

IN THE SUPREME COURT OF THE STATE OF NEVADA

PARVIZ SAFARI, AN INDIVIDUAL;
MANDANA ZAHEDI, AN
INDIVIDUAL; AND NOOSHIN
ZAHEDI, AN INDIVIDUAL,

Appellants,

vs.

HAMID MODJTAHED, AN
INDIVIDUAL; AND MOHAMMAD
MOJTAHED, AN INDIVIDUAL,

Respondents.

Supreme Court No. ~~81279~~ Electronically Filed
Jun 01 2021 03:32 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

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RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

Respondents Hamid Modjtahed and Mohammad Mojtahed, by and through their undersigned counsel, hereby respond to this Court's April 20, 2021 Order to Show Cause.

Pursuant to EDCR 2.67, parties must file a pretrial memorandum that includes, among other things, "[a] list of all claims or defenses to be abandoned." EDCR 2.67(b)(4). Here, the Respondents' pretrial memorandum stated that Respondents were voluntarily abandoning their claims against UTSafety, LLC ("UTSafety") pursuant to EDCR 2.67(b)(4). *See* Pretrial Memorandum, attached hereto as **Exhibit 1**, p. 11. UTSafety was a fraudulent shell company, used by the appellants to advance their fraudulent schemes, but its status with the Utah Secretary of State was expired as of 2015. Because it was non-existent and judgment proof prior to trial, the claims against it were formally abandoned in the Pretrial Memorandum.

Because Respondents abandoned their claims against UTSafety under the rule, there is a final appealable judgment in this case. As such, Appellants should not be allowed to cause additional delays by restarting the entire appeals process for a third time. As this Court knows, Appellants have already had one appeal dismissed as premature. *See* June 23, 2020 Order Granting Motion and Dismissing Appeal in Case No. 79926. Moreover, Appellants have still not paid for the necessary transcripts in this appeal as required by NRAP 9. In fact, Appellants represented to this Court in

their April 12, 2021 Motion to Proceed in Forma Pauperis that they do not intend to pay for the necessary transcripts.¹ Simply put, this case has already dragged on for years, primarily because of the bad faith delays caused by the Appellants. Thus, Appellants should not be allowed to cause even more delays by restarting the entire appeals process, especially since Appellants have failed to timely pay, and have indicated that they are not going to pay for the necessary transcripts. For these reasons, the appeal should not be dismissed on jurisdictional grounds, and instead, the Respondents should be given an opportunity to move to dismiss the appeal based on Appellants' refusal to pay for the necessary transcripts. *See* NRAP 9(1)(7) ("A party's failure to comply with the provisions of this Rule may result in the imposition of sanctions, including dismissal of the appeal.").

Dated: June 1, 2021

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Eric D. Walther

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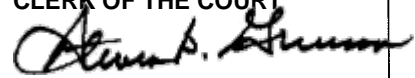
¹ Appellants' Motion to Proceed in Forma Pauperis was denied by this Court on April 15, 2021.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed and served the foregoing **RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE** with the Clerk of the Court of the Supreme Court of Nevada by using the Court's Electronic Filing System on June 1, 2021.

/s/ Wendy Cosby
an employee of Brownstein Hyatt Farber Schreck,
LLP

EXHIBIT 1



PMEM

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Attorneys for Defendants/Counter-Claimants

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

PARVIZ SAFARI and MANDANA ZAHEDI,
individually and on behalf of MEDITEX, LLC,
a Nevada limited liability company,

Plaintiffs,

vs.

HAMID MODJTAHED, an individual;
MOHAMMAD MOJTAHED, an individual;
ALI MOJTAHED, an individual; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

HAMID MODJTAHED, individually and
derivatively on behalf of MEDITEX, LLC, a
Nevada limited liability company;
MOHAMMAD MOJTAHED, individually and
derivatively on behalf of MEDITEX, LLC, a
Nevada limited liability company,

Counter-Claimants,

vs.

PARVIZ SAFARI, an individual; MANDANA
ZAHEDI, an individual; NOOSHIN ZAHEDI,
an individual; UTSAFETY, LLC, a Utah
limited liability company; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Counter-Defendants.

