IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.

Electronically Filed
Aug 23 2022 11:03 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

RONALD SWANSON, an individual,

Petitioner,

v.

EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark; and THE HONORABLE SUSAN JOHNSON, District Judge, Dept. 22

Respondent,

and

SONIC CAVITATION, LLC, a Nevada limited liability company; and GARY GEORGE, an individual,

Real Parties in Interest.

PETITIONER'S APPENDIX
(VOLUME I OF II)
(APP. 001 - APP. 202)

Jon T. Pearson (10182)
Erica C. Medley (13959)
Brian D. Downing (14510)
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Docket 85205 Document 2022-26271

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3	Sonic Cavitation, LLC's Answer to Ron Swanson's Amended Complaint in Intervention and Counterclaim	2019-06-25	I	App. 047 – App. 071

Dated: August 23, 2022

/s/ *Jon T. Pearson*
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Counsel for Petitioner

CERTIFICATE OF SERVICE

I certify that on August 23, 2022, I submitted the foregoing **PETITIONER'S APPENDIX (VOLUME I OF II) (App. 001 – App. 202)** for filing through the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

David T. Blake
PO Box 1589
Logandale, Nevada 89021
David.blake@gmail.com
Counsel for Sonic Cavitation, LLC and Gary George

I further certify that a copy of this document will be personally delivered as follows:

Honorable Susan Johnson
Department 22
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Valerie L. Larsen
An Employee of Holland & Hart LLP

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

MOMIS-RIVERS, LLC, a Delaware Limited Liability Company, Plaintiff, v. SONIC CAVITATION, LLC, a Nevada Limited Liability Company; and Does 1 - 10, unidentified, Defendants.	Case No.: A-16-740207-C Dept. No.: VI **RONALD SWANSON'S MOTION TO INTERVENE AS A PLAINTIFF ON AN ORDER SHORTENING TIME**

Ronald Swanson ("Mr. Swanson") respectfully moves this Court to allow him to intervene in this case as a plaintiff. Mr. Swanson is entitled to intervene as a matter of right pursuant to NRCP 24(a) because he possesses an ownership interest in an assignment of legal rights – entitled Loan Acquisition Agreement, attached hereto as Exhibit 1 – with the currently named plaintiff, Momis Rivers, LLC ("Momis Rivers" or "plaintiff"). Plaintiff is subject to this Court's jurisdiction and is so situated that the disposition of the action without Mr. Swanson included as a party will impede or impair Mr. Swanson's ability to protect his interests. Mr. Swanson is also entitled to intervene permissively pursuant to NRCP 24(b) because his interests and the underlying action have common questions of law and fact.

Plaintiff Momis Rivers is an investor in the defendant company. The underlying

DEPARTMENT VI
NOTICE OF HEARING 30
DATE 3-7-18 TIME 8 AM
APPROVED BY

complaint alleges six causes of action of fraud, securities violations, conversion, and the like against defendant Sonic Cavitation, LLC. Momis Rivers, LLC is Mr. Bruce Yates's investment vehicle which holds the litigation rights against this defendant. For a host of reasons, including litigation uncertainty and expense, Mr. Yates assigned those litigation rights to Intervener Ronald Swanson. Mr. Swanson then hired Nevada attorney Theresa Mains, Esq. to assert the rights by authorizing her to file the current underlying lawsuit.

For over a year and a half, Ms. Mains represented Mr. Swanson and prosecuted the matter on Mr. Swanson's behalf. When Ms. Mains and Mr. Swanson had a recent breakdown in their attorney-client relationship, Ms. Mains fired Mr. Swanson as a client, yet she refused to allow substitute counsel or to withdraw from the case. She now remains in the case without client authority and against the client's best interests. Mr. Swanson has now hired new counsel and seeks to intervene.

Mr. Swanson also respectfully seeks an order shortening time to schedule a hearing on this motion before any Court orders are issued or *ex parte* motions are filed relating to the case that could affect Mr. Swanson's rights in any way, including an alleged pending or impending stipulation to dismiss. Mr. Swanson believes, on information and belief, that his former attorney Ms. Mains – who still purports to represent Momis Rivers – intends to dismiss the case via a Rule 41 stipulation against Mr. Swanson's interests and directives.

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This motion is made and based on NRCP 24, NRS 12.130, the papers and pleadings on file herein, the affidavit of Joseph R. Ganley, the attached points and authorities, and any arguments of counsel allowed at the hearing.

DATED this 7th day of March, 2018.

HUTCHISON & STEFFEN, PLLC

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Attorneys for intervener
Ronald Swanson

ORDER SHORTENING TIME

GOOD CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED, that the time for the hearing on the **RONALD SWANSON'S MOTION TO INTERVENE AS A PLAINTIFF ON AN ORDER SHORTENING TIME** be shortened to the 13 day of March, 2018, at the hour of 8:30 a.m. in Department 6, Courtroom 15B.

DATED this 7 day of March, 2018.

Elissa F. Cadish

DISTRICT COURT JUDGE ELISSA CADISH

DECLARATION OF JOSEPH R. GANLEY

PURSUANT TO NRS § 53.045

I, Joseph R. Ganley, hereby declare under the penalty of perjury:

1. I am a resident of Nevada and over 18 years old.

2. I am a partner with Hutchison & Steffen, PLLC, attorneys of record for intervener Ronald Swanson ("Mr. Swanson") in this case.

3. I make this declaration in support of Ronald Swanson's Motion to Intervene As A Plaintiff On An Order Shortening Time.

4. An order shortening time is requested because Mr. Swanson believes, on information and belief, that his former attorney, Theresa Mains, Esq., who still purports to represent plaintiff Momis Rivers, intends to dismiss the case via a Rule 41 stipulation at any moment, which clearly would be against Mr. Swanson's interests and directives.

5. If this motion were heard in the regular course, the hearing would be set too far out for the this motion to be heard before the case was irreversibly compromised, and the case could be improperly dismissed by that point (wittingly by counsel, but unwittingly by the Court).

6. For this reason, Mr. Swanson needs his intervention motion heard as soon as possible to prevent any compromise of his pending lawsuit.

7. No undue prejudice will occur to any existing party because the case is currently not being prosecuted, no trial set, and no pending discovery or motions are set to be heard.

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8. This declaration is made pursuant to EDCR 2.26.

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

Executed on date: 3.7.18

Signature

3.7.18 Joseph R. Ganley
Name Printed

Points and Authorities

1. Procedural and Background Facts

This breach of contract action has moved slowly from inception because defendants failed to respond to the complaint for over a whole year. Plaintiff filed its complaint on July 19, 2016, defendant was served on July 22, 2016, its response date came and went on or about August 11, 2016, and plaintiff obtained its default on August 29, 2016. Plaintiff was preparing to convert its default into a default judgment when defendant showed up long after service. That resulted in an unauthorized voluntary set-aside of the default by plaintiff's counsel, and a break-down in relations between Mr. Swanson and Ms. Mains. Counsel then fired her client, but stayed on as counsel in the case without Mr. Swanson's authority.

Mr. Swanson now understands and believes that Ms. Mains intends inexplicably and surreptitiously to join with defendant's counsel to dismiss the matter voluntarily. That is against Mr. Swanson's interests and druthers. Pursuant to a Loan Acquisition Agreement ("Assignment"), Mr. Swanson owns the litigation rights to this lawsuit. *See* Loan Acquisition Agreement, Exh. 1. As the owner thereof, he holds the rights to the case's handling. His rights are now in jeopardy of being irreversibly compromised by the his ex-counsel if Mr. Swanson does not intervene. Whether counsel has a malevolent intent or not, the lawsuit has already been severely negatively affected by the default set-aside. Because of this, Mr. Swanson has been compelled to incur substantial costs to try to rectify this situation.

2. Legal Analysis

A. Ronald Swanson is Entitled to Intervene as of Right.

Intervention as a matter of right is governed by NRS 12.130 and NRCP 24(a). NRS 12.130 allows "any person [to] intervene [prior to trial] in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both." NRCP 24(a), in relevant part, provides:

> Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

NRCP 24(a).

In Nevada, intervention should be "liberally construed to effectuate its purpose to secure the determination of controversies between several persons as to property rights in one action, and thus prevent unnecessary litigation." *Rutherford v. Union Land Cattle Co.*, 47 Nev. 21, 213 P. 1045, 1048 (1923). "NRCP 24(a) directs the district court to approve a timely application to intervene of right when . . . 'the applicant claims an interest relating to the [subject] property . . . and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately protected by existing parties.'" *American Home Assurance Co. v. Eighth Jud. Dist. Court*, 122 Nev. 1229, 1235, 147 P.3d 1120, 1124 (2006) (quoting NRC P 24(a)(2)). It is well settled that the requirements of NRCP 24(a)(2) "are broadly interpreted in favor of intervention." *Citizens for Balanced Use v. Montana Wilderness Ass 'n*, 647 F.3d 893, 897 (9th Cir. 2011) (addressing Fed. R. Civ. P. 24(a)(2)).

To intervene as a matter of right, "an applicant must meet four requirements: (1) that it has sufficient interest in the litigation's subject matter; (2) that it could suffer an impairment of its ability to protect that interest if it does not intervene; (3) that its interest is not adequately represented by existing parties; and (4) that its application is timely. Determining whether an applicant has met these four requirements is within the district court's discretion." *American Home Assur. Co. v. Eighth Judicial District Court ex rel. County of Clark*, 122 Nev. 1229, 147 P.3d 1120, 1126 (2006). Mr. Swanson meets all the requirements for intervention of right.

(1). <u>Mr. Swanson has a Significant Protectable Interest</u>.

"No 'bright-line' test to determine an alleged interest's sufficiency exists for purposes of rule allowing a party to intervene when it has an interest that could be impaired which is not

adequately represented by existing parties." *Id.* at 1126. Nevada courts, however, have held "any interest is sufficient." *Bartlett v. Bishop of Nevada*, 59 Nev. 283, P.2d 828, 833 (1939). Certain federal courts have further described the interest as "something more than a mere 'betting' interest . . . but something less than a property right." *Security Ins. Co. of Hartford v. Schipporeit*, 69 F.3d 1377, 1380-81 (7th Cir. 1995).

Here, Mr. Swanson has a property right. It cannot be tenably disputed. It is documented by the attached Assignment, which states, *inter alia*, "For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Transferor [Momis River, LLC] hereby transfer [sic] all interests and rights to the Loan to Acquirer [Ronald Swanson]." *See* exh.1 at para. 3. The Assignment also states variously, "Any pursuit of rights inherent within the Loan are now the exclusive responsibility of Acquirer" and "Acquirer has the right to bring any legal action against SonCav in the name of the Transferor." *Id.* at paras. 4 and 7.

The Assignment demonstrates clearly that Mr. Swanson holds the litigation rights that have been asserted in case number A-16-740207 pending before this Court. Mr. Swanson has demonstrated manifestly his rights by pursuing enforcement of those rights via the underlying lawsuit. And because he was moving forward with prosecution of his complaint when his attorney fired him and refused to withdraw from the lawsuit, his rights are in severe jeopardy unless he can intervene. Mr. Swanson has asked Ms. Mains to step aside, allow his new counsel to continue case prosecution, and to let him pursue his case, but she has refused. It is a unique, surreal situation.

It is anticipated that Ms. Mains will argue that Mr. Swanson was never her client, that Momis Rivers and its individual owner Bruce Yates are the actual clients, and that these purported clients have authorized her to continue to handle the case at their direction. If asserted, those contentions will be false. Ms. Mains executed as engagement agreement with Mr. Swanson on May 3, 2016. A copy is attached as Exhibit 2. In it, Ms. Mains refers to Mr. Swanson as her client numerous times stating, "***Dear Mr. Swanson*** . . . [t]his letter will serve as the proposed engagement and fee agreement . . . ***I have agreed to represent you*** in

connection with ***your objective*** to file a lawsuit in the Clark County Eighth Judicial District Court . . . My fees for legal services are $200.00 [and] . . . I will need a retainer for $5,000 . . . I understand ***you*** will want a forecast of fees . . . [t[herefore I propose that ***we*** follow a roadmap of the litigation process and incorporate ***your*** objectives . . . After each stage . . . ***we*** will review where the litigation is and if we will be entering into pre-trial stage . . . ***I will provide you with an invoice monthly*** . . . Please remember this is a proposal based on ***our discussion*** and objectives ***you*** want to accomplish . . . ***Thank you again for this opportunity*** and ***I am happy to*** be part of your team and ***represent you in this matter***." Exh. 2 (emphasis added).

That is clear language. That is powerful language. That is representation language. Indeed, the engagement letter is replete with representation overtures. The letter is addressed to Mr. Swanson alone. It is signed by Ms. Mains alone. There is no mention of Momis Rivers nor Mr. Yates. Nor should there have been; it is an agreement between the only two people mentioned in the engagement letter: Mr. Swanson and Ms. Mains.

In addition, Ms. Mains charged Mr. Swanson a $5,000 retainer (which he paid himself personally) and, after it was exhausted, billed Mr. Swanson for her work for which he paid her. Indeed, he paid her a total of ~ $10,000 to take this case through the complaint stage to the default stage. Mr. Swanson paid all of those fees himself through personal funds. He was not paying for anyone else's litigation. Based on all of this, there can be no doubt Mr. Swanson and Ms. Mains had an attorney-client relationship.

(2). <u>Mr. Swanson Needs to Intervene to Protect His Interests</u>.

Mr. Swanson will suffer an impairment of his ability to protect his litigation rights if he does not intervene. Indeed, he already has suffered when counsel unilaterally and against his directive set aside the default. And then again when she fired him and refused to withdraw from the case. She purports to represent Momis Rivers on rights Momis Rivers assigned to Mr. Swanson. Those rights are now being adjudicated without Mr. Swanson's authority and without his participation. Ms. Mains has essentially commandeered this case in a perplexing

and precarious way. This type of conduct is axiomatically disallowed under a host of Nevada Supreme Court rules.

This whole set of events has been incredibly vexing and concerning for Mr. Swanson. To know that – as clear owner of the loan enforcement rights but no longer a party to the litigation – the litigation could so dramatically affect his rights without warning by his ex-attorney is frightening. This case epitomizes the purpose behind this intervention rule and statute. The Assignment remains extant and the loan enforcement rights remain the subject of this case. Any movement by Ms. Mains regarding plaintiff's interests would unquestionably have a direct, negative effect on Mr. Swanson's rights. Mr. Swanson cannot afford to have his ex-counsel continuing this case without him or without a deliberate process where all parties' interests are expressed to the Court and considered. This is especially important where the case is moving along and Ms. Mains may have already submitted a Rule 41 stipulation to dismiss the case. Mr. Swanson cannot have his rights irreversibly compromised again by this renegade situation. Without intervention, Mr. Swanson will continue to suffer an impairment of his ability to protect his interests.

(3). <u>The Existing Parties Cannot Adequately Represent Mr. Swanson's Interests</u>.

Mr. Swanson's interests are not adequately represented by the existing parties. Because plaintiff Momis Rivers assigned its rights to Mr. Swanson, it is incapable of protecting Mr. Swanson's interests without him because it does not have any rights separate from Mr. Swanson; Momis Rivers's interests are Mr. Swanson's interests. Literally. As it is, plaintiff's counsel is ignoring the Assignment, continuing the lawsuit over Mr. Swanson's objection, and disavowing Mr. Swanson's interests. Mr Swanson's sole interest in intervention is the preservation and protection of his assignment rights. No one can advocate for Mr. Swanson's substantial and critical loan enforcement interests than himself.

This is especially true where the Nevada Supreme Court has recognized the Ninth Circuit's finding that "'[t]he burden on proposed interveners in showing inadequate

representation is minimal, and would be satisfied if they could demonstrate that representation of their interests "may be" inadequate.'" *Hairr v. First Jud. Dist. Ct.* — Nev. —, —, 368 P.3d 1198, 1202 (Nev. Adv. Op. 16 March 10, 2016) (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003), as amended (May 13, 2003)); *see also Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972). This is not a high standard. While Mr. Swanson's interests were originally aligned with Momis Rivers, they are no longer through some surreal, unique circumstances; Mr. Swanson will not be adequately represented in this case unless he, himself, is allowed to intervene in the case to protect those interests.

(4). <u>The Application to Intervene is Timely</u>.

"Timeliness is a determination that lies within the sound discretion of the trial court." *Lawler v. Ginochio*, 94 Nev. 623, 626, 584 P.2d 667, 668 (1978); *see also, Dangberg Holdings Nevada, L.L.C. v. Douglas Cty. & its Bd. of Cty. Comm'rs*, 115 Nev. 129, 141, 978 P.2d 311, 318 (1999). "[T]he most important question to be resolved in the determination of the timeliness of an application for intervention is not the length of the delay by the intervener but the extent of prejudice to the rights of existing parties resulting from the delay." *Lawler*, 94 Nev. at 626, 584 P.2d at 669. The trial court must also weigh the prejudice to the rights of the existing parties from any delay against "any prejudice resulting to the applicant if intervention is denied." *American Home Assur. Co. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 147 P.3d at 1130. Finally, NRS 12.130 specifies that the application must be made before the trial in the matter. NRS 12.130(a).

Mr. Swanson's application is timely. It is being made far before trial. In fact, no trial has even been set yet because this case is at its nascent stage. Although plaintiff's complaint was filed in mid-2016 and default was taken on August 29, 2016 nothing meaningful has happened in the case for over 12 months while plaintiff prepared to move for default judgment through a prove-up hearing. There has been no early case conference, no joint case conference report, no case management order, no discovery, and no trial setting. Accordingly, there will be no undue prejudice to the existing parties in Mr. Swanson intervenes at this time. In fact,

Mr. Swanson's inclusion in the case will be beneficial because he is the real-party-in-interest. His input will only help the Court in its ultimate determinations. Plus it would cause little to no delay, the procedural posture could remain the same, and Mr. Swanson will prosecute the case earnestly. Assuming, *arguendo*, prejudice was asserted by an existing party neither could establish tenably any prejudice that would not be outweighed by Mr. Swanson's. Indeed, to continue this case any further without allowing Mr. Swanson an opportunity to be part of the these proceedings would offend due process.

B. Intervention is Also Proper Under NRCP 24(b)

Mr. Swanson also meets the requirements for permissive intervention under NRCP 24(b). Rule 24(b) states:

> Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: . . . when an applicant's claim or defense and the main action have a question of law of fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

As outlined herein *supra*, Mr. Swanson's interests and the complaint claims have common questions of law and fact because the case as currently constituted was approved by Mr. Swanson before his counsel fired him. Indeed, the attorney's dispute with her former client is what has compelled Mr. Swanson to file this application. Mr. Swanson is not bringing any other causes of action on which the Court would bear; he comes for protection purposes only, the exact purpose of the intervention rule and statute. If Ms. Mains tries to stay in the case as counsel for the named-plaintiff Mr. Swanson may be compelled to bring a motion (or two) to address that strangeness, but he will not add claims. Mr. Swanson wants to protect his rights. The Court wants to provide protection to the *bona fide* owner of the rights. And the system, itself, wants proper, authorized representation.

Also, as outlined above, Mr. Swanson's intervention will cause little to no undue prejudice to either of the existing parties and will cause little to no case delay making him the perfect applicant for intervention.

3. Conclusion.

For the reasons asserted herein, Mr. Swanson respectfully submits that his application for intervention should be granted.

DATED this 7th day of March, 2018.

HUTCHISON & STEFFEN, PLLC

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Attorneys for intervener Ronald Swanson

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 8 day of March 2018, I caused the above and foregoing document entitled **RONALD SWANSON'S MOTION TO INTERVENE AS A PLAINTIFF ON AN ORDER SHORTENING TIME** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;** and/or
- ☐ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☑ to be hand-delivered;

to the attorney(s) listed below at the address and/or facsimile number indicated below:

Theresa Mains, Esq.
2251 N. Rampart Blvd., Suite 102
Las Vegas, Nevada 89128

Theresa Mains
400 S. 4th Street, Suite 500
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Purported attorney for plaintiff

David T. Blake, Esq.
CLEAR COUNSEL LAW GROUP
1671 W. Horizon Ridge Parkway, Suite 200
Henderson, Nevada 89012

Attorney for defendant

Kari Chappell
An employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

Loan Acquisition Agreement

This Loan Acquisition Agreement (the "Agreement") is entered by and between Ronald Swanson, an individual resident of Connecticut ("Acquirer"), and Momis Rivers LLC, a legal entity registered in the State of Delaware ("Transferor"). Hereafter the parties shall be referred to individually as just stated, or jointly as the "Parties".

1. Transferor entered into the following series of Bridge Loan Agreements (collectively the "Loan"):

Date	Amount	Key Factors
10/12/12	$25,000	Cap Contribution to SC USA Angels 1 / 100% interest / 1 YR Term
05/30/13	$25,000	Cap Contribution to SC USA Angels 1 / 100% interest / 1 YR Term
08/28/13	$25,000	Cap Contribution to SC USA Angels 2 / 50% interest / 1 YR Term
11/05/13	$10,000	Cap Contribution to SC USA Angels 2 / 50% interest / 1 YR Term
03/18/14	$20,000	Bridge Loan directly to SonCav LLC / 10% interest / 90-Day Term

SC USA Angels 1 is in fact Cenyth SC USA Angels LLC. SC USA Angels 2 is in fact Cenyth USA Angels 2 LLC. Both companies entered into an agreement with Sonic Cavitation LLC and Sonic Cavitation Limited (hereafter collectively "SonCav"). SonCav LLC is in fact Sonic Cavitation LLC.

2. Thus through the Loan, Transferor lent a combined total of one hundred and five thousand United States dollars (105,000) to Sonic Cavitation LLC, which was guaranteed by Sonic Cavitation Ltd. At the end of the Loan term, Transferor had the right to the return of principal plus the different amounts of interest noted above, or to convert the principal plus interest to equity interest in Sonic Cavitation LLC.

3. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Transferor hereby transfer all interests and rights to the Loan to Acquirer.

4. Any pursuit of rights inherent within the Loan are now the exclusive responsibility of Acquirer.

5. Acquirer shall pay Transferor one hundred and five thousand United States dollars ($105,000) from proceeds of:
   A. Any Loan repayment from SonCav;
   B. Any settlement agreement or judgment receipt as a result of litigation brought against SonCav;
   C. Any SonCav bankruptcy proceeds in the control of Acquirer;
   D. Any revenue resulting from the SonCav technology that Acquirer is involved with in securing.

6. Transferor has the right to reacquire the Loan at any time for cash payment to Acquirer of an amount equal to the total of all funds expended by Acquirer in pursuit of rights under the Loan.

7. Acquirer has the right to bring any legal action against SonCav in the name of the Transferor. Any communication received by Transferor related to SonCav must be forwarded by Transferor to Acquirer. Acquirer shall keep Transferor appraised of all activities in furtherance of the Loan.

8. This Agreement is to remain CONFIDENTIAL. Furthermore, Transferor is to have no communication directly with SonCav without the prior approval by Acquirer. This is necessary for controlled strategy communication.

9. This Agreement includes all terms contemplated by the Parties, and supersedes any / all prior agreements, either oral or written. It may only be modified in writing signed by all Parties. It shall be governed by Nevada law, and the exclusive jurisdiction for any enforcement action shall be Nevada. This Agreement may be signed in counterparts.

HEREBY AGREED:

Ronald Swanson	**Bruce Yates** **for Momis Rivers LLC**

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EXHIBIT PAGE ONLY

EXHIBIT 2

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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May 3, 2016

ENGAGEMENT LETTER AND FEE ARRANGEMENT PROPOSAL

Dear Mr. Swanson.

It was a pleasure to meet with you today to discuss the litigation strategy of the lawsuit against Sonic Cavitation, LLC ("LLC") and the respective individuals liable for the damages and other remedies which you seek. Thank you for this opportunity.

This letter will serve as the proposed engagement and fee arrangement and is negotiable. I have agreed to represent you in connection with your objective to file a lawsuit in the Clark County Eighth District Court against the LLC and each of the responsible individuals for breach of contract and fraud/embezzlement and other applicable causes of action which will be determined after review of all the material.

My fees for legal services are $200.00, not including any expenses that may be incurred, such as filing fees in business court, deposition charges, copying costs, postage, process service, and related expenses. I estimate that in order to begin the action and file the verified complaint I will need a retainer for $5,000.

It will be difficult to estimate how many hours this litigation will take as the case develops as there are so many variables and "if thens." I understand you will want a forecast of the fees so you are able to gauge the cost of this litigation. Therefore I propose that we follow a roadmap of the litigation process and incorporate your objectives based on our discussion and where we expect the litigation to go and estimate hours per stage of the litigation.

This approach will enable us to agree to a "cap" amount of fees per stage:

I. **Stage I –** Verified Complaint- $5,000 retainer for estimated 25 hours which will include but not be limited to:
   a. Review of all of the documents;

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b. Legal research;

c. Drafting complaint;

d. Declaration(s) in support;

e. Exhibits;

f. Due diligence for process service and other research.

II. **Stage II** – Responsive Pleadings; Pre-Discovery Motion for (Partial) Summary Judgment; Pre-Trial Writs/Injunction; Motions for Receivership:[1]

a. Depending on responsive pleadings – answer and possible motions to dismiss:

i. Reply to motion to dismiss and appearance at hearing, if applicable.

b. Legal research;

c. Draft Pre-Discovery Motion for (Partial) Summary Judgment;

d. Reply to Oppositions;

e. Hearing(s); - MSJ; Injunction; Ex Parte/Pre Trial Writs;

f. Estimated 40 hours – 8,000 retainer.

III. **Stage III** – Discovery

a. Meet and confer meetings and proposed discovery and scheduling plans;

b. Written discovery:

i. RFP's

ii. Admissions

iii. Interrogatories

c. Third Party Discovery; Subpoenas

d. Depositions; FRCP 30(b)(6) Corporate Representative Depositions;

e. Motion practice if and where applicable

f. Motion for Summary Judgment; Oppositions; Reply

g. Hearings

h. Estimated 40 hours – 8,000 retainer.

[1] This Stage II may overlap with State III – Discovery because the Pre-Discovery MSJ and pre-judgment motions may stay discovery.

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After each stage and especially after written and third party discovery is received we will review where the litigation is and if we will be entering into pre-trial stage and as applicable, amend this Agreement.

I will provide you with an invoice monthly and I will also advise you before undertaking any procedures that will substantially increase the amount of fees. Please remember this is a proposal based on our discussion and objectives you want to accomplish and may be subject to change as the litigation develops.

Thank you again for this opportunity and I am happy to be part of your team and represent you in this matter.

Kind regards,

_s/Theresa Mains_____

Theresa Mains, Esq., May 3, 2016

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DISTRICT COURT
CLARK COUNTY, NEVADA

MOMIS-RIVERS, LLC, a Delaware Limited Liability Company, Plaintiff, v. SONIC CAVITATION, LLC, a Nevada Limited Liability Company, and Does 1 - 10, unidentified, Defendants.	Case No. A-16-740207-C Dept. No. VI **AMENDED COMPLAINT IN INTERVENTION AND CROSS-CLAIM** **JURY TRIAL DEMANDED** **Exempt from Arbitration**
RONALD SWANSON, an individual, Plaintiff-Intervenor, v. SONIC CAVITATION, LLC, a Nevada Limited Liability Company; SONIC CAVITATION LIMITED, a foreign corporation; CENYTH CAPITAL CORP., a Nevada corporation; CENYTH SC USA ANGELS, LLC, a Nevada Limited Liability Company; CENYTH SC USA ANGELS 2, LLC, a Nevada Limited Liability Company; PETER DIZER, an individual; GARY GEORGE, an individual; LORINDA LIANG, an individual, and Does 1 - 10, unidentified, Defendants.	

Case Number: A-16-740207-C

RONALD SWANSON, an individual,

Cross-claimant,

v.

MOMIS-RIVERS, LLC, a Delaware Limited Liability Company,

Cross-Defendant.

Plaintiff-intervenor/cross-claimant Ronald Swanson sues Defendants Sonic Cavitation, LLC, Sonic Cavitation Limited, Cenyth Capital Corp., Cenyth SC USA Angels, LLC, Cenyth SC USA Angels 2, LLC, Peter Dizer, Gary George, Momis-Rivers, LLC, Does 1- 10, and Cross-Defendant Momis Rivers, LLC and alleges as follows.

I. PARTIES, JURISDICTION, AND VENUE

A. Parties

1. Defendant Sonic Cavitation LLC ("SonCav USA") is a Nevada registered limited liability company, legally formed on October 2, 2012.

2. Defendant Sonic Cavitation Limited ("SCLtd") is an Irish corporation and the managing member of SonCav USA.

3. Defendants Cenyth Capital Corp., Cenyth SC USA Angels, LLC, and Cenyth SC USA Angels 2, LLC, (collectively, the "Cenyth Defendants") are Nevada registered entities.

4. Plaintiff/Cross-Defendant Momis-Rivers LLC ("Momis-Rivers") is a limited liability company registered in the State of Delaware, whose sole member is Bruce Yates. Momis-Rivers loaned $105,000.00 to SonCav USA, which forms the basis of this dispute.

5. Defendant Peter Dizer claims to own SCLtd and does control SonCav USA.

6. Defendant Gary George ("George") has been SonCav USA's acting CEO since August of 2015.

7. Upon information and belief, Lorinda Liang ("Liang") is Dizer's girlfriend. She received funds Dizer and George fraudulently transferred to her joint account with Dizer.

8. Plaintiff-intervenor/cross-claimant Ronald Swanson ("Swanson") is Momis-Rivers's assignee and the former CEO and general counsel of SonCav USA. Despite the title "general counsel," Swanson retained outside counsel on behalf of SonCav USA to handle SonCav USA's legal work.

B. Jurisdiction and Venue

9. This is a Court of general jurisdiction which has subject matter jurisdiction over this matter because the damages complained of exceed $15,000.00.

10. Venue is proper in Clark County because SonCav USA is a Nevada LLC, SonCav USA is located in Clark County, and the causes of actions and injuries accrued in Clark County.

II. STATEMENT OF FACTS

Facts regarding Momis-Rivers's investments in SonCav USA

11. Sonic Cavitation is a patented technology that is based on a relatively small machine that purifies water on a commercial scale, and requires minimal energy to operate.

12. SonCav USA sought capital in an effort to raise funds needed to launch the technology globally.

13. SonCav USA is owned by member-manager Sonic Cavitation Limited ("SCLtd") (approximately 95%), ECO Integrated Technologies Inc. (approximately 4%); CPL, LLC (approximately 0.35%); and Mr. Eunis Shockey (approximately 0.25701%).

14. SonCav USA represented to potential investors, including Momis-Rivers, that SCLtd owns both the patent and sole global distribution rights to this technology. At the time these statements and/or representations were made, they were accurate, and Swanson was aware of their accuracy. These circumstances changed later, as explained herein, through acts of Dizer, George and Liang, and unbeknownst to Swanson nor within his control.

15. In March of 2012, Momis-Rivers was introduced to SonCav USA through its participation in an angel investor lunch hosted in Irvine, California.

16. The investment structure presented to Momis-Rivers was membership participation in a newly formed limited liability company called Cenyth SC USA Angels ("Cenyth SC"; the "SC" stands for Sonic Cavitation). The managing member of Cenyth SC was an entity known as Cenyth Capital LLC ("Cenyth Capital").

17. SonCav USA's current acting CEO defendant Gary George was managing member of Cenyth Capital, and thus stood in as managing member of Cenyth SC.

18. SonCav USA represented that starting on March 8, 2012, Cenyth SC would then enter into a convertible bridge loan with SonCav USA, with the source of funds for the bridge loan to SonCav USA coming from the pooled capital contributions of Cenyth SC's members.

19. Under this structure, each individual member of Cenyth SC would have the individual right at the end of the one-year loan term to decide whether to "call in" their proportional amount of the bridge loan note, plus an equal amount as interest, or convert their proportional amount of bridge loan principal and interest into equity in SonCav USA.

20. Momis-Rivers invested in Cenyth SC in reliance on SonCav USA's representations: (i) that SCLtd owned the United States patent on the technology; (ii) that SonCav USA had the exclusive global distribution license to the technology; (iii) as to when the product would launch; (iv) that Plaintiff Ronald Swanson would lead SonCav USA as its

CEO, and (v) of its ability and continued effort to raise capital that assured the continued solvency of SonCav USA.

21. Momis-Rivers made the following capital investment contributions under the respective terms beginning in October 12, 2012 through March 18, 2014 to support SonCav USA:

1. $25,000 on October 12, 2012 ("Loan 1"). The bridge loan agreement at the one-year anniversary date allowed Momis-Rivers to either decide upon: (a) receiving a 0.25% equity interest in Defendant SonCav USA; or (b) receiving back $50,000 in full satisfaction of principal, interest, and any fees.

2. $25,000 on May 30, 2013 ("Loan 2"). The bridge loan agreement at the one-year anniversary date allowed Momis-Rivers to either decide upon: (a) receiving a 0.25% equity interest in Defendant SonCav USA; or (b) receiving back $50,000 in full satisfaction of principal, interest, and any fees.

3. $25,000 on August 28, 2013 ("Loan 3"). The bridge loan agreement at the one-year anniversary date allowed Momis-Rivers to either decide upon: (a) receiving a 0.25% equity interest in Defendant SonCav USA; or (b) receiving back $50,000 in full satisfaction of principal, interest, and any fees.

4. $10,000 on November 5, 2013 ("Loan 4"). The bridge loan agreement at the one-year anniversary date allowed Momis-Rivers to either decide upon: (a) receiving a 0.10% equity interest in Defendant SonCav USA; or (b) receiving back $20,000 in full satisfaction of principal, interest, and any fees.

5. $20,000 on March 17, 2014 ("Loan 5"). The short-term bridge loan agreement at the 90-day term allowed Momis-Rivers to either decide upon: (a)

receiving a 0.20% equity interest in Defendant SonCav USA; or (b) receiving back $22,000 in full satisfaction of principal, interest, and any fees.

22. Momis-Rivers did not make each investment expecting to be repaid as loans, but rather with the intent to convert the loans to equity, as was its exclusive right under the terms of the bridge loan agreements. Momis-Rivers was interested in this structure, because it maintained its rights as a creditor should SonCav USA, or SCLtd, not perform as promoted.

23. Each Momis-Rivers convertible bridge loan agreement included SonCav USA, and SCLtd, as signatories.

24. The preamble to each convertible bridge loan agreement noted the following:

> "WHEREAS, Sonic Cavitation Limited [95% owner of Defendant SonCav USA] owns the patent and master global distribution rights concerning a new technology to treat liquids using ultrasonic cavitation (the "Technology") . . . ."

25. Clause 6 of the bridge loan agreement listed the following as collateral:

> "6. Sonic Cavitation LLC [Defendant SonCav USA] grants a lien on any / all SonCav physical equipment owned by SonCav on the Anniversary Date to secure Lender's [Plaintiff's] interests in, and SonCav's responsibilities from, this Agreement, up to the amount of the Loan Repayment."

26. Clause. 7 of the bridge loan agreement notes the following:

> "7. Should Lender [Plaintiff] need to enforce this Agreement in any court, or pursue collection action against [Defendant SonCav USA] for failure to pay the Loan Repayment, SonCav agrees to pay all costs related to such enforcement and/or collection."

27. After several delays in the launch of the Sonic Cavitation technology, and each of Momis-Rivers' bridge loan agreements having been well past their one-year terms, in late July of 2015, SonCav USA represented that it was weeks away from a successful technology launch.

28. At the time, SonCav USA represented that it had significant cash in the company bank account, an excellent relationships with the manufacturer and suppliers, and that it had multiple major-entity interested parties, such as Exxon/Mobil, Coca-Cola, Bacardi Rum, Conoco-Phillips, the State of California, and others.

29. At the time these statements and/or representations were made, Swanson had knowledge that they were accurate. These circumstances changed later, as explained herein, through acts of Dizer, George and Lang, and unbeknownst to Swanson nor within his control.

30. In approximately late July 2015, Dizer deceitfully lauded Swanson's leadership and accomplishments to Momis-Rivers as well as other current and potential investors. Upon information and belief, Dizer and/or George intended to terminate Swanson at the time such statements were made. Ultimately Swanson was terminated.

31. On or around August 1, 2015, the foregoing representations in Paragraph 28 of this Complaint changed. On that date, Peter Malcolm Dizer ("Dizer"), alleged co-owner of SCLtd and self-proclaimed director of SonCav USA, went with his secret partner Liang to Bank of America in Irving, Texas, and improperly withdrew $310,000 dollars from the SonCav USA corporate account, transferring same into his personal bank account. This was done without Ronald Swanson's knowledge or consent and resulted in SonCav USA's insolvency and inability to operate.

32. Dizer's personal bank account in receipt of the improperly transferred funds named Liang as Payee upon death.

33. Liang heretofore had absolutely no association with SonCav USA or SCLtd, and upon information and belief, Liang was Dizer's girlfriend.

34. These improper withdrawals, transfers, and misrepresentations were intentional, malicious, and oppressive.

35. On or about August 5, 2015, after learning of the improper withdrawal and transfer, Swanson notified all investors and other interested parties, including Momis-Rivers and others with bridge loans, of the improper withdrawal and transfer. Mr. Swanson did so in an attempt to protect the financial interests of said investors and interested parties from Dizer's, George's and/or other defendants' wrongdoing.

36. Around the same time, Momis-Rivers learned SonCav USA's representations were false, including but not limited to learning that SCLtd does not own exclusive rights to the patent, that SCLtd does not hold the exclusive global distribution rights, and that SonCav USA did not intent to have Plaintiff Ronald Swanson direct SonCav USA as CEO.

37. On that same day, Dizer improperly withdrew an additional $100,000 from the SonCav USA account and transferred into a bank account under co-defendant George's name in George's hometown of Palo Alto, California. Dizer claims these acts were performed on behalf of SonCav USA.

38. After finding out about the improperly-withdrawn capital investment funds and the misrepresentations of the distribution rights, on September 1, 2015, Momis-Rivers notified Mr. Dizer and SonCav USA's executive team that it was calling in its loans including all due interest.

39. SonCav USA did not repay any of Momis-Rivers' loans. In fact, SonCav USA ignored Momis-Rivers' request entirely, and to date still has not repaid said bridge loans.

40. Upon information and belief, SonCav USA is now insolvent.

41. SonCav USA is in breach of Momis-Rivers' investments into SonCav USA, namely Loans 1 through 5.

42. In February 2016, Momis-Rivers subsequently assigned its interest in the loans to Swanson via a loan acquisition agreement.

43. Pursuant to the loan acquisition agreement, Swanson subsequently brought this action in Momis-Rivers' name.

44. Momis-Rivers eventually ejected Swanson from the action, forcing him to intervene as an individual plaintiff.

45. Upon information and belief, Momis-Rivers intends to recover for Loans 1 through 5 and retain that recovery despite assigning its rights to Swanson.

Facts regarding Ronald Swanson's employment with SonCav USA

46. Swanson is an attorney licensed to practice law in all Federal Courts, and the District of Columbia.

47. On October 12, 2012, Swanson was hired as the chief executive officer and general counsel of SonCav USA. His principal responsibilities in those roles was to raise capital for the company, have a technology prototype built and tested, launch the company, and direct the company as its CEO. Despite the title "general counsel," Swanson retained outside counsel on behalf of SonCav USA to handle SonCav USA's legal work.

