

IN THE SUPREME COURT OF THE STATE OF NEVADA

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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 III; Pages PA00501-PA00750)

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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:

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***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 THE COURT: Mr. Vega?

2 THE WITNESS: Yeah.

3 THE COURT: All right. He's in a nursing home. Is he -- does

4 he have his mental faculties? Is he competent to make decisions --

5 THE WITNESS: I believe he's --

6 THE COURT: -- and know what property he has and where

7 his property is?

8 THE WITNESS: Yeah. I believe he's competent. He is -- his

9 physical -- he has to be hand-carried to a truck and he had to be

10 hand-carried --

11 THE COURT: Okay.

12 THE WITNESS: -- to the notary. His physical -- he's

13 deteriorating rapidly.

14 THE COURT: Okay.

15 THE WITNESS: I don't know mentally if he -- he seems

16 cognitive, you know, he's very cognitive.

17 THE COURT: When was the last time you had occasion to

18 talk to him, to assess his competence?

19 THE WITNESS: On the phone February, I want to say.

20 THE COURT: Okay.

21 THE WITNESS: It just -- understood what was going on,

22 understood that he had to sign, you know, the -- with the notary, you

23 know, and just -- he's a nice guy. So.

24 THE COURT: Okay.

25 THE WITNESS: You know.

1 THE COURT: Appreciate that.
2 Anything -- any follow-up by the attorneys, either side?
3 MR. BRAGONJE: Yes. Please. Thank you.
4 THE COURT: All right.

5 **ADDITIONAL EXAMINATION**

6 BY MR. BRAGONJE:

7 Q What's the name of the agent you've been talking about, the
8 repossession agent?

9 A Oh, I don't know who he used as a repossession agent.
10 Agent was -- general repossession agent, kind of people that do that for
11 a living.

12 Q And -- well, who contacted the agent, then?

13 A Well, I imagine Mr. Vega may have contacted them.

14 Q Could it have been Mr. Foust?

15 A I don't think it would have been Mr. Foust.

16 Q It's possible, though?

17 MR. MAZUR: Objection. Speculation, Your Honor.

18 THE COURT: Well, do you have any --

19 THE WITNESS: I have no knowledge that --

20 THE COURT: Yeah, that's speculative.

21 THE WITNESS: -- Mr. Foust contacted an agent to have
22 these --

23 BY MR. BRAGONJE:

24 Q You have no idea who contacted the agent?

25 A I have no idea. I -- the normal -- in the normal course of

1 events, if I had interest in a -- security interest in a car, I would go to
2 somebody and say, Here's my security interest. I'd go through the
3 process of doing that and I repossess it. I have the car taken. And I'd
4 have it moved as little distance as possible while I determine what I
5 wanted to do with it, whether I wanted to ship it or sell it or take it.

6 If it was a car of, you know, normal car, normal DBS value, I'd
7 take it to a public auction. I'd register it and get whatever I could back
8 out of it.

9 Q And you say you haven't spoken with Mr. Vega since February
10 of this year; is that right?

11 A That would be right.

12 Q So when you -- so you've only been meeting with Mr. Foust to
13 make the decisions related to this matter; isn't that correct?

14 A No, the decisions were made. The decisions were clearly
15 made that when I first showed up here, that all I was going to do is say I
16 have the power of attorney, Mr. Vega has the cars, he has the titles, and
17 this is for the information of both parties. So we're first in line.

18 Q Do you ever speak with Mr. Detwiler?

19 A Yeah, I just saw him in the hallway.

20 Q Before that, have you spoken with him?

21 A Yeah. I've known Mr. Detwiler for a number of years and
22 originally, to the best of my knowledge, Eddie was brought into Harry
23 Hildibrand to facilitate real estate trades. And I actually was looking at
24 investing in the REO lists going back to 2006, '07, and '08 on foreclosed
25 properties. It was a robust business.

1 Q Before talking with Mr. Detwiler in the hall today, when is the
2 last time you spoke with him?

3 A He asked me about three weeks ago to help facilitate some
4 investment for his holdings out of the country in the Honduras. He's
5 looking for some millions of dollars.

6 Q So Mr. Detwiler's your business associate as well?

7 A I get a -- I don't do -- I have not done any business with Eddie
8 Detwiler. I've known Eddie Detwiler as a successful broker here in Las
9 Vegas. In my business I get enormous amount of referrals and inquiries
10 from people that are seeking funds to start up a business to turn around
11 a business to inject capital into it. It's primary to how I make my living.

12 Q How many deals or transactions have you done with
13 Mr. Detwiler?

14 A None successfully to my mind.

15 Q None successfully?

16 A Yes.

17 Q So you -- how many inquiries has he made with you?

18 A Over the years, I've watched him develop three or four
19 different portfolios of opportunities, but was never able to sew together
20 the proper investment group.

21 Q And have you ever spoken with Harry Hildibrand Jr., the
22 person?

23 A No, I have not spoken with Harry Hildibrand Jr.

24 Q Have you ever spoken to anyone with the last name
25 Hildibrand?

1 A Many years ago Harry Hildibrand Sr.

2 Q And what was the nature of your communications with Harry
3 Hildibrand Sr.?

4 A I would -- I might have been buying a car. I recall buying from
5 Harry Hildibrand a 2007 C70 Volvo for my daughter. And, you know, it
6 was in their inventory, it happened to be in Las Vegas, and so I bought
7 that car.

8 Q Is Mr. Detwiler currently --

9 MR. MAZUR: Your Honor, object. This goes beyond direct
10 and redirect and --

11 MR. BRAGONJE: This is showing the inside nature of all of
12 this.

13 THE COURT: Yeah, I think this is going beyond the scope of
14 the extra questions that I had.

15 MR. BRAGONJE: Okay.

16 THE COURT: So why don't you ask one last question.

17 MR. MAZUR: Thank you, Your Honor.

18 BY MR. BRAGONJE:

19 Q It's possible you'll do business with Mr. Detwiler in the future in
20 connection with this Honduras venture, isn't it?

21 A Not really.

22 MR. MAZUR: Objection. Speculation.

23 THE WITNESS: It's not possible.

24 THE COURT: Well, it's not speculative to find out what his
25 intent is. All right.

1 So go ahead.

2 THE WITNESS: I've looked at the deal several times. It's a
3 very, very difficult package for me to put together.

4 MR. BRAGONJE: Thank you.

5 THE COURT: All right.

6 THE WITNESS: Yeah.

7 THE COURT: Mr. Mazur, you get re-redirect based upon my
8 question.

9 MR. MAZUR: Your Honor, I don't have any further questions
10 of Mr. Larkin.

11 THE COURT: All right. Then Mr. Larkin, you may step down.
12 Thank you very much for your time. Make sure you gather all your
13 belongings up there.

