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12 *Attorneys for Defendant*

13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 MARK SCHNIZLEIN,  
16  
17 Plaintiff,

18 v.

19 BLACK & LOBELLO LAW  
20  
21 Defendant.

22 CASE NO.: A-16-734783-C  
23 DEPT. NO.: XXVII

24 **ORDER GRANTING IN PART AND  
25 DENYING IN PART DEFENDANT  
26 BLACK & LOBELLO LAW'S  
27 MOTION FOR SUMMARY  
28 JUDGMENT**

Defendant Black & LoBello Law's Motion for Summary Judgment came before the Court on October 10, 2018. Eric Tran, Esq, appeared on behalf of Black & LoBello Law. Plaintiff Mark Schnizlein appeared in pro per.

The Court having consider Defendant's Motion for Summary Judgment and Plaintiff's Opposition, and oral arguments of the parties, and good cause appearing, hereby orders as follows:

**I. FINDINGS OF FACT**

**A. The Underlying Probate Action**

1. On December 7, 1990, Mel and Betty Schnizlein created the Schnizlein Family Trust. See **Exhibit A** of Defendant's Motion for Summary Judgment. Said Trust was Amended and restated on October 31, 2006. Id. On or about August 10, 2007, Mel Schnizlein died. On or about February 4, 2011, Betty Schnizlein died. Pursuant to the

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1 provisions of the Schnizlein Family Trust, the assets of the Trust were formally divided  
2 between a Bypass Trust and a Survivor’s Trust. See **Exhibit P** of Defendant’s Motion  
3 for Summary Judgment at ¶ 1. The Beneficiaries of the respective trusts were, *inter alia*,  
4 Megan Schnizlein and Plaintiff Mark Schnizlein. Id. at ¶ 6.

5 2. On or about June 6, 2011, Megan Schnizlein filed a “Petition to Assume  
6 Jurisdiction of Trust Pursuant to NRS 164.010(1) and to Appoint Megan Schnizlein as  
7 Successor Trustee of the Bypass Trust Pursuant to NRS 164.015(1) and NRS  
8 153.031(1)(k)” in In the Matter of the Trust of The Bypass Trust of the Schnizlein Family  
9 Trust Dated December 7, 1990, Ca No P-11-071537-T (hereon after referred to as “The  
10 Underlying Probate Action”). See **Exhibit B** of Defendant’s Motion for Summary  
11 Judgment.

12 **B. Plaintiff Retains Attorney Christopher Phillips to Represent Plaintiff in the**  
13 **Underlying Probate Action.**

14 3. On or about July 14, 2011, Plaintiff retained Christopher Phillips of the law  
15 firm of Black & LoBello to represent him in a dispute over distribution proceeds from  
16 “The Schnizlein Family Trust.” On July 14, 2011, Phillips filed a Supplemental Objection  
17 to “Petitioner Megan Schnizlien’s Petition to Assume Jurisdiction of Trust Pursuant to  
18 NRS 164.010(1) and to Appoint Megan Schnizlein as Successor Trustee of the Bypass  
19 Trust Pursuant to NRS 164.015(1) and NRS 153.031(1)(k).”<sup>1</sup> See **Exhibit C** of  
20 Defendant’s Motion for Summary Judgment.

21 **C. Plaintiff Informs Phillips that He Wanted Phillips to Stop Taking Action in**  
22 **the Probate Case and That Plaintiff Would Negotiate a Settlement**  
23 **Agreement with Megan Schnizlein on His Own.**

24 4. On August 29, 2011, Plaintiff sent Phillips an email requesting that Phillips  
25 stop action on Plaintiff’s Underlying Probate case. See **Exhibit D** of Defendant’s Motion  
26 for Summary Judgment at B&L000166. Plaintiff indicated that he would try to make a  
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<sup>1</sup> On July 6, 2011, Plaintiff had already filed an Objection in pro per to Megan Schnizlein Petition.

1 settlement proposal with Megan Schnizlein and her attorney Alice Denton to settle the  
2 Underlying Probate Action on his own and without the assistance of Phillips. Id.

