

1 Ronald D. Green, NV Bar #7360
2 Randazza Legal Group
3 3625 S. Town Center Drive, Suite 150
4 Las Vegas, NV 89135
5 702-420-2001
6 702-420-2003 fax
7 ecf@randazza.com

5 Attorney for Plaintiffs
6 MARC J. RANDAZZA, JENNIFER RANDAZZA, and NATALIA RANDAZZA
7 Attorney for Counterclaim Defendant
7 MARC J. RANDAZZA

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10)
11 MARC J. RANDAZZA, an individual, JENNIFER) Case No. 2:12-cv-2040-JAD-PAL
12 RANDAZZA, an individual, and NATALIA)
13 RANDAZZA, a minor,)
14)
15 Plaintiffs,)
16)
17 vs.)
18)
19 CRYSTAL COX, an individual, and ELIOT)
20 BERNSTEIN, an individual,)
21)
22 Defendants.)
23)
24)

25 **COUNTERCLAIM DEFENDANT MARC J. RANDAZZA'S OPPOSITION TO COX'S**
26 **MOTION FOR LEAVE TO AMEND**

27 Counterclaim Defendant Marc J. Randazza ("Randazza"), through his undersigned counsel of
28 record, files this opposition to Counterclaimant Crystal Cox's ("Cox['s]") motion for leave to amend
her counterclaim against Randazza. (ECF 209). Randazza opposes Cox's motion on the grounds
stated in this opposition.

29 **I. Introduction**

30 This matter arises out of the initial interactions between Randazza and Cox in December 2011.
31 Shortly thereafter, Cox began her campaign of Internet destruction against Randazza. Randazza filed
32 suit here on November 28, 2012 as a result of Cox's actions. (ECF 1). On January 27, 2013, Cox filed

1 her initial counterclaims. (ECF 62). Shortly thereafter, this Court struck Cox's counterclaims in their
 2 entirety, noting that Cox's counterclaims were "replete with irrelevant material, inappropriate
 3 commentary, baseless speculation, and derogatory statements none of which relate to Plaintiff's
 4 Complaint. For this reason alone, Defendant's Amended Counter Complaint must be stricken." (ECF
 5 89 at 3). The Court also determined that for Cox to file counterclaims, she must file as a separate
 6 lawsuit. (*Id.* at 5). More than 60 days later, Cox filed her Motion for Reconsideration. (ECF 116). On
 7 February 14, 2014, this Court granted Cox's request for reconsideration, to the extent that she would
 8 be given leave to file a new counterclaim, while admonishing Cox "the Court refers her to the
 9 discussion in Judge Navarro's previous order striking the 'countercomplaint' and further cautions
 10 Defendant Cox that the failure to cure any deficiencies and violations in that order will be additional
 11 grounds for striking or dismissing the newly pled counterclaim." (ECF 162 at 2).

12 On February 21, 2014, Cox filed a Counterclaim against Randazza and Randazza Legal Group,
 13 a non-party to this action. Cox's Counterclaim asserted causes of action for defamation, harassment,
 14 abuse of process, legal malpractice, tortious interference with business advantage, civil conspiracy, and
 15 violation of her First Amendment rights. (ECF 164; *see* ECF 208). Randazza moved to both dismiss
 16 and strike Cox's counterclaim. (ECFs 179; 180).

17 The Court predominantly granted Randazza's motion to dismiss on May 21, 2014. (ECF 208).
 18 Specifically, the Court dismissed Cox's claims for harassment, abuse of process, legal malpractice,
 19 tortious interference with business advantage, civil conspiracy, and violation of her First Amendment
 20 rights. (ECF 208). The Court further dismissed Cox's defamation claim to the extent they related to
 21 Randazza's statements "in furtherance of or in the course of litigation." (*Id.* at 16). Concluding its
 22 order, the Court advised Cox that she could move for leave to amend her counterclaim, and that "all
 23 allegations and claims not carried forward [into the proposed amended counterclaim] are deemed
 24 waived." (*Id.* at 17).

25 Cox filed a motion for leave to amend her counterclaim on June 2, 2014, well over two years
 26 after the complained-of events took place. (ECF 209). Cox's motion did not specify any reason for
 27 amendment to be provided, any grounds upon which leave should be given, or discuss what, if any,
 28 changes were present in her motion for leave to amend. (*Id.*) In her attempt to bring these specious

1 claims, Cox accompanied her motion with a 30-page proposed amended counterclaim and nearly 120
 2 pages of exhibits not otherwise referenced in the amended counterclaim. (ECFs 209; 209-1; 209-2).
 3 Within her Proposed Amended Counter Complaint, Cox alleges causes of action for legal malpractice,
 4 defamation, and abuse of process. (ECF 209-1 at 1-35).