CASE NO. A-15-729030-B

DEPT NO. XIII

**DEFENDANTS/COUNTER-
CLAIMANTS' HAMID
MODJTAHED AND MOHAMMAD
MOJTAHED'S INDIVIDUAL PRE-
TRIAL MEMORANDUM PER
EDCR 2.67**

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**DEFENDANTS/COUNTER-CLAIMANTS' HAMID MODJTAHED AND MOHAMMAD
MOJTAHED'S INDIVIDUAL PRE-TRIAL MEMORANDUM PER
EDCR 2.67**

Date of Trial: May 21, 2019

Defendants/Counter-Claimants' HAMID MODJTAHED and MOHAMMAD
MOJTAHED have filed this individual Pre-trial Memorandum because, despite numerous contacts
and attempts to coordinate with the Plaintiffs' attorney, he did not respond in a timely manner to
allow a reasonable timeframe for preparation of a Joint Pretrial Memorandum prior to the deadline.

The Pretrial Conference was held in November 9, 2018, at the office of Kolesar & Leatham,
prior to the original trial setting. Present were Jonathan Blum and Scott Fleming for Defendants/
Counterclaimants, and Andrew Flahive for Plaintiffs/ Counter-defendants.

I.

STATEMENT OF FACTS

This is a business breakup case related to a Nevada limited liability company, Meditex,
LLC ("Meditex" or the "Company"), which ceased conducting business in 2015. When it was
operating, Meditex had several areas of business, mostly related to purchasing products in North
America (e.g. vitamin supplements and used/refurbished safety equipment), and selling those
products to customers in the Middle East.

Plaintiffs/ Counter-defendants Parviz Safari (aka Aidan Davis, referred to herein as
"Safari") and his wife Mandana Zahedi ("Mandana") (Safari and Mandana are collectively referred
to as "Plaintiffs") were each 25 percent members/managers of Meditex. On the other side, Hamid
Modjtahed ("Hamid") and his son Mohammad Mojtahead ("Mohammad") (Hamid and Mohammad
are collectively referred to as Defendants) were also each 25 percent members/ managers of
Meditex. Plaintiffs initiated this lawsuit against Hamid and his two sons, Mohammad and Ali as
a ruse to deflect from their longstanding, repeated embezzlement and schemes to take large sums
of money from Hamid, Mohammad and the Company. They filed suit when Hamid and
Mohammad finally began to uncover the numerous schemes employed by Defendants.

Throughout the Company's existence, from 2010-2015, and to the present day, Hamid and
Mohammad lived in California, and ***provided all of the working capital for Meditex's operations.***

1 Safari and his wife Mandana lived in Henderson, Nevada during the same period. Safari, as CEO
2 of Meditex, was the sole occupant of Meditex's Henderson office and was in charge of daily
3 operations. Both he and Mandana abused Hamid and Mohammad's trusting nature and leveraged
4 Safari's position as the sole communicator with Meditex's accountant, and primary communicator
5 with Meditex's customers and vendors. Mr. Safari utilized **six separate schemes** to enrich himself
6 by hundreds of thousands of dollars.

7 Some of the schemes were intricate ruses utilizing fake invoices and emails. Some simply
8 involved withdrawing large amounts of money from the Company's bank accounts or lying about
9 incurring expenses in order to justify withdrawals. The schemes began at the outset of the
10 Company's operations, in late 2010, and continued until it ceased operations in the fall of 2015.

11 In the process, **Mr. Safari¹ wrongfully took \$337,975²** from the Company. Mr. Safari
12 and Mandana also diverted tens of thousands of dollars to themselves, which should have come to
13 Meditex. In the process, he ruined a growing and once profitable business, causing approximately
14 \$1.5 million in future damages. Mr. Safari also borrowed \$15,500 in direct loans from Hamid, but
15 failed to repay any of it.

16 Counterclaimants asserted eleven causes of action in their counterclaim, both individually
17 and derivatively on behalf of Meditex, LLC. Counterclaimants also assert claims against Nooshin
18 Zahedi, the sister of Mandana, and sister in law of Mr. Safari, for her role in one of the schemes.

19 II.

20 CLAIMS FOR RELIEF

21 PLAINTIFF'S CLAIMS FOR RELIEF

22 Plaintiffs asserted the following claims in their Amended Complaint, the first four of which
23 have been dismissed by summary judgment:

24
25
26 ¹ Some of the schemes involved Mandana, for which she directly benefited. Counter-claimants also assert claims against Nooshin Zahedi, the sister of Mandana, and sister in law of Mr. Safari, for her role in one of the schemes.

