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

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

This matter came before the Court and was decided without the necessity of oral argument pursuant to Administrative Order 20-01 on March 25, 2020.[1]

On December 18, 2019, Defendants Paul S. Padda, Esq. ("Mr. Padda") and Paul Padda Law, PLLC ("Padda Law") (collectively, "Defendants") filed a motion for summary judgment arguing, in relevant part, that, because Plaintiff Ruth L. Cohen ("Ms. Cohen") was suspended from the practice of law on April 6, 2017, and remained suspended through the filing of that motion, Ms. Cohen was prohibited from receiving any legal fees earned on any cases resolved on or after April 6, 2017, by NRPC 5.4(a) such that the contractual obligation under which Ms. Cohen sought to recover legal fees through this action was illegal and unenforceable as a matter of law.

On December 23, 2019, Ms. Cohen filed a motion to extend the time to file her opposition to Defendants' motion for summary judgment. The Court granted Ms. Cohen's motion to extend time and established the deadline for Ms. Cohen to file her opposition to January 10, 2020.

On January 10, 2020, Ms. Cohen filed her opposition to Defendants' motion for summary judgment. Regarding Defendants' arguments concerning Ms. Cohen's suspension from the practice of law, Ms. Cohen cited one case, *Shimrak v. Garcia-Mendoza*, 112 Nev. 246, 912 P.2d 822 (1996).

On January 24, 2020, Defendants filed their reply in support of their motion for summary judgment.

A hearing was held on Defendants' motion for summary judgment on January 27, 2020. At that hearing, in regard to Defendants' arguments about Ms. Cohen's suspension from the practice of law, Ms. Cohen's counsel only presented the same arguments Ms. Cohen had made in her opposition, relying exclusively upon the *Shimrak decision* and without referring to other legal authorities or distinguishing the authorities cited by Defendants.

On February 18, 2020, the Court granted Defendants' motion for summary judgment.

On February 21, 2020, Ms. Cohen filed a motion for reconsideration of the Court's order granting Defendants' motion for summary judgment (the "Motion"). There, Ms. Cohen argued

[1] *See* EDCR 2.23(c) ("The judge may consider the motion on its merits at anytime with or without oral argument, and grant or deny it.").

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that the Court's order was "clearly erroneous" because it failed to account for several legal authorities from other jurisdictions, which Ms. Cohen failed to present in her opposition to Defendants' motion for summary judgment or at the original hearing on the same motion.

On March 6, 2020, Defendants filed an opposition to Ms. Cohen's Motion (the "Opposition").

Ms. Cohen filed a reply in support of her Motion on March 16, 2020.

After considering the papers and the pleadings on file, and good cause appearing, the Court hereby orders as follows:

IT IS ORDERED THAT the Motion is DENIED.

EDCR Rule 2.24 provides, in pertinent part, that a party may seek "reconsideration of a ruling of the court." However, the Nevada Supreme Court has determined that "[o]nly in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). A district court may consider a motion for reconsideration concerning a previously decided issue if the decision was clearly erroneous. *See Masonry and Tile v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). But "[p]oints or contentions not raised in the original hearing cannot be maintained or considered on rehearing." *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996); *see also Sargeant v. Henderson Taxi*, 425 P.3d 714 (Table), 2017 WL 10242277, at *1 (Nev. Sup. Ct. Dec. 1, 2017).

A court's decision is "clearly erroneous" where it would result in manifest injustice if it is enforced or would amount to a fundamental miscarriage of justice. *See Hsu v. Cty. of Clark*, 123 Nev. 625, 630–31, 173 P.3d 724, 728–29 (2007). A party's failure to cite or present certain nonbinding authorities from other jurisdictions to this Court in the original hearing on a motion does not render this Court's decision on that motion "clearly erroneous." Thus, this Court's order granting Defendants' motion for summary judgment is not "clearly erroneous" and subject to reconsideration due to Ms. Cohen's failure to cite or present the nonbinding authorities she has identified in her Motion.

Further, the authorities Ms. Cohen cites in her Motion do not apply here.

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In her Motion, Ms. Cohen firsts asks the Court to consider, accept, and apply legal authorities that stand for the general principle that an attorney who becomes disbarred or suspended prior to the resolution of a client's pending matter has voluntarily abandoned that matter such that the attorney may not recover any legal fees of any kind, including the *quantum meruit* value of the services already rendered by the attorney, earned on the matter. *See, e.g., Royden v. Ardoin*, 331 S.W.2d 206, 209 (Tex. 1960). This general principle is far more punitive and exacting than the authorities this Court relied upon in granting Defendants' motion for summary judgment as it denies disbarred and/or suspended attorneys the ability to recover even the reasonable value of services rendered on pending matters following their suspension or disbarment. *See Lessoff v. Berger*, 2 A.D.3d 127, 767 N.Y.S.2d 605, (Mem)–606 (2003) (permitting recovery of *quantum meruit* value of services rendered on pending matters for disbarred or suspended attorneys). In fact, the line of cases Ms. Cohen relies on in her Motion simply represents the more exacting of two approaches developed across the country to address a disbarred or suspended attorney's ability to recover legal fees after his or her disbarment or suspension. *See, e.g., Pollock v. Wetterau Food Distrib. Group*, 11 S.W.3d 754, 772–73 (Mo. Ct. App. 1999) ("There are two schools of thought on the issue of a disbarred attorney's entitlement to recover fees for work performed prior to his disbarment."); *Kourouvacilis v. Am. Fed'n of State, Cty. & Mun. Employees*, 841 N.E.2d 1273, 1279 (Mass. App. Ct. 2006) ("Two principal lines of authority have emerged in other jurisdictions concerning an attorney's right to compensation after he has been suspended or disbarred before completion of his services for the client.").

Ms. Cohen then requests the Court to consider, accept, and apply a narrow exception to this general principle, which provides that, where an attorney has completed all the services he or she was required to complete on a client's matter before his or her suspension or disbarment, the attorney may recover his or her agreed upon share of the legal fees earned on the matter so long as the attorney's right to such compensation was memorialized in a valid contract executed prior to the attorney's suspension or disbarment. *See Lee v. Cherry*, 812 S.W.2d 361, 363 (Tex. App. 1991). The only applicable legal services contracts recognized by these courts (following the more punitive approach which this Court declined to follow) are referral or origination fee agreements.

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See, e.g., Lee, 812 S.W.2d at 361–62; *A.W. Wright & Assocs., P.C. v. Glover, Anderson, Chandler & Uzick, LLP*, 993 S.W.2d 466, 467–68 (Tex. App. 1999); *Comm'n on Prof'l Ethics*, State Bar of Tex., Op. 568 (2010) (considering "a signed referral agreement that calls for the two lawyers to share the contingent fee"); *West v. Jayne*, 484 N.W.2d 186, 188 (Iowa 1992); *Sympson v. Rogers*, 406 S.W.2d 26, 27 (Mo. 1966). Because Ms. Cohen's claim to a share of legal fees earned after her suspension in this case is not predicated upon a referral fee or origination fee agreement, the exception to the general "voluntary abandonment" rule recognized by these other jurisdictions does not apply here.

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Accordingly, for all these reasons, the Court denies Ms. Cohen's Motion for Reconsideration.

DATED this 31st day of March, 2020

DISTRICT COURT JUDGE

Prepared and submitted by:

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Defendants.

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NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion for Reconsideration was entered the 31st day of March 2020.

A copy of said order is attached hereto.

DATED this 31st day of March, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March, 2020, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION** 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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[1] *See* EDCR 2.23(c) ("The judge may consider the motion on its merits at anytime with or without oral argument, and grant or deny it.").

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that the Court's order was "clearly erroneous" because it failed to account for several legal authorities from other jurisdictions, which Ms. Cohen failed to present in her opposition to Defendants' motion for summary judgment or at the original hearing on the same motion.

On March 6, 2020, Defendants filed an opposition to Ms. Cohen's Motion (the "Opposition").

Ms. Cohen filed a reply in support of her Motion on March 16, 2020.

After considering the papers and the pleadings on file, and good cause appearing, the Court hereby orders as follows:

IT IS ORDERED THAT the Motion is DENIED.

EDCR Rule 2.24 provides, in pertinent part, that a party may seek "reconsideration of a ruling of the court." However, the Nevada Supreme Court has determined that "[o]nly in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). A district court may consider a motion for reconsideration concerning a previously decided issue if the decision was clearly erroneous. *See Masonry and Tile v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). But "[p]oints or contentions not raised in the original hearing cannot be maintained or considered on rehearing." *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996); *see also Sargeant v. Henderson Taxi*, 425 P.3d 714 (Table), 2017 WL 10242277, at *1 (Nev. Sup. Ct. Dec. 1, 2017).

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Further, the authorities Ms. Cohen cites in her Motion do not apply here.

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In her Motion, Ms. Cohen firsts asks the Court to consider, accept, and apply legal authorities that stand for the general principle that an attorney who becomes disbarred or suspended prior to the resolution of a client's pending matter has voluntarily abandoned that matter such that the attorney may not recover any legal fees of any kind, including the *quantum meruit* value of the services already rendered by the attorney, earned on the matter. *See, e.g., Royden v. Ardoin*, 331 S.W.2d 206, 209 (Tex. 1960). This general principle is far more punitive and exacting than the authorities this Court relied upon in granting Defendants' motion for summary judgment as it denies disbarred and/or suspended attorneys the ability to recover even the reasonable value of services rendered on pending matters following their suspension or disbarment. *See Lessoff v. Berger*, 2 A.D.3d 127, 767 N.Y.S.2d 605, (Mem)–606 (2003) (permitting recovery of *quantum meruit* value of services rendered on pending matters for disbarred or suspended attorneys). In fact, the line of cases Ms. Cohen relies on in her Motion simply represents the more exacting of two approaches developed across the country to address a disbarred or suspended attorney's ability to recover legal fees after his or her disbarment or suspension. *See, e.g., Pollock v. Wetterau Food Distrib. Group*, 11 S.W.3d 754, 772–73 (Mo. Ct. App. 1999) ("There are two schools of thought on the issue of a disbarred attorney's entitlement to recover fees for work performed prior to his disbarment."); *Kourouvacilis v. Am. Fed'n of State, Cty. & Mun. Employees*, 841 N.E.2d 1273, 1279 (Mass. App. Ct. 2006) ("Two principal lines of authority have emerged in other jurisdictions concerning an attorney's right to compensation after he has been suspended or disbarred before completion of his services for the client.").

Ms. Cohen then requests the Court to consider, accept, and apply a narrow exception to this general principle, which provides that, where an attorney has completed all the services he or she was required to complete on a client's matter before his or her suspension or disbarment, the attorney may recover his or her agreed upon share of the legal fees earned on the matter so long as the attorney's right to such compensation was memorialized in a valid contract executed prior to the attorney's suspension or disbarment. *See Lee v. Cherry*, 812 S.W.2d 361, 363 (Tex. App. 1991). The only applicable legal services contracts recognized by these courts (following the more punitive approach which this Court declined to follow) are referral or origination fee agreements.

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See, e.g., Lee, 812 S.W.2d at 361–62; *A.W. Wright & Assocs., P.C. v. Glover, Anderson, Chandler & Uzick, LLP*, 993 S.W.2d 466, 467–68 (Tex. App. 1999); *Comm'n on Prof'l Ethics*, State Bar of Tex., Op. 568 (2010) (considering "a signed referral agreement that calls for the two lawyers to share the contingent fee"); *West v. Jayne*, 484 N.W.2d 186, 188 (Iowa 1992); *Sympson v. Rogers*, 406 S.W.2d 26, 27 (Mo. 1966). Because Ms. Cohen's claim to a share of legal fees earned after her suspension in this case is not predicated upon a referral fee or origination fee agreement, the exception to the general "voluntary abandonment" rule recognized by these other jurisdictions does not apply here.

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Accordingly, for all these reasons, the Court denies Ms. Cohen's Motion for Reconsideration.

DATED this 31st day of March, 2020

DISTRICT COURT JUDGE

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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 APPEAL**

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. . . . .

. . . . .

Please take notice that Plaintiff Ruth L. Cohen hereby appeals to the Nevada Supreme Court from the "Order Granting Defendants' Motion for Summary Judgment; Judgment," notice of entry of which was filed and e-served on February 18, 2020 (attached hereto as Exhibit "1"), and from the "Order Denying Plaintiff's Motion for Reconsideration," notice of entry of which was filed and e-served on March 31, 2020 (attached hereto as Exhibit "2.").

DATED this 8th day of April, 2020.

CAMPBELL & WILLIAMS

By /s/ ***Philip R. Erwin***
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 8th day of April, 2020 I caused the foregoing document entitled **Notice of Appeal** 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/ ***Crystal Balaoro***
An Employee of Campbell & Williams

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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 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.

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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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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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EXHIBIT 2

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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

NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion for Reconsideration was entered the 31st day of March 2020.

A copy of said order is attached hereto.

DATED this 31st day of March, 2020

HOLLAND & HART LLP

/s/ *Ryan A. Semerad*

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March, 2020, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION** 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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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 DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

This matter came before the Court and was decided without the necessity of oral argument pursuant to Administrative Order 20-01 on March 25, 2020.[1]

On December 18, 2019, Defendants Paul S. Padda, Esq. ("Mr. Padda") and Paul Padda Law, PLLC ("Padda Law") (collectively, "Defendants") filed a motion for summary judgment arguing, in relevant part, that, because Plaintiff Ruth L. Cohen ("Ms. Cohen") was suspended from the practice of law on April 6, 2017, and remained suspended through the filing of that motion, Ms. Cohen was prohibited from receiving any legal fees earned on any cases resolved on or after April 6, 2017, by NRPC 5.4(a) such that the contractual obligation under which Ms. Cohen sought to recover legal fees through this action was illegal and unenforceable as a matter of law.

On December 23, 2019, Ms. Cohen filed a motion to extend the time to file her opposition to Defendants' motion for summary judgment. The Court granted Ms. Cohen's motion to extend time and established the deadline for Ms. Cohen to file her opposition to January 10, 2020.

On January 10, 2020, Ms. Cohen filed her opposition to Defendants' motion for summary judgment. Regarding Defendants' arguments concerning Ms. Cohen's suspension from the practice of law, Ms. Cohen cited one case, *Shimrak v. Garcia-Mendoza*, 112 Nev. 246, 912 P.2d 822 (1996).

On January 24, 2020, Defendants filed their reply in support of their motion for summary judgment.

A hearing was held on Defendants' motion for summary judgment on January 27, 2020. At that hearing, in regard to Defendants' arguments about Ms. Cohen's suspension from the practice of law, Ms. Cohen's counsel only presented the same arguments Ms. Cohen had made in her opposition, relying exclusively upon the *Shimrak decision* and without referring to other legal authorities or distinguishing the authorities cited by Defendants.

On February 18, 2020, the Court granted Defendants' motion for summary judgment.

On February 21, 2020, Ms. Cohen filed a motion for reconsideration of the Court's order granting Defendants' motion for summary judgment (the "Motion"). There, Ms. Cohen argued

[1] *See* EDCR 2.23(c) ("The judge may consider the motion on its merits at anytime with or without oral argument, and grant or deny it.").

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that the Court's order was "clearly erroneous" because it failed to account for several legal authorities from other jurisdictions, which Ms. Cohen failed to present in her opposition to Defendants' motion for summary judgment or at the original hearing on the same motion.

On March 6, 2020, Defendants filed an opposition to Ms. Cohen's Motion (the "Opposition").

Ms. Cohen filed a reply in support of her Motion on March 16, 2020.

After considering the papers and the pleadings on file, and good cause appearing, the Court hereby orders as follows:

IT IS ORDERED THAT the Motion is DENIED.

EDCR Rule 2.24 provides, in pertinent part, that a party may seek "reconsideration of a ruling of the court." However, the Nevada Supreme Court has determined that "[o]nly in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). A district court may consider a motion for reconsideration concerning a previously decided issue if the decision was clearly erroneous. *See Masonry and Tile v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). But "[p]oints or contentions not raised in the original hearing cannot be maintained or considered on rehearing." *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996); *see also Sargeant v. Henderson Taxi*, 425 P.3d 714 (Table), 2017 WL 10242277, at *1 (Nev. Sup. Ct. Dec. 1, 2017).

A court's decision is "clearly erroneous" where it would result in manifest injustice if it is enforced or would amount to a fundamental miscarriage of justice. *See Hsu v. Cty. of Clark*, 123 Nev. 625, 630–31, 173 P.3d 724, 728–29 (2007). A party's failure to cite or present certain nonbinding authorities from other jurisdictions to this Court in the original hearing on a motion does not render this Court's decision on that motion "clearly erroneous." Thus, this Court's order granting Defendants' motion for summary judgment is not "clearly erroneous" and subject to reconsideration due to Ms. Cohen's failure to cite or present the nonbinding authorities she has identified in her Motion.

Further, the authorities Ms. Cohen cites in her Motion do not apply here.

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In her Motion, Ms. Cohen firsts asks the Court to consider, accept, and apply legal authorities that stand for the general principle that an attorney who becomes disbarred or suspended prior to the resolution of a client's pending matter has voluntarily abandoned that matter such that the attorney may not recover any legal fees of any kind, including the *quantum meruit* value of the services already rendered by the attorney, earned on the matter. *See, e.g., Royden v. Ardoin*, 331 S.W.2d 206, 209 (Tex. 1960). This general principle is far more punitive and exacting than the authorities this Court relied upon in granting Defendants' motion for summary judgment as it denies disbarred and/or suspended attorneys the ability to recover even the reasonable value of services rendered on pending matters following their suspension or disbarment. *See Lessoff v. Berger*, 2 A.D.3d 127, 767 N.Y.S.2d 605, (Mem)–606 (2003) (permitting recovery of *quantum meruit* value of services rendered on pending matters for disbarred or suspended attorneys). In fact, the line of cases Ms. Cohen relies on in her Motion simply represents the more exacting of two approaches developed across the country to address a disbarred or suspended attorney's ability to recover legal fees after his or her disbarment or suspension. *See, e.g., Pollock v. Wetterau Food Distrib. Group*, 11 S.W.3d 754, 772–73 (Mo. Ct. App. 1999) ("There are two schools of thought on the issue of a disbarred attorney's entitlement to recover fees for work performed prior to his disbarment."); *Kourouvacilis v. Am. Fed'n of State, Cty. & Mun. Employees*, 841 N.E.2d 1273, 1279 (Mass. App. Ct. 2006) ("Two principal lines of authority have emerged in other jurisdictions concerning an attorney's right to compensation after he has been suspended or disbarred before completion of his services for the client.").

Ms. Cohen then requests the Court to consider, accept, and apply a narrow exception to this general principle, which provides that, where an attorney has completed all the services he or she was required to complete on a client's matter before his or her suspension or disbarment, the attorney may recover his or her agreed upon share of the legal fees earned on the matter so long as the attorney's right to such compensation was memorialized in a valid contract executed prior to the attorney's suspension or disbarment. *See Lee v. Cherry*, 812 S.W.2d 361, 363 (Tex. App. 1991). The only applicable legal services contracts recognized by these courts (following the more punitive approach which this Court declined to follow) are referral or origination fee agreements.

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See, e.g., Lee, 812 S.W.2d at 361–62; *A.W. Wright & Assocs., P.C. v. Glover, Anderson, Chandler & Uzick, LLP*, 993 S.W.2d 466, 467–68 (Tex. App. 1999); *Comm'n on Prof'l Ethics*, State Bar of Tex., Op. 568 (2010) (considering "a signed referral agreement that calls for the two lawyers to share the contingent fee"); *West v. Jayne*, 484 N.W.2d 186, 188 (Iowa 1992); *Sympson v. Rogers*, 406 S.W.2d 26, 27 (Mo. 1966). Because Ms. Cohen's claim to a share of legal fees earned after her suspension in this case is not predicated upon a referral fee or origination fee agreement, the exception to the general "voluntary abandonment" rule recognized by these other jurisdictions does not apply here.

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Accordingly, for all these reasons, the Court denies Ms. Cohen's Motion for Reconsideration.

DATED this 31st day of March, 2020

DISTRICT COURT JUDGE

Prepared and submitted by:

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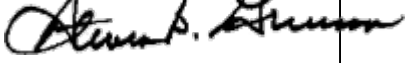

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DISTRICT COURT

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' REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES

Hearing Date: April 17, 2020
Hearing Time: Chambers

Case Number: A-19-792599-B

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 Attorneys' Fees (the "Reply").

This Reply is made and based on the attached Memorandum of Points and Authorities, NRCP 54(d), NRCP 68, NRS 17.117, the papers and pleadings on file in this action, and any oral argument this Court may allow.

DATED this 9th day of April, 2020

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I. INTRODUCTION

From the outset of this case, Plaintiff Ruth L. Cohen ("Plaintiff") sought to recover a single kind of compensatory damages: attorneys' fees. The driving force behind Plaintiff's prosecution of this case was the unprecedented jury verdict in a single case: *Moradi v. Nevada Property 1, LLC et al.*, Case No. A-14-698824-C (the "Moradi Case"). Plaintiff's primary complaint throughout this litigation was she believed she was entitled to 33.333% of the attorneys' fees earned by Defendants Paul S. Padda, Esq. ("Mr. Padda") and Paul Padda Law, PLLC ("Padda Law") (collectively, "Defendants") from the Moradi Case and Defendants wrongfully deprived her of this supposed entitlement through fraudulent means. But, regardless of the vigor of Plaintiff's belief that she was owed a percentage of the attorneys' fees earned in the Moradi Case (or any other case) or the supposed "documented evidence" Plaintiff possessed to support her belief that Defendants defrauded her out of her "share" of these fees, a fundamental flaw has undermined her claims from the start—Plaintiff cannot recover any attorneys' fees earned on the Moradi Case because these fees were earned ***after*** April 6, 2017, the day that Plaintiff was suspended from the practice of law.

The depth of Plaintiff's belief in the merits of her claims and the magnitude of the supposedly supporting evidence Plaintiff claims to possess cannot (and do not) permit Plaintiff to recover a kind of damages—attorneys' fees—which the Nevada Rules of Professional Conduct ("NRPC") prohibit her from ever collecting. And, without any ability to recover the damages she seeks, Plaintiff's case is facially meritless. Because, from the day she filed her Complaint to present, Plaintiff has never had any ability to recover attorneys' fees, Plaintiff cannot possibly have brought her claims in good faith or rejected the reasonable offer of judgment served on her by Defendants in good faith.[1] For these reasons and others, the Court should grant Defendants' Motion for Attorneys' Fees (the "Motion") and award Defendants the full measure of fees they requested.

[1]Plaintiff herself acknowledged the defect in her case when she rushed to get her license reinstated following Defendants' filing of their motion for summary judgment in which they raised the issues involving NRPC 5.4. This by itself demonstrates that Plaintiff clearly appreciated there was a significant possibility her case could get dismissed. Otherwise, Plaintiff would not have bothered reinstating her law license nearly three years after it was first suspended based upon her protest of fees charged by the Nevada Supreme Court.

II. RELEVANT FACTS

The Nevada State Bar suspended Plaintiff from the practice of law on April 6, 2017, for failing to complete her 2016 Continuing Legal Education ("CLE") requirements. Plaintiff "made a knowing and intentional decision to remain suspended from the practice of law" until December 19, 2019, the day after Defendants filed their Motion for Summary Judgment. *See* **Exhibit 1** (Order Granting Defendants' Motion for Summary Judgment) at 4 (¶ 16), 6 (¶ 26). Plaintiff testified during a deposition a year before she filed this action that she knowingly chose to remain suspended from the practice of law as an affirmative protest of the fees required to get her law license reinstated. *See* Exhibit 1 to Motion at 6:17-7:6. Due to her suspension from the practice of law, Plaintiff was prohibited from sharing in attorneys' fees earned on any matter after April 6, 2017, and could only recover the *quantum meruit* value of the services she had already rendered prior to her suspension. *See* NRPC 5.4(a); *see also Lessoff v. Berger*, 2 A.D.3d 127, 767 N.Y.S.2d 605, (Mem)–606 (2003).

Attorneys' fees were not earned in the Moradi Case or *Cochran v. Nevada Property 1, LLC et al.*, Case No. A-13-687601-C (the "Cochran Case") until ***after*** April 6, 2017. *See* **Exhibit 2** (Declaration of Paul S. Padda, Esq., In Support of Defendants' Motion for Summary Judgment) at ¶ 7(d)-(e). Thus, due to her suspension from the practice of law, Plaintiff could only recover the reasonable value of the services she had already rendered on these cases and could not share in the attorneys' fees earned in these cases. *See* NRPC 5.4(a); *see also Lessoff*, 2 A.D.3d 127, 767 N.Y.S.2d 605, (Mem)–606.

Plaintiff conceded in her Opposition to Defendants' Motion for Summary Judgment that she did not provide any services on these two cases and another case, *Garland v. SPB Partners, LLC et al.*, Case No. A-15-724139-C (the "Garland Case"). *See* **Exhibit 3** (Plaintiff's Opposition to Defendants' Motion for Summary Judgment) at 6-11. Further, the Court specifically found that Plaintiff had admitted that she was not "seeking quantum meruit damages in this action." *See* **Exhibit 1** at 6 (¶ 29). Accordingly, because Plaintiff could not share in any of the attorneys' fees earned in the Moradi Case or the Cochran Case due to her suspension from the practice of law at the time fees were earned in those cases and because Plaintiff did not provide any valuable services

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on these cases nor was she seeking *quantum meruit* recovery for services rendered, Plaintiff had and has no ability to ever recover attorneys' fees from these cases.

These facts and Plaintiff's inability to recover any attorneys' fees were established and beyond dispute from the very start of this case. On February 27, 2019, when Plaintiff's counsel sent a demand letter and a draft verified complaint to Defendants seeking a $5 million payment to resolve her claims to attorneys' fees by March 8, 2019, these facts were beyond dispute. *See* **Exhibit 4** (Plaintiff's Letter Re: Dissolution of Cohen & Padda and compensation of Ruth Cohen) at 1-2. On April 9, 2019, when Plaintiff filed her Complaint seeking compensatory damages in the form of attorneys' fees she claimed Defendants owed her, these facts were beyond dispute. From April 2019 through December 18, 2019, the date Defendants served Plaintiff with a valid offer of judgment for $150,000.00 to resolve her claim to attorneys' fees, these facts remained beyond dispute. Nevertheless, Plaintiff chose to ignore the stark reality that she could never recover any measure of attorneys' fees, and instead chose to flagrantly disregard the fairness and reasonableness of Defendants' December 18th offer of judgment by flatly rejecting it in order to press on with her case.

On February 18, 2020, the Court granted Defendants' Motion for Summary Judgment because it concluded that Plaintiff could not recover any of the damages she sought.

III. DEFENDANTS' OFFER OF JUDGMENT IS A VALID BASIS TO SEEK ATTORNEYS' FEES UNDER NRCP 68 OR NRS 17.117

Defendants' December 18th offer of judgment provides a valid basis to seek attorneys' fees under either NRCP 68 or NRS 17.117 as the plain text of the rule and the statute are entirely consistent and the Nevada Legislature expressly intended the rule and the statute to be the same. Accordingly, Defendants moved for attorneys' fees pursuant to both NRCP 68 ***and*** NRS 17.117. *See* Motion at 4.