14 THE WITNESS: Yes, sir. Thank you.

15 THE COURT: And have safe travels back to California.

16 THE WITNESS: I appreciate it. Thank you.

17 THE COURT: All right.

18 THE WITNESS: I'm getting as far as the Venetian for the
19 agent summit. The car business, I'm going to be at.

20 THE COURT: Any further witnesses, Mr. Mazur?

21 MR. MAZUR: No, Your Honor. That's all.

22 THE COURT: All right. So this concludes the evidentiary
23 portion of the contempt proceedings against Mr. Foust.

24 What's the parties' intention with regarding to closing
25 arguments? I would prefer that I get brief closing arguments from both

1 sides, like, five minutes. And then I would entertain more detailed
2 written statements and before I could make a decision on contempt, I
3 would also need an attorney affidavit in support of contempt from Baker
4 Boyer.

5 MR. BRAGONJE: Uh-huh.

6 THE COURT: As a prerequisite to a jurisdiction of the Court
7 to enter any contempt order.

8 MR. BRAGONJE: Would Your Honor not accept -- I think we
9 submitted one with our original motion.

10 THE COURT: Oh, with your original order to show cause?

11 MR. BRAGONJE: Yes. Yes.

12 THE COURT: All right. I'll take a look at it. So that's all that
13 we need there other than closing arguments.

14 MR. BRAGONJE: Yeah.

15 THE COURT: All right?

16 MR. BRAGONJE: Thank you.

17 THE COURT: So you want to take a few minutes now and
18 refresh my memory on --

19 MR. BRAGONJE: Yes.

20 THE COURT: -- whatever facts I need to know?

21 MR. BRAGONJE: Yes, thank you.

22 THE COURT: All right. Let's actually have Mr. Mazur go first.

23 MR. BRAGONJE: Oh, yes. Of course.

24 THE COURT: Since they are the party that --

25 MR. BRAGONJE: Yes. Yes.

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THE COURT: -- has the Order to Show Case verdict.

CLOSING ARGUMENT FOR THE DEFENDANT

MR. MAZUR: Thank you, Your Honor.

And, Your Honor, I'll be extremely brief in majority to the actual written brief that's filed, the supplemental brief.

THE COURT: Yes.

MR. MAZUR: With the Order to Show Cause, it was brought for the purpose that -- in a claim that defendant was not complying with the Court's order of findings of fact, conclusions of law, that Defendant and Harry Hildibrand LLC failed to turn over the vehicles or the assets or identity the vehicles and the assets.

We've gone through, on the list of 20 that were actually identified, and we provided on four of the vehicles, we provided the exact location where they could be picked up in California. There's no reasons why they cannot be retrieved at this point in time or repossessed at this point in time.

The Court has previously ordered that on the 20 vehicles that title is, shall be deemed vested with the plaintiff. So technically it's their vehicles and they can have access to them at any point in time, even behind a gated community.

With the other 16 vehicles, one vehicle is the motor coach which Plaintiffs repossessed in 2018 and subsequently sold in 2018, regardless of the fact there was not proper notice of the execution or notice of attachment that was done. But we'll leave that to a separate day.

1 But the defendant has full -- provided his full cooperation.
2 He's provided locations to the best of his knowledge of what happened
3 to the vehicles, where they went to on each of the 16, the ones that were
4 titled to Harry Hildibrand and then subsequently either sold off at the
5 auction or to the private parties, Mr. Kuck, and a couple of the vehicles.
6 And then the vehicles that actually were repossessed, which is new
7 knowledge that we just learned as far as repossessions, on those seven
8 vehicles, it was identified by Mr. Larkin and Mr. Vega on the security
9 interest.

10 But he's provided his full cooperation. He's shown up --

11 THE COURT: It's concerning that it takes so long to get
12 information that probably should have been provided in earlier
13 proceedings.

14 MR. MAZUR: I understand. And I --

15 THE COURT: We've been -- we meaning I've been listening
16 to a lot of argument and we've all gone through a lot of proceedings to
17 find out, you know, where the cars are and what interest Harry
18 Hildibrand has and what has happened to his interest. And a lot of the
19 stuff I learned today is new, which is information that someone should
20 have been presenting to me earlier.

21 MR. MAZUR: And I understand. The first time I was made
22 aware if it, I appeared April 1st, just six, seven weeks ago --

23 THE COURT: Not blaming you.

24 MR. MAZUR: -- and --

25 THE COURT: Just saying the information's been dripping in

1 slow.

2 MR. MAZUR: Right. We cut to the chase and went straight to
3 the list. And at that first hearing we went through and we said we'd
4 provide declarations on the exact locations and we tried to --

5 THE COURT: All right.

6 MR. MAZUR: -- go as quickly as we possibly could without
7 delay in providing additional information on specifics. And we're still
8 willing to help and participate to the extent that we can at this point in
9 time, Your Honor.

10 But we're not dodging the court order. He's providing his
11 compliance. He simply can't turn over something that he doesn't have
12 possession or control over, doesn't know where's at -- where the
13 vehicle's at. I mean, these are transactions that go back to 2005 on the
14 vehicles and through an entity that he does not have control over.
15 Mr. Foust only has 1 percent interest in the company. And the balance
16 resides by the three children of Mr. Harry Hildibrand, including Junior
17 and the two others that each hold a 33 and 33 percent interest.

18 Mr. Foust does not have any ownership or control or manager
19 of Stardust LLC and any of the other entities, he simply doesn't have
20 control of the vehicles. He's complied with the findings of fact, and
21 complied with the order to the extent that he can.

22 The titles are already transferred over, so those vehicles are
23 legal titled to the plaintiffs now. And we -- my client does not know the
24 location.

25 But with that, we would rest and you've heard the testimony of

1 Mr. Vega's representative and also Mr. Detwiler, as far as there's no
2 ownership, no control, no agreements, no side deals. And that he
3 simply does not own any vehicles.

4 Thank you.

5 THE COURT: Thank you. Appreciate that.

6 MR. MAZUR: And with that, we do request that [indiscernible]
7 as well.

8 THE COURT: Well, I'm not sure what I'm going to do till I hear
9 all sides and you finish the argument and look at my notes further.

10 Thank you.

11 MR. MAZUR: Thank you, Your Honor.

12 THE COURT: Appreciate your argument and position.

13 All right. Mr. Bragonje, your turn.

14 **REBUTTAL ARGUMENT FOR PLAINTIFF**

15 MR. BRAGONJE: Your Honor, the evidence has been
16 dripping in because this is being made up as we go along. Every time
17 we come in here, the road points back to Mr. Foust. We are here today
18 and we're hearing for the first time about this Ron Vega connection. I'm
19 not convinced this is even a real person, because who gets up here and
20 gives a testimony, a 15-year associate of Mr. Foust and Mr. Detwiler.
21 This is not a disinterested party.

22 This -- if this were a legitimate foreclosure, as they claim, they
23 attempt to introduce nothing into evidence, by the way, if it were a
24 legitimate foreclosure, we would have heard about this years ago. I
25 deposited Mr. Foust twice. I deposited Mr. Detwiler once. We had two

1 trials. Never have we heard that.

2 And that's because it's being made up as we go. Every time
3 we dig deeper, we find Mr. Foust's fingers on what's going on. I think
4 the Hagerty subpoena that we talked about in this proceeding, it's almost
5 like cumulative evidence. I almost feel silly talking about it, but I think it's
6 important, because this is what I did. My client is a banker and he said,
7 you know, we've heard that there's this insurance company out there
8 that specializes in classic cars. Why don't we send them a subpoena
9 and see if they've got anything on Mr. Foust?