48. When Swanson was hired by SonCav USA, the company, through Peter Dizer, agreed that Swanson would be paid $10,000 a month for his services.

49. In December of 2013, Swanson procured a substantial investment in SonCav USA from CPL Ventures LLC ("CPL Ventures"). Swanson and Dizer were present when the CPL Ventures' agreement was executed. The investment structure was that monies would be received over 18 month sand the majority of the monies were to be received by SonCav USA after 12 months.

50. Based on the investment, Dizer and Swanson jointly agreed to the 2014 annual budget the next day, which included an increase in Swanson's monthly salary from $10,000 to $15,000, effective January 1, 2014.

51. Swanson was not timely paid during most of his tenure at SonCav USA because due to the extended time lines for investment monies to be received, SonCav USA was not financially stable during that time.

52. In or around July of 2015, SonCav USA, SCLtd, Dizer and George arranged for Swanson's personal hard drive to be stolen from his home. This hard drive contained, among other things, the files for all of Swanson's legal clients. The theft of the hard drive is the subject of a lawsuit in Connecticut.

53. As of August 1, 2015, SonCav USA had sufficient funds in its bank accounts to pay Swanson's unpaid wages. However, at that time, Dizer removed those available funds from the Company's bank accounts and transferred them to his personal account, and the account controlled by George.

54. SonCav USA salary payments were made to Swanson when authorized by Dizer by transferring funds from SonCav USA into accounts designated and controlled by Swanson. Funds from SonCav USA were also used to reimburse Swanson for legitimate business expenses. However, SonCav USA eventually ceased making these payments and reimbursements to Swanson entirely.

55. During his tenure as CEO, Swanson made other transactions on behalf of SonCav USA, including withdrawals from petty cash, rental of office space, travel expenses, and repayments of certain loans. These transactions did not enrich Swanson, but rather, were legitimate expenses of SonCav USA.

56. Swanson discussed his lack of pay with Dizer on several occasions, and sent a formal demand for payment in December 2015. In response, Dizer requested that Swanson forego regular salary payments and instead maintain records for all monies owed to him as

unpaid salary so that the company could pay him in full for all wages and other monies owed at a later date. Swanson was given no other alternative.

57. On March 23, 2016, Swanson was wrongfully terminated by Dizer, George, and John Connor, CFO of SCLtd. Swanson's full wages have never been paid.

58. After Swanson was fired, Gary George sent a letter on the company's behalf to its investors claiming that Swanson was a liar, had defrauded the company, and was unsuccessful in business. The claims were untrue and George knew they were untrue when he made them.

59. Upon information and belief, George and Dizer have made similar statements in person to SonCav USA investors and suppliers, including that Swanson had a serious gambling problem, all of which are false.

60. SonCav USA also filed a Bar complaint containing these and other untrue allegations against Swanson in Washington, D.C.

III. CAUSES OF ACTION
COUNT I
FRAUDULENT TRANSFER
(Against SonCav USA, SCLtd, Dizer, Liang and George)

Plaintiff-intervenor/cross-claimant incorporates the allegations in the preceding paragraphs and further states:

61. Defendant SonCav USA accepted Loans 1 through 5 from Momis-Rivers, knowing that the Loans would either have to be repaid with interest or would be converted into equity.

62. In 2015, SonCav USA was financially unstable, and the likelihood of Momis-Rivers wanting to convert its loans to equity was low.

63. Unbeknownst to Swanson, In August of 2015, SonCav USA allowed Dizer, Liang and George to improperly withdraw over $410,000 dollars from the SonCav USA account, resulting in leaving SonCav USA insolvent.

64. SonCav USA insiders Dizer and George knew that the transfers would render SonCav USA insolvent.

65. Upon information and belief, these transfers were made to defraud SonCav USA's creditors, including Momis-Rivers.

66. Momis-Rivers subsequently assigned its interest in the loans to Swanson via a loan acquisition agreement.

67. Defendants' actions damaged Swanson in an amount exceeding $15,000.

68. Swanson is entitled to equitable relief including avoidance of the transfers, attachment of the funds, and an injunction to avoid future transfers.

69. Because defendants' actions were intentional and made with malice and oppression, Swanson is entitled to punitive damages.

70. Defendants' fraudulent transfers have forced Swanson to retain attorneys to litigate this dispute, therefore he is entitled to the reasonable costs and fees of bringing this action.

COUNT II
MISREPRESENTATION
(Against the Cenyth Defendants, SonCav USA, SCLtd, Dizer and George)

Plaintiff-intervenor/cross-claimant incorporates the allegations in the preceding paragraphs and further states:

71. In March of 2012, SonCav USA, through its Director and owner of its managing member SCLtd, Peter Malcom Dizer, made fraudulent representations to Momis-Rivers that SCLtd owned the patent to the technology, that SCLtd granted exclusive North American

distribution rights for the technology to SonCav USA, and that SonCav USA was capable of raising and maintaining sufficient capital to release the technology.

72. Dizer, on behalf of SonCav USA, made these same misrepresentations again in the bridge loan agreements for Loans 1 through 5, and on an ongoing basis.

73. Similarly, Dizer represented on an ongoing basis that he was co-owner of SCLtd when he was not.

74. On or around August 1, 2015, Momis-Rivers discovered that SCLtd did not own the patent, and that SCLtd did not have exclusive global distribution rights to the technology.

75. Unbeknownst to Swanson, SonCav USA allowed its members and managers to embezzle over $400,000.00 from its accounts, rendering SonCav USA insolvent.

76. Peter Dizer and Gary George, on behalf of SonCav USA, concealed that Dizer was not co-owner of SCLtd, that any change in the patent or distribution rights had occurred, and that it had allowed the embezzlement and subsequent insolvency to occur. Swanson was unaware of each of these issues.

77. Momis-Rivers invested in SonCav USA in reliance on these misrepresentations and omissions to its detriment.

78. Momis-Rivers subsequently assigned its interest in the loans to Swanson via a loan acquisition agreement.

79. Defendants' actions damaged Swanson in an amount exceeding $15,000.

80. Because defendants' actions were intentional and made with malice and oppression, Swanson is entitled to punitive damages.

81. Defendants' fraud has forced Swanson to retain attorneys to litigate this dispute, therefore he is entitled to the reasonable costs and fees of bringing this action.

COUNT III
CONVERSION
(Against Defendants SonCav USA, SCLtd, Dizer, Liang and George)

Plaintiff-intervenor/cross-claimant incorporates the allegations in the preceding paragraphs and further states:

82. SonCav USA negotiated for Momis-Rivers' money to be under its dominion and control, and accepted the same.

83. SonCav USA allowed Dizer, Liang and George to convert Momis-Rivers' funds.

84. The money Peter Dizer converted included funds that were the sole and exclusive property of Momis-Rivers.

85. SonCav USA and Dizer willfully and maliciously disposed of Momis-Rivers' property.

86. Momis-Rivers subsequently assigned its interest in the loans to Swanson via a loan acquisition agreement.

87. Defendants' actions damaged Swanson in an amount exceeding $15,000.

88. As a result of this intentional, willful, and deliberate act of conversion, done with malice and oppression, Swanson is entitled to actual damages incurred as well as punitive damages.

89. Defendants' conversion has forced Swanson to retain attorneys to litigate this dispute, therefore he is entitled to the reasonable costs and fees of bringing this action.

COUNT IV
BREACH OF CONTRACT - INVESTMENT
(Against the Cenyth Defendants, SCLtd and SonCav USA)

Plaintiff-intervenor/cross-claimant incorporates the allegations in the preceding paragraphs and further states:

90. Momis-Rivers entered into valid contracts with SonCav USA, SCLtd and the Cenyth Defendants.

91. Pursuant to these contracts, Momis-Rivers loaned $105,000 to SonCav USA, who in turn gave Momis-Rivers the option of either repayment with specific terms, or an equity interest in SonCav USA.

92. Momis-Rivers informed SonCav USA on or around September 1, 2015 that it had selected immediate repayment.

93. SonCav USA did not repay the loans or even respond to the request.

94. Momis-Rivers subsequently assigned its interest in the loans to Swanson via a loan acquisition agreement.

95. As a result of the breach of the contracts, Momis-Rivers' assignee Swanson suffered damages in excess of $15,000.

96. Defendants' breaches have forced Swanson to retain attorneys to litigate this dispute, therefore he is entitled to the reasonable costs and fees of bringing this action.

COUNT V
CONTRACTUAL AND TORTIUS BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING - INVESTMENT
(Against the Cenyth Defendants, SonCav USA, SCLtd, Dizer and George)

Plaintiff-intervenor/cross-claimant incorporates the allegations in the preceding paragraphs and further states:

97. Momis-Rivers entered into valid contracts with the Cenyth Defendants, SonCav USA, and SCLtd memorializing Loans 1 through 5.

98. Every contract in Nevada contains an implied contract to act in good faith in performance and enforcement of the contract.

99. Momis-Rivers trusted and relied on SonCav USA's agreement to perform under the contracts when it funded the loans.

100. By virtue of this trust and reliance a special relationship existed between Momis-Rivers and SonCav USA.

101. SonCav USA was in a superior and entrusted position.

102. After accepting Momis-Rivers' funds, SonCav USA allowed SCLtd to dispose of the patent and SonCav USA's alleged distribution rights, as well as allowed Dizer to convert SonCav USA's funds.

103. Momis-Rivers subsequently assigned its interest in the loans to Swanson via a loan acquisition agreement.

104. Defendants' actions damaged Swanson in an amount exceeding $15,000.

105. These actions were intentional and deliberate and were performed with malice and oppression. Therefore, Swanson is entitled to actual damages incurred as well as punitive damages pursuant to NRS 42.005.

106. Defendants' breaches have forced Swanson to retain attorneys to litigate this dispute, therefore he is entitled to the reasonable costs and fees of bringing this action.

COUNT VI
BREACH OF EMPLOYMENT CONTRACT
(Against SonCav USA and SCLtd)

Plaintiff-intervenor/cross-claimant incorporates the allegations in the preceding paragraphs and further states:

107. On October 12, 2012, SonCav USA hired Ronald Swanson as its general counsel and chief executive officer.

108. At that time, SonCav USA and Swanson entered into a contract pursuant to which Swanson would be paid $10,000 a month for his services.

109. On January 1, 2014, the parties entered into a new contract to pay Swanson $15,000 a month.

110. SonCav USA repeatedly breached these contracts by failing to pay the full amount of Swanson's wages.

111. In December of 2015, Swanson discussed the arrears with Dizer, co-owner of SCLtd and self-proclaimed director of SonCav USA.

112. Through Dizer, SonCav USA and Swanson entered into another contract, pursuant to which Swanson would forego regular salary payments, but continue to be compensated at the same rate in the near future. The company also agreed to pay Swanson his full arrears.

113. On March 23, 2016, SonCav USA fired Swanson without having paid its obligations under the contracts. SonCav USA's actions constitute breaches of the contracts.

114. Swanson was damaged by SonCav USA's breaches in an amount exceeding $15,000.

115. Defendants' breaches have forced Swanson to retain attorneys to litigate this dispute, therefore he is entitled to the reasonable costs and fees of bringing this action.

COUNT VII
CONTRACTUAL AND TORTIUS BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING - INVESTMENT
(Against SonCav USA, SCLtd, Dizer and George)

Plaintiff-intervenor/cross-claimant incorporates the allegations in the preceding paragraphs and further states:

116. Every contract in Nevada contains an implied contract to act in good faith in performance and enforcement of the contract.

117. SonCav USA, SCLtd and Ronald Swanson entered into agreements pursuant to which Swanson acted as SonCav USA's general counsel and CEO in exchange for monetary compensation.

118. SonCav USA and SCLtd continually accepted Swanson's performance, but did not fully pay him for his services.

119. SonCav USA and SCLtd subsequently asked Swanson to agree to temporarily defer his salary payments due to funding issues. The parties agreed that SonCav USA would pay the full arrears.

120. SonCav USA and SCLtd did not do so, and upon information and belief, had no intention of paying Swanson his ongoing salary or the arrears.

121. Swanson trusted and relied on SonCav USA's promise to pay him for his services.

122. By virtue of this trust and reliance a special relationship existed between Swanson, SCLtd and SonCav USA.

123. SCLtd and SonCav USA were in a superior and entrusted position.

124. Defendants' actions damaged Swanson in an amount exceeding $15,000.

125. These actions were intentional and deliberate and were performed with malice and oppression. Therefore, Swanson is entitled to punitive damages pursuant to NRS 42.005.

126. Defendants' breaches have forced Swanson to retain attorneys to litigate this dispute, therefore he is entitled to the reasonable costs and fees of bringing this action.

COUNT VIII
DEFAMATION – LIBEL AND SLANDER
(Against SonCav USA, SCLtd, Dizer and George)

127. Plaintiff-intervenor/cross-claimant incorporates the allegations in the preceding paragraphs and further states:

128. On or around August of 2015, defendants sent a letter to investors falsely claiming that Swanson is deceitful and engaged in fraud, and "has a history of failed business

promotions where investors lost a lot of money." The letter also falsely claims that Swanson did not pay vendors and embezzled company funds.

129. Defendants intentionally made such false statements.

130. On or around April 13, 2018, Defendants sent another letter with similar intentional false statements and misrepresentations regarding Swanson.

131. Upon information and belief, Defendants made other similar and intentional false statements to various SonCav USA investors and possibly others and are continuing to do so today.

132. In January 2018, Defendants also sent a defamatory letter regarding Ronald Swanson to Bruce Yates of Momis-Rivers.

133. SonCav USA also filed a Bar complaint containing untrue allegations against Swanson in Washington, D.C., including that Swanson engaged in unauthorized transactions and misappropriation during his tenure at SonCav USA and that Swanson failed to maintain complete records of entrusted funds.

134. These statements are untrue and have affected Swanson's standing in the community.

135. Defendants' actions damaged Swanson in an amount exceeding $15,000.

136. These actions were intentional and deliberate and were performed with malice and oppression. Therefore, Swanson is entitled to punitive damages pursuant to NRS 42.005.

137. Defendants' statements have forced Swanson to retain attorneys to litigate this dispute, therefore he is entitled to the reasonable costs and fees of bringing this action.

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COUNT VIII
FALSE LIGHT
(Against SonCav USA, SCLtd, Dizer and George)

Plaintiff-intervenor/cross-claimant incorporates the allegations in the preceding paragraphs and further states:

138. On or around August of 2015, Defendants sent a letter to investors claiming that Swanson is deceitful and engaged in fraud, and "has a history of failed business promotions where investors lost a lot of money." The letter also claims that Swanson did not pay vendors and embezzled company funds.

139. On or around April 13, 2018, Defendants sent another letter with similar misrepresentations regarding Swanson.

140. Upon information and belief, Defendants made similar statements to various SonCav USA investors and possibly others and are continuing to do so today.

141. In January 2018, Defendants also sent a defamatory letter regarding Ronald Swanson to Bruce Yates of Momis-Rivers.

142. SonCav USA also filed a Bar complaint containing allegations against Swanson in Washington, D.C., including that Swanson engaged in unauthorized transactions and misappropriation during his tenure at SonCav USA and that Swanson failed to maintain complete records of entrusted funds.

143. These statements are untrue and have placed Swanson in a false light in the public eye.

144. Defendants' actions damaged Swanson in an amount exceeding $15,000.

145. These actions were intentional and deliberate and were performed with malice and oppression. Therefore, Swanson is entitled to punitive damages pursuant to NRS 42.005.

146. Defendants' statements have forced Swanson to retain attorneys to litigate this dispute, therefore he is entitled to the reasonable costs and fees of bringing this action.

COUNT IX
DECLARATORY RELIEF
(Against Momis-Rivers)

Plaintiff-intervenor/cross-claimant incorporates the allegations in the preceding paragraphs and further states:

147. Momis-Rivers and Swanson entered into a loan acquisition agreement (the "assignment") pursuant to which Momis-Rivers assigned its rights to Loans 1 through 5 to Swanson.

148. The assignment was mutually bargained for and both parties received consideration.

149. The assignment is a legally-enforceable contract.

150. Swanson initially brought this action on behalf of Momis-Rivers, but was subsequently ejected by Momis-Rivers, through Swanson's originally retained counsel to pursue this action.

151. Consequently, Swanson was forced to intervene in this action as an individual plaintiff.

152. Swanson seeks declaratory relief in the form of an order stating that the assignment is valid and enforceable; that Swanson is Momis-Rivers' assignee; and that Swanson has the sole standing to litigate this action regarding Loans 1 through 5.

153. Defendants' actions have forced Swanson to retain attorneys to litigate this dispute, therefore he is entitled to the reasonable costs and fees of bringing this action.

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COUNT X
BREACH OF CONTRACT
(Against Momis-Rivers)

154. Plaintiff-intervenor/cross-claimant incorporates the allegations in the preceding paragraphs and further states:

155. The assignment gives Swanson the sole authority to bring Momis-Rivers' claims in this action. Clause 4 of the assignment states "[a]ny pursuit of rights… are now the exclusive responsibility of" Swanson.

156. Despite this, Momis-Rivers is maintaining claims against SonCav USA for damages that were assigned to Swanson.

157. In order for Momis-Rivers to reacquire its interest in Loans 1 through 5, the assignment requires Momis-Rivers to pay Swanson his legal fees. Momis-Rivers has not done so.

158. Section 8 of the assignment requires that Momis-Rivers keep the assignment confidential. Momis-Rivers has not done so.

159. Momis-Rivers actions constitute breach of the assignment.

160. As a result of Momis-Rivers' breaches, Swanson was damaged in an amount exceeding $15,000.

161. These actions were intentional and deliberate and were performed with malice and oppression. Therefore, Swanson is entitled to punitive damages pursuant to NRS 42.005.

162. Defendants' breaches have forced Swanson to retain attorneys to litigate this dispute, therefore he is entitled to the reasonable costs and fees of bringing this action.

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COUNT VII
CONTRACTUAL AND TORTIUS BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING - INVESTMENT
(Against SonCav USA)

Plaintiff-intervenor/cross-claimant incorporates the allegations in the preceding paragraphs and further states:

163. Every contract in Nevada contains an implied contract to act in good faith in performance and enforcement of the contract.

164. Momis-Rivers assigned its interest in Loans 1 through 5 to Swanson via the assignment.

165. The assignment is a valid and enforceable contract.

166. Momis-Rivers allowed Swanson to initiate this litigation, then ejected him from the action.

167. Momis-Rivers' actions are in violation of the intent and spirit of the assignment, and constitute breach of the implied covenant of good faith and fair dealing.

168. As a result of Momis-Rivers' breaches, Swanson was damaged in an amount exceeding $15,000.

169. Defendants' breaches have forced Swanson to retain attorneys to litigate this dispute, therefore he is entitled to the reasonable costs and fees of bringing this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter and Order and Judgment against Defendants, and each of them, as follows:

1. For special and general damages exceeding $15,000;

2. For punitive damages exceeding $15,000;

3. For declaratory relief in the form of an order stating that the assignment is valid and enforceable; that Swanson is Momis-Rivers' assignee; and that Swanson has the sole standing to litigate this action regarding Loans 1 through 5..

4. For interests and costs;

5. For attorneys' fees; and

6. For such other relief this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands that this matter be tried by jury as to all claims for all damages including statutory and punitive damages.

DATED 30th day of May, 2018.

HUTCHISON & STEFFEN, PLLC

/s/ Richard L. Wade_____
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DISTRICT COURT
CLARK COUNTY, NEVADA

MOMIS-RIVERS, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

SONIC CAVITATION, LLC, a Nevada Limited Liability Company; and Does 1-10, unidentified,

Defendants.

RONALD SWANSON, an individual,

Plaintiff-Intervenor,

v.

SONIC CAVITATION, LLC, a Nevada Limited Liability Company; SONIC CAVITATION LIMITED, a foreign corporation; CENYTH CAPITAL CORP., a Nevada corporation; CENYTH SC USA ANGELS, LLC, a Nevada Limited Liability Company; CENYTH SC USA ANGELS 2, LLC, a Nevada Limited Liability Company; PETER DIZER, an individual; GARY GEORGE, an individual; LORINDA LIANG, an individual, and Does 1 - 10, unidentified,

Defendants.

Case No. A-16-740207-C
Dept. No. VI

SONIC CAVITATION, LLC'S ANSWER TO RON SWANSON'S AMENDED COMPLAINT IN INTERVENTION AND COUNTERCLAIM

CLEARCOUNSEL LAW GROUP

RONALD SWANSON, an individual,

Cross-Claimant,

v.

MOMIS-RIVERS, LLC, a Delaware Limited Liability Company,

Cross-Defendant.

SONIC CAVITATION, LLC, a Nevada Limited Liability Company,

Counter-Claimant,

v.

RONALD DONLAN SWANSON, an individual,

Counter-Defendant,

Defendant, Sonic Cavitation, LLC ("Sonic"), by and through its attorneys of the law firm Clear Counsel Law Group hereby answers Intervenor/Cross-Claimant Ronald Swanson's ("Swanson") Amended Complaint in Intervention and Cross-Claim ("Complaint") as follows:

1. Answering Paragraphs 3, 4, 15, 16, 18, 21, 24, 27, 28, 42, 43, 44, 45, 49, and 78, of the Complaint, Sonic is without sufficient information or knowledge to form a belief as to the truth of these allegations, and therefore denies each and every allegation contained therein.

2. Answering Paragraphs 9, 10, 98, 116, 163, no response is required because only legal conclusions are alleged. Sonic denies any factual allegations express or implied by these paragraphs.

3. Answering Paragraphs, 1, 2, 6, 10, 12, and 163 of the Complaint, Sonic admits the allegations contained therein.

4. Answering Paragraph 11 of the Complaint, Sonic admits it possesses patented technology for a water purification system and the description is roughly accurate. As to the remaining allegations contained in Paragraph 11 of the Complaint, Sonic denies each and every allegation contained therein.

5. Answering Paragraphs 5, 7, 8, 13, 14, 17, 19, 20, including all sub-parts, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 46, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 132, 134, 135, 136, 137, 138, 139, 140, 141, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 164, 165, 166, 167, 168, and 169 of the Complaint, Sonic denies each and every allegation contained therein.

6. Answering paragraph 3, sonic admits the allegations therein except that it is without information and belief as to information regarding Cenyth SC USA Angels 2, LLC and denies any allegations related to that entity.

7. Answering Paragraphs 60, 133, and 142 of the Complaint, Sonic admits it filed a Bar complaint against Swanson in Washington, D.C.. Sonic denies that the Bar complaint contained untrue allegations against Swanson.

Affirmative Defenses

1. Swanson has failed to state a claim upon which relief can be granted.

2. Swanson has failed to mitigate damages, if any, which Sonic denies there are any such alleged damages, and Swanson's Complaint is therefore barred, or in the alternative, any recovery should therefore be reduced accordingly.

3. To the extent that a contract existed, Sonic is excused from performance of any contract duties because Swanson failed to perform material duties and obligations.

4. The contract alleged in the complaint cannot be enforced because it violates law and/or public policy.

5. Swanson's Complaint is barred based upon the doctrine of unclean hands.

6. Swanson's Complaint is barred based upon the doctrine of estoppel.

7. Swanson's Complaint is barred upon the doctrine of laches.

8. The acts of commission or omission, if any, attributable to Sonic were justified and/or privileged under the circumstance.

9. Sonic reserves the right to assert any additional affirmative defenses and matters in avoidance may be disclosed during the course of additional investigation and discovery. Pursuant to NRCP 12, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not pled and are not available after reasonable inquiry upon the filing of Sonic's Answer to Swanson's Complaint, and therefore Sonic reserves the right to amend this Answer to allege additional affirmative defenses if so warranted.

Wherefore, Sonic prays for relief as follows:

1. That Swanson take nothing by his Complaint;

2. That the Court award Sonic its costs;

3. That the Court award Sonic all reasonable attorneys' fees incurred in defending Swanson's Complaint; and

4. For such other and further relief as the Court deems appropriate.

COUNTERCLAIM

1. Defendant/Counter-Claimant, Sonic Cavitation, LLC, ("Sonic") by and through the law firm Clear Counsel Law Group, alleges and pleads as counterclaims against Plaintiff in Intervention/Cross-Claimant, Ronald Swanson ("Swanson") as follows:

Parties and Jurisdiction

2. Sonic, at all times relevant to the dispute herein, was a limited liability company duly licensed to conduct business in Clark County, Nevada.

3. Upon information and belief, Swanson at all times relevant to the dispute herein, was a resident of Connecticut. Swanson consented to jurisdiction in Nevada by asserting claims against Sonic here.

Allegations Common to All Causes of Action

4. Swanson was a member of the Bar of the District of Columbia Court of Appeals, having been admitted on May 11, 2001, and assigned Bar number 472205. The facts giving rise to the charges of misconduct are as follows:

The Glottech Companies and the Creation of Sonic Cavitation

5. In 2010 and 2011, Glottech-USA, LLC (Glottech USA), a company beneficially owned by Peter Dizer and Dr. Victor Glotov, was seeking funding to manufacture and distribute its patented sonic reactor technology invented by Dr. Glotov.

6. Dizer met Swanson in Mallorica, Spain or around 2010. At the time, Swanson was working as legal counsel for a Spanish financier.

7. Swanson persuaded Dizer to have Glottech USA sever its relationship with the three people in the U.S. who were fundraising and managing Glottech USA, and instead have Swanson's company, Cenyth Structured Finance, LLC (which Swanson also referred to as Cenyth Capital Corporation LLC), raise funds for Glottech USA. Cenyth Structured was owned by Swanson or his family members and Gary George and Marty Mayfield.

8. In 2011, GD Glottech International Ltd ("Glottech Int'l") was formed as a limited company under the laws of Ireland, with its principal office in Dublin. Dizer and Glotov beneficially owned Glottech Int'l, which subsequently acquired the right to use the patented technology in the U.S. John O'Connor was a Director of Glottech Int'l.

9. In March 2012, Glottech Int'l agreed to retain Swanson as its lawyer. On March 28, 2012, Swanson provided Glottech Int'l an engagement letter on letterhead reflecting his membership in the D.C. Bar. Swanson stated he would serve as general counsel for Glottech Int'l and provide legal and corporate services in exchange for a fee of $10,000/month, subject to funds being available.

10. As legal counsel, Swanson advised Glottech Int'l and its principals to create new companies to operate and promote the technology.

11. Pursuant to Swanson's advice, O'Connor incorporated Sonic Cavitation Ltd. ("SC Ltd.") on October 26, 2012, as a limited corporation organized under the laws of Ireland, with its principal office in Dublin. Dizer and Glotov, the two beneficial owners of Glottech Int'l, became the owners of SC Ltd. O'Connor served as a Director of SC Ltd. and was primarily responsible for its financial affairs.

12. In October 2012, Swanson incorporated Sonic Cavitation LLC ("SonCav"), a Nevada limited liability company, to manufacture and distribute the technology in the United

States. SonCav was "ultimately owned by Dr. Victor Glotov and Mr. Peter Dizer." Swanson never had an equity interest in SonCav.

13. Swanson prepared the Articles of Organization for SonCav. He listed himself, as well as Dizer and Glotov, as the Managing Members. Swanson designated GG International, a company with an address in Las Vegas, as the registered agent for SonCav.

14. By the end of 2012, SonCav had replaced Glottech USA. In March 2013, Glottech Int'l entered into a licensing agreement with SonCav for the technology. Glottech USA was later dissolved.

15. Swanson persuaded Dizer that Swanson should serve as General Counsel and acting CEO of SonCav. Swanson did not provide SC Ltd. or SonCav a new engagement letter, but he continued to operate under the prior engagement letter.

16. Pursuant to his engagement letter with Glottech Int'l, Swanson was to provide monthly bills. However, between March 2012 and his suspension in August 2015, Swanson did not provide regular or complete monthly invoices to Glottech Int'l, SC Ltd or SonCav. Swanson nevertheless took, without authority, hundreds of thousands of dollars annually from the funds he received on behalf of SonCav.

Swanson's Receipt of Investor Funds and Other Assets on Behalf of SonCav

17. One of Swanson's responsibilities as General Counsel and acting CEO of SonCav was to raise funds to manufacture and distribute the technology, and to prepare and execute the legal contracts or agreements documenting the terms of the investments.

18. Swanson used his company Cenyth Structured to manage a new company, Cenyth SC USA Angels LLC (Cenyth SC Angels), that Swanson formed to raise the initial $500,000 to finance SonCav's operations.

19. Pursuant to the Joint Venture Agreement ("JV Agreement") that Swanson prepared, the investors would become members of Cenyth SC Angels, and their funds would be used to make a bridge loan of $500,000 to SonCav. In exchange for their investment, the members of Cenyth SC Angels would, after one year, receive either interest or, upon notice of intent to exercise conversion rights, a proportionate share of a 5% equity interest in SonCav.

20. For its management services, Cenyth Structured would receive a 9.1 % interest in Cenyth SC Angels. In using Cenyth Structured to raise funds for SonCav and giving Cenyth Structured a 9.1 % interest in Cenyth SC Angels, Swanson did not fully disclose in writing the terms of the arrangement to SC Ltd., Dizer, or any other disinterested principal. Nor did Swanson give the disinterested principals a reasonable opportunity to seek the advice of independent counsel or get their informed consent in writing.

21. The JV Agreement that Swanson prepared directed investors to make their contributions or payments to Swanson's lawyer trust account, which Swanson described as "an official 'IOLTA' (lawyer trust) account." In the agreement, Swanson referred to himself as "Cenyth General Counsel."

22. The JV Agreement further provided that Glottech Int'l would pledge its shares of Lithium Exploration Group ("LEXG") as collateral for the bridge loan from Cenyth SC Angels to SonCav, and that "the Collateral Shares [would] be held in trust by attorney Ron Swanson."

23. Between May 2012 and May 2013, while serving as SonCav's General Counsel and acting CEO as well as the beneficial owner and counsel for Cenyth Structured, Swanson received more than $500,000 from investors to provide the initial funding for SonCav through Cenyth SC Angels.

24. Swanson directed Glottech Int'l to transfer to him its LEXG stock, which Swanson represented he had placed in a safe deposit box (although he did not say where the box was located). After he was suspended in August 2015, Swanson refused to turn over the LEXG stock.

Swanson Used Multiple Accounts to Deposit Funds on behalf of SonCav and Made Unauthorized Withdrawals from the Accounts

25. In and after May 2012, Swanson used his lawyer trust account to receive investor funds for SonCav. Between May 2012 and May 2015, Swanson deposited or caused to be deposited more than $550,000 in investor funds in his lawyer trust account (4762).

26. In addition to using his lawyer trust account (4762) to deposit investor funds, Swanson opened at least two accounts for Cenyth SC Angels - one in December 2012 (account

9048) and another in September 2013 (account 9585)- into which investor funds were deposited. Swanson was the sole signatory for the Cenyth SC Angels 9048 and 9585 accounts.

27. In or around October 2012, Swanson opened an account for SonCav, account no. 9242. Swanson included Dizer as an additional signatory on the account, but Dizer (who lived in the UK) did not receive bank statements and was never provided the name or password for the account to access account information online.

28. Swanson did not begin to deposit investor funds in the SonCav 9242 account until March 2013, when he transferred $45,000 from the Cenyth SC Angels 9048 account to the SonCav 9242 account. The $45,000 were investor funds initially deposited in Swanson's lawyer trust account (4762), that Swanson then transferred to the Cenyth SC Angels 9048 account shortly before transferring them to the SonCav 9242 account on March 8, 2013.

29. Between October 2012 and July 2015, more than $2,050,000 was deposited in the SonCav 9242 account. At least $1,470,000 of the deposits in the SonCav 9242 account were funds directly from investors. Most of the remaining approximately $580,000 deposited in the account were investor funds initially deposited into other accounts that Swanson controlled, including his lawyer trust account (4762) and the Cenyth SC Angels 9048 and 9585 accounts, which he then transferred in the SonCav 9242 account. The funds deposited in the SonCav 9242 account were funds belonging to SonCav, Swanson's client.

30. While he served as SonCav's counsel and acting CEO, Swanson took, without authority, in excess of $1 million of the more than $2 million belonging to SonCav. Swanson took the funds in various ways, including (i) taking the funds directly from the SonCav 9242 account (see ¶¶ 31-32, below), (ii) taking funds from his trust account and the Cenyth SC Angels accounts into which investor funds were deposited (see ¶ 33, below); and (iii) taking funds from other accounts he controlled that he funded with money from the SonCav 9242 account (see ¶ 34, below).

31. Swanson made the following unauthorized withdrawals from the SonCav 9242 account:

a) he transferred approximately $285,000 to his personal account (3546)

b) he transferred $3,500 to another personal account (7062);

c) he withdrew approximately $94,000 in cash;

d) he transferred approximately $88,000 to his law firm account in the name of Donlan Swanson PLLC, account 9271;

e) he transferred or used approximately $330,000 to pay his personal credit card at Citibank (Swanson used his personal credit card to charge approximately $130,000 on SonCav's behalf, but had no authority to take the remaining $200,000 from SonCav's funds to pay his personal credit card bills);

f) he transferred more than $100,000 to his law firm trust account (4762), some of which he used to pay the principals of SC Ltd, but most of which he took for himself, including by transferring the funds to his personal and law firm accounts, making cash withdrawals, and using the funds in the trust account to pay his personal expenses;

g) he used the bank or debit cards issued on the SonCav 9242 account to charge tens of thousands of dollars in goods and services for himself, including but not limited to family vacations, restaurants, doctor bills, pharmacy expenses, dental bills, purchases at stores, transportation, and hotels; and

32. he wrote checks and transferred funds electronically from the SonCav 9242 account to family members and unauthorized third parties, including but not limited to:

a) payments of $12,452.14 to John Swanson, Swanson's father;

b) payments of $1,040 to Marianella Perez, Swanson's then wife;

c) payments of $800 to Marianella Anez;

d) payments of $33,750 to Romie Goulart, Swanson's cousin, and Goulart's company, RNG Consulting;

e) payments to Eric McCray or Angela Denise Worth totaling $4,600;

f) a payment to Will McAndrew for $20,900 using a fraudulent signature;

g) payments to David Kerr of at least $20,000;

h) a payment of $37,247.69 to purchase an auto; and

i) a payment of $5,000 to David Carr (Swanson's lawyer).

33. Swanson took other entrusted funds, without authority, from his trust account and the Cenyth SC Angels accounts and other Sonic bank accounts that he controlled. These unauthorized takings included, but were not limited to:

a) On April 22, 2014, LEXG wired $20,000 to Swanson's trust account (4762) for SonCav. Swanson transferred $11,500 of the $20,000 to SonCav's 9242 account, the principals of SC Ltd., and other third parties, and took the balance of $8,500 for himself-he transferred $7,000 to his personal account (3546) and withdrew $1,500 in cash.

b) Between December 2012 and June 2013, Swanson deposited or caused to be deposited $505,500 of investor funds into the Cenyth SC Angels 9048 account on behalf of SonCav. Swanson later transferred $480,000 of the $505,500 deposited in the Cenyth SC Angels 9048 account to the SonCav 9242 account. Swanson used a substantial portion of the remaining $25,500 for his own purposes: he made cash withdrawals from the account totaling $4,300, transferred more than $7,300 to his personal account (3 546), and used the bank card for the Cenyth SC Angels 9048 account to pay for personal expenses including restaurants, gas and tolls, hotels, car rentals, and a payment to IRA Financial Group.

c) Between September and November 2013, Swanson deposited or caused to be deposited $40,000 from investors into the Cenyth SC Angels 9585 account. Of that $40,000, Swanson transferred $38,738 to the SonCav 9242 account, and took the remaining $1,262 in investor funds for himself, transferring the funds to his personal account, making cash withdrawals, and using the account bank card to pay for personal expenses.

34. Swanson engaged in further unauthorized takings by transferring SonCav funds into other accounts he controlled and then taking the funds from those accounts. These unauthorized takings included, but were not limited to:

a) On or about March 19, 2013, Swanson opened a second account in SonCav's name, account no. 9828, for which he was the sole signatory. Between March 2013 and October 2014, Swanson transferred $11,040.56 from the SonCav 9242 account into the SonCav 9828 account (these were the only funds deposited into the SonCav 9828 account). Swanson then used the funds in the SonCav 9828 account for himself, making cash

withdrawals and using the bank card for the account to purchase goods and services.

b) On or about March 22, 2013, Swanson, without the knowledge or authorization of Dizer or O'Connor, opened a third account in SonCav' s name - Sonic Cavitation Assembly LLC - account no. 9831, for which he and David Kerr were the only signatories. Between March 2013 and August 2013, Swanson transferred $10,807.74 from SonCav's 9242 account to the SonCav Assembly 9831 account (these were the only funds deposited in the SonCav Assembly 9831 account). Swanson and Kerr spent all the funds in the SonCav Assembly 9831 account using credit or debit cards issued on the account to make cash withdrawals and purchase goods and services, including to pay for dry cleaning, car washes, gas, groceries, telephone bills, raceways, and restaurant bills. Swanson later represented to O'Connor that SonCav Assembly had no "financial operations."

c) Swanson previously had opened another account with George for Cenyth Structured (account 2811). In September and October 2012, Swanson withdrew more than $7,000 from the Cenyth Structured 2811 account by transferring funds to his personal account and making cash withdrawals, and by December 2012, the account was overdrawn. In early 2013, Swanson and George agreed to dissolve Cenyth Structured and disburse the $15,000 that Cenyth Structured was holding or supposed to be holding. Unbeknownst to George, Swanson transferred $15,250 from the SonCav 9242 account to the Cenyth Structured 2811 account in May and June 2013, before reimbursing George and his wife for their share of the $15,000. Swanson took most of the balance for himself, and the remainder was used to pay bank fees before the account was closed.

Swanson's Receipt of Additional Non-Monetary Compensation

35. In mid-2014, Swanson, with Dizer's approval, rented office space for SonCav in Litchfield, Connecticut, where Swanson was living. Dizer agreed that Swanson could use SonCav funds to rent a carriage house that would be used as SonCav's office.

36. By no later than October 2014, Swanson was using the carriage house for his personal residence as well as SonCav's office. Dizer became aware that Swanson was living in the carriage house although his marital home was just a short distance away. Swanson informed

Dizer that he was living in the carriage house but did not compensate SonCav for his use of the carriage house. Swanson did not provide SonCav, its owners, or any disinterested party anything in writing to document his use of the carriage house as his personal residence, tell them to seek the advice of independent counsel, or obtain their informed consent to the arrangement.

37. In or around June 2015, Swanson rented an apartment in Irving, Texas using SonCav's funds without authorization. Swanson also used this apartment exclusively for his and his family's personal residence, although without authority. Swanson did not compensate SonCav for the use of the apartment as his home. Swanson did not provide SonCav, its owners, or any disinterested party anything in writing to document his use of the Texas apartment as his personal residence, tell them to seek the advice of independent counsel, or obtain their informed consent to the arrangement.

