

1 **MDQA**

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10 Attorneys for Defendant

11 Scott Roeben

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

14 **LAS VEGAS RESORT HOLDINGS, LLC**
15 dba SAHARA LAS VEGAS, a Delaware limited
16 liability company,

17 Plaintiff,

18 vs.

19 **SCOTT ROEBEN** dba VITALVEGAS
20 dba VITALVEGAS.COM, an individual; and
21 **DOES I-X**, inclusive,

22 Defendants.

Case No. A-20-819171-C

Dept. No. 5

23 **MOTION TO**
24 **DISQUALIFY ATTORNEYS**

25 [HEARING REQUESTED]

26 Defendant Scott Roeben and his attorneys, Marc J. Randazza and Randazza Legal Group,
27 PLLC, jointly move to disqualify the law firm of Lewis Roca Rothgerber Christie LLP and its
appearing attorneys from representing the Plaintiff in this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

1.0 INTRODUCTION

On December 14, 2020 at 4:30 p.m., Lewis Roca Rothgerber Christie LLP (“LRRC”) entered its appearance in this matter. This appearance was made the night before the hearing on Defendant Scott Roeben’s Motion for Costs and Attorneys’ Fees. Randazza Legal Group, PLLC is itself a client of LRRC. In fact, LRRC serves as professional responsibility and ethics counsel to Defendant’s counsel, Marc Randazza and Randazza Legal Group, PLLC.

LRRC’s representation of Sahara in this matter represents a direct conflict of interest against Attorney Randazza’s and the firm’s interests in violation of RPC 1.7, and LRRC should not be allowed to continue in this representation.

Prior to filing this motion, Defendant’s counsel tried mightily, over a period of now months, to convince LRRC to change direction, through multiple attempts with Attorney Polsenberg. However, they seem to be convinced that the RPCs do not apply to them the same as they apply to other firms and attorneys. Additionally, RLG sought the opinion of the Nevada Bar Ethics Hotline to obtain a threshold determination as to whether LRRC could represent Sahara. Using the pseudonyms of “Lawyer A” for Attorney Randazza and “Lawyer B” for LRRC, undersigned counsel was advised that Lawyer B’s firm could not undertake the representation under RPC 1.7 and it was not screenable. *See* Declaration of Marc J. Randazza (“Randazza Decl.”) at ¶¶ 30-31.

2.0 FACTUAL BACKGROUND

2.1 The Current Litigation

Attorney Marc J. Randazza (“Randazza”) and the law firm Randazza Legal Group, PLLC (“RLG”) are attorneys of record for Defendant Scott Roeben (“Roeben”) in this suit. Until recently, Plaintiff Las Vegas Resort Holdings, LLC dba Sahara Las Vegas (“Sahara”) was solely represented by Matthew J. Weitz. Roeben prevailed on an Anti-SLAPP motion and sought Fees and Costs on November 12, 2020. A hearing on the matter was set for December 15, 2020.

On November 25, 2020, Sahara, through Attorney Weitz, filed its Opposition to Roeben’s fee motion. Roeben, as a prevailing anti-SLAPP movant, is entitled to a mandatory award of fees in the

1 case, but Sahara disputed the amount of fees sought. Among other arguments made in its Opposition,
 2 Sahara argued that “*Defendant’s counsel blatantly bill[ed] for matters wholly unrelated to th[e] case*” and asserted
 3 that the redacted billing entries provided to the court could not be trusted. Further, Sahara asserted
 4 that Randazza’s strategy in the case is to “*leverage[e] the Anti-SLAPP fee shifting provision to overwork cases*
 5 *in the pursuit of fees,*” and that Randazza “*pads [his] billing.*” Sahara continued to allege throughout its
 6 Opposition that Randazza improperly billed fees in the matter. Sahara belatedly filed a Notice of
 7 Appeal as to the Anti-SLAPP Order on December 9, 2020 and has since filed an improper and
 8 meritless Motion to Alter or Amend the Judgment in order to attempt to rectify its failure to timely
 9 file. However, unless the Court uproots all current authority on this issue, the motion to alter or
 10 amend will be futile.

