IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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| BRETT SNYDER and JESSICA SNYDER,<br><br>Plaintiffs,<br><br>v.<br><br>TAMARA KRACHT, Individually and as Agent of Re/Max, LLC, REAL ESTATE CONCEPTS, LC d/b/a RE/MAX CONCEPTS, BRIAN CAMPBELL, and KIMBERLY CAMPBELL,<br><br>Defendants. | Case No. LACL156356<br><br>**COMBINED MOTION TO RECONSIDER, ENLARGE, OR AMEND AND**<br><br>**MOTION FOR ATTORNEY FEES PURSUANT TO IOWA R. CIV. P. 1.517(3)(B)** |

Plaintiffs, Brett Snyder and Jessica Snyder, by and through the undersigned counsel, hereby state as follows:

## I. MOTION FOR AWARD OF EXPENSES AND ATTORNEY FEES

### FACTS

On May 3, 2024, Plaintiffs' served upon Defendants, Brian and Kimberly Campbell, requests for admissions. Defendants served responses to the same on May 24, 2025.

On May 22nd, 2024, the Campbells served answers to interrogatories and a response to Plaintiffs' request for production of documents, which included the e-mail correspondence ultimately admitted into evidence as Exhibit 36 (i.e. the e-mail correspondence between Brian Campbell and Nathan Barber of Bellin McCormick law firm). The e-mail produced therein contained direct reference to facts and circumstances evidencing Mr. Campbells knowledge of the facts sought for admission in the request for admissions, particularly the following:

**REQUEST NO. 1**: Admit You knew prior to May 9, 2022 that the Property at issue in this litigation would be annexed by the City of Ankeny, Iowa.

**RESPONSE**: DENIED

**REQUEST NO. 4**: Admit You knew, prior to May 9, 2022, that the 35 acres of land surrounding the Property would be developed after Plaintiffs purchase of the same.

**RESPONSE**: DENIED

At trial, Plaintiffs ultimately proved the facts denied. That proof was made upon admission of the e-mail provided by the Campbells in their response to Request for Production of Documents. The Plaintiff's Request for Admissions is hereto attached as "Attachment 1". The subsequent Campbells' Response to Plaintiff's Request for Admissions is hereto attached as "Attachment 2."

## ARGUMENT

The Plaintiffs are entitled to reasonable attorney fees under Iowa R. Civ. P. 1.517(3)(b), which states

> If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 1.510, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may move for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. I.R.C.P. 1.517(3)(b).

The Court "shall make the order" unless one of the following exceptions are met.

1. The request was held objectionable pursuant to RCP 1.510, or
2. The admission sought was of no substantial importance, or
3. The party failing to admit had reasonable ground to believe that he might prevail on the matter, or

4. There was no other good reason for the failure to admit.

I.R.C.P. 1.517(3)(b)(1)-(4). "Denial [of a request for admission] triggers the enforcement provisions of the rule if the matter is proven at trial." Koegel v. R. Motors, Inc., 448 N.W.2d 452, 456 (Iowa 1989). Once the party proves the truth of the matter denied, the opposing party has the burden of demonstrating the denial was justified under one of the four exceptions. Mark S. Cady, Curbing Litigation Abuse and Misuse: A Judicial Approach, 36 Drake L. Rev. 483, 509 (1987) (citing to Cline v. Prowler Indus. of Maryland, Inc., 418 A.2d 968, 984 (Del. 1980)).

For the opposing party to prevail under the first exception, the request not only has to be objectionable, they also must have objected to the request in their responses prior to the trial. Cline, 418 A.2d at 984. According to Defendant Campbell's responses, the only words used were "Denied" and "Admit" without any elaboration or objections, and no further objections were made. See Attachment 1, Cambell Responses to Request for Admissions.

The second exception requires no further insight because the requests referenced were central to the case. 'Substantial importance' means the matter requested is central to the disposition of the case. Mark S. Cady, Curbing Litigation Abuse and Misuse: A Judicial Approach, 36 Drake L. Rev. at 509 (1987) (citing Campbell v. Spectrum Automation Co., 601 F.2d 246, 253 (6th Cir. 1979)). Ascertaining the Campbells' knowledge pertaining to the annexation and development of the Snyder property prior to the closing date was the crux of this litigation. Had this request been admitted, as it was later proven to be true, these proceedings would not have been as drawn-out.

The third exception applies to matters "within the denying party's control or knowledge that are verifiable by independent sources, [such as] a party's income or a cloud on title of real estate." Mark S. Cady, Curbing Litigation Abuse and Misuse: A Judicial Approach, at 509-510. (citing Exch. Nat. Bank of Chicago v. DeGraff, 441 N.E.2d 1197, 1208 (Ill. App. 1st Dist. 1982)).

Such an independent source would have been Defendant Brian Campbell's own email chain history. This source later became known commonly as Exhibit 36. This third exception implies two things. Koegel, 448 N.W.2d at 457. Firstly, that reasonableness is based on what the denying party knew at the time of their denial. Id. Secondly, that this reasonableness is a factual determination. Id.. Applying this first prong, Mr. Campbell made these denials in May of 2024. The request made was in reference to facts occurring during the sale of his property to the Snyders in March of 2022. For the second prong, the court applies an objective test: "could a person in the denying party's position, armed with the information available at the time, reasonably believe there was a basis to deny the request?" Koegel at 457. With the information available to Mr. Campbell at the time of the requests, there is obviously no reasonable basis to deny the request because the facts were clearly otherwise. When there are difficult factual questions, courts offer lenience to the denying party where they may have prevailed. Dyer v. U.S., 633 F. Supp. 750 (D. Or. 1985), aff'd, 832 F.2d 1062 (9th Cir. 1987) (The factual question at issue was the amount of time it takes for wake turbulence from a helicopter to dissipate; their good faith denial granted them the exception). Courts also side with the denying party when there are mixed questions of law and fact, and the denying party offers an alternate explanation of the fact pattern to support its denials. Sterner v. Smith, 2010 WL 2382981, 3-4 (Iowa App. Jun. 16, 2010). Here, the Requests referenced above are purely factual inquiring only to knowledge. Furthermore, Campbell provided no support for his denials, which could help avoid this issue. See Koegel, 448 N.W.2d at 457 (The Defendant "could have avoided the problem by simply expanding its denial to include a defense").

