

COMMISSION ON JUDICIAL SELECTION APPLICATION

EIGHTH JUDICIAL DISTRICT
DEPARTMENT 29

Replace the highlighted spaces on this page with the vacancy you seek to fill
VII, XXIX, C, N or O
Candidates may only choose one department.

By

(Kimberly Paige Stein)



Personal Information

1.	Full Name	Kimberly Paige Stein
2.	Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used.	No
3.	How long have you been a continuous resident of Nevada?	35 and a half years
4.	City and county of residence	Las Vegas, Clark County
5.	Age	51

Employment History

6. Please start with your current employment or most recent employment, self-employment, and periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer	Flangas Law Group
Phone	702-307-9500
Physical Address & Website	3275 South Jones Blvd., Suite 105 Las Vegas, Nevada 89146
Date(s) of Employment	1/24/2020 - Present
Supervisor's Name and Title	Gus W. Flangas, Partner
Your Title	Partner
Describe Your Key Duties	Practice Areas include: Civil Litigation and Transactional Law in the following areas: Securities Law, Gaming Law, Entertainment Law, Intellectual Property, Corporate Law/Business Formation, Real Estate Law
Reason for Leaving	N/A

Previous Employer	Holley Driggs Walch Fine Puzey Stein & Thompson
Phone	702-791-0308
Address & Website	300 South 4th Street, Suite 1600, Las Vegas, Nevada 89101 nevadafirm.com
Date(s) of Employment	8/1/2015-1/22/2020
Supervisor's Name and Title	Ron Thompson, Managing Partner

Your Title	Partner
Describe Your Key Duties	Practice Areas include: Civil Litigation and Transactional Law in the following areas: Securities Law, Gaming Law, Entertainment Law, Intellectual Property, Corporate Law/Business Formation, Real Estate Law
Reason for Leaving	To go to smaller firm and back with my former partner

Previous Employer	Howard & Howard Attorneys PLLC
Phone	702-257-1483
Address & Website	3800 Howard Hughes Pkwy Ste 1000, Las Vegas, NV 89169 https://howardandhoward.com/locations/las-vegas
Date(s) of Employment	1/2/2012-7/31/2015
Supervisor's Name and Title	Arthur O. Rogers, II, Managing Partner- Las Vegas Office
Your Title	Of Counsel
Describe Your Key Duties	Practice Areas include: Civil Litigation and Transactional Law in the following areas: Securities Law, Gaming Law, Entertainment Law, Intellectual Property, Corporate Law/Business Formation, Real Estate Law
Reason for Leaving	Better opportunity- local firm

Previous Employer	Fox Rothschild
Phone	702-262-6899
Address & Website	1980 Festival Plaza Drive, Suite 700, One Summerlin, Las Vegas, NV 89135 https://www.foxrothschild.com/
Date(s) of Employment	06/1/2011-12/31/2011
Supervisor's Name and Title	Brett A. Axelrod, Managing Partner
Your Title	Partner
Describe Your Key Duties	Practice Areas include: Civil Litigation and Transactional Law in the following areas: Securities Law, Gaming Law, Entertainment Law, Intellectual Property, Corporate Law/Business Formation, Real Estate Law
Reason for Leaving	Better Opportunity

Previous Employer	State of Nevada- Securities Division of the Office of the Nevada Secretary of State
Phone	702-486-2440
Address & Website	555 E Washington Ave Ste 5200, Las Vegas, NV 89101 https://www.nvsos.gov/sos
Date(s) of Employment	05/13/2009-05/31/2011
Supervisor's Name and Title	Carolyn Ellsworth, Administrator
Your Title	Chief of Enforcement
Describe Your Key Duties	Responsible for the enforcement of the security laws of the State of Nevada – Criminal and Civil; and to provide the Secretary of State's office with legal advice regarding securities matters. Acted as State's expert for Attorney General's Office in criminal prosecutions for securities fraud . Testified before Nevada Legislature on behalf of Securities Division. Acted as Administrative Law Judge for Notary Cases.
Reason for Leaving	To earn more money as husband was retiring

Unemployed from 04/01/2009-05/12/2009 – Going through interview process for State

Previous Employer	Sona Mobile (OTC BB: SNMB.OB)
Phone	N/A- company went in bankruptcy
Address & Website	N/A- company went in bankruptcy
Date(s) of Employment	03/01/2008-03/30/2009
Supervisor's Name and Title	Don Kornstein, CEO
Your Title	Vice President, Corporate and General Counsel
Describe Your Key Duties	<ul style="list-style-type: none"> • Responsible for all of the Company's legal, regulatory and compliance matters. • Acted as Corporate Secretary in regards to all reporting requirements and Board meetings, review all SEC filings, and advise the Board of Directors with regards to security issues. • Worked with CEO and CFO on all Strategic Development and Investor Relations functions of Company.
Reason for Leaving	Company went in bankruptcy

Previous Employer	Flangas McMillan Law Group
Phone	702-307-9500
Address & Website	3275 South Jones Blvd., Suite 105 Las Vegas, Nevada 89146

Date(s) of Employment	1/01/2004 – 02/28/2008
Supervisor's Name and Title	Gus W. Flangas, Partner
Your Title	Partner
Describe Your Key Duties	Practice Areas includes: Securities Law, Gaming Law, Intellectual Property, Civil Litigation, Corporate Law/Business Formation, Real Estate Law. Litigated several actions in both State and Federal court, actions included securities matters; Formed numerous businesses, created Private Placement Memoranda, and filed numerous documents with the SEC.
Reason for Leaving	For an opportunity to go to work in-house

Previous Employer	Jolley, Urga, Wirth & Woodbury
Phone	702-699-7500
Address & Website	330 S Rampart Boulevard, Tivoli Village, Ste 380, Las Vegas, NV 89145 http://juwlaw.com/
Date(s) of Employment	05/15/2003-12/31/2003
Supervisor's Name and Title	William R. Urga, Partner
Your Title	Associate
Describe Your Key Duties	Practice Areas includes: Securities Law, Gaming Law, Intellectual Property, Civil Litigation, Corporate Law/Business Formation, Real Estate Law.
Reason for Leaving	They stopped doing securities work

