

**IN THE SUPREME COURT OF THE
STATE OF NEVADA**

Electronically Filed
Jan 26 2022 09:07 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

E&T VENTURES, LLC,
Petitioner,

vs

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE
HONORABLE JOANNA KISHNER,
DISTRICT JUDGE,
Respondent,

EUPPHORIA WELLNESS, LLC a
Nevada limited liability company,
Real Party in Interest.

Supreme Court Case No. TBD

District Court Case: A-19-796919-B

Volume 1 of 7

**APPENDIX IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION
OR, IN THE ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS**

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TABLE OF CONTENTS

Exhibit A	Order Setting Evidentiary Hearing		00005-00008	Vol. 1
Exhibit B-1	Motion for Discovery Sanctions		00009-00037	Vol. 1
Exhibit B-2	Appendix in Support of Motion for Discovery Sanctions		00038-00286	Vol.2
Exhibit B-3	Motion for and Order Shortening Time		00287-00299	Vol.3
Exhibit C-1	Opposition/Counter-motion		00300-00317	Vol.3
Exhibit C-2	Appendix in Support of Opposition/Counter-motion		00318-00565	Vol. 4
			00566-00799	Vol. 5
			00800-00882	Vol. 6
Exhibit D	Reply to Opposition/Opposition to Counter-motion		00883-00904	Vol. 7
Exhibit E	Reply to Opposition to Counter-motion		00905-00915	Vol. 7
Exhibit F	Transcript of Hearing on January 4, 2022		00916-01061	Vol. 7
Exhibit G	Notice of Entry of Order		01062-01079	Vol. 7
Exhibit H	Scheduling Order		01080-01098	Vol.7

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DATED this 25th day of January, 2022.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of January, 2022, I filed the foregoing **APPENDIX IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS**, using the court's electronic filing system.

Notice of the filing of the APPENDIX was made upon acceptance by the Nevada Supreme Court using the District Court's electronic filing system to the following e-service participants in District Court Case and by mail to the addresses as indicated:

Judge Joanna Kishner:

Dept31lc@clarkcountycourts.us

Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

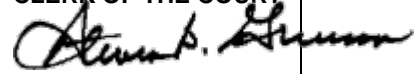
Euphoria Wellness, LLC as Real Parties-in- Interest:

Nicole E. Lovelock, Esq.
Nevada State Bar No. 11187
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By: /s/ Mitchell Stipp

An employee of Law Office of Mitchell Stipp

EXHIBIT A



NOH

DISTRICT COURT
CLARK COUNTY, NEVADA

E&T VENTURES, LLC, a Nevada
limited liability company;

Case No.: A-19-796919-B

Dept. No.: XXXI

PLAINTIFF(S),

VS.

EUPHORIA WELLNESS, LLC, a
Nevada limited liability company;
DOE Individuals I-X, inclusive; and
ROE ENTITIES 1-10, inclusive;

DEFENDANT(S).

ORDER SETTING EVIDENTIARY HEARING

PLEASE TAKE NOTICE that the Court has ORDERED that the above-entitled matter be placed on calendar for an Evidentiary Hearing, as set forth at the hearing on January 4, 2022, for the appearance of **Kristin Taracki**, who is **ORDERED** to appear at the hearing as the person who verified the interrogatory responses in her role on behalf of E & T Ventures. The Evidentiary Hearing will take place on **FEBRUARY 8, 2022, at 8:30 a.m.**, in Department XXXI, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, NV, 16th Floor, **Courtroom 16B**. Counsel for Plaintiff, E & T Ventures, LLC. shall serve a copy of this Order on Ms. Kristin Taracki.

PETITIONER'S APPENDIX NO. 00006

1 The hearing may be attended remotely via Bluejeans if any party has a
2 health or safety concern, or parties may appear in-person (**masks - covering nose**
3 **and mouth - required**). However, if any party intends to appear remotely via
4 Bluejans, appearances must be attended **audiovisually**. Telephonic appearances
5 are not permitted.
6

7 **The Bluejeans connection information is:**

8 **Phone Dial-in**

9 [+1.408.419.1715](tel:+14084191715) (United States(San Jose))

10 [+1.408.915.6290](tel:+14089156290) (United States(San Jose))

11 ([Global Numbers](#))

12 **From internet browser, copy and paste:**

13 <https://bluejeans.com/360511198/2386>

14 **Room System**

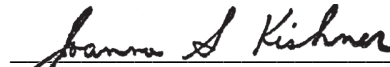
15 199.48.152.152 or bjn.vc

16 **Meeting ID: 360 511 198**

17 **Participant Passcode: 2386**

18 Failure to appear at the hearing may result in an Order to Show Cause being
19 issued with sanctions, up to and including, contempt of court and/or dismissal of
20 case.
21

22 Dated this 20th day of January, 2022

23 

24 HON. JOANNA S. KISHNER
25 DISTRICT COURT JUDGE
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PETITIONER'S APPENDIX NO. 00007

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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

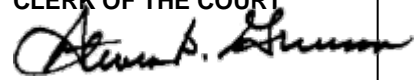
ALL REGISTERED COUNSEL AND/OR PARTIES APPEARING IN PROPER PERSON SERVED VIA ELECTRONIC SERVICE

/s/ Tracy L. Cordoba

TRACY L. CORDOBA-WHEELER
JUDICIAL EXECUTIVE ASSISTANT

EXHIBIT B-1

PETITIONER'S APPENDIX NO. 00009



MOT

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DISTRICT COURT

CLARK COUNTY, NEVADA

E&T VENTURES, LLC, a Nevada limited
liability company,

Plaintiff,

v.

EUPHORIA WELLNESS, LLC, a Nevada
limited liability company; DOE Individuals I-
X, inclusive; and ROE ENTITIES 1-10,
inclusive;

Defendants.

EUPHORIA WELLNESS, LLC, a Nevada
limited liability company,

Counterclaimant,

v.

E&T VENTURES, LLC, a Nevada limited
liability company;

Counter-Defendant.

EUPHORIA WELLNESS, LLC, a Nevada
limited liability company,

Third- Party Plaintiff,

v.

MIRAL CONSULTING, LLC, a Nevada

CASE NO.: A-19-796919-B
DEPT. NO.: XXXI

(HEARING REQUESTED)

**MOTION FOR DISCOVERY SANCTIONS
AGAINST E&T VENTURES, LLC,
MIRAL CONSULTING, LLC, HAPPY
CAMPERS, LLC, AND CBD SUPPLY CO,
LLC**

PETITIONER'S APPENDIX NO. 00010

limited liability company; HAPPY CAMPERS, LLC, a Nevada limited liability company; CBD SUPPLY CO, LLC, a Nevada limited liability company; DOE Individuals I-X, inclusive; and ROE ENTITIES 1-10, inclusive;

Third-Party Defendants.

Defendant/Counterclaimant/Third-Party Plaintiff Euphoria Wellness, LLC (“Euphoria” or “Defendant”), by and through its attorneys of record, the law firm of Jones Lovelock, hereby submits this Motion for Discovery Sanctions (the “Motion”) against E&T Ventures, LLC (“E&T”), Miral Consulting, LLC (“Miral”), Happy Campers, LLC (“Happy Campers”)(collectively “E&T Parties”).¹

This Motion is made and based on the below Memorandum of Points and Authorities, the Declaration of Marta D. Kurshumova, Esq. (“Kurshumova Declaration”) attached to the Appendix as **Exhibit A**, the exhibits attached hereto, the papers and pleading on file herein, and any oral argument this Court may allow.

DATED this 24th day of November 2021.

JONES LOVELOCK

By: /s/ Justin C. Jones

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Attorneys for Euphoria Wellness, LLC

¹ On November 23, 2021, Euphoria submitted to Chambers an Omnibus Motion for Discovery Sanctions seeking an order shortening time for hearing the Omnibus Motion. The Omnibus Motion addressed two separate discovery issues, including the E&T Parties’ failure to comply with this Court’s August 6, 2021 Order and E&T Parties’ failure to produce a privilege log in this matter. Based upon the Court’s response that there is “no support for an omnibus motion,” Euphoria has separated out the two concerns into two separate motions for the Court’s consideration. Due to the impending Thanksgiving holiday, Euphoria will separately submit a request for hearing this Motion on shortened time.¹

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

“Orders are not suggestions or recommendations, they are directives with which compliance is mandatory.”² Here, the E&T Parties³ have disregarded that mandate by knowingly and willfully violating this Court’s Order⁴ compelling them to supplement their responses to Euphoria’s First Set of Interrogatories (“Interrogatories”) and First Set of Requests for Production of Documents (“Requests for Production”) (collectively, “Discovery Requests”). Despite this Court’s admonishment and despite Euphoria’s attempts to communicate and confer, the E&T Parties have failed to provide truthful or substantive supplemental responses to discovery requests, failed to turn over documents, and failed to cooperate in the discovery process. Not only does the E&T Parties’ violation of the Court’s Order warrant immediate sanctions, but so does the E&T Parties’ overall continuous disregard for their discovery obligations.

