IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

RUTH L. COHEN, an Individual,

Plaintiff,

v.

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

REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SANCTIONS AGAINST PLAINTIFF ON AN ORDER SHORTENING TIME FOR HEARING

Hearing Date: January 22, 2020
Hearing Time: 9:00 a.m.

Defendants Mr. Paul S. Padda, Esq. ("Mr. Padda") and Paul Padda Law, PLLC ("Padda Law") (collectively, "Defendants"), by and through their undersigned counsel, file the following Reply in Support of their Motion for Sanctions Against Plaintiff on an order shortening time for hearing (the "Motion").

This Reply is made and based on the attached Memorandum of Points and Authorities, NRCP 37, the Court's inherent powers, the papers and pleadings on file in this action, and any oral argument this Court may allow.

DATED this 21st day of January 2020

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I. INTRODUCTION

Once more, Plaintiff Ruth L. Cohen ("Plaintiff") presents this Court with a smorgasbord of half-truths, deflections, and misleading legal arguments to combat the merits of Defendants' Motion for Sanctions (the "Motion"). In the limited time available before the hearing on Defendants' Motion, suffice it to say, Plaintiff's rosy rendition of her conduct and the history of this case is betrayed by the naked facts.

To this end, Defendants have just recently learned through Plaintiff's production of documents on January 17, 2020, by order of the Court, that Plaintiff obviously did not harvest her own communications and review them for responsiveness after Defendants served her with a proper NRCP 34 request for production of documents on October 7, 2019. Worse still, this latest production reveals that Karla Koutz ("Ms. Koutz"), "a key witness to events relevant to the claims and defenses in this matter," according to Plaintiff, *see* Opp. at 10, was extensively communicating via email with Plaintiff about ***this case*** since its inception and Ms. Koutz would routinely feed Plaintiff and her counsel with information to support Plaintiff's claims. In fact, just sixteen (16) days after rebuffing Defendants' request for her communications with Ms. Koutz about this case, Plaintiff's counsel directly requested that Plaintiff "[i]n a separate email, ask Karla what this report shows" because Plaintiff's counsel needed help preparing for a deposition. *See* **Exhibit 1** (attached herein) at COHEN000993. But Plaintiff never revealed these communications to Defendants, despite their request. In fact, Plaintiff did not reveal this information to Defendants until the eve of trial and only after a Court order compelling her to complete a thorough and proper review of her communications. If nothing else, the Court should exclude Ms. Koutz from testifying at trial.

II. ARGUMENT

Plaintiff weakly suggests that the jury ought to adjudicate her discovery misconduct at trial without seriously disputing the misconduct. *See* Opp. at 5 (regarding Plaintiff's misrepresentations about her ability to sit for extended periods of time), 8-9 (regarding Plaintiff's false testimony regarding the source of her tax problems), 9 (regarding Plaintiff's misrepresentations to the IRS), and 12-13 (regarding Plaintiff's false responses to Defendants' requests for admission). Plaintiff's misconduct is obvious from a simple review of the record in this case. The Court should not simply

look the other way and allow Plaintiff to ambush Defendants at trial with biased witnesses and hidden communications.

A. Only Three Weeks Before Trial, Plaintiff Produces Extensive Communications with "Key Witness" Karla Koutz

Plaintiff cannot (and does not) dispute that she had extensive email communications with Ms. Koutz about her case against Defendants throughout 2019. Plaintiff also cannot (and does not) dispute that she did not produce any of these email communications to Defendants either *during discovery* or *in response to Defendants' requests for these communications*. While Defendants will have to wait for Plaintiff's continued deposition to uncover the reasons for Plaintiff's decision to withhold these communications, the simple truth is that Plaintiff did not harvest or produce these emails until well after the deadline to respond to Defendants' October 7, 2019 request and the close of discovery.

Plaintiff's newly produced email communications with Ms. Koutz reveal that Ms. Koutz is deeply biased in favor of Plaintiff. Within days of Plaintiff filing her complaint against Defendants, Ms. Koutz was emailing Plaintiff with the addresses of Mr. Padda's parents, *see* **Exhibit 1** at COHEN000946, emailing Plaintiff links to Padda Law's social media posts and criticizing these posts, *see id.* at COHEN000955, COHEN000966-978, and emailing Plaintiff news stories about Padda Law and/or Mr. Padda, *id.* at COHEN000958-965, COHEN000979-COHEN980. Plaintiff confided in Ms. Koutz about developments in the case. *See id.* at COHEN000951-954, COHEN000981-982. And, Ms. Koutz served as an informal investigator on Plaintiff's behalf throughout discover, including memorializing a conversation she had with a former bookkeeper for Padda Law and identified witness in this case, Tammy Borowski, and conducting property records searches of Padda Law's chief operating officer, Patty Davidson. *See id.* at COHEN000986, COHEN000987-992.

Worst of all, Plaintiff's counsel, Ms. Liane Wakayama, Esq. ("Ms. Wakayama"), had actual knowledge that Plaintiff was emailing extensively with Ms. Koutz despite the fact that no one on Plaintiff's legal team, including Ms. Wakayama, felt compelled to supplement Plaintiff's deficient discovery responses with these email communications. On November 13, 2019, sixteen

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(16) days after Plaintiff responded on October 28, 2019 to Defendants' October 7th requests for production and stated, effectively, regarding her communications with Ms. Koutz, that she was still looking for them on her old cellphone, Ms. Wakayama affirmatively instructed Plaintiff to email Ms. Koutz "in a separate email" about certain documents from Padda Law in order to prepare Mr. Jared Moser, Esq. ("Mr. Moser") for a deposition. *See id.* at COHEN000993. Thus, neither Plaintiff nor anyone on her legal team can sincerely argue that they did not know or believe that Plaintiff had responsive emails in her possession, custody, or control when she failed to produce any email communications with Ms. Koutz.

NRCP 37(c)(1) as well as this Court's inherent powers give this Court the authority to sanction a party for failure to produce responsive and nonprivileged documents in response to a proper discovery request. *See Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). This Court's inherent power to sanction is designed "to protect the dignity and decency of its proceedings and to enforce its decrees, and thus it may issue contempt orders and sanction or dismiss an action for litigation abuses." *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d 428, 440 (2007).

It goes without saying that Plaintiff withheld responsive documents from Defendants during discovery. And a superficial review of these responsive documents reveals that Ms. Koutz was doing everything in her power to help Plaintiff with this case ***and*** that Plaintiff and everyone on her team knew this to be the case. While Plaintiff secured a troubling declaration from Mr. Michael Holpuch ("Mr. Holpuch") wherein Mr. Holpuch attempts to take the fall for Plaintiff's and her counsel's failure to produce these responsive email communications, *see* **Exhibit 2** (attached herein) at COHEN000925-931, even that declaration reveals that Plaintiff and her team did nothing to even try to collect and produce responsive documents ***during discovery***.[1] Instead, it seems, Plaintiff was happy to keep Defendants in the dark about how much she was relying on

[1] Ms. Wakayama knew that the January 6, 2020 production by Ms Cohen was incomplete because she knew of the existence of the November 13, 2019 email, yet she seems to have done nothing about it.

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Ms. Koutz to conduct informal investigations, gin up information, and gossip about Defendants and their case.

Consequently, the Court should, if nothing else, exclude Ms. Koutz from testifying entirely at trial. Otherwise, Plaintiff's bald refusal to do the bare minimum to uphold her obligations under NRCP 26 and NRCP 34 would have no consequences. And future parties would feel no obligation to turn over responsive documents—rather, parties will have an incentive to withhold bad documents. The Court must ensure there are consequences for Plaintiff's thumbing her nose at the rules.

B. Plaintiff Attempts to Bend Reality to Protect Ms. Koutz From Claims of Bias

Despite the clear and obvious bias Ms. Koutz possesses in favor of Plaintiff, as indicated above, Plaintiff has done absolutely everything in her power to conceal Ms. Koutz's bias from Defendants, the Court, and the jury. It cannot reasonably be disputed that Defendants' counsel were willing to have Ms. Koutz's deposition held in Las Vegas in an effort to avoid the exorbitant costs associated with travel to Hawaii, yet Plaintiff argues to the contrary. Some of the relevant email exchange between counsel for Plaintiff and counsel for Defendants is provided below:

> From Steve Peek (Aug. 14, 2019 at 11:32 a.m.): I am not opting to travel to Hawaii and add costs to this case. **You are free to bring Ms. Koutz to Nevada for a deposition and avoid the costs of travel to Hawaii** and I am within my rights to reserve the right to question Ms. Koutz as to who is paying for her travel to come to Nevada. Your citation to NRS 50.225 is inapposite to this case and this issue. I am still waiting for any authority that you may have to support your position and avoid motion practice. (Emphasis added).
>
> From Liane Wakayama (Aug. 14, 2019 at 11:43 a.m.): NRS 50.225 does require a witness to reimbursed [sic] for travel expenses. Your clients refuse to split costs or reach a stipulation if Ms. Cohen covers these costs. Instead, it appears your clients want to create an inference of bias or drive up costs for us to all travel to Hawaii. So, we are left with no option but to seek a protective order unless your clients reconsider.
>
> It is actually the lack of legal authority to support your position, not mine. Where is an inference of bias to the jury based on the payment of travel expenses admissible evidence when an out-of-state witness is statutorily entitled to have their travel expenses covered?

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> From Liane Wakayama (Aug. 15, 2019 at 2:41 p.m.): Steve, [d]o we have an agreement or do we need to file a motion? If we don't hear from you by noon tomorrow, we will file our motion. Thanks, Liane
>
> From Steve Peek (Aug. 15, 2019 at 2:43 p.m.): To what are you asking me to agree?
>
> From Liane Wakayama (Aug. 15, 2019 at 2:49 p.m.): If Ms. Cohen pays for Ms. Koutz's travel expenses for her deposition, your clients will stipulate no inference of bias or any other negative inference for doing so.
>
> From Steve Peek (Aug. 15, 2019 at 4:05 p.m.): No I will not stipulate to no inference of bias or any other negative inference but **I am fine if you bring her to Las Vegas**. I guess you will have to bring your Motion, however, I fail to see the basis for such a Motion. (Emphasis added).

See **Exhibit 3** (Exhibit B to Defendants' Opposition to Plaintiff's Motion for Protective Order Regarding the Deposition of Karla Koutz) attached herein.

After the Court denied Plaintiff's motion for protective order, which asked the Court to permit Plaintiff to "reimburse Ms. Koutz's travel expense without negative inference at any future time in this case . . .," *see* Plaintiff's Motion for Protective Order regarding the Deposition of Karla Koutz at 5, Plaintiff amended the notice of deposition for Ms. Koutz to change the location from Nevada to Hawaii. As is obvious from the above email correspondence, Defendants agreed to holding Ms. Koutz's deposition in Nevada. But Plaintiff's anxiety about Defendants' development of evidence that Ms. Koutz was biased in Plaintiff's favor drove her to move the deposition to Hawaii.

Now, after the production of Plaintiff's emails with Ms. Koutz, Defendants understand that Plaintiff's anxiety about bias was derived from Plaintiff's knowledge that Ms. Koutz is a deeply, deeply biased witness who is incredibly vulnerable to cross-examination if the truth about Ms. Koutz's relationship with Plaintiff was revealed to Defendants. So, Plaintiff endeavored—through the above-described email with Defendants' counsel, motion for protective order, and her failure and then refusal to turn over all email communications with Ms. Koutz—to hide Ms. Koutz's bias.

Plaintiff cannot argue away these simple facts. Plaintiff cannot use what-about-ism or deflection to deny the stark reality that Plaintiff's key witness, Ms. Koutz, is and has always been steadfastly working to help Plaintiff throughout this case or that Plaintiff hid Ms. Koutz's efforts

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from Defendants despite their proper request on October 7th. And, once more, there must be consequences for Plaintiff's decision to ignore the rules and hide damaging evidence to her key witness's credibility.

C. Plaintiff Disclaimed Paragraph 36 of her Complaint

Plaintiff unequivocally disclaimed the veracity of Paragraph 36 of her Complaint on July 23, 2019, during her deposition. Plaintiff cannot revive Paragraph 36 by arguing that she simply did not recall the allegations in that paragraph verbatim. *See* Opp. at 2-4.

Plaintiff testified as follows:

> Steve Peek: Would you have the witness look at Exhibit 1, please. Or would you look at Exhibit 1, paragraph 36 on page 6?
> Ruth Cohen: **(Witness complies.)**
> Steve Peek: Would you read that out loud, please.
> Ruth Cohen: **(As read): "Padda" verb – "Padda verbally represented to Ms. Cohen, in or around the fourth quarter of 2015, that the value of Garland's case was no more than 10,000 and that C & P would likely have to reduce its fee recovery in order for Garland to recover anything."**
> Steve Peek: That's obviously a misstatement, then, based upon your testimony?
> Ruth Cohen: **It is.**

See Ex. 2 to Motion at 259:22-260:13.[2]

Plaintiff may want to take back this testimony, but she cannot blame confusion or poor memory when she emphatically rejected the allegation after reading it verbatim during her deposition.

D. Plaintiff Admits to Responding Falsely to Defendants' Requests for Admission

Despite the obvious errors in Plaintiff's tenuous and questionable understanding of requests for admission under NRCP 36, Plaintiff concedes that she responded to at least two of Defendants' requests falsely. Thus, the Court should sanction Plaintiff for her false responses.

[2]Notably, this line of testimony took place *after* the line of testimony Plaintiff's quotes at-length in her opposition. *See* Opp. at 2-3. In other words, Plaintiff disclaimed Paragraph 36 *after* she realized that her prior testimony about Mr. Padda's supposed statements regarding the Garland case were inaccurate.

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First and foremost, Plaintiff reads *Morgan v. Demille*, 106 Nev. 671, 799 P.2d 564 (1990), and *Olivero v. Lowe*, 116 Nev. 395, 995 P.2d 1029 (2000), so broadly that her reading would render NRCP 36 meaningless. Under Plaintiff's interpretation, if a request for admission calls for admissions related to "crucial facts central to [a] lawsuit or legal concessions," then a party may always deny the request. *See* Opp. at 12. But that's not what these cases state nor is it what NRCP 36 provides.

The *Morgan* case concerned, in relevant part, a request for admission where one party asked the other "to admit that her negligence was the sole cause of the collision and that respondent was liable for any damages proximately caused to appellants as a result of the collision." *See* 106 Nev. at 675–76, 799 P.2d at 564, *superseded by statute on other grounds as stated in RTTC Comms., LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 110 P.3d 24 (2005). The Nevada Supreme Court noted, in *Morgan*, that this specific request for admission was "too broad and involves both factual issues as well as legal issues." *Id.* at 676, 799 P.2d at 564. The Court went on to observe that "[t]he purpose of procedural statutes such as NRCP 36 is to obtain admission of facts which are in no real dispute and which the adverse party can admit cleanly, without qualifications." *Id.* (citing *Reid Sand & Gravel v. Bellevue Props.*, 502 P.2d 480, 483 (Wash. Ct. App. 1972)). Thus, the Court concluded that the specific request before it "called for either crucial facts central to the lawsuit or legal concessions" such that the answering party properly rejected the request. *Id.*

The *Olivero* decision did not describe the specific request for admission before it, but observed that the request concerned "disputed substantive facts" in connection with a confrontation where one party held the other at gunpoint. *See* 116 Nev. at 397–98, 404–05, 995 P.2d at 1025, 1029. Thus, the Court concluded that the district court did not err by refusing to sanction the answering party for failing to admit these substantive facts concerning the altercation at issue.

By contrast, here, Defendants asked Plaintiff to admit (among others) two relatively simple facts: (1) that Plaintiff had been suspended from the practice of law on or about April 2017; and (2) that Plaintiff "received via email a copy of the regular MRI image of Mr. David Moraid that included a report starting Mr. David Moradi's injuries were 'consistent with traumatic brain injury'

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on June 26, 2014." *See* Exhibit 16 to Motion at 3, 22. Plaintiff cannot seriously contend that these requests are equivalent to asking a party to concede liability or causation, as with the requests in *Morgan* and *Olivero*. Moreover, Plaintiff cannot reasonably argue that these simple requests concerning the facts of this case cannot be admitted or denied cleanly without qualification. Plaintiff may not like the answers, but she has to provide them.

Furthermore, Plaintiff concedes, and now readily admits, in her Opposition to the Motion, that she was copied on the June 26, 2014 email that attached medical records related to Mr. Moradi. *See* Opp. at 13. While she buries the concession in her mealy-mouthed argument, Plaintiff does state "she was only CC'ed" on the relevant email. *See id.* "Only CC'ed" means Plaintiff received it. She should have simply admitted this request.

Thus, once again, Plaintiff had conceded she has failed to adhere to the rules in this case. The Court should sanction Plaintiff's misconduct.

E. Plaintiff Has Waited Until January 21, 2020 to Inform the Court that She Sits For Long Stretches Due to Increased Medication

For the first time, in her Opposition to the Motion, Plaintiff informs Defendants and the Court that, apparently, she "collapsed curbside near Leoné Café" on July 2, 2019, and, as a result of this fall, Plaintiff has been wheelchair-bound ever since. *See* Opp. at 5. Moreover, Plaintiff admits that she now has "no choice *but* to sit" and, despite previously arguing strenuously that Plaintiff cannot sit for more than 3.5 hours, Plaintiff now argues she "cannot stand for any length of time." *See id.* at 5-6. Plaintiff also states that she has been able to sit since her fall on July 2, 2019, because of "a very significant increase in her nerve pain medication dosage."[3] *Id.* at 6.

Defendants have several concerns about these revelations. First, at the hearing on Plaintiff's motion for protective order regarding her request for a two-day staggered deposition—which took place on July 15, 2019, several weeks after Plaintiff's fall—her counsel did not mention any fall on July 2, 2019, or the fact that her client now must sit all-the-time rather than, as was apparently the case, her client *cannot sit* for long stretches. *See* **Exhibit 4** (July 15, 2019 Hearing

[3] None of these statements are supported by a declaration but are just bald statements of revisionist history by her.counsel

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Transcript) at 16:13-22. Second, Plaintiff, who sat in a wheelchair throughout both days of her deposition, testified during the normal admonitions at the first day of her deposition on July 22, 2019, that "I've taken pain medication but none that have side effects, nothing strong. They won't give it to me yet." *See* **Exhibit 5** (additional excerpts from Plaintiff's deposition) at 7:15-9:10.

Perhaps, Plaintiff's dosage was increased *after* her deposition was completed. Defendants simply do not know. Defendants did not even know Plaintiff had fallen on July 2, 2019, or that this fall caused her to be wheelchair-bound until today. Defendants did not receive any word about Plaintiff's fall during the hearing on her motion for protective order or at any other time during this case. Of course, Plaintiff has put her medical condition at-issue in this case via her complaint and her theory of the case.

Nevertheless, Plaintiff seems to understand the obvious dissonance between her only stated position in this case—she cannot sit for long hours—with the observations of counsel for Defendants that Plaintiff has sat through many depositions and has flown from Las Vegas to Hawaii. Lots of sitting, but no explanation as to how the sitting was possible until three weeks before trial. Defendants certainly hope there will be no request for Plaintiff's trial testimony to be staggered like her deposition testimony was.

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III. CONCLUSION

Defendants know that Plaintiff has violated her duties and obligations under NRCP 26. There must be consequences for Plaintiff's misconduct. Defendants request the Court dismiss Plaintiff's action entirely. Alternatively, Defendants ask for an evidentiary hearing to determine the extent of Plaintiff's misconduct and the appropriate sanctions. And, Defendants request that the Court sanction Plaintiff's discovery misconduct by excluding Ms. Koutz from testifying at trial.

DATED this 21st day of January 2020

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of January, 2020, a true and correct copy of the foregoing **REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SANCTIONS AGAINST PLAINTIFF ON AN ORDER SHORTENING TIME FOR HEARING** was served by the following method(s):

☑ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

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EXHIBIT 1

EXHIBIT 1

From: Karla Koutz [karlakoutz@yahoo.com]
Sent: 4/11/2019 3:58:20 PM
To: raelinc8@gmail.com
Subject: Addresses

Aloha Ruth,

Here are the addresses I found. Keep them just in case :)

Darshan S. Padda & Kulwant K Padda
70 Hint Valley Trail
Henderson, NV 89052

The other one is:

Darshpaul Padda & Kulwant K Padda
259 Little Minaj Court
Henderson, NV 89052

Good to have just in case!!
Love & Aloha my friend

Sent from my iPhone

From: Karla Koutz [karlakoutz@yahoo.com]
Sent: 4/12/2019 8:43:38 PM
To: raelinc8@gmail.com
Subject: Another PSP PSA

Aloha Ruth,

For your viewing pleasure!!

https://www.facebook.com/227784283974866/posts/2133992863353989?sfns=mo

Sent from my iPhone

From: Karla Koutz [karlakoutz@yahoo.com]
Sent: 4/17/2019 8:23:41 PM
To: raelinc8@gmail.com
Subject: Paul Deposition Post
Attachments: IMG_5745.PNG; Untitled attachment 11509.txt

WHAT TO EXPECT IN A DEPOSITION

For a personal injury case.

UNDERSTANDING DEPOSITIONS

WHAT IS A DEPOSITION?

THIS IS THE INFORMATION GATHERING PHASE OF A LAWSUIT. YOU WILL BE ASKED QUESTIONS, UNDER OATH, RELATED TO YOUR CASE.

DEPOSITIONS ARE HANDLED BY THE ATTORNEYS INVOLVED IN A CASE

A court reporter might be present as well.

WHO ELSE MIGHT BE PRESENT

- Plaintiff
- Defendant
- Witnesses
- Attorneys for witnesses
- Expert Witnesses
- Insurance Adjusters

DEPOSITION DAY

- DRESS IN PROFESSIONAL ATTIRE
- ARRIVE ON TIME

DURING QUESTIONING, YOU SHOULD:

- Listen closely when asked a question and speak clearly when answering.
- If you don't understand what you were asked, ask for clarification.
- Answer all questions honestly.
- Don't volunteer excess information that isn't asked about.
- If you don't know the answer to a question, be honest.
- Remember that you are under oath. You can be accused of perjury for lying.
- Ask for a break if you need one, the process can be stressful.

PAUL PADDA LAW
INJURY ATTORNEYS

Sent from my iPhone

From: Ruth Cohen [raelinc8@gmail.com]
Sent: 4/27/2019 10:42:48 AM
To: Karla Koutz [karlakoutz@yahoo.com]
Subject: Re: Paul Deposition Post
Attachments: 2019-04-26 Affidavit of Service.PDF

here's his latest shit.....

On Wed, Apr 17, 2019 at 8:24 PM Karla Koutz <karlakoutz@yahoo.com> wrote:

> Sent from my iPhone

Marquis Aurbach Coffing
Liane K. Wakayama, Esq.
Nevada Bar No. 11313
Jared M. Moser, Esq.
Nevada Bar No. 13003
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
lwakayama@maclaw.com
jmoser@maclaw.com
Attorneys for Plaintiff Ruth L. Cohen

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.: 11

AFFIDAVIT OF SERVICE

Plaintiff Ruth L. Cohen, by and through her attorneys of record, Marquis Aurbach Coffing, hereby submit the Affidavit of Service of Plaintiff's Motion for Preferential, Firm Setting and Expedited Discovery Schedule on Order Shortening Time to Paul S. Padda and Paul Padda Law, PLLC attached hereto.

Dated this 26th of April, 2019.

Marquis Aurbach Coffing

/s/ Jared M. Moser
Liane K. Wakayama, Esq.
Jared M. Moser, Esq.
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Plaintiff Ruth L. Cohen

MAC:15438-001 3721899_1.docx 4/26/2019 3:31 PM

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

AFFIDAVIT OF SERVICE

State of Nevada **County of Clark** **Clark County District Court**

Case Number: A-19-792599-B

Plaintiff:
RUTH L. COHEN, an individual,

vs.

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

For:
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

Received by Legal Express on the 25th day of April, 2019 at 10:57 am to be served on **Paul S. Padda And Paul Padda Law, PLLC, 4560 South Decatur Boulevard, Suite 300, Las Vegas, NV 89103**.

I, Kristopher Nicholson, being duly sworn, depose and say that on the **25th day of April, 2019** at **11:57 am, I:**

SERVED by delivering a true copy of the **Receipt of Copy and Certificate of E-Mailing, Plaintiff's Motion for Preferential, Firm Trial Setting and Expedited Discovery Schedule on an Order Shortening Time** to **"Jane Doe"** as **Secretary**.

Said service was made at the address of: **4560 South Decatur Boulevard, Suite 300, Las Vegas, NV 89103** .

Additional Information pertaining to this Service:
4/25/2019 11:57 am Affiant spoke with an individual at the front desk, "Jane Doe", who stated that she is unable to sign the above stated Receipt of Copy. Affiant made note that "Jane Doe" is an employee of Paul Padda Law. Affiant made note that "Jane Doe" stated that Padda would have to sign the receipt of copy and was instructed to wait in the lobby as Padda was currently in a meeting with clients. Affiant made note that he could hear that a meeting was happening in a nearby room. Approximately ten (10) minutes later affiant asked "Jane Doe" if anyone else is available to sign the Receipt of Copy. Affiant was informed that their paralegal might be able to sign but she was currently on the phone. After approximately ten (10) additional minutes "Jane Doe" informed the affiant that the COO of Padda Law might be able to sign. Affiant made note that as "Jane Doe" was attempting to contact the COO of Padda Law, Padda exited the meeting with his clients. Affiant made note that he saw "Jane Doe" give the above stated documents to Padda. Affiant made note that Padda became irritated and put the documents down on the counter. Affiant made note that Padda asked the affiant why these documents were coming to this address and then stated that he would not sign the Receipt of Copy. Affiant made note that Padda further stated that the documents needed to go to an address on South Eastern Avenue. Affiant made note that Padda then left the room. Affiant informed "Jane Doe" that he would step outside of their office to call Marquis Aurbach Coffing for further instruction. Affiant informed "Jane Doe" that he would likely be returning and leaving the documents with her. Affiant made note that "Jane Doe" acknowledged and affiant stepped out of the office. Affiant returned to the office shortly thereafter and informed "Jane Doe" that he was leaving the above stated documents with her. Affiant made note that "Jane Doe" acknowledged the affiant. Affiant placed the above stated documents on the counter in front of "Jane Doe". Approximate description of "Jane Doe": Female, African American, ~40 Years Old, ~5'5", ~185 Pounds.

AFFIDAVIT OF SERVICE for A-19-792599-B

Affiant is, and was, a citizen of the United States, over 18 years of age, and not a party to, nor interested in, the proceeding in which this affidavit is made.

SIGNED and SWORN TO before me on the 26 day of April 2019 by the affiant who is personally known to me.

NOTARY PUBLIC

Kodi Cowley
Notary Public
State of Nevada
Appt No. 04-87799-1
My Appt. Expires
April 29, 2019

Kristopher Nicholson
Process Server

Legal Express
Nevada License 999/999a
911 South 1st Street
Las Vegas, NV 89101
(702) 877-0200
Our Job Serial Number: 2019000421

Service Fee: $152.38

From: Karla Koutz [karlakoutz@yahoo.com]
Sent: 6/6/2019 2:28:20 PM
To: raelinc8@gmail.com
Subject: Patty Davidson is 1st guest on PSP podcast
Attachments: Image-1.png; Untitled attachment 12242.txt

Mary Garcia-Ruiz
2 hrs ·

Let's join in.....

Paul Padda Law, PLLC is live now.
2 hrs ·

Special guest today is Patty Davidson, our first guest of many. Tune in to learn about how we grew our business from a small firm, so where we are today.

