

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUTH COHEN, an individual,)	
)	
Appellant/Cross-Respondent,)	Supreme Court Case No. 81018
)	(Consolidated with Supreme Court
v.)	Case No. 81172)
)	Elizabeth A. Brown
PAUL PADDA, et al.)	Clerk of Supreme Court
)	On Appeal from District Court
Respondents/Cross-Appellants.)	Case No. A-19-792599-B
)	

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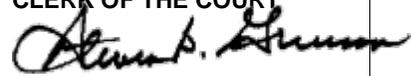
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DISTRICT COURT
CLARK COUNTY, NEVADA

RUTH L. COHEN, an individual,
Plaintiff,

vs.

PAUL S. PADDA, an individual; PAUL
PADDA LAW, PLLC, a Nevada professional
limited liability company; DOE individuals I-X;
and, ROE entities I-X,
Defendants.

Case No.: A-19-792599-B
Dept. No.: XI

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Date of Hearing: January 27, 2020
Time of Hearing: 9:00 a.m.

Plaintiff Ruth L. Cohen ("Ms. Cohen"), by and through her attorneys of record, the law firm of Marquis Aurbach Coffing and the law firm of Campbell & Williams, hereby files her Opposition to Defendants' Motion for Summary Judgment ("Opposition"). This Opposition is made and based upon the pleadings and papers on file herein, the following points and authorities, and any argument allowed by the Court at the time of hearing.¹

¹ Please note, although Plaintiff is to use *numbered*, and Defendants *alphabetical* exhibits, because Defendants have already improperly numbered their exhibits, for the Court's ease of clarity and reference, Plaintiff has used alphabetical designations in the limited circumstance of this Opposition.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants Paul Padda (“Mr. Padda”) and Paul Padda Law, PLLC (“PPL,” and together
4 “Defendants”) move for summary judgment on the entirety of Ms. Cohen’s case despite the
5 numerous genuine issues of material fact that exist in this case. Applying the governing
6 standard, Defendants’ Motion must be denied.

7 **II. MS. COHEN’S STATEMENT OF FACTS**

8 Contrary to Defendants’ claim that the facts of this case are undisputed and warrant
9 summary judgment, the facts leading up to the September 12, 2016 fraudulent Business
10 Expectancy Interest Resolution Agreement (the “Fraudulent Agreement”) are hotly contested.
11 The only facts not in dispute are those concerning Ms. Cohen’s ongoing interest in partnership
12 assets that gave rise to Mr. Padda’s continuing fiduciary duties owed to her. These are the facts:

13 **A. RUTH COHEN**

14 For over 40 years, Ruth Cohen practiced law in Nevada, primarily as a prosecutor.² She
15 made history by becoming one of the first 100 women admitted to the State Bar of Nevada, the
16 fourth woman ever hired in the Clark County District Attorney’s office, and the first female
17 federal prosecutor appointed in the entire state.³

18 **1. The U.S. Attorney’s Office**

19 In 1978, Ms. Cohen started working at the U.S. Attorney’s Office (“USAO”), which was
20 headed, at the time, by U.S. Attorney Mahlon Brown.⁴ There, Ms. Cohen worked as a federal
21 prosecutor for 29 years in both the criminal and civil divisions.⁵

22 In the spring of 2004, Ms. Cohen was part of an ad hoc hiring committee at the USAO,
23 along with current Assistant U.S. Attorney, Gregory Addington, and others, which was looking

24 _____
25 ² See **Exhibit A** hereto, Nevada Lawyer, Ruth Cohen, from Jersey Girl to Nevada Lawyer (March 2011).

26 ³ Id.

27 ⁴ Id.

28 ⁵ Id.

1 to fill a vacancy in the civil division.⁶ Mr. Padda applied for the position and was eventually
2 interviewed by the committee.⁷ Mr. Addington testified that Ms. Cohen played a significant role
3 in advocating, from the outset, for Mr. Padda to be offered the position.⁸ Mr. Padda was
4 ultimately asked to join the USAO and worked with Ms. Cohen for approximately three years.⁹
5 While working together, Ms. Cohen mentored Mr. Padda, and the two developed a very close
6 friendship, often socializing outside of the office, as observed by Mr. Addington.¹⁰ In 2007, Ms.
7 Cohen retired from the USAO and went into private practice.

8 **2. Atkin Winner & Sherrod**

9 After retiring from the USAO, Ms. Cohen started working at Atkin Winner & Sherrod as
10 “of counsel.”¹¹ There, Ms. Cohen met Karla Koutz, an administrative assistant.¹² According to
11 Ms. Koutz, Mr. Padda would frequently visit Ms. Cohen at her office for a couple of hours each
12 time, and she observed the two to have a very close and trusting relationship.¹³

13 **B. FORMATION OF COHEN & PADDA**

14 For years, Mr. Padda tried to convince Ms. Cohen to be his partner because she was
15 “valuable,” he could market her, and they “could really make some money.”¹⁴ After Mr. Padda
16 was forcibly transferred from the criminal division to the civil division and he decided to leave
17 the USAO, Ms. Cohen agreed to form Cohen & Padda in 2011.¹⁵

18 _____
19 ⁶ See **Exhibit B** hereto, excerpts of the Depo. of G. Addington (“Addington Depo”) at 15:10-25, 16:1-25.

20 ⁷ *Id.* at 17:18-25, 19:9-19.

21 ⁸ *Id.* at 23:13-25, 24:1-12.

22 ⁹ *Id.* at 41:24-25, 42:1-5.

23 ¹⁰ *Id.* at 32:7-25, 33-35, 36:1-2.

24 ¹¹ See **Exhibit C** hereto, excerpts of Depo. of R. Cohen (Vol. 1 & 2) (“Cohen Depo”) at 17:3-5, 92:2-3.

25 ¹² See **Exhibit D** hereto, excerpts of the Depo. of Karla Koutz (“Koutz Depo”) at 14:21-25, 15:1-12.

26 ¹³ *Id.* at 23:16-25, 24:1-10; and 26:6-22.

27 ¹⁴ See **Exhibit C**, Cohen Depo at 24:21-25, 25:1-11.

28 ¹⁵ *Id.*; see also **Ex. B** hereto, Addington Depo at 39:25, 40:1-15.

1 **1. The Partnership Agreement**

2 In or about January 2011, Mr. Padda and Ms. Cohen entered into a partnership agreement
3 (prepared by Mr. Padda) outlining their respective rights, requiring equal capital contributions,
4 and specifying that all net profits shall be split on a 50/50 basis (the “Partnership Agreement”).¹⁶
5 The Partnership Agreement further provided that the duration of the partnership shall commence
6 on January 18, 2011, and continue until January 18, 2014, unless dissolved earlier.¹⁷ Thus, Mr.
7 Padda understood that the length of his partnership with Ms. Cohen would be short-lived given
8 her desire to eventually retire.

9 **2. The Dissolution Agreements**

10 On or about October 23, 2014, Mr. Padda and Ms. Cohen signed a partnership dissolution
11 agreement (prepared by Mr. Padda), effective November 1, 2014 (the “First Dissolution
12 Agreement”).¹⁸ Pursuant to Section 7(a)-(b), Mr. Padda agreed that Ms. Cohen shall receive
13 \$15,000 to buy-out her interests in Cohen & Padda; however, he agreed that with respect to all
14 contingency-fee cases for which the partnership was retained prior to December 1, 2014, and
15 where there was yet to be a recovery, Ms. Cohen shall be entitled to a 33.333% share of gross
16 attorney’s fees recovered.¹⁹ Within Section 8, Ms. Cohen would not have any right to inspect the
17 financial records of Cohen & Padda or any other entity created by Padda following November 1,
18 2014, “except for the limited purpose of ensuring compensation for the cases covered by
19 paragraph 7(b) above.”²⁰

20 In or about December 2014, Mr. Padda prepared another partnership dissolution
21 agreement, effective December 23, 2014, that Ms. Cohen signed (the “Operative Dissolution
22

23 _____
24 ¹⁶ See Defs.’ Mot. for Summ. J. (“Defs.’ Mot.”), at Ex. 4 (Partnership Agreement).

25 ¹⁷ Id. at Section 5, “Duration.”

26 ¹⁸ See **Exhibit E** hereto, Partnership Dissolution Agreement effective November 1, 2014.

27 ¹⁹ Id.

28 ²⁰ Id. at Section 8.

