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In the United States District Court
for the District of Arizona

John Doe #1, et al.,	**Case No.: 2:13-CV-01300-SRB**
Plaintiffs	
v.	**MOTION FOR RELIEF FROM JUDGMENT PURSUANT FED. R. CIV. P. 60(b)(6)**
Brent Oesterblad, et al.,	
Defendants	
	Hon. Susan Bolton

Pro per Defendant Charles Rodrick (*hereafter*, "Rodrick") submits to the Court a Motion for Relief of Judgment (*hereafter*, "Motion") Pursuant Federal Rules Civil Procedure (*hereafter*, "Rule.") 60(b)(6) for case no. 2:13-CV-01300-SRB. Rodrick is seeking relief from the Court to vacate the final judgment of July 1, 2016 (Doc. #411) due to the inexplicable conduct and legal counsel provided by Michael Harnden, Esq. (*hereafter*, "Harnden") that effectively constituted abandonment of the case in handling the many post-trial issues including, but not limited to, the failure to timely file a notice of appeal pursuant Federal Rule of Appellate Procedure 4(a). A course of action that Rodrick had been repeatedly told by Harnden was not allowed, but would be both appropriate and aggressively pursued once the Court officially entered a final judgment that addressed the outcome of all twelve (12) Plaintiffs claims alleged in the Third Amended Complaint (Doc. #236) (*hereafter*, "TAC"). For nineteen (19) months Rodrick had been advised by Harnden he was precluded from pursuing legal remedies post-judgment that are afforded to litigants after a case has been fully adjudicated because the Court had not rendered a final judgment. That such inexplicable legal counsel was repeatedly conveyed to Rodrick by Harnden

constituted "extraordinary circumstances" justifying the Court's equitable authority to vacate the final judgment as an appropriate legal remedy to accomplish justice.

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT CASE BACKGROUND

With a case docket of 475 entries, only the events that are relevant to the Motion are noted for the Court's review:

- On March 20, 2013, the Plaintiffs filed the original complaint in the U.S. District Court, Central District of California Western Division naming Rodrick as a Defendant (Doc. #1). The lawsuit was filed by attorney Janice Bellucci (*hereafter*, "Bellucci") on behalf of the California Reform Sex Offender Laws organization representing the ten (10) John and Jane Doe Plaintiffs claiming Violations of RICO, Right of Publicity and Intentional Infliction of Emotional Distress.

- On June 27, 2013, the Court granted Rodrick's Motion to Transfer for Improper Venue (Doc. #61). The case was transferred to the U.S. District Court for the District of Arizona.

- On March 3, 2015, the Plaintiffs attorney Bellucci would file the Third Amended Complaint (*hereafter*, "TAC") (Doc. #236). The TAC would rename Brent Oesterblad (*hereafter*, "Oesterblad") as a Defendant. Also, the TAC added two (2) additional Plaintiffs along with two (2) additional claims encompassing all of the now twelve (12) Plaintiffs alleging False Light Invasions of Privacy and Defamation.

- On June 9, 2015, the Court granted in part Rodrick's Motion to Dismiss. The claims of John Doe Plaintiffs 1 through 6 (Doe #1 - Franklin Udall Lindsay, Doe #2 - Larry Anthony Quintero, Doe #3 - Duane Alfred Ledward, Doe #4 - Jeremy Ryan Graves, Doe #5 - Adam Blair Galvez and Doe #6 - Daniel W. VanWaes) were dismissed based on the legal defense that the allegations did not have a legal basis due to immunity from civil liability and protections supported by the Section 230 of the Communications Decency Act (Doc. #287).

- On July 10, 2015, Bellucci would file a Plaintiff's Motion for Entry of Final Judgment Pursuant to Rule 54(b) (Doc. #304).

- On September 4, 2015, the Court's Order denied the Plaintiffs Motion for Entry of Final Judgment (Doc. #321). The claims of John Doe Plaintiffs 1 through 6 were dismissed on June 9, 2015; it would be repeatedly asserted by Harnden that the Court has never addressed issuing a separate document that constituted final judgment in regard to John Doe Plaintiffs 1 through 6 which precluded Rodrick from filing post-judgment motions and/or Notice of Appeal.

- On April 28, 2016, John Doe #11, Glenn Wyrick of Virginia, filed a Motion to Withdraw from Lawsuit (Doc. #371) as a response to his attorney Bellucci filing a Motion to Withdraw as Attorney for Plaintiff John Doe No. 11 on April 25, 2016 (Doc. #369). In an email received by Rodrick, Glenn Wyrick claimed Bellucci had "lied to him" (Doc. #451, pg. 25-26).

- On May 4, 2016, the Court Ordered the Dismissal of the claims of John Doe #11, Glenn Wyrick of Virginia (Doc. #371). According to Harnden, a separate document constituting the final judgment was never issued by the Court in regard to Glenn Wyrick thus precluding Rodrick from filing post-judgment motions and/or Notice of Appeal.

- On June 27, 2016, the Court would grant John Doe #7, Keith Johnson of Johnson City, Tennessee, request to withdraw from the lawsuit (Doc. #404). The withdrawal occurred the day before the trial after forty (40) months of litigation. According to Harnden, a separate document constituting the final judgment was never issued by the Court in regard to Keith Johnson thus precluding Rodrick from filing post-judgment motions and/or Notice of Appeal.

- On June 28, 2016, on the day of trial, even after the Court had granted a request to testify from her own residence in Washington (Doc. #406), Plaintiff Jane Doe #9, Janine Graves of Shoreline, Washington, would withdraw from the lawsuit and the Court Ordered dismissal of all claims alleged in the TAC (Doc. #407). According to Harnden, a separate document constituting the final judgment was never issued by the Court in regard to Janine Graves thus precluding Rodrick from post-judgment motions and/or Notice of Appeal.

- On June 28, 2016, after 40 months of contentious litigation the trial would commence. Of the twelve (12) Plaintiffs involved with the TAC, only three (3) would appear for the trial.

- On July 1, 2016, the trial would conclude and the jury entered their verdicts (Doc. #435). The TAC claims for Plaintiffs Jane Doe #10 (Susan Galvez) and John Doe #8 (Frank

Silva) would all be dismissed. The jury would rule in favor of Plaintiff David Ellis on two of the five (5) claims of the TAC and grant a judgment against Rodrick.

- On July 1, 2016, Pursuant Rule 58(b)(1)(A) after "the jury returns a general verdict," the Clerk of the Court entered the outcome of the trial onto the Court's Docket (Doc. #411). According to Harnden, a separate document addressing the outcome of ALL twelve (12) of the Plaintiffs claims alleged in the TAC constituting the final judgment was never issued by the Court thus precluding Rodrick from filing post-judgment Motions and/or Notice of Appeal.

- On May 25, 2017, Pursuant Rule 54(b) Oesterblad filed a Request for Entry Final Judgment (Doc. #461).

- On January 2, 2018, pursuant to LRCiv 83.3(b)(2), Harnden filed a Motion to Withdraw as Counsel for Defendants Rodrick and Web Express, LLC (Doc. #469). In the Motion Harnden claimed he had "no obligation" to represent Rodrick.

- On January 26, 2018, finally eight (8) months after Oesterblad's filing the Request for Final Judgment the Court issued an Order denying the Request (Doc. #471). The Court's Order would note "Because final judgment has already been properly entered in this case, there is no need for the Court to direct the Clerk to issue a final judgment specifically as it pertains to Mr. Oesterblad."

- On January 29, 2018, the Court granted Harnden's Motion to Withdraw as Counsel (Doc. #472). The Court's Order states: "The Orders disposing of the last claims and parties were entered July 1 (Doc. 411), July 22 (Doc. #439) and November 9, 2016 (Doc. #452). The time to file post-trial motions has long past."

- On April 6, 2018, as a *pro per* Defendant Rodrick filed a Request for Entry Final Judgment Pursuant Fed. R. Civ. P. 58(a), 58(d) & 54(b) (Doc. #474). The filing was submitted in good faith based on the twenty (20) months of Harnden's legal counsel that an entry of final judgment had not been recorded by the Court. The manner in which the Court's Order of January 26, 2018 (Doc. #471) was articulated, it appeared the ruling had specifically identified that the issue of a final judgment had only "specifically…pertains to Mr. Oesterblad," implying that it did not apply to Rodrick with whom the case was adjudicated under different circumstances.

- On April 23, 2018, the Plaintiffs' Opposition to Defendant Charles Rodrick's Request for Entry of Final Judgment was filed (Doc. #475). Ironically, the Plaintiffs identify the very issues before the Court in the Motion when noting "Rodrick chose not file any timely post-judgment motions in this action, chose not to oppose the Motion for Permanent Injunction against him (granted in part by this Curt on November 9, 2016 (Doc. #452) and, chose not to appeal any judgment or order entered in this case" (Doc. 475, pg. 2:20-22 & pg. 3:1).

- On April 24, 2018, although Rodrick had accused Harnden of abandoning the case beginning December 11, 2017 (*see*, Exhibit A, #1 & #3), due to the conveyed conviction of Harnden's position it had not been considered that the legal counsel provided concerning post-judgment motions and/or the filing of a Notice of Appeal had been categorically false and was merely a ploy to obfuscate and/or hide the degree that legal matters had not been handled in a timely manner per the Rules. The unsettling realization for Rodrick was that Harnden had strung him along for twenty (20) months merely as an attempt to hide the gross negligence of his incompetence is what led to the legal research that is now before the Court in the Motion.

