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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' OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL PAYMENT OF EXPERT WITNESS ROBERT J. FISHER'S DEPOSITION FEE [ECF No. 133]

Defendants oppose Plaintiff's Motion to Compel Defendants to Pay Expert Witness Robert J. Fisher's "Reasonable" Deposition Fee (ECF No. 133).

1.0 INTRODUCTION

Plaintiff is not being very candid. Defendants have not "refused" to pay Mr. Fisher. They have disputed his rate and have been attempting to negotiate a reasonable solution with him. They told him so in writing on October 1 and again on the 14th. ECF No. 133-3 at 2, 9; Randazza Email to Westbrook dated October 14, 2026, attached to the Declaration of Marc Randazza ("Randazza Decl.") as **Exhibit 1** at 4. Defendants are willing to pay a *reasonable* fee – one that the parties could negotiate. But instead, Plaintiff is following his standard playbook: refusing to discuss issues with Defense counsel and preferring to waste the Court's time by filing a motion whose purpose was to simply multiply the proceedings.

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Defendants only contest Mr. Fisher's hourly rate, not the hours he claims. Mr. Fisher charged Plaintiff $900 an hour but attempts to charge Defendants $975 an hour. ECF No. 133-2 at 2. His rate is unreasonable. At least Plaintiff agreed to the unreasonable rate. Plaintiff and Mr. Fisher attempted to stick Defendants with a higher rate simply because they wished to depose him.

While the Defendants were attempting to negotiate with Fisher, he left the country and declined to communicate further until he returned on November 2, 2026. Defendants agreed to resume negotiations with him then. Ex. 1 at 5, 7. Fisher also claimed that he'd had "no contact whatsoever" from Plaintiff's counsel since Defendants' October 1 letter. *Id.* at 7. There were no subsequent communications until Plaintiff filed this Motion. Plaintiff's counsel never called, never held a conference, and never answered nor countered any of Defendants' compromise proposals.

The Motion should be denied for failure to follow the Local Rules which require a meet and confer. If the Court reaches the merits, it should set a reasonable rate below $975 per hour.

2.0 FACTS

Fisher's agreement with Plaintiff bills him at $900 an hour but bills depositions at $975. ECF No. 133-2 at 2. On September 30, 2026, Mr. Fisher emailed Defendants' counsel directly. He demanded $6,825, threatened a bar complaint if he was not paid, made implied threats to attack Defense counsel's reputation, and warned of other unspecified "consequences." Fisher Email to Defense Counsel dated September 30, 2026, attached to Randazza Decl. as **Exhibit 2**. Defendants' counsel answered the next day with a nine-page letter, copied to Plaintiff's counsel. ECF No. 133-3. It said, "Defendants are not refusing to pay you." *Id.* at 2.

The letter invited Plaintiff's feedback and said counsel was "prepared to have [a meet-and-confer] conversation with Plaintiff's counsel should one ever be requested." ECF No. 133-3 at 3, 9. On October 12, 2026, Plaintiff's counsel wrote that Plaintiff "might withdraw Mr. Fisher as an expert." ECF No. 120-2 at 3.

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Defense counsel's letter offered potential resolutions. To Mr. Fisher, it offered payment at $250 an hour, the figure he claimed under oath was what professional work in his field paid. ECF No. 133-3 at 7. However, after Plaintiff offered to withdraw Fisher, Defendants offered to pay the entire amount if he did so, given the savings that would have resulted from such a reasonable act. *Id.* at 8.

Plaintiff's counsel's response was to forward the August 7, 2026, invoice. **Ex. 1** at 1–3. On October 9, Defendants asked: "Is anyone interested in discussing a compromise of the fees here, and/or some other resolution?. . .What is your position?" *Id.* at 3. Plaintiff refused to answer.