5 However, Cox's proposed amended counterclaim does not fix any of the deficiencies the Court
 6 identified in its May 21, 2014 order dismissing Cox's claims (which is the *fourth* time Cox has been
 7 similarly instructed). As set forth below, Cox's allegations of defamation do not allege the existence of
 8 allegedly defamatory statements not made "in furtherance of or in the course of litigation." (ECF 208
 9 at 16). Similarly, to the extent Cox's documents supporting her counterclaim can be considered, they
 10 show that Cox's claim for legal malpractice cannot possibly succeed. Cox's attempt to amend her
 11 counterclaim would be futile, and therefore should be denied. Furthermore, as demonstrated below,
 12 this Opposition will conclusively foreclose any such claims of legal malpractice, regardless of the
 13 leniency offered to *pro se* litigants.

14 **II. Legal Standard**

15 A claimant's right to amend its complaint – or, in this case, counterclaim – is not absolute
 16 under Rule 15. Courts consider four factors when evaluating a motion to amend: 1) undue delay, 2)
 17 bad faith, 3) futility of amendment, or 4) prejudice to the opposing party. *Forsyth v. Humana, Inc.*, 114
 18 F.3d 1467, 1482 (9th Cir. 1997); *see also Chodos v. West Publ'g Co.*, 292 F.3d 992, 1003 (9th Cir. 2002)
 19 ("[w]hen considering a motion for leave to amend, a district court must consider whether the proposed
 20 amendment results from undue delay, is made in bad faith, will cause prejudice to the opposing party,
 21 or is a dilatory tactic"); *Hurn v. Retirement Fund Trust of Plumbing, Etc.*, 648 F.2d 1252, 1254 (9th Cir.
 22 1981). Where there is futility to amendment, or undue prejudice to the opposing party, either of those
 23 factors alone justifies courts' denial of a motion for leave to amend. *Eminence Capital LLC v. Aspeon,*
 24 *Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003); *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995).

25 Courts deny leave to amend solely when it is clear that the amendment will not cure the
 26 Complaint of its deficiencies. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992); *Fin.*
 27 *Pac. Ins. Co. v. Cruz Excavating, Inc.*, Case No. 2:10-cv-00707-RCJ-VPC, 2011 U.S. Dist. LEXIS 80335 at
 28

1 *7 (D. Nev. July 21, 2011). In such circumstances, amendment is futile, and leave to amend is denied
 2 by the Court. *Id.*

3 **III. Argument**

4 Cox has had numerous opportunities to cure deficiencies in her prior four versions of her
 5 counterclaim. This is not only her fifth attempt, but an attempt that she filed with the benefit of direct
 6 instruction from the Court on precisely what to plead and how to litigate her claims. Yet, even with
 7 the Court advising, Cox still refuses to comply with the Court's Orders. She has demonstrated that she
 8 will never bring her counterclaim in accordance with the rules and instructions of the Court.

9 It is true that the U.S. Supreme Court has "instructed the federal courts to liberally construe
 10 the 'inartful pleading' of pro se litigants." *McMillan v. Department of the Interior*, 907 F. Supp. 322, 327
 11 (D.Nev. 1995), *citing and quoting Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987)) (quoting *Boag v.*
 12 *MacDougall*, 454 U.S. 364, 365 (1982) (per curiam)). However, pro se litigants must follow the same
 13 rules of procedure that govern other litigants. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1986).
 14 Although the Court provides deference to *pro se* litigants, that deference is not without limits. This
 15 Court has reminded Cox that:

16 The Court cannot give legal advice or counsel *pro se* litigants, save for recommending
 17 that they seek the advice of a trained attorney. The United States Supreme Court has
 18 itself acknowledged that requiring trial judges to explain the details of federal procedure
 19 or act as a *pro se* litigant's counsel "would undermine district judges' role as impartial
 20 decisionmakers." And the Ninth Circuit Court of Appeals has explained, for a judge to
 21 give advice to a *pro se* litigant on the legal process "would entail the district court's
 22 becoming a player in the adversary process rather than remaining its referee."
 23 (ECF 200 at 19-20, *citing Plier v. Ford*, 542 U.S. 225, 232 (2004) and *Jacobsen v. Filler*, 790 F.2d 1362, 1366
 24 (9th Cir.1986)).

25 **A. Cox's Proposed Counterclaim Violates this Court's Local Rules, and The Court
 26 Should Deny Leave to Amend on That Basis.**

27 The Court has repeatedly reminded Cox that, even as a *pro se* litigant, she is bound by the rules
 28 of the Court, and failure to follow these rules will result in denial of her requests.