II. LEGAL STANDARDS: RULE 60. RELIEF FROM A JUDGMENT ORDER

A) Rule 60(b): Grounds for Relief from a Final Judgment, Order, or Proceeding

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding pursuant Rule 60(b). It provides for reconsideration of a final judgment or an order where one of more of the following is shown: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which, with reasonable diligence, could not have been discovered within twenty-eight days of entry of judgment; (3) fraud, misrepresentation, or misconduct of an opposing party; (4) voiding of the judgment; (5) satisfaction of the judgment; and (6) any other reason justifying relief. The final provision of Rule 60(b) permits court to grant relief "whenever such action is appropriate to accomplish justice." *Mackey v. Hoffman*, 682 F.3d 1247, 1251 (9th Cir. 2012) (citations and internal quotation marks omitted). The moving party must show that "extraordinary circumstances" warrant relief. *Liljeberg v. Health Servs. Acquisition Corp*., 486 U.S. 847, 863-64 (1988).

Rule 60(b) "allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances." *Jones v. Ryan*, 733 F.3d 825, 833 (9th Cir. 2013) (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 528 (2005)). The determination of whether Rule 60(b) relief is warranted "is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Pioneer Investment Services Co.*, 507 U.S. at 395.

B) Rule 60(b)(6): On Motion and Just Terms, the Court may Relieve a Party or its Leal Representative from a Final Judgment, Order, or Proceeding for the following Reason: (6) Any Other Reason that Justifies Relief.

Due to "extraordinary circumstances" (*Lal v. California*, 610 F.3d 518, 524 (9th Cir. 2010); accord, *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008)) ("A party moving for relief under Rule 60(b)(6) must demonstrate both injury and circumstances beyond his control that prevented him from proceeding with action in a proper fashion") (Internal quotation marks omitted), Rodrick is seeking relief from the final judgment deemed by the Court to have occurred July 1, 2016 when the Clerk of the Court entered the outcome of the trial onto the Court's Docket (Doc. #411) pursuant Rule 58(b)(1)(A).

Rule 60(b)(6) "vests power in courts to enable them to vacate judgments whenever such action is appropriate to accomplish justice." *Klapprott v. United States*, 335 U.S. 601, 614-15, 69 S. Ct. 384, 93 L.Ed. 266 (1949). This provision is applied sparingly: "[a] party is entitled to relief under Rule 60(b)(6) where "extraordinary circumstances prevented him from taking timely action to prevent or correct erroneous judgment.'' *Hamilton v. Newland*, 374 F.3d 822, 825 (9th Cir. 2004) (alteration and citation omitted).

In *Maples v. Thomas*, 132 S. Ct. 912, 924 (2012), the U.S. Supreme Court held that attorney abandonment is an "extraordinary circumstance" that may excuse a procedural default caused by the abandonment warranting relief under Rule 60(b)(6). The time for filing an appeal then began anew. *Id*. at 43a-44a. The Supreme Court made clear in *Maples v. Thomas* that "when an attorney abandons his client without notice," the attorney has "severed the principle-agent

relationship [and] no longer acts, or fails to act, as the client's representative." –U.S.--, 132 S.Ct. 912, 922-23, 181 L.Ed.2d 807 (2012).

Thus, a petitioner such as Rodrick may be excused from the consequences of his attorney Harnden's conduct where that conduct effectively severed the principal-agent relationship. *See id.* at 923 ("Common sense dictates that a litigant cannot be held constructively responsible for the conduct of an attorney who is not operating as his agent in any meaningful sense of that word." (quoting *Holland v. Florida*, 560 U.S. 631, 659, 130 S.Ct. 2549, 177 L.Ed.2d 130 (2010) (Alito, J., concurring))).

The Ninth Circuit recognized that Rule 60(b)(6) relief may be available to vacate a judgment entered as a result of an attorney's gross negligence, *i.e.*, neglect that is so gross as to be inexcusable, such as an attorney's virtual abandonment of his client, *Mackey v. Hoffman*, 682 F.3d 1247, 1251 (9 Cir. 2012).

Following the reasoning of Maples, the court held that attorney abandonment "vitiat[es] the agency relationship that underlies our general policy of attributing to the client the acts of his attorney." *Id*. at 1251 (alteration in original) (citation omitted). Thus, when "petitioner has been inexcusably and grossly neglected by his counsel in a manner amounting to attorney abandonment in every meaningful sense that has jeopardized the petitioner's appellate rights, a district court may grant relief pursuant to Rule 60(b)(6)." *Id* at 1253 (citing *Maples*, 132 S. Ct. at 924). Subsequently, in *Gibbs v. Legrand*, the 9th Circuit Court held that "[f]ailure to inform a client his case has been decided, particularly where that decision implicates the client's ability to bring further proceedings *and* the attorney has committed himself to informing his client of such a development constitutes attorney abandonment." 767 F.3d 879,886 (9th Cir. 2014) (emphasis in original).

C) Rule 60(b)(6): "Extraordinary Circumstance"

Courts take a flexible, fact-specific approach to equitable tolling. "[S]pecific circumstances, often hard to predict in advance, could warrant special treatment in an appropriate case." *Holland v. Florida*, 650, 130 S.Ct. 2549; *see also Whalen/Hunt v. Early*, 233 F.3d 1146, 1148 (9th Cir. 2000) (en banc).

Consistent with the flexible approach, attorney conduct compromising the filing of a timely federal petition can constitute the requisite "extraordinary circumstances" in some circumstances but not others. *Holland* held that "garden variety claim[s] of excusable neglect" – such as "simple miscalculation" of time limits – do not constitute an extraordinary circumstances. 560 U.S. at 651-52, 130 S.Ct. 2549 (internal quotation marks omitted). But attorney misconduct *can* be so egregious as to create an "extraordinary circumstance," justifying equitable tolling. *Id*. at 652, 130 S.Ct. 2549. In a concurring opinion, Justice Alito explained his understanding of the logic behind this framework, reasoning that, "the principle rationale for disallowing equitable tolling based on ordinary attorney miscalculation is that the error of an attorney is constructively attributable to the client and thus is not a circumstance beyond the litigant's control." *Id.* at 657, 130 S.Ct. 2549 (Alito, J., concurring).

Maples v. Thomas clarified *Holland's* distinction between "garden variety" attorney negligence and egregious attorney misconduct, drawing on Justice Alito's Holland concurrence and casting the distinction in terms of agency principles. __U.S.__, 132 S.Ct. 912, 932-24, 181 L.Ed.2d 807 (2012). Maples explained that while agency law binds clients, including federal petitioners, to their attorney's negligence, "a client cannot be charged with the acts or omissions of an attorney who has abandoned him." *Id.* at 924. An attorney's failure to communicate about a key development in his client's case can, therefore, amount to attorney abandonment and thereby constitute an extraordinary circumstance. *Maples*, 132 S.Ct. at 923-24; *see also Towery v. Ryan*, 673 F.3d 933, 942-43 (9th Cir. 2012).

D) Rule 60(b)(6): Diligence

Holland reaffirmed that the standard of diligence required of a petitioner seeking equitable tolling is "reasonable," not "maximum feasible" care. 560 U.S. at 653, 130 S.Ct. 2549 (internal quotation marks omitted). "[R]easonable diligence does not require an overzealous or extreme pursuit of any and every avenue of relief." *Doe v. Busby*, 661 F.3d 1001, 1015 (9th Cir. 2011). Rather, "[i]t requires the effort that a reasonable person might be expected to deliver under his or her particular circumstances." *Id*.

A motion for relief under Rule 60(b)(6) must be made within a reasonable time, Rule 60(c)(1), and relief may only be granted where the petitioner has diligently reviewed of his claims. *See Gonzalez v. Crosby*, 545 U.S. 524, 537, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005); *Lehman v. United States*, 154 F.3d 1010, 1017 (9th Cir. 1998) ("Neglect or lack of diligence is not to be remedied through Rule 60(b)(6)"). "What constitutes a reasonable time depends on the facts of each case." *In re Pacific Far East Lines, Inc*., 889 F.2d 242, 249 (9th Cir. 1989) (internal quotation marks omitted).

III. ATTORNEY HARNDEN EFFECTIVELY ABANDONED THE CASE CONSTITUTING "EXTRAORDINARY CIRCUMSTANCES" TO WHICH UPON BEING EXPOSED RODRICK HAS RESPONDED WITH DILIGENCE

It can only be defined as "extraordinary circumstances" associated with the conduct of Harden from July 1, 2016 when the Clerk of the Court entered the outcome of the trial onto the Court's Docket (Doc. #411) until an Ex Parte Motion to Withdraw as Attorney was filed on January 2, 2018, a time period of nineteen (19) months, wherein the number of filings submitted to the Court by Harnden to protect the legal interest of Rodrick post-judgment amounted to a grand total of zero.

Harnden detailed there existed a very strong case to pursue attorney fees pursuant Rule 54(d) as the prevailing party against eleven (11) of the twelve (12) Plaintiffs in a civil litigation adjudicated over forty (40) months with all claims of the TAC being dismissed.

