In the Supreme Court of the State of Nevada

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Elizabeth A. Brown
Clerk of Supreme Court

IN THE MATTER OF JOSHUA RAMOS, AKA ERNESTO JOSHUA RAMOS, an individual
Appellant

vs.

DANA WHITE, an individual; UFC HOLDINGS, LLC, ZUFFA, LLC, doing business as the ULTIMATE FIGHTING CHAMPIONSHIP, a Nevada limited liability company; DOES I through X inclusive; and ROE CORPORATIONS I through V, inclusive;
Respondent.

Supreme Court No.:82102
Eighth Judicial District
District Court Case No.: A-20-813230-C
Hon. David M. Jones, presiding

APPELLANT'S APPENDIX TO OPENING BRIEF
PART 1 of 4 (RAMOS001-RAMOS029)

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Docket 82102 Document 2021-19495

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CASE NO: A-20-813230-C
Department 29

DISTRICT COURT
CLARK COUNTY, NEVADA

JOSHUA RAMOS, aka ERNESTO JOSHUA RAMOS, an individual; Plaintiff, vs. DANA WHITE, an individual; UFC Holdings LLC, ZUFFA, LLC., doing business as the ULTIMATE FIGHTING CHAMPIONSHIP, a Nevada limited liability company; DOES I through X, inclusive; and ROE CORPORATIONS I through V, inclusive; Defendants.	CASE NO.: DEPT. NO.: **EXEMPT FROM ARBITRATION** **[Arbitration Exempt Claimed: Amount in Controversy Exceeds $50,000.00** **DEMAND FOR JURY TRIAL**

COMPLAINT AND DEMAND FOR JURY TRIAL

COME NOW, Plaintiff, JOSHUA RAMOS, by and through Plaintiff's attorney of record, IAN CHRISTOPHERSON, ESQ., of the LAW OFFICE OF IAN CHRISTOPHERSON, and hereby complains, alleges and avers as follows:

I.
PARTIES

1. At all times herein relevant, Plaintiff, JOSHUA RAMOS (hereinafter "RAMOS"), was and is a resident of Clark County, Nevada.

2. Upon information and belief, at all times herein relevant, Defendant, DANA WHITE (hereinafter "WHITE"), was and is a resident of Clark County, Nevada and the president, manager and face of the ULTIMATE FIGHTING CHAMPIONSHIP and is the managing member of its business entity UFC Holdings LLC.

3. Upon information and belief, at all times herein relevant, Defendant, ZUFFA, L.L.C., is a Nevada limited liability company which was doing business as the ULTIMATE FIGHTING CHAMPIONSHIP (hereinafter the "UFC") which later sold the UFC to William Morris Endeavor.

4. Defendants DOES I through X, and ROE CORPORATIONS I through X, are unknown to Plaintiff who thereon sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated as DOES I through X, and ROE CORPORATIONS I through X, are responsible in some manner for the events and happenings herein alleged. Plaintiff will ask leave of Court to amend this Complaint to insert the true names and capacities of DOES I through X, and ROE CORPORATIONS I through X when the names have been ascertained by Plaintiff.

5. The acts, events and circumstances complained of and asserted in the instant Complaint occurred in Clark County, Nevada.

II.
FACTS COMMON TO ALL COUNTS

6. That Plaintiff 's girlfriend (hereinafter Jane Doe) and with whom he resided and had a child with was solicited or enticed to travel with Dana White in late October 2014 to Brazil concurrent with a UFC event involving the Conor McGregor's fight.

RAMOS002

7. That White and Doe had no personal dating relationship prior to the trip, with their contact limited to interactions at her place of employment, the Spearmint Rhino (hereinafter the Rhino).

8. That White was accustomed to frequenting strip clubs including the Rhino and interacting with the performers including Doe.

9. That Doe met White through her work as an entertainer at the Rhino strip club in Las Vegas, Nevada and had paid Doe as much as $200,000 for "entertainment" prior to the trip.

10. That Doe separately traveled to Brazil on a first-class ticket and expedited passport provided by the UFC to meet with White with the expectation she would be expected to engage in sexual activity with White.

11. That also on the same trip, Whites in laws and co-owners of the UFC were accompanied by other eye candy to whom they were not married.

12. That before taking the trip Doe was paid $5,000 or more.

13. On return Doe an additional $10,000 was delivered to the Spearmint Rhino for her taking the trip with White, with only $8,000 reaching Doe.

14. That Doe recorded the sexual conduct in Brazil with White on her cellphone.

15. That Ramos downloaded a copy of the recording from Doe.

16. That Ramos, who was in a domestic relationship with Doe, became upset with Doe and White and contacted White.

17. That after White denied any involvement with Doe, Ramos forwarded a video clip of White on or about December 7, 2014 to establish that Ramos had grounds to confirm that white had been involved with Doe.

18. That after that information/clip was sent to White, White, the UFC or their attorneys contacted either the FBI or the US Attorney to allege White was being extorted.

19 That on December 11, 2014 White, UFC counsel Lawrence Epstein, Whites lawyer Colby Williams and White met at the Campbell law office with AUSA Charles LaBella.

20. That White claimed he was a victim of extortion while at the same time stating that he had arranged for Doe to travel to Brazil and given her a total of $15,000 or more for the trip.

21. There is no record of contact concurrent with that December 11th meeting of contact with law enforcement from Nevada which would have had primary jurisdiction over extortion committed in Nevada.

22. White and his in-laws had earlier purchased the UFC when it was having existential issues with licensing and succeeded in getting licensed in Nevada under their ownership.

23. In 2015, after building the UFC into a business generating millions in revenue White and his in-laws were considering or in the process of selling their interests in the UFC, eventually selling it for nearly a four-billion-dollar profit in mid-2016.

24. That White was the face and front of the UFC.

25. That negative publicity could or would affect business and the sale if made public.

26. That White personally and/or his or UFC attorneys made contact with federal law enforcement and prosecutors alleging that White was the target of extortion by Ramos.

27. That the purpose of that meeting to silence Ramos.

28. That White or his counsel expressed at the December 11th meeting that the allegations if exposed could harm White and the UFC, a business they indicated was then valued at over a billion dollars.

29. At that same meeting both White and his lawyers falsely represented to LaBella and FBI Special Agent Mollica that Ramos was then a convicted felon on probation in Nevada, a member of the Hells Angels and a pimp.

30. The same day the FBI (December 11, 2014) obtained records of Ramos's criminal record which rebutted that allegation.

31. That Whites attorneys made specific allegations referencing a specific criminal case in Clark County Nevada for a Joshua Ramos (not Ernesto).

32. The statements by White, the UFC and their attorneys were false and reckless and intend to influence the US Government to commence a process of criminal investigation and prosecution.

33. That in seeking to have Ramos subject to criminal prosecution White made statements that placed law enforcement on notice that he and/or the UFC had transported Doe out of this country, engaged in sexual conduct and given Doe money, a prima facie Mann Act violation.

34. That the information provided to LaBella on December 11th failed to provide or establish a case for federal prosecution of Ramos.

35. That following said meeting on December 11th FBI Agent Mollica began to monitor contacts and create a case upon which Ramos could be prosecuted in US District Court.

36. Though the White and his attorneys provided no evidence there had been a demand for money or threat to publish the recording before December 11th, only texts indicating Ramos was personally upset with White having had sex with Doe in Brazil, Agent Mollica began quarterbacking the "investigation" to what arguably could be prosecuted as use of a cellphone to aid an extortion plot.

37. That as of December 11th, 2014 the only criminal case the US Government had probable cause to investigate was a potential self-reported violation of the Mann Act by White.

38. Instead the FBI sought to create a basis to prosecute the upset live in boyfriend of Doe apparently without restriction and with the approval of the US Attorney's office.

39. That White and his counsel sought thereby to silence Ramos and prevent publication of the recording by having Ramos criminally prosecuted.

40. That despite indicating the recording having been made in Brazil and White's admission and later having an offer of proof from Doe that upon her return from White she was paid $10,000 by White; no charges were brought against White.

41. Despite the fact that White had likely violated the Mann Act by taking Doe to Brazil for compensated sex, White and his attorneys succeeded in White being labeled a victim and having the FBI set up a sting/orchestrated payoff to Ramos for the tape.

42. That agent Mollica noted in his December 11,2014 report the position and prominence of White.

43. That on January 7th and 8th, 2015 Agent Mollica created a sting, having Ramos meet White in person so he could be videotaped.

44. At the first meeting White insisted that Ramos provide a figure for all copies of the recording.

45. Ramos and White negotiated for a payment of $200,000 to be delivered the next day.

46. That again on the 8th, of January 2015 Ramos met White and was given $200,000 in exchange for the recording.

47. That in his application for a search warrant filed before 2 pm January 8th 2015 Agent Mollica detailed his active participation in creating and controlling the events and that he was waiting for the payment he had essentially orchestrated that day to arrest Ramos.

48. That in the charging complaint and during the subsequent proceedings Whites identity was not revealed by the US Attorney.

49. The US Attorney drafted and had counsel for Ramos execute a protective order effective only during the prosecution which prevented disclosure of the name of White and also provided for the ultimate destruction of the written discovery and video at the close of the case.

50. The stipulation for the protective order was dated September 30, 2015.

51. The following day disclosure of the tape was officially decriminalized in Nevada on October 1, 2015 in NRS 200.770, which excluded sexual activity of a public figure as from application of that statute.

52. After the court entered a protective order which was only effective during the pendency of the criminal proceedings did White through his counsel contact counsel for Ramos to offer to pay Ramos for a NDA after Ramos pled guilty.

53. Ramos was charged under the name Ernesto Joshua Ramos.

54. Nevada did not investigate the claimed extortion nor prosecute the extortion.

55. The US Attorney charged Ramos by indictment with using a phone in the aid of extortion.

56. The US Attorney concealed White's name.

57. Pursuant to the stipulation for a protective Order Whites identity was only concealed through the close of the case after which Ramos was free to talk.

58. Ramos's original private counsel was an acquaintance of White, Pete Christiansen.

59. Christiansen then represented Doe relative to this matter.

60. After Christiansen ceased to be his counsel, Ramos's new counsel received a plea agreement Ramos was considering in October 2015.

61. Unsolicited, White's counsel called Ramos's new counsel Gabriel Grasso and advised that after Ramos entered his guilty plea White would pay Ramos for a nondisclosure agreement to prevent any disclosure of White's actions.

62. The protective order by its terms expired at the close of the prosecution, then set for early 2016.

63. It was the US Attorney's office, not Judge Navarro, who sought to and conceal White's identity and Judge Navarro later confirmed that White and Ramos could enter a NDA separate of the criminal process through counsel.

64. After the sentencing closing the case the protective order would no longer bind Ramos and White offered to pay Ramos for his silence as after sentencing Ramos he would be freed from the protective order.

65. That Ramos accepted this offer and agreed to mediation to determine the amount of compensation he and Doe were to receive.

66. That the parties White, the UFC, Doe and Ramos set a mediation for April 5, 2016.

67. The parties strangely agreed that Pete Christiansen who knew White personally and had represented both Ramos and Doe related to the case was to act as mediator.

68. Ramos understood through his attorney Grasso that the amount could or would approach or exceed one million dollars, whether that understanding was correct or not, Ramos understood a reasonable figure would be paid to him.

69. That the mediation occurred on April 5, 2016 with the parties at different locations.

70. That by agreeing to the mediation White and the UFC acknowledged and agreed Ramos was entitled to compensation for his silence.

71. That White and the UFC were at their offices for the mediation.

72. Previously White had agreed to pay $200,000 for the recording setting the baseline for the mediation.

73. Ramos had reluctantly agreed to the guilty plea agreement prodded by the offer and his counsel that he would be generously compensated for his silence after the plea, if he pled.

74. That the plea agreement and protective order both required forfeiture of the recording.

75. By entering the plea agreement Ramos agreed the recording would be destroyed.

76. That nothing in the plea agreement or, the protective order or the terms of supervised release as directed by the court constrained in any way Ramos from disclosing the events at issue or Whites activities subsequent to completion of his sentence or earlier.

77. On April 5th, 2016 White and Ramos participated in a mediation to determine the amount of compensation for the NDA agreement with Doe and Ramos.

78. White failed to offer Ramos a cent and only offered to double the amount already paid to Doe to date, $15,000.

79. Despite his efforts to withdraw his plea the court denied the request, holding that the offer to pay Ramos was independent from the criminal proceedings and affirming the effect of the protective order not prohibiting disclosure by Ramos of the underlying events and action of White.

80. Ramos was sentenced to a year and a day in prison with supervised release and has now completed that sentence.

III.
FIRST CAUSE OF ACTION
(Breach of Contract)

81. Plaintiff, JOSHUA RAMOS, incorporates paragraphs 1 through 80 of the instant complaint above as though set forth fully herein.

82. White and the UFC through counsel offered to pay Ramos for a nondisclosure agreement subsequent to his entry of a guilty plea.

83. That the NDA was designed to protect the UFC and White.

84. Ramos agreed to what he understood was a precondition to the contract and his mode of acceptance and pled guilty.

85. That the guilty plea's ultimate effect would be to free Ramos from the terms of the protective order after sentencing (the close of the case).

86. That after the plea the parties and Doe set a mediation to determine the amount of compensation to be paid pursuant to the agreement.

87. That all parties understood the amount of compensation would be substantial.

88. That as expressed to the US Attorney on December 11th, 2014 disclosure could affect the value of the UFC and White's interest therein (9%) of a company they then valued at over a billion dollars.

89. That as a result of the silence obtained from Ramos pursuant to their agreement White and the UFC was sold in a sale which closed in June or July 2016 for an amount claimed to be over four Billion dollars.

90. That the reasonable value of an NDA must reflect the value to White and the UFC of concealing the negative information regarding White and Doe.

91. That on the date of the mediation White breached the agreement by not offering to pay Ramos anything.

92. That Ramos has been damaged in excess of 15,000 thereby.

93. That the actions of White were fraudulent, oppressive and designed to encourage Ramos to plead guilty so he could negotiate a substantial settlement which would prevent the disclosure of his actions at trial for the personal benefit of White and his related businesses and interests.

94. That punitive damages are appropriate.

SECOND CAUSE OF ACTION
(Contractual Breach of Implied Covenant of Good Faith and Fair Dealing)

95. Plaintiff, JOSHUA RAMOS, incorporates paragraphs 1 through 80 of the instant complaint above as though set forth fully herein.

96. That White and the UFC owed the duty of good faith and fair dealing pursuant to the covenant found in every contract.

97. That White and the UFC did not engage in fair dealing by their actions noted above.

98. That White and the UFC were motivated in part or in whole for this to conceal White's conduct during negotiations for the sale of the UFC.

99. That the failure to offer any payment to Ramos in April 2016 was in bad faith and an abuse of his financial ability compared with Ramos.

100. That the precondition expressed to Ramos that the agreement was to be made after entry of the plea was intended and had the affect of leading Ramos to believe he only would be paid for a NDA if he pled guilty.

101. That subsequent to the April 2016 breach White confirmed the substantial value of a NDA and offered to pay a combined total amount of $450,000 to Doe and Ramos.

102. That defendant's action are outrageous and punitive damages are appropriate.

THIRD CAUSE OF ACTION

(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing)

103. For Plaintiff's third cause of action Plaintiff hereby realleges the factual allegations set forth in paragraphs 1-102.

104. Plaintiff and defendants entered into a contractual arrangement for a NDA with the amount to be determined at a mediation set for April 5, 2016.

105. That the contractual arrangements began in October 2015 or early November 2015 with a precondition that Ramos to have entered a guilty plea before the NDA negotiations would begin.

106. That Defendants breached their duty of good faith as set forth herein.

107. That Plaintiff suffered damages as a result of Defendants misconduct as a result thereof in excess of $15,000dollars.

FOURTH CAUSE OF ACTION
(Unjust Enrichment)

103. For Plaintiff's fourth cause of action Plaintiff hereby realleges the factual allegations set forth in paragraphs 1 through 107.

104. That beginning at an unknow date and through the date of sale, White, the UFC and the various owners of the UFC were privately entertaining offers to sell their ownership interest in the UFC.

105. That White was an asset of the UFC as its manager and frontman.

106. That disclosure of not only the events in Brazil herein, but the subsequent events resulting in and continuing through the date of sale and beyond would adversely affect the marketability or sale price of the UFC.

107. That under the terms of the protective order as approved by judge Navarro disclosure of White's activities would be subject to disclosure as early as late February or early March 2016 if Ramos pled guilty and was sentenced.

108. That White and the UFC recognized the short- and long-term benefit of reaching a nondisclosure agreement with Ramos for the benefit of both White and the UFC.

109. This was recognized by White and the UFC when the protective order was entered in October 2015.

110. That prior to the scheduled plea hearing in early November 2015 White's counsel contacted Gabriel Grasso advising that upon entry of a guilty plea by Ramos White wanted to obtain a NDA from Ramos.

111. Though no figure was agreed upon it was mutually understood the compensation for such agreement would be substantial.

112. As the sale was pending White and the UFC's attorneys agreed to a mediation to determine the amount of compensation on April 5, 2016.

113. At that meeting White and the UFC offered Ramos nothing.

114. That in early July 2016 the UFC was sold for a sum reported to be in excess of 4 Billion dollars.

115. That to this date White remains as manager and the face of the UFC, receiving a reported annual salary of 20 million dollars.

116. That White and the UFC obtained the silence of Ramos by their actions and were unjustly enriched both by the sale or its price not being affected by potential negative publicity, lack of criminal investigation or charges and White's continued employment with the UFC.

117. That White and the UFC have enjoyed and retained the benefit of Ramos's silence and were enriched thereby.

118. That the value of the benefits conferred on White and the UFC exceed $15,000.

119. That Whites actions are outrageous and punitive damages are appropriate.

IV.
DEMAND

Wherefore Plaintiff prays for the following relief:

1. Damages for breach of contract as determined by the court in excess of 15,000.
2. Damages in excess of 15,000 for breach of the covenant of good faith and fair dealing.
3. Damages for Defendants unjust enrichment based of the value of the UFC at the time of sale enhanced by the non-disclosure of Whites conduct, an amount in excess of $15,000 dollars.
4. For punitive damages and attorney's fees as allowed by law.

DATED this __3___ day of April, 2020.

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOSHUA RAMOS, aka ERNESTO JOSHUA RAMOS, an individual Plaintiff, vs. DANA WHITE, an individual; UFC HOLDINGS LLC, ZUFFA, LLC, a Nevada limited liability company, dba ULTIMATE FIGHTING CHAMPIONSHIP; DOES I through X, inclusive; and ROE CORPORATIONS I through V, inclusive Defendants.	CASE NO.: A-20-813230-C DEPT. NO.: XXIX **DEFENDANTS' MOTION TO DISMISS COMPLAINT PURSUANT TO NRCP 12(b)(5)** **HEARING REQUESTED**

Defendants, through their undersigned counsel, hereby submit their Motion to Dismiss Complaint Pursuant to NRCP 12(b)(5). This Motion is based on the papers and pleadings on file herein, the exhibits attached hereto, the following Points and Authorities, and any oral argument permitted at the time of hearing.

POINTS AND AUTHORITIES

I. INTRODUCTION

Some parties never learn. After pleading guilty to a felony of attempting to extort Defendant Dana White ("Mr. White") and spending nearly a year in federal prison, Plaintiff Joshua Ramos

("Ramos") now seeks this Court's assistance to complete what he could not finish the first time—separating Mr. White (and, now, his employer) from a "substantial" amount of money. Just because Ramos is carrying out his latest scheme through the artifice of a civil lawsuit does not make it any less improper. Fortunately for the Court and Defendants, Ramos' attempts at civil extortion are just as inept as his prior criminal endeavors.

As an initial matter, the Complaint fails to state a claim under NRCP 12(b)(5) given Ramos' inability to plead the most basic element of a claim for breach of contract—the existence of an enforceable agreement. The lack of a valid contract likewise dooms Ramos' derivative claims for contractual and tortious breach of the implied covenant of good faith and fair dealing. Finally, Ramos' claim for unjust enrichment fails because, *inter alia*, it is premised on an alleged "benefit" that Ramos was legally obligated to perform as a result of a pre-existing court order entered in his criminal case. We address these and the Complaint's other defects in more detail below.

II. BACKGROUND

Though Ramos' Complaint is designed to smear Mr. White and hurt his family, Defendants recognize the Court must accept any well-pleaded factual allegations as true for purposes of this Motion. Thus, while Defendants reserve the right to dispute Ramos' allegations if that ever becomes necessary, the material "facts" at issue here are as follows.

A. The Parties.

Ramos is an individual residing in Clark County, Nevada. *See* Compl. ¶ 1. Mr. White is the President of Defendant Zuffa, LLC ("Zuffa"), which does business as the Ultimate Fighting Championship® ("UFC"). *Id.* ¶ 2. Zuffa is a Nevada limited liability company, *id.* ¶ 3, and UFC is the leading promoter of professional mixed martial arts contests in the world. Ramos has also named UFC Holdings, LLC as a defendant. *Id.* ¶ 2. UFC Holdings, LLC is a Delaware limited liability company that was not even formed until July 27, 2016, well after the events alleged in the

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Complaint.[1] As such, it is improperly named herein. The same is true for Zuffa as the Complaint is devoid of any allegations that White, during the events alleged therein, was acting as the company's authorized agent as opposed to in his individual capacity.

B. White Reports Ramos' Criminal Conduct to Law Enforcement, the FBI Investigates, and Ramos Pleads Guilty to a Felony.

Beginning in or about November 2014 and continuing into early 2015, Ramos contacted Mr. White on multiple occasions using the parties' cellular telephones. *See* Compl. ¶¶ 16-17. During these communications, Ramos conveyed information to Mr. White both in writing and in video format that caused Mr. White to contact legal counsel. *Id.* ¶¶ 16-18. Mr. White and his counsel thereafter arranged a meeting with federal law enforcement officials for the purpose of reporting what they believed was potential criminal conduct by Ramos, namely his attempted extortion of Mr. White by threatening to release information designed to expose secrets and/or impute disgrace to Mr. White. *Id.* ¶¶ 18-20; 26. Special agents from the Federal Bureau of Investigation opened a case file and proceeded to monitor Ramos' continued contacts with Mr. White. *Id.* ¶¶ 35-36.

In or about early January 2015, Ramos ultimately demanded that Mr. White pay him $200,000 in cash in exchange for Ramos' agreement not to release the subject videotape and to provide Mr. White with all copies thereof. *See* Compl. ¶¶ 43-47. FBI agents continued to monitor Ramos' communications with Mr. White, and received court-approval to conduct electronic surveillance of scheduled in-person meetings between Ramos and Mr. White. *See id.* Ramos and

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[1] *See* Delaware Secretary of State "Entity Details" for UFC Holdings, LLC, a true and correct copy of which is attached hereto as Exhibit 1. The Court may take judicial notice of this Secretary of State filing when ruling on a Rule 12(b)(5) motion. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) ("the court may take into account matters of public record . . . when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted.").

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Mr. White met in early January 2015 during which Ramos accepted $200,000 in cash per his prior demands, and provided Mr. White with a copy of the videotape. *See id.* Special Agent James Mollica arrested Ramos shortly after he left the meeting with Mr. White. *Id.*

The United States Attorney's Office for the District of Nevada, through the sitting grand jury, indicted Ramos on September 22, 2015 for use of an interstate facility (*i.e.*, a cellular telephone) with the intent to carry on extortion. *See* Compl. ¶ 55.[2] Ramos, through criminal defense counsel, and Assistant United States Attorney (now Magistrate Judge) Carla Higginbotham entered into a stipulated protective order whereby the parties agreed to keep the victim's name and related information confidential. *Id.* ¶¶ 49-50; 52; 57.[3] Former Magistrate Judge Hoffman entered the order on October 5, 2015. *See* Ex. 2 (ECF No. 40). According to Ramos, the protective order was only for the duration of the criminal proceedings (*i.e.*, through sentencing), after which he would be free to speak publicly. *See* Compl. ¶¶ 57; 62; 64; 76. Less than one month later, on October 27, 2015, Ramos and the United States Attorney's Office notified the district court that they had reached a plea agreement. *See* Ex. 2 (ECF No. 41). On November 3, 2015, Ramos—after being sworn and thoroughly canvassed by United States District Court

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[2] *See also* Criminal Docket Sheet for *United States v. Ramos*, Case No. 2:15-cr-00267-GMN-CWH, a true and correct copy of which is attached hereto as Exhibit 2. Again, the Court is free to take judicial notice of and can consider this public record in the context of a Rule 12(b)(5) motion. *See Breliant, supra*. The Court is further permitted to consider this record because Ramos' related criminal proceedings are central to his Complaint in this action. *See Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015) ("A court may consider a document outside the pleadings if (1) the complaint refers to the document, (2) the document is central to the complainant's claim, and (3) no party questions the authenticity of the document."); *Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (court can take judicial notice of related criminal proceedings in appropriate circumstances, especially where the matters are closely related).

[3] A true and correct copy of the Stipulation and Order for Protective Order Pursuant to Fed. R. Crim. Pro. 16(d)(1) and 18 U.S.C. § 3771 is attached hereto as Exhibit 3. The Court may take judicial notice of this document for the same reasons set forth in footnote 2, *supra*.

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Judge Gloria Navarro—plead guilty to Count 1 in the Indictment. *Id.* ¶¶ 74-75; *see also* Ex. 2 (ECF Nos. 43; 67).

C. Mr. White and Ramos Participate in an Unsuccessful Mediation

After Ramos' case was referred to the United States Probation Office to prepare an investigation and report in anticipation of Ramos' sentencing, Mr. White and Ramos, through counsel, agreed to participate in a mediation to determine whether the parties could reach agreement on a potential non-disclosure agreement whereby Ramos would continue to maintain confidentiality regarding White's identity as the victim of Ramos' criminal conduct after the conclusion of the criminal proceedings. *See* Compl. ¶¶ 61; 63-65. Ramos alleges he had a subjective understanding from his counsel—which admittedly may have been incorrect—that White would pay him an amount approaching or exceeding one million dollars for a non-disclosure agreement. *Id.* ¶ 68. The mediation occurred on April 5, 2016. *Id.* ¶¶ 66; 69; 77. Mr. White failed to offer Ramos any amount of money at the mediation. *Id.* ¶¶ 78; 91; 113. The mediation, thus, ended unsuccessfully as "***no figure was agreed upon***." *Id.* ¶ 111 (emphasis added).

D. Ramos Unsuccessfully Attempts to Withdraw His Guilty Plea, and is Sentenced to Approximately One Year in Federal Prison.

In late June 2016, Ramos filed an emergency motion to continue his sentencing so that he could substitute in new counsel and withdraw his guilty plea. *See* Compl. ¶ 79; Ex. 2 (ECF Nos. 53-54). Chief Judge Navarro denied Ramos' motion, and sentenced him to twelve months and one day in prison. *Id.*; *see also* Ex. 2 (ECF Nos. 56-60; 62). According to Ramos, Judge Navarro's ruling confirmed that the parties' negotiations regarding a potential non-disclosure agreement were independent from the criminal proceedings. *Id.* Ramos filed an appeal challenging the denial of his desire to change his plea, which was ultimately dismissed by the United States Court of Appeals for the Ninth Circuit in early-March 2017. *See* Ex. 2 (ECF Nos. 65, 72; 77-79). Ramos self-surrendered to start serving his sentence on March 28, 2017. *Id.* (ECF No. 76). After completing

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a period of supervised release, Ramos filed this action on April 3, 2020—nearly four years from the date of the parties' failed mediation.

III. ARGUMENT

A. Governing Standards Under NRCP 12(b)(5).

As this Court is well aware, dismissal under NRCP 12(b)(5) is appropriate where "it appears beyond a doubt that [plaintiff] could not prove a set of facts which, if true, would entitle [plaintiff] to relief." *Torres v. Nevada Direct Ins. Co.*, 131 Nev. 531, 541, 353 P.3d 1203, 1210 (2015) (citing *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008)). When assessing a motion to dismiss for failure to state a claim upon which relief may be granted, the court construes the pleadings liberally, draws every reasonable inference in favor of the non-moving party, *see Lubin v. Kunin*, 117 Nev. 107, 110 n.1, 17 P.3d 422, 425 n.1 (2001), and treats all well-plead factual allegations as true. *Vacation Village v. Hitachi Am.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (citing *Capital Mortgage Holding v. Hahn*, 101 Nev. 314, 315, 705 P.2d 126, 126 (1985)).[4]

B. Ramos' Complaint Fails to State a Claim Upon Which Relief Can Be Granted.

Ramos has asserted the following four causes of action against all Defendants: (1) breach of contract; (2) contractual breach of the implied covenant of good faith and fair dealing; (3) tortious breach of the implied covenant of good faith and fair dealing; and (4) unjust enrichment. All fail to state a claim.

[4] The principle that a complainant's allegations be accepted as true is not without limitations. For example, courts are not required to "accept as true [ ] allegations that (1) contradict matters properly subject to judicial notice; (2) are conclusory allegations of law, mere legal conclusions, unwarranted deductions of fact, or unreasonable inferences; (3) are contradicted by documents referred to in the complaint; or (4) are internally inconsistent." *Western Lands Project v. United States Bureau of Land Mgmt.*, 2007 WL 9734511, at *3 (D. Nev. Sept. 25, 2007) (interpreting federal counterpart to NRCP 12(b)(5) prior to *Twombly* and *Iqbal*) (listing cases); *Hamilton v. Aubrey*, 2008 WL 1774469, at *1 (D. Nev. Apr. 15, 2008) (same).

