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

DEFENDANTS' MOTION FOR SANCTIONS AGAINST PLAINTIFF *ON AN ORDER SHORTENING TIME FOR HEARING*

HEARING REQUESTED

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

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

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This Motion 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 15th day of January 2020

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ORDER SHORTENING TIME

IT IS SO ORDERED that **DEFENDANTS' MOTION FOR SANCTIONS AGAINST PLAINTIFF** will be heard before in Dept. XI, on the 22 day of Jan 2020 at 9 a .m.

DATED this 15 day of Jan 2020.

DISTRICT COURT JUDGE

CEH

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DECLARATION OF RYAN A. SEMERAD, ESQ. IN SUPPORT OF MOTION FOR ORDER SHORTENING TIME

Ryan A. Semerad, Esq., being first duly sworn, hereby deposes and says:

1. I am an associate with Holland & Hart, LLP, counsel for Defendants Paul S. Padda ("Mr. Padda") and Paul Padda Law, PLLC ("PPL") (collectively, "Defendants"). I am duly admitted to practice law in the State of Nevada. Unless stated otherwise, I make this declaration upon personal knowledge and would be competent to testify to the matters stated herein.

2. There exists good cause to hear Defendants' Motion for Sanctions Against Plaintiff (the "Motion") on an order shortening time for hearing.

3. This case is set for a firm jury trial starting February 10, 2020.

4. However, in light of the many instances of misconduct and litigation abuse chronicled herein, Defendants request that jury trial setting be continued until the completion of an evidentiary hearing to determine the extent of Plaintiff Ruth L. Cohen's ("Plaintiff") efforts in discovery during this litigation to manipulate fact witnesses, shape witness testimony, create evidence, and withhold relevant material and/or fail to undertake any efforts to locate and produce such material as well as any appropriate sanctions for Plaintiff's misconduct.

5. Given the expedited nature of discovery and the proceedings in this matter, which is set for a preferred trial setting starting February 10, 2020, good cause exists to hear Defendants' Motion on an order shortening time. Indeed, given the significant revelations regarding undisclosed and key documents to this case which are directly relevant to Defendants' defense of Plaintiff's claims, significant and irreparable harm will occur if this Court does not grant expedited consideration of this matter. As it is, Defendants are already now at a significant disadvantage with trial less than 4 weeks away as they seek to discover the truth regarding the extent and depth of Plaintiff's attempts to shape the evidence in this case.

6. Therefore, Defendants request that this Court grant his request for a hearing on shortened time and set the Motion for hearing at the soonest available date.

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7. I declare under penalty of perjury that the foregoing statements are true.

DATED January 15, 2020.

/s/ Ryan A. Smerad
RYAN A. SEMERAD, ESQ.

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I. INTRODUCTION

Throughout this abbreviated litigation, Plaintiff Ruth L. Cohen ("Plaintiff") has engaged in a pattern of gamesmanship, maliciousness, and bad-faith litigation tactics that extends beyond ordinary zeal. Over the past nine months, Plaintiff has made every effort to stonewall, disorient, and humiliate Defendants Paul S. Padda ("Mr. Padda") and Paul Padda Law, PLLC ("Padda Law") (collectively, "Defendants") in the hopes that, with such misdirection, she would succeed in prosecuting her case. Or, perhaps, Plaintiff just wants to abuse and insult Defendants. In either case, Plaintiff's brazen efforts to shakedown Defendants have been unconscionable.

In the short time that this case has been open, Plaintiff has checked off an exhaustive and exhausting list of litigation misconduct. What started with Plaintiff's false claim that she was physically unable to sit for more than 3.5 hours at a time so her deposition would have to take place over two days continued through Plaintiff's extensive efforts to contact and influence key witnesses in this case and Plaintiff's systematic withholding, destroying, losing, or refusing to look for highly relevant materials that Defendants had expressly requested during discovery. Plaintiff's campaign of intentional discovery abuses has only been exposed through the efforts and testimony of others. Plaintiff has remained silent or obstinate in the face of these revelations compounding her misconduct with a lack of any real efforts to rectify her misconduct.

The entire purpose of the Nevada Rules of Civil Procedure is "to secure the just, speedy, and inexpensive determination of every action and proceeding." NRCP 1. And Defendants have a right to put on their best defense against Plaintiff's allegations. Plaintiff's misconduct has undermined the very purpose of the Nevada Rules of Civil Procedure by hiding key evidence, manufacturing unnecessary delays and costs into these proceedings, and failing to participate in good faith in the discovery process. Plaintiff's misconduct has also hamstrung Defendants' ability to defend themselves as they are no longer simply defending against Plaintiff's claims (however specious); Defendants must also defend against the slings and arrows of Plaintiff's nefarious efforts to sabotage the objectiveness of these proceedings. And the full extent of Plaintiff's intentional misconduct has just recently—five weeks before trial is supposed to begin—started to be uncovered.

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Accordingly, Defendants request that the Court impose case-ending sanctions and dismiss Plaintiff's action against Defendants in whole. Alternatively, Defendants request the Court either (1) hold an evidentiary hearing to determine the extent of Plaintiff's misconduct and efforts to contact and influence witnesses in this case and impose whatever sanctions the Court deems appropriate, ***or*** (2) permit Defendants to resume the deposition of Plaintiff to examine her regarding the same. In either case, Defendants request the Court continue the trial in this matter by no fewer than ninety (90) days to allow Defendants to investigate fully Plaintiff's misconduct and seek any necessary relief.