Harnden had advised Rodrick that there were a number of post-judgment remedies that would be pursued to address the issues associated with the judgment awarded to the one Plaintiff who prevailed on two claims of the total of twelve (12) Plaintiffs who collectively alleged five (5) claims in the TAC. Harnden had outlined to Rodrick the multiple problems with the trial that resulted in the one Plaintiff being awarded a judgment by the jury that would establish grounds for a new trial pursuant Rule 59(a)(1)(A). The best post-judgment remedy Harnden advised Rodrick that would be filed was pursuant Rule 60(b)(3) seeking relief from the judgment due to blatant fraud engaged in by the Plaintiffs at the direct implementation of their legal counsel Bellucci. The fraud that includes, but not limited to, the documented evidence in the Court's

Record of the undeniable fabrication of an altered and forged facsimile of a webpage manufactured by the Plaintiffs and/or Bellucci that was presented to the jury as one (1) of **only** four (4) exhibits at trial (Doc. #449-1, pg. 72-73). All four (4) exhibits, but certainly the one being a dubious forgery, were not provided as disclosures by the Plaintiffs until at trial before the jury circumventing any opportunity for due diligence verification of its veracity. Also, the stunningly precise sworn testimony of several Plaintiffs taken post-trial that detail the degree of fraud and malicious prosecution (wrongful institution of civil proceedings in Arizona) in willfully fabricating false allegations with malicious intent by the Plaintiffs conspiring with their legal counsel Bellucci in the preparation and filing of the TAC (Doc. #461, pg.13-43).

Although Rodrick did broach the subject with Harnden of pursuing the legal issues with the judgment awarded through the appellant process, he was summarily and repeatedly advised that it was **NOT** an option **ALLOWED.** Harnden claimed the Court had **NOT** rendered a final judgment validated with a separate document addressing all outcomes for the claims of the twelve (12) Plaintiffs alleged in the TAC. The strategy repeatedly conveyed by Harnden was that once the final judgment had been issued by the Court, the post-judgment motions could be filed and if not successful at that time a Notice of Appeal pursuant Rule 4(a) would be submitted. Never in the twenty (20) months between the conclusion of the trial on July 1, 2016 and Harnden being granted his Motion to Withdraw as Attorney by the Court's Order of January 29, 2018 did he disclose to Rodrick that there were timeline issues in filing the Notice of Appeal or that "[t]he time to file post-trial motion has long past" (Doc. #472). In fact, only the month prior on December 21, 2017, eighteen and half (18.5) months ***after*** the Clerk of the Court entered the outcome of the trial onto the Court's Docket (Doc. #411), Harden was still professing his "research" to support his legal counsel that he "do[es] not believe it constitutes a 'final' judgment that would trigger post-judgment motion or appeal deadlines" (*see*, Exhibit B, #1). Unfortunately for Rodrick and to his utter dismay, the Court's Order denied Oesterblad's Request for Entry of Final Judgment issued January 26, 2018 (Doc. #471), unequivocally stating "final judgment has already been properly entered in this case."

Equitable tolling is justified in few cases. "Indeed, the threshold necessary to trigger equitable tolling is very high, lest the exceptions swallow the rule." *Miranda v. Castro*, 292 F.3d 1063, 1066 (9th Cir. 2002) (internal quotation marks and citation omitted). Rodrick "bears the burden of showing that this extraordinary exclusion should apply to him." *Frye v. Hickman*, 273 F.3d 1144, 1146 (9th Cir. 2001) (citing *Whalem/Hunt v. Early*, 233 F.3d 1146, 1148 (9th Cir. 2000) (en banc)).

Due to the misinformation that was willfully and/or ignorantly conveyed by Harnden to Rodrick concerning the timeline to file a notice of appeal, Rodrick had no opportunity to engage in a deliberate post-trial strategy. *See Ackermann v. United States*, 340 U.S. 193, 198 (1950) (noting that "free, calculated, deliberate choices are not to be relieved from" under 60(b)(6)).

In the "extraordinary circumstances" in this case, Harnden either willfully misinformed Rodrick of his post-judgment remedies and/or demonstrated an unaccountable lapse in basic knowledge of post-judgment processes that constituted what amounted to "gross negligence" in performing his duties as legal counsel constituting "virtual abandonment" that "effectively severed the principle-agent relationship" while not allowing Rodrick to make "free, calculated and deliberate choices" in utilizing legal remedies afforded to him per a number of Rules.

A) The conduct of Harnden exemplifies "extraordinary circumstances" that effectively constitutes his abandonment of the case without notifying Rodrick.

Failure to inform a client that his case has been decided, particularly where that decision implicates the client's ability to bring further proceedings and the attorney has committed himself to informing his client of such a development, constitutes attorney abandonment. *See Mackey v. Hoffman*, 682 F.3d 1247, 1253 (9th Cir. 2012). Attorneys are generally required to "perform reasonably competent legal work, to communicate with their clients, to implement clients' reasonable requests, [and] to keep their clients informed of key developments in their cases." *Holland*, 560 U.S. at 652-53, 130 S.Ct. 2549. Harnden repeatedly failed Rodrick on all of the counts from the conclusion of the trial (Doc. #411) until he filed a Motion to Withdraw (Doc. #469) nineteen (19) months later which would be granted on January 26, 2018 (Doc. #471), totaling twenty (20) months of post-judgment representation of Rodrick.

Harnden had expressly conveyed a legal strategy to pursue post-judgment motions and/or Notice of Appeal pursuant Rule 4(a) once the Court had issued the final judgment, creating the scenario wherein Rodrick's "ignorance of the limitations period was caused by circumstances beyond the party's control." *Scoop-Gonzalez v. INS*, 272 F.3d 1176, 1193 (9th Cir. 2001) (en banc).

Such egregious conduct is not analogous and is amenable to only one conclusion: Harnden was not serving as Rodrick's agent "in any meaningful sense of that word." *Maples*, 132 S.Ct. at 923 (quoting *Holland*, 560 U.S. at 659, 130 S.Ct. 2549 (Alito, J., concurring)) (internal quotation marks omitted).

The performance of Harnden must serve as a floor for the extraordinary circumstances prong of equitable tolling. The only guidance the Court gave as to what would not satisfy that prong was courts should exclude "garden variety claim[s] of excusable neglect" such as a 'simple miscalculation." *Holland*, 560 U.S. at 651, 130 S.Ct. 2549 (internal quotation marks omitted). Nothing of Harnden's legal representation post-judgment qualifies as "garden variety" negligence in either scope or the repeated incidences.

Even if Harnden's belief he had no "obligation" to continue representation of Rodrick as claimed nineteen (19) months post-judgment in the Motion to Withdraw as Counsel filed January 2, 2018 (Doc. #469, ¶5), an attorney who ceases to represent a client has a certain continuing obligations to his client, including taking "steps to the extent reasonably practicable to protect a client's interests." Ariz. R. Prof. Conduct 1.16(d). Harnden therefore should have been protecting Rodrick's interest; including preserving his right to an appeal pursuant Rule 4(a) in a timely manner after the final judgment had been added to the Court Docket (Doc. #411). Not only did Harnden not protect Rodrick's right to file a Notice of Appeal, there are the additional issues of a failure to withdraw as counsel for twenty (20) months, notify Rodrick the Law Office of Barry W. Rorex had been "dissolved or otherwise inoperative" (Doc. #469, ¶3), Harnden's supervisor and principal attorney Barry Rorex of the law firm (only a two man operation) was under probation when originally hired and would be suspended from practicing law by the State Bar of Arizona during the post-judgment time period for committing new ethical violations involving

the abandonment of multiple clients cases who Harnden had also worked on (*see*, Exhibit C), sporadic communications with a lack of timely responses to Rodrick's numerous inquiries, retention of Rodrick's legal files until December 13, 2017, obstructed Rodrick's ability to timely file post-judgment motions and/or Notice of Appeal with claims he was actually precluded from making such filings.

Although Rodrick was not incarcerated as those in criminal litigation, the same principles are not precluded to a *pro se* petitioner in a civil litigation as those individuals facing similar difficulties receiving competent legal counsel after a criminal proceeding and meeting the requirements of a *habeas corpus* filing. To the last factor, the 9th Circuit has "previously held that a complete lack of access to a legal file may constitute an extraordinary circumstance and that it is 'unrealistic to expect a … petitioner to prepare and file a meaningful petition on his own within the limitation period without access to his legal file." *Ramirez*, 571 F.3d at 998 (quoting *Espinoza-Matthews v. California*, 432 F.3d 1021, 1027-28 (9th Cir. 2005)). Despite numerous requests for his file, Rodrick would not receive the information from Harnden until December 13, 2017, and that was only a partial file as it did not include the proclaimed "research" on the "final judgment" issues (*see*, Exhibit A, #4). Furthermore, the Arizona professional rule which required Harnden to take "steps to the extent reasonably practicable to protect a client's interests" indicates that one such step may be "surrendering papers to which … the client is entitled." Ariz. R. Prof. Conduct 1.16(d).

To fully appreciate the many incidences occurring over an extended period of time that in their totality demonstrate the degree of "extraordinary circumstances" associated with Harnden's legal representation requires the extensive documenting of the relevant events:

1) Despite Harnden's claims otherwise, he was the attorney of record and did have an "Obligation" to provide competent legal representation to Rodrick.

   On August 14, 2014 Rodrick signed a Legal Services Fee Agreement with the Law Office of Barry W. Rorex for limited representation associated with the case before the Court (*see*, Exhibit D). Harnden is listed as one of the two attorneys who

would be handling the Rodrick case. The agreement specifically addresses the issue if the scope of the representation would require being expanded in stating on page 1: "Attorney and Client agree that additional representation setting forth the scope and cost of the additional representation can be mutually agreed to and memorialized via email or other written correspondence and will not require a separate fee agreement." On September 2, 2014, Harnden filed a Notice of Appearance and became Rodrick's attorney of record (Doc. #203).