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1. Breach of Contract

Ramos alleges that he and Mr. White orally agreed to attend a mediation, that all parties "understood" White would pay Ramos a "substantial" amount of compensation in exchange for a non-disclosure agreement, and that White breached the parties' agreement by not offering to pay Ramos anything at the mediation. *See* Compl. ¶¶ 81-93. Even treating Ramos' factual allegations as true and drawing every reasonable inference in Ramos' favor, he comes nowhere close to pleading a claim for breach of contract. Indeed, the allegations of the Complaint expressly plead Ramos out of any viable contract claim. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988-89 (9th Cir. 2001) (a plaintiff "can . . . plead himself out of a claim[.]").

"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). A meeting of the minds exists when the parties have agreed upon the contract's essential terms. *Roth v. Scott*, 112 Nev. 1078, 1083, 921 P.2d 1262, 1265 (1996). "With respect to contract formation, preliminary negotiations do not constitute a binding contract unless the parties have agreed to all material terms." *May*, 121 Nev. at 672, 119 P.3d at 1257. "A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite" as "[t]he court must be able to ascertain what is required of the respective parties." *Id.* "A breach of contract claim that fails to allege facts sufficient to show that an enforceable contract existed between the parties is subject to dismissal." *Abu Dhabi Commercial Bank v. Morgan Stanley & Co., Inc.*, 651 F. Supp. 2d 155, 173 (S.D.N.Y. 2009).

Ramos' Complaint correctly acknowledges multiple times that Mr. White never offered him any amount of money at the mediation in exchange for a potential non-disclosure agreement. *See* Compl. ¶¶ 78; 91; 113. The mediation, thus, ended unsuccessfully as "***no figure was agreed upon***." *Id.* ¶ 111 (emphasis added). These allegations constitute binding judicial admissions, *see Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.*, 127 Nev. 331, 343, 255 P.3d 268,

278 (2011) ("concessions in pleadings are judicial admissions") (quotation omitted), and unequivocally establish that the parties never had a meeting of the minds on the essential contract term of price. *See, e.g., Nevada Power Co. v. Public Util. Comm'n*, 122 Nev. 821, 839-40, 138 P.3d 486, 489-90 (2006) ("When essential terms such as [price] have yet to be agreed upon by the parties, a contract cannot be formed"); *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378-79, 283 P.3d 250, 255 (2012) (affirming district court's conclusion that no enforceable contract existed where the parties had not agreed to price and scope of work terms); *Roth*, 112 Nev. at 1083, 921 P.2d at 1265 (where parties had not agreed to essential terms of the high-low bracket amounts, there was no contract for binding arbitration).[5]

The lack of material terms in Ramos' alleged contract renders it impossible for this Court "to ascertain what is required of the respective parties." *May*, 121 Nev. at 672, 119 P.3d at 1257. To begin, Ramos repeatedly acknowledges the parties never agreed on a payment amount. That Ramos had a subjective belief the payment would be "substantial" is, frankly, meaningless. "Contractual intent is determined by the objective meaning of the words and conduct of the parties under the circumstances, not any secret or unexpressed intention or understanding of one or more parties to the contract." Nev. J.I. 13.7 (Formation; Contractual Intent). Nor is there any way to ascertain what is meant by "substantial" as this word obviously can have different meanings to different people.

Assuming, *arguendo*, Mr. White had offered a payment amount at the mediation, it is pure guesswork as to whether Ramos would have accepted any such offer. Indeed, in the context of his

[5] *See also Raymond G. Schreiber Revocable Tr. v. Estate of Kneivel*, 984 F. Supp. 2d 1099, 1106 (D. Nev. 2013) ("The essential terms of a contract include the identity of the parties, the subject matter consideration, a quantity term and a price term."); *Hannon v. Wells Fargo Home Mortg.*, 2012 WL 2499290, at * 3 (D. Nev. June 26, 2012) ("the essential terms of a loan contract are who the parties are, the amount of the loan, and the repayment terms.").

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claim for contractual breach of the implied covenant, Ramos (inconsistently) alleges that White offered Ramos and Jane Doe a combined $450,000 for a nondisclosure agreement. *See* Compl. ¶ 101. Tellingly, though, the Complaint lacks any allegation that Ramos accepted such an offer, thus confirming the parties never had a meeting of the minds on this essential contract term. Nor is there any way to ascertain other essential elements of Ramos' would-be contract such as the timing of the payment, its form (*e.g.*, lump sum or paid in installments over time), the terms of Ramos non-disclosure obligations, *et cetera*. The speculation and uncertainty are endless.

At best, Ramos has alleged the parties had an agreement to agree—*i.e.*, the parties agreed to attend a mediation at which they would try to reach agreement on the price for and terms of a non-disclosure agreement. Unfortunately for Ramos, such agreements are likewise unenforceable in Nevada. *See City of Reno v. Silver State Flying Service, Inc.*, 84 Nev. 170, 176, 438 P.2d 257, 261 (1968) ("An agreement to agree at a future time is nothing and will not support an action for damages."). Ramos, thus, cannot state a claim for breach of contract, and this cause of action must be dismissed.[6]

---

[6] *Weinstein v. Meritor, Inc.*, 2017 WL 4397947, at *4 (D. Nev. Sept. 29, 2017) (dismissing breach of contract claim where plaintiff failed to allege parties agreed on essential terms of the contract); *Hannon v. Wells Fargo Home Mortg., supra*, 2012 WL 2499290, at *3 ("the Hannons failed to form a contract at the mediation because the Mediation Agreement lacked essential terms."); *Wyatt v. Wilson Sporting Goods Co.*, 2016 WL 10749160, at *2 (N.D. Cal. June 29, 2016) (granting motion to dismiss where party had not plead "sufficient facts to set forth the essential terms of a contract, written, oral or implied."); *TCC Air Servs. Inc. v. Schlesinger*, 2006 WL 3694639, at *4 (S.D. Fla. Dec. 13, 2006) (granting motion to dismiss because the plaintiff failed to specify an essential element of the agreement: "An agreement on price is an essential term. If an essential term has not been agreed to by the parties, the contract cannot be enforced."); *MGM Auto Grp., LLC v. Genuine Parts Co.*, 2013 WL 967956, at *3 (W.D. Pa. Mar. 12, 2013) (granting motion to dismiss breach of contract claim where "[p]arties have failed to set forth sufficient facts of the essential elements of a contractual agreement between them and Defendant.").

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2. Breach of the Implied Covenant of Good Faith and Fair Dealing (Contractual and Tortious).

Ramos' second and third causes of action for contractual and tortious breach of the implied covenant of good faith and fair dealing cannot survive in the absence of a viable contract. *See* Nev. J.I. 13.43 (requiring "[t]hat the plaintiff and the defendant entered into a valid contract" as the first element of a claim for contractual breach of the implied covenant); Nev. J.I. 13.44 (same requirement for tortious breach of the implied covenant). Without a valid contract, which Ramos has failed to plead here for reasons addressed above, Ramos' derivative claims for breach of the implied covenant likewise fail and must likewise be dismissed. *See, e.g.*, *Greenstein v. Wells Fargo Bank, N.A.*, 2017 WL 1173916, at *1 (D. Nev. Mar. 29, 2017) ("[w]ithout a contract, Greenstein's claims for breach of contract and breach of the implied covenant fail."); *Walker v. Venetian Casino Resort*, LLC, 2012 WL 4794149, at *11 (D. Nev. Oct. 9, 2012) ("[s]ince Plaintiffs have not demonstrated that an enforceable [ ] contract existed . . . [they] cannot maintain their claim for breach of the implied covenant of good faith and fair dealing.").

Ramos' claim for tortious breach of the implied covenant must be dismissed for the independent reason that he has nowhere plead "there was a special element of reliance or trust between [Ramos and Mr. White], such that, [Mr. White] was in a superior position or entrusted position of knowledge." *See* Nev. J.I. 13.44 (recounting second element of claim for tortious breach of the implied covenant). A claim for tortious breach of the implied covenant has been recognized in very limited circumstances such as in the insurer-insured context or in fiduciary relationships. *See, e.g.*, *Shannon v. ReconTrust Co.*, 2012 WL 1695664, at *4 (D. Nev. May 11, 2012) (dismissing claim for tortious breach of the implied covenant where there was no underlying contract and, in any event, no fiduciary relationship existed between the parties). Ramos' Complaint is devoid of any allegations that a special relationship of trust existed between Ramos and Mr. White. Given that this entire

episode arises from Ramos' attempt to extort Mr. White for monetary gain, the absence of such allegations is hardly surprising.[7]

3. Unjust Enrichment

Magnifying his place on the world stage, Ramos alleges his purported "silence" regarding the events surrounding his criminal conduct enabled the UFC to be sold in July 2016 for more than $4 billion. *See* Compl. ¶¶ 114-18. Ramos specifically contends Defendants were unjustly enriched because they "obtained" his silence and "enjoyed and retained" the benefit thereof by virtue of the company's sale or the sale price not being affected by potential negative publicity. *Id.* Incredibly, Ramos seeks damages in an amount attributable to "the value of the UFC at the time of the sale enhanced by the non-disclosure." *Id.* at 14:14-16. This claim fails for multiple reasons.

"Unjust enrichment is the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience." *Topaz Mut. Co. v. Marsh*, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992) (quoting *Nevada Industrial Dev. v. Benedetti,* 103 Nev. 360, 363 n.2, 741 P.2d 802, 804 n.2 (1987)). The essential elements of unjust enrichment "are a benefit conferred on the defendant by the plaintiff, appreciation by the defendant of such benefit, and acceptance and retention by the defendant of such benefit." *Id.* (quoting *Unionamerica Mtg. v. McDonald,* 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981)). Unjust enrichment is an equitable claim that implies a "quasi-contract." *Hunt v. Zuffa, LLC*, 361 F. Supp. 3d 992, 1008 (D. Nev. 2019).

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[7] For similar reasons, Ramos' claim for punitive damages based on breach of contract, contractual breach of the implied covenant, and unjust enrichment should likewise be dismissed or stricken. *See* Compl. ¶¶ 93-94; 102; and 119. Punitive damages can only be awarded in actions "not arising from contract." By definition, claims for breach of contract and contractual breach of the implied covenant "arise from contract." Likewise, as explained below, unjust enrichment is a form of implied contract. *See* Point III(B)(3), *infra*. As such, Ramos cannot recover punitive damages for these claims. Ironically, while Ramos' claim for tortious breach of the implied covenant is defective for a host of other reasons, he does not seek punitive damages for that alleged tort. *See* Compl. ¶¶ 103-07.

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As a threshold matter, Ramos does not (and cannot) allege that any Defendant retained "money or property ***of another*** against the fundamental principles of equity and good conscience." *Topaz, supra* (emphasis added). After all, the value of the UFC—regardless of any allegation about an "enhanced" sales price due to non-disclosure—has never belonged to Ramos. *See State, Dep't of Taxation v. Chrysler Grp. LLC*, 129 Nev. 274, 281 n.4, 300 P.3d 713, 717 n.4 (2013) ("We also reject Chrysler's unjust enrichment argument because the sales tax paid to the State never belonged to Chrysler."). Thus, insofar as Ramos seeks unjust enrichment damages "based on the value of the UFC at the time of sale," his request is both outlandish and legally untenable.

That leaves Ramos trying to plead a claim for unjust enrichment based on Mr. White's alleged "unjust retention of a benefit to the loss of another." *Topaz, supra*. Here, the alleged benefit is Ramos' purported silence. *See* Compl. ¶ 117. But Ramos' allegations indisputably establish that his silence during the criminal proceedings—from October 5, 2015 through at least June 30, 2016 when he was sentenced (if not through March 2017 when his appeal was dismissed)—stemmed directly from a protective order entered by Magistrate Judge Hoffman in that case, not from any services or benefits requested by Mr. White (or any other Defendant). *Id.* ¶¶ 49-50; 52; 57; 62; 64; and 76; *see also* Ex. 2 (ECF Nos. 40; 60; and 72); Ex. 3. It has been settled law for more than eight decades that a person is not entitled to restitution through unjust enrichment by simply performing acts the law requires of him. *See* Restatement (First) of Restitution § 60 cmt. a (1937) ("If a person does an act which it is his legal duty to do, whether such duty is enforceable at law or in equity, he is not entitled to restitution, irrespective of the cause of the act.") (updated through June 2020).

To the extent Ramos alleges the parties attended a mediation in April 2016 to negotiate a price for a non-disclosure agreement that would extend *after* the conclusion of the criminal proceedings, the Complaint's allegations establish that no contract was ever reached. *See* Point III(B)(1), *supra*. In the absence of an independent non-disclosure agreement, Ramos has alleged

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"[t]hat nothing in the plea agreement or, [sic] the protective order or the terms of supervised release as directed by the court constrained in any way Ramos from disclosing the events at issue or Whites [sic] activities subsequent to completion of his sentence or earlier." Compl. ¶ 76. Fair enough—Ramos has now publicly disclosed his version of events through the filing of this lawsuit. Of course, that also means Ramos cannot show he conferred any benefit on Defendants (*i.e.*, no post-criminal proceedings silence) or that Defendants appreciated, accepted, and retained this non-existent benefit. As such, his unjust enrichment claims fails for this reason as well. *See Unionamerica Mtg., supra* (stating basic elements of unjust enrichment claim).

C. The Complaint Lacks any Allegations of Corporate Liability.

Ramos' Complaint, though unclear, appears to lump the corporate entities in with Mr. White as targets of all four causes of action. While Ramos' claims all fail for reasons explained above, they additionally fail against the corporate entities because UFC Holdings, LLC did not even exist at the time of the events alleged herein, and the Complaint lacks any allegations that Mr. White was acting in the course and scope of his employment with Zuffa at the time he was being victimized by Ramos' criminal conduct and/or when subsequently exploring the never-realized non-disclosure agreement.

The time period alleged in Ramos' Complaint spans from October 2014 to "June or July 2016," *see* Compl. ¶¶ 6; 89, with the crux being that Mr. White breached a purported contract when he failed to offer Ramos any money at the April 5, 2016 mediation. *Id.* ¶¶ 77-78. Judicially noticeable facts confirm, however, that Defendant UFC Holdings, LLC was not formed until July 27, 2016. *See* Ex. 1. It is axiomatic that a "non-existent corporation does not have the legal capacity to contract." *Silver State Broadcasting, LLC v. Beasley FM Acquisition*, 148 F. Supp. 3d 1132, 1140 (D. Nev. 2015) (quotation omitted). While a pre-incorporation contract can be ratified by a subsequently-formed company, *see id.*, Ramos' Complaint contains no allegation that ever occurred. Indeed, given the indisputable evidence that no enforceable contract exists here, there was obviously nothing for UFC Holdings, LLC to ratify.

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Finally, while an existing corporate entity may have capacity to enter contracts, it can only act through its authorized agents. *See Edwards v. Carson Water Co.*, 21 Nev. 469, 34 P. 381, 383-86 (1893). The Complaint, though, lacks any allegations that Ramos was interacting with Mr. White in his capacity as an authorized agent of Zuffa as opposed to in his individual capacity. Indeed, simply because Mr. White is Zuffa's president, that does not mean everything he does in life is on behalf of the company. *See Milks v. Eighth Judicial Dist. Ct.*, 2020 WL 4283289, at *1 (Nev. July 24, 2020) ("Milks, in his individual capacity, is a distinct legal person from Milks as manager of [limited liability company]."). While the lack of an enforceable contract renders it a moot point anyway, Zuffa has been improperly named as a defendant given the dearth of any allegations that Mr. White was acting as an agent of the company during his dealings with Ramos.

IV. CONCLUSION

Based on the foregoing, Defendants respectfully submit that Ramos' Complaint must be dismissed in its entirety. Moreover, given the judicial admissions contained in Ramos' original pleading, it is clear he cannot state any viable claims against Defendants. Accordingly, the Complaint should be dismissed with prejudice.

DATED this 31st day of August, 2020.

CAMPBELL & WILLIAMS

By: /s/ J. Colby Williams
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CERTIFICATE OF SERVICE

I certify that I am an employee of Campbell & Williams and that I did, on the 31st day of August, 2020, serve the foregoing **Defendants' Motion to Dismiss Complaint Pursuant to NRCP 12(b)(5)** by e-mailing and sending via United States Mail, first class postage pre-paid, a copy thereof to the following attorneys of record for Complainant:

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In the Supreme Court of the State of Nevada

IN THE MATTER OF JOSHUA RAMOS, AKA ERNESTO JOSHUA RAMOS, an individual
Appellant

vs.

DANA WHITE, an individual; UFC HOLDINGS, LLC, ZUFFA, LLC, doing business as the ULTIMATE FIGHTING CHAMPIONSHIP, a Nevada limited liability company; DOES I through X inclusive; and ROE CORPORATIONS I through V, inclusive;
Respondent.

Supreme Court No.:82102
Eighth Judicial District
District Court Case No.: A-20-813230-C
Hon. David M. Jones, presiding

APPELLANT'S APPENDIX TO OPENING BRIEF
PART 2 of 4 (RAMOS030-RAMOS076)

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Docket 82102 Document 2021-19495

DECLARATION OF J. COLBY WILLIAMS

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DECLARATION OF J. COLBY WILLIAMS

I, J. COLBY WILLIAMS, declare as follows:

1. I am a resident of Las Vegas, Nevada. I am over the age of eighteen and am competent to make this Declaration. This Declaration is based upon my personal knowledge unless otherwise so stated, and if called upon to testify, I would testify as set forth herein.

2. I am a licensed attorney in the State of Nevada, Bar Number 5549, and am one of the attorneys representing Defendants in the above-captioned matter (*i.e.*, Eighth Judicial District Court Case No. A-20-813230-C).

3. I make this Declaration in support of Defendants' Motion to Dismiss Complaint Pursuant to NRCP 12(b)(5).

4. Attached hereto as Exhibit 1 is a true and correct copy of the Delaware Secretary of State "Entity Details" for UFC Holdings, LLC. My office obtained a copy of this publicly-available document from the following government website: https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx (last visited August 24, 2020).

5. Attached hereto as Exhibit 2 is a true and correct copy of the Criminal Docket Sheet for *United States v. Ramos*, Case No. 2:15-cr-00267-GMN-CWH. My office obtained a copy of this publicly-available document from the following government website: https://ecf.nvd.uscourts.gov/cgi-bin/DktRpt.pl?417614966919002-L_1_0-1 (last visited August 24, 2020).

6. Attached hereto as Exhibit 3 is a true and correct copy of the Stipulation and Order for Protective Order Pursuant to Fed. R. Crim. Pro. 16(d)(1) and 18 U.S.C. § 3771. My office obtained a copy of this publicly-available document from the following government website: https://ecf.nvd.uscourts.gov/doc1/11515503251 (last visited August 24, 2020).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 31st day of August, 2020.

/s/ J. Colby Williams
J. COLBY WILLIAMS

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EXHIBIT 1

Department of State: Division of Corporations

Allowable Characters

HOME
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File UCC's
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Name Reservation
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UCC Forms and Fees
Taxes
Expedited Services
Service of Process
Registered Agents
GetCorporate Status
Submitting a Request
How to Form a New Business Entity
Certifications, Apostilles & Authentication of Documents

Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number:	6103234	Incorporation Date / Formation Date:	7/27/2016 (mm/dd/yyyy)
Entity Name:	UFC HOLDINGS, LLC		
Entity Kind:	Limited Liability Company	Entity Type:	General
Residency:	Domestic	State:	DELAWARE

REGISTERED AGENT INFORMATION

Name:	CORPORATION SERVICE COMPANY		
Address:	251 LITTLE FALLS DRIVE		
City:	WILMINGTON	County:	New Castle
State:	DE	Postal Code:	19808
Phone:	302-636-5401		

Additional information is available for a fee. You can retrieve Status for a fee of $10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of $20.00.

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RAMOS034

EXHIBIT 2

CLOSED

United States District Court
District of Nevada (Las Vegas)
CRIMINAL DOCKET FOR CASE #: 2:15-cr-00267-GMN-CWH-1

Case title: USA v. Ramos
Magistrate judge case number: 2:15-mj-00008-CWH

Date Filed: 09/22/2015
Date Terminated: 07/08/2016

Assigned to: Chief Judge Gloria M. Navarro
Referred to: Magistrate Judge Carl W. Hoffman

Appeals court case number: 16-10321 Ninth Circuit

Defendant (1)

Ernesto Joshua Ramos
TERMINATED: 07/08/2016

represented by **Kathleen Bliss**
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ATTORNEY TO BE NOTICED

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Pending Counts	Disposition
18:1952(a)(3) - Use of a Facility of Interstate Communication to Promote Extortion (1)	Sentenced 6/30/2016

Highest Offense Level (Opening)

Felony

Terminated Counts	Disposition
None	

Highest Offense Level (Terminated)

None

Complaints **Disposition**

Count 1 - 18:1952(a)(3) - Use of a Facility of Interstate Commerce to Promote Extortion

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Plaintiff

USA

represented by Carla B. Carry
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/08/2015		Case assigned to Magistrate Judge Carl W. Hoffman. (MW) [2:15-mj-00008-CWH] (Entered: 01/08/2015)
01/08/2015	1	SEALED COMPLAINT as to Ernesto Joshua Ramos (1), Count 1. (MMM) (Main Document 1 replaced on 1/9/2015) (SLD). [2:15-mj-00008-CWH] (Entered: 01/08/2015)
01/09/2015	3	MINUTES OF PROCEEDINGS - Initial Appearance as to Ernesto Joshua Ramos held on 1/9/2015 before Magistrate Judge Carl W. Hoffman. Crtrm Administrator: *Donna Smith*; AUSA: *Nicholas Dickinson*; Def Counsel: *Ryan Norwood*; PTS: *Zack Bowen*; Court Reporter/FTR #: *3:45-3:59*; Time of Hearing: *3:45-3:59 PM*; Courtroom: *3C*; Defendant is present. Financial Affidavit filed. The Federal Public Defenders Office is appointed as defense counsel. Attorney Ryan Norwood for Ernesto Joshua Ramos added. ORDERED that the complanint and case are unsealed. Defendant advised of rights/charges. The government is not seeking detention. Parties heard regarding conditions of release. Defendant is released on a PR bond with supervision and conditions. Bond form executed. Bond Status Hearing set for 1/12/2015 01:30 PM in LV Courtroom 3C before Magistrate Judge Carl W. Hoffman. Preliminary Examination set for 1/23/2015 04:00 PM in LV Courtroom 3C before Magistrate Judge Carl W. Hoffman.

		(no image attached) (Copies have been distributed pursuant to the NEF - DES) [2:15-mj-00008-CWH] (Entered: 01/09/2015)
01/09/2015	5	ORDER APPOINTING COUNSEL as to Ernesto Joshua Ramos. FPD appointed as counsel for Defendant, subpoenas issued upon request with exception to out of state subpoenas which will require court approval. Signed by Magistrate Judge Carl W. Hoffman on 1/9/2015. (Copies have been distributed pursuant to the NEF - DKJ) [2:15-mj-00008-CWH] (Entered: 01/12/2015)
01/09/2015	6	PR BOND Entered as to Ernesto Joshua Ramos. (DKJ) [2:15-mj-00008-CWH] (Entered: 01/12/2015)
01/12/2015	7	MINUTES OF PROCEEDINGS - Bond Hearing as to Ernesto Joshua Ramos held on 1/12/2015 before Magistrate Judge Carl W. Hoffman. Crtrm Administrator: *Donna Smith*; AUSA: *Nicholas Dickinson*; Def Counsel: *Shari Kaufman*; PTS: *Erin Oliver*; Court Reporter/FTR #: *1:30-1:43*; Time of Hearing: *1:30-1:43 PM*; Courtroom: *3C*; Defendant is present. Parties are heard regarding the conditions of release. It is ordered that the following additional condition of relase is made part of the appearance bond 6 : The defendant shall not travel within 100 yards of the victim's residence or place of employment. All other conditions of release previously imposed remain in full effect. (no image attached) (Copies have been distributed pursuant to the NEF - DES) [2:15-mj-00008-CWH] (Entered: 01/12/2015)
01/12/2015	9	Arrest Warrant Returned Executed on 1/9/2015 in case as to Ernesto Joshua Ramos re 2 Warrant Issued. (DKJ) [2:15-mj-00008-CWH] (Entered: 01/13/2015)
01/13/2015	8	NOTICE OF ATTORNEY APPEARANCE: Shari L. Kaufman appearing for Ernesto Joshua Ramos (Kaufman, Shari) [2:15-mj-00008-CWH] (Entered: 01/13/2015)
01/16/2015	10	MOTION to Substitute Attorney by Ernesto Joshua Ramos. Motion ripe 1/16/2015. (Christiansen, Peter) [2:15-mj-00008-CWH] (Entered: 01/16/2015)
01/20/2015	11	ORDER granting 10 Motion to Substitute Attorney. Attorney Peter S. Christiansen and Kendelee Leascher-Works are substituted as attorney of record for Defendant Ernesto Joshua Ramos in the place and stead of Attorney Shari L. Kaufman and the Federal Public Defender's Office as to Ernesto Joshua Ramos (1). Signed by Magistrate Judge Carl W. Hoffman on 1/20/2015. (Copies have been distributed pursuant to the NEF - DKJ) [2:15-mj-00008-CWH] (Entered: 01/20/2015)
01/20/2015	12	DESIGNATION of Retained Counsel by Peter S. Christiansen on behalf of Ernesto Joshua Ramos. (Christiansen, Peter) [2:15-mj-00008-CWH] (Entered: 01/20/2015)
01/20/2015	13	FIRST STIPULATION to Continue Preliminary Hearing; filed by USA as to Ernesto Joshua Ramos. (Dickinson, Nicholas) [2:15-mj-00008-CWH] (Entered: 01/20/2015)

01/21/2015	14	ORDER granting 13 Stipulation to continue preliminary hearing as to Ernesto Joshua Ramos (1). Preliminary hearing reset for 2/19/2015 04:00 PM in LV Courtroom 3C before Magistrate Judge Carl W. Hoffman. Signed by Magistrate Judge Carl W. Hoffman. (Copies have been distributed pursuant to the NEF - DKJ) [2:15-mj-00008-CWH] (Entered: 01/22/2015)
02/05/2015	15	ORDER modifying 6 Bond as to Defendant Ernesto Joshua Ramos. Signed by Magistrate Judge Carl W. Hoffman on 1/12/2015. (Copies have been distributed pursuant to the NEF - DC) [2:15-mj-00008-CWH] (Entered: 02/05/2015)
02/18/2015	16	SECOND STIPULATION to Continue Preliminary Hearing; filed by USA as to Ernesto Joshua Ramos. (Dickinson, Nicholas) [2:15-mj-00008-CWH] (Entered: 02/18/2015)
02/18/2015	17	ORDER granting 16 Stipulation to continue preliminary hearing as to Ernesto Joshua Ramos (1). Preliminary Examination reset for 3/24/2015 04:00 PM in LV Courtroom 3C before Magistrate Judge Carl W. Hoffman. Signed by Magistrate Judge Carl W. Hoffman on 2/18/2015. (Copies have been distributed pursuant to the NEF - DKJ) [2:15-mj-00008-CWH] (Entered: 02/18/2015)
03/23/2015	18	THIRD STIPULATION to Continue Preliminary Hearing; filed by USA as to Ernesto Joshua Ramos. (Dickinson, Nicholas) [2:15-mj-00008-CWH] (Entered: 03/23/2015)
03/24/2015	19	ORDER Granting 18 STIPULATION *to Continue Preliminary Hearing* by USA as to Ernesto Joshua Ramos. Preliminary Examination reset for 4/23/2015 at 04:00 PM in LV Courtroom 3C before Magistrate Judge Carl W. Hoffman. Signed by Magistrate Judge Carl W. Hoffman on 3/24/2015. (Copies have been distributed pursuant to the NEF - DC) [2:15-mj-00008-CWH] (Entered: 03/24/2015)
04/23/2015	20	STIPULATION to Continue filed by USA as to Ernesto Joshua Ramos. (Dickinson, Nicholas) [2:15-mj-00008-CWH] (Entered: 04/23/2015)
04/24/2015	21	ORDER ON STIPULATION granting 20 STIPULATION to Continue Preliminary Hearing as to Ernesto Joshua Ramos. Preliminary Examination reset for 6/3/2015 04:00 PM in LV Courtroom 3C before Magistrate Judge Carl W. Hoffman. Signed by Magistrate Judge Carl W. Hoffman. (Copies have been distributed pursuant to the NEF - DKJ) [2:15-mj-00008-CWH] (Entered: 04/24/2015)
06/02/2015	22	STIPULATION for substitution of counsel; filed by Ernesto Joshua Ramos. (Grasso, Gabriel) [2:15-mj-00008-CWH] (Entered: 06/02/2015)
06/02/2015	23	DESIGNATION of Retained Counsel by Gabriel L Grasso on behalf of Ernesto Joshua Ramos. (Grasso, Gabriel) [2:15-mj-00008-CWH] (Entered: 06/02/2015)
06/02/2015	24	STIPULATION to Continue Preliminary Hearing; filed by USA as to Ernesto Joshua Ramos. (Dickinson, Nicholas) [2:15-mj-00008-CWH] (Entered: 06/02/2015)
06/03/2015	25	ORDER ON STIPULATION Granting 24 STIPULATION to Continue Preliminary Hearing as to Ernesto Joshua Ramos. Preliminary Examination continued to 7/1/2015 04:00 PM in LV Courtroom 3C before Magistrate Judge

