

Electronically Filed
Apr 30 2020 04:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD N. DETWILER, an
individual,

Appellant,

v.

BAKER BOYER NATIONAL
BANK, a Washington corporation,

Respondent.

Supreme Court Case No.: 81017

District Court Case No.: A-17-760779-F

APPELLANT'S OPPOSITION TO MOTION TO DISMISS APPEAL

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APPELLANT’S OPPOSITION TO MOTION TO DISMISS APPEAL

Appellant, non-party Edward N. Detwiler (“Mr. Detwiler” or “Appellant”) hereby opposes Respondent’s, Baker Boyer National Bank, a Washington corporation (“Bank” or “Respondent”), Motion to Dismissal Appeal. Additionally, this Opposition shall address the jurisdictional concerns raised in this Court’s Order to Show Cause filed on April 27, 2020. This Opposition is based on the exhibits attached hereto and the Memorandum of Points and Authorities which follows, all of which demonstrate that this appeal should not be dismissed as Mr. Detwiler has standing to bring this appeal and this Court has jurisdiction to hear it.¹

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS²

The trial court, Honorable Richard Scotti (“Trial Court”), issued an Order on January 9, 2019 (“January 2019 Order”) regarding twenty (20) vehicles (the “Vehicles”) which the Respondent sought to obtain in order to partially satisfy its Judgment against Mr. Foust. Subsequently, on February 21, 2019, the Respondent

¹ Appellant reserves the right to appeal and dispute the findings of the Trial Court regarding his purported status as a party upon which the Trial Court’s sanctions were based.

² Given that Mr. Detwiler’s Opposition has to respond to both Respondent’s Motion to Dismiss and the Court’s Order to Show Cause, Mr. Detwiler hereby incorporates his Statement of Facts from his Motion to Stay as if fully restated herein. See Motion to Stay (**Exhibit 1**), at pg. 1-5. In addition, Mr. Detwiler requests that this Court permit this Opposition to exceed ten (10) pages pursuant to NRAP 27(d)(2).

filed an “Application for Order to Show Cause Why Defendants Should Not be Held in Civil Contempt” for purportedly not turning over the Vehicles to the Respondent. In that Application, the Bank expressly and unequivocally referred to Mr. Detwiler as a party. During the subsequent proceedings, the Trial Court committed multiple reversible errors (i.e., violating NRS 50.155, 22.030(3), NRS 22.100(3) and Mr. Detwiler’s due process rights). Further, the Trial court treated and sanctioned Mr. Detwiler EDCR 7.60(b) as a party, and expressly found him to be one. In fact, at a hearing in this matter – after Mr. Detwiler had objected to the Trial Court presiding over any proceedings – the Trial Court expressly stated that “Mr. Detwiler had the actual ability to comply this Court’s Order of January 9, 2019. **From that point forward, he certainly was a party.**”³ Tellingly, the Bank’s counsel did absolutely nothing to dispute or correct the position it took which the Trial Court affirmed – that Mr. Detwiler was a defendant and a party.

Further, although Mr. Detwiler objected (pursuant to NRS 22.030(3)) to the Trial Court presiding over further proceedings regarding the alleged contempt, **disturbingly, the Trial Court judge refused to recuse himself.** Instead, the Trial Court authorized filing and entry of a contempt order against Mr. Detwiler (“Contempt Order”) and issued an Order for Sanctions, which sanctioned Mr. Detwiler **\$100,000.00**

³ See Exhibit 10 hereto.

which is 200 times the allowable sanction.⁴ The sanction was also based on the Court’s “finding” that Mr. Detwiler was a party. Thereafter, the Trial Court issued an Order and Judgment awarding Respondent \$218,000.00 in attorneys’ fees and costs from before there was any order directed to Mr. Detwiler.⁵

II. LEGAL ARGUMENT

A. **Both the Trial Court and Respondent treated Mr. Detwiler as a Party in the District Court Action and therefore Respondent is judicially estopped from claiming Mr. Detwiler was not a party for purposes of this appeal.**

The Ninth Circuit Court has “consistently applied the general rule that one who is not a party or has not been treated as a party to a judgment has no right to appeal therefrom.”⁶ Here, throughout the district court proceedings against Mr. Detwiler, he was treated as a party by both the Trial Court and Respondent:

<u>Mr. Detwiler treated as a party</u>	<u>Reference</u>
“Therefore, the Bank makes this application for an order to show cause why the defendants, particularly Mr. Foust and Mr. Detwiler (HH’s manager), should not be held in contempt....”	Application for Order to Show Cause Why <u>Defendants</u> should not be held in Contempt (filed 2/21/19), attached as Exhibit 5 , at 2:14-16.

⁴ See Contempt Order and Order for Sanctions, attached as **Exhibit 2** and **3**.

⁵ See Order and Judgment, attached as **Exhibit 4**.

⁶ US v. Kovall, 857 F. 3d 1060 (9th Circuit 2017), *citing* Karcher v. May, 484 U.S. 72, 77, 108 S.Ct. 388, 98 L.Ed.2d 327 (1987); United States ex rel. Louisiana v. Jack, 244 U. S. 397, 402 (1917); Ex parte Leaf Tobacco Board of Trade, 222 U. S. 578, 581 (1911); Ex parte Cockcroft, 104 U. S. 578, 579 (1882); Ex parte Cutting, 94 U. S. 14, 20-21 (1877).

<u>Mr. Detwiler treated as a party</u>	<u>Reference</u>
Order indicated needing to be served on “Defendants” with it being addressed to Mr. Detwiler along with Mr. Foust and HH.	Order to Show Cause (filed 2/21/19) , attached as Exhibit 6 .
“So this is the trial on the contempt pursuant to the Court’s order to appear and show cause why Defendant Edward Detwiler should not be held in civil contempt of court”	5/17/19 Transcript – Evidentiary Hearing, attached as Exhibit 7 , at 17:14-17.
<p>“The Court has jurisdiction over the parties and venue is proper in this Court.”</p> <p>“...but the party in contempt stands committed unless and until the affirmative act required by the order of the court is performed. ... A purge clause...gives the defendant the opportunity to purge himself.... A defendant has the choice to “pay or stay.””</p>	Order for Punishment of Contempt against HH and Detwiler (filed 1/30/20), attached as Exhibit 2, at 11:9 and 14:28-15:5.
<p>“...I'm ordering that Mr. Detwiler pay the attorney's fees of Baker Boyer from the date he was officially a party in this action through today's date.”</p> <p>“But the Court, under the circumstances, is also going to impose a fine of \$100,000. ... And that sanction is pursuant 7.60(b)(5), which allows this Court in a civil context to impose a fine for violation of a court order.”⁷</p>	2/18/20 Transcript, attached as Exhibit 8 , at 3:7-9, 5:16-17, 5:24-25 and 6:1.
“ Because of Mr. Detwiler’s involvement, the lawsuit now had two defendants.... ”	Mr. Bragonje’s Affidavit (filed 2/25/20), attached as Exhibit 9 , at 9:26-27.

⁷ EDCR 7.60(b)(5) authorizes sanctions *only* against a party (“The court may, after notice and an opportunity to be heard, **impose upon** an attorney or **a party** any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney’s fees when an attorney or **a party** without just cause: (5) Fails or refuses to comply with any order of a judge of the court).

<u>Mr. Detwiler treated as a party</u>	<u>Reference</u>
Court awarded sanctions and attorneys' fees under EDCR 7.60(b) .	Order for Sanctions (filed 3/12/20), attached as Exhibit 3, at 6:18-22 and 7:8-10.
"Mr. Detwiler had the actual ability to comply this Court's Order of January 9, 2019. From that point forward, he certainly was a party. "	Court Minutes (3/17/20), attached as Exhibit 10 .
<p>"Inability to pay a judgment due to a party's financial condition weighs in favor of requiring a bond, not waiving that requirement."</p> <p>"Though a party can choose to appeal, the appeal does not stop enforcement of the judgment."</p> <p>"Allowing a party to stay execution of the judgment without posting any bond whatsoever usually violates those principles because it leaves the judgment creditor without protection."</p> <p>"Where a court lacks confidence in a party's ability to pay, the party should post a bond for the full value of the judgment."</p> <p>"Parties who demonstrate a clear ability to satisfy the judgment in the event the appeal is unsuccessful are entitled to reliable alternative to a full bond."</p>	<p>Opposition to Motion to Stay (filed 3/27/20), attached as Exhibit 11, at 1:26-27, 2:10-11, 2:26-28, 3:9-10, 6:16-17 and 6:25-26.</p> <p>Order Denying Motion to Stay (filed 4/13/20), attached as Exhibit 12, at 2:1-2 and 2:15-16.</p>

Clearly, this appeal is distinguishable from the cases cited by Respondent as Mr. Detwiler was specifically treated as a party and sanctioned as one, too.

Given the above, Respondents' disingenuous behavior cannot form the basis for a motion to dismiss. In addition to being contrary to binding precedent, it would be incredibly unfair and a grave violation of due process for this Court to permit the Bank, and the Trial Court at the Bank's request, to treat Mr. Detwiler as a party to

sanction him over 200 times the permissible limit, then dismiss his appeal because the Bank reverses its erroneous position and now argues Mr. Detwiler was not a party. This Court has previously determined that judicial estoppel applies to protect the judiciary's integrity, prevents a party from taking inconsistent positions by “intentional wrongdoing or an attempt to obtain an unfair advantage” and this court may invoke the doctrine at its discretion.⁸ Judicial estoppel may apply when:

“(1) the same party has taken two positions; ... (3) the party was successful in asserting the first position ...; (4) the two positions are totally inconsistent...”⁹

Here, Respondent treated Mr. Detwiler as a party in the underlying action and was successful in doing so as the Trial Court sanctioned Mr. Detwiler based upon a court rule, which provides for sanctions that can only be imposed upon a party (i.e., EDCR 7.60(b)). Now, when Mr. Detwiler files his appeal of the Trial Court's determination of him being a party, as well as the contempt, sanctions and judgments issued against him, Respondent conveniently flips its position to thwart Mr. Detwiler in his proper due process rights. This is the type of conduct that judicial estoppel is designed to prevent.

Further, by serving him with a subpoena, requiring his court appearance, and

⁸ So. California Edison v. First Jud. Dist. Ct., 255 P. 3d 231 (Nev. 2011); NOLM, LLC v. County of Clark, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004) (quoting Kitty-Anne Music Co. v. Swan, 112 Cal.App.4th 30, 4 Cal.Rptr.3d 796, 800 (2003)).

⁹ Id. (quoting Furia v. Helm, 111 Cal.App.4th 945, 4 Cal.Rptr.3d 357, 368 (2003)).

naming him as a party, the Bank cannot now claim he was not a party. This Court has recognized that “in Nevada, a person or entity is not a party within the meaning of NRAP 3A(a) unless that person or entity has been served with process, appeared in the court below *and* has been named as a party of record in the trial court.” Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994). There is no question that Mr. Detwiler “appeared in the court below” as even the Bank admits that Mr. Detwiler appeared at the hearing on the order to show cause – which order was brought about by the Bank itself naming Mr. Detwiler individually as a defendant. There is no question that the Trial Court found that Mr. Detwiler was a party, and improperly sanctioned him as such. Further, there is no dispute that Mr. Detwiler was served with a subpoena,¹⁰ which constitutes process.¹¹

This not a case where the underlying party’s attorneys are seeking to appeal, and the holding in Watson is therefore inapposite. See Watson Rounds v. Eighth Jud. Dist. Ct., 131 Nev. 783, 791, 358 P.3d 228, 234 (2015) (“This court will exercise its discretion to hear Watson's writ petition because, as a nonparty in the underlying action, it has no right to appeal.”). Nor is this a discovery dispute as was presented

¹⁰ See Exhibit 13 hereto.

¹¹ See NRS 10.055 (defining “process” to include “a writ or summons” and NRS 10.115 (defining “writ” to include “an order or precept in writing, issued in the name of the State or of a court or judicial officer”); see also Anglin v. State, 173 Ga. App. 648, 651, 327 S.E.2d 776, 780 (1985) (“A subpoena is a writ or a process, designed to implement rather than confer substantive rights.”).

in the unpublished opinion set forth in Align Chiropractic v. Eighth Judicial Dist. Court In & For Cty. of Clark, No. 72955, 2018 WL 3226867, at *3 (Nev. App. May 16, 2018). The holding of Gladys Baker Olsen Family Tr., By & Through Olsen v. Olsen, 109 Nev. 838, 839, 858 P.2d 385, 385 (1993) involved an intervening entity for purposes of an appeal, which is clearly not the situation here.

Rather, this is a situation where the Respondent, and the Trial Court at the Respondent's request, treated Mr. Detwiler as a party, asserted he was a party, prevailed on the argument that he was a party and the Trial Court **sanctioned him severely** as though he was a party. Now that this position is inconvenient, the Respondent disingenuously flip flops and claims exactly the opposite of what it maintained all along. Accordingly, under this Court's holding in Ginsburg, supra, the Bank's actions and the Trial Court's findings – though erroneous – prohibit the Bank from asserting that Mr. Detwiler is not a party, and require that the Bank's Motion be denied.

B. This Court has jurisdiction to hear this Appeal.

This Court has consistently explained that unless permitted by rule or statute, no appeal may be taken.¹² Further, this Court found that “[a]lthough a contempt order is not independently appealable, [in Pengilly], **we concluded that we had**

¹² Pengilly v. Rancho Santa Fe Homeowners Ass’n, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984); Kokkos v. Tsalikis, 91 Nev. 24, 530 P.2d 756 (1975).

jurisdiction to consider a contempt finding or sanction on appeal, so long as it ‘is included in an order that is otherwise independently appealable.’”¹³

1. The Contempt Order and Order for Sanctions is the final judgment which is independently appealable.

NRAP 3A(b)(1) provides that “[a]n appeal may be taken from the following judgments and orders of a district court in a civil action... A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.” Speaking on rule, this Court held:

“To avoid any confusion regarding this matter, we clarify that a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs.”¹⁴

The only issues against Mr. Detwiler related to the contempt proceedings, which was fully disposed of through the filing of the Contempt Order and Order for Sanctions, which are both considered judgments under NRS 15.040, and act as the final judgment against Mr. Detwiler. Nothing was left for consideration by the Trial Court, except attorney’s fees and costs.

2. Order and Judgment is a special order after final judgment

NRAP 3A(b)(8) further provides that an appeal may be taken from “[a] special

¹³ Yu v. Yu, 405 P. 3d 639 (Nev. 2017) (emphasis added).

¹⁴ Lee v. GNLV CORP., 996 P. 2d 416 (Nev. 2000), citing Smith v. Crown Financial Services, 111 Nev. 277, 280 n. 2, 890 P.2d 769, 771 n. 2 (1995).

order entered after final judgment....” This Court has previously indicated that:

“... a district court order awarding attorney fees and costs is a special order made after final judgment that is appealable by a party.”¹⁵ “A post-judgment order awarding attorney’s fees and/or costs may be appealed as a special order made after final judgment....”¹⁶

It is indisputable that the Order and Judgment awarded attorneys’ fees and costs against Mr. Detwiler, which makes it a special order after final judgment.

C. The equities weigh in favor of hearing this Appeal

The Ninth Circuit Court has held that:

“Although persons who were not parties of record before the district court usually may not appeal that court’s orders or judgment, we have allowed such persons to bring appeals in cases where: (1) they participated in the district court proceedings, and (2) the equities weigh in favor of hearing the appeal.”¹⁷

Moreover, other courts have indicated that the equities supporting a nonparty’s right to appeal an order relating to a receivership are especially significant where the nonparty is haled into the proceeding against his will, and then a party (like the Respondent) attempts to thwart the nonparty’s right to appeal by arguing that he lacks standing.¹⁸

¹⁵ Gumm v. Mainor, 59 P. 3d 1220 (Nev. 2002) (citation omitted).

¹⁶ Lee v. GNLV CORP., 996 P. 2d 416 (Nev. 2000) (citation omitted).

¹⁷ SEC v. Wencke, 783 F.2d 829 (9th Cir. 1986); In re Proceedings Before Federal Grand Jury (Conforte), 643 F.2d 641, 643 (9th Cir.1981).

¹⁸ Id.; West v. Radio-Keith-Orpheum Corp., 70 F.2d 621, 623-24 (2d Cir. 1934), quoted in SEC v. Lincoln Thrift Association, 577 F.2d 600, 603 (9th Cir. 1978); SEC v. An-Car Oil Co., 604 F.2d 114, 119 n. 4 (1st Cir. 1979).

In the present case, it is undisputed that Mr. Detwiler participated in the district court's proceedings and was haled in by the Respondent, despite Mr. Detwiler's objections. Mr. Detwiler made an appearance and raised all the jurisdictional, procedural, and due process claims that he is now raising on appeal. Throughout its proceedings, the Trial Court treated Mr. Detwiler as if he were a party. These facts are **no** different from the facts in Wencke case.

1. Equities weighing in favor hearing this appeal

a. The Order that Mr. Detwiler purportedly violated is ambiguous.

While the trial Court found in its January 2019 Order that Mr. Foust owned all of the Vehicles, it also included an order Mr. Detwiler to turn over Vehicles owned and controlled by Foust. This violates the requirement that "an order for civil contempt must be grounded upon one's disobedience of an order that spells out '**the details of compliance in clear, specific and unambiguous terms so that such person will readily know exactly what duties or obligations are imposed on him.**'"¹⁹

b. Reversible errors committed by the Trial Court.

As more fully explained in the Motion to Stay, in issuing the Contempt Order and judgments against Mr. Detwiler, the Trial Court committed the following reversible errors: (1) granted a judgment against Mr. Detwiler in favor of a

¹⁹ Southwest Gas Corp. v. Flintkote Co., 99 Nev. 127, 131, 659 P.2d 861, 864 (1983) (quoting Ex parte Slavin, 412 S.W.2d 43, 44 (Tex.1967)).

nonexistent entity; (2) violated NRS 50.155; (3) violated Callie v. Bowling; and (4) failure of the Trial Court to recuse himself (as required by NRS 22.030(3)) and the resulting severe bias against Mr. Detwiler.²⁰ Each of these reversible error weighs in favor of this Court hearing this appeal.

c. Mr. Detwiler was sanctioned as a party.

The Trial Court sanctioned Mr. Detwiler pursuant to EDCR 7.60(b)(5), which may only be “...**impose[d] upon** an attorney or **a party**....” While the Trial Court sanctioned Mr. Detwiler as if he was a party, Mr. Detwiler was specifically excluded from the trial/contempt proceedings as if he wasn’t a party. Such inconsistent and inequitable actions are quite baffling as either Mr. Detwiler was a party, in which he was *wrongfully* excluded from his own trial in violation of NRS 50.155(2)(a) - or - Mr. Detwiler was not a party, in which sanctions under EDCR 7.60 were *entirely improper*.

d. If Mr. Detwiler files a writ, this Court may not hear it.

If forced to file a writ petition, this Court may deny it pursuant to NRAP 21(b)(1), without ever hearing from the Respondent on the issues presented. This is exactly the motivation of Respondent in filing its Motion to Dismiss this appeal. Both a dismissal of this appeal and a denial of a writ, would serve as a grave injustice

²⁰ See Motion to Stay (Exhibit 1), at pg. 5-9. Mr. Detwiler hereby incorporates his arguments to this portion of such Motion as if fully restated herein.

to not only Mr. Detwiler, but the public at large, especially when there are multiple, serious reversible errors that were committed by the Trial Court.

Just as the Wencke court did, this Court should conclude that the equities weigh in favor of hearing this appeal and Mr. Detwiler has standing to appeal.

III. CONCLUSION

Mr. Detwiler respectfully requests this Court deny Respondent's Motion to Dismiss Appeal. If this Court is inclined to dismiss this appeal, Mr. Detwiler would respectfully request this Court: (1) give him 60 days to prepare/file a Writ Petition and also file a new Motion to Stay; and (2) issue a stay until a determination is made on said Motion to Stay.²¹

DATED: April 30, 2020.

By: /s/ Brenoch Wirthlin, Esq.
Brenoch Wirthlin, Esq. –Bar #10282

²¹ This Court provided similar relief to the Appellant in the case of Gladys Baker Olsen Family Trust ex rel. Olsen v. Olsen, 109 Nev. 838, 842 n. 2 (Nev. 1993).

RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

Appellant Edward N. Detwiler.

Appellant is represented by Brenoch Wirthlin, Esq. at Hutchison & Steffen.

DATED: April 30, 2020.

HUTCHISON & STEFFEN

By: /s/ Brenoch Wirthlin, Esq.

Brenoch Wirthlin, Esq.

NV Bar. No 10282

Hutchison & Steffen

10080 W. Alta Dr., Suite 200

Las Vegas, Nevada 89145

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PROOF OF SERVICE

I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **APPELLANT'S OPPOSITION TO MOTION TO DISMISS APPEAL** on the following parties, via the manner of service indicated below, on April 30, 2020:

Via Electronic Service through E-Flex System:

Daniel F. Polsenberg
John E. Bragonje
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3993 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89169
Attorneys for Respondent

Dated: April 30, 2020.

By: /s/ Danielle Kelley
An Employee of
Hutchison & Steffen

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD N. DETWILER, an
individual,

Appellant,

v.

BAKER BOYER NATIONAL
BANK, a Washington corporation,

Respondent.

Supreme Court Case No.: 81017

District Court Case No.: A-17-760779-1
Electronically Filed
Apr 23 2020 04:51 p.m.

EMERGENCY
APPELLANT'S MOTION UNDER NRAP RULE 27(e)
TO STAY EXECUTION OF ORDER
FOR SANCTIONS/JUDGMENT
PENDING APPEAL

[Relief Requested by May 7, 2020]

Appellant, non-party Edward N. Detwiler ("Mr. Detwiler" or "Appellant") hereby moves this Court, pursuant NRAP 8 and 27(e), for an Order to Stay Execution of Order for Sanctions/Judgment pending Appeal on an emergency basis. This motion is based on the Appendix submitted herewith and the Memorandum of Points and Authorities which follows, all of which demonstrate that a stay should issue.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS¹

On August 31, 2017, an entity calling itself "Baker Boyer National Bank, a Washington corporation" ("Respondent"), purportedly domesticated a judgment from the State of Washington against an individual by the name of James Foust ("Mr. Foust" and "Foust Judgment"). There is no such entity known as "Baker Boyer National

¹ This Statement of Facts section is supported by the documents attached to the Appendix in support of this Motion, which is filed concurrently herewith. References to such Appendix within this Motion will be cited as follows: "Appx. Vol. [#], at MSA[#]-[#]".

Bank, a Washington corporation.” The Washington Secretary of State (“SOS”) confirms it does not exist.²

Despite this, the trial court, Honorable Richard Scotti (“Trial Court”), issued an Order on January 9, 2019 (“January 2019 Order”) regarding twenty (20) vehicles (the “Vehicles”) which the Respondent sought to obtain in order to partially satisfy the Foust Judgment.³ Mr. Foust had claimed that four (4) of the Vehicles were in the possession of his family and the remainder were either were owned by a Montana LLC known as Harry Hildibrand, LLC (“HH”) – of which Mr. Foust was an owner – or an alleged Wyoming LLC known as StarDust Classic, LLC (“StarDust”). *Id.* Mr. Detwiler was a manager of HH for a time with an extremely limited role, but resigned in September, 2019.⁴ A critical conclusion in the January 2019 Order was that “[a]s for the balance of the 20 cars [*i.e.* the Vehicles] **Mr. Foust controls them because he owns HH and StarDust Classic.**” *Id.* The Trial Court also found, on no fewer than five (5) occasions, that Mr. Foust owned all of the Vehicles.⁵ Yet, despite these clear findings, the Trial Court ordered that “Mr. Foust and HH and any of their respective agents, employees, or affiliates (including without limitation Mr. Detwiler and StarDust Classic and any of its agents) are ordered on penalty of contempt, ... to turn

² See Wash. SOS Certificates, Appx. Vol. IV, at MSA00799 and MSA00801.

³ See List of the Vehicles, Appx. Vol. I, at MSA00052.

⁴ See Resignation Letter of Mr. Detwiler, Appx. Vol. II, at MSA00467-468.

⁵ *Id.* at p. 21, ¶¶ 17-21 (Appx. Vol. I, at MSA00045).

over to the Bank promptly [the Vehicles]...”⁶ This ambiguous order – which appears to order Mr. Detwiler to turn over Vehicles owned and controlled by Foust – violates the requirement that “an order for civil contempt must be grounded upon one’s disobedience of an order that spells out ‘**the details of compliance in clear, specific and unambiguous terms so that such person will readily know exactly what duties or obligations are imposed on him.**’”⁷ How can Mr. Detwiler turn over Vehicles which the Trial Court found unequivocally were owned and controlled by the Defendant Mr. Foust?

Subsequently, on February 21, 2019, the Respondent filed an “Application for Order to Show Cause Why Defendants Should Not be Held in Civil Contempt” for purportedly not turning over the Vehicles to the Respondent. Mr. Detwiler appeared, although with no attorney. In April and May of 2019, the Trial Court held an evidentiary hearing regarding the Respondent’s allegations that the “Defendants” – *i.e.* Mr. Foust and Mr. Detwiler (the Mr. Detwiler was not a defendant) – had committed contempt by not turning over the Vehicles. In a shocking violation of Mr. Detwiler’s constitutional rights, the Trial Court unlawfully excluded Mr. Detwiler from hearing the testimony of other witnesses **regarding Mr. Detwiler’s own purported contempt**

⁶ *Id.* at p. 22, ¶ 17-21 (Appx. Vol. I, at MSA00046).

⁷ Southwest Gas Corp. v. Flintkote Co., 99 Nev. 127, 131, 659 P.2d 861, 864 (1983) (quoting *Ex parte Slavin*, 412 S.W.2d 43, 44 (Tex.1967)).

thereby denying Mr. Detwiler the opportunity to cross-examine them.

In June, 2019, the Trial Court issued an “Order for Punishment of Contempt” (“June 2019 Order”) in which it again found that Mr. Foust “directly and/or indirectly controlled HH”⁸ and that the Vehicles “**remain in the control of Mr. Foust.**”⁹ In fact, the Trial Court specifically and expressly incorporated “any other evidentiary findings in the [January 2019 Order] ... **to support Mr. Foust's ownership and control of the [Vehicles] directly or indirectly through HH and/or StarDust.**”¹⁰ Moreover, in violation of Callie v. Bowling¹¹, without a separate complaint as required, the Trial Court found that Mr. Foust, HH and StarDust “were and are alter egos of each other with respect to the [Vehicles].”¹²

In January 2020, Mr. Detwiler retained an attorney and, pursuant to NRS 22.030(3), objected to the Trial Court presiding over further proceedings regarding the alleged contempt. **Disturbingly, the Trial Court judge refused to recuse himself.** Instead, the Trial Court: (1) authorized filing and entry of a contempt order against Mr. Detwiler (“Contempt Order”); (2) issued a Bench Warrant for Mr. Detwiler’s arrest; and (3) instructed Mr. Detwiler to turn over his passport to his counsel, in further

⁸ See June 2019 Order at p. 5, ¶ 19, Appx. Vol. IV, at MSA00809.

⁹ See *id.* at pp 8-9, Appx. Vol. IV, at MSA00812-813.

¹⁰ See June 2019 Order at p. 6, ¶ 28, Appx. Vol. IV, at MSA00810.

¹¹ 123 Nev. 181, 160 P.3d 878 (2007).

¹² See June 2019 Order at p. 6, Appx. Vol. Vol. IV, at MSA00810.

violation of his due process rights.

On February 5, 2020, Mr. Detwiler filed a Motion for Reconsideration and for Relief under NRCP 60(b), 59 and 52. The Trial Court denied the Motion, and subsequently sanctioned Mr. Detwiler **\$100,000.00**, plus an additional \$218,000 in attorneys' fees and costs from before there was any order directed to Mr. Detwiler, and despite vacating the contempt and related bench warrant ("Detwiler Judgment").

On March 24, 2020, Mr. Detwiler filed a Motion to Stay Execution and Waive Supersedeas Bond. The motion was denied.

II. LEGAL ARGUMENT

A. *This Court should issue a Stay after the District Court refused to do so.*

1. Appellant is likely to prevail on the merits in the appeal

a. Reversible error no. 1: The Trial Court granted a judgment against Mr. Detwiler in favor of a nonexistent entity.

Respondent does not exist. No such entity known as "Baker Boyer National Bank, a Washington corporation" exists.¹³ The Detwiler Judgment is in favor of a **nonexistent entity**. This Court has made absolutely clear that "**[a] judgment for a legally nonexistent entity is a nullity.**"¹⁴ The Trial Court's entry of the Detwiler

¹³ A bank known as *The Baker Boyer National Bank of Walla Walla* exists, but that is not Respondent. See charter for "The Baker Boyer National Bank of Walla Walla" (Appx. Vol. IV, at MSA00770); see also Washington Secretary of State's Certificates of No Record (Appx. Vol. IV, at MSA00799 and MSA00801).

¹⁴ *Causey v. Carpenters S. Nevada Vacation Tr.*, 95 Nev. 609, 610, 600 P.2d 244, 245 (1979); *Garland Family Trust v. Melton*, 2020 WL 1531769 (March 2020).

Judgment is a nullity, and reversible error.

b. Reversible Error No. 2 - the Trial Court violated NRS 50.155

The Trial Court excluded Mr. Detwiler from the courtroom during contempt proceedings against him, indicating “*it doesn’t matter what [Mr. Detwiler] thinks*”¹⁵ regarding whether Mr. Detwiler wanted to hear the testimony of witnesses against him and cross examine them as is his due process right. While Mr. Detwiler is a non-party and appeals the Trial Court’s contrary determination, because the Trial Court determined Mr. Detwiler was a party, NRS 50.155(2)(a) specifically prohibited the Trial Court from excluding Mr. Detwiler.¹⁶ This Court has held that “prejudice is presumed when a violation of NRS 50.155 occurs unless the record demonstrates a lack of prejudice.”¹⁷ Mr. Detwiler’s due process rights were violated as he had no opportunity to cross examine Mr. Foust or other witnesses who testified at his contempt proceeding. This was reversible error.

c. Reversible Error No. 3. – Violation of Callie v. Bowling

The Trial Court’s improper finding of an alter ego relationship between Mr. Foust, HH, StarDust – and the resulting contempt finding against Mr. Detwiler based upon this purported relationship – violates Mr. Detwiler’s due process rights under

¹⁵ See Transcript of 5/17/19, pg.13, lines 8-19 (Appx. Vol. I, at MSA00174).

¹⁶ See Court Minutes dated March 17, 2020 (Appx. Vol. III, at MSA00693).

¹⁷ Heglemeier v. State, 878 P. 2d 294 (1994); Givens v. State, 99 Nev. 50, 55, 657 P.2d 97, 100 (1983), overruled on other grounds, Talancon v. State, 102 Nev. 294, 301, 721 P.2d 764, 768 (1986).

the US Constitution, Nevada Constitution and Callie v. Bowling, 123 Nev. 181, 160 P.3d 878 (2007). As this Court has recognized, “[a] **party who wishes to assert an alter ego claim must do so in an independent action against the alleged alter ego with the requisite notice, service of process, and other attributes of due process.**”¹⁸ The Respondent failed to do this. The Trial Court therefore improperly found alter ego relationships, then used those findings against Mr. Detwiler. This was a direct violation by the Trial Court of Callie and Appellant’s due process rights.

d. Reversible Error No. 4. – Failure of the Trial Court to recuse himself and the resulting severe bias against Mr. Detwiler

Before the Contempt Order was entered, Mr. Detwiler timely filed his NRS 22.030(3) objection, objecting to Judge Scotti presiding at any further proceedings regarding Mr. Detwiler’s alleged contempt.¹⁹ Despite recusal being *automatic* under NRS 22.030(3), the Trial Court judge refused to recuse himself and continued to preside over the contempt proceedings, including entering the Contempt Order and Detwiler Judgment over Mr. Detwiler’s objection. The grievous and reversible nature of a violation of such an objection was set forth in this Court’s decision in Awad v. Wright²⁰ as follows:

Awad argues that Judge Shearing committed reversible error when she did not recuse herself under Awad’s NRS 22.030(3) peremptory

¹⁸ Callie v. Bowling, 123 Nev. 181, 185, 160 P.3d 878, 881 (2007).

¹⁹ See Appx. Vol. II, MSA00486-487 and Appx. Vol. II/III, MSA00498-511.

²⁰ Awad v. Wright, 794 P.2d 713 (1990).

challenge. **We agree.** ...

And so the legislature of this state felt it important to eliminate the possibility of a reasonable apprehension that a judge might not be entirely free from bias in enforcing the orders and decrees of the court of which [she] he is the judge. ...

Judge Shearing's refusal to recuse herself, coupled with her fining Awad \$2,000.00 when the maximum fine provided by NRS 22.100(1) was only \$500.00, are strong indications of a bias against Awad. The purpose of the legislature in passing an **automatic recusal** was precisely to avoid such situations. **Based on NRS 22.030 and on the McCormick case, Judge Shearing committed reversible error when she did not recuse herself when Awad requested her to do so.**²¹

NRS 22.030(3) exists to prevent decisions based on anger at the presiding judge's own order purportedly having been violated. That is exactly what happened here. While the Judge in Awad only sanctioned the party at issue \$2,000 for alleged contempt –four (4) times the allowable limit in NRS 22.100 (1) – here the Trial Court sanctioned Mr. Detwiler **\$100,000.00 – over 200 times the allowable limit!**

In addition, the Trial Court's strong bias against Mr. Detwiler was demonstrated by the attorney's fee award against him. NRS 22.100(3) allows an award of only those attorneys' fees "incurred by the party **as a result of the contempt.**"²² Despite no finding by the Trial Court that the Respondent had incurred fees *as a result of Mr. Detwiler's purported contempt* – as opposed to that of Mr.

²¹ Id. (emphasis added).

²² See also Mayfield v. Koroghli, 124 Nev. 343, 346, 184 P.3d 362, 364 (2008); State, Dep't of Indus. Relations, Div. of Indus. Ins. Regulation v. Albanese, 112 Nev. 851, 856, 919 P.2d 1067, 1070 (1996).

Foust, whom the Trial Court repeatedly found owned, owned and controlled the Vehicles – the Trial Court awarded fees incurred from the time Mr. Detwiler “was officially a party in this action”.²³ Yet, despite there being no order directed at Mr. Detwiler before January 2019 – and in violation of its own statements – the Trial Court proceeded to award fees and costs from March, 2018, totaling \$218,885.52.^{24 25} Of that amount, more than half - \$118,036.72 – were incurred *prior to Mr. Detwiler having any order directing him to do anything in this matter!*²⁶ The impermissible bias of the Trial Court against Mr. Detwiler is clear, and a stay is warranted.