Graduated law school May of 2003

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

Graduated Clark High School, May 1989, prior to that attended Bishop Gorman High School in the Fall of 1987 and switched in January of 1988, and prior to that attended High School in Commack., NY, Commack High School North for 9th and 10th grade

Attended the University of Nevada, Las Vegas for Undergraduate and Graduate degrees:

Masters of Business Administration, Graduated: December 1995

Bachelor of Science Degree in Business Administration: Graduated: August 1992

Major: Managerial Finance

Started Undergraduate at the University of Nevada, Reno for Fall semester in 1989, but moved back to Las Vegas in January of 1990.

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

In High School I was active in team sports, tennis in particular and student government. In graduate school, I interned at the Center for Business & Economic Research and was a student scholar.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

BOSTON UNIVERSITY SCHOOL OF LAW, Boston, MA, Juris Doctorate, May 2003, Final Grade Point average in top 60 percentile at 3.43.

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

Clerkships –
Jolley, Urga, Wirth & Woodbury, Summer 2002, Las Vegas, NV

Clark County District Attorney's Office, Civil Division, Summer 2001,
Las Vegas, NV

- Researched and developed ordinances for Clark County Commission.
- Assisted in implementation of ordinances within various County departments

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.

Participated in the Civil litigation clinic
Was the Administrative Editor for the Journal of Science and Technology Law

Law Practice

12. State the year you were admitted to the Nevada Bar.

2003

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

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California – 2021

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

No

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 16-20 for the five years directly preceding your appointment or election to the bench.

80% of my total practice with 5% on appellate work

16. Estimate percentage of time spent on:

Legal Discipline	Percentage of Practice
Domestic/family	0
Juvenile matters	0
Trial court civil	65
Appellate civil	5
Trial court criminal	0
Appellate criminal	0
Administrative litigation	10
Other: Please describe	0

17. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

1 jury trial, the remaining were all bench trials

18. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

No jury as lead counsel; 2 non-jury to a decision, 1 currently pending

19. List courts and counties in any state where you have practiced in the past five years.

Eighth Judicial District Court, Clark County, Nevada

Nevada Supreme Court

United States District Court, District of Nevada

Superior Court of the State of California, County of Los Angeles-Central District

Court of Appeal of the State of California, Second Appellate District

Supreme Court, State of California

United States District Court, Central District of California

United States Court of Appeals for the Ninth Circuit

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), complete the following tables:

Case 1
Case name and date: Paul D.S. Edwards v. Cenicola-Helvin Enterprises, D/B/A Bannerview.com, et. al.; Supreme Court No.: 44483, Eighth Judicial District Court No: A492764 – Decided March 30, 2006
Court and presiding judge and all counsel: Nevada Supreme Court - Before MAUPIN, GIBBONS and HARDESTY, JJ. Paul D.S. Edwards, in Proper Person. Adams & Rocheleau, LLC, and James R. Adams, Henderson, for Respondents Emperor's Garden Restaurant; Nevada Dragon, Inc.; Tina S. Chen; and Alan Chen. Flangas McMillan Law Group, Inc., and Gus W. Flangas, John R. McMillan and Kimberly P. Stein, Las Vegas, for Respondents Cenicola-Helvin Enterprises, d/b/a Bannerview.com; Mark Cenicola; and Jeff R. Helvin
Importance of the case to you and the case's impact on you: This was the first appeal I ever handled as a lawyer, not only did I win, but it taught me about the appellate process
Your role in the case: I was the lead counsel, I handled all the filings, including drafting

Case 2
Case name and date: Michael Agresti v. Michael Bash, et. al.; Eighth Judicial District Court Case No. A-19-794172-B (while pending due to a stay in bankruptcy- the main part of the case has been resolved and is most significant – August 2019)
Court and presiding judge and all counsel: Dept. No.: 16, Judge Williams My co-counsel was Frank Ellis, Esq. and/or John Savage, Esq. For the Defendants: Michael Harker, Esq.; Byron Thomas, Esq.; Brian Berman, Esq. For other interested Parties: Aaron R. Maurice, Esq.; Patrick McDonnell, Esq.; Michael R. Mushkin, Esq. For the Receiver Val Miller: Michael F. Lynch, Esq.
Importance of the case to you and the case's impact on you: This was important, as I represented 77 Plaintiffs who were taken advantage of as investors by a con-man. I was able to get a preliminary injunction and a receiver, and have the matter taken into to bankruptcy court in the hopes of getting a recovery for my clients.
Your role in the case: I was lead counsel and drafted all pleadings and handled all hearings

Case 3
Case name and date: Dan Brandon Bilzerian v. Dirty World, LLC, et. al., Case Filed August 7, 2015
Court and presiding judge and all counsel: Eighth Judicial District Court, Case No. A-15-722801-C, Dept. No.: 22, Judge Bare