After a year and a half of countless assertions by Harnden that a final judgment had NOT been issued and the post-judgment motions and/or Notice of Appeal could NOT be filed until the Court resolved this specific requirement, Rodrick became insistent in being provided a thorough update and explanation in regard to the status to the "AZ Federal case." An email from Rodrick to Harnden on December 5, 2017 stated: "I am requesting an update and to verify that there is in fact no final judgment…" (*see*, Exhibit B, #6). Rodrick did not receive a response from Harnden. A follow up email was sent on December 7, 2017 stating: "Please answer my emails and my questions as I have not had any updates or plan to move the case forward and bring it to a close" (*see*, Exhibit B, #5). Rodrick did not receive a response from Harnden. Rodrick received an email from Harnden on December 13, 2017 that provided a very sparse and incomplete update and/or status report of the case by stating: "Included in the case file is my research regarding a motion for new trial. The research I completed long ago showed that **a new trial motion based on fraud (or fraud on the court) may be filed at any time**" (*see*, Exhibit A, #4).

Another follow up email was sent to Harnden on December 19, 2017 stating: "I do not understand the non communication from you about my AZ Fed Case. I have not been updated by you since the last 10,000 check written to you. Last year you claimed the AZ Fed case was not over and no final judgment has been made and the appeal was not an issue as far as time wise. I do not know if they are correct or not and I am looking for clarification from you. I am asking you to update me on my

case and let me know my options for an appeal and obtain a judgment or a new trial and if you are unable to then file for clarification from judge Susan Bolton" (*see*, Exhibit B, #4). Rodrick did not receive a response from Harnden.

The potential problems with Harnden's repeated proclaimed legal position concerning final judgment was highlighted to Rodrick with the discovery of a "Clerk's Certification of a Judgment To Be Registered In Another District" that had been filed with the U.S. District Court District of Nevada, Case No. 3:17-ms-00008 (*see*, Exhibit E). The "Certification" was being used to submit applications for writ of garnishments (*see*, Exhibit F). Once again a follow up email demanding answers was sent on December 20, 2017 stating with urgency and clarity: "This document comes from Arizona filed in Nevada to collect on a judgment. It clearly says the time for appeal has in fact expired or no appeal filed. There is a serious problem with this based on you claiming there is no final judgment and ignoring the case and losing all my legal options that were available to me. If the court is wrong please advise what you will be doing about it. This may explain why you have been ignoring the case and all requests for updates" (*see*, Exhibit B, #2).

On December 21, 2017, Harnden finally revealed to Rodrick the true agenda and position that had been undisclosed as to filing any post-judgment pleadings associated to the "AZ Fed Case." An email received from Harnden would assert "two things": "First my position, based on my research done at the time, has not changed. Because the verdict signed by the judge (the document you attached) did not relate to the dismissed Doe Plaintiffs, and the fact that the judge specifically denied entering a final judgment against them when Bellucci requested after the 12b6, I do not believe it constitutes a 'final' judgment that would trigger post-judgment motion or appeal deadlines." Continuing: "Second, you are confused that I am responsible for this matter. I continued litigating the case and handled the trial out of a sense of duty to Barry and with the expectation he would return. That does not mean I am <u>obligated</u> to continue to represent you" (*see*, Exhibit B, #1).

The December 21, 2107 email was the first time Harnden had ever conveyed that there was "no obligation" for him to continue to represent Rodrick. This new assertion by Harnden would be repeated in the Motion to Withdraw as Counsel filed on January 2, 2018 when asserting: "There exists no representation agreement obligating the undersigned to continue to represent these Defendants in this matter" (Doc. #469, ¶5). It is worth noting that Harnden filed the Motion Ex Parte in an attempt to not alert Rodrick of its submission to the Court. There were a few additional proclamation made by Harnden in his Motion to Withdraw as Counsel that are worthy of note. According to Harnden's Withdraw filing: "the represented Defendants have not sought to retain the undersigned or his current office to continue to represent him in this matter" (Doc. #469, ¶4). He revealed for the first time that the "law office is dissolved or otherwise inoperative" (Doc. #469, ¶3). Harnden acknowledges that there had been discussions concerning post-judgment motions when stating: "These Defendants have expressed a desire to take some action in this matter" (Doc. #469, ¶6). And finally, Harnden's Withdraw filing recognized that being the attorney of record precluded Rodrick from pursuing any post-judgment motions on his own even if he had the legal acumen to do so during the nineteen (19) months since the Clerk's Judgment when stating: "These Defendants would be unable to do so on their own behalf due to the undersigned current listing as counsel of record" (Doc. #469, ¶7).

The claim that Harnden had "no obligation" and that Rodrick had "not sought to retain" him to "represent him in this matter" demonstrates a severe case of selective amnesia. Rodrick had hired the Law Offices of Barry W. Rorex to represent him in this case. There was a provision in the Service Fee Agreement that defined terms in the event additional representation exceeded the limited capacity originally detailed (*see*, Exhibit D). On February 10, 2016, the Law Offices of Barry W. Rorex was paid $10,000.00 for the preparation and presenting the defense for the trial scheduled February 16, 2016. The trial would be postponed, first to March 22, 2016 (Doc.

#361), then until June 14, 2016 (Doc. #366) and then again until June 28, 2016 (Doc. #378). During the four and half (4.5) month delay attorney Barry Rorex experienced health issues that placed him on disability and unable to practice law. Harnden represented Rodrick at the trial alone. Eleven (11) days before the trial was to commence on June 28, 2016, purportedly due to attorney Rorex's health condition, Harnden sent an email requesting payment for his services directly for the four day trial scheduled to commence June 28, 2016. Harden would request Rodrick make a payment for his services to a Wells Fargo bank account, #6018268273. This is a personal account under the name of "Mike Harnden," not a Trust IOLTA account. Rodrick would make a payment of $5000.00 on June 17, 2017 (*see*, Exhibit G, #2).

At the conclusion of the trial, due to the one Plaintiff being awarded a judgment against Rodrick, it was immediately determined that all available post-judgment motions and/or the appellant process would be aggressively pursued. Rodrick immediately agreed to and paid Harnden an additional $10,000.00 for the required legal work to the same personal Wells Fargo account that very day. In an email exchange in May of 2017, Harnden listed the payments made to him personally stating "paid to me" for legal services to which Rodrick noted for the record did not include all the payments made to the Law Office of Barry W. Rorex. Rodrick also requested that a professional Legal Trust account be provided for future payments versus the continued use of a personal bank account in the name of "Michael Harnden" (*see*, Exhibit G, #1).

In reality what had occurred in December of 2017 was Harnden's realization that, as the sayings goes, "the gig was up" and it was time to "turn tail and head for the hills." What is germane to the Motion is to detail just how Harnden's conduct truly qualifies as "extraordinary circumstances" of gross negligence and a lack of candor toward the tribunal in violation of the Ariz. R. Prof. Conduct 3.3(a)(1). Rodrick is not a learned attorney but does have a solid understanding of basic business principles when hiring someone to perform services. In reviewing Harnden's

assertion in both the provided emails and his Motion to Withdraw as Counsel which claimed he had not been "retained" and was under "no obligation" to represent Rodrick to provide legal representation for post-judgment motions and/or Notice of Appeal was categorically false. Harnden took payment of $10,000.00 to provide these legal services, yet over a period of twenty (20) months did not submit a single filing to the Court. When Rodrick demanded an update, status report and legal explanation of Harnden's legal counsel concerning the final judgment issue multiple times in December of 2017, Harnden filed the Motion to Withdraw as Counsel on January 2, 2017 (Doc. #469) making blatantly false assertions to the Court. The "extraordinary circumstances" of Harnden's gross negligence would involve additional conduct that demonstrated professional malfeasance.

2) Rodrick approved Harnden's legal counsel to pursue attorney fees pursuant Rule 54(d).

Harnden advised Rodrick that there existed a very strong case to pursue attorney fees pursuant Rule 54(d) as the prevailing party against eleven (11) of the twelve (12) Plaintiffs in a civil litigation adjudicated over forty (40) months with all claims of the TAC being dismissed. There were different circumstances associated to the dismissal of the alleged claims of the TAC for the eleven (11) Plaintiffs, but ALL were proven to have had no legal or factual basis to have pursued expensive litigation. Just as examples, two of the Plaintiffs withdrew all of their claims the day of trial after Rodrick had been encumbered with attorney fees over the forty (40) months of litigation preceding the commencement of the trial. Oops, sorry, never mind was an issue requiring a legal remedy. The adjudication of the case was a very expensive endeavor for Rodrick that totaled approximately $200,000.00 over the forty (40) months of contentious litigation.

Pursuant to Rule 54(d)(2)(B)(i), timing and content of the Motion to be **filed no later than 14 days** after the entry of judgment. The Motion to pursue attorney fees was never filed by Harnden on behalf of Rodrick. When Rodrick enquired as to the

status of the Rule 54 matter, which literally occurred innumerable times over nineteen (19) months, Harnden always professed that if could not be filed until the Court issued a final judgment. Harnden was either grossly negligent or was intentionally misinforming Rodrick for nineteen (19) months to hide his incompetence in order to garner other legal work from Rodrick not associated with this case – or BOTH. Whatever the truth may have been, it certainly qualifies as "extraordinary circumstances" to have an attorney undermining the interest of the client is such an overt manner.

3) Court partially granted the Plaintiff's Motion for Permanent Injunction due to Harnden not submitting a Response.

On July 19, 2016, the Court received the Plaintiff David Ellis's Motion for Permanent Injunction (Doc. #438). Any competent attorney would be well versed in the timelines associated with a Responsive Memorandum. In the U.S. District of Arizona the requirements are dictated by LRCiv. 7.2(c) wherein a Response is to be filed within fourteen (14) days after service in a civil case. Harnden did not file a Response to the Motion for Permanent Injunction.

