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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

REPLY IN SUPPORT OF NOTICE REGARDING MOTION TO COMPEL PRODUCTION OF DOCUMENTS [ECF NO. 83]

Defendants Kevin Hodge, Keith Hodge, and Hodgetwins, LLC (collectively, "Defendants") hereby submit their reply in support of their Notice Regarding Motion to Compel Production of Documents (ECF No. 83). Defendants will keep this Reply concise. However, they need to ensure the Court understands what happened here.

In his expert report for Plaintiff, Robert Fisher extensively quoted an attorney-client privileged letter from Nicole Westbrook to Plaintiff Steve Smothermon. *See* ECF No. 73 at 2. He also cited a "study" performed by Plaintiff's counsel upon which he claims to have based his "expert opinion." This "study" appears to be the AI-generated memorandum that provided Plaintiff's liability theory which has driven their prosecution of this litigation. *See id.* at 3. Ms. Westbrook's provision of these documents to Mr. Fisher waived any claims of privilege, requiring Plaintiff to produce them to Defendants. *See In re W. States Wholesale Natural Gas Antitrust Litig.*,

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Base Case No. 2:03-cv-01431-RCJ-PAL, 2017 U.S. Dist. LEXIS 108444, at *11 (D. Nev. July 12, 2017); *Hallam v. Gemini Ins. Co.*, Case No. 12cv2442-CAB(JLB), 2015 U.S. Dist. LEXIS 191638, at *8-10 (S.D. Cal. June 19, 2015).

During the parties' meet and confer conference, Ms. Westbrook maintained that Mr. Fisher established at the deposition that the letter was from Nicole Westbrook to Marc Randazza and that she had no idea what "study" Mr. Fisher was talking about. *See* ECF No. 73 at 4. In reality, during Mr. Fisher's deposition, which Ms. Westbrook attended in person, Mr. Fisher testified that the letter was "obviously" not to Mr. Randazza and that he relied upon the study provided to him by Plaintiff's counsel, but then claimed that he had not actually seen it. *See id.* at 4-5. Ms. Westbrook expects Defense counsel and this Court to believe that she just did not remember waiving the attorney-client privilege by handing Plaintiff's expert privileged materials and asking her client's expert to rely upon a "study" (in reality, a research memorandum) that he had never seen.

Her representations were inconsistent. Despite multiple attempts to resolve this issue before (thus discharging the duty to meet and confer), Mr. Green made one last call to her cellular phone the next day to try and resolve this without a motion. *See* ECF No. 83 at 2. She did not answer, so he left her a message to return his call to discuss or he was going to have to file on that day. *See id.* He was attempting to avoid filing a Motion to Compel. She refused to return his call. She did not send him an email or a text message asking to schedule a call. So, more than three and one-half hours later, he filed the Motion. *See id.*

Ms. Westbrook mentions twice that Mr. Green's voicemail was 40 seconds long, as though the length makes it insufficient. *See* ECF No. 93 at 3-4. However, that is more than enough time to leave a detailed message, which is what Mr. Green did. He stated that he was going to file a Motion to Compel. He asked her to return his call to attempt to avoid the filing. Then, he waited three and a half hours to see if she would respond. She did not. So, he filed.

And yet, Plaintiff argues that Defendants' meet and confer efforts were insufficient. Defendants sent Plaintiff a meet and confer letter. *See* ECF No. 83 at 2. Defense counsel engaged in a full meet and confer conference where Ms. Westbrook made representations about both

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documents that were not credible. *See id.* So, Mr. Green made another attempt to meet and confer the next day, leaving Ms. Westbrook a detailed message and asking her to call him back. *See id*. He waited nearly half of a workday, and when she did not return his call, he filed the Motion. *See id.* One week later, Plaintiff produced the documents rather than opposing the Motion. *See id.* at 1. The Motion did its job.

Finally, given that the discovery period was rapidly drawing to a close, Defendants could not wait for Ms. Westbrook to get back to their counsel. She has a habit of taking an inordinate amount of time to get back to counsel, if she ever responds at all. Defendants were in no position to allow her to stall.

Defendants did not file prematurely. They made a demand for documents, actually did meet and confer, and Plaintiff's counsel reacted by stalling for time and making misrepresentations about what those documents were and what Plaintiff's expert said about them. If Defendants had not filed the Motion, they would not have the documents. Plaintiff should not be rewarded for these actions. Defendants are entitled to the requested award of fees and costs.

Dated: September 16, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 16, 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/ Ronald D. Green
Ronald D. Green

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