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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

MICHAEL POSTLE,

Plaintiff,

vs.

VERONICA BRILL,

Defendant

Case No.: 34-2020-00286265

PLAINTIFF'S SUPPLIMENTAL BRIEF

Judge: Shama Mesiwala
Dept: 53
Trial Date: June 16, 2021

Original file date June 3, 2021

Refiled June 8, 2021

INTRODUCTION

As it was inclined to do in the recent hearing Postle vs Witteles, the Court should construe that the defendant's petition for legal fees is excessive and unreasonable. The defendant's counsel (Mr. Randazza) has already been financially compensated due to a GoFundMe campaign established for Ms Brill's legal fees and paid to an employee of the Randazza Legal Group. Mr. Randazza has a well-established history of disciplinary action due to fraudulent billing practices that are substantially similar to the extraordinary billing submitted to the court. Mr. Randazza has engaged in a course of conduct designed to prevent me from retaining assistance in in this case, perverting the course of justice.

BACKGROUND

On May 11, 2021, the Court ruled that the identical case, brought by Mr. Witteles against me, was worth $27,000 in legal fees, setting a standard for which Mr. Randazza should be compensated.

ARGUMENT

Mr. Randazza and his firm have already been compensated for legal services. Ms Brill and the Randazza firm launched a GoFundMe campaign, on October 3, 2020, which states clearly that the proceeds are specifically earmarked to pay for this anti-SLAPP motion against me. To date Ms Brill has raised over $27,681.00 on that campaign, which is listed on behalf of Cassidy Curran. You will please note that in Mr. Randazza's petition for fees, Cassidy Curran is listed as an employee of the Randazza Law Firm. **Exhibit #1 – GoFundMe Campaign, motion for costs identifying Cassidy Curran as an employee of Randazza Legal Group, announcement of the GoFundMe campaign on Twitter**

While California's collateral source rule would allow Ms Brill to collect from multiple parties for the same damages in order to compensate pain and suffering, this isn't a pain and suffering case. The exception to that rule, which prevents professionals (generally doctors) from being compensated multiple times for the same bill, I believe, applies here. Ms Brill's legal bill has already been covered by 3rd parties. In this case 329 individuals who donated specifically to cover her legal expenses in the anti-SLAPP. Ms. Brill also states that Mr. Randazza informed her that the anti-SLAPP would cost her about $20,000.00 but would be cheaper if she could get other people to come into the case with her.

Additionally, Ms Brill has publicly declared that Bill Perkins, a wealthy hedge-fund manager and poker player, has established a trust worth roughly $200,000.00 specifically to pay Ms Brills's legal fees. **Exhibit #2 Tweet from Ms Brill regarding Mr Perkins paying her legal fees, a transcript from PokerNews 3/26/2021 where Ms Brill announces that Mr. Perkins is paying her legal fees, and a transcript from Mental Health Matt Show 3/26/2020**

which details the amount that Mr. Randazza projects the anti-SLAPP suit to cost and that Mr. Perkins sent her nearly $200,000 dollars for her legal fees.

By Ms Brill's own statements, despite stating that the anti-SLAPP would cost her around $20,000.00, Mr. Randazza is in possession of over $200,000.00 in a trust set up specifically to pay Ms. Brill's legal fees in this anti-SLAPP. I didn't notice anywhere in Mr. Randazza's lengthy petition for fees where he mentions that he is in possession of this account.

The trust account aside, Mr. Randazza's firm has already been compensated to the tune of at least $27,681.00, which is $7,681.00 more than he quoted Ms Brill to cover and entire Anti-SLAPP case.

History of Fraudulent Billing Practices

Mr. Randazza, in support of his request for nearly $80,000 in legal fees, did make the point that he has more extensive experience than Mr. Bensamochan, providing 200 pages of his own resume, court cases with which he has been involved, and his own testimony. I admit that I was surprised that with the extensive (and in comparison to Mr. Bensamochen's 21 page application for fees) weighty, recitation of his accomplishments and recognitions, that he failed to mention a few for which he is most well-known.

By bringing his history to the attention of the court in support of legal fees twice the amount as was asked for by Mr. Bensamochan, and four times the amount quoted to Ms. Brill, I believe that Mr. Randazza has "opened the door" for supplemental information to be provided in regards to his history.

Mr. Randazza has a long and well documented history of financial fraud, including billing fraud, bribery, and extortion. In fact, in one of his previous disciplinary actions he used some of the same methodology that seems to be at work in this case, for which he was

sanctioned. This is documented in a December 27, 2018 Huffington Post Article entitled: ***Alex Jones' Lawyer Violated Legal Ethics By Soliciting Porn Bribes. Just How Dirty Is Marc Randazza?*** **Exhibit #3** In the article Mr. Randazza's extensive history of lying to his clients and to the courts is discussed.

However, I don't want anyone to take my word, in regards to someone else's character. A website dedicated to informing the public about Mr. Randazza (www.corrupotrandazza.com) details at least 19 law suits against him for all sorts of unethical and illegal behavior including financial fraud against his own clients. **Exhibit #4 – CorruptRandazza.com**

Additionally, I have included complete documentation that I believe is relevant:

Exhibit #5 ***Nevada Bar Amended Complaint Against Randazza***

Exhibit #6 ***Interim Arbitration Award***

Exhibit #7 Utah Federal court ruling chastising Randazza for dishonesty,

The Huffington Post article is extremely long, so I have highlighted perhaps the most relevant passages, as well as added them here:

> *The backstory to what he'd done was complicated, the details sordid. The short of it is this: While working as the in-house general counsel for gay pornographers a few years ago, he solicited bribes, embraced conflicts of interest, relied on ill-gotten privileged information to gain a legal advantage, made misrepresentations about his fees to various courts and despoiled evidence of his treachery, according to an arbitrator's findings, sworn statements in legal proceedings, interviews with opposing counsel, Randazza's own admissions and thousands of pages of court records.*

And

> *Randazza misled people on multiple fronts. When he started his Liberty job, he accurately described himself in court as the "in-house counsel for Liberty Media Holdings." But a year later, he was giving judges, journalists and potential clients the*

impression that he was an outside attorney, rather than a Liberty employee. He swapped out his Liberty email address and letterhead for a personal email address and the letterhead of the "Randazza Legal Group," a firm he'd set up in Florida. He handed out personal business cards that made no reference to his Liberty job.

In court filings, Randazza referred to himself as "counsel for Plaintiff" or "an attorney for the Plaintiff." He told courts that Liberty had "incurred" his fees or that he'd "charged" the company at billing rates of $425 to $500 per hour. To support those rates, he sometimes filed affidavits from a paralegal who stated under oath that he was Liberty's "Vice President for Intellectual Property Management," a position Dunlap said the paralegal never held. Randazza also submitted affidavits from lawyer friends of his, along with time sheets showing his rates, even though he was a salaried employee.

And

"All the stuff that is misleading is tailored for him to win that fee award," said Adam Springel, a Las Vegas attorney and expert in commercial and business law who examined a number of Randazza's fee filings at HuffPost's request. "He was clearly trying to get the judge to rubber-stamp his fee requests."

The article includes extensive, perhaps unrelated scandals, but I did want to draw this part to your attention in particular:

The extent of Randazza's web of deception became apparent in Liberty's 2012 federal lawsuit against Oron, a file-sharing site. When Randazza tried to recover fees in the case, he not only failed to identify himself as Liberty's in-house counsel but also bundled his own "charged" fees with the fees of outside attorneys he'd brought on at his firm. He claimed the Randazza Legal Group had billed Liberty almost 366 hours, causing the porn company to "incur" $214,964 in attorneys' fees and costs. Of that total, Randazza told the court, $90,833.98 resulted from his nearly 182 hours of work at $500 per hour.

He also reported that his employees billed Liberty at their "standard hourly rates." For his partner, Ronald Green, that meant $400 per hour. For paralegals, it was $125 per hour. In reality, the Randazza Legal Group gave Liberty a massive discount, sometimes 75 percent off market rates, on work done by its lawyers — a fact that Randazza withheld from the court.

History of Lying to Court and Ethics Violations

Please note that per your previous instruction, I have only included testimony, disciplinary actions, etc. that concern Mr. Randazza's dishonesty in billing and financial matters. I have not provided documentation in support of the other ethics allegations including that after being booted out of the military after only five months, he continued to present himself as a paratrooper or detail his lies to courts in regards to his ability to actually practice in a particular state, or perhaps most shocking, his attempt to violate the shield that protects victims of rape so that his client, the accused rapist, could use social media followers to harass and intimidate.

However, an additional Huffington Post article from March 20, 2019 ***Connecticut Judge: Marc Randazza Is Too Unethical to Defend Alex Jones*** **Exhibit #8** does detail ethics violations and disciplinary action including lying to the court, bribery, and financial fraud in Arizona, California, Connecticut, Florida, Massachusetts, Montana, and Nevada.

Efforts to Intimidate Me and Anyone Offering Assistance

What may be of more concern however is my ability to retain counsel and receive assistance. Part of that problem has been Mr. Randazza himself who through his reputation of doxing, using trolls to harass, and attacking not only client opposition, but also opposing counsel is resulted in many attorneys simply saying that it isn't worth the hassle to help me if it means that they have to be subjected to him.

A simple browse through his Twitter account @marcorandazza and you will see Mr. Randazza calling opposing counsel idiots or worse and since he represents some very nasty people, calling out his opposition in this extremely unprofessional way means that followers also attack in solidarity. This is the reality for an attorney Paul Berger. ***Florida Bar Complaint Against Randazza Exhibit #9***

But it isn't simply a matter of lawyers not respecting him or being concerned that he will use his troll farms to harass and harm, he has actively prevented me from responding appropriately to this court and has attempted to intimidate those who attempted to assist me.

On March 17, 2021, I received a notice from the court directing me to contact Mr. Bensamochan (Mr. Witteles's attorney) and Mr. Randazza to work out an extension time frame, a response to which had to be received by the court before 4pm. I had been working with the HONR Network for several weeks at that point. The HONR Network is a non-profit organization founded by Lenny Pozner whose son Noah was the youngest victim of the Sandy Hook school shooting. Originally founded to remove defamation, hate, and harassment online that targeted Noah and the other 25 children and teachers killed, HONR had expanded to offer reporting and removal assistance for anyone who was being targeted online. The organization also helps victims find specialized legal assistance, mental health referrals, etc. I have attached a copy of the letter that was filed with the court previously regarding the HONR Network's assistance.

Exhibit #10 ***Letter from the HONR Network***

I had asked the HONR Network if they would have someone help me to explain the steps that they were taking to help me find a lawyer and the cataloging of the defamation perpetrated by Ms. Brill and Mr. Witteles. Alexandrea Merrell, who is an executive at a crisis management firm and is the Director of PR and Policy for the HONR Network agreed to join me on the calls to Mr. Bensamochan and Mr. Randazza to explain the amount of time needed to catalog the abuse and the organization's involvement. She had explained to me the difference between defamatory and harassing content that the HONR Network could "action" or petition to have removed, and content that they couldn't action (generally stories from legitimate news

sources, and content that was offensive, but otherwise not a violation of the various social media platforms terms of service.)

I initially contacted Mr. Bensamochan as you can see from my phone record, I called Ms Merrell and conferenced the three of us into a call 3:10pm and we spoke for 10 minutes. **Exhibit #11 Phone Record of call to Mr. Bensamochan** At that point, Mr. Bensamochan agreed to up to a 90 day extension.

I called Ms Merrell and then Mr. Randaza's office at 3:23 and was transferred to Mr. Shepard who introduced himself as an associate and explained that Mr. Randazza was unavailable, but that he had agreed to a 30 day extension. **Exhibit #12 Phone Record of calls to and from Mr. Randazza's firm** During the conversation, Mr. Shepard asked if Ms Merrell could give him the names of attorneys with whom the HONR Network had referred me. She said that there had been many referrals, but that she personally had discussed the case with Mr. Mark Bankston, an attorney in Texas and Mr. Stephen Lambert, an attorney out of Colorado. Both had previously worked with the HONR Network and both were interested in the case.

At that point, Mr. Shepard said that he thought Mr. Randazza should talk to me and would we mind holding. I reminded him that I had to call into the court in a few minutes. We sat on hold until 3:47 when Mr Randazza called me from a different line (we were still on hold). He reiterated that he would offering 30 days, which he felt was generous and then said, "Oh I have been waiting for this phone call, I'll call you right back" and hung up. At 3:50, Mr. Randazza called me from a different number, but directed his attention to Ms Merrell.

"Who did you say you were?" he said and before she even got her name out, he erupted yelling at her, *"I don't know who you are, you're a fucking cunt, you're a fucking liar, you fucking bitch, Bankston doesn't know who Mike Postle is."* I think that

we were both just stunned. He just kept on at her, cursing and yelling and calling her names until he finally said *"now shut the fuck up and let the boys talk. I'll give you 60 days, no more."* We both just hung up the phone.

At 3:55, Mark Bankston called Ms Merrell, who failed to reach her and the call was returned at 3:56. He said that he had just got the weirdest call from Marc Randazza. Mr. Randazza had demanded to know if he was going to represent Mike Postle. Mr. Bankston responded that he didn't know anyone named Mike Postle and Mr. Randazza hung up. He said only after did he realize that Mike Postle was the name of the "poker guy," which is the way that they had always referred to the case. **Exhibit #13 Alexandrea Merrell's incoming and outgoing phone logs**

Of course, by that time, the court had closed. So even though Mr. Bensamochan had agreed to up to 90 days, and Mr. Randazza had agreed to 60 days, I had been unable to contact to court. Keeping me on hold for so long was a clear tactic. Attacking this lady who was their to help me and provide information, was a clear attempt to intimidate her and prevent the HONR Network from helping me. The next day on the zoom call, without a lawyer and without the HONR Network, Mr. Randazza's tactics were rewarded with a 33 day extension.

Ms. Merrell and I both filed complaints about Mr. Randazza on March 18, 2021. **Exhibit #14 Copy of my complaint and Ms Merrell's complaint** Despite no further contact, Mr. Randazza has continued to attack Ms Merrell and the HONR Network online **Exhibit #15 CardChat Article where Mr. Randazza calls people offering me assistance "idiots" and claims even in his filing for fees that Ms Merrell and the HONR Network "likely committed the unlicensed practice of law" and a billing statement where Randazza claims he is owed more because of HONR.** She made it very clear that she was not a lawyer and that the HONR

Network does not give legal advice, they do offer legal referral however and that is exactly what they did. Clearly his issue with the HONR Network is due to the Alex Jones case, but that has nothing to do with me and I shouldn't have to pay for his personal vendettas against the father of a murdered kindergartener.

Doxxing

Mr. Randazza's unethical and threatening behavior towards me and those who might be able to provide assistance certainly didn't stop there. With a short extension granted, I began to prepare my response to the anti-SLAPP. But was delt two blows in a short span of time. Mr. Bankston's father died on March 24, and he wouldn't be available and Ms Merrell was hospitalized on Apirl 1st and she wouldn't be available. With no hope of handling this myself, I asked to withdraw the case, but be allowed to refile at a later date. Mr. Randazza, posted the withdraw form on twitter, including my address and phone number, despite being aware that myself and my minor daughter have been the subject of death threats. He mocked me, linked his tweet to a video where a man is beaten up, saying that that is what happens....and then when others pointed out that doxing someone by posting their personal address online is illegal, he refused to remove it. Instead of removing it, Ms Brill retweeted it and shared my address and phone number dozens of time. **Exhibit #16. Mr. Randazza's tweet and refusal to remove the doxing content, Ms Brill's reposting of my address and phone number and a small sampling of the attacks received due to Mr. Randazza and Ms Brill doxing me.**

Misrepresentation

I would like to draw your attention to a situation that I do think has bearing on this case. Mr. Randazza has mentioned many times that I had no interest in actually pursuing this case and did so only for fame or attention. His support of this position is two-fold, first that a

documentarian contacted me (and others including Ms Brill) about making a documentary about the scandal and second that I have made no real attempt to find counsel.

I was contacted about participating in some sort of documentary project, but to date, no project has materialized. I was not the facilitator, I didn't contact anyone asking to make a film or tv show about me or about the scandal.

Additionally, I have not pursued any press at all. In fact, I have been completely off social media since September 30, 2019 and have spoken to the press only in response to Ms Brill's failed attempt to sue me. Even those rare interviews haven't occurred since Oct, 2020. I have not sought attention through the press or social media in any way. Mr. Randazza's continued attempts to paint me as a media seeker are easily verifiable as inaccurate and are a continued attempt to cast me in a false light. If his position were so strong, why the need to lie?

Continued Dishonesty

Mr. Randazza 's dishonesty continues in his letter to the court feigning a complete lack of understanding as to why Ms Brill was included in my suit and minimizing her role in what has happened to me. I have known Ms Brill for many years, while I was a professional poker player and she was a part-time poker commentator. Over the years, I have been aware of five other male poker players whom she has accused of sexual harassment or sexual assault. I had been warned to avoid her. I was in the middle of a painful divorce and custody battle, and tried to avoid more drama by insuring that we were never alone together. Eventually, I had to be very stern that I wasn't interested. Angry at being rejected, she turned very nasty. On the final day of her employment at Stones Gaming Hall, she used her show to attempt to get me banned from the casino by claiming "Mike must be cheating."

I don't think that she really expected her statement to blow up like it did. Previously when she went after someone, as she did with Roger Bailey and at least 4 others whom I am aware, her target was simply "canceled." But all of a sudden, this person who had failed to make a career for herself as a commentator and was minutes until the end of her last show, a person with hardly any social media followers, had the whole poker world hanging on her word. She went from a thousand followers on social media to more than 14k almost over-night. Poker celebrities wanted to talk about the scandal, poker shows and sports shows all wanted to talk to her, they called her a whistle-blower and a hero and wanted to know how she cracked the cheating scandal.

Quickly she went from "it's greater than zero percent chance that he is cheating" to "he's a cheat and I can prove it." Though of course she never did prove it. Within days, she launched a $30 million dollar law suit, not focused on me, but focused on the deep pockets of the casino with myself and a floor manager as casualties. 89 people jumped on the suit, expecting the casino to quickly and quietly pay out. **Exhibit #17 Brill etc. vs Postle, Stones casino, and Justin Kuraitis**

But that didn't happen. Stones Gaming Hall, the casino, did their own investigation, hired a 3rd party to do a second investigation and the DOJ did a third. The judge dropped me from the case, but Brill battled on hoping for a big win from the casino. Eventually, Ms Brill's attorney at the time, Mr. Verstandig had to issue a statement that no cheating was found **Exhibit #18 Statement from Maurice VerStanding**

Instead of apologizing or even just ignoring me and moving on, Ms Brill doubled down, calling me a cheater, a con man and a scum bag, she did countless videos and interviews even claiming that the DOJ was bought and paid for by the casinos. Even now, she still goes on

twitter to mock me and call me a cheater, even posting the video of the last court procedure, making fun of me because I was nervous and didn't speak as well as I would have liked. It is endless. She has made an entire career off of defaming me and Mr. Randazza pretends to the court to be baffled. **Exhibit #19 Twitter Posts including the court video, revealing that she is aware that she is not supposed to have it and that she doesn't care that she is violating the court's order.**

I understand that I am without a lawyer and so at a significant disadvantage. I am so thankful that I have friends and supporters around the country who have spent evenings and weekends to try and help me compile this information and launch a defense. But no one can risk defending me, even on social media because Ms Brill and Mr. Randazza have proven themselves to be eager to attack and devour anyone who supports me or even questions their story line.

My life has been completely destroyed by this baseless accusation. Yet thanks to Ms Brill, I continue to be attacked, my name is a punch line in jokes, and I am referred to as a cheater to a nationwide audience on gigs that she landed because of her attack on me. I get that life isn't fair, but I don't understand how someone can be allowed to use the internet to destroy a person's life without consequence.

I understand that poker and gamblers in general have a reputation of being less than upstanding members of society. So, this may seem like an inconsequential issue.

But I am a good person. I am a single farther, raising a young daughter by playing poker. I have been a professional poker player for over 17 years. This is a game that I love and a game that I am good at. But because of Ms Brill I can't even earn a living at my chosen profession.

I understand that the law requires that people who bring an anti-SLAPP have their fees covered in order to protect those who might not otherwise be able to afford to fight. But it isn't supposed to be a lottery win for the opposition.

I didn't complain about Todd Witteles' fees, despite Mr. Bensamochan's claim in court that his client made one post one time, he has spent hours and hours on his podcast calling me a cheater, a liar, and continues to do so, though certainly more carefully now. While I don't excuse what Mr. Witteles has done to me, the fact is he pursued me so vigorously in order to impress Ms Brill, repeating everything that she claimed about me and then reporting to her what he had done.

Ms Brill should be held accountable for the ongoing harassment and defamation that has had far reaching consequences for myself and my family. Withdrawing from a case that I feel certain could be easily proven, a case that winning might not regain all that I have lost, but would at least feel like a degree of justice was received, was devasating. But I didn't feel that I had a choice. I understand that we aren't trying her actions in this forum.

But paying Marc Randazza for his continued campaign of manipulation and intimidation on her behalf, especially after he has already been paid, that I simply don't understand.

CONCLUSION

For the reasons set forth above, I respectfully request that the Court should construe the defendant's request for legal fees be denied on the basis that Mr. Randazza has already been compensated more than the amount set in the previous proceeding, that his claim for 142 hours of work is not only excessive, but fraudulently so, and that his unprofessional behavior has been an obstruction to this entre proceeding.

Date: June 8, 2021

Respectfully,

Michael Postle, PRO PER

3724 Deer Walk Way

Antelope, CA 95843

List of Exhibits:

EXHIBIT #1 – Proof that Randazza Legal Group has received at least $27,681.00 to date

1. **1. GoFundMe campaign created to cover Ms Brill's legal fees, created by Ms Brill, for the listed benefit of Cassidy Curran**
2. **Motion for costs from the Randazza Legal Group showing Cassidy Curran is an employee of the Randazza Legal Group**
3. **Twitter announcement of the success of the GoFundMe campaign**

Exhibit #2 – Claim that nearly $200k in legal fees have been covered for Ms Brill's anti-SLAPP by Bill Perkins and that Mr. Randazza's fee for an anti-SLAPP would be $20,000.00

1. **Tweet from Ms Brill regarding Mr Perkins paying her legal fees**
2. **Transcript from PokerNews 3/26/2021 -Ms Brill announces that Mr. Perkins is paying her legal fees**
3. **Transcript from Mental Health Matt Show 3/26/2020 - Ms Brill details the amount of legal fees Mr. Randazza projects the anti-SLAPP suit to cost and that Mr. Perkins has sent her nearly $200,000.00 for her legal fees**

Exhibit #3 – Huffington Post article about Marc Randazza's financial and billing fraud

Alex Jones' Lawyer Violated Legal Ethics By Soliciting Porn Bribes. Just How Dirty Is Marc Randazza? Luke O'Brien - December 27, 2018

Exhibit #4 – Public warning website dedicated to protecting the public from Marc Randazza

CorruptRandazza.com

Exhibit #5 - Nevada Bar Amended Complaint Against Randazza

Exhibit #6 - Interim Arbitration Award

Exhibit #7 - Utah Federal court ruling chastising Randazza for dishonesty

Exhibit #8 – Huffington Post article about Marc Randazza's continued ethics violations, including additional financial fraud and billing fraud.

Connecticut Judge: Marc Randazza Is Too Unethical to Defend Alex Jones March 20, 2019 Luke O'Brien

Exhibit #9 – Complaint concerning Mr. Randazza's attempt to intimidate and defame opposing lawyers

Florida Bar Complaint Against Randazza

Exhibit #10 – Letter from the HONR Network

Letter from the HONR Network

Exhibit #11 - Phone Record

Record of the call to Mr. Bensamochan

Exhibit #12 - Phone Record

Record of the calls to and from Mr. Randazza

Exhibit #13 – Phone Record

Alexandrea Merrell's incoming and outgoing phone logs

Exhibit #14 – Complaints to the Bar Association

1. **Copy of my complaint to the Bar Association**
2. **Copy of Ms Merrell's complaint to the Bar Association**

Exhibit #15 – Efforts to Intimidate me into not seeking assistance with the HONR Network

1. **Claims in his filing for fees that Ms Merrell and the HONR Network "likely committed the unlicensed practice of law" for assisting me**
2. **Billing statement where Randazza claims he is owed more because of HONR**
3. **CardChat Article where Mr. Randazza calls people offering me assistance "idiots"**

Exhibit #16. – Doxxing by Mr. Randazza and Ms Brill

1. **Mr. Randazza's tweet and refusal to remove the doxing content**
2. **Ms Brill's reposting of my address and phone number**
3. **A small sampling of the attacks received due to Mr. Randazza and Ms Brill doxing me**

Exhibit #17 – Law suit filed by Ms Brill

Brill etc. vs Postle, Stones casino, and Justin Kuraitis

Exhibit #18 – Statement from Ms Brill's attorney acknowledging that no cheating was found

Statement from Maurice VerStanding

Exhibit #19 – Tweets sharing the court video

1. **Twitter Posts by Ms Brill that include the court video**
2. **Tweets revealing that she is aware that she is not supposed to have it and that she doesn't care that she is violating the court's order**

EXHIBIT 1

EXHIBIT #1 – Proof that Randazza Legal Group has received at least $27,681.00 to date

1. GoFundMe campaign created to cover Ms Brill's legal fees, created by Ms Brill for the listed benefit of Cassidy Curran

2. Motion for costs from the Randazza Legal Group showing Cassidy Curran is an employee of the Randazza legal Group

3. Twitter announcement of the GoFundMe campaign

Legal Assistance

$27,681

329 64 331

Share

Veronica Brill is organizing this fundraiser on behalf of Cassidy Curran.

This has blown up more than I thought. Thank you all so much for your generosity and kindness. This money will be going into a trust /separate account.

Mike Postle got caught cheating in poker and is now suing me for being the whistleblower.

He is also suing ESPN, Daniel Negreanu, Run it Once, Haralabos Voulgaris, Up Swing Poker, Poker News, Crush Live Poker, Johnathan Little, and Todd Witteles.

I need to raise money for my own defense as we all need to file Anti-Slapp separately and that costs $20,000.

Scott Cunningham
$50

Thomas Keeling
$200

Mitchell Hoatson
$20

See top donations

If i raise in enough i will consider accepting the suit and moving forward with discovery. In the case that I move forward with the suit and win, and get Mike to pay for my legal bills, I will give all reimbursed legal fees to KL Cleeton (see below).

Any money raised and not used for legal expenses, I will be giving to KL Cleeton towards the van that we have been trying to get for him.

[redacted] **Share**

Organizer and beneficiary

Veronica Brill
Organizer
Santa Clara, CA

→

Cassidy Curran
Beneficiary

Comments (33)

Thomas Redding donated $200
Sorry I forgot about this

Frank Pimentel donated $[illegible]

Thank you Veronica for all you have done for the integrity of Poker.

Brian Ek donated **$20**

It takes the village to rid the idiot.

Kirk G Grier donated **$50**

Cheaters Suck. Go get 'em!

Daniel Iachan donated **$20**

Bring this scumbag down!

Ken Keppel donated **$20**

I don't know you or K.L. but I've followed the story and the cause(s) seem worthy. Good luck!

James C donated **$100**

Bury that mofo

Andrew Gaines donated **$50**

I donated because Fuck Postle

Damian Player donated **$30**

Good luck. Best of British to you

Hylen Smurr donated **$10**

I like Veronica.

Please donate and share words of encouragement.

Created October 3, 2020 Other

Report fundraiser

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English (

Medical

Emergency

Memorial

Education

Nonprofit

How GoFundMe works

Why GoFundMe

Common questions

Success stories

Supported countries

Team fundraising

Donate button

Support COVID-19 fundraisers

Help center

Blog

GoFundMe Stories

Press center

Careers

About

3.2.1 The Hourly Rates of Brill's Attorneys are Reasonable

To determine reasonable hourly rates, a court looks at the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skill, experience, and reputation. "The determination of the 'market rate' is generally based on the rates prevalent in the community where the court is located." *Syers Properties III, Inc. v. Rankin* (Cal. App. 1st Dist. 2014) 226 Cal. App. 4th 691, 700. In determining a reasonable rate, California courts routinely look to the Adjusted Laffey Matrix, attached as **Exhibit 5**, for guidance and find rates consistent with the Laffey Matrix to be reasonable even when the actual fees charged were less. *Id.* at 700; *see Nemecek & Cole v. Horn* (Cal. App. 2d Dist. 2012) 208 Cal. App. 4th 641, 650. Courts may consider several factors in determining a reasonable rate, "including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case." *Melnyk v. Robledo* (Cal. App. 2d Dist. 1976) 64 Cal. App. 3d 618, 623-24. The terms of a fee contract may be considered, but "do not compel any particular award." *Vella v. Hudgins* (Cal. App. 2d Dist. 1984) 151 Cal. App. 3d 515, 520.

Ms. Brill's counsel charged their standard hourly rates for work performed on this case.[2] Attorney Marc Randazza's normal billing rate is $800 per hour. (Randazza Decl. at ¶ 15.) Attorney Ronald Green's rate is $600 per hour. (*Id.* at ¶ 16.) Attorney Jay Wolman's rate is $600 per hour. (*Id.* at ¶ 17.) Due to Mr. Green and Mr. Wolman's limited role in this case, RLG has chosen to write off their time entirely as a proposed compromise. (*Id.* at ¶¶ 16-17.) Attorney Alex Shepard's rate is $450 per hour. (*Id.* at ¶ 18.) Law Clerks Trey Rothell and Bryttni Yi's rate is $200 per hour. (*Id.* at ¶¶ 20-21.) Paralegals Jasmyn Montano, Heather Ebert, and Cassidy Curran's rate is $175 per hour. (*Id.* at ¶¶ 22-24.)

The firm's rates have been found reasonable recently in Clark County, Nevada in *Guo v. Cheng*, Case No. A-18-779172-C and *Las Vegas Resort Holdings, LLC v. Roeben*, Case No. A-20-819171-C, both

[2] Out of respect for the important First Amendment concerns raised in this case, and out of regard for access to justice issues, Randazza agreed to provide a discount if Ms. Brill made prompt payments, with the compromise that counsel could seek full rates in a fee motion. (Randazza Decl. at ¶ 14.)

Tweet

BestBetUSA

...

After a defamation lawsuit against Veronica Brill and others was filed by Mike Postle, Brill set up a GoFundMe for legal bills which hit its goal in less than 24 hours.

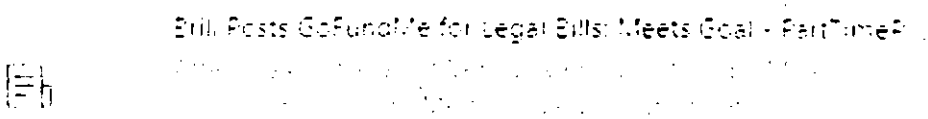


EXHIBIT 2

Exhibit #2 – Claim that nearly $200k in legal fees have been covered for Ms Brill's anti-SLAPP by Bill Perkins and that Mr. Randazza's fee for an anti-SLAPP would be $20,000.00

1. Tweet from Ms Brill regarding Mr Perkins paying her legal fees

2. Transcript from PokerNews 3/26/2021 -Ms Brill announces that Mr. Perkins is paying her legal fees

3. Transcript from Mental Health Matt Show 3/26/2020 - Ms Brill details the amount of legal fees Mr. Randazza projects the anti-SLAPP suit to cost and that Mr. Perkins has sent her nearly $200,000.00 for her legal fees

Tweet

Veronica Brill ...

Hello Poker Community,
I have set up a gofundme to help cover my legal expenses.

If I raise enough I will consider taking on this law suit
Any excessive money raised I will be donated towards s van
Help if you can I very much appreciate it

Legal Assistance organized by Veronica Brill

Bill Perkins (Guy)

I got the balance DM me

35 29 1,378

Veronica Brill Interviews

Transcriptions where she talks about how her legal fees have been paid by donations and benefactor Bill Perkins.

PokerNews Interview with Host Sara Herring
March 26, 2021

Veronica Brill [00:44:22]: Bill Perkins is one of the non-weird ultra rich people.

Veronica Brill [00:44:50]: He sent, so I haven't touched...like the money that was donated to me by the poker community and the chess community. I have to to say there's like a 7-time chess champion that donated to me and I was like I don't even know this person, I never even like...I don't even think I've interacted with him on Twitter but I was like 'Damn, words getting around.'

Veronica Brill [00:45:10]: But um that money is in a trust fund and Bill Perkin's money I sent to that same trust fund because I didn't want anyone to think that I was going to do anything with it. It's just going to legal fees...but like he, he's like 'yea, I'll sent it, I'll sent it right away.' I thought he was just kidding or like you know how people say they'll do it but then they can't or they will find an excuse but he literally shipped the money like the next morning and I was like 'holy shit', like 6 figures. I was just in shock. He's very generous and very kind.

Mental Health Matt with Matt Hunt, Poker Training Coach at Solve4Why
November 14, 2020

Veronica Brill [01:15:15]: Oh, my God, I raised almost $30,000 dollars for my defense in four hours. These people, there is a umm a chess champion. I think he was like a seven time chess champion and he was one of my biggest donors on Go Fund Me.

Veronica Brill [01:15:35]: Incredible I looked it up because I was like, who's donating all this money? Like, all of these big names are donating to me. And I was just, uh, Farah Galfond, you know, I was just taken back. I was the one thing I was thinking was like, 'Look, I'm just going to raise like $3000 bucks if I can and then I'm going to have to, you know, find a way to get this $17,000 and you know paid it off." But um no, it was it was quite the opposite. And I, I just am incredibly grateful for all of the support.

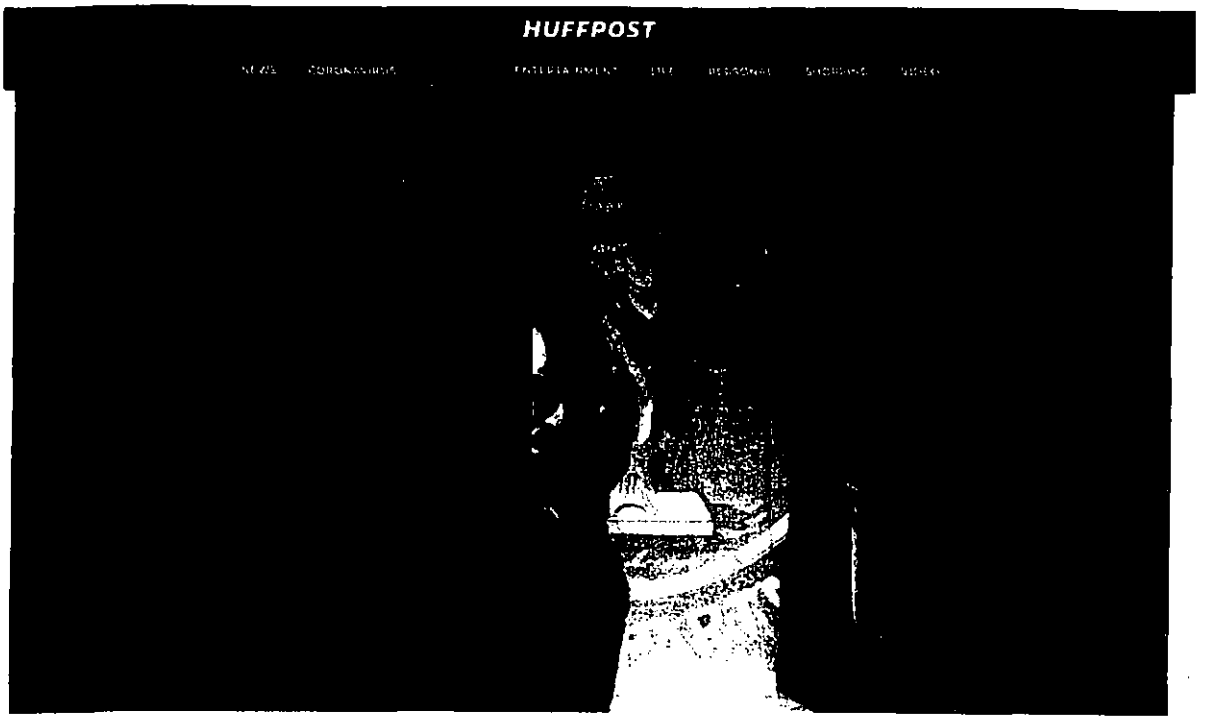
Veronica Brill [01:16:35]: Uh Bill Perkins did more than that. So when I initially contacted the lawyer, the lawyer that I have, my lawyer. He wrote the anti SLAPP law in Las Vegas, in Nevada, and he's he's The Guy. And so I called him up and I was like, 'how much would it cost for an Anti-slapp?" And he's like, 'Oh, it's about $20K but if you can find someone to do it with you, then we can just like cut costs.

Veronica Brill [01:19:55]: And so I was like. OK. I need to I need to just do this on my own, and so when I started this. I was like, well. I was with like $2000 or $3000 dollars away from my $20,000 goal. And then Bill Perkins reached out to me. He followed me first. I just want to let everyone know I'm just I've got some clout here. And I followed him back and he's like, um, "I want to fund a war". And I was like, "I'm I'm fucking ready. You've got the right girl". And I was like, "Uh do you know how much this war is going to cost?" And he's like, well, "just let me know". And I spoke with the lawyer and I let's just say he shipped me under $200K like literally the next week. And so we're just waiting, it's sitting in a trust. None of the money that anyone has given me is, is like near me. It's in a trust. So Bill Perkins money and then the money from the poker community is sitting in a trust and we're just waiting. I haven't been served yet. If I do get served, we're fucking going to war. We want discovery because we all know he did cheat.

EXHIBIT 3

Exhibit #3 – Huffington Post article about Marc Randazza's financial and billing fraud

Alex Jones' Lawyer Violated Legal Ethics By Soliciting Porn Bribes. Just How Dirty Is Marc Randazza? Luke O'Brien - December 27, 2018



HuffPost image

Alex Jones' Lawyer Violated Legal Ethics By Soliciting Porn Bribes. Just How Dirty Is Marc Randazza?

America's foremost attorney for far-right extremists wanted "a little gravy," then lied to cover it up. That's just part of his twisted journey through a lax legal system.

By Luke O'Brien

12/27/2018 03:09 pm ET Updated Dec 27, 2018

One morning this June, a group of lawyers filed into the office of the State Bar of Nevada and closed the door. It was summer in Las Vegas, the morning temperature already nearing 100 degrees, but inside the low-slung tan building, the lawyers had a chilly question to address: what to do about one of their own.

Marc Randazza had been a problem for years.

Randazza, who represents conspiracy theorist Alex Jones and many other far-right extremists, had long relied on lawyer buddies to pump his public image. By their telling and his own, Randazza was a First Amendment "badass." But he was a combative badass, even vicious, and he'd left a trail of bad blood and trampled ethics behind him.

Randazza had made enemies. Plenty of them. But he was cunning. He'd sidestepped previous bar complaints and once avoided paying $600,000 in damages to his former employer by filing for bankruptcy and having his malpractice insurance kick in. Randazza was lucky, too. When an appeals court assigned a panel of judges to look into his misrepresentations in court under oath, the underlying case settled before the panel could meet. So off Randazza went, scuttling along through the Mojave as unaccountable as a scorpion.

His problems, though, now appeared to be gaining on him. For five years, the Nevada Bar had been aware of allegations that Randazza violated ethics rules in 2011 and 2012 while working for pornographers. By the time the lawyers met in Vegas to decide his fate, Randazza had attained a new level of notoriety.

Since Donald Trump's election, he had become, as much as any attorney in America, a legal crowbar for far-right grifters and goons to leverage the protections of democracy in an effort to undermine them. And although Randazza had taken on legitimate free speech cases in the past, he'd grown curiously chummy with fascists and racists who use defamation, harassment and threats to silence others.

Aside from Jones, Randazza and his firm represented neo-Nazi publisher Andrew Anglin; white nationalist Republican congressional candidate Paul Nehlen; white supremacist patriarch Jared Taylor; Holocaust-denying slanderer Chuck Johnson; Pizzagate peddler Mike Cernovich; pro-rape misogynist Daryush "Roosh" Valizadeh; an alt-right member who helped organize the deadly white supremacist rally in Charlottesville, Virginia; the booking agent for white nationalist Richard Spencer; 8chan, an online message board teeming with neo-Nazis; and Gab, the alt-right social media platform where Robert Bowers, who allegedly killed 11 people at a synagogue in Pittsburgh in October, appears to have radicalized himself.

In Randazza, these extremists had found their own bush league Roy Cohn, the attorney who in a pre-internet era served as the "legal executioner" for right-wing thugs such as Trump and Joseph McCarthy and repped mafia bosses like Carmine "Lilo" Galante and "Fat Tony" Salerno. (Cohn was disbarred for "dishonesty, fraud, deceit and misrepresentation" shortly before he died in 1986.)

Like Cohn, Randazza was willing to go on the offensive for authoritarians. And like Cohn, Randazza's legal license and bunco man's talent for beguilement made him as problematic as some of the people he represented. This summer, a former federal judge who'd scrutinized Randazza's unethical behavior in an arbitration proceeding described the attorney as nothing short of a danger to the public.

Certainly, Randazza's misbehavior had *happened* in public — it was all there in the court records for anyone who cared to slog through them, a testament to how easily a bad actor with the right credentials can abuse a system that assumes candor from its professional class, not to mention an illustration of how white-collar privilege can abet white-collar wrongdoing in America. Like a Wall Street banker selling bad debt or a well-connected U.S. Supreme Court nominee fibbing under oath, Randazza had been given a pass. Until now.

The backstory to what he'd done was complicated, the details sordid. The short of it is this: While working as the in-house general counsel for gay pornographers a few years ago, he solicited bribes, embraced conflicts of interest, relied on ill-gotten privileged information to gain a legal advantage, made misrepresentations about his fees to various courts and despoiled evidence of his treachery, according to an arbitrator's findings, sworn statements in legal proceedings, interviews with opposing counsel, Randazza's own admissions and thousands of pages of court records.

But what was the Nevada Bar prepared to do about it?

A Troll Is Born

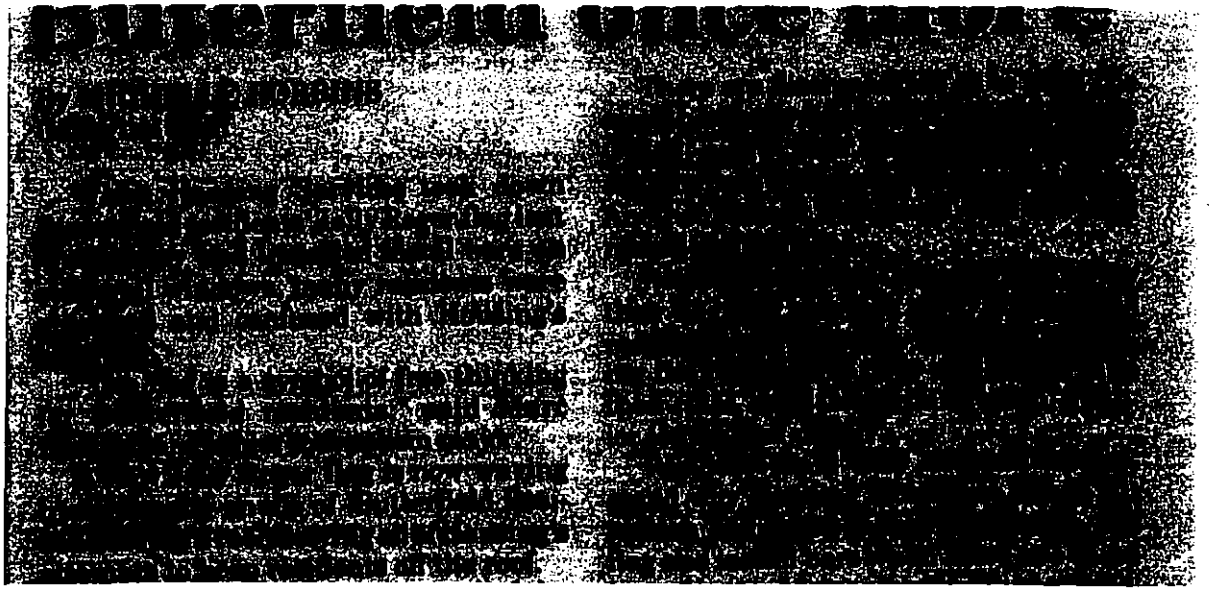
Randazza grew up in Gloucester, Massachusetts, where his Sicilian family immigrated, worked as fishermen and gained repute as champion traversers of greased poles during the town's annual St. Peter's Fiesta. Randazza chose a

different path. In high school, he was voted "most likely to be dead or in jail" by 25. He claims to have failed out of the University of Massachusetts three times.

Twenty-year-old Randazza enlisted in the U.S. Army during one hiatus from college with the goal of becoming a psychological operations soldier, according to military records obtained by HuffPost. He lasted less than five months in the Army. Randazza completed boot camp and airborne "jump school" training but appears to have washed out of psy-ops training and was discharged for undisclosed reasons during the Gulf War.

He returned to the University of Massachusetts and plunged into controversy. A school administrator at the time remembers Randazza as "an oppositional personality" who was "just interested in burning stuff down." Randazza lived in Butterfield Hall, a dorm known for its drug-fueled parties, and took to flying a Jolly Roger flag from an antenna on the building's slate roof — an early, if misguided, free speech stand. Randazza, the former administrator said, egged on other students to climb on the steep roof. The school removed the flag several times because of safety concerns, only to have someone put it back up, at one point by allegedly using explosives to blast off metal bars the school had installed over windows to prevent students from accessing the roof. Randazza claimed the bars "rusted and fell out."

When one female student complained that the flag resembled the logo of White Aryan Resistance, a prominent neo-Nazi organization, Randazza mocked her concerns and covered a letter she'd written in crude sexual insults, according to the student newspaper. The insults, he said, were his "trademark."



MASSACHUSETTS DAILY COLLEGIAN**Randazza seemed to delight in antagonizing the UMass administration.**

It took Randazza seven years to graduate from UMass with a journalism degree in 1994. After college, he drifted for a few years — a period he vaguely refers to as his time as a "former news reporter," although scant evidence of his journalism career exists. Randazza filed at least two dispatches from Italy, where he now has dual citizenship, for the newsletter of the Order Sons of Italy in America, a national organization for people of Italian heritage.

In 1997, Randazza managed to get into Georgetown law school; he said he finished a "dead last" in his class. He caused a furor when he ran for the Student Bar Association using campaign posters that referenced penile implants. When the Women's Legal Association tore down the posters, Randazza protested to the dean that his political speech was being censored. He got to put his posters back up. "And then," Randazza gloated on one legal blog, "the WLA cow had to apologize to *me*."

Randazza completed his third year of law school at the University of Florida because, as he put it, he never fit in at Georgetown: "I found it to be too conformist and oppressive. I'm a hardcore left-wing guy, but at Georgetown, there was no room to dissent." (Georgetown is a large law school that graduates

students from all walks of life and political backgrounds. Among them: Atlantic Media owner David Bradley, Federal Reserve Chairman Jerome Powell, House Majority Leader-elect Steny Hoyer, criminal Republican lobbyist Jack Abramoff, and criminal Republican lobbyist and former Trump campaign manager Paul Manafort.)

In almost every interview, Randazza describes himself as a "leftist" or a "libtard" or "so liberal" that he's "practically a communist," which might have been accurate in 1996, when he listed his party affiliation as the Socialist Workers Party, according to Florida voter registration records. But it wasn't in 2000, when Randazza volunteered for John McCain's presidential campaign. Since at least 2002, Randazza has been a registered and active Republican voter, according to both Florida and Nevada records.

He went out of his way to take advantage of us. With him, there's always an end game that occurs at the expense of somebody else. And he has no remorse. Brian Dunlap, vice president of Liberty's sister company, Excelsior

He began his legal practice in earnest around that time and, with his bad grades, struggled at first to find a job. He claimed to shun the idea of working at a big firm because "it's all about being a billing machine and ethics aren't important." Instead, his moral compass pointed to pornography, which he called "one of the most ethical industries I have ever dealt with."

In 2004, he landed a junior position at a small firm that specialized in First Amendment and intellectual property cases. His career received an immediate and major boost when Fox News made him a talking head after an academic paper he wrote about online vote swapping garnered national attention. From the start, though, smut was Randazza's primary focus. In Florida, the porn lawyer tooled around in a yellow Porsche with U.S. paratrooper plates.

In 2009, he took a nearly $250,000-a-year job in San Diego as in-house general counsel for Excelsior Media, a gay porn company, and Excelsior's production and distribution arms Liberty Media Holdings and Corbin Fisher. (Because all of the cases Randazza worked on involve Liberty as a party, we will refer to his employer as Liberty throughout this article.) Liberty later relocated to Las Vegas, and Randazza moved with the company.

On his first attempt at passing the Nevada Bar exam, Randazza failed the ethics portion of the test.

The Porn Lawyer Ascendant

Randazza staggered naked down the stairs, clutching a bottle of red wine. It was January 2010, and the attorney was boozing it up at the villa Liberty had rented for a location-scouting trip to Costa Rica. Around 9 a.m. that day, according to court records, Randazza stopped studying for the California Bar exam and started guzzling vodka and peach soda. He kept drinking over lunch at a nearby hillside restaurant, tossing back so many cocktails that he had to be helped outside to vomit in the parking lot. Brian Dunlap, vice president of Liberty's sister company, Excelsior, drove Randazza back to the villa in a rental Jeep, the vehicle bouncing over small cobblestone roads as Randazza puked violently out the window, his heaving taking on a staccato rhythm with the bumps.

Back at the villa, Dunlap got the attorney into his bedroom and went to hose down the Jeep. But Randazza was soon back on his feet and making for the pool with a wine bottle. Now, he was naked. The Liberty executives looked on, laughing. One of them filmed the glassy-eyed Randazza wobbling into the pool.

"As your attorney," Randazza said, turning full-frontal to the camera as he held his wine bottle aloft, "I advise you to drink this."

HUFFPOST IMAGE**Marc Randazza getting drunk and naked on a trip to scout porn shoot locations in Costa Rica.**

Initially, Randazza's antics seemed harmlessly incorrigible. And his raffish demeanor was hardly out of place in the freewheeling porn industry. Randazza didn't just party with his bosses. He procured concealed carry permits for them, helped them with legal name changes and sorted out their messy personal affairs. On one occasion, he acted as a cooler after a Liberty performer who was in a sexual relationship with the company's CEO allegedly attacked the executive. Randazza bundled the porn actor into a cab bound for the airport and a flight out of Las Vegas.

"[Your] 702 area code privileges have been revoked," he told the man.

Above all, though, Randazza served as Liberty's attack dog. His main duty was to go after copyright infringers, earning a 25 percent bonus on any settlement funds he brought in. Some of the infringers were companies, but Randazza also shook down gay kids and small-time pirates, even unemployed ones.

But Randazza was two-timing Liberty. He was secretly doing work for Liberty competitors such as Bang Bros, Titan Media and Kink.com, sometimes billing his

outside clients almost 100 hours a month. He also worked for companies accused of infringing Liberty's copyrights, including XVideos. Most attorneys would shun these conflicts of interest. Randazza barreled into them. He played clients off each other and cited "fair use" to dissuade Liberty from suing infringers.

"The big targets that we kept asking him to go after for months were his clients," Dunlap said. "We kept saying, 'What about XVideos? What about XVideos? They're the worst.'"

Only years later did Liberty executives realize that when they sent takedown notices to XVideos, the lawyer handling them sat down the hall. Randazza invoiced XVideos for over $44,000 while employed by Liberty.

"He went out of his way to take advantage of us," Dunlap said. "With him, there's always an end game that occurs at the expense of somebody else. And he has no remorse."

Randazza misled people on multiple fronts. When he started his Liberty job, he accurately described himself in court as the "in-house counsel for Liberty Media Holdings." But a year later, he was giving judges, journalists and potential clients the impression that he was an outside attorney, rather than a Liberty employee. He swapped out his Liberty email address and letterhead for a personal email address and the letterhead of the "Randazza Legal Group," a firm he'd set up in Florida. He handed out personal business cards that made no reference to his Liberty job.

In court filings, Randazza referred to himself as "counsel for Plaintiff" or "an attorney for the Plaintiff." He told courts that Liberty had "incurred" his fees or that he'd "charged" the company at billing rates of $425 to $500 per hour. To support those rates, he sometimes filed affidavits from a paralegal who stated under oath that he was Liberty's "Vice President for Intellectual Property Management," a position Dunlap said the paralegal never held. Randazza also submitted affidavits from lawyer friends of his, along with time sheets showing his rates, even though he was a salaried employee.

It's not clear why he did this. He may have thought it would make it easier for him to recover fees, which juiced his 25 percent bonus on settlement money and

allowed him to hike up his rate ceiling. (He now charges some clients $700 per hour.)

In the U.S. legal system, each party typically pays its own legal bills. There are, however, provisions in some types of litigation — federal copyright cases, for example — that allow for the winning party to collect its fees from the losing party. Judges would probably scrutinize an in-house counsel's request to recover fees more closely, according to several ethics experts and law professors. But an in-house counsel has just as good a chance at recovering fees, the experts added — a fact Randazza might not have been aware of at the time.

"All the stuff that is misleading is tailored for him to win that fee award," said Adam Springel, a Las Vegas attorney and expert in commercial and business law who examined a number of Randazza's fee filings at HuffPost's request. "He was clearly trying to get the judge to rubber-stamp his fee requests."

By creating the impression that he was an outside hired gun, Randazza may have also been trying to build name recognition and drum up business for the Randazza Legal Group, whose growth Liberty was subsidizing. Randazza didn't tell his employer about some of the fee awards he won — "the substantial ones, in particular," Dunlap said — and later refused to let Liberty audit the account where he deposited litigation payouts. He said it would look better in court to use the Randazza Legal Group on filings, as "insulation" for his employers.

"We took it as legal advice, and didn't think much of it at the time," Dunlap said. "We had no idea to what extent he was trying to double dip. ... But when we discovered he was trying to say he was an outside firm charging us hourly and running up huge legal bills, that's when it became apparent he was trying to pull a fast one with the court."

Greedhead & Fleecer, LLP

Randazza's dirty pool went beyond duping his employer and the courts. He was also soliciting illicit payoffs from parties that Liberty wanted him to sue. Records that surfaced during the arbitration proceeding and that were later made public in U.S. Bankruptcy Court in Nevada reveal the grimy particulars. In December 2010, while negotiating a settlement for Liberty with the website

TNAFlix, Randazza went after his first bribe. He wanted TNA to pay to "conflict [him] out" of being able to sue the website again. A $5,000 "contract" figure came up. Randazza's opposing counsel, Val Gurvits, had no idea that Randazza was working in-house for Liberty at the time.

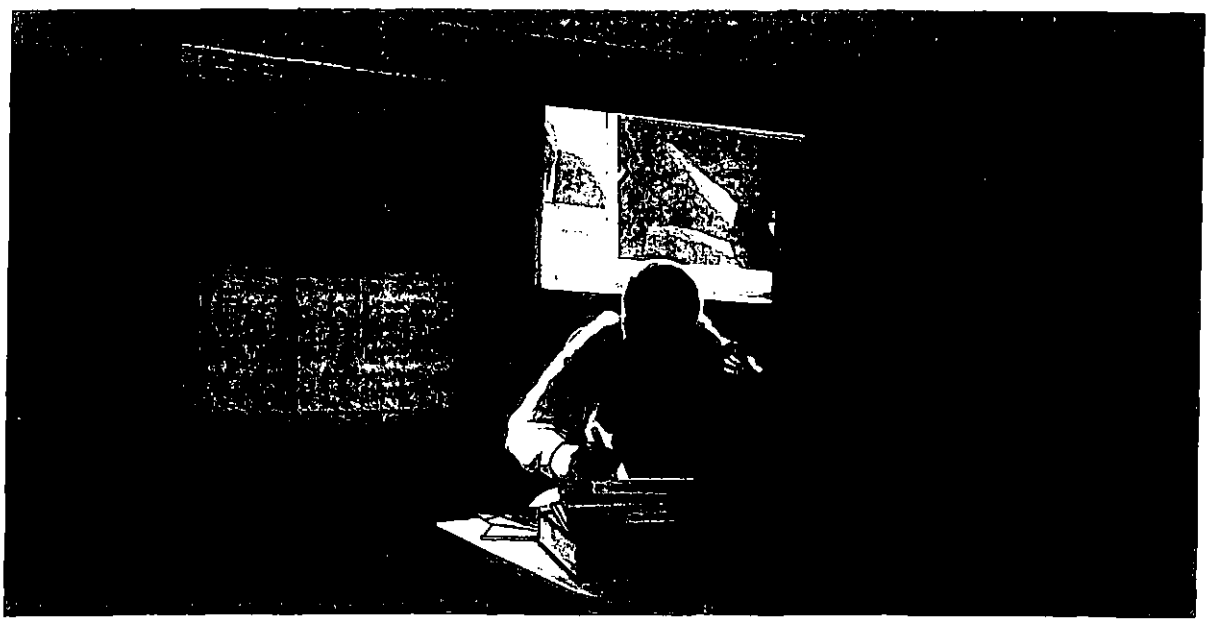
"Not a single communication from him ever came on Liberty letterhead," Gurvits told HuffPost.