27 ² This Court has already entered judgment in the amount of \$95,200 finding that two of the schemes were a breach of
28 the Company's Operating Agreement. *See* July 18, 2018 Findings of Fact, Conclusions of Law, and Order Granting in Part and Denying in Part Motion for Partial Summary Judgment on Counter-Claimants' Non-Fraud Claims Against Parviz Safari.

1. Breach of Fiduciary Duty Against Defendants Hamid Modjtahed and Mohammad Mojtaheh;
2. Intentional Interference with Prospective Economic Advantage Against Hamid Modjtahed and Mohammad Mojtaheh (and Ali Mojtaheh who was later dismissed);
3. Embezzlement Against Defendants Hamid Modjtahed and Mohammad Mojtaheh;
4. Declaratory Relief Against All Defendants;
5. Accounting Against Defendants Hamid Modjtahed and Mohammad Mojtaheh.

COUNTER-CLAIMANTS' CLAIMS FOR RELIEF

Counterclaimants asserted the following claims in its Counterclaim:

Derivative Claims Asserted on Behalf of Meditex, LLC:

1. Breach of contract Against Parviz Safari and Mandana Zahedi

Plaintiffs breached section 6.3 of the Company's operating agreement by receiving distributions without an affirmative vote of the members. Such damages total \$242,775³. Please see Counter-claimants Trial Brief Regarding Counterclaimants' Causes of Action and Damages.

2. Contractual Breach of Implied Covenant of Good Faith and Fair Dealing Against Parviz Safari and Mandana Zahedi

To the extent the various schemes are not a direct breach of the Operating Agreement, they are certainly breaches of the implied covenant of good faith and fair dealing. Counterclaimants seek \$242,775 for this claim as well, along with \$42,000 for improper diversions of funds due to Meditex, for a total of \$284,775. Please see Counter-claimants Trial Brief Regarding Counterclaimants' Causes of Action and Damages.

3. Tortious Breach of Implied Covenant of Good Faith and Fair Dealing Against Parviz Safari and Mandana Zahedi

The members and managers of Meditex owed each other fiduciary duties. As such, Plaintiffs' misconduct that breached the duty of good faith is also a tortious breach.

³ Not including the \$95,200 already awarded as breach of contract damages by summary judgment.

Counterclaimants seek \$284,775 on this claim, as well as punitive damages. Please see Counter-claimants Trial Brief Regarding Counterclaimants' Causes of Action and Damages.

4. Unjust Enrichment/Quantum Meruit Against Parviz Safari and Mandana Zahedi

To the extent Safari and Mandana's various methods of taking money from the Company, Hamid and Mohammad do not constitute a breach of the Operating Agreement as unapproved distributions, they are certainly unjust enrichment. Counterclaimants seek \$310,275 on this claim, as well as punitive damages. Please see Counter-claimants Trial Brief Regarding Counterclaimants' Causes of Action and Damages.

5. Fraud Against Parviz Safari

Mr. Safari's frauds were numerous and wide-ranging, including the use of fake invoices, fake emails, and lies about withdrawals and reimbursements. Five of those schemes constitute fraud. Please see Counter-claimants Trial Brief Regarding Counterclaimants' Causes of Action and Damages.

Counterclaimants seek \$284,775 on this claim for past damages, as well as \$1,525,395 in future damages, plus punitive damages.

6. Breach of Fiduciary Duty Against Parviz Safari and Mandana Safari

Mr. Safari and Mrs. Zahedi, as members and managers of Meditex, owed fiduciary duties to the other members and managers, Hamid and Mohammad. Through their various schemes to enrich themselves, Safari and Mandana clearly violated the duty of loyalty by failing to act in good faith and putting their own interests over the Company and their fellow members/ managers. Five of the schemes constitute breach of fiduciary duties. Please see Counter-claimants Trial Brief Regarding Counterclaimants' Causes of Action and Damages.

Counterclaimants seek \$284,775 on this claim for past damages, as well as \$1,525,395 in future damages, plus punitive damages.

1 **7. Aiding and Abetting Breach of Fiduciary Duty Against Nooshin Zahedi⁴**

2 Nooshin participated in the formation of the shell company, UTSafety, LLC, and was
3 named as its sole member and manager. She is listed on the shell company's bank account from
4 which she received "wages" and other payments. As such, Nooshin Zahedi is liable for the
5 \$91,700 in damages stemming that scheme, as well as punitive damages.

