

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

**Supreme Court Case No.**

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JOSEPH A. GUTIERREZ, Esq., STEVEN G. KNAUSS, Esq., JASON R. MAIER,  
Esq., and MAIER GUTIERREZ & ASSOCIATES,

Electronically Filed  
Feb 26 2024 08:24 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

*Petitioners*

vs.

The Eighth Judicial District Court of the State of Nevada,  
and the Honorable Susan Johnson,

*Respondents,*

and

RENE SHERIDAN,  
An individual,

*Real Parties in Interest*

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**APPENDIX TO PETITION FOR WRIT OF MANDAMUS  
VOLUME IV OF IV**

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Submitted By:

JOSEPH P. GARIN, ESQ. (Bar No. 6653)  
JONATHAN K. WONG, ESQ. (Bar No. 13621)  
LIPSON NEILSON P.C.  
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(702) 382-1500

Attorneys for Petitioners

Joseph A. Gutierrez, Esq., Steven G. Knauss, Esq., Jason R. Maier, Esq., and  
Maier Gutierrez & Associates

## **CHRONONLOGICAL INDEX TO APPENDIX**

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IV	App 0390-0438	11/09/23	Defendants' Motion for Summary Judgment Based on Plaintiff's Failure to Provide Damages Computation, or Alternatively, for Rule 37 Sanctions
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IV	App 0470-0510	1/24/24	December 14, 2023 Recorder's Transcript of Hearing Re: Plaintiff's Motion for Summary Judgment

## **CERTIFICATE OF SERVICE**

Pursuant to N.R.A.P 25(b), I certify that I am an employee of LIPSON NEILSON P.C., and that on this 23<sup>rd</sup> day of February, 2024, I served a true and correct copy of the foregoing **APPENDIX TO PETITION FOR WRIT OF MANDAMUS – VOLUME IV OF IV** via the Court’s EFLEX system and 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 to the addressees listed below:

Michael R. Mushkin, Esq. L. Joe Coppedge, Esq. MUSHKIN & COPPEDGE 6070 S. Eastern Avenue, Suite 270  <i>Attorneys for Real Party in Interest, Rene Sheridan</i>	Honorable Susan Johnson Eighth Judicial District Court Department 22 200 Lewis Ave Las Vegas, NV 89101
--	--

/s/ Juan Cerezo

An Employee of LIPSON NEILSON P.C.



**RIS**

LIPSON NEILSON P.C.  
 JOSEPH P. GARIN, ESQ.  
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*Attorneys for Defendants*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\* \* \*

RENE SHERIDAN, an individual

Plaintiff,

vs.

JOSEPH A. GUTIERREZ, Esq.  
 STEVEN G. KNAUSS, Esq.  
 JASON R. MAIER, Esq.  
 MAIER GUTIERREZ & ASSOCIATES

Defendants.

) Case No: A-21-838187-C

) Dept. No.: 22

) **DEFENDANTS' REPLY IN SUPPORT**  
 ) **OF MOTION FOR SUMMARY**  
 ) **JUDGMENT**

) **Hearing Date: October 5, 2023**

) **Hearing Time: 9:00 a.m.**

COME NOW Defendants MAIER GUTIERREZ & ASSOCIATES, JOSEPH GUTIERREZ, ESQ., STEVEN KNAUSS, ESQ., AND JASON MAIER, ESQ. (collectively, "Defendants"), by and through their counsel of record, LIPSON NEILSON P.C., and hereby file their Reply in Support of Motion for Summary Judgment ("Reply"). This Reply is based upon the pleadings, papers, and records on file herein, the following memorandum of points and authorities, and any oral argument that this Court may entertain.

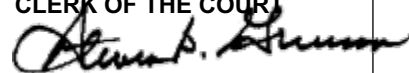
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

As a preliminary matter, Plaintiff Rene Sheridan (hereinafter “Plaintiff”) failed to timely oppose Defendants’ Motion for Summary Judgment, and at that, it was not until *after* Defendants had filed their Notice of Non-Opposition that Plaintiff filed her Opposition. This alone warrants granting Defendants’ Motion. Even if her untimely Opposition were to be considered, it would still be inadequate to defeat summary judgment. The Opposition focuses its efforts in putting on a sideshow featuring the same tired arguments and accusations against Defendants regarding the confidentiality clause and the satisfaction of judgment, but fails to meaningfully address the actual thrust of Defendants’ Motion for Summary Judgment: per this Court’s order, Plaintiff needs expert testimony to survive summary judgment, and the initial experts she disclosed are so deficient – both procedurally and substantively – that Plaintiff cannot overcome summary judgment. The only counter-argument that Plaintiff offers as to her legal malpractice expert, Matthew Fortado, is that he reserved the right to supplement his report, and that her recently-served supplement is sufficient to remedy the shortcomings of his report.<sup>1</sup> Plaintiff does not even address the deficiencies with the disclosure of Steven Istock, her purported damages expert. As set forth more fully herein, Plaintiff’s Opposition does not raise any arguments sufficient to defeat summary judgment, and Defendants respectfully request that this Court grant their Motion for Summary Judgment.

### **II. LEGAL ARGUMENT**

#### **A. Defendants’ Motion Should be Granted as Unopposed Because Plaintiff Failed to Timely Oppose**

Defendants filed their Motion for Summary Judgment on August 22, 2023. Under Eighth Judicial District Court Rule (“EDCR”) 2.20(e), Plaintiff’s Opposition was due on

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<sup>1</sup> This “supplement” to Fortado’s initial report is entirely improper because it does not correct anything in the initial report based on information not available to Plaintiff at the time; rather, it was prepared specifically to address Defendants’ arguments in their Motion for Summary Judgment and thereon bolster the initial report.

September 5, 2023, representing 14 days from the filing of Defendants' motion. September 5<sup>th</sup> passed, and Plaintiff did not file an opposition. September 6<sup>th</sup> passed, and again, Plaintiff did not file any opposition. On September 7<sup>th</sup>, 2023, Defendants filed a Notice of Non-Opposition. It was only after this (at 5:29 p.m. that day) that Plaintiff filed her Opposition to Defendants' Motion. Given the untimeliness of the Opposition, this Court has the discretion to grant Defendants' Motion as unopposed. See *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 278 n.15, 182 P.3d 764, 768 n.15 (2008) (concluding that the district court did not abuse its discretion in granting a motion for failure to oppose **even when an untimely opposition was filed**); see also *King v. Cartlidge*, 121 Nev. 926, 928, 124 P.3d 1161, 1162 (2005) (finding that the plaintiff's tardiness in opposing the defendant's motion for summary judgment "alone was sufficient grounds for the district court to deem [the defendant's] motion unopposed and thus meritorious."). In line with this precedent, Defendants respectfully request that this Court grant their Motion for Summary Judgment as unopposed.

**B. Plaintiff's Opposition Does Not Remedy the Deficiencies in her Initial Expert Disclosures**

In their moving papers, Defendants set forth and detailed numerous deficiencies in Plaintiff's Initial Expert Disclosures, which are succinctly as follows:

- Matthew Fortado, Esq: no qualifications, list of cases, and statement of compensation. Only conclusory statements in report.
- Patrick Cannon: Not an expert. No qualifications, list of cases, and statement of compensation. No report.
- Steven Istock: No qualifications, list of cases, and statement of compensation. Only conclusory statements in report.
- Bennett Wasserman: No report and no statement of compensation.

In her Opposition, Plaintiff does not even address Istock or Wasserman. As to Fortado, she simply states that the deficiencies in his initial report are amended by a supplemental letter Fortado prepared, attached to the Opposition as an exhibit. However, Fortado's

1 supplement is not a proper supplement, but rather an impermissible attempt to revise the  
2 initial report in light of Defendant's challenges to the same, and as such, should not be  
3 considered. See *Luke v. Family Care & Urgent Med. Clinics*, 323 F. App'x 496, 500 (9th  
4 Cir. 2009) (district court did not err in excluding untimely expert declarations where they  
5 impermissibly attempted to fix weaknesses in the initial expert report).

6 Even if *arguendo* Fortado's supplement could be considered proper, it does nothing  
7 to address the substantive deficiencies identified in Defendants' Motion, and essentially  
8 amounts to nothing more than saying "nuh-uh, my opinions are *not* conclusory." The  
9 Opposition offers nothing to change the fact that Fortado's opinions are rebutted by the  
10 record from the underlying case. *Harris v. Gates*, 1998 U.S. App. LEXIS 10663, at \*8 (9th  
11 Cir. May 26, 1998) ("An expert's 'conclusory allegations' do not defeat summary judgment  
12 where the record clearly rebuts the inference the expert suggests.").

### 13 C. Plaintiff's Untimely Declaration Should be Denied

14 To make matters worse, Plaintiff's untimely Opposition did not contain a Rule 56(d)  
15 declaration. On September 26, 2023, in seeming recognition of this shortcoming, Plaintiff  
16 filed a Declaration in Support of Opposition to Defendant's Motion for Summary Judgment  
17 (the "Declaration"). The Declaration is even more untimely than the Opposition, and as  
18 such should not be considered by this Court. *Western Chance #2, Inc. v. KFC Corp.*, 957  
19 F.2d 1538, 1544 (9th Cir. 1992) (Noting that the "district court has discretion to refuse the  
20 filing of untimely affidavits" and that "we are unable to say that the district court abused its  
21 discretion in refusing to accept those affidavits.").

22 Substantively, the Declaration is deficient as it does not set forth what specific facts  
23 may be unearthed in discovery that would allow Plaintiff the ability to defend against  
24 summary judgment. Rather, it simply states that discovery has not yet closed and that the  
25 parties are scheduling depositions. *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 669,  
26 262 P.3d 705, 714 (2011) "[A] motion for a continuance under NRCP 56(f) is appropriate  
27 only when the movant expresses how further discovery will lead to the creation of a  
28 genuine issue of material fact."

At the same time, the Declaration misrepresents the nature of a draft stipulation and order extending discovery that it attaches as Exhibit "1." Plaintiff represents that this Exhibit is "Defendant's request for extension of discovery and continuation of Trial." **Defendants have made no request to extend discovery.** The parties previously had telephone conversations where they discussed extending discovery to allow more time for both sides to take depositions, and the draft SAO attached as Exhibit "1" to the Declaration is a document defense counsel prepared based on these conversations. Plaintiff subsequently decided against the extension when Defendants would not agree to withdraw their pending Motion for Summary Judgment, and nothing further came of the draft SAO. See e-mail Chain, attached hereto as **Exhibit "N."**

### **III. CONCLUSION**

Defendants' Motion for Summary Judgment should be granted because 1) Plaintiff's Opposition was untimely; and 2) even if considered, Plaintiff's Opposition fails to demonstrate that her expert disclosures are sufficient to overcome summary judgment.

DATED this 28th day of September, 2023.

LIPSON NEILSON P.C.

By: /s/ Jonathan K. Wong  
JOSEPH P. GARIN, ESQ.  
Nevada Bar No. 6653  
JONATHAN K. WONG, ESQ.  
Nevada Bar No. 13621  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500  
*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 28<sup>th</sup> day of September, 2022, I electronically served the foregoing **DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to the following parties utilizing the Court's E-File/ServeNV System:

Rene Sheridan  
23823 Malibu Rd., #50-364  
Malibu, CA 90265  
(310) 422-9944  
[rsheridan34@aol.com](mailto:rsheridan34@aol.com)

*Pro Per Plaintiff*

*/s/ Michele Stones*

\_\_\_\_\_  
An Employee of LIPSON NEILSON P.C.

# EXHIBIT N

## Michele Stones

---

**From:** Jonathan Wong  
**Sent:** Tuesday, September 19, 2023 6:28 PM  
**To:** rsheridan34@aol.com  
**Subject:** RE: Sheridan v. MGA - proposed SAO extending discovery cutoff

Rene –

Thank you for your e-mail.

The proposed extension of discovery has nothing to do with the Defendants' pending Motion for Summary Judgment. The proposed discovery extension was intended to mutually benefit both sides; it is not some kind of favor that Defendants are unilaterally seeking from you, and we are more than happy to proceed under the current discovery deadlines if needed.

There is no requirement that all discovery be completed before a motion for summary judgment can be considered by the court, and in this case, there is more than enough discovery completed to justify the motion. As such, we will not be withdrawing it.

If you still have any interest in extending discovery, I am happy to consider any changes to the stipulation (and only the stipulation) that you believe are necessary. If this is unamenable to you, we will proceed under the current deadlines. Thanks.

Jonathan

**Jonathan K. Wong, Esq.**  
**Lipson Neilson P.C.**  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144-7052  
(702) 382-1500  
(702) 382-1512 (fax)  
E-Mail: [jwong@lipsonneilson.com](mailto:jwong@lipsonneilson.com)  
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**Lipson | Neilson**  
Attorneys and Counselors at Law

**National Prominence. Regional Savvy.**

**Offices in Michigan, Nevada, Arizona, and Colorado**

\*\*\*\*\*

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**From:** rsheridan34@aol.com <rsheridan34@aol.com>  
**Sent:** Tuesday, September 19, 2023 3:54 PM  
**To:** Jonathan Wong <JWong@lipsonneilson.com>  
**Subject:** Sheridan v. MGA - proposed SAO extending discovery cutoff

[EXTERNAL EMAIL]

Jonathan,

I am in receipt of your email request of 18 Sept 2023, to extend discovery deadlines and the continuation of trial.

I would agree to this arrangement with the one condition that the defendants withdraw defendants pending motion for summary judgment and have the hearing of 5 October 2023 vacated.

As you pointed out in your request, discovery has not been completed, therefore, a motion for summary judgment is premature.

This would give the parties the additional opportunity to engage in meaningful negotiations in which to reach a settlement.

Once you have agreed to and fulfilled this request, Plaintiff will agree to extend discovery deadlines for 90 days and continue the trial to an agreed date.

I am available for a call in the morning hours of 20 Sept 2023 to finalize this arrangement.

Rene Sheridan  
E: [rsheridan34@aol.com](mailto:rsheridan34@aol.com)  
M: (310) 422-9944

**From:** Jonathan Wong <[JWong@lipsonneilson.com](mailto:JWong@lipsonneilson.com)>  
**Date:** September 18, 2023 at 4:00:17 PM PDT  
**To:** [rsheridan34@aol.com](mailto:rsheridan34@aol.com)  
**Subject:** Sheridan v. MGA - proposed SAO extending discovery cutoff

Good afternoon Rene –

Pursuant to our call a couple of weeks ago where we discussed stipulating to extend the discovery cut-off, I have prepared the attached proposed stipulation and order to submit to the court. I figured 90 days would give us a comfortable buffer to work with as it would extend the discovery cutoff to January 9, 2024. This should allow us time to comfortably conduct all necessary depositions. Please review and let me know if I may submit to the court with your electronic signature. NOTE: If I have calendared my dates correctly, I show that the last day for us to ask the court for an extension of discovery is this Wednesday, September 20<sup>th</sup>, so please get back to me by then. Thank you.

Jonathan

**Jonathan K. Wong, Esq.**  
**Lipson Neilson P.C.**

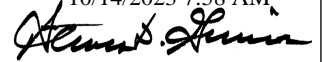
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\*\*\*\*\*

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CLERK OF THE COURT

**ORDR**

LIPSON NEILSON P.C.  
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[jwong@lipsonneilson.com](mailto:jwong@lipsonneilson.com)

*Attorneys for Defendants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

\* \* \*

RENE SHERIDAN, an individual

Plaintiff,

vs.

JOSEPH A. GUTIERREZ, Esq.  
STEVEN G. KNAUSS, Esq.  
JASON R. MAIER, Esq.  
MAIER GUTIERREZ & ASSOCIATES

Defendants.

) Case No: A-21-838187-C

) Dept. No.: 22

) **ORDER ON DEFENDANTS' MOTION**  
) **TO STRIKE 1) PLAINTIFF'S**  
) **UNTIMELY OPPOSITION TO**  
) **DEFENDANTS' MOTION FOR**  
) **SUMMARY JUDGMENT; AND 2)**  
) **IMPROPER SUPPLEMENT TO**  
) **INITIAL EXPERT DISCLOSURES;**  
) **AND DEFENDANTS' MOTION FOR**  
) **SUMMARY JUDGMENT**

This matter came before the Court for hearing on October 5, 2023, on Defendants' Motion for Summary Judgment ("MSJ") and Defendants' Motion to Strike 1) Plaintiff's Untimely Opposition to Defendants' Motion for Summary Judgment; and 2) Improper Supplement to Initial Expert Disclosures on Order Shortening Time ("Motion to Strike"). Plaintiff appeared in pro per person. Defendants MAIER GUTIERREZ & ASSOCIATES, JOSEPH GUTIERREZ, ESQ., STEVEN KNAUSS, ESQ., AND JASON MAIER, ESQ. (collectively, "Defendants") appeared through their counsel, Lipson Neilson P.C. Having considered the record and the briefs submitted in support of and in opposition to Defendants' MSJ and Motion to Strike, being fully informed in the premises, and good cause appearing thereto, the Court hereby FINDS and ORDERS as follows:

## **Motion to Strike**

The Court FINDS that Plaintiff's Opposition to Defendant's MSJ was untimely filed; Defendants' MSJ was filed on August 22, 2023, yet Plaintiff's Opposition was not filed until September 7, 2023. The Court further FINDS, however, that excusable neglect exists because Plaintiff attempted to calendar the deadline, but mistakenly applied the deadlines set forth under the federal rules of procedure rather than the Nevada state court rules.

The Court further FINDS that Plaintiff's "Disclosure of Plaintiff's Expert Witness Supplemental Information" (hereinafter "Plaintiff's Expert Supplement") served on September 7, 2023, is not a proper supplement to her initial expert disclosures under NRCP 26(e), because it does not "include information thereafter acquired" that had "not otherwise been made known" to Plaintiff "during the discovery process or in writing,"<sup>1</sup> but rather, was prepared specifically to address deficiencies in the initial report of Matthew Fortado set forth by Defendants in their MSJ. See *Luke v. Family Care & Urgent Med. Clinics*, 323 F. App'x 496, 500 (9th Cir. 2009).<sup>2</sup> (Stating that Rule 26(e) does not "create a loophole through which a party who submits partial expert witness disclosures, or who wishes to revise her disclosures in light of her opponent's challenges to the analysis and conclusions therein, can add to them to her advantage after the court's deadline for doing so has passed.").

## **Motion for Summary Judgment**

The Court FINDS that the expert reports of Matthew Fortado, Esq., and Steven Istock, disclosed in Plaintiff's Initial Expert Disclosures, appear to contain only conclusory opinions;

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<sup>1</sup> See NRCP 26(e)(1).

<sup>2</sup> This Court may consider federal courts' interpretations of the corresponding federal rules because the "Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002); *Moseley v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 124 Nev. 654, 663, 188 P.3d 1136, 1142 (2008).

1 The Court further FINDS, however, that Plaintiff's oral motion for relief under NRCP  
2 56(d)<sup>3</sup> to conduct the depositions of Steven Knauss and Joseph Gutierrez and, based  
3 thereon, supplement said expert reports, is sufficient to warrant relief under NRCP 56(d) at  
4 this juncture as discovery does not close until October 11, 2023.

### 5 ORDER

6 NOW THEREFORE,

7 It is HEREBY ORDERED that Defendants' Motion to Strike is GRANTED as to  
8 Defendants' request to strike Plaintiff's Expert Supplement, and Plaintiff's Expert  
9 Supplement is hereby ordered STRICKEN;

10 It is FURTHER ORDERED that Defendants' Motion to Strike is DENIED as to  
11 Defendants' request to strike Plaintiff's Opposition to Defendants' Motion for Summary  
12 Judgment;

13 It is FURTHER ORDERED that Plaintiff's oral motion for relief under Rule 56(d) to  
14 conduct the depositions of Steven Knauss and Joseph Gutierrez is GRANTED;

15 It is FURTHER ORDERED that Defendants' Motion for Summary Judgment is  
16 continued to November 7, 2023, to allow Plaintiff time to complete these depositions;

17 The Court FURTHER ORDERS the following with respect to the depositions to be  
18 taken in this matter<sup>4</sup>:

- 19 1. Deposition of plaintiff Rene Sheridan: It is ORDERED that, due to Plaintiff's  
20 stated health concerns, Plaintiff be permitted to appear remotely for her deposition.  
21 However, in consideration of Defendants' stated concerns with maintaining the  
22 integrity of the deposition and the anticipated interference by non-party Patrick  
23 Cannon, the Court hereby imposes the following requirements and limitations:

24  
25  
26 \_\_\_\_\_  
27 <sup>3</sup> Plaintiff's Opposition did not include a NRCP 56(d) declaration. Plaintiff subsequently filed one on September 26,  
28 2023, but it did not set forth what specific facts Plaintiff believed would be uncovered through the depositions that would  
allow her to defend against summary judgment.

<sup>4</sup> During the hearing, the parties orally raised with the Court issues and disputes pertaining to depositions.

- a. At all times during the deposition, Plaintiff is not permitted to access any electronic devices other than the one she is using to facilitate her remote appearance;
  - b. At all times during the deposition, defense counsel may request that Plaintiff conduct a full camera sweep of the room, and Plaintiff must comply with each and every such request;
  - c. Non-party Patrick Cannon may not, under any circumstances, be physically present at the location at which Plaintiff is appearing for her deposition, nor communicate remotely with Plaintiff through any means during the entirety of her deposition, including but not limited to telephone calls, text messaging, e-mails, and/or instant messaging applications. Plaintiff shall be sanctioned a minimum of \$500.00 for every instance that this mandate is violated;
  - d. At all times during the deposition, Plaintiff is not permitted to wear a face mask. To the extent that Plaintiff is concerned for her health, she has the obligation to arrange for a sufficiently sterile space at which she is to conduct her remote appearance; and
  - e. Defendants have the right to videotape the deposition.
2. Deposition of Steven Knauss: The same requirements and limitations imposed upon the deposition of Rene Sheridan (including all of the requirements and limitations relating to non-party Patrick Cannon) apply equally to the deposition of Steven Knauss, with the exception that Plaintiff may wear a face mask during the deposition to address any health concerns on her part.
  3. Deposition of Joseph Gutierrez: The same restrictions and limitations imposed upon the deposition of Rene Sheridan (including all of the requirements and limitations relating to non-party Patrick Cannon) apply equally to the deposition of Joseph Gutierrez, with the exception that Plaintiff may wear a face mask during the deposition to address any health concerns on her part. Additionally, the

deposition of Mr. Gutierrez, and only the deposition of Mr. Gutierrez, may be scheduled for a date beyond the October 11, 2023 close of discovery in this matter.

IT IS SO ORDERED.

Dated this 14th day of October, 2023

*Susan Johnson*

**1DF E5A 1BA2 6A4B**  
**Susan Johnson**  
~~District Court Judge~~

<p>Respectfully Submitted by:</p> <p>LIPSON NEILSON P.C.</p> <p>By: <u>/s/ Jonathan K. Wong</u>          JOSEPH P. GARIN, ESQ.          Nevada Bar No. 6653          JONATHAN K. WONG, ESQ.          Nevada Bar No. 13621          9900 Covington Cross Drive, Suite 120          Las Vegas, Nevada 89144</p> <p><i>Attorneys for Defendants</i></p>	<p>Approved as to Form &amp; Content</p> <p><i>Refused to sign</i></p> <p><u>Rene Sheridan</u>          23823 Malibu Road, #50-364          Malibu, CA 90265</p> <p><i>In Pro Per</i></p>
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## Michele Stones

---

**From:** rsheridan34@aol.com  
**Sent:** Thursday, October 12, 2023 4:36 PM  
**To:** Jonathan Wong  
**Subject:** Sheridan v. MGA - proposed order on October 5, 2023 hearing  
**Attachments:** image001.png; MGA proposed Order Mstrk MSJ.docx

### [EXTERNAL EMAIL]

Jonathan-

Your proposed order is a litany of lies.

We will have the court impose sanctions

for each and every lie you have written on this order.

Send me a corrected version of the draft order with the lies removed.

Rene Sheridan

E: rsheridan34@aol.com

M: (310) 422-9944

**From:** Jonathan Wong <JWong@lipsonneilson.com>  
**Date:** October 12, 2023 at 2:23:16 PM PDT  
**To:** rsheridan34@aol.com  
**Cc:** Michele Stones <MStones@lipsonneilson.com>  
**Subject:** Sheridan v. MGA - proposed order on October 5, 2023 hearing

Rene –

Attached is a proposed order memorializing the Court's October 5, 2023 rulings. Please review and let me know if I may submit to the court with your electronic signature.

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Rene Sheridan, Plaintiff(s)

CASE NO: A-21-838187-C

7 vs.

DEPT. NO. Department 22

8 Joseph Gutierrez, ESQ,  
9 Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 10/14/2023

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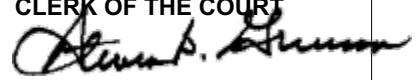
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\* \* \*

RENE SHERIDAN, an individual  
  
Plaintiff,

vs.

JOSEPH A. GUTIERREZ, Esq.  
STEVEN G. KNAUSS, Esq.  
JASON R. MAIER, Esq.  
MAIER GUTIERREZ & ASSOCIATES  
  
Defendants.