Randazza concealed his job while hunting for money from other companies. But he didn't hide his avarice.

"There needs to be a little gravy for me," he emailed Gurvits. "And it has to be more than the $5K you were talking about before. I'm looking at the cost of at least a new Carrera in retainer deposits after circulating around the adult entertainment expo this week. I'm gonna want at least used BMW money."

Randazza asked for $30,000 and raised the possibility of teaming up with Gurvits to broker a sale of TNA to one of Randazza's outside clients, which could have earned him a $375,000 commission. He pushed hard to secure both deals. When Gurvits hesitated, Randazza claimed another company wanted to hire him to sue TNA.

"I can't hold these guys back any longer," he warned.



OWEN FREEMAN FOR HUFFPOST Marc Randazza worked long hours chasing porn money, some of it illicit.

Randazza's first known solicitation of a bribe was an apparent violation of the Nevada Rules of Professional Conduct, which forbid lawyers from "offering or making" agreements like these that could restrict them from practicing law. (The Nevada rules mirror the model rules of the American Bar Association, a baseline version of which has been adopted in every jurisdiction except California.) Randazza later tried to wring a bribe out of Megaupload, a file-sharing site that had allegedly infringed Liberty's copyright, according to arbitration records.

"Once you take a financial stake in the outcome of your client's case, then you have a conflict of interest. It compromises the independent professional judgment of the lawyer. It's not even a close call," said Russell McClain, an associate professor at the University of Maryland School of Law and an expert in professional responsibility.

The extent of Randazza's web of deception became apparent in Liberty's 2012 federal lawsuit against Oron, a file-sharing site. When Randazza tried to recover fees in the case, he not only failed to identify himself as Liberty's in-house counsel but also bundled his own "charged" fees with the fees of outside attorneys he'd brought on at his firm. He claimed the Randazza Legal Group had billed Liberty almost 366 hours, causing the porn company to "incur" $214,964 in attorneys' fees and costs. Of that total, Randazza told the court, $90,833.98 resulted from his nearly 182 hours of work at $500 per hour.

He also reported that his employees billed Liberty at their "standard hourly rates." For his partner, Ronald Green, that meant $400 per hour. For paralegals, it was $125 per hour. In reality, the Randazza Legal Group gave Liberty a massive discount, sometimes 75 percent off market rates, on work done by its lawyers — a fact that Randazza withheld from the court.

These were material misrepresentations, according to multiple fee experts interviewed by HuffPost. And Randazza got away with them: U.S. District Judge Gloria Navarro eventually ordered Oron to pay an extra $131,797.50 to cover Randazza's claimed fees.

Randazza had crossed the line in other ways, too. While negotiating a $550,000 settlement agreement with Oron, he'd chased another bribe. If the file-sharing company paid him $75,000, Randazza would "never be able to sue [Oron and its sister companies] forever and ever," he promised Oron's counsel. For that price, Randazza said he'd "provide some really great value" — including a "plan that you'll drool over" to make it harder for other companies like Liberty to sue Oron.

Randazza had an unfair advantage. He'd acquired information about Oron's privileged legal communications and its Hong Kong bank account from a softcore porn photographer named James Grady who also wanted to take down the file-sharing company. Grady had paid "a guy — call him a forensic investigator — to dig past Domains by Proxy and things like that," the photographer told Randazza in an email, making it clear that his source "didn't get the info at Walmart in the course of normal commerce."

According to Val Gurvits, whom Oron brought in to help with its case because of his experience dealing with Randazza, the only way to know about Oron's overseas bank account would be if someone "broke into Oron's gmail."

It certainly looked that way. Grady sent Randazza a receipt showing that Oron had released money from its PayPal account to its Hong Kong bank account. He sent information about the personal email account of Oron's owner.

He sent the owner's Skype call logs, which Grady said came from one of Oron's email accounts. He supplied Randazza with detailed descriptions of internal emails sent by Oron's lawyer. The intel helped Randazza get a temporary restraining order in Nevada federal court and freeze Oron's assets.

Randazza invited Grady to Las Vegas to be a "star witness" in the case, urging the photographer to be careful about what he might tell the judge about the Oron material. "You [need] to consider what happens if the judge wants to know where you got your information," Randazza wrote. "As far as I know, it was lawfully obtained. You certainly got it lawfully. If the source is a disgruntled Oron employee, great. Jilted lover, great. Hacker, problematic."

Randazza was forbidden from collecting evidence this way. He also wasn't allowed to engage in "conduct involving dishonesty, fraud, deceit or

misrepresentation," according to multiple ethics experts. In fact, state bars across the country have determined that it is wrong for a lawyer to fail to inform opposing counsel about inadvertently received privileged material. The mere act of reading such material is unethical.

"We would file a brief, and they would have a response the next day," said Stevan Lieberman, one of Oron's lawyers. "It's very clear that [Randazza] used the privileged attorney-client communications to his advantage."

Randazza also shared his "entire Oron file" with one of his porn attorney friends, telling a paralegal to let the attorney "lift anything he wants," according to internal Randazza Legal Group emails. That attorney, who'd later become a partner at Randazza's firm, and a different company would soon file a copycat suit in California that ratcheted up pressure on Oron and kept the company's assets frozen.

In a bind, Gurvits agreed to pay Randazza the $75,000 but insisted that the payment be part of the settlement agreement between Liberty and Oron. "If it wasn't for me insisting, we would have had a separate agreement," Gurvits told HuffPost. "But I felt that was improper. That's how Randazza offered to do it. I said, 'I'm not going to do an end-run around your client.'"

And that's how Randazza got caught.

An Unhappy Ending

When his boss at Liberty, Jason Gibson, thumbed through a draft of the proposed settlement with Oron, he spotted a curious one-line item for $75,000: Randazza's gravy.

"My stomach is churning after reading the proposed agreement," he emailed Randazza.

Their relationship quickly unraveled. Within days, Randazza left his job. He and a paralegal covered their tracks by repeatedly running data-wiping software on their company computers that prevented Liberty from recovering evidence,

according to court documents and forensic investigator testimony. He refused to release the $550,000 Oron settlement award to Liberty from his trust account.

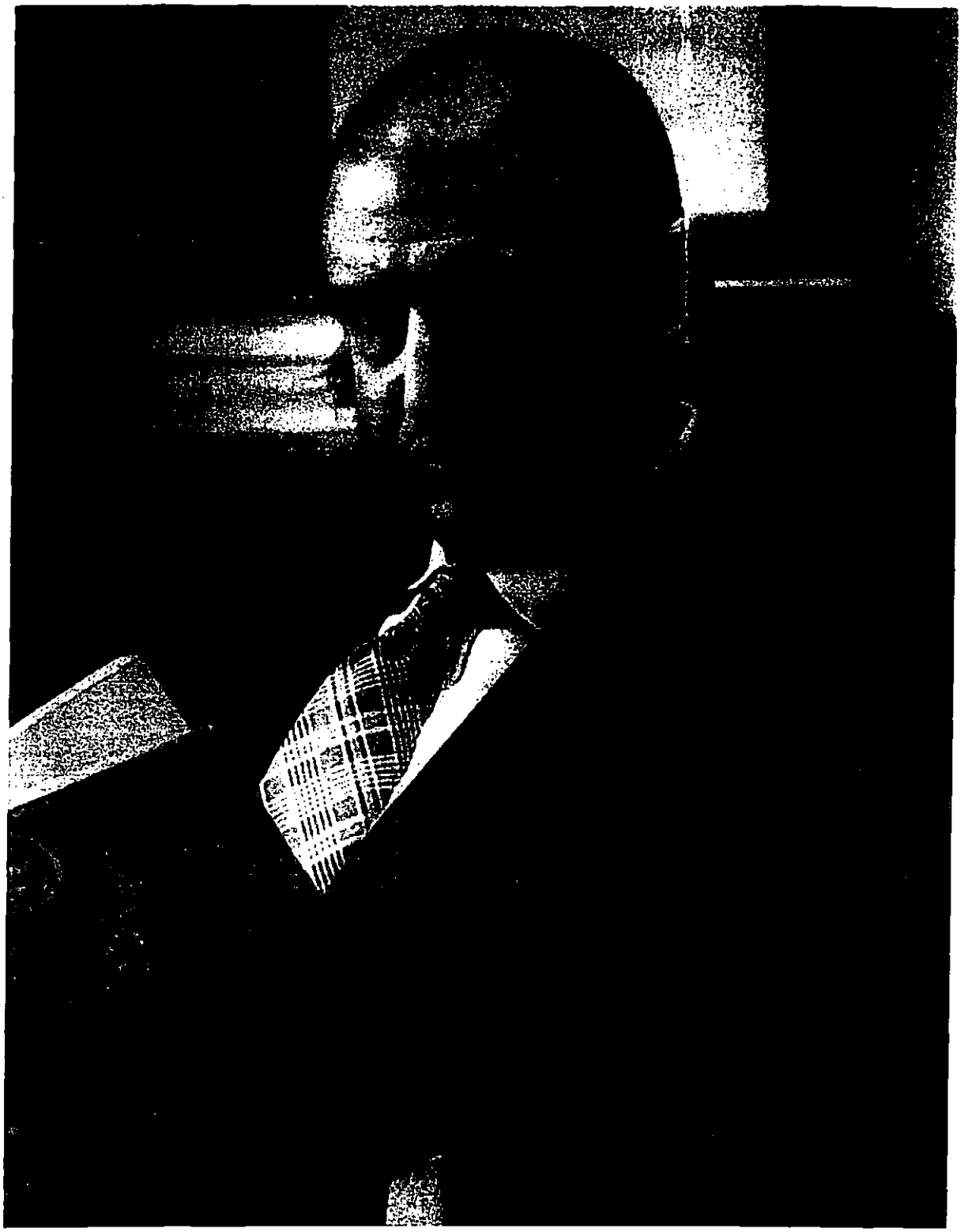
Randazza laid siege to the company.

"Murum aries attigit" is a war doctrine attributed to Julius Caesar that translates to "the [battering] ram has touched the wall." The phrase has a baleful meaning: If your enemies refuse to surrender before hostilities commence, destroy them without mercy. This is Randazza's motto as a lawyer.

"Once the ram touches the wall, you have to commit to ending the other party as a going concern," he explained on his blog. "You must leave the other party with nothing left with which to fight. Because, if a party is fool enough to refuse the favorable terms, that party is fool enough (and poorly advised enough) to keep being a pain in your ass until you finally put them down like a diseased animal."

Randazza filed a complaint with the Nevada Equal Rights Commission, alleging that he'd been sexually harassed at work as a straight man because Liberty, which mainly makes gay porn, once filmed a sex scene — a straight scene, it turned out — in his office. It was a peculiar claim. In the Liberty workplace, Randazza had been exuberantly lewd. He'd talked about wanting to "snap a nasty metal bar across [a man's] wiener" and purchased a couch used for porn shoots for his home, then emailed around a picture of his scantily clad wife posing on it. But the free speech crusader who called political correctness a "disease" and casually, if jokingly, threw around words like "nigger" and "cunt" now was saying he'd suffered ethnic harassment as an Italian-American because Liberty executives had sarcastically called him a "guinea" and a "wop," usually in response to his own off-color instigations.

Randazza's harassment complaint was an obvious farce, and it went nowhere.



SUBPOST IMAGERandazza would bring all his legal firepower to bear in trying to destroy his former client.

In December 2012, he sued Liberty's parent company in Nevada state court on allegations of fraud, breach of contract and unjust enrichment. Four months later, Liberty filed a complaint against Randazza with the Nevada Bar, reporting his solicitation of bribes, conflicts of interest, misleading fee motions and warning that Randazza had on multiple occasions threatened to "drown anyone who attempts to challenge him in legal bills and debt." But the bar dismissed the complaint, citing the ongoing state lawsuit.

"The bar's approach was like, 'Hey, we can't really do anything because there's a civil matter going on now,'" Dunlap said. "But that policy is what allows people to get away with this because private citizens have to assume the burden and the expense of having to prove all this themselves. That means Randazza can drown us in legal fees, which is what he tried to do. It's a process that can be manipulated because if you have a grievance with an attorney, all the attorney has to do is sue you."

Even when Liberty found a way to hold Randazza accountable, the attorney wriggled away. Not long after Randazza sued Liberty, the porn company reported his self-dealing in his fee recovery efforts to an appeals court where the dispute between Oron and Liberty was still playing out. The appeals court asked a panel of judges to look into Randazza's fees, but Liberty and Oron settled their differences and the case was dismissed before the panel could meet. Unfortunately for Oron, the copycat suit that Randazza helped his friend bring against the file-sharing firm kept Oron's assets on ice. Unable to pay its hosting provider, Oron went out of business, according to the company's statements in court filings.

Randazza, on the other hand, stayed in business. And he wasn't done with Liberty. Not long after he left the company, he crossed paths with Dunlap at a porn conference in Arizona and invited his former co-worker to step outside and fight.

"I wonder how much it would cost me to punch you in the face right now," Randazza said, according to sworn testimony by Dunlap in a subsequent legal dispute.

Randazza's next move was to file an arbitration claim against the porn company in which he claimed wrongful termination, breach of contract, back pay and damages from the sexual and ethnic harassment Randazza said he'd suffered. He demanded over $4 million in damages.

The arbitration dragged on for three years and cost Liberty over $1 million. But it backfired spectacularly on Randazza. Liberty brought counterclaims for, among other things, legal malpractice and unjust enrichment. The evidence quickly piled up against Randazza. Billing records proved he'd been getting paid by XVideos every month. Many of the damning emails he thought he'd destroyed were produced and showed him soliciting bribes. Under oath, one of his own expert witnesses was forced to concede that Randazza had likely misled him and violated ethical rules.

Randazza tried to explain away the bribes as a ruse to squeeze extra money for Liberty out of infringers. He'd described his dishonesty in one court filing as "mere puffery."

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Subject: Re: A strange development
From: "Marc John Randazza" [redacted]
Date: Tue, Jan 11, 2011 8:08 pm
To: Val Gurvits <[redacted]
Cc: [redacted]

The number was transmitted on the condition that it was done before a certain date. That date passed

Also, while at the Adult Entertainment Expo, I heard a rumor that TNAflix is installing Vobile.

1) You confirm the rumor,
2) TNA pays $50K,
3) TNA agrees that we get the IPs for each infringement we DMCA,
4) Any work product produced for corbin fisher in this litigation remains confidential, and will not be shared with other companies.

Keeping me completely out of the TNA game is a little more complicated.

If your client wants to keep me personally out of the TNA game, then I think that there needs to be a little gravy for me. And it has to be more than the $5K you were talking about before. I'm looking at the cost of at least a new Camera in retainer deposits after circulating around the adult entertainment expo this week. I'm gonna want at least used BMW money.

In order to conflict me out of future matters, I suggest this:

Your firm retains me as "of counsel" to you. I'd get $5K per month (for six months) paid to me, from you (TNA will reimburse you, I presume). I will render advice on TNA and TNA only, and I'll be chinese walled from your other clients so that other conflicts are not created.

If TNA is sold, and we're the brokers, the payments stop.

Also, I get a conflict waiver so that I can represent the buyer in the sale, and I'm not conflicted out of it.

That way, I'm adequately compensated for my loss of major potential work, and I'm conflicted out of acting adversely to TNA.

HUFFPOST IMAGE/ARBITRATION RECORDSIn emails to opposing counsel that later surfaced during arbitration, Randazza brazenly pursued bribes to conflict himself out of future litigation.

His battering ram had splintered. During arbitration hearings, the normally cocksure Randazza wouldn't even look at Liberty's attorney, Wendy Krincek. He turned his seat away from the arbitration table and put his back to his own attorney, Ken White, a longtime Randazza confederate who runs the Popehat legal blog. Randazza also refused to look at the arbitrator, a former federal judge and assistant Watergate special prosecutor. Instead, the attorney stared at the floor, his body hunched over, hand pressed to the side of his face as he answered Krincek's questions.

"You wouldn't lie to opposing counsel, would you?" Krincek asked Randazza during one hearing while confronting him over a misrepresentation about his fees.

"Yes, I would," Randazza replied.

"I've never seen anything like it before," Krincek said. "He's a litigator. He knows how to present as a witness. He was physically incapable of doing that. ... It was a tell that he was uncomfortable answering the questions. He's a smart guy and he's pretty charismatic. I think he can generally talk his way out of anything, but he was getting nowhere."

Randazza was so rattled after the hearing that he appeared to stick a large wad of used chewing gum on the rear window of Krincek's Saab station wagon in the parking lot, according to Dunlap. (Randazza denied being the gum-sticker.)

In June 2015, the arbitrator ruled against Randazza on every point, finding that the attorney had "been involved in and successfully concluded negotiations for a bribe," among a litany of other wrongdoing. The arbitrator ordered Randazza to pay Liberty more than $600,000 in damages.

But Randazza had one more card to play. Claiming to be almost $14 million in debt, he filed for bankruptcy and froze the arbitration award. A few months

earlier, he'd taken steps to shield many of his assets by moving them into college funds for his children, transferring his BMW and his 80 percent share of his legal practice into a "self-settled spendthrift" trust and lending $300,000 to his in-laws for them to buy a property in Las Vegas, according to Clark County public records. Oddly, the loan came at a time when Randazza's marriage was falling apart. About two weeks after the arbitration ruling, his wife filed for divorce.

"Conceptually, it's not OK to do all sorts of pre-bankruptcy planning and move your assets around," said Bob Keach, one of the country's top bankruptcy lawyers. "This is clearly a guy who has spent some time playing the system."

But the U.S. trustee overseeing Randazza's bankruptcy "didn't seem to care" when the issue was raised at a creditors' meeting, according to Dunlap.

Now, it was Liberty's turn to go on the offensive. With the arbitration decision in hand and binders of evidence proving its case, Liberty filed a second complaint against Randazza with the Nevada Bar. This time, the bar moved forward.

Publicly, Randazza blasted the arbitration as a "miscarriage of justice," but the arbitrator's determinations became the bedrock of the disciplinary proceeding against him. In private, Randazza worried. Liberty had also filed bar complaints against him in Florida, California, Arizona and Massachusetts — every other jurisdiction that licenses him — and Randazza quietly made the porn company an unusual offer: He'd pay Liberty $20,000 for each of his bar licenses that wasn't suspended or revoked. He was, in other words, proposing a bribe.

"He offered us a bounty on his bar licenses — we'd get more of the award if we did not cooperate with bar investigators or send follow-up complaints," Dunlap said. "We refused this offer because it was insulting [and] unethical."

Only in Florida did Randazza fail to offer a bounty — he felt he'd be suspended or disbarred there anyway, according to an email his legal team sent Liberty. Randazza had already made misrepresentations in a letter to The Florida Bar about the Oron bribe and his work for XVideos. When he was busted for them during arbitration, he blamed one of his lawyers for making an "inaccurate" statement in the letter. (The Florida Bar declined to pursue its own investigation.)

And Liberty wasn't the only party upset with Randazza in Florida. In federal court there, Paul Berger, Randazza's opposing counsel in an unrelated case, submitted a copy of a bar complaint he said he'd filed against Randazza over a 2015 episode in which Randazza screamed curses at Berger and his client after a mediation session. Randazza threatened to assault them both and send the client, who happened to be Jewish, to the Gaza Strip, according to Berger's complaint.

"It appears that Mr. Randazza knows no ethical boundaries," Berger told The Florida Bar, which apparently either declined to pursue an investigation or found nothing in Berger's complaint that merited disciplinary action. Pursuant to its policy, the bar then deleted all records of the complaint and, when contacted by HuffPost, was unable to acknowledge the document's prior existence.

In June 2016, Randazza settled his state lawsuit in Nevada against Liberty. He'd been the one to sue, but now his malpractice insurer was the one to pay, shelling out $205,000 to make a counterclaim Liberty filed against Randazza for malpractice go away.

In February of this year, Randazza settled in bankruptcy court with Liberty, where the porn company had also filed a claim. This time, Randazza paid only $40,000. After nearly six years of grueling lawfare, he'd managed to dodge almost all the damages from the arbitration award, which the parties agreed to vacate as part of the bankruptcy settlement.

Vacating the award did not sit well with the arbitrator, who warned in a court filing this July that an "attempted erasure" of his findings might conceal Randazza's "proven serious ethical violations" and weaken protections for "future victims and the public."

The former judge was right to worry.

Nazi Punks, Jump In

Randazza has scrubbed his Liberty job from his resume. The attorney-to-the-trolls now spends most of his days wringing his hands over the "marketplace of ideas" as he tries to game the system for racists and fascists – as if Nazism deserves another spin through the public square.

He openly lauds the "alt-right" movement:

His reputation as a First Amendment attorney has frayed. Even his capstone free speech victory in 2011 over Righthaven, a copyright troll, carries a hoggish taint in hindsight. At the time, Randazza was employed by Liberty, which permitted him, pending the company's approval, to take on pro bono free speech cases to offset any bad press from Liberty's own copyright enforcement lawsuits. But Randazza concealed his work on Righthaven from his employer and kept a $60,000 payout — money Liberty only found out about during arbitration.

"Mr. Randazza was unjustly enriched," wrote the arbitrator, who ruled that the payout should have gone to Liberty.

If you want to represent detestable clients, fine. But when you go out into the media and don't just defend them but actually adopt their logic and moral arguments, that's different. Then, it looks like you agree with them. Elie Mystal, executive editor of the Above the Law blog

Some of Randazza's troubles are behind him — in June, he settled another malpractice claim brought by a former client for $50,000 — but others lie ahead. He remains in Chapter 11 bankruptcy and had only $15,652 in two bank accounts at the end of October, according to court records. In the sloppy monthly reports he is required to file with the bankruptcy court, he lists a sad series of expenses that include his daily coffee at Caffe Sicilia in Gloucester, shopping sprees at Men's Wearhouse and over $4,000 per month in payments to cover alimony to his ex-wife and and child support for their two children.

"I suspect that after the Liberty fiasco, his clients disappeared," Gurvits said. "He was riding high, he was really well-known, and then all of a sudden — disgrace. So who's going to hire him now?"

The answer is the disgraced. Lawyers trying to make their bones as free speech attorneys often take on one extremist client. Maybe two. Randazza has assembled a panzer squad of them, a career choice that is generating new problems for him. When he signed on this year to represent the Satanic Temple in a complaint against Twitter, dozens of members of the organization revolted, describing Randazza as an "agent of the alt-right" and an "ally to Nazis."

They aren't wrong. In January, he partied with rape apologist Mike Cernovich and Gavin McInnes, the founder of the Proud Boys, a fascist gang that commits political violence throughout the country. Other pro-Trump racists and "free speech advocates" were there, yukking it up about "brown people" and "faggots" and the genitalia of transgender women. Randazza also appears routinely on Infowars to lend a legal imprimatur to the lies of hate-spewing, violence-stoking propagandist Alex Jones. In an August appearance, Randazza likened Jones, a key gateway to white nationalism, to black civil rights leaders in the South during the 1960s.

HUFFPOST IMAGE Randazza advocates for far-right extremists outside the courtroom as well as inside.

"If you want to represent detestable clients, fine," Elie Mystal, the executive editor of the Above the Law blog, wrote in a recent column about Randazza. "But when you go out into the media and don't just defend them but actually adopt their logic and moral arguments, that's different. Then, it looks like you agree with them. And if you agree with them, you can no longer avail yourself of the lawyerly presumption that you are just doing your job. Instead of being a mere part of the process, you become part of the problem."

Randazza has gone into business with at least one of his extremist clients, having co-produced both of Cernovich's films. The most recent one, "Hoaxed," is a propaganda reel that appears to demonize the free press and relies on figures such as Jones and Stefan Molyneux, another important conduit to white nationalism.

In a Daily Beast profile, Randazza described the Vladimir Putin-loving, Pizzagate-pushing Cernovich as "an A-plus level friend, and the kind of rare soul now where you can really trust his word as his bond."

And Randazza doesn't just play defense for Cernovich and his other far-right pals. Unlike most First Amendment lawyers, he's willing to brandish the plaintiff's knives for them and carve out space in the legal system for their political agenda.

Since 2016, for example, Randazza and the Holocaust-denying MAGA troll Chuck Johnson have been trying to scavenge coins off the corpse of Gawker after libertarian billionaire Peter Thiel sued the publication into bankruptcy — a legal outcome widely celebrated by fascists that has had a chilling effect on press freedom. Of Gawker and its former CEO, Nick Denton, Johnson said, "In a just world, I'd have them killed. But we are not there yet."

From 2016 to 2017, Randazza represented professional misogynist and rape advocate Daryush Valizadeh in an attempt to sue one of Valizadeh's alleged victims. She lives in Iceland and told her story of sexual assault to Jane Gari, a book author and blogger. Gari gave the alleged victim a pseudonym and published her account of Valizadeh following the woman home, talking his way into her apartment with the pretext of using the bathroom — a ruse another woman who has accused Valizadeh of sexual assault told HuffPost he has used for at least a decade — then raping her. Valizadeh had written a guidebook to having sex with women years before in which he described a similar encounter:

While walking to my place, I realized how drunk she was. In America, having sex with her would have been rape, since she couldn't legally give her consent. ... I can't say I cared or even hesitated.

Randazza apparently didn't care either. He sent a letter to Gari, who has written a book about being sexually abused as a child, and accused her of fabricating the rape account and "causing harm" to "real victims" of sexual assault. He demanded she take down the post and confess on her blog.

"Simply admit that you lied, and all can be forgiven," Randazza wrote.

When Gari refused, Randazza subpoenaed her in South Carolina federal court in an effort to get the alleged victim's name for Valizadeh, whose followers were already menacing Gari.

"Listen you dumb cunt, you hideous skank," one Valizadeh fan emailed her, "making false rape accusations is a great disservice against real victims of sex assaults, you attention seeking lowly cunt."

The case was an about-face from Randazza's earlier work defending small bloggers. Now he was looking to pierce South Carolina's shield law for reporters and muscle a sex abuse survivor on behalf of his pro-rape client. But Gari managed to fend off Valizadeh and Randazza in court and protect her source. When the judge granted her the right to depose Valizadeh and examine his claim that he'd been defamed, Randazza moved to dismiss the case. His own case.

"I don't think a true First Amendment advocate would have taken this case," said Wallace Lightsey, Gari's attorney. "We saw it as an attempt to find the source so the source could be harassed."

Randazza has been equally unscrupulous in his lawyering for Paul Nehlen, Alex Jones and others. When Chuck Johnson was sued for defamation earlier this year after smearing the wrong man as the driver of the car that killed Heather Heyer in Charlottesville last summer, Randazza told a Michigan court that Johnson had simply repurposed information from 4chan — a website Randazza described as a "wire service" and a "reliable source." But 4chan's /pol/ forum, where the libel circulated, is neither a wire service nor a reliable source. It is a place where neo-Nazis congregate to spread hate and disinformation.

But nothing compares to Randazza's advocacy for neo-Nazi Daily Stormer publisher Andrew Anglin, who is being sued in Montana by Tanya Gersh, a Jewish

woman Anglin targeted in a vicious anti-Semitic harassment campaign he launched from his site.

"Fuck Nazis, but fuck Tanya Gersh too," Randazza tweeted while neo-Nazis were threatening Gersh's life. Anglin soon hired Randazza, paying him out of a more than $155,000 legal defense fund raised by Johnson, who took a 15 percent cut, the scum forming a closed loop.

In court, Randazza has played childish games about Anglin's location and sinister ones by advancing Holocaust denial as a legal defense. While trying to reduce the case to a debate in the "marketplace of ideas," Randazza essentially has argued that a neo-Nazi's call to action to terrorize a Jewish woman and her family is protected speech, a position one local paper called a "desperate attempt by a lawyer who should have a better understanding of the First Amendment."

In November, a judge shot down Randazza's argument and allowed the case to move forward, finding that Anglin "drew heavily on his readers' hatred and fear of ethnic Jews" to incite them to harass Gersh.

Even a free speech absolutist might struggle to defend some of Anglin's rhetoric. The neo-Nazi has said he "would absolutely and unequivocally endorse" violence to achieve his goals, and Daily Stormer fans — including Dylann Roof, a white supremacist who killed nine black churchgoers in Charleston, South Carolina — have committed at least a dozen racist or politically motivated murders since 2015. In October, Anglin cheered the stabbing of a reporter in Germany by neo-Nazi youths, writing:

Journalists deserve to fucking die. Every last one of them deserves to be rounded up, lined up and shot execution style and tossed in a mass grave. ... It makes me warm and fuzzy inside to know that journalists are seeing this story and wondering if they'll be next.

Randazza has increasingly shown himself susceptible to fledgling far-right views. He openly agrees, for example, with Trump's description of the press as Americans' "enemy." Earlier this year, Randazza tried to intimidate a reporter and his publication over a harmless tweet that vexed Cernovich. On Twitter, Randazza proclaimed his willingness to support the white nationalist Faith Goldy in her Toronto mayoral campaign. He promoted a white nationalist lie about the

Democratic Party deploying anti-fascists as its foot soldiers. (Antifa almost universally despise the Democratic Party.)

He also tweeted this:

The difference between patriotism (love of country) and nationalism (blind devotion to country, usually with a chauvinistic assertion of superiority) should be obvious to a lawyer who represents nationalists. And as someone who represents white nationalists, Randazza would know that in the U.S. the word "nationalism" is linked to a violent and racist anti-democratic ideology.

He just doesn't care.

Throne Of Lies

The rise of Trump has brought a common arc of radicalization on the political right into sharper relief — that of the contrarian troll who gets lost in his provocations and mutates into something dangerous. Just as some snarky libertarians turned into neo-Nazis and Tucker Carlson was a conservative snot before morphing into a megaphone for white nationalist talking points, Randazza, too, appears to have transformed on his trollish journey through the legal system.

And like Carlson, who gets to spout hate on Fox News because he's a millionaire who once wore a bowtie on CNN, Randazza benefits from the trappings of privilege. His Georgetown law degree and admission to five state bars offer him what people targeted by his clients rarely receive: the benefit of the doubt. Consider a recent front-page Wall Street Journal story that focused on Gab and quoted Randazza as a First Amendment expert. Incredibly, the story failed to mention that Randazza has served as Gab's attorney. Consider, too, that Fox News, CNN, Vice News and others have credulously given Randazza a platform to polish his brand.

But his own profession has shown the least skepticism. Less than a week after the confirmation of Brett Kavanaugh to the Supreme Court, the journal of the American Bar Association ran a short column by Randazza lamenting how easy it is for "vindictive lying women" to ruin the lives of innocent men. Randazza

neglected to tell his ABA editors he'd already run the column on a right-wing legal blog. He also failed to offer any proof for his claim in the column that he currently represents ("at a deep discount") multiple women who have survived sexual assault.

He did, however, have a message for sexual assault victims.

"I believe in their right to tell their story without being sued for it," he wrote.

Last year, Randazza was suing a woman for telling her story about being raped.

Randazza gets away with those sorts of moves because many people assume basic honesty from lawyers. The legal system does too.

"It would take too much time and energy to second-guess and check up on everybody all the time," said Bernie Burk, a legal ethics expert and former professor at the University of North Carolina School of Law. "Generally speaking, if you're reasonably clever and selective about your dishonesty, you can get away with a great deal before the system catches you."

Randazza's duplicity, whether clever or selective, has been constant. Even in recent cases that do not involve porn or Nazis, he has made a mockery of the truth. In Utah federal court, he was — until a few weeks ago — defending a man named Ryan Monahan who ran a website called Honest Mattress Reviews and had been sued by Purple, a mattress manufacturer, after Monahan allegedly lied on his site about Purple's products being covered with a cancer-causing white powder. Purple declared that Monahan had a business relationship with one of its main competitors, GhostBed.

In court, Randazza adamantly argued that Monahan was "an independent journalist" entitled to full protection under the First Amendment. He dismissed the GhostBed connection as a "conspiracy" that "even Alexander Dumas could not have imagined when he wrote the Count of Monte Cristo."

The conspiracy turned out to be real. A witness came forward with evidence proving that Monahan "effectively acted as [GhostBed's] head of marketing" and was being paid $10,000 a month by GhostBed. Randazza and Monahan had

misled both the U.S. Court of Appeals for the 10th Circuit and, repeatedly, the Utah federal court.

"Interference with the judicial process here was substantial," U.S. District Judge Dee Benson wrote, adding that Monahan's violations were "sufficiently egregious that perjury prosecutions would, and perhaps should be, an appropriate consideration."

In February, Benson ordered sanctions be imposed on Monahan and his business, Honest Reviews LLC. A few weeks later, Monahan sold his website to Brooklyn Bedding, another mattress company, and had it wire the money directly to Randazza to pay Monahan's "legal debt." In July, Benson awarded Purple approximately $92,000 in sanctions from Monahan. When Purple's lawyers contacted Randazza to collect, he told them Monahan didn't have the money. Randazza had drained his client dry.

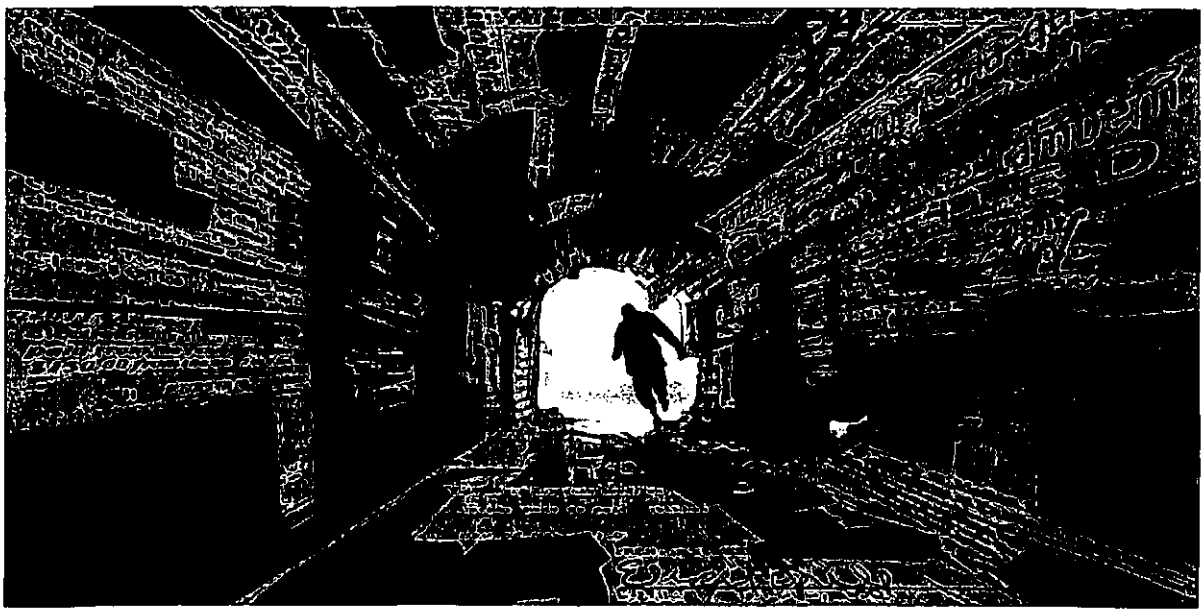
"So do what you gotta do," he told Purple's lawyers.

A desperate Monahan sent a letter to the judge saying he wanted to settle with Purple. Randazza then filed a motion to withdraw from the case "as a matter of professional ethics," leaving Monahan to scramble to find replacement counsel.

"Everything that has exploded in this thing has been because of what [Randazza] has done," Monahan told HuffPost.

Yet Monahan, who said he has a limited grasp of the law, is the one on the hook for sanctions. He is the only one whom the judge suggested should face perjury charges, despite the judge's ruling that Randazza had also "vigorously asserted" misrepresentations in court.

"You know what I like about my life?" Randazza once told a legal blog. "There's not a motherfucker in this world who ever says, 'I'm ambivalent about Marc Randazza.' That is what scares me ... people being ambivalent about me."



OWEN FREEMAN FOR HUFFPOSTWhere Randazza winds up next on his journey through the sewers of the legal system is anyone's guess. "I did not get where I am by having a reputation for being someone who would stab others in the back," he once said.

Lowering The Bar

Randazza had escaped sanctions in Utah. But in Nevada, his long disciplinary proceeding was nearing its end. It had been half a decade since Liberty alerted the Nevada Bar to Randazza's misbehavior. The porn company had given the bar thousands of pages of evidence about its former in-house counsel's conflicts of interest and solicitation of bribes, his misrepresentations about fees and use of privileged and confidential material.

The bar treats multiple offenses and a "pattern of misconduct" as aggravating circumstances that can justify harsher discipline, so Dunlap, the Excelsior vice president who wrote the company's bar complaints, made a deliberate point of including that phrase. "We felt that would be the kicker, that once they had seen that that pattern had been demonstrated that it would leave no room for being wishy-washy or letting him off easy," Dunlap said.

Randazza, in an effort to hang on to his law license, conceded as little as possible. He submitted a conditional guilty plea to the bar confessing to two of the nine ethical violations the bar alleged that he'd committed. The first forbids certain

conflicts of interest and concerned a shady loan Randazza made Liberty; the second prohibits a lawyer from restricting his right to practice and was related to the Oron bribe.

In exchange for this plea, Randazza asked the bar for a stayed suspension and probation — a slap on the wrist. But the bar was under no obligation to give it to him. The baseline sanction for the violations Randazza admitted is suspension.

On Oct. 10, the order came down in Nevada Supreme Court.

"We hereby suspend Marc J. Randazza for 12 months, stayed for 18 months," it read.

That was Randazza's punishment: a stayed suspension and probation, plus a small fine and 20 hours of education in legal ethics. He will avoid actual suspension if he "stays out of trouble" during his probation, according to the order.

The system had finally caught him. And the system didn't seem to much care. The bar didn't pursue Randazza's solicitation of other bribes or his other conflicts of interest. Nor did it investigate whether Randazza despoiled evidence, lied to courts in fee motions or used privileged information that might have been obtained illegally.

What the bar did find were "mitigating circumstances" to allow for lighter punishment. Randazza, for instance, had no prior discipline in Nevada. Another factor was the "time delay" between his ethical violations and the disciplinary hearing — a delay the bar helped cause by dismissing Liberty's initial complaint.

"We had ... to essentially lay out everything for the [Nevada] Bar and then once we handed it to them on a silver platter, they weren't willing to go the distance," Dunlap said.

Here was Randazza's privileged white-collar tribe, policing itself, barely, behind closed doors. The bar refused multiple requests to discuss the Randazza matter or its own arcane rules. For two months, the bar also rebuffed HuffPost's attempts to view records of Randazza's disciplinary proceeding, despite their

high public-interest value. At one point, a lawyer for the bar insisted the records were confidential and could only be obtained through a subpoena or a court order — a stance that clashed with that of the Nevada Supreme Court. When asked for the bar's policy on sealing disciplinary records, the lawyer insisted it was an "internal" and unpublished policy. The next day, he said the bar was "implementing a new policy" and handed over the records.

Among them is a transcript of the June hearing when the bar accepted Randazza's guilty plea. During the hearing, Matthew Carlyon, another bar lawyer, applauded Randazza for reforming his conduct and cited as evidence of the metamorphosis several phone calls Randazza had placed to the bar's ethics hotline seeking advice.

"He is showing that he's willing to change and not be out there endangering the public," Carlyon said. "That's important because ... ultimately our job here is to provide protection to the public. We're not here to discipline attorneys. That's not why we exist. We want to protect the public."

Since then, Randazza has stayed true to form. In Montana federal court, he disobeyed rules requiring him to keep the court informed about his disciplinary proceedings. The judge, clearly upset, ordered Randazza in November to update the court. When Randazza did, he mentioned his stayed suspension but said nothing about his probation, despite describing it in detail to several other federal courts.

Randazza may soon face "reciprocal discipline" in other states where he is licensed. Following his discipline in Nevada, the bars in Arizona, California and Florida have opened or will open their own reviews of his ethical violations. But other bars tend to follow the example of the lead organization, and it is unclear if these states will probe more deeply.

In a disciplinary proceeding against Randazza in Massachusetts federal court, he has shown no remorse for his sleazy behavior and has already distorted reality in an attempt to avoid a suspension. In one filing, he blamed Oron for his solicitation of a bribe. He also audaciously told the court he didn't "cause his clients to suffer any actual harm or financial losses."

"At every step of the way, that has proven to be untrue," Dunlap countered.

Randazza pilfered the $60,000 Righthaven settlement from Liberty, according to the arbitrator's ruling. He caused Liberty to possibly miss out on another settlement by not pursuing XVideos, one of his secret clients, for copyright infringement. Randazza also violated the terms of the $550,000 settlement he'd negotiated with Oron — most significantly by helping his friend file a copycat suit — causing Liberty to pay back $275,000 of the award.

This week, however, the Massachusetts court let Randazza off the hook. The court declined to put the rogue attorney on probation and deferred a decision about further reciprocal discipline until his Nevada probation ends in April 2020. At that point, it's unclear what further discipline the court could even impose, especially if Randazza stays out of new trouble. And, so, the lawyer of choice for far-right extremists will continue to lawyer, at least for now — an example not so much of what America prohibits these days but rather what it permits, provided you belong to the right caste.

When reached by email, Randazza refused to comment for this story. He referred HuffPost to his attorney, who also did not comment. Randazza's attorney, it turned out, was his expert witness from the Liberty arbitration — the one forced under oath to essentially acknowledge Randazza's dishonesty. Last year, the same attorney submitted an affidavit supporting a Randazza fee motion and, on an attached resume, listed his expert witness experience. The records of the Liberty arbitration were by then public, but the man referred to the matter only as Confidential v. Confidential. His online biography revealed more: Randazza's attorney is a former chair and current member of the ethics committee of the Nevada Bar.

Somewhere in Gloucester, looking out at his hometown and dreaming of zealotry, the troll began to laugh.

Top illustration: Owen Freeman.

Exhibit #4 –Public warning website dedicated to protecting the public from Marc Randazza

CorruptRandazza.com

Must know when dealing with attorney Marc Randazza.

Information curated from across the web, courts, State Bars, articles, comments, etc. Most information has possibly been suppressed by artificial SEO so it can not be easily found. You will decide what's real or true. We are not affiliated with attorney Randazza or Randazza Legal Group.

[illegible]

The State Bar of Nevada charged Randazza with alleged violations of Nevada Rules of Professional Conduct 1.4 (Communication), 1.7 (Conflict of Interest: Current Clients), 1.8 (Conflict of Interest: Current Clients, Specific Rules), 1.10 (Imputation of Conflicts of Interest), 1.15 (Safekeeping Property), 1.16 (Declining or Terminating Representation), 2.1 (Advisor), 5.6 (Restrictions on Right to Practice), and 8.4 (Misconduct). On Jun 28 2018, an automatic appeal was filed with the Nevada Supreme Court regarding a guilty plea and disciplinary recommendation made by the southern Nevada Disciplinary Panel.

The Disciplinary Panel had recommended a one-year suspension, stayed for 18 months, with the requirement that he avoid subsequent ethics complaints for the 18 months following entry of the order, complete 20 hours of CLE classes, and pay the costs associated with the proceedings within 30 days. The plea and disciplinary recommendation were only for the violations of Rules 1.8 and 5.6; the remaining charges were dismissed.

In October 2018, Randazza was disciplined and the recommendation of the Disciplinary Panel was upheld by the Supreme Court of Nevada. The Nevada suspension was not put into effect.

On January 14, 2019, the Arizona State Bar issued a public reprimand and a suspension based upon some of the misconduct that took place in Nevada. A new disciplinary case was opened in Arizona and California based upon further information and documentation of alleged misconduct by Randazza, to include allegedly lying in court documents related to the Alex Jones case in Connecticut. However, beyond the reciprocal disciplinary proceedings, Randazza was not charged with any new violations and the Arizona suspension was not put into effect.

On May 2, 2019, in the Supreme Judicial Court for Suffolk County, Massachusetts, in a state bar disciplinary proceeding styled as In re Marc John Randazza, Case No. BD-2018-110, a hearing was conducted, which included an additional alleged ethics violation that the bar counsel claimed the State Bar of Nevada ignored. The Massachusetts Supreme Judicial Court did not find this additional ethical violation existed and issued a stayed suspension of the same term as Nevada.

The Florida Supreme Court conducted a similar reciprocal disciplinary proceeding. It found no aggravating factors, with the Referee finding that there

EXHIBIT 5

Exhibit #5 – Disciplinary Action Against Randazza

Nevada Bar Association Complaint Against Randazza

Case No. OBC15-0747

FILED
DEC 16 2016
STATE BAR OF NEVADA
BY: OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

MARC J. RANDAZZA, Esq.,
Nevada Bar No. 12265,

Respondent.

AMENDED COMPLAINT

TO: Marc J. Randazza, Esq.
c/o Dominic Gentile, Esq.
Colleen McCarty, Esq.
Gentile Cristalli Miller Armeni Savarese
410 S. Rampart Blvd., Ste. 420
Las Vegas, NV 89145

PLEASE TAKE NOTICE that pursuant to Supreme Court Rule ("SCR") 105(2), as amended effective March 1, 2007, a ***VERIFIED RESPONSE OR ANSWER*** to this Amended Complaint must be filed with the Office of Bar Counsel, State Bar of Nevada, 3100 W. Charleston Boulevard, Suite 100, Las Vegas, Nevada, 89102, within twenty (20) days of service of this Complaint. Procedure regarding service is addressed in SCR 109.

Complainant, State Bar of Nevada ("State Bar") by and through its Assistant Bar Counsel, David Rickert, alleges that:

1. Attorney Marc J. Randazza ("Respondent"), Bar No. 12265, is now a licensed attorney in the State of Nevada, having had his principal place of business for the practice of law in Clark County, Nevada from at least June 2011 through [illegible]

2. In or about June 2009, the Respondent drafted and signed a contract with Excelsior Media Corp. ("Excelsior") to become corporate in-house general counsel for Excelsior.

3. At that time, Excelsior was headquartered in California.

4. Excelsior is a related company to Corbin Fisher ("Corbin"), and has a subsidiary called Liberty Media Holdings, LLC ("Liberty").

5. Excelsior, Corbin, and Liberty are involved in the production and distribution of pornography.

6. After becoming general counsel, the Respondent performed legal work on behalf of all three entities.

7. While the Respondent was still working as general counsel for Excelsior, Excelsior relocated its corporate headquarters to Las Vegas, Nevada in approximately February 2011.

8. As of the filing of this complaint, Excelsior remains an active domestic Nevada corporation.

9. The Respondent continued working as Excelsior's general counsel, and relocated to Las Vegas himself in approximately June 2011.

10. While the Respondent was an attorney admitted to practice in one or more other states at that time, he was not admitted as a Nevada attorney until approximately January 6, 2012.

11. A portion of the Respondent's work as general counsel was in pursuing violations of Corbin/Excelsior/Liberty's ("C./E./L.") intellectual property, for example individuals or companies downloading or distributing C./E./L.'s pornographic materials without appropriate payment or permission.

12. The Respondent, on behalf of Liberty, filed suit against FF Magnat Limited d/b/a Oron.com ("Oron") for alleged violations of his client's intellectual property.

13. In July and August 2012, the Respondent engaged in multiple settlement negotiations with Oron's counsel.

14. In this time period, the Respondent was involved in settlement negotiations with Oron for a payment to himself.

15. The eventual amount agreed upon with opposing counsel was $75,000.00.

16. This $75,000.00 was to be paid to the Respondent as part of Oron's broader settlement with his client.

17. One purpose of this payment was so that the Respondent would be conflicted off of litigation against Oron in the future.

18. On or about August 13, 2012, the Respondent presented an execution copy of the Oron settlement agreement to CEO Jason Gibson for his signature.

19. At that time, Mr. Gibson noticed the proposed $75,000.00 payment amid the other settlement provisions, and asked the Respondent about it.

20. This was the first time Mr. Gibson was made aware of the proposed $75,000.00 payment to the Respondent, because the Respondent had not disclosed it to him prior to August 13, 2012.

21. Mr. Gibson was upset, and expressed concerns to the Respondent about the payment of this $75,000.00.

22. The Respondent did not receive the $75,000.00 payment from any settlement with Oron.

23. In August 2012, the Respondent loaned approximately $25,000.00 to Liberty, to cover part of overseas legal fees that would be incurred in the Oron litigation.

24. On or about August 21, 2012, on the Respondent's advice, Mr. Gibson signed a promissory note on Liberty's behalf noting the terms of repayment of this $25,000.00 loan to the Respondent.

25. Liberty was not advised of its right to seek the advice of independent counsel with regards to this promissory note.

26. The Respondent did not obtain Liberty's informed consent, confirmed in writing, to the essential terms of the transaction, and to the Respondent's role as a lender in the transaction.

27. In mid- to late-August 2012, approximately $550,000.00 was sent to the Respondent's out-of-state trust account- this was a settlement payment in relation to the Oron litigation.

28. The Respondent's trust account, that received and held the $550,000.00, was outside of Nevada.

29. The Respondent resigned from his employment with C./E./L. on or about August 29, 2012.

30. Between August 28 and August 30, 2012, the Respondent authorized, or personally performed, multiple erasures of data on a C./E./L. corporate laptop computer that was in his possession, and that he had used for work-related purposes.

31. This laptop computer contained C./E./L. corporate information.

32. The Respondent was also in possession of a C./E./L. corporate iPhone, that he had used for work-related purposes, and that contained C./E./L. corporate information.

33. After resigning on August 29, 2012, for a time the Respondent refused to turn over either the corporate laptop or the corporate iPhone.

34. The Respondent did later turn over the laptop and iPhone for examination.

35. Forensic examination was performed on both the corporate laptop and the corporate iPhone, in an attempt to recover deleted corporate data.

36. Some corporate data was recovered from these devices.

37. Other corporate data appears to have been permanently lost.

38. While corporate in-house general counsel for Excelsior (approximately June 2009 through August 2012), the Respondent maintained an outside legal practice and separate law firm, and represented other clients.

39. One of these clients was an entity known as Bang Bros (or Bang Brothers), a production company for pornography, and possible business competitor of C./E./L.

40. In or around June 2012, Liberty was negotiating for the possible acquisition of Cody Media, another pornography company.

41. In that same timeframe, the Respondent suggested to C./E./L. the possibility of getting financing for the deal from Bang Bros.

42. The Respondent did not disclose the conflict of interest to C./E./L., and had concealed it from C./E./L.

43. The Respondent never obtained informed consent, confirmed in writing, from C./E./L. for he or his firm to represent Bang Bros in the June 2009 - August 2012 timeframe.

44. Another client the Respondent represented in the June 2009 - August 2012 timeframe was XVideos, a "tube site" that permitted users to upload copyrighted videos onto its website.

45. One or more of C./E./L.'s pornographic videos were uploaded to XVideos' "tube site," without permission, and where they could be widely accessed by the public.

46. In or about January 2011, and again in or about September 2011, the Respondent advised C./E./L. not to pursue a lawsuit against XVideos for violation of their intellectual property.

47. The Respondent did not disclose the conflict of interest to C./E./L., and had concealed it from C./E./L.

48. The Respondent never obtained informed consent, confirmed in writing, from C./E./L. for he or his firm to represent XVideos in the June 2009 - August 2012 timeframe.

49. Another client the Respondent represented in the June 2009 - August 2012 timeframe was PornGuardian- an anti-piracy company that works against violations of pornographers' intellectual property rights- who the Respondent represented starting approximately in January 2011.

50. While the Respondent was representing C./E./L. in the 2012 litigation against Oron, he also worked on negotiating a settlement for PornGuardian from Oron at the same time, and corresponded with Oron's counsel about this in early July 2012.

51. The Respondent did not disclose the conflict of interest to C./E./L., and had concealed it from C./E./L.

52. The Respondent never obtained informed consent, confirmed in writing, from C./E./L. for he or his firm to represent PornGuardian in the June 2009 - August 2012 timeframe.

53. Two other clients the Respondent represented in the June 2009 - August 2012 timeframe were Titan Media and Kink.com.

54. Titan Media is a pornography company, and a possible business competitor of C./E./L., who the Respondent represented since at least May 2011.

55. Kink.com is a pornography company, and a possible business competitor of C./E./L.

56. While the Respondent was representing C./E./L., in approximately mid-2012 (before resigning from C./E./L.) the Respondent worked on negotiating producer agreements for Liberty with Titan Media and Kink.com.

57. The Respondent did not disclose either conflict of interest to C./E./L., and had concealed both of them from C./E./L.

58. The Respondent never obtained informed consent, confirmed in writing, from C./E./L. for he or his firm to represent Titan Media or Kink.com in the June 2009 - August 2012 timeframe.

59. The Respondent has been engaged in protracted litigation with C./E./L. over his employment and compensation since 2012, including arbitration and bankruptcy proceedings.

Count 1

RPC 1.4 (Communication)

60. Rule of Professional Conduct ("RPC") 1.4 states that "[a] lawyer shall:

(1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
(2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
(3) Keep the client reasonably informed about the status of the matter;
(4) Promptly comply with reasonable requests for information; and
(5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

61. During his representation of C./E./L., Respondent failed to inform his client about multiple conflicts of interest where he (or his law firm) represented multiple outside clients requiring informed consent; in regards to a loan he made, failed to inform his client of the need for informed consent, confirmed in writing, to the essential terms of the transaction, and to the Respondent's role as a lender in the transaction; and failed to inform his client of the existence of multiple conflicts of interest, information that was reasonably necessary for the client to make informed decisions in those matters.

62. Based on the facts stated in paragraphs 23 through 26, and 38 through 58, Respondent violated RPC 1.4.

Count 2

RPC 1.7 (Conflict of Interest: Current Clients)

63. RPC 1.7 states that "(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

(3) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) Each affected client gives informed consent, confirmed in writing."

64. During his representation of C./E./L., Respondent (or his law firm) represented multiple outside clients where the representation of the client was directly adverse to C./E./L., or there was a significant risk that the representation of one or more clients would be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer. In addition, the Respondent failed to obtain informed consent, confirmed in writing, from C./E./L or any of the other affected clients in order to continue representing them despite the conflicts; in fact, the Respondent concealed these conflicts.

65. Based on the facts stated in paragraphs 38 through 58, Respondent violated RPC 1.7.

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Count 3

RPC 1.8 (Conflict of Interest: Current Clients: Specific Rules)

66. RPC 1.8 states in part that "(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

> (1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
> (2) The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
> (3) The client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction."

67. During his representation of C./E./L., Respondent loaned approximately $25,000.00 to Liberty to cover part of overseas legal fees that would be incurred in litigation, but Liberty was not advised of its right to seek the advice of independent counsel with regards to this promissory note, and the Respondent did not obtain Liberty's informed consent, confirmed in writing, to the essential terms of the transaction, and to the Respondent's role as a lender in the transaction.

68. Based on the facts stated in paragraphs 23 through 26, Respondent violated RPC 1.8.

Count 4

RPC 1.10 (Imputation of Conflicts of Interest)

69. RPC 1.10 states in part that "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.9, or 2.2, unless the prohibition is based on a

personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm."

70. During his representation of C./E./L., Respondent's law firm represented outside clients where the representation of the client was directly adverse to C./E./L., or there was a significant risk that the representation of one or more clients would be materially limited by the lawyer's (or firm's) responsibilities to another client, a former client or a third person or by a personal interest of the lawyer. In addition, the Respondent's law firm failed to obtain informed consent, confirmed in writing, from C./E./L or any of the other affected clients in order to continue representing them despite the conflicts; in fact, these conflicts were concealed. These conflicts are properly imputed to the Respondent as a member of the firm, and they were not waived by the client(s).

71. Based on the facts stated in paragraphs 38 through 58, Respondent violated RPC 1.10.

Count 5

RPC 1.15 (Safekeeping Property)

72. RPC 1.15 states that "(a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property in which clients or third persons hold an interest shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute."

73. During his representation of C./E./L. and afterwards, Respondent received and held approximately $550,000.00 of a settlement payment to his client in an out-of-state trust account, without the client's consent.

