

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

Electronically Filed
Jan 26 2022 09:08 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 3 of 7

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

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Counsel for Petitioner

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DATED this 25th day of January, 2022.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

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Counsel for Petitioner

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

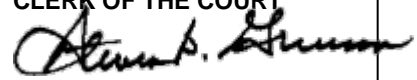
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

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

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By: /s/ Mitchell Stipp

An employee of Law Office of Mitchell Stipp



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Attorneys for Euphoria Wellness, LLC

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.

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

CERTIFICATE OF SERVICE

EUPHORIA WELLNESS, LLC, a Nevada
limited liability company,

Third- Party Plaintiff,

v.

MIRAL CONSULTING, LLC, a Nevada
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.

The undersigned hereby certifies that on the 1st day of December 2021, a true and correct
copy of the **MOTION FOR ORDER SHORTENING TIME ON EUPHORIA WELNNESS,
LLC’S MOTION FOR DISCOVERY SANCTIONS AGAINST E&T VENTURES, LLC,
MIRAL CONSULTING, LLC, HAPPY CAMPERS, LLC, AND CBD SUPPLY CO, LLC,
attached hereto as Exhibit A**, was filed and served by electronically submitting with the Clerk of
the Court using the electronic system and serving all parties with an email-address on record to the
following:

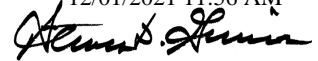
MITCHELL D. STIPP, ESQ.
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Email: mstipp@stipplaw.com
*Attorneys for Plaintiff, E&T Ventures, LLC, and
Cross-Defendants, Miral Consulting, LLC, Happy Campers,
LLC, and CBD Supply Co, LLC*

DATED this 1st day of December 2021.

/s/ Julie Linton
An Employee of JONES LOVELOCK

EXHIBIT “A”

EXHIBIT “A”



CLERK OF THE COURT

MODR

Nicole E. Lovelock, Esq.
Nevada State Bar No. 11187

Justin C. Jones, Esq.
Nevada State Bar No. 8519

Georlen K Spangler, Esq.
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Attorneys for Euphoria Wellness, LLC

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

**MOTION FOR ORDER SHORTENING
TIME ON EUPHORIA WELNNESS,
LLC'S MOTION FOR DISCOVERY
SANCTIONS AGAINST E&T
VENTURES, LLC, MIRAL
CONSULTING, LLC, HAPPY CAMPERS,
LLC, AND CBD SUPPLY CO, LLC**

HEARING DATE: DECEMBER 28, 2021
HEARING TIME: 8:30 A.M.

PETITIONER'S APPENDIX NO. 00291

JONES LOVELOCK
6600 Amelia Earhart Ct., Suite C
Las Vegas, Nevada 89119

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 moves this Honorable Court for an Order Shortening Time on Euphoria’s Motion for Discovery Sanctions (the “Motion”) against E&T Ventures, LLC (“E&T”), Miral Consulting, LLC (“Miral”), Happy Campers, LLC (“Happy Campers”), and CBD Supply Co, LLC (“CBD Supply”)(collectively “E&T Parties”). Pursuant to the current trial order, the deadline to submit rebuttal expert disclosures is December 15, 2021 and the deadline to complete discovery is January 24, 2021. The hearing on Euphoria’s Motion is currently set for January 4, 2022. As outlined in the Declaration attached hereto, Euphoria believes it would be beneficial to all parties to receive a ruling on its Motion ahead of the upcoming discovery deadlines, prompting this Order Shortening Time.

This motion is made pursuant to Rule 2.26 of the Eighth Judicial District Court Rules (“EDCR”) and based upon the following Declaration of Justin C. Jones, Esq., the pleadings and papers on file herein, and any oral argument this court may entertain on this matter.

DATED this 30th day of November 2021.

JONES LOVELOCK

By: /s/ Justin C. Jones

Nicole E. Lovelock, Esq. (11187)
Justin C. Jones, Esq. (8519)
Georlen K Spangler, Esq. (3818)
6600 Amelia Earhart Ct., Suite C
Las Vegas, Nevada 89119

Attorneys for Euphoria Wellness, LLC

JONES LOVELOCK
6600 Amelia Earhart Ct., Suite C
Las Vegas, Nevada 89119

ORDER SHORTEING TIME

It appearing to the satisfaction of the Court, and good cause appearing therefore, IT IS
HEREBY ORDERED that the hearing on **MOTION FOR DISCOVERY SANCTIONS
AGAINST E&T VENTURES, LLC, MIRAL CONSULTING, LLC, HAPPY CAMPERS,
LLC, AND CBD SUPPLY CO, LLC AND APPLICATION FOR ORDER SHORTENING
TIME** may be heard before the Honorable Judge Kushner on December 28, 2021, at the
hour of 830 am, with an Opposition to be due on or before 5:00 p.m. on December 10, 2021, and a Reply
thereto to be due on or before 5:00 pm on December 15, 2021.
Motion must be served by 12:00 p.m. on December 2, 2021.

DATED this 1st day of December 2021.

Dated this 1st day of December, 2021



HONORABLE JUDGE JOANNA KISHNER

**DBA 953 DDEE 8404
Joanna S. Kushner
District Court Judge**

Submitted By:

/s/ Justin C. Jones
Nicole E. Lovelock, Esq. (11187)
Justin C. Jones, Esq. (8519)
Georlen K Spangler, Esq. (3818)
6600 Amelia Earhart Ct., Suite C
Las Vegas, Nevada 89119

Attorneys for Euphoria Wellness, LLC

///

///

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MEMORANDUM OF POINTS AND AUTHORITIES
DECLARATION OF COUNSEL IN COMPLIANCE WITH EDCR 2.26 FOR AN ORDER
SHORTENING TIME

1. I, JUSTIN C. JONES, ESQ., declare that I am over the age of 18 and competent to testify to these matters.

2. I am an attorney duly licensed to practice law in the State of Nevada and represent Defendant/Counterclaimant/Third-Party Plaintiff Euphoria Wellness, LLC (“Euphoria”) in this matter.