) Case No: A-21-838187-C  
) Dept. No.: 22

) **DEFENDANTS' MOTION FOR**  
) **SUMMARY JUDGMENT BASED ON**  
) **PLAINTIFF'S FAILURE TO PROVIDE**  
) **DAMAGES COMPUTATION, OR**  
) **ALTERNATIVELY, FOR RULE 37**  
) **SANCTIONS**

) **HEARING REQUESTED**  
)

COME NOW, Defendants MAIER GUTIERREZ & ASSOCIATES, JOSEPH GUTIERREZ, ESQ., STEVEN KNAUSS, ESQ., AND JASON MAIER, ESQ. (collectively, "Defendants"), by and through their counsel of record, LIPSON NEILSON P.C., and hereby file their Motion for Summary Judgment Based On Plaintiff's Failure To Provide Damages Computation, Or Alternatively, For Rule 37 Sanctions ("Motion"). This Motion is based upon the pleadings, papers, and records on file herein, the following Memorandum of Points and Authorities, and any oral argument that this Court may entertain.

///

///

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Though Defendants have pending a Motion for Summary Judgment based on Plaintiff's inability to establish the elements of her sole cause of action for professional negligence due to deficient expert reports, another compelling reason has surfaced since the filing of that motion that additionally dictates granting summary judgment in Defendants' favor: a complete failure of Plaintiff to provide the required damages computation under NRCP 16.1.

Plaintiff's alleged damages consist of some nebulous harm done to her career stemming from the filing of the unredacted e-mail exhibit, and loss of investment monies for creative projects and damage to credit worthiness stemming from the timing of the filing of the satisfaction of judgment. NRCP 16.1 requires a disclosure of a "computation of each category of damages claimed by the disclosing party." To date, Plaintiff has not provided anything beyond an unsubstantiated statement that her damages are in "excess of \$3,000,000.00" based on "unethical actions and negligence by Defendants." Under the Rules, this fails to satisfy the computation requirement. Discovery closed on October 11, 2023, nearly a month ago, and as such, Plaintiff is no longer able to supplement her disclosures to remedy this deficiency. As of the date of this Motion, her claimed damages remain nothing but mere speculation.

Based on this, Plaintiff is unable to establish damages, which are a necessary element of her single cause of action for professional negligence. This consequently warrants granting summary judgment in Defendants' favor because without damages, Plaintiff as a matter of law is unable to establish professional negligence. Alternatively, Plaintiff's failure to comply with the damages computation requirement also warrants an array of sanctions under NRCP 37, including striking Plaintiff's Complaint, dismissing the action, and/or prohibiting Plaintiff from introducing evidence of her damages at trial.

///

///

1     **II.     UNDISPUTED FACTS**

2             There are no genuine disputes as to the following facts<sup>1</sup>:

3             Plaintiff fails to disclose any meaningful damages computation during discovery

4             1.     The parties held their Early Case Conference on October 11, 2022.

5             2.     On October 25, 2022, Plaintiff served her Initial Rule 16.1 Disclosures.

6     Under the section for computation of damages, the Disclosure only stated damages  
7     ">\$3,000.000.00" caused by "Unethical Actions and Negligence by Defendants." See  
8     Plaintiff's Initial Disclosures, attached hereto as **Exhibit "A."**

9             3.     On December 7, 2022, this Court filed a Scheduling Order and Order  
10     Setting Civil Jury Trial (the "Scheduling Order"). The Scheduling Order required the  
11     parties to complete discovery on or before October 11, 2023.

12            4.     On October 11, 2023, discovery closed. Plaintiff never supplemented  
13     her Rule 16.1 disclosures to provide an actual computation of damages.

14            With discovery now closed, Plaintiff is unable to supplement to cure this  
15     deficiency, and summary judgment in Defendants' favor is warranted.

16     **III.    LEGAL ARGUMENT**

17            **A.     Legal Standard**

18            1.     Summary Judgment

19            "Summary judgment is appropriate under NRCP 56 when the pleadings,  
20     depositions, answers to interrogatories, admissions, and affidavits, if any, that are  
21     properly before the court demonstrate that no genuine issue of material fact exists, and  
22     the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121  
23     Nev. 724, 731, 121 P.3d 1026, 1031 (2005). To survive a motion for summary  
24     judgment, the non-moving party "may not rest upon the mere allegations or denials of  
25     [its] pleadings," *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), nor may it

26            \_\_\_\_\_  
27     <sup>1</sup> Defendants also incorporate those undisputed facts and supporting exhibits set forth in their  
28     Motion for Summary Judgment filed on August 22, 2023, insofar as this Court believes those  
   facts are necessary to resolve the instant Motion.

1 simply show there is some metaphysical doubt as to the material facts. *Matsushita*  
2 *Elec. Indus. Co.*, 475 U.S. 574, 586 (1986).<sup>2</sup> Rather, it is the non-moving party's burden  
3 to "come forward with specific facts showing that there is a genuine issue for trial." *Id.*  
4 at 587; see also *Wood v. Safeway, Inc.*, 121 Nev. at 724, 731, 121 P.3d 1026,  
5 1031(2005), citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82  
6 (2002).

7 A dispute will only preclude the entry of summary judgment if it could affect the  
8 outcome of the suit under governing law. A factual dispute is genuine when the  
9 evidence is such that a rational trier of fact could return a verdict for the non-moving  
10 party. *Wood v. Safeway, Inc.*, *supra*, 121 Nev. at 731, 121 P.3d at 1031. In evaluating  
11 summary judgment, a court views all facts and draws all inferences in a light most  
12 favorable to the non-moving party. *Ibid.*

13 If there are no genuine issues of fact, the movant's burden is not evidentiary  
14 because the facts are not disputed. Rather, the court has the obligation to resolve the  
15 legal dispute between the parties as a matter of law. *Gulf Ins. Co. v. First Bank*, 2009  
16 WL 1953444 \*2 (E.D.Cal.2009) (citing *Asuncion v. Dist. Dir. of U.S. Immigration &*  
17 *Naturalization Serv.*, 427 F.2d 523, 524 (9<sup>th</sup> Cir.1970)).

18 Further, where one "essential element of a claim for relief is absent, the facts,  
19 disputed or otherwise, as to the other elements are rendered immaterial and summary  
20 judgment is proper." *Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d at 592  
21 (1992). As set forth in greater detail below, Plaintiff is unable to establish the element  
22 of damages as a matter of law, warranting a grant of summary judgment in Defendants'  
23 favor.

24  
25 <sup>2</sup> This Court may also consider federal courts' interpretations of the corresponding federal rules  
26 because the "Nevada Rules of Civil Procedure are based in large part upon their federal  
27 counterparts." *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876  
28 (2002); *Moseley v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 124 Nev. 654, 663, 188  
P.3d 1136, 1142 (2008).

2. Rule 37 Sanctions

Under NRCP 16.1(e)(3), a party is subject to sanctions under NRCP 37 for failure to comply with any provisions of NRCP 16.1:

(3) Other Grounds for Sanctions. If an attorney fails to reasonably comply with any provision of this rule, or if an attorney or a party fails to comply with an order entered under Rule 16.3, the court, on motion or on its own, should impose upon a party or a party's attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:

**(A) any of the sanctions available under Rules 37(b) and 37(f);**

or

**(B) an order prohibiting the use of any witness, document, or tangible thing that should have been disclosed, produced, exhibited, or exchanged under Rule 16.1(a).**

See NRCP 16.1(e)(3) (emphasis added). Rule 37(b), in turn, provides for the following sanctions:

**(A) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;**

**(B) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;**

**(C) striking pleadings in whole or in part;**

**(D) staying further proceedings until the order is obeyed;**

**(E) dismissing the action or proceeding in whole or in part;**

**(F) rendering a default judgment against the disobedient party; or**

**(G) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.**

See NRCP 37(b) (emphasis added).

**B. Plaintiff's Failure to Disclose a Damages Computation Renders Her Case Ripe for Summary Judgment**

Under NRCP 16.1(a)(1)(A)(iv), Plaintiff was required to, "without awaiting a discovery request, provide to [Defendants]: ... a computation of each category of damages claimed by [Plaintiff]." The Rule required Plaintiff to produce her computation of damages within 14 days after the parties' Rule 16.1(b) conference. A written

discovery request is not needed. *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 261, 396 P.3d 783, 785 (2017). “The computation of each category of damages requires more than the listing of the broad types of damages so as to ‘enable the defendants to understand the contours of their potential exposure and make informed decisions regarding settlement and discovery.’” *Calvert v. Ellis*, No. 2:13-CV-00464-APG, 2015 WL 631284, at \*2 (D. Nev. Feb. 12, 2015)(citing *CCR/AG Showcase Phase I Owner, L.L.C. v. United Artists Theatre Cir., Inc.*, No. 208-CV-00984-RCJ-GWF, 2010 WL 1947016, at \*5 (D. Nev. May 13, 2010)). Damages that can be assigned an exact dollar amount or can be established with reasonable mathematical certainty must be disclosed. *Walters v. Meeks*, No. 53856, 2011 Nev. Unpub. LEXIS 1633, at \*2 (Sep. 29, 2011) (Rule 16.1 requires “more than providing—without any explanation—undifferentiated financial statements; it requires a ‘computation,’ supported by documents.”) (*Citations omitted*).

In her Initial 16.1 Disclosures, Plaintiff provides the following under her computation of damages:

Expense	Date	Damage
Unethical Actions and Negligence by Defendants	2017-2018	In excess of \$3,000,000.00
Total Damages		>\$3,000,000.00

See **Exhibit “A.”** Plaintiff has never supplemented these disclosures with a more specific computation. As it stands right now, Plaintiff’s “computation” of damages is nothing more than one extremely vague and broad category of damages that fails entirely to comply with the computation requirement of Rule 16.1. Plaintiff did not provide the “mathematical computation totaling up [her] damages for each category of damages claimed.” *Walters*, 2011 Nev. Unpub. LEXIS 1633, at \*2.

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///



1 Making Plaintiff's failure even worse is her efforts to stonewall Defendants in  
2 their proactive attempts to ascertain this information themselves.<sup>3</sup> For instance, in their  
3 First Set of Interrogatories to Plaintiff, Defendants requested as follows:

4 INTERROGATORY NO. 6: Identify each and every element of damages  
5 you claim. For each element, identify the exact amount of damages  
6 claimed or, if applicable, the methodology used to compute any category  
of damages.

7 See Plaintiff's Interrogatory Responses, attached hereto as **Exhibit "B."** In response,  
8 Plaintiff failed to provide any specific categories of damages and their computations,  
9 and instead simply regurgitated her entire strained theory of the case:

10 ANSWER TO No. 6: Engaged the services of Maier Gutierrez- 19 Dec.  
11 2017 – terminated the services of Maier Gutierrez Oct. 2018 – after  
12 continued unethical conduct – damaging Plaintiff and Plaintiff's  
colleagues.

13 Failed to secure proper discovery in underlying case- Sheridan v Senior  
14 Moment Movie LLC – resulting in Plaintiff's loss of 50% ownership in film-  
sales with an estimated value- three million dollars plus.

15 Defendant Stephen Knauss committed perjury in court stating Plaintiff filed  
16 an incorrect/altered Order to benefit the Defendants and assist  
Defendants to obtain sanctions against Plaintiff.

17 Defendants, Maier Gutierrez acted against instructions of Plaintiff inserting  
18 incorrect language "meeting of the minds" to assist underlying defendants  
19 in order to bind a loose list of material terms to structure a damaging one-  
20 sided settlement agreement. Maier Gutierrez breached the essential  
21 material term of confidentiality causing additional protracted litigation  
22 resulting in many months of additional legal billing for this legal  
malpractice and unethical conduct, while acting in consort with underlying  
23 Defendants attorneys.

24 Defendants, Mailer Gutierrez refused to file a Satisfaction of Judgment in  
25 violation of Nevada law, instead maintaining a judgment of \$118,715.25  
after payment of Attorney fees were paid in full. The unnecessary  
Judgment was placed on the public record for no other reason than to  
damage Plaintiff and her colleague's company GoRockLLC. Plaintiff was

26 <sup>3</sup> To be sure, the NRCP place an affirmative burden on Plaintiff to provide this computation  
27 without first being served a discovery request by Defendants. Defendants simply include this  
28 discussion to further illustrate that Plaintiff has had more than ample opportunity to provide the  
requisite damages computation.

1 subjected to approx. two additional years of litigation pursuing Defendants  
2 in order to have the Defendants file the legally required Satisfaction of  
3 Judgment. Clark County Clerk, Gwendolyn Johnson Hall had noted, that  
4 after Defendants finally filed their delinquent Satisfaction of Judgment,  
(706 days after Judgment was paid in full), on 16 Aug 2022, the document  
5 was not properly recorded and thus still maintained that the judgment  
6 against Plaintiff was not satisfied.

7 Defendants, Maier Gutierrez continued to slander the Plaintiff through  
8 Defendant's false claim that Plaintiff's claims were meritless and Plaintiff  
9 was a vexatious litigant. Plaintiff has suffered a permanent loss of  
investors/investment and reputation. These ethical lapses by the  
Defendants have resulted in severe consequences on Plaintiff's business  
and professional reputation and the loss of current and future clients.

10 *Id.* Defendants also attempted to ascertain information that would potentially shed light  
11 on specific damages numbers through Requests for Production. Their efforts on that  
12 front were similarly stonewalled and/or met with non-responses:

13 REQUEST NO. 7: Produce copies of your filed local, state and federal tax  
14 returns for the period 2016 to the present.

15 RESPONSE NO. 7: Plaintiff's tax returns have no relevance to this case  
16 and therefore will not be produced.

17 . . .

18 REQUEST NO. 9: Produce all documents evidencing damages to your  
19 career suffered as a result of Defendants' alleged misconduct, as set forth  
20 in Paragraph 39 of your Complaint.

21 RESPONSE NO. 9: see Plaintiff's Initial Disclosures – filed October 25<sup>th</sup>,  
22 2022. Defendants, Maier Gutierrez refused to file a Satisfaction of  
23 Judgment in violation of Nevada law, instead maintaining a judgment of  
\$118,715.25 after payment of Attorney fees were paid in full. The  
unnecessary Judgment was placed on the public record for no other  
reason than to damage Plaintiff and her colleague's company  
GoRockLLC. Defendants finally filed their delinquent Satisfaction of  
Judgment, (706 days after Judgment was paid in full), on 16 Aug 2022.

24  
25 See Plaintiff's Responses to Requests for Production, attached hereto as **Exhibit "C."**

26 Finally, Plaintiff was provided yet another opportunity to expand on her extremely  
27 vague and specious damages allegations during her deposition, yet even then refused  
28 to provide meaningful responses. For example, Plaintiff was unable to provide any

1 details as to specific investors she allegedly lost as a result of the unredacted e-mail,  
2 claiming that she could not provide details due to "confidentiality" concerns. When  
3 pressed, the only actual name she could offer was – spoiler alert – Patrick Cannon:

4 Q. So which specific investors have you lost like –

5 A. Well, quite a few. I mean, some of them, again, there's confidentiality.  
6 **I'm not at liberty to give people's names that are investing in things.**

7 Q. Well, but you put it at issue by alleging it as an item of damages in this  
8 lawsuit.

9 A. Yeah. I mean, the only one that right now -- like I said, that **I'm not at**  
10 **liberty to disclose people's names. There's confidentiality that are**  
11 **investors.** But **Patrick Cannon and his colleagues**, he's got colleagues  
12 that have invested with me with Patrick Cannon over the years that these  
13 guys will never invest with me again as to the conduct of Maier Gutierrez  
14 and Ayon, Knauss. I mean, they've -- you know, they've been damaged  
15 alongside.

16 You know, it would have been a really good -- we had a value of \$6 million  
17 on that package of the film. You know, we could have set the project up.  
18 You know, Maier Gutierrez came in and threw our discovery, stepped into  
19 court and lied, tangled us up in -- then they took -- you know, then they put  
20 a judgment against GoRock and myself for a couple years after -- left it on  
21 the public record for a couple years after the judgment was satisfied by the  
22 Defendants who had -- they had been working for. I mean, some of this  
23 has been really, really damaging.

24 See Plaintiff's Deposition Transcript, attached hereto as **Exhibit "D"** at 217:19 –  
25 218:22. Yet even as to Cannon, she would not discuss specifically how much he  
26 invested in the Senior Moment Movie project:

27 Q. How much did Mr. Cannon invest in the Senior Moment project?

28 A. Again, I'm not at liberty to, you know -- him and his colleagues, I'm not  
at liberty to say anything. You'd have to ask Mr. Cannon.

Q. Ms. Sheridan, you're claiming that as a component of your damages in  
this lawsuit; so it is at issue.

A. No, I'm saying they -- no, the issue is he's -- he and his colleagues will  
never -- they have invested in projects over the years. They will never  
invest with me again. That's one group.

And there are groups, like I said, that have brought up to me the issue that  
have to run -- they've run checks, you know, KYC, Know Your Client, you  
know, because they're dealing with other people's money. Again, they,  
you know, pull up that there's litigation. They pull up I've breached  
confidentiality clauses. They pulled up that there's judgments against my

1 name that have long been satisfied, that sort of thing. So the -- yeah, that's  
2 caused me to lose investment money.

3 Q. Okay. What specific groups are those?

4 A. They were some New York -- again, I'm not at liberty to give specific  
5 groups and names of investors. There's confidentiality. But there's  
6 different groups of investors that I've put projects in front of over the years.

7 *Id.* at 221:15 – 222:17. Defense counsel even graciously reminded Plaintiff of the  
8 importance to her lawsuit of being specific and precise on her damages, yet she still  
9 chose to proffer evasive and non-responsive answers:

10 Q. Okay. So, again, it is at issue in this litigation, Ms. Sheridan. So **if you**  
11 **hope to recover damages based on these purported investors, you're**  
12 **going to have to let me know what they are.**

13 A. **Yeah, no.** I -- they're definitely in -- like I said, definitely in the hundreds  
14 of thousands, if not millions. I mean, there's some that I know about; some  
15 that I just know that they declined to get involved as far as the reason  
16 being; some of them that directly brought up this litigation, you know, this  
17 litigation that caused confidentiality, you know, to be disclosed, that  
18 caused, you know, loss -- huge financial loss of the project, you know,  
19 caused somebody to get tied up in protracted litigation.

20 It turns off investors. And there's confidentiality with any investment  
21 agreement, you know. Some of those guys don't like their names being --  
22 but I've -- I've lost a lot of projects and investment as a result of this  
23 conduct. **And if I had to, you know, put a number, it's definitely, you**  
24 **know, in the hundreds and hundreds and hundreds of thousands, if**  
25 **not millions.**

26 *Id.* at 222:18 – 223:15 (emphasis added). As can be seen above, even in the face of  
27 counsel's admonition, Plaintiff still chose to offer nothing but meaningless  
28 generalizations about some imaginary investors, projects, and losses. What the above  
response does confirm, however, is that **Plaintiff herself is unsure about what her**  
**alleged damages are:** as mentioned previously, in her 16.1 disclosures, she claimed a  
damages figure of over \$3 million, yet in her cited deposition testimony above, she  
indicated that her damages could actually be **much less** than this, being at a number  
“in the hundreds and hundreds of thousands, if not millions.”

///

1 Perhaps most significantly, Plaintiff outright confirmed that she has no idea what  
2 her damages are at another point in her deposition:

3 Q. So before we went on the break, we were talking about damages and  
4 that sort of a thing. You mentioned investments. How were you damaged  
in terms of investments as a result of that unredacted email?

5 A. I've lost investment money from, you know, quite a few investment  
6 sources. Again, anytime private equity or venture capital look, they have to  
7 run a KYI check, Know Your Client -- KY- -- KYC. They do a KYC check.  
8 They have to run court records. They have to run if there's judgments.  
9 They have to run if there's anyone that's involved in protracted litigation.  
10 So, you know, there -- there's, you know, much more that I'll be -- the  
damage done, I've lost quite a bit, but it's, you know, going to be  
substantial more, and **I'll probably never really know how much I've  
lost as a result of the conduct of this.**

11 See *Id.* at 215:15 – 216:7 (emphasis added).

12 Discovery has been closed for nearly a month. Plaintiff never provided the  
13 required damages computation under NRCP 16.1, and stonewalled Defendants at  
14 every effort they made to ascertain information by which damages could be computed.  
15 Not only has she not provided a computation, she has not even provided any  
16 information and documents that would allow Defendants to have an idea of what her  
17 actual damages are, including (but not limited to) the identities of investors whom she  
18 has lost, the names of specific projects she has lost, agreements and other documents  
19 showing the monies these investors had originally planned to invest, communications  
20 with the alleged lost investors, documents objectively demonstrating the value or  
21 estimated value of each lost project, documents affirmatively connecting the loss of  
22 these with the unredacted e-mail and/or the Satisfaction of Judgment, and documents  
23 proving Plaintiff's past successes in consistently attracting investment and producing  
24 profitable projects.

25 Plaintiff's theory of damages requires these at a minimum – otherwise, her  
26 damages are nothing but speculation. This was made clear in *Knier v. Azores*  
27 *Construction Co.*, 78 Nev. 20 (1962), wherein the Nevada Supreme Court stated that,  
28 “[w]here the loss of anticipated profit is claimed as an element of damages, the

1 business claimed to have been interrupted must be an established one and it must be  
2 shown that it has been successfully conducted for such a length of time and has such a  
3 trade established that the profits therefrom are reasonably ascertainable. The rule  
4 against recovery of uncertain damages generally is directed against uncertainty as to  
5 the existence of cause of damage rather than as to measure or extent.”

6 With discovery now long since closed, Plaintiff is unable to supplement her  
7 disclosures to cure the deficiencies in her damages computation, and as such, her  
8 damages are nothing but speculation. In light of her inability to establish damages, a  
9 key element of her case, Defendants are entitled to summary judgment as a matter of  
10 law on Plaintiff’s sole cause of action for professional negligence. See *Bulbman*, 108  
11 Nev. at 111 (“Where an essential element of a claim for relief is absent, the facts,  
12 disputed or otherwise, as to other elements are rendered immaterial and summary  
13 judgment is proper.”).

14 **C. Alternatively, Plaintiff’s Failure to Disclose a Damages Computation**  
15 **Warrants Sanctions Under Rule 37**

16 In addition to summary judgment, Plaintiff’s failure to provide the required  
17 damages computation also justifies sanctions against her under NRCP 37. NRCP 37  
18 is designed to “give[] teeth to these requirements by forbidding the use at trial of any  
19 information required to be disclosed by Rule 26(a) that is not properly disclosed.”  
20 *Hoffman v. Constr. Protective Servs.*, 541 F.3d 1175, 1179 (9th Cir. 2008). Rule 37  
21 allows a Court to impose an array of sanctions, including exclusion of evidence not  
22 properly disclosed, striking pleadings in part or in whole, and dismissing a case.

23 1. Exclusion of Damages Evidence is Necessary and Warranted

24 Under Rule 37, “exclusion of evidence not disclosed is appropriate unless the  
25 failure to disclose was substantially justified or harmless.” *Id.* Willfulness or bad faith  
26 are not required to justify exclusion of damages evidence. *Id.* at 1180 (“we reject the  
27 notion that the district court was required to make a finding of willfulness or bad faith to  
28 exclude the damages evidence.”). To the contrary, Rule 37 is “a self-executing,

1 automatic sanction to provide a strong inducement for disclosure of material." *Id.* This  
2 is so even where, as here, the sanction would result in an entire cause of action being  
3 precluded. *Id.* ("The implementation of the sanction is appropriate even when a  
4 litigant's entire cause of action . . . [will be] precluded.).

5 Here, there is no substantial justification for Plaintiff's failure to provide a  
6 damages computation, nor is the disclosure harmless. As detailed in the preceding  
7 sections, Plaintiff never supplemented her disclosures to include a proper damages  
8 computation, and also stonewalled Defendants from obtaining discovery that would  
9 corroborate (or refute) the existence of such damages. To the extent she has any  
10 documents that support her alleged damages, there is no justification for why they were  
11 not produced in discovery. Allowing Plaintiff to supplement at this late stage of  
12 litigation to provide a damages computation and supporting documents would require  
13 re-opening discovery (which has been closed for a month), continuing trial, and having  
14 this Court issue a new scheduling order. Accordingly, Plaintiff's failure to disclose is  
15 not "harmless." *Id.* ("Later disclosure of damages would have most likely required the  
16 court to create a new briefing schedule and perhaps re-open discovery, rather than  
17 simply set a trial date. Such modifications to the court's and the parties' schedules  
18 supports a finding that the failure to disclose was not harmless.").

19 2. Dispositive sanctions are also warranted due to Plaintiff's  
20 willfulness and bad faith

21 Where, as here, sanctions beyond exclusion of evidence are also sought (e.g.  
22 dismissal with prejudice), the sanctions must "relate to the claims which were at issue"  
23 and "while dismissal need not be preceded by other less severe sanctions, it should be  
24 imposed only after a thoughtful consideration of all the factors involved in a particular  
25 case." *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 92, 787 P.2d 777, 780 (1990).  
26 "The factors a court may properly consider include, but are not limited to, the degree of  
27 willfulness of the offending party, the extent to which the non-offending party would be  
28 prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the

1 severity of the discovery abuse, whether any evidence has been irreparably lost, the  
2 feasibility and fairness of alternative, less severe sanctions, such as an order deeming  
3 facts relating to improperly withheld or destroyed evidence to be admitted by the  
4 offending party, the policy favoring adjudication on the merits, whether sanctions  
5 unfairly operate to penalize a party for the misconduct of his or her attorney, and the  
6 need to deter both the parties and future litigants from similar abuses.” *Id.* at 93.