II. RELEVANT FACTS

A. Plaintiff's Bad Faith Gamesmanship

From the start of discovery, Plaintiff has engaged in a series of bad faith tactics aimed at disorienting Defendants while giving herself a strategic advantage. Plaintiff's efforts have driven up costs for Defendants, delayed discovery, and further delayed any resolution of this case.

1. Plaintiff Lied in a Verified Complaint Attached to a Demand Letter

By letter dated February 27, 2019, counsel for Plaintiff sent a letter to Mr. Paul Padda threating litigation unless he agreed to "pay five million and 00/100 dollars ($5,000,000) to the Marquis Aurbach Coffing Client Trust Account for the benefit of Ms. Cohen in order to fully and finally resolve all claims she has against You . . . ." **Exhibit 1** (Demand Letter and Verified Complaint) at PPL000708-709. Attached to the letter demanding money was a "Verified Complaint" in which Plaintiff narrated various facts under penalty of perjury as being "true." *See id.* at PPL000713-000729 (the "Verified Complaint"). Plaintiff executed a verification page at the end of the Verified Complaint. *See id.* at PPL000729.

In support of her fraud claim with respect to the Garland case, Plaintiff alleged in paragraph 39 of her Verified Complaint that "Padda verbally represented to Ms. Cohen, in or about the fourth quarter of 2015, in essence, 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 recovery anything." She doubled down on this assertion by stating in the next paragraph of the verified complaint (paragraph 40) that "Padda's representations to Ms. Cohen were false and, upon information and

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belief, he knew them to be false, or alternately, had an insufficient basis to make the representation." **Exhibit 1** at PPL000718. These alleged facts formed the gravamen of Plaintiff's fraudulent inducement claim with respect to the Garland case.

On April 9, 2019, Plaintiff filed her lawsuit initiating this civil action accusing Mr. Padda of a host of misconduct and abuse. Both Plaintiff and her lawyers repeated the claims set forth in the Verified Complaint nearly verbatim in the Complaint. With respect to the very specific conversation she alleges occurred between herself and Mr. Padda in the "fourth quarter of 2015" regarding the Garland case, which was offered in support of her fraud claim, Plaintiff again repeated the allegations from her Verified Complaint (which she had sworn to under penalty of perjury) in her Complaint. *See* Complaint ¶¶ 36-37.

Notwithstanding all of the foregoing, testifying under oath on July 23, 2019, Plaintiff contradicted her prior sworn statement and denied that Mr. Padda had ever told her the value of the Garland case was "no more than $10,000." Incredibly, she disclaimed the conversation which she swore to under penalty of perjury and was relying upon as evidence of "fraud" had ever actually happened:

Steve Peek:	Okay. Did he ever say to you that the value of the Garland case was no more than $10,000?
Ruth Cohen:	No.
Steve Peek:	Did he ever say to you that they had to cut the fee because all he was going to recover was $10,000?
Ruth Cohen:	No.
Steve Peek:	Did he ever make a representation to you at all – or a statement to you at all about what the value of the Garland case was?
Ruth Cohen:	No. And he should have.

Exhibit 2 (Excerpts of Depo. Trans. of Ruth Cohen) at 254:22-255:8. In fact, Plaintiff testified that paragraph 36 of her Complaint contains an obvious misstatement insofar as it alleges that Mr. Padda "verbally represented" anything to Plaintiff regarding the value of the Garland case. *See id.* at 259:17-260:13. This testimony demonstrates, if nothing else, that what Plaintiff tells her own lawyers cannot be relied upon as being true. More sinisterly, this testimony demonstrates the lengths Plaintiff will go to extract a settlement from Defendants.

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2. Plaintiff Deceives the Court to Receive a Staggered Deposition

First, on or about June 17-18, 2019, counsel for Defendants sought to secure an appropriate date for Plaintiff's deposition. *See* Decl. of Mr. Jared Moser, Esq. in Support of Plaintiff's Motion for a Protective Order Regarding Plaintiff's Deposition at ¶ 3. However, counsel for Plaintiff, presumably after discussing this topic with Plaintiff, notified counsel for Defendants that "due to [Plaintiff's] on-going health issues," Plaintiff would not be able to sit for a full 7-hour deposition in one day. *Id.* at ¶ 4. Plaintiff ultimately requested that her deposition take place over two days with each day lasting no more than 3.5 hours. *Id.* at ¶ 10. Defendants were suspicious of this request and Plaintiff's supposed basis for it because Defendants knew Plaintiff had been sitting in excess of 3.5 hours on a regular basis while gambling. *See* Exhibits C-J attached to Defendants' Opposition to Plaintiff's Motion for Protective Order Regarding Plaintiff's Deposition.

