

No. 18A1036

In The

Supreme Court of the United States

David E. Grober,

Petitioner

v.

Mako Products, Inc., Varnell & Warwick, P.A.,

Brian Warwick, Janet Varnell,

Respondents

On Petition for Writ Of Certiorari

To The United States Court of Appeals for the

Federal Circuit

PETITION FOR WRIT OF CERTIORARI

David Grober, *Pro Se*  
578 Washington Blvd., Suite 866  
Marina Del Rey, CA 90292  
310-951-1110  
Davidgrober1@gmail.com

## **Question Presented**

**Whether the mandatory expense sanctions of FRCP Rule 37, can be circumvented by a court ignoring, or reducing them, including to zero, absent the losing party's required burden showing substantial justification, or to be unjust, AND the court's reasoned statement why a reduction comports to that burden.**

### **List of Parties And Rule 29.6 Statement**

Petitioner David Grober is an individual and Plaintiff in the underlying case.

Respondent Mako Products, Inc. is a defunct company with no parent corporation and no publicly-held corporation owns 10% or more of its stock. Respondents Varnell & Warwick, P.A., Brian Warwick and Janet Varnell are husband and wife litigators who were investors in and counsel for Mako Products, Inc.

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### **Citations To The Opinions And Orders Below**

The court of appeals for the federal circuit order ignoring Rule 37 sanctions requests in 2012 can be found at 686 F. 3d 1335; and in 2017 (Case no. 2017-1507; Grober v. Mako Products, Inc., dkt. 106 filed 12/6/18 (Appx A) and the order denying rehearing, dkt. 111 filed 1/15/19 (Appx B).

The ninth circuit's orders ignoring FRCP Rule 37 sanctions are (Case no. 2:04-cv-08604-JZ-DTB, Grober v. Mako Products, Inc., dkt. 371, filed on 11/2/09 (Appx D); dkt. 504, filed 7/24/15 (Appx E); dkt. 506, filed 8/7/15 (Appx F); dkt. 507, filed 8/7/15 (Appx G).

### **Statement Of Jurisdiction**

The Court of Appeals for the Federal District issued its judgment affirming the lower court on December 6, 2018 (Appx A), and denied a petition for rehearing on January 15, 2019 (Appx B). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). Petitioner timely filed this petition for a writ of certiorari. A continuance was granted by this Court to June 4, 2019.

The district court had jurisdiction in the underlying patent action pursuant to 28 U.S.C. §1331 and §1338(a). Following the district court's order denying Petitioner's motion for reconsideration on December 22, 2016, Petitioner filed a notice of appeal to the Court of Appeals for the Federal District on January 20, 2017. The Federal Circuit had jurisdiction under 28 U.S.C. §1295(a)(1) and 28 U.S.C. §1292(c)(1).

### **Statement Of The Case**

This petition asks the Court to resolve the issue of whether Courts must follow FRCP Rule 37 and impose the mandated expense sanction absent the losing party's substantial justification or showing the award would be unjust, and the court's reasoned statement why reducing, including to zero, the mandated sanction comports to that burden.

In the decades since the 1970 Amendments to Rule 37, and the Advisory Committee's notes,

research continues to show about the same 85% non-compliance rate by trial courts, as before the 1970 amendments. This failure unfairly prejudices honest litigants, especially harms the Davids v. Goliaths, and is wasteful of court and litigant resources. This Court has twice spoken to clarify its position that "Rule 37 sanctions must be applied diligently" and still the trial courts have ignored this Court's counsel.

The question at hand resides upon a patent infringement suit, 14 years of litigation, four motions to compel, won or won-in-part, where not one garnered the sanctions mandated by Rule 37. Each instance was absent any review or reasoned statement by the court that the losing party had met its burden for showing "substantial justification" or "unjust" as required to defeat the expense sanction.

Petitioner has appealed this issue to the Court of Appeals for the Federal Circuit on two separate occasions. In the first appeal 2010-1519,-1527, Petitioner won the key appeal issue which was Markman claim construction. The Rule 37 question was ignored in the ruling, and further denied a rehearing. (Appx I).

In the second appeal in the same case, 2017-1507, decided January 15, 2019, the Court of Appeals for the Federal Circuit affirmed the trial court decision wherein the trial court failed to impose expense sanctions upon Respondents for multiple discovery abuses. The capstone was Respondents, upon a direct Order from the district judge, producing discovery withheld over a period of seven



years. 9,383 documents were produced within days. The trial court imposed no sanctions, made no inquiry, review, nor made any reasoned statement why no sanctions were substantially justified or just.