Inexplicitly at the time, and to this day Rodrick has no idea what occurred, Harnden effectively went completely "off the grid" in that he could not be contacted telephonically, text messaging and/or via email for weeks. No matter how many communications were attempted by Rodrick to discuss the Motion for Permanent Injunction and the required Response, they all went unanswered. As examples, in the August 5, 2016 email Rodrick states: "Not responding to the injunction in hopes to win a new trial is betting on the come and a bad bet and could leave the door open for her to simply rule on it." Judge Bolton did rule on the Motion. Another, on August 28, 2016, still with no update or explanation why a Response was not filed, Rodrick writes: "I have been trying to reach you to find out what is going on with the fed case filings, especially the one many weeks overdue. I cannot see any strategy in not responding to the pending motions" (*see*, Exhibit H). Rodrick was forced to

contact others in an attempt locate Harnden, such as attorney Barry Rorex who Harnden worked with by texting and email in both July and August of 2016 (*see*, Exhibit I). Simply stated, Harnden was paid $10,000.00 on July 1, 2016 (Exhibit G) for post-judgment work and he disappeared several weeks without any explanation.

4) Rodrick approved Harnden's legal counsel to pursue a new trial pursuant Rule 59(a)(1)(A).

Harnden advised Rodrick that there existed a reasonable case to pursue a new trial; altering or amending a judgment, pursuant Rule 59(a)(1)(A). The basic premise of the challenge would be the one Plaintiff who prevailed on two (2) of the five (5) claims alleged in the TAC did so arguing a case before the jury that had little to nothing to do with the legal or factual basis of the litigation and were inconsistent with this specific Plaintiff's factual allegations of the TAC. The argument would have focused on a fraud perpetrated upon the Court in presenting the case that was put forth to the jury at trial.

Pursuant Rule 59(b) the time to file a Motion for a new trial must be no later than 28 days after the entry of judgment. The Motion for a new trial was never filed by Harnden on Rodrick's behalf. The same situation prevailed as the circumstances associated with post-judgment motions for attorney fees, relief from a judgment and potentially a Notice of Appeal, Harnden insisted for nineteen (19) months Rodrick was precluded from acting upon these option until the Court issued the final judgment.

On September 19, 2016, although already on day eighty-nine (89) days since the Clerk filed the Judgment and sixty-one (61) days past the deadline, Harnden states in an email to Rodrick his contention as a status update when proclaiming: "That rule is one of the reasons why there is no final judgment yet and our new trial motion is still timely" (*see*, Exhibit J).

Rodrick was naïve and would periodically attempt to get an update from Harnden on when the Motion for New Trial would be filed. There were countless email

communications that would go unanswered or responded with the usual reassurance we were waiting for the final judgment. One of many emails was sent on April 10, 2017, nine and half (9.5) months after the trials conclusion, and Rodrick provides a "quick list of what I think are priorities." Listing: "New trial in Fed case. It is a ghost for us that keep haunting us. I think we should be asking for final judgment (if that is possible) and get some leverage for attorney's fees award under our belt. The final judgment will look like a win for us instead of a loss" (Exhibit K).

5) Rodrick approved Harden's legal counsel to pursue a relief from a judgment pursuant Rule 60(b)(3).

Harnden advised Rodrick that there was a very strong case to pursue relief from the judgment pursuant Rule 60(b)(3). The premise for legal remedy being the Plaintiff had clearly and willfully engaged in fraud (both intrinsic and extrinsic), misrepresentation, and misconduct. It would also be asserted that legal counsel Bellucci had actively participated in the fraud. There had been the accumulation of substantial evidence to support the allegations with undeniable clarity, including, but not limited to, several sworn depositions of the Plaintiffs taken post-trial that irrefutable established malice and nefarious intent associated with the filing of the TAC (Doc. #461, pg. 14-43) (Doc. #461, pg. 45-54)(Doc. #451, pg. 25-26).

Pursuant Rule 60(c)(1) the timing of the motion must be made within a reasonable time – and for reason of fraud, misrepresentation and misconduct by the parties no more than a year after the entry of the judgment. The Motion for relief from a judgment was never filed by Harnden on Rodrick's behalf despite an overwhelming amount of evidence obtained to pursue this particular legal remedy. Furthermore, there was an abundant amount time, a full year, to fully research and acquire the necessary evidence (which was obtained) to pursue this legal remedy, which once again Harnden did nothing. It becomes apparent Harnden's pretense of awaiting a final judgment was nothing more than an elaborate rouse to distract Rodrick's concerns about the "AZ Fed case" while at the same time being paid for

legal representation in other cases in Nevada, Michigan and Washington. By any standard such treacherous machinations by one's own attorney qualifies as "extraordinary circumstances."

6) After ignoring Rodrick's communications for weeks, Harnden finally surfaced only to lie to his client claiming he was filing a Notice of Compliance which he never did.

Despite the assurances of Harnden to Rodrick, after not filing a Response, that the Motion for Permanent Injunction would not be granted by the Court, it is exactly what did occur on November 9, 2016 (Doc. #452). Rodrick was given requirements as to specific statements which were to be removed from designated websites within fourteen (14) days of the date of the Court's Order.

Rodrick worked diligently to be in compliance of the Court's Order, both timely and in full scope of the actions required. It was a concern of Rodrick's to abide to the full extent of the removal of all identified statements to avoid any chance of an accusation of not being in compliance.

Rodrick had discussed with Harnden the importance of filing a Notice of Compliance upon completion of the project in order to make the Court aware that he was in compliance. Upon the completing the required removals of all identified statements, Rodrick attempted to contact Harnden to confirm the filing of a Notice of Compliance. Once again, Harnden could not be contacted in any manner despite repeated attempts. There was finally contact made with Harnden via email addressing the issue of the Notice of Compliance (*see*, Exhibit L). On November 21, 2016 at 11:00PM, Rodrick sent an email to Harnden that clearly memorializes the frustration and/or degree of desperation in alerting the Court that he was in compliance of the Permanent Injunction by communicating "Mike I did not hear back from my previous emails about this notice of compliance request so unless you have something else to file this will be filed tomorrow" (*see*, Exhibit L, #2). Harnden finally responded to Rodrick the next morning, November 22, 2016 at 11:38AM, via

email claiming that "I'll take care of these today" (*see*, Exhibit L, #3). The filing Harnden claimed would be filed would not occur.

With the deadline looming and no filing appearing on the PACER system in conjunction with Harnden once again not responding to emails or phone calls, Rodrick can acknowledge he may have panicked as he had his assistant rush to the U.S. District Court and file *pro se* with the Clerk of the Court the Notice of Compliance before the 4:30PM cutoff (Doc. #453). Simply stated, Rodrick was more concerned with the potential consequences of being in contempt of court in not abiding to a Federal Court Order than the technicalities of protocol. Of course, on January 29, 2016, the Plaintiff's attorney Bellucci appropriately filed a Motion to Strike the Notice of Compliance "on the grounds that it constituted an improper *pro se* filing by a represented party. L.R. Civ. 83.3(c)(2)" (Doc. #454). On December 22, 2016, the Court properly issued an Order granting the Motion to Strike Notice of Compliance (Doc. #458).

The legalese of this particular issue is admittedly very nondescript. The significance is the conduct of Harnden in not competently addressing Rodrick's legal representation even when confronted with the simplest of issues. A strategy was agreed upon to file a Notice of Compliance, yet Harnden could not be located at the appropriate time with any form of communication to confirm the agreed work would be completed. When Harnden did surface at the eleventh hour, he claimed he would "take care of these today." He did not file anything and did not notify and/or update Rodrick. Once again, throughout the nineteen (19) months of post-judgment legal representation by Harnden, he did not file one pleading. Dealing with such gross negligence on all levels of legal representation had become a matter of course.

Rodrick in a panic had felt compelled to prepare and file *pro se* the Notice of Compliance to avoid being held in contempt of court for not abiding to the Court's Order. This is not normal attorney client interaction and qualifies as "extraordinary circumstances" when Harnden so brazenly ignored his professional duty.

7) Harnden's did not file a Response in support of Oesterblad's Request for Entry of Final Judgment to present his "research" on behalf of Rodrick's legal interest.

Rodrick's co-defendant Oesterblad decided to bring the final judgment issue before the Court as a *pro per* litigant by filing a Request for Entry Final Judgment Pursuant Fed. R. Civ. P. 54(b) on May 25, 2017 (Doc. #461). If Harnden's "research" concerning the final judgment issue was correct, Oesterblad's filing provided a perfect opportunity to submit a Response in which to lay out the legal and factual basis for his contention that the Court had not issued a final judgment in the case. Harnden did not file a Response in support of Oesterblad's Request. When Rodrick inquired as to Harnden's strategy in not filing a Response, it was claimed there was no need to do so as the issue was now before the Court and would finally be resolved. This is not what occurred.

After waiting impatiently for eight (8) months, on January 26, 2018, the Court's Order denied Oesterblad's request (Doc. #471). To the dismay of Rodrick, the Court was very specific in its analysis when stating: "final judgment has already been properly entered in this case; there is no need for the Court to direct the Clerk to issue a final judgment…." Rodrick attempted to ascertain what Harnden's explanation would be for the Court's Order by sending an email on January 28, 2018, in part it stated (*see*, Exhibit M): "I am requesting some clarification concerning Judge Bolton's ruling today. In the ruling she denies Brent's Request for Final Judgment." Also: "This is of great concern to me. I have waited impatiently for 19 months to decide which of your advised legal strategies to pursue based solely on the position that a final judgment had NOT been issued. Please provide an update on how my legal position is affected by the Court's by Judge Bolton today." Not surprisingly Harnden did not respond as he clearly knew his façade of a legal theory had been finally compromised and it was time to "head for the hills," which is what he had already done in filing his Motion to Withdraw as Counsel earlier that month.