Nevertheless, Plaintiff filed a motion for protective order to secure a two-day deposition capping each deposition day at 3.5 hours of testimony. Plaintiff submitted a sworn declaration to the Court dated June 24, 2019 attesting, under penalty of perjury, that she lives with "extreme body pain daily," that she cannot sit for "extended periods of time" and that her doctors were "in agreement" that she should not sit for longer than three to three and a half hours, even with breaks." *See* **Exhibit 3** (Plaintiff's Declaration Regarding Inability to Sit For Extended Deposition Due to Pain and Appended Doctors' Notes) at ¶ 6. Both before and after Plaintiff executed this sworn declaration, which cites NRS § 53.045, Plaintiff was observed on multiple occasions seated in front of various poker machines gambling for up to 5 hours at a stretch and walking freely around the Texas Station casino. Nevertheless, the Court granted Plaintiff's motion and Defendants took Plaintiff's deposition according to this schedule on July 22 and 23, 2019.

But, ever since Plaintiff's deposition was taken in July, Plaintiff has sat many days for long hours utterly belying her representation to the Court and to Defendants that she could not sit for a full day deposition in the ordinary course. Plaintiff flew to Hawaii to attend the full-day deposition of Ms. Karla Koutz, sitting both on an airplane for a long roundtrip flight and for Ms. Koutz's all day deposition itself. Plaintiff also sat through the full day depositions of Mr. Joshua Ang, Esq., Mr. Gregg Addington, Esq., Ms. Ashley Pourghahreman, Mr. Paul Padda, Esq., and the NRCP

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30(b)(6) representatives of Padda Law. So, as was the case before her deposition, Plaintiff's conduct since her deposition reveals undeniably that she can sit for long hours and no medical condition prevents her from sitting through multiple full-day depositions or taking long flights. In other words, Plaintiff deceived Defendants and the Court when she requested a two-day deposition.

3. Plaintiff Lied During Her Deposition

Next, during her deposition, Plaintiff repeatedly lied in a conscious effort to misdirect Defendants during discovery. Defendants have found, through discovery, clear proof of Plaintiff's lies as described below.

First, Plaintiff testified emphatically that the desktop computer Padda Law gifted her after her departure from the firm in September 2017 had been "wiped clean." *See* **Exhibit 2** at 108:15-23. However, both her and Defendants' computer experts reached the conclusion that this computer was not "wiped." *See* **Exhibits 4 & 5**. Plaintiff must have known this computer had not been wiped or must have taken no steps to confirm her belief that this computer had been wiped before or after her deposition.[1] Plaintiff has never corrected her testimony. And, due to her testimony, Defendants were not able to ferret out the fulsomeness or lack of disclosure in Plaintiff's responses to discovery requests because they relied on Plaintiff's testimony that she had no documents or communications on her computer. Defendants have learned, since Plaintiff's deposition, that Plaintiff has been using a second computer, a laptop, and a new email address to make and store communications with key witnesses in this litigation. *See infra* at Part II.B.

Second, Plaintiff testified that she cashed all the checks, totaling $50,000.00, she received from Defendants pursuant to the September 12, 2016 Business Expectancy Agreement (the "Buyout Agreement") (that is at the heart of this litigation) they had reached concerning her expectancy interest in certain personal injury cases and then deposited the cash into her savings account. **Exhibit 2** at 278:14-281:5. Plaintiff testified that she started making these cash deposits in 2016. *See id.* Testifying under oath, Plaintiff explained that the reason she received cash instead

[1]Plaintiff likewise must have misled her attorneys who, based upon Plaintiff's misrepresentations, took no steps to collect, process, and produce documents from her desktop and for that matter, her laptop, until a month *after* the close of discovery.

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of depositing the payments directly into her bank account was because she did not want her bank to put a 10-day hold on the checks:

Steve Peek:	Why didn't you deposit the check directly into your savings account as opposed to you cashing it and taking out $8,000 cash.
Ruth Cohen:	Because my bank would have held it for at least 10 business days.
Steve Peek:	And why is that important?
Ruth Cohen:	I didn't want the hold on it. I needed it to use the money to pay bills and things.
Steve Peek:	Did you deposit it into your savings account as opposed to a checking account?
Ruth Cohen:	Correct.
Steve Peek:	And then how did you pay your bills out of a savings account?
Ruth Cohen:	I dribbled it into my checking account as needed.
Steve Peek:	Was there a tax lien on your checking account?
Ruth Cohen:	No. Never has been.
Steve Peek:	Were there a tax lien on your savings account?
Ruth Cohen:	No.
Steve Peek:	And actually, for each of the checks that you received from Padda Law to pay the $50,000, you cashed each – you actually took them and cashed them and received cash from them, did you not?
Ruth Cohen:	And put it in my account. Yes.
Steve Peek:	And the reason you did that was the same, which is you wanted to – you had bills that you had to pay?
Ruth Cohen:	No. I wanted to put cash in so the bank didn't hold it for 10 business days.

Exhibit 2 at 280:20-281:24. Plaintiff's testimony was both misleading and false.

Defendants sought Plaintiff's bank records either to corroborate or rebut Plaintiff's testimony that she cashed the checks she received from Defendants and then deposited those checks into her savings account. Again, Plaintiff resisted Defendants' efforts to secure these bank records by filing a motion for protective order with the Court on the same grounds the Court had previously rejected. The Court overruled Plaintiff's objections and motion and, ultimately, Defendants secured Plaintiff's relevant bank records, which revealed [redacted] *See id.*

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Third and relatedly, Plaintiff claimed that the IRS imposed a $60,000 tax lien on her due to her inadvertent failure to withhold sufficient income to satisfy her Social Security Disability tax obligations in 2014. *See* **Exhibit 2** at 146:15-147:9. Consequently, Defendants subpoenaed certain tax documents that Plaintiff's tax accountant, Mr. Daniel Kim, CPA ("Mr. Kim"), prepared on Plaintiff's behalf to resolve her tax lien. *See* **Exhibit 7** (Excerpts of Kim Documents) at KIM000001-000020. [redacted] *See id.* at KIM000010.

