

**IN THE SUPREME COURT OF BELIZE, A. D. 2016**

**CLAIM NO. 610 OF 2016**

**(DEBRA BAPTIST ESTRADA**

**APPLICANT**

**(**

**BETWEEN(AND**

**(**

**(GULAB LALCHAND**

**RESPONDENT**

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**BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA**

**Ms. Stacey Castillo of Courtenay Coye and Co for the Applicant**

**Mrs. Magali Marin Young, SC, along with Alistair Jenkins of Magali Marin  
Young and Co. for the Respondent**

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**J U D G M E N T**

**Facts**

1. This is a case where the Claimant is seeking damages for libel. The Claimant, Debra Baptist Estrada, is a career Public Officer. She is the Port Commander of the Northern Border in the Belize Immigration and Nationality Department of Belize. The Defendant, Gulab Lalchand, is a

Businessman who operates two stores in the Benque Viejo Del Carmen Free Zone and in the Corozal Free Zone.

2. On or about 10<sup>th</sup> October, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“Good night Belize I had to share this to the public of Belize. This evening I crossed the Corozal border with my family heading to the Corozal free Zone and all of us had Belizeans Passport. At the check point I met a young lady Immigration office and she knew me cause I am regular person who goes to Zone almost every day. But when I was coming back to the check point customs checked the vehicle immigration officers were out there and they didn’t had any issues by me driving away at the Border. Unfortunately from no where this immigration officer THE BOSS OF IMMIGRATION DEBRA BAPTIST ESTRADA showed up in front of my vehicle and asked the customs officer to instruct me that all passengers should go thru the building. So after the customs finished checked my vehicle I moved like 1 feet to the left hand side so they passenger could come out of the vehicle and go inside. This officer is disgrace to her job to her coworkers she screamed and scold everyone she screamed at me and my family and she said to me straight up that I have disrespected her*

*like 6 months before and she was looking for an opportunity to low me down. She is Unbelievable and a worthless person to her job. I hope the New Director of NATIONALITY & IMMIGRATION officer can look into this matter. Sorry to say she is a real shame!”*

The post continued with an image of the Claimant.

3. Several individuals commented on this post. In response to those comments, the Defendant published the following words:

*(a) “You can say it again. She feels like a owner of the Corozal Border and treat people like Animals. She should get fired..... for a psycho B....”*

*(b) “Kishore Makhijani according to me she is a useless human Being.”*

*(c) “I don’t know why she has problems with me cause I think or I prefer not to kiss asses then Kick asses that is why probably she and me doesn’t agree sir. I give respect to people up to a certain limit and when you across that limit you a worthless human being too mee.....God loves me for who I am Om Namah Shivya.”*

4. On or about 11<sup>th</sup> October, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“Corozal and freezone workers people should come forward and protest against the Immigration law to cross border. Stand up in line Rain or Sunshine 25 to 30 minutes for go to work at the Zone. The new Border built up with four booths for immigration purpose on the both sides of the Border almost two years now. Unfortunately the so called Boss and according to her is the owner of the Building and she no care if we are Belizeans and we need her permission to breathe in the land of Belize. What a shame and disgrace she CAN BE DEBRA BAPTIST ESTRADA.”*

5. On or about 12<sup>th</sup> October, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“Jhon Kerry do you know the real truth about Debra Baptist Estrada before you gave her the reward let me share it with you..... Years ago she was out on interdiction by the department for bribe. At the corozal border. The old border. She was also transferred to the income tax department and she was stealing \$ frm that department. She got transfered bak to immigration. I dnt knw how the US embassy*

*never knew about it and never investigated her first before handing her that award.”*

6. Also on or about 13<sup>th</sup> October, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“Debra Baptist Estrada was a good person all the time she was a junior officer in Belmopan. But something went wrong from the day she Got a Award From Jhon Kerry(US/A) She taugt the God himself Praised her and she was above everyone I would say ELVIN PENNER her Ex-Boss...Sorry I meant to say Her Minister of Immigration and Nationality. I wonder what she was doing in Belmopan those Days... Hmmm i would say a file keeper or a swiper.....Hmmm”*

7. On or about 13<sup>th</sup> October, 2016, the Defendant published or caused to be published another post on Facebook:

*“Good Night Belize it is time to go sleep and start a fresh morning, Debra Baptist Estrada is the least person I should or (WE) should worry. The most support we all Belizeans should sign give to the Teacher’s and the union. Prime minister of Belize Mr. Dean Oliver Barrow is a very Smart man and I really think he will come with the best solution for the Teacher’s and the Union and I hope he Doesn’t forget that is the First Prime Minister to run the Third term which he*

*made a history and I don't think he will prove that will be the worst term he will serve and it will go in the Historic book. Of Belize. Soo Prime minister pls pay the Teacher's and agree the terms and Conditions of the Union. You have found money to pay Ascort For BTL."*

8. On or about 20<sup>th</sup> October, 2016 on Facebook, the Defendant published or caused to be published the following words:

*"Belizean's people should also know that the person who I have been quarreling with for almost a year now who is the favorite person for UDP ADMINISTRATION have hired a top class ATTORNEY from the PUP SIDE. I want all Belizeans Brother & Sister's to know UNFORTUNATELY EITHER THE PERSON IS HIGHLY PAID WITH OUR TAXPAYERS MONEY Or the person was born with a Gold Spoon. It's soo sad to say this soo called person have no trust with the current ADMINISTRATION GOB ATTORNEY'S."*

9. On or about 20<sup>th</sup> November, 2016 on Facebook, the Defendant published or caused to be published the following words:

*"Uno see how it feels when I raise this same issue about Immigration treat people soo bad at the Northern Border. THEY NO GIVE A DAMN"*

10. On or about 25<sup>th</sup> November, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“OMG Hear this story on Amandala News, I am soo happy to see this and this story I mentioned on my post 10<sup>th</sup> October about how Immigration boss is treating her coworkers...Thank you God”*

The post also contained an image of an article of an article featured in the Amandala dated Thursday, November 17<sup>th</sup>, 2016.

11. On or about 26<sup>th</sup> November, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“NO PUBLIC OFFICERS SHOULD BE ENTERTAINING THEIR SELF LIKE DOING BAR-B-CUE, DRINKING B.... Like MIX DRINKS WHILE WORKING.”*

12. Also on or about 26<sup>th</sup> November, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“I have one question where does he OR she have hidden her corruption, Bribe and unaccounted MONEY.....HMMM let us guess, husband, mother, father, uncle, aunty, brother, sister??? I Think Grandchildren’s Names.....You have started the war let me finish it for you.....”*

13. On or about 28<sup>th</sup> November, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“Today is a boring day at the Corozal Zone.....Let’s Do Bar-B-Cue and drink up some imported beers right at the Border. All my friends Are WELCOME.....Especially Public OFFICERS.”*

14. The following comments accompanied that post:

*“Jose Leandro Mendez: Confirmed Ms. Estrada will arrived. WOW’*

*Gulab Ricky: Lol mind what you say.....She might take you to court too.....*

*Jose Leandro Mendez: LOL”*

### **Issue**

15. The sole issue to be determined by this court is as follows:

Whether the publications referenced in paragraphs 1-14 above are defamatory of the Claimant.

### **Evidence on behalf of the Claimant**

16. Mrs. Baptist Estrada was the sole witness for the Claimant. She said that she is the Port Commander of the Northern Border in the Belize Immigration and Nationality Department of Belize, and she resides at Lord’s Bank Village, Belize District, Belize.

17. Mrs. Baptist-Estrada set out in her witness statement all the comments that Mr. Gulab made about her on Facebook. She says that the words complained of in the Facebook posts are untrue and, by reason of their publication, her reputation has been seriously damaged.

The Claimant is informed by her attorneys and believes that the words are defamatory of her as, in their natural and ordinary meaning, the words complained of mean and were understood to mean that:

- i. Mrs. Estrada is not qualified to act in her post;
- ii. Mrs. Estrada is a disgrace to her profession and co-workers;
- iii. Mrs. Estrada engages in criminal activities such as the misappropriation or concealment of government files;
- iv. Mrs. Estrada is a worthless human being;
- v. Mrs. Estrada is psychologically unwell;
- vi. Mrs. Estrada treats people like animals; and
- vii. Mrs. Estrada engages in criminal activities such as the misappropriation of government funds.

18. On account of the Defendant's persistence in publishing the aforementioned libellous posts, the Claimant has had a barrage of inquiries from friends, colleagues and family members who are all questioning her integrity.

19. Mrs. Estrada says she has always been an upstanding member of the Belizean society. She has been a public officer for more than 26 years, and she is well known in the Belize Immigration and Nationality Department.

In recognition of her work, in March 2016, Mrs. Estrada was one of the recipients of the International Women of Courage Award. The award is given annually to women who have gone the extra mile to show leadership in advocating for peace, justice, human rights, gender equality and women's empowerment, often at great personal risk. The Hon. John Kerry, United States Secretary of State, presented the award to Mrs. Estrada at the U.S. State Department.

**Cross-examination of Mrs. Baptist Estrada by Mrs. Marin Young, SC**

20. Mrs. Baptist Estrada says that she is currently an Assistant Director for Immigration with responsibility for Border Management. This is a new position that she currently holds as she got that appointment on the 1<sup>st</sup> of June which would have been after the incident. She agreed that as an Acting position this is a promotion in the hierarchy of the Public Service. The incident with Mr. Lalchand occurred in 2016. She agreed that her emoluments have increased in keeping with her new position; she has also received the annual increments that Public Officers receive since 2016. Mrs. Estrada agreed that she knew Mr. Lalchand prior to 2016 due to some previous incident involving Mr. Lalchand's brother. She said she was stating that she would not go contrary to instructions given by the Immigration Director. Mr. Lalchand challenged her authority; Mrs. Estrada did not agree with Counsel's

suggestion that she chased him from the Immigration building, nor that there has been '*bad blood*' between herself and Mr. Lalchand since that day. It was true that around the time that the incident with Mr. Lalchand occurred the Immigration Department was implementing new procedures for purposes of vehicular traffic with passengers exiting the territory of Belize at the Northern Border. She did not agree that the policy at the time was that a maximum of four persons could remain in the vehicle as the vehicle exited the Immigration booth. Mrs. Estrada said that at the time of the incident, the Department was still in the old process of having everyone alighting the vehicle except the driver and checking with the Immigration Officer inside the building. She said that they were about to embark on that new procedure but it was not yet in effect. That new policy did not come into effect until October 16<sup>th</sup>, 2016.

21. Mrs. Estrada agreed that she had heard of Immigration Officers being flexible with persons coming from the Free Zone and entering the territory of Belize. She said that was prior to her being posted at the Northern Border; once she took over on the 1<sup>st</sup> July, 2015, that had ceased as the instructions to follow the law had been given. Mrs. Estrada agreed that since she took over business persons from the Free Zone and people who travelled to and from that exit point in Belize were having difficulty adjusting to her very strict instructions to adhere to the procedure. She said that was the law and she was only

implementing the law. Mrs. Estrada agreed that on the day of the incident with Mr. Lalchand, his girlfriend and his baby were travelling in his vehicle coming from the Free Zone into Belize. She said his vehicle was at the checkpoint being examined by Customs Officers when she saw them. She did not agree that she demanded that they all come out of the vehicle and catch the Immigration line, even though the Customs officer had already given them permission to exit or to enter Belize. Mrs. Estrada said she had no bad blood towards anyone; she simply enforced the procedures.

