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Attorneys for Defendants
 Keith Hodge, Kevin Hodge, and Hodgetwins, LLC

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

PASTOR STEVE SMOTHERMON,
 Plaintiff,

v.

KEITH HODGE, an individual; KEVIN
 HODGE, an individual; HODGETWINS, LLC,
 a limited liability company,
 Defendants.

Case No. 2:25-cv-01858-APG-BNW

**DEFENDANTS' COUNTERMOTION
 FOR ATTORNEYS' FEES
 UNDER 28 U.S.C. § 1927
 [ECF NO. 74]**

Defendants countermove under 28 U.S.C. § 1927 for the fees incurred in responding to Plaintiff's frivolous and unnecessary Motion to Strike Defendants' Notice of Errata (ECF No. 74). Defendants' concurrent Opposition to ECF No. 74 is incorporated by reference.

1.0 INTRODUCTION

Defendants cited the Declaration of Stephen Parker in their Opposition to ECF No. 67 but inadvertently failed to attach it. A few hours later, they realized the mistake and submitted it with a notice of errata. ECF Nos. 70 at 4, 71. Plaintiff's counsel answered with a frivolous motion, largely AI drafted, trying to remove the declaration from the docket, because it highlights her own lack of diligence and poor conduct in this litigation.

In what has been a pattern in this case, Plaintiff's counsel relies on AI to quickly bust out wasteful correspondence and motions that the Defendant must then respond to. One recent lengthy

“meet and confer” letter, for example, was 90% AI drafted. *See* Westbrook August 25, 2026 Meet and Confer Letter, attached as **Exhibit 1**; Pangram.com Analysis of Westbrook August 25, 2026 Meet and Confer Letter, attached as **Exhibit 2**. Plaintiff’s Motion to Strike (ECF No. 74) largely relies on a case that actually holds the opposite of what Plaintiff’s counsel tells the Court it holds. That is the second time in this litigation that counsel has done that because of reliance on AI. The first time, this Court called the misrepresentation of case law out. ECF No. 51 at 4. However, the Court was unaware that it (and the Defense) have been sparring with ChatGPT and not with a licensed attorney. This misconduct is unnecessarily running up the tab for everyone, wasting everyone’s time, and will be encouraged if nothing is done about it.

2.0 LEGAL STANDARD

An attorney who so multiplies the proceedings unreasonably and vexatiously may be required to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct. 28 U.S.C. § 1927. Reckless attorney conduct meets the § 1927 standard. *Fink v. Gomez*, 239 F.3d 989, 993 (9th Cir. 2001). Bad faith exists when an attorney knowingly or recklessly raises a frivolous argument. *New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1306 (9th Cir. 1989).

3.0 ARGUMENT

3.1 The Motion’s main case holds the opposite of what counsel told the Court

The main argument is that errata may correct only ministerial errors but may never supply evidence. This comes from an isolated sentence in *Bias v. Moynihan* that notices of errata clarifying clerical errors differ from attempts to file unauthorized supplemental briefs. ECF No. 74 at 3 (quoting 508 F.3d 1212, 1224 (9th Cir. 2007)).

That sentence comes from a paragraph that describes what the *Bias* appellees did. They moved for summary judgment. The plaintiff opposed and objected to three exhibits. They then filed notices of errata correcting two exhibits, without leave of court, after the opposition was filed but before any ruling. 508 F.3d at 1224. The Ninth Circuit affirmed. *Id.* The quoted sentence is the panel’s reason for approving of the errata. Counsel just parroted what the AI found – a sentence

1 that if you isolate the words, it stands for what they wanted it to. But AI doesn't read the whole
2 case, a lawyer does. Defense counsel did. And it shows that this is an out-of-context sentence that
3 is cordoned off as if it were the key holding in the case.

4 An attorney who cites a case impliedly represents that she read the case. Either counsel
5 read page 1224 and cited it for the wrong proposition anyway, or she did not read it at all. Section
6 1927 applies to both possibilities, because recklessness in the practice of law is sufficient. *Fink*,
7 239 F.3d at 993. This is not just about *Bias* either. Attorney Westbrook's AI provided three other
8 cases for the notion that there is prejudice when something new is added after there is no longer
9 an opportunity to respond. ECF No. 74 at 3, 5. That is not the case here. And while the Court did
10 order that no reply briefs were "required," it certainly did not prohibit them. But that is of no effect
11 either. If no evidence can be attached to the opposition, then *all* the evidence attached should be
12 stricken, no? The argument was ridiculous and raised to do nothing more than to try and run up
13 the bill to harass the defendants.

14 **3.2 This is not the first time**

15 In March, counsel moved to strike Defendants' affirmative defenses in another vexatious
16 and senseless motion. She told the Court that "[t]he Ninth Circuit has routinely struck affirmative
17 defenses that consist of lengthy factual narratives," citing *Barnes v. AT&T Pension Benefit Plan*,
18 718 F. Supp. 2d 1167, 1170 (N.D. Cal. 2010). ECF No. 45 at 3. But *Barnes* did not say what
19 Westbrook said it said, and the court noticed. ECF No. 51 at 4. Once is a mistake. Twice is a
20 pattern. And it is clear that this is AI slop. An automated authorship analysis of ECF No. 74
21 attributes roughly half the motion to generative output. *See Pangram.com Analysis of ECF No. 74*,
22 attached as **Exhibit 3**. The motion is defective anyway, but these standout defects are inevitable
23 when counsel provides authority generated by AI without confirming it, as required by Fed. R.
24 Civ. P. 11(b)(2).

25 **3.3 The Motion unnecessarily multiplied the proceedings**

26 There was no reason for the Motion to Strike. It ostensibly seeks to strike a declaration for
27 no reason other than it was filed a few hours after the Opposition it supported. It seeks to strike a

document yet raises nothing challenging the facts in that document. It just encourages the Court to never see those facts. And those facts themselves show that Plaintiff's counsel has acted in a dilatory manner.

After Plaintiff filed his unnecessary and meaningless Motion to Strike, Defendants had to respond, lest it be granted despite its complete lack of merit. Plaintiff will now file a Reply, and the Court will be forced to waste time and resources dealing with nonsense. Plaintiff's conduct must be discouraged unless this Court wants to invite more of this behavior in the future.