Accordingly, and as further detailed below, dispositive sanctions against the E&T Parties are proper pursuant to NRCP 37, EDCR 7.60, and/or the Court’s inherent authority. More specifically, Euphoria respectfully requests that the E&T Parties’ pleadings be stricken in their entirety pursuant to NRCP 37(b)(1)(C). Alternatively, should the Court not be inclined to award dispositive sanctions at this time, Euphoria seeks an evidentiary hearing be set and the E&T Parties be ordered to appear in person at the evidentiary hearing to, *inter alia*, show cause why dispositive sanctions should not issue and/or the E&T Parties should not be held in contempt of court for violations of the Court’s orders and be subject to sanction under NRCP 37. An evidentiary hearing would provide the E&T Parties one final opportunity to explain their willful violations, the failure of which would confirm that dispositive sanctions are appropriate and warranted.

² *Lewis v. Caesars Entm’t Corp.*, No. 216CV02787JADNJK, 2019 WL 1571281, at *4 (D. Nev. Apr. 11, 2019) (citing *Chapman v. Pacific Tel. & Tel. Co.*, 613 F.2d 193, 197 (9th Cir. 1979); *Weddell v. Stewart*, 261 P.3d 1080, 1085 & n.9 (Nev. 2011)).

³ E&T Ventures, LLC (“E&T”), Miral Consulting, LLC (“Miral Consulting”), Happy Campers, LLC (“Happy Campers”), and CBD Supply Co, LLC (“CBD Supply”) (collectively “E&T Parties”).

⁴ **Exhibit B** to the Appendix is a copy of the Notice of Entry of Order: (1) Compelling Joseph Kennedy to Appear for a Deposition; (2) Compelling Nye Natural Medicinal Solutions, LLC and Valjo, Inc. to Answer Deposition Questions; and (3) Compelling E&T Ventures LLC, Miral Consulting, LLC, Happy Campers, LLC and CBD Supply Co, LLC to Supplement Discovery Responses Entered on October 18, 2021.

1 Euphoria further requests that the Court find that each of the E&T Parties' principals, namely
2 Alexander Taracki ("Alex"), Kristin Taracki ("Kristin"), Miroslav Taracki ("Miro"), and Joseph
3 Kennedy ("Kennedy"), are deemed alter-egos of the respective named party. The E&T Parties'
4 current actions have confirmed that their principals are alter-egos of those entities. Indeed, either:
5 (i) the responses are accurate and none of the E&T Parties adhered to corporate formalities; or, (ii)
6 the E&T Parties failed to adhere to a Court order to provide such information to Euphoria. Under
7 either scenario, the Court should find that the E&T Parties and their respective principals are alter-
8 egos and that these parties flagrantly disobeyed a direct order of the Court, which warrants severe
9 sanctions, and also give Euphoria an opportunity to amend its Answer, Crossclaims and
10 Counterclaims to name the additional individuals as parties.

11 Because of the difficulty in locating Kristin and Alex for the purpose of service of process
12 and subpoena to attend and testify at depositions, Euphoria respectfully requests this Court allow
13 Euphoria to serve Alex and Kristin with subpoenas to appear at a deposition by service upon the Law
14 Office of Mitchell Stipp. Finally, Euphoria requests that the E&T Parties be ordered to pay
15 Euphoria's reasonable expenses, including attorney's fees, incurred in connection with bringing the
16 instant Motion and efforts to obtain the outstanding discovery at issue.

17 **II. THE E&T PARTIES DISOBEYED A DIRECT ORDER FROM THIS COURT.**

18 The E&T Parties' court-ordered First Supplemental Responses and Objections to Requests
19 for the Production of Documents and Interrogatories⁵ ("E&T Parties' Court Ordered Discovery
20 Responses") were wholly insufficient and have prejudiced Euphoria in its ability to obtain discovery
21 and litigate this case on the merits. Prior to Euphoria's Motion to Compel Responses to Discovery
22 Requests and for Sanctions ("Motion to Compel"), E&T's counsel, Mitchell Stipp, Esq. ("Mr.

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25 ⁵ **Exhibit C** to the Appendix is a copy of E&T's First Supplemental Responses and Objections to Requests for the
26 Production of Documents and Interrogatories, electronically served on October 25, 2021; **Exhibit D** to the Appendix is
27 a copy of Miral Consulting's First Supplemental Responses and Objections to Requests for the Production of Documents
28 and Interrogatories, electronically served on October 25, 2021; **Exhibit E** to the Appendix is a copy of Happy Campers'
First Supplemental Responses and Objections to Requests for the Production of Documents and Interrogatories,
electronically served on October 25, 2021; **Exhibit F** to the Appendix is a copy of CBD Supply's First Supplemental
Responses and Objections to Requests for the Production of Documents and Interrogatories, electronically served on
October 25, 2021.

Stipp”), represented that he had boxes of documents belonging to E&T.⁶ Yet, E&T produced only 111 pages, all of which had been previously disclosed, and the Third-Party Defendants produced *no* documents. This willfully inadequate document production and the E&T Parties’ insufficient responses to Euphoria’s Discovery Requests forced Euphoria to file the Motion to Compel. Even after this Court’s direct order, the E&T Parties refuse to disclose relevant information by providing evasive responses and disclosing only ninety-six (96) new pages of self-serving documents.

A. This Court Ordered The E&T Parties to Produce Documents in Response to Euphoria’s Requests for Production.

The Court’s Order required that the E&T Parties fully respond to each discovery request set forth in the Motion to Compel within twenty (21) days of the notice of entry of the Order.⁷ At a subsequent hearing on Euphoria’s Motion to Extend Discovery Deadlines, Mr. Stipp represented to the Court that the production would be made on or about October 25, 2021. What Mr. Stipp did not disclose to the Court was that the production would consist of only a few newly-disclosed documents. Based on Mr. Stipp’s representation that a substantial production would be forthcoming, the Court made a ruling as to the expert deadline.

There can be no dispute that the E&T Parties wholly failed to produce responsive documents and have disobeyed a direct order from the Court. Below is a chart that summarizes the deficient responses to each category:

CATEGORY OF DOCUMENTS	E&T	Miral Consulting, CBD Supply, and Happy Campers
Category 1: The E&T Parties’ ownership, operations, and financial documents	Produced some new documents within the newly disclosed 96 pages.	Produced nothing.
Category 2: The Department of Taxation’s investigations, audits, and complaints	Produced nothing.	Produced nothing.
Category 3: The E&T Parties’ documents and	Produced some new documents within the newly disclosed 96 pages.	Produced nothing.

⁶ Exhibit G to the Appendix is a true and correct copy of the e-mail communication from Mr. Stipp to Ms. Kurshumova on March 24, 2021.

⁷ Ex. B, Order.

information relating to Euphoria		
Category 4: The E&T Parties' documents and information relating to the equipment	Produced some new documents within the newly disclosed 96 pages.	Produced nothing.
Category 5: E&T's documents and information relating to product test results and the variances	Produced nothing.	Produced nothing.
Category 6: E&T's documents and information relating to third parties	Produced some new documents within the newly disclosed 96 pages.	Produced nothing.
Category 7: The Third-Party Defendants' documents and information relating to the parties in this litigation	Produced a single email.	Produced nothing.
Requests related to Exhibit 1 and Kristin Ehasz's Declaration	Produced some new documents within the newly disclosed 96 pages.	Produced nothing.

The lack of any documentation about the most basic aspects of a business, such as organizational and financial documents, let alone documents relating to a major investigation by the State of Nevada, defies belief. Specifically, E&T expects Euphoria and the Court to believe the following:

- A company that obtained licenses to work in the highly regulated marijuana field and had numerous paid employees has no paper or electronic trail. According to E&T, it has no corporate documents, no tax documents, no tax returns, no QuickBooks records, no financial books or records (but by some means possesses a self-serving profit and loss statement), **nothing except the limited material that E&T deemed helpful to itself in the litigation.**
- A company that was issued a notice of default under a contract and was asked to explain the subject of the default had no documents related to the asserted default or its response to the notice of default. According to E&T, it has no internal emails, no correspondence with its employees or principals, **nothing except the limited material that E&T deemed may be helpful to itself in the litigation.**
- A company that was accused by its employee of tampering with test results, subjecting the company to investigation by the Department of Taxation had no documents related to the complaint or the investigation. According to E&T, it has no internal emails, no correspondence with its employees or principals, **nothing except the limited material that E&T deemed may be helpful to itself in the litigation.**

This is just a sample of the absurdity of E&T's position that no responsive documents exist to the thirty-three (33) document requests propounded by Euphoria and to which E&T Parties were ordered

1 to respond. The E&T Parties' Court Ordered Discovery Responses are untruthful on their face.⁸
2 E&T chose to disobey a Court order and only produce 96 pages of documents that it believed would
3 help its case.