Finally, these documents demonstrate that [redacted]

[redacted]

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[redacted]

Fourth, Plaintiff testified that she had never seen or signed an executed "final receipt of payment" document she was shown during her deposition that provided that Plaintiff had obtained the final buyout agreement check and she was releasing Defendants from any claims she may have related to the buyout agreement. **Exhibit 2** at 352:20-353:21. Plaintiff claimed the document was forged by Mr. Padda and that Mr. Padda made it up as part of his efforts to supposedly "influence" witnesses and create evidence in this case. *See id.* Yet, after the Court permitted Plaintiff to belatedly retain a questioned documents examiner ("QDE") to examine the "final receipt of payment" document, Plaintiff's QDE opined that Plaintiff "likely" signed the document and Defendants retained a rebuttal QDE who opined that it is "highly probable" and "virtually certain" that Plaintiff signed this document and there is ***no evidence*** upon which any QDE should be making an assertion as to whether or not Plaintiff's signature was "cut and pasted from another document," as Plaintiff has suggested. *See* **Exhibit 8** (attached herein) at PADDA-EXP000047-52. Defendant Padda Law's chief operating officer, Ms. Patricia Davidson ("Ms. Davidson") further testified on behalf of Padda Law during an NRCP 30(b)(6) deposition that Plaintiff had executed the "final receipt of payment" document in Ms. Davidson's presence such that Ms. Davidson saw Plaintiff sign this document. *See* **Exhibit 9** (Excerpts of Depo. Trans of NRCP 30(b)(6) of Padda Law, Patricia Davidson) at 114:4-8.

[redacted]

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Witnesses do not always remember exactly the correct answer to the questions they are asked in a deposition or at trial. But, Plaintiff's testimony, which is riddled with easily proven lies, is not the ordinary product of faulty (*i.e.*, ordinary) memory. Plaintiff's lies serve only to buttress her own shaky claims. In this way, Plaintiff's lies show something far worse than questionable recall—they evince Plaintiff's *intent* to mislead Defendants and their counsel in their efforts to discover the truth in this case.

3. Plaintiff Forces Defendants to Travel to Hawaii

On or about July 31, 2019, counsel for Plaintiff and counsel for Defendants conferred telephonically to discuss depositions. *See* Exhibit B to Defendants' Opposition to Plaintiff's Motion for Protective Order Regarding the Deposition of Karla Koutz. During that call, counsel for Plaintiff informed counsel for Defendants that Plaintiff wanted to depose Ms. Karla Koutz ("Ms. Koutz"), a resident of Hawaii. *See id.* Plaintiff wanted to pay for Ms. Koutz to travel to Las Vegas to attend this deposition and for Defendants to agree not to inquire about Plaintiff's payment of Ms. Koutz's travel costs and for no negative inference to be reached as a result of Plaintiff's paying for Ms. Koutz's costs. *See id.* Defendants agreed that Plaintiff could pay for Ms. Koutz to travel to Las Vegas, but Defendants did not agree to refuse to inquire into these payments or that no negative inference would result from Plaintiff's payment. *See id.*

Accordingly, Plaintiff filed a motion for protective order that sought, at bottom, to prevent Defendants from inquiring about Plaintiff's payment of Ms. Koutz's travel costs to attend her deposition in Las Vegas. The Court summarily denied this motion.

However, rather than accept the Court's ruling and hold the deposition in Las Vegas with the knowledge that Defendants may inquire about Plaintiff's payment of Ms. Koutz's costs, Plaintiff noticed the deposition for Hawaii and forced Defendants to pay for travel and lodging to attend Ms. Koutz's deposition. *See* **Exhibit 10** (Aug. 27, 2019 Amended Notice of Taking Video Deposition of Karla Koutz). While Plaintiff had previously argued in her Motion for Protective Order Regarding the Deposition of Karla Koutz that Defendants were seeking to cause Ms. Koutz's deposition to take place in Hawaii in order to unnecessarily drive up costs in this case, it was Plaintiff's choice to re-notice the deposition simply to avoid Defendants' questions about Plaintiff

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paying Ms. Koutz's costs after the Court's ruling. Consequently, Plaintiff not only voluntarily ran up her own costs, she unnecessarily caused the Defendants to bear the additional cost to travel to Hawaii all because Plaintiff had lost the Motion. Despite this burden, the Defendants did ask about payment of travel expense, and Ms. Koutz did testify that Plaintiff was going to pay her travel expenses to Las Vegas for her deposition, thus allowing the Defendants to present this fact to the jury. *See* **Exhibit 20** (Excerpts of Depo. Trans. of Karla Koutz) at 211:9-212:11.

B. Plaintiff Lies in Her Written Discovery Responses

In addition to the tactical misconduct and outright lies described above, Plaintiff failed to disclose and failed to take any meaningful efforts to disclose highly material communications Plaintiff had with key witnesses in this case despite Defendants' express requests for these communications and Plaintiff's obligations to disclose these communications under NRCP 16.1. Defendants only became aware of Plaintiff's obfuscation after a witness, Mr. Wayne Price, Esq. ("Mr. Price"), revealed that he had had extensive email communications with Plaintiff in July and August 2019, which Plaintiff never produced, during a continued deposition of Mr. Price on December 23, 2019.

