

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
May 22 2020 04:55 p.m.

Elizabeth A. Brown

Clerk of Supreme Court

EDWARD N. DETWILER, an
individual,

Petitioner,

v.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR CLARK
COUNTY; THE HONORABLE
RICHARD SCOTTI, DISTRICT
JUDGE, DEPT. 2,

Respondent,

and

BAKER BOYER NATIONAL
BANK, a Washington corporation,

Real Party in Interest.

Supreme Court Case No.

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

**PETITIONER'S APPENDIX IN
SUPPORT OF PETITION FOR
WRIT OF MANDAMUS OR, IN THE
ALTERNATIVE, FOR WRIT OF
PROHIBITION**

(Volume I; Pages PA00001-PA00250)

Hutchison & Steffen

Michael K. Wall, Esq.

Nevada Bar No. 2098

Brenoch Wirthlin, Esq.

Nevada Bar No. 10282

10080 W. Alta Dr., Suite 200

Las Vegas, Nevada 89145

Phone: (702) 385-2500

bwirthlin@hutchlegal.com

Attorneys for Petitioner,

Edward N. Detwiler

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PROOF OF SERVICE

I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **PETITIONER'S APPENDIX IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, FOR WRIT OF PROHIBITION** on the following parties, via the manner of service indicated below, on May 22, 2020:

Via Electronic Service through E-Flex System:

John Bragonje, Esq.
Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy., # 600
Las Vegas, Nevada 89169
JBragonje@lrrc.com
Attorney for Real Party in Interest

***Via US Mail
(enclosed on a CD):***

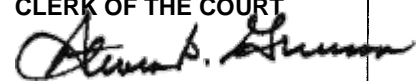
The Honorable Richard Scotti
District Court, Dept. 2
Regional Justice Center
200 Lewis Ave.
Las Vegas, Nevada 89155
Phone No.: (702) 671-4318
Respondent

James Foust
8175 Arville St.
Las Vegas, Nevada 89139
Defendant

Harry Hildibrand, LLC
3011 American Way
Missoula, Montana 59808
Third Party

Dated: May 22, 2020.

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



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

6 *Attorneys for Plaintiff Baker Boyer National Bank*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9
10 **BAKER BOYER NATIONAL BANK, a**
Washington corporation,

11 Plaintiff/Judgment Creditor,

12 vs.

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

15 Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: 2

**NOTICE OF FILING OF FOREIGN
JUDGMENT AND AFFIDAVIT
PURSUANT TO NRS 17.360(2)**

16
17 **TO: JUDGMENT DEBTOR: JAMES PATTERSON FOUST, JR.**

18 **FROM: BAKER BOYER NATIONAL BANK**

19 You, and each of you, will please take notice that, pursuant to the Nevada Uniform
20 Enforcement of Foreign Judgments Act, NRS 17.330 *et seq.*, judgment creditor Baker Boyer
21 National Bank has filed, domesticated, and enrolled in the courts of the State of Nevada the
22 judgment rendered by the Superior Court of the State of Washington in and for Walla Walla
23 County in the action styled *Baker Boyer National Bank v. James Patterson Foust, Jr.* (case
24 number 16-2-00829-2) on July 20, 2017.

25 ...

26 ...

27 ...

28 ...

1 A copy of the Application, Affidavit in Support of Application, and Affidavit Showing Mailing of
2 Notice of The Filing of Judgment as required by NRS 17.350 and NRS 17.360 are included as
3 Exhibits A, B, and C to this notice.

4 DATED this 31st day of August, 2017.

5 LEWIS ROCA ROTHGERBER CHRISTIE LLP

6
7 By: /s/ John E. Bragonje

8 John E. Bragonje

9 State Bar No. 9519

10 E-mail: jbragonje@lrrc.com

11 3993 Howard Hughes Pkwy, Suite 600

12 Las Vegas, NV 89169-5996

13 Tel: 702.949.8200

14 Fax: 702.949.8398

15 *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 FOR NOTICE OF FILING**
2 **OF FOREIGN JUDGMENT AND AFFIDAVIT PURSUANT TO NRS 17.360(2)**

3 Pursuant to NRS 17.360(2), I hereby certify that I mailed, by both regular mail and by
4 certified mail, return receipt requested, the forgoing "Notice of Filing of Foreign Judgment and
5 Affidavit Pursuant to NRS 17.360(2)" to the judgment debtor named in this action and listed
6 below. The certificates of certified mailing are appended to this certificate of service as Exhibit C
7 and the United State Postal Service tracking numbers are also noted on this certificate.

8

9 James P. Foust, Jr. 10 10821 Woodstream Ct Las Vegas, NV 89135 [7016 3010 0000 5911 0017]	Counsel: Lenard L. Wittlake Lenard L. Wittlake, PLLC P.O. Box 1233 Walla Walla, WA 99362 [7016 3010 0000 5911 0024]
12 Counsel: Cody Munteer Marquis Aurbach Coffing 10001 Park Run Drive Las Vegas, NV 89145 [7016 3010 0000 5911 0031]	

15 Dated this 31st day of August, 2017.

17 /s/ Luz Horvath

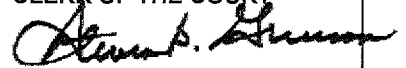
18 LUZ HORVATH, an employee of LEWIS ROCA
19 ROTHGERBER CHRISTIE

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

Lewis Roca
ROTHGERBER CHRISTIE

Exhibit A

Exhibit A



1 **AFJ**
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 Baker Boyer National Bank*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 A-17-760779-F

14 BAKER BOYER NATIONAL BANK, a
15 Washington corporation,

Case No.: Department 2

16 Plaintiff/Judgment Creditor,

Dept. No.:

17 vs.

18 **APPLICATION FOR ENFORCEMENT**
19 **OF FOREIGN JUDGMENT PURSUANT**
20 **TO NRS 17.330 ET SEQ.**

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

24 Defendant/Judgment Debtor.

25 Pursuant to NRS 17.330 *et seq.*, plaintiff and judgment creditor Baker Boyer National
26 Bank, by and through its counsel of record, Lewis Roca Rothgerber Christie LLP, hereby files its
27 application for enforcement of the foreign judgment against defendant and judgment debtor James
28 Patterson Foust, Jr., also known as James P. Foust, Jr., individually, and his marital community, if
any, and registers an exemplified copy of the judgment rendered by the Superior Court of the State
of Washington in and for Walla Walla County in the action styled *Baker Boyer National Bank v.*
James Patterson Foust, Jr. (case number 16-2-00829-2; judgment number 17-9-00590-4) on July

...

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20, 2017 (Exhibit 1 hereto) as well an exemplified copy of the attorney-fee award order that was added to the judgment on August 18, 2017 (Exhibit 2 hereto).

Dated August 30, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: s/ John E. Bragonje

John E. Bragonje
State Bar No. 9519
E-mail: jbragonje@lrrc.com
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

Exhibit 1

Exhibit 1

FILED
KATHY MARTIN
COUNTY CLERK

2017 JUL 20 P 3: 08

WALLA WALLA COUNTY
WASHINGTON

BY

SUPERIOR COURT OF WASHINGTON
IN AND FOR WALLA WALLA COUNTY

BAKER BOYER NATIONAL BANK,

Plaintiff,

v.

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

Defendants.

No. 16-2-00829-2

JUDGMENT FOR BAKER BOYER
NATIONAL BANK

and

Order Denying Reconsideration

17 9 00590 4

JUDGMENT #

JUDGMENT SUMMARY:

1. Judgment Creditor:	Baker Boyer National Bank
2. Attorneys for Judgment Creditor:	Foster Pepper PLLC
3. Judgment Debtors:	James Patterson Foust, Jr., aka James P. Foust, Jr., individually and his marital community
4. Principal:	\$662,287.96
5. Interest through June 7, 2017:	\$100,757.16
6. Late Charges:	\$ 525.68
7. Force Place Insurance Premiums - Net Amount	\$ 48,222.00
8. Fees Paid to Third-Parties to Repossess Collateral:	\$ 31,823.50
TOTAL Judgment Amount as of June 7, 2017: *	\$843,616.30
Interest Rate:	7.88 % Per Annum

* Plus interest at 7.88% per annum from June 7, 2017 to entry of Judgment and until paid in full; and plus ongoing attorneys' fees, costs and expenses.

JUDGMENT FOR BAKER BOYER - I

FOSTER PEPPER PLLC
618 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

1 This matter came before the court on Plaintiff Baker Boyer National Bank's ("Baker
2 Boyer") presentation of a judgment based on the court's order granting summary judgment in
3 Baker Boyer's favor on all claims. The court heard oral argument of counsel for the plaintiff,
4 Todd Reuter, and counsel for the defendant, Lenard Wittlake. The court considered the pleadings
5 filed in the action.

6 I. DOCUMENT AND EVIDENCE CONSIDERED

7 The court also considered the documents and evidence that was brought to the court's
8 attention before the order on summary judgment was entered:

- 9 1. Baker Boyer's Motion for Summary Judgment as to All Claims;
- 10 2. Memo in Support of Baker Boyer's Motion for Summary Judgment as to All
11 Claims;
- 12 3. Declaration of John Blackmon;
- 13 4. Declaration of Tom Palumbo;
- 14 5. Declaration of Lacey Quiggle;
- 15 6. Declaration of Christopher Sentz;
- 16 7. Declaration of Russell S. Colombo in Support of Baker Boyer's Motion for
17 Summary Judgment as to All Claims;
- 18 8. December 14, 2016 Affidavit of Russell S. Colombo of Sums Certain and in
19 Support of Motion for entry of Default and Default Judgment, or in the Alternative, for Summary
20 Judgment;
- 21 9. Declaration of Todd Reuter in Support of Baker Boyer's Motion for Summary
22 Judgment as to All Claims;
- 23 10. January 19, 2017 Memorandum of Law Opposing Plaintiff's Motion for
24 Summary Judgment;
- 25 11. January 19, 2017 Declaration of James P. Foust, Jr.;
- 26

JUDGMENT FOR BAKER BOYER - 2

FOSTER PEPPER PLLC
618 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

12. Second Declaration of James P. Foust, Jr. Opposing Second Motion for Summary Judgment;

13. Declaration of John Eakin;

14. Memo of Law Opposing Plaintiff's Second Motion for Summary Judgment;

15. Reply in Support of Baker Boyer's Motion for Summary Judgment as to All Claims; and

16. Affidavit of Russell S. Colombo Regarding Amounts Owed.

17. *Motion for Reconsideration and Memorandum in Support (June 30, 2017) and*
II. JUDGMENT *Baker Boyer's Response (July 17, 2017).* (HL)

Based on the argument of counsel, the pleadings, order and evidence, judgment is entered as follows:

1. Plaintiff Baker Boyer is awarded \$662,287.96 in principal. This includes a \$223,125.00 reduction in the amount owed the bank based on Baker Boyer's receipt of net sale proceeds in that amount from the sale of 27 trailers in North Dakota. In the event the remaining three trailers are sold, this amount shall be reduced by the amount of the net sale proceeds received from such sale.

2. \$100,757.16 in prejudgment interest on the principal amount to June 7, 2017. A per diem of \$144.97 will accrue from June 7, 2017 to the date of the entry of this Judgment at the rate of 7.88%, as allowed in the Promissory Note.

3. \$525.68 in accumulated late charges.

4. \$31,823.50 in repossession costs.

5. \$48,222.00 for force-placed insurance on the trailers.

6. Post-judgment interest on the judgment amount at 7.88% per annum from the date of entry of this Judgment until the Judgment amount is paid in full.

7. Baker Boyer shall file a motion for award of reasonable attorneys' fees and costs within ten days of the entry of this Judgment, as allowed by Civil Rule 54(d)(2). Any amounts awarded will be added to the judgment amount. The court retains jurisdiction to add attorneys'

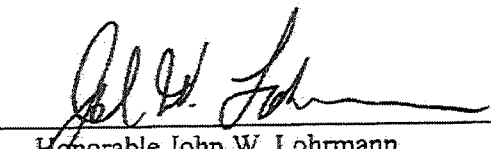
JUDGMENT FOR BAKER BOYER - 3

FOSTER PEPPER PLLC
615 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

1 fees and costs to the judgment amount beyond what are ordered as part of the motion, if any are
2 incurred and sought by Baker Boyer in collecting on its judgment.

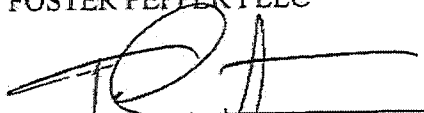
3 *8. Defendants' Motion to Reconsider is denied for the reasons set forth in Plaintiff's Response.*

4 ENTERED this 20th day of July, 2017.

5
6
7 
8 Honorable John W. Lohrmann

9 Presented by:

10 FOSTER PEPPER PLLC

11 

12 Todd Reuter, WSBA # 20859
13 Attorneys for Plaintiff
14 Baker Boyer National Bank

Approved as to content and form:

LENARD L. WITTLAKE, PLLC

15
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21
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23
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Lenard L. Wittlake, WSBA # 15451
Attorneys for Defendant

JUDGMENT FOR BAKER BOYER - 4

FOSTER PEPPER PLLC
618 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

CERTIFICATE OF MAILING

I hereby certify that on the 26th day of June, 2017, I caused to be served a true and correct copy of the foregoing upon the person below stated and in the manner indicated:

Lenard L. Wittlake
Lenard L. Wittlake, PLLC
P. O. Box 1233
Walla Walla, WA 99362
E-Mail: lwlaw@my180.net
Attorney for Defendant

VIA FIRST CLASS MAIL ☒
VIA CERTIFIED MAIL, RETURN
RECEIPT REQUESTED ☐
VIA HAND DELIVERY ☐
VIA FACSIMILE ☐
VIA EMAIL ☒

Melody A. Roberts
Melody A. Roberts, Paralegal

JUDGMENT FOR BAKER BOYER - 5

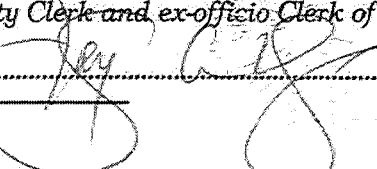
FOSTER PEPPER PLLC
618 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

**In the Superior Court of the State of Washington
For the County of Walla Walla**

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I,Kathy Martin..... County Clerk of the County of Walla Walla, State of Washington, and ex-officio Clerk of the Superior Court of the State of Washington for Walla Walla County, do hereby certify that the within and foregoing are full, true and correct copies of the originals and of the whole thereof as the same are now on file and of record in the within entitled action in my office and custody.

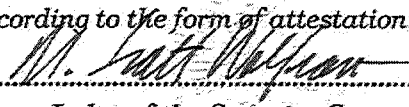
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Superior Court this22nd..... day ofAugust....., 2017.....

.....Kathy Martin.....
County Clerk and ex-officio Clerk of the Superior Court
By..... Deputy

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I,M. Scott Wolfram..... Judge of the Superior Court of the State of Washington, for Walla Walla County, do hereby certify thatKathy Martin....., whose name is subscribed to the preceding exemplification is the County Clerk of Walla Walla County and ex-officio Clerk of the Superior Court of said County, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to the exemplification is the seal of our said Superior Court, and that the attestation thereof is in due form and according to the form of attestation in this State.

..........
Judge of the Superior Court.

Dated at Walla Walla, Washington, this22nd..... day ofAugust..... A.D., 2017.....

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I,Kathy Martin..... County Clerk and ex-officio Clerk of the Superior Court of the State of Washington, for Walla Walla County, do hereby certify thatM. Scott Wolfram..... whose name is subscribed to the preceding certificate, is Judge of the Superior Court of the State of Washington, for Walla Walla County, duly elected, sworn and qualified and that the signature of said Judge to said certificate is genuine.


IN WITNESS WHEREOF, I have hereunto set my hand and affixed  13

Exhibit 2

Exhibit 2

FILED
KATHY MARTIN
COUNTY CLERK

2017 AUG 18 A 9:11

WALLA WALLA COUNTY
WASHINGTON

SUPERIOR COURT OF WASHINGTON IN AND FOR WALLA WALLA COUNTY

BAKER BOYER NATIONAL BANK,

Plaintiff,

v.

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

Defendants.

No. 16-2-00829-2

STIPULATED ORDER AWARDING
ATTORNEYS' FEES AND COSTS TO
BAKER BOYER NATIONAL BANK

THIS MATTER comes before the court on the parties' stipulation to the entry of an order granting Baker Boyer's Motion for Award of Attorneys' Fees and Costs in the amount of \$90,000. Solely to resolve the pending motion the parties have stipulated that:

1. The rates charged by Baker Boyer's counsel are reasonable, that Baker Boyer's legal team consists of experienced litigators, and that their work was of high quality.
2. The amount of money at stake warranted the level and extent of legal work done by Baker Boyer's counsel in this matter. Defendant retains the right to challenge the reasonableness of any attorneys' fees and costs incurred in the future in this matter, whether in the trial court or appellate court.
3. The legal work on behalf of Baker Boyer led to the bank fully prevailing in this matter.

ORDER - I
51629247

FOSTER PEPPER PLLC
615 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

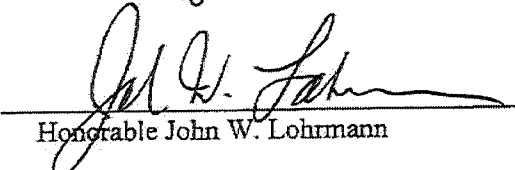
PA00015

1 4. Regarding the attorneys' fees and costs incurred by Crowley Fleck, Baker Boyer
2 is free to pursue recovery of those fees and costs from JPF Enterprises LLC in the North Dakota
3 action, McKenzie County cause No. 27-2016-CV-00392.

4 Based upon the parties' stipulation, **IT IS HEREBY ORDERED:**

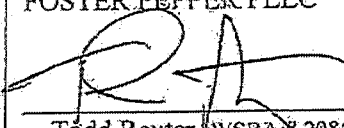
- 5 1. Baker Boyer's motion for award of attorneys' fee and costs is **GRANTED**.
6 2. Defendant shall pay Baker Boyer \$90,000 in attorneys' fees and costs.
7 3. Payment is due immediately.
8 4. The \$90,000 awarded here is added to the judgment amount previously awarded
9 to Baker Boyer in this matter.

10 ENTERED this 18th day of August, 2017.

11
12 
13 Honorable John W. Lohrmann

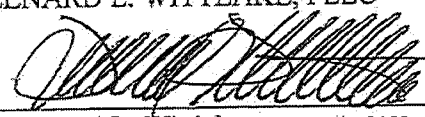
14 Presented by:

15 FOSTER PEPPER PLLC

16 
17 Todd Reuter, WSBA # 20859
18 Attorneys for Plaintiff
19 Baker Boyer National Bank

20 Approved as to form, notice of presentment waived:

21 LENARD L. WITTLAKE, PLLC

22 
23 Lenard L. Wittlake, WSBA # 15451
24 Attorneys for Defendant
25
26

ORDER - 2
51629247

FOSTER PEPPER PLLC
618 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

PA00016

**In the Superior Court of the State of Washington
For the County of Walla Walla**

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I, Kathy Martin County Clerk of the County of Walla Walla, State of Washington, and ex-officio Clerk of the Superior Court of the State of Washington for Walla Walla County, do hereby certify that the within and foregoing are full, true and correct copies of the originals and of the whole thereof as the same are now on file and of record in the within entitled action in my office and custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Superior Court this 23rd day of August, 2017.

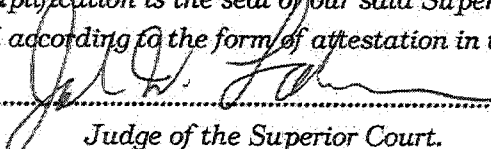
Kathy Martin
County Clerk and ex-officio Clerk of the Superior Court

By Linda Palmer Deputy

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I, John W. Lohrmann Judge of the Superior Court of the State of Washington, for Walla Walla County, do hereby certify that Kathy Martin, whose name is subscribed to the preceding exemplification is the County Clerk of Walla Walla County and ex-officio Clerk of the Superior Court of said County, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to the exemplification is the seal of our said Superior Court, and that the attestation thereof is in due form and according to the form of attestation in this State.


Judge of the Superior Court.

Dated at Walla Walla, Washington, this 23rd day of August A.D., 2017.

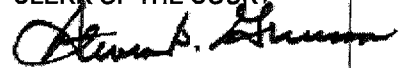
STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I, Kathy Martin County Clerk and ex-officio Clerk of the Superior Court of the State of Washington, for Walla Walla County, do hereby certify that John W. Lohrmann whose name is subscribed to the preceding certificate, is Judge of the Superior Court of the State of Washington, for Walla Walla County, duly elected, sworn and qualified and that the signature of said Judge to said certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Superior Court this 23rd day of August, 2017. PA00017

Exhibit B

Exhibit B



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

6 *Attorneys for Plaintiff Baker Boyer National Bank*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

10 BAKER BOYER NATIONAL BANK, a
Washington corporation,

11 Plaintiff/Judgment Creditor,

12 vs.

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

15 Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No: 2

**AFFIDAVIT IN SUPPORT OF
APPLICATION FOR ENFORCEMENT
OF FOREIGN JUDGMENT PURSUANT
TO NRS 17.360(1)**

17 STATE OF NEVADA)
18 COUNTY OF CLARK) ss:

19 JOHN E. BRAGONJE, being first duly sworn, deposes and says:

20 1. I am an attorney licensed to practice law in the State of Nevada and am a partner of
21 the law firm of LEWIS ROCA ROTHGERBER CHRISTIE LLP.

22 2. I am counsel to plaintiff and judgment creditor in the above-captioned matter. I am
23 over the age of 18 years and a resident of Clark County, Nevada. I make this affidavit based upon
24 personal knowledge (except where stated to be upon information and belief, and as to that
25 information, I believe it to be true). If called upon to testify as to the contents of this affidavit, I
26 am legally competent to testify thereto in a court of law.

27 3. I make this affidavit to fulfill the requirements of NRS 17.360(1).
28

1 4. The names and the last-known post office addresses of the defendant and judgment
2 debtor, or his counsel of record, are as follows:

3 James P. Foust, Jr.
4 10821 Woodstream Ct
5 Las Vegas, NV 89135
6 [16-digit mail code]

7 Counsel: Lenard L. Wittlake
8 Lenard L. Wittlake, PLLC
9 P.O. Box 1233
10 Walla Walla, WA 99362
11 [16-digit mail code]

12 Counsel: Cody Munteer
13 Marquis Aurbach Coffing
14 10001 Park Run Drive
15 Las Vegas, NV 89145
16 [16-digit mail code]

17 5. The name of and post office address of the judgment creditor is as follows:

18 Baker Boyer National Bank
19 P.O. Box 1796
20 Walla Walla, WA 99362

21 6. Upon information and belief, I attest that the foreign judgment is valid and
22 enforceable based on my conversations with the authorized representatives of Baker Boyer
23 National Bank and my review of the exemplified copy of the foreign judgment filed concurrently
24 herewith.

25 7. The foreign judgment has not been satisfied at all.

26 8. The rendering court in Washington state entered a judgment for principal in the
27 amount of \$622,287.96; pre-judgment interest through June 7, 2017 in the amount of \$100,757.16;
28 late charges in the amount of \$525.68; "force place insurance premiums—net amount" in the
amount of \$48,222.00; collateral repossession costs in the amount of \$31,823.50; and attorney fees
in the amount of \$90,000.00, for a total judgment on the rendering dates of July 20, 2017 (for the
original judgment) and August 18, 2017 (for the award of attorney fees) of \$933,616.30.

According to the express terms of the judgment and the underlying loan documents supporting the

1 judgment, the judgment was to bear interest at a rate of 7.88% per annum until satisfied. (See
2 generally the exemplified foreign judgment and attorney fee award filed concurrently herewith.)

3 9. At the time of this filing, then, the current value of the judgment, with interest, is
4 \$941,880.21. (Interest on \$933,616.30 at an interest rate of 7.88% per annum is \$201.55 per day;
5 41 days have elapsed between July 20, 2017 and August 30, 2017; this amounts to \$8,263.91 in
6 post-judgment interest for a total judgment of \$941,880.21.)

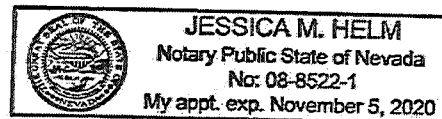
7 10. Further your affiant saith naught.


8 Dated August 31, 2016.

9
10
11 
12 JOHN E. BRAGONJE

13 On this 29th day of August, 2017, personally appeared before me, a Notary Public, in
14 and for said County and State, John E. Bragonje, known to me to be the person described,
15 and executed the foregoing instrument in the capacity set forth therein, who acknowledged to
16 me that he executed the same freely and voluntarily and for the uses and purposes therein
17 mentioned.

18 SUBSCRIBED and SWORN to before me
19 this 31st day of August, 2017.

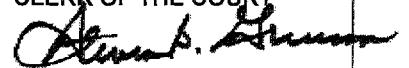



Notary Public in and for said

County and State

Exhibit C

Exhibit C



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

6 *Attorneys for Plaintiff Baker Boyer National Bank*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

10 BAKER BOYER NATIONAL BANK, a
Washington corporation,

11 Plaintiff/Judgment Creditor,

12 vs.

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

15 Defendant/Judgment Debtor.
16

Case No.: A-17-760779-F

Dept. No.: 2 II

**AFFIDAVIT OF MAILING IN
SUPPORT OF APPLICATION FOR
ENFORCEMENT OF FOREIGN
JUDGMENT PURSUANT TO NRS
17.360(2)**

17 STATE OF NEVADA }
18 COUNTY OF CLARK } ss:

19 LUZ HORVATH, being first duly sworn, deposes and says:

20 1. I am an employee of the law firm of LEWIS ROCA ROTHGERBER CHRISTIE LLP.

21 2. I assist attorney John E. Bragonje, the lawyer that acts as counsel of record to
22 plaintiff and judgment creditor Baker Boyer National Bank in the above-captioned matter.

23 3. I am over the age of 18 years and a resident of Clark County, Nevada. I make this
24 affidavit based upon personal knowledge. If called upon to testify as to the contents of this
25 affidavit, I am legally competent to testify thereto in a court of law.

26 4. I make this affidavit to fulfill the requirements of NRS 17.360(2).

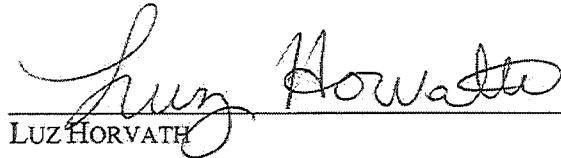
27 5. I hereby certify that on August 31, 2017, I mailed, by both regular mail and by
28 certified mail, return receipt requested, the "Notice of Filing of Foreign Judgment and Affidavit

1 Pursuant to NRS 17.360(2)" required by law. I mailed said notice to the judgment debtor and his
2 attorneys of record in this action and listed below:

3 James P. Foust, Jr. 4 10821 Woodstream Ct 5 Las Vegas, NV 89135 6 [16-digit mail code]	Counsel: Lenard L. Wittlake Lenard L. Wittlake, PLLC P.O. Box 1233 Walla Walla, WA 99362 [16-digit mail code]
7 Counsel: Cody Munteer 8 Marquis Aurbach Coffing 9 10001 Park Run Drive 10 Las Vegas, NV 89145 [16-digit mail code]	

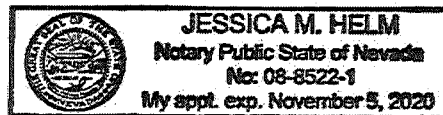
11 6. Further your affiant saith naught.


12 Dated August 31, 2017.

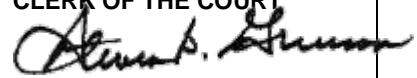
13
14 
LUZ HORVATH

15 On this 30th day of August, 2017, personally appeared before me, a Notary Public, in
16 and for said County and State, LUZ HORVATH, known to me to be the person described, and
17 executed the foregoing instrument in the capacity set forth therein, who acknowledged to me
18 that she executed the same freely and voluntarily and for the uses and purposes therein
19 mentioned.

20 SUBSCRIBED and SWORN to before me
21 this 31st day of August, 2017.



22 
23 Notary Public in and for said
24 County and State



MOT
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

**MOTION FOR AN ORDER
REQUIRING JUDGMENT DEBTOR
TO DELIVER POSSESSION OF
CLASSIC CAR COLLECTION TO
SATISFY NEARLY \$1 MILLION
JUDGMENT**

I.

INTRODUCTION

Plaintiff Baker Boyer National Bank (“Judgment Creditor”) has a judgment for nearly \$1 million against James P. Foust, Jr., a multi-millionaire (“Judgment Debtor”). Judgment Debtor refuses to voluntarily satisfy the judgment. As part of his dealings with the Judgment Creditor, a bank, Judgment Debtor repeatedly represented that he personally owned a collection of 59 exotic cars, including a Ferrari, Lamborghinis, Porsches, and Mercedes, worth millions of dollars. Nevada’s collection statute, specifically NRS 21.320, empowers a district court judge to order judgment debtors to turn over assets to satisfy outstanding judgments. This Court should order Judgment Debtor to turnover his exotic car collection to satisfy the debt.

///

///

1 II.

2 NOTICE OF MOTION

3 Please take notice that the undersigned will bring the above and foregoing "Motion for an
4 Order requiring Judgment Debtor to deliver possession of Classic car collection to satisfy Nearly
5 \$1 million Judgment" on for hearing before the Court on the 22 day of JANUARY, 2018
6 **CHAMBERS**
at .m. in Department 2 of the above-entitled court, located at the Regional Justice Center,
7 200 Lewis Avenue, Las Vegas, Nevada 89155.

8 III.

9 PROCEDURAL HISTORY AND BACKGROUND

10 A. *This Lawsuit Seeks to Enforce Nearly a \$ 1 Million Foreign Judgment Rendered in*
11 *Washington State*

12 This lawsuit concerns the enforcement of a large judgment rendered outside Nevada and
13 thereafter enrolled or domesticated in this state for enforcement here. Specifically, on or about
14 July 20, 2017, the Superior Court of Washington in and for Walla Walla County, in a case styled
15 *Baker Boyer National Bank v. James Patterson Foust, Jr., also known as James P. Foust, Jr.*,
16 entered judgment against Judgment Debtor and in favor of Judgment Creditor on July 20, 2017
17 (for the original judgment) and August 18, 2017 (for the award of attorney fees) in the amount of
18 \$933,616.30 (the "Judgment"). A true and accurate copy of the Judgment is attached hereto as
19 Exhibit 1. The Judgment resulted from Judgment Debtor's failure to repay a loan in the original
20 amount of \$1,077,600. According to the Judgment, interest accrues at 7.88% per annum, or
21 \$201.55 per day. 195 days have elapsed since the Judgment was lodged with the Washington
22 court. Thereafter the judgment was enrolled in this Court on August 31, 2017, pursuant to the
23 Uniform Enforcement of Foreign Judgments Act, NRS 17.330 *et seq.* Mr. Foust has refused to
24 pay any of the Judgment, though Judgment Creditor seized a few of Judgment Debtor's assets,
25 namely heavy machinery that generated \$22,370 at a sheriff's sale and bank garnishments that
26 recovered about \$3,000. Applying these successful collection efforts, the Judgment has a present
27 value of \$952,349.38, calculated as follows:

28 ///

Principal	\$662,287.96
Pre-judgment Interest	\$100,757.16
Attorney's Fees	\$90,000.00
Costs	\$80,571.18
Judgment Total	\$933,616.30
Accrued Costs	\$5,000.00
Accrued Interest	\$39,302.25
Less Satisfaction	\$25,569.17
NET BALANCE	\$952,349.38

B. Judgment Debtors Has an Exotic Car Collection Valuable Enough to Satisfy the Entire Judgment

Judgment Debtor is a rich man. When Judgment Debtor applied for the loan (that he refused to repay which ultimately led to the Judgment), he claimed to have a net worth of no less than \$9,493,574. (See Personal Financial Statement, Exhibit 2.) His liquid assets alone included \$716,854 in cash and \$129,332 in stocks and bonds. (*Id.*) Of particular import to this motion, the loan application stated that Judgment Debtor personally owned assets he identified “Classic Cars – Est. Value using Mkt. [market] Prices” with a value of \$5,120,130. (*Id.*) There is no doubt that Judgment Debtor owned these vehicles in his personal capacity: the document is entitled a “personal” financial statement and Judgment Debtor wrote “Foust”—his surname—in the “Name(s) Registered In” field on the form.

Judgment Debtor also provided an inventory of the cars which he entitled “Foust Classic Cars”—again emphasizing Judgment Debtor’s personal ownership of these vehicles—that details each vehicle’s make, model, year, vehicle identification number, and value. (See Exhibit 3.) His collection comprises 59 vehicles that Judgment Debtor valued at \$5,120,130. (*Id.*) According to this accounting, one of the most valuable cars is 1965 Shelby Cobra, which Judgment Debtor estimates to be worth \$550,000. That car looks something like this:



Judgment Debtor also owns a 1967 Lamborghini Muria, which Judgment Debtor estimates to be worth \$250,000, and which appears something like this:



Among other vehicles, the collection includes two Corvettes (1956, 1957); a 1990 Ferrari Testarosa; a 1988 Lamborghini Countach; two classic Ford Mustangs; two Ford Panteras (collectively worth almost \$100,000); two Jaguars; two classic Porsche 911s; two Harley-Davidsons; a Rolls Royce; and six Mercedes, including a 1956 300 SL Gullwing worth at least \$750,000 that looks something like this:



(See generally Exhibit 3.) Judgment Debtor's car collection alone is valuable enough to satisfy the Judgment.

///

///

///

1 ***C. Judgment Debtor Repeatedly Affirmed That He Personally Owned the Cars Over a***
2 ***Period of Years***

3 Judgment Debtor submitted financial statements throughout the period he dealt with
4 Judgment Creditor. As recently as about two years ago, Judgment Debtor submitted the most
5 recent financial statement in Judgment Creditor's possession. That statement again affirms that
6 Judgment Debtor owns the exotic cars in his personal capacity—the statement is titled “James P.
7 Foust Balance Sheet”; it lists the vehicles' value at \$1,381,320. (*See Exhibit 4.*) Judgment
8 Creditor could provide additional personal financial balance sheets submitted between the first and
9 last statements already discussed, but that would seem cumulative. There is no doubt that
10 Judgment Debtor broadcast in writing repeatedly over a period of years that he personally owned
11 millions of dollars' worth of exotic cars.

12 **IV.**

13 **THIS COURT SHOULD ORDER JUDGMENT DEBTOR**

14 **TO SURRENDER POSSESSION OF HIS EXOTIC CARS TO SATISFY THE JUDGMENT**

15 Nevada law empowers district court judges to order judgment creditors to surrender
16 possession of property to satisfy judgments:

17 **NRS 21.320 Judge may order property applied toward satisfaction of**
18 **judgment.** The judge or master may order any property of the judgment debtor
19 not exempt from execution, in the hands of such debtor or any other person, or
20 due to the judgment debtor, to be applied toward the satisfaction of the judgment.

21 This law is known as a turnover statute. The turnover statute is a procedural device to
22 assist judgment creditors in post-judgment collection. *E.g. Davis v. West*, 317 S.W.3d 301, 309
23 (Tex. App. 2009). A turnover order is a type of post-judgment enforcement order. In Nevada, this
24 remedy is listed under the heading “Proceedings Supplementary to Execution” in NRS Chapter 21,
25 Nevada's judgment enforcement statute. A “supplementary proceeding” is “held in connection
26 with the enforcement of a judgment, for the purpose of identifying and locating the debtor's assets
27 available to satisfy the judgment.” *Black's Law Dictionary* (8th ed. 2004). In Nevada, a
28 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,

1 125 P.2d 723, 726 (1942). Essentially, a turnover statute in a supplemental proceeding allows a
2 court to order the judgment debtor to turn over property that is in the debtor's possession. *See*
3 31A C.J.S. EXECUTIONS § 587 (2017).

4 Neither the Nevada statutes nor the jurisprudence of turnover orders require any specific
5 form of order. *See* 31A C.J.S. EXECUTIONS § 587 (2017). The order must simply identify the
6 property to be surrendered and "direct payment or delivery to the proper person." *Id.*
7 Once a creditor presents evidence that the debtor owns the property in question, "a presumption
8 arises that the assets are in the debtor's possession, and the burden shifts to the debtor to account
9 for the assets." 31A C.J.S. EXECUTIONS § 589 (2017).

10 Here, Judgment Debtor repeatedly affirmed in writing over a period of years that he owned
11 millions of dollars' worth of exotic cars. Judgment Debtor refuses to voluntarily satisfy the
12 Judgment. Therefore, this Court should issue a turnover order directing Judgment Debtor to
13 surrender possession of any and all vehicles identified in Exhibit 3, the list of vehicles that
14 Judgment Debtor prepared, to the authorized representatives of Judgment Creditor wherever the
15 vehicles may be found. If any of said vehicles have been sold or traded, Judgment Debtor should
16 also be ordered to turn over any newly acquired vehicles or proceeds of such transfers. We
17 anticipate that Judgment Debtor will contradict his many, prior written statements and now claim
18 that he owns none of the vehicles identified in Exhibit 3. We emphasize that "a presumption
19 arises that the assets are in the debtor's possession, and the burden shifts to the debtor to account
20 for the assets." 31A C.J.S. Executions § 589 (2017). Judgment Debtor must give a detailed
21 accounting of the deposition of these assets if he claims he no longer owns them.

22 V.

23 CONCLUSION

24 Wherefore, Judgment Creditor respectfully requests that this Court issue a turnover order
25 requiring Judgment Debtor to surrender possession and ownership of any and all vehicles
26 identified in Exhibit 3, which Judgment Debtor himself prepared.

27 ///

28 ///

Dated December 20, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ John E. Bragonje
John E. Bragonje (SBN 9519)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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 the foregoing
3 document entitled “**MOTION FOR AN ORDER REQUIRING JUDGMENT DEBTOR TO**
4 **DELIVER POSSESSION OF CLASSIC CAR COLLECTION TO SATISFY NEARLY \$1**
5 **MILLION JUDGMENT”**, with the Clerk of the Court and caused a true and accurate copy of
6 the same to be served as stated below:

7 **Via Hand-Delivery and U.S. Mail**

8 Cody Munteer
9 Marquis Aurbach Coffing
10 10001 Park Run Drive
Las Vegas, NV 89145

11 *Counsel for Judgment Debtor*

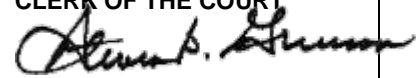
12 DATED this 20th day of December, 2017.

13
14
15 /s/ Luz Horvath

16 An employee of Lewis Roca Rothgerber Christie LLP
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

Exhibit 1



AFJ
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**

A-17-760779-F

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.: Department 2

Dept. No.:

**APPLICATION FOR ENFORCEMENT
OF FOREIGN JUDGMENT PURSUANT
TO NRS 17.330 ET SEQ.**

Pursuant to NRS 17.330 *et seq.*, plaintiff and judgment creditor Baker Boyer National Bank, by and through its counsel of record, Lewis Roca Rothgerber Christie LLP, hereby files its application for enforcement of the foreign judgment against defendant and judgment debtor James Patterson Foust, Jr., also known as James P. Foust, Jr., individually, and his marital community, if any, and registers an exemplified copy of the judgment rendered by the Superior Court of the State of Washington in and for Walla Walla County in the action styled *Baker Boyer National Bank v. James Patterson Foust, Jr.* (case number 16-2-00829-2; judgment number 17-9-00590-4) on July

...

...

...

...

...

1 20, 2017 (Exhibit 1 hereto) as well an exemplified copy of the attorney-fee award order that was
2 added to the judgment on August 18, 2017 (Exhibit 2 hereto).

3 Dated August 30, 2017.

4 LEWIS ROCA ROTHGERBER CHRISTIE LLP

6 By: s/ John E. Bragonje

7 John E. Bragonje

8 State Bar No. 9519

9 E-mail: jbragonje@lrrc.com

10 3993 Howard Hughes Pkwy, Suite 600

11 Las Vegas, NV 89169-5996

12 Tel: 702.949.8200

13 Fax: 702.949.8398

14 *Attorneys for Plaintiff Baker Boyer National Bank*

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

Lewis Roca
ROTHGERBER CHRISTIE

Exhibit 1

Exhibit 1

FILED
KATHY MARTIN
COUNTY CLERK

2017 JUL 20 P 3:08

WALLA WALLA COUNTY
WASHINGTON

BY: 

SUPERIOR COURT OF WASHINGTON
IN AND FOR WALLA WALLA COUNTY

BAKER BOYER NATIONAL BANK,

Plaintiff,

v.


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

Defendants.

No. 16-2-00829-2

JUDGMENT FOR BAKER BOYER
NATIONAL BANK

and

Order Denying Reconsideration 

JUDGMENT # 17 9 00590 4

JUDGMENT SUMMARY:

1. Judgment Creditor:	Baker Boyer National Bank
2. Attorneys for Judgment Creditor:	Foster Pepper PLLC
3. Judgment Debtors:	James Patterson Foust, Jr., aka James P. Foust, Jr., individually and his marital community
4. Principal:	\$662,287.96
5. Interest through June 7, 2017:	\$100,757.16
6. Late Charges:	\$ 525.68
7. Force Place Insurance Premiums - Net Amount	\$ 48,222.00
8. Fees Paid to Third-Parties to Repossess Collateral:	\$ 31,823.50
TOTAL Judgment Amount as of June 7, 2017: *	\$843,616.30
Interest Rate:	7.88 % Per Annum

* Plus interest at 7.88% per annum from June 7, 2017 to entry of Judgment and until paid in full; and plus ongoing attorneys' fees, costs and expenses.

JUDGMENT FOR BAKER BOYER - I

FOSTER PEPPER PLLC
618 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

1 This matter came before the court on Plaintiff Baker Boyer National Bank's ("Baker
2 Boyer") presentation of a judgment based on the court's order granting summary judgment in
3 Baker Boyer's favor on all claims. The court heard oral argument of counsel for the plaintiff,
4 Todd Reuter, and counsel for the defendant, Lenard Wittlake. The court considered the pleadings
5 filed in the action.

6 I. DOCUMENT AND EVIDENCE CONSIDERED

7 The court also considered the documents and evidence that was brought to the court's
8 attention before the order on summary judgment was entered:

- 9 1. Baker Boyer's Motion for Summary Judgment as to All Claims;
- 10 2. Memo in Support of Baker Boyer's Motion for Summary Judgment as to All
11 Claims;
- 12 3. Declaration of John Blackmon;
- 13 4. Declaration of Tom Palumbo;
- 14 5. Declaration of Lacey Quiggle;
- 15 6. Declaration of Christopher Sentz;
- 16 7. Declaration of Russell S. Colombo in Support of Baker Boyer's Motion for
17 Summary Judgment as to All Claims;
- 18 8. December 14, 2016 Affidavit of Russell S. Colombo of Sums Certain and in
19 Support of Motion for entry of Default and Default Judgment, or in the Alternative, for Summary
20 Judgment;
- 21 9. Declaration of Todd Reuter in Support of Baker Boyer's Motion for Summary
22 Judgment as to All Claims;
- 23 10. January 19, 2017 Memorandum of Law Opposing Plaintiff's Motion for
24 Summary Judgment;
- 25 11. January 19, 2017 Declaration of James P. Foust, Jr.;
- 26

12. Second Declaration of James P. Foust, Jr. Opposing Second Motion for Summary Judgment;

13. Declaration of John Eakin;

14. Memo of Law Opposing Plaintiff's Second Motion for Summary Judgment;

15. Reply in Support of Baker Boyer's Motion for Summary Judgment as to All Claims; and

16. Affidavit of Russell S. Colombo Regarding Amounts Owed.

17. *Motion for Reconsideration and Memorandum in Support (June 30, 2017) and Baker Boyer's Response (July 17, 2017).* (H)

II. JUDGMENT

Based on the argument of counsel, the pleadings, order and evidence, judgment is entered as follows:

1. Plaintiff Baker Boyer is awarded \$662,287.96 in principal. This includes a \$223,125.00 reduction in the amount owed the bank based on Baker Boyer's receipt of net sale proceeds in that amount from the sale of 27 trailers in North Dakota. In the event the remaining three trailers are sold, this amount shall be reduced by the amount of the net sale proceeds received from such sale.

2. \$100,757.16 in prejudgment interest on the principal amount to June 7, 2017. A per diem of \$144.97 will accrue from June 7, 2017 to the date of the entry of this Judgment at the rate of 7.88%, as allowed in the Promissory Note.

3. \$525.68 in accumulated late charges.

4. \$31,823.50 in repossession costs.

5. \$48,222.00 for force-placed insurance on the trailers.

6. Post-judgment interest on the judgment amount at 7.88% per annum from the date of entry of this Judgment until the Judgment amount is paid in full.

7. Baker Boyer shall file a motion for award of reasonable attorneys' fees and costs within ten days of the entry of this Judgment, as allowed by Civil Rule 54(d)(2). Any amounts awarded will be added to the judgment amount. The court retains jurisdiction to add attorneys'


JUDGMENT FOR BAKER BOYER - 3

FOSTER PEPPER PLLC
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1 fees and costs to the judgment amount beyond what are ordered as part of the motion, if any are
2 incurred and sought by Baker Boyer in collecting on its judgment.

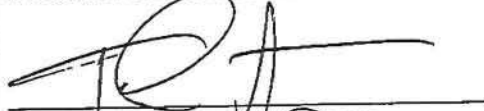
3 *8. Defendants' Motion to Reconsider is denied for the reasons set forth in Plaintiff's Response.*

4 ENTERED this 20th day of July, 2017.

5
6
7 
8 Honorable John W. Lohrmann

9 Presented by:

10 FOSTER PEPPER PLLC

11 

12 Todd Reuter, WSBA # 20859
13 Attorneys for Plaintiff
14 Baker Boyer National Bank

Approved as to content and form:

LENARD L. WITTLAKE, PLLC

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Lenard L. Wittlake, WSBA # 15451
Attorneys for Defendant

JUDGMENT FOR BAKER BOYER - 4

FOSTER PEPPER PLLC
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PHONE (509) 777-1600 FAX (509) 777-1616

1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 26th day of June, 2017, I caused to be served a true and
3 correct copy of the foregoing upon the person below stated and in the manner indicated:

4 Lenard L. Wittlake
5 Lenard L. Wittlake, PLLC
6 P. O. Box 1233
7 Walla Walla, WA 99362
8 E-Mail: lwlaw@my180.net
9 Attorney for Defendant

VIA FIRST CLASS MAIL ☒
VIA CERTIFIED MAIL, RETURN
RECEIPT REQUESTED ☐
VIA HAND DELIVERY ☐
VIA FACSIMILE ☐
VIA EMAIL ☒

10 Melody A. Roberts
11 Melody A. Roberts, Paralegal
12
13
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JUDGMENT FOR BAKER BOYER - 5

FOSTER PEPPER PLLC
618 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

**In the Superior Court of the State of Washington
For the County of Walla Walla**

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I,Kathy Martin..... County Clerk of the County of Walla Walla, State of Washington, and ex-officio Clerk of the Superior Court of the State of Washington for Walla Walla County, do hereby certify that the within and foregoing are full, true and correct copies of the originals and of the whole thereof as the same are now on file and of record in the within entitled action in my office and custody.


IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Superior Court this22nd day ofAugust....., 2017.....

.....Kathy Martin.....
County Clerk and ex-officio Clerk of the Superior Court
By..... Deputy

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I,M. Scott Wolfram..... Judge of the Superior Court of the State of Washington, for Walla Walla County, do hereby certify thatKathy Martin....., whose name is subscribed to the preceding exemplification is the County Clerk of Walla Walla County and ex-officio Clerk of the Superior Court of said County, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to the exemplification is the seal of our said Superior Court, and that the attestation thereof is in due form and according to the form of attestation in this State.

..........
Judge of the Superior Court.

Dated at Walla Walla, Washington, this22nd day ofAugust..... A.D., 2017.....

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I,Kathy Martin..... County Clerk and ex-officio Clerk of the Superior Court of the State of Washington, for Walla Walla County, do hereby certify thatM. Scott Wolfram..... whose name is subscribed to the preceding certificate, is Judge of the Superior Court of the State of Washington, for Walla Walla County, duly elected, sworn and qualified and that the signature of said Judge to said certificate is genuine.

PA00042

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal

Exhibit 2

Exhibit 2

FILED
KATHY MARTIN
COUNTY CLERK

2017 AUG 18 A 9:11

WALLA WALLA COUNTY
WASHINGTON

BY

SUPERIOR COURT OF WASHINGTON IN AND FOR WALLA WALLA COUNTY
BAKER BOYER NATIONAL BANK,

Plaintiff,

v.

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

Defendants.

No. 16-2-00829-2

STIPULATED ORDER AWARDING
ATTORNEYS' FEES AND COSTS TO
BAKER BOYER NATIONAL BANK

THIS MATTER comes before the court on the parties' stipulation to the entry of an order granting Baker Boyer's Motion for Award of Attorneys' Fees and Costs in the amount of \$90,000. Solely to resolve the pending motion the parties have stipulated that:

1. The rates charged by Baker Boyer's counsel are reasonable, that Baker Boyer's legal team consists of experienced litigators, and that their work was of high quality.

2. The amount of money at stake warranted the level and extent of legal work done by Baker Boyer's counsel in this matter. Defendant retains the right to challenge the reasonableness of any attorneys' fees and costs incurred in the future in this matter, whether in the trial court or appellate court.

3. The legal work on behalf of Baker Boyer led to the bank fully prevailing in this matter.

ORDER - 1
51629247

FOSTER PEPPER PLLC
618 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

PA00044

PA00045

**In the Superior Court of the State of Washington
For the County of Walla Walla**

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I, Kathy Martin..... County Clerk of the County of Walla Walla, State of Washington, and ex-officio Clerk of the Superior Court of the State of Washington for Walla Walla County, do hereby certify that the within and foregoing are full, true and correct copies of the originals and of the whole thereof as the same are now on file and of record in the within entitled action in my office and custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Superior Court this23rd... day ofAugust....., 2017.....

.....Kathy Martin.....
County Clerk and ex-officio Clerk of the Superior Court
By Linda Palmer..... Deputy

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I, John W. Lohrmann..... Judge of the Superior Court of the State of Washington, for Walla Walla County, do hereby certify that Kathy Martin....., whose name is subscribed to the preceding exemplification is the County Clerk of Walla Walla County and ex-officio Clerk of the Superior Court of said County, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to the exemplification is the seal of our said Superior Court, and that the attestation thereof is in due form and according to the form of attestation in this State.

John W. Lohrmann.....
Judge of the Superior Court.

Dated at Walla Walla, Washington, this23rd... day of ..August..... A.D., 2017.....

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I, Kathy Martin..... County Clerk and ex-officio Clerk of the Superior Court of the State of Washington, for Walla Walla County, do hereby certify that John W. Lohrmann..... whose name is subscribed to the preceding certificate, is Judge of the Superior Court of the State of Washington, for Walla Walla County, duly elected, sworn and qualified and that the signature of said Judge to said certificate is genuine.

PA00046

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal

Exhibit 2

Exhibit 2

**Baker Boyer Bank***Guiding you to a brighter financial future***Personal Financial Statement**

APPLICANT							
Name		Social Security Number		Date of Birth		Phone Number	
James P. Foust		[REDACTED]		[REDACTED]		310-490-4499	
Street Address		Apt Number		City		State Zip Code	
[REDACTED]		[REDACTED]		Rancho Palos Verdes		CA 90275	
Time at Residence		<input checked="" type="checkbox"/> Own <input type="checkbox"/> Rent		Employer Position		Time at Employer Work Phone	
20 Years		<input type="checkbox"/> Retired					
CO-APPLICANT							
Name		Social Security Number		Date of Birth		Phone Number	
Street Address		Apt Number		City		State Zip Code	
Time at Residence		<input type="checkbox"/> Own <input type="checkbox"/> Rent		Employer Position		Time at Employer Work Phone	
<i>For the purpose of obtaining credit with Baker Boyer Bank from time to time, I (we) herewith submit the following as being a fair and accurate statement of my (our) financial condition as of [REDACTED]</i>							
FINANCIAL STATEMENT (leave blank; data you add to the tables on the following pages will automatically be inserted)							
Assets of Borrower		Amount		Liabilities of Borrower		Amount	
Cash in Bank Accounts* (schedule 1)		\$ 716,854		Total Revolving Credit (schedule A)		\$ -	
Stocks/Bonds/Mutual Funds/Brokerage* (schedule 2)		\$ 129,332		Total Installment Loans (schedule B)		\$ 191,071	
Accounts/Notes Receivable (schedule 3)		\$ 719,051		Total Accounts/Notes Payable (schedule C)		\$ -	
Cash Value Life Insurance (schedule 4)		\$ -		Total Loans on Life Insurance (schedule 4)		\$ -	
Retirement Accounts (schedule 5)		\$ -		Total Other Liabilities (schedule D)		\$ -	
Vehicles and Other Assets (schedule 6)		\$ 5,703,495		Mortgage on Residence (RE schedule)		\$ 867,328	
Residence Market Value (RE Schedule)		\$ 1,800,000		Mortgage(s) on Other Real Estate (RE schedule)		\$ -	
Other Real Estate Market Value (RE schedule)		\$ 1,483,231					
Total Assets		\$ 10,551,973		Total Liabilities		\$ 1,058,399	
Net Worth		\$ 9,493,574					

*Statements required when \$100,000 or more listed in cash and/or marketable securities held at other financial institutions.

GENERAL INFORMATION

	Applicant	Co-Applicant
1. Have you ever filed for bankruptcy?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Have you ever been a principal or guarantor of a firm that declared bankruptcy?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3. Have you ever been convicted of a felony?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4. Are you a party to any claims or lawsuits?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
5. Are you a co-signer or guarantor of any other debt?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6. Are you currently an executive officer or on the Board of Directors of any Bank, Thrift or S & L?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7. Are you currently employed with the Bank's external auditor?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
8. Are any assets held in Trust?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
9. Do you own 25% or more of another company? Company Name (if YES, attach tax returns for all):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
10. Are you a citizen of the United States? If NO, what country?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
11. Marital status? (Answer only if this financial statement is provided in connection one or more of the following: A request for secured credit; applicant is seeking a joint account with spouse; or applicant or co-applicant is a resident of a community property state.)	<input checked="" type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Unmarried	<input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Unmarried
(Unmarried: single, divorced, widowed)		

If YES to questions 1-7, please describe:

PA00048

FINANCIAL STATEMENT SCHEDULES

Assets

Schedule 1: Cash in Bank Accounts

Name of Bank	Account Number	Account Description	Current Balance
Chase		Private	\$ 248,336
USB		checking	\$ 64,608
USB		Private	\$ 201,268
City		checking	\$ 25,243
Schwab		Personal	\$ 129,587
Schwab		Roll Over	\$ 47,942
			\$ -
Total:			\$ 716,854

Schedule 2: Stocks/Bonds/Mutual Funds/Brokerage Accounts

Shares/Amount	Description	Name(s) Registered in	Cost	Market Value	Listed/Unlisted
	Morgan Stanley	Managed account	\$ -	\$ 129,332	
			\$ -	\$ -	
			\$ -	\$ -	
			\$ -	\$ -	
			\$ -	\$ -	
			\$ -	\$ -	
			\$ -	\$ -	
Total:			\$ -	\$ 129,332	

Schedule 3: Accounts/Notes Receivable

Due From	Collateral	Maturity	How Payable	Current	Deferred
Extreme Beverage	Stock		\$ - per		\$ 37,500
Sirous Communications	stock		\$ - per		\$ 125,000
Roatan development Group	5.596 acres land Roatan		\$ - per	\$ -	\$ 556,561
			\$ - per	\$ -	\$ -
			\$ - per	\$ -	\$ -
			\$ - per	\$ -	\$ -
			\$ - per	\$ -	\$ -
Total:			\$ -	\$ -	\$ 719,061

Schedule 4: Life Insurance

Insured	Beneficiary	Name of Company	Face Amount	Cash Value	Loan on Policy
James Foust	Miriam Foust	Lincoln Life	\$ 1,000,000	\$ -	\$ -
James Foust	Miriam Foust	Lincoln Life	\$ 1,000,000	\$ -	\$ -
James Foust	Miriam Foust	Lincoln Life	\$ 1,000,000	\$ -	\$ -
James Foust	Vanessa Foust	Lincoln Life	\$ 1,000,000	\$ -	\$ -
James Foust	Jocelyn Foust	Lincoln Life	\$ 1,000,000	\$ -	\$ -
			\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -
Total:			\$ 5,000,000	\$ -	\$ -

Schedule 5: Retirement Accounts

Shares/Amount	Description	Name(s) Registered in	Cost	Market Value	Listed/Unlisted
			\$ -	\$ -	
			\$ -	\$ -	
			\$ -	\$ -	
			\$ -	\$ -	
			\$ -	\$ -	
			\$ -	\$ -	
			\$ -	\$ -	
Total:			\$ -	\$ -	

Schedule 6: Vehicles & Other Assets

Property Description	Name(s) Registered in	Cost	Year Acquired	Market Value	Amount of Insurance
Classic Cars - Est Value using Mkt. Prices	Foust	\$ 3,012,031	various	\$ 5,120,130	\$ -
Gold Bullion .9999- 4 Kilos @ 1426		\$ -		\$ 183,384	\$ -
Aircraft - N6634P		\$ -		\$ 290,000	\$ -
Las Vegas Coach Resort - Lot #102		\$ -		\$ 101,202	\$ -
Auto Loan to Dettwiller		\$ -		\$ 8,779	\$ -
		\$ -		\$ -	\$ -
		\$ -		\$ -	\$ -
		\$ -		\$ -	\$ -
		\$ -		\$ -	\$ -
Total:				\$ 5,703,495	

24,720

Schedule A: Total Revolving Credit (Credit Cards/Line of Credit)

Schedule B: Total Installment Loans (Auto Loans/Student Loans/Term Loans)

Total:	\$	191,071
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Total:	\$	-
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Total:	\$.	-
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Total:	\$
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FINANCIAL STATEMENT SCHEDULES

Real Estate

Property Type: ☒ SF ☐ MF ☐ C ☐ L ☐ V ☐ R ☐ I ☐ A

Residence		Other Real Estate			
Property Type:	<input checked="" type="checkbox"/> SF <input type="checkbox"/> MF	<input type="checkbox"/> Vacation <input type="checkbox"/> Rental	<input type="checkbox"/> Vacation <input type="checkbox"/> Rental	<input type="checkbox"/> Vacation <input type="checkbox"/> Rental	<input type="checkbox"/> Vacation <input type="checkbox"/> Rental
Ownership %		<input type="checkbox"/> SF <input type="checkbox"/> MF <input type="checkbox"/> C <input type="checkbox"/> L	<input type="checkbox"/> SF <input type="checkbox"/> MF <input type="checkbox"/> C <input type="checkbox"/> L	<input type="checkbox"/> SF <input type="checkbox"/> MF <input type="checkbox"/> C <input type="checkbox"/> L	<input type="checkbox"/> SF <input type="checkbox"/> MF <input type="checkbox"/> C <input type="checkbox"/> L
Co-Owned with Spouse	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Street Address	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
City	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
State	CA	NV	NV	NV	NV
Zip Code	90275	89123	89135	89015	89135
Purchase Date	May 1, 1993	about 1999	Late 2011	January 1, 2010	August 1, 2006
Purchase Price	\$ 800,000	\$ 475,000	\$ 215,000	\$ 90,000	\$ 638,231
Estimated Market Value	\$ 1,800,000	\$ 475,000	\$ 250,000	\$ 120,000	\$ 638,231
Balance - 1st Mortgage	\$ 867,328	\$ -	\$ -	\$ -	\$ -
Interest Rate	3.00%				
Maturity Date	300 Months				
Lender - 1st Mortgage	merrill lynch				
Payment - 1st Mortgage	\$ 2,168	\$ -	\$ -	\$ -	\$ -
Balance - Other Mortgages/Liens	\$ -	\$ -	\$ -	\$ -	\$ -
Interest Rate					
Maturity Date					
Lender - Other Mortgages					
Payments - Other Mortgages	\$ -	\$ -	\$ -	\$ -	\$ -
Property Tax	\$ 14,000	\$ 1,938	\$ 3,131	\$ 2,180	\$ 4,200
Insurance	\$ 1,800	\$ 205	\$ 280	\$ 305	\$ 410
Gross Monthly Rent	\$ -	\$ 1,400	expected \$2200	\$ 1,100	\$ -

SIGNATURES

I (we) hereby authorize Baker Boyer Bank (the Lender) to make any investigation of my (our) credit or employment status either directly or through any agency employed by Lender for that purpose. The Lender may disclose to any other interested parties the Lender's experience with this account. I (we) agree statements in this application, including the information furnished by me (us) are true and complete and are made for the purpose of obtaining credit. I (we) agree to inform the Lender immediately of any matter which will cause any significant change in my (our) financial condition. I (we) understand that the Lender will retain this financial statement whether or not credit is granted.

X
Applicant's Signature _____ Date _____
James P. Foust

X
Co-Applicant's Signature _____ Date _____

0

Page 4

26,016

PA00051

Exhibit 3

Exhibit 3

FOUST Classic Cars

Autos.xlsx

Foust Classic Cars

YEAR	MAKE	DESCRIPTION	Buy	COST	Est. Value	VIN	STATE	From
1935	CADILLAC	V-12 COUPE	1996	\$44,000.00	\$100,000.00	4100743	CAL	THOMAS CADILLAC
1989	CHAPARRAL	TRAILER	2000	\$25,000.00	\$25,000.00	1S9SC4532K1090654	ND	Shirley Muldowney
1956	CHEV	CORVETTE	1982	\$10,000.00	\$50,000.00	VE56S003290	NO, DAK	ROBERT HILTON
1957	CHEV	BEL AIR CONV. (FI)	1989	\$50,000.00	\$100,000.00	VC570141640	KENTUCKY	O.B. SMITH
1957	CHEV	CORVETTE	1988	\$45,000.00	\$50,000.00	E57S103094	KENTUCKY	SOUTHLAND INVEST.
1966	CHEV	TURBO CORVAIR	1990	\$5,000.00	\$5,000.00	107376L110678	CAL	R & S
2007	CHEV	Corvette Z06	2007	\$80,000.00	\$50,000.00	1G1YY26E375121069	Montana	Chevrolet
1957	CHRYSLER	300 C CONV.	1988	\$27,000.00	\$150,000.00	3N571810	Montana	Joe Bortz
2002	Crysler	PT Cruiser	2001	\$35,000.00	\$5,000.00	3C 8FY68B52T216202	NV	Crysler
2005	Crysler	PT Cruiser	2006	\$20,000.00	\$5,000.00	3C3AY75S05T701409	Montana	Crysler
2009	Crysler	PT Cruiser	2009	\$13,000.00	\$5,000.00	3A8FY68899T510047	Montana	Crysler
1965	DODGE	SAVOY Acid dip car	1989	\$33,000.00	\$100,000.00	W0512245600	ILL.	JAMES JACKSON
1990	FERRARI	TESTAROSSA	1995	\$104,000.00	\$75,000.00	ZFFSG17AGL0083464	ND	Jerry Buss
1937	FORD	Coupe	2006	\$75,000.00	\$75,000.00	3541190	Montana	R & S
1940	FORD	Coupe	2007	\$40,000.00	\$40,000.00	AZ152801	Montana	Spencer Shakstad
1955	FORD	T-BIRD (96 MILES)	1988	\$45,000.00	\$45,000.00	P5FH166138	CAL	PS Auction
1955	FORD	T-BIRD (CHEV)	1976	\$15,000.00	\$15,000.00	P5FH240647	CAL	DEDE
1957	FORD	T-BIRD (MATTOX)	1990	\$5,000.00	\$5,000.00	D7FH251424 *	CAL	BOB MATTAX
1957	FORD	FAIRLANE 500	1990	\$7,500.00	\$25,000.00	D7LV162233	Montana	DALE VALURE
1963	FORD	427 GALAXY (R-CAR)	1990	\$23,000.00	\$100,000.00	3W66R131679	KANSAS	RICHARD PETTY
1964	FORD	THUNDERBIRD - BLACK	1992	\$17,000.00	\$17,000.00	4Y85Z127518	GEORGIA	WILLIARD CARROLL
1966	FORD	THUNDERBIRD - RED	1990	\$19,000.00	\$19,000.00	6Y85Z104010	S. CAROLINA	TRANSOUTH
1967	FORD	MUSTANG Convertible	1990	\$5,500.00	\$40,000.00	7T03T118534 *	Montana	Barret Jackson
1968	FORD	COBRA JET MUSTANG	1990	\$20,000.00	\$50,000.00	8R02R1688059	MONTANA	ROBERT KWAPY
1970	FORD	BOSS 429 - Drew Alcazar	1990	\$90,000.00	\$200,000.00	0F02Z137925/KK2459	WISCONSIN	LIEN, MARK
1971	FORD	PANTERIA	1988	\$15,000.00	\$15,000.00	THPNLY01620	Montana	ORAN BERCH
1973	FORD	PANTERIA - \$300,000 Rest.	2003	\$63,000.00	\$100,000.00	THPNNU05291	Montana	IRS Auction
1988	FORD	#11 Budweiser NASCAR	2000	\$40,000.00	\$40,000.00	MRE #unknown	None	Bill Elliot
1991	FORD	#9 COORS LITE NASCAR	2000	\$54,060.00	\$54,060.00	MRE #21	BILL OF SALE	RON HUBER
2008	Harley-Davidson	Motor Cycle	2008	\$21,470.00	\$21,470.00	1HD 1KB 4398 Y 652 304	Cal	Golden Gate
2009	Harley-Davidson	Motor Cycle	2010	Trade 2008 H/D	Trade 2008 H/D	1HD1HPH349K810543	Montana	Golden Gate
1987	HONDA	SCOOTER	2000	\$800.00	\$100.00	JH2HF0316HS202130	CAL	Honda
1992	HONDA	SCOOTER	2000	\$800.00	\$100.00	3H1HF031OND700204	CAL	Honda
1991	INTERNATIONAL	4000 SERIES	2000	\$50,000.00	\$25,000.00	1HTSDNHL4MH321753	ND	Shirley Muldowney
1951	JAGUAR	XK 120 RACE CAR	2000	\$45,050.00	\$45,050.00	S671966	Montana	Dana Mecham auctions
1964	JAGUAR	XKE	1999	\$39,000.00	\$39,000.00	881364	CAL	WILLIAM LAZARIS
1985	KAWASAKA	NINJA 900	1985	\$1,500.00	\$1,500.00	JKAZX2A13FB505429/ZX90C	Montana	KAWASAKA
1967	LAMBORGHINI	MUIRA (3571).	1975	\$13,000.00	\$250,000.00	3571	CAL	Private Party ??

PA00053

FOUST Classic Cars

1988	LAMBORGHINI	COUNTACH	1995	\$64,500.00	\$64,500.00	ZA9CA05A8JLA12269	Montana	Al Bertoni
1998	MARATHON	COACH	2003	\$420,000.00	\$200,000.00	2PCM3349XV1026183	DEALER	MARATHON
1956	Mercedes	300 SL - Scott Resto.	1978	\$50,000.00	\$750,000.00	198 980 650086	CAL	Stock Broker
1968	Mercedes	280 SL	2006	\$60,850.00	\$60,850.00	11304412000874	Virgina	R & S
1977	Mercedes	380 4 DR SEDAN	1977	\$35,000.00	\$35,000.00	10704412035568	ND	Mercedes
1987	Mercedes	450SL	2007	\$37,000.00	\$37,000.00	WDBBA48D5HA059358	Montana	Mercedes
2006	Mercedes	S500	2008	\$43,000.00	\$25,000.00	WDBNG75J76A482303	Montana	Mercedes
2007	Mercedes	M50 SUV	2007	\$65,000.00	\$25,000.00	4JGBB75E07A222537	Montana	Mercedes
1957	OLDSMOBILE	98 ROCKET	1990	\$30,000.00	\$30,000.00	579M27665	Montana	DUFFY SHAMBURGER
1957	PACKARD	CLIPPER	1982	\$8,000.00	\$8,000.00	57L1582	N.D.	Bowman Chev
1962	PLYMOUTH	Savoy w/413 - Ramchargers	1989	\$46,000.00	\$75,000.00	512 216 59 86	MICH.	TOM POLIDAN
1964	PLYMOUTH	HEMI (ALUMINUM BODY)	1990	\$25,000.00	\$50,000.00	RACE CAR - No Title	PLYMOUTH	Jim (Car Covers)
1966	PLYMOUTH	HEMI BELVADIRE	1989	\$45,000.00	\$45,000.00	RP23H67303290	Montana	JOHN KEROLA
2000	PLYMOUTH	PROWLER	2000	\$51,000.00	\$30,000.00	1P3EW65G1YV603597	Montana	Harry Hildibrand
1969	PONTIAC	JUDGE	1988	\$9,000.00	\$40,000.00	Get From Bob Wokel	ND	Bob Wokel
1958	PORSCHE	CABROLET	1990	\$20,000.00	\$20,000.00	NR150801	CAL	R & S
1983	PORSCHE	CARREA	1988	\$35,000.00	\$35,000.00	WPOEA0915DS170119	CAL	Santa Monica dealer
1980	ROLLS ROYCE	SILVER CLOUD II	1990	\$22,500.00	\$22,500.00	SRL41595C	CAL	DUDLEY HAINES
1965	SHELBY	427 Cobra - Org. Comp Car	2000	\$550,000.00	\$1,500,000.00	CSX3012	Not Titled	Original MSO
1968	SHELBY	GT500	1991	\$21,500.00	\$75,000.00	8T02S14955001843	CAL	JIM SHIPLEY
1966	SHELBY	427 COBRA - Ford Cammer	1991	\$50,000.00	\$50,000.00	SP25692LA	CAL	kentucky Lawyer
				\$2,885,030	\$5,120,130			

Exhibit 4

Exhibit 4

James P. Foust
Balance Sheet
December 31, 2015
Print Date January 29, 2016

ASSETS

	CURRENT YEAR	PREVIOUS YEAR
* Current Assets		
USBank # [REDACTED]	\$ 7,235.35	20,240.84
USBank # [REDACTED]	230,669.38	53,109.68
USBank # [REDACTED]	12,499.92	0.00
City National bank - [REDACTED]	0.00	1,762.13
Gold - 128.6 OZ	0.00	215,791.00
Schwab (IRA) - [REDACTED]	0.00	129,558.48
Schwab (JPF) - [REDACTED]	0.00	40,020.35
Smith Barney	167.11	72,583.13
Smith Barney	161.74	27,561.65
Smith Barney	106.48	124,331.56
A/R - HT	0.00	40,000.00
Loan Peris Meeks	0.00	1,800.00
Loan Charis	130,000.00	0.00
Loan - Tony Thompson	0.00	4,875.00
Loan - Dora	0.00	4,500.00
Total Current Assets	380,839.98	736,133.82
Property and Equipment - Cost		
RPV-House	890,000.00	890,000.00
[REDACTED]	101,201.61	101,201.61
[REDACTED]	0.00	638,230.53
Marathon Motor Coach	420,000.00	420,000.00
Automobiles - Classic	1,381,320.00	2,817,930.00
Aircraft - N6634P	290,000.00	290,000.00
8 Rehab Homes	96,000.00	0.00
Total Property and Equipment	3,178,521.61	5,157,362.14
Other Assets		
2006 MBZ	0.00	(6,500.00)
2007 S500 MBZ	0.00	34,820.00
Extreme Beverage	0.00	37,500.00
Sirous Communications - Larkin	0.00	125,000.00
Roatan West bay	721,905.62	556,561.00
Loan - Ed Detwiller	132,073.13	0.00
Note Payable EFG - ICC Sale	0.00	2,249,372.28
Total Other Assets	853,978.75	2,996,753.28
GreenFlex Investment (JPF Enterprises)		
Baker Boyer Bank C/D	0.00	94,375.02
Expenses Paid By JPF	120,397.43	9,242.41
AMEX Expenses	9,566.27	9,566.27
Watford Units - 70 13,15,16,18	135,060.00	135,060.00
Jason 30 Units	250,215.57	250,215.57
Williston - [REDACTED]	100,000.00	100,000.00
Williston - [REDACTED]	76,000.00	76,000.00
JPF Enterprises - Loan RE-Pay	(208,800.00)	(208,800.00)
Total GreenFlex	482,439.27	465,659.27
Total Assets	\$ 4,895,779.61	9,355,908.51

Unaudited - For Management Purposes Only

PA00056

James P. Foust
Balance Sheet
December 31, 2015
Print Date January 29, 2016

LIABILITIES AND CAPITAL

	CURRENT YEAR	PREVIOUS YEAR
<u>Current Liabilities</u>		
Accounts Payable	\$ 2,385.25	32.63
Federal Income Tax Payabl	0.00	0.00
State Income Tax	0.00	0.00
Total Current Liabilities	2,385.25	32.63
<u>Long-Term Liabilities</u>		
Loan - RPV	867,327.50	867,327.50
Loan - Coach	142,545.37	171,548.97
Total Long-Term Liabilities	1,009,872.87	1,038,876.47
Total Liabilities	1,012,258.12	1,038,909.10
<u>Net Worth</u>		
Asset Value	4,478,878.53	6,031,913.16
JPF Individual Net worth	(213,056.04)	2,101,551.76
Beginning Balance Equity	50,435.65	50,435.65
Net Worth	133,098.84	370,940.56
Current Earnings	(565,835.49)	(237,841.72)
Total Capital	3,883,521.49	8,316,999.41
Total Liabilities & Capital	\$ 4,895,779.61	9,355,908.51

Unaudited - For Management Purposes Only

PA00057

James P. Foust
Income Statement
For the Twelve Months Ending December 31, 2015
Print Date January 29, 2016

	Current Month This Year	Current Month Last Year	Year to Date This Year	Year to Date Last Year	% Curr Of Last Year
Cash Flow In					
Other Income					
Interest Income	\$ 4.18	\$ 10.36	\$ 121.45	\$ 154.78	78.47
Social security Payments - JP	2,173.90	2,137.90	26,086.80	25,654.80	101.68
Social security W/H - JPF	(104.90)	(104.90)	(1,258.80)	(1,258.80)	100.00
Total Other Income	2,073.18	2,043.36	24,949.45	24,550.78	101.62
Rental - BOCALE CT. 715					
	0.00	0.00	0.00	3,088.57	0.00
Total Bocale Ct.	0.00	0.00	0.00	3,088.57	0.00
Business - Woodstream 717					
Electric	0.00	(150.00)	(600.00)	(1,500.00)	40.00
Water	(125.00)	(70.00)	(842.44)	(770.00)	109.41
Gas	0.00	0.00	(270.00)	(300.00)	90.00
Trash	(50.40)	(100.00)	(232.55)	(233.75)	99.49
Sewer	0.00	0.00	(247.21)	(259.20)	95.37
Property Tax	0.00	(1,749.26)	(4,442.49)	(4,355.95)	101.99
Gardening	(93.00)	(93.00)	(1,116.00)	(1,116.00)	100.00
Cox Cable - RES	(103.30)	(167.53)	(1,791.81)	(1,999.04)	89.63
Association Fees	0.00	0.00	(291.00)	(970.00)	30.00
Summerlyn HOA	(43.00)	(43.00)	(492.00)	(516.00)	95.35
Cell Phone	(270.27)	(270.00)	(3,241.08)	(3,290.00)	98.51
Swimming Pool	(100.00)	(125.00)	(1,112.00)	(2,035.00)	54.64
Home Cleaning	0.00	0.00	(1,050.00)	(631.00)	166.40
Repairs & Maint.	0.00	0.00	(550.00)	(100.00)	550.00
Replace 5 Ton air Conditione	(350.00)	(313.00)	(4,176.00)	(1,502.00)	278.03
Total Woodstream	(1,134.97)	(3,080.79)	(20,454.58)	(19,577.94)	104.48
Rental - San Laguna 726					
Total San laguna	0.00	0.00	0.00	0.00	0.00
Rental - Comstock 727					
Bluffs HOA	0.00	0.00	0.00	(50.00)	0.00
Bluffs Villiage II	0.00	0.00	0.00	(185.00)	0.00
Total Comstock	0.00	0.00	0.00	(235.00)	0.00
Rental- Manufactured Homes Expenses 753					
Total Comstock	0.00	0.00	0.00	0.00	0.00
Total Ordinary Income	938.21	(1,037.43)	4,494.87	7,826.41	57.43
Capital Gain					
Classic Cars					
Sale Lamborghini Countach	0.00	0.00	(6,519.54)	0.00	0.00
Total Classic Cars	0.00	0.00	(6,519.54)	0.00	0.00
San Laguna					

For JPF Internal Purposes Only

James P. Foust
Income Statement
For the Twelve Months Ending December 31, 2015
Print Date January 29, 2016

	Current Month This Year	Current Month Last Year	Year to Date This Year	Year to Date Last Year	% Curr Of Last Year
Total San Laguna	0.00	0.00	0.00	0.00	0.00
<u>Bocale</u>					
Sale of Bocale	0.00	0.00	0.00	35,983.01	0.00
Total Bocale	0.00	0.00	0.00	35,983.01	0.00
<u>Comstock</u>					
Sale of Comstock	0.00	0.00	0.00	34,330.20	0.00
Comstock	0.00	0.00	0.00	34,330.20	0.00
<u>Woodstream</u>					
Sale Woodstream	(184,375.47)	0.00	(184,375.47)	0.00	0.00
Comstock	(184,375.47)	0.00	(184,375.47)	0.00	0.00
Total Capital Gain	(184,375.47)	0.00	(190,895.01)	70,313.21	(271.49)
Total Income	(183,437.26)	(1,037.43)	(186,400.14)	78,139.62	(238.55)
<u>EXPENSES</u>					
<u>Naomi Household Expenses</u>					
Naomi Household Expenses	0.00	(4,600.00)	(57,497.63)	(52,907.70)	108.68
Phone	0.00	0.00	(15.62)	0.00	0.00
Home Owner Insurance	0.00	0.00	(1,943.00)	(1,748.00)	111.16
Taxes	0.00	0.00	(14,509.41)	(14,398.33)	100.77
Mortgage Interest	(2,072.77)	(1,982.65)	(24,602.88)	(24,332.52)	101.11
Gardener	0.00	0.00	0.00	(300.00)	0.00
Repairs	0.00	0.00	(900.00)	0.00	0.00
Total RPV	(2,072.77)	(6,582.65)	(99,468.54)	(93,686.55)	106.17
<u>Total Arizona</u>	0.00	0.00	0.00	0.00	0.00
<u>Utilities</u>					
Utilities	0.00	0.00	(1,200.00)	(1,500.00)	80.00
Phone	0.00	(46.00)	(221.80)	(552.00)	40.18
Total North Dakota	0.00	(46.00)	(1,421.80)	(2,052.00)	69.29
<u>Palos Verdes High school</u>					
Palos Verdes High school	0.00	0.00	0.00	(300.00)	0.00
Domestic Help	(400.00)	(400.00)	(4,800.00)	(2,800.00)	171.43
Jocelyn	(300.00)	0.00	(1,760.00)	0.00	0.00
Vanessa	(300.00)	0.00	(1,515.00)	0.00	0.00
Total Naomi	(1,000.00)	(400.00)	(8,075.00)	(3,100.00)	260.48
<u>Interest</u>					
Interest	(674.54)	(1,238.94)	(8,094.48)	(14,867.28)	54.44

For JPF Internal Purposes Only

James P. Foust
Income Statement
For the Twelve Months Ending December 31, 2015
Print Date January 29, 2016

	Current Month This Year	Current Month Last Year	Year to Date This Year	Year to Date Last Year	% Curr Of Last Year
Nevada Power Company	0.00	(60.00)	(121.00)	(600.00)	20.17
Coach Homeowners Assoc.	(395.00)	(395.00)	(4,740.00)	(4,689.00)	101.09
Other - Coach Expenses	0.00	0.00	0.00	(400.00)	0.00
Property Taxes	0.00	(470.66)	(972.06)	(941.88)	103.20
Total Coach	(1,069.54)	(2,164.60)	(13,927.54)	(21,498.16)	64.78
<u>JPF Expenses 725</u>					
PayPal	(379.35)	(20.96)	(1,670.22)	(4,188.17)	39.88
Cash	0.00	0.00	0.00	(6,000.00)	0.00
American Express	(4,000.00)	(1,500.00)	(68,017.00)	(23,561.56)	288.68
American Express - Biz	0.00	(3,000.00)	0.00	(48,211.28)	0.00
Bank America / MBNA	0.00	(524.00)	(7,865.64)	(8,952.00)	87.86
Discover Card	(2,000.00)	(300.00)	(12,300.00)	(4,900.00)	251.02
Hangar Rent	(1,251.75)	(1,265.23)	(14,944.84)	(15,295.70)	97.71
Plane	0.00	0.00	(671.11)	(267.00)	251.35
Medical - AARP	(313.90)	(354.50)	(3,773.20)	(3,718.95)	101.46
Auto Expense	0.00	(3,587.42)	0.00	(3,587.42)	0.00
Total JPF	(7,945.00)	(10,552.11)	(109,242.01)	(118,682.08)	92.05
<u>MISCELLANEOUS 740</u>					
OTHER Expenses	(2,000.00)	0.00	(6,624.33)	0.00	0.00
Cash	(1,600.00)	0.00	(9,000.00)	(2,400.00)	375.00
Dues and Subscriptions	0.00	0.00	0.00	(52.88)	0.00
Automobile	(2,385.25)	0.00	(4,748.90)	(205.75)	2,308.09
1990 Ferrari	0.00	0.00	(70.00)	0.00	0.00
2006 MBZ S500	0.00	0.00	0.00	(588.33)	0.00
2007 CLK550	0.00	(32.63)	(1,057.94)	(512.15)	206.57
2007 ML500	0.00	0.00	(996.58)	(1,382.12)	72.11
2007 S500 MBZ	0.00	0.00	0.00	(3,316.35)	0.00
2000 Yukon	0.00	0.00	(739.04)	(357.00)	207.01
2007 Corvette	0.00	0.00	(283.00)	0.00	0.00
Marathon Coach Insurance	0.00	0.00	(222.00)	(419.00)	52.98
Palso Verdes Police Dept.	0.00	0.00	0.00	(75.00)	0.00
Gasoline	(411.95)	0.00	(1,639.09)	0.00	0.00
Paypal	0.00	0.00	(45.92)	0.00	0.00
Bank Charges	(60.00)	0.00	(297.92)	(122.95)	242.31
Accounting	0.00	(1,080.00)	(1,080.00)	(1,080.00)	100.00
Heggen - Autos	0.00	(938.33)	(100.00)	(1,714.18)	5.83
Heggen - Fee's	(500.00)	0.00	(1,487.99)	(340.10)	437.52
Interest Expense	0.00	0.00	(8,000.00)	0.00	0.00
Medical	(175.00)	0.00	(425.00)	(792.20)	53.65
Life Insurance	(31,700.00)	(31,700.00)	(31,700.00)	(31,700.00)	100.00
Business Expenses	0.00	0.00	(60.98)	0.00	0.00
Default Purchase Account	(56.00)	52.95	(23,620.29)	1,337.73	(1,765.70)
Plane Expenses	0.00	0.00	0.00	(4,000.00)	0.00
Total Miscellaneous	(38,888.20)	(33,698.01)	(92,198.98)	(47,720.28)	193.21
<u>Girls College</u>					
California Lutheran	0.00	0.00	0.00	(17,220.00)	0.00
Uni. San Diego	0.00	(500.00)	(49,979.05)	(500.00)	9,995.81
UCLA	(124.46)	0.00	(124.46)	0.00	0.00
UCLA Housing	0.00	0.00	(4,997.97)	(11,462.27)	43.60
Total College	(124.46)	(500.00)	(55,101.48)	(29,182.27)	188.82

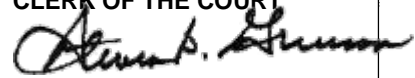
For JPF Internal Purposes Only

James P. Foust
Income Statement
For the Twelve Months Ending December 31, 2015
Print Date January 29, 2016

	Current Month This Year	Current Month Last Year	Year to Date This Year	Year to Date Last Year	% Curr Of Last Year
Total EXPENSES	<u>(51,099.97)</u>	<u>(53,943.37)</u>	<u>(379,435.35)</u>	<u>(315,921.34)</u>	120.10
Net Income	<u>\$ (234,537.23)</u>	<u>\$ (54,980.80)</u>	<u>\$ (565,835.49)</u>	<u>\$ (237,781.72)</u>	237.96

For JPF Internal Purposes Only

PA00061



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Nevada Bar No. 11220
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cmunteer@maclaw.com
Attorneys for Defendant/
Judgment Debtor

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 MOTION FOR AN ORDER REQUIRING JUDGMENT DEBTOR TO
DELIVER POSSESSION OF CLASSIC CAR COLLECTION TO SATISFY NEARLY \$1
MILLION JUDGMENT**

Defendant/Judgment Debtor James Patterson Foust, Jr. ("Mr. Foust") by and through his
attorneys of record, Marquis Aurbach Coffing, herby file this Opposition to Plaintiff's Motion
for an Order Requiring Judgment Debtor to Deliver Possession of Classic Car Collection to
Satisfy Nearly \$1 Million Judgment. This Opposition is made and based upon the pleadings and
papers on file herein, the attached Memorandum of Points and Authorities, and

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MARQUIS AURBACH COFFING


10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 ///

2 any oral argument of counsel entertained at the time of the hearing on this matter.

3 Dated this 5th day of January, 2018.

MARQUIS AURBACH COFFING

6 By 

7 Terry A. Coffing, Esq.

8 Nevada Bar No. 4949

9 Cody S. Munteer, Esq.

10 Nevada Bar No. 11220

11 Tom W. Stewart, Esq.

12 Nevada Bar No. 14280

13 10001 Park Run Drive

14 Las Vegas, Nevada 89145

15 *Attorneys for Defendant/*

16 *Judgment Debtor*

**DECLARATION OF JAMES PATTERSON FOUST, JR. IN SUPPORT OF
OPPOSITION TO MOTION FOR AN ORDER REQUIRING JUDGMENT DEBTOR TO
DELIVER POSSESSION OF CLASSIC CAR COLLECTION TO SATISFY NEARLY \$1
MILLION JUDGMENT**

James P. Foust, Jr., declares under penalty of perjury, that the following is true and correct:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true.

2. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

3. I am the defendant/judgment debtor in this lawsuit, which is a domesticated judgment originally issued in Washington state.

4. At issue in the Washington lawsuit was a commercial loan from Baker Boyer Bank for which I received and, as part of the application for that loan, provided a list of my assets.

5. Included in that list of assets was a collection of 59 cars I owned at the time I applied for the loan.

6. Since that time, however, the downturn in my financial situation required me to liquidate, leaseback, gift, or trade away all of my vehicles, as detailed below and as reflected in the spreadsheet attached to this Opposition.

7. I sold the following vehicles:

- a. 1935 Cadillac V-12 Coupe;
- b. 1989 Chaparral Trailer;
- c. 1957 Chevrolet Bel Air;
- d. 1957 Chevrolet Corvette;
- e. 1963 Chevrolet 425/409 S/S;
- f. 1966 Chevrolet Turbo Corvair;
- g. 2007 Chevrolet Corvette ZO6;

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

- | | | |
|----|-----|---------------------------------------|
| 1 | h. | 1957 Chrysler 300C Convertible; |
| 2 | i. | 2009 Chrysler PT Cruiser; |
| 3 | j. | 1965 Dodge Savoy; |
| 4 | k. | 1990 Ferrari Testarossa; |
| 5 | l. | 1937 Ford Coupe; |
| 6 | m. | 1940 Ford Coupe; |
| 7 | n. | 1955 Ford Thunderbird; |
| 8 | o. | 1955 Ford Thunderbird; |
| 9 | p. | 1957 Ford Fairlane 500; |
| 10 | q. | 1957 Ford Thunderbird; |
| 11 | r. | 1963 Ford 427 Galaxy; |
| 12 | s. | 1966 Ford Thunderbird; |
| 13 | t. | 1967 Ford Mustang; |
| 14 | u. | 1968 Ford Cobra Jet Mustang; |
| 15 | v. | 1970 Ford Boss 429; |
| 16 | w. | 1971 Ford Panteria; |
| 17 | x. | 1973 Ford Panteria; |
| 18 | y. | 1987 Ford Truck; |
| 19 | z. | 1988 Ford #11 Budweiser NASCAR; |
| 20 | aa. | 1991 Ford #9 Coors Lite NASCAR; |
| 21 | bb. | 1999 Ford Crew Car Pickup; |
| 22 | cc. | 2009 Harley-Davidson VROD motorcycle; |
| 23 | dd. | 1991 International 400 Series; |
| 24 | ee. | 1951 Jaguar XK 120 racecar; |
| 25 | ff. | 1964 Jaguar XKE; |
| 26 | gg. | 1985 Kawasaki Ninja motorcycle; |
| 27 | hh. | 1967 Lamborghini Muira; |
| 28 | ii. | 1988 Lamborghini Countach; |

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- jj. 1998 Marathon Coach;
- kk. 1956 Mercedes 300 SL;
- ll. 1968 Mercedes 280 SL;
- mm. 1987 Mercedes 450 SL;
- nn. 2006 Mercedes S500;
- oo. 1957 Oldsmobile 98 Rocket;
- pp. 1957 Packard Clipper;
- qq. 1962 Plymouth Savoy;
- rr. 1964 Plymouth Hemi;
- ss. 1966 Plymouth Belvedere;
- tt. 2000 Plymouth Prowler;
- uu. 1969 Pontiac Judge;
- vv. 1983 Porsche Carrera;
- ww. 1980 Rolls Royce Silver Cloud II;
- xx. 1965 Shelby 427 Cobra;
- yy. 1968 Shelby GT500;
- zz. 1966 Shelby 427 Cobra Replica;
- aaa. 1984 Volkswagen Rabbit; and
- bbb. 2004 Volvo C60.

8. I have sold and have received a leaseback on the following vehicles:

- a. 2000 GMC Yukon;
- b. 2007 Mercedes S550;
- c. 2007 Mercedes CLK 550; and
- d. 2007 Mercedes M50.

9. I have gifted the following vehicles:

- a. 1978 Carrier Boat Trailer (gifted to my son, James P. Foust, III)
- b. 1956 Chevrolet Corvette (gifted to Robert Hilton);
- c. 1996 Chevrolet S-10 (gifted to my granddaughter Ashley);

- 1 d. 1978 Horizon boat (gifted to my son, James P. Foust, III);
2 e. 1977 Mercedes 380 sedan (gifted to Charles Hilton);
3 f. 1958 Porsche Cabrolet (gifted to Tiffiney Foust); and
4 g. 1996 Saturn Coupe (gifted to Melody Foust)

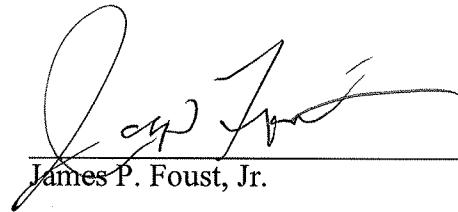
5 10. I have traded the following vehicles:

- 6 a. 1964 Ford Thunderbird, traded for 1968 Mercedes 280 SL listed as 7(mm)
7 above;
8 b. 2002 Chrysler PT Cruiser, traded for 2005 Chrysler PT Cruiser listed as
9 9(c) below;
10 c. 2005 Chrysler PT Cruiser, traded for 2009 Chrysler PT Cruiser listed as
11 7(i) above; and
12 d. 2008 Harley-Davidson, traded for 2009 Harley listed as 7(dd) above.

13 11. I have no other assets.

14 12. Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of
15 the State of Nevada that the foregoing is true and correct.

16 Dated this _____ day of January, 2018.

17
18
19 
James P. Foust, Jr.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's Motion asks this Court to order Defendant to "turn over" 59 exotic cars to satisfy a foreign judgment. *See generally* Motion ("Mot."). However, as detailed below, Mr. Foust no longer owns those cars and, thus, Plaintiff's Motion is moot. Accordingly, this Court should deny it.

II. STATEMENT OF FACTS

In May of 2013, Mr. Foust applied for a commercial loan from Plaintiff and, as part of that application, listed several assets, including "Classic Cars" in his personal financial statement. *See* Personal Financial Statement, attached as **Exhibit 1**. Mr. Foust also included an inventory of those cars detailing each vehicle's make, model, vehicle identification number, cost, estimated value, and other purchase information. *See* **Exhibit 2**.

However, in the years since providing that information, Mr. Foust's financial situation has deteriorated commensurate with the sharp decline in oil prices.¹ *See* Declaration of James P. Foust, Jr., at ¶ 6. Accordingly, Mr. Foust has had to liquidate, leaseback, gift, or trade, every vehicle that was once a part of his collection. *See id.* at ¶¶ 6–10; *see also* Table Detailing Car Sales, attached as **Exhibit 3**. As a result, Mr. Foust has no vehicles in his possession. *Id.* at ¶ 10. Indeed, Mr. Foust has *no* assets to his name. *Id.* at ¶ 11.