29 Cox has been cautioned that she must learn the rules of this Court if she is going to
 30 serve as her own counsel in this case. She is again cautioned that her *pro se* status does
 31 not give her a pass from compliance with all rules of this Court. And she is again
 32 cautioned that her continued filing of motions, notices, and requests without a valid,

1 articulated legal basis will result in her filings being stricken or summarily denied, and
 2 because of the lengthy history of these violations in this case despite repeated warnings,
sanctions will also be assessed.

3 (ECF 200 at 19; emphasis in original).

4 Furthermore, when this Court reconsidered its prior Order, in which Cox's counterclaims were
 5 stricken and she was instructed to bring them as separate claims (ECF 89 at 5), and allowed Cox to re-
 6 plead her counterclaims, this Court again admonished Cox that there will be negative ramifications for
 7 her noncompliance with the Court's rules.

8 The Court cautions Cox that her counterclaim must comply with all rules of this Court or it
 9 may be dismissed. *See, e.g. Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995)... Additionally, the
 10 Court refers her to the discussion in Judge Navarro's previous order striking the
 11 "countercomplaint" and further cautions Defendant Cox that failure to cure any deficiencies
 12 and violations in that order will be additional grounds for striking or dismissing the newly pled
 13 counterclaim.

14 (ECF 162 at 2).

15 Cox's latest motion for leave to amend, and her proposed amended counterclaim, all fail to
 16 even attempt to comply with the rules of the Court, even after strict and specific admonishment from
 17 this Court that these rules must be followed, as outlined below.

16 1. Cox's Violation of Local Rule 10-3(a)

17 Cox's submission of more than 120 pages of rogue exhibits violates Local Rule 10-3(a). Local
 18 Rule 10-3(a) requires that exhibits submitted to the Court in paper form "shall be tabbed with an
 19 exhibit number or letter at the bottom or side of the document," and "must not [be] unnecessarily
 20 voluminous." Cox's proposed amended counterclaim disregards this rule entirely.

21 Absent from Cox's exhibits are any evidence of tabs, or any cover pages designating their
 22 identification number or letter. Cox's exhibits that happen to have numerical designations on them,
 23 are also out of order, further compounding the difficulty in identifying and following them (*see, e.g.*,
 24 ECF 209-1 at 36-62, going from Exhibit 5, to Exhibit 2, to Exhibit 7, without cover sheets or any
 25 explanation as to why, and without all exhibits being numbered). As filed, Cox's exhibits confuse the
 26 docket and complicate the counterclaim defendant's and the court's analysis of the documents on
 27 record in this case.

1 Further, Cox's exhibits bear no relation to her counterclaim, are not cited to in the proposed
 2 amended counterclaim, and are included as an afterthought, listed in the last page of her counterclaim.
 3 (ECF 209-1 at 33-34). As such, Cox's exhibits are unnecessarily voluminous and redundant, especially
 4 as they serve only to reiterate the same few statements by Randazza that were made in furtherance of,
 5 or in the course of, litigation. In addition to their technical deficiencies, they are substantively
 6 defective under Local Rule 10-3(a) as well. Based on Cox's violation of this rule, the Court should
 7 deny her request for leave to file an amended counterclaim.

8 **2. Cox's Violation of Local Rule 7-2.**

9 Cox's motion for leave to amend violates Local Rule 7-2, which requires "all motions" to "be
 10 supported by a memorandum of points and authorities." LR 7-2(a). Furthermore, "The failure of a
 11 moving party to file points and authorities in support of the motion shall constitute a consent to the
 12 denial of the motion." LR 7-2(d). Cox's Motion for leave to file her proposed amended counterclaim
 13 does not provide any points and authorities upon which she would have a basis to seek leave from the
 14 Court. Instead, Cox simply states that she seeks leave to amend, accompanied only by nearly 150
 15 pages of a proposed amended counterclaim including numerous disorganized exhibits. The Court
 16 specifically and individually admonished Cox numerous times in the past regarding the necessity of
 17 complying with LR 7-2. (ECFs 133 at 2; 139 at 2; 144 at 2; 162 at 2; and most recently, ECF 200 at
 18 17). Even as a *pro se* litigant, Cox has no excuse for continued noncompliance with the rule. Cox cites
 19 to no statutory authority or case law to justify her request, and without supporting points and
 20 authorities, Cox's Motion for Leave to Amend should be summarily denied.

21 **3. Cox's Violation of Federal Rule of Civil Procedure 8.**

22 Lastly, Cox's Proposed Amended Counter Complaint is in violation of Rule 8, which requires
 23 that "A pleading that states a claim for relief must contain... a short and plain statement of the claim
 24 showing that the pleader is entitled to relief." FRCP 8(a)(2). Furthermore, "Each allegation must be
 25 simple, concise, and direct." FRCP 8(d)(1). Nothing in Cox's proposed amended counterclaim could
 26 be construed as simple, concise, or direct. Because of its inconsistent, intermittent numbering of
 27 paragraphs and the numerous allegations made within it, it is even more confusing than the

1 counterclaim Cox seeks to amend. Such an outcome is inconsistent with Rule 8, and amendment
 2 should be denied on this basis as well.