10 So that's what I did. And I sent it to the state of Delaware. I
11 got a response from an attorney who said, This is Mr. Foust's file. And
12 in that file was a -- the same list that we saw in the bankruptcy and there
13 was, you know, they dispute it and they deny it, I understand that. But I
14 think the Court has to weigh who's telling the truth? A guy who is facing
15 going to jail or a corporate attorney in Delaware who's got no dog in this
16 fight?

17 I agree, the evidence has been dripping in, and that's because
18 they're making it up as we go along.

19 If Mr. Vega really had this interest that is claimed, we would
20 have heard about that years ago. I submit it's all a fraud, it's all false,
21 and I think that we are dealing with people that only want to participate in
22 litigation when they're winning.

23 This is what their attorney said in the bankruptcy proceedings.
24 I think this is telling. This is what their bankruptcy attorney said about
25 this court. If you'll bear with me here.

1 This is James Laissez in the bankruptcy court. This is what --
2 they were talking about their motivation for filing bankruptcy.

3 THE COURT: Uh-huh.

4 MR. BRAGONJE: Because we have a judge --

5 That's you.

6 THE COURT: Uh-huh.

7 MR. BRAGONJE: -- that has indicated he is willing to violate
8 the U.S. Constitution, the contract clause of the U.S. Constitution
9 and retitle abrogate a purchase money contract and so that was the
10 reason for filing it.

11 Now we are exploring other alternatives in Nevada and it may
12 be that we will be able to leave the bankruptcy realm and proceed
13 there.

14 These people --

15 THE COURT: I remember reading that before.

16 MR. BRAGONJE: -- they don't respect what's going on here.
17 If they did, if this were real, we would have heard about it years ago.
18 There's got to be an end, there's got to be an end, and I submit that
19 these are people that won't take it seriously unless they are imprisoned.

20 And so we're asking that they be imprisoned or that they pay
21 the value of the cars listed in the bankruptcy.

22 THE COURT: What's --

23 MR. BRAGONJE: Both.

24 THE COURT: What's concerning to me, and I need to look
25 into this further, is that Harry Hildibrand did appear in this proceeding

1 and for purposes of identifying and explaining what interest it had in the
2 vehicles. And they had attorneys that came and represented Harry
3 Hildibrand. And they didn't have Harry Jr. Appear or provide any
4 evidence or testimony. They didn't have Harry Hildibrand Jr.'s daughters
5 come, the only person they put forward was Mr. Detwiler.

6 And so Mr. Detwiler says he's just a figurehead, but he's the
7 only one that anyone's ever put forward to show who's controlling this
8 company other than Mr. Foust, who has -- claims to have a 1 percent.

9 So, you know, obviously, Harry Hildibrand, somebody's
10 controlling it and I have to assume it's the persons that have come
11 forward to appear on behalf of Harry Hildibrand.

12 So that's my concern so far. And I have to go back and look
13 at my prior orders, but -- on my prior findings. All right?

14 MR. BRAGONJE: Uh-huh. So --

15 THE COURT: I'm going to look at my prior orders, I'm going
16 to look at all the affidavits that have been submitted in this matter. I'm
17 going to look at the statements made by Harry Hildibrand's attorneys,
18 make it -- I'm going to look at the statements, any admissions or
19 statements made by Mr. Foust's attorneys. And then we'll decide where
20 to go in terms of the contempt proceedings. All right.

21 MR. BRAGONJE: Thank you, Your Honor.

22 THE COURT: Last thing is I need to know how quickly -- and I
23 want you guys to do this super quickly -- get in, if you want any further
24 argument to me on these proceedings. I'm not requiring it. I'm giving
25 you an opportunity to do that. But I want this done no later than

1 Monday, unless you both stipulate for further time. But we need to put
2 an end to this.

3 MR. BRAGONJE: Yeah, I don't think we need further
4 argument. Unless Your Honor has something that Your Honor's really
5 curious about.

6 THE COURT: There's nothing that I need to know. There's
7 some legal issues that I still need to consider that were presented by
8 Mr. Mazur in his prior motion. So.

9 MR. MAZUR: And, Your Honor, I think if we do submit the
10 briefs, there's additional questions that need argument or the Court
11 would like to hear argument, then we can come back a --

12 MR. BRAGONJE: Well, what I'm saying is unless Your Honor
13 wants additional briefs, I mean, I have written --

14 THE COURT: You've written a lot, right.

15 MR. BRAGONJE: We've written a lot.

16 THE COURT: I can't imagine what anybody would say that I
17 haven't already heard. But I limited you to five minutes --

18 MR. BRAGONJE: I would rather not do --

19 THE COURT: -- closing argument now. I didn't want to cut
20 you off if you wanted more to say.

21 So Mr. Mazur, if you want the opportunity -- what's today,
22 Wednesday?

23 THE CLERK: No, Tuesday.

24 THE COURT: Today's Tuesday? I can give you until Monday
25 to provide any written closing argument.

1 MR. MAZUR: Is Monday a holiday? Could we do --
2 MR. BRAGONJE: It is.
3 THE COURT: Oh.
4 MR. MAZUR: Could we do Tuesday?
5 MR. BRAGONJE: I've got a --
6 THE COURT: Tuesday.
7 MR. BRAGONJE: You know --
8 THE COURT: It doesn't look like we need to move faster than
9 that as to the seven cars that Mr. Vega has. Appears that nothing's
10 going to happen to them until August.
11 MR. BRAGONJE: And I have to tell the Court, I've got a big --
12 this is why it is so frustrating for me that this has been continued so long.
13 And by the way, Mr. Foust wasn't even supposed to testify today unless
14 he had paid a fine for not showing up on Friday, which was going to be
15 part of these contempt proceedings.
16 THE COURT: It was. And I'll -- I mean, I had made my orders
17 on this case and then the reason why we're having further proceedings
18 is you did an application for to show cause, and I think the Court's been
19 moving as quickly as the Court could in trying to --
20 MR. BRAGONJE: Well, absolutely.
21 THE COURT: -- resolve your matter other than couple of
22 continuances that have been the result of Mr. Foust.
23 MR. BRAGONJE: Well, I've never asked for more time. Of
24 course, the Court needs time to digest things. They have asked for
25 more time. And what I'm driving at is this:

1 THE COURT: Yeah.

2 MR. BRAGONJE: I'm going to be out of the country beginning
3 Tuesday. I really can't -- it would be very difficult for me to bring
4 someone else up to speed in my law firm. I'm the only one who's ever
5 worked on this.

6 THE COURT: Well, you don't need to respond to the closing
7 that --

8 MR. BRAGONJE: Okay.

9 THE COURT: -- Mr. Foust's attorney is going to provide the
10 Court.

11 MR. BRAGONJE: Okay.

12 THE COURT: I have everything that you've written.

13 MR. BRAGONJE: Yes.

14 THE COURT: You've written -- we could probably, you know,
15 publish it in two full books.

16 MR. BRAGONJE: Right. Right.

17 THE COURT: Maybe more than that. So I have enough
18 writing from you.

19 MR. BRAGONJE: Okay.

20 THE COURT: Mr. Mazur hasn't been in this case that long.
21 He might need a few more days to digest everything. The burden is
22 really on Mr. Foust to explain why my orders haven't been complied
23 with. So I'll give the last word to Mr. Foust and his counsel.