		Carl W. Hoffman. Signed by Magistrate Judge Carl W. Hoffman on 6/3/15. (Copies have been distributed pursuant to the NEF - MMM) [2:15-mj-00008-CWH] (Entered: 06/03/2015)
06/03/2015	26	ORDER ON STIPULATION Granting 22 STIPULATION for substitution of counsel filed as to Ernesto Joshua Ramos. Gabriel L. Grasso is substituted in place and stead of Peter S. Christiansen and Kendelee Leascher-Works. Signed by Magistrate Judge Carl W. Hoffman on 6/3/15. (Copies have been distributed pursuant to the NEF - MMM) [2:15-mj-00008-CWH] (Entered: 06/03/2015)
06/29/2015	27	STIPULATION to Continue Preliminary Hearing; filed by USA as to Ernesto Joshua Ramos. (Dickinson, Nicholas) [2:15-mj-00008-CWH] (Entered: 06/29/2015)
07/01/2015	28	ORDER ON STIPULATION Granting 27 STIPULATION to Continue Preliminary Hearing as to Ernesto Joshua Ramos. Preliminary Examination reset for 8/10/2015 04:00 PM in LV Courtroom 3C before Magistrate Judge Carl W. Hoffman. Signed by Magistrate Judge Carl W. Hoffman on 7/1/15. (Copies have been distributed pursuant to the NEF - MMM) [2:15-mj-00008-CWH] (Entered: 07/01/2015)
07/31/2015	29	SEVENTH STIPULATION to Continue Preliminary Hearing; filed by USA as to Ernesto Joshua Ramos. (Silva, Cristina) [2:15-mj-00008-CWH] (Entered: 07/31/2015)
08/03/2015	30	ORDER Granting 29 Stipulation to Continue Preliminary Hearing (7th Request) as to Ernesto Joshua Ramos (1). Preliminary Examination reset for 9/24/2015 4:00 PM in LV Courtroom 3C before Magistrate Judge Carl W. Hoffman. Signed by Magistrate Judge Carl W. Hoffman on 8/3/15. (Copies have been distributed pursuant to the NEF - PS) [2:15-mj-00008-CWH] (Entered: 08/03/2015)
09/22/2015	31	MINUTE ORDER IN CHAMBERS of the Honorable Magistrate Judge Carl W. Hoffman, as to Ernesto Joshua Ramos on 9/22/2015. By Deputy Clerk: Danielle Cacciabaudo. Magistrate Judge case, pending deadlines, motions, hearings, and excludables terminated in case as to Ernesto Joshua Ramos. Preliminary Hearing set for 9/24/2015 at 4:00 pm is vacated and converted to Arraignment & Plea on 9/30/2015 at 3:00 pm in criminal case number **2:15-cr-00267-GMN-CWH**. For all further proceedings, please see the criminal case. **(no image attached)** (Copies have been distributed pursuant to the NEF - DC) [2:15-mj-00008-CWH] (Entered: 09/22/2015)
09/22/2015		Case assigned to Chief Judge Gloria M. Navarro and Magistrate Judge Carl W. Hoffman. (DC) (Entered: 09/22/2015)
09/22/2015	32	INDICTMENT as to Ernesto Joshua Ramos (1) count 1. (DC) (Entered: 09/22/2015)
09/22/2015	33	AO 257 to 32 Indictment as to Ernesto Joshua Ramos. (DC) (Entered: 09/22/2015)
09/22/2015	34	MINUTES OF PROCEEDINGS - Grand Jury Return as to Ernesto Joshua Ramos held on 9/22/2015 before Magistrate Judge Peggy A. Leen. Crtrm Administrator: *Araceli Bareng*; AUSA: *Robert Knief*; Court Reporter/FTR #: *Bonnie Terry*; Time

		of Hearing: *1:35 PM - 1:37 PM*; Courtroom: *3B*; Summons to issue. Arraignment/Plea set for 9/30/2015 at 03:00 PM in LV Courtroom 3D before Magistrate Judge Cam Ferenbach. (Copies have been distributed pursuant to the NEF - DC) (Entered: 09/22/2015)
09/30/2015	36	MINUTES OF PROCEEDINGS - Arraignment/Plea as to Ernesto Joshua Ramos held on 9/30/2015 before Magistrate Judge Cam Ferenbach. Crtrm Administrator: *J. Ries*; AUSA: *Nicholas Dickinson*; Def Counsel: *Gabriel Grasso*; Court Reporter/FTR #: *3:12 - 3:15*; Courtroom: *3D*; Defendant is present on bond. Defendant is arraigned on Indictment. Defendant pleads NOT GUILTY to the single count. Order regarding Pretrial Procedure is entered and copies will be served on counsel via CM/ECF. The U.S. Probation Office is directed to prepare a report detailing the defendant's criminal history, if any. Defendant is continued on present terms of release. Calendar Call set for 11/23/2015 09:00 AM in LV Courtroom 7D before Chief Judge Gloria M. Navarro. Jury Trial set for 11/30/2015 08:30 AM in LV Courtroom 7D before Chief Judge Gloria M. Navarro.(no image attached) (Copies have been distributed pursuant to the NEF - JAR) (Entered: 09/30/2015)
09/30/2015	37	ORDER REGARDING PRETRIAL PROCEDURE as to Ernesto Joshua Ramos. Responses to motions to be filed and served within fourteen (14) calendar days from the date of service of the motion; and reply brief to be served within seven (7) calendar days from the date of service of the response. Motions due by 10/30/2015. Signed by Magistrate Judge Cam Ferenbach on 9/30/15. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 10/01/2015)
10/01/2015	38	Government's Disclosure Statement filed by USA as to Ernesto Joshua Ramos.. (Higginbotham, Carla) (Entered: 10/01/2015)
10/02/2015	39	STIPULATION *and Proposed Order for Protective Order Pursuant to Fed.R.Crim.Pro. 16(d)(1) and 18 U.S.C. Section 3771* by USA as to Ernesto Joshua Ramos. (Higginbotham, Carla) (Entered: 10/02/2015)
10/05/2015	40	ORDER Granting 39 Stipulation for Protective Order. Signed by Magistrate Judge Carl W. Hoffman on 10/5/15. (Copies have been distributed pursuant to the NEF - TR) (Entered: 10/05/2015)
10/27/2015	41	MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Gloria M. Navarro, as to Ernesto Joshua Ramos on 10/27/2015. By Deputy Clerk: Aaron Blazevich. The Court is in receipt of a plea agreement. IT IS THEREFORE ORDERED that a Change of Plea Hearing is set for 11/3/2015 at 11:00 AM in LV Courtroom 7D before Chief Judge Gloria M. Navarro. (no image attached) (Copies have been distributed pursuant to the NEF - ASB) (Entered: 10/27/2015)
11/03/2015	42	PLEA AGREEMENT/MEMORANDUM as to Ernesto Joshua Ramos. (EW) (Entered: 11/03/2015)

11/03/2015	43	MINUTES OF PROCEEDINGS - Change of Plea as to Ernesto Joshua Ramos held on 11/3/2015 before Chief Judge Gloria M. Navarro. Crtrm Administrator: *Eileen Wood*; AUSA: *Carla Higginbotham*; Def Counsel: *Gabriel Grasso*; Court Reporter/FTR #: *Araceli Bareng*; Time of Hearing: *11:00-11:33 AM*; Courtroom: *7D*. Defendant is present on terms of release. Defendant is sworn. The terms of the proposed plea agreement are read into the record. The Court canvasses the Defendant. Defendant pleads GUILTY to Count 1 of the Indictment. Plea Agreement filed. Court conditionally accepts the guilty plea. This matter is referred to the probation department for investigation and report. Trial setting as to this defendant is vacated. Defendant is continued on present terms of release with the modification that Defendant will no longer be required to submit to location (GPS) monitoring equipment. Sentencing and disposition set for 2/4/2016 at 10:30 AM in LV Courtroom 7D before Chief Judge Gloria M. Navarro.(no image attached) (Copies have been distributed pursuant to the NEF - EW) (Entered: 11/03/2015)
11/03/2015	44	NOTICE to Contact the U. S. Probation Office as to Ernesto Joshua Ramos. (NEV) (Entered: 11/03/2015)
01/25/2016	45	STIPULATION *to Continue Sentencing Hearing (First Request)* by Ernesto Joshua Ramos. (Grasso, Gabriel) (Entered: 01/25/2016)
01/25/2016	46	ORDER ON STIPULATION Granting 45 STIPULATION to Continue Sentencing Hearing (First Request) as to Ernesto Joshua Ramos. Sentencing and disposition continued to 5/5/2016 at 9:00 AM in LV Courtroom 7D before Chief Judge Gloria M. Navarro. Signed by Chief Judge Gloria M. Navarro on 1/25/16. (Copies have been distributed pursuant to the NEF - ASB) (Entered: 01/25/2016)
02/03/2016	47	MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Gloria M. Navarro, as to Ernesto Joshua Ramos on 2/3/2016. By Deputy Clerk: Aaron Blazevich. Due to a conflict in the Court's schedule, the Sentencing and disposition currently set for 5/5/2016 at 9:00 AM is hereby CONTINUED to 5/19/2016 at 9:00 AM in LV Courtroom 7D before Chief Judge Gloria M. Navarro. (no image attached) (Copies have been distributed pursuant to the NEF - ASB) (Entered: 02/03/2016)
04/08/2016	48	STIPULATION *to Continue Sentencing Hearing (Second Request)* by USA as to Ernesto Joshua Ramos. (Higginbotham, Carla) (Entered: 04/08/2016)
04/12/2016	49	ORDER GRANTING 48 STIPULATION *to Continue Sentencing Hearing (Second Request)* as to Ernesto Joshua Ramos. Sentencing and disposition reset for 5/26/2016 at 10:30 AM in LV Courtroom 7D before Chief Judge Gloria M. Navarro. Signed by Chief Judge Gloria M. Navarro on 4/12/16. (Copies have been distributed pursuant to the NEF - EW) (Entered: 04/12/2016)
05/23/2016	50	STIPULATION to Continue Sentencing Hearing (Third Request) by Ernesto Joshua Ramos. (Grasso, Gabriel) (Entered: 05/23/2016)

05/25/2016	51	ORDER ON STIPULATION Granting 50 STIPULATION to Continue Sentencing Hearing (Third Request) as to Ernesto Joshua Ramos. Sentencing and disposition continued to 6/30/2016 at 9:00 AM in LV Courtroom 7D before Chief Judge Gloria M. Navarro. Signed by Chief Judge Gloria M. Navarro on 5/25/16. (Copies have been distributed pursuant to the NEF - ASB) (Entered: 05/25/2016)
06/20/2016	52	SENTENCING MEMORANDUM by Ernesto Joshua Ramos. (Grasso, Gabriel) (Entered: 06/20/2016)
06/27/2016	53	Emergency MOTION to Continue District Judge Hearing; filed by Ernesto Joshua Ramos. (Bliss, Kathleen) (Entered: 06/27/2016)
06/27/2016	54	MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Gloria M. Navarro, as to Ernesto Joshua Ramos on 6/27/2016. Pending before the Court is 53 Emergency Motion to Continue Sentencing filed by Defendant Ernesto Joshua Ramos. **IT IS HEREBY ORDERED** that the Government shall file a Response by Tuesday, June 28, 2016, at 12:00 PM. (Copies have been distributed pursuant to the NEF - SP) (Entered: 06/27/2016)
06/28/2016	55	RESPONSE to 53 Motion to Continue District Judge Hearing ; filed by USA as to Ernesto Joshua Ramos. Replies due by 7/4/2016. (Higginbotham, Carla) (Entered: 06/28/2016)
06/28/2016	56	MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Gloria M. Navarro, as to Ernesto Joshua Ramos on 6/28/2016. Pending before the Court is the 53 Emergency Motion to Continue Sentencing filed by Defendant Ernesto Joshua Ramos. The Court is not persuaded at this time that there is good cause for the substitution of counsel and continuance of the sentencing hearing. Accordingly, **IT IS HEREBY ORDERED** that Defendant's 53 Emergency Motion to Continue Sentencing is **DENIED without prejudice**. However, the Court will entertain further argument regarding these issues at the currently scheduled hearing and determine if sentencing should proceed as scheduled. (Copies have been distributed pursuant to the NEF - SP) (Entered: 06/28/2016)
06/29/2016	57	SUPPLEMENT re 50 Motion to Continue Sentencing by Ernesto Joshua Ramos . (Bliss, Kathleen) (Entered: 06/29/2016)
06/30/2016	60	MINUTES OF PROCEEDINGS - Sentencing and Disposition as to Ernesto Joshua Ramos held on 6/30/2016 before Chief Judge Gloria M. Navarro. Crtrm Administrator: *Aaron Blazevich*; AUSA: *Carla Higginbotham with FBI Agent James Mollica*; Def Counsel: *Gabriel Grasso, Kathleen Bliss, and Jason Hicks*; USPO: *Brian Blevins and Wendy Beckner*; Court Reporter/FTR #: *Araceli Bareng*; Time of Hearing: *9:22 a.m. - 10:27 a.m.*; Courtroom: *7D*; Defendant is present on current terms of release. The Court makes preliminary statements and hears representations from counsel. Attorney Kathleen Bliss argues

		for the continuance of this hearing and to be allowed to substitute in place of Gabriel Grasso. Counsel also makes arguments to allow the defendant to withdraw his guilty plea. The Court denies the oral motion for substitution, denies the oral request to continue this hearing, and finds no fair and just reason for the defendant to withdraw his plea of guilty. The Court proceeds with the sentencing hearing. The defendant addresses the Court on his own behalf. Sentence is imposed as to count 1 of the Indictment. Probation provides a copy of the conditions of supervised release to the defendant. Defendant is advised of right to file an appeal. Defendant is allowed to self surrender by 2:00 PM on 9/28/2016. Bond to be automatically exonerated upon written notification by the U.S. Marshal that the defendant has self surrendered as ordered. The Court stands at recess. (no image attached) (Copies have been distributed pursuant to the NEF - ASB) (Entered: 07/01/2016)
07/01/2016	61	LETTER to the Court from Margaret McLetchie, Attorney for the Las Vegas Review-Journal re: 60 Sentencing Hearing. (ASB) (Entered: 07/01/2016)
07/08/2016	62	JUDGMENT as to Ernesto Joshua Ramos (1), Count 1, Sentenced 6/30/2016. Imprisonment 12 months 1 day; Defendant to self surrender by 2pm on 9/28/2016; Supervised Release one (1) year with special conditions; $100.00 Assessment. Signed by Chief Judge Gloria M. Navarro on 7/8/2016. (Copies have been distributed pursuant to the NEF - DL) (Entered: 07/08/2016)
07/14/2016	63	NOTICE OF APPEAL by Ernesto Joshua Ramos re 62 Judgment, E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (Bliss, Kathleen) (Entered: 07/14/2016)
07/15/2016	64	Designation of Transcripts and Transcript Order forms and instructions for 63 Notice of Appeal as to Ernesto Joshua Ramos. The forms may also be obtained on the Court's website at www.nvd.uscourts.gov/Forms.aspx. (Attachments: # 1 Transcript Order Form)(EDS) (Entered: 07/15/2016)
07/15/2016	65	USCA ORDER for Time Schedule as to 63 Notice of Appeal filed by Ernesto Joshua Ramos. USCA Case Number 16-10321. (MMM) (Entered: 07/18/2016)
08/04/2016	66	TRANSCRIPT DESIGNATION by Ernesto Joshua Ramos re 63 Notice of Appeal, 60 Sentencing,,,,,, 43 Change of Plea,,,,. (Bliss, Kathleen) (Entered: 08/04/2016)
08/17/2016	67	TRANSCRIPT of Proceedings, 43 Change of Plea, as to Ernesto Joshua Ramos held on 11/3/15 before Chief Judge Gloria M. Navarro. Court Reporter/Transcriber: Donna Davidson, 775-329-0132. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber using the court's Transcript Order form available on our website, at www.nvd.uscourts.gov, before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 9/7/2016. Redacted Transcript Deadline set for 9/17/2016. Release of Transcript Restriction set for 11/15/2016. (DD) (Entered: 08/17/2016)

08/17/2016	68	TRANSCRIPT of Proceedings, 60 Sentencing, as to Ernesto Joshua Ramos held on 6/30/16 before Chief Judge Gloria M. Navarro. Court Reporter/Transcriber: Donna Davidson, 775-329-0132. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber using the court's Transcript Order form available on our website, at www.nvd.uscourts.gov, before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 9/7/2016. Redacted Transcript Deadline set for 9/17/2016. Release of Transcript Restriction set for 11/15/2016. (DD) (Entered: 08/17/2016)
09/02/2016	69	MOTION for Release on Personal Recognizance Bond Pending Appeal; Expedited Treatment Requested by Ernesto Joshua Ramos. Responses due by 9/19/2016. (Bliss, Kathleen) (Entered: 09/02/2016)
09/09/2016	70	RESPONSE to 69 Motion for Release on Personal Recognizance Bond Pending Appeal filed by USA as to Ernesto Joshua Ramos. Replies due by 9/15/2016. (Higginbotham, Carla) (Entered: 09/09/2016)
09/13/2016	71	ORDER Denying 69 Motion for Release on Personal Recognizance Bond Pending Appeal as to Ernesto Joshua Ramos (1) as moot. IT IS FURTHER ORDERED that Defendant's self-surrender date shall be extended to 2:00 PM on 3/28/17. All conditions on Defendant's current Personal Recognizance Bond shall remain the same. Signed by Chief Judge Gloria M. Navarro on 9/13/16. (Copies have been distributed pursuant to the NEF - ADR) (Entered: 09/13/2016)
03/08/2017	72	ORDER of USCA as to Ernesto Joshua Ramos re 63 Notice of Appeal. DISMISSED. (MMM) (Entered: 03/20/2017)
03/22/2017	73	Emergency MOTION to stay/extend self-surrender date by Ernesto Joshua Ramos. Responses due by 4/5/2017. (Attachments: # 1 Exhibit Motion to reconsider) (Bliss, Kathleen) (Entered: 03/22/2017)
03/23/2017	74	RESPONSE to 73 Motion ; filed by USA as to Ernesto Joshua Ramos. Replies due by 3/30/2017. (Higginbotham, Carla) (Entered: 03/23/2017)
03/23/2017	75	REPLY to Response to 73 Motion filed by Ernesto Joshua Ramos. (Bliss, Kathleen) (Entered: 03/23/2017)
03/23/2017	76	ORDER, as to Ernesto Joshua Ramos (1), that 73 Emergency Motion to Stay/Extend Self-Surrender Date is DENIED. Defendant's self-surrender date is 2:00 PM on March 28, 2017. Signed by Chief Judge Gloria M. Navarro on 3/23/17. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 03/24/2017)
12/07/2017	77	MANDATE of USCA as to Ernesto Joshua Ramos re 72 USCA Order DISMISSING 63 Notice of Appeal. (MMM) (Entered: 12/08/2017)
12/21/2017	79	ORDER ON MANDATE as to Ernesto Joshua Ramos re 63 Notice of Appeal, 72 USCA Order. DISMISSED Signed by Chief Judge Gloria M. Navarro on 12/21/2017. (Copies have been distributed pursuant to the NEF - JM) (Entered: 12/21/2017)

PACER Service Center			
Transaction Receipt			
08/24/2020 15:00:11			
PACER Login:	joncolby:2739217:0	Client Code:	
Description:	Docket Report	Search Criteria:	2:15-cr-00267-GMN-CWH
Billable Pages:	8	Cost:	0.80

RAMOS047

EXHIBIT 3

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * * * *

UNITED STATES OF AMERICA, Plaintiff, vs. ERNESTO JOSHUA RAMOS, Defendant.	Case No. 2:15-cr-00267-GMN-CWH STIPULATION AND ORDER FOR PROTECTIVE ORDER PURSUANT TO FED. R. CRIM. PRO. 16(d)(1) AND 18 U.S.C. § 3771

It is hereby stipulated and agreed, by and between DANIEL G. BOGDEN, United States Attorney, and CARLA B. HIGGINBOTHAM, Assistant United States Attorney, counsel for the United States, and GABRIEL L. GRASSO, counsel for the defendant, ERNESTO JOSHUA RAMOS, that a protective order pursuant to Federal Rule of Criminal Procedure 16(d)(1), should be entered that will appropriately set guidelines for defense's use and treatment of certain sensitive information and documents that the government may disclose related to the victim in this matter. This stipulation is based upon the following:

1. Defendant is charged in a one-count indictment with the a violation of 18, United States Code, Section 1952(a)(3), which makes it a crime to use a facility of interstate commerce to promote the crime of extortion. The case involves the alleged extortion by Defendant of the victim related to personal sexual activities that were secretly recorded by a third party and provided to Defendant.

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2. In order to protect the victim's privacy and to avoid subjecting the victim to unnecessary psychological harm and emotional distress, which would arise from the disclosure of certain information related to this case, the parties stipulate to the entry of an order to protect the confidentiality of documents disclosed by the government, to prohibit use of the victim's full name or personally identifiable information, including information related to his employment, in papers and documents not sealed by Order of this Court, and to limit all references to the victim at public hearings to the pseudonym, "Victim 1."

3. The Crime Victims' Rights Act of 2004 provides specific rights to victims of crime. Specifically, the Act states that a crime victim has "the right to be reasonably protected from the accused," and "the right to be treated with fairness and with respect for the victim's *dignity* and *privacy*" throughout the court proceedings. 18 U.S.C. § 3771(a)(1) & (8) (emphasis added). A court may enter a protective order related to criminal discovery based on a showing of good cause. Fed. R. Crim. Pro. 16(d)(1). District courts in the Ninth Circuit have held that the need to protect a victim's dignity and privacy during a pending criminal prosecution is sufficient to establish good cause for the entry of a protective order. *See e.g., United States v. Patkar*, 2008 WL 233062, *3 (D. Haw., Jan. 28, 2008) (holding that protection of victim's dignity and privacy provided good cause to support protective order in extortion case) (unpublished opinion provided for demonstrative purposes). Although the defense stipulates to the entry of this protective order, it does not specifically stipulate to the applicability of the above-described legal basis and reserves the right to challenge said law in any future motions regarding this order.

4. Based on the nature and circumstances of the alleged extortion in this case, there is good cause to support the entry of the protective order in order to protect the dignity and privacy of the victim, as well as his family. Specifically, without the entry of the stipulated protective order, the materials that comprise the basis of the alleged extortion could be revealed violating Victim 1's privacy and causing harm to Victim 1's reputation, privacy, and dignity and causing substantial harm to Victim 1's family.

5. The parties agree that either party may move to modify this protective order at any time if circumstances in this case change.

6. Defendant knows who Victim 1 is and the protective order requested will not hinder his ability to adequately investigate the charge or present his defense.

Dated this 30th day of September, 2015

DANIEL G. BOGDEN
United States Attorney

CARLA B. HIGGINBOTHAM
Assistant United States Attorney
Counsel for Plaintiff

Dated this 30th day of September, 2015

GABRIEL L. GRASSO
Counsel for Defendant

RAMOS051

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * * * *

UNITED STATES OF AMERICA, Plaintiff, vs. ERNESTO JOSHUA RAMOS, Defendant.	Case No. 2:15-cr-00267-GMN-CWH [PROPOSED] ORDER FOF PROTECTIVE ORDER PURSUANT TO FED. R. CRIM. PRO. 16(d)(1) AND 18 U.S.C. § 3771

Based on the Stipulation of the parties, and good cause appearing, IT IS HEREBY ORDERED, pursuant to Federal Rule of Criminal Procedure 16(d)(1) and 18 U.S.C. §§ 3771(a)(1) & (8), that:

1. Defense Counsel of Record shall maintain all discovery materials in this case in a secure place to which no person who does not have reason to know their contents has access and shall restrict viewing of discovery in this case only to Defendant, Defense Counsel of Record, Counsel for any additional targets or unindicated co-conspirators working on a joint defense with Defendant or Defendant's Counsel of Record, investigators of Defense Counsel of Record, staff working directly with Defense Counsel of Record, and expert witnesses retained by Defense Counsel of Record. Prior to providing access to these discovery materials to investigators, experts or staff, Defense Counsel of Record shall inform them of the contents of this Order and protections placed on these materials by the Court.

2. Defendant shall not be permitted to have or view discovery materials outside the presence of Defense Counsel of Record.

3. Defense Counsel of Record shall treat the contact information of the victim, including the victim's street addresses, telephone numbers, e-mail addresses, and employment information, whether obtained through discovery materials provided by the government or information independently acquired by the defense team, as "attorneys' eyes only." "Attorneys' eyes" may include a criminal investigator or a staff person working directly with

Defense Counsel of Record. This information shall not be disseminated to any person that is not identified in paragraph one above and shall be used only to investigate this case and to prepare the defense and for no other purpose.

4. During all proceedings in this case, all parties and witnesses shall refer to the victim by the pseudonym, "Victim 1."

5. In all papers filed with the Court, all parties shall refer to the victim by the pseudonym, "Victim 1."

6. In all papers filed with the Court that by necessity require disclosure of the name or other information concerning the victim, all parties shall file the papers under seal, while submitting to opposing counsel the unredacted pleading (provided that such pleading is not filed in camera) and submitting to the clerk of the Court:

a. The complete paper clearly labeled "UNREDACTED" to be kept under seal; and,

b. The paper with the portions of it that disclose the name of or other information concerning the victim redacted, and in the case of names, replaced by the pseudonym "Victim 1", for placement in the public record.

7. Either party may move to modify this order at any time, if the circumstances of this case change.

8. At the conclusion of the case, including any appeals, Defense Counsel of Record shall securely destroy the originals and all copies of discovery materials and any other information containing the victim's personally identifiable information and notify the government of their compliance with this Order.

Dated this 5 day of October, 2015.

United States Magistrate Judge

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Steven D. Grierson
CLERK OF THE COURT

OMD
IAN CHRISTOPHERSON, ESQ.
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Phone: (702) 372-9649
Attorney for Plaintiff, Joshua Ramos

DISTRICT COURT
CLARK COUNTY, NEVADA

JOSHUA RAMOS, AKA ERNESTO JOSHUA RAMOS, an individual: Plaintiff, vs. DANA WHITE, an individual; UFC HOLDINGS LLC., ZUFFA, LLC., doing business as the ULTIMATE FIGHTING CHAMPIONSHIP, a Nevada limited liability company; DOES I through X inclusive; and ROE CORPORATIONS I through V, inclusive; Defendants	Case #: A-20-813230-C Dept. No. 29 **OPPOSITION TO MOTION TO DISMISS**

OPPOSITION TO MOTION TO DISMISS

FACT CHECK

Defendants' Motion is based on false, incorrect, and misleading statements of "facts," which are central to their Motion. The facts set forth in the Complaint and which will be proven at trial not only serve as the basis to deny the Motion but will support a verdict at trial.

1. *This is a lawsuit stemming from Defendants' failed coverup of their improper actions and their solicitation of an NDA so as to conceal those improper actions from potential and subsequent buyers of the UFC and not, as Defendants assert in their Motion, continuation of a failed extortion.*

In their Motion, Defendants seek to prejudice the Court, the public, and ultimately a jury by alleging this Civil Action is a continuation of a failed effort to extort Defendants and is "civil extortion" See Motion p.2, l. 4-5.

From the initial offer/ request by Hunter Campbell, Esq. in October of 2015 until he called Gabe Grasso, Esq. in July of 2016, it was the Defendants who were soliciting silence by Ramos, not Ramos continuing to "extort" Defendants, if he ever did.

On the record at the sentencing hearing of Ramos Judge Navarro recognized these negotiations and discussion as legal and permitted, see exhibit 1 (excerpt of the sentencing transcript) p 49, l. 1-8.

As with any litigation, there can be collateral consequences of litigation, and Defendants can and should consider them before proceeding to litigate and proceed to trial. Our legal system is there for parties to litigate their disputes.

Despite his public protests and disparagement White has not publicly disputed the underlying facts of this case or that after July 5th, 2016, he was apparently no longer concerned with their public disclosure.

2. *A breached Mediation Contract is a Contract.*

Central to their Motion is that there was no contract between the parties hence no breach or bad faith (if so then Count IV Unjust Enrichment provides Ramos a remedy).

Mediation and arbitration agreements are contracts. Central and inherent in that contract is the covenant of good faith The agreement to resolve differences in good faith is the core of a mediation agreement

The facts in the Complaint establish that there was a mediation agreement between the parties and Ramos appeared for mediation with the defendants on April 5th, 2016 (Complaint para 69-72).

A mediation agreement is not an agreement to agree but rather an agreement to meet with a third party in good faith to resolve a dispute. The outcome of the mediation, including whether an agreement will be reached, is not an element of a mediation agreement. The parties agree to the time, manner, mediator, location and payment of the cost prior to the mediation. They also agree that they will cease continuing the dispute pending the mediation or, as in this case, preserving the status quo in exchange and in consideration for the agreement.

All those considerations are factual issues precluding granting a Motion to Dismiss as Plaintiff's fact are taken as true.

3. *The only Crime reported by White was his own.*

As the Complaint indicates, on December 11th, 2014, White, UFC counsel Epstein, and Colby Williams, Esq. met with AUSA LaBella and the FBI at Campbell's office.

Not only was the meeting with the wrong authority, (If in fact White was being extorted, extortion is a state offense), White volunteered that both he and/or the UFC had arranged for the transport of Doe to Brazil, obtained a passport for her, and UFC personnel paid her upon her return for "services?". That is both pandering and a criminal violation of the Mann act.

It took another month to lead Ramos into an agreement (not to remain silent, but rather to sell White the video) so there was a plausible basis to arrest Ramos. Before he pled guilty, Nevada specifically recognized that the tape was an exception to NRS 200.770 and legal for Ramos to posses and publish (Complaint para 51).

White is hardly an innocent victim who reported a crime; he is a sexual predator who used his "juice" to silence a victim, co-opt both the FBI and the Department of Justice, and intimidate his other victims and their potential counsel

from having the audacity to question his well-known and admitted behavior whose disclosure he was no longer concerned with once the sale of the UFC was done.

"Juice" is a Nevada euphemism for what is recognized elsewhere as corruption, though in Nevada, it is not express quid pro quo but rather a mutual exchange of favors on request and thus difficult to prove.

4. *Zuffa and the UFC and their principals are parties herein*

This is a "Doe" complainant, as the public records do not contain all information as to the structures of ownership at the relevant times.