3 5. Phillips responded to Plaintiff's request by advising Plaintiff that it was not  
4 in Plaintiff's best interest to proceed without counsel in these settlement negotiations  
5 and that Plaintiff was making a mistake that could cause irreparable harm to his case by  
6 attempting to negotiate a settlement on his own without counsel. See Id. at B&L000165  
7 (stating "I advised you that I did not believe that this was in your best interest, and I  
8 cautioned you that I could not recommend that you proceed without counsel in these  
9 settlement negotiations . . . Again, I think you are making a mistake that could cause  
10 irreparable damage to your case by attempting to do this on your own, but it is your  
11 decision.")

12 6. In the meantime, a hearing on Megan Schnizlein's Petition was  
13 scheduled for September 9, 2011. See **Exhibit E** of Defendant's Motion for Summary  
14 Judgment Register of Action. Although Plaintiff wanted to now control his own case,  
15 Plaintiff was not even aware of the September 9, 2011 hearing. See **Exhibit F** of  
16 Defendant's Motion for Summary Judgment at B&L000170. In a September 6, 2011  
17 email, Plaintiff stated that "I was not aware that you rescheduled the hearing for this  
18 week. Sorry if I failed to understand that. . . . I will communicate with Alice send a letter  
19 to the Court indicating that the parties want to postpone the Friday hearing until further  
20 notice." Id. at B&L000170. Because Phillips was still the attorney of record, Phillips  
21 informed Plaintiff that he (Phillips) did not schedule the hearing and that the hearing was  
22 continued at Plaintiff's request, and that the hearing cannot be postpone indefinitely.  
23 See Id. at B&L000169.

24 7. Notably, during this time, Phillips continued to warn Plaintiff that he  
25 needed to act on this matter regarding the upcoming hearing and that Phillips was not  
26 charging Plaintiff during this period. See **Exhibit G** of Defendant's Motion for Summary  
27 Judgment at B&L000172 (Phillips stated "I will not bill you for talking to her about this  
28 limited issue. I will not bill you for discussing your case with me. I would rather not be

1 compensated for my time, than to have to walk into Court on Friday and be forced to  
2 either argue a position which is contrary to a document that I have submitted to the  
3 Court or let the Court know that I am not authorized by my Client to speak on his behalf  
4 and watch you lose the case.”)

5 8. After Plaintiff failed to take any action regarding the upcoming September  
6 9, 2011 hearing, on September 9, 2011, the parties, through Phillips, agreed to  
7 postpone the hearing until September 16, 2011. See **Exhibit H** of Defendant’s Motion  
8 for Summary Judgment at B&L000176. Despite the hearing being postponed until  
9 September 16, 2011, Plaintiff still failed to take any action in preparation for his  
10 September 16, 2011 hearing. On September 13, 2011 and September 14, 2011,  
11 Phillips emailed Plaintiff informing him that he needed to take some action in  
12 preparation for the hearing. See Id. at B&L000177-000178. The hearing was eventually  
13 moved to September 30, 2011. See Id. at B&L000179. The hearing was then moved to  
14 October 14, 2011. See **Exhibit E** of Defendant’s Motion for Summary Judgment.

15 **D. Plaintiff Enters Into a Settlement Agreement With Megan Schnizlein that**  
16 **Removed Plaintiff’s Standing Regarding the Trust.**

17 9. Meanwhile on October 6, 2011, and against the advice of Phillips,  
18 Plaintiff entered into a Settlement Agreement with Megan Schnizlein titled “Written  
19 Agreement between Mark A. Schnizlein and Megan Schnizlein concerning the  
20 Schnizlein Family Bypass Trust Dated October 6, 2011” (herein after referred to as  
21 “Settlement Agreement”). See **Exhibit I** of Defendant’s Motion for Summary Judgment.

22 The Settlement Agreement contained the following relevant provisions:

- 23 1. Mark will sign NOMINATION OF SUCCESSOR  
24 TRUSTEE TO THE BYPASS TRUST OF THE  
25 SCHNIZLEIN FAMILY TRUST and formally remove from  
26 court his current objection to Megan Schnizlein as trustee  
27 of the Schnizlein Family Bypass Trust.

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27 ///  
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1                   2. Mark’s portion of the trust be separated into equal lumps  
2                   and distributed to his three children: Karen Reagan,  
3                   Melanie Schnizlein, and Heidi Wilnick, as recommended  
4                   by all beneficiaries to the court and upon condition to the  
5                   court’s approval.

6                   Id. at B&L000412.

7                   10. As a consequence of these two terms of the Settlement Agreement,  
8                   Plaintiff disclaimed any interest he had in the Bypass Trust in favor of his children.