24 Anything you want to provide to me? No new evidence, but
25 you can have argument basically summing up everything and whatever

1 you're going to file on Tuesday. Okay?

2 MR. MAZUR: Thank you, Your Honor.

3 THE COURT: And then I'm going to have a quick decision on
4 this by the middle of next week. Okay?

5 MR. MAZUR: Very good, Your Honor.

6 MR. BRAGONJE: Is there any -- well, we were here on
7 Friday. They were supposed to pay my costs for showing up Friday and
8 Mr. Foust not being here. Is there any resolution on that issue?

9 THE COURT: Well, part of what I'm considering is, you know,
10 if there is contempt, the Court has various remedies it can impose. I
11 mean, the Court can always, you know, if it's still a contempt, the Court
12 can order that Mr. Foust to be incarcerated until the cars are turned
13 over. The Court has the right to do a civil penalty of \$500. The Court
14 can do both. The Court can also impose sanctions under EDCR 7.60,
15 which allows the Court to impose sanctions for multiplying or prolonging
16 the proceedings or engaging in proceedings that have been vexatious or
17 harassing.

18 And one of the things the Court can do for violation of
19 EDCR 7.60 is award costs and attorneys' fees to the party that has had
20 to endure, you know, any vexatious or harassing activity. So those are
21 the remedies that would be available to Baker Boyer in the event the
22 Court found that there was any contempt or any harassing, vexatious
23 activity. All right?

24 MR. MAZUR: And, Your Honor --

25 THE COURT: So your request --

1 MR. MAZUR: -- if I may, on --

2 THE COURT: -- I know you requested before attorneys' fees
3 and costs. I can decide that once I receive --

4 MR. BRAGONJE: Okay.

5 THE COURT: -- Mr. Mazur's brief. And then the other
6 matters that I've agreed to review.

7 MR. BRAGONJE: Okay. Thank you.

8 MR. MAZUR: And, Your Honor, as it relates to the attorneys'
9 fees from Friday, we didn't even finish Mr. Detwiler's testimony on
10 Friday, so we wouldn't not even made it to Mr. Foust's testimony on last
11 Friday. We did run out of time. It was about an hour and 20 minutes
12 that we did proceed on, and that's why we're here today as well.

13 THE COURT: That's true. Part of the reason I, you know, I
14 could have shuffled other things around. But part -- one of the reasons
15 why I continued is because -- well, you know this. One of the reasons I
16 continued is because we didn't have Mr. Foust and we weren't going to
17 have him until Tuesday.

18 MR. MAZUR: Right.

19 THE COURT: So the reason we didn't finish isn't based on
20 my schedule. I would have rearranged my schedule if Mr. Foust had
21 been present.

22 MR. MAZUR: Understand.

23 THE COURT: I accommodated him. All right.

24 MR. MAZUR: Thank you, Your Honor.

25 THE COURT: All right. Thank you.

1 So this matter is adjourned. And we'll see where it goes on
2 Tuesday night. All right?

3 MR. BRAGONJE: Thank you, Your Honor.

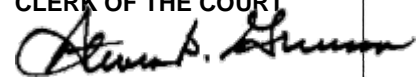
4 [Proceeding concluded at 11:11 a.m.]

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18 ATTEST: I do hereby certify that I have truly and correctly transcribed
19 the audio/video proceedings in the above-entitled case to the best of my
20 ability.

21 

22 Shawna Ortega, CET*562



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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.

Case No.: A-17-760779-F

Dept. No.: II

**ORDER FOR PUNISHMENT OF
CONTEMPT**

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

Defendant/Judgment Debtor.

This matter having come on for an evidentiary hearing before the Honorable Richard Scotti on April 1, April 24, May 17, and May 21, 2019 and pertaining to this Court's Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt for violating this Court's prior Findings of Fact, Conclusions of Law, and Final Judgment issued on January 9, 2019; defendant and judgement debtor Mr. Foust having been represented by Michael D. Mazur of Mazur & Brooks; plaintiff and judgment creditor Baker Boyer National Bank (the "Bank") having been represented by John E. Bragonje of Lewis Roca Rothgerber Christie LLP; the Court having read and considered all relevant pleadings and papers on file in the above-captioned case, having reviewed the documents admitted into evidence during and briefs and points of authorities filed by the parties, and having heard and carefully considered the testimony of the witnesses called to testify, the Court hereby enters the following facts and states the following conclusions of law:

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INTRODUCTION

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

When he applied for the loan that created the obligation that, when breached, led to the Judgment, Mr. Foust represented that he owned a collection of 59 expensive, rare, and exotic vehicles, including Corvettes, a Cadillac, Mercedes, Porsches, and Lamborghinis. On January 9, 2019, the Court issued a Findings of Fact, Conclusions of Law, and Final Judgment (the "Order"), resolving a series of prior supplemental proceedings in favor of the Bank and against Mr. Foust and third party claimant Harry Hildibrand, LLC ("HH"). The Order required, among other things, Mr. Foust "on penalty of contempt, to deliver up, surrender possession of, and turn over to the Bank promptly, in a manner that protects the cars from any damage, all [twenty] cars identified in [Exhibit B] with any cost or expense involved in delivery to the Bank to be borne by Mr. Foust"

However, as discussed herein, Mr. Foust has refused to comply with the Order and has failed to deliver a single vehicle to the Bank. As further discussed herein, Mr. Foust has presented no valid excuse for violating the Court's Order, has presented no evidence of any effort to retrieve the subject vehicles from their present locations, and, instead, has fraudulently testified that he no longer has any ownership interests in the subject vehicles.

Based upon the testimony and documentary evidence presented during the hearing and for good cause appearing, the Court hereby holds Mr. Foust in civil contempt of this Court's January 9, 2019, Order and finds, concludes, orders, adjudges, and decrees as follows:

FINDINGS OF FACT

1. On December 20, 2017, the Bank filed a motion seeking an order requiring Mr. Foust to deliver possession of various exotic vehicles to satisfy the Judgment.
2. In his written opposition to the motion, Mr. Foust indicated that he no longer

1 owned a single one of the fifty-nine (59) vehicles that were the subject of the motion and which he
2 pledged to the Bank to secure the loan.

3 3. Throughout the proceedings, Mr. Foust later specifically indicated that he
4 transferred many of these vehicles to HH.

5 4. The Court conducted two evidentiary hearings on February 15, 2018, and
6 November 5, 2018; the Court conducted standard hearings on about a dozen occasions; and the
7 parties have submitted approximately thirty (30) papers in support of these activities.

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

10 6. The Order required, among other things, Mr. Foust “on penalty of contempt, to
11 deliver up, surrender possession of, and turn over to the Bank promptly, in a manner that protects
12 the cars from any damage, all [twenty] cars identified in [Exhibit B] with any cost or expense
13 involved in delivery to the Bank to be borne by Mr. Foust” (1/9/2019 Order, Conclusions of
14 Law, ¶ 29, on file herein.) The list of twenty (20) vehicles identified in Exhibit B to this Court’s
15 January 9, 2019, Order, is attached hereto as **Exhibit A**.