PAUL PADDA
PODCAST

Sent from my iPhone

From: Karla Koutz [karlakoutz@yahoo.com]
Sent: 6/6/2019 7:06:38 PM
To: raelinc8@gmail.com
Subject: Fwd: Email this to RLC
Attachments: image001.jpg; Untitled attachment 12248.htm; Emilie Bouari and Kim Milko sued by PSP.pdf; Untitled attachment 12251.htm

Sent from my iPhone

Begin forwarded message:

> **From:** Karla Koutz <kkoutz@settlemeyerlaw.com>
> **Date:** June 6, 2019 at 4:05:39 PM HST
> **To:** "karlakoutz@yahoo.com" <karlakoutz@yahoo.com>
> **Subject: Email this to RLC**
>
> Kind regards,
> Karla


SettleMeyer
Law

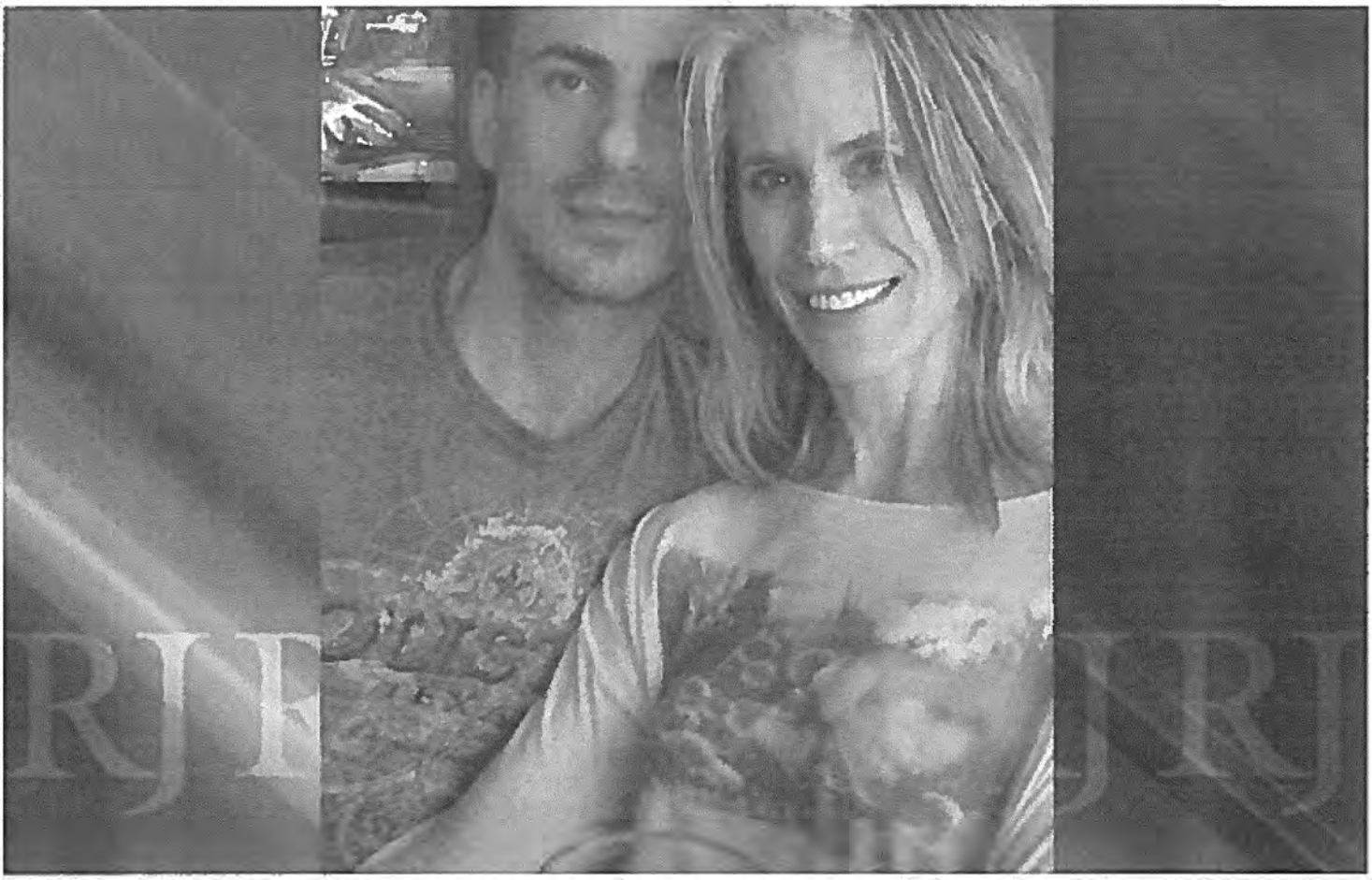
Karla Koutz | LEGAL ASSISTANT

Main 808.540.2400 | *Direct* 808.540.2405 | *Fax* 808.694.3050

Pioneer Plaza – Suite 1800 | 900 Fort Street Mall | Honolulu, HI 96813

kkoutz@settlemeyerlaw.com | www.settlemeyerlaw.com

FBI uncovers alleged plot to cripple ex-federal prosecutor



Emile Bouari, left, and his fiancee, Kimberly Ann Milko, are facing federal money laundering charges. (Facebook)

By Jeff German Las Vegas Review-Journal

February 22, 2016 - 4:52 pm

A former Las Vegas businessman under investigation for money laundering reportedly told undercover FBI agents he wanted to take revenge on an ex-federal prosecutor by having him beaten and "put in a wheelchair" or by cutting off his hand.

The plot to harm Las Vegas attorney Paul Padda surfaced last year during an undercover investigation of businessman Emilie Bouari, who was being sued for defamation by Padda because of comments made about the former prosecutor on a consumer review website.

Agents posing as crime syndicate members involved in drug trafficking and prostitution had approached Bouari, 45, in relation to a money-laundering scheme, accord to federal court papers.

Bouari, who has run weight loss clinics in Las Vegas and elsewhere, told the agents he wanted Padda hurt to discourage him from pursuing the defamation suit, the government alleges. He also told the agents he knew people in Lebanon who could come to Las Vegas and cut off Padda's hand.

FBI agents informed Padda of the threat last year and gave him protection, according to prosecutors.

The alleged plot never came to fruition. Bouari was arrested earlier this month after he and three others, including his younger brother, Ghassan Bouari Houbous, 34, and fiancee Kimberly Ann Milko, 46, were indicted by a federal grand jury on conspiracy and money laundering charges. Bouari and his brother are being held without bail. Milko was released on her own recognizance with restrictions.

The defendants conducted a dozen money laundering transactions with the undercover FBI agents totaling nearly $590,000 between May 2014 and August 2015, according to the indictment. They allegedly accepted cash from the agents and then wrote back checks from bank accounts they controlled. Prosecutors say evidence includes more than 60 secret recordings.

The threat against Padda, an attorney in private practice since 2011, was unrelated to the 18-month money laundering investigation.

Padda mainly handled organized crime cases in his six years with the Nevada U.S. attorney's office.

"I am very appreciative of the efforts of the FBI, it's senior management and Special Agent Chuck Ro, who worked tirelessly to ensure the safety of myself

and others," Padda said Monday. "Agent Ro is a consummate professional who cares about our community and ensuring victims are protected."

Padda had filed a defamation suit in Clark County District Court against Bouari and Milko last March, alleging they made false statements about his personal and professional life on the Internet website, The Ripoff Report. Bouari has made derogatory web comments about a half-dozen other lawyers, the suit alleges.

One of those lawyers, Chris Rasmussen, filed a complaint in July against Bouari in Las Vegas Justice Court over defamatory remarks allegedly made against him. Rasmussen accused Bouari in the complaint of being a "con man" who tricks people into investing in his clinics.

Assistant U.S. Attorney Kimberly Frayn, disclosed the threat against Padda in court Friday while asking U.S. Magistrate Judge Peggy Leen to deny Bouari pre-trial release.

Frayn also alleged that Bouari told undercover agents he had people coming from Dubai to have sex with 16-year-old prostitutes.

Bouari bragged that he knew everything about Padda, his family and his law partners, and he suggested several places where Padda could be attacked to "teach him a lesson," Frayn said. He also told agents he wanted "broken bones," Frayn said.

He suggested infiltrating Padda's law office, catching him at his mother's house or surprising him on his way to his car, Frayn alleged.

Prosecutors intend to charge Bouari in the scheme in a new indictment, Frayn said.

Defense lawyer Brian Smith downplayed the threat in court Friday, saying Bouari, who now lives in Florida, was not a violent man and had no

intention of harming Padda.

Comparing Frayn's allegations to "something out of a James Bond movie," Smith told Leen that a shady FBI informant kept pressing Bouari for $1,500 to harm Padda, but Bouari didn't take the bait.

Leen ordered Bouari's continued detention.

Bouari and his co-defendants all have pleaded not guilty to the money laundering charges.

Contact reporter Jeff German at jgerman@reviewjournal.com or 702-380-8135. Find him on Twitter: @JGermanRJ

From: Ruth Cohen [raelinc8@gmail.com]
Sent: 6/9/2019 8:37:32 AM
To: Karla Koutz [karlakoutz@yahoo.com]
Subject: Re: Patty Davidson is 1st guest on PSP podcast

that announcement is hilarious..... there is a typo!

On Thu, Jun 6, 2019 at 2:28 PM Karla Koutz <karlakoutz@yahoo.com> wrote:

Sent from my iPhone

From: Karla Koutz [karlakoutz@yahoo.com]
Sent: 6/9/2019 11:59:48 AM
To: Ruth Cohen [raelinc8@gmail.com]
Subject: Re: Patty Davidson is 1st guest on PSP podcast □□□□

https://www.facebook.com/paulspadda/videos/301141847439333/

SHE IS AWFUL. HE IS AWFUL. THEY ARE BOTH EMBARRASSING AND AWFUL
□□□□□□□□□□□

Sent from my iPhone

On Jun 9, 2019, at 5:37 AM, Ruth Cohen <raelinc8@gmail.com> wrote:

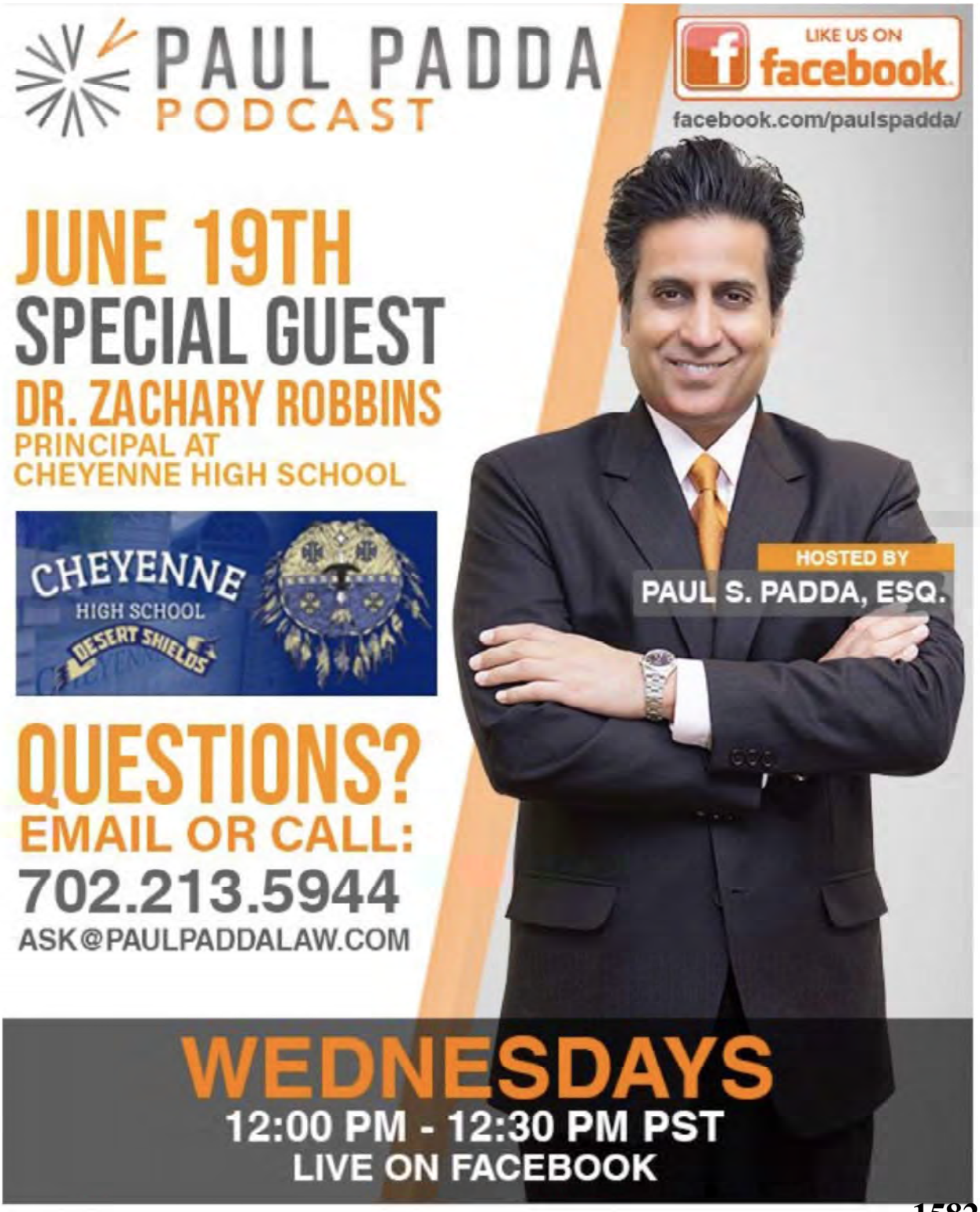
> that announcement is hilarious..... there is a typo!
>
> On Thu, Jun 6, 2019 at 2:28 PM Karla Koutz <karlakoutz@yahoo.com> wrote:
>
> Sent from my iPhone

From: Karla Koutz [karlakoutz@yahoo.com]
Sent: 6/18/2019 8:18:31 PM
To: raelinc8@gmail.com
Subject: PSP and his next PODCAST guest lol
Attachments: Image-1.jpg; Untitled attachment 12352.txt

Paul Padda Law, PLLC

5 hrs ·

Our special guest of the week is Dr. Zachary Robbins, Principal of Cheyenne High School. Just a reminder our podcast will now run every Wednesday from 12:00-12:30 PST.



Sent from my iPhone

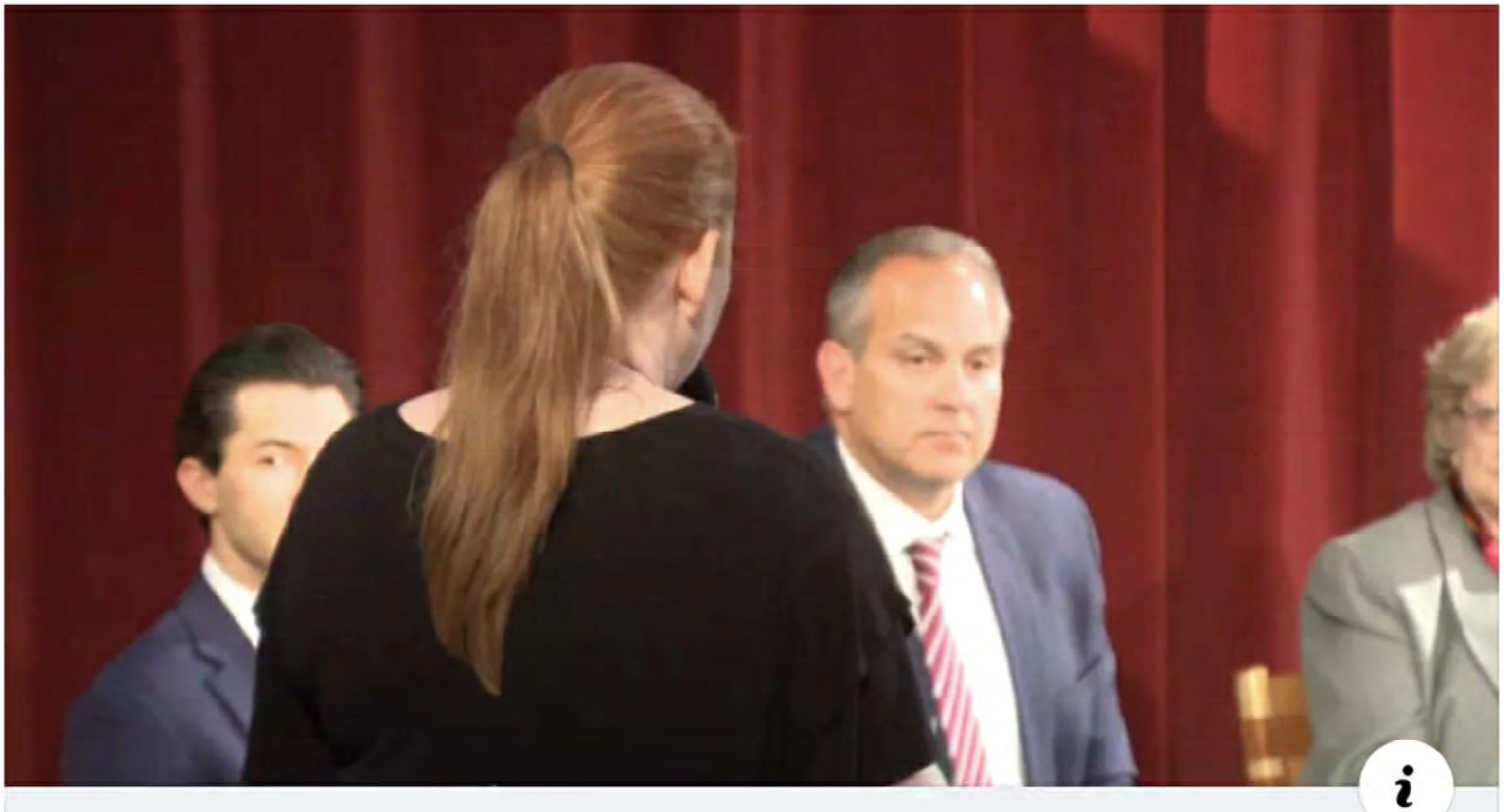
From: Karla Koutz [karlakoutz@yahoo.com]
Sent: 6/18/2019 8:22:03 PM
To: raelinc8@gmail.com
Subject: Another typo
Attachments: IMG_6778.jpg; Untitled attachment 12358.txt

T-Mobile LTE 5:19 PM 52%

Paul Padda Law, PLLC

Yesterday at 6:00 AM ·

Sometimes recovery is two steps forward, one step back. First, a long promised pay raise for teachers, than 170 dean positions vanished overnight. Now principals are pushing back. The path to recovery takes hard work. Do you stand with our educators? Show your support in the comments.



KTNV.COM

Superintendent responds to no confidence vote

Dozens of middle and high school principals have gi...

Sent from my iPhone

From: Ruth Cohen [raelinc8@gmail.com]
Sent: 6/19/2019 7:31:23 AM
To: Karla Koutz [karlakoutz@yahoo.com]
Subject: Re: PSP and his next PODCAST guest lol

who is that?

On Tue, Jun 18, 2019 at 8:18 PM Karla Koutz <karlakoutz@yahoo.com> wrote:

> Sent from my iPhone

From: Karla Koutz [karlakoutz@yahoo.com]
Sent: 6/19/2019 10:23:29 PM
To: Ruth Cohen [raelinc8@gmail.com]
Subject: Re: PSP and his next PODCAST guest lol

The picture is of Paul (hair looks awful, by the way lol). He is interviewing the principal of Cheyenne HS. I think he donated to this one I'd have to check.

Aloha

Sent from my iPhone

On Jun 19, 2019, at 4:31 AM, Ruth Cohen <raelinc8@gmail.com> wrote:

> who is that?
>
> On Tue, Jun 18, 2019 at 8:18 PM Karla Koutz <karlakoutz@yahoo.com> wrote:
>
> Sent from my iPhone

From: Karla Koutz [karlakoutz@yahoo.com]
Sent: 8/8/2019 4:51:07 PM
To: raelinc8@gmail.com
Subject: Paul hired new attorney
Attachments: Image-1.jpg; Untitled attachment 12866.txt

T-Mobile LTE 1:50 PM 57%

Paul Padda Law, PLLC

16 mins ·

Paul Padda Law welcomes our newest Senior Case manager Fermin G. Serafin. Fermin has 10 years of personal injury experience and loves working for the people. In his free time Fermin enjoys making music and art and spending time with his two beautiful daughters.

Sent from my iPhone

From: Karla Koutz [kkoutz@settlemeyerlaw.com]
Sent: 8/8/2019 7:07:07 PM
To: raelinc8@gmail.com
Subject: I'm stalking you while at work lol :-)
Attachments: RLC Article March 2011 - Nevada Lawyer.pdf

Aloha RLC,

I found this article when I googled your name – I have seen it before but thought the comment what Paul says about you at the bottom of the last paragraph is quite humorous:

"Padda, whose parents immigrated from India in the 1960's, describes his new partner as very passionate about helping the underdog. "She sees injustice and she'll speak up," he says ….."and bless her for being that way."

Oh….bless you Ruth, bless you ☺

Kind regards,
Karla

SettleMeyer Law

Karla Koutz | LEGAL ASSISTANT

Main 808.540.2400 | *Direct* 808.540.2405 | *Fax* 808.694.3050
Pioneer Plaza – Suite 1800 | 900 Fort Street Mall | Honolulu, HI 96813
kkoutz@settlemeyerlaw.com | www.settlemeyerlaw.com

BACK STORY

RUTH COHEN, FROM JERSEY GIRL TO NEVADA LAWYER

BY JANE ANN MORRISON

Ruth Cohen abandoned New Jersey for Nevada because a friend told her there were more opportunities for young lawyers, especially women, in Las Vegas. That certainly turned out to be true for Cohen, who became one of the first 100 women admitted to the State Bar of Nevada.

Photo by Beau Sterling

The pretty, feisty 27-year-old with the raucous laugh arrived here in 1976 and, three months later, after passing the Nevada bar exam, she became the fourth woman ever hired in the Clark County District Attorney's office, headed, at the time, by George Holt.

In 1978, U.S. Attorney Mahlon Brown named her one of the first female federal prosecutors in Nevada's history, relying on a recommendation from Lawrence Leavitt, the man assigned to mentor her in the DA's office.

"I had confidence in her and it had nothing to do with her gender; she made a strong impression," says Leavitt, who was also with the U.S. attorney's office and is now a federal magistrate judge. "She was a brash young woman from New Jersey. She was a very quick study and she did not require extensive mentoring."

In both the DA's office and the U.S. attorney's office, Cohen was a zealous advocate. Nobody was going to push her around. "Ruth had a tough-guy New Jersey exterior but inside was quite soft and sensitive. That's why it was easy to look at her as an excellent prospect for the U.S. attorney's office," Leavitt recalled.

Cohen remembers that, on her first day as a federal prosecutor, the woman assigned as Cohen's legal assistant said she didn't know if it was going to work out, because she'd never had to work for a woman before. "I decided that rather than be a radical feminist as I had been in New Jersey, I thought it was best to shut up and do the job and gain people's trust that way," Cohen recalls. "And that's what I did."

Cohen says she wasn't treated as an equal when she first became a federal prosecutor. "I had to prove myself; the others did not have to," she explains. "I had to accept cases given to me, even if they were hand-me-downs from the guys, and I did it."

Cohen worked as a federal prosecutor for 29 years on both the criminal and civil sides. However, it was her criminal cases that grabbed the headlines. In 1978, she prosecuted Pahrump land developer Norman Dacus for violating federal land sales laws by making false claims to buyers. Folks in Pahrump are still waiting for that 20-acre lake Dacus promised would be coming.

Cohen's then-boss was quoted in a 1979 news story saying that the Dacus case was the most difficult and technical case his office had prosecuted up to that time. The headline read, "Ruth Cohen Proves Herself in the Tough Ones." At the time that story was published, she had been a federal prosecutor for only 18 months.

Cohen also successfully prosecuted the Reverend Albert Dunn, an African-American minister and civil rights activist, for providing materials in a $10 million counterfeit operation. In the mid-1980s, she successfully prosecuted brothers Terrance and Dennis Nikrasch in a massive slot scam running in Las Vegas between 1976 and 1979. Some $10 million in slot jackpots had been rigged.

Cohen entered private practice after retiring from the U.S. Attorney's office in 2007. In January of this year, she opened a new law firm with former federal prosecutor, Paul Padda. The firm of Cohen & Padda focuses on personal injury, employment discrimination, sexual harassment, immigration and criminal defense. It's a rarity: one of very few law firms co-owned and operated by a woman and a minority.

Padda, whose parents immigrated from India in the 1960s, describes his new partner as very passionate about helping the underdog. "She sees injustice and she'll speak up," he says. ..."and bless her for being that way."

EDITOR'S NOTE: Jane Ann Morrison has previously authored profiles on Ruth Cohen's career for the *Las Vegas Review-Journal*. She added to her previous work for *Nevada Lawyer* magazine. ■

JANE ANN MORRISON has worked for newspapers since 1971. Publications she has written for include the *Christian Science Monitor*, the *Southwest Times Record*, the *Las Vegas Review-Journal* and the *Reno Gazette-Journal*. She became the first female general interest columnist for the *Review-Journal* in 2003. She has lived in Las Vegas since 1976.

From: Ruth Cohen [raelinc8@gmail.com]
Sent: 8/9/2019 2:20:23 PM
To: Karla Koutz [karlakoutz@yahoo.com]

After Paul had his best friend Seth lie under oath about this case and then his answers to Rogs makes it look like everyone at C&P was involved in the Moradi case??? They will say I knew everything and had full access to the cases....especially Moradi which I didn't.I only worked one day a week???Very upsetting....

From: Karla Koutz [karlakoutz@yahoo.com]
Sent: 8/9/2019 2:41:10 PM
To: Ruth Cohen [raelinc8@gmail.com]

What? That is ridiculous! The Moradi case was being handled by the California firm that was co-counseling with C&P. It was only Ashley and I that really had any involvement while that case was going on because the CA firm was handling just about everything that had to be done. I couldn't believe it when Paul told me and Ashley on a few occasions not to show you any client disbursement sheets. That put us in an awkward position!

You were handling the employment cases and the consultations when they were scheduled the one (maybe two) days you came into the office. It's unfortunate that those dried up, because the clients (and potential clients) really enjoyed working and speaking with you! It use to bother me how Paul would tell me to interrupt your consultations after 20 minutes! Rude!!

I'm sorry it's spinning like this - I can't believe he would lie so blatantly when we know that's not how it was at all!

On Friday, August 9, 2019, 11:20:37 AM HST, Ruth Cohen <raelinc8@gmail.com> wrote:

After Paul had his best friend Seth lie under oath about this case and then his answers to Rogs makes it look like everyone at C&P was involved in the Moradi case??? They will say I knew everything and had full access to the cases....especially Moradi which I didn't.I only worked one day a week???Very upsetting....

From: Karla Koutz [karlakoutz@yahoo.com]
Sent: 8/9/2019 11:28:22 PM
To: raelinc8@gmail.com
Subject: Another new hire
Attachments: Image-1.jpg; Untitled attachment 12939.txt

Another scapegoat he' s getting to do all of the work || Wow, 2 new hires in one week!! Must be doing well to be able to pay these two bozos

Paul Padda Law, PLLC
7 hrs ·

Paul Padda Law is excited to welcome our newest attorney Suneel J. Nelson, Esq. Suneel has been a lawyer and litigator in Nevada since his graduation from law school and passage of the Nevada Bar in 2010. Suneel is at home in the courtroom, and has tried numerous cases in front of juries, judges, and arbitrators. Suneel enjoys biking and tennis and spending time with his son, Fox.

Sent from my iPhone

From: Karla Koutz [karlakoutz@yahoo.com]
Sent: 10/7/2019 4:49:21 PM
To: raelinc8@gmail.com
Subject: Patty

Hi Ruth,

So this is what I recall from Tammy' s conversation:

Non compete agreement (can not work in same business field for 3 years after leaving Profitboosters)

Charged clients "high fees" to clean up and get accounting going - then Tammy stays and continues doing acct work. Patty charges were too much, client cancelled once Tammy fixed it. Clients chose to bring in own people and have Tammy train.
Patty blamed Tammy for losing clients, told Tammy she had to reduce her hourly rate. Tammy refused. Shortly after, Patty fired Tammy for "her fault losing clients" on Dec 21, 2015.

Tammy gets numerous phone calls from Profitbooster clients asking where she is, why not at the office doing accounting?
Patty never communicated with clients that Tammy wasn' t going to be there anymore, she was let go. Tammy has to explain to EACH client what happened. Clients wanted to hire Tammy, but due to non compete, Tammy could not accept.

Mike Davidson has personal friend, who is merging with another attorney. Has to close books before merging. Tammy was fired right before the merger was complete. That client contacted Tammy because no return call from Patty. Tammy explained to him what happened, he said "Nope, that' s can' t be" . And then Patty reaches out to Tammy to finish his books (1 yr) and then done with assignment.

Paul' s office contacted Tammy (Claudia) via voice mail at the beginning of May to "send her flowers for her birthday" . Claudia wanted Tammy' s address. More than 4 years after Tammy got fired. She never called Paul' s office back.

That' s it for now. Sorry so vague. I would' ve taken notes had I known

Sent from my iPhone

From: Karla Koutz [karlakoutz@yahoo.com]
Sent: 10/10/2019 3:21:14 PM
To: raelinc8@gmail.com
Subject: Fwd: Patty Deed
Attachments: Patty Davidson - Property.pdf; Untitled attachment 14290.htm

Sent from my iPhone

Begin forwarded message:

> **From:** Karla Koutz <karla@leu-okuda.com>
> **Date:** October 10, 2019 at 12:19:16 PM HST
> **To:** "karlakoutz@yahoo.com" <karlakoutz@yahoo.com>
> **Subject: Patty**

Inst #: 20190716-0000619
Fees: $40.00
RPTT: $1147.50 Ex #:
07/16/2019 10:08:02 AM
Receipt #: 3765397
Requestor:
PATRICIA DAVIDSON
Recorded By: ANI Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: FRONT COUNTER
Ofc: MAIN OFFICE

RECORDING REQUESTED BY:
Patricia J Davidson
322 Karen Avenue, #1401
Las Vegas, NV 89109

WHEN RECORDED MAIL TO and
SEND TAX STATEMENTS TO:
Patricia J Davidson
322 Karen Avenue, #1401
Las Vegas, NV 89109

R.P.T.T. $ 1,147.50 (AP)
AP.N. ~~1176-18-515-050~~
176-18-515-050

GRANT, BARGAIN, SALE DEED

THE INDENTURE WITNESSETH: That **Damon D Blankman, a married man as his sole and separate property**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do(es) hereby Grant, Bargain, Sale and

Convey to **Patricia J Davidson, a single woman**

all that real property situation in the City of Las Vegas, Clark County, State of Nevada, bounded and described as follows ("the Property"):

Parcel I:

Lot 448 of Huntington Village B Unit 2 at Rhodes Ranch, as shown by map thereof on file in Book 122 of plats, Page 17, in the Office of the County Recorder of Clark County, Nevada.

Reserving therefrom a private access easement over the South five (5) feet of said land for the benefit of Lot 449.

Parcel II:

An easement for ingress and egress over and across all those areas shown as private drives on the final of Huntington Village B Unit 1 at Rhodes Ranch.

Parcel III:

A private access easement over and across the South five (5) feet of Lot 447 for the benefit of said land.

SUBJECT TO:
1. Taxes for the fiscal year 2018-2019
2. Covenants, Conditions, Reservations, Right, Rights of Way and Easements now of record.