1 Agreement”).²¹ That agreement did not change Ms. Cohen’s \$15,000 buy-out or her continuing
2 right to a 33.333% percentage of the partnership’s contingency-fee cases.²² Notably, Mr. Padda
3 *did* change Section 8 to prohibit Ms. Cohen’s right to financial information as follows: “Ruth
4 Cohen shall have no right of inspection with respect to any financial records of Cohen & Padda,
5 LLP or any other entity created by Mr. Padda after December 31, 2014.”²³

6 After the dissolution of Cohen & Padda, Ms. Cohen continued to work on a part-time
7 basis with Mr. Padda, primarily handling the firm’s employment discrimination cases, but she
8 always thought of Mr. Padda as her partner given her continuing interest in the partnership’s
9 contingency-fee cases.²⁴

10 C. THE CONTINGENCY-FEE CASES

11 Through discovery, Ms. Cohen learned that there were approximately 60 contingency-fee
12 cases, possibly more, in which she had an interest in and/or right to 33.333% of any attorney’s
13 fees recovered.²⁵ Based on the total amount in attorneys’ fees recovered in those cases, Ms.
14 Cohen should have received around \$3,314,227.49, which Mr. Padda and his firm continue to
15 withhold from her.²⁶

16 In fact, after the Operative Dissolution Agreement was entered into, in December 2014,
17 and continuing through September 2016, Mr. Padda intentionally kept Ms. Cohen in the dark
18 about the true status of the partnership cases, their potential values, and the actual attorneys’ fees

19 _____
20 ²¹ See Defs.’ Mot. at Exhibit 3, Partnership Dissolution Agreement effective December 23, 2014.

21 ²² *Id.* at Section 7(a)-(b).

22 ²³ *Id.* at Section 8.

23 ²⁴ See Exhibit C hereto, Cohen Depo at 91:3-25, 92:1-23.

24 ²⁵ Defendants produced several retainer agreements in their Tenth Supplemental Disclosure dated
25 September 30, 2019. On October 3, 2019 in their Twelfth Supplemental Disclosures, Defendants
26 produced further retainer agreements as well as various client ledgers, trust statements, a payment listing
27 report, and a few check memos. Upon review and organization of these piecemeal documents, Plaintiff
28 has been able to determine that Defendants produced approximately 60 contingency-fee cases, from
which Plaintiff is able to calculate her damages by reviewing the fees listed as received therein, totaling
the approximate figure of \$3,314,227.49.

²⁶ *Id.*

1 collected.²⁷ On two occasions, Mr. Padda even instructed Karla Koutz (who worked at Cohen &
2 Padda as Ms. Cohen’s legal assistant from July 2014 until July 2016)²⁸ to not show Ms. Cohen
3 the disbursement sheets for contingency-fee cases that would reflect settlement figures and the
4 amount of attorneys’ fees collected.²⁹ These directives from Mr. Padda occurred in the 2015
5 timeframe, which Ms. Koutz followed, and she refrained from showing Ms. Cohen any
6 disbursement sheets.³⁰

7 **1. The David Moradi Case**

8 Out of all of the contingency-fee cases in which Ms. Cohen was entitled to 33.333%, the
9 largest recovery was the David Moradi case where Mr. Padda and his firm collected
10 approximately \$9,186,667 in attorneys’ fees.³¹

11 **a. Ms. Cohen’s Limited Knowledge and Involvement**

12 Ms. Cohen’s involvement with the Moradi case was limited to the initial intake meeting
13 with Mr. Moradi in 2012, referring Mr. Moradi to a doctor, and meeting with the Cosmopolitan’s
14 insurance adjuster.³² As Ms. Cohen testified at her December 30, 2016 deposition taken in the
15 Moradi case, she stopped having an active role in the case almost immediately after her initial
16 involvement in 2012.³³ Ms. Cohen also testified that she had not reviewed any of Mr. Moradi’s
17 medical or financial records.³⁴ Mr. Padda was present at Ms. Cohen’s 2016 deposition.³⁵

18 _____
19 ²⁷ See i.e. Exhibit C hereto, Cohen Depo at 63:21-25, 64:1-6.

20 ²⁸ See Koutz Depo at 40:10-12, and 177:9-10.

21 ²⁹ Id. at 115:17-25, 116, and 117:1-3.

22 ³⁰ Id.

23 ³¹ See **Exhibit F** hereto, filed under seal, Email chain dated June 17, 2017 attaching unsigned “execution
version” of the Moradi Settlement Agreement at Section F, bate PADDA 718-719.

24 ³² See **Exhibit G** hereto, excerpts of the Deposition of Ruth Cohen in the Moradi matter (“Cohen Moradi
25 Depo”) at 8:3-15, 10:1-13, 16:10-25, and 17:1-23.

26 ³³ Id. at 8:16-25, 9:1-4.

27 ³⁴ Id. at 20:5-7, 16-18.

28 ³⁵ Id. at 5.

1 One of many examples of Mr. Padda deceiving Ms. Cohen relates to the economic expert
2 report by Stan V. Smith, Ph.D. Early on in the litigation, Mr. Padda had recommended to Mr.
3 Ravipudi to retain Dr. Smith as Mr. Moradi's economics expert.⁴² On August 18, 2016, Dr.
4 Smith addressed his report directly to Mr. Padda (and only Mr. Padda) setting forth his expert
5 opinions as to Mr. Moradi's loss of income damages.⁴³ Dr. Smith specifically opined that Mr.
6 Moradi's net earning loss of income damages ranged from about \$74 million to over \$314
7 million.⁴⁴ Ms. Pourghahreman testified that, prior to her leaving on maternity leave in July 2016,
8 she received via email prior drafts of Dr. Smith's report opining that Mr. Moradi's loss of
9 income damages were around \$316 million and that she went to Mr. Padda's office to
10 specifically tell him about the report.⁴⁵ Thus, Mr. Padda knew that Mr. Moradi's potential
11 damages could exceed \$300 million in July 2016 – two months before the September 2016
12 Fraudulent Agreement.

13 Moreover, even though Mr. Padda denies receiving Dr. Smith's report in August 2016,⁴⁶
14 Mr. Ravipudi testified that he is certain that he discussed the report with Mr. Padda and thought
15 that Mr. Moradi's loss of earnings damages "could have been even higher."⁴⁷ Ms. Cohen had no
16 knowledge of Dr. Smith's report and testified that Mr. Padda withheld its contents from her.⁴⁸

17 2. The Mark Garland Case

18 Another example of Mr. Padda's plan to defraud Ms. Cohen is the Mark Garland case.

19
20 ⁴² See Exhibit H hereto, Ravipudi Depo at 92:1-8.

21 ⁴³ See Exhibit J hereto, filed under seal, Smith Economics Group Report dated August 18, 2016.

22 ⁴⁴ Id. at pg. 20, Summary of Losses.

23 ⁴⁵ See Exhibit I hereto, Ashley's Depo at 143:3-25, 144-145, 146:1-14, 150:7-25, 151, and 152:1-20.

24 ⁴⁶ See Exhibit K hereto, Def. Paul Padda Law's Responses to Pl.'s First Set of Requests for Admissions
dated August 7, 2019, at Response to Request No. 24.

25 ⁴⁷ See Exhibit H hereto, Ravipudi Depo at 95:15-24 and 96:4-8.

26 ⁴⁸ See Ex. C, Cohen Depo at 197:23-25, 198:1-7. The evidence also shows that the Cochran case, very
27 similar to Moradi in that it involved an assault by security officers at the same venue, was reliant, in part,
28 on the outcome of Moradi, and, based on Defendants' misrepresentations about Moradi and Ms. Cohen's
own experience at the Cochran mediation, she gave Defendants' misrepresentations even more credence.

1 Mr. Garland retained Cohen & Padda in July 2013 to represent him in relation to injuries he
2 suffered at Wet-n-Wild.⁴⁹ In or about 2014, Mr. Padda told Ms. Cohen “Look, I want to put 10
3 grand in the guy’s pocket, which means we’re going to have to cut our fee.”⁵⁰ Knowing that they
4 cut their fees all the time, Ms. Cohen agreed and, after that, did not have any further involvement
5 with Mr. Garland’s case.⁵¹ Failing to consult with Ms. Cohen and without her knowledge, Mr.
6 Padda had associated in as co-counsel, Louis Garfinkel, to represent Mr. Garland.⁵²

7 **a. The Settlement Negotiations**

8 As the paralegal working on Mr. Garland’s case, Ms. Pourghahreman testified that a
9 mediation was held prior to June 20, 2016, attended by Mr. Padda, Mr. Garfinkel, and counsel
10 for Wet-n-Wild, Paul Shpirt.⁵³ At the mediation, the parties were really close to settling where
11 the final offer from the defense was around \$175,000.⁵⁴ The parties continued negotiating after
12 the mediation and the defense raised their offer to \$215,000.⁵⁵ Ms. Pourghahramen confirmed
13 that Mr. Padda, prior to her going on maternity leave in July 2016, was pretty confident and
14 knew that Mr. Garland’s case would settle around \$215,000.⁵⁶

15 **b. The Settlement**

16 Mr. Garland’s case did in fact settle. On or about Friday, August 19, 2016, Mr. Padda
17 served an offer of judgment in the amount of \$215,000.⁵⁷ The following Monday, August 22,
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19 _____
20 ⁴⁹ See Defs.’ Mot. at Exhibit 12, Mark Garland Retainer Agreement dated July 23, 2013.

21 ⁵⁰ See Exhibit C hereto, Cohen Depo at 69:20-25, 70:1-23.

22 ⁵¹ Id. at 71:1-9; see also Exhibit I hereto, Ashley’s Depo at 158:14-25, 159:1-16, 163:25, and 164:1-7.