11 On December 14, 2020, Attorney Daniel F. Polsenberg (“Polsenberg”) and Abraham G.
 12 Smith (“Smith”) of the law firm Lewis Roca Rothgerber Christie LLP (“LRRC”) appeared in the
 13 district court action on behalf of Sahara. Polsenberg is a Partner of LRRC, and Smith is an Associate
 14 Attorney at LRRC. On January 28, 2021, the LRRC attorneys, also now including Attorney Joel
 15 Henriod, managing partner of LRRC’s Las Vegas office, filed the said Motion to Alter or Amend.

16 Attorney Randazza and RLG are clients of LRRC. *See* Randazza Decl., at ¶¶ 2–3. Attorney
 17 Randazza and the firm have employed, and continue to employ LRRC for professional licensure,
 18 responsibility, and malpractice advice and have done so since 2016. *Id.* at ¶¶ 2–3, 18. Thus, LRRC
 19 and its attorneys have a concurrent conflict of interest, for in representing Sahara in contesting the fee
 20 award, they are arguing against the interests of Attorney Randazza and the firm. This is especially so
 21 because now there are accusations that impugn RLG’s professional practices, not just with LRRC
 22 serving of record, but on their very pleading paper.

23 Attorney Randazza has spoken with the firm’s attorneys at LRRC, and he spoke with Attorney
 24 Polsenberg regarding the conflict, seeking LRRC’s withdrawal from representation of Sahara in this
 25 case due to the conflict. *Id.* at ¶ 19. LRRC initially agreed to withdraw. *Id.* at ¶¶ 19–20. For that
 26 reason, LRRC sought a continuance of the fee hearing, so that substitute counsel could appear. *See*
 27 *id.* at ¶ 20; *see also* Minute Order dated December 15, 2020 (“Court CONTINUED matter for counsel

1 to address conflict issues and assign another attorney to argue the matter.”), attached hereto as
2 **Exhibit 1**. Apparently, during that continuance LRRC had a change of heart with respect to its duty
3 to its client. It has now doubled down on its violation and appears to have no intention of curing it.
4 *Id.* at ¶¶ 19–24. LRRC was provided an opportunity to withdraw by noon on December 21, 2020, or
5 the instant motion would be filed. *Id.* at ¶ 29. However, that issue was seemingly mooted when Sahara
6 agreed to stipulate to the Motion on Attorneys’ fees to be ruled on without oral argument. *See* Email
7 from Abraham Smith to L. Lerner dated Dec. 21, 2020, attached hereto as **Exhibit 2**. In order to
8 avoid the embarrassment of withdrawal, Polsenberg entered into multiple discussions with Randazza,
9 finally culminating in the agreement that the parties would waive oral argument on the fee motion.
10 *See id.* Thus, although LRRC’s name was on the file, it had not yet placed its name on a document
11 accusing Attorney Randazza or the firm of misconduct. In furtherance thereof, in fact, LRRC
12 represented to this court and the Nevada Supreme Court that substitute counsel was imminent. *See*
13 **Exhibit 1**, Minute Order. No substitute counsel appears on the horizon, and LRRC is acting as if it
14 is exempt from RPC 1.7.

15 2.2 LRRC’s Prior Conflict with Attorney Randazza in Violation of RPC 1.7

16 This is not the first time LRRC and Attorney Polsenberg have violated RPC 1.7 against the
17 interests of these same exact clients. They were well on notice of this conflict before they undertook
18 to represent Sahara in this matter. In October 2019, a similar conflict occurred. Attorney Randazza
19 and the firm previously represented Trevor Pope (“Pope”), a defendant in a defamation action. *See*
20 *Fellhauer v. Pope*, No. A-15-714378-C (8th Jud. Dist. Ct. filed Feb. 25, 2015). Attorney Randazza
21 withdrew from representing Mr. Pope in that suit on September 12, 2017, and an order regarding the
22 withdrawal was formally entered on May 21, 2019. *See* Order Granting Motion to Withdraw as
23 Attorneys of Record, *Fellhauer v. Pope*, No. A-15714378-C (8th Jud. Dist. Ct. May 22, 2019), attached
24 hereto as **Exhibit 3**. A default had been entered against Mr. Pope, and Mr. Pope’s new attorney
25 moved to set it aside. The plaintiffs in that action were represented by LRRC, including Attorney
26 Polsenberg, Dale Kotchka-Alanes, and John W. Thomson.