On June 6, 2019, Plaintiff disclosed Mr. Price as a witness on her initial NRCP 16.1 disclosure.[4] *See* **Exhibit 11** (attached). Several months later, on October 7, 2019, Defendants served written discovery requests on Plaintiff, including requests for production of any written communications with Mr. Price as well as several other witnesses. *See* **Exhibit 12**. On October 28, 2019, Plaintiff served her responses to Defendants' discovery requests where she responded, in regards to Defendants' request for written communications with Mr. Price, that "she does not believe she has possession, custody, or control of any responsive documents." *See* **Exhibit 13** (Plaintiff's Responses to Defendants' Requests for Production of Documents (First Set)) at 13. Plaintiff produced no email communications with Mr. Price (or any other witnesses). Defendants,

[4] Once Mr. Price was disclosed as a witness by Plaintiff, Plaintiff had an affirmative obligation to supplement her NRCP 16.1 Disclosures with any written communications she had with Mr. Price.

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believing Mr. Price had little or no relevance to this dispute, accepted what they now know were Plaintiff's false representations.

On December 2, 2019, Plaintiff deposed Mr. Price. After the conclusion of Mr. Price's deposition and after the close of discovery, on December 11, 2019, Plaintiff sought permission to continue Mr. Price's deposition and to compel Defendants to produce various documents related to Mr. Price, which Plaintiff claimed Defendants had improperly failed to produce during discovery. In her motion, Plaintiff stated that "Mr. Price's role as a witness in this litigation cannot be overstated as his ignominious departure from Mr. Padda's firm mirrors ***exactly*** that of Plaintiff Ruth Cohen." *See* Plaintiff's Motion to Compel at 6 (emphasis in the original). Plaintiff focused the Court's attention on how Mr. Price "struggled for months to obtain the compensation due him but was serially frustrated by Mr. Padda and Ms. Davidson in obtaining an accounting of those cases which had been resolved and on which he was owed fees." *Id.* The Court granted Plaintiff's Motion.

Mr. Price's deposition continued on December 23, 2019. During that deposition, Mr. Price revealed, for the first time, that he had emailed extensively with Plaintiff in July and August 2019. *See* **Exhibit 14** (Excerpts from Dec. 23, 2019 Depo. Trans. of Wayne Price) at 27:7-36:5. Mr. Price revealed that Plaintiff had forwarded Mr. Price several attachments containing materials Defendants produced in discovery in this case, presumably for Mr. Price to review and to react, but Mr. Price "never responded" to Plaintiff's inquiry. *Id.* at 31:21-22. Mr. Price also revealed that he even blind-copied Plaintiff on an email to Mr. Padda and Padda Law's chief operating officer, Patricia Davidson ("Ms. Davidson"), in August 2019 wherein Mr. Price demanded payment from Defendants Mr. Price believed her was owed. *Id.* at 32:1-34:7. The import of Mr. Price's testimony was clear: Plaintiff was communicating with Mr. Price in an effort to influence Mr. Price against Defendants and to (hopefully) create a chain of communication she could use against Defendants in her lawsuit. *See id.* at 34:4-7 ("Q: Why did you blind copy Ruth on that? A: Because she asked me to. I just got – we just got through reading the one where she asked if I had any more emails from Paul about payment.").

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Counsel for Defendants demanded Mr. Price produce these email communications to both parties immediately. *Id.* at 36:6-10. On December 26, 2019, counsel for Defendants brought Mr. Price's revelation of email communications with Plaintiff to the Court's attention. The Court instructed Plaintiff to produce any email communications she had with Mr. Price to Defendants by the middle of the following week. On December 30, 2019, Plaintiff's counsel revealed to counsel for Defendants that Plaintiff had been using a separate laptop computer to email with witnesses, including Mr. Price, from a new email address. Later that day, Plaintiff disclosed only two email chains with Mr. Price from July and August 2019.

Then, on January 6, 2020, over a month after the close of discovery and nearly three months after Defendants served Plaintiff with their requests for production of documents, Plaintiff served Defendants with a disclosure containing 154 pages of emails Plaintiff had had with several witnesses, including Mr. Price (now with additional emails that weren't disclosed in the December 30, 2019 disclosure), Karla Koutz, and Greg Addington.

In sum, Plaintiff identified Mr. Price in her very first NRCP 16.1 disclosure as a witness in June 2019 and believed (and believes) Mr. Price to be an essential witness in support of her case, but, when Defendants asked for her communications with Mr. Price in October 2019, Plaintiff either had a complete lapse of memory that she had been emailing with Mr. Price just two months earlier ***or,*** as Defendants believe, Plaintiff deliberately hid these communications. Plaintiff only took the time to actually collect and produce these relevant and responsive communications well after discovery closed and only after the Defendants advised the Court that they had discovered Plaintiff had been withholding these communications.