16 7. Mr. Foust never challenged the Order with any motion for reconsideration, or
17 motion pursuant to NRCP 59 or 60 to alter or amend the Order. Instead, Mr. Foust waited until
18 approximately three months later, on April 1, 2019, to file a late and unmeritorious Motion to
19 Discharge Attachment, (*see* 4/1/2019 Mot. to Discharge, on file herein), the merits of which the
20 Court has considered and denies.

21 8. Moreover, as discussed below, Mr. Foust is well aware of this Court’s Order and
22 the Bank’s requests for compliance.

23 9. The Bank, through its counsel, wrote to Mr. Foust’s counsel on January 23, 2019—
24 nearly two weeks after the entry of the Order (the “Letter”)—to inform Mr. Foust that the Bank
25 was ready to take immediate possession of the vehicles identified in the Order.

26 10. The Bank’s counsel has had several discussions with Mr. Foust’s prior counsel,
27 Cody Munteer of the Marquis Aurbach Coffing law firm; Mr. Munteer indicated in an email
28 that he had spoken with Mr. Foust specifically regarding compliance, including on or about

1 January 15 and 23, 2019.

2 11. The Bank's counsel further telephoned Mr. Edward Detwiler, the manager of HH
3 and a witness in the trial before this Court (1/9/2019 Order, Findings of Fact ¶ 23, on file herein),
4 who also received the Letter on January 23, 2019. Despite having signed all the bankruptcy
5 filings identifying the subject vehicles and having testified at a creditors' meeting about their
6 locations (*see id.* ¶¶ 49, 76), Mr. Detwiler claimed to have no knowledge of the vehicles' current
7 whereabouts.

8 12. Despite the Bank's aforementioned attempts, Mr. Foust has refused to comply with
9 this Court's Order.

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

13 14. The Court granted the Bank's Application, and held an evidentiary hearing on April
14 1, April 24, May 17, and May 21, 2019 regarding the same. (*See* 2/21/2019 Order to Appear, on
15 file herein.)

16 15. Mr. Foust had notice of the contempt proceedings, and at the April 1 and May 21,
17 2019, evidentiary hearing, Mr. Foust appeared and testified on his own behalf; he also presented
18 Mr. Detwiler and another associate, Thomas Larkin, as witnesses in his behalf.

19 16. As discussed herein, the Court finds that Mr. Foust fraudulently testified to this
20 Court that he no longer had any ownership interests in the subject vehicles; he presented no valid
21 excuse for violating the Court's Order; he presented no valid excuse for failing to turn over the
22 subject vehicles; and he presented no evidence of any effort whatsoever to attempt to retrieve the
23 subject vehicles from their present locations.

24 17. During the contempt proceedings, Mr. Foust once again claimed that he is unable to
25 deliver any of the subject vehicles because he does not own them and that, instead, they are owned
26 by either HH and/or StarDust Classics LLC ("StarDust"). (*See* 4/8/2019 Foust Decl., on file
27 herein.)

28 18. However, the Court has previously held that Mr. Foust was in privy with HH and

StarDust at all relevant times herein when he transferred ownership of the subject vehicles. (*See* 1/9/2019 Order, Conclusions of Law, ¶¶ 2-3.)

19. The evidence presented in these proceedings to date has proved that, at all times pertinent hereto, Mr. Foust directly and/or indirectly controlled HH.

20. Mr. Foust was designated as the “managing initial director” through at least 2008, and filings with the Montana Secretary of State shows that Mr. Foust was the sole member and/or manager of HH. (*Id.*, Findings of Fact, ¶¶ 23, 30.)

21. In numerous bankruptcy filings of HH, 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 StarDust. (*Id.*, Findings of Fact, ¶ 24.)

22. 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 since its organization in 2016. (*Id.*, Findings of Fact, ¶ 25.)

23. Mr. Detwiler, the supposed manager of HH, has testified that the Wyoming corporate documentation showed that Mr. Foust “ultimately owned” HH; he said “Boy, I didn’t get an A in deducement, but it’s – I – *yeah*.” (11/5/18 Hr’g Trans., p. 65—66:13 (emphasis added).)

24. Significant evidence reflects that even if Mr. Foust transferred the subject vehicles to HH, he never received any consideration.

25. During Mr. Foust’s deposition, he testified that he sold the subject vehicles to HH “in a lot all at the same time” and that there was a single contract related to the sale of a group of cars. However, at the November 5, 2018, evidentiary hearing, Mr. Foust changed his story, claiming that “there were several contracts at different times” in 2011 and 2012 relating to “a series of cars that were sold to [HH] by me.” (11/5/18 Hr’g Trans., p. 75:12-23.) Mr. Foust claimed that these supposed sales contracts were “retrievable” and perhaps in his file cabinet in California or with HH’s Montana attorneys. However, Mr. Foust has never produced a single copy of such contracts.

26. Furthermore, Mr. Foust has provided no evidence regarding the price HH allegedly

1 paid Mr. Foust to purchase any of the subject vehicles. Mr. Foust allowed at the November 5,
2 2018, evidentiary hearing that he had no recollection of the price received from these alleged
3 sales. (*Id.* at 75:22-76:6.) At his deposition, Mr. Foust was flippant about this subject, claiming “I
4 might have got a dollar, I might have got a million dollars. I don’t know.”

5 27. Mr. Foust has failed to provide into evidence car titles showing transfer of the
6 subject vehicles to HH or anyone else.

7 28. This Court further incorporates herein any other evidentiary findings in the January
8 9, 2019, Order, which is not discussed herein to support Mr. Foust’s ownership and control of the
9 subject vehicles directly or indirectly through HH and/or StarDust.

10 29. The Court finds that, at all relevant times herein, Mr. Foust, HH, and StarDust were
11 and are alter egos of each other with respect to all of the subject vehicles listed in Exhibit A.

12 30. In HH’s Evidentiary Hearing Brief, filed herein on October 29, 2018, HH
13 represented to this Court that it held an interest in at least the following four subject vehicles: 2007
14 Mercedes S550; 2007 Mercedes M50 SUV; 2007 Mercedes CLK 550 (hereinafter, collectively,
15 “Mercedes Vehicles”); and 2000 GMC Yukon (“Yukon”). Each of these Mercedes Vehicles and
16 the Yukon are listed in Exhibit A, and are the subject of the Court’s January 9, 2019, Order for
17 Mr. Foust to surrender and deliver to the Bank.

18 31. Mr. Foust in earlier filings with this Court, admitted that he has possession of the
19 Mercedes Vehicles and the Yukon HH claims to own. In an affidavit given to this Court as part of
20 an opposition to an earlier motion, Mr. Foust swore under oath that he has “sold and ha[s] received
21 a leaseback on” these vehicles. The alleged owner and lessor is HH. During his deposition, Mr.
22 Detwiler agreed that the Mercedes Vehicles and the Yukon were in the possession of Mr. Foust,
23 his wife, or his daughters and that HH had not received any money from Mr. Foust for them. No
24 lease documents were ever produced or offered into evidence, despite specific requests and orders
25 from this Court to do so.