1 On September 27, 2019, LRRC filed an Opposition to Pope’s Motion to Set Aside Default
 2 (the “Opposition”). See Opposition to Motion to Set Aside Default, *Fellbauer v. Pope*, No. A-15714378-
 3 C (8th Jud. Dist. Ct. Sept. 27, 2019). In that Opposition, LRRC argued on behalf of the plaintiffs that
 4 Attorney Randazza committed malpractice by allowing Mr. Pope to default, even though Attorney
 5 Randazza had already been permitted to withdraw from representing Pope. See Excerpts of
 6 Opposition to Motion to Set Aside Default, attached hereto as **Exhibit 4**. Attorney Randazza denies
 7 any such malpractice, but having been accused of it by his very counsel, he was clearly concerned.

8 Upon learning that LRRC made unnecessary and erroneous arguments disparaging Attorney
 9 Randazza, Attorney Randazza notified LRRC of the conflict. LRRC withdrew from representing the
 10 plaintiffs in that action. However, Attorney Polsenberg obfuscated the purpose of that withdrawal
 11 from the District Court at that time. See Notice of Withdrawal of Counsel for Respondents [sic],
 12 James and Sharon Fellhauer, *Fellbauer v. Pope*, No. A-15714378-C (8th Jud. Dist. Ct. Oct. 28, 2019),
 13 attached hereto as **Exhibit 5**. Although LRRC did not notify the court that the withdrawal was due
 14 to the RPC 1.7 violation, the withdrawal resolved the conflict. Thus, at the time LRRC and Attorney
 15 Polsenberg entered their appearances for Sahara to again argue against the interests of Attorney
 16 Randazza and the firm, they were well aware of this conflict.

17 **3.0 ARGUMENT**

18 An attorney commits the ethical violation of a concurrent conflict of interest when he
 19 represents a client where the representation is directly adverse to another client. RPC 1.7. If a
 20 concurrent conflict exists under RPC 1.7, an attorney may only represent the client if “[t]he lawyer
 21 reasonably believes that the lawyer will be able to provide competent and diligent representation to
 22 each affected client; ... [t]he representation is not prohibited by law; ... [and e]ach affected client gives
 23 informed consent, confirmed in writing.” *Liapis v. Second Judicial Dist. Court*, 128 Nev. 414, 419-20
 24 (2012) (citing RPC 1.7(b)(1), (2), (4)).¹ The attorney-client relationship of one attorney at a law firm

26 ¹ There is also a substantial risk Attorney Polsenberg and LRRC may use confidential and
 27 privileged information gleaned from their relationship with Attorney Randazza in violation of RPC
 1.8(b).

1 under RPC 1.7 is imputed to all other attorneys at that firm. RPC 1.10; *Ryan v. Eighth Judicial Dist.*
2 *Court of Nev.*, 123 Nev. 419, 430 & n. 25, 168 P.3d 703, 710 (2007).

