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Arizona State Bar
4201 N. 24th Street
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RE: Formal Ethics Complaint Against:
Michael Harnden, Esq. – *Admitted pro hac vice*
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March 20, 2018

Arizona State Bar,

The factual basis for this complaint arises from Michael Harnden (*hereafter*, “Harnden”) misconduct in Case No.: A-15-724483-C, Department No. XV, Andre Wilson vs. Perfect Privacy, LLC, et al, Eighth Judicial District Court (*hereafter*, “case”) before Judge Joe Hardy (*hereafter*, “Judge”). The unethical conduct involved the case of client Charles Rodrick (*hereafter*, “Rodrick”) that extended throughout the period beginning in November, 2015 through today’s date. The case will be finalized once the Court signs the Judgment, which Harden was Ordered to prepare January 19, 2018 and has yet to comply with the the Judge’s specific instructions after **fifty-two <55> days** and counting (*see*, Exhibit A).

Although the case was adjudicated in Nevada governed by the Nevada Rules of Professional Conduct (*hereafter*, “Nevada Rules”), Harnden was permitted to represented Rodrick *pro hac vice* for the case as a member of the State Bar of Arizona in good standing. Harden submitted his certificate to the Court with his application *pro hac vice* (*see*, Exhibit B). As an Arizona licensed attorney, the complaint details Harnden’s repeated violations of the ethical duties and obligations as defined by the Arizona Rules of Professional Conduct (*hereafter*, “Arizona Rules”) by engaging in repeated instances of violating **ER 1.1 - Competence, ER 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer, ER 1.3 - Diligence, ER 1.4 - Communication, ER 3.2 – Expediting Litigation, ER 3.3 – Candor Toward the Tribunal, ER 5.2 – Responsibilities of a Subordinate Lawyer, and ER 8.4 – Misconduct**. The seriousness and scope of the misconduct perpetrated by Harnden over the entire time of legal representation of the case calls for a review of the circumstances outlined below. It is requested that the Review Department order that Harnden be held responsible for the clear violations of the Arizona Rules

for a licensed attorney. The disciplinary process should render a permanent disbarment from Harnden ever being allowed to practice law in Arizona in order to properly protect the citizens of Arizona from unethical lawyers. Furthermore, to the degree allowed by Arizona, Harnden should be held accountable for the reimbursement of the quantifiable financial losses realized by Rodrick directly attributed to the misconduct of “defendants” identified by the Judge in the case. The first was a \$5000 sanction imposed by the Judge for “repeated failure” to adhere to required norms of competent legal representation in abiding to the Nevada “local rules.” The second being a penalty imposed by the Judge wherein he withheld 40% from the “mandatory attorney fees” award pursuant N.S.R. §§ 18.020 and 41.670(1) associated to an Anti-SLAPP defense victory, a reduction to \$45,537.75.

During the tenure of Harnden’s legal representation of Rodrick, he would commit ethical violations of the following Arizona Rules:

- 1) **ER 1.1 – Competence.** A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- 2) **ER 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer.** (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client’s decision concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter.
- 3) **ER 1.3 – Diligence.** A lawyer shall act with reasonable diligence and promptness in representing a client.
- 4) **ER 1.4 – Communication.** (a) A lawyer shall: (1) Promptly inform the client of any decision or circumstances with respect to which the client’s informed consent is required by these Rules; (2) Reasonably consult with the client about the means by which the client’s objectives are to be accomplished; (3) Keep the client reasonably requests for information; and (4) promptly comply with reasonable requests for information; and (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- 5) **ER 3.2 – Expediting Litigation.** A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.
- 6) **ER 3.3 – Candor Toward the Tribunal.** (a) A lawyer shall not knowingly: (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (3) Offer evidence that the lawyer knows to be false.
- 7) **ER 5.2 – Responsibilities of a Subordinate Lawyer.** (a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person. (b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer’s reasonable resolution of an arguable question of professional duty.

- 8) **ER 8.4 – Misconduct.** It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) Engage in conduct that is prejudicial to the administration of justice.