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

By: _____

Name: Damon D Blankman

Witnessed our hand this 28th day of March, 2019

STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on March 28, 2019

By Damon D Blankman.

Notary Public: _____

My Commission Expires: 02/27/2021

MARY E. GARCIA RUIZ
Notary Public, State of Nevada
Appointment No. 13-10312-1
My Appt. Expires Feb 27, 2021

EXHIBIT 'A'

Parcel I:

Lot 448 of Huntington Village B Unit 2 at Rhodes Ranch, as shown by map thereof on file in Book 122 of plats, Page 17, in the Office of the County Recorder of Clark County, Nevada.

Reserving therefrom a private access easement over the South five (5) feet of said land for the benefit of Lot 449.

Parcel II:

An easement for ingress and egress over and across all those areas shown as private drives on the final of Huntington Village B Unit 1 at Rhodes Ranch.

Parcel III:

A private access easement over and across the South five (5) feet of Lot 447 for the benefit of said land.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 176-18-515-050
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 225,000.00
   b. Deed in Lieu of Foreclosure Only (value of property (0.00)
   c. Transfer Tax Value: $ 225,000.00
   d. Real Property Transfer Tax Due $ 1,147.50

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section _____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor (Seller)

Signature _____ Capacity: Grantee (Buyer)

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Damon D Blakeman	Print Name: Patricia J Davidson
Address: 556 Tauntan Street	Address: 322 Karen Avenue, Unit 1401
City: Las Vegas	City: Las Vegas
State: Nevada Zip: 89178	State: Nevada Zip: 89109

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name:	Escrow #
Address:	
City:	State: Zip:

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

From: Ruth Cohen [raelinc8@gmail.com]
Sent: 11/13/2019 10:31:14 AM
To: Karla Koutz [karlakoutz@yahoo.com]
Subject: Fwd: Needles Calendar Reports (15438-1) [IWOV-iManage.FID1062698]
Attachments: PADDA00005788-5838 - Needles Calendar Audit Report re Ruth Cohen Entries from 01-01-2016 to 12-31-2017 (CONFIDENTIAL).pdf

Speaks for itself.....

---------- Forwarded message ---------
From: **Liane K. Wakayama** <LWakayama@maclaw.com>
Date: Wed, Nov 13, 2019 at 9:50 AM
Subject: Needles Calendar Reports (15438-1) [IWOV-iManage.FID1062698]
To: Ruth Cohen <raelinc8@gmail.com>
Cc: Jared M. Moser <jmoser@maclaw.com>, Julia Rodionova <jrodionova@maclaw.com>, Javie-Anne Bauer <jbauer@maclaw.com>

Ruth,

In a separate email, ask Karla what this report shows. Jared needs to know for the Needles depo on 11/20. I think this just shows somebody putting things on your calendar in Needles, but please confirm. Also, when it references your name under "Staff Created" or "Staff Modified," what does that mean?

Thanks,
Liane

EXHIBIT 2

EXHIBIT 2

DECLARATION OF MICHAEL HOLPUCH

I, Michael Holpuch, make the following declaration.

1. I am over the age of 18 years and have personal knowledge of the facts stated herein. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I earned a Bachelor of Science in Computer Science and Engineering (B.S.E.) from The Ohio State University in 2003. While earning my degree, I specialized in hardware and software systems. See Curriculum Vitae of Michael Holpuch.

3. I am currently employed by Holo Discovery ("Holo") as the Principal of Technology. Id.

4. Holo is a litigation support services company based in Las Vegas, Nevada which specializes in electronic discovery management, storage, recovery, retrieval and extraction of data from computers and forensic analysis.

5. In my capacity as the Principal of Technology, I manage the e-Discovery Team at Holo. Id.

6. Besides managing e-discovery, in my capacity as Principal of Technology, I have been hired to serve as an expert concerning digital forensic examinations and acquisitions. Id.

7. Finally, as the Principal of Technology, I am a custodian of records for Holo. Id.

8. In January 2020, Holo was engaged by Marquis Aurbach Coffing in the Cohen v. Padda matter to perform a collection of data of emails from the email account "raelinc8@gmail.com", create a forensic image of a laptop belonging to Ruth Cohen, and to create an image of a cell phone belonging to Ruth Cohen.

9. On January 2nd, 2020, Holo was given username and password access to the email account "raelinc8@gmail.com". Emails were collected from Gmail using Aid4Mail eDiscovery v. 4.64. A total of "3,511" emails were collected.

10. On January 9th, 2020, an Apple iPhone with S/N "DNPH43KLDTFC" and a Toshiba laptop with S/N "ZF048094C" were received into Holo's possession from Ruth Cohen and chain of custody was established.

11. An "Advance Logical Method 1" image of the iPhone was created using Cellebrite UFED Physical Analyzer v. 7.0.26.206.

12. A forensic image of the Toshiba laptop was created using Sumuri Paladin 7.0. The forensic image was verified to be identical to the data on the hard drive of the Toshiba laptop using both MD5 and SHA1 hashing algorithms.

13. After the imaging of the devices completed successfully, Holo exported out emails found on the forensic image of the laptop in the date range "February 28th, 2019" to present. A total of "4" emails were exported from the forensic image. Both active files and data recovered from unallocated space on the forensic image were searched.

14. Due to data access restrictions on iPhone iOS software, it was not possible to collect emails as part of the imaging process of the iPhone, and thus no emails could be exported.

15. On January 3rd, 2020 a list of participants found in the Email From, To, CC, and BCC fields from the Gmail emails in the date range "February 28th, 2019 – Present" was provided to Marquis Aurbach Coffing in order to identify emails from relevant parties.

16. Most records in the participant list contained one email address per line. However, one record contained two emails addresses separated by a semi-colon listed as "karlakoutz@yahoo.com; kkoutz@settlemeyerlaw.com".

17. On January 3rd, 2020, Marquis Aurbach Coffing returned the participant list with records highlighted in green to then use to search for emails to be made available to Marquis Aurbach Coffing for review, which included email addresses of staff and attorneys at Marquis Aurbach Coffing and Campbell & Williams. Among the list of highlighted records was the line containing "karlakoutz@yahoo.com; kkoutz@settlemeyerlaw.com".

18. Employees at Holo Discovery did not realize that the "karlakoutz@yahoo.com; kkoutz@settlemeyerlaw.com" contained a semi-colon, and used the line exactly as listed to search

for emails. As a result, no emails were returned containing "karlakoutz@yahoo.com" or "kkoutz@settlemeyerlaw.com" unless they had contained an email address from another line of the green highlighted records.

19. Using the email addresses from the green highlighted records as search terms, including the incorrect "karlakoutz@yahoo.com; kkoutz@settlemeyerlaw.com" term returned 1,086 emails and attachments. These 1,086 emails and attachments were then made available for Marquis Aurbach Coffing on January 3rd, 2020. However, as stated earlier, no emails containing "karlakoutz@yahoo.com" or "kkoutz@settlemeyerlaw.com" were included unless they had contained an email address from another line of the green highlighted records

20. On January 9th, 2020, Holo was provided with two lists of witness names found in the files "2020-01-08 Defendants_ Thirty-Fifth Supplemental Disclosures.PDF" and "2020-01-06 Plaintiff's Fourteenth Supplement to Initial Disclosure of Witnesses and Documents.PDF". From these two lists, Holo created a list of search terms using the names, business names, and addresses. The search term list has been included as Exhibit A.

21. The list of search terms was then used to search for emails found within the Gmail and Laptop emails that are in the date range "February 28th, 2019 - Present". A total of "67" additional emails and attachments were found that are responsive to the search terms, but that were not originally provided on January 3rd, 2020.

22. Among the "67" additional emails and attachments are "43" emails and attachments that contain "karlakoutz@yahoo.com" or "kkoutz@settlemeyerlaw.com" in the Email From, Email To, Email CC, or Email BCC fields.

23. On January 15th, 2020, the "67" additional emails and attachments were then made available for Marquis Aurbach Coffing to review.

24. To reiterate, the emails that were found in the subsequent search were not provided to Marquis Aurbach Coffing in the January 3rd, 2020 review due to a typographical error by a Holo technician. Therefore, Marquis Aurbach Coffing had produced all the relevant emails that Holo

provided to them for review in their initial production. There was no fault by the lawfirm and Holo Discovery accepts full responsibility for the typographical error.

25. Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 15th day of January, 2020.

Michael Holpuch

Ruth w/2 Cohen
"Marquis Aurbach Coffing"
Paul w/2 Padda
"Holland & Hart LLP"
Patricia w/2 Davidson
Joshua w/2 Ang
Ashley w/2 Pourghareman
"9612 Scrub Jay Court"
Mary w/2 Garcia-Ruiz
"9555 Hillwood Drive, 2nd Floor"
Mark w/2 Kane
"2700 E. Patrick Lane, Suite 1"
Thomas w/2 Winner
"1117 S. Rancho Drive"
Seth w/2 Cogan
"42 Shemesh"
David w/2 Dial
"6385 S. Rainbow Boulevard, Suite 400"
Lee w/2 Roberts
Paul w/2 Shpirt
"6385 S. Rainbow Boulevard, Suite 600"
Martin w/2 Kravitz
"8985 S. Eastern Avenue, Suite 200"
Terry w/2 Coffing
"10001 Park Run Drive"
Betty w/2 Jackson
Joel w/2 Selik
"1050 Indigo Drive, Suite 112"
Lawrence w/2 Leavitt
"3800 Howard Hughes Parkway, 11th Floor"
Daniel w/2 Kim
"5940 S. Rainbow Boulevard"
Robert w/2 Johnson
"1979 Chelsea Jo Lane"
Kathleen w/2 Bliss
"1070 W. Horizon Ridge Parkway, Suite 202"
Kathryn w/2 Landreth
"1 East First Street, #1007"
Daisy w/2 Caro
"Needles, Inc."
"10461 Mill Run Circle, #900"
Shan w/2 Padda
"6280 S. Valley View Boulevard, #412"
"Henness & Haight"
"8972 Spanish Ridge Avenue"
"Sterling & Tucker"
"201 Merchant Street, #950"
"Nevada Board of Continuing Legal Education"

“laura@nvcleboard.org”
"457 Court Street"
"State Bar of Nevada"
“michaelgu@nvbar.org”
"3100 W. Charleston Boulevard, #100"
Marlenne w/2 Casillas
Michael w/2 Lafia
"6830 S. Rainbow Boulevard, #200"
Zachary w/2 Robbins
"3200 W. Alexander Road"
Linda w/2 Louis
"1143 Evening Ridge Street"
Jason w/2 Hahn
Cass* w/2 Bevan
Dav* w/2 Talbot
Michael w/2 Dorris
Kelly w/2 Lane
"425 Filbert Lane, #415A"
Marcus w/2 Williams
"133 Ultra Drive"
Kristopher w/2 Wrightnour
"375 Warm Springs Road, Suite 102"
"Wells Fargo Bank, N.A."
"1900 Village Center Circle"
Mark w/2 Henness
(Robert or Bobby) w/2 Bennett
"3300 W. Sahara Avenue, Suite 450"
Paul w/2 Janda
"2010 Wellness Way, Suite 306"
Liane w/2 Wakayama
Paul w/2 Padda
Stephen w/2 Peek
Pat* w/2 Davidson
Tamara w/2 Peterson
"Peterson Baker, PLLC"
"Panish Shea & Boyle, LLP"
Ian w/2 Samson
"11111 Santa Monica Blvd., Suite 700"
Rahul w/2 Ravipudi
Wayne w/2 Price
"8923 Monteloma Way"
Ashley w/2 Pourghahreman
"9612 Scrub Jay Ct"
Karla w/2 Koutz
"47-266 Kamehameha Highway"
Tammy w/2 Borowski
Gregory w/2 Addington
"100 West Liberty Street, Suite 600"

Steven w/2 Parsons
"10091 Park Run Drive, Suite 200"
Kulwant w/2 Padda
"259 Little Minah Ct."
Sherry w/2 Prine
"169 Adomeit Drive"
Carey w/2 Reno
"7600 Painted Dunes Drive"
Jefrey w/2 Appel
"10675 Fairfield Avenue"
Rachel w/2 Solow
"1850 E. Sahara Ave., Suite 107"
David w/2 Oancea
"Vegas Dave"
Mary w/2 Johnson
Mindy w/2 Pallares
"1820 E. Sahara Avenue, Suite 110"
John w/2 Shannon
"6130 Elton Avenue, 2nd Floor"
Tarquin w/2 Black
Louis w/2 Garfinkel
"1671 W. Horizon Ridge Pkwy, Suite #230"
Eglet Law Group, LLP
Robert w/2 Eglet
"400 S. Seventh Street, Suite 400"
Robert w/2 Adams
"Hui Lim Ang"
Benson w/2 Lee
Matthew w/2 Stumpf
Katie ← No last name
Claudia ← No last name
Chantay ← No last name
"Kathleen Annunziata Nicolaides, B.A., D-ABFDE"
"Associated Forensic Laboratory LLC"
"24 W. Camelback Rd., #A420"
(Mike or Michael) w/2 Holpuch
"Holo Discovery"
"3016 West Charleston Blvd #170"
Patricia w/2 Chavez
Kathy w/2 Campagna
"Campagna & Company"

EXHIBIT 3

EXHIBIT 3

Ryan A. Semerad

From: Steve Peek
Sent: Thursday, August 15, 2019 4:05 PM
To: Liane K. Wakayama
Cc: Ryan A. Semerad; Jared M. Moser; Julia Rodionova; Javie-Anne Bauer
Subject: RE: Cohen v. Padda (Deposition Dates) (15438-1) [IWOV-iManage.FID1062698]

No I will not stipulate to no inference of bias or any other negative inference but I am fine if you bring her to Las Vegas. I guess you will have to bring your Motion, however, I fail to see the basis for such a Motion.

From: Liane K. Wakayama <LWakayama@maclaw.com>
Sent: Thursday, August 15, 2019 2:49 PM
To: Steve Peek <SPeek@hollandhart.com>
Cc: Ryan A. Semerad <RASemerad@hollandhart.com>; Jared M. Moser <jmoser@maclaw.com>; Julia Rodionova <jrodionova@maclaw.com>; Javie-Anne Bauer <jbauer@maclaw.com>
Subject: RE: Cohen v. Padda (Deposition Dates) (15438-1) [IWOV-iManage.FID1062698]

If Ms. Cohen pays for Ms. Koutz's travel expenses for her deposition, your clients will stipulate to no inference of bias or any other negative inference for doing so.

MARQUIS AURBACH COFFING

Liane K. Wakayama, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.207.6078
f | 702.856.8917
lwakayama@maclaw.com | vcard
maclaw.com

From: Steve Peek [mailto:SPeek@hollandhart.com]
Sent: Thursday, August 15, 2019 2:43 PM
To: Liane K. Wakayama
Cc: Ryan A. Semerad; Jared M. Moser; Julia Rodionova; Javie-Anne Bauer
Subject: RE: Cohen v. Padda (Deposition Dates) (15438-1) [IWOV-iManage.FID1062698]

To what are you asking me to agree?

From: Liane K. Wakayama <LWakayama@maclaw.com>
Sent: Thursday, August 15, 2019 2:41 PM

To: Steve Peek <SPeek@hollandhart.com>
Cc: Ryan A. Semerad <RASemerad@hollandhart.com>; Jared M. Moser <jmoser@maclaw.com>; Julia Rodionova <jrodionova@maclaw.com>; Javie-Anne Bauer <jbauer@maclaw.com>
Subject: RE: Cohen v. Padda (Deposition Dates) (15438-1) [IWOV-iManage.FID1062698]

Steve,

Do we have an agreement or do we need to file a motion? If we don't hear from you by noon tomorrow, we will file our motion.

Thanks,
Liane

MARQUIS AURBACH COFFING

Liane K. Wakayama, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.207.6078
f | 702.856.8917
lwakayama@maclaw.com | vcard
maclaw.com

From: Liane K. Wakayama
Sent: Wednesday, August 14, 2019 11:43 AM
To: 'Steve Peek'
Cc: Ryan A. Semerad; Jared M. Moser; Julia Rodionova; Javie-Anne Bauer
Subject: RE: Cohen v. Padda (Deposition Dates) (15438-1) [IWOV-iManage.FID1062698]

NRS 50.225 does require a witness to reimbursed for travel expenses. Your clients refuse to split costs or reach a stipulation if Ms. Cohen covers these costs. Instead, it appears your clients want to create an inference of bias or drive up the costs for us to all travel to Hawaii. So, we are left with no option but to seek a protective order unless your clients reconsider.

It is actually the lack of legal authority to support your position, not mine. Where is an inference of bias to the jury based on the payment of travel expenses admissible evidence when an out-of-state witness is statutorily entitled to have their travel expenses covered?

MARQUIS AURBACH COFFING

Liane K. Wakayama, Esq.
10001 Park Run Drive

Las Vegas, NV 89145
t | 702.207.6078
f | 702.856.8917
lwakayama@maclaw.com | vcard
maclaw.com

From: Steve Peek [mailto:SPeek@hollandhart.com]
Sent: Wednesday, August 14, 2019 11:32 AM
To: Liane K. Wakayama
Cc: Ryan A. Semerad; Jared M. Moser; Julia Rodionova; Javie-Anne Bauer
Subject: RE: Cohen v. Padda (Deposition Dates) (15438-1) [IWOV-iManage.FID1062698]

I am not opting to travel to Hawaii and add costs to this case. You are free to bring Ms. Koutz to Nevada for a deposition and avoid the costs of travel to Hawaii and I am within my rights to reserve the right to question Ms. Koutz as to who is paying for her travel to come to Nevada. Your citation to NRS 50.225 is inapposite to this case and this issue. I am still waiting for any authority that you may have to support your position and avoid motion practice.

From: Liane K. Wakayama <LWakayama@maclaw.com>
Sent: Wednesday, August 14, 2019 10:02 AM
To: Steve Peek <SPeek@hollandhart.com>
Cc: Ryan A. Semerad <RASemerad@hollandhart.com>; Jared M. Moser <jmoser@maclaw.com>; Julia Rodionova <jrodionova@maclaw.com>; Javie-Anne Bauer <jbauer@maclaw.com>
Subject: RE: Cohen v. Padda (Deposition Dates) (15438-1) [IWOV-iManage.FID1062698]

Steve,

In order to control costs, the issue is that the parties can split Ms. Koutz's travel expenses or Ms. Cohen has offered to pay them provided there is no negative inference (bias, prejudice, etc.). Your clients are just opting to have everyone travel to Hawaii and incur exorbitant costs for no reason. Any witness is entitled, as a matter of law, to travel expenses when they voluntarily appear to testify. See NRS 50.225. Plus, the costs may shift depending on who the prevailing party is. I understand that we can address this down the road through MIL practice, but we are trying to eliminate the need to do that and resolve this issue prior to the deposition.

Please let me know if your clients are willing to stipulate.

Thanks,
Liane

MARQUIS AURBACH COFFING

Liane K. Wakayama, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.207.6078

f | 702.856.8917
lwakayama@maclaw.com | vcard
maclaw.com

From: Steve Peek [mailto:SPeek@hollandhart.com]
Sent: Wednesday, August 14, 2019 9:26 AM
To: Liane K. Wakayama
Cc: Ryan A. Semerad; Jared M. Moser; Julia Rodionova; Javie-Anne Bauer
Subject: Re: Cohen v. Padda (Deposition Dates) (15438-1) [IWOV-iManage.FID1062698]

Thank you for agreeing to look for another date for Ms. Davidson's deposition.
With respect to Ms. Koutz's deposition, please send me any legal authority that you have which holds, as a matter of law, that inquiry into whether a party's enlistment of a witness who is beyond the subpoena powers of a Nevada court to appear for a deposition in Nevada and the payment for travel costs by that party is not fair game and cannot be considered by a jury as bias in favor of the party paying for the witness'. If you have such authority, I will be happy to revisit the subject with my client.
Obviously you are free to pay for Ms. Koutz to come to Las Vegas and take her deposition on September 9 without the need for motion practice and then visit the subject with the court in a MIL.

Sent from my iPhone

On Aug 14, 2019, at 8:35 AM, Liane K. Wakayama <LWakayama@maclaw.com> wrote:

> Steve,
>
> I am not available on August 30th, so we will see if September 4th works for Ms. Davidson and her counsel.
>
> As for Ms. Koutz, I expressed to you last week that in order to control costs, we would like to take her deposition here in Las Vegas. Ms. Cohen has offered to pay her travel costs provided that your clients stipulate that there are no negative inferences in doing so. This is not out of the ordinary and a reasonable request, especially since nobody at my firm has even spoken to Ms. Koutz. You initially agreed via phone on July 31st, but you just had to confirm with your clients. Later, your clients elected to all fly to Hawaii (an exorbitant and unnecessary cost). When I asked that you reconsider or make yourself available for a conference call with Judge Gonzalez, you told me to file a motion. So, we are preparing to do so unless your clients change their mind. Right now, the plan is to depose Ms. Koutz in Las Vegas on September 9th pending our request for a protective order concerning the allocation of costs. If your clients are willing to stipulate as originally agreed, please let us know by the end of business today.
>
> Thank you,
> Liane
>
> **<image001.jpg>**
>
> **Liane K. Wakayama, Esq.**
> 10001 Park Run Drive
> Las Vegas, NV 89145
> t | 702.207.6078
> f | 702.856.8917

lwakayama@maclaw.com | vcard
maclaw.com

From: Steve Peek [mailto:SPeek@hollandhart.com]
Sent: Tuesday, August 13, 2019 6:53 PM
To: Liane K. Wakayama; Ryan A. Semerad
Cc: Jared M. Moser; Julia Rodionova; Javie-Anne Bauer
Subject: RE: Cohen v. Padda (Deposition Dates) (15438-1) [IWOV-iManage.FID1062698]

I now have your notice to take deposition of Patty Davidson for August 29. I do have an evidentiary hearing in front of Judge Gonzalez which is scheduled for August 26 – 28 but may bleed into August 29. I would prefer August 30 or September 4. Perhaps when you speak with Ms. Davidson's attorney, the two of you can agree on August 30 or September 4.

I asked you earlier to confirm Ms. Koutz's deposition for September 9 and I am waiting for your response. Please confirm date and location.

From: Liane K. Wakayama <LWakayama@maclaw.com>
Sent: Friday, August 9, 2019 8:54 AM
To: Steve Peek <SPeek@hollandhart.com>; Ryan A. Semerad <RASemerad@hollandhart.com>
Cc: Jared M. Moser <jmoser@maclaw.com>; Julia Rodionova <jrodionova@maclaw.com>; Javie-Anne Bauer <jbauer@maclaw.com>
Subject: Cohen v. Padda (Deposition Dates) (15438-1) [IWOV-iManage.FID1062698]

Steve,

When we spoke on July 31st, you informed me that you would be providing dates for Patty Davidson's deposition as well as Mr. Padda and the 30(b)(6) designee. We have not heard back from you.

We also discussed the deposition of Karla Koutz who lives in Hawaii. I proposed three options for Ms. Koutz's travel: (1) split equally between our clients; (2) Ms. Cohen would bear the cost provided that your clients enter into a stipulation that there will be no negative inferences in doing so (which would also include her trial testimony); or (3) we can all go to Hawaii. Please let us know what option your clients are willing to agree to.

In the meantime, we will be noticing Ms. Davidson's deposition for August 29th at 9:30 a.m. and Ms. Koutz's deposition for September 9th at 9:30 a.m.

Thank you,
Liane

<image001.jpg>

Liane K. Wakayama, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.207.6078

f | 702.856.8917
lwakayama@maclaw.com | vcard
maclaw.com

Please consider the environment before printing this e-mail!

EXHIBIT 4

EXHIBIT 4

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

RUTH COHEN	.	
	.	
Plaintiff	.	CASE NO. A-19-795299-B
	.	
vs.	.	
	.	DEPT. NO. XI
PAUL PADDA, et al.	.	
	.	**Transcript of**
Defendants	.	**Proceedings**
. . . . .	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS FOR PROTECTIVE ORDERS

MONDAY, JULY 15, 2019

APPEARANCES:

FOR THE PLAINTIFF:	LIANE K. WAKAYAMA, ESQ. JARED MOSER, ESQ.
FOR THE DEFENDANTS:	JOSHUA H. REISMAN, ESQ. J. STEPHEN PEEK, ESQ. RYAN A. SEMERAD, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

LAS VEGAS, NEVADA, MONDAY, JULY 15, 2019, 9:57 A.M.

(Court was called to order)

THE COURT: Cohen versus Padda. Motions for protective order.

Mr. Peek, are you here on Cotter, too?

MR. PEEK: I am, Your Honor. I think you saved the best for last. So thank you.

THE COURT: Always.

MS. WAKAYAMA: Good morning, Your Honor. Liane Wakayama and Jared Moser appearing on behalf of the plaintiff, Ruth Cohen.

MR. REISMAN: Good morning, Your Honor. Josh Reisman on behalf of defendant Paul Padda Law PLC.

MR. PEEK: And good morning, Your Honor. Stephen Peek on behalf of Paul Padda. And, Your Honor, there are actually two motions here for protective order. One deals with subpoena duces tecums and the other one deals with the deposition of Ruth Cohen.

THE COURT: I want to start with the privilege issue first.

MR. PEEK: On the subpoena duces tecum?

THE COURT: I have concerns about that, because this is not my first inter-law-firm fight, and it is always tricky trying to get the information of a former client that is now part of the substantive issues of the dispute between the law

firms. It's always tricky, but it gets done. So I'm trying to figure out why you guys don't have a plan, because I know it's going to happen, but a plan for how it gets done in the least disruptive way.

MR. PEEK: Your Honor, because I -- I am prepared to argue that.

THE COURT: Great.

MR. PEEK: You and I went 'round and 'round in another proceeding about who holds the privilege.

THE COURT: We've done this many times.

MR. PEEK: You and I have done this many times.

THE COURT: The Supreme Court has helped us sometimes.

MR. PEEK: Right. So I'm not sure that I really -- and I don't want to spend a lot of time on this, because I'm more concerned about the other one. But I know the Court's concerned about this one because privilege issues are very important to this Court, they're very important to me.

THE COURT: They're important to all of us.

MR. PEEK: I don't hold the privilege.

THE COURT: Nope. The clients do.

MR. PEEK: The client holds the privilege. I have received communications from the clients with respect to they claim privilege. My hands are tied, really, with respect to that. I happen to -- I happen to share --

THE COURT: Who represents the clients?

MR. PEEK: There's a law firm out of New York for Mr. Morati --

THE COURT: Okay.

MR. REISMAN: Steven Goh [phonetic].

MR. PEEK: -- who represents --

MR. REISMAN: Akin Gump.

MR. PEEK: Yeah. That's just Morati. And I don't believe that the other two clients, Garland and Cochrane, are actually represented by counsel today, but the communications have come from the clients to Mr. Padda saying, I don't want you to release anything that is covered by attorney-client --

THE COURT: Is the appeal completed on the underlying case? Wasn't there a jury verdict?

MR. PEEK: There was a resolution. That's in the Morati case.

THE COURT: Okay.

MR. PEEK: That's been resolved. That was the $160 million --

THE COURT: That's resolved. So no more appellate issues in that --

MR. PEEK: No more appellate issues at all.

THE COURT: And the other case?

MR. PEEK: Garland was settled in 2016.

THE COURT: So remaining appellate issues.

MR. PEEK: No remaining appellate issues there.
THE COURT: Okay.
MR. PEEK: I believe that Cochrane has also been resolved, so there really aren't issues there, either.
THE COURT: Okay. So it's --
MR. PEEK: But, you know, I'm happy to discuss privilege issues with the Court.
THE COURT: But I want to talk about mechanism issues, because I do not know as I sit here today the extent of Ms. Cohen's involvement in the litigation of those underlying three claims, which would probably influence my decision on the mechanism as to how that information is reviewed. Because if she was actively acting as counsel at the time, as has been alleged, then I think we have different issues, because she was within the privilege at the time.
MR. PEEK: I understand what the Court says.
THE COURT: Yes.
MR. PEEK: The Court and I had a very long discussion in Sands-Jacobs --
THE COURT: We did.
MR. PEEK: -- where Mr. Jacobs said, I was the actual person with whom lawyers were communicating --
THE COURT: But this isn't a board of directors.
MR. PEEK: -- and I am entitled to have --
THE COURT: I don't have a company board of

directors here, Mr. Peek. I've got a bunch of lawyers.

MR. PEEK: I understand, Your Honor.

THE COURT: They've got different duties.

MR. PEEK: I think it's -- I think the analog is there. The Court may disagree with me. I appreciate the mechanism, so perhaps it's an evidentiary hearing as to Ms. Cohen can tell us more. I certainly --

THE COURT: It may be appropriate after her deposition.

MR. PEEK: That may well be more appropriate after her deposition, because she can then tell us what the nature of her involvement is, and they can then come before you with a declaration that is supported factually about what the nature of her involvement is. I will certainly oppose it. I'm going to take the same position there as I took in the Sands-Jacobs case, and this may well end up in the Supreme Court.

THE COURT: And I will --

MR. PEEK: But I --

THE COURT: Wait. And I will require you to give notice to the real party in interest, who are the holders of the privilege, so they have the opportunity to step in other than just having Mr. Padda's counsel tell us no. Because there are mechanisms that would protect their interests and still have the discoverable information produced if in fact I

decide it's discoverable. But I'm missing a step at this point.

MR. PEEK: Yeah.

THE COURT: Anything else?

MR. PEEK: No. And this only dealt with privileged information.

THE COURT: I know. That's why I started with it.

Ms. Wakayama.

MS. WAKAYAMA: Your Honor, Ms. Cohen was already deposed in a different matter. I believe it was late 2016 or early 2017 as it relates to her involvement in the Morati case. On top of that, and she did testify that she was counsel of record, if you even just pull up a docket as of today in the Cochrane, as well as the Morati cases, she's still listed as the attorney of record, retained. I can give you those case numbers if the Court would like, but --

THE COURT: Nope. I need something from her.