23 ⁵² See Ex. C, Cohen Depo, at 256:20-25, 257:1-6; see also Ex. I, Ashley’s Depo at 162:13-17, 163:5-24.

24 ⁵³ See Exhibit I hereto, Ashley’s Depo at 165:6-25, 166:1-13.

25 ⁵⁴ Id. at 167:14-21.

26 ⁵⁵ Id. at 166:22-25, 167:1-11.

27 ⁵⁶ Id. at 166:22-25, 167:1-11; see also id. at 167:20-25, 168:1-7.

28 ⁵⁷ See Defs.’ Mot. at Exhibit 14, Plaintiff Mark Garland’s Offer of Judgment dated August 19, 2016.

1 2016, Mr. Shpirt emailed Mr. Padda agreeing to settle for the offered \$215,000.⁵⁸ Mr. Padda
2 responded that same day agreeing to a confidentiality clause and letting Mr. Shpirt know that he
3 would handle the stipulation to dismiss and release in lieu of a judgment.⁵⁹

4 Ms. Cohen had absolutely no knowledge that Mr. Garland’s case had settled in August
5 2016 and that the attorneys’ fees recovered totaled \$86,000.⁶⁰ Worse yet, Mr. Padda led Ms.
6 Cohen to believe that Mr. Garland’s case had very little value and failed to disclose his medical
7 records after Mr. Padda had referred him to the doctor.⁶¹ At his deposition, Mr. Padda confirmed
8 that, when the case settled on August 22, 2016, he did not tell Ms. Cohen about it.⁶²

9 3. The Firm Meetings

10 In the 2016 timeframe, there were no regular “weekly case meetings” held at Padda Law
11 as claimed by Defendants.⁶³ Ms. Pourghahramen testified that there were no set weekly
12 meetings at the firm although she would have liked there to be.⁶⁴ She further testified that the
13 meetings, when held, were primarily focused on case deadlines and procedural posture, and, in
14 2016, the value of Mr. Moradi’s case was not discussed because it was being handled by PSB.⁶⁵

15 Likewise, Ms. Koutz testified that there were not regular case status meetings scheduled
16 at the firm, but she did attend all of them.⁶⁶ She further testified that the focus of the meetings
17 would be discovery deadlines and what needed to get done for each case.⁶⁷ And, consistent with

18 _____
19 ⁵⁸ See Defs.’ Mot. at Exhibit 15, email correspondence between Paul Shpirt and Paul Padda.

20 ⁵⁹ Id.

21 ⁶⁰ See Defs.’ Mot., Ex. 17 (Garland Disbursement Statement); see also Ex. C, Cohen Depo at 69:20-25,
22 70-71, and 72:1-7.

23 ⁶¹ See Exhibit C hereto, Cohen Depo at 72:8-17.

24 ⁶² See Defs.’ Mot., at Ex. 36, excerpts of the Deposition of Paul S. Padda (“Padda Depo”) at 34:14-16.

25 ⁶³ See Defs.’ Mot. at pg. 6, ¶¶ 19-20.

26 ⁶⁴ See Exhibit I hereto, Ashley’s Depo at 172:4-16.

27 ⁶⁵ Id. at 173:15-18; 175:17-25; and 177:15-25.

28 ⁶⁶ See Exhibit D hereto, Koutz Depo at 73:20-25, 74:1-5.

⁶⁷ Id. at 74:19-25.

1 Ms. Pourghahreman, Ms. Koutz confirmed that Mr. Moradi’s case was not discussed very often
2 since it was being handled by PSB and, when it was discussed, the conversation focused on case
3 status and not case value.⁶⁸

4 **D. THE FRAUDULENT AGREEMENT**

5 Throughout their relationship, Ms. Cohen placed an extraordinary amount of trust in Mr.
6 Padda and believed that he would act in her best interests as her partner.⁶⁹ So, when Mr. Padda
7 told Ms. Cohen in or about early September 2016 that Mr. Moradi’s case was “in the toilet”
8 because he went back to work and had no financial losses, she believed him and trusted that he
9 was telling her the truth.⁷⁰ And, Ms. Cohen specifically thought that Mr. Padda was acting in her
10 best interests when he told her, “Ruth, I know you want to retire, and I know you got a lot of
11 health problems. I want to help you, so I’m thinking, you don’t have that many cases left, but
12 you have a contingency interest. Let me help you. I’ll buy out your interest. You know, there’s
13 not much money coming in. I’ll buy your interest for 50,000.”⁷¹ With the belief that Mr. Padda
14 was being honest and forthright about the Moradi case, Ms. Cohen agreed and thought that his
15 proposal was the best way to resolve the partnership buyout.⁷² Mr. Padda, however, failed to
16 disclose to Ms. Cohen (among other things) that Mr. Moradi did not return to work, had loss of
17 income damages possibly exceeding \$314 million, and that he had just recently settled Mr.
18 Garland’s case.

19 Based on Mr. Padda’s blatant misrepresentations and failure to disclose to Ms. Cohen the
20 true status of the contingency-fee cases in which she held an interest, Ms. Cohen signed the
21 Fraudulent Agreement, as prepared by Mr. Padda.⁷³ Contrary to Defendants’ position, Ms.

22 _____
23 ⁶⁸ See Exhibit D hereto, Koutz Depo at 75:13-18 and 77:8-23.

24 ⁶⁹ See, e.g., Exhibit C hereto, Cohen Depo at 63:6-25, 64-65, 76:1-8.

25 ⁷⁰ Id. at 136:5-25, 137:1-17.

26 ⁷¹ Id.

27 ⁷² Id.

28 ⁷³ See Defs.’ Mot. at Exhibit 9, the Business Expectancy Interest Resolution Agreement.

1 Cohen never gave up her 33.333% interest under the Operative Dissolution Agreement,
2 “[b]ecause he [Mr. Padda] lied to me about the value of the case. I would have never given it up
3 if he hadn’t lied to me. He lied on purpose and he started this scheme to defraud back in 2016.
4 He was ready. He is a very clever man. He is very well educated, and he’s very evil.”⁷⁴

5 **1. Ms. Cohen’s Unrelated Tax Issue**

6 Prior to the execution of the Fraudulent Agreement, Mr. Padda was aware that Ms. Cohen
7 had some tax issues with the IRS.⁷⁵ Mainly, because Ms. Cohen was receiving social security
8 benefits, she did not realize that she still had to pay social security disability tax.⁷⁶ Ms. Cohen
9 hired a CPA to assist her with resolving this tax issue; however, by the time of the Fraudulent
10 Agreement, she owed the IRS around \$60,000, which Mr. Padda’s proposed \$50,000 buyout was
11 not going to cover.⁷⁷ For that reason, Ms. Cohen’s tax issues had nothing to do with her decision
12 to agree to Mr. Padda’s proposal as she testified:

13 MS. COHEN: The money he was offering was not going to help me. I didn’t
14 need the money. I wanted to retire. And he lied to me about the monetary value
15 of the cases. I told you, he told me Moradi was in the toilet. His exact words,
“Moradi is in the toilet.”

16 I would have never signed this.⁷⁸

17 Indeed, Ms. Cohen had already waited over two years for her one-third (1/3) share of any
18 recovery from Mr. Moradi’s case, and, when she entered into the Fraudulent Agreement, she had
19 no knowledge that the case was set for trial in early 2017, unlike Mr. Padda.⁷⁹

20 **2. No Pending Lawsuits**

21 At the time of the Fraudulent Agreement, Ms. Cohen was not personally involved in any

22 _____
23 ⁷⁴ See Exhibit C hereto, Cohen Depo at 372:2-9.

24 ⁷⁵ Id. at 144:24-25, 145:1-8.

25 ⁷⁶ Id. at 146:9-25, 147:1-6.

26 ⁷⁷ Id. at 147:18-25, 148:1-8, 150:4-25, and 151:1-7.

27 ⁷⁸ Id. at 151:8-19.

28 ⁷⁹ Id. at 163:13-20; see also Defs.’ Mot. at Exhibit 24, Moradi Case Docket.

1 lawsuits and there were no outstanding judgments against her.⁸⁰

2 **3. Ms. Cohen’s Continued Trust in Mr. Padda**

3 After Ms. Cohen entered into the Fraudulent Agreement, she had no reason to believe
4 that Mr. Padda’s representations to her about the Moradi case were inaccurate. In fact, Ms.
5 Cohen continued to represent Mr. Padda, free of charge, in his employment related litigation
6 against the USAO in the 2016 and early 2017-time frame.⁸¹

7 **4. The Buyout Payments**

8 Ms. Cohen did not receive a \$50,000 check to buy out her interest as set forth in the
9 Fraudulent Agreement.⁸² Starting from September 2016, and continuing through May 2017, Ms.
10 Cohen received a number of checks for various amounts.⁸³ The way Mr. Padda and his firm
11 handled these payments was “very confusing” to Ms. Cohen, and she “didn’t keep track of it.”⁸⁴
12 Indeed, when Ms. Cohen received what the defense classifies as the “final check under the
13 Buyout Agreement,” she understood the May 9, 2017 check to be for the \$15,000 owed to her for
14 the furniture and fixtures that were part of Cohen & Padda.⁸⁵

15 Nowhere on the May 9, 2017, check does it indicate that it is for a final buyout or in full
16 accord and satisfaction of Ms. Cohen’s partnership interests.⁸⁶ There is no indication whatsoever
17 to put Ms. Cohen on notice that this check was for her final buyout, which it was not.⁸⁷

18 **E. THE MORADI VERDICT AND SETTLEMENT**

19 Now that he had tried to ensure Ms. Cohen would no longer have an interest in any future
20

21 ⁸⁰ See **Exhibit L** hereto, Clark County District Court Case Records Search Results regarding Ruth Cohen.

