



## **BACKGROUND AND PROCEDURAL HISTORY**

The Court adopts the factual background as contained in Plaintiffs' Amended Complaint to the extent relevant to the present Motion. Additional facts specific to this Motion will be discussed in further detail below.

## **STANDARD OF REVIEW**

Nebraska courts, through their inherent judicial power, have the authority to do all things reasonably necessary for the proper administration of justice. *Houser v. Am. Paving Asphalt, Inc.*, 299 Neb. 1, 14, 907 N.W.2d 16, 26 (2018). “[A]n appropriate sanction under § 6-337 is determined in the factual context of a particular case and is initially left to the discretion of the trial court, whose ruling on a request for sanction or a sanction imposed will be upheld in the absence of an abuse of discretion.” *Eletech, Inc. v. Conveyance Consulting Group, Inc.*, 308 Neb. 733, 746-47, 956 N.W.2d 692, 703 (2021).

## **ANALYSIS**

The Court finds in favor of Plaintiffs and grants their Motion for Sanctions. The Court finds Defendants to be jointly and severally liable, and orders an entry of Default Judgment, and grants Attorneys' Fees against Defendants. Whereas the Court finds sufficient grounds to grant Plaintiffs' Motion for Sanctions and order an entry of default judgment, all other pending motions are hereby denied.

The Court grants Plaintiffs' Motion for Sanctions based on the proceeding analysis. First, Defendants are jointly and severally liable in default for all damages, including attorneys' fees, and interest. Second, the Court finds all evidence offered by both parties, including Defendants' Exhibit 16 to be admissible. Notwithstanding the admissibility of the evidence received, the Court

gives appropriate weight to the evidence in light of the objections on foundation, relevance and hearsay.

Third, sanctions in the form of default judgment, attorneys' fees, and interest against Defendant Amogh Karney are appropriate as Defendant Amogh Karney has willfully violated the Court's orders and has failed to make any appearance before this Court personally or through appointed counsel since June 5, 2023.

Fourth, sanctions in the form of default judgment, attorneys' fees, and interest against Defendants Anand Karney, Sudha Karney, Shiba Prop, LLC, Narke Holdings, LLC, Sarkit Inc., and Ark Capital Brookside, LLC (Anand Defendants) are appropriate. The Anand Defendants have similarly violated the Court's orders, and were on notice of possible sanctions as of March 16, 2023. Lastly, all Defendants are found to be jointly and severally liable.

I. DEFENDANTS ARE JOINTLY AND SEVERALLY LIABLE IN DEFAULT JUDGMENT FOR ALL DAMAGES, INCLUDING ATTORNEYS' FEES, AND INTEREST.

The Court finds all Defendants to be jointly and severally liable in default judgment for all damages alleged, including attorneys' fees, and interest.

Plaintiffs' Amended Complaint alleges, inter alia, Defendants entered into a civil conspiracy to defraud Plaintiffs. Under Nebraska law, a civil conspiracy is "a combination of two or more persons to accomplish by concerted action an unlawful or oppressive object, or a lawful object by unlawful or oppressive means." *United Gen. Title Ins. Co. v. Malone*, 289 Neb. 1006, 1026, 858 N.W.2d 196, 215 (2015). Furthermore,

[T]he gist of an action for civil conspiracy is not the conspiracy charged, but the damages the plaintiff claims to have suffered because of the wrongful acts of the defendants. Thus, by establishing a civil conspiracy, a plaintiff extends liability for the wrongful acts underlying the conspiracy to those actors who did not actively engage in the acts, but conspired in their commission. A conspirator is liable for the injuries sustained by the

plaintiff as a result of the tortious conduct which forms the basis of the conspiracy. *Id.* at 1026–27, 858 N.W.2d at 215 (2015).

Based on the evidence before the Court, and under the totality of the circumstances, the Court finds sufficient evidence to find Defendants jointly and severally liable under a theory of civil conspiracy.