6 **8. Civil Conspiracy Against Parviz Safari, Mandana Zahedi, and Nooshin
7 Zahedi⁵**

8 With regard to the UTSafety Scheme, Safari, Mandana and Nooshin undertook a concerted
9 action with the intent "to accomplish an unlawful objective for the purpose of harming another."
10 Damages in the amount of \$91,700 resulted, as has already been recognized by the Court.
11 Counterclaimants seek punitive damages on this claim as well.

12 **9. Concert of Action Against Parviz Safari, Mandana Zahedi, UTSafety, LLC,
13 and Nooshin Zahedi;**

14 This claim is to be abandoned.

15 **10. Constructive Fraud Against Parviz Safari and Mandana Zahedi**

16 For the same reasons Safari and Mandana have breached their fiduciary duties to Hamid
17 and Mohammad by engaging in Schemes One through Five, they are also liable under the claim
18 of constructive fraud. Counterclaimants seek \$284,775 on this claim for past damages, as well as
19 \$1,525,395 in future damages, plus punitive damages.

20 **11. Accounting Against Parviz Safari and Mandana Zahedi**

21 Defendants have vigorously pursued their accounting claim throughout discovery,
22 subpoenaed many thousands of bank records, deposed Meditex's main vendor and accountant, as
23 well as retaining a forensic CPA and certified fraud examiner as their expert (Kevin Kirkendall).
24 They have already proven via summary judgment an entitlement to a balance due, and will prove
25 a great deal more is owed related to the other schemes.

26
27 _____
28 ⁴ To be abandoned against UTSafety, LLC.

⁵ To be abandoned against UTSafety, LLC.

Individual Claims Asserted by Hamid Modjtahed and Mohammad Mojtahe

All of the claims are asserted individually and derivatively. Additions are noted below.

12. Breach of Contract Against Parviz Safari and Mandana Zahedi

See above. In addition to the above breaches of contract, Mr. Safari also failed to repay \$15,500 in personal loans to Hamid.

13. Contractual Breach of Implied Covenant of Good Faith and Fair Dealing Against Parviz Safari and Mandana Zahedi

See above.

14. Tortious Breach of Implied Covenant of Good Faith and Fair Dealing Against Parviz Safari and Mandana Zahedi

See above.

15. Unjust Enrichment/ Quantum Meruit against Parviz Safari and Mandana Zahedi

See above. In addition to the above instances of unjust enrichment, to the extent Mr. Safari's failure to repay \$15,500 in personal loans to Hamid was not a breach of contract, he is liable under unjust enrichment.

16. Fraud Against Parviz Safari

See above.

17. Breach of Fiduciary Duty Against Parviz Safari and Mandana Zahedi

See above.

18. Aiding and Abetting Breach of Fiduciary Duty Against UTSafety, LLC and Nooshin Zahedi

See above.

19. Civil Conspiracy Against Parviz Safari, Mandana Zahedi, UTSafety, LLC, and Nooshin Zahedi

See above.

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///

1 **20. Concert of Action Against Parviz Safari, Mandana Zahedi, UTSafety, LLC,**
2 **and Nooshin Zahedi**

3 See above.

4 **21. Constructive Fraud Against Parviz Safari and Mandana Zahedi**

5 See above.

6 **22. Accounting Against Parviz Safari and Mandana Zahedi**

7 See above.

8 **III.**

9 **AFFIRMATIVE DEFENSES**

10 **DEFENDANTS' AFFIRMATIVE DEFENSES**

11 Defendants asserted the following affirmative defenses in their Amended Answer:

12 1. Plaintiffs' FAC fails to state a claim upon which relief can be granted.

13 2. At all material times, Defendants acted in good faith and exercised their lawful
14 rights in dealing with Plaintiffs.

15 3. Plaintiffs' claims are barred because Plaintiffs breached the agreement between the
16 parties, if any.

17 4. Plaintiffs' claims are barred by Plaintiffs' own failure to deal in good faith and deal
18 fairly with Defendants.

19 5. Plaintiffs have failed to mitigate their damages, if any.

20 6. Plaintiffs' damages, if any, were caused by economic and other conditions that were
21 beyond the control of the Defendants.

22 7. Plaintiffs have not and will not sustain any injury or damages as a result of
23 Defendants' alleged acts and/or omissions.

24 8. The damages suffered by Plaintiffs, if any, were caused in whole or in part by the
25 acts of a third party over which Defendants had no control.