2. The object of the appeal will be defeated if the stay is denied.

This appeal is sought to challenge the Trial Court’s orders which amount to a monetary Judgment against Mr. Detwiler in excess of \$318,000.00.²⁷ The object of this appeal is to correct the reversible errors committed by the Trial Court. Preserving the status quo by issuing a stay best serves the public interest. A denial would only serve as a grave injustice to Mr. Detwiler’s due process rights as well as Nevada’s public policy (“for the preservation of the respect and high regard the public has always

²³ See Appx. Vol. III, at MSA00647.

²⁴ See Appx. III, at MSA 00693 and Appx. Vol. IV, at MSA00760-762.

²⁵ In further violation of Nevada law, and evidencing the Trial Court’s bias, the Trial Court failed to even attempt to apportion any fees to Mr. Foust. See Mayfield v. Koroghli, 124 Nev. 343, 346, 184 P.3d 362, 364 (2008); State, Dep’t of Indus. Relations, Div. of Indus. Ins. Regulation v. Albanese, 112 Nev. 851, 856, 919 P.2d 1067, 1070 (1996).

²⁶ See Appx. Vol. III, at MSA00671, lines 14-25.

²⁷ See Appx. Vol. II-IV, at MSA00498-517, MSA00685-693, MSA00760-765.

maintained for the courts”), which was specifically upheld by this Court in Awad and McCormick.²⁸ As such, a stay pending appeal must be issued.

3. Appellant will suffer irreparable/serious injury if the stay is denied.

A denial of the stay would force Mr. Detwiler to either post a supersedeas bond, which he is likely unable to do, or potentially file bankruptcy. The reversible errors should be fully addressed by this Court prior to any collection activities by the Respondent, and a stay will allow that to occur. Failure to issue a stay will cause Mr. Detwiler to suffer irreparable, permanent harm far beyond this appeal. A stay pending appeal is the only fair and equitable result.

4. A stay being granted will not irreparably harm Respondent.

Granting of a stay will not irreparably harm or seriously injury the Respondent. As set forth above, the numerous reversible errors committed by the Trial Court make clear the amounts awarded against Mr. Detwiler – **in favor of a nonexistent entity** – are invalid. A Stay in this matter will not affect the Respondent’s ability, such as it is, to pursue the *actual judgment debtor* – Mr. Foust – while Mr. Detwiler’s appeal is pending. Allowing the Respondent to pursue collection against Mr. Detwiler would be a grave miscarriage of justice.

III. CONCLUSION

²⁸ Awad v. Wright, 794 P.2d 713 (1990); McCormick v. The Sixth Judicial Court, 67 Nev. 318, 218 P.2d 939 (1950).

Mr. Detwiler respectfully requests this Court grant his Motion to Stay.

DATED: April 23, 2020.

HUTCHISON & STEFFEN

By /s/ Brenoch Wirthlin, Esq.
Brenoch Wirthlin, Esq. (NV Bar 10282)
Attorneys for Appellant

NRAP 27(e) CERTIFICATE

I, **Brenoch Wirthlin, Esq.**, hereby certify, pursuant to NRAP 27(e), to the following:

1. The telephone number and office address of the attorney for the Respondent is follows:

John Bragonje, Esq.
Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89169
(702) 474-2625
Attorney for Respondent

2. An emergency exists requiring this Motion to be heard in less than 14 days in order to avoid the Appellant from suffering immediate, irreparable harm. If this Motion to Stay is denied, Respondent will commence collection proceedings against Mr. Detwiler and he will be forced to either post a supersedeas bond or file bankruptcy. Either option requires the Appellant to take immediate action given the quickly approaching stay expiration, and Appellant may be unable to post a bond. As this Court is well aware, the entire country is going through a global pandemic known as the Coronavirus, where businesses in Nevada, and throughout the country, have either shutdown entirely or are operating on a limited basis. The sooner Appellant is aware of the decision on his Motion to Stay, the sooner he can work to have the appropriate professionals assist in taking action, which will likely prove to be extremely problematic given the current pandemic. Without this Court hearing

this Motion to Stay on an emergency basis, the Appellant will suffer immediate, irreparable harm and will be subject to collection efforts being commenced against him.

3. The counsel for Respondent was notified by e-mail on April 23, 2020 that the instant Motion would be filed. Additionally, my office notified the Nevada Supreme Court Clerk by phone on April 23, 2020.

4. A filed copy of this Motion will be served on the Respondent's attorney as indicated in the certificate of service provided below.

5. As such, before filing the motion, I have made every practicable effort to notify the clerk of the Supreme Court and opposing counsel, and to serve the motion at the earliest possible time.

6. This emergency motion is filed at the earliest possible time.

I declare under the penalty of perjury the statements herein are true and correct.

Dated: April 23, 2020.

By: /s/ Brenoch Wirthlin, Esq.
Brenoch Wirthlin, Esq.
Hutchison & Steffen
10080 W. Alta Dr., Suite 200
Las Vegas, Nevada 89145
Phone: (702) 385-2500

PROOF OF SERVICE

I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **APPELLANT’S EMERGENCY MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION OF ORDER FOR SANCTIONS/JUDGMENT PENDING APPEAL** on the following parties, via the manner of service indicated below, on April 23, 2020:

Via Electronic Service through E-Flex System:

John Bragonje, Esq.
Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89169
JBragonje@lrrc.com
Attorney for Respondent

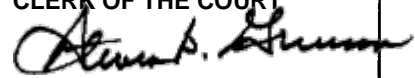
Dated: April 23, 2020.

By: /s/ Danielle Kelley
An Employee of
Hutchison & Steffen

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EXHIBIT PAGE ONLY

EXHIBIT 2

HUTCHISON & STEFFEN
A PROFESSIONAL LLC



ORDR

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Fax: 702.949.8398

*Attorneys for Plaintiff/Judgment Creditor
Baker Boyer National Bank*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**ORDER FOR PUNISHMENT OF
CONTEMPT BY HARRY
HILDBRAND, LLC AND EDWARD N.
DETWILER, ITS MANAGER**

This matter having come on for an evidentiary hearing before the Honorable Richard Scotti on April 1, April 24, May 17, and May 21, 2019 and pertaining to this Court's Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt for violating this Court's prior Findings of Fact, Conclusions of Law, and Final Judgment issued on January 9, 2019; this Court having previously entered an order of contempt against judgment debtor James P. Foust, Jr.; third party claimant Harry Hildibrand, LLC ("HH") having been represented by Holland & Hart LLP before its withdrawal; Edward Newlin Detwiler, the manager of HH having appeared and offered extensive testimony; defendant and judgement debtor Mr. Foust having been represented by Michael D. Mazur of Mazur & Brooks; plaintiff and judgment creditor Baker Boyer National Bank (the "Bank") having been represented by John E. Bragonje of Lewis Roca Rothgerber Christie LLP; the Court having read and considered all relevant pleadings and papers

on file in the above-captioned case, having reviewed the documents admitted into evidence and briefs and points of authorities filed by the parties, and having heard and carefully considered the testimony of the witnesses called to testify, the Court hereby enters the following facts and states the following conclusions of law:

INTRODUCTION

Mr. Foust received a loan in the original amount of \$1,077,600 from the Bank. After his refusal to repay the loan, the Bank obtained a judgment in the original amount of \$933,616.30, including fees and costs, against Mr. Foust in the Superior Court of Washington in and for Walla Walla County (the "Judgment"). The Bank domesticated the Judgment in the State of Nevada on August 31, 2017.

When he applied for the loan that created the obligation that, when breached, led to the Judgment, Mr. Foust represented that he owned a collection of 59 expensive, rare, and exotic vehicles, including Corvettes, a Cadillac, Mercedes, Porsches, and Lamborghinis. On January 9, 2019, the Court issued a Findings of Fact, Conclusions of Law, and Final Judgment (the "Order"), resolving a series of prior supplemental proceedings in favor of the Bank and against Mr. Foust and third party claimant Harry Hildibrand, LLC ("HH"). The Order required "Mr. Foust and HH and any of their respective agents, employees, or affiliates [] *including without limitation Mr. Detwiler* . . . on penalty of contempt, to deliver up, surrender possession of, and turn over to the Bank promptly, in a manner that protects the cars from any damage, all [twenty] cars identified in [Exhibit B] with any cost or expense involved in delivery to the Bank to be borne by Mr. Foust and/or HH." (Order, Conclusion of Law ¶ 29 (emphasis supplied).)

However, as discussed herein, HH, acting through its manager, Edward Detwiler, has refused to comply with the Order and has failed to deliver a single vehicle to the Bank. As further discussed herein, HH and Mr. Detwiler presented no valid excuse for violating the Court's Order, presented no evidence of any effort to retrieve the subject vehicles from their present locations, and, instead, intentionally and knowingly failed to comply, without justification.

Based upon the testimony and documentary evidence presented during the hearing and for good cause appearing, the Court hereby holds HH and its manager, Edward Detwiler in civil

1 contempt of this Court's January 9, 2019, Order and finds, concludes, orders, adjudges, and
2 decrees as follows:

3 **FINDINGS OF FACT**

4 1. On December 20, 2017, the Bank filed a motion seeking an order requiring Mr.
5 Foust to deliver possession of various exotic vehicles to satisfy the Judgment.

6 2. In his written opposition to the motion, Mr. Foust indicated that he no longer
7 owned a single one of the 59 vehicles that were the subject of the motion and which he pledged to
8 the Bank to secure the loan.

9 3. Throughout the proceedings, Mr. Foust claimed to have transferred many of these
10 vehicles to HH.

11 4. Mr. Detwiler, as he has affirmed in a vast array of papers and hearings before this
12 Court, is HH's manager. (*E.g.*, 3/2/18 Application for Hearing, Declaration of E. Detwiler, on file
13 herein ("I am the managing director of Harry Hildibrand, LLC . . .").)

14 5. The Court conducted two evidentiary hearings on February 15, 2018, and
15 November 5, 2018; the Court conducted standard hearings on about a dozen occasions; and the
16 parties have submitted over 30 papers in support of these activities.

17 6. On January 9, 2019, the Court issued the Order, ruling in favor of the Bank and
18 against Mr. Foust and HH in every respect.

19 7. The Order required "Mr. Foust and HH and any of their respective agents,
20 employees, or affiliates *[including without limitation Mr. Detwiler . . . on penalty of contempt,*
21 *to deliver up, surrender possession of, and turn over to the Bank promptly, in a manner that*
22 *protects the cars from any damage, all [twenty] cars identified in [Exhibit B] with any cost or*
23 *expense involved in delivery to the Bank to be borne by Mr. Foust and/or HH."* (Order,
24 Conclusion of Law ¶ 29 (emphasis supplied).) The list of 20 vehicles identified in Exhibit B to
25 this Court's January 9, 2019, Order, is attached hereto as **Exhibit B** also.

26 8. HH never challenged the Order with any motion for reconsideration, or motion
27 pursuant to NRCP 59 or 60 to alter or amend the Order, nor did HH appeal the order. It is final.

28 9. HH and Mr. Detwiler, as discussed below, were well aware of this Court's Order

1 and the Bank's requests for compliance.

2 10. The Bank gave notice of entry of the Order, which was served on HH's counsel,
3 Holland & Hart. (*See* 1/9/19 Notice of Entry of Order, on file herein.)

4 11. The Bank, through its counsel, also wrote to Mr. Detwiler on January 23, 2019,
5 nearly two weeks after the entry of the Order, to inform Mr. Detwiler that the Bank was ready to
6 take immediate possession of the vehicles identified in the Order. (*See* Exhibit 1 to 2/21/19
7 Application, on file herein.)

8 12. The Bank's counsel further telephoned Mr. Detwiler regarding the same. Despite
9 having signed all the bankruptcy filings identifying the subject vehicles and having testified at a
10 creditors' meeting about their locations (*see id.* ¶¶ 49, 76), Mr. Detwiler claimed to have no
11 knowledge of the vehicles' current whereabouts.

12 13. Despite the Bank's aforementioned attempts, HH and Mr. Detwiler have refused to
13 comply with this Court's Order.

14 14. On February 21, 2019, the Bank filed an Application for Order to Show Cause
15 Why Defendants Should Not Be Held in Civil Contempt ("Application"). (*See* 2/21/2019
16 Application, on file herein.)

17 15. The Court granted the Bank's Application, and held an evidentiary hearing on April
18 1, April 24, May 17, and May 21, 2019 regarding the same. (*See* 2/21/2019 Order to Appear, on
19 file herein.)

20 16. Mr. Detwiler and HH, through Mr. Detwiler, had notice of the contempt
21 proceedings, and at the May 17 and May 21, 2019 evidentiary hearing, Mr. Detwiler appeared and
22 testified on his own behalf and on behalf of HH. Mr. Foust and another associate, Thomas Larkin,
23 also offered testimony.

24 17. As discussed herein, the Court finds that Mr. Detwiler, as representative of HH,
25 presented no valid excuse for violating the Court's Order; he presented no valid excuse for failing
26 to turn over the subject vehicles; and he presented no evidence of any effort whatsoever to attempt
27 to retrieve the subject vehicles from their present locations. Mr. Detwiler and HH intentionally
28 and knowingly failed to comply, without justification.

1 18. Mr. Detwiler was not a credible witness. He gave self-serving testimony
2 concerning his role with HH: Mr. Detwiler repeatedly claimed he was a mere “figurehead” of HH
3 (5/17/19 Hr’g Trans. p. 19:12-16; 23:13-15; 5/21/19 Vol. I Hr’g Trans., p. 9:3-16) with “no day-
4 to-day operations knowledge” (*id.* at 20:9-16)—a manager in name only without any control over
5 the situation. Additional evidence received by the Court proved, in a clear and convincing
6 manner, just the opposite. Mr. Detwiler exercised completed control over HH.

7 19. Mr. Detwiler testified that HH has no employees and no payroll. (5/21/19 Vol. I
8 Hr’g Trans., p. 8:15-9:3; *see also id.* at p. 10:10-11 (same); 11/5/18 Hr’g Ex. 3, Control No. 119.)

9 20. Mr. Detwiler acted as HH’s manager. (*E.g.*, 5/17/19 Hr’g Trans., p. 19:12
10 (describing his role as “manager of Harry Hildibrand”); *id.* at p. 20: 11-12 (describing himself as a
11 manager); *id.* at p. 23:1 (same); *id.* at p. 26:22 (same); *id.* at p. 27:24-28 (same).)

12 21. In fact, Mr. Detwiler testified that he was the *only* manager of HH:

13 Q: And you’re the sole—

14 Mr. Detwiler: At least to my knowledge.

15 Q: —manager, correct?

16 Mr. Detwiler: I’m—I’m a manager.

17 Q: Who are the other managers?

18 Mr. Detwiler: I don’t know.

19 (5/21/19 Vol. I Hr’g Trans., p. 10:12-18.)

20 Q: You are the only manager of Harry Hildibrand, LLC, correct?

21 Mr. Detwiler: That I’m aware of, yes.

22 (5/17/19 Hr’g Trans., p. 28:6-7.)

23 22. Mr. Detwiler has acted as the manager since 2008. (11/5/18 Hr’g Ex. 3, Control
24 No. 100.) Mr. Detwiler claims to have contact with HH’s purported owners, the children of the
25 late Harry Hildibrand, Sr., HH’s name sake. (11/5/18 Hr’g Ex. 3, Control Nos. 84, 95, 98-99, 100,
26 108.) Mr. Detwiler claims that he works for free. (11/5/18 Hr’g Ex. 3, Control Nos. 103-04, 105.)

27 23. No one besides Mr. Detwiler claiming a connection with HH or purporting to
28 represent HH has ever appeared before this Court. No one besides Mr. Detwiler claimed to be
speaking with HH’s ownership. Mr. Detwiler was the sole agent and mouthpiece for HH during
the years this Court has presided over this lawsuit. While there were at times claims that others
controlled HH, such as a person named Harry Hildibrand, Jr., none of these alleged owners ever

1 appeared or gave an affidavit. Only Mr. Detwiler did these things.

2 24. During the pendency of the proceedings before this Court, HH petitioned for
3 bankruptcy relief in California. The bankruptcy was ultimately dismissed for HH's subsequent
4 failure to prosecute. *See In re: Harry Hildibrand, LLC*, 2:18-bk-18727-NB, ECF No. 20 (Bankr.
5 C.D. Cal. Sept. 7, 2018).

6 25. Mr. Detwiler signed the bankruptcy petition as HH's manager on June 19, 2018,
7 *See id.* at ECF No. 1, and the same signatures were submitted again for an addendum to the
8 petition filed on August 7, 2018, *see id.* at ECF No. 11. (*See also* Order, Finding of Fact 24
9 (noting that Mr. Detwiler signed the bankruptcy papers).)

10 26. The bankruptcy trustee conducted an 11 U.S.C. § 341 meeting of creditors in Los
11 Angeles on August 27, 2018. Mr. Detwiler flew from Las Vegas (at his own expense, he says) to
12 represent HH and give testimony. (5/17/19 Hr'g Trans. p. 37:16-38:1.)

13 27. During the Court's hearing on November 5, 2018, the Court received into evidence
14 a complete transcript of the Section 341 creditors meeting, where Mr. Detwiler testified under oath
15 after being sworn.

16 28. Mr. Detwiler's testimony in this setting further discredited his characterization of
17 his mere "figurehead" status and, instead, proved that he actively managed HH and that he had
18 specific knowledge of and control over the vehicles in question.

19 29. At the Section 341 hearing, Mr. Detwiler sketched HH's business plan. HH buys
20 cars, restores them, and finally sells them for a profit. (*See* 11/5/18 Hr'g Ex. 3, Control Nos. 91,
21 95, 98.) Mr. Detwiler had intimate knowledge of each step of this process.

22 30. First, Mr. Detwiler identified the location of the vehicles in question. The
23 bankruptcy papers Mr. Detwiler approved included a schedule of assets, which was a list of 20
24 vehicles, which is included herewith as Exhibit B. Mr. Detwiler testified that 10 of the vehicles
25 identified in the bankruptcy schedules, were located at a warehouse in Compton, California.
26 (5/17/19 Hr'g Trans., p. 38:18-23; 11/5/18 Hr'g Ex. 3, Control Nos. 116, 119.) Mr. Detwiler also
27 testified that HH paid rent to lease this warehouse on a month-to-month basis. (11/5/18 Hr'g Ex.
28 3, Control Nos. 83-84, 121.)

1 31. Mr. Detwiler further agreed that HH kept six additional vehicles in North Dakota,
2 one in Montana, and one (the Motorcoach, discussed below) in Nevada. (11/5/18 Hr'g Ex. 3,
3 Control No. 93.)

4 32. Second, Mr. Detwiler gave information concerning how HH maintained the
5 vehicles:

6 Trustee: Does anyone regularly use these vehicles? Any of them? Regularly
7 use them?

8 Mr. Detwiler: Some of them fairly regularly will drive, yeah.

9 Trustee: No, does someone regularly drive the vehicle, any of them, on a
10 routine basis?

11 Mr. Detwiler: Yeah the ones in Los Angeles will be, you know, alternated just to
12 keep them, you know, operational.

13 Trustee: Because the only reason I ask that is other than the comprehensive
14 collision type of insurance, the issue is bodily injury, personal
15 liability that kind of thing.

16 Mr. Detwiler: Sure.

17 (11/5/18 Hr'g Ex. 3, Control No. 93.)

18 33. When the trustee asked about whether the vehicles were drivable, Mr. Detwiler
19 offered that "some definitely are and some definitely are not." (11/5/18 Hr'g Ex. 3, Control No.
20 120.)

21 34. Mr. Detwiler also knew how to value the vehicles for resale because he had seen
22 and inspected them. When asked about how HH arrived at a cumulative value of \$521,575 for the
23 20 vehicles listed in the bankruptcy schedule (Exhibit B), Mr. Detwiler testified:

24 I think it's just purchase value because most – the vehicles that I've seen require
25 work, you know, I think that the purchase criteria was based on what they thought
26 that they could sell for if a certain amount was invested. It's like buying rehab real
27 estate. How much do you put into it and how much can you get out of it so there
28 would need to be an investment in all of those.

(11/5/18 Hr'g Ex. 3, Control No. 109, 111.)

35. Plainly, Mr. Detwiler had repeated access to the vehicles.

36. Caring for the vehicles before resale included, according to Mr. Detwiler, insuring
them all. (11/5/18 Hr'g Ex. 3, Control No. 92.)

37. Finally, when it came time to resell its investment cars, Mr. Detwiler testified that
HH sometimes hired a broker to resell the cars at times and at other times HH itself offers the cars
for sale directly to purchasers. (11/5/18 Hr'g Ex. 3, Control No. 91.)

1 38. All of these activities obviously require money, and Mr. Detwiler indicated in
2 several different ways that he knew about and controlled HH's finances.

3 39. HH's bankruptcy petition listed Mr. Detwiler as the person who "audited,
4 compiled, or reviewed the debtor's books of accounts and records" and as the person in possession
5 of the same. (11/5/18 Hr'g Ex. 3, Control No. 157.)

6 40. At his deposition, Mr. Detwiler affirmed that he had the authority to and in fact had
7 signed check's on HH's behalf. (7/6/18 Dep. E. Detwiler, p. 53-54.)

8 41. Consistent with these declarations, Mr. Detwiler testified during the bankruptcy
9 that HH had \$4,422 in its bank account. (11/5/18 Hr'g Ex. 3, Control Nos. 85-86, 98.)

10 42. In order to purchase the vehicles in the first place, HH received \$521,000 in
11 financing over time, Mr. Detwiler insisted, from StarDust Classic, LLC ("StarDust"). (11/5/18
12 Hr'g Ex. 3, Control Nos. 95, 107.)

13 43. In numerous HH bankruptcy filings, which papers Mr. Detwiler repeatedly signed
14 under penalty of perjury, and the testimony given during the 341 meeting of creditors, HH
15 contended that it is wholly owned by StarDust. (Order, Findings of Fact, ¶ 24.)

16 44. The official records of the Wyoming Secretary of State indicate that Mr. Foust and
17 his daughter have filed some of the annual reports and have paid the annual dues for StarDust
18 since its organization in 2016. (Order, Findings of Fact, ¶ 25.)

19 45. Mr. Detwiler's name also appears on StarDust's 2018 annual report filed with the
20 Montana Secretary of State. (11/5/18 Hr'g Ex. 3, Control No. 369.) Moreover, the address of
21 StarDust's principal office listed on the 2018 report—7854 West Sahara Avenue, #100—is the
22 same address that Mr. Detwiler used for himself in the bankruptcy petition. (*Compare* 11/5/18
23 Hr'g Ex. 3, Control Nos. 129, 157, 159, *with* No. 369.)

24 46. This Court previously found that, at all relevant times herein, Mr. Foust, HH, and
25 StarDust were and are alter egos of each other with respect to all of the subject vehicles listed in
26 Exhibit B. (Order, Finding of Fact ¶ 29.)

27 47. HH produced no evidence, such as a promissory note, of any arms-length dealings
28 between it and StarDust. Instead, the documents received into evidence by this Court reveal

1 StarDust to be *another* entity controlled by Mr. Detwiler and/or Mr. Foust and used to frustrate
2 creditors.

3 48. Mr. Detwiler also directed HH's high-level strategy in this litigation. This Court
4 approved the Bank's levy of a 1998 Prevost motorhome (the "Motorcoach"). (*See generally*
5 3/8/18 Findings of Fact, Conclusions of Law, and Final Judgment, on file herein.) Mr. Detwiler
6 and his associate Mr. Foust spun this lawful seizure as crime committed by the Bank. Mr.
7 Detwiler filed a police report after the levy in which he claimed to be HH's manager. (*See Exhibit*
8 4 to 3/2/18 NRS 31.070 Application, on file herein.)

9 49. Relatedly, at the Section 341 Hearing, Mr. Detwiler testified that he had
10 "tentatively" retained an attorney to assert a claim against the Bank for its levy against the
11 Motorhome, presumably for trespass to chattel. (11/5/18 Hr'g Ex. 3, Control Nos. 91-92.)

12 50. Mr. Detwiler also testified that StarDust was making financing payments on the
13 Motorcoach's purchase money loan, again demonstrating his intimate knowledge of HH's
14 finances. (11/5/18 Hr'g Ex. 3, Control Nos. 98, 112.) This testimony also reveals a false
15 statement from Mr. Detwiler because, based on documentary evidence actually subpoenaed and
16 offered into evidence by HH itself, Mr. Foust, not StarDust, was making these payments. (Order,
17 Findings of Fact ¶¶ 38-40.)

18 51. In a similar circumstance demonstrating his strategic oversight, Mr. Detwiler
19 signed (and presumably drafted) a July 25, 2018 "Minutes of Special Meeting," which authorized
20 and empowered HH "through its manager, Ed Detwiler . . . to prepare and file a Chapter 11
21 petition with the U.S. Bankruptcy Court" (11/5/18 Hr'g Ex. 3, Control Nos. 183-84; 328-29.)

22 52. This extensive testimony and documentary evidence proves that there was no
23 aspect of HH that Mr. Detwiler did not control or know about, especially with respect to the
24 vehicles at issue.

25 53. During the Section 341 Meeting, Mr. Detwiler summarized his duties in an
26 expansive fashion: "I'm head guy in charge of getting stuff done." (11/5/18 Hr'g Ex. 3, Control
27 No. 95.)

28 54. When faced with contempt charge, Mr. Detwiler retreated from this pronouncement

1 and claimed he was a mere “figurehead” with no authority or power generally and no knowledge
2 of the vehicles specifically.

3 55. Mr. Detwiler claimed during the contempt hearing that “I don’t know anything
4 about the cars. I was never involved with the cars.” (5/17/19 Hr’g Trans. p. 20:5-6.) His denials
5 during the contempt hearing came after strikingly specific, contrary testimony given just months
6 earlier during the bankruptcy.

7 56. During bankruptcy, he gave detailed information about the cars’ location; now he
8 claims ignorance on that subject. During bankruptcy he elaborated about the financing for the
9 vehicles, allegedly through StarDust providing \$521,000 to finance purchases over time, but now
10 he claims “I don’t know how they’re financed.” (5/17/19 Hr’g Trans. p. 19:21.) During
11 bankruptcy he described extensive and regular interactions with the purported owners of HH, but
12 now he claims no “relationship with any of the owners or people of [HH]. On the converse, I have
13 very little interacting with them.” (5/17/19 Hr’g Trans. p. 22:10-12.)

14 57. The Court finds persuasive the earlier statements Mr. Detwiler made during the
15 bankruptcy, when he had a motivation to be forthcoming. These earlier statements impeach Mr.
16 Detwiler’s credibility in this proceeding and reveal him as an untruthful witness before this Court.

17 58. In light the substantial and credible evidence of Mr. Detwiler’s pervasive control
18 over HH, the Court rejects Mr. Detwiler’s contempt defense as plainly not credible. On the other
19 hand, the Bank has proved by clear and convincing evidence that HH and Mr. Detwiler had the
20 ability to turn over the vehicles.

21 59. During his testimony, Mr. Detwiler did not claim that HH did not possess or own
22 the 20 vehicles HH claimed to own (Exhibit B) when it petitioned for bankruptcy in 2018.
23 Instead, he only claimed that he did not have the power to deliver the vehicles to the Bank. The
24 Court rejects this testimony.

25 60. The evidence clearly and convincingly demonstrates that Mr. Detwiler was
26 authorized and empowered to comply with this Court’s Order. Mr. Detwiler presented no valid
27 excuse for his and HH’s violating the Court’s Order, presented no evidence of any effort to
28 retrieve the subject vehicles from their present locations, and, instead, intentionally and knowingly

1 failed to comply, without justification.

2 61. This Court further incorporates herein any other evidentiary findings in the January
3 9, 2019 Order and the June 21, 2019 Order for Punishment of Contempt directed against Mr. Foust
4 to support Mr. Detwiler's control of HH and its assets and his cooperation with Mr. Foust to defy
5 the Order.

6 62. In the bankruptcy schedules of HH, HH represented that it owned all 20 of the
7 subject vehicles listed in Exhibit B.

8 **CONCLUSIONS OF LAW**

9 1. The Court has jurisdiction over the parties and venue is proper in this Court.

10 2. Mr. Foust, HH, and StarDust are and have been agents of one another with respect
11 to any past action involving the subject vehicles at issue in these proceedings (Exhibit B) and have
12 been agents of one another regarding notice of these proceedings.

13 3. The Bank offered clear and convincing evidence that Mr. Detwiler was the sole
14 manager of HH and the person in charge of its operations. Mr. Detwiler was the controlling
15 manager of HH, and as such accepted and possessed the responsibility to control the assets of HH,
16 including its classic cars (Exhibit B).

17 4. HH owns and possesses the 20 vehicles identified in Exhibit B, which list HH
18 prepared for its bankruptcy petition.

19 5. The Bank has proved by clear and convincing evidence that Mr. Detwiler and HH
20 had notice of the Order and had the ability to comply with the Order.

21 6. The Court maintains contempt power to address "[d]isobedience or resistance to
22 any lawful writ, order, rule or process issued by the court or judge at chambers." NRS 22.010(3);
23 *see also* NRS 1.210(2) (providing that the district court has the power to "enforce order in the
24 proceedings before it"); *see also In re Water Rights of the Humboldt River*, 118 Nev. 901, 906-07,
25 59 P.3d 1226, 1229-30 (2002) (explaining that the district court has "inherent power to protect
26 dignity and decency in its proceedings, and to enforce its decrees" and because it has particular
27 knowledge of whether contemptible conduct occurred, its contempt decisions are reviewed for an
28 abuse of discretion).

1 7. Contempt proceedings may be criminal or civil in nature. *Lewis v. Lewis*, 132
2 Nev., Adv. Op. 46, 373 P.3d 878, 880 (2016). A civil contempt action is remedial in nature
3 because it is meant to secure compliance with the court order. *Id.*; *see also* NRS 22.110.

4 8. As discussed herein, Mr. Detwiler and HH have violated two separate contempt
5 statutes: NRS 22.010 and NRS 21.340.

6 9. First, the Court may hold a person in contempt when the person has failed to
7 comply with a lawful order or rule. NRS 22.010(3). To be held in contempt for disobeying a
8 court order, the order must clearly put the person on notice of what is required. *Sw. Gas Corp. v.*
9 *Flintkote Co.*, 99 Nev. 127, 131, 659 P.2d 861, 864 (1983); *see also Cunningham v. Dist. Ct.*, 102
10 Nev. 551, 559-60, 729 P.2d 1328, 1333-34 (1986) (“An order on which a judgment of contempt is
11 based must be clear and unambiguous, and must spell out the details of compliance in clear,
12 specific and unambiguous terms so that the person will readily know exactly what duties or
13 obligations are imposed on him.”).

14 10. The Court’s January 9, 2019 Order is unmistakable. The Order required “Mr.
15 Foust and HH and any of their respective agents, employees, or affiliates [] including without
16 limitation Mr. Detwiler . . . on penalty of contempt, to deliver up, surrender possession of, and
17 turn over to the Bank promptly, in a manner that protects the cars from any damage, all [twenty]
18 cars identified in [Exhibit B] with any cost or expense involved in delivery to the Bank to be borne
19 by Mr. Foust and/or HH.” (Order, Conclusion of Law ¶ 29.) The Order further identifies the
20 subject vehicles by make, model, and VIN.

21 11. Second, this action is a supplemental proceeding. A “supplemental proceeding” is
22 “held in connection with the enforcement of a judgment, for the purpose of identifying and
23 locating the debtor’s assets available to satisfy the judgment.” *Supplemental Proceeding*,
24 BLACK’S LAW DICTIONARY (8th ed. 2004). In Nevada, a supplementary proceeding is “incident to
25 the original suit” and “is not an independent proceeding or the commencement of a new action.”
26 *See State ex rel. Groves v. Dist. Ct.*, 61 Nev. 269, 276, 125 P.2d 723, 726 (1942).

27 12. This Court is enforcing a Washington State judgment domesticated in Nevada.
28 NRS Chapter 21 propounds supplemental procedures. Under, this law, disobedience to a court’s

1 order in supplemental proceedings constitutes a contempt: "If any person, party or witness disobey
2 an order of the master, properly made in the proceedings before the master under this chapter, he
3 or she may be punished by the court or judge ordering the reference, for a contempt." NRS
4 21.340.

5 13. The Court's Order clearly and unambiguously directed Mr. Detwiler and HH to
6 deliver the subject vehicles identified in the Order. Counsel for the Bank also wrote to Mr.
7 Detwiler and HH, insisting on compliance with the Order.

8 14. Mr. Detwiler and HH have refused to respond to any communications by the Bank
9 regarding the Order, let alone deliver any of the vehicles that are the subject of the Order; thus,
10 Mr. Detwiler and HH stand in contempt of the Order.

11 15. Mr. Detwiler's and HH's demonstrated intransigence requires stringent treatment:
12 they will clearly refuse to comply with the Order and turn over the subject vehicles to the Bank
13 unless this Court exercises its power of incarceration to detain Mr. Detwiler until he complies.

14 16. Coercive incarceration is within the inherent power of the Court, insofar as it
15 depends on the contemnor's ability to comply, thereby purging himself of contempt, and is
16 designed to coerce, rather than punish and therefore the ordinary requirements of due process do
17 not attach. *Shillitani v. United States*, 384 U.S. 364, 369-70 (1966); *see also S.E.C. v. Solow*, 396
18 Fed. App'x 635 (11th Cir. 2010) (affirming the district court's adjudication of civil contempt and
19 ordering defendant's incarceration until he purged his contempt in compliance with the court's
20 directive). With civil contempt, "the contemnor is able to purge the contempt and obtain his
21 release by committing an affirmative act." *Int'l Union, United Mine Workers of Am. v. Bagwell*,
22 512 U.S. 821, 844 (1994) (internal quotation marks omitted).

23 17. Several Nevada statutes empower district courts to issue a bench warrant for the
24 arrest of a person guilty of contempt:

25 **NRS 22.040 Issuance of warrants of attachment and commitment.** When the
26 contempt is not committed in the immediate view and presence of the court or judge,
27 a warrant of attachment may be issued to bring the person charged to answer, or,
28 without a previous arrest, a warrant of commitment may, upon notice, or upon an
order to show cause, be granted; and no warrant of commitment shall be issued
without such previous attachment to answer, or such notice or order to show cause.

1 18. In addition to this Court's inherent authority, Nevada's statutes explicitly permit
2 imprisonment:

3 **NRS 22.100 Penalty for contempt.**

4 1. Upon the answer and evidence taken, the court or judge or jury, as the
5 case may be, shall determine whether the person proceeded against is guilty of the
6 contempt charged.

7 2. Except as otherwise provided in NRS 22.110, if a person is found guilty
8 of contempt, a fine may be imposed on the person not exceeding \$500 or the person
9 may be imprisoned not exceeding 25 days, or both.

