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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 **ANTHONY MITCHELL,**

11 Plaintiff,

12 v.

13 **EMORY ANDREW TATE III, et al.,**

14 Defendants.

Case No. 2:26-cv-00720-JAD-BNW

**PLAINTIFF’S OPPOSITION TO
DEFENDANT THRIFTY CONSULTING
LLC’S MOTION FOR EXTENSION
OF TIME TO RESPOND TO PLAINTIFF’S
FIRST AMENDED COMPLAINT
(ECF NO. 52)**

15 **INTRODUCTION**

16 Defendant Thrifty Consulting LLC (“Thrifty”) moves for a 14-day extension of its
17 deadline to respond to the First Amended Complaint. The motion rests on a declaration by
18 out-of-state counsel David A. Bernstein, Esq. (Buchalter PC) that: (1) improperly discloses
19 and uses a settlement communication protected by Fed. R. Evid. 408 and NRS 48.105; (2)
20 was obtained through an unauthorized disclosure to a non-addressee in violation of the
21 communication’s explicit confidentiality terms; (3) omits a written, dated good-faith offer
22 Plaintiff made eight days earlier; and (4) contains a sworn misrepresentation of what Plaintiff
23 said during the May 29, 2026 telephone call. The extension should be denied and the
24 declaration stricken.
25

26 **ARGUMENT**
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2 **I. THE EXTENSION SHOULD BE DENIED — PLAINTIFF’S WRITTEN**
3 **GOOD-FAITH OFFER WAS REFUSED, NO AGREEMENT WAS REACHED, AND**
4 **FRCP 15(a)(3) ALREADY PROVIDES THE RELIEF SOUGHT.**

5 Under Fed. R. Civ. P. 6(b)(1)(A), a court may extend a deadline for good cause.
6 Where the moving party rejects the opposing party’s written, dated offer of the very
7 accommodation now being sought, good cause is not established by simply omitting that
8 offer from the motion record.

9 **A. Plaintiff made a written good-faith offer on May 21, 2026 — eight days before the**
10 **telephone call and ten days before the response deadline.**

11
12 On **May 21, 2026**, Plaintiff emailed local counsel for Defendant Thrifty Consulting
13 LLC, Shlomo S. Sherman, Esq. (shlomo@shermanlawlv.com), and attached executed
14 waivers of service pursuant to Fed. R. Civ. P. 4(d) addressed to co-defendants Andrew Joslin
15 (individually) and Thrift Technologies LLC (Thrift’s parent entity). The email stated, in
16 relevant part:

17 *“[S]hould Andrew Joslin and Thrift Technologies LLC execute and return the*
18 *enclosed waivers, I would also be amenable to a reasonable extension of*
19 *Thrift Consulting LLC’s deadline to answer the First Amended Complaint, to*
20 *be coordinated by stipulation consistent with the Court’s scheduling*
21 *requirements.”*

22
23 That written offer was specific: (1) it identified the two co-defendants whose waivers
24 were sought; (2) it offered the exact accommodation Thrifty now requests — a reasonable
25 extension of Thrift’s response deadline; and (3) it proposed the proper procedural vehicle —
26 a stipulation consistent with the Court’s scheduling requirements. Mr. Sherman did not
27 respond to the offer for the next eight days.
28

B. Defendant rejected the written offer on the May 29 telephone call.

1
2 On May 29, 2026, Mr. Bernstein telephoned Plaintiff. During the call, Mr. Bernstein
3 acknowledged receipt of the waiver forms. Mr. Bernstein further acknowledged that he is in
4 direct communication with Mr. Joslin. Notwithstanding that direct access, Mr. Bernstein
5 stated that Mr. Sherman had determined the waivers could not be accepted through current
6 counsel and would need to be served directly on Thrift Technologies LLC and Mr. Joslin.