3. I am a partner of the law firm of Jones Lovelock.

4. Pursuant to the Third Amended Scheduling and Trial Order in this matter, the deadline to complete discovery is January 24, 2022.

5. On October 14, 2021, this Court extended the rebuttal expert witness disclosure deadline to December 15, 2021.

6. On November 24, 2021, Euphoria filed its Motion for Discovery Sanctions (the “Motion”) against 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”).

7. The hearing on Euphoria’s Motion is currently set for January 4, 2022.

8. Hearing this motion in due course will greatly prejudice Euphoria. Specifically, on October 18, 2021, this Court ordered the E&T Parties to supplement their responses to Euphoria’s First Set of Interrogatories and First Set of Requests for Production of Documents. On October 25, 2021, the E&T Parties served their court ordered First Supplemental Responses and Objections to Requests for the Production of Documents and Interrogatories (“E&T Parties’ Court Ordered Discovery Responses”).

9. The E&T Parties’ Court Ordered Discovery Responses were wholly insufficient. Miral Consulting, Happy Campers, and CBD Supply failed to produce any documents. E&T produced mainly previously disclosed documents and only approximately 96 new pages. Further,

1 upon information and belief, the E&T Parties willfully disobeyed the Court's Order and intentionally
2 provided incorrect or misleading information.

3 10. Those responses have prejudiced Euphoria in its ability to obtain discovery and
4 litigate this case on the merits. Further, given the E&T Parties' suggestion they are judgment proof,
5 the insufficient responses have further prejudiced Euphoria in establishing alter-ego liability and
6 Euphoria will be left without the ability to recover on any judgment.

7 11. The inadequate responses and resulting prejudice necessitated Euphoria's Motion.
8 The Motion seeks sanctions that will have a substantive impact on related issues in this action, as
9 well as the manner in which the parties (and the Court) proceed in the remaining discovery period
10 and at trial.

11 12. As such, good cause exists to hear the instant Motion on shortened time as the
12 underlying issues and misconduct by the E&T Parties bear directly on the orderly administration of
13 justice and the ability to proceed on the merits in this action. Should this motion be heard twenty
14 (20) days prior to the close of discovery and should the Court grant any of the discovery sanctions
15 sought therein, all parties will be prejudiced by the shortened schedule to complete discovery.

16 13. Accordingly, good cause exists for an expedited resolution of Euphoria's Motion.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 DATED this November 30, 2021.

19 /s/ Justin C. Jones
20 JUSTIN C. JONES, ESQ.

21 ///

22 ///

23 ///

MEMORANDUM OF POINTS AND AUTHORITIES

Euphoria respectfully requests that its *Motion for Discovery Sanctions against E&T Ventures, LLC, Miral Consulting, LLC, Happy Campers, LLC, and CBD Supply Co, LLC* filed on November 24, 2021 (“Motion”) be heard on shortened time. EDCR 2.26 provides that motions to shorten time may be granted upon a “declaration under penalty of perjury or affidavit of counsel . . . describing the circumstances claimed to constitute good cause and justify shortening of time.”¹ Here, as set forth in the attached Declaration, there is good cause for Euphoria’s Motion to be heard ahead of the upcoming deadlines to afford the parties enough time to complete discovery, to avoid waste of resources and preserve judicial economy.

Specifically, on October 18, 2021, this Court ordered the E&T Parties to supplement their responses to Euphoria’s First Set of Interrogatories and First Set of Requests for Production of Documents. On October 25, 2021, the E&T Parties served their court ordered First Supplemental Responses and Objections to Requests for the Production of Documents and Interrogatories (“E&T Parties’ Court Ordered Discovery Responses”).

The E&T Parties’ Court Ordered Discovery Responses were wholly insufficient. Miral Consulting, Happy Campers, and CBD Supply failed to produce any documents. E&T produced mainly previously disclosed documents and only approximately 96 new pages. Further, upon information and belief, the E&T Parties willfully disobeyed the Court’s Order and intentionally provided incorrect or misleading information. Those responses have prejudiced Euphoria in its ability to obtain discovery and litigate this case on the merits. Further, given the E&T Parties’ suggestion they are judgment proof, the insufficient responses have further prejudiced Euphoria in establishing alter-ego liability and Euphoria will be left without the ability to recover on any judgment.

The inadequate responses and resulting prejudice necessitated Euphoria’s Motion, which is set to be heard on January 4, 2021 (twenty (20) days before the discovery cut-off date). The Motion seeks sanctions that will have a substantive impact on related issues in this action, as well as the

¹ EDCR 2.26.

1 manner in which the parties (and the Court) proceed in the remaining discovery period and at trial.
2 As such, good cause exists to hear the instant Motion on shortened time as the underlying issues and
3 misconduct by E&T Parties bear directly on the orderly administration of justice and the ability to
4 proceed on the merits in this action. Should this Motion be heard twenty (20) days prior to the close
5 of discovery and should the Court grant any of the discovery sanctions sought therein, all parties will
6 be prejudiced by the shortened schedule to complete discovery.

7 As such, Euphoria respectfully requests that the Motion be heard on shortened time.

8
9 DATED this 30th day of November 2021.

10 **JONES LOVELOCK**

11 By: /s/ Justin C. Jones

12 Nicole E. Lovelock, Esq. (11187)

13 Justin C. Jones, Esq. (8519)

14 Georlen K Spangler, Esq. (3818)

15 6600 Amelia Earhart Ct., Suite C

16 Las Vegas, Nevada 89119

17 *Attorneys for Euphoria Wellness, LLC*

18 ///

19 ///

20 ///

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA
4

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6 E&T Ventures LLC, Plaintiff(s) | CASE NO: A-19-796919-B
7 vs. | DEPT. NO. Department 31
8 Euphoria Wellness LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

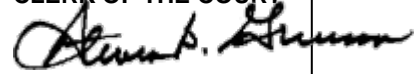
14 Service Date: 12/1/2021

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EXHIBIT C-1



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Attorneys for Plaintiff, E&T Ventures, LLC and Third-Party Defendants, Happy Campers, LLC, CBD Supply Co., LLC, and Miral Consulting, LLC

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

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.