Mr. Fisher answered on October 14, 2026. He wrote that his rate "is not negotiable before or after the deposition," and that he would "have Jones Keller file the motion" if he was not paid by his return from abroad on November 2. *Id.* at 4–5. Defendants replied that they were "not flatly refusing to pay" and that "the amount will either be the product of compromise or of court determination." *Id.* at 4. Mr. Fisher answered that this was his "last communication with you on this matter until I return from my trip." *Id.* at 7. Defendants wrote back: "Ok, enjoy your vacation. We can talk when you get back." *Id.* Mr. Fisher's last message reads: "I have had no contact whatsoever from Ms. Westbrook since your initial letter to me." *Id.*

Between October 1 and November 10, 2026, Plaintiff's counsel did not contact Defendants' counsel by phone, video, email, nor in person, and did not ask for a conference, and did not accept any overtures to have one. Randazza Decl. ¶¶ 2-3.

3.0 ARGUMENT

3.1. The Motion Should Be Denied for Failure to Meet and Confer

Opposing a motion because of a lack of a meet and confer can sometimes seem like elevating form over substance. However, this motion should be used in CLEs as an example of why a meet and confer is not just a requirement, but it is a good idea. This motion practice is over a delta between the parties of $5,075. This Court, which probably has plenty of other things to do, is now called upon to adjudicate a dispute that is barely over the halfway point of small claims jurisdiction. Meanwhile, the motion itself likely cost more than that.

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Denial of the motion is proper because a discovery motion "will not be considered" unless the movant has made a good-faith effort to meet and confer "as defined in LR IA 1-3(f)." LR 26-6(c). That definition requires "direct dialogue and discussion in a face-to-face meeting, telephone conference, or video conference." LR IA 1-3(f). "The exchange of written, electronic, or voice-mail communications does not satisfy this requirement." *Id.* The movant's declaration must state, "all meet-and-confer efforts, including the time, place, manner, and participants." LR IA 1-3(f)(2). Failure to comply "may result in denial of the motion." LR IA 1-3(f)(4). "Emails do not count as a meet and confer," and each motion requires "a new meet and confer with opposing counsel beforehand." *Elias v. Wynn Las Vegas, LLC*, No. 2:23-cv-02111-ART-BNW, ECF No. 65 at 2 (D. Nev. Feb. 11, 2025). There was not only a lack of a good-faith conference; there was a refusal.

Ms. Westbrook's declaration says the parties conferred "by email and letter as referenced above." ECF No. 133-1 ¶ 6. Plaintiff's counsel made no attempt to meet and confer as required by the Local Rule and failed to respond to Defense counsel's attempts to have one. Plaintiff's certification that the parties "met and conferred in good faith" is false. ECF No. 133 at 2. One phone call should have resolved this dispute or narrowed it considerably. That is why the rule exists. But this is not the first time Plaintiff has refused offers to meet and confer, choosing to unnecessarily multiply the proceedings instead. *See* ECF No. 121-1; ECF No. 129.

3.2. Defendants Never Refused to Pay

Plaintiff misrepresents that Defendants "refuse to pay" Mr. Fisher. ECF No. 133 at 1. Plaintiff's own exhibit reveals this is not true. ECF No. 133-3 at 2. Plaintiff omits Defendants' compromise proposals and attorney Westbrook's statement that Plaintiff might withdraw Mr. Fisher anyway. It omits the October 14, 2026, exchange, in which Mr. Fisher set out a timetable for further conversation and Defendants agreed. Plaintiff's counsel, who has not spoken to Defendants' counsel about the fee at all, then filed the Motion. Ex. 1 at 5. Plaintiff chose to unnecessarily run up the bills for all parties. That has been their M.O. since filing the case.

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3.3. If the Court Reaches the Merits, Fisher's Rate Should Be Set Well Below $975

Defendants accept that Mr. Fisher sat for seven hours and that they owe a reasonable fee for that time. The only question is the rate. He is neither worth nor entitled to $975 per hour.