26 9. Plaintiffs failed to disclose necessary information and Defendants relied on this
27 omission.

28 10. Plaintiffs' claims are barred by the statute of frauds.

11. Plaintiffs failed to comply with a pre-existing duty.
12. Plaintiffs ratified, approved or acquiesced in the actions of Defendants.
13. Plaintiffs, by their actions, deeds and conduct, have released Defendants from any and all claims that they might otherwise have been able to assert against Defendants.
14. Plaintiffs are barred from maintaining this action by virtue of their own unclean hands and inequitable conduct.
15. Plaintiffs' claims are barred by Plaintiffs' failure to deal fairly with Defendants.
16. Defendants, at all times relevant herein, acted in accordance with reasonable standards, in good faith, with reasonable care and did not contribute to the alleged damages.
17. Plaintiffs' damages, if any, were not proximately or legally caused by any of the actions of Defendants.
18. Plaintiffs' claims are barred due to the lack of requisite intent by Defendants.
19. Plaintiffs' conduct has forced Defendants to retain the services of an attorney and Defendants are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the defense of this action.
20. Plaintiffs' FAC is barred by the applicable statute of limitations.
21. Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as though fully set forth herein.
22. Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of the Answer, and therefore, Defendants reserve the right to amend its Answer to allege additional affirmative defenses if warranted during the course of discovery or further investigation.

COUNTER-DEFENDANTS' AFFIRMATIVE DEFENSES

Defendants asserted the following affirmative defenses in their Amended Answer:

1. Counter-Claimants' Counterclaim fails to state a claim upon which relief can be granted.
2. At all material times, Counter-Defendants acted in good faith and exercised their lawful rights in dealing with Counter-Claimants.

3. Counter-Claimants' claims are barred because Counter-Claimants breached the agreement between the parties, if any.

4. Counter-Claimants' claims are barred by their own failure to deal in good faith and deal fairly with Counter-Defendants.

5. Counter-Claimants have failed to mitigate their damages, if any.

6. Counter-Claimants' damages, if any, were caused by economic and other conditions that were beyond the control of the Counter-Defendants.

7. Counter-Claimants have not and will not sustain any injury or damages as a result of Counter-Defendants' alleged acts and/or omissions.

8. The damages suffered by Counter-Claimants, if any, were caused in whole or in part by the acts of a third party over which Counter-Defendants had no control.

9. Counter-Claimants failed to disclose necessary information and Counter-Defendants relied on this omission.

10. Counter-Defendants deny each and every allegation of Counter-Claimants Counter-Claim that is not specifically admitted to or otherwise plead to herein.

11. Counter-Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Counter-Defendants reserve the right to seek leave of the Court to amend their Answer to the Counter-Claim to specifically assert the same. Such defenses are herein incorporated by referenced for the specific purpose of not waiving the same.

12. Counter-Claimants failed to comply with a pre-existing duty.

13. Counter-Claimants ratified, approved, or acquiesced in the actions of Counter-Defendants.

14. Counter-Claimants, by their own actions, deeds, and conduct, have released Counter-Defendants from any and all claims that they might otherwise have been able to assert against Counter-Defendants.

15. Counter-Claimants are barred from maintaining this action by virtue of their own unclean hands and inequitable conduct.

16. Counter-Claimants claims are barred by Counter-Claimants' failure to deal fairly with Counter-Defendants.

17. Counter-Defendants, at all times relevant herein, acted in accordance with reasonable standards, in good faith, with reasonable care and did not contribute to the alleged damages.

18. Counter-Claimants damages, if any, were not proximately or legally caused by any of the actions of Counter-Defendants.

19. Counter-Claimants' claims are barred due to the lack or requisite intent by Counter-Defendants.

20. Counter-Claimants' conduct has forced Counter-Defendants to retain the services of an attorney and Counter-Defendants are entitled to be compensated for the reasonable attorney's fees and costs incurred in the defense of this action.

21. Counter-Claimants' claims are barred by the applicable statute of limitations.

IV.

PLEADING AMENDMENTS OR ISSUES TO BE ABANDONED

Counterclaimants abandon the following claims:

1. Claims 7 and 18, Aiding and Abetting Breach of Fiduciary Duty with regard to UTSafety, LLC, only.

2. Claims 8 and 19, Civil Conspiracy against UTSafety, LLC, only.

3. Claims 9, 20, Concert of Action.

V.