The Court of Appeals, affirmed the trial court, without comment, essentially leaving non compliance of Rule 37 the continued policy of the day.

### **Introduction**

FRCP rule 37 is well written and clear. It mandates expense sanctions against the losing party in discovery disputes, absent the losing party's burden to show either "substantial justification" or that sanctions would be "unjust".

The Supreme Court has ruled multiple times that sanctions be "applied diligently", yet trial court *non compliance* has hovered near 85% for decades. This petition asks this Court to apply directive and/or instruction, to turn the 85% non compliance into at least an 85% compliance.

### **Argument For Granting This Writ**

#### **A. The 1970 Amendment To FRCP 37 Shows Little Change In Compliance Decades Later**

In 1970, on the heels of a study conducted by the Columbia Project for Effective Justice, the Supreme Court Advisory committee stated;

The present provision of Rule 37(a) that the court shall require payment if it finds that

the defeated party acted without "substantial justification" may appear adequate, but in fact it has been little used.

FRCP 37, Advisory Comm. Note (1970 Amendments).

The 1970 Committee Amendments then shifted the burden from a requirement that expenses be awarded only if the losing party acted *without* substantial justification, to a requirement that expenses be awarded unless the losing party acted *with* substantial justification.

The Advisory Committee's stated goal was "expenses should ordinarily be awarded" under this new language. (Appx J, pg. 116, Blanchard, fn34).

Ten years later, the Department of Justice commissioned a new study conducted by C. Ronald Ellington from the University of Georgia.<sup>1</sup> Mr. Ellington concluded;

examination of the actual motions shows that the "substantial justification" necessary to defeat the award of expenses lacks clear meaning and is unevenly applied. The costs of bringing successful motions to compel were far from being "ordinarily" granted, as the rule change envisioned. (Appx H, pg. 76, Ellington).

In support of the above statement, the DOJ –

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<sup>1</sup>"A Study of Sanctions For Discovery Abuse." Available in the DOJ Library. Washington, D.C. Appx. H.

Ellington report provided statistics gained from written and oral interviews with 194 active and senior federal district judges in 76 of the 94 judicial districts. Appx H, pg. 73 (Ellington) The report highlighted that the practical application of Rule 37 sanctions was failing the Advisory Committee's goal that sanctions become the norm. Ellington found expenses were "seldom," "almost never" or "never" imposed 86.3% of the time by responding judges. (Appx H, pg. 86, Ellington).

This Supreme Court in at least two rulings, has underscored the necessity of compliance.

Rule 37 sanctions must be applied diligently both "to penalize those whose conduct may be deemed to warrant such a sanction, [and] to deter those who might be tempted to such conduct in the absence of such a deterrent." *National Hockey League v. Metropolitan Hockey Club*, supra, at 643.

*Roadway Express, Inc. v. Robert E. Piper, Jr., et al.*, 100 S.Ct. 2455 (1980) citing *National Hockey League v. Metropolitan Hockey Club*, 427 U.S. 639, 643 (1976).

The Supreme Court has likewise enabled clear meaning to the term "substantial justification." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988).

However, even these orders, according to ongoing studies, have made little impact.

A later study in the 1980's and updated in 2008 by the American College of Trial Lawyers in Newport Beach, (ACTL) in conjunction with IAAL, continued to show the meager rate of compliance. They stated only a 15% compliance rate. (Appx J, pg 117, Blanchard fn36).

However stated, the fact is about 85% of litigants in our courts do not have the benefit of this most beneficial rule intended to penalize and deter discovery abuse and level the playing field for all.

**B. The Question Of Whether District Courts Must Apply Rule 37 Sanctions Is Vitally Important To Litigants Across The Country**

From studies by the DOJ, to independent lawyer groups, to educational law review studies, courtroom application of Rule 37 sanctions, as intended by the Advisory Committee, and in Supreme Court orders, is lacking. The goal to be achieved with this petition for a writ of certiorari, is to turn around an 85% non-compliance record, to at least an 85% compliance record.

Beginning in 1992, Petitioner Grober spent eight years and hundreds of thousands of dollars inventing a device to stabilize motion picture and video cameras for filming on the water. The device removes the pitch and roll motion imparted by wave motion, leaving the camera stabilized as if it was on a tripod on solid ground.

