
No. 09-2701

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2009

ERIC CARTMAN,
Petitioner,

v.

IKE BROFLOVSKI,
Respondent.

*On Writ of Certiorari to the
United States Court of Appeals
for the Fifteenth Circuit*

BRIEF FOR PETITIONER

TEAM NO. 107
Counsel for Petitioner

QUESTIONS PRESENTED

- I. Whether an individual who gathers and disseminates information for his online blog enjoys a reporter's privilege not to disclose his confidential source's identity in a civil defamation suit.
- II. Whether a corporate official directing the research and development of one of the most popular consumer electronic devices in the United States qualifies as a limited-purpose public figure with the burden of showing actual malice in a defamation claim, when allegations arise that human rights violations are occurring at a foreign factory under the corporate official's control.

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JURISDICTION STATEMENT

A Formal Statement of Jurisdiction has been omitted in accordance with the Rules of the Washington College of Law's Burton D. Wechsler First Amendment Moot Court Competition.

STATEMENT OF THE CASE

Ike Broflovski (“Broflovski”) sued Eric Cartman (“Cartman”) for defamation. (J.A. at 1.) Broflovski alleged that Cartman defamed Broflovski on Cartman’s Internet blog, *The Sludge Report*, by accusing Broflovski and his company of human rights violations in their manufacturing plant in India. (J.A. at 1.) Kyle Broflovski (“Kyle”) is the CEO and majority shareholder of Citrus, a Fortune 500 consumer electronics company, whose digital music playing products, have become a status symbol among teens and young adults. (J.A. at 2.) In 2006, Kyle hired his brother, Ike Broflovski, as Citrus’s Director of Research and Development and charged him with overseeing the creation and production of a revolutionary product coined the ePlay Touché. (J.A. at 3.) Kyle introduced Broflovski to the public at a Citrus-sponsored press conference where Kyle touted Broflovski as a “genius” that “one day might be as famous as I am.” (J.A. at 3.) Since that time, Broflovski has become a popular symbol of the Citrus brand because of his technological innovations; so much so that Citrus employees across the United States don “I Like Ike” buttons in the Citrus MegaStores. (J.A. at 4.)

Cartman operates a popular blog, *The Sludge Report*, which has an audience of over 100,000 readers. (J.A. at 4.) While Cartman reports on topics ranging from celebrity happenings to local and international politics, his greatest cause is to enlighten his audience about abuses by large companies participating in international trade. (J.A. at 4.) As part of Cartman’s blog, he provided a link to his personal email address and a notice that all information provided would be treated as confidential unless otherwise requested, in an attempt to gather additional sources of newsworthy information. (J.A. at 5.)

On July 7, 2008, Cartman received an email from an individual stating that Citrus, at Broflovski’s direction, committed human rights violations in its manufacturing plant outside of

Mumbai, India. (J.A. at 5.) The source was an individual named “Professor Chaos,” a name given to protect his identity. (J.A. at 5.) Professor Chaos provided reliable information in the past and has continually provided trustworthy information about various Citrus products to Cartman for use on his blog. (J.A. at 5.) Professor Chaos attached a digital photograph to the email that showed Broflovski, in the Mumbai factory, yelling at employees who appeared to be working in substandard conditions. (J.A. at 5.)

The next day, Cartman published the photograph and a caption regarding Broflovski’s treatment of factory employees and attributed the information gathered to Professor Chaos. (J.A. at 6.) The news spread across the Internet and eventually attracted the attention of the main stream press. (J.A. at 6.) Consequently, Citrus stock declined in value by 25% and various retailers pulled Citrus products off of their shelves. (J.A. at 7.)

In September 2008, Broflovski brought suit, claiming that Cartman’s statements were libelous. (J.A. at 7.) The case proceeded to discovery, where it was revealed that the photograph accurately depicted the night-shift factory workers. (J.A. at 8.) Tests conducted by Citrus to determine whether someone superimposed Broflovski’s image on the picture were inconclusive. (J.A. at 8.) Though Cartman did not run the picture through forgery software, he had no reason to question the image’s authenticity. (J.A. at 7.)

Broflovski made an attempt to identify the source of the photograph by deposing the factory manager and several engineers. (J.A. at 8.) Kyle sent an email to all Citrus employees asking for information on the source of the leak. (J.A. at 8.) Broflovski made no further efforts to discover the identity of Professor Chaos. (J.A. at 8.) With few leads, Broflovski asked the court to compel Cartman to disclose the identity of his source. (J.A. at 8.) Cartman immediately claimed a reporter’s privilege against disclosure and filed a counter-motion for summary

judgment on the defamation claim, alleging that, as a public figure, Broflovski had failed to establish clear and convincing evidence of actual malice. (J.A. at 8.)

The district court denied Broflovski's motion to compel discovery and granted Cartman's summary judgment motion. (J.A. at 20.) The court of appeals reversed the district court's holding as to both issues and remanded the case. (J.A. at 32.) This appeal followed.

SUMMARY OF THE ARGUMENT

This case involves two essential aspects of our nation's free speech guarantees—a reporter's privilege against disclosing the identity of a confidential source and the standard applied to defamation claims when a reporter comments on those who occupy the public spotlight. The court of appeals' holdings are fundamentally wrong but, more importantly, threaten the underlying tenets of this Court's First Amendment jurisprudence. Because these improper standards will necessarily chill protected expression, this Court should reverse.

First, this Court should reverse the court of appeals' decision that Cartman could not claim a reporter's privilege against the disclosure of the identity of his confidential source. The First Amendment inherently creates a reporter's privilege against court-compelled discovery of sources. While the Court held in *Branzburg v. Hayes* that the privilege yields where the state interest in effective criminal law enforcement outweighs the reporter's interest in confidentiality, the holding is inapplicable here. Outside of the criminal context, however, the reporter's privilege is superior to any competing interest.

Moreover, the district court properly concluded that Cartman, a blogger with an online audience of over 100,000, could assert a reporter's privilege against court-compelled disclosure. Cartman gathers and disseminates information on a regular basis. In this particular situation, Cartman collected the information pertaining to potential human rights abuses at the Mumbai

Citrus factory with the intent to utilize that information as a reporter. He then posted the information to his blog in a matter of hours.