In addition to Defendants being jointly and severally liable in default judgment, Defendants are also jointly and severally liable for attorneys' fees and interest. The Nebraska Court Rules of Discovery in Civil Cases are substantially patterned after Federal Rules of Civil Procedure. Thus, Nebraska courts will look to the “federal rules for guidance in construing similar Nebraska rules.” *Eddy v. Builders Supply Co., Inc.*, 304 Neb. 804, 818, 937 N.W.2d 198, 210 (2020). Neb. Ct. R. Disc. § 6-337 is substantially patterned after Federal Rules of Civil Procedure 37, therefore, this Court may look to Federal Rules and precedent for guidance.

In *Comiskey v. JFTJ Corp.*, 989 F.2d 1007 (8<sup>th</sup> Cir. 1993), the Court analyzed the award of attorney fees as a sanction under Federal Rules of Civil Procedure Rule 37. There, the Court found “[r]ule 37(b) authorizes sanctions for failure to comply with discovery orders. A party and its counsel ‘may be held personally liable for expenses, “including attorney’s fees,” caused by the failure to comply with discovery orders.’” *Id.* at 1011 (*citing Roadway Express, Inc. v. Piper*, 447 U.S. 752, 763, 100 S.Ct. 2455, 2462, 65 L.Ed.2d 488 (1980)). The Court continued and declared that an award of attorney fees pursuant to Rule 37 encompasses “all expenses, whenever incurred, that would not have been sustained had the opponent conducted itself properly.” *Id.* at 1012 (citations omitted).

Based on the proceeding analysis, the Court finds an award of attorneys' fees, and interest as an appropriate sanction. To date, Defendants have yet to comply with Plaintiffs' discovery

requests in any meaningful capacity, or the Court's Order to Compel Discovery. Moreover, Defendants have produced zero documents or records as requested and ordered. As mentioned below, the Court held in abeyance the Anand Defendants' Motion for Attorney Fees, and stated it would assess attorney fees if any party committed abuses of civil discovery procedures. Therefore, based on Defendants' continued recalcitrance towards discovery, the Court finds sanctions in the award of attorneys' fees and interest appropriate. Defendants shall be jointly and severally liable for attorneys' fees, interest, as well as for all other damages in default judgment.

II. THE ANAND DEFENDANTS' EXHIBIT 16, THE AFFIRMATION OF DEFENDANT ANAND KARNEY, IS ADMISSIBLE UNDER NEB. REV. STAT. § 49-1801 TO §49-1807; THE UNIFORM UNSWORN FOREIGN DECLARATIONS ACT.

The Court finds that all evidence offered at the hearing on Plaintiffs' Motion to be admissible, including the Anand Defendants' Exhibit 16. At the hearing, Plaintiffs offered into evidence Exhibits 9, 10, 12, 13, 14, 15, 17, and 18. The Anand Defendants generally objected to each exhibit on relevance, foundation, and hearsay grounds. The Court overrules the Anand Defendants' objections and finds each Exhibit to be admissible. Appropriate weight will be given to each Exhibit accordingly. The Anand Defendants offered Exhibits 11, 16, and 19. Exhibit 19 was received by the Court under seal. Plaintiffs objected to Exhibit 11 based on foundation. The Court finds Exhibit 11 to be admissible, and will give Exhibit 11 appropriate weight.

The Anand Defendants' also offered Exhibit 16 the Affirmation of Defendant Anand Karney. Whereas each party argued at length, both at the hearing and in their respective briefs, as to the admissibility of Exhibit 16, the Court makes a brief finding specific to this Exhibit. The Court finds that the affirmation of Defendant Anand Karney is admissible under the Uniform Unsworn Foreign Declarations Act (UUFDA). *See* Neb. Rev. Stat. § 49-1801 to § 49-1807. Plaintiffs argue that Exhibit 16 is not admissible because the affirmation is not notarized, and

cannot be considered an affidavit. The Anand Defendants make several arguments as to Exhibit 16’s admissibility, but only one is applicable. The Anand Defendants argue Exhibit 16 is admissible under the Uniform Unsworn Foreign Declarations Act. The Court agrees.