3 **B. None of Cox's Proposed Amendments Correct The Problems Inherent in Her**
 4 **Counterclaim Against Randazza.**

5 Despite these reminders, Cox has failed to rehabilitate her counterclaim to successfully add –
 6 or clarify – her existing claims. As set forth below, her proposed amended counterclaim fails to set
 7 forth any new cause of action, and actually negates her existing legal malpractice claim.

8 Cox's proposed amendments to her counterclaim are futile, and the Court should deny her
 9 motion for leave to amend. As set forth below, Cox's amended counterclaim amounts to little more
 10 than window dressing on claims that this Court, and at least 11 other federal Courts nationwide, have
 11 already summarily dismissed as meritless.¹ Cox's cosmetic changes in the amended counterclaim do
 12 not overcome their substantive failings.

13 Cox seeks to amend her counterclaim while fixing none of its inherent problems. Cox's
 14 defamation claim still fails to seek redress for claims made without any connection to pending
 15 litigation. Similarly, her abuse of process claim fails to identify any conduct that would constitute an
 16 abuse of judicial process.

17 Finally, Cox's proposed amendment of her counterclaim and the many documents she attaches
 18 to it – to the extent they are properly before the Court at all – utterly belie her claim that Randazza
 19 engaged in legal malpractice. To the contrary, Cox's new allegations show that her legal malpractice
 20 claim cannot succeed. To that extent, as desirous as amendment would be for Randazza, Cox's
 21 attempt to amend the counterclaim is futile, and cannot state a claim for legal malpractice.

22 ¹ The following courts have seen these very same claims and dismissed them sua sponte – *Crystal L. Cox, et al. v. Jordan Rushie, et al.*, 1:13-cv-11308-PBS (U.S. Dist. Ct. D. Mass.); *Crystal L. Cox v. Jordan Rushie, et al.*, 2:13-cv-03028-JHS (U.S. Dist. Ct. E.D. Pa.); *Crystal L. Cox, et al. v. Randazza Legal Group, et al.*, 1:13-cv-21924-DLG (U.S. Dist. Ct. S.D. Fla.); *Crystal L. Cox, et al. v. Scott A. Curry, et al.*, 9:13-cv-00089-DWM (U.S. Dist. Ct. Montana); *Crystal L. Cox v. National Association of Realtors*, 3:13-cv-05364-BHS (U.S. Dist. Ct. Wash.); *Crystal L. Cox, et al. v. Tracy L Coenen, et al.*, 2:13-cv-00534-AEG (U.S. Dist. Ct. E.D. Wis.); *Crystal L. Cox, et al. v. Peter L. Michaelson, et al.*, 3:13-cv-03136-AET-DEA (U.S. Dist. Ct. D.N.J.); *Crystal L. Cox v. Marc J. Randazza, et al.*, 2:13-cv-00298-MMD-VCF (U.S. Dist. Ct. D. NEV.); *Crystal L. Cox v. Tracy L. Coenen*, 1:13-cv-03633 (U.S. Dist. Ct. N.D. Ill.); *Crystal L. Cox v. Kashmir Hill, et al.*, 4:13-cv-02046-DMR (U.S. Dist. Ct. N.D. Ca.); *Crystal L. Cox v. Godaddy Inc., et al.*, 2:13-cv-00962-MEA (U.S. Dist. Ct. D. Ariz.).

28

1 **1. Cox's Claim for Abuse of Process Does Not Address Any of the Issues**
 2 **Identified by the Court in Its Prior Order Dismissing This Claim.**

3 Cox's amended counterclaim repeats the same conclusory allegations that Randazza misused
 4 the judicial process through filing documents and issuing subpoenas that this Court previously rejected.
 5 (ECF 208 at 8-9). The Court advised Cox to allege facts sufficient to show Randazza's actions were
 6 not made to achieve the objects of the litigation, and did not involve litigants or other participants
 7 authorized by law. (*Id.* at 8-10). However, Cox has not cured any of these deficiencies, despite being
 8 given five opportunities to do so in this litigation. Perhaps now enough is enough.