III. LEGAL ARGUMENT

While a judge "may order any property of the judgment debtor not exempt from execution . . . to be applied toward the satisfaction of the judgment," that property must be "in the hands of such debtor" in order to be applied. NRS 21.320. Indeed, "[a]n order to apply . . . property to the judgment can be made only when it is shown that the debtor . . . has . . . [the] property so applicable or has control of the same, and is able to comply with the order." 31A C.J.S. *Executions* § 589.

¹ Additionally, Mr. Foust's financial situation deteriorated due to Plaintiff's failure to follow Truth in Lending requirements, as well as collusive and fraudulent conduct as outlined in the complaint filed in *Baker Boyer Nat'l Bank v. JPF Enterprises, LLC*, Case No. 27-2016-CV-00392 (Mckenzie Cty. Dist. Ct. 2016).

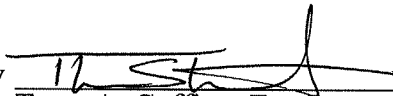
1 Here, Mr. Foust cannot deliver possession of a classic car collection that he no longer
2 owns. Each car has been sold, leased back, gifted, or traded in. To that end, Mr. Foust has
3 provided a Declaration and Spreadsheet, *see* **Ex. 3**, providing additional information of each
4 car's disposition, which should satisfy the Motion's request for a "detailed accounting of the
5 deposition of these assets" because Mr. Foust no longer owns them. Mot. at 6.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Mr. Foust respectfully requests this Court deny Plaintiff's
8 Motion.

9 Dated this 5th day of January, 2018.

10 MARQUIS AURBACH COFFING

11
12 By 
13 Terry A. Coffing, Esq.
14 Nevada Bar No. 4949
15 Cody S. Munteer, Esq.
16 Nevada Bar No. 11220
17 Tom W. Stewart, Esq.
18 Nevada Bar No. 14280
19 10001 Park Run Drive
20 Las Vegas, Nevada 89145
21 *Attorneys for Defendant/
22 Judgment Debtor*
23
24
25
26
27
28

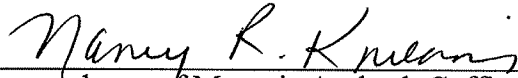
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSITION TO MOTION FOR AN ORDER REQUIRING JUDGMENT DEBTOR TO DELIVER POSSESSION OF CLASSIC CAR COLLECTION TO SATISFY NEARLY \$1 MILLION JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 5 day of January, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:²

N/A

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

John E. Bragonie, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89169-5996
Attorney for Plaintiff


an employee of Marquis Aurbach Coffing

² Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 1

**Baker Boyer Bank***Guiding you to a brighter financial future***Personal Financial Statement**

APPLICANT							
Name		Social Security Number		Date of Birth		Phone Number	
James P. Foust		[REDACTED]		[REDACTED]		310-490-4499	
Street Address		Apt Number		City		State Zip Code	
[REDACTED]		[REDACTED]		Rancho Palos Verdes		CA 90276	
Time at Residence		<input checked="" type="checkbox"/> Own <input type="checkbox"/> Employer		Position		Time at Employer	
20 Years		<input type="checkbox"/> Rent <input type="checkbox"/> Retired		[REDACTED]		[REDACTED]	
CO-APPLICANT							
Name		Social Security Number		Date of Birth		Phone Number	
[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]	
Street Address		Apt Number		City		State Zip Code	
[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]	
Time at Residence		<input type="checkbox"/> Own <input type="checkbox"/> Employer		Position		Time at Employer	
[REDACTED]		<input type="checkbox"/> Rent <input type="checkbox"/> Retired		[REDACTED]		[REDACTED]	
For the purpose of obtaining credit with Baker Boyer Bank from time to time, (we) herewith submit the following as being a fair and accurate statement of my (our) financial condition as of [REDACTED]							
FINANCIAL STATEMENT (leave blank; data you add to the tables on the following pages will automatically be inserted)							
Assets of Borrower				Liabilities of Borrower			
Cash in Bank Accounts* (schedule 1)		\$ 716,864		Total Revolving Credit (schedule A)		\$ -	
Stocks/Bonds/Mutual Funds/Brokerage* (schedule 2)		\$ 128,332		Total Installment Loans (schedule B)		\$ 191,071	
Accounts/Notes Receivable (schedule 3)		\$ 719,081		Total Accounts/Notes Payable (schedule C)		\$ -	
Cash Value Life Insurance (schedule 4)		\$ -		Total Loans on Life Insurance (schedule 4)		\$ -	
Retirement Accounts (schedule 5)		\$ -		Total Other Liabilities (schedule D)		\$ -	
Vehicles and Other Assets (schedule 6)		\$ 5,703,495		Mortgage on Residence (RE schedule)		\$ 867,328	
Residence Market Value (RE Schedule)		\$ 1,800,000		Mortgage(s) on Other Real Estate (RE schedule)		\$ -	
Other Real Estate Market Value (RE schedule)		\$ 1,483,231		[REDACTED]		[REDACTED]	
Total Assets		\$ 10,551,973		Total Liabilities		\$ 1,058,399	
Net Worth \$		9,493,574					

*Statements required when \$100,000 or more listed in cash and/or marketable securities held at other financial institutions.

GENERAL INFORMATION		Applicant		Co-Applicant	
1. Have you ever filed for bankruptcy?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Have you ever been a principal or guarantor of a firm that declared bankruptcy?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3. Have you ever been convicted of a felony?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4. Are you a party to any claims or lawsuits?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
5. Are you a co-signer or guarantor of any other debt?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6. Are you currently an executive officer or on the Board of Directors of any Bank, Thrift or S & L?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7. Are you currently employed with the Bank's external auditor?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
8. Are any assets held in Trust?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
9. Do you own 25% or more of another company? Company Name (if YES, attach tax returns for all):		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
10. Are you a citizen of the United States? If NO, what country?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
11. Marital status? [Answer only if this financial statement is provided in connection one or more of the following: A request for secured credit; applicant is seeking a joint account with spouse; or applicant or co-applicant is a resident of a community property state.		<input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Unmarried	<input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Unmarried	<input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Unmarried	<input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Unmarried
If YES to questions 1-7, please describe:		(Unmarried: single, divorced, widowed)			

Assets

Name of Bank	Account Number	Account Description	Current Balance
Chase		Private	\$ 248,336
USB		checking	\$ 64,608
USB		Private	\$ 201,268
City		checking	\$ 25,243
Schwab		Personal	\$ 129,567
Schwab		Roll Over	\$ 47,942
			\$
Total:			\$ 716,854

Schedule 2: Stocks/Bonds/Mutual Funds/Brokerage Accounts

[illegible]

Schedule 3: Accounts/Notes Receivable

Due From	Collateral	Maturity	How Payable	Current	Deferred
Extreme Beverage	Stock		\$ - per		\$ 37,500
Sirous Communications	stock		\$ - per		\$ 125,000
Roatan development Group	5,596 acres land Roatan		\$ - per	\$ -	\$ 556,561
			\$ - per	\$ -	\$ -
			\$ - per	\$ -	\$ -
			\$ - per	\$ -	\$ -
			\$ - per	\$ -	\$ -

Schedule 4: Life Insurance

Insured	Beneficiary	Name of Company	Face Amount	Cash Value	Loan on Policy
James Foust	Miriam Foust	Lincoln Life	\$ 1,000,000	\$ -	\$ -
James Foust	Miriam Foust	Lincoln Life	\$ 1,000,000	\$ -	\$ -
James Foust	Miriam Foust	Lincoln Life	\$ 1,000,000	\$ -	\$ -
James Foust	Vanessa Foust	Lincoln Life	\$ 1,000,000	\$ -	\$ -
James Foust	Jocelyn Foust	Lincoln Life	\$ 1,000,000	\$ -	\$ -
			\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -
Schedule 5- Retirement Accounts			Total:	\$ 5,000,000	\$ -

Schedule 5: Retirement Accounts

Share Amount	Share Description	Share Name(s)	Cost Basis	Market Value	Listed/Unlisted
			\$ -	\$ -	-
			\$ -	\$ -	-
			\$ -	\$ -	-
			\$ -	\$ -	-
			\$ -	\$ -	-
			\$ -	\$ -	-
			\$ -	\$ -	-
			\$ -	\$ -	-
			Total:	\$ -	-

Schedule 6: Vehicles & Other Assets

Property Description	Name(s) Registered In	Cost	Year Acquired	Market Value	Amount of Insurance
Classic Cars - Est Valued using Mkt. Prices	Foust	\$ 3,012,031	various	\$ 5,120,130	\$ -
Gold Bullion .9999- 4 Kilos @ 1426		\$ -	-	\$ 183,384	\$ -
Aircraft - N6634P		\$ -	-	\$ 280,000	\$ -
Las Vegas Coach Resort - Lot #102		\$ -	-	\$ 101,202	\$ -
Auto Loan to Dettwiler		\$ -	-	\$ 8,779	\$ -
		\$ -	-	\$ -	\$ -
		\$ -	-	\$ -	\$ -
		\$ -	-	\$ -	\$ -
		\$ -	-	\$ -	\$ -
		\$ -	-	\$ -	\$ -
Total:				\$ 5,703,495	

FINANCIAL STATEMENT SCHEDULES

Real Estate

Property Type: ☒ SF ☐ MF ☐ C ☐ L ☐ Other Real Estate

Property Type:	<input checked="" type="checkbox"/> SF <input type="checkbox"/> MF	<input type="checkbox"/> SF <input type="checkbox"/> MF <input type="checkbox"/> C <input type="checkbox"/> L	<input type="checkbox"/> SF <input type="checkbox"/> MF <input type="checkbox"/> C <input type="checkbox"/> L	<input type="checkbox"/> SF <input type="checkbox"/> MF <input type="checkbox"/> C <input type="checkbox"/> L
Ownership %				
Co-Owned with Spouse	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Street Address	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
City	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
State	CA	NV	NV	NV
Zip Code	90275	89123	89135	89135
Purchase Date	May 1, 1993	about 1999	Late 2011	January 1, 2010
Purchase Price	\$ 800,000	\$ 475,000	\$ 215,000	\$ 90,000
Estimated Market Value	\$ 1,800,000	\$ 475,000	\$ 250,000	\$ 120,000
Balance - 1st Mortgage	\$ 867,328	\$ -	\$ -	\$ -
Interest Rate	3.00%			
Maturity Date	300 Months			
Lender - 1st Mortgage	merrill lynch			
Payment - 1st Mortgage	\$ 2,168	\$ -	\$ -	\$ -
Balance - Other Mortgages/Liens	\$ -	\$ -	\$ -	\$ -
Interest Rate				
Maturity Date				
Lender - Other Mortgages				
Payments - Other Mortgages	\$ -	\$ -	\$ -	\$ -
Property Tax	\$ 14,000	\$ 1,938	\$ 3,131	\$ 2,160
Insurance	\$ 1,800	\$ 205	\$ 280	\$ 305
Gross Monthly Rent	\$ -	\$ 1,400	expected \$2200	\$ 1,100

SIGNATURES

I (we) hereby authorize Baker Boyer Bank (the Lender) to make any investigation of my (our) credit or employment status either directly or through any agency employed by Lender for that purpose. The Lender may disclose to any other interested parties the Lender's experience with this account. I (we) agree statements in this application, including the information furnished by me (us) are true and complete and are made for the purpose of obtaining credit. I (we) agree to inform the Lender immediately of any matter which will cause any significant change in my (our) financial condition. I (we) understand that the Lender will retain this financial statement whether or not credit is granted.

X
Applicant's Signature _____ Date _____
James P. Foust

X
Co-Applicant's Signature _____ Date _____
0

26,016

Exhibit 2

FOUST Classic Cars

Autos.xlsx

Foust Classic Cars

YEAR	MAKE	DESCRIPTION	BUY	COST	Est. Value	VIN	STATE	From
1935	CADILLAC	V-12 COUPE	1996	\$44,000.00	\$100,000.00	4100743	CAL	THOMAS CADILLAC
1989	CHAPARRAL	TRAILER	2000	\$25,000.00	\$25,000.00	1S9SC4532K1090654	ND	Shirley Muldowney
1956	CHEV	CORVETTE	1982	\$10,000.00	\$50,000.00	VE56S003290	NO, DAK	ROBERT HILTON
1957	CHEV	BEL AIR CONV. (FI)	1989	\$50,000.00	\$100,000.00	VCS70141640	KENTUCKY	O.B. SMITH
1957	CHEV	CORVETTE	1988	\$45,000.00	\$50,000.00	E575103094	KENTUCKY	SOUTHLAND INVEST.
1966	CHEV	TURBO CORVAIR	1990	\$5,000.00	\$5,000.00	107376L110678	CAL	R & S
2007	CHEV	Corvette Z06	2007	\$80,000.00	\$50,000.00	1G1YY26E375121069	Montana	Chevrolet
1957	CHRYSLER	300 C CONV.	1988	\$27,000.00	\$150,000.00	3N571810	Montana	Joe Bortz
2002	Crysler	PT Cruiser	2001	\$55,000.00	\$5,000.00	3C8FY68B52T216202	NV	Crysler
2005	Crysler	PT Cruiser	2006	\$20,000.00	\$5,000.00	3C3AY75S05T701409	Montana	Crysler
2009	Crysler	PT Cruiser	2009	\$13,000.00	\$5,000.00	3A8FY68899T510047	Montana	Crysler
1965	DODGE	SAVOY Acd dip car	1989	\$33,000.00	\$100,000.00	W0512245600	ILL.	JAMES JACKSON
1990	FERRARI	TESTAROSSA	1995	\$104,000.00	\$75,000.00	ZFFSG17AGL0083464	ND	Jerry Buss
1937	FORD	Coupe	2006	\$75,000.00	\$75,000.00	9541190	Montana	R & S
1940	FORD	Coupe	2007	\$40,000.00	\$40,000.00	AZ152801	Montana	Spencer Shaktad
1955	FORD	T-BIRD (96 MILES)	1988	\$45,000.00	\$45,000.00	P5FH166138	CAL	PS Auction
1955	FORD	T-BIRD (CHEV)	1976	\$15,000.00	\$15,000.00	P5FH240647	CAL	DEDE
1957	FORD	T-BIRD (MATTOX)	1990	\$5,000.00	\$5,000.00	D7FH251424 *	CAL	BOB MATTAX
1957	FORD	FAIRLANE 500	1990	\$7,500.00	\$25,000.00	D7LV162233	Montana	DALE VALURE
1963	FORD	427 GALAXY (R-CAR)	1990	\$23,000.00	\$100,000.00	3W66R131679	KANSAS	RICHARD PETTY
1964	FORD	THUNDERBIRD - BLACK	1992	\$17,000.00	\$17,000.00	4Y85Z127518	GEORGIA	WILLIARD CARROLL
1966	FORD	THUNDERBIRD - RED	1990	\$19,000.00	\$19,000.00	6Y85Z104010	S. CAROLINA	TRANSOUTH
1967	FORD	MUSTANG Convertible	1990	\$5,500.00	\$40,000.00	7T03T118534 *	Montana	Barret Jackson
1968	FORD	COBRA JET MUSTANG	1990	\$20,000.00	\$50,000.00	8R02R1698059	MONTANA	ROBERT KWAPY
1970	FORD	BOSS 429 - Drew Alcazar	1990	\$90,000.00	\$200,000.00	0F02Z137925/KK2459	WISCONSIN	LIEN, MARK
1971	FORD	PANTERIA	1988	\$15,000.00	\$15,000.00	THPNNLY01620	Montana	ORAN BERCH
1973	FORD	PANTERIA - \$300,000 Rest.	2003	\$63,000.00	\$100,000.00	THPNNU05291	Montana	IRS Auction
1988	FORD	#11 Budweiser NASCAR	2000	\$40,000.00	\$40,000.00	MRE #unknown	None	Bill Elliot
1991	FORD	#9 COORS LITE NASCAR	2000	\$54,060.00	\$54,060.00	MRE #21	BILL OF SALE	RON HUBER
2008	Harley-Davidson	Motor Cycle	2008	\$21,470.00	\$21,470.00	1HD 1KB 4398 Y 652 B04	Cal	Golden Gate
2009	Harley-Davidson	Motor Cycle	2010	Trade 2008 H/D	Trade 2008 H/D	1HD1HPH349K810543	Montana	Golden Gate
1987	HONDA	SCOOTER	2000	\$800.00	\$100.00	JH2HF0316HS202130	CAL	Honda
1992	HONDA	SCOOTER	2000	\$800.00	\$100.00	3H1HF031OND700204	CAL	Honda
1991	INTERNATIONAL	4000 SERIES	2000	\$50,000.00	\$25,000.00	1HTSDNHL4MH321753	ND	Shirley Muldowney
1951	JAGUAR	XK 120 RACE CAR	2000	\$45,050.00	\$45,050.00	S671966	Montana	Dana Mecham auctions
1964	JAGUAR	XKE	1999	\$99,000.00	\$99,000.00	881364	CAL	WILLIAM LAZARIS
1985	KAWASAKA	NINJA 900	1985	\$1,500.00	\$1,500.00	JKAZX2A13FB505429/ZX90C	Montana	KAWASAKA
1967	LAMBORGHINI	MUIRA (3571)	1975	\$13,000.00	\$250,000.00	3571	CAL	Private Party ??

PA00077

FOUST Classic Cars

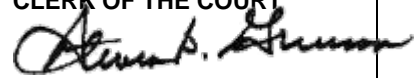
1988	LAMBORGHINI	COUNTACH	1995	\$64,500.00	\$64,500.00	ZA9CA05ABJLA12269	Montana	Al Bertoni
1998	MARATHON	COACH	2003	\$420,000.00	\$200,000.00	2PCM9349XV1026183	DEALER	MARATHON
1956	Mercedes	300 SL - Scott Resto.	1978	\$50,000.00	\$750,000.00	198 980 650086	CAL	Stock Broker
1968	Mercedès	280 SL	2006	\$60,850.00	\$60,850.00	11304412000874	Virgina	R & S
1977	Mercedes	380 4 DR SEDAN	1977	\$95,000.00	\$95,000.00	10704412035568	ND	Mercedes
1987	Mercedes	450SL	2007	\$37,000.00	\$37,000.00	WDBBA48D5HA059958	Montana	Mercedes
2006	Mercedes	S500	2008	\$43,000.00	\$25,000.00	WDBNG75J76A482303	Montana	Mercedes
2007	Mercedes	M50 SUV	2007	\$65,000.00	\$25,000.00	4JGBB75E07A222597	Montana	Mercedes
1957	OLDSMOBILE	98 ROCKET	1990	\$30,000.00	\$30,000.00	579M27665	Montana	DUFFY SHAMBURGER
1957	PACKARD	CLIPPER	1982	\$8,000.00	\$8,000.00	57L1582	N.D.	Bowman Chev
1962	PLYMOUTH	Savoy w/413 - Ramchargers	1989	\$46,000.00	\$75,000.00	512 216 59 86	MICH.	TOM POLIDAN
1964	PLYMOUTH	HEMI (ALUMINUM BODY)	1990	\$25,000.00	\$50,000.00	RACE CAR - No Title	PLYMOUTH	Jim (Car Covers)
1966	PLYMOUTH	HEMI BELVADIRE	1989	\$45,000.00	\$45,000.00	RP23H67303290	Montana	JOHN KEROLA
2000	PLYMOUTH	PROWLER	2000	\$51,000.00	\$30,000.00	1P3EW65G1YV603597	Montana	Harry Hildibrand
1969	PONTIAC	JUDGE	1988	\$9,000.00	\$40,000.00	Get From Bob Wokel	ND	Bob Wokel
1958	PORSCHE	CABROLET	1990	\$20,000.00	\$20,000.00	NR150801	CAL	R & S
1983	PORSCHE	CARREA	1988	\$35,000.00	\$35,000.00	WPOEA0915DS170119	CAL	Santa Monica dealer
1980	ROLLS ROYCE	SILVER CLOUD II	1990	\$22,500.00	\$22,500.00	SRL41595C	CAL	DUDLEY HAINES
1965	SHELBY	427 Cobra - Org. Comp Car	2000	\$550,000.00	\$1,500,000.00	CSX3012	Not Titled	Original MSO
1968	SHELBY	GT500	1991	\$21,500.00	\$75,000.00	8T02S14955001843	CAL	JIM SHIPLEY
1966	SHELBY	427 COBRA - Ford Cammer	1991	\$50,000.00	\$50,000.00	SP25692LA	CAL	kentucky Lawyer
				\$2,885,030	\$5,120,130			

Exhibit 3

YEAR	MAKE	DESCRIPTION	Status	Buy	COST	Status
1987	HONDA	SCOOTER	Sold	2000	\$800	\$200
1992	HONDA	SCOOTER	Sold	2000	\$800	\$200
1964	FORD	THUNDERBIRD - BLACK	TRADE	1992	\$0	Trade for 280 MBZ
1986	LAND DEED	TRAILER COLORADO RIV	Re-Title	1986	\$25,000	DeDe
1935	CADILLAC	V-12 COUPE	Sold	1996	\$44,000	Robert McMath
1978	CARRIER	BOAT TRAILER	Sold	1978	\$0	JPF Jr.- Gift
1989	CHAPARRAL	TRAILER	Sold	2000	\$25,000	Sold
1956	CHEV	CORVETTE	Sold	1982	\$10,000	Gift Robert Hilton
1957	CHEV	BEL AIR CONV. (FI)	Sold	1989	\$50,000	sold 6/8/2011
1957	CHEV	CORVETTE	Sold	1988	\$45,000	Robert McMath
1963	CHEV	425/409 S/S	Sold	2011	\$25,000	sold 6/4/2015
1966	CHEV	TURBO CORVAIR	Hilton	1990	\$5,000	Edgar Hilton
1996	CHEV	S-10 PICKUP	Sold	1996	\$14,000	Gift Ashley
2007	CHEV	Corvette Z06	Sold	2007	\$80,000	sold 1/18/2007
1957	CHRYSLER	300 C CONV.	Sold	1988	\$27,000	sold 6/16/2011
2002	Crysler	PT Cruiser - Blue	Sold	2001	\$35,000	Trade - 2008 Crusier
2005	Crysler	PT Cruiser convertible	Sold	2006	\$20,000	Trade in 2009 PT cruz
2009	Crysler	PT Cruiser - Red	Sold	2009	\$13,000	Sold HT
1965	DODGE	SAVOY Acid dip car	Sold	1989	\$33,000	Sold Kuck
1990	FERRARI	TESTAROSSA	Sold	1995	\$104,000	Sold Ferrari BH 3/10/16
1937	FORD	Coupe	Sold	2006	\$75,000	sold Russo Steele/tony ritz
1940	FORD	Coupe	Sold	2007	\$40,000	sold 7/21/2008
1955	FORD	T-BIRD (96 MILES)	Sold	1988	\$45,000	sold 1/15/1989
1955	FORD	T-BIRD (CHEV)	Sold	1976	\$15,000	sold 6/22/2011
1957	FORD	FAIRLANE 500	Sold	1990	\$7,500	sold 5/16/2011
1957	FORD	T-BIRD (MATTOX)	Sold	1990	\$5,000	sold Tommy
1963	FORD	427 GALAXY (R-CAR)	Sold	1990	\$23,000	sold Russo Steele
1966	FORD	THUNDERBIRD - RED	Sold	1990	\$0	sold 2/9/2017
1967	FORD	MUSTANG	Sold	1990	\$5,500	Robert McMath
1968	FORD	COBRA JET MUSTANG	Sold	1990	\$20,000	Robert McMath
1970	FORD	BOSS 429	Sold	1990	\$29,500	sold Russo Steele
1971	FORD	PANTERIA	Sold	1988	\$15,000	sold 6/16/2011
1973	FORD	PANTERIA -GT4	Sold	2003	\$63,000	sold 6/16/2011

1987	FORD	TRUCK	1987	\$0	sold Bowman - trade
1988	FORD	#11 Budweiser NASCAR	2000	\$40,000	sold steve thomas 2006
1991	FORD	#9 COORS LITE NASCAR	2000	\$54,060	sold barret jackson 2006
1999	FORD	CREW CAB PICKUP	1999		sold Bowman
2000	GMC	Yukon	2014	6800	sold 12/15/2014 - Leaseback
2008	Harley-Davidson	Motor Cycle	2008	\$21,470	Trade for VROD Harley
2009	Harley-Davidson	Motor Cycle VROD	2010		sold South Bay Kawidaki
1978	HORIZON	BOAT	1978	\$10,000	Gift JPF Jr.
1991	INTERNATIONAL	4000 SERIES	2000	\$50,000	sold c. Hilton
1951	JAGUAR	XK 120 RACE CAR	2000	\$45,050	sold 6/16/2011
1964	JAGUAR	XKE	1999	\$39,000	sold C Hilton 12/19/2006
1985	KAWASAKA	NINJA 900	1985	\$0	sold 7/15/2008
1967	LAMBORGHINI	MUIRA (3571)	1975	\$13,000	sold Russo Steele 8/16/2006
1988	LAMBORGHINI	COUNTACH	1995	\$64,500	sold Bonham's 1/25/2016
1998	MARATHON	COACH	2003	420000	sold 2/9/2017
2007	Mercedes	S550	1/20/2014	\$38,000	sold 4/18/2014 - Leaseback
1956	Mercedes	300 SL	1978	\$50,000	sold Russo Steele 8/16/2006
1968	Mercedes	280 SL	2006	\$60,850	sold Russo Steele
1977	Mercedes	380 4 DR SEDAN	1977	\$0	gave to Charles Hilton
1987	Mercedes	450SL	2007	\$37,000	sold Russo Steele 5/1/2007
2006	Mercedes	S500	2008	\$43,000	sold Beberly Hills MBZ
2007	Mercedes	CLK 550	2011	\$25,000	sold 8/28/2012 - Leaseback
2007	Mercedes	M50 SUV	2007	\$65,000	sold 10/09/2007 - Leaseback
1957	OLDSMOBILE	98 ROCKET	1990	\$30,000	sold 6/16/2011
1957	PACKARD	CLIPPER	1982	\$8,000	sold kevin hilton 11/5/82
1962	PLYMOUTH	Savoy w/413	1989	\$46,000	Sold Kuck 11/29/2010
1964	PLYMOUTH	HEMI (ALUMINUM BODY)	1990	\$25,000	Sold Kuck 11/29/2010
1966	PLYMOUTH	HEMI BELVADIRE	1989	\$45,000	Sold Kuck 11/29/2010
2000	PLYMOUTH	PROWLER	2000	\$51,000	sold Russo Steele 8/16/2006
1969	PONTIAC	JUDGE	1988	\$9,000	Charles Hilton
1958	PORSCHE	CABRIOLET	1990	\$20,000	Gift Tiffney 1/26/2005
1983	PORSCHE	CARREA	1988	\$0	Sold Lou paupos
1980	ROLLS ROYCE	SILVER CLOUD II	1990	\$22,500	Charles Hilton
1996	SATURN	COUPE	1996		Gift Melody 1/14/1996

1965	SHELBY	427 Cobra	Sold	2000	\$21,500	Sold Tony Ritz 2012
1968	SHELBY	GT500	Sold	1991	\$50,000	sold Russo Steele 8/16/2006
1966	SHELBY	427 COBRA - Replica	Sold	1991	\$0	Sold San Diego winfred 5/15/2
1984	VOLSWAGEN	RABBIT	Sold	1992		sold Fernando
2004	Volvo	C60	Sold	2005	\$45,000	Sold Detwiler



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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

**REPLY IN SUPPORT OF MOTION
FOR AN ORDER REQUIRING
JUDGMENT DEBTOR TO DELIVER
POSSESSION OF CLASSIC CAR
COLLECTION TO SATISFY NEARLY
\$1 MILLION JUDGMENT**

Date of Hearing: January 22, 2018

Time of Hearing: *In Chambers*

Oral Argument Requested

I.

**JUDGMENT DEBTOR'S NEW CAR INVENTORY
DOES NOT SATISFY HIS BURDEN TO ACCOUNT FOR HIS CLASSIC CAR COLLECTION**

Judgment Debtor's Personal Financial Statement (Exhibit 2 to opening brief, on file herein) was submitted before October 17, 2013—the date of the original loan that, when defaulted upon by the Judgment Debtor, lead to the Judgment. In 2013, Judgment Debtor represented that he personally owned assets he identified as “Classic Cars – Est. Value using Mkt. [market] Prices” with a value of \$5,120,130. (*Id.*) Judgment Debtor swore then that his classic and exotic car collection included 59 vehicles that Judgment Debtor valued at \$5,120,130. (*See* Exhibit 3 to opening brief, on file herein, hereinafter the “Original Car Inventory.”)

1 Now, Judgment Debtor submits a new exhibit with his opposition in which he claims that
2 at least 27 of his sports cars were sold *before* he submitted the Original Car Inventory in 2013 (*See*
3 Exhibit 3 to Judgment Debtor’s opposition, on file herein, hereinafter the “New Car Inventory”).

4 In fact, the New Car Inventory now claims that Judgment Debtor “sold” his “1955 Ford T-
5 Bird (96 Miles)” on “1/15/1989” and his “1957 Packard Clipper” on “11/05/82”—a quarter
6 century before the Original Car Inventory was submitted to Judgment Creditor in 2013! (*See New*
7 *Car Inventory*, pp. 1, 2.) We know this because Judgment Debtor listed sale dates in the New Car
8 Inventory’s “Status Column.”¹ Indeed, in addition to the two 1980s transactions, Judgment
9 Creditor now says that of the 59 cars he claimed to own in 2013, one was actually sold in 2005;
10 seven were actually sold in 2006; three were actually sold in 2007; one was actually sold in 2008;
11 three were actually sold in 2010; eight were actually sold in 2011; and two were actually sold in
12 2012. (*See New Car Inventory* generally, noting the dates in the “Status” column.)

13 Additionally, Judgment Debtor now asks the Court to believe that he “gifted” a 1958
14 classic Porsche to his granddaughter “Tiffany” on “1/26/2005.” (*See New Car Inventory*, p. 2.)
15 The total value of the 28 cars Judgment Debtor now insists he sold or gave away before 2013
16 when he submitted the Original Car Inventory is a staggering \$3,639,610, according to the
17 estimated values given on the Original Car Inventory itself—or over 70% of the value of the his
18 original representation in 2013. (See tally of missing cars, Exhibit 1 to this reply.) This group of
19 missing cars includes some of the most rare and valuable automobiles, the 1968 Shelby 427 Cobra
20 (\$1.5 million); 1956 Mercedes 300 SL (\$750,000); and the 1967 Lamborghini Muira (\$250,000).

21 There is a lesson to be drawn from this comparison: the Court cannot take Judgment
22 Debtor’s word as true. He will obviously puff when he wishes to appear wealthy (when he
23 applied for the loan) and he will obscure when he wants to appear poor (when he attempts to
24 dodge a nearly \$1 million judgment). Either Judgment Debtor lied in 2013 or Judgment Debtor is
25 lying now, but either way he is a prevaricator.

26 The New Car Inventory also lacks the type of detail that should be necessary to convince
27 this Court that sales actually occurred. For example, Judgment Debtor claims he sold a Coach

28 ¹ Judgment Debtor may claim to have sold even more than 27 vehicles before 2013; we cannot tell for certain because
Judgment Debtor did not include a sale date for every entry.

1 Marathon RV he valued at \$200,000 on “2/9/2017,” but no buyer name or sales price is given.
2 (*See* New Car Inventory, p. 2.) If there were a legitimate transaction, there would be a bill of sale
3 and proof of receipt of funds. Several recent alleged transactions also lack convincing detail.
4 Judgment Debtor allegedly sold a Lamborghini Countach to “Bonham’s” on “1/25/16.” Judgment
5 Debtor also claims to have “sold” but “leased back” four cars—a 2000 GMC Yukon and three
6 Mercedes. (*See* New Car Inventory, p. 2.). Judgment Debtor should have to produce lease
7 agreements to prove this is a legitimate transaction. Of course “selling” an asset while continuing
8 to control it indicates a fraudulent transfer under Nevada law. *See* NRS 112.180(2)(b).

9 This Court should not relieve Judgment Debtor of his “burden” to “account for the assets.”
10 31A C.J.S. Executions § 589 (2017). Judgment Debtor must give a detailed accounting of the
11 deposition of his automobiles to prove he no longer owns them. Such an accounting should
12 include, at a minimum, the full, legal name of any buyer; the full date of the sale, including month
13 and day, not just year; the amount received for the sale; the location and disposition of the sale
14 proceeds (*e.g.*, bank account where funds are stored); and copies of the written bills of sales or
15 other written purchase agreements. Absent production of such documents and details, this Court
16 cannot take Judgment Debtor’s naked allegations at face value—he has already proven that he will
17 make self-serving representations to mislead.

18 II.

19 CONCLUSION

20 Judgment Creditor respectfully requests that this Court issue a turnover order requiring
21 Judgment Debtor to surrender possession and ownership of any and all vehicles identified in the
22 Original Car Inventory (Exhibit 3 to the motion and Exhibit 2 to the opposition).

23 ///

24 ///

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1 This Court should order an oral argument so that Judgment Debtor may be confronted
2 concerning the claimed sale of all his car collection.

3 Dated January 16, 2017.

4 LEWIS ROCA ROTHGERBER CHRISTIE LLP

5
6 By: /s/ John E. Bragonje
7 John E. Bragonje (SBN 9519)
8 3993 Howard Hughes Pkwy, Suite 600
9 Las Vegas, NV 89169-5996

10 *Attorneys for Plaintiff Baker Boyer National Bank*
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Lewis Roca
ROTHGERBER CHRISTIE

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed the foregoing
3 document entitled “Reply in Support of Motion for an Order Requiring Judgment Debtor to
4 Deliver Possession of Classic Car Collection to Satisfy Nearly \$1 million Judgment,” with the
5 Clerk of the Court and caused a true and accurate copy of the same to be served thereby as stated
6 below:

7 **VIA U.S. Mail**

8 Cody Munteer
9 Marquis Aurbach Coffing
10 10001 Park Run Drive
11 Las Vegas, NV 89145

12 *Counsel for Judgment Debtor*

13 DATED this 16th day of January, 2018.

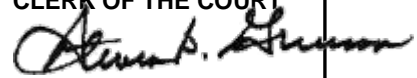
14
15 /s/ Luz Horvath

16 An employee of Lewis Roca Rothgerber Christie LLP
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EXHIBIT 1
Tally of Missing Cars

EXHIBIT 1
Tally of Missing Cars

1968 Shelby GT 500	\$75,000.00
1965 Shelby 427 Cobra	\$1,500,000.00
1958 Porsche Cabriolet	\$20,000.00
2000 Plymouth Prowler	\$30,000.00
1966 Plymouth Hemi Belvedere	\$45,000.00
1964 Plymouth Hemi (aluminum body)	\$50,000.00
1962 Plymouth Savoy w/413	\$75,000.00
1957 Packard Clipper	\$8,000.00
1957 Oldsmobile 98 Rocket	\$30,000.00
2007 Mercedes M50 SUV	\$25,000.00
2007 Mercedes CLK 550	\$25,000.00
1956 Mercedes 300 SL	\$750,000.00
1987 Mercedes 450SL	\$37,000.00
1967 Lamborghini Miura (3571)	\$250,000.00
1985 Kawasaki Ninja 500	\$1,500.00
1964 Jaguar XKE	\$39,000.00
1951 Jaguar XK 120 Race Car	\$45,050.00
1991 Ford # 9 Coors Lite NASCAR	\$54,060.00
1988 Ford #11 Budweiser NASCAR	\$40,000.00
1973 Ford Pantera GT4	\$100,000.00
1971 Ford Pantera	\$15,000.00
1957 Ford Fairlane 500	\$25,000.00
1955 Ford T-Bird (Chev)	\$15,000.00
1955 Ford T-Bird (96 miles)	\$45,000.00
1940 Ford Coupe	\$40,000.00
1957 Chrysler 300C Convertible	\$150,000.00
2007 Chevrolet Corvette Z06	\$50,000.00
1957 Chevrolet Bel Air Convertible	\$100,000.00
	\$3,639,610.00



ORDR

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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 REGARDING HEARINGS ON
CLASSIC CAR COLLECTION**

Date of Hearing: February 5, 2018

Time of Hearing: 11:00 a.m.

Plaintiff/Judgment Creditor Baker Boyer National Bank ("Plaintiff") filed a Motion for an Order Requiring Judgment Debtor to Deliver Possession of Classic Car Collection to Satisfy Nearly \$1 million Judgment" on December 20, 2017 (the "Motion"). Defendant James Patterson Foust, Jr. ("Judgment Debtor") opposed the motion on January 5, 2018, and Plaintiff filed a reply brief on January 16, 2018. The matter initially came on for a hearing in chambers. The Court makes the following rulings.

1. It is hereby ORDERED that the Court grants the Plaintiff's Motion and requires Judgment Debtor to immediately deliver all of the classic cars identified in Exhibit 3 of the Motion to Plaintiff, to the extent any such cars are found (by the Plaintiff, Sheriff, Constable, or any other peace officer) to be in the possession, custody, or control of the Judgment Debtor. Said cars should be held in the custody of Plaintiff (or its assignee, agent, or lawful authority). If Plaintiff intends to levy, seize, or take possession of any such cars, Plaintiff must have a good-faith belief that Judgment Debtor continues to have possession, custody, or control of any cars so

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Lewis Roca
ROTHGERBER CHRISTIE

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1 seized; such a good-faith belief arises under the following, non-exclusive circumstances: Judgment
2 Debtor's admission; the discovery of documents of title showing Judgment Debtor's continued
3 interest; the discovery of documents showing Judgment Debtor's continued use or possession of
4 the cars, such as evidence that he pays insurance for a car or that a car is registered in his name.

5 2. It is FURTHER ORDERED that, to the extent Judgment Debtor has possession,
6 custody, or control of any of the vehicles listed in Exhibit 3 to the Motion, he shall refrain from
7 transferring, disposing, selling, or encumbering said vehicles until further order of the Court.

8 3. It is FURTHER ORDERED that Plaintiff shall exercise reasonable and good faith
9 care to safeguard and protect the cars from theft, vandalism, or the elements.

10 4. It is FURTHER ORDERED that Plaintiff must not sell, transfer, encumber, lease or
11 otherwise dispose of possession of such cars until further order of the Court.

12 The Court held a hearing on February 5, 2018 regarding the Motion. Plaintiff appeared
13 through its counsel of record, John E. Bragonje of Lewis Roca Rothgerber LLP; Judgment Debtor
14 appeared himself in person and also through his counsel of record, Cody S. Munteer and Tom W.
15 Stewart of Marquis Aurbach Coffing. Based on the argument of counsel, the Court makes the
16 following additional rulings:

17 5. It is FURTHER ORDERED that Plaintiff shall be entitled to maintain possession of
18 that certain 1998 Prevost Car, Inc. Marathon, vehicle identification number
19 2PCM3349XV1026183, a class "A" motorhome or recreational vehicle (hereinafter the
20 "Motorhome"), which Plaintiff levied upon on or about February 2, 2018 pursuant to this Court's
21 prior minute order and by way of a duly issued writs of execution and possession.

22 **Orders Related to the Motorhome**

23 6. It is FURTHER ORDERED that Judgment Debtor shall produce clear and
24 persuasive evidence that Judgment Debtor no longer has title to or an ownership interest in the
25 Motorhome and that an entity or person known as Harry Hildibrand or Harry Hildibrand, LLC
26 now owns the Motorhome, including

27 a. A copy of the title and a copy of the registration;
28

- 1 b. Live testimony or a sworn statement from Harry Hildibrand or Harry Hildibrand,
2 LLC regarding the nature of his or its interest;
- 3 c. The sale price for the transfer to Harry Hildibrand, LLC;
- 4 d. All documents in Judgment Debtor's possession or under his control that either
5 directly or indirectly reference, concern, reflect, or relate to the sale, transfer, or
6 lease of the Motorhome to Harry Hildibrand, LLC, including without limitation, a
7 copy of any contract, bill of sale, agreement, memo, note, promise, or other such
8 document that evidences or reflects any such agreement;
- 9 e. All documents in Judgment Debtor's possession or under his control that either
10 directly or indirectly reference, concern, reflect, or relate to any consideration
11 Harry Hildibrand has in the past, does now, or will receive in the future for the sale,
12 transfer, or lease of the Motorhome to Harry Hildibrand, LLC, including without
13 limitation, copies of the front and back of all checks deposited, copies of all other
14 drafts, debit notes, wire transfer records, EFT records, other records reflecting
15 either payments or deposits, account statements, receipts, statement reports, loan
16 documents, transaction records, balance information, account summary reports,
17 payment history records, and all documents showing account activity; and
- 18 f. An accounting concerning what Judgment Debtor has done with the any
19 consideration received for the sale or transfer of the Motorhome, including the
20 status and location of any funds or proceeds received or property purchased with
21 such funds or proceeds.
- 22 7. It is FURTHER ORDERED that Judgment Debtor shall submit to a one-hour
23 deposition concerning ownership of the Motorhome at the offices of Plaintiff's counsel no later
24 than February 12, 2018.
- 25 8. It is FURTHER ORDERED that Judgment Debtor shall produce the documentation
26 described in Paragraph 6 no later than one full business day prior to the deposition.
- 27 9. It is FURTHER ORDERED that the parties shall appear for an evidentiary hearing
28 concerning ownership of the Motorhome on February 15, 2018 at 11:00 a.m.

Orders Related to Other Cars Listed In Exhibit 3 to the Motion

10. It is FURTHER ORDERED that Judgment Debtor shall produce clear and persuasive evidence that Judgment Debtor no longer has title to or an ownership interest in the cars listed in Exhibit 3 to the Motion, including:
- a. Copies of titles and copies of the registrations;
 - b. The sale price for each car Judgment Debtor claims he sold;
 - c. Live testimony or sworn statements, where feasible given the alleged time that has passed since the alleged transfers, from persons claiming an ownership or beneficial interest in said automobiles and the nature of their interest;
 - d. All documents in Judgment Debtor's possession or under his control that either directly or indirectly reference, concern, reflect, or relate to the sale, transfer, or lease of said automobiles to third party transferees, including without limitation, a copy of any contract, bill of sale, agreement, memo, note, promise, or other such document that evidences or reflects any such agreement;
 - e. All documents in Judgment Debtor's possession or under his control that that either directly or indirectly reference, concern, reflect, or relate to any consideration any third persons transferees have in the past, do now, or will receive in the future for the sale, transfer, or lease of said cars, including without limitation, copies of the front and back of all checks deposited, copies of all other drafts, debit notes, wire transfer records, EFT records, other records reflecting either payments or deposits, account statements, receipts, statement reports, loan documents, transaction records, balance information, account summary reports, payment history records, and all documents showing account activity; and
 - f. An accounting concerning what Judgment Debtor has done with the any consideration received for the sale or transfer of said automobiles to third party transferees, including the status and location of any funds or proceeds received or property purchased with such funds or proceeds.

1 11. It is FURTHER ORDERED that Judgment Debtor shall submit to a one-day
2 deposition of seven and a half hours concerning ownership of said automobiles at the offices of
3 Plaintiff's counsel no later than March 2, 2018, with the deposition to begin at 9:00 a.m.

4 12. It is FURTHER ORDERED that Judgment Debtor shall produce the documentation
5 described in Paragraph 10 no later than February 28, 2018.

6 13. It is FURTHER ORDERED that the parties shall appear for an evidentiary hearing
7 concerning ownership of said cars on March 7, 2018 at 9:00 a.m.

8 14. It is FURTHER ORDERED that Judgment Debtor shall bear the burden of proving
9 that he no longer owns or has any beneficial interest in the Motorhome or the other automobiles
10 listed in Exhibit 3 to the Motion. *See* 31A C.J.S. EXECUTIONS § 589 (2017) (concluding that a
11 judgment debtor bears the "burden" to "account for the assets."). Plaintiff shall bear the burden of
12 establishing any fraudulent transfers, though the Court specifically recognizes that such evidence
13 may take time to develop, and the Court therefore does not require Plaintiff to marshal all such
14 evidence by the time of the hearings contemplated by this order.

15
16 DATED this 26th day of February, 2018.

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21 DISTRICT COURT JUDGE

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Lewis Roca
ROTHGERBER CHRISTIE

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Dated this 14th day of February, 2018

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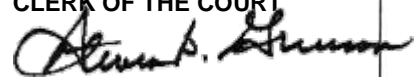
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Dated this 13th day of February, 2018

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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

Hearing Date: February 15, 2018

24 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL JUDGMENT**

25 This matter having come on for an evidentiary hearing and non-jury trial before the
26 Honorable Richard Scotti on February 15, 2018 and pertaining to plaintiff and judgment creditor
27 Baker Boyer National Bank's (the "Baker Bank") request that it be permitted to retain and sell a
28 motorhome it previously levied execution against pursuant to its enforcement of a nearly
\$1,000,000 judgment against defendant and judgment debtor James Patterson Foust, Jr., who
claimed he sold the motorhome before the levy; Mr. Foust having been represented by Cody S.
Munteer and Tom W. Stewart of Marquis Aurbach Coffing; Banker 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 during the trial and briefs and points and
authorities filed by the parties, and having heard and carefully considered the testimony of the
witnesses called to testify, the Court, with the intention of resolving the evidentiary issues

1 pertaining to this dispute, hereby enters the following facts and states the following conclusions of
2 law:

3 **Introduction**

4 Mr. Foust received a loan in the original amount of \$1,077,600 from Baker Bank. After
5 his refusal to repay the loan, Baker Bank obtained a judgment in the original amount of
6 \$933,616.30, including fees and costs, against Mr. Foust in the Superior Court of Washington in
7 and for Walla Walla County (the “Judgment”). (*See* Exs. A–B to 8/31/17 Appl. for Foreign
8 Judgment, on file herein.) Baker Bank domesticated the Judgment in the State of Nevada on
9 August 31, 2017. (*Id.*)

10 When he applied for the loan that created the obligation that, when breached, led to the
11 Judgment, Mr. Foust represented that he owned a collection of 59 expensive, rare, and exotic
12 vehicles. Baker Bank filed a Motion for an Order Requiring Judgment Debtor to Deliver
13 Possession of Classic Car Collection to Satisfy Nearly \$1 million Judgment” on December 20,
14 2017 (the “Motion”). This hearing and ruling concerns just one of those vehicles, a 1998 Prevost
15 Car, Inc. Marathon, vehicle identification number 2PCM3349XV1026183, a class “A” motorhome
16 or recreational vehicle (the “Motorcoach”). The Court ultimately granted the Motion and issued
17 an order (the “Seizure Order”) permitting, among other actions,¹ that Baker Bank be permitted to
18 take possession and control of the Motorcoach, which Baker Bank did through a lawful, regular
19 seizure effected by a Clark County Constable. At a February 5, 2018 hearing on the Motion, Mr.
20 Foust claimed that Baker Bank could not retain the Motorcoach because he no longer owned it,
21 having previously sold it to a third party. Baker Bank, on the other hand, claimed there was no
22 evidence in the opposition of a sale and that if any sale had taken place, it was voidable pursuant
23 to Nevada’s fraudulent transfer statutes, NRS Chapter 112. The Seizure Order required the parties
24 to conduct discovery, including a deposition of Mr. Foust, and scheduled this evidentiary hearing
25 concerning who owns the Motorcoach and whether Baker Bank may retain possession of it and
26 sell it to satisfy the Judgment.