74. Based on the facts stated in paragraphs 27 and 28, Respondent violated RPC 1.15.

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Count 6

RPC 1.16 (Declining or Terminating Representation)

75. RPC 1.16 reads in part that "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law."

76. When the Respondent's representation of C./E./L. terminated, Respondent refused to surrender his client's iPhone and laptop computer for a time, and erased his client's date from the corporate laptop- thus not turning over property to which the client was entitled.

77. Based on the facts stated in paragraphs 29 through 37, Respondent violated RPC 1.16.

Count 7

RPC 2.1 (Advisor)

78. RPC 2.1 reads in part that "[i]n representing a client, a lawyer shall exercise independent professional judgment and render candid advice."

79. During his representation of C./E./L., Respondent failed to give his client candid advice on multiple occasions because of his conflicts of interest in relation to other clients, and established a pattern of omission and deception with respect to C./E./L. that went to the heart of the attorney-client relationship between them.

80. Based on the facts stated in paragraphs 12 through 58, Respondent violated RPC 2.1.

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Count 8

RPC 5.6 (Restrictions on Right to Practice)

81. RPC 5.6 reads in part that "[a] lawyer shall not participate in offering or making... [a]n agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy."

82. During his representation of C./E./L., Respondent offered, and attempted to have his client sign off on, an agreement to conflict himself off of future litigation against Oron in exchange for a payment of $75,000.00. This payment was to be included as part of a settlement between C./E./L. and Oron.

83. Based on the facts stated in paragraphs 12 through 22, Respondent violated RPC 5.6.

Count 9

RPC 8.4 (Misconduct)

84. RPC 8.4 states in part that "[i]t is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another...

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation..."

85. During his representation of C./E./L., and as laid out through this Amended Complaint, Respondent violated and attempted to violate the Rules of Professional Conduct on multiple occasions. In addition, he engaged in conduct "involving dishonesty, fraud, deceit or misrepresentation" when he concealed his relationships to other clients from C./E./L. and didn't advise C./E./L. of the conflicts of interest that he had.

86. Based on the facts stated in paragraphs 12 through 58, Respondent violated RPC 8.4.

WHEREFORE, Complainant prays as follows:

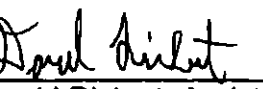
1. That a hearing be held pursuant to Nevada Supreme Court Rule 105;

2. That Randazza be assessed the costs of the disciplinary proceeding pursuant to Supreme Court Rule 120(1); and

3. That pursuant to Supreme Court Rule 102, such disciplinary action be taken by the Southern Nevada Disciplinary Board against Randazza as may be deemed appropriate under the circumstances.

Dated this 16th day of December, 2016.

STATE BAR OF NEVADA
C. Stanley Hunterton, Bar Counsel

By: 

David Rickert, Assistant Bar Counsel
3100 W. Charleston Boulevard, Suite 100
Las Vegas, Nevada 89102
(702) 382-2200
Attorney for State Bar of Nevada

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **AMENDED COMPLAINT** was deposited via electronic mail to:

1. Oliver Pancheri, Esq. (Panel Chair): opancheri@santoronevada.com ; Rachel Jenkins rjenkins@santoronevada.com
2. Dominic Gentile, Esq., Colleen McCarty, Esq. (Respondent's Counsel): dgentile@gcmaslaw.com ; cmccarty@gcmaslaw.com; Myra Hyde mhyde@gcmaslaw.com and Stacey Concepcion sconcepcion@gcmaslaw.com
3. David J. Rickert, Esq. (Assistant Bar Counsel): davidr@nvbar.org (COURTESY COPY)

DATED this 16th day of December, 2016.

By: _____
Jana L. Chaffee, an employee of
the State Bar of Nevada.

EXHIBIT 6

EXHIBIT #6

INTRIM ARBITRATION AWARD

Hon. Stephen E. Haberfeld
JAMS
555 W. 5th St., 32nd Fl.
Los Angeles, CA 90013
Tel: 213-253-9704
Fax: 213-620-0100

Arbitrator

JAMS

MARC J. RANDAZZA, Claimant, v. EXCELSIOR MEDIA CORP., a Nevada Corp.; LIBERTY MEDIA HOLDINGS, LLC, a California limited liability company; and JASON GIBSON, individually Respondents.	JAMS No. 1260002283 INTERIM ARBITRATION AWARD

I, THE UNDERSIGNED ARBITRATOR --- in accordance with the arbitration provision in Section 8 of the Contract For Employment Agreement As General Counsel Between Marc J. Randazza and Excelsior Media Corp., dated June 6/10, 2009 ("employment agreement"), and based upon careful consideration of the evidence, the parties' written submissions and applicable law, and good cause appearing --- make the following findings, conclusions, determinations ("determinations") and this Interim Arbitration Award, as follows:

DETERMINATIONS

1. The determinations in this Interim Arbitration Award include factual determinations by the Arbitrator, which the Arbitrator has determined to be true and necessary to this award. To the extent that the Arbitrator's determinations differ from any party's positions, that is the result of determinations as to relevance, burden of proof considerations, and the weighing of the evidence.

2. The Arbitrator has jurisdiction over the subject matter and over the parties to the arbitration which are as follows: Claimant and Counter-Respondent Marc J. Randazza ("Mr. Randazza"), Respondents and Counterclaimants Excelsior Media Corp. ("Excelsior"), Liberty Media Holdings, LLC ("Liberty"), and Respondent Jason Gibson. [1]

3. On February 9, 10, 11, 12 and 13, 2015, the Arbitrator held in-person evidentiary sessions on the merits of the parties' respective claims, counterclaims and contentions. All witnesses who testified did so under oath and subject to cross-examination. All offered exhibits were received in evidence.

4. This Interim Arbitration Award is timely rendered. See Order of June 1, 2015.

5. The following is a summary of the Arbitrator's principal merits determinations:

---

[1] Except as otherwise stated or indicated by context, "E/L" shall be used to reference Excelsior and Liberty, collectively and interchangeably for convenience in this Interim Arbitration Award, only. Nothing should be inferred or implied that there is any determination, or basis for any determination, that either or both of those entities are "alter egos" of Jason Gibson or of any person or entity. Mr. Randazza failed to sustain his burden of proof that either Excelsior or Liberty were or are "alter egos" of Respondent Jason Gideon or of any person or entity. Mr. Gideon will be dismissed as a party in this arbitration. See Interim Arbitration Award, Par. 9, at p. 29, infra .

A. Mr. Randazza voluntarily ended his employment by Excelsior and Liberty.

B. Mr. Randazza's employment by Excelsior and Liberty was not involuntarily terminated by Excelsior, Liberty or at all.[2]

C. Whether or not Mr. Randazza's employment by E/L was terminated voluntarily by Mr. Randazza or involuntarily by E/L, the principal proximate cause for the ending of Mr. Randazza's employment was Mr. Randazza's breaches of fiduciary duty and the covenant of good faith and fair dealing, implied in his employment agreement, as an employee, executive and general counsel of E/L. The precipitating events which led to the end of Mr. Randazza's employment was Mr. Gideon's having first learned on August 13, 2012 that Mr. Randazza had been involved in and successfully concluded negotiations for a bribe in the amount of $75,000, to be paid to Mr. Randazza by the other side in connection with resolution of high-importance litigation, commonly referred to as the "Oron litigation," which had been initiated and pursued on behalf of E/L by Mr. Randazza, as E/L's counsel of record. The first indication of that was Mr. Gideon's noticing a provision included in an execution copy of an Oron settlement agreement, presented to him for signature by Mr. Randazza on that date, and Mr. Gideon's inquiring of Mr. Randazza about that provision.

After initial contacts with Mr. Randazza concerning what Mr. Gideon discovered in the Oron settlement agreement, communications and relations between Messrs. Gideon and Randazza noticeably chilled during Mr. Randazza's remaining employment, which ended on August 29, 2012.

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[2] While not accepting Mr. Randazza's "core contentions" concerning the end of his employment by E/L, the Arbitrator agrees with Mr. Randazza's assertion that "The nature of Mr. Randazza's departure from Excelsior is central to several of his causes of action, and crucial to the defenses Respondents raise" --- including whether there was a breach of contract, wrongful termination, constructive termination and/or retaliatory termination. Reply at p. 7:12-15. As also stated elsewhere herein, none of those claims were proven.

The chilled relations, including greatly reduced communication, was in stark contrast with the custom and practice of Messrs. Gibson and Randazza, practically right up to August 13, 2012, being in regular, frequent, cordial and occasionally sexually-peppered communication with each other by face-to-face meetings, texting and emails.

That Mr. Gideon's reaction was not feigned or a pretext for anything asserted by Mr. Randazza in his competing narrative are shown by the following:

1. A sudden and significant reduction of those previously primarily electronic (i.e., email and text) communications --- beginning only after Mr. Gideon learned of the $75,000 bribe --- with Mr. Randazza sending Mr. Gideon unresponded-to emails attempting to attempting to salvage and revive his communications and relationship with Mr. Gideon.

2. Mr. Randazza beat a hasty retreat, in an attempt to salvage the situation by offering to pay the bribe money over to E/L, when initially confronted by Mr. Gideon concerning the "bribe" provision in the Oron settlement agreement, presented for Mr. Gideon's signature.

3. Mr. Gideon did not timely sign the execution copy of the Oron settlement agreement, as negotiated and presented to him by Mr. Randazza.

D. The ending of Mr. Randazza's employment E/L was not --- as contended by Mr. Randazza --- (1) constructive discharge, proximately caused by Mr. Gibson becoming distant and out-of-communication with Mr. Randazza, which made it difficult or impossible for Mr. Randazza to get needed instructions or direction in his employment by E/L as their general counsel, leading to Mr. Randazza's August 29, 2012 email of resignation from employment, or (2) retaliatory termination, which was caused by Mr. Randazza's having "expressed his feelings" of having been "upset, betrayed, offended, and

stressed" anything of a sexual nature whatsoever --- including, as highlighted during hearing, a pornographic video shot in Mr. Randazza's office in April, 2012 or a homosexual oral copulation allegedly performed by Mr. Gideon and another E/L executive in the backseat of Mr. Randazza's car, which allegedly greatly upset Mr. Randazza while he was driving his passengers back from a party aboard Mr. Gideon's boat on August 9, 2012.

E. The immediately foregoing Determination's repeated use of the word "allegedly" is because it is not necessary to resolve a conflict of evidence as to whether the alleged sexual act in Mr. Randazza's car actually occurred or the degree of upset it caused Mr. Randazza, if it actually occurred. That is because the Arbitrator has determined that --- contrary to Mr. Randazza's central contentions in this arbitration --- the factual and legal cause of the end of Mr. Randazza's employment had nothing whatsoever to do with anything having to do with alleged sexual activity in Mr. Randazza's car --- alone or taken together with a pornographic shoot which, without dispute, occurred in his office, without prior notice to Mr. Randazza, but which the evidence shows did not occur as alleged, was not strongly or even negatively reacted to by Mr. Randazza as initially alleged and did not, as shot or shown, include a photograph of Mr. Randazza's family, as initially presented by Mr. Randazza.

The foregoing determination includes that anything relating to sex --- including in connection with a filmed video in Mr. Randazza's E/L office or in the back seat of his car --- had nothing whatsoever to do with any decision --- which the Arbitrator has determined was neither made or considered --- to terminate Mr. Randazza's E/L employment. 2012. There was no E/L contrived pretext or any retaliation by E/L in connection with the cessation of Mr. Randazza's E/L employment, which was entirely voluntary on

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Mr. Randazza's part.[3] For those reasons, the Arbitrator has determined that Mr. Randazza failed to sustain his burden of proof required to establish his claims of and relating to anything having to do with sex --- e.g., sexual harassment, hostile work environment, constructive termination, retaliatory termination, etc.

F. As stated above --- and as picked up and amplified later in the Determinations portion of this Award --- since the outset of the arbitration, Mr. Randazza made highly-charged, sexually-based "core allegations" and his claimed strong reactions to them in support of his statutory and contractual claims, which were in the main disproved or not proved. That failure of proof undermined and impaired Mr. Randazza's credibility concerning all of his

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testimony and his claims and related contentions.[4] The evidence established at hearing was that Mr. Randazza intended that his allegations would induce

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[3] The same is true with respect to Mr. Randazza's contention(s) that Mr. Gideon's discovery of Mr. Randazza having been involved with and negotiating a $75,000 "bribe" in connection with a settlement of the Oron litigation was a pretext for an earlier-formed intention by Mr. Gideon to end Mr. Randazza's E/L employment.

[4] Mr. Randazza's credibility was also undermined by the variance between his testimony and positions at hearing and his written Nevada State Bar submission concerning the Oron litigation $75,000 bribe --- including what, if anything, Mr. Gideon knew about it and when, and who solicited the bribe in the first instance.

Mr. Randazza's credibility was also undermined by the variance between his testimony and his EEOC submission. At hearing, Mr. Randazza admitted that the EEOC complaint contained errors, but tried to explain them away by saying that he did not prepare it. That is not a sufficient excuse or explanation, in the circumstances.

Resolving a credibility-related issue presented in the post-hearing briefs concerning asserted testimonial evasiveness implied by Mr. Randazza's body positioning and whether he had eye contact with the Arbitrator (as asserted by Mr. Randazza in his Reply), throughout his extensive testimony at hearing and primarily on cross-examination, the Arbitrator observed that Mr. Randazza sat sideways in his chair, relative to Claimant's counsel's table --- with his back to (i.e., 180 degrees away from) his own counsel and 90 degrees away from Respondent's counsel --- albeit with his seated body positioned toward the part of the wall behind and to Mr. Randazza's left from

Mr. Gideon to authorize a settlement financially favorable to Mr. Randazza, based on Mr. Randazza's belief at the time --- and ultimately proven incorrect --- that Mr. Gideon would so settle, rather than have to litigate true or false allegations relating to his own sexuality, sexual activity, and the pornographic nature of E/L's business. Mr. Randazza's miscalculation, as aforesaid, led to an

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where the Arbitrator was seated. Mr. Randazza almost always listened to questions and answered in that position --- leaning well forward and looking down or straight ahead into "middle distance" in the direction of the wall behind where the Arbitrator was seated. Mr. Randazza rarely answered a question on cross-examination with sustained eye contact with either the questioning attorney or the Arbitrator.

The Arbitrator has determined, based on the evidence, that Mr. Randazza solicited the bribe in the first instance, attempted to negotiate with Oron's counsel ways and means whereby it would be concealed from and not become known by E/L, and disclosed it to E/L, per Mr. Gideon, for the first time only on August 13, 2012, when the settlement documentation prepared and presented for Mr. Gideon's signature on behalf of E/L by Oron's counsel surfaced a $75,000 retainer payment to Mr. Randazza.

The Arbitrator has further determined that E/L never gave Mr. Randazza permission or consent to solicit, negotiate or accept the $75,000 bribe,* or any bribe or any other payment other than payment of all proceeds being solely for the benefit of and deposited to the account of his clients/principals, E/L.

[*On August 13, 2013, Mr. Gideon handwrote an arrow and "Who gets this" next to the $75,000 payment provision in the copy of the execution copy of the Oron settlement agreement presented to him by Mr. Randazza. The Arbitrator credits that notation as being first notice to and genuine surprise expressed by Mr. Gideon about any Oron settlement payment not being made directly to E/L.

[That notation also was the genesis of a rapid unraveling of the theretofore close professional and personal relationship, symbolized by Mr. Gideon's sharply reducing communications with Mr. Randazza and Mr. Randazza's repeated and ultimately unsuccessful efforts to salvage his situation, by attempting to re-establish direct contact with Mr. Gideon. As previously stated, the Arbitrator has not accepted Mr. Randazza's central contention and narrative that this state of affairs, triggered on August 13, 2012, was manufactured by Mr. Gideon and served as a convenient or other pretext for an earlier-decided termination of Mr. Randazza's employment.]

The Arbitrator has not accepted that E/L's knowledge of or informed consent to any such situation can be implied by non-objection and silence in response to an unspecific, Delphic allusion in one of Mr. Randazza's emails prior to August 13, 2012 or to Mr. Randazza's after-the-fact, self-serving reference to alleged earlier communications, wherein Mr. Randazza claimed in the later email to have "fully disclosed...overtures about that."

In addition, except for admissions, anything which Mr. Randazza and his opposing counsel in the Oron litigation, Val Gurvitz, communicated to each other lacked credibility, because Mr. Randazza testified that he and Mr. Gurvitz routinely lied to each other in their settlement communications.

ultimately successful counterattack by E/L, via counterclaims in this arbitration, centering on ethical and legal challenges to Mr. Randazza's conduct as E/L's general counsel and litigation counsel during his employment by E/L. Mr. Randazza's alleged misconduct consisted of engaging in ethically-prohibited negotiations with adverse parties, including concerning monetary "bribes" to "conflict (Mr. Randazza) out" from future litigation, further damaging E/L's recovery in the Oron litigation by knowingly forwarding illegally "hacked" computer data to counsel for another company, without authorization and in contravention of an E/L settlement agreement, engaging in other prohibited conflicts of interest, including representing competitors of E/L, not disclosing and not obtaining informed written client consents from E/L where actual or potential conflicts of interest arose, working and not disclosing that he was working as a practicing lawyer on non-E/L matters during his employment significantly in excess of what was contractually permitted, spoliation of evidence to cover up the foregoing and his undisclosed intention to resign from E/L's employment, including via planning and causing the deletion of legal files and other relevant data from E/L-owned computers, taking control of client funds, in form of Oron litigation settlement proceeds, and refusing to unconditionally release the same to E/L.

G. As stated above, Mr. Randazza voluntarily ended his employment by E/L. The principal evidence of that consisted of (1) Mr. Randazza's August 29, 2012 email to Mr. Gideon, (2) days before sending Mr. Gideon his August 29 email, Mr. Randazza cleaned out his personal belongings from his office, (3) shortly after Noon on August 28 --- and more than 24 hours before sending his August 29 email to Mr. Gideon --- Mr. Randazza had his corporate laptop computer "wiped" the first of four times during his last week of employment, and (4) before that, Mr. Randazza was overheard to say "Fuck this shit, I quit," following a company "happy hour" event.

H. In his August 29, 2012 email to Mr. Gideon, Mr. Randazza stated that he could no longer represent the Company, i.e., E/L. [5] In the circumstances then known, Mr. Gideon and other E/L executives with whom he consulted reasonably, and not hastily,[6] concluded from their review of Mr. Randazza's August 29, 2012 email that Mr. Randazza had resigned from his employment. Their conclusion was proven accurate by facts which became known after Mr. Randazza's departure. Any actions taken by them based on that reasonable belief did not result in any involuntary termination of Mr. Randazza's E/L employment.

I. The lack of absolute, unquestionable, pristine clarity in Mr. Randazza's August 29, 2012 carefully worded and crafted email that he was resigning his employment was deliberate.

J. In addition to Mr. Randazza's disputed, disproved and unproved allegations of sexual conduct engaged in or authorized by is important evidence which established that Mr. Randazza was not either (1) a target of any discriminatory or conduct which created a hostile work environment, because of his being a heterosexual or "straight" male, or (2) offended by any of the sexually-related conduct of which he has complained.

K. Prior to and subsequent to agreeing to go "in house" as E/L's general counsel, Mr. Randazza was outside counsel to several companies engaged in Internet pornography, including videos and stills available on openly homosexual websites. Since at least the date of the commencement of his employment as E/L's inside general counsel through his last day of E/L employment, Mr. Randazza knew of and was not in any way uncomfortable with Mr. Gideon's gay sexual orientation --- which was also that of most, but not all,

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[5] Mr. Randazza also said he could "potentially" work to wind up his E/L pending matters. The Arbitrator interprets the inclusion of that to be part of Mr. Randazza's crafted effort to both resign and leave open his attempt to engage Mr. Gideon directly.

[6] The Arbitrator has not accepted Mr. Randazza's assertion that "Respondents hastily decided to call that [August 29, 2012 email] a resignation." Mr. Randazza's Reply at p. 7:20-21.

of E/L's other executives --- and the frequent seasoning of business and socially-related conversation and written communications with crude gay and other sexual terms, references and allusions, which Mr. Randazza also used.[7] Mr. Randazza was not embarrassed to be seen or filmed in full undress at a poolside business-social event at Mr. Gideon's home. Mr. Randazza permitted and encouraged his children to have warm personal relationships with Mr. Gideon, who they called "Uncle."

L. The evidence was that the only complaints which Mr. Randazza had concerning the pornographic filming in his offices in April 2012 --- four months before the end of his employment --- were that (1) he was not given the courtesy of advance notice of the shoot and (2) after the shoot was completed, Mr. Randazza's office was not restored to just the way it had been before the office was prepped for filming.

The preponderance of disputed evidence was not that Mr. Randazza complained to Mr. Gideon centering on or in any way reasonably relating to sexual discrimination or harassment or a hostile work environment based on sex, including "male-on-male" sex, which has been recognized as a basis for a legal claim. Accordingly, allegedly involuntary termination of Mr. Randazza's employment, based on Mr. Randazza's April 2012 complaint about the filming of pornography in his office --- which did not constitute statutorily "protected activity" --- is not includible as a component for a statutory claim that he had been fired in retaliation for making that complaint. Mr. Randazza's complaint about the allegedly personally offensive oral copulation of Mr. Gideon

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[7] For example, Mr. Randazza admitted that he used the term "butthurt" --- which he alleged that Mr. Gideon used to demean his expression of feelings about the pornographic filming in his office. In a series of texts about the shoot, Mr. Randazza texted, in a crude possible sexual/legal "double entendre," "Don't jizz on my briefs." Mr. Randazza has admitted that "The Arbitrator has seen many texts and emails from Mr. Randazza with informal, rough, vulgar content." Reply at p. 10:9-10. In making a different point, Mr. Randazza concedes by assertion that "Respondents [have] conceded that jokes and banter were common in the office."

in the back seat of his car on August 9, 2012 was not genuinely or deeply felt and was made primarily for tactical reasons. Therefore, the end of Mr. Randazza's employment was not and was not the product of anything retaliatory, in violation of public policy (e.g., engaging in protected activity), as a matter of law.

Moreover, the preponderance of the evidence is that Mr. Randazza had advance notice of the filming of a pornographic video in his office and that he did not either object or indicate that the noticed shoot was in any way objectionable or offensive to him. That evidence is the playful exchange of texts between Messrs. Randazza and Gideon concerning the intended shoot and the testimony of the director of the shoot, Chaz Vorrias, who testified that he advised Mr. Randazza of the shoot in advance and received no objection from Mr. Randazza.[8]

M. Contrary to the strong impression created by Mr. Randazza's pre-Arbitration Hearing narrative of allegations, there was no evidence that any photograph(s) of his wife or children or anything personal of or concerning Mr. Randazza or any member of his family, or in any way reasonably violative of their respective personal privacy, were used or visible in the video. The (possible) visibility of a painting on the wall of Mr. Randazza's office, which was painted by Mr. Randazza's wife, is not to the contrary.

In the circumstances, there was no action taken which was either statutorily offensive or hostile.

N. Mr. Randazza's California Labor Code-based claims --- for Excelsior's failure to (1) pay him his final wages in August 2012 (2nd Claim) or (2) reimburse and indemnify his for business expenses incurred by him in during 2012 (1st Claim) --- fail as a matter of law. The same is true for Mr. Randazza's

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[8] Mr. Vorrias testimony was not unfair surprise, Mr. Vorrias's admitted deletion of his emails with Mr. Randazza was done without knowledge of their significance in connection with the dispute underlying this arbitration and, in the event, is not attributable to either Excelsior or Liberty, because he was not a managing agent of either entity.

claim for payment of all of his wage-related claims --- including payment of raises, bonuses and repayment of his $25,000 loan. That is because --- at all times relevant to those California Labor Code claims, since June 2011, Mr. Randazza worked and lived in Nevada, to which Mr. Randazza relocated, as did E/L, in order to continue as E/L's general counsel. As stated or indicated in a pretrial ruling bearing on the same issue, (1) the California Labor Code, presumptively, does not apply extraterritorially,[9] and does not apply to the facts and circumstances of this case, and relatedly, (2) that determination, concerning Mr. Randazza's non-contractual claims, is unaffected by the California-as-governing-substantive-law provision of Mr. Randazza's employment agreement with Excelsior, which applies and controls only as to breach-of-contract claims and not, as in this instance, Mr. Randazza's statutory claims.[10]

In the event, Mr. Randazza was properly compensated for all services as to which he has asserted statutory and contractual claims.[11]

O. Mr. Randazza's claim for unpaid wages and penalties under Nevada NRS Sec.608.050 (3rd Claim) fails as a matter of law, because there is no private right of action for enforcement of that statute. It is therefore not necessary to decide whether the a claim has been stated under that statute.

P. As to Mr. Randazza's contractual claims --- which are governed by the Employment Agreement, including the provision that California law governs its interpretation and enforcement, etc. --- (1) Mr. Randazza is not entitled to a contractual severance payment, because he voluntarily resigned his

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[9] Sullivan v. Oracle Corp. , 51 Cal.4th 1191, 12016 (2011); Wright v. Adventures Rolling Cross Country, Inc., 2012 U.S. Dist. LEXIS 104378 (N.D. Cal. 2012) (presumption against extraterritorial application of state law applies to unpaid wage claims under California Labor Code, plus "situs of the work" is the most important factor in determining extraterritoriality, trumping residency and where wages are paid).

[10] See, e.g., Narayan v. EGL, Inc. , 616 F.3d 895, 899 (9th Cir. 2010).

[11] For example, Mr. Randazza's bonuses were to be based on net and gross amounts (which he acknowledged prior to the end of his employment), claimed compensation raises were discretionary. Whatever Mr. Randazza was paid as compensation and bonuses is subject to the remedy of disgorgement.

employment,[12] (2) Mr. Randazza is not entitled to any payment for expenses in connection with the annual International Trademark Association Conference, which he did not attend, and (3) Mr. Randazza's bonuses were to be paid on "net" amount, not "gross" amounts, as contended by Mr. Randazza. In the event, E/L has been legally excused from any obligation to make any further contractual payment, by reason of Mr. Randazza's material breaches of contract with respect to the his obligations under the same contract, Mr. Randazza's employment agreement. That is so under contract law principles --- separate and apart from equitable principles, which are also applicable to contract claims, including the equitable doctrine of unclean hands, which is applicable to Mr. Randazza's contract claims.

Q. Turning to E/L's counterclaims, Mr. Randazza owed fiduciary duties to E/L, because he was their in-house general counsel and their attorney of record in judicial civil actions, and an E/L executive and employee. As such, Mr. Randazza owed E/L, as his clients, employers and principals, the highest duty of loyalty and honesty in the performance of his professional and executive obligations. That duty --- among other things --- included legal and ethical duties of acting honestly and solely for the benefit of his clients/employers/principals, avoiding acting inconsistently with those duties, and where actual or potential conflicts of interests existed to make full written disclosure of the same and to obtain informed written consents from his clients/principals as to each and every such conflict of interest. Each and all of Mr. Randazza's ethical duties owed to his principals/clients was a legal fiduciary duty owed to them. Mr. Randazza violated those fiduciary duties owed by him to E/L, as his principals/clients/employers --- including by the following:

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[12] See Pars. 5(A), (B) and (G), supra, concerning Mr. Randazza's having voluntarily ended his E/L employment, including via and as evidenced by written and verbal and non-verbal conduct. Mr. Randazza was contractually entitled to payment equivalent to 12-week severance only if his employment was involuntarily terminated.

(1) engaging in negotiations for monetary bribes to be paid to him --- including the "Oron $75,000" which Mr. Gideon noticed, without Mr. Randazza's affirmative disclosure of it ---- which would result in his being "conflicted out" of future litigation or any disputes with parties then and/or in the future with

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interests adverse to E/L's interests (e.g., Oron, TNA),[13] (2) taking control for his personal benefit of, and refusing to relinquish control over, Oron settlement funds --- all of which ought to have been for the benefit and under the direction and control of his principals/clients E/L, before and after the end of his employment and representations on behalf of E/L --- (3) Mr. Randazza's ordering and causing the deliberate "wiping" of his and legal assistant's corporate laptops, as an integral part of his planned resignation as E/L's General

[13] It is irrelevant that none of Mr. Randazza's negotiations concerning bribes --- including the Oron bribe --- resulted in an actual bribe payment. See Mr. Randazza's Reply at pp.4:24-5:1: "Yet despite years of discovery in this matter, Respondents have not been able to point to a single 'bribe' paid to Mr. Randazza, or a single consummated deal between him and the opposing party."* The Arbitrator has accepted, as an admission by Mr. Randazza that "he repeatedly engaged in these 'bribe' negotiations," but the Arbitrator has not accepted Mr. Randazza's testimony and further contention that he did so "because they were par for the course in dealing with counsel for infringers and because engaging in them was the best way to soften up the other side and get more money for respondents." Id., at p. 5:2-5.

In this arbitration, Mr. Randazza has established a virtually unbroken pattern of asserting a legal/fiduciary variant of the sports cliché, "No harm, no foul." The Arbitrator has not accepted those assertions --- including, for example, a professional or fiduciary duty has been violated, whether spoliation has been committed, etc.

Counsel and outside counsel of record, and (4) Mr. Randazza's continuing and undisclosed (and thus unconsented-to) legal work for clients (e.g., Bang Bros., XVideos, XNXX, Porn Garian, Titan Media, Kink), whose interests were actually and potentially adverse to E/L's interests.[14]

R. The Arbitrator respectfully disagrees with Mr. Randazza's expert witnesses, who respectively testified that, under both Nevada and California rules of ethics and/or professional responsibility, there were no violations of fiduciary duty, if and because they concluded that there was no resulting harm.

The "fact of damage" or proximate cause is not an essential element of either "duty" or "breach of duty" --- but rather a separate element of a claim or cause of The Arbitrator's disagreement with Mr. Randazza's expert witnesses centers

Whether or not Mr. Randazza's breaches of fiduciary duty proximately resulted in damages sustained by Excelsior, Liberty or both of them --- as a matter of sound public policy --- Mr. Randazza should not be allowed to retain any pecuniary or legal benefit resulting from or closely connected to those breaches.

For example, Mr. Randazza has included in his defense of his admitted deletion of files and other legal information via multiple wipings of company-owned computers the assertion that Respondents have not been able to show any damage resulting from those multiple wipings. This is another of Mr. Randazza's assertions in this arbitration of "No harm, no foul" --- which the Arbitrator has not accepted, primarily because of the violations of duties constituting and/or including fiduciary duties. Ethical and other violations of

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[14] Mr. Randazza's legal work for non-E/L clients --- independent of the violations of Mr. Randazza's ethical and fiduciary duties --- were significantly beyond the contractually-permitted scope under his employment agreement. The Arbitrator may award the equivalent to amounts of funds ordered to be immediately turned over by Mr. Randazza to E/L. See Interim Arbitration Award, Par.

fiduciary duties do not require "fact of harm" to be shown by a preponderance of the evidence or otherwise.

Moreover, in the circumstances of (1) multiple ethical violations having been shown to have been committed by Mr. Randazza --- including negotiating for and in the instance of the Oron settlement agreeing to a "bribe" to be conflicted out of future litigation with adverse settling parties and other conflicts of interest --- and (2) Mr. Randazza's ethical challenges shown in this arbitration, there should be a presumption of "fact of harm" caused to E/L by Mr. Randazza's conduct and, additionally, a presumption of Mr. Randazza's intention to harm his clients by wiping everything off of his and his legal assistant's company-owned computers.

As E/L's inside general counsel and employee, Mr. Randazza had a legal and fiduciary duty --- no later than when his employment ceased, regardless of whether or not with or without cause and/or by whom ended --- to deliver every file and other piece of data and/or information --- complete, intact and undeleted, unmodified and immediately accessible and usable by E/L. That included all files and data stored on the computers entrusted to Mr. Randazza and his legal assistant Erika Dillon for their use by and on behalf of E/L. Because of his noncompliance, indeed resistance to compliance with those duties, they continued and continue to the day of the rendering of this award --- including beyond Mr. Randazza's belated and resisted turnover of one of the laptop computers --- because another laptop entrusted to Mr. Randazza remains unreturned. Those continuing fiduciary duties owed by him to E/L exist, including by reason of his exclusive control over the computers and thus superior knowledge of what was on each computer's hard drive before and after he had everything on the returned laptops completely and multiply deleted --- including prior and in contemplation of his planned resignation on August 29, 2012.

In the circumstances, Mr. Randazza's generalized and unspecified claims of privacy --- in attempted justification of his ordered complete and multiple wipings of company-owned computers --- cannot be accorded weight or credibility. By the same token, that ordered conduct raises an inference that whatever was deleted was known and intended by Mr. Randazza to be harmful to him and any claims and contentions which he might make in any dispute with E/L --- i.e., deliberate spoliation, in addition to conversion.

Mr. Randazza cannot escape liability for spoliation or conversion --- or, additionally, violation of his fiduciary duties as an employee, executive and general counsel of E/L, by reason of the same conduct --- by claiming, as he has, that Respondents have not shown any specific or tangible injury by reason of his conduct in causing company-owned computers to be completely wiped of all data prior to their resisted and belated return. In the circumstances --- and paraphrasing former Defense Secretary Donald Rumsfeld --- neither Respondent should bear any burden or responsibility to come forward with any evidence of damage, when they do not know what they do not know. As stated above --- with his actual exclusive knowledge of what was on the computers' hard drives, before and because he ordered them to be completely wiped and, in the instance of his returned laptop, multiply wiped before ultimate return --- Mr. Randazza committed spoliation of evidence, as well as improper conversion of his employer's files, data and equipment and, in so doing, also violated his fiduciary duties owed to E/L.

S. The closure of the Nevada State Bar's file on the grievance filed by E/L has not been given any weight in this arbitration. The reasons for that are manifold, several of the most significant of which include the following: (1) the State Bar did not reach the merits of E/L's grievance, (2) even if it would have, the standard of evaluation would have been "clear and convincing evidence," rather than the standard applicable in this arbitration of "preponderance of the evidence," (3) Mr. Randazza's response to E/L's grievance contained at least one

material misrepresentation acknowledged during an evidentiary session in this arbitration (that he stopped representing XVideos in 2009), (4) the Nevada State Bar closed its file with an express statement that it has "no authority to take any action which could affect the outcome of any civil disputes or litigation, (5) many of the issues and much of the evidence presented in this arbitration (identities of represented entities, retainer and billing records, emails, etc.) was not available to be presented by E/L in support of its grievance (e.g., Mr. Randazza's assisting Datatech, including via forwarding fruits of a disclosed (unnamed) computer "hacker").

T. E/L was damaged in at least the amount of $275,000, by reason of the Oron resettlement, as a direct and proximate result of events being set in motion by Mr. Randazza's violations of fiduciary duty and other duties, by his having secretly negotiated a $75,000 bribe to conflict himself out from suing Oron in the future.

U. Mr. Randazza was unjustly enriched in the amount of $60,000. Of that amount, $55,000 was paid to and received by Mr. Randazza's law firm, rather than E/L, in connection with (1) Mr. Randazza's ostensibly pro bono representation in connection with the so-called "Righthaven cases," of which E/L was generally aware and consented to (A) with the understanding and on the condition that Mr. Randazza was acting as a faithful, compensated E/L employee, including in compliance with his employment agreement, with costs of the representation advanced by E/L, including compensation as employees of Mr. Randazza and his legal assistant Erika Dillon, and (2) unaware that compensation was to be or actually paid to Mr. Randazza, via his law firm, until after the fact, indeed after Mr. Randazza's resignation from E/L employment.[15] Mr. Randazza also received $5,000 from James Grady, in connection with E/L's Oron litigation. Although Mr. Randazza testified, without corroboration, that

[15] Of the $60,000 paid and received, (A) $55,000 was court-awarded attorneys' fees, which were paid to Mr. Randazza's law firm, and (B) $5,000 was paid by James Grady.

Mr. Grady's payment was used for Oron litigation expenses, Mr. Randazza did not disclose the receipt of the Grady $5,000 payment to E/L. In the circumstances, and under principles of unjust enrichment, all compensation paid to or for the benefit of Mr. Randazza should have been paid directly to E/L or turned over to E/L by Mr. Randazza --- neither of which was done, immediately or ever.

V. Mr. Randazza materially breached his employment agreement with Excelsior by (1) acting as an attorney in connection with the TNAFlix litigation and the MegaUpload case, his concurrent representation of XVideos and/or XNXX during his employment by Excelsior and (2) spending significantly excessive time on non-Excelsior/Liberty matters beyond contractually-permitted time under his employment agreement with Excelsior and by failing to wind down his non-Excelsior/Liberty legal activities, as also provided in Mr. Randazza's employment agreement.[16]

The extent of Mr. Randazza's contractual material breaches made them also breaches of fiduciary duty --- regardless of whether or not those breaches of fiduciary duty were conflicts of interests, as some were.

W. Disgorgement of compensation paid by E/L to Mr. Randazza is an available remedy, which is appropriate in the circumstances of Mr. Randazza's clear and serious violations of fiduciary duty owed to E/L, and within the Arbitrator's discretion, based on the evidence in this arbitration.[17]

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[16] Mr. Randazza materially breached his employment agreement with Excelsior by maintaining a private law practice, with billed hours shown to be in excess of that permitted by that agreement, performing non-E/L legal services during the time he could and should have been performing services as E/L's General Counsel, and by failing or refusing, consistent with ethical duties and requirements, to reduce and taper off to zero his professional services for clients other than his employer, E/L.

The extent of Mr. Randazza's contractual material breaches made them also breaches of fiduciary duty --- regardless of whether or not those breaches of fiduciary duty were conflicts of interests, as some were.

[17] See Burrow v. Arce, 997 S.W.2d 229 (Tex. 1999) ("Burrow")(remedy of forfeiture/disgorgement upheld, including court discretion to determine whether some or all compensation paid to attorney who breached fiduciary duty of loyalty owed to

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There is no requirement that causation or "fact of damage" be shown.[18] There is no valid reason to distinguish between an executive who is "in house" general

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client to be forfeited or disgorged, where clear and serious violation(s) of fiduciary duty shown).

[18] That is because, among other reasons, one of the primary purposes of a remedy like forfeiture/disgorgement for breaches of fiduciary duty is to deter, not reward and to remove incentives of fiduciary disloyalty --- including by denying the benefits of disloyalty, regardless of provable or even actual harm to the principal, including after payment of compensation. As the Texas Supreme Court pertinently stated in Burrow in connection with the remedy of forfeiture/disgorgement as a deterrent and disincentive for an attorney or other agent to breach of fiduciary duty:

> "Pragmatically, the possibility of forfeiture of compensation discourages an agent from taking personal advantage of his position of trust in every situation, no matter the circumstances, whether the principal may be injured or not. The remedy of forfeiture removes any incentive for an agent to stray from his duty of loyalty based on the possibility that the principal will be unharmed or may have difficulty proving the existence of amount of damages."

The California cases cited by Claimant are distinguishable. Frye v. Tenderloin Housing Clinic, Inc., 38 Cal.4th 23 (2006)("Frye"), Slovensky v. Friedman, 142 Cal.App. 4th 1518 (2006) ("Slovensky"). The appellate court's conclusion in Slovensky was based on its misreading and/or misstatement of the Supreme Court's holding and the basis and reasoning for its holding in Frye --- which was, in effect, a "one-off" opinion strongly driven by the facts and public policy considerations articulated and emphasized by the Supreme Court in the opinion. The Slovensky court's mistake is highlighted by its reliance on what it called the "Frye rule" --- which was no such thing, or at least not as stated and relied on by the court in Slovensky.

There would be little or no reason for the remedy of disgorgement, if there was a so-called "Frye rule" as misstated by the Slovensky court and urged by Mr. Randazza. If fact of damage and extent of damages must be proven by a preponderance of the evidence, in order to obtain disgorgement, that remedy would be rendered duplicative of the remedy of compensatory damages, except in name only. Moreover, the strong public policy to deter and remove any incentive for clear and serious violations of fiduciary duty - where injury to the client or other principal might be difficult or impossible to prove, as a matter of compensable damages - would be severely undermined.

In Frye , the California Supreme Court appears to have been offended by the plaintiff/client's overreach in the circumstances. The Court determined not that the remedy of disgorgement was legally unavailable but, rather, that its application --- in the

counsel and other corporate executives with respect to the availability of the remedy of forfeiture/disgorgement of compensation for breaches of fiduciary duty.[19] While it might be less easy to determine the appropriate amount of disgorgement --- because, for example, the compensation paid is not a fixed percentage, as in an all-or-nothing legal or brokerage contingency fee arrangement, contractual hourly arrangements, etc. --- that is not a disqualifying factor or consideration. Considerations of proportionality and non-overlap with an award under other remedies are applicable.

Disgorgement will be applied to E/L-paid compensation received by Mr. Randazza in connection with litigation and other engagements on behalf of non-E/L clients --- in material breach of contract, while employed by E/L and beyond the significantly limited scope of his employment agreement (in terms of subject matter and time) and/or, in all events, in violation of his professional and fiduciary duties owed to his principal/client/employer, E/L. See Par. 1(V), above.

None of the expert witnesses who testified concerning breaches of legal ethics and fiduciary duties by attorneys and remedies for such breaches opined that disgorgement is unavailable in all instances. The Arbitrator had the

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special context of a technical failure to properly register for the practice of law by a public interest non-profit organization, engaged in what the Court considered to be important, worthy public interest work, expressly supported by the Court (including by affirming very substantial statutory attorneys' fees awards, as stated in that opinion) --- was "grossly disproportionate to the wrongdoings" of the defendant there and therefore "would constitute a totally unwarranted windfall" to the plaintiff there. 38 Cal.4th, at p. 50. Frye, therefore, is distinguishable from the facts of this case.

Because the basis for its opinion was wrong, Slovensky is distinguishable or, more aptly, inapplicable to Mr. Randazza's proven clear and serious ethical and fiduciary breaches in this case.

[19] See Zakibe v. Ahrens & McCarron, Inc., 28 S.W.3d 373, 385-386 (Mo. Ct. App. 2000) (executive's breaches of fiduciary duty resulted affirmed forfeiture of his right to "all compensation, including bonuses and severance pay to which he may have been entitled"); Riggs Investment Management Corp. v. Columbia Partners, LLC, 966 F. Supp. 1250, 1266-1267 (DDC 1997) (former chairman and CEO of corporation forfeited all salary, bonuses and other compensation paid from the time disloyal action began, as determined by the appellate court, to date of end of employment six months later).

sense, however, that Mr. Joseph Garin came close to opining that causation and/or "fact of damage" caused by an assumed breach of an ethical/fiduciary duty is or should be a prerequisite to the imposition of disgorgement, with which opinion the Arbitrator respectfully disagrees (if that is Mr. Garin's opinion).[20] In so opining, Mr. Garin (as did Mr. Randazza's California expert witness, Ms. Ellen Peck) testified that --- based on information provided by Mr. Randazza --- there was not a single instance of an ethical violation, with which the Arbitrator also respectfully agrees, based on all of the evidence adduced at hearing.

See Burrow v. Arce, 997 S.W.2d 229 (Tex. 1999) and Restatement of Agency 3d, Sec. 8.01 comment d(2).

X. While Mr. Randazza's obtaining Mr. Gideon's signature on the promissory note for Mr. Randazza's $25,000 loan to E/L for Hong Kong legal fees was rife with ethical infirmities, in the exercise of the Arbitrator's discretion, the Arbitrator will not void the underlying loan. However --- again in the exercise of the Arbitrator's discretion --- the Arbitrator will limit the benefit of that decision to allowing Mr. Randazza to assert an offset, under this paragraph, to any and all amounts awarded on E/L's counterclaims, up to a maximum amount of $25,000 (i.e., no interest) --- which right of offset shall be conditional upon Claimant's transfer to Respondent Liberty of all Oron settlement-related and other E/L funds held in Claimant's attorney trust account,[21] plus interest at the legal rate of ten percent (10%) per annum from August 29, 2012.

Y. E/L are the prevailing parties in this arbitration. As such one or both of Respondents is or may be entitled to contractual attorneys fees under the employment agreement.[22]

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[20] Mr. Garin conceded, on cross-examination, that Section 37 of the Restatement 3rd of The Law Governing Lawyers does not say that a showing of actual monetary loss is required for disgorgement of attorney compensation.

[21] See Interim Arbitration Award, Pars. 4 & 5, at p. 28, infra.

[22] See Interim Arbitration Award, Pars. 8 at pp. 28-29, infra.

INTERIM ARBITRATION AWARD

Based upon careful consideration of the evidence, the applicable law, the parties' written submissions, the Determinations hereinabove set forth, and good cause appearing, the Interim Arbitration Award in this arbitration is as follows:

1. Claimant and Counter-Respondent Marc J. Randazza ("Claimant") shall take nothing by any of his claims set forth in his Amended Arbitration Demand.

2. Claimant shall pay Respondent(s) the following sums and amounts, as and for monetary damages in connection with Respondents' counterclaims. Said amounts are exclusive and non-duplicative of any amount separately and additionally awarded to Respondents as part of the remedy of disgorgement. See below.

Said amount includes the amount of $275,000, plus pre-award interest from August 13, 2012, at the legal rate of ten percent (10%) per annum, as and for monetary damages in connection with the resettlement of the Oron litigation, as a direct and proximate result of Claimant's violations of fiduciary duty in connection with his negotiating for a $75,000"bribe" (to conflict him out of future representation against Oron) as part of the resolution of the Oron litigation.

Said amount will include the amount of $60,000, by which amount Claimant was unjustly enriched --- in that Claimant (via his law firm), rather than either Respondent received (A) $60,000 in connection with Claimant's ostensibly pro bono representation in connection with the Righthaven cases, while compensated for Claimant's time spent on the representation as employee, in the course of his employment, as to which representation the costs were advanced by Claimant's employer, and (B) received from James Grady in connection with the Oron litigation.

Said amount will include the amount of $3,215.98 --- as and for Respondents' expenses reasonably incurred in connection with QUIVX forensic

examination and attempted restoration of data on employer-owned laptop computers and an iPhone used and returned, as applicable, by Claimant and Erika Dillon. In addition, an amount yet to be determined, in the exercise of the Arbitrator's discretion, will be awarded for Claimant's spoliation and conversion of Excelsior's and Liberty's files and other data contained on employer-owned laptop computers entrusted to Claimant and Erika Dillon during their employment by Respondents or either of them. The additional amount awarded will be set forth in a further and/or amended interim arbitration award and/or in the final arbitration award.

3. Claimant shall pay Respondent Excelsior the amount of $197,000.00 --- as and for disgorgement of an appropriate amount of Claimant's employment compensation (including salary and bonuses) paid under his employment agreement).

The awarded amount under this paragraph is non-duplicative of and does not overlap with any amount award as monetary damages under any other paragraph of this Interim Award.

The amount awarded under this paragraph does not include disgorgement based on Claimant's post-employment violations of fiduciary duty. That is because it appears to the Arbitrator that they are instances of Respondents having rights without a remedy --- as the limits of case law on disgorgement do not extend to post-employment violations of fiduciary duty.

Disgorgement shall be based on Claimant's violations of fiduciary duty ---including as acting as an attorney in connection with the TNAFlix litigation and the MegaUpload case, Claimant's concurrent representation of XVideos and/or XNXX during his employment by Excelsior and spending excessive, undisclosed, time on non-Excelsior/Liberty matters far beyond contractually-permitted time under his employment agreement.

4. Claimant is hereby ordered forthwith (i.e., within ten (10) days of the date of the issuance of this Interim Arbitration Award) to turn over to

Respondents all Oron-related funds and, further, an additional $30,000 of non-Oron-related client funds of Respondents --- which funds have been held in Claimant's attorney trust account --- plus pre-award interest at the legal rate of ten percent (10%) per annum from August 29, 2012.

5. An accounting of Claimant's attorney trust account is hereby ordered --- including to ensure compliance with Paragraph 4 hereof. The accounting shall be performed by a qualified third-party accountant and/or accounting firm appointed and/or approved by the Arbitrator. The cost and expense of which shall be borne solely by Claimant --- although Respondents may advance the funds necessary for the accounting, subject to ordered reimbursement by Claimant. Claimant is hereby ordered to cooperate fully with the ordered accounting.

6. Claimant is hereby ordered to return the as-yet-unreturned company-owned laptop to Respondents' counsel forthwith --- and in no event later than ten (10) days from the date of the issuance of this Interim Arbitration Award.

7. Respondent shall be awarded as damages or costs reasonably incurred with this litigation, expenses reasonably incurred by QVIX or similarly qualified expert vendor --- up to a maximum of $3,500 --- in connection with the vendor's performance of successful and/or attempted retrieval of data a report to the Arbitrator of what, if anything was deleted from the computer and when.

8. Respondents and Counterclaimants Excelsior Media Corp. and Liberty Media Holdings, LLC shall be afforded the right in this arbitration to establish their rights --- if any, and according to proof --- to contractual attorney's fees and costs.

Counsel for the parties are ordered to immediately commence and diligently conduct and conclude meet-and-confer communications and to submit to the Arbitrator within ten (10) days of the issuance of this Interim Arbitration

Award an emailed proposed briefing and hearing schedule for any application for contractual attorney's fees and costs.

9. Respondent Jason Gideon will be dismissed as a party to this arbitration.

Subject to further order and/or a further and/or amended interim arbitration award, and the Final Arbitration Award, this Interim Arbitration Award, including the Determinations hereinabove set forth, is intended to be in full settlement of all claims, issues, allegations and contentions, on the merits, submitted by any party against any adverse party in this arbitration. Subject to the immediately preceding sentence, claims and requests for relief not expressly granted in this Interim Arbitration Award are hereby denied.

Dated: June 3, 2015

STEPHEN E. HABERFELD
Arbitrator

EXHIBIT 7

EXHIBIT #7

UTAH FEDERAL COURT MEMORANDUM AND DECISION ORDER

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

PURPLE INNOVATION, LLC, a Delaware limited liability company, Plaintiff, v. HONEST REVIEWS, LLC, a Florida Corporation, RYAN MONAHAN, an individual, and GHOSTBED, INC., a Delaware corporation, Defendants.	**MEMORANDUM DECISION AND ORDER** Case No. 2:17-cv-138-DB District Judge Dee Benson

Before the court is Plaintiff's Motion for Sanctions. (Dkt. No. 229.) In its motion, Plaintiff requests sanctions for Defendants' submission of misleading and false statements to the court in opposing Plaintiff's request for preliminary injunction. Pursuant to civil rule 7-1(f) of the United States District Court for the District of Utah Rules of Practice, the court elects to determine the motion on the basis of the written memoranda and finds that oral argument would not be helpful or necessary. DUCivR 7-1(f).

FACTUAL BACKGROUND

Plaintiff is a manufacturer of bed-in-a-box mattresses and other bedding products. (Compl.[1] at ¶¶ 19-29.) Plaintiff advertises and sells its products solely through an e-commerce platform, rather than maintaining brick and mortar stores. (*Id.* at ¶ 29.) Because Plaintiff relies strictly on an e-commerce sales strategy, online comment and review websites can have a significant impact on Plaintiff's business. (*Id.* at ¶¶ 38-39.)

[1] All references to the Complaint herein refer to the Second Amended Complaint. (Dkt. No. 266.)

In January 2017, a new mattress review website—www.honestmattressreviews.com—owned by Defendant Honest Reviews, LLC ("HMR") and operated by HMR's sole owner, Defendant Ryan Monahan ("Monahan"), began to post reviews of various mattress and bedding products. (*Id.* at ¶¶ 9, 10, 44.) HMR's reviews or "articles" about Plaintiff's products suggested a link between a white powder used on some of Plaintiff's products and cancer-causing agents. (*Id.* at ¶¶ 47, 53-54.) For example, one article compared the powder to a "ground down…plastic mustard container" or "glass coke bottle," which consumers will inhale every night for "eight to ten hours." (*Id.* at ¶ 71.) The article, alluding to Plaintiff's product, also included a video of the "cinnamon challenge," in which people were coughing, gagging, spitting, crying, and choking on cinnamon. (*Id.* at ¶¶ 72-74.) Plaintiff received low marks on the HMR site, including an image of a large red "X," while its competitors, including Defendant GhostBed, Inc. ("GhostBed"), received favorable marks. (*Id.* at ¶ 82.)

The HMR website repeatedly stated that it was not influenced by any mattress company and that it did not receive financial compensation for its reviews. (*Id.* at ¶¶ 155-64.) Some of those statements included that HMR "receives zero affiliate commissions," "does not have any affiliate commission sales relationships with mattress companies," and is "free from corporate or conglomerates…[that] silence or shape editorial narratives and truths." (*Id.* at ¶¶ 158-63.) The site also asserted that the posts on HMR "have total editorial independence" for which "[n]o one has influence." (*Id.* at ¶ 163.) The HMR website also stated that it is not interested in "influencing a purchase decision to promote a company" or in "a few large companies controlling the narrative." (*Id.* at ¶ 164.)

Plaintiff filed its Complaint on February 24, 2017, alleging claims for false advertising and false association under the Lanham Act and Utah common law, tortious interference with economic relations, defamation, trade libel and injurious falsehood, civil conspiracy, and violation of the Utah Truth in Advertising Act. (Compl. at ¶¶ 220-72.) Plaintiff alleged that the statements made about its products, including their connection to cancer-causing agents, are false. (*Id.* at ¶¶ 221-25.) Plaintiff also alleged that the statements on the HMR website regarding its intellectual and financial independence from any mattress company are false, and that Monahan, the sole owner and operator of HMR, was closely affiliated with Plaintiff's direct competitor, GhostBed. (*Id.* at ¶ 168.) Accordingly, Plaintiff concluded that HMR's purported "reviews" were actually commercial advertising and promotion that "materially misrepresented the nature, characteristics, and qualities" of Plaintiff's products, while failing to disclose the close affiliation with its competitor. (*Id.* at ¶¶ 222-23.)

On February 27, 2017, Plaintiff requested an ex parte Temporary Restraining Order to prohibit Defendants from posting false or misleading statements regarding its products. (Dkt. No. 8.) The court originally denied Plaintiff's motion for ex parte relief, holding that the Plaintiff had "failed to meet its burden to show what efforts ha[d] been made to provide notice, why notice should not be required in this case, and whether immediate irreparable injury [would] result before the adverse party [could] be heard in opposition." (Dkt. No. 13.) Following entry of that Order, Plaintiff's attorney submitted an additional declaration outlining multiple efforts made to notify Defendants of the case, including indications that Defendants had received actual notice and that Defendants appeared to be avoiding service of process. (Dkt. No. 14.) Based on this showing, along with Plaintiff's evidence of a strong showing of an affiliation between

Defendants and substantial likelihood of success on the merits, the court entered Plaintiff's requested Temporary Restraining Order on March 2, 2017. (Dkt. No. 16.)

The following day, on March 3, 2017, Plaintiff filed a Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt. (Dkt. No. 17.) In that Motion, Plaintiff argued that Defendants had failed to comply with the Temporary Restraining Order and had, instead, posted an inflammatory article about the lawsuit on the HMR website. (*Id.*) Defendants opposed the Motion and filed Motions to Dissolve the T.R.O. on March 9, 2017. (Dkt. Nos. 28, 36.) In support of their Motions, Defendants submitted two Declarations, the Declaration of Marc Werner (Dkt. No. 31) and the Declaration of Ryan Monahan. (Dkt. No. 30.)

In his Declaration, Marc Werner, CEO of GhostBed ("Werner"), stated that "GhostBed does not have any affiliation whatsoever with co-defendants Honest Reviews LLC or Mr. Monahan." (Dkt. No. 31 at ¶ 6.) Werner stated that GhostBed does not own, operate, direct, control or contribute to honestmattressreviews.com and that GhostBed "did not, and does not, remunerate Mr. Monahan or Honest Reviews LLC in any way for anything they do in connection with the honestmattressreviews.com website." (*Id.* at ¶ 4-7.) Werner affirmed that "Mr. Monahan is not, and has never been, an employee, director, or officer of GhostBed," (*Id.* at ¶ 11,) and that when Monahan identified himself on Twitter and LinkedIn as "Chief Brand Officer" of GhostBed, he did so "mistakenly." (*Id.* at ¶ 14.) Werner further stated that Monahan is "not a member of GhostBed's marketing department or any other GhostBed department" and does not have an office, phone extension, or email address with GhostBed. (*Id.* at ¶¶ 15-19.) Werner stated that Monahan has "no monetary interest in the success of GhostBed" and "receives no

compensation either directly or indirectly from GhostBed for the content he publishes on honestmattressreviews.com." (*Id.* at ¶ 20.)