7
8 Plaintiff reiterated the May 21 written offer on the call: Plaintiff would not oppose a
9 reasonable extension of Thrifty's response deadline if the tendered waivers were executed
10 and returned. Mr. Bernstein declined. Plaintiff stated that absent the waivers, he would
11 oppose any extension motion. No agreement was reached.

12 The proffered ground for refusing the waivers — that they could not be accepted
13 through current counsel — is not a procedural impediment. Mr. Bernstein acknowledged
14 direct communication with Mr. Joslin, the individual whose waiver was tendered and the
15 controlling principal of Thrift Technologies LLC. The proposition that a waiver document
16 cannot flow through the very channel through which Mr. Bernstein is already negotiating on
17 behalf of Mr. Joslin's entities is a strategic objection, not a procedural one. The waivers were
18 refused on the merits by choice, not necessity.

C. FRCP 15(a)(3) already provides the relief Thrifty seeks.

19
20
21 Any extension of the FAC response deadline is also procedurally unnecessary. If a
22 Second Amended Complaint is filed, Fed. R. Civ. P. 15(a)(3) automatically triggers a new
23 14-day response deadline running from the date of service of that complaint. Granting a
24 preemptive extension of the FAC deadline — after Plaintiff's reasonable, written,
25 eight-day-old good-faith offer was refused — serves only to reward Defendant for declining
26 the very accommodation Plaintiff offered. The motion should be denied.

1 **II. THE BERNSTEIN DECLARATION SHOULD BE STRICKEN — IT**
2 **REFERENCES A CONFIDENTIAL FRE 408 / NRS 48.105 SETTLEMENT**
3 **COMMUNICATION DISCLOSED TO A NON-ADDRESSEE AND FILED IN**
4 **VIOLATION OF ITS EXPLICIT TERMS.**

5 **A. The email was a protected settlement communication.**

6 At 1:51 AM on May 29, 2026, Plaintiff transmitted an email to three identified
7 addresses — shlomo@shermanlawlv.com, keren@glolawfirm.com, and
8 tamaniotis@equitylegal.net — bearing the subject line “Mitchell v. Tate et al.,
9 2:26-cv-00720-JAD-BNW — Settlement Inquiry.” The email contained the following formal
10 confidentiality block, set off as a separate captioned section and quoted here verbatim:
11

12 ***SETTLEMENT COMMUNICATION — CONFIDENTIAL — FRE 408***

13 *“This email and any response, discussion, negotiation, or communication*
14 *arising from or related to it constitute settlement communications protected*
15 *under Federal Rule of Evidence 408 and applicable state-law equivalents.*
16 *This communication is made in connection with an attempt to compromise a*
17 *disputed claim and is offered solely for that purpose. It is not an admission of*
18 *any fact, liability, or legal position, and it shall not be admissible in evidence*
19 *in any judicial or administrative proceeding. The contents of this email, and*
20 *any discussions or correspondence that follow, are confidential. Neither this*
21 *email nor any response to it shall be filed with any court, disclosed to any*
22 *third party, quoted in any pleading or motion, or otherwise made public*
23 *without the prior written consent of the disclosing party, except as may be*
24 *required by court order. If no settlement is reached, neither party waives any*
25 *right, claim, or defense by reason of this communication or any related*
26 *discussions.”*
27
28

1 That language was not boilerplate appended without effect. It was a captioned, formal
2 confidentiality block placed in the body of the email itself, expressly invoking Fed. R. Evid.
3 408 and applicable state-law equivalents (including NRS 48.105), and expressly prohibiting
4 four distinct downstream uses: (1) filing with any court; (2) disclosure to any third party; (3)
5 quoting in any pleading or motion; and (4) any other form of public disclosure. Each of those
6 four prohibitions was violated. No prior written consent was sought or given.