The allegations herein regarding Harnden’s misconduct are summarized as follows:

- 1) **Documented by the Judge’s Order of November 17, 2016, a sanction of \$5000.00 was issued against the “Defendants” specifically due to the misconduct of Harnden.**

On November 20, 2015, Harnden filed a Notice of Removal to “remove the case from the Clark County District Court, Nevada, to the United States District Court for the District of Nevada (*see*, Exhibit C). On December 21, 2015, Plaintiff filed a motion to Remand Back to the Eighth Judicial District Court of Nevada (*see*, Exhibit D). On April 20, 2016, the Federal Court granted the Plaintiff’s Motion to Remand and the case was sent back to the Eighth Judicial District Court (*see*, Exhibit E). It is important to note for the State Bar of Arizona’s (*hereafter*, “Bar”) review, due to Harnden’s incompetent legal representation, Rodrick wasted six (6) months of litigation chasing red herrings. Which according to the Judge, “defendants” had no legal basis to pursue and were in clear violation of the local rules. This was a clear violation of competently expediting litigation (ER 3.2). Rodrick would endure not only the lost time, but incur substantial additional and unnecessary legal fees, not to mention an eventual \$5000.00 sanction.

After the case was returned to the Eighth Judicial District Court of Nevada, on June 14, 2016, the Plaintiff filed a Motion for Permanent Injunction. Inexplicitly Harnden would NOT file a Response even though Rodrick had frantically attempted to make contact to confirm the Response was filed. The obvious and appropriate repercussion, Plaintiff would file a Motion for Default. Unbeknownst to Rodrick the Nevada local counsel Bret Whipple (*hereafter*, “Whipple”), Bar Number NV6168, and his office had aggressively communicated to Harnden stressing the necessity and importance of filing the Response pleadings and “immediately” address the Default (*see*, Exhibit F). Harnden ignored all attempts to make contact and did NOT file the necessary pleadings. Without a Response filed, the local rules stipulate a default be granted. On September 6, 2016, the Judge would sign an Amended Order for the Permanent Injunction (*see*, Exhibit G) and would specifically note as “Conclusions of Law” the “Defendants” had not provided the required response:

“Under the circumstances of this case, the failure of Defendants WEBEXPRESS LLC and RODRICK to respond to the Motion is construed as an admission the Motion is meritorious and as consent the Motion be granted.”
(*see*, Exhibit G, pg. 2:7-9)

The problems of Harnden's inaction would be further exacerbated with an additional ruling by the Court addressing the same issue of not properly filing the required response. On October 5, 2016, the Judge signed the Preliminary Injunction which would be filed on the docket October 13, 2016 (*see*, Exhibit H). The Judge would once AGAIN note the same admonishment concerning the "Defendants'" conduct:

"Under the circumstances of this case, the failure of Defendants WEBEXPRESS LLC and RODRICK to respond to the Motion is construed as an admission the Motion is meritorious and as consent the Motion be granted." (*see*, Exhibit H, pg. 2:14-16)

Due to Harnden's complete disregard of his duties as Rodrick's attorney and the Nevada Rules, the case had effectively gone completely off the rails. Rodrick was suddenly required per court Order to abide to the terms of the Preliminary Injunction. This would obligate Rodrick to perform extensive work and incur the associated expenses in order to be in compliance. It is important to note for the Bar's attention that Rodrick would eventually prevail in ALL claims that ultimately established the complete lack of a legal basis to be subjected to the very adverse and restrictive Injunction. The Preliminary Injunction would ultimately be reversed and stricken, but would never have occurred if not for Harden's ineptitude.

Once Harnden finally resurfaced, it had become necessary to unwind the legal predicaments he had created. This would require the filing of a Motion to Set Aside Default and Dissolve Preliminary Injunction which occurred on October 12, 2016 (*see*, Exhibit I). The hearing before the Court would occur November 17, 2016 to address the many issues concerning Harden's misconduct: "(1) Defendants' failure to comply with local rules related to the timely filing of pleadings" (*see*, Exhibit J). Although the Judge would reverse the Default Order with conditions, he would admonish Harnden for his disregard of the local rules in both wasting six (6) months with the unjustified Notice of Removal to the Federal Court which would be remanded and also the repeated failure of timely filing of pleadings. For these digressions the Court would Order:

"COURT FURTHER ORDERED that Plaintiff was hereby AWARDED \$5,000.00 in attorney's fees and costs, due to Defendants' repeated failure to comply with local rules, which resulted in an unreasonable multiplication of proceedings; attorney's fees and cost MUST be paid to the Plaintiff no later than December 1, 2016. COURT ORDERED that failure to meet with either of the provisions set forth in the ruling would result in the Default remaining in place." (*see*, Exhibit J)