Under the principles of Agency, when a legal entity participates in through its staff, employees, and with its legal counsel present as set forth in the Complaint, it need not "ratify" its own conduct and it and actions by its officers and employees can be imputed to the company. The presence of Epstein at the December 11th meeting at Campbell's office on behalf of the UFC/Zuffa indicates that alter ego, imputation or ratification apply herein as White's statements to the FBI on December 11, 2014 were an indication that White was using the company as his own and likely violating 42 USC 1983.

It may be found in discovery that the UFC and Zuffa took appropriate steps to rectify the improper conduct in violation of 42 UCSC 1983 after Epstein had knowledge thereof but the record is devoid of the same, and the response of White and his continued employment suggest that White and his co-owners of the UFC thought it appropriate that their consorts at fights be arranged (and at least in this instance) be paid through the business.

Discovery into whether White and the Fertitta's (Zuffa's principal owners) are subject to alter ego liability will proceed. The proffer by Doe, and the participation of counsel for the UFC, Epstein, are a clear indication that the UFC allowed its then owners to utilize business resources for their personal soirees.

PREFACE:

The actions of the Defendants, in this case, are explained by economics.

Defendants' motivation to silence Ramos so as not to interfere with or diminish the price of the UFC is clear when they ceased to have any interest to suppress the story coincident with their windfall sale of the UFC in July 2016.

In late October 2015, days before Ramos was set to enter a plea in Federal District Count, Hunter Campbell, Esq., contacted Gabriel Grasso, Esq. and advised that after Ramos entered a guilty plea that his client would seek a non-disclosure agreement from Ramos to ensure the matter would remain private after sentencing and the expiration of the protective order (Complaint para 52).

After Ramos reluctantly pled guilty, an agreement to mediate was made for April 5th, 2016 to, follow his scheduled sentencing with the understanding that it was for the purpose of determining the amount of compensation for the NDA.

Ramos sentencing date, originally set before the mediation date, was continued and finally occurred on June 30th, 2016.

On April 5th, 2016, Defendants performed pursuant to the mediation agreement in all respect except they did not mediate and unequivocally offered nothing to Ramos. In the next three months Defendants offered as much as $450,000.00 to Ramos and Ms. Doe.

On June 30th, 2016, Ramos was sentenced.

On July 5th, 2016 Hunter Campbell called Grasso and told him there would be no settlement, which was then conveyed to Ramos by letter by Grasso, nor would there be any further discussion/negotiations.

On or about July 9th or 11th, 2016, the sale of the UFC was publicly announced for 4.025 Billion Dollars.

Shortly thereafter, WME_IMG and its spinoff Endeavor reportedly sold roughly 300 million of the company to a group mostly its clients, including Guy Fieri, Ben Affleck

Donnie Walhberg, Sylvester Stallone, Serena Williams, and others and two notable non-clients Tom Brady and Robert Kraft.

Whatever concerns White alleged to have had with disclosure of his infidelities and pandering by the UFC/ Zuffa apparently evaporated with the sale of the UFC.

Did White and the UFC lie to the FBI as to their motivation behind preserving his anynonimity?

When viewed in the context of Defendants' financial interests, their actions are only explained by their financial motives to prevent their actions from being public before the sale of the UFC, whose sale was announced nine days after Ramos was sentenced.

This case is also about the flagrant corrupting of the Federal Justice system in Nevada for the personal benefit of White and his associates. Rather than taking the appropriate steps to report a possible extortion attempt as White allegedly believed was occurring(long before there was any arguable case), White or his counsel called in favors from somewhere and arranged a meeting with both the FBI and the same US Attorney known for vigorously prosecuting the HOA corruption cases, Charles LaBella. The "untouchable" FBI apparently is a thing of the past.

Extortion is a state offense over which neither the FBI nor the US Attorney would have had any jurisdiction over on December 11, 2014. The US Attorney and the FBI ignored White's possible criminal activity and commenced to build a Federal case against Ramos as a personal favor and outside of any normal DOJ procedures.

Defendants, by soliciting Ramos to enter a non-disclosure agreement during the pending sale of the UFC, breaching and then subsequently repudiating the contract while enjoying the benefits of Ramos's silence by the windfall sale to the tune of hundreds of millions of dollars is outrageous.

The facetious claim of White that he was seeking to prevent disclosure of his name for the protection of his wife and kids apparently evaporated when the UFC sale closed.

STATEMENT OF FACTS

The following summary of facts as set forth in the complaint suffice to give notice of Plaintiff's claims and if true would support liability against defendants.

Defendants agreed to formal mediation, conducted on an agreed time and date, with an agreed-on mediator at the agreed location(s) and appeared with counsel for both White and the UFC pursuant to that agreement (para 66-70).

Ramos also agreed to mediate, remained silent, did not seek to withdraw his guilty plea and appeared in good faith with counsel at the scheduled mediation.

Defendants did not mediate and stated they would pay him nothing.

Since Defendants had initiated the discussion and were to be the beneficiaries of the agreement, this was clearly bad faith.

The complaint alleges that it was "White's counsel" who unsolicited called Grasso with the offer to pay Ramos for a NDA (para 61) which then led to the April 5 2016 mediation.

On April 5th, 2016, Defendant breached the agreement by failing to offer or discuss any payment to Ramos (para 78).

Defendants continued to negotiate after that date, and eventually offered a total amount to Ramos and Doe of $450,000.00 and only four days before announcing the sale of the UFC stated they would not pay Ramos anything (para 101).

In addition to the statements made in the Complaint, hereby incorporated by reference, Plaintiff makes the following offer of proof as to what facts it intends to prove that support claims as follows:

Defendants through Hunter Campbell days before Ramos was to enter a plea solicited Ramos to enter a NDA *if and after* he pled guilty.

With that offer out there as a factor to consider Ramos reluctantly pled guilty with the advice of counsel.

The case against Ramos commenced in December 2014, when White, Epstein, Williams, Charles LaBella, and FBI agent Mollica met at Campbell's office. At that time

there was no demand from Ramos other than to talk to White. This was after White failed to acknowledge Ramos when he called on White on his "secretaries" phone he used for his private soirées.

At that meeting, memorialized by the FBI in its report, White acknowledged that the UFC had at a minimum purchased a ticket for Doe to Brazil, obtained an expedited passport, had sex with her in Brazil and paid her through the Spearmint Rhino on her return (para 10).

This not only implicated the UFC/Zuffa itself through knowledge of its counsel Epstein who was present at the meeting White had stated the elements of a Mann Act violation by White and the UFC.

Though prostitution is legal in Brazil and Nevada can only criminalizes activities in Nevada, it does not change the nature of the actions of the UFC – pandering.

These actions (the ticket, the passport, and the payoff) were all done by UFC employees as part of their jobs, not Dana White, and concealments of those activities were for the direct benefit of Zuffa and the owners of UFC (para 25).

Despite his confession of felonious activity by White with the aid of the UFC, the juice of White and his counsel, Campbell, and Williams, succeeded in having the FBI commence what was essentially the entrapment of Ramos.

It was White who brought up payment at a meeting he set up with the FBI a month after White met with the FBI and LaBella to report the alleged extortion.

Ramos, having pled guilty and having exhausted his appeals, does not intend to re-litigate his guilt, as it is not relevant having exhausted his 9th Circuit appeals.

Upon his arrest, a gag order was a condition of Ramos' release by the Magistrate. This order was the only operative until the indictment when a stipulation for a protective order was entered.

That protective order only was effective through the close of the case.

Judge Navarro, after earlier pondering whether discussions of an NDA was extortion, Judge Navarro expressly stated that the parties' counsel could freely discuss

an NDA. See exhibit 1 p. 49, l. 1-8. In doing so, Judge Navarro correctly recognized both that Ramos could openly discuss the events herein and that if White wished to prevent the same negotiating, an NDA was not, as Defendants now allege, an effort to continue a failed extortion.

Defendants contention that a suit based on Defendants' request for an NDA from Ramos sanctioned by Judge Navarro can be transmuted into extortion is clearly meritless and should cease.

It was the defendants that, in October 2015, unsolicited had called Grasso beginning the discussions of Ramos entering an NDA. This action is independent of any asserted "extortion", and Defendants characterization of the same as such will be the subject of a motion in limine before trial.

Ramos was sentenced after his attempt to withdraw his plea was rejected.

On July 5th, 2016, Hunter Campbell advised telephonically that there was no offer to pay Ramos.

On July 9th, 2016, the sale was announced of the UFC for four billion dollars, with White continuing on as its president.

In September 2016, WME-IMG/Endeavor announced it had sold three hundred million dollar of its ownership to a list of its clients, including Guy Fieri, Ben Affleck, Sylvester Stallone, Donnie Wahlberg, Serena Williams, and two non-clients, Tom Brady and Robert Kraft.

It is apparent that after the sale, the Defendant had no economic need for the NDA.

Economics explains everything.

I. <u>The Complaint Supports the Causes of Action</u>

(A) This is a Motion to Dismiss

(1) *The standards for a Motion to Dismiss is well settled and was stated by Defendants in their Motion.*

To prevail on a motion to dismiss under NRCP 12 (b)(5), as stated by Defendants in their Motion at page 6 lines 5-15, Defendants must show beyond a doubt, construing the pleadings liberally, drawing every reasonable inference in favor of the nonmoving party, taking well pled factual allegations as true Plaintiff could not prove facts which would entitle the plaintiff to relief.

In summary the Court must determine that the Plaintiffs' claims, all assertions in the Complaint being taken as true, could not prove their case.

There is no issue of notice here as Defendants have recognized the substance of Plaintiff's claims though the do seek to alter the facts as indicated above to support their Motion. Under 12(b)(5) the court considers Plaintiff's facts as true.

The standard recognizes that further discovery will produce additional evidence to support or rebut the claim which accounts for the high threshold required to grant a motion.

The Complaint clearly asserts a contract to mediate and a breach thereof, which also precludes dismissal of the bad faith claims. Without the details of that agreement and mediation, Defendants cannot meet the standards necessary for a motion to dismiss.

Count IV is an alternative remedy for unjust enrichment which is a quasi-contract action if this Court ultimately found there was no contract.

The Complaint states facts which if true upon which a plaintiff could prevail.

(2) UFC Holdings as a defendant

Plaintiff does not possess yet or have access to the corporate/business records of the defendants and accepts the representation of counsel that UFC Holdings was formed after the events herein and not a proper party to this case and consents to its dismissal without prejudice and reserves the right to amend to name any correct defendant when and if identified.

UFC Holdings appeared by this motion after waiving service. The court is directed to the Caption of the case. Plaintiff does not seek relief against any improper party but the structure of ownership remains unclear.

Clearly there was an entity known as the UFC at the relevant times which defendants sold to WME-IMG in 2016 and upon discovery of the appropriate entity amendment will be sought.

B. The Complaint states facts which the causes of Action

I <u>Breach of Contract/Bad Faith</u>

Defendants erroneously argue that since there was no agreement as to the amount of payment for an NDA, the was no agreement or contract between the parties.

A cursory internet search confirms that mediation agreements are commonplace and the general terms thereof.

A mediation agreement is not "an agreement to agree", it is a contract that is enforceable and carries with it the covenant of good faith.

The consideration for the agreement is itself essentially one of good faith, "we will suspend our contentious dispute and proceed to attempt to resolve it amicably in good faith with the use of a mediator".

II <u>Unjust Enrichment</u>

In the Certified Fire Protection, Inc. v Precision Construction, Inc. 128 Nev. Adv. Op 35, 283 P.3d 257 (2012), the Nevada Supreme Court stated:

> 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 the circumstances such that it would be inequitable for him to retain the benefit

> without payment of the value thereof.' Unionamerica Mtg. v McDonald, 97 Nev. 210, 212, 626 P.2d, 1272, 1273 (1981) (quoting Dass v Epplen, 162, Colo. 60, 424, P.2d 779, 780 (1967).

Unjust enrichment is an equitable remedy which is designed to prevent precisely what Defendants allege here, that a party without a valid binding contract induces another to provide a benefit which the recipient retains and is unjustly enriched thereby, see generally, *Certified*, supra at p.257, see also *Unionamerica Mtg. v McDonald* 97 Nv 210, 212 (1981). *Unionamerica* clarified that unjust enrichment is quasi contract and a remedy where no express or implied contract exist or is found.

If this court eventually finds the contract was limited or does not exist then the unjust enrichment remedy would apply.

Defendant obtained Plaintiff's silence by offering payment for his silence and not contesting its trumped-up claimed charges.

Unjust enrichment is an equitable remedy which applies to situations such as this if the Court were to find there is no contract specifically to prevent the type of conduct by defendants where, in the context of a failed contract, a party realizes a benefit from the actions of another.

This equitable action is discussed in the *Restatement of Restitution (Third 2011)* which in Section 49 explains that in situations like this case the benefit conferred is not measured by the action of the giver (Ramos) but rather the gain realized by the recipient (White and Zuffa). *Certified* cited with approval a different subsection of the same *Restatement* subsection at page 257.

Those benefits are the gain realized by defendants from the sale of the UFC, a gross gain of 4 billion dollars without disclosure, less the value with disclosure.

Defendants clearly recognized the benefits of silencing Ramos as demonstrated by their actions, silencing him with the enticement of payments until they succeeded in their sale of the UFC.

Here the benefit conferred is gain realized by the recipient as opposed to property given. The recipients gain is the amount of increased value the recipient obtained resulting from the conduct of the giver and is discussed in the *Restatement of Remedies* (Third) Section 49(4) and note 4.

The Court can take judicial notice of the extensive inquiry and due diligence, which would occur before a 4 billion dollar sale would occur. The Court need not speculate that the Defendants' conduct herein would potentially have affected that sale because Defendants already recognized that potential effect and silenced Ramos until the sale was made.

Plaintiff states a Cause of Action for unjust enrichment in the Complaint but will be able to show at trial not only that the claim is valid against White and Zuffa in particular but all defendants.

No disclosure by Ramos was made before the repudiation of the contract by Hunter Campbell on July 5th, 2016 or the announced sale of the UFC and by that silence Ramos conferred a benefit on Defendants.

Defendant's argument that he was constrained from doing so fails both because Judge Navarro permitted the discussion but also because Defendants were seeking the same at a point they now claim Ramos was muzzled. Defendants having received the benefit of Ramos's silence cannot it actively solicited cannot now claim he could not have spoken and that he therefore is not entitled to compensation.

Ramos never sought relief from the protective order even while seeking to withdraw his guilty plea thus honoring his agreement for the NDA.

Unjust enrichment is equity.

Plaintiff did not seek relief from the protective order or name White in his Motion to withdraw his plea.

The sale of the UFC by Zuffa occurred without White and the UFC's actions being publicized or provided to the buyers.

The benefit of the agreement, an NDA so as not to interfere or affect the sale price or sale of the UFC, was conferred by the Plaintiff. In expressly stating they had no further interest in an NDA to Grasso on July 5th, 2016, Defendants exposed the real party in interest in non-disclosure of White's actions and behind, Zuffa and its principal owners, the Fertitta's.

Or are we to believe that on July 5th, White, who had allegedly been extremely concerned that neither his wife nor kids learn of his actions, woke up and said I don't care anymore.

The stipulation for a protective order, exhibit 2 to the Defendants' Motion, restates White's alleged reason for continuing his anonymity. The July 5th loss of interest in the same indicates otherwise.

Defendants' have realized the benefit of the silence of Ramos, a sale for 4 billion dollars of a company they bought for 2 million dollars.

The value of the NDA is the benefit conferred. An NDA is valued relative to the gain realized by the Defendants resulting from the silence of Ramos.

The value of an NDA is thus directly related to the parties and the economic effect of (non)disclosure.

The full benefit of the NDA was received by the defendants.

On July 5th, 2016, as the sale of the UFC was finalized, Hunter Campbell called Plaintiff's attorney and told him there would be no payment for an NDA or discussions of payment for an NDA thereafter.

Strange in light of the fact that between the mediation and sentencing, an offer of $450,000.00 dollars had been made.

Plaintiff will be able to prove unjust enrichment.

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III Bad Faith in Contract

Defendants correctly point out that bad faith is dependent on there being a contract.

Nevada recognized that in every contract, there is a covenant of good faith and fair dealing; see Hilton Hotels v.*Butch Lewis Productions*, 107 Nev 226, 234 (1991).

Despite their denials, there was a contract to enter mediation on April 5, 2016.

That was not as defendants assert an agreement to agree.

Though mediation agreements vary, the essential elements of a mediation agreement contain or encompass the following essential elements.

The covenant of good faith as it applies to mediation is that it be in good faith, and the parties mediate in good faith.

Consideration for mediation is found in the implicit agreement that pending mediation, the status quo will be preserved, and acrimony and negotiations are suspended.

The facts here exemplify a clear violation of that covenant. Notice of tortious bad faith is given and Plaintiff may be able to prove a case thereon. Dismissal at this point is premature.

Here the contractual relationship was commenced when Hunter Campbell called Plaintiff's with an offer to enter a non-disclosure agreement if Plaintiff pled guilty.

The timing of this call, on the eve of Plaintiff's plea hearing and the vagueness of the solicitation, was clearly calculated to induce and encourage and entice Plaintiff into entering a guilty plea, though it also was phrased in a manner in which the guilty plea was only a stated precondition to entering an NDA.

The timing of the solicitation to enter an NDA was a factor Defendants intended Plaintiff to consider in entering his guilty plea. The timing was not coincidental.

The mediation date was set five months after the plea was entered while the Defendants were marketing their business.

During that time, Plaintiff remained silent.

Plaintiff's sentencing was set for late February 2016 but was continued to June 30th, 2016.

Plaintiff is confident that discovery will establish that the sale process was proceeding in early April and the anticipated closing date intended to be no later than June or at the latest July 2016.

Not fearing that disclosure of the Defendants' Action would interfere with or devalue the sale price in April, Defendants in bad faith offered Plaintiff nothing at the mediation.

While the closing of the sale was continued into April, May, and June, and Plaintiff indicated he would seek to withdraw his plea, Defendants dangled payment for an NDA before him.

At one point, $450,000.00 was offered to Plaintiff and Doe, with Plaintiff to receive $300,000.00 (para 101).

The fact that the "Mediator" Peter Christianson, ESQ. had been both Plaintiff and Doe's attorney and professed to personally know the Defendant raises ethical issues, issues as to his neutrality and his acting as a "neutral" mediator.

Christianson, during the case, represented Doe in a proffer to the FBI.

After this mediation and continuing offers to Plaintiff and Doe and Plaintiff's sentencing on June 30, 2016, on July 5, 2016, Hunter Campbell called again.

This time the message was that there would be no payment or future discussions of payment.

On July 9th, 2016, the four billion dollar sale of the UFC was announced.

IV ZUFFA AS A DEFENDANT

In their Motion to dismiss Defendants Zuffa/UFC holdings assert that there are no claims against them alleging corporate or entity liability.

In *Americo Derivative Litigation v. Dodds v. Shoen* 252 P 3d. 681,694 (2011) the court said " Under basic corporate agency law, the actions of corporate agents are imputed to the corporation." *Americo* continues and expands on that principal and it is

clear that White's actions (and the UFC actions) with the knowledge of UFC's counsel are sufficient to impose liability as acts of Zuffa.

The complaint clearly makes allegations, if not of direct action by White as an officer(manager) of the entities then of ratification or imputation of those actions through the presence and direct knowledge of Defendant entities attorney Epstein who was present on December 11, 2014.

Apparently not cognizant of or remembering White's statements, with defendants counsel present, that the "UFC" had not only bought the ticket for Doe to travel to Brazil it had also arranged and expedited one day passport for her, and on her return White had the UFC chief of security deliver $10,000.00 in "chips" for Doe at the Spearmint Rhino.

The mediation on April 5th, 2016 occurred with Defendants participation at the UFC offices.

Before discovery issues of whether there was corporate activity, either actual, imputed or ratified and whether the UFC through Zuffa was an alter ego of White and the Fertitiats remain a matter of speculation, not subject to a motion to dismiss.

If the travel arrangements, payoff, and participation in the coverup and subsequent mediation were not themselves actual acts by the UFC/Zuffa, they can still be viewed as ratified by the non action when Epstein had knowledge thereof.

Beyond the other crimes White's statements to the FBI on December 11, 2014 meet all the requirements for pandering prostitution by the legal entity, the UFC, and its owner, the Zuffa company. It arranged for travel for Doe to Brazil and understood that she was entitled to payment for her services on return and paid her through its chief of security. Those acts may have been at the direction of White but they were performed by the UFC/Zuffa.

The casual admission of those events evidence they were not an extraordinary occurrence at the UFC. It also, along with other facts not in the pleadings, indicates that the UFC, through its management, was a sexually hostile environment run by White.

That the UFC's counsel Epstein was in attendance and said nothing at this damning admission constitute ratification as the duty of Epstein was not to White but the UFC.

Ratification and imputation of actions by employees or agents of an entity are discussed in Amerco Derivative litigation Dodds v Shoen 127 Nev. 252 P 3d. 681 (2011). The Complaint clearly alleges that the officers (White) directed actions, had knowledge of those actions (Epstein), failed to repudiate those action and that the actions, if improper, were not adverse to the UFC. Zuffa and the UFCs time to have disavowed White's action has long since passed and discovery will establish, as the casual and accepting reaction to the statement to the FBI by White on December 11, 2014 indicates, that this was not an isolated event but normal procedure at the UFC.

For the purposes of a Motion to Dismiss under notice pleading Zuffa and a UFC entity were proper defendants.

Until discovery is made as to the corporate structure of the entities and the sale mechanisms, it is premature to dismiss Zuffa as Zuffa is believed to have been the owner of the UFC at all relevant times herein.

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CONCLUSION

A review of the complaint and the Motion to Dismiss clearly establish that Defendants White and Zuffa are given notice of the 4 causes of action and that the facts in the complaint if taken as true claims on which Ramos can prevail.

Though defendants dispute the existence of a contract for mediation it is pled and if establishered at trial Plaintiff can prevail. Alternatively Plaintiff pled unjust enrichment which lies if the court ultimately were to find there was no contractual claim.

Tortious and contractual bad faith are properly pled and not subject to dismissal.

As there was clearly an entity before "UFC Holdings" if the court dismisses that entity without prejudice Plaintiff will seek leave to amend on its identification.

Should the court sustain any other portion of the Motion to Dismiss Plaintiff requests and reserves the right for leave to amend.

DATED this of 15th day of September 2020,

/s/ Ian Christopherson

IAN CHRISTOPHERSON, ESQ.
Nevada Bar No.:003701
CHRISTOPHERSON LAW OFFICES
600 South Third Street
Las Vegas, Nevada 89101-6602
Attorney for Plaintiff, Joshua Ramos

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NEFCR 9. I certify that I am an employee of IAN CHRISTOPHERSON, ESQ., and that on the of 15th day of September 2020, I served the foregoing Motion to Dismiss Counterclaim by e-service by electronic service with the Eight Judicial District Court Wiznet filing systems to the parties on the Electronic Service List as follows:

Campbell & Williams
Donald J Campbell, ESQ.
700 South Seventh Street
Las Vegas, Nevada
89101-6908

DATED this 15th day of September 2020.

/s/ Amber Robertson
An employee of
IAN CHRISTOPHERSON, ESQ. OF
CHRISTOPHERSON LAW OFFICES
600 South Third Street
Las Vegas, Nevada 89101-6602

EXHIBIT 1

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
BEFORE THE HONORABLE GLORIA M. NAVARRO
3 CHIEF DISTRICT COURT JUDGE

4
5 UNITED STATES OF AMERICA, :
Plaintiff, :
6 :No. 2:15-cr-00267-GMN-CWH
vs. :
7 :
ERNESTO JOSHUA RAMOS, :
8 :
Defendant. :
9 :

10
11
12 TRANSCRIPT OF IMPOSITION OF SENTENCE
13 June 30, 2016
14
15 Las Vegas, Nevada
16
17
18 FTR No. 7D/20160630 @ 9:22 a.m.
19
20
21 Transcribed by: Donna Davidson, CCR, RDR, CRR
(775) 329-0132
22 dodavidson@att.net
23
24
25 (Proceedings recorded by electronic sound recording,
transcript produced by mechanical stenography and computer.)

1 I understand that there might still be some
2 communication with the victim through counsel. And so I'll
3 permit that. Although, again, it's not my responsibility
4 to try to negotiate any kind of civil issues. So that's up
5 to you.
6 But there won't be any direct or indirect victim
7 witness contact. Through counsel is fine. But other than
8 that, no other contact.
9 You shall have -- you shall not possess or have
10 under your control, have access to any firearm, explosive
11 device, or any other dangerous weapon as defined by
12 federal, state, or local law.
13 And, number 5, you shall report in person to the
14 probation office in the district in which you are released
15 within 72 hours of discharge.
16 There weren't any remaining counts to be
17 dismissed; is that right?
18 MS. HIGGINBOTHAM: That's correct, Your Honor.
19 MR. GRASSO: That's correct.
20 THE COURT: All right. Is he requesting a
21 geographical area or a specific facility? I'm willing to
22 give him a 90-day self-surrender.
23 MR. GRASSO: I would think, Your Honor, the
24 only -- obviously Nevada, there's nothing here. So the
25 only -- the closest location would be somewhere like in

In the Supreme Court of the State of Nevada

IN THE MATTER OF JOSHUA RAMOS, AKA ERNESTO JOSHUA RAMOS, an individual
Appellant

vs.

DANA WHITE, an individual; UFC HOLDINGS, LLC, ZUFFA, LLC, doing business as the ULTIMATE FIGHTING CHAMPIONSHIP, a Nevada limited liability company; DOES I through X inclusive; and ROE CORPORATIONS I through V, inclusive;
Respondent.

Supreme Court No.:82102
Eighth Judicial District
District Court Case No.: A-20-813230-C
Hon. David M. Jones, presiding

APPELLANT'S APPENDIX TO OPENING BRIEF
PART 3 of 4 (RAMOS077-RAMOS105)

Prepared by:

/s/ Ian Christopherson
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Docket 82102 Document 2021-19495

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOSHUA RAMOS, aka ERNESTO JOSHUA RAMOS, an individual Plaintiff, vs. DANA WHITE, an individual; UFC HOLDINGS LLC, ZUFFA, LLC, a Nevada limited liability company, dba ULTIMATE FIGHTING CHAMPIONSHIP; DOES I through X, inclusive; and ROE CORPORATIONS I through V, inclusive Defendants.	CASE NO.: A-20-813230-C DEPT. NO.: XXIX **DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT PURSUANT TO NRCP 12(b)(5)** Hearing Date: October 7, 2020 Hearing Time: 9:00 a.m.

Defendants, through their undersigned counsel, hereby submit their Reply in Support of Motion to Dismiss Complaint Pursuant to NRCP 12(b)(5).

POINTS AND AUTHORITIES

I. INTRODUCTION

Perhaps recognizing that the allegations in his complaint are woefully deficient to establish claims for breach of contract, breach of the implied covenant and unjust enrichment, Ramos seeks to misdirect the Court with twenty pages of false narratives, revisionist history, and baseless attacks against Defendants, their counsel, the FBI, and the United States Attorney's Office.

Case Number: A-20-813230-C

Denials, deflection, and blame-shifting cannot undo Ramos' status as a convicted felon based upon his attempted extortion of Mr. White. Nor can they save Ramos' complaint from dismissal.[1]

When Ramos does get around to addressing his causes of action, the propriety of dismissal becomes even more compelling. Regarding his breach of contract claim, Ramos clings to the notion that he has properly alleged breach of an agreement to mediate. But when he identifies the purported elements of such a contract (which he says can be found on the internet), the allegations in the complaint establish that Defendants fully performed. Ramos instead appears to be arguing that Defendants breached the alleged agreement because they failed to negotiate in good faith on the day of the mediation. This theory, however, would mean that an independent breach claim would exist every time two parties agree to mediate but one party does not like how the other party negotiated. That, of course, is absurd for multiple reasons. Even if Ramos' bad faith allegations are accepted as true—and setting aside his contradictory allegation that White later offered him and Jane Doe $450,000, which Ramos did not accept—Nevada courts have repeatedly refused to recognize a purported contract to negotiate in good faith as it is nothing more than an unenforceable agreement to agree.

To his credit, Ramos seemingly acknowledges that his claims for contractual and tortious breach of the implied covenant cannot exist in the absence of a valid contract. Thus, dismissing his contract claim disposes of these claims as well.

For his unjust enrichment claim, Ramos continues to argue that his purported silence during the pendency of his criminal proceedings enabled the UFC to be sold for the "windfall" amount of $4.2 billion and that he is therefore entitled to the difference between this amount and the alleged

[1] Ramos gratuitously claims that "White has not publicly disputed the underlying facts of this case." Opp'n at 2:14-16. Such a statement purposefully disregards the standard on a Rule 12(b)(5) motion, which requires the Court and the parties to accept any well-pleaded factual allegations as true. Defendants have previously stated, and reaffirm here, they absolutely dispute Ramos' slanted, self-serving and revisionist version of the "facts."

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lesser amount the company would have sold for had he spoken up at the time. Notwithstanding Ramos' delusions of grandeur about his impact on the UFC's valuation, the salient point is that Ramos' so-called silence during the time period surrounding the sale of the UFC was indisputably a court-ordered obligation. The Restatement of Restitution and other authorities teach that simply performing legally-required acts will not support an unjust enrichment claim.

Finally, Ramos agrees that UFC Holdings, LLC may be dismissed without prejudice given the uncontradicted evidence it was formed after the events at issue in the complaint. As for Zuffa, LLC, Ramos attempts to supply additional "facts" in his opposition to support its status as a defendant herein. But the alleged "facts" either have nothing to do with the claims in the case or were supplied for the first time in Ramos' opposition brief and, thus, cannot be considered.