7 Federal Rule of Evidence 408(a) prohibits use of settlement communications “to
8 prove or disprove the validity or amount of a disputed claim.” Fed. R. Evid. 408(a). The
9 Advisory Committee Notes confirm the rule’s purpose: to “encourage[] parties to attempt to
10 settle disputes.” NRS 48.105 provides equivalent protection under Nevada law. The email is
11 indisputably a settlement communication: it bore a “Settlement Inquiry” caption, was
12 addressed to opposing counsel, expressly invoked FRE 408 and NRS 48.105, and contained
13 the formal confidentiality block reproduced above. Its use in ECF 52 serves no purpose
14 independent of characterizing Plaintiff’s litigation posture — precisely what Rule 408
15 prohibits.

16
17 **B. Sherman disclosed the email to a non-addressee in violation of its terms.**

18 David Bernstein was not an addressee of the May 29, 2026 settlement email. At 8:49
19 AM the same morning, Mr. Sherman forwarded it to Mr. Bernstein at Buchalter PC
20 (dbernstein@buchalter.com) under the subject line: “Fwd: Mitchell v. Tate et al.,
21 2:26-cv-00720-JAD-BNW — Settlement Inquiry.” That forward is documented in the email
22 chain in Plaintiff’s possession. The disclosure to Mr. Bernstein was expressly prohibited by
23 the email’s confidentiality notice. Mr. Sherman had no authority to waive the sender’s
24 confidentiality protections.

25
26 **C. Filing the declaration compounds the violation.**

1 Mr. Bernstein then referenced and described the email’s contents in his sworn
2 declaration filed as ECF 52, now publicly available on PACER. That filing constitutes: (1)
3 use of a settlement communication in a court filing in violation of Fed. R. Evid. 408; (2)
4 public disclosure in violation of NRS 48.105; and (3) breach of the explicit contractual term
5 prohibiting filing with any court without prior written consent — consent Plaintiff never
6 gave.

7 Federal courts possess inherent authority to strike improperly filed materials to protect
8 the integrity of their proceedings. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43–44 (1991).
9 Where a declaration is premised on evidence inadmissible under Rule 408 and obtained
10 through unauthorized disclosure, striking the declaration — or at minimum the paragraphs
11 referencing the settlement communication — is the appropriate remedy. Without the
12 declaration, the motion lacks its factual predicate.

13
14 **III. THE DECLARATION OMITTS THE MAY 21 WRITTEN OFFER AND**
15 **MISREPRESENTS WHAT PLAINTIFF SAID ON THE MAY 29 CALL.**

16
17 **A. The declaration omits the written good-faith offer entirely.**

18 Paragraphs 4 and 5 of the Bernstein Declaration (ECF 52, Ex. 1) characterize the May
19 29 telephone call as a request “to confirm [Plaintiff’s] intention to file a SAC” and “to request
20 the courtesy of an extension of the time to respond.” The declaration omits entirely that, eight
21 days earlier on May 21, 2026, Plaintiff had emailed Mr. Sherman a written offer of the
22 precise relief now sought — a reasonable extension of Thrifty’s response deadline,
23 coordinated by stipulation — conditioned on execution and return of waivers tendered to Mr.
24 Joslin and Thrift Technologies LLC. The declaration does not mention the May 21 offer, the
25 waivers, the eight-day non-response, or the fact that Mr. Bernstein declined the same written
26 offer when Plaintiff reiterated it on the May 29 call. The omission of material facts known to
27 declarant rendered the declaration misleading as submitted.
28

1 **B. The declaration misrepresents Plaintiff’s statement.**

2 Paragraph 5 of the Bernstein Declaration states, under penalty of perjury: “Plaintiff
3 would not agree to such an extension, although he confirmed his intention to file a SAC.”
4 ECF 52, Ex. 1, ¶ 5. That statement is materially false.