ET AL.

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

**OPPOSITION TO MOTION FOR
DISCOVERY SANCTIONS AND
COUNTERMOTION FOR RELATED
RELIEF**

Hearing Date: December 28, 2021
Time of Hearing: 8:30 a.m.

Plaintiff, E&T Ventures, LLC (“E&T”) and Third-Party Defendants, Happy Campers, LLC (“Happy”), CBD Supply Co., LLC (“CBD”), and Miral Consulting, LLC (“Miral”),¹ by and through Mitchell Stipp, Esq., of the Law Office of Mitchell Stipp, file the above-referenced opposition/countermotion to the motion for sanctions filed by Euphoria Wellness, LLC (“Euphoria”).

¹ Happy, CBD, and Miral are referred to herein collectively as “Third-Party Defendants.” The motion filed on November 24, 2021 includes CBD in the title of the motion but does not include CBD in its definition of E&T Parties. See Motion, page 2 (lines 5-8).

1 This filing is based on the papers and pleadings on file in this case, the memorandum of points and
2 authorities that follow, the exhibits attached hereto or filed separately but concurrently herewith, and the
3 argument of counsel at the hearing.

4
5 For the reasons set forth below, the motion by Euphoria is frivolous, unnecessary, and unwarranted.
6 Euphoria's motion for sanctions is meritless and intentionally misleads the court on the compliance by E&T and
7 the Third-Party Defendants with this court's orders and their respective discovery/disclosure obligations under
8 NRCP 16.1 and NRCP 26. The motion should be denied and attorney's fees and costs awarded to E&T and
9 Third-Party Defendants under EDCR 7.60(b).

10
11 DATED this 10th day of December, 2021.

12 **LAW OFFICE OF MITCHELL STIPP**

13 /s/ Mitchell Stipp
14

15 _____
16 Mitchell Stipp
17 Nevada Bar No. 7531
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20 Telephone: 702.602.1242
21 mstipp@stipplaw.com
22 *Attorneys for Plaintiff and Third-Party Defendants*

23
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28
MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

Euphoria seeks "dispositive sanctions" against E&T and the Third-Party Defendants by striking their pleadings in their entirety pursuant to NRCP 37(b)(1)(C). See Motion, page 3(lines 14-16). If the court is unwilling to grant Euphoria's request, Euphoria wants an evidentiary hearing on contempt (based on an order to show cause, which has not been issued). Id. at (lines 16-20). Further, Euphoria requests that non-parties, Alex Taracki, Kristin Taracki, Miro Taracki, and Joe Kennedy be "deemed alter-egos of the respective named party."

PETITIONER'S APPENDIX NO. 00302

1 Id. at 4 (lines 1-3). It is not clear what Euphoria means by “respective named party,” but it appears that Euphoria
2 believes that these non-parties are alter egos of E&T and the Third-Party Defendants. Id. (lines 3-4). As part
3 of the foregoing relief, it appears that Euphoria seeks permission from the court to amend its pleadings to sue
4 these non-parties as alter egos and to assert other causes of action which it does not brief. Id. (lines 9-10).
5 Furthermore, Euphoria wants this court to order counsel of record for E&T and Third-Party Defendants to accept
6 service of process on behalf of two (2) of the non-parties (Alex and Kristin Taracki). Id. (lines 11-14). No
7 subpoena has been issued or notice provided of the same to Mr. and Ms. Taracki. And finally, Euphoria wants
8 E&T and the Third-Party Defendants to pay Euphoria’s attorney’s fees and costs. Euphoria’s motion is
9 punishment for the court granting E&T’s motion to compel and an award of attorney’s fees and costs.
10

11 To quickly review, this case is about the wrongful termination of the joint venture between E&T and
12 Euphoria. **It is important to note that the arrangement DID NOT entitle Euphoria to ANY PROFITS from**
13 **the activities of E&T at the production facility.** This fact is not in dispute. E&T agreed to package cannabis
14 product for Euphoria at cost. E&T was entitled to all profits from the production facility, which the parties
15 memorialized as monthly consulting fees booked by Euphoria that matched the sales generated by E&T.
16 Euphoria purportedly conducted an inventory audit of the production facility between March 11, 2019 and
17 March 14, 2019. The **only evidence** of any variances (difference between physical inventory and inventory
18 reported in METRC)² is the spreadsheet attached to the License Incident Report made by Nicole Lovelock to
19 the Nevada Department of Taxation (“DOT”) on March 15, 2019. In response to the investigation by DOT
20 arising from the report, Euphoria blamed E&T for the variances.
21

22 Euphoria **locked-down the production facility** at 8am on March 15, 2019 and prohibited E&T from
23 accessing the same (including even to remove its property and business records). This fact is also not in dispute.
24 On April 4, 2019, Euphoria communicated to the state its “Complete Investigation Results.” **E&T was not**
25 **provided an opportunity to explain the variances or confirm the results of Euphoria’s investigation.** See
26 Appendix (pages 19-22). On May 22, 2019, Euphoria (though its managing director, Darlene Purdy), terminated
27
28

PETITIONER'S APPENDIX NO. 00303

² METRC is the “seed to sale” system used by the state to track cannabis product.

1 the joint venture between E&T and Euphoria. Since then, E&T has ceased operating as a going concern.
2 However, Euphoria has been operating the production facility and retaining all profits.