3.3.1. Plaintiff's Contract with Fisher Does Not Bind Defendants

Rule 26(b)(4)(E) requires payment of "a reasonable fee," not the "contract with the plaintiff fee." "[W]hile plaintiff may contract with any expert of plaintiff's choice and, by agreement, that expert may charge unusually high rates for services, the discovery process will not automatically tax such unreasonable fees upon the defendant." *Bowen v. Monahan*, 163 F.R.D. 571, 574 (D. Neb. 1995). Courts in this District consider the expert's area of expertise, the education and training the work requires, prevailing rates for comparably respected experts, "the nature, quality and complexity of the discovery responses provided," the fee charged to the retaining party, and the expert's customary fees. *Gustin v. Plano Molding Co.*, No. 2:14-cv-00700-RCJ-CWH, ECF No. 145 at 2 (D. Nev. Mar. 9, 2016) (*quoting Axelson v. Hartford Ins. Co. of the Midwest*, No. 2:11-cv-1827-RCJ-GWF, 2013 WL 1261757, at *2 (D. Nev. Mar. 26, 2013)).

3.3.2. Plaintiff's Own Authority Cuts Against $975

Plaintiff cites *Farace v. American Airlines, Inc.* for the idea that an expert's hourly rate for professional services is presumptively reasonable. ECF No. 133 at 4. Mr. Fisher's claimed rate for his client is $900, not $975. The extra $75 an hour applies only to the opposing party. And *Farace* did not award the expert's rate. It cut it by more than half, finding that "a four-hour deposition at the rate of $700 per hour is clearly excessive" and set the rate at $300. *Farace*, No. 2:10-cv-00724-KJD-LRL, ECF No. 22 at 3 (D. Nev. Aug. 29, 2011).[1] *Gustin* also rejected an expert's elevated deposition rate and capped it at what he charged the party that retained him. *Gustin*, ECF No. 145 at 2. At the very least, Mr. Fisher cannot charge Defendants more than he charges Plaintiff.

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[1] Adjusted for inflation, $300 in 2011 is about $430 today. But that was for an actual *expert*.

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3.3.3. Every Market Indicator in the Record Is Far Lower

Fisher testified "The gal out there could have done the same thing as I do." Fisher Dep. at 280:11–13[2] (referring to the receptionist at the court reporter's office, *id.* at 280:4–6). Defendants agree. If one reviews Fisher's testimony at the deposition and his report, it is clear that he provided no more expertise nor value than "the gal out there." Based on his testimony, his rate should be what "the gal out there" makes per hour. While we do not have "the gal's" paystubs, we have market information that tells us what "the gal out there" is likely worth. The 90th percentile hourly rate for a receptionist in Los Angeles is $25.29.[3] If she could have done what Fisher did, then what business does Fisher have charging nearly 40 times what she is worth? There is nothing in the record that suggests a rate in excess of that would be appropriate. However, let us be charitable and say that Fisher is worth nearly ten times what "the gal out there" is worth. That would be consistent with Fisher's own testimony that $250 an hour is a reasonable rate. He priced the professional assessment in a proposed repair program at "20 hours by someone charging $250 an hour," explaining, "I know what people charge out in the field." Fisher Dep. at 356:9–10, 359:2–3.[4] He also testified that he has not done that work himself since the 1980s or 1990s and "will have nothing to do with this program." *Id.* at 359:5–7, 359:13–360:2.

According to Fisher himself, someone who actually does real work in his field is worth $250 per hour. That means someone who is not a generation out of practice, like Fisher, who has not had any practice doing so since "the 1980s or 1990s." He has not taken a single course updating his knowledge since 1966. What could justify a rate more than 10 times "the gal's?" By any reasonable extrapolation, Fisher's stale knowledge is not even worth $250 per hour, but

[2] Citations to "Fisher Dep." are to the deposition transcript excerpts of Robert Fisher (ECF No. 123-1), and citations to "Fisher Rep." are to the report's internal pages (ECF No. 121-2).

[3] Bureau of Lab. Stat., U.S. Dep't of Lab., Occupational Employment and Wage Statistics (May 2025), Receptionists and Information Clerks (SOC 43-4171), Los Angeles-Long Beach-Anaheim, CA, as published in O*NET OnLine, California Wages: 43-4171.00 – Receptionists and Information Clerks, https://www.onetonline.org/link/localwages/43-4171.00?st=CA (last visited Nov. 12, 2026).