5 The May 29, 2026 telephone call was itself a settlement discussion. Mr. Bernstein
6 opened the call by asking Plaintiff to name a low settlement number for Defendant Thrifty
7 Consulting LLC’s claims only, separate from any other defendant. Plaintiff declined to do so.
8 The discussion that followed, including Mr. Bernstein’s request for an extension and his
9 question about Plaintiff’s intent to file, occurred entirely within the context of that settlement
10 call, and is therefore itself protected by Fed. R. Evid. 408 and NRS 48.105 for the same
11 reasons set forth in Section II above. Mr. Bernstein’s decision to attach a declaration to ECF
12 52 quoting and characterizing statements made on that settlement call compounds the Rule
13 408 violations described above.

14 The accurate sequence of the May 29, 2026 telephone call is as follows:

15
16 (1) Plaintiff conditioned any agreement to an extension on Thrift Technologies LLC
17 and Andrew Joslin (individually) executing the waivers tendered on May 21. Mr.
18 Bernstein — who acknowledged direct communication with Mr. Joslin — declined,
19 stating that Mr. Sherman had determined the waivers could not be accepted through
20 current counsel. Plaintiff stated he would oppose any extension motion not
21 accompanied by those waivers.

22
23 (2) Mr. Bernstein then asked directly whether Plaintiff intended to file the SAC.

24 (3) Plaintiff responded: “I haven’t decided yet.”

25 (4) Plaintiff ended the call.

26
27 “I haven’t decided yet” is not a confirmation of an intention to file. It is an express
28 statement of indecision. Mr. Bernstein’s declaration converts that non-commitment into a

1 sworn representation of confirmed intent. The misrepresentation is material: the entire
2 premise of the extension motion is that a second amended complaint is anticipated. If Plaintiff
3 has not confirmed — and expressly declined to confirm — that any such filing will be made,
4 the predicate for the extension request evaporates.

5 Plaintiff anticipates Defendant may attempt to introduce or refer to the May 29, 2026
6 settlement email to suggest a contradiction with Plaintiff’s statement on the May 29 telephone
7 call. Federal Rule of Evidence 408(a)(2) expressly prohibits use of settlement
8 communications “to impeach by a prior inconsistent statement or a contradiction” —
9 precisely the use at issue. No such use is permitted, and any further reliance on the settlement
10 email by Defendant would compound the violations described in Section II above. In any
11 event, a statement of intent at 1:51 AM and a statement of intent later the same day — after a
12 material development in negotiations — are not contradictory; circumstances changed when
13 Mr. Bernstein declined to execute the waivers on which Plaintiff’s written offer was
14 conditioned, and Plaintiff, having now received outreach from counsel for multiple
15 defendants in response to the settlement email, was leaning toward continued settlement
16 discussion rather than filing.

17
18 The foregoing facts are attested under penalty of perjury in the Declaration of
19 Anthony Mitchell filed concurrently herewith, which authenticates the May 21, 2026 email to
20 Mr. Sherman attached thereto as Exhibit 1.

21
22 **CONCLUSION**

23 For the foregoing reasons, Plaintiff respectfully requests that the Court: (1) deny
24 Defendant Thrifty Consulting LLC’s Motion for Extension of Time (ECF 52); (2) strike the
25 Bernstein Declaration, or at minimum the paragraphs referencing the May 29, 2026
26 settlement email, as filed in violation of Fed. R. Evid. 408, NRS 48.105, and the email’s
27 explicit confidentiality terms; and (3) note for the record that the declaration omits Plaintiff’s
28

1 May 21, 2026 written good-faith offer and misrepresents Plaintiff's statement during the May
2 29, 2026 telephone call.

3
4 DATED this 29th day of May, 2026.

5 Respectfully submitted,

6 /s/ Anthony Mitchell

7 **Anthony Mitchell**

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12 *Pro Se Plaintiff*
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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2026, I filed the foregoing Plaintiff’s Opposition to Defendant Thrifty Consulting LLC’s Motion for Extension of Time (ECF 52) with the Clerk of Court via the Court’s CM/ECF system, which will provide electronic notice to all counsel of record.

/s/ Anthony Mitchell

Anthony Mitchell

Pro Se Plaintiff