9 Cox yet again fails to allege a cause of action for abuse of process. As this Court instructed
 10 Cox, only filings and subpoenas constitute a use of judicial process potentially justifying a claim for
 11 abuse of process (ECF 208 at 8-9) (holding that allegations based on actions other than court filings
 12 and subpoenas "do not state a claim for abuse of process"). Disregarding this portion of the Court's
 13 order, Cox once again alleges Randazza abused judicial process by contacting people by phone and
 14 seeking information from them. (ECF 209-1 at 22-23). As this is the exact conduct the Court
 15 informed Cox *does not* constitute abuse of process, Cox's amended counterclaim fails to rehabilitate her
 16 claim for abuse of process, and leave to amend should be denied.

17 Additionally, Randazza's alleged use of pleadings and subpoenas still fails to create a colorable
 18 claim for abuse of process. Cox's allegations are based on Randazza's filings in this case describing her
 19 conduct as extortion. (ECF 209-1 at 22-23). The remainder of Cox's allegations conclusorily claim
 20 that Randazza's success in removing some of Cox's infringement from the Internet through this
 21 litigation, constitutes an abuse the judicial process.² Cox's allegations regarding Randazza's filings fall
 22 within the proper use of the judicial process, and constitute actions this Court has found will not give
 23 rise to an abuse of process claim. (ECF 208 at 8-9).

24

25

26 ² The closest Cox comes to alleging some outside use of judicial process is the alleged use of
 27 subpoenas to obtain information about Diana Grandmason and Monica Foster – individuals Cox has
 28 mentioned *ad nauseam* in her filings – but lacks standing to assert an abuse of process claim (assuming
 one may even exist) on their behalf in this action.

1 Cox's amended counterclaim still fails to state a claim for abuse of process. As with the first
 2 time the Court confronted Cox's abuse of process claim, the Court would dismiss this restated claim as
 3 well. Cox's request for leave to amend is therefore futile as to that claim. *Forayth*, 114 F.3d at 1482.
 4 The Court should deny Cox's request to amend her counterclaim with respect to this cause of action.

5 **2. Cox's Proposed Counterclaim Cannot Establish That She May Prevail
 6 Against Randazza on a Claim for Legal Malpractice.**

7 Cox's attempt to bolster her claim for legal malpractice is belied by the events of what *actually*
 8 transpired between her and Randazza. Cox begins her allegations by stating that she "had an initial
 9 consultation" with Randazza, "whereby Cox divulged private information," including "case strategy."
 10 (ECF 209-1 at 24 ¶ 66). Conspicuously absent from this allegation, however, is the fact that Michael
 11 Spreadbury, a third party, was present for the entirety of Cox's single conversation with Randazza, thus
 12 destroying any confidentiality that could have been claimed in those communications. (Decl. of M.
 13 Spreadbury ¶¶ 8, 10). Attached hereto as Exhibit A is the Declaration of Michael Spreadbury.
 14 Spreadbury is the one who initiated the contact with Randazza. (*Id.* ¶6). Furthermore, all parties
 15 understood that the consultation would not be privileged or confidential. (*Id.* ¶¶ 8, 10). All
 16 participants in that call were also informed and aware that no attorney-client relationship was being
 17 formed as a result of this conversation, and that Randazza would have to review the docket and make
 18 determinations regarding potential conflicts, before any offer of representation could be made. (*Id.* ¶¶
 19 9, 11, 12, 20, 26, 27(d).)

20 Next, Cox alleges that Randazza spoke to counsel for Obsidian Finance Group and Kevin
 21 Padrick regarding Cox's appeal of their case. (ECF 209-1 at 24 ¶ 66). Cox's proposed amended
 22 counterclaim does not claim that Randazza took these actions as her attorney. (*Id.*). That is because he
 23 in fact did not act as her attorney, and never had. It is true that Randazza spoke with David Aman,
 24 counsel for Obsidian Finance Group LLC and Kevin Padrick in the *Obsidian Finance Group LLC v. Cox*
 25 litigation, as a preliminary introduction. (Decl. of D. Aman). Declaration of David Aman attached
 26
 27
 28

1 hereto as Exhibit B.³ It is hardly unusual that, prior to accepting representation, an attorney would
 2 reach out to his proposed counterpart in order to determine the current state of the case, potential for
 3 settlement, or the potential to narrow the issues. (*Id.* ¶ 3). This is what Randazza and Aman did, and
 4 Randazza made it abundantly clear that he did not represent Cox at that point. (*Id.* ¶¶ 3, 5 - 9).
 5 During their conversations, Aman knew that Randazza did not represent Cox, and never took any of
 6 Randazza's statements as anything more than what they were – a mere introduction. (*Id.*).
 7 Furthermore, Randazza never discussed any information provided by Cox, much less any information
 8 that could be deemed to be confidential. (*Id.*).