4.0 RELIEF REQUESTED

Defendants ask the Court to order Plaintiff's counsel to personally pay the reasonable attorneys' fees Defendants incurred in responding to ECF No. 74 and to answer for their provision of AI generated false citations.

5.0 CONCLUSION

The motion was wrong to file in the first place, and it is supported by at least the second AI misuse in this record (and there is more in the unfiled record). The Countermotion should be granted and fees awarded against Plaintiff's counsel personally, as Mr. Smothermon did not likely know that he was paying for AI slop rather than actual legal research.

Dated: September 3, 2026.

Respectfully submitted,

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

Marc J. Randazza, NV Bar No. 12265

Ronald D. Green, NV Bar No. 7360

RANDAZZA LEGAL GROUP, PLLC

8991 W. Flamingo Rd., Ste. B

Las Vegas, NV 89147

Attorneys for Defendants Keith Hodge,
Kevin Hodge, and Hodgetwins, LLC.

Case No. 2:25-cv-01858-APG-BNW

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 3, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document is being served via transmission of Notices of Electronic Filing generated by CM/ECF.

Respectfully submitted,

/s/ Marc J. Randazza

Marc J. Randazza, NV Bar No. 12265

RANDAZZA | LEGAL GROUP

EXHIBIT 1

Nicole Westbrook Meet and Confer Letter to
Ronald D. Green and Marc J. Randazza
(August 25, 2026)

JONES, DAVIS & JACKSON, PC

Attorneys + Counselors

15110 Dallas Parkway, Suite 300
Dallas, TX 75248
615.403.4862
Fax 972.733.3119

Nicole A. Westbrook
nwestbrook@jonesdavis.com
Licensed in Colorado

August 25, 2026

VIA EMAIL: mjr@randazza.com

Marc J. Randazza
Ron Green
Randazza Legal Group
8991 West Flamingo Road, Suite B
Las Vegas, NV 89147

***Re: Meet and Confer Regarding Defendants' Continuing Discovery Deficiencies and
Notice of Intent to Move to Compel Smothermon v. Hodgetwins, LLC, et al., Case
No. 2:25-cv-01858-APG-BNW***

Dear Counsel,

I write pursuant to Federal Rule of Civil Procedure 37(a) and District of Nevada Local Rules IA 1-3(f) and 26-6 to confer regarding deficiencies that remain in Defendants' discovery responses and disclosures. This continues the conferral process we began on April 21, 2026 and pursued in my letters of May 26, June 30, July 9, and July 28, and in our May 4 and July 22 conferences. Defendants' responses to Plaintiff's Second and Third Sets, served July 30 and August 10, 2026, repeat the same objections rather than curing the underlying defects. With the September 18, 2026, discovery cut-off approaching, we ask that Defendants supplement as set forth below. If they do not, Plaintiff will move to compel and will seek the fees incurred under Rule 37(a)(5).

At the outset, one pattern frames the rest. Defendants have repeatedly answered "no documents exist," only to produce responsive material later — including more than 100 pages after representing they had none, and including the August 22, 2025, customer-service email from Krisha Mason to Kylie Howerton reporting an "INCORRECT photo" of "Pastor Steve Smothermon" (HODGE000136–000138).) That history undermines the "no documents" and burden objections repeated below and confirms that a diligent search has not been conducted.

August 25, 2026

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1. Rule 26(a)(1) Initial Disclosures Remain Unsupplemented.

At our May 4 conference, Mr. Green agreed to supplement the initial disclosures within one week. That supplementation, noted as overdue in my May 26 and July 28 letters, still has not addressed the core defects:

- Insurance (Rule 26(a)(1)(A)(iv)). Defendants continue to state they possess no responsive insurance documents (Resp. to RFP No. 21). Given the scale of the Hodgetwins operation, please confirm in writing that a reasonable inquiry was conducted for CGL, media-liability, E&O, and umbrella coverage in effect in August 2025, describe that inquiry, and produce any responsive policies.
- Internal ESI (Rule 26(a)(1)(A)(ii)). The disclosures still identify only public links, articles, and Plaintiff's own materials, and omit the internal ESI Defendants' own defense depends on — search records, communications, and account and device data concerning the creation, publication, and removal of the August 22, 2025 post.
- Witness specificity (Rule 26(a)(1)(A)(i)). The witness descriptions remain boilerplate and do not identify each witness's role in the editorial, verification, and publication process.

2. Google Account Activity and the “No Records” / “Incognito” Position.

Defendants have admitted, under oath, that Kevin Hodge performed a Google image search for “Steve Smotherman,” copied the resulting photograph, and pasted it into the post, and that no reverse-image search was performed. Defendants nonetheless maintain they possess no record of the search (Resps. to RFP Nos. 1, 10) — first because “no documents” exist, and later because the search was run “in incognito mode.”

As explained in my June 30 letter, incognito mode governs only local browser artifacts; it does not suppress server-side logging. When a user is signed in to a Google account, Web & App Activity records searches to that account's “My Activity” regardless of incognito mode, and the account holder can export those records through Google Takeout. That account-side data is within Defendants' possession, custody, or control under Rule 34, because control in the Ninth Circuit means the legal right to obtain documents on demand — a right Defendants plainly have as to their own Google and Meta account data. *See In re Citric Acid Litig.*, 191 F.3d 1090 (9th Cir. 1999); *United States v. Int'l Union of Petroleum & Indus. Workers*, 870 F.2d 1450 (9th Cir. 1989); *Flagg v. City of Detroit*, 252 F.R.D. 346 (E.D. Mich. 2008). Accordingly, please:

- Produce the Google Takeout export (Search, Image Search, Web & App Activity, and YouTube history) for each account signed in on the device used, for August 1 through September 30, 2025; and
- If Defendants contend they cannot themselves produce this data, have each individual Defendant execute the Consent Directive authorizing Google to release the records (RFP No. 23; RFP No. 31 / Attachment A). A subscriber's consent removes any Stored

August 25, 2026

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Communications Act bar under 18 U.S.C. § 2702(b)(3), and court-ordered consent is “lawful consent.” *Negro v. Superior Court*, 230 Cal. App. 4th 879 (2014). Plaintiff will, if necessary, move to compel execution of the directive.