Furthermore, even if this Court determines the reporter's privilege is a qualified privilege in the context of civil litigation, Broflovski failed to pierce that privilege. The district court made specific findings that Broflovski failed to establish (1) that the evidence sought is clearly relevant to the litigation; (2) that he exhausted every reasonable alternative source of information; and (3) that he had a compelling interest in obtaining the information that sufficiently outweighs Cartman's privilege. Recognizing that piercing the reporter's privilege is supposed to be a last resort, the district court explained alternative ways for Broflovski to obtain the source's identity. Unfortunately, the court of appeals did not defer to these factual findings.

Second, this Court should reverse the court of appeals' decision that Broflovski was not a limited-purpose public figure and, as a result, could sue Cartman without the burden of showing that Cartman acted with actual malice. In *New York Times Co. v. Sullivan*, the actual malice standard was the delicate balance that this Court struck between a state's right to regulate defamation and the national interest in robust, uninhibited and wide-open speech. To allow a defamation claim upon a mere showing of negligence under these facts relegates this landmark holding to little more than an historical footnote.

This Court should adopt the three-pronged test established in *Waldbaum* as the appropriate standard for evaluating an individual's status as a limited-purpose public figure. The *Waldbaum* test treats those drawn into public controversies in the same manner as those who seek public attention. This focus respects the fact that journalists on a deadline often will not have the means to determine whether a person embroiled in a public controversy sought the attention or merely was drawn into it. Additionally, this Court's First Amendment jurisprudence has historically

looked to the nature of the brewing public controversy at issue and not whether the individual sought to become a part of it.

Broflovski is a limited-purpose public figure under the *Waldbaum* test. The human rights abuses at the Mumbai factory were a matter of public concern. As the Director of Research and Development, Broflovski plays more than a “trivial or tangential” role in the development of the ePlay Touché. Cartman’s comments that Broflovski was involved in the abuses was certainly germane to Broflovski’s involvement in the public controversy. As such, Broflovski was drawn into the public controversy and qualifies as a limited-purpose public figure.

Even if the Court applies the Second Circuit’s test that requires voluntary action to become involved in the public controversy, Broflovski still qualifies as a limited-purpose public figure. He invited public attention prior to Cartman’s comments. He voluntarily injected himself into the public controversy about human rights abuses at the Mumbai factory. His role at Citrus necessarily caused him to take on a position of prominence within the public controversy and afforded him the access to the press to counter negative publicity about the company and its most famous product. Thus, should the Court apply the Second Circuit’s test, Broflovski voluntarily injected himself into the public controversy.

This Court has repeatedly recognized the dangers inherent in restrictions on free speech. History teaches that society greatly benefits from open discussion of public matters as well as revelations brought forth by confidential sources. If the court of appeals’ holdings stand, journalists, like Cartman, may simply choose to avoid liability by not reporting on matters of public concern. This Court should reverse the court of appeals’ holdings to preserve the basic precepts underlying the First Amendment.

ARGUMENT

This appeal involves the review of a denial of a motion to compel discovery and the granting of a summary judgment motion. In reviewing the district court's decision, this Court reviews legal conclusions de novo and findings of fact for clear error. *Williams v. Bagley*, 380 F.3d 932, 941 (6th Cir. 2004). Generally, an appeal of a ruling granting a Rule 37 motion to compel discovery is subject to an abuse of discretion standard. *United States ex rel. Walker v. R & F Props. of Lake County, Inc.*, 433 F.3d 1349, 1355 (11th Cir. 2005). However, where the inquiry focuses on the determination of the existence of a privilege asserted under Rule 26(b)(5) a question of a law exists. When examining mixed questions of law and fact, the de novo standard requires that the Court "independently apply[] the law to the facts found by the district court, as long as the district court's factual determinations are not clearly erroneous." *Ramirez v. Dretke*, 396 F.3d 646, 649 (5th Cir. 2005). Similarly, the review of a grant of summary judgment, in regard to the status of a plaintiff as a limited-purpose public figure, is reviewed de novo. *World Wide Ass'n of Specialty Programs v. Pure, Inc.*, 450 F.3d 1132, 1137 (10th Cir. 2006).

I. THE COURT OF APPEALS ERRONEOUSLY COMPELLED THE DISCLOSURE OF CARTMAN'S ANONYMOUS SOURCE.

An informed society fundamentally relies on enlightened decision making. *Branzburg v. Hayes*, 408 U.S. 665, 726 (1972) (Stewart, J., dissenting). The press "has been a mighty catalyst in awakening the public interest in government affairs, exposing corruption among public officers and employees, and generally informing the citizenry of public events and occurrences" *Id.* (quoting *Estes v. Texas*, 381 U.S. 532, 539 (1965)). "Without an unfettered press, citizens would be far less able to make informed political, social, and economic choices." *Zerilli v. Smith*, 656 F.2d 705, 712 (D.C. Cir. 1981). Thus, a free press is indispensable to a free

society. The heart of a free press is the ability of a reporter to shield the identity of someone who does not wish to reveal his identity. Throughout history, reporters armed with information from confidential sources have exposed corruption and righted many wrongs in our society. *See Talley v. California*, 362 U.S. 60, 64–65 (1960). Without this anonymity, these individuals simply would not candidly approach the press for fear of various forms of repercussion.

Our nation's most famous anonymous source, Deep Throat, is a classic example of an individual who would not have revealed confidences without a promise of anonymity. Mary-Rose Papandrea, *Citizen Journalism and the Reporter's Privilege*, 91 Minn. L. Rev. 515, 536 (2007). Without Deep Throat, later identified as a former FBI official, reporters Bob Woodward and Carl Bernstein would not have uncovered one of the most pervasive examples of government corruption—the Watergate scandal, which led to the resignation of President Richard Nixon and the impeachment of many of his top aides. *Id.* at 536–37.

In more recent years, confidential informants have been the driving force in exposing other abuses, such as the torture practices at the Abu Ghraib prison, where prisoners were urinated upon, dragged across the floor by their genitalia, and forced to stack themselves into naked human pyramids. Kate Zernike, *Detainees Depict Abuses by Guard in Prison in Iraq*, N.Y. Times, Jan. 12, 2005, at A1. Additionally, these sources alerted the public to an unconstitutional invasion of privacy by the Executive Branch through the wiretapping of individuals within the United States absent judicial supervision. James Risen & Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, N.Y. Times, Dec. 16, 2005, at A1. Without confidential sources and a free press, these abuses might still be occurring.