22 ⁸¹ See **Exhibit M** hereto, Affidavit of Ruth L. Cohen in the Moradi matter at ¶ 2.

23 ⁸² See Exhibit C hereto, Cohen Depo at 356:5-10.

24 ⁸³ See Defs.’ Mot. at Exhibit 10, Checks.

25 ⁸⁴ See Exhibit C hereto, Cohen Depo at 357:5-16.

26 ⁸⁵ *Id.* at 350:5-25, 351:1-4.

27 ⁸⁶ See Defs.’ Mot. at Exhibit 10, at Check No. 7526.

28 ⁸⁷ See *id.*

1 attorneys' fees recovered, as of September 12, 2016, Mr. Padda continued his efforts to settle Mr.
2 Moradi's case and, at one time, became aware that the defense's insurance coverage was around
3 \$300 million⁸⁸ – none of which he shared with Ms. Cohen. It was not until Ms. Cohen read in
4 the newspaper that the jury had awarded Mr. Moradi \$160.5 million that she realized that she had
5 been lied to, and then she confronted Mr. Padda in his office.⁸⁹ Ms. Cohen told Mr. Padda,
6 “What the F? You lied to me. You told me this man had gone back to work and was making
7 money, and he wasn't, and you knew it. You screwed me.”⁹⁰ Having no remorse at all, Mr.
8 Padda shrugged his shoulders and said “You're a big girl. You could have looked it up
9 yourself.”⁹¹ After Ms. Cohen responded that she had no reason to look anything up because she
10 trusted Mr. Padda as her partner, she walked out of his office.⁹²

11 Later, Mr. Padda told Ms. Cohen that the case had settled for \$10 million and Ms. Cohen
12 responded that she couldn't believe that the case would settle for that amount.⁹³ Thereafter, Ms.
13 Cohen learned that the case settled for \$50 million,⁹⁴ however, the settlement in Mr. Moradi's
14 case was and remains confidential in nature.⁹⁵ Through her discovery efforts, Ms. Cohen has
15 determined that the total amount in fees recovered by Mr. Padda and his firm in Mr. Moradi's
16 case was approximately \$9,186,667.⁹⁶

17 **F. THE LOCKOUT**

18 In or about July 2017, Mr. Padda called Ms. Cohen into his office and handed her a

19 ⁸⁸ See Exhibit N hereto, February 9, 2017 email correspondence regarding Moradi Orders/Insurance.

20 ⁸⁹ See Ex. C hereto, Cohen Depo at 269:7-23, 338:5-10.

21 ⁹⁰ Id. at 338:11-17.

22 ⁹¹ Id. at 338:18-22.

23 ⁹² Id. at 338:20-24.

24 ⁹³ Id. at 339:1-12.

25 ⁹⁴ Id. at 339:13-20.

26 ⁹⁵ Id. at 339:16-20; see also Defs.' Mot., at Ex. 24, Moradi Case Docket at May 2, 2017 entry regarding
27 Reporter's Sealed Transcript of Confidential Settlement Agreement.

28 ⁹⁶ See Ex. F, unsigned “execution version” of Moradi Settlement Agreement at § F, at PADDA 718-719.

1 discretionary bonus check.⁹⁷ At first, Ms. Cohen thought the check was for her one-third share
2 of the attorneys' fees recovered in the Moradi case, but then she noticed that it was only for
3 \$50,000.⁹⁸ Ms. Cohen appreciated the bonus, but testified that she "was still waiting for my
4 Moradi checks."⁹⁹ Soon thereafter, on September 22, 2017, Mr. Padda locked Ms. Cohen out of
5 her office and gave her computer and office away to someone else – all without her prior
6 knowledge.¹⁰⁰ Ms. Cohen had previously asked Mr. Padda for a key to the office, but he refused
7 to give her one; thus, she was locked out of her own office.¹⁰¹

8 G. MS. COHEN'S DECISION TO FINALLY SUE

9 From April 2017 until October 2017, Ms. Cohen was experiencing serious health issues
10 and was later hospitalized in October 2017 for an infection on her ankle as a result of a dog
11 incident.¹⁰² Once Ms. Cohen's health issues were taken care of, she retained counsel to
12 prosecute Mr. Padda's and his firm's fraud.¹⁰³ In her own words, "I thought long, hard about
13 suing him. I didn't want to do it. I finally felt there was nothing – I thought he was going to do
14 the right thing."¹⁰⁴ Mr. Padda and his firm continue to refuse to pay Ms. Cohen her 33.333%
15 share of fees recovered pursuant to the Operative Dissolution Agreement, and they refuse to pay
16 her any fees on the cases that she handled thereafter.

17 As of December 19, 2019, Ms. Cohen is an active member of the State Bar of Nevada
18 and remains in good standing.¹⁰⁵

19 _____
20 ⁹⁷ See Defs.' Mot., Ex. 29 at Check No. 8038; see also Ex. C, Cohen Depo at 363:24-25 and 364:1-24.

21 ⁹⁸ See Exhibit C hereto, Cohen Depo at 364:4-10.

22 ⁹⁹ Id. at 365:1-4.

23 ¹⁰⁰ Id. at 106:24-25, 107-109, 110:1-10; 365:12-14; see also **Exhibit O** hereto, text messages between
Ruth Cohen and Paul Padda dated September 22, 2017.

24 ¹⁰¹ See Exhibit C hereto, Cohen Depo at 106:16-23.

25 ¹⁰² Id. at 341:21-25, 342, and 343:1-23.

26 ¹⁰³ Id. i.e. at 341:21-25, 342, and 343:1-23.

27 ¹⁰⁴ Id. at 341:3-17.

28 ¹⁰⁵ See **Exhibit P** hereto, Notice of Completion of Requirements for Reinstatement.

1 **III. LEGAL STANDARD FOR SUMMARY JUDGMENT**

2 As the Court is well aware of the standard for summary judgment, in the interest of
3 brevity, Ms. Cohen accepts the standard presented in Defendants’ Motion and incorporates it
4 here by this reference as if fully set forth.

5 **IV. LEGAL ARGUMENT**

6 **A. AS A BROAD THRESHOLD ISSUE, MS. COHEN HAS ADDUCED**
7 **ADMISSIBLE EVIDENCE TO DEMONSTRATE THAT SHE AND MR.**
8 **PADDA HAD A “SPECIAL RELATIONSHIP.”**

9 Ms. Cohen has presented admissible evidence to demonstrate that she and Mr. Padda
10 maintained the “special relationship” required to support claims for tortious breach of the
11 implied covenant claim and breach of fiduciary duty. Therefore, to the extent Defendants rely on
12 their position that no such relationship existed, their requests for summary judgment on those
13 respective claims must be denied.¹⁰⁶

14 **1. Ms. Cohen and Mr. Padda had the Special Relationship Required in**
15 **Order to Pursue a Claim for Tortious Breach of the Implied Covenant**
16 **of Good Faith and Fair Dealing.**

17 “In Nevada, a tort action for breach of the covenant of good faith and fair dealing arises
18 only in rare and exceptional cases when there is a special relationship between the victim and
19 tortfeasor.” *Klein v. Freedom Strategic Partners, LLC*, 595 F. Supp. 2d 1152, 1162 (D. Nev.
20 2009) (citing *Gibson*, 122 Nev. 455, 134 P.3d at 702 (internal quotation marks omitted)). These
21 special relationships “are characterized by elements of public interest, adhesion, *and fiduciary*
22 *responsibility* and arise when there is a special element of reliance, *such as in partnership ...*”
23 *Id.* (citation and internal quotation marks omitted) (emphases added). “In such situations, a need
24 exists to protect the weak from the insults of the stronger that is not met by ordinary contract
25 damages.” *Id.* (citation and internal quotation marks omitted).

26 ¹⁰⁶ Defendants cite *Insurance Company of the West v. Gibson Tile Company, Inc.*, 122 Nev. 455, 134 P.3d
27 698 (2006) (en banc) (“*Gibson*”), which involved an analysis of the special relationship necessary for a
28 plaintiff to assert “an insurance bad-faith claim” which it held “does not lie against a surety because there
is no special relationship between a surety and its principal.” *Id.* at 457, 134 P.3d at 699. *Gibson* does not
support Defendants’ argument that no special relationship existed. *See id.* at 461-62 (recognizing a
special relationship between “partners of partnerships”).