8) Harnden did not file a Notice of Appeal pursuant Rule 4(a).

Any competent attorney understands the post-judgment appellant process. The most basic and first order of diligence is to be acutely aware of being timely in making post-judgment filings. An Appeal in a civil case is very straight forward governed pursuant Rule 4(a)(1)(A) wherein a civil case, the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days of the judgment.

It was Harnden's steadfast assertion to Rodrick that he was precluded from filing a Notice of Appeal until the Court had issued the final judgment, which he alleged had not occurred throughout the twenty (20) months of legal representation post-judgment.

To exacerbate the frustration for Rodrick is the repeated insistence by Harnden that there were very good grounds for an appeal that would overturn the judgment awarded by the jury at trial if unsuccessful in the discussed post-judgment motions planned. The first line of attack was to challenge the admission of an exhibit that had been clearly fabricated as a forgery of an existing webpage found online (Doc. #449-1, pg. 72-73). The exhibit had been altered to delete significant portions of the webpage that would contradict the premise of the claims of the Plaintiff. Also, the forged exhibit was not disclosed to Rodrick's defense prior to the trial which would have allowed proper preparation to easily challenge the veracity of the provided content put forth to the jury. The second attack point concerned the Court's jury instructions concerning the explanation of the civil liability immunity clause pursuant Section 230 of the Communication Decency Act (*hereafter*, "230 CDA") (Doc. #424). After considerable deliberation, the jury had an inquiry to the Court requesting to be allowed to read for themselves the relevant portion of 230 CDA as it pertained to the evidence before them. The Court denied the request stating the instruction had been adequately articulated for the purposes of their deliberations. Rodrick can speak to this issue not being a learned attorney, as an individual with years of litigation experience involving the subject of the 230 CDA and being a long

time serial Internet entrepreneur (25 years), it is very difficult to understand the legal nuance and the complexity of the 230 CDA. The jury clearly communicated they did not understand the subject that was the central issue to determining the verdict they would render in favor of the one Plaintiff on two claims alleged in the TAC. Had the jury been allowed to garner the necessary additional knowledge and understanding of the 230 CDA, their verdict would have resulted in a favorable ruling for Rodrick.

There is no justification for Harnden to have not properly handled the filing of a Notice of Appeal in a timely manner. It was his professional duty to confirm his position that the final judgment had NOT been issued by the Court. The appellant process is a fundamental aspect of all litigation, whether civil or criminal. Due to Harnden's gross negligence that amounted to virtual abandonment, Rodrick was deprived of making "free, calculated and deliberate choices" in utilizing legal remedies afforded to him to ensure justice.

Although such circumstances are unusual and rare in a civil litigation compared to criminal proceedings, it actually supports the position and validates the proposition of "extraordinary circumstances" that occurred in this case associated with Harnden's legal representation of Rodrick.

9) Harnden shared his legal analysis given to Rodrick with others that the status of the case was effectively "on-hold" until the Court issued a final judgment.

Harnden's proclamations concerning his assessment that the Court had not issued a final judgment in the case were not limited to his communications with Rodrick. The assertion by Rodrick of Harnden's stated legal counsel in regard to the final judgment is not limited to email communications and/or a "he said, he said" debate. There are many incidences of Harnden directly confirming the legal counsel he had conveyed to Rodrick to others. There are two examples that provide both witnesses present and support documentation. One involved a meeting that was held in Phoenix, Arizona and the other a court hearing that occurred in Seattle, Washington.

On March 16, 2017 a meeting was held to discuss the status of the case and plan a retaliatory lawsuit for malicious prosecution among other claims. The parties in attendance were Rodrick, Harnden, Oesterblad and Kelley Bradbury (*hereafter*, "Bradbury").The meeting lasted approximately three hours and the discussions included the status of the case before this Court which included the filing of post-judgment motions, Notice of Appeal, potential issues to present to the appellant court. The main subject discussed was the strategy and viability of filing a new lawsuit against the twelve (12) Plaintiffs and their attorney Bellucci personally for their fraudulence, perjury, malice and abuse of process associated with the case before the Court.

At the meeting, Harnden conveyed his legal opinion that a final judgment had not been issued by the Court. Harnden detailed the significance being that Rodrick was precluded from pursuing any post-judgment motions and/or filing a Notice of Appeal. This legal analysis was also very germane in regard to the claims of a new lawsuit as an element of the very important wrongful claim of institution of civil proceedings (*hereafter*, "malicious prosecution") required the previous lawsuit (this case) had been terminated in favor of the would be Plaintiffs Rodrick and Oesterblad. Harnden asserted that without a final judgment of this case, it was not officially terminated. The new lawsuit could not be filed with a malicious prosecution claim under these circumstances. This claim was a key allegation due to the history of the case before the Court. Substantial evidence had been obtained to support this line of inquiry and it allowed the addition of attorney Bellucci as a defendant which was a major objective for both Rodrick and Oesterblad. Having witnessed firsthand the legal analysis being conveyed by Harnden as to the final judgment, both Oesterblad and Bradbury signed affidavits memorializing what they witnessed (see, Exhibit N).

Another source of documentation of Harnden's legal analysis being conveyed to Rodrick concerning the final judgment was Case No. 16-2-21498-3-SEA in the

Superior Court in the State of Washington in and for the County of King. In this case Harnden was retained for limited representation *pro hac vice* to prepare and argue before the Washington Court a Response to a Motion for Summary Judgment. The Response was prepared by Harnden and filed with the clerk of the court March 29, 2017 (*see*, Exhibit O). What is relevant to the Motion is Harnden documenting in an official court filing his assertion "The Arizona federal case has been fully adjudicated. MSJ, 8:15-17. While there is a partial judgment in that case, Mr. Rodrick remains waiting for the Federal District Court to issue its Final Judgment so that he may proceed with his post-verdict remedies, including a motion for new trail" (*see*, Exhibit O, pg. 3:¶6). This filing occurred nine (9) months after the Clerk's Judgment was filed in the Court Docket (Doc. #411).

On April 12, 2017, the hearing addressing the Motion for Summary Judgment that Harnden had prepared the Response occurred before the Honorable Catherine Moore in the Superior Court of the State of Washington in and for the County of King, Department 44. Harnden appeared telephonically representing Rodrick. In the courtroom for the hearing was Oesterblad as a *pro per* Plaintiff. He prepared an Affidavit detailing what he witnessed firsthand as to relevant statements to this case made by Harnden before the Washington Court on the official record. Oesterblad describes what he witnessed as the following (*see*, Exhibit N, pg. 4:¶11):

> "During the court hearing attorney Michael Harnden would declare on the record that there had NOT been a final judgment issued in the U.S. District Court District of Arizona, Case No. 13-CV-01300-PHX-SRB. This issue appeared to be of some legal significance to the case before the Court as it was discussed, debated and elaborated upon for a period of at least 5 minutes. I cannot say what relevance the issue of final judgment in the Arizona case had upon the case in Washington, only that attorney Harnden felt it was one that advanced his argument for his client Charles Rodrick."

It is truly "extraordinary circumstances" that nine and half (9.5) months after the Court had issued the final judgment, Harnden is stating in an open court hearing in another jurisdiction, falsely, that the final judgment had NOT been issued by the Court. As Rodrick was also present for the Washington court hearing telephonically, he witnessed Harnden's assertion what had been conveyed to him for months. It is why Rodrick would continue to believe the legal counsel he was receiving from Harnden was legally and factually accurate. Unfortunately, that simply was not the case and the truth would not be revealed to Rodrick for another nine (9) months.

10) Harnden proposed a flat fee agreement to handle all litigation matters for Rodrick.

After the conclusion of the Phoenix meeting of March 16, 2018, Oesterblad and Bradbury had departed, Rodrick and Harnden had a private meeting to discuss their working relationship going forward. The main objective of the meeting was Harnden's proposal to work on any and all legal matters for Rodrick on a flat fee monthly basis. After the discussion, Harnden would write up the matters discussed and present a proposal titled "Flat Fee Agreement" (*see*, Exhibit O).

In the flat fee agreement document are a few notes of relevance to the Motion. Harnden documented that he was providing legal counsel proposing a post-judgment motion for a new trial. He wrote: "All research, filings, arguments, and other actions necessary to pursue a motion for new trial in Arizona federal Case No. 2:13-cv-01300-SRM including any related appellate proceeding" (see, Exhibit O, pg. 1).

Harnden also documents the reiteration of his claim that there had not been a final judgment issued by the Court when writing: "The immediate pursuit of all legal fees once final judgement has been finalized against each individual plaintiff in Arizona federal Case No. 2:13-cv-01300-SRB. (This would not include collection only court proceedings to obtain the actual judgements)" (*see*, Exhibit P, pg. 1).

What is an important detail is the proposed agreement was to commence March 17, 2017. This date was eight and half (8.5) months after the conclusion of the trial and the filling of the Clerk's Judgment on July 1, 2016 (Doc. #411). This document

is a prime example of Harnden's gross incompetence that constituted "extraordinary circumstances." Harnden was proposing a monthly flat fee payment from Rodrick to "pursue" legal work that he had already paid $10,000.00 to "pursue" the post-trial motions such as a motion for a new trial on July 1, 2016 (see, Exhibit G). The document memorializes Harnden's legal counsel conveying his assertion that the Court had not issued a final judgment a eight and half (8.5) months after the Court had in fact issued the final judgment and all timelines were "long past" to file post-trial motions and/or Notice of Appeal pursuant Rule 4(a)(1)(A).