3 A current concurrent conflict of interest exists in violation of RPC 1.7. Attorney Randazza
4 was, and is, a current client of LRRC. His representation by LRRC never concluded, Mr. Randazza
5 regularly consults with LRRC on matters relating to professional ethics, and LRRC represented
6 Randazza in a Professional Responsibility and licensure matter. In the Motion to Amend or Alter,
7 LRRC is **again** arguing on behalf of Sahara that the fee petition of Attorney Randazza and the firm's
8 practices are unreasonable. Sahara has argued that Randazza acted unethically through his billing
9 practices. These allegations are directly adverse to Randazza's interests and, moreover, relate to the
10 precise core subject of LRRC's representation of Randazza – defending Randazza from allegations of
11 ethical violations. Sahara's position is, thus, directly adverse to Attorney Randazza and the firm. RPC
12 1.7(a)(1). Similarly, LRRC's representation of Attorney Randazza and the firm would be materially
13 limited by their representation of Sahara. RPC 1.7(a)(2). LRRC cannot simultaneously provide
14 competent and diligent representation to both Sahara and Attorney Randazza. And, a waiver was
15 implicitly sought, but not given.

16 The imputation rule affects attorneys who know that the representation is prohibited through
17 imputation by another attorney at his law firm. Attorney Randazza and the firm were clients of LRRC
18 when LRRC filed the Opposition in the *Pope* matter in 2019. LRRC had actual knowledge of the
19 conflict when they appeared in this matter. All of the attorneys at LRRC, therefore, are prohibited
20 from representing Sahara in this matter under RPC 1.10. Instead of withdrawing, LRRC's attorneys
21 continue to appear on Sahara's filings in this matter and continue to violate RPC 1.7 & 1.10.

22 LRRC seemingly believes that the Rules of Professional Conduct do not apply to them. The
23 reason for this arrogance is unclear. Large firms and well-known attorneys must be held to an exacting
24 standard, lest the public and the bar get the impression that there is an "old boys network" that has a
25 two-tiered system of professional responsibility. If the Rules exist at all, they must apply to large firms
26 like LRRC and to otherwise well-respected attorneys like Mr. Polsenberg. RPC 1.7 & 1.10 prohibit
27 them from representing Sahara in this matter and they must be disqualified from doing so.

1 Sahara will not be prejudiced by the disqualification of LRRC. Sahara’s in-house attorney, Matthew
2 Weitz, signed the Complaint in this matter, opposed and argued Defendant’s Anti-SLAPP motion on
3 behalf of Sahara, signed Sahara’s Opposition to Defendant’ Motion for Costs and Attorneys’ fees, and
4 signed the Motion to Amend or Alter. Attorney Weitz is qualified and able to continue representing
5 Sahara in this matter and they have otherwise indicated that they are retaining alternate counsel.
6 Further, there are many other law firms in Nevada that could very easily step into this representation.

7 **3.1 Movants Have Standing to Seek Disqualification**

8 Because this is a less-common conflict of interest, where the conflict is not with the opposing
9 party, but the counsel for that party, the motion is brought jointly by Mr. Roeben and his counsel.
10 They recognize that “[t]he party seeking to disqualify bears the burden of establishing that it has
11 standing to do so.” *Liapis*, 128 Nev. at 420. They all have standing.

12 Attorney Randazza and the firm have standing. “The general rule is that only a former or
13 current client has standing to bring a motion to disqualify counsel on the basis of a conflict of
14 interest.” *Liapis*, 128 Nev. at 420 (quoting Model Rules of Prof’l Conduct R. 1.7). Because Attorney
15 Randazza and the firm are LRRC’s clients, they are harmed by the conflict of interest, being put in the
16 position of having to defend themselves against their own law firm.

17 Mr. Roeben also has standing. Non-clients affected by a conflict of interest may move to
18 disqualify “if the breach of ethics ‘so infects the litigation in which disqualification is sought that it
19 impacts the [nonclient] moving party’s interest in a just and lawful determination of her claims, she
20 may have the ... standing needed to bring a motion to disqualify based on a third-party conflict of
21 interest or other ethical violation.” *Liapis*, 128 Nev. at 420 (quoting *Colyer v. Smith*, 50 F. Supp. 2d
22 966, 971-72 (C.D. Cal. 1999)). LRRC’s conflict so infects the litigation that it impacts the interests of
23 Defendant Roeben. Mr. Roeben should not have to fear that opposing counsel will use or pretend to
24 use his own lawyer’s confidences against him, whether or not that actually occurs. LRRC’s mere
25 presence in this litigation is a breach of ethics which threatens the just and lawful determination of the
26 fee award.