Werner acknowledged GhostBed's connection with Monahan in only one paragraph, stating that GhostBed uses Achieve Marketing for branding and marketing consultation services and that "[i]n the past, Achieve used another entity, Social Media Sharks, to consult on online presence issues for its clients, including GhostBed." (*Id.* at ¶ 12.) Werner acknowledged that Social Media Sharks is associated with Monahan, but did not acknowledge any current relationship between GhostBed and Social Media Sharks or GhostBed and Monahan. (*Id.*)

Monahan's Declaration similarly disavowed any significant business relationship between GhostBed and Monahan. Monahan stated that he is the sole member and president of Honest Reviews, LLC, which operates honestmattressreviews.com, and the founder, co-owner, and CEO of Social Media Sharks, a Florida marketing company. (Dkt. No. 30 at ¶¶ 2-3.) Monahan stated that "Defendant GhostBed currently contracts with Achieve Agency to perform social media marketing. Achieve Agency in turn engages Social Media Sharks to provide a portion of those services. Social Media Sharks provides similar services to over twenty-five other companies." (*Id.* at ¶ 6.) Although Monahan admitted that he identified himself as Chief Brand Officer of GhostBed on LinkedIn, Twitter, and at a conference in September 2016, he stated that he did so without GhostBed's knowledge and that GhostBed "scolded [him] for doing so, and insisted that [he] stop." (*Id.* at ¶¶ 7-8.) Monahan also stated that he has never had an office or phone extension with GhostBed. (*Id.* at ¶ 9.)

Monahan similarly disavowed a financial relationship between the Honest Mattress Reviews website and GhostBed. He stated that the website has a single source of income—

Google Adsense—and that Honest Reviews, LLC has never received any consideration from GhostBed, nor has any company, person, or product had any influence over reviews on the HMR website. (*Id.* at ¶¶ 11-13.)

The court held a hearing on the Motions regarding the Temporary Restraining Order on March 14, 2017. At the hearing, counsel for Defendants reiterated the content of the Declarations submitted by their clients. Mr. Randazza, counsel for Monahan, strongly argued that Monahan was an independent journalist entitled to full protection under the First Amendment. Mr. Randazza repeatedly referred to Monahan as a "consumer journalist" and "consumer reporter" (March 14, 2017 Hearing Transcript at 44: 14-15, 23), even asserting that the court did not have authority to find otherwise. (*Id.* at 46-47.) He referred to the HMR site as a "consumer journalist publication just like Consumer Reports[.]" (*Id.* at 44: 15-16.) With respect to the allegation that Monahan was, in fact, closely affiliated with GhostBed, Mr. Randazza stated: "if we believe this entire conspiracy that this whole thing was cooked up back in October to be a shadow marketing campaign for GhostBed, that would require a degree of creativity and just a degree of plotting that even Alexander Dumas could not have imagined when he wrote the Count of Monte Cristo" and stated that "these fantasies are probably best used in fiction." (*Id.* at 46:1-6, 8-11.) Mr. Randazza's coy acknowledgement of a relationship between Monahan and GhostBed was only in passing: "we have a contractor who is a contractor to a contractor and we have no desire to hide that relationship." (*Id.* at 49: 4-6.) Mr. Randazza referred to the alleged close relationship between Monahan and GhostBed as "a very convoluted conspiracy theory that just does not make any sense." (*Id.* at 52: 16-18.)

Counsel for GhostBed, Ms. Yost, similarly indicated that no relevant business relationship existed between Monahan and GhostBed. Ms. Yost referred the court to Werner's Declaration testimony that "GhostBed does not compensate the website owner, which is Honest Reviews, or Mr. Monahan in connection with that website." (*Id.* at 56: 4-6.) Ms. Yost further emphasized: "Neither Honest Reviews nor Mr. Monahan have been compensated by GhostBed to produce this website or any of the content on it. GhostBed has declared under the pains and penalties of perjury that it had absolutely nothing to do with the posts before or after the T.R.O. was entered." (*Id.* at 56: 14-18.) Ms. Yost acknowledged an "attenuated" relationship between Monahan and GhostBed, stating that "Monahan is a marketing consultant and he works for many, many organizations and clients ..., including GhostBed[.]" (*Id.* at 57: 3-4.) However, Ms. Yost argued that GhostBed was no different from any of Monahan's other marketing clients and that "two sworn declarations ... say that there is no money trail between GhostBed and the website where Purple's harm is happening." (*Id.* at 57: 19-24; 61: 10-12.)

Based on the strong representation from both Werner and Monahan and their lawyers' arguments regarding the absence of a relevant, current business relationship between them, the court dissolved the Temporary Restraining Order. (Dkt. No. 59.)

On May 24, 2017, Plaintiff filed a Motion for Preliminary Injunction, which was based on evidence and a request for relief similar to that in Plaintiff's original Motion for Temporary Restraining Order. (Dkt. No. 115.) Plaintiff did not appear to have sufficient new evidence to support entry of a Preliminary Injunction. However, approximately one month later, on June 28, 2017, Plaintiff submitted a Supplemental Memorandum in support of its Motion, attaching a newly obtained Declaration from GhostBed's former Director of Marketing, Ms. Calisha

Anderson. (Dkt. No. 137.) In that Declaration, Ms. Anderson confirmed the bulk of Plaintiff's suspicions regarding the relationship between Monahan and GhostBed. (*Id.*)

In her Declaration, Ms. Anderson explained that:

- She was employed as Director of Marketing of GhostBed from October 2016 until June 7, 2017. (Dkt. No. 137-1 at ¶ 4.)
- Shortly after beginning her new job, she learned she had "very little actual authority for GhostBed's marketing" and Monahan "was the real 'Director of Marketing.'" (*Id.* at ¶¶ 5, 8.)
- Monahan "controlled every aspect of the GhostBed website from before the time [Ms. Anderson] was hired until the day that [she] left GhostBed." (*Id.* at ¶ 11.)
- Monahan "was on the agenda" for every weekly staff meeting Ms. Anderson attended. (*Id.* at ¶¶ 14, 15.)
- Monahan attended GhostBed staff meetings telephonically and "led the discussion" regarding marketing. (*Id.* at ¶ 16.)
- Monahan "frequently used the email address ryan@ghostbed.com to communicate with others, including in the system used to send out email blasts." (*Id.* at ¶ 43.)
- Monahan "was the Chief Brand Officer of GhostBed, and he held himself out as such in his communications with others...." (*Id.* at ¶ 41.)
- During Ms. Anderson's employment, Monahan spoke on the telephone regularly with Werner and visited GhostBed's offices from time to time. (*Id.* at ¶¶ 17, 21.)
- Shortly after being hired, Ms. Anderson was informed by CEO Werner's daughter, Ashley Werner, "that Ryan was the real 'Director of Marketing'" and that "Monahan's marketing decisions trumped [Ms. Anderson's] marketing decisions." (*Id.* at ¶ 8.)

Democratic Party deploying anti-fascists as its foot soldiers. (Antifa almost universally despise the Democratic Party.)

He also tweeted this:

The difference between patriotism (love of country) and nationalism (blind devotion to country, usually with a chauvinistic assertion of superiority) should be obvious to a lawyer who represents nationalists. And as someone who represents white nationalists, Randazza would know that in the U.S. the word "nationalism" is linked to a violent and racist anti-democratic ideology.

He just doesn't care.

Throne Of Lies

The rise of Trump has brought a common arc of radicalization on the political right into sharper relief — that of the contrarian troll who gets lost in his provocations and mutates into something dangerous. Just as some snarky libertarians turned into neo-Nazis and Tucker Carlson was a conservative snot before morphing into a megaphone for white nationalist talking points, Randazza, too, appears to have transformed on his trollish journey through the legal system.

And like Carlson, who gets to spout hate on Fox News because he's a millionaire who once wore a bowtie on CNN, Randazza benefits from the trappings of privilege. His Georgetown law degree and admission to five state bars offer him what people targeted by his clients rarely receive: the benefit of the doubt. Consider a recent front-page Wall Street Journal story that focused on Gab and quoted Randazza as a First Amendment expert. Incredibly, the story failed to mention that Randazza has served as Gab's attorney. Consider, too, that Fox News, CNN, Vice News and others have credulously given Randazza a platform to polish his brand.

But his own profession has shown the least skepticism. Less than a week after the confirmation of Brett Kavanaugh to the Supreme Court, the journal of the American Bar Association ran a short column by Randazza lamenting how easy it is for "vindictive lying women" to ruin the lives of innocent men. Randazza

neglected to tell his ABA editors he'd already run the column on a right-wing legal blog. He also failed to offer any proof for his claim in the column that he currently represents ("at a deep discount") multiple women who have survived sexual assault.

He did, however, have a message for sexual assault victims.

"I believe in their right to tell their story without being sued for it," he wrote.

Last year, Randazza was suing a woman for telling her story about being raped.

Randazza gets away with those sorts of moves because many people assume basic honesty from lawyers. The legal system does too.

"It would take too much time and energy to second-guess and check up on everybody all the time," said Bernie Burk, a legal ethics expert and former professor at the University of North Carolina School of Law. "Generally speaking, if you're reasonably clever and selective about your dishonesty, you can get away with a great deal before the system catches you."

Randazza's duplicity, whether clever or selective, has been constant. Even in recent cases that do not involve porn or Nazis, he has made a mockery of the truth. In Utah federal court, he was — until a few weeks ago — defending a man named Ryan Monahan who ran a website called Honest Mattress Reviews and had been sued by Purple, a mattress manufacturer, after Monahan allegedly lied on his site about Purple's products being covered with a cancer-causing white powder. Purple declared that Monahan had a business relationship with one of its main competitors, GhostBed.

In court, Randazza adamantly argued that Monahan was "an independent journalist" entitled to full protection under the First Amendment. He dismissed the GhostBed connection as a "conspiracy" that "even Alexander Dumas could not have imagined when he wrote the Count of Monte Cristo."

The conspiracy turned out to be real. A witness came forward with evidence proving that Monahan "effectively acted as [GhostBed's] head of marketing" and was being paid $10,000 a month by GhostBed. Randazza and Monahan had

misled both the U.S. Court of Appeals for the 10th Circuit and, repeatedly, the Utah federal court.

"Interference with the judicial process here was substantial," U.S. District Judge Dee Benson wrote, adding that Monahan's violations were "sufficiently egregious that perjury prosecutions would, and perhaps should be, an appropriate consideration."

In February, Benson ordered sanctions be imposed on Monahan and his business, Honest Reviews LLC. A few weeks later, Monahan sold his website to Brooklyn Bedding, another mattress company, and had it wire the money directly to Randazza to pay Monahan's "legal debt." In July, Benson awarded Purple approximately $92,000 in sanctions from Monahan. When Purple's lawyers contacted Randazza to collect, he told them Monahan didn't have the money. Randazza had drained his client dry.

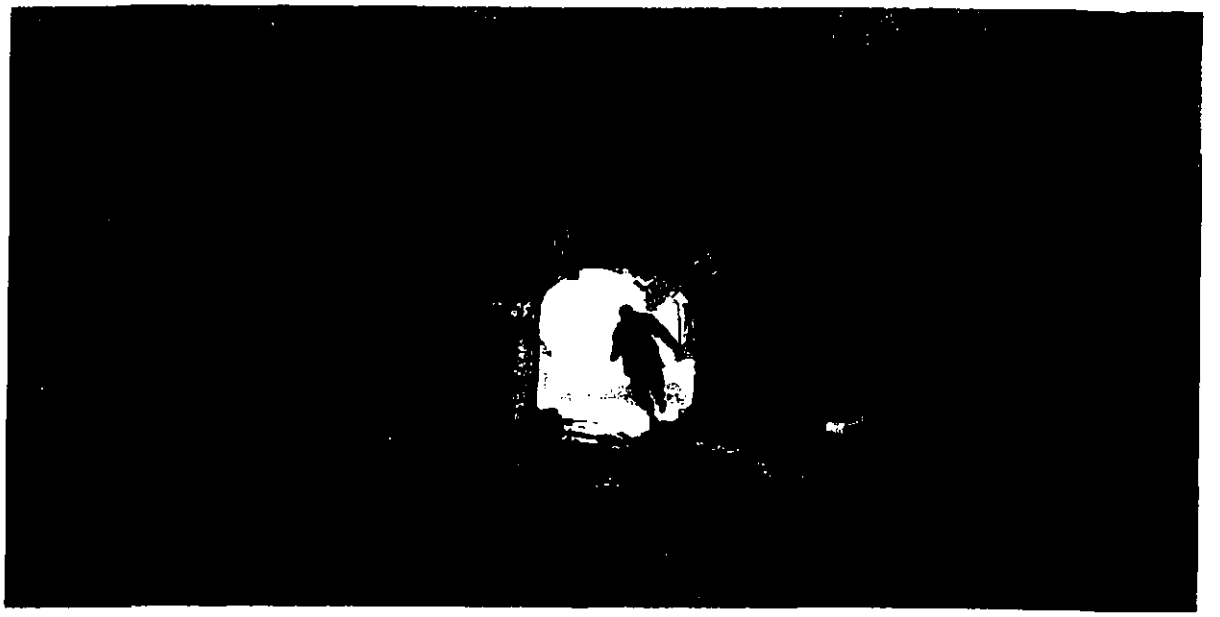
"So do what you gotta do," he told Purple's lawyers.

A desperate Monahan sent a letter to the judge saying he wanted to settle with Purple. Randazza then filed a motion to withdraw from the case "as a matter of professional ethics," leaving Monahan to scramble to find replacement counsel.

"Everything that has exploded in this thing has been because of what [Randazza] has done," Monahan told HuffPost.

Yet Monahan, who said he has a limited grasp of the law, is the one on the hook for sanctions. He is the only one whom the judge suggested should face perjury charges, despite the judge's ruling that Randazza had also "vigorously asserted" misrepresentations in court.

"You know what I like about my life?" Randazza once told a legal blog. "There's not a motherfucker in this world who ever says, 'I'm ambivalent about Marc Randazza.' That is what scares me ... people being ambivalent about me."



OWEN FREEMAN FOR HUFFPOSTWhere Randazza winds up next on his journey through the sewers of the legal system is anyone's guess. "I did not get where I am by having a reputation for being someone who would stab others in the back," he once said.

Lowering The Bar

Randazza had escaped sanctions in Utah. But in Nevada, his long disciplinary proceeding was nearing its end. It had been half a decade since Liberty alerted the Nevada Bar to Randazza's misbehavior. The porn company had given the bar thousands of pages of evidence about its former in-house counsel's conflicts of interest and solicitation of bribes, his misrepresentations about fees and use of privileged and confidential material.

The bar treats multiple offenses and a "pattern of misconduct" as aggravating circumstances that can justify harsher discipline, so Dunlap, the Excelsior vice president who wrote the company's bar complaints, made a deliberate point of including that phrase. "We felt that would be the kicker, that once they had seen that that pattern had been demonstrated that it would leave no room for being wishy-washy or letting him off easy," Dunlap said.

Randazza, in an effort to hang on to his law license, conceded as little as possible. He submitted a conditional guilty plea to the bar confessing to two of the nine ethical violations the bar alleged that he'd committed. The first forbids certain

conflicts of interest and concerned a shady loan Randazza made Liberty; the second prohibits a lawyer from restricting his right to practice and was related to the Oron bribe.

In exchange for this plea, Randazza asked the bar for a stayed suspension and probation — a slap on the wrist. But the bar was under no obligation to give it to him. The baseline sanction for the violations Randazza admitted is suspension.

On Oct. 10, the order came down in Nevada Supreme Court.

"We hereby suspend Marc J. Randazza for 12 months, stayed for 18 months," it read.

That was Randazza's punishment: a stayed suspension and probation, plus a small fine and 20 hours of education in legal ethics. He will avoid actual suspension if he "stays out of trouble" during his probation, according to the order.

The system had finally caught him. And the system didn't seem to much care. The bar didn't pursue Randazza's solicitation of other bribes or his other conflicts of interest. Nor did it investigate whether Randazza despoiled evidence, lied to courts in fee motions or used privileged information that might have been obtained illegally.

What the bar did find were "mitigating circumstances" to allow for lighter punishment. Randazza, for instance, had no prior discipline in Nevada. Another factor was the "time delay" between his ethical violations and the disciplinary hearing — a delay the bar helped cause by dismissing Liberty's initial complaint.

"We had ... to essentially lay out everything for the [Nevada] Bar and then once we handed it to them on a silver platter, they weren't willing to go the distance," Dunlap said.

Here was Randazza's privileged white-collar tribe, policing itself, barely, behind closed doors. The bar refused multiple requests to discuss the Randazza matter or its own arcane rules. For two months, the bar also rebuffed HuffPost's attempts to view records of Randazza's disciplinary proceeding, despite their

high public-interest value. At one point, a lawyer for the bar insisted the records were confidential and could only be obtained through a subpoena or a court order — a stance that clashed with that of the Nevada Supreme Court. When asked for the bar's policy on sealing disciplinary records, the lawyer insisted it was an "internal" and unpublished policy. The next day, he said the bar was "implementing a new policy" and handed over the records.

Among them is a transcript of the June hearing when the bar accepted Randazza's guilty plea. During the hearing, Matthew Carlyon, another bar lawyer, applauded Randazza for reforming his conduct and cited as evidence of the metamorphosis several phone calls Randazza had placed to the bar's ethics hotline seeking advice.

"He is showing that he's willing to change and not be out there endangering the public," Carlyon said. "That's important because ... ultimately our job here is to provide protection to the public. We're not here to discipline attorneys. That's not why we exist. We want to protect the public."

Since then, Randazza has stayed true to form. In Montana federal court, he disobeyed rules requiring him to keep the court informed about his disciplinary proceedings. The judge, clearly upset, ordered Randazza in November to update the court. When Randazza did, he mentioned his stayed suspension but said nothing about his probation, despite describing it in detail to several other federal courts.

Randazza may soon face "reciprocal discipline" in other states where he is licensed. Following his discipline in Nevada, the bars in Arizona, California and Florida have opened or will open their own reviews of his ethical violations. But other bars tend to follow the example of the lead organization, and it is unclear if these states will probe more deeply.

In a disciplinary proceeding against Randazza in Massachusetts federal court, he has shown no remorse for his sleazy behavior and has already distorted reality in an attempt to avoid a suspension. In one filing, he blamed Oron for his solicitation of a bribe. He also audaciously told the court he didn't "cause his clients to suffer any actual harm or financial losses."

"At every step of the way, that has proven to be untrue," Dunlap countered.

Randazza pilfered the $60,000 Righthaven settlement from Liberty, according to the arbitrator's ruling. He caused Liberty to possibly miss out on another settlement by not pursuing XVideos, one of his secret clients, for copyright infringement. Randazza also violated the terms of the $550,000 settlement he'd negotiated with Oron — most significantly by helping his friend file a copycat suit — causing Liberty to pay back $275,000 of the award.

This week, however, the Massachusetts court let Randazza off the hook. The court declined to put the rogue attorney on probation and deferred a decision about further reciprocal discipline until his Nevada probation ends in April 2020. At that point, it's unclear what further discipline the court could even impose, especially if Randazza stays out of new trouble. And, so, the lawyer of choice for far-right extremists will continue to lawyer, at least for now – an example not so much of what America prohibits these days but rather what it permits, provided you belong to the right caste.

When reached by email, Randazza refused to comment for this story. He referred HuffPost to his attorney, who also did not comment. Randazza's attorney, it turned out, was his expert witness from the Liberty arbitration — the one forced under oath to essentially acknowledge Randazza's dishonesty. Last year, the same attorney submitted an affidavit supporting a Randazza fee motion and, on an attached resume, listed his expert witness experience. The records of the Liberty arbitration were by then public, but the man referred to the matter only as Confidential v. Confidential. His online biography revealed more: Randazza's attorney is a former chair and current member of the ethics committee of the Nevada Bar.

Somewhere in Gloucester, looking out at his hometown and dreaming of zealotry, the troll began to laugh.

Top illustration: Owen Freeman.

Exhibit #4 –Public warning website dedicated to protecting the public from Marc Randazza

CorruptRandazza.com

Must know when dealing with attorney Marc Randazza.

Information curated from across the web, courts, State Bars, articles, comments, etc. Most information has possibly been suppressed by artificial SEO so it can not be easily found. You will decide what's real or true. We are not affiliated with attorney Randazza or Randazza Legal Group.

The State Bar of Nevada charged Randazza with alleged violations of the Nevada Rules of Professional Conduct including Interest Current Clients; 1.8 Conflict of Interest: Current Clients; Specific Rules of Professional Conduct; Interest; Safekeeping Property; 1.16 Declining or Terminating Representation; 3.1 Meritorious Claims and Contentions; and 8.4 Misconduct. In April 2018 an actionable case was filed with the Nevada Supreme Court regarding [illegible] Nevada Disciplinary Panel.

The Disciplinary Panel recommended a one-year suspension stayed for [illegible] the recommendation following entry of the order [illegible] within 30 days. The plea and disciplinary recommendation were [illegible]

In October 2018 Randazza was disciplined and the recommendation [illegible] Nevada suspension was not put into effect.

On January 14, 2019 the Arizona State Bar issued a public reprimand and [illegible] Nevada. A new disciplinary case was opened in Arizona and on April 4 based [illegible] Randazza for multiple allegedly lying in court documents related to the Arizona [illegible] proceedings. Randazza was not charged with any new violations and the [illegible]

On May 2, 2019 the Supreme Judicial Court for Suffolk, Massachusetts [illegible] Randazza. Interim Bar Counsel [illegible] a hearing was conducted where [illegible] State Bar of Nevada stated. The Massachusetts Supreme Judicial Court [illegible] Randazza's disbarment of the same term as Nevada.

The Florida Supreme Court conducted a [illegible]

EXHIBIT 5

Exhibit #5 – Disciplinary Action Against Randazza

Nevada Bar Association Complaint Against Randazza

Case No. OBC15-0747

FILED
DEC 16 2016
STATE BAR OF NEVADA
BY: OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

MARC J. RANDAZZA, Esq.,
Nevada Bar No. 12265,

Respondent.

AMENDED COMPLAINT

TO: Marc J. Randazza, Esq.
c/o Dominic Gentile, Esq.
Colleen McCarty, Esq.
Gentile Cristalli Miller Armeni Savarese
410 S. Rampart Blvd., Ste. 420
Las Vegas, NV 89145

PLEASE TAKE NOTICE that pursuant to Supreme Court Rule ("SCR") 105(2), as amended effective March 1, 2007, a ***VERIFIED RESPONSE OR ANSWER*** to this Amended Complaint must be filed with the Office of Bar Counsel, State Bar of Nevada, 3100 W. Charleston Boulevard, Suite 100, Las Vegas, Nevada, 89102, within twenty (20) days of service of this Complaint. Procedure regarding service is addressed in SCR 109.

Complainant, State Bar of Nevada ("State Bar") by and through its Assistant Bar Counsel, David Rickert, alleges that:

1. Attorney Marc J. Randazza ("Respondent"), Bar No. 12265, is now a licensed attorney in the State of Nevada, having had his principal place of business for the practice of law in Clark County, Nevada from at least June 2011 through

2. In or about June 2009, the Respondent drafted and signed a contract with Excelsior Media Corp. ("Excelsior") to become corporate in-house general counsel for Excelsior.

3. At that time, Excelsior was headquartered in California.

4. Excelsior is a related company to Corbin Fisher ("Corbin"), and has a subsidiary called Liberty Media Holdings, LLC ("Liberty").

5. Excelsior, Corbin, and Liberty are involved in the production and distribution of pornography.

6. After becoming general counsel, the Respondent performed legal work on behalf of all three entities.

7. While the Respondent was still working as general counsel for Excelsior, Excelsior relocated its corporate headquarters to Las Vegas, Nevada in approximately February 2011.

8. As of the filing of this complaint, Excelsior remains an active domestic Nevada corporation.

9. The Respondent continued working as Excelsior's general counsel, and relocated to Las Vegas himself in approximately June 2011.

10. While the Respondent was an attorney admitted to practice in one or more other states at that time, he was not admitted as a Nevada attorney until approximately January 6, 2012.

11. A portion of the Respondent's work as general counsel was in pursuing violations of Corbin/Excelsior/Liberty's ("C./E./L.") intellectual property, for example individuals or companies downloading or distributing C./E./L.'s pornographic materials without appropriate payment or permission.

12. The Respondent, on behalf of Liberty, filed suit against FF Magnat Limited d/b/a Oron.com ("Oron") for alleged violations of his client's intellectual property.

13. In July and August 2012, the Respondent engaged in multiple settlement negotiations with Oron's counsel.

14. In this time period, the Respondent was involved in settlement negotiations with Oron for a payment to himself.

15. The eventual amount agreed upon with opposing counsel was $75,000.00.

16. This $75,000.00 was to be paid to the Respondent as part of Oron's broader settlement with his client.

17. One purpose of this payment was so that the Respondent would be conflicted off of litigation against Oron in the future.

18. On or about August 13, 2012, the Respondent presented an execution copy of the Oron settlement agreement to CEO Jason Gibson for his signature.

19. At that time, Mr. Gibson noticed the proposed $75,000.00 payment amid the other settlement provisions, and asked the Respondent about it.

20. This was the first time Mr. Gibson was made aware of the proposed $75,000.00 payment to the Respondent, because the Respondent had not disclosed it to him prior to August 13, 2012.

21. Mr. Gibson was upset, and expressed concerns to the Respondent about the payment of this $75,000.00.

22. The Respondent did not receive the $75,000.00 payment from any settlement with Oron.

23. In August 2012, the Respondent loaned approximately $25,000.00 to Liberty, to cover part of overseas legal fees that would be incurred in the Oron litigation.

24. On or about August 21, 2012, on the Respondent's advice, Mr. Gibson signed a promissory note on Liberty's behalf noting the terms of repayment of this $25,000.00 loan to the Respondent.

25. Liberty was not advised of its right to seek the advice of independent counsel with regards to this promissory note.

26. The Respondent did not obtain Liberty's informed consent, confirmed in writing, to the essential terms of the transaction, and to the Respondent's role as a lender in the transaction.

27. In mid- to late-August 2012, approximately $550,000.00 was sent to the Respondent's out-of-state trust account- this was a settlement payment in relation to the Oron litigation.

28. The Respondent's trust account, that received and held the $550,000.00, was outside of Nevada.

29. The Respondent resigned from his employment with C./E./L. on or about August 29, 2012.

30. Between August 28 and August 30, 2012, the Respondent authorized, or personally performed, multiple erasures of data on a C./E./L. corporate laptop computer that was in his possession, and that he had used for work-related purposes.

31. This laptop computer contained C./E./L. corporate information.

32. The Respondent was also in possession of a C./E./L. corporate iPhone, that he had used for work-related purposes, and that contained C./E./L. corporate information.

33. After resigning on August 29, 2012, for a time the Respondent refused to turn over either the corporate laptop or the corporate iPhone.

34. The Respondent did later turn over the laptop and iPhone for examination.

35. Forensic examination was performed on both the corporate laptop and the corporate iPhone, in an attempt to recover deleted corporate data.

36. Some corporate data was recovered from these devices.

37. Other corporate data appears to have been permanently lost.

38. While corporate in-house general counsel for Excelsior (approximately June 2009 through August 2012), the Respondent maintained an outside legal practice and separate law firm, and represented other clients.

39. One of these clients was an entity known as Bang Bros (or Bang Brothers), a production company for pornography, and possible business competitor of C./E./L.

40. In or around June 2012, Liberty was negotiating for the possible acquisition of Cody Media, another pornography company.

41. In that same timeframe, the Respondent suggested to C./E./L. the possibility of getting financing for the deal from Bang Bros.

42. The Respondent did not disclose the conflict of interest to C./E./L., and had concealed it from C./E./L.

43. The Respondent never obtained informed consent, confirmed in writing, from C./E./L. for he or his firm to represent Bang Bros in the June 2009 - August 2012 timeframe.

44. Another client the Respondent represented in the June 2009 - August 2012 timeframe was XVideos, a "tube site" that permitted users to upload copyrighted videos onto its website.

45. One or more of C./E./L.'s pornographic videos were uploaded to XVideos' "tube site," without permission, and where they could be widely accessed by the public.

46. In or about January 2011, and again in or about September 2011, the Respondent advised C./E./L. not to pursue a lawsuit against XVideos for violation of their intellectual property.

47. The Respondent did not disclose the conflict of interest to C./E./L., and had concealed it from C./E./L.

48. The Respondent never obtained informed consent, confirmed in writing, from C./E./L. for he or his firm to represent XVideos in the June 2009 - August 2012 timeframe.

49. Another client the Respondent represented in the June 2009 - August 2012 timeframe was PornGuardian- an anti-piracy company that works against violations of pornographers' intellectual property rights- who the Respondent represented starting approximately in January 2011.

50. While the Respondent was representing C./E./L. in the 2012 litigation against Oron, he also worked on negotiating a settlement for PornGuardian from Oron at the same time, and corresponded with Oron's counsel about this in early July 2012.

51. The Respondent did not disclose the conflict of interest to C./E./L., and had concealed it from C./E./L.

52. The Respondent never obtained informed consent, confirmed in writing, from C./E./L. for he or his firm to represent PornGuardian in the June 2009 - August 2012 timeframe.

53. Two other clients the Respondent represented in the June 2009 - August 2012 timeframe were Titan Media and Kink.com.

54. Titan Media is a pornography company, and a possible business competitor of C./E./L., who the Respondent represented since at least May 2011.

55. Kink.com is a pornography company, and a possible business competitor of C./E./L.

56. While the Respondent was representing C./E./L., in approximately mid-2012 (before resigning from C./E./L.) the Respondent worked on negotiating producer agreements for Liberty with Titan Media and Kink.com.

57. The Respondent did not disclose either conflict of interest to C./E./L., and had concealed both of them from C./E./L.

58. The Respondent never obtained informed consent, confirmed in writing, from C./E./L. for he or his firm to represent Titan Media or Kink.com in the June 2009 - August 2012 timeframe.

59. The Respondent has been engaged in protracted litigation with C./E./L. over his employment and compensation since 2012, including arbitration and bankruptcy proceedings.

Count 1

RPC 1.4 (Communication)

60. Rule of Professional Conduct ("RPC") 1.4 states that "[a] lawyer shall:

(1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
(2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
(3) Keep the client reasonably informed about the status of the matter;
(4) Promptly comply with reasonable requests for information; and
(5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

61. During his representation of C./E./L., Respondent failed to inform his client about multiple conflicts of interest where he (or his law firm) represented multiple outside clients requiring informed consent; in regards to a loan he made, failed to inform his client of the need for informed consent, confirmed in writing, to the essential terms of the transaction, and to the Respondent's role as a lender in the transaction; and failed to inform his client of the existence of multiple conflicts of interest, information that was reasonably necessary for the client to make informed decisions in those matters.

62. Based on the facts stated in paragraphs 23 through 26, and 38 through 58, Respondent violated RPC 1.4.

Count 2

RPC 1.7 (Conflict of Interest: Current Clients)

63. RPC 1.7 states that "(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

(3) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) Each affected client gives informed consent, confirmed in writing."

64. During his representation of C./E./L., Respondent (or his law firm) represented multiple outside clients where the representation of the client was directly adverse to C./E./L., or there was a significant risk that the representation of one or more clients would be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer. In addition, the Respondent failed to obtain informed consent, confirmed in writing, from C./E./L or any of the other affected clients in order to continue representing them despite the conflicts; in fact, the Respondent concealed these conflicts.

65. Based on the facts stated in paragraphs 38 through 58, Respondent violated RPC 1.7.

///

Count 3

RPC 1.8 (Conflict of Interest: Current Clients: Specific Rules)

66. RPC 1.8 states in part that "(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

> (1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
> (2) The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
> (3) The client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction."

67. During his representation of C./E./L., Respondent loaned approximately $25,000.00 to Liberty to cover part of overseas legal fees that would be incurred in litigation, but Liberty was not advised of its right to seek the advice of independent counsel with regards to this promissory note, and the Respondent did not obtain Liberty's informed consent, confirmed in writing, to the essential terms of the transaction, and to the Respondent's role as a lender in the transaction.

68. Based on the facts stated in paragraphs 23 through 26, Respondent violated RPC 1.8.

Count 4

RPC 1.10 (Imputation of Conflicts of Interest)

69. RPC 1.10 states in part that "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.9, or 2.2, unless the prohibition is based on a

personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm."

70. During his representation of C./E./L., Respondent's law firm represented outside clients where the representation of the client was directly adverse to C./E./L., or there was a significant risk that the representation of one or more clients would be materially limited by the lawyer's (or firm's) responsibilities to another client, a former client or a third person or by a personal interest of the lawyer. In addition, the Respondent's law firm failed to obtain informed consent, confirmed in writing, from C./E./L or any of the other affected clients in order to continue representing them despite the conflicts; in fact, these conflicts were concealed. These conflicts are properly imputed to the Respondent as a member of the firm, and they were not waived by the client(s).

71. Based on the facts stated in paragraphs 38 through 58, Respondent violated RPC 1.10.

Count 5

RPC 1.15 (Safekeeping Property)

72. RPC 1.15 states that "(a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property in which clients or third persons hold an interest shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute."

73. During his representation of C./E./L. and afterwards, Respondent received and held approximately $550,000.00 of a settlement payment to his client in an out-of-state trust account, without the client's consent.

74. Based on the facts stated in paragraphs 27 and 28, Respondent violated RPC 1.15.

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///

Count 6

RPC 1.16 (Declining or Terminating Representation)

75. RPC 1.16 reads in part that "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law."

76. When the Respondent's representation of C./E./L. terminated, Respondent refused to surrender his client's iPhone and laptop computer for a time, and erased his client's date from the corporate laptop- thus not turning over property to which the client was entitled.

77. Based on the facts stated in paragraphs 29 through 37, Respondent violated RPC 1.16.

Count 7

RPC 2.1 (Advisor)

78. RPC 2.1 reads in part that "[i]n representing a client, a lawyer shall exercise independent professional judgment and render candid advice."

79. During his representation of C./E./L., Respondent failed to give his client candid advice on multiple occasions because of his conflicts of interest in relation to other clients, and established a pattern of omission and deception with respect to C./E./L. that went to the heart of the attorney-client relationship between them.

80. Based on the facts stated in paragraphs 12 through 58, Respondent violated RPC 2.1.

///

Count 8

RPC 5.6 (Restrictions on Right to Practice)

81. RPC 5.6 reads in part that "[a] lawyer shall not participate in offering or making... [a]n agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy."

82. During his representation of C./E./L., Respondent offered, and attempted to have his client sign off on, an agreement to conflict himself off of future litigation against Oron in exchange for a payment of $75,000.00. This payment was to be included as part of a settlement between C./E./L. and Oron.

83. Based on the facts stated in paragraphs 12 through 22, Respondent violated RPC 5.6.

Count 9

RPC 8.4 (Misconduct)

84. RPC 8.4 states in part that "[i]t is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another...

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation..."

85. During his representation of C./E./L., and as laid out through this Amended Complaint, Respondent violated and attempted to violate the Rules of Professional Conduct on multiple occasions. In addition, he engaged in conduct "involving dishonesty, fraud, deceit or misrepresentation" when he concealed his relationships to other clients from C./E./L. and didn't advise C./E./L. of the conflicts of interest that he had.

86. Based on the facts stated in paragraphs 12 through 58, Respondent violated RPC 8.4.

WHEREFORE, Complainant prays as follows:

1. That a hearing be held pursuant to Nevada Supreme Court Rule 105;

2. That Randazza be assessed the costs of the disciplinary proceeding pursuant to Supreme Court Rule 120(1); and

3. That pursuant to Supreme Court Rule 102, such disciplinary action be taken by the Southern Nevada Disciplinary Board against Randazza as may be deemed appropriate under the circumstances.

Dated this 16th day of December, 2016.

STATE BAR OF NEVADA
C. Stanley Hunterton, Bar Counsel

By: _____
David Rickert, Assistant Bar Counsel
3100 W. Charleston Boulevard, Suite 100
Las Vegas, Nevada 89102
(702) 382-2200
Attorney for State Bar of Nevada

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **AMENDED COMPLAINT** was deposited via electronic mail to:

1. Oliver Pancheri, Esq. (Panel Chair): opancheri@santoronevada.com ; Rachel Jenkins rjenkins@santoronevada.com
2. Dominic Gentile, Esq., Colleen McCarty, Esq. (Respondent's Counsel): dgentile@gcmaslaw.com ; cmccarty@gcmaslaw.com; Myra Hyde mhyde@gcmaslaw.com and Stacey Concepcion sconcepcion@gcmaslaw.com
3. David J. Rickert, Esq. (Assistant Bar Counsel): davidr@nvbar.org (COURTESY COPY)

DATED this 16th day of December, 2016.

By: _____
Jana L. Chaffee, an employee of
the State Bar of Nevada.

EXHIBIT 6

EXHIBIT #6

INTRIM ARBITRATION AWARD

Hon. Stephen E. Haberfeld
JAMS
555 W. 5th St., 32nd Fl.
Los Angeles, CA 90013
Tel: 213-253-9704
Fax: 213-620-0100

Arbitrator

JAMS

MARC J. RANDAZZA, Claimant, v. EXCELSIOR MEDIA CORP., a Nevada Corp.; LIBERTY MEDIA HOLDINGS, LLC, a California limited liability company; and JASON GIBSON, individually Respondents.	JAMS No. 1260002283 INTERIM ARBITRATION AWARD

I, THE UNDERSIGNED ARBITRATOR --- in accordance with the arbitration provision in Section 8 of the Contract For Employment Agreement As General Counsel Between Marc J. Randazza and Excelsior Media Corp., dated June 6/10, 2009 ("employment agreement"), and based upon careful consideration of the evidence, the parties' written submissions and applicable law, and good cause appearing --- make the following findings, conclusions, determinations ("determinations") and this Interim Arbitration Award, as follows:

DETERMINATIONS

1. The determinations in this Interim Arbitration Award include factual determinations by the Arbitrator, which the Arbitrator has determined to be true and necessary to this award. To the extent that the Arbitrator's determinations differ from any party's positions, that is the result of determinations as to relevance, burden of proof considerations, and the weighing of the evidence.

2. The Arbitrator has jurisdiction over the subject matter and over the parties to the arbitration which are as follows: Claimant and Counter-Respondent Marc J. Randazza ("Mr. Randazza"); Respondents and Counterclaimants Excelsior Media Corp. ("Excelsior"), Liberty Media Holdings, LLC ("Liberty"), and Respondent Jason Gibson. [1]

3. On February 9, 10, 11, 12 and 13, 2015, the Arbitrator held in-person evidentiary sessions on the merits of the parties' respective claims, counterclaims and contentions. All witnesses who testified did so under oath and subject to cross-examination. All offered exhibits were received in evidence.

4. This Interim Arbitration Award is timely rendered. See Order of June 1, 2015.

5. The following is a summary of the Arbitrator's principal merits determinations:

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[1] Except as otherwise stated or indicated by context, "E/L" shall be used to reference Excelsior and Liberty, collectively and interchangeably for convenience in this Interim Arbitration Award, only. Nothing should be inferred or implied that there is any determination, or basis for any determination, that either or both of those entities are "alter egos" of Jason Gibson or of any person or entity. Mr. Randazza failed to sustain his burden of proof that either Excelsior or Liberty were or are "alter egos" of Respondent Jason Gideon or of any person or entity. Mr. Gideon will be dismissed as a party in this arbitration. See Interim Arbitration Award, Par. 9, at p. 29, infra.

A. Mr. Randazza voluntarily ended his employment by Excelsior and Liberty.

B. Mr. Randazza's employment by Excelsior and Liberty was not involuntarily terminated by Excelsior, Liberty or at all.[2]

C. Whether or not Mr. Randazza's employment by E/L was terminated voluntarily by Mr. Randazza or involuntarily by E/L, the principal proximate cause for the ending of Mr. Randazza's employment was Mr. Randazza's breaches of fiduciary duty and the covenant of good faith and fair dealing, implied in his employment agreement, as an employee, executive and general counsel of E/L. The precipitating events which led to the end of Mr. Randazza's employment was Mr. Gideon's having first learned on August 13, 2012 that Mr. Randazza had been involved in and successfully concluded negotiations for a bribe in the amount of $75,000, to be paid to Mr. Randazza by the other side in connection with resolution of high-importance litigation, commonly referred to as the "Oron litigation," which had been initiated and pursued on behalf of E/L by Mr. Randazza, as E/L's counsel of record. The first indication of that was Mr. Gideon's noticing a provision included in an execution copy of an Oron settlement agreement, presented to him for signature by Mr. Randazza on that date, and Mr. Gideon's inquiring of Mr. Randazza about that provision.

After initial contacts with Mr. Randazza concerning what Mr. Gideon discovered in the Oron settlement agreement, communications and relations between Messrs. Gideon and Randazza noticeably chilled during Mr. Randazza's remaining employment, which ended on August 29, 2012.

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[2] While not accepting Mr. Randazza's "core contentions" concerning the end of his employment by E/L, the Arbitrator agrees with Mr. Randazza's assertion that "The nature of Mr. Randazza's departure from Excelsior is central to several of his causes of action, and crucial to the defenses Respondents raise" --- including whether there was a breach of contract, wrongful termination, constructive termination and/or retaliatory termination. Reply at p. 7:12-15. As also stated elsewhere herein, none of those claims were proven.

The chilled relations, including greatly reduced communication, was in stark contrast with the custom and practice of Messrs. Gibson and Randazza, practically right up to August 13, 2012, being in regular, frequent, cordial and occasionally sexually-peppered communication with each other by face-to-face meetings, texting and emails.

That Mr. Gideon's reaction was not feigned or a pretext for anything asserted by Mr. Randazza in his competing narrative are shown by the following:

1. A sudden and significant reduction of those previously primarily electronic (i.e., email and text) communications --- beginning only after Mr. Gideon learned of the $75,000 bribe --- with Mr. Randazza sending Mr. Gideon unresponded-to emails attempting to attempting to salvage and revive his communications and relationship with Mr. Gideon.

2. Mr. Randazza beat a hasty retreat, in an attempt to salvage the situation by offering to pay the bribe money over to E/L, when initially confronted by Mr. Gideon concerning the "bribe" provision in the Oron settlement agreement, presented for Mr. Gideon's signature.

3. Mr. Gideon did not timely sign the execution copy of the Oron settlement agreement, as negotiated and presented to him by Mr. Randazza.

D. The ending of Mr. Randazza's employment E/L was not --- as contended by Mr. Randazza --- (1) constructive discharge, proximately caused by Mr. Gibson becoming distant and out-of-communication with Mr. Randazza, which made it difficult or impossible for Mr. Randazza to get needed instructions or direction in his employment by E/L as their general counsel, leading to Mr. Randazza's August 29, 2012 email of resignation from employment, or (2) retaliatory termination, which was caused by Mr. Randazza's having "expressed his feelings" of having been "upset, betrayed, offended, and

stressed" anything of a sexual nature whatsoever --- including, as highlighted during hearing, a pornographic video shot in Mr. Randazza's office in April, 2012 or a homosexual oral copulation allegedly performed by Mr. Gideon and another E/L executive in the backseat of Mr. Randazza's car, which allegedly greatly upset Mr. Randazza while he was driving his passengers back from a party aboard Mr. Gideon's boat on August 9, 2012.

E. The immediately foregoing Determination's repeated use of the word "allegedly" is because it is not necessary to resolve a conflict of evidence as to whether the alleged sexual act in Mr. Randazza's car actually occurred or the degree of upset it caused Mr. Randazza, if it actually occurred. That is because the Arbitrator has determined that --- contrary to Mr. Randazza's central contentions in this arbitration --- the factual and legal cause of the end of Mr. Randazza's employment had nothing whatsoever to do with anything having to do with alleged sexual activity in Mr. Randazza's car --- alone or taken together with a pornographic shoot which, without dispute, occurred in his office, without prior notice to Mr. Randazza, but which the evidence shows did not occur as alleged, was not strongly or even negatively reacted to by Mr. Randazza as initially alleged and did not, as shot or shown, include a photograph of Mr. Randazza's family, as initially presented by Mr. Randazza.

The foregoing determination includes that anything relating to sex --- including in connection with a filmed video in Mr. Randazza's E/L office or in the back seat of his car --- had nothing whatsoever to do with any decision --- which the Arbitrator has determined was neither made or considered --- to terminate Mr. Randazza's E/L employment. 2012. There was no E/L contrived pretext or any retaliation by E/L in connection with the cessation of Mr. Randazza's E/L employment, which was entirely voluntary on

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Mr. Randazza's part.[3] For those reasons, the Arbitrator has determined that Mr. Randazza failed to sustain his burden of proof required to establish his claims of and relating to anything having to do with sex --- e.g., sexual harassment, hostile work environment, constructive termination, retaliatory termination, etc.

F. As stated above --- and as picked up and amplified later in the Determinations portion of this Award --- since the outset of the arbitration, Mr. Randazza made highly-charged, sexually-based "core allegations" and his claimed strong reactions to them in support of his statutory and contractual claims, which were in the main disproved or not proved. That failure of proof undermined and impaired Mr. Randazza's credibility concerning all of his

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testimony and his claims and related contentions.[4] The evidence established at hearing was that Mr. Randazza intended that his allegations would induce

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[3] The same is true with respect to Mr. Randazza's contention(s) that Mr. Gideon's discovery of Mr. Randazza having been involved with and negotiating a $75,000 "bribe" in connection with a settlement of the Oron litigation was a pretext for an earlier-formed intention by Mr. Gideon to end Mr. Randazza's E/L employment.

[4] Mr. Randazza's credibility was also undermined by the variance between his testimony and positions at hearing and his written Nevada State Bar submission concerning the Oron litigation $75,000 bribe --- including what, if anything, Mr. Gideon knew about it and when, and who solicited the bribe in the first instance.

Mr. Randazza's credibility was also undermined by the variance between his testimony and his EEOC submission. At hearing, Mr. Randazza admitted that the EEOC complaint contained errors, but tried to explain them away by saying that he did not prepare it. That is not a sufficient excuse or explanation, in the circumstances.

Resolving a credibility-related issue presented in the post-hearing briefs concerning asserted testimonial evasiveness implied by Mr. Randazza's body positioning and whether he had eye contact with the Arbitrator (as asserted by Mr. Randazza in his Reply), throughout his extensive testimony at hearing and primarily on cross-examination, the Arbitrator observed that Mr. Randazza sat sideways in his chair, relative to Claimant's counsel's table --- with his back to (i.e., 180 degrees away from) his own counsel and 90 degrees away from Respondent's counsel --- albeit with his seated body positioned toward the part of the wall behind and to Mr. Randazza's left from

Mr. Gideon to authorize a settlement financially favorable to Mr. Randazza, based on Mr. Randazza's belief at the time --- and ultimately proven incorrect --- that Mr. Gideon would so settle, rather than have to litigate true or false allegations relating to his own sexuality, sexual activity, and the pornographic nature of E/L's business. Mr. Randazza's miscalculation, as aforesaid, led to an

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where the Arbitrator was seated. Mr. Randazza almost always listened to questions and answered in that position --- leaning well forward and looking down or straight ahead into "middle distance" in the direction of the wall behind where the Arbitrator was seated. Mr. Randazza rarely answered a question on cross-examination with sustained eye contact with either the questioning attorney or the Arbitrator.

The Arbitrator has determined, based on the evidence, that Mr. Randazza solicited the bribe in the first instance, attempted to negotiate with Oron's counsel ways and means whereby it would be concealed from and not become known by E/L, and disclosed it to E/L, per Mr. Gideon, for the first time only on August 13, 2012, when the settlement documentation prepared and presented for Mr. Gideon's signature on behalf of E/L by Oron's counsel surfaced a $75,000 retainer payment to Mr. Randazza.

The Arbitrator has further determined that E/L never gave Mr. Randazza permission or consent to solicit, negotiate or accept the $75,000 bribe,* or any bribe or any other payment other than payment of all proceeds being solely for the benefit of and deposited to the account of his clients/principals, E/L.

[*On August 13, 2013, Mr. Gideon handwrote an arrow and "Who gets this" next to the $75,000 payment provision in the copy of the execution copy of the Oron settlement agreement presented to him by Mr. Randazza. The Arbitrator credits that notation as being first notice to and genuine surprise expressed by Mr. Gideon about any Oron settlement payment not being made directly to E/L.

[That notation also was the genesis of a rapid unraveling of the theretofore close professional and personal relationship, symbolized by Mr. Gideon's sharply reducing communications with Mr. Randazza and Mr. Randazza's repeated and ultimately unsuccessful efforts to salvage his situation, by attempting to re-establish direct contact with Mr. Gideon. As previously stated, the Arbitrator has not accepted Mr. Randazza's central contention and narrative that this state of affairs, triggered on August 13, 2012, was manufactured by Mr. Gideon and served as a convenient or other pretext for an earlier-decided termination of Mr. Randazza's employment.]

The Arbitrator has not accepted that E/L's knowledge of or informed consent to any such situation can be implied by non-objection and silence in response to an unspecific, Delphic allusion in one of Mr. Randazza's emails prior to August 13, 2012 or to Mr. Randazza's after-the-fact, self-serving reference to alleged earlier communications, wherein Mr. Randazza claimed in the later email to have "fully disclosed...overtures about that."

In addition, except for admissions, anything which Mr. Randazza and his opposing counsel in the Oron litigation, Val Gurvitz, communicated to each other lacked credibility, because Mr. Randazza testified that he and Mr. Gurvitz routinely lied to each other in their settlement communications.

ultimately successful counterattack by E/L, via counterclaims in this arbitration, centering on ethical and legal challenges to Mr. Randazza's conduct as E/L's general counsel and litigation counsel during his employment by E/L. Mr. Randazza's alleged misconduct consisted of engaging in ethically-prohibited negotiations with adverse parties, including concerning monetary "bribes" to "conflict (Mr. Randazza) out" from future litigation, further damaging E/L's recovery in the Oron litigation by knowingly forwarding illegally "hacked" computer data to counsel for another company, without authorization and in contravention of an E/L settlement agreement, engaging in other prohibited conflicts of interest, including representing competitors of E/L, not disclosing and not obtaining informed written client consents from E/L where actual or potential conflicts of interest arose, working and not disclosing that he was working as a practicing lawyer on non-E/L matters during his employment significantly in excess of what was contractually permitted, spoliation of evidence to cover up the foregoing and his undisclosed intention to resign from E/L's employment, including via planning and causing the deletion of legal files and other relevant data from E/L-owned computers, taking control of client funds, in form of Oron litigation settlement proceeds, and refusing to unconditionally release the same to E/L.

G. As stated above, Mr. Randazza voluntarily ended his employment by E/L. The principal evidence of that consisted of (1) Mr. Randazza's August 29, 2012 email to Mr. Gideon, (2) days before sending Mr. Gideon his August 29 email, Mr. Randazza cleaned out his personal belongings from his office, (3) shortly after Noon on August 28 --- and more than 24 hours before sending his August 29 email to Mr. Gideon --- Mr. Randazza had his corporate laptop computer "wiped" the first of four times during his last week of employment; and (4) before that, Mr. Randazza was overheard to say "Fuck this shit, I quit," following a company "happy hour" event.

H. In his August 29, 2012 email to Mr. Gideon, Mr. Randazza stated that he could no longer represent the Company, i.e., E/L.[5] In the circumstances then known, Mr. Gideon and other E/L executives with whom he consulted reasonably, and not hastily,[6] concluded from their review of Mr. Randazza's August 29, 2012 email that Mr. Randazza had resigned from his employment. Their conclusion was proven accurate by facts which became known after Mr. Randazza's departure. Any actions taken by them based on that reasonable belief did not result in any involuntary termination of Mr. Randazza's E/L employment.

I. The lack of absolute, unquestionable, pristine clarity in Mr. Randazza's August 29, 2012 carefully worded and crafted email that he was resigning his employment was deliberate.

J. In addition to Mr. Randazza's disputed, disproved and unproved allegations of sexual conduct engaged in or authorized by is important evidence which established that Mr. Randazza was not either (1) a target of any discriminatory or conduct which created a hostile work environment, because of his being a heterosexual or "straight" male, or (2) offended by any of the sexually-related conduct of which he has complained.

K. Prior to and subsequent to agreeing to go "in house" as E/L's general counsel, Mr. Randazza was outside counsel to several companies engaged in Internet pornography, including videos and stills available on openly homosexual websites. Since at least the date of the commencement of his employment as E/L's inside general counsel through his last day of E/L employment, Mr. Randazza knew of and was not in any way uncomfortable with Mr. Gideon's gay sexual orientation --- which was also that of most, but not all,

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[5] Mr. Randazza also said he could "potentially" work to wind up his E/L pending matters. The Arbitrator interprets the inclusion of that to be part of Mr. Randazza's crafted effort to both resign and leave open his attempt to engage Mr. Gideon directly.

[6] The Arbitrator has not accepted Mr. Randazza's assertion that "Respondents hastily decided to call that [August 29, 2012 email] a resignation." Mr. Randazza's Reply at p. 7:20-21.

of E/L's other executives --- and the frequent seasoning of business and socially-related conversation and written communications with crude gay and other sexual terms, references and allusions, which Mr. Randazza also used.[7] Mr. Randazza was not embarrassed to be seen or filmed in full undress at a poolside business-social event at Mr. Gideon's home. Mr. Randazza permitted and encouraged his children to have warm personal relationships with Mr. Gideon, who they called "Uncle."

L. The evidence was that the only complaints which Mr. Randazza had concerning the pornographic filming in his offices in April 2012 --- four months before the end of his employment --- were that (1) he was not given the courtesy of advance notice of the shoot and (2) after the shoot was completed, Mr. Randazza's office was not restored to just the way it had been before the office was prepped for filming.

The preponderance of disputed evidence was not that Mr. Randazza complained to Mr. Gideon centering on or in any way reasonably relating to sexual discrimination or harassment or a hostile work environment based on sex, including "male-on-male" sex, which has been recognized as a basis for a legal claim. Accordingly, allegedly involuntary termination of Mr. Randazza's employment, based on Mr. Randazza's April 2012 complaint about the filming of pornography in his office --- which did not constitute statutorily "protected activity" --- is not includible as a component for a statutory claim that he had been fired in retaliation for making that complaint. Mr. Randazza's complaint about the allegedly personally offensive oral copulation of Mr. Gideon

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[7] For example, Mr. Randazza admitted that he used the term "butthurt" --- which he alleged that Mr. Gideon used to demean his expression of feelings about the pornographic filming in his office. In a series of texts about the shoot, Mr. Randazza texted, in a crude possible sexual/legal "double entendre," "Don't jizz on my briefs." Mr. Randazza has admitted that "The Arbitrator has seen many texts and emails from Mr. Randazza with informal, rough, vulgar content." Reply at p. 10:9-10. In making a different point, Mr. Randazza concedes by assertion that "Respondents [have] conceded that jokes and banter were common in the office."

in the back seat of his car on August 9, 2012 was not genuinely or deeply felt and was made primarily for tactical reasons. Therefore, the end of Mr. Randazza's employment was not and was not the product of anything retaliatory, in violation of public policy (e.g., engaging in protected activity), as a matter of law.

Moreover, the preponderance of the evidence is that Mr. Randazza had advance notice of the filming of a pornographic video in his office and that he did not either object or indicate that the noticed shoot was in any way objectionable or offensive to him. That evidence is the playful exchange of texts between Messrs. Randazza and Gideon concerning the intended shoot and the testimony of the director of the shoot, Chaz Vorrias, who testified that he advised Mr. Randazza of the shoot in advance and received no objection from Mr. Randazza.[8]

M. Contrary to the strong impression created by Mr. Randazza's pre-Arbitration Hearing narrative of allegations, there was no evidence that any photograph(s) of his wife or children or anything personal of or concerning Mr. Randazza or any member of his family, or in any way reasonably violative of their respective personal privacy, were used or visible in the video. The (possible) visibility of a painting on the wall of Mr. Randazza's office, which was painted by Mr. Randazza's wife, is not to the contrary.

In the circumstances, there was no action taken which was either statutorily offensive or hostile.