My co-counsel was Brian Boschee, Esq. Opposing counsel was Paul Shpirt, Esq. as local counsel for David S. Gingras, Esq.
Importance of the case to you and the case's impact on you: I was able to successfully defend a motion for summary judgment against opposing counsel who had never lost a similar motion in other jurisdictions, including the Sixth Circuit. This is important, as people cannot just attack celebrities at will.
Your role in the case: I was lead counsel, drafted all pleadings and handled most hearings
Case 4
Case name and date: Vanessa Castano v. Dan Brandon Bilzerian, Eighth Judicial District Court Case No.: A-16-747670-C, Case Filed December 6, 2016
Court and presiding judge and all counsel: Judge Kephart; Co-counsel- F. Thomas Edwards, Esq. and Mikkaela N. Vellis, Esq. Opposing Counsel: Jordan P. Schnitzer, Esq. (previously was Craig Drummond, Esq.) as local counsel for Ian D. Pinkert, Esq.
Importance of the case to you and the case's impact on you: This case involved my client being accused of an intentional tort, and I successfully defended this matter, resulting in several motions in limine and leading to settlement.
Your role in the case: I was lead counsel, and handled all hearings and most pleadings.
Case 5
Case name and date: Alanna Duffy v. Kenneth Robert Busse, et. al., Eighth Judicial District Court Case No.: A447965, Filed March 18, 2002
Court and presiding judge and all counsel: Judge Michelle Leavitt Co-Counsel – Gus Flangas, Esq. Opposing Counsel: Rebecca L Mastrangelo, Esq.
Importance of the case to you and the case's impact on you: This was my very first jury trial.
Your role in the case: We represented the Plaintiff . I was second chair, and handled all expert witnesses.

21. Do you now serve, or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

Yes

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As Chief of Enforcement for the Securities Division of the State of Nevada under the Secretary of State, I served as the Administrative Law Judge for hearings involving notaries. I also followed the rules of evidence during the hearing on these matters.

22. Describe any pro bono or public interest work as an attorney.

I was the Legal Aid Center of Southern Nevada Pro Bono Project's attorney of the month for September of 2017. I handled multiple intellectual property cases involving several defendants in United States District Court, District of Nevada.

I also actively participate in the Federal Pro Bono Project.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

Current:

Member, Clark County Bar Association

Member, American Bar Association

Member, Nevada Justice Association

Member, BU School of Law Dean's Advisory Board since 2019

Previous Memberships:

- Western Enforcement Zones Coordinator, North American Securities Administrators Association, Inc. (NASAA) 2009-2011
- International Association of Gaming Advisors 2008-2015
- Founding Member, CFO/Controller Group, 1995-2009
- Certified Toastmaster, 1992-1994

Previous Directorships:

- Director, UNLV MBA Alumni Council, 1996-1998
- Director, Nevada Council on Economic Education, 1996-1998

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

I am in compliance with Nevada:

2022:

State Bar of Nevada Is Elvis Alive? Legal Issues When Representing Celebrity Impersonators

State Bar of Nevada Ethics Lessons from HBO's Succession

State Bar of Nevada 2022 Gaming Law Conference

National Business Institute, Inc Nevada Firearms Law 2022

2021:

Clark County Bar Assoc-CLE Committee Ethics Unbound & Unmasked
State Bar of Nevada The Big Business of Cannabis
State Bar of Nevada Hot Topics in Business & Finance
State Bar of Nevada Financial Wellness
State Bar of Nevada Understanding & Avoiding Burnout in the Legal Profession

2020:

Nevada Justice Association Women's Caucus
State Bar of Nevada The Brain Disease of Addiction
State Bar of Nevada U.S. Supreme Court Update
Clark County Bar Assoc-CLE Committee Frightening Financial Transactions & How to Avoid Them, Production 2

2019:

UNLV-William S. Boyd School of Law Women in the Law: Going First & Going Forward: Nevada
Veritext Legal Solutions Let's Get Technical: Data Security Ethics for Law Firms
West Legal Aid Center (Part of Thomson Reuters) Research Essentials on Practical Law
Veritext Legal Solutions Social Media: Discovery, Ethics, Professionalism, Evidence & Sanctions
Legal Aid Center of Southern Nevada District of Nevada Federal Trial Academy
State Bar of Nevada What Kanye Can Teach Us About Litigation
Fennimore Craig PC Nevada's 2019 Legislative Session What Every Business Needs to Know
State Bar of Nevada Signs & Symptoms of Substance Abuse in the Workplace (Legal Technology)

2018:

West Legal Aid Center (Part of Thomson Reuters) Litigation Research with Westlaw
Las Vegas Latino Bar Association Practice of Law & Wellness/Substance Abuse
Lexis-Nexis Forgotten Fact Is News: Researching Expert Witnesses
UNLV-William S. Boyd School of Law Intellectual Property Rights Enforcement at Trade Shows: International
State Bar of Nevada Developments in Cybercrime
State Bar of Nevada Evolving Trade Secret Law in the European Union
State Bar of Nevada Intellectual Property Considerations in M&A Transactions
State Bar of Nevada Discovery Issues in IP Cases
State Bar of Nevada The Music Modernization Act & Issues Related to Streaming

I also in compliance with California:

2022:

California Lawyers Association (formerly State Bar of CA) Attorney Communication Duties
California Lawyers Association (formerly State Bar of CA) Attorney-Client Relationship 101
California Lawyers Association (formerly State Bar of CA) Basic Law Practice Management Skills

California Lawyers Association (formerly State Bar of CA) Conflict Resolution, Interpersonal Skills, & Technology

California Lawyers Association (formerly State Bar of CA) Duty of Confidentiality & Conflicts of Interest

California Lawyers Association (formerly State Bar of CA) The Lawyer as a Fiduciary of Funds & Property of Clients & Others 4

California Lawyers Association (formerly State Bar of CA) Lawyer as an Officer of the Court-Civility & Pro Bono Legal Services

California Lawyers Association (formerly State Bar of CA) Recognition & Elimination of Bias

California Lawyers Association (formerly State Bar of CA) Lawyer Well-being: The Bedrock of Competence

California Lawyers Association (formerly State Bar of CA) Disrupting Implicit Bias

ACCESS MCLE, LLC - The Ethics of Federal Disqualification Motions

ACCESS MCLE, LLC - Unconscious Bias in the Legal Profession

ACCESS MCLE, LLC - Proficiency and Professionalism (Bias) Toolkit

ACCESS MCLE, LLC - Lawyer on the Rocks

ACCESS MCLE, LLC - PowerPoint for Litigators

25. Do you have Professional Liability Insurance or do you work for a governmental agency?

Yes

Business & Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

Yes

Gaming – 4/95 – 8/00

Worked for various major gaming companies in Las Vegas and the Bahamas, including Mikohn Gaming, Sun International Resorts, Inc., Casino Data and Systems, Alliance Gaming.