Under UUFDA, a sworn declaration includes an affidavit. Neb. Rev. Stat. § 49-1802(6). An “[u]nsworn declaration means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.” Neb. Rev. Stat. § 49-1802(7). Moreover, UUFDA applies “to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States.” Neb. Rev. Stat. § 49-1803. Under UUFDA, “if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of the [UUFDA] has the same effect as a sworn declaration.” Neb. Rev. Stat. § 49-1804(a).

However, for the unsworn declaration to have the same effect as a sworn declaration the unsworn declaration:

[M]ust be in substantially the following form:

I declare under penalty of perjury under the law of the State of Nebraska that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the ..... day of ....., ....., at
(date) (month) (year)

.....	.....
(city or other location, and state)	(country)
.....	
(printed name)	
.....	
(signature)	

Neb. Rev. Stat. § 49-1806. Upon examination of Exhibit 16, it is clear that the affirmation of Defendant Anand Karney is in substantially the same form as described under UUFDA. The affirmation is not notarized to Plaintiffs' point, and while Plaintiffs are correct in pointing to the ability for an out of state or country individual to notarize something virtually, the lack of notarization does not automatically prove that Exhibit 16 is not admissible.

The affirmation begins with Defendant Anand Karney's acknowledgment that he is making the following statement under penalty of perjury. Under paragraph one, Defendant Anand Karney states that he is in the country of India, which is clearly outside the geographic boundaries and jurisdiction of the United States. *See* Neb. Rev. Stat. § 49-1802(1); and §49-1806. The affirmation also contains the day, month, and year, and Defendant Anand Karney's printed name and signature. Despite the affirmation not being in the exact format as described under § 49-1806, the affirmation is in substantially the same form.

Thus, because Defendant Anand Karney is out of the geographic boundaries and jurisdiction of the United States his unsworn affirmation falls under UUFDA. Because the affirmation is in substantially the same form as required under UUFDA, Defendant Anand Karney's affirmation has the same effect as a sworn declaration, i.e. an affidavit. Therefore, Exhibit 16 is admissible under UUFDA.

III. SANCTIONS, INCLUDING DEFAULT JUDGMENT, ATTORNEYS' FEES, AND INTEREST, ARE APPROPRIATE AS AGAINST DEFENDANT AMOGH KARNEY.

The Court grants Plaintiffs' Motion for Sanctions as against Defendant Amogh Karney. Sanctions in way of default judgment, attorneys' fees, and interest are appropriate because Defendant Amogh has willfully violated the Court's orders and has failed to appear at any proceeding before this Court since June 5, 2023.

Under Nebraska law, sanctions under rule 37 serve multiple purposes. “First, they punish a litigant or counsel who might be inclined to frustrate the discovery process. Second, they deter those who are tempted to break the rules. Finally, they prevent parties who have failed to meet their discovery obligations from profiting from their misconduct.” *Hill v. Tevogt*, 293 Neb. 429, 436, 879 N.W.2d 369, 374 (2016).

“[A]n appropriate sanction under § 6-337 is determined in the factual context of a particular case and is initially left to the discretion of the trial court, whose ruling on a request for sanction or a sanction imposed will be upheld in the absence of an abuse of discretion.” *Eletech, Inc.*, 308 Neb. at 746-47, 956 N.W.2d at 703. To determine if sanctions under § 6-337 are appropriate, courts may consider several factors including “prejudice or unfair surprise suffered by the party seeking sanctions, the importance of the evidence which is the root of the misconduct, whether the court considered less drastic sanctions, the sanctioned party's history of discovery abuse, and whether the sanctioned party acted willfully or in bad faith.” *Id.* at 747, 956 N.W.2d at 703. Default judgment or dismissal “may be an appropriate sanction under § 6-337 for an “inexcusably recalcitrant” party. *Id.* (quoting *Hill v. Tevogt*, 293 Neb. at 437, 879 N.W.2d at 374). When dismissing or entering default judgment, federal courts often consider whether the “sanctioned party showed bad faith, willfulness, or fault.” *Tevogt*, 293 Neb. at 437, 879 N.W.2d at 374.