10 3. In addition to the penalties provided in subsection 2, if a person is found
11 guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require
12 the person to pay to the party seeking to enforce the writ, order, rule or process the
13 reasonable expenses, including, without limitation, attorney's fees, incurred by the
14 party as a result of the contempt.

15 19. Although NRS 22.100(2) sets a default rule prohibiting imprisonment for more
16 than 25 days, subsequent sections in the same statute provide for an indefinite term of
17 imprisonment. Specifically, where, as here, one has refused to perform an affirmative act required
18 by the provisions of an order, no limitation on the term exists:

19 **NRS 22.110 Imprisonment until performance if contempt is omission to**
20 **perform an act; penalty for failure or refusal to testify before grand jury.**

21 1. Except as otherwise provided in subsection 2, when the contempt consist
22 in the omission to perform an act which is yet in the power of the person to
23 perform, the person may be imprisoned until the person performs it. The required
24 act must be specified in the warrant of commitment.

25 *See also* TRACY DiFILLIPPO ET AL. EDS., NEVADA CIVIL PRACTICE MANUAL, Sixth Edition § 31.34
26 ([updated] 2016) ("The person guilty of contempt may be imprisoned until he or she perform the
27 ordered act, if it is within his or her power to perform."). Nevada's statute corresponds with the
28 general jurisprudence:

 Imprisonment for civil contempt may be ordered where a defendant has refused to
perform an affirmative act required by the provisions of an order that, either in form
or substance, is mandatory in character. A contemnor who has the ability to comply
with the underlying court order *can be imprisoned indefinitely* until the contemnor
complies with the underlying court order, even if it appears that the contemnor is
never going to comply.

17 C.J.S. CONTEMPT § 186 (West [updated] 2019) (emphasis added).

20. Imprisonment for civil contempt usually is not for a definite term, but the party in

1 contempt stands committed unless and until the affirmative act required by the order of the court is
2 performed. *See Lewis*, 373 P.3d at 881 (2016) (“A purge clause [in the contempt order] gives the
3 defendant the opportunity to purge himself of the contempt sentence by complying with the terms
4 of the contempt order.”). Thus contemnors carry the prison keys in their own pockets. *Shillitani*
5 *v. United States*, 384 U.S. 364, 368 (1966). A defendant has the choice to “pay or stay.” 17 C.J.S.
6 CONTEMPT § 183.

7 21. In Nevada, the cases treating the subject of imprisonment for failure to perform an
8 affirmative act typically arise in spousal- and child-support lawsuits. *Foley v. Foley*, 432 P.2d 736
9 (Nev. 2018) (unpublished) (observing that courts may imprison parents who refuse to pay child
10 support); *Hildahl v. Hildahl*, 95 Nev. 657, 662, 601 P.2d 58, 61 (1979) (“The use of the contempt
11 power to enforce the provisions of a divorce decree has been approved many times in this state.”).

12 22. However, in the judgment enforcement context, violating a “turn-over” order, such
13 as the Court’s Order, often prompts imprisonment until the contemnor agrees to turn over the
14 property. *See, e.g., S.E.C. v. Princeton Econ. Int’l Ltd.*, 152 F. Supp. 2d 456, 459-63 (S.D.N.Y.
15 2001) (committing the principal of a fraudulent investment scheme to jail for at least one year for
16 failing to honor the court’s orders to turn over \$14.9 million in assets, including 102 gold bars,
17 699 gold bullion coins, ancient coins, and a \$750,000 bust of Julius Caesar); *U.S. ex rel. Thom v.*
18 *Jenkins*, 760 F.2d 736, 737-38 (7th Cir. 1985) (committing a judgment debtor to indefinite custody
19 of the U.S. Marshall for failing to return confidential documents taken from an employer and
20 failure to disgorge profits made in conducting a forbidden, competing enterprise).

21 23. If the officers or agents of a company are guilty of a contempt, they may be
22 attached and punished therefore. *See generally* 17 C.J.S. CONTEMPT § 57. Thus, corporate
23 officers or company agents are punishable for contempt where they have knowledge or notice of
24 an order directed to the company and they are responsible for the company’s violation thereof.
25 *C.f. In re Waters of Humboldt River*, 118 Nev. at 903, 59 P.3d at 1227 (concluding that “the
26 district court has the power to sentence a government official to jail for criminal contempt
27 committed in an official capacity”); *see also United States v. Laurins*, 857 F.2d 529, 535 (9th
28 Cir.1988) (“A nonparty may be held liable for contempt if he or she either abets or is legally

1 identified with the named defendant An order to a corporation binds those who are legally
2 responsible for the conduct of its affairs.”); *Nikko Materials USA, Inc. v. R.E. Serv. Co.*, No. C 03-
3 2549 SBA, 2006 WL 1749550, at *4 (N.D. Cal. June 22, 2006) (“When a corporation refuses to
4 abide by an order directing the corporation to perform an act, and the corporation is under the
5 control of a single corporate officer or managing agent, the Ninth Circuit has held that a district
6 court may hold the corporate officer in contempt, as well as the corporation, even when the
7 corporate officer is not a party to the underlying action.”).

8 24. Because companies and corporations can only act through their agents, a contempt
9 order need not explicitly warn agents of potential liability for contumacious conduct. 17 C.J.S.
10 CONTEMPT § 57. More careful practice, however, dictates an explicit warning directed to named
11 agents:

12 It is usual, in an order directed against a corporation, to lay the restraint or
13 command, not only on the corporation itself, but also on its officers, agents, and
14 servants, so that in the case of its violation not only the corporation itself is
15 amenable to punishment, but also its officers, agents, and servants, whether or not
16 parties to the proceeding, provided they have knowledge of the terms of the order
17 and disobey it willfully.

16 Additionally, since a corporation is capable of violating a court order only if its
17 agents act or refrain from acting, it follows that the order directed at the corporation
18 is binding on agents authorized to act on its behalf, whether specifically named in
19 the order or not.

18 *Id.*

19 25. Here, the Court’s order explicitly commanded Mr. Detwiler by name, on penalty of
20 contempt, to turn over the 20 vehicles. (Order, Conclusion of Law ¶ 29.) Mr. Detwiler could have
21 had no reasonable doubt about how he would need to act to avoid punishment.

22 26. Mr. Detwiler’s and HH’s refusal to turn over each of the 20 subject vehicles
23 identified in Exhibit B and which are the subject of the Court’s January 9, 2019, Order, constitutes
24 a separate and distinct act of civil contempt of Court, for a total of 20 separate acts of civil
25 contempt.

26 27. Pursuant to this Court’s authority under NRS 22.100, the Court hereby fines HH
27 the sum of \$500 to be paid to the Bank immediately.

28 28. This Court further hereby orders HH to pay the Bank its reasonable attorney fees

1 and expenses incurred in connection with all of the proceedings to seek enforcement of the Court's
2 Order. The Bank shall submit an affidavit in support of such fees and expenses for the Court to
3 review.

4 29. Pursuant to NRS 22.100, this Court further hereby orders that Mr. Detwiler shall be
5 imprisoned until he complies with the Order and delivers up, surrenders possession of, and turns
6 over to the Bank, in a manner that protects the vehicles from any damage, all 20 vehicles
7 identified in Exhibit B, or pays to the Bank in immediately available funds the value of the
8 vehicles listed in Exhibit B, \$521,575.

9 30. The Bank shall prepare a separate Warrant of Arrest and Commitment accordingly
10 for this Court to review and sign, if appropriate.

11 31. Upon complying with the Order by delivering up, surrendering possession of, and
12 turning over to the Bank all 20 vehicles identified in Exhibit B, or paying to the Bank in
13 immediately available funds the value of the vehicles listed in Exhibit B, \$521,575, Mr. Detwiler
14 will be purged of his contempt sentence and, if imprisoned, shall be released from imprisonment
15 immediately thereafter. Alternatively, Mr. Detwiler may be released upon the posting of a One
16 Hundred Thousand Dollar (\$100,000.00) bond, after which a status check shall be promptly set to
17 establish a payment plan.

18 32. If any Conclusions of Law are properly Findings of Fact, they shall be treated as if
19 appropriately identified and designated.

20 Dated this 16th day of December, 2019

21
22
23 
24 DISTRICT COURT JUDGE
25 

1 Respectfully submitted,

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3
4 By: 

5 John E. Bragonje

6 State Bar No. 9519

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10 *Attorneys for Plaintiff/Judgment Creditor Baker Boyer National Bank*

EXHIBIT B

EXHIBIT B

HARRY HILDBRAND

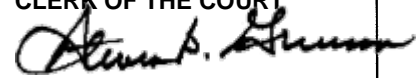
Titles as on BBB		7/26/2018 0:15			
YEAR	MAKE	Model	Value	VIN	
2007	CHEV	Corvette Z06	\$ 35,000	1G1YY28E375121089	
2007	Mercedes	M50 SUV	\$ 11,000	4JGBB75E07A222537	
1940	FORD	Coupe	\$ 35,000	AZ162801	
1957	CHEV	BEL AIR CONV. (FI)	\$ 25,000	VC570141640	
1957	CHRYSLER	300 C CONV.	\$ 35,000	3N571810	
1958	FORD	T-BIRD (CHEV)	\$ 5,000	P5FH240847	
1957	FORD	FAIRLANE 500	\$ 15,000	D7LV162233	
1966	FORD	THUNDERBIRD - red	\$ 15,000	6Y85Z104010	
1971	FORD	PANTERIA	\$ 25,000	THPNLY01620	
1973	FORD	PANTERIA -GT4	\$ 35,000	THPNU05291	
1951	JAGUAR	XK 120 RACE CAR	\$ 20,000	S671986	
1957	OLDSMOBILE	98 ROCKET	\$ 18,000	579M27885	
1966	PLYMOUTH	BELVADIRE	\$ 15,000	RACE CAR BODY & SHELL - N	
2000	PLYMOUTH	PROWLER	\$ 21,000	1P3EW85G1YV603597	
2007	Mercedes	CLK 550	\$ 12,000	WDBTK72F27T081009	
2000	GMC	Yukon	\$ 8,000	1GKEK13T9YJ1740142	
2007	Mecedes	S550	\$ 25,000	WDDNG71X57A075880	
1963	CHEV	425/409 S/S	\$ 25,000	31847L144086	
1998	MARATHON	COACH	\$ 129,875	2PCM3349XV1026183	
2016	KAWASAKA	kr10	\$ 11,700	JKAZX2A13FB505	
Total			\$ 521,575		

SUPPORT FOR 206 A/B #46, PAGE 5

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EXHIBIT PAGE ONLY

EXHIBIT 3

HUTCHISON & STEFFEN
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Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**ORDER AWARDING SANCTIONS
AGAINST EDWARD N. DETWILER
AND HARRY HILDBRAND, LLC**

Date: February 18, 2020

Time: 9:00 a.m.

Introduction

This Court held a contempt trial and found Harry Hildibrand, LLC ("HH"), an intervener and party to this lawsuit pursuant to NRS Chapter 31, and its manager, Edward N. Detwiler, in contempt of court. (*See generally* 1/30/20 Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, Its Manager (hereinafter the "Contempt Order"), on file herein.) After that, Mr. Detwiler (but not HH) retained new counsel, Brenoch R. Wirthlin of Kolesar & Leatham, who filed a series of motions seeking to undo the Contempt Order as to Mr. Detwiler.

First, on January 29, 2020, Mr. Detwiler filed a Motion for Protective Order and Continuance of Hearing; plaintiff and judgment debtor Baker Boyer National Bank (the "Bank") filed an opposition on the same day; Mr. Detwiler filed a reply on January 30, 2020. This Court held a hearing on January 30, 2020.

1 Second, on February 5, 2020, Mr. Detwiler filed his “(1) Motion for Relief from Contempt
2 Order Pursuant to NRCP 60(b); (2) Motion for New Trial Pursuant to NRCP 59; (3) Motion to
3 Alter or Amend Judgment Pursuant to NRCP 52 and 59; (4) Motion for Reconsideration of the
4 Court’s Contempt Order; and (5) Opposition to Plaintiff’s Brief in Support of Request to Hold
5 MR. Detwiler in Civil Contempt of Court.” The Bank filed its opposition on February 10, 2020,
6 Mr. Detwiler filed his reply on February 11, 2020, and this Court held a hearing on February 12,
7 2020. At all points, Mr. Brenoch represented Mr. Detwiler, and John Bragonje of Lewis Roca
8 Rothgerber Christie LLP represented the Bank.

9 After considering the extensive pleadings and lengthy arguments of counsel, after
10 reviewing again the record, including re-reading transcripts of Mr. Detwiler’s testimony, the Court
11 denies both motions in their entirety. The Contempt Order stands, except that instead of ordering
12 the imprisonment of Mr. Detwiler, the Court sanctions him \$100,000 in his personal capacity and
13 orders him in his personal capacity to pay costs and fees incurred by the Bank since the time HH
14 intervened in this action. The Court imposes this same sanction upon HH. Both Mr. Detwiler and
15 HH are jointly and severally responsible to pay the sanction. The Court makes the following
16 findings and rulings.

17 **Additional Findings of Fact**

18 1. The Court rejects the new arguments in these two post-Contempt Order motions
19 brought by Mr. Detwiler. By in large, Mr. Detwiler offered no new evidence and no new
20 arguments. Mr. Detwiler did claim that he resigned his post as manager from HH by a letter dated
21 September 10, 2019, thus divesting himself of the ability to comply with this Court’s orders. Even
22 if the Court were to accept this resignation as valid when given, the resignation came long after the
23 events (explained in detail in the Contempt Order), that led to that ruling. The asserted resignation
24 letter even came long after the contempt trial concluded in May, 2019. If a company officer has
25 notice of a court order and fails to obey it, a resignation will not exempt the officer from
26 punishment for disobedience. The reported cases bear out the common sense of this conclusion:
27 “resignation does not immunize [the contemnor] from liability for contempt [for his conduct when
28

1 he was director].” *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc’y*, 774 F.3d 935,
2 956 (9th Cir. 2014).

3 2. Mr. Detwiler had notice of this Court’s rulings, which he disregarded, and which
4 ultimately justified this Court’s entry of the Contempt Order against him.

5 3. The resignation letter, furthermore, reinforces an aspect of the Court’s earlier
6 findings. This Court previously found that “Mr. Foust, HH, and StarDust Classic have been
7 agents of one another with respect to any past action involving the cars at issue in these
8 proceedings” (1/9/19 Findings of Fact, Conclusions of Law, and Final Judgment at
9 Conclusion ¶ 3.)

10 4. Mr. Detwiler testified three times under oath over a period of years that he took
11 direction in his role as HH’s manager from Harry Hildibrand, Jr. only—not Mr. Foust. (7/6/18
12 Dep. E. Detwiler, 18:7-14; 18:21-19:4; 11/5/18 Hr’g Trans., 22:1-12; 5/17/19 Hr’g Trans., 33:5-
13 24.) And yet, Mr. Detwiler directed the alleged resignation letter to Mr. Foust, Mr. Foust’s long-
14 time personal attorney, James Lezie,¹ and to StarDust Classic, an entity that was supposedly a
15 creditor to HH (as discussed *infra*)—not to Mr. Harry Hildibrand, Jr.

16 5. After the Bank pointed out this fact, Mr. Detwiler sent the resignation letter to
17 HH’s registered agent in Montana, but that was when the motions this order resolves were already
18 pending.

19 6. Mr. Detwiler’s sending the letter to Mr. Foust, his personal attorney, and an entity
20 that was supposedly an adversarial creditor of HH (StarDust Classic) tends to show a further
21 collaboration between Mr. Foust and Mr. Detwiler, who acted for HH, even though Mr. Foust and
22 HH were supposedly dealing at arm’s length.

23 7. Mr. Detwiler’s directing the letter to Mr. Foust and his lawyer also further indicates
24 Mr. Detwiler’s lack of candor, which has already been the subject of this Court’s prior orders,
25 including the Contempt Order. It is no small thing for Mr. Detwiler to have repeatedly sworn
26 under oath that HH’s affairs were conducted in one manner, only to take a totally contrary action

27 _____
28 ¹ In a supporting declaration, Mr. Detwiler states that he sent the resignation letter to HH’s attorney “Jim Lizzei at the
address set forth on the Letter of Resignation.” (Exhibit 1 to 2/6/20 App’x of Exs. to Mot. for Relief of Contempt, at ¶
4, on file herein.)

1 when the critical question of his resignation arose. The Court believes Mr. Detwiler is hiding the
2 truth, and this is just one more circumstance in a significant accumulation of similar instances.

3 8. Mr. Detwiler has argued in these new motions that he could not comply with the
4 Court's order to turn over the vehicles because either Mr. Foust had them or an entity called
5 StarDust Classic, had already repossessed them. The Court rejects these arguments.

6 9. First, as to Mr. Foust, while the collaboration and conspiracy between Mr. Foust
7 and HH has been discussed in prior orders, the Court never meant to suggest that Mr. Foust had
8 sole, physical possession of the vehicles or the exclusive power to turn them over, as Mr. Detwiler
9 now argues. HH has possession of the vehicles; it said so in its bankruptcy filings. Mr. Detwiler
10 signed those bankruptcy filings under penalty of perjury. Mr. Detwiler gave detailed testimony
11 about his involvement with the vehicles and his general powers as manager of HH, which are the
12 subject of this Court's previous orders, including the Contempt Order. HH also held the titles to
13 the vehicles. HH, which acted through Mr. Detwiler as its manager, clearly has the ability to
14 surrender the vehicles to the Bank.

15 10. As for StarDust Classic, no credible evidence has ever been tendered to the effect
16 that this entity has possession of the vehicles or any involvement at all with the vehicles. An
17 alleged representative of StarDust Classic, Tom Larkin, did appear at the contempt trial, but he too
18 admitted on cross examination that he was a 15-year friend and business associate of James Foust
19 (5/21/29 Hr'g Trans., Vol. 2, 78-80.) and a long-time acquaintance and business associate of Mr.
20 Detwiler (*id.* at 90:18-91:23), not a person dealing at arm's length.

21 11. Mr. Larkin admitted he knew nothing of the vehicles' locations:

22 The Court: Okay. And each of these vehicles, the seven, are currently in the
control or possession of Mr. Vega, then?

23 Mr. Larkin: Yes.

24 The Court: Okay. Any of the vehicles, do you have a specific location where
they're --

25 Mr. Larkin: I don't have an address or location. I suspect they're in wherever
they were located or wherever he consolidated them to, whatever
storage facility.

26 The Court: Okay. And do you know who would have the knowledge of where
these vehicles are located?

27 Mr. Larkin: Mr. Vega or his agent, his repossession agent.

28 The Court: Okay. And do you know who Mr. Vega's repossession agent is?

Mr. Larkin: I don't. I don't know that.

1 (5/21/29 Hr'g Trans., Vol. 2, 71:5-14; *see also id.* at 86:24-87:2.)

2 12. Mr. Larkin introduced no documentary evidence at all. Were he a credible witness
3 he would have adduced evidence showing that he was the attorney-in-fact for StarDust Classic, as
4 he claimed; showing that StarDust Classic had a security interest in the vehicles; showing that the
5 vehicles had been repossessed through lawful process arising from a security interest; or showing
6 that he had the vehicle titles.

7 13. In fact, Mr. Larkin not only failed to bring documents to the trial, he further
8 admitted when questioned by the Court that he personally had seen no documentation regarding
9 repossession, nor had he personally observed the supposed repossessions. (*Id.* 69:17-70:23;
10 72:10-15) Most critically, this Court informed Mr. Larkin that StarDust Classic, if it had an
11 alleged interest in the vehicles, had declined to intervene in these proceedings and assert that
12 interest. (*Id.* 68:2-9.) Mr. Larkin was not a convincing witness. He seemed to simply be
13 cooperating with Mr. Foust and Mr. Detwiler to frustrate the Court's efforts to locate the vehicles.

14 14. The only credible evidence this Court has concerning StarDust Classic are official
15 corporate filings from the Wyoming Secretary of State, which this Court received into evidence
16 when Mr. Detwiler's former counsel and Mr. Foust's attorney stipulated to their admission. (*See*
17 11/5/18 Hr'g Trans., 64:1-16.)

18 15. These corporate annual reports were signed by Mr. Foust and Mr. Detwiler before
19 these proceedings began (*see* 11/5/18 Hr'g Ex. 3, control numbers 365-70) and before Mr.
20 Detwiler had a motivation to change his testimony. Therefore, the only credible evidence this
21 Court has received concerning StarDust Classic further reveals the involvement of Mr. Detwiler
22 and Mr. Foust in that entity, which in turn further suggests HH's and Mr. Detwiler's ability to
23 comply with this Court's orders.

24 16. Mr. Detwiler's arguments in these two motions are not even minimally persuasive
25 in light of the extensive evidence this Court has received contrary to his arguments.

26 17. The Court, therefore, rejects the contention that HH lacked the ability to comply
27 with the Court's orders. HH clearly did, and Mr. Detwiler is the only HH agent who has ever
28 appeared or given testimony that he acted on behalf of HH. As a consequence, he personally had

1 the duty, responsibility, and power to carry out the Court's orders. For the reasons given in the
2 Contempt Order and further discussed in this order, there is clear and convincing evidence of Mr.
3 Detwiler's and HH's ability to perform this Court's orders, their notice of the Court's orders, and
4 their willful refusal to comply.

5 18. The Court, however, will give Mr. Detwiler the maximum benefit of the doubt.
6 The Court will regard the resignation letter as effective to terminate his service as HH's manager.
7 The Court will consider Mr. Detwiler's agency for HH terminated for purposes of the Contempt
8 Order from the time he tendered the letter to HH's registered agent on February 11, 2020.² The
9 Court cannot regard the original transmission of the letter as effective because it was sent to
10 persons (Mr. Foust, for example) that Mr. Detwiler previously said had no say whatsoever in HH's
11 ownership or management.

12 19. As a former manager, Mr. Detwiler lacks the current ability to comply with the
13 rulings that led to the Contempt Order, so the Court declines to incarcerate him. *See* NRS
14 22.110(1) (permitting imprisonment for contempt where "the omission to perform an act which is
15 yet in the power of the person to perform").

16 20. The Court cannot and will not, nevertheless, simply absolve Mr. Detwiler on the
17 extensive record of his personal misconduct and contempt, which the Court finds beyond a
18 reasonable doubt. For the reasons given in the Contempt Order and the further findings in this
19 order, the Court levies a sanction against Mr. Detwiler and HH, on a joint and several liability
20 basis, in the amount of \$100,000, to be paid to the Bank in immediately available funds upon
21 notice of entry of this order. The Court imposes this sanction pursuant to EDCR Rule 7.60 and its
22 inherent powers, *see* NRS 1.210(2) (providing that the district court has the power to "enforce
23 order in the proceedings before it"); *see also In re Water Rights of the Humboldt River*, 118 Nev.
24 901, 906-07, 59 P.3d 1226, 1229-30 (2002) (explaining that the district court has "inherent power
25 to protect dignity and decency in its proceedings, and to enforce its decrees" and because it has
26 particular knowledge of whether contemptible conduct occurred, its contempt decisions are
27 reviewed for an abuse of discretion).

28 _____
² (Exhibit 17 to 2/11/20 Reply Brief, on file herein.)

21. The Court also orders Mr. Detwiler and HH to pay the Bank's reasonable expenses, including attorney fees and costs, from the time that HH intervened as a party in this action pursuant to NRS Chapter 31, and the Court further orders that both Mr. Detwiler and HH be jointly and severally responsible for such. NRS 22.100(3) ("In addition to the penalties provided in subsection 2, if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt."); EDCR 7.6(b) (allowing for the imposition of sanctions, including costs and attorney fees for multiplying proceedings in a case as to increase costs unreasonably and vexatiously and for failing or refusing to comply with any order).

Conclusions of Law

22. There is clear and convincing evidence of HH's Mr. Detwiler's contempt.

23. The Court hereby ORDERS that any aspect of the Contempt Order relating to imprisonment of Mr. Detwiler be and is vacated, but otherwise the Contempt Order remains in full force and effect.

24. The Court FURTHER ORDERS that Mr. Detwiler and HH be fined and sanctioned in the amount of \$100,000.00 and that both be jointly and severally liable for the same.

25. The Court FURTHER ORDERS that Mr. Detwiler and HH be assessed the Bank's costs, including attorney fees, from the time HH intervened as a party in this action, and that both Mr. Detwiler and HH be jointly and severally liable for the same.

26. HH's and Mr. Detwiler's actions in disobeying this Court's orders and withholding the vehicles were clearly calculated to harm the Bank; were done with the intent to harm the Bank's and the Court's integrity; and were committed without just cause or excuse.

27. If any Conclusions of Law are properly Findings of Fact, they shall be treated as if appropriately identified and designated.

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IT IS SO ORDERED.

Dated this 6th day of March, 2020


DISTRICT COURT JUDGE

Bm

A-17-760779-F

ORDER AWARDED SANCTIONS AGAINST
EDWARD "DETWILER AND HARRY
WILDERSON, LLC.

Respectfully submitted,

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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EXHIBIT PAGE ONLY

EXHIBIT 4

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Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

ORDER AND JUDGMENT

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input checked="" type="checkbox"/> Non-Jury Judgment Reached	<input type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Other -

ORDER AND JUDGMENT

On April 1 and 24, 2019, and May 17, 21, 2019, the cause of whether or not Edward N. Detwiler and Harry Hildibrand, LLC should be punished for contempt of Court came on for trial. Harry Hildibrand, LLC was represented at all times through its manager, Edward N. Detwiler. Witnesses on the part of Harry Hildibrand, LLC and Edward N. Detwiler, on the one hand, and on the part of the plaintiff and judgment creditor Baker Boyer National Bank (the "Bank"), on the other hand, were sworn and examined.

After hearing the evidence and the arguments of counsel, the Court retired to consider its decision. The Court has given due study and consideration to all of the above, and to the whole record and history in this litigation, including all hearings conducted on discovery questions throughout the period of this action's commencement to the present. The Court has further reviewed all relevant pleadings, papers, and other relevant and credible documents and materials in this case, as well as pleadings in other related court cases.


1 This Court concludes that Edward N. Detwiler and Harry Hildibrand, LLC have followed a
2 contumacious, conscious, willful, and deliberate policy throughout this litigation, which continues
3 to the present time, of cynical disregard and disdain of this Court's orders, particularly the order to
4 turnover and surrender certain vehicles to the Bank, as detailed in the Court's order and judgment
5 of January 9, 2019. Therefore, it is ORDERED, ADJUDGED, and DECREED that Edward N.
6 Detwiler and Harry Hildibrand, LLC stand in contempt of Court. The Court has made previously
7 findings of fact and conclusions of law that detail the contemptuous conduct and that resolved
8 certain post-trial motions and requests to tax costs and award attorney fees in its separate rulings
9 which issued on January 30, 2020, and March 12, 2020.

10 It is, therefore, CONSIDERED and ADJUDGED by the Court that the Bank, have and
11 recover of and from Edward N. Detwiler and Harry Hildibrand, LLC, on a joint and several
12 liability basis, the sum of \$100,000.00, and interest on that sum, from January 30, 2020, at the rate
13 established by Chapter 99 of the Nevada Revised Statutes, and the further sum of \$208,889.00, as
14 attorney's fees in this cause, together with costs, taxed at \$9,966.52, with interest on these
15 amounts to run from the notice of entry of this order and judgment, and let execution issue.

16 It is further CONSIDERED and ADJUDGED that this order and judgment shall be
17 enforced against the joint and/or separate property of Edward N. Detwiler and Harry Hildibrand,
18 LLC.

19 It is further CONSIDERED and ADJUDGED that this order and judgment shall in no way
20 affect the underlying judgment in this case against the judgment debtor, James P. Foust and his
21 marital community, which judgment remains unsatisfied at this time.

22 Dated this 23rd day of March, 2020

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28

DISTRICT COURT JUDGE
2nd A-17-740779-F

1 Respectfully submitted,

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3
4 By: 

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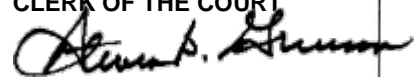
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EXHIBIT 5

HUTCHISON & STEFFEN
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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **BAKER BOYER NATIONAL BANK, a**
Washington corporation,

Case No.: A-17-760779-F

Dept. No.: II

11 Plaintiff/Judgment Creditor,

12 vs.

13 **JAMES PATTERSON FOUST, JR., also**
known as James P. Foust, Jr., individually, and
14 his marital community, if any,

**Application for Order to Show Cause
Why Defendants Should Not Be Held in
Civil Contempt**

15 Defendant/Judgment Debtor.

16 **I.**

17 **INTRODUCTION**

18 Judgment debtor and defendant James P. Foust received a \$1,077,600 loan from Baker
19 Boyer National Bank (the "Bank") in 2013. After his refusal to repay the loan, the Bank obtained
20 a judgment in the original amount of \$933,616.30 against Mr. Foust in Washington. (See Exs. A-
21 B to 8/31/17 Appl. for Foreign Judgment, on file herein, affirmed on appeal). The Bank
22 domesticated the judgment here. (*Id.*) Mr. Foust has refused, though he obviously has means, to
23 voluntarily pay the Judgment. Interest and fees are accruing all the time and the judgment is now
24 well in excess of \$1 million. This Court is now engaged in the enforcement of the Judgment.

25 When applying for the loan, Mr. Foust represented in writing on multiple occasions that he
26 owned a very expensive collection of classic and exotic cars. December 20, 2017, the Bank filed a
27 motion for an order requiring Mr. Foust to turn over the collection to partially satisfy the
28 judgment. In his written opposition, Mr. Foust indicated that he no longer owned a single one of

1 the 59 vehicles that were the subject of the motion and which he pledged to the Bank to secure the
2 loan.

3 Mr. Foust later specifically indicated that he transferred many of these vehicles to a third
4 party named Harry Hildibrand, LLC ("HH"). This allegation triggered an avalanche of
5 proceedings. The Court conducted two evidentiary hearings on February 15, 2018 and November
6 5, 2018; the Court conducted standard hearings on about a dozen occasions; and the parties have
7 submitted approximately 30 papers in support of these activities. In the end, the Court ruled in
8 favor of the Bank and against Mr. Foust and HH in every respect. (*See generally* 1/9/19 Findings
9 of Fact, Conclusions of Law, and Final Judgment, on file herein.) In particular, the Court ordered
10 the defendants¹ to turn over the vehicles to the Bank. (*Id.*)

11 We approach the Court again because, after all this, the defendants now refuse to comply
12 with the Court's turn over order. Defendants refuse to deliver any of the vehicles to the Bank.
13 Instead, defendants behave as if this Court never conducted the hearings and never considered the
14 briefs and never issued its judgments and orders. Therefore, the Bank makes this application for
15 an order to show cause why the defendants, particularly Mr. Foust and Mr. Detwiler (HH's
16 manager), should not be held in contempt for their obstinate refusal to comply with this Court's
17 clear judgment and order. The defendants' chicanery is a part of this Court's record and official
18 findings. For instance, most recently, this Court found that "Mr. Foust's conduct epitomizes
19 concealing assets associated with fraudulent transfer" and that "Mr. Detwiler's demeanor was
20 untrustworthy." (1/9/19 Judgment, Findings of Fact ¶ 77, on file herein.)

21 Defendants are scofflaws. We believe the defendants will not comply with this Court's
22 orders unless this Court imprisons the defendants. Nevada statutes and the laws and practices of
23 this nation clearly empower this Court to imprison the defendants unless and until they perform
24 the acts this Court has ordered. If the Court will not take such steps, justice will miscarry.
25 Persons who have the ability to satisfy a lawful judgment will simply ignore this Court's
26 judgments.

27
28

¹ Mr. Foust and HH are sometimes collectively referred to as the defendants or the defense.

1 This Court should issue an order to show cause why the defendants should not be held in
2 civil contempt. If the defendants refuse to turn over the vehicles by an outside deadline ordered by
3 this Court, the Court should then issue warrants for the imprisonment of Mr. Foust and Mr.
4 Detwiler, with a purge clause that permits the contemnors' release upon transfer of the vehicles.
5 Specifically, Mr. Foust ought to be imprisoned until the four vehicles he and his family members
6 possess and the 20 vehicles mentioned in the bankruptcy are turned over to the Bank; Mr. Detwiler
7 ought to be imprisoned until the 20 vehicles mentioned in the bankruptcy are turned over.

8 **II.**

9 **AFFIDAVIT CONCERNING FACTS CONSTITUTING CONTEMPT**

10 STATE OF NEVADA)
11 COUNTY OF CLARK)ss:

12 I, John E. Bragonje, hereby swear under penalty of perjury that the following statements
13 are true to the best of my knowledge and belief:

14 1. I am over the age of eighteen.
15 2. I am a partner with the law firm of Lewis Roca Rothgerber Christie LLP, counsel
16 to the Bank in this action.

17 3. The facts of defendants' contempt are not in dispute: on January 10, 2019, this
18 Court entered its judgment commanding Mr. Foust and HH, and its agents, including Mr.
19 Detwiler, to turn over the vehicles that have been the subject of this Court's hearings and trials.
20 (*See generally* 1/9/19 Judgment on file herein.)

21 4. Among other findings, the judgment concluded that "Mr. Foust is the owner of all
22 cars over which HH claims an interest, including those cars identified in the bankruptcy (Exhibit
23 B)." (1/9/19 Judgment, Conclusions of Law ¶ 18.)

24 5. The judgment warned that "Mr. Foust and HH and any of their respective agents,
25 employees, or affiliates (including without limitation Mr. Detwiler and StarDust Classic and any
26 of its agents) are ordered, **on penalty of contempt**, to deliver up, surrender possession of, and turn
27 over to the Bank promptly in a manner that protects the cars from any damage, all cars identified
28

1 in Exhibits A and B, with any cost or expense involved in delivery to the Bank to be borne by Mr.
2 Foust and/or HH.” (*Id.* ¶ 29 (emphasis supplied).)

3 6. Mr. Foust, HH, and their agents and affiliates are, therefore, under court order to
4 surrender all vehicles at issue in these proceedings.

5 7. I wrote to the defendants on January 23, 2019—nearly two weeks after the
6 judgment’s entry—to inform the defendants that the Bank was ready to take immediate possession
7 of the vehicles. (*See* Ex. 1 hereto.) In particular, I suggested that we begin with the 20 vehicles
8 identified in the bankruptcy (which the bankruptcy filings indicated were located in Compton,
9 California, and at undisclosed locations in Montana and North Dakota) (Ex. 1 (citing 1/9/19
10 Judgment, Findings of Fact ¶ 76) and those four vehicles in the possession and use of Mr. Foust
11 and his family members, i.e. a 2000 GMC Yukon; a 2007 Mercedes S550; a 2007 Mercedes CLK
12 550; and a 2007 Mercedes M50 (*see* 1/9/19 Judgment, Conclusions of Law ¶ 17).