N. Mr. Randazza's California Labor Code-based claims --- for Excelsior's failure to (1) pay him his final wages in August 2012 (2nd Claim) or (2) reimburse and indemnify his for business expenses incurred by him in during 2012 (1st Claim) --- fail as a matter of law. The same is true for Mr. Randazza's

[8] Mr. Vorrias testimony was not unfair surprise, Mr. Vorrias's admitted deletion of his emails with Mr. Randazza was done without knowledge of their significance in connection with the dispute underlying this arbitration and, in the event, is not attributable to either Excelsior or Liberty, because he was not a managing agent of either entity.

claim for payment of all of his wage-related claims --- including payment of raises, bonuses and repayment of his $25,000 loan. That is because --- at all times relevant to those California Labor Code claims, since June 2011, Mr. Randazza worked and lived in Nevada, to which Mr. Randazza relocated, as did E/L, in order to continue as E/L's general counsel. As stated or indicated in a pretrial ruling bearing on the same issue, (1) the California Labor Code, presumptively, does not apply extraterritorially,[9] and does not apply to the facts and circumstances of this case, and relatedly, (2) that determination, concerning Mr. Randazza's non-contractual claims, is unaffected by the California-as-governing-substantive-law provision of Mr. Randazza's employment agreement with Excelsior, which applies and controls only as to breach-of-contract claims and not, as in this instance, Mr. Randazza's statutory claims.[10]

In the event, Mr. Randazza was properly compensated for all services as to which he has asserted statutory and contractual claims.[11]

O. Mr. Randazza's claim for unpaid wages and penalties under Nevada NRS Sec.608.050 (3rd Claim) fails as a matter of law, because there is no private right of action for enforcement of that statute. It is therefore not necessary to decide whether the a claim has been stated under that statute.

P. As to Mr. Randazza's contractual claims --- which are governed by the Employment Agreement, including the provision that California law governs its interpretation and enforcement, etc. --- (1) Mr. Randazza is not entitled to a contractual severance payment, because he voluntarily resigned his

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[9] Sullivan v. Oracle Corp. , 51 Cal.4th 1191, 12016 (2011); Wright v. Adventures Rolling Cross Country, Inc., 2012 U.S. Dist. LEXIS 104378 (N.D. Cal. 2012) (presumption against extraterritorial application of state law applies to unpaid wage claims under California Labor Code, plus "situs of the work" is the most important factor in determining extraterritoriality, trumping residency and where wages are paid).

[10] See, e.g., Narayan v. EGL, Inc. , 616 F.3d 895, 899 (9th Cir. 2010).

[11] For example, Mr. Randazza's bonuses were to be based on net and gross amounts (which he acknowledged prior to the end of his employment), claimed compensation raises were discretionary. Whatever Mr. Randazza was paid as compensation and bonuses is subject to the remedy of disgorgement.

employment,[12] (2) Mr. Randazza is not entitled to any payment for expenses in connection with the annual International Trademark Association Conference, which he did not attend, and (3) Mr. Randazza's bonuses were to be paid on "net" amount, not "gross" amounts, as contended by Mr. Randazza. In the event, E/L has been legally excused from any obligation to make any further contractual payment, by reason of Mr. Randazza's material breaches of contract with respect to the his obligations under the same contract, Mr. Randazza's employment agreement. That is so under contract law principles --- separate and apart from equitable principles, which are also applicable to contract claims, including the equitable doctrine of unclean hands, which is applicable to Mr. Randazza's contract claims.

Q. Turning to E/L's counterclaims, Mr. Randazza owed fiduciary duties to E/L, because he was their in-house general counsel and their attorney of record in judicial civil actions, and an E/L executive and employee. As such, Mr. Randazza owed E/L, as his clients, employers and principals; the highest duty of loyalty and honesty in the performance of his professional and executive obligations. That duty --- among other things --- included legal and ethical duties of acting honestly and solely for the benefit of his clients/employers/principals, avoiding acting inconsistently with those duties, and where actual or potential conflicts of interests existed to make full written disclosure of the same and to obtain informed written consents from his clients/principals as to each and every such conflict of interest. Each and all of Mr. Randazza's ethical duties owed to his principals/clients was a legal fiduciary duty owed to them. Mr. Randazza violated those fiduciary duties owed by him to E/L, as his principals/clients/employers --- including by the following:

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[12] See Pars. 5(A), (B) and (G), supra, concerning Mr. Randazza's having voluntarily ended his E/L employment, including via and as evidenced by written and verbal and non-verbal conduct. Mr. Randazza was contractually entitled to payment equivalent to 12-week severance only if his employment was involuntarily terminated.

(1) engaging in negotiations for monetary bribes to be paid to him --- including the "Oron $75,000" which Mr. Gideon noticed, without Mr. Randazza's affirmative disclosure of it ---- which would result in his being "conflicted out" of future litigation or any disputes with parties then and/or in the future with

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interests adverse to E/L's interests (e.g., Oron, TNA),[13] (2) taking control for his personal benefit of, and refusing to relinquish control over, Oron settlement funds --- all of which ought to have been for the benefit and under the direction and control of his principals/clients E/L, before and after the end of his employment and representations on behalf of E/L --- (3) Mr. Randazza's ordering and causing the deliberate "wiping" of his and legal assistant's corporate laptops, as an integral part of his planned resignation as E/L's General

[13] It is irrelevant that none of Mr. Randazza's negotiations concerning bribes --- including the Oron bribe --- resulted in an actual bribe payment. See Mr. Randazza's Reply at pp.4:24-5:1: "Yet despite years of discovery in this matter, Respondents have not been able to point to a single 'bribe' paid to Mr. Randazza, or a single consummated deal between him and the opposing party."* The Arbitrator has accepted, as an admission by Mr. Randazza that "he repeatedly engaged in these 'bribe' negotiations," but the Arbitrator has not accepted Mr. Randazza's testimony and further contention that he did so "because they were par for the course in dealing with counsel for infringers and because engaging in them was the best way to soften up the other side and get more money for respondents." Id., at p. 5:2-5.

In this arbitration, Mr. Randazza has established a virtually unbroken pattern of asserting a legal/fiduciary variant of the sports cliché, "No harm, no foul." The Arbitrator has not accepted those assertions --- including, for example, a professional or fiduciary duty has been violated, whether spoliation has been committed, etc.

Counsel and outside counsel of record, and (4) Mr. Randazza's continuing and undisclosed (and thus unconsented-to) legal work for clients (e.g., Bang Bros., XVideos, XNXX, Porn Garian, Titan Media, Kink), whose interests were actually and potentially adverse to E/L's interests.[14]

R. The Arbitrator respectfully disagrees with Mr. Randazza's expert witnesses, who respectively testified that, under both Nevada and California rules of ethics and/or professional responsibility, there were no violations of fiduciary duty, if and because they concluded that there was no resulting harm.

The "fact of damage" or proximate cause is not an essential element of either "duty" or "breach of duty" --- but rather a separate element of a claim or cause of The Arbitrator's disagreement with Mr. Randazza's expert witnesses centers

Whether or not Mr. Randazza's breaches of fiduciary duty proximately resulted in damages sustained by Excelsior, Liberty or both of them --- as a matter of sound public policy --- Mr. Randazza should not be allowed to retain any pecuniary or legal benefit resulting from or closely connected to those breaches.

For example, Mr. Randazza has included in his defense of his admitted deletion of files and other legal information via multiple wipings of company-owned computers the assertion that Respondents have not been able to show any damage resulting from those multiple wipings. This is another of Mr. Randazza's assertions in this arbitration of "No harm, no foul" --- which the Arbitrator has not accepted, primarily because of the violations of duties constituting and/or including fiduciary duties. Ethical and other violations of

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[14] Mr. Randazza's legal work for non-E/L clients --- independent of the violations of Mr. Randazza's ethical and fiduciary duties --- were significantly beyond the contractually-permitted scope under his employment agreement. The Arbitrator may award the equivalent to amounts of funds ordered to be immediately turned over by Mr. Randazza to E/L. See Interim Arbitration Award, Par.

fiduciary duties do not require "fact of harm" to be shown by a preponderance of the evidence or otherwise.

Moreover, in the circumstances of (1) multiple ethical violations having been shown to have been committed by Mr. Randazza --- including negotiating for and in the instance of the Oron settlement agreeing to a "bribe" to be conflicted out of future litigation with adverse settling parties and other conflicts of interest --- and (2) Mr. Randazza's ethical challenges shown in this arbitration, there should be a presumption of "fact of harm" caused to E/L by Mr. Randazza's conduct and, additionally, a presumption of Mr. Randazza's intention to harm his clients by wiping everything off of his and his legal assistant's company-owned computers.

As E/L's inside general counsel and employee, Mr. Randazza had a legal and fiduciary duty --- no later than when his employment ceased, regardless of whether or not with or without cause and/or by whom ended --- to deliver every file and other piece of data and/or information --- complete, intact and undeleted, unmodified and immediately accessible and usable by E/L. That included all files and data stored on the computers entrusted to Mr. Randazza and his legal assistant Erika Dillon for their use by and on behalf of E/L. Because of his noncompliance, indeed resistance to compliance with those duties, they continued and continue to the day of the rendering of this award --- including beyond Mr. Randazza's belated and resisted turnover of one of the laptop computers --- because another laptop entrusted to Mr. Randazza remains unreturned. Those continuing fiduciary duties owed by him to E/L exist, including by reason of his exclusive control over the computers and thus superior knowledge of what was on each computer's hard drive before and after he had everything on the returned laptops completely and multiply deleted --- including prior and in contemplation of his planned resignation on August 29, 2012.

In the circumstances, Mr. Randazza's generalized and unspecified claims of privacy --- in attempted justification of his ordered complete and multiple wipings of company-owned computers --- cannot be accorded weight or credibility. By the same token, that ordered conduct raises an inference that whatever was deleted was known and intended by Mr. Randazza to be harmful to him and any claims and contentions which he might make in any dispute with E/L --- i.e., deliberate spoliation, in addition to conversion.

Mr. Randazza cannot escape liability for spoliation or conversion --- or, additionally, violation of his fiduciary duties as an employee, executive and general counsel of E/L, by reason of the same conduct --- by claiming, as he has, that Respondents have not shown any specific or tangible injury by reason of his conduct in causing company-owned computers to be completely wiped of all data prior to their resisted and belated return. In the circumstances --- and paraphrasing former Defense Secretary Donald Rumsfeld --- neither Respondent should bear any burden or responsibility to come forward with any evidence of damage, when they do not know what they do not know. As stated above --- with his actual exclusive knowledge of what was on the computers' hard drives, before and because he ordered them to be completely wiped and, in the instance of his returned laptop, multiply wiped before ultimate return --- Mr. Randazza committed spoliation of evidence, as well as improper conversion of his employer's files, data and equipment and, in so doing, also violated his fiduciary duties owed to E/L.

S. The closure of the Nevada State Bar's file on the grievance filed by E/L has not been given any weight in this arbitration. The reasons for that are manifold, several of the most significant of which include the following: (1) the State Bar did not reach the merits of E/L's grievance, (2) even if it would have, the standard of evaluation would have been "clear and convincing evidence," rather than the standard applicable in this arbitration of "preponderance of the evidence," (3) Mr. Randazza's response to E/L's grievance contained at least one

material misrepresentation acknowledged during an evidentiary session in this arbitration (that he stopped representing XVideos in 2009), (4) the Nevada State Bar closed its file with an express statement that it has "no authority to take any action which could affect the outcome of any civil disputes or litigation, (5) many of the issues and much of the evidence presented in this arbitration (identities of represented entities, retainer and billing records, emails, etc.) was not available to be presented by E/L in support of its grievance (e.g., Mr. Randazza's assisting Datatech, including via forwarding fruits of a disclosed (unnamed) computer "hacker").

T. E/L was damaged in at least the amount of $275,000, by reason of the Oron resettlement, as a direct and proximate result of events being set in motion by Mr. Randazza's violations of fiduciary duty and other duties, by his having secretly negotiated a $75,000 bribe to conflict himself out from suing Oron in the future.

U. Mr. Randazza was unjustly enriched in the amount of $60,000. Of that amount, $55,000 was paid to and received by Mr. Randazza's law firm, rather than E/L, in connection with (1) Mr. Randazza's ostensibly pro bono representation in connection with the so-called "Righthaven cases," of which E/L was generally aware and consented to (A) with the understanding and on the condition that Mr. Randazza was acting as a faithful, compensated E/L employee, including in compliance with his employment agreement, with costs of the representation advanced by E/L, including compensation as employees of Mr. Randazza and his legal assistant Erika Dillon, and (2) unaware that compensation was to be or actually paid to Mr. Randazza, via his law firm, until after the fact, indeed after Mr. Randazza's resignation from E/L employment.[15] Mr. Randazza also received $5,000 from James Grady, in connection with E/L's Oron litigation. Although Mr. Randazza testified, without corroboration, that

[15] Of the $60,000 paid and received, (A) $55,000 was court-awarded attorneys' fees, which were paid to Mr. Randazza's law firm, and (B) $5,000 was paid by James Grady.

Mr. Grady's payment was used for Oron litigation expenses, Mr. Randazza did not disclose the receipt of the Grady $5,000 payment to E/L. In the circumstances, and under principles of unjust enrichment, all compensation paid to or for the benefit of Mr. Randazza should have been paid directly to E/L or turned over to E/L by Mr. Randazza --- neither of which was done, immediately or ever.

V. Mr. Randazza materially breached his employment agreement with Excelsior by (1) acting as an attorney in connection with the TNAFlix litigation and the MegaUpload case, his concurrent representation of XVideos and/or XNXX during his employment by Excelsior and (2) spending significantly excessive time on non-Excelsior/Liberty matters beyond contractually-permitted time under his employment agreement with Excelsior and by failing to wind down his non-Excelsior/Liberty legal activities, as also provided in Mr. Randazza's employment agreement.[16]

The extent of Mr. Randazza's contractual material breaches made them also breaches of fiduciary duty --- regardless of whether or not those breaches of fiduciary duty were conflicts of interests, as some were.

W. Disgorgement of compensation paid by E/L to Mr. Randazza is an available remedy, which is appropriate in the circumstances of Mr. Randazza's clear and serious violations of fiduciary duty owed to E/L, and within the Arbitrator's discretion, based on the evidence in this arbitration.[17]

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[16] Mr. Randazza materially breached his employment agreement with Excelsior by maintaining a private law practice, with billed hours shown to be in excess of that permitted by that agreement, performing non-E/L legal services during the time he could and should have been performing services as E/L's General Counsel, and by failing or refusing, consistent with ethical duties and requirements, to reduce and taper off to zero his professional services for clients other than his employer, E/L.

The extent of Mr. Randazza's contractual material breaches made them also breaches of fiduciary duty --- regardless of whether or not those breaches of fiduciary duty were conflicts of interests, as some were.

[17] See Burrow v. Arce, 997 S.W.2d 229 (Tex. 1999) ("Burrow")(remedy of forfeiture/disgorgement upheld, including court discretion to determine whether some or all compensation paid to attorney who breached fiduciary duty of loyalty owed to

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There is no requirement that causation or "fact of damage" be shown.[18] There is no valid reason to distinguish between an executive who is "in house" general

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client to be forfeited or disgorged, where clear and serious violation(s) of fiduciary duty shown).

[18] That is because, among other reasons, one of the primary purposes of a remedy like forfeiture/disgorgement for breaches of fiduciary duty is to deter, not reward and to remove incentives of fiduciary disloyalty --- including by denying the benefits of disloyalty, regardless of provable or even actual harm to the principal, including after payment of compensation. As the Texas Supreme Court pertinently stated in Burrow in connection with the remedy of forfeiture/disgorgement as a deterrent and disincentive for an attorney or other agent to breach of fiduciary duty:

> "Pragmatically, the possibility of forfeiture of compensation discourages an agent from taking personal advantage of his position of trust in every situation, no matter the circumstances, whether the principal may be injured or not. The remedy of forfeiture removes any incentive for an agent to stray from his duty of loyalty based on the possibility that the principal will be unharmed or may have difficulty proving the existence of amount of damages."

The California cases cited by Claimant are distinguishable. Frye v. Tenderloin Housing Clinic, Inc., 38 Cal.4th 23 (2006)("Frye"), Slovensky v. Friedman, 142 Cal.App. 4th 1518 (2006) ("Slovensky"). The appellate court's conclusion in Slovensky was based on its misreading and/or misstatement of the Supreme Court's holding and the basis and reasoning for its holding in Frye --- which was, in effect, a "one-off" opinion strongly driven by the facts and public policy considerations articulated and emphasized by the Supreme Court in the opinion. The Slovensky court's mistake is highlighted by its reliance on what it called the "Frye rule" --- which was no such thing, or at least not as stated and relied on by the court in Slovensky.

There would be little or no reason for the remedy of disgorgement, if there was a so-called "Frye rule" as misstated by the Slovensky court and urged by Mr. Randazza. If fact of damage and extent of damages must be proven by a preponderance of the evidence, in order to obtain disgorgement, that remedy would be rendered duplicative of the remedy of compensatory damages, except in name only. Moreover, the strong public policy to deter and remove any incentive for clear and serious violations of fiduciary duty - where injury to the client or other principal might be difficult or impossible to prove, as a matter of compensable damages - would be severely undermined.

In Frye , the California Supreme Court appears to have been offended by the plaintiff/client's overreach in the circumstances. The Court determined not that the remedy of disgorgement was legally unavailable but, rather, that its application --- in the

counsel and other corporate executives with respect to the availability of the remedy of forfeiture/disgorgement of compensation for breaches of fiduciary duty.[19] While it might be less easy to determine the appropriate amount of disgorgement --- because, for example, the compensation paid is not a fixed percentage, as in an all-or-nothing legal or brokerage contingency fee arrangement, contractual hourly arrangements, etc. --- that is not a disqualifying factor or consideration. Considerations of proportionality and non-overlap with an award under other remedies are applicable.

Disgorgement will be applied to E/L-paid compensation received by Mr. Randazza in connection with litigation and other engagements on behalf of non-E/L clients --- in material breach of contract, while employed by E/L and beyond the significantly limited scope of his employment agreement (in terms of subject matter and time) and/or, in all events, in violation of his professional and fiduciary duties owed to his principal/client/employer, E/L. See Par. 1(V), above.

None of the expert witnesses who testified concerning breaches of legal ethics and fiduciary duties by attorneys and remedies for such breaches opined that disgorgement is unavailable in all instances. The Arbitrator had the

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special context of a technical failure to properly register for the practice of law by a public interest non-profit organization, engaged in what the Court considered to be important, worthy public interest work, expressly supported by the Court (including by affirming very substantial statutory attorneys' fees awards, as stated in that opinion) --- was "grossly disproportionate to the wrongdoings" of the defendant there and therefore "would constitute a totally unwarranted windfall" to the plaintiff there. 38 Cal.4th, at p. 50. Frye, therefore, is distinguishable from the facts of this case.

Because the basis for its opinion was wrong, Slovensky is distinguishable or, more aptly, inapplicable to Mr. Randazza's proven clear and serious ethical and fiduciary breaches in this case.

[19] See Zakibe v. Ahrens & McCarron, Inc., 28 S.W.3d 373, 385-386 (Mo. Ct. App. 2000) (executive's breaches of fiduciary duty resulted affirmed forfeiture of his right to "all compensation, including bonuses and severance pay to which he may have been entitled"); Riggs Investment Management Corp. v. Columbia Partners, LLC, 966 F. Supp. 1250, 1266-1267 (DDC 1997) (former chairman and CEO of corporation forfeited all salary, bonuses and other compensation paid from the time disloyal action began, as determined by the appellate court, to date of end of employment six months later).

sense, however, that Mr. Joseph Garin came close to opining that causation and/or "fact of damage" caused by an assumed breach of an ethical/fiduciary duty is or should be a prerequisite to the imposition of disgorgement, with which opinion the Arbitrator respectfully disagrees (if that is Mr. Garin's opinion).[20] In so opining, Mr. Garin (as did Mr. Randazza's California expert witness, Ms. Ellen Peck) testified that --- based on information provided by Mr. Randazza --- there was not a single instance of an ethical violation, with which the Arbitrator also respectfully agrees, based on all of the evidence adduced at hearing.

See Burrow v. Arce, 997 S.W.2d 229 (Tex. 1999) and Restatement of Agency 3d, Sec. 8.01 comment d(2).

X. While Mr. Randazza's obtaining Mr. Gideon's signature on the promissory note for Mr. Randazza's $25,000 loan to E/L for Hong Kong legal fees was rife with ethical infirmities, in the exercise of the Arbitrator's discretion, the Arbitrator will not void the underlying loan. However --- again in the exercise of the Arbitrator's discretion --- the Arbitrator will limit the benefit of that decision to allowing Mr. Randazza to assert an offset, under this paragraph, to any and all amounts awarded on E/L's counterclaims, up to a maximum amount of $25,000 (i.e., no interest) --- which right of offset shall be conditional upon Claimant's transfer to Respondent Liberty of all Oron settlement-related and other E/L funds held in Claimant's attorney trust account,[21] plus interest at the legal rate of ten percent (10%) per annum from August 29, 2012.

Y. E/L are the prevailing parties in this arbitration. As such one or both of Respondents is or may be entitled to contractual attorneys fees under the employment agreement.[22]

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[20] Mr. Garin conceded, on cross-examination, that Section 37 of the Restatement 3rd of The Law Governing Lawyers does not say that a showing of actual monetary loss is required for disgorgement of attorney compensation.

[21] See Interim Arbitration Award, Pars. 4 & 5, at p. 28, infra.

[22] See Interim Arbitration Award, Pars. 8 at pp. 28-29, infra.

INTERIM ARBITRATION AWARD

Based upon careful consideration of the evidence, the applicable law, the parties' written submissions, the Determinations hereinabove set forth, and good cause appearing, the Interim Arbitration Award in this arbitration is as follows:

1. Claimant and Counter-Respondent Marc J. Randazza ("Claimant") shall take nothing by any of his claims set forth in his Amended Arbitration Demand.

2. Claimant shall pay Respondent(s) the following sums and amounts, as and for monetary damages in connection with Respondents' counterclaims. Said amounts are exclusive and non-duplicative of any amount separately and additionally awarded to Respondents as part of the remedy of disgorgement. See below.

Said amount includes the amount of $275,000, plus pre-award interest from August 13, 2012, at the legal rate of ten percent (10%) per annum, as and for monetary damages in connection with the resettlement of the Oron litigation, as a direct and proximate result of Claimant's violations of fiduciary duty in connection with his negotiating for a $75,000"bribe" (to conflict him out of future representation against Oron) as part of the resolution of the Oron litigation.

Said amount will include the amount of $60,000, by which amount Claimant was unjustly enriched --- in that Claimant (via his law firm), rather than either Respondent received (A) $60,000 in connection with Claimant's ostensibly pro bono representation in connection with the Righthaven cases, while compensated for Claimant's time spent on the representation as employee, in the course of his employment, as to which representation the costs were advanced by Claimant's employer, and (B) received from James Grady in connection with the Oron litigation.

Said amount will include the amount of $3,215.98 --- as and for Respondents' expenses reasonably incurred in connection with QUIVX forensic

examination and attempted restoration of data on employer-owned laptop computers and an iPhone used and returned, as applicable, by Claimant and Erika Dillon. In addition, an amount yet to be determined, in the exercise of the Arbitrator's discretion, will be awarded for Claimant's spoliation and conversion of Excelsior's and Liberty's files and other data contained on employer-owned laptop computers entrusted to Claimant and Erika Dillon during their employment by Respondents or either of them. The additional amount awarded will be set forth in a further and/or amended interim arbitration award and/or in the final arbitration award.

3. Claimant shall pay Respondent Excelsior the amount of $197,000.00 --- as and for disgorgement of an appropriate amount of Claimant's employment compensation (including salary and bonuses) paid under his employment agreement).

The awarded amount under this paragraph is non-duplicative of and does not overlap with any amount award as monetary damages under any other paragraph of this Interim Award.

The amount awarded under this paragraph does not include disgorgement based on Claimant's post-employment violations of fiduciary duty. That is because it appears to the Arbitrator that they are instances of Respondents having rights without a remedy --- as the limits of case law on disgorgement do not extend to post-employment violations of fiduciary duty.

Disgorgement shall be based on Claimant's violations of fiduciary duty ---including as acting as an attorney in connection with the TNAFlix litigation and the MegaUpload case, Claimant's concurrent representation of XVideos and/or XNXX during his employment by Excelsior and spending excessive, undisclosed, time on non-Excelsior/Liberty matters far beyond contractually-permitted time under his employment agreement.

4. Claimant is hereby ordered forthwith (i.e., within ten (10) days of the date of the issuance of this Interim Arbitration Award) to turn over to

Respondents all Oron-related funds and, further, an additional $30,000 of non-Oron-related client funds of Respondents --- which funds have been held in Claimant's attorney trust account --- plus pre-award interest at the legal rate of ten percent (10%) per annum from August 29, 2012.

5. An accounting of Claimant's attorney trust account is hereby ordered --- including to ensure compliance with Paragraph 4 hereof. The accounting shall be performed by a qualified third-party accountant and/or accounting firm appointed and/or approved by the Arbitrator. The cost and expense of which shall be borne solely by Claimant --- although Respondents may advance the funds necessary for the accounting, subject to ordered reimbursement by Claimant. Claimant is hereby ordered to cooperate fully with the ordered accounting.

6. Claimant is hereby ordered to return the as-yet-unreturned company-owned laptop to Respondents' counsel forthwith --- and in no event later than ten (10) days from the date of the issuance of this Interim Arbitration Award.

7. Respondent shall be awarded as damages or costs reasonably incurred with this litigation, expenses reasonably incurred by QVIX or similarly qualified expert vendor --- up to a maximum of $3,500 --- in connection with the vendor's performance of successful and/or attempted retrieval of data a report to the Arbitrator of what, if anything was deleted from the computer and when.

8. Respondents and Counterclaimants Excelsior Media Corp. and Liberty Media Holdings, LLC shall be afforded the right in this arbitration to establish their rights --- if any, and according to proof --- to contractual attorney's fees and costs.

Counsel for the parties are ordered to immediately commence and diligently conduct and conclude meet-and-confer communications and to submit to the Arbitrator within ten (10) days of the issuance of this Interim Arbitration

Award an emailed proposed briefing and hearing schedule for any application for contractual attorney's fees and costs.

9. Respondent Jason Gideon will be dismissed as a party to this arbitration.

Subject to further order and/or a further and/or amended interim arbitration award, and the Final Arbitration Award, this Interim Arbitration Award, including the Determinations hereinabove set forth, is intended to be in full settlement of all claims, issues, allegations and contentions, on the merits, submitted by any party against any adverse party in this arbitration. Subject to the immediately preceding sentence, claims and requests for relief not expressly granted in this Interim Arbitration Award are hereby denied.

Dated: June 3, 2015

STEPHEN E. HABERFELD
Arbitrator

EXHIBIT 7

EXHIBIT #7

UTAH FEDERAL COURT MEMORANDUM AND DECISION ORDER

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

PURPLE INNOVATION, LLC, a Delaware limited liability company, Plaintiff, v. HONEST REVIEWS, LLC, a Florida Corporation, RYAN MONAHAN, an individual, and GHOSTBED, INC., a Delaware corporation, Defendants.	**MEMORANDUM DECISION AND ORDER** Case No. 2:17-cv-138-DB District Judge Dee Benson

Before the court is Plaintiff's Motion for Sanctions. (Dkt. No. 229.) In its motion, Plaintiff requests sanctions for Defendants' submission of misleading and false statements to the court in opposing Plaintiff's request for preliminary injunction. Pursuant to civil rule 7-1(f) of the United States District Court for the District of Utah Rules of Practice, the court elects to determine the motion on the basis of the written memoranda and finds that oral argument would not be helpful or necessary. DUCivR 7-1(f).

FACTUAL BACKGROUND

Plaintiff is a manufacturer of bed-in-a-box mattresses and other bedding products. (Compl.[1] at ¶¶ 19-29.) Plaintiff advertises and sells its products solely through an e-commerce platform, rather than maintaining brick and mortar stores. (*Id.* at ¶ 29.) Because Plaintiff relies strictly on an e-commerce sales strategy, online comment and review websites can have a significant impact on Plaintiff's business. (*Id.* at ¶¶ 38-39.)

[1] All references to the Complaint herein refer to the Second Amended Complaint. (Dkt. No. 266.)

In January 2017, a new mattress review website—www.honestmattressreviews.com—owned by Defendant Honest Reviews, LLC ("HMR") and operated by HMR's sole owner, Defendant Ryan Monahan ("Monahan"), began to post reviews of various mattress and bedding products. (*Id.* at ¶¶ 9, 10, 44.) HMR's reviews or "articles" about Plaintiff's products suggested a link between a white powder used on some of Plaintiff's products and cancer-causing agents. (*Id.* at ¶¶ 47, 53-54.) For example, one article compared the powder to a "ground down…plastic mustard container" or "glass coke bottle," which consumers will inhale every night for "eight to ten hours." (*Id.* at ¶ 71.) The article, alluding to Plaintiff's product, also included a video of the "cinnamon challenge," in which people were coughing, gagging, spitting, crying, and choking on cinnamon. (*Id.* at ¶¶ 72-74.) Plaintiff received low marks on the HMR site, including an image of a large red "X," while its competitors, including Defendant GhostBed, Inc. ("GhostBed"), received favorable marks. (*Id.* at ¶ 82.)

The HMR website repeatedly stated that it was not influenced by any mattress company and that it did not receive financial compensation for its reviews. (*Id.* at ¶¶ 155-64.) Some of those statements included that HMR "receives zero affiliate commissions," "does not have any affiliate commission sales relationships with mattress companies," and is "free from corporate or conglomerates…[that] silence or shape editorial narratives and truths." (*Id.* at ¶¶ 158-63.) The site also asserted that the posts on HMR "have total editorial independence" for which "[n]o one has influence." (*Id.* at ¶ 163.) The HMR website also stated that it is not interested in "influencing a purchase decision to promote a company" or in "a few large companies controlling the narrative." (*Id.* at ¶ 164.)

Plaintiff filed its Complaint on February 24, 2017, alleging claims for false advertising and false association under the Lanham Act and Utah common law, tortious interference with economic relations, defamation, trade libel and injurious falsehood, civil conspiracy, and violation of the Utah Truth in Advertising Act. (Compl. at ¶¶ 220-72.) Plaintiff alleged that the statements made about its products, including their connection to cancer-causing agents, are false. (*Id.* at ¶¶ 221-25.) Plaintiff also alleged that the statements on the HMR website regarding its intellectual and financial independence from any mattress company are false, and that Monahan, the sole owner and operator of HMR, was closely affiliated with Plaintiff's direct competitor, GhostBed. (*Id.* at ¶ 168.) Accordingly, Plaintiff concluded that HMR's purported "reviews" were actually commercial advertising and promotion that "materially misrepresented the nature, characteristics, and qualities" of Plaintiff's products, while failing to disclose the close affiliation with its competitor. (*Id.* at ¶¶ 222-23.)

On February 27, 2017, Plaintiff requested an ex parte Temporary Restraining Order to prohibit Defendants from posting false or misleading statements regarding its products. (Dkt. No. 8.) The court originally denied Plaintiff's motion for ex parte relief, holding that the Plaintiff had "failed to meet its burden to show what efforts ha[d] been made to provide notice, why notice should not be required in this case, and whether immediate irreparable injury [would] result before the adverse party [could] be heard in opposition." (Dkt. No. 13.) Following entry of that Order, Plaintiff's attorney submitted an additional declaration outlining multiple efforts made to notify Defendants of the case, including indications that Defendants had received actual notice and that Defendants appeared to be avoiding service of process. (Dkt. No. 14.) Based on this showing, along with Plaintiff's evidence of a strong showing of an affiliation between

Defendants and substantial likelihood of success on the merits, the court entered Plaintiff's requested Temporary Restraining Order on March 2, 2017. (Dkt. No. 16.)

The following day, on March 3, 2017, Plaintiff filed a Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt. (Dkt. No. 17.) In that Motion, Plaintiff argued that Defendants had failed to comply with the Temporary Restraining Order and had, instead, posted an inflammatory article about the lawsuit on the HMR website. (*Id.*) Defendants opposed the Motion and filed Motions to Dissolve the T.R.O. on March 9, 2017. (Dkt. Nos. 28, 36.) In support of their Motions, Defendants submitted two Declarations, the Declaration of Marc Werner (Dkt. No. 31) and the Declaration of Ryan Monahan. (Dkt. No. 30.)

In his Declaration, Marc Werner, CEO of GhostBed ("Werner"), stated that "GhostBed does not have any affiliation whatsoever with co-defendants Honest Reviews LLC or Mr. Monahan." (Dkt. No. 31 at ¶ 6.) Werner stated that GhostBed does not own, operate, direct, control or contribute to honestmattressreviews.com and that GhostBed "did not, and does not, remunerate Mr. Monahan or Honest Reviews LLC in any way for anything they do in connection with the honestmattressreviews.com website." (*Id.* at ¶ 4-7.) Werner affirmed that "Mr. Monahan is not, and has never been, an employee, director, or officer of GhostBed," (*Id.* at ¶ 11,) and that when Monahan identified himself on Twitter and LinkedIn as "Chief Brand Officer" of GhostBed, he did so "mistakenly." (*Id.* at ¶ 14.) Werner further stated that Monahan is "not a member of GhostBed's marketing department or any other GhostBed department" and does not have an office, phone extension, or email address with GhostBed. (*Id.* at ¶¶ 15-19.) Werner stated that Monahan has "no monetary interest in the success of GhostBed" and "receives no

compensation either directly or indirectly from GhostBed for the content he publishes on honestmattressreviews.com." (*Id.* at ¶ 20.)

Werner acknowledged GhostBed's connection with Monahan in only one paragraph, stating that GhostBed uses Achieve Marketing for branding and marketing consultation services and that "[i]n the past, Achieve used another entity, Social Media Sharks, to consult on online presence issues for its clients, including GhostBed." (*Id.* at ¶ 12.) Werner acknowledged that Social Media Sharks is associated with Monahan, but did not acknowledge any current relationship between GhostBed and Social Media Sharks or GhostBed and Monahan. (*Id.*)

Monahan's Declaration similarly disavowed any significant business relationship between GhostBed and Monahan. Monahan stated that he is the sole member and president of Honest Reviews, LLC, which operates honestmattressreviews.com, and the founder, co-owner, and CEO of Social Media Sharks, a Florida marketing company. (Dkt. No. 30 at ¶¶ 2-3.) Monahan stated that "Defendant GhostBed currently contracts with Achieve Agency to perform social media marketing. Achieve Agency in turn engages Social Media Sharks to provide a portion of those services. Social Media Sharks provides similar services to over twenty-five other companies." (*Id.* at ¶ 6.) Although Monahan admitted that he identified himself as Chief Brand Officer of GhostBed on LinkedIn, Twitter, and at a conference in September 2016, he stated that he did so without GhostBed's knowledge and that GhostBed "scolded [him] for doing so, and insisted that [he] stop." (*Id.* at ¶¶ 7-8.) Monahan also stated that he has never had an office or phone extension with GhostBed. (*Id.* at ¶ 9.)

Monahan similarly disavowed a financial relationship between the Honest Mattress Reviews website and GhostBed. He stated that the website has a single source of income—

Google Adsense—and that Honest Reviews, LLC has never received any consideration from GhostBed, nor has any company, person, or product had any influence over reviews on the HMR website. (*Id.* at ¶¶ 11-13.)

The court held a hearing on the Motions regarding the Temporary Restraining Order on March 14, 2017. At the hearing, counsel for Defendants reiterated the content of the Declarations submitted by their clients. Mr. Randazza, counsel for Monahan, strongly argued that Monahan was an independent journalist entitled to full protection under the First Amendment. Mr. Randazza repeatedly referred to Monahan as a "consumer journalist" and "consumer reporter" (March 14, 2017 Hearing Transcript at 44: 14-15, 23), even asserting that the court did not have authority to find otherwise. (*Id.* at 46-47.) He referred to the HMR site as a "consumer journalist publication just like Consumer Reports[.]" (*Id.* at 44: 15-16.) With respect to the allegation that Monahan was, in fact, closely affiliated with GhostBed, Mr. Randazza stated: "if we believe this entire conspiracy that this whole thing was cooked up back in October to be a shadow marketing campaign for GhostBed, that would require a degree of creativity and just a degree of plotting that even Alexander Dumas could not have imagined when he wrote the Count of Monte Cristo" and stated that "these fantasies are probably best used in fiction." (*Id.* at 46:1-6, 8-11.) Mr. Randazza's coy acknowledgement of a relationship between Monahan and GhostBed was only in passing: "we have a contractor who is a contractor to a contractor and we have no desire to hide that relationship." (*Id.* at 49: 4-6.) Mr. Randazza referred to the alleged close relationship between Monahan and GhostBed as "a very convoluted conspiracy theory that just does not make any sense." (*Id.* at 52: 16-18.)

Counsel for GhostBed, Ms. Yost, similarly indicated that no relevant business relationship existed between Monahan and GhostBed. Ms. Yost referred the court to Werner's Declaration testimony that "GhostBed does not compensate the website owner, which is Honest Reviews, or Mr. Monahan in connection with that website." (*Id.* at 56: 4-6.) Ms. Yost further emphasized: "Neither Honest Reviews nor Mr. Monahan have been compensated by GhostBed to produce this website or any of the content on it. GhostBed has declared under the pains and penalties of perjury that it had absolutely nothing to do with the posts before or after the T.R.O. was entered." (*Id.* at 56: 14-18.) Ms. Yost acknowledged an "attenuated" relationship between Monahan and GhostBed, stating that "Monahan is a marketing consultant and he works for many, many organizations and clients ..., including GhostBed[.]" (*Id.* at 57: 3-4.) However, Ms. Yost argued that GhostBed was no different from any of Monahan's other marketing clients and that "two sworn declarations ... say that there is no money trail between GhostBed and the website where Purple's harm is happening." (*Id.* at 57: 19-24; 61: 10-12.)

Based on the strong representation from both Werner and Monahan and their lawyers' arguments regarding the absence of a relevant, current business relationship between them, the court dissolved the Temporary Restraining Order. (Dkt. No. 59.)

On May 24, 2017, Plaintiff filed a Motion for Preliminary Injunction, which was based on evidence and a request for relief similar to that in Plaintiff's original Motion for Temporary Restraining Order. (Dkt. No. 115.) Plaintiff did not appear to have sufficient new evidence to support entry of a Preliminary Injunction. However, approximately one month later, on June 28, 2017, Plaintiff submitted a Supplemental Memorandum in support of its Motion, attaching a newly obtained Declaration from GhostBed's former Director of Marketing, Ms. Calisha

Anderson. (Dkt. No. 137.) In that Declaration, Ms. Anderson confirmed the bulk of Plaintiff's suspicions regarding the relationship between Monahan and GhostBed. (*Id.*)

In her Declaration, Ms. Anderson explained that:

- She was employed as Director of Marketing of GhostBed from October 2016 until June 7, 2017. (Dkt. No. 137-1 at ¶ 4.)
- Shortly after beginning her new job, she learned she had "very little actual authority for GhostBed's marketing" and Monahan "was the real 'Director of Marketing.'" (*Id.* at ¶¶ 5, 8.)
- Monahan "controlled every aspect of the GhostBed website from before the time [Ms. Anderson] was hired until the day that [she] left GhostBed." (*Id.* at ¶ 11.)
- Monahan "was on the agenda" for every weekly staff meeting Ms. Anderson attended. (*Id.* at ¶¶ 14, 15.)
- Monahan attended GhostBed staff meetings telephonically and "led the discussion" regarding marketing. (*Id.* at ¶ 16.)
- Monahan "frequently used the email address ryan@ghostbed.com to communicate with others, including in the system used to send out email blasts." (*Id.* at ¶ 43.)
- Monahan "was the Chief Brand Officer of GhostBed, and he held himself out as such in his communications with others...." (*Id.* at ¶ 41.)
- During Ms. Anderson's employment, Monahan spoke on the telephone regularly with Werner and visited GhostBed's offices from time to time. (*Id.* at ¶¶ 17, 21.)
- Shortly after being hired, Ms. Anderson was informed by CEO Werner's daughter, Ashley Werner, "that Ryan was the real 'Director of Marketing'" and that "Monahan's marketing decisions trumped [Ms. Anderson's] marketing decisions." (*Id.* at ¶ 8.)

- Monahan "could and did on several occasions veto [Ms. Anderson's] decisions." (*Id.*)
- Based on Ms. Anderson's observations and experience, she "suspect[ed] that [Monahan] is being paid under the table by GhostBed." (*Id.* at ¶ 22.)

Ms. Anderson's Declaration also provided support for the proposition that GhostBed independently made statements substantially similar to those alleged in the Complaint. She stated that CEO Werner "would tell [Anderson] and other GhostBed employees about a powder on [Plaintiff's] mattress", "saying that a competitor was using talcum powder and talking about lawsuits against Johnson & Johnson because talcum powder caused cancer." (*Id.* at ¶ 24.) Ms. Anderson further stated that she believed that Werner "wanted consumers to know about this." (*Id.*)

The court held a hearing on the Motion for Preliminary Injunction on July 7, 2017. At the hearing, counsel for Defendants strongly disputed Ms. Anderson's Declaration. Mr. Randazza stated: "I realize if you look at Ms. Anderson's declaration, boy, that looks really compelling. It is lies. I am going to prove it is lies. I hope that there will be sanctions when it shows that it is lies. I hope she'll be charged with perjury when I can show she has lied." (July 7, 2017 Hearing Transcript at 123: 22-25—124: 1-2.) In light of the directly conflicting Declaration testimony before the court, the court "determined that an evidentiary hearing [would] aid the court in ruling on the pending motion, particularly in determining the nature of the relationship between Defendant Ryan Monahan and Defendant GhostBed, Inc." (Dkt. No. 145.) Accordingly, the court ordered the three witnesses who had submitted Declaration testimony to appear at an evidentiary hearing for purposes of cross examination. (*Id.*)

The court held the Evidentiary Hearing on September 16, 2017. (Dkt. No. 187.) At the hearing, the court heard testimony from Marc Werner, Ryan Monahan, and Calisha Anderson. The evidence elicited at the hearing from all witnesses established, among other facts, that: 1) Monahan continues to provide extensive marketing services to GhostBed (September 16, 2016 Hearing Transcript at 161-64); 2) Monahan's company, Social Media Sharks, has received over $130,000 from GhostBed, and continues to receive $10,000 per month, for Monahan's marketing services to GhostBed, of which Monahan receives approximately half (*id.* at 25, 28-31); 3) Monahan used the title "Chief Brand Officer" of GhostBed with GhostBed's knowledge and without protest (*id.* at 84-85, 103, 120-22); and 4) Monahan helped GhostBed place competitive ads that targeted Plaintiff. (*id.* at 59, 148-49.) At the conclusion of that testimony, the court determined that Monahan and Werner had materially misrepresented the relationship between HMR and GhostBed, as well as Monahan's status as an independent journalist. (*Id* at 165-70.) The court found the testimony of Ms. Anderson to be credible and persuasive, and it was not seriously challenged by cross-examination.[2] (*Id.*) After considering all the evidence presented to the court, particularly the close relationship and substantial financial ties between Monahan and GhostBed, the court entered a Preliminary Injunction. (Dkt. No. 191.)

On October 25, 2017, Plaintiff filed its Motion for Sanctions. (Dkt. No. 229.) Plaintiff argues that Defendants' willful misrepresentations prejudiced Plaintiff's case and interfered with these proceedings. (*Id.*) Plaintiff accordingly requests that the court strike Defendants' answers and defenses to Plaintiff's complaint, grant judgment in favor of Plaintiff, and dismiss GhostBed's counterclaim against it. (*Id.*) Defendants maintain that none of the challenged

[2] Mr. Randazza did not attend the hearing to cross-examine Ms. Anderson, despite his confident assertions that he would expose Ms. Anderson as a liar.

statements were willful, intentional, or made in bad faith, and that they do not rise to the level of sanctionable conduct. (Dkt. Nos. 247, 250.)

DISCUSSION

District Courts have "very broad discretion to exercise their inherent powers to sanction a full range of litigation misconduct that abuses the judicial process." *Xyngular Corp. v. Schenkel*, 200 F. Supp. 3d 1273, 1300-01 (D. Utah 2016). However, "[d]ismissal is a severe sanction [which] should be imposed only if a 'lesser sanction would not serve the ends of justice.'" *LaFleur v. Teen Help*, 342 F.3d 1145, 1151 (10th Cir. 2003)(quoting *Reed v. Bennett*, 312 F.3d 1190, 1195 (10th Cir. 2002)). The Tenth Circuit has provided five factors for a court to consider in determining the appropriateness of sanctions:

> (1) the degree of actual prejudice to the [party requesting sanctions], (2) the degree of interference with the judicial process, (3) the litigant's culpability, (4) whether the litigant was warned in advance that dismissal was a likely sanction, and (5) whether lesser sanctions would be effective.

LaFleur, 342 F.3d at 1151 (citing *Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir. 1992). These factors provide a "flexible framework" to "adequately punish [the Defendants'] misconduct, remedy the prejudice to and harm suffered by [Plaintiff] and the judicial process, deter future litigants from engaging in this type of misconduct, and engender public trust in the integrity of the judicial proceedings. *Xyngular Corp.*, 200 F. Supp. 3d at 1320-21.

The Degree of Actual Prejudice to Plaintiff

The court finds that Plaintiff was significantly prejudiced by Defendants' misrepresentations in this action. Plaintiff sought and obtained a T.R.O. in this matter, which was dissolved by the court due to the strong representations of Werner and Monahan and their counsel that they did not maintain a relevant business relationship, and that Monahan was an

independent consumer journalist. However, the evidence at the Evidentiary Hearing showed an entirely different picture. Monahan continues to maintain a significant business relationship with GhostBed and during the relevant time period effectively acted as its head of marketing. When presented with the truth regarding Monahan and GhostBed's relationship, the court reinstated the injunctive relief initially requested by Plaintiff. Plaintiff was deprived of this injunctive relief in the interim and was required to expend time and resources to obtain the requested relief the second time.

The Degree of Interference with the Judicial Process

The court also finds that the degree of interference with the judicial process here was substantial. Defendants and their counsel adamantly defended misleading representations that Monahan and GhostBed had no meaningful association and that Monahan was a consumer journalist entitled to the fullest possible protection of the First Amendment. They vigorously asserted those misrepresentations even after the court received Ms. Anderson's declaration, which caused the court to hold a full day evidentiary hearing to determine the truth. Such a hearing could have been avoided had Defendants been honest and forthcoming regarding their relationship in the first instance.

The Litigant's Culpability

Defendants now acknowledge that the misrepresentations "lacked the level of candor and attention to detail necessary to ensure that all of the material facts were clearly stated and understood by all parties and the Court" but claim they were "made in the heat of battle." (Dkt. No. 247 at iii, 14.) While the court appreciates Defendants' acknowledgment of some responsibility, the court does not agree that these material misrepresentations were merely

inadvertent missteps. Monahan, Werner, and counsel for each were given numerous opportunities in several hearings prior to the September 16 Evidentiary Hearing to correct and clarify their previous, misleading testimony. Instead, Defendants doubled down on their statements and continued to actively conceal the truth from Plaintiff and the court. Werner and Monahan actively misrepresented the nature of their relationship for months. These misleading statements could not be reasonably classified as mere oversight.

Advance Warning

The court did not explicitly warn Defendants that misleading the court by sworn testimony was sanctionable conduct but it could hardly be expected that such a warning would be given. It is expected and presumed that parties and their counsel will not knowingly misrepresent material facts to the court. The declarations of Monahan and Werner were signed under penalty of perjury, and counsel, as officers of the court, are under strict ethical rules to be honest in all of their dealings with the court, and to never assist in the subornation of perjury. Mr. Randazza's statements at the July 7, 2017 hearing—that he would expose Ms. Anderson's statements to be lies and that he "hope[d] that there will be sanctions…[and] she'll be charged with perjury when [he could] show she has lied"—demonstrates a clear understanding that submitting a false declaration to the court could result in sanctions. Indeed, based on the court's careful consideration of the testimony given at the Evidentiary Hearing, the misrepresentations by Werner and Monahan were sufficiently egregious that perjury prosecutions would, and perhaps should be, an appropriate consideration.

Efficacy of a Lesser Sanction

All of the previous factors weigh in favor of assessing sanctions against Defendants. The court must now determine whether a sanction less than dismissal would remedy the harm to Plaintiff and "deter the errant part[ies] from future misconduct." *Ehrenhaus*, 965 F.2d at 920. Dismissal is "an extreme sanction" and "should be used as a weapon of last, rather than first resort." *Id.* (citing *Meade v. Grubbs*, 841 F.2d 1512, 1520 (10th Cir. 1988)). "Only when the aggravating factors outweigh the judicial system's strong predisposition to resolve cases on their merits is dismissal an appropriate sanction." *Meade*, 841 F.2d at 1520. Here, the court does not find that case-terminating sanctions are the only appropriate remedy for Defendants' misconduct. However, given the egregious nature of Werner's misrepresentations, the court finds that striking GhostBed's counterclaims is appropriate. Furthermore, sanctions will be, and hereby are, awarded for Plaintiff's reasonable attorneys' fees and costs expended in pursuing its second Motion for Preliminary Injunction (Dkt. No. 115) and this Motion for Sanctions. Defendants Ryan Monahan and Honest Mattress Reviews, LLC shall jointly pay one half of those fees and costs, and GhostBed, Inc. shall pay the other half. The court will also issue an adverse jury instruction if deemed appropriate when this case goes to trial.

CONCLUSION

For the foregoing reasons, Defendant GhostBed's counterclaims are hereby stricken and sanctions are awarded for Plaintiffs' reasonable attorneys' fees and costs in pursuing its second Motion for Preliminary Injunction and Motion for Sanctions, and an adverse jury instruction shall be given if deemed appropriate at the time of trial.

DATED this 9th day of February, 2018.

BY THE COURT:

Dee Benson

Dee Benson
United States District Judge

EXHIBIT 8

EXHIBIT #8

HUFFINGTON POST ARTICLE:

CONNETICUT JUDGE: MARC RANDAZZA IS TOO UNETHICAL TO REPRESENT ALEX JONES

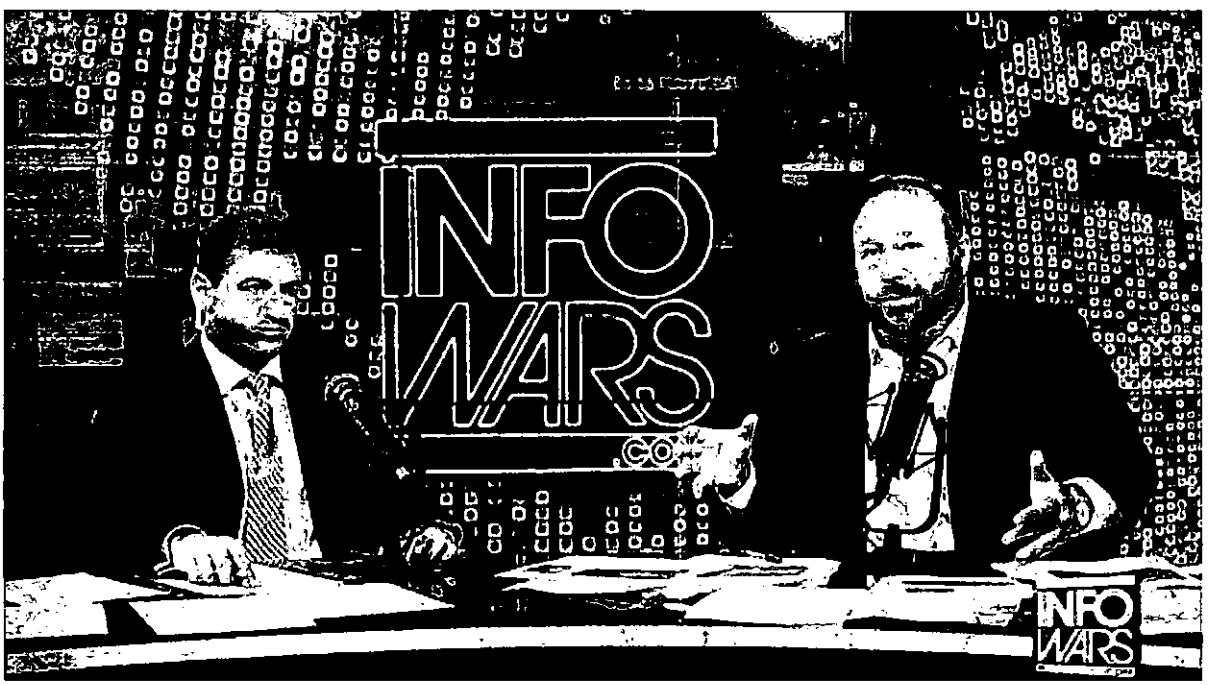
POLITICS

03/20/2019 02:00 pm ET

Connecticut Judge: Attorney Marc Randazza Is Too Unethical To Represent Alex Jones

The lawyer-to-the-trolls got booted from a Sandy Hook defamation case against the Infowars host.

By Luke O'Brien



HUFFPOSTLawyer Marc Randazza regularly appears on Alex Jones' Infowars. But he will not be appearing in court to represent Jones.

Alex Jones needed an "untainted" lawyer. That's why he fired Marc Randazza this month.

The far-right conspiracy theorist had had a brief professional relationship with the attorney-to-the-trolls. Last spring, Jones, who falsely claimed that the Sandy Hook massacre was a hoax, hired Randazza after being sued in Connecticut Superior Court by six families of children killed in the 2012 school shooting and an FBI agent who responded to the scene.

But Randazza, a regular guest on Jones' conspiracy outlet Infowars, came with baggage.

In January, the attorney filed what's called a pro hac vice application to be added to the Sandy Hook case as an out-of-state lawyer. Judges routinely sign off on these applications. The Connecticut judge, however, swiftly rejected Randazza's application, citing "serious misconduct" by the attorney.

"Permission to appear pro hac vice is a privilege, not a right," the judge wrote, ending Randazza's aspirations to take the stage in one of the highest-profile First Amendment cases in the country.

The ruling was a humiliating setback for a lawyer who styles himself as a top free speech attorney. So was getting canned by his marquee client. Jones declared that he had no option, given the rejection of Randazza's pro hac vice application, but to "choose new counsel untainted by the claims of misconduct."

Claims? There was nothing suggestive about Randazza's misconduct. It happened. And his ethical problems had been on display for almost a decade, flaring into view only a few years after he began his legal career as a copyright enforcer for pornographers.

In 2009, he'd taken a job as in-house counsel for a group of porn companies known as Excelsior/Liberty. But he sold out his employer for side money, according to an arbitrator's ruling. After getting caught, Randazza waged lawfare against Excelsior/Liberty for years. The dispute only exposed him as a scoundrel. In 2015, he lost decisively in arbitration, then declared bankruptcy to avoid paying $600,000 in damages.

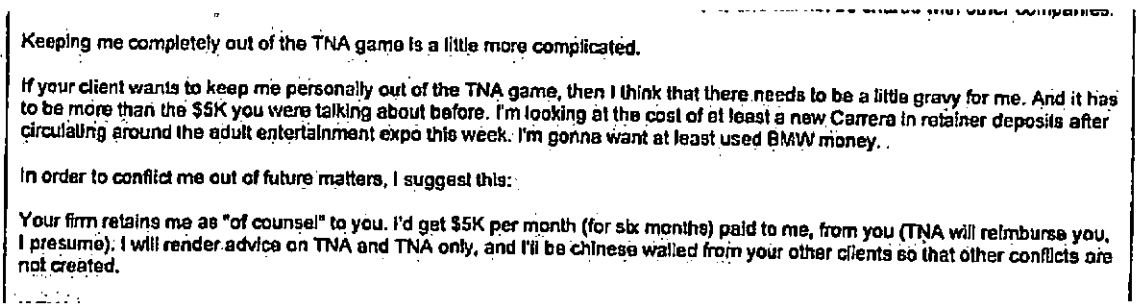
By then, he'd reinvented himself as an attorney for racists, fascists, rape advocates, propagandists and extremists. He soon became America's go-to

attorney for far-right undesirables who use defamation, harassment and threats to silence others. Some of his current clients include neo-Nazi publisher Andrew Anglin, Holocaust-denying slanderer Chuck Johnson and Pizzagate peddler Mike Cernovich, who is also Randazza's close friend and business partner. Another Randazza friend and — according to him — former client is the porn actress and right-wing Gamergate troll Mercedes Carrera, who was charged in February with eight counts of sexually abusing a minor under the age of 10. (Carrera has pleaded not guilty.)

Randazza's brush-off in Connecticut, however, had nothing to do with the sordid company he keeps. It had to do with his ethical problems.

In December, HuffPost published an exposé of Randazza's violations of the rules of professional conduct that govern attorney behavior. He'd made scores of misrepresentations in court, entered into conflicts of interest and solicited bribes.