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Defendants are willing to compromise and settle for that rate, with the explicit protest that he is vastly overpriced even at that number.

3.3.4. Mr. Fisher Has No Credentials That Justify a Premium Rate

The first two factors for determining a fair rate for an expert witness are "the witness's area of expertise" and "the education and training that is required to provide the expert insight that is sought." *Gustin*, ECF No. 145 at 2. Mr. Fisher's formal education ended with a bachelor's degree in public relations from San Jose State College in 1966. ECF No. 121-2 at 6. He has never taken a graduate course. Fisher Dep. at 34:2–9. He has no master's degree. *Id.* at 286:1–3. His claimed expertise in how readers perceive a post comes down to this: "I mean, I have a college education." *Id.* at 217:7–13. He has not run a reputation repair program since "[p]robably around 2000."

He does not engage with the scholarship in his own field. His "peer-reviewed" publications are expert-referral services that reposted his LinkedIn articles. *Id.* at 83:4–84:16. He had not even heard of the seven leading journals in his field. *Id.* at 88:12–89:15. He calls peer review "a red herring," an "opposing counsel's witch hunt," and "useless in . . . expert witnessing." *Id.* at 85:5–8, 91:5–23. Asked whether his report cites any scientific studies, he said: "I don't know how you define scientific studies." *Id.* at 95:6–8. Asked whether he applied "[a]ny scientific method at all," he answered: "No, not through surveys." *Id.* at 301:23–24.

Strip away the label Plaintiff put on him, and Mr. Fisher is a retired publicist with stale knowledge that has not been refreshed since the end of the Cold War. His last equivalent of a CLE was before the Apollo missions. He has no graduate training. What he has is open contempt for the methods that separate expert testimony from opinion. By his own admission, he performed a Google search and repeated what Plaintiff's counsel told him to say. Fisher Dep. at 140:16–17, 141:21–25, and 138:23–25. He is not an expert in any sense Rule 702 recognizes. He is just a guy with opinions and no real knowledge in the field. That is not worth $975 per hour. It is worth $25.29 per hour, but again, $250 will do.

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3.3.5. Charging $975 an Hour for This Work Is Outrageous

The fourth factor, "the nature, quality and complexity of the discovery responses provided," is the most important. *Gustin*, ECF No. 145 at 2. Defendants discussed the quality (or lack thereof) of Mr. Fisher's work in their Rule 702 briefing. ECF Nos. 121, 129. That shows a witness who was there to offer opinions on nothing.

Mr. Fisher has no methodology. He claims that his methodology has three steps: gather information, analyze it, reach conclusions. Fisher Rep. at 23–24. That describes any exercise of judgment by anyone on any subject. He argued that his field is more art than science. Fisher Dep. at 301:25–302:3 (the thousands of experts and academics in the field would not agree). His claimed method has no known error rate, no written standards, and has never been reviewed by anyone. *Id.* at 91:25–92:11, 300:14–25. He dismisses peer review as "BS." *Id.* at 84:20–22. In his report, he lied. He claimed "extensive research of treatises and academic studies" from Harvard, Duke, and Cornell. But under oath, he admitted they do not exist: "there isn't any." *Id.* at 94:11–16; Fisher Rep. at 22. He is not even an expert at remembering what he claimed in writing.

Mr. Fisher's 45-page report and his entire expert testimony rest on four proverbs: (1) it takes years to build a reputation and seconds to destroy it; (2) you cannot un-ring a bell; (3) you can never wipe the slate clean; and (4) perception is more important than reality. Fisher Rep. at 27. He calls these sayings "the basis of many of my conclusions and opinions in this report," and says they apply "regardless of whether it is true or not." *Id.* Asked whether "we've heard these sayings since we were children" and "[y]ou don't need to go be a PR professional to know them," he answered: "Right." Fisher Dep. at 295:18–22. Of Fisher's proverbs, Defendants' rebuttal expert, Eric Rose, says: "They are not evidence, and standing alone they are not a methodology." ECF No. 121-3 at 7. Fisher's "expertise" rests on four adages with all the authority found in a fortune cookie. ECF No. 129 at 5.