Swanson's Mismanagement of SonCav's Account and Finances, Failure to Keep Records, and Failure to Account for Funds

38. Swanson used the bank card associated with the SonCav 9242 account to pay his personal expenses as well as for business expenses. Swanson charged goods and services to the SonCav 9242 account even when there were insufficient funds in the account, resulting in numerous overdrafts in January, February, April and December 2013, January-April and June-August 2014, and May 2015. SonCav incurred thousands of dollars in bank fees because of the overdrafts.

39. Swanson failed to account to SC Ltd or the owners of SonCav concerning the funds he received from investors and what he did with them. The first accounting that Swanson provided during the time he served as General Counsel and acting CEO was a one-page letter to Dizer dated March 5, 2013, that purported to account for the funds going into and out of his lawyer trust account (4762) for a two-month period, i.e., January and February 2013. Some of the entries in the accounting did not accurately reflect the activity in Swanson's trust account. For example, the starting balance or "Balance Forward from 2012" Swanson included in his accounting was off by more than $10,000; Swanson omitted a $25,000 deposit from a SonCav investor; and many of the withdrawal or debit items listed in the accounting did not match the

amounts or payees reflected in the bank statements for Swanson's trust account.

40. While Swanson served as SonCav's General Counsel and acting CEO, SonCav never filed a tax return or a Schedule K-1 with the IRS.

41. In early 2015, Swanson asked George to serve as the Chief Financial Officer for SonCav. George asked Swanson to provide him SonCav's financial records, including an accounting of the funds Swanson received from investors and what Swanson had done with them, including invoices and receipts for any expenditures Swanson made on SonCav's behalf. Swanson never provided the requested information or financial records.

42. Without the requested information and supporting documents, George was unable to audit SonCav's finances. George also was unable to complete any tax returns for SonCav but sought an extension to protect its interests.

43. In early 2015, George reported to Dizer and O'Connor that Swanson would not provide him the financial records he needed and, without them, he could not serve as CFO. Dizer requested that George continue to be involved through SC Ltd., which George agreed to do. George's role in SC Ltd., however, was initially limited.

44. Dizer and O'Connor also asked Swanson for financial information concerning SonCav, including a report or accounting of the funds Swanson had received from investors and what he had done with them. Swanson did not substantially respond to their requests for information and did not provide any accountings after the one-page account for his trust account for January and February 2013, referenced in 135 above, until July 2015.

45. By no later than June 2015, O'Connor and Dizer were sending Swanson emails and other writings demanding an accounting and information about SonCav's funds. O'Connor and Dizer had become increasingly concerned about Swanson's failure to account, and they wanted Swanson to provide the information and supporting documents prior to scheduled meetings in late July 2015 in Texas among the principals of SC Ltd., the owners of SonCav, and current and prospective SonCav investors.

46. On July 25, 2015, Swanson sent Dizer two pages of financial information - a one-page document purporting to reflect SonCav's expenses in 2014, and another one-page

document purporting to reflect the investments in SonCav by amount, date and investor. The two pages did not accurately reflect the funds that Swanson had received and what he had done with them. After receiving the information, O'Connor asked Swanson for additional information and financial records. Swanson failed to provide any further accounting or any of the underlying records.

47. At their meetings commencing in late July 2015, Dizer sought to discuss with Swanson the lack of accountings and to obtain the financial information that he, O'Connor and others had been requesting. Swanson did not provide Dizer any information or documents, and said he was leaving for Puerto Rico the morning of August 1, 2015.

48. On August 1, 2015, Dizer went to a Bank of America branch in Texas and, with the assistance of a bank employee, reviewed the bank statements for the SonCav 9242 account for the three preceding months - the only records the bank would allow him to access at the time. Based on that review, Dizer learned that Swanson had withdrawn more than $175,000 from the SonCav 9242 account in June and July 2015.

49. With the assistance of bank employees, Dizer transferred $410,000 from the balance of $413,973.09 remaining in the SonCav 9242 account to other accounts for safekeeping.

50. After learning of Swanson's unauthorized withdrawals, O'Connor notified Swanson by e-mail on August 5, 2015, that he was suspended from all positions he held at SonCav and its affiliated companies until further notice so that an audit could be done.

Swanson's Discharge from SonCav, and Continued Misappropriation of Funds

51. On August 5, 2015, O'Connor on behalf of SC Ltd. also notified Swanson that George would serve as acting CEO of SonCav and its CFO.

52. Despite his receipt of the notice of his suspension, Swanson continued to use the bank card associated with the SonCav 9242 account to charge more than $685 in personal expenses after August 5, 2015.

53. Swanson also took, without authority, SonCav funds that were in his possession after he was suspended. On August 21, 2015, Swanson transferred the $13,000 in SonCav funds

from his trust account (4762) to another account he controlled, in the name of Donlan Swanson PLLC (9271). After transferring the funds to the Donlan 9271 account, Swanson withdrew $5,000 in cash on August 21, 2015, transferred $1,000 to Marta Villares as "family support" that same day, and on August 28, 2015, transferred $4,000 to his personal account (3546).

54. After August 5, 2015, SonCav continued to ask Swanson for an accounting of the funds he received on behalf of SonCav and what he had done with them. SonCav also asked Swanson for the company records and contracts.

55. Swanson failed to provide SonCav its records and documents, including company contracts, investor agreements, and loan agreements. Swanson also failed to account for the funds he had received on SonCav's behalf and what he had done with them.

56. Swanson did not return a laptop purchased with funds from SC Ltd. or SonCav. However, SonCav was able to retrieve the backup drive that Swanson used to store SonCav documents that Swanson had left in the Connecticut carriage house used as SonCav's office.

57. Swanson failed to return or deliver to SonCav the LEXG stock pledged as collateral that he claimed he had placed in a safe deposit box.

58. The only financial information that Swanson provided SonCav after his suspension was set forth in a two-page attachment to a letter to Glottech Int'l and SC Ltd. dated December 16, 2015. In the document, Swanson purported to account for the funds deposited in his trust account for Glottech Int'l and SonCav companies and his use of the funds. Many of the entries in Swanson's December 16, 2015 letter did not match the amounts reflected in the bank records. Swanson failed to provide any additional information or the underlying financial records to Glottech Int'l, SC Ltd. or SonCav.

59. In his December 16, 2015 letter Swanson falsely claimed that Glottech Int'l owed him $292,083.94 for his "legal services", that SonCav owed him $62,343.75 for his "nonlegal professional services", and that he was owed an additional $41,446.44 for "expense reimbursement." Swanson did not provide any records to support his claims for additional compensation or for the expenses he allegedly incurred on behalf of his former clients.

Swanson's Communications with SonCav Investors after His Suspension

60. On September 9, 2015, more than a month after his suspension, Swanson sent several investors an e-mail critical of Dizer, O'Connor and George. Swanson made several knowing false representations in the e-mail, including but not limited to his claims that:

a) Swanson had provided SonCav or Dizer all company contracts and agreements;

b) Dizer had full knowledge of all bank account transactions and had full access to on-line banking;

c) Dizer had "drain[ed] SonCav's bank account," with the assistance or involvement of George;

d) Swanson's salary was increased to $15,000/month in January 2014, but he never took his full salary and was owed back-pay of $175,000; and

e) Swanson was not allowed to use a corporate credit card and was owed $36,000 for charges he made to his personal credit card for business expenses.

61. Swanson later caused or assisted investors in filing lawsuits against SonCav, including Xavier Vilaro and Myrna Cano, which Swanson knew to be false in that Vilaro had converted his loan into equity. Swanson previously had solicited $45,000 from Vilaro and Cano to invest in SonCav. On January 14, 2015, a deposit of $45,0000 was made in the SonCav 9242 account that Vilaro and Cano later claimed was their investment. In January 2015, Swanson took more than $44,000 from the SonCav 9242 account for himself - he transferred $20,500 to other accounts he controlled ($9,500 to the Donlan account (9271), $5,000 to his personal account (3546), and $6,000 to his trust account (4762)); he transferred another $16,981.26 from the SonCav 9242 account to pay his personal credit card; and he used the bank card for the account to pay $6,677.51 for his expenses.

62. After SonCav suspended Swanson as counsel and acting CEO, Vilaro sent the principals of SonCav and others an e-mail demanding $54,000 (for his $45,000 investment) and a copy of the technology patent assignment from Glottech Int'l to SonCav. Swanson encouraged other investors to send similar letters.

63. In June 2016, Vilaro and Cano filed a lawsuit in Puerto Rico against SonCav and some of the companies working with SonCav. Vilaro and Cano claimed that they served the

summons and complaint on SonCav through GG International in Nevada, the registered agent Swanson had designated for SonCav and for which Swanson continued to be listed as the contact person. Swanson did not notify SonCav of the summons and complaint or provide it copies.

64. Shortly after the Federal Court in Puerto Rico entered a default judgment against SonCav for more than $133,000, Swanson wrote to George and SonCav seeking to collect the judgment. Swanson claimed he was entitled to collect the judgment from SonCav pursuant to an undated "Loan Acquisition Agreement" between himself on the one hand and Vilaro and Cano, on the other.

65. Swanson also hired solicitors in Ireland to petition the Irish court to liquidate SC Ltd. based on the Puerto Rican judgment. The solicitors representing Swanson later withdrew the petition after receiving a letter stating that SC Ltd and SonCav disputed the validity of the judgment on a number of grounds, including that they had no notice of the proceedings in Puerto Rico.

66. Vilaro and Cano also were among the plaintiffs in another action against SonCav filed in Federal District Court in Nevada in December 2016. Plaintiffs in this action repeated Swanson's false claims about Dizer's alleged conversion of SonCav's funds in August, 2015 and sought declaratory and injunctive relief against SonCav and related companies.

67. The Federal Court in Nevada denied the plaintiffs' ex-parte motion for relief, finding that they had not met their burden.

68. On March 22, 2017, the Federal Court in Nevada notified the plaintiffs that their case would be dismissed pursuant to FRCP 4(m) (requiring proof of service) unless they filed proof of service on defendants on or before April 21, 201 7. The plaintiffs failed to do so.

69. After suspending Swanson, SonCav obtained the bank records for the SonCav 9242 account from Bank of America and learned that Swanson had taken or transferred in excess of $1 million from SonCav to himself, other accounts he controlled, or unauthorized third parties.

70. The principals of SC Ltd and owners of SonCav never authorized Swanson to

take any SonCav's funds for himself, and his engagement letter with Glottech Int'l, which carried over to govern his relationship with SC Ltd and SonCav, permitted Swanson to take fees or a salary of no more than $10,000/month (when funds were available) and reimbursement (upon presentation of a monthly invoice and receipts) of expenses that he incurred on behalf of SonCav.

71. On December 9, 2015, SonCav filed a complaint against Swanson with Disciplinary Counsel in the District of Columbia ("Disciplinary Counsel").

72. Swanson did not respond to the complaint until April 2016. In his response, Swanson made several knowing false statements, including: a) Swanson worked without pay for the three plus years he worked for Glottech Int'l and the SonCav companies; b) Dizer insisted on the structure that involved Swanson's use of Cenyth to raise funds for SonCav, including the interest that Cenyth was to receive; c) Swanson always provided full IOLTA accountings to Dizer; d) Swanson was owed $300,000 in unpaid legal fees (for which he provided no invoices or other supporting documents); and e) Dizer stole $410,000 of SonCav's funds for himself.

73. Around the time he responded to the disciplinary complaint, Swanson contacted several SonCav investors and directed them to write Disciplinary Counsel. Many of them repeated the misrepresentations that Swanson had made to them concerning Dizer's purported appropriation of SonCav funds.

74. Disciplinary Counsel sent subpoenas to Swanson for his financial records relating to SonCav and asked for an accounting of the funds he received while serving as SonCav's General Counsel and acting CEO. In response, Swanson produced some emails he exchanged with Dizer relating to some of the withdrawals and payments to himself but failed to produce any financial records. The only "accountings" Swanson provided were the one-page list of deposits and withdrawals from his trust account for January-February 2013 (which was inaccurate), the two pages of financial information he sent to Dizer on July 25, 2015 (which also was inaccurate), and the two-page report dated December 16, 2015 (which also was inaccurate).

75. Disciplinary Counsel sent Swanson a subpoena for documents relating to the investor suits against SonCav after Swanson's termination. Swanson failed to respond to the

subpoena.

76. Disciplinary Counsel also sent Swanson a subpoena for his personal credit card records during the time he served as SonCav's General Counsel and acting CEO and for which he used SonCav's funds to pay his bills. Swanson failed to respond to the subpoena.

77. Swanson admitted during the investigation, that he had a computer on which he stored SonCav's information and documents but claimed he had destroyed the computer. Despite numerous inquiries from Disciplinary Counsel concerning the claimed destruction of the computer, Swanson failed to provide the information.

78. On October 19, 2018, Swanson filed an affidavit of consent to disbarment with Disciplinary Counsel that complied with D.C. Bar R. XI, § 12(a) and was subsequently disbarred by the District of Columbia Bar.

79. D.C. Bar Rule XI, § 12(a) provides that Disciplinary Counsel may accept an affidavit of consent to disbarment if it states that (1) the consent is given freely and voluntarily, (2) the attorney is aware of the pending investigation against him or her, (3) the attorney "acknowledges that the material facts upon which the allegations of misconduct are predicated are true," and (4) that the attorney submits the consent because the attorney "knows that if disciplinary proceedings based on the alleged misconduct were brought, the attorney could not successfully defend against them."

80. The practical result of Swanson's affidavit is that he has admitted that all material allegations herein above are true.

81. To defend and delay the consequences of his conduct, Swanson began contacting investors with false accusations and persuading them to sue Sonic Cavitation for return of their investment.

82. Swanson represented one or more of these investors, including Plaintiff Momis-Rivers, LLC, and advised them to act adverse to Sonic, including filing lawsuits despite that Swanson not Sonic had actually misappropriated large amounts of investors' money.

83. At least two investors filed suit against Sonic—Momis-Rivers, LLC and Xavier Vilaro. Momis-Rivers filed in Nevada and Mr. Vilaro filed in Puerto Rico.

84. Swanson used information he learned during his representation of Sonic Cavitation and others related to clients to the advantage of the investors.

85. For example, Swanson maintained sole contact with Sonic's registered agent and failed to deliver lawsuits and other legal process to Sonic, preventing Sonic from learning of a pending lawsuit that ultimately resulted in a judgment against Sonic. Swanson advised the investors to serve the lawsuit at a time when he believed it would not be noticed or responded to by Sonic. Swanson also was a party to the copying of Sonic's patented and proprietary intellectual property and set up a competing entity. Swanson also indicated his intent to force Sonic into bankruptcy.

86. Swanson entered into an agreement with Momis-Rivers and acquired the right to recover against Sonic in violation of his duties.

87. Swanson is currently engaged in active litigation against Sonic based on this acquisition.

88. When Momis-Rivers decided to explore settling its lawsuit against Sonic, Swanson intervened and continues to act in violation of his duties to Sonic.

89. Swanson's conduct gives rise to the following claims for relief:

First Claim for Relief
(Conversion)

90. Sonic repeats and realleges all prior allegations as if fully set forth herein.

91. Sonic was the owner of funds that Swanson solicited for investment in Sonic. These funds were solicited on behalf of Sonic and for the use and benefit of Sonic.

92. Swanson wrongfully exerted ownership, dominion, and control over the converted funds and used them for his own personal expenses.

93. Sonic has been damaged by Swanson's conversion in an amount in excess of $15,000.

94. Sonic has incurred attorney's fees in prosecuting this action and is entitled to recover attorney's fees against Swanson.

95. Sonic is entitled to an award of punitive damages because Swanson's conduct

was fraudulent, malicious, oppressive, and/or undertaken with a conscious disregard for the probable consequences of his conduct.

Second Claim for Relief
(Breach of Fiduciary Duty)

96. Sonic repeats and realleges all prior allegations as if fully set forth herein.

97. Swanson owed Sonic Cavitation fiduciary duties of loyalty, confidentiality, competency, diligence and other duties arising from his role as both attorney and officer for the company.

98. Swanson's conduct of stealing money from, defrauding, and, entering in competition with Sonic Cavitation breaches the numerous duties owed to Sonic.

99. Swanson's breach of his duties damaged Sonic in an amount in excess of $15,000.

100. Sonic has incurred attorney's fees in prosecuting this action and is entitled to recover attorney's fees against Swanson.

101. Sonic is entitled to an award of punitive damages because Swanson's conduct was fraudulent, malicious, oppressive, and/or undertaken with a conscious disregard for the probable consequences of his conduct.

Third Claim for Relief
(Unjust Enrichment)

102. Sonic repeats and realleges all prior allegations as if fully set forth herein.

103. Sonic has conferred a benefit on Swanson by Swanson's receipt and use of funds that he converted from Sonic.

104. Swanson accepted this benefit.

105. Equity and good conscience require that Swanson makes restitution to Sonic in an amount equal to the benefit enjoyed by Swanson.

106. Swanson's unjust enrichment damaged Sonic in an amount in excess of $15,000.

107. Sonic has incurred attorney's fees in prosecuting this action and is entitled to

recover its attorney's fees against Swanson.

Fourth Claim for Relief
(Breach of Contract)

108. Sonic repeats and realleges all prior allegations as if fully set forth herein.

109. Swanson entered into an agreement, whether written or oral, wherein he agreed to act as counsel of record and an officer for Sonic.

110. An express or implied term of the agreement is that Swanson would make a good faith and sincere effort to comply with his duties for the benefit of Sonic.

111. Swanson materially breached his duties by exploiting Sonic Cavitation for his own personal gain and stealing from Sonic Cavitation.

112. Swanson's breach proximately damaged Sonic in an amount in excess of $15,000.

113. Sonic has incurred attorney's fees in prosecuting this action and is entitled to recover attorney's fees against Swanson.

Fifth Claim for Relief
(Intentional Interference with Contractual Relations)

114. Sonic repeats and realleges all prior allegations as if fully set forth herein.

115. Sonic had an agreement from investors to provide funds to Sonic.

116. Swanson diverted investment funds to himself and converted the funds.

117. Swanson's diversion of funds disrupted the contract between Sonic and its investors.

118. Swanson's conduct damaged Sonic in an amount in excess of $15,000.

119. Sonic has incurred attorney's fees in prosecuting this action and is entitled to recover attorney's fees against Swanson.

120. Sonic is entitled to an award of punitive damages because Swanson's conduct was fraudulent, malicious, oppressive, and/or undertaken with a conscious disregard for the probable consequences of his conduct.

Sixth Claim for Relief
(Malpractice)

121. Sonic repeats and realleges all prior allegations as if fully set forth herein.

122. Swanson entered into an attorney-client relationship with Sonic.

123. Swanson owed Sonic all of the duties associated with that relationship, including the duties of loyalty, competence, and diligence.

124. Swanson breached these duties, as described hereinabove.

125. Swanson's conduct damaged Sonic in an amount in excess of $15,000.

126. Sonic has incurred attorney's fees in prosecuting this action and is entitled to recover attorney's fees against Swanson.

Seventh Claim for Relief

(Fraudulent Representation and Nondisclosure)

127. Sonic repeats and realleges all prior allegations as if fully set forth herein.

128. As described hereinabove, sonic made numerous fraudulent misrepresentations and intentionally failed to disclose material facts to Sonic.

129. As a result of Swanson's fraudulent statements and nondisclosure of material facts, Sonic suffered damages in excess of $15,000.

130. Sonic has incurred attorney's fees in prosecuting this action and is entitled to recover attorney's fees against Swanson.

131. Sonic is entitled to an award of punitive damages because Swanson's conduct was fraudulent, malicious, oppressive, and/or undertaken with a conscious disregard for the probable consequences of his conduct.

Eight Claim for Relief

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

132. Sonic repeats and realleges all prior allegations as if fully set forth herein.

133. Swanson entered into a special and fiduciary relationship with Sonic.

134. An implied covenant of good faith and fair dealing is implied in Swanson's contracts and fiduciary relationship with Sonic.

135. As described at length herein, Swanson violated the spirit and intention of his contracts and relationships with Sonic.

136. As a result of Swanson's conduct, Sonic suffered damages in excess of $15,000.

137. Sonic has incurred attorney's fees in prosecuting this action and is entitled to recover attorney's fees against Swanson.

138. Sonic is entitled to an award of punitive damages because Swanson's conduct was fraudulent, malicious, oppressive, and/or undertaken with a conscious disregard for the probable consequences of his conduct.

Wherefore, Sonic prays for relief as follows:

1. Damages in excess of $15,000;

2. Attorney's fees and costs of suit as a component of damages on each claim for relief described above;

3. Punitive damages for each claim for relief as described above; and

4. Any such other and further relief as this Court may deem appropriate.

Dated: June 25, 2019.

CLEAR COUNSEL LAW GROUP

*/s/David T. Blake*_____
David T. Blake, Esq. (#11059)
Attorneys for Sonic Cavitation, LLC

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that on the 25th day of June, 2019, I caused the foregoing **SONIC CAVITATION'S, ANSWER AND COUNTERCLAIM TO RONALD SWANSON'S AMENDED COMPLAINT AND COUNTERCLAIM** to be served as follows:

[ ] by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid addressed to the parties below; and/or

[ ] pursuant to EDCR 7.26, by sending it via facsimile; and/or

[ ] by hand delivery

[X] E-Service to all registered parties

*/s/K.A.Gentile*_____
An employee of Clear Counsel Law Group

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Attorneys for intervening plaintiff/ cross-claimant plaintiff Ronald Swanson

DISTRICT COURT
CLARK COUNTY, NEVADA

RONALD SWANSON, an individual,

Plaintiff,

v.

SONIC CAVITATION, LLC, a Nevada Limited Liability Company; SONIC CAVITATION LIMITED, a foreign corporation; CENYTH CAPITAL CORP., a Nevada corporation; CENYTH SC USA ANGELS, LLC, a Nevada Limited Liability Company; CENYTH SC USA ANGELS 2, LLC, a Nevada Limited Liability Company; PETER DIZER, an individual; GARY GEORGE, an individual; LORINDA LIANG, an individual, and Does 1 - 10, unidentified,

Defendants.

Case No. A-16-740207-C
Dept. No. VI

PLAINTIFF RONALD SWANSON'S REPLY TO SONIC CAVITATION, LLC'S COUNTERCLAIM

Plaintiff Ronald Swanson ("Mr. Swanson") replies to Sonic Cavitation, LLC's ("SonCav") counterclaim as follows.

Case Number: A-16-740207-C

1. Paragraph 1 does not call for a response, therefore Mr. Swanson denies all the allegations contained therein.

Parties and Jurisdiction

2. Answering paragraph 2 of the counterclaim, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

3. Mr. Swanson admits the allegations in paragraph 3 of the counterclaim.

Allegations Common to All Causes of Action

4. Answering paragraph 4 of the counterclaim, Mr. Swanson admits that he was a member of the District of Columbia bar, was admitted on May 11, 2001, and was assigned bar number 472205. Mr. Swanson denies the remaining allegations in paragraph 4 of the counterclaim.

5. Answering paragraph 5 of the counterclaim, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

6. Mr. Swanson admits the allegations in paragraph 6 of the counterclaim.

7. Answering paragraph 7, Mr. Swanson admits that Cenyth worked as a fundraiser for Glottech, and that he was a partial owner of Cenyth. Mr. Swanson denies the remaining allegations in paragraph 7 of the counterclaim.

8. Answering paragraph 8 of the counterclaim, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

9. Mr. Swanson admits the allegations in paragraph 9 of the counterclaim.

10. Mr. Swanson admits the allegations in paragraph 10 of the counterclaim.

11. Mr. Swanson admits the allegations in paragraph 11 of the counterclaim.

12. Mr. Swanson admits the allegations in paragraph 12 of the counterclaim.

13. Answering paragraph 13 of the counterclaim, due to SonCav's theft of Mr. Swanson's files, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

14. Answering paragraph 14 of the counterclaim, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

15. Mr. Swanson denies the allegations in paragraph 15 of the counterclaim.

16. Mr. Swanson denies the allegations in paragraph 16 of the counterclaim.

17. Mr. Swanson admits the allegations in paragraph 17 of the counterclaim.

18. Mr. Swanson denies the allegations in paragraph 18 of the counterclaim, inasmuch as the paragraph, as worded, is misleading. Mr. Swanson admits that he, together with SonCav CEO Gary George, so used their company Cenyth.

19. Mr. Swanson admits the allegations in paragraph 19 of the counterclaim.

20. Mr. Swanson denies the allegations in paragraph 20 of the counterclaim.

21. Mr. Swanson admits the allegations in paragraph 21 of the counterclaim.

22. Mr. Swanson admits the allegations in paragraph 22 of the counterclaim.

23. Mr. Swanson denies the allegations in paragraph 23 of the counterclaim.

24. Mr. Swanson denies the allegations in paragraph 24 of the counterclaim.

25. Mr. Swanson denies the allegations in paragraph 25 of the counterclaim.

26. Mr. Swanson denies the allegations in paragraph 26 of the counterclaim.

27. Mr. Swanson denies the allegations in paragraph 27 of the counterclaim.

28. Answering paragraph 28 of the counterclaim, due to SonCav's theft of Mr. Swanson's files, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

29. Answering paragraph 29 of the counterclaim, due to SonCav's theft of Mr. Swanson's files, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

30. Mr. Swanson denies the allegations in paragraph 30 of the counterclaim.

31. Mr. Swanson denies the allegations in paragraph 31 of the counterclaim.

32. Mr. Swanson denies the allegations in paragraph 32 of the counterclaim.

33. Mr. Swanson denies the allegations in paragraph 33 of the counterclaim.

34. Mr. Swanson denies the allegations in paragraph 34 of the counterclaim.

35. Mr. Swanson denies the allegations in paragraph 35 of the counterclaim.

36. Mr. Swanson denies the allegations in paragraph 36 of the counterclaim.

37. Mr. Swanson denies the allegations in paragraph 37 of the counterclaim.

38. Mr. Swanson denies the allegations in paragraph 38 of the counterclaim.

39. Mr. Swanson denies the allegations in paragraph 39 of the counterclaim.

40. Mr. Swanson admits the allegations in paragraph 40 of the counterclaim and notes that it was Gary George's responsibility to do so.

41. Mr. Swanson denies the allegations in paragraph 41 of the counterclaim.

42. Mr. Swanson denies the allegations in paragraph 42 of the counterclaim.

43. Mr. Swanson denies the allegations in paragraph 43 of the counterclaim.

44. Mr. Swanson denies the allegations in paragraph 44 of the counterclaim.

45. Mr. Swanson denies the allegations in paragraph 45 of the counterclaim.

46. Mr. Swanson denies the allegations in paragraph 46 of the counterclaim.

47. Mr. Swanson denies the allegations in paragraph 47 of the counterclaim.

48. Mr. Swanson denies the allegations in paragraph 48 of the counterclaim.

49. Mr. Swanson denies the allegations in paragraph 49 of the counterclaim.

50. Mr. Swanson denies the allegations in paragraph 50 of the counterclaim.

51. Mr. Swanson admits the allegations in paragraph 51 of the counterclaim.

52. Mr. Swanson denies the allegations in paragraph 52 of the counterclaim.

53. Mr. Swanson denies the allegations in paragraph 53 of the counterclaim.

54. Mr. Swanson denies the allegations in paragraph 54 of the counterclaim.

55. Mr. Swanson denies the allegations in paragraph 55 of the counterclaim.

56. Mr. Swanson denies the allegations in paragraph 56 of the counterclaim.

57. Mr. Swanson denies the allegations in paragraph 57 of the counterclaim.

58. Mr. Swanson denies the allegations in paragraph 58 of the counterclaim.

59. Mr. Swanson denies the allegations in paragraph 59 of the counterclaim.

60. Mr. Swanson denies the allegations in paragraph 60 of the counterclaim.

61. Mr. Swanson denies the allegations in paragraph 61 of the counterclaim.

62. Mr. Swanson denies the allegations in paragraph 62 of the counterclaim.

63. Mr. Swanson denies the allegations in paragraph 63 of the counterclaim.

64. Mr. Swanson denies the allegations in paragraph 64 of the counterclaim.

65. Mr. Swanson denies the allegations in paragraph 65 of the counterclaim.

66. Mr. Swanson denies the allegations in paragraph 66 of the counterclaim.

67. Mr. Swanson admits the allegations in paragraph 67 of the counterclaim.

68. Mr. Swanson denies the allegations in paragraph 68 of the counterclaim.

69. Mr. Swanson denies the allegations in paragraph 69 of the counterclaim.

70. Mr. Swanson denies the allegations in paragraph 70 of the counterclaim.

71. Mr. Swanson denies the allegations in paragraph 71 of the counterclaim.

72. Mr. Swanson denies the allegations in paragraph 72 of the counterclaim.

73. Mr. Swanson denies the allegations in paragraph 73 of the counterclaim.

74. Mr. Swanson denies the allegations in paragraph 74 of the counterclaim.

75. Mr. Swanson denies the allegations in paragraph 75 of the counterclaim.

76. Mr. Swanson denies the allegations in paragraph 76 of the counterclaim.

77. Mr. Swanson denies the allegations in paragraph 77 of the counterclaim.

78. Mr. Swanson denies the allegations in paragraph 78 of the counterclaim.

79. Mr. Swanson denies the allegations in paragraph 79 of the counterclaim.

80. Mr. Swanson denies the allegations in paragraph 80 of the counterclaim.

81. Mr. Swanson denies the allegations in paragraph 81 of the counterclaim.

82. Mr. Swanson denies the allegations in paragraph 82 of the counterclaim.

83. Mr. Swanson admits the allegations in paragraph 83 of the counterclaim.

84. Mr. Swanson denies the allegations in paragraph 84 of the counterclaim.

85. Mr. Swanson denies the allegations in paragraph 85 of the counterclaim.

86. Mr. Swanson denies the allegations in paragraph 86 of the counterclaim.

87. Mr. Swanson denies the allegations in paragraph 87 of the counterclaim.

88. Mr. Swanson denies the allegations in paragraph 88 of the counterclaim.

89. Mr. Swanson denies the allegations in paragraph 89 of the counterclaim.

First Claim for Relief
(Conversion)

90. Mr. Swanson incorporates the preceding paragraphs by reference.

91. Mr. Swanson admits the allegations in paragraph 91 of the counterclaim.

92. Mr. Swanson denies the allegations in paragraph 92 of the counterclaim.

93. Mr. Swanson denies the allegations in paragraph 93 of the counterclaim.

94. Answering paragraph 94 of the counterclaim, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

95. Mr. Swanson denies the allegations in paragraph 95 of the counterclaim.

Second Claim for Relief
(Breach of Fiduciary Duty)

96. Mr. Swanson incorporates the preceding paragraphs by reference.

97. Mr. Swanson admits the allegations in paragraph 97 of the counterclaim.

98. Mr. Swanson denies the allegations in paragraph 98 of the counterclaim.

99. Mr. Swanson denies the allegations in paragraph 99 of the counterclaim.

100. Answering paragraph 100 of the counterclaim, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

101. Mr. Swanson denies the allegations in paragraph 101 of the counterclaim.

Third Claim for Relief
(Unjust Enrichment)

102. Mr. Swanson incorporates the preceding paragraphs by reference.

103. Mr. Swanson denies the allegations in paragraph 103 of the counterclaim.

104. Mr. Swanson denies the allegations in paragraph 104 of the counterclaim.

105. Mr. Swanson denies the allegations in paragraph 105 of the counterclaim.

106. Mr. Swanson denies the allegations in paragraph 106 of the counterclaim.

107. Answering paragraph 107 of the counterclaim, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

Fourth Claim for Relief
(Breach of Contract)

108. Mr. Swanson incorporates the preceding paragraphs by reference.

109. Mr. Swanson admits the allegations in paragraph 109 of the counterclaim.

110. Mr. Swanson admits the allegations in paragraph 110 of the counterclaim.

111. Mr. Swanson denies the allegations in paragraph 111 of the counterclaim.

112. Mr. Swanson denies the allegations in paragraph 112 of the counterclaim.

113. Answering paragraph 113 of the counterclaim, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

Fifth Claim for Relief
(Intentional Interference with Contractual Relations)

114. Mr. Swanson incorporates the preceding paragraphs by reference.

115. Paragraph 115 is so vague as to render it impossible to respond, therefore, Mr. Swanson denies the allegations therein.

116. Mr. Swanson denies the allegations in paragraph 116 of the counterclaim.

117. Mr. Swanson denies the allegations in paragraph 117 of the counterclaim.

118. Mr. Swanson denies the allegations in paragraph 118 of the counterclaim.

119. Answering paragraph 119 of the counterclaim, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

120. Mr. Swanson denies the allegations in paragraph 120 of the counterclaim.

Sixth Claim for Relief
(Malpractice)

121. Mr. Swanson incorporates the preceding paragraphs by reference.

122. Mr. Swanson admits the allegations in paragraph 122 of the counterclaim.

123. Mr. Swanson admits the allegations in paragraph 123 of the counterclaim.

124. Mr. Swanson denies the allegations in paragraph 124 of the counterclaim.

125. Mr. Swanson denies the allegations in paragraph 125 of the counterclaim.

126. Answering paragraph 126 of the counterclaim, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

Seventh Claim for Relief
(Fraudulent Representation and Nondisclosure)

127. Mr. Swanson incorporates the preceding paragraphs by reference.

128. Paragraph 128 of the counterclaim contains errors that render it nonsensical, therefore Mr. Swanson denies the allegations therein.

129. Mr. Swanson denies the allegations in paragraph 129 of the counterclaim.

130. Answering paragraph 130 of the counterclaim, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

131. Mr. Swanson denies the allegations in paragraph 131 of the counterclaim.

Eighth Claim for Relief
(Contractual and Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing)

132. Mr. Swanson incorporates the preceding paragraphs by reference.

133. Paragraph 133 is so vague as to render it impossible to respond, therefore, Mr. Swanson denies the allegations therein.

134. Paragraph 134 is so vague as to render it impossible to respond, therefore, Mr. Swanson denies the allegations therein.

135. Paragraph 135 is so vague as to render it impossible to respond, therefore, Mr. Swanson denies the allegations therein.

136. Mr. Swanson denies the allegations in paragraph 136 of the counterclaim.

137. Answering paragraph 137 of the counterclaim, Mr. Swanson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies all the allegations contained therein.

138. Mr. Swanson denies the allegations in paragraph 138 of the counterclaim.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The counterclaim fails to state a claim against Mr. Swanson on which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

It has been necessary for Mr. Swanson to employ the services of attorneys to defend this action and a reasonable sum should be allowed Mr. Swanson as and for attorneys' fees, together with his costs expended in defending this action.

THIRD AFFIRMATIVE DEFENSE

Mr. Swanson alleges that the incidents alleged in the counterclaim, and the alleged damages, if any, to SonCav in the underlying action, were proximately caused and contributed to by the actions of other persons, entities or parties hereto, who were not subject to the supervision and/or control of Mr. Swanson, and any award of damages to SonCav at the trial of this case should be compared and allocated accordingly.

FOURTH AFFIRMATIVE DEFENSE

Mr. Swanson alleges that the damages, if any, suffered by SonCav in the underlying action were caused, in whole or in part, by SonCav's actions.

FIFTH AFFIRMATIVE DEFENSE

SonCav is estopped from asserting any cause of action against Mr. Swanson.

SIXTH AFFIRMATIVE DEFENSE

All damages alleged by SonCav are speculative, and therefore not recoverable.

SEVENTH AFFIRMATIVE DEFENSE

If SonCav has failed to reasonably mitigate itsdamages, SonCav may not recover damages which could have been reasonably avoided.

EIGHTH AFFIRMATIVE DEFENSE

As a separate further answer and defense, Mr. Swanson alleges that in the event that the damages, if any, sustained by SonCav, were proximately caused by the independent, intervening and/or supervening actions of other persons or entities, no recovery may be had against Mr. Swanson for such damages.

NINTH AFFIRMATIVE DEFENSE

The facts alleged in SonCav's counterclaim are untrue and SonCav suffered no damages.

TENTH AFFIRMATIVE DEFENSE

SonCav's claims are barred by the doctrines of waiver and estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

SonCav has unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

SonCav breached the contract with Mr. Swanson.

THIRTEENTH AFFIRMATIVE DEFENSE

SonCav has failed to plead its claims with the degree of particularity required by Nevada Rule of Civil Procedure 9.

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FOURTEENTH AFFIRMATIVE DEFENSE

Any harm suffered by SonCav was not caused by any conduct on the part of Mr. Swanson.

FIFTEENTH AFFIRMATIVE DEFENSE

Mr. Swanson fully performed under the contracts.

SIXTEENTH AFFIRMATIVE DEFENSE

Mr. Swanson lacked the requisite scienter.

SEVENTEENTH AFFIRMATIVE DEFENSE

Mr. Swanson denies that he is guilty of any conduct that entitles SonCav to recover punitive damages.

EIGHTEENTH AFFIRMATIVE DEFENSE

The counterclaim fails to state a claim upon which punitive damages may be awarded.

NINETEENTH AFFIRMATIVE DEFENSE

No claims for punitive damages or other non-compensatory damages are appropriate against Mr. Swanson.

TWENTIETH AFFIRMATIVE DEFENSE

Any award of punitive damages to SonCav in this case would be violative of constitutional safeguards provided to Mr. Swanson under the Nevada constitution.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Any award of punitive damages to SonCav in this case would be violative of constitutional safeguards provided to Mr. Swanson under the United States Constitution.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Any award of punitive damages to SonCav in this case would be violative of constitutional safeguards provided to Mr. Swanson under the Due Process clause of the Fourteenth Amendment of the United States Constitution in that the determination of punitive damages under Nevada law is vague, is not based on any objective standards, is in fact, standardless, and is not rationally related to legitimate government issues.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Any award of punitive damages to SonCav in this case would be violative of constitutional safeguards provided to Mr. Swanson under the Due Process clause of the Fourteenth Amendment of the United States Constitution in that punitive damages are penal in nature and consequently Mr. Swanson is entitled to the same procedural safeguards accorded to criminal defendants.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

It is violative of the self-incrimination clause of the Fifth Amendment to the United States Constitution to impose against Mr. Swanson punitive damages, which are penal in nature, yet compel Mr. Swanson to disclose potentially incriminating documents and evidence.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

SonCav's claim of punitive damages violates the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution on the following grounds:

(a) It is violative of the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution to impose punitive damages, which are penal in

nature, against a civil defendant upon SonCav satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(b) The procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendant for different alleged acts of wrongdoing, which infringes the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution;

(c) The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of award against Mr. Swanson, which thereby violates the Due Process clause of the Fourteenth Amendment to the United States Constitution;

(d) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the Due Process clause of the Fourteenth Amendment to the United States Constitution;

(e) The procedures pursuant to which punitive damages are awarded permit multiple punishments or penalties for the same or similar acts and thus violate the Equal Protection clause of the Fourteenth Amendment to the United States Constitution;

(f) The procedures pursuant to which punitive damages are awarded results in imposition of different penalties for the same or similar acts and thus violate the Equal Protection clause of the Fourteenth Amendment to the United States Constitution;

(g) The procedures pursuant to which punitive damages are awarded results in imposition of penalties for out-of-state acts and thus violate the Due Process clause of the Fourteenth Amendment to the United States Constitution;

(h) The procedures pursuant to which punitive damages are awarded results in imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the Due Process clauses of the Fifth and Fourteen Amendments and the Equal Protection clause of the Fourteenth Amendment to the United States Constitution;

(i) The procedures pursuant to which punitive damages are awarded do not require written instructions to be given to the jury and thus violate the Due Process clause of the Fourteenth Amendment to the United States Constitution;

(j) The procedures pursuant to which punitive damages are awarded do not require the identification of actual damages separate from punitive damages on the verdict form, and thus violate the Due Process clause of the Fourteenth Amendment to the United States Constitution;

(k) The procedures pursuant to which punitive damages are awarded do not require the court to bifurcate trial to require that the jury return a verdict determining liability, actual damages, compensatory damages, and the appropriateness of punitive damages before considering the amount of punitive damages, and thus violate the Due Process clause of the Fourteenth Amendment to the United States Constitution.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The award of punitive damages in this action would constitute a deprivation of property without due process of law required under the Fifth and Fourteenth Amendments to the United States Constitution.