3. Native Photograph File and Metadata.

Defendants respond “no documents” to requests for the original photograph in native format with EXIF and system metadata intact, including the source URL (RFP Nos. 13, 26), while also stating they “have not reviewed the metadata” for the photograph. Those positions are inconsistent: a party cannot decline to review metadata for a file it does not possess. The importance of this material is now common ground — Defendants’ own Sixth and Seventh Sets of Requests for Production adopt Plaintiff’s definition of “Metadata” verbatim, including its IPTC and system-metadata categories and the image file’s “Source URL,” and demand that Plaintiff produce documents bearing that metadata. Defendants cannot maintain both that metadata is not probative and that Plaintiff must produce it under Defendants’ own definition. Please produce the native photograph file, and the native file and metadata of the August 22, 2025, notice email (produced to date only as a flattened image), or confirm in writing — with specifics — when and how the native files ceased to exist.

4. Meta/Facebook Page Export and Audit Log.

Defendants object to producing the Meta/Business Suite export and the page activity/audit log reflecting the creation, edits, and removal of the post, with timestamps and the acting administrator (RFP Nos. 14, 24). This material goes to the heart of the case — who published the post, when, and when and by whom it was removed — and is not rendered irrelevant by the post’s short lifespan. To the extent confidentiality is a genuine concern, we remain willing to negotiate a stipulated protective order. Please confirm whether Defendants will produce this export subject to such an order.

5. Internal and Third-Party Communications.

Defendants’ verified Amended Response to Interrogatory No. 3 describes a customer-service email through which Nathan Hughes learned of the post and communications between Defendants and Mr. Hughes; Interrogatory No. 21 identifies that Krisha Mason contacted Defendants’ customer-support team, leading to the post’s removal; and Defendants have themselves produced the Mason-to-Howerton notice email. Despite these sworn answers and their own production, Defendants respond “no documents” to, and object to producing, the broader communications (RFP Nos. 20, 22, 29). A publisher’s editorial and verification process and state of mind are proper subjects of discovery in this defamation case. *Herbert v. Lando*, 441 U.S. 153 (1979). Please produce the customer-service email in native format, the Hughes communications, and communications with Ms. Mason, Ms. Howerton, and Mr. Rynders concerning the post, with metadata intact — or confirm in writing what became of them. A blanket privilege objection does not substitute for production of plainly non-privileged party and third-party communications, and does not excuse the absence of a privilege log (see Item 8).

August 25, 2026

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6. Financial, Monetization, and Engagement Data.

Defendants declined to produce revenue and monetization documents (RFP Nos. 19, 28) and instead offered Keith Hodge's declaration estimating that the page earned roughly \$3,500 per day across approximately 40 posts, that each post earned \$75–\$120, and that the post at issue “probably earned around \$20 to \$40.” An estimate in a declaration is not a substitute for the responsive documents. Revenue and engagement data are relevant to motive — the monetization of Defendants' content — and to Plaintiff's damages. Mr. Hodge's declaration also confirms the data existed and was recoverable for roughly 30 days after deletion, which bears directly on preservation (Item 7). Please produce documents sufficient to show the views, reach, and revenue associated with the post, and supplement Interrogatory No. 18 (engagement data) with a substantive answer rather than an objection premised on Plaintiff's supposed fault.

7. Preservation, Litigation Hold, and Spoliation.

Defendants respond “no documents” or “not in possession” to requests concerning any litigation hold or steps taken to preserve or suspend auto-deletion of account, device, and platform data (RFP Nos. 17, 30; Interrogatory No. 20). Defendants' own declaration states that post-level data becomes “unrecoverable after 30 days,” meaning it remained recoverable well after Plaintiff's August 22, 2025, demand for removal and retraction. The duty to preserve attaches upon the reasonable anticipation of litigation and, on this record, arose no later than that date. Please state, in a substantive supplemental response, what preservation steps were taken, when, and by whom. Plaintiff expressly reserves all rights under Rule 37(e), including curative measures and an adverse-inference instruction. We again instruct Defendants to preserve all Google account activity, device data, browser data, and Meta account data, and to suspend any auto-delete settings on the relevant accounts.

8. Improper Blanket Objections and Refusal to Provide a Privilege Log.

Defendants incorporate boilerplate General Objections into every answer, including General Objection No. 9, by which Defendants state they “will neither produce nor create a privilege log” for documents they contend are privileged. A party withholding responsive documents on privilege grounds must describe them sufficiently to assess the claim under Rule 26(b)(5)(A), and the burden of sustaining an objection — including on a motion for a protective order — rests on the objecting party; boilerplate assertions do not suffice. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984); *Burlington N. & Santa Fe Ry. v. U.S. Dist. Court*, 408 F.3d 1142 (9th Cir. 2005). Please withdraw the categorical refusal and produce a privilege log for any responsive document withheld on privilege grounds, or confirm that no responsive documents are being withheld on that basis.

Plaintiff's Narrowing Offers Remain Open.

To move this forward, Plaintiff reiterates the good-faith narrowing proposed in my July 9 letter: Plaintiff will accept a neutral, court-appointed forensic examiner operating under a mutually acceptable protocol and a stipulated protective order for any device examination (see *United Factory Furniture Corp. v. Alterwitz*, No. 2:12-cv-00059-KJD-VCF (D. Nev. 2012);

August 25, 2026

Page 5

Ameriwood Indus. v. Liberman, 2006 WL 3825291 (E.D. Mo. 2006)); will withdraw or defer the router/modem/ISP request; and will narrow any browsing-activity request to search-related activity. Plaintiff also renews its offer to enter a stipulated protective order to address any genuine confidentiality concern, including as to the financial records.

Meet-and-Confer Request.

Under Local Rule IA 1-3(f), the meet-and-confer obligation may be satisfied only through direct dialogue. Accordingly, please advise by September 2, 2026, of your availability for a telephonic conference during the week of September 7 to discuss the items above. Given the September 18, 2026, discovery cut-off, time is short, and we would prefer to resolve these matters by agreement rather than burden the Court.