What's more, Defendants know that Plaintiff has refused to meaningfully respond to any of their discovery requests. Her responses to Defendants' interrogatories, requests for admission, and requests for production of documents are riddled with inane, illogical, and bad-faith readings of simple phrases like "honesty" and "truth." *See* **Exhibits 15** (Plaintiff's Answers to Defendants' Interrogatories) and **Exhibit 16** (Plaintiff's Answers to Defendants' Requests for Admission). Plaintiff repeatedly objected to Defendants' requests for production of documents on the basis that each request sought "documents subject to the attorney work product doctrine" without producing

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any privilege log by which Defendants could evaluate Plaintiff's claim of such protection. Moreover, Plaintiff only recently revealed that the communications Defendants have asked for were stored on Plaintiff's laptop computer at one point. Of course, it is expected that Plaintiff will tell the Court that she cannot readily locate them now because she either deleted these emails or she refused to search for them when they were requested and were in a more accessible location on her computer. This conduct is pure and simple spoliation of evidence by the Plaintiff.

In her responses to Defendants' Requests for Admission, Plaintiff falsely denied that she was suspended from the practice of law in or about April 2017. *See* **Exhibit 16** at 3. Defendants secured a copy of the court order advising that Plaintiff had been suspended from the practice of law for failure to comply with her CLE requirements, demonstrating the falsity of Plaintiff's responses. *See* **Exhibit 17** (Nevada Board of Continuing Legal Education Order of Suspension of Non-Compliant Members). Moreover, Plaintiff implicitly conceded the falsity of her discovery responses in her Opposition to Defendants' Motion for Summary Judgment wherein she expressly provides that "[a]s of December 19, 2019, [she] is an active member of the State Bar of Nevada and remains in good standing." *See* Opposition to Defendants' Motion for Summary Judgment at 15; *see also* Exhibit P to Opposition to Defendants' Motion for Summary Judgment.

Additionally, in those same responses, Plaintiff falsely denied that she had access to Padda Law's electronic record database stored on a software platform called "Needles." *See* **Exhibit 16** at 12. As a result, Plaintiff forced Defendants to take the deposition of an NRCP 30(b)(6) designee of the software company, Assembly Software LLC, that owns and operates the "Needles" platform in Maryland to determine the veracity of Plaintiff's false claim. The Assembly Software LLC designee testified that not only did Plaintiff have access to Padda Law's "Needles" platform, but Plaintiff used that "Needles" platform to modify a key entry regarding the Moradi Case. *See* **Exhibit 18** (Excerpts from Depo. Trans. of NRCP 30(b)(6) Designee of Assembly Software LLC) at 46:3-49:19.

In those same responses, Plaintiff [redacted] *See* **Exhibit 16** at 22.

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However, Defendants produced this precise email chain and identified it by Bates number for Plaintiff's consideration. [redacted] Because the Plaintiff failed to collect, process, and produce emails from her desktop, she would have no legitimate reason to deny this Request for Admission.

In these same responses, Plaintiff even denied that "wagering money" is a recreational activity. *See* **Exhibit 16** at 24. Thus, Plaintiff was not even seriously trying to respond to these requests in good faith.

Moreover, in her interrogatory responses (as well as her deposition testimony), Plaintiff fails to identify with specificity when Mr. Padda supposedly made the affirmative misrepresentations on which Plaintiff bases her claims. *See* **Exhibit 15** at 6 ("Ms. Cohen cannot recall the 'exact' date and time that Mr. Padda made this statement, but it occurred before September 12, 2016.").[5] Proof of fraud requires more than some vague reference to a time before September 12, 2016. *See* NRCP 9(b); *see also Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (party may not avoid summary judgment without evidence and by relying solely on pleadings). Ms. Cohen has never supplemented her response to this Interrogatory.

Plaintiff has spent much of this case pointing her finger at Defendants for trivial discovery issues. Yet, when it comes to the essential witnesses in this case and Defendants requests for Plaintiff's communications with those witnesses, Plaintiff has erected a shameful and inappropriate posture of the amnesiac or the proverbial "useful idiot." But Plaintiff's see-no-evil, hear-no-evil, speak-no-evil approach to her own discovery foibles does not render her innocent of these abuses. It only magnifies her guilt and her awareness of her guilt.

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[5]Plaintiff also testified at her deposition inconsistently about when Mr. Padda supposedly made representations about the value of the Moradi Case. *See* **Exhibit 2** at 205:21-206:15 (Plaintiff's varying testimony about when Mr. Padda supposedly made certain representations to her about the Moradi Case).

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C. Plaintiff's Backroom Efforts to Win Over Witnesses and Influence Their Testimony

Mr. Price's revelation that he and Plaintiff had been communicating extensively via email during discovery in this case casts new light on Plaintiff's other odd behavior in this case. In particular, her extensive contacts and phone calls with other witnesses she believes are favorable to her cause. Now that Defendants know Plaintiff had been attempting to push Mr. Price to create evidence against Defendants, Defendants believe Plaintiff likely sought to accomplish similar ends with other witnesses.

Defendants first learned that Plaintiff had been communicating extensively with witnesses during the deposition of Ms. Koutz in Hawaii. During that deposition, Ms. Koutz testified that she spoke with Plaintiff on the phone regularly and the two had discussed Plaintiff's case at-length on three or four different occasions. *See* **Exhibit 20** (Excerpts of Depo. Trans. of Karla Koutz) at 212:25-213:6. After Ms. Koutz's deposition, several other witnesses described being contacted either by Ms. Koutz at Plaintiff's direction *or* by Plaintiff directly, including Mr. Greg Addington, Ms. Sherry Prine, and Ms. Ashley Pourghahreman.