Although the Judge found the conduct of the "defendants'" so egregious to merit a sanction of \$5000.00 to reimburse the Plaintiff for costs incurred due to "unreasonable multiplication of proceedings," the ruling was based on the technical implementation of the legal filings (or lack thereof) associated with the litigation process by Harnden. The

sanction was NOT identified as any conduct associated to Rodrick personally. Since Harnden was not in a position to pay the sanction, although not personally responsible for the conduct cited by the Court, Rodrick was forced to pay the \$5000.00 or the failure “would result in the Default.” This was a completely untenable position for Rodrick to have been placed in by his own legal counsel. To add insult to the injury of the circumstances of the sanction, Harnden would ignore and not respond to Rodrick’s communication requesting payment instructions to meet the stated deadline of the Court (*see*, Exhibit K). Not wanting to be in Default, Rodrick would have to make the payment arrangements through the local counsel Martin L. Welsh (*hereafter*, “Welsh”), Nevada State Bar No. 8720, as Harden would not respond to inquiries as to the logistics required to abide to the Court’s Order. Welsh would take receipt of the \$5000.00 and properly transfer to the Plaintiff. It was Welsh who would have to document the payment for the Court’s review (*see*, Exhibit L).

It is worth note for the Bar’s review that the issue of “Defendants” not following the “Nevada Rules” was a concern the Judge expressed under a number of different circumstances. For example, on August 25, 2016, in Journal Entries wherein the Court specifically expresses the ongoing concerns that Harnden was not filing pleadings properly and is documented by the Judge **“urges counsel to follow the rules for such motion.”** (*see*, Exhibit M). The Order imposing the \$5000.00 sanction was the accumulation of repeated violations of the Nevada Rules and the generally accepted conduct of an attorney to which the Judge finally acting upon Harden’s misconduct.

The multiple factors that accumulated to result in the Court Ordering a \$5000.00 sanction was the direct responsibility of Harden’s conduct in violation of the Nevada Rules and the responsibilities of an attorney. There can be no dispute the circumstances detailed above are irrefutable occurrences of ethical violations meriting restrictions imposed by the Bar that Harnden never be allowed to practice law in the State of Arizona again. The specific violations of the Nevada Rules are **ER 1.1 - Competence, ER 1.3 - Diligence, ER 1.4 - Communication, ER 3.2 – Expediting Litigation, ER 5.2 – Responsibilities of a Subordinate Lawyer, and ER 8.4 – Misconduct.**

- 2) **Documented by the signed Court Notice of Entry of Order of August 14, 2017, Rodrick was penalized a 40% reduction in the award of “mandatory attorney fees” specifically attributed to the misconduct of Harnden.**

Rodrick would prevail against all claims of the Plaintiff with the Court’s granting the Special Motion to Dismiss (Anti-SLAPP) on February 8, 2017 (*see*, Exhibit N). Having all claims of the Plaintiff dismissed due to an Anti-SLAPP defense entitled Rodrick to an award of **ALL COURT AND ATTORNEY FEES.** Pursuant the dictates of Nevada anti-SLAPP statute, N.R.S. § 41.670(1)(b), Rodrick could have been awarded the recovery of the \$113,843.75 billed in attorney fees over the course of the litigation process.

Although Rodrick requested, the Court denied the return of the \$5000.00 Sanction in the Notice of Entry of Order signed August 14, 2017 (*see*, Exhibit O, pg. 21:¶91). The Judge pointedly noted “there were multiple bases for the issuance of the sanctions and there was no basis for its return.”

The financial penalties for the transgressions of Harnden’s legal representation would **NOT** be limited to the \$5000.00 Sanction. The same issues of Harnden’s misconduct previously noted by the Court would be detrimental to Rodrick when the Judge contemplated the awarding of the “mandatory attorney fees.” These issues would once again be specifically addressed by the Court when dismissing 40% of the attorney fees that totaled \$113,843.75, to be set as a judgment Ordered amounting to \$68,306.25(*see*, Exhibit O, pg.21:¶87 and ¶88). **A net loss to Rodrick of \$45,537.75**. The Court directly addressed the rationale in its decision to withhold 40% of the legal fees incurred by Rodrick, all of which were specifically associated to the handling of the litigation process by Harnden and they included, but not limited to, “displayed a lack of understanding of Nevada procedures for properly filing in this Court pleadings that had been filed in the federal court” (*see*, Exhibit O, pg. 20:¶80, ¶81 and ¶82). These decisions entered into the Court’s Record are evidence of EXPENSIVE penalties realized by Rodrick directly associated to Harnden’s lack of abiding to the local rules and providing competent and diligent legal representation in accordance to Nevada Rules and those required of an Arizona licensed attorney.