22. Mrs. Estrada agreed that prior to this claim Mr. Lalchand's attorneys had been attempting to settle this dispute. She knew that he had been prepared to write a public apology on Facebook to her in relation to some of these posts, as well as pay legal costs to her in order to avoid this claim coming to court. In relation to one of the posts that Mr. Lalchand admitted posting on October 13<sup>th</sup>, 2016, Mrs. Estrada admitted that she had to appear before the Public Services Commission in 1995 where she was accused of corruption in the public service. She agreed that the Commission found her guilty and penalized her by transferring her from the Immigration Department to a Second Class Clerk at Income Tax Department. She agreed that as a fact she was found guilty of corruption in relation to this incident in 1995 and it was true that she was penalized for that incident. She also agreed that as a result of that incident her

integrity as an Immigration Officer was seriously called into question by the Public Services Commission in relation to the charges levied against her. Mrs. Estrada acknowledged that in his additional disclosure Mr. Lalchand disclosed documents evidencing the disciplinary action taken against her by the Public Services Commission in relation to the 1995 incident including letters written by her to the Commission and Minutes of the proceedings before the Commission.

23. Mrs. Estrada was re-examined briefly by Ms. Castillo. She clarified that there was no bad blood towards Mr. Lalchand; she applied the rules and procedures of the Immigration Act Chapter 156 to Mr. Lalchand as she does to everyone else as everyone is subject to the law. She explained that she did not accept Mr. Lalchand's offer of settlement because the damage had been done and Mr. Lalchand's postings were unrelenting. He continued to post derogative remarks about her and that was simply for doing her job. The offer for damages could not compensate for the pain and the suffering that her family, her children, herself and her office had to endure. Mrs. Estrada explained that she was not accused of corruption; she was accused of and charged with extortion. In reference to Mr. Lalchand's Facebook post, Mrs. Estrada said she was never out on interdiction and never charged with stealing money from

the Income Tax Department. She was re-instated at Immigration Department and she has since been promoted on three separate occasions.

**Evidence on behalf of the Defendant**

24. Gulab Lalchand says he is a Retired Businessman, of Venezuela Site, Corozal Town, Corozal District. Before he was retired, he operated a company, Benzer International Company Limited, in the Corozal Free Zone. He therefore visited the Corozal Free Zone quite frequently before and after he was retired, and he became well known to the immigration and customs officers stationed at the Northern Border of Belize. Oftentimes he would take his family to the Corozal Free Zone and on the 10<sup>th</sup> October, 2016, he took his girlfriend, Sixta Pinelo, and his daughter to the Corozal Free Zone. He, his girlfriend and his child are all in possession of valid Belizean Passports which they had with them on that day.
  
25. When Mr. Lalchand and his family attempted to cross the border in the evening of the 10<sup>th</sup> October, 2016, in his vehicle, he said he met a young immigration officer at the checkpoint with whom he was familiar, since he went to the Corozal Free Zone almost daily. He was allowed to drive his car to the Corozal Free Zone and he did do so. The immigration officer allowed

Mr. Lalchand's girlfriend and his daughter to cross the border into the Corozal Free Zone without having to stamp their passports.

26. On Mr. Lalchand's return from the Corozal Free Zone, as he proceeded to drive his vehicle to the customs check point, the customs officers present that day had no issues with his family and with him, and allowed them to leave the customs checkpoint, having checked his vehicle. Immediately thereafter, the Port Commander of the Northern Border, the Claimant, positioned herself in front of Mr. Lalchand's vehicle, and directed that the customs officer, who had already given him the go ahead to leave, instruct Mr. Lalchand that all passengers needed to get out of the vehicle and instead exit through the immigration building. The Claimant only directed this towards Mr. Lalchand, though there were other vehicles, also with passengers in them, waiting in the line to be checked out.
27. Having received those instructions after the customs officer had already checked his vehicle, Mr. Lalchand proceeded to slowly drive his vehicle approximately one foot to the left to allow his girlfriend and his daughter to exit the vehicle to go inside the immigration building.

28. The Claimant then began to shout and scold all the immigration workers that were present at that time. She also shouted at Mr. Lalchand's family and at him and told Mr. Lalchand that he had disrespected her about six months ago and that she was looking for an opportunity to embarrass him in public which she did by making this big scene by shouting and being rude. She was being very unreasonable and rude to Mr. Lalchand at the time, since the new immigration policy was that if four or less persons occupied a vehicle while coming back to Belize through the Northern Border, they need not exit the vehicle and stamp out at the immigration building, which said stamping and customs check could be done without exiting the vehicle.
29. When Mr. Lalchand's girlfriend and daughter exited the vehicle and went into the immigration building, they had to wait outside the Claimant's office for a long period of time. After waiting for over an hour, his daughter even began to cry. The entire incident with the Claimant was unnecessary because Mr. Lalchand said that his family did adhere to the Claimant's demands to exit the vehicle.
30. Mr. Lalchand said that he and his family were very upset by the events which took place that evening on the 10<sup>th</sup> October, 2016, and, thereafter, when he arrived at his home in Corozal Town, he took to Facebook, and he posted from his account, Gulab Ricky, a brief but accurate account of the incident that took

place that evening. He also expressed his frustration towards the Claimant who had acted very unreasonably and rude towards his family and him.

*“Good Night Belize I had to share this to the public of Belize. This evening I crossed the Corozal border with my family heading to the corozal free Zone and all of us had Belizeans Passport. At the check point i met a young lady Immigration officer and she knew me cause i am regular person who goes to the Zone almost every day. But when i was coming back to the check point customs checked the vehicle immigration officers were out there and they didn’t had any issued by me driving away at the Border. Unfortunately from no where this immigration officer THE BOSS OF IMMIGRATION DEBRA BAPTIST ESTRADA showed up in front of my vehicle and asked the customs officer to instruct me that all passengers should go thru the building. So after the customs finished checked my vehicle I moved like 1 feet to the left hand side so they passenger could come out of the vehicle and go inside. This officer is a disgrace to her job to her coworkers she screamed and scold everyone she screamed at me and my family and she said to me straight up that I have disrespected her like 6 months before and she was looking for a opportunity to low me down. she is unbelievable unreasonable and a worthless person to her job. I hope*

*the New Director of NATIONALITY & IMMIGRATION officer can look into this matter. Sorry to say she is real shame!”*

A copy of the Facebook post is annexed as **Annex GL 1.**

31. On the 11<sup>th</sup> October, 2016, Mr. Lalchand again took to Facebook and posted the following:

*“Corozal and freezone workers people should come forward and protest against the Immigration law to cross border. Stand up in line Rain or Sunshine 15 to 30 minutes for go to work at the Zone. The new Border built up with four booths for immigration purpose on the both sides of the Border almost two years now. Unfortunately the so called Boss and according to her is the owner of the Building and she no care if we are Belizeans and we need her permission to breathe in the land of Belize. What a shame and disgrace she CAN BE DEBRA BAPTIST ESTRADA.”*

A copy of the Facebook post is annexed as **Annex GL 2.**

32. Mr. Lalchand said that he made this post on the 11<sup>th</sup> October, 2016, because the long lines that Belizeans have to stand in when crossing the Northern Border, with limited immigration booths, is indeed an issue which has plagued the immigration system for years, and which he has witnessed first-hand. This was especially so at the time of his Facebook post, when the immigration

system was recently changed, and the lines were very long. One of the changes under the new system was that the driver of a car could be stamped without exiting the car, while the passengers had to exit to be stamped in the immigration building.

33. Mr. Lalchand said that in 2015 the Claimant did tell him that she was the owner of the immigration building and demanded that he leave the immigration building and her office. All this was in the presence of an immigration officer, Mr. Martin Guy. Mr. Lalchand said that he became upset and had a verbal exchange with the Claimant, and he admits that he challenged her authority. He believes that because of this, the Claimant has acted unfairly towards him.

34. On the 12<sup>th</sup> October, 2016, Mr. Lalchand posted from his Facebook Account:

*“Tonight i am proud to say to Debra Baptist Estrada that you are not a qualified immigration officer, cause people are coming forward to describe what kind of person you were WORTHLESS.... I believe if Channel Seven Belize Jules Vasquez to go and interview your Coworkers in Corozal Border to ask 1 to 10 what type of person you’re they said up to 9 the worse Boss they every had...and if he ask me personally I would just shake my head and say the worse in the Belize History 9.99....”*

A copy of the Facebook post is annexed as **Annex GL 3**.

35. Mr. Lalchand admitted that on the 13<sup>th</sup> October, 2016, he again posted the following three posts on his Facebook account:

*“Jhon Kerry do you know the real truth about Debra Baptist Estrada before you gave her the reward let me share it to you..... Years ago she was out on interdiction by the department for bribe. At the corozal border. The old border. She was also transferred from the income tax department and she was stealing \$ frm that department. She got transferred bak to immigration. I dnt knw how the US embassy never knew about it and never investigated her first before handing her that award.”*

*“Debra Baptist Estrada was a good person all the time when she was a junior officer in Belmopan. But something went wrong from the day she Got a Award from Jhon Kerry (USA) She taught the God himself praised her and she was above everyone I would say ELVIN PENNER her EX Boss... Sorry I meant to say her Minister of Immigration and Nationality. I wonder what she was doing in Belmopan those Days.. Hmm I would say a file keeper or a swiper .....Hmmm.”*

*“Good Night Belize it is time to go sleep and start a fresh morning, Debra Baptist Estrada is the least person I show or (WE) should worry. Mr. Dean Oliver Barrow is a very Smart man and i really think he will come with the best solution for the Teacher’s and the Union and I hope he doesn’t forget that is the First Prime Minister to run the Third term which he made a history and i don’t think he will prove that will be the worst term he will serve and it will go in the Historic book of Belize. Soo Prime minister pls pay the Teacher’s and agree the terms and Conditions of the Union. You have found money to pay Ashcroft for BTL.”*

A copy of these Facebook posts are annexed as **Annex GL 4**.

36. On the 20<sup>th</sup> October, 2016, Mr. Lalchand took to Facebook to make a post about a public/political issue in Belize in the following words:

*“Belizean’s people should also know that the person who i have been quarreling with for almost a year now who is the favourite person for UDP ADMINISTRATION have hired a top class ATTORNEY from the PUP SIDE. I want all Belizeans Brother & Sister’s to know UNFORTUNATELY EITHER THE PERSON IS HIHLY PAID WITH OUR TAX PAYERS MONEY Or the person was born with a Gold*

*Spoon. It's soo sad to say this soo called person have no trust with the current ADMINISTRATION GOB ATTORNEY'S."*

A copy of the Facebook post is annexed as **Annex GL 5**.

37. Since the filing and service of Claim No. 610 of 2016, Mr. Lalchand said he has removed all posts which the Claimant complained about and which reference the Claimant in any way.

**Cross-examination of The Defendant by Ms. Stacey Castillo**

38. Mr. Lalchand did not agree with the suggestion that when passing the Northern Border a person has to get an exit stamp in his passport. He said that is not the procedure at the Free Zone and that some people had a different way of procedure by crossing. He did agree that he is bound to follow the Laws of Belize. He did not agree that it is the law that he is to get an exit stamp when he leaves the country. He disagreed that it was just an act of leniency when Immigration Officers would allow him to go to Free Zone without first getting a stamp. He said that in those days Free Zone used to have a card where you just showed your card and you were free to go. He had one of those cards. His girlfriend also had a card but not his child. He agreed that they would have required a stamp. He did not agree that the reason Mrs. Estrada asked his girlfriend and child to exit the vehicle was because they did not have an exit stamp in their passports. Mr. Lalchand said that Mrs. Estrada saw him from

far and she came running towards him. There were several vehicles filled with passengers in front of him and behind him and Immigration and Customs Officers present. He agreed that his girlfriend and his child did not have exit stamps entering or exiting Belize. He disagreed that he almost hit Mrs. Estrada with his vehicle on that day as he drove towards the Immigration Building as she had directed him to do. He agreed that he was charged by the police for assaulting Mrs. Estrada.