A. The Reporter’s Privilege Protects Confidential Sources in an Online Defamation Claim.

A reporter’s privilege “recognizes society’s interest in protecting the integrity of the newsgathering process, and in ensuring the free flow of information to the public. It is an interest of sufficient legal importance to justify some incidental sacrifice of sources of facts needed in the administration of justice.” *In re Madden*, 151 F.3d 125, 128 (3d Cir. 1998). This protection is necessary to allow sources to speak out candidly against powerful individuals with the ability to exact revenge. If an online defamation claim could obligate a reporter to breach his promise of confidentiality, such a requirement would “seem inevitably to lead to an excessive restraint on the scope of legitimate newsgathering activity.” *Cervantes v. Time, Inc.*, 464 F.2d 986, 993 n.10 (8th Cir. 1972). Worse, it would result in sources refusing to share information with reporters.

1. The First Amendment creates a qualified reporter’s privilege against court-compelled discovery of sources.

The First Amendment guarantees that “no law . . . abridging the freedom of speech, or of the press” be made. U.S. Const. amend. I. Inherent in that guarantee is the pledge that anyone exercising the “freedom of the press” will be protected from governmental interference. *See id.* The right of the press to publish is a basic tenet of the First Amendment and is central to the existence of constitutional democracy. *See Grosjean v. Am. Press Co.*, 297 U.S. 233, 249 (1936) (“A free press stands as one of the great interpreters between the government and the people.”). “A corollary of the right to publish [is] the right to gather news.” *Branzburg*, 408 U.S. at 727 (Stewart, J., dissenting). The process of gathering information and informing the citizenry is the core purpose of the First Amendment guarantee of free speech and a free press. *Id.* It is this interest that must be protected to ensure that the public is afforded a full and free flow of

information. See *Grosjean*, 297 U.S. at 250 (stating that the First Amendment grant was intended “to preserve an untrammelled press as a vital source of public information.”); *Roth v. United States*, 354 U.S. 476, 484 (1957) (explaining that the First Amendment safeguard “was fashioned to assure unfettered interchange of ideas for the bringing about of . . . societal changes desired by the people”).

The right to gather information necessarily encompasses a reporter’s constitutional right to a confidential relationship with his source. *Branzburg*, 408 U.S. at 728 (Stewart, J., dissenting). Reporters commonly establish and maintain confidential relationships with their sources which are “indispensable to [the] reporter’s work of gathering, analyzing, and publishing the news.” *Id.* at 730 (citing *In re Caldwell*, 311 F. Supp. 358, 361 (N.D. Cal. 1970)). Without freedom to attain information in this manner, the right to publish would perish. *Id.* at 728.

The protection of the identity of a confidential informant is “not for the benefit of the press so much as for the benefit [to the citizenry].” *Time, Inc. v. Hill*, 385 U.S. 374, 389 (1967). While the reporter’s pivotal function is to collect information for public dissemination, the paramount First Amendment concern is that the public be provided with a “vigorous, aggressive, and independent press capable of participating in robust, unfettered debate over controversial matters.” *Gonzales v. NBC, Inc.*, 194 F.3d 29, 35 (2d Cir. 1998) (quoting *Baker v. F & F Inv.*, 470 F.2d 778, 782 (2d Cir. 1972)). This need is so essential that nine of the twelve circuits have readily identified a reporter’s privilege.¹

A newsman who does not honor his promise of confidence will have substantial difficulty establishing, developing, and maintaining other confidential relationships necessary for diligent

¹ The First, Second, Third, Fourth, Fifth, Ninth, Tenth, Eleventh, and D.C. Circuits all identify some form of a reporter’s privilege. James Thomas Tucker & Stephen Wermiel, *Enacting a Reasonable Federal Shield Law: A Reply to Professors Clymer and Eliason*, 57 Am. U. L. Rev. 1291 (2008).

newsgathering in the future. *Branzburg*, 408 U.S. at 732 n.11 (Stewart, J., dissenting). If a potential informant has no guarantee that his identity or off-the-record communications will not subsequently be revealed, as a result of court compelled disclosure, the likelihood that he will reveal such information diminishes. *See Zerilli*, 656 F.2d at 712 (“Unless potential sources are confident that compelled disclosure is unlikely, [informants] will be reluctant to disclose any confidential information to reporters.”); *Baker*, 470 F.2d at 782 (“The deterrent effect [on informant’s] disclosure is likely to have upon future ‘undercover’ investigative reporting . . . threatens freedom of the press and the public’s need to be informed.”). The threat of the disclosure of information obtained from confidential sources, absent a substantial state interest, has the potential to eviscerate the freedom of the press and “emasculate the fundamental principles that underlay” the First Amendment. *Cervantes*, 464 F.3d at 992–93.

2. The holding in *Branzburg v. Hayes* was limited to a criminal context.

The district court recognized that the holding in *Branzburg* was limited to the criminal context. (J.A. at 10.) As this is a civil dispute between private litigants, the holding is inapplicable here.

Branzburg considered the issue of whether a reporter could assert a constitutional reporter’s privilege against revealing an anonymous source in a criminal grand jury investigation. 408 U.S. at 667. The Court recognized that because newsgathering is essential to a free press, it is afforded some qualified protection by the First Amendment. *Id.* at 682. The court found, however, that where the state interest in effective criminal law enforcement outweighs the reporter’s interest in confidentiality, that any such privilege should give way. *Id.* at 710.

The Court readily limited its holding to the particular facts of the case before it saying, “[t]he sole issue before [the Court was] the obligation of reporters to respond to grand jury subpoenas as other citizens do and to answer questions relevant to an investigation into the commission of a crime. *Branzburg*, 408 U.S. at 682. The Court solely premised this inquiry on “whether requiring newsmen to appear and testify before state or federal grand juries abridges the freedom of speech and press guaranteed by the First Amendment.” *Id.* at 667.