MS. WAKAYAMA: And she already was deposed, and they have the transcripts. They're the ones that went ahead and had that in the file when we went to go inspect what was supposed to be the whole file but wasn't in there. So they have this deposition. They know that she was involved in the intake especially with Morati. Now, what they fail to realize is that this was a partnership. So although she had been involved in the intake with Morati, she was wholly reliant on

Mr. Padda, her partner, to go ahead and be active in that case because they are --

THE COURT: I understand that issue, but --

MS. WAKAYAMA: Okay.

THE COURT: -- I'm trying to get to the point where I understand whether it is just an accounting issue as to moneys that I'm worried about so I have a special master but looking only at certain things, or if there are other substantive issues that are of concern because of the relationship of the parties.

MS. WAKAYAMA: Sure. And here's the thing. I think that there are two different pockets of information that are discoverable here. The first pocket of information as it relates to all of these cases -- and these are not just the only cases, but these are the three that we tried to subpoena -- is the fact that it goes to the knowledge. It goes to Mr. Padda's knowledge in making the misrepresentations that he did to Ms. Cohen. So we suspected that the piece of evidence that we actually gleaned from the public record, Dr. Stan Smith's report in Morati was provided to Mr. Padda in August of 2016. Only to him. And it values the case between 34 million -- or, excuse me, 74 million to $370 million. That's weeks before he induces her to sign this agreement where she gets $50,000 and he walks away with over 10 million. Because he's telling her the case is in the toilet. So we figured we had only

scratched the surface there. We sent out these subpoenas. Lewis Brisbois, Paul Shpirt, went ahead and complied in part pending today's hearing. And in that we find emails between Mr. Padda and Mr. Shpirt, who represented Wet & Wild, the defendant in the Garland case, where he reached a settlement for $215,000 on August 22nd, 2016, weeks before he gets Ms. Cohen to sign the agreement forfeiting her interests. It's amazing.

So we know that there's other gems out there. Whether or not that's relevant here, yes, because that shows a substantial need given that this is a fraud case. So we suggest that given the protective order that the Court entered the issue is is this information discoverable? Yes. Is the privilege going to be waived by having these co-counsel law firms and even opposing counsel produce these documents? No. Because Ms. Cohen was and is still counsel of record, and she understands what her duties are.

THE COURT: So can I stop you.

MS. WAKAYAMA: Sure.

THE COURT: I know it wasn't you, because you were still in law school at the time, and I think some of you guys were on it. But do you guys remember how the Mainor-Harris sorting out was arranged? I think you were counsel for one of them, Mr. Peek.

MR. PEEK: I was not, Your Honor, but I'm familiar.

It just goes back, you know --

THE COURT: It goes back before Ms. Wakayama was out of law school, because I know she was my extern and I wasn't on the bench -- or I'd just started on the bench when the litigation was active.

MS. WAKAYAMA: I think [unintelligible] had been involved in that.

THE COURT: I believe someone at your law firm was.

MR. PEEK: I did the Mainor Eglet -- excuse me, the Mainor Harris split-up.

THE COURT: Well, that's what I'm talking about.

MR. PEEK: Yeah. And I know that we -- sorry, Your Honor. I apologize.

THE COURT: It's okay. I'm just -- I can't -- I'm trying to tax -- because I remember yelling at all three of them at the same time, and one of few times is actually had to use my gavel and their first names to get them to stop yelling at each other.

MR. PEEK: Your Honor, it was not -- those were not privilege issues.

THE COURT: Some of them were, Mr. Peek, because of the client files. And I remember the issue related to Ms. Quon was the most related to what's going on here with the fraud allegations, and I'm trying to remember which mechanism we used and who was appointed, and for the life of me I cannot

remember, because it --

MR. PEEK: We'd have to ask Justice Cadish, I guess, as well, Your Honor, because she was my partner handling a lot of that litigation, as well.

THE COURT: Let's not go --

MR. PEEK: And we may end up -- we may end up asking her on this privilege issue, because --

THE COURT: You may end up asking her on it if she's on the panel.

MR. PEEK: Yeah.

THE COURT: But my recollection is -- and so I would like you -- before I decide this issue I want you to go back -- I think it was Phil Aurbach, if I remember.

MS. WAKAYAMA: I could be wrong, but that sounds familiar.

THE COURT: I think it was. It sounds familiar to me. Ask if Phil remembers what mechanism we used. Because my recollection is that I appointed a special master who had eyes only to review some of the more confidential issues related to the internal communications on the client files related to Ms. Quon because of some of the allegations that were being made among the partners. And there was also -- I believe it was George Swarz who handled the financial stuff related to -- no?

MR. PEEK: No. I -- yeah. Your Honor may have a different recollection. That may have been separate. But

I'll let the Court do the --

THE COURT: I don't remember, Mr. Peek.

MR. PEEK: We certainly did with David -- you did with David Wall with respect to the Wynn litigation. You remember that we had David Wall appointed on that one, and that took forever.

THE COURT: I do remember that. And it never got done. I got a jury picked before he finished.

MR. PEEK: You're right. I don't believe that it ever did get done. And certainly I'm respectful of that, Your Honor. But there's got to be a balancing test here.

THE COURT: Absolutely.

MR. PEEK: And that's why I don't think that they've met any burden at all. And just saying, oh, protective order, protective order, you're covered, is not sufficient.

THE COURT: Okay. Ms. Wakayama, I'm giving you homework.

MS. WAKAYAMA: Okay.

THE COURT: Talk to Phil. See if Phil remembers. Because I believe Phil was counsel for one of the parties, and I can't remember who. He may have actually been the one who was trying to mediate it. And I'm going to continue it for a week for you to try and figure that out, because I want to spark my memory, nudge my memory a little bit about the method by which we did that. And I can't remember what part in that

I played. I just remember Randy, Rick, Eglet, and Quon all yelling at each other in this tiny little courtroom that I had on the fourth floor of the old courthouse, and none of them would shut up.

MS. WAKAYAMA: So, Your Honor --

THE COURT: And there's a dent in the bottom of my gavel because of it, and it's like two or three times I used that gavel in my career, and that was one of those days. And they still wouldn't shut up. I had to call them by their first names, and then they looked at me like I was crazy and sat down.

MS. WAKAYAMA: So, Your Honor, just to be clear, is that only as it relates to privileged communications, though?

THE COURT: Correct.

MS. WAKAYAMA: Because here's the issue.

THE COURT: Nonprivileged for Lewis Brisbois. That's -- you know.

MS. WAKAYAMA: Well, and Morati and Cochrane, too. Because we actually wanted to get any type of communications with the experts that were retained, potential experts that were retained.

THE COURT: That's potentially privileged.

MS. WAKAYAMA: In the sense --

THE COURT: Or work product.

MS. WAKAYAMA: Depending on what the communication

is.

THE COURT: Correct. Yeah.

MS. WAKAYAMA: So we would at least like, -- because we are on a shortened time frame here, for at least some guidance from the Court in directing the third-party recipients of those subpoenas on how to go ahead and start combing through their file and giving us what is not privileged. Because right now they haven't given us anything except for Lewis Brisbois.

THE COURT: Lewis Brisbois should have nothing privileged in their file.

MR. PEEK: I'll wait till she's finished.

THE COURT: Lewis Brisbois should have nothing privileged in their file. They were the adverse party.

MS. WAKAYAMA: Exactly. And that's why they complied.

THE COURT: They're an example of what I'm using. So the adverse party should have nothing in their files that's privileged.

Okay. Mr. Peek, anything else? I'm continuing it for her to do homework. Is there anything you want to say before I continue it a week?

MR. PEEK: Yeah. I -- the Mainor Harris dispute in which I was involved was just Rick and Randy. The Nancy Quon one preceded that, as you recall. So --

THE COURT: That's the one I remember.

MR. PEEK: So I wasn't involved in that one.

But with respect to Ms. Wakayama's points here, remember that under new Rule 45 that has been amended I'm obligated within seven days of receiving notice.

THE COURT: Absolutely.

MR. PEEK: Once that has been -- once I've satisfied that burden of a motion for protective order, which I have, then they may issue their subpoenas. Of course, they have to exclude pending the Court approval that information that I've claimed as privileged, and they may serve their subpoenas. They've done that with one of the law firms, the Panish law firm [phonetic].

MS. WAKAYAMA: Yes, we have.

MR. PEEK: And now, Your Honor, that other entity has its own opportunity to object and they have their own opportunity to conduct motion practice there.

THE COURT: Absolutely.

MR. PEEK: So just to say, well, you know, avoiding that second step, I think we shouldn't be doing to avoid that second step,

THE COURT: I'm not trying to avoid a second step. I'm trying to get the case done, since I gave it a preferential trial setting, so we'll all be ready for trial.

So to the extent there are communications with

adverse parties, those would not be protected by a claim of attorney-client privilege.

MR. PEEK: Panish was co-counsel, Your Honor, with Padda Law with respect to --

THE COURT: Then he's not adverse party, is he?

MR. PEEK: They're not an adverse party.

THE COURT: Okay. So let's go to the protective order related to the deposition. We don't have much time left. Does anybody want to say anything?

MR. PEEK: That was exactly why I didn't want to spend time on this one, Your Honor. That's why I asked the Court not to.

MS. WAKAYAMA: Well, since her deposition is next week, I just wanted to highlight a couple points, because we weren't able to do a reply. And that is, Your Honor, at the end of the day if they want to have private investigators in a fraud case, not a personal injury case where she's seeking heightened damages for her injuries, follow her around town and watch what she's doing, that's fine. But it doesn't matter in relation to what the doctors say, three of them. And they tied it to the deposition. So we'd ask that you grant a protective order.

THE COURT: Okay. Two sessions, three and a half hours each.

MS. WAKAYAMA: Thank you.

THE COURT: Okay. Mr. Peek.

MR. PEEK: Your Honor, the fraud here is Ms. Cohen's fraud. So she requests over $20 million in damages, and she's now asking the Court to enter a protective order to allow her to be deposed over two days and neither of those days to exceed three and a half hours. Despite her argument and her sworn statements, Ms. Cohen has been observed sitting for over -- you know, anywhere from three and a half to six hours gambling at Texas Station, walking without the assistance of her cane, walking without and [unintelligible] observing not to be in pain during that gambling. So we have, of course, declarations to that effect. And one of the most discerning declarations is that of Mr. Norris on July 1st and 2nd in which he observed Ms. Cohen gambling at Texas Station for five hours, from 9:00 p.m. on July 1st to 2:00 a.m. on July 2nd. And then he observed her again on July 2nd at 2:00 p.m. when she went to Tivoli Village, and although not completely observed, at least draws an inference that she spent six hours at Tivoli Village.

So what we're dealing with here, Your Honor, is a false narrative. She's based her requested protective order on a single claim, that is, that she cannot sit for more than three hours at a time due to her inexplicable ongoing medical conditions and then requiring her to sit for a seven-hour deposition in a single day would be oppressive and/or unduly

burdensome.

However, as seen from the attached declarations and a critical analysis of the physicians' notes, but do not, do not support her counsel's statement on page 5 of her motion that she suffers from various chronic infirmities. We have no statement about what these so-called chronic infirmities are. All we have is a note that says, oh, she'd be in pain, she can't sit. Are they then going to ask you in this false narrative when she has a jury trial in February that that jury trial only occur for three and a half hours a day?

THE COURT: She would not be the first person to ask me that

MR. PEEK: Yeah. I'm sure she wouldn't. And I don't think that this Court would allow that.

THE COURT: Well, I actually have granted it, Mr. Peek.

MR. PEEK: Well, I think that's an unusual request, Your Honor --

THE COURT: It is an unusual [inaudible].

MR. PEEK: -- to inconvenience jurors to extend their service for longer. But that said, that's maybe for another day. And maybe we'll have -- maybe we will at that time have better physicians' certificates that say, these are those so-called chronic infirmities that she has, not just, I have pain and I can't sit for three and a half hours.

THE COURT: Thanks.

Mr. Reisman, anything else?

MR. REISMAN: Nothing further, Your Honor.

THE COURT: The motion's granted. Two three-and-a-half-hour sessions. Good luck.

MS. WAKAYAMA: Thank you. We'll prepare the order.

MR. PEEK: Your Honor, one thing that I did, also, as you saw, is what my concern is, is the Coyote concern, is that during that break -- I don't want to have to come back here. I would just like as part of the Court's order to include something that they not be permitted to talk to her --

THE COURT: Ms. Wakayama, you are aware of the BrightSource Energy decision, right, versus Coyote Springs?

MS. WAKAYAMA: Yes, Your Honor. We've already had circulated a stipulation when we gave the doctors' notes and the declaration. So we understand what our obligations are and what we're limited to in relation to that break.

THE COURT: So the break between the two sessions of depositions are deemed a requested recess by the plaintiff.

MS. WAKAYAMA: Understood.

THE COURT: Anything else?

MR. PEEK: No, Your Honor.

THE CLERK: The other motion is on July 22 at 9:00 a.m.

THE COURT: I'm continuing this a week for Ms.

Wakayama to see -- and if Phil has something still, because I know he still has paper -- or, I'm sorry, he has old computer files, if he has it, if you could send it around to everyone, whatever that order was that was entered.

MS. WAKAYAMA: Sure.

MR. PEEK: Your Honor, I'm not sure I really understand. We're going to come back here next Monday.

THE COURT: And I'm going to make a decision on the protective order related to the privilege issues, because I am concerned about the mechanism issues.

MR. PEEK: And I appreciate that. But I do believe that, as I said.

THE COURT: I know, Mr. Peek. See you next week.

MR. PEEK: All right.

THE COURT: 'Bye.

MS. WAKAYAMA: Thank you.

THE PROCEEDINGS CONCLUDED AT 10:16 A.M.

* * * * *

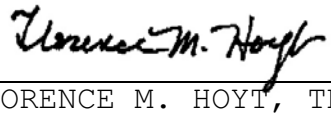
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

7/25/19

DATE

EXHIBIT 5

EXHIBIT 5

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 Volume I

VIDEOTAPED DEPOSITION OF RUTH L. COHEN

Taken on behalf of the Defendant, PAUL S. PADDA, at the law offices of Holland & Hart, 9555 Hillwood Drive, 2nd Floor, Las Vegas, Nevada 89134, commencing at 1:02 p.m., on Monday, July 22, 2019, pursuant to Notice.

REPORTED BY: PAIGE M. CHRISTIAN, CCR #955
Registered Professional Reporter
Certified Realtime Reporter
Certified Realtime Captioner

APPEARANCES

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ALSO PRESENT: Paul Padda; Christina Carl, Videographer

THE VIDEOGRAPHER: I'm sorry.

MR. PEEK: You didn't let him introduce himself.

THE VIDEOGRAPHER: Sorry.

MR. PADDA: Paul Padda for the record.

THE VIDEOGRAPHER: And will the court reporter now please swear in the witness.

RUTH L. COHEN,

called as a witness, after having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. REISMAN:

Q. Good afternoon, Ms. Cohen.

A. Good afternoon.

Q. So have you ever had your deposition taken before?

A. Yes.

Q. How many times?

Best estimate, please.

A. Five.

Q. Five times. Okay.

And it's my understanding that you practiced law for approximately 40 years; is that correct?

A. Little more. Yeah.

Q. Okay. Little more.
A. Uh-huh.
Q. How many more?
A. I think about 43; 42, 43.
Q. 42 or 43 years.
And I would assume, having practiced law for 42 or 43 years, you've taken and defended a lot of depositions, right?
A. A lot.
Q. Can you give me your best estimate as to how many total?
A. 150, 200.
Q. Okay. So is it -- I'll just cut to the chase.
Do you need me to redo the standard admonitions? Would be that be helpful? Are you aware of them?
A. I'm totally aware of them. If you want to do them, fine. I don't need them.
Q. Okay. Well, there's just a couple I -- I do want to emphasize very quickly. One is that you are testifying under oath, and therefore you're subject to penalties of perjury should you testify falsely.
You know that, correct?
A. Of course.
Q. Okay. And then I encourage you, if I ask a

question you don't understand, to seek clarification. Please understand that if you don't seek clarification, I'm going to assume and rely on the fact that you understand the question.

You understand that, correct?

A. I do.

Q. Okay. And I see -- I see you're in a wheelchair.

A. Yes, I am.

Q. If -- if you're suffering any pain or for any other reason you need to request a break, please feel free to do so. We can take as many breaks as you need.

And then -- or I'm informed that you -- you suffer a lot of pain.

Are you currently under any -- the influence of any medication, pain medication or other, that --

A. I -- I've taken pain medication but none that have side effects, nothing strong. They won't give it to me yet.

Q. Okay. So --

A. I like it, but they won't give it to me.

Q. Why won't they give it to you?

A. Because they're still running tests and trying to figure out why I have all this pain.

Q. Okay, okay. But as you sit here today, you

don't -- you don't feel that you're -- you're under the influence of any medication that could --

A. No, no --

Q. -- possibly affect your ability --

A. -- I have --

Q. You cut me off. Sorry.

MS. WAKAYAMA: Let him finish his question.

THE WITNESS: Okay.

Q. (By Mr. Reisman) See, if I had read you the admonition about not interrupting, you would have known that.

A. I still would have done it.

Q. I'm sure. We're Jewish. I'm sure we'll -- we'll interrupt each other a bunch, so...

Okay. So just -- just to clarify, you're not under the influence right now of any medication that you believe is going to impact your ability to testify accurately today?

A. No. I've taken medication, but none of them have side effects --

Q. Okay.

A. -- that affect me. They have side effects, but they've never affected me.

Q. Okay. They don't affect you mentally?

A. No.

Q. Okay. Or your ability to recall anything?
A. No.
Q. Okay.
MS. WAKAYAMA: That's correct?
MR. REISMAN: Okay.
THE WITNESS: Yes.
Q. (By Mr. Reisman) And I assume you're not under the influence of any other drugs or alcohol right now?
A. No.
Q. Okay. Very good. All right. So I'll just begin questioning, then.
MS. WAKAYAMA: And, Josh, if we could just put on the record the order for the protective order today. The testimony will not exceed three and a half hours. That excludes breaks. And I believe Christina Carl is going to be keeping track of that time.
MR. REISMAN: You have any objection?
MR. PEEK: I don't have anything for the record.
MR. REISMAN: That's fine.
MR. PEEK: It's up to you. If you feel compelled to do that, Ms. Wakayama, you certainly can do that. But there's no need to do that, and you're wasting our time by doing that.

MS. WAKAYAMA: Yes, I did. I want to make sure we're all on the same page --

MR. REISMAN: We are on the same page --

MS. WAKAYAMA: -- and who's -- and who's keeping time.

MR. REISMAN: That -- that's fine. We reserve the right to challenge if we don't think the time is correct.

MS. WAKAYAMA: Correct. Got it.

MR. REISMAN: Okay. Very good.

All right. So I'm going to first mark -- we're going to make this as Defendant's Exhibit 1.

(Exhibit No. 1 was marked for identification.)

Q. (By Mr. Reisman) This is the complaint that you filed in this matter?

A. Yes.

Q. Now, you previously testified that -- that the medication that you're -- you're under doesn't impact your memory, correct?

A. Correct.

Q. On a scale of 1 to 10, how good would you say your memory is?

A. About what -- current events? past events? what?

CERTIFICATE

STATE OF NEVADA)
)
COUNTY OF CLARK)

I, Paige M. Christian, CCR #955, Registered Professional Reporter, Certified Realtime Reporter, Certified Realtime Captioner, do hereby certify:

That on Monday, July 22, 2019, at 1:02 p.m., appeared before me RUTH L. COHEN, the witness whose deposition is contained herein; that prior to being examined she was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That the deposition was taken down by me in machine shorthand and was thereafter reduced to typewriting under my direction and supervision; that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter;

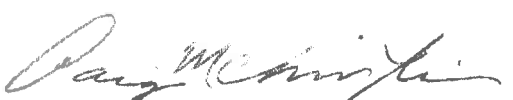
That a request for an opportunity to review and make changes to this transcript:

was made by the deponent or a party (and/or their attorney) prior to the completion of the deposition.
X was not made by the deponent or a party (and/or their attorney) prior to the completion of the deposition.
was waived.

I further certify that I am not an attorney for, nor related to, any of the parties hereto, nor in any way interested in the outcome of the cause.

In witness whereof, I have hereunto subscribed my name.

Dated this 31st day of July, 2019, in Clark County, Nevada.



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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

REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Date of Hearing: January 27, 2020

Time of Hearing: 9:00 a.m.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION[1]

In an effort to avoid summary judgment, Ms. Cohen offers an Opposition that contains a scattershot of so-called facts, ever-shifting theories to support her claims for relief, and broad sweeping statements unsupported by any facts or law. Ms. Cohen's strategy is both expected and transparent. Ms. Cohen hopes that the Court will be so confused over her positions and overwhelmed with information and documentation (notwithstanding its relevance) that the Court will simply throw up its hands and conclude that there must be a material issue of fact somewhere that justifies the denial of the Motion. The Court should see through Ms. Cohen's façade.

Contrary to what Ms. Cohen seemingly believes, the law that governs the Motion imposes bilateral obligations. In the Motion, the Padda Defendants set forth seventy-five (75) short, numbered statements of Undisputed Fact and supported each Undisputed Fact with citations to the exact locations in the record that support the Undisputed Fact. (*See* Motion at 2:21-16:5.) The Padda Defendants more than satisfied their initial burden. *See Torrealba v. Kesmetis*, 124 Nev. 95, 100, 178 P.3d 716, 720 (2008) (stating that the moving party can meet its burden by either "(1) submitting evidence that negates an essential element of the nonmoving party's claim or (2) pointing out that there is an absence of evidence to support the nonmoving party's case.") (internal citations and quotations omitted).

In turn, the burden shifted to Ms. Cohen to "transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact." *Torrealba*, 124 Nev. at 100, 178 P.3d at 720. Despite having twenty-three (23) days to prepare and file her Opposition, Ms. Cohen failed to present a thorough and specific opposition to the Padda Defendants' well-documented Motion. Ms. Cohen did not offer a "Statement of Disputed Facts", identifying by number any of the Padda Defendants' Undisputed Facts that she contends is disputed. Nor did Ms. Cohen cite anywhere in her Opposition to a specific Undisputed Fact

[1] Unless otherwise defined, capitalized terms in this Reply shall have the same definitions as described in Defendants' Motion for Summary Judgment filed on December 18, 2019 (the "Motion").

identified by the Padda Defendants that she claims is disputed. Instead, Ms. Cohen offered a "Statement of Facts"—not a "Statement of *Undisputed* Facts"—and broadly asserted that the Undisputed Facts offered by the Padda Defendants are "hotly contested." (*See* Opp. at 2:10.) In doing so, Ms. Cohen left it up to the Padda Defendants and the Court to sift through her Opposition and compare her so-called "facts" with the Undisputed Facts set forth in the Motion to try to guess which Undisputed Fact, if any, Ms. Cohen actually disputes. It is apparent that Ms. Cohen intends to turn this summary judgment procedure into a game of cat-and-mouse, giving rise to the "specter of district court judges being unfairly sandbagged by unadvertised factual issues." *Stepanischen v. Merchants Despatch Transp. Corp.,* 722 F.2d 922, 931 (1st Cir. 1983). For this reason alone, the Court can, and should, find that Ms. Cohen failed to dispute any of the Undisputed Facts set forth in the Motion and grant the Motion.[2]

In any case, after spending the time to separate the wheat from the chaff, it becomes clear that Ms. Cohen's Opposition fails to dispute the key Undisputed Facts that entitle the Padda Defendants to summary judgment. Nor could she credibly dispute the Undisputed Facts because they were based on her Complaint, her testimony, and the plain language of the relevant agreements and documents filed in the contingency fee cases. While claiming that "numerous genuine issues of material fact" exist, Ms. Cohen actually only disputes the legal effect of and the law that applies to the Undisputed Facts. Disputes over the law, however, do not warrant a denial of the Motion. *See Wynne v. United States*, 306 F. Supp. 2d 660, 664 (N.D. Tex. 2004) ("Furthermore, disputes over the legal inferences to be gleaned from the facts in evidence will not prevent summary judgment; thus, where a non-movant merely debates the consequences flowing from admitted facts, summary judgment is proper."); *Bank of Am., N.A. v. Huffaker Hills Unit No. 2 Residence Ass'n*,

[2] Nev. R. Civ. P. 56(e) states that "[i]If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly support or address the fact; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or (4) issue any other appropriate order." Given that the parties are literally on the eve of trial, the Court should not give Ms. Cohen another opportunity to comply with her burden.

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No. 3:15cv00502-MMD-WGC, 2019 WL 1261351, at *2 (D. Nev. Mar. 19, 2019), *appeal dismissed*, No. 19-15809, 2019 WL 5212969 (9th Cir. Oct. 7, 2019) ("The purpose of summary judgment is to avoid unnecessary trials when there is no dispute **as to the facts** before the court.") (emphasis added).

For instance, Ms. Cohen does not dispute that on or before April 6, 2017, she was suspended from the practice of law by the Nevada State Bar for failing to complete her 2016 CLE requirements and that during the time she was suspended, Mr. Moradi's case and other cases settled. (*See* Motion at Undisputed Fact Nos. 59, 65 & 67.) Instead, Ms. Cohen disputes the legal impact her suspension has on her ability to recover a share of the fees received by the Padda Defendants for those cases.

By way of another example, Ms. Cohen does not dispute that she and Mr. Padda dissolved C&P effective as of December 31, 2014. (*Id*. at No. 9.) She also does not refute the clear language or the binding nature of the Dissolution Agreement. (*Id*. at Nos. 9-12.) Rather, Ms. Cohen contends that the legal effect of Mr. Padda's contractual obligation to pay Ms. Cohen the Expectancy Interest pursuant to the Dissolution Agreement was that C&P did not immediately dissolve, but rather was being wound up, and therefore the fiduciary duties owed by Mr. Padda during the existence of C&P continued, seemingly indefinitely.

For yet another example, Ms. Cohen does not dispute that she has not produced any evidence to show the actual services she performed or the value of those services in order to establish the Padda Defendants were unjustly enriched. In fact, in an effort to shore up her fraud-based claims, Ms. Cohen concedes that she had very little involvement in any of the cases she seeks fees for in this case. (*See e.g.,* Opp. at 7:1-2.) (referencing testimony that "Ms. Cohen was not involved in the Moradi case.") Nevertheless, Ms. Cohen disputes whether the law permits the jury to rely solely on her expectation damages under the Dissolution Agreement to establish the amount she should be awarded under her unjust enrichment claim.

The Padda Defendants could go on and on. The point is that the actual disagreements between the parties relate to the law that should be applied to these, and other, Undisputed Facts and the legal consequences that flow therefrom. These legal questions do not create any genuine

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issue of material fact for the jury to decide. The legal questions are the Court's purview. When the Court applies the law to the Undisputed Facts, the inescapable conclusion is that the Padda Defendants are entitled, as a matter of law, to summary judgment on each and all of Ms. Cohen's claims.

II. DISCUSSION

A. Ms. Cohen's Claims Related to a Breach of the Dissolution Agreement Fail Because Ms. Cohen Was a Non-Lawyer When the Monies Were Received in the Moradi and Cochran Cases and Therefore, She Cannot Assert Any Damages With Respect to Those Cases.

As set forth in the Motion, Ms. Cohen is precluded by NRPC 5.4(a) from recovering a share of the legal fees from any cases that were settled or concluded after April 6, 2017, when her law license was suspended. (*See* Motion at 17-19.) Therefore, if Ms. Cohen were successful in rescinding the Buyout Agreement,[3] she would still be precluded from recovering under the Dissolution Agreement her share of any legal fees received by Padda Law for the cases brought by Mr. Moradi and the Cochrans because her law license was suspended *before* either of those cases settled and any money was received by Padda Law. (*See* Motion at Undisputed Fact Nos. 59, 65 & 67.)[4]

In response to the Motion, Ms. Cohen quickly abandoned her nearly three years long protest[5] over the fees she was required to pay to reinstate her license.[6] On December 19, 2019, the

[3] Again the issue of whether Ms. Cohen could recover the Expectancy Interest due to her suspended license is altogether beside any relevant point, unless the Court first finds that the Buyout Agreement is unenforceable. That is, if the Court finds that summary judgment should be granted on Ms. Cohen's fraud claims, the Buyout Agreement precludes Ms. Cohen from seeking her Expectancy Interest under the Dissolution Agreement. (*See* Motion at Undisputed Fact Nos. 25-29.)

[4] To the extent Ms. Cohen can assert any entitlement to unpaid fees, it must be limited to cases in which monies were received prior to her suspension from the practice of law in April 2017.

[5] *See* Motion at Ex. 34 at 6:17-7:6 ("And I don't intend to pay them $700 to get my license back when I'm not going to use it, so. . . . So, it's my protest."; "And when I went to turn [the CLE credits] in, they said, Well, it will cost you $700, and I said, See you. I'm just not going to do it.").

[6] The following question can be fairly posed to Ms. Cohen: if Ms. Cohen truly believed that the status of her law license did not impact her ability to recover the Expectancy Interest under the Dissolution Agreement, then why did Ms. Cohen, after nearly three years of "protest" and while still retired, suddenly decide to comply with her CLE obligations, pay the appropriate fines and

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day after the Motion was filed, Ms. Cohen filed a reinstatement application with the Nevada Board of Continuing Legal Education (the "Board").[7] Laura Bogden, the Executive Director for the Board whom Ms. Cohen knows "very well" because she is the wife of Ms. Cohen's long-time friend, Dan Bogden, quickly processed the reinstatement application that same day, which resulted in Ms. Cohen's law license being reinstated via a "Notice of Completion of Requirements for Reinstatement" (the "Reinstatement Notice").[8] (*See* Opp. at Ex. P.) Should Ms. Cohen's claims survive the Motion, the swiftness of the approval of the reinstatement application coupled with Ms. Cohen's testimony that "Dan Bogden's wife [Laura] would have done anything for me" (*see* Motion at Ex. 1 at 118:19-24) and with Ms. Cohen's penchant for manipulating witnesses and creating new "facts" in this case may raise eyebrows with the jury.