It is important for the Bar to review the detailed analysis of the most relevant findings by the Court outlining the conduct of the “defendants” attorneys that warranted the Sanction and the 40% reduction of a “mandatory attorney fees” award which are explicitly noted by the Judge as the following (*see*, Exhibit O, pg. 20:¶80, ¶81 and ¶82:

¶ 80) The Court finds that the following actions and mistakes of the Arizona Defendants were not reasonable:

- Removal of this action to the Federal District Court of Nevada;
 - The Court finds the removal was not appropriate.
- The fallout from the remand of this action from the federal court to this Court:
 - The Arizona Defendants **displayed a lack of understanding of the relationship between this Court and the Nevada federal court;**
 - The Arizona Defendants **displayed a lack of understanding of Nevada procedures for property filing in this Court** pleadings that had been filed in the federal court;
 - The Arizona Defendants **failed to take reasonable steps to resume progress of this litigation** following remand.

¶ 81) The actions and **failings of the Arizona Defendants** related to these issues (and the resulting pleadings, arguments, and related litigation which

could have been avoided but for these issues), **needlessly increased the scope of this litigation and resulted in unnecessarily duplicative effort.**

¶ 82) While the Court finds it is reasonable to award the Arizona Defendants attorneys' fees under this element, **the issues referenced and the problems they created in this litigation warrant a reduction in the amount of fees awarded.**

¶ 87) Because of the issues cited in (c), above, the Court finds **a reduction of 40% of the requested fees is warranted.**

¶ 91) There **were multiple bases for the issuance of the sanction** and there was no basis for its return.

As the prevailing party in a contentious and prolonged civil litigation, it is very disconcerting to review the Court's determination that your own attorney had been responsible in costing an unrecoverable \$50,000.00 due to their gross incompetence and disregard of the Nevada Rules and those required of an Arizona licensed attorney. As the client, Rodrick had believed the dictates of the codes that govern licensed attorneys would provide protection from the type of ethical violations as those repeatedly perpetrated by Harnden. Clearly the rulings as documented in the Court's record demonstrate the degree of indignation the Judge felt toward the conduct of Harnden and how he was litigating the case. If the Bar does not believe Rodrick rendition of events concerning the ethical violation of both the Nevada Rules and Arizona Rules, it merely needs only consider the position of a sitting Judge with the Eighth Judicial District Court of Nevada.

The additional penalty realized by Rodrick amounting to a \$45,537.75 reduction in an award of "mandatory attorney fees" was the direct result of Harnden's legal representation not in line with the local rules drawing the indignation of the Judge. Such ethical violation resulting is such a quantifiable detriment to the client is irrefutable evidence of Harden NOT adhering to the dictates of **ER 1.1 - Competence, ER 1.3 - Diligence, ER 3.2 – Expediting Litigation, and ER 8.4 – Misconduct.**

- 3) Harnden's legal representation throughout the litigation of the case involved the untimely or ignoring the required filing of pleadings as dictated pursuant local rules or even Court Order "which resulted in an unreasonable multiplication of proceedings."**

It is the duty of a competent attorney to expedite the litigation process to minimize the expenditure of the resources of both client(s) and/or court(s). Harnden could not have practiced a more contrary application of the legal strategy of an anti-SLAPP defense in his representation of the Rodrick Nevada case. The conclusion of the Court was made abundantly clear in reprimanding Harnden's repeated indiscretions with the Order of a \$5000.00 Sanction when clearly stating **"which resulted in an unreasonable**

multiplication of proceedings” (see, Exhibit J). This position was further expressed empathically by the Judge when reiterated in the Court’s Notice of Entry of Order with the analysis Harnden had “**needlessly increased the scope of this litigation and resulted in unnecessarily duplicative effort**” (see, Exhibit O, pg. 20: ¶81).