Still, Plaintiff' argues that Defendants cannot request fees under NRS 17.117 because Defendants did not cite to NRS 17.117 in their December 18th offer of judgment. *See* Opposition at 4. Not so.

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"Both NRCP 68 and NRS 17.115 [repealed in 2015] allow for an award of attorney fees to a party that makes an offer of judgment that is refused by the other party, and then subsequently obtains a more favorable judgment." *RTTC Commc'ns, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 40–41, 110 P.3d 24, 28 (2005). In 1999, NRS 17.115 was amended "to make it consistent with Nevada Rules of Civil Procedure 68." *See id.* at 42 n.21, 110 P.3d at 29 n.21. Then, on October 1, 2019, the Nevada Legislature enacted NRS 17.117, which was introduced as Assembly Bill 418 (2019), to codify NRCP 68 in order to allow both plaintiffs and defendants to make offers of judgment in federal court in diversity jurisdiction cases. *See* **Exhibit 5** (Assembly Committee on Judiciary, Minutes of April 4, 2019) at 3-5. In so doing, the Nevada Legislature did not modify or add to the language of NRCP 68—NRS 17.117 mirrors NRCP 68 exactly. *See id.* at 5 ("This is not something new; we are just codifying N.R.C.P. 68 to make sure that the federal court recognizes its importance."). In fact, the entire purpose of codifying NRCP 68 into Nevada's substantive laws so that litigants in federal diversity cases could avail themselves of the "offer of judgment" procedures offered by NRCP 68 would be nullified if NRS 17.117 differed in any material respect from NRCP 68.

While "[a]n offer of judgment must specify the statute or rule that provides for the costs or fees sought by the offeror," *see id.* at 41, 110 P.3d at 28, Defendants satisfied this requirement here by referring to NRCP 68 in the December 18th offer of judgment. And since NRCP 68 and NRS 17.117 are exactly the same—the latter simply codifying the former—Plaintiff's argument that Defendants are not entitled to recover fees under NRS 17.117 must fail.

Furthermore, even to the extent Plaintiff's argument has any merit (which it does not), it is immaterial. Because NRCP 68 and NRS 17.117 provide identical procedures and remedies for rejected offers of judgment which a party fails to improve upon, Defendants may recover the same attorneys' fees under either the rule or the statute.

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IV. THE *BEATTIE* FACTORS SUPPORT DEFENDANTS' REQUEST FOR ATTORNEYS' FEES

Plaintiff, currently an active member of the Nevada bar with over 40 years of experience practicing law, sought millions of dollars in attorneys' fees from Defendants when she was prohibited from ever recovering any of these attorneys' fees by the Nevada Rules of Professional Conduct. As a long-time member of the legal profession and Nevada bar, Plaintiff must have expressly or implicitly known that she could not recover attorneys' fees earned during her suspension from the practice of law from the very start of her case. However, even if she did know, Defendants disabused Plaintiff of her ignorance when they filed their Motion for Summary Judgment, which described in no uncertain terms the impossibility of Plaintiff ever recovering attorneys' fees.

The same day Defendants filed their Motion for Summary Judgment, they served Plaintiff with their offer of judgment for $150,000.00 pursuant to NRCP 68. Rather than accept this offer of judgment, Plaintiff ignored it, rushed to get her law license reinstated, forced Defendants to file fourteen (14) motions *in limine*, filed eight (8) motions *in limine* herself, and opposed Defendants' Motion for Summary Judgment without citing or presenting a single case that supported her ability to recover attorneys' fees earned while she was suspended from the practice of law. Simply put, Plaintiff did not give Defendants' offer of judgment, or the consequences of her refusal of Defendants' offer of judgment, any consideration at all, let alone any reasonable consideration.

Accordingly, as described in more detail below, Plaintiff is wrong when she suggests that she brought her case in good faith and rejected Defendants' offer of judgment in good faith because she believes she has strong evidence to support her theory of liability in this case. Plaintiff's case was ***always*** nothing more than a quixotic endeavor. Plaintiff could never achieve the result she sought. Instead, the only outcome Plaintiff could achieve (and did achieve) was forcing Defendants to expend substantial resources to defend against Plaintiff's fatally flawed claims—resources that could have otherwise gone to supporting Padda Law and its employees and their families. Because Plaintiff could never recover the attorneys' fees she sought, Plaintiff did not bring her case in good faith and her rejection of Defendants' good faith offer of judgment was

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grossly unreasonable. For these reasons, the Court should grant Defendants' Motion for Attorneys' Fees in full.

A. Legal Standard

In determining whether to award attorneys' fees pursuant to NRCP 68, the Court must evaluate certain factors identified in by the Nevada Supreme Court in *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983) (the "*Beattie* factors"). *See Frazier v. Drake*, 131 Nev. 632, 641–42, 357 P.3d 365, 372 (Ct. App. 2015). Ultimately, however, the decision to award attorneys' fees rests within the Court's discretion, and an appellate court will only review this Court's decision as to an award of attorneys' fees for an abuse of discretion. *Id.* at 642, 357 P.3d at 372.

> The *Beattie* factors require the Court to evaluate:
> "(1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount."

Beattie, 99 Nev. at 588-89, 668 P.2d at 274.

"[N]o one factor under *Beattie* is determinative and [the Court] has broad discretion to grant [a] request [for attorneys' fees under NRCP 68] so long as all appropriate factors are considered." *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252 n.16, 955 P.2d 661, 673 n.16 (1998). The first three *Beattie* factors require the Court to consider the parties' motives in making or rejecting an offer of judgment and continuing the litigation. *See Frazier*, 131 Nev. at 642, 357 P.3d at 372. The fourth *Beattie* factor requires the Court to consider the amount of fees requested. *See id.*

B. Plaintiff's Claims Were Not Brought In Good Faith

Plaintiff did not bring her claims in good faith because she could never prove the compensatory damages she alleged and sought in her Complaint since these damages were composed solely of attorneys' fees. Plaintiff cannot simply claim that she possessed documentary evidence that supposedly supports her theory of liability to demonstrate that she brought her claims in good faith.

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The first *Beattie* factor concerns "whether the plaintiff's claim was brought in good faith." *See Beattie* 99 Nev. at 588-89, 668 P.2d at 274. In conducting this evaluation, the Nevada Supreme Court has expressly instructed district courts to take into account the good faith of the parties in litigating "damage issues." *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998).

"[W]hether a case be one in contract or in tort, the injured party bears the burden of proving that he or she has been damaged." *Chicago Title Agency v. Schwartz*, 109 Nev. 415, 418, 851 P.2d 419, 421 (1993); *Cent. Bit Supply, Inc. v. Waldrop Drilling & Pump, Inc.*, 102 Nev. 139, 142, 717 P.2d 35, 37 (1986) ("[T]he burden of establishing damages lies on the injured party."). While the injured party need not prove her damages with mathematical precision, she must establish a reasonable basis for ascertaining those damages. *See Bader v. Cerri*, 96 Nev. 352, 609 P.2d 314 (1980).

Here, from the start of her case, Plaintiff has identified a single basis for ascertaining her damages—33.333% of the attorneys' fees earned on several cases. *See* Complaint at ¶¶ 28, 30-31, 39-41, 58, 64, 82-108. To date, Plaintiff has never identified or relied on any other basis for her damages. *See* Opposition at 2 ("Ms. Cohen [supposedly] learned that she had an interest in 65 contingency cases and was owed a total of $3,335,302.49 [in attorneys' fees earned in these cases]."). Because Plaintiff was knowingly and intentionally suspended from the practice of law when virtually all of these attorneys' fees were earned (and had no actual damages from the Garland Case given the monies she admitted receiving from Defendants in 2016 and 2017 pursuant to the buyout agreement between the parties and a discretionary bonus), Plaintiff never had a good faith basis to assert and seek the damages she alleged throughout this case. Thus, Plaintiff did not bring her claims in good faith.

Plaintiff does not dispute these points in her Opposition to Defendants' Motion. *See* Opposition at 6-9 (concerning the first *Beattie* factor). Instead, Plaintiff focuses her entire argument on the extent of the evidence she claims to have obtained in support of her theory of liability. *See id.* While Defendants strongly disagree with Plaintiff's revisionist and self-serving interpretation of the supposed evidence on liability, the focus on liability urged by Plaintiff misses

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the salient point. Specifically, Plaintiff does not address at all the clear fact and attendant legal conclusion, which this Court recognized in granting Defendants' Motion for Summary Judgment and in denying Plaintiff's Motion for Reconsideration, that Plaintiff could never recover any measure of attorneys' fees through her prosecution of her claims due to her suspension from the practice of law and her admission that she was not seeking a *quantum meruit* recovery for services rendered prior to her suspension. *See id.*

To reiterate, Defendants vigorously dispute Plaintiff's characterization in her Opposition of the evidence in this case. But Plaintiff's flawed reading of the evidence is beside the point here because Plaintiff did not bother to show how she ever had a good faith basis to believe she could recover the damages she sought. Plaintiff could never recover attorneys' fees from the cases she identified in her Complaint because, as this Court found, she was suspended from the practice of law when these attorneys' fees were earned and because she was made more than whole regarding the one other case in which she claimed an interest (the Garland Case). Because Plaintiff never identified and never could identify a category of recoverable damages throughout her prosecution of this case, Plaintiff did not bring her claims in good faith. Thus, the first *Beattie* factor weighs in favor of awarding Defendants their requested attorneys' fees.

C. Defendants' Offer of Judgment Was Reasonable

Defendants served Plaintiff with an offer of judgment for $150,000.00 on December 18, 2019, the day they filed their Motion for Summary Judgment and sixteen days after the close of discovery. This offer of judgment was reasonable and in good faith both in its timing and amount given the state of the case at the time and Plaintiff's inability to recover attorneys' fees, as a matter of law, due to her suspension from the practice of law.

The second *Beattie* factor requires district courts to evaluate "whether the . . . offer of judgment was reasonable and in good faith in both its timing and amount." *Beattie*, 99 Nev. at 588, 668 P.2d at 274. "[T]here is no bright-line rule that qualifies an offer of judgment as per se reasonable in amount; instead, the district court is vested with discretion to consider the adequacy of the offer and the propriety of granting attorney fees." *Certified Fire Prot, Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 383, 283 P.3d 250, 258 (2012).

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As described in their Motion, Defendants served this offer of judgment after Plaintiff had the opportunity to conduct full discovery and with the opportunity for Plaintiff to consider the force of the arguments in their Motion for Summary Judgment. *See* Motion at 7. Additionally, because Defendants served this offer of judgment well in advance of trial, Plaintiff had the opportunity to avoid incurring most of the trial-specific costs and expenses related to the prosecution of her case. Thus, the timing of Defendants' service of their offer of judgment was reasonable.

Further, Defendants offered $150,000.00 to resolve Plaintiff's claims even though Plaintiff had not identified any category of recoverable damages. In fact, after Defendants detailed Plaintiff's complete lack of evidence to show any recoverable damages in their Motion for Summary Judgment, Plaintiff failed to meaningfully oppose these arguments, *see* **Exhibit 3** at 20-21, and the Court determined, after concluding that Plaintiff could not recover any attorneys' fees from the Moradi Case or the Cochran Case, that Plaintiff had no recoverable damages. *See* **Exhibit 1** at 9 (¶ 14). Yet, as demonstrated in Defendants' Motion, Defendants offered $150,000.00 in their offer of judgment, an amount that accounts for 99.7% of Plaintiff's claimed compensatory damages from cases other than the Moradi Case, the Cochran Case, or the Garland Case. *See* Motion at 8. Therefore, Defendants' offer of judgment is reasonable and in good faith in its amount.

Plaintiff's theory of liability or claims about the evidence in support thereof do not undermine the reasonableness or good faith of the timing or amount of Defendants' offer of judgment. Plaintiff suggests that the supposed strengths of the evidence she claims to possess supporting her theory of liability render any offer of judgment for less than her claimed multi-million-dollar damages unreasonable. *See* Opposition at 9-10. This suggestion cannot withstand even minimal scrutiny.

First, once again, Plaintiff fails to appreciate that she has no claim without proof of recoverable damages. *See Chicago Title Agency*, 109 Nev. at 418, 851 P.2d at 421. Second, Plaintiff misunderstands the Court's analysis under the second *Beattie* factor—the adequacy of an offer of judgment does not depend upon the maximum extent of a party's claimed damages,

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especially where the party is legally prohibited from recovering the upper limit of her claimed damages. *See Certified Fire Prot.*, 128 Nev. at 383, 283 P.3d at 258. Nor does the adequacy of an offer of judgment depend upon the interpretation of the evidence available most favorable to the party receiving the offer. *See id.* Instead, the adequacy of an offer of judgment is predicated upon an objective review of the evidence, the claims, and the law, and what is a fair value to resolve the matter in light of the foregoing. *See id.* Because such a review leads only to the conclusion that Defendants' December 18th offer of judgment was reasonable and in good faith, the second *Beattie* factor weighs in favor of awarding Defendants the attorneys' fees they requested.

D. Plaintiff's Decision to Reject Defendants' Offer of Judgment was Grossly Unreasonable and in Bad Faith

As discussed in Defendants' Motion, Plaintiff's rejection of Defendants' offer of judgment was, without a doubt, grossly unreasonable and in bad faith. *See* Motion at 8-10. Plaintiff reprises her grossly unreasonable and bad faith approach to Defendants' offer of judgment in her Opposition to Defendants' Motion for Attorneys' Fees here.

While Plaintiff postures that the legal authorities she cited in her Motion for Reconsideration support her decision to reject Defendants' offer of judgment, *see* Opposition at 10, a cursory review of the history of Defendants' offer of judgment and Plaintiff's opposition to Defendants' Motion for Summary Judgment reveals that Plaintiff did not even know about these cases until ***after*** the Court granted Defendants' Motion for Summary Judgment. *See* Motion for Reconsideration at 2 ("We bring this Motion with the benefit of fresh eyes and hindsight . . . ."). As it happened, Plaintiff chose to get her law license reinstated the day after Defendants' filed their Motion for Summary Judgment and served her with their offer of judgment because she obviously concluded that she needed to be an active member of the bar to recover any attorneys' fees. In short, Plaintiff did not consider and rely upon the legal authorities in her Motion for Reconsideration when she rejected Defendants' offer of judgment. Plaintiff only considered the possibility of recovering millions of dollars, despite the legal bar to that recovery.

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Because Plaintiff did not fairly consider Defendants' offer of judgment and did not soberly assess the likelihood that her claims could survive Defendants' Motion for Summary Judgment in rejecting that offer of judgment, Plaintiff's decision to reject that offer of judgment was grossly unreasonable and in bad faith. Plaintiff's revisionist history and finger-pointing do not render her decision otherwise. For these reasons, the third *Beattie* factor supports awarding attorneys' fees to Defendants.

E. Defendants' Attorneys' Fees Are Reasonable and Justified in Amount

Plaintiff only superficially addresses the amount of attorneys' fees requested by Defendants in their Motion. In so doing, Plaintiff (who is herself represented by two separate law firms) glibly assails Defendants for retaining two law firms, while ignoring the fact that she herself had retained two law firms, and incurring $279,167.50 in legal fees over the course of a few months. *See* Opposition at 11. The import of Plaintiff's argument on this point is the fees Defendants incurred were somehow excessive (though Plaintiff does not identify which fees are excessive or unjustified). *See id.*

Plaintiff sought over $3 million in compensatory damages against Defendants and she calculated her total damages, after certain (inapplicable) statutory damages "kickers," at nearly $30 million. Were Plaintiff to succeed on her claims, she would have effectively rendered Padda Law defunct, forcing layoffs of all the employees who work for Padda Law and cutting off their source of income, and would have bankrupted Mr. Padda. Due to the existential nature of the threat posed by Plaintiff's claimed damages calculation (regardless of Plaintiff's actual ability to recover these damages) as well as the necessary uncertainty of the outcome of this litigation, were it to proceed to trial, Defendants vigorously defended themselves and steeled themselves for trial. Plaintiff cannot reasonably fault Defendants for defending themselves accordingly.

Moreover, to the extent Plaintiff failed entirely to identify any specific fees she believes are either excessive or unjustified, the Court should reject Plaintiff's arguments out of turn. Defendants cannot respond to unspecified contentions that their fees are excessive.

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V. PLAINTIFF CANNOT AVOID AN AWARD OF ATTORNEYS' FEES BY APPEALING TO INAPPLICABLE PUBLIC POLICY

Plaintiff suggests that the Court should deny Defendants' Motion because this situation is analogous to the scenario where a successful defendant seeks attorneys' fees under the "prevailing party" rule for actions less than $20,000.00 pursuant to NRS 18.010(2)(a). *See* Opposition at 12. However, Plaintiff's analogous reasoning is categorically flawed and demonstrably deficient.

First, Defendants have not moved for attorneys' fees as a prevailing party under NRS 18.010(2)(a). *See generally* Motion. Rather, Defendants seek attorneys' fees under the penalty provisions of NRCP 68 and NRS 17.117. Thus, Plaintiff's arguments that rely on NRS 18.010(2)(a) or caselaw related to that statute are inapposite here.

Second, Plaintiff's analogy flies in the face of NRCP 68 and NRS 17.117. The penalty provisions of both the rule and the statute make clear that the focus is on whether the party who received and rejected an offer of judgment—the offeree—subsequently obtains a more favorable judgment. *See* NRCP 68(f)(1); NRS 17.117(10).

But Plaintiff is not bothered by these obvious conflicts with the rule and statute. Plaintiff believes the Court should simply ignore the express requirements of the rule and the statute and shift the focus to what result is achieved by the offeror. *See* Opposition at 12. And, additionally, Plaintiff believes the Court should conclude that defendants who do not bring counterclaims, but successfully defeat all claims brought against them can never recover attorneys' fees under NRCP 68 or NRS 17.117 because they have not obtained a judgment, as the Nevada Supreme Court required in *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 285, 890 P.2d 769, 774 (1995), when evaluating fee awards under NRS 18.010(2)(a). *See* Opposition at 12.

Not only do these arguments create irreconcilable conflicts among the rules and statutes at play, they do not serve public policy ends—they only serve Plaintiff's personal interests. Plaintiff simply does not want to be ordered to pay Defendants' requested attorneys' fees. And so, she demands the Court deny Defendants' request and cloaks her demand in the trappings of an equity-based argument.

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The public will not be served by this Court ignoring unambiguous provisions in NRCP 68 and NRS 17.117. Instead, the judicial system will be slightly transformed into a more *ad hoc* and unpredictable enterprise where the desires of individual litigants are permitted to trump the rules. This devolution of the rule of law would damage the principle that the law should be applied consistently in different cases.

Further, Plaintiff's argument that requiring her to pay the attorneys' fees Defendants requested would deter individuals with meager resources from bringing claims is disingenuous and hollow. Plaintiff, a former federal prosecutor with a robust and guaranteed federal pension which is immune from garnishment, did not bring a small claim, a civil rights claim, a personal injury suit, or a products liability action against some colossal corporation. Plaintiff brought a partnership dispute in business court seeking $30 million from her former partner and his current business. *See* **Exhibit 6** (Ruth L. Cohen's Case Appeal Statement) at 3-4 ("This case arises out of the dissolution of a partnership between appellant Ruth L. Cohen ('Ms. Cohen') and respondent Paul S. Padda ('Mr. Padda')."). Awarding attorneys' fees to Defendants in this situation will not dissuade poorer folks from pursuing claims, but it will chasten individuals who want to seek exorbitant and speculative (and legally prohibited) damages in business disputes. In that way, awarding attorneys' fees here will serve the public interest.

Lastly, Plaintiff's cynical appeal to "public policy" should not obfuscate the reality of this case. Plaintiff made a choice, as she herself testified one year prior to initiating this suit, to "protest" the Nevada Supreme Court's imposition of licensing fees which every other lawyer is required to adhere to. Plaintiff made a choice to bring this lawsuit. Plaintiff made a choice to seek damages that she could never recover in an action the Court determined it could not "in good conscience" allow to continue. Defendants did not have a choice ***but*** to defend against Plaintiff's spurious claims. While Plaintiff (represented under a "contingency fee" arrangement according to her Opposition) only had eyes for the millions of dollars she would personally reap from, and intentionally bankrupt Defendants, Defendants through her suit, Defendants had to protect their business in order to keep providing a paycheck to the 19 people they employ who have families to feed, mortgages/rents to pay, and children to educate.

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Plaintiff may want the Court to see this case as a story of a single person fighting against a faceless corporate giant, but the truth is something else. This was (and remains, as Plaintiff has noticed her appeal) a story of a person who wants all of the rules and requirements everyone else must live by to bend to her personal desires.[2] The Court should reject Plaintiff's false narrative.

VI. CONCLUSION

Because Defendants served Plaintiff with an offer of judgment for $150,000.00 on December 18, 2019, and Plaintiff failed to obtain a more favorable judgment after rejecting this offer of judgment and because the *Beattie* factors weigh in favor of awarding attorneys' fees to Defendants, the Court should grant Defendants' Motion in full and award them $279,167.50 in attorneys' fees.

DATED this 9th day of April, 2020

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[2]Plaintiff, a former federal prosecutor, still has pending against her a federal tax lien for unpaid federal taxes. Whether the issue involves her failure to pay her federal taxes, her protest of the Nevada Supreme Court's licensing fees or her decision to reject a generous offer of judgment in this case, Plaintiff always seeks to cast herself as a victim.

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April 2020, a true and correct copy of the foregoing **DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES** 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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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

APPENDIX TO DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES

Hearing Date: April 17, 2020
Hearing Time: Chambers

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 Appendix of Exhibits to Defendants' Reply In Support of Motion for Attorneys' Fees.

Exhibit	Description	Page(s)
1	Order Granting Defendants' Motion for Summary Judgment; Judgment	1 – 11
2	Declaration of Paul S. Padda	12 – 16
3	Plaintiff's Opposition to Defendants' Motion for Summary Judgment	17 – 49
4	2019-02-27 Dissolution of Cohen & Padda	50 – 72
5	Minutes of the Meeting of the Assembly Committee on Judiciary	73 – 117
6	Case Appeal Statement	118 - 124

DATED this 9th day of April 2020

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April 2020, a true and correct copy of the foregoing **APPENDIX TO DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES** 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

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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

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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Approved as to form by:

(1563)

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EXHIBIT 2

EXHIBIT 2

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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

DECLARATION OF PAUL S. PADDA, ESQ. IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

DECLARATION OF PAUL S. PADDA

I, Paul S. Padda, declare and state the following:

1. I am a defendant in this action. I am also the Managing Member of defendant Paul Padda Law, PLLC.

2. I have personal knowledge of the facts identified herein.

3. I make this declaration in support of "Defendants' Motion for Summary Judgment" (the "Motion").

4. I began my legal career in 1994 as an attorney at the United States Department of Justice in Washington, D.C. I was later selected to serve as an Assistant United States Attorney ("AUSA") for the United States Attorney for the District of Columbia.

5. In 2004, I transitioned to serve as an ASUA for the United States Attorney's Office for the District of Nevada ("USAO-NV"). At the USAO-NV, I handled both civil and criminal matters, and worked, from time to time, with Ms. Cohen. I voluntarily resigned from the USAO-NV in December 2010.

6. Ms. Cohen and I initially executed the Partnership Agreement through our corporate entities, The Padda Law Firm, P.C., and Ruth Lynn Cohen, LLC, respectively. However, in or about early 2013, we dissolved our respective corporations and continued C&P in our individual capacities.

7. With respect to some of the cases implicated by Ms. Cohen's lawsuit, I state the following:

a. Mr. Garland aggressively sought reductions in the medical specials that were to be deducted from his recovery from Wet'n'Wild.

b. In or about August of 2014, Mr. Moradi retained the law firm Panish Shea & Boyle to assist with his representation.

c. On March 20, 2017, Mr. Moradi's case proceeded to a jury trial, which lasted five weeks. Counsel for defendants, led by David Dial, Esq. and Lee Roberts, Esq., vigorously disputed liability at the jury trial, arguing and presenting evidence that Mr. Moradi was the initial aggressor in the incident that led to his injuries. According to defendants, the alleged incident started when Mr. Moradi head-butted a Marquee employee.

d. Before the jury could reach the issue of punitive damages, Mr. Moradi, the Cosmo, and Marquee reached a settlement, which was finalized on May 23, 2017.

e. In the spring of 2019, Mr. Stephen Cochran and Mrs. Melissa Cochran reached a confidential settlement with Marquee and the Cosmo.

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8. Following Ms. Cohen's suspension from the practice of law by the State Bar of Nevada on April 6, 2017, and prior to any settlement and/or resolution of Mr. Moradi's or the Cochrans' cases, I never received any attorney lien pursuant to NRS 18.015 from Ms. Cohen. Nor have I ever seen any evidence (including in this action) that she asserted such a lien. Additionally, following her suspension from the State Bar of Nevada, Ms. Cohen never requested or obtained a fee split agreement authorized by the Cochrans or Mr. Moradi pursuant to Nevada Rule of Professional Conduct 1.5.

9. Attached to the Motion as Exhibit 4 is a true and correct copy of the Partnership Agreement dated January 18, 2011, between Ruth Lynn Cohen, LLC and The Padda Law Firm, P.C., which has been maintained within my office's files.

10. Attached to the Motion as Exhibit 10 is a true and correct copy checks numbered 7049, 7050, 7150, 7213, 7307, 7343, 7469, 7485 and 7526 issued to Ms. Cohen, which have been maintained within my office's files.

11. Attached to the Motion as Exhibit 11 is a true and correct copy of a letter dated November 29, 2016, from me to Ms. Cohen, which has been maintained within my office's files.

12. Attached to the Motion as Exhibit 17 is a true and correct copy of the Disbursement Statement for Mr. Garland's case, which has been maintained within my office's files.

13. Attached to the Motion as Exhibit 19 is a true and correct copy of the Retainer Agreement with Mr. Moradi, which has been maintained within my office's files.

14. Attached to the Motion as Exhibit 21 is a true and correct copy of an email chain between myself and Ms. Cohen and others, which has been maintained within my office's files.

15. Attached to the Motion as Exhibit 26 is a true and correct copy of defendants' Offer of Judgment in Mr. Moradi's case, which has been maintained within my office's files.

16. Attached to the Motion as Exhibit 31 is a true and correct copy of the Confidential Mediation Statement for the Cochrans' case, which has been maintained within my office's files.

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17. Attached to the Motion as Exhibit 35 is a true and correct copy of an email chain between Ms. Cohen and Ms. Davidson, which has been maintained within my office's files.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed in Las Vegas, Nevada on December 17, 2019.

Paul S. Padda, Esq.

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EXHIBIT 3

EXHIBIT 3

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DISTRICT COURT

CLARK COUNTY, NEVADA

RUTH L. COHEN, an individual, Plaintiff, vs. PAUL S. PADDA, an individual; PAUL PADDA LAW, PLLC, a Nevada professional limited liability company; DOE individuals I-X; and, ROE entities I-X, Defendants.	Case No.: A-19-792599-B Dept. No.: XI **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** Date of Hearing: January 27, 2020 Time of Hearing: 9:00 a.m.