13 8. The defense has failed to make any effort to surrender the vehicles, as ordered by
14 this Court “*on penalty of contempt.*” (1/9/19 Judgment, Conclusions of Law ¶ 29 ((emphasis
15 supplied).)

16 9. The defendants are well aware of this Court’s order and the Bank’s request for
17 compliance. Mr. Foust continues to be represented by counsel. I have had several discussions
18 with Mr. Foust’s counsel, Cody Mounteer of the Marquis Aurbach Coffing law firm. Mr.
19 Mounteer indicated in an email that he had spoken with his client specifically regarding
20 compliance, including on or about January 15 and 23, 2019. (*See* Ex. 2.)

21 10. I also telephoned Mr. Edward Detwiler, the manager of HH and a witness in the
22 trial before this Court (*see* 1/9/19 Judgment, Findings of Fact ¶ 23), who also received the letter
23 (Exhibit 1) on January 23, 2019. Despite that he signed all the bankruptcy filings identifying the
24 vehicles and testified at a creditors’ meeting about their location (*see id.* ¶¶ 49, 76), Mr. Detwiler
25 claimed to have no knowledge of the vehicles’ current whereabouts.


26 11. The defendants and their agents (Mr. Detwiler) have not complied with this Court’s
27 orders.

28 12. Further your affiant saith naught.

1 DATED this 13th day of February, 2019.

2
3
4 
JOHN E. BRAGONJE

5 On this 13th day of February, 2019, personally appeared before me, a Notary Public, in
6 and for said County and State, John E. Bragonje, known to me to be the person described in and
7 who executed the foregoing instrument in the capacity set forth therein, who acknowledged to me
8 that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.
9

10
11 
12 NOTARY PUBLIC IN AND FOR
13 SAID COUNTY AND STATE



14 ANNETTE JARAMILLO
Notary Public State of Nevada
My Commission Expires: June 1, 2019
Certificate No: 10-3715-1

15 III.

16 **MR. FOUST AND MR. DETWILER STAND IN CONTEMPT OF COURT**

17 This Court ordered Mr. Foust, HH, and their agents and affiliates to turn over all vehicles
18 at issue in these proceedings. Mr. Foust and Mr. Detwiler (the manager of HH) refuse to take any
19 action. They flout this Court's order. They stand in contempt.

20 A. **District Courts Maintain Contempt Power to
Address Disobedience of Orders**

21 District courts maintain contempt power to address "[d]isobedience or resistance to any
22 lawful writ, order, rule or process issued by the court or judge at chambers." NRS 22.010(3); *see*
23 *also* NRS 1.210(2) (providing that the district court has the power to "enforce order in the
24 proceedings before it"); *see also In re Water Rights of the Humboldt River*, 118 Nev. 901, 906-07,
25 59 P.3d 1226, 1229-30 (2002) (explaining that the district court has "inherent power to protect
26 dignity and decency in its proceedings, and to enforce its decrees" and because it has particular
27 knowledge of whether contemptible conduct occurred, its contempt decisions are reviewed for an
28 abuse of discretion).

Contempt proceedings may be criminal or civil in nature. *Lewis v. Lewis*, 132 Nev. Adv. Op. 46, 373 P.3d 878, 880 (2016). A civil contempt action is remedial in nature because it is meant to secure compliance with the court order. *Id.*; *see also* NRS 22.110. An order of contempt is reviewed for abuse of discretion. *Lewis*, 373 P.3d at 880.

B. One that Ignores a Clear Order Commits Contempt of Court

A district court may hold a person in contempt when the person has failed to comply with a lawful order or rule. NRS 22.010(3). To be held in contempt for disobeying a court order, the order must clearly put the person on notice of what is required. *Sw. Gas Corp. v. Flintkote Co.*, 99 Nev. 127, 131, 659 P.2d 861, 864 (1983); *see also Cunningham v. Dist. Ct.*, 102 Nev. 551, 559–60, 729 P.2d 1328, 1333–34 (1986) (“An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him.”).

Here, this Court’s January 9, 2019 judgment is unmistakable, it identifies vehicles by make, model, and VIN and directs the defendants to turn over the vehicles to the Bank.

C. Nevada Statutes Specifically Identify Contempt In Supplementary Proceedings Such as this Judgment Enforcement Action

This action is a supplemental proceeding. A “supplementary proceeding” is “held in connection with the enforcement of a judgment, for the purpose of identifying and locating the debtor’s assets available to satisfy the judgment.” *Black’s Law Dictionary* (8th ed. 2004). In Nevada, a supplementary proceeding is “incident to the original suit” and “is not an independent proceeding or the commencement of a new action.” *See State ex rel. Groves v. Dist. Ct.*, 61 Nev. 269, 276, 125 P.2d 723, 726 (1942). This Court is enforcing a Washington state judgment domesticated in Nevada. (*See* Exs. A–B to 8/31/17 Appl. for Foreign Judgment, on file herein, affirmed on appeal). NRS Chapter 21 propounds supplemental procedures. Under this law, disobedience to a court’s order in supplemental proceedings constitutes a contempt: “If any person, party or witness disobey an order of the master, properly made in the proceedings before the master under this chapter, he or she may be punished by the court or judge ordering the

reference, for a contempt.” NRS 21.340. The defendants have violated two separate contempt statutes.

D. Mr. Foust and Mr. Detwiler Are In Contempt of Court

Here, the Court’s order clearly and unambiguously directed Mr. Foust and HH (including its agents, such as its manager Edward Detwiler) to deliver the vehicles identified in the order. The undersigned also wrote insisting on performance of the order and offering a common-sense beginning point: the defendants’ delivery of the cars that Mr. Foust and his family are currently using and the 20 cars that HH—through Mr. Detwiler—identified in the bankruptcy. The defendants refuse to respond. The defendants stand in contempt.

IV.

IF DEFENDANTS CONTINUE TO REFUSE TO TURN OVER THE VEHICLES, THIS COURT SHOULD ARREST AND HOLD MR. FOUST AND MR. DETWILER UNTIL THEY COMPLY WITH THE ORDER

Mr. Foust and Mr. Detwiler require stringent treatment. If they refuse to turn over the vehicles, this Court should use its power of incarceration to detain these two until they comply with the Court’s order. Nevada statutes and the general law of this nation permit courts to indefinitely imprison persons who willfully omit to perform an act ordered by a court. Without this action, the defense will continue to disrespect this Court.

A. Courts Have the Power to Incarcerate Persons to Enforce Orders

Coercive incarceration is within the inherent power of a court, insofar as it depends on the contemnor’s ability to comply, thereby purging himself of contempt, and is designed to coerce, rather than punish and therefore the ordinary requirements of due process do not attach. *Shillitani v. United States*, 384 U.S. 364, 369–70 (1966); *see also S.E.C. v. Solow*, 396 Fed. App’x 635 (11th Cir. 2010) (affirming district court’s adjudication of civil contempt and ordering defendant’s incarceration until he purged his contempt in compliance with the court’s directive). With civil contempt, “the contemnor is able to purge the contempt and obtain his release by committing an affirmative act.” *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 844 (1994) (internal quotation omitted). This case justifies this extreme remedy.

1 **B. Nevada Statutes Permit a Court to Issue**
2 **a Warrant for the Arrest of Contemnors**

3 Nevada courts may issue a bench warrant for the arrest of a person guilty of contempt:

4 **NRS 22.040 Issuance of warrants of attachment and commitment.** When
5 the contempt is not committed in the immediate view and presence of the court or
6 judge, a warrant of attachment may be issued to bring the person charged to
7 answer, or, without a previous arrest, a warrant of commitment may, upon notice,
8 or upon an order to show cause, be granted; and no warrant of commitment shall
9 be issued without such previous attachment to answer, or such notice or order to
10 show cause.

11 **C. The Penalty for Contempt Includes Arrest and Imprisonment**

12 In addition to this Court's inherent authority, Nevada's statutes explicitly permit
13 imprisonment:

14 **NRS 22.100 Penalty for contempt.**

15 1. Upon the answer and evidence taken, the court or judge or jury, as the
16 case may be, shall determine whether the person proceeded against is guilty of the
17 contempt charged.

18 2. Except as otherwise provided in NRS 22.110, if a person is found guilty
19 of contempt, a fine may be imposed on the person not exceeding \$500 or the
20 person may be imprisoned not exceeding 25 days, or both.

21 3. In addition to the penalties provided in subsection 2, if a person is found
22 guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require
23 the person to pay to the party seeking to enforce the writ, order, rule or process
24 the reasonable expenses, including, without limitation, attorney's fees, incurred
25 by the party as a result of the contempt.

26 Furthermore, in the judgment-enforcement context, Nevada's laws provide a separate basis to
27 arrest persons who hid assets to defraud creditors:

28 **NRS 31.480 Cases in which defendant may be arrested.** The defendant
may be arrested, as hereinafter prescribed, in the following cases:

* * *

3. In an action to recover the possession of personal property unjustly
detained, when the property, or any part thereof, has been concealed, removed, or
disposed of so that it cannot be found or taken by the sheriff.

5. When the defendant has removed or disposed of the defendant's property,
or is about to do so, with intent to defraud the defendant's creditors.

D. A Person May Be Imprisoned Until the Ordered Act Is Performed

Although NRS 22.100(2), sets a default rule prohibiting imprisonment for more than 25 days, subsequent sections in the same statute provide for an indefinite term. Specifically, where, as here, one has refused to perform an affirmative act required by the provisions of an order, no limitation on the term exists:

NRS 22.110 Imprisonment until performance if contempt is omission to perform an act; penalty for failure or refusal to testify before grand jury.

1. Except as otherwise provided in subsection 2, when the contempt consists in the omission to perform an act which is yet in the power of the person to perform, the person may be imprisoned until the person performs it. The required act must be specified in the warrant of commitment.

See also TRACY DiFILLIPPO ET AL. EDS., NEVADA CIVIL PRACTICE MANUAL, Sixth Edition § 31.34 ([updated] 2016) (“The person guilty of contempt may be imprisoned until he or she perform the ordered act, if it is within his or her power to perform.”). Nevada’s statute corresponds with the general jurisprudence:

Imprisonment for civil contempt may be ordered where a defendant has refused to perform an affirmative act required by the provisions of an order that, either in form or substance, is mandatory in character. A contemner who has the ability to comply with the underlying court order *can be imprisoned indefinitely* until the contemner complies with the underlying court order, even if it appears that the contemner is never going to comply.

17 C.J.S. CONTEMPT § 186 (WEST [updated] 2019) (emphasis supplied).

1. *An Indefinite Term Is Just Because the Contemnor “Carries the Prison Keys” in His Pocket*

Imprisonment for civil contempt usually is not for a definite term, but the party in contempt stands committed unless and until the affirmative act required by the order of the court is performed. See *Lewis*, 373 P.3d at 881 (2016) (“A purge clause [in the contempt order] gives the defendant the opportunity to purge himself of the contempt sentence by complying with the terms of the contempt order.”). Thus contemnors carry the prison keys in their own pockets. *Shillitani v. United States*, 384 U.S. 364, 368 (1966). A defendant has the choice to “pay or stay.” 17 C.J.S. CONTEMPT § 183.

2. ***Imprisoning a Judgment Debtor that Willfully Refuses to Turnover Property Is a Common Remedy***

In Nevada, the cases treating the subject of imprisonment for failure to perform an affirmative act typically arise in spousal- and child-support lawsuits. *Foley v. Foley*, 432 P.3d 736 (Nev. 2018) (unpublished) (observing that courts may imprison parents who refuse to pay child support); *Hildahl v. Hildahl*, 95 Nev. 657, 662, 601 P.2d 58, 61 (1979) (“The use of the contempt power to enforce the provisions of a divorce decree has been approved many times in this state.”).

However, in the judgment enforcement context, violating a “turn-over” order, such as the Court’s latest judgment in this case, often prompts imprisonment until the contemnor agrees to turn over the property. *See, e.g., S.E.C. v. Princeton Econ. Int’l Ltd.*, 152 F. Supp. 2d 456, 459–63 (S.D.N.Y. 2001) (committing the principal of a fraudulent investment scheme to jail for at least one year for failing to honor the court’s orders to turn over \$14.9 million in assets, including 102 gold bars, 699 gold bullion coins, ancient coins, and a \$750,000 bust of Julius Caesar); *U.S. ex rel. Thom v. Jenkins*, 760 F.2d 736, 737–38 (7th Cir. 1985) (committing a judgment debtor to indefinite custody of the U.S. Marshall for failing to return confidential documents taken from an employer and failure to disgorge profits made in conducting a forbidden, competing enterprise).

This Court will have to force the defendants to comply this its orders; the defendants will not comply unless and until they face jail time.

V.

CONCLUSION

This Court should issue an order to show cause why the defendants should not be held in civil contempt. If the defendants refuse to turn over the vehicles by an outside deadline ordered by this Court, the Court should then issue warrants for the imprisonment of Mr. Foust and Mr. Detwiler, with a purge clause that permits the contemnors’ release upon transfer of the vehicles. Specifically, Mr. Foust ought to be imprisoned until the four vehicles he and his family members possess and the 20 vehicles mentioned in the bankruptcy are turned over to the Bank; Mr. Detwiler ought to be imprisoned until the 20 vehicles mentioned in the bankruptcy are turned over.

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Dated this 13th day of February, 2019.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: 
John E. Bragonje (SBN.: 9519)
E-mail: jbragonje@lrrc.com
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Attorneys for Plaintiff Baker Boyer National Bank

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I E-filed and served the foregoing
3 document entitled “**Application For Order To Show Cause Why Defendants Should Not Be**
4 **Held In Civil Contempt and Order to Appear and Show Cause Why Defendants Should Not**
5 **Be Held in Civil Contempt**” through the Court’s electronic filing system on all interested parties
6 on the e-filing service list and mailed the foregoing, via first class postage with the charges
7 prepaid, to the last two named addresses, who have not registered through the Court’s electronic
8 filing system.

9 Cody S. Munteer
10 Tom W. Stewart
11 **MARQUIS AURBACH COFFING**
10001 Park Run Drive
Las Vegas, NV 89145

12 **HARRY HILDIBRAND, LLC**
13 c/o Jared S. Heggen
14 Street Address
3011 American Way
Missoula, MT 59808

15 Edward Detwiler
16 817 Windhook Street
Las Vegas, NV 89144

17 DATED this 21st day of February, 2019.

18
19 /s/ Luz Horvath
20 An employee of Lewis Roca Rothgerber Christie LLP
21
22
23
24
25
26
27
28

Exhibit 1

Exhibit 1

Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Pkwy
Suite 600
Las Vegas, NV 89169

702.949.8200 main
702.949.8398 fax
lrrc.com

John Bragonje
Admitted in Nevada
702.474.2625 direct
702.216.6173 fax
jbragonje@lrrc.com

January 23, 2019

Our File Number: 213222-00108

VIA E-MAIL (CMOUNTEER@MACLAW.COM; TSTEWART@MACLAW.COM;
EDETWILER@CBVEGAS.COM)
VIA U.S. MAIL

CONFIDENTIAL

Cody Munteer
Thomas Stewart
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

Harry Hildibrand, LLC
c/o Jared S. Heggen
Street Address
3011 American Way,
Missoula, MT 59808

Edward Detwiler
817 Windhook Street
Las Vegas, NV 89144

Re: **Baker Boyer National Bank v. Foust; Case Number A-17-760779-F**

Dear Cody, Tom, Mr. Detwiler, and Harry Hildibrand, LLC:

As you know, the court entered its judgment commanding Mr. Foust to turn over the vehicles that are the subject of this dispute on January 10, 2019. (You all knew about the order even before that—when it was filed the day before.) Among other findings, the judgment concluded that “Mr. Foust is the owner of all cars over which [Harry Hildibrand, LLC (hereinafter “HH”)] claims an interest, including those cars identified in the bankruptcy (Exhibit B).” (1/9/19 Judgment, Conclusions of Law ¶ 18.) The judgment warned that “Mr. Foust and HH and any of their respective agents, employees, or affiliates (including without limitation Mr. Detwiler and StarDust Classic and any of its agents) are ordered, on penalty of contempt, to deliver up, surrender possession of, and turn over to the Bank promptly in a manner that protects the cars from any damage, all cars identified in Exhibits A and B, with any cost or expense involved in delivery to the Bank to be borne by Mr. Foust and/or HH.” (Id. ¶ 29.)

Mr. Foust, HH, and their agents and affiliates are, therefore, under court order to surrender all vehicles at issue in these proceedings. The Bank would like to begin with those 20 vehicles identified in the bankruptcy (which we understand from the bankruptcy filings prepared by you all are located in Compton, California and at undisclosed locations in Montana and North Dakota (see id. at Findings of Fact ¶ 76) and those four vehicles in the possession and use of Mr. Foust and his family members, i.e. a 2000 GMC Yukon; a 2007 Mercedes S550; a 2007 Mercedes CLK 550; and a 2007 Mercedes M50. (Id. Conclusions of Law ¶ 17.)

The Bank is ready to take immediate possession of the vehicles. Please contact me at your earliest convenience to make arrangements for the transfers. I want to emphasize that the Bank, following the court's explicit mention of contempt in its order, intends to seek a contempt order against Mr. Foust, Mr. Detwiler, and any other agents of Harry Hildibrand, LLC that refuse to turn over the vehicles mentioned. We will ask that bench warrants issue for the arrest of those persons resisting the order. If I have not heard back from you with positive, concrete details on making these transfers by January 25, 2019, I will assume that the defendants have elected to flout the court's order. The time for delay is over. The defendants have had their days in court. Now it is time to turn over the property to partially satisfy this judgment.

I look forward to hearing from you.

Very truly yours,



John E. Bragonje
Lewis Roca Rothgerber Christie LLP

JB

Exhibit 2

Exhibit 2

Bragonje, John

From: Cody Munteer <cmunteer@maclaw.com>
Sent: Tuesday, January 15, 2019 1:43 PM
To: Cody Munteer; Bragonje, John
Cc: Tom W. Stewart
Subject: RE: Foust [IWOV-iManage.FID1007225]

[EXTERNAL]

John,

I spoke to my client briefly, but as discussed he is in ill health and requested to meet with me to address everything next Wednesday. I am not trying to drag this out, that is honestly the first day he said he has available to meet. I will let you know as soon as I have met with the client whether there is any traction on settlement, turning over vehicles, or otherwise.

Thanks,



Cody S. Munteer, Esq.

10001 Park Run Drive
Las Vegas, NV 89145

t | 702.207.6089

f | 702.856.8915

cmunteer@maclaw.com | [vcard](#)
maclaw.com



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From: Cody Munteer
Sent: Tuesday, January 15, 2019 11:18 AM
To: Bragonje, John
Cc: Tom W. Stewart
Subject: Foust

John,

I have not forgot about you and your client, I have reached to my client that last couple days, and hope to talk to him any time now.

Thanks,



Cody S. Mounteer, Esq.

10001 Park Run Drive

Las Vegas, NV 89145

t | 702.207.6089

f | 702.856.8915

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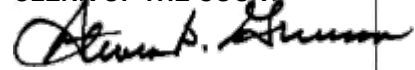
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EXHIBIT 6

HUTCHISON & STEFFEN
A PROFESSIONAL LLC



ORDR

John E. Bragonje
State Bar No. 9519
E-mail: jbragonje@lrrc.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: 702.949.8200
Fax: 702.949.8398

*Attorneys for Plaintiff/Judgment Creditor
Baker Boyer National Bank*

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**Order to Appear and Show Cause Why
Defendants Should Not Be Held in Civil
Contempt**

HEARING REQUIRED

DATE: 4/1/19
TIME: 9:00 AM

TO: JAMES P. FOUST, JR.

HARRY HILDIBRAND, LLC

EDWARD DETWILER

The Court having examined the "Application for Order to Show Cause Why Defendants Should Not Be Held in Civil Contempt" filed by the plaintiff and judgment creditor, Baker Boyer National Bank (the "Bank"), on file herein, and finding that the affidavit accompanying it meets the requirements of the Nevada Revised Statutes, and the Court being fully advised in the premises and good cause appearing; therefore,

IT IS HEREBY ORDERED that you are to appear in Department II of the above-entitled Court at the hour of 9:00 A m on the 1st day of April 2019, and show cause why you should not be held in civil contempt for failing to comply with this Court's January 9, 2019 "Findings of Fact, Conclusions of Law, and Judgment," and especially

1 the order therein requiring Mr. Foust Harry Hildibrand, LLC and their agents (including Mr.
2 Detwiler, Harry Hildibrand LLC's manager) to turn over vehicles to the Bank;

3 IT IS FURTHER ORDERED that you may file affidavits on your behalf with the Court
4 and you may appear and present testimony on your behalf at the hearing according to NRS
5 Chapter 22;

6 IT IS FURTHER ORDERED that if you fail to appear, the Bank will apply to the Court,
7 for a ruling of contempt and warrant for your imprisonment, as described in the application;

8 IT IS FURTHER ORDERED that this Order shall be served upon the defendants pursuant
9 to NRCP 4(d) by service of a true copy thereof pursuant to said rule no later than two (2) days
10 prior to the above-mentioned hearing date; however, in the case of Mr. Foust, who is represented
11 by counsel, this order may simply be served upon his counsel of record pursuant to NRCP 5.

12 IT IS SO ORDERED this 15th day of February, 2019

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16 
DISTRICT COURT JUDGE

17 TM

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20 Respectfully submitted,

21 LEWIS ROCA ROTHGERBER CHRISTIE LLP

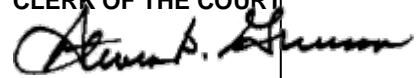
22
23 By: 
24 John Bragonje
25 State Bar No. 9519
26 E-mail: jbragonje@lrrc.com
27 3993 Howard Hughes Parkway, Suite 600
28 Las Vegas, NV 89169
Tel: 702-474-2625
Fax: 702-216-6173

Attorneys for Plaintiff/Judgment Creditor Baker Boyer National Bank

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EXHIBIT PAGE ONLY

EXHIBIT 7

HUTCHISON & STEFFEN
A PROFESSIONAL LLC



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL
BANK,

Plaintiff(s),

vs.

JAMES FOUST, JR.,

Defendant(s).

Case No. A-17-760779-F

DEPT. II

BEFORE THE HONORABLE RICHARD F. SCOTTI,
DISTRICT COURT JUDGE

FRIDAY, MAY 17, 2019

**TRANSCRIPT OF PROCEEDINGS RE:
EVIDENTIARY HEARING
VOLUME I**

APPEARANCES:

For the Plaintiff(s):

JOHN E. BRAGONJE, ESQ.

For the Defendant(s), James
Patterson Foust, Jr.:

MICHAEL D. MAZUR, ESQ
(Via Court Call)

RECORDED BY: DALYNE EASLEY, COURT RECORDER

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WITNESSES Page #

FOR THE PLAINTIFF:

<u>EDWARD DETWILER</u>	
Examination by the Court	18
Direct Examination	27

EXHIBITS

	<u>Page #</u>
No exhibits offered.	

1 **LAS VEGAS, NEVADA, FRIDAY, MAY 17, 2019**

2 [Proceeding commenced at 9:04 a.m.]

3
4 THE COURT: All right. Please be seated. All right. I think
5 we have somebody on Court Call.

6 Mr. Mazur, are you on Court Call?

7 MR. MAZUR: [Indiscernible.]

8 THE COURT: Good morning. Thanks for being present by
9 Court Call. Appreciate that.

10 Mr. Bragonje, good morning.

11 MR. BRAGONJE: Good morning, Your Honor.

12 THE COURT: And then Mr. Detwiler?

13 MR. DETWILER: Yes, sir.

14 THE COURT: All right. Good morning, to you, sir.

15 MR. DETWILER: Good morning, sir.

16 THE COURT: All right. Mr. Mazur, I forget, do you represent
17 Mr. Detwiler also?

18 MR. MAZUR: I represent, yeah, Mr. Foust only.

19 THE COURT: Mr. Foust. Okay.

20 And Mr. Foust is not present, I understand.

21 MR. MAZUR: Correct. I did receive a communication from
22 him end of last week. A very dear friend of his passed away and the
23 funeral, I believe, was yesterday. We did submit a declaration that he
24 did sign last night, authorized us to sign electronically, did state that the
25 funeral was in Texas. He's booking a flight to come home, but it was a

1 very dear friend and his family's home, and he won't be in attendance
2 today because of that.

3 But he will make himself available as soon as he can
4 beginning on Monday when he returns.

5 THE COURT: I haven't seen that declaration. Was it filed this
6 morning or late last night?

7 MR. MAZUR: It was late last night. I believe that Diana from
8 my office copied the JEA, Melody.

9 THE COURT: Okay.

10 MR. MAZUR: Got a copy of it. But it was late last night when
11 we had received it from him.

12 THE COURT: All right. Let me just see if I can pull it up and
13 read it.

14 MR. MAZUR: And, Your Honor, in that declaration, he does
15 provide facts as it relates to the evidence that was submitted by
16 Plaintiffs' counsel at the last hearing, prior to the last hearing. And also
17 some of the other information, as well.

18 THE COURT: Anybody get a courtesy copy over to
19 Mr. Bragonje, do you know?

20 MR. BRAGONJE: Yeah, I did receive it.

21 MR. MAZUR: We also put it in the mail --

22 THE COURT: You did -- you saw it?

23 MR. MAZUR: -- but it was --

24 MR. BRAGONJE: About 10:00 last night. I didn't look at it
25 closely, because it was --

1 THE COURT: All right. So you got a copy.
2 MR. BRAGONJE: I was going to bed, but, yeah.
3 THE COURT: Okay. Well, I'm the only one who hasn't seen it
4 then. Give me a moment.
5 [Pause in proceedings.]
6 THE COURT: Yeah, my computer's still not working. I
7 mentioned it to somebody, it hasn't been fixed yet. I need somebody to
8 print that declaration off for me.
9 THE CLERK: I'm doing that right now.
10 THE COURT: Okay. Thanks.
11 [Pause in proceedings.]
12 THE COURT: All right. I read the declaration. I haven't had
13 time it look at the attachments thereto.
14 Comment, Mr. Bragonje. Any comments on this?
15 MR. BRAGONJE: Yes, thank you, Your Honor.
16 You know, this is not a deposition or a routine hearing. I --
17 you know, I don't believe a lot of what Mr. Foust says, but I think even if
18 we accept this excuse on its face, I don't think it matters. This is not a
19 immediate relative or anything like that. And I believe the evidence
20 shows that this death occurred some time ago, and I feel like we heard
21 about it 10:00 last night. I really think --
22 THE COURT: I think he said the 11th, right? Which would
23 be --
24 MR. BRAGONJE: Yeah.
25 THE COURT: -- Saturday. Last Saturday. And hear about it

1 on Monday.

2 MR. BRAGONJE: The truth is --

3 THE COURT: Today's Thursday.

4 MR. BRAGONJE: Yeah.

5 THE COURT: Or Friday, the 17th.

6 MR. BRAGONJE: You know, I did have some discussions
7 with Mr. Mazur and I told him I'd be willing to move this hearing, but only
8 move it up, not continue it. If we were to continue it again, that would be
9 the fourth continuance. The fourth continuance.

10 THE COURT: I know.

11 MR. BRAGONJE: This was originally scheduled for April 1st.
12 I think we've got enough record to make the decision. So I really think
13 that this is just another in a series of demonstration to the Court that
14 Mr. Foust doesn't take this proceeding seriously. This is not a
15 deposition. This is a hearing to determine whether or not he's going to
16 jail for contempt.

17 I really think that if they had been serious about this problem,
18 we would have heard about it sooner, and like I said, I don't think it even
19 matters, because it wasn't his child, heaven forbid, that died or
20 something like that. It was an acquaintance.

21 And while that might be an excuse to move a deposition, I
22 don't think it's an excuse to move a contempt hearing. These are
23 extraordinary proceedings.

24 Now, I recognize that we, you know, we need to hear from
25 the -- from Mr. Foust, but I think we have. He's already been on the

1 stand once. And at a minimum, Mr. Detwiler's here, so I think we can go
2 forward with that portion.

3 THE COURT: Mr. Mazur, would you like to respond?

4 MR. MAZUR: Yes, Your Honor.

5 This is not another delay tactic by Mr. Foust. I don't know if
6 the Court was aware, Mr. Foust did state a few months back to me that
7 he was given the diagnosis that left him six months. He had very severe
8 cancer. And they'd given him six months from a couple of months back
9 to live.

10 THE COURT: Who has six months?

11 MR. MAZUR: He didn't -- pardon?

12 THE COURT: Who has six months? This friend who just
13 passed?

14 MR. MAZUR: No, Mr. Foust does. And his friend just passed
15 and he's very close to the family. And it hit him very severely. And I
16 was able to speak to him quite a bit last night, you know, to get the
17 declaration. And he noticed the urgency and he just said, I can't leave
18 the family right now. I have to be with them. I'll be back this weekend.

19 But, you know, his mental state, because of that, because it
20 was his own diagnosis as well, it's not an intent [indiscernible] he said he
21 could make himself available as soon as he gets back, whatever the
22 Court's schedule is, he will be there to answer questions.

23 And, you know, it provides some of the information in the
24 declaration last night as well. But I would request -- my request in this --
25 a continuance, but we will make ourselves available, my client will make

1 himself available as soon as he returns. And it's not an attempt to delay,
2 what I'm trying to say, Your Honor.

3 THE COURT: Why -- I still don't understand why he couldn't
4 have been here. Even if he attended the funeral -- well, knowing that he
5 attended the funeral yesterday, there's tons of flights that go from Dallas,
6 a major international hub, to Las Vegas, also a major international hub.
7 He could have flown in last night or taken a early morning flight to -- he
8 could have been here if he really wanted to. I mean I --

9 MR. MAZUR: I understand --

10 THE COURT: -- you probably don't have any response to
11 that. I understand. I'm just -- I'm thinking out loud why he couldn't be
12 here knowing that, you know, he knew about the passing on Monday.
13 He would have -- sounds like the 13th -- I'm sorry, he attended the
14 visitation on Wednesday. He probably knew about the visitation the day
15 before the Wednesday, which was the Tuesday. He could have made
16 travel plans to be out here. I -- and he didn't explain any of that. Like,
17 why isn't he here?

18 It's just very troubling, given all the prior continuances that
19 we've had in this case. I know it's not your fault, Mr. Mazur. It's just it's
20 very troubling here.

21 And I'm not -- Mr. Bragonje, I'm not sure -- I'm not really sure
22 what to do. Because this is a contempt proceeding to determine
23 whether appropriate punishment, including incarceration --

24 MR. BRAGONJE: Right.

25 THE COURT: -- should be imposed for contempt. And --

1 MR. BRAGONJE: Right.

2 THE COURT: -- and it's a serious matter, basically --

3 MR. BRAGONJE: It is.

4 THE COURT: -- to throw someone in jail without him -- having

5 him present to have an opportunity to be heard.

6 MR. BRAGONJE: I agree.

7 THE COURT: So I --

8 MR. BRAGONJE: He has been on the stand.

9 THE COURT: -- this is a very --

10 MR. BRAGONJE: He's been on the stand an hour and a half

11 already. I mean, we did have one session.

12 THE COURT: Right.

13 MR. BRAGONJE: It's not like -- I understand what Your

14 Honor's saying. But I think that -- my opinion here is I don't believe

15 anything that Mr. Foust says. If he's really so sick from cancer, why is

16 he jetting across the country? I mean, he either traveled from --

17 presumably from California or Nevada.

18 THE COURT: Yeah.

19 MR. BRAGONJE: I really don't believe that. And I think that --

20 I think we're dealing here with a defendant that wants to flout the system

21 and I think at some point, even if they're not willing to show up, justice

22 must happen.

23 THE COURT: Yeah. I'm wondering if -- I can't access -- guys,

24 this is what happens when I try and access my calendar. This is really

25 annoying.

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[Pause in proceedings.]

THE COURT: Monday I have a bench trial, it doesn't start until 10:30. I don't have any summary judgment motions. I have -- let's see, Motions in Limine that are going to take an hour and a half. Let me check Tuesday.

I could do this -- I mean, if I were inclined not to hold him in contempt right now and then add this failure to appear as additional grounds for contempt punishment, if I were not going to do that, then I could have this hearing Tuesday beginning at 8:30.

MR. BRAGONJE: That could work. Although I would say this --

THE COURT: And certainly, he would have to pay costs --

MR. BRAGONJE: That's what I was going to --

THE COURT: -- for you to show up here, because, you know, the funeral and the death of his friend, even -- assuming that did happen and me taking Mr. Foust at his word there, it's still required you to attend through no fault of your own.

MR. BRAGONJE: Right.

THE COURT: So you should have to be compensated for your time to show up here today.

MR. BRAGONJE: I think so.

THE COURT: And I'm sure Mr. Foust would understand that and wouldn't have a problem with that. But we'll deal with that. So I'm thinking Monday at 8:30.

Mr. Mazur --

1 MR. BRAGONJE: I think --
2 THE COURT: I'm sorry, Tuesday at 8:30.
3 Mr. Mazur?
4 MR. MAZUR: Yes, Your Honor.
5 THE COURT: So you're going to have to make that work.
6 He's got to fly out here over the weekend or Monday. We need to
7 proceed with this hearing. You know, I'm giving him a great leniency
8 here in, you know, in moving this to Tuesday at 8:30.
9 MR. MAZUR: I appreciate that, Your Honor. And I'm sure he
10 can be very thankful of that. I will make sure that he is here Tuesday
11 at 8:30 at the courthouse [indiscernible] the State. But he said that he
12 will be returning this weekend, so I will make sure he's here. And I'm
13 sure he's very appreciative and thankful as well.
14 THE COURT: No, I appreciate that. You don't foresee any
15 conflicts in your schedule, do you?
16 MR. MAZUR: Your Honor, I have a mediation at 10:00. But I
17 can reschedule that.
18 THE COURT: Yeah, I think --
19 MR. MAZUR: Foreclosure mediation.
20 THE COURT: Okay. Do you want me to make a call to the
21 mediator or is that something you feel comfortable doing to get your
22 mediation moved on Tuesday?
23 MR. MAZUR: Your Honor, I am the mediator.
24 THE COURT: Oh.
25 MR. MAZUR: So I'll go ahead and make the change

1 [indiscernible].