But, before turning to the excuses Ms. Cohen makes in an effort to avoid the self-inflicted consequences of her suspended license, it bears noting how cavalierly she treats having her law license suspended. Ms. Cohen refers to her suspension as an "obviously temporary suspension" (*see* Opp. at 20:24), when in fact the suspension lasted for over two-and-a-half years. Although Ms. Cohen was administratively CLE suspended for noncompliance with the rules, she was still precluded from engaging in the practice of law in the State of Nevada until she was reinstated. *See* SCR 212(4) ("In the event that the attorney is administratively CLE suspended for noncompliance with these rules, the attorney is not entitled to engage in the practice of law in the State of Nevada until such time as the attorney is reinstated under Rule 213."). And, once she was suspended, Ms. Cohen was obligated to comply with SCR 115, which requires, among other things, that she notify clients and the tribunals of her suspension, that she file an affidavit of compliance of compliance with the rule "with the supreme court, bar counsel, and, if the suspension was under Rule 212, with

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fees, and become an active member of the Nevada State Bar? When considering this question, the Court should keep in mind the line of reasoning called Occam's razor, which essentially states that the simplest explanation is the most plausible one. Here, the simplest explanation is that her lack of a law license prevents her from recovering a share of legal fees and she knows it.

[7] Curiously, Ms. Cohen did not produce or attach to her Opposition an actual copy of the reinstatement application.

[8] *See* SCR 212(4) ("An attorney who is suspended for noncompliance with these rules must comply with Rule 115.").

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the board of continuing legal education", that she not take any new clients or matters on, and that she "wind up and complete, on behalf of any client, all matters pending on the entry date" but only for a period of 15 days after the suspension order was entered.[9] Whether she complied with these obligations is anyone's guess.

In any case, the fact that Ms. Cohen's law license was suspended on April 6, 2017, and then reinstated on December 19, 2019, is not disputed. Ms. Cohen does, however, challenge the legal impact of her suspension and subsequent reinstatement. Ms. Cohen's reinstatement does not offer her the easy fix she is looking for.

1. Ms. Cohen's Belated Attempt To Fix The Problem Discussed Above Will Not Assist Her Because Her Reinstatement Was Not, and Cannot Be, Applied Retroactively.

Seizing on her remarkable ability to obtain reinstatement of her law license in between the time the Motion was filed and the (extended) due date of her Opposition, Ms. Cohen tries to create a trial worthy issue by proclaiming that "Defendants cannot withhold payment to Ms. Cohen on the basis of her prior CLE issues or status as an active attorney." (*See* Opp. at 22:8-9.) In effect, Ms. Cohen claims that the Reinstatement Notice is a magical wand that she can wave to make her prior law license suspension, and the effect of the suspension, magically disappear. With respect to this case, the Reinstatement Notice is just smoke and mirrors.

Ms. Cohen does not, because she cannot, cite to any rule, document or case that establishes that the reinstatement of her law license on December 19, 2019, somehow retroactively cures her failure to be a licensed attorney at the time Mr. Moradi's case or the Cochrans' case settled, or at any other time between April 6, 2017, and December 19, 2019.[10] In fact, the majority of

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[9] Ms. Cohen has not, to date, produced any documents showing that she complied with SCR 115, despite that under Section 5 of that rule, she is required to maintain such records and show she is compliant as "a condition precedent to reinstatement or readmission." *See* SCR 115(5) ("An attorney required to comply with this rule shall maintain records of his or her proof of compliance with these rules and with the disbarment, suspension, transfer to disability inactive status, or resignation order for the purposes of subsequent proceedings. Proof of such compliance shall be a condition precedent to reinstatement or readmission.").

[10] In *Sheppard, Mullin, Richter & Hampton, LLP v. JM Manufacturing Co., Inc*., 6 Cal. 5th 59, 73 (2018), the Supreme Court of California held that "a contract or transaction involving attorneys may be declared unenforceable for violation of the Rules of Professional Conduct, the set

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jurisdictions (and undersigned counsel has not found a single jurisdiction to have held the opposite) that have considered the issue have reached the opposite conclusion. *See e.g., Robnett v. Kirklin Law Firm,* 178 S.W.3d 45, 51 (Tex. App. 2005) ("Because neither the Tax Code nor the State Bar Rules provides for retroactive reinstatement for suspensions arising from nonpayment of attorney-occupation tax, we conclude that the trial court correctly ruled that Robnett was not retroactively reinstated on October 30, 1998, when the contingency-fee contract in the Thomas case was signed. Because Robnett was thus still suspended from the practice of law when the Thomas contract was signed, she had no authority to enter into that contract."); *The Fla. Bar v. Bratton*, 413 So. 2d 754, 755 (Fla. 1982) ("We do not agree that reinstatement functions retroactively so as to excuse the misconduct of practicing law while under suspension for nonpayment of dues. To so hold would undermine the purpose of the proscription against practicing law while in arrears on dues.").

In fact, the Reinstatement Notice simply states that Ms. Cohen "may be transferred to the active practice of law." (*See* Opp. at Ex. P.) It does not state that the reinstatement is retroactive to April 6, 2017, the date of Ms. Cohen's suspension. Ms. Cohen cannot manufacture genuine issues of material fact through wholly unsupported assertions in her Opposition. *See Dermody v. City of Reno*, 113 Nev. 207, 211, 931 P.2d 1354, 1357 (1997) ("A party cannot manufacture a genuine issue of material fact by making assertions in its legal memorandum, *S.A. Empresa De Viacao Aerea Rio Grandense v. Walter Kidde & Co.,* 690 F.2d 1235 (9th Cir.1982), nor can a party build a case on gossamer threads of speculation and surmise. *Bulbman, Inc. v. Nevada Bell,* 108

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of binding rules governing the ethical practice of law in the State of California." In that decision, the California Supreme Court further noted "[i]t would be 'absurd' . . . for a court to aid an attorney in enforcing a transaction prohibited by the rules." *Id*. (*citing Chambers v. Kay,* 29 Cal.4th 142 (2012)). In *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. 416, 420, 373 P.3d 103, 105 (2016), the Nevada Supreme Court determined, in a case involving the assertion of an attorney charging lien, that the attorney's entitlement to fees is to be determined based upon factors in place at the time attorney's fees are received. There is no dispute that at the time fees were received in Moradi and Cochran, Ms. Cohen was a non-lawyer who was on suspension by the Supreme Court of Nevada. An attorney that withdraws from representing a client before the occurrence of a contingency fee forfeits all rights to compensation unless the attorney can show the client's conduct made the withdrawal necessary. *See Santini v. Cleveland Clinic Florida*, 65 So.3d 22 (2011). In this case, there is no dispute that Ms. Cohen's suspension from the practice of law was a voluntary, informed and deliberate decision on her part. In fact, she herself characterized it as her "protest."

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Nev. 105, 825 P.2d 588 (1992).").

2. Ms. Cohen's suspension rendered Mr. Padda's obligation to pay her the Expectancy Interest unenforceable.

Next, Ms. Cohen tells the Court that "Mr. Padda cannot argue that a prior, and obviously temporary, suspension absolves Defendants, for all time, of their duty to fulfill contractual obligations." (*See* Opp. at 20:23-25.) Yet again, she does not cite to a single case to support her self-serving position.

To unpack Ms. Cohen's argument, the Court should first look to the allegations made by Ms. Cohen in her Complaint. Ms. Cohen alleges Mr. Padda breached the Dissolution Agreement "by refusing to make payment for the attorney fees to which Ms. Cohen was entitled thereunder, which includes, but is not limited to, the Garland, Moradi, and Cochran, as well as other cases brought into C&P by Ms. Cohen." (*See* Compl. at ¶ 86.) Under her allegations, the breach occurred when Mr. Padda received funds from these cases and failed to pay her the Expectancy Interest. *See Quality Cleaning Prod. R.C., Inc. v. SCA Tissue N. Am., LLC*, 794 F.3d 200, 206 (1st Cir. 2015) ("Unlike a prolonged series of wrongful acts, a contract breach is a single, readily ascertainable, event. *Cf.* 51 Am.Jur.2d *Limitation of Actions* § 139, at 601 (2011) (noting that a breach 'occurs when a party fails to perform when performance is due')."); *Hahn Auto. Warehouse, Inc. v. Am. Zurich Ins. Co.*, 81 A.D.3d 1331, 1333, 916 N.Y.S.2d 678, 680 (2011), *certified question answered, order aff'd,* 18 N.Y.3d 765, 967 N.E.2d 1187 (2012) ("'Where, as here, the claim is for payment of a sum of money allegedly owed pursuant to a contract, the cause of action accrues when the [party making the claim] possesses a legal right to demand payment.'"); *see also United States v. Toro*, 981 F.2d 1045, 1048 (9th Cir. 1992) ("The statute of limitations for actions based on contract begins to run at the time the contract is breached."). [11]

[11] If the Court were to determine that Mr. Padda's obligation to pay to Ms. Cohen the Expectancy Interest were both revived and triggered when she was reinstated on December 19, 2019, and therefore the breach occurred on that date (it did not), Ms. Cohen would, at a minimum, be prevented from recovering pre-judgment interest prior to December 19, 2019, for any contract damages the jury awarded her at trial. *See Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of S. Nevada*, 106 Nev. 283, 289–90, 792 P.2d 386, 390 (1990) (concluding "that interest should begin to accrue from the time damages actually occur if they are sustained after the

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However, when Mr. Padda received the settlement funds for Mr. Moradi's case, for the Cochrans' case, and any other cases settled or resolved after Ms. Cohen's suspension on April 7, 2017, he was ethically prohibited under NRPC 5.4(a) from sharing any of his legal fees with Ms. Cohen as a result of her self-inflicted suspension from the practice of law.[12] Therefore, the issue for the Court to resolve, as a matter of law, is whether the doctrine of illegality applies to the fee sharing provision in the Dissolution Agreement, and renders this provision unenforceable, as a result of Ms. Cohen's license suspension. *See McIntosh v. Mills*, 121 Cal. App. 4th 333, 343, 17 Cal. Rptr. 3d 66, 73 (2004) (holding that the issue of whether "the doctrine of illegality applies to the fee-sharing agreement between" an attorney and a non-attorney "is a question of law"). The answer is a resounding "yes".

The law did not require Mr. Padda to choose between breaching the Dissolution Agreement and violating an ethical rule. Instead, the law rendered Mr. Padda's obligation to pay Ms. Cohen the Expectancy Interest unenforceable the moment Ms. Cohen's law license was suspended.[13] *See United States v. 36.06 Acres of Land*, 70 F. Supp. 2d 1272, 1276 (D.N.M. 1999) (holding that "unwritten contingency fee contracts, because they violate the Rules of Professional Conduct, will not be enforced, and an attorney's recovery in such cases will be limited to" the reasonable value

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complaint is served but before judgment, rather than from the date of serving the complaint or from the date of judgment. To carry interest, damages must be sustained and specifically quantified.").

[12] Predictably, Ms. Cohen tries to drag Mr. Padda down into her unethical behavior by asserting that "Defendants' argument that they could never pay Ms. Cohen what she was owed is belied by the undisputed fact that they gave her a $15,000 check in May 2017, and a $50,000 "discretionary bonus" in July 2017. (*See* Opp. at 20:25-21:2.) Ms. Cohen is wrong. These payments did not represent a "share" of legal fees from any case. Rather, the $15,000.00 was the final amount Mr. Padda owed to Ms. Cohen under the Buyout Agreement, wherein he purchased Ms. Cohen's Expectancy Interest for a flat $50,000.00. (*See* Motion at Undisputed Fact No. 32.) And, the discretionary bonus paid to Ms. Cohen was no different than the discretionary bonuses Mr. Padda handed out to other non-attorney employees of Padda Law. Surely, Ms. Cohen is not claiming that when Mr. Padda generously hands out discretionary bonuses to paralegals and other employees of Padda Law—a practice that should be lauded, not condemned—he is unethically fee splitting with non-attorneys.

[13] Oddly, Ms. Cohen claims that "[o]ther than Defendants' argument that is was superseded by the Fraudulent Agreement, that the Operative Dissolution Agreement is otherwise enforceable remains undisputed." (*See* Opp. at 24:4-5.) Perhaps Ms. Cohen should re-read pages 17-19 of the Motion, wherein the Padda Defendants clearly argue that Mr. Padda's obligation to pay the Expectancy Interest was rendered unenforceable by Ms. Cohen's license suspension.

of its services under quantum meruit); *Christensen v. Eggen*, 577 N.W.2d 221, 225 (Minn. 1998) (holding that fee-splitting agreement between attorneys "violates public policy because it does not comply with Minn. R. Prof. Conduct 1.5(e) and is therefore unenforceable."); *Widmer v. Widmer,* 288 Ark. 381, 384, 705 S.W.2d 878, 879 (1986) (holding that since lawyer "was in fact suspended from practice for a period in 1984 and 1985, he is not entitled to collect for his services during that time.").

Additionally, Ms. Cohen does not provide any evidence that any of the clients, such as the Cochrans, who had cases settle or be resolved after her employment with Padda Law was terminated in September 2017, ever consented to the fee splitting arrangement she now seeks to enforce. Such consent was required by NRPC 1.5(e), which states, in pertinent part, that "a division of a fee between lawyers who are not in the same firm may be made only if … (2) The client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing." This alone renders the provision creating the Expectancy Interest unenforceable with respect to those cases that settled or resolved after Ms. Cohen was no longer with Padda Law. *See Christensen*, 577 N.W.2d at 225 (holding that client "was neither told of the share that each attorney would receive, nor did he consent to the fee split and joint representation in writing" as required with the rules of professional conduct and, therefore, the fee splitting agreement was unenforceable). Moreover, Ms. Cohen's sudden change of heart about reinstating her law license does not somehow resuscitate the Expectancy Interest provision. *See Mitchell v. B.A.S.F.*, 145 Misc. 2d 930, 932, 548 N.Y.S.2d 135, 136 (Sup. Ct. 1989) (stating that contract ended with attorney's suspension, that attorney's return to practice "did not automatically revive his contractual relationship" with the client). The Expectancy Interest provision in the Dissolution Agreement became illegal and unenforceable as soon as Ms. Cohen's law license was suspended. She cannot ask the Court, either through the law or equity, to undo the predicament she created for herself. *See Crockett & Myers, Ltd. v. Napier, Fitzgerald & Kirby*, *LLP*, 401 F. Supp. 2d 1120, 1126 (D. Nev. 2005) ("Nevada recognizes the rule that 'traditionally neither courts of law nor equity will interpose to grant relief to parties to an illegal agreement.'").

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3. The Shimrak *case and public policy favor a finding that Ms. Cohen's license suspension rendered the Expectancy Interest unenforceable.*

In a desperate attempt to avoid summary judgment, Ms. Cohen cites to *Shimrak v. Garcia-Mendoza*, 112 Nev. 246, 912 P.2d 822 (1996), claiming that the Nevada Supreme Court "not[ed]" that "the prohibition of fee-splitting is to protect the independence of the judgment of lawyers." (*See* Opp. at 21:6-9.) Not quite. Rather, the *Shimrak* Court, citing to a California case, simply noted that "[a]t least one court has recognized that the purpose of the prohibition of fee-splitting is to protect the independence of the judgment of lawyers." *Shimrak*, 112 Nev. at 252, 912 P.2d at 826.[14] That Ms. Cohen must resort to misquoting opinions by the Nevada Supreme Court reveals the frivolity of her position.

Furthermore, contrary to what Ms. Cohen tells the Court, the analysis in the *Shimrak* case is not "on all fours with this case." (*See* Opp. at 21:14-16.) In *Shimrak*, the attorney, presumably knowing of the prohibition against fee sharing, entered into a fee sharing agreement with a private investigator. For this reason, the *Shimrak* Court, as part of its "in pari delicto" analysis, held that "not to enforce this contract would actually *endanger* the public, because it would allow lawyers to enter into such contracts and then get out of them by invoking SCR 188." *Shimrak*, 112 Nev. at 252, 912 P.2d at 826 (emphasis in original).

Here, at the time Mr. Padda and Ms. Cohen entered into the Dissolution Agreement, which provided her the Expectancy Interest, Ms. Cohen was a properly licensed attorney. Therefore, the Dissolution Agreement was not illegal or unenforceable at the time it was signed. However, Ms. Cohen created the illegality or unenforceability when she failed to complete her CLE requirements, allowed her law license to be suspended, and then refused to do what was required to reinstate her law license. As a long-time lawyer, Ms. Cohen had knowledge of the law[15] and of the consequences

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[14] Courts have "consistently upheld the prohibition [against fee splitting with non-attorneys] based on a number of legitimate concerns." *McIntosh*, 17 Cal. Rptr. 3d at 74. "One authority has also suggested that fee sharing tends to increase the total fees charged to clients, presumably in an effort by the attorney to 'make up' that portion being paid to the third party." *Id.*, 17 Cal. Rptr. 3d at 75 (citing Vapnek et al., Cal. Practice Guide: Professional Responsibility (The Rutter Group 2003) ¶ 5:510, p. 5–66.14 (rev.# 1, 2003).)

[15] Even if Ms. Cohen were not a lawyer, the law in Nevada has long recognized the

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of having a suspended license, and either allowed her license to be suspended for nearly three years anyways or did not care about her law license because she knew she had agreed to the Buyout Agreement. Unlike the private investigator in *Shimrak*, Ms. Cohen is "guilty of the greatest moral fault since she is the one who violated a professional rule." *Shimrak*, 112 Nev. at 252, 912 P.2d at 826. If the *Shimrak* case sheds any light on this case, it highlights the fact that the Expectancy Interest in the Dissolution Agreement became unenforceable when Ms. Cohen allowed her law license to become suspended.

What's more, if the Court were to permit Ms. Cohen to recover fees, notwithstanding the suspension of her law license, it would incentivize attorneys to allow their law licenses to lapse or be suspended. While a few attorneys may practice law because they "love the law", most attorneys practice law because they make a living doing so. If an attorney could simply let their law license lapse or be suspended—thereby avoiding the yearly obligation to complete CLEs, to pay dues, and/or be accountable to the Nevada State Bar—and still not only receive fees, but utilize the Court's process and resources to collect fees, there would be little to no incentive for an attorney to maintain an active license. Public policy, particularly as applied to the Undisputed Facts of this case, does not warrant such a result. The Court should find, as a matter of law, that the fee splitting provision was rendered illegal and unenforceable the moment Ms. Cohen's law license was suspended, and grant summary judgment in favor of the Padda Defendants on Ms. Cohen's claims to enforce the fee sharing provision in the Dissolution Agreement. *See McIntosh,* 17 Cal. Rptr. 3d at 75 (affirming trial court's grant of summary judgment on the basis that "in light of these public interest concerns, and because there is no dispute here that the agreement at issue between McIntosh and Mills clearly violates CPRC, rule 1–320(A) [the prohibition against fee splitting with non-attorneys], we conclude that the doctrine of illegality applies facially to their fee-sharing agreement.") (citation omitted).

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irrebuttable presumption that everyone knows the law. *See US Bank, N.A. v. SFR Investments Pool 1, LLC*, 414 P.3d 809 (Nev. 2018) ("Every one is presumed to know the law and this presumption is not even rebuttable.") (citing *Smith v. State,* 38 Nev. 477, 481, 151 P. 512, 513 (1915).)

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4. Ms. Cohen concedes that she is not seeking, and has no evidence to support, quantum meruit damages in this case.

Notwithstanding the untenable position Ms. Cohen put Mr. Padda in when she allowed her license to be, and remain, suspended until December 19, 2019, the Padda Defendants' Motion did not argue that Ms. Cohen's lack of an active law license left her without any remedy. The Padda Defendants pointed out that Ms. Cohen may have a quantum meruit claim based on the value of the work she performed on the relevant cases prior to the suspension. *See e.g., Padilla v. Sansivieri*, 31 A.D.3d 64, 65, 815 N.Y.S.2d 173, 174 (2006) ("Under this court's rules, a disbarred attorney may recover legal fees for services rendered prior to disbarment. However, such fees are capped by the rule of quantum meruit, and no private agreement as to compensation is binding on the court.") (citation omitted); *Lessoff v. Berger*, 2 A.D.3d 127, 767 N.Y.S.2d 605, (Mem)–606 (2003) (stating the general position adopted by courts that, "with respect to cases that were open at the time of [a] suspension, [the suspended attorney's] share in any fees paid after his suspension is limited to the quantum meruit value of any work he performed prior to his suspension."); *see also Golightly*, 2009 WL 147042, *2 (unpublished disposition) ("When the attorney is discharged and the contract is terminated, the attorney may be compensated for the reasonable value of his services under quantum meruit principles.").

The Padda Defendants' Motion also informed the Court that Ms. Cohen has produced *no* evidence to establish the reasonable value of the work she performed on either Mr. Moradi's or the Cochrans' cases, or on any other cases for which she now seeks fees. Nowhere in her Opposition does Ms. Cohen dispute her utter lack of evidence. In fact, Ms. Cohen has now conceded that she is not seeking quantum meruit damages in this case. (*See* Opp. to the Padda Defendants' Motion in Limine #3 at 7:9-10.) ("The Court should disregard Defendants' **quantum meruit arguments, which are not part of Ms. Cohen's case**.") (emphasis added).

In closing, summary judgment on Ms. Cohen's claims related to the Dissolution Agreement is appropriate because, as a matter of law, she cannot recover a share of any legal fees due to her suspended law license and she has abandoned any right to recover, and has no evidence to support,

an award of quantum meruit damages. *See Chicago Title Agency v. Schwartz*, 109 Nev. 415, 418, 851 P.2d 419, 421 (1993) (stating "whether a case be one in contract or in tort, the injured party bears the burden of proving that he or she has been damaged").[16] Accordingly, Ms. Cohen's first three claims related to the Dissolution Agreement fail as a matter of law.

B. Ms. Cohen Cannot Prove She Had a "Special Relationship" with Mr. Padda or That He Owed Her Any Fiduciary Obligations After C&P Was Dissolved.

1. The winding up of C&P did not take years to complete or extend Mr. Padda's fiduciary obligations to Ms. Cohen.

As established in the Motion, Ms. Cohen's Third Claim for Relief for tortious breach of the implied covenant of good faith and fair dealing related to the Dissolution Agreement and Fourth Claim for Relief for breach of fiduciary duty fail for one key reason: Ms. Cohen cannot prove that she and Mr. Padda had a "special or confidential relationship" or that he owed her a fiduciary duty after C&P dissolved on December 31, 2014. (*See* Motion at 20-21, 25-27.) In response, Ms. Cohen alleges that "[u]ntil the dissolved partnership is wound up, the partners continue to owe fiduciary duties to each other, especially with respect to unfinished business." (*See* Opp. at 18:8-10.) According to Ms. Cohen, a special relationship and the fiduciary obligations continued until C&P's business was "wound up", which could not occur unless and until Mr. Padda had paid "a final buyout" of "Ms. Cohen's partnership interests." (*Id*. at 13:15-17.) Ms. Cohen's arguments are artful dodging.

Ms. Cohen's arguments would have some legs, if she and Mr. Padda had simply decided to dissolve and wind up C&P under the terms of the Partnership Agreement. (*See* Motion at Ex. 4.) According to the Partnership Agreement, upon the dissolution of C&P, "[t]he value of a partner's interest in the partnership shall be computed by adding the totals of the partner's (i) capital contribution and (ii) profits due and owing minus any amount owed by it to the partnership (including distributive burden of partnership debts)." (*Id*. at § 17(C).) And, Section 17(D) of the

[16] As noted in the Motion, if Ms. Cohen successfully invalidates the Buyout Agreement, Ms. Cohen would actually owe Mr. Padda money under the Dissolution Agreement. (*See* Motion at 19:12-21.) While Ms. Cohen states that "[t]he idea that Ms. Cohen would owe Mr. Padda is ludicrous" (*see* Opp. at 24:12-13), she does not deny this fact anywhere in her Opposition.

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Partnership Agreement stated that "[o]n dissolution of the partnership, it shall be wound up and liquidated as quickly as circumstances will allow." (*Id*. at § 17(C).)

Pursuant to the Partnership Agreement and Nevada law, both Mr. Padda and Ms. Cohen would have equally shared in the profits and losses during this wind up period and the costs incurred relating to this wind up period. *See e.g*., NRS 87.4357(2) ("In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts."). Mr. Padda would have also been entitled to receive reasonable compensation for services rendered in winding up the business of C&P. *See e.g.,* Uniform Partnership Act (1997) § 401(h) ("A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.")

Had Mr. Padda proceeded to wind up C&P under the Partnership Agreement, he likely would have owed Ms. Cohen continued fiduciary duties during the wind up process. However, that is not what occurred: Mr. Padda and Ms. Cohen did not equally divide up profits and losses, Ms. Cohen did not contribute to any of the costs incurred to wind up C&P's business, and Mr. Padda was not compensated for any efforts to wind up C&P. Instead, Mr. Padda and Ms. Cohen decided to enter into the Dissolution Agreement "to effectuate the dissolution" of C&P. (*See* Motion at Ex. 3.) The Dissolution Agreement states that Mr. Padda and Ms. Cohen expressly agreed that C&P "shall be dissolved effective December 31, 2014 and **shall cease to exist thereafter**." (emphasis added). (*Id*. at § 3.) Thus, by the express terms of the Dissolution Agreement, the winding up process occurred before, and C&P terminated on, December 31, 2014.[17] *See also* NRS 87.4352(1) ("The partnership is terminated when the winding up of its business is completed."). Ms. Cohen cannot now claim that any material issue of fact exists concerning how long it took for the wind up of C&P to be completed.

If more were required, as noted in the Motion, the Expectancy Interest was not created by

[17] NRS 47.240(2) creates a conclusive presumption that the facts recited in a written instrument between the parties are true." *Flangas v. State*, 104 Nev. 379, 381, 760 P.2d 112, 113 (1988).

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the Partnership Agreement; rather, it was created by the separate Dissolution Agreement. (*See* Motion at Undisputed Fact No. 10.) Therein, Mr. Padda contractually agreed that Ms. Cohen "shall be entitled to a 33.333% percent share of gross attorney's fees recovered in all contingency fee cases for which [C&P] has a signed retainer agreement dated on or before December 31, 2014." (*Id*. at Ex. 3 at § 7(b).). By the plain language of the Dissolution Agreement, which cannot be disputed, Ms. Cohen was not required to share in the costs related to prosecuting or winding up the contingency fee cases. Therefore, Ms. Cohen's Expectancy Interest was not a partnership interest, but a contractual interest—one that Ms. Cohen bargained away through the Buyout Agreement. Ms. Cohen's attempt to use the Expectancy Interest as a basis to claim that Mr. Padda's fiduciary obligations or that a "special relationship" continued to exist after December 31, 2014, should be rejected.

The case of *Meehan v. Shaughnessy,* 404 Mass. 419, 535 N.E.2d 1255 (1989), illustrates the effect of a contract provision addressing partnership dissolution. That case involved a large partnership of lawyers where Meehan had been employed in 1959, had become a partner in 1963, and, with another partner, had withdrawn in 1984. In lieu of "waiting for the unfinished business to be 'wound up' and liquidated" in accordance with statutes dealing with partnerships, the partnership agreement gave a withdrawing partner "the right to remove any case which came to the firm 'through the personal effort or connection' of the partner, if the partner compensate[d] the dissolved partnership 'for the services to and expenditures for the client.'" *Id.* at 430–31, 535 N.E.2d at 1261 (footnote omitted). The court held that the contract addressing the partnership dissolution effectuated the wind up process immediately:

> Under the agreement, the old firm's unfinished business is, in effect, "wound up" immediately; the departing partner takes certain of the unfinished business of the old, dissolved [firm] on the payment of a "fair charge," and the new, surviving [firm] takes the remainder of the old partnership's unfinished business. The two entities surviving after the dissolution possess "new business," unconnected with that of the old firm, and the former partners no longer have a continuing fiduciary obligation to windup for the benefit of each other the business they shared in their former partnership.

Id. at 432–33, 535 N.E.2d at 1262 (footnote omitted).

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Based on the plain language of the Dissolution Agreement, the only issue left to decide is purely a legal issue; namely, what legal effect did the Dissolution Agreement, which clearly effectuated the dissolution of C&P and confirmed that C&P ceased to exist after December 31, 2014, have on Mr. Padda's fiduciary obligations to and/or "special relationship" with Ms. Cohen arising out of the partnership? The law is clear: his fiduciary obligations and/or special relationship with Ms. Cohen arising out of the partnership ended when C&P ceased to exist on December 31, 2014. *See Lund v. Albrecht,* 936 F.2d 459, 463 (9th Cir. 1991) (finding that when partnership ceased to exist, the fiduciary obligations of the partners to each other ended); *Marr v. Langhoff*, 322 Md. 657, 668, 589 A.2d 470, 476 (1991) (holding that "mutual fiduciary duties cease when the winding up [of a partnership] is completed."). There is no genuine issue of material fact for the jury to decide. Summary judgment in favor of Mr. Padda is warranted.