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

II. MS. COHEN'S STATEMENT OF FACTS

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

A. RUTH COHEN

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

1. The U.S. Attorney's Office

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

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

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

[3] Id.

[4] Id.

[5] Id.

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

2. Atkin Winner & Sherrod

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

B. FORMATION OF COHEN & PADDA

For years, Mr. Padda tried to convince Ms. Cohen to be his partner because she was "valuable," he could market her, and they "could really make some money."[14] After Mr. Padda was forcibly transferred from the criminal division to the civil division and he decided to leave the USAO, Ms. Cohen agreed to form Cohen & Padda in 2011.[15]

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[6] See **Exhibit B** hereto, excerpts of the Depo. of G. Addington ("Addington Depo") at 15:10-25, 16:1-25.

[7] Id. at 17:18-25, 19:9-19.

[8] Id. at 23:13-25, 24:1-12.

[9] Id. at 41:24-25, 42:1-5.

[10] Id. at 32:7-25, 33-35, 36:1-2.

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

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

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

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

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

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1. The Partnership Agreement

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

2. The Dissolution Agreements

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

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

[16] See Defs.' Mot. for Summ. J. ("Defs.' Mot."), at Ex. 4 (Partnership Agreement).

[17] Id. at Section 5, "Duration."

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

[19] Id.

[20] Id. at Section 8.

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

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

C. THE CONTINGENCY-FEE CASES

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

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

[21] See Defs.' Mot. at Exhibit 3, Partnership Dissolution Agreement effective December 23, 2014.

[22] Id. at Section 7(a)-(b).

[23] Id. at Section 8.

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

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

[26] Id.

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

1. The David Moradi Case

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

a. Ms. Cohen's Limited Knowledge and Involvement

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.[32] As Ms. Cohen testified at her December 30, 2016 deposition taken in the Moradi case, she stopped having an active role in the case almost immediately after her initial involvement in 2012.[33] Ms. Cohen also testified that she had not reviewed any of Mr. Moradi's medical or financial records.[34] Mr. Padda was present at Ms. Cohen's 2016 deposition.[35]

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

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

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

[30] Id.

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

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

[33] Id. at 8:16-25, 9:1-4.

[34] Id. at 20:5-7, 16-18.

[35] Id. at 5.

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Lead counsel in the Moradi case, Rahul Ravipudi, Esq., with the law firm of Panish Shea & Boyle ("PSB"), confirmed that Ms. Cohen was not involved in the Moradi case. At his deposition, Mr. Ravipudi testified that he never met with Ms. Cohen about becoming co-counsel, and it was Mr. Padda alone that approached PSB.[36] And, throughout the entire Moradi litigation, Mr. Ravipudi further confirmed that he did not discuss the Moradi case with Ms. Cohen, did not include her in case strategy discussions, that Ms. Cohen was not involved in the day-to-day aspects of the case, and was not actively working on the case.[37] Similarly, Ms. Koutz and Ashley Pourghahreman, the paralegal who worked on the Moradi case, both testified that Ms. Cohen did not personally work on the case and lacked the level of knowledge that Mr. Padda possessed.[38] Ms. Koutz and Ms. Pourghahreman further testified that they did not keep Ms. Cohen updated on the Moradi case and they never observed Mr. Padda doing so.[39] All of this testimony is consistent with the fact that Ms. Cohen was never listed on the Odyssey e-service list for the Moradi case.[40]

b. Mr. Padda's Knowledge of the Potential Value of the Moradi Case and Failure to Disclose

As the primary attorney working on the Moradi case at Cohen & Padda, Mr. Padda was intimately aware of what the potential recovery could be. In fact, Mr. Ravipudi testified that he would do his best to keep Mr. Padda informed, on a regular basis, about important events in the Moradi case, including retaining experts.[41]

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[36] See **Exhibit H** hereto, filed under seal, excerpts of the Deposition of the NRCP 30(b)(6) Designee of Panish Shea & Boyle, Rahul Ravipudi ("Ravipudi Depo") at 16:7-13.

[37] Id. at 58:4-25, 59:1-17, 61:16-23 and 62:1-10.

[38] See Exhibit D hereto, Koutz Depo at 93:21-25; 94:11-20, 96:24-25 and 97:1-9; see also **Exhibit I** hereto, excerpts of the Depo. of Ashley Pourghahreman ("Ashley's Depo") at 106:17-24, 107:18-25, 108:1-7 and 114:2-11.

[39] See Exhibit D hereto, Koutz Depo at 65:6-8, 86:24-25, and 87:1-2; see also Exhibit I hereto, Ashley's Depo at 114:6-11, 116:10-14, 135:5-8, 138:24-25, and 139:1-7.

[40] See Defs.' Mot. at Exhibit 24, Moradi Case Docket.

[41] See Exhibit H hereto, Ravipudi Depo at 50:8-25, 51, and 52:1-11.

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

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

2. The Mark Garland Case

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

[42] See Exhibit H hereto, Ravipudi Depo at 92:1-8.

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

[44] Id. at pg. 20, Summary of Losses.

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

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

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

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

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

a. The Settlement Negotiations

As the paralegal working on Mr. Garland's case, Ms. Pourghahreman testified that a mediation was held prior to June 20, 2016, attended by Mr. Padda, Mr. Garfinkel, and counsel for Wet-n-Wild, Paul Shpirt.[53] At the mediation, the parties were really close to settling where the final offer from the defense was around $175,000.[54] The parties continued negotiating after the mediation and the defense raised their offer to $215,000.[55] Ms. Pourghahramen confirmed that Mr. Padda, prior to her going on maternity leave in July 2016, was pretty confident and knew that Mr. Garland's case would settle around $215,000.[56]

b. The Settlement

Mr. Garland's case did in fact settle. On or about Friday, August 19, 2016, Mr. Padda served an offer of judgment in the amount of $215,000.[57] The following Monday, August 22,

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[49] See Defs.' Mot. at Exhibit 12, Mark Garland Retainer Agreement dated July 23, 2013.

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

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

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

[53] See Exhibit I hereto, Ashley's Depo at 165:6-25, 166:1-13.

[54] Id. at 167:14-21.

[55] Id. at 166:22-25, 167:1-11.

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

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

2016, Mr. Shpirt emailed Mr. Padda agreeing to settle for the offered $215,000.[58] Mr. Padda responded that same day agreeing to a confidentiality clause and letting Mr. Shpirt know that he would handle the stipulation to dismiss and release in lieu of a judgment.[59]

Ms. Cohen had absolutely no knowledge that Mr. Garland's case had settled in August 2016 and that the attorneys' fees recovered totaled $86,000.[60] Worse yet, Mr. Padda led Ms. Cohen to believe that Mr. Garland's case had very little value and failed to disclose his medical records after Mr. Padda had referred him to the doctor.[61] At his deposition, Mr. Padda confirmed that, when the case settled on August 22, 2016, he did not tell Ms. Cohen about it.[62]

3. The Firm Meetings

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

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

[58] See Defs.' Mot. at Exhibit 15, email correspondence between Paul Shpirt and Paul Padda.

[59] Id.

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

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

[62] See Defs.' Mot., at Ex. 36, excerpts of the Deposition of Paul S. Padda ("Padda Depo") at 34:14-16.

[63] See Defs.' Mot. at pg. 6, ¶¶ 19-20.

[64] See Exhibit I hereto, Ashley's Depo at 172:4-16.

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

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

[67] Id. at 74:19-25.

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

D. THE FRAUDULENT AGREEMENT

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

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

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

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

[70] Id. at 136:5-25, 137:1-17.

[71] Id.

[72] Id.

[73] See Defs.' Mot. at Exhibit 9, the Business Expectancy Interest Resolution Agreement.

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

1. Ms. Cohen's Unrelated Tax Issue

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

> MS. COHEN: The money he was offering was not going to help me. I didn't need the money. I wanted to retire. And he lied to me about the monetary value of the cases. I told you, he told me Moradi was in the toilet. His exact words, "Moradi is in the toilet."
>
> I would have never signed this.[78]

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

2. No Pending Lawsuits

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

[74] See Exhibit C hereto, Cohen Depo at 372:2-9.

[75] Id. at 144:24-25, 145:1-8.

[76] Id. at 146:9-25, 147:1-6.

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

[78] Id. at 151:8-19.

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

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lawsuits and there were no outstanding judgments against her.[80]

3. Ms. Cohen's Continued Trust in Mr. Padda

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

4. The Buyout Payments

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

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

E. THE MORADI VERDICT AND SETTLEMENT

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

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

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

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

[83] See Defs.' Mot. at Exhibit 10, Checks.

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

[85] Id. at 350:5-25, 351:1-4.

[86] See Defs.' Mot. at Exhibit 10, at Check No. 7526.

[87] See id.

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attorneys' fees recovered, as of September 12, 2016, Mr. Padda continued his efforts to settle Mr. Moradi's case and, at one time, became aware that the defense's insurance coverage was around $300 million[88] – none of which he shared with Ms. Cohen. It was not until Ms. Cohen read in the newspaper that the jury had awarded Mr. Moradi $160.5 million that she realized that she had been lied to, and then she confronted Mr. Padda in his office.[89] Ms. Cohen told Mr. Padda, "What the F? You lied to me. You told me this man had gone back to work and was making money, and he wasn't, and you knew it. You screwed me."[90] Having no remorse at all, Mr. Padda shrugged his shoulders and said "You're a big girl. You could have looked it up yourself."[91] After Ms. Cohen responded that she had no reason to look anything up because she trusted Mr. Padda as her partner, she walked out of his office.[92]

Later, Mr. Padda told Ms. Cohen that the case had settled for $10 million and Ms. Cohen responded that she couldn't believe that the case would settle for that amount.[93] Thereafter, Ms. Cohen learned that the case settled for $50 million;[94] however, the settlement in Mr. Moradi's case was and remains confidential in nature.[95] Through her discovery efforts, Ms. Cohen has determined that the total amount in fees recovered by Mr. Padda and his firm in Mr. Moradi's case was approximately $9,186,667.[96]

F. THE LOCKOUT

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

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

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

[90] Id. at 338:11-17.

[91] Id. at 338:18-22.

[92] Id. at 338:20-24.

[93] Id. at 339:1-12.

[94] Id. at 339:13-20.

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

[96] See Ex. F, unsigned "execution version" of Moradi Settlement Agreement at § F, at PADDA 718-719.

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discretionary bonus check.[97] At first, Ms. Cohen thought the check was for her one-third share of the attorneys' fees recovered in the Moradi case, but then she noticed that it was only for $50,000.[98] Ms. Cohen appreciated the bonus, but testified that she "was still waiting for my Moradi checks."[99] Soon thereafter, on September 22, 2017, Mr. Padda locked Ms. Cohen out of her office and gave her computer and office away to someone else – all without her prior knowledge.[100] Ms. Cohen had previously asked Mr. Padda for a key to the office, but he refused to give her one; thus, she was locked out of her own office.[101]

G. MS. COHEN'S DECISION TO FINALLY SUE

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

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

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

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

[99] Id. at 365:1-4.

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

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

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

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

[104] Id. at 341:3-17.

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

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III. LEGAL STANDARD FOR SUMMARY JUDGMENT

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

IV. LEGAL ARGUMENT

A. AS A BROAD THRESHOLD ISSUE, MS. COHEN HAS ADDUCED ADMISSIBLE EVIDENCE TO DEMONSTRATE THAT SHE AND MR. PADDA HAD A "SPECIAL RELATIONSHIP."

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

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

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

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

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

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

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

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

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

[108] Id.

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

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

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

[109] See Section II Ms. Cohen's Statement of Facts at Subsections B-D herein.

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

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

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

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

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

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B. GENUINE ISSUES OF MATERIAL FACT EXIST SUCH THAT MS. COHEN'S CLAIM FOR BREACH OF THE DISSOLUTION AGREEMENT SHOULD PROCEED TO TRIAL.

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

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

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

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

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

[111] Defs. Mot. for Summ. J., at 18 (filed Dec. 18, 2019), on file herein.

[112] See Section II Ms. Cohen's Statement of Facts at Subsection G herein.

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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,[113] after she was temporarily suspended in *April* 2017.[114] If Defendants believed their own argument, then they are admitting to their own commission of ethical violations, which their own counsel would have an ethical duty to report to the State Bar, which is surely not going to happen. *See* NRPC 8.3.

The Nevada Supreme Court considered enforceability of a contract that required fee-splitting with a non-lawyer in *Shimrak v. Garcia-Mendoza*, 112 Nev. 246, 912 P.2d 822 (1996), noting that "the prohibition of fee-splitting is to protect the independence of the judgment of lawyers." *Id.* at 251-52, 912 P.2d at 826 (citation omitted). Here, "[t]he public would not be protected by refusing to enforce this contract, because," like Garcia in the *Shimrak* case, Defendants "ha[ve] already exercised [their] judgment in the cases covered by the contract. Indeed, 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 [the fee-splitting rule]." *Id.* at 252, 912 P.2d at 826. In short, *Shimrak*'s analysis is on all fours with this case, and should lead this Court to conclude that Defendants owe, and have always owed, Ms. Cohen the monies due under the Operative Dissolution Agreement.

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

[113] See Defs.' Mot. at Exhibit 29 at Check No. 8038.

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

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

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

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

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

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

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

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

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

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

3. <u>The Operative Dissolution Agreement is Enforceable, and the Court Can Conclude that Mr. Padda Did Not Perform Thereunder and Breached the Implied Covenant of Good Faith and Fair Dealing, Too.</u>

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

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

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

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

[118] <u>See</u> Section II Ms. Cohen's Statement of Facts at Subsection D herein.

[119] <u>Id.</u>

[120] <u>See</u> Section II Ms. Cohen's Statement of Facts at Subsection C herein.

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

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

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

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

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

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

[121] See generally Defs.' Mot. for Summ. J., at 4-5.

[122] See generally Section II Ms. Cohen's Statement of Facts herein.

[123] See Section II Ms. Cohen's Statement of Facts at Subsection C herein.

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

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

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

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

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

[124] See Section II Ms. Cohen's Statement of Facts at Subsections C-E herein.

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

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

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

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

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

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

[126] See generally Section II Ms. Cohen's Statement of Facts at Subsection C.

[127] Id.

[128] Id.

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

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

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

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

2. Ms. Cohen's Fraudulent Concealment is Similarly Well Supported Warranting Denial of Summary Judgment thereon.

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

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

[129] See generally Section II Ms. Cohen's Statement of Facts at Subsection C herein.

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they had a duty to disclose them.[130] *See Lubritz*, 113 Nev. at 1095-96, 944 P.2d at 865. Ms. Cohen has provided admissible evidence to prove or from which to infer that (1) Defendants intentionally concealed this information with the intent to induce Ms. Cohen into acting differently and/or executing the Fraudulent Agreement, (2) Ms. Cohen was unaware of the information that Defendants had concealed from her, and (3) Ms. Cohen would not have signed the Fraudulent Agreement, nor accepted a mere $50,000 payment, had she known of the withheld information.[131] Now, as a result of Defendants' concealment of the material facts set forth above, Ms. Cohen has suffered losses estimated to be at least $3,314,227.49.[132]

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

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

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

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

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

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

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

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

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

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

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

"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." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 381, 283 P.3d 250, 257 (2012) (citation and internal quotation marks omitted). "'Benefit' in the unjust enrichment context can include 'services beneficial to or at the request of the other,' 'denotes any form of advantage,' and is not confined to retention of money or property." *Id.* at 382, 283 P.3d at 257 (citations omitted).

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

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

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

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

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

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

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

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

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

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

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

[139] See id.

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

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

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V. CONCLUSION

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

Dated this 10th day of January, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** was submitted electronically for filing and service with the Eighth Judicial District Court on the 10th day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[142]

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[142] Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT 4

EXHIBIT 4

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Re: Dissolution of Cohen & Padda and compensation of Ruth Cohen
Our File No. 15438-001

Dear Mr. Padda:

Please be advised that the law firm of Marquis Aurbach Coffing ("MAC") represents the interests of Ruth Cohen ("Ms. Cohen"). As such, please direct all future communications regarding the subject of this letter to the undersigned.

MS. COHEN'S CLAIMS AND DEMAND

As you are aware, you and Ms. Cohen executed a Partnership Dissolution Agreement whereby she was entitled to receive 33.333% of attorney fees recovered on any cases for which Cohen & Padda had a contingency fee agreement with the client dated earlier than December 31, 2014. Given the concealment or intentional misrepresentation by you and your law firm, Padda Law (together, "You" and "Your") of the values of several cases, Ms. Cohen has been deprived of the millions of dollars in attorney fee revenues to which she was, and remains, entitled. Despite Ms. Cohen's discovery of Your deception and subsequent confrontation and demand for payment, You have refused.

Importantly, not only were Your actions indisputably characterized by fraud, oppression, and malice, which subject You to treble, punitive damages under NRS Chapter 42, but Ms. Cohen's age will entitle her to double damages and the recovery of her attorney fees and costs under NRS 41.1395, for elder abuse and Your exploitation of an older and infirm person.

Accordingly, Ms. Cohen has instructed us to file the enclosed complaint against You, to be filed and served in the immediate future. In one last effort to resolve this dispute outside of court, Ms. Cohen makes this ***final, one-time demand*** and offer: You shall 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 ***by no later than the close of business on Friday, March 8, 2019***.

If You do so, Ms. Cohen will take no action against You; fail to do so, and Ms. Cohen intends to fully protect her rights and avail herself of any and all remedies, all of which are hereby expressly preserved.

PRESERVATION OF EVIDENCE

Should You have any inclination to reject Ms. Cohen's demand and offer, please be advised that You must immediately take all necessary steps to prevent the destruction, loss, concealment, or alteration of any electronically stored information ("ESI") and other data or information generated by and/or stored on Your computers and storage media, including, but not limited to, servers, flash/thumb drives, internal hard drives, external hard drives, cloud servers, CDs/DVDs, smart phones and similar-type devices, cell phones, tablets, backup media and email related or potentially related (pursuant to Rule 26) to: (1) the various contracts to which You and Ms. Cohen were parties; (2) the client files of Mark Garland, David Moradi, and Steven and Melissa Cochran; and (3) any and all clients' files for clients who executed contingency fee agreements prior to December 31, 2014, including, without limitation, accounting records relating to attorney fee revenues for such cases (the "Issues").

The term ESI will be afforded the broadest possible definition and includes, but is not limited to, all digital communications (*e.g.,* email, voice mail, instant messages, text messages), word processed documents (*e.g.,* Word and WordPerfect files and drafts), spreadsheets and tables (*e.g.,* Excel and Lotus 123 worksheets), accounting application data (such as QuickBooks, Quicken, and Peachtree), image and fax files (including PDF, TIFF, JPG, and GIF files), sound recordings (including WAV and MP3 files), video recordings, all databases, all contact and relationship management data, calendar and diary application data, online access data (including temporary internet files, history, and cookies), all presentations (*e.g.,* PowerPoint and Corel), all network access and server activity logs, all data created with the use of any PDAs or cell phones, including text messages and instant messages, all CAD files, all backup and archival files, and all metadata, which describes how, when, and by whom a particular file was created, modified, and where it was transmitted.

Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. You must also intervene to prevent the inadvertent loss of ESI that may occur due to routine operations and employ proper techniques to safeguard all such evidence.

LITIGATION HOLD

We request that You immediately issue a litigation hold for potentially relevant ESI, documents, and tangible things relating to the Issues and to act diligently and in good faith to secure and audit compliance with the litigation hold. You are requested to preserve (and not

destroy) all passwords, decryption procedures (including, if necessary, the software to decrypt the files), network access codes, ID names, manuals, tutorials, written instructions, decompression or reconstruction software, and any and all other information and things necessary to access, view, and (if necessary) reconstruct any ESI. You should not pack, compress, purge, or dispose of any file or any part thereof.

You are further requested to immediately identify and modify or suspend features of their operations, information systems, and devices that, in routine operations, operate to cause the loss of documents, tangible items, or ESI. Examples of such features and operations include, but are not limited to, purging the contents of email repositories by age, capacity, or other criteria; using data or media wiping, disposal, erasure, or encryption utilities or devices; overwriting, erasing, destroying, or discarding backup media; reassigning, re-imaging or disposing of systems, servers, devices, or media; running anti-virus or other programs that alter metadata; using metadata stripping utilities; destroying documents or any ESI by age or other criteria.

EMAIL

With respect to email data, we recognize that potentially responsive email messages may reside on Your servers, desktops, laptops, external media devices, Blackberry and similar-type devices, cell phones, tablets, personal computers, personal email accounts, backup media, and other sources. We request that You preserve all email data, regardless of its source, sent or received during the time period of January 1, 2012 to the date of this letter that may be associated with the email accounts attributed to You or the attorneys, paralegals, and other staff employed by You.

We further request that You preserve email data, regardless of its source or custodian, sent or received during the time period of January 1, 2012 to the date of this letter that may be sent to, received from, or reference the following companies and/or individuals: Mark Garland; SBP Partners LLC d/b/a Wet n' Wild ("SBP"); any insurance carrier for SBP; Panish Shea & Boyle LLP; Pisanelli Bice, PLLC; David Moradi; Nevada Property 1, LLC ("NP1"); Roof Deck Entertainment, LLC (together with NP1, the "Moradi Defendants"); and any insurance carrier for the Moradi Defendants, or either of them; Steven Cochran; and, Melissa Cochran.

SERVERS

With respect to servers used to manage the network storage of ESI, the entire contents of Your network storage that are associated with the above-referenced custodians or that pertain to the above-referenced companies should be preserved and not modified.

STORAGE

With respect to online storage and/or direct access storage devices within or attached to any of Your computers and/or other devices, in addition to the above, You are not to modify or delete any ESI, including "deleted" files and file fragments existing on the date of this letter's

delivery. Considering the volatility of ESI, we expect bit-stream copies of each such storage device will be created, which are sector-by-sector/bit-by-bit copy that would preserve not only the files and directory structures, but also preserve all of the latent data, including that which resides in the file slack and unallocated file space that normally contains deleted files.

With regard to all electronic media used for off-line storage, including magnetic tapes and cartridges, optical media, electronic media, and other media or combinations of media containing potentially relevant information, You are requested to stop any activity which may result in the loss of any ESI, including rotation, destruction, overwriting, and erasure in whole or in part. This request includes all media used for data or information storage in connection with Your computer systems, including flash/thumb drives, magnetic tapes and cartridges, magneto-optical disks, floppy disks, and all other media, whether used with personal computers, mini computers, mainframes, or other computers, and whether containing backup and/or archival ESI.

With regard to all data stored online or through cloud-based services, including, but not limited to, iCloud, Dropbox, Google Docs, Google Drive, OneDrive or other similar type services containing potentially relevant information, You are requested to stop any activity which may result in the loss of any ESI, including destruction, overwriting, and erasure in whole or in part.

PERSONAL COMPUTERS

You should take immediate steps to preserve all ESI on all personal computers and media devices used by any employees or contractors that in any way relate to the Issues by creating bit-stream copies of each such device. Any personal computers, tablets, flash/thumb drives, floppy disks, CDs/DVDs, tapes, and other non-fixed media devices relating to this matter that are not preserved through the creation of bit-stream copies are to be collected and stored with proper Chain of Custody procedures pending resolution of the Issues. Additionally, if any employees used online or browser-based email accounts or services to send or receive potentially relevant messages and attachments, as well as loose documents, the contents of these accounts should be preserved.

EVIDENCE CREATED OR ACQUIRED IN THE FUTURE

With regard to documents, tangible things, and ESI that are created or come into Your custody, possession, or control subsequent to the date of delivery of this letter, potentially relevant evidence is to be preserved. You should take all appropriate action to avoid destruction of potentially relevant evidence.

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Please forward a copy of this letter to all persons and entities possessing or controlling discoverable evidence. The obligation to preserve potentially relevant evidence is imposed by law and failure to take reasonable steps to preserve ESI will result in severe sanctions.

Guide yourselves accordingly.

Sincerely,

MARQUIS AURBACH COFFING

Liane K. Wakayama, Esq.
Jared M. Moser, Esq.

LKW:jmm
Enclosures: As stated
MAC:15438-001 3660084_1 2/27/2019 8:27 AM

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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.: Dept. No.: **Exempt from Arbitration: NAR 3(A) (Amount in Controversy in Excess of $50,000.00, Exclusive of Interest and Costs; Equitable Relief Requested)** **Business Court Requested:** ***** Jury Trial Demanded *****

VERIFIED COMPLAINT

Plaintiff Ruth L. Cohen ("Ms. Cohen"), by and through her attorneys of record, the law firm of Marquis Aurbach Coffing, alleges and complains against Paul S. Padda ("Padda") and Paul Padda Law, PLLC ("Padda Law," and together with Padda, "Defendants") as follows:

PARTIES

1. Ms. Cohen is, and was at all times relevant hereto, an individual residing in Clark County, Nevada.

2. Upon information and belief, Padda is, and was at all times relevant hereto, an individual residing in Clark County, Nevada.

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3. Upon information and belief, Padda Law is, and was at all times relevant hereto, a Nevada professional limited liability company, licensed to conduct business in the state of Nevada, and conducting business as a law firm, with its principal place of business in Clark County, Nevada.

4. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants named herein as DOES I-X, inclusive, and ROE entities I-X, inclusive, are presently unknown to Ms. Cohen. Said DOE and ROE Defendants are responsible for damages suffered by Ms. Cohen. As a result, Ms. Cohen sues said Defendants by such fictitious names. Ms. Cohen will seek leave to amend this Complaint to reflect the true names and capacities of each DOE and ROE Defendant at such time as the same has been ascertained.

JURISDICTION AND VENUE

5. Venue is proper in the Eighth Judicial District Court in Clark County, Nevada, pursuant to NRS 13.040 because (1) one or more of the Defendants reside in Clark County, Nevada, and are authorized to transact business, and currently transact business, within Clark County, Nevada; and, (2) the obligations, acts, and omissions complained of herein were incurred and committed, in whole or in part, within Clark County, Nevada.

6. This Court has personal jurisdiction over the Defendants, pursuant to NRS 14.065 because (1) the Defendants' activities and contacts in Nevada have been and continue to be so substantial, continuous, and systematic that the Defendants are deemed present in the forum; and, (2) the obligations, acts, and omissions compliance of herein were incurred and committed, in whole or in part, in Nevada, and thus, the Defendants have had sufficient minimum contacts with this forum such that the exercise of personal jurisdiction over them will not offend traditional notions of fair play and substantial justice.

GENERAL ALLEGATIONS

MS. COHEN'S CAREER AND RELATIONSHIP WITH PADDA

7. Born in 1949, Ms. Cohen became licensed to practice law by the Nevada State Bar in 1976.

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8. In early 1977, Ms. Cohen became the fourth woman ever hired in the Clark County District Attorney's office, and, in 1978, she was named the first female federal prosecutor in Nevada's history on the recommendation of her mentor, former Magistrate Judge Lawrence Leavitt.

9. Ms. Cohen worked as an Assistant United States Attorney ("AUSA") for nearly 30 years, on both the civil and criminal sides, and it was during her time as an AUSA that she met Padda.