Petitioner Grober applied for, and received U.S. Pat. # 6,611,662. Petitioner's invention, the

Perfect Horizon Camera Stabilization System, won an Emmy Award in 2004, and the coveted Academy Award for Scientific and Engineering Achievement in 2006. Petitioner created a company for renting his Perfect Horizon to film companies. He began to employ local men and women in all aspects of growing a small entrepreneurial business, including ongoing R&D, developing new IP, and creating well-paying, film production tech jobs.

The U.S. Navy also came knocking. Petitioner helped Navy R&D labs such as SPAWAR, in stabilizing camera systems for the newly minted unmanned vessel capabilities that were quickly unfolding as the U.S. has strived to stay ahead of foreign threats to our national security.

In 2003, Respondent Mako Products, Inc. (MPI), decided that Petitioner Grober's patented camera stabilization system was ripe for stealing. They surreptitiously hired Petitioner's employee to hand over system components, trade secrets, and help Respondent design a competing stabilizer.

This set up the instant patent infringement suit, filed in October 2004. Unknown to Petitioner, Respondent counsel, Brian Warwick and Janet Varnell, husband and wife litigation team for MPI, had financially invested \$40,000 in MPI's start-up.

Petitioner's suit for patent infringement set in motion an onslaught of divisive filings to bring Petitioner financially to his knees. These included Anti-Trust, California Unfair Practices CA: Bus & Prof Code 17500 et seq., California Unfair

Competition Law, 17200 et Seq. and Defamation in both federal and Florida state courts. (Appx C).

Relevant here is the massive discovery abuse, including refusals to provide vast numbers of relevant documents. Respondent counsel, Brian Warwick further ordered Respondent's two corporate officers not to enter the deposition room after Petitioner, his counsel, and an expert, flying from California, arrived with a local court reporter and videographer at the Florida Respondent's office. (Grober v. Mako, 2:04-cv-08604-JZ-DTB, Dkt. 229).

The depositions thus blocked, Petitioner and his company, Voice International Inc., then filed a motion to compel. The court later ordered the depositions rescheduled, but failed to award a single dollar for Rule 37 mandated costs of the successful motion, nor sanctions to compensate over ten thousand dollars in legal fees, flights, hotels, court reporter and videographer fees incurred.

Later in the case, with a vast number of key documents unaccounted for, and Respondents continuing to flaunt the Magistrate's discovery order, Petitioner and his company made a motion directly to the district Judge. He then ordered Respondents to produce the documents or face sanctions (Appx E).

Respondents, in just days, turned over 9,383 emails they had withheld over seven years (Appx F).

The Court's next order stated that Respondents had met their obligations (Appx G). No costs nor sanctions were assessed. Respondents'

only statement of justification alluded to an internal discussion on if the 9,383 emails were Attorney Client Privileged.

The court never asked for, nor reviewed a single email for verification. No privilege log had ever been created, much less provided to the Court. Respondents took no actionable measures that could have resulted in a reduction, even to zero as in this case, of the mandated expense sanction. Petitioner's review of the 9,383 emails found only a few even mentioned counsels' name, much less any that were communications between attorney and client.

The Court simply ignored the Rule 37 expense award mandate. The discovery, produced years late, was worthless by that point as Respondents had declared bankruptcy to avoid imminent trial. The withheld discovery did however show an additional \$183,000 in hidden rentals. It also showed that Respondents had repurchased their accused infringing stabilization devices in their own private bankruptcy auction, and continued to rent them out. This has triggered the 2<sup>nd</sup> case, CV-08830-JAK-KS, same accused device to the same '662 patent, and now in its 4<sup>th</sup> year. This derivative case, with a different judge, is experiencing the same staggering discovery abuse.

The instant case exemplifies what the Supreme Court, through its Advisory Committee and its own rulings has advocated, that leaving Rule 37 sanctions on the floor fails "to penalize those whose conduct may be deemed to warrant such a sanction, [and] to deter those who might be tempted to such

conduct in the absence of such a deterrent." *National Hockey League v. Metropolitan Hockey Club*, *supra*, at 643.

**C. This Case, In Particular, Covers Multiple Rule 37 Issues**

Relevant, and in further support to grant this writ is that the instant case covers a multitude of Rule 37 failures.

1. Not appearing for deposition. Rule (37(d)(1)(A)(i). (*Grober v. Mako*, 2:04-cv-08604-JZ-DTB, Dkt. 229). Noted earlier, Respondent Counsel, Warwick, ordering MPI's executives not to enter the deposition room. The Magistrate ordered make-up depositions. No sanction was imposed.