27
28 ¹ The Court’s Seizure Order concerns other, ongoing matters related to additional vehicles which are not at issue in this ruling. *See* [] Seizure Order, on file herein.

1 Based upon the testimony and documentary evidence presented during the hearing and for
2 good cause appearing, pursuant to Rules 50 and 52, the Court rules in favor of Baker Bank and
3 against Mr. Foust and finds, concludes, orders, adjudges, and decrees as follows:

4 **Findings of Fact**

- 5 1. Mr. Foust has not voluntarily paid the Judgment.
- 6 2. Mr. Foust testified that the Motorcoach is worth approximately \$100,000.
- 7 3. Mr. Foust claims to have sold the Motorcoach to Harry Hildibrand, LLC, a
8 Montana limited liability company, for \$5,000 on an uncertain date in late 2016.
- 9 4. The alleged sale or transfer took place after Mr. Foust had incurred the obligation
10 (*i.e.*, the loan) that led to the Judgment and after an action to enforce that debt had been filed in
11 Washington.
- 12 5. Mr. Foust failed to produce any documentary evidence that the alleged sale had
13 occurred. Mr. Foust, for example, failed to produce any bill of sale, contract, or other agreement
14 showing an arm's length transaction; failed to produce evidence of receipt of funds for the alleged
15 sale (such as a cancelled check or evidence of wire transfer); and failed to account for the
16 disposition of the alleged sale proceeds (which the Seizure Order specifically directed Mr. Foust to
17 present).
- 18 6. The only proffered evidence that a sale occurred was Mr. Foust's testimony, which
19 was self-serving.
- 20 7. On the other hand, Baker Bank presented and elicited clear, compelling,
21 convincing, and substantial evidence from Mr. Foust himself, from two third-party witnesses, and
22 through relevant documents that, collectively, prove that no sale had occurred and that Mr. Foust
23 continued to behave as if he owned the Motorcoach after the alleged sale in late 2016.
- 24 8. A uncertified photocopy of the Motorcoach title does appear to indicate that the
25 current owner is Harry Hildibrand, LLC; however, this only indicates, at most, a transfer, not a
26 sale for consideration in an arm's length transaction, which Mr. Foust contests occurred.
27 Furthermore, the title vested in Hildibrand, LLC after the debt was incurred and after Mr. Foust
28 had been sued on that debt in Washington state.

1 9. Furthermore, records both obtained from the Montana Secretary of State and
2 produced by Mr. Foust himself demonstrate that Mr. Foust owns and controls Harry Hildibrand,
3 LLC, the alleged transferee.

4 10. Harry Hildibrand, LLC was incorporated in 2006. An official "Principal Report"
5 issued on February 7, 2018, just days before the hearing, lists James P. Foust as the sole member
6 and/or manager for Harry Hildibrand, LLC. An amendment to the articles of incorporation filed
7 August 27, 2007 lists Mr. Foust as the "new manager"; a second amendment filed October 9, 2007
8 indicates that the entity was "managed by member James P. Foust." Meeting minutes produced by
9 Mr. Foust from 2008 also record that he appointed another manager, Edward Detwiler, by virtue
10 of Mr. Foust's status as "constituting all the members of the LLC."

11 11. In contrast to this documentary evidence, Mr. Foust testified that he at most had
12 previously owned one half of one percent of Harry Hilidibrand, LLC. Mr. Foust alleges that he
13 divested his interest on some uncertain date he could not recall, but perhaps in 2010. Once again,
14 Mr. Foust produced no documentary evidence of this alleged divestment. Standing in sharp relief
15 to the documentary evidence in the record, which was generated before this dispute arose and
16 when Mr. Foust had no motive to distance himself from Harry Hildibrand, LLC, Mr. Foust's
17 testimony is not credible. It is also unreasonable to believe that Mr. Foust, with only a one half of
18 one percent ownership interest could serve as a manager.

19 12. Mr. Foust owns and controls Harry Hildibrand, LLC. He is the sole member; he is
20 a manager also.

21 13. Before its seizure by Clark County Constables, Mr. Foust kept the Motorcoach at
22 lot 172 of the Las Vegas Motorcoach Resort (the "Resort"), located at 8175 Arville Street, Las
23 Vegas, Nevada, an upscale, guard-gated motorhome park.

24 14. Mr. Foust and/or his wife, Miriam Foust, owned the real property on which the
25 Motorcoach was kept—*i.e.*, lot 172 of several hundred lots at the Resort.

26 15. On January 12, 2018, two Clark County Constables entered the Motorcoach at lot
27 172 of the Resort and, pursuant to writs of execution and possessions issued by this Court, seized
28

1 and delivered to Baker Bank some of Mr. Foust's personal property located inside the
2 Motorcoach, including cash and a computer.

3 16. Sergeant Devin Smith, one of the Constables involved, testified that he discovered
4 Mr. Foust's personal mail inside the Motorcoach. Photographs taken during the January 12, 2018
5 seizure show no fewer than 15 pieces of mail addressed to Mr. Foust at lot 172 of the Resort. The
6 mail addressed to Mr. Foust at the Resort address includes correspondence from his life insurance
7 company, from the A.A.R.P., from two cell phone carriers, and from the government, transmitting
8 Mr. Foust's Nevada voter registration card.

9 17. Mr. Foust represented to the public that he lived in the Motorhome, which he kept
10 at the Resort.

11 18. Sergeant Smith testified that he spent more than an hour at lot 172 while trying to
12 gain access to the Motorcoach. During this time, Sergeant Smith met with a member of the
13 Resort's homeowner's association board, Mr. Foust's neighbors, and Resort management, all of
14 whom indicated that Mr. Foust, and no one else, stayed at the Motorcoach at lot 172 on a regular
15 basis. In particular, Sergeant Smith testified that the Resort management had only Mr. Foust listed
16 on their paper work as an owner and that no one could be granted access to lot 172 without a guest
17 pass—and there was no record of any guest passes issued to anyone else. Resort management also
18 dealt exclusively with Mr. Foust concerning upkeep of lot 172 and other maintenance issues.

19 19. Sergeant Smith testified that there was only one set of men's clothing (similar in
20 size and style) and one set of grooming materials in the Motorcoach.

21 20. Sergeant Smith testified that he also found documentation concerning collectibles
22 associated with or owned by Mr. Foust and documentation of transactions involving Mr. Foust in
23 the Motorcoach.

24 21. Based on what he learned during the seizure and his experience and training as a
25 law enforcement officer, Sergeant Smith testified that Mr. Foust—and no one else—used the
26 Motorhome. Sergeant Smith's testimony is unbiased and credible; he has no interest in this
27 matter's outcome.
28

1 22. Sergeant Smith and another Clark County Constable took possession of the
2 Motorcoach and removed it from the Resort on or about February 2, 2018, and, at the time of the
3 hearing, it remained in the government's possession.

4 23. Consistent with the testimony that Sergeant Smith gave, the Court also received
5 into evidence an affidavit of Jessica Smukal, the General Manager of the Resort.

6 24. Ms. Smukal has served as General Manager for the last four and a half years.
7 During this tenure, Ms. Smukal only personally observed Mr. Foust use lot 172, including twice in
8 the past year.

9 25. As an example of her interaction, the Motorcoach was leaning to one side because
10 there was a maintenance issue. Ms. Smukal ultimately convinced Mr. Foust that this condition
11 had to be repaired because it was starting to appear that the Motorcoach was not capable of being
12 driven. Resort policy requires owners to remove motorhomes from their pads every 180 days.

13 26. According to the Resort's records, Ms. Smukal testified that Mr. Foust, and no one
14 else, receives mail in the Resort's Welcome Center mail services area.

15 27. The Resort is not open to the public. In fact, it is a guard-gated community with
16 security on site 24 hours a day. Therefore, it is not possible for persons who are not owners or
17 invited guests of owners to enter the Resort.

18 28. According to Ms. Smukal, about a year ago, Mr. Foust asked that a woman named
19 Maria be given a guest pass. Ms. Smukal has observed Maria collecting Mr. Foust's mail. Maria
20 visits about every two weeks.

21 29. Just three days before this hearing, on Monday, February 12, 2018, Mr. Foust met
22 with Ms. Smukal at her office in the Resort Welcome Center. Mr. Foust instructed Ms. Smukal
23 that the owner of the motorhome kept at pad 172 was a man named Edward Detwiler; Mr. Foust
24 represented that Edward Detwiler was a managing director of Harry Hildibrand, LLC.

25 30. Mr. Foust instructed Ms. Smukal to deal with Mr. Detwiler as the owner. Ms.
26 Smukal informed Mr. Foust that she cannot deal with Mr. Detwiler as the owner because Mr.
27 Detwiler does not own the motorhome pad, lot 172. Resort policy, Ms. Smukal says, forbids pad
28 rentals. It would be against Resort policy for the pad to be rented or lent out to someone who did

1 not own the pad, unless a request was cleared through the Resort rental program; Mr. Foust never
2 made such a rental request.

3 31. To accommodate Mr. Foust's request, the most Ms. Smukal could do was issue Mr.
4 Detwiler a visitors pass, which she did on February 12, 2018. Mr. Detwiler has not had a visitors
5 pass before this time.

6 32. Ms. Smukal has not met Mr. Detwiler or observed Mr. Detwiler at the Resort
7 before this time. Ms. Smukal believes that Mr. Detwiler has not had access to the Resort before
8 Monday, February 12, 2018.

9 33. Ms. Smukal and Mr. Foust both testified that the Resort assesses a \$395 monthly
10 owner's fee for each pad to cover both individual owner's expenses (water and cable T.V.
11 subscription) and shared community-wide expenses (security personnel, landscaping of common
12 areas, upkeep of community pools, gym, water features, and clubhouse). In the case of the ten
13 most recent monthly fee payments, spanning approximately the prior year, Mr. Foust—and not
14 Harry Hildibrand, LLC or Edward Detwiler—paid this fee. The Resort received payment by
15 check; the ten checks total \$4,434.50. Copies of the ten checks include Mr. Foust's name and
16 address at the Resort. Mr. Foust or his daughter signed each of the checks.

17 34. Ms. Smukal's testimony is credible; she is an unbiased witness with no interest in
18 the matter's outcome.

19 35. Mr. Foust himself testified that he had stayed at the Motorcoach at least six to
20 seven times in the prior year.

21 36. Mr. Foust exclusively controlled access to lot 172 at the Resort and use of the
22 Motorcoach at all relevant times, including the issuance of guest passes that only he approved.

23 37. Mr. Foust, and no one else, used the Motorcoach on a regular basis and at all
24 relevant times.

25 38. Mr. Foust claimed that he had to arrange his use through Edward Detwiler, who
26 Mr. Foust claimed was a "managing partner" of Harry Hildibrand, LLC. This testimony is not
27 credible in the face of the overwhelming evidence, discussed above, showing that Mr. Foust, and
28 no one else, controlled every aspect of the use of the Motorcoach and its storage at Resort lot 172.

1 39. Edward Detwiler did not appear at the hearing, nor did he submit any affidavit.

2 40. Mr. Foust did offer a police report apparently lodged by Edward Detwiler; it
3 accuses someone of grand larceny for taking the Motorcoach. However, this police report was
4 filed *after* Sergeant Smith took possession of the Motorcoach and had it kept in the government's
5 yard. The police report was also filed *after* the issue of ownership had been raised with this
6 Court—indeed only about a week before the hearing. The police report is a reaction to this
7 hearing, not any independent evidence that Edward Detwiler had possession of the Motorcoach.²
8 Furthermore, in the report, Edward Detwiler does not allege that he owned Harry Hildibrand,
9 LLC, only that he was a manager. Sergeant Smith also testified that the officer receiving the
10 police report would have access to a database revealing that the Clark County Constables had
11 possession of the Motorcoach. This police report does not persuade the Court that Edward
12 Detwiler had control of the Motorcoach or that he, and not Mr. Foust, owns Harry Hildibrand,
13 LLC.

14 41. No representative of Harry Hildibrand, LLC other than Mr. Foust appeared at the
15 hearing or claimed ownership of the Motorcoach.

16 42. At several points during the hearing, and especially on cross examination, Mr.
17 Foust's demeanor was untrustworthy. For example, Mr. Foust testified at one point that Edward
18 Detwiler did have a guest pass for some time before the issue of ownership arose in this Court.
19 But on cross examination Mr. Foust also admitted that Ms. Smukal's testimony concerning the
20 fact that she met with Edward Detwiler for the purpose of securing a guest pass just three days
21 before the hearing was true. When pressed as to why Edward Detwiler would be meeting to
22 secure a guest pass if he already had one, Mr. Foust said "I don't know . . .," suggesting to the
23 Court that Mr. Foust conceded his testimonial inconsistencies. Mr. Foust also claimed that his
24 wife owned the account that issued the \$395 monthly resort fee checks. However, Mr. Foust
25 conceded on cross examination that he signed two of the checks and that he could not have done
26

27 ² Furthermore, in the report, Edward Detwiler does *not* allege that he owned or was a member of Harry Hildibrand,
28 LLC, only that he was a manager. This means that the only documentary evidence in the record, the Montana
Secretary of State filings and the meeting minutes, uniformly show that only Mr. Foust owned Harry Hildibrand,
LLC.

1 so unless he owned the account. Mr. Foust appeared to be willing to say whatever seemed
2 convenient at the moment, without regard for established or incontrovertible facts.

3 43. It is not reasonable to believe that Harry Hildibrand, LLC owns the Motorcoach
4 when no one besides Mr. Foust uses it and pays for its substantial upkeep.

5 44. It is not reasonable to believe that Harry Hildibrand, LLC, a Montana-based entity
6 that apparently has no operations in or connection to Nevada, owns the Motorcoach when Mr.
7 Foust was controlling it and paying for its substantial upkeep.

8 45. Because there is no proof that a sale of the Motorcoach actually occurred, the Court
9 finds that no sale actually occurred and that Mr. Foust continues to own it.

10 46. Mr. Foust acted at all times as if he were the owner of the Motorcoach.

11 47. Any of the foregoing Findings of Fact which constitute Conclusions of Law shall
12 be deemed as Conclusions of Law.

13 **Conclusions of Law and Final Judgment**

14 The Court concludes the following:

15 1. Mr. Foust bore the burden of proving that he no longer owned or had any beneficial
16 interest in the Motorcoach. *See* 31A C.J.S. EXECUTIONS § 589 (2017) (concluding that a judgment
17 debtor bears the “burden” to “account for the assets”). Mr. Foust did not carry this burden. Even
18 if Baker Bank had the burden, the Court concludes it met this burden. Mr. Foust produced no
19 documentary evidence that a sale actually occurred; Mr. Foust failed to rebut the substantial
20 evidence to the effect that, at all relevant times, Mr. Foust continued to behave as if he owned the
21 Motorcoach. Mr. Foust is the actual owner of the Motorcoach.

22 2. Baker Bank proved by clear and convincing evidence that no sale of the
23 Motorcoach occurred and that Mr. Foust continues to own it. Therefore, Baker Bank may keep
24 possession and control of the Motorcoach and sell it to partially satisfy the Judgment.

25 3. A second, independently sufficient basis for ruling in Baker Bank’s favor also
26 exists: even assuming for the sake of argument that a transfer of the Motorcoach did occur, Baker
27 Bank has established by clear and convincing evidence that such a sale is a voidable, fraudulent
28 transfer.

1 4. Pursuant to NRS 112.180(1)(a), if a sale or transfer of the Motorcoach from Mr.
2 Foust to Harry Hildibrand, LLC did occur, it was made with the actual intent to hinder, delay, and
3 defraud Baker Bank. The record indicates that many, if not all, of the so-called “badges” that
4 demonstrate actual fraud occurred here.

5 5. This was a transfer to an insider. *See* NRS 112.180(2)(a). Mr. Foust transferred
6 the Motorcoach to himself because Mr. Foust owns and controls Harry Hildibrand, LLC. *See also*
7 NRS 112.150(7)(a) (stating that if the debtor is a natural person, an insider includes a transfer to a
8 corporation in which the debtor is “a director, officer or person in control”).

9 6. The evidence is uncontroverted and overwhelming that Mr. Foust “retained
10 possession or control of the property transferred after the transfer.” *See* NRS 112.180(2)(b).

11 7. Here, the alleged “transfer or obligation was disclosed or concealed.” *See* NRS
12 112.180(2)(c). Mr. Foust did not inform Baker Bank of this alleged transfer until the dispute
13 about ownership arose. Mr. Foust did not attempt to inform the Resort about the alleged transfer
14 until three days before this hearing. It would have been against Resort policy, moreover, for
15 anyone besides Mr. Foust (such as Edward Detwiler or Harry Hildibrand, LLC) to keep the
16 Motorcoach at lot 172 without a rental agreement, which the record shows Mr. Foust never
17 requested.

18 8. Before the alleged transfer took place, Mr. Foust had already been sued in
19 Washington state court and the Judgment was issued in that State just a few months after the
20 alleged transfer. The alleged transfer also occurred after Mr. Foust had received the loan
21 proceeds. *See* NRS 112.180(2)(d).

22 9. The debtor’s absconding or removing or concealing assets indicates fraud. *See*
23 NRS 112.180(2)(f) *and* (g). Here, there is evidence in the file and this record, that Mr. Foust was
24 transferring away a substantial percentage of many of his valuable vehicles, including the
25 Motorcoach, after the time he received the loan proceeds from Baker Bank in an attempt to move
26 the assets beyond the reach of Baker Bank.

27 10. In this case, “the value of the consideration received by the debtor was [not]
28 reasonably equivalent to the value of the asset transferred or the amount of the obligation

1 incurred.” *See* NRS 112.180(2)(h). Mr. Foust testified that the Motorcoach is worth \$100,000,
2 but he claims he only received \$5,000 when he sold it. This is not an arms-length transaction or a
3 fair bargain. Mr. Foust did also claim that Harry Hildibrand, LLC assumed a purchase-money
4 loan incurred by Mr. Foust years ago with a third-party lender, but again Mr. Foust failed to
5 produce any documentary evidence of this claim or even offer any precise testimony regarding any
6 status or balance of this alleged loan. The supposed title for the Motorcoach (an uncertified
7 photocopy) includes spaces for the recording of liens, but none was written there. Furthermore,
8 the assumption of the loan would not automatically prove equivalent value anyway: the statute
9 contemplates fraud for both a deficient sales price and for an “amount of the obligation incurred,”
10 such as a purchase-money loan, that is unfair under the circumstances.

11 11. The Court is also persuaded that this alleged sale is fraudulent because Harry
12 Hildibrand, LLC is apparently a Montana-based business without any operations or connections to
13 Nevada. The Court cannot believe that a legitimate transaction would result in Mr. Foust (or his
14 daughter or wife) paying for maintenance, lot fees, and other significant upkeep on a vehicle that
15 only Mr. Foust uses and was kept in Nevada at all relevant times. *See* NRS 112.180(2) (noting
16 that a court may consider any relevant fact and is not limited to those fraudulent circumstances
17 expressly enumerated in the statute).

18 12. In sum, the alleged transfer was a fraud upon creditors done to hinder, delay, or
19 defraud Baker Bank.

20 13. Because the Court concludes that this alleged sale was fraudulent, it grants Baker
21 Bank the relief prescribed in the statute itself and the applicable provisions of the Civil Rules:

22 a. Any alleged sale or transfer of the Motorcoach is voided ab initio and is of no
23 effect whatsoever so that Baker Bank may satisfy its claim and enforce its Judgment by levying
24 execution against the Motorcoach, *see* NRS 112.210(1)(a);

25 b. The attachment and garnishment of the Motorcoach and the personal effects of Mr.
26 Foust located therein that has already been effected with the aid of Clark County Constables
27 levying an execution against said properties are confirmed as valid, lawful, and regular in every
28 respect, *see* NRS 112.210(1)(b);

c. Mr. Foust and Harry Hildibrand, LLC are enjoined from any further attempt to dispose of the Motorcoach or interfere with Baker Bank's right to keep and sell the Motorcoach, *see* NRS 112.210(1)(c)(1);

d. Any interested persons, including any government agency concerned with registering title to the Motorcoach, shall regard a copy of this order as a final judgment divesting Harry Hildibrand, LLC of title and vesting it in James Patterson Foust, Jr., the judgment debtor in this action, with such title subject to Baker Bank's rights to levy execution against the Motorcoach, as described in this judgment. *See* NRCP 70 ("If real or personal property is within the State, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law.").

e. Baker Bank may sell the Motorcoach to partially satisfy the Judgment. The Court stays this subsection 13(e) of the ruling, and no others, for 15 days from notice of entry of this judgment.

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

Dated this 7th day of March, 2018.

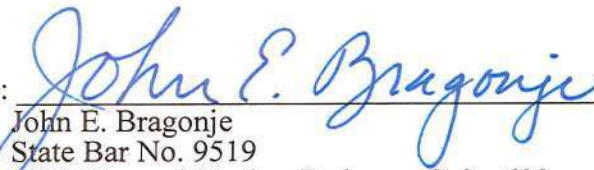


DISTRICT COURT JUDGE

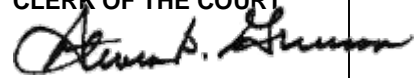
Respectfully submitted by:

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By:


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DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgement Creditor,

v.

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

MOTION TO INTERVENE

Harry Hildibrand LLC, a Montana limited liability company ("HH"), by and through its attorneys of record Holland & Hart, LLP, hereby submits this Motion to Intervene (the "Motion").

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1 This Motion is made and based upon Nevada Rules of Civil Procedure (“NRCP”) 24, the
2 attached Memorandum of Points and Authorities, the pleadings and papers on record in this
3 action, and any argument presented at the time of hearing on this matter.

4 DATED this 15th day of March, 2018.

5 HOLLAND & HART LLP

6
7 /s/ Joseph G. Went
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NOTICE OF MOTION

TO: All Interested parties and/or their Counsel of Record

PLEASE TAKE NOTICE the undersigned will bring the foregoing Motion to Intervene for
hearing before the above-entitled Court on the **23rd** day of **April 2018** at _____ a.m / p.m
or as soon thereafter as may be heard.

DATED this 15th day of March, 2018.

HOLLAND & HART LLP

/s/ Joseph G. Went
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1
2
3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I.**

5 **INTRODUCTION**

6 This matter involves one motorhome wrongfully attached by Baker Boyer National Bank (the
7 “Bank”) in an attempt to satisfy a judgment against James Patterson Foust, Jr. (“Foust”). HH is
8 the legal owner of a 1997 Prevost Bus Motorcoach, Vehicle Identification Number (“VIN”) 2PCM3349XV1026183, registered with the State of Montana, department of Justice – Motor
9 Vehicle Division, Title Number AA3350572 (“Motorcoach”). The Bank is additionally seeking
10 to attach additional property legally owned by HH. HH is now required to intervene as a right to
11 protect its legal interest in its assets.

12 HH has the right to intervene pursuant to NRCP 24(a)(2) because it has personal property
13 interests that are directly involved in the underlying action. The Bank is pursuing Foust in a
14 post-judgment collection action to satisfy a judgment entered in Washington and domesticated in
15 Nevada. While the Bank may have the right to pursue Foust pursuant to the Washington
16 Judgment, there are no legal grounds that support the Bank’s seizure of HH’s assets.

17 **II.**

18 **FACTS**

19 1. On or about November 12, 2008, Edward N. Detwiler (“Detwiler”) became
20 a managing director of HH. A true and correct copy of the Minutes of Special Meeting of
21 Harry Hildibrand, LLC dated November 12, 2008 are attached hereto as **Ex. 1** and
22 incorporated herein by reference.

23 2. On or about November 12, 2008, Defendant/Judgment Debtor James
24 Patterson Foust, Jr. (“Foust” or “Judgment Debtor”) resigned as a managing director of HH.

25 3. On or about January 13, 2017, HH became the owner of certain personal
26 property described as a 1997 Prevost Bus Motorcoach, Vehicle Identification Number
27 2PCM3349XV1026183, registered with the State of Montana, Department of Justice –
28

1 Motor Vehicle Division, Title Number AA3350572 (the “Motorcoach”). A true and correct
2 copy of the Certificate of Title for the Motorcoach issued by the State of Montana,
3 Department of Justice – Motor Vehicle Division identifying HH’s ownership interest is
4 attached hereto as **Ex. 2** and incorporated herein by reference.

5 4. On or around June 8, 2011, HH became the owner of certain personal property
6 described as 1957 Chevrolet Bel Air Convertible, VIN VC570141640, registered with the State
7 of Montana, Department of Justice – Motor Vehicle Division (“1957 Bel Air”).

8 5. On or around June 16, 2011, HH became the owner of certain personal property
9 described as 1957 Chrysler 300 C Convertible, VIN 3NS71810, registered with the State of
10 Montana, Department of Justice – Motor Vehicle Division (“1957 300 C”).

11 6. On or around May 13, 2011, HH became the owner of certain personal property
12 described as 1957 Ford Fairlane 500, VIN D7LV162233, registered with the State of Montana,
13 Department of Justice – Motor Vehicle Division (“1957 Fairlane”).

14 7. On or around May 12, 2011, HH became the owner of certain personal property
15 described as 1971 Ford Pantera, VIN THPNLY01620, registered with the State of Montana,
16 Department of Justice – Motor Vehicle Division (“1971 Pantera”).

17 8. On or around May 12, 2011, HH became the owner of certain personal property
18 described as 1973 Ford Pantera – GT4, VIN THPNNU05291, registered with the State of
19 Montana, Department of Justice – Motor Vehicle Division (“1973 Pantera”).

20 9. On or around May 12, 2011, HH became the owner of certain personal property
21 described as 1951 Jaguar XK 120 Race Car, VIN S671966, registered with the State of
22 Montana, Department of Justice – Motor Vehicle Division (“1951 XK”).

23 10. On or around May 12, 2011, HH became the owner of certain personal property
24 described as 1957 Oldsmobile 98 Rocket VIN 579M27665, registered with the State of
25 Montana, Department of Justice – Motor Vehicle Division (“1957 Rocket”).

26 11. On or around July 21, 2008, HH became the owner of certain personal property
27 described as 1940 Ford Del VIN AZ152801, registered with the State of Montana,
28 Department of Justice – Motor Vehicle Division (“1940 Del”).

12. HH asserts it is the legal owner of certain personal property described as 1970 Ford Boss 429 ("1970 Boss").

Ex. 3. Paragraphs 3-12 are collectively referred to as the "Vehicles," paragraphs 4-12 are collectively referred to as the "Exotic Cars."

III.

LEGAL STANDARD

HH has a right to intervene under NRCP 24(a)(2) as a matter of right:

[W]hen the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The Nevada Supreme Court recognizes that to intervene under NRCP 24(a)(2), an applicant must show that: "(1) it has a sufficient interest in the litigation's subject matter, (2) it could suffer an impairment of its ability to protect that interest if it does not intervene, (3) its interest is not adequately represented by existing parties, and (4) its application is timely. Determining whether an applicant has met these four requirements is within the district court's discretion." *Am. Home Assur. Co. v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006) (citations omitted).

Alternatively, HH has a right to intervene under NRCP 24(b). NRCP 24(b) permits intervention if the proposed intervenor's claim or defense and the main action share a common question of law or fact and intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. *Dangberg Holdings v. Douglas Co.*, 115 Nev. 129, 141, 978 P.2d 311, 318 (1999).

IV.

LEGAL ARGUMENT

A. HH Has A Right To Intervene Under NRCP 24(a)(2).

HH satisfies the four requirements for intervention pursuant to law. HH appropriately and timely protected its interests pursuant to NRS Chapter 31. Additionally, the outcome of the

1 disposition of the Exotic Cars is still pending. HH has direct and significant protectable interest
2 relating to the subject matter of the proceeding, i.e. the seizure of HH's Vehicles without due
3 process of law. As demonstrated by the seizure of the Motorcoach and the recent March 8, 2017,
4 Order ("March Order"), HH's interests may, as a practical matter, be impaired or impeded by the
5 disposition of the action because it will lose the value of the Vehicles. HH's interests are not
6 represented by any party present in the action. Foust is already bound by a Washington
7 judgment. HH stands in a completely different position as a third party claimant..

8 To meet the first requirement under NRCP 24(a)(2), an applicant must demonstrate that it
9 has a significantly protectable interest, which is "one that is protected under the law and bears a
10 relationship to the plaintiff's claims." *Am. Home Assur.*, at 1239, 147 P.3d at 1127. Moreover,
11 where the subject matter of a lawsuit affects property rights, a party has a sufficient interest in
12 the matter to warrant intervention. *Dangberg Holdings Nevada, L.L.C. v. Douglas Cnty.*, 115
13 Nev. 129, 139, 978 P.2d 311, 317 (1999). Here, HH has substantial interest in the subject matter
14 of this case because it owns the personal property in question, uses the Vehicles, and holds them
15 assets in its limited liability company. These property rights are directly involved in this case,
16 and therefore, HH clearly has a significantly protectable interest in this case.

17 The second requirement of NRCP 24(a)(2) is met if the district court determines that the
18 applicant's ability to protect its interest in the litigation's subject matter might be impaired by the
19 disposition of the case before the Court. *Am. Home Assur. Co.*, 122 Nev. at 1240, 147 P.3d at
20 1128. Here, the Bank asserts it has the right to seize the Vehicles to satisfy an outstanding debt
21 that has nothing to do with HH. HH has an interest in these matters because it is the true, valid,
22 and legal owner of the Vehicles in question. HH's ability to protect its property interest could be
23 impaired or impeded if it is not allowed to intervene. HH also asserts that the Bank's actions
24 against HH are unlawful. The Bank has no valid right or claim to the Vehicles in question. The
25 Bank is attempting to collaterally attack a third-partys' protected property interest without
26 pursuing the proper legal channels. Therefore, HH must intervene to protect its interests.

The third factor is whether HH's interest is adequately represented by the existing parties. The standard to establish that an applicant is not adequately represented by the existing parties is "minimal." *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n. 10 (1972). Foust has no interest in protecting HH's assets. Foust's only interest is to maintain his own assets. HH is not adequately represented by Foust in this action because their interests and objectives are not identical. Foust has no duty to protect HH's property in this action. No one but HH is capable of protecting its property interests in this matter.

Lastly, HH's motion for intervention is timely. Nevada case law "generally reflect[s] that intervention is timely if the procedural posture of the action allows the intervenor to protect its interest." *Estate of Lomastro ex rel. Lomastro v. Am. Family Ins. Grp.*, 124 Nev. 1060, 1071 n. 10, 195 P.3d 339, 347 n. 10 (2008) (comparing *Dangberg Holdings*, 115 Nev. at 139-42, 978 P.2d at 317-19, with *Lopez v. Merit Ins. Co.*, 109 Nev. 553, 557, 853 P.2d 1266, 1268 (1993)).

Here, the Application for Hearing Within 10 Days On Third Party's Claim Of Interest In Property was filed on March 2, 2018 ("Application"). **Ex. 4.** HH became aware that the Motorcoach was missing on February 4, 2018. **Ex. 5.** HH filed a police report with the Las Vegas Metropolitan Police Department on the same date. **Ex. 6.** Considering the rapid succession of HH's actions in this matter, HH's intervention is timely. Regarding the Exotic Cars, the Court has not held a hearing or determination. Regarding the Motorcoach, the time to move for reconsideration has not passed. Additionally, the time to appeal has not run. HH has a right to protect its interest in its property before this Court. The Bank has not seized the Exotic Cars. Additionally, the Court Ordered the Bank to keep the Motorcoach safe until a full determination could be made. *See* March order. Therefore, granting intervention at this time would not prejudice the parties because it will not cause a signification delay or prejudice in this action.

B. HH has a right to intervene under NRCP 24(b).

Alternatively, HH seeks permissive intervention under NRCP 24(b)(2). Its claims or defenses share a common question of law with the main action, its intervention cannot cause undue delay or prejudice to existing parties, and HH's participation in this case will not prejudice

1 the rights of the original parties. Moreover, HH's participation will assist the Court in focusing
2 on the appropriate attachment to satisfy the Bank's outstanding judgment.

3 **III.**

4 **CONCLUSION**

5 For these reasons, HH requests this Court grant its Motion To Intervene. Pursuant to
6 NRCP 24(c), HH's NRCP 24(c) pleading is attached hereto as **Ex. 4.**¹

7 DATED this 15th day of March, 2018.

8 HOLLAND & HART LLP

9
10 /s/ Joseph G. Went
11 Joseph G. Went, Esq.
12 Nevada Bar No. 9220
13 Sydney R. Gambee, Esq.
14 Nevada Bar No. 14201
15 9555 Hillwood Drive, 2nd Floor
16 Las Vegas, NV 89134
17 *Attorneys for Harry Hildibrand, LLC*
18
19
20
21
22
23
24
25
26

27 _____
28 ¹ Execution on the Exotic Cars has not occurred in this matter. Therefore the necessity for a
NRS Chapter 31 Application has not yet triggered.

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 15th day of March, 2018, I served a true and correct copy of the foregoing **REPLY IN SUPPORT OF THE APPLICATION FOR HEARING WITHIN 10 DAYS ON THIRD PARTY'S CLAIM OF INTEREST IN PROPERTY LEVIED UPON AND OPPOSITION TO PLAINTIFF'S INDEPENDENT REQUEST FOR HEARING UNDER NRS 31.070(5)** by the following method(s):

☒ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

John E. Bragonje
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*Attorneys for Defendant James Patterson
Foust, Jr.*

/s/ Valerie Larsen
An Employee of Holland & Hart LLP

EXHIBIT 1

EXHIBIT 1


**MINUTES OF SPECIAL MEETING
OF HARRY HILDIBRAND, LLC
Dated November 12, 2008**

The undersigned, the managing initial director of the LLC, hereby certify:

1. At the special meeting of the LLC, duly called and held by teleconference this day, there Being present the following, constituting all of the members of the LLC, James P. Foust, the initial managing director took the following action, adopting the following resolutions which Have not been modified or rescinded:

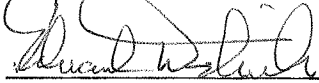
RESOLVED that James P. foust, as managing director, is authorized, to appoint Edward Detwiler as also a managing director

IN WITNESS WHEREOF, the undersigned has hereto affixed his hand this 12th day of November 2008, by approval of:



James P. Foust. Member
State of Montana

ACCEPTED BY:



Edward Detwiler,
Managing Director

EXHIBIT 2

EXHIBIT 2

DEPARTMENT OF JUSTICE - MOTOR VEHICLE DIVISION

CERTIFICATE OF TITLE

pj5753

Title Nbr AA3350572	Year 1997	Make Prevost	Model Bus	Extended Model	Style BU	NCIC Vehicle Type CH	Unladen Weight/Material
VIN/HIN 2PCM3349XV1026183	MT Boat Nbr	Ton. Code/Propulsion Type		Odometer		Vehicle Nbr 2950151	
Brand	Title Issue Date 02/09/2017	Vehicle Sale Date 01/13/2017	Transfer Reason Cancel - Voluntary	Attribute	Owner Tracking Nbr	Fleet Nbr	

Owner Name and Address

Harry Hildibrand LLC
3011 American Way
Missoula MT 59808-1921
Customer Number: 1727321

This vehicle/vessel is subject to the following security interest(s):

Mail To:

Harry Hildibrand LLC
PO Box 16270
Missoula MT 59808

The vehicle/vessel may be subject to other security interests.

SELLER COMPLETES IN INK

As the Registered Owner of the above vehicle, I transfer all right, title and interest to the vehicle to the following person, as of the date below:			
Print name of buyer, whether individual or business			Date of Transfer (delivery of vehicle)
Buyer's Street Address		City	State Zip
Federal and state law require that the owner state the mileage of a vehicle upon transfer of ownership. If you fail to complete this disclosure or provide a false statement, you may be subject to fines and/or imprisonment.			
I state that this (check one) 5 <input type="checkbox"/> or 6 <input type="checkbox"/> digit odometer now reads (no tenths) _____ miles, date read _____ and to the best of my knowledge it reflects the actual mileage unless one of the following statements is checked:			
<div style="display: flex; justify-content: space-between;"> <div>DO NOT CHECK UNLESS APPLICABLE:</div> <div> <input type="checkbox"/> The odometer reading reflects the amount of mileage in excess of its mechanical limits. <input type="checkbox"/> The odometer reading is not the actual mileage. Warning - odometer discrepancy. </div> </div>			
ALL OWNERS MUST SIGN - Additional owners are listed to the right of the first owner above.			
Under penalty of law, I certify the above odometer disclosure and transfer of ownership information is correct to the best of my knowledge; that I am the same person named above; and if signing for a business entity or trust, I have full authority to act upon behalf of the owner, whose name appears on the upper left side of this Title.			
ALL OWNERS MUST SIGN.	Signature of First Owner or Agent of Owner (Transferor)	Printed name - must be the same as signature (do not type)	
X	Signature of Additional Owner or Agent of Owner (if more than one)	Printed name - must be the same as signature (do not type)	
X			
NOTARY	State of _____ County of _____	Signed before me on (date)	Notary Stamp/Seal
	by (clearly print name of person signing Title)		
	Notary signature		
BUYER	ACKNOWLEDGEMENT OF MILEAGE DISCLOSURE: I am aware of the above odometer certification made by the seller.		
	Signature of Buyer - only one signature is required		Printed name - must be the same as signature (do not type)
	X		



TITLE AND REGISTRATION BUREAU
1003 BUCKSKIN DRIVE
DEER LODGE MT 59722-2375



CONTROL NO. **14544545**
(This is not a title number)

PA00121

(REV. 04/2016)

EXHIBIT 3

EXHIBIT 3

<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>Status</u>	<u>Year</u>	<u>Name</u>
1956	CHEV	CORVETTE	Sold	1982	Gift Robert Hilton
1957	PACKARD	CLIPPER	Sold	1982	sold kevin hilton 11/5/82
1977	Mercedes	380 4 DR SEDAN	Sold	1985	gave to Charles Hilton
1986	LAND DEED	TRAILER COLORADO RIV	Re-Title	1986	
1978	CARRIER	BOAT TRAILER	Sold	1990	JPF Jr. - Gift
1966	CHEV	TURBO CORVAIR	Hilton	1990	Edgar Hilton
1978	HORIZON	BOAT	Sold	1990	Gift JPF Jr.
1996	CHEV	S-10 PICKUP	Sold	1996	Gift Ashley
1996	SATURN	COUPE	Sold	1996	Gift Melody 1/14/1996
1984	VOLSWAGEN	RABBIT	Sold	1996	Gift Melody 1/14/1996
1987	FORD	TRUCK	Sold	1999	Trade for 1999 Truck
1991	FORD	#9 COORS LITE NASCAR	Sold	2001	Crash Phoenix - Sold ASIS
1989	CHAPARRAL	TRAILER	Sold	2004	sold Armstrong
1991	INTERNATIONAL	4000 SERIES	Sold	2004	sold Armstrong
1999	FORD	CREW CAB PICKUP	Sold	2005	sold Mid 2000's
1987	HONDA	SCOOTER	1996	2005	scrap
1992	HONDA	SCOOTER	1996	2005	scrap
1958	PORSCHE	CABROLET	Sold	2005	Gift Tiffiney 1/26/2005
2002	Crysler	PT Cruiser - Blue	Sold	2006	Trade - 2005 Crusier
1955	FORD	T-BIRD (96 MILES)	Sold	2006	sold Russo Steele 8/16/2006
1963	FORD	427 GALAXY (R-CAR)	Sold	2006	sold Russo Steele
1964	FORD	THUNDERBIRD	TRADE	2006	Trade for 280 MBZ
1970	FORD	BOSS 429	Sold	2006	HH - sold 6/16/2006
1988	FORD	#11 Budweiser NASCAR	Sold	2006	sold steve thomas 2006
1964	JAGUAR	XKE	Sold	2006	sold C Hilton 12/19/2006
1967	LAMBORGHINI	MUIRA (3571)	Sold	2006	sold Russo Steele 8/16/2006
1956	Mercedes	300 SL	Sold	2006	sold Russo Steele 8/16/2006
1968	Mercedes	280 SL	Sold	2006	sold Russo Steele 8/16/2006
1969	PONTIAC	JUDGE	Sold	2006	sold Russo Steele 8/16/2006
1980	ROLLS ROYCE	SILVER CLOUD II	Sold	2006	Charles Hilton
1968	SHELBY	GT500	Sold	2006	Charles Hilton
1966	SHELBY	427 COBRA - Replica	Sold	2006	sold Russo Steele 8/16/2006
1937	FORD	Coupe	Sold	2007	Sold San Diego winfred 5/15/2006
1987	Mercedes	450SL	Sold	2007	sold Russo Steele/tony ritz
					sold Russo Steele 5/1/2007

2000	PLYMOUTH	PROWLER	Sold	2007	sold Russo Steele 8/16/2007
1940	FORD	Coupe	Sold	2008	HH - sold 6/16/2008
2008	Harley-Davidson	Motor Cycle	Sold	2008	Trade for VROD Harley
1985	KAWASAKA	NINJA 900	Sold	2008	sold 7/15/2008 Parts ASIS
2005	Crysler	PT Cruiser convertible	Sold	2009	Trade in 2009 PT cruz
1935	CADILLAC	V-12 COUPE	Sold	2010	Robert McMath feb 2010
1957	CHEV	CORVETTE	Sold	2010	Robert McMath
1965	DODGE	SAVOY Acid dip car	Sold	2010	Sold Kuck
1957	FORD	T-BIRD (MATTOX)	Sold	2010	sold Thommy
1966	FORD	THUNDERBIRD	Sold	2010	Thommy - sold 2/9/2010
1967	FORD	MUSTANG	Sold	2010	Robert McMath
1968	FORD	COBRA JET MUSTANG	Sold	2010	Robert McMath
1962	PLYMOUTH	Savoy w/413	Sold	2010	Sold Kuck 11/29/2010
1964	PLYMOUTH	HEMI (ALUMINIUM BODY)	Sold	2010	Sold Kuck 11/29/2010
1966	PLYMOUTH	HEMI BELVADIRE	Sold	2010	Sold Kuck 11/29/2010
1957	CHEV	BEL AIR CONV. (FI)	Sold	2011	HH - sold 6/16/2011
1957	CHRYSLER	300 C CONV.	Sold	2011	HH - sold 6/16/2011
2009	Crysler	PT Cruiser - Red	Sold	2011	Sold HT
1955	FORD	T-BIRD (CHEV)	Sold	2011	sold 6/22/2011
1957	FORD	FAIRLANE 500	Sold	2011	HH - sold 6/16/2011
1971	FORD	PANTERIA	Sold	2011	HH - sold 6/16/2011
1973	FORD	PANTERIA -GT4	Sold	2011	HH - sold 6/16/2011
2009	Harley-Davidson	Motor Cycle VROD	Sold	2011	sold South Bay Kawidaki
1951	JAGUAR	XK 120 RACE CAR	Sold	2011	HH - sold 6/16/2011
1957	OLDSMOBILE	98 ROCKET	Sold	2011	HH - sold 6/16/2011
1965	SHELBY	427 Cobra	Sold	2011	Sold Natalino Bertin 2011
1963	CHEV	425/409 S/S	Sold	2012	sold Russo Steele jan 2012
2007	CHEV	Corvette Z06	Sold	2012	sold 1/18/2012 by hh
2004	Volvo	C60	Sold	2012	Sold Detwiler
1983	PORSCHE	CARREA	Sold	2013	Sold jan 2013 Lou paupos
2000	GMC	Yukon	Sold	2014	sold 1/18/2014 by hh
1990	FERRARI	TESTAROSSA	Sold	2016	Sold Ferrari BH 3/10/16
1988	LAMBORGHINI	COUNTACH	Sold	2016	sold Bonham's 1/25/2016
1998	MARATHON	COACH	Sold	2016	sold 12/9/2016
2007	Mercedes	S550	Bought	2016	Vanessa Bought From HH

2006	Mercedes	S500	Sold	2016	sold Beberly Hills MBZ
2007	Mercedes	CLK 550	Bought	2016	Jocelyn Bought From HH
2007	Mercedes	M50 SUV	Bought	2016	Naomi Bought From HH

STATE OF MONTANA DEPARTMENT OF JUSTICE - MOTOR VEHICLE DIVISION CERTIFICATE OF TITLE

pl5753

Title Nbr AA3350572	Year 1997	Make Prevost	Model Bus	Extended Model	Style BU	NCIC Vehicle Type CH	Unladen Weight/Material
VIN/HIN 2PCM3349XV1026183	MT Boat Nbr	Ton. Code/Propulsion Type		Odometer		Vehicle Nbr 2950151	
Brand	Title Issue Date 02/09/2017	Vehicle Sale Date 01/13/2017	Transfer Reason Cancel - Voluntary	Attribute	Owner Tracking Nbr		Fleet Nbr

Owner Name and Address

Harry Hildibrand LLC
3011 American Way
Missoula MT 59808-1921
Customer Number: 1727321

This vehicle/vessel is subject to the following security interest(s):

Mail To:

Harry Hildibrand LLC
PO Box 16270
Missoula MT 59808

The vehicle/vessel may be subject to other security interests.