EXHIBITS

A. Defendants/Counter-Claimants' Exhibits

Please see Defendants/Counter-Claimants' Exhibit List, attached hereto as **Exhibit A**.

B. Joint Exhibits

Please see Parties' Joint Exhibit List, attached hereto as **Exhibit B**.

C. Plaintiffs/ Counter-defendants' Exhibits

1. List of Plaintiffs' Exhibits as Provided by Plaintiffs

Exhibit 1-Meditex Bank statements with JP Morgan Chase for 2011 and 2012 ASD9078-9250

Exhibit 2-Meditex Bank statements with JP Morgan Chase for 2013 ASD9255-9377

Exhibit 3-Meditex Bank statements with JP Morgan Chase for 2014 ASD9383-9493-

Exhibit 4-Meditex Bank statements with JP Morgan Chase for 2015 ASD9494-9540

Exhibit 5-Various order/shipping forms, including Meditex Commercial Invoice dated January 9, 2014 ASD376-380

Defendants' Objections:

Damage Assessment - January 2014 Shipment Documents (\$107,069.50)	ASD000376 - ASD000379	Foundation, authenticity, hearsay. Improperly combined, unrelated documents, incomplete document.
Damage Assessment - March 2014 Shipment Documents (\$125,220.00)	ASD000380 - ASD000385	Foundation, authenticity, hearsay. Improperly combined, unrelated documents.

Exhibit 6-Various order/shipping forms, including Meditex Commercial Invoice dated March 14, 2014 ASD381-386

Defendants' Objections:

Damage Assessment - March 2014 Shipment Documents (\$125,220.00)	ASD000380 - ASD000385	Foundation, authenticity, hearsay. Improperly combined, unrelated documents.
Damage Assessment - June 2014 Shipment Documents (\$187,579.50)	ASD000386 - ASD000390	Foundation, authenticity, hearsay. Improperly combined, unrelated documents.

Exhibit 7-Various order/shipping forms, including Meditex Commercial Invoice dated June 18, 2014 ASD387-391

Damage Assessment - June 2014 Shipment Documents (\$187,579.50)	ASD000386 - ASD000390	Foundation, authenticity, hearsay. Improperly combined, unrelated documents.
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Damage Assessment - June 2014 Shipment 2 Documents (\$194,400)	ASD000391 - ASD000394	Foundation, authenticity, hearsay. Improperly combined, unrelated documents.
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Exhibit 8-Various order/shipping forms, including Meditex Commercial Invoice dated June 26, 2014 ASD392-395

Damage Assessment - June 2014 Shipment 2 Documents (\$194,400)	ASD000391 - ASD000394	Foundation, authenticity, hearsay. Improperly combined, unrelated documents.
Damage Assessment - July 2014 Shipment Documents (\$120,000.00)	ASD000395 - ASD000398	Foundation, authenticity, hearsay. Improperly combined, unrelated documents.

Exhibit 9-Various order/shipping forms, including Meditex Commercial Invoice dated July 10, 2014 ASD396-398

Damage Assessment - July 2014 Shipment Documents (\$120,000.00)	ASD000395 - ASD000398	Foundation, authenticity, hearsay. Improperly combined, unrelated documents.
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Exhibit 10-Various order/shipping forms, including Meditex Commercial Invoice dated July 16, 2014 ASD399-402

Damage Assessment - July 2014 Shipment 2 Documents (\$47,252.50)	ASD000399 - ASD000401	Foundation, authenticity, hearsay. Improperly combined, unrelated documents.
Damage Assessment - September 2014 Shipment Documents (\$235,296.00)	ASD000402 - ASD000407	Foundation, authenticity, hearsay. Improperly combined, unrelated documents.

Exhibit 11-Various order/shipping forms, including Meditex Commercial Invoice dated September 4, 2014 ASD403-408

Damage Assessment - September 2014 Shipment Documents (\$235,296.00)	ASD000402 - ASD000407	Foundation, authenticity, hearsay. Improperly combined, unrelated documents.
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Damage Assessment - UTSafety, LLC for Meditex Shipment Documents (\$25,000.00)	ASD000408 - ASD000410	Foundation, authenticity, hearsay.
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Exhibit 12-Various order/shipping forms, for Meditex Order on September 9, 2015

ASD11851-11866

2015 Damage Assessment With related documents	ASD011850 - ASD011866	Foundation, authenticity, hearsay.
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Exhibit 13-Bank Wire Transfer Instructions

ASD276-260(sic)

Meditex, LLC Invoice OE150250	ASD000258	Foundation, Authenticity.
Meditex, LLC Invoice OE150252	ASD000259	Foundation, Authenticity.
Meditex, LLC Invoice OE150251	ASD000260	Foundation, Authenticity.
Email Communications: From Ronson re "incoming wire payment information for MEDITEX"	ASD000276 - ASD000278	Foundation, Authenticity, hearsay.