7 Here, the claim to be dismissed relates squarely to Plaintiff’s deficient damages  
8 disclosure, as Plaintiff has only a single cause of action for legal malpractice/  
9 professional negligence. Additionally, Plaintiff’s 16.1 disclosure specifically indicates  
10 that her damages stem from “unethical actions and negligence by Defendants.”

11 As to the factors a court may consider, the vast majority militate in favor of  
12 dispositive sanctions:

- 13 • The degree of willfulness of the offending party: As detailed above, Plaintiff has  
14 been uncooperative in the discovery process, refusing to provide Defendants  
15 with requested documents that relate to her damages and offering evasive, non-  
16 responsive, circular, filibuster responses at deposition to questions probing for  
17 specifics as to her damages.
- 18 • Severity of the sanction vs. the severity of the discovery abuse: The discovery  
19 abuse is severe. As a result of Plaintiff’s conduct, Defendants remain entirely in  
20 the dark as to Plaintiff’s claimed damages, and are unable to meaningfully  
21 address the same. With discovery closed, they are unable to depose any of the  
22 purported investors whom Plaintiff lost, nor can they retain an expert to  
23 specifically examine and opine on any damages evidence by Plaintiff.
- 24 • The feasibility of alternative sanctions: alternative sanctions are not feasible.  
25 For instance, staying the proceeding until the order is obeyed would not work  
26 because discovery is long closed. Prohibiting Plaintiff from supporting her  
27 damages claim and introducing evidence of the same is, in a vacuum, a lesser  
28 sanction, but here would all the same result in Plaintiff’s case being terminated,



as exclusion of evidence of damages would prevent Plaintiff from being able to establish her sole cause of action for professional negligence.

- The extent to which Defendants would be prejudiced by a lesser sanction: As argued above, there are no feasible lesser sanctions. To the extent a sanction could be fashioned that still allows Plaintiff to proceed in some manner or form on her damages claim, such a sanction would prejudice Defendants because, as set forth above, they would be unable to conduct discovery into those damages.
- Need to deter future abuses: This need is overwhelmingly strong here. Plaintiff has been evasive and obstructive throughout discovery as discussed above, yet at the same time, she would ask this Court to allow her to proceed to trial based on some flimsy, speculative, unsubstantiated damages. Notably, this is not Plaintiff's first rodeo; she has had prior experience filing malpractice claims against attorneys who represent her. See, e.g., *Sheridan v. Rintala*, No. B199979, 2009 Cal. App. Unpub. LEXIS 92, 2009 WL 27189 (Jan. 6, 2009). Without sanctions, it is highly likely that Plaintiff will continue this pattern of litigation abuse in the future.

In light of the above, Defendants respectfully request that this court, pursuant to Rule 37, sanction Plaintiff in the form of either striking her cause of action for professional negligence, or dismissing the proceeding. See NRCP 37(b)(1)(C) and (E). *Young*, 106 Nev. at 93 ("[T]he district court did not abuse its discretion in imposing the more severe sanctions of dismissal and entry of default judgment" where "all of the claims dismissed related to the fabricated evidence," the sanctions were not manifestly unjust, and "the district court gave appropriately careful, correct and express consideration of most of the factors discussed above.").

#### **IV. CONCLUSION**

Discovery has run its course, and Plaintiff has failed to comply with her obligation under NRCP 16.1 to provide a computation of damages. Even after nearly a year of discovery, her alleged damages remain but mere speculation. To make matters worse,

1 she actively prevented Defendants from obtaining discovery that related to her damages.  
2 With discovery closed and trial on the horizon, Plaintiff is unable to supplement her  
3 disclosures to remedy this deficiency. As such, Plaintiff is unable to establish damages, a  
4 necessary element of her sole cause of action for professional negligence. Defendants  
5 accordingly request that this Court grant summary judgment in their favor on this cause of  
6 action. Defendants further maintain that Rule 37 sanctions are another suitable basis on  
7 which Plaintiff's case may be disposed of, and respectfully request that this Court  
8 exercise its authority to enter such sanctions, particularly if it is not inclined to grant  
9 summary judgment.

10 DATED this 9<sup>th</sup> day of November, 2023.

11 LIPSON NEILSON P.C.  
12

13 By: /s/ Jonathan K. Wong  
14 JOSEPH P. GARIN, ESQ.  
15 Nevada Bar No. 6653  
16 JONATHAN K. WONG, ESQ.  
17 Nevada Bar No. 13621  
18 9900 Covington Cross Drive, Suite 120  
19 Las Vegas, Nevada 89144  
20  
21 *Attorneys for Defendants*  
22  
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**CERTIFICATE OF SERVICE**

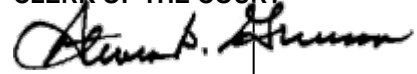
Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 9<sup>th</sup> day of November, 2023, I electronically served the foregoing **MOTION FOR SUMMARY JUDGMENT BASED ON PLAINTIFF'S FAILURE TO PROVIDE DAMAGES COMPUTATION, OR ALTERNATIVELY, FOR RULE 37 SANCTIONS** to the following parties utilizing the Court's E-File/ServeNV System:

Rene Sheridan 23823 Malibu Rd., #50-364 Malibu, CA 90265 (310) 422-9944 <a href="mailto:rsheridan34@aol.com">rsheridan34@aol.com</a>	
--	--

*Pro Per Plaintiff*

/s/ Michele Stones  
An Employee of LIPSON NEILSON P.C.

# EXHIBIT A



NLWD  
Rene Sheridan  
23823 Malibu Road, #50-364  
Malibu, CA 90265  
Tel: 310-422-9944  
In Pro Per

**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

RENE SHERIDAN, an individual, )  
Plaintiff, )  
v. )  
JOSEPH A. GUTIERREZ, an individual; )  
STEVEN G. KNAUSS, an individual; )  
JASON R. MAIER, an individual; )  
MAIER GUTIERREZ & ASSOCIATES; )  
A Domestic Professional LLC, and )  
DOES I-XX, inclusive, and XYZ )  
CORPORATIONS' I-XX, inclusive, )  
Defendants. )

Case No. A-21-838187-C  
Dept. No. 22

**PLAINTIFF'S INITIAL DISCLOSURE OF  
WITNESSES AND DOCUMENTS  
PURSUANT TO NRCP 16.1**

Plaintiff, RENE SHERIDAN, in Proper Person, hereby produce the following list of persons that are likely to have knowledge of the facts and circumstances of the instant action, and documents, data compilations, and tangible things that are in his and/or his counsel's possession, custody, or control pursuant to N.R.C.P. 16.1(a)(1):

**I.**  
**Witnesses**

1. Rene Sheridan  
23823 Malibu Road, #50-364  
Malibu, CA 90265  
310-422-9944

Rene Sheridan is the Plaintiff in this case and is expected to testify regarding the facts and circumstances surrounding this litigation.

////

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1       2. Patrick Cannon  
2       CONFIDENTIAL

3 Patrick Cannon is expected to testify regarding the facts and circumstances surrounding this  
4 litigation.

5       3. James Harmon  
6       CONFIDENTIAL

7 James Harmon is expected to testify regarding the facts and circumstances surrounding this  
8 litigation.

9       4. Joseph A. Gutierrez, Esq.  
10       c/o Joseph P. Garin, Esq. and Jonathan K. Wong, Esq.  
11       Lipson Neilson P.C.  
12       9900 Covington Cross Drive, Suite 120  
13       Las Vegas, NV 89144

14 Joseph A. Gutierrez, Esq. is expected to testify regarding the facts and circumstances  
15 surrounding this litigation.

16       5. Steven G. Knauss, Esq.  
17       c/o Joseph P. Garin, Esq. and Jonathan K. Wong, Esq.  
18       Lipson Neilson P.C.  
19       9900 Covington Cross Drive, Suite 120  
20       Las Vegas, NV 89144

21 Steven G. Knauss, Esq. is expected to testify regarding the facts and circumstances  
22 surrounding this litigation.

23       6. James R. Maier, Esq.  
24       c/o Joseph P. Garin, Esq. and Jonathan K. Wong, Esq.  
25       Lipson Neilson P.C.  
26       9900 Covington Cross Drive, Suite 120  
27       Las Vegas, NV 89144

28 James R. Maier, Esq. is expected to testify regarding the facts and circumstances surrounding  
29 this litigation.

30       7. Proper 30(b)(6) Representative for Maier Gutierrez & Associates  
31       c/o Joseph P. Garin, Esq. and Jonathan K. Wong, Esq.  
32       Lipson Neilson P.C.  
33       9900 Covington Cross Drive, Suite 120  
34       Las Vegas, NV 89144

1 The Proper 30(b)(6) Representative for Maier Gutierrez & Associates will testify about their  
2 knowledge of this litigation.

3 **II.**

4 **Copy or Description by Category of Document Within Plaintiff's Possession that May be**  
5 **Used to Support Defense**

- 6 1. Exhibits from various filed documents of this litigation, as SHERIDAN 000001-000228;  
7 2. Complaint for Legal Malpractice, case #: A-20-813635-C, as SHERIDAN 000229-  
8 000249;  
9 3. Order filed on 03/10/2021, Case #: CV20-01353, as SHERIDAN 000250-000255;  
10 4. Request for Exemption from Arbitration, case #: A-21-838187-C, as SHERIDAN  
11 000256-000267;  
12 5. Commissioner's Decision on Request for Exemption, case #: A-21-838187-C, as  
13 SHERIDAN 000268-000269; and  
14 6. Subpoena Duces Tecum for All Original Unredacted Billing Statements Regarding Rene  
15 Sheridan and GoRock LLC., case #: A-21-838187-C, as SHERIDAN 000270-000275.

16 **III.**

17 **Computation of Damages**

18 Pursuant to N.R.C.P. 16.1(a)(1)(C) below are the calculation of damages to date. Plaintiff  
19 reserves the right to supplement/amend his calculation as discovery continues.

Expense	Date	Damage
Unethical Actions and Negligence by Defendants	2017-2018	In excess of \$3,000,000.00
<b>Total Damages</b>		<b>&gt;\$3,000,000.00</b>

21 /////

22 /////

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1 IV.

2 **Any Insurance Agreement or Agreement by Person in the Insurance Business**

3 Not applicable.

4 DATED this 25th day of October, 2022.

5  
6 Respectfully submitted by:

7 

8 Rene Sheridan  
9 23823 Malibu Road, #50-364  
10 Malibu, CA 90265  
11 Tel: 310-422-9944  
12 In Pro Per  
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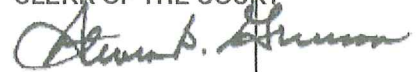
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Lipson Neilson P.C.  
Joseph P. Garin, Esq.  
Jonathan K. Wong, Esq.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, NV 89144

Kere Shen'dan

MSJD 006  
App 0412

# EXHIBIT B



DMJT  
Rene Sheridan  
23823 Malibu Road, #50-364  
Malibu, CA 90265  
Tel: 310-422-9944  
In Pro Per

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

RENE SHERIDAN, an individual, )  
Plaintiff, )

v. )

Case No. A-21-838187-C  
Dept. No. 22

JOSEPH A. GUTIERREZ, an individual; )  
STEVEN G. KNAUSS, an individual; )  
JASON R. MAIER, an individual; )  
MAIER GUTIERREZ & ASSOCIATES; )  
A Domestic Professional LLC, and )  
DOES I-XX, inclusive, and XYZ )  
CORPORATIONS' I-XX, inclusive, )  
Defendants. )

**PLAINTIFF'S ANSWERS TO  
DEFENDANT'S FIRST SET OF  
INTERROGATORIES TO PLAINTIFF  
RENE SHERIDAN**

Pursuant to NRCP 33(b), RENE SHERIDAN, Plaintiff in this case, answers and objects to the Interrogatories served by the Defendants JOSEPH A. GUTIERREZ, an individual; STEVEN G. KNAUSS, an individual; JASON R. MAIER, an individual. MAIER GUTIERREZ & ASSOCIATES, a Domestic Professional LLC.; by and through their attorneys JOSEPH P. GARIN, ESQ. and JONATHAN K. WONG, ESQ., as follows:

INTERROGATORY NO. 1: Identify each and every person who answered these Interrogatories, or who participated in the preparation of the answers to these Interrogatories.

ANSWER TO NO. 1: Dustin Voigt. 10845 Griffith Peak Drive, Las Vegas, NV 89135.

INTERROGATORY NO. 2: Identify the name, address and telephone number of each individual who has information discoverable under NRCP 26(b), including for impeachment or rebuttal, identifying the subject of the information. For each individual, state the facts you believe are known to that person, the basis for your belief that the person has knowledge of those facts and how the person acquired knowledge of those facts.

1                    ANSWER TO NO. 2: Michael Mushkin, 6070 S. Eastern Ave., #270, Las Vegas,  
2 NV 89119, 702-454-3333, [michael@mccnvlaw.com](mailto:michael@mccnvlaw.com), Defendant's unethical conduct.

3                    Gwendolyn Johnson Hall, Clark County Clerks, 200 Lewis Ave., Las Vegas, NV 89101,  
4 702-671-0660, Defendants, Maier Gutierrez involvement with incorrect data entry and falsifying  
5 information.

6                    Kristen Gallagher, McDonald Carano, 2300 W. Sahara Ave., Las Vegas, NV 89102, 702-  
7 873-4100, [kgallagher@mcdonaldcarano.com](mailto:kgallagher@mcdonaldcarano.com), Defendants, Maier Gutierrez, breach of  
8 confidentiality of essential material term, and unnecessary protracted drafting one-sided settlement  
9 agreement detrimental to Plaintiff and extended legal billings caused by Defendants actions.

10                    Maier Gutierrez, 8816 Spanish Ridge Ave., Las Vegas, NV 89148, 702-629-7900,  
11 [jag@mgalaw.com](mailto:jag@mgalaw.com), unqualified and inexperienced legal associates working on Plaintiff's case and  
12 engaged in fraudulent billing of Plaintiff. Numerous acts of Legal Malpractice.

13                    INTERROGATORY NO. 3: Please describe in detail your relationship with Patrick  
14 Cannon including a description of any agreement to assign or transfer any of the proceeds of this  
15 case to him. You should include as part of your answer how long you have known him, your prior  
16 working relationship, and all of the terms and conditions of your agreements with him related to  
17 this lawsuit.

18                    ANSWER TO NO. 3: Patrick Cannon is a colleague, known for approximately  
19 twenty years, invested in projects. There exists no agreements between Patrick Cannon and the  
20 Plaintiff pertaining to Maier Gutierrez legal malpractice lawsuit. Patrick Cannon and Go RockLLC  
21 have been damaged as a result of the unethical conduct/ legal malpractice of Defendants.

22                    INTERROGATORY NO. 4: Please describe in detail your relationship with GOROCK  
23 LLC including a description of any agreement to assign or transfer any of the proceeds of this case  
24 to that entity. You should include as part of your answer how long you have been associated with  
25 the entity, your prior working relationship with the entity, the extent of your ownership (since 2012  
to the present) in the entity, and all of the terms and conditions of your agreements with the entity  
related to this lawsuit



1           ANSWER TO NO. 4: GoRockLLC entity Patrick Cannon. No agreement to transfer  
2 or assign proceeds of this case to GoRockLLC. Plaintiff relationship with GoRockLLC  
3 involving Senior Moment Movie LLC investment. Plaintiff has no agreement with the entity  
4 related to this legal malpractice lawsuit. Patrick Cannon and GoRockLLC have been damaged as  
5 a result of the unethical conduct/ legal malpractice of Defendants-

6           INTERROGATORY NO. 5: Please identify each Nevada licensed attorney who will  
7 testify in support of your claim that Defendants committed legal malpractice which proximately  
8 caused you damages.

9           ANSWER TO NO. 5: Kristen T. Gallagher, Esq., McDonald Carano, 2300 West  
10 Sahara Ave. #1200, Las Vegas, NV 89102, Tele: (702) 873-4100, Email:  
11 [kgallagher@mcdonaldcarano.com](mailto:kgallagher@mcdonaldcarano.com). Additional expert witness statements provided once Plaintiff  
12 has received Defendants unredacted legal billing statements. Defendants have failed to provide a  
13 copy of the unredacted legal billing statements, claiming that the legal billing statements had been  
14 "lost".

15           INTERROGATORY NO. 6: Identify each and every element of damages you claim. For  
16 each element, identify the exact amount of damages claimed or, if applicable, the methodology  
17 used to compute any category of damages.

18           ANSWER TO NO. 6: Engaged the services of Maier Gutierrez- 19 Dec. 2017 -  
19 terminated the services of Maier Gutierrez Oct. 2018 - after continued unethical conduct -  
20 damaging Plaintiff and Plaintiff's colleagues.

21           Failed to secure proper discovery in underlying case- Sheridan v Senior Moment Movie  
22 LLC- resulting in Plaintiff's loss of 50% ownership in film- sales with an estimated value- three  
23 million dollars plus.

24           Defendant Stephen Knauss committed perjury in court stating Plaintiff filed an incorrect/  
25 altered Order to benefit the Defendants and assist Defendants to obtain sanctions against Plaintiff.

26           Defendants, Maier Gutierrez acted against instructions of Plaintiff inserting incorrect  
27 language "meeting of the minds" to assist underlying defendants in order to bind a loose list of  
28 material terms to structure a damaging one-sided settlement agreement. Maier Gutierrez breached  
29 the essential material term of confidentiality causing additional protracted litigation resulting in

1 many months of additional legal billing for this legal malpractice and unethical conduct, while  
2 acting in consort with underlying Defendants attorneys.

3 Defendants, Maier Gutierrez refused to file a Satisfaction of Judgment in violation of  
4 Nevada law, instead maintaining a judgment of \$118,715.25 after payment of Attorney fees were  
5 paid in full. The unnecessary Judgment was placed on the public record for no other reason than  
6 to damage Plaintiff and her colleague's company GoRockLLC. Plaintiff was subjected to approx  
7 two additional years of litigation pursuing Defendants in order to have the Defendants file the  
8 legally required Satisfaction of Judgment. Clark County Clerk, Gwendolyn Johnson Hall had  
9 noted, that after Defendants finally filed their delinquent Satisfaction of Judgment, (706 days after  
10 Judgment was paid in full), on 16 Aug 2022, the document was not properly recorded and thus  
still maintained that the judgment against Plaintiff was not satisfied.

11 Defendants, Maier Gutierrez continued to slander the Plaintiff through Defendant's false  
12 claim that Plaintiff's claims were meritless and Plaintiff was a vexatious litigant. Plaintiff has  
13 suffered permanent loss of investors/ investment and reputation. These ethical lapses by the  
14 Defendants have resulted in severe consequences on Plaintiff's business and professional  
reputation and the loss of current and future clients.

15 INTERROGATORY NO. 7: Do you maintain that, but for the alleged malpractice of  
16 Defendants, you would have obtained a more favorable outcome in the Underlying Case? If so,  
17 please describe specifically what outcome you believe you would have obtained, and state all bases  
18 supporting such assertion

19 ANSWER TO NO. 7: Plaintiff maintains that, but for the unethical, gross  
20 misconduct/ legal malpractice of the Defendants Maier Gutierrez, Plaintiff would have obtained a  
21 more favorable outcome in the underlying case. Defendants' legal malpractice includes failing to  
22 secure proper discovery, committing acts of perjury in court to avoid sanctions against underlying  
23 Defendant's attorney and acting against Plaintiff's express instructions to not use the false and  
24 purposely misleading statement that there existed a "meeting of the minds" between the parties.  
25 This willful act was done to assist underlying Defendants in their efforts to bind a loose list of  
material terms into a one-sided settlement agreement detrimental to the Plaintiff, and cause many  
months of unnecessary and fraudulent legal Billings. The Defendants additionally breached an  
essential material term of Confidentiality causing irreparable damage and harm to Plaintiff.

1 If not but for the Defendants, Maier Gutierrez legal malpractice, Plaintiff could have  
2 placed the film project into the hands of professionals to complete and sell for minimum sales  
3 estimates - Plaintiff 50% ownership loss- \$3,000,000.00.

4 If not for the Defendants Plaintiff would not have to endure over three years of litigation  
5 following Defendant's admitted Legal Malpractice of breaching the Plaintiff's Settlement  
6 Agreement's Essential Material Term of Confidentiality, and placing an unnecessary credit and  
7 character destroying Judgement against the Plaintiff for Defendant's fully paid attorney fees.

8 INTERROGATORY NO. 8: Identify all actions and/or inactions of Defendants that form  
9 the basis of your claim for legal malpractice against them.

10 ANSWER TO NO. 8: See answers to Interrogatories number 6 and number 7.

11 INTERROGATORY NO. 9: Identify all business opportunities that you believe you  
12 missed or lost as a direct result of Defendants' alleged malpractice.

13 ANSWER TO NO. 9: see answer Interrogatory number 7.

14 Plaintiff was forced into protracted litigation for over three years as a result of the  
15 Defendant's admitted breach of the settlement agreement's confidentiality clause and maintaining  
16 a damaging judgment for almost two years after the judgment was fully satisfied.

17 Plaintiff's investment/business opportunities were lost as a direct result of Defendant's  
18 unethical conduct and protracted litigation relating to Defendant's legal malpractice, which  
19 resulted in Plaintiff's inability to extend time and resources for production projects and other  
20 business ventures. Had Defendants taken responsibility for the breach of Plaintiff's Settlement  
21 Agreement and other ethical lapses, paid Plaintiff the restitution to mitigate the damage caused by  
22 Defendant's unethical conduct, there would have been no need for three years of this protracted  
23 litigation and the additional damage done to the Plaintiff's credit worthiness, personal character  
24 and professional reputation.

25 INTERROGATORY NO. 10: State all facts supporting your allegation that "[t]he damages  
done to plaintiff's professional reputation and value was, and will always be, devastating to  
Plaintiff's career," as alleged in Paragraph 39 of Your Complaint.

ANSWER TO NO. 10: see answer Interrogatory numbers 7, 8 and 9.



1 Investors and other business professionals decline to be involved with business associates  
2 that breach the confidentiality of agreements and are deemed vexatious litigants filing meritless  
3 cases, (i.e., "Other Civil Matters").

4 INTERROGATORY NO. 11: Please identify any and all agreements to assign or transfer  
5 proceeds received from this litigation to any third party.

6 ANSWER TO NO. 11:

7 There have been no agreements to assign or transfer proceeds received from this litigation at  
8 this time.

9 DATED this 19th day of December, 2022.

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1 VERIFICATION

2 STATE OF NEVADA )

3 COUNTY OF CLARK )

4 Under penalties of perjury, the undersigned, RENE SHERIDAN, Plaintiff named in the  
5 foregoing PLAINTIFF'S ANSWERS TO DEFENDANT'S FIRST SET OF  
6 INTERROGATORIES TO PLAINTIFF RENE SHERIDAN and knows the contents thereof; that  
7 the pleading is true of her own knowledge, except as to those matters stated on information and  
8 belief, and that as to such matters she believes it to be true.

9 DATED this 19th day of December, 2022.

10 *Rene Sheridan*  
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 19th day of December, 2022, I placed a true and correct copy of the foregoing PLAINTIFF'S ANSWERS TO DEFENDANT'S FIRST SET OF INTERROGATORIES TO PLAINTIFF RENE SHERIDAN in the United States Mail in Las Vegas, Nevada, with first-class postage prepaid, addressed to the following:

LIPSON NEILSON P.C.  
JOSEPH P. GARIN, Esq.  
JONATHON K. WONG, Esq.  
9900 Covington Cross Drive, Ste #120  
Las Vegas, Nevada 89144  
Phone; (702) 382-1500

DATED this 19th day of December, 2022.

Rene Sheridan

# EXHIBIT C



DMJT  
Rene Sheridan  
23823 Malibu Road, #50-364  
Malibu, CA 90265  
Tel: 310-422-9944  
In Pro Per

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

RENE SHERIDAN, an individual,  
Plaintiff,

v.

Case No. A-21-838187-C  
Dept. No. 22

JOSEPH A. GUTIERREZ, an individual;  
STEVEN G. KNAUSS, an individual;  
JASON R. MAIER, an individual;  
MAIER GUTIERREZ & ASSOCIATES;  
A Domestic Professional LLC, and  
DOES I-XX, inclusive, and XYZ  
CORPORATIONS' I-XX, inclusive,  
Defendants.

**PLAINTIFF'S ANSWERS TO  
DEFENDANT'S FIRST SET OF  
REQUEST FOR PRODUCTION OF  
DOCUMENTS TO RENE SHERIDAN**

TO: JOSEPH A. GUTIERREZ, an individual; STEVEN G. KNAUSS, an individual; JASON R. MAIER, an individual. MAIER GUTIERREZ & ASSOCIATES, a Domestic Professional LLC; and

TO: JOSEPH P. GARIN, ESQ. and JONATHAN K. WONG, ESQ., attorneys for Defendants:

Plaintiff, RENE SHERIDAN, in response to the Defendant's First Set of Requests for Production of Documents to Plaintiff Rene Sheridan on the 19th day of December, 2022 states as follows:

REQUEST NO. 1: Produce copies of all Documents regarding any Communications between You and Defendants from 2016 up to the present.

RESPONSE NO. 1: Engaged services of Defendants Maier Gutierrez – 19th Dec 2017- terminated Maier Gutierrez Oct 2018.

Documents regarding communications from Dec 2017 - present have been produced<sup>1</sup>.