4 Miral Consulting, CBD Supply, and Happy Campers took a similar approach and have chosen
5 to produce no documents in this litigation even after this Court ordered them to do so. There is
6 evidence to prove that each of these companies operated—meaning there should be some emails,
7 correspondence, and financials. For instance, in a declaration to support a preliminary injunction,
8 E&T produced invoices for equipment related to Miral Consulting, CBD Supply, and Happy
9 Campers.⁹ Kennedy further testified as Valjo Inc.'s designated witness, under oath, that Valjo, Inc.
10 gave \$300,000 to Happy Campers on behalf of Kristin Ehasz and Alexander Taracki.¹⁰ Moreover,
11 Miral Consulting had an email address with the domain miralconsulting.com, which its principals
12 used in their communication with Euphoria, thus demonstrating that emails relevant to this litigation
13 do exist.¹¹ Yet, now, these parties claim that there are no communications, financial information, or
14 records for any of those entities. Very simply, these representations are untruthful and the E&T
15 Parties' decision to misrepresent facts and not produce documents is sanctionable.

16 **B. The E&T Parties Knowingly and Intentionally Verified Incorrect Information.**

17 The majority of the E&T Parties' Court Ordered Discovery Responses to Interrogatories are
18 evasive, but more importantly, they are also inconsistent with the record and the E&T Parties should
19 not be allowed to benefit from such deliberately disingenuous responses. Here are just a few
20

21 ⁸ The list of untruthful statements is so numerous that it is overwhelming to go over each and every misstatement. For
22 instance, E&T provides there are no documents related to ACC Enterprises LLC ("ACC"). See Ex. C, E&T's Court
23 Ordered Response to RFP No. 24. E&T also claims to have no relationship with ACC Enterprises. See *Id.*, Response to
24 Interrogatory No. 16. Yet, ACC has filed suit against Euphoria based upon the actions of E&T and in doing so has
25 produced emails and invoices between E&T and ACC Enterprises, LLC. See generally *ACC Enterprises LLC v.*
Euphoria Wellness, LLC, Case No. CV 20-0402. In essence, E&T claims to have no records of an entity with which
26 E&T used to do business and which provided E&T a highly regulated raw material.

27 ⁹ The Ehasz Declaration was included in the Appendix in Support of Supplemental Motion for Preliminary Injunction
28 on Order Shortening time that was filed on July 9, 2019.

¹⁰ Valjo Transcript at 41:12-25, 42:1-11. **Exhibit H** to the Appendix is a copy of the Transcript of Deposition of Valjo,
Inc., which took place on April 16, 2021. Mr. Kennedy also testified to the same at his November 19, 2021 deposition,
though the transcript is not yet available.

¹¹ Ex. A, Kurshumova Decl. Specifically, while E&T was managing and operating the production facility and when
communicating with Euphoria regarding the variances and subsequent investigation and correction, Kristin on multiple
occasions used kristin@miralconsulting.com and listed Miral Consulting in the signature block.

examples of the misrepresentations:

1. Kristin Taracki Verified the Incorrect Address for Alex Taracki and Herself, Further Preventing Service of Process.

Euphoria has been attempting to serve Kristin and Alex with service of process¹² for approximately one month. Euphoria has also been attempting to notice their deposition in the instant litigation because Mr. Stipp has refused to accept service on their behalf. Therefore, it was of utmost importance that E&T provide Kristin's and Alex's current address in response to Interrogatory No. 1. Euphoria was dismayed (but not surprised) that not only did E&T provide the wrong address but that Kristin signed a declaration under penalty of perjury verifying the accuracy of that address.¹³ Specifically, Kristin verified that her and Alex's current address is 2244 Summerwind Circle, Henderson 89053 ("Property"). ***However, this is not Alex and Kristin's current address and has not been their address for at least 10 months.*** Per the Clark County Assessor Office's Records, they sold the Property on or about December 23, 2020.¹⁴ Nonetheless, immediately after receiving E&T's Court Ordered Discovery Responses, on October 28, 2021, Euphoria's process server went to that address and confirmed that Kristin and Alex do not live at that address.¹⁵

The inquiry does not end with the issue of Alex and Kristin's address. More troublingly, either (1) Kristin intentionally provided the wrong address to evade service and counsel for E&T sanctioned that material misrepresentation; or, alternatively, (2) counsel for E&T listed the wrong address and e-signed the declaration on his client's behalf without Kristin having reviewed the information.

On November 2, 2021, counsel for Euphoria specifically asked Mr. Stipp if the signature on

¹² *ACC Enterprises LLC v. Euphoria Wellness, LLC*, Case No. CV 20-0402. To add insult to injury, Euphoria previously attempted to serve the Tarackis at the address they had listed on the Sale Deed for the Property (19 Brentmead Cove, Jackson, TN 38305). However, the residents of the property located at 19 Brentmead Cove, Jackson, TN 38305 confirmed the Tarackis did not live there. And neither could the Tarackis be served at their purported work address in Tennessee. Thus, to date, not only does their current address remain unknown but also E&T's Supplemental Responses contain incorrect information.

¹³ Kristin e-signed the declaration on October 25, 2021.

¹⁴ **Exhibit I** to the Appendix is a copy of the Grant, Bargain, Sale Deed and PDF showing parcel No. and Parcel Ownership History.

¹⁵ **Exhibit J** to the Appendix is a copy of the Affidavits of Attempted Service, executed on October 27, 2021.

1 the declaration was in fact Kristin’s and if she had reviewed the responses.¹⁶ Mr. Stipp responded
2 he had no obligation to disclose whether Kristin verified the Court Ordered Discovery Responses
3 and that Euphoria simply had to rely on the existence of the signature.¹⁷ Per Nevada’s Rules of
4 Professional Conduct, an attorney must be fair to opposing counsel and opposing parties and not “fail
5 to make reasonably diligent effort to comply with a legally proper discovery request by an opposing
6 party,”¹⁸ “obstruct another party’s access to evidence,”¹⁹ or “assist a witness to testify falsely.”²⁰
7 Yet, here, Mr. Stipp told Euphoria to subpoena Kristin to answer those questions and still produced
8 the incorrect address in the Court Ordered Discovery Responses. Since then, E&T’s counsel has
9 largely ignored Euphoria’s e-mail communications requesting Alex and Kristin’s current address.²¹
10 The blatant misrepresentation of something as simple as a current address for E&T’s principals shows
11 the willfulness of the E&T Parties’ litigation tactics.²²

12 Because of the difficulty in locating Kristin and Alex for the purpose of service of process
13 and subpoena to attend and testify at depositions, Euphoria respectfully requests this Court allow
14 Euphoria to serve Alex and Kristin with subpoenas to appear at a deposition by service upon Law
15 Office of Mitchell Stipp.

16 **2. The E&T Parties Misrepresented They Do Not Have Any Relationships**
17 **with the Other Parties and Certain Non-Parties.**

18 According to the E&T Parties’ discovery responses, none of them have any relationships with
19 the other parties in this litigation and with certain non-parties.²³ Their responses also state that they
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21

22 ¹⁶ Ex. A, Kurshumova Decl.

23 ¹⁷ Ex. A, Kurshumova Decl.

¹⁸ NRPC 3.4(d).

¹⁹ NRPC 3.4(a).

²⁰ NRPC 3.4(b).

24 ²¹ **Exhibit K** to the Appendix is a true and correct copy of the e-mail communications between Ms. Kurshumova, Ms.
25 Lovelock, and Mr. Stipp regarding the current address of the E&T principals between November 3, 2021 and November
15, 2021.

26 ²² Mr. Stipp played a similar game with Joe Kennedy, refusing to accept service on his behalf because he said he did not
represent Mr. Kennedy individually.

27 ²³ See Ex. C, E&T’s Court Ordered Response to Interrogatory No. 16; Ex. D, Miral Consulting’s Court Ordered
Responses to Interrogatory Nos. 9-12; Ex. E, Happy Campers’ Court Ordered Responses to Interrogatories Nos. 9-12;
28 Ex. F, CBD Supply’s Court Ordered Responses to Interrogatories Nos. 9-12.

1 have not identified any documents relating to those parties or non-parties.²⁴ However, those
2 responses are inconsistent with the record.

3 For example, E&T claims that it has not identified any documents regarding communications
4 with Kennedy, a principal of Happy Campers, Nye Natural Medicinal Solutions, LLC (“Nye
5 Natural”), and Valjo, Inc. (“Valjo”), relating to this litigation.²⁵ Yet, on or about June 27, 2019,
6 Kennedy attended a hearing on E&T’s Motion for Preliminary Injunction where E&T conveyed to
7 this Court that the situation required immediate and emergency relief because E&T had a contract
8 with Nye Natural and needed the equipment to perform the contract. And on July 28, 2019, Kennedy
9 and the principals of E&T appeared at Euphoria’s Production Facility with police officers, waving
10 an order executed by the Honorable Judge Delaney in a different case, and demanded access to the
11 Production Facility to obtain all equipment and supplies located inside.²⁶ Therefore, the claim that
12 E&T has no record of any communications or documents regarding third parties, including Kennedy,
13 is not consistent with the record.