9                   11. Because Plaintiff still failed to take any action in preparation for the  
10                  upcoming October 14, 2011 hearing, on October 6, 2011, Phillips emailed Plaintiff to  
11                  discuss the upcoming October 14, 2011 hearing and to figure out why Plaintiff was  
12                  emailing documents to Megan Schnizlein’s attorney Alice Denton. See **Exhibit H** of  
13                  Defendant’s Motion for Summary Judgment at B&L000180.

14                 12. On October 7, 2011, in response to Phillips’ email, Plaintiff sent an email  
15                 to Phillips with a subject line stating “I’m still in Amarillo [TX]. Unsure if I should go back  
16                 to Michigan or my ex-wife’s home in Phoenix.” See **Exhibit K** of Defendant’s Motion for  
17                 Summary Judgment at B&L000188. In his email, Plaintiff stated that “[y]esterday I faxed  
18                 Alice the signed trustee release form. **She can file that immediately with the clerk**  
19                 **and there will be no hearing next Friday**” (bold underlying emphasis added). See Id.<sup>2</sup>  
20                 Plaintiff’s email further inquired, “[w]ill there be a hearing next week if Alice files my  
21                 signed Trustee paper with the court. **I signed it because I believe we had a good**  
22                 **agreement** . . . .”) (bold underline emphasis added). See **Exhibit K** at B&L000189.

23                 13. This very email contradicts Plaintiff’s allegation that Plaintiff thought that  
24                 there was a hearing on October 7, 2011 and unequivocally shows that as of October 7,  
25                 2011, Plaintiff was well aware that he had a hearing October 14, 2011. In addition, even  
26                 if Plaintiff thought that there was a hearing on October 7, 2011, this email shows that  
27                 Plaintiff entered into the Settlement Agreement because he believed that he had a good  
28                 Settlement Agreement.

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<sup>2</sup> The hearing was eventually moved to November 4, 2011. See **Exhibit E** of Defendant’s Motion for Summary Judgment.

1     **E.     Phillips Files the Petition For Confirmation of Settlement Agreement.**

2             14.     On October 20, 2011, Phillips filed a Petition for Confirmation of  
3     Settlement Agreement. See **Exhibit L** of Defendant’s Motion for Summary Judgment.  
4     As part of the Petition, Phillips stated that “[t]he parties hereto have reached an  
5     amicable global resolution of all outstanding issues related to the Schnizlein Bypass  
6     Trust.” *Id.* at 1:22-23. The Petition attached the Settlement Agreement in addition to the  
7     “Nomination of Successor Trustee to the Bypass Trust of the Schnizlein Family Trust”  
8     containing Plaintiff’s signature, and in Plaintiff’s own handwriting, Plaintiff wrote “I  
9     relinquish all of my monies equally to my three kids.” *Id.* at Exhibit 1 to **Exhibit L** of  
10    Defendant’s Motion for Summary Judgment. On November 4, the District Court issued  
11    an Order Confirming the Settlement. See **Exhibit M** of Defendant’s Motion for Summary  
12    Judgment.

13     **F.     The Probate Commissioner Finds that by Entering into the Settlement**  
14     **Agreement, Plaintiff Lost Standing in The Underlying Probate Action.**

15             15.     After the parties had disagreements over the terms of the Settlement  
16     Agreement regarding the distribution of assets, on March 5, 2013, Megan Schnizlein  
17     filed a “Petition for Court to Assume Jurisdiction of Trust, For Appointment of Trustee;  
18     And for Instruction on Settlement Agreement.” See **Exhibit N** of Defendant’s Motion for  
19     Summary Judgment. On March 27, 2013, Plaintiff’s new attorney Douglas Gardner, filed  
20     a Response to Megan Schnizlein’s Petition. See **Exhibit O** of Defendant’s Motion for  
21     Summary Judgment.