10. Padda had interviewed for a position as AUSA in 2004, during Ms. Cohen's tenure, and Ms. Cohen strongly recommended Padda to her superiors for the job for which Padda was ultimately hired.

11. Padda and Ms. Cohen worked with each other in the U.S. Attorney's Office ("USAO") for several years and have known each other professionally for more than 15 years.

12. Over the years, Padda and Ms. Cohen also developed a close friendship.

13. Padda's and Ms. Cohen's relationship was so close, in fact, that the two even spent significant amounts of time with each other's family. Indeed, the relationship was one of friends, partners, and of extraordinary trust, which Padda would eventually exploit for his own financial gain, and to the detriment of Ms. Cohen's well-being.

14. Ms. Cohen entered the private practice of law in 2007, after retiring from her career in the USAO, forming "Ruth Lynn Cohen, LLC" ("RLC"), in March 2007.

15. A few years after Ms. Cohen left the USAO, so, too, did Padda, to form "The Padda Law Firm, P.C." ("TPLF"), in January 2011.

16. Padda often encouraged Ms. Cohen to leave her solo practice and form their own law firm, where the two would be equal partners.

COHEN & PADDA LAW FIRM

17. Within days of forming TPLF, Padda and Ms. Cohen agreed to establish a limited liability partnership whereby RLC and TPLF, and their respective principals, would operate cohesively as "Cohen & Padda, LLP" ("C & P").

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18. In conjunction with establishing C & P, Ms. Cohen and Padda executed a contract titled "Partnership Agreement."

19. Pursuant to the Partnership Agreement, each partner was entitled to the distributive share, paid on a quarterly basis, with RLC and TPLF each to receive 50% of the net profits of C & P.

20. The Partnership Agreement also provided that "[e]ach partner shall have free access upon request to examine and copy the books, papers or other writings of the partnership."

21. In addition, under the Partnership Agreement, "[e]ach partner shall, on every reasonable request, give to the other partners a true accounting of all transactions relating to the business of the partnership, and full information of all letters, accounts, writings and other things which shall come to his or her knowledge concerning the business of the partnership."

22. According to the Partnership Agreement, "[t]he value of a partner's interest 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 … "

23. Upon information and belief, Padda and Ms. Cohen executed a subsequent partnership agreement (the "Second Agreement"), in or about January 2014, which effectively extended the term of the Partnership Agreement through the end of calendar year 2014.

24. The Second Agreement also reallocated distributions of net profits from a 50/50 distribution to allow 1/3 of profits to go to each Padda, Ms. Cohen, and the C & P entity.

MS. COHEN'S DECISION TO WIND DOWN HER CAREER AND THE ULTIMATE DISSOLUTION OF C & P

25. In 2008, Ms. Cohen was diagnosed with breast cancer and was forced to undergo treatment, which caused her to begin considering retirement.

26. At or around the time she turned 65 years of age, in or about late 2014, Ms. Cohen began to consider retirement in earnest.

27. Consequently, Ms. Cohen and Padda discussed dissolution of their partnership, and memorialized their mutual intention and understanding in a contract, titled "Partnership Dissolution Agreement" and dated December 23, 2014 (the "Dissolution Agreement").

28. Pursuant to the Dissolution Agreement, the parties agreed that Ms. Cohen would be entitled to payment of $15,000, to purchase her interest in the C & P business (the "Buyout Payment"), including all of C & P's "electronics, furniture, computers, other items, intellectual property or interests."

29. The Dissolution Agreement also provided that "[w]ith respect to contingency fee cases in which there [had, as of the effective date] yet to be a recovery by way of settlement or judgment, Ruth 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. ... "

30. In exchange for, and in reliance upon, these contractual assurances, Ms. Cohen agreed to forfeit any fees earned (1) on C & P's or Padda's clients whose retainer agreements were dated after January 1, 2015; (2) on clients whose matters were handled on a flat fee basis; and (3) on clients whose matters were handled on an hourly fee basis.

31. Those clients with contingency fee agreements dated December 31, 2014, or earlier, included, without limitation, the following:

a. Mark Garland ("Garland");

b. David Moradi ("Moradi"); and

c. Steven Cochran and Melissa Cochran (the "Cochrans").

32. In 2016, Ms. Cohen transitioned to a part-time employment role with Padda Law.

33. As she was awaiting the resolutions of the Garland, Moradi, and Cochrans cases, among others, in early 2017, Ms. Cohen suffered a traumatic injury as the result of trying to break up a fight between her dogs at her home..

34. Ms. Cohen's injury would become badly infected and eventually require Ms. Cohen's hospitalization in the fall of 2017.

35. Also, in 2017, Ms. Cohen began to experience recurring pain in her breasts, which she believed may be related to her earlier breast cancer diagnosis.

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36. Ms. Cohen explained to Padda that she was experiencing pain based on "prior health issues," which information and the compromised state of Ms. Cohen's health Padda would later use to manipulate Ms. Cohen into executing a new contract.

PADDA PROFITS FROM HIS DECEPTION OF MS. COHEN REGARDING GARLAND

37. Padda misrepresented to Ms. Cohen the value of Garland's case, arising from an incident where Garland was severely injured at a Las Vegas water park in July 2013.

38. Garland had previously retained C & P for an employment law matter, and he would return to retain C & P to represent him in his personal injury litigation, executing a contingency fee agreement prior to December 31, 2014.

39. 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 recover anything.

40. Padda's representations to Ms. Cohen were false and, upon information and belief, he knew them to be false or, alternatively, had an insufficient basis to make the representation.

41. In actuality, Ms. Cohen would later discover that Padda served an offer of judgment in the amount of $240,000, which confirms that Padda knew the case had a much higher value than $10,000 when he falsely represented the value to Ms. Cohen.

42. The defendant water park accepted the $240,000 offer of judgment, and the litigation was dismissed with prejudice in September 2016.

43. Pursuant to the Dissolution Agreement, Ms. Cohen was entitled to 33.333% of the attorney fees received from that $240,000 recovery.

44. Ms. Cohen received nothing from Padda or Padda Law relative to the Garland recovery.

PADDA PROFITS FROM HIS DECEPTION OF MS. COHEN REGARDING MORADI

45. In an attempt to avoid paying Ms. Cohen the attorney fees to which she was entitled under the Dissolution Agreement, Padda also misrepresented to Ms. Cohen, in or about the first quarter of 2017, that the Moradi case was "in the toilet," and of minimal value.

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46. Padda lied to Ms. Cohen, telling her that Moradi had returned to work, that the case had no economic value and, therefore, that it would not likely recover much for Moradi.

47. Moradi was a New York City hedge fund manager, less than 40 years old, and making more than $10 million/year when he visited the Marquee nightclub at the Cosmopolitan.

48. On the night of Moradi's visit to Marquee, in 2012, Marquee security assaulted, battered, and falsely imprisoned Moradi, beating him so badly that he received severe injuries, including permanent brain damage.

49. In 2017, a jury awarded Moradi $160.5 million in compensatory damages, and, upon information and belief, in the process of the jury's consideration of Moradi's request for more than $400 million in punitive damages, the parties settled, with $20 million in attorney fees ultimately awarded to Defendants and their co-counsel, the Los Angeles law firm of Panish Shea & Boyle, of which Defendants are believed to have received half, or approximately $10 million.

50. Ms. Cohen first learned of the Moradi jury award of $160.5 million when she read the Las Vegas Review Journal's article in the Spring of 2017.

51. Pursuant to the Dissolution Agreement, Ms. Cohen was entitled to receive more than $3.3 million of the $10 million retained by Defendants because Moradi's contingency fee agreement with C & P was dated before December 31, 2014.

PADDA STANDS TO PROFIT FROM HIS DECEPTION REGARDING THE COCHRANS

52. About three months after the 2012 incident involving Moradi and the Marquee nightclub, the Cochrans, a Las Vegas couple, attending a Farmers Insurance party at the Marquee were also assaulted by security officers at the nightclub.

53. With C & P's representation of Moradi being reported by news media, the Cochrans also retained C & P, long before December 31, 2014.

54. As of the date of this Complaint, Eighth Judicial District Court records still identify Ms. Cohen as the Lead Attorney, and Padda as counsel as well, in the Cochrans' case, but Defendants have associated the law firm of Eglet Prince ("Eglet") to assist in the prosecution.

55. The Cochrans' case now has a firm jury trial setting for April 16, 2019.

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56. Upon information and belief, given the factually similarity to Moradi's case, the recovery is expected to be substantial, likely upwards of $10 million, with contingency fees to be split between Defendants and Eglet.

57. Pursuant to the Dissolution Agreement, Ms. Cohen is entitled to receive 33.333% of the attorney fees' generated from any recovery.

MS. COHEN CONFRONTS PADDA, WHO COERCES HER INTO SIGNING A NEW CONTRACT

58. In or about late 2016, before Garland was finally resolved and before Moradi's case was set for trial, Padda verbally reiterated to Ms. Cohen that the pending contingency cases were not likely to recover much of anything, and he used Ms. Cohen's age and health issues (*i.e.*, the worsening dog bite) as leverage to insist she execute a new contract (the "Final Agreement") and take small, token payments in exchange for her waiver of her interests in the pending resolutions.

59. Under financial duress and false pretenses, Padda forced Ms. Cohen to sign the Final Agreement, which she would not have done but for Padda's misrepresentations about the cases' values, her compromised health status, and her advanced age.

60. Ms. Cohen first discovered that Defendants had lied to her about the value and anticipated recovery in the Moradi case when, in approximately April 2017, she read an article in the Las Vegas Review Journal about the jury verdict and subsequent settlement.

61. Later, in or about the summer of 2017, when Ms. Cohen confronted Defendants and demanded payment of those fees to which she was entitled, Defendants refused to remit full payment and, instead, issued a check identified as "discretionary bonus," and they have refused to make payment in full.

62. The Final Agreement is legally unenforceable due, in part, to the Padda's fraud in the inducement, coercion, and financial duress under which they were signed.

FIRST CLAIM FOR RELIEF

(Breach of Contract – Partnership Dissolution Agreement, against Padda)

63. Ms. Cohen repeats, re-alleges, and incorporates by this reference each and every allegation contained above, inclusive, as if fully set forth herein.

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64. In December 2014, Padda and Ms. Cohen entered into a valid and binding contract, the Dissolution Agreement.

65. Ms. Cohen fully performed any and all obligations she had under the Dissolution Agreement.

66. Ms. Cohen satisfied all conditions precedent, if any, to the Dissolution Agreement.

67. Padda materially 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 and Moradi cases.

68. Ms. Cohen made demand for payment, with which Padda has refused to comply.

69. There was and is no excuse for Padda's failure to pay Ms. Cohen.

70. As a direct and proximate result of Padda's breach of contract, Ms. Cohen has been damaged in excess of $15,000.00, in an amount to be proven at trial.

71. It has become necessary for Ms. Cohen to engage the services of an attorney to prosecute this action, and therefore, she is entitled to attorney fees and costs to the extent permitted by law.

SECOND CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing – Contract, against Padda)

72. Ms. Cohen repeats, re-alleges, and incorporates by this reference each and every allegation contained above, inclusive, as if fully set forth herein.

73. On or about December 31, 2014, Padda and Ms. Cohen entered into a valid and binding contract, the Dissolution Agreement.

74. In Nevada, every contract contains an implied covenant of good faith and fair dealing.

75. Given that every contract contains an implied covenant of good faith and fair dealing, Padda had a duty to deal with Ms. Cohen in good faith, consistent with the spirit of the Dissolution Agreement, and consistent with the parties' justifiable expectations.

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76. Padda materially breached the contractually implied covenant of good faith and fair dealing with Ms. Cohen by, among other things, advising her that the recoveries obtained in the cases from which she was entitled to a portion of the attorney fees awarded had been, or were expected to be, substantially less than was truthful.

77. Padda further breached the contractually implied covenant of good faith and fair dealing with Ms. Cohen when, among other things, he took advantage of her compromised health and financial duress by manipulating her into signing Final Agreement.

78. As a direct and proximate result of Padda's breach of the contractually implied covenant of good faith and fair dealing, Ms. Cohen has been damaged in excess of $15,000.00, in an amount to be proven at trial.

79. It has become necessary for Ms. Cohen to engage the services of an attorney to prosecute this action, and therefore, she is entitled to attorney fees and costs to the extent permitted by law.

THIRD CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing – Tortious, against Padda)

80. Ms. Cohen repeats, re-alleges, and incorporates by this reference each and every allegation contained above, inclusive, as if fully set forth herein.

81. On or about December 31, 2014, Padda and Ms. Cohen entered into a valid and binding contract, the Dissolution Agreement.

82. In Nevada, every contract contains an implied covenant of good faith and fair dealing.

83. Given that every contract contains an implied covenant of good faith and fair dealing, Padda had a duty to deal with Ms. Cohen in good faith, consistent with the spirit of the Dissolution Agreement, and consistent with the parties' justifiable expectations.

84. Ms. Cohen had a justifiable expectation to receive certain benefits consistent with the spirit of the Dissolution Agreement.

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85. There was a special relationship of trust between Padda and Ms. Cohen, arising not only from their long relationship, personally and professionally, but particularly as business partners, and Ms. Cohen relied upon Padda to be open, honest, and provide accurate accounting and truthful assessments of their cases together.

86. The bad faith conduct of Padda was knowing and deliberate.

87. As a direct and proximate result of Padda's breach of the implied covenant of good faith and fair dealing in tort, Ms. Cohen has been damaged in excess of $15,000.00, in an amount to be proven at trial.

88. Moreover, as a direct and proximate result of Padda's breach, which was characterized by fraud, oppression, or malice, express or implied, Ms. Cohen is entitled to punitive damages, in an amount to be proven at trial.

89. It has become necessary for Ms. Cohen to engage the services of an attorney to prosecute this action, and therefore, she is entitled to attorney fees and costs to the extent permitted by law.

FOURTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty, against Padda)

90. Ms. Cohen repeats, re-alleges, and incorporates by this reference each and every allegation contained above, inclusive, as if fully set forth herein.

91. A fiduciary relationship existed between Padda and Ms. Cohen, such that Padda was bound to act for the benefit of Ms. Cohen, as his partner, and to provide full and frank disclosure of all relevant information.

92. Padda failed to use due care or diligence, to act with utmost faith, to exercise ordinary skill, or to act with reasonable intelligence in his role as a partner and, consequently, a fiduciary to Ms. Cohen.

93. As a direct and proximate result of Padda's breach of fiduciary duty, Ms. Cohen has been damaged in excess of $15,000.00, in an amount to be proven at trial.

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94. Moreover, as a direct and proximate result of Padda's breach of fiduciary duty, which was characterized by fraud, oppression, or malice, express or implied, Ms. Cohen is entitled to punitive damages, in an amount to be proven at trial.

95. It has become necessary for Ms. Cohen to engage the services of an attorney to prosecute this action, and therefore, she is entitled to attorney fees and costs to the extent permitted by law.

FIFTH CLAIM FOR RELIEF

(Fraud in the Inducement – the Final Agreement, against Padda and Padda Law)

96. Ms. Cohen repeats, re-alleges, and incorporates by this reference each and every allegation contained above, inclusive, as if fully set forth herein.

97. Padda, on his own behalf and on behalf of Padda Law, verbally made false representations to Ms. Cohen in summer 2016 (as to Garland), in the first quarter of 2017 (as to Moradi), and in late 2017 (as to the Cochrans), when he told Ms. Cohen that these cases each had little or no value and/or little or no likelihood of any substantial recovery.

98. Padda had knowledge or belief that the representations were false, or had knowledge that he had insufficient basis for making the representations at the time made.

99. Padda intended to induce Ms. Cohen to consent to the formation of the Final Agreement.

100. Ms. Cohen justifiably relied upon Padda's misrepresentation in entering into the Final Agreement.

101. As a direct and proximate result of Padda's misrepresentations, Ms. Cohen has been damaged in excess of $15,000.00, in an amount to be proven at trial.

102. Moreover, as a direct and proximate result of Padda's misrepresentations, which were characterized by fraud, oppression, or malice, express or implied, Ms. Cohen is entitled to punitive damages, in an amount to be proven at trial.

103. It has become necessary for Ms. Cohen to engage the services of an attorney to prosecute this action, and therefore, she is entitled to attorney fees and costs to the extent permitted by law.

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SIXTH CLAIM FOR RELIEF

(Fraudulent Concealment, against Padda and Padda Law)

104. Ms. Cohen repeats, re-alleges, and incorporates by this reference each and every allegation contained above, inclusive, as if fully set forth herein.

105. Defendants concealed or suppressed material facts from Ms. Cohen.

106. Upon information and belief, Padda even instructed staff of C & P and Padda Law, "don't tell Ruth anything," and "do not share disbursement sheets," in order to conceal the material facts at issue, namely the values and potential recoveries of the Garland, Moradi, and Cochran cases, and others.

107. Defendants were under a duty to disclose the concealed facts.

108. Defendants intentionally concealed or suppressed facts with the intention of defrauding Ms. Cohen.

109. Ms. Cohen did not know about the facts and would have acted differently had she known.

110. As a direct and proximate result of Defendants' fraudulent concealment of material facts from Ms. Cohen, Ms. Cohen has been damaged in excess of $15,000.00, in an amount to be proven at trial.

111. Moreover, as a direct and proximate result of Defendants' fraudulent concealment of material facts from Ms. Cohen, which was characterized by fraud, oppression, or malice, express or implied, Ms. Cohen is entitled to punitive damages, in an amount to be proven at trial.

112. It has become necessary for Ms. Cohen to engage the services of an attorney to prosecute this action, and therefore, she is entitled to attorney fees and costs to the extent permitted by law.

SEVENTH CLAIM FOR RELIEF

(Fraudulent or Intentional Misrepresentation, against Padda and Padda Law)

113. Ms. Cohen repeats, re-alleges, and incorporates by this reference each and every allegation contained above, inclusive, as if fully set forth herein.

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114. Padda, on his own behalf and on behalf of Padda Law, verbally made false representations to Ms. Cohen in summer 2016 (as to Garland), in the first quarter of 2017 (as to Moradi), and in late 2017 (as to the Cochrans), when he told Ms. Cohen that these cases each had little or no value and/or little or no likelihood of any substantial recovery.

115. Defendants knew or believed that their representations were false, or they had an insufficient basis of information for making the false representations.

116. Defendants intended to induce Ms. Cohen to act or refrain from acting upon those misrepresentations.

117. Ms. Cohen justifiably relied upon Defendants' representations.

118. As a direct and proximate result of Defendants' fraudulent or intentional misrepresentations, and Ms. Cohen's reliance on those misrepresentations, Ms. Cohen has been damaged in excess of $15,000.00, in an amount to be proven at trial.

119. Moreover, as a direct and proximate result of Defendants' intentional misrepresentations, which were characterized by fraud, oppression, or malice, express or implied, Ms. Cohen is entitled to punitive damages, in an amount to be proven at trial.

120. It has become necessary for Ms. Cohen to engage the services of an attorney to prosecute this action, and therefore, she is entitled to attorney fees and costs to the extent permitted by law.

EIGHTH CLAIM FOR RELIEF

(Unjust Enrichment, against Padda Law, and pleaded in the alternative against Padda)

121. Ms. Cohen repeats, re-alleges, and incorporates by this reference each and every allegation contained above, inclusive, as if fully set forth herein.

122. Ms. Cohen conferred a benefit upon Padda and, consequently, upon Padda Law, when she, among other things, performed client intake and caused Garland, Moradi, and the Cochrans to execute contingency fee agreements which resulted in substantial attorney fee revenues, or prospective revenues, on those cases.

123. Defendants received and appreciated the benefit of Ms. Cohen's actions and her work on the contingency fee cases at issue.

124. Defendants accepted and retained that benefit under circumstances such that it would be inequitable for them to retain the benefits without payment to Ms. Cohen for the value thereof.

125. As a direct and proximate result of Defendants' unjust enrichment, Ms. Cohen has been damaged in excess of $15,000.00, in an amount to be proven at trial.

126. Moreover, as a direct and proximate result of Defendants' retention of the benefit, which retention was characterized by fraud, oppression, or malice, express or implied, Ms. Cohen is entitled to punitive damages, in an amount to be proven at trial.

127. It has become necessary for Ms. Cohen to engage the services of an attorney to prosecute this action, and therefore, she is entitled to attorney fees and costs to the extent permitted by law.

NINTH CLAIM FOR RELIEF

(Elder Abuse, under NRS 41.1395, against Padda)

128. Ms. Cohen repeats, re-alleges, and incorporates by this reference each and every allegation contained above, inclusive, as if fully set forth herein.

129. This is an action for damages pursuant to NRS 41.1395 for injury or loss suffered by Ms. Cohen from exploitation.

130. Pursuant to NRS 41.1395, Ms. Cohen is an older person who suffered a loss of money or property caused by exploitation by Padda.

131. Pursuant to NRS 41.1395(d), Ms. Cohen did meet the definition of an older person in that she was over the age of 60 years of age at all times relevant herein.

132. Padda's conduct, as previously described above herein, meets the definition of "exploitation," as defined in NRS 41.1395(4)(b), because he took acts, with the trust and confidence of Ms. Cohen, in order to obtain control, through deception, intimidation or undue influence, over the money, assets or property of Ms. Cohen, with the intention of permanently depriving her of the ownership, use, benefit or possession of her money, assets or property.

133. In addition, Padda's conduct, as previously described above herein, meets the definition of "exploitation," as defined in NRS 41.1395(4)(b), because he converted Ms. Cohen's

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money, assets or property with the intention of permanently depriving her of the ownership, use, benefit or possession of her money, assets or property.

134. Padda acted with recklessness, oppression, fraud and/or malice, express or implied, and his actions or inactions towards Ms. Cohen as previously stated above, and herein, justify the award of punitive damages, attorney fees, and costs of suit.

135. Further, pursuant to NRS 41.1395(1), Ms. Cohen is entitled to two times the actual damages incurred as a result of Padda's exploitation.

TENTH CLAIM FOR RELIEF

(Declaratory Relief, against Padda and Padda Law)

136. Ms. Cohen repeats, re-alleges, and incorporates by this reference each and every allegation contained above, inclusive, as if fully set forth herein.

137. A justiciable controversy exists between Defendants and Ms. Cohen in that Ms. Cohen posits that (1) she is entitled to a 33.333% share of the attorney fees recovered in contingency fee cases for which a retainer agreement for C & P was executed prior to December 31, 2014, and (2) any later agreement, including the Final Agreement, is invalid as a matter of law while, upon information and belief, Defendants disagree and have taken a contrary position.

138. Accordingly, Ms. Cohen has requested payment of amounts owed, but Defendants rejected Ms. Cohen positions.

139. Ms. Cohen, therefore, has asserted, and hereby asserts, a legally protected right.

140. The issue is ripe for judicial determination, so Ms. Cohen seeks a declaration from the Court that the Dissolution Agreement is valid and enforceable, entitling her to immediate payment for attorney fee revenues collected, and that the Final Agreement is legally invalid and unenforceable.

JURY TRIAL DEMAND

Pursuant to NRCP 38, Ms. Cohen hereby demands a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Ms. Cohen prays for the following relief against Defendants:

1. Complete rescission of the Final Agreement;

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2. For an accounting;

3. Judgment in her favor and against Defendants on all of her causes of action in excess of $15,000 in actual, compensatory damages in an amount to be proven at trial;

4. For disgorgement of profits received by Defendants;

5. For an award of treble, punitive damages, under NRS 42.005, against Defendants in an amount to be proven at trial;

6. For an award of double damages, under NRS 41.1395, against Defendants in an amount to be proven at trial;

7. For an award of attorney fees and costs and incurred in bringing this action as special damages under NRS 41.1395, and as permitted by law;

8. For an award of pre-judgment and post-judgment interest at the highest rate permitted by law until paid in full; and

9. For any further relief as the Court deems to be just and proper.

Dated this 26th day of February, 2019.

MARQUIS AURBACH COFFING

By /s/ Jared M. Moser
Liane K. Wakayama, Esq.
Nevada Bar No. 11313
Jared M. Moser, Esq.
Nevada Bar No. 13003
10001 Park Run Drive
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Attorneys for Plaintiff Ruth L. Cohen

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VERIFICATION

Under penalties of perjury, the undersigned declares that she is the Plaintiff named in the foregoing Complaint, and knows the contents thereof; that the pleading is true of his or her own knowledge, except as to those matters stated on information and belief, and that as to such matters he or she believes it to be true.

Ruth L. Cohen

EXHIBIT 5

EXHIBIT 5

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eightieth Session
April 4, 2019

The Committee on Judiciary was called to order by Vice Chairwoman Lesley E. Cohen at 8:08 a.m. on Thursday, April 4, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Lesley E. Cohen, Vice Chairwoman
Assemblywoman Shea Backus
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblywoman Rochelle T. Nguyen
Assemblywoman Sarah Peters
Assemblyman Tom Roberts
Assemblywoman Jill Tolles
Assemblywoman Selena Torres
Assemblyman Howard Watts

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Traci Dory, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Matthew Hoffmann, Attorney, Atkinson, Watkins and Hoffmann, Las Vegas, Nevada
Mike Cathcart, Business Operations Manager, City of Henderson
Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Dylan Shaver, Director of Policy, City of Reno
Graham Lambert, Private Citizen, Henderson, Nevada
Amanda Hertzler, Private Citizen, Henderson, Nevada
Jennifer P. Noble, Chief Appellate Deputy, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association
Shirle T. Eiting, Chief Assistant City Attorney, City of Sparks
Lisa A. Gianoli, representing Washoe County
Melissa A. Saragosa, Judge, Las Vegas Justice Court
Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Megan Ortiz, Intern, American Civil Liberties Union of Nevada
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Alanna Bondy, representing Nevada Attorneys for Criminal Justice
Sylvia R. Lazos, Legislative Advocate, Nevada Immigrant Coalition
Dylan Lawter, Vice President, Policy and Legislation Society, William S. Boyd School of Law, University of Nevada, Las Vegas
Kimberly Estrada, Co-Director, Nevada Student Power
Zachary Kenney-Santiwan, Volunteer, Mass Liberation Project Nevada
Shani J. Coleman, Deputy Director, Government Affairs Executive, Office of Administrative Services, City of Las Vegas
Dana P. Hlavac, Court Administrator, Las Vegas Municipal Court
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Mary Sarah Kinner, Government Affairs Liaison, Washoe County Sheriff's Office
Wiselet Rouzard, Field Director, Americans for Prosperity – Nevada

Vice Chairwoman Cohen:
[Roll was called, and Committee protocol was explained.] We have three bills on the agenda this morning. The order we will be taking them is: Assembly Bill 418, Assembly Bill 434,

and Assembly Bill 411. I will open the hearing on Assembly Bill 418, which enacts provisions governing an offer of judgment.

Assembly Bill 418: Enacts provisions governing an offer of judgment. (BDR 2-1115)

Assemblyman Steve Yeager, Assembly District No. 9:
It is my honor to present Assembly Bill 418 to you this morning. Mr. Matt Hoffmann is in Las Vegas this morning to assist with the presentation of the bill after my introductory remarks.