14 Further, in its Court Ordered Discovery Responses to Interrogatories, Happy Campers stated
15 it was previously dissolved.²⁷ Kennedy signed a declaration to verify that response.²⁸ Yet, per the
16 Nevada Secretary of State, Happy Campers was revived on July 29, 2021, approximately three
17 months before the supplemental interrogatory response.²⁹ During Kennedy’s deposition on
18 November 19, 2021, Kennedy confirmed his knowledge that Happy Campers was indeed revived
19 and currently active,³⁰ in direct contradiction of his supplemental response to Euphoria’s
20 interrogatory.

21 _____
22 ²⁴ See Ex. C, E&T’s Court Ordered Response to RFP No. 23, 24, 27-33; Ex. D, Miral Consulting’s Court Ordered
23 Responses to RFP Nos. 15-22; Ex. E, Happy Campers’ Court Ordered Responses to RFP Nos. 14-22; Ex. F, CBD
Supply’s Court Ordered Responses to RFP Nos. 14-22.

24 ²⁵ Ex. C, E&T’s Court Ordered Response to RFP No. 28.

25 ²⁶ **Exhibit L** to the Appendix, which is a true and correct copy of the e-mail communications between Nicole E. Lovelock
and Erika Pike-Turner (July 29-July 30, 2019). Ex. H, Valjo Deposition Transcript at p. 87-88.

26 ²⁷ Ex. E, Happy Campers’ Court Ordered Response to Interrogatory No. 8.

27 ²⁸ Ex. E, Happy Campers’ Court Ordered Responses at p. 28.

28 ²⁹ **Exhibit M** to the Appendix is a copy of Happy Campers’ Certificate of Revival filed on July 29, 2021.

³⁰ On November 19, 2021, Jones Lovelock took the deposition of Joseph Kennedy in his individual capacity, in his
capacity as a designated witness for Nye Natural Medicinal Solutions, LLC, and in his capacity as a designated witness
for Valjo, Inc. Jones Lovelock has requested a copy of the deposition transcripts on an expedited basis and will attach
them as an exhibit to Euphoria’s reply.

Finally, Happy Campers stated through its Court Ordered Discovery Responses that it had no relationship with E&T.³¹ Yet, Kennedy testified as the witness for Valjo on April 16, 2021 that Valjo loaned \$500,000 to E&T but gave \$300,000 from that loan to Happy Campers instead.³²

As such, not only are the majority of E&T Parties' Court Ordered Discovery Responses evasive but they also continue to provide information inconsistent with the record. The E&T Parties have been given multiple opportunities to supplement, clarify, and verify the accuracies of their responses. That has not happened. Either the E&T Parties are not taking their discovery obligations seriously or, more likely, they are deliberately obstructing Euphoria's efforts to obtain discovery. Both necessitate sanctions. Here, the record clearly demonstrates the E&T Parties' noncompliance is willful, thus sanctions are warranted.

III. LEGAL STANDARD FOR SANCTIONS FOR IMPEDING DISCOVERY.³³

Previously, this Court entered a clear and unambiguous order compelling disclosure and discovery within 21 days of notice of entry of the Order.³⁴ This did not occur.

District courts in Nevada may sanction abusive litigation practices through their inherent powers.³⁵ The inherent power to sanction is designed "to protect the dignity and decency of its proceedings and to enforce its decrees, and thus it may issue contempt orders and sanction or dismiss an action for litigation abuses."³⁶ Further, district courts have discretion to sanction a party for its failure to comply with a discovery order under NRCP 37(b),³⁷ and those sanctions may include any

³¹ Ex. E, Happy Campers' Court Ordered Response to Interrogatory No. 9.

³² Ex. H, Valjo Deposition Transcript at 41:2-15.

³³ NRCP 37 was amended effective March 1, 2019. See In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). Accordingly, Euphoria cites the latest version of the rules herein.

³⁴ Ex. B, Order.

³⁵ *Ir. Bank v. V.*, 2020 Nev. Dist. LEXIS 132, *12; *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

³⁶ *Ir. Bank v. V.*, 2020 Nev. Dist. LEXIS 132, *12 citing *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d 428, 440 (2007).

³⁷ See also EDCR 7.60:

The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

...

(4) Fails or refuses to comply with these rules.
(footnote continued)

1 the following:

- 2
- 3 (A) directing that the matters embraced in the order or other designated facts be taken
as established for purposes of the action, as the prevailing party claims;
- 4 (B) prohibiting the disobedient party from supporting or opposing designated claims
or defenses, or from introducing designated matters in evidence;
- 5 (C) striking pleadings in whole or in part;
- 6 (D) staying further proceedings until the order is obeyed;
- 7 (E) dismissing the action or proceeding in whole or in part;
- 8 (F) rendering a default judgment against the disobedient party; or
- 9 (G) treating as contempt of court the failure to obey any order except an order to
submit to a physical or mental examination.³⁸

10 Generally, sanctions are imposed where there has been willful noncompliance with the court's
order,³⁹ or where the adversary process has been halted by the actions of the unresponsive party.⁴⁰
11 Here, both of these elements have occurred.

12 In addition, EDCR 7.60(b) authorizes the Court to impose, upon notice and an opportunity to
13 be heard, "any and all sanctions which may, under the facts of the case, be reasonable," including
14 fines, costs or attorney's fees, when a party, without just cause, unreasonably and vexatiously
15 multiplies the proceedings in a case as to increase costs, fails or refuses to comply with these rules,
16 or fails or refuses to comply with any order of a judge of the court.⁴¹

17 Further, Nevada courts have "inherent equitable powers to dismiss actions or enter default
18 judgments for . . . abusive litigation practices."⁴² This inherent power to sanction is designed "to
19 protect the dignity and decency of its proceedings" and therefore courts "may issue contempt orders
20 and sanction or dismiss an action for litigation abuses."⁴³

21

22 (5) Fails or refuses to comply with any order of a judge of the court.
(emphasis added).

23 ³⁸ NRCF 37(b)(1); *Ir. Bank v. V.*, 2020 Nev. Dist. LEXIS 132, *11-12; *See also, Young v. Johnny Ribeiro Bldg.*, 106
Nev. 88, 787 P.2d 777 (1990); *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 606, 245 P.3d 1182 (2010).

24 ³⁹ *Fire Ins. Exch. v. Zenith Radio Corp.*, 103 Nev. 648, 651, 747 P.2d 911, 913-14 (1987); *Finkelman v. Clover Jewelers
Blvd., Inc.*, 91 Nev. 146, 147, 532 P.2d 608, 609 (1975).

25 ⁴⁰ *Skeen v. Valley Bank of Nevada*, 89 Nev. 301, 303, 511 P.2d 1053, 1054 (1973). *See also, Temora Trading Co. v.
Perry*, 98 Nev. 229, 645 P.2d 436 (1982); *Kelly Broadcasting v. Sovereign Broadcast*, 96 Nev. 188, 606 P.2d 1089
(1980).

26 ⁴¹ EDCR 7.60(b)(3)–(5).

27 ⁴² *Young*, 106 Nev. at 92, 787 P.2d at 779 (citation omitted); *see also Dietz v. Bouldin*, 136 S. Ct. 1885, 1892–93 (2016)
(holding that "district courts have the inherent authority to manage their dockets and courtrooms with a view toward the
efficient and expedient resolution of cases").

28 ⁴³ *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d 428, 440 (2007).

IV. THE COURT SHOULD STRIKE THE E&T PARTIES' PLEADINGS.

Under NRCP 37(b)(1)(C) and (D), this Court can strike the pleadings and render a default judgment against each of the E&T Parties. Specifically, the district court may sanction a party by striking its pleadings under NRCP 37.⁴⁴ The Nevada Supreme Court has provided guidance for the Court on the factors to consider before striking a pleading as a sanction:

The factors a court may properly consider include, but are not limited to, the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party, the policy favoring adjudication on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses.⁴⁵

Discovery violations such as the failure to appear at a deposition, obey an order compelling discovery, or answer interrogatories leaves the Court with clear discretion to dismiss an action and enter a default judgment.⁴⁶ Here, the analysis of the factors, which is discussed *infra*, warrants striking E&T's affirmative claims and the E&T Parties' Answer.

1. The Court Should Strike E&T's Affirmative Claims and the E&T Parties' Answer.

a. The E&T Parties Willfully Disobeyed this Court's Order.

The E&T Parties were well aware of their discovery obligations and the obligation to comply with the Court's Order. This Court should find that the E&T Parties willfully and intentionally disobeyed that order by concealing documents and information sought by Euphoria with an intent to preclude Euphoria from obtaining discovery relevant to its claims and defenses. As such, the E&T Parties have harmed and unfairly prejudiced Euphoria. Where, as here, discovery abuses are willful, as opposed to accidental or involuntary, courts have found dismissal an appropriate sanction.⁴⁷

⁴⁴ *Valley Health Sys., LLC v. Estate of Doe*, 427 P.3d 1021, 134 Nev. Adv. Rep. 76 (Nev. 2018). (The Court found that [Plaintiff] willfully violated its disclosure obligation.)