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TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The award of punitive damages against Mr. Swanson in this action would violate the prohibition against laws that impair the obligations of contract in violation of article 1 section 15 of the Nevada constitution.

PRAYER FOR RELIEF

THEREFORE, Mr. Swanson prays for the judgment, order, and decree of this Court as follows:

1. That SonCav's counterclaim be dismissed with prejudice and that SonCav take nothing thereby;
2. For attorneys' fees incurred in defending this action; and
3. For all other fees, costs and disbursements as the Court deems just and equitable under the circumstances.

DATED this 16th day of July, 2019.

Joseph R. Ganley (5643)
Richard L. Wade (11879)
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Attorneys for Ronald Swanson

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 16th day of July, 2019, I caused the above and foregoing document entitled **RONALD SWANSON'S ANSWER TO SONIC CAVITATION, LLC'S COUNTERCLAIM** to be served electronically pursuant to NEFCR 9 through the Eighth Judicial District Court's electronic filing system to the attorney(s) listed below at the address and/or facsimile number indicated below:

David T. Blake, Esq.
CLEAR COUNSEL LAW GROUP
1671 W. Horizon Ridge Parkway, Suite 200
Henderson, Nevada 89012

Attorney for defendants / counterclaimant

An employee of Hutchison & Steffen, PLLC

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Steven D. Grierson
CLERK OF THE COURT

OPPM
Joseph R. Ganley (5643)
Richard L. Wade (11879)
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel: (702) 385-2500
Fax: (702) 385-2086
jganley@hutchlegal.com
rwade@hutchlegal.com

Attorneys for intervening plaintiff/ cross-claimant plaintiff Ronald Swanson

DISTRICT COURT
CLARK COUNTY, NEVADA

RONALD SWANSON, an individual,

Plaintiff,

v.

SONIC CAVITATION, LLC, a Nevada Limited Liability Company; SONIC CAVITATION LIMITED, a foreign corporation; CENYTH CAPITAL CORP., a Nevada corporation; CENYTH SC USA ANGELS, LLC, a Nevada Limited Liability Company; CENYTH SC USA ANGELS 2, LLC, a Nevada Limited Liability Company; PETER DIZER, an individual; GARY GEORGE, an individual; LORINDA LIANG, an individual, and Does 1 - 10, unidentified,

Defendants.

Case No. A-16-740207-C
Dept. No. VI

PLAINTIFF RONALD SWANSON'S OPPOSITION TO SONIC CAVITATION'S MOTION TO STAY DISCOVERY PENDING RESOLUTION OF: (A) MOTION TO COMPEL; AND (B) MOTION FOR SUMMARY JUDGMENT

ORDER SHORTENING TIME

Hearing Date: February 11, 2020
Hearing Time: 9:30 a.m.

This case primarily involves a dispute over the loss of funds formerly held by defendant Sonic Cavitation, LLC ("SonCav"). Both sides accuse the other of absconding with the funds. During the pendency of this case, a multitude of cases in other jurisdictions – from Connecticut

Case Number: A-16-740207-C

to Washington D.C. to even Puerto Rico – have dovetailed in some way with this Nevada action. For the last few years, SonCav has been under the control of the very individuals who looted its accounts — Gary George and Peter Dizer – which led to plaintiff Ron Swanson bringing this action in Nevada. Mr. Swanson was CEO and general counsel of SonCav, but after ousting Mr. Swanson from the company, George, Dizer and SonCav, on information and belief, burgled Mr. Swanson's personal hard drive, which contains not just SonCav files, but also the files for every client Mr. Swanson had ever represented during his legal career. SonCav then brought untrue complaints to the Washingon D.C. Bar association, where Mr. Swanson was a member of the Bar.

Because SonCav possessed the hard drive that contained the documents that would have exculpated him, Mr. Swanson was forced to consent to disbarment rather than engage in a protracted, prohibitively expensive legal battle for which he lacked the evidence to defend against. SonCav's pending motion to compel Mr. Swanson's affidavit related to that consented disbarment contravenes Washington D.C. Bar association rules designations such affidavits as confidential. That is the sole document SonCav is seeking with its motion to compel.[5] SonCav's motion to compel is not yet fully briefed, but is set for a March 3, 2020 hearing.

Here, SonCav is seeking an open-ended stay of all case deadlines, claiming that its not-yet-heard motion to compel will lead to another not-yet-drafted motion for summary judgment based on evidence that SonCav has not yet seen that will allegedly resolve the entire case. In short, SonCav's request for a stay is based on layers of speculation regarding events that have not and may not *ever* occur. SonCav's motion should be denied.

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[5] Because SonCav's motion to compel is being addressed in a different hearing, the specifics of that motion are not discussed further here.

Argument

A. SonCav Offers No Tenable Basis to Warrant a Stay.

SonCav seeks to stay the entire case because it is bullish on its summary judgment prospects? With zero discovery having been completed? At the risk of sounding glib, that is certainly brazen. Especially where motions to stay are generally discouraged. *See Aspen Fin. Servs. v. Dist. Ct.*, 128 Nev. 635, 649, 289 P.3d 201, 210 (2012) ("[C]onvenience of the courts is best served when motions to stay proceedings are discouraged. . . . A stay would further frustrate the district court's interest in managing its caseload and expeditiously resolving the underlying suit given its complexity and the fact that it had already been pending for over a year and a half when the Aspen defendants brought their motion." (quotation omitted)).

This case began nearly four years ago on July 9, 2016. As a result of extensive motion practice during that time, discovery has only recently begun. And now SonCav wants further delay with its only basis being its unbridled optimism of its legal position, which is so far from solid that this case will be going to trial. As it is this, this case needs to get moving because of Nevada's unique five-year rule. A stay would only extend the case needlessly and jeopardize a five-year rule rub. Besides, Son Cav has offered no compelling reason why a stay is needed. It only outlines a series of hypothetical future events that it believes *may* streamline the case, but its hypotheticals are all one-sided; that is, they are based on presumptions that SonCav will prevail on certain pending motions, presumptions about the contents of documents it has never seen, and presumptions about unfiled, future motions.

Moreover, SonCav's motion seeks a stay with no end. SonCav needs to build its house of cards before telling the Court it cannot be knocked down. Indeed, if every litigant could stay a case based on adversarial posturing and partisan Pollyannas, the judicial system would come to a standstill. A party seeking an unending stay like this needs exceptional cause to do so and SonCav offers none.

Specifically, SonCav says two reasons exists for its request: (1) it has filed a motion to compel production of a single document (*i.e.,* the D.C. Bar affidavit); and (2) it hopes to move for summary judgment sometime in the undisclosed future. In doing so, SonCav relies on several hopeful assumptions related to those motions. First, SonCav assumes that it will prevail on its motion to compel, despite the fact that the motion has not even been fully briefed yet, let alone heard. Second, SonCav assumes that the document it expects to receive as a result of its motion will be so expansive and inflammatory that it will be able to base a dispositive motion on it, despite having no specific awareness of what that document contains. Third, SonCav assumes that it will be able to prevail on a broad motion for summary judgment based on that single document that allegedly will resolve the whole case at a point when the sum total of all discovery to date is the parties' initial disclosures and a *single request for production*. Based thereon, not only would such a motion be vulnerable to a NRCP 56(d) defense – which mandates fair discovery before judgments as a matter of law – it would undermine full and fair adjudication on the merits.

The parties have a lot of work to do. There has been no scheduling order to date. No trial date has been set. No pending discovery requests exist, and none of the parties has sought to schedule depositions. Discovery has scarcely begun. There are no pending *or even scheduled* deadlines. There is no risk of the parties running out of time to conduct any discovery they desire. Further, even if the parties were to propound written discovery requests, responses would be due *after* the Court hears SonCav's motion to compel. *If* SonCav's motion is granted, and *if* SonCav suddenly has a basis for a summary judgment motion, then they might gain some tenability, but, as it stands, all SonCav has offered is a series of overly-optimistic hypotheticals. SonCav is asking the Court to shut down the case *indefinitely* so that it can hopefully find support for its theory of the case sometime in the future, while preventing Mr. Swanson from litigating his own. It is nonsensical and unfair. Accordingly, there is absolutely no reason for a stay.

Importantly, Mr. Swanson is the plaintiff in this case.[6] He has gone to the Court to vindicate a wrong that was done against him by SonCav. Much of the reason this lawsuit has taken so long to date is that the other parties fought viciously to keep him *out* of the case, first by turning Momis Rivers against him after he brought the case on their behalf, then by motion practice to prevent him from filing claims as an intervening plaintiff. Now, SonCav wishes to stay the case so that SonCav can prevent Mr. Swanson from *even conducting discovery in the case he brought*. SonCav has delayed this case for four years. It should not be delayed further.

Further, it is also entirely unclear why this motion needed to be heard on shortened time. The Court will not hear SonCav's motion to compel until March, and SonCav did not even hint at a timeframe for its purely-hypothetical motion for summary judgment. There simply was no rush.

CONCLUSION

There is no reason for the Court to stay the case. SonCav's motion to compel has not even been fully briefed yet, let alone decided. The summary judgment motion it claims it will file based on its assumptions about evidence it believes it will receive from that motion to compel could not have even been drafted yet. Consequently, SonCav cannot even provide a timeline for when that motion might coalesce. Last, SonCav asked for an open-ended stay in

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[6] This has been true since the case was filed, in fact. Mr. Swanson brought the case on Momis Rivers' behalf, before their counsel went rogue and he was forced to intervene under his own name.

hope that any of these events might take place at any time in the future. This case has existed for nearly four years and has barely reached the start of discovery. Respectfully, it should not be delayed further. SonCav's motion should be denied.

DATED this 10th day of February, 2020.

Joseph R. Ganley (5643)
Richard L. Wade (11879)
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Attorneys for Ronald Swanson

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 10TH day of February 2020, I caused the above and foregoing document entitled **PLAINTIFF RONALD SWANSON'S OPPOSITION TO SONIC CAVITATION'S MOTION TO STAY DISCOVERY PENDING RESOLUTION OF (A) MOTION TO COMPEL AND (B) MOTION FOR SUMMARY JUDGMENT** to be served electronically pursuant to NEFCR 9 through the Eighth Judicial District Court's electronic filing system to the attorney(s) listed below at the address and/or facsimile number indicated below:

David T. Blake, Esq.
CLEAR COUNSEL LAW GROUP
1671 W. Horizon Ridge Parkway, Suite 200
Henderson, Nevada 89012

Attorney for defendants / counterclaimant

/s/ BOBBIE BENITEZ
An employee of Hutchison & Steffen, PLLC

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Tort | **COURT MINUTES** | **April 07, 2020**

A-16-740207-C Momis Rivers, LLC, Plaintiff(s)
vs.
Sonic Cavitation, LLC, Defendant(s)

April 07, 2020 09:30 AM **Sonic Cavitation's Motion to Compel**

HEARD BY: Truman, Erin **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Lott, Jennifer

RECORDER: Haak, Francesca

REPORTER:

PARTIES PRESENT:

Piers R. Tueller	**Attorney for Counter Defendant, Cross Claimant, Intervenor Plaintiff**
Sonic Cavitation, LLC	**Counter Claimant, Defendant, Intervenor Defendant**

JOURNAL ENTRIES

Commissioner Truman DISCLOSED as a private attorney, she was Of Counsel at Hutchison & Steffen from approximately 2010 through 2017. No objection by counsel to move forward with Commissioner Truman. Mr. Blake stated Mr. Swanson signed an Affidavit in connection with the District of Columbia Bar Authority. Arguments by counsel.

Commissioner stated there was a conversation between counsel on 3-3-2020 prior to the Motion to Compel being re-filed on 3-6-2020. Commissioner stated Mr. Swanson consented to disbarment, and he signed a Confidential Affidavit. Based on what was presented, COMMISSIONER RECOMMENDED, the motion is DENIED as the Affidavit was part of the negotiated Bar Agreement understanding that it would remain Confidential. Mr. Tueller to prepare the Report and Recommendations, and Mr. Blake to approve as to form and content. Comply with Administrative Order 20-10, and submit the DCRR to DiscoveryInbox@clarkcountycourts.us. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution.

CLERK'S NOTE: Minute Order amended 4-29-2020 and 6-12-2020. jl

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DISTRICT COURT
CLARK COUNTY, NEVADA

MOMIS-RIVERS, LLC, a Delaware Limited Liability Company, Plaintiff, vs. SONIC CAVITATION, LLC, a Nevada Limited Liability Company; and DOES 1-10, unidentified, Defendants.	CASE NO.: A-16-740207-B DEPT. NO.: XXII
RONALD SWANSON, an Individual, Plaintiff-Intverenor, vs. SONIC CAVITATION, LLC, a Nevada Limited Liability Company; SONIC CAVITATION LIMITED, a foreign corporation; CENYTH CAPITAL CORP., a Nevada corporation; CENYTH SC USA ANGELS 2, LLC, a Nevada Limited Liability Company; PETER DIZER, an individual; GARY GEORGE, an individual; LORINDA LIANG, an individual; and Does 1-10, unidentified, Defendants.	
RONALD SWANSON, an individual, Corss-Claimant, vs. MOMIS-RIVERS, LLC, a Delaware Limited Liability Company, Cross-Defendant.	
SONIC CAVITATION, LLC, a Nevada Limited Liability Company,	

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

Counter-Claimant,

vs.

RONALD DONLAN SWANSON, an individual,

Counter-Defendant.

AMENDED ORDER SETTING CIVIL JURY TRIAL

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set to be tried to a jury on a five-week stack to begin **Monday, October 10, 2022, at 8:30 a.m. The August 1, 2022 trial is hereby vacated.**

B. A Pre-Trial Conference/Calendar Call with the designated trial attorney and/or parties in proper person will be held on **Wednesday, September 28, 2022, at 8:30 a.m. The July 20, 2022 Pre-Trial Conference is hereby vacated.** Parties must bring to Calendar Call the following:

(1) Typed exhibit lists;
(2) List of depositions;
(3) List of equipment needed for trial; and
(4) Courtesy copies of any legal briefs on trial issues.

C. The Pre-trial Memorandum must be filed no later than noon on September 26, 2022, with a courtesy copy hand delivered to Department XXII. All parties, (Attorneys and parties in proper person) **MUST** comply with **All REQUIREMENTS** of E.D.C.R. 2.67 and 2.69.

D. All pre-trial motions, including but not limited to motions in limine, must be in writing and **filed no later than August 15, 2022,** and must be heard not less than 14 days prior to trial. The parties must adhere to the requirements set forth within the Eighth Judicial District Court Rules (EDCR), and particularly, EDCR 2.47(b), which requires the lawyers personally consult with one another by way of face-to-face meeting or via telephone conference before a motion in limine can be filed. Counsel are required to confer, **pursuant to EDCR2.47 at least two weeks prior** to filing any motion in limine. If a personal or telephone conference was not possible, the attorney's declaration and/or affidavit attached to the motion in limine shall set forth the reasons. Should a

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

party and/or his or her attorney fail to abide by the requirements of EDCR 2.47(b) before filing his or her motion in limine, such motion will not be heard by the Court. **Orders shortening time will not be signed except in extreme emergencies. An upcoming trial date is not an extreme emergency.**

E. All discovery deadlines, deadlines for filing dispositive motions and motions to amend the pleadings or add parties are controlled by the previously issued Scheduling Order and Order Setting Civil Jury Trial and Calendar Call.

Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.

Dated this 1st day of April, 2022

SUSAN H. JOHNSON, DISTRICT COURT JUDGE

D59 2B5 7F1E 7F6E
Susan Johnson
District Court Judge

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Momis Rivers, LLC, Plaintiff(s) vs. Sonic Cavitation, LLC, Defendant(s)	CASE NO: A-16-740207-B DEPT. NO. Department 22

AUTOMATED CERTIFICATE OF SERVICE

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

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DISTRICT COURT
CLARK COUNTY, NEVADA

MOMIS-RIVERS, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

SONIC CAVITATION, LLC, a Nevada Limited Liability Company; and Does 1-10, unidentified,

Defendants.

RONALD SWANSON, an individual,

Plaintiff-Intervenor,

v.

SONIC CAVITATION, LLC, a Nevada Limited Liability Company; SONIC CAVITATION LIMITED, a foreign corporation; CENYTH CAPITAL CORP., a Nevada corporation; CENYTH SC USA ANGELS, LLC, a Nevada Limited Liability Company; CENYTH SC USA ANGELS 2, LLC, a Nevada Limited Liability Company; PETER DIZER, an individual; GARY GEORGE, an individual; LORINDA LIANG, an individual, and Does 1 - 10, unidentified,

Defendants.

RONALD SWANSON, an individual,

Cross-Claimant,

v.

MOMIS-RIVERS, LLC, a Delaware Limited

Case No. A-16-740207-C
Dept. No. VI

Renewed Motion to Compel

HEARING REQUESTED

Liability Company,

Cross-Defendant.

SONIC CAVITATION, LLC, a Nevada Limited Liability Company,

Counter-Claimant,

v.

RONALD DONLAN SWANSON, an individual,

Counter-Defendant,

Defendant/Counter-Claimant Sonic Cavitation, LLC, and Cenyth SC USA Angels, LLC (collectively "Sonic") and Gary George hereby request that the Court Compel Plaintiff-in-Intervention Swanson to disclose an affidavit consenting to disbarment (the "Affidavit").[1]

I.

Background

Sonic Cavitation is a start-up company developing technology to produce clean water and power. Plaintiff-in-intervention, Ron Swanson, was general counsel for Sonic Cavitation during a critical period of the start-up company's operation. During his employment with Sonic, Swanson intentionally breached his ethical duties to his client, stole money from company investors, and used his position as trusted counsel to avoid detection of his theft. Ultimately, his conduct was discovered and reported to the Washington D.C. Bar Association. As the governing authority for attorney licensing, Bar Counsel for the District of Columbia ("Bar Counsel") had direct access to Swanson's trust IOLTA accounts and performed an independent investigation into Mr. Swanson's conduct as counsel for Sonic Cavitation. After investigation, Bar Counsel

[1] The declaration regarding efforts of Sonic's attorney to hold a telephonic discovery dispute conference regarding this issue appears at the end of the Motion. This motion was previously taken off calendar because counsel for the parties did not discuss a resolution to the issue in person or by phone. The updated declaration details the parties 2.34 conference on March 3, 2020.

brought numerous charges against Swanson and sought his disbarment. The charging document, called a Specification of Charges, alleges that Swanson engaged in the following misconduct:

- Acquiring a possessory or pecuniary interest adverse to Sonic Cavitation in violation of District of Columbia Rule of Professional Conduct ("DCRPC") 1.8(a),
- Failing to keep and maintain complete records of entrusted funds in violation of DCRPC 1.15(a).
- **Stealing more than $1,000,000 of funds belonging to Sonic Cavitation in violation of DCRPC 1.15(a)**.
- Failing to give a full accounting of his use of client funds in violation of in violation of DCRPC 1.15(c).
- Failing to surrender papers and property and return funds to Sonic Cavitation in violation of DCRPC 1.15(a).
- Obstructing, destroying, or concealing a laptop belonging to Sonic Cavitation with evidence relevant to Sonic Cavitation's interests.
- **Engaging in criminal conduct, including theft and fraud in violation of D.C. Code § 22-3211, § 22-3221, and 18 U.S.C. § 1343**.

See November 27, 2017 Specification of Charges, attached hereto as Exhibit A ¶ 74.

The Specification of Charges describes a concerning pattern of conduct for Swanson. He was under a fiduciary duty to advocate for Sonic Cavitation's best interest. Instead, he abused his position to embezzle and steal more than $1,000,000 from Sonic Cavitation, attempted to hide evidence and cover his tracks, and refused to cooperate with Bar Counsel's investigation.

Disciplinary proceedings terminated against Swanson when he consented to his disbarment. Section 12 of Rule 11 of the Rules governing the District of Columbia Bar allow an attorney facing disciplinary charges to consent to disbarment by submitting an affidavit stating, among other things, that the attorney **(a) knowingly consents to the disbarment, (b) admits that the "material facts upon which the allegations of misconduct are predicated are true," and (c) "submits the consent because the attorney knows that if disciplinary proceedings based on the alleged misconduct were brought, the attorney could not successfully defend**

against them." Swanson submitted the required affidavit and was disbarred. See October 29, 2018, Report and Recommendation of the Board on Professional Responsibility, attached hereto as Exhibit B.

Sonic's Counterclaim alleges that Swanson stole more than $1,000,000 from Sonic Cavitation. See June 25, 2019 Answer to First Amended Complaint and Counterclaim (the "Counterclaim"), on file herein, at ¶ 30-34. The great majority of factual allegations in Sonic's counterclaim are substantively identical to those in the Specification of Charges. Swanson's affirmative defenses raise issues that would be resolved by the Affidavit. See, e.g., Fourth Affirmative Defense (alleged damages were caused by Sonic), Eighth Affirmative Defense (Sonic's damages were caused by a independent/intervening/supervening actions of others), Ninth Affirmative Defense (the facts alleged in the Counterclaim are untrue and Sonic suffered no damages), Twelfth Affirmative Defense (Sonic breached its contract with Swanson), Fourteenth Affirmative Defense (Any harm suffered by Sonic was not caused by any conduct on the part of Swanson), Fifteenth Affirmative Defense (Swanson fully performed under the contracts). See July 16, 2019 Reply to Sonic Cavitation LLC's Counterclaim at 12-19.

The Affidavit is also highly relevant to Swanson's claims against Sonic. In the Affidavit, Swanson admits to all o the material allegations in the Specification of Charges. Nearly all o the allegations in Swanson's Complaint are contradicted by the Affidavit/Specification of Charges. Swanson alleges that he did not steal money from Sonic, it was Dizer and George that stole approximately $400,000 from the company. See May 30, 2018 Amended Complaint-in-Intervention and Cross-Claim (the "FAC") at ¶¶ 31, 37, 63, 75, 83-84. However, the Specification of Charges concludes that Dizer transferred the funds to prevent further theft by Swanson. Ex. A ¶ 45. Swanson alleges that Sonic Cavitation did not repay the loan from Momis-Rivers. FAC ¶ 39. The Specification of Charges/Affidavit, on the other hand, demonstrate that the loans could not be repaid because Swanson stole more than $1,000,000 from Sonic Cavitation. Ex. A ¶¶ 27-30. Swanson alleges that he was not timely paid for his work at Sonic Cavitation "because . . . SonCav was not financially stable during that time." FAC ¶¶ 51, 110, 113, 114. The Specification of Charges/Affidavit confirm the opposite.

Swanson compensated himself more than he was owed by stealing more than $1,000,000 from Sonic Cavitation—which directly caused Sonic Cavitation's financial instability. Ex. A ¶¶ 27-30. The FAC alleges that the transactions were legitimate expenses for Sonic Cavitation. FAC ¶ 55. But the Specification of Charges/Affidavit confirm that Swanson stole more than $1,000,000 from Sonic Cavitation. Ex. A ¶¶ 27-30.

On October 16, 2019, Sonic Cavitation served a request for production asking Swanson to produce a copy of his affidavit consenting to disbarment. Swanson responded on November 15, 2019 with an objection stating:

> Mr. Swanson . . . objects that pursuant to District of Columbia Court of Appeals Board on Professional Responsibility Board Rule 16.3, the affidavit requested "and any substantive reference to its contents are confidential.

Counsel for Sonic responded via email on November 15, 2019, noting that District of Columbia Bar Rule XI section 12(c) says that Swanson can waive confidentiality of the affidavit. Specifically, Rule XI section 12(c) states:

> the affidavit required under subsection (a) of this section shall not be publicly disclosed or made available for use in any other proceeding except by order of the Court or **upon written consent of the attorney**.

(emphasis added).[2]

II.

Procedural History

Prior to submitting his affidavit consenting to disbarment, Swanson intervened as a Plaintiff in this action on May 21, 2018. Swanson's FAC alleges that he acquired certain contracts between Sonic and its investors and that he, standing in the shoes of the investors, is entitled to recover damages for breach of contract and other torts. The FAC identifies at least $105,000 of funds invested that he argues should be repaid. See May 30, 2018 Amended Complaint and Crossclaim, on file herein, at ¶ 21. Swanson also alleges that certain Sonic principals improperly withdrew and/or embezzled $410,000 and requests recovery of these

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[2] A copy of this rule is attached to this Motion as Exhibit C.

funds. See id. at ¶¶ 82-89.

Sonic filed a motion to compel with the discovery commissioner before this case was transferred to business court. Discovery Commissioner Truman orally denied the motion to compel (See April 7, 2020 Minute Order, on file herein), but never entered a written order that Sonic could object to pursuant to EDCR 2.34(f)(1). Commissioner Truman's ruling is no longer relevant because this case was transferred to Business Court on October 6, 2021. As this Court knows, discovery disputes in business court are not heard before the discovery commissioner.

As argued below, Swanson should be compelled to disclose his affidavit consenting to disbarment because it contains sworn admissions that are directly relevant to the issues raised by Swanson in his claims against Sonic. Swanson has waived any confidentiality of the Affidavit by placing those contentions at issue in this action.

III.

Analysis

Swanson does not object to the Affidavit as being outside the scope of discovery, not proportional to the needs of this case, or an otherwise burdensome request. His only objection is that the affidavit is confidential under disciplinary rules governing lawyers in the District of Columbia. As demonstrated below, these rules explicitly permit Swanson to disclose the Affidavit. And, under the doctrine of at-issue waiver, Swanson may be compelled to disclose the Affidavit.

A. The Affidavit contains substantive admissions that are relevant in this case.

The District of Columbia Court of Appeals has explained the purpose of an affidavit consenting to disbarment. In re Stephens, 247 A.3d 698, 702 (D.C. 2021). First, the affidavit "provides assurance that the attorney's consent is knowing and voluntary." This squarely rejects Swanson's narrative that he somehow had no other choice or was unaware of the consequences of submitting the Affidavit. Second, "the admissions required in the affidavit are a substitute for a full-blown adjudication and relieve Disciplinary Counsel of the burden of proving the attorney's disciplinary violations on a full evidentiary record." Id. This rejects the notion that the

affidavit somehow did not admit all of the key factual allegations in the Bar Proceedings against Swanson. The Affidavit replaces findings resulting from a complete disciplinary hearing. Thus, the Affidavit is akin to a guilty plea. It substitutes for the due process that would otherwise be afforded to an accused.

These principles illustrate the importance of the Affidavit in this case. Swanson appears to take the position that he can make a sworn statement admitting misconduct to the D.C. Bar and then make a totally contradictory sworn statement to the jury in this matter. He should not be permitted to do so without evidentiary consequences. It is well settled the outcome of a criminal proceeding (include a plea bargain) is admissible against a party in a subsequent civil proceeding. See, e.g., State v. La Russo, 242 N.J. Super. 376, 379 (Law. Div. 1990). Additionally, Nevada has enacted a statute reflecting the policy that a criminal conviction is conclusive evidence of all facts necessary to impose civil liability. See NRS 41.133. And the Nevada Supreme Court has repeatedly affirmed the use of issue and claim preclusion in civil matters, a doctrine which promotes judicial efficiency, and prevents inconsistent results in court proceedings. See, e.g., G.C. Wallace, Inc. v. Eighth Jud. Dist. Ct., 127 Nev. 701, 705, 262 P.3d 1135, 1138 (2011) (citing and analyzing numerous cases).

The affidavit is both admissible and critically relevant to the factual issues in this case.

B. Swanson can waive confidentiality of the Affidavit.

District of Columbia Bar Rule XI section 12(c) says that Swanson can waive confidentiality of the Affidavit. Rule XI section 12(c) specifically provides:

> the affidavit required under subsection (a) of this section shall not be publicly disclosed or made available for use in any other proceeding except by order of the Court or **upon written consent of the attorney**.

See Exhibit C (emphasis added). Accordingly, Swanson's position that he *cannot* disclose the Affidavit is meritless. Swanson could authorize the Affidavit to be disclosed. He simply chooses not to.

C. The doctrine of at-issue waiver requires disclosure of the Affidavit.

The at-issue waiver doctrine requires a litigant to disclose relevant medical records that

would otherwise be privileged or confidential. For example, "Bringing a claim for personal injury or medical malpractice results in a limited waiver of the physician-patient privilege with regard to directly relevant and essential information necessary to resolve the case." Leavitt v. Siems, 130 Nev. 503, 511, 330 P.3d 1, 7 (2014). The Nevada Supreme Court explained the reason for this at-issue waiver:

> this . . . rule promotes fairness . . . and discourages abuse of the privilege; it prevents the patient from putting his physical or mental condition in issue and then asserting the privilege to prevent an adversary from obtaining evidence that might rebut the patient's claim.

Mitchell v. Eighth Judicial Dist. Court of State ex rel. Cty. of Clark, 131 Nev. 163, 168, 359 P.3d 1096, 1099–100 (2015).

The at-issue waiver doctrine has been applied in other contexts. See Wardleigh v. Second Judicial Dist. Court In & For Cty. of Washoe, 111 Nev. 345, 355, 891 P.2d 1180, 1186 (1995) (attorney-client privilege); JPMorgan Chase Funding Inc. v. Cohan, 134 A.D.3d 455, 456, 20 N.Y.S.3d 363, 364 (N.Y. App. Div. 2015) (tax returns); Hudson Specialty Ins. Co. v. Haley & Aldrich, Inc., 159 A.D.3d 1344, 1345, 73 N.Y.S.3d 812, 814 (N.Y. App. Div. 2018) (Insurance and subrogation claim files); State v. Davis, 522 S.W.3d 360, 369 (Mo. Ct. App. 2017) (statements to probation officer). Assertion of an affirmative defense can operate as an at issue waiver. See Village Bd. of Vil. of Pleasantville v. Rattner, 130 A.D.2d 654, 655 (1987); McGrath v. Nassau Cty. Health Care Corp., 204 F.R.D. 240, 247 (E.D.N.Y. 2001).

The waiver of confidentiality can occur with sealed or confidential court records. For example, in Green v. Montgomery, 95 N.Y.2d 693, 700, 746 N.E.2d 1036, 1041 (2001), the New York Court of Appeals examined various cases where a party waived confidentiality of prior juvenile or sealed court records by affirmatively placing facts arising from the records at issue. The Court specifically noted that courts have "consistently held that the statutory protection is waived" when a party "affirmatively places the conduct at issue by bringing a civil suit." In such instances, the privilege or confidentiality "may not be used as a sword to gain an advantage in a civil action." See id. And "[s]elective disclosure is not permitted as a party may not rely on the protection of the privilege regarding damaging communications while disclosing

other self-serving communications." Deutsche Bank Tr. Co. of Americas v. Tri-Links Inv. Tr., 43 A.D.3d 56, 64, 837 N.Y.S.2d 15, 23 (2007).

Here, Swanson has raised claims against Defendants and asserted affirmative defenses that place the Affidavit at issue. He (1) stole the money that Momis-Rivers invested in Sonic, (2) subsequently acquired Momis-Rivers' right to recover the investment (i.e. recover liability on a loss that he directly caused), (3) intervened in this action as a plaintiff, (4) filed claims against Sonic to repay the money that he stole, (5) asserted additional claims against Sonic, and then (6) signed the Affidavit, which admits to a host of material and critical facts that contradict his claims and affirmative defenses in this case.

Numerous critical allegations in Swanson's FAC are contradicted by the allegations in the Specification of Charges—which are now admitted by Swanson. For example, the FAC identifies certain loan investments in Sonic and alleges that they were not repaid. FAC ¶ 21. By contrast, the now-admitted allegations in the Specification of Charges detail how Swanson stole most of the funds that were invested in Sonic. See Exhibit A ¶¶ 14-21; 22-30. The FAC also alleges that Sonic cavitation officers, not Swanson, are the ones who stole money from Sonic. See FAC ¶ 31-38. The now-admitted facts in the Specification of Charges contradict this. See Ex. A ¶¶ 68-69. Finally, the FAC alleges that Sonic reached certain payment terms with Swanson that remain due and owing. FAC ¶¶ 51-56. The now-admitted allegations in the Specification of Charges show that Swanson stole money from Sonic and continually breached his duties, engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, and seriously interfered with the administration of justice, which would disentitle him to compensation altogether.

Additionally, Swanson's affirmative defenses place the Affidavit at issue. Swanson raises the affirmative defense that he did not contribute to the damages that Sonic is alleging, that Sonic suffered no damages, that Sonic breached its contract with Swanson, and that Swanson fully performed his obligations under his contract with Sonic. Each of these defenses, raised by Swanson, is critically rebutted or undermined by the Affidavit and the Specification of Charges.

This is a clear situation where use of the at-issue waiver doctrine is necessary to prevent a litigant from using confidentiality as a sword to gain an advantage. Like a personal injury plaintiff that places otherwise confidential medical records at issue by claiming personal injury damages, Swanson has placed the substance of his Affidavit at issue by raising claims against Sonic that arise from conduct referenced in the Affidavit.

D. Swanson's reasons for not disclosing the affidavit are without merit.

In his Opposition (the "Opposition") to Sonic Cavitation's Motion to Compel, Swanson does not disagree with the at-issue waiver rule itself. See February 19, 2020 Opposition to Motion to Compel (the "Opposition"), on file herein. Instead he argues that he has not waived confidentiality by placing the affidavit at issue. Swanson supports this conclusion with largely irrelevant or misplaced arguments facts. As argued below, the FAC, which Swanson filed after affirmatively seeking to intervene as a plaintiff and which greatly expanded the factual scope of this action, raises numerous allegations that are directly rebutted by his affidavit admitting the material allegations in the Specification of Charges.

Swanson argues that he only signed the Affidavit because he lacked the evidence to defend bar proceedings. He claims that he lacked the evidence because Sonic Cavitation had obtained a hard drive on which Swanson kept some of his records.[3] But the question of *why*

[3] Swanson's claim that exculpatory evidence exists on this hard drive is an attempted deception that he has raised frequently—including during the D.C. Bar disciplinary proceedings and at other times. But the defense is hollow. Swanson himself admits that he chose not to search through the files on the digital image given to him to locate unidentified exculpatory documents. See Opposition Ex. A ¶ 12. The contention that he could not be inconvenienced by searching through electronic and digital records—which can be narrowed quickly using search terms—and that he preferred to consent to disbarment rings hollow. If exculpatory evidence existed, Swanson no doubt would produce and identify it. More tellingly, *all* of the documents on the digital device have been disclosed to Swanson, although some have an "attorney's eyes only" designation because they contain proprietary Sonic Cavitation information. Swanson has had more than a year to locate and identify these exculpatory documents. He has not attached any documents to his opposition or sought to file them under seal. And not only does Swanson not attach these documents, he also does not describe what the allegedly exculpatory documents are or explain how they would refute the clear evidence that he misappropriated Sonic Cavitation's funds.

Swanson submitted the affidavit consenting to disbarment is irrelevant. The only issue is whether Swanson has affirmatively asserted issues to which the confidential document is relevant.

Swanson argues that Sonic Cavitation has not "offered any specific reason why they need this confidential document." This contention ignores the substance of Sonic Cavitation's Motion to Compel. The affidavit admits a multitude of facts that Swanson insists on disputing and would greatly assist in eliminating discovery and narrowing issues for trial.

Swanson argues that Sonic Cavitation does not need the affidavit because it is already aware that he consented to disbarment. This argument is rebutted by logic and by the very substance of Swanson's Opposition. In terms of logic, it is not the *fact* of Swanson's disbarment that is relevant, it is his *admission* that the material facts of the Specification of Charges are true that is relevant. And it is true that Swanson cannot deny that he consented to disbarment by submitting the Affidavit and that the Affidavit complied with all of the rules, including the requirement that Swanson admit to all of the material allegations in the Specification of Charges. But Swanson suggests that he did not admit to all material allegations set forth in the Specification of Charges. See Opposition Ex. A at ¶¶ 12-13. Moreover, Swanson prior conduct in this action demonstrates that Swanson intends to dispute material facts alleged in the Specification of Charges. He has made repeated factual assertions that are directly contradicted in the Specification of Charges. Compare Opposition at 2:7-8 (describing Swanson as "the top executive who had singularly accomplished and managed every company success to date.") with Ex. A at ¶¶ 14-46 (describing in detail how Swanson stole more than $1,000,000 of the approximately $2,000,000 invested with Sonic Cavitation.) and ¶¶ 47-64 (describing how Swanson breached his duties to Sonic through misrepresentation and convincing investors, whom Swanson stole from, to sue Sonic Cavitation); Opposition at 2:13-15 (alleging that Peter Dizer stole $400,000 from Sonic Cavitation) with Motion Exhibit A at ¶ 45 (noting that Dizer transferred $410,000 from Sonic Cavitation accounts to prevent Swanson from embezzling additional funds). Thus, Swanson has already revealed that he intends to make arguments relating

to the scope of facts admitted to in the affidavit. The Court must compel Swanson to produce the affidavit so that Sonic Cavitation can rebut Swanson's contentions.[4]

Additionally, Swanson admits that he signed the affidavit at a time when he "was already involved in litigation against . . . the defendants . . . involving multiple jurisdictions, including this one." Opposition Ex. A at ¶ 14. He knew what he was admitting to when he signed the affidavit and knew that it could have consequences in the o. Swanson also fails to mention that **he** instigated each of these lawsuits—either as plaintiff or as the recipient of the named plaintiffs' contract rights. See Ex. A at ¶¶ 57. Thus, Swanson signed the affidavit at a time when he knew it would be directly relevant to claims and defenses that he personally asserted in this and other lawsuits.

The procedural history of this case also directly demonstrates that it is Swanson's affirmative conduct that placed these facts at issue. Swanson was not originally a named plaintiff. But he insisted on intervening in the action and was granted leave to intervene on May 16, 2018. He filed his Complaint in intervention on May 21, 2018, which was substantively identical to the underlying Complaint of Momis-Rivers. A few weeks later, over Sonic Cavitation's objection, Swanson filed the FAC, which greatly expanded the scope of his allegations. Nearly all of the allegations mentioned in the table above were added for the first time in Swanson's First Amended Complaint. Thus, both Swanson's participation as a plaintiff and the new allegations that he brought to this case arose because of Swanson's affirmative conduct in spite of Sonic Cavitation's objections.