As acknowledged by Fisher himself, a $25.29 per hour receptionist could have done his job. Fisher's one and only investigative act was Googling something. When asked about that Google search at deposition, he responded: "Specialized knowledge has nothing to do with doing

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a Google search. You're right. The gal out there could have done the same thing as I do." Fisher Dep. at 280:11–13. His report agrees: "As an average person, I sought to replicate the process used to do a search on the internet." Fisher Rep. at 30. The search has no date and no documentation, and Mr. Fisher agreed it "can't be replicated." Fisher Dep. at 218:16–21. Mr. Fisher himself estimates that "probably 80 percent of the report" could be produced by anyone handed the same documents. Fisher Dep. at 290:3–11. As for the rest: "You can't replicate that. . . . Nobody else can do it." *Id.* at 281:22–282:4. So, by his own account, the only "expert" part of the report is the part that nobody can ever check or replicate. ECF No. 129 at 5. Even $25.29 seems a bit high when you listen to Fisher.

When asked for "every bit of evidence" behind his word-of-mouth theory, he said: "Well, I don't have any evidence." Fisher Dep. at 259:6–15. He spoke to only Plaintiff's counsel. *Id.* at 129:24–130:4. He does not know how many people saw, liked, commented on, or shared the post. *Id.* at 135:6–14. He has never seen the photograph at the center of the case. *Id.* at 187:2–4. He testified that it does not matter whether the Facebook post at the heart of this case "was up for two years or two months," and called that "a supposition, obviously." *Id.* at 325:15–18. Asked about the effect of the post on Smothermon: "I don't think anyone has an actual clue." *Id.* at 368:21. In every case in which a plaintiff has retained him, his method has never produced a finding of no harm. *Id.* at 301:14–19.

Much of his testimony was not even his. He just said what the Plaintiff's attorney told him to say. The "study" he claimed was behind his metadata and image-search opinion is a synopsis of a memo from one of Plaintiff's lawyers to another *that Mr. Fisher never saw*. Asked whether he had "adopted a study designed by the lawyers who hired [him], whose author [he] can't name, using a method [he] can't describe," he answered: "Yeah, that's fair." Fisher Dep. at 141:21–25. On the metadata passage, he agreed he was "just writing what they told [him] to write." *Id.* at 267:3–7. The damages range is "not [his] number." *Id.* at 365:5–9. Confronted with the report's findings of fault, he disowned them: "It's a personal opinion. It's not expert opinion"; "if it's in italics, it's not me." *Id.* at 304:11–12, 307:6–11. Much of the rest is "boilerplate" from earlier

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reports, used because original drafting would have taken 25 percent more billable time. *Id.* at 123:19–22, 126:5–9.

This is what Plaintiff asks the Court to price at $975 an hour. A Google search that a receptionist could have run, four sayings every child knows, a synopsis of a lawyer's memorandum he never actually saw, and a damages number he admits are not the work of a premium professional. Rule 26(b)(4)(E) guarantees a *reasonable* fee. It does not guarantee a windfall for nothing. *See Farace*, ECF No. 22 at 2 (expert's fee should not "result in a windfall to the expert").

A reasonable rate is $25.29 per hour for what Fisher brought to the table. But in the interest of compromise, Defendants offered $250 an hour, the figure Mr. Fisher himself gave for professional work in his field. Seven hours at that rate is $1,750.

Nothing about $975 is anchored to anything. It is not Mr. Fisher's actual rate that he charged Plaintiff, which is $900. ECF No. 133-2 at 2. It is not the market, as Fisher told us. It is not anything a court in this District has approved for a witness like him. And it is not justified by credentials, method, or work product, because Mr. Fisher has none of those things. The figure reflects only what he would like to be paid by a party that never agreed to pay it.