1 Defendants try to argue that “tort liability for a breach of the implied covenant of good
2 faith and fair dealing is unavailable where the plaintiff is a highly sophisticated party and the
3 parties are not otherwise bound by a special element of reliance of fiduciary duties.”¹⁰⁷ Not only
4 was Mr. Padda actually “bound by a special element of reliance of fiduciary duties,” as detailed
5 in the section that follows, but the citation they omit is also telling and contradicts their
6 argument.¹⁰⁸ Indeed, the *Great American Insurance Company* case upon which Defendants rely
7 cited to *Aluevich v. Harrah’s*, 99 Nev. 215, 660 P.2d 986 (1983). In *Aluevich*, the plaintiff was
8 “an experienced businessperson and an attorney” and commercial tenant in a prime location in
9 downtown Reno, Nevada, who had negotiated leases like the one at issue in that case, with
10 Harrah’s, for ten years. 99 Nev. at 218, 660 P.2d at 987. The court, therefore, found that the
11 lessor-lessee relationship between those parties was not characterized by a “special element of
12 reliance” necessary for a tortious breach of implied covenant claim. The case and analysis do
13 not support Defendants’ argument.

14 **2. Mr. Padda still held a fiduciary duty to Ms. Cohen.**

15 “A fiduciary relationship is deemed to exist when one party is bound to act for the benefit
16 of the other party. Such a relationship imposes a duty of utmost good faith.” *Hoopes v.*
17 *Hammargren*, 102 Nev. 425, 431, 725 P.2d 238, 242 (1986) (citation omitted).

18 Defendants maintain that because Ms. Cohen and Mr. Padda had dissolved their
19 partnership on paper, he no longer had any duty to her, but this position is wrong under the law.
20 Under Nevada law, a fiduciary relationship exists when one has the right to expect trust and
21 confidence in the integrity and fidelity of another. *See Powers v. United Servs. Auto Ass’n*, 114
22 Nev. 690, 701, 932 P.2d 596, 602 (1998). In *Lopez v. Javier Corral, D.C.*, 126 Nev. 690, 367
23 P.3d 745 (2010), the Nevada Supreme Court held that such a relationship existed when the
24 defendant recognized that the plaintiff had trust and confidence in him, that this trust was
25 reasonable under the circumstances, and that the defendant intended for the plaintiff to trust him.

26 ¹⁰⁷ Defs.’ Mot. for Summ. J., at 20:17-19 (citing *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346,
27 355, 934 P.2d 257, 263 (1997)).

28 ¹⁰⁸ Id.

1 2010 WL 5541115, at *2. Here, Ms. Cohen has shown she had absolute trust in Mr. Padda,
2 leaving another law firm to join him as his business partner, relying on his handling of cases
3 without scrutiny, and even representing him as his attorney at one point.¹⁰⁹

4 The Nevada Revised Statutes and a library of persuasive authority lead to the same
5 conclusion – *i.e.*, that Mr. Padda’s fiduciary duties to Ms. Cohen continued even after the
6 Operative Dissolution Agreement was executed. *See* NRS 87.300 (“On dissolution the
7 partnership is not terminated, but continues until the winding up of partnership affairs is
8 completed.”), *accord* Uniform Partnership Act (1994) (“UPA”) § 30 (same). Until the dissolved
9 partnership is wound up, the partners continue to owe fiduciary duties to each other, especially
10 with respect to unfinished business. *See Rosenfeld, Meyer & Susman v. Cohen*, 146 Cal. App. 3d
11 200, 216 (Ct. App. 1983); *Hillman on Lawyer Mobility* § 4.3.3. Income generated from matters
12 pending at the time of withdrawal is income of the partnership, which remains alive until all
13 unfinished business is completed. *See Hillman* § 4.10.2.2. Likewise, the “[t]he unfinished
14 business rule ... requires that upon dissolution and winding up of a partnership’s business, any
15 profits derived from completion of such unfinished business inure to the partnership’s benefit,
16 even if received after dissolution.” *Diamond v. Hogan Lovells US LLP*, 883 F.3d 1140, 1146
17 (9th Cir. 2018) (citation and internal quotation marks omitted).

18 Absent a partnership agreement, the UPA “requires that attorneys’ fees received on cases
19 in progress upon dissolution of a law partnership to be shared by the former partners according to
20 their right to fees in the former partnership, regardless of which former partner provides legal
21 services in the case after the dissolution.” *LaFond v. Sweeney*, 343 P.3d 939, 944 (Colo. 2015)
22 (quoting *Jewel v. Boxer*, 156 Cal. App. 3d 171, 174 (Ct. App. 1984)). The *LaFond* court also
23 notes that a majority of jurisdictions have followed *Jewel* in concluding that pending
24 contingency-fee cases are the unfinished business of a dissolved law firm (not assets); therefore,
25
26

27
28 ¹⁰⁹ See Section II Ms. Cohen’s Statement of Facts at Subsections B-D herein.

1 any profit derived from such cases belongs to the law firm and not to an individual partner tasked
2 with winding up.¹¹⁰ See 343 P.3d at 944 (citations omitted).

3 *LaFond* also recognized that fiduciary duties of members and managers continue to apply
4 through the winding up process. See *id.* at 945; see also *Hooper v. Yoder*, 737 P.2d 852, 859
5 (Colo. 1987); *Huber v. Etkin*, 58 A.3d 772, 782 (Penn. 2012) (relying on list of cases holding
6 similarly and concluding: “In representing those clients whose cases originated with the
7 partnership, Appellant was winding up partnership business. The fees earned from those cases
8 were partnership assets.”). Relative to Mr. Padda’s duty to fully disclose, § 403 of the Revised
9 UPA (1997) (“RUPA”) requires the disclosure “without demand” of any information concerning
10 the partnership’s business and affairs reasonably required for the proper exercise of the partner’s
11 rights and duties under the partnership agreement or RUPA.

12 Mr. Padda continued to be bound by fiduciary duties to Ms. Cohen, even after the
13 Operative Dissolution Agreement, including, without limitation, his duties of loyalty and to be
14 transparent and to fully disclose all “relevant” facts material to partnership goings-on. *Lubritz*,
15 113 Nev. at 1095, 944 P.2d at 865. Therefore, all claims on which Defendants seek summary
16 judgment based on an argument that no fiduciary duty or special relationship existed – *i.e.*, the
17 third (Breach of the Implied Covenant of Good Faith and Fair Dealing – Tortious), fourth
18 (Breach of Fiduciary Duty) – must proceed and summary judgment thereon must be denied.

19 In doing so, the Court should find and enter summary judgment, as a matter of law, to the
20 effect that Mr. Padda’s fiduciary duties owed to Ms. Cohen existed after the Operative
21 Dissolution Agreement entered into in December 2014. See NRCP 56(f)(1) (allowing summary
22 judgment to be entered in favor of the nonmovant).

23
24
25 ¹¹⁰ The *Lund v. Albrecht*, 936 F.2d 459, 463 (9th Cir. 1991) case upon which Defendants rely also dealt
26 with California law, but its holding was not as specific as *Jewel’s* as to sharing fees, and its holding
27 relative to a continuing fiduciary duty during the winding up of partnership affairs is consistent with the
28 authority cited herein. See *id.* at 461 (affirming summary judgment in favor of plaintiff and holding that
defendant “breached his fiduciary duty as a partner in not revealing the offers” before the partnership was
fully wound down and dissolution completed); compare *id.*, with *LaFond*, 343 P.3d at 945-46.

1 **B. GENUINE ISSUES OF MATERIAL FACT EXIST SUCH THAT MS.**
2 **COHEN’S CLAIM FOR BREACH OF THE DISSOLUTION**
3 **AGREEMENT SHOULD PROCEED TO TRIAL.**

4 As a threshold matter, Ms. Cohen is currently admitted to the State Bar of Nevada as an
5 active attorney, so Defendants’ argument that her prior suspension absolves them in perpetuity of
6 their contractual and/or fiduciary duties is without merit. In addition, Ms. Cohen was
7 fraudulently induced into executing the Fraudulent Agreement, making it legally unenforceable.
8 Therefore, under the Operative Dissolution Agreement, Ms. Cohen is entitled to 33.333% of
9 attorney fees recovered for contingency-fees cases for which Cohen & Padda was retained prior
10 to December 31, 2014. Ultimately, she was not paid what she was, and remains, owed, as is
11 demonstrated by evidence of Defendants’ proceeds from numerous such cases, not the least of
12 which was the Garland case referenced in Defendants’ Motion.

13 Therefore, she absolutely has recoverable damages on her contract claims related to the
14 Operative Dissolution Agreement, and summary judgment must be denied as to Ms. Cohen’s
15 first (Breach of Contract), second (Breach of the Implied Covenant of Good Faith and Fair
16 Dealing – Contract), and third (Breach of the Implied Covenant of Good Faith and Fair Dealing
17 – Tortious) claims for relief.