To demonstrate the inadequacy of Harnden’s legal representation only requires a cursory review of the Nevada anti-SLAPP statute (Nev. Rev. Stat. § 41.660 *et seq.*). The statute extends well beyond serving as an affirmative defense. In addition to serving as a shield by providing immunity, the statute also provided a SLAPP (Strategic Lawsuit Against Public Participation) defendant a sword by creating its own special motion to dismiss procedure to effectuate **QUICKLY DISPOSING** of those claims that have the practical effect of infringing on a defendant’s free speech rights. “The purpose of the special motion to dismiss is to filter out ‘unmeritorious claims in an effort to protect citizens from costly retaliatory lawsuits arising from their right to free speech under both the Nevada and Federal Constitutions.’” *Rebel Communications, LLC v. Virgin Mary Water Dist.*, No. 2:10-CV-0513-LRH-PAL, 2012 WL 934301, *2 (D. Nev. March 20, 2012) (citing *John*, 219 P.3d at 1282). To facilitate the protection of the SLAPP defendant, the legislation requires the judge to render a ruling on a Special Motion to Dismiss (anti-SLAPP) in **ONLY 30 DAYS** to minimize excessive time and costs of civil litigation.

It is inconceivable how Harnden was able to take the **WINNING** legal strategy of an anti-SLAPP defense specifically structured by the Nevada Legislation to minimize both time and cost of frivolous litigation to garner the results realized by Rodrick in the case. What **could have / should have** been a case determined after only 3 – 4 months of litigation would devolve into a seemingly endless array of delays and legal quagmires instigated by Harnden incompetence. As of today, the duration of the case **WON** by Rodrick is 30 months (filed September 15, 2015) at a cost exceeding \$150,000.00. This excessive time line and cost is the polar opposite of the legislative intent of the Nevada statute anti-SLAPP defense and is relevant to a Bar investigation. No matter the view of Harnden legal representation, it is undeniable that he overtly disregarded both Rodrick’s best interest and those of the Court in abiding to the Nevada Rules in Expediting Litigation.

The latest incidence of Harnden’s violation of the Nevada Rules is the blatant disregard of a court Order. On January 19, 2018, it was clearly stated that the “COURT FURTHER ORDERED ... **Mr. Harden to prepare a Judgment**, and forward it to Mr. Dorman and Mr. Weinstock for approval as to form and content” (see, Exhibit P). The Order was to be completed within ten (10) days; today is day fifty-two (52). The attempts by Rodrick and local counsel Welsh to contact Harnden in regard to the Judgment have gone ignored (see, Exhibit Q). Besides the obvious potential contempt of court issue, Harnden’s non-compliance has unnecessarily delayed the requirement of expediting litigation. Once the Order is signed the 30 day time period for the Plaintiff to file an appeal would have been initiated. If Harnden had complied with the Court’s Order, the time for the Plaintiff to decide and execute the filing would have passed; ten (10) days past. Once again,

Harnden's disregard for the Nevada Rules operating pro hac vice and not in line with his duties as an Arizona licensed attorney appears to be of little to no concern.

The totality of the non-expeditious manner in which the case was litigated by Harnden has to take into account the pervasive lack of communication in general, consultation of legal strategy with Rodrick, responsibilities of a subordinate counsel in coordinating with local counsel (both Whipple and Welsh) as additional factors that have led to a case unnecessarily extended to **OVER** 2.5 years. Harnden has been clearly responsible for ethical violations that merit the Bar's consideration of **ER 1.1 - Competence, ER 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer, ER 1.3 - Diligence, ER 1.4 – Communication, ER 3.2 – Expediting Litigation, ER 5.2 – Responsibilities of a Subordinate Lawyer and ER 8.4 – Misconduct.**

- 4) Based on Harnden's refusal to comply with the Court's Order of January 19, 2018, plus ignoring any and all attempts to communicate concerning the matter, the only conclusion is Harnden has officially abandoned the case.**

Base on the circumstances detailed concerning Harnden's refusal to "prepare a Judgment, and forward it to Mr. Dorman and Mr. Weinstock for approval as to form and content" by Court Order on January 19, 2018 (*see*, Exhibit P); it has to be interpreted as the clear indication Harnden has officially abandoned the case.