1 **4.0 CONCLUSION**

2 LRRC has a conflict of interest and cannot represent Sahara in this proceeding. They knew
 3 that the conflict of interest existed when they entered their appearances in this matter and have refused
 4 to withdraw voluntarily, nor even to back off from apparently trying to drum up more ethics work by
 5 accusing their client of unethical conduct. The conflict could not be more staggeringly clear. The
 6 Court should disqualify LRRC from representing Sahara in this matter.

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Dated: February 2, 2021.

Respectfully Submitted,

/s/ Marc J. Randazza
 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
 2764 Lake Sahara Drive Suite 109
 Las Vegas, NV 89117

 Attorneys for Defendant
 Scott Roeben

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of February 2021, I caused a true and correct copy of the foregoing document to be served via the Eighth Judicial District Court’s Odyssey electronic filing system, and by electronic mail to:

Daniel F. Polsenberg
Joel D. Henriod
Abraham G. Smith
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
<DPolsenberg@LRRC.com>
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Attorneys for Plaintiff
Las Vegas Resort Holdings, LLC

Respectfully submitted,



Employee,
Randazza Legal Group, PLLC

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1 **DECL**

Marc J. Randazza, NV Bar No. 12265
2 Ronald D. Green, NV Bar No. 7360
3 Alex J. Shepard, NV Bar No. 13582
RANDAZZA LEGAL GROUP, PLLC
4 2764 Lake Sahara Drive Suite 109
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5 Telephone: 702-420-2001
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6 Attorneys for Defendant
7 Scott Roeben

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

10 **LAS VEGAS RESORT HOLDINGS, LLC**
11 dba SAHARA LAS VEGAS, a Delaware limited
12 liability company,

13 Plaintiff,

14 vs.

15 **SCOTT ROEBEN** dba VITALVEGAS
16 dba VITALVEGAS.COM, an individual; and
17 **DOES I-X**, inclusive,

18 Defendants.

Case No. A-20-819171-C
Dept. No. 5

DECLARATION OF
MARC J. RANDAZZA

19 I, MARC J. RANDAZZA, being first sworn, now deposes and declares:

20 1. I am an attorney licensed to practice law in the State of Nevada and am the managing
21 member of the law firm of Randazza Legal Group, PLLC, counsel of record in this action for
22 Defendant Scott Roeben (“Defendant”).

23 2. Lewis Roca Rothgerber Christie, LLP (“LRRC”), serves as professional liability and
24 responsibility counsel to me and my firm, and it has done so since 2016.

25 3. LRRC both provides legal counsel and has appeared for me in multiple proceedings
26 through attorneys in various offices, including LRRC’s Las Vegas office.

27 4. Upon information and belief, Attorney Daniel F. Polsenberg is a partner of LRRC.

1 5. This is not the first matter in which LRRC has entered an appearance and directly
 2 challenged my professional conduct.

3 6. In a separate case before the Eighth Judicial District Court in October 2019, Attorney
 4 Polsenberg, as a partner of LRRC, filed a pleading wherein he accused me of committing malpractice.¹
 5 This was not true and served no purpose to the legal arguments in the case, but it created for LRRC
 6 a conflict of monumental proportions – given that the firm I had paid for years to advise me on
 7 professional liability and responsibility issues was directly attacking my professional conduct.

8 7. At the time, I was no longer counsel to LRRC opposing party in that case, but I had
 9 previously served as counsel for that opposing party.

10 8. After discovering LRRC’s accusations, I contacted LRRC, which instructed
 11 Polsenberg to withdraw from that case.

12 9. LRRC did so, but was not candid with the court – instead of admitting it was
 13 withdrawing due to the conflict of interest, LRRC misrepresented that it was withdrawing because he
 14 had “concluded the limited scope of their engagement to assist [his clients] in the appeals regarding
 15 Defendant[’s] anti-SLAPP motions.”²

16 10. LRRC made this claim despite having represented his clients in the District Court for
 17 at least six months following the resolution of an appeal in that case.