Accordingly, Swanson's contention that "this is not at all like a personal injury plaintiff being compelled to produce medical records after suing for damages" and that he has not "put the evidence at issue" (Opposition at 7:9, 7:23-24) does not withstand scrutiny. Swanson

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[4] Swanson also argues that he did not know that Sonic Cavitation would know that he submitted an affidavit consenting to disbarment. If this is true, it is due to his failure to review local rules. Section 12 of Rule XI of the D.C. Bar Rules provides that "The order disbarring the attorney on consent shall be a matter of public record." The the specific fact that the disbarment was by consent is a matter of public record. See Ex. C.

affirmatively intervened in this action. He then took steps to expand the factual scope of the action. Those factual allegations allege misconduct by Sonic Cavitation and its principles. He then signed and submitted an affidavit admitted to material facts related to his allegations. Swanson's conduct is no different than that of a personal injury claimant. A situation like this is the precise reason that the at-issue waiver doctrine exists.

Accordingly, the Court should enter an order compelling Swanson to disclose his Affidavit and authorize its release from the relevant disciplinary authorities in the District of Columbia.

Dated: April 26, 2022.

/s/ David Blake
David T. Blake (#11059)

Declaration of David T. Blake, Esq. in Support of Motion to Compel

David T. Blake, Esq., being duly sworn, do hereby state under oath as follows;

1. I am an attorney licensed to practice in the State of Nevada and a Partner with the law firm of Clear Counsel Law Group ("CCLG"), attorneys for Sonic Cavitation in this matter.

2. I have personal knowledge of the matters set forth herein and could competently testify thereto if called to do so in a court of law.

3. On October 16, 2019, Sonic Cavitation served a request for production asking Swanson to produce a copy of his affidavit consenting to disbarment. Swanson responded on November 15, 2019 with an objection stating:

> Mr. Swanson . . . objects that pursuant to District of Columbia Court of Appeals Board on Professional Responsibility Board Rule 16.3, the affidavit requested "and any substantive reference to its contents are confidential.

4. I responded via email on November 15, 2019, noting that District of Columbia Bar Rule XI section 12(c) says that Swanson can waive confidentiality of the affidavit. Specifically, Rule XI section 12(c) states:

> the affidavit required under subsection (a) of this section shall not be publicly disclosed or made available for use in any other proceeding except by order of the Court or **upon written consent of the attorney**.

(emphasis added).

5. I tried to hold a discovery dispute conference to address the issue. Swanson's attorney, Rik Wade, Esq., first indicated that he was communicating with his client about the issue. Finally, in a November 26, 2019 email, Mr. Wade stated, "Unfortunately I still don't have an answer for you about producing this."

6. Since that email, Swanson's counsel has not contacted me or discussed the issue with me.

7. I again sent an email to Swanson's attorneys on January 24, 2020, asking if they had spoken with Mr. Swanson about the issue. I had not received a response by the time of filing this Motion.

8. I spoke with counsel for Swanson on March 3, 2020. We discussed Swanson's position with respect to waiving confidentiality and producing the Affidavit. Swanson's position had not changed. He still refused to produce the affidavit.

9. I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of Nevada.

Dated: March 6, 2020.[5]

/s/ David Blake
David T. Blake (#11059)

[5] This motion to compel was originally brought before discovery Commissioner Erin Truman before this matter was transferred to business court. The affidavit in support of that motion is included herein to satisfy EDCR 2.34.

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that on the April 26, 2022, I caused the foregoing **Renewed Motion to Compel** to be served as follows:

[ ] by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid addressed to the parties below; and/or

[ ] pursuant to EDCR 7.26, by sending it via facsimile; and/or

[ ] by hand delivery

[X] E-Service to all registered parties

/s/ David Blake
David T. Blake, Esq.

EXHIBIT “A”

EXHIBIT “A”

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	:	
	:	
RONALD SWANSON-CERNA	:	**Disciplinary Docket No. 2016-D007**
	:	
Respondent,	:	
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals.	:	
Bar Number: 472205	:	
Date of Admission: May 11, 2001	:	
	:	

SPECIFICATION OF CHARGES

The disciplinary proceeding instituted by this petition is based upon conduct that violates the standards governing the practice of law in the District of Columbia as prescribed by D.C. Bar R. X and XI, § 2(b).

Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar R. XI. Pursuant to D.C. Bar R. XI, § 1(a), jurisdiction is found because:

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on May 11, 2001, and assigned Bar number 472205.

The facts giving rise to the charges of misconduct are as follows:

The Glottech Companies and the Creation of Sonic Cavitation

2. In 2010 and 2011, Glottech-USA, LLC (Glottech USA), a company beneficially owned by Peter Dizer and Dr. Victor Glotov, was seeking funding to manufacture and distribute its patented sonic reactor technology invented by Dr. Glotov.

3. In or around 2010, a Spanish financier working with Glottech USA introduced Dizer to Respondent. At the time, Respondent was working as legal counsel for the Spanish

financier.

4. Respondent persuaded Dizer to have Glottech USA sever its relationship with the three people in the U.S. who were fundraising and managing Glottech USA, and instead have Respondent's company, Cenyth Stuctured Finance, LLC (which Respondent also referred to as Cenyth Capital Corporation LLC), raise funds for Glottech USA. Cenyth Structured was owned by Respondent or his family members (60%) and Gary George (40%).

5. In 2011, GD Glottech International Ltd (Glottech Int'l) was formed as a limited company under the laws of Ireland, with its principal office in Dublin. Dizer and Glotov beneficially owned Glottech Int'l, which held the rights to the U.S. patent for the technology. John O'Connor was a Director of Glottech Int'l.

6. In March 2012, Glottech Int'l agreed to retain Respondent as its lawyer. On March 28, 2012, Respondent provided Glottech Int'l an engagement letter on letterhead reflecting his membership in the D.C. Bar. Respondent stated he would serve as general counsel for Glottech Int'l and provide legal and corporate services in exchange for a fee of $10,000/month, when funds were available.

7. As legal counsel, Respondent advised Glottech Int'l and its principals to create new companies to operate and promote the technology.

8. Pursuant to Respondent's advice, O'Connor incorporated Sonic Cavitation Ltd. (SC Ltd.) on October 26, 2012, as a limited corporation organized under the laws of Ireland, with its principal office in Dublin. Dizer and Glotov, the two beneficial owners of Glottech Int'l, became the owners of SC Ltd. O'Connor served as a Director of SC Ltd. and was primarily responsible for its financial affairs.

9. In October 2012, Respondent incorporated Sonic Cavitation LLC (SonCav), a

Nevada limited liability company, to manufacture and distribute the technology in the United States. According to Respondent, SonCav was "ultimately owned by Dr. Victor Glotov and Mr. Peter Dizer." Respondent never had an equity interest in SonCav.

10. Respondent prepared the Articles of Organization for SonCav. He listed himself, as well as Dizer and Glotov, as the Managing Members. Respondent designated GG International, a company with an address in Las Vegas, as the registered agent for SonCav.

11. By the end of 2012, SonCav had replaced Glottech USA. In March 2013, Glottech Int'l entered into a licensing agreement with SonCav for the technology. Glottech USA was later dissolved.

12. Respondent persuaded Dizer that Respondent should serve as General Counsel and acting CEO of SonCav. Respondent did not provide SC Ltd. or SonCav a new engagement letter, but he continued to operate under the engagement letter signed by Dizer on behalf of Glottech Int'l, authorizing him to no more than $10,000/month when funds were available. SC Ltd., its principals, and the owners of SonCav never agreed to pay Respondent any additional compensation.

13. Pursuant to his engagement letter with Glottech Int'l, Respondent was to provide monthly bills. However, between March 2012 and his discharge in August 2015, Respondent did not provide any monthly invoices to Glottech Int'l, SC Ltd or SonCav. Respondent nevertheless took, without authority, hundreds of thousands of dollars annually from the funds he received on behalf of SonCav.

Respondent's Receipt of Investor Funds and Other Assets on Behalf of SonCav

14. One of Respondent's responsibilities as General Counsel and acting CEO of SonCav was to raise funds to manufacture and distribute the technology, and to prepare and

execute the legal contracts or agreements documenting the terms of the investments.

15. Respondent told Dizer that he would use his company Cenyth Structured to manage a new company, Cenyth SC USA Angels LLC (Cenyth SC Angels), that Respondent formed to raise the initial $500,000 to finance SonCav's operations.

16. Pursuant to the Joint Venture Agreement (JV Agreement) that Respondent prepared, the investors would become members of Cenyth SC Angels, and their funds would be used to make a bridge loan of $500,000 to SonCav. In exchange for their investment, the members of Cenyth SC Angels would, after one year, receive either interest or a proportionate share of a 5% equity interest in SonCav.

17. For its "management" services, Cenyth Structured would receive a 9.1% interest in Cenyth SC Angels. In using Cenyth Structured to raise funds for SonCav and giving Cenyth Structured a 9.1% interest in Cenyth SC Angels, Respondent did not fully disclose in writing the terms of the arrangement to SC Ltd., Dizer, or any other disinterested principal. Nor did Respondent give the disinterested principals a reasonable opportunity to seek the advice of independent counsel, or get their informed consent in writing.

18. The JV Agreement that Respondent prepared directed investors to make their contributions or payments to Respondent's lawyer trust account, which Respondent described as "an official 'IOLTA' (lawyer trust) account." In the agreement, Respondent referred to himself as "Cenyth General Counsel."

19. The JV Agreement further provided that Glottech Int'l would pledge its shares of Lithium Exploration Group (LEXG) as collateral for the bridge loan from Cenyth SC Angels to SonCav, and that "the Collateral Shares [would] be held in trust by attorney Ron Swanson."

20. Between May 2012 and May 2013, while serving as SonCav's General Counsel

and acting CEO as well as the beneficial owner and counsel for Cenyth Structured, Respondent received more than $500,000 from investors to provide the initial funding for SonCav through Cenyth SC Angels.

21. Respondent directed Glottech Int'l to transfer to him its LEXG stock, which Respondent represented he had placed in a safe deposit box (although he did not say where the box was located). After he was discharged in August 2015, Respondent refused to turn over the LEXG stock.

Respondent Used Multiple Accounts to Deposit Funds on behalf of SonCav and Made Unauthorized Withdrawals from the Accounts

22. In and after May 2012, Respondent used his lawyer trust account to receive investor funds for SonCav. Between May 2012 and May 2015, Respondent deposited or caused to be deposited more than $550,000 in investor funds in his lawyer trust account (4762).

23. In addition to using his lawyer trust account (4762) to deposit investor funds, Respondent opened at least two accounts for Cenyth SC Angels – one in December 2012 (account 9048) and another in September 2013 (account 9585) – into which investor funds were deposited. Respondent was the sole signatory for the Cenyth SC Angels 9048 and 9585 accounts.

24. In or around October 2012, Respondent opened an account for SonCav, account no. 9242. Respondent included Dizer as an additional signatory on the account, but Dizer (who lived in the UK) did not receive bank statements and was never provided the name or password for the account to access account information online.

25. Respondent did not begin to deposit investor funds in the SonCav 9242 account until March 2013, when he transferred $45,000 from the Cenyth SC Angels 9048 account to the SonCav 9242 account. The $45,000 were investor funds initially deposited in Respondent's lawyer trust account (4762), that Respondent then transferred to the Cenyth SC Angels 9048

account shortly before transferring them to the SonCav 9242 account on March 8, 2013.

26. Between October 2012 and July 2015, more than $2,050,000 was deposited in the SonCav 9242 account. At least $1,470,000 of the deposits in the SonCav 9242 account were funds directly from investors. Most of the remaining approximately $580,000 deposited in the account were investor funds initially deposited into other accounts that Respondent controlled, including his lawyer trust account (4762) and the Cenyth SC Angels 9048 and 9585 accounts, which he then transferred in the SonCav 9242 account. The funds deposited in the SonCav 9242 account were funds belonging to SonCav, Respondent's client.

27. While he served as SonCav's counsel and acting CEO, Respondent took, without authority, almost $1 million of the more than $2 million belonging to SonCav. Respondent took the funds in various ways, including (i) taking the funds directly from the SonCav 9242 account (see ¶ 28, below), (ii) taking funds from his trust account and the Cenyth SC Angels accounts into which investor funds were deposited (see ¶ 29, below); and (iii) taking funds from other accounts he controlled that he funded with money from the SonCav 9242 account (see ¶ 30, below).

28. Respondent made the following unauthorized withdrawals from the SonCav 9242 account:

a) he transferred approximately $285,000 to his personal account (3546)

b) he transferred $3,500 to another personal account (7062);

c) he withdrew approximately $94,000 in cash;

d) he transferred approximately $88,000 to his law firm account in the name of Donlan Swanson PLLC, account 9271;

e) he transferred or used approximately $330,000 to pay his personal credit card at Citibank (Respondent used his personal credit card to charge approximately

$130,000 on SonCav's behalf, but had no authority to take the remaining $200,000 from SonCav's funds to pay his personal credit card bills);

f) he transferred more than $100,000 to his law firm trust account (4762), some of which he used to pay the principals of SC Ltd, but most of which he took for himself, including by transferring the funds to his personal and law firm accounts, making cash withdrawals, and using the funds in the trust account to pay his personal expenses;

g) he used the bank or debit cards issued on the SonCav 9242 account to charge tens of thousands of dollars in goods and services for himself, including but not limited to family vacations, restaurants, doctor bills, pharmacy expenses, dental bills, purchases at stores, transportation, and hotels; and

h) he wrote checks and transferred funds electronically from the SonCav 9242 account to family members and unauthorized third parties, including but not limited to:

1. payments of $12,452.14 to John Swanson, Respondent's father;
2. payments of $1,040 to Marianella Perez, Respondent's then wife;
3. payments of $800 to Marianella Anez;
4. payments of $33,750 to Romie Goulart, Respondent's cousin, and Goulart's company, RNG Consulting;
5. payments to Eric McCray or Angela Denise Worth totaling $4,600;
6. a payment to Will McAndrew for $20,900;
7. payments to David Kerr of at least $20,000;
8. a payment of $37,247.69 to purchase an auto; and
9. a payment of $5,000 to David Carr (Respondent's lawyer).

29. Respondent took other entrusted funds, without authority, from his trust account

and the Cenyth SC Angels accounts that he controlled. These unauthorized takings included, but were not limited to:

a) On April 22, 2014, LEXG wired $20,000 to Respondent's trust account (4762) for SonCav. Respondent transferred $11,500 of the $20,000 to SonCav's 9242 account, the principals of SC Ltd., and other third parties, and took the balance of $8,500 for himself – he transferred $7,000 to his personal account (3546) and withdrew $1,500 in cash.

b) Between December 2012 and June 2013, Respondent deposited or caused to be deposited $505,500 of investor funds into the Cenyth SC Angels 9048 account on behalf of SonCav. Respondent later transferred $480,000 of the $505,500 deposited in the Cenyth SC Angels 9048 account to the SonCav 9242 account. Respondent used a substantial portion of the remaining $25,500 for his own purposes: he made cash withdrawals from the account totaling $4,300, transferred more than $7,300 to his personal account (3546), and used the bank card for the Cenyth SC Angels 9048 account to pay for personal expenses including restaurants, gas and tolls, hotels, car rentals, and a payment to IRA Financial Group.

c) Between September and November 2013, Respondent deposited or caused to be deposited $40,000 from investors into the Cenyth SC Angels 9585 account. Of that $40,000, Respondent transferred $38,738 to the SonCav 9242 account, and took the remaining $1,262 in investor funds for himself, transferring the funds to his personal account, making cash withdrawals, and using the account bank card to pay for personal expenses.

30. Respondent engaged in further unauthorized takings by transferring SonCav funds

into other accounts he controlled and then taking the funds from those accounts. These unauthorized takings included, but were not limited to:

(a) On or about March 19, 2013, Respondent opened a second account in SonCav's name, account no. 9828, for which he was the sole signatory. Between March 2013 and October 2014, Respondent transferred $11,040.56 from the SonCav 9242 account into the SonCav 9828 account (these were the only funds deposited into the SonCav 9828 account). Respondent then used the funds in the SonCav 9828 account for himself, making cash withdrawals and using the bank card for the account to purchase goods and services.

(b) On or about March 22, 2013, Respondent opened a third account in SonCav's name – Sonic Cavitation Assembly LLC – account no. 9831, for which he and David Kerr were the only signatories. Between March 2013 and August 2013, Respondent transferred $10,807.74 from SonCav's 9242 account to the SonCav Assembly 9831 account (these were the only funds deposited in the SonCav Assembly 9831 account). Respondent and Kerr spent all the funds in the SonCav Assembly 9831 account using credit or debit cards issued on the account to make cash withdrawals and purchase goods and services, including to pay for dry cleaning, car washes, gas, groceries, telephone bills, raceways, and restaurant bills. Respondent later represented to O'Connor that SonCav Assembly had no "financial operations."

(c) Respondent previously had opened another account with George for Cenyth Structured (account 2811). In September and October 2012, Respondent withdrew more than $7,000 from the Cenyth Structured 2811 account by transferring funds to his personal account and making cash withdrawals, and by December 2012, the account was overdrawn. In early 2013, Respondent and George agreed to dissolve Cenyth Structured and disburse

the $15,000 that Cenyth Structured was holding, or supposed to be holding. Unbeknownst to George, Respondent transferred $15,250 from the SonCav 9242 account to the Cenyth Structured 2811 account in May and June 2013, before reimbursing George and his wife for their share of the $15,000. Respondent took most of the balance for himself, and the remainder was used to pay bank fees before the account was closed.

Respondent's Receipt of Additional Non-Monetary Compensation

31. In mid-2014, Respondent asked Dizer to rent office space for SonCav in Litchfield, Connecticut, where Respondent was living. Dizer agreed that Respondent could use SonCav funds to rent a carriage house that would be used as SonCav's office.

32. By no later than October 2014, Respondent was using the carriage house for his personal residence as well as SonCav's office. Respondent informed Dizer that he was living in the carriage house, but did not compensate SonCav for his use of the carriage house. Respondent did not provide SonCav, its owners, or any disinterested party anything in writing to document his use of the carriage house as his personal residence, tell them to seek the advice of independent counsel, or obtain their informed consent to the arrangement.

33. In or around June 2015, Respondent rented an apartment in Irving, Texas, that was paid for with SonCav's funds. Respondent also used this apartment for his personal residence, although without authority. Respondent did not compensate SonCav for the use of the apartment as his home. Respondent did not provide SonCav, its owners, or any disinterested party anything in writing to document his use of the Texas apartment as his personal residence, tell them to seek the advice of independent counsel, or obtain their informed consent to the arrangement.

Respondent's Mismanagement of SonCav's Account and Finances, Failure to Keep Records, and Failure to Account for Funds

34. Respondent used the bank card associated with the SonCav 9242 account to pay his

personal expenses as well as for business expenses. Respondent charged goods and services to the SonCav 9242 account even when there were insufficient funds in the account, resulting in numerous overdrafts in January, February, April and December 2013, January-April and June-August 2014, and May 2015. SonCav incurred thousands of dollars in bank fees because of the overdrafts.

35. Respondent failed to account to SC Ltd or the owners of SonCav concerning the funds he received from investors and what he did with them. The first accounting that Respondent provided during the time he served as General Counsel and acting CEO was a one-page letter to Dizer dated March 5, 2013, that purported to account for the funds going into and out of his lawyer trust account (4762) for a two-month period, *i.e.*, January and February 2013. Some of the entries in the accounting did not accurately reflect the activity in Respondent's trust account. For example, the starting balance or "Balance Forward from 2012" Respondent included in his accounting was off by more than $10,000; Respondent omitted a $25,000 deposit from a SonCav investor; and many of the withdrawal or debit items listed in the accounting did not match the amounts or payees reflected in the bank statements for Respondent's trust account.

36. While Respondent served as SonCav's General Counsel and acting CEO, SonCav never filed a tax return or a Schedule K-1 with the IRS.

37. In 2013, Respondent asked George to serve as the Chief Financial Officer for SonCav. George asked Respondent to provide him SonCav's financial records, including an accounting of the funds Respondent received from investors and what Respondent had done with them, including invoices and receipts for any expenditures Respondent made on SonCav's behalf. Respondent never provided the requested information or financial records.

38. Without the requested information and supporting documents, George was unable

to audit SonCav's finances. George also was unable to complete any tax returns for SonCav, but sought an extension to protect its interests.

39. In 2014, George reported to Dizer and O'Connor that Respondent would not provide him the financial records he needed and, without them, he could not serve as CFO. Dizer requested that George continue to be involved through SC Ltd., which George agreed to do. George's role in SC Ltd., however, was relatively limited in 2014 and early 2015.

40. Dizer and O'Connor also asked Respondent for financial information concerning SonCav, including a report or accounting of the funds Respondent had received from investors and what he had done with them. Respondent did not respond substantively to their requests for information and did not provide any accountings after the one-page account for his trust account for January and February 2013, referenced in ¶ 35 above, until July 2015.

41. By no later than June 2015, O'Connor and Dizer were sending Respondent emails and other writings demanding an accounting and information about SonCav's funds. O'Connor and Dizer had become increasingly concerned about Respondent's failure to account, and they wanted Respondent to provide the information and supporting documents prior to scheduled meetings in late July 2015 in Texas among the principals of SC Ltd., the owners of SonCav, and current and prospective SonCav investors.

42. On July 25, 2015, Respondent sent Dizer two pages of financial information – a one-page document purporting to reflect SonCav's expenses in 2014, and another one-page document purporting to reflect the investments in SonCav by amount, date and investor. The two pages did not accurately reflect the funds that Respondent had received and what he had done with them. After receiving the information, O'Connor asked Respondent for additional information and financial records. Respondent failed to provide any further accounting or any of the underlying

records.

43. At their meetings commencing in late July 2015, Dizer sought to discuss with Respondent the lack of accountings and to obtain the financial information that he, O'Connor and others had been requesting. Respondent did not provide Dizer any information or documents, and said he was leaving for Puerto Rico the morning of August 1, 2015.

44. On August 1, 2015, Dizer went to a Bank of America branch in Texas and, with the assistance of a bank employee, reviewed the bank statements for the SonCav 9242 account for the three preceding months – the only records the bank would allow him to access at the time. Based on that review, Dizer learned that Respondent had withdrawn more than $175,000 from the SonCav 9242 account in June and July 2015.

45. With the assistance of bank employees, Dizer transferred $410,000 from the balance of $413,973.09 remaining in the SonCav 9242 account to other accounts for safekeeping.

46. After learning of Respondent's unauthorized withdrawals, O'Connor notified Respondent by e-mail on August 5, 2015, that he was suspended from all positions he held at SonCav and its affiliated companies until further notice so that an audit could be done.

Respondent's Discharge from SonCav, and Continued Misappropriation of Funds

47. On August 5, 2015, O'Connor on behalf of SC Ltd. also notified Respondent that George would serve as acting CEO of SonCav and its CFO.

48. Despite his receipt of the notice of his suspension, Respondent continued to use the bank card associated with the SonCav 9242 account to charge more than $685 in personal expenses after August 5, 2015.

49. Respondent also took, without authority, SonCav funds that were in his possession after he was discharged. On August 21, 2015, Respondent transferred the $13,000 in SonCav

funds from his trust account (4762) to another account he controlled, in the name of Donlan Swanson PLLC (9271).[1] After transferring the funds to the Donlan 9271 account, Respondent withdrew $5,000 in cash on August 21, 2015, transferred $1,000 to Marta Villares as "family support" that same day, and on August 28, 2015, transferred $4,000 to his personal account (3546).

50. After August 5, 2015, SonCav continued to ask Respondent for an accounting of the funds he received on behalf of SonCav and what he had done with him. SonCav also asked Respondent for the company records and contracts.

51. Respondent failed to provide SonCav its records and documents, including company contracts, investor agreements, and loan agreements. Respondent also failed to account for the funds he had received on SonCav's behalf and what he had done with them.

52. Respondent did not return a laptop purchased with funds from SC Ltd. or SonCav. However, SonCav was able to retrieve the backup drive that Respondent used to store SonCav documents that Respondent had left in the Connecticut carriage house used as SonCav's office.

53. Respondent failed to return or deliver to SonCav the LEXG stock pledged as collateral that he claimed he had placed in a safe deposit box.

54. The only financial information that Respondent provided SonCav after his discharge was set forth in a two-page attachment to a letter to Glottech Int'l and SC Ltd. dated December 16, 2015. In the document, Respondent purported to account for the funds deposited in his trust account for Glottech Int'l and SonCav companies and his use of the funds. Many of the

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[1] On June 1, 2015, the balance in Respondent's trust account (4762) was $25.00. On June 5, 2015, Respondent transferred $50,000 from the SonCav 9242 account to his lawyer trust account (4762). Between June 5 and 9, 2015, Respondent transferred $37,000 of the $50,000 to accounts for Dizer ($7,000), and SC Ltd. ($30,000). After the transfers, Respondent's trust account had a balance of $13,025 – $13,000 of which remained from the $50,000 that Respondent transferred from the SonCav 9242 account. The balance in the trust account remained $13,250 until August 21, 2015, when Respondent transferred $13,000 to his Donlan account (9271).

entries in Respondent's December 16, 2015 letter did not match the amounts reflected in the bank records. Respondent failed to provide any additional information or the underlying financial records to Glottech Int'l, SC Ltd. or SonCav.

55. In his December 16, 2015 letter Respondent falsely claimed that Glottech Int'l owed him $292,083.94 for his "legal services", that SonCav owed him $62,343.75 for his "non-legal professional services", and that he was owed an additional $41,446.44 for "expense reimbursement." Respondent did not provide any records to support his claims for additional compensation or for the expenses he allegedly incurred on behalf of his former clients.

Respondent's Communications with SonCav Investors after His Discharge

56. On September 9, 2015, more than a month after his discharge, Respondent sent several investors an e-mail critical of Dizer, O'Connor and George. Respondent made several knowing false representations in the e-mail, including but not limited to his claims that:

a) Respondent had provided SonCav or Dizer all company contracts and agreements;

b) Dizer had full knowledge of all bank account transactions and had full access to on-line banking;

c) Dizer had "drain[ed] SonCav's bank account," with the assistance or involvement of George;

d) Respondent's salary was increased to $15,000/month in January 2014, but he never took his full salary and was owed back-pay of $175,000; and

e) Respondent was not allowed to use a corporate credit card, and was owed $36,000 for charges he made to his personal credit card for business expenses.

57. Respondent later caused or assisted investors in filing lawsuits against SonCav,

including Xavier Vilaro and Myrna Cano. Respondent previously had solicited $45,000 from Vilaro and Cano to invest in SonCav. On January 14, 2015, a deposit of $45,0000 was made in the SonCav 9242 account that Vilaro and Cano later claimed was their investment. In January 2015, Respondent took more than $44,000 from the SonCav 9242 account for himself – he transferred $20,500 to other accounts he controlled ($9,500 to the Donlan account (9271), $5,000 to his personal account (3546), and $6,000 to his trust account (4762)); he transferred another $16,981.26 from the SonCav 9242 account to pay his personal credit card; and he used the bank card for the account to pay $6,677.51 for his expenses.

58. After SonCav removed Respondent as counsel and acting CEO, Vilaro sent the principals of SonCav and others an e-mail demanding $54,000 (for his $45,000 investment) and a copy of the technology patent assignment from Glottech Int'l to SonCav. Respondent encouraged other investors to send similar letters.

59. In June 2016, Vilaro and Cano filed a lawsuit in Puerto Rico against SonCav and some of the companies working with SonCav. Vilaro and Cano claimed that they served the summons and complaint on SonCav through GG International in Nevada, the registered agent Respondent had designated for SonCav and for which Respondent continued to be listed as the contact person. Respondent did not notify SonCav of the summons and complaint or provide it copies.

60. Shortly after the Federal Court in Puerto Rico entered a default judgment against SonCav for more than $133,000, Respondent wrote to George and SonCav seeking to collect the judgment. Respondent claimed he was entitled to collect the judgment from SonCav pursuant to an undated "Loan Acquisition Agreement" between himself on the one hand and Vilaro and Cano, on the other.

61. Respondent also hired solicitors in Ireland to petition the Irish court to liquidate SC Ltd. based on the Puerto Rican judgment. The solicitors representing Respondent later withdrew the petition after receiving a letter stating that SC Ltd and SonCav disputed the validity of the judgment on a number of grounds, including that they had no notice of the proceedings in Puerto Rico.

62. Vilaro and Cano also were among the plaintiffs in another action against SonCav filed in Federal District Court in Nevada in December 2016. Plaintiffs in this action repeated Respondent's false claims about Dizer's alleged conversion of SonCav's funds in August 2015, and sought declaratory and injunctive relief against SonCav and related companies.

63. The Federal Court in Nevada denied the plaintiffs' *ex parte* motion for relief, finding that they had not met their burden.

64. On March 22, 2017, the Federal Court in Nevada notified the plaintiffs that their case would be dismissed pursuant to FRCP 4(m) (requiring proof of service) unless they filed proof of service on defendants on or before April 21, 2017. The plaintiffs failed to do so.[2]

SonCav's Audit of the SonCav 9242 Account and Complaint to Disciplinary Counsel

65. After suspending Respondent, SonCav obtained the bank records for the SonCav 9242 account from Bank of America and learned that Respondent had taken or transferred approximately $1 million from SonCav to himself, other accounts he controlled, or unauthorized third parties.

66. The principals of SC Ltd and owners of SonCav never authorized Respondent to

[2] SonCav learned of the action filed in Puerto Rico after Respondent sought to collect the default judgment pursuant to his "Loan Acquisition Agreement." Shortly thereafter, SonCav designated an entity other than GG International to serve as its registered agent to ensure that any notices served would be sent to representatives of SonCav, not Respondent.

take any SonCav's funds for himself, and his engagement letter with Glottech Int'l, which carried over to govern his relationship with SC Ltd and SonCav, permitted Respondent to take fees or a salary of no more than $10,000/month (when funds were available) and reimbursement of expenses that he incurred on behalf of SonCav.

67. On December 9, 2015, SonCav filed a complaint against Respondent with Disciplinary Counsel.

68. Respondent did not respond to the complaint until April 2016. In his response, Respondent made several knowing false statements, including:

a) Respondent worked without pay for the three plus years he worked for Glottech Int'l and the SonCav companies;

b) Dizer insisted on the structure that involved Respondent's use of Cenyth to raise funds for SonCav, including the interest that Cenyth was to receive;

c) Respondent always provided full IOLTA accountings to Dizer;

d) Respondent was owed $300,000 in unpaid legal fees (for which he provided no invoices or other supporting documents); and

e) Dizer stole $410,000 of SonCav's funds for himself.

69. Around the time he responded to the disciplinary complaint, Respondent contacted several SonCav investors and directed them to write Disciplinary Counsel. Many of them repeated the misrepresentations that Respondent had made to them concerning Dizer's purported appropriation of SonCav funds.

70. Disciplinary Counsel sent subpoenas to Respondent for his financial records relating to SonCav and asked for an accounting of the funds he received while serving as SonCav's General Counsel and acting CEO. In response, Respondent produced some e-mails he exchanged

with Dizer relating to some of the withdrawals and payments to himself, but failed to produce any financial records. The only "accountings" Respondent provided were the one-page list of deposits and withdrawals from his trust account for January-February 2013 (which was inaccurate), the two pages of financial information he sent to Dizer on July 25, 2015 (which also was inaccurate), and the two-page report dated December 16, 2015 (which also was inaccurate).

71. Disciplinary Counsel sent Respondent a subpoena for documents relating to the investor suits against SonCav after Respondent's termination. Respondent failed to respond to the subpoena.

72. Disciplinary Counsel also sent Respondent a subpoena for his personal credit card records during the time he served as SonCav's General Counsel and acting CEO and for which he used SonCav's funds to pay his bills. Respondent failed to respond to the subpoena.

73. Respondent admitted during the investigation, that he had a computer on which he stored SonCav's information and documents, but claimed he had destroyed the computer. Despite numerous inquiries from Disciplinary Counsel concerning the claimed destruction of the computer, Respondent failed to provide the information.

Respondent's Violation of the Rules

74. Respondent's conduct violated the following District of Columbia Rules of Professional Conduct:

A. Rule 1.8(a), in that Respondent knowingly acquired possessory or pecuniary interests adverse to his clients, and (i) the transactions and terms on which the lawyer acquired the interests were not fair and reasonable to the clients and were not fully disclosed and transmitted in writing to the clients in a manner which they could reasonably understand; (ii) the clients were not given a reasonable opportunity to seek the advice of independent counsel in the

transaction; and/or (iii) the clients did not give informed consent in writing;

B. Rule 1.15(a), in that Respondent failed to keep and maintain complete records of entrusted funds;

C. Rule 1.15(a), in that Respondent engaged in intentional misappropriation;

D. Rule 1.15(c), in that Respondent failed to render a full accounting after being requested to do so by his clients;

E. Rule 1.16(d), in that Respondent, in connection with the termination of representation, failed to take timely steps to the extent reasonably practicable to protect his clients' interests, including surrendering papers and property, and returning funds belonging to the clients;

F. Rule 3.4(a), in that Respondent obstructed another party's access to evidence or altered, destroyed or concealed evidence (the laptop computer belonging to SonCav);

G. Rule 8.4(b), in that Respondent committed crimes (including theft in violation of D.C. Code § 22-3211, and fraud in violation of D.C. Code § 22-3221 and/or 18 U.S.C. § 1343) that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects;

H. Rule 8.4(c), in that Respondent engaged in conducting involving dishonesty, fraud, deceit, and misrepresentation; and

I. Rule 8.4(d), in that Respondent engaged in conduct that seriously interfered with the administration of justice.

Respectfully submitted,

Hamilton P. Fox III

Hamilton P. Fox, III
Disciplinary Counsel

Julia Porter
Senior Assistant Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL
515 Fifth Street, N.W.
Building A, Room 117
Washington, D.C. 20001
(202) 638-1501

VERIFICATION

I do affirm that I verily believe the facts stated in the Specification of Charges to be true.

Julia L. Porter
Senior Assistant Disciplinary Counsel

Subscribed and affirmed before me in the District of Columbia this **27th** day of November 2017.

My Commission Expires:

Notary Public

EXHIBIT “B”

EXHIBIT “B”

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE[1]

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
October 29, 2018

In the Matter of:	:	
	:	
RONALD D. SWANSON-CERNA	:	Board Docket No. 18-BD-003
	:	Disc. Docket Nos. 2016-D007
Respondent.	:	
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 472205)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

This matter is before the Board on Professional Responsibility ("Board") on Disciplinary Counsel's Motion to Consent to Disbarment, filed pursuant to D.C. Bar R. XI, § 12 and Board Rule 16.1. Respondent's affidavit of consent to disbarment, executed on October 19, 2018, is attached to Disciplinary Counsel's motion.

The Board, acting through its Chair, and pursuant to D.C. Bar R. XI, § 12(b) and Board Rule 16.2, has reviewed Respondent's affidavit of consent to disbarment and finds that it conforms to the requirements of D.C. Bar R.

[1] Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

XI, § 12(a). Accordingly, the Board recommends that the Court enter an order disbarring Respondent on consent pursuant to D.C. Bar R. XI, § 12(b).

The Board further recommends that in the Court's order of disbarment, Respondent be reminded of the provisions of D.C. Bar R. XI, §§ 14 and 16, including the requirement to file the affidavit under D.C. Bar R. XI, § 14(g), and that the period of disbarment will not be deemed to run for purposes of reinstatement until a compliant affidavit is filed. *See* D.C. Bar R. XI, § 16(a); *In re Slosberg*, 650 A.2d 1329, 1331-33 (D.C. 1994).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 

Robert C. Bernius
Chair

EXHIBIT “C”

EXHIBIT “C”

(https://www.dcbarconference.org?id=slideshow1)

Rule XI. Disciplinary Proceedings

Section 1. Jurisdiction

(a) *Persons subject to disciplinary jurisdiction*. All members of the District of Columbia Bar, all persons appearing or participating pro hac vice in any proceeding in accordance with Rule 49(c)(1) of the General Rules of this Court, all persons licensed by this Court Special Legal Consultants under Rule 46(c)(4), all new and visiting clinical professors providing services pursuant to Rule 48(c)(4), and all persons who have been suspended or disbarred by this Court are subject to the disciplinary jurisdiction of this Court and its Board on Professional Responsibility (hereinafter referred to as "the Board").

(b) *Jurisdiction of other courts and voluntary bar associations.* Nothing in this rule shall be construed to deny to any court in the District of Columbia such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt or to prohibit a voluntary bar association from censuring, suspending, or expelling its members.

(c) *No statute of limitations.* Disciplinary proceedings against an attorney shall not be subject to any period of limitation.

Section 2. Grounds for Discipline

(a) *Duty of attorneys*. The license to practice law in the District of Columbia is a continuing proclamation by this Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and an officer of the Court. It is the duty of every recipient of that privilege at all times and in all conduct, both professional and personal, to conform to the standards imposed upon members of the Bar as conditions for the privilege to practice law.

(b) *Misconduct.* Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the attorney's oath of office or the rules or code of professional conduct currently in effect in the District of Columbia shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney- client relationship. Any of the following shall also be grounds for discipline:

(1) Conviction of a crime (see section 10);
(2) Discipline imposed in another jurisdiction (see section 11);
(3) Failure to comply with any order of the Court or the Board issued pursuant to this rule; or
(4) Failure to respond to a written inquiry from the Court or the Board in the course of a disciplinary proceeding without asserting, in writing, the grounds for refusing to do so.

(c) *Review of board orders and inquiries*. If an attorney objects in writing to an order or written inquiry of the Board, the objection shall be noted, but review of the order or inquiry by the Court shall not be available (except as provided in section 18 (c) with respect to subpoenas) until all proceedings before the Board have been concluded. If the Board imposes or recommends the imposition of a disciplinary sanction, the attorney may then seek review of the previously challenged order or inquiry by filing an appropriate motion or pleading with the Court. If the order or inquiry is reversed, vacated, or set aside by the Court, a previous failure to comply with the order or to respond to the inquiry shall not be a ground for discipline. If the order or inquiry is modified by the Court, failure to comply with the order or to respond to the inquiry may be a ground for discipline only to the extent that the order or inquiry is not modified.

Section 3. Disciplinary sanctions.

(a) *Types of discipline*. Any of the following sanctions may be imposed on an attorney for a disciplinary violation:

(1) Disbarment;
(2) Suspension for an appropriate fixed period of time not to exceed three years. Any order of suspension may include a requirement that the attorney furnish proof of rehabilitation as a condition of reinstatement. In the absence of such a requirement, the attorney may resume practice at the end of the period of suspension;
(3) Censure;
(4) Reprimand;
(5) Informal admonition;
(6) Revocation or suspension of a license to practice as a Special Legal Consultant; or

(7) Probation for not more than three years. Probation may be imposed in lieu of or in addition to any other disciplinary sanction. Any conditions of probation shall be stated in writing in the order imposing probation. The order shall also state whether, and to what extent, the attorney shall be required to notify clients of the probation. The Board by rule shall establish procedures for the supervision of probation. Violation of any condition of probation shall make the attorney subject to revocation of probation and the imposition of any other disciplinary sanction listed in this subsection, but only to the extent stated in the order imposing probation.