The attempts to contact Harnden have been very specific in the communications concerning the preparation of the Judgment the Court Order specified Harnden to "prepare." The first inquiry by Rodrick began in late January. On February 8, 2018, although Rodrick had not received an update or any response from numerous inquiries, Welsh emailed Rodrick that he had contact with Harnden who indicated "he needed to wait for the Order prepared by Wilson after the last hearing to be entered before he should lodge the proposed new Judgment" (*see*, Exhibit Q). Even if Harnden's "understanding" was correct, which it is not as there was NO ambiguity in the Court's Order, "the Order prepared by Wilson" was filed by the Court February 21, 2018. There is no plausible explanation and/or excuse for Harnden's non-compliance.

After awaiting any contact and/or the Judgment being prepared by Harnden without any success, it had become clear he has abandoned the case. Rodrick was forced to have Welsh "prepare the judgment." On March 8, 2018, Welsh had made the last attempts of contacting Harnden. Rodrick and Welsh agreed there was no option but to move forward with the belief Harnden has abandoned the case and Welsh will attempt to properly prepare the Judgment pursuant the Court Order (*see*, Exhibit R).

One possible explanation for the Harnden's non-compliance in abiding to the Court's Order is his employment with the Tucson Law firm Giordano, Spanier & Hecke PLC (*hereafter*, "firm"). At one point it was claimed by Harnden that he was NOT allowed to continue with legal representation of his "old cases" after accepting a position with the

firm. Whatever may have been the terms of Harnden's new employment with the firm, ignoring of the Arizona Rules cannot be circumvented without consideration of the dictates for Terminating Representation in accordance of ER 1.16(b)(1): "Except as stated in paragraph (c), a lawyer may withdraw from representing a client if: withdrawal can be accomplished without material adverse effect on the interests of the client."

Harnden has abandoned the case. He is in defiance of the Court's Order of January 19, 2018. The continued ethic violations of the Nevada Rules by Harnden in regard to the manner in which he has abandoned the case demonstrate the willful disregard of **ER 1.1 - Competence, ER 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer, ER 1.3 - Diligence, ER 1.4 – Communication, ER 3.2 – Expediting Litigation, ER 5.2 - Responsibilities of a Subordinate Lawyer and ER 8.4 – Misconduct.**

5) Harnden offered terms of a settlement position in a Court filing without consulting Rodrick at anytime with a clear intent to pursue his own best interest over those of his client (Rodrick).

On October 10, 2017, Harnden filed a Confidential Settlement Memorandum (see, Exhibit S). Apparently it was so confidential Rodrick was intentionally excluded from having any input in regard to the terms of a settlement. Despite multiple attempts to contact Harnden, all efforts to receive an update or to provide his input of acceptable terms toward a settlement were ignored. Rodrick would finally receive a copy of the filing six (6) days after it had been submitted to the Court, which would be via an email from Welsh and NOT Harnden. Perhaps the simple reason for such tactics by Harnden was the knowledge Rodrick would have no interest in the terms being considered. Harnden offered to accept a "partial" payment of the \$68,000.00 judgment if received in a short time period of a few days. The objective for Harnden was to secure monies that would be earmarked specifically and exclusively for himself with no consideration for either Rodrick's best interest in the short or long term legal strategy. Rodrick expressed his many points of view with Harnden via email on October 18, 2017 (see, Exhibit T). Rodrick would NOT receive a response from Harnden addressing the many issues raised in the email of October 18, 2017.

It is a fundamental foundation of the dictates of practicing law that an attorney cannot exclude the client in making settlement terms. Also, the interest of the client must take precedent over those of the lawyer. These principles certainly apply to both the Nevada Rules and Arizona which Harnden was well versed, yet choose to ignore in an attempt to pursue his own objectives with his unilateral settlement offer that advanced his personal agenda which is an irrefutable and egregious abuse of his professional duties.

Harnden's actions from a legal representation aspect were reprehensible. He has shown no concern for the client Rodrick or the legal representation dictates of both the Nevada Rules and Arizona Rules. Self-dealing to the detriment of the client and not advising the client of settlement terms are clear and irrefutable ethics violations of **ER**

1.1 - Competence, ER 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer, ER 1.3 - Diligence, ER 1.4 – Communication, ER 3.2 – Expediting Litigation, and ER 8.4 – Misconduct.

6) Harnden refused to properly communicate during entirety of the case with Rodrick and local counsel (both Whipple and Harnden).