SELLER COMPLETES IN INK	As the Registered Owner of the above vehicle, I transfer all right, title and interest to the following person, as of the date below:			
	Print name of buyer, whether individual or business		Date of Transfer (delivery of vehicle)	
	Buyer's Street Address		City	State Zip
	Federal and state law require that the owner state the mileage of a vehicle upon transfer of ownership. If you fail to complete this disclosure or provide a false statement, you may be subject to fines and/or imprisonment. I state that this (check one) <input type="checkbox"/> or <input type="checkbox"/> digit odometer now reads (no tenths) _____ miles, date read _____ and to the best of my knowledge it reflects the actual mileage unless one of the following statements is checked: DO NOT CHECK UNLESS APPLICABLE: <input type="checkbox"/> The odometer reading reflects the amount of mileage in excess of its mechanical limits. <input type="checkbox"/> The odometer reading is not the actual mileage. Warning - odometer discrepancy.			
NOTARY	ALL OWNERS MUST SIGN - Additional owners are listed to the right of the first owner above.			
	Under penalty of law, I certify the above odometer disclosure and transfer of ownership information is correct to the best of my knowledge; that I am the same person named above; and if signing for a business entity or trust, I have full authority to act upon behalf of the owner, whose name appears on the upper left side of this Title.			
	ALL OWNERS MUST SIGN	Signature of First Owner or Agent of Owner (Transferor)	Printed name - must be the same as signature (do not type)	
		Signature of Additional Owner or Agent of Owner (if more than one)	Printed name - must be the same as signature (do not type)	
BUYER	State of	County of	Signed before me on (date)	Notary Stamp/Seal
	by (clearly print name of person signing title)			
	Notary signature			
ACKNOWLEDGEMENT OF MILEAGE DISCLOSURE: I am aware of the above odometer certification made by the seller.				
Signature of Buyer - only one signature is required			Printed name - must be the same as signature (do not type)	



TITLE AND REGISTRATION BUREAU
1003 BUCKSKIN DRIVE
DEER LODGE MT 59722-2375

CONTROL NO. 14544545
(This is not a title number)



(REV. 04/2016)

PA00126

STATE OF MONTANA

DEPARTMENT OF JUSTICE - MOTOR VEHICLE DIVISION CERTIFICATE OF TITLE

pj5732

Title Nbr	Year	Make	Model	Extended Model	Style	NCIC Vehicle Type	Unladen Weight/Material
AA0839101	1951	Jaguar	xk120		CV	PC	2900
VIN/HIN		MT Boat Nbr	Ton Code/Propulsion Type	Odometer			Vehicle Nbr
S671966				as of //			2886487
Brand	Title Issue Date	Vehicle Sale Date	Transfer Reason	Attribute	Owner Tracking Nbr	Fleet Nbr	
	06/16/2011	05/12/2011	OOS Title Transfer				

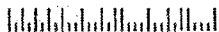
Owner Name and Address

Harry Hildibrand LLC
2675 Palmer St Ste f
Missoula, MT 59808
Customer Number: 1727321

This vehicle/vessel is subject to the following security interest:

Mail To:

Harry Hildibrand LLC
PO Box 16270
Missoula, MT 59808



The vehicle/vessel may be subject to other security interests.

SELLER COMPLETES IN INK

Print name of buyer, whether individual or business		Date of Transfer (delivery of vehicle)	
Buyer's Street Address		City	State
			Zip
Federal and state law require that the owner state the mileage of a vehicle upon transfer of ownership. If you fail to complete this disclosure or provide a false statement, you may be subject to fines and/or imprisonment.			
I state that this (check one) <input type="checkbox"/> 5 or <input type="checkbox"/> 6 digit odometer now reads (no tenths) _____ miles, date read _____ and to the best of my knowledge it reflects the actual mileage unless one of the following statements is checked:			
<div style="border: 1px solid black; padding: 5px;"> DO NOT CHECK UNLESS APPLICABLE: <input type="checkbox"/> The odometer reading reflects the amount of mileage in excess of its mechanical limits. <input type="checkbox"/> The odometer reading is not the actual mileage. Warning - odometer discrepancy. </div>			
Under penalty of law, I certify the above odometer disclosure and transfer of ownership information is correct to the best of my knowledge; that I am the same person named above; and if signing for a business, I have full authority to act upon behalf of the owner, whose name appears on the upper left side of this Title. ALL OWNERS MUST SIGN.			
Signature of Owner or Agent of Owner (Transferor)		Printed name - must be the same as signature (do not type)	
X Signature of Owner or Agent of Owner (if more than one)		Printed name - must be the same as signature (do not type)	
State of	County of	Signed before me on (date)	Notary Stamp/Seal
by (clearly print name of person signing Title)			
Notary signature		Printed name	
Title or rank	Residing at	My commission expires	
ACKNOWLEDGEMENT OF MILEAGE DISCLOSURE: I am aware of the above odometer certification made by the seller.			
Signature of Buyer - only one signature is required		Printed name - must be the same as signature (do not type)	
X			

Rev. 09/10



TITLE AND REGISTRATION BUREAU
1003 BUCKSKIN DRIVE
DEER LODGE MT 59722-2375

CONTROL NO. 12019338

Rev. 08/09

(This is not a title number)



KEEP IN SAFE PLACE-ANY ALTERATION-USE OF CORRECTION FLUID-ERASURE - VOIDS THIS TITLE

VERIFY PRESENCE OF WATERMARK - HOLD TO LIGHT TO VIEW

PA00127

DEPARTMENT OF JUSTICE - MOTOR VEHICLE DIVISION 0000000000 4

57

CERTIFICATE OF TITLE

TITLE NUMBER YEAR MAKE/MANUFACT. MODEL BODY STYLE/LENGTH

H062361

1940

FORD

DEL

2D

VEHICLE/VESSEL IDENTIFICATION NUMBER

UNLADEN WEIGHT/MATERIAL

TON/PROPULSION

VESSEL NUMBER

AZ152801

2,831

ODOMETER READING

0

DATE ISSUED

07/21/2008

OTHER PERTINENT DATA

OWNER(S) NAME AND ADDRESS

HARRY HILDBRAND LLC
PO BOX 16270
MISSOULA MT 59808

This entire section must be completed when selling,
trading or transferring your vehicle/vessel.

STEP 1 - OWNERS ASSIGNMENT OF TITLE TO PURCHASER

Owner(s) shown above must enter the name and address of the purchaser(s) here.
Do not leave these lines blank - doing so constitutes an "open title" and is a
violation of state law.

Print Name of Purchaser(s) (individuals or business)

Address

STEP 2 - OWNER(S) MILEAGE DISCLOSURE AND RELEASE OF INTEREST

Warning: Federal and state law requires that you state the mileage of the
vehicle - failure to do so or providing a false statement may result in fines
and/or imprisonment.

I/we state that this (check one) ☐ for ☐ digit odometer now reads (no farther)
_____ miles, date read _____ and to the best of my/our knowledge it
reflects the actual mileage unless one of the following statements is checked:

DO NOT CHECK UNLESS APPLICABLE ☐ The odometer reading reflects the amount of
mileage in miles of the motor vehicle.
☐ The odometer reading is not the actual mileage.
Warning - odometer discrepancy.

Very carefully under penalty of law (Sections 65-7-202, 65-7-203, 65-7-204, 65-7-205, 65-7-206, 65-7-207, 65-7-208, 65-7-209, 65-7-210, 65-7-211, 65-7-212, 65-7-213, 65-7-214, 65-7-215, 65-7-216, 65-7-217, 65-7-218, 65-7-219, 65-7-220, 65-7-221, 65-7-222, 65-7-223, 65-7-224, 65-7-225, 65-7-226, 65-7-227, 65-7-228, 65-7-229, 65-7-230, 65-7-231, 65-7-232, 65-7-233, 65-7-234, 65-7-235, 65-7-236, 65-7-237, 65-7-238, 65-7-239, 65-7-240, 65-7-241, 65-7-242, 65-7-243, 65-7-244, 65-7-245, 65-7-246, 65-7-247, 65-7-248, 65-7-249, 65-7-250, 65-7-251, 65-7-252, 65-7-253, 65-7-254, 65-7-255, 65-7-256, 65-7-257, 65-7-258, 65-7-259, 65-7-260, 65-7-261, 65-7-262, 65-7-263, 65-7-264, 65-7-265, 65-7-266, 65-7-267, 65-7-268, 65-7-269, 65-7-270, 65-7-271, 65-7-272, 65-7-273, 65-7-274, 65-7-275, 65-7-276, 65-7-277, 65-7-278, 65-7-279, 65-7-280, 65-7-281, 65-7-282, 65-7-283, 65-7-284, 65-7-285, 65-7-286, 65-7-287, 65-7-288, 65-7-289, 65-7-290, 65-7-291, 65-7-292, 65-7-293, 65-7-294, 65-7-295, 65-7-296, 65-7-297, 65-7-298, 65-7-299, 65-7-300, 65-7-301, 65-7-302, 65-7-303, 65-7-304, 65-7-305, 65-7-306, 65-7-307, 65-7-308, 65-7-309, 65-7-310, 65-7-311, 65-7-312, 65-7-313, 65-7-314, 65-7-315, 65-7-316, 65-7-317, 65-7-318, 65-7-319, 65-7-320, 65-7-321, 65-7-322, 65-7-323, 65-7-324, 65-7-325, 65-7-326, 65-7-327, 65-7-328, 65-7-329, 65-7-330, 65-7-331, 65-7-332, 65-7-333, 65-7-334, 65-7-335, 65-7-336, 65-7-337, 65-7-338, 65-7-339, 65-7-340, 65-7-341, 65-7-342, 65-7-343, 65-7-344, 65-7-345, 65-7-346, 65-7-347, 65-7-348, 65-7-349, 65-7-350, 65-7-351, 65-7-352, 65-7-353, 65-7-354, 65-7-355, 65-7-356, 65-7-357, 65-7-358, 65-7-359, 65-7-360, 65-7-361, 65-7-362, 65-7-363, 65-7-364, 65-7-365, 65-7-366, 65-7-367, 65-7-368, 65-7-369, 65-7-370, 65-7-371, 65-7-372, 65-7-373, 65-7-374, 65-7-375, 65-7-376, 65-7-377, 65-7-378, 65-7-379, 65-7-380, 65-7-381, 65-7-382, 65-7-383, 65-7-384, 65-7-385, 65-7-386, 65-7-387, 65-7-388, 65-7-389, 65-7-390, 65-7-391, 65-7-392, 65-7-393, 65-7-394, 65-7-395, 65-7-396, 65-7-397, 65-7-398, 65-7-399, 65-7-400, 65-7-401, 65-7-402, 65-7-403, 65-7-404, 65-7-405, 65-7-406, 65-7-407, 65-7-408, 65-7-409, 65-7-410, 65-7-411, 65-7-412, 65-7-413, 65-7-414, 65-7-415, 65-7-416, 65-7-417, 65-7-418, 65-7-419, 65-7-420, 65-7-421, 65-7-422, 65-7-423, 65-7-424, 65-7-425, 65-7-426, 65-7-427, 65-7-428, 65-7-429, 65-7-430, 65-7-431, 65-7-432, 65-7-433, 65-7-434, 65-7-435, 65-7-436, 65-7-437, 65-7-438, 65-7-439, 65-7-440, 65-7-441, 65-7-442, 65-7-443, 65-7-444, 65-7-445, 65-7-446, 65-7-447, 65-7-448, 65-7-449, 65-7-450, 65-7-451, 65-7-452, 65-7-453, 65-7-454, 65-7-455, 65-7-456, 65-7-457, 65-7-458, 65-7-459, 65-7-460, 65-7-461, 65-7-462, 65-7-463, 65-7-464, 65-7-465, 65-7-466, 65-7-467, 65-7-468, 65-7-469, 65-7-470, 65-7-471, 65-7-472, 65-7-473, 65-7-474, 65-7-475, 65-7-476, 65-7-477, 65-7-478, 65-7-479, 65-7-480, 65-7-481, 65-7-482, 65-7-483, 65-7-484, 65-7-485, 65-7-486, 65-7-487, 65-7-488, 65-7-489, 65-7-490, 65-7-491, 65-7-492, 65-7-493, 65-7-494, 65-7-495, 65-7-496, 65-7-497, 65-7-498, 65-7-499, 65-7-500, 65-7-501, 65-7-502, 65-7-503, 65-7-504, 65-7-505, 65-7-506, 65-7-507, 65-7-508, 65-7-509, 65-7-510, 65-7-511, 65-7-512, 65-7-513, 65-7-514, 65-7-515, 65-7-516, 65-7-517, 65-7-518, 65-7-519, 65-7-520, 65-7-521, 65-7-522, 65-7-523, 65-7-524, 65-7-525, 65-7-526, 65-7-527, 65-7-528, 65-7-529, 65-7-530, 65-7-531, 65-7-532, 65-7-533, 65-7-534, 65-7-535, 65-7-536, 65-7-537, 65-7-538, 65-7-539, 65-7-540, 65-7-541, 65-7-542, 65-7-543, 65-7-544, 65-7-545, 65-7-546, 65-7-547, 65-7-548, 65-7-549, 65-7-550, 65-7-551, 65-7-552, 65-7-553, 65-7-554, 65-7-555, 65-7-556, 65-7-557, 65-7-558, 65-7-559, 65-7-560, 65-7-561, 65-7-562, 65-7-563, 65-7-564, 65-7-565, 65-7-566, 65-7-567, 65-7-568, 65-7-569, 65-7-570, 65-7-571, 65-7-572, 65-7-573, 65-7-574, 65-7-575, 65-7-576, 65-7-577, 65-7-578, 65-7-579, 65-7-580, 65-7-581, 65-7-582, 65-7-583, 65-7-584, 65-7-585, 65-7-586, 65-7-587, 65-7-588, 65-7-589, 65-7-590, 65-7-591, 65-7-592, 65-7-593, 65-7-594, 65-7-595, 65-7-596, 65-7-597, 65-7-598, 65-7-599, 65-7-600, 65-7-601, 65-7-602, 65-7-603, 65-7-604, 65-7-605, 65-7-606, 65-7-607, 65-7-608, 65-7-609, 65-7-610, 65-7-611, 65-7-612, 65-7-613, 65-7-614, 65-7-615, 65-7-616, 65-7-617, 65-7-618, 65-7-619, 65-7-620, 65-7-621, 65-7-622, 65-7-623, 65-7-624, 65-7-625, 65-7-626, 65-7-627, 65-7-628, 65-7-629, 65-7-630, 65-7-631, 65-7-632, 65-7-633, 65-7-634, 65-7-635, 65-7-636, 65-7-637, 65-7-638, 65-7-639, 65-7-640, 65-7-641, 65-7-642, 65-7-643, 65-7-644, 65-7-645, 65-7-646, 65-7-647, 65-7-648, 65-7-649, 65-7-650, 65-7-651, 65-7-652, 65-7-653, 65-7-654, 65-7-655, 65-7-656, 65-7-657, 65-7-658, 65-7-659, 65-7-660, 65-7-661, 65-7-662, 65-7-663, 65-7-664, 65-7-665, 65-7-666, 65-7-667, 65-7-668, 65-7-669, 65-7-670, 65-7-671, 65-7-672, 65-7-673, 65-7-674, 65-7-675, 65-7-676, 65-7-677, 65-7-678, 65-7-679, 65-7-680, 65-7-681, 65-7-682, 65-7-683, 65-7-684, 65-7-685, 65-7-686, 65-7-687, 65-7-688, 65-7-689, 65-7-690, 65-7-691, 65-7-692, 65-7-693, 65-7-694, 65-7-695, 65-7-696, 65-7-697, 65-7-698, 65-7-699, 65-7-700, 65-7-701, 65-7-702, 65-7-703, 65-7-704, 65-7-705, 65-7-706, 65-7-707, 65-7-708, 65-7-709, 65-7-710, 65-7-711, 65-7-712, 65-7-713, 65-7-714, 65-7-715, 65-7-716, 65-7-717, 65-7-718, 65-7-719, 65-7-720, 65-7-721, 65-7-722, 65-7-723, 65-7-724, 65-7-725, 65-7-726, 65-7-727, 65-7-728, 65-7-729, 65-7-730, 65-7-731, 65-7-732, 65-7-733, 65-7-734, 65-7-735, 65-7-736, 65-7-737, 65-7-738, 65-7-739, 65-7-740, 65-7-741, 65-7-742, 65-7-743, 65-7-744, 65-7-745, 65-7-746, 65-7-747, 65-7-748, 65-7-749, 65-7-750, 65-7-751, 65-7-752, 65-7-753, 65-7-754, 65-7-755, 65-7-756, 65-7-757, 65-7-758, 65-7-759, 65-7-760, 65-7-761, 65-7-762, 65-7-763, 65-7-764, 65-7-765, 65-7-766, 65-7-767, 65-7-768, 65-7-769, 65-7-770, 65-7-771, 65-7-772, 65-7-773, 65-7-774, 65-7-775, 65-7-776, 65-7-777, 65-7-778, 65-7-779, 65-7-780, 65-7-781, 65-7-782, 65-7-783, 65-7-784, 65-7-785, 65-7-786, 65-7-787, 65-7-788, 65-7-789, 65-7-790, 65-7-791, 65-7-792, 65-7-793, 65-7-794, 65-7-795, 65-7-796, 65-7-797, 65-7-798, 65-7-799, 65-7-800, 65-7-801, 65-7-802, 65-7-803, 65-7-804, 65-7-805, 65-7-806, 65-7-807, 65-7-808, 65-7-809, 65-7-810, 65-7-811, 65-7-812, 65-7-813, 65-7-814, 65-7-815, 65-7-816, 65-7-817, 65-7-818, 65-7-819, 65-7-820, 65-7-821, 65-7-822, 65-7-823, 65-7-824, 65-7-825, 65-7-826, 65-7-827, 65-7-828, 65-7-829, 65-7-830, 65-7-831, 65-7-832, 65-7-833, 65-7-834, 65-7-835, 65-7-836, 65-7-837, 65-7-838, 65-7-839, 65-7-840, 65-7-841, 65-7-842, 65-7-843, 65-7-844, 65-7-845, 65-7-846, 65-7-847, 65-7-848, 65-7-849, 65-7-850, 65-7-851, 65-7-852, 65-7-853, 65-7-854, 65-7-855, 65-7-856, 65-7-857, 65-7-858, 65-7-859, 65-7-860, 65-7-861, 65-7-862, 65-7-863, 65-7-864, 65-7-865, 65-7-866, 65-7-867, 65-7-868, 65-7-869, 65-7-870, 65-7-871, 65-7-872, 65-7-873, 65-7-874, 65-7-875, 65-7-876, 65-7-877, 65-7-878, 65-7-879, 65-7-880, 65-7-881, 65-7-882, 65-7-883, 65-7-884, 65-7-885, 65-7-886, 65-7-887, 65-7-888, 65-7-889, 65-7-890, 65-7-891, 65-7-892, 65-7-893, 65-7-894, 65-7-895, 65-7-896, 65-7-897, 65-7-898, 65-7-899, 65-7-900, 65-7-901, 65-7-902, 65-7-903, 65-7-904, 65-7-905, 65-7-906, 65-7-907, 65-7-908, 65-7-909, 65-7-910, 65-7-911, 65-7-912, 65-7-913, 65-7-914, 65-7-915, 65-7-916, 65-7-917, 65-7-918, 65-7-919, 65-7-920, 65-7-921, 65-7-922, 65-7-923, 65-7-924, 65-7-925, 65-7-926, 65-7-927, 65-7-928, 65-7-929, 65-7-930, 65-7-931, 65-7-932, 65-7-933, 65-7-934, 65-7-935, 65-7-936, 65-7-937, 65-7-938, 65-7-939, 65-7-940, 65-7-941, 65-7-942, 65-7-943, 65-7-944, 65-7-945, 65-7-946, 65-7-947, 65-7-948, 65-7-949, 65-7-950, 65-7-951, 65-7-952, 65-7-953, 65-7-954, 65-7-955, 65-7-956, 65-7-957, 65-7-958, 65-7-959, 65-7-960, 65-7-961, 65-7-962, 65-7-963, 65-7-964, 65-7-965, 65-7-966, 65-7-967, 65-7-968, 65-7-969, 65-7-970, 65-7-971, 65-7-972, 65-7-973, 65-7-974, 65-7-975, 65-7-976, 65-7-977, 65-7-978, 65-7-979, 65-7-980, 65-7-981, 65-7-982, 65-7-983, 65-7-984, 65-7-985, 65-7-986, 65-7-987, 65-7-988, 65-7-989, 65-7-990, 65-7-991, 65-7-992, 65-7-993, 65-7-994, 65-7-995, 65-7-996, 65-7-997, 65-7-998, 65-7-999, 65-800.

All owners must sign in ink. If commercial entity, enter business name.

X Signature of Seller or Business Name

Printed Name - must be same as signature (do not type)

X Signature of Seller (if more than one) - or - Business Name

Printed Name - must be same as signature (do not type)

DO NOT NOTARIZE OR VERIFY UNLESS SIGNED IN YOUR PRESENCE AND PURCHASER NAME(S) IS LISTED.

State of _____ County of _____

Subscribed and affirmed to before me on (date) _____ by (clearly print
name of person appearing before you) _____

Notary signature _____

Printed name _____

Title or rank _____

For the State of _____

Residing at _____

My commission expires _____

Affix

Notary

Seal

Here

STEP 3 - PURCHASER'S ACKNOWLEDGMENT OF MILEAGE DISCLOSURE

I hereby acknowledge the above odometer certification made by the seller(s).

Signature of Purchaser - only one signature is required

Date of Sale

I hereby acknowledge the above odometer certification made by the seller(s).

PURCHASER'S: See instructions above for Title Application (Section E)

or Dealer Transfer - Assignments - Sections A,B,C,D)

Rev. 01/07

VERIFY PRESENCE OF WATERMARK - HOLD TO LIGHT TO VIEW

The Montana Department of Justice, Motor Vehicle Division, hereby certifies that the
person(s) named above is/are the owner(s) of the vehicle/vessel described, which is
subject to the security interest(s) shown.

TITLE AND REGISTRATION BUREAU
1003 BUCKSKIN DRIVE
DEER LODGE MT 59724-2375

001092860

CONTROL NO. 11078915

(This is not a title number)

OF CORRECTION FLUID ERASURE - VOID THIS TITLE

PLATE

PEAK

PA00128

ARIZONA CERTIFICATE OF TITLE



**Motor
Vehicle
Division**

48-7200 R10/09 www.azdot.gov

Inventory Control

18583444

Vehicle Identification Number	Year	Make	Model	Body Style
VC570141640	1957	CHEV	BELAI	CV
First Registered	List Price	Mobile Home Manufacturer	Unit Number	
00/0000	000000			

HARRY HILDI BRAND LLC
2675 PALMER ST #F
MISSOULA MT 59808

Title Number	Issue Date	Film Number	Odometer Miles (no tenths) *
BE27011159004	06082011	L159BE2702	0103225 A
Previous Title Number	Issue Date	Previous Film Number	A - Actual Mileage B - Mileage in excess of the odometer mechanical limits C - NOT Actual Mileage, WARNING ODOMETER DISCREPANCY
872750340065 KY	10161987	ORIGINAL	

Arizona Brands

Previous Brand	State	Previous Brand	State	Previous Brand	State	Other States With Brands
----------------	-------	----------------	-------	----------------	-------	--------------------------

Owners/Lesseees

HARRY HILDI BRAND LLC

Lienholders

LIEN RELEASE

Lienholder Name		Acknowledged before me this date.		Notary Public Signature	
Lien Amount	Lienholder Signature	Date	County	State	Commission Expires

PA00129

STATE OF MONTANA

DEPARTMENT OF JUSTICE - MOTOR VEHICLE DIVISION
CERTIFICATE OF TITLE

pj5732

Title Nbr	Year	Make	Model	Extended Model	Style	NCIC Vehicle Type	Unladen Weight/Material
AA0839159	1957	Chrysler	300c		CV	PC	2900
VIN/HIN		MT Boat Nbr	Ton Code/Propulsion Type	Odometer			Vehicle Nbr
3NS71810				as of //			2886512
Brand	Title Issue Date	Vehicle Sale Date	Transfer Reason	Attribute	Owner Tracking Nbr	Fleet No	
	06/16/2011	05/12/2011	Cancel - Voluntary Transfer				

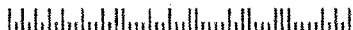
Owner Name and Address

Harry Hildibrand LLC
2675 Palmer St Ste F
Missoula, MT 598081741
Customer Number: 1527132

This vehicle/vessel is subject to the following security interest:

Mail To:

Harry Hildibrand LLC
PO Box 16270
Missoula, MT 598086270



The vehicle/vessel may be subject to other security interests.

SELLER COMPLETES IN INK	As the Registered Owner of the above vehicle, I transfer all right, title and interest to the following person, as of the date below:			
	Print name of buyer, whether individual or business		Date of Transfer (delivery of vehicle)	
	Buyer's Street Address		City	State Zip
	Federal and state law require that the owner state the mileage of a vehicle upon transfer of ownership. If you fail to complete this disclosure or provide a false statement, you may be subject to fines and/or imprisonment. I state that this (check one) <input type="checkbox"/> 5 or 6 <input type="checkbox"/> digit odometer now reads (no tenths) _____ miles, date read _____ and to the best of my knowledge it reflects the actual mileage unless one of the following statements is checked: <div>DO NOT CHECK UNLESS APPLICABLE: <input type="checkbox"/> The odometer reading reflects the amount of mileage in excess of its mechanical limits. <input type="checkbox"/> The odometer reading is not the actual mileage. Warning - odometer discrepancy.</div>			
NOTARY	Under penalty of law, I certify the above odometer disclosure and transfer of ownership information is correct to the best of my knowledge; that I am the same person named above; and if signing for a business, I have full authority to act upon behalf of the owner, whose name appears on the upper left side of this Title. ALL OWNERS MUST SIGN.			
	Signature of Owner or Agent of Owner (Transferor)		Printed name - must be the same as signature (do not type)	
	Signature of Owner or Agent of Owner (if more than one)		Printed name - must be the same as signature (do not type)	
	State of _____ County of _____		Signed before me on (date) _____	
BUYER	by (clearly print name of person signing Title)		Notary Stamp/Seal	
	Notary signature _____ Printed name _____			
	Title or rank _____ Residing at _____		My commission expires _____	
	ACKNOWLEDGEMENT OF MILEAGE DISCLOSURE: I am aware of the above odometer certification made by the seller.			
Signature of Buyer - only one signature is required		Printed name - must be the same as signature (do not type)		

Rev. 09/10



TITLE AND REGISTRATION BUREAU
1003 BUCKSKIN DRIVE
DEER LODGE MT 59722-2375

CONTROL NO. 12019306

Rev. 08/03

(This is not a title number)



KEEP IN SAFE PLACE-ANY ALTERATION-USE OF CORRECTION FLUID-ERASURE - VOIDS THIS TITLE

PA00130

STATE OF MONTANA

DEPARTMENT OF JUSTICE - MOTOR VEHICLE DIVISION
CERTIFICATE OF TITLE

PJ5718

Title Nbr	Year	Make	Model	Extended Model	Style	NCIC Vehicle Type	Unladen Weight/Material
AA0840975	1957	Ford	Fairlane 500		SD	PC	2900
VIN/HIN		MT Boat Nbr	Ton Code/Propulsion Type	Odometer			Vehicle Nbr
D7LV162233				as of //			2887309
Brand	Title Issue Date	Vehicle Sale Date	Transfer Reason	Attribute	Owner Tracking Nbr	Fleet No	
	06/16/2011	05/13/2011	OOS Title Transfer				

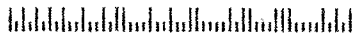
Owner Name and Address

Harry Hildibrand LLC
2675 Palmer St Ste F
Missoula, MT 598081741
Customer Number: 1527132

This vehicle/vessel is subject to the following security interest:

Mail To:

Harry Hildibrand LLC
PO Box 16270
Missoula, MT 598086270



The vehicle/vessel may be subject to other security interests.

SELLER COMPLETES IN INK	As the Registered Owner of the above vehicle, I transfer all right, title and interest to the vehicle to the following person, as of the date below:			
	Print name of buyer, whether individual or business		Date of Transfer (delivery of vehicle)	
	Buyer's Street Address		City	State
				Zip
	Federal and state law require that the owner state the mileage of a vehicle upon transfer of ownership. If you fail to complete this disclosure or provide a false statement, you may be subject to fines and/or imprisonment.			
	I state that this (check one) <input type="checkbox"/> 5 or <input type="checkbox"/> 6 digit odometer now reads (no tenths) _____ miles, date read _____ and to the best of my knowledge it reflects the actual mileage unless one of the following statements is checked:			
	DO NOT CHECK UNLESS APPLICABLE: <input type="checkbox"/> The odometer reading reflects the amount of mileage in excess of its mechanical limits. <input type="checkbox"/> The odometer reading is not the actual mileage. Warning - odometer discrepancy.			
	Under penalty of law, I certify the above odometer disclosure and transfer of ownership information is correct to the best of my knowledge; that I am the same person named above; and if signing for a business, I have full authority to act upon behalf of the owner, whose name appears on the upper left side of this Title. ALL OWNERS MUST SIGN.			
	Signature of Owner or Agent of Owner (Transferor)		Printed name - must be the same as signature (do not type)	
	X Signature of Owner or Agent of Owner (if more than one)		Printed name - must be the same as signature (do not type)	
NOTARY	State of	County of	Signed before me on (date)	Notary Stamp/Seal
	by (clearly print name of person signing Title)			
	Notary signature		Printed name	
	Title or rank	Residing at	My commission expires	
BUYER	ACKNOWLEDGEMENT OF MILEAGE DISCLOSURE: I am aware of the above odometer certification made by the seller.			
	Signature of Buyer - only one signature is required		Printed name - must be the same as signature (do not type)	

Rev. 09/10



TITLE AND REGISTRATION BUREAU
1003 BUCKSKIN DRIVE
DEER LODGE MT 59722-2375

CONTROL NO. 12019301

Rev. 08/09

(This is not a title number)



KEEP IN SAFE PLACE-ANY ALTERATION-USE OF CORRECTION FLUID-ERASURE-VOIDS THIS TITLE

PA00131

VERIFY PRESENCE OF WATERMARK - HOLD TO LIGHT TO VIEW

STATE OF MONTANA

DEPARTMENT OF JUSTICE - MOTOR VEHICLE DIVISION
CERTIFICATE OF TITLE

pj5732

Title Nbr	Year	Make	Model	Extended Model	Style	NCIC Vehicle Type	Unladen Weight/Material
AA0839179	1957	Oldsmobile	98 Rocket		CV	PC	2900
VIN/HIN		MT Boat Nbr	Ton Code/Propulsion Type	Odometer			Vehicle Nbr
579M27665				as of //			2886520
Brand	Title Issue Date	Vehicle Sale Date	Transfer Reason	Attribute	Owner Tracking Nbr	Fleet N	
	06/16/2011	05/12/2011	OOS Title Transfer				

Owner Name and Address

Harry Hildibrand LLC
2675 Palmer St Ste F
Missoula, MT 598081741
Customer Number: 1527132

This vehicle/vessel is subject to the following security interest:

Mail To:

Harry Hildibrand LLC
PO Box 16270
Missoula, MT 598086270



The vehicle/vessel may be subject to other security interests.

SELLER COMPLETES IN INK	As the Registered Owner of the above vehicle, I transfer all right, title and interest to the vehicle to the following person, as of the date below:			
	Print name of buyer, whether individual or business		Date of Transfer (delivery of vehicle)	
	Buyer's Street Address		City	State
			Zip	
	Federal and state law require that the owner state the mileage of a vehicle upon transfer of ownership. If you fail to complete this disclosure or provide a false statement, you may be subject to fines and/or imprisonment.			
	I state that this (check one) 5 <input type="checkbox"/> or 6 <input type="checkbox"/> digit odometer now reads (no tenths) _____ miles, date read _____ and to the best of my knowledge it reflects the actual mileage unless one of the following statements is checked:			
	DO NOT CHECK UNLESS APPLICABLE: <input type="checkbox"/> The odometer reading reflects the amount of mileage in excess of its mechanical limits. <input type="checkbox"/> The odometer reading is not the actual mileage. Warning - odometer discrepancy.			
	Under penalty of law, I certify the above odometer disclosure and transfer of ownership information is correct to the best of my knowledge; that I am the same person named above; and if signing for a business, I have full authority to act upon behalf of the owner, whose name appears on the upper left side of this Title. ALL OWNERS MUST SIGN.			
	Signature of Owner or Agent of Owner (Transferor)		Printed name - must be the same as signature (do not type)	
	X Signature of Owner or Agent of Owner (if more than one)		Printed name - must be the same as signature (do not type)	
NOTARY	State of	County of	Signed before me on (date)	Notary Stamp/Seal
	by (clearly print name of person signing Title)			
	Notary signature		Printed name	
	Title or rank	Residing at	My commission expires	
BUYER	ACKNOWLEDGEMENT OF MILEAGE DISCLOSURE: I am aware of the above odometer certification made by the seller.			
	Signature of Buyer - only one signature is required		Printed name - must be the same as signature (do not type)	

Rev. 09/10



TITLE AND REGISTRATION BUREAU
1003 BUCKSKIN DRIVE
DEER LODGE MT 59722-2375

CONTROL NO. 12019307

Rev. 08/09

(This is not a title number)



KEEP IN SAFE PLACE-ANY ALTERATION-USE OF CORRECTION FLUID-ERASURE-VOIDS THIS TITLE

PA00132

015732

VERIFY PRESENCE OF WATERMARK - HOLD TO LIGHT TO VIEW

PA00133

STATE OF MONTANA

DEPARTMENT OF JUSTICE - MOTOR VEHICLE DIVISION
CERTIFICATE OF TITLE

pj5732

Title Nbr AA0839216	Year 1973	Make DE TOMASO	Model Pantera	Extended Model	Style 2D	NCIC Vehicle Type PC	Unladen Weight/Material 2900
VIN/HIN THPNUU05291	MT Boat Nbr	Ton Code/Propulsion Type		Odometer as of //	Vehicle Nbr 2886540		
Brand	Title Issue Date 06/16/2011	Vehicle Sale Date 05/12/2011	Transfer Reason OOS Title Transfer	Attribute	Owner Tracking Nbr	Fleet Nbr	

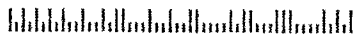
Owner Name and Address

Harry Hildibrand LLC
2675 Palmer St Ste F
Missoula, MT 598081741
Customer Number: 1527132

This vehicle/vessel is subject to the following security interest:

Mail To:

Harry Hildibrand LLC
PO Box 16270
Missoula, MT 598086270



The vehicle/vessel may be subject to other security interests.

SELLER COMPLETES IN INK	As the Registered Owner of the above vehicle, I transfer all right, title and interest to the vehicle to the following person, as of the date below:			
	Print name of buyer, whether individual or business		Date of Transfer (delivery of vehicle)	
	Buyer's Street Address		City	State Zip
	Federal and state law require that the owner state the mileage of a vehicle upon transfer of ownership. If you fail to complete this disclosure or provide a false statement, you may be subject to fines and/or imprisonment. I state that this (check one) <input type="checkbox"/> 5 or <input type="checkbox"/> 6 digit odometer now reads (no ticks) _____ value, make read _____ and to the best of my knowledge it reflects the actual mileage unless one of the following statements is checked: DO NOT CHECK UNLESS APPLICABLE: <input type="checkbox"/> The odometer reading reflects the amount of mileage in excess of its mechanical limits. <input type="checkbox"/> The odometer reading is not the actual mileage. Warning - odometer discrepancy.			
NOTARY	Under penalty of law, I certify the above odometer disclosure and transfer of ownership information is correct to the best of my knowledge, that I am the same person named above, and if signing on a business, I have full authority to act upon behalf of the owner, whose name appears on the upper left side of this Title. ALL OWNERS MUST SIGN.			
	Signature of Owner or Agent of Owner (Transferor)		Printed name - must be the same as signature (do not type)	
	Signature of Owner or Agent of Owner (if more than one)		Printed name - must be the same as signature (do not type)	
	State of _____ County of _____		Signed before me on (date) _____ Notary Stamp/Seal	
NOTARY	by (clearly print name of person signing Title)			
	Notary signature		Printed name	
	Title or rank	Residing at	My commission expires	
BUYER	ACKNOWLEDGEMENT OF MILEAGE DISCLOSURE: I am aware of the above odometer certification made by the seller.			
	Signature of Buyer - only one signature is required		Printed name - must be the same as signature (do not type)	

Rev. 09/10



TITLE AND REGISTRATION BUREAU
1003 BUCKSKIN DRIVE
DEER LODGE MT 59722-2375

CONTROL NO. 12019305

Rev. 08/09

(This is not a title number)

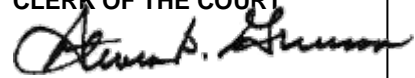


KEEP IN SAFE PLACE-ANY ALTERATION USE OF CORRECTION FLUID ERASURE - VOIDS THIS TITLE

PA00134

EXHIBIT 4

EXHIBIT 4



1 **APP**

2 Joseph G. Went, Esq.
3 Nevada Bar No. 9220
4 Sydney R. Gambee, Esq.
5 Nevada Bar No. 14201
6 HOLLAND & HART LLP
7 9555 Hillwood Drive, 2nd Floor
8 Las Vegas, Nevada 89134
9 (702) 669-4600
10 jgwent@hollandhart.com
11 srgambee@hollandhart.com

12 *Attorneys for Harry Hildibrand, LLC*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 BAKER BOYER NATIONAL BANK, a
16 Washington corporation,

17 Plaintiff/Judgment Creditor,

18 v.

19 JAMES PATTERSON FOUST, JR., also
20 known a James P. Foust, Jr., individually,
21 and his marital community, if any,

22 Defendant/Judgment Debtor.

CASE NO.: A-17-760779-F

DEPT. NO.: II

**APPLICATION FOR HEARING
WITHIN 10 DAYS ON THIRD PARTY'S
CLAIM OF INTEREST IN PROPERTY
LEVIED UPON**

23 Third-Party Claimant Harry Hildibrand LLC, a Montana limited liability company ("HH"),
24 by and through its attorneys of record, Holland & Hart LLP, hereby submits this application (the
25 "Application") for a hearing pursuant to NRS 31.070 to be held *within 10 days* to determine title to
26 the property levied upon by Plaintiff / Judgment Creditor Baker Boyer National Bank, a
27 Washington corporation ("Judgment Creditor" or "Baker Boyer").

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HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

1 This Application is made and based on NRS 31.070, the attached memorandum of points
2 and authorities, the declaration of Edward N. Detwiler, attached hereto as **Exhibit 1** and
3 incorporated herein by reference, the *Verified Third-Party Claim of Harry Hildibrand LLC in*
4 *Response to Writ of Execution* (the “Verified Claim”), attached hereto, the exhibits attached hereto,
5 and any oral argument that this Court may permit at the hearing on this matter.

6 DATED this 2nd day of March 2018.

7 HOLLAND & HART LLP

8 */s/ Joseph G. Went*

9 _____
10 Joseph G. Went, Esq.
11 Nevada Bar No. 9220
12 Sydney R. Gambée, Esq.
13 Nevada Bar No. 14201
14 9555 Hillwood Drive, 2nd Floor
15 Las Vegas, NV 89134

16 *Attorneys for Harry Hildibrand LLC*

17 **NOTICE OF APPLICATION**

18 TO: All Interested Parties and/or their Counsel of Record

19 PLEASE TAKE NOTICE the undersigned will bring the foregoing **APPLICATION FOR**
20 **HEARING WITHIN 10 DAYS ON THIRD PARTY’S CLAIM OF INTEREST IN**
21 **PROPERTY LEVIED UPON** on for hearing before the above-entitled court on the **12th** day
22 **IN CHAMBERS**
23 **of March, 2018**, at the hour of _____ or as soon thereafter as may be heard.

24 DATED this 2nd day of March 2018.

25 HOLLAND & HART LLP

26 */s/ Joseph G. Went, Esq.*

27 _____
28 Joseph G. Went, Esq.
Nevada Bar No. 9220
Sydney R. Gambée, Esq.
Nevada Bar No. 14201
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Attorneys for Harry Hildibrand LLC

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
APPLICATION FOR HEARING WITHIN 10 DAYS ON THIRD PARTY'S CLAIM OF
INTEREST IN PROPERTY LEVIED UPON**

I.

INTRODUCTION

This Application is about preserving and protecting HH's ownership and possessory interest in its personal property. Nevada law allows for a hearing on shortened time when property in which a third party claims a superior interest is jeopardized through judgment creditor enforcement action. *See* NRS 31.070(5). In this case, in connection with its effort to collect on its judgment, Baker Boyer caused the Constable to execute on personal property collateral belonging to HH. HH owns the personal property, not Baker Boyer's judgment debtor, and it should be immune from collection efforts by Baker Boyer. Accordingly, this Court should grant this Application and release the subject personal property of HH in the possession of Baker Boyer.

II.

STATEMENT OF FACTS

1. On or about November 12, 2008, Edward N. Detwiler ("Detwiler") became a managing director of HH. A true and correct copy of the Minutes of Special Meeting of Harry Hildibrand, LLC dated November 12, 2008 are attached hereto as **Exhibit 2** and incorporated herein by reference.

2. On or about November 12, 2008, Defendant/Judgment Debtor James Patterson Foust, Jr. ("Foust" or "Judgment Debtor") resigned as a managing director of HH.

3. On or about January 13, 2017, HH became the owner of certain personal property described as a 1997 Prevost Bus Motorcoach, Vehicle Identification Number 2PCM3349XV1026183, registered with the State of Montana, Department of Justice – Motor Vehicle Division, Title Number AA3350572 (the "Motorcoach"). A true and correct copy of the Certificate of Title for the Motorcoach issued by the State of Montana, Department of Justice – Motor Vehicle Division identifying HH's ownership interest is attached hereto as **Exhibit 3** and incorporated herein by reference.

Pursuant to NRS 31.070, HH requests that a hearing be held to determine title to the personal property in question. NRS 31.070(5) states:

5. Whenever a verified third-party claim is served upon the sheriff upon levy of the writ of attachment, the plaintiff or **the third-party claimant is entitled to a hearing within 10 days therefrom before the court having jurisdiction of the action**, in order to determine title to the property in question, which hearing must be granted by the court upon the filing of an application or petition therefor. Seven days' notice of such hearing must be given to all parties to the action and all parties claiming an interest in the property, or their attorneys, which notice must specify that the hearing is for the purpose of determining title to the property in question. The court may continue the hearing beyond the 10-day period, but good cause must be shown for any such continuance.

NRS 31.070(5)(emphasis added). The procedures set forth in NRS 31.070 apply where a third party claims a right to personal property levied on by a judgment creditor. *See* NRS 21.120(2). Pursuant to NRS 31.070(5), HH is entitled to a hearing within ten (10) days from the date of the service of the Verified Claim on the Constable, which was no later than March 2, 2018.

B. HH Owns The Motorcoach, Not Foust.

As set forth in the title, HH is the owner of the Motorcoach. *See* Ex. 3; *see also* Montana Code Annotated 2017 61-3-202(2). Only property owned by the judgment debtor is subject to a judgment creditor's execution efforts, "and questions regarding title to that property as between the judgment creditor and a third party are properly determined by the court having jurisdiction under NRS 31.070." *See Brooksby v. Nevada State Bank*, 129 Nev. 771, 312 P.3d 501, 502 (2013); *see also* NRS 31.249(2); *Kulik v. Albers, Inc.*, 91 Nev. 134, 137, 532 P.2d 603, 605-06 (1975); *see also* NRS 21.120 (referring third-party claims concerning writs of garnishment in aid of execution to the NRS 31.070 process).

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1 In line with the ownership rule, this Court should find that Baker Boyer is not entitled to
2 the Motorcoach. HH should have an opportunity to demonstrate, in an evidentiary hearing, that the
3 Motorcoach is owned by HH, not Foust, and thus is not subject to execution by Baker Boyer. *See*
4 *Brooksby*, 129 Nev. at 771, 312 P.3d at 503.

5 **IV.**

6 **CONCLUSION**

7 Based on the foregoing, this Court should grant the Application and enter an order
8 scheduling a hearing, and a further order declaring HH'S ownership interest in the Motorcoach and
9 ordering it released to HH.

10 DATED this 2nd day of March 2018.

11 HOLLAND & HART LLP

12 */s/ Joseph G. Went*

13 _____
14 Joseph G. Went, Esq.
15 Nevada Bar No. 9220
16 Sydney R. Gambia, Esq.
17 Nevada Bar No. 14201
18 9555 Hillwood Drive, 2nd Floor
19 Las Vegas, NV 89134

20 *Attorneys for Harry Hildibrand LLC*

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March 2018, a true and correct copy of the foregoing
**APPLICATION FOR HEARING WITHIN 10 DAYS ON THIRD PARTY'S CLAIM OF
INTEREST IN PROPERTY LEVIED UPON** was served by the following method(s):

☒ Electronic: by submitting electronically for filing and/or service with the Eighth
Judicial District Court's e-filing system and served on counsel electronically in accordance with
the E-service list to the following email addresses:

John E. Bragonje
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Cody S. Mounteer
MARQUIS AURBACH COFFING
10001 PARK RUN DRIVE
Las Vegas, NV 89145

Attorneys for Plaintiff Baker Boyer National Bank *Attorneys for Judgment Debtor*

/s/ Valerie Larsen

An Employee of Holland & Hart LLP

EXHIBIT 1

EXHIBIT 1

DECL

Joseph G. Went, Esq.
Nevada Bar No. 9220
Sydney R. Gambee, Esq.
Nevada Bar No. 14201
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
(702) 669-4600
jgwent@hollandhart.com
srgambee@hollandhart.com

Attorneys for Harry Hildibrand, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

v.

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

**DECLARATION OF EDWARD N.
DETWILER IN SUPPORT OF
APPLICATION FOR HEARING
WITHIN 10 DAYS ON THIRD PARTY'S
CLAIM OF INTEREST IN PROPERTY
LEVIED UPON**

I, Edward N. Detwiler, hereby declare as follows:

1. I am a managing director of Harry Hildibrand, LLC, a Montana limited liability company ("HH"). I am authorized to make this verified third-party claim on behalf of HH pursuant to NRS 31.070(1), and I make this declaration based on my personal knowledge.

2. On or about November 12, 2008, I became a managing director of HH. A true and correct copy of the Minutes of Special Meeting of Harry Hildibrand, LLC dated November 12, 2008 are attached to the Application **Exhibit 2** and incorporated herein by reference.

3. On or about November 12, 2008, Defendant/Judgment Debtor James Patterson Foust, Jr. ("Foust" or "Judgment Debtor") resigned as a managing director of HH.

4. On or about January 13, 2017, HH became the owner of certain personal property described as a 1997 Prevost Bus Motorcoach, Vehicle Identification Number 2PCM3349XV1026183, registered with the State of Montana, Department of Justice – Motor

Vehicle Division, Title Number AA3350572 (the “Motorcoach”). A true and correct copy of the Certificate of Title for the Motorcoach issued by the State of Montana, Department of Justice – Motor Vehicle Division identifying HH’s ownership interest is attached to the Application as **Exhibit 3** and incorporated herein by reference.