18 **1. Ms. Cohen is an Active Member of the Nevada State Bar.**

19 Defendants argue that “if Ms. Cohen were successful in rescinding the [Fraudulent]
20 Agreement, she would still be precluded from recovering under the Dissolution Agreement her
21 share of any legal fees received by Padda Law” for the contingency cases for which Cohen &
22 Padda was retained prior to December 31, 2014 “because her law license was suspended,” and
23 “she refused, out of protest, to [reinstate her law license].”¹¹¹

24 Ms. Cohen’s law license was reinstated in December 2019, so Mr. Padda cannot argue
25 that a prior, and obviously temporary, suspension absolves Defendants, for all time, of their duty
26 to fulfill contractual obligations.¹¹² More importantly, Defendants’ argument that they could

27 ¹¹¹ Def’s. Mot. for Summ. J., at 18 (filed Dec. 18, 2019), on file herein.

28 ¹¹² See Section II Ms. Cohen’s Statement of Facts at Subsection G herein.

1 never pay Ms. Cohen what she was owed is belied by the undisputed fact that they gave her a
2 \$15,000 check” in *May* 2017, and a \$50,000 “discretionary bonus” in July 2017,¹¹³ after she was
3 temporarily suspended in *April* 2017.¹¹⁴ If Defendants believed their own argument, then they
4 are admitting to their own commission of ethical violations, which their own counsel would have
5 an ethical duty to report to the State Bar, which is surely not going to happen. *See* NRPC 8.3.

6 The Nevada Supreme Court considered enforceability of a contract that required fee-
7 splitting with a non-lawyer in *Shimrak v. Garcia-Mendoza*, 112 Nev. 246, 912 P.2d 822 (1996),
8 noting that “the prohibition of fee-splitting is to protect the independence of the judgment of
9 lawyers.” *Id.* at 251-52, 912 P.2d at 826 (citation omitted). Here, “[t]he public would not be
10 protected by refusing to enforce this contract, because,” like Garcia in the *Shimrak* case,
11 Defendants “ha[ve] already exercised [their] judgment in the cases covered by the contract.
12 Indeed, not to enforce this contract would actually endanger the public, because it would allow
13 lawyers to enter into such contracts and then get out of them by invoking [the fee-splitting rule].”
14 *Id.* at 252, 912 P.2d at 826. In short, *Shimrak*’s analysis is on all fours with this case, and should
15 lead this Court to conclude that Defendants owe, and have always owed, Ms. Cohen the monies
16 due under the Operative Dissolution Agreement.

17 Ms. Cohen’s prior and resolved CLE issues matter not, as this Court may take judicial
18 notice of the Notice of Completion of Requirement for Reinstatement and the State Bar website
19 referenced in Defendants’ Motion, both of which completely disprove their allegations and, at a
20 bare minimum, create a genuine issue of material fact precluding summary judgment.¹¹⁵ *See*

21 _____
22 ¹¹³ See Defs.’ Mot. at Exhibit 29 at Check No. 8038.

23 ¹¹⁴ Id.; see also Section II Ms. Cohen’s Statement of Facts at Subsection F herein; see also Defs.’ Mot. for
Summ. J., at 67 (filed Dec. 18, 2019), on file herein.

24 ¹¹⁵ Defendants’ citation to non-binding authority about payment to Ms. Cohen should also be
25 unpersuasive because it is all entirely inapplicable or distinguishable. *See generally, e.g., In re Phillips*,
26 226 Ariz. 112, 244 P.3d 549 (2010) (en banc) (explicitly ordering that suspended attorney is precluded
27 from collecting any fees where there was no existing basis for entitlement at the time the prohibition was
28 ordered); *Disciplinary Counsel v. McCord*, 121 Ohio St.3d 497, 504, 905 N.E.2d 1182, 1189 (Ohio 2009)
(agreeing with the disciplinary panel and board that the accused had “accepted legal fees while he was
suspended from the practice of law,” and adopting the board’s and panel’s findings that the accused
“enter[ed] into an agreement for, charge, or collect an illegal or clearly excessive fee” but not expressly
linking the fees collected during suspension to this finding).

1 NRS 47.130(1), (2)(b) (“facts subject to judicial notice are facts in issue or facts from which they
2 may be inferred,” which “must be ... [c]apable of accurate and ready determination by resort to
3 sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to
4 reasonable dispute”); *see also Mack v. Estate of Mack*, 125 Nev. 80, 91-92, 206 P.3d 98, 106
5 (discussing judicial notice, generally, and the taking of judicial notice, even by the Nevada
6 Supreme Court, “of other state court and administrative proceedings”) (citations omitted); *Joy v.*
7 *Bennight*, 91 Nev. 763, 766, 542 P.2d 1400, 1403 (1975) (taking judicial notice of public record).

8 Accordingly, Defendants cannot withhold payment to Ms. Cohen on the basis of her prior
9 CLE issues or status as an active attorney.

10 2. **Ms. Cohen Was Fraudulently Induced into the Fraudulent**
11 **Agreement, so the Operative Dissolution Agreement Still Governs the**
12 **Monies Owed to Her by Mr. Padda.**

13 To establish fraud in the inducement, Ms. Cohen must prove by clear and convincing
14 evidence the following: (1) a false representation made by the defendant; (2) the defendant’s
15 knowledge or belief that the representation was false (or knowledge that it had an insufficient
16 basis for making the representation); (3) the defendant’s intention to induce the plaintiff to
17 consent to the contract’s formation, (4) the plaintiff’s justifiable reliance upon the
18 misrepresentation; and (5) damages resulting from the reliance. *See J.A. Jones Const. Co. v.*
19 *Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004) (footnote
20 references omitted). The admissible evidence submitted herewith supports each of these factors
21 to satisfy the clear and convincing standard. *See Ferguson v. LVMPD*, 131 Nev. 939, 944-45,
22 364 P.3d 592, 595-96 (2015) (applying “substantive evidentiary burden” on summary judgment
23 and describing “clear and convincing” standard as requiring “evidence from which a reasonable
24 jury could find it highly probable that the [allegations are true]”) (citations omitted).

25 Ms. Cohen has presented sufficient admissible evidence to demonstrate clearly and
26 convincingly that Defendants made false representations to her,¹¹⁶ and that they knew those

27 ¹¹⁶ See Section II Ms. Cohen’s Statement of Facts at Subsection C-E herein. Notably, Defendants
28 disregard the statement that Ms. Cohen has testified Mr. Padda made to her that Mr. Moradi “...went back
to work. He’s making his money. We have no financial losses.” See Ex. C hereto, Cohen Depo at 136:5-

1 representations to be false at the time they were made.¹¹⁷ Ms. Cohen has provided further
2 evidence from which a factfinder could conclude that Defendants intended, by their
3 misrepresentations, to induce her into signing the Fraudulent Agreement and signing away
4 millions of dollars in exchange for a fractional, token payment.¹¹⁸ Ms. Cohen's justifiable
5 reliance is demonstrated by her execution of the contract and testimony by her and others about
6 Ms. Cohen's trust in Mr. Padda.¹¹⁹ The damages are inarguable in that Ms. Cohen never
7 received any payment on the largest of the underlying cases at issue and did not receive payment
8 in full for numerous other contingency-fee cases from which she was entitled payment.¹²⁰

9 Therefore, Ms. Cohen has submitted admissible evidence to satisfy her burden to show
10 that Defendants fraudulently induced her into executing the Fraudulent Agreement, and summary
11 judgment must be denied.

12 **3. The Operative Dissolution Agreement is Enforceable, and the Court**
13 **Can Conclude that Mr. Padda Did Not Perform Thereunder and**
14 **Breached the Implied Covenant of Good Faith and Fair Dealing, Too.**

15 **a. Mr. Padda breached the Operative Dissolution Agreement,**
16 **and Ms. Cohen suffered considerable damages as a result of**
17 **Mr. Padda's breach.**

18 To prevail on a breach of contract, the plaintiff must prove an existing valid contract with
19 the defendant, the defendant's material breach, and damage as a result of the breach. *See*

20 25, 137:1-17. This statement is far more than the expression of opinion regarding value that Defendants
21 suggest is Ms. Cohen's only evidence. *See Defs.' Mot. for Summ. J.*, at 23.

22 ¹¹⁷ *See* Section II Ms. Cohen's Statement of Facts at Subsection C-E herein. Defendants cite *Bulbman,*
23 *Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992), to posit that the fraud claims cannot
24 rest on "estimates and opinions based on past experience." *Defs.' Mot. for Summ. J.*, at 23. *Bulbman,*
25 though, involved a district court's determination, ultimately affirmed, that the defendant had not
26 knowingly made a false representation or lack sufficient basis for a representation *because* the represented
27 "cost of [a new telephone system] and the installation time are estimates and opinions based on past
28 experience with the system." *Id.* Similarly inapposite is *Clark Sanitation, Inc. v. Sun Valley Disposal*
Company, cited by Defendants, in which the fraud claim related to the estimated "value of the equipment
available for use in servicing the franchise and use permit" at issue. 87 Nev. 338, 339, 487 P.2d 337, 338
(1971) (identifying detail included to support estimates and recognizing that there are exceptions to
whether estimates of value can support a fraud claim).