18 11. At the time, I presumed that there could be some innocent explanation for the lack of
 19 candor.

20 12. I raise this incident only to demonstrate that LRRC could not possibly have failed to
 21 appreciate that LRRC had a duty to me as a client when LRRC entered its appearance in this case
 22 where there was no question LRRC intended to again attack my professional conduct and the firm’s
 23 practices.

25 ¹ See Opposition to Motion to Set Aside Default, *Fellbauer v. Pope*, No. A-15714378-C (8th Jud.
 26 Dist. Ct. Sept. 27, 2019).

27 ² See Notice of Withdrawal of Counsel for Respondents [sic], James and Sharon Fellbauer,
Fellbauer v. Pope, No. A-15714378-C (8th Jud. Dist. Ct. Oct. 28, 2019).

1 24. I have brought this to the Court’s attention with great reluctance. I clearly respect
 2 LRRC, as I chose them to be my ethics counsel. I further respect and admire Attorney Polsenberg
 3 for his reputation – however, if the same rules do not apply to them as apply to less august attorneys,
 4 then I must ask why we have rules of professional conduct at all.

5 25. Out of a desire to be as thorough in my analysis as possible and to seek an independent
 6 opinion, I contacted the Nevada Bar ethics hotline, and described the situation. I was informed that
 7 this conduct negatively implicates RPC 1.6, 1.7, 1.8, 1.10 and 8.4.

8 a. RPC 1.6 - The fact that I have been represented by LRRC since 2016 on
 9 multiple matters was confidential information. I would not wish to have let this be known
 10 publicly. However, LRRC’s refusal to withdraw voluntarily has forced me to do so – since
 11 both my, and my clients’ legal interests will be negatively impacted if I do not do so. I cannot
 12 put this genie back in the bottle at this point.

13 b. RPC 1.7 prohibits representation of one client against another. LRRC’s
 14 representation of Sahara in this matter, at this stage, is directly adverse to me.

15 c. RPC 1.10 is implicated because the violation of RPC 1.7 is done knowingly –
 16 because given the incident described above in September-October 2019, there is no possibility
 17 Mr. Polsenberg was unaware of the conflict of interest.

18 d. RPC 1.8(b) may be implicated to the extent Attorney Polsenberg may attempt
 19 to use information relating to LRRC’s representation of me in an adverse manner. In my
 20 opinion, by forcing this motion to be filed, rather than withdrawing, Attorney Polsenberg has
 21 constructively used such information.

22 26. I recognize that filing this motion is a serious matter, and thus I have consulted with
 23 multiple other Nevada attorneys, and I have not encountered a single one who does not share my
 24 view.

25 27. I have spoken to Mr. Polsenberg about these issues.

26 28. I have endeavored to allow Mr. Polsenberg to avoid this motion.

EXHIBIT 1

Minute Order
dated December 15, 2020

A-20-819171-C Las Vegas Resort Holdings, LLC, Plaintiff(s)
vs.
Scott Roeben, Defendant(s)

December 15, 2020 09:30 AM Defendant Scott Roeben's Motion for Costs and Attorneys' Fees

HEARD BY: Atkin, Trevor COURTROOM: Phoenix Building 11th Floor 110

COURT CLERK: Castle, Alan

RECORDER: Kirkpatrick, Jessica

REPORTER:

PARTIES PRESENT:

Daniel F. Polsenberg Attorney for Plaintiff

Marc J. Randazza, ESQ Attorney for Defendant

Matthew J. Weitz Attorney for Plaintiff

JOURNAL ENTRIES

Court CONTINUED matter for counsel to address conflict issues and assign another attorney to argue the matter.

CONTINUED TO:
12/22/20 9:00 a.m.