Exhibit 14-October 10, 2013 email from Vahid Aghaei ASD620-621

Email Communication: Hamid to Aidan re: "Fwd: BA Quick Connections" [Translated]	ASD000620 - ASD000621	Foundation, authenticity, hearsay. "Automatically translated" with no original text provided or certified translation.
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Exhibit 15-Various Meditex Proforma Invoices ASD18-19, 22-24

Meditex, LLC Proforma Invoice No. MX-100-233	ASD000018	Foundation, Authenticity, Hearsay.
Meditex, LLC Proforma Invoice No. MX-100-240	ASD000019	Foundation, Authenticity, Hearsay.
Meditex, LLC Proforma Invoice No. MX-100-236	ASD000022	Foundation, Authenticity, Hearsay.
Meditex, LLC Proforma Invoice No. MX-100-238	ASD000023	Foundation, Authenticity, Hearsay.

Meditex, LLC Proforma
Invoice No. MX-100-237

ASD000024

Foundation, Authenticity,
Hearsay.

Exhibit 16-June 26, 2014 email from sales@scbarentalco.com MEDITEX1900

2. Objections to Plaintiffs' Exhibits

In addition to the specific objections listed above to the Exhibits Plaintiffs have provided, to the extent Plaintiffs attempt to admit any additional documents listed on their pretrial disclosures, Defendants refer to and incorporate herein their Objections to Plaintiff/Counterdefendants' Amended Pre-Trial Disclosures filed on February 15, 2019.

VI.

AGREEMENTS AS TO LIMITATION OR EXCLUSION OF EVIDENCE

None.

VII.

WITNESSES

A. Defendants/Counter-Claimants' List of Witnesses

1. Hamid Modjtahed
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Defendants/Counter-Claimants also reserve the right to adopt all witness designations made by any other party to this action. Defendants/Counter-Claimants reserve the right to call any and all witnesses named by all other parties to the above-entitled action. Defendants/Counter-Claimants reserve the right to supplement or amend this list as needed to rebut testimony of any and all witnesses who may be called to testify at trial.

VIII.

BRIEF STATEMENT REGARDING PRINCIPAL ISSUES OF LAW

The principal issues of law with regard to Plaintiffs' sole remaining claim of accounting is whether such claim is viable. Specifically, Defendants content that it is not a viable, stand-alone claim and the Court's prior Findings of Fact and Conclusions of Law preclude the factual

1 underpinnings of the claim. See Defendants' Trial Brief: Plaintiffs' Sole Remaining Claim of
2 Accounting is Not Viable.

3 It is unknown what issues of law Counter-defendants intend to raise with regard to Counter-
4 claimants claims. The case appears to be very fact-dependent. With regard to the counter-claims,
5 the principal issues of law is whether the various schemes undertaken by the Counter-Defendants
6 fit within the eleven causes of action asserted. Please see Counter-claimants Trial Brief Regarding
7 Counterclaimants' Causes of Action and Damages.

8 **IX.**

9 **ESTIMATED LENGTH OF TRIAL**

10 It is anticipated the trial will take a total of approximately 10 days.

11 **X.**

12 **OTHER MATTERS**

13 **A. Translator**

14 Several party witnesses will require the use of a Farsi translator. The parties have agreed
15 that the party calling the witness must arrange for and pay for that translator. Both sides are using
16 Ladan Dillon, the only known Farsi translator in the area, who provided translation services at
17 various depositions taken by Defendants.