II. ARGUMENT

A. The Additional "Facts" Supplied in Ramos' Opposition Are Irrelevant.

As alluded to above, Ramos' opposition takes the Court and the parties on a nearly-20 page frolic and detour into events and allegations nowhere mentioned in or completely irrelevant to the claims at issue in the complaint. A nonexhaustive list of examples include, alleged violations of federal civil rights statutes (*i.e.*, 42 U.S.C. § 1983) (*see* Opp'n at 4:9-28), alleged alter ego liability (*id.*), alleged corruption of the federal justice system in Nevada (*id.* at 6:11-28), a list of purported WME clients and celebrity owners of the UFC (*id.* at 5:27-6:2), a proposed "offer of proof" that, Ramos admits, is "[i]n addition to the statements made in the Complaint" (*id.* at 7:20-8:20), topics for future motions in limine (*id.* at 9:8-11), and so on.

Needless to say, none of these items can forestall dismissal. "In deciding a motion to dismiss, courts may not take into account additional facts asserted in a memorandum opposing the motion to dismiss, because such memoranda do not constitute pleadings under Rule 7(a)." *In re Turbodyne Techs., Inc. Sec. Litig.*, 2000 WL 33961193, at *10 (C.D. Cal. Mar. 15, 2000) (quotations omitted); *see also Schneider v. California Dep't of Corr.*, 151 F.3d 1194, 1197 (9th

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Cir. 1998) ("[t]he 'new' allegations contained in the inmates' opposition motion, however, are irrelevant for Rule 12(b)(6) purposes.") (citing 2 *Moore's Federal Practice*, § 12.34[2] (Matthew Bender 3d ed.)); *Arizona Civil Constructors, Inc. v. Colony Ins. Co.*, No. 2:20-cv-00010-JAD-DJA, 2020 WL 5042778, at *3 (D. Nev. Aug. 25, 2020) ("a deficient pleading cannot be cured by new allegations raised in a plaintiff's response to a motion to dismiss."). While Defendants submit the new material supplied in Ramos' opposition would not impact the dismissal calculus in any event, the foregoing authorities make clear the Court need not waste its time with these sideshows.

B. Nevada Courts Do Not Recognize Contracts to Negotiate in Good Faith.

Defendants previously set forth the elements for breach of contract, and established the complaint failed to state such a claim as there had been no meeting of the minds on all essential contract terms as required under Nevada law. *See* Mot. at 7:1-9:7. Ramos failed to address Defendants' arguments or any of the legal authorities set forth therein. He instead repeats the allegation that the parties entered a mediation agreement. *See* Opp'n at 11:11-19. Rather than cite any legal authorities to support his arguments, Ramos simply tells us that "[a] cursory internet search confirms that mediation agreements are commonplace and the general terms thereof." *Id.* Obviously, parties can enter into agreements to mediate or arbitrate, but there still has to be a meeting of the minds on all essential contractual elements. *See Roth v. Scott*, 112 Nev. 1078, 1083, 921 P.2d 1262, 1265 (1996) (where parties had not agreed to essential terms of the high-low bracket amounts, there was no contract for binding arbitration).

According to Ramos, the elements of a mediation agreement are "[t]he parties agree to the time, manner, mediator, location and payment of the cost of the mediation." Opp'n at 3:4-5. Ramos further argues that "[t]he outcome of the mediation, including whether an agreement will be reached, is not an element of the mediation agreement." *Id.* at 3:2-4. Assuming *arguendo* Ramos is correct, the allegations in the complaint show that Defendants fully-performed. The parties agreed (i) on a time for the mediation (*i.e.* April 5, 2016) (*see* Compl. ¶ 66), (ii) the manner

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of the mediation (*i.e.*, the parties would participate from different locations) (*see id.* ¶ 69), (iii) the identity of a mediator (*i.e.*, Mr. Christiansen) (*see id.* ¶ 67), and the location (*i.e.*, White participated from UFC's offices) (*see id.* ¶ 71). Ramos nowhere alleges that Defendants breached the purported final element of a mediation agreement by failing to pay the costs of the mediation, thus confirming that is a non-issue here. *See* Opp'n at 5:17-20; 7:4-6 (agreeing that Defendants performed the foregoing elements of a mediation agreement).

Ramos' claim is instead premised entirely on the allegation that Defendants breached the mediation agreement not because the parties failed to reach a resolution but, rather, because Defendants did not offer Ramos any money on the day of the mediation. *See* Compl. ¶ 91. Ramos, in other words, now contends (repeatedly) that Defendants had a duty to negotiate in good faith, and breached the same by offering Ramos nothing (at least on that day). *See, e.g.*, Opp'n at 2:23-24; 3:1-2; 7:9-11; 11:17-19. Whether Ramos is reformulating or simply clarifying the basis for his breach claim, it is still subject to dismissal.

That is because Nevada courts have repeatedly refused to recognize purported contracts to negotiate in good faith. In *Verifone, Inc. v. A Cab, L.L.C.*, for example, the federal district court dismissed a breach of contract claim premised on a written contract providing that the parties "shall negotiate in good faith to enter into [a subsequent] agreement" upon the expiration of the underlying written agreement. 2017 WL 2960519, at *3 (D. Nev. July 7, 2017). The court found that the language requiring the parties to negotiate in good faith was simply an agreement to agree and, thus, unenforceable under Nevada law in an action for damages. *Id.* at *4 (citing *Kohlmoos Enterprises v. Pines, LLC*, 129 Nev. 1131, 2013 WL 5476860, at *1 (Nev. Sept. 26, 2013) ("Nevada abides by traditional jurisprudence that agreements to agree are generally too indefinite to enforce as final agreements" and declining to recognize "the enforceability of a preliminary agreement that requires the parties to negotiate in good faith.")). Chief Judge Navarro concluded with the observation that "[s]eemingly, A Cab's [ ] breach of contract claim is motivated by A Cab

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not receiving its desired result from negotiations rather than the negotiations themselves." *Verifone,* 2017 WL 2960519, at *4. So, too, here.

Also instructive is *Bond Mfg. Co., Inc. v. Ashley Furniture Indus., Inc.*, which involved a breach of contract claim asserted by a furniture manufacturer against a retailer regarding the failure to agree on the price for an exclusive line of furniture products. 2018 WL 1511717 (D. Nev. Mar. 27, 2018). The subject agreement provided "that the parties would negotiate in good faith over the price to [defendant] for such products." *Id.* at *1; 5. After the parties could not agree on price, the retailer began making the furniture products itself, and the manufacturer sued. *Id.* at *2. Like Defendants here, the retailer moved to dismiss the contract claim on grounds there had been no meeting of the minds on price, and the manufacturer (like Ramos) argued that price was not an essential term because the contract only governed "the pre-sale negotiation process." *Id.* at *6. The Honorable James Mahan relied on *Verifone, Kohlmoos,* and *City of Reno v. Silver State Flying Serv.*, 84 Nev. 170, 438 P.2d 257 (1968) (cited in Defendants' motion at 9:9-15) when determining the agreement to negotiate in good faith was nothing more than an unenforceable agreement to agree. *Id.* This Court, respectfully, should do the same.

At best, Ramos and Defendants had a preliminary agreement to attend a mediation at which they would negotiate over the price to be paid for a post-criminal proceeding non-disclosure agreement. The parties performed the preliminary agreement by attending the mediation, but it ended without a resolution. Obviously disappointed he did not achieve his desired result, Ramos now seeks to manufacture a breach claim premised on the way Defendants negotiated during the mediation. Nevada, however, does not recognize the enforceability of preliminary agreements requiring the parties to negotiate in good faith, and for good reason. While Ramos may be disappointed that Defendants did not offer him anything during the mediation on April 5, 2016, parties in Defendants' shoes could be just as disappointed with what they view to be unreasonably high monetary demands of a plaintiff. Extreme positions taken by parties on the opposite sides of

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issues occur in mediations every day in Nevada and around the country. If such differences in viewpoint and negotiating style gave rise to independent causes of action for breaching a mediation agreement, no one would ever agree to mediate which would undermine the entire purpose of alternative dispute resolution and overburden an already-taxed judicial system. Moreover, the reality is that many initial mediations are unsuccessful and require the parties to engage in subsequent negotiations. Ramos alleges that is exactly what happened here: "Defendants continued to negotiate after that [mediation] date, and eventually offered a total amount to Ramos and Doe of $450,000." Opp'n at 7:17-18; Compl. ¶ 101. That Ramos did not accept this offer only reinforces there was no meeting of the minds between him and Defendants and, accordingly, no breach of any contract.

C. Dismissal of Ramos' Claim for Breach of Contract Requires Dismissal of His Implied Covenant Claims.

Ramos appears to agree that a viable contract is required in order to pursue claims for contractual or tortious breach of the implied covenant of good faith and fair dealing. *See* Opp'n at 15:2-5. Thus, the dismissal of Ramos' contract claim would dispose of his claims for breach of the implied covenant. *See* Mot. at 10:1-15. Nevertheless, Ramos contends he has provided "notice of tortious bad faith" and that he "may be able to prove a case thereon." Opp'n at 15:15-17. This is wishful thinking. Claims for tortious breach of the implied covenant require a special relationship of trust between the parties. *See* Mot. at 10:16-11:2. Ramos has alleged no such special relationship with Defendants in his Complaint, and his opposition utterly fails to address the point. As such, he concedes the merit of Defendants' arguments on this issue. *See* EDCR 2.20(e); *Benjamin v. Frias Transportation Mgmt. Sys., Inc.*, 433 P.3d 1257 (Nev. 2019) ("when a party fails to set forth specific arguments as to why a motion to dismiss should not be granted,

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EDCR 2.20(e) gives the district court the discretion to dismiss the complaint based solely on that failure.") (unpublished disposition).[2]

D. Ramos Cannot Pursue an Unjust Enrichment Claim Against Defendants Because He Had an Independent Legal Obligation to Maintain Confidentiality During His Criminal Proceedings.

Ramos continues to speculate the UFC would have sold for less than $4.2 billion dollars had he disclosed that Mr. White was the victim of his extortion scheme in advance of the sale. Building upon this speculation, Ramos claims he benefitted the Defendants by maintaining his silence and, thus, is entitled to the difference between the UFC's actual sale price and what it would have sold for had he spoken out. *See* Opp'n at 12:23-24. While Ramos' theory succeeds in terms of "chutzpa," it fails miserably insofar as stating a claim for unjust enrichment.

As alleged in Ramos' complaint (*see, e.g.*, Compl. ¶ 57), as repeatedly acknowledged in his opposition (*see, e.g.*, Opp'n at 8:23-26), and as confirmed by the judicially noticeable facts (*see* Mot. at 4:6-13 and Exs. 2-3), Ramos was subject to a court order from October 5, 2015 through the duration of his criminal proceedings (*i.e.*, at least March 8, 2017 (appeal dismissed)) that required him to maintain the confidentiality of his victim's identity and related matters. As Defendants have previously established, where a party has an independent legal obligation to perform in a certain way, he does not unjustly enrich another party even though the latter may experience an incidental benefit therefrom. *See* Mot. at 12:10-24 (citing the Restatement (First) of Restitution § 60 (1937)); *see also id.* § 106 (instructing that "[a] person who, incidentally to the performance of his own duty or to the protection or the improvement of his own things, has conferred a benefit upon another, is not thereby entitled to contribution.").

[2] Ramos also failed to address Defendants' arguments that he cannot recover punitive damages for his contract-based claims, *see* Mot. at 11:24-28, and should be deemed to concede this issue as well.

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Multiple courts have relied on the foregoing principles when granting dispositive motions on unjust enrichment claims. *See, e.g., Allegheny Gen. Hosp. v. Philip Morris, Inc.*, 228 F.3d 429, 446-48 (3d Cir. 2000) (affirming dismissal of unjust enrichment claim where plaintiff hospitals had an independent legal obligation to provide healthcare to nonpaying patients such that any benefit to defendant tobacco companies was incidental to the hospitals' own duty); *Oregon Laborers-Employers Health & Welfare Tr. Fund v. Philip Morris, Inc.*, 185 F.3d 957, 968-69 (9th Cir. 1999) ("because plaintiffs had an independent obligation to pay the smokers' medical expenses, they cannot maintain an action for unjust enrichment against defendants just because defendants were incidentally benefitted."); *Chem-Nuclear Sys., Inc. v. Arivee Chemicals, Inc.*, 978 F. Supp. 1105, 1110-11 (N.D. Ga. 1997) (plaintiff under an administrative order to remediate property could not pursue unjust enrichment claim against defendant who would incidentally benefit from the clean-up); *Hobart Corp. v. Waste Mgmt. of Ohio, Inc.*, 840 F. Supp. 1013, 1036-37 (S.D. Ohio 2011) (dismissing unjust enrichment claim where settlement agreement imposed obligation on plaintiff to remediate site such that any benefit to defendant accrued by virtue of plaintiff's performance of its own legal duty). The principles at issue in these authorities apply equally here.

During the time leading up to the announcement of UFC's sale in early-July 2016, Ramos was subject to a court order that required him to maintain confidentiality regarding the identity of his victim. Because he had an independent obligation not to disclose this information, any alleged benefit to Defendants was incidental to Ramos' performance of his own legal duty. The parties' failed negotiations over a non-disclosure agreement that would have applied *after* the criminal proceedings concluded has no impact on this issue as it never came to fruition, and Ramos has now told his "story" to the world, thus rendering any alleged benefit nonexistent. The unjust enrichment claim, accordingly, fails as a matter of law.

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E. The Corporate Entities Are Not Proper Defendants.

Defendants maintain that all of Ramos' claims should be dismissed for the reasons set forth above. Additional reasons exist to dismiss the corporate defendants. First, Ramos agrees that UFC Holdings, LLC can be dismissed without prejudice as the company was not even formed until after the events alleged in the complaint. *See* Opp'n at 10:22-26. Next, Zuffa, LLC argued it should be dismissed based on the lack of any allegations suggesting that Mr. White was acting on behalf of the company at the time of his interactions with Ramos. *See* Mot. at 14:1-11. In response, Ramos points to allegations he believes demonstrate the participation of UFC agents in various acts and meetings that preceded the commencement of his criminal proceedings. *See* Opp'n at 17:3-11. Even if treated as true for purposes of this motion, those allegations relate to matters in 2014 that pre-date and had nothing to do with the alleged events giving rise to Ramos' (defective) claims for breach of contract, breach of the implied covenant and unjust enrichment in spring 2016. That Mr. White participated in the April 2016 mediation from UFC's offices with his personal counsel does not mean he was acting on behalf of the company. Neither corporate entity should be a defendant herein.

III. CONCLUSION

Based on the foregoing, Defendants respectfully submit that Ramos' Complaint must be dismissed with prejudice.

DATED this 30th day of September, 2020.

CAMPBELL & WILLIAMS

By: /s/ J. Colby Williams
DONALD J. CAMPBELL, ESQ. (1216)
J. COLBY WILLIAMS, ESQ. (5549)

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CERTIFICATE OF SERVICE

I certify that I am an employee of Campbell & Williams and that I did, on the 30th day of September, 2020, serve the foregoing **Defendants' Reply in Support of Motion to Dismiss Complaint Pursuant to NRCP 12(b)(5)** by the Court's ECF System through Wiznet:

By: */s/ John Y. Chong*
An employee of Campbell & Williams

A-20-813230-C

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Contract

COURT MINUTES

October 07, 2020

A-20-813230-C Joshua Ramos, Plaintiff(s)
vs.
Dana White, Defendant(s)

October 07, 2020 09:00 AM Defendants' Motion to Dismiss Complaint Pursuant to NRCP 12 (b)5.

HEARD BY: Jones, David M COURTROOM: RJC Courtroom 15A

COURT CLERK: Tapia, Michaela

RECORDER: Delgado-Murphy, Melissa

REPORTER:

PARTIES PRESENT:

Donald J. Campbell Attorney for Defendant

Ian Christopherson Attorney for Plaintiff

Jon C. Williams Attorney for Defendant

JOURNAL ENTRIES

Following arguments by counsel; COURT ORDERED, Motion to Dismiss for Contract DENIED; Motion to Dismiss Unjust Enrichment GRANTED. Defendant to prepare the order and submit the Findings of Fact and Conclusions of Law.

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOSHUA RAMOS, aka ERNESTO JOSHUA RAMOS, an individual Plaintiff, vs. DANA WHITE, an individual; UFC HOLDINGS LLC, ZUFFA, LLC, a Nevada limited liability company, dba ULTIMATE FIGHTING CHAMPIONSHIP; DOES I through X, inclusive; and ROE CORPORATIONS I through V, inclusive Defendants.	CASE NO.: A-20-813230-C DEPT. NO.: XXIX **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS COMPLAINT PURSUANT TO NRCP 12(b)(5)**

Defendants' Motion to Dismiss Complaint Pursuant to NRCP 12(b)(5) came on for hearing on October 7, 2020. Defendants were represented by Donald J. Campbell and J. Colby Williams of Campbell & Williams. Plaintiff was represented by Ian Christopherson of Christopherson Law Offices. Having considered Defendants' motion, Plaintiff's opposition, Defendants' reply, and oral argument presented at the time of hearing; with good cause appearing therefore, the Court hereby enters the following order granting the motion.

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A. Governing Standards Under NRCP 12(b)(5).

Dismissal under NRCP 12(b)(5) is only appropriate where "it appears beyond a doubt that [plaintiff] could not prove a set of facts which, if true, would entitle [plaintiff] to relief." *Torres v. Nevada Direct Ins. Co.*, 131 Nev. 531, 541, 353 P.3d 1203, 1210 (2015) (citing *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008)). When assessing a motion to dismiss for failure to state a claim upon which relief may be granted, the Court construes the pleadings liberally, draws every reasonable inference in favor of the non-moving party, *see Lubin v. Kunin*, 117 Nev. 107, 110 n.1, 17 P.3d 422, 425 n.1 (2001), and treats all well-plead factual allegations as true. *Vacation Village v. Hitachi Am.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (citing *Capital Mortgage Holding v. Hahn*, 101 Nev. 314, 315, 705 P.2d 126, 126 (1985)).

In addition to the foregoing standards, "the court may take into account matters of public record . . . when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted," *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993), and can likewise "consider a document outside the pleadings if (1) the complaint refers to the document, (2) the document is central to the complainant's claim, and (3) no party questions the authenticity of the document." *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015).

B. Facts Alleged in the Complaint, Incorporated by Reference, and Subject to Judicial Notice.

1. Plaintiff Joshua Ramos ("Mr. Ramos") is an individual residing in Clark County, Nevada. *See* Compl. ¶ 1. Defendant Dana White ("Mr. White") is the President of Defendant Zuffa, LLC ("Zuffa"), which does business as the Ultimate Fighting Championship® ("UFC"). *Id.* ¶ 2. Zuffa is a Nevada limited liability company, *id.* ¶ 3, and UFC is the leading promoter of professional mixed martial arts contests in the world. Mr. Ramos has also named UFC Holdings, LLC as a defendant. *Id.* ¶ 2. Defendants have provided records as part of their motion suggesting

that UFC Holdings, LLC is a Delaware limited liability company that was formed on July 27, 2016, which is after the events alleged in the complaint. The Court need not take judicial notice on this issue in light of the other bases for its ruling herein.

2. Beginning in or about November 2014 and continuing into early 2015, Mr. Ramos contacted Mr. White on multiple occasions using the parties' cellular telephones. *See* Compl. ¶¶ 16-17. During these communications, Mr. Ramos conveyed information to Mr. White both in writing and in video format that caused Mr. White to contact legal counsel. *Id.* ¶¶ 16-18. Mr. White and his counsel thereafter arranged a meeting with federal law enforcement officials to report Mr. Ramos' conduct. *Id.* ¶¶ 18-20; 26. Special agents from the Federal Bureau of Investigation opened a case file and proceeded to monitor Mr. Ramos' continued contacts with Mr. White. *Id.* ¶¶ 35-36.

3. In or about early January 2015, Mr. Ramos ultimately demanded that Mr. White pay him $200,000 in cash in exchange for Mr. Ramos' agreement not to release a videotape and to provide Mr. White with all copies thereof. *See* Compl. ¶¶ 43-47. FBI agents continued to monitor Ramos' communications with Mr. White, and received court-approval to conduct electronic surveillance of scheduled in-person meetings between Ramos and Mr. White. *See id.* Ramos and Mr. White met in early January 2015 during which Ramos accepted $200,000 in cash per his prior demands, and provided Mr. White with a copy of the videotape. *See id.* Special Agent James Mollica arrested Ramos shortly after he left the meeting with Mr. White. *Id.*

4. The United States Attorney's Office for the District of Nevada, through the sitting grand jury, indicted Mr. Ramos on September 22, 2015 for use of an interstate facility (*i.e.*, a cellular telephone) with the intent to carry on extortion. *See* Compl. ¶ 55.[1] Mr. Ramos, through

[1] *See also* Criminal Docket Sheet for *United States v. Ramos*, Case No. 2:15-cr-00267-GMN-CWH, a true and correct copy of which was attached to the motion as Exhibit 2. The Court takes judicial notice of this record and Mr. Ramos' criminal proceedings. *See Breliant*; *Baxter, supra*;

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criminal defense counsel, and Assistant United States Attorney (now Magistrate Judge) Carla Higginbotham entered into a stipulated protective order whereby the parties agreed to keep the victim's name and related information confidential. *Id.* ¶¶ 49-50; 52; 57.[2] Former Magistrate Judge Hoffman entered the order on October 5, 2015. *See* Mot., Ex. 2 (ECF No. 40). According to Mr. Ramos, the protective order was effective only for the duration of the criminal proceedings, after which he would be free to speak publicly. *See* Compl. ¶¶ 57; 62; 64; 76. On October 27, 2015, Mr. Ramos and the United States Attorney's Office notified the district court that they had reached a plea agreement. *See* Mot., Ex. 2 (ECF No. 41). On November 3, 2015, Mr. Ramos—after being sworn and canvassed by United States District Court Judge Gloria Navarro—plead guilty to Count 1 in the Indictment. *See* Compl. ¶¶ 74-75; *see also* Mot., Ex. 2 (ECF Nos. 43; 67).

5. During the pendency of Mr. Ramos' criminal proceedings, Mr. White and Mr. Ramos, through counsel, agreed to participate in a mediation to determine whether the parties could reach agreement on a potential non-disclosure agreement whereby Mr. Ramos would continue to maintain confidentiality regarding Mr. White's identity as the victim of Mr. Ramos' criminal conduct after the conclusion of the criminal proceedings. *See* Compl. ¶¶ 61; 63-65. Mr. Ramos alleges he had a subjective understanding from his counsel—which admittedly may have been incorrect—that Mr. White would pay him an amount approaching or exceeding one million dollars for a non-disclosure agreement. *Id.* ¶ 68. The mediation occurred on April 5, 2016. *Id.* ¶¶ 66; 69; 77. Mr. White failed to offer Mr. Ramos any amount of money at the mediation, although he allegedly did make an offer to Jane Doe (Mr. Ramos' then-girlfriend) who was also

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see also Mack v. Estate of Mack, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (court can take judicial notice of related criminal proceedings in appropriate circumstances, especially where the matters are closely related).

[2] A true and correct copy of the Stipulation and Order for Protective Order Pursuant to Fed. R. Crim. Pro. 16(d)(1) and 18 U.S.C. § 3771 was attached to the motion as Exhibit 3. The Court takes judicial notice of this document based on the same authorities identified in footnote 1, *supra*.

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participating in the mediation. *Id.* ¶¶ 6; 78; 91; 113. The mediation, thus, ended unsuccessfully as "no figure was agreed upon." *Id.* ¶ 111.

6. In the months following the April 5 mediation, Mr. Ramos alleges that Mr. White eventually offered him and Jane Doe a combined amount of $450,000 for a post-criminal proceedings non-disclosure agreement. *See* Compl. ¶ 101. Mr. Ramos did not accept the offer.

7. In late June 2016, Mr. Ramos filed an emergency motion to continue his sentencing so that he could substitute in new counsel and withdraw his guilty plea. *See* Compl. ¶ 79; Mot., Ex. 2 (ECF Nos. 53-54). Chief Judge Navarro denied Mr. Ramos' motion, and sentenced him to 366 days in prison. *Id.*; *see also* Mot., Ex. 2 (ECF Nos. 56-60; 62). According to Mr. Ramos, Judge Navarro's ruling confirmed that the parties' negotiations regarding a potential non-disclosure agreement were independent from the criminal proceedings. *Id.* Ramos filed an appeal challenging the denial of his desire to change his plea, which was ultimately dismissed by the United States Court of Appeals for the Ninth Circuit in early-March 2017. *See* Mot., Ex. 2 (ECF Nos. 65, 72; 77-79). Mr. Ramos self-surrendered to start serving his sentence on March 28, 2017. *Id.* (ECF No. 76). After completing a period of supervised release, Mr. Ramos filed this action on April 3, 2020—nearly four years from the date of the parties' failed mediation.

C. Mr. Ramos' Complaint Fails to State a Claim Upon Which Relief Can Be Granted.

Mr. Ramos has asserted the following four causes of action against all Defendants: (1) breach of contract; (2) contractual breach of the implied covenant of good faith and fair dealing; (3) tortious breach of the implied covenant of good faith and fair dealing; and (4) unjust enrichment. The Court addresses each in turn.

1. Breach of Contract

Mr. Ramos alleges that he and Mr. White orally agreed to attend a mediation, that all parties "understood" White would pay Ramos a "substantial" amount of compensation in exchange for a non-disclosure agreement, and that Mr. White breached the parties' agreement by not offering to

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pay Mr. Ramos anything at the mediation. *See* Compl. ¶¶ 81-93. Even treating Mr. Ramos' factual allegations as true and drawing every reasonable inference in Mr. Ramos' favor, he has not stated a claim for breach of contract. Indeed, the allegations of the complaint expressly plead Ramos out of any viable contract claim. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988-89 (9th Cir. 2001) (a plaintiff "can . . . plead himself out of a claim[.]").

"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). A meeting of the minds exists when the parties have agreed upon the contract's essential terms. *Roth v. Scott*, 112 Nev. 1078, 1083, 921 P.2d 1262, 1265 (1996). "With respect to contract formation, preliminary negotiations do not constitute a binding contract unless the parties have agreed to all material terms." *May*, 121 Nev. at 672, 119 P.3d at 1257. "A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite" as "[t]he court must be able to ascertain what is required of the respective parties." *Id.* "A breach of contract claim that fails to allege facts sufficient to show that an enforceable contract existed between the parties is subject to dismissal." *Abu Dhabi Commercial Bank v. Morgan Stanley & Co., Inc.*, 651 F. Supp. 2d 155, 173 (S.D.N.Y. 2009).

Mr. Ramos alleges multiple times that Mr. White never offered him any amount of money at the mediation in exchange for a potential non-disclosure agreement. *See* Compl. ¶¶ 78; 91; 113. The mediation, thus, ended unsuccessfully as "no figure was agreed upon." *Id.* ¶ 111. These allegations constitute binding judicial admissions, *see Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.*, 127 Nev. 331, 343, 255 P.3d 268, 278 (2011) ("concessions in pleadings are judicial admissions") (quotation omitted), and unequivocally establish that the parties never had a meeting of the minds on the essential contract term of price. *See, e.g., Nevada Power Co. v. Public Util. Comm'n*, 122 Nev. 821, 839-40, 138 P.3d 486, 489-90 (2006) ("When essential terms such as [price] have yet to be agreed upon by the parties, a contract cannot be formed"); *Certified*

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Fire Prot. Inc. v. Precision Constr., 128 Nev. 371, 378-79, 283 P.3d 250, 255 (2012) (affirming district court's conclusion that no enforceable contract existed where the parties had not agreed to price and scope of work terms); *Roth*, 112 Nev. at 1083, 921 P.2d at 1265 (where parties had not agreed to essential terms of the high-low bracket amounts, there was no contract for binding arbitration).

The lack of material terms in Mr. Ramos' alleged contract renders it impossible for this Court "to ascertain what is required of the respective parties." *May*, 121 Nev. at 672, 119 P.3d at 1257. To begin, Mr. Ramos repeatedly acknowledges the parties never agreed on a payment amount. That Mr. Ramos had a subjective belief the payment would be "substantial" does not constitute a meeting of the minds. "Contractual intent is determined by the objective meaning of the words and conduct of the parties under the circumstances, not any secret or unexpressed intention or understanding of one or more parties to the contract." Nev. J.I. 13.7 (Formation; Contractual Intent). Nor is there any way to ascertain what is meant by "substantial" as this word obviously can have different meanings to different people.

Mr. Ramos argues in his opposition that Defendants breached an agreement to mediate by failing to offer him anything on the day of the mediation, which Mr. Ramos contends is "bad faith." Nevada law, however, does not recognize an alleged agreement to negotiate in good faith as it constitutes an unenforceable agreement to agree. *See, e.g., Verifone, Inc. v. A Cab, L.L.C.*, 2017 WL 2960519, at *3 (D. Nev. July 7, 2017) (citing *Kohlmoos Enterprises v. Pines, LLC*, 129 Nev. 1131, 2013 WL 5476860, at *1 (Nev. Sept. 26, 2013) ("Nevada abides by traditional jurisprudence that agreements to agree are generally too indefinite to enforce as final agreements" and declining to recognize "the enforceability of a preliminary agreement that requires the parties to negotiate in good faith."); *Bond Mfg. Co., Inc. v. Ashley Furniture Indus., Inc.*, 2018 WL 1511717 (D. Nev. Mar. 27, 2018); *City of Reno v. Silver State Flying Serv.*, 84 Nev. 170, 438 P.2d 257 (1968) ("An agreement to agree at a future time is nothing and will not support an action for damages.").