⁴⁵ *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 93 (Nev. 1990).

⁴⁶ *Riverside Casino Corp. v. J.W. Brewer Co.*, 80 Nev. 153, 390 P.2d 232 (Nev. 1964).

⁴⁷ See, e.g., *Picon v. Ryon*, 99 Nev. 801, 802, 671 P.2d 1133, 1134 (1983) (discovery abuses were willful where conduct was "unexplained and unwarranted").

1 Further, the Nevada Supreme Court “has upheld entries of default where litigants are unresponsive
2 and engage in abusive litigation practices that cause interminable delays.”⁴⁸

3 After being parties to this litigation for *two years*, Miral Consulting, CBD Supply, and Happy
4 Campers have produced **ZERO** documents. Even after the Court **compelled** Miral Consulting, CBD
5 Supply, and Happy Campers to produce documents, they still produced **ZERO** documents. This is
6 willful disobedience warranting terminating sanctions. An unexplained or unjustified failure to
7 provide discovery that halts the adversarial process will, in all likelihood, constitute willful
8 noncompliance.⁴⁹

9 Similarly, E&T was compelled to produce documents and subsequently produced only **96**
10 new pages—feigning that no other financial documents, email communications, or any other related
11 documents existed. This defies belief as E&T managed and operated Euphoria’s marijuana
12 Production Facility for almost two years. Yet, during this litigation, E&T’s document production
13 relating to the contract with Euphoria, the operation of the facility, and the investigations by the State
14 of Nevada amounts to a total of 622 pages. E&T has produced a total of *three emails*, and even then,
15 only those that it believes are helpful to its claims (the existence of said e-mails shows
16 communications do exist). E&T’s production of three self-serving emails, a few self-serving
17 invoices, and overall failure to produce responsive documents to the majority of Euphoria’s discovery
18 requests, is a brazen disregard for the Court’s Order. E&T’s willful disobedience warrants
19 terminating sanctions.

20 Dismissal is encouraged where the district court determines “a party has acted willfully or in
21 bad faith in failing to comply with rules of discovery or with court orders enforcing the rules.”⁵⁰ “[I]t
22 is clear that a ‘willful’ violation of a court order does not require proof of mental intent such as bad
23 faith or an improper motive, but rather, it is enough that a party acted deliberately.”⁵¹ In other words,
24 “‘disobedient conduct not shown to be outside the control of the litigant’ is all that is required to
25

26 ⁴⁸ *Foster v. Dingwall*, 126 Nev. 56, 65, 227 P.3d 1042, 1048 (2010).

27 ⁴⁹ *Fire Ins. Exch. V. Zenith Radio Corp.*, 103 Nev. 648, 747 P.2d 911 (Nev. 1987).

28 ⁵⁰ *Sigliano v. Mendoza*, 642 F.2d 309, 310 (9th Cir. 1981).

⁵¹ *Evon v. L. Offs. of Sidney Mickell*, 688 F.3d 1015, 1035 (9th Cir. 2012).

1 demonstrate willfulness, bad faith, or fault.”⁵² Indeed, the United States Supreme Court has upheld
2 the trial court’s inherent power to dismiss an action for failure to comply with the court’s orders, as
3 well as for failure to prosecute.⁵³

4 “Parties have an obligation to make a reasonable effort to locate all documents and
5 information necessary to fully respond to discovery. . . . Simply not responding to discovery requests
6 is not an option.”⁵⁴ Here, the E&T Parties simply chose not to meaningfully supplement their
7 Responses to Euphoria’s Discovery Requests, in direct contravention of the Court’s Order.

8 **b. A Less Severe Sanction Would be Unfair or Prejudicial to**
9 **Euphoria.**

10 The E&T Parties’ wholesale failure to respond to Euphoria’s Discovery Requests has
11 obstructed the fact-finding process, interfering with Euphoria’s ability to conduct meaningful
12 discovery, prepare for and go to trial, and ascertain facts as to the key issue of alter ego. The financial
13 documents of the E&T Parties were requested almost a year ago. To date, the E&T Parties have yet
14 to turn over even a single tax return or account to Euphoria. The E&T Parties’ continuing delays and
15 inexcusable refusal to cooperate in the discovery process have prejudiced, and continue to prejudice,
16 Euphoria in its efforts to litigate this case on the merits.⁵⁵ Accordingly, this factor weighs in favor of
17 dispositive sanctions.

18 **c. A Less Severe Sanction Would Not Deter E&T and the Third-**
19 **Party Defendants’ Behavior.**

20 With this Motion, Euphoria seeks several less severe sanctions against E&T and the Third-
21 Party Defendants. However, the facts demonstrate that a less severe sanction will not be enough to

22 ⁵² *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 948 (9th Cir. 1993) (quoting *Fjelstad v. Am. Honda Motor Co.*, 762 F.2d
23 1334, 1341 (9th Cir. 1985)).

24 ⁵³ *See, e.g., Link v. Wabash R. Co.*, 370 U.S. 626, 633 (1962) (“[W]hen circumstances make such action appropriate, a
District Court may dismiss a complaint for failure to prosecute even without affording notice of its intention to do so or
providing an adversary hearing before acting.”).

25 ⁵⁴ *United States v. Reeves*, No. 2:12-cv-01916-JAD-GWF, 2013 U.S. Dist. LEXIS 146671, at *2-3, 112 A.F.T.R.2d
(RIA) 2013-6359 (D. Nev. Oct. 3, 2013).

26 ⁵⁵ *See, e.g., Foster*, 126 Nev. at 66, 227 P.3d at 1049 (“Additionally, we conclude that appellants’ continued discovery
27 abuses and failure to comply with the district court’s first sanction order evidences their willful and recalcitrant disregard
of the judicial process, which presumably prejudiced Dingwall, Yang, and Chai.”); *see also In re Phenylpropanolamine*
(*PPA*) *Products*, 460 F.3d 1217, 1236 (9th Cir. 2006) (holding that, with respect to discovery abuses, “[a] prejudice from
28 unreasonable delay is presumed” and failure to comply with court orders mandating discovery “is sufficient prejudice”).

1 deter E&T and the Third-Party Defendants from abusing the discovery process. The record
2 demonstrates E&T and the Third-Party Defendants have purposefully avoided their required NRC
3 16.1 disclosures and discovery obligations. E&T and the Third-Party Defendants' responses to
4 Euphoria's Interrogatories are at best evasive and at worst, provide no actual responses, not to
5 mention the fact that E&T directly provided Euphoria with the wrong address for its principals, Alex
6 and Kristin.

7 In terms of document production, the Third-Party Defendants have literally produced nothing.
8 As for E&T, it strategically waited until the initial expert disclosure deadline to produce the majority
9 of its documents, which relate to only a handful of Euphoria's discovery requests. E&T's fervent
10 position that it has no other responsive documents stands for the irrational representation that E&T
11 has next to no documents to show for operating and managing a marijuana production facility for
12 two years except for mostly self-serving invoices and three e-mails.

13 Moreover, E&T's counsel refuses to produce E&T's principals for their noticed depositions
14 while E&T itself intentionally lists its principals' wrong address and refuses to provide the correct
15 one. As such, E&T has debilitated Euphoria's efforts to depose the principals. E&T has prevented
16 Euphoria from obtaining relevant information and documents necessary for its preparation for trial.
17 This purposeful and willful behavior demonstrates that E&T and the Third-Party Defendants have
18 no intention of participating in this litigation in good faith. As such, Euphoria doubts that a less
19 severe sanction would deter E&T and Third-Party Defendants from intentionally impeding
20 Euphoria's litigation efforts.

21 **d. The Policy Favoring Adjudication on the Merits Does Not Give**
22 **Refuge to a Willfully Disobedient Party.**

23 Although public policy favors adjudication on the merits, it should not do so to the detriment
24 of those who play by the rules. E&T and the Third-Party Defendants have shown they are not
25 interested in playing by the rules unless it is solely to their benefit, and should therefore not be
26 provided refuge by public policy. Given the need to deter both the parties and future litigants from
27 similar abuses, namely the intentional disruption of an opposing party's efforts to litigate on the

merits, this Court should strike E&T's affirmative claims and the Third-Party Defendants' defenses.

**e. Those Sanctions Do Not Unfairly Operate to Penalize E&T and
Third-Party Defendants for the Misconduct of Their Attorney.**

E&T and Third-Party Defendants are responsible for their decision regarding their counsel and, therefore, bound by their counsel's acts. E&T and Third-Party Defendants were on notice of the possible consequences of their failure to participate in discovery following this Court's order compelling their responses. E&T's principal, Kristin, verified E&T's responses intentionally providing the wrong physical address for her and Alex. As such, it would not be unfair if this Court were to issue the requested sanctions.