As many of you know, when the Legislature is not in session, for better or worse, I am a practicing attorney. When I first began my legal career in 2004, I started by practicing civil litigation, almost exclusively defense civil litigation primarily in class action defense, complex commercial litigation, and insurance defense. I cannot say it was the most exciting thing that I have ever done in my life, but it was a good place to cut my teeth in terms of the civil world and pay off my student loans, which was another benefit. After doing that for a number of years, I went to the Clark County Public Defender's Office and worked there for nearly a decade. What many of you may not know is, after the last legislative session, I left the public defender's office and I now work at Battle Born Injury Lawyers where I am a partner and work with one of our former colleagues, Justin Watkins.

I hope all of the Committee members received a communication from me yesterday letting you know that there is a mock-up of the bill that essentially replaces the entire bill (Exhibit C). It is accomplishing the same thing, but the mock-up you have on Nevada Electronic Legislative Information System essentially puts our existing *Nevada Rules of Civil Procedure* (N.R.C.P.) 68, which has just been amended and became effective March 1, 2019, into statute. We will tell you in a moment why we are trying to do that and the significance of doing so. I would like to hand it over to Mr. Hoffmann to explain what A.B. 418 does and why it is needed.

Matthew Hoffmann, Attorney, Atkinson, Watkins and Hoffmann, Las Vegas, Nevada:
I am an attorney practicing in Las Vegas for nearly 15 years. I have spent my entire legal career in Nevada practicing exclusively in the area of civil litigation. I have represented both defendants and plaintiffs in a variety of civil matters. I am here today to discuss A.B. 418, which would codify N.R.C.P. 68 governing offers of judgment.

Nevada Rules of Civil Procedure Rule 68 is the rule dealing with offers of judgment in Nevada and, in essence, N.R.C.P. 68 authorizes either party in a civil action to serve one another with a formal offer of judgment, which provides a specific time to accept or reject an offer and penalties against a party who rejects an offer but does not later obtain a more favorable result at trial. Those penalties include attorney's fees, prejudgment interest, costs, and penalty interest. The purpose of N.R.C.P. 68 is to promote and incentivize the prompt resolution of civil actions, helping to reduce the tremendous burden on our court system.

Since 1971 and until 2015, *Nevada Revised Statutes* (NRS) 17.115 had codified N.R.C.P. 68. In 2015, the Legislature repealed NRS 17.115. There was no explanation given for the decision. I suspect that the statute was seen as being duplicative, but the result of its repeal has had what I believe to be unintended consequences.

The state of Nevada has an unusually diverse economy. We have many out-of-state visitors and corporations who do business in our state, and because of this, many civil actions result in out-of-state participants removing civil actions from our state courts to the federal courts based upon diversity of citizenship. When this is done, the *Federal Rules of Civil Procedure* apply, but the Nevada substantive law applies. Under the federal rules, unlike the Nevada rules, only a defendant may serve an offer of judgment in a diversity case. For over 40 years, however, because of NRS 17.115, which was substantive law, both parties, the plaintiffs and the defendants, could serve offers of judgment upon one another.

What this bill does is restore what was NRS 17.115, mirroring N.R.C.P. 68, and ensuring that any party to a lawsuit is allowed to serve offers of judgment regardless of whether the case is in state court or has been removed to federal court.

To be clear, A.B. 418 would not create some kind of advantage to either the plaintiffs or the defendants. Instead, it would level the playing field for Nevada residents whose cases find their way into federal court under diversity jurisdiction. And the reason an offer of judgment is so important towards prompt resolution is that it forces a party to make a more critical evaluation when offers to settle are made because there are consequences. This bill would help promote the intent of the Nevada Supreme Court to effectuate the prompt resolution of lawsuits. Without it, Nevada citizens find themselves at a disadvantage merely because the party who caused them harm is a resident of or incorporated in a jurisdiction outside of Nevada.

Vice Chairwoman Cohen:
I was trying to find the section on family law offers of judgment as they are a little different than offers of judgment in the civil realm. Will this affect that rule?

Matthew Hoffmann:
No, that would not affect the family court rule because, to my understanding, that is a completely separate rule and this is merely codifying N.R.C.P. 68 specifically.

Assemblywoman Torres:
For those of us non-attorneys in the room, could you clarify in layman's terms what this legislation does?

Assemblyman Yeager:
Essentially what it means is, if there is a civil lawsuit going on and you are in state court, either party can make an offer to settle the case to the other party. This is done in writing. It is called an offer of judgment and is a formal document. As Mr. Hoffmann said, when you receive that document it has legal significance because, if you reject it and you do not do

better at trial, then you are going to be on the hook to pay the other side's attorney's fees. Right now in state court either party can do that. Because of some legislation that was enacted in 2015, that is not the case in federal court in Nevada. In federal court right now, only defendants can make an offer of judgment, but plaintiffs cannot. The reason for that is a little bit tricky legally because federal court has its own rules, but it also looks to Nevada law to sort of supplement those rules. By putting our Nevada existing rule into statute, that will make the federal court open up the process so both plaintiffs and defendants can make these offers of judgment. As Mr. Hoffmann said, that was the way it worked for over 40 years in Nevada but, for some unknown reason, in 2015 that statute was repealed. So right now there is that inequity.

Just for clarification, the plaintiff decides where to file a case. What often happens here in Nevada is the plaintiff is a Nevada resident and files the case in state court but under some procedural rules, a defendant has the ability to remove that case to federal court in certain circumstances. When that happens now, there is this inequity whereby the plaintiff is not able to make that formal offer of judgment. What it really does is level the playing field when you are in federal court so both are playing by the same rules. The way we do that is by taking a rule and putting it into statute. This is not something new; we are just codifying N.R.C.P. 68 to make sure that the federal court recognizes its importance.

Vice Chairwoman Cohen:
The whole concept of the offers of judgment is to encourage settlement before a case goes to trial, correct?

Matthew Hoffmann:
Yes, the purpose of offers of judgment is to get the parties to engage and take a critical look at any offers that are made to one another and try to resolve cases. Again, we cannot have every case going to trial.

Vice Chairwoman Cohen:
As a party, if you receive an offer of judgment from the other side, you know that you have to try negotiating in good faith. Saying, I am just going to roll the dice and go to trial is not necessarily beneficial because if you lose and the offer of judgment is out there and you do not do better than the offer of judgment, then you are on the hook for attorney's fees?

Assemblyman Yeager:
That is precisely right, and often these offers of judgment do not happen until a little bit later in the case after you have had a chance to evaluate your case. For instance, from a plaintiff's side, I will talk to the client about what I think the result would be at trial, what I think the value of the case is, and we will come up with a number. The defendant will do that as well. The benefit to the offer of judgment is you can have a conversation with your client about settling the case at any point, but there is really no legal ramification. If the client says I do not want to settle when you get that written offer of judgment, then you have a conversation with your client about what this really means and, if we go to trial, are we going to do better or not. If we are not going to do better, what are the consequences?

In a lot of civil cases, having the ability to do an offer of judgment finally gets the parties to really sit down and evaluate the case and decide whether this is a case that needs to go to trial or not. In my experience, the offer of judgment stage usually ends up in a case being negotiated or, if not, it starts those very serious discussions about reaching a negotiation. To have a system in federal court where the plaintiff cannot apply that pressure and only the defendant can apply it, is really an unfair situation. That is what we are trying to accomplish in A.B. 418.

Assemblywoman Backus:
I do not have any questions; I am just making a comment. I really like offers of judgment and think they are imperative for any civil case no matter which side you are on. I just want to thank all of you for making A.B. 418 identical to N.R.C.P. 68 because for years we struggled with two different rules in statute. Thank you both for bringing a good bill.

Assemblywoman Hansen:
For a little bit of understanding for myself, could you give an example of when a case might go to federal court? If I understood that right, there is the equity in the other courts but not in the federal courts, and you are looking to address that.

Matthew Hoffmann:
The most common scenario we would see is when somebody is injured in a car accident involving an Uber or Lyft, which are out-of-state corporations. The plaintiff who is injured would file suit in state court, then the defendant, without answering, would file a notice of removal and they would remove the case to the federal court based upon diversity of citizenship and threshold of damages of $75,000. That is the most common. You also see it with business transactions, but mainly torts. It could be incidents and injuries that occur at a Lowe's or a Home Depot—any out-of-state corporations that do business here in Nevada. When the plaintiffs initiate the lawsuit in state court, those out-of-state corporations then remove them to federal court based upon diversity jurisdiction.

Vice Chairwoman Cohen:
Do we have any other questions from Committee members? [There were none.] Do we have any testimony in support of A.B. 418? [There was none.] Do we have any testimony in opposition to A.B. 418? [There was none.] Do we have any neutral testimony on A.B. 418? [There was none.] Are there any closing remarks?

Assemblyman Yeager:
I want to thank Mr. Hoffmann for joining us this morning in Las Vegas. As always, Committee members, if you have questions later on about what this bill does or what we are trying to accomplish, please feel free to reach out. Thank you for hearing the bill and I urge your support.

Vice Chairwoman Cohen:
I will close the hearing on A.B. 418. I will open the hearing on Assembly Bill 434, which revises various provisions relating to offenses.

Assembly Bill 434: Revises various provisions relating to offenses. (BDR 14-428)

Assemblyman Steve Yeager, Assembly District No. 9:
It is an honor this morning to present Assembly Bill 434. Assembly Bill 434 comes out of an interim committee that I chaired this past interim. Some of this will sound familiar because we heard a bill previously, Assembly Bill 110, which came out of that interim committee. This was the interim committee that was created as a result of the passage of Assembly Concurrent Resolution 9 of the 79th Session. That legislation appointed a committee to essentially study traffic infractions in our state and to make suggestions about whether we should move to a civil system or whether we should maintain the criminal system with potential modifications. Our committee met five different times and ultimately we decided to advance four pieces of legislation. Assembly Bill 434 is one of those pieces of legislation. This is not the one that transitions to a civil system; that is the next bill on the agenda. But this bill makes some changes to our current criminal traffic infraction system.

Sections 1 and 2 of the bill increase the amount of credit received per day spent in jail from $75 to $150 per day when someone is jailed for not paying, and also provides the court with guidance about how to determine whether a defendant is indigent. Existing law does not allow you to be incarcerated if you cannot afford to pay a fine, but there really is not good guidance in the statute about how a court is to make that determination. In sections 1 and 2 you will see that there are four different provisions that would help the court make that determination of whether you are indigent. The impact of that is, if you are indigent and you cannot pay the fine, you cannot be incarcerated for a traffic infraction. But, that being said, if you have the money and you are willfully not paying, you can be incarcerated. The system right now is you get $75 per day of credit for the incarceration. If you owed $750, that would be ten days in jail. This bill increases that credit amount to $150. You might ask why $150. I think that was a pretty good approximation of what it actually costs the county to incarcerate someone. That amount had not been updated in quite some time.

Section 3 of the bill provides that if somebody is allowed to do community service rather than pay a fine, the court must credit that person no less than $10 per hour for the community service that is done. Right now, that is the typical practice, but there are some courts in our state that depart from that. They give less than $10 an hour of credit. We wanted to make sure we put in a standardized amount so every court knows it has to be a minimum of $10 per hour. They can give you more if they want; if the court says we think you should be compensated $15 an hour, then that is the credit you would get.

Sections 3 and 4 of the bill are really the heart of the bill and they create a new class of crime called a "petty misdemeanor." We have talked in this Committee about felonies, gross misdemeanors, and misdemeanors, so this would be below the misdemeanor level and be a petty misdemeanor. The real crux of this is, if you were convicted of a petty misdemeanor, you would not be looking at jail time. Right now, if you are convicted of a misdemeanor, you are looking at potentially six months in jail for almost all misdemeanors. There are some exceptions, but a petty misdemeanor, should we create that, would be subject to a $1,000 fine or 100 hours of community service.

There are various provisions in this bill that downgrade certain crimes from a misdemeanor to a petty misdemeanor. I do not want to read all of them because there are quite a few and the bill is complex in the sense that sometimes you have to go look at three or four other statutes to figure out what is happening. Some of the bigger ones—running a stop light or a red light, failure to obey a no left or right turn sign, parking more than 18 inches from a curb, and overstaying a parking meter—would no longer be misdemeanors but would be petty misdemeanors.

I am not sure if any of you had a chance to really go through and look at all the different things that are being downgraded in here. There are some that I think go too far and need to remain regular misdemeanors. For the record, some of those are: failure to obey a school crossing guard, failure of a school bus to stop at a railroad crossing, and failure to stop for a peace officer. There are some modifications that need to be made. Unfortunately, there is one really important one that did not make it into the list that was supposed to make it and that is simple speeding. A simple speeding ticket, I believe, should be a petty misdemeanor. I am going to ask that it be amended into the bill. I think that was simply an oversight. Once you get to reckless driving, aggressive driving, or speed contest, those would all remain misdemeanors. The intent here is, for some of these more minor traffic infractions, to not have the possibility that someone actually spend six months in jail.

Section 6 of the bill specifies the order in which payments to the court should be applied. Some of you might know, when you get a ticket you have a fine portion of that ticket, but then you also have administrative assessment fees that have been added on in statute over the years. You might have court fees as well. For instance, if you miss court or your case goes to collections, the court will add additional fees. Section 6 specifies how, if you make a partial payment, that payment is to be applied. It would first go to the administrative assessment fees because those are earmarked for different programs in our state. It would then go to the fine, and the last portion to be paid would be the court-added fees. This is what most courts are doing, but not all of them are doing it. I should mention that as part of our interim committee, we sent surveys out to every limited jurisdiction court, justice court, and municipal court in our state. We tried to gather data in terms of what is happening in those courts. We had about a 50 percent response rate with most of the larger jurisdictions providing information. The picture I got, not surprisingly, is courts operate very differently in terms of what fees they are assessing and how they apply payment. So this is an effort to standardize in the state the payment schedule and how monies should be applied.

Section 7 does something similar. It essentially says, if you have multiple open cases or multiple open infractions and you make a partial payment, it has to go to satisfy the earliest ticket in time first. What we found out, much to my dismay, is that there were jurisdictions that were doing something like this: if you had four different tickets that you owed on and you made a payment that was large enough to pay off one ticket, the jurisdiction would apportion that payment to all four tickets, which would mean that it takes you a lot longer to get one paid off. The significance there is that if you miss the payment, you would be hit with collection or late fees on every single one of the tickets. So it had this spiraling effect, and sometimes we hear about how a $100 or $200 ticket can end up in a $2,500 or $3,000

fine and fee. This is how—because the payments were not being applied in a way that I think is appropriate and fair to a defendant. This section says you have to pay off one before you start collecting on the next.

Section 8 of the bill allows an offender to buy out of traffic school to have a charge reduced. I know those of you who do not do traffic tickets for a living, if you are wondering about what this is, there is a current practice now where—say you get a speeding ticket—the court often will agree to reduce your speeding ticket down to a parking ticket if you agree to attend a traffic school. But there is a catch, you can then pay an additional fee to get out of going to the traffic school and get the charge reduced. Right now, that extra payment to get out of the traffic school is characterized differently in every court, is called something different; it is a little bit uncertain as to where that fee actually goes. I also think it is potentially constitutionally suspect whether a court can assess such a fee. I think reasonable minds can differ, but my reading of existing case law is, that is probably not an appropriate fee because limited jurisdiction courts can only assess fees if the Legislature gives them permission to assess them or if they are part of an inherent court function. That is what the case law says. What section 8 does is expressly allow this fee to be charged, but we want to make sure it is going to fund our specialty courts in this state. It expressly authorizes a practice that is already happening and also says we want to control where that money goes. Right now I am not really certain where it goes and it depends on which court is collecting it, but with this bill it would go to specialty courts, which we have heard in this Committee are very effective.

Section 9 ensures that the state gets the money that is due to it. I am not sure if all of you realize this, but our *Nevada Constitution*, in Article 11, Section 3, states that any fine assessed by the state goes into our State Permanent School Fund. That fund is an account that generates interest and the interest goes to the Distributive School Account. Essentially, this is one of the ways we fund our schools, with fines that are paid for state infractions. Here is the tricky part. Local governments can create their own set of infractions, county codes, city codes, and when they do that and collect the money, it is no longer a state fine, it is a local fine and the local government gets to keep that money. That is the way the system works because it is a reflection of typically local law enforcement, and local prosecutors are the ones working on these cases.

Here is where things got a little tricky when I started asking questions. There are certain things in statute that we as a state have said we have the sole jurisdiction to enforce and local governments, you are preempted from regulating in this space. Here are two great examples: licensing of drivers and registering of vehicles. Those are functions of the Department of Motor Vehicles (DMV), which is a state agency. We do not allow local governments to handle those. As a result, if somebody is cited for not having a driver's license or driving an unregistered vehicle, that is a state fine and that fine needs to go into the State Permanent School Fund. What I realized was happening, whether intentionally or not, was sometimes those tickets were being processed in a way that they were being characterized as local offenses so that money that was intended to go into the State Permanent School Fund was actually going to the local government. I am not going into the weeds because it is a tricky

area, but there are ways that courts and other individuals can characterize offenses so that the state does not get the money that it should get. Section 9 says it does not matter what you call it or how you process it: if it is a state fine, it needs to go into the State Permanent School Fund so we can fund our schools. Over the years, the collections into that fund on the state side have gone way down from where they were. In some instances almost nothing is being remitted from certain courts to the state. We are here on behalf of the state. We all talk about education and education funding in this state and this is a way we can make sure that we are enacting the intent of the *Nevada Constitution*.

Section 28 relates to speeding. As I indicated, I want speeding to be a petty misdemeanor, but this standardizes how much the fine is for speeding. We have heard anecdotal stories and probably some of you have experienced this. You may get a speeding ticket in Clark County for ten miles over the speed limit and it is going to be one amount of fine, but it might be different in the City of Henderson or North Las Vegas. Some of our communities between Las Vegas and Carson City can be different and the fines can be very high for speeding. Section 28 says that the fine is $10 per mile over the speed limit. If you are ten miles over the speed limit, the fine is $100; if you are 20 miles over, it is $200. We finally have a standardization where you are not going to be hit with a small fine in one jurisdiction and sometimes up to $1,000 fine in other jurisdictions for going a few miles an hour over.

If someone gets a speeding ticket and they decide they are just going to pay the whole amount before coming to court, which you can do now in most jurisdictions, you can go online, particularly in Clark County, and pay the whole amount and never have to go to court. It says in that circumstance that the court must reduce the charge to a parking violation. The thought behind that is—practically speaking, this is what happens already, but these are individuals who are able to make good on the fine amount without using court resources, without having to bog down the system—you ought to get some kind of benefit for doing that. If you were to hire an attorney and go to court, you would get this negotiation anyway. It happens every single day, but there are also exclusions. It says, if you cause an accident or you hurt somebody, such as a pedestrian, you are not entitled to that kind of reduction. It would stay a speeding violation.

Finally, there is one additional item that I intended to be in this bill, but it did not make it. I intended to have a grace period for warrants. For instance, if you do not come to court or you miss a payment now—again talking about traffic infractions and not other kinds of offenses—the court will issue a warrant for your arrest. Courts are a little bit all over the place in terms of how long they wait to issue those warrants. I would like a provision in this bill that provides a grace period of 14 calendar days before that bench warrant goes active. That would essentially give a defendant in a minor traffic infraction case two weeks to come back to court to take care of their business before that warrant would go active in the system. There are some jurisdictions that are already doing this and there are some that are not. This would not apply to serious traffic infractions such as DUI, reckless driving, or vehicular manslaughter. You are not going to get that grace period; you will simply have a warrant issued because those are serious infractions.

Assemblywoman Nguyen:
I know that you worked on this during the interim, and it was my understanding that you contacted a lot of these local jurisdictions that handle tickets. We are talking about clarifying in statute where this money should go, because it seems like currently there are a lot of unknowns. Did you get any kind of impression while reaching out during the interim as to how much money we are talking about?

Assemblyman Yeager:
One of the difficulties was that a lot of the local jurisdictions were simply unable to provide adequate information or data to the questions that were posed. They were questions such as: How much money did you collect from traffic fines in this fiscal year? How much of that money was remitted to the state? How much of it was a result of court fees? How much were administrative assessment fees? These are things that you would think you would be able to process, but a lot of courts said they were unable to figure this out due to software limitations.

I do not feel comfortable that we got great information, but it is my belief, based on the information we did receive, that in excess of $20 million or $25 million annually did not go to the State Permanent School Fund. In the budgets that we have, that is not a huge number in an absolute sense, but keep in mind that that is money that stays in the State Permanent School Fund—it does not get spent, but the interest from that goes to our schools. Obviously it is important to us to make sure that, on the state level, we are getting every single dollar we can get. I am comfortable saying I think it is around that amount, and that is just for the last couple of fiscal years. Keep in mind, this practice has been happening for years and our interim committee was not the first one to study this. There was a study done in 1999. It was chaired by former Assemblyman Bernie Anderson, and former Assemblywoman Barbara Buckley was on that committee. I think this is the first time we actually have legislation that attempts to deal with this in an equitable fashion.

Assemblywoman Nguyen:
Who did you envision would administer these funds that would be redirected to or essentially be reinvested into the specialty courts?

Assemblyman Yeager:
We essentially earmarked it for the Administrative Office of the Courts' (AOC) Specialty Court fund. They are the agency right now that essentially collects all the specialty court monies and they have a process in which they divvy that out to the jurisdictions and to the different specialty courts. There is a formula they use to figure that out based on population and they give that money directly to the specialty court. Any county or court in the state that has a specialty court would be eligible to collect that money and to use it, and the benefit is that if you do not have a specialty court yet, you could potentially get funding to start one. In some of our more frontier areas that do not have these courts yet, there would be a mechanism for them to hopefully start one of these courts.

Assemblywoman Nguyen:
I know that is just a part of the monies that are collected that would be redistributed or redirected towards that reinvestment in our own communities, but do you have any idea, conservatively, what type of funds we are talking about annually that might be redistributed to the specialty courts?

Assemblyman Yeager:
So everyone knows, this is section 8 of the bill where somebody can essentially buy their way out of a traffic school and get a reduction. Right now the amount that seems to be customary is about $100 in addition to whatever your normal fees and fines are. I believe, based on what I have seen, and it is a conservative estimate, that fee would probably generate somewhere in the neighborhood of between $10 million and $25 million a year for our specialty courts.

Assemblywoman Hansen:
I really do like the idea of channeling those fees to the specialty courts. With some of these jurisdictions that lie in my district going from here to Las Vegas, I had that same issue where the fines can be pretty hefty. But I am also sympathetic because they depend on some of these revenues for their jurisdictions. I know we are doing a little bit of a dance, and of course, the *Constitution* is preeminent in my mind. Going to Assemblywoman Peters' concern about data systems, perhaps there could be an amendment that, if we let them keep the fines, they have to develop data systems in their rural jurisdictions so that we can gather data. I am saying that in jest but also seriously; maybe they need to keep some funds so that they can prioritize being able to have data systems.

Assemblyman Yeager:
Great point, Assemblywoman Hansen. I will note right now there is one administrative assessment fee, and I think it is $10; any local jurisdiction can charge a $10 premium and that goes into a designated fund that they can use for court upgrades. That is available now, and I know for some of our rural jurisdictions that is crucial for them to be able to have funding to upgrade their facilities, to remodel, et cetera. I think your point is well-taken. I think there is potentially some kind of workaround we can have where perhaps some of this money does go to that specific purpose of information technology and data systems. As you all know, it is extraordinarily expensive, and I guess we can blame the people in these chairs 20 years ago for not thinking about where we would be today. I am open to that and I just note that we have to specifically say that, because if we do not put it in a specific fund and the county or the city collects the money, they remit it the county or the city. Then they have to go through the process of trying to get it back in the budgeting process.

We, as a Legislature, can do that. I certainly would be open, in section 8 of the bill with the $100 premium to get out of traffic school, to earmarking a portion of that to go back into technology infrastructure and upgrades. I appreciate the suggestion.

Assemblywoman Tolles:
I actually had the same question as Assemblywoman Hansen along those same lines that I absolutely appreciate. I always feel like when we talk about education funding, there is a hole in the bucket. We have all this money that tends to shift around and does not go where it is intended to go. I appreciate that we are trying to recoup what was meant to go to the State Permanent School Fund, as it would have a positive impact for schools, but I just want to hear a little bit more about what the impact would be when that $20 million to $25 million is going to schools. What is the impact on the local jurisdictions?

Assemblyman Yeager:
It is hard to say. I think you will hear from some of the local jurisdictions this morning. I do not want to give the impression that it is every court in the state, it is not—I do not want to impute any bad faith, I think folks are trying to do their jobs—but sometimes practices develop that are probably contrary to the *Constitution* and statute. In my mind, particularly regarding the fines and fees associated with no driver's license and no registration—those infractions and speeding by and large make up the biggest number of minor traffic infractions we have in the state—this is money that was always supposed to go to the state and, through local practice, has been deprived of the state. I think there will be a fiscal impact on the local governments, but at the same time, we are the stewards of the state and every dollar we can send into the classroom is significant. Perhaps some of that money does indirectly get back to the schools through the local governments, but it is not going where it should go. The State Permanent School Fund does not have money drawn out of it. The bigger that fund grows—and it has been growing since the *Constitution* was enacted—the more money we have in that, the more interest that is going to be generated and there is a compounding effect over time.

That being said, I am sensitive to the fact that, as you and Assemblywoman Hansen mentioned, there is a real fiscal impact to this and I think we are still trying to work our way through some of that. One of my hopes is that through this bill and some of the other bills we are hearing, if we streamline this process and we make our courts more user-friendly, I actually believe collections are going to increase from people who are able to pay but have problems accommodating their schedule to match the court's schedule. My hope is that we will come out even but I cannot say that for sure at this point.

Assemblyman Edwards:
I really like the idea of having a grace period if you miss a court date before a warrant is put out there, especially for an infraction like this. I would, however, propose that the days be at least 30 days because if you have to show up in court, the courts are already overworked so they might not be able to schedule you, frankly. In that case, I think we should maybe say that the courts have to automatically extend the deadline 60 days for a maximum of 120 days, or something of that nature, just so that we do not put an unworkable requirement on either party. Also, what about having some sort of annual amnesty where people—if for whatever reason, did not make it, screwed it up, or did not get it right—actually have one last shot at fixing things without having to go to jail for it?

Assemblyman Yeager:
I appreciate the suggestion, particularly on the warrant grace period. I think that is something we can work on. Initially I thought 7 days and then went to 14 days, but you are right; especially in our busy urban jurisdictions, it is pretty difficult to get back on calendar. I am certainly open to that suggestion of more days. I think the suggestion of an amnesty day is a good one and perhaps some of the local governments can talk about that. I think some of them do that already, but I do not know if that is through the courts or through the prosecutors. I know the Clark County Public Defender's Office is doing a warrant-quashing day in early May on a Saturday. I do not think that has ever been done before, so I am looking forward to going to the courthouse to see exactly how that functions. There are some programs in place: the Veterans Stand Down, for instance, will quash warrants. I am hopeful that we can do that. I do not want to put too much of a burden on the court, but I think working with some of our community partners, some of these programs that are happening could be expanded. It is a lot easier for someone to get somewhere on a Saturday morning to take care of a warrant than it is to have to show up on a random Tuesday at 8:30 a.m. or 2 p.m.