2 THE COURT: Oh, you are the mediator. Ah, good.

3 MR. MAZUR: Yes, sir.

4 THE COURT: Then that works out.

5 MR. MAZUR: Okay. Makes that easy.

6 THE COURT: Well, thank you. Thank you for
7 accommodating us, Mr. Mazur. I appreciate that.

8 MR. MAZUR: Yes, Your Honor.

9 THE COURT: So I'm wondering if we should not hear from
10 Mr. Detwiler, then, because it -- because what he says might relate to
11 what --

12 MR. BRAGONJE: Well --

13 THE COURT: -- Mr. Foust --

14 MR. BRAGONJE: I've got a couple thoughts on that. I think it
15 would be a witness exclusion rule anyway. I mean, I think these guys
16 would need to be separated anyway. So I would like to proceed with
17 Mr. Detwiler today.

18 THE COURT: Might be kind of difficult with --

19 MR. BRAGONJE: And I'm worried about the timing of it all
20 too. I mean, we've got to finish Tuesday morning also. So, I mean, to
21 the extent we could advance it.

22 THE COURT: Well, I indicated that we get it -- we're doing a
23 total of two hours. Isn't that what I said?

24 MR. BRAGONJE: Oh, yeah.

25 THE COURT: Each side shall have one hour for its --

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MR. BRAGONJE: Okay.

THE COURT: I could give a little bit more time if we need to.
We -- but we've got to get it done Tuesday morning.

MR. BRAGONJE: Yeah. Yeah, I mean, it's --

THE COURT: I --

MR. BRAGONJE: Obviously, we'll defer to the Court, but my
feeling is --

THE COURT: I do agree that the exclusionary rule should
apply. And that's what I'm going to impose, that one witness cannot
be -- well, since it's a separate contempt proceeding, technically, against
each individual. All right. I can require that one witness be out of the
room when the other witness is being exempt. All right. And that's what
I'm going to do.

The only issue here is whether we proceed with Mr. Detwiler --

MR. BRAGONJE: Yeah.

THE COURT: -- this morning.

MR. BRAGONJE: I wonder what he thinks about it.

THE COURT: Well, I -- it doesn't matter what he thinks.

MR. BRAGONJE: Oh, okay.

THE COURT: It's -- because he complied with my order to be
here.

MR. BRAGONJE: He did.

THE COURT: I appreciate that.

MR. BRAGONJE: He did.

THE COURT: The only thing I'm concerned about, Mr. Mazur,

1 you're not available -- you're -- in person, you're on the phone.

2 MR. MAZUR: Correct.

3 THE COURT: How do you -- can you hear me okay? I hear
4 some --

5 MR. MAZUR: I can -- I've got four puppies, Your Honor. I
6 apologize.

7 THE COURT: Okay. So, I mean, I really want to proceed with
8 examination of Mr. Detwiler and to hear his story. He's here and, you
9 know, he took time out of his day. Would you be able to hear sufficiently
10 on the phone for -- I mean, if we have a half an hour of testimony, is that
11 something that you'd be able to hear from the witness? He has a
12 microphone up here.

13 MR. MAZUR: Yes, Your Honor. I believe that'll be okay. And
14 what I request is if we can recall him as well on Tuesday, potentially.
15 But I'm okay proceeding, moving forward today.

16 THE COURT: See, this gets us into the structural problem,
17 Mr. Bragonje. Mr. Detwiler is, of course, entitled to speak on his own
18 behalf --

19 MR. BRAGONJE: Sure.

20 THE COURT: -- in connection with the contempt proceedings
21 against him. But Mr. Foust, in connection with the contempt
22 proceedings against him, is entitled to have Mr. Detwiler be presented
23 as a witness.

24 MR. BRAGONJE: Sure. Yeah.

25 THE COURT: So I don't know if you want to do it all at once --

1 MR. BRAGONJE: Your Honor, I --

2 THE COURT: -- or together.

3 MR. BRAGONJE: Yeah. I mean, I've made my position clear.
4 I defer to the Court. I think there's no reason not to go ahead today, but,
5 you know, I'm a officer of the Court and we're here at your pleasure. So
6 it's --

7 THE COURT: Yeah. But here's the other --

8 MR. BRAGONJE: -- as you wish to proceed.

9 THE COURT: Here's the other logistical structural issue.

10 Mr. Foust would not be entitled to be present in the room
11 when Mr. Detwiler is testifying in connection with Mr. Detwiler's contempt
12 proceedings.

13 MR. BRAGONJE: Right.

14 THE COURT: However, in connection with Mr. Foust's
15 contempt proceedings, he's entitled to call Mr. Detwiler as a witness
16 there and to be present.

17 MR. BRAGONJE: Yeah.

18 THE COURT: Because it's his own contempt proceedings.

19 MR. BRAGONJE: Right.

20 THE COURT: So the way to do this properly would be to have
21 the contempt proceedings with respect to Mr. Detwiler first. All right.
22 And outside the presence of Mr. Foust and then proceed to the next
23 phase.

24 MR. BRAGONJE: Yeah. Yeah.

25 THE COURT: Why don't we do this.

1 Mr. Detwiler, since you're here --

2 MR. DETWILER: Yes, sir.

3 THE COURT: -- why don't you take the stand and we'll see --
4 we may not need a lot out of you. We will see how far we get. Since
5 you are here, you took time out of your day. I appreciate that.

6 MR. DETWILER: Yes, sir.

7 THE COURT: And then whether Mr. Foust subpoenas you to
8 be here on Tuesday or requests your presence on Tuesday, that's
9 between you and him. Okay?

10 MR. DETWILER: Would I be able to know before I leave
11 today if I need to be here on Tuesday so that I can schedule accordingly,
12 as well?

13 THE COURT: Well, I'm not going to require you to be here.

14 But Mr. Mazur, you're on the line. Is this something that you
15 need to talk to Mr. Foust first, whether he wants Mr. Detwiler as a
16 witness.

17 Mr. Mazur, are you still on the line, sir?

18 MR. MAZUR: Yes, Your Honor.

19 THE COURT: Yes. Does Mr. Foust want Mr. Detwiler as a
20 witness? And if so, is Mr. Detwiler, at your request, going to voluntarily
21 appear? Or do you need to get a subpoena on him?

22 MR. MAZUR: I believe Mr. Foust would like him to appear as
23 a witness. And I'm not sure if Mr. Detwiler would be able to voluntarily
24 appear on Tuesday. Maybe we inquire as to if you will? If he states that
25 he'll voluntarily appear, then we don't need a subpoena.

1 MR. DETWILER: I will be here on Tuesday.

2 THE COURT: All right.

3 MR. MAZUR: Great.

4 THE COURT: Very good. Otherwise, Mr. Mazur could jump
5 through hoops to get a subpoena served on you today.

6 MR. DETWILER: Not necessary.

7 THE COURT: And -- all right. Well, I appreciate -- we'll take
8 you at your word that you're going to be here as a witness for
9 Mr. Detwiler Tuesday morning at 8:30.

10 All right. Why don't you come take the stand now, though.

11 MR. DETWILER: Yes, sir.

12 THE COURT: Thank you.

13 One second. So hold on, if you don't mind.

14 So this is the trial on the contempt pursuant to the Court's
15 order to appear and show cause why Defendant Edward Detwiler should
16 not be held in civil contempt of court as indicated in the order filed
17 February 21st, 2019.

18 And we will have Mr. Detwiler sworn in as a witness at this
19 point in time.

20 **EDWARD DETWILER,**

21 [having been called as a witness and first duly sworn, testified as
22 follows:]

23 THE CLERK: Okay. You may be seated. And then can you
24 please state and spell your first and last name for the record.

25 THE WITNESS: Yes. My name is Edward Detwiler,

1 E-D-W-A-R-D D-E-T-W-I-L-E-R.

2 THE CLERK: Thank you.

3 THE COURT: So here's how we technically are supposed to
4 proceed. Since it's an order to show cause hearing, Mr. Mazur, since
5 this is an order to show cause hearing, Mr. Detwiler has the right to
6 proceed first in explaining his position and the facts and reasons why he
7 should not be held in civil contempt.

8 And under the circumstances, I would be willing to either allow
9 you to ask questions of Mr. Detwiler, or I would allow him to express to
10 us initially his position. Or what we could do is, Mr. Detwiler, you have
11 the right to simply defer to Mr. Bragonje, he can go first and ask
12 questions, and then you can have the last word and explain at the end.

13 So which -- so Mr. Mazur, I'll give you the choice here. Do
14 you want to go first? Do you want your client to go first or Mr. Bragonje
15 go first?

16 MR. MAZUR: I would defer to Mr. Detwiler to allow him to
17 testify or provide explanation first, and then we can allow questioning by
18 Mr. Bragonje and then myself.

19 THE COURT: All right. We could do it that way.

20 Why don't you -- you give us your position and then
21 Mr. Bragonje will ask questions. And then we'd have Mr. Mazur proceed
22 to ask questions.

23 So your statement will be, in essence, your direct testimony.
24 Mr. Bragonje is going to then to direct examination, and then Mr. Mazur
25 will ask questions that will be deemed the redirect examination.

1 Does that work for you, Mr. Bragonje?

2 MR. BRAGONJE: That's fine. Thank you, Your Honor.

3 THE COURT: All right.

4 THE WITNESS: Okay.

5 THE COURT: Mr. Detwiler, why don't you tell us why the cars
6 haven't been turned over? That's basically the question. Go ahead and
7 explain it --

8 THE WITNESS: Okay.

9 THE COURT: -- in the way you feel comfortable.

10 THE WITNESS: Yes, sir. Thank you.

11 I have no access to the cars. As I shared with Mr. Bragonje at
12 a deposition in his office some time ago, my role as coming in as being a
13 manager of Harry Hildibrand was to be involved in real estate. That was
14 in 2008. The market spiraled down. Real estate never got off the
15 ground with them. And basically, I've been a figurehead as a manager
16 of that company ever since.

17 I've also shared with Mr. Bragonje that I don't know anything
18 about cars, I don't know about remodeling. Well, I guess it would be
19 restoring cars. I know where the key goes, I know where the gas goes
20 in a car, and that's it.

21 I don't know how they're financed. I don't know how auctions
22 work. It's not anything that I was ever involved in on a basis whatsoever
23 relating to Harry Hildibrand. I have a resort that I'm building on the
24 island of Roatan where the U.S. Government OPIC, O-P-I-C, has agreed
25 to finance \$20 million of it. I've gone through extensive background

1 searches with them and the Honduran government. I've passed all
2 requirements that they have to know about my background.

3 Do have something like a contempt charge would have it all
4 go away. Okay. So I have nothing to hide. I have a lot to lose.
5 Unfortunately, I don't know anything about the cars. I was never
6 involved with the cars. I wasn't involved -- and I don't even know the
7 bank that is suing Mr. Foust. I was never a part of that bank or anything
8 to do with them.

9 I sold Jim Foust houses in the '90s and I was recommended to
10 the Hildibrand family to be a manager so that I could acquire, remodel,
11 and sell assets for a profit that never came to be. My extent as a
12 manager, I have no day-to-day operations knowledge of the company. I
13 don't know the structure outside of the document that was shown that
14 the Hildibrand children own 99 percent of the company. Mr. Foust
15 owned 1 percent of the company that was established the day I was --
16 the last time I was here to testify.

17 Outside of that, I know nothing about the operations of Harry
18 Hildibrand, nor should I as I -- I don't even have a -- I don't have a
19 financial interest in the company either.

20 I'm brought into this because I filed a police report on the
21 motor home.

22 THE COURT: Apparently you filed something in the
23 bankruptcy proceedings, also.

24 THE WITNESS: Yes, I did. Yes, I did.

25 THE COURT: Okay.

1 THE WITNESS: But outside of that --

2 THE COURT: Yeah.

3 THE WITNESS: -- those two instances, I've had nothing to do
4 on an operation standpoint with this company.

5 THE COURT: When was the last time you saw any of
6 those 52 cars that have been the subject of these proceedings?

7 THE WITNESS: Oh, my gosh, 52 cars.

8 THE COURT: Any of them, including the Mercedes that
9 Mr. Foust's family apparently has?

10 THE WITNESS: I haven't, sir. I haven't.

11 THE COURT: Okay.

12 THE WITNESS: I haven't seen any of them.

13 THE COURT: All right.

14 THE WITNESS: And I know that at the -- when I was at the
15 bankruptcy, the gentleman that held the meeting, that chaired the
16 meeting, asked if I knew where the cars were. Before I could answer,
17 the attorney that had prepared the bankruptcy for Harry Hildibrand
18 answered for me. And then the gentleman holding the -- I don't want to
19 call him the judge, because he wasn't, but whoever the --

20 THE COURT: Magistrate?

21 THE WITNESS: I don't even know --

22 THE COURT: Referee?

23 THE WITNESS: -- what the title would be.

24 THE COURT: Okay.

25 THE WITNESS: But the gentleman conducting the hearing

1 said that he asked me that and not the attorney. The attorney that filed
2 the bankruptcy put -- he was sitting next to me. He put his hand on me
3 and he said, Yes, we know where the cars are. And so I answered yes,
4 I know where the cars are.

5 THE COURT: Okay. You must have at least seen the GMC
6 Yukon that -- which I think Mr. Foust himself drives, I think.

7 THE WITNESS: I have seen that car in Nevada within the last
8 two years, yes, sir.

9 THE COURT: Understood. All right.

10 THE WITNESS: But I don't have a relationship with any of the
11 owners or people of Harry Hildibrand. On the converse, I have very little
12 interacting with them.

13 THE COURT: What relationship do you still have with
14 Mr. Foust at this point in time?

15 THE WITNESS: Former -- he was a former client of mine. In
16 fact, I have recently learned that he -- they -- his wife owns a piece of
17 property, and I wasn't even asked to market or list the property. So I
18 guess I've been fired --

19 THE COURT: Okay.

20 THE WITNESS: -- as his realtor.

21 THE COURT: So you don't have any current business
22 partnership, corporate or social interest with him at this point in time?

23 THE WITNESS: No, sir.

24 THE COURT: Okay.

25 THE WITNESS: None whatsoever. Nor do I have -- the only

1 relationship I have is manager of tis company that as far as I know he
2 owns 1 percent of. Outside of that --

3 THE COURT: Right.

4 THE WITNESS: -- I have no business relations with him at all.

5 THE COURT: Anything else currently going on with Harry
6 Hildibrand Company other than -- do you know of any business that's
7 going on that you have a role in?

8 THE WITNESS: Oh, no, sir.

9 THE COURT: Okay.

10 THE WITNESS: And I have no role in any business --

11 THE COURT: Okay.

12 THE WITNESS: -- in that company.

13 THE COURT: So you still consider yourself just a figurehead
14 in that company.

15 THE WITNESS: Yes, sir, I am.

16 THE COURT: Well, why are you continuing to serve as that
17 figurehead?

18 THE WITNESS: When Mr. Bragonje called me I don't know
19 how long ago, I had talked about wanting to resign this position. But it
20 would not absolve me of being here. And I would very much like to
21 resign as the managing member of this company as soon as is practical,
22 because this has been a toll on my time and I was also a little bit
23 intimidated when the call -- when Mr. Bragonje said to me, I've seen
24 crazy things happen in court, and you could be going to jail.

25 THE COURT: All right.

1 THE WITNESS: So it's -- and I don't have any counsel for
2 this. I don't have any representation, because from what I understand,
3 and this is just looking up the word contempt and trying to understand
4 what it is, is that is -- I'm not withholding anything, because I don't have
5 any knowledge. So I can't be a blockade or a roadblock to his client
6 getting these vehicles, because I don't know where they are and I don't
7 have access to them and I don't own them.

8 THE COURT: Okay.

9 THE WITNESS: So --

10 THE COURT: You -- are you comfortable with us turning over
11 the questions to Mr. Bragonje now --

12 THE WITNESS: Yes, sir.

13 THE COURT: -- and we'll see where that leads?

14 THE WITNESS: Yes, sir, I am.

15 THE COURT: Thank you.

16 Mr. Bragonje.

17 MR. BRAGONJE: Yes, Your Honor.

18 If I can approach, I'd like to look at a transcript from the
19 bankruptcy that was referenced earlier. I've got a copy, if I can
20 approach?

21 THE COURT: Sure.

22 He's going to show you a transcript.

23 MR. BRAGONJE: Here's one for Your Honor too.

24 THE COURT: Okay.

25 MR. BRAGONJE: And I know that this is already in evidence.

1 This is something we put into evidence back in our November hearing.
2 And if you'll indulge me just a minute, I can let you know exactly where
3 I'm looking here. So it'll be under Tab 2 of this -- your Tab 2.

4 THE COURT: All right. I'm looking.

5 MR. BRAGONJE: And there's a few things I want to go over
6 in this. And this is just for context, this is not a question, but just by way
7 of explanation.

8 This is just a standard 341(a) hearing that occurred in
9 connection with the bankruptcy. The bankruptcy occurred in the Los
10 Angeles area, it was in the central district of California. So this is the,
11 you know, the United States Trustee is the person conducting this
12 hearing. And it was the chance for creditors to come and ask questions.
13 The IRS came. My client was there. The trustee was there. And they
14 asked Mr. Detwiler a series of questions.

15 THE COURT: So this isn't the actual deposition, these are
16 document -- or these are exhibits to the deposition?

17 MR. BRAGONJE: No, it's a transcript.

18 THE COURT: I -- you know, you must have --

19 MR. BRAGONJE: I'm sorry. I didn't give you --

20 THE COURT: You must --

21 MR. BRAGONJE: -- the right page yet. This starts --

22 THE COURT: You must --

23 MR. BRAGONJE: -- at page 80.

24 THE COURT: You must have given me the wrong thing,
25 because there's no transcript here, right? Or where is it?

1 MR. BRAGONJE: Page -- should be starting at page 2.
2 Sorry, may I approach?
3 THE WITNESS: I -- is it Exhibit 2 or Tab 2?
4 MR. BRAGONJE: Tab 2.
5 THE COURT: Because I'm looking under Exhibit 2 and I don't
6 see any --
7 MR. BRAGONJE: Oh, I apologize. It's Exhibit 3. Apologies.
8 THE COURT: Okay. All right. So Exhibit 3.
9 MR. BRAGONJE: I apologize.
10 THE COURT: Go ahead.
11 MR. BRAGONJE: Tab 3. And we're starting here at page 80.
12 THE COURT: Got it.
13 MR. BRAGONJE: I apologize. Thank you. That was a lot of
14 paperclipping. Okay.
15 So I'd like to direct everyone's attention to page 80. And the
16 question -- AM is the -- are the initials for the trustee. And about halfway
17 through the page -- and ED, of course, is just abbreviation for Ed
18 Detwiler. So we're going to be looking at any statements that Ed
19 Detwiler, abbreviated ED, made.
20 It says here about halfway through the page:
21 Are you -- and you represent the debtor in what capacity?
22 ED, next line: I'm the managing member. I'm the manager.
23 THE WITNESS: What page is this, sir? I'm sorry.
24 MR. BRAGONJE: 80.
25 THE WITNESS: Okay. I'm on 29.

1 THE COURT: It's the bottom right-hand corner.
2 MR. BRAGONJE: Yes. Sorry. The bottom right-hand corner
3 is where you'll see those page numbers.
4 THE COURT: Those are the document identification
5 numbers.
6 Under Tab 3, sir?
7 THE WITNESS: Yes, I'm in Tab 3, but I'm on --
8 THE COURT: Okay. Looks like it's about eight pages in.
9 Looks like this. Are you in Tab 3?
10 THE WITNESS: Oh, it ends in 80.
11 THE COURT: Okay.
12 THE WITNESS: That's 90, 89, now I know where to look.
13 Okay.
14 THE COURT: Okay. Thank you.
15 THE WITNESS: Okay. I'm there, sir.
16 THE COURT: You were looking at the other numbers in the
17 middle, right?
18 THE WITNESS: Yes, sir. Yes. I --
19 THE COURT: Okay. Not a problem.
20 Go ahead, Mr. Bragonje.
21 MR. BRAGONJE: Thank you.

22 **DIRECT EXAMINATION**

23 BY MR. BRAGONJE:

24 Q So do you see the question there?
25 I'm the managing member, I'm the manager.

1 A Yes, sir.

2 Q Okay. And that's accurate, right?

3 A Yes.

4 Q Do you --

5 A As stipulated in that --

6 Q You are the only manager of Harry Hildibrand LLC, correct?

7 A That I'm aware of, yes.

8 Q Okay. All right. Could you please direct your attention to

9 page 92 now.

10 A [Witness complies.] Okay.

11 Q Isn't it true that you know about the insurance for these

12 vehicles?

13 A I was --

14 Q You were involved in insuring the vehicles, weren't you?

15 A No, I wasn't. The company was involved in insuring the

16 vehicles.

17 Q Okay.

18 A Okay? And as -- and I had been assured by counsel, who

19 was JL, and I forget his last name to be honest with you, but he assured

20 the Court that there was insurance on those vehicles and by his saying

21 that, I may have indicated that the vehicles were insured, as well.

22 Q Okay. Let's look at that. It says -- you're -- I'm looking about

23 halfway up the page. AM -- AM is the initials for the trustee, his name is

24 Adam Moore.

25 He says: Yeah, the Jaguar. I understand. Before I appeared

1 for this examination that there's a motion by the U.S. Trustee out
2 there and I assume it's a compliance motion. So let me ask you this,
3 because when I looked at these files, I didn't see what we referred to
4 as the seven-day requirements insurance documents. Do you have
5 insurance documents on these vehicles?

6 Then the next line, JL: Some do and we're getting it on the
7 remainder of them.

8 Next line, ED -- that's you, correct?

9 A Uh-huh.

10 Q And you say: The ones that do not, sir, are not operational as
11 far as being on the street so -- but yes, sir, we're in the process of
12 getting that done.

13 So you were involved in insuring these vehicles; isn't that
14 true?

15 A No. When I say we, that is not -- that is I was referencing we
16 are Harry Hildibrand, not as me.

17 Q Okay. Next page, please.

18 A [Witness complies.]

19 Q You know who uses these vehicles; isn't that correct?

20 A I know of them, but I don't know them, sir. I do not know
21 them.

22 Q Okay. Let's see what you said at the hearing here. I'm about
23 two-thirds of the way down the page.

24 A Okay.

25 Q AM again: Does anyone regularly use these vehicles, any of

1 them, regularly use them?

2 Next line, your statement: Some of them fairly regularly will
3 drive, yes.

4 A And that would be Jim Foust's family. And that's how I
5 referenced that.

6 Q And the next line --

7 A Uh-huh.

8 Q No, does someone regularly drive the vehicle, any of them, on
9 a routine basis?

10 Next line, your statement: Yeah, the ones in Los Angeles will
11 be, you know, alternated just to keep them, you know, operational.

12 That's not talking about Mr. Foust's family's cars, is it? There
13 would be no reason to alternate Mr. Foust's family's cars, they're being
14 used all the time; isn't that correct?

15 A No, sir. The ones that I was referencing in Los Angeles were
16 his family's cars.

17 Q What use would a family have of alternating vehicles or not?
18 If they're in family use, they're being used all the time. Isn't it true that
19 this statement refers to the vehicles that aren't being used all the time,
20 the classic vehicles --

21 A Oh, no, sir.

22 Q -- the --

23 A No, sir. I wouldn't have any knowledge of that, sir.

24 Q Then why did you say it, sir?

25 A I was -- it says the ones in Los Angeles. And those were the

1 ones that Jim's daughters and wife drove or were driving.

2 Q But it makes no sense, does it, that a family would alternate or
3 not alternate the vehicles it's using? A family simply uses vehicles; isn't
4 that right?

5 A Yes. But my wife and I alternate cars quite regularly, I'd say a
6 couple, two, three times a week she'll drive my car and I'll drive her car.
7 So that's what I was referencing, sir. I wasn't trying to be anything other
8 than I know in the past those sisters trade cars, they drive each others'
9 cars. Sometimes they'll be in San Diego, sometimes they'll be in -- at
10 UCLA. So yeah, they do change cars. So I don't know who drives what
11 car.

12 Q Can -- let me put it this way, then: Can you understand why
13 someone would draw the conclusion that you weren't talking about the
14 Foust family cars when I read this statement, when you say:

15 You know, alternate it, just to keep them, you know,
16 operational.

17 You can understand how someone would conclude that that
18 would refer to some kind of a car collection?

19 A Guess I'm not that smart. Because, no, sir, I don't.

20 Q Okay. Page 95, please.

21 A [Witness complies.]

22 Q You have described today your role as that of a figurehead,
23 correct?

24 A Yes, sir.

25 Q On page 95, let's see what you said at the time of the hearing.

1 The very top quarter of the page.

2 AM says: Okay. Why does Junior have a secured debt on the
3 motorcycle? I don't know.

4 And then your response: I don't know. Honestly, like I said,
5 I'm the head guy in charge of getting stuff done. I'm not always privy
6 to what Junior and Ron do. I take direction, not given them.

7 So isn't it true that you're the head guy?

8 A Absolutely not. This -- I'm the head guy on paper to go to file
9 the police report, to go to the bankruptcy hearing. I was the head guy
10 because I was the manager. So that was probably too strong of a word
11 to use. But I'm not the head guy from the extent as I make decisions. I
12 don't.

13 Q If you can go to the bankruptcy hearing, if you can be involved
14 in insurance, if you have knowledge --

15 A But I already said --

16 Q You can answer --

17 A -- I was not involved in insurance.

18 Q -- when I'm done -- I'm done asking my question.

19 A Yes, sir.

20 Q If you're involved in going to the bankruptcy hearing, if you
21 know about the insurance, at the very least, if you know about the status
22 of the cars, isn't it true that you can affect the transfer of the cars to the
23 bank to satisfy this judgment?

24 A No, sir.

25 THE COURT: Well, any cars that are certainly in the name of

1 Harry Hildibrand, you, as being the sole managing member on paper,
2 you have the legal ability to have those transferred.

3 THE WITNESS: I don't know where they are, sir.

4 BY MR. BRAGONJE:

5 Q Have you made it -- have you made any efforts to try and
6 comply with this order? Have you called anyone to say that the Court is
7 ordering these vehicles delivered? I'm the guy who's responding for
8 Harry Hildibrand in court, I need you guys to do something, whoever
9 these guys are, whoever's really running things; have you even tried to
10 do that?

11 A Yes, sir. I have. And I've gotten no response.

12 Q Who did you call?

13 A I called Harry Jr. And here I am here by myself, no counsel, I
14 have no help from them. They're not helping me.

15 Q Why --

16 A I -- but I can't give you what I don't know.

17 Q Why do these people refuse?

18 A I don't know, sir.

19 Q They've never said anything to you?

20 A No, sir.

21 Q So they talked to --

22 A I have not --

23 Q They asked you to represent them in the bankruptcy, correct?

24 A And that's the last I've heard from them.

25 Q And they won't give you the courtesy to say, you know, why

1 we won't comply with the order from a court of the state of Nevada?
2 They just won't say anything on that?

3 A No, sir.

4 Q Does that strike you as odd?

5 A Strikes me as -- I don't know what to make of that, is if it's --

6 THE COURT: Well, they're holding you out to take the fall.

7 THE WITNESS: But how can I take the fall for something that
8 I can't do? I --

9 THE COURT: You kind of got yourself in this position by
10 agreeing to be the member manager of the company.

11 THE WITNESS: To do real estate.

12 THE COURT: Well, no, I understand that. I took notes on
13 that. And I'm trying to put this all together. Don't have any opinions yet,
14 but I'm trying to figure out -- you know -- you understand we're trying to
15 figure out where the cars are, right? And you're saying you have no
16 knowledge of that.

17 THE WITNESS: That's correct.

18 THE COURT: But the people that put you in charge of this
19 company, they certainly know and under the circumstances, it -- from
20 what I've seen so far, it would seem that you would either know that or
21 you know who to contact to find out where they are, right? Or the people
22 that have them are trying to keep things concealed from you and expect
23 you to take the fall for this. I don't know. Anyway, I'm trying to piece all
24 this together.

25 THE WITNESS: Yeah, I'm just asking, is that right? Is that

1 justice? Is that fair?

2 THE COURT: I don't know --

3 THE WITNESS: If things are being concealed --

4 THE COURT: Yeah.

5 THE WITNESS: -- from me? I'm not an attorney.

6 THE COURT: I don't know what's fair -- yeah, I don't know
7 what's fair yet until I hear all the evidence. But I just wanted you to know
8 that some of the inquiry I would like to see explored more. So.

9 Anyway, Mr. Bragonje.

10 MR. BRAGONJE: Thank you, Your Honor.

11 BY MR. BRAGONJE:

12 Q Thank you, Mr. Detwiler, for your answers so far.

13 Page 103, please.

14 A Oh, I closed it. Sorry.

15 Q No problem.

16 A [Witness complies.]

17 Q And this is something I think we talked about before, but I'm
18 looking at the bottom of the page now. Again, a question from MK, and I
19 will tell everyone -- well, let me ask this way:

20 Mr. Detwiler, do you recall that someone from my law firm, not
21 me, but one of my colleagues, was present at this 341 meeting?

22 A I do. He sat to my right facing the gentleman indicated as AM.

23 Q Thank you. And if I tell you that his initials -- his name is
24 Michael and his initials are MK, do you accept that? Does that sound
25 right?

1 A Well, there were four people there. So you've got AM, JL, ED,
2 I would say yes, sir, I'm going to use that as a -- as correct.

3 Q Thank you.

4 Okay. So I'm looking at the bottom, you know, really, the
5 bottom probably quarter of the page, maybe even fifth of the page. I
6 think this is something we've discussed before.

7 It says: And, Mr. Detwiler, were you compensated for your
8 work with the company over the years?

9 Your answer: No.

10 Is that accurate?

11 A That's correct.

12 Q And that's what you said at the time?

13 A Yes, sir, that's correct.

14 Q Is it unusual that you would do so much work for no
15 compensation?

16 A Well, I didn't do any work. If we go down to the bottom.

17 It says: Approximately how much time per week were you
18 spending on month with the company?

19 My response: I would say, except -- since February --

20 Which was when the motor coach was taken, repossessed or
21 what have you.

22 -- since February, prior to that, about 0.0. None.

23 Okay. So, yeah.

24 Q You've been -- who paid for --

25 A I mean, none.

1 Is what I -- okay.

2 I mean, none. And it hasn't been since the theft of the coach I
3 have been involved at all.

4 Q Thank you. And I appreciate your answers. I know these are
5 difficult questions and we're trying to get at the truth. So thank you
6 sincerely.

7 Since this lawsuit started, you've been very active, would you
8 agree?

9 A Yeah, out of a sense of loyalty that I feel is probably very
10 misplaced, where I was doing something for Junior to help him, because
11 I know -- what I do know is those assets I believed were his, not Foust's.
12 So I don't know, sir. I have no idea. So a sense of loyalty, I was on the
13 thing, I've always been someone to live up to my word and do what I say
14 I'm going to do. So I agreed to help him.

15 Q Thank you.
16 You traveled to L.A. for this meeting of creditors; is that
17 correct?

18 A It's correct.

19 Q From here, correct?

20 A Yes.

21 Q Did you fly?

22 A I did.

23 Q Who paid?

24 A I did.

25 Q You didn't ask anyone if they would pay?

1 A I did not.

2 Q Why? How many times have you been to L.A. in connection
3 with this lawsuit?

4 A I think just the one time.

5 Q Okay. You've seen these cars in person, correct?

6 A No, sir.

7 Q Okay. Page 109, please.

8 A Yeah. [Witness complies.] Well, let me take -- when you say
9 cars, the first thing that popped in my head were 52 cars.

10 Q Okay.

11 A Okay. I have seen the Yukon, I have seen a Mercedes sedan,
12 and not having that list of 52 cars in front of me, Mr. Bragonje, I don't
13 want to say yes or no unless they were each asked, have I ever seen
14 this car? Because I do not want to misspeak or say something that isn't
15 correct.

16 Q Thank you. Thank you. We appreciate the -- being accurate.
17 We appreciate that.

18 Are you aware that -- and this was mentioned extensively in
19 the bankruptcy filings and in this meeting of creditors that we're
20 discussing, you're aware, aren't you, that some of the vehicles, I
21 believe 10, that were on the bankruptcy schedule, were in a warehouse
22 in Compton in Los Angeles County; are you aware of that?

23 A Yes.

24 Q Have you been to that warehouse?

25 A I have not. But I did -- I was told by JL, and like I said, I forgot

1 his last name --

2 Q Uh-huh. It's -- that's the attorney, just for the record. That's
3 the --

4 A Yes, sir. That's the attorney --

5 Q -- attorney?

6 A -- that was the attorney for the bankruptcy. I did not speak
7 with that attorney in preparing that bankruptcy. That was all done by the
8 owners of Harry Hildibrand, not the manager. I did not involve myself --
9 zero time spent preparing that bankruptcy, sir.

10 Q Mr. Foust asked you to file that bankruptcy, didn't he?

11 A No. I was --

12 Q Who asked you? Who called you up and said --

13 A Junior. Junior said, Will you sign as manager? I said, yeah,
14 I'll do that.

15 Q Okay. Page 109, please.

16 A [Witness complies.]

17 Q Looking at the top quarter of the page. The question that
18 starts MK again. We agreed earlier that that MK represents Michael,
19 who's an attorney, a colleague of mine at my law firm. So he represents
20 the bank. And he says:

21 And does the --

22 And I will just -- for a little bit of context, you appreciate, don't
23 you, that there is a schedule that was filed in the bankruptcy. We could
24 look at this schedule, but if you --

25 A Yes. Could we --

1 Q -- list it --
2 A Could we look at that?
3 Q Absolutely.
4 A Because I -- like I said, I share --
5 Q Absolutely.
6 A -- I didn't prepare --
7 Q Absolutely.
8 A -- I had nothing to do with the preparation of that. And I don't
9 know if --
10 Q I've got it handy.
11 A Thank you.
12 Q I've got it handy.
13 A Okay. Thank you.
14 Q Just flip over to page 137.
15 A [Witness complies.]
16 Q And you will see the -- one of the many times that a list of
17 vehicles was submitted to the bankruptcy court in California.
18 A Okay.
19 Q All right. You've seen that list before, I take it?
20 A Yeah.
21 Q Yeah.
22 A I believe so.
23 Q Okay.
24 A I think so.
25 Q Okay. All right. So back to 109, and I thank everyone for their

1 gymnastics as we flip around. It's not linear here. This examination
2 wasn't linear, so we've got to flip around.

3 MK there in the top quarter says: And does the value take into
4 account --

5 They're talking about this chart that we've just looked at. I'll --
6 can we agree to that?

7 A Yes, sir.

8 Q Okay.

9 A I believe so.

10 Q Okay.

11 A I --

12 Q We do remember that the chart came up in the -- in this
13 meeting of creditors, right? It was discussed, correct?

14 A Yes.

15 Q Okay. MK says: And does the value take into account any
16 wear or damages issues or not operational issues costs?

17 And then you say: I think it's just purchase value, because
18 most, the vehicles that I've seen require work, you know. I think that
19 the purchase criteria was based on what they thought they could sell
20 for if a certain amount was invested. It's like buying rehab real
21 estate. How much do you put into it and how much can you get out
22 of it so there would be an investment in all of those.