¹¹⁸ *See* Section II Ms. Cohen's Statement of Facts at Subsection D herein.

¹¹⁹ *Id.*

¹²⁰ *See* Section II Ms. Cohen's Statement of Facts at Subsection C herein.

1 *Richardson v. Jones*, 1 Nev. 405, 408 (1865). “Basic contract principles require, for an
2 enforceable contract, an offer and acceptance, meeting of the minds, and consideration.” *May v.*
3 *Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

4 Other than Defendants’ argument that it was superseded by the Fraudulent Agreement,
5 that the Operative Dissolution Agreement is otherwise enforceable remains undisputed.¹²¹
6 Defendants argue, though, that Mr. Padda did not breach and Ms. Cohen was not damaged, both
7 of which positions are demonstrably false. As set forth above, Mr. Padda materially breached
8 the Operative Dissolution Agreement by failing to pay Ms. Cohen the percentage of attorney fees
9 recovered, by he or Padda Law, to which she was entitled.¹²² Additionally, Ms. Cohen was
10 unequivocally damaged and suffered considerable financial losses as a result of Mr. Padda’s
11 breach(es).¹²³

12 The idea that Ms. Cohen would owe Mr. Padda is ludicrous and, at a minimum creates a
13 genuine issue of material fact precluding summary judgment on Ms. Cohen’s breach of contract
14 claim. Therefore, summary judgment thereon must be denied.

15 **b. Mr. Padda breached the implied covenant of good faith and**
16 **fair dealing, both as a matter of contract as well as in tort.**

17 “It is well established within Nevada that every contract imposes upon the contracting
18 parties the duty of good faith and fair dealing.” *Hilton Hotels v. Butch Lewis Prods.*, 109 Nev.
19 1043, 1046, 862 P.2d 1207, 1209 (1993) (“*Hilton Hotels II*”) (citations omitted). “Where one
20 party to a contract deliberately countervenes the intention and spirit of the contract, that party can
21 incur liability for breach of the implied covenant of good faith and fair dealing.” *Morris v. Bank*
22 *of Am. Nev.*, 110 Nev. 1274, 1278, 886 P.2d 454, 457 (1994) (citing *Hilton Hotels*, 107 Nev. 226,
23 232, 808 P.2d 919, 922-23 (1991)) (“*Hilton Hotels I*”) (internal quotation marks omitted).

24 In other words, a breach of the implied covenant of good faith and fair dealing occurs

25 _____
26 ¹²¹ See generally Defs.’ Mot. for Summ. J., at 4-5.

27 ¹²² See generally Section II Ms. Cohen’s Statement of Facts herein.

28 ¹²³ See Section II Ms. Cohen’s Statement of Facts at Subsection C herein.

1 “[w]hen one party performs a contract in a manner that is unfaithful to the purpose of the
2 contract and the justified expectations of the other party are thus denied.” *Hilton Hotels I*, 107
3 Nev. at 234, 808 P.2d at 923 (footnote reference omitted). In *Starr v. Fordham*, the court held
4 that “an unfair determination of a partner’s respective share of a partnership’s earnings is a
5 breach not only of one’s fiduciary duty, but also of the implied covenant of good faith and fair
6 dealing.” 420 Mass. 178, 184, 648 N.E.2d 1261, 1266 (1995) (citations omitted).

7 When Mr. Padda represented that the cases from which Ms. Cohen was waiting to be
8 paid were “in the toilet” or otherwise not likely to recover much, and when he withheld the
9 information that the Garland case had settled for a large sum, he acted in contravention of the
10 spirit and purpose of the Operative Dissolution Agreement.¹²⁴ That spirit and purpose was to
11 equitably distribute partnership income from cases Cohen & Padda was retained to handle prior
12 to execution of that agreement in order to allow Ms. Cohen to retire with a reasonable retirement
13 fund from her work in and for the partnership.¹²⁵

14 Accordingly, genuine issues of material fact exist on Ms. Cohen’s second (Breach of the
15 Implied Covenant of Good Faith and Fair Dealing – Contract), and third (Breach of the Implied
16 Covenant ... – Tortious) claims for relief, and summary judgment on both must be denied.

17 **C. NEVADA LAW PROVIDES THAT MR. PADDA’S FIDUCIARY DUTIES**
18 **TO MS. COHEN CONTINUED AT ALL RELEVANT TIMES AND THAT**
19 **HE MATERIALLY BREACHED THOSE DUTIES.**

20 “In Nevada, a claim for breach of fiduciary duty has three elements: (1) existence of a
21 fiduciary duty; (2) breach of the duty; and (3) the breach proximately caused the damages.”
22 *Klein*, 595 F. Supp. 2d at 1162 (citing *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234,
23 1245 (D. Nev. 2008)). As set forth in Section IV Subsection A, above, the law dictates that Mr.
24 Padda still held fiduciary duties to Ms. Cohen. Thus, the only remaining questions are whether
25 he breached such duties and caused damages to Ms. Cohen, the answers to both of which
26 questions are affirmative.

26 ¹²⁴ See Section II Ms. Cohen’s Statement of Facts at Subsections C-E herein.

27 ¹²⁵ See Section II Ms. Cohen’s Statement of Facts at Subsection D herein; see also Exhibit C hereto,
28 Cohen Depo at 136:5-25, 137:1-17.

1 “Under Nevada law, partners owe their other partners and the partnership the fiduciary
2 duty of loyalty, which is limited to accounting to the partnership, holding partnership assets as
3 trustee, as well as refraining from being an adverse party, acting on behalf of an adverse party,
4 and competing with the partnership.” *Klein*, 595 F. Supp. 2d at 1162. The Nevada Supreme
5 Court, in *Clark v. Lubritz*, 113 Nev. 1089, 944 P.2d 861 (1997), held as follows:

6 The fiduciary duty among partners is generally one of full and frank disclosure of
7 all relevant information for just, equitable and open dealings at full value and
8 consideration. Each partner has a right to know all that the others know, and each
9 is required to make full disclosure of all material facts within his knowledge in
anything relating to the partnership affairs. The requirement of full disclosure
among partners in partnership business cannot be escaped. Each partner must not
deceive another partner by concealment of material facts.

10 *Id.* at 1095-96, 944 P.2d at 865 (citation omitted). “In addition,” said the court, “a partner’s
11 motives or intent do not determine whether his actions violate his fiduciary duty.” *Id.* at 1096,
12 944 P.2d at 865 (citation omitted).

13 Mr. Padda materially breached his fiduciary duties by, among other conduct, breaching
14 his duty of loyalty to Ms. Cohen in farming out cases to other attorneys without her knowledge
15 or consent, splitting fees and, consequently, depriving her of her full portion of attorney fees.¹²⁶
16 In addition, he breached his fiduciary duty to Ms. Cohen by failing to provide the “full and frank
17 disclosure of all relevant information” required under *Lubritz*, including, without limitation, the
18 Garland settlement, Moradi expert reports, and Moradi trial setting.¹²⁷ 113 Nev. at 1095, 944
19 P.2d at 865. As a result of withholding this information, and the blatant misrepresentations about
20 the values of the various cases for which Cohen & Padda had been retained before December 31,
21 2014, Ms. Cohen signed an agreement that, if enforceable, could deprive her of her fair share of
22 the attorney fees recovered in those cases.¹²⁸

23 Therefore, Ms. Cohen has presented sufficient admissible evidence to raise a number of
24 genuine issues of material fact, any one of which precludes summary judgment on her fourth
25

26 ¹²⁶ See generally Section II Ms. Cohen’s Statement of Facts at Subsection C.

27 ¹²⁷ *Id.*

28 ¹²⁸ *Id.*

1 (Breach of Fiduciary Duty) claim, and summary judgment must be denied.

2 **D. GENUINE ISSUES OF MATERIAL FACT EXIST TO WARRANT**
3 **DENIAL OF SUMMARY JUDGMENT ON ALL FRAUD CLAIMS.**

4 **1. Ms. Cohen’s Fraud in the Inducement Claim is Well Supported by**
5 **Fact and Law, so Summary Judgment thereon Should Be Denied.**

6 As set forth in Section IV.B.2., above, Ms. Cohen’s evidence demonstrates, to a clear and
7 convincing standard, that she was fraudulently induced into executing the Fraudulent Agreement.
8 In the interest of brevity, those arguments are incorporated here as though fully set forth, and Ms.
9 Cohen submits that denial of summary judgment on this claim is appropriate.