3
4 On or about July 9, 2019, the state accepted Euphoria's plan of correction. *The case was closed.*
5 Euphoria has not been disciplined by the state, and its cannabis production licenses are not in any jeopardy.
6 Euphoria also retained all furniture, fixtures, and equipment provided by E&T for the operation of the production
7 facility. To summarize, Euphoria conducted an audit, reported the results to the state, blamed E&T for the
8 variances, terminated the joint venture agreement with E&T (while retaining E&T's property), and re-started
9 the business. Despite being in a more favorable position financially, Euphoria has alleged a "grand conspiracy"
10 to harm Euphoria by E&T (with the supposed help of Miral, Happy, CBD and Alex, Kristin and Miro Taracki
11 and Joseph Kennedy). *There is no dispute that Euphoria has not been harmed as a result of the variances.* If
12 Euphoria was not harmed by the variances, what does Euphoria hope to gain by the remedy of alter ego?

13
14 Euphoria filed its answer, counterclaims and crossclaims on September 24, 2019. Paragraphs 53-56 of
15 this filing pertains to "Alter-Egos." See id., pg. 11. Judge Allf determined that Euphoria failed to plead alter
16 ego as a remedy properly but was willing to consider such remedy if Euphoria had evidence (more than wild
17 accusations). See Notice of Entry, filed on January 13, 2020. In addition to alter ego claims, Euphoria asserted
18 two (2) direct claims against Third-Party Defendants, which survived Judge Allf's rulings: civil conspiracy and
19 concert of action.

20 Actionable civil conspiracy arises where two (2) or more persons undertake some concerted action with
21 the intent "to accomplish an unlawful objective for the purpose of harming another," and damage results. Consol.
22 Generator-Nevada, Inc. v. Cummins Engine Co., 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). Thus,
23 Euphoria is required to allege an explicit or tacit agreement between the alleged conspirators. Id. Euphoria has
24 not alleged there was any agreement between the "E&T Parties." The claim for concert of action also requires
25 some agreement. Ges, Inc. v. Corbitt, 117 Nev. 265 (Nev. 2001). For this cause of action, Euphoria also has
26 failed to allege there was any agreement between the "E&T Parties." Upon a motion to dismiss before Judge
27 Gonzalez, the court declined to dismiss the claims. See Notice of Entry filed on October 28, 2020. The court
28 deferred to Judge Allf and Euphoria's request to continue discovery on alter ego claims; however, Judge

1 Gonzales specifically noted on the record that she “would not have made that decision [by Judge Allf].” It is
2 clear that all elements for civil conspiracy and concert of action have not been pled properly. This review of
3 the case history is important because the claims for civil conspiracy and concert of action are the only reasons
4 Happy, Miral, and CBD are parties.

5
6 The deadline imposed by the court to amend pleadings/add parties expired on December 1, 2020—more
7 than twelve (12) months ago. See Stipulation and Order, filed on December 5, 2020 (pages 3-4, Sections III and
8 IV). Euphoria was aware of the deadline and voluntarily entered into a stipulation to extend discovery and trial
9 deadlines expressly except for the deadline to amend pleadings/add parties. Id.; see also Gallego v. State, 117
10 Nev. 348, 368, 23 P.3d 227, 241 (2001) (waiver requires the knowing and voluntary relinquishment of a right).
11 Euphoria had until December 1, 2020 to make its case against the Third-Party Defendants and to re-assert the
12 same or new claims against non-parties based on alter ego.

13 14 **II. Argument**

15 **A. Euphoria fails to comply with EDCR 2.30(a), NRCP 15(a) and NRCP 16(b).**

16
17 EDCR 2.30(a) expressly provides that “[a] copy of a proposed amended pleading must be attached to
18 any motion to amend the pleading.”). Euphoria’s motion does not comply as no proposed amended pleading is
19 attached (despite requesting the court to allow it to amend). Under NRCP 15(a), a party should be granted leave
20 to amend a pleading “when justice so requires” and the proposed amendment is not futile. However, when a
21 party seeks to amend a pleading after the deadline previously set for seeking such amendment has expired,
22 NRCP 16(b) requires a showing of “good cause” for missing the deadline. Euphoria’s sole basis for requesting
23 to amend its pleading is discovery sanctions authorized by NRCP 37(b). Even if there was some basis for
24 sanctions, NRCP 37(b) does not allow amendments to pleadings to add parties and additional causes of action
25 as a remedy.

26 ///

27 ///

1 **B. E&T and Third-Party Defendant have complied with all Orders from the Court.**

2 Euphoria filed its motion to compel four (4) months after the parties completed their meet and confer
3 under EDCR 2.34 (and eight (8) months after the deadline to amend pleadings/add parties expired). After
4 substantial briefing and a half-day hearing on the matter, the court granted in part and denied in part Euphoria's
5 motion. See Notice of Entry, filed on October 18, 2021. According to the court's order, Mr. Kennedy was
6 required to appear for a personal deposition and the PMK's for Nye Natural Medicinal Solutions, LLC ("Nye")
7 and Valjo, Inc. ("Valjo"), were required to re-appear for continued depositions to answer specific questions
8 (which were not answered based on the instruction of counsel). Id. On November 19, 2021, Mr. Kennedy
9 appeared for and completed his personal deposition and as the PMK's for Nye and Valjo. Euphoria does not
10 contend otherwise in its motion. Further, E&T and the Third-Party Defendants were ordered **to supplement**
11 **their responses** to specific written discovery as identified in Euphoria's motion. Id. at 9-10. And finally,
12 **Euphoria's request for contempt and attorney's fees was expressly denied.** Id. at 13 (line 5). It was the
13 general understanding of E&T and the Third-Parties that the court believed supplementing their discovery
14 responses at this stage of the litigation was likely required under NRCP 16.1 regardless.

15
16 E&T and the Third-Party Defendants supplemented **all of their discovery responses** (not just the specific
17 responses requested by Euphoria). See Appendix (Pages 1-347), **Exhibits 1-5.** While these parties had twenty-
18 one (21) days to supplement after notice of entry of the court's order (as stipulated by the parties at the hearing),
19 they voluntarily agreed to respond on or about October 25, 2021 (based on Euphoria subsequent motion that it
20 needed "additional time" to disclose its expert and rebuttal experts). Noteworthy, even after the court extended
21 the expert deadlines, **Euphoria disclosed no report.**³

22
23 Euphoria's objection to the supplemental discovery responses appears substantially to be with the
24 production of documents. In its motion, Euphoria sought supplemental production as follows:

25 **Category 1: Ownership, operations, and financial documents.**

26
27
28 ³ Euphoria did not disclose an expert report on damages because Euphoria actually benefited from the termination of the
joint venture with E&T. Euphoria retained E&T's property and re-started the production facility at substantial profit.