EXHIBIT 2

Email from Abraham Smith
to L. Lerner dated Dec. 21, 2020

Case No. A-20-819171-C (Submission of motion on papers)

Smith, Abraham <ASmith@lrrc.com>

Mon, Dec 21, 2020 at 2:16 PM

To: "lernerl@clarkcountycourts.com" <lernerl@clarkcountycourts.com>

Cc: Marc Randazza <mjr@randazza.com>, "Polisenberg, Daniel F." <DPolisenberg@lrrc.com>, "Kasten, Larry" <LKasten@lrrc.com>, "Helm, Jessica" <JHelm@lrrc.com>, "Kelley, Cynthia" <CKelley@lrrc.com>, "Kapolnai, Emily" <EKapolnai@lrrc.com>, Matthew Weitz <MWeitz@meruelogroup.com>

Ms. Lerner,

Thank you for speaking with Mr. Randazza and me. As we stated on the call, we have agreed to submit defendants' motion for attorney's fees on the briefs, so none of the parties will be appearing tomorrow.

Very best,

Abraham G. Smith

Associate

702.474.2689 office

702.949.8398 fax

asmith@lrrc.com**COVID-19 questions?****Connect to our Rapid Response Team****for answers and resources.**

Lewis Roca
ROTHGERBER CHRISTIE

Lewis Roca Rothgerber Christie LLP

[3993 Howard Hughes Parkway, Suite 600](#)[Las Vegas, Nevada 89169](#)[lrrc.com](#)



Because what matters

to you, matters to us.

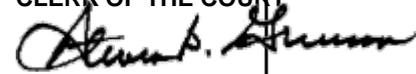
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EXHIBIT 3

Order Granting
Motion to Withdraw as Attorneys of Record

Fellhauer v. Pope
No. A-15714378-C
(8th Jud. Dist. Ct. May 22, 2019)



1 **OGM**

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9 *Withdrawn Counsel for Defendant*
10 *Trevor Pope*

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 JAMES FELLHAUER and SHARON
14 FELLHAUER, husband and wife,

15 Plaintiffs,

16 vs.

17 TREVOR POPE, an individual; DOE individuals
18 I through X; and ROE Corporations, Entities,
19 and Organizations I through X, inclusive

20 Defendants.

Case No.: A-15-714378-C

Dept.: XXIV

**ORDER GRANTING MOTION TO
WITHDRAW AS ATTORNEYS OF
RECORD**

21 This matter came before the Court on September 12, 2017 for attorneys Marc J.
22 Randazza and Alex J. Shepard's Motion to Withdraw as Attorneys of Record. The Court,
23 having considered the Motion to Withdraw, the pleadings, exhibits, papers on file in the case,
24 and the argument of counsel, and good cause appearing, GRANTS the Motion.

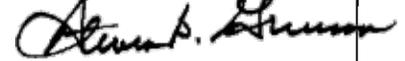
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EXHIBIT 4

Excerpts of
Opposition to Motion to Set Aside Default

Fellhauer v. Pope
No. A-15714378-C
(8th Jud. Dist. Ct. May 22, 2019)



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20 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

21 JAMES FELLHAUER and SHARON
22 FELLHAUER, husband and wife,

Case No. A-15-714378-C
Dept. No. XXIV

23 Plaintiffs,

**OPPOSITION TO MOTION TO SET
ASIDE DEFAULT**

24 *vs.*

25 Trevor Pope, an individual; DOE
26 INDIVIDUALS I through X; ROE
27 CORPORATIONS I through X, inclusive,

28 Defendants.

29 Pope's motion to set aside default should be denied because there is no good
30 cause to set aside the default. Pope had notice of the default and did nothing about it
31 for over a year and a half. Pope has repeatedly delayed these proceedings, acted in
32 bad faith, and evidenced inexcusable neglect.

INTRODUCTION

33 The Fellhauers filed a simple defamation case over 4 years ago. Their
34 complaint stemmed from the actions of their former neighbor Trevor Pope, who
35 committed lewd and vile acts and posted false and malicious statements about them

1 online. Rather than defending on the merits, Pope has been playing games and
2 needlessly extending this litigation ever since it began.