<sup>1</sup> See Plaintiff's Initial Disclosures - filed October 25, 2022

1        REQUEST NO. 2: Produce all copies of your fee agreements with Defendants, including  
2 any modifications to your fee agreement.

3                RESPONSE NO. 2: See Plaintiff's Initial Disclosures - filed October 25<sup>th</sup>, 2022 -  
4 Maier Gutierrez engagement agreement dated 19th Dec. 2018<sup>2</sup> - attached again for convenience.

5        REQUEST NO. 3: For the period 2016 to the present, please produce a copy of your  
6 communications with any third party about any of Defendants. For any documents withheld on a  
7 claim of privilege, please provide a privilege log.

8                RESPONSE NO. 3: Engaged services of Defendants Maier Gutierrez- 19th Dec.  
9 2017- terminated Maier Gutierrez Oct. 2018.

10        See Plaintiff's Initial disclosures- filed October 25<sup>th</sup>, 2022.

11        Additional documents pertaining to Nevada State Bar violations<sup>3</sup>.

12        Nevada attorney Michael Mushkin communication<sup>4</sup>.

13        REQUEST NO. 4: Produce copies of all of your file materials related to the Underlying  
14 Case.

15                RESPONSE NO. 4: see Plaintiff's Initial Disclosures- filed October 25<sup>th</sup>, 2022 -  
16 Defendants are in possession of Plaintiff's original file materials in the underlying case and have  
17 refused to return these files to Plaintiff.

18        Documents filed in Washoe case # CV20-01353 went missing after change of venue  
19 granted and case and documents were transferred to Clark County.

20        Defendants Maier Gutierrez paid a filing fee and had case filed in Plaintiff's name as "Other  
21 Civil Matters" Plaintiff's case documents went missing from the record/ docket.

22        REQUEST NO. 5: Produce copies of all of your agreements with Patrick Cannon that are  
23 in any way related to this lawsuit  
24 \_\_\_\_\_

25 <sup>2</sup> See Maier Gutierrez engagement agreement attached hereto as **Exhibit "1"**.

<sup>3</sup> See Additional documents pertaining to Nevada State Bar violations attached hereto as **Exhibit "2"**.

<sup>4</sup> See Nevada attorney Michael Mushkin communication attached hereto as **Exhibit "3"**.

1           RESPONSE NO. 5: Plaintiff has no agreement with Patrick Cannon relating to the  
2 Legal Malpractice lawsuit against Maier Gutierrez.

3           REQUEST NO. 6: Produce copies of all of your agreements with GOROCK LLC that are  
4 in any way related to this lawsuit.

5           RESPONSE NO. 6: Plaintiff has no agreements with GoRockLLC relating to the  
6 Legal Malpractice lawsuit against Maier Gutierrez.

7           REQUEST NO. 7: Produce copies of your filed local, state and federal tax returns for the  
8 period 2016 to the present

9           RESPONSE NO. 7: Plaintiff's tax returns have no relevance to this case and  
10 therefore will not be produced.

11          REQUEST NO. 8: Please produce a copy of any and all agreements to assign or transfer  
12 proceeds received from this litigation to any third party

13          RESPONSE NO. 8: Plaintiff has no agreement at this time to assign or transfer  
14 proceeds received from this litigation to any third party.

15          REQUEST NO. 9: Produce all documents evidencing damages to your career suffered as  
16 a result of Defendants' alleged misconduct, as set forth in Paragraph 39 of your Complaint.

17          RESPONSE NO. 9: see Plaintiff's Initial Disclosures- filed October 25<sup>th</sup>, 2022.

18          Defendants, Maier Gutierrez refused to file a Satisfaction of Judgment in violation of  
19 Nevada law, instead maintaining a judgment of \$118,715.25 after payment of Attorney fees were  
20 paid in full. The unnecessary Judgment was placed on the public record for no other reason than

21 /////

22 /////

23 /////

24 /////

25 /////



1 to damage Plaintiff and her colleague's company GoRockLLC.<sup>5</sup> Defendants finally filed  
2 their delinquent Satisfaction of Judgment, (706 days after Judgment was paid in full), on August  
3 16<sup>th</sup>, 2022<sup>6</sup>

4 DATED this 19th day of December, 2022.

6 Kere Sheridan

25  
<sup>5</sup> Document evidencing judgment on docket attached hereto as **Exhibit "4"**.

<sup>6</sup> See Exhibit #2 of Request for Exemption from Arbitration attached hereto as **Exhibit "5"**.

VERIFICATION

STATE OF NEVADA       )  
                                  )  
COUNTY OF CLARK       )

Under penalties of perjury, the undersigned, RENE SHERIDAN, Plaintiff named in the foregoing PLAINTIFF'S ANSWERS TO DEFENDANT'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF RENE SHERIDAN and knows the contents thereof; that the pleading is true of her own knowledge, except as to those matters stated on information and belief, and that as to such matters she believes it to be true.

DATED this 19th day of December, 2022.

*Rene Sheridan*



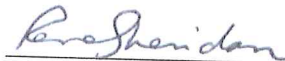
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**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 19th day of December, 2022, I placed a true and correct copy of the foregoing PLAINTIFF'S ANSWERS TO DEFENDANT'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS TO RENE SHERIDAN in the United States Mail in Las Vegas, Nevada, with first-class postage prepaid, addressed to the following:

LIPSON NEILSON P.C.  
JOSEPH P. GARIN, Esq.  
JONATHON K. WONG, Esq.  
9900 Covington Cross Drive, Ste #120  
Las Vegas, Nevada 89144  
Phone; (702) 382-1500

DATED this 19th day of December, 2022.

  
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# EXHIBIT D

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DISTRICT COURT

CLARK COUNTY, NEVADA

RENE SHERIDAN, an	)	
individual,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. A-21-838187-C
	)	
JOSEPH A. GUTIERREZ,	)	
ESQ.; STEVEN G. KNAUSS,	)	
ESQ.; JASON R. MAIER,	)	
ESQ.; MAIER GUTIERREZ &	)	
ASSOCIATES,	)	
	)	
Defendants.	)	
	)	

---

DEPOSITION OF RENE SHERIDAN

Taken on Wednesday, October 11, 2023

By a Certified Court Reporter and Legal Videographer

At 10:02 a.m.

Via Web-Based Videoconferencing

Reported by: Suzanne M. Stone, CCR 970, RPR

Job No. 54644, Firm No. 116F

1 record, and the time is 2:50 p.m.

2 MR. WONG: All right. Thank you.

3 BY MR. WONG:

4 Q. Ms. Sheridan, as we did just take a  
5 break, I just have to ask you again. Is there  
6 anyone in the room other than yourself?

7 A. No.

8 Q. Okay. Thank you.

9 Let me get the share screen back up  
10 again.

11 Okay. Do you see the complaint again,  
12 Ms. Sheridan?

13 A. I do.

14 Q. Okay. Great.

15 So before we went on the break, we were  
16 talking about damages and that sort of a thing. You  
17 mentioned investments. How were you damaged in  
18 terms of investments as a result of that unredacted  
19 email?

20 A. I've lost investment money from, you  
21 know, quite a few investment sources. Again,  
22 anytime private equity or venture capital look, they  
23 have to run a KYI check, Know Your Client -- KY- --  
24 KYC. They do a KYC check. They have to run court  
25 records. They have to run if there's judgments.

1 They have to run if there's anyone that's involved  
2 in protracted litigation. So, you know,  
3 there -- there's, you know, much more that I'll be  
4 -- the damage done, I've lost quite a bit, but it's,  
5 you know, going to be substantial more, and I'll  
6 probably never really know how much I've lost as a  
7 result of the conduct of this. But it's been  
8 substantial, in addition to the loss of --

9 Q. And how do you know that?

10 A. Because I've had some guys say that, "We  
11 can't, you know, right now." You know,  
12 they -- actually, like I said, somebody brought up,  
13 you know, why is this \$118,000 judgment against my  
14 name and GoRock's name. And that was -- you know,  
15 that was on the court record for -- what? -- 706  
16 days.

17 Q. Okay. So you said you've had --

18 A. And that lost -- I've -- I've  
19 lost -- yeah, like I said, I've lost, you know,  
20 hundreds and hundreds of thousands and investment  
21 money in the millions, you know, the projections as  
22 far as losing money.

23 Patrick Cannon and his group  
24 would -- would, I doubt, ever put, you know, because  
25 of the breach of confidentiality, because of the,

1     you know, tangled -- tangling them up in litigation,  
2     putting these judgments against GoRock, putting  
3     judgments against their name that are -- been long  
4     satisfied. You know, I've lost that source of  
5     investment, which, you know, for years, you know,  
6     those guys have been putting money into some of my  
7     projects, which has been really unfortunate.

8           Q.     Okay. So --

9           A.     Yeah, I would have to put the damage in  
10    the millions. You know, like I said, again, the  
11    loss of the half of the film, too, from the  
12    beginning, you know, which had the \$6 million. And  
13    I've lost quite a few projects, you know, where  
14    people like have looked and we've talked about it  
15    and --

16          Q.     Okay. Ms. Sheridan, I'm only asking  
17    about the investments right now.

18          A.     So that answers that one, I guess.

19          Q.     So which specific investors have you lost  
20    like --

21          A.     Well, quite a few. I mean, some of them,  
22    again, there's confidentiality. I'm not at liberty  
23    to give people's names that are investing in things.

24          Q.     Well, but you put it at issue by alleging  
25    it as an item of damages in this lawsuit.

1           A.       Yeah. I mean, the only one that right  
2 now -- like I said, that I'm not at liberty to  
3 disclose people's names. There's confidentiality  
4 that are investors. But Patrick Cannon and his  
5 colleagues, he's got colleagues that have invested  
6 with me with Patrick Cannon over the years that  
7 these guys will never invest with me again as to the  
8 conduct of Maier Gutierrez and Ayon, Knauss. I  
9 mean, they've -- you know, they've been damaged  
10 alongside.

11                    You know, it would have been a really  
12 good -- we had a value of \$6 million on that package  
13 of the film. You know, we could have set the  
14 project up. You know, Maier Gutierrez came in and  
15 threw our discovery, stepped into court and lied,  
16 tangled us up in -- then they took -- you know, then  
17 they put a judgment against GoRock and myself for a  
18 couple years after -- left it on the public record  
19 for a couple years after the judgment was satisfied  
20 by the Defendants who had -- they had been working  
21 for. I mean, some of this has been really, really  
22 damaging.

23           Q.       Okay. So you said --

24           A.       -- and I've lost investments  
25 from -- those guys have been longtime really good

1     like I said, you know, something I negotiated for  
2     that was important to me.

3           Q.     Okay. So, Ms. Sheridan --

4           A.     Yeah.

5           Q.     -- I'm only asking about Patrick Cannon  
6     right now.

7           A.     Yeah, that's what I was just saying.  
8     You're asking me why you think that he would never  
9     -- never be interested in getting involved in  
10    another project with me with him and his colleagues,  
11    and I was trying to explain, you know, once again  
12    why. That's why.

13          Q.     Okay.

14          A.     That's what he did.

15          Q.     How much did Mr. Cannon invest in the  
16    Senior Moment project?

17          A.     Again, I'm not at liberty to, you  
18    know -- him and his colleagues, I'm not at liberty  
19    to say anything. You'd have to ask Mr. Cannon.

20          Q.     Ms. Sheridan, you're claiming that as a  
21    component of your damages in this lawsuit; so it is  
22    at issue.

23          A.     No, I'm saying they -- no, the issue is  
24    he's -- he and his colleagues will never -- they  
25    have invested in projects over the years. They will



1 never invest with me again. That's one group.

2 And there are groups, like I said, that  
3 have brought up to me the issue that have to  
4 run -- they've run checks, you know, KYC, Know Your  
5 Client, you know, because they're dealing with other  
6 people's money. Again, they, you know, pull up that  
7 there's litigation. They pull up I've breached  
8 confidentiality clauses. They pulled up that  
9 there's judgments against my name that have long  
10 been satisfied, that sort of thing. So the -- yeah,  
11 that's caused me to lose investment money.

12 Q. Okay. What specific groups are those?

13 A. They were some New York -- again, I'm not  
14 at liberty to give specific groups and names of  
15 investors. There's confidentiality. But there's  
16 different groups of investors that I've put projects  
17 in front of over the years.

18 Q. Okay. So, again, it is at issue in this  
19 litigation, Ms. Sheridan. So if you hope to recover  
20 damages based on these purported investors, you're  
21 going to have to let me know what they are.

22 A. Yeah, no. I -- they're definitely  
23 in -- like I said, definitely in the hundreds of  
24 thousands, if not millions. I mean, there's some  
25 that I know about; some that I just know that they



1 declined to get involved as far as the reason being;  
2 some of them that directly brought up this  
3 litigation, you know, this litigation that caused  
4 confidentiality, you know, to be disclosed, that  
5 caused, you know, loss -- huge financial loss of the  
6 project, you know, caused somebody to get tied up in  
7 protracted litigation.

8           It turns off investors. And there's  
9 confidentiality with any investment agreement, you  
10 know. Some of those guys don't like their names  
11 being -- but I've -- I've lost a lot of projects and  
12 investment as a result of this conduct. And if I  
13 had to, you know, put a number, it's definitely, you  
14 know, in the hundreds and hundreds and hundreds of  
15 thousands, if not millions.

16           Q.     Aside from Senior Moment, has Patrick  
17 Cannon invested in any of your other projects?

18           A.     Yes.

19           Q.     Which ones?

20           A.     Again, I'm not at liberty to disclose all  
21 sorts of details. There are confidentiality  
22 agreements. You could ask Mr. Cannon. I mean, he's  
23 been very -- you're -- you know, you've been so  
24 insistent that he's not in a room or not around,  
25 but, you know, he's been very -- as, you know, you



## REPORTER'S CERTIFICATE

STATE OF NEVADA                    )  
  ) ss  
COUNTY OF CLARK                )

I, Suzanne M. Stone, a duly certified court reporter licensed in and for the State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, RENE SHERIDAN, at the time and place aforesaid;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

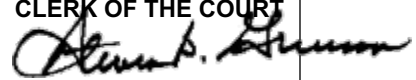
That I thereafter transcribed my shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate record of testimony provided by the witness at said time to the best of my ability.

I further certify (1) that I am not a relative, employee or independent contractor of counsel of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned; and (2) that transcript review pursuant to NRCP 30(e) was not requested.

IN WITNESS WHEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 21st day of October 2023.



Suzanne M. Stone, CCR 970, RPR



MICHAEL R. MUSHKIN, ESQ.  
Nevada Bar No. 2421  
L. JOE COPPEDGE, ESQ.  
Nevada Bar No. 4954  
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michael@mccnvlaw.com  
jcoppedge@mccnvlaw.com

*Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY NEVADA**

RENE SHERIDAN, an individual,  
  
Plaintiff,

vs.

JOSEPH A. GUTIERREZ, an individual;  
STEVEN G. KNAUSS, an individual; JASON  
R. MAIER, an individual MAIER  
GUTIERREZ & ASSOCIATES; a Domestic  
Professional LLC, and DOES I-XX, inclusive;  
and XYZ CORPORATIONS I-XX, inclusive,  
  
Defendants.

Case No.: A-21-838187-C  
Dept. No.: XXII

Hearing Date: December 14, 2023  
Hearin Time: 9:00 am

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT BASED ON PLAINTIFF'S FAILURE TO PROVIDE DAMAGES  
COMPUTATION, OR ALTERNATIVELY, FOR RULE 37 SANCTIONS**

Plaintiff Rene Sheridan ("Sheridan" or "Plaintiff") by and through her attorney, Michael R. Mushkin, of the law firm of Mushkin & Coppedge, hereby submits her Opposition to Defendants Motion for Summary Judgment Based on Plaintiff's Failure to Provide Damages Computation, or Alternatively, for Rule 37 Sanctions. This Opposition is made and based upon the following Memorandum of Points and Authorities, the papers, pleadings, and records, and any and all arguments that may be allowed at the time of hearing of this motion.

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This is a legal malpractice action brought by Plaintiff against her prior lawyers, Defendants Joseph A. Gutierrez, Steven G. Knauss, Jason R. Maier, and Maier Gutierrez & Associates. Sheridan's malpractice action stems from Defendants' negligent legal representation in litigation concerning a business dispute.

### A. Standard of Review

A principal purpose of summary judgment is to isolate and dispose of factually unsupported claims. *Las Vegas Tribe of Paiute Indians v. Phebus*, 5 F. Supp. 3d, 1221, 1227 (D. Nev. 2014) (citing *Celotex*, 477 U.S. at 323-24). Summary judgement is not intended to determine the truth of the matter but rather to determine whether there is a genuine issue of material fact necessitating a trial. *Balint v. Carson City*, 180 F.3d 1047, 1050 (9<sup>th</sup> Cir. 1999); *Conn v. City of Reno*, 572 F.3d 1047, 1054 (9<sup>th</sup> Cir. 2009).

“When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party.” *Clark County School District v. Payo*, 403 P.3d 1270, 1275 (Nev. 2017). If the moving party meets his burden of demonstrating that there is no genuine dispute of material fact, the non-moving party bears the burden to set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him. *Collins v. Union Federal Savings & Loan*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983).

To establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626 (9th Cir. 1987).

## 1. Professional Negligence/Malpractice

The elements for a claim of legal malpractice are the existence of “an attorney-client relationship, a duty owed to the client by the attorney, breach of that duty, and the breach as

1 proximate cause of the client's damages." *Semenza v. Nevada Med. Liability Ins. Co.*, 104 Nev.  
2 666, 667-68, 765 P.2d 184, 185 (1988).

3 An attorney-client relationship was clearly created between Defendants and Plaintiff hired  
4 the Defendants to represent her and her company, GoRock, LLC in litigation concerning a  
5 business dispute involving the theft of Plaintiff's intellectual property rights and half ownership  
6 of the production of a motion picture, as well as a filing with the Nevada Secretary of State in  
7 which Plaintiff's name was fraudulently removed from the business representing the movie  
8 production. This matter was ultimately settled to which Plaintiff agreed to a fraction of the value  
9 of Plaintiff's half ownership of the production of the motion picture under the terms of the  
10 settlement agreement.

11 Defendants breached their duty under the attorney client relationship when Defendants  
12 did not advocate for their client and created a one-sided settlement agreement that was damaging  
13 to their client; disclosed the material terms of the settlement agreement in a publicly filed  
14 document; and further failing to timely file Satisfaction of Judgment on Attorney Lien. Due to  
15 Defendants' actions, Plaintiff's personal and business credit rating was damaged; Plaintiff's  
16 professional reputation was damaged; Plaintiff lost funding in her productions; and Plaintiff was  
17 further damaged by paying legal fees for Defendants' activities in not zealously representing their  
18 client.

## 19 **2. Request for Alternative Relief**

20 NRCP 37 sanctions is not appropriate in this matter. NRCP 37 requires that a party must  
21 first move for an order compelling disclosure or discovery. Sanctions can apply if, after making  
22 attempt to resolve the issue, a party files a motion and brings it before the court of Discovery  
23 Commissioner.<sup>1</sup> Defendants have had ample time to file a motion to compel the disclosure of  
24 damages as required by Rule 16.1(a).

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27 <sup>1</sup> In the Eighth Judicial District Court "Unless otherwise ordered, all discovery disputes ... must first be heard by the  
28 discovery commissioner." EDCR 2.34(a). Any issue that was "presentable" to the discovery commissioner but was  
not first raised to the discovery commissioner is waived and cannot thereafter be raised in district court. *Valley Health  
System, L.L.C. v. Eighth Judicial Dist. Ct.*, 127 Nev. 167, 173, 252 P.3d 676, 680 (2011).

1 NRCP 37

2 (a) Motion for an Order Compelling Disclosure or Discovery.

3 (1) In General. On notice to other parties and all affected persons, a  
4 party may move for an order compelling disclosure or discovery. The  
5 motion must include a certification that the movant has in good faith  
6 conferred or attempted to confer with the person or party failing to  
7 make disclosure or discovery in an effort to obtain it without court  
8 action.

9 (2) Appropriate Court. A motion for an order to a party must be made  
10 in the court where the action is pending. A motion for an order to a  
11 nonparty must be made in the court where the discovery is or will be  
12 taken.

13 (3) Specific Motions.

14 (A) To Compel Disclosure. If a party fails to make a disclosure  
15 required by Rule 16.1(a), 16.2(d), or 16.205(d), any other party  
16 may move to compel disclosure and for appropriate sanctions.

17 In this matter no motion to compel was ever filed.

18 Although Plaintiff did not provide a formal NRCP 16.1 computation of damages, she did  
19 disclose a general calculation of her damages. The Defendants have been aware of Plaintiff's  
20 damage calculations as disclosed in her Request for Exemption from Arbitration filed on  
21 September 14, 2022 (Doc ID#71), Plaintiff's Initial Disclosure of Witnesses and Documents filed  
22 on October 25, 2022 (Doc ID# 86),<sup>2</sup> Plaintiff's Disclosure of Expert Witnesses filed on July 10,  
23 2023(Doc ID# 116), and the Declaration of Rene Sheridan Exhibit 1 to Plaintiff's Opposition to  
24 Motion for Summary Judgment filed September 7, 2023 (Doc ID# 144).

25 A dispositive ruling is a severe sanction and pursuant to *Young v. Johnny Ribeiro Bldg.,*  
26 *Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), prior to granting such a sanction the district court must  
27 properly consider several factors.

28 Where the discovery sanctions are within the power of the district court,  
this court will not reverse the particular sanctions imposed absent a  
showing of abuse of discretion. *Kelly Broadcasting v. Sovereign*  
*Broadcast*, 96 Nev. 188, 192, 606 P.2d 1089, 1092 (1980). Even if we  
would not have imposed such sanctions in the first instance, we will not  
substitute our judgment for that of the district court. *Id.* Where the  
sanction is one of dismissal with prejudice, however, we believe that a

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<sup>2</sup> Defendants previously filed a Motion for Summary Judgment (Doc ID# 130) requesting that Plaintiff's Initial Expert Disclosure is Insufficient. This Court extended the hearing, to determine the sufficiency of Plaintiff's Experts, to be held after the depositions of Defendants Joseph Gutierrez and Steven Knaus, See Order On Defendants' Motion To Strike 1) Plaintiff's Untimely Opposition to Defendants' Motion for Summary Judgment; and 2) Improper Supplement to Initial Expert Disclosures; and Defendants' Motion for Summary Judgment filed October 14, 2023 (Doc ID#154). The depositions are scheduled for December 4, 2023 and December 7, 2023, the continued hearing on Doc ID# 130 is December 12, 2023.

1 somewhat heightened standard of review should apply. First, fundamental  
2 notions of due process require that the discovery sanctions for discovery  
3 abuses be just and that the sanctions relate to the claims which were at  
4 issue in the discovery order which is violated. *Wyle v. R.J. Reynolds*  
5 *Industries, Inc.*, 709 F.2d 585, 591 (9th Cir.1983). Second, while  
6 dismissal need not be preceded by other less severe sanctions, it should  
7 be imposed only after thoughtful consideration of all the factors involved  
8 in a particular case. *Aoude v. Mobile Oil Corporation*, 892 F.2d 1115 (1st  
9 Cir.1989). We will further require that every order of dismissal with  
10 prejudice as a discovery sanction be supported by an express, careful and  
11 preferably written explanation of the court's analysis of the pertinent  
12 factors. The factors a court may properly consider include, but are not  
13 limited to, the degree of willfulness of the offending party, the extent to  
14 which the non-offending party would be prejudiced by a lesser sanction,  
15 the severity of the sanction of dismissal relative to the severity of the  
16 discovery abuse, whether any evidence has been irreparably lost, the  
17 feasibility and fairness of alternative, less severe sanctions, such as an  
18 order deeming facts relating to improperly withheld or destroyed evidence  
19 to be admitted by the offending party, the policy favoring adjudication on  
20 the merits, whether sanctions unfairly operate to penalize a party for the  
21 misconduct of his or her attorney, and the need to deter both the parties  
22 and future litigants from similar abuses.

23 *Young* at 92-93, 779-80.

24 In the instant matter, preparing a formal calculation of damages is not a severe abuse of  
25 discovery. Plaintiff has disclosed her damages no less than four (4) times. Further, it is  
26 disingenuous of Defendants to state that they will be prejudiced as discovery is long closed.  
Defendants have previously proposed extending Discovery to January 9, 2024. Although this  
matter has been ongoing since August of 2020, it was Defendants that filed several motions for  
dismissal and a motion to transfer the venue, to delay this matter; the Answer to Complaint was  
not filed until August 31, 2022.<sup>3</sup> Further, Discovery did not begin until November 28, 2022.<sup>4</sup>

The Nevada Supreme Court has held “[w]here an essential element of a party’s case can  
be easily and readily established by reopening the case, refusal to allow the case to be reopened  
will most often constitute an abuse of discretion.” *Andolino v. State*, 99 Nev. 346, 351, 662 P.2d  
631, 634 (1983). “In order that justice be done, district courts should freely grant leave to amend  
and reopen.” *Ford v. Ford*, 105 Nev. 672, 676, 782 P.2d 1304, 1307 (1989). Should this Court  
believe that a formal calculation of damages is essential to Plaintiff’s case, Plaintiff requests

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<sup>3</sup> See Doc ID# 66, Defendants Answer and Affirmative Defenses

<sup>4</sup> See NRCP 26(a): At any time after the filing of a joint case conference report, or not sooner than 14 days after a  
party has filed a separate case conference report, or upon order by the court or discovery commissioner, any party  
who has complied with Rule 16.1(a)(1), 16.2, or 16.205 may obtain discovery by any means permitted by these rules.