Throughout the complaint a number of incidences are detailed wherein Harnden would disappear and be unreachable through any form of communications. Exhibits have been provided that document some of the occurrences that were a consistent indication of Harnden legal representation (see, Exhibits F, K, Q and S). The degree of malfeasance demonstrated by Harnden in regard to his lack of respect for communication protocol is worth special attention by the Bar. If the provided documentation of numerous emails does not suffice, upon request, dozens of additional email content can be provided for the Bar's review.

Harnden made it a consistent and pervasive issue with his lack of communication as required by the Nevada Rules and generally accepted norms in being an Arizona licensed attorney. The degree of egregious incidences of not abiding to common business protocol norms, let alone the importance of conveyance of ongoing circumstances and updates during an active civil litigation is beyond comprehension. Harnden had no regard for the dictates of the Nevada Rules the Arizona Rules as to **ER 1.2 – Scope of Representation and Allocation of Authority between Client and Lawyer, ER 1.4 – Communication, ER 3.2 – Expediting Litigation, ER 5.2 – Responsibilities of a Subordinate Lawyer, and ER 8.4 – Misconduct.**

7) Harden engaged in conduct that involved willfully making false statements to the Court.

Harnden's ethical violations were not exempt from showing disregard to the Court itself by willfully providing false statements. Although there were many such occurrences, the complaint provides two that can be documented with available evidence within the Court's record.

On July 28, 2016, in a hearing before the Judge it is documented in the Minute Entry that "The Court noted that local counsel, Bret O. Whipple, Esq., had filed a Motion to Withdraw; Mr. Harnden stated that Mr. Whipple was no longer pursuing the Motion to Withdraw" (see, Exhibit U). At **NO** time did Whipple convey any intention to withdraw his Motion to Withdraw. It simply did not happen and is certainly verifiable with Whipple, a licensed attorney of Nevada. Harnden was before the Court and felt the need to fabricate a lie to address an issue at hand involving his Motion to Associate Counsel which was under the scrutiny of the Judge. He chooses to take an easy way out and just fabricates a lie before the Court.

On January 15, 2016, Harnden filed with the U.S. District Court District of Nevada a Motion for Enlargements of Time to Submit Responses (*see*, Exhibit V). In the Motion Harnden would claim “Excusable Neglect” for his not filing the Responses in a timely manner. The excuse put forth to the U.S. District Court was “the firm’s internet provider erroneously shut down service” making access to ALL phone, internet and email inaccessible. He also claimed at the “same time” the email host was somehow separately inaccessible. Of course, to exacerbate the problems was a physical illness (alleged) that prevented Harnden from the ability to “rectify the various problems or complete the outstanding pleadings” (*see*, Exhibit V, pg. 3:7-8). As Rodrick was working with Harnden at the time, he can attest to firsthand knowledge that such assertions are complete fabrications, otherwise known as lies. All the services associated with Harnden’s law practice were disconnected for non-payment. Harnden and the partner of the law firm Barry Rorex vacated their offices in Tucson in the middle of the night without notice to the land lord whom Rodrick communicated with directly, along with Harnden’s father.

It is an ethical violation to knowingly provide false statements to the Court. It is likely such obvious deceptive tactics by Harnden were recognized by the Judge and at least in part cause for the rulings concerning the \$5000.00 Sanction and the 40% reduction of the award for “mandatory attorney fees.” It is Rodrick who would ultimately be held accountable, in the tune of \$50,000.00, for these clearly unethical incidences of dishonesty perpetrated by Harden upon the courts.

The fact that Harnden had no qualms in knowingly providing false statements to the Court should be of great consternation for the Bar. Lying to the Court in any jurisdiction while practicing of law as an Arizona licensed attorney represents one to the greatest ethical violations as it goes directly to the premise that a lawyer must be of good character and absent moral turpitude. Harnden does not possess such noble inclinations as he clearly was responsible for violating the dictates of **ER 3.3 – Candor Toward the Tribunal and ER 8.4 – Misconduct.**

8) Unauthorized use of Rodrick’s credit card by Harnden.

A smaller infraction of the Arizona Rules committed by Harnden involves the unauthorized use of Rodrick’s credit card to purchase a \$544.00 airline ticket. It is not a matter that Rodrick wants to make a big issue of the amount of the transaction; it is the matter of having his credit card used without his knowledge and/or authorization. This is a matter of Harnden committing a fraud that is in clear violation of the Arizona Rules, if not the Arizona criminal code.