39. Asked about his Facebook post dated October 10<sup>th</sup> where he said Mrs. Estrada “*should get fired for a psycho B....*”, Mr. Lalchand agreed he did not post that she should get fired for not doing her job properly. He did not agree that he meant psycho bitch. He said that there are many other words besides the word Bitch, but he agreed that the word “*bitch*” begins with “*B*” and has four other letters. He agreed that in calling Mrs. Estrada “*a useless human being*” in another of his Facebook posts he did not make this comment in relation to her job. He said he knows bribery and extortion are two different crimes but he used the Creole term bribery. He said he never meant in another post that Mrs. Estrada was stealing money from the Income Tax Department; he said he meant she was stealing from the Immigration Department. He said he attached documents to show Mrs. Estrada was stealing from Immigration Department.

40. Mr. Lalchand said in relation to another of his Facebook posts saying the Claimant was a *'file keeper'* or a *'file swiper'* that he was not referring to Mrs. Estrada stealing files; he said he meant she was working as a maid or a sweeper. He said he meant she was keeping up files in Belmopan and he wants to know how come she did not know about Elvin Penner. Mr. Lalchand said he knows that the Claimant is an Immigration Officer; he says an officer can still sweep her office. He agreed that the post he made on Facebook describing the *"person who he had been quarreling with for over a year"* and that person hiring a PUP attorney refers to the present case in this court. He agreed that at this point he had gotten a letter dated October 18<sup>th</sup>, 2016 from Mr. Eamon Courtenay of Courtenay Coye LLP which set out the defamatory posts and what they meant in their natural and ordinary meaning. Mr. Lalchand admitted that he posted on Facebook two days after receiving this letter from Mr. Courtenay. In that post he said in all capital letters *"UNFORTUNATELY EITHER THE PERSON IS HIGHLY PAID WITH OUR TAX PAYERS MONEY or the person was born with a Gold Spoon."* Mr. Lalchand said he did not imply that she is paying her attorney with tax dollars; he said he meant either she is making a very good income or she is rich. He denied that notwithstanding that he had received two letters from Courtenay Coye and Co. by October 31<sup>st</sup>, 2016, he continued to post on Facebook.

41. Mr. Lalchand disagreed with Counsel's suggestion that he had posted about Mrs. Estrada so much that people were starting to assume that all his posts were about her. He admitted that the entire country of Belize knew of the court proceedings between Mrs. Estrada and him. On November 2<sup>nd</sup>, 2016 Mr. Lalchand again posted on Facebook:

*"Guys I don't know WTF to say but it's time to disclose of all the files about my old friend cause he/she playing hard ball imagine..."* He does not admit that in this post he was referring to the Supplemental Disclosure filed by his attorneys evidencing that Mrs. Estrada had been disciplined by the Public Services Commission. He said that message was for his ex-girlfriend and had nothing to do with Mrs. Estrada. In a post on Facebook dated November 9<sup>th</sup>, 2016, Mr. Lalchand posted *"Wait and watch while watching don't get busted and blame me for it so give up your pride BITCH and apologies before you get BUSTED."*

42. Upon re-examination by Mrs. Marin Young, SC, Mr. Lalchand explained that arising out of the same incident at the border, Mrs. Estrada had claimed he almost knocked her down with his vehicle, she brought a witness but the case against him was dismissed. He said he knew "*bribery*" and "*extortion*" were two different crimes. He stated that '*bribery*' meant somebody is giving you some money to complete a job, while '*extortion*' meant you are really forcing

someone to give up something of what you have; in relation to money, he said extortion is just like bribery.

**Evidence of Sixta Pinelo on behalf of the Defendant**

43. The final witness for the Defence was Sixta Pinelo. Ms. Pinelo says she is of Venezuela Site, Corozal Town, Corozal District. She is in a relationship with the Defendant herein with whom she has a child.

*The 10<sup>th</sup> October Incident*

On the 10<sup>th</sup> October, 2016, Ms. Pinelo says she accompanied the Defendant on a trip to the Corozal Freezone. Upon arriving at the Northern Border, a customs officer, with whom the Defendant was familiar, gave Ms. Pinelo and their daughter permission to cross the Northern Border into the Corozal Free zone without having to stamp their passports, which they had with them at that time. They spent about half an hour in the Corozal Free zone, and then proceeded to cross the border into Belize to go home. They approached the customs check point, still in the Defendant's vehicle, and the customs officer present checked the vehicle and gave them the go-ahead to proceed. Immediately thereafter, the Claimant came towards their vehicle only, as there were other vehicles with passengers, and demanded in a very high tone, as if shouting, that Ms. Pinelo and her child check out at the immigration building.

She therefore exhibited the vehicle with her daughter to comply with the Claimant's demands. The Claimant followed Ms. Pinelo and her daughter into the immigration building and demanded that Ms. Pinelo stand in the line for visitors, which she did after experiencing Ms. Estrada's aggressive tone and behavior towards her. When Ms. Pinelo got to the front of the line and was attended to by the immigration officer in the booth, she told the officer that she did not stamp out through the immigration building since the previous officer who was outside gave her and her child permission to cross the Northern Border into the Corozal Free Zone without stamping. The Claimant then approached the booth, knocked on the glass and instructed the officer, in a very high tone as if to alert everyone in the immigration building, to check if Ms. Pinelo had an exit stamp on her passport, which he informed her that Ms. Pinelo did not. Ms. Pinelo was then instructed by the immigration officer to go inside the office, and when she did so, Mrs. Estrada was furious because of what had transpired, i.e., because the previous immigration officer had allowed Ms. Pinelo to cross the border without stamping. She began to yell at Ms. Pinelo and asked why she did not check out. Ms. Pinelo said that she explained to Mrs. Estrada repeatedly that the officer outside granted her permission to exit and that she did not deliberately or dishonestly run over the checkpoint.

44. The Claimant then sent Ms. Pinelo outside of her office to wait, and she was standing there waiting for more than an hour. Her baby began to cry and complain that she was hungry. That was when the Claimant came to Ms. Pinelo and said that she could go home but that she had to come back to her office the following morning at 8:00 a.m. The following day Ms. Pinelo's helper, who would take care of her baby she was gone, was late and so she did not arrive at the Northern Border until about 8:40 a.m. on the 11<sup>th</sup> October, 2017. When Ms. Pinelo arrived, she went directly to the Claimant's office, but because she was late, the Claimant instructed that Ms. Pinelo wait outside her office. After waiting for about half an hour Ms. Pinelo approached the Claimant again and asked her to give me an opportunity to explain why she was late. During that short conversation Ms. Pinelo asked Mrs. Estrada what was the matter between her and the Defendant, as on the previous day she only approached the Defendant's vehicle when there were many vehicles with passengers therein, awaiting to be checked out in the same way they were attempting to do? The Claimant then began to explain to Ms. Pinelo that a long time ago when the Defendant's brother came from India, they had a confrontation. Mrs. Estrada then stopped explaining to Ms. Pinelo and said that she need not explain to her what happened. Mrs. Estrada said that Ms. Pinelo would have to go to Court because of the passport stamp issue and that

she would hold her passport. Ms. Pinelo again waited outside the Claimant's office for another hour and a half. After waiting for a while, and after having informed the Claimant that she got a call about her baby, Mrs. Estrada allowed Ms. Pinelo to leave but kept her passport and instructed that she return the following the day.

45. The next day Ms. Pinelo returned with her baby, and again she was instructed by the Claimant to wait outside her office. Ms. Pinelo stood waiting outside her office for about an hour with her baby until finally the Claimant returned with her passport and Ms. Pinelo left the immigration building.
46. After the incident transpired, the Defendant made several posts on Facebook highlighting what had happened to them. Ms. Pinelo also posted an account of what took place on her Facebook page, Vani Pinelo. A copy of her post is annexed hereto as **Annex SP 1**.

**Cross-examination of Ms. Pinelo by Ms. Castillo**

47. Ms. Pinelo said that she did not know who Mrs. Estrada was prior to October 10<sup>th</sup>, 2016. She agreed that the normal procedure when crossing the border is to get an exit stamp in your passport. The witness also agreed that because Mr. Lalchand was familiar with an Immigration Officer at the border, she and her child were allowed to cross the border without getting an

exit stamp in their passports; she said that was because they crossed the border every day. Ms. Pinelo said that they were crossing through the border along with many other vehicle that were there when suddenly Mrs. Estrada came out of nowhere and in a loud voice started shouting for everybody to get out of the vehicle. Ms. Pinelo then got out of the vehicle. When asked about whether one of Mr. Lalchand's post was referring to Mrs. Estrada, Ms. Pinelo said she is not sure because she did not write that post. She was asked who she was referring to in a comment in responding to one of Mr. Lalchand's posts on Facebook, where she said that "*You only worried but one person I know who is that I think it's a she.*" Ms. Pinelo said she was referring to other people and it was personal stuff between Mr. Lalchand and herself. Ms. Pinelo agreed that when Mrs. Estrada asked her and her child to get out of the vehicle and attend the Immigration Office, Mrs. Estrada was addressing an irregularity.

### **Legal Submissions on behalf of the Claimant**

48. These submissions are made on behalf of Debra Baptist Estrada, the Claimant herein. The Claimant seeks relief in the form of damages, including exemplary damages, for libel in respect of several posts which the Defendant published or caused to be published on a website called '*Facebook.*'

49. The Defendant admits that he published a number of posts referencing the Claimant, but alleges that some of those posts are true, while others are regarded as an exercise of his freedom of speech and are fair comment.<sup>1</sup>
50. The parties filed an Agreed Statement of Facts and Issues in these proceedings dated the 17<sup>th</sup> October, 2017.<sup>2</sup> The sole issue identified by the parties is whether the Facebook posts made by the Defendant are defamatory of the Claimant.
51. In the premises, these submissions will address each post, setting out why they are defamatory and submitting why the defences put forward by the Defendant should fail.

## **DISCUSSION**

### **A. Defamatory Posts**

52. Halsbury's Laws of England sets out the meaning of a defamatory statement as follows:

*“The essence of a defamatory statement is its tendency to injure the reputation of another person. There is no complete or comprehensive definition of what constitutes a defamatory statement, since the word*

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<sup>1</sup> Defence of the Defendant Trial Bundle P. 60 @ [3]

<sup>2</sup> Trial Bundle P. 139 to 140

*'defamatory' is nowhere precisely defined. Generally speaking, a statement is defamatory of the person of whom it is published if it tends to lower him in the estimation of right thinking members of society generally or if it exposes him to public hatred, contempt or ridicule or if it causes him to be shunned or avoided.*

*A person's reputation is not confined to his general character and standing but extends to his trade, business or profession, and words will be defamatory if they impute lack of qualification, knowledge, skill, capacity, judgment or efficiency in the conduct of his trade, business or professional activity.*

*A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.”<sup>3</sup>*

53. The test of what is defamatory is:

*“In deciding whether or not a statement is defamatory, the court must first consider the notional single meaning that the words would convey to the ordinary person. The fact that the same words can mean different things to different people is ignored; the court seeks to determine and act upon the one and only meaning that the readers as reasonable*

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<sup>3</sup> Halsbury's Laws of England, Defamation (Volume 32, 2019) @ [543] [TAB 1]

*persons should have collectively understood the words to bear. Having determined the meaning, the test is whether, under the circumstances in which the words were published, the reasonable person would be likely to understand them in a defamatory sense. Words which tend to diminish the esteem in which a person is held by the criminal classes or by persons out of sympathy with the law will not support a claim, for that is not a standard which the court can recognise.*

*The fact that the particular person to whom the words were published did not believe them to be true is irrelevant and does not affect the right of action, although it may affect the question of damages. Similarly, the fact that the publisher of the words has a bad reputation, depriving his allegation of credibility, may affect damages, but not liability.*

*Words will be defamatory if they impute conduct the reasonable person considers discreditable, even though in the author's stated view such conduct is proper.”<sup>4</sup>*

54. It is submitted that the post made by the Defendant on or about 10<sup>th</sup> October, 2016, which also contained a picture of the Claimant, is defamatory of the Claimant:

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<sup>4</sup> Halsbury's Laws of England, Defamation (Volume 32, 2019) @ [544] [TAB 2]

*“Good Night Belize i had to share this to the public of Belize. This evening i crossed the Corozal border with my family heading to the corozal free Zone and all of us had Belizeans Passport. At the check point i met a young lady Immigration office and she knew me cause i am regular person who goes to Zone almost every day. But when i was coming back to the check point customs checked the vehicle immigration officers were out there and they didn’t had any issues by me driving away at the Border. Unfortunately from no where this immigration officer THE BOSS OF IMMIGRATION DEBRA BAPTIST ESTRADA showed up in front of my vehicle and asked the customs officer to instruct me that all passengers should go thru the building. So after the customs finished checked my vehicle i moved like 1 feet to the left hand side so they passenger could come out of the vehicle and go inside. This officer is a disgrace to her job to her coworkers she screamed and scold everyone she screamed at me and my family and she said to me straight up that i have disrespected her like 6 months before and she was looking for a opportunity to low me down. she is Unbelievable unreasonable and a worthless person to her job. I hope*

*the New Director of NATIONALITY & IMMIGRATION officer can look into this matter. Sorry to say she is real shame !”*

55. In their natural and ordinary meaning, the words mean and would be understood by others to mean that the Claimant:

- a. is not qualified to act in her post; and.
- b. is a disgrace to her profession and co-workers.