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At best, Mr. Ramos and Defendants had a preliminary agreement to attend a mediation at which they would negotiate over the price to be paid for a post-criminal proceeding non-disclosure agreement. According to the complaint and Mr. Ramos' opposition, the parties performed the preliminary agreement by attending the mediation, *see* Opp'n at 5:17-20; 7:4-6, but it ended without a resolution. Obviously disappointed he did not achieve his desired result, Mr. Ramos now asserts a breach claim based on the way Defendants negotiated during the mediation. Nevada, however, does not recognize the enforceability of preliminary agreements requiring the parties to negotiate in good faith, and for good reason.

While Mr. Ramos may be disappointed that Defendants did not offer him anything during the mediation on April 5, 2016, parties in Defendants' shoes could be just as disappointed with what they view to be unreasonably high monetary demands of a plaintiff. Extreme positions taken by parties on the opposite sides of issues occur in mediations every day in Nevada and around the country. If such differences in viewpoint and negotiating style gave rise to independent causes of action for breaching a mediation agreement, no one would ever agree to mediate which would undermine the entire purpose of alternative dispute resolution and overburden an already-taxed judicial system. Moreover, the reality is that many initial mediations are unsuccessful and require the parties to engage in subsequent negotiations. Mr. Ramos alleges that is exactly what happened here: "Defendants continued to negotiate after that [mediation] date, and eventually offered a total amount to Ramos and Doe of $450,000." Opp'n at 7:17-18; Compl. ¶ 101. That Ramos did not accept this offer only reinforces there was no meeting of the minds between him and Defendants and, accordingly, no enforceable contract. With no enforceable contract, the breach of contract claim fails.

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2. Breach of the Implied Covenant of Good Faith and Fair Dealing (Contractual and Tortious).

Mr. Ramos' second and third causes of action for contractual and tortious breach of the implied covenant of good faith and fair dealing cannot survive in the absence of a viable contract. *See* Nev. J.I. 13.43 (requiring "[t]hat the plaintiff and the defendant entered into a valid contract" as the first element of a claim for contractual breach of the implied covenant); Nev. J.I. 13.44 (same requirement for tortious breach of the implied covenant). Without a valid contract, which Mr. Ramos has failed to plead here for reasons addressed above, his derivative claims for breach of the implied covenant likewise fail and must likewise be dismissed. *See, e.g.*, *Greenstein v. Wells Fargo Bank, N.A.*, 2017 WL 1173916, at *1 (D. Nev. Mar. 29, 2017) ("[w]ithout a contract, Greenstein's claims for breach of contract and breach of the implied covenant fail."); *Walker v. Venetian Casino Resort*, LLC, 2012 WL 4794149, at *11 (D. Nev. Oct. 9, 2012) ("[s]ince Plaintiffs have not demonstrated that an enforceable [ ] contract existed . . . [they] cannot maintain their claim for breach of the implied covenant of good faith and fair dealing.").

Mr. Ramos' claim for tortious breach of the implied covenant must be dismissed for the independent reason that he has nowhere plead "there was a special element of reliance or trust between [Mr. Ramos and Mr. White], such that, [Mr. White] was in a superior position or entrusted position of knowledge." *See* Nev. J.I. 13.44 (recounting second element of claim for tortious breach of the implied covenant). A claim for tortious breach of the implied covenant has been recognized in limited circumstances such as in the insurer-insured context or in fiduciary relationships. *See, e.g.*, *Shannon v. ReconTrust Co.*, 2012 WL 1695664, at *4 (D. Nev. May 11, 2012) (dismissing claim for tortious breach of the implied covenant where there was no underlying contract and, in any event, no fiduciary relationship existed between the parties). No such special relationship has been alleged here.

3. Unjust Enrichment

Lastly, Mr. Ramos alleges his "silence" regarding the events surrounding his criminal conduct enabled the UFC to be sold in July 2016 for more than $4 billion. *See* Compl. ¶¶ 114-18. Mr. Ramos specifically contends Defendants were unjustly enriched because they "obtained" his silence and "enjoyed and retained" the benefit thereof by virtue of the company's sale or the sale price not being affected by potential negative publicity. *Id.* Mr. Ramos seeks damages in an amount attributable to "the value of the UFC at the time of the sale enhanced by the non-disclosure." *Id.* at 14:14-16. This claim fails for several reasons.

"Unjust enrichment is the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience." *Topaz Mut. Co. v. Marsh*, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992) (quoting *Nevada Industrial Dev. v. Benedetti*, 103 Nev. 360, 363 n.2, 741 P.2d 802, 804 n.2 (1987)). The essential elements of unjust enrichment "are a benefit conferred on the defendant by the plaintiff, appreciation by the defendant of such benefit, and acceptance and retention by the defendant of such benefit." *Id.* (quoting *Unionamerica Mtg. v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981)). Unjust enrichment is an equitable claim that implies a "quasi-contract." *Hunt v. Zuffa, LLC*, 361 F. Supp. 3d 992, 1008 (D. Nev. 2019).

As a threshold matter, Ramos does not allege that any Defendant retained "money or property ***of another*** against the fundamental principles of equity and good conscience." *Topaz, supra* (emphasis added). After all, the value of the UFC—regardless of any allegation about an "enhanced" sales price due to non-disclosure—has never belonged to Mr. Ramos. *See State, Dep't of Taxation v. Chrysler Grp. LLC*, 129 Nev. 274, 281 n.4, 300 P.3d 713, 717 n.4 (2013) ("We also reject Chrysler's unjust enrichment argument because the sales tax paid to the State never belonged to Chrysler."). Thus, insofar as Mr. Ramos seeks unjust enrichment damages "based on the value of the UFC at the time of sale," his request is legally untenable.

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That leaves Mr. Ramos trying to plead a claim for unjust enrichment based on Defendants' alleged "unjust retention of a benefit to the loss of another." *Topaz, supra*. Here, the alleged benefit is Mr. Ramos' silence. *See* Compl. ¶ 117. But Mr. Ramos' allegations in the complaint (and as also acknowledged in his opposition and confirmed by the judicially noticeable facts) indisputably establish that Mr. Ramos' silence during the criminal proceedings—from at least October 5, 2015 through March 2017 when his appeal was dismissed—stemmed directly from a protective order entered by Magistrate Judge Hoffman in that case. *Id.* ¶¶ 49-50; 52; 57; 62; 64; and 76; *see also* Mot., Ex. 2 (ECF Nos. 40; 60; and 72) and Ex. 3. It has been settled law for more than eight decades that a person is not entitled to restitution through unjust enrichment by simply performing an independent legal obligation. *See* Restatement (First) of Restitution § 60 cmt. a (1937) ("If a person does an act which it is his legal duty to do, whether such duty is enforceable at law or in equity, he is not entitled to restitution, irrespective of the cause of the act.") (updated through June 2020); *see also id.* § 106 (instructing that "[a] person who, incidentally to the performance of his own duty or to the protection or the improvement of his own things, has conferred a benefit upon another, is not thereby entitled to contribution.").

Multiple courts have relied on the foregoing principles when granting dispositive motions on unjust enrichment claims. *See, e.g., Allegheny Gen. Hosp. v. Philip Morris, Inc.*, 228 F.3d 429, 446-48 (3d Cir. 2000) (affirming dismissal of unjust enrichment claim where plaintiff hospitals had an independent legal obligation to provide healthcare to nonpaying patients such that any benefit to defendant tobacco companies was incidental to the hospitals' own duty); *Oregon Laborers-Employers Health & Welfare Tr. Fund v. Philip Morris, Inc.*, 185 F.3d 957, 968-69 (9th Cir. 1999) ("because plaintiffs had an independent obligation to pay the smokers' medical expenses, they cannot maintain an action for unjust enrichment against defendants just because defendants were incidentally benefitted."); *Chem-Nuclear Sys., Inc. v. Arivee Chemicals, Inc.*, 978 F. Supp. 1105, 1110-11 (N.D. Ga. 1997) (plaintiff under an administrative order to remediate

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property could not pursue unjust enrichment claim against defendant who would incidentally benefit from the clean-up); *Hobart Corp. v. Waste Mgmt. of Ohio, Inc.*, 840 F. Supp. 2d 1013, 1036-37 (S.D. Ohio 2011) (dismissing unjust enrichment claim where settlement agreement imposed obligation on plaintiff to remediate site such that any benefit to defendant accrued by virtue of plaintiff's performance of its own legal duty).

During the time leading up to the announcement of UFC's sale in early-July 2016 (and continuing through the Ninth Circuit's dismissal of his appeal in March 2017), Mr. Ramos was subject to a court order that required him to maintain confidentiality regarding the identity of his victim. Because he had an independent obligation not to disclose this information, any alleged benefit to Defendants was incidental to Mr. Ramos' performance of his own legal duty. The parties' failed negotiations over a non-disclosure agreement that would have applied *after* the criminal proceedings concluded has no impact on this issue as it never came to fruition, and Mr. Ramos has now disclosed the subject information through this lawsuit, thus rendering any alleged benefit nonexistent. The unjust enrichment claim, accordingly, fails as a matter of law.

THEREFORE, IT IS HEREBY ORDERED that Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5) is GRANTED. Given the concessions made in the complaint and the judicially noticeable facts identified herein, the dismissal is with prejudice.

DATED this _____ day of October, 2020.

Dated this 19th day of October, 2020

DISTRICT COURT JUDGE
THE HONORABLE DAVID M. JONES

FD8 1B8 5BC1 CF74
David M Jones
District Court Judge

Submitted by:
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By: /s/ J. Colby Williams
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Joshua Ramos, Plaintiff(s)	CASE NO: A-20-813230-C
vs.	DEPT. NO. Department 29
Dana White, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOSHUA RAMOS, aka ERNESTO JOSHUA RAMOS, an individual Plaintiff, vs. DANA WHITE, an individual; UFC HOLDINGS LLC, ZUFFA, LLC, a Nevada limited liability company, dba ULTIMATE FIGHTING CHAMPIONSHIP; DOES I through X, inclusive; and ROE CORPORATIONS I through V, inclusive Defendants.	CASE NO.: A-20-813230-C DEPT. NO.: XXIX **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION TO DISMISS COMPLAINT PURSUANT TO NRCP 12(b)(5)**

PLEASE TAKE NOTICE that an Order Granting Defendants' Motion to Dismiss Complaint Pursuant to NRCP 12(b)(5) was entered in the above-captioned matter on October 19, 2020, a true and correct copy of which is attached hereto.

DATED this 20th day of October, 2020.

CAMPBELL & WILLIAMS

By: /s/ J. Colby Williams

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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 20th day of October, 2020 I caused the foregoing document entitled **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION TO DISMISS COMPLAINT PURSUANT TO NRCP 12(b)(5)** 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.

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By: */s/ John Y. Chong*
An employee of Campbell & Williams

In the Supreme Court of the State of Nevada

IN THE MATTER OF JOSHUA RAMOS, AKA ERNESTO JOSHUA RAMOS, an individual
Appellant

vs.

DANA WHITE, an individual; UFC HOLDINGS, LLC, ZUFFA, LLC, doing business as the ULTIMATE FIGHTING CHAMPIONSHIP, a Nevada limited liability company; DOES I through X inclusive; and ROE CORPORATIONS I through V, inclusive;
Respondent.

Supreme Court No.:82102
Eighth Judicial District
District Court Case No.: A-20-813230-C
Hon. David M. Jones, presiding

APPELLANT'S APPENDIX TO OPENING BRIEF
PART 4 of 4 (RAMOS106-RAMOS163)

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOSHUA RAMOS, aka ERNESTO JOSHUA RAMOS, an individual Plaintiff, vs. DANA WHITE, an individual; UFC HOLDINGS LLC, ZUFFA, LLC, a Nevada limited liability company, dba ULTIMATE FIGHTING CHAMPIONSHIP; DOES I through X, inclusive; and ROE CORPORATIONS I through V, inclusive Defendants.	CASE NO.: A-20-813230-C DEPT. NO.: XXIX **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS COMPLAINT PURSUANT TO NRCP 12(b)(5)**

Defendants' Motion to Dismiss Complaint Pursuant to NRCP 12(b)(5) came on for hearing on October 7, 2020. Defendants were represented by Donald J. Campbell and J. Colby Williams of Campbell & Williams. Plaintiff was represented by Ian Christopherson of Christopherson Law Offices. Having considered Defendants' motion, Plaintiff's opposition, Defendants' reply, and oral argument presented at the time of hearing; with good cause appearing therefore, the Court hereby enters the following order granting the motion.

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A. Governing Standards Under NRCP 12(b)(5).

Dismissal under NRCP 12(b)(5) is only appropriate where "it appears beyond a doubt that [plaintiff] could not prove a set of facts which, if true, would entitle [plaintiff] to relief." *Torres v. Nevada Direct Ins. Co.*, 131 Nev. 531, 541, 353 P.3d 1203, 1210 (2015) (citing *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008)). When assessing a motion to dismiss for failure to state a claim upon which relief may be granted, the Court construes the pleadings liberally, draws every reasonable inference in favor of the non-moving party, *see Lubin v. Kunin*, 117 Nev. 107, 110 n.1, 17 P.3d 422, 425 n.1 (2001), and treats all well-plead factual allegations as true. *Vacation Village v. Hitachi Am.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (citing *Capital Mortgage Holding v. Hahn*, 101 Nev. 314, 315, 705 P.2d 126, 126 (1985)).

In addition to the foregoing standards, "the court may take into account matters of public record . . . when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted," *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993), and can likewise "consider a document outside the pleadings if (1) the complaint refers to the document, (2) the document is central to the complainant's claim, and (3) no party questions the authenticity of the document." *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015).

B. Facts Alleged in the Complaint, Incorporated by Reference, and Subject to Judicial Notice.

1. Plaintiff Joshua Ramos ("Mr. Ramos") is an individual residing in Clark County, Nevada. *See* Compl. ¶ 1. Defendant Dana White ("Mr. White") is the President of Defendant Zuffa, LLC ("Zuffa"), which does business as the Ultimate Fighting Championship® ("UFC"). *Id.* ¶ 2. Zuffa is a Nevada limited liability company, *id.* ¶ 3, and UFC is the leading promoter of professional mixed martial arts contests in the world. Mr. Ramos has also named UFC Holdings, LLC as a defendant. *Id.* ¶ 2. Defendants have provided records as part of their motion suggesting

that UFC Holdings, LLC is a Delaware limited liability company that was formed on July 27, 2016, which is after the events alleged in the complaint. The Court need not take judicial notice on this issue in light of the other bases for its ruling herein.

2. Beginning in or about November 2014 and continuing into early 2015, Mr. Ramos contacted Mr. White on multiple occasions using the parties' cellular telephones. *See* Compl. ¶¶ 16-17. During these communications, Mr. Ramos conveyed information to Mr. White both in writing and in video format that caused Mr. White to contact legal counsel. *Id.* ¶¶ 16-18. Mr. White and his counsel thereafter arranged a meeting with federal law enforcement officials to report Mr. Ramos' conduct. *Id.* ¶¶ 18-20; 26. Special agents from the Federal Bureau of Investigation opened a case file and proceeded to monitor Mr. Ramos' continued contacts with Mr. White. *Id.* ¶¶ 35-36.

3. In or about early January 2015, Mr. Ramos ultimately demanded that Mr. White pay him $200,000 in cash in exchange for Mr. Ramos' agreement not to release a videotape and to provide Mr. White with all copies thereof. *See* Compl. ¶¶ 43-47. FBI agents continued to monitor Ramos' communications with Mr. White, and received court-approval to conduct electronic surveillance of scheduled in-person meetings between Ramos and Mr. White. *See id.* Ramos and Mr. White met in early January 2015 during which Ramos accepted $200,000 in cash per his prior demands, and provided Mr. White with a copy of the videotape. *See id.* Special Agent James Mollica arrested Ramos shortly after he left the meeting with Mr. White. *Id.*

4. The United States Attorney's Office for the District of Nevada, through the sitting grand jury, indicted Mr. Ramos on September 22, 2015 for use of an interstate facility (*i.e.*, a cellular telephone) with the intent to carry on extortion. *See* Compl. ¶ 55.[1] Mr. Ramos, through

[1] *See also* Criminal Docket Sheet for *United States v. Ramos*, Case No. 2:15-cr-00267-GMN-CWH, a true and correct copy of which was attached to the motion as Exhibit 2. The Court takes judicial notice of this record and Mr. Ramos' criminal proceedings. *See Breliant*; *Baxter, supra*;

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criminal defense counsel, and Assistant United States Attorney (now Magistrate Judge) Carla Higginbotham entered into a stipulated protective order whereby the parties agreed to keep the victim's name and related information confidential. *Id.* ¶¶ 49-50; 52; 57.[2] Former Magistrate Judge Hoffman entered the order on October 5, 2015. *See* Mot., Ex. 2 (ECF No. 40). According to Mr. Ramos, the protective order was effective only for the duration of the criminal proceedings, after which he would be free to speak publicly. *See* Compl. ¶¶ 57; 62; 64; 76. On October 27, 2015, Mr. Ramos and the United States Attorney's Office notified the district court that they had reached a plea agreement. *See* Mot., Ex. 2 (ECF No. 41). On November 3, 2015, Mr. Ramos—after being sworn and canvassed by United States District Court Judge Gloria Navarro—plead guilty to Count 1 in the Indictment. *See* Compl. ¶¶ 74-75; *see also* Mot., Ex. 2 (ECF Nos. 43; 67).

5. During the pendency of Mr. Ramos' criminal proceedings, Mr. White and Mr. Ramos, through counsel, agreed to participate in a mediation to determine whether the parties could reach agreement on a potential non-disclosure agreement whereby Mr. Ramos would continue to maintain confidentiality regarding Mr. White's identity as the victim of Mr. Ramos' criminal conduct after the conclusion of the criminal proceedings. *See* Compl. ¶¶ 61; 63-65. Mr. Ramos alleges he had a subjective understanding from his counsel—which admittedly may have been incorrect—that Mr. White would pay him an amount approaching or exceeding one million dollars for a non-disclosure agreement. *Id.* ¶ 68. The mediation occurred on April 5, 2016. *Id.* ¶¶ 66; 69; 77. Mr. White failed to offer Mr. Ramos any amount of money at the mediation, although he allegedly did make an offer to Jane Doe (Mr. Ramos' then-girlfriend) who was also

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see also Mack v. Estate of Mack, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (court can take judicial notice of related criminal proceedings in appropriate circumstances, especially where the matters are closely related).

[2] A true and correct copy of the Stipulation and Order for Protective Order Pursuant to Fed. R. Crim. Pro. 16(d)(1) and 18 U.S.C. § 3771 was attached to the motion as Exhibit 3. The Court takes judicial notice of this document based on the same authorities identified in footnote 1, *supra*.

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participating in the mediation. *Id.* ¶¶ 6; 78; 91; 113. The mediation, thus, ended unsuccessfully as "no figure was agreed upon." *Id.* ¶ 111.

6. In the months following the April 5 mediation, Mr. Ramos alleges that Mr. White eventually offered him and Jane Doe a combined amount of $450,000 for a post-criminal proceedings non-disclosure agreement. *See* Compl. ¶ 101. Mr. Ramos did not accept the offer.

7. In late June 2016, Mr. Ramos filed an emergency motion to continue his sentencing so that he could substitute in new counsel and withdraw his guilty plea. *See* Compl. ¶ 79; Mot., Ex. 2 (ECF Nos. 53-54). Chief Judge Navarro denied Mr. Ramos' motion, and sentenced him to 366 days in prison. *Id.*; *see also* Mot., Ex. 2 (ECF Nos. 56-60; 62). According to Mr. Ramos, Judge Navarro's ruling confirmed that the parties' negotiations regarding a potential non-disclosure agreement were independent from the criminal proceedings. *Id.* Ramos filed an appeal challenging the denial of his desire to change his plea, which was ultimately dismissed by the United States Court of Appeals for the Ninth Circuit in early-March 2017. *See* Mot., Ex. 2 (ECF Nos. 65, 72; 77-79). Mr. Ramos self-surrendered to start serving his sentence on March 28, 2017. *Id.* (ECF No. 76). After completing a period of supervised release, Mr. Ramos filed this action on April 3, 2020—nearly four years from the date of the parties' failed mediation.

C. Mr. Ramos' Complaint Fails to State a Claim Upon Which Relief Can Be Granted.

Mr. Ramos has asserted the following four causes of action against all Defendants: (1) breach of contract; (2) contractual breach of the implied covenant of good faith and fair dealing; (3) tortious breach of the implied covenant of good faith and fair dealing; and (4) unjust enrichment. The Court addresses each in turn.

1. Breach of Contract

Mr. Ramos alleges that he and Mr. White orally agreed to attend a mediation, that all parties "understood" White would pay Ramos a "substantial" amount of compensation in exchange for a non-disclosure agreement, and that Mr. White breached the parties' agreement by not offering to

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pay Mr. Ramos anything at the mediation. *See* Compl. ¶¶ 81-93. Even treating Mr. Ramos' factual allegations as true and drawing every reasonable inference in Mr. Ramos' favor, he has not stated a claim for breach of contract. Indeed, the allegations of the complaint expressly plead Ramos out of any viable contract claim. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988-89 (9th Cir. 2001) (a plaintiff "can . . . plead himself out of a claim[.]").

"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). A meeting of the minds exists when the parties have agreed upon the contract's essential terms. *Roth v. Scott*, 112 Nev. 1078, 1083, 921 P.2d 1262, 1265 (1996). "With respect to contract formation, preliminary negotiations do not constitute a binding contract unless the parties have agreed to all material terms." *May*, 121 Nev. at 672, 119 P.3d at 1257. "A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite" as "[t]he court must be able to ascertain what is required of the respective parties." *Id.* "A breach of contract claim that fails to allege facts sufficient to show that an enforceable contract existed between the parties is subject to dismissal." *Abu Dhabi Commercial Bank v. Morgan Stanley & Co., Inc.*, 651 F. Supp. 2d 155, 173 (S.D.N.Y. 2009).

Mr. Ramos alleges multiple times that Mr. White never offered him any amount of money at the mediation in exchange for a potential non-disclosure agreement. *See* Compl. ¶¶ 78; 91; 113. The mediation, thus, ended unsuccessfully as "no figure was agreed upon." *Id.* ¶ 111. These allegations constitute binding judicial admissions, *see Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.*, 127 Nev. 331, 343, 255 P.3d 268, 278 (2011) ("concessions in pleadings are judicial admissions") (quotation omitted), and unequivocally establish that the parties never had a meeting of the minds on the essential contract term of price. *See, e.g., Nevada Power Co. v. Public Util. Comm'n*, 122 Nev. 821, 839-40, 138 P.3d 486, 489-90 (2006) ("When essential terms such as [price] have yet to be agreed upon by the parties, a contract cannot be formed"); *Certified*

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Fire Prot. Inc. v. Precision Constr., 128 Nev. 371, 378-79, 283 P.3d 250, 255 (2012) (affirming district court's conclusion that no enforceable contract existed where the parties had not agreed to price and scope of work terms); *Roth*, 112 Nev. at 1083, 921 P.2d at 1265 (where parties had not agreed to essential terms of the high-low bracket amounts, there was no contract for binding arbitration).

The lack of material terms in Mr. Ramos' alleged contract renders it impossible for this Court "to ascertain what is required of the respective parties." *May*, 121 Nev. at 672, 119 P.3d at 1257. To begin, Mr. Ramos repeatedly acknowledges the parties never agreed on a payment amount. That Mr. Ramos had a subjective belief the payment would be "substantial" does not constitute a meeting of the minds. "Contractual intent is determined by the objective meaning of the words and conduct of the parties under the circumstances, not any secret or unexpressed intention or understanding of one or more parties to the contract." Nev. J.I. 13.7 (Formation; Contractual Intent). Nor is there any way to ascertain what is meant by "substantial" as this word obviously can have different meanings to different people.

Mr. Ramos argues in his opposition that Defendants breached an agreement to mediate by failing to offer him anything on the day of the mediation, which Mr. Ramos contends is "bad faith." Nevada law, however, does not recognize an alleged agreement to negotiate in good faith as it constitutes an unenforceable agreement to agree. *See, e.g., Verifone, Inc. v. A Cab, L.L.C.*, 2017 WL 2960519, at *3 (D. Nev. July 7, 2017) (citing *Kohlmoos Enterprises v. Pines, LLC*, 129 Nev. 1131, 2013 WL 5476860, at *1 (Nev. Sept. 26, 2013) ("Nevada abides by traditional jurisprudence that agreements to agree are generally too indefinite to enforce as final agreements" and declining to recognize "the enforceability of a preliminary agreement that requires the parties to negotiate in good faith."); *Bond Mfg. Co., Inc. v. Ashley Furniture Indus., Inc.*, 2018 WL 1511717 (D. Nev. Mar. 27, 2018); *City of Reno v. Silver State Flying Serv.*, 84 Nev. 170, 438 P.2d 257 (1968) ("An agreement to agree at a future time is nothing and will not support an action for damages.").

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At best, Mr. Ramos and Defendants had a preliminary agreement to attend a mediation at which they would negotiate over the price to be paid for a post-criminal proceeding non-disclosure agreement. According to the complaint and Mr. Ramos' opposition, the parties performed the preliminary agreement by attending the mediation, *see* Opp'n at 5:17-20; 7:4-6, but it ended without a resolution. Obviously disappointed he did not achieve his desired result, Mr. Ramos now asserts a breach claim based on the way Defendants negotiated during the mediation. Nevada, however, does not recognize the enforceability of preliminary agreements requiring the parties to negotiate in good faith, and for good reason.

While Mr. Ramos may be disappointed that Defendants did not offer him anything during the mediation on April 5, 2016, parties in Defendants' shoes could be just as disappointed with what they view to be unreasonably high monetary demands of a plaintiff. Extreme positions taken by parties on the opposite sides of issues occur in mediations every day in Nevada and around the country. If such differences in viewpoint and negotiating style gave rise to independent causes of action for breaching a mediation agreement, no one would ever agree to mediate which would undermine the entire purpose of alternative dispute resolution and overburden an already-taxed judicial system. Moreover, the reality is that many initial mediations are unsuccessful and require the parties to engage in subsequent negotiations. Mr. Ramos alleges that is exactly what happened here: "Defendants continued to negotiate after that [mediation] date, and eventually offered a total amount to Ramos and Doe of $450,000." Opp'n at 7:17-18; Compl. ¶ 101. That Ramos did not accept this offer only reinforces there was no meeting of the minds between him and Defendants and, accordingly, no enforceable contract. With no enforceable contract, the breach of contract claim fails.

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2. Breach of the Implied Covenant of Good Faith and Fair Dealing (Contractual and Tortious).

Mr. Ramos' second and third causes of action for contractual and tortious breach of the implied covenant of good faith and fair dealing cannot survive in the absence of a viable contract. *See* Nev. J.I. 13.43 (requiring "[t]hat the plaintiff and the defendant entered into a valid contract" as the first element of a claim for contractual breach of the implied covenant); Nev. J.I. 13.44 (same requirement for tortious breach of the implied covenant). Without a valid contract, which Mr. Ramos has failed to plead here for reasons addressed above, his derivative claims for breach of the implied covenant likewise fail and must likewise be dismissed. *See, e.g.*, *Greenstein v. Wells Fargo Bank, N.A.*, 2017 WL 1173916, at *1 (D. Nev. Mar. 29, 2017) ("[w]ithout a contract, Greenstein's claims for breach of contract and breach of the implied covenant fail."); *Walker v. Venetian Casino Resort*, LLC, 2012 WL 4794149, at *11 (D. Nev. Oct. 9, 2012) ("[s]ince Plaintiffs have not demonstrated that an enforceable [ ] contract existed . . . [they] cannot maintain their claim for breach of the implied covenant of good faith and fair dealing.").

Mr. Ramos' claim for tortious breach of the implied covenant must be dismissed for the independent reason that he has nowhere plead "there was a special element of reliance or trust between [Mr. Ramos and Mr. White], such that, [Mr. White] was in a superior position or entrusted position of knowledge." *See* Nev. J.I. 13.44 (recounting second element of claim for tortious breach of the implied covenant). A claim for tortious breach of the implied covenant has been recognized in limited circumstances such as in the insurer-insured context or in fiduciary relationships. *See, e.g., Shannon v. ReconTrust Co.*, 2012 WL 1695664, at *4 (D. Nev. May 11, 2012) (dismissing claim for tortious breach of the implied covenant where there was no underlying contract and, in any event, no fiduciary relationship existed between the parties). No such special relationship has been alleged here.

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3. Unjust Enrichment

Lastly, Mr. Ramos alleges his "silence" regarding the events surrounding his criminal conduct enabled the UFC to be sold in July 2016 for more than $4 billion. *See* Compl. ¶¶ 114-18. Mr. Ramos specifically contends Defendants were unjustly enriched because they "obtained" his silence and "enjoyed and retained" the benefit thereof by virtue of the company's sale or the sale price not being affected by potential negative publicity. *Id.* Mr. Ramos seeks damages in an amount attributable to "the value of the UFC at the time of the sale enhanced by the non-disclosure." *Id.* at 14:14-16. This claim fails for several reasons.

"Unjust enrichment is the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience." *Topaz Mut. Co. v. Marsh*, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992) (quoting *Nevada Industrial Dev. v. Benedetti,* 103 Nev. 360, 363 n.2, 741 P.2d 802, 804 n.2 (1987)). The essential elements of unjust enrichment "are a benefit conferred on the defendant by the plaintiff, appreciation by the defendant of such benefit, and acceptance and retention by the defendant of such benefit." *Id.* (quoting *Unionamerica Mtg. v. McDonald,* 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981)). Unjust enrichment is an equitable claim that implies a "quasi-contract." *Hunt v. Zuffa, LLC*, 361 F. Supp. 3d 992, 1008 (D. Nev. 2019).