Mikohn Gaming Corporation, Las Vegas, NV

Sales Support Manager, 1/00 – 8/00

- Developed strategies for the roll out of various products, including slot machines, player tracking systems and table games.
- Coordinated implementation of new products from developmental stage, through licensing approvals, through the manufacturing and sale process.
- Managed all centralized sales reporting functions including budget tracking, sales commissions, and expense reports.
- Developed policy and procedure manuals for the department and implemented a computerized sales reporting system.

Sun International Resorts, Inc., Ft. Lauderdale, FL
Senior Financial Analyst, 12/97 – 6/98

- Developed ongoing management reporting and implemented ad hoc financial/operational projects.
- Managed capital asset accounts and developed analytical tools for the resort in the Bahamas.

Casino Data Systems, Las Vegas, NV
Manager of Finance/Senior Financial Analyst, 1/97 – 11/97

- Directed multi-divisional operations with particular attention to slot machine manufacturing and development, multi-site progressives and player tracking systems.
- Assisted CFO in SEC reporting and filing.
- Analyzed various merger and acquisition opportunities.

Alliance Gaming (United Coin), Las Vegas, NV
Marketing/Financial Analyst, 7/96 – 12/96

- Assisted CEO with development and implementation of new Gambler Bonus System, including obtaining licensing approvals with Nevada Gaming Control Board.
- Analyzed customer and financial data associated with gaming operations.

Banking – 1/90 – 6/94

Beginning with a career in banking field, worked for First Interstate Bank of Nevada in Las Vegas (presently Wells Fargo) starting as an Intern in the Legal Department and going on to become a Senior Credit Analyst responsible for analyzing complex financial statements and supporting loan officers in three main areas: Gaming, Corporate Real Estate, and Corporate.

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:
- a. the nature of the business
 - b. the nature of your duties
 - c. the extent of your involvement in the administration or management of the business
 - d. the terms of your service
 - e. the percentage of your ownership

My personal LLC, KPS Leslie, LLC

28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.
- None

Civic Professional & Community Involvement
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29. Have you ever held an elective or appointive public office in this or any other state?
Yes

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Have you been a candidate for such an office?

No

If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

I was appointed in May of 2009 as the Chief of Enforcement for the State of Nevada- Securities Division of the Office of the Nevada Secretary of State, and served 2 years, when I resigned to go back to private practice.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

Directorships:

- Chair, Regional Trustees, Olive Crest, Las Vegas Chapter, 2019-2022
- Regional Trustee, Olive Crest, Las Vegas Chapter, 2011-2022
- Director, UNLV MBA Alumni Council, 1996-1998
- Director, Nevada Council on Economic Education, 1992-2000
- Advisory Board Member, Nevada Housing and Neighborhood Development (H.A.N.D.), 2004-2008

Memberships:

- Member, Executive Development Association
- Member, CFO/Controller Group

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

- In 2019, taught at the Nevada Federal Trial Academy
- Various lectures on Nevada State Securities Law to State Bar and other local attorney organizations
- Various panels and lectures on Intellectual Property in the gaming, entertainment and nightclub industries
- Various panels and lectures to the gaming and Lottery industries on laws and technology from slot machines to sports wagering and internet gaming
- Adjunct professor of Economics at UNLV, various times, starting 1996
- Given lectures on Sarbanes-Oxley to various local organizations

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

- Orphaned Starfish Foundation, General Counsel, 2012-present
- Member, BU School of Law Dean's Advisory Board, 2019-present
- Chair, Regional Trustees, Olive Crest, Las Vegas Chapter, 2019-2022
- Regional Trustee, Olive Crest, Las Vegas Chapter, 2011-2022

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- Director, UNLV MBA Alumni Council, 1996-1998
- Director, Nevada Council on Economic Education, 1992-2000

33. List honors, prizes, awards, or other forms of recognition.

Legal Aid Center of Southern Nevada Pro Bono Project's attorney of the month for September of 2017

Legal Elite 2014-2015

34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

Provided series of opinions as private lawyer in various securities matters, but never published

See Nevada Secretary of State Website for several Investor Alerts and Licensing Publications written

36. During the past ten years, have you been registered to vote?

Yes

Have you voted in the general elections held in those years?

Yes

37. List avocational interests and hobbies.

Going to Vegas Golden Knights Games, Tennis, Traveling

Conduct

38. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?

Yes

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39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.

No

40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.

No

41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

No

42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No

43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No

44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No

45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.

No

Other

46. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

N/A

47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

See attached

48. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

I feel I am uniquely qualified. I have been an attorney for almost twenty years in Nevada. I have practiced both criminal and civil matters, both as a prosecutor and defense counsel on criminal matters and as plaintiff and defendant in civil matters. I am both a litigator and transactional attorney. Lastly, I just took the California bar in October of 2020, studied very judiciously for that bar, and passed on the first attempt.

49. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

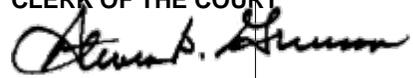
See attached

47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

A long-term Las Vegas resident with my unique experience in banking, securities, finance, operations and law has provided me a strong business background to assist my clients on a business and legal level. I have been an attorney for almost twenty years in Nevada. Such experience also translates to being a Judge in the Eighth Judicial District. I also understand this community, and am very active in charity work.

I have over 15 years' experience in business prior to becoming a lawyer. But as a lawyer, I have worked for the government, as a prosecutor, in-house, and as a private attorney in civil and criminal matters. As the former Chief of Enforcement to the Office of the Nevada Secretary of State, Securities Division, I also have unique experience as a securities lawyer. I also worked as a liaison for all the western states with the Securities and Exchange Commission.