3 Pope has defaulted not once, but twice. And twice, he has argued that the
4 Fellhauers' claims should be dismissed based on the anti-SLAPP statute. But as
5 both this Court and the Nevada Supreme Court have ruled, Pope's anti-SLAPP
6 arguments are without merit. Pope's vicious statements about the Fellhauers were
7 not statements made in connection with an issue of public interest, but rather were
8 false and vindictive attempts to harass the Fellhauers. Pope's two appeals based on
9 the denial of his anti-SLAPP motion served no purpose other than to delay the
10 resolution of this case.

11 At issue now is Pope's utter failure to respond to the Fellhauers' Amended
12 Complaint. Pope makes the incredible argument that the Fellhauers are at fault
13 because they should have inquired with Pope's former counsel as to counsel's
14 intention to proceed. But Pope's former counsel had moved to withdraw, and their
15 motion was granted by this Court. Pope's former counsel had made it abundantly
16 clear that they had no intention to continue to defend the case. And even if it is true
17 that the withdrawal of Pope's former counsel was not technically effectuated until a
18 signed Order was filed, then this proves too much. If Pope was still represented,
19 then his former attorneys had an obligation to respond to the Amended Complaint.
20 They did not do so. Pope might have a malpractice case against his former attorneys,
21 but the remedy cannot be to penalize the Fellhauers by overturning the default
22 entered against Pope over a year and a half ago.

23 The Clerk entered default against Pope in December 2017. Pope absolutely
24 and incontrovertibly received notice of the default by January 9, 2018, including by
25 email from Fellhauer's counsel. Pope responded to that email, confirming he had
26 received notice of the default. Yet he now states under penalty of perjury that he did
27 not know about the default until September 2019. The evidence shows Pope knew of
28 the default in January 2018 and made no effort to set aside the default until

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CONCLUSION

Pope moves to set aside the default entered against him over a year and half ago. There is no good cause to do so, only inexcusable neglect. Pope has not acted promptly, diligently, or in good faith. Rather, he has vexatiously delayed the resolution of this case multiple times and does so, most recently, by submitting false statements to the Court. His motion to set aside the default entered against him should be denied.

Dated this 27th day of September 2019.

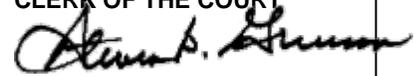
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EXHIBIT 5

Notice of Withdrawal of
Counsel for Respondents [sic],
James and Sharon Fellhauer

Fellhauer v. Pope
No. A-15714378-C
(8th Jud. Dist. Ct. May 22, 2019)



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22 DISTRICT COURT

23 CLARK COUNTY, NEVADA

24 JAMES FELLHAUER and SHARON
25 FELLHAUER, husband and wife,

Case No. A-15-714378-C
Dept. No. XXIV

26 Plaintiffs,

27 *vs.*

28 Trevor Pope, an individual; DOE
INDIVIDUALS I through X; ROE
CORPORATIONS I through X, inclusive,

Defendants.

NOTICE OF WITHDRAWAL OF COUNSEL FOR RESPONDENTS,
JAMES AND SHARON FELLHAUER

29 Please take notice that DANIEL F. POLSENBERG and DALE KOTCHKA-
30 ALANES of the law firm of LEWIS ROCA ROTHGERBER CHRISTIE LLP hereby
31 withdraw as attorneys for Plaintiffs JAMES AND SHARON FELLHAUER
32 (“FELLHAUER”) in this case, having concluded the limited scope of their
33 engagement to assist the Fellhauers in the appeals regarding Defendant

1 Trevor Pope's anti-SLAPP motions. Plaintiffs continue to be represented by
2 the Law Office of John W. Thomson, 2450 St. Rose Parkway, Suite 120,
3 Henderson, Nevada 89074 (702) 478-8282.

4 Dated this 28th day of October, 2019.

5 LEWIS ROCA ROTHGERBER CHRISTIE LLP

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