If we are unable to resolve these issues through conferral, Plaintiff will move to compel under Rule 37(a) and will seek the reasonable fees and costs incurred, and will pursue relief under Rule 37(e) where the record warrants. Nothing in this letter waives, and Plaintiff expressly reserves, all rights and objections.

I look forward to hearing from you..

Sincerely yours,

JONES, DAVIS & JACKSON, PC



By:

Nicole A. Westbrook

CC: Pastor Steve Smothermon

EXHIBIT 2

Pangram.com AI Analysis of
Nicole Westbrook's August 25, 2026
Meet and Confer Letter



Pangram 4.0

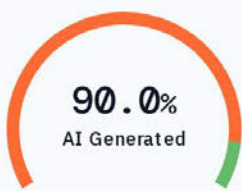
AI Detection Report for Exh. 1 - Westbrook Meet and Confer Letter.pdf

Sep 3, 2026 | 2,036 Words | Pangram 4.0

Summary

We believe this text is mainly AI, with some human-written content.

Authorship Breakdown



90 %
of the document

AI Generated

0 %
of the document

Moderately AI Assisted

0 %
of the document

Lightly AI Assisted

10 %
of the document

Human Written

Authorship Progression



Analyzed Text

Words that are underlined indicate AI phrases, while the numbers represent how frequently they are likely to appear in AI writing. These elements are not used to determine the results but are displayed separately as patterns commonly found in AI-generated text.

Human Written | 177 Words | **High Confidence** .11

JONES, DAVIS & JACKSON, PC Attorneys + Counselors 15110 Dallas Parkway, Suite 300 Dallas, TX 75248 615.403.4862 Fax 972.733.3119 Nicole A. Westbrook nwestbrook@jonesdavis.com Licensed in Colorado August 25, 2026 VIA EMAIL: mjr@randazza.com Marc J. Randazza Ron Green Randazza Legal Group 8991 West Flamingo Road, Suite B Las Vegas, NV 89147 Re: Meet and Confer Regarding Defendants' Continuing Discovery Deficiencies and Notice of Intent to Move to Compel Smothermon v. Hodgetwins, LLC, et al., Case No. 2:25-cv-01858-APG-BNW Dear Counsel, I write pursuant to Federal Rule of Civil Procedure 37(a) and District of Nevada Local Rules IA 1-3(f) and 26-6 to confer regarding deficiencies that remain in Defendants' discovery responses and disclosures. This continues the conferral process we began on April 21, 2026 and pursued in my letters of May 26, June 30, July 9, and July 28, and in our May 4 and July 22 conferences.

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Defendants' responses to Plaintiff's Second and Third Sets, served July 30 and August 10, 2026, repeat the same objections rather than curing the underlying defects. With the September 18, 2026, discovery cut-off approaching,



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we ask that Defendants supplement as set forth below. If they do not, Plaintiff will move to compel and will seek the fees incurred under Rule 37(a)(5). At the outset, one pattern frames the rest. Defendants have repeatedly answered "no documents exist," only to produce responsive material later — including more than 100 pages after representing they had none, and including the August 22, 2025, customer-service email from Krishna Mason to Kylie Howerton reporting an "INCORRECT photo" of "Pastor Steve Smothermon" (HODGE000136–000138).) That history undermines the "no documents" and burden objections repeated below and confirms that a diligent search has not been conducted.

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DALLAS ■ DENVER ■ LOS ANGELES www.jonesdavis.com August 25, 2026 Page 2 1. Rule 26(a)(1) Initial Disclosures Remain Unsupplemented.

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At our May 4 conference, Mr. Green agreed to supplement the initial disclosures within one week. That supplementation, noted as overdue in my May 26 and July 28 letters, still has not addressed the core defects: • Insurance (Rule 26(a)(1)(A)(iv)). Defendants continue to state they possess no responsive insurance documents (Resp. to RFP No. 21). Given the scale of the Hodgetwins operation, please confirm in writing that a reasonable inquiry was conducted for CGL, media- liability, E&O, and umbrella coverage in effect in August 2025, describe that inquiry, and produce any responsive policies. • Internal ESI (Rule 26(a)(1)(A)(ii)). The disclosures still identify only public links, articles, and Plaintiff's own materials, and omit the internal ESI Defendants' own defense depends on — search records, communications, and account and device data concerning the creation, publication, and removal of the August 22, 2025 post. • Witness specificity (Rule 26(a)(1)(A)(i)). The witness descriptions remain boilerplate and do not identify each witness's role in the editorial, verification, and publication process. 2. Google Account Activity and the "No Records" / "Incognito" Position. Defendants have admitted, under oath, that Kevin Hodge performed a Google image search for "Steve Smotherman," copied the resulting photograph, and pasted it into the post, and that no reverse-image search was performed. Defendants nonetheless maintain they possess no record of the search (Resps. to RFP Nos. 1, 10) — first because "no documents" exist, and later because the search was run "in incognito mode." As explained in my June 30 letter, incognito mode governs only local browser artifacts; it does not suppress server-side logging. When a user is signed in to a Google account, Web & App Activity records searches to that account's "My Activity" regardless of incognito mode, and the account holder can export those records through Google Takeout. That account-side data is within Defendants' possession, custody, or control under Rule 34, because control in the Ninth Circuit means the legal right to obtain documents on demand — a right Defendants plainly have as to their own Google and Meta account data. See *In re Citric Acid Litig.*, 191 F.3d 1090 (9th Cir. 1999); *United States v. Int'l Union of Petroleum & Indus. Workers*, 870 F.2d 1450 (9th Cir. 1989); *Flagg v. City of Detroit*,