Further and more ominously, an unnamed male "investigator" contacted another witness, Mr. Jefrey Appel, informing Mr. Appel that he "had information" that Mr. Appel was "forced out of Paul Padda Law and [Mr. Appel] had a claim similar to Ruth Cohen." *See* **Exhibit 21** (Excerpts of Depo. Trans. of Jefrey Appel) at 137:6-138:13. This investigator also seemed to have "detailed knowledge" of Mr. Appel's medical condition and disclosed this information to Mr. Appel. *Id.* at 137:25-138:3. This investigator did not identify himself to Mr. Appel and the conversation terminated when Mr. Appel hung up on the man. *Id.* at 138:4-13.

While a party and her counsel may generally contact unrepresented third-parties to investigate her claims or defenses in ligation, a party (and her counsel) may not endeavor to contact unrepresented third-parties in an effort to influence their testimony or encourage these third-parties to contact a litigation opponent in the hopes of creating evidence in her case. Certainly, a party and her counsel may not offer any benefits to a witness in exchange for that witness testifying in a particular way. *See* Restatement (Third) of the Law Governing Lawyers § 117(2) (Am. Law

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Inst. 2000); *HomeDirect, Inc. v. H.E.P. Direct, Inc.*, No. 10 C 812, 2013 WL 1815979, at *4 (N.D. Ill. Apr. 29, 2013).

Yet, here, Defendants do not know the full extent of Plaintiff's contacts with Mr. Price and the other witnesses. Defendants have only just recently scratched the surface of Plaintiff's contacts with the witnesses in this case. In light of Plaintiff's extensive history in this case of avoiding her discovery obligations, lying to the Court and to Defendants (and to the IRS), and gaming this case in every way she possibly can, Defendants have no faith that Plaintiff has not engaged in more egregious conduct, such as outright witness tampering.

III. PRAYER FOR RELIEF

Defendants request that this Court dismiss Plaintiff's action as a sanction for Plaintiff's abusive litigation strategy, tactics, and conduct. Alternatively, Plaintiff's request an evidentiary hearing to determine the extent of Plaintiff's misconduct after a continued deposition of Plaintiff to learn the truth and grant the Defendants an appropriate sanction at the conclusion of an evidentiary hearing.

This Court has two, distinct sources of authority to sanction abusive litigation practices. *See Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). The Court has authority under NRCP 37 and the Court has inherent power to sanction abusive litigation practices. *See id.* 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).

While this Court's decision to impose sanctions generally will not be reversed absent a clear showing of an abuse of discretion, case-ending sanctions require "a somewhat heightened standard of review." *Foster v. Dingwall*, 126 Nev. 56, 65, 227 P.3d 1042, 1048 (2010). This somewhat-heightened review requires a reviewing court to consider whether (1) the sanction is just and relates to the specific conduct at issue; and (2) the district court engaged in an express, thoughtful, and preferably written analysis of all material factors. *Id.* These "material factors" may include (but are not limited to):

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1. The degree of willfulness of the offending party,

2. The extent to which the non-offending party would be prejudiced by a lesser sanction,

3. The severity of the sanction of dismissal relative to the severity of the discovery abuse,

4. Whether any evidence has been irreparably lost,

5. The feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party,

6. The policy favoring adjudication on the merits,

7. Whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and

8. The need to deter both the parties and future litigants from similar abuses.

Young, 106 Nev. at 93, 787 P.2d at 780.

In *N.A. Props. v. McCarran Int'l Airport*, the Nevada Supreme Court affirmed the district court's imposition of sanctions on the plaintiffs for discovery abuses, including failing to collect and review for relevancy a large cache of documents in its possession, custody, or control. *See* No. 61997, 2016 WL 699864, at *2 (Nev. Sup. Ct. Feb. 19, 2016). A little more than two months after the close of discovery, plaintiffs revealed for the first time that they had millions of documents in storage that were relevant to key issues in the case that they neither reviewed for relevancy or produced. *Id.* The district court sanctioned the plaintiff's by applying an adverse inference against them, concluding that the unproduced documents would show the dispositive issue relevant to these documents—plaintiff's standing to sue—weighed against plaintiffs (plaintiffs lacked standing). *Id.* at *1-*2.

Here, Defendants are in a similar position to the defendants in *N.A. Props.* as they have learned nearly a month after the close of discovery that Plaintiff has hidden key documents from them, including documents evidencing her efforts to influence key witnesses in this case, and Plaintiff has refused to review the contents of her laptop computer, a key source of potentially

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relevant documents, for relevancy. Furthermore, Ms. Cohen, a former Assistant United States Attorney for the District of Nevada in the civil division, hid the existence of those very same documents from her counsel.[6] In this case, however, Defendants are worse off as Plaintiff has yet to come clean and has not revealed anything about the nature or extent of her communications with Mr. Price or the other witnesses in this case and Plaintiff has not reviewed her laptop computer or produced more than two email chains from her new email account. Defendants simply do not know what they do not know.

Still, all of the material factors weigh in favor of dismissing Plaintiff's action here. First, Plaintiff was directly communicating with *at least* Mr. Price only two months before Defendants served her with their discovery requests. Plaintiff must have known she had responsive communications to Defendants' requests, but she simply refused to turn them over and may have destroyed those communications at this point. Thus, Plaintiff's misconduct was intentional and knowing.