3. In the civil context, disclosure of confidential sources yields to the reporter’s privilege.

Because the Court limited its holding in *Branzburg* to the criminal grand jury context, the rule of law established in that case is of “little relevance in civil decisions to situations such as the one now before [this Court].” *United States v. Liddy*, 354 F. Supp. 208, 213 n.14 (D.D.C. 1972). First Amendment values weigh differently between civil and criminal actions. *Id.* In criminal cases there is an inclination toward disclosure; in civil cases, non-disclosure is preferred. *Zerilli*, 656 F.2d at 712. Consequently, a majority of circuits have established that a reporter’s privilege under the First Amendment should be readily available in civil cases. *See, e.g., id.* (recognizing a reporter’s privilege in the civil context for the D.C. Circuit); *Baker*, 470 F.2d at 786 (same for the Second Circuit); *United States v. Criden*, 633 F.2d 346, 356–57 (3d Cir. 1980) (same); *Miller v. Transamerican Press, Inc.*, 621 F.2d 721, 725 (5th Cir. 1980) (same); *Cervantes*, 464 F.2d 986 (same for the Eighth Circuit); *Silkwood v. Kerr-McGee Corp.*, 563 F.3d 433, 436–37 (10th Cir. 1977) (same).

If a reporter’s privilege does not prevail in all but the most exceptional cases, the value of the privilege will be significantly diminished. *Zerilli*, 656 F.2d at 712. In the ordinary case, the civil litigant’s interest in disclosure of a confidential source’s identity should yield to the reporter’s privilege. *Id.* Therefore, “when no countervailing constitutional concerns are at stake,

it can be said that the privilege is absolute; when constitutional precepts collide, the absolute gives way to the qualified and a balancing process comes into play to determine its limits.” *Criden*, 633 F.2d at 356–57.

A significantly more compelling interest exists in protecting the confidentiality of a reporter’s source in a libel case than in grand jury proceedings. *Miller v. Transamerican Press, Inc.*, 621 F.2d at 725. In a libel case, the plaintiff and the reporter are on opposite sides. *Id.* Compelling a reporter to breach a promise of confidentiality merely because a libel suit has been filed against him would invite retaliation from an allegedly defamed plaintiff and lead to an excessive restraint on the scope of legitimate newsgathering activity. *Cervantes*, 464 F.3d at 993 n.10. Because such restraint on constitutional freedoms and abuse of the legal system should not be tolerated, the privilege must stand to protect the reporter exercising his First Amendment rights.

B. Cartman May Assert the Reporter’s Privilege.

Those who gather and disseminate the news are entitled to protection from court-ordered disclosure of their confidential sources. “Liberty of the press is the right of the lonely pamphleteer . . . just as much as of the large metropolitan publisher.” *Branzburg*, 408 U.S. at 703 (Stewart, J., dissenting). To assert a reporter’s privilege, Cartman had to establish that his work was that of a reporter and that he had the requisite intent to disseminate newsworthy information at the inception of the newsgathering process. *See In re Madden*, 151 F.3d at 131 (reporter); *Gonzales*, 194 F.3d at 34 (intent to disseminate). Cartman met that burden.

1. Cartman qualifies as a reporter because he gathers and disseminates information on his blog.

Cartman performs the traditional functions of a reporter through his work as a blogger.² Historically, the term “reporter” connoted those individuals employed by newspapers, television, and radio stations. *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938). Modern technology has opened communication channels beyond the mass media of old. Patrick M. Garry, *Anonymous Sources, Libel Law, and the First Amendment*, 78 Temp. L. Rev. 579, 589 (2005). Today, a reporter encompasses all persons engaged in investigative reporting and newsgathering who intend, at the inception of the newsgathering process, to disseminate news to the public. *In re Madden*, 151 F.3d at 131; *see, e.g., Shoen v. Shoen*, 5 F.3d 1289, 1293 (9th Cir. 1993) (qualifying “investigative book authors” as reporters); *Silkwood*, 563 F.3d at 436–37 (qualifying an independent documentary filmmaker as a reporter). This modern media has vastly increased the opportunities for individual citizens to participate in the dissemination of information. Garry, *supra*, at 591.

As the Internet becomes an ever important source of news, bloggers, who are most often unaffiliated with traditional news media outlets, play a role “within the news media comparable to that of traditional journalists.” *Developments in the Law—The Law of Media*, 120 Harv. L. Rev. 996, 997 (2007). Consequently, American courts have to begun to recognize the necessity of expanding the traditional understanding of the term reporter to include the online media. *See*

² A “blogger” is defined as “a person who keeps a Web log (blog).” Dictionary.com, <http://dictionary.reference.com/browse/blogger> (last visited Sept. 20, 2009). Blogs are an increasingly popular form of interactive website, since an individual can reach a potentially huge audience with a relatively small investment of time and energy. Jay M. Zitter, *First Amendment Protection Afforded to Blogs and Bloggers*, 35 A.L.R.6th 407 (2008). Blogs started out primarily as online diaries with author’s posts and links to items on the Internet. *Id.* “The content of blogs has changed somewhat over the years, to the extent that many [blogs] deal with politics, business and the like.” *Id.* (citation omitted).

Blumenthal v. Drudge, 186 F.R.D. 236, 244 (D.D.C. 1999) (classifying the creator of an electronic gossip column, who disseminated content through his website, as a reporter for the purposes of the reporter's privilege); *O'Grady v. Superior Court*, 44 Cal. Rptr. 3d 72, 106 (Ct. App. 2006) (finding that any differences between a traditional journalist and the operator of an online news magazine devoted to Apple computers were "minute, subtle, and constitutionally immaterial" for the purposes of classifying the individual as a reporter).

Here, Cartman investigates a wide range of news topics from celebrity happenings to local and international politics. (J.A. at 4.) Cartman utilizes the Internet, national newspapers, and a stream of confidential sources to develop and publish news stories to over 100,000 readers per day. (J.A. at 4–5.) While his website may be commonly referred to as a "blog" and Cartman a "blogger," the work he does in disseminating relevant information to the public is no different than the work a traditional journalist undertakes in creating a story. As Cartman participates in information gathering with intent to disseminate the news to the public, he is a reporter for all intents and purposes.

2. Cartman gathered the information pertaining to potential human rights abuses at the Mumbai Citrus factory with the intent to utilize that information as a reporter.