I have experience in many areas of the law from corporate to intellectual property to criminal to handling employer-employee matters. I also have access to many resources, as I am a member of the Dean's advisory Board for my law school, with the first woman, Chief Justice of the Texas Court of Appeals. Lastly, I also have experience being an administrative law Judge.



1 **RPLY**
2 **FLANGAS LAW GROUP**
3 KIMBERLY P. STEIN, ESQ.
4 Nevada Bar No. 8675
5 E-mail: kps@fdlawlv.com
6 3275 South Jones Blvd., Suite 105
7 Las Vegas, Nevada 89146
8 Telephone: (702) 307-9500
9 *Attorneys for Plaintiff/Counterdefendant STEVE SOFFA*

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DISTRICT COURT
CLARK COUNTY, NEVADA

STEVE SOFFA, an individual,
Plaintiff,

vs.

ATCSOFFA LLC, a Delaware limited liability
company; DOES I through X, inclusive, and
ROE BUSINESS ENTITIES I though X,
inclusive,
Defendant(s).

Case No.: A-20-816258-C
Dept. No. 22

**PLAINTIFF/ COUNTER-
DEFENDANT STEVE SOFFA'S
REPLY IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT; AND
COUNTERMOTION TO STRIKE
EXHIBIT 1 OF THE
DECLARATION OF DARREN
MANZARI FILED IN SUPPORT
OF ATCSOFFA'S OPPOSITION
TO STEVE SOFFA'S MOTION
FOR SUMMARY JUDGMENT**

ATCSOFFA LLC, a Delaware limited liability
company,

Counterclaimant,

vs.

STEVE SOFFA, an Individual; DOES I through
X, inclusive; and ROE BUSINESS ENTITIES I
through X, inclusive,
Counterdefendants.

Hearing Date: August 10, 2021
Hearing Time: 8:30 a.m.

1 Plaintiff/Counterdefendant, STEVE SOFFA, an individual, (“Mr. Soffa” or
2 “Plaintiff”), by and through his attorneys of record, the law firm of Flangas Law Group,
3 hereby submits his Reply in Support of his Motion for Summary Judgment (“Reply”) and
4 further files this Countermotion to Strike Exhibit 1 of the Declaration of Darren Manzari
5 filed in Support of ATCSOFF’s Opposition to Steve Soffa’s Motion for Summary
6 Judgement (“Countermotion”).

7 This Reply and Countermotion is made and based upon the following
8 Memorandum of Points and Authorities, the papers and pleadings on file herein, and any
9 such oral argument as may be adduced at a hearing on this matter.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION/UNDISPUTED FACTS**

12 As with ATCSOFFA LLC’s (“ATCSoffa” or “Defendant”) Motion for Summary
13 Judgment brought at the same time as Mr. Soffa’s Motion for Summary Judgement
14 (“Motion”), ATCSOFF’s Opposition to the Motion is only an attempt to create issues of
15 material fact. The problem is that the Defendant continues to provide no admissible
16 evidence. A review of the Opposition to the Motion shows no evidence provided, except
17 for a second declaration of Darren Manzari¹. Instead, we are again left with conclusory
18 allegations with misstated facts in an attempt to create a genuine issue of material fact. For
19 the purpose of judicial economy, Mr. Soffa’s Motion is incorporated herein, including all
20 exhibits, along with Mr. Soffa’s Opposition to ATCSOFFA’s Motion for Summary
21 Judgment.

22 Most importantly, this matter arises from the anticipatory repudiation, also known
23 as anticipatory breach of the Settlement Agreement between Mr. Soffa and Defendant
24 executed on December 16, 2019. There is no dispute that both parties executed the
25 Settlement Agreement. There is also no dispute that Defendant committed an anticipatory
26 repudiation of the Settlement Agreement pursuant to the May 28, 2020 letter. Mr. Manzari

27 _____
28 ¹ Exhibit 1 to Mr. Manzari’s declaration provides documents that were not produced during
discovery in this matter and as such, are the subject of the countermotion to strike herein.

1 does not dispute he authorized the sending of May 28, 2020 correspondence from his
2 counsel, wherein he committed an anticipatory repudiation of the Settlement Agreement.
3 In the May 28, 2020 letter, counsel for ATCSoffa advised Mr. Soffa that the Installment
4 Payments will no longer be made. *See* Complaint at ¶25, Answer at ¶25; *see also* Manzari
5 Depo Transcript excerpts attached as Exhibit 3 to Mr. Soffa’s Motion at 68:17-25–70:1-
6 21, and *see* correspondence dated May 28, 2020 from attorney Nahabedian to Kimberly
7 Stein providing notice that the monthly payments to Soffa pursuant to the Settlement
8 Agreement will no longer be made, Bates Nos. SS000332-SS000334; a true and correct
9 copy of which is attached as Exhibit 4 to Mr. Soffa’s Motion. Specifically, the letter stated
10 that: “Based thereon, this letter shall serve as notice to you as admitted counsel for Soffa
11 that the monthly payments to be made to Soffa will no longer be made as Soffa continues
12 to be in material breach of the agreement.” *Id.* There is also no dispute that a Court had
13 ever ruled prior to May 28, 2020 that the Settlement Agreement had been breached by
14 Mr. Soffa.