E&T: RFP Nos. 6-14
CBD Supply: RFP Nos. 1-2, 5-13, 26
Happy Campers: RFP Nos. 1, 5-13, 26
Miral Consulting: RFP Nos. 1, 5-13, 26

Category 2: The Department of Taxation's investigations, audits, and complaints.

E&T: RFP Nos. 2, 5

Category 3: Documents and information relating to Euphoria.

E&T: RFP Nos. 15-18
CBD Supply: RFP Nos. 14, 18, 22
Happy Campers: RFP Nos. 14, 18, 22
Miral Consulting: RFP Nos. 14, 18, 22

Category 4: Documents and information relating to the equipment

E&T: RFP Nos. 19-20
CBD Supply: RFP Nos. 23-25
Happy Campers: RFP Nos. 23-25
Miral Consulting: RFP Nos. 23-25

Category 5: Documents and information relating to product test results and the variances.

E&T: RFP No. 21

Category 6: E&T's documents and information relating to third parties

E&T: RFP Nos. 22, 29-33

Category 7: The Third-Party Defendants' documents and information relating to the parties in this litigation

1 *CBD Supply:* RFP Nos. 15-17, 19-21

2 *Happy Campers:* RFP Nos. 15-17, 19-21

3 *Miral Consulting:* RFP Nos. 15-17, 19-21

4
5 **Category 8: Kristin Ehasz's Declaration.**

6 *CBD Supply:* RFP Nos. 23-25

7 *Happy Campers:* RFP Nos. 22, 23

8 *Miral Consulting:* RFP Nos. 23-26

9
10 For clarity, based on Euphoria's requests above, E&T was asked to supplement its responses to RFP Nos. 2, 5,
11 6-22, and 29-33; CBD was asked to supplement its responses to RFP Nos. 1-2 and 5-26; Happy was asked to
12 supplement its responses to RFP Nos. 1 and 5-26; and Miral was asked to supplement its responses to RFP Nos.
13 1 and 5-26. The court did not award attorney's fees and costs and did not find these parties in contempt.

14
15 As a preliminary matter, the fact that documents are not physically produced in response to a request
16 for production is not evidence of discovery misconduct. A party is only required to produce non-privileged
17 records in its possession, custody, or control in response to a discovery request. See NRCP 26; 34(a)(1). Further,
18 referencing documents by bates number previously produced by others is acceptable production. Under these
19 circumstances, the number of actual pages physically produced means nothing. For example, Euphoria was
20 required to supplement its discovery responses (including to forty-five (45) requests for production) in response
21 to E&T's motion to compel (see Order filed on November 16, 2021), and in response to the court's order,
22 Euphoria produced only thirty-three (33) pages of additional records. See Supplemental Disclosures attached
23 as **Exhibit 6** to Appendix (pages 348-395). **Nothing can be inferred by the number of pages physically**
24 **produced by a party (or non-party).**

25
26 E&T and the Third-Party Defendants **do not** have cannabis licenses. That fact is undisputed (despite
27 Euphoria's contention in its motion to the contrary). The cannabis production licenses are owned by Euphoria.
28 The Third-Party Defendants **are not parties** to the joint venture between E&T and Euphoria and do not have any

relationship with Euphoria. That fact is also undisputed. The Third-Party Defendants were affiliated with Alex and Kristin Taracki. After E&T was unlawfully evicted by Euphoria from the production facility, many of E&T's business records were confiscated and retained by Euphoria.⁴ Fortunately, since Euphoria is the cannabis license-holder and is regulated by the Cannabis Compliance Board ("CCB") and DOT, Euphoria is required to file financial reports (including during the time E&T operated the production facility). NCCR 6.135 (as adopted by the CCB) expressly provides as follows:

6.135 Quarterly reporting concerning production, purchases and sales of cannabis and cannabis products. Each cannabis cultivation facility, cannabis production facility and cannabis sales facility shall submit the report required pursuant to NRS 372A.285 to the Board on or before the 30th day of each January, April, July and October containing information concerning the 3 months immediately preceding the date of the report. Each cannabis cultivation facility, cannabis production facility and cannabis sales facility shall submit such a report regardless of whether any purchases or sales have occurred.

NRS 372A.285(2) (as referenced in NCCR 6.135 above) provides the details on the report as follows:

2. Each cannabis production facility shall submit a report to the Department that includes the following information, reported separately for each calendar month included in the report:
 - (a) The amount of cannabis purchased;
 - (b) The amount of cannabis products produced;
 - (c) Sales by product type;
 - (d) Prices by product type; and
 - (e) Such other information as the Department may require.

The court should note that at the time Euphoria filed its motion for sanctions Euphoria had not disclosed any of these reports (despite a stipulated protective order being in place and an obligation to do so under NRCP 16.1). Further, E&T has asked Euphoria to produce financial information concerning the production facility and Euphoria has declined without a valid basis under Nevada law to do so. See Exhibit 7 to Appendix (pages 396-430) (e.g., RFP Nos. 50 and 51 and Euphoria's Responses on pages 404-412).⁵ While

⁴ Even if available, Euphoria is generally not entitled to tax returns and financial records (especially if Euphoria is not entitled to any profits from the facility). See Hetter v. Eighth Judicial Dist. Court, 110 Nev. 513, 520, 874 P.2d 762, 766 (1994) (recognizing that tax returns and financial records are relevant to the matter of punitive damages, not privileged, and discoverable so long as the plaintiff demonstrates "some factual basis" supporting punitive damages). As pointed out, Euphoria also has no damages (because it is operating the facility and retaining all profits). Further, limited liability companies which are disregarded or pass-through entities for federal income tax purposes are not required to file a partnership return. Profits and losses can be reported on Schedule C of the member's personal income tax returns (which is the case here).