2. Failure to produce documents. The includes multiple categories;

a.) Fully granted with no sanctions applied. Rule 37(a)(5)(A). (Appxs. E, F, G).

b.) Partially granted and partially denied. Rule 37(a)(5)(C). The partially denied portion, infringement documents, was rendered moot upon the CAFC Order to vacate and remand the errant district court non infringement Order. (Appx. D). Respondents thereafter refused to correct and supplement their responses, withholding thousands of documents.



c.) Failure to impose sanctions by the Magistrate. Sanctions raised before the district judge who ignored the request. Rule 37(a)(5)(A).

d.) A district judge direct order to produce, then actual production. No sanctions awarded nor reason given to meet Rule 37(a) requirement finding that the losing party acted with substantial justification, or that the expense award would be unjust. (Appx E).

Rule 37. (Appx K).

e.) Rule 37(a)(5)(B) applies if a motion is denied. "If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and *must*, after giving an opportunity to be heard, require [the losing party] to pay ... reasonable expenses including attorney's fees. But the court must not order this payment if the motion was *substantially justified* or other circumstances make an award of expenses *unjust*." (emphasis added)

Herein, even if Respondents claim the motions were denied, then the trial court should have imposed sanctions upon Petitioner absent the same "substantially justified" or "unjust" burden of proof.

The point, as stated by the Advisory Committee Notes, 1970 Amendments, "[E]xpenses should ordinarily be awarded unless a court finds

that the losing party acted justifiably in carrying his point to the court.”

See also Rule 37(a)(5)(B) as cited in Appx. J, pp 115-116, Blanchard, fn 33 & 34).

#### **D. Research Shows Compliance Is Just A Drop In The Bucket**

Ellington states 86.3% of the judges responded that they “seldom,” “almost never” or “never” awarded such costs. (Appx. H, pg 86, Ellington). This percentage, based on 194 active and senior federal district court judges in 76 out of 94 U.S. judicial districts, asserts the additional point that the problem is nationwide and cuts across the entire judicial system. No state or region is outside the norm. The norm is inapposite to the stated intention and Orders of this Supreme Court.

The Law Review Article by Lindsey Blanchard, “Rule 37(a)'s Loser-Pays "Mandate": More Bark Than Bite” (University of the Pacific, McGeorge School of Law, 2013<sup>2</sup>) delves into the pervasiveness of the problem and its prejudicial effect on honest litigants, most notably the little guy/gal. Blanchard’s study lists case after case where attorneys, hundreds at a time polled, have proffered that sanctions for discovery abuse “holds the *most* promise for reducing discovery problems.” This was based on a national survey of counsel in closed federal civil cases (1997).” (Appx J, pg 108, Blanchard, fn9).

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<sup>2</sup><https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1334&context=facultyarticles>

**E. The Supreme Court and Attorneys  
Want Compliance. The Trial Courts  
Are The Missing Link**

The interest to see sanctions imposed as the norm, finds favor directly from attorneys. The National Center for State Courts ("NCSC"), in the early 1990's, interviewed over 200 attorneys from Boston, Kansas City, New Haven, and Seattle. They suggested the imposition of costs and sanctions as the "single measure" the courts should take to improve the discovery process. (Appx J, pg 107, Blanchard fn6).

One key reason for the Supreme Court to accept any writ of certiorari is a conflict in how courts of last resort, of different locals, deal with an issue. What could be a greater conflict than when the majority of trial courts nationwide acknowledge that they fail to follow the dictates of the Supreme Court, the highest court of last resort?

To the unfortunate 86.3% of litigants who have become the norm in courtrooms across the country, they are unfairly prejudiced and penalized when the mandate of Rule 37 are ignored and discovery abuse goes unchecked.

[These behaviors] "often result from a desire to wear down an opponent who has inferior litigating resources or exert settlement leverage unrelated to the merits of the dispute."

(Appx J, pg 129, Blanchard fn92)

Also right on point, the Columbia Law School Project for Effective Justice's survey indicated that large corporations used discovery inappropriately to force small businesses to settle. *Id.*

One court recently put it more succinctly: "The purpose of court-imposed sanctions is to stop reinforcing winning through obstruction." *Security National Bank of Sioux City, Iowa v. Abbott Laboratories*, 299 F.R.D. 595, 597 (N.D. Iowa 2014).

The American Bar Foundation supported a 1980 study by Hastings College of Law Professor Wayne Brazil. Interviewing 180 civil litigators in Chicago, he noted "a disturbing picture of the way the discovery system functions." One attorney's response stated, "The rules are excellent. The enforcement of the rules stinks." (Appx J, pg 110, Blanchard, fn 15 (supra note 3 at 797)).

If there is one reason, in a nutshell, why this petition for certiorari should not be overlooked or denied, the above statement represents it to the core.

A vast majority of states have adopted identical or nearly identical forms of Rule 37. Clarification by the Supreme Court of the method to achieve that intent in trial court practice will flow through the veins of the entire court system.

#### **F. Presently The Little Guy And Gal Don't Stand A Chance**

As former U.S. Supreme Court Justice Lewis F. Powell, Jr. noted in 1978:

Discovery as it now operates may enable the party with the greater financial resources to prevail simply by the threat or reality of exhausting the available resources of the weaker opponent. Settlements are coerced, and persons or businesses of comparatively limited means pay unjust claims, or refrain from pursuing just claims, simply because they cannot afford the cost of litigation. The mere threat of delay and unbearable expense thus denies justice to many actual or prospective litigants. (Appx. J, pg 130, Blanchard, fn94).

Lindsey Blanchard expounds that often, failure to sanction ultimately forces the “little guy” to settle.

While sanctions may not discourage Goliath from ignoring his discovery obligations in this situation, there is still an immense benefit to David from strict enforcement of Rule 37(a) because an award of expenses, including attorney's fees, allows him to stay in the game. The only way David will ever realize this benefit, however, is if the judiciary begins to enforce the Rule consistently and puts an end to the vicious cycle of abuse and delay.

(Emphasis added) (Appx. J, pg 132, Blanchard).

Wherein the above is true, an 86.3% non-compliance rate, even double or triple that, would still put compliance under 50%.

The 2008 ACTL/IAALS study, which was later augmented in 2009 – 2010 cited “approximately half of the survey respondents in the 2008 believed discovery abuse occurs in nearly every case. 40% of the respondents indicated that parties “often” or “almost always” “ignore or violate discovery rules;” more than 60% of the respondents noted that parties “often” or “almost always” “harass or obstruct the opposition.” (Appx J, pg. 117, Blanchard, fn36).

These statistics comport with former U.S. Supreme Court Justice Lewis F. Powell, “settlements are coerced ...delay and unbearable expense thus deny justice to many actual or perspective litigants.”

In another study, Schroeder & Frank, they stated that their direct observation, although limited, that discovery controversies plummet when sanctions are used. (Appx J, pg. 142, Blanchard fn142).

#### **G. The Presumption Should Be That Rule 37 Sanctions Are Automatic**

Research underscores the reason for the instant petition.

Thus, when the losing party has engaged in obstructionist behavior or needlessly raised costs, the award of expenses should be an ordinary, if not automatic, occurrence. That was the

Advisory Committee's intent, to which the judiciary should adhere. (Appx J, pg. 136, Blanchard).

Research likewise indicates the benefit on courtroom overload.

“Proper enforcement of Rule 37(a) adds the "bite" that has been missing from the Rule and should lead to the result the Advisory Committee intended: fewer instances of discovery abuse. As discussed above, the failure to enforce Rule 37(a) leads to a vicious cycle of abuse among litigants and an ever-increasing burden on the courts. However, if the judiciary is willing to strictly adhere to the spirit of Rule 37(a) and to impose existing ethical standards on attorneys, it can eliminate much of the time and money wasted through discovery abuse. (Appx J, pg. 142, Blanchard fn139).

Indeed, the presumption in favor of imposing an expenses sanction means that a court needs to consider whether the sanction is inappropriate only if the losing party comes forward with evidence to rebut the presumption.” (Appx J, pp 140-141, Blanchard)

This continues to speak to the benefit of reversing an 86.3 % non-compliance rate.

In research by Mark S. Cady the benefits are many.

...the purposes of discovery sanctions are to prevent a party from profiting from its failure to comply with discovery rules, ensure compliance with the rules, and deter other litigants from engaging in dilatory discovery conduct.

(Appx J, pg. 112, Blanchard fn 20). Also, *Cine Forty-Second St. Theatre v. Allied Artists Pictures Corp.*, 602 F.2d 1062, 1066 (2d Cir. 1979). This again comports to the Supreme Court, "to penalize ... [and] to deter", cited in *National Hockey League*.