15 Further, there is no dispute that ATCSoffa made the first three Installment
16 Payments on March 1, 2020, April 1, 2020 and May 1, 2020, but did not make the June 1,
17 2020 payment. *See* Complaint at ¶24, Answer at ¶24; *see also* Manzari Depo Transcript
18 excerpts attached as Exhibit 3 to Mr. Soffa’s Motion at 64:21-25 – 68:1-16. Further,
19 following the May 28th repudiation, there is no dispute that the Defendant did not make the
20 June 1, 2020 payment, and has not made such payment to date. *See* Manzari Depo
21 Transcript excerpts attached hereto as Exhibit 3 to Mr. Soffa’s Motion at 64:21-25 – 68:1-
22 16 and *see* Soffa Decl. at ¶34 attached as Exhibit 1 to Mr. Soffa’s Motion. There is also
23 no question of fact that the Defendant has only made payments every other month starting
24 on July 1, 2020 to Mr. Soffa. *See id.* Interestingly, for the first time in its Opposition to
25 this Motion, Mr. Manzari provides a second declaration and an exhibit purportedly from
26 his bank wherein he now claims to have made one additional payment to Mr. Soffa. The
27 problems are two-fold; first, that such documents are unauthenticated and only show one
28 side of a transaction, but further that such documents were not produced in discovery, and

1 as such must be stricken. *See* ATCSoffa's Initial Disclosures served on August 27, 2020,
2 a true and accurate copy (without exhibits) is attached hereto as **Exhibit 1**, and which was
3 never supplemented by the close of discovery on April 29, 2021. Thus, we must only base
4 such evidence on Mr. Soffa's declaration and the testimony of Mr. Manzari himself at his
5 deposition, which shows payments only every other month, after the repudiation, but also
6 shows that the June payment was never made.

7 Interestingly, provides no other basis for his failure to fulfill the other obligations
8 under the Settlement Agreement, which include failure to make vendor payments, return
9 merchandise to customers, and failure to return Mr. Soffa's personal property, except to
10 state that without support that all failures were mainly due to the Square Account. Yet,
11 Mr. Manzari does not explain why he started making installment payments again, if such
12 a breach occurred. Nor does Mr. Manzari address the fact that he was sent the information
13 on the Square Account. *See* correspondence between counsel dated March 31, 2020
14 regarding invoices and payment which included Square Account information, Bates Nos.
15 SS000101-102 attached as Exhibit 6 to Mr. Soffa's Motion; *see also* Exhibit 11 to
16 Mr. Soffa's Motion wherein further Square information was provided to Defendant. Nor
17 does Mr. Manzari address the fact that he knew the Square account was closed in October
18 2019 (two months prior to the Settlement Agreement) since Mr. Manzari did not pay the
19 bill and took the money out of the account. *See* Soffa Decl. at ¶44 attached as Exhibit 1 to
20 Mr. Soffa's Motion.

21 Moreover, Defendant continues to fail to state how such information was material
22 to the Settlement Agreement. Lastly, while there are a series of excuses made, Mr. Manzari
23 admits that Mr. Soffa was not present when he obtained his inventory from Mr. Manzari's
24 counsel, Mr. Nadig, and that Mr. Soffa was not present. Interestingly, Mr. Nadig does not
25 provide a declaration in this matter or is even listed as a witness by the Defendant. *See*
26 ATCSoffa's Initial Disclosures served on August 27, 2020, a true and accurate copy
27 (without exhibits) is attached hereto as **Exhibit 1**. Even more interesting is that while the
28 Defendant argues the Square account is for inventory, he also argues that some of

1 Mr. Soffa's items are part of inventory.

2 While, the Defendant attempts to argue that Mr. Soffa materially breached the
3 Settlement Agreement first, and thus his anticipatory repudiation is justified, this was not
4 proven in a Court of law. While Defendant makes excuses, the matter he filed was never
5 adjudicated and was dismissed. Once the Defendant sent its notice of repudiation and
6 stopped making payments, there is no question of material fact remaining that Defendant
7 anticipatorily breached the Settlement Agreement. Thereafter, Mr. Soffa could not have
8 breached the Settlement Agreement. Thus, this Court has no choice but to grant summary
9 judgment in Plaintiff's favor on his three (3) causes of action for breach of contract, breach
10 of implied covenant of good faith and fair dealing, and declaratory relief all relating to the
11 Settlement Agreement, and to dismiss the counterclaims in their entirety as Defendant
12 cannot establish the necessary elements to sustain any of his five (5) counterclaims, which
13 all relate to Settlement Agreement.

14 II. LEGAL ARGUMENT

15 Summary judgment is proper "If the movant shows that there is no genuine issue
16 as to any material fact and that the movant is entitled to judgment as a matter of law,"
17 NRCPC 56(a). The Nevada Supreme Court has adopted the Federal Summary Judgment
18 standard. *Wood v. Safeway, Inc.*, 121 Nev. Adv. Op. No. 73, 121 P.3d 1026 (2005).
19 "Summary judgment procedure is properly regarded not as a disfavored procedural
20 shortcut, but rather as an integral part of the federal rules as a whole, which are designed
21 to 'secure the just, speedy and inexpensive determination of every action.'" *Celotex Corp.*
22 *v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555 (1986); *Wood v. Safeway, Inc.*, 121
23 Nev. Adv.Op. No. 73, 121 P.3d 1026 (2005). The purpose of summary judgment "is to
24 avoid a needless trial when an appropriate showing is made in advance that there is no
25 genuine issue of fact to be tried, and the movant is entitled to judgment as a matter of law."
26 *Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212, 984 P.2d 164,
27 165 (1999) (*quoting, Coray v. Hom*, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964)).

28 The existence of some alleged factual dispute between the parties is not sufficient

1 to defeat a Motion for Summary Judgment. *Sustainable Growth v. Jumpers, LLC*, 122
2 Nev. 53, 128 P.3d 452, 458 (2006). A non-moving party must present admissible evidence;
3 they are not entitled to build their case on “gossamer threads of whimsy, speculation and
4 conjecture.” *Posadas v. City off Reno*, 109 Nev. 448, 851 P.2d 438, 442 (1993) (quoting
5 *Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 61.0, 621 (1983);
6 *Medallion Dev. Co. v. Converse Consultants*, 113 Nev. 127, 930 P.2d 115, 118 (1997) (“[a]
7 party opposing summary judgment may not rely on his allegations to raise a material issue
8 of fact where the moving party supports his motion with competent evidence”).
9 Additionally, the interpretation or construction of “a contractual term is a question of law.”
10 *NGA# 2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1158, 946 P.2d 163, 167 (1997).