3.4. The Remaining Relief Should Be Denied

Plaintiff asks for "interest at the statutory rate" but cites no statute or rule that provides it. ECF No. 133 at 5. Rule 26(b)(4)(E) does not. Anything Mr. Fisher bills above a reasonable fee is between him and Plaintiff under their agreement, which places payment obligations on Plaintiff and sends disputes between them to Los Angeles County. ECF No. 133-2 at 2–3; *see Reed v. Binder*, 165 F.R.D. 424, 428 n.3 (D.N.J. 1996) ("Where the expert charges more than what a court determines is a 'reasonable' fee, the party retaining that expert must pay the amount over and above the 'reasonable' rate."); *Bowen*, 163 F.R.D. at 574.

Defendants also reserve the question the Ninth Circuit left open in *Miller*: "whether a party may still recover fees under Rule 26(b)(4)(E) if his expert has already been precluded from testifying under *Daubert*." 114 F.4th at 1075 n.2. If the Court grants ECF No. 121 before ruling on this motion, that question will be live.

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4.0 CONCLUSION

The Court should deny the motion for failure to meet and confer under LR 26-6(c) and LR IA 1-3(f). In the alternative, the Court should set Mr. Fisher's reasonable deposition rate at $250 an hour for seven hours, a total of $1,750.

Dated: November 12, 2026.

Respectfully submitted,

RANDAZZA LEGAL GROUP, PLLC
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UNITED STATES DISTRICT COURT
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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

DECLARATION OF MARC J. RANDAZZA IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL PAYMENT OF EXPERT WITNESS ROBERT J. FISHER'S DEPOSITION FEE [ECF No. 133]

I, Marc J. Randazza, declare:

1. I am counsel for Defendants in the above-captioned matter. I make this declaration in support of Defendants' Opposition to Plaintiff's Motion to Compel Payment of Expert Witness Robert J. Fisher's Deposition Fee [ECF No. 133] (the "Motion").

2. Between October 1 and November 10, 2026, Plaintiff's counsel did not contact Defendants' counsel by phone, video, email, nor in person.

3. Plaintiff's counsel did not ask for a conference, and did not accept any overtures by Defendants' counsel to have one.

4. **Exhibit 1** is a true and accurate copy of my email with opposing counsel regarding Fisher's deposition payment on October 14, 2026.

5. **Exhibit 2** is a true and accurate copy of Fisher's September 30, 2026, email to me.

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

Dated: November 12, 2026

/s/ Marc J. Randazza
Marc J. Randazza

Exhibit 1

Randazza Email to Westbrook on October 14, 2026

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Casey Spring <cts@randazza.com>

Re: Smothermon v Hodge et al. | August 6, 2026, Deposition Payment Issue

1 message

Marc John Randazza <mjr@randazza.com> Wed, Oct 14, 2026 at 3:45 PM
To: "Associates Inc. Fisher" <pr4biz@fisherpr.com>
Cc: Casey Spring <cts@randazza.com>, Mike Jackson <mjackson@jonesdavis.com>, Ron Green <rdg@randazza.com>, Staff <staff@randazza.com>, Steve Jones <sjones@jonesdavis.com>, Aaron McDaniel <amcdaniel@joneskeller.com>, Dana Reedle <dreedle@jonesdavis.com>, Danielle Darkenwald <dbd@randazza.com>, "Nicole A. Westbrook" <nwestbrook@joneskeller.com>

Ms. Westbrook has said that she “might” withdraw your report. But it seems that she has not decided on that yet, and does not intend to do so until after we have spent the fees on our motion to disqualify you.

I find that unfortunate because I think we had a compromise that we had proposed that would’ve benefited everybody.

As i said in my letter: we’re not flatly refusing to pay you at all, but, the amount will either be the product of compromise or of court determination.

While your report was, indeed far beneath what would be properly billed at your rate, it was only at your deposition that we learned the degree of your malfeasance, lack of preparation, and lack of complete candor.

We will be filing our motion for disqualify you by this time tomorrow.