Defendant Amogh Karney may be considered an inexcusably recalcitrant party, and warrant sanctions at this time. Both Plaintiffs and the Anand Defendants argue sanctions are appropriate as against Defendant Amogh Karney. Defendant Amogh Karney has failed to appear or present any argument against sanctions. Defendant Amogh Karney is aware of the present action and has previously appeared through appointed counsel. However, Defendant Amogh Karney's counsel withdrew on June 5, 2023. In the Court's June 13, 2023, Order to Compel, Defendant

Amogh Karney was given until July 6, 2023, to acquire new counsel. As of the date of this order Defendant Amogh Karney has yet to hire new counsel to the best of the Court's knowledge. Moreover, the Court's June 13, 2023, Order to Compel applied equally to all Defendants, and Defendant Amogh Karney has not complied to any degree with discovery.

Defendant Amogh Karney's failure to appear before this Court either personally or through appointed counsel, despite his knowledge of the litigation and the Court's orders, shows bad faith, willful disregard for the Court, and inexcusable recalcitrance. Thus, the Court finds sanctions in the form of default judgment, attorneys' fees, and interest as appropriate sanctions. Therefore, the Court grants Plaintiffs' Motion for Sanctions as against Defendant Amogh Karney.

IV. SANCTIONS, INCLUDING DEFAULT JUDGMENT, ATTORNEYS' FEES, AND INTEREST, ARE APPROPRIATE AS AGAINST THE ANAND DEFENDANTS.

The Court grants Plaintiffs' Motion for Sanctions as against the Anand Defendants. The Court finds the Anand Defendants have frustrated the discovery process, have failed to comply with the Court's Order to Compel in any meaningful way, were on notice of possible sanctions, and should not profit from their misconduct.

The rules as articulated above in the previous section apply as if set forth fully herein, but need not be repeated. The Court adds that "[t]he Nebraska Supreme Court has also noted that dismissal or default judgment is an appropriate sanction for failing to comply with a discovery order." *Pope-Gonzalez v. Husker Concrete, LLC*, 21 Neb. App. 575, 580, 842 N.W.2d 135, 140 (2013). Additionally, a court may award attorney's fees on a motion or sua sponte. *See* Neb. Rev. Stat. § 25-824(4). § 25-824(4) states, in pertinent part:

The court shall assess attorney's fees and costs if, upon the motion of any party or the court itself, . . . the action or any part of the action was interposed solely for delay or harassment. If the court finds that an attorney or party unnecessarily expanded the proceedings by other

improper conduct, including, but not limited to, *abuses of civil discovery procedures*, the court shall assess attorney's fees and cost.

(emphasis added).

Under Neb. Ct. R. Disc. § 6-337, a court may grant sanctions:

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party[.]

Neb. Ct. R. Disc. § 6-337(b)(2)(C). The Nebraska Supreme Court has also previously held that “a party's failure to answer properly severed interrogatories or to seasonably supplement discovery responses may be grounds for sanctions imposed under § 6-337.” *Eletech, Inc.*, 308 Neb. at 746, 956 N.W.2d at 702-03.

The Anand Defendants concede that default judgment and attorneys' fees are appropriate as against Defendant Amogh Karney. However, the Anand Defendants contend that the same sanctions that should apply to Defendant Amogh Karney should not apply to them. The Anand Defendants argue that the sanctions requested by Plaintiffs are too harsh because they have complied with discovery, and because they were not previously warned that sanctions were possible. The Anand Defendants additionally argue sanctions are not appropriate because the Anand Defendants do not have any financial documents or records in their control or possession. The Court is unpersuaded by the Anand Defendants' arguments.