(b) *Conditions imposed with discipline.* When imposing discipline, the Court or the Board may require an attorney to make restitution either to persons financially injured by the attorney's conduct or to the Clients' Security Trust Fund (see Rule XII), or both, as a condition of probation or of reinstatement. The Court or the Board may also impose any other reasonable condition, including a requirement that the attorney take and pass a professional responsibility examination as a condition of probation or of reinstatement.

(c) *Temporary suspension or probation.*

(1) On petition of the Board authorized by its Chairperson or Vice Chairperson, supported by an affidavit showing that an attorney appears to pose a substantial threat of serious harm to the public or has failed to respond to an order of the Board in a matter where Disciplinary Counsel's investigation involves allegations of serious misconduct, the Court may issue an order, with such notice as the Court may prescribe, temporarily suspending the attorney or imposing temporary conditions of probation on the attorney, or both. "Serious misconduct" for this purpose means fraud, dishonesty, misappropriation, commingling, overdraft of trust accounts, criminal conduct other than criminal contempt, or instances of neglect that establish a pattern of misconduct in the pending investigation.

Any order of temporary suspension or probation which restricts the attorney's maintenance or use of a trust account shall, when served on any bank maintaining an account against which the attorney may make withdrawals, serve as an injunction barring the bank from making further payment from the account on any obligation except in accordance with restrictions imposed by the Court. An order of temporary suspension issued under this subsection shall preclude the attorney from accepting any new cases or other legal matters, but shall not preclude the attorney from continuing to represent existing clients during the thirty-day period after issuance of the order;however, any fees tendered to the attorney during that thirty-day period or at any time thereafter while the temporary suspension is in effect shall be deposited in a trust account, from which withdrawals may be made only as directed by the Court. The order of temporary suspension or probation for failure to respond to a Board order shall not disclose information about the substance of the complaint against the attorney.

(2) Where issues of fact appear to be presented by a petition of the Board under this section, or by any response of the attorney thereto, the Court may appoint a special master to preside at a hearing at which evidence will be presented concerning the petition. The master shall prepare a report summarizing the evidence presented and make recommended findings of fact which, together with the record, shall be filed with the Court within fifteen days of the Court's order of appointment.

(d) *Dissolution or amendment of orders of temporary suspension or probation.* An attorney temporarily suspended or placed on probation for failure to file a response to a Board order pursuant to subsection (c) of this section shall be reinstated and the temporary suspension or probation dissolved when (1) Disciplinary Counsel notifies the Court that the attorney has responded to the Board's order or (2) the Court determines that an adequate response has been filed by the attorney.

An attorney temporarily suspended or placed on probation on the ground that the attorney appears to pose a substantial threat of serious harm to the public may, for good cause, request dissolution or amendment of the temporary order by petition filed with the Court, which shall also be served on the Board and on Disciplinary Counsel. A petition for dissolution shall be set for immediate hearing before the Board or a panel of at least three of its members designated by its Chairperson or, in the Chairperson's absence, by the Vice Chairperson. The Board or its designated panel shall hear the petition forthwith and submit its report and recommendation to the Court with the utmost speed consistent with fairness. Upon receipt of the report, the Court shall consider the petition promptly, with or without a hearing as the Court may elect, and shall enter an appropriate order.

Section 4. The Board on Professional Responsibility

(a) *Composition of the Board.* The Court shall appoint a board to be known as the Board on Professional Responsibility, which shall consist of seven members of the Bar and two persons who are not lawyers.

(b) *Appointment of Board members.* The lawyer members of the Board shall be appointed by the Court from a list submitted by the Board of Governors containing the names of not fewer than three active members of the Bar for each vacancy to be filled. The non-lawyer members shall be chosen by the Court. In appointing non-lawyer members, the Court shall consider, but not be limited to, any nominees whose names may be submitted to the Court in writing by the Board of Governors or by any other organization or individual. The Court shall designate one of the lawyer members as Chairperson of the Board and another as Vice Chairperson, who shall act in the absence or disability of the Chairperson.

(c) *Terms of Board members.* The term of each Board member shall be three years. Upon completion of a member's term, that member shall continue to serve until a successor is appointed. No member shall serve more than two consecutive terms, except that a member appointed to fill an unexpired term of two years or less shall be eligible to serve two additional three-year terms.

(d) *Action by the Board.* Six members of the Board shall constitute a quorum for deciding cases, and five members shall constitute a quorum for administrative matters. In deciding cases in which the Board's action is final, the Board shall act only with the concurrence of a majority of its entire membership. In deciding cases involving a recommendation to the Court, the Board shall act only with the concurrence of a majority of its members present and voting. In all other matters the Board shall act only with the concurrence of a majority of its members present and voting, except that the Board may delegate its authority to act in such matters to a single member of the Board.

(e) *Powers and duties of the Board.* The Board shall have the power and duty:

(1) To consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effect the purposes of this rule.
(2) To appoint Disciplinary Counsel, Special Disciplinary Counsel, and such assistant disciplinary counsel and staff as may be required to perform the duties and functions of that office (see section 6), and to fix their compensation. Disciplinary Counsel shall serve at the pleasure of the Board, subject to the Court's oversight authority over all disciplinary matters. Any Special Disciplinary Counsel and all assistant disciplinary counsel shall serve at the pleasure of the Board. As used hereafter in this rule, the term "Disciplinary Counsel" shall refer collectively to Disciplinary Counsel, any Special Disciplinary Counsel, and all assistant disciplinary counsel unless the context requires otherwise.
(3) To appoint an Executive Attorney, who shall serve at the pleasure of the Board, and such staff as may be required to perform the duties and functions of that office (see section 7), and to fix their compensation.
(4) To appoint two or more Hearing Committees, each consisting of two members of the Bar and one person who is not a lawyer, and such alternate Hearing Committee members as may be required, who shall conduct hearings under this rule and such other hearings as the Court or the Board may direct, and shall submit their findings and recommendations, together with the record, to the Board or, if required under this rule, to the Court.
(5) To assign, through the Executive Attorney, periodically and on a rotating basis, an attorney member of a Hearing Committee as a Contact Member to review and approve or suggest modifications of recommendations by Disciplinary Counsel for dismissals, informal admonitions, and the institution of formal charges.
(6) To assign, through the Executive Attorney, formal charges and a petition for negotiated disposition to a Hearing Committee, and to refer a petition for reinstatement to Disciplinary Counsel to determine whether Disciplinary Counsel opposes reinstatement and, if so, to assign, through the Executive Attorney, the petition for reinstatement to a Hearing Committee.
(7) To review the findings and recommendations of Hearing Committees submitted to the Board, and to prepare and forward its own findings and recommendations, together with the record of proceedings before the Hearing Committee and the Board, to the Court.
(8) To reprimand attorneys subject to the disciplinary jurisdiction of the Court and the Board.
(9) To prepare the Board's proposed budget for submission to the Board of Governors.
(10) To adopt rules, procedures, and policies not inconsistent with this rule or any other rules of this Court

(f) *Review of the Board's proposed budget.* The Board of Governors may adopt or reject a proposed budget of the Board on Professional Responsibility, but in the event of a dispute between the Board of Governors and the Board on Professional Responsibility as to the amount of the latter's proposed budget, or any of its budget items, the Court shall resolve such dispute upon application by either Board.

(g) *Providing information to the Court*. Upon request from the Court, in the exercise of its duty to oversee the disciplinary system, the Board shall provide to the Court for its review the file in any case or cases, including

those which have been concluded by dismissal, informal admonition, or reprimand.
(h) *Consultation with the Bar.* The Board shall, to the extent it deems feasible, consult with officers of the Bar and of voluntary bar associations in the District of Columbia concerning any appointments which it is authorized to make.

Section 5. Hearing Committees

(a) *Composition and term*. Each Hearing Committee appointed by the Board shall consist of two members of the Bar and one person who is not a lawyer. The Board shall designate one of the lawyer members of each Hearing Committee as Chairperson of the Committee. The term of each Hearing Committee member shall be three years. Upon completion of a member's term, that member shall continue to serve until a successor is appointed. No person shall serve more than two consecutive terms as a Hearing Committee member, but a person who has served two consecutive terms may be reappointed after the expiration of one year.
(b) *Quorum and Acting Chairperson.* Two members of a Hearing Committee shall constitute a quorum for the conduct of hearings. If a member cannot be present for a hearing, alternate Hearing Committee members previously selected by the Board may serve upon designation by the Executive Attorney. If the absent member is the Chairperson of the Hearing Committee, the other attorney member shall serve as Acting Chairperson. Each Hearing Committee shall act only with the concurrence of a majority of its members.
(c) Powers and duties of Hearing Committees. Hearing Committees shall have the power and duty:

(1) Upon assignment by the Executive Attorney, to conduct hearings on formal charges of misconduct, a proposed negotiated disposition, or a contested petition for reinstatement and on such other matters as the Court or Board may direct.
(2) To submit their findings and recommendations on formal charges of misconduct to the Board, together with the record of the hearing.
(3) To submit their findings and recommendations to approve a negotiated disposition and their findings and recommendations in a contested reinstatement to the Court, together with the record of the hearing.

(d) *Duties of Contact Members.* A Contact Member designated under section 4(e)(5) of this rule shall have the power and duty to review and approve or suggest modifications of recommendations by Disciplinary Counsel for dismissals, informal admonitions, the institution of formal charges, and the deferral or abatement of disciplinary investigations pending the outcome of related criminal or civil litigation. In the event of a disagreement between Disciplinary Counsel and the Contact Member regarding the disposition recommended by Disciplinary Counsel, the matter shall be referred by the Executive Attorney to the Chairperson of a Hearing Committee other than that of the Contact Member for decision. The decision of the Hearing Committee Chairperson to whom the matter is referred shall be final.
(e) *Recusal of Contact Members.* No Hearing Committee member shall take part in any formal disciplinary proceeding regarding a matter which that member reviewed as a Contact Member.

Section 6. Disciplinary Counsel

(a) *Powers and duties*. Disciplinary Counsel shall have the power and duty:

(1) To employ and supervise such staff as may be necessary for the performance of Disciplinary Counsel's duties, subject to budget limitations established by the Board.
(2) To investigate all matters involving alleged misconduct by an attorney subject to the disciplinary jurisdiction of this Court which may come to the attention of Disciplinary Counsel or the Board from any source whatsoever, where the apparent facts, if true, may warrant discipline. Except in matters requiring dismissal because the complaint is clearly unfounded on its face or falls outside the disciplinary jurisdiction of the Court, no disposition shall be recommended or undertaken by Disciplinary Counsel until the accused attorney shall have been afforded an opportunity to respond to the allegations.
(3) Upon prior approval of a Contact Member, to dispose of all matters involving alleged misconduct by an attorney subject to the disciplinary jurisdiction of the Court, by dismissal or informal admonition or by referral of charges;or upon prior approval of a member of the Board on Professional Responsibility, by diversion;or by negotiated disposition.
(4) To prosecute all disciplinary proceedings before Hearing Committees, the Board, and the Court. When appearing before the Court, Disciplinary Counsel may, after notice to the Board, argue for a disposition other than that contained in the report and recommendation of the Board.
(5) To appear at hearings on petitions for reinstatement of suspended or disbarred attorneys, to examine witnesses testifying in support of such petitions, and to present available evidence, if any, in opposition thereto.

(6) To maintain permanent records of all matters processed and the disposition thereof, except that files of cases which have been dismissed may be destroyed after ten years.
(7) To file with the Court and the Board certificates of convictions of attorneys convicted of crimes, and certified copies of disciplinary orders concerning attorneys issued in other jurisdictions.
(8) To submit to the Court at regular intervals, at least twice a year, a list of cases resulting in informal admonitions by Disciplinary Counsel or reprimands by the Board.

(b) *Prohibition of private practice.* Disciplinary Counsel shall not engage in the private practice of law, except that the Board may authorize a reasonable period of transition after appointment.

Section 7. The Executive Attorney

(a) *Powers and duties.* The Executive Attorney shall have the power and duty:

(1) To employ and supervise such staff as may be necessary for the performance of the Executive Attorney's duties, subject to budget limitations established by the Board.
(2) To assign, periodically and on a rotating basis, an attorney member of a Hearing Committee as a Contact Member to review and approve or suggest modifications of recommendations by Disciplinary Counsel for dismissals, informal admonitions, and the institution of formal charges.
(3) To assign formal charges, a petition for negotiated disposition, and a contested petition for reinstatement to a Hearing Committee.
(4) To maintain records of proceedings before Hearing Committees, the Board, and the Court.
(5) To forward to the Court the findings and recommendations of the Board on formal charges of misconduct together with the record of proceedings before the Hearing Committee and the Board.
(6) To forward to the Court the Hearing Committee's recommendation to approve a negotiated disposition and its recommendation in a contested reinstatement, together with the record of proceedings before the Hearing Committee.
(7) To assist the Board in the performance of its duties as the Board from time to time may direct.
(8) To act as Special Disciplinary Counsel when appointed by the Board.
(9) To act as legal advisor to the Board.
(10) To represent the Board in any court proceeding when designated by the Board to do so.
(11) To argue before this Court the position of the Board, when designated by the Board to do so, in any case in which Disciplinary Counsel disagrees with a report and recommendation of the Board.

(b) *Review by the Board.* Because the Executive Attorney is exercising the delegated authority of the Board, any decision or action by the Executive Attorney shall be subject to review by the Board in its discretion.
(c) *Prohibition of private practice.* The Executive Attorney shall not engage in the private practice of law, except that the Board may authorize a reasonable period of transition after appointment.

Section 8. Investigations and Hearings

(a) *Investigations.* All investigations, whether upon complaint or otherwise, shall be conducted by Disciplinary Counsel. An attorney under investigation has an obligation to respond to Disciplinary Counsel's written inquiries in the conduct of an investigation, subject to constitutional limitations. In the event of an attorney's failure to respond to such an inquiry, Disciplinary Counsel may request the Board to enter an appropriate order.
(b) *Disposition of investigations*. Upon the conclusion of an investigation, Disciplinary Counsel may, with the prior approval of a Contact Member, dismiss the complaint, informally admonish the attorney under investigation, or institute formal charges;or may, with the prior approval of a member of the Board on Professional Responsibility, enter into a diversion agreement. An attorney who receives an informal admonition may request a formal hearing before a Hearing Committee, in which event the admonition shall be vacated and Disciplinary Counsel shall institute formal charges.
(c) *Petitions*. Formal disciplinary proceedings before a Hearing Committee shall be instituted by Disciplinary Counsel by the filing of a petition under oath with the Executive Attorney. A copy of the petition shall be served upon the attorney, and another copy shall be sent to the Clerk of the Court. The petition shall be sufficiently clear and specific to inform the attorney of the alleged misconduct. Upon receipt of the petition, without waiting for the attorney to file an answer, the Executive Attorney shall schedule a hearing and assign the matter to a Hearing Committee.
(d) *Notice of hearing*. After a hearing has been scheduled, the Executive Attorney shall serve notice of the hearing upon Disciplinary Counsel and the attorney, or the attorney's counsel, stating the date and place of the hearing. The date of the hearing shall be at least fifteen days after the date of service of the notice. Service shall be made in accordance with section 19(e) of this rule. The notice shall also advise the attorney that, at the hearing, the attorney shall have the right to be represented by counsel, to cross-examine

witnesses, and to present evidence in defense or mitigation of the charges.

(e) *Attorney's answer.* The attorney shall file an answer to the petition within twenty days after service of the petition unless the time is extended by the Hearing Committee Chairperson. The attorney shall serve a copy of the answer upon Disciplinary Counsel and file the original with the Executive Attorney. If the attorney fails to file an answer within the time provided, the Hearing Committee Chairperson may authorize the filing of an answer at any time before the hearing upon a showing of mistake, inadvertence, surprise, or excusable neglect.

(f) *Failure to answer and default*. Notwithstanding any action taken pursuant to section 3 (c), if the attorney fails to answer a petition as provided by section 8 (e) of this rule, Disciplinary Counsel may file a motion for default with the Hearing Committee to which the matter has been assigned;the motion must be supported by sworn proof of the charges in the specification and by proof of actual notice of the petition or proper publication as approved by the Court. The Hearing Committee Chairperson may enter an order of default and the petition shall be deemed admitted subject to ex parte proof by Disciplinary Counsel sufficient to prove the allegations, by clear and convincing evidence, based upon documentary evidence, sworn affidavits, and/or testimony. Disciplinary Counsel shall notify the attorney of the entry of a default order.

An order of default is limited to the allegations set forth in Disciplinary Counsel's petition and shall be included in the Hearing Committee's report and recommendation filed with the Board. The Hearing Committee shall issue its report and recommendation based upon the documentary evidence, sworn affidavits, or testimony presented by Disciplinary Counsel, and the report shall set forth proposed findings of fact and conclusions of law.

An order of default shall be vacated if, within thirty days of issuance of the Hearing Committee's report, the attorney files a motion with the Hearing Committee showing good cause why the order should be set aside. Thereafter, the Board may vacate the order only upon a showing that failure to do so would result in a manifest injustice.

(g) *Discovery*. The attorney shall have the right to reasonable discovery in accordance with rules promulgated by the Board. Rulings with respect to such discovery proceedings shall be made by the Chairperson of the Hearing Committee to which the matter has been assigned for hearing or by the Chairperson of the Board. Objections to such rulings shall be preserved and may be raised upon appeal to the Board from the final action of the Hearing Committee. No interlocutory appeals shall be permitted.

(h) *Prehearing conference.* In the discretion of the Hearing Committee Chairperson, a prehearing conference may be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. The conference may be held before the Hearing Committee Chairperson or any member of the Committee designated by its Chairperson.

(i) *Conduct of hearings.* A Hearing Committee shall conduct its hearings in accordance with rules promulgated by the Board.

Section 8.1. Diversion

(a) *Availability of diversion.* Subject to the limitations herein, diversion may be offered by Disciplinary Counsel to an attorney under investigation for a disciplinary violation.

(b) *Limitations on diversion*. Diversion shall be available in cases of alleged minor misconduct, but shall not be available where:

(1) the alleged misconduct resulted in prejudice to a client or another person;

(2) discipline previously has been imposed or diversion previously has been offered and accepted, unless Disciplinary Counsel finds the presence of exceptional circumstances justifying a waiver of this limitation;

(3) the alleged misconduct involves fraud, dishonesty, deceit, misappropriation or conversion of client funds or other things of value, or misrepresentation; or

(4) the alleged misconduct constitutes a criminal offense under applicable law, except for the offenses of driving under the influence and operating a motor vehicle while impaired (or a similar conviction in another jurisdiction).

(c) *Procedures for diversion.* At the conclusion of an investigation, Disciplinary Counsel may, in Disciplinary Counsel's sole discretion, offer to an attorney being investigated for misconduct the option of entering a diversion program in lieu of other procedures available to Disciplinary Counsel. The attorney shall be free to accept or reject the offer of diversion. If the attorney accepts diversion, a written diversion agreement shall be entered into by both parties including, inter alia, the time of commencement and completion of the diversion program, the content of the program, and the criteria by which successful completion of the program will be measured. The diversion agreement shall state that it is subject to review by a member of the Board, to whom

it shall be submitted for review and approval after execution by Disciplinary Counsel and the attorney.

(d) *Content of diversion program*. The diversion program shall be designed to remedy the alleged misconduct of the attorney. It may include participation in formal courses of education sponsored by the Bar, a law school, or another organization;completion of an individualized program of instruction specified in the agreement or supervised by another Bar entity; or any other arrangement agreed to by the parties which is designed to improve the ability of the attorney to practice in accordance with the Rules of Professional Conduct.

(e) *Proceedings after completion or termination of diversion program.* Except as provided in subsection (b)(2) of this section, if the attorney successfully completes a diversion program, Disciplinary Counsel's investigation shall be closed, and the attorney shall have no record of misconduct resulting therefrom. If the attorney does not successfully complete the diversion program, Disciplinary Counsel shall take such other action as is authorized and prescribed under section 8(b).

Section 9. Post-hearing Proceedings

(a) *Hearing Committee report*. Within 120 days after the conclusion of its hearing, the Hearing Committee shall in every case submit to the Board a report containing its findings and recommendation, together with a record of its proceedings and the briefs of the parties, if any were submitted. The record shall include a transcript of the hearing.

(b) *Proceedings before the Board*. Exceptions to the report of a Hearing Committee may be filed in accordance with rules promulgated by the Board. If no exceptions are filed, the Board shall decide the matter on the basis of the Hearing Committee record. If exceptions are filed, the Executive Attorney shall schedule the matter for submission of briefs and oral argument to the Board.

(c) *Disposition by the Board.* Promptly after the conclusion of oral argument or, if there is no argument, promptly after reviewing the Hearing Committee record, the Board shall either adopt or modify the recommendation of the Hearing Committee, remand the case to the Hearing Committee for further proceedings, direct Disciplinary Counsel to issue an informal admonition, or dismiss the petition.

(d) *Report of the Board.* Unless the Board dismisses the petition or remands the case, or unless the matter is concluded by a reprimand or a direction for an informal admonition, the Board shall promptly prepare a report containing its findings and recommendation. The Executive Attorney shall submit the report of the Board, together with the entire record, to the Court and shall serve a copy thereof on the attorney.

(e) *Exceptions to the report.* The attorney or Disciplinary Counsel, or both, may file with the Court exceptions to the report of the Board within twenty days from the date of service of a copy thereof. The Court, for good cause shown, may grant an additional period for filing exceptions, not to exceed twenty days.

(f) *Exceptions when no report is filed.* If the Board issues a reprimand, directs Disciplinary Counsel to issue an informal admonition, or dismisses the petition, the attorney or Disciplinary Counsel, or both, may file with the Court exceptions to the Board's decision within twenty days from the date of service of a copy thereof. The Court, for good cause shown, may grant an additional period for filing exceptions, not to exceed twenty days.

(g) *Suspension pending final action by the Court*.

(1) Upon receipt of a report from the Board recommending discipline in the form of disbarment, suspension requiring proof of fitness as a condition of reinstatement, or suspension of one year or more without a fitness requirement, the Court shall order the attorney to show cause within thirty days why the Court should not enter an order of suspension pending final action on the Board's recommendation. The attorney shall be required to show cause even if the Board recommends as discipline a partial (but not an entire) stay of the suspension in favor of probation. Unless the Court requests, Disciplinary Counsel need not reply to the attorney's response. To prevent suspension under this subsection, the attorney shall have the burden of demonstrating a substantial likelihood of success with respect to the exceptions the attorney has taken to the Board's report.

(2) If the attorney does not make the showing required by subsection (g)(1) of this section, or if the attorney has not responded to the show cause order in the time required, the Court shall impose interim discipline as follows pending final action on the Board's recommendation:

(a) If the Board has recommended disbarment or suspension requiring proof of fitness to practice law as a condition of reinstatement, the Court shall enter an order suspending the attorney from the practice of law in the District of Columbia.(b) If the Board has recommended suspension of one year or more without requiring proof of fitness as a condition of reinstatement, the Court shall enter an order imposing the discipline recommended by the Board.

(3) Any suspension imposed under this subsection will not limit the authority of the Court to impose greater or lesser discipline than that recommended by the Board.

(4) Suspension under this subsection shall take effect as provided in subsection 14 (f), and an attorney suspended under this subsection shall comply with the requirements of section 14 of this rule.

(h) *Proceedings before the Court.*

(1) Upon the filing of exceptions under subsection (e) or subsection (f) of this section, and in all cases arising under section 8 in which the Board's recommended sanction includes a requirement that the attorney make a showing of fitness before reinstatement, the Court shall schedule the matter for consideration in accordance with applicable court procedures. If the matter has come before the Court under subsection (f) of this section, the Court may order the Board to file a report setting forth its findings of fact and the reasons for its decision. Upon conclusion of the proceedings, or upon consideration of the report if no exceptions are filed, the Court shall enter an appropriate order as soon as the business of the Court permits. In determining the appropriate order, the Court shall accept the findings of fact made by the Board unless they are unsupported by substantial evidence of record, and shall adopt the recommended disposition of the Board unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. Unpublished opinions in disciplinary cases decided on or after April 1, 1991, shall not be deemed binding precedent by the Court except as to appropriateness of sanctions.
(2) Other than as provided in subsection (g) of this section, if no exceptions are filed to the Board's report, the Court will enter an order imposing the discipline recommended by the Board upon the expiration of the time permitted for filing exceptions.

(i) *Counsel in disciplinary matters before the Court.* Proceedings before the Board and the Court shall be conducted by Disciplinary Counsel. If Disciplinary Counsel disagrees with the findings or recommendation of the Board, the position of the Board may be presented before the Court, upon request of the Board, by the Executive Attorney or other counsel. The Court in its discretion may appoint an attorney to present the views of a minority of the Board.

(j) *Court review of final actions by the Board*. In any disciplinary proceeding in which a dismissal, an informal admonition, or a reprimand is contemplated or effected, the Court shall have the right to review the matter on its own motion and to enter an appropriate order, including an order directing further proceedings.

Section 10. Disciplinary Proceedings Based Upon Conviction of Crime

(a) *Notification.* If an attorney is found guilty of a crime or pleads guilty or *nolo contendere* to a criminal charge in a District of Columbia court, the clerk of that court shall, within ten days from the date of such finding or plea, transmit to this Court and to Disciplinary Counsel a certified copy of the court record or docket entry of the finding or plea. Disciplinary Counsel shall forward the certified copy to the Board. Upon learning that the certified copy has not been timely transmitted by the clerk of the court in which the finding or plea was made, or that an attorney has been found guilty of a crime or has pleaded guilty or *nolo contendere* to a criminal charge in a court outside the District of Columbia or in any federal court, Disciplinary Counsel shall promptly obtain a certified copy of the court record or docket entry of the finding or plea and transmit it to this Court and to the Board. The attorney shall also file with this Court and the Board, within ten days from the date of such finding or plea, a certified copy of the court record or docket entry of the finding or plea.

(b) *Serious crimes*. The term "serious crime" shall include (1) any felony, and (2) any other crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

(c) *Action by the Court*—Serious crimes. Upon the filing with this Court of a certified copy of the record or docket entry demonstrating that an attorney has been found guilty of a serious crime or has pleaded guilty or *nolo contendere* to a charge of serious crime, the Court shall enter an order immediately suspending the attorney, notwithstanding the pendency of an appeal, if any, pending final disposition of a disciplinary proceeding to be commenced promptly by the Board. Upon good cause shown, the Court may set aside such order of suspension when it appears in the interest of justice to do so.

(d) *Action by the Board—Serious crimes*. Upon receipt of a certified copy of a court record demonstrating that an attorney has been found guilty of a serious crime or has pleaded guilty or *nolo contendere* to a charge of serious crime, or any crime that appears to be a serious crime as defined in subsection (b) of this section, Disciplinary Counsel shall initiate a formal proceeding in which the sole issue to be determined shall be the nature of the final discipline to be imposed. However, if the Court determines under subsection (c) of this section that the crime is not a serious crime, the proceeding shall go forward on any charges under the Rules of Professional Conduct that Disciplinary Counsel may institute. A disciplinary proceeding under this subsection may proceed through the Hearing Committee to the Board, and the Board may hold such hearings

and receive such briefs and other documents as it deems appropriate, but the proceeding shall not be concluded until all direct appeals from conviction of the crime have been completed.

(e) *Other crimes*. Upon the receipt of a certified copy of a court record demonstrating that an attorney has been found guilty of a crime other than a serious crime, or has pleaded guilty or *nolo contendere* to a charge of crime other than a serious crime, Disciplinary Counsel shall investigate the matter and proceed as appropriate under section 8 of this rule.

(f) *Proof of criminal convictions*. A certified copy of the court record or docket entry of a finding that an attorney is guilty of any crime, or of a plea of guilty or *nolo contendere* by an attorney to a charge of any crime, shall be conclusive evidence of the commission of that crime in any disciplinary proceeding based thereon.

(g) *Reinstatement.* An attorney suspended under subsection (c) of this section may file with the Court and the Board, at any time, a certificate demonstrating that the underlying finding or plea or the judgment of conviction based thereon has been reversed, vacated, or set aside. Upon the filing of the certificate, the Court shall promptly enter an order reinstating the attorney, but the reinstatement shall not terminate any formal disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Board on the basis of all available evidence.

Section 11. Reciprocal Discipline

(a) *Definition.* As used in this section,

(1) "state" shall mean any state, territory, or possession of the United States.
(2) "disciplining court" shall mean (a) any court of the United States as defined in Title 28, Section 451 of the United States Code;(b) the highest court of any state;and (c) any other agency, commission, or tribunal, however denominated, that is authorized to impose discipline effective throughout a state.

(b) *Notification*. It shall be the duty of Disciplinary Counsel to obtain copies of all orders of discipline from other disciplining courts. Upon learning that an attorney subject to the disciplinary jurisdiction of this Court has been disciplined by another disciplining court, Disciplinary Counsel shall obtain a certified copy of the disciplinary order and file it with this Court. In addition, any attorney subject to the disciplinary jurisdiction of this Court, upon being subjected to professional disciplinary action by another disciplining court, shall promptly inform Disciplinary Counsel of such action in writing.

(c) *Standards for reciprocal discipline*. Reciprocal discipline may be imposed whenever an attorney has been disbarred, suspended, or placed on probation by another disciplining court. It shall not be imposed for sanctions by a disciplining court such as public censure or reprimand that do not include suspension or probation. For sanctions by another disciplining court that do not include suspension or probation, the Court shall order publication of the fact of that discipline by appropriate means in this jurisdiction. Reciprocal discipline shall be imposed unless the attorney demonstrates to the Court, by clear and convincing evidence, that:

(1) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or (2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistently with its duty, accept as final the conclusion on that subject; or
(3) The imposition of the same discipline by the Court would result in grave injustice; or
(4) The misconduct established warrants substantially different discipline in the District of Columbia; or
(5) The misconduct elsewhere does not constitute misconduct in the District of Columbia. Unless there is a finding by the Court under (1), (2), or (5) of this subsection, a final determination by another disciplining court that an attorney has been guilty of professional misconduct shall conclusively establish the misconduct for the purpose of a reciprocal disciplinary proceeding in this Court.

(d) *Temporary suspension and show cause order.*
Upon receipt of a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of this Court has been suspended or disbarred by another disciplining court, the Court shall forthwith enter an order (1) suspending the attorney from the practice of law in the District of Columbia pending final disposition of any reciprocal disciplinary proceeding, and (2) directing the attorney to show cause within thirty days why identical reciprocal discipline should not be imposed. Disciplinary Counsel shall reply to the attorney's response to the show cause order no later than fifteen days after service of the response. Alternatively, no later than fifteen days after the attorney's response was due, Disciplinary Counsel may object to the imposition of reciprocal discipline based upon the factors set forth in subsection (c) of this section. In either case, Disciplinary Counsel shall provide the Court with the relevant portions of the record of

the proceeding in the other disciplining court, the statute and the rules that governed it, and a short statement identifying all of the issues that the matter presents.

If Disciplinary Counsel opposes the imposition of identical discipline, Disciplinary Counsel shall

(1) recommend appropriate non-identical discipline or
(2) request that the matter be referred to the Board for its recommendation as to discipline. The attorney may reply within ten days after service of Disciplinary Counsel's submission.

(e) *Action by the Court.*
Upon receipt of the attorney's response to the show cause order, if any, and of any submission by Disciplinary Counsel, the Court may refer the matter to the Board for its consideration and recommendation. If the Court decides that a referral to the Board is unnecessary, it shall impose identical discipline unless the attorney demonstrates by clear and convincing evidence, or the Court finds on the face of the record, that one or more of the grounds set forth in subsection (c) of this section exists.

If the Court determines that identical discipline should not be imposed, it may impose such discipline as it deems appropriate. In deciding what non-identical discipline to impose, the Court shall accept the facts found by the disciplining court unless it has made a finding under (1), (2), or (5) of subsection (c) of this section. If the Court has made a finding under one of these subsections, it shall direct Disciplinary Counsel to institute such proceedings as may be appropriate, including an original disciplinary proceeding. In the absence of such a finding, the Court shall impose final discipline.
(f) *Effect of stay of discipline by disciplining court.* If the discipline imposed by another disciplining court is stayed, any reciprocal discipline imposed by this Court shall be deferred until the stay expires.

Section 12. Disbarment by Consent

(a) *Required affidavit.* An attorney who is the subject of an investigation or a pending proceeding based on allegations of misconduct may consent to disbarment, but only by delivering to Disciplinary Counsel an affidavit declaring the attorney's consent to disbarment and stating:

(1) That the consent is freely and voluntarily rendered, that the attorney is not being subjected to coercion or duress, and that the attorney is fully aware of the implication of consenting to disbarment;
(2) That the attorney is aware that there is currently pending an investigation into, or a proceeding involving, allegations of misconduct, the nature of which shall be specifically set forth in the affidavit;
(3) That the attorney acknowledges that the material facts upon which the allegations of misconduct are predicated are true; and
(4) That the attorney submits the consent because the attorney knows that if disciplinary proceedings based on the alleged misconduct were brought, the attorney could not successfully defend against them.

(b) *Action by the Board and the Court*. Upon receipt of the required affidavit, Disciplinary Counsel shall file it and any related papers with the Board for its review and approval. Upon such approval, the Board shall promptly file it with the Court. The Court thereafter may enter an order disbarring the attorney on consent.
(c) *Access to records of disbarment by consent*. The order disbarring an attorney on consent shall be a matter of public record. However, the affidavit required under subsection (a) of this section shall not be publicly disclosed or made available for use in any other proceeding except by order of the Court or upon written consent of the attorney.

Section 12.1. Negotiated discipline other than disbarment by consent.

(a) Availability of negotiated discipline.
An attorney who is the subject of an investigation by Disciplinary Counsel, or of a pending petition under section 8 (c) of this rule charging misconduct, may negotiate with Disciplinary Counsel a disposition of the charges and sanction at any time before a Hearing Committee has submitted to the Board a report containing its findings and recommendation with respect to discipline.
(b) *Documentation of a negotiated disposition.*
(1) A petition for negotiated disposition, signed by Disciplinary Counsel and the attorney, shall contain:

(i) A statement of the nature of the matter that was brought to Disciplinary Counsel's attention;
(ii) A stipulation of facts and charges, including citation to the Rules of Professional Conduct that the attorney has violated;(iii) A statement of any promises that have been made by Disciplinary

Counsel to the attorney; and
(iv) An agreed upon sanction, with a statement of relevant precedent and any circumstances in aggravation or mitigation of sanction that the parties agree should be considered.

(2) In further support of a petition for negotiated disposition, the attorney shall submit an affidavit which includes averments that:

(i) The disposition is freely and voluntarily entered into, the attorney is not being subjected to coercion or duress and is fully aware of the implications of the disposition, and Disciplinary Counsel has made no promises to the attorney other than what is contained in the petition for negotiated disposition;
(ii) The attorney is aware that there is currently pending an investigation into, or a proceeding involving, allegations of misconduct;
(iii) The attorney acknowledges the truth of the material facts upon which the misconduct described in the accompanying petition for negotiated disposition is predicated; and
(iv) The attorney agrees to the disposition because the attorney believes that he or she could not successfully defend against disciplinary proceedings based on that misconduct. The affidavit may recite any other facts the attorney chooses to present in mitigation that support the agreed upon sanction.

(c) *Hearing Committee review*.
A petition for negotiated disposition and accompanying affidavit shall be submitted to the Executive Attorney, who in turn shall assign it to a Hearing Committee for review. The Board may adopt procedures for assignment of petitions for negotiated disposition to Hearing Committees, taking into account such matters as the pendency (and at what stage) of a related section 8 (c) proceeding.

A Hearing Committee receiving a proposed negotiated disposition shall hold a limited hearing. The hearing shall be public and the proceeding a matter of public record. Prior to the hearing, Disciplinary Counsel shall furnish to any complainant the petition for negotiated disposition and affidavit, together with notice of the hearing and of the complainant's opportunity to be present. Also before the hearing, the Hearing Committee or the Chairperson may review Disciplinary Counsel's investigative file in camera or meet with Disciplinary Counsel ex parte to discuss the basis for Disciplinary Counsel's recommendation of a negotiated disposition.

The Hearing Committee conducting the review shall recommend to the Court approval of a petition for negotiated disposition if it finds that:

(1) The attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the petition and agreed to the sanction set forth therein;
(2) The facts set forth in the petition or as shown at the hearing support the admission of misconduct and the agreed upon sanction; and
(3) The sanction agreed upon is justified. If the Hearing Committee rejects a petition for negotiated disposition, it may not modify the proposed disposition on its own initiative, but instead shall afford Disciplinary Counsel and the attorney an opportunity to revise the petition, and shall review any revised petition they submit.

(d) *Review by the Court of a recommendation.*
Upon receipt from a Hearing Committee of a recommendation to approve a negotiated disposition, the Court shall review the recommendation in accordance with its procedures for the imposition of uncontested discipline. The Court in exceptional cases may request the views of the Board concerning the appropriateness of a negotiated disposition. If the Court accepts the recommendation, it shall impose the recommended discipline in a *per curiam* opinion briefly describing the misconduct, the specific Rule(s) of Professional Conduct violated, and the sanction imposed. Unless the opinion provides otherwise, an opinion imposing negotiated discipline may not be cited as precedent in contested disciplinary proceedings except as provided in the second sentence of D.C. App. R. 28 (g).

No review by the Board or the Court may be had from a refusal of Disciplinary Counsel to agree to a disposition or from the rejection of a petition for negotiated disposition by a Hearing Committee.
(e) *Limitations on reference to a negotiated disposition or admissions by an attorney*. Neither a Hearing Committee nor the Board may inquire of Disciplinary Counsel or an attorney who is the subject of a contested disciplinary proceeding whether the parties considered entering into a negotiated disposition, nor may a Hearing Committee or the Board, in imposing discipline following a section 8 (c) proceeding, consider

whether the attorney offered or declined to enter into a negotiated disposition. If a section 8 (c) proceeding commences or resumes after a petition for negotiated disposition has been rejected, admissions made by the attorney in the petition or accompanying affidavit, or in the associated hearing, may not be used as evidence against the attorney except for purposes of impeachment.

Section 13. Incompetent and Incapacitated Attorneys

(a) *Mentally disabled attorneys*. When an attorney has been judicially declared to be mentally incompetent or has been involuntarily committed to a mental hospital as an inpatient, the Court, upon proper proof of that fact, shall enter an order suspending that attorney from the practice of law for an indefinite period until further order of the Court. The suspension shall be effective immediately. A copy of the order shall be served upon the attorney, the attorney's guardian, and the director of the mental hospital, if any, in such manner as the Court may direct. If at any time thereafter the attorney is judicially declared to be competent or discharged from inpatient status in the mental hospital, the Court may dispense with further evidence that the disability has ended and may direct the attorney's reinstatement to the practice of law upon such terms as it deems appropriate.

(b) *Application for medical examination.* If, at any time prior to its final disposition of a disciplinary proceeding, the Board has good cause to believe that the mental or physical condition of the attorney is relevant to the subject matter of the complaint and is a factor which should be considered in the pending proceeding, the Board shall direct Disciplinary Counsel to apply to the Court for an order requiring the attorney to submit to an appropriate examination. The application shall be by petition, with notice to the attorney, and shall be accompanied by a statement from Disciplinary Counsel setting forth in detail the reasons for the application and the relevance of the examination to the pending proceeding.