5. The consideration for HH’s purchase of the Motorcoach was approximately \$135,000.00, comprised of a lump sum cash payment of \$5,000.00 and the assumption of the remaining payments owed to the lender, Santander Consumer USA (“Santander”), that financed the original acquisition of the Motorcoach.

6. After completing the purchase of the Motorcoach, including paying \$5,000.00 to Foust, HH commenced making the monthly payments owed to Santander.

7. HH has made all monthly payments to Santander since January 2017.

8. HH parked the Motorcoach at a lot that it rents at the LVM Resort, a Class A motorcoach facility, located at 8175 Arville Street, Unit 172, Las Vegas, Nevada, 89139.

9. On February 4, 2018, I attempted to use the Motorcoach, but discovered that it was missing from the lot at the LVM Resort.

10. On February 12, 2018, I provided a voluntary statement to the Las Vegas Metropolitan Police Department regarding the removal of the Motorcoach from the lot at the LVM Resort. A true and correct copy of the February 12, 2018 police report is attached to the Application as **Exhibit 4** and incorporated herein by reference.

11. My personal items, including a safe, were in the Motorcoach at the time it was taken.

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1 12. On or about February 28, 2018, HH caused the Verified Claim to be served upon
2 the Office of the Ex-Officio Constable (the “Constable”), Laughlin Constable’s Office, Laughlin,
3 Nevada, and upon Baker Boyer. A true and correct copy of the Verified Claim is attached to the
4 Application as **Exhibit 5** and incorporated herein by reference.

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

9 EXECUTED on the 1st day of March 2018 in Roatan, Honduras.

10 /s/ *Edward N. Detwiler*

11 _____
12 EDWARD N. DETWILER
13 Managing Director
14 Harry Hildibrand LLC
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EXHIBIT 2

EXHIBIT 2

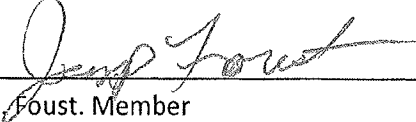
**MINUTES OF SPECIAL MEETING
OF HARRY HILDIBRAND, LLC
Dated November 12, 2008**

The undersigned, the managing initial director of the LLC, hereby certify:

1. At the special meeting of the LLC, duly called and held by teleconference this day, there Being present the following, constituting all of the members of the LLC, James P. Foust, the initial managing director took the following action, adopting the following resolutions which Have not been modified or rescinded:

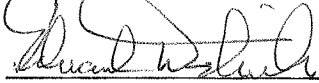
RESOLVED that James P. foust, as managing director, is authorized, to appoint Edward Detwiler as also a managing director

IN WITNESS WHEREOF, the undersigned has hereto affixed his hand this 12th day of November 2008, by approval of:



James P. Foust. Member
State of Montana

ACCEPTED BY:



Edward Detwiler,
Managing Director

EXHIBIT 3

EXHIBIT 3

DEPARTMENT OF JUSTICE - MOTOR VEHICLE DIVISION

CERTIFICATE OF TITLE

pj5753

Title Nbr AA3350572	Year 1997	Make Prevost	Model Bus	Extended Model	Style BU	NCIC Vehicle Type CH	Unladen Weight/Material
VIN/HIN 2PCM3349XV1026183	MT Boat Nbr	Ton. Code/Propulsion Type		Odometer		Vehicle Nbr 2950151	
Brand	Title Issue Date 02/09/2017	Vehicle Sale Date 01/13/2017	Transfer Reason Cancel - Voluntary	Attribute	Owner Tracking Nbr	Fleet Nbr	

Owner Name and Address

Harry Hildibrand LLC
3011 American Way
Missoula MT 59808-1921
Customer Number: 1727321

This vehicle/vessel is subject to the following security interest(s):

Mail To:

Harry Hildibrand LLC
PO Box 16270
Missoula MT 59808

The vehicle/vessel may be subject to other security interests.

SELLER COMPLETES IN INK

As the Registered Owner of the above vehicle, I transfer all right, title and interest to the vehicle to the following person, as of the date below:			
Print name of buyer, whether individual or business			Date of Transfer (delivery of vehicle)
Buyer's Street Address		City	State Zip
Federal and state law require that the owner state the mileage of a vehicle upon transfer of ownership. If you fail to complete this disclosure or provide a false statement, you may be subject to fines and/or imprisonment.			
I state that this (check one) 5 <input type="checkbox"/> or 6 <input type="checkbox"/> digit odometer now reads (no tenths) _____ miles, date read _____ and to the best of my knowledge it reflects the actual mileage unless one of the following statements is checked:			
<div style="border: 1px solid black; padding: 5px;"> DO NOT CHECK UNLESS APPLICABLE: <input type="checkbox"/> The odometer reading reflects the amount of mileage in excess of its mechanical limits. <input type="checkbox"/> The odometer reading is not the actual mileage. Warning - odometer discrepancy. </div>			
ALL OWNERS MUST SIGN - Additional owners are listed to the right of the first owner above.			

Under penalty of law, I certify the above odometer disclosure and transfer of ownership information is correct to the best of my knowledge; that I am the same person named above; and if signing for a business entity or trust, I have full authority to act upon behalf of the owner, whose name appears on the upper left side of this Title.

ALL OWNERS MUST SIGN	Signature of First Owner or Agent of Owner (Transferor)	Printed name - must be the same as signature (do not type)
	Signature of Additional Owner or Agent of Owner (if more than one)	Printed name - must be the same as signature (do not type)

NOTARY

State of	County of	Signed before me on (date)	Notary Stamp/Seal
by (clearly print name of person signing Title)			
Notary signature			

BUYER	ACKNOWLEDGEMENT OF MILEAGE DISCLOSURE: I am aware of the above odometer certification made by the seller.	
	Signature of Buyer - only one signature is required	Printed name - must be the same as signature (do not type)



TITLE AND REGISTRATION BUREAU
1003 BUCKSKIN DRIVE
DEER LODGE MT 59722-2375



CONTROL NO. **14544545**
(This is not a title number)

PA00150

(REV. 04/2016)

EXHIBIT 4

EXHIBIT 4



Administrative

Location 8175 ARVILLE ST LAS VEGAS, NV 89144
Occurred On (Date / Time) Sunday 1/28/2018 4:45:00 PM
Reporting Officer 13179 - Reese, E
Entered By 13179 - Reese, E
Related Cases

Or Between (Date / Time) Sunday 2/4/2018 3:30:00 PM
Reported On 2/7/2018
Entered On 2/12/2018 9:18:45 AM
Jurisdiction Clark County

Traffic Report No Place Type Accident Involved

Offenses:

Grand Larceny Of Auto \$3500+(F)-NRS 205.228.3

Completed Yes Domestic Violence No

Entry Premises Entered

Weapons

Criminal Activities

Hate/Bias Unknown (Offenders Motivation Not Known)

Type Security Tools

Location Type Other/Unknown

Victims:

Name: HARRY HILDIBAND LLC

Victim Type Business Written Statement
Victim of 56014 - Grand Larceny Of Auto \$3500+(F)-NRS 205.228.3

Can ID Suspect

DOB Age Sex Race Ethnicity
Height Weight Hair Color Eye Color
Employer/School
Occupation/Grade Work Schedule
Injury Injury Weapons

Addresses

Business 2675 Palmer St Suite F MISSOULA, MT 59808-1741

Phones

Cellular (702) 493-7801

Offender Relationships

Notes:

UNLAWFUL DISSEMINATION of this
Restricted information is PROHIBITED
Violation will subject the offender to
Criminal and Civil Liability
Release To: Edward Detwiler
Date: 2/12/18 By: [Signature]
Las Vegas Metropolitan Police Department

Witnesses:

Name: DETWILER, EDWARD NEWLIN

Written Statement Yes Can ID Suspect No
DOB 3/3/1961 Age 56 Sex Male Race White Ethnicity Not Hispanic or Latino
Height 6' 0" Weight 205 Hair Color Gray Eye Color Blue

Addresses

Residence 817 Windhook St LAS VEGAS, NV 89144

Phones

Cellular (702) 493-7801

Notes:

Properties: ()

Type: Vehicle-Other / Motorcycles / Scooters (Locally Stolen)

Status Stolen Quantity 1 Value 500,000.00 Color White
Description MOTOR HOME
Manufacturer PREVOST Model BUS Serial No./VIN 2FCM3349XV1026163
Vehicle Year 1997 Body Type
Lic Plate # 4712378 Lic Plate State Montana Lic Plate Exp
Insurance Company
Owner V - HARRY HILDIBAND LLC
Notes: ALSO GRAY/MARQUON

Type: Misc. (Cell Phones, Ammo, Bicycles, Worthless Doc, items not listed)

Status Stolen Quantity 1 Value 1,500.00 Color Multi-colored
Description SAFE
Manufacturer Model Serial No./VIN
Vehicle Year Body Type

2/12/2018 9:54 AM

LLV180207002470

PA00152

Lic Plate #
Insurance Company
Owner W - DETWILER, EDWARD NEWLIN
Notes:

Lic Plate State

Lic Plate Exp

Type: Misc. (Cell Phones, Ammo, Bicycles, Worthless Doc, items not listed)

Status	Stolen	Quantity	35	Value	00.00	Color
Description	PERSONAL DOCUMENTS					
Manufacturer		Model		Serial No.	VIN	
Vehicle Year		Body Type		Lic Plate #	Lic Plate State	
Lic Plate #		Lic Plate State		Lic Plate Exp		
Insurance Company						
Owner	W - DETWILER, EDWARD NEWLIN					
Notes:						

Type: Currency, Coins, Securities, Cash

Status	Stolen	Quantity	1	Value	1,000.00	Color
Description	CASH					
Manufacturer		Model		Serial No.	VIN	
Vehicle Year		Body Type		Lic Plate #	Lic Plate State	
Lic Plate #		Lic Plate State		Lic Plate Exp		
Insurance Company						
Owner	W - DETWILER, EDWARD NEWLIN					
Notes:						

Narrative

On 02122018 at 0940 hours Edward Detwiler came into NWAC to file a report for a STOLEN MOTOR HOME and stated the following:

On 02042018 at 1530 hours he went to 8175 Arville to retrieve some personal belongings from his company's Coach Motor Home and realized it was gone. Edward said the last time he saw the motor home was on 01282018 at 1645 hours. Edward said the listed property inside the motor home belonged to him and was inside the motor home when it was stolen.

Edward said he is the Managing Partner of Harry Hildibrand, LLC which is the Entity that owns the Coach.

Negative Weapons, Keys and Title
Motor Home entered into NCIC.

3 VEGAS METROPOLITAN POLICE DEPARTMENT .NT
VOLUNTARY STATEMENT

Event #

180207-2470

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>Stolen MOTORHOME</u>	Date Occurred <u>2/4/18</u>	Time Occurred <u>1530</u>
Location of Occurrence <u>8175 Arville St. LV, NV</u>	Sector/Beat <u>01</u>	<input type="checkbox"/> City <input checked="" type="checkbox"/> County

Your Name (Last / First / Middle) <u>DETWILER EDWARD NEWLIN</u>						Date of Birth <u>3-3-61</u>		Social Security # <u>546-41-6326</u>	
Race <u>CAUC.</u>	Sex <u>M</u>	Height <u>6'</u>	Weight <u>205</u>	Hair <u>Gray</u>	Eyes <u>Blue</u>	Work Schdl. (Hours) <u>SELF-EMPLOYED</u>	(Days Off) <u>NONE</u>	Business / School <u>Coldwell Banker</u>	
Residence Address: (Number & Street) <u>817 Windhook St.</u>			Bldg./Apt.# <u></u>	City <u>Las Vegas</u>		State <u>NV</u>	Zip Code <u>89144</u>	Res. Phone: <u>702-493-7801</u>	
Bus. (Local) Address: (Number & Street) <u>10120 S. EASTERN AVE</u>			Bldg./Apt.# <u>300</u>	City <u>HENDERSON</u>		State <u>NV</u>	Zip Code <u>89052</u>	Occupation <u>REACTOR</u>	Depart Date (if visitor) <u></u>
Best place to contact you during the day <u>ON THE PHONE</u>						Best time to contact you during the day <u>8:00 - 8:00</u>		Can You Identify <input type="checkbox"/> Yes the Suspect? <input checked="" type="checkbox"/> No	

DETAILS I went to 8175 Arville to retrieve personal belongings from the coach, (motorhome). ^{2018 Feb 4th} To my shock, it was gone. The last time I saw the coach at the park was Jan. 28, 2018. I am the Managing Partner of Harry Hildibrand, LLC, the entity that owns the coach. No weapons, no keys to the coach, a safe that contains personal documents and a bit of cash.

UNLAWFUL DISSEMINATION of this
Restricted information is PROHIBITED
Violation will subject the offender to
Criminal and Civil Liability

Release To: Edward Detwiler
Date: 2/12/18 By: [Signature]
Las Vegas Metropolitan Police Department

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) NVAC

ON THE 12th DAY OF Feb. AT 0940 (AM/PM), 2018.

Witness/Officer:

(SIGNATURE)

Witness/Officer:

(PRINTED)

P# 13119

SIGNATURE OF PERSON GIVING STATEMENT

EXHIBIT 5

EXHIBIT 5

TPC

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Attorneys for Harry Hildibrand, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

v.

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

Defendant/Judgment Debtor.

CASE NO.: A-17-760779-F

DEPT. NO.: II

**VERIFIED THIRD-PARTY CLAIM OF
HARRY HILDIBRAND LLC IN
RESPONSE TO WRIT OF EXECUTION**

TO: THE CONSTABLE – LAUGHLIN TOWNSHIP OF CLARK COUNTY

I, Edward N. Detwiler, hereby declare as follows:

1. I am a managing director of Harry Hildibrand, LLC, a Montana limited liability company (“HH”). I am authorized to make this verified third-party claim on behalf of HH pursuant to NRS 31.070(1), and I make this declaration based on my personal knowledge.

2. On or about January 13, 2017, HH became the owner of certain personal property described as a 1997 Prevost Bus Motorcoach, Vehicle Identification Number 2PCM3349XV1026183, registered with the State of Montana, Department of Justice – Motor Vehicle Division, Title Number AA3350572 (the “Motorcoach”).

3. On or about February 4, 2018, I discovered that the Motorcoach was levied on by Plaintiff/Judgment Creditor Baker Boyer National Bank, a Washington corporation (“Baker Boyer” or Plaintiff”).

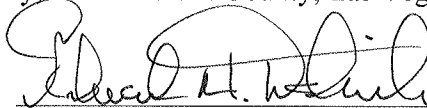
1 4. The Motorcoach belongs to HH, not Defendant James Patterson Foust, Jr. ("Foust"
2 or "Defendant"), as HH's interest as legal owner is documented on the title to the Motorcoach, and
3 HH is entitled to possession of the Motorcoach.

4 5. As a result of HH's ownership, the Motorcoach should not be subject to a levy by
5 Baker Boyer and should be released to HH absent a timely and sufficient undertaking being made
6 by Baker Boyer in favor of HH as required under NRS 31.070.

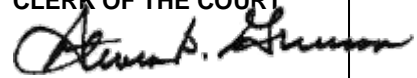
7 6. In the event that the Motorcoach is not immediately released to HH, and Baker
8 Boyer challenges this third-party claim, under NRS 31.070, Baker Boyer must post an undertaking
9 executed by at least two good and sufficient sureties in a sum equal to double the value of the
10 property levied on. If such undertaking is not posted within seven days, by law the Constable's
11 Office must release the property levied on.

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

14 EXECUTED this 27th day of February, 2018 in Clark County, Las Vegas, Nevada.

15
16 

17 EDWARD N. DETWILER
18 Managing Director
19 Harry Hildibrand LLC
20
21
22
23
24
25
26
27
28



1 **RIS**

2 Joseph G. Went, Esq.
3 Nevada Bar No. 9220
4 Sydney R. Gambia, Esq.
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11 *Attorneys for Harry Hildibrand, LLC*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **BAKER BOYER NATIONAL BANK, a**
15 **Washington corporation,**
16
17 **Plaintiff/Judgement Creditor,**

18 **v.**

19 **JAMES PATTERSON FOUST, JR., also**
20 **known as James P. Foust, Jr., individually,**
21 **and his marital community, if any,**
22
23 **Defendant/Judgment Debtor.**

Case No. A-17-760779-F

Dept. No. II

**REPLY IN SUPPORT OF THE
APPLICATION FOR HEARING WITHIN
10 DAYS ON THIRD PARTY'S CLAIM
OF INTEREST IN PROPERTY LEVIED
UPON AND OPPOSITION TO
PLAINTIFF'S INDEPENDENT
REQUEST FOR HEARING UNDER
NRS 31.070(5)**

24 Third-Party Claimant, Harry Hildibrand LLC, a Montana limited liability company
25 (“Hildibrand”), by and through its attorneys of record Holland & Hart, LLP, hereby submits this
26 Reply in Support of the Application for Hearing within 10 Days on third party’s Claim of interest
27 in Property levied Upon (the “Application”) and Opposition to the Plaintiff’s Request for
28 Hearing Under NRS 31.070(5) (the “Reply”) to demine title to the property levied upon by
Plaintiff / Judgment Creditor Baker Boyer national Bank, a Washington corporation (the
“Bank”).

This Reply is made and based on NRS 31.070, the attached memorandum of Points and
Authorities, the declaration of Edward N. Detwiler, and incorporated herein by reference the

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///

1 *Verified Third-Party Claim of Harry Hildibrand LLC in Response to Writ of Execution* (the
2 “Verified Claim”) and any oral argument the Court may permit at the hearing on this matter.

3 DATED this 13th day of March, 2018.

4 HOLLAND & HART LLP

5
6 /s/ Joseph G. Went
7 Joseph G. Went, Esq.
8 Nevada Bar No. 9220
9 Sydney R. Gambee, Esq.
10 Nevada Bar No. 14201
11 9555 Hillwood Drive, 2nd Floor
12 Las Vegas, NV 89134
13 *Attorneys for Harry Hildibrand, LLC*

14
15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I.**

17 **INTRODUCTION**

18 This matter involves one motorhome wrongfully attached by Baker Boyer National Bank
19 (the “Bank”) in an attempt to satisfy a judgment against James Patterson Foust, Jr. (“Foust”).
20 Hildibrand is the legal owner of a 1997 Prevost Bus Motorcoach, Vehicle Identification Number
21 (“VIN”) 2PCM3349XV1026183, registered with the State of Montana, department of Justice –
22 Motor Vehicle Division, Title Number AA3350572 (“Motorcoach”).

23 The Bank argues that the Court should deny Hildibrand’s application for a hearing
24 because, “[a] trial on this very subject has already occurred.” Response at 8:12. If the Bank
25 believes this to be a true statement, then the entire case should be dismissed for failure to join
26 Hildibrand as an indispensable party. In actuality, the Bank is asking this Court to deny
27 Hildibrand’s procedural and substantive due process rights under the U.S. and Nevada
28 constitutions and improperly apply claim preclusion to Hildibrand.

The Bank is pursuing a post-judgment enforcement action against Foust. Hildibrand is
not a party nor debtor to the Bank. The Bank has not pled fraud, fraudulent transfer,
misrepresentation, forgery, embezzlement, or any other cause of action against Hildibrand that
would allow the Bank to attach the personal property of a non-party entity. NRS 31.070

(verification of the third parties oath setting out the third party's right to possession requires the property released to the third party); NRS 112.220 (protection of good faith transferee); NRS 31.017 (attachment without notice and hearing, as applicable here, may only occur in cases proceeding based on embezzlement, forgery, larceny, extortion or pursuant to NRS Chapter 112). The Bank did not request the relief it now seeks from this Court.

II.

LEGAL ARGUMENT

A. Hildibrand's Due Process Rights Have Been Violated.

The Nevada constitution protects against deprivation of property without due process of law. Nev. Const. art 1 §8(5). Procedural due process requires that parties receive "notice and opportunity to be heard." *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007). Hildibrand, as a separate entity, did not receive notice or an opportunity to be heard prior to the attachment and disposal of its property.

The requested relief from the Bank was to pursue post-judgment enforcement against Foust. Instead, the Bank now has an Order from this Court determining that non-party Hildibrand participated in a fraudulent transfer. This is improper. If this is the relief that the Bank sought, it should have properly pled the elements and requested relief from the Court. The Bank's failure to effectively plead or serve Hildibrand with notice violated Hildibrand's due process rights in this manner.

The Bank relies on *Persing v. Reno Stock Brokerage Co.*, 30 Nev. 342, 96 P. 1054 (1908) to support its position that the Court can bind a non-party Hildibrand to a judgment. *Persing* supports Hildibrand's position. *Persing* requires "a party to properly be brought into Court." *Id.* Hildibrand has not been properly brought into Court in reference to this Court's determination of fraudulent transfer. *See* March 8, 2018 Order ("Order"). As discussed *infra*, Hildibrand has pursued appropriate action pursuant to NRS 31.070. The Bank argues that a prior hearing can bind Hildibrand. The Bank further argues this satisfies due process. Neither of these arguments are valid.

///

Nevada is a notice-pleading jurisdiction. *Nevada State Bank v. Jamison Family Partnership*, 106 Nev. 762, 801, 801 P.2d 1377, 1383 (1990). To plead a claim for relief in Nevada, a party must include (1) a statement of the claim, and (2) a demand (or prayer) for relief. NRCP 8(a). The Bank did not actual plead action against Hildibrand. NRCP 3 (a civil action is commenced by filing a complaint with the court). Confusingly, the Bank seems to indicate that Hildibrand's due process is tied to Foust's hearing. *See generally* Response to Edward Detwiler's Application for hearing within 10 Days of Third Party's Claim of Interest in Property Levied Upon and Plaintiff's Independent Request for a Hearing Under NRS 31.070(5) ("Response"). This application violates the Nevada Rules of Civil Procedure ("NRCP") and due process. NRCP 4(a) (Plaintiff must request a separate or additional summons for multiple defendants); *Cardinal v. Zonneveld*, 89 Nev. 403, 406, 514 P.2d 204, 205 (1973) (each defendant is required to be served with a separate copy of the summons). This is not procedurally appropriate. Hildibrand was never served with process. NRCP 4. Under *Persing's* standards, Hildibrand was not properly brought into this Court in a manner for which it can be bound by the order or be bound to a determination of fraudulent acts.

1. Due Process Requires Meaningful Notice That Will Grant A Meaningful Opportunity To Be Heard Before A Decision Affecting The Movant's Position Is Reached.

"It is . . . fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (internal quotations omitted). The United States Supreme Court Stated:
if the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of the procedural due process has already occurred.

Id., 407 U.S. 81-82; *Turner v. Saka*, 90 Nev. 54, 62, 518 P.2d 608, 613 (1974); *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004); *Eureka Cty v. Sadler Ranch, LLC*, 133 Nev. Adv. Rep. 111, *8, 407 P.3d 755, 758, (2017) (analyzing when due process rights attach and at what stage in the

proceedings notice must be given.). In *Fuentes*, the United States Supreme Court was considering replevin laws in Florida and Pennsylvania that did not provide notice and a hearing until after the property was taken. *Fuentes*, 407 U.S. at 80. The Court concluded that such laws were unconstitutional as they did not provide meaningful due process before the Property was taken. Similarly, Hildibrand's property was also taken without meaningful notice or a meaningful opportunity to be heard.

Recently, the Nevada Supreme Court published a ruling similar to *Fuentes*. *Sadler Ranch, LLC*, 133 Nev. Adv. Rep. at *8-9, 407 P.3d at 758. In *Sadler*, the Nevada Supreme Court determined that interested non-parties with an interest in the outcome of the hearing are required to receive notice before the hearing. In *Sadler*, the outcome of an upcoming hearing was a decision that affected the interested non-parties. *Id.* The Nevada Supreme Court held that because the rights of the interested non-parties may be affected by the upcoming hearing, the interested non-parties, "must be given an opportunity to make their case." *Id.*

The same situation occurred in the current matter. However, unlike the interested non-parties in *Sadler*, Hildibrand did not appear until after its personal property was disposed of. Therefore, since the Bank was aware of the competing claim for title to the Motorcoach, the Bank failed to afford a meaningful opportunity and a meaningful manner in which Hildibrand could be heard on this matter. Because the Court's Hearing resulted in the loss of Hildibrand's property, and because the Bank was aware of Hildebrand's competing interest in the Motorcoach, Hildibrand's due process rights have already been violated. *Fuentes*, 407 U.S. 81-82 The Bank encourages this Court to continue down a path that will continue to foreclose on Hildibrand's exercise its due process rights in this matter.

2. The March 8, 2018, Order Violates Hildibrand's Due Process Rights.

The Bank's Response is premised on non-party Hildibrand being bound a hearing and Order in a matter that Hildibrand was neither a party to nor served with a subpoena to appear. This position violates Hildibrand's due process rights. On August 31, 2017, the Bank filed an Application for Enforcement of Foreign Judgment Pursuant to NRS 17.330 et seq.

1 (“Application”).¹ Nowhere in the Application does the Bank indicate it intends to pursue a NRS
2 Chapter 112 claim against Hildibrand. NRS 112.230 states in pertinent part, “[a] claim for
3 relief with respect to a fraudulent transfer or obligation under this chapter is extinguished unless
4 action is brought [within determinant statute of limitations times].” Notably, NRS Chapter 112
5 is a cause of action to be pled. That was not done in this matter.

6 Contrary to the Bank’s position that the hearing and order was enough, this position is not
7 supported by due process considerations. An “elementary and fundamental requirement of due
8 process . . . is notice reasonably calculated, under all circumstances, to apprise interested parties
9 of the pendency of an action and afford them an opportunity to present their objections.”
10 *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Hildibrand is not
11 apprised of any action against it, yet is somehow now bound to a damaging finding of fraud
12 and/or fraudulent transfer.

13 Hildibrand is not a judgment debtor. Hildibrand is not jointly liable to the Washington
14 Judgment entered in this case. *Compare* NRS 17.030 *et seq.* Hildibrand was not named in any
15 complaint, Hildibrand was not served with process and not afforded an opportunity to present its
16 objections. Hildibrand’s due process rights have been violated.

17 The Bank failed to join Hildibrand to the action but wants to bind Hildibrand to a prior
18 decision. Essentially, the Bank is requesting this Court to apply the doctrine of *res judicata* –
19 claim preclusion - to Hildibrand. This is improper. However, a key element of this theory is that
20 there is final judgment against a party to the action. *Five Star Capital Corp. v. Ruby*, 124 Nev.
21 1048, 1059-60, 194 P.3d 706, 716 (2008). As discussed *supra*, Hildibrand was not a party to the
22 underlying litigation. Hildibrand is not a party to the post-judgment action. Claim preclusion
23 does not apply, and the Bank’s arguments that try to bind Hildibrand to a prior judgment are
24 improper.

25 ///

26 ///

27 _____
28 ¹ The September 1, 2017, Amended Affidavit in Support of Application identifies James P. Foust as the judgment
debtor. There is no indication or reference to Hildibrand. Every single document or filing in connection with the
Application was served on Foust alone. No document was served on Hildibrand.

3. The Determination That Foust Effectuated A Fraudulent Transfer To Hildibrand Effectively Holds That Hildibrand Is Foust's Alter Ego Without Due Process.

Hildibrand is a completely separate entity from Foust. *Citizens United v. FEC*, 558 U.S. 310, 313 (2010) (corporations enjoy constitutional protections); *O'Niel v. Commissioner*, 271 F.2d 44, 47, 59-2 U.S. Tax Cas. (CCH) P9717 (1959) (the corporation is a separate entity for tax purposes); *Plaris Indus. Corp v. Kaplan*, 103 Nev. 598, 601, 747 P.2d 884, 886 (1987). Even if the Bank's argument that Foust was an agent of Hildibrand, that does not, by virtue of the situation, mean Hildibrand was suddenly a party or a represented entity in this matter. What the Bank proposes forces Hildibrand to act in violation of the alter ego doctrine. *McCleary Cattle Co. v. Sewell*, 73 Nev. 279, 282, 317 P.2d 957, 959 (1957) (alter ego occurs when (1) the corporation is influenced and governed by the person asserted to be the alter ego [Foust]; (2) there must be such unity of interest and ownership that is inseparable from the other; and (3) the facts must be such that adherence to the corporate fiction of a separate entity would, under the circumstances, sanction fraud or promote injustice.). Notably, alter ego was not pled in this matter.

B. The Bank's Position That A Non-Party Can Be Bound By Decisions In This Matter Is A Determination That The Bank Failed To Join An Indispensable Party.

For the Bank's position to apply, the Bank must admit that Hildibrand is indispensable to this litigation. NRCP 19(a); *Crowley v. Duffrin*, 109 Nev. 597, 602, 885 P.2d 536, 539-40 (1993) (Joinder of a necessary party is required when the third party may be subjected to "undue inconvenience, or to danger of loss, or to future litigation, or to liability"). In this case, Hildibrand has already suffered the loss of the Motorcoach. Now, Hildibrand must participate in this action or it will be subject to additional dangers of loss, determinations of liability, and future litigation. The Bank attempts to argue that Foust could bind a separate entity without consent, apparent authority or due process. Instead, the Bank proved it failed to join an indispensable party.

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C. Hildibrand Is Properly Seeking Relief From This Court Pursuant To NRS 31.070.

NRS 31.070 is “a complete and valid remedy to third persons whose property has been attached.” *Cooper v. Liebert*, 81 Nev. 341, 344, 402 P.2d 989, 991 (1965). The Bank concedes this is the only remedy available to Hildibrand at this time. Response at 6:3-7:4. Yet, the Bank actively tries to prevent Hildibrand from seeking relief from this Court under the exact statute provided by legislature for Hildibrand to do so. The Bank argues that Hildibrand’s request is belated while concurrently recognizing, that “nowhere does the [third party [claims] statute include an absolute deadline for making a third-party claim to property before the Court.” Response at 7:1-3 (internal citations omitted). Therefore, all parties concede Hildibrand has appropriately sought relief from this Court in a procedurally proper manner.

1. The Bank’s Request For Relief Under NRS 31.070 Is Improper.

The Bank requests additional relief pursuant to NRS 31.070. The Bank’s position is already protected. The Bank brought the underlying action against Foust. However, due process and fairness determine that the Bank is able to defend its position at the upcoming hearing in chambers.

2. Hildibrand Does Not Concede That A Chambers Hearing Satisfies Due Process.

As already presented by Hildibrand *supra*, Hildibrand’s due process rights have already been violated. The Bank’s unilateral statement otherwise does not change the laws of this State. Hildibrand does not concede that the hearing in chambers is sufficient.

D. The Bank’s Evidentiary Objections Should Fail.

The Bank argues Hildibrand is not entitled to a full hearing on the process then spends the next five pages engaging in active and technical evidentiary objections regarding Hildibrand’s documents and evidence. Response at 8:17-12:2. The Bank relies on a previous hearing to bind a non-party without a complaint, answer, counterclaim, service of process, discovery. Response at 8:14-16; 8:18-19, 9:14-15 (regarding the Motorcoach title); 9:17-18 (regarding the police report); 10:4-7, 10:20-14 (regarding the meeting minutes); 10:27-28, 11:4-13 (regarding the purchase price of the Motorcoach); 11:20-23 (regarding the safe). All

///

1 the Bank's arguments do is reinforce the position that the Bank failed to join an indispensable
2 party. The Bank's clearly demonstrate the harm suffered by Hildibrand.

3 The Bank ignores the Declaration of Edward N. Detwiler in Support of the Application
4 for Hearing ("Declaration"). Mr. Detwiler's Declaration authenticates every document presented
5 by Hildibrand to support its position.² Otherwise, discover must be afforded to allow Hildibrand
6 to serve a subpoena duces tecum on the custodian of records and allow forty-five days for a
7 response pursuant to law.³ NRCP 45.

8 **III.**

9 **CONCLUSION**

10 Hildibrand's due process rights have been violated and continue to be violated during the
11 pendency of this action. The Bank wants Hildibrand to be bound by judicial determinations
12 without going through the procedural process. For these reasons, Hildibrand requests that this
13 Court grant the Application.

14 DATED this 13th day of March, 2018.

15 HOLLAND & HART LLP

16 /s/ Joseph G. Went

17 Joseph G. Went, Esq.
18 Nevada Bar No. 9220
19 Sydney R. Gambee, Esq.
20 Nevada Bar No. 14201
21 9555 Hillwood Drive, 2nd Floor
22 Las Vegas, NV 89134
23 *Attorneys for Harry Hildibrand, LLC*
24
25
26

27 ² This Court entered an Order for Foust to produce demonstrating he no longer has title or ownership to the
28 Motorcoach. February 5, 2018, Order Regarding Hearings on Classic Car Collection ("Feb. 5 Order") at 2:23-3:21.
The Detwiler Declaration is produced directly in compliance with this Court's requirements.

³ Service of a Subpoena duces tecum on a government actor allows 45 days for response.

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 13th day of March, 2018, I served a true and correct copy of the foregoing **REPLY IN SUPPORT OF THE APPLICATION FOR HEARING WITHIN 10 DAYS ON THIRD PARTY'S CLAIM OF INTEREST IN PROPERTY LEVIED UPON AND OPPOSITION TO PLAINTIFF'S INDEPENDENT REQUEST FOR HEARING UNDER NRS 31.070(5)** by the following method(s):

- ☒ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

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*Attorneys for Defendant James Patterson
Foust, Jr.*

/s/ Joyce Heilich
An Employee of Holland & Hart LLP

EXHIBIT 5

EXHIBIT 5

From: Edward Detwiler [<mailto:Edward.Detwiler@cbvegas.com>]
Sent: Sunday, February 04, 2018 7:08 PM
To: jpf@jpfent.com
Subject: My coach

Jim,

I swung by my coach late this afternoon, and LO and Behold, it is not there!! I did not plan on taking it to Florida until later in the month, but I needed to retrieve some personal items that are in my safe!! Do you have an earthly idea where my fucking coach is? It's not funny! I need items in my safe. I am going to go down to the Police Department to file a grand larceny report. Please, let me know if you know anything??

Edward Detwiler
Executive Vice-President
Naiá Resorts, LLC
702-493-7801

EXHIBIT 6

EXHIBIT 6



Administrative

Location 8175 ARVILLE ST LAS VEGAS, NV 89144 Sector /Beat 01
Occurred On (Date / Time) Sunday 1/28/2018 4:45:00 PM
Reporting Officer 13179 - Reese, E Or Between (Date / Time) Sunday 2/4/2018 3:30:00 PM
Entered By 13179 - Reese, E Reported On 2/7/2018
Related Cases Entered On 2/12/2018 9:18:45 AM
Jurisdiction Clark County

Traffic Report No Place Type Accident Involved

Offenses:

Grand Larceny Of Auto \$3500+(F)-NRS 205.228.3
Completed Yes Domestic Violence No Hate/Bias Unknown (Offenders Motivation Not Known)
Entry Premises Entered Type Security Tools
Weapons Location Type Other/Unknown
Criminal Activities

Victims:

Name: HARRY HILDIBAND LLC

Victim Type Business Written Statement Can ID Suspect
Victim of 56014 - Grand Larceny Of Auto \$3500+(F)-NRS 205.228.3

DOB Age Sex Race Ethnicity
Height Weight Hair Color Eye Color
Employer/School
Occupation/Grade Work Schedule
Injury Injury Weapons

Addresses

Business 2675 Palmer St Suite F MISSOULA, MT 59808-1741

Phones

Cellular (702) 493-7801

Offender Relationships

Notes:

UNLAWFUL DISSEMINATION of this
Restricted information is PROHIBITED
Violation will subject the offender to
Criminal and Civil Liability
Release To: Edward Newlin
Date: 2/12/18 By: Det. [Signature]
Las Vegas Metropolitan Police Department

Witnesses:

Name: DETWILER, EDWARD NEWLIN

Written Statement Yes Can ID Suspect No
DOB 3/3/1961 Age 56 Sex Male Race White Ethnicity Not Hispanic or Latino
Height 6' 0" Weight 205 Hair Color Gray Eye Color Blue

Addresses

Residence 817 Windhook St LAS VEGAS, NV 89144

Phones

Cellular (702) 493-7801

Notes:

Properties: ()

Type: Vehicle-Other / Motorcycles / Scooters (Locally Stolen)

Status Stolen Quantity 1 Value 500,000.00 Color White
Description MOTOR HOME
Manufacturer PREVOST Model BUS
Vehicle Year 1997 Serial No./VIN 2PCM3349XV1026183
Lic Plate # 471237B Body Type Montana Lic Plate Exp
Insurance Company
Owner V - HARRY HILDIBAND LLC
Notes: ALSO GRAY/MAROON

Type: Misc. (Cell Phones, Ammo, Bicycles, Worthless Doc, items not listed)

Status Stolen Quantity 1 Value 1,500.00 Color Multi-colored
Description SAFE
Manufacturer Model Serial No./VIN
Vehicle Year Body Type
2/12/2018 9:54 AM LLV180207002470

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event # 180207-2470
THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>Stolen Motorhome</u>	Date Occurred <u>2/4/18</u>	Time Occurred <u>1530</u>
Location of Occurrence <u>8175 Arville St. LV, NV</u>	Sector/Beat <u>01</u>	<input type="checkbox"/> City <input checked="" type="checkbox"/> County

Your Name (Last / First / Middle) <u>DETWILER EDWARD NEWLIN</u>						Date of Birth <u>3-3-61</u>		Social Security # <u>546-41-6326</u>	
Race <u>Cauc.</u>	Sex <u>M</u>	Height <u>6'</u>	Weight <u>205</u>	Hair <u>Gray</u>	Eyes <u>Blue/Gray</u>	Work Schdl. (Hours) <u>SELF-EMPLOYED</u>	(Days Off) <u>NONE</u>	Business / School <u>Coldwell Banker</u>	
Residence Address: (Number & Street) <u>817 Windbrook ST.</u>			Bldg./Apt. # <u></u>	City <u>Las Vegas</u>		State <u>NV</u>	Zip Code <u>89144</u>	Res. Phone: <u>702-493-7801</u>	
Bus. (Local) Address: (Number & Street) <u>10120 S. EASTERN AVE</u>			Bldg./Apt. # <u>300</u>	City <u>HENDERSON</u>		State <u>NV</u>	Zip Code <u>89052</u>	Occupation <u>REACTOR</u>	Depart Date (if visitor) <u></u>
Best place to contact you during the day <u>ON THE phone</u>						Best time to contact you during the day <u>8:00 - 8:00</u>			Can You Identify the Suspect? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

***DETAILS** I went to 8175 Arville to retrieve personal belongings from the coach (motorhome). ^{2018 FEB 4th} To my shock, it was gone. The last time I saw the coach at the park was Jan. 28, 2018. I am the Managing Partner of Harry Hildibrand, LLC, the entity that owns the coach. No weapons, no keys to the coach, a safe that contains personal documents and a bit of cash.

UNLAWFUL DISSEMINATION of this
 Restricted information is PROHIBITED
 Violation will subject the offender to
 Criminal and Civil Liability
 Release To: Edward Detwiler
 Date: 2/12/18 By: ASAR
 Las Vegas Metropolitan Police Department

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT LOCATION NEWARK ON THE 12th DAY OF Feb. AT 0940 (AM/PM), 2018.

Witness/Officer: [Signature]
 (SIGNATURE)
 Witness/Officer: [Printed Name] P# 13179
 (PRINTED)
 LVMPD 85 (REV. 6-08)

[Signature]
 SIGNATURE OF PERSON GIVING STATEMENT

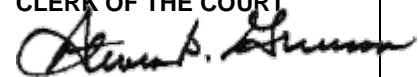
Done

15 of 15



EXHIBIT "D"





OPPM

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

**OPPOSITION TO THIRD PARTY'S
MOTION TO INTERVENE**

Hearing Date: March 23, 2018

Time of Hearing: Chambers

I.

INTRODUCTION

In this action, a final judgment has already entered. The plaintiff/judgment creditor Baker Boyer National Bank (the "Bank") has a final judgment against judgment debtor James Foust. Harry Hildibrand, LLC—a third party to these proceedings—now moves to intervene. However, Harry Hildibrand, LLC cannot intervene in the traditional sense of joining a lawsuit to take up the side of the plaintiff or the defendant and assert claims because the trial has already occurred and the asserted claims have been reduced to a judgment, which is all that remains of the original action. Instead, only to the extent that the Bank seizes property that Harry Hildibrand, LLC claims it owns may Harry Hildibrand, LLC intervene for the limited purposes allowed by NRS 31.070. That statute, the third party claims statute, applies only after a seizure (a levy) of property to satisfy a judgment; the statute requires the Court to conduct a summary proceeding to resolve competing

claims to ownership of seized property. Because the Bank has not seized the nine cars Harry Hildibrand, LLC claims to own and upon which it bases its request to intervene, its motion to intervene is premature. This Court must, therefore, deny the motion. This Court should also award the Bank its fees under the intervention statute, NRS12.130, which requires payment of the party resisting the intervention if the request is denied.

II.

RELEVANT PROCEDURAL BACKGROUND

Mr. Foust received a loan in the original amount of \$1,077,600 from Baker Boyer National Bank (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 Washington (the “Judgment”). (*See* Exs. A–B to 8/31/17 Appl. for Foreign Judgment, on file herein.) The Bank domesticated the Judgment in the State of Nevada on August 31, 2017. (*Id.*) Mr. Foust has refused, though he obviously has means, to voluntarily pay the Judgment. (*See* 3/8/18 Judgment, on file herein, Findings of Fact, ¶ 1.) This Court is now engaged in the enforcement of the Judgment.

The Bank filed a Motion for an Order Requiring Judgment Debtor to Deliver Possession of Classic Car Collection to Satisfy Nearly \$1 million Judgment” on December 20, 2017 (the “Motion”). Debtor James Patterson Foust, Jr. opposed the motion on January 5, 2018. (*See* pleadings on file in this case.) In his written opposition, Mr. Foust did not protest that Harry Hildibrand LLC, a purported transferee of some of the cars in question, including a 1998 Prevost Car, Inc. Marathon, vehicle identification number 2PCM3349XV1026183, a class “A” motorhome or recreational vehicle (hereinafter the “Motorhome”), was unaware of the proceedings. The Court has ruled that Mr. Foust himself was an agent of Harry Hildibrand, LLC. “Mr. Foust owns and controls Harry Hildibrand, LLC, the alleged transferee.” (3/8/18 Judgment, on file herein, ¶ 9.) “Mr. Foust owns and controls Harry Hildibrand, LLC. He is the sole member; he is a manager also.” (*Id.* ¶ 12.)

The Court granted the Motion and stressed that “[a]ny party claiming to own or hold any beneficial interest in the cars may come forward and present its claim for review to the Court.”

(See January 22, 2018 Court Minutes, on file herein.) The Court has now set a second evidentiary hearing related to vehicles other than the Motorcoach for April 18, 2018. (See Court's 3/7/18 Minute Order, on file herein.) The Court emphasized that Mr. Foust "was to produce clear and persuasive evidence that Judgment Debtor no longer has title to or an ownership interest in the cars listed in Exhibit 3 to the Motion including . . . [l]ive testimony or a sworn statements . . . from persons claiming an ownership or beneficial interest in said automobiles and the nature of their interest." (See 3/1/18 Order, on file herein, ¶ 10.)

III.

LEGAL ARGUMENT

Because the Judgment has already entered, Harry Hildibrand, LLC cannot intervene in the traditional sense of joining a lawsuit to take up the side of the plaintiff or the defendant and assert claims. Instead, only to the extent that the Bank seizes property that Harry Hildibrand, LLC claims it owns may Harry Hildibrand, LLC intervene pursuant to NRS 31.070. That statute applies only after a seizure (a levy) and requires the court to conduct a summary proceeding to resolve competing claims to ownership of the seized property. Because the Bank has not seized the nine cars Harry Hildibrand, LLC claims to own, its motion to intervene is premature and must be denied.

A. There is No Right to Intervene After a Final Judgment Has Issued

This Court cannot properly resolve this motion to intervene without bearing in mind this case's procedural posture. Final judgment has already entered against Mr. Foust, a judgment debtor who refuses to voluntarily satisfy his judgment. (See 3/8/18 Judgment, on file herein, Findings Of Fact, ¶ 1.) The focus of this action now becomes executing the judgment pursuant to NRS Chapter 21.

In general, a non-party may not intervene in an action after a trial has occurred. Our Nevada statutes expressly prohibit post-trial intervention:

NRS 12.130 Intervention: Right to intervention; procedure, determination and costs; exception.

1. Except as otherwise provided in subsection 2:

1 (a) *Before the trial*, any person may intervene in an action or proceeding,
2 who has an interest in the matter in litigation, in the success of either of the
parties, or an interest against both.

3 (b) An intervention takes place when a third person is permitted to become a
4 party to an action or proceeding between other persons, either by joining the
5 plaintiff in claiming what is sought by the complaint, or by uniting with the
defendant in resisting the claims of the plaintiff, or by demanding anything
adversely to both the plaintiff and the defendant.

6 (c) Intervention is made as provided by the Nevada Rules of Civil Procedure.
7 (Emphasis supplied.) *Accord Am. Home Assur. Co. v. Dist. Ct.*, 122 Nev. 1229, 1235, 147 P.3d
8 1120, 1124 (2006) (“NRS 12.130 allows, *before the trial commences*, “any person ... who has an
9 interest in the matter in litigation, in the success of either of the parties, or an interest against both”
10 to intervene in an action under the Nevada Rules of Civil Procedure.”) (emphasis supplied).

11 Because a final judgment has already issued, Edward Detwiler and Harry Hildibrand, LLC
12 have no generalized right to intervene. Harry Hildibrand, LLC cannot join the case now in the
13 traditional sense because, in the words of the controlling statute, there is no point in “joining the
14 plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting
15 the claims of the plaintiff,” NRS 12.120(b), because the claims and defenses of the original
16 dispute—the unpaid loan—have already been resolved and reduced to a judgment. Were Harry
17 Hildibrand, LLC permitted to intervene the traditional sense, there would be no end goal to
18 achieve, judgment already having been entered. This Court must not allow some open-ended
19 intervention that would undermine the finality of the Judgment already entered and being
20 enforced.

21 **B. NRS 31.070 Is the “Exclusive Remedy” for a Third Party**
22 **to Intervene After a Judgment to Resolve Competing**
23 **Claims to Property Seized by a Judgment Creditor**

24 This is not, or course, to say Harry Hildibrand, LLC has no right to participate in these
25 post-judgment proceedings. If the Bank levies execution against property to satisfy the Judgment
26 and Edward Detwiler claims that Harry Hildibrand, LLC actually owns the seized property, then—
27 and only then—there is a statutory right to intervene for the limited purpose of holding “a hearing
28 to determine title to property.” NRS 31.070(5).