9 These facts go to the heart of Nevada law's requirement for an attorney-client privilege to exist
 10 for a legal malpractice claim to proceed. *Day v. Zubel*, 112 Nev. 972, 976, 922 P.2d 536, 538 (Nev.
 11 1996); *Morgano v. Smith*, 110 Nev. 1025, 1028 n.2, 879 P.2d 735, 737 n.2 (Nev. 1994); *Charleson v.*
 12 *Hardesty*, 108 Nev. 878, 883-84, 839 P.2d 1303, 1307 (Nev. 1992). Absent the existence of such a
 13 relationship, Cox's claim cannot proceed. *Elie v. Ifrah PLLC*, Case No. 2:13-cv-888-JCM-VCF, 2014
 14 U.S. Dist. LEXIS 17096 at *10 (D. Nev. Feb. 10, 2014) (requiring attorney-client relationship to prevail
 15 on claim for legal malpractice). Furthermore, "the attorney-client relationship is based on the
 16 subjective belief of the client." *In re Rossana*, 395 B.R. 697, 702 (Bankr. D. Nev. 2008). According to
 17 Cox's own Proposed Amended Counter Complaint, "On this first call... Randazza did not commit to
 18 representation." (ECF 209-1 at 2). Following that initial consultation conversation between Randazza,
 19 Cox, and Spreadbury, Cox "awaited Randazza to do a conflicts check, check the record and then get
 20 back to Cox on his representation and the details of such... Randazza did not contact Cox with any
 21 ideas, details, elements of negotiations in any way." (ECF 209-1 at 24). By her own words, Cox left
 22 the initial consultation call waiting to hear back from Randazza on whether he would represent her.
 23 After not having immediately heard back, Cox then sought out representation from Eugene Volokh to
 24 be her attorney. (*Id.*) Randazza later emailed Cox to state that he would represent her, and Cox

26 ³ David Aman was unable to return a signed copy of his Declaration at the time of filing. Exhibit B is
 27 Aman's declaration bearing his electronic signature. Attached as Exhibit C is an email from Aman
 confirming that the contents of the Declaration are true and correct, and a signed copy of the
 Declaration will be filed with the Court by Monday, June 16, 2014.

28

1 declined. (*Id.*) Cox cannot now claim, in retrospect, that there was any attorney-client relationship,
 2 when she herself admittedly never believed one existed. Cox's proposed amended counterclaim *does*
 3 *not allege* that Randazza represented Cox, nor does Cox allege that she even believed that Randazza was
 4 in fact her attorney. Quite the opposite. The evidence in Mr. Spreadbury and Mr. Aman's declarations
 5 further shows that no attorney-client relationship ever existed between Cox and Randazza, that Cox
 6 did not believe Randazza was her attorney at the time, nor that Randazza ever took any action
 7 purporting to be Cox's counsel. (Spreadbury Decl. ¶23 – 26). "Cox was not particularly interested in
 8 hiring Mr. Randazza before the call, and it was very clear... that Ms. Cox never considered Mr.
 9 Randazza to have been her attorney." (*Id.* ¶25).

10 Cox's proposed amended counterclaim here defeats her claim for legal malpractice, despite the
 11 Court not dismissing it in the original counterclaim. As the Court warned Cox, "Cox must carry
 12 forward into the new draft counterclaim any information that she wants to continue to plead," as "the
 13 Court cannot and will not simply refer back to a prior pleading for other information because an
 14 amended counterclaim supersedes all prior versions as if the prior versions never existed, and all
 15 allegations and claims not carried forward are deemed waived." (ECF 208 at 16-17). Cox's proposed
 16 amended counterclaim does not allege that an attorney-client relationship existed, but literally asks the
 17 Court to decide this point on its own accord, without any support or clear allegations. With the
 18 testimony of Messrs. Spreadbury and Aman, though, it is clear that an attorney-client relationship did
 19 not exist. Allowing Cox to proceed with her malpractice claim would be an exercise in futility.

20 **3. Cox's Defamation Claim Fails to Identify Defamatory Statements That**
 21 **Were Not Made In Furtherance of This Litigation.**

22 Cox's proposed amended counterclaim identifies numerous statements Randazza made to third
 23 parties about her conduct, but fails to allege how they were not made in anticipation of litigation.
 24 Nevada's litigation privilege, which the Court has recognized as being quite broad (ECF 208 at 7),
 25 applies to statements made in anticipation of litigation,⁴ as well as in connection with it. *Oracle USA,*
 26

27 ⁴ This Court specifically recognized in its May 21, 2014 order that Cox cannot bring a defamation claim
 28 based on Randazza's statements made "in anticipation of" this litigation.