2. The actualities of the relationship between Mr. Padda and Ms. Cohen establish that no special or confidential relationship exists

Citing to other witnesses' testimony, Ms. Cohen claims that she and Mr. Padda had a "very close and trusting relationship." (*See* Opp. at 3:9-12.) Yet again, Ms. Cohen turns a blind eye to her own testimony, which demonstrates that she did not have confidence or trust in Mr. Padda. Ms. Cohen questioned Mr. Padda's competence and honesty as far back as 2011, and she had serious issues with Mr. Padda's financial management of their partnership as early as 2013. (*See* Motion at Undisputed Fact No. 7.) According to Ms. Cohen's testimony, she did not actually repose any special confidence in Mr. Padda that would impose a duty of disclosure on him.

Indeed, while simultaneously shouting from the rooftop that she and Mr. Padda "have a very close and trusting relationship" (*see* Opp. at 3:12), Ms. Cohen attached to her Opposition text messages she sent to Mr. Padda that prove otherwise. After Ms. Cohen was locked out of the Padda Law office on September 22, 2017, she sent Mr. Padda a text message, complaining that Mr. Padda gave her computer and her office away and asking, "**Do I have to drive over to channel 8 and bloody you in front of everyone like I promised.**[sic]" (*Id*. at Ex. O.) (emphasis added). To make sure that Mr. Padda did not interpret this as an idle threat, Ms. Cohen followed up with "**You better**

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get back to me ASAP if you want to remain in one piece". (*Id*.) (emphasis added). These texts, not what she says in the Opposition, should be the prism through which the Court views all of Ms. Cohen's allegations that a special or confidential relationship between her and Mr. Padda existed after C&P dissolved on December 31, 2014, and Ms. Cohen's claims that Mr. Padda is guilty of elder abuse. (*See* Section II(E), *infra*.)

Equally important, Ms. Cohen does not deny that she was a highly sophisticated party throughout all of the events described in her Complaint and testimony. She had been a lawyer for decades. (*See* Motion at Undisputed Fact No. 1.) Under these Undisputed Facts, no confidential or special relationship existed. *See Ins. Co. of the W. v. Gibson Tile Co.,* 122 Nev. 455, 462, 134 P.3d 698, 702 (2006) ("The parties occupied similar bargaining positions. Consequently, as a matter of law, no special relationship existed between Gibson and ICW, and the district court therefore erred when it allowed Gibson to proceed in tort against ICW for the breach of the covenant of good faith and fair dealing."); *Perry v. Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 338 (1995) (stating that a confidential relationship "exists when one party gains the confidence of the other and purports to act or advise with the other's interests in mind; it may exist although there is no fiduciary relationship; it is particularly likely to exist when there is a family relationship or one of friendship."); *Andes Indus., Inc. v. Cheng Sun Lan*, 774 F. App'x 358, 360–61 (9th Cir. 2019) (holding district court correctly dismissed claims against defendant that required a fiduciary duty because plaintiff "did [not] plead any specific facts to demonstrate that defendant's superiority of position or power, or 'great intimacy, disclosure of secrets, or intrusting of power,' was such that [plaintiff's] will was effectively substituted for [defendant's]."). Summary judgment is appropriate on Ms. Cohen's tortious breach of covenant of good faith and fair dealing and breach of fiduciary duty claims.

3. Any claim related to the buyout of Ms. Cohen's interest in C&P is statutorily time-barred.

As established in the Motion, the Dissolution Agreement provided, among other things, that Ms. Cohen "shall be entitled to a total payment of $15,000.00" and said payment "shall constitute a complete and total monetary 'buyout' of Ruth Cohen's interests in Cohen & Padda, LLP". (*See*

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Motion at Undisputed Fact No. 10.) Undeterred by actual facts or the plain language of the Dissolution Agreement, Ms. Cohen appears to suggest that the damages she seeks concern the "final buyout or in full accord and satisfaction of Ms. Cohen's partnership interests." (*See* Opp at 13:15-17.) Even if the Court were to accept Ms. Cohen's flawed premise as true, her claim is time-barred.

NRS 87.4346(9) states as follows:

> A dissociated partner may maintain an action against the partnership, pursuant to subparagraph (2) of paragraph (b) of subsection 2 of NRS 87.4337, to determine the buyout price of that partner's interest, any offsets under subsection 3 or other terms of the obligation to purchase. **The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within 1 year after written demand for payment if no payment or offer to pay is tendered**. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection 3 and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection 8, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection 7. (Emphasis added).

In order for NRS 87.4346(9) to be applicable to Ms. Cohen, she must first be a dissociated partner, as defined in the statute. Nevada's UPA lays out several instances in which a partner shall be considered dissociated. *See* NRS 87.4343(1)-(10). There are two events contained in the statute that trigger dissociation specifically applicable to Ms. Cohen. They are:

> (a) "A partner is dissociated from a partnership upon the occurrence of the partnership's having notice of the partner's express will to withdraw as a partner or on a later date as specified by the partner." (NRS 87.4343(1)); and
>
> (b) "A partner is dissociated from a partnership upon the occurrence of the partner's expulsion by unanimous vote of the other partners if it is unlawful to carry on the partnership business with that partner." (NRS 87.4343(4)(a)).

Upon Ms. Cohen's suspension on April 6, 2017, it became unlawful to carry on the partnership's business with Plaintiff, as she had now become a non-lawyer.[18] Under NRS

[18] NRPC 5.4(b) specifically states that "a lawyer shall not form a partnership with a

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87.4343(4)(a) this is a dissociation triggering event upon unanimous vote of expulsion by the other partners. At the time of her suspension, there was no need to cast a vote of expulsion for two reasons: (1) there was only remaining partner, Mr. Padda himself, and (2) the parties had already previously agreed to a buyout set forth in the Dissolution Agreement.

Under Ms. Cohen's theory, Mr. Padda tendered, and Ms. Cohen accepted, the final installment payment under the Buyout Agreement on May 9, 2017. (*See* Motion at Undisputed Fact No. 32.) It is at this point Ms. Cohen became a dissociated partner within the meaning of NRS 87.4343(1), as the parties had reached the "specified later date" by Ms. Cohen as required by the statute. Under both scenarios, either Ms. Cohen's suspension from the practice of law in April 2017 or the completion and full satisfaction of the Buyout Agreement terms in May 2017, she was a dissociated partner by the spring of 2017 within the meaning of that phrase under NRS 87.4343.

Upon becoming a dissociated partner, NRS 87.4346 established the time frame in which Ms. Cohen was obligated to bring a claim against C&P. NRS 87.4346(9) specifically states, in pertinent part, that any action maintained against a partnership by a dissociated partner, which is predicated upon determination of the dissociated partners' buyout price, must be brought within 120 days after the partnership has tendered or offered payment, or within one year after written demand if no payment or offer is tendered. In the instant case, on May 9, 2017, the Padda Defendants submitted to Ms. Cohen the final payment under the Buyout Agreement to purchase her interest in C&P. (*See* Motion at Undisputed Fact No. 32.) Upon the offering and acceptance of said final payment under Buyout Agreement, the Padda Defendants had "tendered payment" within the meaning of NRS 87.4346(9), and it is from this point in time Ms. Cohen's 120-day time clock to bring an action began running. This means that Ms. Cohen would have had until approximately September 9, 2017, to commence this action. Ms. Cohen filed this action on April 9, 2019, roughly one year and seven months after Nevada's prescriptive period ended. Any claims concerning Ms. Cohen's buyout price for her interest in C&P is time-barred.

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nonlawyer if any of the activities of the partnership consist of the practice of law."

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C. Ms. Cohen's Fraud-Based Claims Fail As a Matter of Law.

The Padda Defendants offered essentially three arguments for why Ms. Cohen's Fifth (fraud in the inducement), Sixth (fraudulent concealment), and Seventh (fraudulent or intentional misrepresentation) Claims for Relief fail as a matter of law: (1) the alleged fraudulent statements made by Mr. Padda were "estimates and opinions" that cannot form the basis of a fraud claim (*see Clark Sanitation, Inc. v. Sun Valley Disposal Co.*, 87 Nev. 338, 341, 487 P.2d 337, 339 (1971) ("Nevada has recognized that expressions of opinion as distinguished from representations of fact, may not be the predicate for a charge of fraud.") (citation omitted)); (2) the purported fraudulent inducement cannot be something that conflicts with the contract's express terms (*see Road & Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 390, 284 P.3d 377, 381 (2012)); and (3) Ms. Cohen's fraudulent concealment claim cannot stand because the requisite "special relationship", which would impose a duty of disclosure, did not exist. (*See* Motion at 22:1-28:4.) Ms. Cohen's responses (or lack thereof) to each is addressed in turn.[19]

1. The statements at issue in Ms. Cohen's fraud claims are statements of opinion or estimates, neither of which can be the basis of fraud claims.

Ms. Cohen does not, because she cannot, dispute that Nevada law does not permit a claim for fraud based on estimates and opinions. *See Tai-Si Kim v. Kearney*, 838 F. Supp. 2d 1077, 1098 (D. Nev. 2012) ("Generally, Nevada law will not permit a claim of fraud based on a representation of value because it is an opinion or estimate about which reasonable persons could disagree."). Nor does she dispute that Mr. Padda made no false statements about the value or status of the cases filed by Mr. Garland and/or the Cochrans. (*See* Undisputed Fact Nos. 38 & 66.) Instead, she harps on Mr. Padda's statement "that Mr. Moradi's case was 'in the toilet' because he went back to work and had no financial losses…." (*See* Opp. at 11:7-9.) However, Mr. Padda's alleged statement about

[19] As pointed out in the Motion, Ms. Cohen does not allege that Mr. Padda made any false representations or material omissions to her about the Cochrans' case or its potential value. (*See* Motion at Undisputed Fact No. 66.) Ms. Cohen does not dispute this fact in her Opposition. In fact, Ms. Cohen appears to have thrown in the towel altogether on her claim to fees from the Cochrans' case. She mentions the Cochrans twice in one footnote in her Opposition. (*See* Opp. at 8, n.48.)

Mr. Moradi's case being "in the toilet" in or after September 2016 cannot be a literal statement of fact; rather, it is a statement of opinion. Ms. Cohen cannot deny that the law will not allow her to premise her fraud claims on this statement.

Ms. Cohen also does not deny that no one could have anticipated that Mr. Moradi would receive the largest jury verdict in Nevada's history. Mr. Padda and his highly experienced California co-counsel valued Mr. Moradi's claims at $1.5 million in December 2015. (*See* Motion at Undisputed Fact No. 46.) The Cosmo and Marquee valued Mr. Moradi's claims at $500,000.00 approximately two (2) months before trial started. (*Id.* at No. 55.) Even Ms. Cohen "couldn't believe" the jury verdict when she read about it. (*Id*. at No. 58.) Yet, Ms. Cohen wants to portray Mr. Padda as the attorney version of Carnac the Magnificent, who could divine unknowable future jury verdicts and settlements. Nonsense.

Next, Ms. Cohen tries to parse out the different statements (purportedly) made by Mr. Padda during one conversation about Mr. Moradi's case being "in the toilet." (*See* Motion at Undisputed Fact No. 49.) According to Ms. Cohen, Mr. Padda told her that Mr. Moradi's case was "in the toilet" because Mr. Moradi had returned to work so the only recovery would be medical damages and the extent of the recovery would likely range between $1 and $2 million. However, this bundle of supposed statements all went to Mr. Padda's expression of an opinion regarding the value of the Mr. Moradi's case. As a matter of law, these statements are not actionable in fraud. *See Bulbman*, 108 Nev. at 111, 825 P.2d at 592.

2. Any alleged fraudulent statements that purportedly induced her into signing the Buyout Contract contradict the express terms of the Buyout Agreement cannot form the basis of her fraud claims.

Although this case hinges on the terms and enforceability of the Buyout Agreement, Ms. Cohen's Opposition avoids the Buyout Agreement like the plague. Other than repeatedly referring to the agreement as the "Fraudulent Agreement"—as if repeating this term will somehow make it true—she does not set forth any of the terms of the Buyout Agreement. Ms. Cohen also does not deny that consistent with the express terms of the Buyout Agreement, she reviewed the Buyout Agreement before executing it, understood the terms of the Buyout Agreement, and was competent

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and of sound mind at the time she received and reviewed the Buyout Agreement. (*See* Motion at Undisputed Fact Nos. 25-29.) She also does not assert that Mr. Padda failed to comply with his obligations under the Buyout Agreement.

The reason why Ms. Cohen avoids the plain language of the Buyout Agreement is that the terms directly contradict, and therefore preclude the introduction of parol evidence regarding, many of her allegations. For instance, Ms. Cohen asserts that Mr. Padda proposed the Buyout Agreement. (*See* Opp. at 11:5-18.) However, her assertion contradicts the Buyout Agreement, which expressly states that "**Cohen has proposed** complete and final resolution of any and all expectancy interests she may have, or could possibly assert, in exchange for receipt of $50,000.00." (*See* Motion at Ex. 9 at ¶ 4.) (emphasis added). Ms. Cohen cannot assert that Mr. Padda proposed the Buyout Agreement as a basis for her fraudulent inducement claim. *See Road & Highway Builders,* 128 Nev. at 390, 284 P.3d at 381.

Before the Motion was filed, Ms. Cohen appeared to base, at least in part, her fraud claim on Mr. Padda's alleged oral statement that her Expectancy Interest effectively had "little or no value." (*See* Compl. at ¶ 117.) Of course, her assertion flatly contradicts the plain terms of the Buyout Agreement, which states that "her expectancy interests under paragraph 7(b) of the Partnership Dissolution Agreement could exceed $50,000.00". (*See* Motion at Ex. 9 at ¶ 2.) Because Ms. Cohen fails to address this allegation in her Opposition, she admits through silence that it cannot form the basis of her fraud claim. Her fraudulent inducement claim fails as a matter of law.

3. There was no special or confidential relationship between Mr. Padda and Ms. Cohen that created a duty of disclosure.

As set forth in Section II(B), *supra*, no special or confidential relationship existed between Mr. Padda and Ms. Cohen, and no fiduciary duties were owed by Mr. Padda, after C&P dissolved and ceased to exist as of December 31, 2014. There is no need to belabor the point here. Suffice it to say that without a duty to disclose, which does not exist without a special or confidential relationship or a fiduciary obligation, Ms. Cohen's fraudulent concealment claim fails as a matter of law. *See Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1486, 970 P.2d 98, 110 (1998), *overruled*

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on other grounds by GES, Inc. v. Corbitt, 117 Nev. 265, 21 P.3d 11 (2001) (stating that to prove fraudulent concealment, a plaintiff must present clear and convincing evidence that the defendant had a duty to disclose the facts at issue); *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 634–35, 855 P.2d 549, 553 (1993) (holding that a duty to disclose may arise where the parties enjoy a "special relationship" as defined by law). The Court should enter summary judgment in favor of the Padda Defendants on Ms. Cohen's fraudulent concealment claim.

D. Ms. Cohen's Claim for Unjust Enrichment Fails As a Matter of Law.

The Padda Defendants' Motion established that Ms. Cohen's Eighth Claim for Relief for unjust enrichment (*see* Compl. at ¶¶ 144-151) fails for lack of evidence of damages and, therefore, she cannot sustain her burden of proving this claim. (*See* Motion at 28:5-29:2.)[20] Not only does Ms. Cohen's Opposition fail to refute this fact, it establishes additional reasons why summary judgment in favor of the Padda Defendants is warranted.

Ms. Cohen argues that "she has provided evidence demonstrating that she conferred numerous benefits upon them for which she is entitled to just compensation, including, but not limited to, her continued work on employment discrimination cases for the firm." (*See* Opp. at 29:19-22.) However, until filing her Opposition brief, Ms. Cohen has never claimed, much less presented any evidence, that she was not adequately paid for any services she performed on her employment discrimination cases. The Court need not take the Padda Defendants' word for it. It need only ask Ms. Cohen the following question: what evidence is in the record before the Court that establishes the amount or figure the jury can use to evaluate the alleged benefit Ms. Cohen conferred on the Padda Defendants through her work on the employment discrimination cases? The answer is undisputed: there is no such evidence. This is fatal to Ms. Cohen's claim. *See Certified Fire Prot. Inc. v. Precision Constru.*, 128 Nev 371, 381, 283 P.3d 250, 257 (2012) (stating that "a pleading of quantum meruit for unjust enrichment does not discharge the plaintiffs

[20] The Padda Defendants also pointed out that Ms. Cohen cannot recover punitive damages under her unjust enrichment theory. (*See* Motion at 28:14-29:2.) Ms. Cohen concedes through silence that her punitive damages request is improper. (*See* Opp. at 30, n.138.)

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obligation to demonstrate that the defendant received a benefit from services provided.") (citing Restatement (Third) of Restitution and Unjust Enrichment § 31 cmt. e (2011).).

Ms. Cohen also avers that she "helped form the Cohen & Padda firm, assisted in client intake and carried burdens of the firm while others may have handled client intake." (*See* Opp. at 29:23-30:1.) In other words, Ms. Cohen asserts that she conferred a benefit on C&P, a non-party in this case. Ms. Cohen's failure to present any evidence that, through these acts, she conferred any benefit upon the Padda Defendants warrants entry of summary judgment in the Padda Defendants' favor. *See Certified Fire,* 128 Nev. at 381, 283 P.3d at 257 ("Unjust enrichment exists when the plaintiff confers a benefit **on the defendant**, the defendant appreciates such benefit, and there is 'acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof.'") (emphasis added).

Next, Ms. Cohen directs the Court to look to "Section II Ms. Cohen's Statement of Facts at Subsections B and C herein" to find her "facts" that establish the benefits she conferred on the Padda Defendants. (*See* Opp. at 30, n.137.) In Subsection B, the Court will find Ms. Cohen's allegation regarding continued work "on a part-time basis" on the "firm's employment discrimination cases," which was easily dispatched above. In Subsection C, the Court will find all of the alleged facts Ms. Cohen claims establish the services she performed and the benefit she conferred:

* "Ms. Cohen's involvement with the Moradi case was limited to the initial intake meeting with Mr. Moradi in 2012, referring Mr. Moradi to a doctor, and meeting with the Cosmopolitan's insurance adjuster." (*See* Opp. at 6:12-14.)

* Ms. Cohen "stopped having an active role in the [Moradi] case almost immediately after her initial involvement in 2012." (*Id*. at 6:14-16.)

* Ms. Cohen "was not involved in the day-to-day aspects of the case, and was not actively working on the case." (*Id*. at 7:5-7.)

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* "In or about 2014", Mr. Padda made a statement to Ms. Cohen and "after that" Ms. Cohen "did not have any further involvement with Mr. Garland's case." (*Id*. at 9:4-5.)

Accepting Ms. Cohen's facts as true, she did not perform any services or confer any benefit after 2014. Therefore, based upon Ms. Cohen's filing of her Complaint on April 9, 2019, her unjust enrichment claim is time-barred by the applicable four-year statute of limitations. *See In re Amerco Derivative Litig.,* 127 Nev. 196, 228, 252 P.3d 681, 703 (2011) ("The statute of limitation for an unjust enrichment claim is four years.") (citing NRS 11.190(2)(c).). For this reason alone, the Court can, and should, grant summary judgment in favor of the Padda Defendants' on Ms. Cohen's unjust enrichment claim.

Equally important, the only measure of damages Ms. Cohen has offered for her unjust enrichment claim is the amount of $3,314,227.49, which also represents her contract-based expectation damages under the Dissolution Agreement. (*See* Opp. at 30:1-2.) ("Therefore, the value of her services for which she is entitled to compensation are the same damages she seeks on all other claims."). Thus, the issue can be fairly framed as follows: is Ms. Cohen relying solely on breach of contract damages to establish the value of the benefit she conferred through her services? The undisputed answer is "yes".

As the Court knows, the law prohibits Ms. Cohen from relying on breach of contract damages to establish damages under an unjust enrichment claim. *See e.g., Las Vegas Sands Corp. v. Suen*, No. 64594, 2016 WL 4076421, at *5 (Nev. July 22, 2016) (unpublished disposition) (stating that "[t]he '[c]ontract price and the reasonable value of services rendered are two separate things,'" and holding new jury trial warranted because "relying solely on the success fee [from a contract] does not ensure reasonable compensation for the value of [plaintiff's] services"); *Gordon v. Stewart*, 74 Nev. 115, 119, 324 P.2d 234, 236 (1958) ("The amount of the agreed fee is certainly a proper consideration upon a determination, in quantum meruit, of reasonable value; but, just as clearly, it cannot be held to be the controlling or dominant consideration. Quantum meruit contemplates that the true reasonable value is to be substituted for the agreed terms."); *Scaffidi v. United Nissan*, 425 F.Supp.2d 1159, 1170 (D. Nev. 2005) ("In a case with a quantum meruit or

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unjust enrichment theory of recovery, the proper measure of damages is the 'reasonable value of [the] services.'").

Put differently, damages for unjust enrichment claims cannot be a substitute for breach of contract damages. *See Crockett & Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP*, 440 F. Supp. 2d 1184, 1197 (D. Nev. 2006), *aff'd,* 583 F.3d 1232 (9th Cir. 2009) ("An unjust enrichment claim is 'not available when there is an express, written contract, because no agreement can be implied when there is an express agreement.'"); *Harris Corp. v. Giesting & Assocs.,* 297 F.3d 1270, 1276 (11th Cir. 2002) (rejecting argument that a plaintiff asserting an unjust enrichment claim should "recover benefit of the bargain damages" and instead holding that the plaintiff was entitled to the "reasonable value of the labor performed and the market value of any furnished materials").

In summary, there are no genuine issues of material fact left for the jury to decide regarding Ms. Cohen's unjust enrichment claim. Regardless of whether the Court finds that Ms. Cohen's unjust enrichment claim fails, as a matter of law, because the claim is asserted against a non-party, the claim is time-barred and/or Ms. Cohen failed to meet her burden of proving that a benefit was conferred and the value of that benefit, the result is still the same: the Court should enter summary judgment in favor of the Padda Defendants on this claim. The Motion should be granted.

E. Ms. Cohen's Elder Abuse Claim is Factually and Legally Without Merit.

In perhaps her weakest argument, Ms. Cohen devotes a total of eleven lines out of her 30-page brief to arguing that her Ninth Claim for Relief for elder abuse under NRS 41.1395 is appropriate. (*See* Opp. at 30:8-18.) In her cursory response, Ms. Cohen does not actually try to explain how her allegations create a claim for elder abuse under the plain language of NRS 41.1395. Ms. Cohen simply states that "Ms. Cohen was 60 years of age or older at all relevant times" and there is an issue of fact "as to Ms. Cohen losing money as a result of Defendants' conduct and liability arising from Ms. Cohen's other affirmative claims." (*Id.*) Simply stating there is an issue of fact "as to Ms. Cohen losing money as a result of Defendants' conduct" does not make it so.

Ms. Cohen does not cite to a single case that would support a claim for elder abuse under the facts of this case. She does, however, try to sweep under the rug the legislative history of NRS

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41.1395 set forth in *Brown v. Mt. Grant Gen. Hosp.,* No. 3:12-CV-00461-LRH, 2013 WL 4523488, at *6 (D. Nev. Aug. 26, 2013), by claiming the facts in that case were different than the facts in this case. Ms. Cohen's strategy of "that which is ignored does not exist" must be rejected.

The facts at issue in *Brown* do not alter the plain language of NRS 41.1395 or the legislative history behind NRS 41.1395. There is no dispute that the plain language of NRS 41.1395 refers to the improper acquisition by another person of the older or vulnerable person's money or property—such as by theft or conversion. Nor is there any dispute that NRS 41.1395 was enacted to target the "relationship between long-term caretakers and their charges." *Brown,* 2013 WL 4523488, at *7 ("Thus, both the plain language of § 41.1395 and its legislative history suggest that the statute targets the relationship between long-term caretakers and their charges. . . . Indeed, during hearings on § 41.1395, several legislators addressed the statute's potential impact on 'nursing homes,' 'managed care facilities,' 'long-term care facilities,' "group homes," caretaking family members, even homeless shelters, yet no legislator mentioned hospitals or clinics.").

In this case, Ms. Cohen has not asserted, much less provided any evidence, that Mr. Padda obtained control over or converted Ms. Cohen's money, assets or property. She has not properly asserted, much less provided any evidence to support, an elder abuse claim. There are no genuine issues of material fact for the jury to decide on this claim. Ms. Cohen's hope that she may be able to establish that she "lost money" and somehow fit that into an elder abuse claim at trial is not enough to defeat the Motion. *See Roche v. John Hancock Mutual Life Ins. Co.,* 81 F.3d 249, 253 (1st Cir. 1996) ("[S]peculation and surmise, even when coupled with effervescent optimism that something definite will materialize further down the line, are impuissant in the face of a properly documented summary judgment motion."). Summary judgment in favor of the Padda Defendants on this claim is warranted.

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III. CONCLUSION

For the reasons set forth above and in the Motion, the Padda Defendants respectfully request that the Court grant this Motion and enter judgment in favor of the Padda Defendants on each and all of the claims asserted by Ms. Cohen.

DATED this 24th day of January, 2020.

By: /s/ Tamara Beatty Peterson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Peterson Baker, PLLC, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 24th day of January, 2020, to the following:

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

RUTH COHEN	.	
	.	
Plaintiff	.	CASE NO. A-19-795299-B
	.	
vs.	.	
	.	DEPT. NO. XI
PAUL PADDA, et al.	.	
	.	**Transcript of**
Defendants	.	**Proceedings**
. . . . .	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

MOTION TO REDACT PORTIONS OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND EXHIBIT 39 AND TO SEAL EXHIBITS 20, 21, 28 AND 31

MONDAY, JANUARY 27, 2020

APPEARANCES:

FOR THE PLAINTIFF:	LIANE K. WAKAYAMA, ESQ. SAMUEL R. MIRKOVICH, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. TAMARA PETERSON, ESQ. RYAN A. SEMERAD, ESQ.

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	LIZ GARCIA LGM Transcription Service

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

LAS VEGAS, NEVADA, MONDAY, JANUARY 27, 2020, 10:40 A.M.

* * * * *

THE COURT: Cohen versus Padda.

MS. WAKAYAMA: Good morning, Your Honor.

THE COURT: Good morning.

Mr. Peek, are you or Ms. Peterson arguing?

MR. PEEK: I'm going to be arguing, Your Honor.

THE COURT: Okay.

MR. PEEK: I just want to make sure I have everything that I need.

THE COURT: Okay.

(Pause in the proceedings)

MR. PEEK: Anyway, Your Honor, good morning. When I think about this morning's argument, I think about what it means to me, the Court, and everyone in this courtroom to be a part of an honorable profession and to always honor our profession. As a society we speak often of the rule of law. We pride ourselves on being members of a professional that upholds the rule of law.

Today, however, we are challenged by a plaintiff who has degraded our profession and the Rules of Professional Conduct, as well as the rule of law. Ms. Cohen seems to have forgotten the oath that each of us took when we stood before a judge, raised our right hand and swore the following oath. And I'm not going to repeat all of it, Your Honor, but I'm

going to repeat the pertinent part under Rule 73. "I do solemnly swear or affirm that I will support the Constitution and Government of the United States and of the State of Nevada. I will maintain the respect due to courts of justice and judicial officers. I will support, abide by and follow the Rules of Professional Conduct as are now or may hereafter be adopted by the supreme court. I will faithfully and honestly discharge the duties of an attorney at law to the best of my knowledge and ability."

Again, the reminder from this oath, and I took it before then Supreme Court Justice Thompson, "I will support, abide by and follow the Rules of Professional Responsibility." Yet, Ms. Cohen now seeks to have this Court ignore Rules of Professional Responsibility 5.4(a) and arguably 5.4(d) and permit her when she was a nonlawyer, suspended from the practice of law, to recover fees earned and paid to Paul Padda Law in June of 2017 and in early 2019.

She also wants you to ignore Supreme Court Rule 212, sub 4, that states that an attorney who is suspended for noncompliance with the rules governing CLE is -- quote, "is not entitled to engage in the practice of law." As such, Ms. Cohen, who was suspended on April 7th, 2017, became a nonlawyer in accordance with this rule.

Ms. Cohen argues and we appreciate that she was reinstated in December of 2019 after the filing of our motion

for summary judgment challenging her request. But the supreme court ruled 213, Your Honor --

THE COURT: And your motion was filed on December 18th, right?

MR. PEEK: Pardon?

THE COURT: December 18th.

MR. PEEK: Yes. Our motion was December 18th. The supreme court ruled 213, Your Honor, is not retroactive and it does not give her the right to recover fees earned and paid to Paul Padda Law while she was a nonlawyer in 2017 and early 2019, or even when she filed her lawsuit in April of 2019.

Your Honor, rules have to have meaning. An oath has to have meaning. Neither can be ignored or disregarded. What will the public think of us if we are permitted to ignore the law and our oath and that the Court will sanction this unprofessional conduct? You don't get a mulligan for a violation of the Nevada Rules of Professional Responsibility. You don't get a mulligan for violating the supreme court rules. And the public needs to know that we do not have special privileges as lawyers or even in this case a suspended nonlawyer.

We have cited you, Your Honor, both in our opening brief and in our reply brief, to many cases upholding this rule. And counsel has not distinguished any of the cases or cited you to any contrary authority. They cite you only

to the 3-2 decision of the supreme court in the Shimrak v. Garcia-Mendoza case as authority. Shimrak is not only distinguishable, it is completely inapposite. This is not a case where an attorney misled a private investigator and was, quote, "in pari delicto" with the nonlawyer. Rather, Ms. Cohen, like the lawyer in Shimrak, is, quote, "guilty of the greatest moral fault, since she is the one who violated a professional rule when she filed her lawsuit as a nonlawyer seeking to recover fees from Paul Padda Law, fees that were earned and paid when Ms. Cohen was a nonlawyer and fees which Paul Padda law could not share with her.