26 32. Thus, Mr. Foust owns the Mercedes Vehicles and the Yukon either directly or
27 indirectly through HH. Mr. Foust and HH know where the Mercedes Vehicles and the Yukon are
28 located, and Mr. Foust has the right, ability, and duty, under the Order to locate, surrender, and

1 deliver these four (4) vehicles to the Bank. As a result of Mr. Foust's violation of the Order
2 regarding each of the Mercedes Vehicles and the Yukon, Mr. Foust is in civil contempt of Court.

3 33. A 2016 Kawasaki KR10 ("Kawasaki") is also listed in Exhibit A, and is the subject
4 of the Court's Order for Mr. Foust to surrender and deliver to the Bank. Mr. Foust represents to
5 this Court by sworn declaration on April 8, 2019, that the Kawasaki was in the possession of HH.
6 (4/8/2019 Foust Decl., p. 3:10-12.) Mr. Foust has offered no valid reason, and indeed has no valid
7 reason, to fail to surrender the Kawasaki, which he owns either directly or indirectly through HH.
8 As a result of Mr. Foust's violation of the Order regarding the Kawasaki, Mr. Foust is in civil
9 contempt of Court.

10 34. For several of the subject vehicles that is listed in Exhibit A and is the subject of
11 the Order, Mr. Foust represented under oath that these vehicles were in the control of HH through
12 at least 2018, but that they may have been "repossessed" by StarDust and/or individuals by the
13 name of "Ronald Vega" and "Santander." (See 4/8/2019 Foust Decl.) These vehicles include: (1)
14 2007 Chevy Corvette Z06; (2) 1940 Ford Coupe; (3) 1957 Chevy Bel Air Convertible; (4) 1957
15 Chrysler 300 C Convertible; (5) 1955 Ford T-Bird (Chev); (6) 1957 Ford Fairlane 500; (7) 1971
16 Ford Panteria; (8) 1973 Ford Panteria-GT4; (9) 1951 Jaguar XK 120 Race Car; (10) 1957
17 Oldsmobile 98 Rocket; and (11) 1998 Marathon Coach. (See Exhibit A hereto.)

18 35. In the bankruptcy schedules of HH, HH represented that it owned all twenty (20) of
19 the subject vehicles listed in Exhibit A. In fact, Mr. Foust himself represented to the Court that
20 HH owned the cars: "Here, [HH] claimed an interest in the classic cars that was adverse to
21 Defendant's interest. [HH] provided copies of certificates of title demonstrating its
22 ownership" (4/1/2019 Mot. to Discharge Attach., p. 5:13-15, on file herein.) Furthermore,
23 Mr. Foust represented to this Court that, "[HH] . . . is the registered owner of the vehicles." (*Id.* at
24 p. 6:2-3.) Yet in other documents, Mr. Foust continued to represent to the Bank that he owned the
25 subject vehicles, through at least until the end of 2015. (See Order, ¶¶ 45-51.)

26 36. Whether Mr. Foust claimed to own the subject vehicles in his name, or whether
27 they were held indirectly by HH—the entity that Mr. Foust "ultimately owned"—Mr. Foust has no
28 valid excuse for not surrendering all twenty (20) subject vehicles over to the Bank.

1 37. Furthermore, as noted above, StarDust is an alter ego of Mr. Foust, and thus, Mr.
2 Foust has no valid reason for failing to surrender the aforementioned eleven (11) vehicles in
3 Paragraph 34, which he either owns directly, or indirectly through StarDust.

4 38. With regard to Mr. Foust's representation that the subject vehicles had been subject
5 to security interests by "Santander" and/or "Ronald Vega," Mr. Foust did not know if any such
6 secured creditors had commenced any proceedings to enforce their security interests. Mr. Foust
7 did not provide any evidence about the existence of any such security interests, and Mr. Foust
8 further failed to mention to the Court of any amounts that remained due and owing by him and/or
9 HH to these supposed third party creditors. Most importantly, neither Mr. Foust nor HH provided
10 any proof or evidence to the Court that they have lost control over the subject vehicles. They only
11 offered rank speculation, which the Court rejects.

12 39. Furthermore, Mr. Foust has in the past made a bare assertion that Ronald Vega
13 owned StarDust. This Court rejected such assertion *ipse dixit* because the official records of
14 Wyoming, which were generated between 2016 and 2018 before this dispute over the subject
15 vehicles came before this Court, showed Mr. Foust's role as an officer and owner of StarDust.
16 Again, this is yet another example of what this Court previously found regarding Mr. Foust's
17 demeanor: he appears untrustworthy because he seems to be willing to say whatever appears
18 convenient to him in the moment without regard to established or incontrovertible facts.

19 40. The existence of any purported third-party security interest in the subject vehicles
20 is no excuse for Mr. Foust's disregard of this Court's Order. As a result of Mr. Foust's violation
21 of the Order regarding each of the aforementioned eleven (11) vehicles, Mr. Foust stands in civil
22 contempt of this Court.

23 41. With regard to the four (4) remaining subject vehicles listed in Exhibit A hereto
24 and that are the subject of this Court's Order, Mr. Foust represents that these vehicles are not held
25 by him, HH, or StarDust. (*See* 4/8/2019 Foust Decl.) These vehicles include (1) 1966 Ford
26 Thunderbird – red; (2) 1966 Plymouth Belvedere; (3) 2000 Plymouth Prowler; and (4) 1963
27 Chevy 425/409 S/S. (*See* Exhibit A hereto.)

28 42. While it is perfectly clear, and supported by clear and convincing evidence, that as

1 of April 1, 2009, the twenty (20) subject vehicles that are identified in Exhibit A hereto, were in
2 the possession, custody, control of, and owned by, either Mr. Foust directly, or by Mr. Foust
3 indirectly through HH, and remain in the control of Mr. Foust, this Court will give Mr. Foust the
4 benefit of the doubt and hereby finds that the four (4) remaining subject vehicles are possibly not
5 held by Mr. Foust, HH, or StarDust. These four vehicles only are not the proper subject of a
6 contempt citation.

7 43. Accordingly, the Court finds that each of Mr. Foust's failure to turn over each of
8 the sixteen (16) vehicles listed in Exhibit A hereto, excluding the four mentioned in the prior
9 paragraph (the 1966 Ford thunderbird – red; 1966 Plymouth Belvedere; 2000 Plymouth Prowler;
10 and 1963 Chevy 425/409 S/S), constitutes a separate act of civil contempt of the Court's Order.

11 CONCLUSIONS OF LAW

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

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

16 3. The Bank offered clear and convincing evidence that Mr. Foust owned HH, both
17 directly and indirectly, and that Mr. Foust is the owner, member, and/or officer of StarDust.

18 4. Mr. Foust is the owner of all vehicles identified in Exhibit A over which StarDust
19 claims an interest.

20 5. Mr. Foust is the owner of all vehicles identified in Exhibit A over which HH claims
21 an interest.