23 Did you say that, sir?

24 A Yes, I did.

25 Q And doesn't that indicate that you saw the vehicles?

1 A Well, I've seen photographs of the vehicles. I have -- I've
2 been told that what they do as a model --

3 Q Who told you that?

4 A -- but I haven't -- JL, Junior shared that with me.

5 Q When did he tell you that?

6 A The -- before the --

7 Q You said you didn't --

8 A Before the bankruptcy hearing.

9 Q Okay. And that's the only time you've talked with JL?

10 A That's correct. It was -- the only time I've talked to JL was the
11 day of the proceeding.

12 Q And by the way, do you --

13 A So he did -- he did give me some background information
14 based on this prior to my being there. So he had been involved with the
15 principles in Harry Hildibrand.

16 Q Thank you.

17 A Yes, sir.

18 Q And his name is James Laissez [phonetic], by the way.

19 A Okay.

20 Q Laissez. James Laissez.

21 A Okay.

22 Q And, by the way, this is kind of an aside, but you agree, don't
23 you, that he was Mr. Foust's personal attorney? Do you have that
24 understanding?

25 A I --

1 Q Okay.

2 A I really --

3 Q I mean, that's established --

4 A -- really don't know.

5 Q That's established in the --

6 A I don't know.

7 Q -- record, but I just didn't know if you knew anything about
8 that. In any event.

9 A I didn't, sir.

10 Q Thank you.

11 I want to ask about something now, because I feel like there's
12 a fundamental inconsistency in the story that you're telling. Because
13 we've heard all morning that you're talking to Harry Hildibrand Jr., right?

14 A Yes.

15 Q But isn't it true that in this meeting of creditors, you said that
16 there is one owner of member of Harry Hildibrand; didn't you say that?

17 A I believe it to be Junior.

18 Q And -- well, in the hearing, didn't you say it was another entity
19 called Stardust Classics?

20 A I believe Junior owns that as well, along with another
21 gentleman by the name of Ron Vega. And I wasn't -- I was unaware of
22 these names, Mr. Bragonje and Judge Scotti, until the day of that
23 bankruptcy filing. I was unfamiliar with who the ownership structure was.
24 Because in the hearing that we had here, there was documentation
25 shown that Harry Hildibrand was owned by four people. Three people,

1 the Hildibrand children, 33 percent each, and Mr. Foust, 1 percent.

2 So up until -- from that hearing until the day of this bankruptcy,
3 that's what I believed to be true.

4 Q But how can that be true? Because isn't it true that you are on
5 records from the state of Wyoming, your name is on a corporate records
6 for Stardust Classics; isn't that true?

7 A I do not know that, sir.

8 Q Okay.

9 A Honestly, I --

10 Q All right.

11 A -- I do not know that.

12 Q Okay. Let's look.

13 MR. BRAGONJE: Everyone's indulgence for just a minute --

14 THE COURT: Uh-huh.

15 MR. BRAGONJE: -- as I look at this precisely.

16 THE WITNESS: Your Honor?

17 THE COURT: Yes.

18 THE WITNESS: Would it be possible to get a glass of water?

19 THE COURT: Of course.

20 Marshal.

21 And, unfortunately, I don't want to go too much further,
22 maybe 15 minutes. Because I am in the middle of a jury trial and we're
23 settling jury instructions, supposed to do that at 10:00. They can wait a
24 little bit. I thought since -- I thought maybe this wouldn't be going
25 forward today.

1 MR. BRAGONJE: Thank you.

2 THE COURT: So -- but I wanted to indulge you and -- in
3 getting some information from Mr. Detwiler and because of his
4 inconvenience in showing up, I wanted to get started on this.

5 MR. BRAGONJE: Okay.

6 THE COURT: You can go a little -- why don't you find a good
7 breaking point --

8 MR. BRAGONJE: Yeah. Thank you.

9 THE COURT: -- for yourself here.

10 MR. BRAGONJE: Thank you.

11 BY MR. BRAGONJE:

12 Q Could you please direct your attention to page 365 in this
13 same -- this is -- we're still in this gigantic Tab 3. It should be a
14 document from the Wyoming Secretary of State.

15 A [Witness complies.]

16 THE COURT: My 365 starts at Tab 4.

17 MR. BRAGONJE: Thank you.

18 THE COURT: Okay.

19 MR. BRAGONJE: It's never --

20 THE COURT: The Tab 4, the first page there.

21 MR. BRAGONJE: Never easy.

22 BY MR. BRAGONJE:

23 Q It's dated October 26, 2016, filed at 12:55 p.m.

24 MR. BRAGONJE: Does everyone have that in front of them?

25 THE COURT: I do.

1 BY MR. BRAGONJE:

2 Q Mr. Detwiler?

3 A Yes, sir. I'm looking at it.

4 Q You're looking at it? Okay. Then take a moment and let me
5 know when you've had a chance to look at it.

6 A [Witness complies.] Okay.

7 Q Do you see Field 4 there, it says -- okay.

8 First of all, do you see there, Field 1, it says, Name of the
9 limited liability Company: Stardust Classic, LLC?

10 A Yes, sir, I do.

11 Q Okay. Then do you see there, Tab -- or Field 4, Mailing
12 address of the limited liability company; do you see that?

13 A Yes, sir, I do.

14 Q And the address that's given is 7854 West Sahara,
15 Number 100?

16 A Yes, sir.

17 Q See that? And that's your office, isn't it?

18 A No, sir.

19 Q Whose office is that?

20 A I have no idea. I have an office on Sahara that's 8290 West
21 Sahara and I have an office at 10120 South Eastern Avenue in
22 Henderson.

23 Q Uh-huh.

24 A Those are the only two addresses that I have outside of my
25 home address.

1 Q Uh-huh. Okay. Would you kindly flip over to page 369, just a
2 few pages back.

3 A [Witness complies.]

4 Q This is, again, a --

5 MR. BRAGONJE: I will represent to you all -- this is, by the
6 way, these are all exhibits from the prior hearing in November. These
7 have all been admitted into evidence. This is a 2018 limited liability
8 company -- annual report from the State of Wyoming.

9 Q You're aware, aren't you, Mr. Detwiler, that all entities have to
10 file annual reports with the states under which they're organized?

11 A Yes, sir.

12 Q Okay. And do you see that this filing, if you look about in the
13 top quarter of the page, it's for Stardust Classic, LLC; do you see that?

14 A I see that.

15 Q And do you see that it's your signature under this report; do
16 you see that?

17 A I see my name typed in there.

18 Q Yes. And do you see it's dated December 18, 2017?

19 A I see that.

20 Q And you're telling this Court you didn't sign this?

21 A I didn't sign this. I've never seen this document in my entire
22 life except for right now.

23 Q And you didn't -- didn't you say in -- when we had depositions,
24 didn't you say that you allow people to use your signature?

25 A I believe that -- no. What I believe I said in the deposition --

1 we can go back and look -- is that I had a -- there were stamps that were
2 put together so that if and when I bought real estate, I could stamp
3 contracts as a manager for the company. But I haven't seen that stamp,
4 sir, in I couldn't tell you how long.

5 Q But at a minimum you're willing to admit that you gave other
6 people the permission to use your signature?

7 A No, sir. I wouldn't do that. No, sir. Absolutely not.

8 Q Well, what was the point of having a stamp of your signature,
9 then, if --

10 A As a contract, as a signature on a contract, on a purchase
11 contract for real estate, representing the company. But I would never
12 give someone carte blanche to go use my name on anything. That's
13 foolish.

14 Q The bankruptcy filings, for example, you signed those,
15 correct?

16 A Yes, sir.

17 Q Did you physically sign them with a pen? Or did you use a
18 stamp?

19 A I don't know, sir. Can I -- can we look at that?

20 Q Okay.

21 A Because I don't know what I -- I signed some documents for
22 JL on the morning of that, and I also -- so I don't know.

23 Q Okay. Well, we can go into that, but I think we're running out
24 of time. What I want to ask is this: Don't you believe that if Mr. Foust
25 wanted to pay this judgment, he could just cause the cars to be

1 delivered to the bank?

2 A What do I believe?

3 Q He's controlling all of this, isn't he?

4 A I don't know that.

5 THE COURT: Yeah, well, that's the thing. Do you have any
6 personal knowledge as to whether he can do that?

7 THE WITNESS: I don't.

8 THE COURT: Okay.

9 THE WITNESS: And -- because, I mean, anything --

10 THE COURT: Don't want you to speculate.

11 THE WITNESS: Yeah, I was just going to use that word.

12 THE COURT: All right.

13 THE WITNESS: What I know and what I think? I don't know
14 that they're necessarily --

15 THE COURT: Got it.

16 THE WITNESS: -- the same thing.

17 THE COURT: If they're --

18 THE WITNESS: What I know is if I had the ability to deliver
19 any of these cars to your office or wherever, I would do so. And the
20 reason is, foremost, I wouldn't go to jail.

21 THE COURT: I understand.

22 THE WITNESS: Two, I don't want the last nine years of my
23 life to have this Hilton Resort project fall apart because of these holdings
24 that -- or these proceedings that I really have nothing to do with.

25 THE COURT: If the Court ordered you to transfer any interest

1 in the cars that might be held by Harry Hildibrand, what would be your
2 response to that?

3 THE WITNESS: I don't know how to go about doing that.

4 THE COURT: All right. Well, if you're the sole manager
5 member of the company, you could sign an instrument assigning all
6 right, title, and interest to the judgment debtor. Wouldn't you have the
7 legal right to -- or if you don't know, that's fine.

8 THE WITNESS: I don't know. I don't know, sir.

9 THE COURT: Do you know who at the company would have
10 that decision-making power?

11 THE WITNESS: That would -- at this point, it would be a
12 gentleman -- I think it would be Ron Vega, to be -- based on what I just
13 looked at and based on the bankruptcy proceedings. Ron Vega's name
14 was mentioned by JL.

15 MR. MAZUR: Your Honor --

16 THE COURT: Yes.

17 MR. MAZUR: -- it's Michael Mazur.

18 THE COURT: Yes, Mr. Mazur.

19 MR. MAZUR: I believe that the Court has previously ordered
20 all the titles to be transferred over by court order from Hildibrand over to
21 the plaintiff, if I'm not mistaken.

22 MR. BRAGONJE: That's right.

23 THE COURT: Yeah. No, I believe we did. I don't think any of
24 that's happened, though. So, all right --

25 MR. MAZUR: Are those --

1 THE COURT: Go ahead.

2 MR. MAZUR: I was just going to state that pursuant to NRS
3 [indiscernible], once that order has been issued, then the transfer any
4 ownership interest in Hildibrand would have had, at that point in time,
5 would automatically transfer legal -- or legal title would transfer over to
6 Plaintiff.

7 THE COURT: You --

8 MR. MAZUR: In that order.

9 THE COURT: You might be correct. Right. Right. There
10 might be -- happen by operation of law. Mr. Bragonje will have to look
11 into that if he believes that's important for me to know.

12 Okay. We're going to have to continue this 8:30 on Tuesday.

13 You will be back, Mr. Detwiler?

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 THE WITNESS: If -- please, just tell me that if I'm, like, five or
17 six minutes late, that I'm not going to be in too much trouble.

18 THE COURT: You won't be in any trouble --

19 THE WITNESS: Okay.

20 THE COURT: -- as long as -- I want you to make your best
21 efforts to be here on time. If you're not, because of --

22 THE WITNESS: I was here 20 minutes today, sir.

23 THE COURT: No, I appreciate that, sir. No, you were fine.
24 You were fine. Just make your best efforts. If something happens,
25 sometimes there's traffic, things happen. So thank you.

1 THE WITNESS: One day the line was out the door and down
2 the steps. And so -- and I can't get in that side door. So.

3 THE COURT: And what we'll do is we'll finish with you, these
4 proceedings that would involve you, and then we'll switch over to
5 Mr. Foust.

6 So how many more questions do you think you might have,
7 Mr. Bragonje?

8 MR. BRAGONJE: Oh, I'm done -- practically done.

9 THE COURT: Okay.

10 MR. BRAGONJE: I mean, I'll think about it.

11 THE COURT: Okay. So we'll give you maybe 15, 20 more
12 minutes --

13 MR. BRAGONJE: Fine, yeah.

14 THE COURT: -- 15 minutes, and then --

15 MR. BRAGONJE: I mean, real practically done. Not lawyer
16 practically done.

17 THE COURT: Actually, Mr. Mazur, even though I'm allowing
18 you to participate, you really -- I guess you really don't have standing to
19 ask him in connection with his own proceeding. You would have the
20 right to call him back and ask him questions then on Tuesday in
21 connection with the Foust proceedings. Does that make sense?

22 MR. MAZUR: I understand that. Yes, Your Honor.

23 THE COURT: All right. So when you're done, Mr. Bragonje,
24 then I'll let Mr. Detwiler have the last word in explaining anything you
25 want to do on Tuesday morning. And then we'll be done with your

1 contempt proceedings. And I won't make a decision on what to do, of
2 course, until we hear from Mr. Foust and his witnesses, which might be
3 you again. Okay?

4 THE WITNESS: I -- okay. Sure. Certainly.

5 THE COURT: All right. You're a resident of Nevada?

6 THE WITNESS: Yes, sir. Have been since 1990.

7 THE COURT: Okay. How often are you -- now, you're
8 working on a project in Roatan?

9 THE WITNESS: Yes, sir. I will not be -- I'm not scheduled to
10 go back out of town until June -- I believe it's the weekend of the 9th.

11 THE COURT: June 9th.

12 THE WITNESS: June 9th.

13 THE COURT: Okay. You have social connections here,
14 family here, property here in Las Vegas?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. So even if you're found in contempt of
17 court, you aren't going -- no, I'm just saying, if -- worst case scenario,
18 you're not going to get locked up on Tuesday. Okay? So I don't -- I
19 don't want you to be worried about showing up. Okay?

20 THE WITNESS: May I ask a question?

21 THE COURT: And you're going to get -- look, I have an open
22 mind. I can't make any decisions for anybody's sake till I hear all the
23 evidence. So.

24 THE WITNESS: Yes, sir. But if I could just ask a question?

25 THE COURT: Yes, of course.

1 THE WITNESS: What is the --

2 THE COURT: The procedure is somebody who's in contempt
3 of court can be held until he complies with the order. In this case, the
4 order would be doing whatever you can do to turn over the cars.
5 Obviously, I'm listening to you very carefully to see if you know where
6 the cars are, if you exercise your best efforts to comply with my order to
7 have them turned over.

8 You can't do something, of course, that you're -- that's a
9 physical impossibility. Okay. So if there's something that's a physical
10 impossibility, you can't be held in contempt of court. All right. So that's
11 what we're trying to find out here is have you done all that's in your
12 power to do so satisfy my order. And that's all I'm looking for. Right?

13 THE WITNESS: Okay.

14 THE COURT: And so if there's more you can do over the
15 weekend or Monday, I don't know if there is, maybe you want to talk to
16 Harry Jr., this guy Ron Vega. But understood, sir, you're only
17 responsible for what's in your power to control. Okay?

18 MR. BRAGONJE: May I say just one thing on a --

19 THE COURT: Yes, you may.

20 MR. BRAGONJE: -- housekeeping? I don't anticipate talking
21 to anyone but Mr. Foust. I mean, we have -- this was originally
22 scheduled for April 1st. So I'm going to be really upset if Mr. Mazur
23 brings in new witnesses on Monday after the --

24 THE COURT: Well, no, he -- and he can't, because I required
25 all parties to identify their witnesses --

1 MR. BRAGONJE: Yeah. Okay.

2 THE COURT: -- by a certain deadline. That deadline's

3 passed.

4 MR. BRAGONJE: Yeah, long passed. Okay.

5 THE COURT: So there would have to be -- yeah, some --

6 MR. BRAGONJE: Yeah, okay.

7 THE COURT: -- some change in that prior order.

8 MR. BRAGONJE: Yeah, yeah. And one other --

9 THE COURT: But I just wanted him in case we're doing more

10 examination --

11 MR. BRAGONJE: Yes.

12 THE COURT: -- of Mr. Detwiler on Tuesday, that he be

13 prepared to at least answer questions about what communications he

14 had with Mr. Vega since the very first time I --

15 MR. BRAGONJE: Right.

16 THE COURT: -- I issued the order.

17 MR. BRAGONJE: Right.

18 THE COURT: Because I think that may or may not be

19 relevant.

20 MR. BRAGONJE: Yeah.

21 THE COURT: I'm not saying it is. Just --

22 MR. BRAGONJE: Could -- I just have one other thing to say

23 as we kind of frame this issue.

24 THE COURT: Okay.

25 MR. BRAGONJE: We -- you know, every contempt order has

1 to have a purge clause, right? How do you -- if one does go to jail --
2 THE COURT: Of course.
3 MR. BRAGONJE: -- how does one get out?
4 THE COURT: Of course. Right.
5 MR. BRAGONJE: And we're not necessarily set on having
6 these vehicles. We want either their value of the vehicles of the vehicles
7 themselves. So the bankruptcy --
8 THE COURT: Right.
9 MR. BRAGONJE: -- the bankruptcy order says they're
10 worth -- or, excuse me, the bankruptcy schedule says they're
11 worth 520,000. We'll take either. We'll take the -- we'd rather have the
12 money, obviously.
13 THE COURT: Then that may be more important with
14 Mr. Foust.
15 MR. BRAGONJE: Yeah.
16 THE COURT: Because I don't know anything about --
17 MR. BRAGONJE: Right.
18 THE COURT: -- Mr. Detwiler's control over the assets of
19 Harry Hildibrand --
20 MR. BRAGONJE: Right.
21 THE COURT: -- or what control he has over Mr. Foust, the
22 judgment debtor here, his finances.
23 MR. BRAGONJE: Right.
24 THE COURT: And so that's a relevant inquiry too.
25 MR. BRAGONJE: Yeah. I represent a bank, not a car

1 dealership. So we'd rather have money, obviously.

2 THE COURT: Of course. Well, and Mr. Foust is going to
3 have some things to answer to on Tuesday.

4 MR. BRAGONJE: Yeah.

5 THE COURT: All right. You understand the procedure at
6 least? I tried to help you understand the procedure here.

7 THE WITNESS: Yeah, I just have one four-letter word keep
8 going in and out of my head and that's jail. So I'm trying to pay attention.

9 THE COURT: You're okay Tuesday. All right. And this
10 whole -- we want to be fair here. But I want my orders complied with.
11 You know, it's very -- when I issue an order, I expect it to be complied
12 with if it's at all possible. Right? And a very serious matter here,
13 because we had a judgment here for a million dollars, we have cars that
14 were supposed to be security and nobody knows where the cars are.

15 So I'm trying to get more information to decide how to
16 proceed. All right?

17 THE WITNESS: Yes, sir.

18 THE COURT: So all right. I'm a nice guy, but I'm very serious
19 and expect my orders to be complied with. You understand? Okay.

20 THE WITNESS: Okay. I just don't know what I can do to --

21 THE COURT: Well, we'll find out with more questioning on
22 Tuesday.

23 MR. BRAGONJE: Thank you.

24 THE COURT: So we're going to continue --

25 You may step down, sir.

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THE WITNESS: Thank you.

THE COURT: Mr. Mazur, we'll see you here Tuesday at 8:30,
correct?

MR. MAZUR: Yes, Your Honor. Thank you.

THE COURT: All right. Thank you.

Everyone have a good day.

MR. BRAGONJE: Thank you, Your Honor.

THE COURT: Have a good day.

[Proceeding concluded at 10:13 a.m. until May 21, 2019.]

///

ATTEST: I do hereby certify that I have truly and correctly transcribed
the audio/video proceedings in the above-entitled case to the best of my
ability.



Shawna Ortega, CET*562

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EXHIBIT 8

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 BAKER BOYER NATIONAL BANK,

8 Plaintiff,

9 vs.

10 JAMES FOUST, JR.,

11 Defendant.
12

) CASE#: A-17-760779-F

) DEPT. II

13 BEFORE THE HONORABLE RICHARD F. SCOTTI
14 DISTRICT COURT JUDGE
TUESDAY, FEBRUARY 18, 2020

15 **RECORDER'S TRANSCRIPT OF DECISION ON 2/12/20 HEARING**

16
17 APPEARANCES:

18 For the Plaintiff: JOHN E. BRAGONJE, ESQ.

19 For Edward Detwiler: BRENOCH WIRTHLIN, ESQ.

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25 RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

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Las Vegas, Nevada, Tuesday, February 18, 2020

[Case called at 9:30 a.m.]

THE MARSHAL: Remain seated. Department 2 now in session. The Honorable Judge Richard F. Scotti presiding.

THE COURT: All right, folks. Appearances, please. Baker Boyer.

MR. WIRTHLIN: Yes, Your Honor. Brenoch Wirthlin on behalf of Ed Detwiler.

THE COURT: Okay.

MR. BRAGONJE: Good morning, Your Honor. John Bragonje of the Lewis Roca Law Firm on behalf of the Plaintiff Baker Boyer.

THE COURT: Very good. You can both be seated. So here's the way I see it. At least up through the date that Mr. Detwiler resigned, the Court finds and has found that he had the ability to actually comply with the Court order. And the Court had made that determination, although it may not be stated in the rule. The Court went back and reviewed everything, and the Court believes that that is accurate based upon a clear and convincing evidence standard. Not a preponderance -- I mean, higher than a preponderance of the evidence, but it doesn't rise to a level of beyond a reasonable doubt, but a clear and convincing evidence standard.

As for after the date of the resignation, I just can't find that on a clear and convincing evidence standard that he still has the ability

1 to comply. I think at this point in time, I'm not convinced by the clear
2 and convincing evidence standard that he has possession, custody or
3 control over the cars.

4 I do find that there was failure to comply with this Court's
5 order up through the point in time when he did resign. An appropriate
6 sanction for violating the Court's order and all of the time and effort that
7 the Court had to deal with this, and the Bank had to deal with this, I'm
8 ordering that Mr. Detwiler pay the attorney's fees of Baker Boyer from
9 the date he was officially a party in this action through today's date.

10 I will give Baker Boyer three days to submit an affidavit
11 attesting to those attorney's fees, unless you need more time. Three
12 business days sufficient?

13 MR. BRAGONJE: I'm thinking. Thank you. If we could have
14 a week that would be all right.

15 THE COURT: All right. One full week from today's date. The
16 Clerk will give you that date. And while she's doing that, I'll ask Mr.
17 Detwiler's counsel to tell us how long he would need to respond to the
18 affidavit. In particular, I need an analysis from both of you as to the
19 *Brenzel* factors, of course.

20 MR. WIRTHLIN: Yes, Your Honor. We would like two weeks,
21 but we could do it in a week if the Court requires that.

22 THE COURT: I'll give you two weeks unless -- I don't see --

23 MR. WIRTHLIN: Thank you.

24 THE COURT: -- that there's any urgency as to the monetary
25 issue --

1 MR. WIRTHLIN: Okay.

2 THE COURT: -- Mr. Bragonje.

3 MR. BRAGONJE: No. No.

4 THE COURT: I mean -- I mean, I would like to get this
5 resolved, counsel, actually.

6 MR. WIRTHLIN: Sure.

7 THE COURT: Can you do it --

8 MR. WIRTHLIN: We'll do it in a week.

9 MR. BRAGONJE: -- in a week?

10 MR. WIRTHLIN: We'll do it in a week.

11 THE COURT: Okay.

12 MR. WIRTHLIN: Definitely.

13 THE COURT: So one week, and then I'll make a decision two
14 days after that.

15 THE CLERK: Okay. So one week from today is February
16 25th. And then one week from that, for the response, is March 3rd. And
17 a couple days after that, is a Tuesday, so -- do we need a hearing or is it
18 in chambers?

19 THE COURT: Pardon.

20 THE CLERK: Is your decision in chambers?

21 THE COURT: Yes, chambers.

22 THE CLERK: Okay.

23 THE COURT: Not another hearing. Now on top of that, I find
24 it very serious that Mr. Detwiler didn't comply with my order. I think he
25 did -- I know he did have the capability of doing it. He was controlling

1 the company based upon everything up to that date and there was
2 ample evidence that the company had control or possession of the cars.
3 But you're standing up, I'll let you --

4 MR. WIRTHLIN: No, just in case the Court wanted me to
5 respond is all. I apologize.

6 THE COURT: I don't need a response, but if you would like to
7 make a record, you can.

8 MR. WIRTHLIN: Your Honor, I think we probably put it in our
9 motion everything that I've got left. I do think that -- just to clarify --

10 THE COURT: Yes, sir.

11 MR. WIRTHLIN: -- the Court's order if I can today. Is that Mr.
12 Detwiler doesn't have to be worried about getting picked up and --

13 THE COURT: I was going to -- I was going to state that.

14 MR. WIRTHLIN: Okay.

15 THE COURT: The Court is expunging and recalling the
16 warrant, returning his passport. But the Court, under the circumstances,
17 is also going to impose a fine of \$100,000. That is less than one-fifth of
18 the total value of the cars. At least those values at the time Mr. Detwiler
19 was ordered to turn them over. I know he had control from everything
20 I've seen.

21 Now, someone might disagree with me, but I believe, based
22 upon the standard I've indicated that he had control from his own
23 admissions as to the title he held and some other comments that he
24 made in various pleadings. And that sanction is pursuant 7.60(b)(5),
25 which allows this Court in a civil context to impose a fine for violation of

1 a court order. It's not pursuant to the criminal contempt because there
2 hasn't been a motion for criminal contempt, right?

3 MR. WIRTHLIN: That's correct, Your Honor. And --

4 THE COURT: And it's not a conditional amount, but -- you
5 know, the 100,000 is not conditional, but, of course, if the cars were to be
6 turned over, I wouldn't be adverse to a motion for reconsideration.

7 MR. WIRTHLIN: And just to clarify, Your Honor, is that
8 included in the attorney's fees award or is that --

9 THE COURT: It's separate and apart from the --

10 MR. WIRTHLIN: Separate.

11 THE COURT: -- attorney's fees.

12 MR. WIRTHLIN: Okay. Okay.

13 THE COURT: Right. Because -- for the reasons I indicated.

14 MR. BRAGONJE: Would Your Honor like me to prepare an
15 order or will Your Honor --

16 THE COURT: Could you prepare the order?

17 MR. BRAGONJE: Yes.

18 THE COURT: And given that he's not being imprisoned, I
19 don't know that we need a stay of the order. I know you had said last
20 time you wanted a stay, but I think you were worried about him being
21 imprisoned?

22 MR. BRAGONJE: Well, if I may. I mean, I think Rule 62
23 there's an automatic stay built into the Civil Rules. The rule says --

24 THE COURT: If you were to appeal, right?

25 MR. BRAGONJE: Yeah. Right.

1 THE COURT: And I'm assuming he'll appeal this.

2 MR. WIRTHLIN: I do believe so, Your Honor.

3 THE COURT: Okay.

4 MR. WIRTHLIN: I haven't spoken with him, obviously, about
5 the specifics, but I guess I would just -- maybe I can take a look at what
6 the Bank submits, but my initial thought is --

7 THE COURT: You may.

8 MR. WIRTHLIN: -- I would like to reserve the right to move
9 for a stay if necessary, but I agree with Your Honor. At this point, I don't
10 see the need for that, other than potentially a supersedeas bond, but we
11 can talk about that down the road.

12 THE COURT: Now I don't know how quickly the Bank would
13 intend to try to collect on this.

14 MR. BRAGONJE: Well, we still have to prepare the order and
15 Your Honor has to sign it. I mean, it's not something that's
16 instantaneous. And I do think --

17 THE COURT: I mean, you know, the three year -- two-and-a-
18 half-year history on this case.

19 MR. BRAGONJE: Right. Right. I mean --

20 THE COURT: And I don't know that another week matters.

21 MR. BRAGONJE: Well, right.

22 THE COURT: I mean, you could prepare the documents. I
23 think you need to do writ of -- another writ. I don't know if the existing
24 writ applies. You're going to have to do the research on that.

25 MR. BRAGONJE: Yeah.

1 THE COURT: I'm not vacating the prior writ and the prior
2 attachment, but you'll have to look and see if that was issued as to Mr.
3 Detwiler or only, you know, Hildibrand.

4 MR. BRAGONJE: Right. We'll move with all deliberate speed
5 according to the rules. I mean, I'll have to look at it all.

6 THE COURT: All right. And, of course, once the Court
7 receives it, the Court will need time to --

8 MR. BRAGONJE: Right.

9 THE COURT: I think what the Court will do is have my law
10 clerk -- once I sign it and put it in the outbox, I'll have my court clerk
11 contact both of you to let you both know it's there. It will take me, you
12 know, a few days to -- probably a couple days for you to get it to me, a
13 few days for me to review it.

14 MR. BRAGONJE: Sure.

15 THE COURT: Then we'll call, so then you'll both know if you
16 need to move for a stay and how quickly you need to move for a stay.

17 MR. WIRTHLIN: Understood. Appreciate that, Your Honor.

18 MR. BRAGONJE: Thank you, Your Honor.

19 THE COURT: Anything else?

20 MR. BRAGONJE: I don't think so.

21 MR. WIRTHLIN: I don't think so.

22 THE COURT: All right. Then that's the order. Thank you.
23 Court's adjourned.

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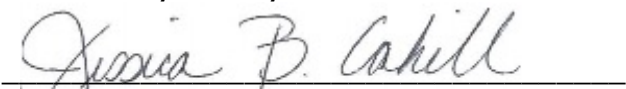
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MR. WIRTHLIN: Thank you.

MR. BRAGONJE: Thank you.

[Proceedings concluded at 9:39 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.



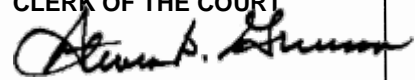
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Jessica B. Cahill, Transcriber, CER/CET-708

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EXHIBIT 9

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



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Attorney for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: 2

**AFFIDAVIT OF JOHN E. BRAGONJE
IN SUPPORT OF LEWIS AND ROCA
ATTORNEY FEES AND COSTS
INCURRED IN CONNECTION WITH
MR. DETWILER AND HARRY
HILDIBRAND, LLC**

STATE OF NEVADA)
COUNTY OF CLARK) SS:

John E. Bragonje, being first duly sworn, deposes and says:

1. I am an attorney licensed to practice law in the State of Nevada and am a partner of the law firm of LEWIS ROCA ROTHGERBER CHRISTIE LLP (hereinafter "Lewis and Roca"). I am counsel to plaintiff/judgment creditor Baker Boyer National Bank (the "Bank") in the above-captioned matter. I am over the age of 18 years and a resident of Clark County, Nevada. I make this affidavit based upon personal knowledge (except where stated to be upon information and belief, and as to that information, I believe it to be true). If called upon to testify as to the contents of this affidavit, I am legally competent to testify thereto in a court of law. I base this affidavit upon my review of the time records of Lewis and Roca, all of which are records kept in the ordinary course of business.

2. This Affidavit is made in connection with this Court holding Harry Hildibrand, LLC and Edward N. Detwiler in civil contempt of this Court's January 9, 2019, Findings of Fact, Conclusions of Law, and Final Judgment ("Order"), and awarding the Bank its reasonable attorney fees and costs incurred in connection with all of the proceedings seeking to enforce the Order since the time that Harry Hildibrand, LLC intervened in this case.

3. Thus, the purpose of this Affidavit is to support Lewis and Roca's total fee request—specifically \$218,855.52, consisting of \$208,889.00 in attorney fees and \$9,441.52 in costs advanced and \$525.00 for a cost bond.

LEWIS AND ROCA'S BILLING PRACTICES

4. Lewis and Roca attorneys and paraprofessionals have kept accurate, contemporaneous records of time expended using the firm's computerized legal billing system in this matter. The information Lewis and Roca attorneys and paraprofessionals input into the system was used to generate time entries and cost summaries and back-up to support the amounts of fees and costs requested in this Affidavit ("Supporting Documents"). Contemporaneous with the filing of this Affidavit, the undersigned will promptly submit the Supporting Documents to the Court's chambers for *in camera* review.

5. Lewis and Roca attorneys enter time regularly. In addition, it is Lewis and Roca's custom and practice when preparing its monthly time records for the responsible attorneys to review the draft time records to insure that the time listed was reasonably and necessarily incurred.

6. Based on my review of Lewis and Roca's time records, the firm has rendered no fewer than 487.7 hours of work in this matter in connection with all of the proceedings seeking to enforce the Order since the time Harry Hildibrand, LLC intervened in this lawsuit. Harry Hildibrand, LLC first appeared in this action and intervened pursuant to NRS 31.070 on March 2, 2018, which request was supported by a declaration from Mr. Detwiler. As a result of the work of Lewis and Roca, the Bank has incurred no less than \$208,889.00 in attorney fees.

7. The Bank has been paying its attorney fee invoices on a monthly basis since this matter began. There are no amounts that have been billed but not paid—other than work in progress.

1 8. As with time entries, Lewis and Roca paraprofessionals have kept accurate,
2 contemporaneous records of cost advances using the firm's computerized legal billing system.
3 The information Lewis and Roca professionals have input into the system was used to generate the
4 accounting of the costs itemized by amount and the date the cost was incurred or paid, which is
5 part of the Supporting Documents that will be submitted to the Court's chambers for *in camera*
6 review.

7 9. The costs sought are supported by receipts from, and proof of payments to, vendors
8 and will also be included in the Supporting Documents. As in the case of fees, costs advanced
9 have actually been paid to the various vendors by Lewis and Roca, and the Bank has reimbursed
10 Lewis and Roca for these expenses.

11 10. "If the [Court] determines that attorney fees are warranted, it must [] consider the
12 *Brunzell* factors in determining whether the requested fee amount is reasonable and justified."
13 *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev., Adv. Op. 31, 416 P. 249, 258
14 (2018).

15 11. The *Brunell* factors include: "(1) *the qualities of the advocate*: his ability, his
16 training, education, experience, professional standing and skill; (2) *the character of the work to be*
17 *done*: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed
18 and the prominence and character of the parties where they affect the importance of the litigation;
19 (3) *the work actually performed by the lawyer*: the skill, time and attention given to the work; (4)
20 *the result*: whether the attorney was successful and what benefits were derived. *Gunderson v.*
21 *D.R. Horton, Inc.*, 130 Nev. 67, 81, 319 P.3d 606, 615-16 (2014) (quoting *Brunzell v. Golden Gate*
22 *Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

23 12. The Court need not make explicit findings with respect to the above factors;
24 "[i]nstead, the [Court] need only demonstrate that it considered the required factors, and the award
25 must be supported by substantial evidence." *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139,
26 1143 (2015); *Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 1049, 881 P.2d 638, 642 (1994)
27 (providing that the district court "need not . . . make explicit findings as to all of the factors where
28 support for an implicit ruling regarding one or more of the facts is clear on the record"); *see also*

1 *Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 252 n. 16, 955 P.2d 661, 673 n. 16 (1998) (providing
2 that “no one factor . . . is determinative”).