"There needs to be a little gravy for me," he once wrote opposing counsel while seeking extra lucre. "I'm gonna want at least used BMW money."



Keeping me completely out of the TNA game is a little more complicated.

If your client wants to keep me personally out of the TNA game, then I think that there needs to be a little gravy for me. And it has to be more than the $5K you were talking about before. I'm looking at the cost of at least a new Carrera in retainer deposits after circulating around the adult entertainment expo this week. I'm gonna want at least used BMW money.

In order to conflict me out of future matters, I suggest this:

Your firm retains me as "of counsel" to you. I'd get $5K per month (for six months) paid to me, from you (TNA will reimburse you, I presume). I will render advice on TNA and TNA only, and I'll be chinese walled from your other clients so that other conflicts are not created.

An email from far-right attorney Marc Randazza seeking a payoff from a porn company. View the full document here.

For years, Randazza had avoided scrutiny for his wrongdoing, mainly because the legal profession does such a poor job policing its own. Eventually, the State Bar of Nevada, which licenses Randazza, launched an investigation. (He is also licensed in Arizona, California, Florida and Massachusetts.) Randazza pleaded guilty to two ethical violations. The first concerned a shady loan he'd made; the second, a bribe he'd solicited from Oron, a file-sharing company he sued while working for Excelsior/Liberty.

But the Nevada Bar found "mitigating circumstances" to reduce Randazza's punishment. In October, he walked away with a 12-month stayed suspension and an 18-month probation. He kept right on lawyering.

He also continued to fudge facts. And his offenses may finally be catching up to him.

Legacy of Lies

Randazza started his job at Excelsior/Liberty in 2009. But he was soon secretly lawyering for Excelsior/Liberty competitors such as Bang Bros, Titan Media and Kink.com. These were glaring conflicts of interest. Randazza also worked for companies accused of infringing Excelsior/Liberty's copyrights. One was XVideos, a porn site that Excelsior/Liberty wanted Randazza, then their in-house counsel, to sue for infringement. Instead, Randazza started billing XVideos every month, a fact he concealed from Excelsior/Liberty while dissuading his employer from pursuing litigation. Randazza invoiced XVideos for over $44,000 during this period.

Randazza also made misrepresentations about his role at Excelsior/Liberty. In court filings, he often concealed his salaried job and claimed that Excelsior/Liberty had "incurred" his fees, which allowed him to recoup more money from litigation targets. Over time, his behavior grew more brazen. He used ill-gotten privileged legal communications that might have come from a hacker to gain an advantage in one proceeding. In others, he began soliciting payoffs from litigation targets to "conflict himself out" from being able to sue them again.

In 2012, his boss at Excelsior/Liberty caught Randazza trying to sneak one of these bribes into a settlement agreement. Their relationship ended. Randazza filed a trumped-up discrimination claim, alleging he'd been sexually harassed as a straight man working at a gay porn company. He sued Excelsior/Liberty. Then he initiated an arbitration dispute. Excelsior/Liberty, meanwhile, filed bar complaints against Randazza everywhere he was licensed.

In 2013, Randazza lied to the bar associations in Nevada and Florida about not representing XVideos. The Nevada Bar, which was the lead regulatory body, did

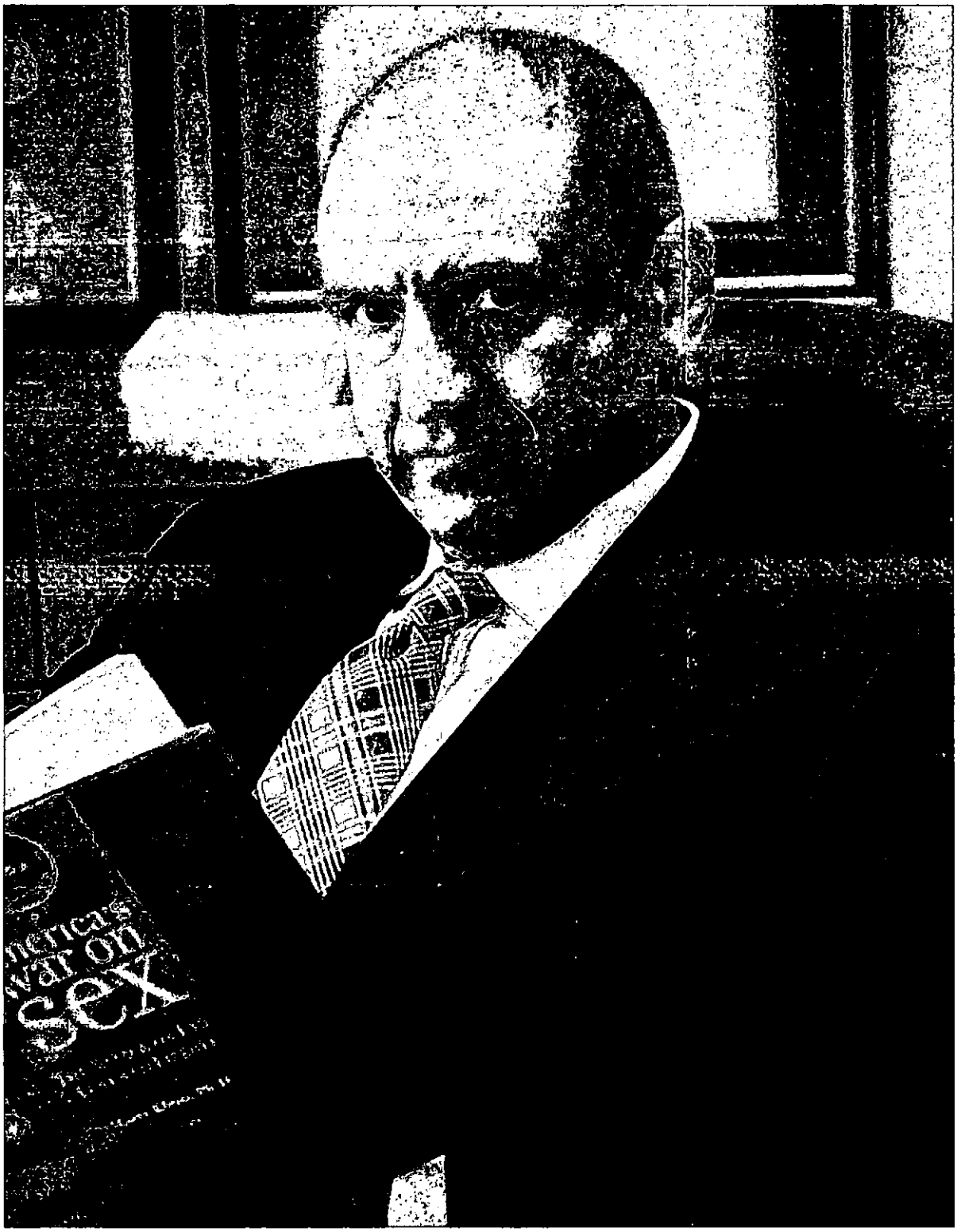
nothing and declined to investigate any of Excelsior/Liberty's other allegations, citing pending litigation. The bar complaints in other jurisdictions were subsequently closed.

But the arbitration forced Randazza to produce financial records and admit under oath that he'd been working for XVideos all along, among other unethical things. In 2015, the arbitrator ruled against Randazza on numerous points and determined that the attorney had solicited a $75,000 bribe from Oron. Randazza filed for bankruptcy to avoid paying damages to Excelsior/Liberty. His former employer lodged another round of bar complaints based on the arbitrator's decision and voluminous evidence from the arbitration.

At the end of 2016, the Nevada Bar finally filed an amended complaint against Randazza seeking to discipline him for misconduct. Randazza negotiated a conditional guilty plea that let him off the hook for most of the alleged violations. The Nevada Bar accepted his plea last year and recommended a light punishment, which the Nevada Supreme Court approved in October 2018.

The Nevada discipline has now prompted "reciprocal" disciplinary proceedings in the other jurisdictions that license Randazza. Those bar associations will decide whether to impose similar discipline for Randazza's admitted ethical violations or to increase or reduce his punishment.

Below, a roundup of Randazza's latest problems and prevarications across the country.



HUFFPOSTRandazza bones up on the law.

Connecticut

Randazza is not licensed in Connecticut and not subject to reciprocal discipline here. He has, however, made misrepresentations that might indicate a continued pattern of unethical behavior. Consider the sworn affidavit attached to Randazza's pro hac vice application in the Sandy Hook case. In it, Randazza acknowledged the reciprocal disciplinary proceedings against him but told the court that he was "aware of no other grievances."

But he had known for weeks about a new Excelsior/Liberty-related complaint against him, this one filed in Arizona in October by a different party.

When HuffPost asked Randazza about the omission in his affidavit, he claimed the complaint wasn't a "grievance" because Arizona uses different terms. He called it a "screening" and said he felt no need to report it since it was a refiling of documents from the Excelsior/Liberty dispute, which was true. A few days later, he told the Connecticut court that the new complaint dealt with the "same set of operative facts as the underlying discipline in Nevada." That, though, was misleading. The complaint covers alleged violations that the Nevada Bar failed to address — for example, Randazza's request for "used BMW money."

In response to Randazza's application to represent Jones, the Sandy Hook plaintiffs had also filed a memorandum that included the 2015 arbitration ruling against Randazza. Emails produced during the arbitration show that Randazza solicited a payoff to prevent him from suing Oron in the future, a clear violation of an ethical rule that prohibits a lawyer from offering or making an agreement that restricts his right to practice.

In court, Randazza dismissed the memorandum as "an effort to smear" him and called the bribe a "mischaracterization." Randazza also told the court that his discussions with Oron about paying him "were fully disclosed" to Excelsior/Liberty. But this, too, had been shot down during the arbitration.

"That's a flat-out lie, and he knows it," said Brian Dunlap, the vice president of Excelsior. "He could never produce any emails when he disclosed it. He could never recall any specific dates when he did. He could never back it up at all. And his story kept changing."

Arizona

In response to the Nevada Supreme Court order disciplining Randazza, the Arizona Bar in January gave Randazza 18 months of probation and a formal reprimand for his "failure to avoid conflicts of interest with clients" and his failure to act ethically in extending a loan to a client.

A separate Arizona ethics complaint was filed against Randazza on Oct. 12, 2018, by Tom Retzlaff, who has tangled in court with far-right extremists such as Jason Lee Van Dyke, a Texas lawyer and ostensibly a former member of the Proud Boys gang. Van Dyke has worked closely with Randazza in the past and was recently suspended from practicing law in Texas for three months for threatening to kill Retzlaff.

The Arizona Bar confirmed to HuffPost that Retzlaff, who has his own history of legal trouble, had filed a "charge" against Randazza, which has triggered a preliminary "screening" investigation. The Arizona Bar appears to be looking into a wider range of scurrilous activity than Nevada did, including Randazza's relationship with XVideos, the alleged copyright infringer that Randazza was secretly representing.

And Randazza now appears to be lying about XVideos to the Arizona Bar. In January, he assured the bar that he'd told Excelsior/Liberty "in writing" about his representation of XVideos and that he let his employer know he couldn't represent Excelsior/Liberty against XVideos because of a potential conflict.

Bottom of Form

1. XVideos

During the course of his Excelsior employment, Mr. Randazza provided some counsel to XVideos, a pornographic "tube site". A "tube site," like YouTube, does not directly infringe or even create content. Rather, third parties upload videos to share with others. They are not liable to copyright holders unless and until they fail to abide a properly issued takedown notice under the Digital Millennium Copyright Act, 17 U.S.C. § 512.

Excelsior and Liberty knew Mr. Randazza represented XVideos. He told them. On January 17, 2011, an Excelsior and Liberty employee suggested pursuing XVideos itself for infringement. In response, Mr. Randazza reminded Excelsior and Liberty (in writing) that he and his law partner provided advice and counsel to XVideos in avoiding such infringement claims. He said he could not represent Excelsior and Liberty against XVideos, thus avoiding any conflict.

TOM RETZLAFFRandazza's response to the Arizona Bar. View the full document here.

Randazza did not attach any proof of his XVideos disclosure to his response and refused to show the disclosure to HuffPost, citing attorney-client privilege.

"For him to say there was any disclosure or that clients were aware at all is obviously just bullshit," Dunlap said. "If that were the case, why would he deny [working for XVideos] initially to the Florida and Nevada bars in 2013?"

Randazza's claims to Arizona contradict what the Nevada Bar found in 2016, when it charged him with failing to disclose the XVideos conflict, hiding it from his employer and never getting "informed consent, confirmed in writing ... to represent XVideos." (The Nevada Bar did not pursue this alleged ethical violation.)

Randazza's Arizona response also clashed with his sworn arbitration testimony, when Randazza explicitly said he never made any written disclosure to Excelsior/Liberty about XVideos being his client nor obtained written consent from Excelsior/Liberty to represent XVideos.

Q. Did you ever make any written disclosure to Liberty Media or Excelsior that XVideos was your client?

A. No.

Q. Did you ever obtain written consent from Liberty Media or Excelsior to represent XVideos?

A. No.

MS. KRINCEK: Now is a good point to stop.

UNITED STATES GOVERNMENTRandazza's testimony at an arbitration hearing in 2015. View the full document here.

California

Randazza will likely face reciprocal discipline in California for his Excelsior/Liberty transgressions. And Randazza made what appear to be dozens of misrepresentations in California federal court about his fees. He also solicited payments from TNA and Megaupload, two other Excelsior/Liberty litigation targets, to conflict himself out of future lawsuits, according to evidence produced during arbitration. As in other jurisdictions, it is an ethical violation in California for an attorney to "be a party to or participate in offering or making an agreement" to restrict his right to practice.

Retzlaff filed a bar complaint against Randazza in California on Nov. 22, 2018, he said.

Florida

A reciprocal discipline action against Randazza is underway in Florida, which has looked past Randazza's dishonesty before. In 2013, Randazza told The Florida Bar that he didn't work for XVideos. Randazza's lawyer at the time, Brian Tannebaum, made the false statement in a letter he sent to the Bar.

Randazza told HuffPost that he insisted the letter be corrected as soon as he realized it contained an error and that Tannebaum was "entitled to get a detail wrong." Randazza said he told Tannebaum to send a new letter to the bar.

But it's unclear when Tannebaum did this, if at all. (Tannebaum refused to tell HuffPost if he had sent another letter.) And the timing Randazza cited was curious. His XVideos misrepresentation came to light during the arbitration in 2015. In September of last year, HuffPost showed Tannebaum the portion of the arbitration hearing where Randazza admitted to working for XVideos. Tannebaum, who no longer represents Randazza, said it was a document he'd never seen before.

"I did not participate in the arbitration," he said.

After speaking with HuffPost in September, Tannebaum said he contacted The Florida Bar in an effort to correct the XVideos misrepresentation. But this would have been at least three years after Randazza became aware of the problem.

Massachusetts

Randazza is scheduled to appear for a disciplinary hearing in Massachusetts on March 26. He may face the most legal jeopardy in his home state, where he may have already misled two courts in telling them that he didn't "cause his clients to suffer any actual harm or financial losses." That statement clashes with the ruling of the arbitrator, who determined that Randazza pilfered a $60,000 settlement from Excelsior/Liberty and violated the terms of another settlement, forcing his employer to pay back half of a $550,000 award.

In a reciprocal proceeding in Massachusetts Supreme Judicial Court, the Massachusetts Board of Bar Overseers, which licenses Randazza, is closely scrutinizing his Excelsior/Liberty misconduct. According to Dunlap, the board hopes to convince a judge that the Nevada Bar didn't do enough to rein in Randazza, who has continued to make misrepresentations.

In his response to the board, for example, Randazza declared that he "did not participate in the offering or making of an agreement to explicitly restrict his practice," which would be a violation of the rules of professional conduct.

company. Respondent's conduct was materially different from the *Traficonte* conduct.

Respondent did not participate in the offering or making of an agreement to explicitly restrict his practice—no covenant akin to the one agreed to by Mr. Traficonte is at issue. To the contrary, Mr. Randazza did that which the Rule is *intended* to promote—permitting Oron to freely choose Mr. Randazza as its counsel – for the *bona fide* provision of services, only after all matters with his employer's sister entity were resolved.

Prohibiting an attorney from discussing post-settlement *bona fide* services to

UNITED STATES GOVERNMENTRandazza's reply to the Massachusetts Board of Bar Overseers. View the full document here.

But arbitration evidence and his own testimony showed that Randazza discussed payments from several companies to restrict his practice. His own guilty plea in Nevada includes an admission that he "offered to enter into an agreement [with Oron] which would have the likely effect of restricting Respondent's right to practice law."

24. RPC 5.6 reads, in part, that "[a] lawyer shall not participate in offering or making ... [a]n agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy." As part of the negotiations culminating in the drafting of the proposed

SBN EXH 1, PG.0005

Post-Judgment Agreement to which Liberty was a proposed party and signatory, Respondent offered to enter into an agreement which would have the likely effect of restricting Respondent's right to practice law.

NEVADA SUPREME COURTRandazza's guilty plea in Nevada. View the full document here.

Randazza also told the Massachusetts Supreme Judicial Court that he'd never made an offer to "never sue" Oron again.

Additionally, the defendant in that litigation insisted that Mr. Randazza agree to never sue them again, as a condition of paying Mr. Randazza's employer $550,000. Mr. Randazza never agreed to such a condition or made such an offer.

UNITED STATES GOVERNMENTRandazza's reply in a Massachusetts disciplinary proceeding.

But in an email from Randazza to Oron's attorney, Randazza *does* make an offer to never sue Oron again:

From: mjr@randazza.com [mailto:mjr@randazza.com]
Sent: Tuesday, August 07, 2012 8:43 PM
To: Stevan Lieberman
Subject: Hong Kong

I just got a call from our HK counsel.

1) They spent $80K so far in USD. Liberty's going to want a little more than $25K to satisfy them on that. Do what you can.

2) It seems that we could get this resolved without filing anything in the USA except a joint notice to release the paypal funds, if you want to get on the tel to your HK counsel and have the HK counsel stipulate that say $650K in USD can be transferred from the HSBC account to our attorneys' account in Hong Kong.

3) Then, whatever you guy pay me to retain me would come from your paypal account, and would have no real relevance to that. I spoke to my partner, who was adamant that we should earn $100K if we're to never be able to sue FF Magnat, Bochenko, Novafile.com, oron.com, etc. forever and ever. I got him to go with $75K. But, for that, we'll provide some really great value -- including a jurisdiction derailing plan that you'll drool over.

What do you think ?

UNITED STATES GOVERNMENTIn 2012, Randazza sent an email to Oron's lawyer soliciting a payoff. View the full document here.

Montana

Randazza isn't licensed in Montana, where he represents the neo-Nazi publisher Andrew Anglin in another high-profile case. He has run into pro hac vice problems here too. In November, the judge in the Anglin case, having learned that Randazza neglected to follow court rules requiring him to update his pro hac vice application with the Nevada discipline, ordered Randazza to comply. Randazza quickly updated his application. But he has continued to fib in court.

Nevada

In Nevada, Randazza can avoid an actual suspension if he "stays out of trouble" during his probation. Any other grievance against him that results in discipline will likely trigger a suspension. With each deception, Randazza increases that risk.

But other jurisdictions that license him have also been hamstrung by Nevada's tepid response to his misconduct, an outcome that Randazza has wrongly trumpeted as evidence of his innocence with respect to allegations that Nevada

didn't consider. Without a judge's authorization or a new complaint, other bar associations are limited in their reciprocal proceedings to addressing only the violations to which Randazza pleaded guilty in Nevada. Some of the bars are upset with Nevada for letting Randazza off easy, according to Dunlap.

"It's good," Dunlap said. "If everyone gets together for a conference, I want Nevada to be all lonely in the corner."

EXHIBIT 9

Exhibit 2

The Florida Bar
Inquiry/Complaint Form

PART ONE (See Page 1, PART ONE – Complainant Information.):

Your Name: Paul Berger
Organization: _____
Address: 1015 Spanish River Road, Apt. 408
City, State, Zip Code: Boca Raton, FL 33432
Telephone: 561-414-4570
E-mail: paul@hurricanelawgroup.com
ACAP Reference No.: _____
Have you ever filed a complaint against a member of The Florida Bar: Yes ☐ No ☒
If yes, how many complaints have you filed? _____
Does this complaint pertain to a matter currently in litigation? Yes ☒ No ☐

PART TWO (See Page 1, PART TWO – Attorney Information.):

Attorney's Name: Marc Randazza
Address: 3625 S Town Center Dr.
City, State, Zip Code: Las Vegas, NV 89135
Telephone: 702-420-2001

PART THREE (See Page 1, PART THREE – Facts/Allegations.): The specific thing or things I am complaining about are: (attach additional sheets as necessary)

See Part Three Attached

PART FOUR (See Page 1, PART FOUR – Witnesses.): The witnesses in support of my allegations are: [see attached sheet].

PART FIVE (See Page 1, PART FIVE – Signature.): Under penalties of perjury, I declare that the foregoing facts are true, correct and complete.

Paul Berger

Print Name

Signature

6/8/1025

Date

PART THREE Facts/Allegations

As described below, I, Paul Berger, allege that Marc Randazza has violated rules of the Florida Bar governing attorney ethics and conduct in Florida. The facts that support these allegations are as follows:

I am an attorney representing a corporate client, Roca Labs, Inc. ("Roca"). Attorney Marc Randazza represents Opinion Corp and Consumer Opinion Corp. These entities operate a website pissedconsumer.com Mr. Randazza's clients are collectively referred to as Pissed Consumer. Roca is involved in litigation with Pissed Consumer. I provided legal services to assist Roca in dealing with false, malicious and defamatory information placed about Roca on pissedconsumer.com.

On **August 12, 2104**, Pissed Consumer filed suit against Roca in the U.S. District Court in the Southern District of New York. At the time the lawsuit was filed attorney Marc Randazza of the Randazza Legal Group was representing Pissed Consumer (Mr. Randazza was not counsel in New York, attorney Ron Coleman represented Pissed Consumer). I am not licensed to practice law in New York and did not file an appearance in this matter. This case was voluntarily dismissed.

On **August 20, 2014**, Roca filed suit against Pissed Consumer in Twelfth Judicial Circuit in and for Sarasota County, Florida. I was an attorney of record on the suit. The matter was then removed to the U.S. District Court for the Middle District of Florida where it is presently ongoing. Mr. Randazza is the lead attorney for Pissed Consumer. I am lead counsel on the case.

On **September 15, 2014**, Mr. Randazza emailed Michael Masnick, the founder of TechDirt about Roca in an effort to find a class representative "to serve Roca right" (see below). Mr. Randazza was asking Mr. Masnick to solicit clients for him and for other law firms to serve as a plaintiff against Roca (In Mr. Juravin's Bar Complaint against Mr. Randazza, he asserts that essentially Mr. Masnick was providing free advertising for Mr. Randazza). TechDirt is a technology website that claims 1.5 million monthly viewers. Mr. Randazza and Mike Masnick are friends and Mr. Masnick has published numerous negative articles about Roca Labs and myself. There is no reason for a technology magazine to publish anything about the

undersigned. The only reason is the request from Mr. Randazza.

Roca Labs
1 message

Marc Randazza <mjr@randazza.com> Mon, Sep 15, 2014 at 8:12 PM
To: Michael Masnick [redacted]

Mike,

Is it something you'd do, ask anyone reading your post if they've been threatened by Roca Labs?

I'm defending Pissed Consumer. I'd really like some threatened parties as witnesses.

Further, I think there's a hell of a class action here - and finding the right class rep would be a good way to serve Roca right.

--

Marc John Randazza, JD, MAMC, LLM | Randazza Legal Group
3625 South Town Center Drive | Las Vegas, NV 89135
Tel: 702-420-2001 | Fax: 305-437-7662
Email: mjr@randazza.com | Website: www.randazza.com

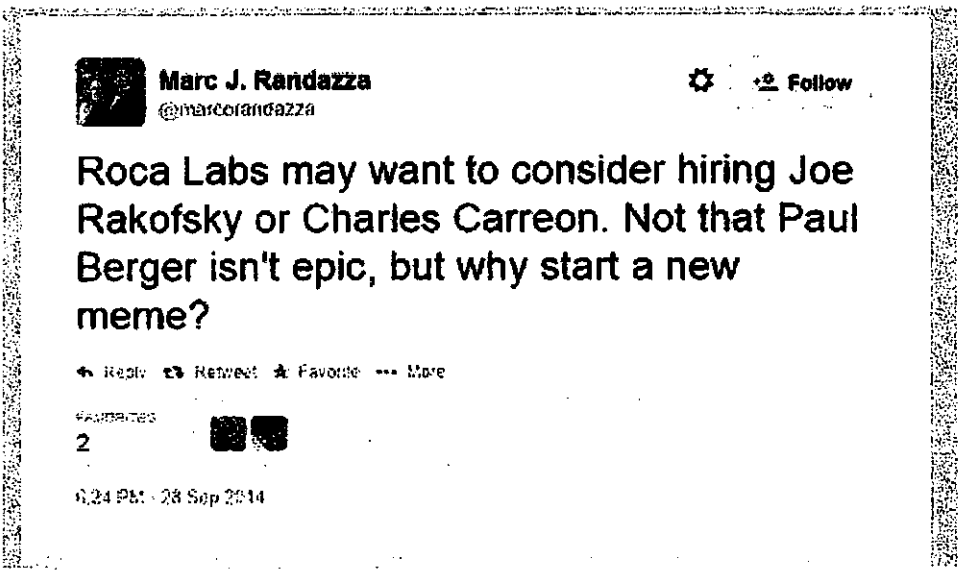
Since the email, TechDirt published a series of articles deriding Roca and portraying Mr. Randazza as a legal champion (articles available upon request). Mr. Randazza augmented by artificial stimulus the publicity normally resulting from his law practice, seeing to it that his successes are broadcast and magnified. At the same time he took to the media to smear my reputation. A search on TechDirt shows dozens of articles linked to my name or about me (articles available upon request). These articles were published because of Mr. Randazza.

On **September 19, 2014,** Mr. Randazza sent me an email that consisted only of the Latin phrase *murum aries attigit* (Email attached as **Exhibit 1**). Mr. Randazza has written a blog about the use of this phrase (Attached as **Exhibit 2**). I interpreted this cryptic email as a threat against myself and Roca by Mr. Randazza[1]. I felt it was Mr. Randazza's announcement that he was going to war with me and that he would show me no mercy. I also interpreted it as a command that I surrender immediately. I sincerely believe that Mr. Randazza's goal is to put both myself and my client out of business.

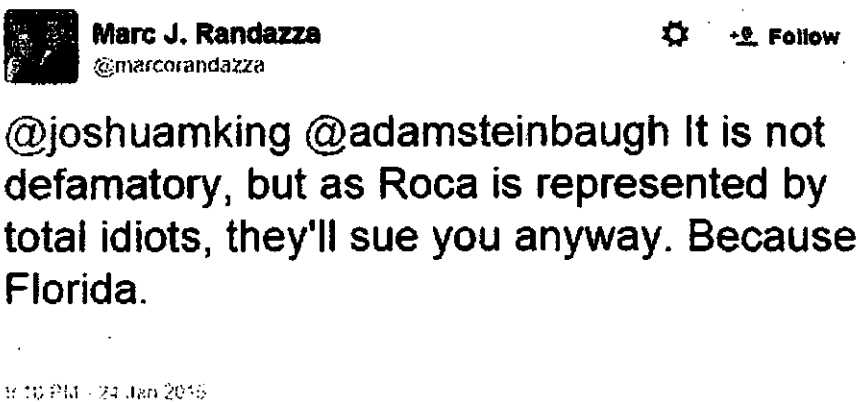
On **September 28, 2014,** Mr. Randazza issued a Tweet comparing me to Joe Rakofsky and Charles Carreon. Mr. Rakofsky was an attorney who had one of his cases declared a mistrial

[1] *Murum Aries Attigit* was a warfare policy attributed to Mark Antony advocating "no mercy" toward Pompey and the Optimates. The policy was said to act as a deterrent against resistance to those about to be besieged. It was an incentive for anyone who was not absolutely sure that they could withstand the assault to surrender immediately, rather than face the possibility of total destruction.

by the Judge because of his apparent lack of courtroom knowledge (his first trial was a murder case). Mr. Carreon was an attorney who sued an Internet publisher and lost trying to protect his reputation online and who has a history of bar complaints. I have no relationship with either attorney and was not aware of either attorney until the Tweet by Mr. Randazza.



On **January 24, 2015**, Mr. Randazza publically called myself and every other attorney providing legal services to Roca Labs "idiots." Mr. Randazza has repeatedly called me an idiot, stupid and other derogatory and unprofessional terms.



Mr. Randazza uses social media websites such as Twitter and his friends at media outlets such as TechDirt to promote himself, smear my reputation and hurt my legal practice. Mr. Randazza's countless number of social media activities about myself ranges from stating that Roca Lab's legal team (including myself) would be a good fit for radical terrorists to stating that "Some Fucker put Roca Labs Shit in my kid's candy bag!" (social media activity upon request).

On **May 6, 2015,** mandatory mediation took place between Roca and Pissed Consumer in a different matter (*Roca Labs, Inc. v. Opinion Corp et. al.* Case No: 8:14-cv-2096-T-33EAJ). After the conclusion of mediation outside the building Mr. Randazza became enraged at Don Juravin and myself. Mr. Randazza screamed, threatened, and berated the undersigned and my client without provocation. He screamed at both of us and threatened violence against both Mr. Juravin and myself. He threatened to beat me up and send Mr. Juravin to the Gaza Strip. Mr. Juravin is Jewish and his family lives in Israel. After screaming and berating Mr. Juarvin and myself for several minutes Mr. Randazza walked to his vehicle and proceeded as if he was leaving (screaming curses at us as he left).

Rather than driving away, he stopped his vehicle, got out of the car and began to scream at Mr. Juravin and myself and made more threats of violence against us. He stated that he would ruin Mr. Juravin and sue him for millions of dollars. He then drove off in his car. The mediator, Mr. Michael Kahn, Esq., a Member of the Florida Bar (482 N. Harbor City Blvd., Melborne, FL 32935 Tel. 321-242-2564) witnessed the entire event.

On May 8, 2015, Mr. Randazza posted a blog on his website with the Hebrew phrase רוקה הוא מאוד נפגע מאוד (translation: "Roca Labs is very hurt"). The message was directed specifically at Mr. Juravin and was more hate speech. A brief search of Mr. Randazza's hundreds of blog posts failed to find any other titles written in Hebrew.

On **June 3, 2015,** during a conference call Mr. Randazza repeatedly berated the undersigned, calling me an idiot, stupid and a "sorority girl". After the call I sent an email to Mr. Randazza notifying him that I would not have any telephone calls that were not recorded to ensure professional behavior (email available upon request).

I am requesting the Committee investigate the above allegations against Marc Randazza to determine whether his conduct violates the Rules of the Florida Bar.

EXHIBIT 1

Re: Roca Labs adv. Pissed Consumer
1 message

Marc Randazza <mjr@randazza.com>
To: "Paul Berger Esq." <legal5@rocalabs.com>

Thu, Sep 18, 2014 at 8:45 PM

murum aries attigit

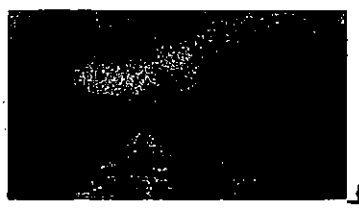
EXHIBIT 2

The Legal Satyricon

Occasionally irreverent thoughts on law, liberty, tech, and politics

Murum Aries Attigit – Το έμβολο έχει αγγίξει τον τοίχο – Teaching Achievement Unlocked!

Murum Aries Attigit. That phrase gets batted around a lot with my name attached to it. But, what does it really mean?



(https://randazza.files.wordpress.com/2014/12/murum-aries-attigit-zp1.jpg)
Το έμβολο έχει αγγίξει τον τοίχο

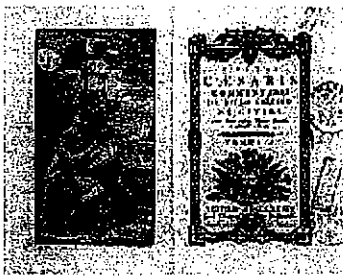
Caesar described the concept in Commentarii de Bello Gallico. It literally translates to "the ram has touched the wall." The "ram" meaning a battering ram, and "the wall" meaning a besieged city's outer defenses. Under Roman Law, a general had the right to offer any terms to a besieged city. As long as the city submitted, the terms could be quite favorable. The Romans were quite civilized in this regard, and dispensing quite favorable, even beneficial, terms was not uncommon. Why destroy a city if you can turn it into an ally?

Of course, these terms were not available indefinitely. Diplomacy ended once the first battering ram touched the city's walls. Then, the general was legally prohibited from offering any terms except complete destruction.

It is well known that this is my personal motto in litigation. I announced it in Righthaven (http://arstechnica.com/tech-policy/2011/10/creditor-moves-to-dismantle-copyright-troll-righthaven/), for example. And, the rest is history as the company now no longer exists. If only they had accepted the really reasonable terms they were offered before the ram touched the wall.

In fact, my most proud achievements while employing Murum Aries Attigit are those that nobody will ever hear about. They are cases where my clients authorized me to offer ludicrously generous terms, the other side accepted, and no metaphoric blood was shed. I wish I could talk about those,

but usually they come along with confidentiality agreements. Suffice to say that I love those. Client gets a four figure bill instead of a six figure one. About half the time, the opposing party winds up calling me to represent them within a year or two.



(https://randazza.files.wordpress.com/2014/12/commentarii_de_bello_gallico.jpg)
Photo Credit: Matris Futuor

As an example, I once represented a party that got a *ridiculous* defamation demand. My personal desire was to utterly destroy the other party — and I had all the tools with which to do so. The allegedly defamatory statements were quite problematic for the plaintiff, but I had a full report from an official source proving each of them exactly true. The report was a public record but not one that the plaintiff thought we could find. We found it. Nevertheless, I am proud to say that we ultimately settled the matter, with my client even writing a check to the plaintiff. Why? It was smart. The client paid less than the cost of a motion to dismiss, or even a small discovery skirmish. The plaintiff's lawyer could not believe his good luck in not getting dashed against the rocks. Client thanked me.

Of course, there is always the fool who thinks that favorable terms are a sign of weakness, or that some terms are not favorable enough. "Just walk away" is often something that gets put on the table. But, we always have
a *Stercus Caput* who will think that *Murum Aries Attigit* means *blind aggression*, or even that it contains a component of anger. Nothing could be further from the truth. (here is an utterly hilarious example (https://randazza.files.wordpress.com/2014/12/roca-v-randazza-complaint.pdf) specifically ¶32-35)

Murum Aries Attigit is an excuse **for** diplomacy and mercy. Once you release the Ram, you do so only after you realize that there is no talking sense into the besieged city. You do so only once you realize that you are not dealing with a rational opponent, and there is no other way to end the fight. You also do not deploy this unless you are pretty damn confident that you hold all the cards. But, with that confidence, you do not let them go once they realize they have lost. You make the offer. You explain what it means to continue past a certain point. You give them a reasonable amount of time to think about it. But, you do not let them go once they pass that point. Once the ram touches the wall, you have to commit to ending the other party as a going concern. You must leave the other party with nothing left with which to fight. Because, if a party is fool enough to refuse the favorable terms, that party is fool enough (and poorly advised enough) to keep being a pain in your ass until you finally put them down like a diseased animal.

At that point, you can confidently say *Caput tuum in ano est, Murum Aries Attigit!* Ok, just the second part.

I loved teaching this to my students. I had some who truly understood it. I love hearing from them. Imparting this kind of wisdom to my students meant a lot to me.

But, nothing could prepare me for this.

I have not taught for a while. But, one of the most rewarding things about teaching is staying in touch with my former students. One, in particular, struggled a bit in law school. But, he had some serious talent and passion. It just needed to be unlocked. The guy is now a pretty successful lawyer, and someone I am very proud to have had as a student.

But, nothing could have prepared me for this.

I woke up this morning to a photo in my inbox.

My former student just walked out of a tattoo parlor with "Το έμβολο έχει αγγίξει τον τοίχο" tattooed on his arm.

For those of you who don't understand Greek, it translates to Latin as "*Murum Aries Attigit*"

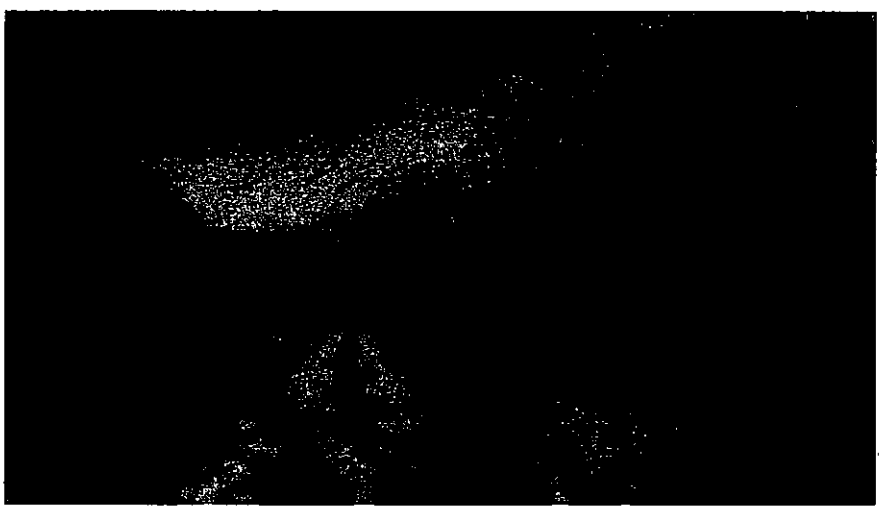
Student called me shortly after sending it, saying "you inspired me to get that."

I don't know too many law professors who could inspire a student to do something like that.

Pretty fucking awesome.

I don't expect too many to follow suit. But, I do ask that any readers who *think* they know what Murum Aries Attigit means, to make sure that they *really* understand it.

Of course, if you want to get it tattooed on you, go right ahead. Just remember what it really means.



(https://randazza.files.wordpress.com/2014/12/murum-aries-attigit-zp.jpg)
Teaching achievement unlocked!

PART FOUR - WITNESSES

Don Juravin
PO Box 5309
Sarasota, FL 34277
Tel 813-810-5100
don@rocalabs.com

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Tel. 727-437-8044
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Tel. 813-415-3510
johnd@inlawwetrust.com

Cindy Koroll
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Rockford, IL 61103
Tel. 815-316-7130
legal6@rocalabs.com

Mike Masnick
TechDirt
370 Convention Way
Redwood City, CA 94063
1.888.930.9272

EXHIBIT #9

PAUL BERGER COMPLAINT TO FLORIDA BAR AGAINST RANDAZZA

EXHIBIT 10

EXHIBIT #10

LETTER TO THE COURT FROM THE HONR NETWORK

February 28, 2021

To Whom It May Concern,

My name is Alexandrea Merrell, I am the Director of Public Relations and Policy at the HONR Network. The HONR Network is a non-profit founded by Lenny Pozner whose 6-year-old son Noah was the youngest victim of the Sandy Hook school shooting, After the shooting the Pozner family was mercilessly attacked online by conspiracy theorists, trolls, and financial opportunists. In response, Mr. Pozner founded the HONR Network, which researches, reports, and ultimately removes online defamation and targeted harassment.

Today, the HONR Network is largely regarded as one of the most influential organization in the online defamation space. You may have seen the recent 60 Minutes episode focusing on our founder, our work and our successes. We liaise closely with social media and internet providers to both remove defamatory and harassing content and to create policy that helps to create a safer, more inclusive internet for all. Additionally, we work with law enforcement, politicians, and policy makers in order to protect people who are being victimized online.

Recently we have been made aware of the defamation, harassment, doxing, and death threats made against Mr. Postle. While we are in the early stages of researching and cataloging the abuse, we have certainly found enough actionable content to warrant further investigation and have undertaken the arduous task of researching and mapping.

We are assisting Mr. Postle in finding appropriate counsel in California, familiar with online defamation and harassment campaigns and will be working closely with the attorney he retains in order to provide our findings and lend our expertise.

Please do not hesitate to contact me if you have any questions about our organization, our work, or specifically about the Postle case.

Sincerely,

Alexandrea Merrell

Alexandrea Merrell
Director of Public Relations and Policy
HONR Network Inc.
20 West 55th Street #PH
New York, NY 10019
917-885-4051
www.HONRnetwork.org

EXHIBIT 11

EXHIBIT #11

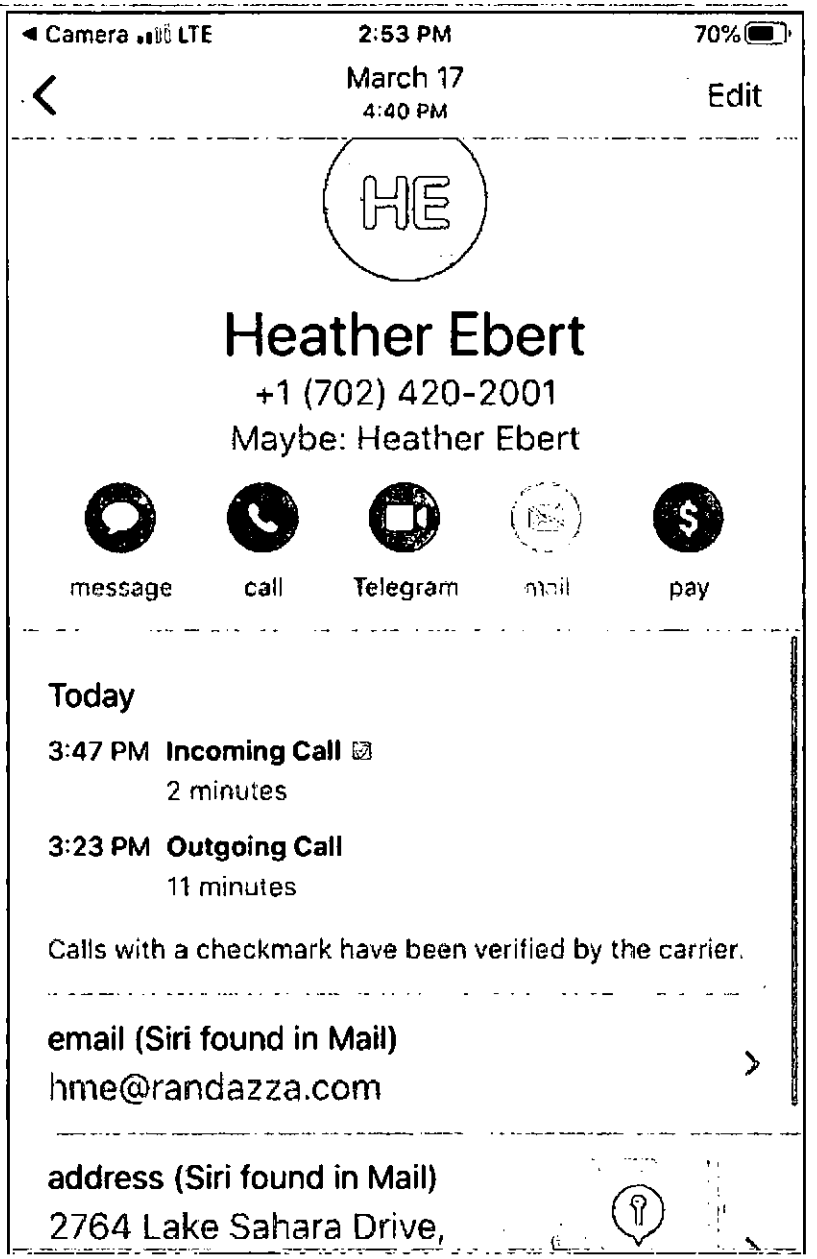
PHONE RECORDS OF CALL TO MR. BENSAMOCHAN

EXHIBIT 12

EXHIBIT #12

PHONE RECORDS OF CALLS TO AND FROM RANDAZZA LEGAL GROUP

This is the phone number for Mr Randazza's law firm.



This is the phone number for Mr Randazza's law firm.

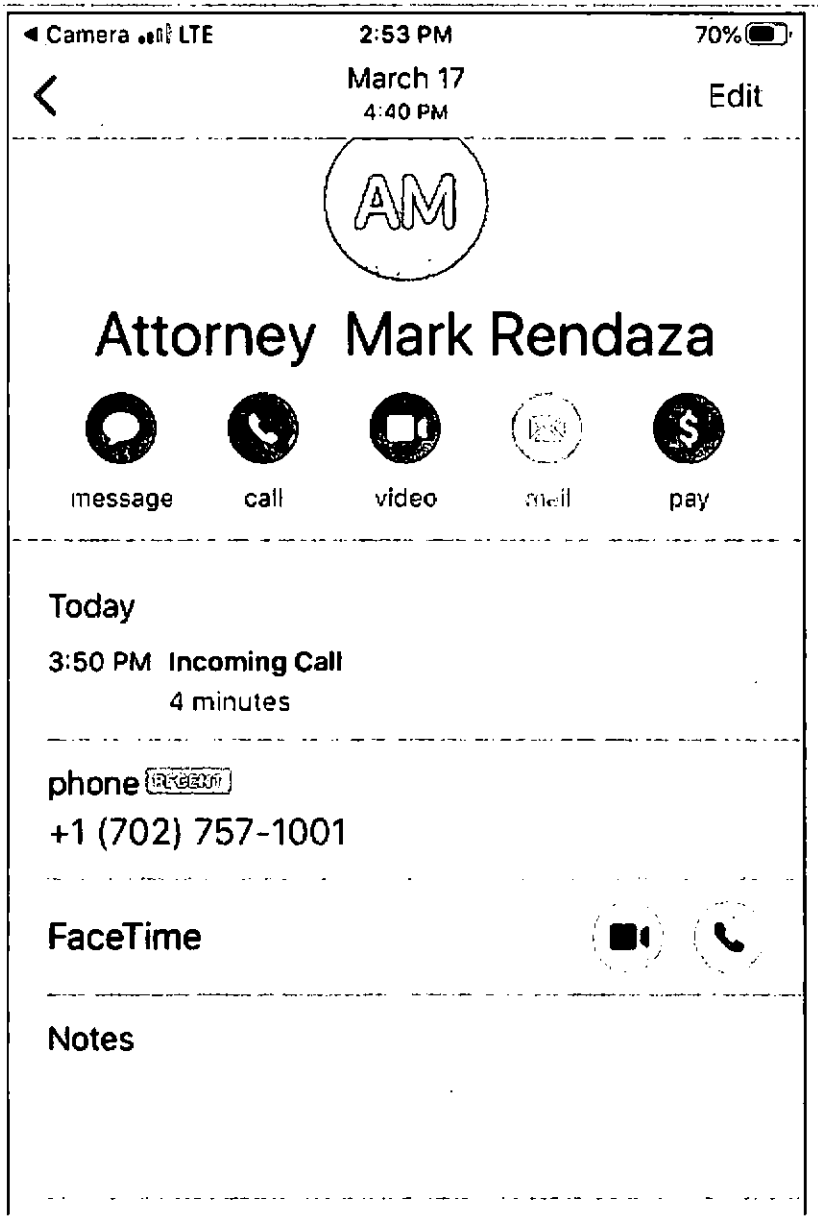


EXHIBIT 13

EXHIBIT #13

INCOMING AND OUTGOING CALLS FROM MS MERRELL'S PHONE

Ms Merrell's phone log from March 17, 2021

Steven Lambert	7:48 PM
Mike Postle (2)	7:07 PM
Mark Bankston - Lawyer	6:56 PM

Mobile (281) 633-1105
Outgoing call, 10 mins 54 sec

Mike Postle	6:56 PM
Mark Bankston - Lawyer	6:55 PM
Mike Postle (2)	6:50 PM
Mike Postle (2)	6:09 PM

Detailed log of Ms Merrell's phone (time difference due to time zone, Ms Merrell's is in NYC)

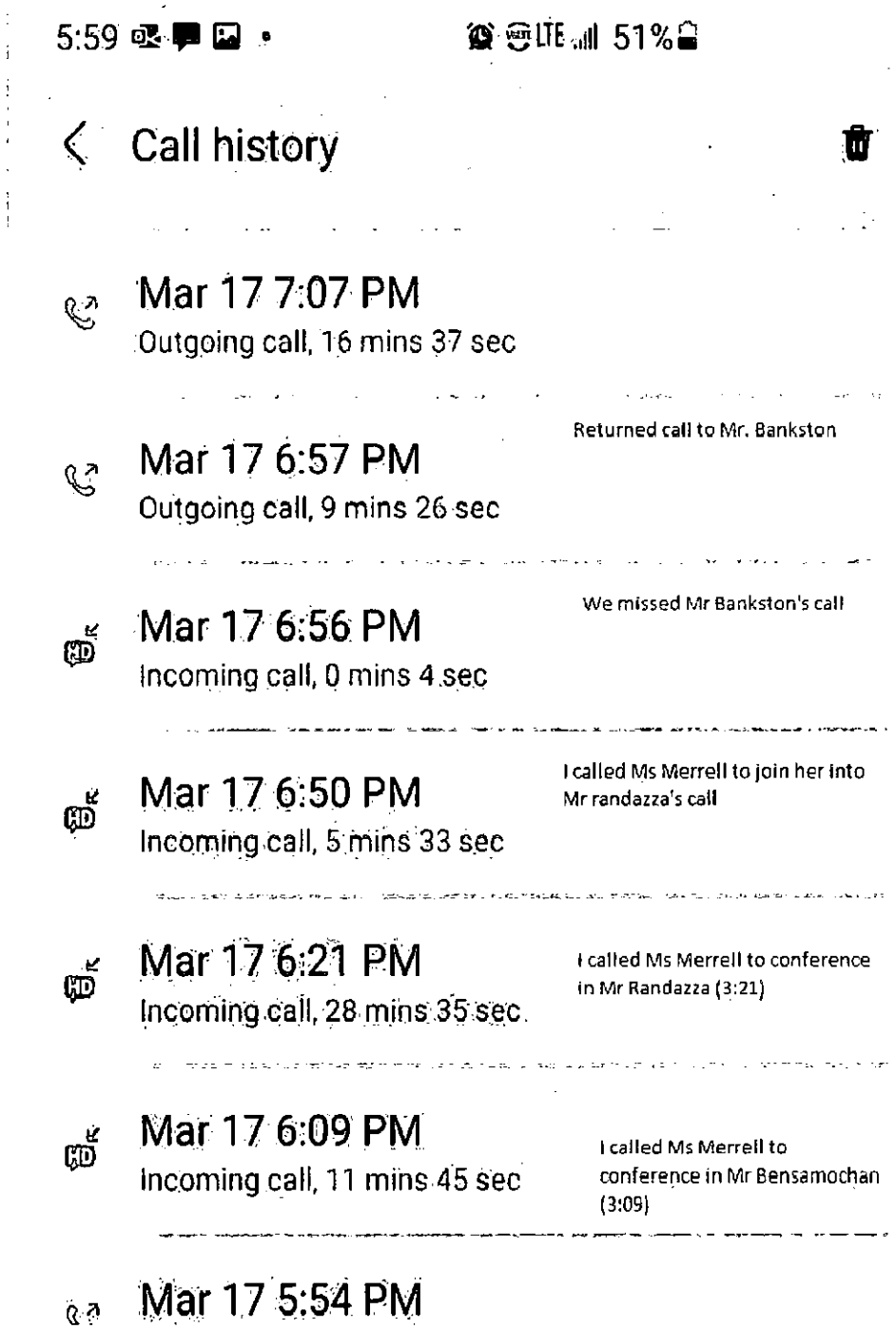


EXHIBIT 14

EXHIBIT #14

COMPLAINTS FILED AGAINST MR RANDAZZA BY MYSELF AND MS MERRELL

DECLARATION OF MIKE POSTLE

STATE OF CALIFORNIA §
§
SACRAMENTO COUNTY §

I, Mike Postle, declare under penalty of perjury that the following declaration is true and correct and based upon my personal knowledge:

1. My name is Mike Postle. I am over the age of 18 and competent to make this declaration.

2. I am a resident of Sacramento, California. I am a professional poker player. I am currently pursuing a defamation lawsuit based on false allegations that I cheated in a series of live-stream poker events.

3. Attorney Marc Randazza represents one of the individuals who defamed me.

4. On March 17th, 2021, I had a phone conversation with Alexandrea Merrell and Mr. Randazza in which Mr. Randazza acted in an outrageously unprofessional manner.

5. During this phone call, Mr. Randazza made abusive statements, including calling Ms. Merrell "a fucking cunt."

6. Mr. Randazza also said, "I don't know who the fuck you are" and "shut up and let the boys talk," he continued to berate her and call her a "fucking liar" and a "fucking bitch" so we hung up on the call.

Mike Postle

Dated: March 18th, 2021

DECLARATION OF ALEXANDREA MERRELL

STATE OF NEW YORK §
§
NEW YORK COUNTY §

I, Alexandrea Merrell, declare under penalty of perjury that the following declaration is true and correct and based upon my personal knowledge:

1. My name is Alexandrea Merrell. I am over the age of 18 and competent to make this declaration.

2. I am the President of Orndec Public Relations based in New York. My firm specializes in crisis reputation response and communication strategy. I have also come to be heavily involved in the growing national struggle with online harassment and defamation.

3. Over the past several years, I have assisted numerous individuals who have been harassed online, both in my business and through *pro bono* endeavors.

4. On some occasions, I assist these individuals in trying to locate law enforcement who are willing to pursue their harassers, or in trying to locate and convince attorneys to pursue legal cases on their behalf.

5. One such individual I have been assisting is Mike Postle, a poker prodigy whose professional career was cut short by a false smear campaign that he was a cheater.

6. Marc Randazza represents one of the individuals who is alleged to have defamed Mr. Postle. At present, Mr. Postle remains unrepresented.

7. Over the past few weeks, I have been contacting attorneys to see if they are interested in bringing a defamation case based on that smear campaign.

8. In early March 2021, I called attorney Mark Bankston to discuss the case. Because of my work with some of the Sandy Hook families in fighting online abuse, I knew Mr. Bankston handled these kind of defamation cases.

9. I described to Mr. Bankston the basic facts of the case, but I did not disclose Mr. Postle's name. Mr. Bankston told me he was interested in the facts and that once he had researched some legal issues he would like to talk to the client.

10. On March 17, 2021, Mr. Postle and I had a phone conversation with Mr. Randazza. During that conversation, I told Mr. Randazza that we had approached Mr. Bankston

and that he would hopefully be appearing in the near future. Mr. Randazza then said that he had to take a call and hung up.

11. A few minutes later, Mr. Randazza called us back. He told us that he had called Mr. Bankston and that Mr. Bankston denied any intention to make an appearance for Mr. Postle.

12. Mr. Randazza was astonishingly abusive and profane during this call.

13. During the call, Mr. Randazza called me "a fucking cunt," "a fucking liar," and "fucking bitch liar."

14. He then told me to "shut the fuck up and let the big boys talk."

15. My career has often brought me into contact with lawyers and law enforcement, and thus I am no stranger to colorful language, crude humor, and the occasional aggressive confrontation. But what Mr. Randazza did was truly upsetting

16. I am also extremely disturbed that his abuse and his insult of "fucking cunt" was meant to demean and disgrace me as a woman.

Alexandrea Merrell

Dated: March 18th, 2021

EXHIBIT 15

Exhibit #15 – Efforts to Intimidate me into not seeking assistance with the HONR Network

1. Claims in his filing for fees that Ms Merrell and the HONR Network "likely committed the unlicensed practice of law" for assisting me

2. Billing statement where Randazza claims he is owed more because of HONR

3. CardChat Article where Mr. Randazza calls people offering me assistance "idiots"

any such discovery. Then Postle sought a months-long continuance of the already-continued Anti-SLAPP hearing, arguing that discovery was needed and he was having difficulty retaining new counsel. This necessitated an opposition from Brill to ensure that her Anti-SLAPP Motion would be heard in a timely manner. Postle never provided any evidence or explanation of his efforts to retain counsel and refused to agree to a reasonable continuance, requiring Brill's attorneys to prepare for and attend the hearing on Postle's motion for a continuance. And finally, Postle completely ignored Brill's attempt to compromise on the amount of fees to cut his fee liability short, necessitating this motion.