22 6. Mr. Foust fraudulently testified to this Court that he no longer had any ownership
23 interests in the vehicles identified in Exhibit A; he presented no valid excuse for violating the
24 Court's Order; he presented no valid excuse for failing to turn over the subject vehicles; and he
25 presented no evidence of any effort whatsoever to attempt to retrieve the subject vehicles from
26 their present locations.

27 7. The Court maintains contempt power to address "[d]isobedience or resistance to
28 any lawful writ, order, rule or process issued by the court or judge at chambers." NRS 22.010(3);

1 *see also* NRS 1.210(2) (providing that the district court has the power to “enforce order in the
2 proceedings before it”); *see also In re Water Rights of the Humboldt River*, 118 Nev. 901, 906-07,
3 59 P.3d 1226, 1229-30 (2002) (explaining that the district court has “inherent power to protect
4 dignity and decency in its proceedings, and to enforce its decrees” and because it has particular
5 knowledge of whether contemptible conduct occurred, its contempt decisions are reviewed for an
6 abuse of discretion).

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

10 9. As discussed herein, Mr. Foust has violated two separate contempt statutes: NRS
11 22.010 and NRS 21.340.

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

20 11. The Court’s January 9, 2019 Order is unmistakable. It required, among other
21 things, that Mr. Foust “on penalty of contempt, to deliver up, surrender possession of, and turn
22 over to the Bank promptly, in a manner that protects the cars from any damage, all [twenty] cars
23 identified in [Exhibit B] with any cost or expense involved in delivery to the Bank to be borne by
24 Mr. Foust” The Order further identifies the subject vehicles by make, model, and VIN.

25 12. Second, this action is a supplemental proceeding. A “supplemental proceeding” is
26 “held in connection with the enforcement of a judgment, for the purpose of identifying and
27 locating the debtor’s assets available to satisfy the judgment.” *Supplemental Proceeding*,
28 BLACK’S LAW DICTIONARY (8th ed. 2004). In Nevada, a supplementary proceeding is “incident to

1 the original suit” and “is not an independent proceeding or the commencement of a new action.”
2 *See State ex rel. Groves v. Dist. Ct.*, 61 Nev. 269, 276, 125 P.2d 723, 726 (1942).

3 13. This Court is enforcing a Washington State judgment domesticated in Nevada.
4 NRS Chapter 21 propounds supplemental procedures. Under, this law, disobedience to a court’s
5 order in supplemental proceedings constitutes a contempt: “If any person, party or witness disobey
6 an order of the master, properly made in the proceedings before the master under this chapter, he
7 or she may be punished by the court or judge ordering the reference, for a contempt.” NRS
8 21.340.

9 14. The Court’s Order clearly and unambiguously directed Mr. Foust to deliver the
10 subject vehicles identified in the Order. Counsel for the Bank also wrote to Mr. Foust, insisting on
11 compliance with the Order and offering a common-sense beginning point: Mr. Foust’s delivery of
12 the subject vehicles that he and his family are currently using.

13 15. Mr. Foust has refused to respond to any communications by the Bank regarding the
14 Order, let alone deliver any of the vehicles that are the subject of the Order; thus, Mr. Foust stands
15 in contempt of the Order.

16 16. Mr. Foust’s demonstrated intransigence requires stringent treatment: he will clearly
17 refuse to comply with the Order and turn over the subject vehicles to the Bank unless this Court
18 exercises its power of incarceration to detain him until he complies.

19 17. Coercive incarceration is within the inherent power of the Court, insofar as it
20 depends on the contemnor’s ability to comply, thereby purging himself of contempt, and is
21 designed to coerce, rather than punish and therefore the ordinary requirements of due process do
22 not attach. *Shillitani v. United States*, 384 U.S. 364, 369-70 (1966); *see also S.E.C. v. Solow*, 396
23 Fed. App’x 635 (11th Cir. 2010) (affirming the district court’s adjudication of civil contempt and
24 ordering defendant’s incarceration until he purged his contempt in compliance with the court’s
25 directive). With civil contempt, “the contemnor is able to purge the contempt and obtain his
26 release by committing an affirmative act.” *Int’l Union, United Mine Workers of Am. v. Bagwell*,
27 512 U.S. 821, 844 (1994) (internal quotation marks omitted).

28 18. Several Nevada statutes empower district courts to issue a bench warrant for the

1 arrest of a person guilty of contempt:

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

8 19. In addition to this Court's inherent authority, Nevada's statutes explicitly permit
9 imprisonment:

10 **NRS 22.100 Penalty for contempt.**

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

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

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

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

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

28 1. Except as otherwise provided in subsection 2, when the contempt consist
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:

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

5 17 C.J.S. CONTEMPT § 186 (West [updated] 2019) (emphasis added).

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

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

18 23. However, in the judgment enforcement context, violating a “turn-over” order, such
19 as the Court’s Order, often prompts imprisonment until the contemnor agrees to turn over the
20 property. *See, e.g., S.E.C. v. Princeton Econ. Int’l Ltd.*, 152 F. Supp. 2d 456, 459-63 (S.D.N.Y.
21 2001) (committing the principal of a fraudulent investment scheme to jail for at least one year for
22 failing to honor the court’s orders to turn over \$14.9 million in assets, including 102 gold bars,
23 699 gold bullion coins, ancient coins, and a \$750,000 bust of Julius Caesar); *U.S. ex rel. Thom v.*
24 *Jenkins*, 760 F.2d 736, 737-38 (7th Cir. 1985) (committing a judgment debtor to indefinite custody
25 of the U.S. Marshall for failing to return confidential documents taken from an employer and
26 failure to disgorge profits made in conducting a forbidden, competing enterprise).

27 24. Mr. Foust’s failure to turn over each of the sixteen (16) subject vehicles identified
28 in Exhibit A and which are the subject of the Court’s January 9, 2019, Order, excluding the four

1 vehicles discussed in Paragraph 43 of the Findings of Fact herein, constitutes a separate and
2 distinct act of civil contempt of Court, for a total of sixteen (16) separate acts of civil contempt.

3 25. Pursuant to this Court's authority under NRS 22.100, the Court hereby fines Mr.
4 Foust for the sum of \$8,000.00, to be paid to the Bank immediately.

5 26. This Court further hereby orders Mr. Foust to pay the Bank its reasonable attorney
6 fees and expenses incurred in connection with all of the proceedings to seek enforcement of the
7 Court's Order. The Bank shall submit an affidavit in support of such fees and expenses for the
8 Court to review.

9 27. Pursuant to NRS 22.100, this Court further hereby orders that Mr. Foust shall be
10 imprisoned until he complies with the Order and delivers up, surrenders possession of, and turns
11 over to the Bank, in a manner that protects the vehicles from any damage, all of the sixteen (16)
12 vehicles identified in Exhibit A, which excludes the four vehicles discussed in Paragraph 43 of the
13 Findings of Fact herein, or pays to the Bank in immediately available funds the value of the
14 vehicles listed in Exhibit A, \$521,575.

15 28. The Bank shall prepare a separate Warrant of Arrest and Commitment accordingly
16 for this Court to review and sign, if appropriate.