1 *Inc. v. Rimini St., Inc.*, Case No. 2:10-cv-00106-LRH-PAL 2010 U.S. Dist. LEXIS 116249 at * 10 (D.
 2 Nev. Oct. 29, 2010), *citing Rothman v. Jackson*, 49 Cal. App. 4th 1134, 1145, 57 Cal. Rptr. 2d 284 (Cal. Ct.
 3 App. 1996). Like statements made in litigation, statements made in advance of litigation are entitled to
 4 “both an absolute and qualified privilege.” *Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 115
 5 Nev. 212, 217-18 984 P.2d 164 (1999), *quoting Richards v. Conklin*, 94 Nev. 84, 85 575 P.2d 588 (1979).

6 Within her proposed amended counterclaim, Cox identifies Randazza’s allegedly defamatory
 7 statements as being made prior to engaging in legal action against her. Cox states that Randazza made
 8 his statements beginning in February 2012 (ECF 209-1 at 14 ¶ 38), and continued making allegedly
 9 defamatory statements about her through April of 2012. (*Id.* at 14-20). The consistent thrust of Cox’s
 10 allegations is that Randazza allegedly called her an “extortionist” in his statements to third parties,
 11 which Cox claims defamed her.

12 Cox’s proposed amended counterclaim notes, however, that Randazza filed a complaint with
 13 the World Intellectual Property Organization (“WIPO”). Randazza filed his complaint with WIPO to
 14 recover domain names Cox registered, which wholly incorporated his own name, under the Uniform
 15 Domain-Name Dispute Resolution Protocol (“UDRP”). In his UDRP Complaint, Randazza argued
 16 that Cox engaged in the extortionate conduct Randazza spoke about publicly. The WIPO panel
 17 agreed, expressly finding Cox’s conduct constituted a pattern of extortion, and ordering the domain
 18 names at issue transferred to Randazza. (ECF 41, incorporating WIPO decision by reference. WIPO
 19 decision also attached hereto as Exhibit D).

20 Randazza then filed suit against Cox in this Court on November 28, 2012. (ECF 1). Within
 21 the Complaint, and throughout this litigation, Randazza has consistently premised his action on the
 22 argument that Cox’s actions are extortionate. (ECF 1 ¶ 1; *see* ECFs 179; 180). Even this *very Court* has
 23 recognized that Cox’s conduct amounts to extortion. (ECFs 14; 41 at 7, 9). If this *very Court* has
 24 found Cox’s conduct to amount to extortion, no amount of mental acrobatics or contortion can
 25 logically fit Cox’s statements into the box of defamation – either that, or Cox’s prior attempts to also
 26 hold Judge Navarro responsible for her alleged misdeeds must prevail as well.

27 The statements Cox complains of were all made in anticipation of litigation against Cox for her
 28 extortionate activity. All of Randazza’s actions in this case, since its inception, have been to redress

1 Cox's attempts to extort him and his family (ECF 1 ¶ 1). WIPO and this Court have agreed that Cox's
 2 conduct was, in fact, extortionate (ECFs 14; 41). The Ninth Circuit has determined Cox to engage in a
 3 pattern of behavior tantamount to extortion as well.⁵ In a similarly related matter, so has the Montana
 4 Board of Real Estate, in terminating Cox's real estate license.⁶ Randazza's statements, as alleged in
 5 Cox's proposed amended counterclaim, cannot be read in a vacuum. Randazza's alleged statements,
 6 calling Cox an extortionist, were made shortly before filing an arbitration action and this litigation
 7 against her to redress her extortionate scheme.

8 Randazza's alleged statements touch directly upon the subject matter of this litigation, and
 9 concern Cox's registration of domain names incorporating his full name, the full name of his wife, and
 10 the full name of his then three-year-old daughter. (ECF 209 at 14-20). After Cox began this conduct,
 11 she offered "reputation management" services to Randazza, and placed a domain name containing his
 12 full name for sale at a price of \$5 million. Email exchange between Cox and Randazza, in which she
 13 informs him that she has purchased a website in his name, and will use "to control the search, and pr"
 14 attached hereto as Exhibit E. Cox continues that she is in need of money, and "search management is
 15 something tons of people due [sic] and for thousands a month per search term." *Id.* Shortly
 16 thereafter, Cox posted on <www.marcrandazza.com> that <MarcRandazza.me> would be for sale for
 17 \$5million. Attached hereto as Exhibit F. (*See also* ECFs 14; 41). Both <marcrandazza.com> and
 18 <MarcRandazza.me> have since been removed from Cox's control and returned to Randazza, either
 19 under the WIPO decision or by this Court's decision, pursuant to 15 U.S.C. §8131(2). (ECF 41). Cox
 20 also made statements that she was not only engaging in extortion by purchasing these websites in
 21 Randazza's name, but that she was also engaging in what is tantamount to witness tampering in

22
 23 ⁵ "After Padrick's appointment, Crystal Cox published blog posts on several websites that she created,
 24 accusing Padrick and Obsidian of fraud, corruption, money-laundering, and other illegal activities in
 25 connection with the Summit bankruptcy. Cox apparently has a history of making similar allegations
 26 and seeking payoffs in exchange for retraction. See David Carr, *When Truth Survives Free Speech*,
 N.Y. Times, Dec. 11, 2011, at B1. Padrick and Obsidian sent Cox a cease-and-desist letter, but she
 continued posting allegations." *Obsidian Finance Group, LLC, Kevin D. Padrick v. Crystal Cox*, 3:11-cv-
 00057-HZ (9th Cir. 2014), at 4.