56. Several individuals commented on this post. In response to those comments, the Defendant published the following words:

*(a) “You can say it again. She feels like a owner of the Corozal Border and treat people like Animals. She should get fired.....for a pyscho B....”*

*(b) “Kishore Makhijani according to me she is a useless human Being”*

*(c) “I don’t know why she has problems with me cause i think or i prefer not to kiss asses then Kick asses that is why probably she and me doesn’t agree sir. I give respect to people upto a certain limit and when you across that limit you a worthless human being too mee..... God loves me for who i am Om Namah Shivya.”*

57. In their natural and ordinary meaning, the words mean and would be understood by others to mean that the Claimant:

- a. treats people like animals.
- b. is psychologically unwell; and
- c. is a worthless human being.

58. According to Halsbury's Laws of England, an allegation of insanity or serious mental illness will generally be defamatory, especially if it carries with it the inference of unfitness to pursue one's trade or profession.<sup>5</sup>

59. On or about 11 October, 2016 on Facebook, the Defendant published or caused to be published the following words:

*“Corozal and freezone workers people should come forward and protest against the Immigration law to cross border. Stand up in line Rain or Sunshine 15 to 30 minutes for go to work at the Zone. The new Border built up with four booths for immigration purpose on the both sides of the Border almost two years now. Unfortunately the so called Boss and according to her is the owner of the Building and she no care if we are Belizeans and we need her permission to breathe in the land*

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<sup>5</sup> Halsbury's Laws of England, Defamation (Volume 32, 2019) @ [553] [TAB 3]

*of Belize. What a shame and disgrace she CAN BE DEBRA BAPTIST ESTRADA.”*

60. In their natural and ordinary meaning, the words mean and would be understood by others to mean that the Claimant is a disgrace to her profession and co-workers.
61. The Defendant alleges that the post constitutes fair comment.<sup>6</sup>
62. The Claimant submits that the abovementioned post does not constitute fair comment. It is said that a comment cannot exist “*in thin air.*” The Defendant must prove that the factual building blocks on which the comment is based are true, or sufficiently true, or are protected by privilege.<sup>7</sup>
63. The Defendant has failed to prove that the Claimant is the owner of the building, nor that persons need her permission to breathe in the land of Belize. Consequently, the defence of fair comment fails.
64. On or about 12<sup>th</sup> October, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“Tonight i am proud to say to Debra Baptist Estrada that you are not a qualified immigration officer, cause people are coming forward to*

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<sup>6</sup> Trial Bundle p. 61 Defence of the Defendant @ [7]

<sup>7</sup> Clerk and Lindsell on Torts, 22<sup>nd</sup> Edn. p. 1606 @ 22-163 [TAB 4]

*describe what kind of a person you were WORTHLESS.....I believe if Channel Seven Belize Jules Vasquez to go and interview your Coworkers in Corozal Border to ask 1 to 10 what type of person you're they said up to 9 the worse Boss they ever had... and if he ask me personally i would just shake my head and say the worse in the Belize History 9.99 .....*”

65. In their natural and ordinary meaning, the words mean and would be understood by others to mean that the Claimant is not qualified to act in her post.
66. The Defendant alleges that he was simply expressing his opinion.<sup>8</sup>
67. There are five key elements the Defendant must prove to successfully advance the defence of honest comment/opinion:
  - a. The subject matter of the comment must be of public interest.
  - b. The statement must be recognizable as comment as distinct from fact.
  - c. The comment must be based on facts which are true or protected by privilege.
  - d. The comment must indicate explicitly or implicitly, at least in general terms, the facts on which it is based.

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<sup>8</sup> Trial Bundle p. 60 Defence of the Defendant @ [9].

- e. The comment must be one which an honest person could hold. This is an objective test, but should not be confused with reasonableness; if an honest person could have made the comment, however prejudiced, exaggerated or obstinate in his or her views, this requirement will be fulfilled.<sup>9</sup>
68. It is submitted that there are no true facts upon which this comment can be based as seen in the post. Thus, the Defendant has not satisfied the elements required to establish a plea of honest opinion.
69. On or about 13<sup>th</sup> October, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“Jhon Kerry do you know the real truth about Debra Baptist Estrada before you gave her the reward let me share it to you .....*

*Years ago she was out on interdiction by the department for bribe. At the corozal border. The old border. She was also transferd to the income tax department and she was stealing \$ frm that department. She got transfered bak to immigration. I dnt knw how the US embassy never knew about it and never investigated her first before handing her that award.”*

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<sup>9</sup> Clerk and Lindsell on Torts, 22<sup>nd</sup> Edn. p. 1600 @ 22-160 [TAB 5]

70. Also on or about 13<sup>th</sup> October, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“Debra Baptist Estrada was a good person all the time when she was a junior officer in Belmopan. But something went wrong from the day she Got a Award From Jhon Kerry (USA) She taught the God himself Praised her and she was above everyone i would say ELVIN PENNER her Ex Boss .... Sorry i meant to say Her Minister of Immigration and Nationality. I wonder what she was doing in Belmopan those Days..Hmmm i would say a file keeper or a swiper.....Hmmm”*

71. In their natural and ordinary meaning, the words mean and would be understood by others to mean that the Claimant engages in criminal activities such as the misappropriation or concealment of government files.

72. The Defendant avers that the words posted are true.<sup>10</sup>

73. With respect to justification under the common law, the Court must consider whether the meaning has been shown to be substantially true, bearing in mind the balance to be struck between free speech and private rights. The burden of proof is on the defendant.<sup>11</sup>

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<sup>10</sup> Trial Bundle p. 61 Defence of the Defendant @ [10]

<sup>11</sup> Clerk and Lindsell on Torts, 22<sup>nd</sup> Edn. p. 1549 @ 22-65 [TAB 6]

74. The fundamental principle is that the defence will not succeed if the meaning that is proved to be true is a materially less serious meaning than that which the words are held to bear.<sup>12</sup>

75. It is submitted that the contents of the abovementioned posts are not true. The Defendant has adduced evidence<sup>13</sup> which speaks to disciplinary proceedings in relation to a charge for corruption as an immigration officer. No evidence has been presented to substantiate the Defendant's allegation that the Claimant was placed on interdiction by the Immigration Department for bribe, and no evidence has been presented to substantiate any allegation of the Claimant stealing money from the Income Tax Department. Additionally, no evidence has been presented to substantiate the Defendant's allegation that the Claimant was involved with the concealment of government files. The Claimant states that these allegations are untrue.

76. On or about 13<sup>th</sup> October, 2016, the Defendant published or caused to be published another post on Facebook:

*“Good Night Belize it is time to go sleep and start a fresh morning,  
Debra Baptist Estrada is the least person i should or (WE) should*

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<sup>12</sup> Clerk and Lindsell on Torts, 22<sup>nd</sup> Edn. p. 1550 @ 22-66 [TAB 7]

<sup>13</sup> Trial Bundle p. 145 -155

*worry, The most support we all Belizeans should give to the Teacher's and the union. Prime minister of Belize Mr. Dean Oliver Barrow is a very Smart man and i really think he will come with the best solution for the Teacher's and the Union and i hope he Dosen't forget that is the First Prime minister to run the Third term which he made a history and i dont think he will prove that will be the worst term he will serve and it will go in the Historic book of Belize. Soo Prime minister pls pay the Teacher's and agree the terms and Conditions of the Union. You have found money to pay Ascort For BTL."*

77. All of the abovementioned posts impute lack of qualification, knowledge, skill, capacity, judgment or efficiency in the conduct of the Claimant's post, which, at the material time, was Port Commander of the Northern Border.

**B. The Defendant's Conduct**

78. On the 18<sup>th</sup> of October, 2016, the Claimant's Attorneys-at-Law wrote to the Defendant on behalf of the Claimant, requesting a full and unequivocal public retraction and apology in the terms approved by us, removal of the posts, damages and an undertaking not to repeat the allegations.<sup>14</sup>

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<sup>14</sup> Trial Bundle p. 79 - 81

79. Notwithstanding this letter, the Defendant continued to publish posts on Facebook implicitly referring to the Claimant.

80. On or about 20<sup>th</sup> October, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“Belizean’s people should also know that the person who i have been quarreling with for almost a year now who is the favourite person for UDP ADMINISTRATION have hired a top class ATTORNEY from the PUP SIDE. I want all Belizeans Brother & Sister’s to know UNFORTUNATELY EITHER THE PERSON IS HIGHLY PAID WITH OUR TAX PAYERS MONEY Or the person was born with a Gold Spoon. It’s soo sad to say this soo called person have no trust with the current ADMINISTRATION GOB ATTORNEY’S.”*

81. It is submitted that in their natural and ordinary meaning, the words mean and would be understood by others to mean that the Claimant is using public funds to obtain legal representation in this matter.

82. The Defendant alleges that this post was fair comment.<sup>15</sup> The Claimant submits that there is no sufficient factual basis which would ground the publication as a fair comment.

83. On or about 20<sup>th</sup> November, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“Uno see how it feels when i raise this same issue about how Immigration treat people soo bad at the Northern Border. THEY NO GIVE A DAMN.”*

84. The Claimant submits that the abovementioned post refers to her. The Claimant further submits that there is no sufficient factual basis which would ground this publication as a fair comment.

85. On or about 25<sup>th</sup> November, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“OMG Hear this Story on Amandala News . I am soo happy to see this and this story i mentioned on my post 10th of October about how Immigration boss is treating her coworkers.....Thank you God.”*

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<sup>15</sup> Trial Bundle p. 61 Defence of the Defendant @ [12]

86. The Claimant submits that by virtue of the abovementioned post, the Defendant is attempting to justify his baseless allegations, instead of attempting to mitigate the damage he has caused to the Claimant.