As a threshold matter, Ramos does not allege that any Defendant retained "money or property ***of another*** against the fundamental principles of equity and good conscience." *Topaz, supra* (emphasis added). After all, the value of the UFC—regardless of any allegation about an "enhanced" sales price due to non-disclosure—has never belonged to Mr. Ramos. *See State, Dep't of Taxation v. Chrysler Grp. LLC*, 129 Nev. 274, 281 n.4, 300 P.3d 713, 717 n.4 (2013) ("We also reject Chrysler's unjust enrichment argument because the sales tax paid to the State never belonged to Chrysler."). Thus, insofar as Mr. Ramos seeks unjust enrichment damages "based on the value of the UFC at the time of sale," his request is legally untenable.

That leaves Mr. Ramos trying to plead a claim for unjust enrichment based on Defendants' alleged "unjust retention of a benefit to the loss of another." *Topaz, supra*. Here, the alleged benefit is Mr. Ramos' silence. *See* Compl. ¶ 117. But Mr. Ramos' allegations in the complaint (and as also acknowledged in his opposition and confirmed by the judicially noticeable facts) indisputably establish that Mr. Ramos' silence during the criminal proceedings—from at least October 5, 2015 through March 2017 when his appeal was dismissed—stemmed directly from a protective order entered by Magistrate Judge Hoffman in that case. *Id.* ¶¶ 49-50; 52; 57; 62; 64; and 76; *see also* Mot., Ex. 2 (ECF Nos. 40; 60; and 72) and Ex. 3. It has been settled law for more than eight decades that a person is not entitled to restitution through unjust enrichment by simply performing an independent legal obligation. *See* Restatement (First) of Restitution § 60 cmt. a (1937) ("If a person does an act which it is his legal duty to do, whether such duty is enforceable at law or in equity, he is not entitled to restitution, irrespective of the cause of the act.") (updated through June 2020); *see also id.* § 106 (instructing that "[a] person who, incidentally to the performance of his own duty or to the protection or the improvement of his own things, has conferred a benefit upon another, is not thereby entitled to contribution.").

Multiple courts have relied on the foregoing principles when granting dispositive motions on unjust enrichment claims. *See, e.g., Allegheny Gen. Hosp. v. Philip Morris, Inc.*, 228 F.3d 429, 446-48 (3d Cir. 2000) (affirming dismissal of unjust enrichment claim where plaintiff hospitals had an independent legal obligation to provide healthcare to nonpaying patients such that any benefit to defendant tobacco companies was incidental to the hospitals' own duty); *Oregon Laborers-Employers Health & Welfare Tr. Fund v. Philip Morris, Inc.*, 185 F.3d 957, 968-69 (9th Cir. 1999) ("because plaintiffs had an independent obligation to pay the smokers' medical expenses, they cannot maintain an action for unjust enrichment against defendants just because defendants were incidentally benefitted."); *Chem-Nuclear Sys., Inc. v. Arivee Chemicals, Inc.*, 978 F. Supp. 1105, 1110-11 (N.D. Ga. 1997) (plaintiff under an administrative order to remediate

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property could not pursue unjust enrichment claim against defendant who would incidentally benefit from the clean-up); *Hobart Corp. v. Waste Mgmt. of Ohio, Inc.*, 840 F. Supp. 2d 1013, 1036-37 (S.D. Ohio 2011) (dismissing unjust enrichment claim where settlement agreement imposed obligation on plaintiff to remediate site such that any benefit to defendant accrued by virtue of plaintiff's performance of its own legal duty).

During the time leading up to the announcement of UFC's sale in early-July 2016 (and continuing through the Ninth Circuit's dismissal of his appeal in March 2017), Mr. Ramos was subject to a court order that required him to maintain confidentiality regarding the identity of his victim. Because he had an independent obligation not to disclose this information, any alleged benefit to Defendants was incidental to Mr. Ramos' performance of his own legal duty. The parties' failed negotiations over a non-disclosure agreement that would have applied *after* the criminal proceedings concluded has no impact on this issue as it never came to fruition, and Mr. Ramos has now disclosed the subject information through this lawsuit, thus rendering any alleged benefit nonexistent. The unjust enrichment claim, accordingly, fails as a matter of law.

THEREFORE, IT IS HEREBY ORDERED that Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5) is GRANTED. Given the concessions made in the complaint and the judicially noticeable facts identified herein, the dismissal is with prejudice.

DATED this _____ day of October, 2020.

Dated this 19th day of October, 2020

DISTRICT COURT JUDGE
THE HONORABLE DAVID M. JONES

FD8 1B8 5BC1 CF74
David M Jones
District Court Judge

Submitted by:
CAMPBELL & WILLIAMS

By: /s/ J. Colby Williams
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DISTRICT COURT
CLARK COUNTY, NEVADA

Joshua Ramos, Plaintiff(s)	CASE NO: A-20-813230-C
vs.	DEPT. NO. Department 29
Dana White, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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DISTRICT COURT
CLARK COUNTY, NEVADA

JOSHUA RAMOS, Plaintiff(s), vs. DANA WHITE, Defendant(s).	Case No. A-20-813230-C DEPT. XXIX

BEFORE THE HONORABLE DAVID M. JONES,
DISTRICT COURT JUDGE

WEDNESDAY, OCTOBER 7, 2020

TRANSCRIPT OF PROCEEDINGS RE:
DEFENDANTS' MOTION TO DISMISS COMPLAINT PURSUANT TO NRCP 12(b)5

APPEARANCES:

For the Plaintiff(s): IAN CHRISTOPHERSON, ESQ.

For the Defendant(s): J. COLBY WILLIAMS, ESQ.
DONALD J. CAMPBELL, ESQ.

RECORDED BY: MELISSA MURPHY-DELGADO, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, OCTOBER 7, 2020

2 [Proceeding commenced at 9:17 a.m.]

3

4 THE COURT: Page 3, A-20-813230, Ramos versus White.

5 MR. CHRISTOPHERSON: Ian Christopherson for the

6 plaintiff, Mr. Ramos is present in court.

7 MR. WILLIAMS: Good morning, Your Honor. Colby

8 Williams on behalf of the defendants.

9 THE COURT: Good morning, counsels.

10 MR. CAMPBELL: Good morning, Your Honor. Donald J.

11 Campbell, Campbell and Williams, Bar Number 1216, on behalf of

12 our client.

13 THE COURT: Thank you, counsels.

14 Motion to Dismiss. Go ahead, counsel.

15 MR. WILLIAMS: Thank you, Your Honor. Colby Williams.

16 And does Your Honor prefer if I argue from the podium or

17 the desk?

18 THE COURT: Whichever is more comfortable for you,

19 counselor. I can hear you either way.

20 MR. WILLIAMS: Okay. Very good. I'll come up to the

21 podium then.

22 Good morning, Your Honor. Again, Colby Williams on

23 behalf of the defendants.

24 Despite the provocative nature of the allegations in the

25 complaint, Your Honor, what we're here on today is very

1 straightforward, and we submit the answer is very clear. The
2 question here is whether Mr. Ramos has stated or can state the
3 claim for relief for the following causes of action: Breach of
4 contract, breach of the implied covenant, and unjust enrichment.
5 And given the allegations in the complaint, which we are
6 accepting as true for purposes of this motion, Your Honor, we
7 submit the answer is he has not stated such a claim. And, most
8 respectfully, Your Honor, we submit the answer is not even a close
9 call.
10 Let's start with the breach of contract claim. As Your
11 Honor well knows, the first element of a breach of contract claim is
12 you've got to have a valid contract. An enforceable contract
13 requires offer, acceptance, meeting of the minds, and
14 consideration, Your Honor.
15 With respect to meeting of the minds, what that means is
16 the parties have to agree to all essential terms. Preliminary
17 contracts, preliminary agreements, preliminary negotiations are not
18 enforceable contracts, Your Honor. And the reason for that is
19 because when we come to the Court, the Court has to know what
20 are the parties' respective obligations? Because the Court has to
21 know what it is enforcing. And, Your Honor, that doesn't exist here.
22 What Mr. Ramos is claiming through his complaint, and
23 it's fleshed out in his opposition brief, is that the defendants
24 breached a duty -- or excuse me, a contract to mediate. That's the
25 claim. And if you read the opposition, Your Honor, at page 5, it

1 actually acknowledges the defendants fully performed the
2 agreement to mediate, except in one respect. And what they claim
3 the breach occurred is through Mr. White and the defendants not
4 offering Mr. Ramos anything on the day of the mediation. That's
5 the claimed breach, Your Honor.
6 And there are a number of problems with that. The most
7 significant of which is that Mr. Ramos alleges that not offering
8 anything to him on the day of the mediation was bad faith, that the
9 parties had an obligation to negotiate in good faith the day of the
10 mediations. Well, Your Honor, Nevada has repeatedly rejected
11 so-called contracts to negotiate in good faith. Why? For the reason
12 I mentioned earlier: Courts aren't going to know what they're being
13 asked to enforce.
14 What is negotiating in good faith? The Nevada district
15 courts and Federal Court and the Nevada Supreme Court has said
16 they're nothing more than unenforceable agreements to agree.
17 Repeatedly, Your Honor, we've cited you four cases for that.
18 Your Honor has done a lot of both on the defense side, the
19 plaintiff side, and I believe he's even acted as a mediator. You
20 know how mediations work. They're in agreement to get together
21 and negotiate to see if you could ultimately reach a final agreement.
22 Sometimes you can, sometimes you can't.
23 If a party's particular offer would give rise to an
24 independent claim of breach, either because it was too high or it
25 was too low or none was made at all, what would -- who would

1 ever go mediate? It wouldn't happen, Your Honor. It's an absurd
2 proposition, most respectfully.
3 But Mr. Ramos has a bigger problem on the breach of
4 contract claim, Judge. Because in his complaint, and again, this is
5 not anything other than what they have alleged. And we're
6 accepting it as true under the Motion to Dismiss standard. The
7 allegations that are in the complaint are that the parties continued
8 to negotiate after the mediation. Not uncommon, right?
9 Oftentimes mediations don't settle on the first go-round. The
10 parties continue to talk.
11 And what Mr. Ramos alleges is that he was then offered,
12 some time in the next three months, the parties kept talking, he was
13 offered $450,000 in a combined offer for him and Ms. Jane Doe.
14 And Your Honor didn't accept it. Did not accept it.
15 And so we have no acceptance and we have no meeting
16 of the minds on all the essential terms. Without those two
17 elements, you cannot have a valid contract. And with no valid
18 contract, you can have no breach. So that is the breach of contract
19 claim, Your Honor.
20 I'll move onto the two claims for breach of the implied
21 covenant of good faith and fair dealing. One is contractual, one is
22 tortious, I think they're both easily dealt with. If there's no contract,
23 you can't have breach of the implied covenant, either contractual or
24 tortious. So that should take care of those claims.
25 The claim for tortious breach fails for an additional

1 reason. As you know, you have to have a special relationship of
2 trust in order for the tortious variety of tortious breach of the
3 implied covenant to come into fruition. Most typically, you see that
4 in the insurer/insured context. Obviously, that's not the case here.
5 There's no allegation of a special relationship, Judge. So that claim
6 fails as well, for the addition -- that additional reason.
7 So what that leaves us with, Judge, it unjust enrichment.
8 Equitable claim, I know His Honor is familiar with it, but the upshot
9 of it is that you -- a party has retained a benefit for money or
10 property that belongs to another. And the claim here seems to be
11 that the UFC ultimately sold for $4.2 billion, and somehow
12 Mr. Ramos is entitled to a portion of that sales price, because he
13 maintained a confidentiality regarding his victim in the criminal
14 proceedings.
15 But, Judge, the valuation of the UFC had nothing to do
16 with Mr. Ramos, most respectfully. I mean, the company has
17 existed for nearly 20 years and has its -- you have a valuation based
18 on the work of its executives, its employees, and its independent
19 contractors. Not Mr. Ramos. So there can't be a legitimate claim
20 that the valuation of the UFC belonged to Mr. Ramos. So that's that
21 issue.
22 But more importantly, to the extent they're claiming the
23 defendant somehow retained a benefit that was performed by
24 Mr. Ramos, that aspect of unjust enrichment fails as well. And why
25 does it fail? Because the allegation is this, Judge: that Mr. Ramos

1 maintained the confidentiality of his victim and related information
2 prior to the sale of the UFC, which occurred in July of 2016, that's
3 when it was announced. And that that somehow gave rise to a
4 benefit that the defendants accepted.
5 But here's the problem, Judge. Mr. Ramos was under a
6 independent legal obligation in the criminal proceedings to
7 maintain the confidentiality of his victim and related information.
8 There was -- and again, this is not coming -- I'm not making this
9 up -- this comes from the allegations in the complaint, it comes
10 from repeated acknowledgement in the opposition, and it comes
11 from judicially noticeable facts we've asked this Court to take notice
12 of in the criminal proceedings. Public records, Your Honor.
13 When Mr. Ramos was arrested, he acknowledges a gag
14 order that was imposed as a condition of his release -- that's his
15 term, gag order, not mine -- that required him to maintain the
16 confidentiality regarding his victim.
17 Subsequently, when he was indicted in September
18 of 2015, a stipulation and order was entered by former magistrate
19 Judge Hoffman imposing a written stipulation and protective order
20 requiring him to maintain the confidentiality of his victim. That
21 remained in place, they acknowledged throughout the duration of
22 the criminal proceedings, Your Honor. We've attached the docket
23 sheet from those proceedings, which the Court can take judicial
24 notice of.
25 The criminal proceedings continued, we submit, at a

1 minimum, until March of 2017, when his appeal to the Ninth Circuit
2 was dismissed.
3 So that independent legal obligation was in place
4 throughout that entire time. The UFC -- the announcement was
5 July 2016, so that obligation existed. The restatement on
6 restitution, we've cited you two sections. Restatement first, the
7 restitution, Section 60 and Section 106. And both of them stand for
8 the proposition that if a party has an independent legal obligation
9 to either act a certain way or to refrain from acting in a certain way,
10 the fact that an incidental benefit may be conferred on somebody
11 else, that is not unjust enrichment, Your Honor, most respectfully.
12 That's what we have here.
13 There is no dispute. He was subject to that confidentiality
14 agreement from the criminal proceedings at the time of the UFC
15 sale. So the unjust enrichment claim fails for that reason as well.
16 Unless Your Honor has any further questions, I'll submit
17 it.
18 THE COURT: Let me hear from the other side first.
19 Mr. Christopherson.
20 MR. CHRISTOPHERSON: Yes, Your Honor.
21 First, it's important in this case to remember what we
22 actually have going on here. This is a case, and I would refer you to
23 the --
24 THE COURT: I read through the entire thing. I actually
25 pulled all of Navarro's findings and pleadings. So I know the case

1 very well, counsel.

2 MR. CHRISTOPHERSON: Okay. I would refer you in this
3 case to the *Pacillas* [phonetic] case, I think it is 127 Nev. –
4 actually, 255 Pac. 3d, 1281. That's a case which I think is quite on
5 point in this case. This was a case where there was an agreement
6 to mediate. And we take a look at the *Pacillas* case, that's a case
7 involving the mortgage litigation. And in that case, the Supreme
8 Court found, and it's been well established authority in those
9 mortgage mediations, that there is not just a obligation to show up
10 at a mediation; there's a good-faith obligation. That is in the
11 statutes.

12 But I think there is a good-faith obligation to appear at a
13 mediation which has been agreed on, and there's a contractual
14 basis to do that. And our position is there was an agreement, a
15 contract, there's no dispute the mediation occurred on
16 April 5th, 2015 -- '16. That happened. The parties agreed on that.
17 They met. They all had to meet. They had Mr. Ramos at one
18 location, and Mr. White was at the UFC offices. But they agreed on
19 a mediator. The mediator showed up, he talked to -- I believe, he
20 talked to the Ramoses. And this is why it's a Motion to Dismiss, it's
21 premature, in any event, to dismiss this, because we need to flesh
22 this out.

23 They showed up on April 5th, Mr. Christiansen went to the
24 offices or contacted Dana White, came back and said, They're not
25 going to offer Mr. Ramos a dime. Is that good faith? You set up an

1 agreement to have a mediation to discuss not the terms of the
2 nondisclosure agreement, because that's quite clear that that
3 wasn't negotiated. The only issue was are they going to pay? And
4 how much are they going to pay Mr. Ramos? Can they reach an
5 agreement? There was no good-faith negotiation.
6 When we -- when you enter a mediation agreement,
7 there's an understanding that there will be a good-faith negotiation.
8 THE COURT: Counselor, is that an action or is that
9 something that can be sanctionable?
10 MR. CHRISTOPHERSON: Well, when it's a breach of a
11 contract, if it's in the mortgage mediation, I think that's subject to
12 sanctions.
13 THE COURT: Well, that's statutory and also court order.
14 MR. CHRISTOPHERSON: There's a statutory sanction
15 there. But this is a situation where there was a breach of the
16 agreement. They set up an agreement to deliver a good, which in
17 this case was to make an offer. If they'd showed up and made an
18 offer of a dollar, they would have a different argument. But they
19 said we will not pay you a dime.
20 THE COURT: So a dime or a dollar is good faith, but zero
21 is not?
22 MR. CHRISTOPHERSON: Well, then we would be
23 discussing whether or not it was good-faith participation. But when
24 you don't even make an offer, that's breach of the agreement.
25 THE COURT: So, counsel, let me ask you this: If a failed

1 mediation gives rise to a cause of action, who's going to mediate? I
2 act as a mediator through the settlement court systems. I was a
3 mediator for hundreds of cases before that. I think some for
4 yourself.
5 Where would anybody participate in a mediation if, in fact,
6 they know that the other side is just going to sue them if they don't
7 come about a resolution?
8 MR. CHRISTOPHERSON: Well, this wasn't a court ordered
9 mediation.
10 THE COURT: Right. Then we'd have a lot more grounds.
11 MR. CHRISTOPHERSON: You know, and this gets into --
12 this is a bad-faith situation. This is where -- this is why it's an
13 actionable case, because here you have the defendant in this case
14 having his counsel call up Mr. Ramos's counsel before he's pled
15 guilty, after they already know that there is a protective order in
16 place, it was issued before, and say, Forget about the criminal case,
17 we want to negotiate a nondisclosure agreement. They enter a
18 mediation agreement. In the interim, he pleads guilty and that's not
19 enforce of a contract.
20 THE COURT: I know the criminal facts, I've --
21 MR. CHRISTOPHERSON: With the understanding that
22 there is additional bonus out there. Doesn't know what it's going to
23 be, but that if he pleads guilty, one of the factors is that they will
24 negotiate a nondisclosure agreement. That's one of the factors in
25 there -- there's not a cause of action for that.

1 THE COURT: Well, let me stop you there. So let's say, for
2 example, that was a factor, and that's still a large step. But that was
3 a factor and Mr. Ramos's decision to go to prison for a year, that he
4 was expecting some big payout if he went, would that be a basis to
5 set aside a guilty plea? If you went in front of Judge Navarro and
6 said, I'm going to withdraw the guilty plea solely on the basis that
7 my client didn't get paid money he was promised from someone
8 else if he took a year in prison, do you believe that Judge Navarro
9 would give that grounds to set aside a guilty plea?
10 MR. CHRISTOPHERSON: Well, she didn't, and I think the
11 distinction there is -- and I don't think that it's a -- I think Judge
12 Navarro was correct in not doing that when he raised that. The --
13 THE COURT: It's not a valid ground --
14 MR. CHRISTOPHERSON: Well --
15 THE COURT: -- to remove a guilty plea.
16 MR. CHRISTOPHERSON: If -- but --
17 THE COURT: Never would it be.
18 MR. CHRISTOPHERSON: If it had been the State that
19 made the offer, yes, it would be grounds to set it aside. If they'd
20 made him a promise, it was a third-party promise, which --
21 THE COURT: That's the case here.
22 MR. CHRISTOPHERSON: No, it was a third --
23 THE COURT: We're not talking about the State making a
24 promise.
25 MR. CHRISTOPHERSON: It was a third-party promise to

1 him.

2 THE COURT: Right. Would that ever be grounds to

3 withdraw your guilty plea? Never. Not in any court in this land.

4 MR. CHRISTOPHERSON: If it was the State that did it, yes,

5 it would.

6 THE COURT: Okay.

7 MR. CHRISTOPHERSON: I mean, when you do the

8 canvass --

9 THE COURT: We're not talking about what-ifs, counsel. In

10 this scenario, you're basically saying that this gentleman took a

11 year in prison in hopes that he would get paid for that year in

12 prison. And then he tried to withdraw his Guilty Plea Agreement

13 and Judge Navarro did what I believe every judge in this

14 jurisdiction, whether federal or State, would do. It's not a grounds

15 for withdrawal of a Guilty Plea Agreement. It's not even a basis for

16 it.

17 MR. CHRISTOPHERSON: Well, and we're not contesting

18 that.

19 THE COURT: Okay. So it's not a valid basis. So move on.

20 MR. CHRISTOPHERSON: So what we have is that there's

21 a mediation agreed on. There's a contract to mediate. And, yes, it's

22 a contract. And I refer to the fact and, you know, it's undisputed

23 that people reach agreements to mediate. You just don't show up

24 and --

25 THE COURT: Okay. Agreement, contract. Two totally

1 different things.

2 MR. CHRISTOPHERSON: It isn't --

3 THE COURT: Totally different legal things. Are they not,

4 counsel?

5 MR. CHRISTOPHERSON: No, it's a contract.

6 THE COURT: So an agreement's a contract?

7 MR. CHRISTOPHERSON: It's like --

8 THE COURT: I agree to meet you for lunch. If I fail to

9 show up, you can sue me.

10 MR. CHRISTOPHERSON: Well, I recently did one with

11 Judge Pro. And what we did was we had to agree on who was

12 going to pay for it, where it was going to be, what time it was.

13 And --

14 THE COURT: Did they comply with all those elements?

15 Did they show up to mediation? Did they agree on the mediator?

16 Did they agree on the dates? And did they, in fact, show up?

17 MR. CHRISTOPHERSON: And --

18 THE COURT: Did they, in fact, do all those things,

19 counselor?

20 MR. CHRISTOPHERSON: Yes, they did.

21 THE COURT: Okay.

22 MR. CHRISTOPHERSON: But they did not mediate.

23 THE COURT: Okay. So we -- when they -- according to

24 your facts, the weeks later, when they offered him $450,000, what

25 would that be considered?

1 MR. CHRISTOPHERSON: That was --
2 THE COURT: Is that a continuation of mediation or is that
3 just a lucky throw of some money out?
4 MR. CHRISTOPHERSON: Well, that gets into what really
5 was going on in this case. Which is that -- and we take a look at
6 the --
7 THE COURT: I understand what you said in your brief.
8 But, counsel, my question is if you and I went to a mediation, and at
9 the time of the mediation, I said, you know what, I've listened to the
10 mediator, I don't agree with the mediator, I'm not going to offer a
11 penny. And then a week later you call me up and say, Counselor,
12 what about this? And I say, You know what, let me go back to my
13 client. And my client says, You know what, offer him a thousand
14 bucks.
15 MR. CHRISTOPHERSON: Well, again --
16 THE COURT: Is that still a continuation of the mediation?
17 MR. CHRISTOPHERSON: Again, this gets into why a
18 Motion to Dismiss is not well taken. Because those facts need to be
19 fleshed out. We are not before the Court.
20 THE COURT: You brought them before the Court by
21 saying that he was offered amount of money after the specific date.
22 You brought those facts in front of this Court, and this Court is
23 accepting them as true. They just admitted for this motion that they
24 are true. So after the date of the mediation, according to you,
25 money was offered. So they agreed to the time, the place, the

1 mediator, they attended, and then within a short period thereafter,
2 they actually offered money -- not at the mediation, but shortly
3 thereafter, correct?
4 MR. CHRISTOPHERSON: And that was in response to his
5 indication he would withdraw his plea.
6 THE COURT: Okay.
7 MR. CHRISTOPHERSON: Or attempt to. Okay?
8 THE COURT: Which we all figured out sooner or later was
9 not a valid basis to withdraw.
10 MR. CHRISTOPHERSON: But he could have contested the
11 gag order. There are a number of things he could have done, okay,
12 that would have revealed Mr. White's name. And he did have
13 options at that time, and they continued to discuss settlement
14 options until five days -- five to seven days before they announced
15 the sale of UFC. So they strung him along after the mediation. I
16 think we can show that the date of the mediation was set knowing
17 that his sentencing date would have occurred before then. So they
18 waited until five days after he pled guilty, seven days before -- six
19 or seven days before they announced the sale, to say, We're not
20 going to pay you anything.
21 So that's -- if we do agree that this is a continuation to
22 mediation, it's in bad faith, because they're stringing him along,
23 stringing him along. I don't think they had any intention to do
24 anything besides delay disclosure until after the sale happened,
25 after Mr. White had his agreement to continue on working for the

1 UFC and the new owners for millions of dollars a year.
2 So there's factual issues which remain and if this was a
3 summary judgment motion, I would be asking for 56(f) relief.
4 THE COURT: Relief.
5 MR. CHRISTOPHERSON: So I think that's -- and again, it's
6 a Motion to Dismiss, these are issues which I think will come back
7 before you. But it's premature at this point on a Motion to Dismiss
8 to reach that determination, because there was facially a contract,
9 there was facially a breach. I don't think that, as a matter of law,
10 you can say that the agreement was not breached without further
11 facts. You know, you're making a point here. Well, do they
12 continue to mediate after this informally? If that's the case, then
13 was there a bad-faith breach in that? So, you know, it goes both
14 ways.
15 It's a matter that needs to be raised after some discovery.
16 We need to develop the facts we do not have. I have at this point
17 the criminal file. I have Mr. Williams' and Mr. LaBella and Mr. -- the
18 FBI agent, Mr. -- I forgot his name right now. Mr. White,
19 Mr. Epstein, all sitting down in Mr. Williams' office, conspiring to
20 have a prosecution brought against my client. We have that.
21 We have Judge Navarro saying it's okay to continue
22 negotiating. We have all of that file. And we don't have the file
23 from the other side. We don't have the sales, we don't have their
24 knowledge of what was going on, their intent; those are all factors
25 that go into bad faith, and whether or not there was an intentional

1 breach of this contract. Were they playing this man or were they
2 actually intending to mediate in good faith? And good faith is a
3 requirement of any mediation.
4 THE COURT: Well, counsel, if I offer you $450,000 and
5 you decline to take that, have I not participated in good faith? I
6 offered you almost half a million dollars. That's not participating?
7 MR. CHRISTOPHERSON: Well, I will --
8 THE COURT: Just because you don't like the number?
9 MR. CHRISTOPHERSON: I would -- and again, this isn't in
10 the record yet, which is why there's a possibility, which is a
11 grounds to deny it. There wasn't a offer of $450,000 cash. It was
12 piecemealed out, it was this, that, and the other. And that was
13 the -- where things fell apart, from my understanding. We have to
14 flesh that out.
15 THE COURT: That's where the mediation failed, was it
16 wasn't specific.
17 MR. CHRISTOPHERSON: No, it wasn't -- there wasn't a
18 mediation at that point. Mr. Christiansen, who, ironically, had
19 represented both Mr. Ramos and Ms. Doe in the proceedings, was
20 the mediator showed up --
21 THE COURT: Did he agree to Mr. Christiansen? Not
22 Christensen, Mr. Christiansen as the mediator; did your client agree
23 to that?
24 MR. CHRISTOPHERSON: Yes. That's part of the
25 agreement.

1 THE COURT: Okay. Then the argument about him being
2 some improper mediator is done. Your client agreed to it. If
3 anybody had the favor of the mediator, wouldn't it have been the
4 clients of that attorney rather than someone who's a stranger to
5 them?
6 MR. CHRISTOPHERSON: Well --
7 THE COURT: Wouldn't that be in his favor to have his
8 attorney be your mediator?
9 MR. CHRISTOPHERSON: In his --
10 THE COURT: I'd love to have my attorney as my mediator
11 in every case. I would imagine I would probably come out pretty
12 good.
13 MR. CHRISTOPHERSON: Except in this case
14 Mr. Christiansen was representing that he had a relationship with
15 Mr. White and that was why he thought he could get things done
16 and was holding out his relationship with Mr. White from having
17 known him as a basis to select him as a mediator.
18 THE COURT: And he had a relationship with your client
19 also.
20 MR. CHRISTOPHERSON: Yes.
21 THE COURT: Okay. So you had a client -- he had a
22 relationship -- a professional relationship with your client, and I
23 guess a personal relationship with Mr. White.
24 MR. CHRISTOPHERSON: Again, those are facts which
25 need to be fleshed out.

1 THE COURT: All of which was known to your client before
2 he agreed to have him as a mediator.
3 MR. CHRISTOPHERSON: It was a basis for the agreement
4 that Mr. Christiansen was proffering that he had a special
5 relationship, like he just talked about, he can get something done
6 with Mr. White based on that.
7 THE COURT: Okay.
8 MR. CHRISTOPHERSON: And again, if Mr. White knew
9 him, was this raised? How was it raised? Was there a basis that
10 that shouldn't have happened? Was there full disclosure? These
11 are all factors to go into whether or not there was a good-faith
12 mediation. So -- and again, the mediation was on April 5th, that
13 was done. There was subsequent contact. If you want to treat it as
14 a continuing mediation, then there's clearly bad faith. And we
15 can --
16 THE COURT: I don't know what you would continue --
17 what you would consider, when someone offers you $450,000 to
18 discuss something you just mediated --I act as a mediator and
19 settlement judge. I have probably 20 files sitting in my office that
20 I'm still following up on and I resolve about 80 percent of those
21 weeks, months, sometimes half a year later.
22 MR. CHRISTOPHERSON: And I've been to those
23 mediations.
24 THE COURT: Right.
25 MR. CHRISTOPHERSON: And you basically say, Well, if I

1 can help out, come back to me. Well, this was not something
2 where Mr. Christiansen continued in the mix. It was between
3 Mr. Grasso and I believe Hunter Campbell.
4 THE COURT: Okay.
5 MR. CHRISTOPHERSON: And so it wasn't
6 Mr. Christiansen was there the fifth, and I think that was the end of
7 it. So I don't think it was --
8 THE COURT: But your facts are that we -- you have
9 brought before this Court is someone on behalf of Mr. White then
10 went forward and at least attempted to negotiate with your client.
11 MR. CHRISTOPHERSON: Well, our position is that they
12 continue to keep a silence, because they realize -- and this is
13 important --
14 THE COURT: What if your client had accepted the 450?
15 Then what?
16 MR. CHRISTOPHERSON: Then we wouldn't be here
17 today. But it wasn't --
18 THE COURT: So he had a choice that he made at that time
19 to accept or not accept.
20 MR. CHRISTOPHERSON: There wasn't a offer of $450,000.
21 It was conditioned on a number of things. Ms. Doe was going to
22 get part of that. So it wasn't, like, Okay, well, we'll give
23 you 450,000. There were strings attached, my understanding.
24 Again, we need to get those facts, those are known to Mr. Grasso
25 and Mr. Hunter.