**f. The E&T Parties' Overall Actions in this Litigation Warrant
Dispositive Sanctions.**

According to the Ninth Circuit, the E&T Parties' overall discovery and litigation conduct should be properly considered.⁵⁶ Here, the litigation conduct demonstrates that sanctions are warranted. The E&T Parties' litigation tactics have effectively frustrated every simple matter so as to cause Euphoria to accrue unnecessary fees and potentially force Euphoria into an unfair settlement. Examples of the conduct in question include:

- Forcing Euphoria to file a motion, then after the motion is prepared and filed, changing its position so the motion was unnecessary. This has occurred on no less than two (2) occasions, including Euphoria's Motion to Enter Protective and Confidentiality Order, which E&T's counsel was refusing to sign despite representations to the contrary for a period of four months, and Euphoria's Motion for Protective Order to protect Darlene Purdy's appearance at a deposition until her toddler son was discharged from the hospital.

⁵⁶ See, e.g., *Adriana Int'l Corp. v. Thoeren*, 913 F.2d 1406, 1411 (9th Cir. 1990) (district court properly considered all of defendant's discovery conduct in ordering default judgment: "In evaluating the propriety of sanctions, we look at all incidents of a party's misconduct."); *Halaco Eng'g Co. v. Costle*, 843 F.2d 376, 381 n.2 (9th Cir. 1988) ("court may indeed consider prior conduct that has already been subject to sanction, when it is weighing a subsequent sanction motion").

- Unilaterally setting depositions and refusing to accommodate schedules, then vacating those depositions late the night before.
- Preventing access to E&T's principals by not providing their current address and by refusing to produce them for their depositions.

2. Alternatively, Euphoria Respectfully Requests this Court Set an Evidentiary Hearing and Order the E&T Parties to Appear in Person to Show Cause as to Why Dispositive Sanctions Should Not Issue and the E&T Parties Should Not Be Held in Contempt.

If the Court is not inclined to order the striking of the E&T Parties' pleadings as a discovery sanction, Euphoria respectfully requests an evidentiary hearing. Such a hearing will afford the E&T Parties an opportunity to explain their willful violations of this Court's Order and the rules governing discovery, and establish whether dispositive sanctions are appropriate and warranted.

District courts have both inherent and statutory authority to enforce orders by subsequent contempt proceedings.⁵⁷ Pursuant to NRCP 22.010, "[d]isobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers" shall be deemed contempt. NRCP 22.010(3). In addition, for contempt pursuant to subsection (3) of NRCP 22.010, as here, "the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt."⁵⁸ The Nevada Supreme Court generally "affords the district court sufficient leeway to exercise its [contempt] power."⁵⁹ "The ability to punish disobedience to judicial orders is regarded as essential to ensuring that the Judiciary has a means to vindicate its own authority without complete dependence on other Branches."⁶⁰

⁵⁷ See *City Council of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 784 P.2d 974 (1989); see also *All Minerals Corp. v. Kunkle*, 105 Nev. 835, 784 P.2d 2 (1989). Specifically, NRCP 1.210(3) states that "[e]very Court shall have power . . . [t]o compel obedience to its lawful judgments, orders and process . . ." NRCP 1.210(3).

⁵⁸ NRCP 22.100(3); see also NRCP 22.130 ("Proceedings when defendant does not appear; measure of damages in action on undertaking.").

⁵⁹ See *In re Claimants*, 118 Nev. 901, 907, 59 P.3d 1226, 1229–30 (2002).

⁶⁰ *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 796, 107 S. Ct. 2124, 2131–32 (1987); see also *Bessette v. W.B. Conkey Co.*, 194 U.S. 324, 333, 24 S. Ct. 665, 668 (1904) (contempt power "has been uniformly held to be necessary (footnote continued)

1 As set forth above, despite having knowledge of the Court's Order, the E&T Parties willfully
2 elected not to comply. The E&T Parties are not entitled to disregard this Court's orders without
3 consequence. Accordingly, their conduct is sanctionable under NRS § 22.010(3) and the E&T Parties
4 should be ordered to pay Euphoria's attorney's fees and costs incurred as a result of their contempt,
5 including the cost of pursuing the instant Motion. NRS § 22.100(3). Finally, if this Court is not
6 inclined to order the striking of the pleadings as a discovery sanction, the Court should order an
7 evidentiary hearing.

8 **V. THE COURT SHOULD FIND THAT THE PRINCIPALS ARE ALTER-EGOS OF**
9 **THE CORPORATE ENTITIES.**

10 This Court has considerable discretion to tailor the sanctions imposed to the misconduct at
11 issue.⁶¹ The Court should find that based upon the E&T Parties' Court Ordered Discovery Responses
12 to Euphoria's Discovery Requests, the principals of the E&T Parties are alter-egos of those parties.

13 Specifically, the E&T Parties have implied they are judgment-proof by communicating they
14 are not operational and do not generate income.⁶² Indeed, the E&T Parties' counsel has repeatedly
15 provided that the E&T Parties are not operational⁶³ and, therefore, suggesting Euphoria cannot collect
16 on any judgment entered against them. Yet, the E&T Parties have produced no documents to
17 evidence their statements. No corporate documents, no bank accounts, next to no financial records,
18 or anything to show the relationship of the company to the principals—nothing. The E&T Parties
19 maintain the organizational and financial documents requested by Euphoria are not relevant even
20 after this Court ruled they were relevant and ordered them to be produced. The E&T Parties have
21 knowingly provided incorrect information to Euphoria's counsel which is contradicted by the record

22
23 to the protection of the court from insults and oppressions while in the ordinary course of its duties, and to enable it to
enforce its judgments and orders necessary to the due administration of law and the protection of the rights of suitors").

24 ⁶¹ *Young*, 106 Nev. at 93, 787 P.2d at 780; *see also Emerson v. Eighth Judicial Dist. Court*, 127 Nev. 672, 680, 262 P.3d
224, 229 (2011) (noting broad discretion to sanction "any litigation abuses not specifically proscribed by statute").

25 ⁶² Ex. A, Kurshumova Decl.

26 ⁶³ Ex. A, Kurshumova Decl. *See Exhibit N* to the Appendix is a true and correct copy of the e-mail communication
from Mr. Stipp to Ms. Lovelock on November 2, 2021 ("E&T has not operated since Euphoria closed the production
facility. Happy Campers and CBD Supply are also out-of-business." Ex. N at p. 2); Omnibus Opposition to Applications
for Order to Show Cause, to Compel Appearance for a Deposition, and for an Award of Attorney's Fees and Costs and
27 Countermotion for a Protective Order and Related relief filed on August 30, 2021 at 3:2 ("E&T is no longer operating.");
Opposition to Motion to Compel Discovery Responses and for Sanctions and Countermotion for Related Relief filed on
28 August 20, 2021 at 2:27 ("E&T is no longer operating.").

1 and have intentionally prevented Euphoria from obtaining the information necessary to establish
2 whether the principals of those parties are alter-egos and should be held accountable. To add insult
3 to injury, Euphoria needs this Court's assistance to depose two of those principals. In other words,
4 Euphoria is forced to incur significant, unnecessary fees while the E&T Parties do little but drive up
5 the cost of litigation. The E&T Parties' violation of the Court's Order further evidences their openly
6 lackadaisical approach to the consequences of this litigation.

7 The E&T Parties' suggestion they are judgment proof and, therefore absolved of
8 consequences for their gamesmanship in the current litigation, coupled with their refusal to provide
9 information about their principals' involvement and relation to this litigation, demonstrate a more
10 sinister motive—shielding the bad actors from potential liability and judgment. This course of action
11 has successfully prejudiced Euphoria in establishing alter-ego liability and Euphoria will be left
12 without the ability to recover on any judgment. The evidence cannot be retrieved without the E&T
13 Parties' cooperation. A remedy must be fashioned to overcome the prejudice that Euphoria has
14 suffered at Euphoria's hands. The missing evidence goes directly to the issue of whether Kristin,
15 Alex, Miro, and Kennedy can be liable for the E&T Parties' conduct.

16 Here, either: 1) the responses are accurate and none of the E&T Parties adhered to corporate
17 formalities; or, alternative, 2) the E&T Parties failed to adhere to a Court order to provide such
18 information to Euphoria. Under either scenario, the Court should find that the E&T Parties and their
19 respective principals are alter-egos and that these parties flagrantly disobeyed a direct order of the
20 Court, which warrants severe sanctions. Based upon the willful disobedience of a discovery order,
21 the Court should find that: (i) Kristin, Alex, and Miro are alter-egos of E&T; (ii) Kristin and Alex
22 are alter-egos of Miral Consulting and CBD Supply; (iii) Kristin, Alex, and Joe Kennedy are alter-
23 egos of Happy Campers; and (iv) E&T, Miral Consulting, CBD Supply, and Happy Campers are all
24 alter-egos of each other.