Second, without dismissing Plaintiff's action, Defendants would be forced to go to trial knowing that Plaintiff has been engaging in efforts to turn witness testimony against them, but without knowing exactly what it is Plaintiff has done. Defendants would be forced to fight in the dark and would be susceptible to ambush by Plaintiff's improper evidence-shaping at trial.

Third, while dismissing an action is a very serious sanction, Plaintiff's conduct has been abhorrent. Plaintiff has lied to the Court and Defendants repeatedly and made every effort to prevent Defendants from having a fair trial. Plaintiff's misbehavior strikes at the very heart of the justice system and, if the Court permits it to go on unchecked, there will be no risk for future litigants in shirking their responsibilities under Nevada law and the Nevada Rules of Civil Procedure.

Fourth, Defendants do not yet know whether Plaintiff has irreparably destroyed any email communications (or other communications) with Mr. Price or the other witnesses. However,

[6]It appears that Plaintiff's counsel made no effort to submit either her desktop or her laptop to HOLO early in the litigation. They know how to do that because once Defendants raised the issue that her desktop was not wiped, they retained HOLO only to confirm that her desktop was not wiped. In fact, HOLO had possession of Plaintiff's desktop before the close of discovery, but did nothing to process the ESI on this computer.

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Plaintiff's representations through counsel that Plaintiff could not locate certain emails that Mr. Price was able to review on his personal cellphone during his December 23 deposition suggests Plaintiff may have destroyed or attempted to destroy *at least* the iterations of those emails stored on her personal laptop.

Fifth, Defendants recognize that a lesser sanction, such as conclusively determining that Plaintiff's communications with Mr. Price demonstrate that she intended to have Mr. Price create evidence against Defendants, could have been appropriate earlier in this case. At this late stage (four weeks before trial), however, the only proper sanction is to dismiss Plaintiff's action.

Sixth, while Nevada policy favors adjudication on the merits, Nevada policy also favors "just, speedy, and inexpensive determination of every action and proceeding." NRCP 1. And here, Plaintiff's conduct has resulted in injustice, delay, and great expense to Defendants, to third-party witnesses, and to the Court as Plaintiff endeavors to tip the scales of justice in her favor.

Seventh, Plaintiff's counsel may have been complicit in Plaintiff's malfeasance. They may also have simply looked the other way or failed to investigate the bases for Plaintiff's false contentions, such as her false claim that she cannot sit for a full-day deposition or her false claim that her desktop computer was "wiped clean." But, in the end, the misconduct here starts and ends with Plaintiff herself, a former AUSA and a current attorney in good standing with the Nevada bar. Any sanctions for Plaintiff's misconduct would be attributable solely to Plaintiff's choices to lie, to hide evidence, and to endeavor to influence witnesses whom Plaintiff contacted directly.

Due to Plaintiff's brazen efforts to violate her discovery obligations under NRCP 16.1 and NRCP 26 as well as her extensive attempts to influence and shape the evidence in this case, Defendants hereby request that the Court impose case-ending sanctions and dismiss Plaintiff's action against Defendants altogether. Alternatively, Defendants request either (1) an evidentiary hearing before the Court to determine the extent of Plaintiff's discovery misconduct and efforts to influence witness testimony, including possibly engaging in witness tampering, or (2) permission to continue their deposition of Plaintiff to investigate these same topics. In either event, Defendants request the Court continue the trial set to start on February 10, 2020, so either the evidentiary hearing or Plaintiff's continued deposition may occur before trial.

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IV. CONCLUSION

The law and our system of justice is a rule-based enterprise. The rules ensure that conflicts may be resolved efficiently and fairly. But Plaintiff has never wanted a fair or efficient process. From the start of this litigation, Plaintiff has sought a process by her terms only, come hell or highwater.

Plaintiff lied to the Court to secure a two-day deposition rather than an ordinary one-day/seven-hour deposition. She then riddled her deposition testimony with easily provable lies in an effort to paint herself as a victim and Defendants as the perpetrators of a years-long fraud. She sought to improperly restrict Defendants' inquiries of her witnesses regarding their biases towards her and, when she lost, she forced all the parties to travel to Hawaii while blaming the necessity of this travel and expense on Defendants and their lawyers.

All the while, Plaintiff was contacting witnesses on the sly. Plaintiff was sharing documents produced in discovery with non-parties, lay witnesses, and who knows who else. Why? Because Plaintiff wanted to drum up support for her weak and weakening case by any means necessary. And because Plaintiff wanted to make sure Defendants were unable to defend themselves properly.

And when Defendants asked for Plaintiff's communications with key witnesses, like Mr. Price, Plaintiff simply stonewalled. Plaintiff just spit out as many objections as she could think of and said, "I got nothing." Well, Defendants now know Plaintiff was lying, just as she did about her supposed medical condition and her computer and her cash deposits and her tax debt and her signature on the "final receipt of payment" document.

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This Court—and the judicial system writ large—ought not to abide a case built on lies and bad-faith. The Court should not allow Plaintiff to continue this case against Defendants. Defendants request the Court impose case-ending sanctions.

DATED this 15th day of January 2020

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of January 2020, a true and correct copy of the foregoing **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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