If you would like to convince Ms. Westbrook to return our calls, we might be able to come to a compromise.

Marc John Randazza, JD, MAMC, LLM

Randazza Legal Group

Las Vegas - Gloucester - Miami

Sent from iPhone (maybe even using Siri). If the message is at all intelligible, it is a minor miracle.

Il giorno 14 ott 2026, alle ore 12:31, Fisher & Associates, Inc. <pr4biz@fisherpr.com> ha scritto:

Mr. Randazza

Thank you for your follow-up to your original letter to me sent on October 1 in response to my email to you on September 30. Since 90% of your letter was directed to the law firm, I was waiting for it to respond. If the tone of my email

was offending to you, I'm sorry. At the time, the payment of the statement for my deposition fee had not been paid for two months and I had been informed that you didn't intend to pay it. Let's keep this simple:

- You subpoenaed me (actually twice) to have my deposition taken which required me to do so.

- My deposition fee is $975 an hour. Assumingly you knew what my deposition fee was before you subpoenaed me. If not, you were negligent in not learning what it was. My deposition fee is not negotiable before or after the deposition. If you felt the hourly fee was excessive, you needed to address that concern prior to deposing me.

- I attended the deposition and it lasted seven hours. At my rate, the amount due is $6,825.

- Nevada law requires you to pay that amount.

- Should you not pay, Nevada law provides that a motion (NRCP 26(b)(4)(E)) can be filed to compel payment and demand court intervention.

Finally, as to the closing comment in your letter about me not being a "proper expert," if that were true, I question why you deposed me at all. You had access to my expert report. Such an assertion is ludicrous of course as I have been retained by law firms in over 125 cases and the courts (federal and state) have authorized me to testify in 15 trials.

The "bottom line" is you need to be honorable and pay my fee. I am leaving the country tomorrow for two weeks, returning on November 2. If the money isn't in hand, I will have to move forward with the legal action and have Jones

Keller file the motion referenced above. I trust you will fulfill your obligation.

Bob Fisher

From: Marc Randazza <mjr@randazza.com>
Sent: Friday, October 9, 2026 12:11 PM
To: Nicole Westbrook <nwestbrook@jonesdavis.com>
Cc: Casey Spring <cts@randazza.com>; Fisher & Associates, Inc. <pr4biz@fisherpr.com>; Mike Jackson <mjackson@jonesdavis.com>; Ron Green <rdg@randazza.com>; Staff <staff@randazza.com>; Steve Jones <sjones@jonesdavis.com>; Aaron McDaniel <amcdaniel@joneskeller.com>; Dana Reedle <dreedle@jonesdavis.com>; Danielle Darkenwald <dbd@randazza.com>
Subject: Re: Smothermon v Hodge et al. | August 6, 2026, Deposition Payment Issue

Nicole and Mr. Fisher,

Is anyone interested in discussing a compromise of the fees here, and/or some other resolution?

We presume that our letter sent 8 days ago has now been read and digested. What is your position?

On Thu, Oct 1, 2026 at 4:29 PM Nicole Westbrook <nwestbrook@jonesdavis.com> wrote:

See attached – a copy of the email and invoice for Mr. Fisher sent to you (Marc, Ron, and Danielle) on August 7, 2026.

Jones, Davis & Jackson, PC

Attorneys + Counselors

Nicole A. Westbrook, Attorney at Law

15110 Dallas Parkway, Suite 300, Dallas, Texas 75248

mobile: 615.403.4862 | *fax*: 972.733.3119

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IRS CIRCULAR 230 DISCLOSURE: This communication has not been prepared as a formal legal opinion within the procedures described in Treasury Department Circular 230. As a result, we are required by Treasury Regulations to advise you that for any significant Federal tax issue addressed herein, the advice in this communication (including any attachments) was not intended or written to be used, and it cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer.