(c) *Attorneys who may be incapacitated.* If the Board has reason to believe that an attorney is incapacitated from continuing to practice law because of mental infirmity or illness or because of addiction to drugs or intoxicants, the Board may petition the Court to determine whether the attorney is so incapacitated. Upon the filing of the Board's petition, the Court may take or direct such action as it deems appropriate, including the examination of the attorney by such qualified medical expert or experts as it shall designate. If the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order suspending the attorney on the ground of such disability for an indefinite period, effective immediately and until further order of the Court, and any pending disciplinary proceeding against the attorney shall be held in abeyance. In a case of addiction to drugs or intoxicants, the Court alternatively may consider the possibility of probationary conditions. The Court may provide for such notice to the attorney of proceedings in the matter as it deems appropriate and may appoint counsel to represent the attorney if it determines that the attorney is without adequate representation.

(d) *Burden of proof.* In a proceeding under this section seeking an order of suspension, the burden of proof shall be upon the Board. In a proceeding under this section seeking an order terminating a suspension, the burden of proof shall be upon the suspended attorney.

(e) *Claim of disability by attorney*. If, in the course of a disciplinary proceeding, the attorney claims to be suffering from a disability because of mental or physical illness or infirmity, or because of addiction to drugs or intoxicants, which makes it impossible for the attorney to present an adequate defense, the Court shall enter an order immediately suspending the attorney from the practice of law until a determination is made of the attorney's capacity to practice law in a proceeding under subsection (c) of this section.

(f) *Action by the Court when attorney is not incapacitated.* If, in the course of a proceeding under this section or a disciplinary proceeding, the Court determines that the attorney is not incapacitated from practicing law, it shall take such action as it deems appropriate, including the entry of an order directing the resumption of the disciplinary proceeding against the attorney.

(g) *Reinstatement of incapacitated attorney.* An attorney suspended under this section may apply for reinstatement once a year, or at such shorter intervals as the Court may direct in its order of suspension or any modification thereof. Upon the filing of such application, the Court may take or direct such action as it deems appropriate, including the examination of the attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the attorney, and that evidence be presented establishing proof of the attorney's competence and learning in the law, which may include certification by the bar examiners of the attorney's successful completion of an examination for admission to practice. An application for reinstatement under this subsection shall be granted by the Court upon a showing by the attorney, by clear and convincing evidence, that the disability has ended and that the attorney is fit to resume the practice of law.

(h) *Waiver of doctor-patient privilege.* The filing of an application for reinstatement under subsection (g) of this section shall constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of disability. The attorney shall disclose the name and address of every physician by whom, and every hospital in which, the attorney has been examined or treated since the suspension and

shall furnish to the Court written consent to each to divulge such information and records as may be required by Court-appointed medical experts.

Section 14. Disbarred and Suspended Attorneys

(a) *Notice to clients in non-litigated matters*. An attorney ordered to be disbarred or suspended shall promptly notify by registered or certified mail, return receipt requested, all clients on retainer and all clients being represented in pending matters other than litigated or administrative matters or proceedings pending in any court or agency, of the order of disbarment or suspension and of the attorney's consequent inability to act as an attorney after the effective date of the order, and shall advise such clients to seek legal advice elsewhere. (b) *Notice to clients in litigated matters*. An attorney ordered to be disbarred or suspended shall promptly notify, by registered or certified mail, return receipt requested, all clients involved in litigated matters or administrative proceedings in any court of the District of Columbia, or in pending matters before any District of Columbia government agency, of the order of disbarment or suspension and of the attorney's consequent inability to act as an attorney after the effective date of the order. The notice shall advise the prompt substitution of another attorney or attorneys. If the client fails to obtain substitute counsel before the effective date of the order, the disbarred or suspended attorney shall move pro se in the court or agency in which the proceeding is pending for leave to withdraw.

(c) *Notice to adverse parties.* An attorney ordered to be disbarred or suspended shall promptly notify, by registered or certified mail, return receipt requested, the attorney or attorneys for every adverse party in litigated matters or administrative proceedings in any court of the District of Columbia, or in pending matters in any District of Columbia administrative agency, of the order of disbarment or suspension and of the attorney's consequent inability to act as an attorney after the effective date of the order. The notice shall state the mailing address of each client of the disbarred or suspended attorney who is a party in the pending matter or proceeding.

(d) *Delivery of client papers and property.* An attorney ordered to be disbarred or suspended shall promptly deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or shall notify the clients and any co-counsel of a suitable time when and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

(e) *Imposition of discipline pendente lite*. The Court, sua sponte or on motion, may order that the discipline recommended by the Board shall take effect pending the Court's determination of the merits of the case.

(f) *Effective date of discipline.* Except as provided in sections 10, 11, and 13 of this rule, and in subsection (e) of this section, an order of disbarment or suspension shall be effective thirty days after entry unless the Court directs otherwise. The disbarred or suspended attorney, after entry of the order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period between the date of entry of the order and its effective date, the attorney may conclude other work on behalf of a client on any matters which were pending on the date of entry. If such work cannot be concluded, the attorney shall so advise the client so that the client may make other arrangements.

(g) *Required affidavit and registration statement.* Within ten days after the effective date of an order of disbarment or suspension, the disbarred or suspended attorney shall file with the Court and the Board an affidavit:

(1) Demonstrating with particularity, and with supporting proof, that the attorney has fully complied with the provisions of the order and with this rule;

(2) Listing all other state and federal jurisdictions and administrative agencies to which the attorney is admitted to practice;and (3) Certifying that a copy of the affidavit has been served on Disciplinary Counsel.

The affidavit shall also state the residence or other address of the attorney to which communications may thereafter be directed. The Board may require such additional proof as it deems necessary. In addition, for five years following the effective date of a disbarment or suspension order, a disbarred or suspended attorney shall continue to file a registration statement in accordance with Rule II, stating the residence or other address to which communications may thereafter be directed, so that the attorney may be located if a complaint is made about any conduct of the attorney occurring before the disbarment or suspension. See also section 16(c).

(h) *Required records*. An attorney ordered to be disbarred or suspended, other than an attorney suspended under section 13(a) or 13(c), shall keep and maintain records of the various steps taken under this section, so that in any subsequent proceeding proof of compliance with this section and with the disbarment or suspension order will be available. The Court may require the attorney to submit such proof as a condition precedent to the granting of any petition for reinstatement. In the case of an attorney suspended under

section 13(a) or 13(c), the Court shall enter such order as may be required to compile and maintain all necessary records. See also sections 15(a) and 15(f).

Section 15. Protection of Clients' Interests When Attorney Becomes Unavailable

(a) *Appointment of Counsel*. If an attorney dies, disappears, or is suspended for incapacity or disability, and there is no partner, associate, or other responsible attorney capable of conducting the attorney's affairs, the Court, on motion of the Board, shall appoint a member of the Bar to make an inventory of the attorney's cases, to make appropriate disposition of the attorney's files, to distribute as appropriate any funds in the attorney's escrow accounts, and to ensure continuity of representation for the attorney's clients. The appointed attorney shall file with the Board written acceptance of the appointment.

(b) *Initiation of proceeding.* Any person may apply to the Board for action to be taken under this section. The Board may also act on direction from the Court, on notice from Disciplinary Counsel or from any other source, or on its own motion.

(c) *Establishment of eligibility*. When directed by the Chairperson of the Board, the Executive Attorney shall determine that an attorney's affairs require proceeding under this section and shall verify that determination to the Board.

(d) *Selection of attorneys for appointment*. The Court may appoint any member of the Bar to perform any function under subsection (a) of this section. The Executive Attorney may submit to the Court the names of three attorneys who are willing and able to accept such appointment.

(e) *Compensation for appointed attorneys*. The level of compensation to be paid under this section shall, in the absence of extraordinary circumstances as determined by the Chairperson of the Board, be the prevailing rate under the District of Columbia Criminal Justice Act. If, after reasonable efforts, the Executive Attorney cannot find three attorneys willing to accept compensation at that rate, the list of names submitted by the Executive Attorney under subsection (d) may include attorneys who will serve at a higher rate deemed appropriate by the Executive Attorney. In such a case, the Executive Attorney shall provide to the Chairperson of the Board a brief description, in writing, of the nature and extent of the search for candidates for appointment.

(f) *Duties of appointed attorney.* As promptly as possible after receiving an appointment by the Court under subsection (a), the appointed attorney shall review the files, identify open cases, and note those requiring action. The attorney shall provide to the Executive Attorney, in writing, an estimate of the number of hours necessary to complete the inventory and distribution. If the attorney is appointed in the case of an attorney suspended under section 13(a) or 13(c), the appointed attorney shall, to the fullest extent possible, compile and maintain such records as the Court may require under section 14(g).

(g) *Budget amendments.* If the Executive Attorney reasonably concludes that the estimated payment of fees for services to be performed under this section will exceed the amount available for that purpose in the budget of the Board, the Executive Attorney shall, on approval by the Chairperson of the Board, submit a report to the Board of Governors seeking a budget amendment before authorizing the appointed attorney to proceed.

(h) *Contact with clients*. The appointed attorney shall consult with clients whose cases are open to discuss the disposition of their cases and to make arrangements to distribute client papers and assets.

(i) *Disposition of cases*. After consulting each client, the appointed attorney may refer that client's open cases to attorneys willing to handle such matters, may advise the client to consult the Bar for assistance in finding new counsel, or may elect, with the consent of the client, to assume responsibility for one or more of the client's cases. In all other matters the attorney shall return the client's files to the client.

(j) *Monthly statements of time and expenses*. The appointed attorney shall submit to the Executive Attorney each month a detailed statement of the time spent and expenses incurred in carrying out the order of appointment.

(k) *Review of statements and payment*. The Executive Attorney shall promptly review the appointed attorney's statement and submit it to the Chairperson of the Board, together with a recommendation for the Chairperson's review and, if appropriate, approval. Upon approval of the statement by the Chairperson of the Board, the Executive Attorney shall authorize payment to the appointed attorney by submitting a copy of the approved statement to the Board of Governors. The appointed attorney shall receive compensation under this section only for services rendered in carrying out the order of appointment. If the appointed attorney undertakes any substantive work on a case, payment for such work shall be made by the client in accordance with a fee agreement between the appointed attorney and the client.

(l) *Confidentiality*. The appointed attorney shall not disclose any information obtained in a client file without the consent of the client to whom the file relates, except as necessary to carry out the order of appointment.

Section 16. Reinstatement

(a) *Restrictions on reinstatement.* A disbarred attorney, or a suspended attorney required to furnish proof of rehabilitation under section 3(a)(2) of this rule, shall not resume the practice of law until reinstated by order of the Court. A disbarred attorney not otherwise ineligible for reinstatement may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment. See also section 14(h).

(b) *Reinstatement of attorneys suspended for disability*. An attorney who has been suspended indefinitely because of disability under section 13 of this rule may move for reinstatement in accordance with that section, but reinstatement shall not be ordered except on a showing by clear and convincing evidence that the disability has ended and that the attorney is fit to resume the practice of law.

(c) *Reinstatement of attorneys suspended on other grounds*. An attorney suspended for more than one year before September 1, 1989, shall be subject to the reinstatement requirements in effect on the date of suspension. An attorney suspended for a specific period of time on or after September 1, 1989, without being required to furnish proof of rehabilitation under section 3(a)(2) of this rule shall be reinstated without further proceedings upon the expiration of the period specified in the order of suspension, provided that the attorney has timely filed with the Court the affidavit required by section 14(g) and such other proof as may be required under section 14(h). Notwithstanding the foregoing, a suspended attorney shall not be eligible for reinstatement until a period of time equal to the period of suspension shall have elapsed following the attorney's compliance with section 14, and a disbarred attorney shall not be eligible for reinstatement until five years shall have elapsed following the attorney's compliance with section 14. If the attorney has failed in any respect to comply with section 14, the Board shall so notify the Court, and the Court thereafter shall enter an appropriate order.

(d) *Contested petitions for reinstatement*.

(1) A petition for reinstatement by a disbarred attorney or an attorney suspended for misconduct rather than for disability and required to provide proof of rehabilitation shall be filed with the Board. If the attorney is not eligible for reinstatement, or if the Board determines that the petition is insufficient or defective on its face, the Board may dismiss the petition;otherwise it shall refer the petition to Disciplinary Counsel for a determination of whether Disciplinary Counsel opposes the petition. If Disciplinary Counsel opposes reinstatement, the Executive Attorney shall promptly schedule a hearing before a Hearing Committee at which the attorney seeking reinstatement shall have the burden of proof by clear and convincing evidence. Such proof shall establish:

(a)That the attorney has the moral qualifications, competency, and learning in law required for readmission; and

(b) That the resumption of the practice of law by the attorney will not be detrimental to the integrity and standing of the Bar, or to the administration of justice, or subversive to the public interest.

(2)Within sixty days after the conclusion of its hearing on reinstatement and receipt of the final briefs by the parties, the Hearing Committee shall submit to the Court a report containing its findings and recommendation, together with a record of the proceedings and any briefs of the parties. The record shall include a transcript of the hearing. Upon the filing of the Hearing Committee's findings and recommendation, the Court shall schedule the matter for consideration. In its discretion, the Court may request a recommendation by the Board concerning reinstatement.

(e) *Uncontested petitions for reinstatement.* A petition for reinstatement by a disbarred attorney or a suspended attorney who is required to prove fitness to practice as a condition of reinstatement, which is uncontested by Disciplinary Counsel following a suitable investigation, may be considered by the Court on the available record and submissions of the parties. In every uncontested matter, Disciplinary Counsel shall submit to the Court a report stating why Disciplinary Counsel is satisfied that the attorney meets the criteria for reinstatement. The Court may grant the petition, deny it, or request a recommendation by the Board concerning reinstatement.

(f) *Conditions of reinstatement.* If the attorney is found unfit to resume the practice of law, the petition shall be denied. If the attorney is found fit to resume the practice of law, the Court shall enter an order of reinstatement, which may be conditioned upon the making of partial or complete restitution to persons harmed by the misconduct which led to the suspension or disbarment, or upon the payment of all or part of the costs of the reinstatement proceedings, or both. The reinstatement may also be conditioned upon the furnishing of evidence, in a form determined by the Court, of the attorney's successful completion of an examination for reinstatement subsequent to the date of suspension or disbarment. The Court may impose such other conditions on reinstatement as it deems appropriate. Failure to comply with conditions of reinstatement may result in revocation of the reinstatement order. See also section 2 (b)(3).

(g) *Resubmission of petitions for reinstatement.* If a petition for reinstatement is denied, no further petition for reinstatement may be filed until the expiration of at least one year following the denial unless the order of denial provides otherwise.

Section 17. Confidentiality

(a) *Disciplinary proceedings.* Except as otherwise provided in this rule or as the Court may otherwise order, all proceedings involving allegations of misconduct by an attorney shall be kept confidential until either a petition has been filed under section 8 (c) or an informal admonition has been issued. All proceedings before the Hearing Committee and the Board shall be open to the public, and the petition, together with any exhibits introduced into evidence, any pleadings filed by the parties, and any transcript of the proceeding, shall be available for public inspection. If an informal admonition is issued, the letter of admonition from Disciplinary Counsel informing the attorney of the grounds for the admonition shall be available for public inspection. Disciplinary Counsel's files and records, however, shall not be available for public inspection except to the extent that portions thereof are introduced into evidence in a proceeding before the Hearing Committee.

(b) *Disability proceedings*. All proceedings involving allegations of disability on the part of an attorney shall be kept confidential unless and until the Court enters an order suspending the attorney under section 13 of this rule.

(c) *Informal admonitions*. Disciplinary Counsel may disclose information pertaining to proceedings resulting in informal admonitions to any court, to any other judicial tribunal or disciplinary agency, to any duly authorized law enforcement officer or agency conducting an investigation, to any representative of a public agency considering an attorney for judicial or public employment or appointment, or to any representative of another bar considering the application of an attorney for admission to such bar. Disciplinary Counsel may also make such disclosure to a duly authorized representative of the District of Columbia Bar with respect to any person whom the Bar is considering for possible employment, appointment to a Bar position related to attorney discipline or legal ethics, or recommendation to this Court for appointment to any board, committee, or other body.

(d) *Protective orders*. To protect the interests of the complainant or of any other person, the Board may, upon application and for good cause shown, and upon notice to the attorney and an opportunity to be heard, issue a protective order prohibiting the disclosure of confidential or privileged information or of any documents listed in the order, including subpoenas and depositions, and directing that any proceedings before the Board or a Hearing Committee be so conducted as to implement the order.

(e) *Limited disclosure on motion.* The Court on motion, filed *ex parte* and under seal by Disciplinary Counsel, may authorize disclosure of otherwise confidential information to a duly constituted grand jury for use in the performance of its official duties. Disciplinary Counsel's motion shall be filed only in response to grand jury subpoena. For good cause shown, the Court on motion may authorize disclosure of otherwise confidential information through discovery or appropriate processes in any civil, criminal, or administrative action, subject to such protective order as the Court may deem appropriate, or may authorize disclosure of otherwise confidential information to local, state or federal governmental agencies not associated with law enforcement or attorney discipline subject to appropriate protections of confidentiality.

(f) *Cooperation with law enforcement and other disciplinary authorities*. Notwithstanding any other provision of this Rule, Disciplinary Counsel may file a written request with the Board for permission to communicate information about any disciplinary matter to law enforcement agencies, the Committee on Admissions, the Committee on Unauthorized Practice, the Clients' Security Trust Fund, or a state or federal attorney disciplinary agency, board, or committee that has a legitimate interest in such matter. Permission to communicate such information may be granted, in writing, by the Chairperson of the Board or the Chairperson's designated Board member upon good cause shown and subject to any limitations or conditions the Board may impose, including appropriate protections of confidentiality. Communication under this provision may be made either during the course of Disciplinary Counsel's investigation or following such investigation.

Section 18. Subpoenas

(a) *Issuance of subpoenas*. In carrying out this rule, any member of the Board, any member of a Hearing Committee in matters before the Committee, the Executive Attorney, or Disciplinary Counsel in matters under investigation may, subject to Superior Court Civil Rule 45, compel by subpoena the attendance of witnesses and the production of pertinent books, papers, documents, and other tangible objects at the time and place designated in the subpoena. An attorney who is a respondent in a disciplinary proceeding or is under investigation by Disciplinary Counsel may, subject to Superior Court Civil Rule 45, compel by subpoena the attendance of witnesses and the production of pertinent books, papers, documents, and other tangible objects before a Hearing Committee after formal disciplinary proceedings are instituted. Subpoena and witness fees and mileage costs shall be the same as those in the Superior Court. (b) *Subpoenas issued during investigations.* A subpoena issued during the course of an investigation shall clearly state on its face that it is issued in connection with a confidential investigation under this rule. A consultation with an attorney by a person subpoenaed shall not be regarded as a breach of confidentiality.

(c) *Quashing subpoenas.* Any challenge to the validity of a subpoena issued in accordance with this section shall be heard and determined by a Hearing Committee designated by the Executive Attorney. The decision of the Hearing Committee shall not be subject to an interlocutory appeal but may be reviewed by the Board and subsequently by the Court as part of their review of the case in which the subpoena is issued.

(d) *Enforcement of subpoenas.* The Court may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents or tangible objects so subpoenaed.

(e) *Subpoena pursuant to law of another jurisdiction*. Whenever a subpoena is sought in the District of Columbia pursuant to the law of another jurisdiction for use in lawyer discipline or disability investigations or proceedings in that jurisdiction, and where the application for issuance of the subpoena has been duly approved or authorized under the law of that jurisdiction, Disciplinary Counsel (in a case where the request is by the disciplinary authority of the foreign jurisdiction) or an attorney admitted to practice in this jurisdiction (in a case where the request is by a respondent in a proceeding in the foreign jurisdiction), may issue a subpoena as provided in this Section to compel the attendance of witnesses and production of documents in the District of Columbia, or elsewhere as agreed by the witnesses, for use in such foreign investigations or proceedings or in defense thereof. Service, enforcement and challenges to such subpoenas shall be as provided in this Section and incorporated rules.

(f) *Request for foreign subpoena in aid of proceeding in this jurisdiction*. In a lawyer discipline or disability investigation or proceeding pending in this jurisdiction, both Disciplinary Counsel and a respondent may apply for the issuance of subpoenas in other jurisdictions, pursuant to the rules of those jurisdictions, where such application is in aid of such investigation or proceeding or in defense thereto, and to the extent that Disciplinary Counsel or the respondent could issue compulsory process or obtain formal prehearing discovery under the provisions of this Rule or the rules issued by the Board on Professional Responsibility.

Section 19. Miscellaneous Matters

(a) *Immunity.* Complaints submitted to the Board or Disciplinary Counsel shall be absolutely privileged, and no claim or action predicated thereon may be instituted or maintained. Members of the Board, its employees, members of Hearing Committees, Disciplinary Counsel, and all assistants and employees of Disciplinary Counsel, all persons engaged in counseling, evaluating or monitoring other attorneys pursuant to a Board or Court order or a diversion agreement, and all assistants or employees of persons engaged in such counseling, evaluating or monitoring shall be immune from disciplinary complaint under this rule and from civil suit for any conduct in the course of their official duties.

(b) *Complaints against members of the disciplinary system*. Disciplinary complaints against members of the Board involving activities other than those performed within the scope of their duties as Board members shall be submitted directly to the Court. Disciplinary complaints against Hearing Committee members, the Executive Attorney, or Disciplinary Counsel involving activities other than those performed within the scope of their duties as such shall be submitted directly to the Board.

(c) *Effect of settlement, compromise, restitution, or refusal to proceed.* Neither unwillingness nor neglect by the complainant to sign a disciplinary complaint or to prosecute a charge, nor settlement, compromise, or restitution, shall in itself justify abatement of an investigation into the conduct of an attorney.

(d) *Related pending litigation.* The processing of a disciplinary complaint shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal, civil, or administrative proceedings, unless authorized by the Board or a Contact Member for good cause shown.

(e) *Service*. Service upon the attorney of a petition instituting formal disciplinary proceedings shall be made by personal service by any person authorized by the Chairperson of the Board, or by registered or certified mail, return receipt requested, to the address shown in the most recent registration statement filed by the attorney pursuant to Rule II, or other last known address. Service by registered or certified mail shall not be effective unless Disciplinary Counsel files in the record of the proceeding proof of receipt of the petition by the attorney. Service of any other paper or notice required by this rule shall, unless otherwise provided in this rule, be made in accordance with Superior Court Civil Rule 5.

(f) Deleted by Court, effective March 1, 2016.

(g) *Expenses*. The salaries of Disciplinary Counsel and the Executive Attorney, their expenses, the expenses of the members of the Board and Hearing Committees, and other expenses incurred in the implementation or administration of this rule shall be paid out of the funds of the Bar.

Section 20. Approved Depositories for Lawyers' Trust Accounts and District of Columbia Interest on Lawyers' Trust Accounts Program

(a) To be listed as an approved depository for lawyers' trust accounts, a financial institution shall file an undertaking with the Board on Professional Responsibility (BPR), on a form to be provided by the board's office, agreeing (1) promptly to report to the Office of Disciplinary Counsel each instance in which an

instrument that would properly be payable if sufficient funds were available has been presented against a lawyer's or law firm's specially designated account at such institution at a time when such account contained insufficient funds to pay such instrument, whether or not the instrument was honored and irrespective of any overdraft privileges that may attach to such account;and (2) for financial institutions that elect to offer and maintain District of Columbia IOLTA (DC IOLTA) accounts, to fulfill the requirements of subsections (f) and (g) below. In addition to undertaking to make the above-specified reports and, for financial institutions that elect to offer and maintain DC IOLTA accounts, to fulfill the requirements of subsections (f) and (g) below, approved depositories, wherever they are located, shall also undertake to respond promptly and fully to subpoenas from the Office of Disciplinary Counsel that seek a lawyer's or law firm's specially designated account records, notwithstanding any objections that might be raised based upon the territorial limits on the effectiveness of such subpoenas or upon the jurisdiction of the District of Columbia Court of Appeals to enforce them.

Such undertakings shall apply to all branches of the financial institution and shall not be canceled by the institution except upon thirty (30) days written notice to the Office of Disciplinary Counsel. The failure of an approved depository to comply with any of its undertakings hereunder shall be grounds for immediate removal of such institution from the list of BPR- approved depositories.

(b) Reports to Disciplinary Counsel by approved depositories pursuant to paragraph (a) above shall contain the following information: (1) In the case of a dishonored instrument, the report shall be identical to the over-draft notice customarily forwarded to the institution's other regular account holders.

(2) In the case of an instrument that was presented against insufficient funds but was honored, the report shall identify the depository, the lawyer or law firm maintaining the account, the account number, the date of presentation for payment and the payment date of the instrument, as well as the amount of overdraft created thereby.

The report to the Office of Disciplinary Counsel shall be made simultaneously with, and within the time period, if any, provided by law for notice of dishonor. If an instrument presented against insufficient funds was honored, the institution's report shall be mailed to Disciplinary Counsel within five (5) business days of payment of the instrument.

(c) The establishment of a specially designated account at an approved depository shall be conclusively deemed to be consent by the lawyer or law firm maintaining such account to that institution's furnishing to the Office of Disciplinary Counsel all reports and information required hereunder. No approved depository shall incur any liability by virtue of its compliance with the requirements of this rule, except as might otherwise arise from bad faith, intentional misconduct, or any other acts by the approved depository or its employees which, unrelated to this rule, would create liability.

(d) The designation of a financial institution as an approved depository pursuant to this rule shall not be deemed to be a warranty, representation, or guaranty by the District of Columbia Court of Appeals, the District of Columbia Bar, the District of Columbia Board on Professional Responsibility, the Office of Disciplinary Counsel, or the District of Columbia Bar Foundation as to the financial soundness, business practices, or other attributes of such institution. Approval of an institution under this rule means only that the institution has undertaken to meet the reporting and other requirements enumerated in paragraph (a) and (b) above.

(e) Nothing in this rule shall preclude a financial institution from charging a lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

(f) Participation by financial institutions in the DC IOLTA program is voluntary. A financial institution that elects to offer and maintain DC IOLTA accounts shall fulfill the following requirements:

(1) The institution shall pay no less on its DC IOLTA accounts than the interest rate or dividend rate in (A) or (B):

(A) The highest interest rate or dividend rate generally available from the institution to its non–IOLTA customers when the DC IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend rate generally available from the institution to its non-IOLTA customers, an institution may consider in addition to the balance in the DC IOLTA account, factors customarily considered by the institution when setting interest rates or dividend rates for its non-IOLTA customers, provided that such factors do not discriminate between DC IOLTA accounts and non–IOLTA accounts and that these factors do not include the fact that the account is a DC IOLTA account.

(i) An institution may offer, and the lawyer or law firm may request, an account that provides a mechanism for the overnight investment of balances in the DC IOLTA account in an interest- or dividend-bearing account that is a daily (overnight) financial institution repurchase agreement or an open–end money–market fund.
(ii) An institution may choose to pay the higher interest rate or dividend rate on a DC IOLTA account in lieu of establishing it as a higher rate product.

(B) A "benchmark" rate set periodically by the Foundation that reflects the Foundation's estimate of an overall comparability rate for accounts in the DC IOLTA program and that is net of allowable reasonable fees. When applicable, the Foundation will express the benchmark rate in relation to the Federal Funds Target Rate.

(2) Nothing in this Rule shall preclude a financial institution from paying a higher interest rate or dividend on a DC IOLTA account than described in subparagraph (f)(1) above.
(3) Allowable reasonable fees are the only fees and service charges that may be deducted by a financial institution from interest or dividends earned on a DC IOLTA account. Allowable reasonable fees may be deducted from interest or dividends on a DC IOLTA account only at the rates and in accordance with the customary practices of the financial institution for non-IOLTA customers. No fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends on a DC IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the DC IOLTA account. Allowable reasonable fees in excess of the interest or dividends earned on one DC IOLTA account for any period shall not be taken from interest or dividends earned on any other DC IOLTA account or accounts or from the principal of any DC IOLTA account. Nothing in this rule shall preclude a financial institution from electing to waive any fees and service charges on a DC IOLTA account.

(g) On forms approved by the Foundation, a financial institution that maintains DC IOLTA accounts shall:

(1) Remit all interest or dividends, net of allowable reasonable fees, if any, on the average monthly balance in each DC IOLTA account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, to the Foundation. The institution may remit the interest or dividends on all of its DC IOLTA accounts in a lump sum;however, the institution shall provide, for each individual DC IOLTA account, to the Foundation the information described in subparagraph (g)(2), and to the lawyer or law firm the information in subparagraph (g)(3).
(2) Transmit with each remittance to the Foundation a report showing the following information for each DC IOLTA account: the name of the lawyer or law firm in whose name the account is registered, the amount of interest or dividends earned, the rate and type of interest or dividend applied, the amount of any allowable reasonable fees assessed during the remittance period, the net amount of interest or dividends remitted for the period, the average account balance for the remittance period, and such other information as is reasonably required by the Foundation.
(3) Transmit to the lawyer or law firm in whose name the account is registered a periodic account statement in accordance with normal procedures for reporting to depositors.

(h) The Foundation shall maintain records of each remittance and statement received from a financial institution for a period of at least three years and shall, upon request, promptly make available to a lawyer or law firm the records or statements pertaining to that lawyer's or law firm's DC IOLTA accounts.
(i) All interest and dividends transmitted to the Foundation shall, after deduction for the necessary and reasonable administrative expenses of the Foundation for operation of the DC IOLTA program, be distributed by the Foundation for the following purposes: (1) at least eighty–five percent for the support of legal assistance programs providing legal and related assistance to poor persons in the District of Columbia who would otherwise be unable to obtain legal assistance;and (2) up to fifteen percent for those programs to improve the administration of justice in the District of Columbia as are specifically approved from time to time by this court.
(j) Definitions. As used in this rule, the terms below shall have the following meanings:

(1) "Allowable reasonable fees" for DC IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable DC IOLTA account administrative or maintenance fee.
(2) "Foundation" means the District of Columbia Bar Foundation, Inc.
(3) "Interest- or dividend-bearing account" means (i) an interest-bearing account, or (ii) an investment product which is a daily (overnight) financial institution repurchase agreement or an open-end money-market fund. A daily (overnight) financial institution repurchase agreement must be fully collateralized

by U.S. Government Securities and may be established only with an eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-¬market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a "money-market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least $250,000,000.

(4) "DC IOLTA account" means an interest- or dividend-bearing account established by a lawyer or law firm for IOLTA-eligible funds at a financial institution from which funds may be withdrawn upon request by the depositor as soon as permitted by law.

(5) "IOLTA-eligible funds" means those funds from a client or third-party that are nominal in amount or are expected to be held for a short period of time, and that cannot earn income for the client or third party in excess of the costs incurred to secure such income.

(6) "Law Firm" - Includes a partnership of lawyers, a professional or non-profit corporation of lawyers, and combination thereof engaged in the practice of law.

(7) "Financial Institution" - Includes banks, savings and loan associations, credit unions, savings banks and any other business that accepts for deposit funds held in trust by lawyers or law firms which is authorized by federal, District of Columbia, or state law to do business in the District of Columbia or the state in which the financial institution is situated and that maintains accounts which are insured by an agency or instrumentality of the United States.

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DISTRICT COURT
CLARK COUNTY, NEVADA

RONALD SWANSON, an individual, Intervenor Plaintiff, v. SONIC CAVITATION, LLC, a Nevada Limited Liability Company; SONIC CAVITATION LIMITED, a foreign corporation; CENYTH CAPITAL CORP., a Nevada corporation; CENYTH SC USA ANGELS, LLC, a Nevada Limited Liability Company; CENYTH SC USA ANGELS 2, LLC, a Nevada Limited Liability Company; PETER DIZER, an individual; GARY GEORGE, an individual; LORINDA LIANG, an individual, and Does 1 - 10, unidentified, Defendants. AND ALL RELATED ACTIONS.	Case No. A-16-740207-C Dept. No. VI **RONALD SWANSON'S OPPOSITION TO SONIC CAVITATION'S RENEWED MOTION TO COMPEL**

This issue has already been decided. Sonic Cavitation, LLC ("SonCav") is seeking an improper second bite of the apple. Just over two years ago, Discovery Commissioner Truman rejected SonCav's motion to compel production of Ronald Swanson's confidential affidavit consenting to disbarment from the Washington D.C. Bar Association ("D.C. Bar"). SonCav's

motion was denied for good reason: Mr. Swanson signed the affidavit specifically *based on it being confidential*. Following the hearing, Mr. Swanson's counsel circulated a draft report and recommendations ("DCRR") to SonCav's counsel, but it was rejected by SonCav's counsel because of counsel's concern with a single paragraph describing an analogy both parties used in their oral argument in relation to the at issue doctrine. *See* Declaration of Richard L. Wade ("Wade Decl."), ¶ 3, Ex. A. This was counsel's sole concern with the order. *Id*. After Mr. Swanson's counsel submitted the draft to the Discovery Commissioner with a letter explaining the difference of opinion on the order language, Commissioner Truman held a phone conference with the parties during which she determined that the paragraph in question should be removed but the DCRR was otherwise acceptable. *Id.*, ¶ 5. Mr. Swanson's counsel removed the paragraph and submitted the revised draft DCRR on or around June 16, 2020. *Id.*, ¶ 6. Based on the phone conference with the Discovery Commissioner, she intended to sign the revised DCRR. *Id.*

But for reasons unknown, the Court never issued the signed DCRR. *Id.*, ¶ 8. This was the early days of the pandemic when Courts were learning how to deal with working remotely, and likely it just got lost in the shuffle with the prior Court. Regardless, the parties spent the next two years operating under the understanding that SonCav's motion was denied. In the meantime, Swanson served a host of written discovery. In contrast, SonCav did nothing all during this time. It was not until very recently when SonCav moved this five-year old case to Business Court. Up until that point, the only discovery SonCav had conducted other than its initial disclosures was serving that *single* request for production seeking Mr. Swanson's single-use, confidential affidavit.

Now, after relying on Commissioner Truman's ruling for two years, and after removing the case to Business Court where the Discovery Commissioner is uninvolved, SonCav wants to file the same motion that was denied years before to get a second bite at the apple. SonCav's motion was denied already for good reason, and SonCav simply wants to use its late-stage Court change to take improper advantage. This procedural history is critical for the Court to

know here. SonCav has done virtually nothing with regard to discovery until the last two months sitting on this ruling that entire time. At its core, SonCav's motion is one for reconsideration two years after the fact and, respectfully, should be denied.

Indeed, SonCav's ostensibly pedestrian motion to compel is anything but. While on its face it appears innocuous because it seeks one sole document, the document defendants seek is a radioactive one because the document is expressly highly confidential and so protected that the Washington D.C. bar ("D.C. Bar") promulgated a protection rule for just this type of circumstance. *See* D.C. Bar Rule XI, § 12 (addressed more fully *infra*.) To understand defendants' hubris in bringing this motion now in this jurisdiction, intervenor plaintiff Ronald Swanson provides the parties' historical interactions which exposes defendants' vindictive motivations and delusions of grandeur.

I. Introduction

As is common in these corporate divorce disputes, the parties started out amicably and enthusiastically. Also, all too common unfortunately, it fell apart; after several years of professionally leading one's company, the top executive who had singularly accomplished and managed every company success to that date was oblivious to the coup plotting behind his back. Just a day after this company's CEO, Mr. Swanson, was publicly lauded to investors, prospective investors, and suppliers alike by defendant ringleader Peter Dizer, it all had soured as Dizer and his cabal of corporate insiders stole everything they could from SonCav and its now former CEO, Ron Swanson.

After Dizer and his close friend Lorinda Liang, on information and belief, embezzled over $400,000.00 in company funds, Dizer fired Mr. Swanson and ordered Mr. Swanson to travel from his Connecticut apartment to Dallas, Texas, for a supposed "exit interview." While Mr. Swanson was in Dallas, on information and belief, Dizer commissioned a company employee to break into Mr. Swanson's Connecticut apartment and steal *all* of his files, including a hard drive which served as his "filing cabinet" that contained, not just company files, but the files for every case Mr. Swanson had ever handled as an attorney. The loss of this

hard drive served to cover-up the evidence of defendant Dizer's illicit actions. That is, they stole the evidence that Mr. Swanson could use to hold them accountable.

Dizer then strategically and vindictively filed a complaint with the D.C. Bar, where Mr. Swanson held his law license, for accounting issues. Because of Dizer's theft of Mr. Swanson's complete filing cabinet, Mr. Swanson was unable to offer evidence to defend himself in the D.C. Bar proceeding. Mr. Swanson has incurred hundreds of thousands of dollars in legal fees/costs battling to regain his stolen property. After the theft, Mr. Swanson neither possessed nor could obtain the exculpatory evidence because it was all in defendants' possession. Consequently, his D.C. Bar counsel concluded he had no choice but to consent to voluntary surrender of his law license. As part of the deal, Mr. Swanson was required to provide a ***confidential*** affidavit that he was told specifically would remain confidential, and that the defendants here (as complainants in the Bar action) would not receive a copy. That battle was over; the guilty parties had won as they took his Bar license.

And here, defendant Sonic Cavitation continues the war by seeking again the prohibited disclosure of Mr. Swanson's ***confidential*** affidavit to the D.C. Bar. Because that affidavit is confidential per D.C. Bar rules, and because that confidentiality was the *most important factor* in Mr. Swanson begrudgingly taking the negotiated deal, it must remain confidential. For purposes here (or anywhere), defendants have no right to and do not need access to this rule-protected, confidential document, which was signed only *because* it would remain confidential.

Defendants are legally prohibited from possessing or viewing this affidavit and for that reason alone their motion should be denied. This case should instead be decided on its own merits with the opportunity for all parties to present their respective cases; an opportunity Mr. Swanson never had in the Bar action because defendants stole his hard drive (which, to date, they have refused and *still* refuse to return despite an order compelling production in a different case).

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II. Pertinent Procedural and Background Facts

On August 1, 2015, defendant Peter Dizer walked into a Bank of America branch in Dallas, Texas with his girlfriend Ms. Lorinda Liang and emptied SonCav's bank account into his personal bank account ($310,000.00), and a new corporate account ($100,000.00) under the control of co-conspirator Gary George. *See* Declaration of Ronald Swanson ("Swanson Decl."), ¶ 3, Ex. B; Bank of America Records, Ex. C. Dizer then immediately transferred most of the cash out of the country to accounts he controls in Ireland, with the help of co-conspirator John O'Connor. *See* Swanson Decl., ¶ 3.

A few days later, on August 5, 2015, Mr. Swanson discovered the embezzlement and immediately notified all SonCav's investors. *Id.*, ¶¶ 4-5. That same day, Mr. Swanson was suspended from SonCav by the company's member-manager Sonic Cavitation, Ltd. ("SonCav Ireland"), at Dizer's direction. *Id.*, ¶ 4. All but two of the investors called for the immediate return of the converted cash from Dizer, and for the immediate reinstatement of Mr. Swanson as CEO. *Id.*, ¶ 5.