1 limited discovery to supplement her calculation of damages.

2 **III. Conclusion**

3 In evaluating the Motion, this Court must construe the evidence in the light most favorable  
4 to the Plaintiff. Plaintiff has set forth in great detail sufficient evidence to support his claim for  
5 relief. Based on the foregoing, Plaintiff respectfully requests that the Motion for Summary  
6 Judgment be denied in all respects.

7 Further if the Court deems that a formal calculation is necessary, Plaintiff requests that  
8 Discovery be reopened for the limited purpose of providing the required information.

9 DATED this 28<sup>th</sup> day of November 2023

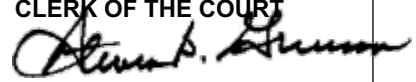
10 MUSHKIN & COPPEDGE

11  
12 /s/Michael R. Mushkin  
13 MICHAEL R. MUSHKIN, ESQ.  
14 Nevada Bar No. 2421  
15 L. JOE COPPEDGE, ESQ.  
16 Nevada Bar No. 4954  
17 6070 South Eastern Ave Ste 270  
18 Las Vegas, NV 89119

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that the foregoing **Plaintiff's Opposition to Defendants' Motion for**  
20 **Summary Judgment Based on Plaintiff's Failure to Provide Damages Computation, or**  
21 **Alternatively, for Rule 37 Sanctions** was submitted electronically for filing and/or service with  
22 the Eighth Judicial District Court on this 28<sup>th</sup> day of November 2023. Electronic service of the  
23 foregoing document shall be upon all parties listed on the Odyssey eFileNV service contact list.

24  
25 /s/Karen L. Foley  
26 An Employee of  
27 MUSHKIN & COPPEDGE  
28



**RIS**

LIPSON NEILSON P.C.  
JOSEPH P. GARIN, ESQ.  
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*Attorneys for Defendants*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\* \* \*

RENE SHERIDAN, an individual

Plaintiff,

vs.

JOSEPH A. GUTIERREZ, Esq.  
STEVEN G. KNAUSS, Esq.  
JASON R. MAIER, Esq.  
MAIER GUTIERREZ & ASSOCIATES

Defendants.

) Case No: A-21-838187-C

) Dept. No.: 22

) **DEFENDANTS' REPLY IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT BASED ON PLAINTIFF'S  
FAILURE TO PROVIDE DAMAGES  
COMPUTATION, OR  
ALTERNATIVELY, FOR RULE 37  
SANCTIONS**

) **Hearing Date: December 14, 2023  
Hearing Time: 9:00 a.m.**

COME NOW, Defendants MAIER GUTIERREZ & ASSOCIATES, JOSEPH GUTIERREZ, ESQ., STEVEN KNAUSS, ESQ., AND JASON MAIER, ESQ. (collectively, "Defendants"), by and through their counsel of record, LIPSON NEILSON P.C., and hereby file their Reply in Support of Motion for Summary Judgment Based On Plaintiff's Failure To Provide Damages Computation, Or Alternatively, For Rule 37 Sanctions ("Reply"). This Reply is based upon the pleadings, papers, and records on file herein, the following memorandum of points and authorities, and any oral argument that this Court may entertain.

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///

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

In her Opposition to Defendants' Motion, Plaintiff admits that she "did not provide a formal NRCP 16.1 computation of damages," but argues that Defendants' Motion should still be denied because 1) disputes of material fact exist as to the other elements of her professional negligence claim; 2) Rule 37 sanctions are unavailable here because Defendants did not first file a motion to compel discovery relating to damages and the issue was not first raised with the discovery commissioner; and 3) discovery should be reopened to allow Plaintiff to supplement her damages. None of these arguments have merit.

First, Plaintiff's discussion about the other elements of her professional malpractice claim are irrelevant to the instant analysis. Defendants' instant Motion seeks summary judgment based on the inability of Plaintiff to establish the element of damages given her failure to provide the requisite damages computation. Plaintiff's superficial discussion of duty and breach is irrelevant, as under Nevada law, "when one essential element of a claim for relief is absent, the facts, disputed or otherwise, as to the other elements are rendered immaterial and summary judgment is proper." *Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d at 592 (1992).

Second, Rule 37 sanctions are in fact available and proper here. NRCP 37(a) permits a party to file a motion to compel discovery, but does not require the same as a prerequisite to impose sanctions under NRCP 37(b). In fact, NRCP 37(c) specifically allows for the imposition of NRCP 37(b)(1) sanctions against a party that fails to provide information as required under NRCP 16.1(a)(1) (which encompasses the damages computation requirement). Moreover, NRCP 16.1(e) expressly authorizes imposition of sanctions under NRCP 37(b) for failure to comply with any provision of NRCP 16.1. Nowhere is there a requirement that an aggrieved party first file a motion to compel.

Plaintiff's contention that all requests for Rule 37 sanctions must first be heard and ruled upon by the discovery commissioner is similarly unavailing. EDCR 2.34(a) allows the district court discretion to "otherwise order" a discovery dispute be heard by the judge rather

1 than the discovery commissioner. Additionally, in *Pizarro-Ortega v. Cervantes-Lopez*, 133  
2 Nev. 261, 396 P.3d 783 (Nev. 2017), the Nevada Supreme Court clarified that the district  
3 court could impose discovery sanctions under NRCP 37 for failure of a party to submit the  
4 required damages computation. In a subsequent decision<sup>1</sup>, the Court of Appeals specifically  
5 found that the district court did not err in imposing NRCP 37 sanctions pursuant to *Pizarro-*  
6 *Ortega* without first raising the argument before the discovery commissioner, because  
7 *Pizarro-Ortega* vests district courts with the authority to directly impose such sanctions for  
8 failure to submit a damages computation.

9 Finally, Plaintiff's arguments about reopening discovery are inapposite. Plaintiff cites  
10 to cases where the Court reopened the case in chief to allow for the introduction of additional  
11 evidence, and argues that the same support her request to re-open discovery here. Plaintiff  
12 fails to grasp that these cases involved reopening of the case in chief during trial to allow  
13 additional evidence to be presented at the trial; it is an entirely different matter to re-open  
14 discovery in the pre-trial stage of a case after it has long since closed to allow for a party to  
15 supplement with information that it could have and should have provided from the outset.  
16 Not one of Plaintiff's cited cases support the latter relief. Indeed, Plaintiff's strained  
17 interpretation directly clashes with authority cited in Defendants' Motion that, where allowing  
18 for a late disclosure of damages would require reopening discovery and extending the trial,  
19 the failure to timely disclose the same is not "harmless." Plaintiff's interpretation of the law  
20 would also render meaningless the policy rationale of Rule 37 to provide "teeth" to the  
21 discovery disclosure requirements.

22 As set forth in detail herein, Plaintiff's Opposition is entirely without merit, and  
23 Defendants' Motion should be granted in its entirety.

24 ///

25 ///

26 ///

27 \_\_\_\_\_

28 <sup>1</sup> *Clark Cty. Credit Union v. Saunders*, 2020 Nev. App. Unpub. LEXIS 232, \*5, 2020 WL 1531772.

## II. LEGAL ARGUMENT

### A. Plaintiff Cannot Establish Damages Given Her Failure to Disclose the Requisite Damages Computation, and She Fails to Demonstrate Otherwise in Her Opposition

Plaintiff does not deny that under NRCP 16.1(a)(1)(A)(iv), she was required to, “without awaiting a discovery request, provide to [Defendants]: ... a computation of each category of damages claimed by [Plaintiff].” Plaintiff further admits that she “did not provide a formal NRCP 16.1 computation of damages.” See Opp’n at 4:11-12. Plaintiff argues that she nonetheless provided a “general calculation” of her damages, and that the same is apparently sufficient to satisfy the computation requirement of NRCP 16.1. Plaintiff provides no authority for what constitutes a “general calculation” and that such a calculation is sufficient under Rule 16.1, but claims that she provided this “general calculation” in four separate documents: her initial Rule 16.1 disclosures, her initial expert disclosures, her request for exemption from arbitration, and her declaration in opposition to Defendants’ pending Motion for Summary Judgment based on deficient expert disclosures. A cursory glance at these documents demonstrates that none of them come close to satisfying the “computation” requirement of NRCP 16.1:

- Initial Disclosures: Plaintiff’s “computation” merely claims “excess of \$3,000,000.00” caused by “Unethical Actions and Negligence by Defendants.” See **Exhibit “A”** to Defendants’ Motion.
- Initial Expert Disclosures: The report of Steven Istock does not address Plaintiff’s damages, but merely what he believes the “Senior Moment” film should have earned. Notwithstanding that Senior Moment’s performance cannot be properly considered a component of Plaintiff’s damages, Istock’s one-page report merely states conclusorily that Sheridan’s absence from the project reduced the operating revenue by “several hundred thousand dollars at least.” See Istock Report, attached hereto as **Exhibit “E.”** No computation is provided to support this.

- Request for Exemption from Arbitration: Similar to Plaintiff's initial Rule 16.1 disclosures, this document only states that Plaintiff's damages are "in excess of three million dollars (\$3,000,000)." See Request for Exemption, filed on September 14, 2022, on this Court's docket.
- Plaintiff's Declaration in Opposition to MSJ: Plaintiff merely states that she has suffered damages to her "personal and business credit rating," her professional reputation, loss of investment funding, and costs incurred relating to the lawsuit. She says that she quantifies these "in at least the amount of \$500,000." See Declaration, attached hereto as **Exhibit "F."**

None of these provide any actual "computation": Plaintiff merely throws out broad damages categories and figures. Again, "[t]he computation of each category of damages **requires more than the listing of the broad types of damages** so as to 'enable the defendants to understand the contours of their potential exposure and make informed decisions regarding settlement and discovery.'" *Calvert v. Ellis*, No. 2:13-CV-00464- APG, 2015 WL 631284, at \*2 (D. Nev. Feb. 12, 2015) (emphasis added). The computation requirement of NRCP 16.1(a)(1)(C) "anticipates both a computation of the total amount sought for each category of special damages and the provision of documents to support these claimed damages." *Walters v. Meeks*, No. 53856, 2011 Nev. Unpub. LEXIS 1633, at \*3 (Sep. 29, 2011).

Plaintiff has failed to provide such a computation and supporting documents, and with discovery now closed and trial fast-approaching, she cannot supplement her disclosures to provide for the same. As such, she cannot establish the element of damages as a matter of law, and Defendants are entitled to summary judgment on her remaining cause of action for professional negligence. See *Bulbman*, 108 Nev. at 111 ("Where an essential element of a claim for relief is absent, the facts, disputed or otherwise, as to other elements are rendered immaterial and summary judgment is

proper.”).<sup>2</sup> See also *Clark Cty. Credit Union*, 2020 Nev. App. Unpub. LEXIS 232 at \*5 (affirming the district court’s exclusion of damages for the plaintiff’s failure to provide a damages computation, and then finding that “because CCCU had no evidence of damages to present at trial, and there were no other disputed material facts at issue, we agree that Saunders was entitled to summary judgment as a matter of law.”); see also *Semenza v. Nev. Med. Liab. Ins. Co.*, 104 Nev. 666, 668, 765 P.2d 184, 185 (1988) (setting forth damages as a necessary element of a claim for legal malpractice).

**B. Rule 37 Sanctions are Appropriate Here, and this Court Has Authority to Impose the Same**

Plaintiff argues that Rule 37 sanctions are improper because Defendants did not first file a motion to compel, and Defendants did not first raise the issue before the Discovery Commissioner. Both arguments are without merit.

1. A motion to compel is not a prerequisite to seeking sanctions for Plaintiff’s failure to provide the required damages computation

To begin with, as it pertains to a party’s disclosure obligations, motions to compel the same are optional, not mandatory:

(a) Motion for an Order Compelling Disclosure or Discovery.

(1) In General. On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(2) Appropriate Court. A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken.

(3) Specific Motions.

(A) To Compel Disclosure. **If a party fails to make a disclosure required by Rule 16.1(a), 16.2(d), or 16.205(d), any other party may move to compel disclosure and for appropriate sanctions.**

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<sup>2</sup> In her Opposition, Plaintiff also makes conclusory arguments about breach of duty and causation. Defendants obviously dispute that she can establish any of these elements, and the same are not properly before this Court as they were not raised by Defendants in their underlying Motion. At any rate, disputes as to those elements do not preclude summary judgment here because as a matter of law, Plaintiff cannot establish the element of damages.

See NRCP 37(a) (emphasis added). There is no requirement that a motion to compel first be filed. Moreover, NRCP 16.1(e)(3) allows for imposition of NRCP 37(b) sanctions upon direct motion or of the court's own volition for failure of a party to comply with any provisions of NRCP 16.1:

(3) Other Grounds for Sanctions. If an attorney fails to reasonably comply with any provision of this rule, or if an attorney or a party fails to comply with an order entered under Rule 16.3, the court, on motion or on its own, should impose upon a party or a party's attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:

(A) **any of the sanctions available under Rules 37(b) and 37(f); or**

(B) an order prohibiting the use of any witness, document, or tangible thing that should have been disclosed, produced, exhibited, or exchanged under Rule 16.1(a).

See NRCP 16.1(e)(3) (emphasis added). Finally, NRCP 37(c) allows a party to directly petition the court for sanctions for another party's failure to comply with discovery obligations without first seeking to compel the same:

(c) Failure to Disclose, to Supplement an Earlier Response, or to Admit.

(1) Failure to Disclose or Supplement. **If a party fails to provide information or identify a witness as required by Rule 16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or 26(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:**

(A) may order payment of the reasonable expenses, including attorney fees, caused by the failure;

(B) may inform the jury of the party's failure; and

**(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(1).**

See NRCP 37(c) (emphasis added). Thus, under the plain text of these statutes, when as here, a plaintiff fails to comply with his or her discovery obligation to provide a damages computation, the other party may petition the court for Rule 37(b) sanctions. This is precisely what Defendants have done through their instant Motion.

2. The discovery commissioner was not required to first hear Defendants' request for sanctions

Plaintiff's argument that the Discovery Commissioner was required to first hear this



1 issue fares no better. In support of this proposition, Plaintiff cites to EDCR 2.34(a) and  
2 *Valley Health System, L.L.C. v. Eighth Judicial Dist. Ct.*, 127 Nev. 167, 173, 252 P.3d 676,  
3 680 (2011). EDCR 2.34(a) allows a district court discretion in hearing matters that would  
4 otherwise be directed to the discovery commissioner by ordering otherwise. See EDCR  
5 2.34(a). *Valley Health System* is inapposite as its holding applies only to new arguments  
6 raised in objection to a discovery commissioner's report and recommendation. See  
7 *Ferrellgas, Inc. v. Eighth Judicial Dist. Court of Nev.*, 502 P.3d 1091 n.2 (Nev. 2022)  
8 (rejecting that a party waived any good cause argument under NRCP 35 by not raising it  
9 before the discovery commissioner, because "*Valley Health's* bar applies to new  
10 arguments raised *in objection* to a discovery commissioner's report and  
11 recommendation.") (emphasis in original). If an issue is not addressed to the discovery  
12 commissioner to begin with, the rationale of *Valley Health* does not apply.

13 Even if *Valley Health* could be interpreted as broadly mandating that all discovery-  
14 related issues be first heard before the discovery commissioner, such a mandate was  
15 subsequently modified by intervening case law. In *Pizarro-Ortega v. Cervantes-Lopez*, 133  
16 Nev. 261, decided six years after *Valley Health*, the Nevada Supreme Court held that a  
17 district court could directly impose Rule 37 sanctions where a party fails to provide the  
18 requisite computation of damages. *Pizarro-Ortega*, 133 Nev. at 265 ("We clarify that when  
19 a party has failed to abide by NRCP 16.1's disclosure requirements, NRCP  
20 37(c)(1) provides the appropriate analytical framework for district courts to employ in  
21 determining the consequence of that failure."). The Court even went so far as to find that  
22 absolving a plaintiff of its obligation to provide such a computation constitutes error of law.  
23 *Id.* ("Thus, to the extent that the district court absolved respondents of their obligation  
24 under NRCP 16.1(a)(1)(C) to provide a computation of Christian's future medical expenses  
25 based on *FCH1* or a general understanding amongst Nevada practitioners, doing so was  
26 an error of law."). The Court made these rulings despite the parties not having first taken  
27 the dispute before the discovery commissioner.

28 The Court of Appeals recognized the impact of *Pizarro-Ortega* on EDCR 2.34(a) in

1 *Clark Cty. Credit Union v. Saunders*, 2020 Nev. App. Unpub. LEXIS 232, \*5, 2020 WL  
2 1531772. There, the court specifically considered the argument that the district court  
3 erred by allowing defendant Saunders to petition for Rule 37 sanctions because Saunders  
4 did not first raise the argument before the discovery commissioner. *Id.* at \*3. The court  
5 rejected this argument and held that the district court properly applied *Pizarro-Ortega* to  
6 strike plaintiff CCCU's damages for failure to comply with NRCP 16.1(a)(1). *Id.* at \*4-\*5  
7 (stating that "the district court did not err by applying the holding of *Pizarro-Ortega* to strike  
8 CCCU's damages for failing to comply with NRCP 16.1(a)(1).").

9 Accordingly, this Court may properly impose Rule 37 sanctions against Plaintiff  
10 despite Defendants having not first filed a motion to compel and despite the issue not  
11 having been first brought before the discovery commissioner.

12 3. Plaintiff does not meaningfully oppose the sanctions sought by  
13 Defendants

14 Plaintiff's arguments against Defendants' requested sanctions are almost all  
15 procedural in nature, as addressed (and refuted) above. She does not meaningfully  
16 address the substantive aspect of the sanctions sought in Defendants' Motion; rather, she  
17 merely block quotes the *Young* factors and states that dismissal is an improper sanction  
18 because there is no prejudice to Defendants given that discovery is "long closed," and that  
19 Defendants are somehow culpable because they exercised their right to have this case  
20 transferred back to Clark County from Washoe County. See Opp'n at 4:18 – 5:19.

21 Plaintiff's assertion that Defendants face no prejudice because discovery is closed  
22 is nonsensical; it is precisely *because* discovery is closed that Defendants will be  
23 prejudiced if sanctions are not imposed, because Defendants are unable to conduct  
24 discovery into the many facets of Plaintiff's claimed damages. This includes, but is not  
25 limited to, depositions of investors whom Plaintiff claims she lost as a result of the  
26 unredacted e-mail exhibit, depositions of those individuals organizing and running all  
27 projects that she claims she lost, and obtaining documents (likely through subpoenas  
28

duces tecum) relating to all of these.<sup>3</sup> The inability to conduct critical discovery has been found to constitute the requisite prejudice to support an imposition of Rule 37 sanctions. See, e.g., *Degrelle v. Simon Wiesenthal Ctr.*, 1989 U.S. App. LEXIS 24350, at \*6 (9th Cir. Aug. 2, 1989) (“The third Wiltec factor, prejudice to the defendants, also weighs in favor of dismissal. The inability of appellee to depose appellant impaired its ability ‘to go to trial’ and threatened to ‘interfere with the rightful decision of the case.’”); see also *Greene v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 27235, at \*22 (D. Nev. Jan. 26, 2016) (“Actions that impair an opposing party's ability to go to trial or interfere with the rightful decision of the case are prejudicial.”), citing to *Payne v. Exxon Corp.*, 121 F.3d 503, 508 (9th Cir. 1997).

Thus, the prejudice factor unequivocally favors imposition of sanctions, and Plaintiff does not address any of the other *Young* factors, which, as addressed in Defendants’ moving papers, also support sanctions.<sup>4</sup>

**C. Discovery Should Not Be Reopened, and Plaintiff Offers No Basis for Doing So**

Plaintiff requests that discovery be reopened to allow her to provide a damages computation. Opp’n at 5:20 – 6:1. She cites two cases in support of this request: *Andolino v. State*, 99 Nev. 346, 662 P.2d 631 (1983) and *Ford v. Ford*, 105 Nev. 672, 782 P.2d 1304 (1989). Neither case provides for the relief Plaintiff seeks. *Andolino* and *Ford* both involve requests to re-open a party’s case-in-chief at trial to introduce additional evidence; they do NOT provide for the re-opening of discovery in the pre-trial stage of a case after it has long since closed. See *Andolino*, 99 Nev. at 349 and 351 (“Plaintiffs then moved the court to **reopen their case in chief** in order to publish the deposition of Neil Emigh,” and “[g]enerally, the decision to **reopen a case** for the introduction of additional evidence is within the sound discretion of the trial court.”) (emphasis added); see also *Ford*, 105 Nev.

<sup>3</sup> An extensive (but not exhaustive) list of discovery that would be necessitated in the event Plaintiff were allowed to supplement her computation and disclosures is set forth on page 11, lines 12-24 of Defendants’ moving papers.

<sup>4</sup> Pursuant to EDCR 2.20(e), the failure to oppose an argument can be construed as an admission that the same is meritorious.

1 at 676 (stating that the issue was whether “the district court erred when it granted Dr.  
2 Ford’s **Motion to Reopen Trial** for the limited purpose of hearing additional testimony”)  
3 (emphasis added).

4 Expanding the holdings of *Andolino* and *Ford* to encompass the reopening of  
5 discovery in the pretrial stage of the case would directly contravene the policy  
6 considerations underlying NRCP 37, namely to “give[] teeth to [the damages computation  
7 disclosure requirement] by forbidding the use at trial of any information required to be  
8 disclosed by Rule 26(a) that is not properly disclosed.” *Hoffman v. Constr. Protective*  
9 *Servs.*, 541 F.3d 1175, 1179 (9th Cir. 2008). It would also render meaningless precedent  
10 finding that allowing for a late disclosure of new information is prejudicial and not  
11 “harmless” where the same would require re-opening discovery and issuing a new briefing  
12 schedule. *Id.* at 1180; see also *Degrelle*, 1989 U.S. App. LEXIS 24350, at \*6 (9th Cir.  
13 Aug. 2, 1989). Plaintiff also cannot get around the fact that “[b]elated compliance with  
14 discovery orders does not preclude the imposition of sanctions. **Last-minute tender of**  
15 **documents does not cure the prejudice to opponents nor does it restore to other**  
16 **litigants on a crowded docket the opportunity to use the courts.”** *Payne*, 121 F.3d at  
17 508 (emphasis added).

18 As an aside, Plaintiff frames her request as being of a “limited” nature to simply  
19 “supplement her computation of damages.” However, her lack of damages computation is  
20 not something that can be remedied by simply throwing out more numbers in a  
21 supplemental disclosure. Again, by her own assertions, Plaintiff’s damages stem from loss  
22 of investments and investors who purportedly no longer will do business with her, loss of  
23 projects, and damage to her career, all allegedly resulting from them viewing the  
24 unredacted e-mail exhibit.

25 To substantiate these alleged damages, Plaintiff would need, inter alia, to disclose  
26 the identities of all such investors who refuse to associate with her and all individuals  
27 relating to projects on which she has been excluded from, all communications with each  
28 such person, documents substantiating and evidencing all lost investments, and

documents and/or individuals who prove that she has suffered professionally as a result of the unredacted e-mail. See *Walters v. Meeks*, No. 53856, 2011 Nev. Unpub. LEXIS 1633, at \*3 (Sep. 29, 2011) (stating that the computation requirement of NRCP 16.1(a)(1)(C) “anticipates both a computation of the total amount sought for each category of special damages **and the provision of documents to support these claimed damages.**”). After disclosing the identities of these individuals (which Plaintiff was required pursuant to NRCP 16.1 to have done at the outset of discovery without awaiting a discovery request, yet did not do), Defendants would thereafter need to depose them, and potentially issue subpoenas duces tecum to ascertain further information. With discovery having been closed for over a month (it will be two months at the time of the hearing on this Motion) and trial set for February 2024, re-opening discovery is simply not feasible.<sup>5</sup>

### III. CONCLUSION

Based on the foregoing, Defendants respectfully request that this Court grant summary judgment in their favor given Plaintiff's inability to establish the element of damages, or alternatively request that this Court impose sanctions on Plaintiff pursuant to NRCP 37 in the form of either striking her cause of action for professional negligence or dismissing the proceeding.

DATED this 7<sup>th</sup> day of December, 2023.

LIPSON NEILSON P.C.

/s/ Jonathan K. Wong

By: \_\_\_\_\_

JOSEPH P. GARIN, ESQ.

Nevada Bar No. 6653

JONATHAN K. WONG, ESQ.

Nevada Bar No. 13621

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

(702) 382-1500

*Attorneys for Defendants*

<sup>5</sup> Defendants make this point simply to illustrate that Plaintiff's request is unworkable; the greater point remains that Plaintiff has no legal support for such a request in the first place, and allowing her requested relief would prejudice Defendants.

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 7<sup>th</sup> day of December, 2023, I electronically served the foregoing **DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT BASED ON PLAINTIFF'S FAILURE TO PROVIDE DAMAGES COMPUTATION, OR ALTERNATIVELY, FOR RULE 37 SANCTIONS** to the following parties utilizing the Court's E-File/ServeNV System:

Michael R. Mushkin, Esq. L. Joe Coppedge, Esq. MUSHKIN & COPPEDGE 6070 S. Eastern Avenue, Suite 270 Las Vegas, Nevada 89119 <a href="mailto:michael@mushlaw.com">michael@mushlaw.com</a> <a href="mailto:lcoppedge@mccnvlaw.com">lcoppedge@mccnvlaw.com</a>	
---	--

*Attorneys for Plaintiff*

*/s/ Michele Stones*

\_\_\_\_\_  
An Employee of LIPSON NEILSON P.C.