3 13. Regarding the first *Brunzell* factor, Lewis and Roca’s rates are reasonable and
4 accurately reflect the prevailing market rates in Las Vegas for attorneys and paraprofessionals of
5 similar skill, experience, and reputation.

6 14. The rates reported herein are the rates that Lewis and Roca clients are actually
7 charged and which they actually pay—including the Bank. The attorneys’ hourly rates were set by
8 the firm’s executive committee after considering each attorney’s experience, skill, and reputation
9 in the community, as well as the rates charged by attorneys at other major law firms in Las Vegas
10 and the Southwest.

11 **LEWIS AND ROCA ATTORNEYS’ QUALIFICATIONS**

12 15. Lewis and Roca used a number of attorneys on this case in order to maximize
13 efficiency wherever possible. For instance, we used associates instead of partners for discrete
14 research tasks. We also used associates to edit draft papers and “shepardize” legal citations. The
15 number of attorneys on this case reflects our practice of using whichever associate is available at
16 the time of need, assuming the task required does not demand extensive background knowledge of
17 the case.

18 16. The Lewis and Roca lawyers and paraprofessional who worked on this matter are
19 as follows:

- 20 a. **John E. Bragonje**, partner at the firm, who billed 221.8 hours at the rate of
21 \$465.00; 128.8 hours at the rate of \$485; and 31.6 hours at the rate of \$495;
22 b. **Jason Furedy**, a partner at the firm, who billed .2 hours at the rate of \$530;
23 c. **Justin Henderson**, partner at the firm, who billed 7.1 hours at the rate of \$470;
24 d. **G. Warren Bleeker**, a partner at the firm ,who billed 3.2 hours at the rate of \$600;
25 e. **Mike Koplow**, an associate at the firm, who billed 5.1 hours at the rate of \$410;
26 f. **Abraham G. Smith**, an associate at the firm who billed .2 hours at the rate of
27 \$350;
28 g. **Brian D. Blakley**, associate at the firm, who billed 2.2 hours at the rate of \$375.00;

- h. **Matthew Tsai**, associate at the firm, who billed 10 hours at the rate of \$250; and
32.9 hours at the rate of \$275;
- i. **Erik J. Foley**, an associate at the firm, who billed 4.1 hours at the rate of \$335;
- j. **Adrienne Brantley-Lomeli**, an associate at the firm, who billed 6.7 hours at the rate of \$250;
- k. **Jessica Helm**, paralegal at the firm, who billed 8.4 hours at the rate of \$140; and
6.5 hours at the rate of \$150;
- l. **Emily Baxter**, paralegal at the firm, who billed .5 hours at the rate of \$135;
- m. **Ricky McCann**, paralegal at the firm, who billed .4 hours at the rate of \$140; and
2.1 hours at the rate of \$175;
- n. **Chris Wilhelm**, paralegal at the firm, who billed 6.5 hours at the rate of \$210;
- o. **Monica Switzer**, paralegal at the firm, who billed 2.4 hours at the rate of \$245;
- p. **Patti Miller**, private investigator/paralegal at the firm, who billed .4 hours at the rate of \$255.

17. I am informed, believe, and thereon allege that the qualifications of my attorney and paraprofessional colleagues set forth in the motion and this affidavit are accurate. I have based them on publicly available information displayed on Lewis and Roca's website and other official sources and documentation.

18. I did not set my hourly rate. I am informed and believe that my final hourly rate of \$495.00 reflects my partners' judgment that my skill, expertise, and reputation distinguish me as a leading litigator in Las Vegas. I graduated *cum laude* from Brigham Young University's J. Reuben Clark Law School in 2005. My practice has particular emphasis on complex corporate business litigation, arbitration, and mediation—including the representation of individual and corporate clients in the areas of commercial, construction, real estate, and fiduciary litigation. I am the author of several publications, including the chapter on Construction Defect Statutes in the *Nevada Civil Practice Manual* and the section on "Lateral and Subjacent Support; Party Walls" in a forthcoming Nevada Bar publication. I was named to *Nevada Business*' 2013 Legal Elite in the "Southern Nevada Best" category, and in the "Top 100" category in 2018-2019. I

1 have also been featured in *Mountain States Super Lawyers* for about the past ten years, including
2 2020. My final hourly rate of \$495.00 is within industry norms for someone of my caliber,
3 expertise, and experience.

4 19. **G. Warren Bleeker** is a partner at Lewis Roca. He is a summa cum laude graduate
5 of Emporia State University (1996) and a graduate of the University of California, Berkley,
6 School of Law (2000). Mr. Bleeker's final hourly rate of \$600 is within industry norms for
7 someone of his caliber, expertise, and experience.

8 20. **Justin Henderson** is a partner at Lewis Roca. He focuses his practice on
9 bankruptcy and assisted after HH petitioned for relief under the bankruptcy laws. He holds these
10 degrees: J.D., *summa cum laude*, Order of the Coif, Arizona State University - Sandra Day
11 O'Connor College of Law, 2008 and B.S., University of Arizona, 1998. He is a former clerk to a
12 justice on the Arizona Supreme Court. He has been featured in SuperLawyers for nearly a decade.
13 He is admitted to practice in Nevada and Arizona. Mr. Henderson's final hourly rate of \$470 is
14 within industry norms for someone of his caliber, expertise, and experience.

15 21. **Mike Koplow**, an associate at the firm, holds a J.D. from the New York University
16 School of Law and a Ph.D. in mechanical engineering from the University of California, Berkeley.
17 Mr. Koplow's final hourly rate of \$410 is within industry norms for someone of his caliber,
18 expertise, and experience.

19 22. **Abraham G. Smith** is a senior associate at Lewis Roca. He focuses his practice
20 on appellate work and works directly with Daniel F. Polsenberg, this state's preeminent appellate
21 lawyer. Mr. Smith holds these degrees: J.D., Duke University School of Law, 2013, *magna cum*
22 *laude*, *Order of the Coif*; LL.M., Duke University School of Law, 2013, *magna cum laude*, *Order*
23 *of the Coif*; B.M., Indiana University Jacobs School of Music, 2010, *with High Distinction*, *with*
24 *Honors*. Mr. Smith's final hourly rate of \$350 in within industry norms for someone of his
25 caliber, expertise, and experience.

26 23. **Brian Blakley** is a senior associate in Lewis Roca's litigation practice group,
27 where he focuses his practice on complex disputes, class actions, and multidistrict litigation. He
28 graduated in the top 10% of his class from Brigham Young University's J. Reuben Clark Law

1 School in 2013 and served as a law clerk to U.S. District Judge Robert C. Jones in the United
2 States District Court for the District of Nevada. He obtained his Nevada law license in 2013 and
3 has litigated numerous Nevada cases and complex discovery disputes since then. Additionally, he
4 regularly represents defendants in class actions in U.S. District Courts around the country. Mr.
5 Blakley is consistently named as one of “Southern Nevada’s Top Attorneys” and one of the “Best
6 Up and Coming Attorneys” in Nevada Business Magazine’s annual list of “Legal Elite.” Mr.
7 Blakley’s final hourly rate of \$375 is within industry norms for someone of his caliber, expertise,
8 and experience.

9 24. **Matthew Tsai** is a second-year associate in Lewis Roca’s litigation practice group.
10 Matthew Tsai graduated *cum laude* from the William S. Boyd School of Law. Mr. Tsai previously
11 served for two years as law clerk for the Honorable Ron Parraguirre at the Supreme Court of
12 Nevada. Mr. Tsai was named as one of “Southern Nevada’s Top Attorneys” in Nevada Business
13 Magazine’s annual list of “Legal Elite” for 2019. Mr. Tsai’s final hourly rate of \$275 is within
14 industry norms for someone of his caliber, expertise, and experience.

15 25. **Adrienne Brantley-Lomeli** is a third-year associate in Lewis Roca’s litigation
16 practice group. Ms. Brantley-Lomeli graduated *suma cum laude* from the William S. Boyd School
17 of Law. She previously served as an extern to the Honorable Ron Israel at the Eighth Judicial
18 District Court. Ms. Brantley-Lomeli’s final hourly rate of \$250 is within industry norms for
19 someone of his caliber, expertise, and experience.

20 26. **Erik J. Foley** is a four-year associate in Lewis Roca’s litigation practice group.
21 Mr. Foley graduated *suma cum laude* from the William S. Boyd School of Law. Mr. Foley was
22 recognized by the State Bar of Arizona for “the outstanding accomplishment of achieving the
23 highest score on the February 2018 Arizona Bar Examination.” Mr. Foley’s final hourly rate of
24 \$335 is within industry norms for someone of his caliber, expertise, and experience.

25 27. **Jessica Helm** is a Paralegal – Litigation Support Project Manager at Lewis Roca
26 who has worked in the legal services industry for over 10 years. She joined Lewis and Roca in
27 2012 and has worked on an array of matters, including bad faith insurance defense cases, medical
28 malpractice suits, and securities litigation. Jessica routinely provides support on high-profile cases

1 and matters with complex legal and discovery issues. She has specialized training and work
2 experience in appeals and eDiscovery. Jessica has a Bachelor of Science in Finance from the
3 University of Nevada, Las Vegas and is pursuing a Masters of Legal Studies from the University
4 of Illinois, Springfield. Ms. Helm's final hourly rate of \$150.00 is within industry norms for
5 someone of her caliber, expertise, and experience.

6 28. **Emily Baxter** is a paralegal at the firm with about five years' worth of experience.
7 Her rate of \$135 is within industry norms for someone of her caliber, expertise, and experience.

8 29. **Ricky McCann** is a paralegal at the firm with over 13 years of law firm
9 experience. His final rate of \$175 is within industry norms for someone of his caliber, expertise,
10 and experience.

11 30. **Chris Wilhelm** is a paralegal at the firm with over 10 years of experience in the
12 legal industry. His final rate of \$210 is within industry norms for someone of his caliber,
13 expertise, and experience.

14 31. **Monica Switzer** is a 34-year paralegal at the firm with vast legal experience. Her
15 rate of \$245 is within industry norms for someone of her caliber, expertise, and experience.

16 32. **Patti Miller** is a 23-year private investigator/paralegal at the firm and is a member
17 of the National Association of Legal Investigators. Her rate of \$255 is within industry norms for
18 someone of her caliber, expertise, and experience.

19 **THE OTHER BRUNZELL FACTORS**

20 33. The other three *Brunzell* factors to be considered by this Court in determining
21 whether Lewis and Roca's requested fee amount is reasonable and justified are as follows: (1) the
22 character of the work to be done: its difficulty, its intricacy, its importance, time and skill required,
23 the responsibility imposed; (2) the work actually performed by the lawyer: the skill, time and
24 attention given to the work; and (3) the result: whether the attorney was successful and what
25 benefits were derived.

26 34. The underlying matter entails the Bank obtaining a judgment in the original amount
27 of \$933,616.30, including fees and costs, against Mr. Foust in the Superior Court of Washington
28 in and for Walla Walla County (the "Judgment"), and the Bank, through the representation of

1 Lewis and Roca, domesticating the Judgment in the State of Nevada and enforcing it against Mr.
2 Foust. The Judgement now exceeds \$1.3 million as costs and interest continue to accrue.

3 35. When he applied for the loan that created the obligation that, when breached, led to
4 the Judgment, Mr. Foust represented that he owned a collection of 59 expensive, rare, and exotic
5 vehicles, including Corvettes, a Cadillac, Mercedes, Porsches, and Lamborghinis.

6 36. Almost immediately after this lawsuit began, Mr. Foust and Harry Hildibrand, LLC
7 (“HH”) insisted that the vehicles had been transferred to HH. Mr. Detwiler introduced himself as
8 a “managing director of HH.” (Decl. E. Detwiler, ¶ 2, attached to 3/2/18 Application for Hearing
9 within 10 Days on Third Party’s Claim of Interest in Property Levied Upon, on file herein.)

10 37. This declaration inaugurated a broad range of procedures during which Mr.
11 Detwiler testified extensively under oath concerning his role as HH’s manager and his dealings
12 with the vehicles. Specifically, Mr. Detwiler has given testimony under oath on four occasions: at
13 deposition ordered by this Court (July, 2018); during the Section 341 meeting of creditors during
14 HH’s bankruptcy (August, 2018); at the hearing resolving HH’s third party claim under NRS
15 31.070 (November, 2018); and during the contempt proceedings (April and May, 2019). He has
16 submitted many additional sworn statements.

17 38. This Court has previously found that Mr. Detwiler’s testimony is untrustworthy.
18 This made this lawsuit more expensive than was necessary. Mr. Detwiler’s multi-year campaign
19 to withhold information and hide the truth about the assets has greatly multiplied this case’s
20 difficulty, intricacy, time and skill required. *Gunderson*, 130 Nev. at 81, 319 P.3d at 615-16
21 (quoting *Brunzell*, 85 Nev. at 349, 455 P.2d at 33).

22 39. Furthermore, Mr. Detwiler’s actions and conduct “raised the stakes,” *see id.*,
23 because he single handedly represented an entity, HH, that claimed to own property that could be
24 used to satisfy the Judgment. Mr. Detwiler’s activities mutated this lawsuit from a debt collection
25 action into a fight over who controlled assets that then spawned into an obvious conspiracy to hide
26 assets, including through filing a spurious bankruptcy. Because of Mr. Detwiler’s involvement,
27 the lawsuit now had two defendants, Mr. Foust and HH (after the time it intervened under NRS
28 31.070). Mr. Detwiler’s participation effectively doubled the complexity of this case.

1 40. The “the work actually performed by the lawyer,” *Gunderson*, 130 Nev. at 81, 319
2 P.3d at 615-16 (quoting *Brunzell*, 85 Nev. at 349, 455 P.2d at 33) has covered the full range of
3 civil practice from pleadings to discovery to trial.

4 41. The Bank conducted extensive discovery of HH’s involvement, which included
5 directing a subpoena duces tecum to HH. This was notable because HH withheld obviously
6 relevant documents (car titles) under a bogus claim of attorney-client privilege. Mr. Detwiler also
7 had to be compelled to sit for his deposition. The Court ordered Mr. Detwiler to appear for his
8 deposition by a date certain after which a fine of \$1,000 per day was to be imposed. The Court
9 observed that “there has been gamesmanship on the part of HH.” (7/27/18 Order Resolving
10 Motion to Compel and Order Setting Future Hearing, on file herein.) This episode typified the
11 discovery process with HH, a constant battle of issues that should not have been complicated or
12 controversial. Mr. Detwiler appeared for a deposition thereafter. The Bank also deposed Mr.
13 Foust twice. Because the testimony of the two men conflicted, the depositions raised more
14 questions than they answered, and again spun the complexity of the case up beyond what should
15 have been necessary.

16 42. To resolve the issue of ownership, the Court conducted evidentiary hearings on six
17 different days (February 5, 15, 2018; March 7, 2018; April 18, 2018; July 31, 2018; and
18 November 5, 2018). The court conducted a contempt trial, in which Mr. Detwiler featured
19 prominently, over four days (April 1, 24, 2019; May 17, 21, 2019). Just since HH intervened
20 through Mr. Detwiler, the Court has conducted no fewer than 10 hearings with parties present—
21 and many, many more chambers hearings. The parties have filed over 90 papers, with the Bank
22 alone having submitted approximately 30 briefs or proposed orders and factual findings. While
23 the Bank has had just one law firm, three other fine firms or attorneys have represented Foust and
24 HH: Holland & Hart, Marquis Aurbach Coffing, Michael Mazur, and now Kolesar Leatham.
25 Newly appearing counsel have always requested extensions and continuances to come up to speed
26 and have sought reconsideration of prior decisions, which itself has significantly increased the
27 Court’s time and the parties’ costs. When summarizing this case, we are talking about thousands
28 of pages written and reviewed, many weeks in deposition and evidentiary hearings, and many days

1 in argument before the court. This lawsuit has been more procedurally complex than most and has
2 required the constant attention of Lewis Roca attorneys, and especially the undersigned.

3 43. The “results” or answering Brunzell’s call to report on whether “the attorney was
4 successful and what benefits were derived,” *Gunderson*, 130 Nev. at 81, 319 P.3d at 615-16
5 (quoting *Brunzell*, 85 Nev. at 349, 455 P.2d at 33), have been totally one-sided in favor of the
6 Bank and against Mr. Detwiler and HH. Both decisions resolving the ultimate questions in the
7 case (ownership and control of the vehicles and Mr. Detwiler’s and HH’s contempt) and
8 incremental decisions along the way (*e.g.*, motion to compel, motions for reconsideration) have
9 uniformly favored the Bank. We do not believe that HH or Mr. Detwiler have won a single
10 motion or prevailed on a single issue for the duration of this action. The most they have ever
11 succeeded in doing is securing continuances or reconsiderations of decisions that have, in the final
12 analysis, resolved in favor of the Bank. In the end, the Bank has succeeded in proving that HH,
13 acting through Mr. Detwiler, had the ability to deliver vehicles that could have partially satisfied
14 the Judgment, but that they committed contempt for failing to do so. This Court has imposed a
15 \$100,000 sanction against Mr. Detwiler personally. This is an unmitigated victory for the Bank.

16 44. In addition to the aforementioned work performed by Lewis and Roca, part of the
17 Supporting Documents that will be submitted to the Court’s chambers for *in camera* review entails
18 Lewis and Roca invoices that provide a complete itemization and description of all work
19 performed by Lewis and Roca attorneys and paraprofessional in connection with all of the
20 proceedings seeking to enforce the Order. Rather than burdening the Court by repeating the
21 details of those invoices here, the same are incorporated herein by reference. This matter is
22 ongoing: neither Mr. Detwiler, Foust, nor HH, has yet complied with this Court’s orders. In light
23 of the continuing nature of these proceedings, we will submit the Supporting Documents in
24 underacted form for *in camera* review only. Neither Mr. Foust nor Mr. Detwiler should be able to
25 obtain the Bank’s strategy notes so that he can further evade the consequences of the Judgment
26 and this Court’s turn over and contempt orders.

27 45. Finally, the Court is familiar with the quality of work performed by the attorneys
28 and paraprofessionals of Lewis and Roca, including the skill, time, and attention given to the

work. *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev., Adv. Op. 31, 416 P.3d 249, 259 n. 7 (2018) (“[T]he district court’s familiarity with the work quality of the parties’ attorneys and the submitted invoices permitted the district court to properly consider the *Brunzell* factors.”).

46. The Court, it bears emphasis, need not engage in a detailed, line-by-line analysis of time entries:

We emphasize, as we have before, that the determination of fees “should not result in a second major litigation.” The fee applicant . . . must, of course, submit appropriate documentation to meet “the burden of establishing entitlement to an award.” But trial courts need not, and indeed should not, become green-eyeshade accountants. *The essential goal in shifting fees . . . is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney’s time.* And appellate courts must give substantial deference to these determinations, in light of “the district court’s superior understanding of the litigation.” *We can hardly think of a sphere of judicial decision making in which appellate micromanagement has less to recommend it.*

Fox v. Vice, 131 S. Ct. 2205, 2216 (2011) (Kagan, J.) (emphasis added) (internal citations omitted). Indeed, if the number of hours worked is consistent the court’s “overall sense of [the] suit,” it should award fees accordingly. *See id.*

47. Accordingly, the *Brunzell* factors weigh in favor of this Court finding that Lewis and Roca’s requested fee amount is reasonable and justified.

LEWIS AND ROCA COST ADVANCES

48. Since this Court entered its Order on January 9, 2019, Lewis and Roca has advanced costs for the total amount of \$2,632.06, which are itemized with back-up for these costs and will be included in the Supporting Documents.

TOTAL AMOUNT SOUGHT BY LEWIS AND ROCA

49. Based on the foregoing, Lewis and Roca seeks a total of \$218,855.52, consisting of \$208,889.00 in attorney fees and \$9,966.52 in costs advanced.¹

¹ The Bank reserves the right to add all collection costs, including attorney fees, to the Judgment, in accordance with applicable law and the fee-shifting provision of the underlying contract giving rise to the Judgment. *See* 8/31/17 Notice of Filing of Foreign Judgment, on file herein (the original judgment stating that the “court retains jurisdiction to add attorneys’ fees and costs to the judgment amount beyond what are ordered as part of the motion, if any are incurred and sought by Baker Boyer in collecting on its judgment”).

50. Further your affiant saith naught.

Dated this 25th day of February, 2020.

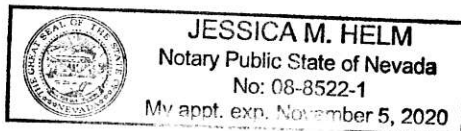

John E. Bragonje

STATE OF NEVADA)
COUNTY OF CLARK) ss:

On this 25th day of February, 2020, personally appeared before me, a Notary Public, in and for said County and State, John E. Bragonje, known to me to be the person described, and executed the foregoing instrument in the capacity set forth therein, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

SUBSCRIBED and SWORN to before me
this 25th day of February, 2020.

Notary Public in and for said
County and State



1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed and served
3 the foregoing document entitled "*Affidavit of John E. Bragonje In Support of Lewis and Roca*
4 *Attorney Fees and Costs Incurred in Connection with Mr. Detwiler and Harry Hildibrand,*
5 *LLC*" through the court's electronic filing system on all registered parties in this case.

6 Michael D. Mazur, Esq.
7 **MAZUR & BROOKS**
8 **A PROFESSIONAL CORPORATION**
9 2355 Red Rock Street, Suite 100
10 Las Vegas, NV 89146

11 *Attorneys for Defendant James Patterson Foust, Jr.*

12 Brenoch Wirthlin, Esq.
13 Amanda K. Baker, Esq.
14 **KOLESAR & LEATHAM**
15 400 South Rampart Boulevard, Suite 400
16 Las Vegas, NV 89145
17 *Attorneys for Edward Detwiler*

18 DATED this 25th day of February, 2020.

19 /s/ Luz Horvath
20 An employee of Lewis Roca Rothgerber Christie LLP
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EXHIBIT 10



**DISTRICT COURT
CLARK COUNTY, NEVADA**

Foreign Judgment

COURT MINUTES

March 17, 2020

A-17-760779-F	Baker Boyer National Bank, Plaintiff(s) vs. James Foust, Jr., Defendant(s)
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March 17, 2020	10:00 AM	All Pending Motions
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HEARD BY: Scotti, Richard F.	COURTROOM: Chambers
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COURT CLERK: Elizabeth Vargas

PARTIES Minute Order- No parties present.
PRESENT:

JOURNAL ENTRIES

- STATUS CHECK: ORDER RE SANCTIONS MOTION TO SEAL SUPPORTING DOUCMENTS TO AFFIDAVIT OF JOHN E. BRAGONJE IN SUPPORT OF LEWIS AND ROCA ATTORNEYS FEES AND COSTS INCURRED IN CONNECTION WITH MR. DETWILER AND HARRY HILDIBRAND, LLC

The Court GRANTS Plaintiff's Attorney's Fees and Costs in the amount of \$208,889 in fees, and \$9,966.52 in costs. The Court has considered the Brunzell factors as discussed in Plaintiff's brief. Mr. Detwiler had the actual ability to comply with this Court's Order of January 9, 2019. From that point forward, he certainly was a party.

The Court GRANTS Plaintiff's Motion to Seal Supporting Documents.

The Court also reviewed Mr. Detwiler's competing Order regarding the January 30, 2020 and February 18, 2020 hearings. The Court finds Plaintiff's proposed Order to more accurately reflect the referenced proceedings. According, the Court declines to strike, or otherwise invalidate, the signed Order filed on March 12, 2020 and VACATES the March 20, 2020 Status Check. Plaintiff to prepare the Order.

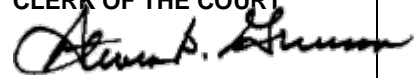
CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Elizabeth Vargas, to all registered parties for Odyssey File & Serve. //ev 3/17/20

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EXHIBIT 11

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



OPPM

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State Bar No. 9519
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Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually,
and his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**OPPOSITION TO NON-PARTY
EDWARD DETWILER'S MOTION
TO STAY EXECUTION OF ORDER
FOR SANCTIONS PENDING
APPEAL AND TO WAIVE
SUPERSEDEAS BOND**

Date: March 30, 2020

Time: 9:00 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion presents three principal issues, each of which, when considered, resolves in Baker Boyer National Bank's (the "Bank") favor. This Court should deny this motion for the following reasons.

First, granting a stay without bond is exceptionally rare and should occur only where a district court has absolute confidence that the judgment debtor will be able to promptly pay the full judgment, with interest, after an unsuccessful appeal. Here, Mr. Detwiler freely admits he lacks the funds to procure a bond or pay the judgment. This is fatal. Inability to pay a judgment due to a party's financial condition weighs in favor of *requiring* a bond, not waiving that requirement.

1 Second, the five *Nelson v. Heer* factors, which this Court must consider determining
2 whether to reduce the amount of the bond or allow alternate security, essentially ask
3 whether a judgment creditor can anticipate an easy route to collect its judgment. Here, Mr.
4 Detwiler has engaged in studied and protracted disregard of this Court's orders, which led
5 to his being held in contempt. Contumacious litigants merit no leniency. We have new
6 evidence of this even since our last appearance that we will present in this paper.

7 Finally, to secure a stay of execution under *Hansen v. District Court*, a debtor must
8 show that an appeal would be pointless without it. A debtor cannot simply argue that she
9 will lose money if the judgment is enforced. Enforcing the judgment is the whole point of
10 a civil action. Though a party can choose to appeal, the appeal does not stop enforcement
11 of the judgment. Despite this, Mr. Detwiler complains that he will be "irreparably
12 harmed" simply because he claims he cannot afford a bond premium and because he
13 claims he could never pay a judgment anyway. Once again, such talk militates against, not
14 in favor of, a stay.

15 **II. STANDARD**

16 Generally, a stay of the judgment lasts just 30 days; after that, the prevailing party
17 may execute on the judgment. NRCP 62(a).

18 Pursuant to NRCP 62(d), when an appeal is taken the appellant, by giving a
19 supersedeas bond, may obtain a stay. NRCP 62(d). Bond and stay applications are
20 normally initiated in the district court. NRAP 8(a).

21 **III. MR. DETWILER IS NOT ENTITLED TO A TOTAL SUPERSEDEAS BOND** 22 **WAIVER**

23 The normal way to stay a money judgment is to post a supersedeas bond in an
24 amount that fully secures the judgment, plus any post-judgment interest, through the
25 duration of the appeal. NRCP 62(d). Such a bond protects the judgment creditor pending
26 an appeal, while maintaining the status quo for the judgment debtor. Allowing a party to
27 stay execution of the judgment without posting any bond whatsoever usually violates those
28 principles because it leaves the judgment creditor without protection. So a stay without

1 bond is exceptionally rare and should occur only where a district court has absolute
2 confidence that the judgment debtor will be able to promptly pay the full judgment, with
3 interest, after an unsuccessful appeal. Mr. Detwiler cannot demonstrate any of these
4 factors. A total waiver of the bond would not protect the Bank's right to its judgment.

5 **A. Mr. Detwiler Has Totally Failed to Demonstrate His Ability to Pay in**
6 **the Event of an Unsuccessful Appeal**

7 The purpose of security for a stay pending appeal is to protect the judgment
8 creditor's ability to collect the judgment if it is affirmed by preserving the status quo and
9 preventing prejudice to the creditor arising from the stay. *Nelson v. Heer*, 121 Nev. 832,
10 835, 122 P.3d 1252, 1254 (2005). Inability to pay a judgment due to a party's financial
11 condition weighs in favor of *requiring* a bond, not waiving that requirement. *Avirgan v.*
12 *Hull*, 125 F.R.D. 185, 187 (S.D. Fla. 1989) (requiring a supersedeas bond because
13 uncertain financial condition defeats the contention that a bond is unnecessary or
14 alternative collateral properly could be posted); *see also In re Carlson*, 224 F.3d 716, 719
15 (7th Cir. 2000) (denying total waiver of bond and holding lack of confidence that party will
16 eventually pay required bond). Total waiver of the bond requirement should be permitted
17 only where the appellant has a clearly demonstrated ability to satisfy the judgment in the
18 event the appeal is unsuccessful and there is no other concern that the other party's rights
19 will be compromised by a failure to adequately secure the judgment. *In re Carlson*, 224
20 F.3d 716, 719 (7th Cir. 2000); *see also Fowler ex rel. Fowler v. Unified Sch. Dist. No. 259*,
21 907 F. Supp. 348, 351 (D. Kan. 1995) (waiving bond because the party had a well-funded
22 risk management fund which could be easily accessed if the judgment was affirmed and
23 had an effective procedure for paying the judgment within thirty days following
24 completion of appellate proceedings), *rev'd on other grounds*, 107 F.3d 797 (10th Cir.
1997).

25 **B. Mr. Detwiler's Candid Admission that He Cannot Pay the Judgment**
26 **Dooms His Request**

27 Mr. Detwiler has not demonstrated his ability to satisfy the judgment in the event of
28 an unsuccessful appeal. In fact, his attorney argues the total opposite. Mr. Detwiler, we

are frankly told, “does not have the ability to pay the judgment or the bond associated with it.” (Mot. to Stay, 5:18-19.) Mr. Detwiler repeats this confession again and again in his papers. Mr. Detwiler’s insistence that he is financially insecure negates his argument that a total waiver of a bond is warranted. His admission, in fact, ends the analysis. Accordingly, this Court should deny a stay of execution without the posting of a supersedeas bond in the full amount of the judgment.

IV. MR. DETWILER IS NOT ENTITLED TO A REDUCED BOND AMOUNT

Mr. Detwiler also requests the amount of his supersedeas bond be reduced to just \$500. (Mot. to Stay, 6:5-7.) Nevada’s *Nelson* decision forbids this.

A. The *Nelson* Factors Do Not Weigh in Favor of Reducing Mr. Detwiler’s Bond Amount

To determine whether to reduce or require an alternative to a bond a district court considers five factors: (1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant’s ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position. *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005). *Nelson* gives the district court to discretion to allow “reliable alternative” for security. 121 Nev. at 835, 122 P.3d at 1254. The ultimate goal is to provide security that will maintain the status quo and protect the judgment creditor pending an appeal. 121 Nev. at 835-26, 122 P.3d at 1254. Mr. Detwiler cannot show that the factors weigh in favor of allowing a stay of execution of judgment with a reduced bond amount. Accordingly, the Court should deny this motion.

1. *Complexity of the Collection Process*

A Court may waive or provide an alternative for the security if the collection process for the alternative is simple. *See Dillon v. City of Chicago*, 866 F.2d 902, 905 (7th

1 Cir. 1988) (waiving bond requirement where City submitted affidavits to the district court,
2 which the plaintiff did not dispute, outlining the mode of payment of employment
3 discrimination judgments). The order Mr. Detwiler claims he will appeal arose after more
4 than one full year of contempt proceedings. The entire record and history of this case
5 compel the conclusion that future collection will be—as it has been in the past—
6 surpassingly difficult.

7 Indeed, just since the last time we were before this Court, the Bank has learned of
8 additional malfeasance. Harry Hildibrand, LLC (“HH”) (necessarily with the cooperation
9 or authorization of its only agents, Mr. Foust and/or Mr. Detwiler) auctioned two of the
10 cars that are the subject of this Court’s orders, a 1951 Jaguar XK120 and a 1971
11 DeTomaso Pantera, which collectively fetched \$132,000 in August, 2019. (*See* email from
12 Mr. D. Alcazar, CEO of Russo & Steel, Ex. 1 hereto.) The auction house indicated the cars
13 came from HH. (*Id.*) This auction occurred, of course, well after this Court’s turnover
14 order (January, 2019), after the contempt trial (April and May, 2019), and even after the
15 final contempt order had issued against Mr. Foust (June, 2019). Critically, the auction
16 occurred before Mr. Detwiler claims he resigned as HH’s manager on or about September
17 20, 2019.¹ The Bank expects to develop more evidence like this as it continues its efforts
18 to locate and seize the vehicles.

19 The Bank should just collect its judgment against Mr. Foust, Mr. Detwiler urges,
20 making collection simple. (Mot. to Stay, 7:11-16.) This is a false choice. The Bank now
21 has two independent orders or judgments to collect, one against Mr. Detwiler and HH
22 (\$318,855.52), on the one hand, and one against Mr. Foust and his marital community
23 (almost \$1.4 million), on the other hand. Mr. Detwiler seeks a bond reduction, not Mr.
24 Foust, so Mr. Detwiler must speak to the collectability of his separate, unique judgment.
25 His motion does not even attempt that analysis. Further, Mr. Detwiler fails to articulate
26 how a reduced bond amount would allow for a more simple collection process. Therefore,

27 ¹ While Mr. Detwiler claimed he resigned as HH’s manager on September 10, 2019, this
28 Court ruled that the resignation was effective no earlier than February 11, 2020. (*See*
3/12/20 Order Awarding Sanctions, ¶ 18, on file herein.) Either way, Mr. Detwiler was in
charge of HH at the time of this order-flouting auction.

1 this factor weighs in favor of denying a stay of execution with a reduced bond.

2 **2. *The Amount of Time Required to Obtain the Judgment***

3 A Court may waive or reduce a bond where the judgment will still be obtained
4 promptly. *Dillon*, 866 F.2d at 905 (holding a bond was not required where the entire
5 process of payment of the judgment and fees and costs would take less than thirty days,
6 and was guaranteed to be paid from a dedicated fund). Mr. Detwiler fails to demonstrate
7 how a reduced bond amount would allow the Bank to recover its judgment promptly.
8 Conversely, a reduced bond amount (the \$500 requested) would permit the Bank to recover
9 only a fraction—far less than one percent—of the judgment in a timely manner. The Bank
10 would then have to spend a considerable amount of time attempting to collect the
11 additional 99.99 percent of the judgment. Given that Mr. Detwiler personally contributed
12 to this unnecessarily long collection process, as this Court has recorded in its two orders
13 holding him in contempt, this factor weighs in favor of denying a stay of execution without
14 a bond or with a reduced bond.

15 **3. *There is a lack of confidence in Mr. Detwiler's ability to pay***

16 Where a court lacks confidence in a party's ability to pay, the party should post a
17 bond for the full value of the judgment. *In re Carlson*, 224 F.3d 716, 719 (7th Cir. 2000).
18 Mr. Detwiler's motion generally, and his argument on for this *Nelson* factor specifically
19 (see Mot. to Stay, 8:13-28), freely admit that he "has no ability to pay this now or even any
20 foreseeable ability to pay in the future." (*Id.*) In other words, Mr. Detwiler explicitly
21 concedes that he has no grounds to reduce or eliminate the bond requirement under *Nelson*.
22 This factor weighs in favor of denying a stay of execution without a bond or with a
23 reduced bond.