Furthermore, Brill's counsel spent 5.3 hours of work, totaling $3,310 in fees, related to the HONR Network's involvement in this suit. This organization was advising Postle on litigation strategy and was actively involved in attempting to negotiate a lengthy continuance of the hearing on Brill's Anti-SLAPP Motion. (Randazza Decl. at ¶ 39; Declaration of Alex J. Shepard ["Shepard Decl."], attached as **Exhibit 15**.) In doing so, the HONR Network and its representative, Alexandrea Merrell, likely committed the unlicensed practice of law. Brill's counsel were thus forced to spend time determining whether claims should be brought against the HONR Network and Postle, as well as to correct misrepresentations made in the press by the HONR Network regarding its unlicensed practice of law. (Randazza Decl. at ¶¶ 39-41.) As this work stemmed directly from the HONR Network's attempt to secure a lengthy and unwarranted continuance of the hearing on Brill's Anti-SLAPP Motion, these hours are properly compensable.

3.3 Anticipated Future Fees

To obviate the need for a subsequent fee motion to include fees spent on a reply in support of this Motion (assuming Postle files an opposition) and attending the hearing on this Motion, Brill requests an estimated $10,000 in additional fees if Postle files an opposition, and $2,000 in additional fees if he does not. This is a reasonable estimate based on Randazza's familiarity with the work involved in briefing and arguing motions for attorneys' fees. (Randazza Decl. at ¶ 31.)

4.0 CONCLUSION

Based on the foregoing, Defendant Veronica Brill hereby respectfully requests that the Court award her $961.91 in costs and between $67,677.50 and $77,677.50 in attorneys' fees, for a total award

RANDAZZA
LEGAL GROUP

Marc J. Randazza, JD, MAMC, LLM
Licensed in AZ, CA, FL, MA, NV

02 April 2021

Via Email Only

Michael Postle
<droamscatpoker@gmail.com>

Re: Voluntary Dismissal of Case in Postle v. Brill

Dear Mike:

I saw that you dismissed your case against Veronica Brill in Sacramento Superior Court. This makes Ms. Brill the prevailing defendant. We want you to pay her fees.

Cal. Code Civ. Proc. § 425.16(c)(1) provides that "a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." Cases addressing the Anti-SLAPP statute's attorneys' fees provision have discussed the term "prevailing defendant" in the statute and have found it does not require an order granting an Anti-SLAPP motion to entitle a moving defendant to fees. *See Coltrain v. Shewalter* (1998) 66 Cal. App. 4th 94, 102 (stating that "[t]he vast majority of attorney's fees statutes do not explicitly provide for the event of voluntary dismissal"); *see also New Cingular Wireless PCS, LLC v. Public Utilities Com.* (2016) 246 Cal. App. 4th 784, 817 n.29 (stating that "[w]hile historically the term 'prevailing party' was construed in such statutes to mean the defendant must win a judgment on the merits . . ., the modern trend of authority allows such a showing even in the absence of a judgment on the merits").

Voluntary dismissal before the hearing on an Anti-SLAPP motion creates a presumption that the defendant is the prevailing party on the Anti-SLAPP motion. *Shewalter* 66 Cal. App. 4th at 107.

In determining whether an Anti-SLAPP defendant is "a prevailing defendant," the "critical issue is which party realized its objectives in the litigation. Since the defendant's goal is to make the plaintiff go away, ordinarily the prevailing party will be the defendant." *Shewalter*, 66 Cal. App. 4th at 107.

You cannot avoid an award of attorneys' fees by voluntarily dismissing your claims after an Anti-SLAPP motion is filed. *See ARP Pharmacy Serv., Inc. v. Gallagher Basset Serv., Inc.* (2006) 138 Cal. App. 4th 1307 (overruled on unrelated grounds in *Beeman v. Anthem Prescription Management, LLC* (2013) 58 Cal. 4th 329) (stating that "[a] plaintiff may not avoid liability for attorney[s'] fees and costs by voluntarily dismissing a cause of action to which an anti-SLAPP motion is directed"); *eCash Techs., Inc. v. Guagliardo*, 210 F. Supp. 2d 1138, 1154-55 (C.D. Cal. Oct. 30, 2000) (citing *Shewalter* and *Moore* and noting that attempt to voluntarily dismiss claims after filing of Anti-SLAPP motion did not affect moving party's entitlement to attorneys' fees); *Moraga-Orindo Fire Protection Dist. v. Weir* (2004) 115 Cal. App. 4th 477, 480 (noting that "resolution of the underlying action does not moot a fee request under the SLAPP statute"); *White v. Lieberman* (2002) 103 Cal. App. 4th 210,

220-21 (allowing award of attorneys' fees and costs pursuant to Anti-SLAPP statute even though the trial court sustained defendant's demurrer without leave to amend without ruling on the pending anti-SLAPP motion).

Federal courts in the Ninth Circuit have also recognized that allowing a plaintiff start frivolous litigation, causing defendants to run up a significant legal bill, and then calling it quits before an Anti-SLAPP motion is decided, allows plaintiffs "to circumvent the SLAPP liability mandated by California law." *Gilabert v. Logue*, 2013 U.S. Dist. LEXIS 179128, *5-6 (C.D. Cal. Dec. 20, 2013).

Ms. Brill is entitled to an award of her attorneys' fees, and the court must make a determination regarding fees before allowing dismissal of your claims. Ms. Brill is clearly the prevailing party on her Anti-SLAPP motion. She sought dismissal of all your claims, which has happened. You have not achieved any legitimate objective of your suit, as you never so much as made a settlement offer, Ms. Brill has not paid you any money, and none of Ms. Brill's speech has been removed.

We plan to bring these authorities to the court's attention and request that the April 20, 2021 hearing on Ms. Brill's Anti-SLAPP motion go forward as scheduled in order to reduce our fee award to a judgment. To do so, we will need to draft a motion for fees and will incur significant costs in doing so. You will need to pay our fees and costs incurred in drafting that motion.

This letter is our attempt to save you the additional fees that will be incurred going forward. At this point, your fee liability is $59,270.00.

Paying this amount now voluntarily will also reduce your total bill in the future, as you will not have to pay Ms. Brill's fees in attending the hearing on the Anti-SLAPP motion, preparing a motion for fees, or attending the hearing on that motion. Resolving this case will never be cheaper than it is right now. Further, this number is a moving target. If we are compelled to do more motion practice, investigation, or dealing with your friends at the HONR network (who caused a significant portion of these fees to be incurred), we will charge you for that, too.

Please let us know by April 6, 2021 at 5:00 p.m. Pacific whether you plan to pay Ms. Brill's fees and costs, or if you will require us to continue litigating until you have paid.

Sincerely,

Marc J. Randazza

cc: Veronica Brill (via separate email); Alex J. Shepard (via email).

APRIL 27, 2021 SCANDALS & CRIME

Veronica Brill Seeking Nearly $79K in Legal Fees from Mike Postle

By HALEY HINTZE
4 MIN READ
1

Veronica Brill wants Mike Postle to pay — her attorney's fees. Brill is looking to recoup as much as $78,600 in attorney's fees and related legal costs incurred while defending herself against the defamation lawsuit brought against her and 11 co-defendants by the alleged poker cheat.

Veronica Brill has repeatedly blasted Mike Postle for his filing of a frivolous defamation suit against her and 11 other defendants. (Image: YouTube/Veronica Brill)

In a court filing obtained by CardsChat News, Brill's attorney, Marc J. Randazza, detailed the expenses incurred on her behalf while being forced to defend against the largely frivolous lawsuit filed by Postle in 2020. That action sought a massive $330 million in damages from Brill and others.

Brill joins fellow defendant Todd Witteles in filing a formal compensation claim against Postle following **his voluntary withdrawal of the libel lawsuit**, largely due to his failure to secure replacement counsel after his original attorney successfully removed himself from the case in February. **Witteles is seeking more than $43,000** in legal fees, meaning Postle's liability could top $120,000.

Brill's anti-SLAPP (Strategic Lawsuit Against Public Participation) motion against Postle remains open but has been rendered moot by Postle dropping his claims. Both Brill and Witteles also have preserved their rights to pursue their legal expenses. Presiding judge Shama L. Mesiwala affirmed the defendants' right to collect in a tentative ruling issued during an April 20 hearing, in which Postle's case was formally dismissed.

Legal fees to date top $68,000

The 13-page motion to collect legal fees, filed on April 12, asks for $68,639.41 in already-incurred legal fees. That amount includes attorney-related fees of $67,677.50 for the services of Randazza's legal firm, including a second attorney who worked on the case, Alex J. Shepard. The filing also asks for an additional $961.91 in legal fees.

The filing also includes a presumptive claim for expenses that are still expected to be incurred. An upcoming hearing will determine the extent of Postle's financial liability, and according to the filing, "Brill requests an estimated $10,000 in additional fees if Postle files an opposition, and $2,000 in additional fees if he does not." That number is a "reasonable estimate" based on Randazza's familiarity with the work involved in briefing and arguing motions for attorneys' fees, the motion says. Randazza noted that Postle has not yet responded to the claim for fees.

Judge Mesiwala may decide on the amount Postle owes Brill in a hearing currently scheduled for May 19. Mesiwala is also expected to rule on the parallel anti-SLAPP motion previously filed by Witteles, though the date of that decision currently remains unknown.

Randazza blasts Postle and legal advisors

Brill's attorney, Randazza, didn't mince his words when talking about the case to CardsChat News, stating, "It is unfortunate that Mr. Postle appears to have received some terrible advice from either really piss-poor lawyers who didn't have the courage to enter an appearance in the

case, or from non-lawyers who decided to play lawyer. Either way — he seems to have listened to idiots."

The reference to non-lawyers was aimed at the HONR Network, a group founded to battle online defamation that volunteered its services to Postle, including assisting him in his ultimately failed attempt to find replacement counsel.

"California law is crystal clear on this," Randazza added. "If you file a SLAPP suit, and you try to cut and run after getting hit with an anti-SLAPP motion, you are deemed the losing party and have to pay the prevailing party's fees. Now, he [Postle] doesn't even have a prayer of being the prevailing party.

Randazza says he hopes that whoever advised Postle over the past few months is going to help him pay any judgment levied against him. "It only seems fair," Randazza said.

Haley Hintze
CONTRIBUTING WRITER HALEY HINTZE IS A 20-YEAR VETERAN OF THE POKER WORLD, A WOMEN IN POKER HALL OF FAME FINALIST, AND TWO-TIME GLOBAL POKER AWARDS FINALIST.
SHARE THIS STORY

EXHIBIT 16

Exhibit #16 - Doxxing by Mr. Randazza and Ms Brill

1. Mr. Randazza's tweet and refusal to remove the doxing content
2. Ms Brill's reposting of my address and phone number
3. A small sampling of the attacks received due to Mr. Randazza and Ms Brill doxing me

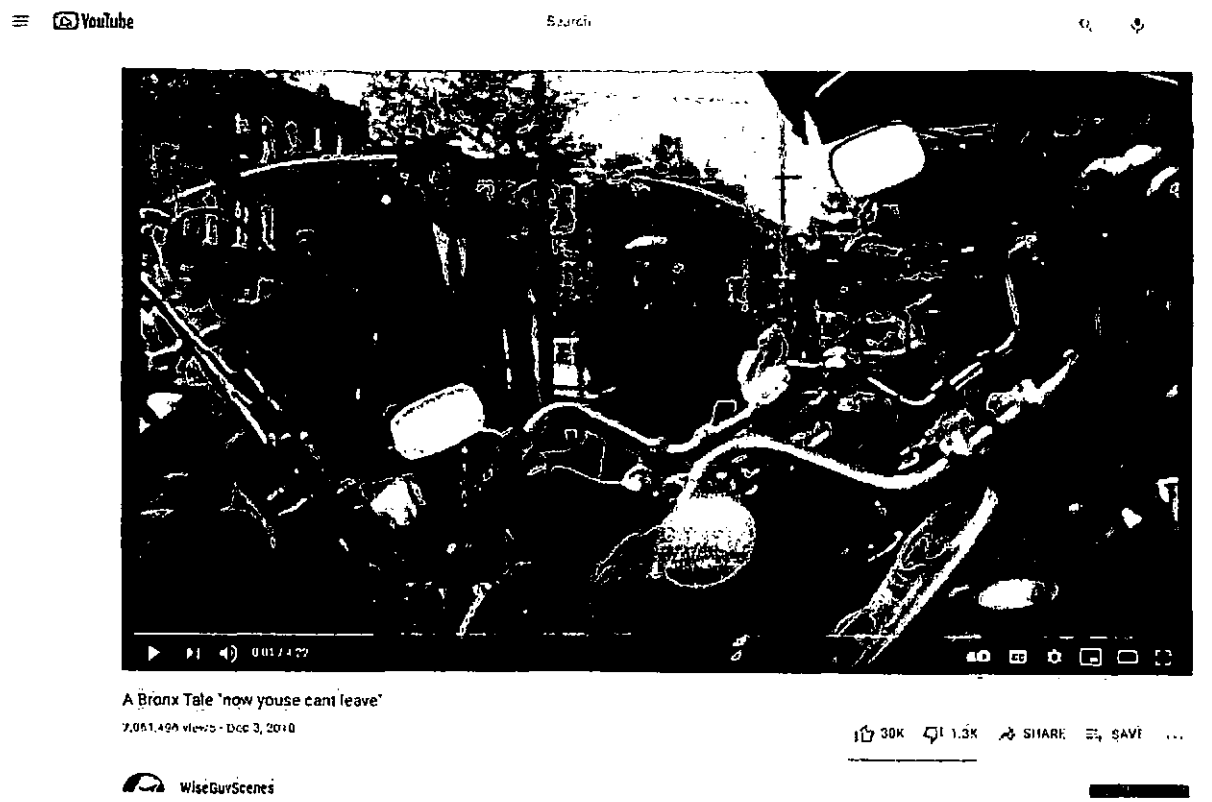
← **Tweet**

Marc J. Randazza
@marcorandazza

I do not think that Mike Postle understands how the Anti-SLAPP law works. You can't just cut and run. You automatically lose the Anti-SLAPP motion if you do that.

For those without a JD, this video explains it: youtube.com/watch?v=H_lijL...

Please note that the video link above goes to a YouTube video where mafiosos beat up a bunch of guys. A screen shot is below, followed by the remainder of his tweet and responses.



CIV-110

NAME: Michael Postle STREET ADDRESS: 3724 Door Wash Way CITY: Antelope STATE: CA ZIP CODE: 95843 TELEPHONE NO: (916) 790-4112 E-MAIL ADDRESS: ATTORNEY FOR (name): IN PRO PER	FOR COURT USE ONLY FILED/ENDORSED APR - 1 2021 By: E. Molina, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS: 813 6th Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, 95814 BRANCH NAME: Hall of Justice	
Plaintiff/Petitioner: Michael Postle Defendant/Respondent: Veronica Bird, et al	
REQUEST FOR DISMISSAL	CASE NUMBER: 34-2020-00286265

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. **TO THE CLERK. Please dismiss** this action as follows:
   a. (1) ☐ With prejudice (2) ☒ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
      (3) ☐ Cross-complaint filed by *(name)* on *(date)*
      (4) ☐ Cross-complaint filed by *(name)* on *(date)*
      (5) ☒ Entire action of all parties and all causes of action
      (6) ☐ Other *(specify)*:

2. *(Complete in all cases except family law cases.)*
   The court ☐ did ☒ did not waive court fees and costs for a party in this case. *(This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed.)*

Date: April 1st 2021
Michael Postle
(TYPE OR PRINT NAME OF ☐ ATTORNEY ☒ PARTY WITHOUT ATTORNEY)

▶ Michael Postle
(SIGNATURE)

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-Complainant

3. **TO THE CLERK:** Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶
(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-Complainant

** If a cross-complaint or Response (Family Law) seeking affirmative relief is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

(To be completed by clerk)
4. ☒ Dismissal entered as requested on *(date)*: 4/1/21
5. ☐ Dismissal entered on *(date)*: as to only *(name)*:
6. ☐ Dismissal not entered as requested for the following reasons *(specify)*:

7. a. ☐ Attorney or party without attorney notified on *(date)*:
   b. ☐ Attorney or party without attorney not notified. Filing party failed to provide
      ☐ a copy to be conformed ☐ means to return conformed copy

Date: 4/1/21 Clerk, by _____, Deputy

Page 1 of 1

Form Adopted for Mandatory Use
Judicial Council of California
CIV-110 [Rev. Jan. 1, 2013]

REQUEST FOR DISMISSAL

Code of Civil Procedure §§ 581 et seq.; Cal. Rules of Court, rule 3.1390
www.courts.ca.gov

Matt Collins @pingy300 · Apr 2

Replying to @marcorandazza

Posting his address and phone number?

3 1

Andrew Ransom @503Andrew · Apr 2

It's still doxing even if it's reposting a public document. Most people aren't going to have ready access to that publicly filed document versus a very public Twitter thread.

1

Marc J. Randazza @marcorandazza · Apr 2

Did not occur to me that this might be his home address. If he used his that, (I have not confirmed) then that is on him.

Had it occurred to me that it was his home address, I would have redacted it. But, since I can not un-ring the bell, I am not going to change anything.

1 2

Andrew Ransom @503Andrew · Apr 2

You can't delete, redact, and repost a tweet that has a whole 11 likes? Or you won't? Don't get me wrong, Postle is scumbag cheat, but nobody deserves to be doxxed with their address and phone number.

3

Marc J. Randazza @marcorandazza · Apr 2

Not interested.

1

Andrew Ransom @503Andrew · Apr 4

As a lawyer, I figured you'd be aware that doxing is illegal in many places and violates Twitter's TOS.

← **Tweet**

Veronica Brill
@Angry_Polak

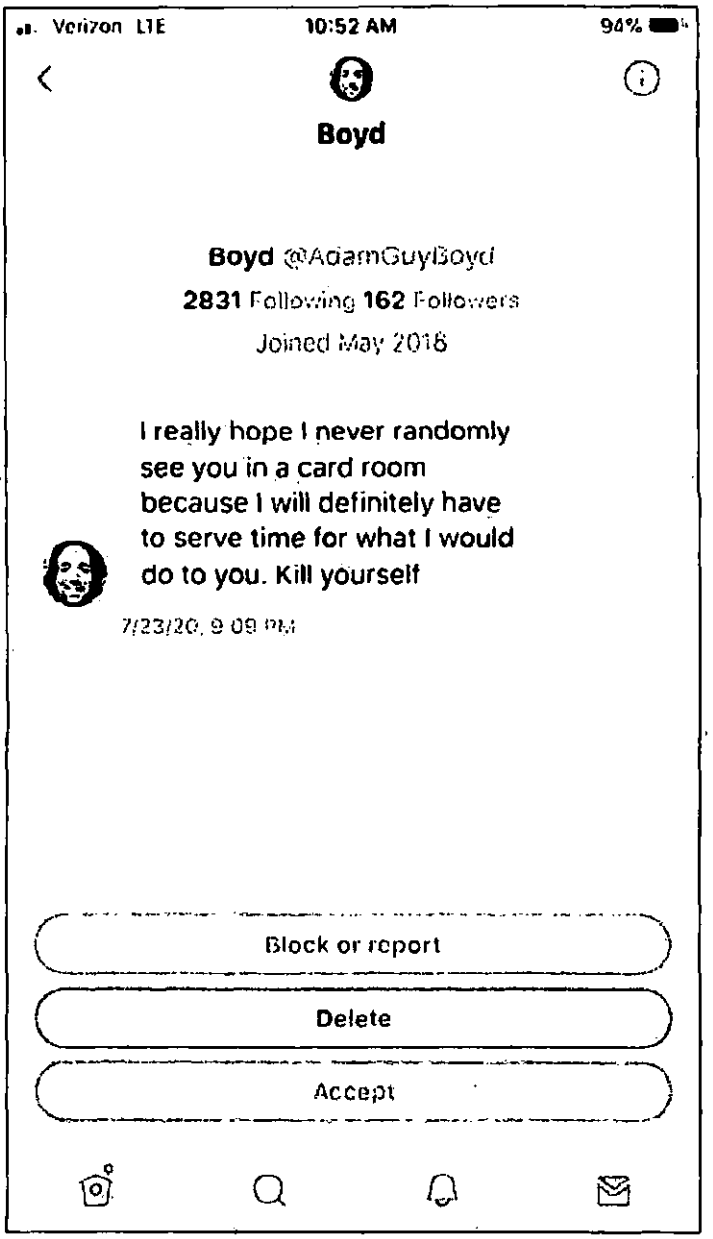
Mike voluntarily dropped the case against me and many others. Now he owes me my legal fees

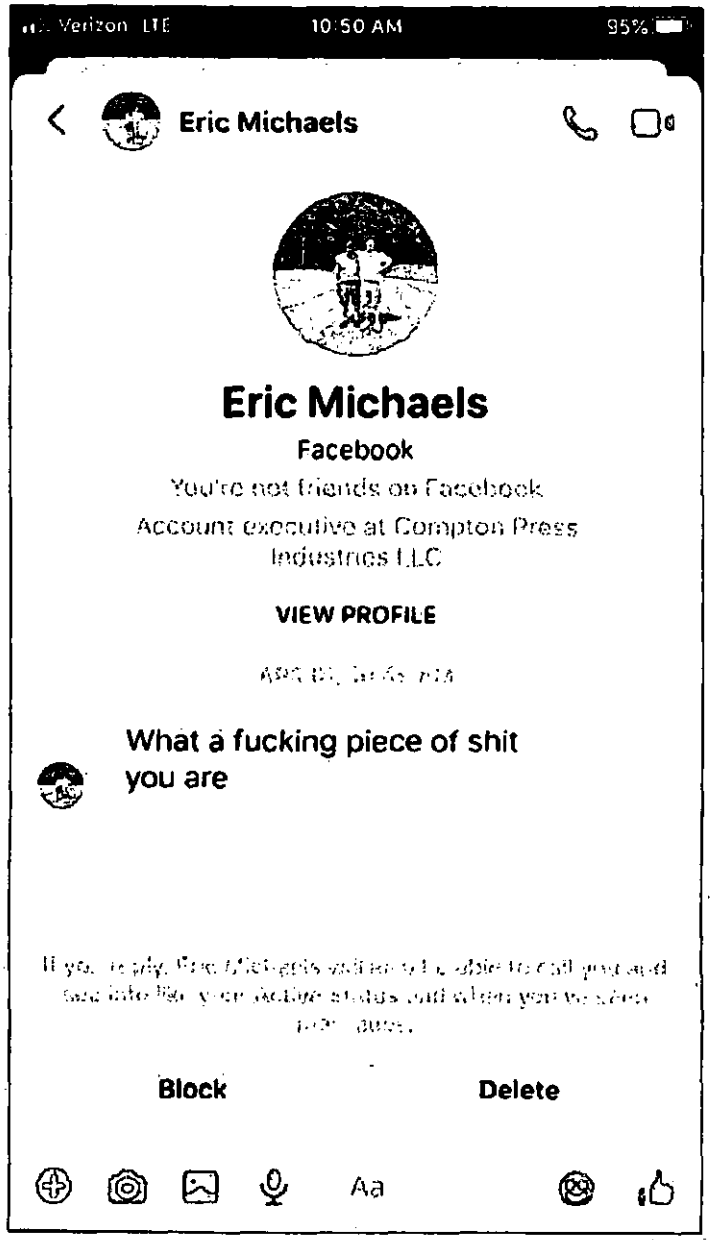
> **Marc J. Randazza** @marcorandazza · Apr 2
> I do not think that Mike Postle understands how the Anti-SLAPP law works. You can't just cut and run. You automatically lose the Anti-SLAPP motion if you do that.
>
> For those without a JD, this video explains it: youtube.com/watch?v=H_lijL...

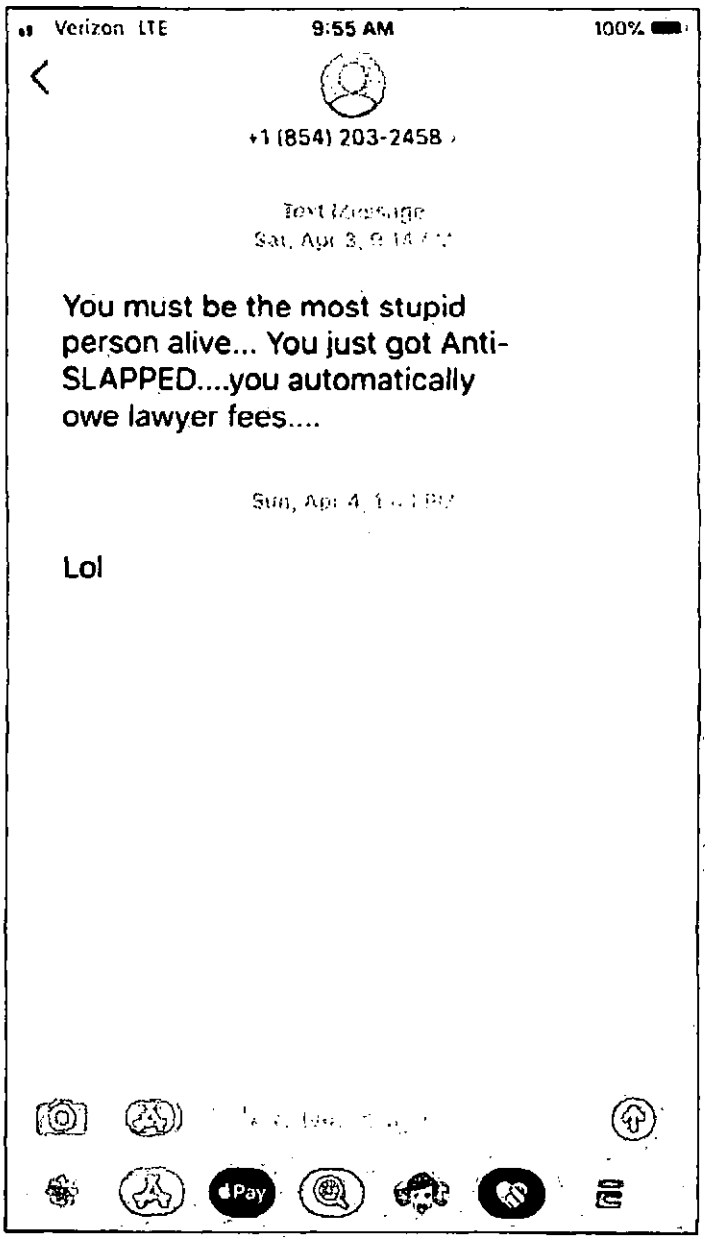
CIV-110

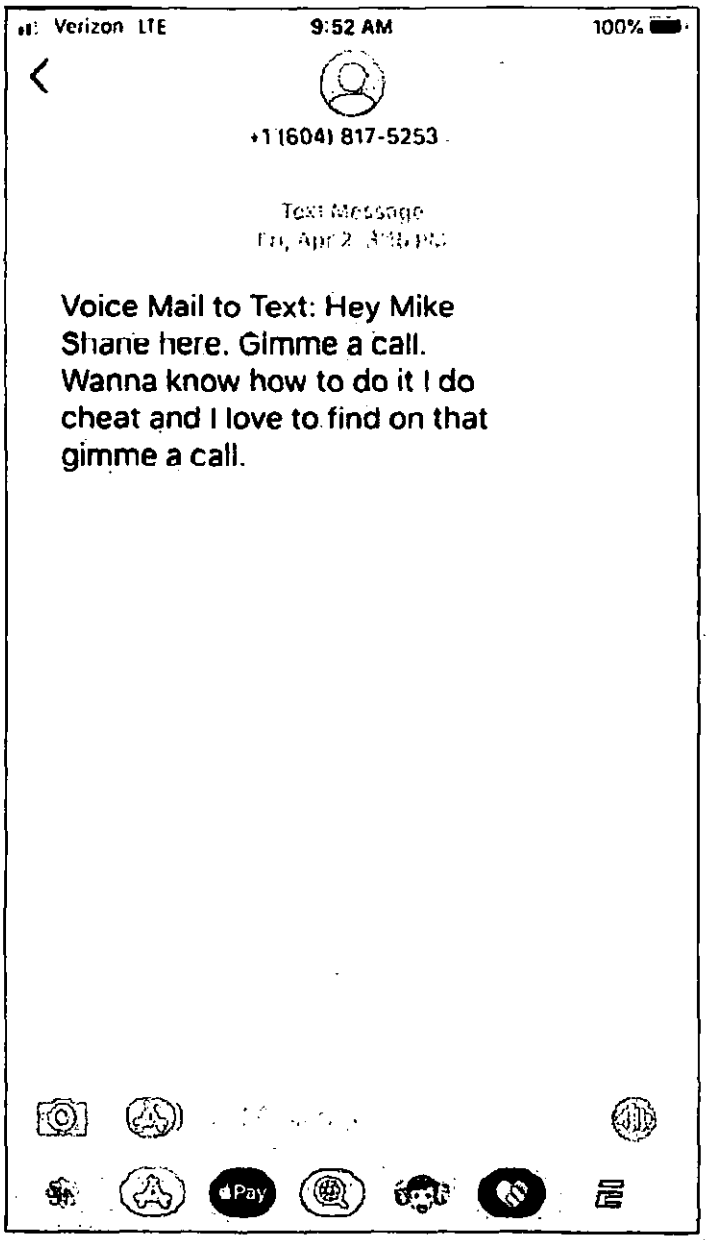
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: Michael Postle FIRM NAME: STREET ADDRESS: 3724 Deer Path Way CITY: Antelope STATE: CA ZIP CODE: 95843 TELEPHONE NO.: (916) 790-4112 FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name): IN PRO PER	FOR COURT USE ONLY FILED/ENDORSED APR - 1 2021 By: E. Medina, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS: 813 6th Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, 95814 BRANCH NAME: Hall of Justice	
Plaintiff/Petitioner: Michael Postle Defendant/Respondent: Veronica Brill, et al.	
REQUEST FOR DISMISSAL	CASE NUMBER: 34-2020-00286265

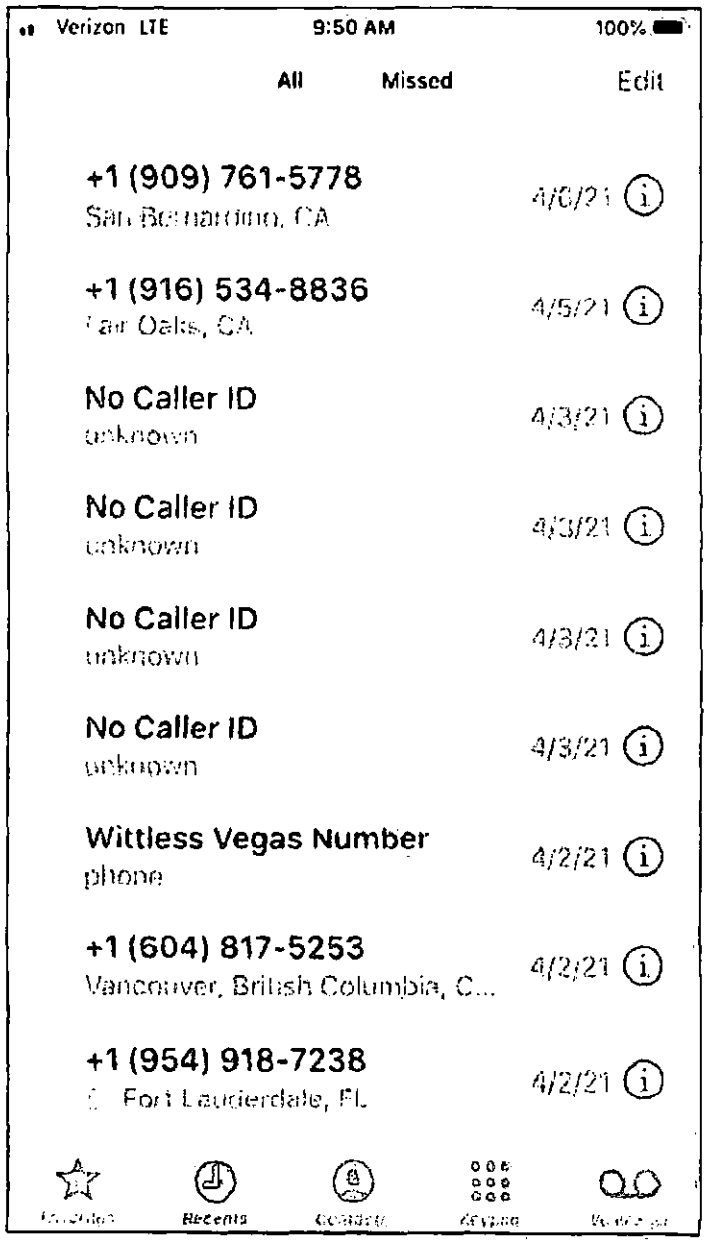
A conformed copy will not be returned by the clerk unless a method of return is provided with the document.


Verizon LTE
10:52 AM
94%
Boyd
Boyd @AdamGuyBoyd
2831 Following 162 Followers
Joined May 2018
I really hope I never randomly see you in a card room because I will definitely have to serve time for what I would do to you. Kill yourself
7/23/20, 9:09 PM
Block or report
Delete
Accept


Verizon LTE
10:50 AM
95%
Eric Michaels
Eric Michaels
Facebook
You're not friends on Facebook
Account executive at Compton Press Industries LLC
VIEW PROFILE
What a fucking piece of shit you are
Block
Delete
Aa


Verizon LTE
9:55 AM
100%
+1 (854) 203-2458
Text Message
Sat, Apr 3, 9:14 PM
You must be the most stupid person alive... You just got Anti-SLAPPED....you automatically owe lawyer fees....
Sun, Apr 4, 1:... PM
Lol
Pay


Verizon LTE
9:52 AM
100%
+1 (604) 817-5253
Text Message
Fri, Apr 2
Voice Mail to Text: Hey Mike Shane here. Gimme a call. Wanna know how to do it I do cheat and I love to find on that gimme a call.
Pay


Verizon LTE
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All
Missed
Edit
+1 (909) 761-5778
San Bernardino, CA
4/6/21
+1 (916) 534-8836
Fair Oaks, CA
4/5/21
No Caller ID
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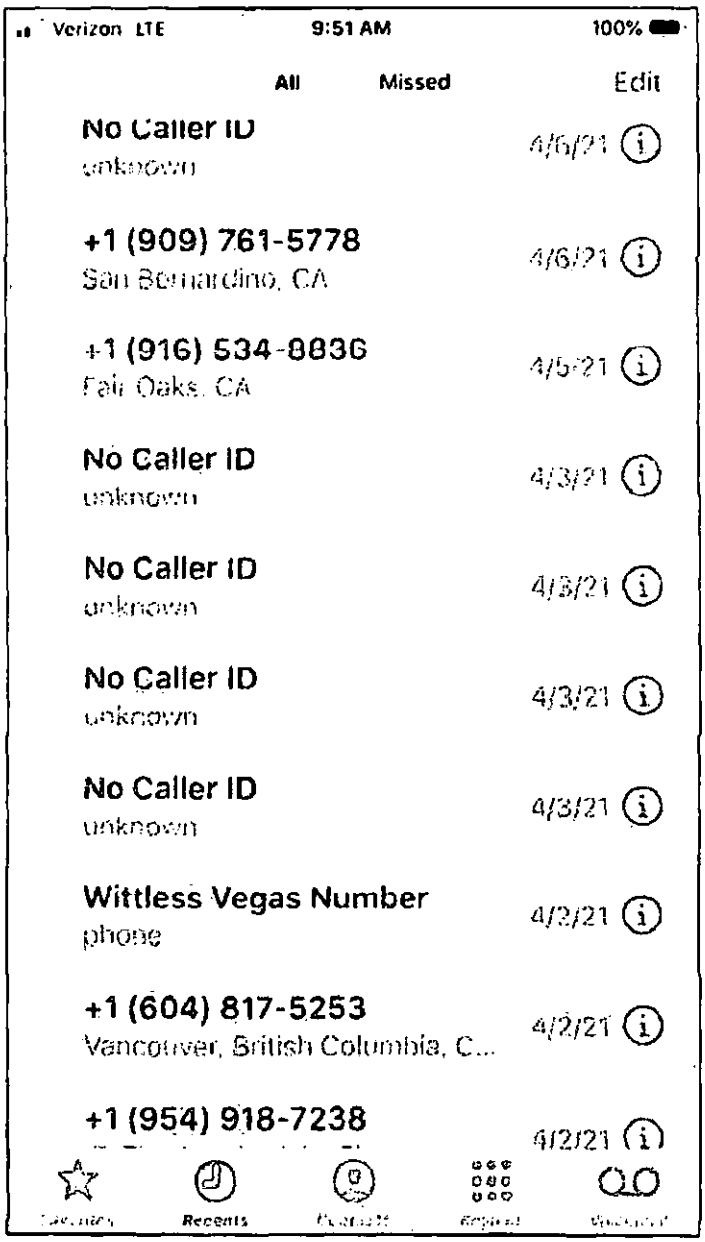
4/3/21
Wittless Vegas Number
phone
4/2/21
+1 (604) 817-5253
Vancouver, British Columbia, C...
4/2/21
+1 (954) 918-7238
Fort Lauderdale, FL
4/2/21
Recents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No Caller ID
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+1 (909) 761-5778
San Bernardino, CA
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+1 (916) 534-8836
Fair Oaks, CA
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No Caller ID
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No Caller ID
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4/3/21
Wittless Vegas Number
phone
4/2/21
+1 (604) 817-5253
Vancouver, British Columbia, C...
4/2/21
+1 (954) 918-7238
4/2/21
Recents

EXHIBIT 17

EXHIBIT #17

BRILL ETC vs MICHAEL POSTLE, KINGS CASINO/ STONES GAMBLING HALL, JUSTIN KURAITIS ...

Maurice B. VerStandig, Esq.
Admitted *Pro Hac Vice*
The VerStandig Law Firm, LLC
1452 W. Horizon Ridge Pkwy, #665
Henderson, Nevada 89012
Telephone: 301-444-4600
Facsimile: 301-576-6885
E-mail: mac@mbvesq.com
Counsel for the Plaintiffs

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

VERONICA BRILL; KASEY LYN MILLS; MARC GOONE; NAVROOP SHERGILL; JASON SCOTT; AZAAN NAGRA; ELI JAMES; PHUONG PHAN; JEFFREY SLUZINSKI; HARLAN KARNOFSKY; NATHAN PELKEY; MATTHEW ALLEN HOLTZCLAW; JON TUROVITZ; ROBERT YOUNG; BLAKE ALEXANDER KRAFT; JAMAN YONN BURTON; MICHAEL ROJAS; HAWNLAY SWEN; THOMAS MORRIS III; PAUL LOPEZ; ROLANDO CAO; BENJAMIN JACKSON; HUNG SAM; COREY CASPERS; ADAM DUONG; DUSTIN MCCARTHY; CHOU VINCE XIONG; BRIAN OLSON; CAMERON SMITH; JORDAN DIAMOND; ARONN SOLIS; ALISHA DANIELS-DUCKWORTH; CHRISTIAN SOTO VASQUEZ; ANDREW HERNANDEZ; DARRELL STEED; ARISH S. NAT; KYLE KITAGAWA; BRIAN MICHAEL RAASCH; ZEEV MALKIN; DAVID CRITTENTON; PATRICK LAFFEY; PARAS SINGH; FIRAS BOURI; IDRIS M. YONISI; JOSHUA WHITESELL; DAVID DUARTE; HARUN UNAI BEGIC; BRAD KRAFT; TAYLOR CARROLL; ELIAS ABOUFARES; TYLER DENSEN; ANDREW LOK; JAKE ROSENSTIEL; ANTHONY AJLOUNY; HECTOR MARTIN; DALE MENGHE; SCOTT SCHLEIN; AUGUSTE SHASTRY;	Case No. 2:19-cv-02027-WBS-AC The Honorable William B. Shubb FIRST AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY CAUSES OF ACTION: 1. VIOLATION OF THE RACKETEER INFLUENCED CORRUPT ORGANIZATION ACT AS CODIFIED AT SECTION 1962(C) OF TITLE 18 OF THE UNITED STATES CODE 2. FRAUD 3. NEGLIGENT MISREPRESENTATION 4. NEGLIGENCE PER SE 5. UNJUST ENRICHMENT 6. NEGLIGENCE 7. CONSTRUCTIVE FRAUD 8. FRAUD 9. LIBEL 10. CONSUMER LEGAL REMEDIES ACT 11. NEGLIGENCE PER SE

NICHOLAS COLVIN; JASON MARKWITH; BRIAN WATSON; SHANE GONZALES; KATHERINE STAHL; MIKE NELSON; BRANDON STEADMAN; BRYANT MILLER; HONG MOON; MATTHEW GOUGE; NICHOLAUS WOODERSON; CARLOS WELCH; ARIEL REID; DAN MAYER; ANTHONY GIGLINI; RYAN JACONETTI; ARIEL CRIS MANIPULA; TRENTON SIDENER; JAMES JOHN O'CONNOR; PATRICK VANG; MARCUS DAVIS; ADAM COHEN; DERICK COLE; AARON MCCORMACK; BRENNEN ALEXANDER COOK; MICHAEL PHONESAVANH RASPHONE; BENJAMIN TENG; SCOTT SORENSON; ANTHONY HUGENBERG; BILLY JOE MESSIMER

Plaintiffs,

vs.

MICHAEL L. POSTLE; KING'S CASINO, LLC D/B/A STONES GAMBLING HALL; JUSTIN F. KURAITIS; JOHN DOES 1-10; JANE DOES 1-10

Defendants.

Come now Veronica Brill ("Ms. Brill"), Kasey Lyn Mills ("Ms. Mills"); Marc Goone ("Mr. Goone"). Navroop Shergill ("Mr. Shergill"); Jason Scott ("Mr. Scott"); Azaan Nagra ("Mr. Nagra"); Eli James ("Mr. James"); Phuong Phan ("Mr. Phan"); Jeffrey Sluzinski ("Mr. Sluzinski"), Harlan Karnofsky ("Mr. Karnofsky"); Nathan Pelkey ("Mr. Pelkey"); Matthew Allen Holtzclaw ("Mr. Holtzclaw"); Jon Turovitz ("Mr. Turovitz"); Robert Young ("Mr. Young"); Blake Alexander Kraft ("Mr. Kraft"); Jaman Yonn Burton ("Mr. Burton"); Michael Rojas ("Mr. Rojas"); Hawnlay Swen ("Mr. Swen"); Thomas Morris III ("Mr. Morris"); Paul Lopez ("Mr. Lopez"); Rolando Cao ("Mr. Cao"); Benjamin Jackson ("Mr. Jackson"); Hung Sam

("Mr. Sam"); Corey Caspers ("Mr. Caspers"); Adam Duong ("Mr. Duong"); Dustin McCarthy ("Mr. McCarthy"); Chou Vince Xiong ("Mr. Xiong"); Brian Olson ("Mr. Olson"); Cameron Smith ("Mr. Smith"); Jordan Diamond ("Mr. Diamond"); Aronn Solis ("Mr. Solis"); Alisha Daniels-Duckworth ("Ms. Daniels-Duckworth"); Christian Soto Vasquez ("Mr. Vasquez"); Andrew Hernandez ("Mr. Hernandez"); Darrell Steed ("Mr. Steed"); Arish S. Nat ("Mr. Nat"); Kyle Kitagawa ("Mr. Kitagawa"); Brian Michael Raasch ("Mr. Raasch"); Zeev Malkin ("Mr. Malkin"); David Crittenton ("Mr. Crittenton"); Patrick Laffey ("Mr. Laffey"); Paras Singh ("Mr. Singh"); Firas Bouri ("Mr. Bouri"); Idris M. Yonisi ("Mr. Yonisi"); Joshua Whitesell ("Mr. Whitesell"); David Duarte ("Mr. Duarte"); Harun Unai Begic ("Mr. Begic"); Brad Kraft ("Mr. Kraft"); Taylor Carroll ("Mr. Carroll"); Elias AbouFares ("Mr. AbouFares"); Tyler Denson ("Mr. Denson"); Andrew Lok ("Mr. Lok"); Jake Rosenstiel ("Mr. Rosenstiel"); Anthony Ajlouny ("Mr. Ajlouny"); Hector Martin ("Mr. Martin"); Dale Menghe ("Mr. Menghe"); Scott Schlein ("Mr. Schlein"); Auguste Shastry ("Mr. Shastry"); Nicholas Colvin ("Mr. Colvin"); Jason Markwith ("Mr. Markwith"); Brian Watson ("Mr. Watson"); Shane Gonzales ("Mr. Gonzalez"); Katherine Stahl ("Ms. Stahl"); Mike Nelson ("Mr. Nelson"); Brandon Steadman ("Mr. Steadman"); Bryant Miller ("Mr. Miller"); Hong Moon ("Mr. Moon"); Matthew Gouge ("Mr. Gouge"); Nicholaus Wooderson ("Mr. Wooderson"); Carlos Welch ("Mr. Welch"); Ariel Reid ("Mr. Reid"); Dan Mayer ("Mr. Mayer"); Anthony Giglini ("Mr. Giglini"); Ryan Jaconetti ("Mr. Jaconetti"); Ariel Cris Manipula ("Mr. Manipula"); Trenton Sidener ("Mr. Sidener"); James John O'Connor ("Mr. O'Connor"); Patrick Vang ("Mr. Vang"); Marcus Davis ("Mr. Davis"); Adam Cohen ("Mr. Cohen"); Derick Cole ("Mr. Cole"); Aaron McCormick ("Mr. McCormick"); Brennen Alexander Cook ("Mr. Cook"); Michael Phonesavnh Rasphone ("Mr. Rasphone"); Benjamin Teng ("Mr. Teng"); Scott Sorenson ("Mr. Sorenson"); Anthony

Hugenberg ("Mr. Hugenberg"); and Billy Joe Messimer ("Mr. Messimer") (collectively, the "Plaintiffs," with each sometimes being known as a "Plaintiff"), by and through counsel, The VerStandig Law Firm, LLC, pursuant to Federal Rule of Civil Procedure 15(a)(1)(B) and Local Rule 220, and as and for their first amended complaint (the "Complaint") against Michael L. Postle ("Mr. Postle"), King's Casino, LLC d/b/a Stones Gambling Hall ("Stones"), Justin F. Kuraitis ("Mr. Kuraitis"), John Does 1-10 and Jane Does 1-10 (Mr. Postle, Stones, Mr. Kuraitis, John Does 1-10, and Jane Does 1-10 being collectively known as the "Defendants," and each sometimes being known as a "Defendant") state as follows:

Introduction

1. This case concerns Mr. Postle's systematic use of one or more electronic devices, for purposes of cheating, while playing in broadcast games of poker, to steal hundreds of thousands of dollars from fellow players, together with Stones' collection of administrative fees, to operate those broadcast games of poker as putatively secure and fair contests, despite being on notice of Mr. Postle's cheating.

2. All poker games at issue herein occurred at Stones' eponymous facility in Citrus Heights, California; as concerns and suspicions about Mr. Postle's cheating were repeatedly brought to Stones' management, the casino operator habitually sought to downplay such concerns while simultaneously promoting Mr. Postle as an idiosyncratically gifted individual imbued with poker skills so immense as to be incomprehensible to the average person.

3. By downplaying concerns and, in so doing, allowing Mr. Postle to continue cheating, Stones was able to enrich itself by continuing to collect a so-called "rake" from the Plaintiffs herein, even though they would not have participated in games with Mr. Postle – and

thusly not permitted Stones to enrich itself off of such games – had they known of Mr. Postle's cheating.

4. Rather than investigate Mr. Postle's cheating or ban him from playing in poker games, Stones continued to promote Mr. Postle as an in-house celebrity of sorts, going so far as to allow him to begin hosting his own poker games and, upon information and belief, compensating him as an employee of Stones for his work hosting and promoting those games (in which many of the Plaintiffs herein continued to be systematically victimized).

5. When Ms. Brill made public her concerns of cheating, in late September 2019, Stones initially responded by indicating her observations to be "completely fabricated;" only after the *ad hoc* poker community proceeded to investigate such allegations in myriad public forums, and confirmed Mr. Postle to be engaged in demonstrative cheating, did Stones announce a new investigation to be underway by an "independent" third party who, in actuality, is Stones' own legal counsel.

6. Despite a public promise to "share outcomes [of its investigation] with transparency," Stones has never made public any findings of its putative investigation and, rather, now insists the Plaintiffs are sore losers who merely believe "their lack of success means they were cheated."

7. As extrapolated upon *infra*, this case represents the single largest known cheating scandal in the history of broadcast poker, emanates from a series of events that have rocked the poker community, is brought with hopes the discovery process will reveal why Stones appears to have perpetually covered up for Mr. Postle (in the past and through this litigation), and is filed with the aim of bringing redress to the numerous individuals victimized by Mr. Postle, his confederate(s), and Stones itself.

Parties

8. Ms. Brill is a natural person who is a citizen of Canada and domiciliary of the State of California, in which she legally resides.

9. Ms. Mills is a natural person who is a citizen of the State of Texas by virtue of her ongoing domicile therein.

10. Mr. Goone is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

11. Mr. Shergill is a natural person who is a citizen of Canada.

12. Mr. Scott is a natural person who is a citizen of the State of New Hampshire by virtue of his ongoing domicile therein.

13. Mr. Nagra is a natural person who is a citizen of the State of Nevada by virtue of his ongoing domicile therein.

14. Mr. James is a natural person who is a citizen of the State of Nevada by virtue of his ongoing domicile therein.

15. Mr. Phan is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

16. Mr. Sluzinski is a natural person who is a citizen of the State of Nevada by virtue of his ongoing domicile therein.

17. Mr. Karnofsky is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

18. Mr. Pelkey is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

19. Mr. Holtzclaw is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

20. Mr. Turovitz is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

21. Mr. Young is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

22. Mr. Kraft is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

23. Mr. Burton is a natural person who is a citizen of the State of Missouri by virtue of his ongoing domicile therein.

24. Mr. Rojas is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

25. Mr. Swen is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

26. Mr. Morris is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

27. Mr. Lopez is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

28. Mr. Cao is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

29. Mr. Jackson is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

30. Mr. Sam is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

31. Mr. Caspers is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

32. Mr. Duong is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

33. Mr. McCarthy is a natural person who is a citizen of the State of Colorado by virtue of his ongoing domicile therein.

34. Mr. Xiong is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

35. Mr. Olson is a natural person who is a citizen of the State of Nevada by virtue of his ongoing domicile therein.

36. Mr. Smith is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

37. Mr. Diamond is a natural person who is a citizen of the State of New Jersey by virtue of his ongoing domicile therein.

38. Mr. Solis is a natural person who is a citizen of the State of Arizona by virtue of his ongoing domicile therein.

39. Ms. Daniels-Duckworth is a natural person who is a citizen of the State of California by virtue of her ongoing domicile therein.

40. Mr. Vasquez is a natural person who is a citizen of the State of New Jersey by virtue of his ongoing domicile therein.

41. Mr. Hernandez is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

42. Mr. Steed is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

43. Mr. Nat is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

44. Mr. Kitagawa is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

45. Mr. Raasch is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

46. Mr. Malkin is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

47. Mr. Crittenton is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

48. Mr. Laffey is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

49. Mr. Singh is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

50. Mr. Bouri is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

51. Mr. Yonisi is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

52. Mr. Whitesell is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

53. Mr. Duarte is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

54. Mr. Begic is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

55. Mr. Kraft is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

56. Mr. Carroll is a natural person who is a citizen of the State of Arizona by virtue of his ongoing domicile therein.

57. Mr. AbouFares is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

58. Mr. Denson is a natural person who is a citizen of the State of Florida by virtue of his ongoing domicile therein.

59. Mr. Lok is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

60. Mr. Rosenstiel is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

61. Mr. Ajlouny is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

62. Mr. Martin is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

63. Mr. Menghe is a natural person who is a citizen of the State of Tennessee by virtue of his ongoing domicile therein.

64. Mr. Schlein is a natural person who is a citizen of the State of Maryland by virtue of his ongoing domicile therein.

65. Mr. Shastry is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

66. Mr. Colvin is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

67. Mr. Markwith is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

68. Mr. Watson is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

69. Mr. Gonzalez is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

70. Ms. Stahl is a natural person who is a citizen of the State of Nevada by virtue of his ongoing domicile therein.

71. Mr. Nelson is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

72. Mr. Steadman is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

73. Mr. Miller is a natural person who is a citizen of the State of Ohio by virtue of his ongoing domicile therein.

74. Mr. Moon is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

75. Mr. Gouge is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

76. Mr. Wooderson is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

77. Mr. Welch is a natural person who is a citizen of the State of Nevada by virtue of his ongoing domicile therein.

78. Mr. Reid is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

79. Mr. Mayer is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

80. Mr. Giglini is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

81. Mr. Jaconetti is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

82. Mr. Manipula is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

83. Mr. Sidener is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

84. Mr. O'Connor is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

85. Mr. Vang is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

86. Mr. Davis is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

87. Mr. Cohen is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

88. Mr. Cole is a natural person who is a citizen of the State of Nevada by virtue of his ongoing domicile therein.

89. Mr. McCormack is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

90. Mr. Cook is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

91. Mr. Rasphone is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

92. Mr. Teng is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

93. Mr. Sorenson is a natural person who is a citizen of the State of Minnesota by virtue of his ongoing domicile therein.

94. Mr. Hügenberg is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

95. Mr. Messimer is a natural person who is a citizen of the State of California by virtue of his ongoing domicile therein.

96. Mr. Postle is a natural person who, upon information and belief, is a citizen of the State of California by virtue of his ongoing domicile therein.

97. Stones is a limited liability company formed pursuant to the laws of the State of Delaware, with a principle place of business in the State of California; the membership of Stones is not known to the Plaintiffs as of the filing of this Complaint but it is anticipated such will be learned in discovery to the extent relevant to this case.

98. Mr. Kuraitis is a natural person who, upon information and belief, is a citizen of the State of California by virtue of his ongoing domicile therein.

99. John Does 1-10 and Jane Does 1-10 are persons, natural and/or legal, who (i) conspired with Mr. Postle to cheat at the game of poker through one or more electronic instrumentalities; (ii) aided Mr. Postle in cheating at the game of poker; (iii) worked to conceal Mr. Postle's cheating from discovery by third parties; (iv) were charged with monitoring Stones' eponymous card room for cheating activity and failed to do so; (v) suppressed allegations of Mr. Postle's cheating, leading to the continuation of his tortious conduct; (vi) installed or implemented electronic devices to be utilized by Mr. Postle while cheating at games of poker; (vii) altered broadcast graphics so as to make Mr. Postle's cheating behavior less evident to viewers and the public at large; and/or (viii) aided Mr. Postle in structuring monetary transactions so as to avoid tax reporting requirements. The Plaintiffs have a good faith basis upon which to allege the identity of the person who is John Doe 1, being an individual who directly aided Mr. Postle in cheating by aiding in the concealment of such behavior with knowledge and scienter, and have directed a litigation hold letter to such person. The Plaintiffs, however, are cognizantly refraining from making such allegation against this particular Defendant herein until greater information can be gleaned through the discovery process, in recognition of the

sensitivity of making such an allegation. If necessary to conform with the pleading standards of this Honorable Court, however, the Plaintiffs are prepared to amend this Complaint and identify John Doe 1 by his legal name, without the aid of discovery, and do further note that their pre-filing investigation of the facts of this case furnishes them with a sufficient basis to do so; their election to not do so at this time is solely derivative of a desire to be more cautious than required, given the gravity of this matter.

Jurisdiction and Venue

100. This Honorable Court enjoys jurisdiction over the matter *sub judice* pursuant to the allowances of Section 1331 of Title 28 of the United States Code, as this case involves a claim for relief arising under the Racketeer Influenced Corrupt Organization Act codified at Section 1961, *et seq.* of Title 18 of the United States Code.

101. This Honorable Court enjoys supplemental jurisdiction over the state and common law claims set forth herein, pursuant to the allowances of Section 1367(a) of Title 28 of the United States Code, as the first cause of action enumerated herein furnishes this Honorable Court with original jurisdiction as alleged *supra*.

102. Inasmuch as the damages sought herein exceed Five Million Dollars and No Cents ($5,000,000.00), should there be an infirmity in the federal question raised herein, the Plaintiffs are prepared to amend this Complaint to assert their claims on behalf of themselves and all others similarly situated, and thus invoke this Honorable Court's jurisdiction pursuant to the allowances of Section 1332(d)(2) of Title 28 of the United States Code.

103. Venue is properly laid in this Honorable Court pursuant to the allowances of Section 1391(b)(2) of Title 28 of the United States Code, as the events complained of herein

occurred within Citrus Heights, California, being within a county enumerated in Section 84(b) of Title 28 of the United States Code.

General Allegations: Stones Live Poker

104. In or about July 2014, Stones opened a casino in Citrus Heights, California (the "Casino"), in which the majority of gaming space is dedicated to a poker room.