Cartman collected information pertaining to potential human rights abuses at the Mumbai Citrus factory with the intent to utilize that information as a reporter and thus, he is entitled to exercise his reporter's privilege. A reporter's privilege protects information that is "sought, gathered, or received [with the intent] to disseminate information to the public." *von Bulow v. von Bulow*, 811 F.2d 136, 142 (2d Cir. 1987). Therefore, a reporter is entitled to assert a qualified reporter's privilege against disclosure of information provided by a confidential source if (1) the reporter intends to use the information in the dissemination of news; and (2) the

reporter had intent to disseminate when the information was obtained. *See Gonzales*, 194 F.3d at 34 (citing *von Bulow*, 811 F.2d at 142). To determine whether a reporter is entitled to assert this privilege, the district court must conduct an intent-based factual inquiry. *von Bulow*, 811 F.2d at 144–45 (stating that even a novice in the field of reporting may qualify for the reporter’s privilege if his intent to disseminate the information to the public, garnered from his confidential relationship, is proved).

The district court made a fact finding that that Cartman intended to use the information in the dissemination of the news and that that intent existed when Cartman obtained the information. (J.A. at 11.) The court based its conclusion on the fact that Cartman provides readers of *The Sludge Report* with a link to his personal email account and provided notice that all information provided would be treated as confidential unless otherwise requested. (J.A. at 5.) Cartman provided this information-gathering channel with the express purpose of collecting leads anonymously in order to develop news stories for publication. (J.A. at 12.) Cartman’s efforts proved successful as a significant number of readers utilized the email submission feature to share information for the purpose of helping Cartman investigate newsworthy events. (J.A. at 4–5.) As Cartman not only accepted readers’ submissions regarding newsworthy topics, but also often utilized that information in his development of news stories, Cartman had the requisite intent to use the information provided in this case in the dissemination of news.

Additionally, Cartman previously received and used reliable tips from Professor Chaos, so he justifiably relied on him here. After receiving the photograph and information pertaining to potential human rights violations in the Mumbai Citrus factory, Cartman posted the picture and accompanying commentary within twenty-four hours of its receipt. (J.A. at 5.) As soon as Cartman identified the information as being of substantial public interest, he began developing a

lead story regarding the abuses thereby obviating his intent to disseminate the information upon its receipt. (J.A. at 5.)

The district court's conclusions are supported by the record. Cartman had the requisite intent to disseminate news regarding potential human rights violations in the Citrus factory in Mumbai at the time he received the information. As a result, Cartman is entitled to assert the reporter's privilege.

C. Broflovski Failed to Meet His Burden of Piercing Cartman's Qualified Privilege.

In all but the most exceptional cases, a "civil litigant's interest in disclosure should yield to the journalist's privilege." *Zerilli*, 656 F.2d at 712. Broflovski, as the moving party, must establish that his private interest in disclosure outweighs the public's interest in protecting Cartman's confidential source. *Id.* Only then will the reporter's privilege be pierced. *Id.* To overcome the privilege, Broflovski must establish (1) that the evidence sought is clearly relevant to the litigation; (2) that he has exhausted every reasonable alternative source of information; and (3) that there exists a compelling interest in obtaining the information that sufficiently outweighs the invocation of the privilege. *Id.* at 713–14. Broflovski cannot satisfy the second and third elements.

1. Broflovski did not show he had exhausted all other means to obtain the confidential source's identity.

A reporter should only be compelled to disclose his confidential sources "after the [plaintiff] has shown that he has exhausted every reasonable alternative source of information." *Id.* at 713. While there are some limits to the obligation to pursue alternative sources, a cursory attempt to discern the source's identity is insufficient to warrant disclosure. *Id.*; *see also Carey v. Hume*, 492 F.2d 631, 639 (D.C. Cir. 1974) (suggesting that litigants taking of as many as 60

depositions might be a reasonable prerequisite to compelled disclosure); *Miller v. Mecklenburg County*, 602 F. Supp. 675, 680 (W.D.N.C. 1985) (deposing every known possible witness to incident sufficient to establish exhaustion of resources). The moving party cannot escape this obligation with a conclusory statement that the investigation and deposition process will be “time-consuming, costly, and unproductive.” *Zerilli*, 656 F.2d at 715.

Here, Broflovski conducted only a superficial internal investigation before engaging the court to order disclosure. Broflovski merely deposed the Mumbai factory manager and some factory engineers in an attempt to discern the source of the photograph.³ (J.A. at 8.) While these efforts yielded few leads, the district court determined that Broflovski could have used other means to obtain the information. (J.A. at 8.) The district court suggested Broflovski could have reviewed Citrus’s internal records to see who had access to the facility or could have performed a sweep of the company’s e-mail servers in an attempt to discover if the photograph originated from any of its own user accounts. (J.A. at 8.) Moreover, Broflovski could have attempted to identify the workers on the assembly line pictured for deposition purposes. As the record is devoid of any indication that Broflovski made any more than a cursory attempt at discerning the true identity of Cartman’s informant, Broflovski has failed to meet his burden of persuasion on this element.

2. Broflovski cannot show a compelling interest to overcome Cartman’s qualified privilege.

As the party moving for disclosure, Broflovski must establish that a compelling interest in obtaining the information exists which outweighs the protections afforded to Cartman in regard to keeping his sources confidential. *Zerilli*, 656 F.2d at 712. Cases where a movant’s interest is

³ The record reflects that Kyle sent a company-wide email requesting information on the source of the leak. (J.A. at 8.)

sufficiently compelling, as to override the protections of the First Amendment, are rare. *Baker*, 470 F.2d at 783 (“While we recognize that there are cases—few in number to be sure—where First Amendment rights must yield, we are still mindful of the preferred position which the First Amendment occupies in the pantheon of freedoms.”). A sufficiently compelling interest is typically established where the movant shows that the confidential source’s identity is critical to the success of the plaintiff’s claim. *Zerilli*, 656 F.2d at 713 n.48. In a libel action, knowledge of the identity of a source is important in establishing whether the reporter verified his story, but disclosure is by no means automatic. *Id.* at 714. “Where other relevant factors suggest disclosure is inappropriate, the privilege should prevail.” *Id.*

While the identity of Cartman’s source may be relevant to Broflovski’s claim, it is not essential. Broflovski argues that disclosure is necessary to determining whether Cartman’s source was reliable as to determine whether Cartman was reckless in his publication. (J.A. at 13.) As the district court aptly noted, however, “unreliability of the source . . . is but one method of proving fault in a defamation claim.” (J.A. at 13.) In this case, an obvious source of other relevant information would be Cartman himself. If Broflovski deposed Cartman, he could have determined whether Cartman performed due diligence or actively sought to corroborate the source’s information. Without pursuing the alternative suggested by the district court and investigating other sources of information that could potentially support Broflovski’s claim, the disclosure of Cartman’s source is unnecessary and insufficient to overcome the privilege.