25 **A. The Principals of the E&T Parties Had Notice and Knew, or Reasonably Should**
26 **Have Known, That They Would Be Named as Parties to the Litigation.**

27 On June 18, 2019, E&T filed its Complaint against Euphoria alleging that Euphoria breached

PETITIONER'S APPENDIX NO. 00029

1 the First Amended and Restated Agreement, wrongfully retained equipment and property belonging
2 to E&T, and intentionally interfered with E&T's prospective economic advantage by converting
3 E&T's equipment and property.⁶⁴ On September 24, 2019, Euphoria filed a crossclaim against E&T
4 and counterclaims against Miral Consulting, Happy Campers, and CBD Supply, and against Kristin
5 Alex and Miro, as alter egos, for breaching the Agreement by failing to follow Nevada laws and
6 regulations, jeopardizing Euphoria's marijuana licenses with the State of Nevada, causing the State
7 of Nevada to shut down the Production Facility for investigation, and acting together to retain
8 Euphoria's property.

9 Euphoria has a good faith basis to believe that Kristin, Alex and Miro were alter egos of each
10 of the E&T Parties. Specifically, on or about June 27, 2019, E&T rushed into Court seeking an order
11 that Euphoria turn over equipment, supplies, and marijuana to E&T because E&T claimed that it
12 owned the equipment, supplies, and marijuana. On July 9, 2019, in support of E&T's claim of
13 ownership, E&T submitted a declaration executed by Kristin Ehasz ("Kristin Ehasz' Declaration").⁶⁵
14 The Ehasz Declaration provided that E&T owns the equipment at the production facility based upon
15 certain invoices and receipts that were attached to the declaration.⁶⁶ These invoices, which were
16 offered to prove ownership by E&T, did not make any distinction between Cross-Defendants and
17 E&T.⁶⁷ ***E&T treated the Third-Party Defendants as being E&T and E&T as being the Third-Party***
18 ***Defendants***. Judge Allf Instructed Euphoria to conduct discovery into the alter-ego elements before
19 amending its Answer, Counterclaims, and Cross-Claims.

20 While the Honorable Judge Allf dismissed the alter-ego remedy without prejudice, Judge Allf
21 specifically advised that there needed to be discovery into the alter-ego elements and then Euphoria
22 could bring back the alter-ego remedy against all E&T Parties, as well as against Kristin, Alex, and
23 Miro. As to the alter-ego remedy, the Honorable Judge Allf stated:

24
25 ⁶⁴ See generally E&T's Complaint.

26 ⁶⁵ The Ehasz Declaration was included in the Appendix in Support of Supplemental Motion for Preliminary Injunction
on Order Shortening time that was filed on July 9, 2019.

27 ⁶⁶ *Id.*

28 ⁶⁷ The Ehasz Declaration was included in the Appendix in Support of Supplemental Motion for Preliminary Injunction
on Order Shortening time that was filed on July 9, 2019.

1 And the way I normally look at these is that, you know, the piercing the corporate veil
2 is a statutory remedy and there's case law interpreting it. I usually, because it's a
3 business court case, **give you the option of either amending the complaint later to**
add the piercing the corporate veil causes of action after discovery, or if you can
argue that you have the facts now, then -- then we deal with it.⁶⁸

4 Importantly, the Honorable Judge Allf *already* addressed that Euphoria could take discovery into all
5 the parties to determine whether alter-egos claims and remedies might exist. When the issue of the
6 E&T Parties potentially playing games in discovery as to alter-ego claims came up, the following
7 exchanged occurred:

8 **THE COURT:** And I manage -- I manage discovery in the case. It's a business court
9 case.

10 **MS. LOVELOCK:** Understood, Your Honor.

11 **THE COURT:** And I will make sure that you get the discovery. And I can assure
12 you Mr. Ciciliano has been on both sides of this one, so -- **so he knows that I'll**
enforce your right to obtain discovery.⁶⁹

13 The Court again acknowledged that Euphoria had the right to complete discovery into its alter-ego
14 claims when the Honorable Judge Allf stated:

15 **THE COURT:** The individuals. All of the alter ego-defendants are dismissed without
16 prejudice, **but subject to being brought back in if the discovery** -- if they can make
a prima facie case.⁷⁰

17 Based upon the foregoing, the E&T Parties knew well that Euphoria was allowed to complete
18 discovery into the elements of alter ego for the E&T Parties.

19 **B. It Is Judge Allf's Practice to Not Allow Alter-Ego Claims Go Forward Until After**
20 **the Evidence is Collected and Then Allows Amendments.**

21 During the same hearing, Judge Allf indicated that allowing alter-ego claims from the
22 inception of the case could create grounds for attorney's fees and costs should those claims be
23 dismissed later. As such, the better approach would be to assert alter-ego claims after the parties
24

25 _____
26 ⁶⁸ See Transcript of hearing on Defendant's Motion to Dismiss Cross-Claim and Counterclaim for Fraud December 5,
27 2019, at 2:11-19 (emphasis added). **Exhibit O** to the Appendix is a copy of Transcript of hearing on Defendant's Motion
to Dismiss Cross-Claim and Counterclaim for Fraud December 5, 2019.

28 ⁶⁹ *Id.* at 8:2-9 (emphasis added).

⁷⁰ Ex. O, Transcript of hearing at 12:21-24 (emphasis added).

1 have been able to conduct discovery.

2 **THE COURT:** So let me make the risk clear, then. If I keep them in but later dismiss
3 them, there may be an issue with attorney's fees.

4 **MS. LOVELOCK:** Based upon notice pleading? I mean, the

5 **THE COURT:** Based upon -- yeah, based upon not having grounds to proceed.

6 **MS. LOVELOCK:** Based upon alter ego.

7 **THE COURT:** If down the road it turns out that -- that the alter ego claims fail, it
8 could detriment your client.

9 **MS. LOVELOCK:** So the alternative is for them to be dismissed without prejudice
10 today?

11 **THE COURT:** Exactly.⁷¹

12 Following Judge Allf's directions and ruling, Euphoria proceeded with discovery before asserting
13 alter-ego claims.

14 **C. This Court Should Order that the Facts of an Alter-Ego Remedy are Taken as**
15 **Established and Allow Euphoria to Move to Amend its Crossclaims and**
16 **Counterclaims.**

17 NRCP 37(b)(1) allows this Court to sanction a party for violating a court order by "directing
18 that the matters embraced in the order or other designated facts be taken as established for purposes
19 of the action, as the prevailing party claims."⁷² The E&T Parties violated this Court's Order by
20 failing to produce documents and information, much of which pertains specifically to the
21 establishment of alter ego liability. As such, this Court has discretion to issue an order that the facts
22 of an alter-ego remedy are taken as established. Should the Court rule that the facts of an alter-ego
23 remedy are taken as established, Euphoria respectfully requests an opportunity to move to amend its
24 Crossclaims and Counterclaims.

25 The elements for finding alter ego, which must be established by a preponderance of the

26
27 ⁷¹ *Id.* at 7:13-25.

28 ⁷² NRCP 37(b)(1)(A).

evidence, are: (1) the corporation must be influenced and governed by the person asserted to be the alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the other; and (3) the facts must be such that adherence to the corporate fiction of a separate entity would, under the circumstances, sanction a fraud or promote injustice.⁷³ The following factors, though not conclusive, may indicate the existence of an alter-ego relationship: (1) commingling of funds; (2) undercapitalization; (3) unauthorized diversion of funds; (4) treatment of corporate assets as the individual's own; and (5) failure to observe corporate formalities. Notwithstanding these enumerated factors, the Nevada Supreme Court has emphasized that "there is no litmus test for determining when the corporate fiction should be disregarded; the result depends on the circumstances of each case."⁷⁴

Here, the facts demonstrate the following:

- ***E&T treated the Third-Party Defendants as being E&T and E&T as being the Third-Party Defendants***, as demonstrated by the invoices attached to Kristin Ehasz' Declaration and used by E&T to allege ownership over Euphoria's equipment;⁷⁵
- ***Kristin is a principal of all E&T Parties and Alex is a principal of all E&T Parties except for Miral Consulting***, as demonstrated by the E&T Parties' Court Ordered Discovery Responses;⁷⁶
- ***Upon information and belief, during the time period relevant to this litigation, Miro was a principal of Miral Consulting and CBD Supply;***
- ***The E&T Parties' principals, Kristin, Alex, and Kennedy, and upon information and belief, Miro, claimed the E&T Parties' profits and losses on their individual tax returns***, as represented by the E&T Parties' counsel;⁷⁷
- ***E&T, Miral Consulting, and CBD Supply are defunct companies***, as represented by the E&T Parties' counsel.⁷⁸ ***Happy Campers is operational only for the purpose of maintaining a property lease, and only after years of being defunct according to the Secretary of State;***⁷⁹
- ***All E&T Parties shut down at the same time—when Euphoria locked E&T out of the***

⁷³ See, e.g., *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 904, 8 P.3d 841, 847 (2000).