NRS 31.070 provides that if property levied on “is claimed by a third person as his property by a written claim verified by his oath or that of his agent,” and “served upon the sheriff,” the sheriff “must release the property” if the plaintiff fails “within 7 days after written demand to give the sheriff an undertaking executed by at least two good and sufficient sureties in a sum equal to double the value of the property levied on.” NRS 31.070(1). The Nevada Supreme Court calls NRS 31.070 the “third party claims” statute. *Elliot v. Denton & Denton*, 109 Nev. 979, 980, 860 P.2d 725, 726 (Nev. 1993). According to that court: “This statute sets forth a very simple procedure for cases where . . . ‘the property levied on is claimed by a third person as his [or her] property.’” *Id.* “All the claimant has to do under the statute is to make a sworn statement claiming rightful ownership and possession of the property levied-upon and present the claim to the sheriff.” *Id.* The sheriff, in turn, “must release the property” unless the person who instituted the levy on the property “disputes the third party claim and gives to the sheriff an undertaking equal to double the value of the property.” *Id.* “In cases in which the levying party puts up the required undertaking, NRS 31.070 provides for resolution of the opposing claims by ‘motion to the court without the necessity of an independent action.’” *Id.* The Nevada Supreme Court has stated that this statute provides “a complete and valid remedy to third persons whose property has been attached.” *Cooper v. Liebert*, 81 Nev. 341, 344, 402 P.2d 989, 991 (Nev. 1965). Indeed, the Nevada Supreme Court consistently characterizes this statute as the “exclusive remedy” to resolve claims to levied property. *E.g.*, *Elliott*, 109 Nev. at 980, 860 P.2d at 726. (“Nevada, like most states, has a statute which, by its terms, provides an exclusive and summary means for disposing of claims.”); *Cooper*, 81 Nev. at 344, 402 P.2d at 991 (“We hold that N.R.S. 31.070 is a complete and valid remedy to third persons whose property has been attached, that the remedy therein provided is exclusive . . . and that the term ‘property’ includes both real and personal property.”).

1. NRS 31.070 Applies Only After a Levy

That NRS 31.070 provides the exclusive remedy for resolving competing claims to levied property has two important, limiting implications. First, the right of a third person to intervene pursuant to the statute arises only after a levy against property. “Levy” is the term of art describing the sheriff’s seizure of property to satisfy a judgment. *See, e.g., Daniel v. Barengo*, 94

1 Nev. 697, 698, 585 P.2d 1348, 1349 (1978). The statute only operates “[i]f the property levied on
2 is claimed by a third person.” NRS 31.070(1) (emphasis added).

3 **2. NRS 31.070 Limits the Intervention to a Summary Hearing to Determine**
4 **Competing Claims to Title Only**

5 Second, the intervention is limited in scope to determining title to the seized property. If
6 the creditor posts security, the sheriff “shall hold the property,” NRS 31.070(1), and the court
7 conducts a “summary,” *Cooper*, 81 Nev. at 344, 402 P.2d at 991, hearing to determine title to the
8 seized property, NRS 31.070(5). If the creditor fails to post security, the sheriff “must release the
9 property.” NRS 31.070(1). In all events, the process begins only after levy and focuses only on
10 determination of the title of seized property. This is, to use the High Court’s jargon, Harry
11 Hildibrand, LLC’s “exclusive” remedy in this post-judgment context.

12 **C. Harry Hildibrand, LLC’s Motion to Intervene Is Premature**
13 **Because the Bank Has Not Levied Against the Nine Vehicles in Question**

14 With the proper contours of NRS 31.070 intervention in mind, Harry Hildibrand’s motion
15 to intervene reveals itself as largely premature. Although this Court has ruled that “no sale of the
16 Motorcoach occurred and that Mr. Foust continues to own it,” (*see* 3/8/18 Judgment, on file
17 herein, Conclusions of Law, ¶ 2), Harry Hildibrand, LLC still claims to own the Motorcoach.
18 With respect to the Motorcoach, this Court is already engaged in the NRS 31.070(5) hearing
19 process and has indicated it will resolve that issue in a chambers hearing on March 23, 2018. (*See*
20 Court’s 3/16/18 Minute Order, on file herein.) To be clear, the Bank does not dispute Edward
21 Detwiler’s right to apply to this Court under NRS 31.070 with respect to the Motorcoach. In fact,
22 the Bank has also exercised its independent right under NRS 31.070 to determine title. Under the
23 statute, *either* the “plaintiff” (here, the Bank) or “the third party” (here, Mr. Detwiler, the second
24 manager of Harry Hildibrand, LLC) “is entitled to a hearing . . . in order to determine title to the
25 property in question.” NRS 31.070(5).

26 However, Harry Hildibrand, LLC also claims that it owns nine additional vehicles (3/15/18
27 Mot. to Intervene, on file herein, p. 5-6), and seeks to intervene with respect to these vehicles also.
28 The Bank has not seized these vehicles, there has been no levy. Consequently, the motion to

1 intervene as to these nine additional vehicles is premature. The Bank may or may not ever levy
2 against these vehicles. Although these vehicles have been the subject of motions before this
3 Court, the Court has prohibited the Bank from levying against these vehicles unless Mr. Foust
4 continues to own and control them:

5 1. It is hereby ORDERED that the Court grants the Plaintiff's Motion
6 and requires Judgment Debtor to immediately deliver all of the classic cars
7 identified in Exhibit 3 of the Motion to Plaintiff, to the extent any such cars are
8 found (by the Plaintiff, Sheriff, Constable, or any other peace officer) to be in the
9 possession, custody, or control of the Judgment Debtor. Said cars should be held
10 in the custody of Plaintiff (or its assignee, agent, or lawful authority). If Plaintiff
11 intends to levy, seize, or take possession of any such cars, Plaintiff must have a
12 good-faith belief that Judgment Debtor continues to have possession, custody, or
13 control of any cars so seized; such a good-faith belief arises under the following,
14 non-exclusive circumstances: Judgment Debtor's admission; the discovery of
15 documents of title showing Judgment Debtor's continued interest; the discovery
16 of documents showing Judgment Debtor's continued use or possession of the cars,
17 such as evidence that he pays insurance for a car or that a car is registered in his
18 name.

19 2. It is FURTHER ORDERED that, to the extent Judgment Debtor
20 has possession, custody, or control of any of the vehicles listed in Exhibit 3 to the
21 Motion, he shall refrain from transferring, disposing, selling, or encumbering said
22 vehicles until further order of the Court.

23 (*See* 3/1/18 Order, on file herein, ¶¶ 1-2.) The Bank will abide this Court's orders. If the Bank is
24 satisfied that Mr. Foust has "possession, custody, or control of any cars," it will levy against them.
25 If and when any levy occurs, Mr. Detwiler will be free to intervene under the third party claims
26 statute so that a hearing to determine title may occur. Until that time, there is no basis to intervene
27 with respect to the nine cars besides the Motorcoach that Mr. Detwiler claims Harry Hildibrand,
28 LLC owns.

 The Bank intends to conduct third-party discovery of Harry Hildibrand, LLC regarding
these additional nine vehicles. *See* NRCP 69 ("In aid of the judgment or execution, the judgment
creditor or a successor in interest when that interest appears of record, may obtain discovery from
any person, including the judgment debtor, in the manner provided in these rules."). Harry
Hildibrand, LLC and Edward Detwiler could also participate in the upcoming evidentiary hearing
as a third-party witnesses. This discovery may or may not lead to additional seizures. There is
much to learn on this subject still. On the one hand, Mr. Detwiler claims Harry Hildibrand, LLC,

1 a company that Mr. Foust owns and controls (3/8/18 Judgment, on file herein, Findings of Fact ¶
2 12.), owns these nine vehicles. On the other hand, Mr. Foust claimed he owned these vehicles
3 when he incurred the obligation (a bank loan) that resulted in the Judgment, and he has been
4 dissipating his assets to avoid the Bank's collection efforts. (See 3/8/18 Judgment, on file herein,
5 Conclusions of Law ¶ 9 ("Here, there is evidence in the file and this record, that Mr. Foust was
6 transferring away a substantial percentage of many of his valuable vehicles, including the
7 Motorcoach, after the time he received the loan proceeds from Baker Bank in an attempt to move
8 the assets beyond the reach of Baker Bank.").)

9 The Bank is convinced that Harry Hildibrand, LLC is Mr. Foust's alter ego. But with that
10 said the Bank will, of course, obey this Court's orders concerning seizure of any vehicles: it will
11 not take any of the nine cars unless it has proof that Mr. Foust "continues to have possession,
12 custody, or control of any cars so seized." (See 3/1/18 Order, on file herein, ¶¶ 1-2.) In the
13 meantime, Mr. Foust must refrain from "transferring, disposing, selling, or encumbering said
14 vehicles until further order of the Court." (*Id.*) This order naturally extends to Harry Hildibrand,
15 LLC, because "Mr. Foust owns and controls Harry Hildibrand, LLC. He is the sole member; he is
16 a manager also." (3/8/18 Judgment, on file herein, ¶ 12.)

17 IV.

18 REQUEST FOR FEES

19 Because this motion to intervene is premature, Harry Hildibrand, LLC should pay the
20 costs, including attorney fees, for the Bank's having to oppose this motion. The intervention
21 statute provides that "[t]he court shall determine upon the intervention at the same time that the
22 action is decided. If the claim of the party intervening is not sustained, the party intervening shall
23 pay all costs incurred by the intervention." NRS 12.130(d).

24 ///

25 ///

26 ///

27 ///

28 ///

V.

CONCLUSION

For the foregoing reasons, the Court should deny the motion to intervene.

Dated this 19th day of March, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ John E. Bragonje

John E. Bragonje (SBN.: 9519)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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 the foregoing
3 document entitled:

4 **“OPPOSITION TO THIRD PARTY’S MOTION TO INTERVENE”**

5 with the Clerk of the Court and caused a true and accurate copy of the same to be e-served through
6 the Court’s electronic system to the parties below:

7
8 Cody S. Munteer
9 Tom W. Stewart
10 **MARQUIS AURBACH COFFING**
11 10001 Park Run Drive
12 Las Vegas, NV 89145

13
14 Joseph Went
15 **HOLLAND & HART**
16 9555 Hillwood Drive, 2nd Floor
17 Las Vegas, NV 89134

18
19 DATED this 19th day of March, 2018.

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Foreign Judgment**COURT MINUTES****March 23, 2018**

A-17-760779-F Baker Boyer National Bank, Plaintiff(s)
vs. James Foust, Jr., Defendant(s)

March 23, 2018 3:00 AM Decision RE: Motion to Intervene

HEARD BY: Scotti, Richard F. **COURTROOM:** Chambers

COURT CLERK: Kory Schlitz

PARTIES None – Minute Order Issued from Chambers
PRESENT:

JOURNAL ENTRIES

- The COURT DENIES the Motion To Intervene by Harry Hildibrand, LLC. . (Hildibrand). Plaintiff Baker Boyer National Bank (Baker) opposed the motion. Hildibrand asserted an interest in the motorcoach and the cars that are the subject of this action.

Hildibrand's rights are governed by NRS 31.070. That statute sets forth the procedure for Hildibrand to assert a Third Party Claim to the subject property. Pursuant to NRS 31.070, an entity asserting a claim to the property may pursue its claim after the Plaintiff has levied on the property. In this case, Hildibrand may assert a Third Party Claim after Baker Boyer has levied on the property.

The term levied on means to take possession pursuant to a writ of attachment. NRS 31.070(1) (drawing distinction between a levy, where a sheriff has taken possession of the property, and a writ of attachment); NRS 31.070(1) (mentioning a levy of the writ of attachment).

The Court entered judgment in favor of Baker granting Baker a writ of attachment to take possession of the property. Baker represents to this Court that it has not yet taken possession. If and when Baker takes possession of the motorcoach and the cars, then Hildibrand's rights under NRS 31.070 are triggered. The Court makes no ruling whether Hildibrand actually holds and right to the property, or whether Hildibrand would prevail upon implementing the procedures under NRS 31.070. The Court already held in this matter that Mr. Foust owns and controls Harry Hildibrand, LLC. This finding will guide the Court's manner of resolving Hildibrand's a claim made under NRS 31.070. The Court rejects Hildibrands arguments made under NRCP 24. Specifically, Hildibrand is not entitled to intervene as a matter of right under NRCP 24(a)(2), because the present action does not

PRINT DATE: 03/23/2018

Page 1 of 2

Minutes Date: March 23, 2018

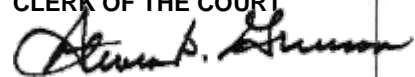
PA00185

impair or impede its ability to protect its interest, if any exists, in the subject property. Hildibrand may pursue the procedure available under NRS 31.070. Moreover, the COURT FINDS that Hildibrands interest was adequately represented by Defendant James Patterson. Also, the Court exercises its discretion not to permit Hildibrand to intervene pursuant to NRCP 24(b) because Hildibrand's rights, to the extent they exist, are protected under NRS 31.070.

Finally, the Court questions whether the Findings of Fact, Conclusions of Law, and Final Judgment (filed March 8, 2018) actually constitutes a Final Judgment. The parties to this action (Plaintiff Baker, and Defendant James Patterson Foust Jr.) must be prepared to address this issue at the next hearing in this matter.

Accordingly, the COURT DENIES the Hildibrand's Motion to Intervene. Plaintiff Baker shall prepare the proposed Order consistent herewith, adding appropriate context is necessary, and correcting any scrivener error. Defendant need not countersign, but must be provided a copy of the proposed order at least two business days before it is submitted to the Court.

CLERK'S NOTE: This Minute Order has been electronically served by Courtroom Clerk, Kory Schlitz, to all registered parties for Odyssey File & Serve. (3/23/18)



ORDR

John E. Bragonje
State Bar No. 9519
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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 HARRY
HILDIBRAND, LLC'S THIRD PARTY
CLAIM UNDER NRS 31.070**

and

**ORDER DENYING HARRY
HILDIBRAND, LLC'S MOTION TO
INTERVENE**

(Decided in Chambers on March 23, 2018)

Introduction

Judgment Debtor and defendant James P. Foust, Jr. received a loan in the original amount of \$1,077,600 from Baker Boyer National Bank (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 Washington state (the "Judgment"). (See Exs. A-B to 8/31/17 Appl. for Foreign Judgment, on file herein.) The Bank domesticated the Judgment in the State of Nevada on August 31, 2017. (*Id.*) This Court is now engaged in the enforcement of the Judgment.

The Bank filed a Motion for an Order Requiring Judgment Debtor to Deliver Possession of Classic Car Collection to Satisfy Nearly \$1 million Judgment" on December 20, 2017 (the "Motion"). Mr. Foust opposed the motion, claiming he no longer owned any of the cars. (See pleadings on file in this case.) This Court ordered discovery, including depositions, and set two separate evidentiary hearings principally concerning who owns the vehicles in question. (See

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3/1/18 Order Regarding Hearings on Classic Car Collection, on file herein.) On February 15, 2018, this Court held an evidentiary hearing concerning “just one of those vehicles, a 1998 Prevost Car, Inc. Marathon, vehicle identification number 2PCM3349XV1026183, a class “A” motorhome or recreational vehicle (the ‘Motorcoach’).” (See 3/8/18 Judgment, Introduction, on file herein.)

This Court received extensive documentary and testimonial evidence and issued a detailed ruling. (See generally 3/8/18 Judgment, on file herein.) The Court ruled for the Bank and against Mr. Foust in every respect. (*Id.*) For purposes of *this* order, two relevant rulings emerged: (1) the Bank had lawfully seized the Motorcoach pursuant to this Court’s orders and duly issued writs of execution and had possession of the Motorcoach, which was and is stored with law enforcement officials, and (2) the Motorcoach belongs to Mr. Foust, the judgment debtor, and not an alleged transferee, Harry Hildibrand, LLC, meaning that the Bank could retain possession of the Motorcoach and sell it to satisfy the Judgment. (*Id.*)

After the evidentiary hearing had concluded, Harry Hildibrand, LLC filed two motions that this order resolves. First, on March 2, 2018, Harry Hildibrand, LLC filed an “Application for Hearing within 10 Days on Third Party’s Claim of Interest in Property Levied Upon” pursuant to NRS 31.070, seeking a ruling that it, not Mr. Foust, owned the Motorcoach (hereinafter the “NRS 31.070 Application”). The Bank posted the bond required by NRS 31.070 on March 9, 2018 and filed a its opposition and countermotion on March 12, 2018; Harry Hildibrand, LLC filed its reply on March 13, 2018.

Second, Harry Hildibrand, LLC filed a Motion to Intervene in this action on March 15, 2018, which the Bank opposed on March 19, 2018. After considering the parties’ arguments and briefing, the Court denies both motions and rules against Harry Hildibrand, LLC and for the Bank and makes the following rulings:

NRS 31.070 Application

1. The Court generally adopts the arguments made by the Bank in its briefing and generally rejects the arguments made by Harry Hildibrand, LLC in its briefing.

2. Harry Hildibrand, LLC argues that it, not Mr. Foust, owns the Motorcoach. In support of its NRS 31.070 Application, however, Harry Hildibrand, LLC offered only the very

1 same evidence that this Court had already received and considered at the February 15, 2018
2 evidentiary hearing. The Court did not find this evidence persuasive at the evidentiary hearing,
3 and the Court has not changed its mind in this context. The Court rejects the evidence and
4 argument offered by Mr. Edward Detwiler, an alleged manager of Harry Hildibrand, LLC and the
5 affiant for the NRS 31.070 Application, for the reasons given in its detailed March 8, 2018 order,
6 already on file.

7 3. The Court specifically finds that Harry Hildibrand, LLC has received due process
8 in this determination that it has no ownership interest in the Motorcoach for the following reasons:

9 a. First, this Court has previously ruled that no sale of the Motorcoach occurred and
10 that Mr. Foust is the actual owner. (3/8/18 Judgment, on file herein, Conclusions of Law, ¶ 2.)
11 There is no due process right where Harry Hildibrand, LLC never had a property interest.
12 *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (under federal due process analysis, the aggrieved
13 party must establish a protected property interest).

14 b. Second, an important component “of the procedural due process right is the
15 guarantee of an opportunity to be heard and its instrumental corollary, a promise of prior notice.
16 L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 10–15, at 732 (2d ed. 1988). Indeed, the cases are
17 legion that “the fundamental requisite of due process of law is the opportunity to be
18 heard.” *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). The Court issued two separate orders
19 about a month before the evidentiary hearing—first on January 22, 2018 and again on February 5,
20 2018—that it would take evidence from Harry Hildibrand, LLC on the subject of ownership of the
21 Motorcoach. (See January 22, 2018 Court Minutes, on file herein; 3/1/18 Order, on file herein, ¶¶
22 8–9.) At the evidentiary hearing, Harry Hildibrand, LLC, through its 100% owner and manager,
23 Mr. Foust, adduced evidence, including sworn testimony from both managers of Harry Hildibrand,
24 LLC. The managers, Mr. Foust and Mr. Detwiler, obviously collaborated. Mr. Foust produced
25 the sworn statement of Mr. Detwiler (the police report). (3/8/18 Judgment, on file herein,
26 Findings of Fact, ¶ 40.) And Mr. Detwiler was obviously aware of the evidentiary hearing
27 because he and Mr. Foust were meeting with Jessica Smukal to attempt to arrange access to the
28 Las Vegas Motorcoach Resort, where the Motorcoach had been kept, just two days before the

1 evidentiary hearing. (*Id.* ¶¶ 29–32.) Thus both managers of Harry Hildibrand, LLC had notice of
2 the evidentiary hearing and offered testimony at the trial—Mr. Foust through live examination and
3 Mr. Detwiler through his sworn statement. The Court finds that Harry Hildibrand, LLC’s interests
4 were adequately represented by judgment debtor James P. Foust.

5 c. Third, the Court has afforded Harry Hildibrand, LLC yet another round of notice
6 and opportunity to be heard upon the question of whether it owns the Motorcoach through the
7 briefing, hearing upon, and resolution of this NRS 31.070 Application. This second hearing came
8 after the original evidentiary hearing.

9 4. Therefore, IT IS HEREBY ORDERED that Harry Hildibrand, LLC does not have
10 “title to the property in question,” NRS 31.070(5)—the Motorcoach; the NRS 31.070 Application
11 is resolved in favor of the Bank and against Harry Hildibrand, LLC.

12 5. IT IS HERBY ORDERED that the bond the Bank posted on March 9, 2018
13 pursuant to NRS 31.070 be and hereby is released and exonerated.

14 6. The Laughlin Constable, Mr. Jordan Ross, is hereby empowered and ordered to
15 release or restore possession of the Motorcoach to the Bank, consistent with this order.

16 **Motion to Intervene**

17 7. The Court generally adopts the arguments made by the Bank in its briefing and
18 generally rejects the arguments made by Harry Hildibrand, LLC in its briefing.

19 8. In this action, the Bank has a final Judgment against Mr. Foust. Harry Hildibrand,
20 LLC—a third party to these proceedings—now moves to intervene. However, Harry Hildibrand,
21 LLC cannot intervene in the traditional sense of joining a lawsuit to take up the side of the
22 plaintiff or the defendant and assert claims because the trial has already occurred and the asserted
23 claims have been reduced to the Judgment, which is all that remains of the original action. *See*
24 NRS 12.130; *accord Am. Home Assur. Co. v. Dist. Ct.*, 122 Nev. 1229, 1235, 147 P.3d 1120, 1124
25 (2006) (“NRS 12.130 allows, *before the trial commences*, “any person ... who has an interest in
26 the matter in litigation, in the success of either of the parties, or an interest against both” to
27 intervene in an action under the Nevada Rules of Civil Procedure.”) (emphasis supplied).
28

1 9. Instead, only to the extent that the Bank seizes property that Harry Hildibrand,
2 LLC claims it owns may it intervene for the limited purposes allowed by NRS 31.070. That
3 statute, the third party claims statute, applies only after a seizure (a levy) of property to satisfy a
4 judgment; the statute requires the Court to conduct a summary proceeding to resolve competing
5 claims to ownership of seized property. The third party claims statute is the “exclusive remedy” to
6 resolve competing claims of ownership of levied property. *E.g., Elliot v. Denton & Denton*, 109
7 Nev. 979, 980, 860 P.2d 725, 726 (Nev. 1993) (“Nevada, like most states, has a statute which, by
8 its terms, provides an exclusive and summary means for disposing of claims.”).

9 10. Harry Hildibrand, LLC claims to own nine cars that the Bank has not seized and
10 requests intervention on this basis. If and when the Bank levies execution against any of these
11 nine cars—or any other property—the parties may invoke the NRS 31.070 procedure.

12 11. The Court makes no ruling concerning whether Harry Hildibrand, LLC actually
13 holds and right to the nine cars mentioned in the Motion to Intervene or whether Harry Hildibrand,
14 LLC would prevail upon implementing the procedures under NRS 31.070. The Court already held
15 in this matter that Mr. Foust owns and controls Harry Hildibrand, LLC. (3/8/18 Judgment, on file
16 herein, Findings of Fact, ¶¶ 9, 12.) This finding will guide the Court’s manner of resolving any
17 future claims made under NRS 31.070.

18 12. The Court rejects Harry Hildibrand, LLC’s arguments made under NRCP 24.
19 Specifically, Harry Hildibrand, LLC is not entitled to intervene as a matter of right under NRCP
20 24(a)(2) because the present action does not impair or impede its ability to protect its interest, if
21 any exists, in the subject property, the nine cars. Moreover, the Court finds that Harry Hildibrand,
22 LLC’s interests were adequately represented by judgment debtor James P. Foust. Also, the Court
23 exercises its discretion not to permit Harry Hildibrand, LLC to intervene pursuant to NRCP 24(b)
24 because its rights, to the extent they exist, are protected under NRS 31.070.

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26 ///

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28 ///

1 13. This Court, therefore, rules in favor of the Bank and against Harry Hildibrand, LLC
2 and IT IS HEREBY ORDERED that the Motion to INTERVENE is denied in its entirety.

3 DATED this 11th day of April, 2018.

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6 

7
8 DISTRICT COURT JUDGE

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10 Bh

11 Respectfully submitted,

12 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**

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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 **Defendant/Judgment Debtor.**

Case No.: A-17-760779-F

Dept. No.: II

Hearing Date: November 5, 2018

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Def(s)	<input type="checkbox"/> Judgment of Arbitration

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23 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL JUDGMENT**

24 This matter having come on for an evidentiary hearing and non-jury trial before the
25 Honorable Richard Scotti on November 5, 2018 and pertaining to plaintiff and judgment creditor
26 Baker Boyer National Bank's (the "Bank") request that this Court's prior Findings of Fact,
27 Conclusions of Law, and Final Judgment issued on March 8, 2018 apply to third party claimant
28 Harry Hildibrand, LLC ("HH") and that the Court resolve HH's claim of ownership over certain
vehicles that the Bank seeks to levy and execute against to satisfy a judgment against judgment
debtor and defendant James P. Foust, Jr. for approximately \$1,000,000; Mr. Foust having been
represented by Cody S. Mounteer and Tom W. Stewart of Marquis Aurbach Coffing; the Bank
having been represented by John E. Bragonje of Lewis Roca Rothgerber Christie LLP; HH having
been represented by Joseph West of Holland & Hart LLP; the Court having read and considered
all relevant pleadings and papers on file in the above-captioned case, having reviewed the

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documents admitted into evidence during the trial and briefs and points and authorities filed by the parties, and having heard and carefully considered the testimony of the witnesses called to testify, the Court, with the intention of resolving the evidentiary issues pertaining to this dispute, 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, Baker 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 December 20, 2017, the Bank filed a motion seeking an order requiring Mr. Foust to deliver possession of the cars to satisfy the judgment. This hearing and ruling resolves two main issues.

Res Judicata. In a prior evidentiary hearing, this Court determined that a 1998 Prevost Car, Inc. Marathon motor coach (the "Motorcoach") belonged to Mr. Foust and that the Bank could lawfully seize and sell it to satisfy the Judgment. Thereafter, HH intervened in these proceedings and claimed that it, not Mr. Foust, owned the Motorcoach. Pursuant to *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), HH is bound by the earlier judgment under the doctrine of res judicata, particularly because Mr. Foust and HH are in privity. Privity exists where there is a substantial identity between the parties, as in corporate relationships involving controlling owners. This Court ruled that Mr. Foust owned HH. HH filed bankruptcy after the first evidentiary hearing and claimed repeatedly that a company called StarDust Classic, LLC was its sole member and owner. Mr. Foust owns and/or controls StarDust Classic, so he owns HH. Mr. Foust and HH cooperated with each other in all aspects of the dispute related to the Motorcoach.

Turnover of Other Cars. When Mr. Foust obtained the loan that led to the Judgment, he

1 told the Bank he owned 59 expensive, rare, and exotic vehicles. Mr. Foust bears the burden of
2 proving he no longer owns the cars. HH claims in bankruptcy schedules to own 20 of these cars.
3 Neither Mr. Foust nor HH (sometimes collectively the “defense” or the “defendants”) offered any
4 documentary evidence—such as car titles, contracts for sale, or evidence of payment—showing
5 any legitimate sale of cars by Mr. Foust to HH. Defendants could not even say what the purchase
6 price for these alleged sales was. Additionally, even if some bare transfer of title did occur, it was
7 *for the reasons discussed herein* fraudulent and voidable. ~~The NRS Chapter 112 “badges of fraud” from the Uniform Fraudulent~~
8 ~~Transfer Act are on full display here. Typifying the concealment that shows fraud, the defendants~~
9 ~~lied about the cars’ locations in depositions before this Court, and then told the bankruptcy court~~
10 ~~the cars were in North Dakota (and other places), where Mr. Foust, not HH, conducts business.~~
11 ~~This Court concludes that Mr. Foust and HH have attempted to perpetrate a fraud on creditors and~~
12 ~~that all cars originally identified to the Bank as Mr. Foust’s ought to be made available to satisfy~~
13 ~~the Judgment.~~

14 Based upon the testimony and documentary evidence presented during the hearing and for
15 good cause appearing, pursuant to Rules 50 and 52, the Court rules in favor of the Bank and
16 against Mr. Foust and HH and finds, concludes, orders, adjudges, and decrees as follows:

17 **Findings of Fact Related to the Motorcoach and HH’s Claim Thereto**

- 18 1. Mr. Foust has not voluntarily paid the Judgment.
- 19 2. The Bank filed a “Motion for an Order Requiring Judgment Debtor to Deliver
20 Possession of Classic Car Collection to Satisfy Nearly \$1 million Judgment” on December 20,
21 2017. Mr. Foust opposed the motion, claiming he no longer owned any of the cars. This Court
22 ordered discovery, including depositions, and set two separate evidentiary hearings concerning
23 who owns the vehicles in question.
- 24 3. On February 15, 2018, this Court held the first evidentiary hearing concerning just
25 the Motorcoach. (See 3/8/18 Judgment, Introduction, on file herein.)
- 26 4. This Court received extensive documentary and testimonial evidence and issued a
27 detailed ruling. (See generally 3/8/18 Judgment, on file herein (hereinafter the “Prior
28 Judgment”).) The Court ruled for the Bank and against Mr. Foust in every respect, including that

2. Baker Bank proved by clear and convincing evidence that no sale of the Motorcoach occurred and that Mr. Foust continues to own it. Therefore, Baker Bank may keep possession and control of the Motorcoach and sell it to partially satisfy the Judgment.

3. A second, independently sufficient basis for ruling in Baker Bank's favor also exists: even assuming for the sake of argument that a transfer of the Motorcoach did occur, Baker Bank has established by clear and convincing evidence that such a sale is a voidable, fraudulent transfer.

(3/8/18 Prior Judgment, on file herein, Conclusions ¶¶ 2-3.)

5. After the first evidentiary hearing had concluded, HH filed an application pursuant to NRS 31.070, seeking a ruling that it, not Mr. Foust, owned the Motorcoach.

6. Although originally a non-party, by invoking NRS 31.070, HH subjected itself to this Court's jurisdiction as a third-party claimant. *Cooper v. Liebert*, 81 Nev. 341, 344, 402 P.2d 989, 991 (Nev. 1965) ("We hold that N.R.S. 31.070 is a complete and valid remedy to third persons whose property has been attached, that the remedy therein provided is exclusive . . . and that the term 'property' includes both real and personal property."). While the statute's operation typically begins when a levy occurs, NRS 31.070(1), in this case HH voluntarily submitted to this Court's jurisdiction by waiving the levy predicate. (See Transcript of April 18, 2018 hearing; accord 5/22/18 Order Setting Future Hearing Date, on file herein, at ¶ 4 ("This is an Evidentiary Hearing under NRS 31.070. The parties agreed that this Evidentiary Hearing may proceed before the [Bank] has levied upon the subject cars.")).

7. After briefing by the parties, on April 18, 2018, the Court held a hearing pursuant to NRS 31.070 to consider whether HH was bound by the Prior Judgment, which concluded that Mr. Foust owned the Motorcoach. At this hearing, the Court determined that the outcome of the issue preclusion question is governed by *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), holding modified by *Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015), which states "the following factors are necessary for application of issue preclusion: (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated."

1 8. As to factor (1), the Court finds that the issue of title to the Motorcoach was
2 decided at the prior evidentiary hearing on February 15, 2018 (the “Prior Hearing”) and that
3 issue—ownership of the Motorcoach—is identical to the issue again before the Court based on
4 HH’s continued assertion that it owns the Motorcoach.

5 9. As to factor (2), the initial ruling arising from the Prior Hearing was on the merits
6 and has become final. (*See generally* 3/8/18 Prior Judgment, on file herein.)

7 10. As to factor (4), obviously the issue of ownership was actually and necessarily
8 litigated because the Court received extensive documentary and testimonial evidence at the Prior
9 Hearing and argument and made a binding ruling based on such evidence.

10 11. As to factor (3), whether Mr. Foust and HH are in privity, the Court resolved
11 certain issues and made certain factual findings at the Prior Hearing that are relevant to the
12 question of privity: Mr. Foust was an officer and/or member of HH, in fact he was the sole owner
13 and member of HH; HH, through Mr. Foust, had notice of the Prior Hearing; Mr. Foust
14 represented the interests of HH at the Prior Hearing because he actually tried to prove that HH was
15 the owner of the Motorcoach; Mr. Foust, the sole owner and member of HH, never complained
16 that HH was not a party to the hearing; HH, despite having some notice of the Prior Hearing by
17 Mr. Foust, never sought to intervene in the proceeding in which the Court determined that Mr.
18 Foust owned the Motorcoach; Mr. Foust’s counsel actually notified this Court that HH intended to
19 intervene in the matter on March 7, 2018, so there was obviously some communication between
20 Mr. Foust and HH and their respective counsel—Mr. Foust told the Court what HH intended to do
21 before it happened; at the hearing on March 7, 2018, Mr. Foust’s counsel also asserted due process
22 rights on behalf of HH.

23 12. The Court then ordered the parties to present evidence on *Five Star Capital* factor
24 (3) to see whether HH could develop any additional facts to contravene these findings from the
25 Prior Hearing.

26 13. HH then filed a Chapter 11 bankruptcy case in California, which was dismissed.
27 The Court then scheduled another evidentiary hearing.

28 14. After this second evidentiary hearing, which occurred on November 5, 2018, the

1 Court is further convinced that Mr. Foust and HH¹ are in privity and that the Prior Judgment
2 should apply to HH.

3 15. HH offered no significant evidence on the privity issue, as ordered; rather HH
4 attempted to re-try the factual issues the Prior Judgment resolved. The Bank, on the other hand,
5 did present compelling, clear, and convincing evidence that the HH and Mr. Foust are in privity.

6 16. The cooperation between Mr. Foust and HH is even more pronounced than
7 originally apparent at the Prior Hearing.

8 17. During HH's presentation of evidence, HH's counsel of record, Mr. Joseph Went,
9 actually examined Mr. Foust as a friendly witness, rather than Mr. Foust's own counsel of record,
10 Cody Mounteer, handling the examination. (11/5/18 Hr'g Trans., p. 71 *et seq.*)

11 18. Although HH is ostensibly a Montana-based company, HH petitioned for
12 bankruptcy relief in California, where Mr. Foust resides. The bankruptcy occurred after the Prior
13 Hearing and stayed this Court's proceedings for several months; the bankruptcy was ultimately
14 dismissed for HH's subsequent failure to participate. *See In re: Harry Hildibrand, LLC*, 2:18-bk-
15 18727-NB, ECF No. 20 (Bankr. C.D. Cal. Sept. 7, 2018).

16 19. HH's bankruptcy counsel of record, a Los Angeles-based attorney named James
17 Lezie, concurrently represents Mr. Foust in one of the underlying, out of state lawsuits that
18 resulted in the Judgment which has been subsequently domesticated in Nevada. Mr. Lezie, said,
19 in seeking a pro hac vice admission in North Dakota, that he is "a long time [sic] associate of
20 James Paterson Foust" and that he had "served as counsel to Mr. Foust on previous matters."

21 20. This is a striking statement because Mr. Foust has sworn under oath repeatedly
22 before this Court, and in depositions ordered by this Court, that he disassociated from HH in 2008.
23 If that were true, his long-time personal attorney would have no involvement in HH's 2018
24 bankruptcy, which occurred in a court located close to Mr. Foust's home in Los Angeles.

25 21. Similarly, during the Section 341 creditors meeting, Mr. Lezie also testified under
26 oath that Mr. Foust, though supposedly separate from HH since 2008, helped make the decision to
27 put HH into bankruptcy. These two ostensibly separate parties, Mr. Foust and HH, actually work

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

as one under common legal representation coordinated in multiple judicial fora. 

22. ~~The appearance of Mr. Lezie under these circumstances is another example of Mr. Foust's willingness to lie to this Court and to attempt to obscure the truth.~~ The Court reaffirms its ruling from the Prior Hearing that Mr. Foust's demeanor is untrustworthy and that he demonstrates a propensity to say whatever seems convenient at the moment, without regard for established or incontrovertible facts.

23. This Court has already ruled that Mr. Foust was an "an officer and/or member of HH [and that] HH, through Mr. Foust, had notice of the Prior Hearing." (5/22/18 Order Setting Future Hearing, on file herein, ¶ 3(d).) Although Mr. Foust has steadfastly denied any involvement in HH since 2008, and although Mr. Edward Detwiler, who testified that he is a manager of HH, claims HH was owned by the heirs of a deceased man named Harry Hildibrand (see 11/5/18 Hr'g Trans., p. 26:9-16),² the bankruptcy pointed up Mr. Foust's direct ownership of HH yet again.

24. In the bankruptcy filings, which papers Mr. Detwiler repeatedly signed under penalty of perjury, and the testimony given during the 341 meeting of creditors, HH repeatedly contended that it is wholly owned by a Wyoming limited liability company called StarDust Classic.

25. The official records of the Wyoming Secretary of State indicate that Mr. Foust and his daughter have been filing the annual reports and paying the annual dues for StarDust Classic since its organization in 2016.

26. In fact, the 2016 articles of organization for StarDust Classic give its office and mailing address as the very same location of Mr. Foust's Las Vegas Motorcoach Resort property where he kept the Motorcoach before the Bank seized it pursuant to this Court's writs.

27. Mr. Foust's daughter, Jocelyn, signed StarDust Classic's annual report in 2017 and

² HH attempted to introduce a document allegedly showing ownership interests in HH. This document was not produced before the hearing and will not be considered. The disclosures end at Bates range HHLLC 000074, and this new documents bears the Bates number HHLLC 000075. The Court excludes this evidence. See, e.g., NRCP 16.1(e)(3)(B) (providing that failure to disclose a document before trial justifies an "order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited, or exchanged pursuant to Rule 16.1(a)"). In any event, this document does not undo the other, extensive evidence of Mr. Foust's control and ownership over HH.

1 Mr. Foust himself signed the 2019 annual report on March 27, 2018, and paid the registration fee.

2 28. These Wyoming reports are signed under penalty of perjury, and, according to
3 Wyoming law, must be submitted by a company officer or a “fiscal” agent. Wy. St. § 17-29-
4 209(a) (2018).

5 29. Mr. Detwiler, the supposed manager of HH, agreed on cross examination that this
6 Wyoming corporate documentation showed that Mr. Foust “ultimately owned” HH; he said “Boy,
7 I didn’t get an A in deducement, but it’s – I – *yeah*.” (11/5/18 Hr’g Trans., p. 65–66:13 (emphasis
8 supplied).)

9 30. At the Prior Hearing, the Court rejected Mr. Foust’s claim that he divested himself
10 of any interest in HH because, on the hand, he “produced no documentary evidence of this alleged
11 divestment” while, on the other hand, this Court received evidence of official corporate filings and
12 annual reports generated by the Montana Secretary of State showing that Mr. Foust was “the sole
13 member and/or manager for Harry Hildibrand, LLC.” (3/8/18 Prior Judgment, on file herein,
14 Findings ¶¶ 10–11.)

15 31. This Court again rejects Mr. Foust’s naked denials of involvement in StarDust
16 Classic when the official corporate records for Wyoming demonstrate just the opposite, especially
17 because these papers were generated before this dispute started (beginning in 2016) and before
18 Mr. Foust had a motive to change his story.

19 32. Mr. Foust and Mr. Detwiler both gave superficial testimony to the effect that HH
20 purchased the Motorcoach from Mr. Foust. However, the defense produced no actual evidence of
21 a sale, such as evidence of the alleged \$5,000 purchase price changing hands.

22 33. This proceeding began by a motion that the Bank filed on December 20, 2017. In
23 nearly one year’s time, the defendants, with the aid of two able law firms assisting them,
24 responded to a subpoena duces tecum directed to HH, responded to formal document requests
25 ordered by this Court, sat for three separate depositions, and testified in two evidentiary hearings.
26 Each of these circumstances demanded the defense produce actual proof of money changing hands
27 to evidence the alleged sale of the Motorcoach. There is no such evidence, at long last.

28 34. The defendants have belatedly produced what they claim is a contract for the sale


1 of the Motorcoach, which the Court finds unpersuasive given the circumstances of its disclosure
2 and given that it never appears it was performed because no money changed hands.³

3 35. Mr. Foust testified at this second evidentiary hearing that he received a \$5,000
4 “cash” payment. (11/5/18 Hr’g Trans., p.72:2–5.) This contradicts his earlier deposition
5 testimony that he could not “remember” the payment method but that it was “a check, probably.”

6 36. Mr. Detwiler, the supposed manager of HH, conceded it was “very possible” HH
7 never paid Mr. Foust and that he had “no idea as the manager if that money was ever paid.”
8 (11/5/18 Hr’g Trans., p. 38:9–17.)

9 37. Even if HH had actually made a cash payment, HH would still be able to produce a
10 bank record showing such a large withdrawal—after all the alleged transaction closed only about a
11 year ago. This Court is convinced there is no such evidence because the payment never happened.

12 38. HH and Mr. Foust claim that HH also agreed to assume the Motorcoach purchase-
13 money loan, but here again the documentary evidence that HH itself produced—documents from
14 the lienholder’s records custodian responsive to an HH subpoena—show only Mr. Foust’s
15 involvement.

16 39. First, only Mr. Foust, not HH, appears as the debt obligor. 

17 40. Second, only Mr. Foust or his daughter and frequent collaborator, Jocelyn, signed
18 the monthly payment checks produced by the lienholder, including after the supposed transfer of
19 the Motorcoach to HH.

20 41. There is a total failure of any documentary evidence whatsoever showing an actual
21 sale of the Motorcoach. This “sale” is a transparent attempt to defraud the Bank.

22 **Findings of Fact Related to All Other Cars Mr. Foust Claimed to Own Before the Judgment**

23 42. This Court’s order establishing the scope of this evidentiary hearing required the
24 parties to focus on three issues: (1) “whether Mr. Foust is the owner of those certain cars over
25 which HH claims an interest”— *i.e.* the “HH cars”; (2) “whether Mr. Foust is the owner of those

26 ³ The authenticity of this alleged sales contract is suspect. Despite this Court’s February 5, 2018 order for Mr. Foust
27 and HH to produce “a copy of any contract” related to the Motorhome, neither defendant produced this alleged
28 contract until June 25, 2018, after Mr. Foust had been deposed not once but twice and after the Prior Hearing. (See
3/1/18 Order Regarding Hearings on Classic Car Collection, on file herein, at ¶ 10(d).) The defense offered no
explanation for this remarkable delay.

1 certain cars that HH contends it purchased from Mr. Foust and then sold to third parties”— *i.e.* the
2 “HH Sold Cars”; and (3) “whether Mr. Foust is the owner of those certain cars that he contends
3 were transferred directly to third parties”—*i.e.* the “Third Party Cars.” (5/22/18 Order Setting
4 Future Hearing, on file herein, ¶¶ 4–6.)

5 43. Neither Mr. Foust nor HH offered evidence on these subjects, other than a cursory
6 statement. It is no exaggeration to say that the evidence these defendants offered focused on the
7 Motorcoach and little else. By contrast, the Bank offered a treasure trove of evidence showing
8 that although Mr. Foust claims he sold certain cars to HH and others, these same cars remain
9 under the control of Mr. Foust.

10 44. Mr. Russ Colombo, the Bank’s Vice President and Senior Credit Administrator,
11 offered extensive testimony concerning Mr. Foust’s written representations to the Bank regarding
12 his car collection.

13 45. Mr. Foust is a rich man. When Mr. Foust applied for the loan in 2013, he claimed
14 to have a net worth of no less than \$9,493,574. His liquid assets alone included \$716,854 in cash
15 and \$129,332 in stocks and bonds, according to documents submitted to the Bank. The loan
16 application stated that Mr. Foust personally owned assets he identified as “Classic Cars – Est.
17 Value using Mkt. [market] Prices” with a value of \$5,120,130.

18 46. There is no doubt that Mr. Foust represented that he owned these vehicles in his
19 personal capacity: the document is entitled a “personal” financial statement and Mr. Foust wrote
20 “Foust”—his name—in the “Name(s) Registered In” field on the form.

21 47. Mr. Foust also provided an inventory of the cars which he entitled “Foust Classic
22 Cars”—again emphasizing his personal ownership of these vehicles—that details each vehicle’s
23 make, model, year, vehicle identification number, and value. Mr. Foust’s collection comprises 59
24 vehicles that he valued at \$5,120,130. These cars are identified in Exhibit A to this judgment.
25 The value of the car collection on the personal financial statement submitted to the Bank is the
26 same as that given on the list of cars.

27 48. After the loan proceeds were disbursed, Mr. Foust continued to represent to the
28 Bank that he owned these valuable automobiles by way of financial statements submitted to the

1 Bank. For example, in a balance sheet prepared by Mr. Foust and submitted to the Bank and dated
2 April 30, 2015—years after the loan was made—Mr. Foust gives the value of his “Automobiles –
3 Classic” as \$3,242,930. In the most recent balance sheet the Bank has, which is dated December
4 31, 2015, Mr. Foust gave the value of his “Automobiles – Classic” as \$1,381,320.

5 49. The vehicles identified by Mr. Foust in these pre-lawsuit bank records (Exhibit A)
6 are the same that HH identified in its bankruptcy petition—except that there are approximately 39
7 fewer cars listed in the bankruptcy schedules. The list of cars that HH identified in its bankruptcy
8 papers is attached hereto as Exhibit B.

9 50. Neither Mr. Foust nor HH produced any documentary evidence or offered any
10 testimony to show that Mr. Foust did not own the “HH cars,” as he told the Bank he did; that Mr.
11 Foust did not in fact own the HH Sold Cars, as he told the Bank he did; or that Mr. Foust did not
12 continue to own the “Third Party Cars” he claims he sold.

13 51. The only actual evidence before this Court conclusively proves that Mr. Foust
14 continues to own and control all the cars mentioned on any list, and certainly those that HH
15 claimed to own in the bankruptcy.

16 52. The defense failed to offer into evidence any contracts for sale of any of the cars in
17 question, the HH cars, the HH Sold Cars, or the Third Party Cars.

18 53. During his deposition, Mr. Foust testified that he sold cars to HH “in a lot all at the
19 same time” and that there was a single contract related to the sale of a group of cars. At the
20 evidentiary hearing, Mr. Foust changed his story, claiming that “there were several contracts at
21 different times” in 2011 and 2012 relating to “a series of cars that were sold to [HH] by me.”
22 (11/5/18 Hr’g Trans., p. 75:12–23.) ~~Ever willing to say what is convenient without regard to the~~
23 ~~record,~~ Mr. Foust claimed that these supposed sales contracts were “retrievable” and perhaps in his
24 file cabinet in California or with HH’s Montana attorneys.