II. THE COURT OF APPEALS ERRONEOUSLY DETERMINED IKE BROFLOVSKI HAD A VIABLE DEFAMATION CLAIM BY REGARDING HIM AS A PRIVATE FIGURE SUBJECT TO THE NEGLIGENCE STANDARD.

A principal ground of Cartman’s summary judgment motion was his contention that Broflovski was required to, but could not, prove that Cartman had acted with “actual malice.”

(J.A. at 15); *see also N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964) (defining “actual malice” as publication with knowledge that it was false or with reckless disregard of whether it was false or not). *Cartman* established, as a matter of law, that Broflovski was a “limited-purpose public figure” and, accordingly, Broflovski was required to produce evidence of actual malice to avoid summary judgment. (J.A. at 18.) Nonetheless, the court of appeals reached the opposite conclusion, applied a negligence standard, and reversed the district court’s grant of summary judgment. (J.A. at 28.)

The threshold legal issue that the district court determined was whether Broflovski is a limited purpose public figure. (J.A. at 15.) If Broflovski is a limited purpose public figure, then he is required to adduce clear and convincing evidence of actual malice to survive summary judgment. *See Dameron v. Wash. Magazine Inc.*, 779 F.2d 736, 741 (D.C. Cir. 1985). Within the category of public figures, plaintiffs can be either “general-purpose” or “limited-purpose” public figures. *Gertz v. Robert Welsh, Inc.*, 418 U.S. 323, 351 (1983). This Court has identified and distinguished the two classes of public figures:

In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues.

Id.

In *Gertz*, this Court held that the actual malice requirement of *New York Times Co. v. Sullivan* is applicable to defamation plaintiffs. 418 U.S. at 351–52. While they are not public officials or all-purpose public figures, these plaintiffs should be considered as public figures for limited purposes. *Id.* The Court stressed that it is necessary to consider “the nature and extent of an individual’s participation in the particular controversy giving rise to the defamation. *Id.* at 352.

A. The Three-Pronged Test Applied by the District Court Is the Appropriate Standard for Evaluating an Individual’s Status as a Limited Purpose Public Figure Because the Focus of Such Inquiry Must Be on the Public Controversy at Issue and Not Whether the Individual’s Actions Were Voluntary.

The *Gertz* holding did not provide “a detailed chart of the contours of the public and private figure categories”; rather, it “elect[ed] to paint with a broad brush” in lieu of a case-by-case approach. 418 U.S. at 343–44. Consequently, lower courts have adopted differing constitutional standards under which a defamation plaintiff is considered a limited-purpose public figure required to prove actual malice under *Sullivan*. Compare *Waldbaum v. Fairchild Publ’ns, Inc.*, 627 F.2d 1287, 1296 (D.C. Cir. 1980) (applying a three-prong controversy-centered test), and *Little v. Breland*, 93 F.3d 755, 757 (11th Cir. 1996) (same), and *Harris v. Quadracci*, 48 F.3d 247, 251 (7th Cir. 1995) (same), and *Trotter v. Jack Anderson Enters., Inc.*, 818 F.2d 431, 433–34 (5th Cir. 1987) (same), with *Lerman v. Flynt Distrib. Co.*, 745 F.2d 123, 136–37 (2d Cir. 1984) (applying a four-prong person-centered test). The principal area of disagreement involves situations where, as here, an individual claims to have been involuntarily drawn into an ongoing public controversy. Nat Stern, *Unresolved Antitheses of the Limited Public Figure Doctrine*, 33 Hous. L. Rev. 1027, 1044 (1996).

This Court should adopt the standard applied by the D.C. Circuit Court of Appeals in *Waldbaum v. Fairchild Publications, Inc.* The *Waldbaum* test focuses on the controversy and not the individual. See generally 627 F.2d 1287. It allows an individual drawn into an ongoing public controversy to be classified as a limited-purpose public figure, although that individual did not want or pursue the attention. *Id.* at 1297. This approach is the appropriate standard for several reasons.

First, the issue of whether an individual voluntarily injected himself into the controversy will not be readily apparent in most situations. Stories unfold as time goes on. When a reporter approaches an issue of public concern, the key players are usually identifiable, but how or why they achieve this status is often not. If a reporter is forced to investigate subjects central to the story to determine if that person voluntarily injected himself into it, the purpose of the press would be thwarted. Adverse, hostile, or inaccessible subjects could avoid public scrutiny by not divulging the nature of their involvement in a matter of public concern. The need for free dissemination of information to the public should not be hindered by the reporter's inability to classify the subject of the newsworthy event.

Second, given the difficulties in determining whether the subject of a story voluntarily injected himself into the controversy with the luxury of time, discovery and hindsight, these questions are impossible for the media under the pressure of deadlines and with more limited information. As far as the press is concerned, "news is a perishable commodity." Sigman L. Splichal & Matthew D. Bunker, *The Supreme Court and Prior Restraint Doctrine: An Ominous Shift?*, 3 Media L. & Pol'y 9, 12 (1994). To delay its publication, even for a short period, may well deprive it of all of its value or interest. *Id.* This is particularly true with the advent of the Internet; the near instantaneous publication of events requires reporters to do in minutes what used to take days.

Third, the *Waldbaum* standard honors what this Court said in *Gertz*. This Court explained in the *Gertz* holding that anyone who "voluntarily inject[ed] himself or is *drawn into* a particular controversy" qualifies as a limited-purpose public figure. 418 U.S. at 351 (emphasis added). In making this pronouncement, this Court specifically stated:

[I]t may be possible for someone to become a public figure through no purposeful action of his own. . . . More commonly, those classed as public figures have thrust

themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment. . . . It is preferable to reduce the public-figure question to a more meaningful context by looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation.

Id. at 345, 352. The *Waldbaum* standard incorporates those situations discussed in *Gertz* where a person at the heart of a public matter is drawn into the controversy.