⁵ E&T intends to file a motion to compel. The parties completed their meet and confer under EDCR 2.34 on December

1 Euphoria continues to complain about the lack of data from E&T, Euphoria has direct access to METRC and
2 possession (because it filed the reports) of all relevant inventory and sales data with respect to the production
3 facility at issue. Further, Ms. Purdy, the managing director of Euphoria, was the cannabis agent responsible
4 for inventory controls under NAC 453D.426 (now NCCR 6.080) while E&T operated the production facility.
5 In other words, Ms. Purdy as the agent for Euphoria was responsible for any variances (deference between
6 physical inventory and inventory reported in METRC). This fact (which is not in dispute) was confirmed by
7 Keoki Allen during her deposition as the PMK for the CCB and DOT. Ms. Allen was also the person responsible
8 for investigating the variances claimed by Euphoria.⁶
9

10 The CCB and DOT disclosed all investigative records in response to E&T's subpoena. As Euphoria is
11 aware, all such investigations are closed, and no action was taken by the state against E&T. Euphoria was
12 asked to submit and obtain approval of a plan of correction. There is nothing more to produce other than what
13 the state produced on the matters of the investigation. **Even if there were actual variances, Euphoria was not**
14 **harmed**. The duplicity of Euphoria should be clear to the court. Euphoria refused to provide the state's
15 investigative file in response to E&T's discovery requests based on a lack of a protective order. After a protect
16 order was entered, Euphoria still claimed confidentiality as to the state's files. Rather than battle Euphoria to
17 produce discovery, E&T provided notice of its subpoena to the state, and Euphoria filed a motion for a protective
18 order (which motion was denied by Judge Gonzalez). See Order filed on May 7, 2021. Unfortunately, it appears
19 E&T is exactly in the same position regarding financial matters concerning the production facility.
20

21 **C. E&T and Third-Party Defendants provided true and accurate responses to all discovery**
22 **requests.**

23 As expected, Euphoria also appears to have issues with responses to certain interrogatories. Although
24 Euphoria claims they are inconsistent with the record, Euphoria does not provide any authority for its position
25

26 9, 2021. During the discovery conference, Euphoria failed to agree to supplement any of its discovery responses. As the
27 court should see, Euphoria's objections are based on relevancy. E&T's damages include the profit earned by Euphoria
28 after it terminated the joint venture and commenced operating the production facility. The joint venture was a five (5)
year term.

⁶ Given Euphoria's failure to comply with disclosure and discovery obligations, E&T is forced to obtain financial
information on the production facility from the Nevada Department of Taxation. See Exhibit 8 to Appendix (pages 431-
439).

(including to “the record” it believes contradicts the supplemental discovery responses).

1. Kristin Taracki’s Verification on Behalf of E&T included with E&T’s Supplemental Discovery Responses was accurate.

Euphoria complains that Ms. Taracki’s verification is false and/or E&T’s counsel has violated his ethical duties in connection with such responses. To remind the court, neither Mr. Taracki nor Mrs. Taracki is a party to this case. The primary basis for Euphoria’s argument is E&T’s supplemental response to Euphoria’s Interrogatory No. 1.

INTERROGATORY NO. 1:

Please provide the name and current addresses of the principals of E&T.

RESPONSE TO INTERROGATORY NO. 1:

E&T incorporates general objections herein. The term “principals” is not defined. NRCP 26 does not permit discovery of the personal addresses of members and managers of E&T (assuming they are principals), since such matters are not relevant and cannot lead to the discovery of admissible evidence. The members and managers of E&T are not parties to this case. Discovery may not invade the right to privacy of these individuals without weighing the needs of the case, the amount in controversy, the importance of the issues at stake, the potential for finding relevant material, and the importance of the proposed discovery in resolving the issues.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:

For purposes of responding to this Interrogatory, E&T will assume the term “principals” mean the members of E&T. The members of E&T are Alex and Kristin Taracki. E&T is informed and believes based on available records for E&T that Mr. and Mrs. Taracki’s address is as follows:

2244 Summerwind Circle
Henderson 89053

The supplemental response is true and accurate. See Exhibit 2 to Appendix (pages 207-247, specifically page 234). The undersigned counsel for E&T and the Third-Party Defendants does not represent Mr. or Mrs. Taracki. Further, Mr. and Mrs. Taracki are no longer affiliated with E&T.⁷

///

///

⁷ Euphoria has never provided notice of any subpoena to be served on Alex, Kristin or Miro Taracki. It is unclear what if anything Euphoria attempted to serve at the purported address of Alex and Kristin Taracki.

2. E&T and Third-Party Defendants' supplemental responses regarding their respective relationships were accurate.

Euphoria claims the fact that E&T has not identified any communications with Mr. Kennedy is inconsistent with “the record” in this case. Euphoria points to E&T’s supplemental response to Euphoria’s RFP No. 28 (as referenced in footnote 24 as part of Euphoria’s motion). Below is the actual request, initial response and supplemental response by E&T:

DOCUMENT REQUEST NO. 28:

Produce any Document in Your possession, custody, or control regarding any of Your communications with Joseph Kennedy regarding this litigation.

RESPONSE TO DOCUMENT REQUEST NO. 28:

Subject to and without waiving the foregoing objections, E&T has not identified any documents that are responsive to this request. However, discovery is on-going, and E&T reserves the right to supplement its response.

SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 28:

After good faith efforts, E&T has not identified any documents responsive to this request. Discovery is on-going, and E&T reserves the right further to supplement its response to Document Request No. 28.

See **Exhibit 2** to Appendix (pages 207-247, specifically page 230). Euphoria intentionally misrepresents the scope of the discovery request and ignores contrary evidence which undermines its position.