87. Also on or about 26<sup>th</sup> November, 2016, on Facebook, the Defendant published or caused to be published the following words:

*“I have one question where does he OR she have hidden her corruption, Bribe and unaccounted MONEY .....HMMM let us guess husband, mother, father, uncle, aunty, brother, sister??? I Think Grandchildren's Names .....You have started the war let me finish it for you.....”*

88. Although these posts do not mention the Claimant expressly, it is submitted that ordinary sensible readers with knowledge of special facts could and did understand them to refer to the Claimant. This is demonstrated by a comment on a post published on or about 28<sup>th</sup> November, 2016 by the Defendant:

*“Today is a boring day at the Corozal Zone..... Let's Do Bar-B-Cue and drink up some imported beers right at the Border. All my friend's are WELCOME .....Especially Public OFFICERS.”*

89. The following comments accompanied that post:

*“Jose Leandro Mendez: Confirmed Ms Estrada will arrived. WOW*

*Gulab Ricky: Lol mind what you say.....She might take you to the court too .....*

*Jose Leandro Mendez: LOL.”*

90. When the Defendant was examined with respect to persons knowing that he was referring to the Claimant, the Defendant responded stating that all of Belize knows of the matter:

*“Q. Very well. So in that comment when you say, ‘Mind what you say.... She might take you to the court too....,’ that would allow your Facebook followers to know that there were ongoing court proceedings between you and Mrs. Estrada?*

*A. Whole Belize knows us.*

*Q. The whole Belize knows?*

*A. Yes.”<sup>16</sup>*

91. On the 30<sup>th</sup> of March, 2017, by way of a consent order, the Defendant undertook to the Court that until trial or further order he would not make any further posts on Facebook about the Claimant, and not to contact the Claimant.

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<sup>16</sup> Transcript p. 61 @ 3- 10

92. Notwithstanding this undertaking, the Defendant published the posts tendered as Exhibits DE2 and DE3 at trial. The Claimant asserts that these posts were about her and the proceedings herein.

93. In the premises, the Claimant submits that the abovementioned posts are defamatory of her, and the Defendant engaged in aggravating conduct prior to and throughout the proceedings herein. As a result, the Claimant is entitled to damages.

### **C. Damages**

94. The Claimant testified as to the damage caused as a result of the Defendant's Facebook publications:

*“The reason I did not accept the offer was simply because the damages had been done and the Defendant Mr. Lalchand postings were unrelenting. He continued to post derogative remarks about me and that was simply for doing my job. And more so, the offer for 5 damages could not compensate for the pain and suffering that my family, myself, my office had to endure, my children.”<sup>17</sup>*

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<sup>17</sup> Transcript P. 31 @ 1

95. During the Defendant's examination, he acknowledged that the whole of Belize knew of the matter.<sup>18</sup>

96. The Claimant submits that the following cases should be used to arrive at a figure to be awarded for damages:

- a. Claim No. 142 of 2018 *Mark King and Brints Security Limited v Moses Sulph*<sup>19</sup> in which the Court ordered the sum of \$20,000 as damages against the Defendant therein for defamatory publications against the Claimants therein;
- b. Claim No. 131 of 2016 *Sittee River Wildlife Reserve et al v Thomas Herskowitz et al*<sup>20</sup>, in which awards of general damages in the sums of \$30,000.00 and \$60,000.00 to the First and Second Defendants respectively and aggravated damages in the sum of \$30,000.00 were made. This case also involved Facebook posts;
- c. Claim No. 561 of 2006 *Lois Young Barrow v Andrew Steinhauer and Belize Times Press Ltd*<sup>21</sup> where the Court awarded damages in the sum of \$30,000.00;

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<sup>18</sup> Transcript P. 61 @ 8-10

<sup>19</sup> [TAB 8]

<sup>20</sup> [TAB 9]

- d. Claim No 254 of 2018 *Anwar Barrow v Michael Rudon and the Times Newspaper Limited*<sup>22</sup> where \$40,000.00 was awarded as general damages and \$10,000.00 as aggravated damages.

#### **D. Conclusion**

97. It is therefore submitted that the Claimant should be awarded the relief she seeks.

#### **Legal Submissions on behalf of the Defendant**

98. The Claimant filed Claim No. 610 of 2016 against the Defendant seeking the following reliefs:

*“(1) Damages, including exemplary damages, for libel in respect of several posts which the Defendant published or caused to be published on a website called ‘Facebook’ which is located at ‘http://www.facebook.com/gulab.lalchand’ on the following dates:*

- i. 10<sup>th</sup> October 2016;*
- ii. 11<sup>th</sup> October, 2016;*
- iii. 12<sup>th</sup> October 2016;*
- iv. 20<sup>th</sup> October 2016.*

- (2) An injunction to restrain the Defendant, whether by himself, his servants or agents or otherwise, from further publishing or causing to be published the same or any similar defamatory matter concerning the Claimant;*
- (3) Interest pursuant to the Supreme Court of Judicature Act;*
- (4) Further or other relief; and*
- (5) Costs.”*

The Defendant now makes these submissions in response to the Claimant’s Skeleton Arguments per the Order of the Court of the 17<sup>th</sup> September, 2019.

### **Factual Background**

99. Following an altercation between the Claimant and the Defendant at the Northern Border in the Corozal District, Belize, on the 10<sup>th</sup> October, 2016, the Defendant made the following posts on Facebook:

(1) On the 10<sup>th</sup> October, 2016:

*“Good Night Belize I had to share this to the public of Belize. This evening i crossed the Corozal border with my family heading to the corozal free zone and all of us had Belizean Passport. At the check point i met a young lady Immigration office and she knew me cause i am a regular person who goes to Zone almost every day. But when i was coming back to the check point customs checked the vehicle immigration officers were out there and they didn’t had any issues by me driving away at the Border. Unfortunately*

*from no where this immigration officer THE BOSS OF IMMIGRATION DEBRA BAPTIST ESTRADA showed up in front of my vehicle and asked the customs officer to instruct me that all passengers should go thru the building. So after the customs finished checked my vehicle i moved like 1 feet to the left hand side so they passenger could come out of the vehicle and go inside. This officer is a disgrace to her to her coworkers she screamed and scold everyone she screamed at me and my family and she said to me straight up that i have disrespected her like 6 months before and she was looking for an opportunity to low me down. She is unbelievable unreasonable and a worthless person to her job. I hope the New Director of NATIONALITY & IMMIGRATION officer can look into this matter. Sorry to say she is a real shame!”*

(2) On the 11<sup>th</sup> October, 2016:

*“Corozal and freezone workers people should come forward and protest against the immigration law to cross border. Stand up in line Rain or Sunshine 15 to 30 minutes for go to work at the Zone. The new Border built up with four booths for immigration purpose on the both sides of the Border almost two years now. Unfortunately the so called Boss and according to her is the owner of the Building and she no care if we are*

*Belizeans and we need her permission to breathe in the land of Belize.  
What a shame and disgrace she CAN BE DEBRA BAPTIST ESTRADA.”*

(3) On the 12<sup>th</sup> October, 2016:

*“Tonight i am proud to say to Debra Baptist Estrada that you are not a qualified immigration officer, cause people are coming forward to describe what kind of a person you were WORTHLESS..... I believe if Channel Seven Belize Jules Vasquez to go and interview your Coworkers in Corozal Border to as 1 to 10 what type of person you’re they said up to 9 the worse Boss they ever had... and if he ask me personally i would just shake my head and say the worse in the Belize History 9.99.....”*

(4) On the 13<sup>th</sup> October, 2016:

*“Jhon Kerry do you know the real truth about Debra Baptist Estrada before you gave her the reward let me share it to you.....Years ago ahe was out on interdiction by the department for bribe. At the corozal border. The old border. She was also transferred to the income tax department and she was stealing \$ from that department. She got transferred back to immigration. I dnt knw how the US embassy never knew about it and never investigated her first before handing her that award.”*

*“Debra Baptist Estrada was a good person all the time when she was a junior officer in Belmopan. But something went wrong from the day she Got a Award From Jhon Kerry (USA) She taught the God himself Praised her and she was above everyone i would say ELVIN PENNER her Ex Boss....Sorry I meant to say Her Minister of Immigration and Nationality. I wonder what she was doing in Belmopan those Days.. Hmmm i would say a file keeper or a swiper.....Hmmm.”*

*“Good Night Belize it is time to go to sleep and start a fresh morning. Debra Baptist Estrada is the least person i should or (9WE) should worry, The most support we all Belizeans should give to the Teacher’s and the union. Prime minister of Belize Mr. Dean Oliver Barrow is a very Smart man and I really think he will come with the best solution for the Teacher’s and the Union and i hope he Dosen;t forget that is the First Prime minister to run the Third term which he made a history and i don’t think he will prove that will be the worst term he will serve and it will go in the Historic book of Belize. Soo Prime minister pls pay the Teacher’s and agree the terms and Conditions of the Union. You have found money to pay Ashcroft For BTL.”*

(5) On the 20<sup>th</sup> October, 2016:

*“Belizean’s people should also know that the person who i have been quarrelling with for almost a year now who is the favourit person for UDP ADMINISTRATION have hired a top class ATTORNEY from the PUP SIDE. I want all Belizeans Brother & Sister’s to know UNFORTUNATELY EITHER THE PERSON IS HIGHLY PAID WITH OUT TAX PAYERS MONEY or the person was born with a Gold Spoon. It’s soo sad to say this soo called person have no trust with the current ADMINISTRATION GOB ATTORNEY’S.”*

### **Submissions**

100. Chief Justice Conteh, as he then was, in *Ara Macao Development Limited et al v Peninsula Citizen for Sustainable Development et al* Claim no. 362 of 2007 [TAB 1], succinctly outlined what constitutes the tort of defamation at paragraph 5 of his decision as follows:

*“The tort of defamation is concerned with the protection of reputation. A man or woman should not be thought less of or ill by his neighbors and peers because of the unwarranted publication by a defendant. The common law of defamation, as Dr. Kaseke helpfully pointed out to the court, set out in the cases he referred to, *Lewis v The Daily Telegraph* [1963] 2 All E.R 151; *The Capital and County Bank Limited v George**

*Henty & Sons [1882] 7 A.C. 741; United Printers Limited v Bernard and Others [1967] 11 WIR 271; and the Guyanese case of Janet Jagan and Another v Linden Forbes Sampson Burnham [1973], 20 WIR, all attest to the fact that the test for defamation is whether the publication complained of is capable in the eyes of the ordinary man or woman to lower the claimant in the esteem of right thinking members of society.”*

The Claimant and the Defendant are therefore not at odds in relation to what constitutes defamation and the test for the same. The Claimant and the Defendant are, however, at odds as to whether the publications complained of are libelous. The Defendant therefore proposes to address each post complained of individually.

**Publication of the 10<sup>th</sup> October, 2016**

101. The Defendant says that his Facebook post of the 10<sup>th</sup> October, 2016, highlighted the incident which transpired between the Claimant and the Defendant at the Northern Border in Corozal District, Belize. The said incident was corroborated by the Defendant’s witness, Ms. Sixta Pinelo, who confirmed that the Claimant did, in fact, ask her to exit the vehicle while at the Customs Checkpoint and that the Claimant was very loud when speaking to her and the Defendant, as if shouting. The said publication therefore

referenced an event which, in fact, occurred and is true. The Claimant was rude and acted in an unreasonable manner when dealing with the Defendant.

102. The Defendant says that even if the Court does not believe the Defendant's version of the events that transpired on the 10<sup>th</sup> October, 2016, the words published are not defamatory in that the words do not satisfy the test, i.e., the words complained of do not lower the Claimant in the esteem of right thinking members of the Belizean Society. The Defendant also says that the words contained in the publication of the 10<sup>th</sup> October, 2016, do not impute that the Claimant is not qualified to act in her post. The Defendant admits that the words are critical, not welcoming and even unfriendly, but does not amount to defamation. Understandably, the Claimant may have a heightened sensitivity to the matters complained of, but that heightened sensitivity cannot be regarded as that of right thinking members of society.