# EXHIBIT E

June 14, 2023

Rene Sheridan  
23823 Malibu Road #50-364  
Malibu, CA 90265  
Email: rsheridan34@aol.com

Re: "Senior Moment" Feature Film

Dear Ms. Sheridan:

We reviewed the sales estimates and the apparently regrettable operating results of the Feature Film "Senior Moment" starring William Shatner, Christopher Lloyd and Jean Smart.

This included the previously prepared Sales Estimates by Territory using the Take and Asking Price columns which resulted in a \$3,595,000 take or floor asking price. This was substantially above by a wide margin the actual results that were previously shared with the appropriate partners of this project.

With a cast including William Shatner ("Star Trek"), Christopher Lloyd ("Back to the Future") and Jean Smart ("Designing Women") we would have expected the film to generate greater results.

For instance, even if we discounted the above Sales Estimate Take number by 75 percent, that would result in \$898,750 in Gross Sales.

The potential results of the production, in my opinion, were hurt by a number of factors, not the least of which was the fact that production itself was wrested from Ms. Sheridan's 50% ownership and control.

The film's potential was further damaged by the absence of Ms. Sheridan's expertise and industry professional relationships. The unfortunate events that followed Ms. Sheridan's involuntary absence from her production duties resulted in an inferior production, poor sales and marketing.

Litigation itself is a detriment to the creative process and especially so in the entertainment business whose lifeblood is the ability to raise large sums of money from seasoned investors.

In short, those that invest in film want to see their investment dollar on the screen, not tied up in production delays and the additional costs of litigation.

Another detriment to the ability to raise funding for film projects would be any violation to the confidentiality of contracts that contain the necessary confidentiality clause that spell out the details of the films funding. This information is priority information, and must always be kept confidential

The poor sales and marketing efforts of the film as well as the misfortune and potential negative publicity suffered by the events and disclosures you mention in your letter and correspondence and in our opinion, this reduced the operating revenue of this film by several hundred thousand dollars at least.

Our company exhibits and sells feature films and documentaries at the major film markets across the world including the American, Berlin, Cannes and Hong Kong film markets and we have produced several motion pictures and distributed dozens of films now to all six major continents in the world.

Please let us know if we can provide any more information or if a detailed analysis of this motion picture project is required.



Thank you again and best regards,

A handwritten signature in blue ink, appearing to read "Steven Istock". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steven Istock  
President and CEO  
California Pictures  
5225 Wilshire Blvd Suite 900  
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# EXHIBIT F

DECL  
Rene Sheridan  
23823 Malibu Road #50-364  
Malibu, CA 90265  
Phone: (310) 422-9944  
Email: rsheridan34@aol.com  
*Plaintiff in Proper Person*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

RENE SHERIDAN, an individual, )  
Plaintiff, ) Case No. A-21-838187-C  
Dept. No. 22

)  
)  
) **DECLARATION OF RENE SHERIDAN**  
v. )  
JOSEPH A. GUTIERREZ, an individual; )  
STEVEN G. KNAUSS, an individual; )  
JASON R. MAIER, an individual; )  
MAIER GUTIERREZ & ASSOCIATES; )  
A Domestic Professional LLC, and )  
CORPORATIONS' I-XX, inclusive, )  
Defendants

I, RENE SHERIDAN, hereby declares as follows:

I am over the age of eighteen (18) and I have personal knowledge of all the facts set forth herein.  
Except as otherwise indicated, all facts set forth in this declaration are based upon my own personal knowledge, my review of the relevant documents, and my opinion of the matters that are the issues of this lawsuit. If called to do so, I would competently and truthfully testify to all matters set forth herein, except for those matters stated to be based upon information and belief.

I have suffered damages as a result of the breach of the standard of care by the Defendants including but not limited to:

1. Damage to Plaintiff's personal & business credit rating.
2. Damage to Plaintiff's professional reputation.
3. Loss of Plaintiff's investment funding.

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4. Costs incurred due to Defendant's vexatious litigation, (legal & personal).

These damages are ongoing and I anticipate suffering future damages as described above.

The nature of these damages is difficult to quantify but my reasonable opinion is that I have been damaged to date in at least the amount of \$500,000 (Five hundred thousand dollars).

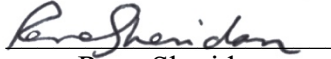
DATED this 7<sup>th</sup> day of September, 2023.

By: Rene Sheridan.

Rene Sheridan  
23823 Malibu Road #50-364  
Malibu, CA 90265  
Phone: (310) 422-9944  
Email: rsheridan34@aol.com  
*Plaintiff in Proper Person*

1  
2 **AFFIRMATION (per NRS 239B.030)**

3 The undersigned hereby affirms the preceding document does NOT contain the social  
4 security number of any person.

5   
6 Rene Sheridan

7  
8 **CERTIFICATE OF SERVICE**

9 I declare under penalty of perjury, that a true copy of the foregoing **DECLARATION OF**  
10 **RENE SHERIDAN** was served through Odyssey E-fileNV, pursuant to EDCR 7.26 and NEFCR  
11 Rule 9, upon all electronic service list recipients to the following:

12 Joseph A. Gutierrez  
13 [jag@mgalaw.com](mailto:jag@mgalaw.com)

14 Charity M. Johnson  
15 [cmj@mgalaw.com](mailto:cmj@mgalaw.com)


16 Jason R. Maier  
17 [jrm@mgalaw.com](mailto:jrm@mgalaw.com)

18 Jonathan Wong  
19 [jwong@lipsonneilson.com](mailto:jwong@lipsonneilson.com)

20 Michele Stones  
21 [mstones@lipsonneilson.com](mailto:mstones@lipsonneilson.com)

22 Joseph Garin  
23 [jgarin@lipsonneilson.com](mailto:jgarin@lipsonneilson.com)

24 Dated this 7th day of September, 2023.

25 By:   
26 Rene Sheridan (*Plaintiff in Proper Person*)  
27 23823 Malibu Road #50-364  
28 Malibu, CA 90265  
Phone: (310) 422-9944  
Email: [rsheridan34@aol.com](mailto:rsheridan34@aol.com)

**LIPSON NEILSON P.C.**  
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*Attorneys for Defendants*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**  
\* \* \*

RENE SHERIDAN, an individual	)	Case No: A-21-838187-C
	)	Dept. No.: 22
Plaintiff,	)	
vs.	)	
	)	
JOSEPH A. GUTIERREZ, Esq.	)	
STEVEN G. KNAUSS, Esq.	)	Hearing Date: December 14, 2023
JASON R. MAIER, Esq.	)	Hearing Time: 9:00 A.M.
MAIER GUTIERREZ & ASSOCIATES	)	
	)	
Defendants.	)	
_____	)	

**ORDER DENYING (1) PLAINTIFF'S MOTION TO ALTER OR AMEND ORDER;  
(2) PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT;  
(3) DEFENDANT'S MOTION FOR SUMMARY JUDGMENT  
OR ALTERNATIVELY FOR RULE 37 SANCTIONS; AND (4) DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT FILED AUGUST 22, 2023**

The Court having reviewed and considered Plaintiff's Motion to Alter or Amend Order Entered on October 14<sup>th</sup>, 2023; Plaintiff's Motion for Partial Summary Judgment, and Defendant's Motion for Summary Judgment Based on Plaintiff's Failure to Provide Damages Computation, or Alternatively, for Rule 37 Sanctions, and Defendants' Motion for Summary Judgment Filed August 22, 2023 (collectively the "Motions"), and it appearing to the satisfaction of the Court that good cause exists to deny the Motions, and the Court

1 having reviewed, and considered the record, the points and authorities on file, and the  
2 argument of counsel, and good cause appearing, finds and orders as follows:

3 1. On October 26<sup>th</sup>, 2023, Plaintiff, Rene Sheridan ("Plaintiff") filed Plaintiff's  
4 Motion to Alter or Amend Order Entered on October 14<sup>th</sup>, 2023, and Plaintiff's Motion for  
5 Partial Summary Judgment.

6 2. On November 9<sup>th</sup>, 2023, Defendants, Joseph Guterrez, Steven Knauss,  
7 Jason R. Maier, and Maier Gutierrez & Associates (collectively herein "Defendants") filed  
8 their Motion for Summary Judgment based on Plaintiff's Failure to Provide Damages  
9 Computation, or alternatively, for Rule 37 Sanctions.

10 3. On December 14<sup>th</sup>, 2023, before the Honorable Susan Johnson, the Court  
11 reviewed all pending Motions, the points and authorities on file, and the argument of  
12 counsel.

13 WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED  
14 AND DECREED that Plaintiff's Motion to Alter or Amend Order Entered on October 14<sup>th</sup>,  
15 2023, is hereby DENIED as the Court reviewed the Order and it complies with the Court's  
16 prior findings.

17 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for  
18 Partial Summary Judgment is DENIED as there are material issues of fact remaining.

19 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants' Motion  
20 for Summary Judgment Based on Plaintiff's Failure to Provide Damages Computation, or  
21 Alternatively, for Rule 37 Sanctions is DENIED. With respect to the Request for Rule 37  
22 Sanctions, Defendants did not first file a motion to compel Plaintiff's damages  
23 computation, and as such, this Court is unable to impose any Rule 37 Sanctions. The  
24 Motion is also DENIED as to the request for summary judgment.

25 ///

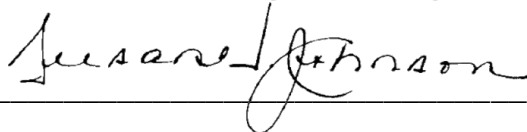
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IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment filed on August 22, 2023, is DENIED.

Dated this 12th day of January, 2024



**106 9AD AD7C 5F4E**  
**Susan Johnson**  
**District Court Judge**

Respectfully submitted by:

LIPSON NEILSON P.C.

/s/ Jonathan K. Wong

JOSEPH P. GARIN, ESQ.

Nevada Bar No. 6653

JONATHAN K. WONG, ESQ.

Nevada Bar No. 13621

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

*Attorneys for Defendants*



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Rene Sheridan, Plaintiff(s)

CASE NO: A-21-838187-C

7 vs.

DEPT. NO. Department 22

8 Joseph Gutierrez, ESQ,  
9 Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 1/12/2024

15 Charity Johnson

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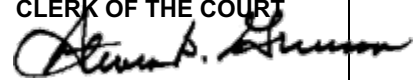
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Suzanne Zaranti

szaranti@mccnvlaw.com



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

RENE SHERIDAN,

Plaintiff,

vs.

JOSEPH GUTIERREZ, ESQ.,

Defendant.

CASE NO. A-21-838187-C

DEPT. XXII

BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE  
**DECEMBER 14, 2023**

**RECORDER'S TRANSCRIPT OF HEARING RE**  
***PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT***

APPEARANCES:

MICHAEL R. MUSHKIN, ESQ.

For the Plaintiff:

JONATHAN WONG, ESQ.

For the Defendant:

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 THURSDAY, DECEMBER 14, 2023 AT 11:05 A.M.

2  
3 THE COURT: Okay. Sheridan versus Gutierrez, case number A21-838187-  
4 C.

5 MR. MUSHKIN: Good morning, Your Honor. Mike Mushkin on behalf of the  
6 Plaintiff, bar number 2421.

7 MR. WONG: Good morning, Your Honor. Jonathan Wong, 13621 on behalf  
8 of Defendant.

9 THE COURT: Okay. And I'm delighted you're in the case, Mr. Mushkin.

10 MR. MUSHKIN: It's good to see you, Judge. I'm particularly impressed with  
11 the green robe.

12 THE COURT: It's the holidays so -- I know people don't know this but we can  
13 have just about any color we want, we just generally wear the black --

14 MR. MUSHKIN: As you know, Judge Delaney enjoys the green robe year  
15 round.

16 THE COURT: Yes, but hers is Kelly green and I couldn't quite get there.

17 Okay. We've got various motions here. First we've got Plaintiff's  
18 Motion to Alter or Amend the Order Entered October 14<sup>th</sup>. I was inclined to deny  
19 that because the order reflected exactly what I ordered.

20 MR. MUSHKIN: Your Honor, I'm not aware that that's on today. I believe that  
21 there are three motions on today, the -- the competing Motions for Summary  
22 Judgment and a Rule 37 motion.

23 THE COURT: Okay.

24 MR. MUSHKIN: I think that motion has been dealt with but I could be wrong  
25 because I am new to the -- the case.

1 THE COURT: Did I deal with that already? I didn't think that I had.

2 MR. WONG: You did not, Your Honor. It was my understanding that it was  
3 on today but I'll defer to however the Court would like to handle it.

4 THE COURT: Okay. Well, the order that was prepared by counsel I read it  
5 and it was exactly what I had done and so I'm gonna go ahead and deny that  
6 motion, okay?

7 All right. We've got Plaintiff's Motion for Partial Summary Judgment  
8 which, counsel, it appeared to me that one was already dealt with like back in July. I  
9 know that Ms. Sheridan had indicated that there -- that she was entitled to summary  
10 judgment, that it was -- that her claims were worth at least 50,000 because the  
11 discovery commissioner had exempted it from arbitration because it dealt with  
12 claims of 50,000 or -- or more and I don't know where she got that.

13 MR. MUSHKIN: Judge, I don't believe that's the gravitas of the motion.  
14 Plaintiff's Motion for Summary Judgment is based upon the admissions of the  
15 Defendants. There are two very clear acts that took place here that the Plaintiff  
16 alleges amount to negligence. The first one -- I'll do them in reverse chronological  
17 order. There is absolutely no information that's been provided to explain why after  
18 their judgment was paid they did not provide a satisfaction document. They've  
19 admitted it. So, to the extent that that gives rise to a claim there are no factual  
20 disputes. They received the money directly from the opposing party; my client  
21 asked for it repeatedly that the judgment be satisfied. What's interesting is that the  
22 only comment that's been made by the -- the Defendants is that she somehow could  
23 have done it herself and that's actually not the case, you must have proof from the  
24 party that holds the judgment in order to record the satisfaction. They didn't receive  
25 the money from my client; they received the money directly from McDonald, Carano.

1 That's actually not true, Judge, they actually received it directly from McDonald,  
2 Carano's client. Instead of the wire going to their trust account the wire went directly  
3 to Maier, Gutierrez. So, they get paid and 712 or 14 days later they get around to  
4 the satisfaction of judgment. That clearly damage to my client, damage to her -- to  
5 her reputation, to slander, to her credit. There's no question about it and they don't  
6 even argue that. So, to the extent that that finding creates negligence, that's the  
7 partial summary judgment.

8 Now, the other issue I believe is equally clear. So, it's fully briefed if  
9 you have questions, but that's what I believe is before the Court today. Their  
10 position today is that under Rule 37 we haven't set forth an adequate rendition of  
11 damages. It's been a long morning so I'm just gonna give -- very briefly on the Rule  
12 37 and it's in my pleadings. There's three different statements of damages. One is  
13 for 161, one in her deposition, and one in the declaration that she's -- she's filed so I  
14 -- I -- I'm sort of non-plused by the Rule 37 motion and if you have any other  
15 questions I'm happy to answer them. But there are certainly mater -- no material  
16 issue of facts as to the two separate acts of malpractice that we've alleged and I'm --  
17 I'll answer any questions you might have.

18 THE COURT: Well, let's go with the failing to provide a satisfaction of  
19 judgment. By that time Ms. Sheridan was not the client of Gutierrez so I'm  
20 wondering if there's a duty there.

21 MR. MUSKIN: They are the holder of the judgment, that's where the duty lies  
22 and I provided you the statutory citation.

23 THE COURT: Okay. And did she ever provide a document so that they could  
24 just sign it?

25 MR. MUSHKIN: She requested the document from them in fact got it by

1 going through the bar association. That's part of her declaration. She couldn't get it  
2 unless she went to the bar. Judge, I -- I think it's fair to say that my client doesn't  
3 believe that Maier, Gutierrez acted in her best interest. That's the issue that she has  
4 raised and the two separate acts are unrefuted. So, from our perspective we're  
5 asking for partial summary judgment on those two factual -- undisputed factual  
6 matters. So -- and they still haven't factually disputed it, they're just claiming that  
7 under Rule 37 they don't know what her damages are. In her effort to show that the  
8 Court had dealt with this issue she goes to the contested exemption from arbitration  
9 where the -- the arbitration judge found that there were damages in excess of  
10 \$50,000.0.

11 THE COURT: Well --

12 MR. MUSHKIN: That's not --

13 THE COURT: -- it involves an amount in excess of \$50,000.00.

14 MR. MUSHKIN: And I agree with you, Judge, but i'm -- what I'm trying to say  
15 is that they certainly can't stand before you and say that under our notice pleading  
16 statutes they haven't had information about damages provided to them. That would  
17 be the fourth prong, that would be -- the fourth issue on damages would be the -- the  
18 arbitration -- the granting of the exemption from arbitration but the other three are  
19 clear that the 16.1, her declaration, and her expert. So, they have damages that's  
20 why our response to the Rule 37 motion is really short and clear. They got it three  
21 times. That -- it's not -- I have to admit, Judge, I've never had to defend a Rule 37  
22 motion on damages because I've never seen it used to try and get a summary  
23 adjudication. Somebody always provides damages and in this case they haven't  
24 three different ways. So, I just don't understand their motion and how they would  
25 expect you to grant summary adjudication when there's that much information.

1 With that said, I now ask this Court to say, yeah, those two acts were  
2 not appropriate. You have to -- when you're paid, as the statute said, in a  
3 reasonable period of time you have to provide a satisfaction of judgment. That's  
4 absolutely clear. And so with all due respect, summary judgment is inappropriate  
5 from -- on their behalf. They have a Motion for Summary Judgment and Rule 37 is  
6 inappropriate because they've got three different renditions of damages from the  
7 Plaintiff. So, if you have any other questions, Judge, I'd be happy to answer them.

8 Mr. Wong is a fine guy and I -- I -- we've been -- we've worked well  
9 together, we've gotten -- I filed that supplement just so you'd know that the  
10 depositions of the two attorneys were taken and -- and to -- it is now been the  
11 testimony of both of those attorneys that they have no information on the satisfaction  
12 of judgment. That was somebody else in the office's responsibility, Mr. Maier I  
13 believe. So, to me it's actually quite clear, Judge, and I know it's been a long  
14 morning so I don't want to take up a lot of your time unless you have questions.

15 THE COURT: Well, no, this is what I do so I'm gonna listen to you.

16 MR. MUSHKIN: It certainly is, Judge. And this is the most daunting set of  
17 exhibits I may have seen since I was a law clerk in Washington, D.C., and if that's  
18 your law clerk good on your, sir, because that's gotta be no fun.

19 THE COURT: Okay. Where is it in your papers about the case that you've  
20 got a duty to provide a satisfaction of judgment?

21 MR. MUSHKIN: It's in the statute that we cited, Your Honor. I don't have the  
22 statutory number in my -- in front of me but --

23 THE COURT: Is it --

24 MR. MUSHKIN: -- the sta --

25 THE COURT: Because the --



1 MR. MUSHKIN: -- I want to say 17 -- I just don't recall. Give me just a  
2 moment and I'll pull it up with my camera.

3 THE COURT: Well --

4 MR. MUSHKIN: But the --

5 THE COURT: Because the -- the motion that was filed was from her when  
6 she --

7 MR. MUSHKIN: Yes, Your Honor.

8 THE COURT: -- was -- so, I'm looking all through that and I don't see it.

9 MR. MUSHKIN: It's in my reply I believe.

10 THE COURT: We've had problems with lawyers not giving us courtesy  
11 copies and -- let me see, there's one that looks -- no, that's Defendants. Oh, you  
12 filed it on December 13 and I've been in this trial dealing with all those. NRS 17 --

13 MR. MUSHKIN: There you go.

14 THE COURT: Okay.

15 MR. MUSHKIN: And I believe it says within a reasonable period of time.

16 THE COURT: Well, the remedy in that is whenever a judgment is satisfied in  
17 fact the party or attorney shall give such an acknowledgment and the party who has  
18 satisfied the judgment may move the court to compel it or to order the clerk to enter  
19 the satisfaction in the document of the judgment. Okay. I'll be honest with you,  
20 when I was in private practice if there was a satisfaction I usually sent a satisfaction  
21 of judgment to the other side to sign and then I went ahead and recorded it.

22 MR. MUSHKIN: Your Hon -- Your Honor, this is actually quite unique  
23 because this is a -- a -- and factually there were actually two attorney's liens, one --  
24 and both were paid. One was a lien, the other -- the Gutierrez lien was reduced to  
25 judgment and the -- the first attorney was paid, the lien is satisfied, no document

1 required, and the -- those payments came direct. So, my client wasn't in a position  
2 as you and I might have done in private practice to say here's the check, sign my  
3 satisfaction of judgment. So, once it was done then she made request after request  
4 after request then ultimately had to go to the bar and 712 days later they issue a  
5 satisfaction of judgment. I'm not sure what she could have done except as the rule  
6 says if you -- if you understand it more completely you file a motion to compel.

7 THE COURT: Right.

8 MS. MUSHKIN: And I'm acknowledging that that was not done here but that  
9 doesn't change the duty and the obligation of the party that's paid under NRS 17 at  
10 all to -- in a reasonable period of time provide the satisfaction of judgment.

11 THE COURT: Okay. And you ask -- now you're asking for summary  
12 judgment here. This also gets into how was she harmed by this and how much and  
13 all that and, you know, was she harmed by it? I mean --

14 MR. MUSHKIN: We've provided three different statements of why they've  
15 taken her deposition, she lost funding on movie projects, she had this judgment on  
16 her credit, she -- there are damages. Slander of credit is a stand-alone cause of  
17 action in this state and frankly, Judge, once the evidence is heard I'll probably move  
18 to conform the pleadings to the proofs, but this is a unique situation because this is  
19 her attorney that took an attorney's lien that did this. I know what my client wants  
20 me to allege and say and I'll do it on her behalf. She thinks this was done  
21 intentionally to harm her, that they were mad because she went to the bar, they  
22 were mad because there was this whole issue about enforcing the settlement  
23 agreement. If you recall the evidence in that her story was this was an agreement to  
24 agree not a meeting of the minds, her own attorneys said, no, it's a meeting of the  
25 minds and so that issue has been resolved unfortunately for her against her, but

1 when you put this in context why would they -- first of all they know the money is  
2 coming pursuant to the settlement agreement why reduce it to judgment, number  
3 one, and then after you pay why not issue the satisfaction the -- the very day you're  
4 paid which is what we would have done.

5           So, I don't have much sympathy in this particular case. I don't want to  
6 try and unwind the findings that have already been made but as to the two issues  
7 we've raised in our motion they have not effectively disputed it. So, those two  
8 factual matters are what we seek partial summary judgment on those undisputed  
9 facts and then you're right, we have to prove damages and we -- we may have a lot  
10 of damages, we may have very little damages but in this state under the notice  
11 provisions and given the information we've provided we get our day in court. And,  
12 Your Honor, that's why I'm here, I want her to have her day in court. She thinks that  
13 she has been abused by the system.

14           And I have one last comment to make and I'll try and make it a  
15 humorous one. We all see those commercials on television. We will never take  
16 more than you get from the settlement, they're never gonna take more than the  
17 client gets. Well, that didn't happen here, Judge, the attorneys got almost all of it.  
18 And that's her -- her perspective on this that they just ran this through on her. Okay.  
19 The settlement has been enforced, that's behind us, but the other actions of her  
20 counsel at the time they are not explained nor are they excused. Thank you, Judge.

21           THE COURT: Mr. Mushkin, how is she -- from what I understand she has --  
22 she has alleged that she's entitled to \$3 million plus. What are we talking about  
23 here? I mean -- and what -- what does she have to support it?

24           MR. MUSHKIN: So, Your Honor, during her deposition they questioned her  
25 on this very issue. She has various projects that she had in the pipeline, she has

1 one project that she lost as a direct result of the judgment, she will so -- so testify,  
2 and then she can explain to you how it's damaged her reputation in the -- in the  
3 community -- in the movie making community. As you probably are aware, you  
4 have to raise capital to do these projects and this dispute and the errors that  
5 occurred and the pleadings that were filed are damaging. The other act that is  
6 unrefuted is that they took the confidential settlement agreement and filed it in un-  
7 redacted form. So, now the movie world knows what she took to get out of that  
8 dispute. That's a great problem for her because she thinks she took way too little  
9 and now that specifically negotiated confidentiality provision was violated by her own  
10 attorney.

11 THE COURT: Wasn't that redacted shortly right -- right after? I thought it was  
12 redacted.

13 MR. MUSHKIN: It -- about three months later, a little over three months later  
14 they sealed it but it was never redacted. It was filed in its original form with the  
15 money amounts in it. So, that's a matter of public record for that period of time.