At Mr. Kennedy's deposition as the PMK for Nye, Mr. Kennedy testified that Nye did not have any documents or communications concerning E&T, the proposed transaction between E&T and Nye was not reduced to writing, and Mr. Kennedy's dealings as an agent for Nye were with Mr. Taracki (on behalf of E&T) and were entirely verbal. See Pages 29-32 of Deposition Transcript included as part of **Exhibit 9** to Appendix (pages 440-481, specifically 448-449). Further, at Mr. Kennedy's deposition as the PMK for Valjo, Mr. Kennedy testified that all documents were produced concerning the loan from Valjo to E&T and any communications with E&T regarding the same were verbal. See Pages 47-48 of Deposition Transcript included as part of **Exhibit 10** to Appendix (pages 482-538, specifically 495); see also Responses to Discovery by Valjo attached as **Exhibit 11** to Appendix (pages 539-564). It is unclear how or why Euphoria believes Mr. Kennedy's appearance at a hearing on June 27, 2019 in this case makes E&T's supplemental response regarding written

PETITIONER'S APPENDIX NO. 00312

1 communications false or misleading.⁸

2
3 Happy was previously a dissolved limited liability company. The supplemental discovery responses
4 by Happy are accurate. Happy was revived on or about July 29, 2021. Mr. Kennedy testified to these facts
5 accurately on November 19, 2021. Euphoria believes the response to Euphoria's Interrogatory No. 8 is false.
6 Below is the actual request, initial response, and supplemental response:

7
8 INTERROGATORY NO. 8:

9 Please provide a detailed description of the nature and extent of Happy Campers' business
10 functions and activities.

11
12 RESPONSE TO INTERROGATORY NO. 8:

13 HAPPY incorporates general objections herein. The interrogatory is compound. Further, HAPPY is
14 not a party to the Joint Venture Agreement. Subject to and without waiving the foregoing objections,
15 Happy is a Nevada limited liability company, which has been dissolved.

16
17 SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8:

18 HAPPY attempted to enter the business of cannabidiol (CBD) extraction. HAPPY's efforts were not
19 successful. HAPPY was previously dissolved. HAPPY is not conducting business.

20 See Exhibit 3 to Appendix (pages 248-277, specifically page 271). Nothing about Happy's supplemental
21 response is false or misleading. Just because Happy was revived does not mean it is also a going concern.

22
23 Euphoria further claims that Happy's response to Euphoria's Interrogatory No. 9 is false. Below is the
24 actual request, initial response, and supplemental response:

25
26 INTERROGATORY NO. 9:

27 Please provide a detailed description of the nature and extent of Happy Camper's
28 relationship with E&T.

29
30 RESPONSE TO INTERROGATORY NO. 9:

31 HAPPY incorporates general objections herein. HAPPY is not a party to the Joint
32 Venture Agreement. NRCP 26 does not permit discovery of HAPPY's relationship with
33 E&T, since such matters are not relevant and cannot lead to the discovery of admissible
34 evidence. Discovery may not invade HAPPY's right to privacy without weighing the
35 needs of the case, the amount in controversy, the importance of the issues at stake, the
36 potential for finding relevant material, and the importance of the proposed discovery
37 in resolving the issues.

40 ⁸ On November 19, 2021, Mr. Kennedy appeared for and completed the continued depositions as the PMK's for Nye and Valjo.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:

HAPPY does not have a relationship with E&T. However, Alex and Kristin Taracki were members of HAPPY and purported members of E&T. Joseph Kennedy was a member of HAPPY, but upon information and belief, Mr. Kennedy was not a manager or member of E&T.

See id. (page 272). Happy did not provide that it had “no relationship” with E&T as falsely claimed by Euphoria in its motion. The fact that Mr. and Mrs. Taracki as members of E&T used \$300,000.00 from the loan by Valjo, Inc. to invest in Happy does not mean there is any “relationship” between E&T and Happy. Valjo, Inc. made a loan to E&T (making Valjo, Inc. the “lender” and E&T the “borrower”). E&T has every right to use any portion of the loan proceeds (including distributing the same to Alex and Kristin Taracki, who used the same to invest in Happy). Again, there is nothing false or inaccurate about Happy’s supplemental response.⁹

Counsel for E&T and Third-Party Defendants has never represented to Euphoria’s attorneys that Third-Party Defendants “were created as ancillary entities to E&T.” Counsel for E&T and Third-Party Defendants has represented to Euphoria’s attorneys that litigation over whether Third-Party Defendants are alter egos of E&T is ancillary to the dispute between the Euphoria and E&T—the actual parties to the joint venture agreement. Given that these entities are not going concerns, it is inexplicable why or how the remedy of alter ego helps Euphoria. Again, alter ego is a remedy (not a cause of action). If Euphoria is the prevailing party and judgment is entered against E&T, it does not matter whether Third-Party Defendants are alter egos of E&T. E&T’s only assets are the value of its claims in this case against Euphoria. The Third-Party Defendants have no assets from which to pay any judgment against E&T in favor of Euphoria. Where is the “lack of justice” by continuing to recognize the separate existences of E&T and Third-Party Defendants as LLC’s? Gardner v. Eighth Judicial Dist. Court of Nev., 405 P.3d 651 (Nev. 2017) (alter ego theory applies to LLC’s to do justice whenever it appears the protections provided by the LLC under NRS 86 are abused).

If Euphoria has real concerns over the supplemental discovery responses by Third-Party Defendants, Euphoria still has every right before the end of discovery to conduct depositions (including under NRCP 30(b)(6) for E&T and Third-Party Defendants). **To date, Euphoria has failed to do so.** It seems like depositions would

⁹ Euphoria also complains about the failure to produce operating agreements by E&T and Third-Party Defendants. There are none. Operating agreements for limited liability companies are not required to be adopted. NRS 86.286(1).