A. THE ANAND DEFENDANTS HAVE FRUSTRATED THE DISCOVERY PROCESS AND REPEATEDLY FAILED TO COMPLY WITH DISCOVERY REQUESTS AND ORDERS.

The Court finds that sanctions are appropriate because the Anand Defendants have frustrated the discovery process by failing to produce any meaningful documents or comply with

Plaintiffs' discovery requests. The Anand Defendants have also failed to comply with the Court's orders, including its Order to Compel.

The Court summarizes the procedural history of the case relative to the discovery process for context. Plaintiffs filed the present action on February 18, 2022. The Court issued a scheduling order filed on August 31, 2022, stating that discovery would need to be completed by February 1, 2023. Thus, as of August 31, 2022, the Anand Defendants were on notice of the need to comply with discovery requests. Moreover, notice of discovery was served on all Defendants on September 28, 2022. On November 2, 2022, the Court updated its scheduling order and ordered discovery to be completed by December 1, 2023.

Various motions were filed including the Anand Defendants' Motion to Dismiss and for Attorney's Fees filed on February 21, 2023. In the Court's March 16, 2023, order denying the Anand Defendants' Motion the Court held in abeyance the Anand Defendants' Motion for Attorney's Fees. In holding this Motion in abeyance, the Court put all parties on notice of possible future sanctions under Neb. Rev. Stat. § 25-824. Specifically, the Court highlighted possible future sanctions for abuses of civil discovery procedures.

The Anand Defendants responded to Plaintiffs discovery requests on March 24, 2023, but objected to most of the requests, and did not produce any documents. In response to the lack of compliance with discovery, Plaintiffs sent a letter to the Anand Defendants on April 19, 2023, detailing the Anand Defendants' failure to comply with discovery. Later, on April 25, 2023, in a conference call between the parties, the Anand Defendants told Plaintiffs that they would produce the requested documents to Plaintiffs within 30 days. No Documents were produced, and Plaintiff filed a Motion to Compel Discovery on May 17, 2023.

The Court held a hearing on the Motion to Compel on June 5, 2023, and granted the Motion in an Order filed on June 13, 2023. In the Court's June 13 Order, the Court highlighted that the Anand Defendants had produced zero documents as part of discovery at that time, and ordered the Anand Defendants to produce the requested documents. The Anand Defendants were ordered to produce the requested documents by July 18, 2023. The Anand Defendants produced some documents over a month later on July 18, 2023. However, the documents produced were replete with insufficiencies and were not the documents that were required to be produced per the Order to Compel. Moreover, the Anand Defendants did not supplement any of their responses, and the documents produced were unverified, and incomplete. Plaintiffs sent a deficiency letter to the Anand Defendants in response to the insufficiencies on August 2, 2023, but received no response.

Coincidentally, on August 2, 2023, Counsel for the Anand Defendants made a Motion to Withdraw from representing Shiba Prop, LLC, Narke Holdings, LLC, Sarkit, Inc., and Ark Capital Brookside, LLC. At a hearing on the Motion to Withdraw on August 14, 2023, Counsel argued he could no longer effectively communicate with his LLC clients. However, Counsel would continue to represent Anand and Sudha Karney, who were and are the owners and managing members of the LLC's during the relevant times of the present action.

At the hearing, the Court held in abeyance the Motion to Withdraw pending an evidentiary hearing to be held on November 16, 2023. The Anand Defendants were required to provide evidence, including documents at the November 16, 2023, hearing for the Court to review. However, the Anand Defendants did not supply any documents or evidence with the exception of the unsworn affirmation of Defendant Anand Karney. The Anand Defendants attempted to persuade the Court that they had complied with some discovery by stating they had produced bank statements for Defendant Sarkit, Inc. However, the bank statements the Anand Defendants refer

to they did not produce. Rather, Plaintiffs obtained the bank statements through third party subpoenas, to which the Anand Defendants had objected to.