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1369 Words

High Confidence

252 F.R.D. 346 (E.D. Mich. 2008). Accordingly, please: • Produce the Google Takeout export (Search, Image Search, Web & App Activity, and YouTube history) for each account signed in on the device used, for August 1 through September 30, 2025; and • If Defendants contend they cannot themselves produce this data, have each individual Defendant execute the Consent Directive authorizing Google to release the records (RFP No. 23; RFP No. 31 / Attachment A). A subscriber's consent removes any Stored^{FF}August 25, 2026 Page 3 Communications Act bar under 18 U.S.C. § 2702(b)(3), and court-ordered consent is "lawful consent." *Negro v. Superior Court*, 230 Cal. App. 4th 879 (2014). Plaintiff will, if necessary, move to compel execution of the directive. 3. Native Photograph File and Metadata. Defendants respond "no documents" to requests for the original photograph in native format with EXIF and system metadata intact, including the source URL (RFP Nos. 13, 26), while also stating they "have not reviewed the metadata" for the photograph. Those positions are inconsistent: a party cannot decline to review metadata for a file it does not possess. The importance of this material is now common ground — Defendants' own Sixth and Seventh Sets of Requests for Production adopt Plaintiff's definition of "Metadata" verbatim, including its IPTC and system-metadata categories and the image file's "Source URL," and demand that Plaintiff produce documents bearing that metadata. Defendants cannot maintain both that metadata is not probative and that Plaintiff must produce it under Defendants' own definition. Please produce the native photograph file, and the native file and metadata of the August 22, 2025, notice email (produced to date only as a flattened image), or confirm in writing — with specifics — when and how the native files ceased to exist. 4. Meta/Facebook Page Export and Audit Log. Defendants object to producing the Meta/Business Suite export and the page activity/audit log reflecting the creation, edits, and removal of the post, with timestamps and the acting administrator (RFP Nos. 14, 24). This material goes to the heart of the case — who published the post, when, and when and by whom it was removed — and is not rendered irrelevant by the post's short lifespan. To the extent confidentiality is a genuine concern, we remain willing to negotiate a stipulated protective order. Please confirm whether Defendants will produce this export subject to such an order. 5. Internal and Third-Party Communications. Defendants' verified Amended Response to Interrogatory No. 3 describes a customer- service email through which Nathan Hughes learned of the post and communications between Defendants and Mr. Hughes; Interrogatory No. 21 identifies that Krisha Mason contacted Defendants' customer-support team, leading to the post's removal; and Defendants have themselves produced the Mason-to-Howerton notice email. Despite these sworn answers and their own production, Defendants respond "no documents" to, and object to producing, the broader communications (RFP Nos. 20, 22, 29). A publisher's editorial and verification process and state of mind are proper subjects of discovery in this defamation case. *Herbert v. Lando*, 441 U.S. 153 (1979). Please produce the customer-service email in native format, the Hughes communications, and communications with Ms. Mason, Ms. Howerton, and Mr. Rynders concerning the post, with metadata intact — or confirm in writing what became of them. A blanket privilege objection does not substitute for production of plainly non-privileged party and third-party communications, and does not excuse the absence of a privilege log (see Item 8).^{FF}August 25, 2026 Page 4 6. Financial, Monetization, and Engagement Data. Defendants declined to produce revenue and monetization documents (RFP Nos. 19, 28) and instead offered Keith Hodge's declaration estimating that the page earned roughly \$3,500 per day across approximately 40 posts, that each post earned \$75–\$120, and that the post at issue "probably earned around \$20 to \$40." An estimate in a declaration is not a substitute for the responsive documents. Revenue and engagement data are relevant to motive — the monetization of Defendants' content — and to Plaintiff's damages. Mr. Hodge's declaration also confirms the data existed



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and was recoverable for roughly 30 days after deletion, which bears directly on preservation (Item 7). Please produce documents sufficient to show the views, reach, and revenue associated with the post, and supplement Interrogatory No. 18 (engagement data) with a substantive answer rather than an objection premised on Plaintiff's supposed fault. 7. Preservation, Litigation Hold, and Spoliation. Defendants respond "no documents" or "not in possession" to requests concerning any litigation hold or steps taken to preserve or suspend auto-deletion of account, device, and platform data (RFP Nos. 17, 30; Interrogatory No. 20). Defendants' own declaration states that post-level data becomes "unrecoverable after 30 days," meaning it remained recoverable well after Plaintiff's August 22, 2025, demand for removal and retraction. The duty to preserve attaches upon the reasonable anticipation of litigation and, on this record, arose no later than that date. Please state, in a substantive supplemental response, what preservation steps were taken, when, and by whom. Plaintiff expressly reserves all rights under Rule 37(e), including curative measures and an adverse-inference instruction. We again instruct Defendants to preserve all Google account activity, device data, browser data, and Meta account data, and to suspend any auto-delete settings on the relevant accounts. 8. Improper Blanket Objections and Refusal to Provide a Privilege Log. Defendants incorporate boilerplate General Objections into every answer, including General Objection No. 9, by which Defendants state they "will neither produce nor create a privilege log" for documents they contend are privileged. A party withholding responsive documents on privilege grounds must describe them sufficiently to assess the claim under Rule 26(b)(5)(A), and the burden of sustaining an objection — including on a motion for a protective order — rests on the objecting party; boilerplate assertions do not suffice.

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Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984); Burlington N. & Santa Fe Ry. v. U.S. Dist.

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Court, 408 F.3d 1142 (9th Cir. 2005). Please withdraw the categorical refusal and produce a privilege log for any responsive document withheld on privilege grounds, or confirm that no responsive documents are being withheld on that basis. Plaintiff's Narrowing Offers Remain Open. To move this forward, Plaintiff reiterates the good-faith narrowing proposed in my July 9 letter: Plaintiff will accept a neutral, court-appointed forensic examiner operating under a mutually acceptable protocol and a stipulated protective order for any device examination (see United Factory Furniture Corp. v. Alterwitz, No. 2:12-cv-00059-KJD-VCF (D. Nev.



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2012);^{FF} August 25, 2026 Page 5 Ameriwood Indus. v. Liberman, 2006 WL 3825291 (E.D. Mo.