103. In *Ara Macao*, the publications complained of were similarly unfriendly and even unwelcomed, but Conteh CJ, as he then was, noted at paragraph 6:

*"I have had the benefit of reading the two publications as a whole and in particular the sections the claimants take issue with. In my view, I do not think they bear the meanings contended for by the Claimant. They certainly may not be friendly or even welcoming of the Ara Macao project itself, but they are views held by the defendants of the project.*

*The comments do not, in my view, in any way, reflect ill on the Claimants or indeed the reputation of Mr. Goguen himself. Only a heightened sensitivity would read in between the lines of the publications to find that they are truly defamatory...One is entitled to hold strong views and even strongly to express them. I therefore rule that the publications as a whole and read in context and in the setting of the development on the Palencia peninsula are not capable of bearing the defamatory meanings sought to be contended for by the Claimant. I therefore rule that there is no defamation in the publications.” [Emphasis Added]*

104. The Defendant also says that the words, “*This officer is a disgrace to her job to coworkers she screamed and scold everyone she screamed at me and my family and she said to me straight up that i have disrespected her like 6 months before and she was looking for an opportunity to low me down,*” are not defamatory when looked at in their context. A statement that a person “*is a disgrace*” alone **MAY** be defamatory, but the words published by the Defendant, in their context, are merely commentary. The said words are not defamatory allegations of fact. This was noted by the Court of Appeal of Trinidad and Tobago in *Ramlakhan v Trinidad and Tobago News Centre Ltd and Ali* Civil Appeal No. 30 of 2005 [TAB 2] at paragraph 22:

*“(22) In Gatley on Libel and Slander, supra, (at para. 12.7) it is said the key to whether a defamatory statement is recognisable by the ordinary, reasonable reader as comment is whether it is supported by facts upon which the comment may be based. The example given by Ferguson, J. referred to earlier is an example of this. The following example is also given in Gatley (at para. 12.7):*

*‘To write of someone that he is ‘a disgrace to human nature’ is a defamatory allegation of fact. But if the words were, ‘He murdered his father, and therefore is a disgrace to human nature,’ the latter words appear from the context to be merely comment.’*

*As was said in O’Brien v Salisbury (1889) 54 J.P. 215, 216:*

*‘It seems to me - as, indeed, I suggested during the argument - that comment may sometimes consist in the statement of a fact, and may be held to be comment if the fact so stated appears to be a deduction or conclusion come to by the speaker from other facts stated or referred to by him or in the common knowledge of the person speaking and those to whom the words are addressed, and from which his conclusion may be reasonably inferred. If a statement in words of a fact stands by itself naked, without*

*reference, either expressed or understood, to other antecedent or surrounding circumstances notorious to the speaker and to those to whom the words are addressed, there would be little, if any, room for the inference that it was understood otherwise than as a bare statement of fact, and then, if untrue, there would be no answer to the action; but if, although stated as a fact, it is preceded or accompanied by such other facts, and it can be reasonably based upon them, the words may be reasonably regarded as comment, and comment only, and if honest and fair, excusable’;*”

105. The Defendant therefore states that the reference to the Claimant as a disgrace must be looked at in its context, since they were stated as a result of the interaction which the Defendant had with the Claimant, and in reference to the Claimant’s unreasonableness and behavior, i.e., screaming at the Defendant and his family.

106. The responses which the Defendant made on the Facebook post of the 10<sup>th</sup> October, 2016, were also in relation to the incident which occurred between him and the Claimant, in which the Claimant screamed at him and his family and behaved unreasonably. The responses are not defamatory allegations of

fact, which do not, in any event, lower the Claimant in the eyes of reasonable members of society.

107. Contrary to what the Claimants states at paragraph 12 of her Skeleton Arguments, and while the Defendant Facebook post stated that, “*she should get fired.....for a psycho B,*” the Defendant did not make any allegations of insanity or serious mental illness. In fact, apart from the reference “*psycho,*” it is not clear what the Defendant was trying to say. The Defendant says, respectfully, that it is not for the Court and it is not a part of the test in determining whether words are defamatory, to make any damning inferences which are not sufficiently clear, and from words/ phrases which are not intelligibly clear.

**Publication of the 11<sup>th</sup> October, 2016**

108. In the Defendant’s Facebook post of the 11<sup>th</sup> October, 2016, the Defendant refers to inadequacies at the Northern Border and the lines that citizens of Belize have to stand in, which is not at all defamatory of the Claimant. While the Defendant then states that citizens of Belize would need the Claimant’s permission to breathe in Belize, such a statement does not defame the character of the Claimant, as no right thinking member of society would believe that such a statement is true nor would it lower the Claimant in the esteem of right thinking members of the Society. While the statements were

harsh, they do not lower the Claimant's reputation in any way. While after the incident of the 10<sup>th</sup> October, 2016, the Defendant began to rant and comment harshly about the Claimant on social media, not every rant or mention of the Claimant in an unfriendly manner, in fact, defamed her character.

109. Additionally, it is a fact as alleged at paragraph 11 of the Defendant's witness statement that citizens of Belize sometimes have to stand in long lines when at the Northern border of Belize. The Claimant also gave evidence that the Claimant did tell him that she was the owner of the immigration building as noted at paragraph 12 of the Defendant's witness statement. These are the bases of fact from which the comment was made. The Defendant did not alone make defamatory allegations of fact as noted in *Ramlakhan*.

**Publication of the 12<sup>th</sup> October, 2016**

110. The Defendants says that he was stating his opinion which he urges the Court to read in the context of, and, as a result of the incident that occurred between the Claimant and the Defendant. The Defendant also says that, though unkind and unwelcoming, the post did not lower the Claimant in the esteem of right thinking members of society. This is evidenced by the fact that the Claimant has not been demoted from her position. In fact, the Claimant gave evidence that her present post is Assistant Director for Border Administration, which

was a promotion and that she has continued to receive her yearly increments and salary increases.

**Publications of the 13<sup>th</sup> October, 2016**

111. As noted by the Claimant's Skeleton Arguments, the natural and ordinary meaning of the Defendant's publications of the 13<sup>th</sup> October, 2016, would be that the Claimant engages in criminal activities.

The Claimant was, in fact, disciplined because of a crime which she admitted to in cross-examination. During cross-examination, the Claimant was asked if she was accused of corruption in the public service in 2007, which the Claimant denied. The Claimant however admitted that she was accused of corruption in the public service in 1995. When it was put to the Claimant that she was found guilty of corruption in the public service and that she was penalized for that incident in 1995, the Claimant admitted the same. The Claimant was then asked whether she agreed that as a result of the incident in 1995, her integrity as an immigration officer was seriously called into question by the Public Service Commission, to which, she replied with a resounding "Yes."

112. When pressed further, the Defendant's Supplemental List of Documents was put to the Claimant, and in particular the Memorandum disclosed. The Claimant was then asked whether the second paragraph of the Memorandum, at paragraph 147 of the Trial Bundle, states the penalty imposed, to which she declared, "*Yes.*"

113. From the Claimant's evidence, then, it becomes clear that the Claimant was, in fact, found guilty of corruption in the public service, i.e., as an Immigration Officer, proof that the Claimant was involved in criminal activity.

114. During cross-examination of the Defendant, the Claimant's counsel suggested to the Defendant that the Claimant was disciplined for extortion and not bribery, to which the Defendant responded that he was using creole words for bribery, but that, yes, the Claimant was disciplined for extortion specifically.

115. While extortion and bribery, strictly speaking, mean different things, what is common is that both involve illegal solicitation of money or some favour, which is what the Defendant was referring to. The Defendant was referring to the incident in 1995, when the Claimant was found guilty of corruption as an immigration officer, which the Defendant has proven, and the Claimant has admitted. The Claimant was therefore involved in criminal activity as an Immigration Officer.

116. The Claimant admitted that because of the charges and the disciplinary action taken against her, her integrity was seriously called into question. The Defendant submits that this fact should be taken into consideration when determining whether the Facebook publications of the 13<sup>th</sup> October, 2016, lowered the Claimant in the esteem of right thinking members of society, since because of her transgression, her reputation was already called into question. Would the difference of the specific criminal activity, i.e. bribery or extortion, lower the Claimant's reputation in the eyes of right thinking members of society in a different manner? Is one charge lesser than the other? The Defendant's answer to both questions is no. The Defendant also says that the difference between bribery and extortion is not so material when considering the effects each charge would have on the Claimant's reputation and integrity in the eyes of right thinking members of society.

117. The Defendant submits that the following post of the 13<sup>th</sup> October, 2016, save for an express mention of the Claimant's name, does not impute any lack of qualification, knowledge, skill, capacity or judgment on the part of the Claimant. There is no defamatory allegation of fact made against the Claimant at all which could lower the Claimant's reputation in the eyes of the right thinking members of society:

*“Good Night Belize it is time to go to sleep and start a fresh morning. Debra Baptist Estrada is the least person i should or (WE) should worry. The most support we all Belizeans should give to the Teacher’s and the union. Prime minister of Belize Mr. Dean Oliver Barrow is a very Smart man and i really think he will come with the best solution for the Teacher’s and the union and i hope he Doesn’t forget that is the First Prime minister to run the Third term which he made a history and i don’t think he will prove that will be the worst term he will serve and it will go in the Historic book of Belize. Soo Prime minister pls pay the Teacher’s and agree the terms and Conditions of the Union. You have found money to pay Ashcroft For BTL.”*

**Publication of the 20<sup>th</sup> October, 2016**

118. From a review of the Defendant’s post of the 20<sup>th</sup> October, 2016, it becomes clear that the said post is in relation to politics, and does not defame the Claimant in any way.

119. The Claimant submits that in their natural meaning, the words mean that the Claimant is using public funds to obtain legal representation in this matter, which the Defendant denies. For ease of reference, the particular words are as follows: *“I want all the Belizeans Brother & Sister’s to know*

*UNFORTUNATELY EITHER THE PERSON IS HIGHLY PAID WITH OUR TAXPAYERS MONEY Or the person was born with a Gold Spoon.”*

120. When questioned in cross-examination, the Defendant explained that his post meant that the Claimant is highly paid or born rich, which the Defendant says is the natural meaning of the words. In any event, it is fact that the Claimant is employed in the public service, and it is fact that the tax payer’s dollar is the source of the Government of Belize’s purse from which the Claimant receives her remuneration. The Defendant therefore reiterates that the Facebook post of the 20<sup>th</sup> October, 2016, amounts to a comment, and does not amount to defamation.

**Pleadings Point**

121. The following posts which are outlined in the Claimant’s Witness Statement were not pleaded in the Claimant’s Statement of Claim, and, as such, the Defendant did not have an opportunity to respond with any particularly to the said posts in his defence:

(1) On the 20<sup>th</sup> November, 2016:

*“Uno see how it feels when i raise this same issue about how Immigration treat people soo bad at the Northern Border. THEY NO GIVE A Damn.”<sup>23</sup>*

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<sup>23</sup> Paragraph 11 of the Witness Statement of Debra Baptist Estrada

(2) On the 25<sup>th</sup> November, 2016:

*“OMG Hear this Story on Amandala News. I am soo happy to see this and this story i mention on my post 10<sup>th</sup> October about how Immigration boss is treating her coworkers... Thank you God.”<sup>24</sup>*

(3) On the 26<sup>th</sup> November, 2016:

*“NO PUBLIC OFFICERS SHOULD BE ENTERTAINING THEIR SELF LIKE DOING BAR-B-CUE, DRINKING B.....LIKE MIX DRINKS WHILE WORKING.”<sup>25</sup>*

*“I have one question where does he OR she have hidden her corruption, bribe and unaccounted MONEY.....HMMM let us gues husbands, mother, father, uncle, aunty brother, sister??? I Think Grandchildren’s Names.....You have started the war let me finish it for you.....”<sup>26</sup>*

(4) On the 28<sup>th</sup> November, 2016:

*‘Today is a boring day at the Corozal Zone.... Let’s Do Bar-B-Cue and drink up some imported beers right at the Border. All my friend’s are WELCOME...Especially Public OFFICERS.’<sup>27</sup>*

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<sup>24</sup> Paragraph 12 of the Witness Statement of Debra Baptist Estrada

<sup>25</sup> Paragraph 13 of the Witness Statement of Debra Baptist Estrada

<sup>26</sup> Paragraph 14 of the Witness Statement of Debra Baptist Estrada

<sup>27</sup> Paragraph 15 of the Witness Statement of Debra Baptist Estrada

(5) Comments:

*Jose Leandro Mendez: "Confirmed Ms. Estrada will arrived. WOW*

*Gulab Ricky: lol mind what you say.....She might take you to court too...*

*Jose Leandro Mendez: LOL*"<sup>28</sup>

122. While the said Facebook posts were made after the filing of the claim herein, the Claimant had ample time to amend her claim to include the same but did not do so. The said posts ought not therefore to form a part of the Court's determination, the Claimant not having pleaded the same, and the Defendant not having an opportunity to put up a defence as required pursuant to rule 68.2 of the *Supreme Court (Civil Procedure) Rules 2005* [TAB 3].