11 **A. Defendant Clearly Anticipatorily Repudiated the Settlement Agreement**
12 **and as such Summary Judgment Should be Entered in Favor of Plaintiff.**

13 **1. Anticipatory Repudiation**

14 “[T]he law generally has acknowledged for more than one hundred years that an
15 unequivocal statement by a promisor that he will not perform his promise gives ‘the injured
16 party an immediate claim to damages for total breach, in addition to discharging the
17 remaining duties of performance.’” *Carteret Bancorp, Inc. v. Home Group, Inc.*, Del.Ch.,
18 C.A.No. 9380, Allen, C. (January 13, 1988). A repudiation is ... “a statement by the obligor
19 to the obligee indicating that the obligor will commit a breach ...”. *State Dep’t of Transp. v.*
20 *Eighth Judicial Dist. Court, No. 70098*, 402 P.3d 677, 682 (Nev. 2017). Anticipatory
21 repudiation applies when a substantial portion of the contract is repudiated. *Cladianos v.*
22 *Friedhoff*, 69 Nev. 41, 46, 240 P.2d 208, 210 (1952).

23 It is undisputed that Defendant sent and approved the May 28th letter repudiating
24 the Settlement Agreement and did not make the June 1, 2020 payment. It is further
25 undisputed that Mr. Soffa did not abandon the Settlement Agreement or that there was a
26 determination of a material breach by a Court of competent jurisdiction. A nonbreaching
27 party need not engage in futile gestures to preserve contractual rights. 17A Am. Jur.2d
28 Contracts § 598 (2004); *see also Mayfield v. Koroghli*, 124 Nev. 343, 349, 184 P.3d 362,

1 366 (2008). Viewing these facts in the light most favorable to the Defendant, a fact-finder
2 can only conclude that the Defendant anticipatorily repudiated the Settlement Agreement.

3 **2. Breach of Contract**

4 “When a party anticipatorily repudiates a contract, the cause of action for breach of
5 contract accrues either on the date that performance under the contract is due or, if the
6 plaintiff so elects, on the date that the plaintiff sues upon the anticipatory breach.”
7 *Schwartz v. Wasserburger*, 117 Nev. 703, 707, 30 P.3d 1114, 1116 (2001). Therefore, as
8 Defendant’s conduct amounted to anticipatory repudiation, Mr. Soffa had the option to sue
9 immediately. *See id.*

10 The Settlement Agreement is clear and unambiguous. Payments had to made, and
11 they were not. Thus, there is no genuine issues of material fact whether Defendant
12 breached its obligations under the Settlement Agreement and that such breach caused
13 damage to Mr. Soffa in relation to the Installment Payments and late fees alone, not to
14 mention the amounts owed in outstanding invoices to vendors, the merchandise owed to
15 customers, and the value of Mr. Soffa’s personal items.

16 **3. Breach of Implied Covenant of Good Faith and Fair Dealing**

17 To establish the claims for Breach of Covenant of Good Faith and Fair Dealing as
18 to the Settlement Agreement, Mr. Soffa must prove the following elements:

- 19 1. That the plaintiff and the defendant entered into a valid contract;
- 20 2. That the plaintiff performed all, or substantially all, of its obligations pursuant to
21 the contract;
- 22 3. That the defendant performed in a manner that was unfaithful to the purpose of the
23 contract, or deliberately contravened the intention and sprit of the contract; and that
24 the defendant’s conduct was a substantial factor in causing damage to the plaintiff.

25 *Nelson v. Heer*, 123 Nev. 217, 226, 163 P.3d 420, 427 (2007).

26 As shown above, the facts in this matter establish that the Defendant anticipatorily
27 breached a valid Settlement Agreement, and failed to perform under the Settlement
28 Agreement in direct contravention of the purpose of said agreement. For these reasons,

1 this Court should grant summary judgment in favor of Mr. Soffa's claim for contractual
2 breach of the implied covenant of good faith and fair dealing on the Settlement Agreement.

3 **4. Declaratory Relief**

4 The elements for an equitable claim of declaratory relief are: (1) a justifiable
5 controversy exists between two or more parties; (2) regarding their respective rights
6 pursuant to a contract; (3) such that the plaintiff asserts a claim of a legally protected right;
7 (4) the issue is ripe for judicial determination; and (5) Plaintiff asks the court to determine
8 the parties' relative rights under the contract. NRCP 57; NRS Chapter 30; *Kress v. Corey*,
9 65 Nev. 1, 189 P.2d 352 (1948).

10 As shown above, Defendant has anticipatorily repudiated the Settlement
11 Agreement, and as such is in breach of said agreement. Moreover, because there was an
12 anticipatory repudiation, Mr. Soffa's requirement to comply with the Settlement
13 Agreement is excused as a matter of law. *Finnell v. Bromberg*, 79 Nev. 211, 228, 381 P.2d
14 221 (1963) (Because there was an anticipatory repudiation, the other party's failure to
15 tender performance is excused). Therefore, summary judgment as to the declaratory relief
16 requested should be granted.

17 **B. Defendant Cannot Sustain Its Counterclaims Which All Relate to the**
18 **Settlement Agreement Due to Its Anticipatory Repudiation of the**
Settlement Agreement.

19 As shown in Mr. Soffa's Motion and in Mr. Soffa's Opposition to ATCSoffa's
20 Motion for Summary Judgment, Defendant has failed to meet the standards and
21 requirements under Nevada law that would entitle it to summary judgment in this matter.
22 More importantly, Defendant cannot maintain such counterclaim as Defendant has
23 anticipatorily repudiated the Settlement Agreement and as such the counterclaims should
24 be dismissed in their entirety.