22             16.     At the April 15, 2013 hearing on Megan Schnizlein’s Petition, the Probate  
23     Commissioner found that Plaintiff entered into the Settlement Agreement with Megan  
24     Schnizlein and through the Settlement Agreement, Plaintiff disclaimed any interest he  
25     had in the Bypass Trust in favor of his children. See **Exhibit P** of Defendant’s Motion for  
26     Summary Judgment at ¶ 10. The Probate Commissioner also found that because  
27     Plaintiff is no longer a beneficiary of the Bypass Trust, he does not have any standing to

28     ///

1 contest its distribution. Id. In this regard, the Probate Commissioner’s Reports, Findings,  
2 and Recommendation stated as follows:

3 10. MEGAN SCHNIZLEIN and MARK SCHNIZLEIN entered  
4 into a Settlement Agreement, which was approved by this  
5 Court on November 4, 2011. Through the Settlement  
6 Agreement MARK SCHNIZLEIN disclaimed any interest he  
7 had in the Bypass Trust in favor of his children. MARK  
8 SCHNIZLEIN is no longer a beneficiary of the Bypass Trust  
9 nor does he have standing to contest its distribution.

10 See **Exhibit P** of Defendant’s Motion for Summary Judgment at ¶ 10 on page 2.

11 **G. The District Court Adopts The Probate Commissioner Finding that Plaintiff  
12 Lost Standing in the Underlying Probate Action by Entering into the  
13 Settlement Agreement.**

14 17. After Plaintiff’s new attorney filed his Objection to the Probate  
15 Commissioner’s April 15, 2013 Report and Recommendations, the District Court issued  
16 an Order Affirming the Probate Commissioner’s Report and Recommendation and  
17 adopting the Probate Commissioner’s findings in its entirety. See **Exhibit Q** of  
18 Defendant’s Motion for Summary Judgment at 4:22.

19 **H. Plaintiff’s Current Legal Malpractice Complaint Against Black & LoBello.**

20 18. On March 8, 2016, Plaintiff filed a Complaint against Black & LoBello. The  
21 Complaint vaguely asserts the following:

- 22 1) That Plaintiff retained Defendant to help him with a Trust/Probate  
23 Issue.
- 24 2) That Christopher Phillips filed papers directly against the wishes of  
25 Plaintiff which resulted in damages to Plaintiff of over \$100,000.
- 26 3) That Plaintiff was overcharged for fees.
- 27 4) That Christopher Phillips abandoned the Plaintiff when further  
28 action was needed.

29 See Complaint.

30 *///*

1           19. On July 16, 2018, Defendant conducted Plaintiff's deposition. Plaintiff  
2 stated that his Complaint against Defendant was based on the following two allegations:

3           20. First, Plaintiff alleges that he was forced to sign the Settlement Agreement  
4 with Megan Schnizlein on October 6, 2011 under duress. See **Exhibit R** of Defendant's  
5 Motion for Summary Judgment at 143:17-144:10; 194:7-195:15. Plaintiff alleges that  
6 Phillips erroneously told Plaintiff that there was a hearing on Megan Schnizlein's first  
7 Petition on October 7, 2011 and that Phillips would not attend the hearing as Phillips  
8 was on vacation. Id. Plaintiff alleges that this caused Plaintiff to drive from Michigan to  
9 Las Vegas to attend the hearing or else Plaintiff believed that he would lose his probate  
10 case. Id. During the drive, Plaintiff alleges that he was forced to sign the Settlement  
11 Agreement or else he would lose his case. Id.

12           In this regard, in his deposition, he stated as follows:

13           **Q.** . . . So if your testimony is -- if I understand you correctly  
14 now, then, so the basis of your complaint against Phillips  
15 now is based on two issues that you have with him. The first  
16 issue is that -- is that he made a mistake regarding the  
17 hearing on October 7th, 2011. You're saying that he told you  
18 that the hearing was held on October 7, 2011, which caused  
19 you to rush to Nevada from --

20           **A.** Michigan.

21           **Q.** -- Michigan; and because of that, you were forced to  
22 sign the settlement agreement that's part of Exhibit 3, the  
23 last two pages of Exhibit 3? Because of Phillips' mistake in  
24 saying that the hearing was held on October 7, 2011, it  
25 forced you to sign this written agreement that was drafted by  
26 Megan and dated October 6, 2011?

27           **A.** Correct.

28           **See Exhibit R** of Defendant's Motion for Summary Judgment at 194:7-195:15.