That same day, Mr. Swanson was lured to Dallas at his own expense to have an "exit meeting" with co-conspirator Gary George, whom Mr. Swanson had previously fired and whom Dizer had named as Mr. Swanson's replacement. Once Mr. Swanson arrived in Dallas, George made multiple excuses to postpone then simply canceled the meeting entirely. Ultimately George refused to meet with Mr. Swanson despite his having asked Mr. Swanson to travel all the way to Dallas from the East Coast. *Id.*, ¶ 6.

As it turned out, the request for Mr. Swanson to come to Dallas for the exit meeting was a ruse. While Mr. Swanson was in Dallas, Dizer and George had Mr. Swanson's ex-personal assistant break into Mr. Swanson's apartment in Connecticut. This was on or around August 10, 2015 (as admitted by the defendant's Gary George in testimony in the Connecticut action *Swanson v. Sonic Cavitation LLC et. al.*). Their directive was for the personal assistant to take Mr. Swanson's NAS storage drive (a computer filing cabinet, with every document Mr. Swanson ever had for SonCav, his law practice, his personal life, photos of all his children

growing up, etc.; *i.e.*, that is, they took his entire "hard drive"). *Id.*, ¶ 7. As soon as Mr. Swanson realized the theft, he contacted the Connecticut State Police and reported the burglary. *See* Police Report, Ex. D.

Mr. Swanson subsequently filed the civil action in Connecticut against defendants for burglary and theft. The Connecticut case is in trial as this motion is being heard. Subsequently defendants have also been sued in this Court, and in federal court in Puerto Rico for breach of contract (which they lost, including losing a motion for reconsideration). *Id.*, ¶ 8.

To date, defendants still refuse to return Mr. Swanson's hard drive to him. They have been forced by the D.C. Bar and a Connecticut state court to at least provide two clones of the hard drive, but thousands of documents were omitted and/or deleted from the copies. *Id.*, ¶ 9. That fight continues on those other legal fronts.

Stealing Mr. Swanson's hard drive was not the main goal, but it was the key to defendants' reaching their main goal. With Mr. Swanson's complete files in hand, defendants then filed the Bar complaint against him in the District of Columbia for not providing an accounting when requested. One hundred percent of the documents Mr. Swanson would need to defend himself were solely in the possession of defendants by that time. Mr. Swanson has incurred more than $200,000.00 in legal fees and costs trying to get defendants to return his stolen hard drive so that he could defend himself against the false, libelous claims to the D.C. Bar. *Id.*, ¶ 10.

To date Mr. Swanson has not had the opportunity to defend himself, as he has not had his hard drive returned, and with the defendants deleting documents from the hard drive, it is unlikely that every document exonerating him could *ever* be found.

With just an incomplete and disorganized clone of his hard drive, there was no way Mr. Swanson could timely find every SonCav-related document necessary to refute each claim. A week before his scheduled hearing before the D.C. Bar, Mr. Swanson's Bar counsel concluded that no matter how unfair it was, without the documents, there was no way possible that he

would win. The D.C. Bar only needed to prevail on one of the claims and Mr. Swanson would be unequivocally disbarred. *Id.*, ¶¶ 11-12.

Without possession of the documents needed to defend himself, Mr. Swanson concluded there was no way possible for him to prevail. And he was incurring crushing debt of legal fees. Therefore, rather than incur several hundred thousand more dollars in attorneys' fees, he decided to voluntarily consent to disbarment to stop the bleeding. Although D.C. Bar rules state that an attorney must sign an affidavit admitting *all* material facts in the complaint when consenting to disbarment, lead prosecutor Julia Porter advised Mr. Swanson's bar counsel that in practice, the Bar would not require admitting every allegation against him. In fact, there are four routes to submitting a voluntary disbarment, including one fitting perfectly with these particular circumstances, being that "the attorney could not successfully defend" against the claimed allegations. Therefore, Mr. Swanson signed a less comprehensive affidavit. He only did so knowing full-well that due to its confidentiality, defendants here (many of whom are also defendants in the ongoing Connecticut action) would never have access to the affidavit, and he would be able to continue to have his day in court in demanding that justice be served against defendants. The prosecutor Julia Porter specifically confirmed that the complainants in that matter (defendants here) would not have access to Mr. Swanson's affidavit due to its confidentiality. *Id.*, ¶¶ 11-13.

As noted *supra*, D.C. Bar rules regarding the confidential voluntary disbarment affidavit note that the attorney is submitting such an affidavit for voluntary disbarment because the attorney knows that "the attorney could not successfully defend" against the claimed allegations. *Id.*, ¶¶ 13-15. Due to defendants' having stolen all his files, Mr. Swanson could not possibly defend himself against the claimed allegations before the D.C. Bar. Defendants' actions have not only ruined Mr. Swanson's life, but they have also caused the complete destruction of SonCav, including the loss of its investors' funds.

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III. Argument

A. The Court should not compel production of Mr. Swanson's ***confidential*** affidavit.

An attorney barred in the District of Columbia who is accused of misconduct may consent to disbarment if the attorney "knows that if disciplinary proceedings based on the alleged misconduct were brought, the attorney could not successfully defend against them." D.C. Bar rule XI, § 12. In consenting to disbarment, the attorney must provide an affidavit acknowledging "material facts upon which the allegations of misconduct are predicated." *Id.* Notably, although the order disbarring the attorney is a public record, it "**shall not be publicly disclosed or made available for use in any other proceeding** except by order of the Court or upon written consent of the attorney." *Id.* (emphasis added). Mr. Swanson does not consent to disclosure of his confidential affidavit (or the order), and the Court here should not compel production of the same. Defendants know Mr. Swanson consented to disbarment after their illegal strategies worked; they simply do not need his confidential affidavit.

B. The at-issue doctrine does not apply because Mr. Swanson did not put the affidavit at issue.

Courts sometimes order disclosure of confidential or privileged materials where the party fighting disclosure is found to have personally waived confidentiality by putting the evidence at-issue. *See Wardleigh v. Second Judicial Dist. Court In & For Cty. of Washoe*, 111 Nev. 345, 356, 891 P.2d 1180, 1187 (1995). Further, the fact that pleadings might raise issues "[f]airness should not simply dictate . . . the privilege regarding those issues is waived." *Wardleigh*, 111 Nev. at 356, 891 P.2d at 1187. This limited waiver only applies where the party seeking confidentiality is the one who *raised* the issue. *Id.*; *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 133 Nev. 369, 380, 399 P.3d 334, 345 (2017) ("the doctrine applies *only* when the client tenders an issue involving *the substance or content* of a protected communication" (emphasis in original) (quoting *Rockwell Int'l Corp. v. Superior Court*, 26 Cal.App.4th 1255, 32 Cal.Rptr.2d 153, 161 (1994))). As is well known, only the

holder of a privilege can waive it. Here Mr. Swanson holds the privilege, and he has not waived it.

This is not at all like a personal injury plaintiff being compelled to produce medical records after suing for damages based on the treatment reflected in those records. Of course, in that scenario the confidential medical records must be produced; the plaintiff put them at issue after all when she sued for medical damages. Conversely, Mr. Swanson did not put his voluntary disbarment at issue in this case. His claims are all directed at defendants, who mismanaged SonCav, and stole investor funds. It is *defendants* who are trying to desperately put Mr. Swanson's voluntary disbarment at issue because they want to prevail through demonization of Mr. Swanson to this Court and not through fair adjudication of the only issues before the Court.

In addition to investor funds, SonCav and other defendants stole the hard drive containing all the files from Mr. Swanson's legal practice and sent it to *Ireland.* Defendants then brought a false complaint to the D.C. Bar that they knew Mr. Swanson now lacked the evidence to rebut. Although a Connecticut court was actively considering an order for defendants to return the drive at the time, the D.C. Bar refused to stay the proceedings until defendants did so. (Defendants never have returned the drive, as a matter of fact.) Left with no choice, and after incurring more than $200,000.00 in legal fees to have the drive returned so he could answer to the D.C. Bar, Mr. Swanson consented to disbarment rather than fight a case he could not win due to defendants' theft of all the evidence and its prohibitively exorbitant expense. Defendants know this. They also know that Mr. Swanson consented to disbarment. Regardless, the D.C. Bar action was not an issue in this case until *defendants* brought claims against Mr. Swanson on June 25, 2019, three *years* into the case. These new claims were manufactured to create leverage issues like this.

Further, defendants have not offered any specific reason why they need this confidential document other than likening it to a guilty plea in a criminal case. In their motion, they say they need this radioactive, confidential D.C. Bar affidavit that is protected by DC jurisdictional

rules while simultaneously defendants filing a motion to stay the case preventing Mr. Swanson from doing any discovery. It is the height of hubris: defendants can get a rule-protected, confidential documents while Mr. Swanson can get at nothing, not even defendants' non-privileged, non-confidential documents. The glaring inequity in defendants' proposals to this Court underscore the inequities with which Mr. Swanson has been dealing since he met Dizer and his nefarious cabal. Defendants "cannot have it both ways," and as trite and overdone as that expression may be in legal filings, it so perfectly apt here that it merits paragon status. Defendants truly cannot have it both ways because that would truly be unfair.

The affidavit is not at all like a guilty plea in a criminal case. As a rule, criminal matters are public proceedings. Criminal defendants are not entitled to confidentiality at all. Even then, criminal defendants have a mechanism to negotiate a case without admitting guilt via pleading no contest. The law recognizes the distinction between a guilty plea ("I did it") and a no contest plea ("I am not saying I did it, but I am taking a deal"), rendering no contest pleas inadmissible. *See* NRS 48.125(2). It makes no sense whatsoever that Mr. Swanson could sign a confidential affidavit based on its being confidential and be given less protection in a civil case than that which is offered to a murderer who took a deal with a no contest plea.

Further, SonCav claims it needs the affidavit because it contains specific admissions that they presumably want to use to bolster an eventual dispositive motion. However, SonCav's claim is pure speculation — they have not seen the affidavit and have no idea what it says. Ultimately, defendants do not need the confidential affidavit protected by DC rule. After all, Mr. Swanson is not hiding the fact that he voluntarily consented to disbarment. He admits he consented to disbarment in that case, and he was, in fact, disbarred. Defendants have nothing to gain by seeing Mr. Swanson's confidential affidavit other than embarrassing and demonizing Mr. Swanson. Other than publicly shaming him. Other than creating leverage in this Nevada litigation with a confidential document from another jurisdiction.

The D.C. Bar expressly stated that these affidavits are confidential by default. And they are to prevent precisely the type of behavior defendants are demonstrating here and the type of

illicit usage defendants seek. Had Mr. Swanson known the defendants here would have access, he would not have entered into the agreement. It is here, in this Court, a full trial court of law, where justice will be served for the investors of SonCav (each one of whom were brought to the company by Mr. Swanson), and Mr. Swanson seeks vindication for the multiple illegalities performed by defendants. Although the D.C. Bar rules leave room for production by Court order, this specific, articulated, prudent confidentiality protection would serve little purpose if it could be circumvented without a showing of genuine need — a showing defendants have axiomatically not made.

Finally, were defendants to prevail, confidentiality would be further imperiled because defendants previously indicated they intend to attach the affidavit to publicly filed motions. Consequently, granting the motion to compel would have the practical effect of not just eliminating the confidentiality the D.C. Bar found so sacrosanct as to codify it in their rules as to defendants, ***but to the world***, which has access to defendants' filings. Defendants simply have not established any legitimate justification to compel this document that Mr. Swanson only signed due to its confidentiality.

C. SonCav did not hold attempt to meet and confer regarding this motion.

All discovery motions must be supported by an affidavit of counsel "setting forth that after a discovery dispute conference or a good faith effort to confer, counsel have been unable to resolve the matter satisfactorily." EDCR 2.34. Here, SonCav's affidavit only states that the parties held such a conference before filing the initial motion, over two years ago.[5] SonCav did not hold such a conference before filing this motion and it must be denied. That said, SonCav did inform Mr. Swanson's counsel that he *intended* to file such this motion, but the parties did not hold a meet and confer regarding the motion.

[5] Notably, that affidavit also states that counsel is a partner at Clear Counsel Law Group, which has not been the case for some time.

Conclusion

Defendants were able to successfully force Mr. Swanson into choosing bankruptcy or disbarment by burgling his house and stealing his hard drive. After forcing him into this lose-lose situation, Mr. Swanson chose to consent to disbarment based solely and entirely on his ability to keep the affidavit regarding that disbarment confidential as he fought on to regain his stolen property and bring true culprits of much more than just a stolen filing cabinet to justice. Now, defendants want to compel Mr. Swanson to produce that without offering any substantial justification, bringing a motion that was already denied *two years ago*. Defendants know that Mr. Swanson consented to disbarment. They do not need to see Mr. Swanson's confidential affidavit to confirm that fact. Accordingly and respectfully, the motion to compel should be denied yet again.

DATED this 25th day of April, 2022.

Joseph R. Ganley (5643)
Richard L. Wade (11879)
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Attorneys for plaintiff Ronald Swanson

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 26th day of April, 2022, I caused the above and foregoing document entitled ***RONALD SWANSON'S OPPOSITION TO SONIC CAVITATION'S RENEWED MOTION TO COMPEL*** to be served as follows:

☒ to be electronically served through the Eighth Judicial District Court's electronic filing system pursuant to NEFCR (9); and/or

☐ to be hand-delivered

to the attorneys listed below:

David T. Blake, Esq.
PO Box 1589
Logandale, Nevada 89021
Telephone: (702) 579-5529

Attorney for defendants

/s/ Sarah Ramo

An employee of Hutchison & Steffen, PLLC

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EXHIBIT A

DECLARATION OF RICHARD L. WADE

I, Richard L. Wade, declare under penalty of perjury that the foregoing is true and correct.

1. I am an attorney with Hutchison & Steffen, PLLC ("H&S"), counsel for plaintiff in this case.

2. Two years ago, Discovery Commissioner Erin Truman denied SonCav's motion to compel production of Ronald Swanson's D.C. Bar confidential affidavit.

3. Following the hearing, H&S circulated a draft report and recommendations ("DCRR") to SonCav's counsel, but it was rejected by SonCav's counsel because of counsel's concern with a single paragraph describing an analogy both parties used in their oral argument. This was SonCav's counsel's sole concern with the order.

4. A true and correct copy of the first DCRR draft is attached as exhibit A-1.

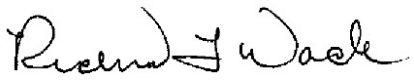
5. After H&S submitted the draft to the Discovery Commissioner with a letter explaining the difference of opinion on the order language, Commissioner Truman held a phone conference with the parties during which she determined that the paragraph in question (paragraph 9) should be removed but the DCRR was otherwise acceptable.

6. H&S removed the paragraph and submitted the revised draft DCRR on or around June 16, 2020. Based on the phone conference with the Discovery Commissioner, I understood that she approved of the language of the revised DCRR.

7. A true and correct copy of the second DCRR draft is attached as exhibit A-2.

8. For reasons unknown, the prior Court never issued a signed DCRR.

DATED April 25, 2022.



RICHARD L. WADE

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EXHIBIT PAGE ONLY

EXHIBIT A-1

DCRR
Joseph R. Ganley (5643)
Richard L. Wade (11879)
HUTCHISON & STEFFEN, PLLC
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jganley@hutchlegal.com

Attorneys for
Attorneys for intervening plaintiff/
cross-claimant plaintiff Ronald Swanson

DISTRICT COURT

CLARK COUNTY, NEVADA

RONALD SWANSON, an individual,

Plaintiff,

v.

SONIC CAVITATION, LLC, a Nevada Limited Liability Company; SONIC CAVITATION LIMITED, a foreign corporation; CENYTH CAPITAL CORP., a Nevada corporation; CENYTH SC USA ANGELS, LLC, a Nevada Limited Liability Company; CENYTH SC USA ANGELS 2, LLC, a Nevada Limited Liability Company; PETER DIZER, an individual; GARY GEORGE, an individual; LORINDA LIANG, an individual, and Does 1 - 10, unidentified,

Defendants.

And other related matters.

Case No. A-16-740207-C
Dept. No. VI

DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

Hearing Date: April 7, 2020
Hearing Time: 9:30 a.m.

Attorney for intervening plaintiff/cross-claimant plaintiff Ronald Swanson: Piers Tueller
Attorney for defendants: David Blake

I.

FINDINGS

Defendant Sonic Cavitation's ("SonCav") motion to compel Ronald Swanson's ("plaintiff" or "Mr. Swanson") responses to its first set of requests for production of documents came before the Discovery Commissioner on the 7th day of April, 2020. Defendant was represented by its counsel of record, David Blake of Clear Counsel Law Group. Mr. Swanson was represented by his counsel of record, Piers R. Tueller of the firm Hutchison & Steffen, PLLC.

The Discovery Commissioner, having considered defendant's motion to compel, associated reply in support of its motion, Mr. Swanson's opposition thereto, statements by counsel at the time of the hearing, and good cause appearing, hereby makes the following findings.

1. As a result of a dispute between the parties, defendants had filed a Bar complaint against Mr. Swanson in the District of Columbia.

2. In defense of that Bar complaint, Mr. Swanson expended significant personal resources yet lacked access to the documents and evidence he believed were necessary to mount a complete and organized defense.

3. Prior to the scheduled D.C. Bar hearing, Mr. Swanson – recognizing his disadvantaged predicament — agreed to voluntarily consent to disbarment.

4. Under the D.C. Bar rules four routes to submitting a voluntary disbarment exist, including one fitting well with these particular circumstances – "the attorney could not successfully defend" against the claimed allegations.

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5. As part of submitting for voluntary disbarment, D.C. Bar rules state that an attorney must sign an affidavit admitting material facts pertinent to the complaint allegations when consenting to disbarment.

6. Under the D.C. Bar rules, this affidavit is confidential and, as such, there is a commensurate expectation of confidentiality.

7. One of the main reasons Mr. Swanson signed the affidavit was because he knew that it would be confidential.

8. SonCav has access to the D.C. Bar order disbarring Mr. Swanson and has not provided any basis establishing an additional need for Mr. Swanson's confidential affidavit.

9. SonCav's legal argument comparing Mr. Swanson' confidential affidavit to a plaintiff's medical records in a personal injury lawsuit is unpersuasive as the D.C. Bar allegations have not been put at issue by Mr. Swanson, unlike an injured plaintiff who puts his medical condition at issue.

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II.

RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that SonCav's motion to compel is DENIED.

The Discovery Commissioner, met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this _____ day of May, 2020.

_____
DISCOVERY COMMISSIONER
ERIN L. TRUMAN

Submitted by:

HUTCHISON & STEFFEN, PLLC

_____

Joseph R. Ganley (5643)
Richard L. Wade (11879)
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Tel: (702) 385-2500
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Attorneys for Ronald Swanson

Approved as to form and content by:

CLEAR COUNSEL LAW GROUP

Did not sign

David T. Blake, Esq.
1671 W. Horizon Ridge Parkway, Suite 200
Henderson, Nevada 89012

Attorney for defendants

CASE NAME: A-16-740207-C
CASE NUMBER: VI

N O T I C E

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on_____2020.

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the ____ day of _____ 2019:

_____ Electronically filed and served counsel on _____, 2020, Pursuant to N.E.F.C.R. Rule 9.

By:_____
COMMISSIONER DESIGNEE

CASE NAME: A-16-740207-C
CASE NUMBER: VI

ORDER

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

_____ The parties having waived the right to object thereto,

_____ No timely objection having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

_____ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

* * *

AND

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner. (Attached hereto)

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report and Recommendations is set for _____, 2020, at __:__ a.m.

DATED this _____ day of _____, 2020.

_____
DISTRICT COURT JUDGE

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EXHIBIT PAGE ONLY

EXHIBIT A-2

DCRR
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Richard L. Wade (11879)
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jganley@hutchlegal.com

Attorneys for
Attorneys for intervening plaintiff/
cross-claimant plaintiff Ronald Swanson

DISTRICT COURT

CLARK COUNTY, NEVADA

RONALD SWANSON, an individual,

Plaintiff,

v.

SONIC CAVITATION, LLC, a Nevada Limited Liability Company; SONIC CAVITATION LIMITED, a foreign corporation; CENYTH CAPITAL CORP., a Nevada corporation; CENYTH SC USA ANGELS, LLC, a Nevada Limited Liability Company; CENYTH SC USA ANGELS 2, LLC, a Nevada Limited Liability Company; PETER DIZER, an individual; GARY GEORGE, an individual; LORINDA LIANG, an individual, and Does 1 - 10, unidentified,

Defendants.

And other related matters.

Case No. A-16-740207-C
Dept. No. VI

DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

Hearing Date: April 7, 2020
Hearing Time: 9:30 a.m.

Attorney for intervening plaintiff/cross-claimant plaintiff Ronald Swanson: Piers Tueller
Attorney for defendants: David Blake

I.

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The Discovery Commissioner, having considered defendant's motion to compel, associated reply in support of its motion, Mr. Swanson's opposition thereto, statements by counsel at the time of the hearing, and good cause appearing, hereby makes the following findings.

1. As a result of a dispute between the parties, defendants had filed a Bar complaint against Mr. Swanson in the District of Columbia.

2. In defense of that Bar complaint, Mr. Swanson expended significant personal resources yet lacked access to the documents and evidence he believed were necessary to mount a complete and organized defense.

3. Prior to the scheduled D.C. Bar hearing, Mr. Swanson – recognizing his disadvantaged predicament — agreed to voluntarily consent to disbarment.

4. Under the D.C. Bar rules four routes to submitting a voluntary disbarment exist, including one fitting well with these particular circumstances – "the attorney could not successfully defend" against the claimed allegations.

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5. As part of submitting for voluntary disbarment, D.C. Bar rules state that an attorney must sign an affidavit admitting material facts pertinent to the complaint allegations when consenting to disbarment.

6. Under the D.C. Bar rules, this affidavit is confidential and, as such, there is a commensurate expectation of confidentiality.

7. One of the main reasons Mr. Swanson signed the affidavit was because he knew that it would be confidential.

8. SonCav has access to the D.C. Bar order disbarring Mr. Swanson and has not provided any basis establishing an additional need for Mr. Swanson's confidential affidavit.

II.

RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that SonCav's motion to compel is DENIED.

The Discovery Commissioner, met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this _____ day of June, 2020.

_____
DISCOVERY COMMISSIONER
ERIN L. TRUMAN

Submitted by:

HUTCHISON & STEFFEN, PLLC

_____
Joseph R. Ganley (5643)
Richard L. Wade (11879)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Ronald Swanson

Approved as to form and content by:

CLEAR COUNSEL LAW GROUP

_____
David T. Blake, Esq.
1671 W. Horizon Ridge Parkway, Suite 200
Henderson, Nevada 89012

Attorney for defendants

CASE NAME: A-16-740207-C
CASE NUMBER: VI

N O T I C E

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on_____2020.

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the ____ day of _____ 2019:

_____ Electronically filed and served counsel on _____, 2020, Pursuant to N.E.F.C.R. Rule 9.

By:_____
COMMISSIONER DESIGNEE

CASE NAME: A-16-740207-C
CASE NUMBER: VI

ORDER

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

_____ The parties having waived the right to object thereto,

_____ No timely objection having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

_____ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

* * *

AND

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner. (Attached hereto)

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report and Recommendations is set for _____, 2020, at __:__ a.m.

DATED this _____ day of _____, 2020.

_____
DISTRICT COURT JUDGE

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EXHIBIT B

DISTRICT COURT
CLARK COUNTY, NEVADA

RONALD SWANSON, an individual, Intervenor Plaintiff, v. SONIC CAVITATION, LLC, a Nevada Limited Liability Company; SONIC CAVITATION LIMITED, a foreign corporation; CENYTH CAPITAL CORP., a Nevada corporation; CENYTH SC USA ANGELS, LLC, a Nevada Limited Liability Company; CENYTH SC USA ANGELS 2, LLC, a Nevada Limited Liability Company; PETER DIZER, an individual; GARY GEORGE, an individual; LORINDA LIANG, an individual, and Does 1 - 10, unidentified, Defendants. AND ALL RELATED ACTIONS.	Case No. A-16-740207-C Dept. No. VI **DECLARATION OF RONALD SWANSON IN SUPPORT OF RONALD SWANSON'S OPPOSITION TO SONIC CAVITATION'S MOTION TO COMPEL**

I, Ronald Swanson, declare under penalty of perjury under the law of the State of Nevada that the following is true and correct.

1. I am the intervening plaintiff in this action. I originally brought this action in Momis Rivers' name. Momis Rivers is no longer a party.

2. I was CEO of Sonic Cavitation LLC until August of 2015. During that time, I was also ostensibly general counsel for the company, but my duties rarely involved acting as counsel.

3. On August 1, 2015, defendants' ring-leader Peter Dizer walked into a Bank of America branch in Dallas, Texas, with his traveling companion Ms. Lorinda Liang and emptied SonCav USA's bank account into his personal bank account ($310,000), and a new corporate account ($100,000) under the control of co-conspirator Gary George. (George was noteworthy due to my having previously fired him from SonCav USA.) Dizer then immediately transferred most

of the cash out of the country to accounts he controls in Ireland, with the help of co-conspirator John O'Connor.

4. On August 5, 2015, while on a scheduled business trip in Puerto Rico, I was suspended from SonCav USA by the company's member-manager SonCav Ireland, at Dizer's direction. It was on this date that I checked SonCav USA bank account, and discovered that effectively all funds had been taken (there was $3,000 left in the account, when there should have been @ $430,000). I then contacted Bank of America, and was told Dizer had emptied SonCav USA's account (with more than $300,000 going into Dizer's personal account with Lorinda Liang).

5. Immediately upon finding out of the embezzlement, I notified all of SonCav USA's investors. All but two of the investors called for the immediate return of the converted cash, and for the immediate reinstatement of me as CEO.

6. That same day, I was lured to Dallas at my own expense to have an "exit meeting" with co-conspirator Gary George, whom Dizer had named as my replacement. Once I arrived in Dallas, George made multiple excuses to postpone, then simply canceled the meeting entirely. Ultimately George refused to meet with me, despite his having asked me to come to Dallas.

7. As it turned out, the request for me to come to Dallas for the exit meeting was a ruse. During the time that I was in Dallas, Dizer and George had my (ex) personal assistant break into my apartment in Connecticut on or around August 10, 2015, and take my NAS storage drive (a computer filing cabinet, with every document I ever had for SonCav USA, my law practice, my personal life, photos of all my children growing up, etc.) (my "filing cabinet" or "hard drive"). As soon as I realized the theft, I contacted the Connecticut State Police and filed a report of burglary.

8. I subsequently filed a civil action against the Defendant for burglary and theft, such action currently set for pre-trial conference at the end of February, 2020. Subsequently the defendants have been sued in this court for fraud and conversion, and in federal court in Puerto Rico for breach of contract (which they lost, including losing a motion for reconsideration).

9. To date, defendants still refuse to return my hard drive to me. They have been forced to at least provide two clones of the filing cabinet and all its contents. Clone 1 was through a forced measure via the Washington DC Board on Professional Responsibility, over the objections of both the defendants and (amazingly) the D.C. Bar Association Office of Disciplinary Counsel. A clone was ultimately provided to my bar counsel in a format that had no organization of the hundred-thousand plus documents thereon, rendering it completely unusable. Clone 2 was ordered by the Connecticut Superior Court in the ongoing civil action brought by me against the defendants for theft, again against the objection of the defendant. For this clone, defendant's own named expert witness, a computer forensic firm called Sensei, confirmed that some 7,000 documents ***had been omitted from the clone per the defendant's instruction***, and ***some 150 documents had been deleted by the defendants*** from my hard drive.

10. With my entire filing cabinet in hand, defendants then filed a bar complaint against me in the District of Columbia for not providing an accounting when requested. 100% of the documents I would need to defend himself were in the possession of the defendants by that time. The fox truly had all the keys to the chicken coop.

11. I racked up more than $200,000.00 in legal fees trying to get the defendants to return my stolen hard drive so that I could defend myself against the false libelous claims to the ODC, which without access to my documents turned into charges by the ODC to the Board on Professional Responsibility (hereafter "BPR").

12. With just a zip-drive clone of hundreds of thousands of unorganized documents, there was no way I could timely find every SonCav USA-related document necessary to refute each and every claim. A week before my scheduled hearing before the bar, I and my bar counsel concluded that no matter how unfair it was, without the documents there was no way possible that I would win. The ODC only needed to prevail on one of the claims and I would be unequivocally disbarred given my evidentiary defense was in the control of the defendants.

13. I then considered my options, none of which were positive. I was made aware of the possibility of a voluntary disbarment, but had been cautioned that the rules as written stated that I would need to admit to *all* material facts from the complaint, something I did not want to do, given that such a statement would be patently false. However at the eleventh hour lead ODC prosecutor Julia Porter advised my bar counsel that the ODC often accepts voluntary disbarment affidavits that do not admit all material facts. There are other prongs to the voluntary dismissal affidavit, such as that "the attorney could not successfully defend" against the claimed allegations, and clearly without my documents, receipts, communications with the Dizer group, etc., as clearly and repeatedly communicated by me to the defendants, Porter, the ODC, and the BPR, I could not successfully defend against the (false libelous) claimed allegations. Porter confirmed that the ODC did not want to go to trial if it could be avoided, and would be willing to accept such an affidavit from me. As part of the discussions, Porter confirmed that because of the strict confidentiality of a necessary affidavit of voluntary disbarment, the affidavit would only be shared with the BPR, ***and not with the defendants***. The matter of confidentiality of this document is of huge public policy importance to the Washington DC Bar Association and its related entities such as the ODC and BPR; without it, few lawyers, if any, would ever enter into entertaining a voluntary disbarment for whatever reason.

14. When I decided upon a voluntary affidavit for disbarment, at the time I was already involved in litigation against many of the defendants involving multiple jurisdictions, including this one. Without possession of the documents needed to defend myself, which had been stolen by defendants on or around August 10, 2015, there was no way possible to prevail in the Bar action. And I was incurring crushing debt of legal fees. I only entered into the voluntary disbarment affidavit knowing full-well that due to its confidentiality, the defendants here (many of whom are also the defendants in the ongoing Connecticut action, and in the federal case in Puerto Rico) would never have access to the document, as confirmed by the ODC's Porter, and

I would be able to continue to have my day in court in demanding that justice be served against the defendants.

15. As mentioned above, the D.C. Bar rules regarding the confidential voluntary disbarment affidavit note that the attorney is submitting such an affidavit for voluntary disbarment because the attorney knows that "the attorney could not successfully defend" against the claimed allegations. I have been continually extremely publicly vocal that the defendants are thieves who stole my hard drive, and without my stolen files and receipts, there was no way I could possibly defend against the claimed allegations. Defendants' actions have not only ruined my life, they have caused the complete destruction of SonCav USA, including the loss of its investors' funds. They should not be allowed access to my confidential affidavit, which was only entered into *specifically because* defendants could never see it, and which I had been forced into by Dizer and his cronies' theft of my hard drive.

16. The documents attached to the underlying opposition are true and correct copies.

DATED this 18th day of February 2020.

Ronald Swanson

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EXHIBIT C

Bank of America

BANK OF AMERICA, N.A. (THE "BANK")

Transaction History

SONIC CAVITATION LLC

BUSINESS FUNDAMENTALS CHK

**** **** 9242

Last Posting Date 08/10/2015

Date/Time Printed 8/11/2015 3:39 PM EST

Since Last Statement Summary

Last Statement Date 07/31/2015			
Balance Last Statement ($)		$413,973.09	
Deposits/Credits (+)	# 4	$130,000.00	Holds (-)
Withdrawals/Debits (-)	# 104	$193,414.57	Pending Credits (+)
Available Balance ($)		$3,047.16	

#Counts include posted items only-Intraday items are not included in the counts
Balance Last Statement, Deposits/Credits, Withdrawals/Debits may not total to Available Balance.

Date	Description	Type	Amount	Available Balance
	Amount included in Available Balance			
Processing	CHECKCARD HUBSPOT INC CAMBRIDGE MA ON 08/10	Debit	-$181.80	$3,047.16
08/07/2015	CHECKCARD 0805 SJU AIRPORT PARKING CAROLINA 74998585218980000082040 CKCD 7523 4635721001142153	Debit	-$4.75	$3,228.96
08/05/2015	CHECKCARD 0804 INTUIT *QB ONLINE 800-286-6800 CA 24692165216000585343209 RECURRING CKCD 5734 4635721001142153	Debit	-$10.46	$3,233.71
08/04/2015	CHECKCARD 0803 LUL TICKET OFFICE. LONDON BRIDGE 74579155215002870927733 CKCD 4112 4256370000738112 ...	Fee	-$1.41	$3,244.17
08/04/2015	CHECKCARD 0803 PARAGON CLEANERS OF CO COPPELL TX 24323045216577215010010 CKCD 7216 4635721001142153	Debit	-$27.02	$3,245.58
08/04/2015	CHECKCARD 0803 LUL TICKET OFFICE. LONDON BRIDGE 74579155215002870927733 CKCD 4112 4256370000738112	Debit	-$46.94	$3,272.60

For additional information or service, please contact the Customer Service Center at 1-800-432-1000

**** **** 9242

* = Item(s) included in Previous Statement(s).

Date	Description	Type	Amount	Available Balance
08/03/2015	Wire Transfer Fee	Fee	-$25.00	$3,319.54
08/03/2015	WIRE TYPE:WIRE OUT DATE:150803 TIME:1140 ET TRN:2015080300283385 SERVICE REF:007816 BNF:SONIC CAVITATION LLC ID...	Withdrawal	-$100,000.00	$3,344.54
08/03/2015	FRY'S ELECTRON 08/01 #000006034 PURCHASE FRY'S ELECTRONICS IRVING TX CKCD 5732 4256370000738112	Debit	-$80.16	$103,344.54
08/03/2015	BEST BUY 08/01 #000030461 PURCHASE BEST BUY 000 IRVING TX CKCD 5732 4256370000738112	Debit	-$119.04	$103,424.70
08/03/2015	CHECKCARD 0801 COOL RIVER 475 IRVING TX 24692165215000997847269 CKCD 5812 4256370000738112	Debit	-$160.00	$103,543.74
08/03/2015	TX TLR transfer to CHK 4042 Banking Ctr MACARTHUR BANKING CENTER #0000089 TX Confirmation# 1645281336	Transfer	-$300,000.00	$103,703.74
08/03/2015	TX TLR transfer to CHK 4042 Banking Ctr MACARTHUR BANKING CENTER #0000089 TX Confirmation# 1644645434	Transfer	-$10,000.00	$403,703.74
08/03/2015	CHECKCARD 0801 UBER TECHNOLOGIES INC 866-576-1039 CA 24692165213000933111319 RECURRING CKCD 4121 4635721001142153	Debit	-$4.25	$413,703.74
08/03/2015	CHECKCARD 0731 PAPPADEAUX SEAFOOD KITC DALLAS TX 24610435212072030492790 CKCD 5812 4256370000738112	Debit	-$265.10	$413,707.99
07/31/2015	01220 Las Colina DES:WEB PMTS ID:0088C2 INDN:Sonic Cavitation LLC CO ID:1752788861 WEB	Other Payment	-$2,933.00	$413,973.09
07/31/2015	CITI CARD ONLINE DES:PAYMENT ID:111763092680086 INDN:RONALDO D SWANSON CO ID:CITICTP WEB	Other Payment	-$16,000.00	$416,906.09
07/31/2015	Check 1075	Single Check	-$600.00	$432,906.09
07/31/2015	CHECKCARD 0730 PAYPAL *IGOUBN9248 IGOU 402-935-7733 CA 24492155211894424914057 CKCD 8999 4635721001142153	Debit	-$400.00	$433,506.09
07/31/2015	CHECKCARD 0730 YOUMAIL INC 8003740013 CA 24492155211894423681533 CKCD 4814 4635721001142153	Debit	-$7.00	$433,906.09
07/31/2015	CHECKCARD 0729 7-ELEVEN 36349 IRVING TX 24299105211002863064901 CKCD 5541 4256370000738112	Debit	-$66.62	$433,913.09

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EXHIBIT D

Run Date: 12/17/2015
Run Time: 11:12

CSP Troop L

VICTIM/WITNESS STATEMENT

Date: 12/17/2015	Time Started: 10:38	Time Ended: 00:00	CFS #: 1500727584
Location: Troop I		Statement taken by: RUSSO, PETER R.	

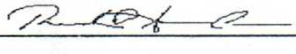
I, Ronald D Swanson **Date Of Birth:** 01/27/1967

of 33 SOUTH ST **Town/City:** LITCHFIELD CT

I make the following statement, without fear, threat or promise. I have been advised that any statement(s) made herein which I do not believe to be true, and which statement is intended to mislead a public servant in the performance of his/her official function, is a crime under C.G.S. section 53a-157b and is punishable by law.

I am a self employed Attorney. My home office is at 33 South Street in Litchfield, CT 06759. I previously was contracted to perform work for Sonic Cavitation LLC which is water technology company. As part of the contract with Sonic, they also provided a secretary through an independent contractor, named Grace Kalinosky. She worked in my office at 33 South Street from on or about January of 2015 and left my office on or about August 10, 2015. On August 5, 2015 Sonic Cavitation notified me that my services were no longer needed. I was informed of this when I was out of state. On August 10, 2015 I went from Puerto Rico to Dallas Texas to meet with Gary George of Sonic Cavitation. The purpose of this meeting was an attorney - client exit meeting. Mr. George did not show up for this scheduled meeting. I returned to Connecticut and to my office on August 11, 2015 and discovered that Grace Kalinosky was no longer there. I also found that all items relating to Sonic Cavitation were missing from my office. On August 19, 2015, when planning to conduct my normal data backup, I discovered that a Netgear Ready NAS NV+, serial # 23J3997M00BD1, was missing from my office. The Netgear Ready NAS NV+ was purchased by me on or about the years of 2009 or 2010. I purchased the item with the help of John Wages, Meadow Street, Litchfield, CT. I sought his help in locating the item and setting it up. I believe that Grace Kalinosky took the Netgear Ready NAS NV+, serial # 23J3997M00BD1 from my office and forwarded it to Sonic Cavitation. The storage device contained files for my legal practice which includes legal documents that are attorney / client privileged which are required by law to be maintained in my office for a period of five years. On August 19, 2015, I notified Grace Kalinosky that I wanted the return of the Netgear Ready NAS NV+, serial # 23J3997M00BD1 and my apartment keys. On August 20, 2015 Gary George of Sonic Cavitation advised me that the NAS would be returned to me. On or about August 22, 2015 I received a box containing business cards, the apartment keys, and a personal USB storage device which was owned by me. The Neatgear NAS was not in the box. The box said it was from Grace Kalinosky. I am reporting this matter of the missing NAS to the police.

By affixing my signature to this statement, I acknowledge that I have read it and / or have had it read to me and it is true to the best of my knowledge belief.

Name of Person making Statement: Swanson, Ronald D	Signature of Person making Statement: 	Date: 12/17/2015
Parent/Guardian Name:	Parent/Guardian Signature:	Date:

Personally appeared the signer of the foregoing statement and made oath before me to the truth of the matters contained therein. If notarized, endorse here:

Oath Taken By: /PO PETER RUSSO/ 12/17/2015

Name: Signature: Date Signed:

Witness Name:	Witness Signature:	Date: