

1 TAI was a resident was \$43,200, against which TAI has paid \$21,258.66, and paid \$20,000 in
2 improvements, leaving only nominal actual damages.

3 **3. CRYSTAL v. BUSH – Loans For ACS Stock Purchase**

4 This present action is just one of two¹ cases that have been filed against the Bush
5 defendants by Steve Crystal, individually and through various entities that he owns. The other
6 case is entitled *Crystal v. Bush, et al.*, case #CV16-00865, (hereinafter referred to as the "Crystal
7 Action") and is currently pending in Department Four before the Honorable Connie Steinheimer.
8 The Crystal Action involves a series of loans to the Bush defendants totaling more than \$5
9 million, used to purchase a controlling interest in a start up company known as Automated Cash
10 Systems (ACS). Crystal and his various entities have sued the Bush defendants for alleged
11 breaches of those notes. During the course of the events involved in that case, the stock
12 purchased by one of the Bush defendants was transferred back to Crystal, and there is a dispute
13 as to the ownership of that stock, with Crystal claiming that it is now his, and the Bush
14 defendants claiming a right thereto. After the stock transfer, Crystal caused the closure of ACS,
15 and transferred all of its assets to a newly formed a company, Automated Cashless Systems
16 (ACLS), which now Crystal controls. The Bush defendants claim that this action constituted
17 fraud on the part of Crystal, ACS and ACLS.

18 The loans in the Crystal action were used by a related entity, Tyche Acquisitions Group
19 (TAG), to purchase a controlling interest in ACS. The loans were secured by the ACS stock, a
20 personal injury case that had been filed on behalf of Mr. Bush, and various pieces of art,
21 including those which had been present at the Virginia Street property. When the loans went
22 into default, the first step taken in the Crystal Action was to seek a temporary restraining order,
23 and ultimately a Preliminary Injunction, prohibiting Mr. Bush, and any related legal entities,
24 from selling, offering to sell, transferring or encumbering any of the pieces of art discussed
25 above. In essence, this action precludes Mr. Bush from generating any form of income or funds
26 that could be used to address settlement of either this case or the Crystal action. However, it is
27

28 ¹ In actuality, there were originally three (3) cases, but one of the cases, *Automated Cash
Systems v. Bush, et al.*, was dismissed when its claims were consolidated into the Crystal Action.

1 the contention of the Bush Defendants that the agreements between the parties resulted in the
2 ACS stock being withdrawn from consideration as collateral for the loan, and that upon
3 repayment of the debt owed to Crystal, they would have to be transferred back to TAG.

4 In order to facilitate the pay off to Crystal, and obtain the return of the ACS stock, it
5 would be necessary for Mr. Bush to secure a willing investor to step into his and/or TAG's
6 position upon paying off the debt to Crystal. Several such persons exist, and are ready, willing
7 and able to take that exact action. However, to do this, there would have to be a joint resolution
8 of not only the Crystal action, but the claims in this case as well. Thus, defendants proposed to
9 Crystal, who is both the plaintiff in the Crystal action and the individual that controls the entities
10 in this case, that both cases be discussed together at the upcoming settlement conference on
11 February 9. Crystal refuses to do so, which would render the settlement conference in this case
12 meaningless, as Mr. Bush would have no means of generating any funds to settle the claims in
13 this matter.

14 It is the position of the Bush defendants that Crystal is refusing to negotiate in the Crystal
15 action in order to solidify his position, while accruing interest charged by Crystal at a rate of
16 25% per annum, wherein he has effectively taken over control of ACLS, a company that
17 ultimately will have far more value than the total of all the loans and debts owed to Crystal. In
18 other words, he will have taken all of the stock previously owned by TAG, converting it to his
19 own use, and will still be able to collect the debts owed for the purchase of that stock by selling
20 Mr. Bush's artwork. In other words, Mr. Bush and TAG get nothing, yet have to pay Crystal in
21 excess of \$8 million.

22 Accordingly, to ensure that such an inequitable result does not occur, it is necessary to
23 compel the consolidation of this case with the Crystal action, solely for purposes of settlement
24 discussions at the upcoming settlement conference on February 9, 2017, before the Honorable
25 Judge Russell. Defendants herein pray that such an order be issued forthwith.

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Affirmation

The undersigned hereby affirms that the foregoing document does not contain the social security number of any person.

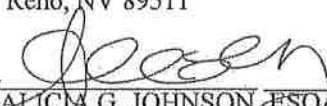
Dated: February 6, 2017

PICONE & DEFILIPPIS, A P.L.C.
625 N. 1st Street
San Jose, CA 95112

By: /s/ Steve M. Defilippis
STEVE M. DEFILIPPIS, ESQ.
CA Bar No. 117292 (Pro Hac Vice)
Attorneys for Defendants
RONALD G. BUSH
TYCHE ART INTERNATIONAL, INC.

Dated: February 6, 2017

JOHNSON LAW PRACTICE, PLLC
611 Sierra Rose Dr., Suite A
Reno, NV 89511

By: 
ALICIA G. JOHNSON, ESQ.
Nevada State Bar No. 10093
Attorneys for Defendants
RONALD G. BUSH
TYCHE ART INTERNATIONAL, INC.

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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that on February 6, 2017, I caused the foregoing document to be served to all parties to this action by:

☐ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Reno, Nevada [NRCP 5(b)(2)(B)]

☐ Hand-delivery [NRCP 5(b)(2)(A)] via RENO/CARSON MESSENGER SERVICE

☐ Facsimile

☐ Federal Express, UPS, or other overnight delivery

☒ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

W. Chris Wicker, Esq.
Nevada State Bar No. 1037
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, Nevada 89511

/s/ Alicia G. Johnson
ALICIA G. JOHNSON

FILED
Electronically
CV17-00281
2017-03-28 06:43:34 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6021939 : pmsewell

EXHIBIT “3”

EXHIBIT “3”

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CIP REAL ESTATE SO. VIRGINIA LLC,
a Nevada limited liability company; CIP
REAL ESTATE LLC, a Nevada limited
liability company,

Case No. CV16-00948

Dept. No. 1

Plaintiffs,

vs.

RONALD G. BUSH aka RONNIE G. BUSH,
an individual; TYCHE ART INTERNATIONAL,
INC., a Nevada corporation; and DOES 1-5, inclusive;

Defendants.

ORDER

On February 6, 2017, Defendants RONALD G. BUSH and TYCHE ART INTERNATIONAL, INC., by and through counsel of record, PICONE & DEFILIPPIS, A P.L.C. and JOHNSON LAW PRACTICE, filed a *Defendants' Motion to Consolidate Actions for Purposes of Settlement Conference Only*. On February 8, 2017, Plaintiff, CIP REAL ESTATE LLC ("CIP"), by and through counsel of record, WOODBURN AND WEDGE, filed an *Opposition*. The settlement conference is scheduled for February 9, 2017, before the Honorable Judge Russell.

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The Court finds the motion is untimely and finds the Department 4 case should not be added to the scope of the settlement conference. Accordingly, and good cause appearing, *Defendants' Motion to Consolidate Actions for Purposes of Settlement Conference Only* is hereby DENIED.

IT IS SO ORDERED.

DATED this 8th day of February 2017.


JANET J. BERRY
District Judge

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court
3 of the State of Nevada, County of Washoe; that on this 2 day of February 2017, I deposited in the
4 County mailing system for postage and mailing with the United States Postal Service in Reno,
5 Nevada, a true copy of the attached document addressed the individuals listed herein and/or
6 electronically filed the foregoing document with the Clerk of the Court by using the ECF system
7 which will send a notice of electronic filing to the following:

8 VIA ECF

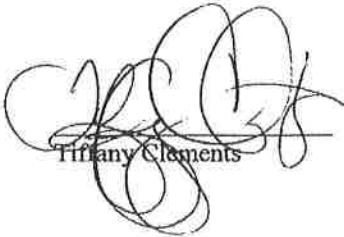
9 Dane Anderson, Esq.

10 Alicia Johnson, Esq.

11 Steve Defilippis, Esq.

12 Walter Wicker, Esq.

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Tiffany Clements

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Clerk of the Court
Transaction # 6021939 : pmsewell

EXHIBIT “4”

EXHIBIT “4”

BILL OF SALE, RIGHT TO REPURCHASE AGREEMENT, and IRREVOCABLE
INSTRUCTIONS TO SELLER'S ATTORNEY FOR PAYMENT OF FUNDS

November 26, 2014

Seller: RON G. BUSH and/or Renaissance Masters, LLC, Classic Fine Art, LLC or affiliated companies
5000 Smithridge Dr., Ste. D11-68, Reno, NV 89502

Buyer: JIM MCGOWEN, TRUSTEE, McGowen & Fowler, PLLC
Dallas, Texas

Information On Items Sold:

1. #9 of 9 Bronze Casting of Michelangelo St. Peter Pieta'
2. 1 Painting credited to have been painted by Jackson Pollock, identified as #B2
3. 1 Painting credited to have been painted by Jackson Pollock, identified as #Q2

For consideration of \$500,000 to be paid by wire transfer to the below identified bank account for delivery to Ron Bush upon execution of this document on November 26, 2014:


Wells Fargo Bank
Address: 4780 Caughlin Parkway, Reno, NV 89519
Routing: 121000248
To the Account of Ronnie Gene Bush, Acct: # 6123688696

I, the undersigned Seller, Ron Bush on behalf of myself and Renaissance Masters, LLC, Classic Fine Art, LLC or affiliate companies, hereby sell the above described three pieces of art to Buyer, and affirm that I have the authority to sell and transfer the above three described pieces of art and that the information provided in this bill of sale is true and correct. The three pieces of art are sold free and clear of debt with good title and interest to the Buyer named above.

Buyer and Seller further agree that Buyer hereby gives Seller the irrevocable right to buy the three above-listed pieces of art back from the Buyer for the total sum of \$3,500,000 as long as Seller pays the full \$3,500,000 to Buyer to complete the buy-back of the three pieces of art immediately upon sale of any of the art or on or before March 1, 2015, whichever occurs first.

Seller hereby acknowledges that the attached document is his Irrevocable instruction to the law firm of Picone and Defilippis in San Jose, California, to pay Buyer the total sum of \$3,500,000 directly from that firm's escrow of the sale of up to six Jackson Pollock paintings that Seller is negotiating with a European buyer and expecting to close before the end of year 2014. This instruction is contingent upon Buyer wiring the above-described \$500,000 upon receipt of the executed Bill of Sale on November 26, 2014. Buyer acknowledges that this \$3,500,000 payment will constitute full payment from Seller to buy back the 3 pieces of art described above free and clear with no encumbrances or liens.

Signature of Seller:  November 26, 2014
Ron G. Bush

Signature of Buyer:  November 26, 2014
Jim McGowen, Trustee

IRREVOCABLE INSTRUCTION TO PICONE & DEFILIPPIS LAW FIRM
TO PAY FUNDS FROM ESCROW OF ART SALE

November 26, 2014

I, Ronnie Gene Bush hereby instruct Steve Defilippis, Picone & Defilippis, San Jose, CA, as follows:

- 1 I have been negotiating the sale of up to six Jackson Pollock paintings to a buyer referred to herein as "European Buyer"
- 2 Based on representations by Dr. Jorg Richardi of the German Law Firm Haver & Mailander, Lenzhalde 83-85, 70192 Stuttgart, Germany, I believe the sale will close before the end of this year, 2014
- 3 I have retained the services of the Law Offices of Picone & Defilippis to transact the legal documents and escrow of funds from the aforementioned anticipated sale of art.
- 4 I hereby give the irrevocable instructions to Steve Defilippis for disbursements from the funds received from the above described sale of art, immediately upon receipt of the funds from sale of the art, but before March 1, 2015, whichever occurs first.
 - a \$7,500,000 to be paid to the party named as payee for money still owed on Jackson Pollock paintings, #C5, #C6, #C7, #E12.
 - b Legal fees as agreed to the law firm of Picone & Defilippis.
 - c \$3,500,000 to Jim McGowen, Trustee, McGowen & Fowler, PLLC.
 - d If the sales price of the art sold is between \$25M to \$129M, I will direct 35% of those proceeds to be paid to Jim McGowen, TRUSTEE for the purchase of Michelangelo Bronzes.
 - e If the sales price of the art sold is at least \$130,000,000 as expected, I will direct \$75M of those proceeds to be paid to Jim McGowen, TRUSTEE for the purchase of Michelangelo Bronzes.
- 5 I hereby acknowledge that Steve Defilippis' agreement to follow my instructions in no way serves as any guarantee that the above mentioned anticipated sale of art will actually happen. This instruction document is merely my instructions to Steve Defilippis in the event that the aforementioned sale of art is transacted and Defilippis agreeing to distribute the money



Ron G. Bush November 26, 2014

I Agree to Follow Mr. Bush's above Instructions.

Steve M. Defilippis November 26, 2014

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Transaction # 6021939 : pmsewell

EXHIBIT “5”

EXHIBIT “5”

From: rbush6@aol.com
To: JMoly@aol.com; globalu@charter.net
Subject: McGowen Authorize
Date: Friday, November 28, 2014 12:43:18 PM

Mr. McGowen,

Please send me an email stating to the effect the following:

I, Jim McGowen, Trustee, hereby authorize Ron Bush, for the purpose of selling the below described items, to represent that he owns the Jackson Pollock paintings B2 and Q2 and the #9 of 9 Pieta through and until the expiration date of our "Sale and Repurchase Agreement."

Logistically, no one needs to know these pieces were ever actually purchased by you as long as I pay you the \$3,500,000 as agreed. All the escrow instructions state is that Defilippis is to pay you \$3.5M upon my sale of Jackson Pollock paintings.

Thank you.

cc: Ronald Welborn

Make it a GREAT Day.

Ron Bush, CEO
Renaissance Masters, LLC
renaissancemasters.com
(M) 707-479-4400

From: JMcGow@aol.com
To: rbush6@aol.com
Subject: Letter of Authorization
Date: Friday, November 28, 2014 2:16:37 PM

I, Jim McGowen, Trustee, hereby authorize Ron Bush, for the purpose of selling the below described items, to represent that he owns the Jackson Pollock paintings B2 and Q2 and the #9 of 9 Pieta through and until the expiration date of our "Sale and Repurchase Agreement."

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CV17-00281
2017-03-28 06:43:34 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6021939 : pmsewell

EXHIBIT “6”

EXHIBIT “6”

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN B. CRYSTAL, Trustee of The)
Barbara L. Crystal Decedent Trust;) Case No.: CV16-00865
STEVEN B. CRYSTAL, individually) Dept. No.: 4
Plaintiffs)
v.)
RONALD G. "RON" BUSH, and individual;)
TYCHE ACQUISITIONS GROUP, INC., a)
Nevada corporation; and DOES 1-20,)
Inclusive,)
Defendants.)
_____)

RECORDED DEPOSITION OF RONNIE GENE BUSH

Taken on June 29, 2016

At 1:05 p.m.

6100 Neil Road, Suite 500

Reno, Nevada 89511

1 APPEARANCES:

2 For the Plaintiff: CHRIS WICKER, ESQ.

3 WOODBURN and WEDGE

4 6100 Neil Road, Suite 500

5 Reno, Nevada 89511

6

7 DANE W. ANDERSON, ESQ.

8 WOODBURN and WEDGE

9 6100 Neil Road, Suite 500

10 Reno, Nevada 89511

11

12 STEVEN B. CRYSTAL

13 Plaintiff

14

15 For the Defendants: STEVE DEFILIPPIS, ESQ.

16 PICONE & DEFILIPPIS, ATTORNEYS AT LAW

17 625 North First Street #1

18 San Jose, California 95112

19

20 ALICIA JOHNSON, ESQ.

21 JOHNSON LAW PRACTICE, PLLC

22 611 Sierra Rose Dr,

23 Reno, Nevada 89511

24

25

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1 Q: Okay. Now, when was the Monaco show? Just the
2 year is good enough.

3 A: Yeah, last year, June or July.

4 Q: 2015?

5 A: '15, right.

6 Q: Okay. And when did you borrow on B2 and Q2?

7 A: I don't remember if it was before or after the
8 show.

9 Q: And that's the \$500,000 loan that Mr. McGowan is
10 involved in?

11 A: Yes.

12 Q: What are the terms of that transaction?

13 A: 500,000 and then when sales are done, he's going
14 to get three -- \$3 million back.

15 Q: McGowan?

16 A: Yeah.

17 Q: Do you know if he's acting for a client or is he
18 acting for his own interest?

19 A: I'm told that transaction was on behalf of a
20 client.

21 Q: And so you borrow 500,000 and did it come from Mr.
22 McGowan's trust account?

23 A: Yes.

24 Q: And the deal is that when those paintings are
25 sold, Mr. McGowan will get \$3 million?

1 A: Yeah. I was supposed to pay him back, you know,
2 in a short time, but that didn't happen.

3 Q: Does he have right to foreclose on the paintings?

4 A: I would certainly think so.

5 Q: Is there -- in written agreement?

6 A: Yes.

7 Q: And do you have that?

8 A: Yes.

9 Q: What does the written agreement say as far as what
10 happens if you don't pay back the \$500,000?

11 A: It's actually written up as a sale.

12 Q: Well, what gives you the right to -- to get them
13 back?

14 A: What gives me the right to buy them back?

15 Q: Well as I understood it that you could sell them
16 and he would get \$3 million, but you could still sell them, is
17 that right?

18 A: Yes.

19 Q: Okay. Who owns them then?

20 A: Technically on paper, he owns them.

21 Q: McGowan.

22 A: It was done -- it was a done as a sale and buy
23 back, not as a loan and a pay back.

24 Q: So, would it be accurate to say you have an option
25 to buy them back?

1 A: Yeah. I'm -- I'm not using that word as freely
2 now because of things that have happened in this. But from the
3 layman's point of view, yeah.

4 Q: Let me just ask you, your understanding of the
5 transaction is that if -- if you're able to sell the paintings,
6 \$3 million of the sales price goes to Mr. McGowan?

7 A: Yeah. And it doesn't matter whether that money
8 comes from those particular paintings.

9 Q: Okay.

10 A: Because there's -- there's also Michelangelo's,
11 you know, involved. And wherever the money comes from it
12 doesn't matter where money comes from.

13 Q: So, you could buy back the paintings for \$3
14 million?

15 A: That's right. And -- and the Pietà. It's all in
16 one transaction.

17 Q: Okay. Tell me about the transaction that you just
18 described, would that involves the Pietà.

19 A: It's all three tied together.

20 Q: Okay. Are we talking about the transaction of Mr.
21 McGowan?

22 A: Yes.

23 Q: Okay. And how is the Pietà involved in that?

24 A: It's just -- it's in the same document it was as
25 the \$500,000 loan. And at that time, we were in the middle of

1 getting the authentication done on the paintings, negotiating
2 with the foundation to buy Michelangelo pieces and it was a
3 \$500,000 loan.

4 Q: So, what is the deal on the Pietà then?

5 A: Same thing. The 3 million gets all three pieces
6 free and clear back.

7 Q: So, is it -- are you saying that you sold the two
8 Jackson Pollock's B2 and Q2 and the Pietà to Mr. McGowan for
9 \$500,000?

10 A: I'm saying that's what the document says, it's a
11 loan.

12 Q: Okay. But the document would say that?

13 A: The document would say sale. Just like when I did
14 hard money loans in real estate.

15 Q: Is that the Pietà that sits in the building in
16 South Virginia?

17 A: Yes.

18 Q: What about Mr. Crystal's interest in that? How is
19 that handled?

20 A: He has a -- he has 2.1 million coming from the
21 sale. Plus now, he has, well -- I don't know what he has now,
22 but the original deal was 2.1 million and 20% of the profit.

23 Q: And that was increased to 50% interest rate?

24 A: Umm, yes.

25 Q: And was that disclosed to Mr. McGowan that Mr.

1 Crystal has a 50% interest in the Pietà?

2 A: Hmm. No, I don't think I told Mr. McGowan what --
3 I didn't tell him about Mr. Crystal's royalties or percentage
4 ownerships anymore than I told him about other royalties that
5 are coming from the pieces that I'm doing.

6 Q: Does the agreement with Mr. McGowan, does it, on
7 its face appear to sell the entire interest of the Pietà to Mr.
8 McGowan?

9 A: On its face, yes.

10 Q: Where are the two Jackson Pollock's paintings
11 located now?

12 A: I don't know exactly where they are. I was back
13 there three or four months ago and took samples to Geneva or to
14 -- I don't remember if I took those samples to Zurich. No, to
15 Geneva and I took the samples from Mr. Welborn's house.

16 Q: Okay. So, the last time you saw them at Mr.
17 Welborn's house?

18 A: Yes.

19 Q: Do you have any indication that - its Mr. Welborn
20 had paid the \$500,000 for the paintings and the Pietà?

21 A: I don't know. I -- I always can go by what they
22 say and they say it's not Mr. Welborn.

23 Q: But Mr. Welborn had possession of them the last
24 time you talk -- the last time you saw them?

25 A: He went and got them when I told them I needed to

1 take samples for testing. I said, where -- can we do it at the
2 museum? Because I thought they were still at the museum? And
3 he says, no, we can't cut things from them at the museum. And I
4 said, "Well, where do you want me to meet you?" And he said,
5 "Meet me at the ranch." So, I met him, I videoed it, you know,
6 so there's a record of cutting off very tiny piece of paper off
7 at each of this. That's the last time I saw them.

8 Q: When was that?

9 A: Three or four months ago.

10 Q: Do you have a copy of the video?

11 A: Yes.

12 Q: Have those pieces that you cut off been tested?

13 A: Yes.

14 Q: And do you have the test results?

15 A: Yes.

16 Q: What are the test results?

17 A: Well, really inconclusive on the paper and that
18 really didn't show anything. I've also had fractals done, so I
19 guess I need to say, not only did I take pieces, but I took high
20 quality pictures for fractal analysis.

21 Q: And that's from the guy in the northwest that does
22 fractals?

23 A: Yes.

24 Q: What's his name?

25 A: Professor Taylor.

1520
W. Chris Wicker, Esq.
Nevada State Bar No. 1037
Dane W. Anderson, Esq.
Nevada State Bar 6883
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, Nevada 89511
Telephone: 775-688-3000
Facsimile: 775-688-3088
cwicker@woodburnandwedge.com
danderson@woodburnandwedge.com

Attorneys for Plaintiff, Steven Crystal

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN B. CRYSTAL, individually and as
Trustee of The Barbara L. Crystal Decedent
Trust,

Plaintiff,

v.

JIM MCGOWEN, Trustee of McGowen &
Fowler, PLLC and/or DOES 1-10, inclusive;
and DOES 11-20,

Defendants.

Case No.: CV17-00281

Dept. No.: 6

**DECLARATION OF DIANNE
KELLING IN SUPPORT OF
OPPOSITION TO DEFENDANT'S
MOTION TO QUASH SERVICE AND
DISMISS CASE AND
REQUEST FOR SANCTIONS**

1. I am an employee of Woodburn and Wedge and assistant to Dane W. Anderson, Esq. This declaration is in support of Plaintiff's Opposition to Defendant's Motion to Quash Service and Dismiss Case and Request for Sanctions ("Motion to Quash").

2. On February 9, 2017, I took the Complaint and Summons in the *Crystal v. McGowen* matter to the Second Judicial District Court for filing and issuance of the Summons so that the two could be served upon Jim McGowen, who happened to be present at Sunshine Litigation Services that day.

3. After I left the courthouse with the filed Complaint and issued Summons, I drove straight to Sunshine Litigation Services, located at 151 Country Estates Circle, Reno,

1 Nevada, to serve the Summons and Complaint upon Jim McGowen.

2 4. Mr. Anderson texted me before I arrived at Sunshine Litigation Services to tell
3 me that he was in Room 5. *See* Exhibit 2.

4 5. I arrived at Sunshine Litigation Services shortly before 12:30 p.m. When I
5 arrived, I greeted the receptionist. I then went into Room 5, where Dane Anderson, attorney
6 W. Chris Wicker of Woodburn and Wedge, Plaintiff Steve Crystal, and two other gentleman,
7 were.
8

9 6. While I was in Room 5, Steve Crystal offered to W. Chris Wicker to
10 photograph me serving Jim McGowen. Mr. Wicker did not want a photo to be taken of the
11 service.

12 7. Steve Crystal photographed me in Room 5 holding up the Summons and
13 Complaint which I was there to serve. *See* Exhibit "1." Mr. Crystal took the photograph at
14 12:30 p.m.
15

16 8. W. Chris Wicker left Room 5, and I also left the room. I took a seat in a chair
17 at a conference table located in Sunshine Litigation Service's reception/lobby.

18 9. Jim McGowen exited the room across from Room 5 because W. Chris Wicker
19 asked to speak with him. Upon seeing him, I got up, Mr. Wicker identified him as Mr.
20 McGowen, and I personally served Jim McGowen at that time. I did not speak to him, but
21 handed him the Summons and Complaint.
22

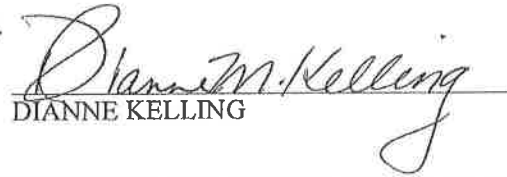
23 10. I exited Sunshine Litigation Services and, once in my car, I texted Dane
24 Anderson that service had been accomplished. *See* Exhibit 2. Once I sent the text, I left the
25 premises and returned to Woodburn and Wedge.

26 ///

27 ///

1 I swear under penalty of perjury under the laws of the State of Nevada that the
2 foregoing is true and correct.

3 DATED this ^{20th}~~4~~ day of March, 2017.

4 
DIANNE KELLING

Affirmation pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: March 28, 2017.

WOODBURN AND WEDGE

By:



W. Chris Wicker, Esq.

Nevada Bar No. 1037

Dane W. Anderson, Esq.

Nevada Bar No. 6883

Attorneys for Plaintiff Steven Crystal

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Table of Exhibits		
<u>Exhibit No.</u>	<u>Description</u>	<u>No. of Pages</u>
1	Photograph of Dianne Kelling in Room 5 of Sunshine Litigation Services on February 9, 2017	1
2	Text exchange between Dane Anderson and Dianne Kelling on February 9, 2017	1

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Woodburn and Wedge and that on this date,
3 I caused to be sent via electronic service through the Court's E-flex system a true and correct
4 copy of the **DECLARATION OF DIANNE KELLING IN SUPPORT OF OPPOSITION**
5 **TO DEFENDANT'S MOTION TO QUASH SERVICE AND DISMISS CASE** to:

6 Jacey Prupas, Esq.
7 Carrie L. Parker, Esq.
8 SNELL & WILMER, L.L.P.
9 50 West Liberty Street, Suite 510
10 Reno, NV 89501
11 *Attorneys for Defendant*

12 Dated: March 28, 2017.

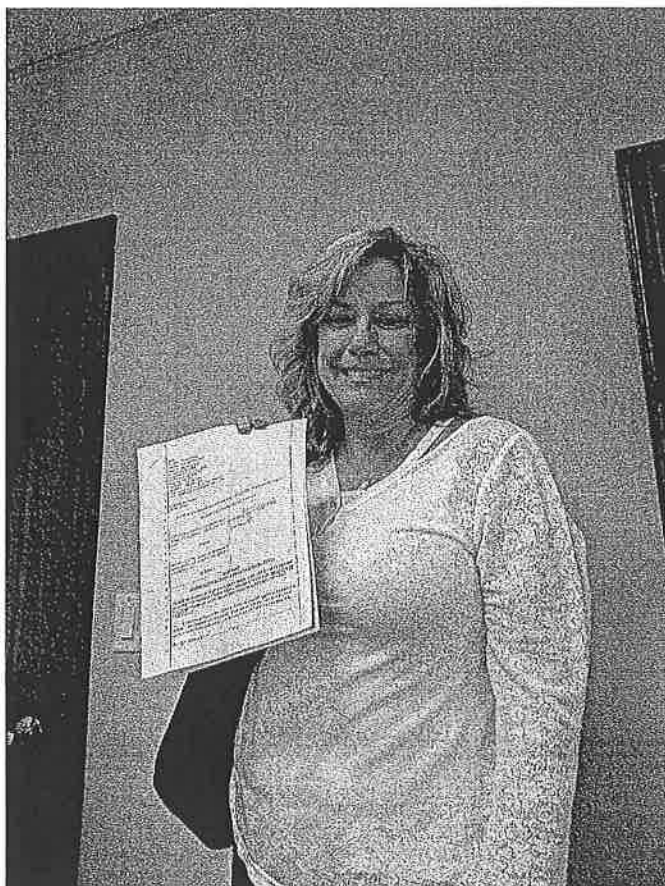
13 By:


An employee of Woodburn and Wedge

FILED
Electronically
CV17-00281
2017-03-28 06:43:34 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6021939 : pmsewell

EXHIBIT “1”

EXHIBIT “1”



FILED
Electronically
CV17-00281
2017-03-28 06:43:34 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6021939 : pmsewell

EXHIBIT “2”

EXHIBIT “2”

Thu, Feb 9, 12:04 PM

Still hasn't been filed

I'm here and I will see if they can issue summons without a no.

They are going to process the complaint now .

We are in room 5 when you get here

Just text me

I'm here

Service accomplished!
Wicker is talking to him

Delivered

1520
W. Chris Wicker, Esq.
Nevada State Bar No. 1037
Dane W. Anderson, Esq.
Nevada State Bar 6883
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, Nevada 89511
Telephone: 775-688-3000
Facsimile: 775-688-3088
cwicker@woodburnandwedge.com
danderson@woodburnandwedge.com

Attorneys for Plaintiff, Steven Crystal

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN B. CRYSTAL, individually and as
Trustee of The Barbara L. Crystal Decedent
Trust,

Plaintiff,

v.

JIM MCGOWEN, Trustee of McGowen &
Fowler, PLLC and/or DOES 1-10, inclusive;
and DOES 11-20,

Defendants.

Case No.: CV17-00281

Dept. No.: 6

**DECLARATION OF STEVEN B.
CRYSTAL IN SUPPORT OF
OPPOSITION TO DEFENDANT'S
MOTION TO QUASH SERVICE AND
DISMISS CASE AND
REQUEST FOR SANCTIONS**

1. I am the Plaintiff, individually and as Trustee in the above matter. This
declaration is in support of Plaintiff's Opposition to Defendant's Motion to Quash Service
and Dismiss Case and Request for Sanctions.

2. I have had no contact with Mr. McGowen in the last two years.

3. I was surprised to see Mr. McGowen with Mr. Bush and Mr. Bush's attorney
on the morning of February 9, 2017, at Sunshine Litigation Services.

4. I played no role whatsoever in Mr. McGowen being present in Nevada.

5. I took a photograph of Dane Anderson, Esq.'s assistant, Dianne Kelling,

1 holding up a copy of the Summons and Complaint. I offered to photograph Ms. Kelling
2 serving Mr. McGowen, but Mr. Wicker requested that I not do so, so as to avoid
3 embarrassing Mr. McGowen at the time of service.

4
5 6. In July, 2014, I wired \$2.1 Million to Mr. McGowen's trust account. This was
6 money I loaned to Mr. Bush for the purchase by Mr. Bush or one of his alter ego entities of
7 the full-size bronze sculpture made from an authorized casting of the original Michelangelo's
8 marble Pieta. Through discovery at the deposition of Mr. Bush in June, 2016, I found out
9 that Mr. Bush sold the Pieta and two purported Jackson Pollock paintings to Jim McGowen,
10 as Trustee, in November, 2014, for only \$500,000.

11 I swear under penalty of perjury under the laws of the State of Nevada that the
12 foregoing is true and correct.

13 DATED this 27th day of March, 2017.

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16 STEVEN B. CRYSTAL
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DATED: March 28, 2017.

By:

W. Chris Wicker, Esq.
Nevada Bar No. 1037
Dane W. Anderson, Esq.
Nevada Bar No. 6883
Attorneys for Plaintiff Steven Crystal


1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Woodburn and Wedge and that on this date,
3 I caused to be sent via electronic service through the Court's E-flex system a true and correct
4 copy of the **DECLARATION OF STEVE CRYSTAL IN SUPPORT OF OPPOSITION**
5 **TO DEFENDANT'S MOTION TO QUASH SERVICE AND DISMISS CASE** to:
6

7 Jacey Prupas, Esq.
8 Carrie L. Parker, Esq.
9 SNELL & WILMER, L.L.P.
10 50 West Liberty Street, Suite 510
11 Reno, NV 89501
12 *Attorneys for Defendant*

13 Dated: March 28, 2017.

14 By:

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16 An employee of Woodburn and Wedge
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1520
W. Chris Wicker, Esq.
Nevada State Bar No. 1037
Dane W. Anderson, Esq.
Nevada State Bar 6883
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, Nevada 89511
Telephone: 775-688-3000
Facsimile: 775-688-3088
cwicker@woodburnandwedge.com
danderson@woodburnandwedge.com

Attorneys for Plaintiff, Steven Crystal

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN B. CRYSTAL, individually and as
Trustee of The Barbara L. Crystal Decedent
Trust,

Plaintiff,

v.

JIM MCGOWEN, Trustee of McGowen &
Fowler, PLLC and/or DOES 1-10, inclusive;
and DOES 11-20,

Defendants.

Case No.: CV17-00281

Dept. No.: 6

**DECLARATION OF DANE W.
ANDERSON IN SUPPORT OF
OPPOSITION TO DEFENDANT'S
MOTION TO QUASH SERVICE AND
DISMISS CASE AND
REQUEST FOR SANCTIONS**

1. I am a shareholder with the law firm of Woodburn and Wedge which
represents the Plaintiff, Steven B. Crystal, in the within matter. This declaration is in support
of Plaintiff's Opposition to Defendant's Motion to Quash Service and Dismiss Case and
Request for Sanctions.

2. On the morning of February 9, 2017, I was in my office. I received a call from
Chris Wicker who was taking a deposition in the case of *Crystal, et al. v. Bush, et al.*, Second
Judicial District Court Case No. CV16-00865, Department No. 4.

///

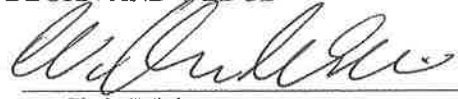
Affirmation pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: March 28, 2017.

WOODBURN AND WEDGE

By:



W. Chris Wicker, Esq.

Nevada Bar No. 1037

Dane W. Anderson, Esq.

Nevada Bar No. 6883

Attorneys for Plaintiff Steven Crystal

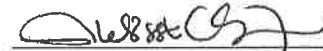
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Woodburn and Wedge and that on this date,
3 I caused to be sent via electronic service through the Court's E-flex system a true and correct
4 copy of the **DECLARATION OF DANE ANDERSON IN SUPPORT OF OPPOSITION**
5 **TO DEFENDANT'S MOTION TO QUASH SERVICE AND DISMISS CASE** to:

6 Jacey Prupas, Esq.
7 Carrie L. Parker, Esq.
8 SNELL & WILMER, L.L.P.
9 50 West Liberty Street, Suite 510
10 Reno, NV 89501
11 *Attorneys for Defendant*

12 Dated: March 28, 2017.

13 By:



14 An employee of Woodburn and Wedge
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1 CODE NO. 3370
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7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE
9

10 STEVEN B. CRYSTAL, individually and as
Trustee of The Barbara L. Crystal Decedent
Trust,

Case No. CV17-00281

Dept. No. 6

11 Plaintiff,
12

13 vs.

14 JIM MCGOWEN, Trustee of McGowen &
Fowler, PLLC and/or DOES 1-10, inclusive;
and DOES 11-20,

15 Defendant.
16 _____ /
17

18 ORDER OF RECUSAL OF PRESIDING JUDGE AND FOR RANDOM REASSIGNMENT

19 W. Chris Wicker, Esq., counsel of record for the Plaintiff, Steven B. Crystal, is a
20 member of the law firm of Woodburn and Wedge. Prior to being elected as the presiding
21 judge in this department, I was a member of the law firm of Woodburn and Wedge. Several
22 cases involving some of the parties and/or property at issue in this case although filed in
23 2017, were handled by Woodburn and Wedge while I was a member.
24

25 Therefore, in accordance with the applicable Nevada Code of Judicial Conduct, and
26 to avoid any actual or perceived conflict and/or any appearance of impropriety, the
27 undersigned hereby disqualifies herself as the presiding judge in this action.
28

1 The clerk shall randomly reassign this action to another department of this court for
2 all other proceedings. Once the reassignment has been completed, counsel shall contact
3 the new department regarding hearings, trial dates, or any events currently scheduled in
4 Department Six.

5 Dated this 30 day of ^{April}~~March~~, 2017.


DISTRICT JUDGE

1 CERTIFICATE OF SERVICE

2
3 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
4 that on the 3rd day of April, 2017, I electronically filed the foregoing with the Clerk of
5 the Court system which will send a notice of electronic filing to the following:

6 WALTER WICKER, ESQ.

7 JANINE PRUPAS, ESQ.

8 DANE ANDERSON, ESQ.

9 CARRIE PARKER, ESQ.

10
11
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13
14 And, I deposited in the County mailing system for postage and mailing with the
15 United States Postal Service in Reno, Nevada, a true and correct copy of the attached
16 document addressed as follows:

17
18
19 Debra Bae
20 Judicial Assistant

1 CODE 1312
2
3
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 STEVEN B. CRYSTAL, individually and as
10 Trustee of The Barbara L. Crystal Decedent
11 Trust,

Case No: CV17-00281

12 Plaintiff,

13 vs.

Dept. No: 6

14 JIM MCGOWEN, Trustee of McGowen & Fowler,
15 PLLC,
16 Defendant.

17 CASE ASSIGNMENT NOTIFICATION
18

19 I hereby certify the above-entitled matter has been randomly reassigned to
20 Department 15, from Department 6.

21 Additional information:

22 On April 3rd, 2017, an Order of Recusal of Presiding Judge and for Random
23 Reassignment was filed.
24

25 Dated April 3, 2017.
26
27
28

By

JACQUELINE BRYANT
Clerk of the Court
Deputy Clerk
STATE OF NEVADA
DISTRICT COURT
COUNTY OF WASHOE
SECOND JUDICIAL DISTRICT

CERTIFICATE OF SERVICE

Case No. CV17-00281

I certify that I am an employee of the Second Judicial District Court; that on April 3, 2017, I electronically filed the Case Assignment Notification with the clerk of the Court System which will send a notice of electronic filing to the following:

Honorable David A. Hardy

JANINE PRUPAS, ESQ. for JIM MCGOWEN, TRUSTEE OF MCGOWEN & FOWLER, PLLC

DANE ANDERSON, ESQ. for STEVEN B CRYSTAL, TRUSTEE OF THE BARBARA L. CRYSTAL DECEDENT TRUST et al

CARRIE PARKER, ESQ. for JIM MCGOWEN, TRUSTEE OF MCGOWEN & FOWLER, PLLC

WALTER WICKER, ESQ. for STEVEN B CRYSTAL, TRUSTEE OF THE BARBARA L. CRYSTAL DECEDENT TRUST et al

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated April 3, 2017.



Randy Watkins
Deputy Clerk

1 CODE:
2
3
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE
8

9 STEVEN B. CRYSTAL, individually and as
10 Trustee of The Barbara L. Crystal Decedent
11 Trust,

Case No. CV17-00281

Dept. No. 15

12 Plaintiff,

13 vs.

14 JIM MCGOWEN, Trustee of McGowen & Fowler,
15 PLLC,

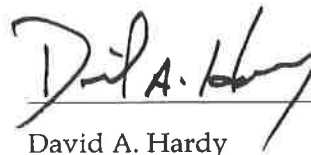
16 Defendant.
17

18 ORDER ACCEPTING REASSIGNMENT

19 Department 15 of the Second Judicial District Court will accept the assignment of
20 the above-entitled action.

21 IT IS SO ORDERED.

22 Dated: April 4, 2017.



23 David A. Hardy
24 District Court Judge
25
26
27
28

1 **3795**
Jacey Prupas, Bar No. 9156
2 Carrie L. Parker, Bar No. 10952
SNELL & WILMER LLP
3 50 West Liberty Street, Suite 510
Reno, Nevada 89501
4 Telephone: 775-785-5440
Facsimile: 775-785-5441
5 Email: jprupas@swlaw.com
cparker@swlaw.com
6

7 *Attorneys for Defendant James "Jim" McGowen,*
8 *erroneously sued as Trustee of McGowen & Fowler,*
9 *PLLC*

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR THE COUNTY OF WASHOE**

12 STEVEN B. CRYSTAL, individually and as
Trustee of the Barbara L. Crystal Decedent
Trust,

Case No. CV17-00281

13 Plaintiff,

Dept. No. 15

14 vs.

15 JIM MCGOWEN, Trustee of McGowen &
16 Fowler, PLLC and/or DOES 1-10, inclusive;
and DOES 11-20,

17 Defendants.
18

19 **REPLY IN SUPPORT OF MOTION TO QUASH SERVICE AND DISMISS CASE AND**
20 **REQUEST FOR SANCTIONS**

21 Defendant James "Jim" McGowen, erroneously sued as Trustee of McGowen & Fowler,
22 PLLC, ("McGowen"), by and through undersigned counsel, hereby files this Reply in Support of
23 Motion to Quash Service and Dismiss Case and Request for Sanctions ("Reply"). This Reply is
24 based upon the Nevada Rules of Civil Procedure ("NRCP") 12, the following memorandum of
25 points and authorities, and any oral argument this Court may entertain.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Plaintiff's argument in response to the Motion to Quash Service and Dismiss Case and Request for Sanctions ("Motion") is to overrule Nevada Supreme Court precedent. Plaintiff urges this Court to ignore the Nevada Supreme Court's holding that proper service is accomplished by a disinterested party and CANNOT be accomplished by Plaintiff's counsel or his employee. Thus, Plaintiff argues (in direct contradiction to Nevada law) that counsel's employee properly served McGowen and that personal jurisdiction is proper based solely on service by counsel's employee.

This Court need not be distracted by Plaintiff's various declarations (all from interested parties) purporting to describe the substance of plaintiff's allegations and the circumstances the day the Complaint was filed. Under the factual scenario presented by Plaintiff, the best scenario for Plaintiff is that an employee of Plaintiff's counsel served McGowen with the Summons and Complaint. Under this scenario, however, service is improper and must be quashed as void. Without proper service, Plaintiff's sole argument for personal jurisdiction based upon service in Nevada also fails. While McGowen does not abandon his arguments that (a) Plaintiff's counsel, and not counsel's employee, actually served the Summons and Complaint; and (b) Plaintiff tricked or conspired to trick McGowen to come to Reno and to remain long enough to be served, this Court need not even reach these arguments because Plaintiff's service was improper. This Court should dismiss this case for lack of personal jurisdiction and improper service based on controlling Nevada Supreme Court precedent that neither counsel nor counsel's employee can effectuate proper service.

II. Factual Background

McGowen incorporates and reasserts the factual background set forth in his Motion. McGowen is an attorney and resident of Texas who was tricked to come to Nevada for a settlement conference purportedly related to his client's interests. The sole reason he was in Nevada was to attend this settlement conference, and he was invited to sit in on a deposition he was falsely told was related to some of his clients. Motion, Exhibit 1. Plaintiff, in fact, concedes the deposition did not relate to McGowen or his clients. Opp., p. 2:27.

1 Plaintiff filed the instant Complaint and attempted service the day McGowen was in Reno
2 for the purported settlement conference. While McGowen asserts Plaintiff's counsel himself
3 served him with the Summons and Complaint, Plaintiff asserts a secretary for Plaintiff's counsel
4 served the Summons and Complaint. The difference is immaterial, as neither Plaintiff's counsel
5 nor counsel's employee is disinterested. NRCP 4(c) forbids Plaintiff's counsel or any of his
6 employees from serving McGowen.

7 **III. Legal Argument**

8 **A. Standard of Review**

9 NRCP 12(b) provides for a motion to dismiss based on insufficient process, insufficient
10 service of process, and lack of personal jurisdiction. Service of process is invalid if it is not
11 served by a wholly disinterested person. *Nevada Cornell Silver Mines v. Hankins*, 51 Nev. 410,
12 279 P. 2d 27, 30 (1929). A motion to dismiss based upon insufficient process and insufficient service
13 of process is directed to the Court's discretion not to exercise power over the defendant and to
14 further the administration of justice. *Coyne v. Grupo Indus. Triem, S.A. de C.V.*, 105 F.R.D. 627,
15 629 (D.D.C. 1985).

16 Regarding a motion to dismiss based on lack of personal jurisdiction, "the plaintiff has the
17 burden of introducing competent evidence of essential facts which establish a prima facie
18 showing that personal jurisdiction exists." *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 692, 857
19 P.2d 740, 743 (1993).

20 **B. Service Was Invalid Because the Summons and Complaint Were Not Served**
21 **by a Disinterested Person.**

22 Plaintiff argues this Court should ignore controlling Nevada Supreme Court precedent and
23 instead follow federal case law to interpret Nevada Rule of Civil Procedure 4(c). Inexplicably,
24 Plaintiff quotes the controlling language from *Sawyer v. Sugarless Shops, Inc.*, 106 Nev. 265,
25 269-70, 792 P.2d 14, 17 (1990), and argues it does not really mean what it says and this Court
26 should just follow federal cases anyway. Opp., p. 9:19-23. Plaintiff's argument fails for several
27 reasons.

28 ///

1 First, the Nevada Supreme Court, not the federal district court, is the controlling authority
2 on the Nevada Rules of Civil Procedure. Second, all of the federal cases on which Plaintiff relies
3 were decided by federal district courts in the 1980s, before the Nevada Supreme Court decided
4 *Sawyer*. Those cases were available to the *Sawyer* Court, and the *Sawyer* Court interpreted the
5 NRCP 4 without reference to them, or any other federal case for that matter. *Sawyer* controls this
6 case.

7 In *Sawyer*, similar to this case, “[t]here [was] no disinterested party with personal
8 knowledge of the service of process.” 106 Nev. at 269, 792 P.2d at 17. The two individuals who
9 allegedly served the defendant, or someone claiming to be the defendant, did not know what the
10 documents were that they handed to the defendant. *Id.* “Evidence concerning the contents of the
11 envelope could be supplied only by an employee of the California attorney representing
12 [plaintiff].” *Id.* To prove service, plaintiff had to rely on “an interested secretary to its California
13 counsel.” *Id.* Recognizing “service many times becomes a battle of credibility and testimony,”
14 the Court held “[s]omething as fundamental and decisive as service is best taken away from the
15 parties or their counsel or counsel’s employees.” *Id.* at 270, 792 P.2d at 17. The plaintiff in that
16 case could not establish proper service by a disinterested party, and the Court declared the default
17 judgment void. The holding in *Sawyer* is clear: proper service cannot be effectuated by counsel
18 or counsel’s secretary.

19 Plaintiff’s musings that an independent process server could not serve process under this
20 rule is desperate and meritless. Plaintiff concedes a process server is not employed by counsel.
21 Opp., p. 9:27. A process server is an independent contractor of counsel, not an employee who
22 would be “interested” in the case.

23 Under *Sawyer*, Nevada observes a bright line rule prohibiting service of the summons and
24 complaint by a party, party’s counsel, or an employee of counsel. This rule exists to prevent “he

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1 said/she said” disagreements over the factual circumstances of alleged service of jurisdictional
2 notice—the very disagreement occurring in this case.¹ This rule cannot be overcome by a
3 photograph of an interested person purportedly holding the Summons.²

4 Service of jurisdictional notice by a person who is not disinterested is no service or notice
5 at all. *Nevada Cornell Silver Mines*, 279 P. at 30. Plaintiff filed a Declaration of Personal
6 Service stating counsel’s secretary served the Summons and Complaint. Even assuming
7 *arguendo*, the secretary was the one who delivered the Summons and Complaint to McGowen,
8 such service was in direct violation of NRCP 4(c) and therefore void. Accordingly, this Court
9 must quash service of the Summons and Complaint.

10 **C. Process Was Insufficient Based upon Trickery and Deceit.**

11 Plaintiff asserts he and his counsel were surprised to see McGowen in Reno the day of the
12 deposition and settlement conference. Plaintiff’s position is if a third party happened to trick
13 McGowen to come to Reno, such trickery should not prevent Plaintiff from taking advantage of
14 it, ginning up a Complaint against McGowen, tricking him to remain for service by someone who
15 is not disinterested, and basing personal jurisdiction solely on the fact McGowen was present for
16 such trickery. Plaintiff’s argument lacks merit.

17 Process based on trickery and deceit is invalid and void. *See Buchanan v. Wilson*, 254
18 F.2d 849, 850 (6th Cir. 1958); *Coyne*, 105 F.R.D at 629; *Empire Mfg. Co. v. Ginsburg*, 253 Ill.
19 App. 242, 247 (Ill. App. Ct. 1929). Additionally, “witnesses, suitors, and their attorneys, while in
20 attendance in connection with the conduct of one suit, are immune from service of process in
21 another.” *Lamb v. Schmitt*, 285 U.S. 222, 225 (1932).

22 McGowen was tricked to come to Nevada for a settlement conference and was tricked to
23 remain long enough for Plaintiff to serve him. This Court should not condone a party luring (or
24 conspiring to lure) an out-of-state attorney to Nevada for a purported settlement conference and
25 then serving him with a Complaint in order to learn more about the attorney’s clients. Motion,

26 ¹ Jurisdictional notice is treated differently than service of other documentation, such as a motion. *Compare* NRCP 4
27 (service of summons) and NRCP 45 (service of subpoena) to NRCP 5 (service of documents such as motions).

28 ² The assertion that a photo was taken just before the Summons was served is itself suspicious. One may wonder
why the photo was taken in the first place. If Plaintiff truly believed nothing dubious was occurring, why then take
the picture?

1 Exhibit 1, ¶14. This is just the type of case where such attorney should be held immune from
2 process.

3 McGowen was immune from process when he came to Reno in good faith for the
4 purported settlement conference. McGowen requests this Court quash service as insufficient,
5 void, and an abuse of process.

6 **D. This Court Lacks Personal Jurisdiction Over McGowen.**

7 Plaintiff fails to dispute McGowen does not have sufficient minimum contacts with
8 Nevada for the exercise of personal jurisdiction. Instead, Plaintiff argues only that personal
9 jurisdiction is proper based on service in Nevada.

10 The rule Plaintiff asserts, however, applies only where service was proper. Because
11 service was improper and therefore void, Plaintiff's argument fails. Based upon all the reasons
12 explained in the Motion related to lack of sufficient minimum contacts and due process, which
13 Plaintiff failed to dispute, this Court lacks personal jurisdiction over McGowen, and the
14 Complaint should be dismissed.

15 **IV. Conclusion.**

16 McGowen is an out-of-state attorney who was tricked into coming to Nevada for a
17 settlement conference unrelated to this matter and was therefore immune to service. McGowen
18 was tricked to remain at Sunshine Litigation Services while Plaintiff filed the Complaint and
19 received the Summons from the Court. Based on such trickery, service was insufficient and
20 therefore void. Further, as explained more fully in the Motion, the Declaration of Personal
21 Service was perjured and should be stricken. Regardless of the Declaration of Personal Service,
22 Nevada precedent is clear neither Plaintiff's counsel nor his employee may properly serve the
23 summons and complaint. Because McGowen was served by Plaintiff's counsel or Plaintiff's

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1 secretary, service must be quashed. Additionally, this case must be dismissed for lack of personal
2 jurisdiction, as Plaintiff bases jurisdiction solely on service of process, which is void. McGowen
3 requests recovery of his reasonable attorney fees and costs incurred defending against this
4 trickery and deceit and responding to this Complaint for which there is no jurisdiction.

5 **AFFIRMATION**
6 **Pursuant to NRS 239B.030**

7 The undersigned does hereby affirm that the preceding document does not contain the
8 social security number of any person.

9 Dated: April 6, 2017

SNELL & WILMER L.L.P.

10
11 By: 

Jacey Prupas, Bar No. 9156
Carrie L. Parker, Bar No. 10952
50 West Liberty Street, Suite 510
Reno, Nevada 89501

*Attorneys for Defendant James "Jim"
McGowen, erroneously sued as Trustee of
McGowen & Fowler, PLLC*

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this actions. On this date, I caused to be served a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION TO QUASH SERVICE AND DISMISS CASE AND REQUEST FOR SANCTIONS** by the method indicated:

XXXXXXX by Court's CM/ECF Program
by U. S. Mail
by Facsimile Transmission
by Overnight Mail
by Federal Express
by Electronic Service
by Hand Delivery

and addressed to the following:

W. Chris Wicker
Dane W. Anderson
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, NV 89511
Attorney for Plaintiff Steven Crystal

Dated this 6th day of April, 2017.

By: 

An employee of Snell & Wilmer L.L.P.

1 **3860**
2 Jacey Prupas, Bar No. 9156
3 Carrie L. Parker, Bar No. 10952
4 SNELL & WILMER L.L.P.
5 50 West Liberty Street, Suite 510
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10 cparker@swlaw.com

11 *Attorneys for Defendant James "Jim" McGowen,*
12 *erroneously sued as Trustee of McGowen & Fowler,*
13 *PLLC*

14 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
15 **IN AND FOR THE COUNTY OF WASHOE**

16 STEVEN B. CRYSTAL, individually and as
17 Trustee of the Barbara L. Crystal Decedent
18 Trust,

Case No. CV17-00281

Dept. No. 6

Plaintiff,

vs.

19 JIM MCGOWEN, Trustee of McGowen &
20 Fowler, PLLC and/or DOES 1-10, inclusive;
21 and DOES 11-20,

Defendants.

REQUEST FOR SUBMISSION

22 Defendant James "Jim" McGowen, erroneously sued as Trustee of McGowen &
23 Fowler, PLLC, ("McGowen"), by and through his attorneys of record, Snell & Wilmer
24 L.L.P., hereby submits his Motion to Quash Service and Dismiss Case and Request for Sanctions
25 filed March 10, 2017.

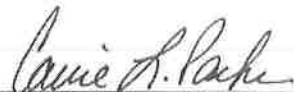
26 Plaintiff filed his opposition on March 28, 2017 and Defendant filed his reply on April 7,
27 2017.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: April 6, 2017

SNELL & WILMER L.L.P.

By: 
Jacey Prupas, Bar No. 9156
Carrie L. Parker, Bar No. 10952
50 West Liberty Street, Suite 510
Reno, Nevada 89501

*Attorneys for Defendant James "Jim"
McGowen, erroneously sued as Trustee of
McGowen & Fowler, PLLC*

CERTIFICATE OF SERVICE


I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **REQUEST FOR SUBMISSION** by the method indicated:

XXXXXXX by Court's CM/ECF Program
_____ by U. S. Mail
_____ by Facsimile Transmission
_____ by Overnight Mail
_____ by Federal Express
_____ by Electronic Service
_____ by Hand Delivery

and addressed to the following:

W. Chris Wicker
Dane W. Anderson
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, NV 89511
Attorney for Plaintiff Steven Crystal

Dated this 6th day of April, 2017.

By: 
An employee of Snell & Wilmer L.L.P.

CODE 1250

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Steven B. Crystal,
Plaintiff,

vs.

Case No. CV17-00281

Jim McGowen,
Defendant.

Dept. No. 15

APPLICATION FOR SETTING

TYPE OF ACTION: Declaratory Relief

MATTER TO BE HEARD: Evidentiary Hearing Setting

Date of Application : 4/27/17 Made by: Plaintiff

Plaintiff or Defendant

COUNSEL FOR PLAINTIFF: W. Chris Wicker / Dane W. Anderson

COUNSEL FOR DEFENDANT: Carrie Parker

Instructions: Check the appropriate box. Indicate who is requesting the jury. Estimated No. Of Jurors:

☐ Jury Demanded by (Name): _____

☒ No Jury Demanded by (Name): _____

Estimated Duration of Trial: _____

/s/ W. Chris Wicker - consent by phone

/s/ Carrie Parker - consent by phone

W. Chris Wicker - NV Bar No. 1037

Jacey Prupas - NV Bar No. 9156

Dane W. Anderson - NV Bar No. 6883

Carrie L. Parker, NV Bar No. 10952

Attorney(s) for Plaintiff

Attorney(s) for Defendant

1 2:PM 1st
Motion - No. Setting at on the

May 17
day of 20

Trial - No. Setting at on the

 20
day of

1
2 CERTIFICATE OF SERVICE

3 I hereby certify that I am an employee of Woodburn and Wedge and that on this date,
4 I caused to be sent via electronic service through the Court's E-flex system a true and correct
5 copy of the APPLICATION FOR SETTING to:

6 Jacey Prupas, Esq.
7 Carrie L. Parker, Esq.
8 SNELL & WILMER, L.L.P.
9 50 West Liberty Street, Suite 510
10 Reno, NV 89501
11 *Attorneys For Defendant*

12 Dated: April 27, 2017.

13 By: 

14 An employee of Woodburn and Wedge
15
16
17
18
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20
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24
25
26
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28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN B. CRYSTAL, individually and as
Trustee of the Barbara L. Crystal Decedent
Trust,

Plaintiff,

vs.

Case No. CV17-00281

Dept. No. 15

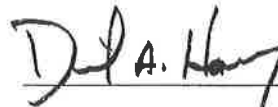
JIM MCGOWEN, Trustee of McGowen &
Fowler, PLLC and/or DOES 1-10, inclusive;
and DOES 11-20,

Defendants.

ORDER TO SET

This Court reviewed all briefing on Defendant's *Motion to Quash Service and Dismiss Case and Request for Sanctions* and determines an evidentiary hearing is necessary. All witnesses, parties, and attorneys shall be physically present. While this Court requires Mr. McGowen's presence, he will be immune to any service attempts and his appearance will not confer personal jurisdiction. The parties shall contact the Department 15 Judicial Assistant at 775-328-3880 within five (5) days to set the evidentiary hearing.

Dated: April 27, 2017.


District Court Judge

1 CODE 1250

2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 Steven B. Crystal,

9 Plaintiff,

10 vs.

Case No. CV17-00281

11 Jim McGowen,

Dept. No. 15

12 Defendant.

13
14 APPLICATION FOR SETTING

15 TYPE OF ACTION: Declaratory Relief

MATTER TO BE HEARD: Evidentiary Hearing Setting

16 Date of Application: May 3, 2017 Made by: Plaintiff

Plaintiff or Defendant

17 COUNSEL FOR PLAINTIFF: W. Chris Wicker / Dane W. Anderson

18 COUNSEL FOR DEFENDANT: Carrie Parker

19 Instructions: Check the appropriate box. Indicate who is requesting the jury. Estimated No. Of Jurors:

20 ☐ Jury Demanded by (Name): _____

21 ☒ No Jury Demanded by (Name): _____

22 Estimated Duration of Hearing: 3 hours

23 /s/ W. Chris Wicker - consent by phone

/s/ Carrie Parker - consent by phone

24 W. Chris Wicker - NV Bar No. 1037

Jacey Prupas - NV Bar No. 9156

Dane W. Anderson - NV Bar No. 6883

Carrie L. Parker, NV Bar No. 10952

25 Attorney(s) for Plaintiff

Attorney(s) for Defendant

26 1
Motion - No.

1:30 p.m.
Setting at

17
on the

May

day of

17

20

27 Trial - No.

Setting at

on the

day of

20

IN THE SUPREME COURT OF THE STATE OF NEVADA

JIM MCGOWEN, Trustee of McGowen &
Fowler, PLLC and/or DOES 1-10, inclusive;
and DOES 11-20,

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT, in and for the County of Washoe,
State of Nevada, and THE HONORABLE
DAVID A. HARDY, District Judge,

Respondent,

STEVEN B. CRYSTAL, individually and as
Trustee of the Barbara L. Crystal Decedent
Trust,

Real Party in Interest.

Case No.

District Court Case No. CV17-00281

Dept. 15

Electronically Filed
Jun 23 2017 09:59 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

PETITION

**From the Second Judicial District Court
The Honorable David A. Hardy, District Judge**

PETITIONER'S APPENDIX – VOLUME I

WILLIAM E. PETERSON
Nevada Bar No. 1528
JANINE C. PRUPAS
Nevada Bar No. 9156
CARRIE L. PARKER
Nevada Bar No. 10952
SNELL & WILMER L.L.P.
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Reno, Nevada 89501
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cparker@swlaw.com
Attorneys for Petitioner

<u>Document Name</u>	<u>Dated Filed</u>	<u>Volume</u>	<u>Page</u>
Application for Setting	4/27/17	I	APPX000129- APPX000130
Application for Setting	5/3/17	I	APPX000132
Case Assignment Notification	4/3/17	I	APPX000115- APPX000116
Complaint	2/9/17	I	APPX000001- APPX000003
Declaration of Dane W. Anderson in Support of Opposition to Defendant's Motion to Quash Service and Dismiss and Request for Sanctions	3/28/17	I	APPX000108- APPX000111
Declaration of Dianne Kelling in Support of Opposition to Defendant's Motion to Quash Service and Dismiss and Request for Sanctions	3/28/17	I	APPX000094- APPX000103
Declaration of Stephen Warner in Support of Opposition to Defendant's Motion to Quash Service and Dismiss and Request for Sanctions	3/28/17	I	APPX000043- APPX000052

Declaration of Steven B. Crystal in Support of Opposition to Defendant's Motion to Quash Service and Dismiss and Request for Sanctions	3/28/17	I	APPX000104-APPX000107
Declaration of W. Chris Wicker in Support of Opposition to Defendant's Motion to Quash Service and Dismiss and Request for Sanctions	3/28/17	I	APPX000053-APPX000093
Evidentiary Hearing Exhibits	5/22/17	II	APPX000286-APPX000384
Evidentiary Hearing Minutes	5/22/17	II	APPX000282-APPX000285
Motion to Quash Service and Dismiss Case and Request for Sanctions	3/10/17	I	APPX000007-APPX000030
Notice of Entry of Order	5/31/17	II	APPX000387-APPX000392
Opposition to Defendant's Motion to Quash Service and Dismiss Case	3/28/17	I	APPX000031-APPX000042
Order Accepting Reassignment	4/4/17	I	APPX000117

Order After Hearing	5/31/17	II	APPX000385- APPX000386
Order of Recusal of Presiding Judge and for Random Reassignment	4/3/17	I	APPX000112- APPX000114
Order to Set	4/27/17	I	APPX000131
Reply in Support of Motion to Quash Service and Dismiss Case and Request for Sanctions	4/6/17	I	APPX000118- APPX000125
Request for Submission	4/6/17	I	APPX000126- APPX000128
Summons	2/9/17	I	APPX000004- APPX000006
Transcript of Proceedings – Evidentiary Hearing	5/17/17	II	APPX000133- APPX00281

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On June 22, 2017, I caused to be served a true and correct copy of the foregoing **PETITIONER'S APPENDIX – VOLUME I** upon the following by the method indicated:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Reno, Nevada addressed as set forth below.
- ☐ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

The Honorable David A. Hardy
Second Judicial District Court
Department 15
75 Court Street
Reno, Nevada 89501

W. Chris Wicker
Dane W. Anderson
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511

By: /s/ Holly W. Longe
An employee of Snell & Wilmer L.L.P.

1 **\$1425**
2 W. Chris Wicker, Esq.
3 Nevada State Bar No. 1037
4 Dane W. Anderson, Esq.
5 Nevada State Bar 6883
6 WOODBURN AND WEDGE
7 6100 Neil Road, Suite 500
8 Reno, Nevada 89511
9 Telephone: 775-688-3000
10 Facsimile: 775-688-3088
11 Email: cwicker@woodburnandwedge.com
12 Email: danderson@woodburnandwedge.com

13 Attorneys for Plaintiff
14 Steven Crystal

15 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

16 IN AND FOR THE COUNTY OF WASHOE

17 STEVEN B. CRYSTAL, individually and as
18 Trustee of The Barbara L. Crystal Decedent
19 Trust,

Case No.: CV17-00281

Dept. No.: 6

20 Plaintiff.

21 v.

22 JIM MCGOWEN, Trustee of McGowen &
23 Fowler, PLLC and/or DOES 1-10, inclusive;
24 and DOES 11-20,

25 Defendants.

26 **COMPLAINT**

27 Plaintiff Steven B. Crystal, individually and as Trustee of The Barbara L. Crystal
28 Decedent Trust ("Crystal"), through his counsel, Woodburn and Wedge, complains and
alleges as follows:

1. Crystal is an individual residing in Reno, Washoe County, Nevada. Crystal
claims an interest in certain property located in Reno, Washoe County, Nevada, as
described below.

2. Defendant Jim McGowen ("McGowen") is an individual residing in the
State of Texas, but who was physically present in Washoe County on February 9, 2017.

1 Additionally, Mr. McGowen is the Trustee of McGowen & Fowler, PLLC and/or
2 Defendants Does 1-10, which persons or entities claim an interest in property located in
3 Reno, Washoe County, Nevada, as further described below. The identity of Does 1-10 is
4 currently not known to Crystal.

5 3. The true names and capacities defendant DOES 11 through 20, are
6 unknown to Crystal at this time. Crystal is informed and believes and thereupon alleges
7 that each of these DOE Defendants may claim an interest in the property at issue in this
8 litigation. Crystal requests leave of court to amend this Complaint to include the true
9 names and capacities of such Defendants as such information becomes fully known and
10 ascertained by Crystal.

11 4. Between 2013 and 2015, Crystal entered into in certain transactions with
12 Ron Bush ("Bush") and Tyche Acquisitions Group, Inc. ("TAG") pursuant to which
13 Crystal was granted either an ownership or security interest in certain property, including:

- 14 a. #9 of 9 Bronze Casting of Michelangelo St. Peter Pieta' ("Pieta").
- 15 b. 1 Painting credited to have been painted by Jackson Pollock,
16 identified as #B2 ("B2")
- 17 c. 1 Painting credited to have been painted by Jackson Pollock,
18 identified as #Q2 ("Q2")

19 5. Crystal's interest in these pieces was reflected by a UCC 1 financing
20 statement filed with the Nevada Secretary of State.

21 6. On or about November 14, 2014, Bush sold the above pieces to artwork to
22 McGowen for \$500,000, despite Crystal's interest in those pieces.

23 7. An actual controversy exists between Crystal and McGowen as to their
24 relative interest in these pieces of artwork.

25 8. Crystal requests a judicial determination as to the parties' relative interests
26 in the artwork.

27 ///

28 ///

1 WHEREFORE, Crystal prays for judgment as follows:

- 2 1. For a judicial declaration of the parties' relative rights and interests in the
3 Picta, B2 and Q2, an any other artwork that may be subject to this controversy;
4 2. For an award of attorney's fees and costs as allowed by law; and
5 3. For such further relief as the Court may deem appropriate.

6 **Affirmation pursuant to NRS 239B.030**

7 The undersigned does hereby affirm that the preceding document does not contain
8 the social security number of any person.

9 DATED: February 9, 2017.

WOODBURN AND WEDGE

10
11 By /s/ Dane W. Anderson
12 W. Chris Wicker, Esq.
13 Nevada State Bar No. 1037
14 Dane W. Anderson, Esq.
15 Nevada Bar No. 6883
16 Attorneys for Plaintiff
17 Steven Crystal
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ORIGINAL

FILED
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CV17-00281
2017-02-09 02:23:50 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5943908 : pmsewell

4085
W. Chris Wicker, Esq.
Nevada State Bar No. 1037
Dane W. Anderson, Esq.
Nevada Bar No. 6883
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
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Telephone: 775-688-3000
Facsimile: 775-688-3088
Email: cwicker@woodburnandwedge.com
Email: danderson@woodburnandwedge.com

Attorneys for Plaintiff
Steven Crystal

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STEVEN B. CRYSTAL, individually and as
Trustee of The Barbara L. Crystal Decedent
Trust,

Plaintiff,

v.

JIM MCGOWEN, Trustee of McGowen &
Fowler, PLLC and/or DOES 1-10, inclusive;
and DOES 11-20,

Defendants.

Case No.: CV17-00281

Dept. No.: 6

SUMMONS

(JIM MCGOWEN, Trustee of McGowen & Fowler, PLLC)

**TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE
AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN
WRITING WITHIN 30 DAYS. READ THE INFORMATION BELOW VERY
CAREFULLY.**

A civil complaint or petition has been filed by the plaintiff against you for relief as
set forth in that document (see complaint). When service is by publication, add a brief
statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is: _____

1 1. If you intend to defend this lawsuit, you must do the following within 30
2 calendar days after service of this summons, exclusive of the day of
3 service:

4 a. File with the Clerk of this Court, whose address is shown below, a
5 **formal written answer** to the complaint or petition, along with the
6 appropriate filing fees, in accordance with the rules of the Court,
7 and;

8 b. Serve a copy of your answer upon the attorney or plaintiff(s) whose
9 name and address is shown below.

10 2. Unless you respond, a default will be entered upon application of
11 the plaintiff(s) and this Court may enter a judgment against you for
12 the relief demanded in the complaint or petition.

13 Dated: this 9th day of February, 2017.

JACQUELINE BRYANT
CLERK OF THE COURT

By: 

Deputy Clerk
SECOND JUDICIAL DISTRICT COURT
75 COURT STREET, RENO, NV 89511

14 Issued on behalf of Plaintiff:

15 W. Chris Wicker, Esq.
16 Nevada State Bar No. 1037
17 Dane W. Anderson, Esq.
18 Nevada State Bar 6883
19 **WOODBURN AND WEDGE**
20 6100 Neil Road, Suite 500
21 Reno, Nevada 89511
Telephone: 775-688-3000
Facsimile: 775-688-3088
Email: cwicker@woodburnandwedge.com
Email: danderson@woodburnandwedge.com

22 Attorneys for Plaintiff
23 Steven Crystal
24
25
26
27
28

(To be filled out and signed by the person who served the Defendant)

STATE OF NEVADA)
COUNTY OF WASHOE)

I, Dianne M. Kelling, declare;
(Name of person who completed service)

1. That I am not a party to this action and I am over 18 years of age.
2. That I personally served a copy of the *Summons and Complaint* and the following documents:

upon Jim McGowan, at the following
(Name of Defendant who was served)

address: Sunshine Litigation Services,
151 Country Estates Circle, Reno, NV 89511

on the 9th day of February, 2017.
(Month) (Year)

This document does not contain the Social Security Number of any person.

I declare, under penalty of perjury under the law of the State of Nevada, that the foregoing is true and correct.

(Signature of person who completed service)

\$2395
Jacey Prupas, Bar No. 9156
Carrie L. Parker, Bar No. 10952
SNELL & WILMER LLP.
50 West Liberty Street, Suite 510
Reno, Nevada 89501
Telephone: 775-785-5440
Facsimile: 775-785-5441
Email: jprupas@swlaw.com
cparker@swlaw.com

*Attorneys for Defendant James "Jim" McGowen,
erroneously sued as Trustee of McGowen & Fowler,
PLLC*

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

STEVEN B. CRYSTAL, individually and as
Trustee of the Barbara L. Crystal Decedent
Trust,

Plaintiff,

vs.

JIM MCGOWEN, Trustee of McGowen &
Fowler, PLLC and/or DOES 1-10, inclusive;
and DOES 11-20,

Defendants.

Case No. CV17-00281

Dept. No. 6

**MOTION TO QUASH SERVICE AND DISMISS CASE
AND REQUEST FOR SANCTIONS**

Defendant James "Jim" McGowen, erroneously sued as Trustee of McGowen & Fowler, PLLC, ("McGowen"), by and through undersigned counsel, hereby files this Motion to Quash Service and Dismiss Case and Request for Sanctions ("Motion"). This Motion is based upon Nevada Rule of Civil Procedure ("NRCP") 12, the following memorandum of points and authorities, the Declaration of James McGowen in Support of Motion to Quash Service and Dismiss Case and for Sanctions ("McGowen Decl.") attached hereto as **Exhibit 1**, and any oral argument this Court may entertain.

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 This Court should quash service and dismiss this case for multiple reasons. McGowen is
4 a resident of Texas, who was tricked into coming to Reno, Nevada for a purported settlement
5 conference regarding another unrelated matter. After McGowen arrived in Reno per an invitation
6 to the purported settlement conference, Plaintiff filed the instant Complaint, and Plaintiff's
7 counsel himself hand served McGowen the Summons and Complaint. Plaintiff filed a perjured
8 affidavit of service, indicating staff for Plaintiff's counsel served the Summons, which is not true.
9 Neither Plaintiff's counsel nor an employee of Plaintiff's counsel may effectuate service.
10 Trickery and deceit should not be tolerated.

11 Assuming, *arguendo*, service was proper, and to preserve jurisdictional arguments, this
12 Court does not have personal jurisdiction over McGowen because he does not have sufficient
13 minimum contacts with Nevada or Washoe County to confer personal jurisdiction, neither general
14 jurisdiction nor specific jurisdiction. Indeed, the Complaint does not allege any Nevada contacts
15 as a basis for jurisdiction, but merely asserts McGowen was present in Reno, Nevada on February
16 9, 2017, which is the day McGowen was tricked to be in Reno. McGowen respectfully requests
17 that this Court quash service and dismiss this case for lack of personal jurisdiction.

18 **II. Factual Background**

19 McGowen disputes Plaintiff's allegations in the Complaint and summarizes Plaintiff's
20 allegations for illustrative purposes only. Plaintiff alleges McGowen purchased artwork from
21 Ron Bush on or about November 14, 2014. Complaint, ¶6. Plaintiff further alleges he acquired
22 security interests in the artwork at issue through certain transactions between 2013 and 2015 with
23 Bush and Tyche Acquisitions Group, Inc. ("Tyche"). Complaint, ¶4. The Complaint does not
24 clearly indicate whether the purported security interest was acquired before or after the 2014
25 alleged sale to McGowen. While the Complaint alleges a UCC 1 financing statement, it fails to
26 provide any details of the financing statement, including a description of property purportedly
27 secured or even the date of the financing statement.

28 ///

1 In April 2016, Plaintiff filed a Complaint against Bush and Tyche in the Second Judicial
2 District Court, Case No. CV16-00865 (Dept. 4), alleging claims for breach of contract, claim and
3 delivery, and writs of attachment or garnishment. The instant Complaint appears to be an attempt
4 by Plaintiff to pull McGowen, and probably his clients, into that dispute between Plaintiff on the
5 one side and Bush and Tyche on the other.

6 McGowen is an attorney and resident of Texas. Exhibit 1, ¶¶1-3. McGowen is not
7 licensed to practice law in Nevada, does not live in Nevada, and has never lived in Nevada. *Id.* at
8 ¶4. McGowen does not own any property in Nevada and does not conduct business in Nevada.
9 *Id.* at ¶¶4-5.

10 Bush's attorney, Steve Defilippis, recently contacted McGowen's client and requested he
11 come to Reno, Nevada for a settlement conference unrelated to the artwork at issue in the instant
12 matter. *Id.* at ¶6. McGowen's sole purpose and intent in coming to Reno was to attend the
13 purported settlement conference, which McGowen was told would be held on February 9, 2017.
14 *Id.* at ¶7. After McGowen arrived in Reno, on February 9, 2017, Defilippis and Bush informed
15 him there was a deposition occurring that they thought he would be interested in and encouraged
16 McGowen to attend before the settlement conference. *Id.* at ¶8. The settlement conference and
17 deposition were both scheduled to take place on February 9, 2017 in Reno, Nevada. *Id.*
18 Plaintiff's counsel, Chris Wicker, was taking the deposition, and Plaintiff and Bush were in
19 attendance. *Id.* at ¶9. Bush's attorneys Defilippis and Bert Terrari were also present at the
20 deposition. *Id.* McGowen attended the deposition, which turned out to have nothing to do with
21 McGowen, his clients, or artwork (the purported subject matter of the instant Complaint). *Id.* at
22 ¶10. No question was relevant to McGowen, and McGowen did not participate in the deposition.
23 *Id.* There seemed to be no legitimate reason for McGowen to have been invited to the deposition.
24 Indeed, as the events of that day unfolded, it became apparent there was actually a sinister reason
25 to keep him there.

26 The deposition continued through the morning, there was a lunch break, and then the
27 deposition continued after lunch. *Id.* at ¶11. During the lunch break, Terrari talked to Wicker.
28 *Id.* In the afternoon, while this deposition was occurring, Plaintiff's counsel, Dane Anderson,

1 arrived and appeared to hand something to Wicker, who had been taking the deposition. *Id.* at
2 ¶12. After the deposition concluded, Terrari and Wicker spoke outside the room where the
3 deposition was being taken. *Id.* at ¶13. When Terrari returned, he told McGowen that Wicker
4 needed to speak with him. *Id.* Wicker then hand served McGowen the Summons and Complaint
5 in the instant matter. *Id.* Wicker informed McGowen that he needed to know more about
6 McGowen's clients and accused them of "taking" art that belonged to Plaintiff. *Id.* at ¶14.

7 In other words, Plaintiff tricked McGowen, a lawyer, into staying at a location in Reno so
8 that he could gin up a Complaint against him and serve him, in hopes of learning more about
9 McGowen's clients. Based on the frequent conversations between Plaintiff's counsel and Bush's
10 counsel, it appears they may have conspired to trick McGowen to come to Reno in the first place.
11 Plaintiff knew McGowen was at Sunshine Litigation Services, and Plaintiff's counsel kept him
12 there all day while his partner caused the Complaint to be filed against him and a Summons to be
13 issued. The Complaint in this case is file stamped as having been filed on February 9, 2017 at
14 11:40 a.m. This corresponds with McGowen's recollection attested to in his Declaration and the
15 overall scheme of getting the Complaint filed and Summons issued while McGowen was in Reno.
16 Plaintiff's counsel personally hand delivered the Summons and caused the executed Summons to
17 be filed the same day, at 2:23 p.m. In light of this trickery, McGowen rebooked his flight back to
18 Texas for an earlier flight and left Reno that afternoon. *Id.* at ¶15. McGowen did not attend any
19 settlement conference that day. *Id.*

20 After his return to Texas, McGowen learned that Plaintiff filed a Declaration of Personal
21 Service, signed by Dianne M. Kelling. Dianne M. Kelling is an employee of Woodburn and
22 Wedge, Plaintiff's counsel. Attached hereto as **Exhibit 2** is a true and correct copy of Crystal's
23 Motion for Appointment of Receiver in *Crystal v. Bush*, Case No. CV16-00865, which includes a
24 certificate of service signed by Kelling as an employee of Woodburn and Wedge.¹ Wicker, not a
25 woman, handed the Summons and Complaint to McGowen, who is certain no woman served him.
26 *Id.* at ¶15. Rather than have a disinterested party serve McGowen, as the rules require, Plaintiff's
27 counsel himself served McGowen and had his assistant sign the declaration as if she effectuated

28 ¹ This Court may take judicial notice of Certificate of Service filed in Case No. CV16-00865.

1 service (which is still prohibited by the rules). Thus, the trickery and deceit continued beyond
2 tricking McGowen to be in Reno and stay here to be served, and it resulted in the filing of a
3 perjured Declaration of Personal Service.

4 **III. Legal Argument**

5 **A. Standard of Review**

6 NRCP 12(b) provides for a motion to dismiss based on insufficient process, insufficient
7 service of process, and lack of personal jurisdiction. Process is invalid where a defendant has
8 been lured into a foreign jurisdiction by trickery. *Coyne v. Grupo Indus. Triem, S.A. de C.V.*, 105
9 F.R.D. 627, 629 (D.D.C. 1985). Further, service of process is invalid if it is not served by a
10 wholly disinterested person. *Nevada Cornell Silver Mines v. Hankins*, 51 Nev. 410, 279 P. 27, 30
11 (1929). A motion to dismiss based upon insufficient process and insufficient service of process is
12 directed to the Court's discretion not to exercise power over the defendant and to further the
13 administration of justice. *Coyne*, 105 F.R.D. at 629.

14 Regarding a motion to dismiss based on lack of personal jurisdiction, "the plaintiff has the
15 burden of introducing competent evidence of essential facts which establish a prima facie
16 showing that personal jurisdiction exists." *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 692, 857
17 P.2d 740, 743 (1993). At the prima facie stage, the defendant has no burden; instead, the
18 plaintiff must produce "some evidence," such as affidavits, to support all facts necessary for a
19 finding of personal jurisdiction. *Id.* at 692, 857 P.2d at 744.

20 **B. Plaintiff's Perjured Declaration of Service Should Be Stricken.**

21 NRCP 4(g) requires proof of service of the Summons and Complaint. Plaintiff filed a
22 Declaration of Personal Service stating Kelling served McGowen at Sunshine Litigation Services
23 on February 9, 2017. However, Wicker hand delivered the Summons and Complaint to
24 McGowen. McGowen Decl., ¶13. Plaintiff's Declaration of Personal Service is perjured and
25 should be stricken.

26 **C. Process Was Insufficient Based upon Trickery and Deceit.**

27 "The rule that process is invalid where a defendant has been lured into a jurisdiction has
28 been applied for more than 100 years." *Coyne*, 105 F.R.D at 629. Indeed, "[i]t is almost

1 universally held in other jurisdictions that if a person is induced by artifice, trick or fraud to come
2 within the jurisdiction of a court for the purpose of obtaining service of process upon him, and
3 process in an action brought against him in such court is there served, it is an abuse of legal
4 process, void, and will be set aside.” *Empire Mfg. Co. v. Ginsburg*, 253 Ill. App. 242, 247 (Ill.
5 App. Ct. 1929). Additionally, “witnesses, suitors, and their attorneys, while in attendance in
6 connection with the conduct of one suit, are immune from service of process in another.” *Lamb*
7 *v. Schmitt*, 285 U.S. 222, 225 (1932).

8 Courts consider not only whether the defendant was induced to enter the jurisdiction by
9 fraud but also whether defendant was tricked into remaining long enough to be served. *Buchanan*
10 *v. Wilson*, 254 F.2d 849, 850 (6th Cir. 1958). For example, in *Buchanan*, the Sixth Circuit Court
11 of Appeals affirmed the lower court’s decision to quash service as abuse of process, noting that
12 the non-resident defendant had not been induced by artifice to enter the jurisdiction, but “having
13 come within the jurisdiction he was induced by artifice, and for the sole purpose of subjecting
14 him to service of summons, to come to a certain place within the jurisdiction, and was there
15 induced, by artifice, to remain until a deputy sheriff could arrive and make service of summons
16 upon him.” *Id.*

17 In this case, McGowen was induced by artifice, trickery, and deceit both to enter the
18 jurisdiction and to remain long enough to be handed the Summons and Complaint. McGowen
19 was tricked to come to Reno for a purported settlement conference in an unrelated matter. This is
20 the only reason McGowen came to Reno. Under *Lamb*, McGowen was immune from process
21 because he came to Reno as counsel in an unrelated matter. Further, McGowen was tricked to
22 remain at Sunshine Litigation Services for a deposition that was not relevant to him or his clients
23 and to remain after a lunch break so that Plaintiff could have enough time to both file the
24 Complaint and deliver the Summons and Complaint to McGowen while he was at Sunshine
25 Litigation Services. McGowen requests that this Court find that McGowen was immune from
26 process when he came to Reno in good faith for the purported settlement conference. McGowen
27 further requests that this Court quash service as insufficient, void, and an abuse of process.

28 ///

1 **D. Service Was Insufficient Because the Summons and Complaint Were Not**
2 **Served by a Disinterested Person.**

3 NRCP 4(c) requires “[p]rocess shall be served by the sheriff of the county where the
4 defendant is found, or by a deputy, or by any person who is not a party and who is over 18 years
5 of age....” NRCP 4(c) (emphasis added). The person serving process must be a “wholly
6 disinterested person.” *Nevada Cornell Silver Mines v. Hankins*, 51 Nev. 410, 279 P. 27, 30
7 (1929). Otherwise, “there would be great danger of abuse and inducement to the person making
8 the service to make a false return, and thereby put himself in a position to obtain judgment by
9 default or some other undue advantage over the opposite party...” *Id.* Service many times
10 “becomes a battle of credibility and testimony.” *Sawyer v. Sugarless Shops, Inc.*, 106 Nev. 265,
11 269-70, 792 P.2d 14, 17 (1990). This rule prohibits the individual party, as well as an agent of
12 the party, including his attorney or an employee of his attorney, from effectuating service of
13 process. *Id.* at 270, 792 P.2d at 17 (“Something as fundamental and decisive as service is best
14 taken away from the parties or their counsel or counsel’s employees.”). Thus, neither Plaintiff’s
15 counsel, Wicker, nor counsel’s employee, Kelling, may effectuate service.

16 Service of jurisdictional notice by a person who is not disinterested is no service or notice
17 at all. *Nevada Cornell Silver Mines*, 279 P. at 30. Plaintiff filed a Declaration of Personal
18 Service stating Kelling served the Summons and Complaint. Even assuming *arguendo*, Kelling
19 was the one who delivered the Summons and Complaint to McGowen,² such service was in
20 violation of NRCP 4(c) and therefore void. Accordingly, McGowen requests that this Court
21 quash service of the Summons and Complaint.

22 **E. This Court Lacks Personal Jurisdiction Over McGowen.**

23 Nevada’s long-arm statute permits personal jurisdiction over a nonresident defendant
24 unless the exercise of jurisdiction would violate due process. NRS 14.065; *Levinson v. Second*
25 *Jud. Dist. Ct.*, 103 Nev. 404, 406, 742 P.2d 1024, 1025 (1987). “Due process requires minimum
26 contacts between the defendant and the forum state such that the maintenance of the suit does not

27
28 ² As explained more fully above, the Declaration of Service was not true. Wicker is the individual who personally
hand served McGowen the Summons and Complaint. McGowen Decl., ¶13.

1 offend traditional notions of fair play and substantial justice.” *Trump v. Eighth Jud. Dist. Ct.*, 109
2 Nev. 687, 698, 857 P.2d 740, 747 (Nev. 1993). The defendant’s conduct and connection with the
3 forum must be “such that he should reasonably anticipate” being sued there. *Consipio Holding,*
4 *BV v. Carlberg*, 282 P.3d 751, 754 (Nev. 2012) (quoting *World-Wide Volkswagen Corp. v.*
5 *Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567 (1980)).

6 Personal jurisdiction may be either general or specific. *Trump*, 109 Nev. at 699, 857 P.2d
7 at 748. General jurisdiction occurs where a defendant is held to answer in a forum for causes of
8 action unrelated to the defendant’s forum activities. *Id.* Absent general jurisdiction, specific
9 personal jurisdiction over a defendant may be established where the cause of action arises from
10 the defendant’s contacts with the forum. *Id.* This Court has neither general nor specific
11 jurisdiction over McGowen.

12 **1. This Court does not have general jurisdiction over McGowen.**

13 General personal jurisdiction over the defendant “is appropriate where the defendant’s
14 forum activities are so substantial or continuous and systematic that it may be deemed present in
15 the forum.” *Budget Rent-A-Car v. Eighth Jud. Dist. Ct.*, 108 Nev. 483, 485, 835 P.2d 17, 19
16 (1992). Even if substantial, or continuous and systematic contacts exist, the assertion of general
17 jurisdiction must be reasonable. *Amoco Egypt Oil Co. v. Leonis Navigation Co.*, 1 F.3d 848, 852-
18 53 (9th Cir. 1993). “The level of contact with the forum state necessary to establish general
19 jurisdiction is high.” *Budget Rent-A-Car*, 108 Nev. at 485, 835 P.2d at 19.

20 Plaintiff’s Complaint fails to allege any indicia of general jurisdiction. This failure is an
21 implicit recognition that general jurisdiction does not in fact exist. General jurisdiction
22 “approximates physical presence” in the forum state. *Bancroft & Masters, Inc. v. Augusta Nat’l*
23 *Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). The plaintiff must demonstrate that the defendant
24 conducts activities, solicits business, holds a license, or engages in activities that essentially
25 places him physically in the forum state. *In re Western States Wholesale Natural Gas Litigation*,
26 605 F.Supp. 2d 1118, 1131 (D. Nev. 2009) (citing *Int’l Shoe Co v. Washington*, 326 U.S. 310,
27 315 (1945)). A few business or personal trips to Nevada do not establish general jurisdiction over
28 nonresident defendants. *Laxalt v. McClatchy*, 622 F.Supp. 737, 742 (D. Nev. 1985).

1 In this case, Plaintiff alleges a single trip to Nevada. As previously explained, this trip
2 was induced by trickery and deceit. McGowen is not a resident of Nevada, has never lived in
3 Nevada, does not conduct business in Nevada, and does not own any real property in Nevada.
4 McGowen Decl., ¶¶1-5. This Court does not have general jurisdiction over McGowen.

5 **2. This Court does not have specific personal jurisdiction over McGowen.**

6 Absent general jurisdiction, specific personal jurisdiction over a defendant may be
7 established only where the cause of action arises from the defendant's contacts with the forum.
8 *Budget Rent-A-Car*, 108, Nev. at 486, 835 P.2d at 20. "A state may exercise specific personal
9 jurisdiction only where: (1) the defendant purposefully avails himself of the privilege of serving
10 the market in the forum, or of enjoying the protection of the laws of the forum, or where the
11 defendant purposefully establishes contacts with the forum state and affirmatively directs conduct
12 toward the forum state, and (2) the cause of action arises from that purposeful contact with the
13 forum or conduct targeting the forum." *Trump*, 109 Nev. at 699-700, 857 P.2d at 748-49.
14 Additionally, those actions or the consequences of those actions must have a substantial enough
15 connection with Nevada to make the exercise of jurisdiction by a Nevada court reasonable. *Id.*
16 The focus must be "on the relationship among the defendant, the forum, and the litigation within
17 the particular factual context of each case." *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482
18 (9th Cir. 1993).

19 Where the complained of activities did not take place in the forum, the only other way to
20 satisfy the first prong of specific jurisdiction is to show that the effects of the complained-of
21 activity were felt in or aimed at the forum. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1156 (9th
22 Cir. 2006) (citing *Calder v. Jones*, 465 U.S. 783 (1984)). Under the *Calder* effects test, Plaintiff
23 must show that the defendant "(1) committed an intentional act; (2) expressly aimed at the forum
24 state; (3) causing harm that the defendant knows is likely to be suffered in the forum state. *Id.*
25 The *Calder* effects test requires "something more" than simply showing it is foreseeable that a
26 certain act will cause harm in the forum. There must be a showing that the complained-of act was
27 directly aimed at the forum and that the defendant "individually targeted the forum" by his
28 actions. *Id.*; *Global Verge, Inc. v. Rodgers*, 2011 WL 70611 (D. Nev. 2011) (citing *Calder v.*

1 *Jones*, 465 U.S. 783 (1984)).

2 Plaintiff must show that he would not have suffered an injury “but for” McGowen’s
3 forum-related conduct. *Omeluk v. Langsten Slip & Bathyggeri A/S*, 52 F.3d 267, 272 (9th Cir.
4 1995) (concluding that where the plaintiff would have suffered the same injuries even if none of
5 the alleged forum contacts had taken place, the plaintiff failed to meet the “but for” test);
6 *Menalco, FZE v. Buchan*, 602 F. Supp. 2d 1186, 1193 (D. Nev. 2009). Moreover, the fact that
7 Plaintiff is a resident of the forum is not enough to satisfy minimum contacts or the effects test.
8 *Cas. Assurance Risk Ins. Brokerage Co. v. Dillon*, 976 F.2d 596 599 (9th Cir. 1992); accord *Dole*
9 *Food Co., Inc. v. Watts*, 303 F.3d 1104, 111-14 (9th Cir. 2002). Federal jurisprudence addressing
10 due process concerns of personal jurisdiction establishes that even if the plaintiff is a resident of
11 the forum and harm is felt in the forum, the express aim may not necessarily be at the forum. *See*
12 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 807 (9th Cir. 2004) (concluding that
13 the defendant’s express aim was not at the forum because the purpose of the advertisement at
14 issue was to affect Ohio markets—even though this intentional act eventually caused harm to the
15 plaintiff (a forum resident in California) in the forum, and the defendant may have known the
16 plaintiff lived in the forum).

17 Plaintiff fails to establish “a specific and direct relationship” between the forum and the
18 cause of action. *See Trump*, 109 Nev. at 700, 857 P.2d at 748. Plaintiff fails to allege any
19 activities by McGowen expressly directed at Nevada. For example, Plaintiff does not allege the
20 alleged transaction between Bush and McGowen (the alleged basis of the cause of action)
21 occurred in Nevada. *See* Complaint, ¶6. The Complaint in this case is completely devoid of any
22 allegations that would satisfy the *Calder* effects test. First, Plaintiff does not allege any
23 intentional wrongful act. Plaintiff alleges only that a third party (Bush) sold artwork to
24 McGowen “despite Crystal’s interest in those pieces.” Complaint, ¶6. Plaintiff does not allege
25 any action or intent on McGowen’s part. Second, the Complaint does not allege any facts
26 showing McGowen expressly aimed any intentional wrongful act at Nevada. Third, the
27 Complaint does not allege any knowledge on McGowen’s part that harm would likely be suffered
28 in Nevada. Plaintiff does not allege any conduct by McGowen in Nevada. McGowen should not

1 reasonably anticipate, and never anticipated, being sued in Nevada. *See Consipio Holding, BV*,
2 282 P.3d at 754.

3 Plaintiff fails to establish sufficient minimum contacts for this Court to exercise personal
4 jurisdiction over McGowen, a Texas resident, who was tricked into coming to Nevada in the first
5 place. To exercise personal jurisdiction over McGowen would offend traditional notions of fair
6 play and justice and would violate due process. Accordingly, McGowen respectfully requests
7 that the Complaint be dismissed for lack of personal jurisdiction.

8 **IV. Conclusion.**

9 McGowen is an out-of-state attorney who was tricked into coming to Nevada for a
10 settlement conference unrelated to this matter and was therefore immune to service for this
11 matter. Additionally, McGowen was tricked to remain at Sunshine Litigation Services while
12 Plaintiff filed the Complaint and received the Summons from the Court. Based on such trickery,
13 service was insufficient and therefore void. Further, the Declaration of Personal Service was
14 perjured and should be stricken. Regardless of the Declaration of Personal Service, neither
15 Plaintiff's counsel nor an employee of Plaintiff's counsel may properly serve the Summons and
16 Complaint. For all of these reasons, each of which is independently sufficient, McGowen
17 requests service be quashed.

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1 Assuming *arguendo* service were sufficient, this Court may not exercise personal
2 jurisdiction over McGowen because he lacks sufficient minimum contacts with Nevada, and the
3 exercise of personal jurisdiction would be a violation of due process. Accordingly, McGowen
4 requests that this case be dismissed. Finally, McGowen requests recovery of his reasonable
5 attorney fees and costs incurred defending against this trickery and deceit and this Complaint for
6 which there is no jurisdiction.

7 **AFFIRMATION**
8 **Pursuant to NRS 239B.030**

9 The undersigned does hereby affirm that the preceding document does not contain
10 the social security number of any person.

11 Dated: March 10, 2017

SNELL & WILMER L.L.P.

12 By: 

13 Jacey Prupas, Bar No. 9156
14 Carrie L. Parker, Bar No. 10952
15 50 West Liberty Street, Suite 510
16 Reno, Nevada 89501

17 *Attorneys for Defendant James "Jim"*
18 *McGowen, erroneously sued as Trustee of*
19 *McGowen & Fowler, PLLC*

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **MOTION TO QUASH SERVICE AND DISMISS CASE AND REQUEST FOR SANCTIONS** by the method indicated:

XXXXXXX by Court's CM/ECF Program
 _____ by U. S. Mail
 _____ by Facsimile Transmission
 _____ by Overnight Mail
 _____ by Federal Express
 _____ by Electronic Service
 _____ by Hand Delivery

and addressed to the following:

W. Chris Wicker
 Dane W. Anderson
 WOODBURN AND WEDGE
 6100 Neil Road, Suite 500
 Reno, NV 89511
Attorney for Plaintiff Steven Crystal

Dated this 10th day of March, 2017.

By: 
 An employee of Snell & Wilmer L.L.P.

EXHIBIT LIST

1. Declaration of James McGowen in Support of Motion to Quash Service and Dismiss Case and for Sanctions 3 pgs
2. Motion for Appointment of Receiver in *Crystal v. Bush*, Case No. CV16-00865, which includes a certificate of service signed by Dianne M. Kelling 5 pgs

FILED
Electronically
CV17-00281
2017-03-10 01:57:43 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5991254 : csulezic

EXHIBIT 1

EXHIBIT 1

1520
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Carrie L. Parker, Bar No. 10952
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*Attorneys for Defendant James "Jim" McGowen,
erroneously sued as Trustee of McGowen & Fowler,
PLLC*

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

STEVEN B. CRYSTAL, individually and as
Trustee of the Barbara L. Crystal Decedent
Trust,

Plaintiff,

vs.

JIM MCGOWEN, Trustee of McGowen &
Fowler, PLLC and/or DOES 1-10, inclusive;
and DOES 11-20,

Defendants.

Case No. CV17-00281

Dept. No. 6

**DECLARATION OF JAMES MCGOWEN IN SUPPORT OF MOTION TO QUASH
SERVICE AND DISMISS CASE AND FOR SANCTIONS**

I, James McGowen, declare under penalty of perjury of the law of the State of Nevada that
the foregoing is true and correct:

1. I am an attorney licensed to practice law in Texas.
2. I am a partner of McGowen & Fowler, PLLC, which is my law firm, located in
Texas.
3. I live and work in Texas, and I am a resident of Texas.

1 4. I do not live in Nevada, I have never lived in Nevada, I am not licensed to practice
2 law in Nevada, and I do not conduct business in Nevada.

3 5. I do not own any real property in Nevada.

4 6. Ron Bush and his counsel, Steve Defilippis, recently contacted a client of mine
5 and requested that my client and I come to Reno, Nevada for a settlement conference unrelated to
6 the artwork at issue in the instant matter.

7 7. My sole purpose and intent in coming to Reno, was to attend the purported
8 settlement conference, which I was told would be held on February 9, 2017.

9 8. On February 9, 2017, Defilippis and Bush informed me there was a deposition
10 occurring that they thought I would be interested in and encouraged me to attend before the
11 settlement conference. The settlement conference and deposition were both scheduled to take
12 place on February 9, 2017 in Reno, Nevada.

13 9. Steven Crystal's counsel, Chris Wicker, was taking the deposition, and Crystal and
14 Bush were in attendance. Bush's attorneys, Defilippis and Bert Terrari were also present at the
15 deposition.

16 10. I attended the deposition, which turned out to have nothing to do with me, my
17 clients, or the artwork that is the purported subject matter of the instant Complaint. No question
18 was relevant to me, and I did not participate in the deposition.

19 11. The deposition continued through the morning, there was a lunch break, and then
20 the deposition continued after lunch. During the lunch break, Terrari talked to Wicker.

21 12. In the afternoon, while this deposition was occurring, Crystal's counsel, Dane
22 Anderson, arrived and appeared to hand something to Wicker.

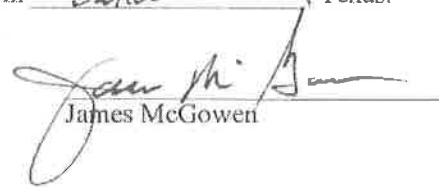
23 13. After the deposition concluded, Terrari and Wicker spoke outside the room where
24 the deposition was being taken. When Terrari returned, he told me that Wicker needed to speak
25 with me. Wicker hand served me the Summons and Complaint in the instant matter. I am certain
26 no woman served me with the Summons and Complaint.

27 14. Wicker informed me that he needed to know more about my clients and accused
28 them of "taking" art that belonged to Crystal.

1 15. I rebooked my flight back to Texas for an earlier flight, and left that afternoon. I
2 did not attend any settlement conference that day.

3 16. I declare under the penalty of perjury under the law of the State of Nevada that the
4 foregoing is true and correct.

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6 Executed this 9th day of March, 2017 in Dallas, Texas.

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9 James McGowen
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FILED
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2017-03-10 01:57:43 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5991254 : csulezic

EXHIBIT 2

EXHIBIT 2

1 **2490**

2 W. Chris Wicker, Esq.
3 Nevada State Bar No. 1037
4 Dane W. Anderson, Esq.
5 Nevada State Bar 6883
6 WOODBURN AND WEDGE
7 6100 Neil Road, Suite 500
8 Reno, Nevada 89511
9 Telephone: 775-688-3000
10 Facsimile: 775-688-3088
11 cwick@woodburnandwedge.com
12 danderson@woodburnandwedge.com
13 Attorneys for Steven B. Crystal, Automated
14 Cash Systems and Automated Cashless Systems
15

16 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
17 **IN AND FOR THE COUNTY OF WASHOE**

18 STEVEN B. CRYSTAL, Individually and as
19 Trustee of The Barbara L. Crystal Decedent
20 Trust,

21 Plaintiff,

22 v.

23 RONALD G. "RON" BUSH, an individual;
24 TYCHE ACQUISITIONS GROUP, INC., a
25 Nevada corporation; RENAISSANCE
26 MASTERS, LLC, a Nevada limited liability
27 company; CLASSIC FINE ART, LLC, a
28 Nevada limited liability company; TYCHE
ART INTERNATIONAL, INC., a Nevada
corporation; and DOES 1 – 20, inclusive,

Defendants.

AND RELATED CLAIMS.

Case No.: CV16-00865

Dept. No.: 4

MOTION FOR APPOINTMENT OF RECEIVER

Plaintiff, STEVEN B. CRYSTAL, individually and as Trustee of The Barbara L. Crystal Decedent Trust ("Crystal"), through his counsel, WOODBURN AND WEDGE, moves this Court pursuant to NRS 32.010 for an order appointing a receiver for the purpose of collecting, preserving and liquidating the artwork at issue in this case to satisfy the outstanding obligations owed to Crystal by the defendants. This motion is supported by the

1 following memorandum of points and authorities and the pleadings and papers on file in this
2 matter.

3 **I. INTRODUCTION**

4 The facts supporting this motion have been presented to the Court by affidavit and
5 deposition testimony, as well as direct testimony and exhibits from multiple hearings. The
6 Court has found that Crystal is likely to prevail on the merits of his underlying contract claims
7 against defendants, and that he is likely to suffer irreparable harm in the absence of an
8 injunction because the artwork at issue is likely the only asset available to repay the loans at
9 issue. See Preliminary Injunction entered on July 20, 2015. The Court ordered that the
10 parties confer on the appointment of a receiver for the purpose of liquidating artwork to
11 satisfy the loan obligations at issue and report back to the Court at the hearing set for
12 September 26, 2016. Id.

13 Crystal has reached out to more than one receiver candidate that is nationally regarded
14 in fine art to determine if they are willing to serve, but has received indication that they are
15 not interested under the circumstances. Crystal will continue to explore receiver options, but
16 in the event he has not located a receiver willing to serve, Crystal wants the issue to be ripe
17 for decision at the hearing on September 26, 2016.

18 **II. LAW AND ARGUMENT**

19 A receiver is an officer or representative of the court, appointed to take the charge and
20 management of property which is the subject of litigation before it, for the purpose of its
21 preservation and ultimate disposition according to the final judgment therein. State v. Second
22 Judicial Dist. Court in & for Washoe Cty., 49 Nev. 145, 241 P. 317, 317 (1925). NRS
23 32.010(1) provides that a receiver may be appointed by the court in an action by a creditor to
24 subject any property or fund to the creditor's claim, where it is shown that the property or
25 fund is in danger of being lost, removed or materially injured. Alternatively, pursuant to NRS
26 32.010(6), a receiver may be appointed in all other cases where receivers previously have
27 been appointed by "the usages of courts of equity."

28 * * *

1 Here, the evidence presented to the Court demonstrates that Crystal is a creditor with a
2 security interest in property under the control of the named defendants, whom the Court has
3 found are likely the alter ego of each other. The Court has found that the evidence suggests
4 the artwork at issue is the only source of payment for the amounts owed to Crystal, and
5 expressed concern about the manner in which Bush may be disposing of collateral. Courts of
6 equity have previously appointed receivers in similar circumstances requiring preservation
7 and administration of property in situations of fraud, imminent insolvency and waste or loss
8 of property. See 65 AmJur.2d (2011) Receivers §§ 29-33.

9 Here, given the Court's Preliminary Injunction restraining both parties from disposing
10 of the artwork at issue, it is appropriate for a disinterested third party to marshal and liquidate
11 the assets at issue for the purpose of satisfying defendants' obligations to Crystal. The Court
12 indicated at the hearing on July 12 that it may be appropriate for a receiver to be appointed for
13 this purpose. The purpose of this motion is to put the issue formally before the Court prior to
14 the hearing on September 26, 2016. In the meanwhile, Crystal intends to continue exploring
15 possible receiver options and will confer with defendants if a suitable candidate expresses
16 interest in serving as a receiver.

17 NRS Chapter 32 does not require a bond for the appointment of a receiver. The
18 Nevada Supreme Court has stated that "it is the general rule that the requirement of such a
19 bond lies within the discretion of the trial court. Bowler v. Leonard, 70 Nev. 370, 269 P.2d
20 833 (1954). Given that the asserted value of the artwork at issue is very substantial, it may be
21 appropriate to require a bond of some substantial amount. However, Crystal suggests that the
22 bond amount be discussed at the hearing.

23 **III. CONCLUSION**

24 The appointment of a receiver is appropriate to collect, preserve and ultimately
25 liquidate the artwork at issue in this case to satisfy the outstanding obligations owed to Crystal
26 by defendants. Crystal requests that the Court enter its order that a receiver be appointed and
27 setting forth a mechanism for doing so.

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Affirmation pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: September 9, 2016.

WOODBURN AND WEDGE

By: /s/ Dane W. Anderson
W. Chris Wicker, Esq.
Nevada Bar No. 1037
Dane W. Anderson, Esq.
Nevada Bar No. 6883
Attorneys for Steven B. Crystal,
Automated Cash Systems and Automated
Cashless Systems

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of
3 Woodburn and Wedge, 6100 Neil Road, Suite 500, Reno, Nevada 89511, and that I
4 caused to be served the foregoing document(s) described as follows:

5 MOTION FOR APPOINTMENT OF RECEIVER

6 On the party(s) set forth below by:

7 X Placing an original or true copy thereof in a sealed envelope placed for collection
8 and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following
9 ordinary business practices.

10 X Personal delivery.

11 Facsimile (FAX).

12 Federal Express or other overnight delivery.

13 X Electronically filed the foregoing with the Clerk of the Court by using the
14 ECF system which will send a notice of electronic filing to the following:

15 Alicia Johnson
16 JOHNSON LAW PRACTICE
17 611 Sierra Rose Dr., Suite A
18 Reno, NV 89511
19 **Via Personal Delivery & E-Flex**

20 Steve M. Defilippis
21 PICONE & DEFILIPPIS, A P.L.C.
22 625 N. First Street
23 San Jose, CA 95112
24 **Via E-Flex & U.S. Mail**

25 DATED this 9th day of September, 2016.

26 /s/ Dianne M. Kelling
27 An employee of Woodburn and Wedge

1 **2645**
2 W. Chris Wicker, Esq.
3 Nevada State Bar No. 1037
4 Dane W. Anderson, Esq.
5 Nevada State Bar 6883
6 WOODBURN AND WEDGE
7 6100 Neil Road, Suite 500
8 Reno, Nevada 89511
9 Telephone: 775-688-3000
10 Facsimile: 775-688-3088
11 cwicker@woodburnandwedge.com
12 danderson@woodburnandwedge.com

13 Attorneys for Plaintiff, Steven Crystal

14
15 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

16
17 IN AND FOR THE COUNTY OF WASHOE

18 STEVEN B. CRYSTAL, individually and as
19 Trustee of The Barbara L. Crystal Decedent
20 Trust,

Case No.: CV17-00281

Dept. No.: 6

21
22 Plaintiff,

23 v.

24 JIM MCGOWEN, Trustee of McGowen &
25 Fowler, PLLC and/or DOES 1-10, inclusive;
26 and DOES 11-20,

27
28 Defendants.

29 **OPPOSITION TO DEFENDANT'S MOTION TO QUASH SERVICE AND DISMISS**

30 **CASE**

31 Plaintiff Steven B. Crystal, individually and as Trustee of the Barbara L. Crystal
32 Decedent Trust ("Crystal"), by and through undersigned counsel, hereby opposes Defendant's
33 Motion to Quash Service and Dismiss Case as follows. This Opposition is based upon Nevada
34 Rules of Civil Procedure ("NRC") 4, the following memorandum of points and authorities,
35 the Declaration of Chris Wicker, the Declaration of Dianne Kelling, the Declaration of Dane
36 Anderson, the Declaration of Stephen Warner, the Declaration of Steve Crystal, attached
37 exhibits, and any oral argument this Court may entertain.

1 Memorandum of Points and Authorities

2 **I. Introduction**

3 This Court should deny Defendant's Motion to Quash Service and Dismiss Case. This
4 Court does have personal jurisdiction over the Defendant as he was personally served by a
5 non party while physically present in the State of Nevada. Minimum contacts are not required
6 to be shown to justify personal jurisdiction when service is by personal service upon
7 Defendant while physically present in the forum state. Defendant was properly served in
8 accordance with NRCP 4, as he was served by a person who is not a party and who is over 18
9 years of age. The Declaration of Personal Service was not perjured, the Declaration of James
10 McGowen contains the perjury.
11

12 Further, Defendant was not tricked into coming to Nevada by Plaintiff, nor was any
13 manner of deceit used by Plaintiff to lure Defendant to Nevada with the intention to obtain
14 personal jurisdiction. Plaintiff was surprised to discover Defendant in Reno. Therefore,
15 Defendant's motion should be denied.
16

17 **II. Factual Background**

18
19 Plaintiff reasserts the facts as alleged in the Complaint. On February 9, 2017, Plaintiff
20 and his counsel appeared at a scheduled deposition in the matter of *Crystal v. Bush* and related
21 claims, Second Judicial District Court Case No. CV16-00865, Department 4. The deposition
22 took place at Sunshine Litigation Services in Reno, Nevada. Upon arrival, Plaintiff's attorney
23 Chris Wicker, as well as Plaintiff, Mr. Crystal, were surprised to see that the Defendant Jim
24 McGowen was present. Mr. Wicker did not know, nor did he have any reason to suspect that
25 Defendant would be in attendance. Wicker Decl. ¶ 3, Crystal Decl. ¶ 3. There was no
26 trickery or deceit on behalf of Plaintiff or a sinister motive as alleged by Defendant. Mot. 4:7-
27 19. Indeed, there was no reason for Defendant to be in attendance and Mr. Wicker and Mr.
28 Crystal were surprised to see him that day. Plaintiff was not involved in any collusion with

1 any other party, and was not a part of, or aware of, any request to get Defendant to Nevada.
2 Crystal Decl. ¶ 4. Wicker did not object to Defendant's presence during the deposition. Mr.
3 Wicker did, however, believe it was an opportunity to obtain personal jurisdiction over
4 Defendant and serve him in the present matter. Wicker Decl. ¶ 4.

5 When Mr. Wicker found out that Mr. McGowen was present, he called Mr. Anderson
6 and requested him to prepare a complaint for claims that Mr. Crystal had against Mr.
7 McGowen as Trustee for an undisclosed trust. Wicker Dec. ¶ 4, DA Decl. ¶ 2, 3. The
8 Summons and Complaint were drafted by Plaintiff's counsel, Dane Anderson, and brought to
9 the location where the deposition was being held. Mr. Anderson directed his assistant, Dianne
10 Kelling, to file the Complaint and get a summons issued. DA Decl. ¶ 4, 5. Ms. Kelling
11 brought the issued Summons and a copy of the Complaint to Sunshine Litigation Services
12 where the deposition was being conducted. Kelling Decl. ¶ 2, 3. The text messages between
13 Mr. Anderson and Ms. Kelling asking Ms. Kelling to come to Sunshine Litigation Services
14 are attached as Exhibit 1 to Ms. Kelling's Declaration. Also attached as Exhibit 2 to the
15 Kelling Declaration is a copy of a photograph of Ms. Kelling holding the Summons and
16 Complaint in the conference room 5 at Sunshine Litigation Services. Kelling Decl. ¶ 6,
17 Anderson Decl. ¶ 8. Defendant McGowen stepped out of the deposition room and was met by
18 Mr. Wicker and Ms. Kelling. Defendant was served by Dianne Kelling and not, as he alleged,
19 by Mr. Wicker. Wicker Decl. ¶ 8, 9, 10, Kelling Decl. ¶ 7, 8. The text message from Ms.
20 Kelling to Mr. Anderson indicates "service was accomplished." Kelling Decl. ¶9, Exhibit 1.

21 The Declaration of Personal Service as filed by Plaintiff is true and accurate and not
22 perjured as further alleged by Defendant. Mr. McGowen's claim that he was hand served by
23 Mr. Wicker and that he was certain no woman served him is the false statement. Thus,
24 personal jurisdiction was obtained by Defendant's presence in the forum state and personal
25 service was effectuated through service by a disinterested person.

26 Defendant McGowen declares he was tricked into coming to Nevada through
27 collusion between Mr. Bush and Plaintiff. Mot. 4:7-13. The allegation is nonsense, not
28 supported by any evidence, and as described below, Mr. McGowen has had dealings with Mr.

1 Bush to the detriment of Mr. Crystal. Neither Mr. Crystal nor his counsel had anything to do
2 with Mr. McGowen coming to Reno. Crystal Decl. ¶ 2, 3, 4, Wicker Decl. ¶ 3. Defendant
3 claims to have been told by Mr. Bush's attorney, Steve Defilippis, that he was coming for a
4 settlement conference that peripherally involved his clients. Mot. 3:10-14. Also, on February
5 6, 2017, Mr. Bush emailed Mr. Warner's attorney, Carole Pope, that he was busy on a
6 settlement conference and was coordinating the attendance of attorneys from, among other
7 places, Texas (Mr. McGowen), Healdsburg (Mr. Terreri), and San Jose (Mr. Defilippis).
8 Warner Decl. ¶ 4, 5, 6, Exhibit 1 to Warner Decl. This is consistent with Mr. McGowen's
9 statement that Mr. Bush and Mr. Defilippis contacted Mr. McGowen's client and requested
10 that they come to Reno for a settlement conference. Mc. Gowen Decl., ¶ 6. They also
11 allegedly encouraged Mc. Gowen to attend the deposition of Elina Leung the morning of
12 February 9, 2017. *Id.*, ¶ 8.

13 Although Plaintiff does not know what was said to Mr. McGowen, this may be related
14 to a settlement conference that was scheduled for the afternoon of February 9, 2017 in the
15 case of *CIP South Virginia v. Ronald Bush*, Second Judicial District Court Case No. CV16-
16 00948 in Department 1. There also was pending litigation between Crystal and Bush and other
17 parties in *Crystal, et al. v. Bush, et al.*, Second Judicial District Court Case No. CV16-00865
18 in Department 4. Judge Berry ordered a settlement conference in the CIP case before Judge
19 Russell in Carson City to take place on the afternoon of February 9, 2017. Wicker Decl. ¶ 12.
20 Three depositions were scheduled for February 8, 2017. One of the depositions moved from
21 February 8 and rescheduled for the morning of February 9 in the *Crystal v. Bush* matter.
22 Wicker Decl. ¶ 12. Mr. Defilippis, from San Jose, had to attend the settlement conference
23 that afternoon.

24 On February 6, 2017, Mr. Bush filed a motion to consolidate the two actions for
25 purposes of the settlement conference. A copy is attached hereto as Exhibit 1 to the Wicker
26 Declaration. On February 8, 2017, CIP, which is a family company of Mr. Crystal, opposed
27 the motion, which opposition was filed at 3:42 p.m. A copy of the Opposition is attached
28 hereto as Exhibit 2 to the Wicker Declaration. CIP opposed it as the two matters had different

1 issues, different parties and the *Crystal v. Bush* matter was much more complicated. If the
2 matters had been consolidated for settlement, Mr. McGowen's clients might have had an
3 interest since they allegedly claim an interest in a company involved in the *Crystal v. Bush*
4 case. However, McGowen's clients are not parties, have never formally brought forward any
5 claims, and have just said they believe they have claims. Wicker Decl. ¶ 17. On February 8,
6 at 4:58 p.m., the Court denied the motion to consolidate. See Exhibit 3 to the Wicker
7 Declaration, attached.

8 Since neither Crystal nor his counsel had any involvement or contact with Mr.
9 McGowen, it is unknown what was said to him. Mr. McGowen may not have been told the
10 Court denied the motion to consolidate the cases for settlement purposes at the end of the day
11 on February 8, 2017. Mr. Terreri, who Mr. McGowen refers to, apparently was also present
12 for a proposed settlement conference in *Crystal v. Bush* that was not happening. It was only
13 decided on February 8, 2017 to move a scheduled deposition to February 9, 2017. Wicker
14 Decl. ¶ 11. Certainly, there was no collusion involving Crystal and Bush to bring Mr.
15 McGowen to Nevada. Crystal and Bush are involved in bitter litigation which would preclude
16 collusion on anything. If Plaintiff actually thought Mr. McGowen might be coming to
17 Nevada, a complaint would have been prepared in advance. Wicker Decl. ¶ 16.

18 **III. Legal Argument**

19 **A. Personal Jurisdiction.**

20 It is well-settled that personal jurisdiction may be asserted over an individual who is
21 served with process while present within the forum state. *See Pennoyer v. Neff*, 95 U.S. [5
22 Otto], 714, 24 L.Ed. 565 (1878); NRCP 4(f). Defendant's motion contains a nearly four-page
23 "minimum contacts" analysis, citing numerous cases but overlooking the critical authority of
24 *Cariaga v. Eighth Judicial Dist. Court of State*, 104 Nev. 544, 546, 762 P.2d. 886, 887-88
25 (1988). In that case, the Nevada Supreme Court addressed the issue of whether Nevada courts
26 must conduct a "minimum contacts" analysis when a Defendant is served with process while
27
28

1 physically present in Nevada. The *Cariaga* Court answered that question in the negative,
2 holding that “personal jurisdiction may be exercised over a non-resident Defendant if the
3 Defendant is served with process while he is physically present in the forum state.” *Id.* In so
4 holding, the court stated: “The doctrine of ‘minimum contacts’...was never intended to limit
5 the jurisdiction of state courts over persons found within the borders of the forum state.” *Id.*
6 There is no dispute that Defendant was personally served with the Summons and Complaint
7 while physically present in Reno, Nevada.

8 Thus, pursuant to the findings in *Cariaga*, the minimum contacts between the
9 Defendant and the forum state as discussed in *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687,
10 698,857 P.2d 740, 747 Q.tev. 1993), do not apply. Defendant was in Nevada, the forum state,
11 and was personally served with process, thus personal jurisdiction has been established.

12
13 **B. Service of Process Was Not Accomplished by Deceit or Trickery.**

14 Plaintiff was not involved in, nor a party to, any trickery or deceit in order to lure
15 Defendant to the forum state. As previously discussed, it was a surprise to Plaintiff to see Mr.
16 McGowen present at the scheduled deposition on February 9, 2017. At no time prior to
17 arriving at the deposition did Plaintiff have any idea Defendant would be in attendance.
18 Defendant has not alleged he was lured to Nevada by Mr. Crystal, and if he did, that would
19 not be true; thus, service was properly effectuated. Plaintiff played no role in ensuring
20 Defendant would be present in Reno, Nevada, and in fact had no notice he would be present
21 until counsel arrive at Sunshine Litigation Services on the morning of the deposition.
22 Defendant has offered no evidence to substantiate his inflammatory allegations that Plaintiff
23 was involved in some cunning plot to lure Defendant to Nevada with the sole purpose of
24 serving him. Plaintiff did not object to McGowen being present in the deposition, but in no
25 way tricked or induced him to remain long enough in order to be served. Defendant is an adult
26 and could have exercised his free will to leave at any time he so desired. Plaintiff should not
27 be prejudiced by granting Defendant’s motion to quash simply because Defendant was found
28 in Reno.

1 It is more than a little ironic that Mr. McGowen complains of Bush and his counsel
2 inviting him to a settlement conference. There is plenty of reason to believe that Bush has a
3 much closer relationship to Mr. McGowen than he admits. In June, 2014 Crystal wired \$2.1
4 million to Mr. McGowen's trust account, because Mr. McGowen's client, controlled by Mr.
5 Wellborn Sr., was selling the Bronze Pieta to Mr. Bush or his alter ego company. Crystal
6 Decl. ¶ 6. Just a few months later, Bush and McGowen entered into the transaction whereby
7 McGowen as Trustee bought the Pieta back plus two purported Jackson Pollock paintings for
8 only \$500,000. Crystal Decl. ¶ 6, See Exhibit 4 attached to Wicker Decl. One might think
9 that when Mr. McGowen received \$2.1 million for the Pieta four months before Bush came to
10 him to sell the Pieta plus two potential Jackson Pollocks for \$500,000, it should raise some
11 questions. Mr. McGowen even conspired with Mr. Bush to hide the facts of the sale. See
12 Exhibit 5 to Wicker Declaration. McGowen has never revealed who he claims to be Trustee
13 for, but Bush testified that after the sale Mr. Wellborn Sr. was able to present the paintings so
14 Bush could take a sample for testing purposes. Deposition of Bush, excerpts attached as
15 Exhibit 6 to Wicker Decl. If any collusion has occurred it would likely be between McGowen
16 and Bush, and not between Crystal and Bush. As stated in the opposition to consolidate for
17 settlement purposes, Crystal never had any intention of negotiating the case that potentially
18 included Mr. McGowen's clients.

19 The cases cited by Defendant have no application to these circumstances. In all of the
20 cases, unlike here, the Plaintiff was involved in procuring the Defendant's presence in the
21 forum state. The case of *Coyne v. Grupo Inds. Triem, S.A. de C.V.*, 105 F.R.D. 627 (D.D.C.
22 1985) cited by Defendant, does not affect the proper service on Defendant. Plaintiff had no
23 role whatsoever in the presence of Mr. McGowen in Reno. Crystal did nothing and said
24 nothing to attempt to keep Mr. McGowen present. Wicker Decl. ¶ 3. At any time Mr.
25 McGowen could have asked Mr. Crystal or his counsel if they wanted him to stay to try to
26 negotiate. Mr. McGowen said nothing. Wicker Decl. ¶ 8.

27 Defendant also relies on *Lamb v. Schmitt*, 285 U.S. 222 (1932) to claim Defendant
28 was immune from service because he came to Reno in an unrelated matter. Mot. 6:20-21.

1 Defendant stretches the holding in *Lamb* beyond recognition. Mr. McGowen did not
2 represent any party in the *Bush v. Crystal* litigation. Even if he did, he did not come to a
3 hearing or trial as in *Lamb*, he came to a deposition that he admits had nothing to do with him,
4 his clients, or the artwork. McGowen Decl. ¶ 10. Mr. McGowen had zero immunity from
5 service.

6 Defendant claims he was tricked into remaining at Sunshine Litigation Services until
7 after a lunch break, but provides no evidence to substantiate this absurd claim. Mot. 6:21-25.

8
9 **C. Summons and Complaint Were Served by a Non-Party and Thus Service Was Proper.**

10
11 NRCP 4(c) requires "[p]rocess shall be served by the sheriff of the county where the
12 Defendant is found, or by a deputy, or by any person who is not a party and who is over 18
13 years of age...." NRCP 4(c) (emphasis added).

14 The Federal Rules of Civil Procedure (FRCP) Rule 4(c)(2)(A) provides that "[a]
15 summons and complaint shall, ..., be served by any person who is not a party and is not less
16 than 18 years of age." The wording is almost identically in that service may be made by
17 anyone who is not a party. (Emphasis added).

18 The Federal Rules were amended in 1983 to reduce the role of federal marshals in the
19 service of process in most civil actions." *Madden v. Cleland*, 105 F.R.D. 520, 522
20 (N.D.Ga.1985). As amended, Rule 4 no longer includes restrictive language with respect to
21 the classes of persons who are permitted to serve process. A summons and complaint now
22 may be served by "any person who is not a party and is not less than 18 years of age." The
23 Court in *Madden v. Cleland* declined to read limitations onto the clear wording of
24 Fed.R.Civ.P. 4(c)(2)(A), and found that a party's attorney may serve a summons and
25 complaint in accordance with the Federal Rules, stating, "The phrase "any person who is not a
26 party" in Fed.R.Civ.P. 4(c)(2)(A) does not prohibit service by a party's representative."

27 Many other Federal Courts have found that "any person who is not a party" does not
28 preclude service of process by an attorney or an employee of an attorney, as they are not a
party to the case. See, Trustees of Local Union No. 727 Pension Fund v. Perfect Parking, Inc.

1 126 F.R.D. 48 USDC, N.D. Illinois, Eastern Division. March 31, 1989. Based upon the plain
2 language of Rule 4, service of summons and complaint by an attorney for the Plaintiff has
3 been held to be proper service. *See C.F.T.C. v. American Metal Exchange Corp.*, 693 F.Supp.
4 168, 186 (D.N.J.1988); *Jugolinija v. Blue Heaven Mills*, 115 F.R.D. 13, 15 (S.D. Ga.1986).

5 Furthermore, Courts have found that service by an employee of an attorney is proper
6 within the meaning of FRCP 4(c)(2)(A). *Commodity Futures Trading Com'n v. American*
7 *Metals Exchange Corp.* 693 F.Supp. 168 USDC, D. New Jersey. July 18, 1988. In that case,
8 Defendants were served by a senior financial investigator of the Office of Comptroller for the
9 State of Florida. The pleadings in that case reveal that the Office of Comptroller represented
10 the State of Florida. Thus, since that office was counsel for a party, State of Florida, the Court
11 found that these Defendants were not served by a party, but rather were served by an
12 employee of its counsel. The Court found such was proper.

14 Defendant cites *Nevada Cornell Silver Mines v. Hankins*, 51 Nev. 410,279 P.27,30
15 (1929) and *Sawyer v. Sugarless Shops, Inc.*, 106 Nev. 265, 269-70,792 P.2d 14, 17 (1990) and
16 argues that the rules prohibit the individual party, as well as an agent of the party, including
17 his attorney, from effectuating service. This is simply an inaccurate reading and
18 understanding of the law. While the case does hold that "something as fundamental and
19 decisive as service is best taken away from the parties or their counsel or counsel's
20 employees," (emphasis added), it does not explicitly prohibit service by an attorney or
21 employee. In any event, the rule just prohibits a party from serving process as recognized by
22 the federal courts.

24 By Defendant's reasoning, it would be impossible to find a "wholly disinterested
25 party" to effectuate service of process. One must consider an independent process server
26 being retained by counsel to serve process. This person, while not employed by the attorney
27 or the law firm, has been retained for the specific purpose of serving process. Their actions
28 are motivated by the desire to fulfill the wishes of counsel, and are paid for doing a job.

1 Essentially they are being paid to ensure the instructions of the attorney are met, i.e. that the
2 party is served. They have as much, or as little, interest in the substance of the case as any
3 other employee of the attorney.

4 Thus, while service by counsel for Plaintiff may not be the most preferable method,
5 service by counsel is proper, as is service by an employee of counsel. Defendant does not
6 deny the fact he was served with a Summons and Complaint, he simply objects to the person
7 by whom he was served. As established by case law and the plain reading of the statute,
8 service by anyone who is not a party and over 18 years of age, is proper service. Thus,
9 Defendant was properly served in accordance to NRCP 4(c). This Court should follow the
10 recent federal court cases interpreting an identical rule so Defendant's motion to quash service
11 should be denied.

12 Defendant was served by Dianne M. Kelling. Even if, as Defendant alleged, he was
13 served by Mr. Wicker, service still would have been proper under FRCP 4(c)(2)(A). Neither
14 Ms. Kelling nor Mr. Wicker is a party to the case, both are over 18 years old, thus either
15 would qualify as a proper person to effectuate service under FRCP and NRCP 4.

16 17 **IV. Conclusion**

18 Plaintiff obtained personal jurisdiction over Defendant when Defendant was
19 physically present in the forum state. No minimum contacts are required to justify personal
20 jurisdiction when Defendant is physically present in the forum state. Personal service was
21 effectuated when Defendant was handed the Summons and Complaint by Dianne M. Kelling,
22 an employee of Woodburn and Wedge. Kelling is not a party to the case and is over 18 years
23 old, thus a suitable person to serve process. The Declaration of Personal Service was not
24 perjured.

25 Mr. Bush and his counsel may have had a belief that the Court in Department 1 would
26 not deny their motion to consolidate for settlement purposes. Plaintiff played no role in, nor
27 has any knowledge of, a sinister plot to lure Defendant to the forum state. Plaintiff was
28 surprised to see Defendant at the deposition on February 9, 2017. There was no collusion by

1 Plaintiff with any party, or any deceit on the part of Plaintiff. Indeed, Plaintiff had no
2 knowledge that Defendant would be present until he arrived at the deposition location. For all
3 the reasons set forth above, Defendant's Motion to Quash Service and Dismiss case should be
4 denied.

5 **Affirmation pursuant to NRS 239B.030**

6 The undersigned does hereby affirm that the preceding document does not contain the
7 social security number of any person.

8 DATED: March 28, 2017.

9 WOODBURN AND WEDGE

10 By:



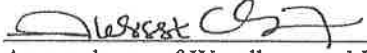
11 W. Chris Wicker, Esq.
12 Nevada Bar No. 1037
13 Dane W. Anderson, Esq.
14 Nevada Bar No. 6883
15 Attorneys for Plaintiff Steven Crystal
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1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that I am an employee of Woodburn and Wedge and that on this date,
4 I caused to be sent via electronic service through the Court's E-flex system a true and correct
5 copy of the **OPPOSITION TO DEFENDANT'S MOTION TO QUASH SERVICE AND**
6 **DISMISS CASE** to:

7 Jacey Prupas, Esq.
8 Carrie L. Parker, Esq.
9 SNELL & WILMER, L.L.P.
10 50 West Liberty Street, Suite 510
11 Reno, NV 89501
12 *Attorneys for Defendant*

13 Dated: March 28, 2017.

14 By: 
15 An employee of Woodburn and Wedge
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W. Chris Wicker, Esq.
Nevada State Bar No. 1037
Dane W. Anderson, Esq.
Nevada State Bar 6883
WOODBURN AND WEDGE
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cwicker@woodburnandwedge.com
danderson@woodburnandwedge.com

Attorneys for Plaintiff, Steven Crystal

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN B. CRYSTAL, individually and as
Trustee of The Barbara L. Crystal Decedent
Trust,

Plaintiff,

v.

JIM MCGOWEN, Trustee of McGowen &
Fowler, PLLC and/or DOES 1-10, inclusive;
and DOES 11-20,

Defendants.

Case No.: CV17-00281

Dept. No.: 6

**DECLARATION OF STEPHEN
WARNER IN SUPPORT OF
OPPOSITION TO DEFENDANT'S
MOTION TO QUASH SERVICE AND
DISMISS CASE AND
REQUEST FOR SANCTIONS**

1. I am the Chief Operating Officer of Automated Cashless Systems, Inc., which
is a party in the pending lawsuit of *Crystal, et al. v. Bush, et al.*, Second Judicial District Case
No. CV16-00865, Dept. No. 4.

2. In addition, my wife and I filed an action against Ron G. Bush based on
personal loans my wife and I made to Mr. Bush. I was represented by Carole Pope in that
matter, *Warner v. Bush*, Case No. CV16-01913, Dept. No. 10.

3. In that action, Mr. Bush had not answered and my attorney contacted him
about our intent to default him.

1 4. Attached hereto is an email exchange between Ms. Pope and Mr. Bush. My
2 attorney sent this email to me in the ordinary course of business.

3 5. Notably, in his emails dated February 6, 2017, Mr. Bush asked us not to
4 default him because he had a settlement conference scheduled that week. Mr. Bush said he
5 was coordinating the settlement conference by bringing "...attorneys in from Texas, Arizona,
6 Vegas, Healdsburg [sic], and San Jose for those proceedings." P. 3.

7 6. Mr. McGowen is from Texas, Mr. Terreri is from Healdsburg and Mr.
8 Defilippis is from San Jose. All three were present during the deposition on the morning of
9 February 9, 2017.

10 I swear under penalty of perjury under the laws of the State of Nevada that the
11 foregoing is true and correct.

12 DATED this 27 day of March, 2017.

13 
14 _____
15 STEPHEN WARNER
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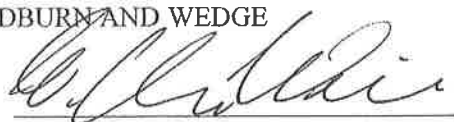
Affirmation pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: March 28, 2017.

WOODBURN AND WEDGE

By:



W. Chris Wicker, Esq.

Nevada Bar No. 1037

Dane W. Anderson, Esq.

Nevada Bar No. 6883

Attorneys for Plaintiff Steven Crystal

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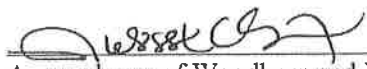
Table of Exhibits		
<u>Exhibit No.</u>	<u>Description</u>	<u>No. of Pages</u>
1	Email exchange between Carole Pope and Ron Bush	4

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Woodburn and Wedge and that on this date,
3 I caused to be sent via electronic service through the Court's E-flex system a true and correct
4 copy of the **DECLARATION OF STEPHEN WARNER IN SUPPORT OF**
5 **OPPOSITION TO DEFENDANT'S MOTION TO QUASH SERVICE AND DISMISS**
6 **CASE to:**

7
8 Jacey Prupas, Esq.
9 Carrie L. Parker, Esq.
10 SNELL & WILMER, L.L.P.
11 50 West Liberty Street, Suite 510
12 Reno, NV 89501
13 *Attorneys for Defendant*

14 Dated: March 28, 2017.

15 By: 
16 An employee of Woodburn and Wedge
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FILED
Electronically
CV17-00281
2017-03-28 06:43:34 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6021939 : pmsewell

EXHIBIT “1”

EXHIBIT “1”

-----Original Message-----

From: Steve Warner <swarner@acsplayon.com>
To: 'Carole Pope' <cmp7000@aol.com>
Cc: 'Kathryn Warner' <kathrynlake588@gmail.com>
Sent: Tue, Feb 7, 2017 10:37 am
Subject: RE: Warner v. Bush lawsuit

Hello Carole,

Please file the today... His letter has no credence as far as my wife and I are concerned. Our lawsuit filing (You, Kate and I) against Mr. Bush has absolutely nothing to do with the proceedings between he and Mr. Crystal. His representations in his response letter to you are idle threats with no merit and Kate are tired of the BS/delays he continues to represent. You too indicate that in the body of your email... "I know this man is not forthcoming. He did wait until the last minute to respond to my letter." He's not even represented by an attorney for his responses. Therefore, please execute default.

BTW the court meeting he is representing has to do with real-estate he and Crystal are in litigation over...

Thank you,

Stephen L Warner
Founder/Chief Operating Officer
Automated Cashless Systems, Inc

swarner@acsplayon.com
775-412-5450



www.acsplayon.com

Play On Responsibly

From: Carole Pope [<mailto:cmp7000@aol.com>]
Sent: Monday, February 06, 2017 5:47 PM
To: swarner@acsplayon.com
Subject: Fwd: Warner v. Bush lawsuit

Good Evening Steve,

Please see the emails below. I look forward to hearing your thoughts. I am poised to file the default tomorrow, or we can wait one week. I know this man is not forthcoming. He did wait until the last minute to respond to my letter. Is there any chance of resolution in the other matter?

Sincerely,
Carole
Law Office of Carole M. Pope, APC
301 Flint Street
Reno, Nevada 89501

775-337-0773
775-337-0778 (fax)

-----Original Message-----
From: Rgbush6 <Rgbush6@aol.com>
To: cmp7000 <cmp7000@aol.com>
Sent: Mon, Feb 6, 2017 5:37 pm
Subject: Re: Warner v. Bush lawsuit
Dear Ms. Pope:

Your representations in your email are very unfortunate. As I have repeatedly stated, I intend to pay Steve (who I will refer to as Steve W. due to several Steve's involved).

Unfortunately, Steve W's partner Steve Crystal managed to "trick" the court into tying up my assets and I have no way earn an income or sell anything to pay my bills or debts.

HOWEVER, without going into confidential details, I can tell you that things will change after this week.

I just don't have time to file that Answer, and I am NOT denying the debt. I am working 16 hours a day (along with 3 attorneys putting in a crazy amount of hours) preparing what will be very unpleasant legal proceedings in multiple states for everyone involved in the fraud allegations in that litigation if Mr. Crystal doesn't accept payment of the debt, return the stolen assets, and agree to let the Court release the hold on my other assets.

Getting a default judgment filed against me is unnecessary at this time and will accomplish nothing except force me to raise other defenses which will be very unfortunate.

I truly like Steve Warner, and have no desire to cause very costly litigation costs on his part if the multiple people being represented in the settlement hearings this week are forced to drag him into what will be very

serious litigation matters filed by the law firm of Brownstein, Hyatt, Farber et al, who will be representing several interested parties in court this week.

This can be avoided. AGAIN I say, I admit the debt and I intend to pay it. I have instructed my attorneys to pay my debt to Mr. and Mrs. Warner directly out of the settlement that will be presented this week. A default judgment accomplishes nothing further than that because I don't have any available assets until that settlement is executed.

If on the other hand, Mr. Crystal doesn't agree to accept the debt owed to him and "do the right thing," then everyone on that side, including unfortunately Mr. Warner, will be dragged into defending against very, very unpleasant litigation.

Carole, I ask that you wait until the outcome of this week's Court meeting with the multiple attorneys coming from multiple states to represent my interests and the interests of several other people who have been "wronged."

I promise I will be in touch with you by the end of the day a week from today, and hopefully in that call I can give you a date when the entire debt to Mr. and Mrs. Warner will be paid. The money has been available for distribution by my attorneys for several months. But it cannot be distributed until the case with Mr. Crystal is settled.

Sincerely,

Ron Bush

In a message dated 2/6/2017 4:54:31 P.M. Pacific Standard Time, cmp7000@aol.com writes:

Dear Mr. Bush,

My paralegal, Denise Hines, forwarded me the email below. Please be advised that your answer was due today as outlined in my letter dated January 26, 2017 since you did not accept the settlement offer. Further, as I indicated, if an answer is not filed, I will be filing your default tomorrow.

Sincerely,

Carole

Law Office of Carole M. Pope, APC

301 Flint Street

Reno, Nevada 89501

775-337-0773

775-337-0778 (fax)

----- Forwarded message -----

From: <Rgbush6@aol.com>

Date: Mon, Feb 6, 2017 at 12:05 PM

Subject: Re: Warner v. Bush lawsuit

To: nvskilady@gmail.com

Denise,

I'm sorry I have just been overwhelmed preparing for a settlement conference and legal proceedings that are taking place Wednesday and Thursday this week. I am having to coordinate attorneys coming in from Texas, Arizona, Vegas, Healdsburg, and San Jose for those proceedings.

I will respond to your email later today or tomorrow morning.

Sincerely,

Ron

In a message dated 1/26/2017 3:05:07 P.M. Pacific Standard Time, nvskilady@gmail.com writes:
Dear Mr. Bush,

I work for Carole Pope as her paralegal. Attached is a letter from the Warners relating to their offer regarding the above lawsuit. Please note that the offer is only open for 10 days from the date of this letter.

If you have any questions please let us know.

Sincerely,

Denise Hines, ACP
Advanced Certified Paralegal
nvskilady@gmail.com

Sincerely,

Denise Hines, ACP
Advanced Certified Paralegal

Stephen L Warner
Founder/Chief Operating Officer
Automated Cashless Systems, Inc
swarner@acsplayon.com
775-412-5450



www.acsplayon.com

Play On Responsibly

1 **1520**
W. Chris Wicker, Esq.
2 Nevada State Bar No. 1037
Dane W. Anderson, Esq.
3 Nevada State Bar 6883
WOODBURN AND WEDGE
4 6100 Neil Road, Suite 500
Reno, Nevada 89511
5 Telephone: 775-688-3000
Facsimile: 775-688-3088
6 cwicker@woodburnandwedge.com
danderson@woodburnandwedge.com
7

8 Attorneys for Plaintiff, Steven Crystal

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11
12 STEVEN B. CRYSTAL, individually and as
Trustee of The Barbara L. Crystal Decedent
13 Trust,

14 Plaintiff,

15 v.

16 JIM MCGOWEN, Trustee of McGowen &
Fowler, PLLC and/or DOES 1-10, inclusive;
17 and DOES 11-20,

18 Defendants.
19

Case No.: CV17-00281

Dept. No.: 6

**DECLARATION OF W. CHRIS
WICKER IN SUPPORT OF
OPPOSITION TO DEFENDANT'S
MOTION TO QUASH SERVICE AND
DISMISS AND
REQUEST FOR SANCTIONS**

20 1. I am a shareholder in the law firm of Woodburn and Wedge which represents
21 the Plaintiff, Steven B. Crystal, in the within matter. This declaration is in support of
22 Plaintiff's Opposition to Defendant's Motion to Quash Service and Dismiss Case and
23 Request for Sanctions.
24

25 2. On the morning of February 9, 2017, I went to Sunshine Litigation Services in
26 Reno, Nevada to attend the scheduled deposition of Elina Leung, which was postponed from
27 the prior day, in the matter of *Crystal v. Bush*, Second Judicial District Court Case No. CV16-
28 00865, Department 4. It was originally scheduled to take place on February 8, along with

1 two other depositions, but the parties' counsel agreed to move this to the morning of February
2 9, 2017.

3 3. I was surprised to find Jim McGowen, as well as Bert Terreri, present at the
4 deposition, as Mr. McGowen was not representing any party in the matter for which the
5 deposition was being held. Counsel for Mr. Crystal had no involvement in Mr. McGowen's
6 presence on February 9, 2017.

7
8 4. At a break, I called Dane Anderson, Esq., a shareholder of Woodburn and
9 Wedge, and asked him to prepare a complaint for claims that our client, Steve Crystal, has
10 against Mr. McGowen as Trustee for an undisclosed trust.

11 5. Steve Crystal offered to photograph Ms. Kelling performing the service of the
12 Summons and Complaint upon Mr. McGowen, but I declined the offer as I did not want to
13 embarrass Mr. McGowen.

14
15 6. Just prior to 12:30 p.m. that afternoon, Dianne Kelling, Mr. Anderson's
16 assistant, brought the filed Complaint and issued Summons to Sunshine Litigation Services
17 into conference room 5. Ms. Kelling was there to serve Mr. McGowen with the documents.

18 7. Mr. Crystal photographed Ms. Kelling holding up the Summons and
19 Complaint prior to serving them upon Mr. McGowen. *See Exhibit 2 to Kelling Declaration.*

20 8. I escorted Ms. Kelling out of Room 5 and into the common area of Sunshine
21 Litigation Services, so that I could request that Mr. McGowen, who was in another
22 conference room at the time, come out to meet me. I had been talking to Mr. Terreri, who
23 wanted to speak with me. When we were done, I asked Mr. Terreri to ask Mr. McGowen to
24 come out of the conference room where the deposition occurred. Mr. McGowen said nothing
25 to me until he came out of the conference room where he was served.

26
27 9. When Mr. McGowen stepped out of the other conference room, I identified
28 him to Ms. Kelling, and Ms. Kelling handed him the Summons and Complaint.

1 10. Mr. McGowen accepted the papers from Ms. Kelling, and then looked at me
2 and asked, "What's this?" I told him it was a Summons and Complaint. I then went into a
3 conference room with Mr. McGowen to discuss the complaint with him after he confirmed he
4 was not represented by counsel.

5 11. Three depositions were scheduled for February 8, 2017 in the *Crystal v. Bush*
6 matter. Counsel for Mr. Bush and Mr. Crystal agreed to reschedule the deposition of Elina
7 Leung to take place on the morning of February 9, 2017.

8 12. In the *CIP Real Estate So. Virginia v. Bush* case, Judge Berry ordered the
9 parties to participate in a settlement conference with Judge Russell in Carson City on the
10 afternoon of February 9, 2017.

11 13. Attached hereto as Exhibit 1 is a Motion to Consolidate Actions for Purposes
12 of Settlement Conference Only filed by Mr. Bush in *CIP Real Estate So. Virginia, et al. v.*
13 *Ronald G. Bush, et al.*, Second Judicial District Case No. CV16-00948, in Department 1.
14 Attached as Exhibit 2 is CIP's opposition. Attached hereto as Exhibit 3 is the order denying
15 the motion. All are accurate copies of the papers that were filed.

16 14. Attached hereto as Exhibit 4 is a copy of a Bill of Sale, Right to Repurchase
17 Agreement dated November 26, 2014, which was produced to me by Mr. Bush's counsel in
18 response to a request for production. Attached hereto as Exhibit 5 is an email dated
19 November 28, 2014 which was also produced to me by Mr. Bush's counsel. Both exhibits
20 are accurate copies of documents acknowledged by Mr. Bush in his deposition.

21 15. Attached hereto as Exhibit 6 are accurate copies of excerpts from the
22 deposition of Ronnie Gene Bush (aka Ron or Ronald Bush) taken on June 29, 2016 in the
23 case of *Crystal, et al. v. Bush, et al.*, Second Judicial District Court Case No. CV16-00865, in
24 Department 4.

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///

1 16. If we knew Mr. McGowen was coming to Reno, we would have prepared the
2 complaint in advance to serve immediately.

3 17. Mr. McGowen's clients allegedly claim an ownership interest in a corporate
4 entity which is a party in the *Crystal v. Bush* matter. However, they are not parties, they have
5 never made a formal claim, and they are just allegations at this time. It does not appear those
6 clients have any involvement in the situation which led to Mr. Crystal's suit against Mr.
7 McGowen as Trustee for an undisclosed principal.
8

9 I swear under penalty of perjury under the laws of the State of Nevada that the
10 foregoing is true and correct.

11 DATED this 28 day of March, 2017.

12
13 
14 W. CHRIS WICKER

Affirmation pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: March 28, 2017.

WOODBURN AND WEDGE

By:



W. Chris Wicker, Esq.

Nevada Bar No. 1037

Dane W. Anderson, Esq.

Nevada Bar No. 6883

Attorneys for Plaintiff Steven Crystal

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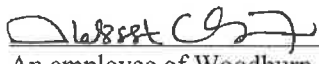
Table of Exhibits		
<u>Exhibit No.</u>	<u>Description</u>	<u>No. of Pages</u>
1	Motion to Consolidate Actions for Purposes of Settlement Conference Only	6
2	CIP's Opposition to Motion to Consolidate Actions for Purposes of Settlement Conference Only	6
3	Order denying Motion to Consolidate Actions for Purposes of Settlement Conference Only	3
4	Bill of Sale, Right to Repurchase Agreement (11/26/14)	2
5	Email dated November 28, 2014	2
6	Excerpts from Ronnie Gene Bush deposition transcript	9

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Woodburn and Wedge and that on this date,
3 I caused to be sent via electronic service through the Court's E-flex system a true and correct
4 copy of the **DECLARATION OF W. CHRIS WICKER IN SUPPORT OF OPPOSITION**
5 **TO DEFENDANT'S MOTION TO QUASH SERVICE AND DISMISS CASE to:**

6 Jacey Prupas, Esq.
7 Carrie L. Parker, Esq.
8 SNELL & WILMER, L.L.P.
9 50 West Liberty Street, Suite 510
10 Reno, NV 89501
11 *Attorneys for Defendant*

12 Dated: March 28, 2017.

13 By: 
14 An employee of Woodburn and Wedge
15
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FILED
Electronically
CV17-00281
2017-03-28 06:43:34 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6021939 : pmsewell

EXHIBIT “2”

EXHIBIT “2”

1 2645

2 W. Chris Wicker, Esq.
3 Nevada State Bar No. 1037
4 Dane W. Anderson, Esq.
5 Nevada State Bar 6883
6 WOODBURN AND WEDGE
7 6100 Neil Road, Suite 500
8 Reno, Nevada 89511
9 Telephone: 775-688-3000
10 Facsimile: 775-688-3088
11 Email: cwicker@woodburnandwedge.com
12 danderson@woodburnandwedge.com

13 Attorneys for Plaintiffs

14 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

15 IN AND FOR THE COUNTY OF WASHOE

16 CIP REAL ESTATE SO. VIRGINIA LLC, a
17 Nevada limited liability company; CIP REAL
18 ESTATE LLC, a Nevada limited liability
19 company,

Case No.: CV16-00948

Dept. No.: 1

20 Plaintiffs,

21 v.

22 RONALD G. BUSH aka RONNIE G. BUSH,
23 an individual; TYCHE ART
24 INTERNATIONAL, INC., a Nevada
25 corporation; and DOES 1 – 5, inclusive,

26 Defendants.

27 **PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO CONSOLIDATE**
28 **ACTIONS FOR PURPOSES OF SETTLEMENT CONFERENCE ONLY**

Plaintiffs, CIP REAL ESTATE SO. VIRGINIA LLC and CIP REAL ESTATE LLC,
by and through their counsel of record, WOODBURN AND WEDGE, hereby oppose
Defendants' Motion as follows.

It is ludicrous for Defendants to request an order consolidating the two actions for
purposes of settlement negotiations. There are many reasons why Crystal has refused to
negotiate the Department 4 case with the CIP lease matters.

1 The Department 4 cases are extremely different and have been litigated completely
2 differently than this case. In the case before this Court, virtually no discovery has been
3 performed. CIP has produced 1,200 pages of information about the two buildings and their
4 expenses. The only disclosure from Defendants is they served copies of ten cancelled checks
5 after the disclosure deadline. No depositions have been taken.

6 In the Department 4 case, in addition to the complaint, counterclaims, crossclaims, and
7 third-party claims, many thousands of pages of documents have been produced by both sides.
8 There have been two preliminary injunction hearings. Seven depositions have been taken.
9 Numerous motions have been filed and briefed, including discovery motions. The level of
10 complexity of the Department 4 litigation is many times that of the relatively simple issues in
11 the case before this Court.

12 A major issue in Department 4 is whether Mr. Bush or any of his alter ego companies,
13 Tyche Art International (TAI), Tyche Acquisitions Group (TAG), Classic Fine Art (Classic),
14 and Renaissance Masters (Renaissance), own an interest in Automatic Cash Systems (ACS) or
15 the entity that purchased its assets, Automatic Cashless Systems (ACLS). Mr. Bush, through
16 his alter-ego, Tyche Acquisitions Group (TAG), borrowed \$5,150,000 from Mr. Crystal and
17 by Barbara Crystal Decedent's Trust (collectively "Crystal") to buy 51% of ACS issued stock
18 for \$5.0 million from February to June, 2013. ACS stock and art owned by Bush were
19 collateral for the ACS stock loan pursuant to a security agreement. In late 2013, Mr.
20 Bush/TAG borrowed back \$2.5 million, which loan was personally guaranteed by Crystal.

21 In July, 2014, Bush and his alter ego company, Renaissance, borrowed \$2.1 million to
22 buy a Michelangelo authorized bronze sculpture; in August, 2014, borrowed \$450,000 for an
23 interest in purported Jackson Pollock paintings; and from May to October, 2014, borrowed
24 \$500,000 for an interest in a project to cast and sell Michelangelo miniatures in the Bay Area.
25 All of the loans are in default. Without Crystal's knowledge, Bush secretly sold the
26 Michelangelo and purported Jackson Pollocks to an attorney as trustee in Dallas, Texas for
27 \$500,000.

1 ACS is a company that was formed to produce a device that would allow gaming
2 customers to use a debit card at a gaming table or slot machine to obtain credit to gamble. In
3 late summer of 2015, it was determined by ACS gaming counsel that anybody owning one
4 share of ACS had to be licensed.

5 Over time, as Bush defaulted, Crystal obtained a large share of ACS stock and was
6 chairman of the Board. Mike Sackrison was the CFO of ACS. In October, 2015, Sackrison
7 discovered that Bush was convicted of a felony that involved a gaming company, and spent
8 1985 to 2005 in prison. Bush did not disclose his criminal record when he borrowed money
9 from Crystal and obtained stock in ACS. Crystal and ACS learned from their gaming counsel
10 that as long as Bush was involved in ACS, ACS could never be licensed to do business in
11 Nevada.

12 After discovering Bush's deception, Crystal and ACS negotiated with Bush, who was
13 agreeable to getting out of ACS. Those negotiations in November and December of 2016
14 resulted in an agreement. Bush/TAG entered into an agreement dated December 29, 2015
15 whereby Bush agreed that he had until March 30, 2016 to tender all amounts he owed and if
16 he did, somebody designated by Bush and who was licensable would be assigned 82,000,000
17 shares of ACS. Pursuant to the agreement, if Bush failed to tender the money due, he lost the
18 opportunity to obtain the ACS stock. Bush may have a right to offset his debts of over \$8.0
19 million plus interest, expenses and fees, from the value of collateral, which included ACS
20 stock.

21 ACS still needed all of its shareholders to be licensed. Despite requests made in early
22 2016, minority shareholders, allied with Bush, refused to send in the required gaming
23 applications. As a result, ACS was dead because it could not get licensed without the
24 cooperation of minority shareholders. ACS had its assets valued and the ACS officers and
25 shareholders, including Crystal, who wanted to pursue the business opportunity, formed
26 ACLS and purchased the assets of ACS.

27 On November 30, 2016, Crystal, ACS and ACLS filed a motion for partial summary
28 judgment. The motion had 24 pages of facts and, with exhibits, was 366 pages long. Bush

1 and his alter ego companies opposed the motion but obtained an additional 60 days for
2 discovery, starting January 17, 2017. The Crystal, ACS, ACLS motion seeks a declaration
3 that Bush and his alter ego companies owned no interest in ACS or ACLS. ACLS cannot go
4 forward until it obtains a judgment that Bush owns no interest in ACS or ACLS, so it can be
5 licensed in Nevada.

6 After March 30, 2016, Bush still claims to own a major interest in ACS and therefore
7 claims an interest in ACLS. Bush has claimed to have investors lined up to pay his debts in
8 exchange for ACS stock. However, at his deposition in October 2016, Bush could not
9 remember the name of a single so-called investor.

10 The Department 4 case is vastly more complicated than the CIP litigation and, if
11 Crystal was inclined to settle the Department 4 case, it could never be accomplished in an
12 afternoon. However, Crystal has no interest in negotiating the Department 4 case at this time.
13 Since 2014, Bush has repeatedly said he is about to get a large sum of money, either from
14 sales of art or "investors," but they were all lies or unjustified exaggerations. Bush did obtain
15 extensions of deadlines based on those representations which came to an end when Crystal
16 discovered Bush's criminal history in October 2015. They negotiated an agreement for ACS
17 to get away from Bush but Bush will not adhere to his agreement.

18 As seen from the above discussion, it makes no sense to grant Bush's motion. It
19 appears that it is a ruse to avoid the settlement conference because Bush knows very well that
20 Crystal will not negotiate the matters in Department 4 with the pending motion for summary
21 judgment. Crystal trusted Bush for way too long and, so far, Crystal is out millions of dollars.

22 Bush claims that with the injunction in place and other unresolved issues, he has no
23 ability to pay the CIP claims. Crystal has no way to evaluate this assertion because in
24 discovery, Bush has opposed efforts to obtain financial information from Bush. A settlement
25 conference could resolve the CIP matter without wasting judicial resources in a trial. If all
26 CIP gets is a confession of judgment, the settlement conference will have served its purpose.
27 There is no requirement that a settlement conference must result in payment and Crystal does
28 not expect Bush to pay any judgment anyway.

1 While the CIP case is straightforward and set for trial in four weeks, the Department 4
2 litigation is completely different. Aside from the substantive complexity and procedural
3 posture of the Department 4 case, there is the practical reality that Judge Russell, who will
4 preside over the settlement conference, likely knows very little if anything about the
5 Department 4 case because CIP did not address this issue in its settlement conference brief,
6 having rejected Bush's request that both matters be heard at the conference. It is simply
7 absurd for Bush and TAI to file this motion on shortened time asking the Court to order, on
8 the eve or morning of the settlement conference, that the complex case in Department 4 be
9 added to the scope of the settlement conference. Therefore, Defendants' Motion to
10 Consolidate for Purposes of Settlement should be denied.

11 **AFFIRMATION**
12 **pursuant to NRS 239B.030**

13 The undersigned does hereby affirm that the preceding document does not contain the
14 social security number of any person.

15 DATED: February 8, 2017.

WOODBURN AND WEDGE

16 By: /s/ W. Chris Wicker
17 W. Chris Wicker
18 Nevada Bar No. 1037
19 Dane W. Anderson, Esq.
20 Nevada Bar No. 6883
21 Attorneys for Plaintiffs
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Woodburn and Wedge and that on this date,
3 I caused to be sent via electronic service through the Court's E-flex system a true and correct
4 copy of the **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO**
5 **CONSOLIDATE ACTIONS FOR PURPOSES OF SETTLEMENT CONFERENCE**
6 **ONLY** to:
7

8 Alicia Johnson
9 JOHNSON LAW PRACTICE
10 611 Sierra Rose Dr., Suite A
11 Reno, NV 89511
12 *Attorneys for Defendants*

11 Steve M. Defilippis
12 PICONE & DEFILIPPIS, A P.L.C.
13 625 N. First Street
14 San Jose, CA 95112
15 *Attorneys for Defendants*

15 DATED this 8th day of February, 2017.

17
18 By: /s/ Melissa C. Scott
19 An employee of Woodburn and Wedge
20
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FILED
Electronically
CV17-00281
2017-03-28 06:43:34 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6021939 : pmsewell

EXHIBIT “1”

EXHIBIT “1”

1 STEVE M. DEFILIPPIS
CA State Bar #117292
2 PICONE & DEFILIPPIS, A P.L.C.
625 N. First Street
3 San Jose, CA 95112
Office: 408-292-0441
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flipsmd2005@yahoo.com

5 ALICIA JOHNSON
State Bar #10093
6 JOHNSON LAW PRACTICE
611 Sierra Rose Dr., Suite A
7 Reno, NV 89511
8 Phone: (775) 737-9927
Alicia@JohnsonLawReno.com

9
10 Attorneys for Defendants,
RONALD G. BUSH
11 TYCHE ART INTERNATIONAL, INC.

12
13 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
14 **IN AND FOR THE COUNTY OF WASHOE**

15 CIP REAL ESTATE SO, VIRGINIA LLC, a
16 Nevada limited liability company; CIP REAL
ESTATE LLC, a Nevada limited liability
17 company,

Case No. CV16-00948

Dept . 1

18 Plaintiffs,

19 vs.

20 RONALD G. BUSH aka RONNIE G. BUSH, an
individual; TYCHE ART INTERNATIONAL,
21 INC., a Nevada corporation; and DOES 1-5,
inclusive,

22 Defendants.

23
24
25 **DEFENDANTS' MOTION TO CONSOLIDATE ACTIONS FOR PURPOSES OF**
26 **SETTLEMENT CONFERENCE ONLY**
27
28

1 **A. BRIEF STATEMENT OF THE NATURE OF THE ACTION**

2 This case involves a lease on two separate properties by landlords CIPSV and CIP to
3 BUSH and TAI respectively. The properties were occupied by TAI as an art gallery to display
4 numerous exclusive art pieces that included works of Jackson Pollock, Michaelangelo, Tuan, and
5 various other highly acclaimed artists. Plaintiffs and their principal, Steven Crystal, were fully
6 aware of the purpose for occupying the premises, as Mr. Crystal was actually involved as a joint
7 venturer with Mr. Bush in the acquisition of several of the pieces of art that were part of the
8 collection owned by Mr. Bush and/or TAI.

9 **1. CIPSV v. BUSH – South Virginia Premises**

10 The contentions as to this property revolve around an oral arrangement between Plaintiff,
11 CIPSV, landlord, to occupy a commercial premises (“South Virginia Premises”), with Defendant
12 BUSH as the proposed tenant, with part of Bush’s rent to be applied to the joint ownership of the
13 South Virginia Premises, which had a total initial cost to Plaintiff of \$1,800,000 plus
14 improvements that would make the premises inhabitable by a tenant. The terms of the
15 arrangement were discussed but they were never established in writing. Plaintiff alleges the
16 Defendant owes \$1,215,748.97 under the lease which includes rent and common area
17 maintenance (“CAM”) charges, and \$459,983.23 in tenant improvement work, for a total of
18 \$1,675,732.20. However there exists a disagreement by the parties as to the material terms of the
19 agreement regarding this property.

20 **2. CIP v. TAI – Mill Lease**

21 The issues as to this property revolve around a commercial lease agreement (“Mill
22 Lease”) between Plaintiff, CIP, landlord, and Defendant, TAI. Bush was not a party to that
23 lease individually. Plaintiff alleges that TAI has failed to make payments as required by the Mill
24 Lease and currently owes \$55,946.36 (including 3,052.50 in attorney’s fees) out of a total
25 \$64,800.00 (as noted in the Lease Agreement). However, TAI has paid a total of \$21,258.66 on
26 the Mill Lease and expended approximately \$20,000 in improvements. In addition, CIP failed to
27 mitigate by re-letting the premises. Therefore, the total cost of rent for the two years wherein
28