Assemblyman Edwards:
And maybe the other aspect is to actually have certain judges work on a weekend or two, even if we had to expand the number of judges to do that, which I, frankly, would support.

Assemblyman Roberts:
I was trying to look for a definition of "petty misdemeanor" in the bill and it does not really define it there. I went to *Nevada Revised Statutes* (NRS) Chapter 193 which defines criminal misdemeanors and gross misdemeanors. Is a petty misdemeanor a civil infraction or is it a criminal violation?

Assemblyman Yeager:
Right now petty misdemeanor does not exist. This bill actually creates a new class of offenses called petty misdemeanor. It would, in this bill, still be a criminal infraction. The only difference is, you cannot be jailed for it. The next bill will talk about civil; but this bill would be enacted essentially if we are not able to transition to a civil system. It is kind of a backup. It would be criminal, but you are not looking at jail time.

Assemblyman Roberts:
If this goes and the other one does not, would it be defined in NRS Chapter 193? I just know that when we teach our cops, we pull definitions right out of the statutes and they have to recite it a thousand times before they can graduate.

Assemblyman Yeager:
Other states have classes of misdemeanors and we have that with felonies, of course. I think the intent was to just set up for one to be called a misdemeanor and one a petty misdemeanor. I am not wed to that terminology. I think if it makes more sense to call one a class 1 or a class A or class B, I would be happy to look at that as well. Maybe you could have some

input whether that would be easier in the field—to do that instead of create a separate, new thing called a "petty misdemeanor."

Assemblyman Roberts:
Maybe even keep "petty misdemeanor" as the term, and then if you make it a civil infraction, just define that in the statutes and leave it that way. Just a suggestion.

Assemblyman Daly:
Thank you for the explanation. When I read through this, most of my questions were related to the next bill so I am hoping we will see how those two mesh together. The one thing that I thought was interesting and wanted to follow up on is the reduction to a non-moving violation if you pay before the court appearance. I was just curious if you had heard from or been contacted by anybody in the insurance industry. I know that is how they do a lot of ratings; they check your moving violations and various things. I do not want to raise a red flag. Then how does that work on the other side with the other bill, which I am hoping you will explain when that bill comes up. I did not see the same reducing it to a non-moving violation in Assembly Bill 411.

Assemblyman Yeager:
The genesis of that provision is to align policy with practice. Right now, if I am speeding on Interstate 215 in South Summerlin and I get a ticket, the ticket tells me when I have to go to court. Before I go to court, I can go to the website and decide how I want to proceed. One of my options on the website is to just pay in full; pay the whole amount because I do not want to be bothered by going to court. The interesting part is if I do that, that actually is a conviction for speeding and it gets reported to the DMV as a conviction for speeding, and however fast you are going is how many points you will be assessed. Meanwhile, at the same time, when I am on the website I have two other options: I would like it to be reduced to a parking ticket so I will pay all the fines and I will go to traffic school. If I do that, then it gets reduced down to a non-moving violation and that, of course, does not get reported to the DMV. The third option, which is section 8 of this bill, is I want a reduction but I do not want to go to traffic school, so I will pay extra money not to go to traffic school. When I do that, I get the reduction as well.

I guess when you look at that, it seems like the first scenario of someone going online, paying the whole amount, and not taking up the court's time—that is the kind of practice we want to encourage. That person does not get a reduction and I will tell you, that surprises people. I had a call from an attorney in Louisiana who read an article about our interim committee and he said, Hey, I got a speeding ticket and just went online and paid it. Is that on my record now? I said, Yes, it is on your record now. He had some concerns about whether he had to report that to the Louisiana State Bar Association because it is a criminal conviction. I had a conversation with him about that and I said, Next time, do not do that. Contact an attorney because the truth is, even if you do not want to pay the whole amount, if you hire an attorney to go to court for you, they are going to get that same negotiation where you get a reduction. When I was thinking about this, it seems like we want to encourage

people to be responsible right up front as quickly as possible, if they do that, we ought to give them a reduction.

To answer your second question, I have not heard from insurance companies on it. I will say that this is current practice really, absent the one example from Louisiana. Most people are getting speeding tickets reduced to non-moving violations already. I will note that there are some inconsistencies between these two bills that I think probably need to be put in alignment. As I worked through some of these bills over the last couple of days, I realized that as well. This bill as well as the next bill are both works in progress at the moment.

Vice Chairwoman Cohen:
I have a question about the determination of indigency. Section 1, subsection 2, has a person who has a household income that is less than 200 percent of the federally designated level signifying poverty. I was thinking about families who maybe are at 300 percent but there are five people in the family as opposed to that one person who is at 200 percent but is the only person in the family. Was there any consideration given to the size of the family?

Assemblyman Yeager:
What I do not know at the moment is whether the level set by the federal government takes into account family size or not. It looks like Assemblywoman Peters is nodding her head that perhaps they do take into account family size. I think that would address that potential concern, but I can certainly look at that. I want to also point out that this is definitely how you prove that you are indigent, if you qualify under one of these provisions. Even if you do not fit under this, a judge does not have to incarcerate you. A judge can find mitigating circumstances. What I liked about this section is that we simply had no definition of indigency in the law. It was just whatever the practice was in court. Your concern is well-taken and I will get a handle on exactly how the federal government defines poverty.

Vice Chairwoman Cohen:
Do we have any other questions from Committee members? [There were none.] I will open it to testimony in support of A.B. 434. [There was none.] I will open it up to testimony in opposition to A.B. 434.

Mike Cathcart, Business Operations Manager, City of Henderson:
We are supportive of the policy goals of where A.B. 434 is going, however, we are opposed to section 9. We would like to have a little more conversation about that. I believe that we need to get our court administrator and really take a look at our fees and see how they are being processed. I can see one of the issues that could become complicated by that section is you may have one of the fines that goes directly to the state, but it may be rolled up into fines that are going to the city as well in the same infraction. We need to take a look at our systems, sit down with Assemblyman Yeager, and see if we can talk through how section 9 will work in the future. I look forward to doing that.

Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
The only section we have concern with is section 28, subsection 4, regarding speeding. What this sets up here is it eliminates the progressive penalties for multiple speeding offenses. It opens up for allowing driving privileges if you continue to speed, but then have it reduced every time by codifying in law. The big problem we have in this state is that many of our accidents are due to speed, so there is no deterrence there.

Dylan Shaver, Director of Policy, City of Reno:
I live on a street called Skyline Boulevard which is a predominantly residential street, but we also have a firehouse on the street which means that the speed limit has to be 35 miles per hour (mph) and there cannot be speed controls. As I am sure you know, 35 mph does not mean 35 mph, it means much, much more. Under this bill, we have basically commoditized speeding. If you charge somebody $10 per mile over the speed limit to drive up and down this residential street, they can go 60 mph for a $250 fine and, given the provisions of the bill, zero points on their license.

As a city, we retain the right under NRS Chapter 266 and NRS Chapter 268 to do things to guarantee the health, safety, and welfare of our citizens. I do not believe it was Assemblyman Yeager's intent, but we view enacting these measures in tandem as a serious infraction into that authority. We want to keep our streets safe and we want to make sure that the habitual speeders get the points on their license that, frankly, they should get. At the end of the day, that is how we find these people. They are getting fined time and time again for infractions like this, and eventually they lose their privilege to drive. By not reporting these infractions to the DMV, you have taken away that enforcement mechanism.

Outside of that, the overarching ideological goals of the bill are goals we support. It is going to be a long road to get there, and we look forward to working with Assemblyman Yeager and members of the Committee, but we just want to illustrate that there are serious challenges on our roads. I told one of you just the other day that we live in a world where we literally have to post signs to remind people to look up from their cell phones when they are crossing the street into a crowded roadway. As a municipality, we want as many tools as we have at our disposal to make sure we can keep those people safe.

Graham Lambert, Private Citizen, Henderson, Nevada:
We oppose just a small portion of this bill and perhaps A.B. 411 will make this point a non-issue. As a medical student at Touro University Nevada, what happens is we apply for residency after medical school, and when we submit that application we have to state any criminal activity. As it stands currently and as this bill proposes, any moving traffic violation such as a speeding ticket could, in fact, become one of these types of actions that will have to be reported and could potentially hinder someone's ability to get into a residency. The reason this is important and specific for Nevada is it will help level the playing field. If you are unaware, all of the surrounding states consider simple moving traffic violations as just civil infractions, meaning that when students from those states apply for residency, they do not have to cite speeding tickets as criminal activity. The states surrounding us that do consider

speeding tickets as civil infractions are California, Arizona, Utah, Idaho, Oregon, and Washington. Again, we are proponents of A.B. 411 simply for the fact that it will help level the playing field, and if A.B. 411 goes through, again, this would be a non-issue for us. This is the only reason we are in opposition to A.B. 434, again just because the fact that changing it to a petty misdemeanor still means that it is criminal activity that will have to be reported when applying for residencies.

Amanda Hertzler, Private Citizen, Henderson, Nevada:
I am speaking on behalf of the osteopathic medical students at Touro University Nevada as the student government president. Respectfully, we are also in opposition to this bill. Like my colleague said, it is simply because this is taking a speeding violation down to a petty misdemeanor. Regardless of the fact that it is now just a petty misdemeanor with this bill, as residents and people who are applying to residencies, we would still need to report that on our residency application. It is simply for that reason that we are in opposition to this bill.

Vice Chairwoman Cohen:
Especially for me, it is always gratifying to see students from Touro University Nevada in beautiful Assembly District No. 29 visiting us at the Legislature and participating in the process.

Jennifer P. Noble, Chief Appellate Deputy, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
We have two concerns with this bill. The first is the creation of a "petty misdemeanor." In general, we do not oppose making these civil infractions like the next bill will do, but we do not want to create a new class of misdemeanor. I think if this is a bill that goes through, we could perhaps craft language where we just apply different punishments under the misdemeanor scheme for different offenses.

Our more primary concern is that expressed by Mr. O'Callaghan, and that is that speeding is a public safety concern. Yes, people do get reductions on their speeding tickets. I have spent more time litigating speeding tickets than I ever want to remember. We certainly do try to resolve those. In Washoe County, you do not automatically get a non-moving violation if you are going 30 mph over the speed limit. Our primary concern here is if we have somebody who is routinely egregiously speeding in areas, that should be reflected on their driver's license. Wealthier people should not be able to pay their way—a tax for speeding—and then go on their way continuing to endanger the public. That is our primary concern and our opposition.

Shirle T. Eiting, Chief Assistant City Attorney, City of Sparks:
We are in opposition to this bill and agree with the other concerns that have been raised by the other jurisdictions. We look forward to working with the sponsor to resolve the contradictions between A.B. 434 and A.B. 411.

Vice Chairwoman Cohen:
Do we have any other testimony in opposition to A.B. 434? [There was none.] I will open it up to neutral testimony on A.B. 434.

Lisa A. Gianoli, representing Washoe County:
I just want to get on the record—and I know that the sponsor is willing to work with us—we have some confusion with some of the language and it does probably, in some cases, change the fee structure as far as where the dollars are going to go. For us, it means money going to the state, which in some cases might be appropriate, but we just want to get on the record that that does change our funding piece. We do, as a county, fund the bulk of the justice courts. The fees do pay a portion of it, but I think in our case, the two are lumped together now with regard to A.B. 434 and A.B. 411. We do want to get on the record that we want to work on those things and make sure that we take into account all those issues that will change that funding mechanism for us.

Melissa A. Saragosa, Judge, Las Vegas Justice Court:
On behalf of our court, we are neutral on the bill. We do have some questions and concerns about a few areas and I look forward to working with Assemblyman Yeager to work through some of those issues. I do agree with Assemblywoman Peters with regard to the federal poverty guideline. I deal with that guideline quite often in our court, and it does distinguish by number of individuals in the family.

The one area that I had the largest concern with was section 8. With respect to the funds that are here, my court is a court that has a process in place currently that will allow an individual to pay a higher fee, something that is more costly than a driver school program—in fact, almost double what the driver's education program costs—in order to reduce those points and not have to attend the traffic school. This particular bill contemplates that, in lieu of that money currently going to the court that collects it, it would go to the AOC for the specialty court fund. While I have no issue with those dollars being spent in that fashion, the one thing I noted was in my particular court, we have a large number of specialty courts—two DUI courts, a drug court, a veterans treatment court program, a community impact center—and we put all of the money that comes in through that into our court education fund. It is a slightly different fund than the specialty court fund, but for us, the court education fund does fund locally all of our specialty courts. It funds a number of staff positions right now that are not covered through the AOC. We are only able to offer these specialty court programs because we have those funds. Our court coordinators who run our specialty courts are funded out of this. I am not opposed to the position that it does this, but I am hopeful that we might be able to work something out so that we can use the money in the exact same way that this anticipates but not having it filtered back up through the AOC in hopes that we will get a fraction of it back, because it would require some additional funding for our current staff.

In section 28, the area of the bill that talks about if an individual wants to avoid court altogether, they may pay the full amount of the fine ahead of time. The one thing I wanted to clarify was that that was the full fine plus all of the administrative assessment fees that go

along with it, not just the fine portion of it. I will save my other comments for a further discussion when we can work out the details of the bill.

[(Exhibit D) was submitted on behalf of the Nevada Judges of Limited Jurisdiction.]

Vice Chairwoman Cohen:
Do we have any other neutral testimony on A.B. 434? [There was none.] I will invite Assemblyman Yeager back to the table for concluding remarks.

Assemblyman Yeager:
I heard what I believe are some very legitimate concerns from the opposition and neutral testimony. I think we can work through some of those. I am certainly not trying to give serial speeders who act in dangerous ways breaks that they do not deserve. But I think we can potentially tighten up that area. Although I will say, I believe in Clark County, there are serial speeders who are routinely getting traffic tickets over and over again. It happens all the time, which does not mean it is right, so we can try to address that. I think we are in agreement as to where we are trying to go. Maybe we have some disagreement about how best to get there, but the number-one priority for me is making sure that every dollar that is supposed to go into the State Permanent School Fund is going into that fund. I think everyone wants to do that as well. Thank you for hearing A.B. 434. I will continue to work on it, and I urge your support.

Vice Chairwoman Cohen:
I will close the hearing on A.B. 434. I will now open the hearing on Assembly Bill 411, which provides for civil penalties for certain traffic and related violations.

Assembly Bill 411: Provides for civil penalties for certain traffic and related violations. (BDR 43-426)

Assemblyman Steve Yeager, Assembly District No. 9:
It is my honor to present Assembly Bill 411 this morning. This is the big one that we all have been waiting for that seeks to change our system for minor traffic infractions from criminal to civil. I am not going to go over all of the history of where we have been to get here. You have all heard multiple times about the interim committee that met. I did want to tell the Committee that there was an effort to do just this in the 2013 Session, which did not really go anywhere. There was also an effort to do this in the 2015 Session and it, again, did not go anywhere. In the 2017 Session, we established the interim committee to study it because as you know, it is a more complicated issue than you might first believe it to be.

This is the legislation that finally comes out of what I believe is six or seven years in the making of trying to figure out how to join many of the states around us, including all of our neighboring states, who treat minor traffic infractions as civil offenses rather than criminal.

As you heard in the last bill and I am sure you will hear in this bill, there are implications for Nevada citizens who at times have to report criminal traffic infractions on applications, so

this is an equity issue where we want to put Nevada citizens on par with our neighboring citizens. The majority of states have transitioned to a system like this. We are not breaking new ground; in fact, we are behind the curve.

The main goal of this bill is to make sure that we are not arresting and incarcerating people for committing minor traffic infractions, especially when those people do not have the means to pay the tickets. Consider for a moment, even though we say that they are criminal traffic infractions, we do not treat them as if they are criminal traffic infractions. We do not give them proper due process in the system we have now. For instance, if you get a speeding ticket and you do not go to court, all of the fines, fees, and additional fees for not coming to court are assessed against you and then all of those are sent to a collection agency which then tries to collect the money from you. Keep in mind, no one has adjudicated you as guilty of the offense that you are charged with. We have a system right now that I think is of dubious constitutionality. If we are going to say they are criminal, we need to treat them like they are criminal. If they are not, then we need to stop saying that they are criminal because the process we have now is not working. Transitioning to a civil system will help those issues.

I understand that this is a really long bill and it is pretty involved. Part of that is because our traffic laws are probably unnecessarily complicated in statute. Essentially what this bill tries to do is to create a civil system where, if you miss court, a default judgment would be entered against you—not a criminal judgment, but a default civil judgment—just like in any another civil case that might proceed. If you do not come to court and state your case as a defendant, the court simply orders a default judgment against you. At that point, the local government—whether it be the city, county, or sometimes the state—would be able to collect on that default judgment just like anyone can collect on a default judgment that exists in the civil world. This bill indicates that a default judgment expires after ten years. Essentially, if they cannot collect or find you after ten years, it is just going to be written off the books because that is essentially what is happening now anyway.

In this circumstance, if the court issues a default judgment and the defendant against whom that judgment is issued is not indigent, meaning you have the funds to pay—but you are intentionally not paying or making good on your obligation—the court can garnish wages, suspend your driver's license, or hold you in contempt of court, including potentially imposing jail time. But we are putting protections in this bill that those mechanisms only apply if you have the means to pay and you are willfully choosing not to pay. The structure of that is set up in section 36 of the bill.

Please allow me to take you through the bill as succinctly as possible, then take questions. Again, as you noted from some of the testimony, this is a work in progress. If A.B. 411 were to be enacted, I do not believe we would need Assembly Bill 434 that we just heard. Assembly Bill 434 is essentially a bill that would only apply if we were not able to enact A.B. 411. Assembly Bill 411 changes the structure we have dramatically.

Under this bill, the more serious traffic infractions will remain criminal misdemeanors—things such as reckless driving, DUI, vehicular manslaughter, and drag racing—so I do not

want to give the impression that we are moving everything to a civil system. It is indeed the minor traffic infractions. Our traffic laws are fascinating when you start looking at some of the things that we criminalize. Some of those we have talked about that would be considered civil infractions are: basic speeding in section 22; driving without a license in section 15; having a passenger in the bed of a pickup truck in section 46; and failure to move over to the right if there are five cars behind you on a one-lane road and you are driving too slow in section 57—that is a criminal infraction right now. I know all of you experience that driving from Las Vegas to Carson City. So, five cars behind you is the period where you are obligated to pull over if you can safely do so and let those cars pass you. That would be a civil infraction, but right now it is a criminal misdemeanor.

Some others—infractions dealing with bicycles and lighting in section 59; length limitations in section 65; certain permit violations to transport equipment in section 67—are all criminal infractions under our existing laws. Under this bill, they would become civil infractions.

Sections 9, 11, and 12 make clear that civil infractions still count as infractions on your driving record. This goes to the question that Assemblyman Daly asked on the last bill. Even the civil infraction would still be reported to the Department of Motor Vehicles (DMV) and you would still acquire whatever points correspond with that citation. In terms of insurance companies being able to assess whether you are a good driver or not, this bill would not change that.

Sections 23 through 26 actually talk about the procedure of how these cases would be processed in court. Section 24 provides what the notice of civil infraction would be, what it would look like in terms of what you would be handed in the field by a peace officer. Section 26 makes clear that a police officer can still stop you if they think you are committing a civil infraction and they can detain you for a reasonable amount of time to investigate. I do not want to give the impression that you are going to be able to do whatever you want and the police are not going to be able to stop you. That is not the case; that is not going to change at all. If they look in your car and see evidence of criminal activity, they are going to be able use that against you. It is just not going to be criminal, it will be civil.

Section 30 basically says that if you are faced with one of these civil infractions, you have three options. The first option is to just pay the fine and be done with it, as we talked about earlier. The second option would be, I want to contest it; I did not actually commit this infraction. The third option would be, Yeah, I did it, but I want to explain why and provide some mitigating circumstances to try to get a reduction in penalty.

Sections 31 through 33 describe what such a hearing would look like in court. It is going to look a little different than it does now. First of all, the *Nevada Rules of Civil Procedure* would not apply so we are not going to have written discovery, depositions, or any of those things that you would see in a typical civil case. The defendant does not have to hire an attorney but he can. The city or county prosecutor can participate in a trial if it happens, but they are not obligated to be there. It is completely at their election. The burden of proof is a preponderance of the evidence. This is a big difference. Right now, under criminal, it is

proof beyond a reasonable doubt that you committed the infraction. Under a civil system, it would be a preponderance of the evidence which has been defined as 51 percent; once you get past that it is more likely than not. The citing officer does not have to come to court, they can simply submit a statement under oath for the judge to consider. The judge can consider the citation itself. Any party can subpoena a witness, so if the defendant said, No, I want the officer there, or, I have an eyewitness, that person can be subpoenaed. A prosecutor can do that as well. Then, if you lose, you can appeal as you can under any civil case right now in justice or municipal court. That would be what the hearing looks like if you are going to fight it all the way to the end.

A mitigation hearing—meaning, I did it but want to explain why—would be less formal. There would be no ability to subpoena. Basically, the offender would show up in court and explain to the judge the mitigating factors for the judge to take into consideration when assessing a penalty and there would be no appeal.

Section 34 basically says that unless a greater penalty is provided under the law, the penalty amount for a civil infraction will be $250. There are infractions that have greater penalties; for instance, not having insurance or speeding over a certain amount carry greater penalties. What we are trying to do here is finally, much like the last bill we looked at, have a uniform system of what your citation is going to be so that if you get a civil infraction in Las Vegas, Reno, Goldfield or Elko, it is $250 and you will know that upfront. No longer would your fine be $1,000 in one place and $100 in another.

Much like we talked about with respect to A.B. 434, if the civil infraction is a state offense, it would go to the State Permanent School Fund. Let me be clear about this because there was a question as to whether local governments could actually enact civil infractions in their own codes like they have now with criminal. The answer is yes. Nothing would prevent a local government from adopting their own civil infraction codes and keeping the funds if it is a violation of a city or county code. A city or county would not be able to classify these as criminal, because the state is saying they are civil, but it would be much the same system as we have now where we have state offenses and local offenses. The local governments would be able to do that and would continue to be able to collect their funds. Hopefully that should relieve any concerns that every single dollar from every single infraction is going to go to the state rather than the local government, as that is not the intent.

Section 34 also continues the system of administrative assessment fees as they now exist. As we talked about and Judge Saragosa mentioned on the last bill, there are these administrative assessment fees that are in statute. I am not looking to get rid of those. They are important in funding various things in our state including courts, victim services, domestic violence services, and others. However, this bill would allow a judge to find extenuating circumstances and waive or reduce those civil penalties.

There are certain infractions now in our statute where we, as a Legislature, have told the judge they are not allowed to reduce fines, period. They are not allowed to reduce them at all, no matter what the circumstances. This bill would give some flexibility there. We want

to depend on our judges to make the right analysis and frankly, I have seen some cases where it is so abundantly clear that the offender is never going to be in a position to pay the fine. A fine of $1,000 may not sound like a lot, but for some people that is a lot of money. Sometimes these cases are open for four, five, or six years and people are coming in making $5 payments, and it allows a judge at some point to assess that and ask, What are we doing throwing good money after bad? This would allow a judge to reduce or waive the penalties as well as set up payment plans.

Section 80 would require that any existing warrant for a failure to appear in court would be cancelled. If you have something out there right now that we are now saying is going to be a civil traffic infraction and you have a warrant for it because you did not go to court, if we enact this bill, those warrants are going to be cancelled and removed from the Central Repository for Nevada Records of Criminal History system. I think that is the right thing to do if somebody has one of these infractions and has not been to court yet and now, as a Legislature, we are saying this is a civil infraction, no longer criminal. I think cancellation of those warrants is the right thing to do, so that would be retroactive. If you have already entered a plea, you have already been found guilty, or you are already making payments, we are not cancelling that because we cannot as a Legislature.

Finally, this bill would be effective on October 1, 2019, so that would be the date that we transition from criminal to civil. Again, there is a lot of history behind this bill. There is a lot of information I could give you about practices going on in courts, but I do not want to overwhelm you. But I am happy to answer any questions about how the bill would work. I am happy to answer any questions about the interim committee or answer any questions any of you have about A.B. 411.

Assemblyman Daly:
You touched on a couple of questions that I have. The first is more rhetorical. In section 51 [subsection 4], there is going to be an increased penalty for going more than 20 miles over the speed limit. Who wanted that?

Assemblyman Yeager:
I have to be honest, the work that we did on the interim committee seems like a very long time ago at this point in the session, but I think one of the things we were concerned about was wanting to go civil but we also wanted to—much in response to Mr. Shaver's concerns from the City of Reno—make a distinction between those who maybe just were not paying attention and going five or ten miles over the speed limit versus those who really are causing a risk. We put that in there to indicate that if you are going more than 20 mph over the speed limit, the fine is going to be doubled. Hopefully that will address some of the concerns we heard earlier from some of the local governments.

Assemblyman Daly:
You did touch on the penalties being $250, but I think I read $250 up to $500. Is that what you are talking about where it doubles? It sounded to me like there was a range, but maybe I read it incorrectly. Then my question is, how is that range going to be set? Is it not a

sliding scale, is it a set amount, or is it doubled for certain infractions? because it does say in certain circumstances.

Assemblyman Yeager:
I think you are looking at section 34, subsection 1, which indicates that it would be $250 per violation unless a greater penalty is authorized by statute. There would not be a range in the actual penalty, but I think the language you are referring to is in section 36, subsection 1, paragraphs (a) and (b). Those are amounts in terms of collection fees. Basically if you do not pay, the court can assess a collection fee on you and the ranges there are based on the amount of the underlying fine. It is a little confusing in the way it is set up, but it is current law. That is what happens right now when someone has a criminal infraction and does not pay—there is a collection fee. There is a range that can be assessed by the court. I wanted to keep those intact because I understand the court is going to have to make efforts to collect and they are going to need to pay collection agencies to do that kind of work.

Assemblyman Daly:
You said people can issue subpoenas. How does a regular person issue a subpoena? Do you have to get a lawyer? I could just write it on tissue paper and send it in. I do not know how that works, so could you explain that process? Right now it is criminal and with beyond a reasonable doubt burden of proof, and this lowers it to a preponderance of the evidence, which you explained as well. I am not so concerned with that. What I have found is it may be beyond reasonable doubt but it is preponderance, as the cop has never been wrong in my experience.

Assemblyman Yeager:
I think you are right. I think aligning this to a civil standard makes more sense and probably aligns with what is practiced anyway. Sort of the trade-off there was if we are going to say you cannot be arrested or incarcerated, we probably do not need a higher standard. To get back to your question about subpoenas, that is a really good question. I do not know the answer to that yet. One of the courts may be able to weigh in. Attorneys have the ability right now to issue subpoenas in criminal cases. Civil is a little bit more interesting so I think that is a wrinkle we are going to have to work out—that if you have someone who does not have an attorney and wants to issue a subpoena, what is the process going to be? I do not think they can just come up with one themselves, and then, of course, they would have to serve the subpoena. That is an area we are going to have to continue to look at, how to make that work in the real world.