105. As a means of promoting the Casino, attracting more lucrative poker games to the Casino, giving the Casino the aura and ambiance of a "destination," and profiting off the fees charged for operating poker games (the "rake"), Stones installed a single poker table imbedded with radio-frequency identification ("RFID") capabilities, procured playing cards containing RFID censors, and installed various motion picture cameras around the subject poker table (the "RFID Table").

106. While games of poker are traditionally played in a manner that at least some of each respective player's cards are concealed from everyone except that individual player (the "Hole Cards"), the RFID Table introduced the ability of Stones to transmit – in real time – the identity of each player's Hole Cards to a control room, where such information can be utilized to produce a broadcast of the subject poker game to the public at large.

107. The phenomenon of broadcasting poker games where the public is able to see players' Hole Cards is neither new nor novel; this has been an emerging trend in the poker industry for much of the past few decades, and one that has allowed television and internet content producers to create more dramatic, appealing programs, by satisfying the desire of viewers to assume an omniscient posture while consuming poker programming.

108. To avoid the precise variety of cheating evidenced in this case, most purveyors of RFID technology in live poker games feed the information – through one or more encrypted

channels – to a separate control room, away from the physical area in which the poker game is being played, and then have the control room produce the broadcast on a delay of typically fifteen (15) to thirty (30) minutes.

109. Other operators of RFID-enabled poker games – such as the World Series of Poker and the Bicycle Casino in Bell Gardens, California – take extensive steps to ensure the security of players' Hole Cards, so as to protect the integrity of the poker games being broadcast, to entice reputable poker players to participate in such games, and to avoid enabling the sort of rampant criminality alleged in this Complaint.

110. Stones uses its RFID Table to broadcast "live" poker games (typically on a delay, as discussed *supra*) several nights a week, airing such games on various internet platforms and publicizing such games as "Stones Live Poker."

111. When Stones utilizes its RFID Table to broadcast poker games, it has one or more persons offer live commentary on the subject game from a booth within the Stones poker room (the "Commentator," defined in the singular even though it is often embodied in the plural).

112. The Commentator does *not* view RFID information and players' Hole Cards in real time but, rather, watches the produced stream on the same taped delay as the public, and commentates by watching the already-produced visual stream.

113. Stones Live Poker operated from at least January 2016 until the week prior to the bringing of this suit, when the operation was suspended in light of the scandal giving rise to this case.

114. At all times relevant, Stones Live Poker has been controlled, *en toto*, by Stones and its agents.

115. From at least 2018 through the present, Mr. Kuraitis – an employee of Stones – has been the director of Stones Live Poker and has been responsible for its production and operation including, *inter alia*, its security.

General Allegations: Cheating

116. Mr. Postle has been a regular and habitual participant in Stones Live Poker games during a period of time commencing in or before January 2018.

117. While playing in Stones Live Poker games, Mr. Postle has won more money than any other participant, in total, and has oftentimes been the winningest player on the show on any given night in which he is a participant.

118. Mr. Postle's winnings on the Stones Live Poker broadcast, and his correlative play of poker, have been so exceptionally outstanding as to lead the Commentator to note his seemingly mystical abilities on numerous occasions, and to lead Stones Like Poker to produce various graphics portraying Mr. Postle as a deity-like individual imbued with omniscient powers (with one such graphic conflating an image of Mr. Postle and an image of Jesus Christ).

119. These winnings and this aura were brought about by Mr. Postle's peculiar ability to make an optimal decision in almost every situation with which he was confronted while playing on Stones Live Poker from July 2018 onward.

120. This optimal decision making was so precise as to allow Mr. Postle to record net winnings in more than ninety four percent (94%) of the Stones Live Poker games in which he played from July 18, 2018 onward, even though such games are of fixed duration and elevated variance (relative to "normal" poker games); such a winning percentage, under these confined circumstances in a streamed environment, is not known to have ever been achieved by any other poker player – professional or amateur – over such a significant period of time.

121. This optimal decision making was also so precise as to allow Mr. Postle to record an average profit of more than sixty (60) "big blinds per hour" (a metric used by professional poker player to track winnings, adjusting for the different stakes of various games); by contrast, it is generally noted in poker circles five (5) big blinds per hour is a goal for which one should aspire, ten (10) big blinds per hour is exceptional, and anything more than twenty five (25) big blinds per hour is stratospherically phenomenal over any appreciable period of time due to the high presence of chance in games of poker and the inherent skill of other players.

122. A detailed review of Mr. Postle's play reveals not only statistics unfathomable in the world of professional poker but, too, situation-specific decision making in which almost every so-called "guess" to be made by Mr. Postle is done so in a manner that optimally benefits his monetary interest.

123. Analytical observation reveals Mr. Postle's exponential winnings cannot be explained through finely-honed abilities to "read" opponents, as myriad optimal plays made by Mr. Postle required not merely an analysis of his opponent's self-perceived strength or weakness in a poker hand but, rather, the precise composition of such hand; while such may be anecdotally attributed to guess work in a vacuum, Mr. Postle was continuously correct in making such assessments over a period of time in excess of a full year, being analogous to correctly predicting the outcome of a coin toss several hundred times in a row.

124. In short, Mr. Postle's poker winnings – considered in the prism of both metrics and hand-for-hand decision-making – on Stones Live Poker have been not merely outliers but, in fact, exponential outliers, representing a quality of play multiple degrees higher than that achieved by the best poker players in the world.

125. Despite these metrics, Mr. Postle has – since commencing his run on Stones Live Poker – only rarely played cash poker games in other forums, almost never played in any cash poker games at Stones aside from those broadcast on Stones Live Poker, and habitually stopped playing on the Stones Live Poker game as soon as the broadcast ends (even though it is common for players to remain and play "offline" for some time thereafter).

126. Similarly, Mr. Postle is not known – since commencing his run on Stones Live Poker – to have played on any other streamed poker game, even though at least one other stream (offering higher stakes and, thus, a greater chance for profit) runs regularly in California; nor has Mr. Postle been known to play with great frequency and regularity in any other cash poker games (streamed or unstreamed), in any location, during this time (even though higher stake games – offering, again, a greater chance for profit – regularly run in Las Vegas, Reno, Los Angeles, Atlantic City, Southern Florida, and other locations to which poker professionals regularly travel to maximize their earnings).

127. Mr. Postle was able to achieve these results by engaging in a pattern and practice of using one or more wire communication mechanisms to defraud his opponents by gaining knowledge of their Hole Cards during the play of poker hands.

128. To carry out this pattern and practice, Mr. Postle was aided by one or more confederates – the John Doe 1-10 and Jane Doe 1-10 Defendants herein – who furnished him with this information, for purposes of carrying out a fraud, through one or more concealed communicative mechanisms.

129. Specifically, Mr. Postle used a cellular telephone, lodged between his legs so as to have its screen beyond the view of the Plaintiffs herein, to access the identity of the Hole Cards of other players, in real time, while playing in Stones Live Poker games.

130. While playing in Stones Live Poker games, Mr. Postle would stare – often repeatedly – between his legs, at his cellular telephone, so as to study the Hole Cards of the Plaintiffs herein, and would then use the superior knowledge gleaned from such study (the ultimate form of poker cheating) to defraud the Plaintiffs in a systematic and highly-effective manner.

131. As Mr. Postle has declined to share the specific software he used to defraud the Plaintiffs and the identities of his confederate(s), and Stones has refused to make its investigation public, despite having sole access to the pertinent software and security records, this case implicates the doctrine set forth in *Estate of Migliaccio v. Midland Nat'l. Life Ins. Co.*, 436 F. Supp. 2d 1095, 1106 (C.D. Cal. 2006), where "the facts supporting the allegation of fraud are exclusively within the defendants' possession."

132. Specifically, the Plaintiffs know who cheated (Mr. Postle), what he did (use his cellular telephone to access the identity of the Plaintiffs' Hole Cards), when he cheated (on the dates set forth *infra*), where he cheated (at Stones' eponymous facility in Citrus Heights, California), and how he cheated (by using his phone to discover the Hole Cards of the Plaintiffs); they do not, however, know the precise software he used, nor the identities of all his confederates, as such information is exclusively within the possession of the various Defendants herein.

133. For the avoidance of doubt, the Plaintiffs make their allegation of Mr. Postle systematically, habitually and regularly cheating at Stones Live Poker games based not on a hunch or suspicion but, rather, based on a statistical analysis of his results, analytical review of the manner in which he played, and extensive footage of his placing his cellular telephone

between his legs and thereafter gazing at it when needing to make certain game-optimal decisions.

134. For the avoidance of doubt, the Plaintiffs allege Mr. Postle to have used one or more wire communication facilities, with the aid of a confederate, based on an understanding that this cheating behavior occurred only at the RFID Table; the RFID Table is equipped to reveal players' concealed cards through wire communications; and it would not be possible for Mr. Postle to have such information relayed to him without the aid of a confederate.

135. There exists, too, instance-specific evidence of Mr. Postle being aware of other players' precise hidden cards; on May 6, 2019, he visited the Commentator immediately after a Stone Live Poker game to discuss his play, and indicated he was aware that a specific hand's broadcast had only displayed "two of our cards" to the viewing public (whereas four cards should have been displayed, based on the type of poker being played), even though he would not have had the opportunity to view the broadcast – and, thus, become aware of this technical malfunction – prior to making that comment, unless he had illicitly accessed the information in real time, with the aid of one or more confederates.

136. During this hand, in which only two (2) of each player's four (4) Hole Cards were captured by the RFID Table, Mr. Postle can be seen repeatedly looking at his cellular telephone under the table and endeavoring to spread all four (4) of his Hole Cards over the RFID Table's censor, in a deliberate and highly unusual manner; his demeanor throughout the hand is exceedingly strange, and it is manifest this technical malfunction (which, in turn, denies him the ability to play the hand with knowledge of his opponents' Hole Cards) is distressing to Mr. Postle even though the malfunction is one of which he would have no real time knowledge if he was not engaged in fraudulent cheating behavior.

137. Following the subject hand, Mr. Postle was interviewed by the Commentator and during said interview Mr. Postle asked (nearly immediately upon arriving in the Commentator's booth), "so what happened on that PLO hand where it only showed two of our cards?"

138. "PLO" is shorthand for "pot limit Omaha," a game in which players are dealt four (4) Hole Cards: in contrast, during Texas hold 'em (the predominant game on Stones Live Poker), players are only dealt two (2) cards.

139. The RFID Table malfunctioned transitioning from Texas hold 'em to pot limit Omaha during the May 3, 2019 game (the two games were played on a rotation on that given Stones Live Poker broadcast), and thusly only displayed two (2) of the players' Hole Cards in a pot limit Omaha hand where players were dealt four (4) cards.

140. This is what caused Mr. Postle confusion while playing the subject hand; he could not view the entirety of every other player's Hole Cards on his phone, in his lap, and thus had to actually play a hand without omniscient knowledge of his opponents' holdings.

141. Mr. Postle could not have known of the malfunction unless he was viewing the RFID Table's feed – on his phone, in his lap – in real time; yet his question to the Commentator – "what happened on that PLO hand where it only showed two of our cards" – immediately following his leaving the game, shows he did, in fact, have knowledge of the malfunction in real time.

142. While there are a handful of Stones Live Poker sessions in which Mr. Postle did not make money, and in which he played in a sub-optimal manner, the Plaintiffs have information and a belief that such sessions correlate to the absence of Mr. Postle's suspected chief confederate, John Doe 1.

143. Additionally, Mr. Postle's participation in Stones Live Poker games was uncharacteristically rare – in contrast to his normal schedule – when the person the Plaintiffs believe to be John Doe 1 was absent from the Sacramento area.

144. Further, in the Stones Live Poker sessions where Mr. Postle played in a sub-optimal manner, he did not habitually stare at his lap, tended to keep his cellular telephone in plain view (ie, not concealed between his legs), and evidenced the sort of mediocre poker analytical and decision-making skills indicative of a rather average (if not below-average) player.

145. These "honest" sessions actually function as evidence of Mr. Postle's cheating in and of themselves, as rather than serving to merely break his unworldly statistical trends, they act as a makeshift "placebo" in which Mr. Postle behaves differently, plays differently, and makes frequently-horrendous game-centric decisions when not imbued with the ability to utilize his cellular telephone for cheating purposes.

General Allegations: Coverup

146. On multiple occasions, when Mr. Postle's play of a given poker hand could not be explained through any point of strategy or style, and was instead heavily suggestive of cheating, one or more agents of Stones would announce his cards, as displayed on viewers' screens, were errant, and on at least one occasion the image would then "correct" the cards to suggest he was holding a different hand.

147. This occurred, among other times, on February 9, 2019, in the Stones Live Poker game, when Mr. Postle made an inexplicable decision to bet almost Five Thousand Dollars ($5,000.00) into a pot, against an opponent's wager of Two Thousand Four Hundred Dollars ($2,400.00), despite Mr. Postle having a hand of "eight high" (one of the worst possible holdings in Texas hold 'em).

148. Mr. Postle's action in this situation induced his opponent to fold, thus ensuring Mr. Postle won the hand; in and of itself, this is neither extraordinary nor even noteworthy, as bluffing is part and parcel of poker.

149. Mr. Postle's play in this situation, however, would necessarily have invited questions as to his strategy, as it was particularly reckless in nature and of the sort of variety likely to beget viral scrutiny on the internet.

150. So as to avoid such, immediately following the hand, Stones changed the graphic showing his Hole Cards, and the Commentator announced an error to have occurred, with the new graphic suggesting Mr. Postle to have held a straight (one of the best hands in Texas hold 'em).

151. For various technical reasons, it is not possible for the RFID Table to have misread Mr. Postle's cards only when they were dealt to Mr. Postle; if a misread was to occur, it would chronically follow the same precise cards of the deck when dealt to any player in the game, in any hand of poker in that given game.

152. Further, even if a so-called misread could have occurred, it is technically impossible for the same to have been "detected" during the subject poker hand; even if the RFID Table erred (which it could not have in this context), the RFID Table would not have the ability to then promptly detect its own error, and there are no other instrumentalities through which any such feigned error could have been brought to the attention of Stones' production team.

153. On every occasion where there was a "misread" of Mr. Postle's hand in such an instance, the "corrected" cards served to make more plausible Mr. Postle's behavior in the given hand; never did such serve to make Mr. Postle's play of the hand less plausible.

154. These faux corrections were part of a pattern and practice, on the part of Stones through its agent(s), to conceal Mr. Postle's cheating from the public.

155. Commencing at least as early as February 2019, numerous individuals approached Mr. Kuraitis to indicate the play of Mr. Postle on Stones Live Poker can only be attributed to cheating or, at minimum, is strongly indicative of the presence of cheating.

156. Specifically, an out-of-town poker player ("Player 1") approached Mr. Kuraitis, at Stones' eponymous facility, in person, standing in front of a podium behind the Stones Live Poker table from which Mr. Kuraitis would normally watch game broadcasts, in February 2019, and informed Mr. Kuraitis of concerns about the integrity of an individual's play in the Stones Live Poker streams.

157. Mr. Kuraitis responded to Player 1 by indicating Mr. Kuraitis was aware of the concerns, had heard them elsewhere, and was taking appropriate steps to ensure the integrity of the Stones Live Poker games.

158. The Plaintiffs are aware of the identity of Player 1 and will reveal the same in discovery; he is not named herein solely to protect him from public scrutiny, but should this Honorable Court find Player 1 must be named to satisfy the pleading rigors of the Federal Rules of Civil Procedure, the Plaintiffs are prepared to amend this Complaint to name Player 1.

159. Specifically, Ms. Brill approached Mr. Kuraitis on March 20, 2019, at Stones' eponymous facility, and notified him of her concerns Mr. Postle was cheating in Stones Live Poker games.

160. Mr. Kuraitis responded to Ms. Brill by insisting the Stones Live Poker game is "one hundred percent secure," claiming there is no possibility of anyone cheating, asserting there to be an outside agency that audits the Stones Live Poker stream every three (3) months,

declaring that Mr. Postle is simply a "fearless player" who uses a "Martingale strategy" to win at poker, and alleging Mr. Postle's play is so unique as to be incomprehensible to professional poker players.

161. These assertions by Mr. Kuraitis, on behalf of Stones, were demonstrably counterfactual in nature.

162. For various reasons related to the structure of poker games, it is impossible to apply a so-called "Martingale strategy" to a game of poker.

163. It does not appear Stones was actually having external audits completed of its Stones Live Poker operations every three (3) months, or such audits would have resulted in Mr. Postle's cheating being detected (unless such audits were grossly incompetent); Stones has not identified any such external audits in connection with its now-false promise to conduct an investigation and make the results public.

164. Indeed, Mr. Kuraitis repeatedly told multiple persons Mr. Postle was not cheating but, to the contrary, Mr. Postle's play is simply "on a different level" or he is "just on a heater" and his play is not something that can be explained.

165. Further, Mr. Kuraitis told multiple persons Stones conducted a thorough investigation into the matter and such did not reveal the presence of cheating.

166. On September 29, 2019, Stones – through its @StonesLivePoker Twitter handle – responded to allegations of cheating on the part of Mr. Postle by writing, *inter alia*, "We conducted a full investigation & found no evidence that any cheating had occurred," going on to write, in response to public allegations then made by Ms. Brill, "The recent allegations are completely fabricated."

167. It is not clear how a "full investigation" could have been carried out by Stones prior to September 29, 2019; none of the Plaintiffs herein – all persons who played on Stones Live Poker with Mr. Postle – were ever approached or interviewed in furtherance of such an investigation and, upon information and belief, neither was Mr. Postle.

168. To the contrary, if an investigation was undertaken (and the Plaintiffs do not know if one was or one was not), the same would necessarily not have been a "full" investigation in any normative sense of the term.

169. Rather, when suspicions and concerns about Mr. Postle's play began to be raised, Stones – through Mr. Kuraitis and others – sought to quell such by giving false assurances a "full" investigation was undertaken, by playing up Mr. Postle as a deity-like figure through the introduction of certain graphics on the Stones Live Poker broadcast, and by telling players they simply did not understand Mr. Postle's immensely talented play.

170. By taking these concerted actions, Stones was able to prolong the period of time in which Mr. Postle cheated other poker players out of their money, was able to elongate Mr. Postle's fraudulent conduct, and was able to allow for the further enrichment of Mr. Postle and his confederate(s).

171. Only after Ms. Brill made public her suspicions, and the poker community at large responded by carrying out a series of *ad hoc* investigations through utilization of footage of old Stones Live Poker broadcasts, did Stones suspend the Stones Live Poker broadcast and announce the launching of an "independent investigation team."

172. However, even in announcing an "independent investigation team," Stones continued its pattern and practice of misleading the public, as the individual Stones publicly designated as heading such team – Michael Lipman – is, in fact, an attorney who has previously

represented Stones in connection with gaming matters, who has also served as personal counsel to one or more of Stones' principles, and who – as recently as October 6, 2019 – Stones has referred to as its "outside counsel;" in short, while very much a respected and able attorney, Mr. Lipman is most certainly not "independent" of Stones.

General Allegations: Mr. Postle's Employment by Stones

173. After being notified Mr. Postle was engaging in cheating activities on the Stones Live Poker streams, and after falsely assuring persons to the contrary, Stones elected to engage Mr. Postle to host multiple special Stones Live Poker shows of his own, known as "Postle and Pals!" broadcasts.

174. Upon information and belief, Stones agreed to – and actually did – compensate Mr. Postle for hosting these "Postle and Pals!" shows, on at least May 4, 2019 and June 1, 2019.

175. Mr. Postle was an employee of Stones, for purposes of hosting – and playing in – these "Postle and Pals!" games, within the prism of California law, as he was not free from the control and direction of Stones in carrying out this work.

176. Specifically, Stones dictated where Mr. Postle was to host the "Postle and Pals!" shows (at Stones' eponymous facilities), when he was to do so (on the dates indicated by Stones), and what he was to do (play poker on a broadcast at the RFID Table).

177. The Plaintiffs believe there may have been additional "Postle and Pals!" games for which Mr. Postle was playing – and cheating – in his capacity as an employee of Stones, and/or other Stones Live Poker broadcasts for which he was employed by Stones even if the airings were not given his titular nomenclature; the details of such would be known to Stones and Mr. Postle, and can be learned in discovery herein.

178. It does not, however, appear Stones hired Mr. Postle to begin hosting Stones Live Poker games, on the Stones payroll, until *after* Stones was made aware of his cheating behavior.

179. Stated otherwise, Stones responded to being notified of Mr. Postle's cheating not by conducting a proper investigation or banishing him from its premises but, rather, by making him an employee.

General Allegations: Mr. Postle and Stones' Structuring of Financial Transactions

180. As Mr. Postle won monies through his strategic cheating of Stones Live Poker games, he often ended certain gaming sessions with casino chips valued in excess of Ten Thousand Dollars and No Cents ($10,000.00).

181. In contravention of the federal prohibition on structuring financial transactions to evade financial reporting requirements, Mr. Postle, on multiple occasions, utilized chip runners, employed by Stones, to cash out his chips in sums less than Ten Thousand Dollars and No Cents ($10,000.00), so no single transaction would exceed the reporting threshold set forth in Section 1021.313 of Title 31 of the Code of Federal Regulations.

182. Stones was aware Mr. Postle was leaving its casino with monies in excess of the requisite reporting threshold (as its own employees documented his monies as part of the Stones Live Poker broadcasts, and as its own chip runners – also employees of Stones – were instrumental in this structuring scheme), yet nonetheless permitted Mr. Postle to engage in this illegal behavior.

183. While none of the Plaintiffs herein are directly impacted by this illegality (except in some *de minimis* regard as taxpayers, for which they feign no standing), it is demonstrative of the wanton disregard for governing law employed by both Stones and Mr. Postle as he cheated

Stones Like Poker games at the direct expense of the Plaintiffs, and as Stones built up his image for its own economic and promotional purposes.

General Allegations: Rake Damages

184. At all times relevant, Stones collected a rake from every hand of poker in which Mr. Postle participated while cheating the Plaintiffs herein.

185. The rake was collected by Stones, from the Plaintiffs, as and for Stones' operation of an honest, legal, regulated poker game, complete with sufficient security.

186. Stones profited off the rake it collected, totaling tens of thousands of dollars during the life of Mr. Postle's scheme.

187. The Plaintiffs would not have played in the Stones Live Poker games – and, ergo, paid the rake to Stones for operating those games – had they known (i) Mr. Postle was cheating; (ii) Stones was ignoring reports of Mr. Postle cheating; (iii) Stones and Mr. Postle were jointly engaged in illegal structuring activity; (iv) Stones security did not protect the integrity of the games being dealt; and/or (v) Stones was manipulating graphics and taking other steps so as to cover up for Mr. Postle's criminal cheating conduct.

General Allegations: Loss Damages

188. During the course of the events alleged herein, Mr. Postle profited more than Two Hundred Fifty Thousand Dollars ($250,000.00) from his play on Stones Live Poker.

189. Each of the Plaintiffs herein played on Stones Live Poker with Mr. Postle and contributed chips to one or more pots in which he played.

190. Most of the Plaintiffs herein lost money in one or more Stones Live Poker sessions in which they played with Mr. Postle, and Mr. Postle won such money from most of the Plaintiffs herein.

191. Mr. Postle would not have won such money if he was not cheating.

192. Every one of the Plaintiffs herein was deprived of the opportunity to maximize her or his respective profits in an honest poker game, while playing on Stones Live Poker, because of the conduct alleged herein.

193. Many of the Plaintiffs herein derive part or all of their living from the play of poker, and have had their confidence in the integrity of the game greatly compromised by Mr. Postle's cheating and Stones' allowance of such cheating.

General Allegations: Live Stream Security

194. Operating a livestream – using a device like the RFID Table – does not have to be, and should not be, a security risk.

195. Numerous poker rooms have operated RFID-based live streams for several years, without any known instances of cheating having occurred by reason of manipulation of such RFID technology.

196. By way of anecdote only, one casino in Los Angeles was an early pioneer in operating an RFID-based live stream and still utilizes it to broadcast widely-viewed cash poker games, four (4) to five (5) nights per week, through the present; the security and integrity of such casino's streaming operation is not readily subject to meaningful or well-reasoned challenge.

197. Stones, however, utilized an appreciably more lackadaisical approach to security with its Stones Like Poker stream, allowing the room in which concealed information is reviewed in real time (the "Production Room") to be readily accessible by numerous people; by not constructing a proper security perimeter around the Production Room; by allowing the use of cellular telephones in the Production Room, during Stones Live Poker streams; and otherwise.

198. Not only does this case not challenge the permissibility of undertaking a live poker stream but, to the contrary, this case is premised, in large part, upon the understanding that such live poker streams can – and should – be carried out in a secure and intelligent fashion, and that Stones was grossly negligent in not even feigning compliance with prevailing industry norms and standards for such an operation.

Count I – Violation of the Racketeer Influenced and Corrupt Organizations Act As Codified at Section 1962(c) of Title 18 of the United States Code As Against Mr. Postle, John Does 1-10, and Jane Does 1-10

199. The Plaintiffs repeat and reallege each and every foregoing paragraph of this Complaint, as though fully set forth herein.

200. Mr. Postle, John Does 1-10, and Jane Does 1-10, "devised ... [a] scheme or artifice to defraud, or for obtaining money ... by means of false or fraudulent pretenses, [and] representations," in furtherance of which they did "transmit[] or causes to be transmitted by means of wire ... communication in interstate or foreign commerce, ... signals, pictures, or sounds for the purpose of executing such scheme or artifice," in contravention of Section 1343 of Title 18 of the United States Code.

201. Specifically, Mr. Postle, John Does 1-10, and Jane Does 1-10 used one or more instrumentalities of wire transmissions to relay to Mr. Postle, while playing in the Stones Live Poker games, information concerning the concealed card holdings of other players in the game, with such being transmitted for the express purpose of aiding Mr. Postle in a scheme to make money from such other players by fraudulently cheating in such game; Mr. Postle, John Does 1-10, and Jane Does 1-10, working together, directed the scheme.

202. Based on a review of video footage of several Stones Like Poker games, this scheme to defraud involved transmitting to Mr. Postle, via his cellular telephone, information concerning the concealed cards of other players, on multiple occasions.

203. The specific mechanism(s) through which such information was fed to Mr. Postle by John Does 1-10 and Jane Does 1-10 is known only to them as of the filing of this Complaint, and will be learned through discovery herein; the Plaintiffs do, however, have information sufficient to specifically allege wire communications to have been sent to Mr. Postle's telephone, know such transmissions occurred during Stones Live Poker games, to allege such transmissions were made for purposes of defrauding the Plaintiffs (and others), and to allege such transmissions contained information concerning the concealed cards of the Plaintiffs (and others).

204. The actions alleged in this Count I all occurred after Mr. Postle, John Does 1-10, and Jane Does 1-10 devised a scheme to defraud individuals – including the Plaintiffs – by having Mr. Postle cheat while playing in Stones Live Poker games.

205. The fraudulent conduct alleged in this Count I occurred on at least the following dates:

i. July 18, 2018

ii. July 30, 2018

iii. August 1, 2018

iv. August 3, 2018

v. August 6, 2018

vi. August 10, 2018

vii. August 15, 2018

viii. August 22, 2018

ix. August 29, 2018

x. September 5, 2018

xi. September 15, 2018

xii. September 24, 2018

xiii. September 26, 2018

xiv. October 10, 2018

xv. October 17, 2018

xvi. October 19, 2018

xvii. October 20, 2018

xviii. October 24, 2018

xix. October 29, 2018

xx. November 7, 2018

xxi. November 21, 2018

xxii. November 26, 2018

xxiii. November 28, 2018

xxiv. December 5, 2018

xxv. December 12, 2018

xxvi. December 16, 2018

xxvii. December 17, 2018

xxviii. January 2, 2019

xxix. January 7, 2019

xxx. January 9, 2019

xxxi. January 12, 2019

xxxii. January 14, 2019

xxxiii. January 16, 2019

xxxiv. January 19, 2019

xxxv. January 30, 2019

xxxvi. February 9, 2019

xxxvii. February 16, 2019

xxxviii. February 25, 2019

xxxix. February 27, 2019

xl. March 9, 2019

xli. March 13, 2019

xlii. March 16, 2019

xliii. March 18, 2019

xliv. March 23, 2019

xlv. March 25, 2019

xlvi. April 8, 2019

xlvii. April 20, 2019

xlviii. April 22, 2019

xlix. April 30, 2019

l. May 2, 2019

li. May 3, 2019

lii. May 4, 2019

liii. May 8, 2019

liv. May 13, 2019

lv. May 18, 2019

lvi. May 20, 2019

lvii. July 20, 2019

lviii. July 22, 2019

lix. July 31, 2019

lx. August 3, 2019

lxi. August 5, 2019

lxii. August 7, 2019

lxiii. August 14, 2019

lxiv. August 17, 2019

lxv. August 21, 2019

lxvi. September 9, 2019

lxvii. September 18, 2019

lxviii. September 21, 2019

206. The Plaintiffs are in possession of records requisite to identify the individual participants in the Stones Like Poker games on each of the foregoing dates; this information is known to Stones and readily available to Mr. Postle (who participated in each such game and who has online access to complete footage of each such game). The Plaintiffs refrain from listing such information in this Complaint solely in the interest of keeping an already-lengthy pleading from becoming overly voluminous, however to the extent this Honorable Court believes such allegations should be included herein so as to comply with governing pleading rigors, the Plaintiffs are prepared to amend this Complaint to include such specific information.

207. The fraudulent conduct alleged in this Count I was carried out at Stones' eponymous facility in Citrus Heights, California.

208. The fraudulent conduct alleged in this Count I was carried out by Mr. Postle and his "enterprise," as defined *infra*.

209. The fraudulent conduct alleged in this Count I consists of Mr. Postle's cheating, as alleged *passim*.

210. The fraudulent conduct alleged in this Count I was accomplished through the use of a cellular telephone, as described *supra*.

211. Mr. Postle, John Does 1-10, and Jane Does 1-10 did constitute an "enterprise," as that term is defined in Section 1961(4) of Title 18 of the United States Code, at all times relevant.

212. While the Plaintiffs do not know how many persons participated in such "enterprise," and will need discovery to learn such information as it is uniquely known to the Defendants as of present, the Plaintiffs do specifically allege Mr. Postle had at least one confederate, that such confederate – John Doe 1 – is the individual who caused to be transmitted to Mr. Postle the information concerning other players' Hole Cards during Stones Live Poker games, and that such confederate also took steps to allay suspicions and concerns regarding Mr. Postle's cheating so as to allow the same conduct to continue in an unabated manner for a protracted period of time in excess of one (1) year.

213. The actions of Mr. Postle, John Doe 1, and Mr. Postle's other confederate(s) did constitute a "pattern of racketeering activity," as that term is defined in Section 1961(5) of Title 18 of the United States Code, as individual acts of wire fraud occurred on at least sixty eight (68)

separate occasions, correlating to every time Mr. Postle cheated in a Stones Live Poker game throughout the calendar years 2018 and 2019.

214. The Plaintiffs' property interests have been damaged through the racketeering conduct set forth herein, as each has been deprived of monies – or the opportunity to win monies in an honest poker game – by reason of the racketeering conduct.

215. Specifically, most Plaintiffs have lost money to Mr. Postle, in cheated hands of poker, that would not have been lost but for Mr. Postle cheating.

216. Specifically, most Plaintiffs would have derived winnings from hands of poker but for their inability to do so as a result of Mr. Postle cheating.

217. Specifically, all Plaintiffs paid a rake for operation of a fair, secure and honest poker game, of which they were deprived by Mr. Postle's cheating.

WHEREFORE, the Plaintiffs respectfully pray this Honorable Court (i) enter judgment in favor of each Plaintiff, individually, and against Mr. Postle, John Does 1-10, and Jane Does 1-10, jointly and severally, in an amount equal to three times the damages suffered by each individual Plaintiff, pursuant to the allowances of Section 1964(c) of Title 18 of the United States Code; (ii) award each Plaintiff his or her respective attorneys' fees and suit costs incurred in connection with this action, and reduce the same to judgment in favor of each Plaintiff individually, with each such judgment being jointly and severally against Mr. Postle, John Does 1-10 and Jane Does 1-10, pursuant to the allowances of Section 1964(c) of Title 18 of the United States Code; and (iii) afford such other and further relief as may be just and proper.

Count II – Fraud

As Against Mr. Postle, John Does 1-10, and Jane Does 1-10

218. The Plaintiffs repeat and reallege each and every foregoing paragraph of this Complaint, as though fully set forth herein.

219. Mr. Postle and his confederate(s) implicitly represented to all players participating in Stones Live Poker games that Mr. Postle is a fellow honest participant in such games.

220. This representation was false, as Mr. Postle and his confederate(s) were utilizing various wire communication facilities to permit Mr. Postle to cheat in such games.

221. Mr. Postle and his confederate(s) had knowledge of the falsity of these representations, as their own overt conduct was required to carry out the fraud alleged herein.

222. Mr. Postle and his confederate(s) made these implicit representations with the intent to defraud others by inducing their play in Stones Live Poker games where Mr. Postle could then take their money.

223. The Plaintiffs herein justifiably relied on these fraudulent representations, electing to wager their own hard-earned money in Stones Live Poker games believing such to be honest and fair contests.

224. The Plaintiffs herein have been damaged both in the form of monies lost to Mr. Postle in such Stones Live Poker games, monies paid to Stones as and for the rake, and, too, the loss of opportunity to earn monies through honest games of poker broadcast to the viewing public on a stream.

WHEREFORE, the Plaintiffs respectfully pray this Honorable Court (i) enter judgment in favor of each Plaintiff, individually, and against Mr. Postle, John Does 1-10, and Jane Does 1-10, jointly and severally, in an amount equal to the damages suffered by each individual Plaintiff; (ii)

enter judgment favor of each Plaintiff, individually, and against Mr. Postle, John Does 1-10, and Jane Does 1-10, jointly and severally, as and for punitive damages, in the sum of Ten Million Dollars and No Cents ($10,000,000.00), divided *pari passu* between and amongst the Plaintiffs in proration to the number of minutes they spent playing on the Stones Like Poker broadcast from July 18, 2018 through the present; and (iii) afford such other and further relief as may be just and proper.

Count III – Negligent Misrepresentation

As Against Mr. Postle, Stones, Mr. Kuraitis, John Does 1-10, and Jane Does 1-10

225. The Plaintiffs repeat and reallege each and every foregoing paragraph of this Complaint, as though fully set forth herein.

226. The Defendants implicitly and explicitly herein represented the Stones Live Poker games to be honest poker games monitored and effectively regulated by a licensed gaming operator in full compliance with California law.

227. Mr. Postle did so through the conduct alleged *supra* in Count II of this Complaint.

228. Mr. Kuraitis – individually and as an agent of Stones – did so when he allayed suspicions of cheating by telling people Mr. Postle's play of poker was simply on "a different level," and that Mr. Postle is "on a heater," while also telling at least one Plaintiff that Stones undertakes a quarterly security audit of its Stones Live Poker system and assuring multiple Plaintiffs that Stones had investigated Mr. Postle's play and cleared him.

229. Stones also made this representation implicitly by conducting Stones Live Poker games in a licensed casino, wherein there exists an implicit representation players are protected from the cheating of other players through utilization of adequate and sufficient security measures and protocols.

230. These representations were untrue, as Mr. Postle was cheating in the Stones Live Poker games from at least July 2018 onward.

231. Mr. Postle made this representation without a reasonable basis for believing it to be true, inasmuch as he personally knew of his own cheating conduct.

232. Stones and Mr. Kuraitis made these representations without a reasonable basis for believing them to be true, as they continuously concealed allegations of cheating on the part of Mr. Postle, and failed to supervise the Stones Live Poker with adequate and sufficient security.

233. Stones also knew this representation to be untrue because at least one agent of Stones served as a John Doe or Jane Doe confederate of Mr. Postle in aiding him with carrying out his scheme to defraud other poker players.

234. These representations were universally made with an intent to induce reliance on the part of the Plaintiffs in the form of having the Plaintiffs continue to play in the Stones Live Poker games.

235. The Plaintiffs did detrimentally rely on these representations by continuing to play in the Stones Live Poker games.

236. The Plaintiffs herein have been damaged both in the form of monies lost to Mr. Postle in such Stones Live Poker games, in the form of monies paid to Stones as and for the rake, and, too, the loss of opportunity to earn monies through honest games of poker broadcast to the viewing public on a stream.

WHEREFORE, the Plaintiffs respectfully pray this Honorable Court (i) enter judgment in favor of each Plaintiff, individually, and against Mr. Postle, Stones, Mr. Kuraitis, John Does 1-10, and Jane Does 1-10, jointly and severally, in an amount equal to the damages suffered by each individual Plaintiff; and (ii) afford such other and further relief as may be just and proper.

Count IV – Negligence Per Se

As Against Mr. Postle, John Does 1-10, and Jane Does 1-10

237. The Plaintiffs repeat and reallege each and every foregoing paragraph of this Complaint, as though fully set forth herein.

238. Mr. Postle and his confederate(s) "devised … [a] scheme or artifice to defraud, or for obtaining money … by means of false or fraudulent pretenses, [and] representations," in furtherance of which they did "transmit[] or causes to be transmitted by means of wire … communication in interstate or foreign commerce, … signals, pictures, or sounds for the purpose of executing such scheme or artifice," in contravention of Section 1343 of Title 18 of the United States Code.

239. This violation of controlling law, on the part of Mr. Postle and his confederates, has caused the Plaintiffs to suffer damages in the form of monies lost to Mr. Postle in Stones Live Poker games, monies paid to Stones as and for the rake, and, too, the loss of opportunity to earn monies through honest games of poker broadcast to the viewing public on a stream.

WHEREFORE, the Plaintiffs respectfully pray this Honorable Court (i) enter judgment in favor of each Plaintiff, individually, and against Mr. Postle, John Does 1-10, and Jane Does 1-10, jointly and severally, in an amount equal to the damages suffered by each individual Plaintiff; and (ii) afford such other and further relief as may be just and proper.

Count V – Unjust Enrichment

As Against Mr. Postle

240. The Plaintiffs repeat and reallege each and every foregoing paragraph of this Complaint, as though fully set forth herein.

241. Mr. Postle won monies from the Plaintiffs through his cheating on the Stones Live Poker broadcasts.

242. It is unjust for Mr. Postle to retain such illicit winnings when they should, as a matter of fact and law alike, be returned to the Plaintiffs.

243. A failure on the part of Mr. Postle to return these winnings will result in his being unjustly enriched to the detriment of the Plaintiffs.

WHEREFORE, the Plaintiffs respectfully pray this Honorable Court (i) enter judgment in favor of each Plaintiff, individually, and against Mr. Postle, in an amount equal to the damages suffered by each individual Plaintiff; and (ii) afford such other and further relief as may be just and proper.

Count VI – Negligence

As Against Stones and Mr. Kuraitis

244. The Plaintiffs repeat and reallege each and every foregoing paragraph of this Complaint, as though fully set forth herein.

245. As the director of Stones Live Poker, Mr. Kuraitis – individually and as an agent of Stones – had a duty to ensure the game was carried out in a manner reasonably free of cheating, and to take reasonable steps to detect and stop any cheating from occurring.

246. Mr. Kuraitis, as a key employee in his capacity as director of Stones Live Poker – individually and as an agent of Stones – had a duty to ensure the game was carried out in a manner reasonably free of cheating, and to take reasonable steps to detect and stop any cheating from occurring, as mandated by Section 19801, *et seq.* of the California Business and Professions Code (the "Gambling Control Act").

247. Mr. Kuraitis breached this duty by not adequately investigating allegations of cheating on the part of Mr. Postle, not following such allegations with an objective examination of Mr. Postle's play (which would have confirmed the presence of cheating), and allowing Mr. Postle to remain in the Stones Live Poker games.

248. Further, Stones had a duty to the public to abide by the "strict and comprehensive regulation of all persons, ... practices, associations, and activities related to the operation of lawful gambling establishments [...]," as mandated by Section 19801(h) of the Gambling Control Act.

249. Stones breached this duty by maintaining a control room that did not adhere to prevailing industry standards for security.

250. Stones breached this duty by not properly regulating and/or supervising Mr. Kuraitis in his capacity as a key employee in a way that would protect the public from reasonably foreseeable harm.

251. These breaches have caused the Plaintiffs to sustain damages, as they each continued to play in poker games in which criminal fraud was being carried out; they each either lost money, or lost the opportunity to maximize profit, in such games; and they have each had their confidence in the fairness of poker games disrupted and disturbed.

252. The Plaintiffs have each been damaged in an amount equal to their pro rata share of the monies Mr. Postle won, as well as in a sum equal to other losses they sustained by playing in a fraudulent poker game, as well as in a sum equal to monies they paid to Stones as and for the rake.

253. For the avoidance of doubt, the Plaintiffs do *not* claim to bring a private cause of action for violation of the Gambling Control Act; citations thereto herein are merely for purposes of establishing one of the duties of care owed by Stones and Mr. Kuraitis to the Plaintiffs.

WHEREFORE, the Plaintiffs respectfully pray this Honorable Court enter judgment in each of their favor, individually, and against Mr. Kuraitis and Stones, jointly and severally, in a sum equal to the damages they have each sustained as a result of the negligence of Stones and Mr. Kuraitis; and for such other and further relief as may be just and proper.

Count VII – Constructive Fraud

As Against Stones

254. The Plaintiffs repeat and reallege each and every foregoing paragraph of this Complaint, as though fully set forth herein.

255. Stones had a legal duty to monitor the Stones Live Poker game for cheating and to take reasonable steps and measures to prevent the occurrence of cheating therein.

256. This duty was owed to the Plaintiffs as players in the Stones Live Poker game.

257. Stones breached this duty by concealing from the Plaintiffs allegations of cheating and fraud on the part of Mr. Postle.

258. Stones breached this duty by allaying the suspicions of certain Plaintiffs with false assurances of a thorough investigation and quarterly audits being undertaken.

259. Stones breached this duty by maintaining a control room that did not adhere to prevailing industry standards for security.

260. The Plaintiffs herein have been damaged both in the form of monies lost to Mr. Postle in such Stones Live Poker games, monies paid to Stones as and for the rake, and, too, the

loss of opportunity to earn monies through honest games of poker broadcast to the viewing public on a stream.

WHEREFORE, the Plaintiffs respectfully pray this Honorable Court (i) enter judgment in favor of each Plaintiff, individually, and against Stones, in an amount equal to the damages suffered by each individual Plaintiff; (ii) enter judgment favor of each Plaintiff, individually, and against Stones, as and for punitive damages, in the sum of Ten Million Dollars and No Cents ($10,000,000.00), divided *pari passu* between and amongst the Plaintiffs in proration to the number of minutes they spent playing on the Stones Like Poker broadcast from July 18, 2018 through the present; and (iii) afford such other and further relief as may be just and proper.

Count VIII – Fraud

As Against Stones and Mr. Kuraitis

261. The Plaintiffs repeat and reallege each and every foregoing paragraph of this Complaint, as though fully set forth herein.

262. Mr. Kuraitis, in his capacity as an employee and agent of Stones, expressly told Ms. Brill, Ms. Mills, and Mr. Goone (the "Stones Fraud Victims") there was no cheating in the Stones Live Poker broadcast.

263. Mr. Kuraitis further informed the Stones Fraud Victims a thorough investigation of such cheating allegations had occurred or would be occurring.

264. Mr. Kuraitis knew, or should have known, these representations to be false; had he reviewed the cumulative footage of Mr. Postle's play, it would have revealed cheating to be rampant, and it is not possible for any putative investigation carried out to have been thorough and such would have revealed the cheating underlying this Complaint.

265. The Stones Fraud Victims relied on these counterfactual representations in continuing to play on Stones Live Poker; had they known the game to be fraudulent, they would have declined to further participate in the game.

266. The Stones Fraud Victims have been damaged by these representations in an amount equal to their pro rata share of the monies Mr. Postle won, as well as in a sum equal to other losses they sustained by playing in a fraudulent poker game, as well as in a sum equal to monies paid to Stones as and for the rake.

267. The fraudulent representation made to the Stones Fraud Victims, by Mr. Kuraitis, while acting for himself and on behalf of Stones, are particularly outrageous, as they served to allow the continuation of the largest known fraud in the modern history of live poker.

WHEREFORE, the Stones Fraud Victims respectfully pray this Honorable Court (i) enter judgment in their favor, individually, and against Mr. Kuraitis and Stones, jointly and severally, in an amount equal to their pro rata share of the monies Mr. Postle won, as well as in a sum equal to other losses they sustained by playing in a fraudulent poker game; (ii) alternatively, enter judgment in their favor, individually, and against Mr. Kuraitis and Stones, jointly and severally, in an amount equal to the rake collected by Stones in all Stones Poker Live games enumerated herein (iii) enter judgment in their favor, individually, and against Mr. Kuraitis and Stones, jointly and severally, as and for punitive damages, in the sum of Ten Million Dollars and No Cents ($10,000,000.00), divided *pari passu* between and amongst the Stones Fraud Victims in proration to the number of minutes they spent playing on the Stones Like Poker broadcast from January 1, 2019 through the present; and (iv) afford such other and further relief as may be just and proper.

Count IX – Libel

As Against Stones

268. The Plaintiffs repeat and reallege each and every foregoing paragraph of this Complaint, as though fully set forth herein.

269. After Ms. Brill made public her suspicions of Mr. Postle cheating on the Stones Live Poker broadcast, Stones responded by asserting, on a publicly-available social media account, *inter alia*, "The recent allegations are completely fabricated."

270. This statement was and is demonstrably counterfactual; the precise allegations made by Ms. Brill – that there is anecdotal and circumstantial evidence to believe someone has been cheating on the Stones Live Poker broadcast – were truthful in nature, objective in nature, and genuine in nature.

271. As a direct and proximate result of Stones accusing Ms. Brill of making "completely fabricated" allegations, Ms. Brill suffered bullying, harassment, and emotionally-taxing non-physical attacks on social media and elsewhere.

272. While Ms. Brill was rapidly acquitted of this libelous statement by third party members of the poker community who made public their *ad hoc* investigations, she nonetheless suffered the emotional duress of having her integrity and reputation sullied for a period of days before such acquittal could be brought about by the mitigating efforts of third party individuals.

273. Ms. Brill brings this Count IX solely to seek nominal damages, and in an effort to highlight Stones' efforts to coverup the criminal activity alleged *passim* as being so pervasive as to extend to libeling one of the individuals who played on the Stones Live Poker game; she does not seek any damages correlative to the mental toll such libelous conduct took on her, nor does

she seek any lost compensation nor any reputational damages, as the mitigation of Stones' by the poker community at large, has served to restore Ms. Brill's good name.

WHEREFORE, Ms. Brill respectfully prays this Honorable Court enter judgment against Stones, and in her favor, in the sum of One Thousand Dollars and No Cents ($1,000.00), and for such other and further relief as may be just and proper.

Count X - Consumers Legal Remedies Act

As Against Stones

274. The Plaintiffs repeat and reallege each and every foregoing paragraph of this Complaint, as though fully set forth herein.

275. In operating each of the Stones Live Poker games referenced *supra*, and collecting a rake in each such game as and for, *inter alia*, the provision of appropriate safeguards and security befitting a game played at an RFID Table, Stones represented it was furnishing services having the characteristic of being secure and honest in nature, in contravention of Section 1770(a)(5) of the California Civil Code.

276. In operating each of the Stones Live Poker games referenced *supra*, and collecting a rake in each such game as and for, *inter alia*, the provision of appropriate safeguards and security befitting a game played at an RFID Table, Stones represented the Stones Like Poker games to be of an honest, secure, and safe quality and standard, featuring appropriate security protocols to prevent cheating through illicit utilization of the RFID Table, in contravention of Section 1770(a)(7) of the California Civil Code.

277. Stones specifically represented to Ms. Brill it had investigated allegations of Mr. Postle's cheating, with such representation concerning the characteristic of a service (the Stones

Live Poker games) Stones was providing, in contravention of Section 1770(a)(5) of the California Civil Code.

278. On February 15, 2020, the Plaintiffs, by and through counsel, transmitted to Stones, by and through counsel (via electronic mail), a demand for remediation of the damages flowing from these statutorily-proscribed practices, asking Stones to, *inter alia*, "identify and refund all players any and all monies lost in any hand in which Michael Postle participated, in any Stones Live poker game between July 18, 2019 and the present."

279. This demand was later transmitted to Stones' counsel through certified mail.

280. Stones has not complied with the Plaintiffs' demand.

WHEREFORE, the Plaintiffs respectfully pray this Honorable Court (i) enter judgment in their favor, individually, and against Stones, in an amount equal to their pro rata share of the monies Mr. Postle won, as well as in a sum equal to other losses they sustained by playing in a fraudulent poker game, pursuant to the allowances of Section 1780(a)(1) of the California Civil Code; (ii) alternatively, enter judgment in their favor, individually, and against Stones, in an amount equal to the rake collected by Stones in all Stones Poker Live games enumerated herein, pursuant to the allowances of Section 1780(a)(1) of the California Civil Code; (iii) enter judgment in their favor, individually, and against Stones, as and for punitive damages, in the sum of Ten Million Dollars and No Cents ($10,000,000.00), divided *pari passu* between and amongst the Stones Fraud Victims in proration to the number of minutes they spent playing on the Stones Like Poker broadcast from January 1, 2019 through the present, pursuant to the allowances of Section 1780(a)(4) of the California Civil Code; (iv) award them their reasonably attorneys' fees and court costs in connection with this litigation, pursuant to the allowances of Section 1780(e)

of the California Civil Code; and (v) afford such other and further relief as may be just and proper.

Count XI – Negligence Per Se

As Against Mr. Postle

281. The Plaintiffs repeat and reallege each and every foregoing paragraph of this Complaint, as though fully set forth herein.

282. Section 337x of the California Penal Code provides, "It is unlawful to cheat at any gambling game in a gambling establishment."

283. This provision is intended to protect players participating in games at California gambling establishments from such cheating.

284. The Plaintiffs, as poker players engaged in poker games at Stones (a California gambling establishment), fall within the class of persons sought to be protected by this statute.

285. Mr. Postle violated this statute by cheating in Stones Live Poker games, as alleged *passim*.

286. The Plaintiffs have been damaged by these Mr. Postle's criminal conduct in an amount equal to their pro rata share of the monies Mr. Postle won, as well as in a sum equal to other losses they sustained by playing in a fraudulent poker game, as well as in a sum equal to monies paid to Stones as and for the rake.

WHEREFORE, the Plaintiffs respectfully pray this Honorable Court (i) enter judgment in favor of each Plaintiff, individually, and against Mr. Postle, in an amount equal to the damages suffered by each individual Plaintiff; and (ii) afford such other and further relief as may be just and proper.

[JURY DEMAND AND SIGNATURE ON FOLLOWING PAGE]

Jury Demand

Pursuant to, and in accordance with, the allowances of Federal Rule of Civil Procedure 38, the Plaintiffs pray a trial by jury on all matters so triable.

Dated this 25th day of March, 2020.

Respectfully Submitted,

THE VERSTANDIG LAW FIRM, LLC

By: /s/ Maurice B. VerStandig
Maurice B. VerStandig (*pro hac vice*)
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mac@mbvesq.com
Counsel for the Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2020, I caused a true and correct copy of the foregoing to be served upon the following persons via this Honorable Court's CM/ECF system:

Michael L. Lipman, Esq.
Karen Lehmann Alexander, Esq.
Duane Morris LLP
750 B Street
Suite 2900
San Diego, CA 92101
Counsel for King's Casino, LLC

Heather U. Guerena, Esq.
Heather U. Guerena, Attorney at Law
7727 Herschel Avenue
La Jolla, CA 92037
Counsel for King's Casino, LLC

Mark Mao, Esq.
Boies Schiller Flexner LLP
44 Montgomery Street, 41st Floor
San Francisco, CA 94104
Counsel for King's Casino, LLC

Richard Pachter, Esq.
Law Offices of Richard Pachter
555 University Avenue, Suite 200
Sacramento, CA 95825
Counsel for Justin Kuraitis

I further certify that I have caused a true and accurate copy of the foregoing to be served on the following person via United States Mail, postage prepaid:

Michael L Postle
3724 Deerwalk Way
Antelope, California 95843

/s/ Maurice B. VerStandig
Maurice B. VerStandig

EXHIBIT 18

EXHIBIT #18

STATEMENT FROM MS BRILL'S ATTORNEY MAURICE VERSTANDIG THAT NO CHEATING WAS FOUND

Statement by Plaintiffs' Counsel Maurice "Mac" VerStandig
Regarding *Brill et al. v. Postle et al.* (E.D. Cal. Case No. 2:19-cv-02027-WBS-AC)

After reviewing evidence with the cooperation of Stones, my co-counsel and I have found no evidence supporting the Plaintiffs' claims against Stones, Stones Live Poker, or Justin Kuraitis. My co-counsel and I have found no forensic evidence that there was cheating at Stones or that Stones, Mr. Kuraitis, the Stones Live team, or any dealers were involved in any cheating scheme. Based on our investigation, we are satisfied that Stones and Mr. Kuraitis were not involved in any cheating that may have occurred.

While Stones has not spoken publicly regarding the details of their investigation during its pendency, its counsel and Mr. Kuraitis' counsel have been immensely cooperative behind-the-scenes.

It has been an honor and a privilege to represent my clients in this matter.

DocuSigned by:
Maurice VerStandig
2172700CAAF8498...

Maurice B. VerStandig

Exhibit #19– Tweets sharing the court video

1. **Twitter Posts by Ms Brill that include the court video**

2. **Tweets revealing that she is aware that she is not supposed to have it and that she doesn't care that she is violating the court's order**

Veronica Brill
@Angry_Polak

Mike Posted told the judge that there was confusion in her previous ruling
youtu.be/0VeTZiAEm_4

5:12 PM · May 12, 2021 · Twitter for Android

6 Retweets **7** Quote Tweets **102** Likes

Daniel Negreanu @RealKidPoker · May 12
Replying to @Angry_Polak
That was awesome thanks for sharing!

Brought me joy to watch him squirm

4 1 46

JKB @JKBach · May 12
Replying to @Angry_Polak
I think u r awesome but do you see the part where it says not to record the hearings? Just checking

1

Veronica Brill @Angry_Polak · May 12
Yes I did...what's the issue?

2 1

JoeySal @JoeSalOG · May 13

Replying to @Angry_Polak

Video posts as private ? What's the word .

1 1

Veronica Brill @Angry_Polak · May 13

ya they make it private after like 6 hours. You gotta work fast

1

Show replies

Joshua Macciello @Joshuamacciello · May 13

Replying to @Angry_Polak

How come the video is private? I truly want to see

1

Veronica Brill @Angry_Polak · May 13

cause the court does that at end of day

1 1

Show replies

T @kb5zcr · May 13

Replying to @Angry_Polak

Looks like someone also posted on YouTube. Here is the link. It works as of Thursday evening.

Mike Postle in Court (Representing Himself) 5-12-21

Mike Postle virtual Sacremento Superior Court session via Zoom. Oral arguments in response to court's ruling that plaintiff (Postle) owes Tod...

youtube.com

1 1

← **Tweet**

Bart Hanson
@BartHanson

If you ever wondered what it would look like to be a cheater, scammer or low life scum trying to argue your case in front of a judge have a look at this: youtu.be/zAdMLLW5rIg

This video will age like a fine wine. @Mike_Postle @StonesGambling

Mike Postle in Court (Representing Himself) 5-12-21
Mike Postle virtual Sacremento Superior Court session via Zoom. Oral arguments in response to court's ruling that ...
youtube.com

1:34 AM · May 15, 2021 · Twitter for iPhone

10 Retweets **87** Likes

PROOF OF SERVICE

Postle v. Brill et al – Sacramento County Superior Court case: 34-2020-00286265

At the time of service, I was over the age of 18.

On June 8, 2021, I served a true and correct copy of the foregoing document entitled:

SUPPLEMENTAL BRIEF

To the parties as follows:

Marc Randazza Legal Group
Atten. Marc Randazza
2764 Lake Sahara Drive Suite 109
Las Vegas, NV 89117
mjr@randazza.com
attorney for defendant Veronica Brill

BY US MAIL: I enclosed the documents listed above in a sealed envelope or package addressed to the persons at the address above and deposited the sealed envelope with the United State Postal Service with postage fully prepaid, and

BY ELECTRONIC MAIL: I electronically served the documents listed above to the persons at the electronic mail address listed above, from my electronic service address, dreamseatpoker@gmail.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 8, 2021 in Sacramento, California.

Michael Postle
Plaintiff