16 THE COURT: Why didn't she ask the Court to seal it?

17 MR. MUSHKIN: She didn't know until she saw it in the opposi -- in the  
18 opposing parties' pleading. She never was given a copy of her client's pleading,  
19 only her attorney's pleading. She only saw it in the opposition pleading and when  
20 she saw it she brought to Mr. Gutierrez' attention and he said I can't complain about  
21 them doing it, I did it first. And he -- and to his credit, Mr. Gutierrez admits it in an  
22 email and he admits it in his deposition. So, those two specific acts are undisputed  
23 and my client was damaged. She so alleged, she said -- whether it's 3 -- whether  
24 it's \$300,000.00 or whether it's \$3 million it's an issue of fact for the trier of fact to  
25 decide but they can't say that they're un -- that there are no damages pled. Under

1 rule 37 it would have to be -- they are too speculative, they're not pled, all those  
2 other issues that are not even raised. So, that's why I say I think the Rule 37 motion  
3 is not appropriate and I think that the competing summary judgment motions are  
4 pretty clear.

5 So, they don't argue that they published the confidential settlement  
6 agreement; they don't argue that they took 700 and some odd days to issue a  
7 satisfaction of judgment. Undisputed facts. And those are the underpinnings for the  
8 negligence that I intend to prove up damages on. If you have any other questions I'll  
9 be --

10 THE COURT: No.

11 MR. MUSHKIN: -- happy to answer them.

12 THE COURT: Okay. Counsel.

13 MR. WONG: Yes. Well, I guess --

14 THE COURT: Let's talk about the motion -- Plaintiff's Motion for Partial  
15 Summary Judgment.

16 MR. WONG: Certainly. So, I guess a number of things, Your Honor. There's  
17 -- and, you know, I similarly respect and like Mr. Mushkin so nothing I say here is  
18 intended to be personal or whatever, but, you know, there are a number of  
19 misrepresentations or things that are not in the actual pleadings that have been held  
20 before this Court. You know, for instance there's a contention that Plaintiff has  
21 repeatedly asked for the judgment to be satisfied. There's no evidence of  
22 communications of her doing that saying, hey guys, can you please satisfy this, can  
23 you satisfy this, can you satisfy this. We don't have any documentation of that sort  
24 nor did either Mr. Knaus -- or Gutierrez testify to the same at their depositions. So,  
25 that's -- you know, without more support it's, you know, unsubstantiated.

1 As far as their -- he issue of, you know, why couldn't there have been --  
2 why couldn't she have gotten it redacted or sealed. You know, Mr. Gutierrez did at  
3 that hearing on the Motion to Compel Settlement, a hearing I might add which was  
4 necessitated only as a result of Ms. Sheridan's [indecipherable] in trying to renege  
5 on the settlement. He did at that hearing before Judge Denton bring this issue  
6 before the judge, you know, hey, we've got this issue with this un-redacted email  
7 that should have been redacted. You know, I've spoken it over with Ms. Gallagher  
8 and we both agreed that, you know, it's not a breach where Ms. Gallagher wants to  
9 work with us to take any appropriate measures to get it redacted or sealed. So, it  
10 was raised before the Court at that hearing which was probably five days at most  
11 after this opposition was filed with the un-redacted email. And, you know, as Your  
12 Honor is aware at that hearing Ms. Sheridan terminated my counsel -- or my clients  
13 so, you know, at that point it was, you know, on her to follow through with getting  
14 this, you know, purportedly important and sensitive exhibit redacted and for  
15 whatever reason she didn't do so.

16 You know, so again, there -- my client took all the actions that he could  
17 at the time to make sure of that because the exhibit was redacted. So, to suggest  
18 otherwise is completely nonsensical and belied by the record. And I think -- with  
19 respect to this motion in particular I think it helps to take a step back and look at  
20 what specifically is the Plaintiff asking. You know, if it's simply an ask of I want to  
21 establish factually that on such and such date Mr. Gutierrez sent an email to Rene  
22 Sheridan saying, you know, we filed this opposition and inadvertently the -- this  
23 exhibit is un-redacted, yadda, yadda, yadda, and then, you know, on such and such  
24 date there was this attorney lien filed, it was satisfied on this date. If it's simply  
25 those factual items then, yeah, I don't -- you know, I can't oppose those. I think they

1 would have been much more properly flushed out through a request for admissions  
2 in the course of discovery but if the motion is simply trying to get those facts  
3 established then sure, but to the extent that the motion is, you know, trying to go a  
4 step further and say, well, based on those facts there is a breach of duty, there is,  
5 you know causation, there is damages. That is sort of the thing that needs to be  
6 supported by expert testimony which as we set forth in our other pending motion her  
7 expert reports were willfully inadequate on that front and they could have addressed  
8 it and they did not.

9           So, to the extent that the motion is seeking to go that extra step of not  
10 only establishing these facts but also saying they should get judgment in their favor  
11 at least on some of the elements as a matter of law because of these facts. We'd  
12 oppose [indecipherable] on that basis. And I -- if Your Honor has specific questions  
13 on -- on this particular motion I'm happy to -- to answer those. I'll save my  
14 comments on the Rule 37 sanctions motion until, you know, we're -- we're at that  
15 point unless Your Honor would prefer otherwise.

16           THE COURT: Okay. Counsel, Motion for Partial Summary Judgment. We're  
17 gonna talk about the Rule 37 motion in a little bit.

18           MR. MUSHKIN: My response will be very brief, Judge.

19           Counsel wants to say it's not a breach, it clearly is a breach. It's a  
20 confidential settlement agreement; if you publish it it's a breach. I don't know how to  
21 -- it's as plain as day. If it's confidential you can't publish it. They did, they admitted  
22 it so it is a breach. It's a breach by her own attorney at the time, not after he was  
23 released, when he was her attorney and he acknowledges it in the email. So, that's  
24 negligence, Judge, pure and simple.

25           Five days later they're in court, he's right, but it's three months later that

1 it's sealed. Why the wait? And it's the same issue with the satisfaction of judgment;  
2 they've got the money direct. Why almost two years before you satisfy that  
3 judgment? It -- it -- it smacks of punitive behavior. And the --

4 THE COURT: Mr. Mushkin, I'm gonna tell you this, that it was my memory  
5 that -- about the -- as you know, it was about the time that I -- I had this case and I  
6 saw that there was no satisfaction of judgment and to be honest with you counsel  
7 actually looked very surprised, he was unaware of it, and I ordered that he do it right  
8 away and he did.

9 MR. MUSHKIN: Two years --

10 THE COURT: So --

11 MR. MUSHKIN: -- after they were paid.

12 THE COURT: Well, I understand but I -- I don't know that I'm gonna fault  
13 counsel here because he was very surprised by it.

14 MR. MUSHKIN: I am not faulting counsel in any way; he had no way to know.  
15 The only people that knew were Maier, Gutierrez and associates and if they don't  
16 tell their attorney he's not gonna know and that's exactly what happened here. They  
17 just shuffled it off for two years -- 712 days. So, they publish it and then they wait  
18 712 days. Those facts are not in dispute and so that's why there's summary  
19 judgment on those facts and they're both negligent acts. I have to now prove up  
20 causation and damages. I'm not arguing against that, I think he's right. But, it's not  
21 appropriate for this case to be summarily disposed of until those issues are heard by  
22 the Court and the trier of fact and that's why we're here.

23 THE COURT: Okay. I'm gonna deny your Motion for Partial Summary  
24 Judgment, I think these are issues that need to go to the jury. I am also -- I'll tell you  
25 the -- I'm concerned about the satisfaction of judgment because your client had a



1 remedy according to the statute NRS 17.200 to compel the satisfaction, she didn't  
2 do it. So, it also gets into a causal issue there as well. So, I think there's issues of  
3 fact on that, okay?

4 MR. MUSHKIN: And I -- Judge, I can certainly understand that I believe that  
5 would go to time not to the element of negligence. There's no argument that they  
6 didn't in a reasonable period of time provide a satisfaction, now the question is is  
7 there a mitigating factor that my client should have done something more so that it  
8 didn't take two years. That's a damage issue but not a factual --

9 THE COURT: Well --

10 MR. MUSHKIN: -- dispute.

11 THE COURT: -- anyway I'm --

12 MR. MUSHKIN: But I understand where you're coming from.

13 THE COURT: Okay. And then the second thing, I think we've all seen in our  
14 career where we accidentally file a document we shouldn't have and then of course  
15 we -- sometimes we work [indecipherable] back and all of that. And I'll be honest  
16 with you, I'm struggling with whether or not that would be considered -- I mean, is it  
17 something that should not have been done? It -- whether that's malpractice or not.

18 MR. MUSHKIN: Well, that's why we have a trier of fact to --

19 THE COURT: That's --

20 MR. MUSHKIN: -- put that on.

21 THE COURT: -- that's why I think that that issue has also gotta go to the jury

22 --

23 MR. MUSHKIN: Okay.

24 THE COURT: -- okay?

25 MR. MUSHKIN: I understand where you're coming from --

1 THE COURT: Okay.

2 MR. MUSHKIN: -- Judge.

3 THE COURT: And I did deny the Plaintiff's Motion to Alter or Amend the  
4 Order.

5 THE COURT CLERK: Okay. Thank you.

6 THE COURT: Okay. All right. Now, we've got two motions for summary  
7 judgment. We've got Defendant's Motion for Summary Judgment Based upon  
8 Plaintiff's Failure to Provide Damage Computation or Alternatively for a Rule 37  
9 Sanctions and then we've for the Motion for Summary Judgment. So, why don't we  
10 do the Rule 37?

11 MR. WONG: Certainly, Your Honor.

12 So, as Your Honor, is aware, under Rule 16.1, subsection A1 a plaintiff  
13 is required to disclose a computation of each category of damages claimed and this  
14 entails not just throwing out some unsubstantiated random numbers but, you know,  
15 each category needs to be established with reasonable mathematical certainty and  
16 all of the documents supporting these computations must also be disclosed. And  
17 then, you know, another factor bearing on top of that is that cases such as this one  
18 where a Plaintiff is seeking to recover lost profits -- lost -- anticipated loss of profits.  
19 They also have to recover under *Knier v. Azores Construction*, 78 Nev. 20, they  
20 need to show that the business that they claim to have -- that was interrupted is an  
21 established one and that it had been successfully conducted for such a duration of  
22 time and had such a trade established that these lost profits were reasonably  
23 ascertainable so yet another facet that Plaintiff was required to establish in the  
24 course of discovery in this case. Here she has not given us anything beyond a very  
25 vague and unsubstantiated figure in her initial disclosures of excess of \$3 million for

1 some unethical and/or negligent acts of my clients.

2 Counsel mentions that, well, she also threw out some numbers in -- in  
3 affidavits in opposition to another Motion for Summary Judgment with respect -- she  
4 also threw out something in the request for exemption and there was one other  
5 document, but, you know, we sent those out in our reply brief. But all four of those  
6 doc -- or those other three documents suffer from the same issue as her initial  
7 disclosures in that they're just unsubstantiated numbers. You know, for instance  
8 her -- the declaration that she references, you know, she says that she's been  
9 damaged in excess of 500,000 -- or in at least 500,000. Again, there's no further  
10 information provided there, nothing that would even give us a hint as to, well, what's  
11 comprising that number. How can we confirm or dispute this calculation? You  
12 know, it's the same stuff repeated four different times and to make it worse, Your  
13 Honor, is that the Plaintiff can't even get her story straight. In her 16.1 she says \$3  
14 million, right? And then in this declaration she's saying 500,000. So, she's  
15 essentially contradicting herself, she can't make -- what her damages are and in her  
16 deposition as we cited she is also sort of all over the board and at one point even  
17 said, well, I'll probably never have an idea of actually how much I was damaged by  
18 -- so, you know, we're here just sort of tossing up our hands, like, you know, how  
19 can we even begin to ascertain the [indecipherable] of this and, you know, logically  
20 defend against it and try and refute it, you know, when this is all that she's given us.

21 So, you know, these minimal ascertains as to her damages that she's  
22 provided in the course of this very lengthy and proactive case fall very short of her  
23 obligations under 16.1, subsection A. So, you know, that opens her case to  
24 vulnerability on two separate fronts. The first is in the arena of summary judgment  
25 and this one is very simple. You know, she's got one cause of action against my

1 clients for legal malpractice and as Your Honor is aware damages is a key element  
2 of that. Well, discovery has been closed at this point for two months now, we've got  
3 trial approaching on the horizon, February of next year so, you know, at this point  
4 Plaintiff is stuck with what she did and quite frankly did not disclose in the course of  
5 discovery. So, given her deficient damages disclosures, you know, she cannot  
6 establish these damages as a matter of law and because she cannot do that she  
7 cannot prevail on her legal malpractice claim as a matter of law entitling my clients  
8 to summary judgment on the same. And, you know, I would just emphasize that  
9 with respect to looking at this damages issue under summary judgment it doesn't  
10 matter whether there are any disputed facts as to the other issues, you know, the  
11 satisfaction of judgment, the alleged breach of the settlement agreement. You  
12 know, I think it was the *Bulbman* case that we stated in our brief that says where  
13 one essential element to the claim for relief is absent, so damages here, the facts  
14 disputed or otherwise as to the other elements are rendered immaterial and  
15 summary judgment is proper. So, that's our ask for summary judgment here. The  
16 other area in which Plaintiff's failure to comply with her damages -- disclosure  
17 obligations exposes her case of vulnerability is the arena of Rule 37 sanctions and  
18 this is a bit of a more nuanced inquiry but it's still on that results in paper of my  
19 clients.

20           So, on this front I would start out by just stating that there -- there is no  
21 requirement under the rules that my clients first filed a Motion to Compel an item  
22 which the Plaintiff was affirmatively obligated to disclose under Rule 16.1 and if we  
23 look at Rule 16.1, subsection E3 this section specifically allows for imposition of  
24 sanctions. Under Rule 37 if a party fails to make a disclosure that is required under  
25 that statute which encompasses the damages computation requirement. Likewise,

1 Rule 37(c) also allows the party to directly seek sanctions from the Court, sanctions  
2 available under Rule 37(b) for failure to comply with discovery obligations. So, it's  
3 within that framework that we are making this ask here today. So, you know -- so,  
4 we've established that there's no need for a Motion to Compel or to take something  
5 before the discovery commissioner first. So, that brings us to the question of, well,  
6 what sanctions are appropriate? Well, under Rule 37(c) exclusion of evidence is the  
7 base line sanction for failure to disclose and this is a sanction that applies  
8 automatically unless -- unless the failure to disclose was substantially justified and  
9 also harmless and we don't have either of those here. There's absolutely no  
10 justification.

11           You know, all of the information on Plaintiff's alleged damages is -- has  
12 been in her possession -- her exclusive possession from day one. You know,  
13 names of investors, communications with them, written agreements, financial  
14 statements, documents related to projects that she says she lost and would have  
15 potentially otherwise been able to work on. You know, all of that it's in her  
16 possession and there's no reason why she was unable to disclose this, you know, at  
17 the outset of the case and she was in fact obligated to disclose it as early as  
18 possible in discovery and at a minimum before the close of discovery she didn't do  
19 so. And to make things worse, Your Honor, as we set forth in our brief, you know,  
20 my clients -- we've also been proactive in trying to get this information ourselves,  
21 you know, we served written discovery, we took her deposition but as we illustrated  
22 and I believe it was through a reply brief, you know, we were still involved on both  
23 fronts. You know, she didn't really provide any documents that would get at this  
24 stuff in her request for production and then at her deposition, yeah, sure, we asked  
25 about, you know, what investors have you lost? You know, how do you know that

1 they viewed this un-redacted email, what projects? How much did they invest with  
2 you? You know -- and, you know, we were -- it's met with evasive and quite frankly  
3 filibuster as to her responses where she would just turned the question into more  
4 accusations against my client and not give us any real information. It was other that  
5 or it was just, well, that's confidential, I can't say that. I -- there's a confidentiality, I  
6 can't say. So, you know, we've been stonewalled in our own efforts to ascertain  
7 this.

8           So, trying to get back to the -- the test here. There is no justification for  
9 the seller to disclose this damages information nor was it harmless, you know,  
10 because we've got discov -- or we got trial on the horizon and my clients can no  
11 longer conduct discovery into -- you know, the Plaintiff is very grandiose and  
12 [indecipherable] this theory of damages. And to the extent that, you know, they  
13 would ask, well, you know, we can always just re-open discovery to allow for the  
14 supplementation. You know, we always have good case law that says where  
15 allowing supplementation would require re-opening of discovery, continuing trial and  
16 issuing a new scheduling order. That -- it's not harmless and that's exactly what  
17 would be necessitated here. You know, if she were -- the supplement -- if she were  
18 to be allowed to supplement she couldn't just throw out some additional numbers or  
19 some document, you know, she's claiming that, you know, one, some unknown  
20 investors were monitoring this docket of the underlying case and somehow were  
21 able to pinpoint this email exhibit which was page 41 of a 42 page document and  
22 based on that day decided to call off their business dealings with her. You know, so  
23 she would have to disclose the names of every such investor, she would have to  
24 disclose her communications with them, she would have to disclose whatever  
25 agreement she has with them and on top of that once we get those we would need

1 to depose all of them to confirm, you know. their relationship with Ms. Sheridan. Did  
2 they in fact view the email? Were there any other factors that played -- that caused  
3 them to back out of whatever business arrangement they had? The list goes on and  
4 on. So, my point is that it's not something that can simply be remedied by, oh, you  
5 know, here's -- here's a document, you know, no harm, no foul sort of thing. So, it  
6 would not be harmless either.

7           So -- so, at a bare minimum the sanction of exclusion of evidence of  
8 damages is highly inappropriate here and under Rule 37 the statute also allows for  
9 sanctions -- greater sanctions in addition to we're in [indecipherable] of that based  
10 on the sanction whenever the *Young* factors are met. And as we set forth in our  
11 brief we've got a number of those -- a majority of those actually weigh in favor here.  
12 [indecipherable] is the offending party. Again, you know, this case has been  
13 dragging on forever, Plaintiff has had ample opportunity and time to throw forth  
14 anything and everything that she wants to that can substantiate her damages. We  
15 have tried to discover -- you know, take discovery to ourselves and have been  
16 stonewalled. So, it's -- it's been very willful her un-coop -- her lack of cooperation in  
17 the discovery process and just evasive conduct at her deposition. The severity of  
18 the sanction versus severity of abuse is another one that weighs in our favor. You  
19 know, as I just pointed out we're unable to obtain information into what is a very  
20 attenuative, very intricate theory of damages here and, you know, requiring my  
21 clients to go to trial with this hanging over them. You know, we're flying -- shooting  
22 in the dark here, Your Honor, and you have no idea what we'd be up against and  
23 how to even begin defending against it. So -- and the severity of the abuse cannot  
24 be understated.

25           As far as the feasibility of alternative sanctions, given the posture of the

1 case, Your Honor, and the fact that, you know, Plaintiff really only has one cause of  
2 action at this point. There are no alternative sanctions that are excusable. If it were  
3 perhaps a larger case and, you know, you've got a plaintiff that maybe has ten  
4 causes of action and a number of different damages theories then I can see, yeah,  
5 perhaps there's a -- there's a lesser sanction of, you know, maybe tailoring it to a  
6 specific cause of action or a specific facet of the damages, but here, you know, it's --  
7 she -- her complaint is sort of just a skeleton complaint at this point. She's only got  
8 a cause of action for legal malpractice and, you know, whatever damages she  
9 believes stem from that. So, you know, excluding one cause of action would  
10 essentially just be excluding her entire case at this point. So, you know, feasibility of  
11 alternative sanctions that's one that also weighs in our favor.

12           And then there's also the need to deter future abuses. So, you know,  
13 as I pointed out, Ms. Sheridan has been evasive and obstructive throughout the  
14 entire discovery process including at her deposition. And, you know, she also took  
15 similar actions in the underlying case as we saw with respect to her trying to renege  
16 on a settlement agreement and -- and this is all supported by the documents and the  
17 record in the underlying case in Judge Denton's order granting the motion to -- for  
18 settlement specifically found that Ms. Sheridan's obstinance in failing to follow  
19 through with the agreement that was reached during the settlement conference was  
20 unreasonable and in fact imposed a fee of twenty-five hundred dollars against her  
21 which was taken out of her share of that settlement amount. So, we've seen it in the  
22 past there's -- I've made brief references to this as well in the reply brief in that, you  
23 know, she -- this isn't her first go around at this. She several years ago filed a  
24 malpractice action against a different set of attorneys in California I believe who  
25 represented her and her allegations were very similar if not identical, you know,



1 claiming that -- well, she realized at one point that, you know, they were incompetent  
2 and they actually weren't interested in representing her but they were conspiring  
3 with the other side to sabotage her case. Stuff that -- it's just that I'm very familiar at  
4 this point. So, the point being there -- there is very much a strong need to deter  
5 future abuses and, you know, sanctions. The sanctions that we're requesting here I  
6 believe would sufficiently serve this purpose and, you know, cause her to think twice  
7 before trying to take some -- a more course of action in the future.

8           And then the only other thing I would point out on this motion is that,  
9 you know, in the opposition there was this request to say, well, to the extent this  
10 Court believes that the damages computation is inadequate, you know, discovery  
11 should be re-opened for the limited purpose of allowing them to supplement it. And  
12 there are two main issues that I have. The first -- and, you know, I won't belabor the  
13 point, is what I was just talking about with respect to, you know, it's not a matter of  
14 just giving us another document or throwing out, you know, a more specific figures.  
15 It would require basically a whole -- another several months of discovery before we  
16 could fully flush out the contours and substance of these alleged damages and  
17 that's simply not workable given where we're at in this case.

18           The other is that, you know, counsel cited to two different cases in  
19 support of this notion that, well, you know, whenever a parties' claim can be  
20 established by -- by re-opening a case, it's an abuse of discretion for the Court not  
21 to do so. Well, those two cases, Your Honor, they are both cases that were done at  
22 the trial phase in the case and then involved re-opening the case in chief to allow for  
23 the hearing of additional evidence. It's a substantially different matter to be saying,  
24 you know, opening discovery after it's been long since closed in a case that's been  
25 dragging on for years due to a Plaintiff who has, you know, respectfully just dragged

1 her heels and skirted her discovery obligations under the statute. So, you know,  
2 those cases do not apply and they do not support the relief requested of re-opening  
3 the discovery. And, you know, interpreting those cases in that way would also  
4 conflict with the cases we cited where for instance the Court found that re-opening  
5 discovery, kicking out trial, etcetera, that would constitute harm sufficient to impose  
6 sanctions under Rule 37.

7           So, to tie it all together, Your Honor, you know, it's they -- very  
8 significant issues for us because, you know, Mr. -- started to depose -- disclose  
9 damages just leaves us in a -- in an extremely bad position on as one that we're  
10 unable to remedy in any feasible manner and her failure to comply with these  
11 obligations I think renders the case both right for summary judgment and/or  
12 imposition of a host of Rule 37 sanctions. So, unless Your Honor has any questions  
13 that's what I've got.

14           THE COURT: All right. Thank you.

15           MR. MUSHKIN: Real briefly, Judge. I want to try and unpack some of the  
16 factual misstatements. So, discovery has been closed for two months, not a long  
17 time. They've not articulated any prejudice whatsoever to now that she has counsel  
18 to be able to provide a more accurate or more detailed calculation of damages. I'm  
19 not saying that she didn't provide damages they just don't like that she didn't give  
20 them a calculation. I'm not sure that's what Rule 37 says particularly if the damages  
21 are speculative and lost profits are speculative and you have to put your case on for  
22 your client. Here's what I do for a living, here's how many times I've done it, this is  
23 what happened in this case and here's how I'm damaged. I -- I really think that the  
24 Rule 37 motion is not appropriate because they have the expert. They don't like it  
25 but they have it. They have her original 16.1, they don't like it but they have it and

1 then they have her declaration where after the case has been litigated she now  
2 realizes her damages aren't three million her damages are more like 500,000 and  
3 that is why you have a trial because they can impeach her on the issue of damages.  
4 They also don't advise the Court that they received about \$118,000.00 and so part  
5 of her damages is that she paid for stuff that she didn't get. That's issue one.

6           Damages as a matter of law, that's what they're trying to say that you're  
7 gonna make a finding that there are no damages as a matter of law. I don't think  
8 you can do that, Judge, I don't think that's the standard. And you just said that our  
9 Motion for Summary Judgment is not appropriate because those issues should go to  
10 the jury. And so to say there are no damages as a matter of law given the record  
11 just doesn't fly.

12           THE COURT: Can I ask you something? I -- what's always bothered me  
13 about this case is substantiating the damages. I -- I mean, all I've got -- like in her  
14 declaration is the nature of these damages is difficult to quantify but my reasonable  
15 opinion is that I have been damaged to date and at least \$500,000.00. How do we  
16 reach that figure?

17           MR. MUSHKIN: Through -- and they examined her, at deposition they  
18 examined her --

19           THE COURT: And she said --

20           MR. MUSHKIN: -- and she gave them the answers that she gave at the time.  
21 They've only given you just eight pages. There's a whole long deposition, but that is  
22 an issue of fact.

23           THE COURT: Well, let me ask you this though.

24           MR. MUSHKIN: Sure.

25           THE COURT: She has indicated that -- I mean, that she lost investment

1 money.