Your Honor, furthermore -- I'm going to move now past that oath requirement and that rule of law and ask you to honor our Rules of Professional Responsibility. But, Your Honor, this is also a case by a party who ignores the rule of law, the rule of law of contracts. She wants you to rewrite her agreement that she made on September 12, 2016. She asks you to ignore the contract that she voluntarily and freely signed based on after the fact revisionism.

But contracts as well have meaning, Your Honor. Statements in contracts have meaning. We only need look to the conclusive presumptions set forth in NRS 47.240, subpart 2, to support and uphold my statement of meaning in contracts. NRS 47.240 provides: "The following and no others are conclusive." So, part 2: "The truth of the fact recited

from the recitals in a written instrument between the parties thereto."

And what truth of facts do we find in the recitals in paragraph 2 of the business expectancy interest resolution agreement? One, Cohen has proposed complete and final resolution of any and all expectancy interest she may have or could possibly assert in exchange for $50,000. It wasn't Paul Padda who proposed it -- Ruth Cohen. Two, Cohen acknowledges that her expectancy interest could exceed $50,000. Three, Cohen has determined for her own personal reasons that it would be advantageous and in her best interest to forfeit those expectancy interests, which carry significant risk and uncertainty -- which carry significant risk and uncertainty, in exchange for the certainty of $50,000.

And what we know from all of the evidence here that is undisputed is that the certainty of $50,000 was certainly something that would help her with her tax problems with the IRS. In fact, the agreement itself recites the fact that $2,000 of the first payment will go to Daniel Kim, a CPA.

So, Ms. Cohen also asked you to ignore the entire agreement integration clause of paragraph 8. Under the rule of law of contracts, contracts have meaning, and even more so when between two sophisticated parties, two lawyers. Statements above your signature that state that the signing party is of sound mind, has fully reviewed the agreement,

has had the opportunity to consult with counsel and agrees to be bound by the terms of the contract have meaning. So conclusive presumptions in recitals, the entire agreement integration clauses and other statements above one's signature are not the province of the jury. They are legal issues for the Court to decide on this summary judgment. Neither you nor the jury may rewrite this contract.

Ms. Cohen attempts to defeat summary judgment with a scatter shot of so-called facts and that scatter shot is really a wing and a prayer that she may get divine help or become lucky that maybe just one of her broad, sweeping statements might just hit the mark. Well, we're not here for divine intervention and we're not here for luck. We're here honoring the law. Furthermore, she doesn't dispute any of the key undisputed facts outlined in and supported in our motion for summary judgment. She just doesn't like the legal effect of the undisputed facts. Ms. Cohen contorts the facts in an effort to create a special relationship. I was still a partner --

THE COURT: Mr. Peek, if you could wrap up.

MR. PEEK: I did this last night, Your Honor, and it only took me eight and a half minutes, so I thought I was on time.

THE COURT: Yeah, but you're going too slow. You're having too many dramatic pauses.

MR. PEEK: I'm having too many drama moments, Your Honor. A lot of this is all set forth.

THE COURT: I got it. I've got a question for Ms. Wakayama.

MR. PEEK: There are a couple of points that I do want to make, though, Your Honor, in terms of that. One of them is -- well, two of them --

THE COURT: How about you wait until after I ask Ms. Wakayama the question and give you two minutes.

Ms. Wakayama.

MS. WAKAYAMA: Yes, Your Honor.

THE COURT: Usually when I have an attorney that appears in front of me that has a CLE suspension it's something that was overlooked, it's something that was -- they weren't aware of, there's a problem, but given the deposition testimony of Ms. Cohen it seems to be an intentional and knowing decision not to proceed. Can you tell me how that impacts this discussion?

MS. WAKAYAMA: Sure, Your Honor. So we have to remember the timeline here. So, April 2017 she is notified that she's delinquent in her CLEs. She pays the fine. I think it was like $640, which she testified to, and she goes ahead and orders the CDs, the tapes to start taking those. She's experiencing a lot of health issues at this time and is subsequently hospitalized in October of 2017.

But in September, on September 22nd, 2017, what happens? She gets locked out of her office by Mr. Padda. Her computer is given to somebody else. Her office is given to somebody else. And by that point, you know, she was already semi-retired. She thought to herself, well, there's no point in me going forward and trying to get these CLEs finished while I'm dealing with all these health issues, which they filed a motion in limine on which you'll hear next Monday.

So when her health is better, when she's able to go ahead and make sure that she's compliant, she does so. And this didn't happen on December 19th, Your Honor. I mean, she had to take -- I believe it was twelve CLEs altogether, including ethics and everything else, so this took some time. And I will say I believe she started in late summer of this year to get compliant on that.

So regardless, the Shimrak decision is very important because it doesn't allow an attorney to go ahead and enter into a contract and then all of a sudden say, you know what, you're a nonlawyer now, I don't have to abide by my contractual relations.

And what's so interesting is that Mr. Peek did not address one purely question of law that's before this Court, and that is did Mr. Padda owe Ms. Cohen continuing fiduciary duties after the December 2014 dissolution agreement? And the law says he did, because this isn't just a regular fee

splitting. This is a contract that they agreed to in order to wind down their partnership. It was a contractual right that he's now trying to use as a sword and as an excuse for not honoring -- for defrauding her; for defrauding her. And that's -- you know, Mr. Peek goes back and forth with the, oh, it goes both ways. We obviously vehemently disagree with his characterization of Ms. Cohen. But the question is, was there unfinished business in the partnership in December of 2014? Of course there was. There were these pending contingency fee ases that she continued to have an interest in, a continued interest in partnership assets.

Now, in their reply they argue Mr. Padda's fiduciary duties ended in December of 2014. They cite two cases to support that theory, the Lund case and the Marr (phonetic) case. So I pulled those cases to see what they actually say and they both support summary judgment, partial summary judgment in our favor and here's why. The Ninth Circuit in the Lund case says, and I'm quoting, "The rule in analyzing California is that upon consummation of the sale of a partnership interest the selling partner's interest and participation in the partnership are terminated. In California consummation occurs and a partner's fiduciary duty ends when the parties have formed a signed contract to purchase -- to purchase a partnership interest."

That didn't happen in December 2014. And so for

that reason the issue is ripe as to Mr. Padda's duty as a matter of law, continued duty to honor his fiduciary obligations because those mean something and the Nevada Supreme Court has gone ahead and said what they actually mean in Clark v. Lubritz. You have to give full transparency and disclosure. Everything you know your partner needs to know, and that didn't happen here because she was defrauded.

So we would ask that you deny summary judgment and then you enter it on the narrow issue of law as to whether or not Mr. Padda owed a continuing fiduciary duty to her.

THE COURT: Thank you. Mr. Peek, I don't need anything else from you.

I am going to grant the motion for summary judgment. Here, if the plaintiff is successful on her claim of fraudulent inducement, she would be able to address all of the claims that she has pled. There is a genuine issue of material fact as to the special relationship. However, given the knowing and intentional decision to be suspended from the practice of law, I cannot in good conscience allow this case to proceed. If it was an oversight, I think we would be in a different position, but given her deposition testimony that is contained in Exhibit 34 to the motion, the motion for summary judgment is granted on that narrow basis.

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MR. PEEK: Thank you, Your Honor. We'll prepare the order.

(PROCEEDINGS CONCLUDED AT 10:58 A.M.)

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Liz Garcia

Liz Garcia, Transcriber
LGM Transcription Service

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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

NOTICE OF ENTRY OF ORDER DENYING MOTION FOR SANCTIONS AND AWARDING ATTORNEY'S FEES

PLEASE TAKE NOTICE that an Order Denying Motion for Sanctions and Awarding Attorney's Fees ("Order") was entered on February 3, 2020. A copy of said Order is attached hereto.

Dated this 3rd day of February, 2020.

By: /s/ Tamara Beatty Peterson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Peterson Baker, PLLC, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING MOTION FOR SANCTIONS AND AWARDING ATTORNEY'S FEES** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 3rd day of February, 2020, to the following:

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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

ORDER DENYING MOTION FOR SANCTIONS AND AWARDING ATTORNEY'S FEES

This matter came before the Court for hearing on January 22, 2020 at 9:00 a.m. for Defendants' Motion for Sanctions Against Plaintiff on an Order Shortening Time, with appearances by Liane Wakayama, of Marquis Aurbach Coffing, on behalf of Plaintiff Ruth L. Cohen ("Ms. Cohen"); Donald J. Campbell, of Campbell & Williams, on behalf of Ms. Cohen; Samuel

Mirkovich, of Campbell & Williams, on behalf of Ms. Cohen; J. Stephen Peek, of Holland & Hart, on behalf of Defendants Paul S. Padda ("Mr. Padda") and Paul Padda Law, PLLC ("PPL") (collectively, "Defendants"); and Tamara Beatty Peterson, of Peterson Baker, PLLC, on behalf of Defendants.

Upon the Court's consideration of the pleadings and papers on file herein, the arguments and representations of counsel, and good cause appearing therefor, the Court hereby finds as follows:

1. The late disclosure of documents by Ms. Cohen, following a Motion to Compel, clearly should have been provided to Defendants at an earlier stage.

2. While the documents should have been produced earlier, the failure to do so does not rise to the level of NRCP 37 case terminating sanctions or even evidentiary sanctions.

3. The Court will award attorney's fees to Defendants for Ms. Cohen's late production, and the requirement of proceeding this way in both the Motion to Compel and the Motion for Sanctions, in the amount of $1,500.00 (one thousand five hundred dollars) by Ms. Cohen to the Defendants.

Based on the foregoing findings, and good cause appearing, the Court orders as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for Sanctions is DENIED;

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Ms. Cohen shall pay the sum of $1,500.00 (one thousand five hundred dollars) to Defendants as attorneys' fees.

Dated this 31 day of January, 2020.

EIGHTH JUDICIAL DISTRICT COURT

CEH

Submitted by:

By: _____

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Attorneys for Defendants PAUL S. PADDA and PAUL PADDA LAW, PLLC

DISTRICT COURT

CLARK COUNTY, NEVADA

RUTH L. COHEN, an Individual,

Plaintiff,

v.

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

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; JUDGMENT

Hearing Date: January 27, 2020

Hearing Time: 9:00 a.m.

This matter came before the Court for hearing on the Motion for Summary Judgment (the "Motion") filed by Defendants Paul S. Padda ("Mr. Padda") and Paul Padda Law, PLLC ("Padda Law") (collectively, "Defendants"). J. Stephen Peek, Esq., and Ryan A. Semerad, Esq., of Holland & Hart, LLP, and Tamara Peterson, Esq., of Peterson Baker PLLC appeared on behalf of Defendants; Liane K. Wakayama, Esq., of Marquis Aurbach Coffing, and Samuel

R. Mirkovich, Esq., of Campbell & Williams, on behalf of Plaintiff Ruth L. Cohen ("Ms. Cohen").

The Court, having carefully considered Defendants' Motion and the exhibits and declarations attached thereto, Ms. Cohen's Opposition to the Motion and the exhibits and affidavit attached thereto, Defendants' Reply in support of the Motion, as well as the arguments of counsel for Defendants and Ms. Cohen, being fully apprised, and good cause appearing, makes the following findings of undisputed fact, which are relevant to the Court's decision on the Motion, and conclusions of law:

I.

FINDINGS OF UNDISPUTED FACT

1. On or about January 18, 2011, Mr. Padda and Ms. Cohen formed a partnership called Cohen & Padda, LLP ("C&P") to provide legal services.

2. Pursuant to the Partnership Agreement dated January 18, 2011, Mr. Padda and Ms. Cohen acknowledged that the duration of their partnership would be until January 14, 2014 or until earlier dissolved by agreement of the parties (the "Partnership Agreement").

3. Sometime in 2014, Ms. Cohen began to consider semi-retirement from the practice of law.

4. On or about December 23, 2014, Mr. Padda and Ms. Cohen entered into an agreement, which set forth the terms under which they effectuated the dissolution of C&P, and C&P ceased to exist, as of December 31, 2014 (the "Dissolution Agreement").

5. Section 7(b) of the Dissolution Agreement provided, in relevant part, that "[w]ith respect to contingency cases in which there is yet to be a recovery by way of settlement or judgment," Ms. Cohen "shall be entitled to a 33.333% percent share of gross attorney's fees recovered in all contingency fee cases for which [C&P] has a signed retainer agreement dated on or before December 31, 2014" (the "Expectancy Interest"). Nothing in the Dissolution Agreement required or anticipated that Ms. Cohen would perform work on the contingency cases that comprised of her Expectancy Interest.

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6. On January 2, 2015, Mr. Padda formed a new law firm, which after two separate name changes, became Padda Law.

7. While she continued to practice law after the dissolution of C&P working primarily on new employment law matters and handling employment discrimination consultations, Ms. Cohen transitioned to part-time work and did not come to the office much.

8. On September 12, 2016, Ms. Cohen and Mr. Padda executed a Business Expectancy Interest Resolution Agreement (the "Buyout Agreement"), wherein Ms. Cohen agreed to exchange her Expectancy Interest for the sum certain of $50,000.00.

9. In total, Mr. Padda paid Ms. Cohen, and Ms. Cohen accepted, $51,500.00 under the Buyout Agreement.

10. At the time Ms. Cohen and Mr. Padda entered into the Buyout Agreement, several contingency fee cases subject to Ms. Cohen's Expectancy Interest were still pending and had not reached a complete and final resolution, including, among others, *Garland v. SPB Partners, LLC et al.*, Case No. A-15-724139-C (the "Garland Case"), *Moradi v. Nevada Property 1, LLC et al.*, Case No. A-14-698824-C (the "Moradi Case"), and *Cochran v. Nevada Property 1, LLC et al.*, Case No. A-13-687601-C (the "Cochran Case") (collectively referred to, where appropriate, as the "Pending Cases").

11. With respect to her role in the Pending Cases, Ms. Cohen admits the following:

(a) "Ms. Cohen's involvement with the Moradi case was limited to the initial intake meeting with Mr. Moradi in 2012, referring Mr. Moradi to a doctor, and meeting with the Cosmopolitan's insurance adjuster."

(b) Ms. Cohen "stopped having an active role in the [Moradi] case almost immediately after her initial involvement in 2012."

(c) Ms. Cohen "was not involved in the day-to-day aspects of the case, and was not actively working on the [Moradi] case."

(d) "In or about 2014", Mr. Padda made a statement to Ms. Cohen about reducing C&P's attorneys' fees in the Garland case and "after that" Ms. Cohen "did not have any further involvement with Mr. Garland's case."

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12. On October 6, 2016, Mark Garland, the client in the Garland Case, executed a disbursement sheet authorizing the release of settlement funds.

13. The disbursement sheet for Mr. Garland's case established that the gross attorneys' fees earned by Padda Law totaled $51,600.00.[1]

14. On or about April 6, 2017, Ms. Cohen was notified that she was suspended from the practice of law by the Nevada Board of Continuing Legal Education pursuant to Nevada Supreme Court Rule ("SCR") 212 for her failure to complete the 2016 Continuing Legal Education ("CLE") requirements, as mandated by SCR 210.

15. Upon learning of her suspension, Ms. Cohen "immediately called the bar" and discovered that she would be required to pay $700.00 and complete her CLE requirements in order to be reinstated.

16. Ms. Cohen made a knowing and intentional decision to remain suspended from the practice of law. (*See* Motion at Ex. 34, 6:17-7:6.) ("And I don't intend to pay them $700 to get my license back when I'm not going to use it, so. . . . So, it's my protest."; "And when I went to turn [the CLE credits] in, they said, Well, it will cost you $700, and I said, See you. I'm just not going to do it.").

17. On April 27, 2017, a jury returned a verdict in favor of David Moradi, the client in the Moradi Case, including an award of damages for past and future loss of earnings as well as past and future pain and suffering.

18. On May 23, 2017, Mr. Moradi reached a confidential settlement agreement with the defendants as a complete and final resolution of the Moradi Case.

19. On February 27, 2019, Ms. Cohen, through counsel, and while she was suspended from the practice of law, sent a letter to Mr. Padda demanding, for the first time, payment of certain attorneys' fees Ms. Cohen claimed were owed to her by Defendants pursuant to her Expectancy Interest under the Dissolution Agreement.

20. In the spring of 2019, Stephen Cochran and Melissa Cochran, the clients in the

[1] Ms. Cohen's 33.333% putative share would have equaled $17,196.67.

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Cochran Case, reached a confidential settlement agreement with the defendants as a complete and final resolution of the Cochran Case, and on or about July 9, 2019, filed a stipulation and order to dismiss the Cochran Case.

21. On April 9, 2019, Ms. Cohen, while she was still suspended from the practice of law, filed her Complaint in this action, asserting the following claims for relief: (1) First Claim for Relief for breach of contract—Partnership Dissolution Agreement (against Mr. Padda); (2) Second Claim for Relief for breach of the implied covenant of good faith and fair dealing (against Mr. Padda); (3) Third Claim for Relief for tortious breach of the implied covenant of good faith and fair dealing (against Mr. Padda); (4) Fourth Claim for Relief for breach of fiduciary duty (against Mr. Padda); (5) Fifth Claim for Relief for fraud in the inducement (against Mr. Padda and Padda Law); (6) Sixth Claim for Relief for fraudulent concealment (against Mr. Padda and Padda Law); (7) Seventh Claim for Relief for fraudulent or intentional misrepresentation (against Mr. Padda and Padda Law); (8) Eighth Claim for Relief for unjust enrichment (against Padda Law or, in the alternative, against Mr. Padda); (9) Ninth Claim for Relief for elder abuse under NRS 41.1395 (against Mr. Padda); and (10) Tenth Claim for Relief for declaratory relief (against Mr. Padda and Padda Law). (*See generally* Compl.)

22. The gist of Ms. Cohen's claims is that Mr. Padda and/or Padda Law induced her to enter the Buyout Agreement through fraudulent acts, misrepresentations and/or omissions such that the Buyout Agreement should be rescinded, thereby entitling Ms. Cohen to recover as damages 33.333% of the gross attorneys' fees earned in the Pending Cases pursuant to the Expectancy Interest set forth in the Dissolution Agreement.

23. Ms. Cohen asserts that her 33.333% share of the gross legal fees Defendants received for the Pending Cases equals $3,314,227.49.

24. Ms. Cohen seeks to recover this amount ($3,314,227.49) as damages caused by Defendants' breach of the Dissolution Agreement under her First Claim for Relief. (*See* Compl. at ¶¶ 82-90.)

25. Ms. Cohen seeks to recover the same amount of damages ($3,314,227.49), in addition to other statutory damages, under each of her other claims for relief.

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26. On December 19, 2019, the day after Defendants filed their Motion, Ms. Cohen obtained a "Notice of Completion of Requirements for Reinstatement", which was executed by Executive Director Laura Bogden and reinstated Ms. Cohen's law license as of December 19, 2019 (the "Reinstatement Notice").

27. Pursuant to the Reinstatement Notice, the Nevada Board of Continuing Legal Education recognized that Ms. Cohen had completed a minimum of fifteen (15) hours of accredited educational activity within the period of twelve (12) months immediately preceding the filing of her application, as required by SCR 213.

28. Beginning on April 6, 2017, and continuing until December 19, 2019, Ms. Cohen's license to practice law in the State of Nevada was suspended.

29. Ms. Cohen admits she is not seeking quantum meruit damages in this action.

30. If any Finding of Undisputed Fact is properly a Conclusion of Law, it shall be treated as if appropriately identified and designated.

II.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when, "after review of the record viewed in a light most favorable to the non-moving party, there remain no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law." *Evans v. Samuels*, 119 Nev. 378, 75 P.3d 361, 363 (2003).

2. "A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002) (citation and quotation omitted).

3. The moving party can meet its burden by either "(1) submitting evidence that negates an essential element of the nonmoving party's claim or (2) pointing out that there is an absence of evidence to support the nonmoving party's case." *Torrealba v. Kesmetis*, 124 Nev. 95, 100, 178 P.3d 716, 720 (2008) (internal citations and quotations omitted).

4. On the other hand, "[t]o successfully defend against a summary judgment motion, 'the nonmoving party must transcend the pleadings and, by affidavit or other

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admissible evidence, introduce specific facts that show a genuine issue of material fact.'" *Id.* (internal citations and quotations omitted). In other words, the nonmoving party must "do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor." *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005) (internal citations and quotations omitted).

5. The Nevada Rules of Professional Conduct provide that a "lawyer or law firm shall not share legal fees with a nonlawyer." NRPC 5.4(a).

6. A lawyer who is suspended from the practice of law pursuant to SCR 212 for failing to comply with the CLE requirements required by SCR 210 is a "nonlawyer" for purposes of NRPC 5.4(a). *See e.g., In re Phillips*, 226 Ariz. 112, 121, 244 P.3d 549, 558 (2010) (suspended lawyer is equivalent of nonlawyer for purposes of RPC 5.4(a)); *Disciplinary Counsel v. McCord*, 121 Ohio St.3d 497, 905 N.E.2d 1182, 1189 (2009) (ethical violation for suspended lawyer to receive attorney's fee); *Office of Disciplinary Counsel v. Jackson*, 536 Pa. 26, 637 A.2d 615, 620 (1994) (noting a suspended attorney is a "'non-lawyer' within the meaning of the rules"); *Comm. on Prof'l Ethics*, State Bar of Tex., Op. 592 (2010) (prohibiting a lawyer from sharing legal fees with suspended attorney).

7. NRPC 5.4(a) prohibits suspended lawyers from recovering or sharing in attorneys' fees earned on cases that were open and unresolved at the time the lawyers were suspended. *See Lessoff v. Berger*, 2 A.D.3d 127, 767 N.Y.S.2d 605, (Mem)–606 (2003) (stating the general position adopted by courts that, "with respect to cases that were open at the time of [a] suspension, [the suspended attorney's] share in any fees paid after his suspension is limited to the quantum meruit value of any work he performed prior to his suspension.").

8. A lawyer who becomes suspended under SCR 212 for noncompliance with his or her CLE requirements could arguably seek to avoid some of the consequences of this suspension if the lawyer's noncompliance was inadvertent, accidental, or the product of the lawyer's reasonable mistake or misunderstanding. However, a lawyer who becomes suspended under this rule and knowingly or intentionally refuses to remedy his or her deficiencies or

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deliberately protests the fees associated with remedying his or her deficiencies cannot avoid the consequences of his or her suspension.

9. The undisputed facts establish that Ms. Cohen was suspended from the practice of law on or about April 6, 2017, for failing to comply with the CLE requirements imposed by SCR 210.

10. The undisputed facts establish that Ms. Cohen knowingly and intentionally refused to reinstate her license until December 19, 2019, the day after Defendants filed their Motion.

11. Ms. Cohen was a "nonlawyer" subject to the prohibition on fee sharing provided in NRPC 5.4(a) beginning on April 6, 2017, and continuing until her law license was reinstated on December 19, 2019.

12. Mr. Padda's obligation to pay Ms. Cohen the Expectancy Interest under the Dissolution Agreement was rendered illegal and unenforceable the moment Ms. Cohen's law license was suspended. *See McIntosh v. Mills*, 121 Cal. App. 4th 333, 343, 17 Cal. Rptr. 3d 66, 73 (2004) (holding that the issue of whether "the doctrine of illegality applies to the fee-sharing agreement between" an attorney and a non-attorney "is a question of law"); *United States v. 36.06 Acres of Land*, 70 F. Supp. 2d 1272, 1276 (D.N.M. 1999) (holding that "unwritten contingency fee contracts, because they violate the Rules of Professional Conduct, will not be enforced, and an attorney's recovery in such cases will be limited to" the reasonable value of its services under quantum meruit); *Christensen v. Eggen*, 577 N.W.2d 221, 225 (Minn. 1998) (holding that fee-splitting agreement between attorneys "violates public policy because it does not comply with Minn. R. Prof. Conduct 1.5(e) and is therefore unenforceable.").

13. With respect to Ms. Cohen's First, Second, and Third Claims for Relief relating to an alleged breach of the Dissolution Agreement, Ms. Cohen is precluded from enforcing Mr. Padda's obligation to pay her the Expectancy Interest and from recovering any share of the attorneys' fees earned by Mr. Padda or Padda Law on the Pending Cases, which were resolved while she was suspended from the practice of law between April 6, 2017, and December 19, 2019, including the Moradi Case and the Cochran Case.

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14. Although Defendants received funds from the Garland Case before April 6, 2017, Ms. Cohen has not incurred any damages relating to her 33.333% share (or $17,196.67) of the gross attorneys' fees received by Defendants for the Garland Case and did not present any evidence to establish that she was damaged as a result of "other contingency matters" resolved prior to April 6, 2017, even if she could establish an entitlement to recover such damages, because Ms. Cohen received $51,500.00 from Defendants under the Buyout Agreement. *See Chicago Title Agency v. Schwartz*, 109 Nev. 415, 418, 851 P.2d 419, 421 (1993) (stating "whether a case be one in contract or in tort, the injured party bears the burden of proving that he or she has been damaged").

15. Having determined that Ms. Cohen is prohibited under NRPC 5.4(a) from enforcing the Expectancy Interest in the Dissolution Agreement on any Pending Cases, the Court cannot, in good conscience, permit Ms. Cohen to use her remaining fraud and fiduciary duty claims, among others, to circumvent NRPC 5.4(a) by essentially enforcing a contract obligation NRPC 5.4(a) renders illegal and unenforceable.

16. If Ms. Cohen is successful on her claim of fraudulent inducement, she would be able to address all of the claims that she has pled in her complaint at trial.

17. There remains a genuine issue of material fact as to whether a special relationship existed between Mr. Padda and Ms. Cohen following the dissolution of C&P.

18. However, given Ms. Cohen's knowing and intentional decision to be suspended from the practice of law as evidenced by Exhibit 34 to Defendants' motion, the Court cannot as a matter of law allow this case to proceed to trial. Thus, summary judgment is granted on that narrow basis.

19. If any Conclusion of Law is properly a Finding of Undisputed Fact, it shall be treated as if appropriately identified and designated.

III.

ORDER AND JUDGMENT

Having entered the foregoing Findings of Undisputed Fact and Conclusions of Law, and good cause appearing,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Motion is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the granting of Defendants' Motion disposes of all claims asserted by Ms. Cohen against Defendants in this action and, therefore, JUDGMENT is hereby entered against Ms. Cohen and in favor of Defendants.

DATED this 18 day of February 2020

DISTRICT COURT JUDGE

Respectfully submitted by:

Declined to Sign

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Counsel for Defendants

Approved as to form by:

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Attorneys for Plaintiff Ruth L. Cohen

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 individual I-X; and, ROE entities I-X,

Defendants.

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

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; JUDGMENT

Please take notice that on the 18th day of February, 2020, an Order Granting Defendants' Motion for Summary Judgment; Judgment, was duly entered in the above-entitled matter, a copy of which is attached as "Exhibit 1" and by this reference made part hereof.

DATED this 18th day of February, 2020.

CAMPBELL & WILLIAMS

By /s/ ***Donald J. Campbell***
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 2020, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; JUDGMENT** to be served through the Eighth Judicial District Court's electronic filing system, to the following parties:

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EXHIBIT 1

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Attorneys for Defendants PAUL S. PADDA and PAUL PADDA LAW, PLLC

DISTRICT COURT

CLARK COUNTY, NEVADA

RUTH L. COHEN, an Individual,

Plaintiff,

v.

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

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; JUDGMENT

Hearing Date: January 27, 2020

Hearing Time: 9:00 a.m.

This matter came before the Court for hearing on the Motion for Summary Judgment (the "Motion") filed by Defendants Paul S. Padda ("Mr. Padda") and Paul Padda Law, PLLC ("Padda Law") (collectively, "Defendants"). J. Stephen Peek, Esq., and Ryan A. Semerad, Esq., of Holland & Hart, LLP, and Tamara Peterson, Esq., of Peterson Baker PLLC appeared on behalf of Defendants; Liane K. Wakayama, Esq., of Marquis Aurbach Coffing, and Samuel

R. Mirkovich, Esq., of Campbell & Williams, on behalf of Plaintiff Ruth L. Cohen ("Ms. Cohen").

The Court, having carefully considered Defendants' Motion and the exhibits and declarations attached thereto, Ms. Cohen's Opposition to the Motion and the exhibits and affidavit attached thereto, Defendants' Reply in support of the Motion, as well as the arguments of counsel for Defendants and Ms. Cohen, being fully apprised, and good cause appearing, makes the following findings of undisputed fact, which are relevant to the Court's decision on the Motion, and conclusions of law:

I.

FINDINGS OF UNDISPUTED FACT

1. On or about January 18, 2011, Mr. Padda and Ms. Cohen formed a partnership called Cohen & Padda, LLP ("C&P") to provide legal services.

2. Pursuant to the Partnership Agreement dated January 18, 2011, Mr. Padda and Ms. Cohen acknowledged that the duration of their partnership would be until January 14, 2014 or until earlier dissolved by agreement of the parties (the "Partnership Agreement").

3. Sometime in 2014, Ms. Cohen began to consider semi-retirement from the practice of law.

4. On or about December 23, 2014, Mr. Padda and Ms. Cohen entered into an agreement, which set forth the terms under which they effectuated the dissolution of C&P, and C&P ceased to exist, as of December 31, 2014 (the "Dissolution Agreement").

5. Section 7(b) of the Dissolution Agreement provided, in relevant part, that "[w]ith respect to contingency cases in which there is yet to be a recovery by way of settlement or judgment," Ms. Cohen "shall be entitled to a 33.333% percent share of gross attorney's fees recovered in all contingency fee cases for which [C&P] has a signed retainer agreement dated on or before December 31, 2014" (the "Expectancy Interest"). Nothing in the Dissolution Agreement required or anticipated that Ms. Cohen would perform work on the contingency cases that comprised of her Expectancy Interest.