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2006)); will withdraw or defer the router/modem/ISP request; and will narrow any browsing-activity request to search-related activity. Plaintiff also renews its offer to enter a stipulated protective order to address any genuine confidentiality concern, including as to the financial records. Meet-and-Confer Request. Under Local Rule IA 1-3(f), the meet-and-confer obligation may be satisfied only through direct dialogue. Accordingly, please advise by September 2, 2026, of your availability for a telephonic conference during the week of September 7 to discuss the items above. Given the September 18, 2026, discovery cut-off, time is short, and we would prefer to resolve these matters by agreement rather than burden the Court. If we are unable to resolve these issues through conferral, Plaintiff will move to compel under Rule 37(a) and will seek the reasonable fees and costs incurred, and will pursue relief under Rule 37(e) where the record warrants. Nothing in this letter waives, and Plaintiff expressly reserves, all rights and objections. I look forward to hearing from you.. Sincerely yours, JONES, DAVIS & JACKSON, PC By: _____ Nicole A. Westbrook CC: Pastor Steve Smothermon

EXHIBIT 3

Pangram.com AI Analysis of
Plaintiff's Motion to Strike Defendants'
Notice of Errata and the Attached
Declaration of Stephen Parker
[ECF No. 74]

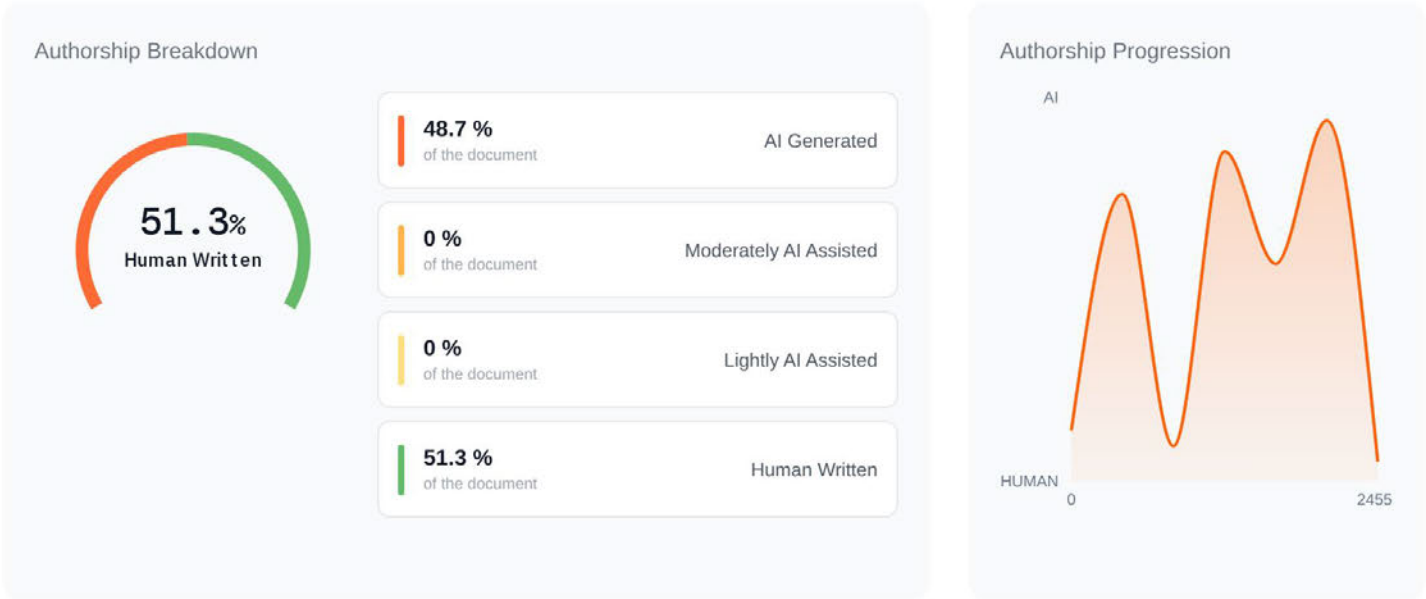


AI Detection Report for 074 - Plaintiff's Motion to Strike Notice of Errata.pdf

Sep 3, 2026 | 2,455 Words | Pangram 4.0

Summary

We believe that this text is a mix of AI and human-written content.





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Case 2:25-cv-01858-APG-BNW Document 74 Filed 09/02/26 Page 1 of 8 1 2 3 4 5 6 G. Michael Jackson, State Bar No. 1894 Nicole A. Westbrook, pro hac vice JONES, DAVIS & JACKSON, P.C. 25350 Magic Mountain Parkway, Suite 300 Valencia, CA 91355 Telephone: (661) 481-2220 Facsimile: (661) 836-7711 Email: mjackson@jonesdavis.com nwestbrook@jonesdavis.com Attorneys for Plaintiff Pastor Steve Smothermon 7 UNITED STATES DISTRICT COURT 8 DISTRICT OF NEVADA 9 10 PASTOR STEVE SMOTHERMON, 11 12 13 14 15 Case No.: 2:25-cv-01858-APG-BNW PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' NOTICE OF ERRATA (ECF NO. 71) AND THE ATTACHED DECLARATION OF STEPHEN PARKER Plaintiff, v. KEITH HODGE, an individual; KEVIN HODGE, an individual; HODGETWINS, LLC, a Nevada limited liability company; Defendants. 16 17 Plaintiff Pastor Steve Smothermon respectfully moves, under Local Rule 7- 18 2(g), to strike Defendants' Notice of Errata (ECF No. 71) and the Declaration of 19 Stephen Parker attached to it or, in the alternative, for leave to respond to that 20 declaration. Through the "errata," Defendants added to the record a non-party's 21 sworn declaration — the declaration of counsel for Nathan Hughes and 22 DiamondHands, LLC d/b/a Bigly — as evidence on Plaintiff's Motion to Modify 23 the Scheduling Order (ECF No. 67), without leave of Court as Local Rule 7-2(g) 24 requires. The filing is not an errata. It is a supplemental submission of new evidence. 25 It should be stricken. 26 27 1FF Case 2:25-cv-01858-APG-BNW Document 74 Filed 09/02/26 Page 2 of 8 I.