In light of the above history, the Court finds the Anand Defendants' arguments unpersuasive. First, the court finds based on the clear procedural history articulated above that the Anand Defendants have frustrated the discovery process by repeatedly failing to comply with not only Plaintiffs' requests for discovery, but the Court's Order to Compel Discovery. In Nebraska, "civil jury cases are to be disposed of within 1 year to 18 months of filing, absent extraordinary circumstances." *Putnam v. Scherbring*, 297 Neb. 868, 877, 902 N.W.2d 140, 146 (2017); *see also* Neb. Ct. R. § 6-101. To effectuate this disposal standard, not only are judges "encouraged to implement firm, consistent procedures for minimizing continuances[,]" "[e]ach member of the bar shall cooperate with the judiciary in meeting these standards." *Id. quoting* (Neb. Ct. R. § 6-101(C)).

The Anand Defendants were aware of the need to comply with discovery as early as August 31, 2022, when the Court issued its first scheduling order. Notwithstanding the Anand Defendants' knowledge of the need to comply with discovery since August 2022, the Anand Defendants have still not produced any documents or meaningfully complied with discovery. The Anand Defendants argue they turned over some financial documents, however, the financial documents the Anand Defendants refer to were obtained by Plaintiffs through third party subpoenas, and not through the Anand Defendants. Moreover, the Court highlighted in its June 16, 2023, order that as of that date the Anand Defendants had turned over zero documents. Again, at the November 16, 2023, evidentiary hearing, the Anand Defendants did not have any documents to submit to either the Court or Plaintiffs.

Therefore, the Court finds the Anand Defendants have frustrated the discovery process by failing to comply with both Plaintiffs requests, and the Court's orders. Because the Anand Defendants have repeatedly frustrated the discovery process, the Court finds sanctions to be an appropriate remedy.

B. SANCTIONS ARE APPROPRIATE BECAUSE THE ANAND DEFENDANTS WERE ON NOTICE OF POSSIBLE FUTURE SANCTIONS FOR ABUSES OF CIVIL DISCOVERY PROCEDURES.

The Anand Defendants argue that Plaintiffs' requested sanctions are too harsh as applied to them because they were not on notice of possible sanctions. However, the Court warned all parties in its March 16, 2023, order that less drastic sanctions by way of attorney's fees may be awarded for abuses of civil discovery procedures.

This order was issued in response to the Anand Defendants' Motion to Dismiss and for Attorney's Fees. Essentially, at this time, the Anand Defendants requested the Court consider less drastic sanctions in accordance with one of the factors to consider under *Eletech, Inc. See Eletech, Inc.*, 747, 956 N.W.2d at 703. While the Court denied the Anand Defendants' Motion to Dismiss, the Court held in abeyance the Motion for Attorney's Fees.

The Court specifically warned all parties "[i]f the Court finds that an attorney or party unnecessarily expand[s] the proceedings by other improper conduct, including, but not limited to, **abuses of civil discovery procedures**, the court shall assess attorney's fees and costs." Order on Defendants' Motion to Dismiss and Motion for Attorney's Fees; (emphasis in original). All parties were on notice as of March 16, 2023, that sanctions were possible for abuses of civil discovery procedures. The Anand Defendants' argument that they were not on notice of possible sanctions or that the Court has failed to consider less drastic sanctions is, thus, unpersuasive.

Under *Eletech, Inc.*, Plaintiffs have shown that the Court considered less drastic sanctions. Plaintiffs have further shown that the Anand Defendants were on notice of possible future

sanctions for abuses of civil discovery procedures. Therefore, the Court finds sanctions are appropriate against the Anand Defendants.

C. THE ANAND DEFENDANTS ARE RESPONSIBLE FOR THE POSSESSION, CUSTODY, AND CONTROL OF THEIR DOCUMENTS.

Lastly, the Anand Defendants argue sanctions are not appropriate because they have complied with the discovery process by turning over the documents they have in their possession, and to the extent the documents are insufficient, the Anand Defendants do not have any further documents or records in their control.