25 Specifically, Defendant has failed to establish with specificity the necessary
26 elements for his claim for fraud against Mr. Soffa pursuant to NRCP 9(b). Mr. Soffa did
27 not breach the Settlement Agreement. Notwithstanding that Mr. Soffa performed under
28 the Settlement Agreement, there was an anticipatory repudiation by the Defendant and as

1 such, Mr. Soffa’s requirement to comply with the Settlement Agreement is excused as a
2 matter of law. *Finnell v. Bromberg*, 79 Nev. at 228, 381 P.2d at 221. Further, Mr. Soffa
3 did not abandon the Settlement Agreement. Defendant has provided no evidence that Mr.
4 Soffa did not perform under the Settlement Agreement. In fact, Mr. Soffa performed.
5 Lastly, Defendant failed to plead damages relating to any of its claims.

6 **C. The Court Should Strike Exhibit 1 of the Declaration of Darren Manzari**
7 **filed in Support of ATCSOFF’s Opposition.**

8 Nevada Rule of Civil Procedure 12(f) allows the Court to “strike from a pleading
9 an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”
10 “Scandalous” matter has been described to include allegations that cast a cruelly derogatory
11 light on a party or other person. *In re TheMart.com, Inc. Sec. Litig.*, 114 F.Supp.2d 955,
12 965 (C.D. Cal. 2000). (*citing Skadegaard v. Farrell*, 578 F.Supp. 1209, 1221 (D. N.J.
13 1984)). The Court’s power to strike is not limited to pleadings, but extends to all “filings.”
14 *See, e.g., Pacquiao v. Mayweather*, No. 2:09-cv-2448, 2010 WL 3271961, at *1-2 (D. Nev.
15 Aug. 13, 2010); *Chavez-Gallegos v. First Magnus Fin. Corp.*, No. 3:11-cv-0709, 2012 WL
16 1229509, at *4 (D. Nev. Apr. 12, 2012).

17 NRCPC 37(c)(1) states in pertinent part that “[i]f a party fails to provide information
18 or identify a witness as required by Rule 16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or
19 26(e), the party is not allowed to use that information or witness to supply evidence on a
20 motion, at a hearing, or at a trial, unless the failure was substantially justified or is
21 harmless.” “The purpose of the rule is to prevent the practice of ‘sandbagging’ an
22 adversary with new evidence.” *Ventra v. United States*, 121 F.Supp.2d 326, 332 (S.D.N.Y.
23 2000). NRCPC 37(c)(1)(A) also provides for payment of the reasonable expenses, including
24 attorney fees, caused by the failure to comply with this Rule. Additionally, EDCR
25 Rule 7.60 (b)(4) provides for sanctions, including the imposition of fines, costs or
26 attorney’s fees when an attorney or a party without just cause: “Fails or refuses to comply
27 with these rules.”

28 First, Exhibit 1 consists of bank statements, which were not produced in discovery.

1 See ATCSoffa's Initial Disclosures served on August 27, 2020, a true and accurate copy
2 (without exhibits) is attached hereto as Exhibit 1. Discovery closed on April 29, 2021, and
3 ATCSoffa never supplemented its disclosures. A review of Exhibit 1 further shows that
4 such documents were not bated stamped, more evidence of the failure to disclose. Not to
5 mention, that such evidence is inconsistent with the testimony of Mr. Manzari at his
6 deposition and that of Mr. Soffa in his Declaration attached to the Motion.

7 Such actions by the Defendant are also not the first instance in this case of an
8 attempt to sandbag. Defendant failed to disclose damages. In addition, as shown,
9 Mr. Nadig did not provide a declaration in this matter nor has been listed as a witness in
10 this case.

11 Although the application of sanctions under Rule 37(c) does not require a showing
12 of bad faith, "a party's bad faith may 'be taken into account as part of the party's
13 explanation for its failure to comply.'" *See Am. Friends of Yeshivat Ohr Yerushalayim,*
14 *Inc. v. United States*, No. 04-CV-1798 (CPS), 2009 WL 1617773, at *6 (E.D.N.Y. June 9,
15 2009) (*quoting Design Strategy, Inc. v. Davis*, 469 F.3d 284, 296 (2d Cir. 2006)). Here, all
16 factors warrant a determination that the undisclosed bank statements, attached as Exhibit 1
17 to Mr. Manzari's Declaration, should be stricken. Defendant cannot provide any
18 justification for its failure to properly disclose documents, witnesses or damages.
19 Defendant's inexcusably late attempt to cure this failure is an implicit concession that their
20 conduct had violated the Nevada Rules of Civil Procedure. Finally, Mr. Soffa would be
21 prejudiced if these documents were considered on summary judgment, as he was deprived
22 of any opportunity to depose the Mr. Manzari on these documents prior to summary
23 judgment, and filing declarations on opposition to summary judgment is the very definition
24 of "sandbagging" that the Rules were intended to prevent. *See Ventra*, 121 F.Supp.2d at
25 332.

26 III. CONCLUSION

27 Based on the Motion and the above, summary judgment should be entered in favor
28 of the Plaintiff on his three (3) causes of action for breach of contract, breach of implied

1 covenant of good faith and fair dealing and declaratory relief all relating to the Settlement
2 Agreement, which include monetary damages and the declaratory relief requested.
3 Additionally, since Defendant has failed to establish the necessary elements of any of his
4 five (5) counterclaims, which all relate to Settlement Agreement, this Court should grant
5 summary judgment in Plaintiff's favor and dismiss the counterclaims. Furthermore, since
6 discovery is closed in this matter, and for the reasons stated above including the failure to
7 produce such documents in discovery, the Court should grant the Countermotion to Strike
8 Exhibit 1 of Defendant's Declaration in support of its Opposition to the Motion in its
9 entirety and disregard any testimony related thereto. In granting the Countermotion, the
10 Court should also award sanctions for Defendant's continued disregard of the rules of this
11 Court.

12 Dated this 3rd day of August 2021.

13 **FLANGAS LAW GROUP**

14 */s/ Kimberly P. Stein*

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