The fourth exception provides a broad catch-all for any 'other good reason for the failure to admit.' I.R.C.P. 1.517(3)(b)(4). Good reason is based on a variety of factors, such as the condition of the pleadings, availability of sources to admit or deny, good faith, and the

reasonableness for denying the matter. Mark S. Cady, Curbing Litigation Abuse and Misuse: A Judicial Approach, 36 Drake L. Rev. 483 at 510. (citing Brooks v. Am. Broad. Co., 224 Cal. Rptr. 838, 843 (Cal. App. 1st Dist. 1986)). Furthermore, "no party has reason to deny the truth of a matter simply because the truth might defeat its lawsuit." Cady, 36 Drake L. Rev. at 510. (citing Chem. Engr. Corp. v. Essef Industries, Inc., 795 F.2d 1565, 1575 (Fed. Cir. 1986)). Defendant Campbell's pleadings were sufficient, they each had all pertinent information available to them, and they denied these requests in bad faith because the truth would have defeated their lawsuit.

In conclusion, the denials made by Defendant Campbell do not fall under any of the four exceptions to Rule 1.517(3)(b). It is the burden of Defendant Campbell to justify his denials under one of the exceptions, and nothing in the record supports any of the exceptions. See Mark S. Cady, Curbing Litigation Abuse and Misuse: A Judicial Approach, 36 Drake L. Rev. 483, 509 (1987) (citing Cline v. Prowler Indus. of Maryland, Inc., 418 A.2d 968, 984 (Del. 1980)). When Law prescribes a procedure for determining a lawyer's fee, "[the] lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure." I.R.C.P. 32:1.5, cmt. 9. Thus, the Plaintiff is entitled to the "reasonable expenses incurred in making that proof, including attorney fees." I.R.C.P. 1.517(3)(b).

WHEREFORE, Plaintiffs request the Court set this Motion for hearing and, at said hearing, issue an Order awarding Plaintiffs reasonable expenses and attorney fees in proving the truth of those matters submitted for admission pursuant to Iowa R. Civ. P. 1.517(3)(b) and for any other relief the Court deems just and proper under the circumstances.

## II. MOTION TO RECONSIDER

Fraudulent misrepresentation claims also may follow a vein of common-law attorney fee awards where the "the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." See Fennelly v. A–1 Mach. & Tool Co., 728 N.W.2d 163, 181 (Iowa 2006) (quoting Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co. of Des Moines, Inc., 510 N.W.2d 153, 158 (Iowa 1993)); see also Wolf v. Wolf, 690 N.W.2d 887, 896 (Iowa 2005). As set forth above, the Defendants had prolonged the litigation unnecessarily by denying their knowledge of the potential annexation and development of the Snyder Property and surrounding June Campbell Property. These facts were requested over a year before trial began and cost the Plaintiff's counsel extensive time and materials in proving the existence of this fact. The verdict returned for the Plaintiff indicates that both Tamara Kracht & REMAX Concept and Brian Campbell had fraudulently misrepresented the Snyders in connection with their purchase of the property at issue. Both of their denials in the Plaintiff's Request for Admissions severely prolonged litigation, and simply because admitting to the truth might defeat their lawsuit, no party has the right to deny the truth. See Cady, 36 Drake L. Rev. at 510. (citing Chem. Engr. Corp. v. Essef Industries, Inc., 795 F.2d 1565, 1575 (Fed. Cir. 1986)).

Furthermore, Jury Instruction 16 in this matter were not limiting to actual damages the Plaintiffs suffered. In pertinent part, the jury was instructed to consider "(c) Other expenses Plaintiffs would not have incurred had Defendants not failed to disclose material facts." According to this Instruction, it was the contemplation of the jury that the Plaintiffs would not have incurred any attorney fees had the Defendants not failed to disclose the material facts. From this instruction, the jury awarded the Plaintiff's full attorney fees. When a defendant's acts have been "'tainted by fraud, malice, or insult,' the jury may award punitive damages, and in doing so, may include attorney fees in its award." Baldwin v. City of Estherville, 929 N.W.2d 691, 701 (Iowa 2019)

(citing Dorris v. Miller, 105 Iowa 564, 568 (1898)). Although attorney fees were not explicitly stated in the Jury Instructions, the broad nature of Instruction 16 comports with the assertion that jury awards of attorney fees are allowed in such common-law claims. Baldwin, 929 N.W.2d at 701. In this common-law fraud claim, both Defendants' acts were tainted by fraud, and thus the jury's award for attorney fees is supported by case precedent. See Remer v. Bd. of Med. Exam'rs, 576 N.W.2d 598, 603 (Iowa 1998); See also Baldwin, 929 N.W.2d at 700-01.

WHEREFORE, for the reasons state herein, Plaintiffs request the Court reconsider its ruling in denying the jury's award of Plaintiffs' attorney fees and hereby requests the Court award reasonable attorney fees for labor and materials in proving their claim against the Defendants and for any other relief the Court deems just and proper under the circumstances.

DATED this 25 day of July, 2025.

Respectfully submitted,
**SULLIVAN & WARD, P.C.**

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