⁷⁴ *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 904, 8 P.3d 841, 847 (2000) citing *Polaris Industrial Corp. v. Kaplan*, 103 Nev. 598, 601, 747 P.2d 884, 886 (1987).

⁷⁵ The Ehasz Declaration was included in the Appendix in Support of Supplemental Motion for Preliminary Injunction on Order Shortening time that was filed on July 9, 2019.

⁷⁶ Ex. C, E&T's Court Ordered Response to Interrogatory No. 1; Ex. D, Miral Consulting's Court Ordered Response to Interrogatory No. 1; Ex. E, Happy Campers' Court Ordered Response to Interrogatory No. 1; Ex. F, CBD Supply's Court Ordered Response to Interrogatory No. 1.

⁷⁷ Ex. A, Kurshumova Decl.; See also Ex. C, E&T's Court Ordered Response to RFP No. 10; Ex. D, Miral Consulting's Court Ordered Response to RFP No. 9; Ex. E, Happy Campers' Court Ordered Response to RFP No. 9; Ex. F, CBD Supply's Court Ordered Response to RFP No. 9.

⁷⁸ Ex. A, Kurshumova Decl.

⁷⁹ *Supra*, n. 29.

Production Facility, as represented by the E&T Parties' counsel;⁸⁰

- *Miral Consulting, CBD Supply, and Happy Campers were created as ancillary entities to E&T*, as represented by the E&T Parties' counsel;⁸¹
- *Kristin utilized both E&T's and Miral Consulting's e-mail addresses and signature lines when managing and operating the Production Facility and communicating with Euphoria about the events leading to the termination of the First Amended and Restated Agreement and the State of Nevada's investigation;*
- Pursuant to Valjo, Inc.'s deposition testimony, *E&T directed a non-party, Valjo, to pay \$300,000.00 of E&T's loan to Happy Campers.*⁸² Pursuant to Kennedy's recent deposition testimony, Valjo gave the entire \$500,000 loan amount to E&T, Alex, and Kristin.⁸³ Both demonstrate that neither the principals nor the entities have proper understanding of the financial dealings between said principals and entities.
- *Kristin, Alex, Miro, Kennedy, the E&T Parties, Valjo, and Nye Natural, allegedly executed a Joint Defense, Confidentiality, and Forbearance Agreement on or about June 18, 2019 claiming to have a common interest in this litigation;*
- Kennedy encouraged Alex and Kristin to file the instant litigation as a strategy to obtain Euphoria's equipment and enable E&T to pay off the promissory note to Valjo, Inc. Kennedy also reviewed E&T's complaint prior to filing and provided feedback. Even though Valjo had an interest in the equipment subject to this litigation, Kennedy made the strategic decision not to join as a party but to file a separate action through a confession of judgment.⁸⁴

The above undisputed facts demonstrate that the E&T Parties were governed by the same individuals, that their ownership and interest was inseparable, and that neither the principals nor the E&T Parties followed corporate formalities. The fact that the E&T Parties' principals jointly claimed the E&T Parties' profits and losses on their individual tax returns demonstrates, coupled with the lack of any financial documents, suggests that Alex, Kristin, Kennedy and the E&T Parties comingled funds and treated the corporate assets as their own. For those reasons, and because the E&T Parties have failed to produce any documents to show the opposite, this Court should issue an order that the facts of an alter ego remedy are taken as established and those principals, in their individual capacities, are necessary parties to the action, and allow Euphoria to move to amend its Crossclaims and Counterclaims accordingly.

⁸⁰ Ex. A, Kurshumova Decl.

⁸¹ Ex. A, Kurshumova Decl.

⁸² Ex. H, Valjo's Deposition Transcript, at 41:2-15.

⁸³ *Supra*, n. 29.

⁸⁴ *Supra*, n. 29

1 **VI. THE COURT SHOULD AWARD EUPHORIA ATTORNEYS' FEES AND COSTS.**

2 When a party, or a party's officer, director, or managing agent fails to obey a court order to
3 provide discovery, the court **must** order the disobedient party, or their attorney, or both to pay the
4 reasonable expenses and attorney's fees caused by the failure, "**unless** the failure was substantially
5 justified," or such an award would be unjust.⁸⁵ The Court may also hold them in contempt for failing
6 to obey the order.⁸⁶

7 Here, this Court's Order specifically required the E&T Parties to supplement their discovery
8 responses to the requests identified in Categories 1-7 and the requests based on Exhibit 1 and Kristin
9 Ehasz's Declaration.⁸⁷ Completely disregarding this Court's Order, the Third-Party Defendants
10 produced no documents. E&T similarly failed to produce documents responsive to the majority of
11 Euphoria's Requests for Production. Not only are the E&T Parties' Court Ordered Discovery
12 Responses to Euphoria's Interrogatories evasive but they also contain information manifestly
13 inconsistent with the record. Finally, Kristin and Kennedy intentionally verified information they
14 know to be inaccurate, which is a gross misrepresentation and violation of the rules. On November
15 2, 2021, the E&T Parties further demonstrated their lack of regard for this Court's Order by requiring
16 Euphoria's counsel to explain yet again why Euphoria needs the requested records,⁸⁸ even though
17 the Order specifically states the following:

18 The discovery requests identified in Categories 1 to 7 and the requests based on
19 Exhibit 1 and Kristin Ehasz's Declaration **are relevant** to the parties' claims and
20 defenses, **and are proportional** to the needs of the case.⁸⁹

21 The E&T Parties provided deficient supplementation and continue to disregard the Court's
22 findings, thus frustrating this process and delaying Euphoria's discovery efforts. Specifically, the
23 E&T Parties were required to provide full responses to Euphoria's Discovery Requests but, without
24 justification, failed to do so. Euphoria has been prejudiced by the E&T Parties' repeated failures to

25 _____
26 ⁸⁵ NRCP 37(b)(1)-(3).

27 ⁸⁶ NRCP 37(b)(1)(G).

28 ⁸⁷ Ex. B, Order at p. 12 at Para. 74.

⁸⁸ Ex. A, Kurshumova Decl.

⁸⁹ Ex. B, Order at p. 11, para. 67 (emphasis added).

1 cooperate in discovery; moreover, Euphoria expended time, money and effort in pursuit of discovery
2 that the E&T Parties were legally obligated to provide. As such, an award of attorneys' fees and
3 costs would not be unjust considering the willful violation of the Order and the continued insistence
4 to withhold information. For those reasons, this Court should hold the E&T Parties in contempt and
5 order the E&T Parties to pay the reasonable expenses and attorney's fees Euphoria incurred in
6 pursuing this discovery.

7 Accordingly, Euphoria requests that the E&T Parties be ordered to pay the reasonable
8 expenses, including attorney's fees, incurred by Euphoria in connection with bringing the instant
9 Motion and efforts to obtain the outstanding discovery at issue with the exact amount to be briefed
10 before the Court within fourteen days of entry of such order or other later date deemed reasonable by
11 the Court. Further, the E&T Parties should be ordered to pay the fee award within fourteen days of
12 entry of such order setting forth the exact amount deemed reasonable by the Court.

13 **VII. CONCLUSION.**

14 Based upon the foregoing, Euphoria respectfully requests that this honorable Court:

15 1. Strike the E&T Parties' pleadings and enter default judgment with an amount of
16 judgment to be determined. That this relief be made upon the instant motion and oral argument, or
17 in the alternative, for the Court to set an evidentiary hearing as to this relief.

18 2. Find that the principals be found to be alter-egos of the parties, specifically:

- 19 a. Kristin, Alex, and Miro are deemed to be alter-egos of E&T and now parties to this
20 action in their individual capacities;
21 b. Kristin, Alex, and Miro are deemed to be alter-egos of Miral Consulting and now
22 parties to this action in their individual capacities;
23 c. Kristin, Alex and Miro are deemed to be alter-egos of CBD Supply and now parties
24 to this action in their individual capacities; and,
25 d. Kennedy, Kristin and Alex are deemed to be alter-egos of Happy Campers and now
26 parties to this action in their individual capacities.

3. Allow Euphoria to move to amend its Crossclaims and Counterclaims to add Kristin, Alex, Miro, and Kennedy as parties and add the alter-ego related facts this Court deems established.

4. Allow Euphoria to serve Alex and Kristin with subpoenas to appear at a deposition by service upon the Law Office of Mitchell Stipp.

5. Award Euphoria its attorneys' fees and costs.

DATED this 24th day of November 2021.

JONES LOVELOCK

By: /s/ Justin C. Jones

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of November 2021, a true and correct copy of the foregoing **MOTION FOR DISCOVERY SANCTIONS AGAINST E&T VENTURES, LLC, MIRAL CONSULTING, LLC, HAPPY CAMPERS, LLC, AND CBD SUPPLY CO, LLC** was served by electronically submitting with the Clerk of the Court using the electronic system and serving all parties with an email-address on record.

By /s/ Julie Linton

An Employee of JONES LOVELOCK