Any individual, who undertakes a course of conduct or becomes entangled in a matter that invites legitimate, public attention, is a public figure regardless of whether the intention was desired. *McDowell v. Paiewonsky*, 769 F.2d 942, 949 (3d Cir. 1985). “Our citizenry has a legitimate and substantial interest in the conduct of such persons and [the] freedom of the press to engage in uninhibited debate about their involvement in public issues and events” *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 164 (1967). The media must be afforded ample “breathing space” to ensure that the public receives “uninhibited, robust, and wide-open” information regarding issues of significant public concern. *Sullivan*, 376 U.S. at 270. The *Waldbaum* test best serves these goals.

B. Broflovski Is a Limited Purpose Public Figure Under the Three-Pronged Test Established in *Waldbaum*.

The district court applied the *Waldbaum* standard and found that Broflovski was a limited-purpose public figure. (J.A. at 18.) The *Waldbaum* standard classifies an individual as a limited-purpose public figure if (1) the relevant controversy is a matter of public concern; (2) the plaintiff plays more than a “trivial or tangential” role in the controversy; and (3) the defendant’s allegedly defamatory remarks are germane to the plaintiff’s involvement in the public controversy. 627 F.2d at 1296; *see also Little*, 93 F.3d at 757; *Harris*, 48 F.3d at 251; *Trotter*, 818 F.2d at 433–34. The record supports the district court’s conclusion.

1. Potential human rights violations at a factory producing among the most popular consumer electronics devices in the United States is a matter of public concern.

The first step of the *Waldbaum* analysis addresses whether the relevant controversy is a matter of public concern. 627 F.2d at 1269. For nearly a decade, Citrus has led the technological forefront in the arena of digital music players. (J.A. at 2.) The original Citrus ePlay evolved into a status symbol among teenagers and twenty-somethings. (J.A. at 2.) When Kyle Broflovski's announced that his brother, Ike Broflovski, would assume the role of Citrus's Director of Research and Development and would oversee the development of the new ePlay Touché, the public understandably had great interest in the product and its architect. (J.A. at 3.) Advancements in such technology affect consumer perceptions of the company and correspondingly increase consumer spending. Changes in consumer spending thereby affect those that sell the Citrus products. Moreover, as a publicly traded company, the introduction and ultimate success of Citrus's products has a direct correlation to its investor's financial livelihood. The impact that Citrus's new product and corporate decisions make are not limited to the company's four walls; they directly affect its shareholders and consumers. The interest in Broflovski and the happenings of Citrus extend beyond mere public curiosity.

In its limited analysis, the court of appeals failed to recognize that the public controversy was not merely the Mumbai factory abuses, but rather Citrus's development of Citrus's ePlay Touché. Courts consistently reject plaintiffs' efforts to narrowly define controversies. *See Lohrenz v. Donnelly*, 350 F.3d 1272, 1281 (D.C. Cir. 2003) (holding that the controversy broadly defined as "the appropriateness of women in combat positions," and rejecting the plaintiff's contention that the controversy should narrowly be defined as the "competence of [plaintiff] herself"); *Lerman*, 745 F.2d at 137–38 (holding that the controversy was broadly defined as the

relationship “between the sexes and nudity,” and rejecting the plaintiff’s contention that the controversy surrounded whether the plaintiff consented to appear nude in a film). So long as the public is discussing a matter and “persons beyond the immediate participants in the dispute [are likely] to feel the impact of its resolution,” the matter is a public controversy. *Tavoulareas v. Piro*, 817 F.2d 762, 772–73 (D.C. Cir. 1987) (citing *Waldbaum*, 627 F.2d at 1297). Because Broflovski and Citrus cultivated great public interest and reaped the commercial benefits from their efforts, they cannot distance themselves from the resulting public concern.

2. Ike Broflovski plays more than a trivial or tangential role in the ePlay Touché controversy.

The second step of the *Waldbaum* analysis addresses the extent to which the plaintiff is involved in the public controversy. 627 F.2d at 1297. As the Director of Research and Development at Citrus, Broflovski developed and organized the production of the ePlay Touché. (J.A. at 3.) Accordingly, Broflovski influenced the internal workings and processes involved in the product production. (J.A. at 18.)

Moreover, Broflovski participated in press conferences and continually allowed his work to be praised, both by his brother Kyle, in television and magazine interviews, and by the staff of the Citrus MegaStores throughout the country, in the form of “I Like Ike” buttons. (J.A. at 3–4.) Broflovski was readily identified as the source of the technological innovations produced by Citrus. His actions invited attention and comment. Broflovski could have realistically expected, because of his position in the company, to have an impact on all aspects of its public perception. *Waldbaum*, 627 F.2d at 1297; *see also Little*, 93 F.3d at 758 (“[Plaintiff’s] choice to assume a position of leadership at . . . an organization involving public scrutiny, shows a voluntary decision to place himself in a situation where there was a likelihood of public controversy. [Plaintiff] was participating in activities whose success depends in large part on publicity.”)

(internal citations omitted). Therefore, Broflovski is more than a trivial or tangential player in the controversy.

3. Cartman’s allegedly defamatory remarks are germane to Broflovski’s involvement in the public controversy.

The third step of the *Waldbaum* analysis is whether the defamatory remarks are relevant to the public controversy. 627 F.2d at 1297. Cartman alleged that Broflovski violated the rights of workers producing the Citrus ePlay Touché, in the Mumbai factory. (J.A. at 6.) These allegations are interwoven with his role as the leader of the ePlay Touché project. Broflovski controlled all facets of this product’s development, including the manufacturing operations. (J.A. at 18.) If, in fact, Citrus was involved in modern slave labor, as alleged, the already existing controversy regarding Citrus’s developing product line would take on an additional front for legitimate public discussion.

Where a relevant relationship between the alleged defamatory comments and an established public controversy exists, the remarks are deemed germane to the controversy. *See Trotter*, 818 F.2d at 436 (stating that when defendant alleged plaintiff was involved in anti-union violence, defendant was also describing plaintiff’s role as chief policymaker of a Guatemalan bottling company that was the center of the controversy); *Tavoulaareas*, 817 F.2d at 774 (finding that the “alleged nepotism” of an oil company executive was germane to a public controversy focused on the credibility and integrity of representatives of the oil industry). Because Broflovski meets the requirements of the three-pronged *Waldbaum* test, he is a limited purpose public figure for all matters involving this controversy.