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6. On January 2, 2015, Mr. Padda formed a new law firm, which after two separate name changes, became Padda Law.

7. While she continued to practice law after the dissolution of C&P working primarily on new employment law matters and handling employment discrimination consultations, Ms. Cohen transitioned to part-time work and did not come to the office much.

8. On September 12, 2016, Ms. Cohen and Mr. Padda executed a Business Expectancy Interest Resolution Agreement (the "Buyout Agreement"), wherein Ms. Cohen agreed to exchange her Expectancy Interest for the sum certain of $50,000.00.

9. In total, Mr. Padda paid Ms. Cohen, and Ms. Cohen accepted, $51,500.00 under the Buyout Agreement.

10. At the time Ms. Cohen and Mr. Padda entered into the Buyout Agreement, several contingency fee cases subject to Ms. Cohen's Expectancy Interest were still pending and had not reached a complete and final resolution, including, among others, *Garland v. SPB Partners, LLC et al.*, Case No. A-15-724139-C (the "Garland Case"), *Moradi v. Nevada Property 1, LLC et al.*, Case No. A-14-698824-C (the "Moradi Case"), and *Cochran v. Nevada Property 1, LLC et al.*, Case No. A-13-687601-C (the "Cochran Case") (collectively referred to, where appropriate, as the "Pending Cases").

11. With respect to her role in the Pending Cases, Ms. Cohen admits the following:

(a) "Ms. Cohen's involvement with the Moradi case was limited to the initial intake meeting with Mr. Moradi in 2012, referring Mr. Moradi to a doctor, and meeting with the Cosmopolitan's insurance adjuster."

(b) Ms. Cohen "stopped having an active role in the [Moradi] case almost immediately after her initial involvement in 2012."

(c) Ms. Cohen "was not involved in the day-to-day aspects of the case, and was not actively working on the [Moradi] case."

(d) "In or about 2014", Mr. Padda made a statement to Ms. Cohen about reducing C&P's attorneys' fees in the Garland case and "after that" Ms. Cohen "did not have any further involvement with Mr. Garland's case."

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12. On October 6, 2016, Mark Garland, the client in the Garland Case, executed a disbursement sheet authorizing the release of settlement funds.

13. The disbursement sheet for Mr. Garland's case established that the gross attorneys' fees earned by Padda Law totaled $51,600.00.[1]

14. On or about April 6, 2017, Ms. Cohen was notified that she was suspended from the practice of law by the Nevada Board of Continuing Legal Education pursuant to Nevada Supreme Court Rule ("SCR") 212 for her failure to complete the 2016 Continuing Legal Education ("CLE") requirements, as mandated by SCR 210.

15. Upon learning of her suspension, Ms. Cohen "immediately called the bar" and discovered that she would be required to pay $700.00 and complete her CLE requirements in order to be reinstated.

16. Ms. Cohen made a knowing and intentional decision to remain suspended from the practice of law. (*See* Motion at Ex. 34, 6:17-7:6.) ("And I don't intend to pay them $700 to get my license back when I'm not going to use it, so. . . . So, it's my protest."; "And when I went to turn [the CLE credits] in, they said, Well, it will cost you $700, and I said, See you. I'm just not going to do it.").

17. On April 27, 2017, a jury returned a verdict in favor of David Moradi, the client in the Moradi Case, including an award of damages for past and future loss of earnings as well as past and future pain and suffering.

18. On May 23, 2017, Mr. Moradi reached a confidential settlement agreement with the defendants as a complete and final resolution of the Moradi Case.

19. On February 27, 2019, Ms. Cohen, through counsel, and while she was suspended from the practice of law, sent a letter to Mr. Padda demanding, for the first time, payment of certain attorneys' fees Ms. Cohen claimed were owed to her by Defendants pursuant to her Expectancy Interest under the Dissolution Agreement.

20. In the spring of 2019, Stephen Cochran and Melissa Cochran, the clients in the

[1] Ms. Cohen's 33.333% putative share would have equaled $17,196.67.

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Cochran Case, reached a confidential settlement agreement with the defendants as a complete and final resolution of the Cochran Case, and on or about July 9, 2019, filed a stipulation and order to dismiss the Cochran Case.

21. On April 9, 2019, Ms. Cohen, while she was still suspended from the practice of law, filed her Complaint in this action, asserting the following claims for relief: (1) First Claim for Relief for breach of contract—Partnership Dissolution Agreement (against Mr. Padda); (2) Second Claim for Relief for breach of the implied covenant of good faith and fair dealing (against Mr. Padda); (3) Third Claim for Relief for tortious breach of the implied covenant of good faith and fair dealing (against Mr. Padda); (4) Fourth Claim for Relief for breach of fiduciary duty (against Mr. Padda); (5) Fifth Claim for Relief for fraud in the inducement (against Mr. Padda and Padda Law); (6) Sixth Claim for Relief for fraudulent concealment (against Mr. Padda and Padda Law); (7) Seventh Claim for Relief for fraudulent or intentional misrepresentation (against Mr. Padda and Padda Law); (8) Eighth Claim for Relief for unjust enrichment (against Padda Law or, in the alternative, against Mr. Padda); (9) Ninth Claim for Relief for elder abuse under NRS 41.1395 (against Mr. Padda); and (10) Tenth Claim for Relief for declaratory relief (against Mr. Padda and Padda Law). (*See generally* Compl.)

22. The gist of Ms. Cohen's claims is that Mr. Padda and/or Padda Law induced her to enter the Buyout Agreement through fraudulent acts, misrepresentations and/or omissions such that the Buyout Agreement should be rescinded, thereby entitling Ms. Cohen to recover as damages 33.333% of the gross attorneys' fees earned in the Pending Cases pursuant to the Expectancy Interest set forth in the Dissolution Agreement.

23. Ms. Cohen asserts that her 33.333% share of the gross legal fees Defendants received for the Pending Cases equals $3,314,227.49.

24. Ms. Cohen seeks to recover this amount ($3,314,227.49) as damages caused by Defendants' breach of the Dissolution Agreement under her First Claim for Relief. (*See* Compl. at ¶¶ 82-90.)

25. Ms. Cohen seeks to recover the same amount of damages ($3,314,227.49), in addition to other statutory damages, under each of her other claims for relief.

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26. On December 19, 2019, the day after Defendants filed their Motion, Ms. Cohen obtained a "Notice of Completion of Requirements for Reinstatement", which was executed by Executive Director Laura Bogden and reinstated Ms. Cohen's law license as of December 19, 2019 (the "Reinstatement Notice").

27. Pursuant to the Reinstatement Notice, the Nevada Board of Continuing Legal Education recognized that Ms. Cohen had completed a minimum of fifteen (15) hours of accredited educational activity within the period of twelve (12) months immediately preceding the filing of her application, as required by SCR 213.

28. Beginning on April 6, 2017, and continuing until December 19, 2019, Ms. Cohen's license to practice law in the State of Nevada was suspended.

29. Ms. Cohen admits she is not seeking quantum meruit damages in this action.

30. If any Finding of Undisputed Fact is properly a Conclusion of Law, it shall be treated as if appropriately identified and designated.

II.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when, "after review of the record viewed in a light most favorable to the non-moving party, there remain no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law." *Evans v. Samuels*, 119 Nev. 378, 75 P.3d 361, 363 (2003).

2. "A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002) (citation and quotation omitted).

3. The moving party can meet its burden by either "(1) submitting evidence that negates an essential element of the nonmoving party's claim or (2) pointing out that there is an absence of evidence to support the nonmoving party's case." *Torrealba v. Kesmetis*, 124 Nev. 95, 100, 178 P.3d 716, 720 (2008) (internal citations and quotations omitted).

4. On the other hand, "[t]o successfully defend against a summary judgment motion, 'the nonmoving party must transcend the pleadings and, by affidavit or other

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admissible evidence, introduce specific facts that show a genuine issue of material fact.'" *Id.* (internal citations and quotations omitted). In other words, the nonmoving party must "do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor." *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005) (internal citations and quotations omitted).

5. The Nevada Rules of Professional Conduct provide that a "lawyer or law firm shall not share legal fees with a nonlawyer." NRPC 5.4(a).

6. A lawyer who is suspended from the practice of law pursuant to SCR 212 for failing to comply with the CLE requirements required by SCR 210 is a "nonlawyer" for purposes of NRPC 5.4(a). *See e.g., In re Phillips*, 226 Ariz. 112, 121, 244 P.3d 549, 558 (2010) (suspended lawyer is equivalent of nonlawyer for purposes of RPC 5.4(a)); *Disciplinary Counsel v. McCord*, 121 Ohio St.3d 497, 905 N.E.2d 1182, 1189 (2009) (ethical violation for suspended lawyer to receive attorney's fee); *Office of Disciplinary Counsel v. Jackson*, 536 Pa. 26, 637 A.2d 615, 620 (1994) (noting a suspended attorney is a "'non-lawyer' within the meaning of the rules"); *Comm. on Prof'l Ethics*, State Bar of Tex., Op. 592 (2010) (prohibiting a lawyer from sharing legal fees with suspended attorney).

7. NRPC 5.4(a) prohibits suspended lawyers from recovering or sharing in attorneys' fees earned on cases that were open and unresolved at the time the lawyers were suspended. *See Lessoff v. Berger*, 2 A.D.3d 127, 767 N.Y.S.2d 605, (Mem)–606 (2003) (stating the general position adopted by courts that, "with respect to cases that were open at the time of [a] suspension, [the suspended attorney's] share in any fees paid after his suspension is limited to the quantum meruit value of any work he performed prior to his suspension.").

8. A lawyer who becomes suspended under SCR 212 for noncompliance with his or her CLE requirements could arguably seek to avoid some of the consequences of this suspension if the lawyer's noncompliance was inadvertent, accidental, or the product of the lawyer's reasonable mistake or misunderstanding. However, a lawyer who becomes suspended under this rule and knowingly or intentionally refuses to remedy his or her deficiencies or

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deliberately protests the fees associated with remedying his or her deficiencies cannot avoid the consequences of his or her suspension.

9. The undisputed facts establish that Ms. Cohen was suspended from the practice of law on or about April 6, 2017, for failing to comply with the CLE requirements imposed by SCR 210.

10. The undisputed facts establish that Ms. Cohen knowingly and intentionally refused to reinstate her license until December 19, 2019, the day after Defendants filed their Motion.

11. Ms. Cohen was a "nonlawyer" subject to the prohibition on fee sharing provided in NRPC 5.4(a) beginning on April 6, 2017, and continuing until her law license was reinstated on December 19, 2019.

12. Mr. Padda's obligation to pay Ms. Cohen the Expectancy Interest under the Dissolution Agreement was rendered illegal and unenforceable the moment Ms. Cohen's law license was suspended. *See McIntosh v. Mills*, 121 Cal. App. 4th 333, 343, 17 Cal. Rptr. 3d 66, 73 (2004) (holding that the issue of whether "the doctrine of illegality applies to the fee-sharing agreement between" an attorney and a non-attorney "is a question of law"); *United States v. 36.06 Acres of Land*, 70 F. Supp. 2d 1272, 1276 (D.N.M. 1999) (holding that "unwritten contingency fee contracts, because they violate the Rules of Professional Conduct, will not be enforced, and an attorney's recovery in such cases will be limited to" the reasonable value of its services under quantum meruit); *Christensen v. Eggen*, 577 N.W.2d 221, 225 (Minn. 1998) (holding that fee-splitting agreement between attorneys "violates public policy because it does not comply with Minn. R. Prof. Conduct 1.5(e) and is therefore unenforceable.").

13. With respect to Ms. Cohen's First, Second, and Third Claims for Relief relating to an alleged breach of the Dissolution Agreement, Ms. Cohen is precluded from enforcing Mr. Padda's obligation to pay her the Expectancy Interest and from recovering any share of the attorneys' fees earned by Mr. Padda or Padda Law on the Pending Cases, which were resolved while she was suspended from the practice of law between April 6, 2017, and December 19, 2019, including the Moradi Case and the Cochran Case.

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14. Although Defendants received funds from the Garland Case before April 6, 2017, Ms. Cohen has not incurred any damages relating to her 33.333% share (or $17,196.67) of the gross attorneys' fees received by Defendants for the Garland Case and did not present any evidence to establish that she was damaged as a result of "other contingency matters" resolved prior to April 6, 2017, even if she could establish an entitlement to recover such damages, because Ms. Cohen received $51,500.00 from Defendants under the Buyout Agreement. *See Chicago Title Agency v. Schwartz*, 109 Nev. 415, 418, 851 P.2d 419, 421 (1993) (stating "whether a case be one in contract or in tort, the injured party bears the burden of proving that he or she has been damaged").

15. Having determined that Ms. Cohen is prohibited under NRPC 5.4(a) from enforcing the Expectancy Interest in the Dissolution Agreement on any Pending Cases, the Court cannot, in good conscience, permit Ms. Cohen to use her remaining fraud and fiduciary duty claims, among others, to circumvent NRPC 5.4(a) by essentially enforcing a contract obligation NRPC 5.4(a) renders illegal and unenforceable.

16. If Ms. Cohen is successful on her claim of fraudulent inducement, she would be able to address all of the claims that she has pled in her complaint at trial.

17. There remains a genuine issue of material fact as to whether a special relationship existed between Mr. Padda and Ms. Cohen following the dissolution of C&P.

18. However, given Ms. Cohen's knowing and intentional decision to be suspended from the practice of law as evidenced by Exhibit 34 to Defendants' motion, the Court cannot as a matter of law allow this case to proceed to trial. Thus, summary judgment is granted on that narrow basis.

19. If any Conclusion of Law is properly a Finding of Undisputed Fact, it shall be treated as if appropriately identified and designated.

III.

ORDER AND JUDGMENT

Having entered the foregoing Findings of Undisputed Fact and Conclusions of Law, and good cause appearing,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Motion is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the granting of Defendants' Motion disposes of all claims asserted by Ms. Cohen against Defendants in this action and, therefore, JUDGMENT is hereby entered against Ms. Cohen and in favor of Defendants.

DATED this 18 day of February 2020

DISTRICT COURT JUDGE

Respectfully submitted by:

Declined to Sign

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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 MOTION FOR RECONSIDERATION OF ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; JUDGMENT

HEARING REQUESTED

Plaintiff Ruth L. Cohen ("Plaintiff"), by and through her undersigned counsel, hereby submits her Motion for Reconsideration of Order Granting Defendants' Motion for Summary Judgment; Judgment. This Motion is made and based upon the attached memorandum of points and authorities,

all exhibits attached hereto, all pleadings and papers on file herein, and any oral argument that the Court shall allow at the time of hearing.

I. INTRODUCTION

We bring this Motion with the benefit of fresh eyes and hindsight in the hopes that a lengthy appeal from this Court's recent order granting summary judgment can be avoided. Plaintiff respectfully submits that the Court—through no fault of Her Honor—erred by ruling that Plaintiff's suspension from the practice of law barred her from recovering the Expectancy Interest under the Dissolution Agreement.[1] Although Plaintiff did not present this legal authority to the Court in the underlying briefing, multiple courts have found that fee-splitting contracts involving suspended or disbarred lawyers are enforceable where, as here, the lawyer transferred responsibility for the cases at issue prior to suspension or disbarment in exchange for a percentage of the ultimate recovery. These same courts have consistently determined that this type of arrangement does not run afoul of the prohibition on fee-sharing with non-lawyers because the lawyer fully performed his or her obligations before the suspension or disbarment and there was no abandonment of the client.

Plaintiff's case fits squarely within the framework established by these cases. As such, Plaintiff submits this new and highly persuasive legal authority for the Court's consideration as it plainly rebuts the arguments advanced by Defendants that any payment to Plaintiff under the Dissolution Agreement would violate NRPC 5.4(a). Because Plaintiff's suspension from the practice of law did not render the Expectancy Agreement illegal and unenforceable, we respectfully request reconsideration of the Order pursuant to EDCR 2.24.

[1] Capitalized terms referenced herein have the same meaning as those set forth in the Order Granting Defendants' Motion for Summary Judgment; Judgment (the "Order").

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II. ARGUMENT

A. Legal Standard.

Eighth Judicial District Court Rule 2.24 authorizes motions for reconsideration to be filed "within 10 days after service of written notice of the order or judgment[.]" EDCR 2.24(b). Because the Order was entered on February 18, 2020, this Motion is timely. While EDCR 2.24 does not set forth any specific standards, "[a] district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry and Title v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (citing *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976)).

A ruling "is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Unionamerica Mortgage and Equity Trust v. McDonald*, 97 Nev. 210, 211-212, 626 P.2d 1272, 1273 (1981) (quotation omitted). The Nevada Supreme Court has likewise recognized that reconsideration may be proper even though "the facts and law were unchanged," but where the judge "was more familiar with the case by the time the second motion was heard[.]" *Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 217, 217-18, 606 P.2d 1095, 1097 (1980) (finding no abuse of discretion where district court reheard and granted motion for partial summary judgment after originally denying the same).

B. Plaintiff Is Entitled To Seek Recovery Under The Dissolution Agreement Irrespective Of Her Temporary Suspension From The Practice Of Law.

The relevant facts related to the Court's analysis of whether Plaintiff's suspension prevents her from enforcing the Dissolution Agreement are undisputed. Plaintiff and Defendant Paul Padda ("Padda") entered into the Dissolution Agreement on or about December 23, 2014 at which time Plaintiff had an active Nevada law license.[2] The Dissolution Agreement effectuated the dissolution

[2] Order, ¶¶ 4, 14, 28.

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of Cohen & Padda, LLP ("C&P") as of December 31, 2014, and granted Plaintiff "a 33.333 percent share of gross attorney's fees recovered in all contingency fee cases for which [C&P] has a signed retainer agreement on or before December 31, 2014."[3] The Dissolution Agreement did not require or otherwise anticipate that Plaintiff would perform work on the contingency fee cases that were the subject of the Dissolution Agreement.[4] Nor did Plaintiff actually perform work on the disputed contingency fee cases following the execution of the Dissolution Agreement.[5] Beginning on April 6, 2017, and continuing until December 19, 2019—during which time the Moradi and Cochran Cases settled—Plaintiff's license to practice law was suspended.[6]

The Texas Court of Appeals confronted a similar scenario in *Lee v. Cherry*, 812 S.W.2d 361 (Tex. Ct. App. 1991). Attorney Lee referred a personal injury matter to attorney Cherry in exchange for one-third of any legal fee earned in the case. *Id.* at 361. Approximately three years later, the Texas State Bar suspended Lee's law license and he subsequently resigned his license in lieu of disciplinary proceedings. *Id.* The personal injury matter thereafter settled for $1.6 million and Lee requested his referral fee from Cherry. *Id.* Like Padda, however, Cherry contended that the referral agreement was unenforceable due to the prohibition on fee-sharing with non-lawyers such that Cherry was legally obligated to keep the entire fee. *Id.*

The Texas Court of Appeals soundly rejected Cherry's argument as follows:

> After careful consideration, we decline to extend the State Bar Rule forbidding payment of attorney's fees to non-lawyers to encompass fees due a former attorney who performed all that was required of him prior to his resignation or disbarment under a client-approved referral fee contract. To do otherwise, under the facts of this case where *no* issue of abandonment exists, would not further the rationale behind Rule 5.04. Such an interpretation would undermine the rule's integrity by artificially expanding it simply to inflict additional economic punishment on appellant.

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[3] *Id.* at ¶ 5.

[4] *Id.* at ¶ 5.

[5] *Id.* at ¶ 11.

[6] *Id.* at 18, 20, 28.

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Id. at 363 ("We have found no cases which have disallowed attorney's fees where the disbarred or resigned attorney had completed all of his contractual duties prior to surrendering his license.") (emphasis in original); *see also A.M. Wright & Assocs., P.C. v. Glover, Anderson, Chandler & Uzick, L.L.P.*, 993 S.W.2d 466, 468-70 (Tex. Ct. App. 1999) (following *Lee* and remanding for further proceedings to determine whether referral contract provision addressing "day to day handling" of cases contemplated the future performance of legal services by suspended lawyer).[7]

The Iowa Supreme Court reached the same result in *West v. Jayne*, 484 N.W.2d 186 (Iowa 1992). Attorneys Jayne and West practiced law in the same firm and allocated the fees collected on contingency cases based on which attorney originated the case. *Id.* at 187-88. West was suspended from the practice of law and the firm broke up with Jayne taking more than 60 pending contingency fee cases. *Id.* Jayne refused to divide the fees recovered from the contingency cases on grounds that West was prohibited from earning fees or deriving income from the practice of law during his suspension. *Id.* at 190. The Iowa Supreme Court held that West's suspension did not annul the contract because "West had performed his services under the contract at the time he turned the cases over to Jayne." *Id.* at 191. The Iowa Supreme Court further opined that "Jayne's contention that West can recover only on the reasonable value of his services performed, or on a quantum meruit basis, has no merit." *Id.*

In holding that West's suspension did not render the fee-splitting agreement unenforceable, the Iowa Supreme Court relied heavily on the Missouri Supreme Court's decision in *Sympson v. Rogers*, 406 S.W.2d 26 (Mo. 1966). In *Sympson*, a lawyer facing disbarment proceedings decided to surrender

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[7] Although the Court did not reach this issue in the Order, Defendants argued that the Dissolution Agreement was invalid because the clients (Moradi, Cochran, *et cetera*) did not consent to the fee-splitting agreement pursuant to NRCP 1.5(e). This is incorrect. Plaintiff and Padda were members of the same firm when they entered into the Dissolution Agreement, which removes this matter from the purview of NRCP 1.5(e). *Id.* ("A division of a fee between lawyers ***who are not in the same firm*** may be made only if…") (emphasis added). To that end, courts have repeatedly rejected the argument that a client must consent to a fee-splitting agreement between a lawyer and his or her former firm. *See Norton Frickey, P.C. v. James B. Turner, P.C.*, 94 P.3d 1266, 1267-1270 (Colo. Ct. App. 2004) (listing numerous cases).

his law license and approached another firm about taking over five pending contingency cases. *Id.* at 27-28. With knowledge that the lawyer would soon lose his law license, the firm accepted responsibility for the five contingency fee cases and agreed to pay the lawyer one-half of any fees recovered. *Id.* As in *West*, the Missouri Supreme Court determined that the disbarred lawyer had earned his portion of the fee on the contingency fee cases at the time he entered into fee-splitting agreement. *Id.* at 27-29. The Missouri Supreme Court further held that the contract did not violate the rule against fee-splitting with non-lawyers because the parties entered into the contract while the disbarred attorney was still licensed to practice law. *Id.* at 29.

The Appellate Division of the New Jersey Superior Court is in accord. In *Eichen, Levinson & Crutchlow, LLP v. Weiner*, the New Jersey court considered whether a trustee appointed to oversee a suspended lawyer's practice could recover referral fees on 78 contingency fee cases that resolved during the period of suspension. 938 A.2d 947, 948-50 (N.J. App. Div. 2008). The New Jersey court expressly rejected the defendant's "contention that payment of a referral fee to the trustee runs afoul of the prohibition on sharing legal fees that are due after the date of [suspension]." *Id.* at 951. Instead, the New Jersey court determined that the suspended lawyer's "interest in the referral fee from the [defendant] vested in accordance with the terms of the referral agreement the moment the referral agreement was executed[,] which was long before [the plaintiff] was first suspended." *Id.*

So, too, here. Defendants acknowledge that "the Dissolution Agreement was not illegal or unenforceable at the time it was signed" because Plaintiff "was a properly licensed attorney."[8] Plaintiff's entitlement to fees was derived from her interest in the disputed contingency fee cases as a partner of C&P rather than the expectation that she would continue to perform work on the cases. Thus, Plaintiff had performed all services required of her and earned her one-third split of the unrealized proceeds from the contingency fee cases at the time the parties entered into the Dissolution Agreement. Padda,

[8] *See* Reply in Support of Defendants' Motion for Summary Judgment at 11 (on file).

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moreover, assumed full responsibility for the contingency fee cases and there is no suggestion that Plaintiff abandoned Moradi, Cochran or any other clients. The invocation of NRCP 5.4 to dismiss Plaintiff's claims due to her temporary suspension would "visit additional, retroactive punishment" on Plaintiff and "result in unjust enrichment" to Defendants. *Lee*, 812 S.W.2d at 364.[9] That cannot be the law.

III. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court grant her Motion for Reconsideration of Order Granting Defendants' Motion for Summary Judgment; Judgment and permit this case to proceed to trial.

DATED this 21st day of February, 2020.

CAMPBELL & WILLIAMS

By /s/ ***Philip R. Erwin***
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[9] Notably, Defendants incorporated *Comm'n on Prof'l Ethics*, State Bar of Tex., Op. 592 (2010) in the Order for the proposition that a lawyer may not share legal fees with a suspended lawyer. But Opinion No. 592 addressed the enforceability of a referral agreement entered into between two attorneys while one attorney was suspended from the practice of law. *Id.* In that regard, Opinion No. 592 referenced Opinion No. 568, which directly addressed the facts of *Lee* and *A.M. Wright*. The Texas State Bar affirmed the enforceability of a fee-splitting agreement that was entered into before the referring lawyer became disbarred and before the fee became payable. Exhibit 1 (*Comm'n on Prof'l Ethics*, State Bar of Tex., Op. 568 (2010)). These legal authorities support the viability of Plaintiff's claims and not the position advanced by Defendants.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 21st day of February, 2020 I caused the foregoing document entitled **Motion for Reconsideration of Order Granting Defendants' Motion for Summary Judgment; Judgment** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

/s/ ***John Y. Chong***
An Employee of Campbell & Williams

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EXHIBIT 1

The Supreme Court of Texas Professional Ethics Committee
for the State Bar of Texas
Opinion Number 568
April 2006

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct, may a lawyer share a contingent fee with a suspended or disbarred lawyer?

STATEMENT OF FACTS

Lawyer A refers a contingent fee case to Lawyer B pursuant to a signed referral agreement that calls for the two lawyers to share the contingent fee. Subsequently, Lawyer A is suspended from the practice of law. While Lawyer A is suspended from the practice of law, a contingent fee becomes payable with respect to the contingent fee case.

DISCUSSION

With exceptions not relevant here, Rule 5.04(a) of the Texas Disciplinary Rules of Professional Conduct provides that "[a] lawyer or law firm shall not share or promise to share legal fees with a non-lawyer ...." The primary rationale behind this rule is to prevent solicitation by lay persons of clients for lawyers and to avoid encouraging or assisting non-lawyers in the practice of law. See Comment 1 to Rule 5.04.

The Committee previously addressed a similar issue under Disciplinary Rule 3- 102 of the Texas Code of Professional Responsibility, the predecessor to current Rule 5.04(a) of the Texas Disciplinary Rules of Professional Conduct. Disciplinary Rule 3-102 provided that "[a] lawyer or law firm shall not share legal fees with a non-lawyer ...." In Professional Ethics Committee Opinion 432 (October 1986), the Committee held that payment of fees to a lawyer who is disbarred prior to the completion of a contingent fee contract violates Rule 3-102 because the disbarred lawyer is not entitled to collect either on the contract or quantum meruit for the services that have been rendered. Relying on the Texas Supreme Court's decision in *Royden v. Ardoin*, 331 S.W.2d 206 (Tex. 1960), the Committee concluded that the disbarment or suspension of the lawyer is tantamount to voluntary abandonment by the lawyer, which disqualifies the lawyer from compensation because the lawyer is unable to complete the work the lawyer was hired to perform. The Committee, however, expressly did not address the question of payment to a lawyer where there was no abandonment because the services had been completed prior to the disciplinary action.

Two opinions of the Fourteenth District Court of Appeals have addressed the specific question left unresolved by Opinion 432. In *Lee v. Cherry*, 812 S.W.2d 361 (Tex. App. - Houston [14th Dist.] 1991, writ denied), the court held that a disbarred lawyer may receive referral fees provided that the lawyer completed the legal work on the case prior to disbarment. In *Lee*, the court refused to extend the holding of *Royden v. Ardoin*, supra, to a case in which the lawyer had completed all of the work expected of him. The court reasoned that voluntary abandonment only applies to those situations where the lawyer has not completed the legal services prior to disbarment. See 812 S.W.2d at 363. The *Lee* decision was followed in *A.W. Wright & Associates, P.C. v. Glover, Anderson, Chandler & Uzick, L.L.P.*, 993 S.W.2d 466 (Tex. App. - Houston [14th Dist.] 1999, pet. denied). Both cases involved forwarding lawyers in referral fee arrangements.

Lee and *A. W. Wright* were decided before the amendments to Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct, which became effective March 1, 2005. The amendments abolished the pure referral fee. Under the amended Rule as currently in effect, fee

divisions between lawyers not in the same firm must be made either in proportion to the professional services performed by each lawyer or based on the lawyers' assumption of joint responsibility for the representation. See Rule 1.04(f). Under the amended rule, a referring lawyer's duties cannot end with the referral. Although *Lee* and *A. W. Wright* were decided before the 2005 amendment of Rule 1.04, the Committee is of the opinion that the underlying rationale of these decisions is correct and that under the Texas Disciplinary Rules of Professional Conduct a lawyer may share a contingent fee with a suspended or disbarred lawyer if the suspended or disbarred lawyer has fully performed all work in the matter prior to the lawyer's suspension or disbarment. The Committee, however, notes that under other principles of Texas law a suspended or disbarred lawyer may be prohibited from receiving some or all of the fees generated from a matter that forms the basis of the disciplinary action against the lawyer. See *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999).

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer may share a contingent fee with a suspended or disbarred lawyer if the fee-sharing agreement existed before the suspension or disbarment and the suspended or disbarred lawyer fully performed all work in the matter before the suspension or disbarment.