10 **2. Ms. Cohen’s Fraudulent Concealment is Similarly Well Supported**
11 **Warranting Denial of Summary Judgment thereon.**

12 There are five elements for a fraudulent concealment claim in Nevada: (1) The defendant
13 concealed or suppressed a material fact; while (2) under a duty to disclose the fact to the
14 plaintiff; (3) he or she “must have intentionally concealed or suppressed the fact with the intent
15 to defraud the plaintiff, that is, he must have concealed or suppressed the fact for the purpose of
16 inducing the plaintiff to act differently than he would if he knew the fact”; (4) the “plaintiff must
17 have been unaware of the fact and would not have acted as he did if he had known of the
18 concealed or suppressed fact”; and (5) the plaintiff must have sustained damages as a result.
19 *Nev. Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1415 (D. Nev. 1995) (citing Nev. Jury
20 Instr. 9.03). “Even in allegations of fraud based on concealment or omission, reliance may be
21 logically shown by proving that, had the omitted information been disclosed one would have
22 been aware of it and behaved differently.” *Id.* (citation and internal quotation marks omitted).

23 For the same reasons Mr. Padda is liable for breach of fiduciary duty in failing to provide
24 a full and frank disclosure of all relevant facts to Ms. Cohen – relative to, among other subjects,
25 the Garland settlement, the number of cases that Cohen & Padda was retained for prior to
26 December 31, 2014, the economic expert report in Moradi, and the Moradi trial setting – so, too,
27 are Defendants liable for fraudulent concealment.¹²⁹ Defendants concealed those facts when

28 ¹²⁹ See generally Section II Ms. Cohen’s Statement of Facts at Subsection C herein.

1 they had a duty to disclose them.¹³⁰ See *Lubritz*, 113 Nev. at 1095-96, 944 P.2d at 865. Ms.
2 Cohen has provided admissible evidence to prove or from which to infer that (1) Defendants
3 intentionally concealed this information with the intent to induce Ms. Cohen into acting
4 differently and/or executing the Fraudulent Agreement, (2) Ms. Cohen was unaware of the
5 information that Defendants had concealed from her, and (3) Ms. Cohen would not have signed
6 the Fraudulent Agreement, nor accepted a mere \$50,000 payment, had she known of the
7 withheld information.¹³¹ Now, as a result of Defendants' concealment of the material facts set
8 forth above, Ms. Cohen has suffered losses estimated to be at least \$3,314,227.49.¹³²

9 Based on the foregoing, genuine issues of material fact exist as to Defendants' fraudulent
10 concealment from Ms. Cohen, and the Court should deny summary judgment on her sixth
11 (Fraudulent Concealment) claim for relief.

12 **3. Ms. Cohen Has Presented Sufficient Evidence to Demonstrate**
13 **Genuine Issues of Material Fact as to Her Claim for Fraudulent**
14 **Misrepresentation, so Summary Judgment Should Be Denied.**

15 In Nevada, a fraudulent misrepresentation claim requires (1) a false representation, (2)
16 made with knowledge or belief that it is false, or with an insufficient basis of information for
17 making the representation, (3) the defendant's intent to induce the plaintiff to act, (4) the
18 plaintiff's reliance on the misrepresentation, and (5) resulting damages. See *Jordan v. State ex*
19 *rel. Dep't of Motor Vehicles & Public Safety*, 121 Nev. 44, 75, 110 P.3d 30, 51 (2005),
20 *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d
21 670 (2008).

22 Ms. Cohen has presented admissible evidence to prove each of the elements of this claim.
23 She has shown that Defendants made false representations, and Defendants knew their
24 representation were false or had an insufficient basis for making them.¹³³ The evidence herewith

25 ¹³⁰ See Section IV Subsection D.2., above (discussing obligations to disclose relevant facts).

26 ¹³¹ See generally Section II Ms. Cohen's Statement of Facts at Subsection C herein.

27 ¹³² See Section II Ms. Cohen's Statement of Facts at Subsection C herein; see also Footnote 24 herein.

28 ¹³³ See generally Section II Ms. Cohen's Statement of Facts at Subsections C and D herein.

1 further shows that Defendants' purpose was to induce Ms. Cohen to act, which she did, in
2 reliance on the misrepresentations.¹³⁴ Finally, Ms. Cohen has shown that she has, in fact,
3 suffered significant damages as a result.¹³⁵

4 Therefore, genuine issues of material fact exist, and the Court must deny summary
5 judgment on Ms. Cohen's seventh (Fraudulent or Intentional Misrepresentation) claim for relief.

6 **E. MS. COHEN'S DAMAGES ARE NOT LACKING RELATIVE TO HER**
7 **ALTERNATIVE CLAIM FOR UNJUST ENRICHMENT, SO SUMMARY**
8 **JUDGMENT ON THAT CLAIM MUST BE DENIED.**

9 "Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the
10 defendant appreciates such benefit, and there is acceptance and retention by the defendant of
11 such benefit under circumstances such that it would be inequitable for him to retain the benefit
12 without payment of the value thereof." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev.
13 371, 381, 283 P.3d 250, 257 (2012) (citation and internal quotation marks omitted). "'Benefit' in
14 the unjust enrichment context can include 'services beneficial to or at the request of the other,'
15 'denotes any form of advantage,' and is not confined to retention of money or property." *Id.* at
16 382, 283 P.3d at 257 (citations omitted).

17 Padda Law was unjustly enriched by Ms. Cohen and, to the extent the Court and jury
18 finds no contract between Ms. Cohen and Mr. Padda, the claim is pleaded in the alternative
19 against Mr. Padda. As dictated by Nevada law, the benefit conferred upon Defendants by Ms.
20 Cohen need not be money or property. *See id.* Thus, she has provided evidence demonstrating
21 that she conferred numerous benefits upon them for which she is entitled to just compensation,
22 including, but not necessarily limited to, her continued work on employment discrimination
23 cases for the firm.¹³⁶ These damages overlap with Ms. Cohen's other claims for relief, and she
24 does not seek a double recovery; to wit, Ms. Cohen helped form the Cohen & Padda firm,
25 assisted in client intake and carried burdens of the firm while others may have handled client

26 ¹³⁴ See generally Section II Ms. Cohen's Statement of Facts at Subsections C through E herein.

27 ¹³⁵ See Section II Ms. Cohen's Statement of Facts at Subsection C herein; see also Footnote 24 herein.

28 ¹³⁶ See Section II Ms. Cohen's Statement of Facts at Subsection B.2. herein.

1 intake.¹³⁷ Therefore, the value of her services for which she is entitled compensation are the
2 same damages she seeks on all other claims.¹³⁸

3 Therefore, summary judgment on Ms. Cohen's eighth (Unjust Enrichment) claim for
4 relief must also be denied because Ms. Cohen does have damages, as have been disclosed.¹³⁹ At
5 the very least, genuine issues of fact exist to preclude summary judgment.

6 **F. THE CLEAR LANGUAGE OF THE ELDER ABUSE STATUTE**
7 **DEMONSTRATES THAT MS. COHEN'S CLAIM FOR THE SAME IS**
8 **SUPPORTED BY BOTH FACT AND LAW.**

9 "[I]f an older person ... suffers a loss of money or property caused by exploitation, the
10 person who caused the ... loss is liable to the older person or vulnerable person for two times the
11 actual damages incurred by the older person or vulnerable person." NRS 41.1395(1). "Older
12 person' means a person who is 60 years of age or older." NRS 41.1395(4)(d). Notably, nothing
13 in the statute or legislative history *restricts* the application of this statute to caregivers, as
14 Defendants suggest.¹⁴⁰

15 There is no dispute that Ms. Cohen was 60 years of age or older at all times relevant. To
16 the extent it is not undisputed, there are certainly genuine issues of material fact as to Ms. Cohen
17 losing money as a result of Defendants' conduct and liability arising from Ms. Cohen's other
18 affirmative claims.¹⁴¹ Therefore, summary judgment on Ms. Cohen's ninth (Elder Abuse) claim
19 for relief must be denied as well.

20 ¹³⁷ See generally Section II Ms. Cohen's Statement of Facts at Subsections B and C herein.

21 ¹³⁸ See Section II Ms. Cohen's Statement of Facts at Subsection C herein. Defendants also argue that Ms.
22 Cohen is not entitled to punitive damages under her unjust enrichment claim but, as Defendants seem to
23 concede in failing to argue otherwise, Ms. Cohen is entitled to seek punitive damages on a number of her
24 other claims for relief. See Defs.' Mot. for Summ. J., at 28-29.

25 ¹³⁹ See id.

26 ¹⁴⁰ Defendants cite *Brown v. Mt. Grant General Hospital*, No. 3:12-CV-00461-LRH, 2013 WL 4523488,
27 at *6 (D. Nev. Aug. 26, 2013). *Brown*, however, should have no bearing on this Court's decision. See
28 Defs.' Mot., at 29-30. Indeed, the federal district court's concern in the unpublished *Brown* decision was
whether mistreatment of a hospital patient constitutes medical malpractice, governed by a different
statute, statute of limitations, and other strictures, or constitutes elder abuse. See generally *id.* Thus, the
Brown court was required to evaluate legislative history, which analysis Defendants take out of context.

¹⁴¹ See generally Section II Ms. Cohen's Statement of Facts herein.

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V. CONCLUSION

Based on the foregoing, it should be clear that genuine issues of material fact exist as to each and every one of Ms. Cohen’s claims for relief in this action. Accordingly, Defendants Motion for Summary Judgment should be denied in its entirety.

Dated this 10th day of January, 2020.

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