27 ⁶ See *In the Matter of Case No. 2011-RRE-LJC-186 Regarding: The Proposed Disciplinary Treatment of the*
 License of Crystal L. Cox, Licensed Real Estate Broker License No. 11581, State of Montana Realty
 Regulation, Case. No. 1105-2013. Attached hereto as Exhibit I.

1 violation of 18 U.S.C. § 1512(d)(1). Attached hereto as Exhibit G is a transcript of Cox's YouTube
 2 video, in which she outlines that she bought websites in Randazza's name in order to prevent him
 3 from giving deposition testimony. Also attached hereto as Exhibit H, is the declaration of Laura
 4 Tucker, Esq., who viewed and transcribed Cox's YouTube video at the url:
 5 <<https://www.youtube.com/watch?v=8-XYnITpBNs>>.

6 Randazza's public statements that Cox's conduct was extortionate relates directly to the
 7 allegations Randazza made before WIPO and this Court. In making the alleged statements, Randazza
 8 attempted to illuminate Cox's conduct, so that Cox's extortionate conduct could be brought to a halt.
 9 (ECF 209-1 at 14-20). Given the fact that Cox simply ignored this Court's injunctive relief, which was
 10 designed to bring some respite from her behavior, what alternate remedy could this Court suggest?

11 As this Court recently recognized, those statements – even when litigation is not pending – are
 12 protected under the litigation privilege. (ECF 208 at 6-7). As Cox's defamation claim is barred to the
 13 extent it seeks to redress privileged statements made in anticipation of litigation (ECF 208 at 7), her
 14 proposed amendment is futile. The statements Cox identifies relate to the subject matter of the case at
 15 hand, and are covered by Nevada's broad litigation privilege. *Crockett & Myers, ltd. v. Napier, Fitzgerald*
 16 & Kirby, LLP

17 440 F. Supp. 2d 1184, 1196 (D. Nev. 2006), affirming dismissal and vacating in part on
 18 other grounds, 583 F.3d 1232 (9th Cir. 2009). As Cox's amendment would be futile in this regard, the
 Court should deny her leave to amend.

19 **IV. Conclusion**

20 The Court should deny Cox's motion for leave to amend her counterclaim and this Court
 21 should join the other federal courts, who found her claims to be nonsensical, internally inconsistent,
 22 and worthy of dismissal *sua sponte*. As set forth above, any amendment of Cox's counterclaim would be
 23 futile, as Cox's proposed amended counterclaim fails to address any of the deficiencies addressed in the
 24 Court's prior order. Moreover, Cox's proposed amended counterclaim adds more than 150 pages of
 25 confusing and improperly organized documents to the Court's docket, in violation of Local Rule 10-
 26 3(a). Cox's motion provides no authority or argument in support of amending her counterclaim as

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5 required by Local Rule 7-2. Finally, Cox's proposed amended counterclaim falls far short of the
6 standard for a short and plain statement of the facts required by Federal Rule of Civil Procedure 8. In
7 addition to the futility of Cox's amendment, these repeated rule violations yet one more reason the
8 Court should deny Cox's motion for leave to file an amended counterclaim.

9

10 Dated: June 13, 2014

Respectfully submitted,

11 /s/Ronald D. Green

12 Ronald D. Green, NV Bar #7360

13 Randazza Legal Group

14 3625 S. Town Center Drive, Suite 150

15 Las Vegas, NV 89135

16 702-420-2001; 702-420-2003 fax

17 ecf@randazza.com

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure 5(b), I hereby certify that the foregoing document, **COUNTERCLAIM DEFENDANT MARC J. RANDAZZA'S OPPOSITION TO COX'S MOTION FOR LEAVE TO AMEND**, was served to Defendant Crystal L. Cox at:

P.O. Box 2027
Port Townsend, WA 98368

Dated: June 13, 2014

Signed,

/s/ *Vanessa Acosta*

Employee of Randazza Legal Group

ecf@randazza.com

Randazza Legal Group

3625 S. Town Center Drive, Suite 150

Las Vegas, NV 89118

(702) 420-2001

(702) 420-2003 fax