The relevant issue for the Motion is the irrefutable evidence of gross negligence that constitutes "extraordinary circumstances" that amount to "virtual abandonment" to such a degree to amount to have "severed the principle-agent relationship [and] no longer acts, or fails to act, as the client's representative." –U.S.--, 132 S.Ct. 912, 922-23, 181 L.Ed.2d 807 (2012). The only other plausible explanation is even more nefarious in explaining Harnden's conduct and his proposed monthly flat fee payment agreement. It is possible Harnden was only acknowledging the "Arizona federal Case" as a means to keep Rodrick agreeable to paying for his legal representation for the other cases detailed. According to Harnden's Motion to Withdraw as Counsel (Doc. # 472) his law firm's office had been "dissolved." Harnden did not have a job and Rodrick was his only client. It is very plausible the disclosure that all post-judgment motions or even a Notice of Appeal in this case were no longer available as time to file had "long past" was simply not a viable option for fear of losing his only paying client business. Either situation had created an untenable situation for Rodrick who was naive as to the true nature of his position in the case before this Court. This was undeniably "extraordinary circumstances."

11) <u>Harnden's legal career is encumbered with a history of abandonment of cases, the central element to the Motion as it pertains to the legal representation of Rodrick.</u>

The key element to Rodrick's Motion is to establish Harnden's gross negligence constitutes "extraordinary circumstance" to qualify as "virtual abandonment." What

becomes relevant to this aspect of the Motion is Harnden's history of abandonment and how it has intersected with his misconduct and some assertions made in this case. The detailing of Harnden's legal practice and how it manifests in the courts and the representation of Rodrick creates a whole different aspect of "extraordinary circumstances."

In the Motion to Withdraw as Counsel (Doc. #469) it claims Harnden "believes that law office is dissolved or otherwise inoperative" (Doc. #469, ¶3) As the Law Offices of Barry W. Rorex consisted of exactly two parties, attorney Barry Rorex and Harnden – period – it seems strange his motion feigns uncertainty when stating he ""believes." Harnden was well aware the Tucson offices had been vacated, unannounced in the night according to the landlord, in late December of 2015. At that time attorney Rorex was under State Bar of Arizona (*hereafter*, "SBA") probation for having abandoned clients (*see*, Exhibit C, pg. 5-10). Harnden had also been an attorney of record for the law office for these clients. Attorney Rorex would again be disciplined by the Arizona Supreme Court with a six-month suspension ordered retroactive to February 24, 2017 (*see*, Exhibit C, pg. 1 & pg. 11-12). Although the time period of the suspension has passed, attorney Rorex is still listed as suspended (*see*, Exhibit C, pg. 13-14). For Harden to claim he was unaware that the two man operation of the law firm that was shut down due to multiple cases of abandoning cases and the principle attorney Rorex was under SBA probation to be followed with suspension from the practice of law for new complaints is ludicrous. Harnden's position was he was "not retained" and had "no obligation" to represent Rodrick post-judgment despite accepting payments from Rodrick directly to his personal Wells Fargo bank account (*see*, Exhibit G). Also, during the entire post-trial period Harnden was the attorney of record, retained personally the case files until December 13, 2017 and did not file a Motion to Withdraw as Counsel until January 2, 2018.

The relevancy to the Motion is Harden's misrepresentation of the situation surrounding the Law Offices of Barry W. Rorex and his intimate knowledge of the details is a pattern of inconsistencies and misrepresentation of his law practice It is a requirement when an attorney is suspended by the SBA that clients such as Rodrick are notified within ten (10) days pursuant Rule 72(a)(1), Ariz. R. Sup. Ct.. Rodrick received no such notification from attorney Rorex, nor did Harnden disclose the pertinent update information. Furthermore, in contradiction to the Harnden's representation of his association to the law firm, he was using the name of the law firm in all pleadings for Rodrick cases with several different courts. As late as August 17, 2017, Harnden was still listing in the caption of legal filings that he was with the "Law Offices of Barry W. Rorex" (*see*, Exhibit Q).

An issue was made of the details associated to the law practice of Harnden during the hearing on April 12, 2017 for Case No. 16-2-21498-3-SEA in the Superior Court in the State of Washington in and for the County of King. In a particularly awkward start to the hearing, Seattle attorney Fred Diamondstone representing defendants VanWaes challenged Harnden's participation representing Rodrick. The basis for the challenge was the address and phone number provided to the Court by Harnden was not valid, which per Washington statute precluded him from addressing the Court. Attorney Diamondstone would disclose to the Court he had researched Harnden and found that his listing of "Law Offices of Barry W. Rorex" at addresses "2954 N. Campbell, #340, Tucson, AZ 85719" with phone contact "520-329-5309" all did not check out. In fact, what attorney Diamondstone disclosed to the Court for the record was the business associated to the provided address was the "Christian Alcohol Addiction Rehabilitation Center" (*see*, Exhibit R). Attorney Diamondstone confirmed with the rehabilitation center their mailing address which they had used for many years. After much debate before the Court, Harnden acknowledged the information was not "exactly" correct as to the law firm, address and phone number. The Court required Harnden to provide correct information for the record in order to

proceed with the hearing. Harnden reluctantly stated he was a sole practitioner, his residence address and the cell phone he was using to telephonically join the hearing. Oesterblad was in the courtroom as a firsthand witness to the scene that occurred and noted in his affidavit the occurrence (see, Exhibit N, pg. 4:¶12). Harnden made it a part of his law practice to be difficult to locate.

Even in victory, Harnden ultimately will revert to his propensity to abandon his cases. In District Court Clark County, Nevada, Case no.: A-15-724483-C, Dept. No.: XV, before the Honorable Joe Hardy a case was adjudicated to its conclusion with Rodrick realizing a victory. The case was very similar to the basic premise before this Court, a convicted sex offender Andre Wilson did not appreciate his public records disseminated on the Internet via Rodrick's websites. He sued for the usual suspects such as defamation. Rodrick was able to prevail due to an Anti-SLAPP defense that was per a statute passed by Nevada Legislatures, unlike Arizona. Despite Harnden's best efforts to bungle the case with multiple untimely filings and being admonished by the Court for unnecessary and repetitive litigation that cost Rodrick a $5000.00 sanction and a 40% reduction in "mandatory court and attorney fees award, a favorable ruling was Ordered based on the obvious First Amendment issues and civil liability immunity afforded by the Section 230 of the CDA.

On January 19, 2018, the Court Ordered specifically for "Mr. Harnden to prepare a Judgment, and forward it to Mr. Dorman and Mr. Weinstock for approval as to form and content" (*see*, Exhibit S). At a February 14, 2018 court hearing the Court ruled its decision NOT hold the attorneys and the law firm personally liable for the $69,000.00 judgment, only the Plaintiff Andre Wilson. Harnden had previously stated to Rodrick at the January 19, 2018 court hearing that if that occurred "he no longer had skin in the game." At this point Harnden did his usual practice of completely abandoning the case. He did not abide by the Court's Order. He did not respond to any and all communications from either Rodrick or local counsel Martin Welsh. After sixty (60) days of another Harnden disappearance a State Bar of

Nevada grievance was filed (*see*, Exhibit T). The grievance provided evidence of the extensive efforts of Rodrick and attorney Welsh to communicate with Harnden to no avail (*see*, Exhibit U). Despite being the attorney of record, retained and paid tens of thousands of dollars and a victory that was being finished up, Harnden abandoned the case. It was an old pattern of misconduct by Harnden just repeating itself.

These facts clearly contradict the representation to the Court the claims put forth by Harnden in his Motion to Withdraw as Counsel (Doc. #469). Harnden has made it a consistent variable to his legal representation of clients, both in his previous employment with the Law Offices of Barry W. Rorex and his sole practitioner law practice, to abandon cases. A simple review of the Court's docket reveals ZERO filings by Harnden from July 1, 2016 until January 2, 2018. A nineteen (19) month time period which undeniably represents "virtual" or "effectively" abandonment.

B) Rodrick has Demonstrated the Appropriate Diligence

Rodrick reasonably relied on Harnden during the post-trial period until the Motion to Withdraw was filed, and so was adequately diligent. *Holland, Maples, Spitsyn* and *Busby* all illustrate the basic principle that a petitioner's reasonable reliance on an attorney should not prejudice his opportunity to file a petition.

In *Busby*, where the attorney promised __ and then failed __ to file a habeas petition on his client's behalf, and the client relied on his absent attorney for four years before eventually filing a late petition *pro se*, this court held the petitioner's reliance reasonable. 661 F.3d at 1009-10, 1015. "Even had [the petitioner] known his attorney had not handled a habeas petition before, his reliance would still have been reasonable," the court held. Id. at 1015. "[A] reasonable litigant in [the petitioner's] situation who is represented by experienced counsel, if asked about the status of his or her lawsuit, would be justified in replying, 'My lawyer is handling it.'"

Rodrick was consistent throughout the twenty (20) months of Harnden's legal representation post-judgment requesting to be informed of the status of the case. Upon Harnden's Withdrawal being granted by the Court on January 29, 2018, Rodrick attempted to the best of his ability to educate himself on the legal remedies available to have the Court issue the final

judgment. The strategy was to resolve the old final judgment issue in order to revisit the possibility of filing the post-judgment motions. In the event they were no longer an option, Rodrick would move on to filing a Notice of Appeal. These efforts in research led to a better understanding of the fallacy of the legal counsel provided by Harnden for twenty (20) months and has resulted in the Motion before the Court.