On July 7, 2017, Harnden contacted Rodrick seeking authorization to purchase a \$544.00 ticket for airfare to travel non-stop on American Airlines to a case hearing scheduled in Las Vegas before the Court. Rodrick did **NOT** grant the authorization as he was able to easily find similar non-stop flights offered by Southwest Airlines for \$152.00. Further,

with just a little additional online research Rodrick was able to locate a travel package via TripAdvisor.com that provided both airfare and hotel accommodations for \$382.00. Although Rodrick expressed the options he was perfectly agreeable to authorize, Harnden ignored the criteria communicated and fraudulently proceeded to utilize a personal credit card of Rodrick's to make the \$544.00 purchase. Harnden did not respond to Rodrick's emails providing the alternative travel options. When Rodrick received his bill on July 21, 2017, listing the unauthorized purchase, he expressed his perception that Harnden's conduct constituted "fraud" via an email. Although Rodrick had provided the credit card information and authorized expenditure many months prior, that one-time permission was not an open invitation to utilize the credit card at the discretion of Harnden without direct knowledge and authorization from Rodrick. The email was ignored and Harnden refused to address the matter. The entire incident was documented via the email exchanges of July 7 and July 21 of 2017 (*see*, Exhibit W).

Again, Rodrick is stressing to the Bar the issue of the fraudulent use of his credit card by Harnden is NOT the \$390.00. The sum in dispute is but a nominal fraction (0.26 of 1%) in the context of having spent in excess of \$150,000.00 associated to the case. It cannot be an acceptable practice for an Arizona attorney with a working relationship with a client and access to credit card information to just ignore the client and feel entitled to make unauthorized charges. This is a clear ethics violation and arguably committing a fraud.

The unauthorized use of Rodrick's credit card by Harnden was in violation of the Arizona Rules specific to **ER 1.4 – Communication** and **ER 8.4 – Misconduct**.

CONCLUSION

The Arizona State Bar is charged with the responsibility for protecting the public from problematic attorneys. As part of this duty, the Bar should ensure that the public has ready access to information about attorney misconduct, so it can make informed decisions about who to retain when seeking counsel.

For these reasons, the Arizona State Bar should conduct an in-depth investigation into the allegations outlined in detail in this complaint in regards to conduct of attorney Harnden. As an Arizona licensed attorney he is at all times responsible to adhere to the Arizona Rules, even when practicing *pro hac vice* in Nevada which was granted only after providing the Certificate of Good Standing issued by the Bar (*see*, Exhibit B).

The damages realized by Rodrick due to the extensive misconduct of Harnden are significant and must be thoroughly reviewed to determine the amount of culpability that can be associated with such blatant malpractice. The various ethic violations cover a wide range of infractions defined by the Arizona Rules and involve the quantifiable financial cost to Rodrick of a \$5000.00 Court imposed Sanction and the 40% reduction in "mandatory attorney fees" amounting to \$45,537.75 for a total of \$50,537.75. It should be noted for the Bar's consideration that the dollar figure does not take into account the amount of time, effort and

costs required by Rodrick directly that are not subject to recognition by the Court. The complaint is submitted to request the Arizona State Bar take action against Harnden in the form of the appropriate reimbursement of financial losses realized by Rodrick and to permanently restrict Harnden from practicing law in the State of Arizona due to his clear disregard of the Arizona Rules. No one requiring legal counsel in the State of Arizona should ever have to endure the fiasco that was the legal representation provided by Harnden to Rodrick during the case before the Court and Judge Hardy. It is the duty of the Bar to protect the public from such incompetence and outright disdain for the "rule of law" demonstrated by Harnden.

NOTE: Rodrick would encourage the Bar in an investigation to corroborate the plethora of events detailed in the complaint with the Nevada local counsel that participated in the case, Nevada licensed attorneys Whipple and Welsh. If appropriate and/or necessary, Rodrick would be amenable to waiving attorney client privilege concerns in regard to contact with Nevada attorneys Whipple and/or Welsh.

Thank you in advance for your consideration and anticipated cooperation.

Respectfully submitted this 20th day of March, 2018,

A handwritten signature in blue ink that reads "Charles Rodrick". The signature is written in a cursive style with a large initial "C".

Charles Rodrick