2 MR. MUSHKIN: Yep.

3 THE COURT: Okay.

4 MR. MUSHKIN: And -- and -- and her witnesses are gonna so testify.

5 THE COURT: Okay. Who are her witnesses?

6 MR. MUSHKIN: Mr. Cannon and her expert.

7 THE COURT: Are those the only ones?

8 MR. MUSHKIN: I believe those are the only ones.

9 THE COURT: Okay. And I assume that when we're talking about investors --

10 MR. MUSHKIN: Cannon had the investors --

11 THE COURT: Okay.

12 MR. MUSHKIN: -- who pulled out.

13 THE COURT: Okay. But how is he going to testify to that because it's  
14 hearsay?

15 MR. MUSHKIN: No, not if he -- it's his business. Not if he's the syndicator.  
16 These are movies.

17 THE COURT: I understand.

18 MR. MUSHKIN: And so you -- it happens. I mean, I'm no -- I'm no expert in  
19 this -- with this movie business but I -- I do -- I have had a couple of clients that have  
20 done these productions and first you have to have the concept then you have to go  
21 out and get the -- the distribution, there has to be a place where you know that's its  
22 gonna go --

23 THE COURT: Right.

24 MR. MUSHKIN: -- and then you go out and get your funding to make the  
25 product and she'll lay out exactly those steps and how this damaged her and one of

1 those projects just -- just -- they can't say they don't know the amounts because  
2 they just settled a case where the settlement amount was 200 -- and I want to say  
3 280,000 and change just to get her out of her interest in that movie before it was  
4 even made and produced. So, there's clearly value and there the attorneys they  
5 have that knowledge. They don't need that from her, they already have that  
6 knowledge, they settled the case. She didn't -- isn't happy, she thought it was, you  
7 know, other things but I get that, but in this case how are they damaged? Her  
8 credibility is the only thing that's gonna be, her expert they haven't deposed him,  
9 Cannon they haven't deposed him. So, it's on them if they want to know more about  
10 damages.

11           One last comment, Judge. I disagree with his -- his statement about  
12 Rule 37. If you're gonna set up Rule 37 sanctions you can't sit on your hands, you  
13 gotta file a motion to compel. You gotta say, hey, your -- or at the very least a meet  
14 and confer that says your answers aren't acceptable we need more. They didn't do  
15 that here, they just sat on their hands, waited for discovery to close and say I want  
16 sanctions under Rule 37. Respectfully I think it's a misuse of the rule. And the --  
17 and the last comment I'll make, Judge. They haven't articulated any prejudice. If  
18 you want -- if you as the trier, as the gatekeeper, want more specific information on  
19 damages I don't -- I don't intend to change the trial date. If we give them a new  
20 calculation and they want to take her deposition on a couple -- a couple of hour  
21 deposition or a full day on damage I'm not gonna argue with it and it's not gonna  
22 change the -- the schedule. This is not, you know, opening discovery for all  
23 purposes. If they really need more information on damages, and I submit they don't,  
24 there's a way to get it and that's a more appropriate resolution than -- what they  
25 want is to make this case go away after they've admitted two acts of negligence.

1 That's just not right, Judge. Not under any set of facts it's not right. Had they really  
2 been concerned about damages they would have done the -- of what the rules  
3 require, you're given notice that the answers are deficient, set up a meet and confer,  
4 file a motion to compel and then file the motion for -- under Rule 37 that say this --  
5 there are no damages, she hasn't provided them. They can't do that here, Judge  
6 because she had her 16.1, her declaration which reduces it substantially, and her  
7 expert. Respectfully, Judge, I ask that you deny the Motion for -- under Rule 37 and  
8 if you want us to flush out damages we'll do so within the next two weeks and they  
9 can have whatever time they want with her again and now the case is ready for trial.

10 THE COURT: I will tell you I'm having trouble with the -- okay, we've got the  
11 two acts that you're claiming is negligence, not sealing or --

12 MR. MUSHKIN: Publishing.

13 THE COURT: -- or I should say publishing the confidential agreement and not  
14 sealing it essentially and then the not recording the satisfaction --

15 MR. MUSHKIN: Not --

16 THE COURT: -- right?

17 MR. MUSHKIN: -- providing the satisfaction.

18 THE COURT: Okay. How did the publishing of the confidential agreement  
19 cause her damage? I mean, what are you gonna say?

20 MR. MUSHKIN: Because now the industry knows the settlement amount of  
21 that -- of the under --

22 THE COURT: Okay.

23 MR. MUSHKIN: -- lying case.

24 THE COURT: And who's gonna testify about that?

25 MR. MUSHKIN: Her expert.

1 THE COURT: And what is he gonna be using --

2 MR. MUSHKIN: The -- the -- the -- so, I don't want to put words in anybody's  
3 mouth, Judge, but she's going to testify that she was damaged. That she lost  
4 funding.

5 THE COURT: Well, she's gonna have to do all of that without hearsay.

6 MR. MUSHKIN: It's not hearsay. What we are damaged is I lost funding on  
7 this project.

8 THE COURT: Oh, well, how is she gonna get there? How are you gonna lay  
9 the foundation for that?

10 MR. MUSHKIN: I'm gonna -- very easy. Your Honor, what do you do -- I'll  
11 ask my client, Ms. Sheridan, what do you for a living. I -- I write and produce motion  
12 pictures. How many have you done? Twenty. Were there -- were there projects in  
13 the pipeline at the time of this dispute? Yes. Did you have -- did you lose any  
14 projects as a result of this dispute? Yes. Which one and why? And she'll tell you  
15 exactly.

16 THE COURT: And what is that? I mean --

17 MR MUSHKIN: Well --

18 THE COURT: -- that's --

19 MR. MUSHKIN: -- because --

20 THE COURT: -- my problem is that --

21 MR. MUSHKIN: -- Mr. Cannon who was the agent of the funding entity is  
22 going to testify that the industry now became aware, everybody knew. It spreads  
23 like --

24 THE COURT: Oh, wait --

25 MR. MUSHKIN: -- wildfire.

1 THE COURT: -- how in the world is he gonna testify to that?

2 MR. MUSHKIN: Because how is he gonna know? How does he know? He's  
3 gonna say here's how I found out. Either this person told me or I read --

4 THE COURT: Okay.

5 MR. MUSHKIN: -- it.

6 THE COURT: That's hearsay.

7 MR. MUSHKIN: That's not what he -- what they said to him, it's that they said  
8 to him. That's not hearsay. The fact that he learned it from a third party isn't  
9 hearsay, what he learned is hearsay. The source is not hearsay and now we have  
10 the source, we have the published document. So, I understand where you're  
11 coming from, Judge, but it -- these are clear acts, they're compensable particularly  
12 the 700 days on the satisfaction. I for the life of me can't explain that away. And  
13 the -- and the -- the deposition testimony is, well, that wasn't my job, that was my  
14 partner's job, I don't know why that happened. I'm the attorney of record but I don't  
15 know why that happened.

16 So, I'm nonplussed by that and it's clearly a damage. It's slander of  
17 credit in and of itself. So, I -- I -- I'm not saying damages are easy but if they really  
18 want a better calculation of damages there's a better remedy for this Court than  
19 dismissing this case particularly in light of the clear acts of negligence. It's just not  
20 right to do that, Judge; the trier of fact has to do that not them.

21 THE COURT: Okay. Counsel, you get the last word, it's your motion.

22 MR. WONG: Okay. Well, respectfully to Mr. Mushkin. You know, I  
23 understand there's been a lot of ethos in that presentation but nothing refuting the  
24 black letter law and the case law in which we put in our moving papers and in our  
25 reply regarding enforcement of sanctions and imposing the discovery disclosure



1 requirements under the rules. You know, those still apply here and we shouldn't  
2 lose sight of them in the midst of all of this.

3           With respect to there being no prejudice, I mean, there absolutely is  
4 prejudice. As I pointed out, her theory of damage is very attenuated and has a lot of  
5 moving parts. You know, it's not as simple as here's a document or, you know,  
6 here, take -- take my deposition again, I'll, you know, filibuster for three more hours  
7 and we'll call it good. You know, if she's saying there were a number of investors  
8 who were viewing this email which was buried again in this opposition to a motion to  
9 enforce settlement and the opposite I might add also attached the -- the various  
10 iterations of the settlement agreement itself those were redacted, but if for some  
11 reason something was wondering this pulled that up was not persuaded by the  
12 redactions in that agreement and somehow decided to look this page 41 and 42 and  
13 saw this email, you know, she has not given us any names of anyone who has done  
14 that and something she would have -- was required to do, you know, at the outset of  
15 discovery. So, I mean, here's how this should have went down. If -- if these  
16 investors actually do exist, Your Honor, it should have been in her initial disclosures,  
17 you know, here's individuals A through whatever, H, you know, they are investors,  
18 have been investors with me for x years, they, you know, invested on such projects  
19 and they, you know, have knowledge about the un-redacted email and are gonna  
20 testify to the same. I see that and then I say, okay, I'd like to depose this guy, this  
21 guy, this guy and then I get the chance to with each of them flush out their  
22 background with Ms. Sheridan and figure, you know, okay, what -- what was the  
23 extent of your investment, what were the terms and, you know, what caused you to  
24 do that email, you know, of all the filings and, you know, why did you decide to back  
25 out of the business deal because of that. You know, that's what should have went

1 down, that's unfortunately not what went down here and we're, you know, unable to  
2 get to that point with trial being on the horizon here and discovery being closed for  
3 over two months. So, this idea of no prejudice, there is prejudice, You know, that's  
4 a substantial component of her dam -- that's basically all of her damages and we're  
5 unable to, you know, even scratch the surface of that beyond some arbitrary  
6 numbers that she's pulled out of a hat respectfully.

7           Even with respect to the satisfaction of judgment issue saying, well, you  
8 know, my credit has been slandered, your personal and business credit, she hasn't  
9 produced no documents regarding that, there's nothing regarding her credit scores  
10 [indecipherable] credit reports and, you know, that's a significant causation issue  
11 because even if you see hypothetically, right, a decline in her credit score around  
12 the time of that she would still need to establish that this was due to the satisfaction  
13 of judgment and not some other issue for instance, you know, defaulting on a loan  
14 or failure to timely pay -- pay back certain obligations which I may add was a  
15 consistent theme in the underlying case. This is neither here nor there but I do have  
16 several -- several emails from the underlying case where assistants from Mr.  
17 Gutierrez's office are saying -- emailing Mr. Sheridan and saying, hey, you know,  
18 you're late on your -- you know, this employee has [indecipherable] to my payment.  
19 So, again, even with respect to the satisfaction of judgment issue she has not in the  
20 slightest, you know, met her burden and setting forth evidence and marshaling the  
21 evidence to establish those damages. So, you know, they're absolutely is prejudice  
22 to us on that front. There's just way too much out there that should have been  
23 disclosed, that has not been disclosed.

24           As far as Plaintiff mentioning, well, she has an expert on damages who  
25 is going to testify at trial. For the record, she does not have an expert on actual

1 damages. The -- Your Honor may recall she disclosed four experts at her initial  
2 expert disclosures, Matthew Furtado who is an out of state attorney, he's her liability  
3 expert, there is Patrick Cannon and then there is a Bennett Bosurman [phonetic]  
4 who, you know, I suspect he was neither retained by her, she just [indecipherable]  
5 on his resume which is a publically available document, and then this guy named  
6 Steven Ivestock [phonetic]. And his report is perhaps the closest thing that she has  
7 to a damages expert but even that it's not an actual damages expert. He speaks  
8 specifically to the poor results of the senior mo -- Senior Moment film in the box  
9 office not her damages as a whole and I would just point out that, you know, senior  
10 judge -- Senior Moment, the movie, it's -- that's not a proper facet of Ms. Sheridan's  
11 damages. Part of the settlement of the underlying action was that she relinquished  
12 rights and that Gina Goff go ahead and produce that film and do whatever she  
13 wanted with it and, you know, that's why if you look at the film it's Gina Goff is the  
14 one credited not Ms. Sheridan.

15 But, you know, if Your Honor, doesn't mind indulging me, I'm happy to  
16 read -- it's -- it's a one page report and it'll demonstrate that. It's really got nothing to  
17 do with damages as a whole but only speaks to the performance of Senior Moment  
18 which, you know, has nothing to do with her actual damages.

19 MR. MUSHKIN: That's not the expert that he's referencing, Judge.

20 THE COURT: Well, and I've got it as Steven Ivestock.

21 MR WONG: Well, and then --

22 THE COURT: -- of the letter.

23 MR. WONG: -- you know --

24 THE COURT: I've got it.

25 MR. WONG: -- to the extent that it's not Mr. Ivestock that only leave Mr.

1 Furtado who is disclosed as an expert and, again, he's an attorney. He's not  
2 qualified to be talking about damages. And I think even in one of his -- I might have  
3 been that improper supplement. He said, you know, my job was to talk about  
4 breach and perhaps causation, I don't work in Hollywood, I don't know anything  
5 about damages, that's for some other guy. So, she effectively has no expert on  
6 damages.

7 THE COURT: Please don't interrupt. I'll talk to you in a moment.

8 MR. WONG: As to -- with respect to her other witness, Patrick Cannon, again  
9 I think Your Honor hit the nail on the head with this one. There's, you know -- he --  
10 he cannot testify feasibly to any of those things --

11 THE COURT: Isn't he --

12 MR. WONG: -- without --

13 THE COURT: -- a paralegal?

14 MR. WONG: I'm not sure if he's a paralegal, I know he's tried to sort of act as  
15 her -- he says he's her agent sort of and things. He's, you know, apparently tried to  
16 be an expert witness in this case. I think he was her husband at one point. But I  
17 just know -- you know, he has not been held out as, you know, this investor who lost  
18 -- who decided not to -- to back out of business arrangements with Ms. Sheridan  
19 and I think the fact that he -- you know, to this day you see him online right now, you  
20 know, continues to make an interest in the case shows that he's in fact very  
21 interested in continuing some sort of relationship with Ms. Sheridan and, you know,  
22 she has not produced any documents in discovery showing any past investment or  
23 present investment by Mr. Cannon in any projects of hers and, you know, it's --  
24 there's just a lot of issues with -- with him being held out as this -- you know, the  
25 investor, and with him being the only one, you know, I think that perfectly illustrates

1 the suspicious nature of her damages.

2           And; the other thing I would point out with respect to Mr. Cannon is that  
3 it doesn't makes sense that, you know, by -- by virtue of his involvement in the  
4 underlying case, you know, he -- he cannot have -- to the extent he didn't withdraw  
5 funds from Ms. Sheridan it cannot be causally related to that un-redacted email  
6 because he himself was a client of Maier, Gutierrez or more specifically his -- they  
7 say it's his company, it's [indecipherable] LLC. I'm not sure whether it's actually his  
8 company or Ms. Sheridan's but they're saying it's his and he was involved in all of  
9 the correspondence and he had a lot of -- there are conversations with Mr. Gutierrez  
10 and Mr. [indecipherable]. So, you know, it's -- he was there for every step of the  
11 way, it's not as if he was some investor who's not in the know and then all of the  
12 sudden he sees this email and overreacts and says I'm -- I'm, you know, cutting my  
13 -- my ties with you, I'm not gonna invest in your projects, that sort of a thing. So,  
14 you know, the fact that she doesn't have a proper damages expert and Cannon is  
15 the only individual that she can hold out as someone who will testify to substantiate  
16 her -- her damages theory I think speaks volumes to where she's at with her  
17 damages.

18           As far as for the allegation that she paid for stuff she didn't get, you  
19 know, that's simply -- that's not before the Court. You know, her -- her -- her  
20 complaint has -- all has been fixated on the confidentiality issue and the satisfaction  
21 of judgment issue. So, you know, that's really a non-starter --

22           THE COURT: You know, I -- I'm looking at the complaint right now because I  
23 didn't recall the complaint even including the satisfaction of judgment issue, that it  
24 was just disclosing the terms of the settlement -- confidential settlement agreement.

25           MR. WONG: Yes, Your Honor. I think it's I want to say paragraph 40 or 41.

1 It was just kind of an afterthought in one short paragraph in the middle of the whole  
2 complaint. I think it's -- it should be within a few paragraphs of the fourth or first  
3 causes of action starts. So, I think -- I think it was forty-something.

4 THE COURT: Okay. Well, it said that she filed -- that they filed a lien for  
5 attorney's fees and judgment.

6 MR. WONG: Correct.

7 THE COURT: That's all it says.

8 MR. WONG: And again, that's because she had a lot about [indecipherable]  
9 and fees owed to my clients at the time. So, you know, they were fired from the  
10 case, the next logical thing to do was, well, we gotta protect our interest and make  
11 sure we collect on what we're owed so --

12 THE COURT: It is in paragraph 31, it just -- this -- based upon the numerous  
13 and ongoing errors, Plaintiff fired MGA as her counsel of record on October 29,  
14 2018 due to the ongoing negligence and failure to adequately represent her and in  
15 fact had been actively working against Plaintiff's interest. Interestingly, MGA filed  
16 that same day a lien for attorney's fees and judgment. This further harmed Plaintiff  
17 by precluding her from obtaining further investment monies for other creative  
18 projects and negatively affecting -- affected Plaintiff's credit worthiness. This  
19 demonstrates Defendant's fraudulent intent to gain unearned attorney's fees for  
20 work that were not competently completed. Okay.

21 MR. WONG: So, it sounds like again, even with that diverts back to this, you  
22 know, square one of what investors, what projects. You know, causation regarding  
23 your alleged, you know, harm to credit. It's -- and, you know, I won't belabor the  
24 points on those but, you know, I think even that cause of -- or that allegation is very,  
25 very tenuous in terms of trying to establish her damages with respect to that --

1 THE COURT: Okay.

2 MR. WONG: -- and --

3 THE COURT: Counsel, I've listened to you quite a while and at this point I am  
4 going to deny your motion for a couple of reasons. One, there wasn't a Motion to  
5 Compel filed first and I think you do need to do that. You've got to make some sort  
6 of effort to try and get it before we use terminating sanctions which is basically what  
7 you're asking me to do here. And I am going to be -- at the trial I'm going to be  
8 listening and if I don't see competent evidence coming in we're gonna have  
9 problems. I'm gonna be really on my toes in terms of evidentiary stuff.

10 Okay. We've got one other Motion for Summary Judgment. Is that --  
11 did we encompass that?

12 MR. MUSHKIN: I think we did, Judge.

13 MR. WONG: I -- well, I -- I'd like to actually argue on that if --

14 THE COURT: Okay. Go ahead.

15 MR. WONG: So, Your Honor might recall that -- so, this is our initial Motion  
16 for Summary Judgment, we filed this back in --

17 THE COURT: Right.

18 MR. WONG: -- yeah. It was based on the failure to disclose adequate expert  
19 support and Your Honor at the hearing you may recall you actually looked over Ms.  
20 Sheridan's expert reports and found that, yeah, you know, these do appear to just  
21 be very conclusory reports without any substantiation which, you  
22 know, as we argued in our brief do not allow her to survive summary judgment.  
23 Thereafter based on here oral motion for 56(d) relief you allowed her to depose Mr.  
24 Knaus and Mr. Gutierrez so those depositions have since happened and nothing  
25 has come out, there's been no smoking gun. You know, if anything they help our

1 position because they were able to explain certain allegations of Ms. Sheridan's  
2 outlandish allegations that, you know, for instance, well, you know, they -- Mr. Knaus  
3 appeared in his gym clothes at the 16.1 conference. You know, Mr. Knaus as his  
4 deposition said, look -- clarified, you know, there was a situation that came up that I  
5 wasn't able to change in time but I wasn't the attorney of record at that hearing, it  
6 was Steven [indecipherable] from our office that made the appearance so no harm,  
7 no foul.

8           With respect to -- you know, there's also another allegation that, well,  
9 how come, you know, Mr. Knaus would -- he altered by declaration without my -- my  
10 knowledge and my consent. Again, when asked about it Mr. Knaus just said -- to  
11 clarify, you know, we -- we never did anything of the sort and in fact, you know, what  
12 she's getting at here is that after we had filed this motion with this attached  
13 declaration Ms. Sheridan looked at it and said, well, you know, this word, I don't like  
14 this and this should be different and that's what spawned with the email that was  
15 referenced with respect to that. So, you know, there was nothing nefarious going on  
16 is what I'm saying. So, there's nothing that came out in the depositions that would  
17 allow her expert, you know, particularly with Mr. Furtado to be in a, I guess, any  
18 stronger imposition such that he could supplement his opinion to allow it to survive  
19 summary judgment.

20           THE COURT: Okay.

21           MR. MUSHKIN: Very quickly, Judge. For the very same reasons that you  
22 didn't grant my motion you have not grant their motions. These are issues of fact  
23 that are in dispute and because the depositions were just taken our expert does get  
24 a chance to supplement based upon the content of the depositions and can use  
25 those at the time of trial. And what's interesting is there was -- there was a smoking



1 gun at the deposition and Mr. Knaus admitted that he did not check who filed the  
2 motion order that had prior counsel's header. It had both counsels signing it, it was  
3 directed that Plaintiff file the order. What happened is the order was changed and  
4 they changed from -- and it was jurisdictional, instead of a Nevada LLC they put a  
5 California LLC and new counsel came in and instead of reviewing that order and  
6 correcting it it was submitted by the Defendants. Prior counsel as Plaintiff would not  
7 file that order, he had -- there was an electronic signature but he didn't file it. That  
8 necessitated a whole round of motions to change the order from Nevada -- from  
9 California to Nevada. That whole series of things was done because Mr. Knaus  
10 didn't look at the order.

11 I don't want to belabor their summary judgment application but it really  
12 is the same argument as they're making in Rule 37 is that somehow she doesn't  
13 have damages. That's what they're arguing. And respectfully, Judge, they've got  
14 three different renditions of damages, there's her testimony, there's Mr. Cannon's  
15 testimony and there's gonna be an expert's testimony. That's what we have. I  
16 come after discovery is closed so I don't have the ability to un-ring a bell but I  
17 respectfully submit, Your Honor, that summary judgment is not appropriate in this  
18 case not under Rule 37 and not under Rule 56. It just doesn't apply. There are  
19 material issues of fact in dispute and there are some issues that are not in dispute  
20 that establishes negligence so now it's about causation and damages. They can  
21 argue about causation but that's not an issue for today. Respectfully it needs to go  
22 to trial.

23 And I agree, you're the gatekeeper, you -- and I -- I want you to be  
24 vigilant. I don't want to be up here litigating for three weeks -- two -- you know, I --  
25 this should be pretty straight forward and direct and they can explain themselves,

1 they did in their depositions, Mr. Knaus and Mr. Gutierrez, and they can look at the  
2 documents and say why they did it. My client can say here's what projects I had,  
3 here are my damages, the jury either believes it or it doesn't. It's just a credibility  
4 issue not a lack of material facts in dispute. Thanks, Judge.

5 THE COURT: Okay. You get the last word.

6 MR. WONG: Thank you, Your Honor. So, just to correct things a little bit.  
7 This isn't about damages, this particular Motion for Summary Judgment is actually  
8 more nuanced, it's based on -- Your Honor may recall way back I think a year ago at  
9 this point we had a motion to dismiss in front of you and you denied it without  
10 prejudice and told Ms Sheridan that she would need to have expert support to  
11 survive summary judgment. So, fast forward a year later, she's retained experts  
12 who just have nothing but flimsy conclusory reports prompting us to file the current  
13 Motion for Summary Judgment. So, that's what the issue is focused is on, it's not --  
14 it's separate from the damages.

15 What Mr. Mushkin talked about as far as changing the language in the  
16 order, you know, this order in the grand scheme of things was inconsequential. It  
17 doesn't change the fact that, you know, Judge Denton in fact recognized it as sort of  
18 a typographical error, it was -- that my clients filed a motion to amend it, you know,  
19 upon Ms. Sheridan's request, the error was corrected and, you know, this -- I think  
20 the -- the greater point here is that it did not in any way affect -- negatively affect the  
21 Courts analysis of the jurisdictional issue down the road. You know, there's --  
22 there's nothing that says, well, based on the representations in this order that -- you  
23 know, in this one section it said California said Nevada I'm granting jurisdiction. You  
24 know, it's -- it's a much more intricate in depth -- depth robust order.

1 And, you know, to the extent Your Honor is, you know, concerned about  
2 specifically what was said at the depositions, what wasn't said, you know, I would  
3 suggest perhaps, you know, entertaining supplemental briefing on this such that it,  
4 you know, they can be properly brought before Your Honor, the expert can  
5 supplement his report to the extent permissible and we can, you know, fully argue  
6 this issue before Your Honor again. You know, I think as we stand here today her  
7 expert reports it's in no better condition than it was several months ago here on this  
8 issue and based on what was talked about at the depositions they can't really get to  
9 the point they need to be to pass muster so thank you, Your Honor.

10 THE COURT: Okay. Counsel, this one is a close one for me but I am gonna  
11 deny your Motion for Summary Judgment. I will be very vigilant at trial in terms of  
12 the evidentiary stuff, maybe even have to bone up a little bit but you're gonna have  
13 to do the thing, Mr. Mushkin.

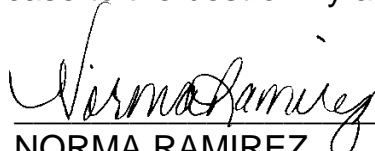
14 MR. MUSHKIN: Do you know how many times I've heard that, Judge? Gotta  
15 do your thing. Thank you very much, Your Honor, it was a pleasure being here and  
16 I apologize to staff that we were here until 12:30.

17 THE COURT: Well, it's not just your fault.

18 [Proceedings concluded at 12:22 p.m.]

19 \* \* \* \* \*

20  
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio/video recording in the above-entitled case to the best of my ability.

23 

24 NORMA RAMIREZ  
25 Court Recorder  
District Court Dept. XXII  
702 671-0572