18 **B. Prior Court Orders**

19 The Court has entered four orders that bear directly on this trial, as follows:

20 **1. Motion for Partial Summary Judgment Regarding the Claims Against**
21 **Hamid Modjtahed and Mohammad Mojtahed**

22 All of the substantive claims against Hamid and Mohammad were dismissed via this
23 motion for partial summary judgment: 1. Breach of Fiduciary Duty; 2. Intentional Interference
24 with Prospective Economic Advantage; 3. Embezzlement/ Conversion; and, 4. Declaratory Relief.
25 All that remains of Plaintiffs' case is a claim for accounting. *See* April 24, 2018 Findings of Fact,
26 Conclusions of Law, and Order Granting in Part and Denying in Part Defendants-Counter-
27 Claimants' Motion for Partial Summary Judgment Regarding the Claims Against Hamid
28 Modjtahed and Mohammad Mojtahed.

2. **Motion for Partial Summary Judgment on Counter Claimants' Claims Against Parviz Safari**

This is the first of two motions for partial summary judgment regarding counter-claimants' claims. The Court entered numerous findings of fact and conclusions of law regarding two of Mr. Safari's numerous schemes, namely the "SCBA and UTSafety" scheme and the "Las Vegas Metro Chamber of Commerce" scheme. *See* May 8, 2018 Findings of Fact, Conclusions of Law, and Order Granting in Part and Denying in Part Defendants/Counter-Claimants' Motion for Partial Summary Judgment on Counter Claimants' Claims Against Parviz Safari. However, the Court found, "The Court concludes that there are genuine issues of material fact regarding Safari's state of mind and intention to deceive. Accordingly, summary judgment on Defendants' fraud claim is inappropriate at this time." *Id.* at par. 24. The Court also found, "IT IS FURTHER ORDERED that this ruling is without prejudice to further motion practice by Defendants, and Defendants are hereby authorized to file additional motions, including motions for summary judgment, regarding Defendants' non-fraud claims." *Id.* at p. 8.

3. **Motion for Partial Summary Judgment on Counter-Claimants' Non-Fraud Claims Against Parviz Safari**

In response to the Court's May 8, 2018 order, Defendants filed a final motion for partial summary judgment ten days later on May 18, 2018: Motion for Partial Summary Judgment on Counter-Claimants' Non-Fraud Claims Against Parviz Safari. *See* July 18, 2018 Findings of Fact, Conclusions of Law, and Order Granting in Part and Denying in Part Defendants/Counter-Claimants' Motion for Partial Summary Judgment on Counter Claimants' Claims Non-Fraud Against Parviz Safari. There, the Court acknowledged the findings of fact and conclusions of law of its prior May 8, 2018 order, and granted summary judgment on counter-claimants' breach of contract claim in the amount of **\$95,200**. *Id.* par. 2-17, 22-25. Specifically, the Court found,

As a direct result of Safari's Fake Domain and Fake Invoices, a total of \$233,700 was wired from Meditex to UTSafety. UTSafety, in turn, only wired a total of \$148,000 to SCBA Sales, \$6,000 of which was refunded to UTSafety. Accordingly, **Safari personally and improperly retained a total of \$91,700 from Meditex. Said another way, as a direct result of Safari's actions, Meditex, Hamid, and Mohammad suffered damages of \$91,700.** *Id.* at par. 11.

1 The Court also made the following conclusion of law:

2 [I]t has been established that **Safari breached Section 6.3⁶ of the Operating**
3 **Agreement** by personally retaining \$95,200 in Company money related to the
SCBA and Chamber of Commerce schemes without a member vote or resolution.

4 *Id.* at par. 25.

5 **4. Motion in Limine**

6 On May 8, 2018 the Court granted Defendants Motion in Limine to Exclude References to
7 Illegal Sales to Iran.

8 DATED this 17 day of May, 2019.

9 **KOLESAR & LEATHAM**

10 By 

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12 Nevada Bar No. 009515

13 SCOTT D. FLEMING, ESQ.

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16 Las Vegas, Nevada 89145

17 Attorneys for Defendants/Counter-Claimants

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27 ⁶ "Section 6.3 of the Operating Agreement states that members cannot receive distributions of Company money
28 without an 'affirmative vote ... of the LLC Members' and the adoption of a 'resolution ... stat[ing] the amounts and
dates of distribution to each member....' *Id.* at par. 16. *See* Operating Agreement, Exhibit 688 - MTX 2321-2332.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 17th day of May, 2019, I caused to be served a true and correct copy of foregoing **DEFENDANTS/COUNTER-CLAIMANTS' HAMID MODJTAHED AND MOHAMMAD MOJTAHED'S INDIVIDUAL PRE-TRIAL MEMORANDUM** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.


An Employee of KOLESAR & LEATHAM