1 be the best way to get clarification on any supplemental responses. The only depositions taken by Euphoria in
2 this case have been with non-parties, Joseph Kennedy personally and Mr. Kennedy as the person most
3 knowledgeable for Valjo and Nye. Again, Mr. Kennedy, Valjo and Nye are not parties to this case.

4
5 **D. There is no basis for an award of any discovery sanctions (including striking the pleadings of**
6 **E&T and Third-Party Defendants).**

7
8 District courts in Nevada may sanction abusive litigation practices through their inherent powers. Young
9 v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). A court's inherent power to sanction
10 is designed "to protect the dignity and decency of its proceedings and to enforce its decrees, and thus it may
11 issue contempt orders and sanction or dismiss an action for litigation abuses." Halverson v. Hardcastle, 123 Nev.
12 245, 261, 163 P.3d 428, 440 (2007). Generally, "[the appellate courts] will not reverse sanctions absent a clear
13 showing of abuse of discretion." Hamlett v. Reynolds, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998). However,
14 case-ending sanctions require "a somewhat heightened standard of review." Foster v. Dingwall, 126 Nev. 56,
15 65, 227 P.3d 1042, 1048 (2010). That somewhat-heightened review requires a determination whether (1) the
16 sanction is just and relates to the specific conduct at issue; and (2) the district court engaged in an express,
17 thoughtful, and preferably written analysis of all material factors. Id.; Young, 106 Nev. at 92-93, 787 P.2d at
18 779-80. Such factors might include:

19
20 [1] the degree of willfulness of the offending party, [2] the extent to which
21 the non-offending party would be prejudiced by a lesser sanction, [3] the
22 severity of the sanction of dismissal relative to the severity of the
23 discovery abuse, [4] whether any evidence has been irreparably lost, [5]
24 the feasibility and fairness of alternative, less severe sanctions, such as an
25 order deeming facts relating to improperly withheld or destroyed evidence
26 to be admitted by the offending party, [6] the policy favoring adjudication
27 on the merits, [7] whether sanctions unfairly operate to penalize a party
28 for the misconduct of his or her attorney, and [8] the need to deter both the
parties and future litigants from similar abuses.

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

E&T and the Third-Party Defendants have not violated any order of the court (including the order to

1 supplement discovery responses). First, the subject order does not require any party to produce a document that
2 does not exist (emails, operating agreements, tax returns, etc.). Further, records which were retained by Euphoria
3 when it shut-down the production facility and evicted E&T remain in the exclusive possession, custody, or
4 control of Euphoria. If the court believes E&T and Third-Party Defendants have committed misconduct,
5 Euphoria does not explain why a lesser sanction would be inadequate. Third, given the evidence in
6 the record concerning Euphoria's discovery misconduct and the fact that Euphoria suffered no harm as a result
7 of the variances, the discovery sanctions requested by Euphoria are far more severe than the alleged
8 misconduct. Fourth, no evidence has been lost or destroyed. Financial information concerning E&T and
9 Third-Party Defendants is available from non-parties. Euphoria has had more than ample time to conduct third-
10 party discovery. Further, Euphoria has access to METRC and submitted reports of production activities
11 (including sales) to the state for the production facility. Under these facts, it is difficult to understand Euphoria's
12 request for punishment. Fifth, alternative sanctions exist if the court actually believes there was misconduct. It
13 is difficult to propose any alternatives given the lack of any misconduct. Sixth, striking the pleadings would be
14 entirely contrary to Nevada's policy favoring adjudication on the merits, particularly in this case, where actual
15 claims against Third-Party Defendants have not been properly pled, Third-Party Defendants are not parties to
16 the agreement between E&T and Euphoria, and Euphoria has no damages. E&T is not aware of any law, rule
17 or authority that would allow the district court to deem non-parties like Alex, Kristin and Miro Taracki together
18 with Joe Kennedy alter egos. Seventh, counsel for E&T and Third-Party Defendants has not violated any rules
19 (including rules of professional conduct). Mr. Stipp is not withholding knowledge of the addresses for Mr. and
20 Ms. Taracki. There is no duty to create records which do not exist or to accept service of process on parties an
21 attorney does not represent. Euphoria appears to be making up its own rules of professional conduct. Finally,
22 deterrence would not be best served by striking the pleadings because Euphoria is seeking sanctions far in excess
23 of the conduct sought to be punished. The reality is deterrence is not necessary because no discovery misconduct
24 has occurred.

25 ///

26 ///

27 ///

PETITIONER'S APPENDIX NO. 00316

1 **III. Conclusion**

2 For the reasons set forth above, Euphoria's motion should be denied, and the court should award E&T
3 and Third-Party Defendants their attorney's fees and costs.¹⁰ The motion is frivolous and was designed purely
4 to harass E&T and Third-Party Defendants.

5
6 **DECLARATION OF MITCHELL STIPP**

7
8 The undersigned, Mitchell Stipp, declares under penalty of perjury as follows:

9 1. I am counsel of record in the above referenced case for Plaintiff and Third-Party Defendants.

10 2. I submit the above-titled declaration in support of the opposition/countermotion. I have personal
11 knowledge of the discovery dispute briefed therein unless otherwise qualified by information and belief or such
12 knowledge is based on the record in this case, and I am competent to testify thereto, and such facts are true and
13 accurate to the best of my knowledge and belief.

14 Dated this 10th day of December, 2021.

15 */s/ Mitchell Stipp*

16 _____
Mitchell Stipp, Esq., Counsel for Plaintiff and Third-Party Defendants

17
18
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20
21
22
23
24
25
26
27 ¹⁰ Matters related to a privilege log are addressed in a separate motion by Euphoria (despite also being briefed in Euphoria's
28 motion for sanctions). For this reason, they are not addressed here. In short, E&T and Third-Party Defendants have not
asserted the attorney-client and/or work product privilege in their supplemental responses to any discovery requests.
Euphoria's separate motion is entirely frivolous, and like the motion for sanctions, was filed to punish E&T for its successful
motion to compel and determination by the court that E&T is entitled to its attorney's fees and costs.