C. Even if This Court Opts to Apply the Test Established Utilized by the Court of Appeals, Broflovski Is a Limited-Purpose Public Figure for Purposes of This Litigation.

Though inapplicable, the court of appeals further erred in apply the four-pronged test established by the Second Circuit. Under that test, a defamation plaintiff is a limited-purpose public figure if he (1) “successfully invite[d] public attention” prior to the remarks litigated; (2) “voluntarily inject[ed]” himself into the relevant public controversy; (3) took on a “position of prominence” within the public controversy; and (4) took on a “position of prominence” within the public controversy. *Lerman*, 745 F.2d at 136–37. Broflovski qualifies a limited-purpose public figure even under this standard.

1. Broflovski successfully invited public attention to himself prior to Cartman’s remarks.

The first element of the *Lerman* test is whether plaintiff successfully invited public attention to himself prior to the remarks litigated. *Id.* By freely accepting the position of Director of Research and Development at Citrus and assuming the revolutionary task of bringing the ePlay Touché to market, Broflovski effectively invited public attention to himself and additional attention to Citrus. *See Tavoulaareas*, 817 F.2d at 773 (stating that when an industry and a company, in particular, are “at the center of a vigorous public debate,” an individual’s position of prominence can establish him as a limited-purpose public figure). Regardless of whether the attention was sought or not, the attention was received. *See Chuy v. Phila. Eagles Football Club*, 431 F. Supp. 254, 267 (E.D. Pa. 1977) (“If society chooses to direct massive public attention to a particular sphere of activity, those who enter that sphere inviting such attention” will be deemed limited-purpose public figures.). Unlike a typical individual working in a research and development department, Broflovski was known to be the mind behind the ePlay Touché and was praised by the public for his innovations. (J.A. at 3–4); *see also*

McDowell, 769 F.2d at 950 (stating that where a person chooses to engage in a profession which draws him into public view, even if he has no ideological thesis to promulgate, he invites general public discussion). Broflovski need not use words to invite public attention. His engagement on the course of innovation delivered the attention sufficient to establish this element.

2. As Broflovski undertook a course of conduct that invited considerable public attention, he, thereby, voluntarily injected himself into the Citrus controversy.

The second element of the *Lerman* test requires that the plaintiff voluntarily injected himself into the relevant public controversy. 745 F.2d at 36–37. The debate surrounding Citrus’s product development existed well before Broflovski accepted his position and such debate continues today. By electing to accept the Citrus position, Broflovski “placed [himself] into the vortex of a public controversy.” *Id.* at 950; *see also Chuy*, 431 F. Supp. at 267 (classifying a professional football player as a limited-purpose public figure “because of the inevitable publicity that accompanies such a position”). Broflovski stepped directly into the existing controversy by allowing himself to be classified as the “genius” responsible for setting the standard for mobile technology. *See McDowell*, 769 F.2d at 949–50 (recognizing that an individual can voluntarily inject himself in a controversy, simply by engaging in a course of action that invites attention although he does not intend such result). Predictably popular support followed him. Although Broflovski’s voice has been quiet throughout this process, his actions speak to the voluntariness of his entry into this controversy and establish this element.

3. Broflovski took on a position of substantial prominence within the public controversy.

The third step of the *Lerman* test is whether the plaintiff takes on a “position of prominence” within the public controversy. 745 F.2d at 36–37. At the time that Broflovski was hired as the Director of Research and Development at Citrus, it was a matter of public

knowledge that Citrus was an industry leader in the consumer electronics industry. (J.A. at 2–3.) Broflovski freely accepted the position and took on the responsibilities of developing and organizing the production of the ePlay Touché. (J.A. at 3); *see also Little*, 93 F.3d at 758 (“When an individual chooses to assume a position of leadership at . . . an organization subject to public scrutiny, he shows a voluntary decision to place himself in a position of prominence in relation to the public controversy.”). Accordingly, Broflovski had influence over the internal workings and processes involved in the production of this product. Because Broflovski was readily identified as the source of the technological innovations produced by Citrus and is responsible for all aspects of the product’s production he took on a position of prominence in the controversy as to satisfy this element.

4. Broflovski maintained regular and continuing access to the media through his executive position at Citrus, which could be utilized to combat the defamatory remarks at any time.

The fourth step in the *Lerman* test is whether the plaintiff maintained regular and continuing access to the media to combat the defamatory remarks. 745 F.2d at 36–37. Citrus readily maintains and utilizes its relationship with the media in order to continually inform the public about its products and other corporate news. (J.A. at 3.) By virtue of his position within Citrus, Broflovski has virtually unlimited access to the media, should he so choose to utilize it. *See U.S. Healthcare v. Blue Cross of Greater Phila.*, 898 F.2d 914, 938 (3d Cir. 1990) (stating that an individual’s considerable access to the media is strong indicia that he is a limited purpose public figure). Broflovski’s ready access is evidenced by the fact that Broflovski’s attorney, Terrence Phillips, announced the filing of this suit to the media. (J.A. at 7.) An individual that was not so positioned would not have the same opportunity to make such pronouncements to the

public at large. Regardless of whether Broflovski has, himself, reached out to his media sources is irrelevant to this matter as this element only requires the plaintiff to have such access.

As Broflovski satisfies the four elements, he is a public-figure under the Second Circuit analysis. Therefore, even under this analysis, the court of appeals erred in reversing the district court's grant of summary judgment.

CONCLUSION

As Judge Learned Hand stated more than sixty-five years ago, the First Amendment “presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be folly; but we have staked upon it our all.” *United States v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943). This Court has repeatedly encouraged a robust and uninhibited discussion of public issues and has consistently sought to protect journalists from those who wish to restrict public discourse. Our national commitment to the free exchange of information embodies a recognition that all sources of news are entitled to participate in the public debate with the privileges afforded to reporters and with the actual malice protection embodied in *New York Times Co. v. Sullivan*.

This Court should REVERSE the court of appeals' judgment in all respects. Specifically, the Court should reverse the court of appeals' grant of Broflovski's motion to compel discovery and should reinstate the district court's grant of summary judgment.

Respectfully submitted,

TEAM NO. 107
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