The Anand Defendants offered Exhibit 16, the affirmation of Defendant Anand Karney, as evidence to support their argument that the Anand Defendants do not have any documents in their control. Specifically, in paragraph seven of Exhibit 16, Defendant Anand states that he and Defendant Sudha Karney are members of the LLCs, but Defendant Amogh Karney was the manager of the LLCs. (E. 16, ¶ 7). Defendant Anand Karney further states that because Defendant Amogh Karney was the manager he is the one who kept the records for the LLC. *Id.* Based on this information, the Anand Defendants attempt to show their lack of production of evidence is not their fault because the Anand Defendants do not have the records requested. The Court is wholly unpersuaded by the Anand Defendants' argument.

Regardless of the Anand Defendants' argument, an LLC is an entity distinct from its members and managers. *See* Neb. Rev. Stat. § 21-104; *see also* Neb. Rev. Stat. 21-520. Because an LLC is distinct from its members, an LLC has "the power to do all things necessary or convenient to carry on its activities[.]" Neb. Rev. Stat. § 21-105. Furthermore, the debts, obligations, and other liabilities of an LLC belong solely to the LLC. *See* Neb. Rev. Stat. § 21-520. Thus, as a distinct entity from its members with the power and responsibility for its activities,

an LLC has a right to its records and other relevant information which are or were necessary or convenient to carry on its activities.

An LLC may not escape liability by simply shedding its responsibility onto a member. Such an attempt is antithetical to well established principals of law that protect members of an LLC from liability for the actions, obligations, or liabilities of the LLC. The Anand Defendants' argument attempts to dissolve liability of the LLCs' requirement to produce documents by stating the LLCs are not in possession or control of their business documents, rather, that an alleged manager, Defendant Amogh Karney, is in possession and control of those documents. The Court cannot accept this argument as it would create a vast abyss of legal limbo in which an LLC could avoid liability because of its member, whilst a member could simultaneously avoid liability because of piercing the corporate veil principals.

Rather, the Court finds that an LLC has a right to its documents and records which are necessary or convenient to carry on its activities. Because of this right, such documents and records are necessarily within the possession and control of the LLC. *See Rhodes v. Edwards*, 178 Neb. 757, 135 N.W.2d 453 (1965) (holding that a plaintiff's tax returns were within the possession and control of the plaintiff because he could obtain copies from the federal government by requesting them); *see also United States v. Approximately \$7,400 in U.S. Currency*, 274 F.R.D. 646, 647 (E.D. Wis. 2011) (a party is obligated to produce her account records when she has a legal right to those records even though the party does not have a copy of the record).

Thus, the Anand Defendants are responsible for the possession, custody, and control of their documents. Therefore, Plaintiffs request for sanctions in the form of default judgment, attorney fees, and interest are appropriate based on the Anand Defendants failure to comply with discovery.

## CONCLUSION

Based on the preceding analysis, Plaintiff's Motion for Sanctions pursuant to Neb. Ct. R. Disc. § 6-337 is GRANTED. Defendants are found to be jointly and severally liable.

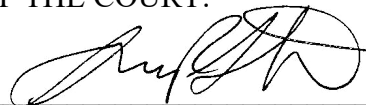
**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion for Sanctions pursuant to Neb. Ct. R. Disc. § 6-337 is GRANTED. The Court hereby enters an order for default judgment against Defendants for their inexcusable recalcitrance with the discovery process. Defendants are jointly and severally liable in default for the following amounts:

- a. Plaintiff Pranay Bajjuri: \$1,123,154.14;
- b. Nirmal Gorla: \$597, 558.36
- c. Sathwik Madishetti: \$32, 832.88
- d. Terraland Holdings, LLC: \$316,508.93;
- e. SSRRW, LLC: \$131,331.51;
- f. Attorneys' Fees: \$180,645.68;
- g. Interest at the statutory rate.

Whereas the Court enters an Order for Default Judgment all other pending motions before the Court are hereby denied.

DATED this 12<sup>th</sup> day of January, 2024.

BY THE COURT:



HON. SHELLY R. STRATMAN  
DISTRICT COURT