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BACKGROUND 1 On August 24, 2026, Defendants filed their Opposition to Plaintiff's Motion 2 to Modify the Scheduling Order. ECF No. 70. The Opposition was supported by the 3 Declaration of Ronald D. Green and eight exhibits. ECF Nos. 70-1 through 70-9. 4 The Parker Declaration was not among those attachments. 5 Later the same day, Defendants filed a "Notice of Errata" to that Opposition. 6 ECF No. 71. The only attachment is "Exhibit A — Declaration of Stephen Parker." 7 ECF No. 71-1. The Notice states that "[t]he Opposition cites to the Declaration of 8 Stephen Parker, but the filed Opposition did not include Mr. Parker's declaration," 9 and that Defendants "wish to correct this error." ECF No. 71 at 1. They did not move 10 for leave to supplement. Mr. Parker executed the declaration on August 21, 2026 — 11 three days before the Opposition was filed. ECF No. 71-1 at 3. 12 Mr. Parker is not a party. He is counsel for Nathan Hughes and 13 DiamondHands, LLC d/b/a Bigly. He states that he is "authorized to speak for Mr. 14 Hughes and Bigly with respect to the scheduling of Mr. Hughes deposition." ECF 15 No. 71-1 ¶ 4. The declaration then goes further. Paragraphs 5 through 9 offer 16 testimony about subpoena service, the August 26 date, a court reporter, and whether 17 a Rule 30(b)(6) deposition of Bigly was requested. Paragraph 10 states that "Mr. 18 Hughes and Bigly have complied with all requests by Ms.

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Westbrook." ECF No. 71- 19 1 ¶¶ 5–10. That compliance assertion is contested. It is not a typographical correction 20 to the Opposition. 21 Plaintiff files this Motion so the Court will not treat the Parker Declaration as 22 part of the opposition record. 23 II. LEGAL STANDARD 24 Local Rule 7-2(g)



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is controlling and is quoted here as this Court has quoted it: 25 A party may not file supplemental pleadings, briefs, 26 authorities, or evidence without leave of court granted for 27 Case 2:25-cv-01858-APG-BNW Document 74 Filed 09/02/26 Page 3 of 8 good cause. The judge may strike supplemental filings 1 made without leave of court. 2 LR 7-2(g); see, e.g., Williams v. Rashid, No. 2:21-cv-01676-APG-MDC, 2026 WL 3 1679286, at *5 (D. Nev. June 9, 2026) (Gordon, C.J.) (striking errata and amended 4 briefs filed without leave because they were "new briefs with new authorities," not 5 clerical corrections); Armstrong as Tr. of R.J. Armstrong Living Tr. v. Holmes, No. 6 3:22-cv-00375-ART-CSD, 2024 WL 1744513, at *3-4, *6 (D. Nev. Apr. 22, 2024) 7 (striking a filing captioned as an "errata" that "does not contain any corrections" and 8 instead attached a declaration and supplemental briefing); 1600 E. Newlands Drive, 9 LLC v. Amazon.com.NVDC, LLC, No. 3:17-cv-00566-RCJ-WGC, 2020 WL 10 7319412, at *2 (D. Nev. Dec. 11, 2020) (striking evidence and a new argument first 11 offered in a reply, where the opposing party had no opportunity to respond). Local 12 rules "have the force of federal law." In re Corrinet, 645 F.3d 1141, 1146 (9th Cir. 13 2011); see also Hollingsworth v. Perry, 558 U.S. 183, 191 (2010). 14 A notice of errata "must explain the changes made to the corrected document." 15 LR IC 2-2(h). An errata "should only correct ministerial errors made in a previously 16 filed document that is pending before the Court." ATLP ex rel. Taylor v. CoreCivic, 17 Inc., No. 2:21-cv-02072-JCM-EJY, 2023 WL 9232967, at *2 (D. Nev. Dec. 5, 2023). 18 "Notices of errata to clarify clerical errors are substantively different from attempts 19 to file supplemental briefs unauthorized by local rules." Bias v. Moynihan, 508 F.3d 20 1212, 1224 (9th Cir. 2007). 21 New evidence filed without leave is improper where it deprives the opposing 22 party of a chance to respond. See 1600 E. Newlands Drive, 2020 WL 7319412, at 23 *2; Tovar v. U.S. Postal Serv., 3 F.3d 1271, 1273 n.3 (9th Cir. 1993) (striking extra- 24 record statistics and a counsel affidavit first offered in an appellate reply). If such 25 evidence is to be considered at all, the other side must have an opportunity to answer 26 it. See Provenz v. Miller, 102 F.3d 1478, 1483 (9th Cir. 1996) (district court erred 27 Case 2:25-cv-01858-APG-BNW Document 74 Filed 09/02/26 Page 4 of 8 by using new reply evidence without considering the non-movant's rebuttal). The 1 Court also has inherent authority to strike noncompliant papers from its docket. See 2 Ready Transp., Inc. v. AAR Mfg., Inc., 627 F.3d 402, 404-05 (9th Cir. 2010) (district 3 courts have inherent power to strike items from the docket; whether to exercise that 4 power is discretionary). 5 III. ARGUMENT 6 A. ECF No. 71 is not an errata. It is a supplemental filing of new evidence. 7 An errata "is a document that contains corrections." Armstrong, 2024 WL 8 1744513, at *3.

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Citing a declaration in a brief and then filing the declaration later is 9 not a correction to the brief. It is the late addition of evidence. ECF No. 71 does not 10 mark a change to the text of ECF No. 70. It attaches a new ten-paragraph affidavit 11 from a non-party's lawyer and offers that affidavit as evidence on a pending motion. 12 That is a supplement and the caption does not change the function. 13 This Court has drawn that line. Filings "do not merely fix clerical errors like 14 a typical errata" when they add "new briefs with new authorities." Williams, 2026 15 WL 1679286, at *5. The Court struck those papers under Local Rule 7-2(g) because 16 leave had not been granted. Id. The same rule reaches new evidence. LR 7-2(g) 17 (prohibiting "supplemental



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pleadings, briefs, authorities, or evidence" without leave) 18 (emphasis added). 19 Judge Denney applied the same distinction to a filing that, like this one, was 20 styled as an errata and attached a declaration. The "errata" "does not contain any 21 corrections, instead it consists of ... supplemental briefing, along with a 22 declaration." Armstrong, 2024 WL 1744513, at *3. The party "did not seek leave of 23 court before filing her supplemental brief, incorrectly titled as an 'errata.'" Id. at *4. 24 The court struck it. Id. at *4, *6. 25 That is this record. Defendants filed a complete opposition on August 24, 26 2026, ECF No. 70, with a supporting declaration and eight exhibits. They had Mr.