From: Casey Spring <cts@randazza.com>
Sent: Thursday, October 1, 2026 12:40 PM
To: pr4biz@fisherpr.com
Cc: Nicole Westbrook <nwestbrook@jonesdavis.com>; Mike Jackson <mjackson@jonesdavis.com>; Marc Randazza <mjr@randazza.com>; Ron Green <rdg@randazza.com>; Staff <staff@randazza.com>
Subject: Smothermon v Hodge et al. | August 6, 2026, Deposition Payment Issue

Dear Mr. Fisher,

Find the attached letter from Attorney Randazza regarding the payment issue for your deposition in Smothermon v Hodge et al. (Case No. 2:25-cv-01858).

Sincerely,

Casey Spring* | **Randazza Legal Group**
30 Western Avenue, Harbor Room | Gloucester, MA 01930
Tel: 888-887-1776 | Email: cts@randazza.com
Firm Offices - Las Vegas | Miami | New England
**Paralegal - Not licensed to practice law*

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Marc John Randazza, JD, MAMC, LLM* | **Randazza Legal Group**
8991 W. Flamingo Road, Unit B, Las Vegas, NV 89147
30 Western Avenue, Gloucester, MA 01930
2 S Biscayne Boulevard, Suite 2680, Miami, FL 33131
Tel: 702-420-2001 | Email: mjr@randazza.com
Firm Offices - Las Vegas | Miami | New England

* Licensed to practice law in Arizona, California, Florida, Massachusetts, and Nevada.

<2026.10.01 - Letter to R. Fisher re Deposition Fee.pdf>

Exhibit 2

Fisher Email to Defense Counsel on September 30, 2026

RANDAZZA
LEGAL GROUP

Marc Randazza <mjr@randazza.com>

Demand for Payment

1 message

Fisher & Associates, Inc. <pr4biz@fisherpr.com> Wed, Sep 30, 2026 at 1:23 PM
To: "mjr@randazza.com" <mjr@randazza.com>
Cc: "Nicole A. Westbrook" <nwestbrook@joneskeller.com>, Mike Jackson <mjackson@jonesdavis.com>

Mr. Randazza

I have been informed by the law firm of Jones & Keller that you are refusing to pay my fee of $6,825 for the deposition you took of me in the case of Pastor Steve Smothermon v Keith Hodge, Kevin Hodge and Hodgetwins, LLC. (Case No.

2:25-cv-01858) in the United States District Court, State of Nevada. If this is not true, please advise. If it is true, this is obviously unacceptable and frankly unprofessional. Here are the facts:

- On July 28, 2026, you issued a subpoena requiring me to testify in a deposition. (Copy attached)
- On August 6, 2026, you took my deposition for a period of seven hours in downtown Los Angeles.
- On August 7, 2026, I sent a statement for my deposition fee to you through the Jones & Keller law firm. (copy attached)
- To this date, the statement hasn't been paid despite the attempts of Nicole Westbrook of Jones & Keller to solicit payment from you.

As you are aware, the State of Nevada mandates that deposing attorneys pay expert witnesses their hourly fee for taking their deposition. **Please consider this communication a demand for payment of $6,825 on or before Wednesday, September 16, 2026.** I have attached my banking information so you can direct deposit the money if you prefer. If you do not pay by that date, the following will happen:

- Jones & Keller will file a motion (NRCP 26(b)(4)(E)) to compel payment and demand court intervention should the deposing attorney refuse to pay the fee.

- Under NRCP 37, if you should continue to refuse payment, the court will be petitioned to impose sanctions which, as you know, can result in monetary fines to you as well as well as attorneys fees for filing these motions.

- Additionally, a complaint will be filed with the Nevada Bar Association.

(You should be aware that my public relations firm represented several laws firms in Las Vegas, including the state's second largest, and am very family with the legal community there, including writing articles for the Clark County Bar Association publication. Please also remember I had a 50+ year career as a professor communicator.)

I trust you will do the "right thing" and honor your obligation for payment. If not, there will be consequences. I'll look forward to receiving the payment.

Robert J. Fisher

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3 attachments

2026.07.28 Notice of Issuance re Fisher Depo. Subpoena.pdf
489K

DepoStatement.doc
31K

BankInfo.docx
13K