25 54. This testimony ignores this Court’s prior order and a subpoena duces tecum
26 directed to HH, both of which sought these same alleged sales contracts. This Court has allowed
27 three depositions and two evidentiary hearings, and the defense has never produced any contract
28 for the sale of cars between HH and Mr. Foust. The Court is convinced no such contract or

1 contracts exist.

2 55. Similarly, the defense offers no evidence about the price HH allegedly paid Mr.
3 Foust to purchase any of the cars. Mr. Foust allowed at the hearing that he had no recollection of
4 the price received from these alleged sales. (*Id.* at 75:22–76:6.) At his deposition he was flippant
5 about this subject, claiming “I might have got a dollar, I might have got a million dollars. I don’t
6 know.”


7 56. Finally, HH failed to offer into evidence car titles showing transfer of the cars in
8 question to HH or anyone else. The only evidence this Court has is that Mr. Foust, on multiple
9 occasions and in writing, swore to the Bank that he owned at least the 20 cars that HH now claims
10 to own in the bankruptcy, and, in fact, many more. The few car titles the Bank offered, showed
11 Mr. Foust buying a car and then immediately transferring its title to HH without any consideration,
12 as discussed below.

13 57. Mr. Foust, in earlier filings with this Court, admitted that he has possession of four
14 vehicles HH claimed to own. In an affidavit given to this Court as part of an opposition to the
15 original motion that gave rise to this evidentiary hearing, Mr. Foust swore under oath that he has
16 “sold and ha[s] received a leaseback on the following vehicles: (a) 2000 GMC Yukon; (b) a 2007
17 Mercedes S550; (c) a 2007 Mercedes CLK 550; and (d) a 2007 Mercedes M50.” The alleged
18 owner and lessor is HH. During his deposition, Mr. Detwiler agreed that these cars were in the
19 possession of Mr. Foust, his wife, or his daughters and that HH had not received any money from
20 Mr. Foust for them. No lease documents were ever produced or offered into evidence, despite
21 specific requests and orders from this Court.

22 58. Despite Mr. Foust’s claims that HH owns these four cars that he and his family
23 drive through this alleged “leaseback,” the financial statements given to the Bank before this
24 dispute arose show that Mr. Foust personally spent his own money on these four cars, even though
25 he claims they are owned by HH.

26 59. The “Expense” page of Mr. Foust’s 2014 Income Statement provided to the Bank
27 shows \$6,439.50 in expenses for a two-year period for the Mercedes. The Expense page of the
28 April 25, 2015 Income Statement shows \$5,143.13 in expenses for two of the 2007 Mercedes.

1 And the December 31, 2015 Income Statement shows \$8,361.03 in expenses for all four cars for
2 2015 and the first month of 2016. If HH really owned these cars, then HH would be paying these
3 costs, not Mr. Foust.

4 60. Similarly, before this litigation arose and Mr. Foust had a motive to prevaricate, he
5 submitted financial statements to the Bank showing that he was paying the attorney fees to a
6 Montana attorney that acts as the registered agent for HH; HH is a Montana limited liability
7 company. The name of the law firm is the Heggen Law Office, P.C. It is located in Missoula,
8 Montana. This law office is the place of business given for HH in Montana corporate records on
9 file with the secretary of state. This is significant when it comes to the subject of the cars because
10 ~~this law firm specializes in vehicle registration, its webpage says:~~ 

11 Form your Limited Liability Company in Montana and our knowledgeable and
12 experienced staff can help you to save thousands on automobile, motorhome & RV,
13 boat and airplane registration. Montana has no sales or property tax on vehicles
14 such as RVs and luxury high-performance cars. By establishing a Montana
15 Limited Liability Company (LLC) or Corporation, you may title your vehicle in the
16 name of the business and purchase the vehicle free of sales tax even if your
17 purchase is outside the state of Montana. In addition to your savings on vehicle
18 taxes, you will also be able to take advantage of Montana's low vehicle registration
19 fees.

20 61. The financial statements given to the Bank show regular payments by Mr. Foust to
21 this law office for fees and vehicle registration. The Income Statement for April 30, 2015 shows
22 \$100 for "Heggen - Autos" and \$250 for "Heggen - Fee's" for the first months of 2015 and \$340
23 for registration fees in 2014 and \$300 in attorney fees for 2014. Similarly, the Income Statement
24 dated December 31, 2015 shows \$1,080 for registration fees and \$1,487.99 for attorney fees in
25 2016 and \$1,714.18 in registration fees and \$340 in attorney fees for 2015. The defense did not
26 even attempt to contradict this evidence. This Court believes that if HH really owned these cars,
27 then HH would be paying the registration costs and attorney fees, not Mr. Foust.

28 62. A second, independently sufficient basis for ruling in the Bank's favor exists: even
assuming for the sake of argument that a transfer of the 20 cars that HH identifies in its bankruptcy
schedules (Exhibit B) did occur, there is clear and convincing evidence that such a sale is a
voidable, fraudulent transfer.

63. Transfers to insiders demonstrate fraud. *See* NRS 112.180(2)(a)). Mr. Foust

1 transferred the 20 cars identified in the HH bankruptcy to himself because Mr. Foust owns and
2 controls HH.

3 64. At the Prior Hearing, this Court rejected Mr. Foust's claim that he divested himself
4 of any interest in HH because, on the one hand, he "produced no documentary evidence of this
5 alleged divestment" while, on the other hand, and this Court received evidence of official
6 corporate filings and annual reports generated by the Montana Secretary of State showing that Mr.
7 Foust was "the sole member and/or manager for Harry Hildibrand, LLC." (3/8/18 Prior Judgment,
8 on file herein, Findings ¶¶ 10–11.) *See also* NRS 112.150(7)(a) (stating that if the debtor is a
9 natural person, an insider includes a transfer to a corporation in which the debtor is "a director,
10 officer or person in control").

11 65. A like circumstance has occurred at this second hearing: HH claimed in its
12 bankruptcy filings that it is wholly owned by StarDust Classic, an entity that Mr. Foust owns
13 and/or controls according to the Wyoming Secretary of State, as shown above. Mr. Foust did
14 make a bare assertion that he "believe[s]" someone named Ron Vega—a name never mentioned
15 before by the defendants in any of the three depositions or the prior evidentiary hearing—owned
16 StarDust Classic. (*See* 11/5/18 Hr'g Trans., p. 72:17–21.)

17 66. The Court rejects this *ipse dixit* when the official records of Wyoming, which were
18 generated between 2016 and 2018 before this dispute over the cars came before this Court, show
19 Mr. Foust's role as an officer and owner of StarDust Classic. This is yet another example of what
20 this Court previously found regarding Mr. Foust's demeanor: he appears untrustworthy because he
21 seems to be willing to say whatever appears convenient to him in the moment without regard to
22 established or incontrovertible facts.

23 67. The evidence is uncontroverted and overwhelming that Mr. Foust "retained
24 possession or control of the property transferred after the transfer." *See* NRS 112.180(2)(b). Mr.
25 Foust and Mr. Detwiler admitted in their depositions that Mr. Foust and his wife and daughters
26 have possession of and use three Mercedes and a GMC Yukon that HH claimed to own in its
27 bankruptcy schedules. As for the balance of the 20 cars HH claims in its bankruptcy, Mr. Foust
28 controls them because he owns HH and StarDust Classic. Someone must control these cars. Mr.

1 Detwiler, the supposed manager of HH, claimed during his deposition that he knew nothing about
2 any cars HH owned except for the four in Mr. Foust's and his family's possession:

3 Q: So other than those four vehicles, Harry Hildibrand doesn't own anything else?
4 Mr. Detwiler: Not that I'm aware of. Not that I have had conversation about or
know about.

5 68. Here, the alleged "transfer or obligation was ~~disclosed~~ or concealed." See NRS
6 112.180(2)(c). Mr. Foust did not inform the Bank of this alleged transfer of the 20 cars HH now
7 claims in its bankruptcy, nor of the transfer of any other cars. Mr. Foust was silent until this
8 dispute arose.

9 69. Even after these preceding began, IIII attempted to cover up the transactions by
10 withholding bills of sale under a bogus claim of attorney-client privilege; this later came to this
11 Court's attention during a motion to compel preceding this hearing.

12 70. The Court finds that HH in particular engaged in gamesmanship and misconduct in
13 attempting to withhold bills of sale related to the cars in question, ultimately introduced into
14 evidence by the Bank, under a facially bogus attorney-client privilege claim. The only motive for
15 such conduct was to attempt to suppress incriminating evidence.

16 71. The only bills of sale in evidence show transfers in 2016 (1966 Ford Thunderbird
17 and Kawasaki motorcycle) and 2014 (2000 GMC Yukon and 2007 Mercedes S550). These
18 alleged transfers took place after the loan was made that gave rise to the Judgment (October, 2013)
19 and around the time Mr. Foust was originally sued (December, 2016). The alleged transfer also
20 occurred after Mr. Foust had received the loan proceeds. See NRS 112.180(2)(d).

21 72. The debtor's absconding or removing or concealing assets indicates fraud. See
22 NRS 112.180(2)(f) and (g). Here, Mr. Foust was purporting to transfer away a substantial
23 percentage of many of his valuable vehicles after he received the loan proceeds in an attempt to
24 move the assets beyond the reach of the Bank.

25 73. For example, with respect to the 2000 GMC Yukon, Mr. Foust purchased it on
26 October 20, 2014 and purported to "sell" it to HH on December 3, 2014. And then ~~the defense~~ ^{Mr. Foust}
27 tried to hide this fact by asserting attorney-client privilege over the bill of sale. Mr. Foust also
28 bought the 2007 Mercedes and "sold" it to HH two months later. The bills of sale were all signed

1 by Mr. Foust as both buyer and seller—even though he tells this Court he’s been disassociated
2 with HH since 2008. ~~The defense attempted to lie to the Court and then attempted to conceal this~~
3 ~~misconduct behind a sham privilege claim.~~ *BF*

4 74. The Court’s prior orders recognize Mr. Foust and HH as capable of dishonesty and
5 gamesmanship. The defense lied repeatedly about the cars’ location in attempt to keep the
6 location secret from this Court and the Bank. During three depositions sessions, Mr. Foust and
7 Mr. Detwiler claimed they did not know where the cars were or even which cars HH owned. For
8 example:

9 Q: So other than those four vehicles, Harry Hildibrand doesn’t own anything else?
10 Mr. Detwiler: Not that I’m aware of. Not that I have had conversation about or
know about.

11 75. The Bank asked Mr. Foust about every car on the original lists submitted to the
12 Bank (Exhibit A). With respect to the 2007 Corvette, Mr. Foust said he once owned it but that HH
13 bought it and subsequently resold it to an unknown person. Mr. Foust said he sold the 1966 Ford
14 Thunderbird to a museum named Kuck in Nebraska and a 1955 Thunderbird to an auction house
15 called Russo Steele. Yet, all these cars appear on HH’s bankruptcy schedules (Exhibit B). Mr.
16 Foust generally testified during his deposition that he had “no idea” where the cars were that he
17 allegedly sold to HH.

18 76. Then during the bankruptcy, HH, through Mr. Foust’s long-time personal attorney,
19 James Lezie, and Mr. Detwiler, matter-of-factly testified at a creditors meeting that HH’s cars
20 were located in a warehouse in Compton, California, and at undisclosed locations in Montana and
21 North Dakota. The North Dakota location, where HH says it has six cars, is significant because
22 Mr. Foust was engaged in business there and sought the loan from the Bank to further his
23 enterprises there. HH, according to Mr. Detwiler, is defunct and has no business at all and,
24 therefore, no operations in North Dakota.

25 77. ~~The point is these defendants do not scruple to lie in depositions conducted under~~
26 ~~this Court’s orders and then totally change their testimony in bankruptcy court when they perceive~~
27 ~~an advantage to be had.~~ *Mr. Foust’s*
28 This conduct epitomizes concealing assets associated with fraudulent
transfer. Mr. Detwiler, in particular, signed the bankruptcy petition and schedules on behalf of

1 HH, which revealed the cars' locations, but he claimed to know nothing about that subject in
2 depositions before this Court. This is just one example of several points during the hearing, and
3 especially on cross examination, where Mr. Detwiler's demeanor was untrustworthy. Mr.
4 Detwiler appeared to be willing to say whatever seemed convenient at the moment, without regard
5 for established or incontrovertible facts, especially concerning representations he made in
6 bankruptcy court that contradicted his prior deposition testimony before this Court.

7 78. In this case, "the value of the consideration received by the debtor was [not]
8 reasonably equivalent to the value of the asset transferred or the amount of the obligation
9 incurred." See NRS 112.180(2)(h). Neither HH nor Mr. Foust has offered any evidence that any
10 money changed hands for the 20 cars HH lists in its bankruptcy filings (Exhibit B) or any of the 59
11 cars Mr. Foust claimed he owned (Exhibit A).

12 79. As shown above, despite Court orders and a subpoena, ~~the defense has failed to~~ *Mr. Foust*
13 produce any contracts for sale. Likewise ~~the defense has failed to~~ *Mr. Foust* produce any evidence of
14 payment, such as cancelled checks or evidences of wire transfer.

15 80. The few bills of sale in the record (which HH attempted to suppress through its
16 false claim of attorney-client privilege) show "\$N/A," or not applicable, as the amount HH paid to
17 Mr. Foust to "purchase" the 1966 Ford Thunderbird, the 2000 GMC Yukon, and the 2007
18 Mercedes from Mr. Foust.

19 81. Consistent with the vague answers generally given, with respect to the three
20 Mercedes his wife and daughters drive, that HH allegedly owns and leases back to Mr. Foust and
21 his family, Mr. Foust claimed in deposition to be totally ignorant on the subject of whether any
22 money changed hands with HH:

23 Q. Were they [the three Mercedes] all sold at the same time?

24 Mr. Foust: It appears to be so, yes.

25 Q. Were you involved in the sale?

26 Mr. Foust: No.

27 Q. Do you know the sales price?

28 Mr. Foust: No.

Q. Was money paid for these cars?

Mr. Foust: I have no idea.

Q. Would your daughters know?

Mr. Foust: Harry Hildibrand would know.

Q. And your daughters and your wife continue to own and use these cars?

1 Mr. Foust: I have no idea.

2 82. With respect to the remaining 16 cars HH claims to own, Mr. Foust allowed at the
3 hearing that he had no recollection of the price received from these alleged sales. At his
4 deposition he was flippant about this subject, claiming "I might have got a dollar, I might have got
5 a million dollars. I don't know." Mr. Detwiler, the supposed manager, never testified on this
6 subject at the trial or during his depositions. On the most basic question—purchase price—the
7 ^{Mr. Foust} defense could not produce the most elementary evidence—an amount—let alone proof that money
8 actually changed hands. This whole alleged relationship between Mr. Foust and HH appears to
9 the Court to be a scam for frustrating creditors' claims. Mr. Foust and HH have acted willfully
10 and maliciously with the intent to harm the Bank. The evidence is clear and convincing
to this Court that

11 **Conclusions of Law and Final Judgment**

12 The Court concludes the following:

13 1. The Court has jurisdiction over the parties and venue is proper in this Court.
14 2. The Court enters judgment in favor of the Bank and against HH and Mr. Foust,
15 including ~~all persons or entities claiming an ownership interest in HH~~, all entities owned or
16 controlled by Mr. Foust, including HH and StarDust Classic, on all claims.

17 3. Mr. Foust, HH, and StarDust Classic are and have been agents of one another with
18 respect to any past action involving the cars at issue in these proceedings (Exhibits A and B) and
19 have been agents of one another regarding notice of these proceedings.

20 ***Conclusions Related to the Motorcoach***

21 4. Privity in the res judicata context exists between business entities and their owners.
22 *Mendenhall v. Tassinari*, 132 Nev., Adv. Op. ___, 403 P.3d 364, 369 (2017) (acknowledging that
23 "contemporary courts have broadly construed the concept of privity, far beyond its literal and
24 historic meaning, to include any situation in which the relationship between the parties is
25 sufficiently close to supply preclusion," and adopting the Ninth Circuit's concept of privity, which
26 "encompass a relationship in which there is substantial identity between parties, that is, when there
27 is sufficient commonality of interest" (internal quotation marks omitted)); *In re Gottheiner*, 703
28 F.2d 1136, 1139–40 (9th Cir. 1983) (holding that there is sufficient commonality of interest

1 between a corporation and a person who owns or controls the corporation to establish privity);
2 18A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE: JURISDICTION, § 4460
3 (2d ed. 2018) (“Many of the decisions that extend preclusion through corporate relationships
4 involve controlling owners.”).

5 5. The Bank offered clear and convincing evidence that Mr. Foust owned HH, both
6 directly (as set forth in the Prior Judgment related to the Motorcoach and issued on March 8,
7 2018) and indirectly (*i.e.*, though proof that Mr. Foust owns and/or is an officer of StarDust
8 Classic, the alleged owner of HH according to the bankruptcy filings).

9 6. Under the circumstances apparent in the record, this Court concludes that there is
10 privity for res judicata purposes between Mr. Foust and HH because there is substantial identity
11 between these defendant parties and a commonality of interest, namely attempting to hide cars that
12 Mr. Foust told the Bank he owned when he obtained the loan now that the Bank has a judgment,
13 including the Motorcoach.

14 7. This Court’s Prior Judgment related to the Motorcoach and issued on March 8,
15 2018 applies to and is binding upon HH in every respect.

16 8. HH does not have title to the Motorcoach, and the Court denies HH’s NRS 31.070
17 application and request and resolves the claim in favor of the Bank and against HH.

18 9. The Laughlin Constable, Mr. Jordan Ross, or any other authorized law enforcement
19 officer or person, is hereby empowered and ordered to release or restore possession of the
20 Motorcoach to the Bank, consistent with this order.

21 ***Conclusions of Law Related to Other Cars***

22 10. Nevada law empowers district court judges to order judgment creditors to surrender
23 possession of property to satisfy judgments:

24
25 **NRS 21.320 Judge may order property applied toward satisfaction of**
26 **judgment.** The judge or master may order any property of the judgment debtor
not exempt from execution, in the hands of such debtor *or any other person*, or
due to the judgment debtor, to be applied toward the satisfaction of the judgment.

27 (Emphasis supplied.) This law is known as a turnover statute. The turnover statute is a procedural
28 device to assist judgment creditors in post-judgment collection. *E.g. Davis v. West*, 317 S.W.3d

301, 309 (Tex. App. 2009). A turnover order is a type of post-judgment enforcement order. In Nevada, this remedy is listed under the heading “Proceedings Supplementary to Execution” in NRS Chapter 21, Nevada’s judgment enforcement statute. 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).

11. A judgment debtor bears the burden of proving it no longer owns assets it previously claimed. “Once a creditor presents evidence that the debtor owns property, a presumption arises that the assets are in the debtor’s possession, and the burden shifts to the debtor to account for the assets.” 33 C.J.S. EXECUTIONS § 589 (2018).

12. Where a party bears the burden of production, that party’s failure to satisfy the burden necessitates a finding against the party. *See, e.g., Ferguson v. LVMPD*, 131 Nev., Adv. Op. 94, 364 P.3d 592, 595 (2015) (“When the party moving for summary judgment fails to bear his burden of production, the opposing party has no duty to respond on the merits and summary judgment may not be entered against him.” (internal quotation marks omitted)); *Morgan v. State*, 134 Nev., Adv. Op. 27, 416 P.3d 212, 224-26 (2018) (affirming the district court’s overruling of defendant’s *Batson* challenge where defendant failed to bear his burden in demonstrating that the State engaged in discriminatory peremptory challenge); *Goodwin v. Jones*, 132 Nev., Adv. Op. 12, 368 P.3d 763, 769 (Nev. Ct. App. 2016) (affirming the denial of unemployment compensation to claimant, who failed to demonstrate, after the burden of production shifted to her, that her conduct was not misconduct in that it was reasonable and justified under the circumstances); *Tom v. Innovative Home Sys., LLC*, 132 Nev., Adv. Op. 15, 368 P.3d 1219 (Nev. Ct. App. 2016) (reversing the district court’s grant of summary judgment in favor of movant where movant “failed to meet its initial burden of production to show the absence of a genuine issue of material fact”).

13. Mr. Foust failed to carry his burden because he offered no evidence of actual sales or transfers of any cars, whether the 59 cars originally identified for the bank (Exhibit A) or the 20 cars HH now claims to own in the bankruptcy (Exhibit B).

14. Mr. Foust also failed to carry his burden because he offered only a few lines of superficial testimony that he sold his cars to HH, though he failed to say which cars, what the

1 purchase price was, or when the transaction occurred. Mr. Foust literally introduced no
2 documentary evidence himself, and what little testimony he offered related primarily to the
3 Motorcoach. (11/5/18 Hr'g Trans., p. 71 *et seq.*)

4 15. Similarly, the documentary evidence HH adduced related solely the Motorcoach

5 16. On the other hand, the Bank gave clear, convincing, and compelling evidence of
6 Mr. Foust's ownership and control of the cars in question: his repeated, written statements
7 concerning his car collection and expenses related thereto given to the Bank over a period of years
8 and bills of sale that Mr. Foust signed transferring some of the cars to HH without consideration
9 right after Mr. Foust purchased the cars.

10 17. The Bank has offered ^{substantial and credible} a treasure trove of evidence showing that Mr. Foust still
11 owns, possesses, and controls the cars in question, including especially the four cars he openly
12 admits he and his family use (the three Mercedes and the 2000 GMC Yukon) and the 20 cars that
13 HH claims to own in the bankruptcy.

14 18. Mr. Foust is the owner of all cars over which HH claims an interest, including those
15 cars identified in the bankruptcy (Exhibit B).

16 19. Mr. Foust is the owner of all cars over which StarDust Classic claims an interest,
17 including those cars identified in the bankruptcy (Exhibit B).

18 20. Mr. Foust is the owner of all of the cars that HH contends or has contended that it
19 obtained from Mr. Foust and transferred to some third parties.

20 21. Mr. Foust is the owner of all cars, believed to number 59 (Exhibit A), which he
21 owned or claimed to own at the time he became indebted to Bank, and/or which he contends or
22 has contended were transferred by him to some third parties or party.

23 22. Mr. Foust is the owner, member, and/or officer of StarDust Classic.

24 23. Pursuant to NRS 112.180(1)(a), even if any sale or transfer of the cars listed in
25 Exhibits B from Mr. Foust to HH or StarDust Classic did occur, it was made with the actual intent
26 to hinder, delay, and defraud the Bank. The record indicates that many, if not all, of the so-called
27 "badges" that demonstrate actual fraud occurred here. The alleged sale of cars by Mr. Foust to
28 HH is a scam and a fraudulent transfer.

24. Any alleged sale or transfer of the ^{cars}20 that HH still claims to own (Exhibit B) is
void ab initio and is of no effect whatsoever so that the Bank may satisfy its claim and enforce its
Judgment by levying execution against such cars. See NRS 112.210(1)(a).

25. Any alleged sale or transfer of the 59 cars that Mr. Foust claimed to own when
obtained the loan from the Bank (Exhibit A) is void ab initio and is of no effect whatsoever so that
the Bank may satisfy its claim and enforce its Judgment by levying execution against such cars.
See NRS 112.210(1)(a).

26. Any alleged sale or transfers of any cars to StarDust Classic, including those listed
in Exhibits A and B is void ab initio and is of no effect whatsoever so that the Bank may satisfy its
claim and enforce its Judgment by levying execution against such cars. See NRS 112.210(1)(a).

27. A certified copy of this order shall constitute conclusive proof, to any person,
entity, or governmental agency or other authority, including regulators charged with registering
vehicles, that HH has been fully and completely divested of any and all title to any vehicles or
automobiles in which it claims an interest, including those identified in Exhibit B, and that such
title and interest resides in Mr. Foust, subject to the rights of the Bank set forth herein.

28. Any attachment or garnishment of any cars identified in Exhibits A and B is
confirmed as valid, lawful, and regular in every respect. See NRS 112.210(1)(b).

29. 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,
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.

~~30. It is further ordered that, in the event it develops that the cars identified in Exhibits
A and B are damaged in any way while in defendants' possession or in transit, Mr. Foust and HH
shall be liable for any repairs that are required to be made to restore the property to its condition
when possession was first taken by Mr. Foust or HH.~~

31. Mr. Foust and HH are and shall be permanently enjoined from any further attempt
to dispose, sell, transfer, hypothecate, or pledge any cars identified in Exhibits A and B, or any

*in a manner that protects the
cars from any damage*


1 assets traceable to the sale of such cars, or from interfering with the Bank's right to repossess,
2 keep, and sell said cars. See NRS 112.210(1)(c)(1).

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

5 Dated this 19 day of December, 2018.

6
7
8 

9 DISTRICT COURT JUDGE

10
11
12 33. LIMITATION. Notwithstanding the foregoing, TM Nothing
13 contained herein shall have the effect of precluding
14 any person or entity not referenced herein from
15 exercising any rights, if any, that may exist under
16 NRS 31.070 in a new proceeding.
17 

18
19
20
21
22 Respectfully submitted by:

23 LEWIS ROCA ROTHGERBER CHRISTIE LLP

24
25 By: 

26 John E. Bragonje
27 State Bar No. 9519
28 3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Attorneys for Judgment Creditor Baker Boyer National Bank

Exhibit A

Exhibit A

FOUST Classic Cars

Autos.xlsx

Foust Classic Cars

YEAR	MAKE	DESCRIPTION	Buy	COST	Est. Value	VIN	STATE	From
1955	CADILLAC	V-12 COUPE	1996	\$44,000.00	\$100,000.00	4100743	CAL	THOMAS CADILLAC
1989	CHAPARRAL	TRAILER	2000	\$25,000.00	\$25,000.00	1S9SC4532K1090654	ND	Shirley Muldowney
1956	CHEV	CORVETTE	1982	\$10,000.00	\$50,000.00	VE56S003290	NO, DAK	ROBERT HILTON
1957	CHEV	BEL AIR CONV. (FI)	1989	\$50,000.00	\$100,000.00	VC570141640	KENTUCKY	O.B. SMITH
1957	CHEV	CORVETTE	1988	\$45,000.00	\$50,000.00	E57S103094	KENTUCKY	SOUTHLAND INVEST.
1966	CHEV	TURBO CORVAIR	1990	\$5,000.00	\$5,000.00	107376L110678	CAL	R & S
2007	CHEV	Corvette Z06	2007	\$80,000.00	\$50,000.00	1G1YY26E375121069	Montana	Chevrolet
1957	CHRYSLER	300 C CONV.	1988	\$27,000.00	\$150,000.00	3N571810	Montana	Joe Bortz
2002	Crysler	PT Cruiser	2001	\$35,000.00	\$5,000.00	3C 8FY68B52T216202	NV	Crysler
2005	Crysler	PT Cruiser	2005	\$20,000.00	\$5,000.00	3C3AY75S05T701409	Montana	Crysler
2009	Crysler	PT Cruiser	2009	\$13,000.00	\$5,000.00	3A8FY68B99T510047	Montana	Crysler
1965	DODGE	SAVOY Acid dip car	1989	\$33,000.00	\$100,000.00	W0512245600	ILL.	JAMES JACKSON
1990	FERRARI	TESTAROSSA	1995	\$104,000.00	\$75,000.00	ZFFSG17AGL0083464	ND	Jerry Buss
1937	FORD	Coupe	2006	\$75,000.00	\$75,000.00	3541190	Montana	R & S
1940	FORD	Coupe	2007	\$40,000.00	\$40,000.00	AZ152801	Montana	Spencer Shakstad
1955	FORD	T-BIRD (96 MILES)	1988	\$45,000.00	\$45,000.00	P5FH166138	CAL	PS Auction
1955	FORD	T-BIRD (CHEV)	1976	\$15,000.00	\$15,000.00	P5FH240647	CAL	DEDE
1957	FORD	T-BIRD (MATTOX)	1990	\$5,000.00	\$5,000.00	D7FH251424 *	CAL	BOB MATTAX
1957	FORD	FAIRLANE 500	1990	\$7,500.00	\$25,000.00	D7LV162233	Montana	DALE VALURE
1963	FORD	427 GALAXY (R-CAR)	1990	\$23,000.00	\$100,000.00	3W66R131679	KANSAS	RICHARD PETTY
1964	FORD	THUNDERBIRD- BLACK	1992	\$17,000.00	\$17,000.00	4Y85Z127518	GEORGIA	WILLIARD CARROLL
1966	FORD	THUNDERBIRD - RED	1990	\$19,000.00	\$19,000.00	6Y85Z104010	S. CAROLINA	TRANSOUTH
1967	FORD	MUSTANG Convertible	1990	\$5,500.00	\$40,000.00	7T03T118534 *	Montana	Barret Jackson
1968	FORD	COBRA JET MUSTANG	1990	\$20,000.00	\$50,000.00	8R02R1688059	MONTANA	ROBERT KWAPY
1970	FORD	BOSS 429 - Drew Alcazar	1990	\$90,000.00	\$200,000.00	0F02Z137925/KK2459	WISCONSIN	LIEN, MARK
1971	FORD	PANTERIA	1988	\$15,000.00	\$15,000.00	THPNLY01620	Montana	ORAN BERTCH
1973	FORD	PANTERIA - \$300,000 Rest.	2003	\$63,000.00	\$100,000.00	THPNU05291	Montana	IRS Auction
1988	FORD	#11 Budweiser NASCAR	2000	\$40,000.00	\$40,000.00	MRE #unknown	None	Bill Elliot
1991	FORD	#9 COORS LITE NASCAR	2000	\$54,060.00	\$54,060.00	MRE #21	BILL OF SALE	RON HUBER
2008	Harley-Davidson	Motor Cycle	2008	\$21,470.00	\$21,470.00	1HD 1KB 4398 Y 652 304	Cal	Golden Gate
2009	Harley-Davidson	Motor Cycle	2010	Trade 2008 H/D	Trade 2008 H/D	1HD1HPH349K810543	Montana	Golden Gate
1987	HONDA	SCOOTER	2000	\$800.00	\$100.00	JH2HF0316HS202130	CAL	Honda
1992	HONDA	SCOOTER	2000	\$800.00	\$100.00	3H1HF031OND700204	CAL	Honda
1991	INTERNATIONAL	4000 SERIES	2000	\$50,000.00	\$25,000.00	1HTSDNHL4MH321753	ND	Shirley Muldowney
1951	JAGUAR	XK 120 RACE CAR	2000	\$45,050.00	\$45,050.00	S671966	Montana	Dana Mecham auctions
1964	JAGUAR	XKE	1999	\$39,000.00	\$39,000.00	881364	CAL	WILLIAM LAZARIS
1985	KAWASAKA	NINJA 900	1985	\$1,500.00	\$1,500.00	JKAZX2A13FB505429/ZX90C	Montana	KAWASAKA
1967	LAMBORGHINI	MUIRA (3571)	1975	\$13,000.00	\$250,000.00	3571	CAL	Private Party ??

PA00217

FOUST Classic Cars

1988	LAMBORGHINI	COUNTACH	1995	\$64,500.00	\$64,500.00	2A9CA05A8JLA12269	Montana	Al Bertoni
1998	MARATHON	COACH	2003	\$420,000.00	\$200,000.00	2PCM3349XV1026183	DEALER	MARATHON
1956	Mercedes	300 SL - Scott Resto.	1978	\$50,000.00	\$750,000.00	198 980 650086	CAL	Stock Broker
1968	Mercedes	280 SL	2006	\$60,850.00	\$60,850.00	11304412000874	Virginia	R & S
1977	Mercedes	380 4 DR SEDAN	1977	\$35,000.00	\$35,000.00	10704412035568	ND	Mercedes
1987	Mercedes	450SL	2007	\$37,000.00	\$37,000.00	WD8BA48D5HA059358	Montana	Mercedes
2006	Mercedes	S500	2008	\$43,000.00	\$25,000.00	WD8NG75J76A482303	Montana	Mercedes
2007	Mercedes	M50 SUV	2007	\$65,000.00	\$25,000.00	4JGB875E07A222537	Montana	Mercedes
1957	OLDSMOBILE	98 ROCKET	1990	\$30,000.00	\$30,000.00	579M27665	Montana	DUFFY SHAMBURGER
1957	PACKARD	CLIPPER	1982	\$8,000.00	\$8,000.00	57L1582	N.D.	Bowman Chev
1962	PLYMOUTH	Savoy w/413 - Ramchargers	1989	\$46,000.00	\$75,000.00	512 216 59 86	MICH.	TOM POLIDAN
1964	PLYMOUTH	HEMI (ALUMINUM BODY)	1990	\$25,000.00	\$50,000.00	RACE CAR - No Title	PLYMOUTH	Jim (Car Covers)
1966	PLYMOUTH	HEMI BELVADIRE	1989	\$45,000.00	\$45,000.00	RP23H67303290	Montana	JOHN KEROLA
2000	PLYMOUTH	PROWLER	2000	\$51,000.00	\$30,000.00	1P3EW65G1YV603597	Montana	Harry Hildibrand
1969	PONTIAC	JUDGE	1988	\$9,000.00	\$40,000.00	Get From Bob Wokel	ND	Bob Wokel
1958	PORSCHE	CABROLET	1990	\$20,000.00	\$20,000.00	NR150801	CAL	R & S
1983	PORSCHE	CARREA	1988	\$35,000.00	\$35,000.00	WP0EA0915DS170119	CAL	Santa Monica dealer
1980	ROLLS ROYCE	SILVER CLOUD II	1990	\$22,500.00	\$22,500.00	SRL41595C	CAL	DUDLEY HAINES
1965	SHELBY	427 Cobra - Org. Comp Car	2000	\$550,000.00	\$1,500,000.00	CSX3012	Not Titled	Original MSO
1968	SHELBY	GT500	1991	\$21,500.00	\$75,000.00	8T02S14955001843	CAL	JIM SHIPLEY
1966	SHELBY	427 COBRA - Ford Cammer	1991	\$50,000.00	\$50,000.00	SP25692LA	CAL	kentucky Lawyer
				\$2,885,030	\$5,120,130			

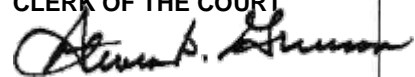
Exhibit B

Exhibit B

HARRY HILDI BRAND

Titles as on BBB			7/26/2018 0:15		
YEAR	MAKE	Model	Value	VIN	
2007	CHEV	Corvette Z06	\$ 35,000	1G1YY26E375121069	
2007	Mercedes	M50 SUV	\$ 11,000	4JGBB75E07A222537	
1940	FORD	Coupe	\$ 35,000	AZ152801	
1957	CHEV	BEL AIR CONV. (FI)	\$ 25,000	VC570141640	
1957	CHRYSLER	300 C CONV.	\$ 35,000	3N571810	
1955	FORD	T-BIRD (CHEV)	\$ 5,000	P5FH240647	
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	THPNNU05291	
1951	JAGUAR	XK 120 RACE CAR	\$ 20,000	S671966	
1957	OLDSMOBILE	98 ROCKET	\$ 18,000	579M27665	
1966	PLYMOUTH	BELVADIRE	\$ 15,000	RACE CAR BODY & SHELL - N	
2000	PLYMOUTH	PROWLER	\$ 21,000	1P3EW65G1YV603597	
2007	Mercedes	CLK 550	\$ 12,000	WDBTK72F27T081009	
2000	GMC	Yukon	\$ 8,000	1GKEK13T9YJ1740142	
2007	Mecedes	S550	\$ 25,000	WDDNG71X57A075860	
1963	CHEV	425/409 S/S	\$ 25,000	31847L144085	
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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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,

Case No.: A-17-760779-F

Dept. No.: II

Plaintiff/Judgment Creditor,

vs.

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

Defendant/Judgment Debtor.

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

I.

INTRODUCTION

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

When applying for the loan, Mr. Foust represented in writing on multiple occasions that he owned a very expensive collection of classic and exotic cars. December 20, 2017, the Bank filed a motion for an order requiring Mr. Foust to turn over the collection to partially satisfy the 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)ss:
12 COUNTY OF CLARK)

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

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

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

DATED this 13th day of February, 2019.


JOHN E. BRAGONJE

On this 13th day of February, 2019, 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 in and who 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.


NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE



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

III.

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

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

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

District courts maintain contempt power to address "[d]isobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers." NRS 22.010(3); *see also* NRS 1.210(2) (providing that the district court has the power to "enforce order in the proceedings before it"); *see also 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).

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
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Cody S. Mounteer
Tom W. 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

DATED this 21st day of February, 2019.

/s/ Luz Horvath
An employee of Lewis Roca Rothgerber Christie LLP

Exhibit 1

Exhibit 1

Lewis Roca Rothgerber Christie LLP
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John Bragonje
Admitted in Nevada
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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

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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](#)
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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.

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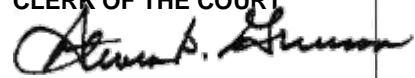
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*Attorneys for Plaintiff/Judgment Creditor
Baker Boyer National Bank*

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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15
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DISTRICT COURT JUDGE

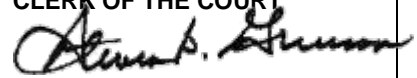
17 TM

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19
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



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

BAKER BOYER NATIONAL BANK,)

Plaintiff,)

vs.)

JAMES PATTERSON FOUST, JR.,)

Defendant.)

CASE NO. A-17-760779

DEPT. NO. II

Transcript of Proceedings

BEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE

SHOW CAUSE HEARING

MONDAY, APRIL 1, 2019

APPEARANCES:

For the Plaintiff: JOHN E. BRAGONJE, ESQ.

For the Defendant: MICHAEL MAZUR, ESQ.

RECORDED BY: SANDRA TRUCHNIC, DISTRICT COURT

TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript
produced by transcription service.

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MONDAY, APRIL 1, 2019 AT 9:07 A.M.

THE COURT: Most of you are here. Right?

MR. BRAGONJE: Good morning, Your Honor. John
Bragonje --

THE COURT: Well --

MR. BRAGONJE: Sorry.

THE COURT: I'm sorry. There's still people
sitting the back. I thought I only had two matters on
today. What matter are you here for?

[Colloquy on a separate matter]

[Case trailed at 9:08 a.m.]

[Hearing recalled at 9:10 a.m.]

THE COURT: All right. So, let's go back to where
we started, *Baker Boyer versus James Foust*, A760779. Now
we can do it.

MR. BRAGONJE: Good morning, Your Honor. John
Bragonje with the Lewis Roca law firm on behalf of the
plaintiff and judgment creditor, Baker Boyer Bank.

THE COURT: All right.

MR. MAZUR: Good morning, Your Honor. Michael
Mazur --

THE COURT: Yeah.

MR. MAZUR: -- on behalf of the defendant, James
Foust. And, Your Honor, we did file a motion this morning.

1 I don't think it's hit your calendar yet. It was about
2 2:30 this morning. We did e-mail a copy over to --

3 THE COURT: Okay. What's your motion?

4 MR. MAZUR: It was a Motion to Discharge the
5 Attachment Pursuant 31.200. The attachment order, I know
6 that the case is pretty convoluted. We were just retained
7 this last week. And it goes way back. It was pretty
8 substantial in the files, about 2,000 pages to review.

9 THE COURT: Yeah.

10 MR. MAZUR: But we did get --

11 THE COURT: I didn't think it was convoluted; it
12 just had a lot of parts. Right?

13 MR. MAZUR: Repetitive. Yeah.

14 THE COURT: I'm pretty up to speed on everything
15 we did and I think we did it in a very organized manner.

16 MR. MAZUR: Yeah. Well, I looked at it going
17 backwards and, then, all the way through.

18 THE COURT: Yeah. How long have you -- are you
19 coming in new on the case?

20 MR. MAZUR: I just came in today. I just filed my
21 first document and appearance today in the matter.

22 THE COURT: Okay.

23 MR. MAZUR: I know that counsel, Cody [phonetic],
24 just recently withdrew about three weeks ago from the
25 matter.

1 THE COURT: Okay.

2 MR. MAZUR: And I was just retained in this.

3 THE COURT: All right. Very good. So, Mr.
4 Bragonje, why are we here today?

5 MR. BRAGONJE: So, we're here today, Your Honor,
6 on a Order to Show Cause. And, as Your Honor is aware,
7 we've been working this case for over a year. We've had
8 two evidentiary hearings with trials. The issues concern,
9 you know, whether or not certain assets belonged to Mr.
10 Foust and therefore could be seized to satisfy a Judgment
11 that's over \$1 million. We had those hearings. The Court
12 has made its ruling. In every respect, the Court has ruled
13 on behalf of the Bank.

14 The problem is that despite this Court's most
15 recent order, which directed Mr. Foust to turn over four of
16 the vehicles that he and his family members use and 20 of
17 the vehicles that pertain to the classic car collection,
18 you know, that hasn't happened.

19 THE COURT: Okay.

20 MR. BRAGONJE: And, I think, instead what we're
21 seeing is an attempt to reargue the merits and that kind of
22 thing. And, so, I'm afraid that unless this Court uses
23 what is admittedly an extreme remedy, incarcerating a
24 person to enforce this Court's orders, it will be as if we
25 never had those hearings and those Judgments were never

1 issued.

2 This Court's most recent order was issued on
3 penalty of contempt. Those words were in the order. The
4 debtor and the alleged transferee, Harry Hildibrand, were
5 ordered to make these vehicles available to the Bank to
6 satisfy the Judgment. I wrote them and I asked them:
7 Please turn them over. My request was ignored, so I filed
8 this Motion. We served the Order to Show Cause and we're
9 here today.

10 So, does the Court have any questions about this -
11 -

12 THE COURT: No. I just wanted you to put on the
13 record --

14 MR. BRAGONJE: Yeah.

15 THE COURT: -- your position of the new appearance
16 of Mr. Mazur and if you know anything about this Motion to
17 Discharge Attachment and whether that would affect the
18 proceedings today. I didn't want to yet get into the
19 substance of the contempt hearing.

20 MR. BRAGONJE: I don't think the motion -- I
21 haven't seen the motion.

22 THE COURT: Okay.

23 MR. BRAGONJE: I mean, it's probably been sent to
24 me. But I haven't seen it. I don't think it could affect
25 the hearings today because we are post-judgment.

1 THE COURT: Right. Mr. Mazur, what was your
2 intent for today? This was properly noticed and Mr. Foust
3 didn't provide any affidavits in Opposition. And I had
4 time to, you know, proceed with an evidentiary hearing
5 today, this morning, before my jury trial starts.

6 MR. MAZUR: Right. I understand. And, Your
7 Honor, --

8 THE COURT: And, by the way, one other thing, I --
9 whatever motion you filed -- I mean, I've already issued an
10 order. It looks like he hasn't complied with the order.
11 So, the proper remedy wouldn't be to just completely
12 disregard the order and disrespect the Court and just file
13 a new motion, whatever this motion is, which is -- would be
14 a collateral attack on the order. The motion that would
15 have been proper is a Motion for Reconsideration, or for a
16 new trial, or a stay pending appeal. Right?

17 MR. MAZUR: Incorrect, Your Honor.

18 THE COURT: So, what's going on here?

19 MR. MAZUR: Well, this motion is separate and
20 distinct, although it does overlap a little bit what what's
21 going on today. And, in the order for the OST, it does
22 state that we could file affidavits or appear and provide
23 testimony and that's why we're here, to provide testimony.

24 THE COURT: Okay. Then --

25 MR. MAZUR: Just didn't want to show up. But,

1 also, on the -- in the motion itself, it is some of the
2 grounds that do overlap, such as the Notice of Execution,
3 which --

4 THE COURT: I don't see --

5 MR. MAZUR: I don't believe a Notice of Execution
6 --

7 THE COURT: All right.

8 MR. MAZUR: -- was ever filed in this matter. We
9 have the attachment order, --

10 THE COURT: Right.

11 MR. MAZUR: -- which is phrased as it's an
12 attachment. It's called a writ of possession, which it's
13 not.

14 THE COURT: Okay.

15 MR. MAZUR: It's called, I believe, a replevin.
16 It's made --

17 THE COURT: Well, let's hold off for a second.

18 MR. MAZUR: Right.

19 THE COURT: So, I guess it's your position that
20 your client has not violated the order.

21 MR. MAZUR: Correct. Because, without the Notice
22 of Execution, it doesn't allow us to file a claim of
23 exemption. And I know we had claims of third parties that
24 were discussed prior that were dismissed. But not for
25 claims of exemption for the actual debtor themselves, which

1 they have a statutory right to file that claim with
2 exemption.

3 THE COURT: All right. So, it looks like we're
4 able to proceed, then, with an evidentiary hearing, Mr.
5 Bragonje. Are you prepared to do that today? We would put
6 Mr. Foust on the stand and examine him. And, then, I'll
7 decide if we need a further hearing where I could announce
8 my decision.

9 MR. BRAGONJE: Right. I think that's fine. I
10 don't know that I necessarily anticipated an evidentiary
11 hearing. I guess I was anticipating an Opposition. I
12 think that's fine. I guess I would say --

13 THE COURT: Usually I get one.

14 MR. BRAGONJE: Yeah. I guess I would say this is
15 an Order to Show Cause so they really bear the burden here.

16 THE COURT: No. I know. And that's why they
17 would go first.

18 MR. BRAGONJE: Yeah. Yeah.

19 THE COURT: Well -- but since they're coming in
20 with not having filed any affidavit and coming in with new
21 counsel, if you wanted to continue this, I would give you
22 that right, especially in light of -- I mean, we have new
23 counsel, we have a new motion, and we have no affidavit
24 being filed by Mr. Foust. So, Mr. Bragonje, if you want to
25 continue this, I would be willing to do that.

1 MR. BRAGONJE: I --

2 THE COURT: I think that would be the only thing
3 that would be fair.

4 MR. BRAGONJE: I appreciate Your Honor's offer. I
5 don't think it's necessary. I mean, this --

6 THE COURT: All right. Well, let's go ahead and
7 put Mr. Foust on the stand, then. Well, Mr. Mazur, it's
8 your time to show cause why the Court should not hold Mr.
9 Foust in contempt.

10 MR. MAZUR: And -- correct, Your Honor. And I
11 believe there's only one item in the order as far as the
12 surrender of the vehicles. There's nothing else that would
13 be available for contempt. Everything else is just that
14 the title would be put into Mr. Foust's name. But there
15 was no other affirmative act that he was required to do
16 except for surrender.

17 THE COURT: Well, he was required to surrender the
18 vehicles that were subject of the order.

19 MR. MAZUR: Right. And he doesn't -- you know --

20 THE COURT: So, let's --

21 MR. MAZUR: And we'll have him up for testimony,
22 Your Honor.

23 THE COURT: Let's go ahead and hear from him, not
24 you.

25 MR. MAZUR: Very good.