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27 ^{FF}Case 2:25-cv-01858-APG-BNW Document 74 Filed 09/02/26 Page 5 of 8 Parker's declaration in hand when they did so; he signed it on August 21.

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Later, 1 under a separate ECF, they filed that declaration under an errata event. Local Rule 2 IC 2-2(h) required them to "explain the changes made to the corrected document." 3 Naming a missing attachment is not a change to ECF No. 70. It is the addition of 4 evidence to the opposition record. An "improper 'Errata'" that supplies omitted 5 substance is not an errata. ATLP, 2023 WL 9232967, at *1-2. 6 B. Defendants did not seek leave. Local Rule 7-2(g) authorizes a strike. 7 The rule is not discretionary in its prohibition. A party "may not file" 8 supplemental evidence without leave granted for good cause. LR 7-2(g). Defendants 9 did not ask. They did not attempt the showing the rule requires. The Court "may 10 strike supplemental filings made without leave of court." Id.; Williams, 2026 WL 11 1679286, at *5; Armstrong, 2024 WL 1744513, at *4, *6; 1600 E. Newlands Drive, 12 2020 WL 7319412, at *2. 13 The prejudice Local Rule 7-2(g) is written to prevent is present. The Parker 14 Declaration is new sworn testimony, including that Hughes and Bigly "have 15 complied with all requests by Ms. Westbrook." ECF No. 71-1 ¶ 10. Plaintiff had no 16 opportunity to test or answer that statement in the Opposition, because the 17 declaration was not part of the Opposition. A court "cannot consider new evidence 18 ... when the other party does not have an opportunity to respond to the evidence." 19 1600 E. Newlands Drive, 2020 WL 7319412, at *2 (citing Provenz, 102 F.3d at 20 1483). That is the reason to strike, not a reason to treat the declaration as if it had 21 been filed with ECF No. 70. 22 Defendants will say this is Weinfeld v. Minor, No. 3:14-cv-00513-RJC-WGC, 23 2019 WL 13211833 (D. Nev. Jan. 14, 2019), because the Notice asserts that the 24 Opposition cites to the Parker Declaration. ECF No. 71 at 1. Even taking that 25 assertion as true, Weinfeld does not authorize what they filed. In Weinfeld, the errata 26 supplied billing records the opening brief had already quoted by figure. Id. at *1-2. 27 ^{FF}Case 2:25-cv-01858-APG-BNW Document 74 Filed 09/02/26 Page 6 of 8 The court still did not treat the late paper as established. It declined to strike and 1 gave fourteen days to respond. Id. at *2. Parker is not an invoice stack. It is a new 2 sworn statement of non-party counsel, signed three days before the Opposition, 3 containing contested



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testimony that Hughes and Bigly “have complied with all 4 requests.” ECF No. 71-1 ¶ 10. Citing a declaration and omitting it does not convert 5 that testimony into a ministerial correction, and it does not excuse Local Rule 7-2(g). 6 If the Court follows Weinfeld at all, the holding is the fallback this Motion separately 7 requests — a short period to respond — not a ruling that the declaration was part of 8 ECF No. 70 all along. 9 C. Alternatively, Plaintiff should be permitted to respond before the Court relies 10 on the declaration. 11 If the Court is not prepared to strike ECF No. 71, it should do what Weinfeld 12 did when it declined to strike: refuse to treat the late paper as established, and give 13 Plaintiff a short, date-certain period to respond to the Parker Declaration before the 14 Court rules on ECF No. 67. Weinfeld, 2019 WL 13211833, at *2. Plaintiff asks for 15 seven days from the Court’s order, or such other period as the Court sets. The 16 alternative is not a request to keep the declaration in the record by default. It is the 17 minimum process Local Rule 7-2(g) and Provenz require if the paper is going to be 18 considered at all.

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19 IV. CONCLUSION 20 The Court should strike Defendants’ Notice of Errata (ECF No. 71) and the 21 attached Declaration of Stephen Parker as an unauthorized supplemental filing under 22 Local Rule 7-2(g). 23 24 25 26 27 6FF Case 2:25-cv-01858-APG-BNW Document 74 Filed 09/02/26 Page 7 of 8 Respectfully submitted this 2nd day of September, 2026. 1 2 3 4 5 6 7 8 /s/ Nicole A. Westbrook Nicole A. Westbrook G. Michael Jackson Esq. JONES, DAVIS & JACKSON, P.C. Attorneys for Pastor Steve Smothermon 9 10 CERTIFICATION OF CONFERRAL 11 Counsel for Plaintiff certify that they have attempted in good faith to confer 12 with counsel for Defendants on this motion. Counsel for Plaintiff sent an email to 13 defense counsel on August 26 requesting both conferral on Plaintiff’s forthcoming 14 motion to compel and the above-styled motion to strike. Telephonic conferral was 15 16 had August 28 and Defendants oppose the relief requested herein. 17 CERTIFICATE OF SERVICE 18 I HEREBY CERTIFY that on September 2, 2026, I caused the foregoing 19 document to be electronically filed with the Clerk of the Court using CM/ECF. I 20 further certify that a true and correct copy of the foregoing document was served 21 on all counsel of record via transmission of Notices of Electronic Filing generated 22 23 24 25 26 by CM/ECF. Marc J. Randazza, NV Bar No. 12265 Ronald D. Green, NV Bar No. 7360 Alex J. Shepard, NV Bar No. 13582 RANDAZZA LEGAL GROUP, PLLC 8991 W. Flamingo Rd., Ste. B 27 7FF Case 2:25-cv-01858-APG-BNW Document 74 Filed 09/02/26 Page 8 of 8 1 2 3 4 Las Vegas, NV 89147 Attorneys for Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC /s/ Nicole A. Westbrook 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 8