          21. Second, Plaintiff alleges that Phillips filed the "Petition For Confirmation of  
Settlement Agreement" which erroneously contained language stating that "[t]he parties  
hereto have reached an amicable **global resolution of all outstanding issues** related  
to the Schnizlein Bypass Trust." See **Exhibit L** of Defendant's Motion for Summary



1 Judgment at 1:22-23 (bold underling emphasis added). Plaintiff alleges that Phillips did  
2 not file a "Verification and Errata" which would have shown that the Settlement  
3 Agreement was not a "global resolution." See **Exhibit S** of Defendant's Motion for  
4 Summary Judgment. Instead, Phillips filed a draft of the "Petition for Confirmation of  
5 Settlement Agreement" that did contain the "global resolution" language which Plaintiff  
6 believes caused Plaintiff to lose standing in the Underlying Probate Case.

7 In this regarding, Plaintiff testified as follows:

8 **Q.** Okay. So that's the first part of your complaint against  
9 Christopher Phillips?

10 **A.** Uh-huh.

11 **Q.** The second part of your complaint against Christopher  
12 Phillips is that you're -- you are saying that he signed -- that  
13 he filed this Petition for Confirmation of Settlement  
14 containing the first -- where the first two pages of the  
15 document says that it's a global resolution of all outstanding  
16 issues, when it was not. But the remaining documents in  
17 this petition is correct, though?

18 **A.** I believe that to be true. My -- I will restate what you just  
19 said. My complaint against him is he did not file the  
20 document that I signed and he understood and agreed that  
21 he was going to file. And that's the one, instead of filing, he  
22 put a "hold" sticker on it and filed something totally different.  
23 That's my complaint. He didn't file the right document that he  
24 knew was expected to be signed, and which I -- filed -- and  
25 which I signed.

26 **Q.** Okay. So you're referring to the verification -- I'll try this  
27 again. Your testimony is that the second part of the  
28 complaint that you have against Christopher Phillips is that  
Christopher Phillips failed to file this verification and errata  
form that is attached to Exhibit 6. It's not Bates stamped  
because these are documents that you turned over to us.  
Your testimony is that Phillips didn't file this verification and  
errata form, and instead he filed what's the cover page to  
Exhibit 3, called Petition for Confirmation of Settlement  
Agreement. Am I missing anything else?

**A.** Yes.

**Q.** What else am I missing?

1           A. And the next point here isn't reason enough to file a  
2 lawsuit on its own, but it is a frustration . . .

3 See **Exhibit R** of Defendant's Motion for Summary Judgment at 195:5-196:15.

4           22. Despite the Probate Commissioner's finding that the Settlement  
5 Agreement entered into by Plaintiff is what caused Plaintiff to lose standing in the  
6 Underlying Probate Action, and despite the fact that the District Court adopted the  
7 Probate Commissioner's findings, Plaintiff believes that the filing of the Petition for  
8 Confirmation of Settlement Agreement containing language stating that the Settlement  
9 Agreement was a "global resolution" is what caused Plaintiff to lose standing in his  
10 Underlying Probate Action.

11           23. The time for disclosing expert has long past and Plaintiff never disclosed  
12 an expert to support any of his claims for legal malpractice. In fact, Plaintiff argues that  
13 he does not need an expert to support his claims. Instead, all of Plaintiff's theories of  
14 legal malpractice is based on his own beliefs.

## 15   II.     CONCLUSIONS OF LAW

16           24. Summary judgment is appropriate when the pleadings, depositions,  
17 answers to interrogatories, admissions, and affidavits, if any, that are properly before  
18 the court demonstrate that no genuine issue of material fact exists, and the moving  
19 party is entitled to judgment as a matter of law. NRCP 56(c), Wood v. Safeway, Inc.,  
20 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). When reviewing a motion for summary  
21 judgment, the evidence, and any reasonable inferences drawn from it, must be viewed  
22 in a light most favorable to the nonmoving party. Lipps v. Southern Nevada Paving, 116  
23 Nev. 497, 498, 998 P.2d 1183, 1184 (2000).

24           25. While the pleadings and other proof must be construed in a light most  
25 favorable to the nonmoving party, that party bears the burden to "do more than simply  
26 show that there is some metaphysical doubt" as to the operative facts in order to avoid  
27 summary judgment being entered in the moving party's favor. Wood, 121 Nev. at 732,  
28 121 P.3d at 1031. The nonmoving party "must, by affidavit or otherwise, set forth  
specific facts demonstrating the existence of a genuine issue for trial or have summary

1 judgment entered against him.” Id. A factual dispute is genuine when the evidence is  
2 such that a rational trier of fact could return a verdict for the nonmoving party. Id. The  
3 nonmoving party “is not entitled to build a case on the gossamer threads of whimsy,  
4 speculation, and conjecture.” Id.