1 THE COURT: Talk to me about your unjust enrichment
2 claim.
3 MR. CHRISTOPHERSON: Okay. On unjust enrichment,
4 the first thing I'd point out is that they're recite -- they're citing the
5 restatement of restitution first. And I went to the law library, and I
6 was looking for those sections, and I realized we have the third
7 now. It's the Restatement of Contracts (Third). I cited Restatement
8 of Contracts (Third), Section 49.
9 The law has changed. The cases they've cited, *Hobart*,
10 which I think they've mis-cited -- I think it's the second as opposed
11 with first as F-supp -- is a case involving an EPA related that's
12 different --
13 THE COURT: I know the case.
14 MR. CHRISTOPHERSON: -- SER [indiscernible]. But the
15 *Hobart* case, which is the Fed reporter case, discusses the factors
16 involved in what is necessary determining whether there is a
17 common obligation and whether you can bring an unjust
18 enrichment case in that case. And that was a case where you had
19 two parties that contaminated some property. It gets complicated,
20 but one party was trying to bring an unjust enrichment --
21 THE COURT: Uh-huh.
22 MR. CHRISTOPHERSON: -- against the other one, because
23 the other one didn't pay for their cleanup.
24 THE COURT: The remuneration of it.
25 MR. CHRISTOPHERSON: So -- and I think, if I got it right,

1 that's the case where they said, well, the unjust enrichment came
2 because you didn't file a claim -- counterclaim against them or
3 bring an action against them for indemnification. And I'm not that
4 familiar with the case, but at one point it says -- [indiscernible] is the
5 Fed. 3d case, determining whether Defendant received an unjust or
6 unconscienable benefit, we must consider whether the defendant
7 was the party responsible for the plaintiffs' detrimental position.
8 If you take a look at the *Hobart* case, and if I -- if you don't
9 find it, I can find the citation.
10 THE COURT: I know.
11 MR. CHRISTOPHERSON: It's a federal -- Fed. 2d case.
12 THE COURT: My clerk found it.
13 MR. CHRISTOPHERSON: And there's -- the *Hobart* cases
14 are a series of them. And the last one, the Federal case, I think what
15 I -- the Fed. 3d case, the one I just cited. And it is not a simple
16 matter to say, okay, well, we have a gag order, so therefore there's
17 no unjust enrichment. Because the theory of unjust enrichment
18 focuses heavily on whether or not a party has received and then
19 retained a benefit by its actions, which is unjust.
20 And what happened in this case, and I think we -- I know
21 we can prove it -- Mr. White and the UFC walked into
22 Mr. Campbell's office, and they said that Mr. White, through the
23 UFC, had bought Ms. Doe a plane ticket, got her a passport on
24 one-day's notice, an expedited passport, which he can do. They got
25 her a passport, she could go, because she didn't have one --

1 THE COURT: Right.

2 MR. CHRISTOPHERSON: -- on a couple days' notice. I
3 don't know how many days it was. But -- and then when she came
4 back, they had --

5 THE COURT: She received $10,000 in chips at her place of
6 employment through their security officer.

7 MR. CHRISTOPHERSON: Through their security officer.
8 So that is a violation of the Mann Act, prima facie. At the time --

9 THE COURT: Does he have a right to call and bring a
10 cause of action or is that up to the attorney general and to the feds
11 and/or the DA?

12 MR. CHRISTOPHERSON: That's the feds.

13 THE COURT: Okay.

14 MR. CHRISTOPHERSON: You know, that -- he doesn't --

15 THE COURT: So what right did he lose by that not coming
16 forward?

17 MR. CHRISTOPHERSON: That's not where the unjust
18 enrichment comes in this case. But we have a situation where you
19 have a bad actor. We think that we can establish I have other
20 information that you have a sexually hostile environment at the
21 UFC. This is not an individual, Mr. White, who is a one-off. We
22 think the fact that this was routine, that the other owners of the UFC
23 also -- this is based upon documents in the file under severe
24 penalty that the other owners of the UFC had other women at the
25 Brazil location on the same date that were not their spouses. This is

1 a pattern and practice.

2 So when you're looking at selling a company to a publicly
3 traded company, like IMG is, they are very concerned with whether
4 or not they're going to be taking on irresponsible executives, a
5 company that is in violation of the law, that is a sexually hostile
6 environment, with an individual who is exhibiting the kind of
7 behavior that Mr. White is doing. And it's, again, a fact that I think
8 we will be getting into.

9 But, coincidentally, with the offer to Mr. Ramos for
10 nondisclosure agreement, Mr. White was in the media saying that
11 he was giving up his flip phones on the advice of counsel. And they
12 were fully conscious and aware of what the implications were of
13 this coming out in September and October of 2015. And,
14 remember, this happened -- the event happened in 2014, he was
15 charged in January.

16 In September, they come to the epiphany that, oh, well,
17 we probably shouldn't let this get out in the public and he can talk.
18 And he talks, it might have a problem -- it might cause a problem
19 with this sale, because if IMG finds out that Mr. White is doing this,
20 and Mr. White is a factor in the sales price, because he's got a
21 great -- they wanted to have him come on, well, we might have a
22 problem.

23 That's the same time they decide, jeez, Mr. White
24 probably shouldn't use his secretary's cell phone, flip phone, and
25 he's joked about that to the media a couple of times. And we

1 probably ought to make sure that Mr. Ramos, if he pleads guilty,
2 doesn't talk about this. And that's when they make the offer.
3 And they string it out until April, when he's supposed to
4 be sentenced in February and the mediation. And then they see
5 that the sale hasn't occurred yet, so they have to continue it on. So
6 they string out some offers of money to him that, in a way -- and
7 this will -- this is the answer to that question -- they were making
8 offers that he wouldn't accept, knowing that they -- if I offer you
9 a $450,000 and I'll give you a dollar today and the $449,999 in five
10 years, are you likely to accept that? No. And the condition weren't
11 that onerous, but the conditions, as I understand it, was one of the
12 factors and was where things broke down, was they were putting
13 conditions on the payments that were --
14 THE COURT: So the mediation failed, it broke down.
15 MR. CHRISTOPHERSON: Well, it wasn't -- that wasn't
16 mediation. Those were offers post-mediation. If you want to say
17 it's mediation, it was bad faith. If, you know, you can take the
18 position it was mediation, it was mediation, it was bad faith. If it
19 was a separate contract, it's -- I think it's in the unjust enrichment.
20 But --
21 THE COURT: The offer of 450 as a separate contract? I
22 just consider that an offer until he accepts. It doesn't become a
23 contract until they pay the consideration. All we have is an offer,
24 right?
25 MR. CHRISTOPHERSON: Well, your reading is

1 complicating my analysis.
2 THE COURT: Okay.
3 MR. CHRISTOPHERSON: But I think --
4 THE COURT: When I offer you $450,000, is that a
5 contract?
6 MR. CHRISTOPHERSON: No.
7 THE COURT: Okay. You have to accept it and I have to
8 pay it?
9 MR. CHRISTOPHERSON: Right.
10 THE COURT: Okay.
11 MR. CHRISTOPHERSON: Well, you have to accept -- I
12 have to accept it, and then if you don't pay it, there's still a contract.
13 But --
14 THE COURT: Maybe.
15 MR. CHRISTOPHERSON: Well, an offer and acceptance is
16 a contract.
17 THE COURT: Okay.
18 MR. CHRISTOPHERSON: In this case, there was an offer
19 and acceptance to mediate. Okay. And that was the contract. And
20 when you have a contract, an offer and acceptance, there's a
21 obligation to mediate in good faith. We could take a look at the
22 *Pacillas* case, it specifically makes that part of a mediation. I think
23 that's part of the mediation.
24 You would not agree to a mediation that was not going to
25 be in good faith. And as a settlement judge, I know you've done a

1 lot of mediations and sometimes you see parties that show up for
2 those and they're not in good faith. And I wish to heck that we
3 were able to sue for that failure. But --
4 THE COURT: Until legislature passes that law.
5 MR. CHRISTOPHERSON: -- in a court mediation, there's
6 no cause of action. In a private agreed-on mediation, if there's not
7 a good -- and this is where the critical distinction is -- it's not an
8 agreement to agree. It's an agreement to sit down and mediate in
9 good faith. And there's a reason for that. Because when you've
10 agreed to a mediation, you agree to preserve the status quo to quiet
11 yourself and not argue further during the interim and things will be
12 in the status quo. So you -- there is an agreement in the mediation
13 to stop hostilities. When you -- when we go to court-ordered
14 mediation, that's where we stop doing things. You know, we're not
15 in court with 15 different motions, arguing this, that, and the other.
16 Okay. We're -- stop everything.
17 So there is a consideration for that mediation. And when
18 you have private mediation, and it's sought by one party, and it's
19 sought to delay certain actions, which would be, you know,
20 Mr. Ramos could have moved in October to withdraw his guilty
21 plea. Or -- in December and withdraw his guilty plea after he
22 entered it in November. He could have moved --
23 THE COURT: Based on what? That I didn't get my
24 mediation done? I think Navarro heard that and Navarro told
25 Mr. Ramos exactly what she thought of that proposition. It's not a

1 valid basis to withdraw a guilty plea. It would never be a valid
2 basis.
3 MR. CHRISTOPHERSON: Well, there were other bases.
4 But he could have brought a motion --
5 THE COURT: None of which were accepted.
6 MR. CHRISTOPHERSON: He could have brought a
7 motion. He could have brought a motion to remove the gag order,
8 the media, which is here today, was supporting that. He could have
9 violated the gag order. He could have done a number of things. He
10 could have brought -- and this an important point -- he could have
11 brought a motion that he didn't bring, which his counsel didn't find,
12 I found, which is that in September -- in October 1st, 2015, a month
13 before he pled guilty, the legislature passed a criminal statute,
14 which I think is cited in my brief, which made what he was being
15 prosecuted for legal. I would call it the Hulk Hogan law, which is
16 that you can, in Nevada, publish a videotape or pictures of a public
17 figure having sexual activity. That's statutory. If I do that of a
18 private individual, it's a felony. If it's a public figure, it's not a
19 crime. That undermined the entire case.
20 THE COURT: Counsel.
21 MR. CHRISTOPHERSON: So --
22 THE COURT: Counsel?
23 MR. CHRISTOPHERSON: -- you know, there's a number of
24 things could have happened. But the bottom line is that the office
25 was calculated and they made sure that this information did not

1 come out until the sale date, July 5th, five days after he pleads
2 guilty -- after he's sentenced.
3 Six days before they announce the sale, Hunter Campbell
4 calls up Mr. Grasso and says, We ain't going to pay you anything.
5 THE COURT: They withdrew the 450 offer, right?
6 MR. CHRISTOPHERSON: And said, We're not going to --
7 we don't -- aren't going to negotiate, we don't need a nondisclosure
8 agreement anymore. And the reason Mr. White claimed, when he
9 went to the FBI in 2014, that he needed protection and why he was
10 being extorted was he didn't want his family to find out. It wasn't
11 his family he didn't want to find out; it was a potential buyer that
12 they didn't want to have find out what was going on.
13 THE COURT: Counsel, let me see if I can get this straight.
14 You have an organization that promotes men and women beating
15 each other, trying to cause one of the individuals to quit because of
16 broken bones or strangle the guy out or strangle the woman out,
17 beat each other without full-blown blows, basically, hand gloves.
18 And the president is afraid of a statement about adultery, and that's
19 somehow going to have a negative impact upon this organization?
20 An organization that promotes that type of behavior, the fighting,
21 somehow is going to be discouraged because of an adulterous
22 executive? That's the whole theory?
23 MR. CHRISTOPHERSON: Well, this is 2020, and if you ask
24 Mr. Wynn whether his conduct had any adverse effect on the
25 company, the answer would be no. What we have is we have a law

1 which prevents a sexual hostile environment, and for him it's --
2 THE COURT: Amongst employees. Right? Employees.
3 MR. CHRISTOPHERSON: No.
4 THE COURT: If I sexually harass -- you were talking about
5 Mr. White, basically, being a sexual harasser at the place of
6 employment towards his employees.
7 MR. CHRISTOPHERSON: Which he was. But --
8 THE COURT: Is that what his cause of action is?
9 MR. CHRISTOPHERSON: Which he was, but again --
10 THE COURT: That's your statement.
11 MR. CHRISTOPHERSON: Well, we know of at least two
12 incidents.
13 THE COURT: Okay.
14 MR. CHRISTOPHERSON: And we haven't commenced
15 discovery yet.
16 THE COURT: Okay.
17 MR. CHRISTOPHERSON: But what the law prohibits is a
18 sexually hostile work environment. And when you have your
19 secretary getting a phone in her name so you can engage in
20 extramarital activities --
21 THE COURT: Are you representing the secretary or are
22 you representing Mr. Ramos? Mr. White's secretary is not a party
23 to this.
24 MR. CHRISTOPHERSON: Well, getting back to your
25 question, your question was does it -- why would Mr. White want to

1 conceal this from business purposes in a business which he took
2 over and called it a blood sport --
3 THE COURT: Right.
4 MR. CHRISTOPHERSON: -- at one point. You know, the
5 thing is that IMG is buying this. IMG, within 60 days of purchasing
6 this, spun off to their clients -- you familiar with who IMG is?
7 THE COURT: I know very -- yes, counsel.
8 MR. CHRISTOPHERSON: Anyways, IMG sells $300 million
9 to Serena Williams, Guy Fieri, Ben Affleck --
10 THE COURT: I heard all the names.
11 MR. CHRISTOPHERSON: Okay. So --
12 THE COURT: So they made a good business --
13 MR. CHRISTOPHERSON: -- they spin this off.
14 THE COURT: They made a good business deal. Okay.
15 MR. CHRISTOPHERSON: Would these people want to be
16 involved in -- these are people who are doing advertising --
17 associated with this kind of business? Does IMG want --
18 THE COURT: I'm concerned there, because a couple of
19 people that you listed in your thing I think have already been in
20 trouble for extramarital affairs. I think one lost his wife and children
21 over an extramarital affair. So you think he'd be concerned that
22 Mr. White was having an extramarital affair?
23 MR. CHRISTOPHERSON: Well, if I was representing the
24 person, I would discourage them from engaging in a company like
25 that. Okay. I mean, there's -- but the bottom line is that would be

1 cause for concern. If it came out that an employee that I was
2 looking to hire and has now has a contract at $20 million a year,
3 thought it was perfectly okay to have his company purchase plane
4 tickets and passports and have company staff pay off a girl in
5 violation of the Mann Act, I would have serious concerns about that
6 person's judgment. Would I hire that person as an employee, as a
7 chief executive of a company? Is that by itself a sexual hostile
8 environment, where the boss is coming in saying, Hey, get me a
9 phone, I need it so my wife doesn't find out about it. And can you
10 get my squeeze a plane ticket to Brazil next week? I think that's a
11 sexual hostile environment. If I were --
12 THE COURT: It would be if you were representing the
13 secretary.
14 MR. CHRISTOPHERSON: Well --
15 THE COURT: You might have a grounds for it, but I don't
16 think as an individual person he has any basis whatsoever. He's
17 not an employee of the company, counselor.
18 MR. CHRISTOPHERSON: No. But if that is disclosed
19 during the negotiations for sale, it definitely affects --
20 THE COURT: In the blood sport.
21 MR. CHRISTOPHERSON: -- the price of it -- definitely
22 affects the price of the business. Because one of the factors is --
23 and, you know, if you take a look at what happened when Steve
24 Wynn left the company and Jim Murren retired, who is running a
25 company directly affects the value of the company in some cases.

1 And when you have an individual like Mr. White, who's
2 high profile, one of the values of the business, which is why he's
3 still working there, is his personality. So if he's subject to becoming
4 a next Weinstein or Epstein, you're not going to pay as much for
5 the company. So that's why it's relevant.
6 So if this comes out, then they would have had to do due
7 diligence as a company, and investigate all of this material. But
8 since they were able to keep it under wraps, I don't think any
9 investigation occurred.
10 THE COURT: Okay. Anything else, counselor?
11 MR. CHRISTOPHERSON: The other important thing to
12 keep in mind on the unjust enrichment case is, it's rather
13 disingenuous that the defendants say, well, he had an obligation to
14 remain quiet during this period of time. I think they're estopped
15 from making that argument by one simple fact: They were the
16 individuals -- or Mr. Hunter Campbell was the individual, knowing
17 that there was a gag order in place, who began the negotiations
18 and began the interaction with respect to the nondisclosure
19 agreement.
20 And I think that's an important fact, which even if there
21 was a argument, which I don't think is correct, that there's a --
22 there's no unjust enrichment for something you're obligated to do.
23 They're estopped from making that argument because they knew
24 that before they made the offer. And the intent of their actions
25 were clearly to silence Mr. Ramos during the pendency of the

1 potential sale.

2 And we take a look at the July 5th date, that's where it all
3 comes together; on July 5th, they didn't need his silence, because
4 they already had it. And I think your point is well taken. On
5 July 5th -- this is where we go backwards -- on July 5th Mr. White
6 had his agreement, the Zuffa had its agreement. And at that point
7 they didn't need it, because it's a blood sport, and they didn't care,
8 because they had their money. Once they had their money, they
9 didn't care, because, frankly, they didn't care whether this came out
10 or not. They just cared whether it screwed up their sale.

11 Thank you.

12 THE COURT: Okay. Counsel?

13 MR. WILLIAMS: Your Honor, there's a lot there, but I think
14 I can be pretty brief. Let me start with this. I sat quietly here and
15 didn't object or move to strike a lot of the stuff we heard that is
16 outside the pleadings. We previewed that this was what went on in
17 the opposition and that it's improper to raise matters outside the
18 pleadings in the context of a Motion to Dismiss hearing in the
19 manner that's been done here and in an effort to augment, I guess,
20 the complaint. So we would object to that and move to strike it.

21 Your Honor, I'm talking about things about a hostile work
22 environment, you know, the conspiracy that, apparently, I engaged
23 in, the giving up of flip phones. I mean, none of this is in the
24 complaints.

25 THE COURT: Not only you, apparently the FBI, the AG,

1 the US attorney and half of Hollywood.

2 MR. WILLIAMS: Right. Yeah, Your Honor, we're part of a

3 massive conspiracy here. But, obviously, we disagree with that. I'd

4 object to it. I'll leave it at that.

5 With respect to this estoppel argument that was made at

6 the very end, that we're somehow estopped because we went to

7 Mr. Ramos when there was already a nondisclosure in place. Your

8 Honor, the whole point -- and I know you know this, because it's

9 clear how much you've spent with -- how much time you've spent

10 with the record.

11 What was being negotiated was an NDA that would take

12 place post-criminal proceedings. When they were over and when,

13 according to them, the stipulated protective order ordered by Judge

14 Hoffman ended, what was being discussed between the parties as a

15 mechanism to continue an NDA after that happened. Okay. So

16 there's no estoppel argument here, there's nothing inconsistent at

17 all.

18 Your Honor, next, this argument about the $450,000 I find

19 intriguing. In fact, it just reaffirms what we've been saying here.

20 What the argument apparently is, if the party engaged in months of

21 negotiations, during one of those days, the day of the mediation, no

22 offer was made, so that constituted bad faith. But yet thereafter,

23 the 450,000 offer is made when they continue to negotiate. But that

24 too wasn't accepted, because, well, there were a lot of unfavorable

25 terms. Exactly. That is the whole point why we are here. There

1 has never been any acceptance. There has never been any meeting
2 of the minds on all essential elements. There is no contract.
3 The notion -- the -- finally, and I think we can wrap it up
4 here -- well, maybe two more points. The -- this obligation to
5 negotiate in good faith, I sat here, I had my pen out, I was waiting,
6 you know, to hear what the Nevada authority is for recognizing
7 contracts to negotiate in good faith. And what we heard, I believe,
8 was a case that isn't cited in their opposition, this *Pacillas* case, in
9 the mortgage context.
10 Your Honor, I wish we were in the mortgage context.
11 Right? I mean, it would be great if we're --
12 THE COURT: I don't. I have too many of those.
13 MR. WILLIAMS: You know, if we were dealing with
14 something that mundane. But we're not. And the fact of the matter
15 is the good faith -- the duty to negotiate in good faith just does not
16 exist in --
17 THE COURT: Mr. Williams, let me stop you quickly.
18 MR. WILLIAMS: Sure.
19 THE COURT: Because the only concern I have right now
20 in regards to the factual stuff is the timing.
21 MR. WILLIAMS: Yes.
22 THE COURT: The timing issue is the only issue that I have
23 some real concerns with is why was this negotiations going on, and
24 then all of a sudden, right before the announcement, we pull back?
25 I mean, is those -- are those factual things that need to be fleshed

1 out in discovery? The other stuff about sexual -- this is not a sexual
2 harassment case. This is not the secretary being -- suing because
3 her boss uses her phone or posts nasty pictures on it. This is
4 dealing with the timing issue about it.
5 Were they, in fact, trying to suppress this release up until
6 the time of sale, if Mr. White's big concern was I don't want my wife
7 to find out, that's why I'm doing all this, versus, Hey, I don't want it
8 to effect my sale.
9 I mean, I had the Colin McGregor case in here. I don't
10 think anybody's concerned about the reputations of people that are
11 involved in this organization as far as are they volatile, are they
12 mean, are they nasty? That's the UFC. If I entered it, I'd probably
13 get killed. But it's about being mean and nasty as bluntly as you
14 can to another human being and people paying to watch that.
15 MR. WILLIAMS: That's right, Your Honor.
16 THE COURT: So what about timing?
17 MR. WILLIAMS: And so I don't believe the timing is an
18 issue at all. And, of course, we're here on a Motion to Dismiss.
19 And I could give you explanation for that. But let's assume what
20 they've said is true from the timing standpoint, that he's sentenced
21 on June the 30th, correct? The sale -- or the offer or the
22 negotiations get ended on I believe he said July the 5th, and then
23 the sale gets announced on July the 9th or 10th, give or take.
24 Here's why none of that matters for purposes of why
25 we're here today. The independent legal obligation to maintain

1 confidentiality was still in place in the criminal proceedings. The
2 criminal proceedings were still going on. He had indicated that he
3 was going to challenge, because he had had this argument in front
4 of Judge Navarro, which Your Honor is familiar with, trying to
5 withdraw the guilty plea on the 30th. She denied that. They then
6 moved into sentencing. He was sentenced.
7 Apparently, you know, this call takes place where the
8 negotiations are ended. But, Your Honor, here is -- that -- so that
9 just confirms there was no agreement, no contract. So that leaves
10 him with his unjust enrichment claim. But there was an
11 independent obligation to maintain that confidentiality anyway.
12 And it went on until March.
13 But more -- think about this, though, Judge, because
14 we've heard a lot of commentary about what Mr. Ramos could have
15 done. He could have, you know, breached the confidentiality order.
16 He could have named Mr. White in his Motion to Withdraw his plea,
17 or he could have done all these things in the criminal proceedings.
18 Well, Judge, why didn't he? Right? Why didn't he?
19 Because here's the point: If, in fact, we accept as true that on July
20 the 5th they were told no more negotiating, we're done talking to
21 you, that he's on notice, like, you know what? Screw these guys,
22 I'm going to do whatever I want to do. He could have done that,
23 but he didn't, Judge. But that too is not unjust enrichment.
24 If I voluntarily do something because I'm deciding to do it,
25 that doesn't mean I've unjustly enriched someone just because

1 there's theoretically a benefit. Think about this: You have two
2 neighbors, they've got houses with no fence in between. One goes
3 to the other and says, I'm going to put up a fence, I think it would
4 be a good idea and it'll benefit us both. And one of the neighbors
5 says, I don't want a fence. No, I don't want -- I'm not going to
6 participate in that.
7 So the first neighbor goes and builds it anyway. And
8 says, you know what, I think this benefits your property, pay me
9 some of the money, whatever percentage -- well, Judge, that's not
10 unjust enrichment. If I voluntarily undertake to do something,
11 which he apparently is claiming he did now, you know, when he
12 was told on July 5th no more talking, well, that's on him. Most
13 respectfully. I mean, that's not unjust enrichment for him to
14 undertake that on his own.
15 But the overriding answer to your question, I think, Your
16 Honor, is he had that independent legal obligation up through the
17 time his appeal was dismissed in March of '17, more -- you know,
18 nearly a year later.
19 THE COURT: Thank you, counsel.
20 MR. WILLIAMS: And that's -- unless Your Honor has any
21 further questions, I'll submit it.
22 THE COURT: Thank you.
23 Motions to Dismiss are always interesting to this Court
24 because of the standard that's being out there. But this is simply a
25 case in which, basically, the first argument is, is there a contract?

1 No. There's not a contract here. This is a meeting, an agreement to
2 go to a mediation.
3 If this is a contract, first of all, we're going to have some
4 huge problems with the Statute of Frauds. But there's no
5 applicable law in Nevada that says going to a mediation is a
6 contractual relationship. Is it a agreement to go to try to resolve a
7 case? If we start making it actionable because one party doesn't
8 like the mediation results, no one's going to mediate. They'll end
9 the mediation process and all Jackie Glass and all the other poor
10 judges are going to be out of a job.
11 We mediate voluntarily. We come into this to say, Look,
12 we are going to try to resolve our disputes. It's not a contractual
13 agreement, it's basically an agreement, as the Court has always
14 said, mainly the Federal Court in Nevada, it's an agreement to agree
15 to meet. That's what it is.
16 They met, they met with the time, they met with a person
17 who was agreed by both parties to be a mediator. They then,
18 according to the plaintiff, went out and continued to negotiate.
19 That shows, clearly, under *May vs. Anderson*, there was no meeting
20 of the minds. They're still negotiating terms of a contract. So the
21 contractual issue is gone. The Motion to Dismiss for the contract is
22 out.
23 The unjust enrichment was intriguing to me because of
24 the case law out there in regards to this. The problem I have here is
25 Navarro was very specific in the Federal Court -- they're very

1 specific in a criminal case. Until the criminal proceeding was over,
2 there was a gag order, there was a nondissemination order,
3 whatever you want to call it. And Plaintiff chose to appeal the
4 criminal proceedings and take this matter beyond. And until that
5 was done, that he himself chose to do, he was bound by that and
6 could not speak.
7 So if he had released the stuff, I'm sure, knowing Justice
8 Navarro like I do, there would have been some major action on
9 Navarro's part in regards to violating that. Therefore, the Motion to
10 Dismiss in regards to the unjust enrichment is also granted.
11 Counsel for the defendant, prepare the order, pass it by. I
12 want findings of fact and conclusions of law.
13 Anything else?
14 MR. WILLIAMS: Your Honor, just for clarification, the
15 breach of the implied covenant claims, those go out --
16 THE COURT: They'll go out, there's no contract.
17 MR. WILLIAMS: Right.
18 ///
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22 ///
23 ///
24
25

THE COURT: There's no contract, there can't be --

MR. WILLIAMS: Very good.

THE COURT: -- an implied covenant.

MR. WILLIAMS: Thank you, Your Honor. I'll prepare the order and run it by counsel.

THE COURT: Thank you.

[Proceeding concluded at 10:15 a.m.]

///

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

Shawna Ortega

Shawna Ortega, CET*562

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EIGTH JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA

JOSHUA RAMOS, aka ERNESTO JOSHUA RAMOS, an individual; Plaintiff, vs. DANA WHITE, an individual; UFC Holdings LLC, ZUFFA, LLC., doing business as the ULTIMATE FIGHTING CHAMPIONSHIP, a Nevada limited liability company; DOES I through X, inclusive; and ROE CORPORATIONS I through V, inclusive; Defendants.	Case #: A-20-813230-C Dept. No. 29

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT JOSHUA RAMOS, AKA ERNESTO JOSHUA RAMOS, the Plaintiff above named, hereby appeal to the Supreme Court of Nevada from the "Findings of Fact, Conclusions of Law and Judgment" entered in this action on October 20, 2020.

DATED this 10th of November 2020

CHRISTOPHERSON LAW OFFICE

/s/ Ian Christopherson
IAN CHRISTOPHERSON, ESQ.
600 South Third Street, Las Vegas, Nevada 89101
Attorney for Plaintiff, Joshua Ramos

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NEFCR 9, I certify that I, Amber Robertson am an employee of IAN CHRISTOPHERSON, ESQ., and that on the of 10th day of November 2020, I served the foregoing Motion to Dismiss Counterclaim by e-service by electronic service with the Eight Judicial District Court Wiznet filing systems to the parties on the Electronic Service List as follows:

Donald J. Campbell, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
djc@cwlawlv.com

DATED this 10th day of November 2020.

/s/ Amber Robertson
An employee of
IAN CHRISTOPHERSON, ESQ. OF
CHRISTOPHERSON LAW OFFICE

RAMOS163