There is little doubt that Rule 37(a) is well written. "91% of judges polled in the Department of Justice 1977-1978 study stated that "Rule 37 [is] adequately written" (Appx J. pg. 121, Blanchard). The rule is understood, why is it ignored?

#### **H. Trial Court Failure To Impose Expense Awards Has No Unity Of Cause, Just Accepted Practice**

Research, as noted in Appx J, pg 122, fn57), shows no pervasive set of reasons why judges, nationwide, shy or ignore Rule 37 compliance. Common responses include the process is time consuming, takes judicial resources, and that it isn't their job. This runs headlong into research, noted earlier, that compliance could well reduce the workload, result in more litigant adherence to discovery rules, and mitigate discovery motions. If



the non-compliance rate of Rule 37 were reversed and became an 86% compliance rate, courtroom practice may look quite different. One thing is certain, an 86% compliance rate would more closely resemble the dictates of this Court and Congress. Non-compliance has simply become the accepted practice. There appears no specified intention.

### **I. The Goal Of This Petition For A Writ Of Certiorari**

The Advisory Committee's advisements, and this Supreme Court, in multiple cases state that Rule 37 sanctions should be the norm. They are not.

Research shows that the Supreme Court, as the highest authority, and attorneys as the practical practitioners, both make strong statements requesting Rule 37 sanction compliance. In the center, trial judges, for no defined logical or illogical reason, just out of common stance and habit, are a disconnect between the Rule and practice.

Petitioner commenced litigation 14 years ago solely to bring a set of technical facts before a judge and/or jury. The goal, adjudicate infringement whichever way the scales of justice weighed.

The failure of adherence to Rule 37's mandate, begat exactly what the pre-1970 amendment Columbia Law School survey cited, discovery abuse being the sword by which "one litigant wears down an opponent with inferior litigating resources." (Appx J, pg. 129, Blanchard, fn92).

The onslaught of discovery abuse required Petitioner's continued motions to compel discovery, and severely hampered all aspects of case progress. Fourteen years of litigation took its toll and Petitioner's company finally shuttered in financial ruin. Honest employees lost their jobs as further collateral damage.

Petitioner, experiencing the devastation of his Academy Award winning company through discovery abuse, was stunned to discover the plethora of research from the Department of Justice, University Law Reviews, the IAALS and others, all crying out the mischief of Rule 37 non-compliance.

For that reason, Petitioner brings this writ for certiorari. The goal, give this Court the opportunity, if it wishes, to correct the problem.

Everyone who enters our courtrooms should be granted the favor of a level playing field and compliance with a well-written and simply stated Rule 37, such as Rule 37(a) that reads:

**must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if ... (then listed exceptions)**

The exceptions pertaining to "if", are clear.  
C. Ronald Ellington pinpoints the 1970 Amendment Committee's intention because he targets the requirement, "'substantial justification" necessary to defeat the award of expenses".

Rule 37 non-compliance history goes back decades. It seldom rises to the surface of judicial appeal because who is left to raise it? Those damaged, have lost the fight, if not the spirit to fight. Their resources are often in shreds, their "just claims" are often nightmares of lost companies and stressed families.

How likely is it that this issue, side-stepped twice by the Court of Appeals for the Federal Circuit, will come again before the Supreme Court?

If on our trafficked roads, motorists suddenly ignored red lights 86.3% of the time, the damage, deaths, pain and suffering caused would be a national tragedy on day one.

If our measles and polio vaccines were likewise suddenly ineffective 86.3 % of the time, our belief in the efficacy of our entire medical system would crumble.

Why is it that 86.3% disobedience to our highest court in the land, the Supreme Court, on an issue that cuts a vast swath through virtually all courtrooms, with likely impact on a majority of litigants, is simply viewed as a statistic to be ignored?

This Court is requested to grant certiorari so that it can apply instruction, procedure, whatever it deems necessary that will comport to compliance of its own mandate and reverse the 86.3% non-compliance rate to at least 86.3% compliance of this most important, yet ignored Rule 37.

If not now, when?

### CONCLUSION

For the foregoing reasons, this Court should grant this petition for a writ of certiorari.

June 1, 2019

Respectfully submitted,

/David Grober/

David E. Grober, Pro Se  
578 Washington Blvd., #866  
Marina del Rey, CA 90292  
310-951-1110  
Davidgrober1@gmail.com

Petitioner, being pro se, realizes that pro se status may be a strike against granting this writ for certiorari. If this petition is granted, Petitioner will proceed with Supreme Court admitted counsel for briefing and oral argument.