The other point I will make on that is, even now with criminal infractions, so very few of these actually go to trial. Some of the statistics we received in the interim committee showed some jurisdictions had 10 or 15 total for the whole year that actually went to trial on criminal traffic infractions. I do not anticipate that there will be a huge workload increase, but we do have those situations where individuals may want to subpoena, so we will have to figure out how that is going to be done in a way that works for everybody.

Assemblywoman Tolles:
I have certainly received a number of emails from constituents who are very interested in this legislation. Under section 17, just by way of example, as I read the existing statute [NRS 483.575(1)], it reads: "A person with epilepsy shall not operate a motor vehicle if that person has been informed by a physician . . . that his or her condition would severely impair his or her ability to safely operate a motor vehicle." Reading through this, it seemed like a good example to be able to better understand that the current statute would say that person is banned altogether because a physician has deemed that they are unsafe, which is a public safety issue on our roads. As I read it now, this change would remove that ban, which is there to protect public safety, and make it just a misdemeanor. Am I misreading that or was that the intention?

Assemblyman Yeager:
Here was the difficulty: in existing law right now there are a lot of things you are told you cannot or shall not do. Those are misdemeanors even though our statute does not say that. If you were told you shall not do something and you do it, it is a misdemeanor. Existing section 17, the way the law is now, it says "shall not," but if you do it, it is a misdemeanor. The way that this bill was constructed and why it is so incredibly confusing is that, essentially, the bill looks at all of the different things under minor traffic infractions that right now would be misdemeanors and there are four or five different chapters with hundreds of subchapters. What this bill does is say all of these things are now civil infractions unless we say they are not. There are things that are pulled out of there and are now being called misdemeanors to make it abundantly clear that they are no longer civil infractions. The intent of section 17 is not to change one iota what the law is right now, but I think it was a drafting choice to say it is a misdemeanor. I think we could also leave "shall not" in there but indicate that it is a misdemeanor so it actually is clarifying that we are not intending to downgrade the penalty for violating section 17.

That is how most of the bill reads. When you read through the bill, there are a lot of items that are designated now as misdemeanors. What that means is they already were misdemeanors, but now we have to specify since we are creating a system of civil infractions. That is why the bill is really hard to read and to get a handle on what is happening. Hopefully that answers the question, and I think if you are more comfortable keeping the "shall not" in there and also specifying a misdemeanor, we could easily accomplish that.

Assemblywoman Tolles:
Thank you for that explanation. I did just pick that one example because I did see, as you stated, that it was repeated over and over again for a number of infractions that are currently "banned" or "shall not" under law. I do think it would be important to keep that language in there so that the intent is clear that we want to keep public safety first. Along those lines, you spoke to how much this does impact, and I do not know if, in the course of your study, there was ever a chart—which might be too much to ask in this short period of time. But as I was reading this and wrapping my head around what exactly we are changing from current statute, what exactly we are swapping out toward civil, it would be nice to have that in some

sort of comparative chart so that it is clear, because it is quite a lengthy bill. There is some room for misinterpretation of what we are doing in regards to public safety versus appropriate penalties.

Assemblyman Yeager:
I do not think a chart like that exists right now. I can certainly ask for help in making that happen. It is a little tedious, but I think it would be helpful. Just to give you an idea, this bill is one of the few drafts that I sent back a couple of times to legal and I am sure they were not pleased by that because it was a very long draft. I tried very carefully to look at items that I thought really did impact public safety. For instance, the one you just identified, things involving school, crossing guards, school buses, and not stopping for police officers are all ones that would impact public safety. Different versions of the bill had some of those as civil infractions so I tried really hard to pull those out and make sure that we are not going to jeopardize public safety. I will do my best to get some kind of chart together that lays out exactly what it is we are talking about. The big ones in terms of volume are basic speeding and driving without a license. A lot of the other ones, quite honestly, are things that you probably never heard of and would be surprised to know are actually infractions under the law. I will try my best to get that over to you and the Committee, hopefully by early next week.

Assemblyman Edwards:
What can we do to improve the situation with those drivers who are driving slowly in the left lane? This is one of those things that everybody faces and too little is done about it. They say we do not have the manpower and so forth. I would like to propose that we increase the penalties, increase them even further if they are blocking traffic intentionally with preponderance of the evidence as it may be. In order to encourage the local communities to actually get them out of our way, actually let the local communities or the issuing agency keep the money. We need to incentivize it somehow because they are a hazard and a danger, in all seriousness, but it is also a tremendous annoyance to just about everybody on the roads. I would like to include something, and I would be more than delighted to help you to instill something into the bill so I can support it enthusiastically.

Assemblyman Yeager:
I sense some passion on this issue, Assemblyman Edwards. I think you had a piece of legislation last session that talked about this issue.

Assemblyman Edwards:
Indeed, and I am not satisfied with the results.

Assemblyman Yeager:
To your point though, one of the beauties of this bill is the local government would still be able to enact whatever local code they want that would address this issue. I think they would be able to figure out what the appropriate fine is and what to do with it. That may be a way to incentivize, because I do not know if this is necessarily a problem in all jurisdictions, but

I certainly share your frustration of being in the left lane behind somebody who is going 40 mph in a 65 mph zone.

Assemblyman Edwards:
I feel your pain.

Vice Chairwoman Cohen:
I love to see bipartisan bonding.

Assemblyman Roberts:
In sections 24 through 29, we get into the nuts and bolts of how this bill works. In the first few sections, it talks about what the police officers do in the field as far as ticket books and things of that nature. I do not want you to get bogged down with a fiscal note at some point, because that will be an issue from the physical ticket books to the Brazos Electronic Citation books. I do not know what it would cost. Department of Motor Vehicles is good with fiscal notes, so I am sure they will have a good one for us. Is there a way to push the transition into the courts and not necessarily into the field versus having a completely separate system on the front end? When you looked at the other states around us, how do they do it? Maybe that is the norm, that they have two different citation books?

Assemblyman Yeager:
I think the answer is yes, there probably is a way to do it that way. I am sensitive to that concern and I have had some conversations with law enforcement about what it would be like to have two different sets of books and tickets. I think we can do that. Another option might be to have one standard one that you check civil versus criminal. I am certainly willing to work with them. I am not sure off the top of my head how other jurisdictions do it. It is somewhat complicated only in the sense that some of these are going to remain criminal misdemeanors. But we will keep working on that to try to come up with something that works and also be mindful of the regional differences in our state. I do not think everyone is on electronic citations yet in the state, but I will keep working on that. Your point is well taken.

Vice Chairwoman Cohen:
I have a question about the mitigating factors. I know that is not set in statute, but we are talking about things like, my child was in their car seat and was throwing up or throwing a tantrum and I just needed to get them home—that type of thing.

Assemblyman Yeager:
I anticipate exactly that, or I was late to something or I was not paying attention. I am sure that Ms. Noble can tell you that happens now anyway on traffic tickets when you are negotiating. You do not usually get someone who says I did not commit the act, it is usually that I should have a lesser penalty because I had something going on. I think that is what is happening now with the negotiations, but that pitch would just be made to a judge and then the judge would be able to decide whether that weighs into or potentially mitigates the amount of fine or community service given.

Assemblywoman Peters:
I am just wondering how we are going to use this change to start doing some data collection on how we handle traffic violations. We can discuss that later, but I just wanted to put that out there.

Vice Chairwoman Cohen:
Are there any other questions from Committee members? [There were none.] I will open it up to testimony in support of A.B. 411.

Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General:
The Office of the Attorney General is pleased to support this bill. I do have to say, at this point, it is qualified support. There are still some issues we are vetting though the bill and we have spoken to Assemblyman Yeager about them. We know there are some opportunities to make some amendments. But I think it was really important that our office come out and speak in support instead of neutral given the magnitude of this change in our criminal justice system. This is an important tool as part of the larger effort towards criminal justice reform, and the Attorney General's Office is pleased to put its support behind it.

Graham Lambert, Private Citizen, Henderson, Nevada:
I am a fourth-year medical student at Touro University Nevada and a military member through the Health Professionals Scholarship Program. I am also a registered voter in Nevada and I plan to return here after completing my military service. I just want to say that we are in support of this bill for the reasons as stated earlier. As Nevada law currently stands, simple moving traffic violations and parking citations are deemed misdemeanors. This puts Nevada students of the medical and other professions at a great disadvantage when compared to those surrounding states. While these offenses are currently misdemeanors in Nevada, they are civil infractions in the surrounding states of California, Arizona, Utah, Idaho, Oregon, and Washington, the significance of this being that if two medical students with a speeding ticket applying for the same residency program—one being from Nevada and another being from one of the previously mentioned states—the Nevada student would have to declare a misdemeanor and the one out of state would not, although the same actions were performed. Criminal history such as misdemeanors can be detrimental when applying for residency and I am just asking that you level the playing field for the students of Nevada by passing A.B. 411 to decrease the penalties for the activities cited therein to civil infractions as opposed to misdemeanors as it currently stands. I myself have never received any tickets for speeding or parking citations, and I have already been accepted to a residency program. This is not for myself; this is for the other students of Nevada. I am in favor of this bill, and I hope that you will vote yes on A.B. 411.

Amanda Hertzler, Private Citizen, Henderson, Nevada:
I am speaking on behalf of the osteopathic medical students at Touro University Nevada as student government president. I will not reiterate what my colleague has just said as they are all excellent points that we all agree with, which is why we are here today. What I would like to do is give you a better idea of why this is so significant for medical students, not only osteopathic medical students, but all medical students in Nevada. When we apply to

residencies as third-year medical students, everyone in the nation uses the exact same application process and the exact application. What that means is those students who got speeding violations in any of our neighboring states, when they are filling out that exact same application, they do not have to say, Yes, I have been convicted of a criminal misdemeanor. Those students in Nevada do have to answer in that fashion on the application. When residency programs are looking at this massive stack of applications, they are at this point just looking at one thing to make the list a little bit shorter. That can be one of the things they will look at and then automatically not consider that applicant because they have that check mark in the box. That is happening to Nevada students; it is not happening to other students in the nation. That really puts us at a disadvantage when we are applying to really competitive residencies. On top of that, as I am sure you all know, Nevada is in a doctor shortage. We are training wonderful doctors here in Nevada. My classmates are wonderful as are those at University of Nevada, Las Vegas. This bill will help us keep those doctors in Nevada; keep Nevada-trained doctors in Nevada so that they are just as competitive as those in our surrounding states when they are applying to the residencies here in Nevada. We are in support of this bill and hope that you are in support of this bill so that we can keep Nevada-trained doctors in Nevada and make them competitive nationally and not be those underdogs simply because we have to check that box on our application.

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:
We are in support of A.B. 411. For many people in Nevada the first step into the criminal justice system is a traffic stop. Because Nevada's traffic tickets are currently criminal violations rather than civil, something as seemingly harmless as a broken tail light or unpaid parking tickets could lead to arrest or incarceration, particularly in low-income communities. Often the fines associated with these criminal penalties are outside the economic means for many Nevadans. Still today, 40 percent of adults could not pay a $400 unexpected expense.

Assembly Bill 411 addresses this concern by creating a set fine, allowing the court to waive or reduce a fine deemed excessive, or enter into a payment plan. In addition, by making minor traffic violations civil infractions, we remove the overly harsh punitive measures and prevent the physical, emotional, and economic harm that being incarcerated can have. At least 37 states, including all of Nevada's neighbors, have already taken the step to decriminalize minor traffic violations. We believe it is time for Nevada to join them and we urge your support.

Megan Ortiz, Intern, American Civil Liberties Union of Nevada:
I would like to echo everything my colleague just said. We are always looking for ways to decriminalize certain procedures and certain infractions so that this does not echo out further into the criminal justice system where we then might encounter more problems of incarceration and several of the things that Ms. Saunders just noted that we would potentially have to deal with. I would also like to echo the sentiments of my fellow professional students in Las Vegas. As a second-year law student, we also have to put a mark in that box just for anything like a traffic ticket. If you have ever been to the University of Nevada, Reno, or the University of Nevada, Las Vegas, it is not easy to park at either one of those

spots, and oftentimes that can result in something like a traffic ticket. We urge your support of A.B. 411.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
We wholeheartedly support this measure, and thank Assemblyman Yeager for sitting through those meetings during the interim to bring this bill forward. If I could bring it down to a granular level for you, we do bench warrant quashing clinics fairly regularly in Clark County. I do not think anybody in this room, or at least most of us in this room do not live paycheck to paycheck, but when you do, a $400 traffic ticket can ruin your life. Here is what generally happens: You get that ticket and then you are scared because you cannot pay and you do not want to go to jail so you do not go to court, which is not a good decision. You should definitely go in and explain your circumstances to the judge, but people avoid it. If you do not appear, you get a bench warrant. If you are in municipal court, that bench warrant fee tacks on another $500, so now your $400 ticket is a $900 ticket. You definitely cannot pay that ticket. Then you get pulled over for another traffic offense and get arrested. Then you are in custody for two to three days. If it is municipal court where they only work Monday through Thursday and you get arrested on a Thursday, you may not see a judge until Tuesday. You have lost your job, and you lost your housing because you live paycheck to paycheck and do not have that money saved up. You could not even pay your $400 ticket so you cannot pay back that rent that you missed. Your whole life gets ruined. For some people that we have run into at these clinics, single moms in particular, their lives really get ruined because the kids are then put with either a family member or into child protective services' custody while the moms wait in jail to see a judge for a traffic ticket. That is why this measure is so important, that we stop incarcerating people.

I know there may be some opposition from the municipalities, but a couple of things on that: There are a couple of business owners on this panel. It is $170 a day to incarcerate somebody and all of us in here wind up absorbing that for that $400 traffic ticket. So when they say they are going to lose that revenue stream from some of these traffic tickets but we are incarcerating them at $170 a day, anybody who has ever run a business would look at that and say, Your math is kind of funny because we are paying more to keep that person in than we are taking in on these traffic tickets in the first place. That would not be a wise way to run a business and I do not think any business owner would do that. That being said, perhaps delaying the implementation can help these municipalities to prepare for the change and evaluate some of those circumstances. Obviously, I am not the sponsor of that, but I do want to make this the most palatable bill possible to start helping people. Instead of funding our municipality court systems on the backs of poor people, we should look for different funding mechanisms.

Assemblywoman Tolles:
I may or may not have ever received a speeding ticket, but I do not know that I was ever in fear of being sent to jail in that moment. So I just wondered if you could clarify those statements about the tie to incarceration for speeding tickets.

John Piro:
I am in the same boat. I definitely have gotten my share of speeding tickets and I will admit that on the record. But I do not live in that place where I live paycheck to paycheck anymore. For the person who does live paycheck to paycheck, he tells the judge he cannot pay, and the judge says, Sir, I will give you another 30 days—you figure out how you are going to pay for this and come back. He starts worrying about not coming back. Maybe he will go to jail. You and I, who live well, we are going to pay that ticket. He comes back again, and the judge gives him more time to pay the ticket. Then he needs to start thinking about what his next option is. If he goes to court the next time, the judge is going to put him in custody, maybe to teach him a lesson for one or two days until he pays this ticket. He is not going to go back. At least most of my clients do not go back. That is where the bench warrant adds fees and those people wind up in custody.

Alanna Bondy, representing Nevada Attorneys for Criminal Justice:
I would like to thank Assemblyman Yeager for bringing this bill. It is an important bill and has been a passion of mine since going to law school. I am going to touch on the issue that John Piro raised with incarceration arising from traffic violations and the inability to pay a fine. That practice is an unconstitutional practice called a "debtors' prison." A debtors' prison arises when individuals are imprisoned for their inability to pay a fine. The Department of Justice has previously found that the practice of automatically issuing arrest warrants for missed payments likely violates a prohibition on debtors' prisons. Other jurisdictions, such as Ferguson, Missouri, have been involved in class action lawsuits for engaging in practices that constitute the establishment of de facto debtors' prisons and these practices are similar to practices Nevada is currently engaging in. This bill would address the issue of de facto debtors' prisons, and for that reason, we are urging your support of A.B. 411.

Sylvia R. Lazos, Legislative Advocate, Nevada Immigrant Coalition:
We are comprised of Progressive Leadership Alliance of Nevada, Culinary Workers Union, Make the Road Nevada, Mi Familia Vota, the University of Nevada, Las Vegas Immigration Law Clinic, American Immigration Lawyers Association, America's Voice, Planned Parenthood, Service Employees International Union 1107, ¡Arriba! Workers Center!, UndocuNetwork, Children's Advocacy Alliance, Catholic Charities of Southern Nevada, NextGen, DREAM Big Nevada, Asian Community Development Council, America Votes, and For Nevada's Future (Exhibit E). We support A.B. 411 and want to thank Assemblyman Yeager for his hard work in bringing such a good bill together. Apart from the comments that Mr. Piro has already made regarding the compounding of fines, bench warrants, and how that hits home so hard for working families, there is also the issue of who is the person who is going to get ticketed. I will have my true confessions moment that I have speeded and I have deserved tickets, but somehow I have gotten away with not getting a ticket. What I tell my students at the law school is, if you look pretty boring, as I do, you probably are not going to get a ticket. But a young, good-looking man like Mr. Piro is probably going to get a ticket. There has been some work and studying done on this. African Americans are 20 percent more likely to get a traffic ticket and Latinos are 30 percent more likely to get a ticket. This whole issue also has racial disproportionality. We ask you to please pass this

bill because penalties should be proportionate to the offense that the driver or citizen has committed.

Dylan Lawter, Vice President, Policy and Legislation Society, William S. Boyd School of Law, University of Nevada, Las Vegas:
I have submitted a letter and petition signed by students and faculty at William S. Boyd School of Law supporting this bill to treat moving traffic violations as civil infractions rather than criminal misdemeanors (Exhibit F). When we began supporting these bill draft requests, initially we were generally focused on how law students are directly affected by the impact criminal misdemeanors can have on our bar applications. While it is true that we have the duty to report all traffic violations—whether criminal or civil—from any jurisdiction when we sit for the bar, we became concerned that misdemeanors on our record for Nevada traffic violations would be viewed more scrupulously and this could present yet another hurdle to receiving bar admission. As some of you may know, the bar exam is difficult enough, in and of itself.

As I shared this petition with other law students, several have shared with me how this has adversely affected the lives of members of our community. We have a misdemeanor clinic at the Boyd School of Law and we help those who have violated these and other current laws. Many individuals have bench warrants out for their arrest for failure to pay tickets for moving violations, and we believe this contributes to overcriminalization in the justice system and can have adverse effects on how the community views law enforcement and the justice system as a whole. These concerns are particularly important to those in lower socioeconomic groups and minorities who feel targeted by such laws; they would be pleased that justice be meted out in a civil manner and that you vote to pass this bill to change moving traffic violations from criminal misdemeanors to civil infractions.

Kimberly Estrada, Co-Director, Nevada Student Power:
We are a student-led statewide group fighting to improve the lives of marginalized students through financial literacy, policy education, and direct actions. We represent students in Reno and Las Vegas; students who also have to check that box. We fight for issues related to housing justice and racial justice among other things. I am here today as someone whose family and friends have been directly affected by the criminal justice system to share a bit about our stories regarding traffic tickets.

I have had multiple family members incarcerated for traffic tickets. That scenario that Mr. Piro went through for everyone is not an extreme case scenario; that is actually something that happens pretty frequently to a lot of people. It is just usually people who are low-income, people of color, or young people, like myself. My boyfriend has actually left Nevada in fear of being incarcerated for his traffic tickets. He moved back to southern California with his parents where, of course, we know there is not as much opportunity to get a job as there is here. I myself have traffic tickets for speeding when I was late to work. I was pulled over and the police officer gave me two tickets: one for speeding and one for having an unregistered vehicle. I was one day past the expiration date because I am living paycheck to paycheck and it is not $400 that I cannot afford, it was the $200 for that

registration fee that I cannot afford. I was just waiting for that paycheck to pay it, and because I am a child of immigrants, I did not know about temporary moving permits because my parents do not know about them. You can see how this affects certain people differently. My nephew was recently incarcerated for traffic tickets and nearly lost his job because of it. This is just adding to a cycle where we are putting people in a place where they are set up to be incarcerated. I would like to thank Assemblyman Yeager for bringing this to light, and I urge you all to support it.

Zachary Kenney-Santiwan, Volunteer, Mass Liberation Project Nevada:
I am here in support of this bill for a lot of the reasons already discussed: the disproportionate impact on low-income people and the fact that the criminalization of traffic tickets equates to the criminalization of poor people for being poor. There are a couple of other angles that I would like to emphasize here, one of which being the fact that the criminalization of traffic tickets has also been shown to be a vehicle to deportation for individuals who, given the higher priority this presidential administration has placed on the enforcement of immigration laws, a lot of law enforcement officials, when they find a traffic ticket on someone who could very well be deported, will hand them over to Immigration and Customs Enforcement which is an organization known for mistreatment of those that it takes into custody. That is something I would like you to consider.

This is something that was touched on earlier, but I would also like to use this opportunity with this bill to emphasize to the Committee and ask you to consider this part of the larger traffic ticket system as a whole. According to a 2015 investigation by the *Las Vegas Review-Journal*, a lot of municipal courts here in Nevada rely on the money from these traffic tickets. You would think there would be a reason not to emphasize them, but the fact remains, as has already been discussed, this is a thing that disproportionately impacts people of low incomes and by extension, people of color, as was earlier said. People of color are 20 to 30 percent more likely to get pulled over and given a traffic ticket. What this essentially does is create a system in which our municipal courts are being funded by those who have the least amount of money to offer and are essentially funding the system that is incarcerating them and negatively impacting their communities. With regards to this bill, I would like the Committee to consider that angle and consider the greater failure of the traffic ticket system and the larger, negative impacts it has on low-income communities as a whole.

Assemblyman Edwards:
I would like to correct something for the record. Immigration and Customs Enforcement is not known for mistreating people. They have a difficult job and they do the best they can. I just think we need to treat them a bit more fairly rather than launching accusations like that.

Vice Chairwoman Cohen:
Thank you, Assemblyman Edwards. As we know, it is a touchy subject with people having concerns on both sides of the issue. Do we have any other testimony in support of A.B. 411? [There was none.] I will now open it to testimony in opposition to A.B. 411.

Mike Cathcart, Business Operations Manager, City of Henderson:
The proposed changes will have a significant impact on the operations of our Henderson Municipal Court, but I do want to go on the record that we are not against the policy piece of this and moving these to civil. I think there just needs to be some work done on the details and how we get there. We did file a fiscal note in the amount of $175,000, which would be for our changes to our software. Our current case management system does not handle civil infractions so we would have to make a change there. We are also looking into what type of impact it would have on our revenues with the $250 cap unless *Nevada Revised Statutes* (NRS) provides otherwise. We are trying to look through our records and see what kind of impact that would have on our court revenues. The City of Henderson also has concerns with the omission of NRS Chapter 482 regarding motor vehicles and trailers. It is not addressed in the proposed bill and there are 33 possible misdemeanor violations in that chapter so we want to make sure that things are consistent.

In section 80, subsection 3, of the proposed bill, we have some concerns about how to handle the warrants because many times the failure to appear bench warrants could have a traffic citation and it could have something more serious as well. We currently have 3,000 active warrants so we would have to look through all 3,000 of those active warrants because they could be comingled between the new civil infractions and criminal infractions. We also have concerns with the October 1, 2019, implementation date. We believe that could be unattainable.

Lastly, I just wanted to mention that there are several pieces of legislation that will impact municipal courts, and I believe the Committee needs to look at how all of these different changes to law would work together. For example, the Henderson court will need to spend an enormous amount of resources just to implement the changes in A.B. 411, moving to the civil infractions, while simultaneously adjusting to other prosecution of new crimes that may be moved to municipal courts by another piece of legislation which is Assembly Bill 236. We also heard Assembly Bill 434 this morning. There are lots of moving parts for municipal courts so I hope we can sit down and really look at the impact on our operations before we move forward.

Jennifer P. Noble, Chief Appellate Deputy, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
I want to begin my testimony by saying that we are 100 percent okay and supportive of the idea of decriminalizing traffic offenses in general. During the interim, we testified in front of a subcommittee as such. But if we are going to be making these civil, then we want the district attorneys out of it. We do not want to have a "may" clause in there so that a judge can require us to come to court and litigate traffic tickets. They do not do that necessarily in other states. The police officer can show up, the alleged traffic offender can show up, and they can present their testimony to the judge, which is basically what happens anyway. When you are prosecuting traffic citations, you do a lot of, What happened next? What happened next? Having a district attorney in there simply to ask what happened next when really it is just going to be the judge making the call in terms of what occurred and what to do is a waste of resources. That concern pertains to section 31.

I appreciate Assemblyman Yeager's statements about section 26 not affecting the development of reasonable suspicion or probable cause on a traffic stop, but if you look at section 26, it says, "A peace officer in this State who has reasonable cause to believe that a person violated a provision of chapters 483 to 484E, inclusive, 486 or 490. . . ." These are just chapters of the NRS that are related to vehicle violations. We believe that if the officer during that encounter develops reasonable suspicion to believe that a crime is occurring that is outside of these chapters, they should be permitted to continue to investigate with all of the constitutional laws that apply regarding the development of probable cause and our statute about detaining people still applying.

Our last concern is the crime of driving while revoked due to a DUI, and that is different from not getting your license reinstated after a DUI. That should remain a crime and not a civil infraction because we believe that presents a threat to public safety.

Dylan Shaver, Director of Policy, City of Reno:
In the City of Reno we have a municipal court, and much of what Mr. Cathcart said I will just file under ditto. However, I wanted to bring your attention to something that I think we have lost sight of in a lot of the testimony—the fact that these municipal courts are institutions of the community and they are a service to the community. We are responsive to community needs, so in the last few years our municipal court has stopped the practice of issuing warrants for minor traffic offenses which means no jail for anybody at any point. We have taken the fees on these offenses as low as we can and still provide the service to the community. We no longer report traffic violations to the Nevada Criminal Justice Information System (NCJIS), just to the DMV to make sure those repeat offenders that I was talking about in my previous testimony have their driver's privilege restricted the way that it should be. These are things that we do in response to community needs. We see who is getting tickets; we know what is going on in the community.

We have also set up a series of specialty court systems to help deal with community needs. We have veterans court, a special indigent court, and a homeless court, which literally has judges holding court in the parks to quash warrants and assist them to get on the right track. These are services we provide as part of the community. As the proponents of the bill said, if somebody ends up in jail because they were driving on a one-day-late registration, well, that is probably not justice as we had all collectively envisioned it. We have taken steps proactively to address these issues.

Similarly to what Mr. Cathcart said, we have to look at how all of these bills play together. For example, next week you will be hearing Assembly Bill 416, which will basically make it unlikely, if not impossible, for a municipal court to collect any fines at all. You combine these two things together, then all of those specialty courts that we offer will go away because they are funded somehow. That is a decision made through this building. I know this is not the money committee, but we have to realize that as these costs are pushed into our courts while money is taken out, well, we have very few options at our disposal at that point. Local governments do not have the opportunity to go out and seek new revenue sources like this body does, and we must live within a certain number of means.