123. The Defendant says that in any event, these Facebook publications outlined above, which were not pleaded in the Claimant's Statement of Claim, do not even expressly refer to the Claimant and do not defame any person for that matter. The said posts cannot therefore amount to defamation and are not therefore libelous. The Defendant reiterates that, after the incident which occurred between the Claimant and the Defendant on the 10<sup>th</sup> October, 2016, and after some of the Defendant's posts, which expressly refer to the

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<sup>28</sup> Paragraph 15 of the Witness Statement of Debra Baptist Estrada

Claimant, the Claimant has developed a heightened sensitivity to whatever the Defendant posts on his Facebook account. The Claimant has unreasonably believed that every post by the Defendant which references any immigration, border or public service matter or issue is in relation to her.

124. On a whole, while the Defendant's posts were harsh, and unwelcoming, the said posts did not lower the Claimant in the esteem of right thinking members of society, and therefore do not amount to defamation.

### **Mitigation and Damages**

125. The Learned Editors of *Gatley on Libel and Slander* [TAB 4] outlined what evidence is admissible in mitigation of damages in a claim for defamation or libel at paragraph 35.29 as follows:

*“Admissible evidence that can be given in mitigation of damages can be placed in the following categories:*

*(1) Claimant's bad reputation;*

*(2) Facts relevant to the contextual background in which the defamatory publication came to be made;*

*(3) Evidence properly before the court on some other issue;*

*(4) Facts which tend to disprove malice;*

*(5) Claimant's own conduct;*

*(6)Apology or other amends;*

*(7)Damages already recovered for same libel.”*

126. If the Court finds that the Defendant’s Facebook publications are libelous and that the Claimant is therefore entitled to damages, the Defendants says that there are mitigating factors which the Court ought to consider in determining any award of damages as follows:

- (1) As noted at paragraph 16 of the Defendant’s witness statement, the Defendant removed all posts which the Claimant complained about and which reference the Claimant in any way;
- (2) As admitted by the Claimant in cross-examination, before the claim was filed, the Defendant offered to publish an apology on Facebook and he was also prepared to pay a certain amount;
- (3) Since the filing of this claim, over two years have passed, and the Defendant has not made any libelous publications in relation to the Claimant, in accordance with his undertaking; and
- (4) Despite the Defendant’s Facebook publications, which the Claimant alleges lowered her reputation, the Claimant has in fact received all her yearly increments and has even been promoted to the post of Assistant Director for Border Administration.

127. The Defendant also says that the Court ought to take particular consideration to the fact that the Claimant was found guilty of extortion and, therefore, corruption as an Immigration Officer, which she admitted, seriously affected her integrity/reputation. This is important to consider when determining whether the Claimant's reputation was lowered in the eyes of right thinking members of society who would be aware of the charge against her.

128. In *Ramos v Herrera* Claim No. 289 of 2008 [TAB 5], the Claimant therein alleged that the Defendant had sent an email to his employer which contained defamatory words to the effect that the Claimant accepted a bribe. As a result of the same, the Claimant's character and reputation was damaged, and he lost his job. The Court awarded \$7,000.00 in damages.

129. In *Ramos*, the Claimant lost his job, while in this case, not only has the Claimant been promoted, but she has continued to receive yearly increments and salary increases. The damage or loss to the Claimant herein, if the Court finds that the Defendant is liable, must therefore be less than that of the Claimant in *Ramos*, since the claimant in Ramos lost his job and his means to provide a livelihood for himself as a result of the defamation, while the Claimant herein has been promoted. The Defendant says, therefore, that if he is found liable, a sum of between \$7,000.00 and \$10,000.00 would be a

reasonable sum to reflect any damage caused to the Claimant in this case, especially in light of the mitigating factors noted above.

### **Conclusion**

130. In light of the foregoing, the Defendant urges the Court to dismiss the claim.

If found liable, the Defendant reiterates that there are mitigating factors which the Court ought to consider, as noted above, in awarding any sum in damages.

### **Claimant's Submissions in Reply to Defendant's Submissions**

131. These submissions are in reply to the Skeleton Arguments on behalf of the Defendant dated the 18<sup>th</sup> day of October, 2019, which responded to the Claimant's Written Submissions dated the 7<sup>th</sup> of October, 2019 ("*the Claimant's Submissions*").

#### **A. The Published Words are Defamatory**

##### **Publication of the 10<sup>th</sup> October, 2016 and comments<sup>29</sup>**

132. The Defendant relies on the Supreme Court judgment of *Ara Macao Development Limited et al v Peninsula Citizen for Sustainable Development et al*<sup>30</sup> in support of his contention that the posts were "*unfriendly*" and that "*only a heightened sensitivity would read in between the lines of the*

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<sup>29</sup> Trial Bundle p. 106 - 107

<sup>30</sup> Tab 1 of the Defendant's Skeleton Arguments

*publications to find that they are truly defamatory.”* This judgment has been appealed, and it was determined that two of the statements appearing in the Supreme Court claim were capable of possessing defamatory meanings.

133. In Civil Appeal No. 8 of 2008<sup>31</sup>, the Court of Appeal ordered that the judgment of the court below would be set aside in respect of paragraphs (b) and (d) of the statement of claim and directed that the case be remitted for hearing before another judge. Mottley, P held:

*“Under Part 68.4 the Chief Justice had to determine whether or not these words were reasonable capable of bearing these meanings. In my view, the words were capable of bearing the meanings for which the appellants were contending.*

*It was for those reasons that I agreed that the appeal should be allowed and the judgment of the court below should be set aside in respect of that set out in paragraph 7 and that the matter be remitted to the Supreme Court for hearing before another judge.”*<sup>32</sup>

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<sup>31</sup> *Ara Macao Development Limited et al v Peninsula Citizen for Sustainable Development et al* Civil Appeal No. 8 of 2008 [TAB 1]

<sup>32</sup> *Supra* @ [20] – [21]

134. When considering the pleaded defamatory statements set out in paragraph 2(b) and (d) of the pleadings, Carey JA held:

*“It becomes necessary to examine each of the set of words informed by the approach articulated in the authorities mentioned in this judgment. With respect to the former, the reasonable reader would understand that the writer was suggesting that in order to obtain approval for their project, the developers were willing to stir up discord and disharmony between the different villages where none presently existed. Understood in this way, it cannot be doubted that the words were calculated to convey an injurious imputation with respect to the developer.”*

Therefore, the Supreme Court *Ara Macao* judgment as relied upon by the Defendant is unhelpful.

135. The Defendant further relies on *Ramlakhan v Trinidad and Tobago News Centre Ltd and Ali*<sup>33</sup> in support of its argument that the published words are merely commentary. It must be noted that the Defendant did not plead fair comment with respect to the October 10<sup>th</sup> post.

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<sup>33</sup> TAB 2 of the Defendant’s Skeleton Arguments

136. Without prejudice to the Claimant's argument that the post constituted a defamatory statement, in the event that this Honourable Court finds that the Defendant's words were commentary, there is a qualification in *O'Brien v Salisbury*, as referred to by the Defendant<sup>34</sup>, which provides that the comments, if established as comments, must be reasonably based upon the facts, and if honest and fair, are excusable.

137. In respect of the incident which occurred on the 10<sup>th</sup> of October, 2019, the evidence has shown the Claimant was addressing an irregularity when she requested the Defendant's girlfriend and her child alight the vehicle and exit through the immigration building since they did not have entry or exit stamps in their passports.

138. When asked whether the Defendant agreed that his girlfriend and child did not have an exit stamp in their passports, he responded: "*Did not have entering or exiting.*"<sup>35</sup>

139. The second witness for the Defendant, Ms. Sixta Pinelo, confirmed this position. When asked whether she agrees that the normal procedure when crossing the border is to get an exit stamp in your passport, she responded:

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<sup>34</sup> @ [9]

<sup>35</sup> Transcript p. 38

*“It is and you should get one but due to that day - - I don't know if you want I explain or - - ”*<sup>36</sup>

140. Ms. Pinelo was asked whether she agreed that Mrs. Estrada was addressing an irregularity when she asked Ms. Pinelo and her child to get out of the vehicle and attend the Immigration Office. Her response was “*Yes.*”<sup>37</sup>

141. Therefore, it is submitted that this publication satisfies the test of whether the words are defamatory, as under the circumstances in which the words were published, the reasonable person would be likely to understand the natural and ordinary meanings of these words<sup>38</sup> in a defamatory sense. These words impute conduct the reasonable person considers discreditable.

142. If this Honourable Court determines that the publications are commentary, it is submitted that the publications are not words which would be reasonably based upon the facts of the incident which the Defendant alleges occurred on the 10<sup>th</sup> of October, 2016, as the incident entailed Mrs. Estrada simply enforcing compliance with the law. As such, these comments would not qualify as fair comment, and the Defendant’s defence would fail with respect to this publication.

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<sup>36</sup> Transcript p. 73 l. 2

<sup>37</sup> Transcript p. 78 l. 10

<sup>38</sup> Claimant’s Submissions @ [9] and [11]

**Publication of the 11<sup>th</sup> October, 2016<sup>39</sup>**

143. The post of October 11, 2016 indeed injures the Claimant's reputation, as the post states that the Claimant is a shame and disgrace. The Claimant submits that this is a defamatory statement/fact, and not a comment. In the event that the Court disagrees, the Claimant states that the Defendant's words are not supported by the facts upon which the alleged 'comments' are based.

144. The Claimant further says that upon a review of the transcript of the proceedings, the Claimant did not give any evidence stating that she told the Defendant that she was the owner of the immigration building. The Defendant has mischaracterized the evidence.

**Publication of the 12<sup>th</sup> October, 2016<sup>40</sup>**

145. In relation to the publication of the 12<sup>th</sup> October, 2016, the Claimant repeats the test set out in [21] of the Claimant's Submissions, and reiterates that the test for honest opinion has not been satisfied, specifically:

- a. The Defendant states as a fact, and not a comment, that the Claimant is not a qualified immigration officer;
- b. If this Honourable Court deems the publication to be a comment, it is submitted that the comment is not based on facts which are true, as no

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<sup>39</sup> Trial Bundle p. 108

<sup>40</sup> Trial Bundle p. 109

evidence has been provided to establish that the Claimant is worthless;  
and

c. The comment is not one which an honest person could hold.

**Publications of the 13<sup>th</sup> October, 2016<sup>41</sup>**

146. The Defendant argues that the post of 13<sup>th</sup> October, 2016 is true. The Defendant has only presented evidence of disciplinary action against the Claimant on a charge for corruption as an immigration officer, specifically for extortion.

147. In *Weaver v Lloyd*<sup>42</sup> where the Defendant charged the Plaintiff with various acts of cruelty to a horse, and, amongst others, with knocking out an eye, proof that the charge was true in all particulars except that the eye was not knocked out was held to be insufficient.