24 **4. *Mr. Detwiler's ability to pay the judgment is not plain***

25 Parties who demonstrate a clear ability to satisfy the judgment in the event the
26 appeal is unsuccessful are entitled to reliable alternative to a full bond. *In re Carlson*, 224
27 F.3d at 719; see also *Fowler*, 907 F. Supp. at 351. For instance, the court in *Avirgan v.*
28 *Hull*, noted that where a party would have difficulty maintaining the same state of

1 solvency through the appellate process, the court must require the movant to post a
2 supersedeas bond. 125 F.R.D. at 187. Further, the *Dillon* court, the inspiration for our
3 *Nelson* decision, allowed a waiver of the bond where a dedicated fund existed that
4 guaranteed payment. 866 F.2d 902 at 905.

5 Here again, Mr. Detwiler writes this opposition for us. He says of this *Nelson* factor
6 that, “[a]s mentioned above,” he “does not have the ability to pay the sanctions and
7 attorneys’ fees, nor does he have the ability to pay for a supersedeas bond.” (Mot. to Stay,
8 8:21-22.) This factor, too, weighs in favor of denying a stay of execution without a bond
9 or with a reduced bond.

10 **5. *Mr. Detwiler has not proven a precarious financial***
11 ***situation affecting other creditors***

12 A precarious financial situation includes the inability to remain in the same state of
13 solvency throughout the appeal. *Avirgan*, 125 F.R.D. at 187. Mr. Detwiler admits to no
14 other creditors. His counsel makes the naked claim that posting a supersedeas bond “will
15 impair his ability to pay other creditors and debts, *if any*.” (Mot. to Stay, 13:12-13
16 (emphasis supplied).) Counsel’s argument is not competent evidence of solvency or risk to
17 other creditors. *See* EDCR 2.21 (requiring “factual contentions involved in any pretrial or
18 post-trial motion” to be supported by declaration, affidavit, deposition answer, and written
19 discovery responses); *Nevada Ass’n Servs., Inc. v. Dist. Ct.*, 130 Nev. 949, 957, 338 P.3d
20 1250, 1255 (2014) (“Arguments of counsel, however, are not evidence and do not establish
21 the facts of the case.”).

22 This is especially so when the counsel’s argument on its face establishes that there
23 *are* no other creditors for whom a bond might be destabilizing. Our rules of civil
24 procedure do not permit the waiving of even something as trifling as filing fees without a
25 sworn affidavit to proceed in forma pauperis. NRS 12.015. This Court must forbid Mr.
26 Detwiler’s gambit to breeze by this *Nelson* prong with one sentence of counsel argument.

27 **V. MR. DETWILER IS NOT ENTITLED TO A STAY**

28 In deciding whether to issue a stay, a court generally considers (1) whether the

1 object of the appeal or writ petition will be defeated if the stay is denied; (2) whether
2 appellant will suffer irreparable or serious injury if the stay is denied; (3) whether
3 respondent will suffer irreparable or serious injury if the stay is granted; and (4) whether
4 appellant is likely to prevail on the merits in the appeal or writ petition. *Hansen v. Dist.*
5 *Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000).

6 **A. The Object of Mr. Detwiler's Appeal Will Not be Defeated**

7 The object of Mr. Detwiler's appeal will not be defeated if a stay is denied. *Cf.*
8 NRAP 8(c)(1). For this factor to apply, the denial of a stay would have to make "any
9 victory on appeal . . . hollow." *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252,
10 89 P.3d 36, 39 (2004); *Hansen*, 116 Nev. at 658, 6 P.3d at 986. Here, however, no
11 appellate issues depend on a stay; if they were preserved at trial, they can be raised on
12 appeal, even if the Bank in the meantime executes on the judgment. The judgment against
13 Mr. Detwiler involves an award of money. If a stay is denied Mr. Detwiler will merely be
14 required to comply with the judgment. Accordingly, the object of the appeal will still be
15 intact.

16 **B. Mr. Detwiler Will Not Suffer Irreparable Harm**

17 Mr. Detwiler would not suffer irreparable or serious injury if the stay is denied.
18 "Mere injuries, however substantial, in terms of money . . . necessarily expended in the
19 absence of a stay are not enough" to show irreparable harm. *Hansen*, 116 Nev. at 658, 6
20 P.3d at 987 (quoting *Wisconsin Gas Co. v F.E.R.C.*, 758, F.2d 699, 674 (D.C. Cir 1985)).

21 Despite this universally recognized standard, Mr. Detwiler casts his supposed harm
22 exclusively in financial terms. "Paying for a supersedeas bond in the full amount," Mr.
23 Detwiler contends, would interfere with his "ability to prosecute the appeal." (Mot. to
24 Stay, 12:19-19.) Alleged financial hardship is simply not a recognized "irreparable harm"
25 under Nevada law (or the decisions of other jurisdictions for that matter).

26 Mr. Detwiler also again conjures the false narrative of a double recovery. The Bank
27 cannot "double-dip" by collecting the judgment against Mr. Foust and Mr. Detwiler, he
28 complains. The Bank has two judgments now; it can lawfully collect both. That is not

double recovery. There is no irreparable harm on this score, either.

C. In Contrast, the Bank Will Suffer Irreparable Harm

There will be a serious risk of injury to the Bank if Mr. Detwiler's stay is granted. Mr. Detwiler stands in contempt of this Court. He actively frustrated the Bank's efforts to collect the underlying debt for years. This Court ultimately concluded that Mr. Detwiler and HH followed a contumacious, conscious, willful, and deliberate policy throughout this litigation of cynical disregard and disdain of this Court's orders, particularly the order to turnover and surrender certain vehicles to the Bank, as detailed in the Court's order and judgment of January 9, 2019, all of which this Court memorialized in two lengthy orders issued on January 30, 2020, and March 12, 2020. To stay the execution now would exonerate Mr. Detwiler when he has repeatedly demonstrated his refusal to be forthcoming and honest. A stay would only embolden a known bad actor. Thus, this factor weighs in favor of denying a stay of execution.

D. Mr. Detwiler Has Failed to Show That He Is Likely to Prevail on the Merits

When moving for a stay pending an appeal or writ proceedings, the movant must present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay. *Hansen*, 116 Nev. at 659, 6 P.3d at 987.

Mr. Detwiler presents no new argument on this critical point. Instead, Mr. Detwiler merely recycles the issues he claims he will present on appeal from his prior briefs. Contempt orders are reviewed under the difficult abuse of discretion standard. *See In re Water Rights of the Humboldt River*, 118 Nev. 901, 906–07, 59 P.3d 1226, 1229–30 (2002) (explaining that the district court has “inherent power to protect dignity and decency in its proceedings, and to enforce its decrees” and because it has particular knowledge of whether contemptible conduct occurred, its contempt decisions are reviewed for an abuse of discretion). Mr. Detwiler fails to discuss how he will overcome the years-long evidentiary record against him under the applicable standard. Accordingly, this factor

1 weighs in favor of denying a stay of execution without any bond.

2 Mr. Detwiler has not been candid with the Court, none of the *Hansen* factors weigh
3 in his favor, and, accordingly, he is not entitled to a stay of execution without a bond.

4 **VI. CONCLUSION**

5 Mr. Detwiler presents no compelling reasons to grant a stay of execution or a total
6 waiver of the normal bond requirement. This Court should deny a stay pending appeal and
7 require Mr. Detwiler to post a bond or, failing that, to be subject to execution.

8 DATED this 27th day of March, 2020.

9 LEWIS ROCA ROTHGERBER CHRISTIE LLP

10 By: /s/ John E. Bragonje

11 John E. Bragonje

12 State Bar No. 9519

13 jbragonje@lrrc.com

14 3993 Howard Hughes Parkway, Suite 600

15 Las Vegas, NV 89169

16 *Attorneys for Plaintiff Baker Boyer National Bank*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed and
3 served the foregoing document entitled “**OPPOSITION TO NON-PARTY EDWARD**
4 **DETWILER’S MOTION TO STAY EXECUTION OF ORDER FOR SANCTIONS**
5 **PENDING APPEAL AND TO WAIVE SUPERSEDEAS BOND**” through the Court’s
6 electronic filing system on all parties on the Court’s e-service list.

7
8 Michael D. Mazur, Esq.
9 **MAZUR & BROOKS**
10 **A PROFESSIONAL CORPORATION**
11 2355 Red Rock Street, Suite 100
12 Las Vegas, NV 89146
13 *Attorneys for Defendant James Patterson Foust, Jr.*

14 Brenoch Wirthlin, Esq.
15 **HUTCHISON & STEFFEN, PLLC**
16 Peccole Professional Park
17 10080 W. Alta Drive, Suite 200
18 Las Vegas, NV 89145
19 bwirthlin@hutchlegal.com
20 *Attorneys for Edward Detwiler*

21 **The following served via U.S. Mail:**

22 **HARRY HILDIBRAND, LLC**
23 c/o Registered Agent
24 Jared S. Heggen
25 3011 American Way
26 Missoula, MT 59808

27 **HARRY HILDIBRAND, LLC**
28 c/o Registered Agent
Jared S. Heggen
P.O. Box 16270
Missoula, MT 59808

DATED this 27th day of March, 2020.

/s/ Luz Horvath
An employee of Lewis Roca Rothgerber Christie LLP

Exhibit 1

Exhibit 1

DECLARATION OF JOHN E. BRAGONJE

I, John E. Bragonje, hereby swear under penalty of perjury of the laws of the State of Nevada that the following statements are true to the best of my knowledge and belief:

1. I am an attorney licensed to practice law in the State of Nevada and am a partner of the law firm of LEWIS ROCA ROTHGERBER CHRISTIE LLP. I am counsel to the plaintiff and judgment creditor Baker Boyer National Bank (the "Bank") in the lawsuit styled *Baker Boyer National Bank v. Foust*, Clark County, Nevada, district court case number A-17-760779-F.

2. As part of the Bank's continuing efforts to repossess the vehicles at issue in this lawsuit, I sent, on or about March 13, 2020, notice to certain auction houses that the Bank has recently learned were potentially doing business with Mr. Foust, Harry Hildibrand, LLC, and/or Mr. Detwiler. A true and correct copy of the correspondence is attached hereto as Exhibit "B."

3. One of the addressees, Russo & Steele, responded through an email sent by its CEO and owner, Drew Alcazar. A true and correct copy of this correspondence is attached hereto as Exhibit "A."

4. The letter and email attached to this declaration and true and correct copies of the originals.

5. Further your declarant saith naught.

DATED this 27th day of March, 2020.

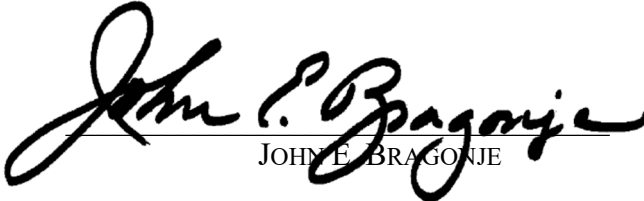

JOHN E. BRAGONJE

Exhibit A

Exhibit A

Bragonje, John

From: Drew Alcazar <Drew@russoandsteele.com>
Sent: Tuesday, March 17, 2020 2:11 PM
To: Bragonje, John
Cc: 'golexa@jsslaw.com'
Subject: FW: Notice Letter re: James P. Foust
Attachments: 20200316145902247.pdf

[EXTERNAL]

Dear Mr. Bragonge,

Our Law Firm forwarded your correspondence attached.

Please be kindly advised – of the vehicles listed the Exhibits, this is the past disposition relating to Russo and Steele:

6438 - Monterey Auction, August 2006 (Show No sale)

6438		1957	Chevrolet	Bel Air	Convertible
------	--	------	-----------	---------	-------------

8098 - Monterey Auction, August 2019 (Showing sold)

8098	TH263	1971	DeTomaso	Pantera	Coupe
------	-------	------	----------	---------	-------

6444 - Monterey Auction, August -2006 (Showing No Sale) - RECONSINGED 8097 – Monterey Auction, August – 2019 (Showing Sold)

6444		1951	Jaguar	XK 120	Roadster
------	--	------	--------	--------	----------

Consignment Number 8098 – 1971 DeTomaso Pantera Coupe, Sold for \$65,000.00 and 8097 – 1951 Jaguar XK120, Sold for \$67,000.00.

Both vehicles were Titled to Harry Hildibrand LLC. Provided State of Montana Titles were free of any liens or recorded encumbrances.

Should you require any further information, please contact me directly.

Sincerely,
Drew

Andrew M. Alcazar
CEO/Owner
Russo and Steele, LLC

Collector Automobile Auctions
7722 East Gray Road, Suite C
Scottsdale, AZ 85260

www.russoandsteele.com

O: 602-252-2697 ext. 321

F: 602-252-6260



Confidential Statement:

This e-mail and any files transmitted with it are the property of the Russo and Steele, LLC. and/or its affiliates, are confidential, and are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this e-mail in error, please notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing or copying of this e-mail is strictly prohibited.

From: Olexa, Garrett <GOlexa@jsslaw.com>

Sent: Monday, March 16, 2020 2:08 PM

To: Drew Alcazar <Drew@russoandsteele.com>

Subject: Notice Letter re: James P. Foust

Drew,

Please review the attached letter and the enclosures accompanying the same which was received in our office today.

Garrett J. Olexa

golexa@jsslaw.com

[vCard](#) | [bio](#)

P 602.262.5863 | **F** 602.495.2683

Jennings, Strouss & Salmon, P.L.C.

16150 North Arrowhead Fountains Center Drive, Suite 250

Peoria, AZ 85382-4754

jsslaw.com | [map](#)



Kindly consider the environment before printing this email.

This electronic mail is intended to be received and read only by certain individuals. It may contain information that is attorney-client privileged or protected from disclosure by law. If it has been misdirected, or if you suspect you have received this in error, please notify me by replying and then delete both the message and reply. Thank you.

Exhibit B

Exhibit B

Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, NV 89169

702.949.8200 main
702.949.8398 fax
lrrc.com

John Bragonje
Partner
Admitted in Nevada
(702) 474-2625 direct
(702) 216-6173 fax
JBragonje@lrrc.com

March 13, 2020

Our File Number: 21322-00108

VIA U.S. MAIL
VIA E-MAIL (JIMLEZIE@GMAIL.COM; TOMLARKIN28@GMAIL.COM)

CONFIDENTIAL

James Philip Lezie
2512 Artesia Blvd., Ste. 210
Redondo Beach, CA 90278-3280

Tom Larkin
12250 Corte Sabio, Number 2201
San Diego, CA 92128

Barrett-Jackson Auction Company, L.L.C.
Attn: Legal Department
c/o Capitol Corporate Services, Inc.
8825 N. 23rd Ave., Suite 100
Phoenix, AZ 85021

Russo and Steele, LLC
Attn: Legal Department
c/o Jennings Strouss & Salmon PLC 16150
N. Arrowhead Fountains Center Dr., Ste 250
Peoria, AZ 85382

Attn: Legal Department
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

**RE: FRAUD ALERT AS TO VEHICLES PURPORTEDLY OWNED BY JAMES P. FOUST;
NAOMI FOUST; HARRY HILDIBRAND, LLC; STARDUST CLASSIC, LLC; OR RON
VEGA**

To Whom It May Concern:

The purpose of this letter is to warn you about a case of fraud that may affect your businesses. We respectfully request that you refuse any dealings with respect to vehicles listed in Exhibit 1 to this letter because they are stolen. We provide additional details below and welcome any inquiries you may have.

We Are Attorneys Representing a Bank that Now Owns the Vehicles.

We represent Baker Boyer National Bank (the "Bank"). James P. Foust received a loan in the original amount of \$1,077,600 from the Bank. After his refusal to repay the loan, the Bank obtained a judgment in Washington State on July 20, 2017. The judgment is against both Mr. James P. Foust and his marital community and is presently valued at approximately \$1.4 million. The judgment was later registered or enrolled in the courts of the States of Nevada and California on August 31, 2017, and April 12, 2018, respectively.

The Vehicles Were Ordered to Be Surrendered to the Bank to Satisfy a Judgment.

When he applied for the loan, Mr. Foust represented to the Bank that he owned a collection of 59 expensive, rare, and exotic vehicles, including Corvettes, Shelby Cobras, a Cadillac, Mercedes, Porsches, and Lamborghinis. In response to court orders to turn over the vehicle collection to satisfy the judgment, Mr. Foust claimed he had sold all vehicles to an entity called Harry Hildibrand, LLC and other third parties or that a company called StarDust Classic, LLC or a person called Ron Vega possessed the cars. The Nevada court conducted multiple trials over the next two years to resolve these issues and the competing claims to the cars. Ultimately, the Nevada court ruled that Mr. Foust had lied repeatedly under oath and had engaged in fraudulent dealings designed to frustrate the Bank's lawful collection efforts. The court ruled that Mr. Foust still possessed and controlled all the vehicles and ordered him and his agents—Harry Hildibrand and its manager Mr. Edward Detwiler, StarDust, and Ron Vega—to surrender all vehicles to the Bank.

When these defendants refused to obey the court's orders, they were held in contempt: Mr. Foust was ordered to be incarcerated until he complied, and Mr. Detwiler was personally fined \$100,000. These persons are the worst kinds of scofflaws and frauds; activities such as theirs make lending more expensive for everyone. A list of the vehicles ordered to be surrendered is included as Exhibit 1 to this letter. We collect the surrender order and the contempt orders in Exhibit 2.

Mr. Foust and His Associates Continue to Defy Court Orders.

We are given to understand that despite the court's repeated orders over many years, Mr. Foust's wife, Naomi Foust, and potentially certain other of Mr. Foust's associates involved in the proceedings, intend to sell the vehicles that are the subject of the court's turn over and contempt orders. We understand that Mr. Foust has previously done business with Russo and Steele and The Hagerty Group, LLC. We believe these persons may intend to use other auction houses such as Barret Jackson. Given the extensive campaign of fraud waged by Mr. Foust, Mr. Detwiler, and their associates, we are writing to ask that you refuse to do any business with respect to these vehicles, including insuring them or offering them for sale or auction at any time. We ask that you cooperate, as responsible corporate citizens, so that the Bank may continue the lawful repossession of this collateral. The Bank intends to sue any alleged transferee of these cars to quiet title in its name, to recover damages for fraudulent transfer, and any other appropriate remedy.

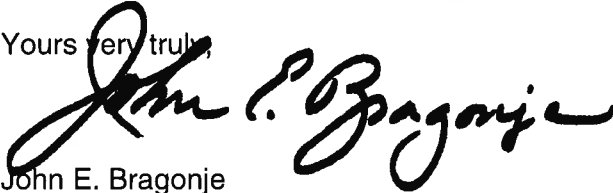
The Bank Issues a Separate Warning for Mr. Foust's Associates.

Quite separately, we warn the other individual persons addressed in this letter—not the businesses. We know from the Nevada court proceedings that you, Mr. Lezie and Mr. Larkin, have assisted Mr. Foust and Mr. Detwiler in their multi-year campaign of deception. The Bank will exercise all lawful means to hold you personally accountable for any continued cooperation in this conspiracy, including any continuing attempt to sell or abscond with the vehicles. We think by now you understand the Bank's resolve, so you know this is no idle comment.

Conclusion.

We thank you businesses for your attention and anticipated cooperation. I can be reached at the contact information indicated in this letter. We would be pleased to address any concerns or questions you may have. Thank you for your anticipated cooperation.

Yours very truly,

A handwritten signature in black ink, appearing to read "John E. Bragonje". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

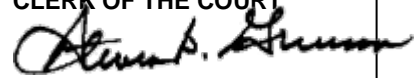
John E. Bragonje
Lewis Roca Rothgerber Christie LLP

JB

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EXHIBIT PAGE ONLY

EXHIBIT 12

HUTCHISON & STEFFEN
A PROFESSIONAL LLC



ORDR

John E. Bragonje
State Bar No. 9519
E-mail: jbragonje@lrrc.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: 702.949.8200
Fax: 702.949.8398

Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**ORDER DENYING EDWARD N.
DETWILER'S MOTION TO STAY
EXECUTION OF ORDER FOR
SANCTIONS PENDING APPEAL AND
TO WAIVE SUPERSEDEAS BOND**

Date: March 30, 2020

Time: 9:00 a.m.

ORDER

The motion of Edward N. Detwiler for an order imposing a stay of execution and waving the supersedeas bond requirement, which was filed on March 24, 2020, came on to be heard by the Court, with Brenoch R. Wirthlin of Hutchinson & Steffen, PLLC appearing as attorney for Mr. Detwiler, and John E. Bragonje of Lewis Roca Rothgerber Christie LLP, appearing as attorney for plaintiff and judgment creditor Baker Boyer National Bank (the "Bank"). The Bank opposed the motion in writing on March 27, 2020. The matter having been fully heard and submitted, the Court now denies the motion for the following reasons.

FINDINGS

1. Granting a stay without bond is exceptionally rare and should occur only where the Court has absolute confidence that the judgment debtor will be able to promptly pay the full judgment, with interest, after an unsuccessful appeal. NRCP 62(d). Here, Mr. Detwiler freely and repeatedly contends in his motion that he lacks the funds to procure a bond or pay the judgment.

1 Inability to pay a judgment due to a party's financial condition weighs in favor of *requiring* a
2 bond, not waiving that requirement.

3 2. The five *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005) factors,
4 which this Court considered in determining Mr. Detwiler's request to reduce the amount of the
5 bond or allow alternate security, essentially ask whether a judgment creditor can anticipate an easy
6 route to collect its judgment. Here, Mr. Detwiler has engaged in studied and protracted disregard
7 of this Court's orders, which led to his being held in contempt, all as memorialized in this Court's
8 orders through the years and most recently in the orders holding Mr. Detwiler in contempt and
9 imposing sanctions, which issued on January 30, 2020, and March 12, 2020. Mr. Detwiler's
10 conduct has increased the risk that the Bank will not collect its debts. Contumacious litigants
11 merit no leniency of bonding or security requirements.

12 3. To secure a stay of execution under *Hansen v. District Court*, 116 Nev. 650, 657, 6
13 P.3d 982, 986 (2000), a debtor must in essence show that an appeal would be pointless without it.
14 A debtor cannot simply argue that she will lose money if the judgment is enforced. Enforcing the
15 judgment is the whole point of a civil action. Though a party can choose to appeal, the appeal
16 does not stop enforcement of the judgment. Mr. Detwiler asserts that he will be "irreparably
17 harmed" simply because he claims he cannot afford a bond premium and because he claims he
18 could never pay a judgment anyway. Once again, such talk militates against, not in favor of, a
19 stay.

20 4. The Court finds the arguments in the Bank's opposition generally persuasive and
21 the arguments in Mr. Detwiler's motion generally unpersuasive.

22 CONCLUSIONS

23 5. IT IS ORDERED that the motion of Mr. Detwiler is denied.

24 6. ADDITIONALLY IT IS FURTHER ORDERED that Mr. Detwiler shall post a
25 supersedeas bond in the amount of no less than \$350,000.00, or, failing that, be subject to
26 execution.

1 7. ADDITIONALLY IT IS FURTHER ORDERED that execution of the judgment
2 against Mr. Detwiler is stayed temporarily for a period of 45 days from notice of entry of this
3 order.

4 **IT IS SO ORDERED.**

5 Dated this 8th day of April, 2020

6
7
8 

9 DISTRICT COURT JUDGE
10 A-17-760779-F

BMT

11
12
13
14
15
16
17
18
19
20 Respectfully submitted,

21 LEWIS ROCA ROTHGERBER CHRISTIE
22 LLP

23 By: 

24 John E. Bragonje
25 State Bar No. 9519
26 jbragonje@lrrc.com
27 3993 Howard Hughes Parkway, Suite 600
28 Las Vegas, NV 89169

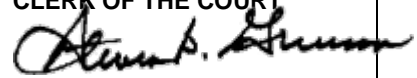
*Attorneys for Plaintiff Baker Boyer National
Bank*

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EXHIBIT PAGE ONLY

EXHIBIT 13

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



1 **SR**
2 John E. Bragonje
3 State Bar No. 9519
4 E-mail: jbragonje@lrrc.com
5 LEWIS ROCA ROTHGERBER CHRISTIE LLP
6 3993 Howard Hughes Pkwy, Suite 600
7 Las Vegas, NV 89169-5996
8 Tel: 702.949.8200
9 Fax: 702.949.8398

10 *Attorneys for Plaintiff/Judgment Creditor*
11 *Baker Boyer National Bank*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 BAKER BOYER NATIONAL BANK, a
15 Washington corporation,
16
17 Plaintiff/Judgment Creditor,

18 vs.

19 JAMES PATTERSON FOUST, JR., also
20 known as James P. Foust, Jr., individually, and
21 his marital community, if any,
22
23 Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**NOTICE OF SERVING SUBPOENA ON
EDWARD NEWLIN DETWILER**

24 Please take notice that on January 16, 2020, Edward Newlin Detwiler was served with a
25 Subpoena. Subpoena and Affidavit of Service is attached herewith.

26 DATED this 22nd day of January, 2020.

27 LEWIS ROCA ROTHGERBER CHRISTIE LLP

28 By: /s/ John E. Bragonje

John E. Bragonje
State Bar No. 9519
jbragonje@lrrc.com
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

*Attorneys for Plaintiff/Judgment Creditor Baker
Boyer National Bank*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed and served the
3 foregoing document entitled “**Notice of Serving Subpoena on Edward Newlin Detwiler**”
4 through the Court’s electronic filing system on all registered parties in this matter.

5 Michael D. Mazur, Esq.
6 **MAZUR & BROOKS**
7 **A PROFESSIONAL CORPORATION**
8 2355 Red Rock Street, Suite 100
9 Las Vegas, NV 89146
10 *Attorneys for Defendant James Patterson Foust, Jr.*

11 Via Email to:

12 Brenoch Wirthlin
13 **KOLESAR & LEATHAM**
14 400 S. Rampart Blvd., Ste. 400
15 Las Vegas, NV 89145
16 bwirthlin@knevada.com

17 DATED this 22nd day of January, 2020.

18 /s/ Luz Horvath

19 An employee of Lewis Roca Rothgerber Christie LLP
20
21
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24
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26
27
28

1 **CC03**

2 John E. Bragonje
3 State Bar No. 9519
4 E-mail: jbragonje@lrrc.com
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7 Las Vegas, NV 89169-5996
8 Tel: 702.949.8200
9 Fax: 702.949.8398

10 *Attorneys for Plaintiff Baker Boyer National Bank*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 BAKER BOYER NATIONAL BANK, a
14 Washington corporation,

15 Plaintiff/Judgment Creditor,

16 vs.

17 JAMES PATTERSON FOUST, JR., also
18 known as James P. Foust, Jr., individually, and
19 his marital community, if any,

20 Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

SUBPOENA – CIVIL

☒ **REGULAR** ☐ **DUCES TECUM**

21 **THE STATE OF NEVADA SENDS GREETINGS TO:**

22 EDWARD N. DETWILER

23 **YOU ARE HEREBY COMMANDED** that all and singular, business and excuses set
24 aside, you appear and attend on the 29th day of January, 2020, at the hour of 9:00 A.M. in
25 Department No. II of the District Court, Clark County, Nevada. The address where you are
26 required to appear is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your
27 attendance is required to give testimony and/or to produce and permit inspection and copying of
28 designated books, documents or tangible things in your possession, custody or control, or to
permit inspection of premises.

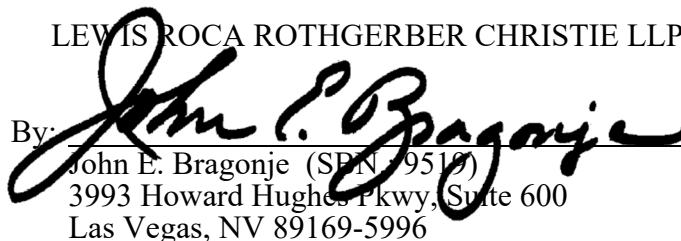
You are required to appear pursuant to NRS 31.100 and to give testimony and be examined
under oath concerning the following matters: (1) your status as a person owing debts to the
defendant and judgment debtor James Patterson Foust Jr. or having in your possession or under

1 your control any credits or other personal property belonging to the defendant and judgment
2 debtor James Patterson Foust Jr.; (2) whether you are an alter ego of Harry Hildibrand, LLC; (3)
3 any updates or additions to the testimony you previously gave before this Court on April 1, April
4 24, May 17, and May 21, 2019 and pertaining to this Court's Order to Appear and Show Cause
5 Why Defendants Should Not Be Held in Civil Contempt for violating this Court's prior Findings
6 of Fact, Conclusions of Law, and Final Judgment issued on January 9, 2019; and (4) any other
7 matter properly within the scope of NRS 31.100.

8 **CONTEMPT:** Your failure to appear will place you at risk of civil contempt. Failure by
9 any person without adequate excuse to obey a subpoena served upon that person may be deemed a
10 contempt of court. NRCP 45(e). If you fail to attend, you may be liable to pay \$100, plus all
11 damages caused by your failure to appear, and may be committed to jail. NRS 50.195, 50.205.
12 Additionally, the court may issue a warrant for your arrest pursuant to its civil contempt powers.
13 NRS 22.010(3); NRS 1.210(2); NRS 21.340. Please see Exhibit "A" attached hereto for
14 information regarding the rights of the person subject to this Subpoena.

15
16 LEWIS ROCA ROTHGERBER CHRISTIE LLP

17 By:


18 John E. Bragonje (SPN 9519)
3993 Howard Hughes Pkwy, Suite 600
19 Las Vegas, NV 89169-5996

20 *Attorneys for Plaintiff Baker Boyer National Bank*
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EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

1 (1) A person responding to a subpoena to produce documents shall produce them as
2 they are kept in the usual course of business or shall organize and label them to correspond with
3 the categories in the demand.

4 (2) When information subject to a subpoena is withheld on a claim that it is privileged
5 or subject to protection as trial preparation materials, the claim shall be made expressly and shall
6 be supported by a description of the nature of the documents, communications, or things not
7 produced that is sufficient to enable the demanding party to contest the claim.
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1 **AFFT**

2 Lewis, Roca, Rothgerber, Christie LLP

3 John E. Bragonje

3993 Howard Hughes Parkway, Suite 600

Las Vegas, NV 89169

State Bar No.: 9519

Attorney(s) for: Plaintiff(s)

DISTRICT COURT
CLARK COUNTY, NEVADA

Case No.: A-17-760779-F

Dept. No.: II

Baker Boyer National Bank, a Washington corporation

vs

Plaintiff(s)/Judgment Creditor

James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually, and his marital community, if any

Defendant(s)/Judgment Debtor

Date: January 29, 2020

Time: 9:00AM

AFFIDAVIT OF SERVICE

I, Leonard Jay Hirschhorn, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received the Subpoena - Civil: Check for Witness Fee \$40.00, on the 16th day of January, 2020 and served the same on the 17th day of January, 2020 at 11:23am by: delivering a copy to the witness Edward N. Detwiler by leaving copies with Edward N. Detwiler, at Kolesar & Leatham, 400 S. Rampart Blvd. #400, Las Vegas, NV 89145.

Pursuant to NRS 239B.030 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.
Executed this 17th day of January 2020

Affiant – Leonard Jay Hirschhorn #: R-2018-03419
Legal Process Service License # 604
Work Order # 2000139



AFFT

Lewis, Roca, Rothgerber, Christie LLP
John E. Bragonje
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
State Bar No.: 9519
Attorney(s) for: Plaintiff(s)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Case No.: A-17-760779-F

Dept. No.: II

Date: January 15, 2020
Time: 9:00AM


Baker Boyer National Bank, a Washington corporation
vs **Plaintiff(s)/Judgment Creditor**
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually, and his marital community, if any
Defendant(s)/Judgment Debtor

**AFFIDAVIT OF
ATTEMPTED SERVICE**

I, Leonard Jay Hirschhorn, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action: That the affiant received the within Subpoena - Civil; Check for Witness Fee \$40.00 on the 6th day of January, 2020 and attempted to effect service on Edward N. Detwiler at the following: 817 Windhook St., Las Vegas, NV 89144, as follows:

<u>Date</u>	<u>Time</u>	<u>Address</u>	<u>Outcome</u>
01/06/2020	6:25pm	817 Windhook St.	Address is a 2 story house in community of Sycamore Ridge. There were some interior lights on but no answer and/or any visible activity.
01/08/2020	8:17am	817 Windhook St.	There was no change from previous attempt. Affiant left a delivery notice.
01/09/2020	12:40pm	817 Windhook St.	Delivery notice was still posted. There was no answer and/or any activity.
01/11/2020	11:17am	11268 Rising Ridge	Affiant spoke with male resident who said that subject does not live there.

I declare under penalty of perjury under the law
of the state of Nevada that the foregoing is true and correct.
Executed this 16th day of January 2020


Affiant – **Leonard Jay Hirschhorn** #: R-2018-03419
Legal Process Service, License # 604
Work Order No 2000739





Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255



AFFT
 Lewis, Roca, Rothgerber, Christie LLP
 John E. Bragonje
 3993 Howard Hughes Parkway, Suite 600
 Las Vegas , NV 89169
 State Bar No.: 9519
 Attorney(s) for: Plaintiff(s)

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

Case No.: A-17-760779-F

Dept. No.: II

Date: January 15, 2020
 Time: 9:00AM

Baker Boyer National Bank, a Washington corporation
vs **Plaintiff(s)/Judgment Creditor**
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually, and his marital community, if any
Defendant(s)/Judgment Debtor

**AFFIDAVIT OF
 ATTEMPTED SERVICE**

I, Jennifer Lynn Jones, being duly sworn deposes and says: That Affiant is and was on the day when she attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not contain the social security number of any person. That the affiant received the within Subpoena - Civil: Check for Witness Fee \$40.00 on the 13th day of January, 2020 and attempted to effect service on Edward N. Detwiler at the following: Coldwell Banker Premier Realy 10120 S. Eastern Ave., #300, Henderson, NV 89052. Below are listed the date(s) and time(s) of attempted service:

<u>Date</u>	<u>Time</u>	<u>Address</u>	<u>Outcome</u>
01/13/2020	11:55am	As above	Affiant spoke with receptionist, Krissy. She advised that subject was not in the office and said to check with Coldwell Banker at 8290 W. Sahara Ave. A subsequent call was made to Coldwell Banker on W. Sahara and subject was not in the office, 702 817 9500.

I declare under penalty of perjury under the law of the state of Nevada that the foregoing is true and correct.
 Executed this 15th day of January 2020

Jennifer Lynn Jones #R-2018-02711

Legal Process Service License # 604

WorkOrderNo 2000139