Finally, as per this bill and our previous conversation, our law enforcement personnel want as many tools as possible to make sure we can keep our roads safe. Traffic infractions and the injuries and fatalities that occur because of them are a leading cause of death, not just in the City of Reno, but across the state. We want to make sure that we have the ability to protect our citizens and keep them safe. As always, we look forward to working with the Committee and Assemblyman Yeager. We do believe there is a bill here, we are just concerned about some of the ramifications as drafted.

Shirle T. Eiting, Chief Assistant City Attorney, City of Sparks:
I would like to draw the Committee's attention to section 27, which states that a "peace officer may prepare a notice of civil infraction manually or electronically in the form of a complaint issuing in the name of 'The State of Nevada.'" Our concern about that is, if you then take that to section 34, it requires that the fines be paid to the state. The City of Sparks would then not be collecting any fines whatsoever based on our reading of it. We figure that is about a $600,000 loss to our general fund which equates to four police officers for the city.

Also, on behalf of the court, I can tell you that this would require a major overhaul of the processes and procedures, and I believe there was an October deadline proposed. It would be impossible for the court to meet that deadline.

Finally, the language contained in section 26, which Ms. Noble previously referred to, is going to need some clarification so that again we do not lose reasonable suspicion or probable cause during a traffic stop investigation such as a DUI. Having personally prosecuted for a number of years, I know how criminal defense attorneys are very good at taking the law and using it to show we do not have probable cause or reasonable suspicion, and I believe that language could put it in danger there.

Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I want to thank Assemblyman Roberts as he brought up one of our concerns. We also have the same concerns with section 26 that Ms. Noble referenced.

Shani J. Coleman, Deputy Director, Government Affairs Executive, Office of Administrative Services, City of Las Vegas:
We, too, similarly situated to Henderson, have concerns. We support the concept and understand the work that Assemblyman Yeager has done on criminal justice reform. We are concerned about the operational challenges that this could pose for our municipal court. We are in opposition, but are willing to work with the sponsor.

Dana P. Hlavac, Court Administrator, Las Vegas Municipal Court:
The court itself remains neutral on the bill. We had been asked to submit a fiscal note by the city, which is rather expansive, and I was asked to be here to explain how that fiscal note was derived. We took the offenses which would become civil and looked back to see how many cases of that particular offense went into warrant. In fiscal year (FY) 2016 there were 43,000 cases in municipal court and in FY 2017, there were 55,000 cases that went into warrant.

I would recognize that many of those cases went into warrant multiple times. Those warrants are issued for failure to appear or pay, it is not just for failure to pay. Basically, somebody is given the option if they cannot pay; all they have to do is appear. The result of that lost warrant fee, the revenue from what is actually assessed for those warrants on behalf of all those, averages $4 million per year.

The second amount was reduced fine revenue. We looked at the offenses which will be reduced to civil offenses and looked at the average fines which were imposed. Most of our fines are well below the $250 recommended cap, however, there is a series of offenses which generally represent the types of offenses which cause accidents. These are offenses such as: a prohibited U-turn, violation of turns in an intersection, one-way road violations, and unsafe lane changes. Our city attorney in those cases tends to seek higher fines and those fines are generally higher. When you take those average fines, reduce them to $250 at the cap, that results in $1.5 million of lost fine revenue on an annual basis.

The last and most concerning is what we see as a significantly decreased ability to collect any revenue that is actually assessed. From the fines that were assessed in FY 2016, it was a total of about $10.9 million in fines on the offenses which would be turned into civil. Over the subsequent three years, we have collected about 72 percent of those fines. In general, when you look at civil collection rates they are somewhere between 20 and 40 percent and those are for medical bills, dental bills, past-due rent, or lease and contract-type debts.

This bill has significant limitations, as well as some of the existing law at the federal level has serious limitations, on our ability to collect. For instance, in section 36, subsection 2, it would require, before the court would proceed with standard collection, that the court makes a finding that the person against whom the judgment is entered is not indigent and that the person has intentionally failed to satisfy the judgment. The problem is, that means that anybody who simply defaults and never appears before the court could not have collections proceeded. It would basically be impossible. Secondly, in that same paragraph it says if you make that finding, you could report it to the DMV. By not being able to make that finding, you could not report it to the DMV; therefore holding a DMV suspension over someone's head would not be an enforcement tool.

Lastly, there was a civil settlement in a case involving the New York attorney general in 2015 and the credit reporting agencies. As a result of that settlement agreement, the credit reporting agencies prohibit the reporting of non-contractual debt such as court fines and fees to the credit reporting agencies. There would be no impact in terms of the credit ratings of individuals so that would not be an incentive for people to pay either. As a result of what we see as a significant decreased ability to collect on fines that were assessed, we estimate that there would be another $4.5 million of lost revenue.

With respect to section 80, it is a very complicated issue to clear warrants. Warrants are sent both to the NCJIS and also, when a warrant is issued, notice of that warrant is also sent to DMV, and a person's driver's license could be suspended while that warrant is outstanding. So you would have to clear the warrant in both places.

The last fiscal impact we had was the expense of converting our case management software systems. We are currently in the process of implementing a new system which will not be ready until after the effective date or sometime next year so we would have to essentially convert an old system and a new system and those conversions are extremely complicated. While many of us think it is simply a matter of switching one little bit or byte from a 0 to a 1 and it changes everything, I have learned with a two-year overdue system that is not the case. It would be beyond difficult, it would be impossible to meet an effective date of October 1, 2019, and actually have our systems implemented to meet the interfaces that we have to create with the Department of Public Safety, Administrative Office of the Courts, DMV, the southern Nevada system called SCOPE [Shared Computer Operation for Protection and Enforcement, NCJIS [Nevada Criminal Justice Information System], Brazos, and OffenderWatch, which is the system that the city uses for the jail, and our city internal finance system.

Lisa A. Gianoli, representing Washoe County:
I do not want to be redundant, but I echo many of the concerns that were voiced. I look forward to working with Assemblyman Yeager. We did also upload a fiscal impact for Washoe County, which was roughly $3 million.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
Pursuant to Committee rules, I am here in opposition to A.B. 411. We just have a few concerns with the mechanics of the bill as written, all of which have been addressed by my colleagues. I look forward to being a part of the conversation going forward.

Mary Sarah Kinner, Government Affairs Liaison, Washoe County Sheriff's Office:
In the interest of time, I will say "ditto" to Mr. Spratley's comments and I look forward to working with Assemblyman Yeager on this bill.

Vice Chairwoman Cohen:
Do we have any other opposition testimony on A.B. 411? [There was none.] I will now open it up for neutral testimony on A.B. 411.

Melissa A. Saragosa, Judge, Las Vegas Justice Court:
On behalf of the Las Vegas Justice Court, we are neutral on this bill. I had a few things I wanted to comment on. The first is, we likely will have a fiscal note on this as we have been trying to gather the information that we need. We may need some additional employees to help with the processes and the recalling of warrants. We just have not quite figured out what that will be. The other aspect of our fiscal note may entail the processing of determining indigency. We do have some software related to a TransUnion-type product, and we are charged on a per-transaction basis. Right now if we were to run that system to determine indigency of each of our traffic offenders we would do an estimated 10,000 transactions a month—so we are trying to figure out what that cost will be to include in the fiscal note.

One specific area that I wanted to raise to the sponsor's attention is, currently in Las Vegas Justice Court, we use an individual who is designated as a referee under NRS 4.355 who hears almost all of our traffic matters. If these were to move to civil infractions, then we would ask that there be an amendment to NRS 4.355 to authorize the referee to hear those civil infractions. Currently, it allows him to hear misdemeanor criminal matters or misdemeanor traffic matters but since there is that change, we would like to have that amended as well.

Additionally, because of the nature of these moving to a civil matter, currently the referee statute reads that each of the items that are brought to a trial before a referee would essentially be a recommendation, and that an individual would have an opportunity to formally object to the recommendation, and then a judge would have to hear the case *de novo*, or all over again. We would ask that if there is an amendment made to NRS 4.355 for referee, that his or her decision be a final decision on the case and one that is appealable.

Section 31, subsection 2, paragraph (b) uses the language: "the district attorney of the county may represent the State, county, or town, as applicable, at the hearing" should a hearing be requested. The question we had was, what if the individual opts out if they are given that optional "may" language? I know there was a reference from the Nevada District Attorneys Association that they do not want the court to be forcing them to appear. My question is, does the court just proceed without them? To that extent, in section 31, subsection 4, it says, "The State has the burden of proving by a preponderance of the evidence that the person named in the notice of civil infraction committed a civil infraction." My suggestion would be to rephrase that to, "the court must find by a preponderance of the evidence that the person named . . .", leaving off any particular entity because it may be a city, the county, or the State.

With respect to section 36 on collections, there are some confusing areas in there and some areas where it appears that there may be some disagreement between different portions. For example, section 36, subsection 2, reads that the civil judgment may be enforced in any manner provided by law for the enforcement of a judgment. Those manners provided by law would be the issuance of a writ of execution or writ of garnishment in those matters. But when you look at subparagraph (a), that we must go through this process before you can undertake collection through the garnishment and that the collection efforts would be limited to "by attachment or garnishment of the property," the question was, can our collection agencies that we currently use go about their business the same way that they have been or are they limited only by attachment and garnishment? Do we have to wait until there is a finding that the person is not indigent to take the steps outlined in section 36, subsection 2, subparagraphs (a), (b), or (c), or can we enforce those at the moment you get a judgment? These are just a little confusing and I look forward to working with Assemblyman Yeager on those issues.

One other question along those lines is, when a writ of execution or writ of attachment is issued there are filing fees, because now we are talking about a civil judgment being entered. Filing fees are required for those. Who would pay those filing fees, or would they be waived

because it is a governmental entity seeking the execution, garnishment, or attachment? Currently it is a $25 fee for each writ that is payable to the court as a civil filing fee. The other question would be, who would be the plaintiff on a civil judgment? Would the civil plaintiff always be the State of Nevada, in which case, any collection efforts on a civil matter would go to the State of Nevada? I think there is some question because, as was noted by Assemblyman Yeager earlier, there are some municipalities that have ordinances—Clark County being one of those. So Clark County may have an ordinance that addresses a speeding violation, and if there is a finding that they have committed a violation of the county ordinance, then typically the civil penalty would go to the county. If we are getting a civil judgment out of that, are we saying that the plaintiff would now be Clark County, Nevada, or the State of Nevada because that is what the civil infraction says? There is a little bit of confusion there, so I look forward to working with the other stakeholders to clarify that.

With respect to section 78, that is an interesting section that nobody else referenced this morning, but that we had questions about. It is about a juvenile offender. In one sentence [subsection 1] it says that the juvenile court has the exclusive jurisdiction over proceedings concerning a child who commits a minor traffic offense, but then later it seems to give the juvenile court the authority to transfer the case to a justice or municipal court, which seems mutually exclusive. Juvenile court cannot have exclusive jurisdiction and then transfer their exclusive jurisdiction away. It does appear that there is some sort of finding that it must be in the best interests of the child, but I am not sure what that analysis would entail or what circumstances might make it in the best interests of a child to have a minor traffic offense heard in an adult court rather than a juvenile court. What I can tell you is, as a matter of practice, every juvenile traffic violation gets transferred to the justice court. Quite frankly, we think those are better suited in the juvenile court, but we leave that to your policy decision and wanted to bring that to your attention.

The only other comment that I had was to echo the comments that the October 1, 2019, effective date may be a little optimistic, and there are definitely some technology issues. With Brazos being the electronic citation program that would be used, it might take a little longer than that for us to get all of these gears moving in the change of direction. We would be requesting an extension—perhaps even as late as January 1, 2021—but we would be working with the stakeholders to determine what would be a reasonable time frame.

[(Exhibit G) was submitted on behalf of the Nevada Judges of Limited Jurisdiction.]

Vice Chairwoman Cohen:
Do we have any questions from Committee members? [There were none.] Do we have any other neutral testimony on A.B. 411 either in Las Vegas or Carson City? [There was none.] I will invite Assemblyman Yeager back to the table for concluding remarks.

Assemblyman Yeager:
It has been a long week and we still have one day to go, so I just want to thank you for your attention to what can sometimes be very "in the weeds" policy that we are talking about.

I am encouraged that for the first time we are actually having a real discussion around this issue after six or eight years of trying this. I think some of the concerns that were raised are obviously very valid concerns. I agree with Ms. Noble that driving on a revoked license due to a DUI should remain a misdemeanor. I did want to clarify that I am not trying to change what law enforcement does in the field. If they stop someone for a traffic infraction and then through reasonable suspicion or probable cause, they find other things going on, I am not intending to change that. If we need to change the language, we can.

I did not go too much into some of the information I learned in the interim committee. I will say that I was very concerned about the inconsistencies among courts, and frankly I was concerned about the constitutionality of some of the practices that I saw. I am not here today to drag anyone through the mud or impute bad intent, but I think there are things that need to be cleaned up in the system. Going to civil is a way to do that. One example I can add is, there is at least one jurisdiction where if you do not pay your traffic ticket, you get charged with another misdemeanor called "failure to pay." That kind of practice, I think, is not something that we should be proud of in our justice system. I think it is time to have this discussion, it is time to do what is right. I think at the end of the day we have to look in the mirror and ask ourselves, Do we want to be incarcerating our Nevada citizens because of minor traffic infractions?

I will tell you that it does not happen often, but it happens, and it is disastrous when it happens. We need to find a way to make this work, and I know we do not have a lot of time, but I am committed to doing everything I can to get something workable between now and next Friday. I am encouraged that I do not think anyone came up in opposition and said they do not like the policy that we are trying to accomplish. What we heard a lot about was fiscal concerns. Fiscal concerns are definitely important, but the policy is important too. It is important for us as a state to get this right. Again, I want to thank you for your attention, and thank you for chairing this morning, Vice Chairwoman Cohen. With that, I would urge your support of A.B. 411.

Vice Chairwoman Cohen:
I will close the hearing on A.B. 411. I will now open it up for public comment either in Carson City or Las Vegas.

Wiselet Rouzard, Field Director, Americans for Prosperity – Nevada:
We definitely second what Assemblyman Yeager stated here. This is definitely a step in the right direction. When you talk about the criminal justice system, a lot of people are dealing with traffic violations who face severe financial hardship. I think it is something that needs to have continuous discussions. Just recently I had a young activist of ours who literally holds all the bills at his home and while driving home, he did not know that the license plate was suspended due to his mother not having the money. This is his only means of driving to and from school and work. He is a senior in high school, and unfortunately he was taken into the jail for the first time. He was really broken down. He had a $1,800 fine assessed on him and literally, this kid is one of the hardest working kids I know in Las Vegas, and he is still

facing that financial hardship to try to pay that off and get his life correct while also paying all the bills.

When we look at the policies and look at the taxing that happens through different things within the law that compounds, it really makes it harder, and the last thing we want is to create more criminals by means of their hardship and financial situation. We admire what the police officers are doing. It is very important because we do want our communities and our streets safe. But we also have to consider the incarceration rate and the criminal justice system and how it is being overwhelmed with very, very minor infractions like this. It is due to people not having the financial means to get out of the financial situation that is imposed on them by the laws.

I definitely think it is great to see today many discussions on these issues occurring, and I thank you all for giving us the time and opportunity to share our insights on how we can be better moving forward.

Vice Chairwoman Cohen:
Do we have any other public comment? [There was none.] Do we have any questions or comments from Committee members? [There were none.] We will start tomorrow morning at 8 a.m. The meeting is adjourned [at 10:47 a.m.].

RESPECTFULLY SUBMITTED:

_____
Traci Dory
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a proposed amendment to Assembly Bill 418, submitted and presented by Assemblyman Steve Yeager, Assembly District No. 9.

Exhibit D is a document titled "Comments/Questions Re A.B. 434," submitted by the Nevada Judges of Limited Jurisdiction, regarding Assembly Bill 434.

Exhibit E is a letter to Chairman Yeager and members of the Assembly Committee on Judiciary, dated April 1, 2019, in support of Assembly Bill 411, authored and submitted by Sylvia R. Lazos, Legislative Advocate, Nevada Immigrant Coalition.

Exhibit F is a letter to Mr. Tick Segerblom dated March 29, 2019, with a signed petition, in support of Assembly Bill 411, submitted and presented by Dylan Lawter, Vice President, Policy and Legislation Society, William S. Boyd School of Law, University of Nevada, Las Vegas.

Exhibit G is document titled "Comments/Questions on A.B. 411," submitted by the Nevada Judges of Limited Jurisdiction, regarding Assembly Bill 411.

EXHIBIT 6

EXHIBIT 6

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Attorneys for Plaintiff

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 **CASE APPEAL STATEMENT**

1. Name of appellant filing this case appeal statement:

Ruth L. Cohen.

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Judge Elizabeth Gonzalez, District Court Judge.

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant:

Ruth L. Cohen.

Counsel:

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Liane K. Wakayama, Esq.
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700 South Seventh Street
Las Vegas, Nevada 89101

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Respondents:

PAUL S. PADDA, an individual; PAUL PADDA LAW, PLLC, a Nevada professional limited liability company.

Counsel:

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Ryan A. Semerad, Esq.
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5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant is represented by appointed or retained counsel in the district court:

Retained counsel.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of the entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court (e.g. date complaint, indictment, information, or petition was filed):

The Complaint was filed on April 9, 2019.

10. Provide a brief description of the nature of this action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This case arises out of the dissolution of a partnership between appellant Ruth L. Cohen ("Ms. Cohen") and respondent Paul S. Padda ("Mr. Padda). Specifically, Ms. Cohen brought claims against Mr. Padda for breach of contract, breach of fiduciary duty, and fraud in connection with Mr. Padda's

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failure to pay Ms. Cohen her agreed upon share of attorney's fees collected on contingency fee cases that originated pre-dissolution and resolved post-dissolution.

On February 18, 2020, the district court granted Defendants' motion for summary judgment on the grounds that Ms. Cohen was suspended from the practice of law at the time such cases resolved and, thus, was a "non-lawyer" for purposes of Nevada Rules of Professional Conduct 5.4(a). The district court held that Ms. Cohen's suspension from the practice of law rendered the Dissolution Agreement between Ms. Cohen and Mr. Padda illegal and unenforceable. Accordingly, the district court entered its Order Granting Defendants' Motion for Summary Judgment; Judgment on February 18, 2020 and dismissed all of Ms. Cohen's claims. Thereafter, the district court entered its Order Denying Plaintiff's Motion for Reconsideration of the Order Granting Defendants' Motion for Summary Judgment; Judgment on March 31, 2020. Ms. Cohen appeals both orders.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

N/A

12. Indicate whether this appeal involves child custody or visitation:

N/A

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13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

No, this appeal does not involve the possibility of settlement.

DATED this 8th day of April, 2020.

CAMPBELL & WILLIAMS

By /s/ ***Philip R. Erwin***
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SAMUEL R. MIRKOVICH, ESQ. (11662)
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 8th day of April, 2020 I caused the foregoing document entitled **Case Appeal Statement** 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/ ***Crystal Balaoro***
An Employee of Campbell & Williams

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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 Date of Hearing: April 17, 2020 Time of Hearing: Chambers

ORDER DENYING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

ORDER DENYING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

This matter having come before the Court for a chambers hearing on April 17, 2020, as requested by Defendants ("Defendants") to decide Defendants' Motion for Attorneys' Fees ("Motion"), the Court having considered the Motion and related briefing, as well as the underlying papers and pleadings, and good cause appearing therefore FINDS and ORDERS as follows:

1. Based on this Court's summary judgment award entered on February 18, 2020, Defendants filed their Motion for Attorneys' Fees on March 11, 2020.

2. On March 25, 2020, Plaintiff Ruth L. Cohen ("Plaintiff") filed her Opposition to Defendants' Motion for Attorneys' Fees on the basis that Defendants are not entitled to an award of their attorneys' fees (the "Opposition").

3. When exercising its discretion to award attorneys' fees based on an offer of judgment, this Court is tasked with considering the following factors:

> (1) whether the plaintiff's claim was brought in good faith;
>
> (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount;
>
> (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and
>
> (4) whether the fees sought by the offeror are reasonable and justified in amount.

Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). A district court's decision to grant or deny attorney fees will not be disturbed absent a clear abuse of discretion. *LaForge v. State, Univ. & Cmty. Coll. Sys. of Nev.*, 116 Nev. 415, 423, 997 P.2d 130, 136 (2000).

4. The Court, upon evaluating the underlying facts provided in Plaintiff's Opposition and the *Beattie* factors, finds that, although the timing of the Defendants' $150,000.00 Offer of Judgment served on December 18, 2019 was reasonable, Plaintiff's decision to reject it was not grossly unreasonable or in bad faith given the amount of damages Plaintiff sought in this case.

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Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants' Motion for Attorneys' Fees is DENIED in its entirety.

Dated this 28th day of April, 2020.

HON. JUDGE ELIZABETH GONZALEZ

Respectfully Submitted By:

Dated this 27th day of April, 2020.

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Order Denying Defendants' Motion for Attorneys' Fees
Ruth L. Cohen v. Paul S. Padda, et al.
Case No. A-19-792599-B

Approved as to Form and Content By:

Dated this 27th day of April, 2020.

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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 Date of Hearing: April 17, 2020 Time of Hearing: Chambers

NOTICE OF ENTRY OF ORDER

/ / /

NOTICE OF ENTRY OF ORDER

Please take notice that an Order Denying Defendants' Motion for Attorneys' Fees was entered in the above-captioned matter on the 29th day of April, 2020, a copy of which is attached hereto.

Dated this 30th day of April, 2020.

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By */s/ Liane K. Wakayama, Esq.*
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and service with the Eighth Judicial District Court on the 30th day of April, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[1]

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Plaintiff, Ruth L. Cohen	
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/s/ Julia Rodionova
Julia Rodionova, an Employee of Hayes Wakayama

[1] Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

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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 Date of Hearing: April 17, 2020 Time of Hearing: Chambers

ORDER DENYING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

ORDER DENYING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

This matter having come before the Court for a chambers hearing on April 17, 2020, as requested by Defendants ("Defendants") to decide Defendants' Motion for Attorneys' Fees ("Motion"), the Court having considered the Motion and related briefing, as well as the underlying papers and pleadings, and good cause appearing therefore FINDS and ORDERS as follows:

1. Based on this Court's summary judgment award entered on February 18, 2020, Defendants filed their Motion for Attorneys' Fees on March 11, 2020.

2. On March 25, 2020, Plaintiff Ruth L. Cohen ("Plaintiff") filed her Opposition to Defendants' Motion for Attorneys' Fees on the basis that Defendants are not entitled to an award of their attorneys' fees (the "Opposition").

3. When exercising its discretion to award attorneys' fees based on an offer of judgment, this Court is tasked with considering the following factors:

> (1) whether the plaintiff's claim was brought in good faith;
>
> (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount;
>
> (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and
>
> (4) whether the fees sought by the offeror are reasonable and justified in amount.

Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). A district court's decision to grant or deny attorney fees will not be disturbed absent a clear abuse of discretion. *LaForge v. State, Univ. & Cmty. Coll. Sys. of Nev.*, 116 Nev. 415, 423, 997 P.2d 130, 136 (2000).

4. The Court, upon evaluating the underlying facts provided in Plaintiff's Opposition and the *Beattie* factors, finds that, although the timing of the Defendants' $150,000.00 Offer of Judgment served on December 18, 2019 was reasonable, Plaintiff's decision to reject it was not grossly unreasonable or in bad faith given the amount of damages Plaintiff sought in this case.

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Order Denying Defendants' Motion for Attorneys' Fees
Ruth L. Cohen v. Paul S. Padda, et al.
Case No. A-19-792599-B

Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants' Motion for Attorneys' Fees is DENIED in its entirety.

Dated this 28th day of April, 2020.

HON. JUDGE ELIZABETH GONZALEZ

Respectfully Submitted By:

Dated this 27th day of April, 2020.

HAYES | WAKAYAMA

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Order Denying Defendants' Motion for Attorneys' Fees
Ruth L. Cohen v. Paul S. Padda, et al.
Case No. A-19-792599-B

Approved as to Form and Content By:

Dated this 27th day of April, 2020.

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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

NOTICE OF CROSS-APPEAL

Please take notice that Defendants Paul S. Padda and Paul Padda Law, PLLC hereby appeal to the Nevada Supreme Court from the Order Denying Defendants' Motion for Attorneys' Fees, notice of entry of which was filed and e-served on April 30, 2020 (attached hereto as **Exhibit A**).

DATED this 11th day of May, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May 2020, a true and correct copy of the foregoing **NOTICE OF CROSS-APPEAL** 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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/s/ Valerie Larsen
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EXHIBIT A

EXHIBIT A

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Attorneys for Plaintiff

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 Date of Hearing: April 17, 2020 Time of Hearing: Chambers

NOTICE OF ENTRY OF ORDER

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NOTICE OF ENTRY OF ORDER

Please take notice that an Order Denying Defendants' Motion for Attorneys' Fees was entered in the above-captioned matter on the 29th day of April, 2020, a copy of which is attached hereto.

Dated this 30th day of April, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and service with the Eighth Judicial District Court on the 30th day of April, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[1]

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/s/ Julia Rodionova
Julia Rodionova, an Employee of Hayes Wakayama

[1] Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

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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 Date of Hearing: April 17, 2020 Time of Hearing: Chambers

ORDER DENYING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

ORDER DENYING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

This matter having come before the Court for a chambers hearing on April 17, 2020, as requested by Defendants ("Defendants") to decide Defendants' Motion for Attorneys' Fees ("Motion"), the Court having considered the Motion and related briefing, as well as the underlying papers and pleadings, and good cause appearing therefore FINDS and ORDERS as follows:

1. Based on this Court's summary judgment award entered on February 18, 2020, Defendants filed their Motion for Attorneys' Fees on March 11, 2020.

2. On March 25, 2020, Plaintiff Ruth L. Cohen ("Plaintiff") filed her Opposition to Defendants' Motion for Attorneys' Fees on the basis that Defendants are not entitled to an award of their attorneys' fees (the "Opposition").

3. When exercising its discretion to award attorneys' fees based on an offer of judgment, this Court is tasked with considering the following factors:

> (1) whether the plaintiff's claim was brought in good faith;
>
> (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount;
>
> (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and
>
> (4) whether the fees sought by the offeror are reasonable and justified in amount.

Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). A district court's decision to grant or deny attorney fees will not be disturbed absent a clear abuse of discretion. *LaForge v. State, Univ. & Cmty. Coll. Sys. of Nev.*, 116 Nev. 415, 423, 997 P.2d 130, 136 (2000).

4. The Court, upon evaluating the underlying facts provided in Plaintiff's Opposition and the *Beattie* factors, finds that, although the timing of the Defendants' $150,000.00 Offer of Judgment served on December 18, 2019 was reasonable, Plaintiff's decision to reject it was not grossly unreasonable or in bad faith given the amount of damages Plaintiff sought in this case.

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Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants' Motion for Attorneys' Fees is DENIED in its entirety.

Dated this 28th day of April, 2020.

HON. JUDGE ELIZABETH GONZALEZ

Respectfully Submitted By:

Dated this 27th day of April, 2020.

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Order Denying Defendants' Motion for Attorneys' Fees
Ruth L. Cohen v. Paul S. Padda, et al.
Case No. A-19-792599-B

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Dated this 27th day of April, 2020.

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