5 26. Further, “**[w]here an essential element of a claim for relief is absent,**  
6 **the facts, disputed or otherwise, as to other elements are rendered immaterial**  
7 **and summary judgment is proper.**” Bulbman Inc. v. Nevada Bell, 108 Nev. 105, 111,  
8 825 P.2d at 592 (1992) (bold emphasis added).

9 27. To assert a cause of action for legal malpractice, a plaintiff must satisfy  
10 the following five elements: (1) an attorney-client relationship; (2) a duty owed to the  
11 client by the attorney to use such skill, prudence, and diligence as lawyers of ordinary  
12 skill and capacity possess in exercising and performing the tasks which they undertake;  
13 (3) a breach of that duty; (4) the breach being the proximate cause of the client's  
14 damages; and (5) actual loss or damage resulting from the negligence. Day v. Zobel,  
15 112 Nev. 972, 976, 922 P.2d 536, 538 (1996).

16 28. It is firmly established that “expert evidence is generally required in a legal  
17 malpractice case to establish the attorney's breach of care.” Garmong v. Silverman,  
18 2014 WL 5306328, at \*1 (Nev. 2014) (citing Allyn v. McDonald, 112 Nev. 68, 71–72,  
19 910 P.2d 263, 266 (1996)).

20 29. Expert testimony is unnecessary only in such cases where the breach of  
21 care or lack thereof is so obvious that it may be determined by the court as a matter of  
22 law or is within the ordinary knowledge and experience of laymen. Allyn, 112 Nev. at 71,  
23 910 P.2d at 266 (stating no expert is required where a lawyer failed to file suit for a  
24 client before the statute of limitations ran out, because “the applicable statute of  
25 limitations was clear and unambiguous” and the “accrual date of the claim was also not  
26 subject to question”). In contrast, expert testimony is necessary to establish a prima  
27 facie case of legal malpractice where the attorney's alleged misconduct involved  
28

1 strategic decisions. Garmong 2014 WL 5306328, at \*1 (citing Grimm v. Fox, 303 Conn.  
2 322, 33 A.3d 205, 211, 215 (Conn. 2012)).

3 30. In this case, Plaintiff filed his complaint on April 6, 2016 asserting the  
4 following:

- 5 1) That Plaintiff retained Defendant to help him with a Trust/Probate Issue.
- 6 2) That Christopher Phillips filed papers directly against the wishes of Plaintiff  
7 which resulted in damages to Plaintiff of over \$100,000.
- 8 3) That Plaintiff was overcharged for fees.
- 9 4) That Christopher Phillips abandoned the Plaintiff when further action was  
10 needed.

11 31. Plaintiff does not delineate the grounds for his Complaint. However, the  
12 Court finds that paragraphs 1-3 is based on legal malpractice and expert testimony is  
13 necessary to support a cause of action for legal malpractice. Thus, summary judgment  
14 is granted to Defendant as to paragraphs 1-3.

15 32. Regarding paragraph 4 alleging that Christopher Phillips abandoned the  
16 Plaintiff when further action was needed, the Court finds that this allegation is potentially  
17 sound in a breach of contract theory.

18 33. Thus, the Court will leave it to the discretion of the Arbitrator to determine  
19 whether Plaintiff can support a breach of contract claim at the Arbitration. The Parties  
20 are ordered to attend the Arbitration hearing.

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**NOW THEREFORE, IT IS HEREBY ORDERED:**

34. Defendants' Motion for Summary Judgment on Plaintiff's Complaint is hereby **GRANTED** as to paragraphs 1-3 of the Complaint to the extent that paragraphs 1-3 is based upon legal malpractice and Plaintiff failed to disclose an expert to support his claims for legal malpractice.

35. However, Defendant's Motion for Summary Judgment is DENIED as to paragraph 4 of the Complaint alleging that Christopher Phillips abandoned the Plaintiff when further action was needed, as the Court finds that this allegation is potentially sound in a breach of contract theory. The Arbitrator will have discretion to determine whether Plaintiff has established a breach of contract claim at the Arbitration hearing.

Dated this 31<sup>st</sup> day of <sup>Nov.</sup> October, 2018.

Nancy L. AIG  
DISTRICT COURT JUDGE

**Submitted by:**

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