Rodrick practiced diligence throughout the post-judgment period. As soon as Rodrick had a reasonable understanding of Rule 60(b), he prepared and filed the Motion now before the Court seeking the final judgment to be vacated so a Notice of Appeal may be properly prepared and filed. There are many examples of events and actions taken by Rodrick that demonstrate the amount of diligence he has engaged in trying to pursue post-judgment legal remedies addressing the judgment awarded by the jury to the one Plaintiff. Such examples include, but are not limited to, the following:

1. <u>It is well documented that Rodrick was extremely diligent in his efforts in communications with Harnden to be updated on the status of the case.</u>

   As a litigant with legal representation, it cannot be said Rodrick did not perform his responsibilities in being engaged in the circumstances of the case. He had paid Harnden for his legal representation to handle the post-judgment motions and/or Notice of Appeal (*see*, Exhibit G). He sent hundreds of emails to Harnden seeking updates (*see*, Exhibit A, B, H, K, L and M). Unfortunately, many were repetitive messaging as it was rare for Harnden to respond. Rodrick would call and text Harnden seeking responses to the emails that had gone unanswered. He had meetings face-to-face with Harnden to discuss the status of the case. He had his research assistant attempt to clarify the legal and factual basis of the legal counsel provided by Harnden and instructed her to communicate with him (*see*, Exhibit V). Rodrick reviewed all filings and legal arguments submitted by Oesterblad concerning the case post-judgment and would seek Harnden's opinion to the points made in such filings. When Harnden had appeared to disappear for extended periods of times, Rodrick would

make contact with his previous associate attorney Barry Rorex and even made contact with family members such as the father in attempts to locate Harnden (*see*, Exhibit I).

2. When Harnden did not file a pleading he falsely claimed he would, Rodrick attempted to do so himself *pro per*.

Rodrick understands it was inappropriate to file *pro per* the Notice of Compliance (Doc. #453) while being represented by Harnden. The Plaintiffs were correct to file a Motion to Strike (Doc. #454). The Court's Order (Doc. #458) ruled as required in granting the Plaintiffs Motion to Strike and was justified to admonish Rodrick for his efforts. However, his actions were not done in bad faith; in fact, it was an attempt to diligently avoid being in contempt of this Court's Order concerning the Permanent Injunction (Doc. #438) when Harnden failed take care of the matter as he claimed he would (*see*, Exhibit L). Furthermore, it does demonstrate the level of engagement Rodrick was willing to pursue to apply diligence in obtaining legal remedies to post-judgment issues. It also served as notice Rodrick was legally reliant upon Harnden, the attorney of record and keeper of all the case files, to be the sole party responsible and authorized for any filings with the Court on Rodrick's behalf.

3. Rodrick instructed his assistant Bradbury to research the final judgment independent of Harnden's legal counsel.

Bradbury is Rodrick's assistant and was well versed on the circumstances of the case. Rodrick had instructed her to do legal research about the final judgment entry after months waiting for the Court to issue some ruling as Harnden advised would occur. It proved difficult to understand the nuances of the Rules and case law.

Bradbury sought clarification of the final judgment issue from Harnden, one example being an email titled "Entry of Judgment" sent November 28, 2016 (*see* Exhibit V): "I am looking for some Case Law on this subject for Chuck. The rules are very confusing, but it appears that final Judgment needs to be submitted to the Court for Final Approval and it needs to be submitted by the person who prevailed. It also appears that after 150 days have passed, Final Judgment should be entered into the

record the Record. Can you please clarify some of this for me? THANKS!" The rest of the email was a copy and paste of Rule 58, Entering Judgment. As was the practice of Harnden, he did NOT provide a response to Bradbury's inquiry.

4. After the Court granted Harnden his Motion to Withdraw as Counsel, Rodrick sought to pursue an Entry of Final Judgment on his own.

Rodrick has never wavered in his commitment to pursuing post-judgment motions and/or a Notice of Appeal. He has adamantly believed from July 1, 2016, when the jury returned a verdict in favor of the one Plaintiff that was awarded a judgment, the decision did not have justification founded on a sound legal or factual basis. He immediately paid Harnden $10,000.00 (*see,* Exhibit G) the day of the verdict to pursue legal remedies to challenge the error that had occurred. Neither Rodrick's commitment nor the necessary diligence has diminished since Harnden was granted his Motion to Withdraw as Counsel (Doc. #472).

Based on the "research" and innumerable discussions with Harnden providing legal counsel, Rodrick believed that a final judgment had never been issued by the Court. Rodrick committed to researching and preparing a filing to be submitted to the Court that addressed this outstanding issue that had been unresolved for twenty (20) months.

On April 6, 2018, Rodrick filed a Request for Entry Final Judgment Pursuant Fed. R. Civ. P. 58(a), 58(d) & 54(b) (Doc. #474). Although the legal arguments put forth by Rodrick may have been misguided, they were submitted in good faith. Nor does his effort diminish the demonstration of an attempt to proceed with the proper diligence to address the issue with reasonable expediency. However futile the effort may be deemed by the Court to have been, it was a sincere attempt to exercise diligence to address an issue Rodrick was led to believe by Harnden had remained unresolved since the conclusion of the trial on July 1, 2016.

5. Upon reviewing the Plaintiff's Response, it was realized that Rodrick needed to accept he had been provided erroneous legal counsel from Harnden.

Ironically it was the receipt of the Plaintiff's Opposition to Defendant Charles Rodrick's Request for Entry of Final Judgment filed on April 23, 2018 (Doc. #475) that generated a serious review of Rodrick's continuance in relying upon the twenty (20) months of legal counsel provided by Harnden. It was that moment of an epiphany that would lead to submersion into diligent legal research to grasp the legal realities of what had occurred post-judgment. Unfortunately, leading to the realization that Harnden's representation had amounted to "extraordinary circumstances" of gross negligence and repeated incompetence.

After realizing what had occurred, it was obvious the conduct of Harnden constituted "extraordinary circumstances" that could be addressed with a Motion for Relief from Judgment pursuant Rule 60(b)(6). In an effort to be appropriately diligent in filing the Motion as timely as possible, Rodrick spent hours upon hours researching dozens of cases provided as a search result by Google that were addressed by the U.S. Court of Appeals for the Ninth Circuit involving the legal arguments pursuant Rule 60(b) and Rule 60(b)(6).

6. <u>As a pro per litigant, Rodrick exercised the most expeditious diligence once he understood the legal peril Harnden had created due to his gross incompetence.</u>

Rodrick has practiced extreme diligence throughout the post-judgment period. Unfortunately, he was strapped with an attorney who provided erroneous legal counsel that was either grossly incompetent or intentionally misleading for financial self-interest that spanned a ridiculous period of twenty (20) months. Whatever the basis for Harnden's gross negligence, the situation qualifies as "extraordinary circumstances" that cannot be classified as the "garden variety." Rodrick was diligent in his research and preparation to complete and file the Motion at the earliest opportunity. It was difficult and time consuming to grasp the legal conundrum Harnden had left in his wake. The Motion was filed May 7, 2018 (Doc. #476).

Rodrick is not a learned attorney and is not afforded the same legal resources as a learned attorney and does not have access to the same law materials, nor could he

afford to hire a new attorney to get up to speed for a case consisting of 475 docket entries that has now spanned over five (5) years. "The court noted that *pro se* plaintiffs should be afforded 'special solicitude'" *Rabin v. Dep't of State*, No. 95-4310, 1997 U.S.Dist. LEXIS 15719 and *Haines v. Keaner*, et al. 404 U.S. 519, 92 S.Ct. 594, 30 L. Ed. 2d 652.

CONCLUSION

The travesty of the Harnden post-judgment legal representation of Rodrick breaks down to two plausible explanations: 1) gross negligence and repeated incompetence, and/or 2) financial self-interest to prolong the case as long as possible. Either explanation does not deter the relevant issue of "extraordinary circumstances" that Harnden's "neglect that is so gross as to be inexcusable, such as an attorney's virtual abandonment of his client" which "severed the principle-agent relationship," thus Rodrick was not afforded the opportunity for "free, calculated, deliberate choices" to pursue post-judgment motions and/or Notice of Appeal pursuant Rule 4(a).

There are issues very similar to those experienced by incarcerated individuals abandoned by their attorneys which are the bases of the voluminous case law on the issues associated with habeas corpus filings seeking relief pursuant Rule 60(b)(6). Present in this case are the usual suspect issues experienced by incarcerated clients of abandonment with pleadings not timely filed, no filings at all submitted, completely erroneous legal analysis, gross negligence, inexplicable incompetence, communications being completely ignored, and attorney self-interest superseding the legal interest of the client. This comparison is meaningful and serves as further evidence of just how unusual these particular "extraordinary circumstances" really are in the context of a civil litigation. The uniqueness of the events detailed in the Motion summarizing Harnden's duplicitous misconduct represents the type of rare case that Rule 60(b)(6) was instituted to address and provide relief.

WHEREFORE, based upon the foregoing, Rodrick respectfully requests the Court to grant the Motion for Relief from Judgment Pursuant Rule 60(b)(6). Rodrick seeks to have the judgment vacated by the Court so he may pursue his right to file a Notice of Appeal in order to

have the opportunity to present his challenges to the verdict rendered by the jury at trial for Appellant review by the U.S. Court of Appeals for the Ninth Circuit.

RESPECTFULLY SUBMITTED this 7th day of May, 2018.

By: _____

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PROOF OF SERVICE ORIGINAL of the foregoing filed this 7th day of May, 2018, to:

Clerk of the Court
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ORIGINAL of the foregoing was emailed this 7th day of May, 2018, to:

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I declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct. Executed on this 7th day of May 2018, in Scottsdale, Arizona.

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