148. No evidence was led to establish that the Claimant committed any acts of bribery. The Claimant also testified that she was never out on interdiction<sup>43</sup>, and that she was never charged for stealing money from the Income Tax Department.<sup>44</sup>

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<sup>41</sup> Trial Bundle p. 110

<sup>42</sup> (1824) 2 B. & C. 678 [TAB 2]

<sup>43</sup> Transcript p. 32 l. 8

<sup>44</sup> Transcript p. 32 l 11

149. The Defendant also did not lead any evidence to establish that the Claimant stole money from the Income Tax Department. The Claimant vehemently denies this allegation.

150. According to *Gatley on Libel and Slander*:

*“The evidence that the defendant can lead in support of a plea of justification is governed by the particulars of justification; the ambit of admissible evidence will be defined by the content of these particulars. If he wishes to give evidence of matters not pleaded he must seek leave to amend to add fresh particulars. Furthermore, the plea of justification must specify the defamatory meanings the defendant seeks to justify, and he will be confined to establishing the truth of that meaning.”*<sup>45</sup>

151. It is submitted that the Defendant failed to plead his defence of truth/justification with sufficient particularity. The Defendant failed to specify the defamatory meaning he sought to justify, and is now attempting to assert that ‘*bribe*’ is tantamount to ‘*extortion*.’ This definition was not pleaded, and the evidence led in this regard should be deemed inadmissible.

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<sup>45</sup> *Gatley on Libel and Slander* p. 996-997 @ 33.9 [TAB 3]

152. The Defendant was asked whether he agreed that bribery and extortion are two different crimes. His response was “*Yes, I know.*”<sup>46</sup> Consequently, the Defendant was aware of the difference in definitions, and the alleged colloquial meaning of the word ‘*bribe*’ should have been pled.

153. In the premises, it is submitted that the defence of truth should fail.

154. In relation to the second publication made on October 10<sup>th</sup>, 2019<sup>47</sup>, the Defendant asserts that the words are not defamatory of the Claimant, and the words complained of do not lower the Claimant in the estimation of right thinking members of society.<sup>48</sup> However, in this publication the Defendant alleges that the Claimant was a file keeper or a swiper, which a reasonable person would understand to mean that the Claimant conceals government files. Such an allegation is indeed defamatory of the Claimant.

## **B. Conduct**

155. It is admitted that the publication made on October 13<sup>th</sup>, 2016<sup>49</sup> does not contain any defamatory statements made against the Claimant, but the publication demonstrates the Defendant’s persistent motivation and desire to mention, injure and ruin the Claimant. It is submitted that this post, along with

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<sup>46</sup> Transcript p. 45 @ l. 14

<sup>47</sup> Trial Bundle p. 111

<sup>48</sup> Trial Bundle p. 61 Defence of the Defendant @ [11]

<sup>49</sup> Trial Bundle p. 112

the posts referenced at [27] of the Defendant's Skeleton Arguments, should be considered in relation to the Defendant's conduct of the case, as these posts, save for the post of October 13<sup>th</sup>, 2016, were made after the Claimant caused her Attorneys-at-Law to send a letter requiring the Defendant to retract the defamatory publications and to post an apology.<sup>50</sup>

156. The Defendant also published two more posts in November of 2017, which we submit referred to the Claimant. These publications were admitted into evidence as DE2 and DE3 respectively. The Defendant made these publications notwithstanding having undertaken that until trial or further order he will not make any further posts on Facebook about the Claimant, and not to contact the Claimant. This undertaking was made into a court order dated the 30<sup>th</sup> of March, 2017.

157. The Defendant was questioned as follows on the November post:

*“Q. So you posted that on November 2nd and you'll agree that a week later your attorneys filed a Supplemental Disclosure? That you posted that on November 2nd and a week later your attorneys filed a Supplemental Disclosure disclosing certain documents, true?”*

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<sup>50</sup> Trial Bundle p. 79-81

The Defendant Responded: "*On 9th November, yes.*"<sup>51</sup>

158. The Defendant during his examination also denied publishing that the Claimant stole money from the Income Tax Department, which in fact appears in his very witness statement<sup>52</sup>:

*Q. And you'll agree with me that you have attached no evidence that Mrs. Estrada stole money from the Income Tax Department?*

*A. JUDGE'S NOTES: "I didn't write that she stole money from Income Tax."*<sup>53</sup>

159. The abovementioned conduct should be considered in this Honourable Court's determination of the quantum of damages to be awarded to the Claimant.

**C. No Genuine Mitigation**

160. The Defendant's conditional offer to apologize contained no sum for compensation, and offered a paltry sum of \$1000 for legal fees, which the Claimant could not accept, for the following reason, as she stated in her examination:

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<sup>51</sup> Transcript p. 62

<sup>52</sup> Trial Bundle p. 129 @ [14]

<sup>53</sup> Transcript p. 46 @ 1-2

*“The reason I did not accept the offer was simply because the damages had been done and the Defendant Mr. Lalchand postings were unrelenting. He continued to post derogative remarks about me and that was simply for doing my job. And more so, the offer for damages could not compensate for the pain and suffering that my family, myself, my office had to endure, my children.”*<sup>54</sup>

#### **D. Quantum**

161. According to **Gatley on Libel and Slander:**

*“In an action for libel the claimant need not allege that actual damage has resulted from the words complained of. ‘The law presumes that some damage will flow in the ordinary course of things from the mere invasion of his absolute right to reputation’, and he is entitled to such general damages as the court may properly award, although he neither pleads nor proves any actual damage.”*<sup>55</sup>

162. The quantum of damages in ***Ramos v Herrera***<sup>56</sup> is distinguishable from the case at bar, as Legall J contemplated that the publication in that case was by e-mail to a particular individual.<sup>57</sup>

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<sup>54</sup> Transcript p. 31 @ 1

<sup>55</sup> Gatley on Libel and Slander, p. 827 @ 26.27 [TAB 4]

<sup>56</sup> TAB 5 of the Defendant’s Skeleton Arguments

<sup>57</sup> P. 8 @ [15]

163. It is submitted that an award for damages should be made in the range of \$20,000 to \$50,000 for the following reasons, which were taken into account in the local case law submitted by the Claimant for the Court's consideration:

- a. The publications were made on Facebook, a popular social media platform. The Defendant himself stated in evidence that “*whole Belize knows them*”<sup>58</sup>;
- b. The Claimant is a senior public officer, and the Defendant's publications reflect ill upon her professional standing and practice<sup>59</sup>;
- c. The publications alleged criminal activity committed by the Claimant<sup>60</sup>;
- d. There is no genuine mitigation by the Defendant;
- e. The *Sittee River Wildlife Reserve* case held that upon a general survey of local cases on libel and the quantum of damages which have been assessed by this Honourable Court, “*it would seem that the sum of \$25,000 to \$60,000 is the range for general damages and for costs awarded over the period 1999 to 2014.*”<sup>61</sup>

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<sup>58</sup> Transcript p. 61 l. 8

<sup>59</sup> Claimant's Submissions **TAB 10 @** [53]

<sup>60</sup> Claimant's Submissions, **TAB 8 @** [31]

<sup>61</sup> Claimant's Submissions **TAB 9 @** [205]

It is therefore submitted that the Claimant should be awarded the relief she seeks.

164. **Decision**

I am grateful to counsel for the Claimant and the Defendant for their submissions which have assisted this court in reaching its decision. The sole issue to be decided is whether the statement published by the Defendant were defamatory of the Claimant. Having heard the evidence and reviewed the submissions of both parties, I find that the Claimant has proven her case on a balance of probabilities. I understand and I believe the Defendant when he said the Claimant shouted at him and embarrassed him and his family on that day at the Northern Border. I accept as true the evidence that he was angry and distressed at what he deemed was unfair treatment of him and his family by the Claimant, since he had by his own admission become accustomed to being treated differently by previous Immigration Officers who allowed him, as a well-known businessman who crossed the border daily, to remain in his vehicle with his family instead of entering into the Immigration Building to have their passports stamped. However, I also accept as true the Claimant's position that she was simply enforcing the law. It may be that she was peeved at the Defendant due to previous disagreements with him which caused her to address him and his family in a loud voice in front of other officers and

members of the public; but the truth of the matter is the Claimant had the law on her side. Even the Defendant's girlfriend conceded that in her evidence. The Defendant went home after this unfortunate incident feeling hurt, humiliated and disrespected by what he perceived to be the Claimant's disrespect and unfair treatment of him and his family and he then proceeded to in a fit of rage publicly lambast and denigrate the Claimant on Facebook. He started on October 10<sup>th</sup>, 2016 and he kept posting series of posts on successive days, for the next two months, publicly venting his rage at the Claimant. I have considered the Defence of fair comment made on behalf of the Defendant. This Defence fails for several reasons. As rightly articulated by Ms. Castillo for the Claimant, in order for the defence of fair comment to succeed, the Defendant has to establish that his comments were based on proven facts. His statements on Facebook, e.g., that Ms. Estrada is a "*Psycho B...*" clearly implies that Mrs. Estrada is mentally ill and therefore unfit for her job, and that Mrs. Estrada is "*not qualified for her post*" implies that the Claimant has not received the requisite training or education to carry out her duties when he has provided no evidence to prove these allegations. His defence of truth in relation to the statements where he described Mrs. Estrada being placed on interdiction for stealing from Income Tax Department also fails. As rightly stated by Ms. Castillo, for the Defence of truth to succeed, it

must be proven that the statements made by the Defendant against or about the Claimant is true in every material particular. It is not enough for the Defendant to now claim that since extortion and bribery are similar, and Mrs. Estrada was charged for extortion, what he published about her was true or “*close enough*” to the truth so he should not be held liable for these statements. The documents from the Public Service Commission reveal that Mrs. Estrada was in fact charged with extortion, not bribery or stealing. The lesson here is when one decides to get on any public forum to attack another person, one has to make sure that every word that is published is factually correct and true. I, therefore, find that the Claimant has proven on a balance of probabilities that the Defendant’s statement against her on Facebook are libelous in that those words in their natural and ordinary meaning convey to the general public that:

- i. Mrs. Estrada is not qualified to act in her post;
- ii. Mrs. Estrada is a disgrace to her profession and co-workers;
- iii. Mrs. Estrada engages in criminal activities such as the misappropriation or concealment of government files;
- iv. Mrs. Estrada is a worthless human being;
- v. Mrs. Estrada is psychologically unwell;
- vi. Mrs. Estrada treats people like animals; and

vii. Mrs. Estrada engages in criminal activities such as the misappropriation of government funds.

On the measure of damages to be awarded in this case, I believe that the sum of \$25,000 should compensate Mrs. Estrada for the suffering she and her family endured at the relentless campaign that Mr. Lalchand launched against her for nearly two months. In so doing, I take into account the fact that Facebook is a social media platform with a worldwide audience of millions of people, the fact that Mr. Lalchand kept on publishing these derogatory and demeaning statements repeatedly, even after receiving two letters from Mrs. Estrada's attorneys, and the fact that the incident which led to this extended diatribe arose from the fact that Mrs. Estrada as a Senior Public Officer was executing her duty in accordance with the law. I have also considered the mitigating factors helpfully set out by Mrs. Marin Young, SC, that Mr. Lalchand did offer to make a public apology to Mrs. Estrada for his statements, and that Mr. Lalchand has stopped making derogatory statements against Mrs. Estrada for almost three years now. I also agree with Mrs. Marin Young, SC, that those statements published on November 20<sup>th</sup>, 2016, November 26<sup>th</sup>, 2016 and November 28<sup>th</sup>, 2016 which do not expressly name the Claimant and which were not expressly pleaded by the Claimant should not be considered by the court in this claim. I have also taken into account the

fact that since the publication of these libelous posts on Facebook, Mrs. Estrada has since been promoted to her current post and has received her emoluments. It is on that basis of those mitigating factors that I have reduced the award of damages from \$30,000 to \$25,000.

Costs awarded to the Claimant to be paid by the Defendant to be agreed or assessed.

*Dated this            day of March, 2021*

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**Michelle Arana**  
**Chief Justice (Acting)**  
**Supreme Court of Belize**