17 29. Upon complying with the Order by delivering up, surrendering possession of, and
18 turning over to the Bank all sixteen (16) vehicles identified in Exhibit A, excluding the four
19 vehicles discussed in Paragraph 43 of the Findings of Fact herein, or paying to the Bank in
20 immediately available funds the value of the vehicles listed in Exhibit A, \$521,575, Mr. Foust will
21 be purged of his contempt sentence and, if imprisoned, shall be released from imprisonment
22 immediately thereafter.

23 30. Mr. Foust will further be afforded a reasonable opportunity to comply with the
24 foregoing obligations without fear of arrest or imprisonment. Accordingly, the Court hereby stays
25 the enforcement of this Order For Punishment of Contempt and the Warrant of Arrest and
26 Commitment for ten (10) calendar days from the date of their issuance by the Court. During this
27 period of stay, the Warrant of Arrest and Commitment will not be delivered to any law
28 enforcement personnel for execution, and Mr. Foust shall not be subject to arrest during this

1 period of stay. Furthermore, during this period of stay, should Mr. Foust comply with all of his
2 obligations provided in this Order for Punishment of Contempt, the Court will not issue the
3 Warrant of Arrest and Commitment and will purge Mr. Foust of his contempt sentence.

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

6 Dated this 18^m day of June, 2019

7
8 
9 DISTRICT COURT JUDGE
10 TM

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18 Respectfully submitted,

19 LEWIS ROCA ROTHGERBER CHRISTIE LLP

20
21
22 By: 
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28 *Attorneys for Plaintiff/Judgment Creditor Baker Boyer National Bank*

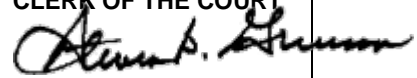
Exhibit A

Exhibit A

HARRY HILDBRAND

Titles as on BBB		7/26/2018 0:15		VIN
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 Z06 A/B #46. PAGE 5



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 BAKER BOYER NATIONAL BANK,

8 Plaintiff,

9 vs.

10 JAMES FOUST, JR.,

11 Defendant.

) CASE#: A-17-760779-F

) DEPT. II

12
13 BEFORE THE HONORABLE RICHARD F. SCOTTI
14 DISTRICT COURT JUDGE
MONDAY, DECEMBER 23, 2019

15 **RECORDER'S TRANSCRIPT OF STATUS CHECK**

16
17 APPEARANCES:

18 For the Plaintiff:

JOHN E. BRAGONJE, ESQ.

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25 RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

1 Las Vegas, Nevada, Monday, December 23, 2019

2
3 [Case called at 9:25 a.m.]

4 THE COURT: Baker Boyer v. James Foust, A-760779.

5 MR. BRAGONJE: Good morning, Your Honor. John
6 Bragonje of Lewis Roca Rothgerber Christie, on behalf of the Plaintiff,
7 and judgment creditor, Baker Boyer National Bank.

8 THE COURT: Good morning.

9 MR. BRAGONJE: Good morning.

10 THE COURT: And I know this case has been going on for a
11 while. It's been difficult for your client to first locate the motorcoach,
12 find out who had an interest in the motorcoach, and get that person
13 served with a writ, and then bring that person before the Court, and then
14 have hearing on that. And then the Court issued an order, and then didn't
15 comply, and there was an order to show cause, and a further hearing,
16 and then some time to draft the findings.

17 And then there were some attempts to attach the motorhome
18 to get secure possession, and finally there was possession secured on
19 the motorhome, and then your client proceeded with the next phase,
20 which is to attach and garnish, serve a writ to obtain a right to possess
21 the classic cars.

22 MR. BRAGONJE: Thank you for all your work, Your Honor.

23 THE COURT: I just --

24 MR. BRAGONJE: There's been a lot of work on the Court's
25 part, and we thank you.

1 THE COURT: No, no, no. You know, it's -- but thank you for
2 saying that.

3 And then there was the -- and then the same kind of effort to
4 get an order on classic cars, and then there was nothing turned over,
5 which led to an order to show cause, and an appearance, and an
6 evidentiary hearing, and a new order. So, roughly, that's the history of
7 this case, and I think it's taken probably a year and three-quarters, or
8 something like that, right?

9 MR. BRAGONJE: It sounds right, yeah.

10 THE COURT: So and just part of my normal review, after a
11 warrant for arrest is issued, I looked at all the paperwork again, it's a
12 pretty serious thing arresting somebody. And I did, obviously, what I
13 thought was a pretty thorough review when I issued the warrant.
14 Usually having the warrant issued is enough to get the person to
15 comply; it didn't happen here.

16 MR. BRAGONJE: Right.

17 THE COURT: And then it was out for service, and I did
18 another review of the paperwork. And I do have a concern, and let me
19 explain why, and as we go through this, if you can tell me if I'm missing
20 something --

21 MR. BRAGONJE: Okay.

22 THE COURT: -- please let me know.

23 MR. BRAGONJE: Okay.

24 THE COURT: Because I want to make sure that, you know,
25 we're crystal clear. All right. So --

1 MR. BRAGONJE: So we're talking about the warrant for Mr.
2 Detweiler, in particular?

3 THE COURT: Let's just talk about Mr. Detweiler.

4 MR. BRAGONJE: Okay.

5 THE COURT: So looking first at the law, NRS 31.100, a writ of
6 attachment has to be served on the person to be bound, and then the
7 Court has jurisdiction over that person, to issue an order that the
8 property -- well, there has to be a subpoena served on that person, and
9 maybe there's other ways to get jurisdiction, we'll go through that.

10 I know the writ was served on Mr. Foust, and the company,
11 and Foust, we certainly had jurisdiction over Mr. Foust, and I don't know
12 the circumstances under which that happened. Then Harry Hildibrand
13 made an appearance into the action, I think as part of motion to
14 intervene, and also pursuant to a claim against the property.

15 MR. BRAGONJE: Right.

16 THE COURT: And there was actually findings of the Court,
17 that the Court not only had jurisdiction over Foust, but Harry Hildibrand,
18 and Harry Hildibrand and Foust were alter egos.

19 MR. BRAGONJE: Right.

20 THE COURT: And I didn't see in my file any indication that
21 either -- well, going back to 31.100, it says that the person whom the
22 creditor believes has control over the property has to be served with a
23 subpoena, and you can also name them in a complaint, and then have a
24 complaint and summons served on the person, but this will require, in
25 the alternative, that you have a subpoena served.

1 I don't think either of those were done. Was a subpoena --

2 MR. BRAGONJE: As to --

3 THE COURT: -- served, personally, on Mr. Detweiler? I know
4 various other things were, and we'll get to that, but --

5 MR. BRAGONJE: I'm thinking about that.

6 THE COURT: I didn't see it in the record, but if it has
7 happened, I need proof, there's a lot of things filed in this case.

8 MR. BRAGONJE: Yeah.

9 THE COURT: And maybe my --

10 MR. BRAGONJE: I don't --

11 THE COURT: -- law clerk is checking this too, if there's ever a
12 subpoena?

13 MR. BRAGONJE: I don't recall -- let's see here.

14 Mr. Detweiler, personally, I don't recall a subpoena being served. I do
15 believe he received an order to show cause.

16 THE COURT: Well, let's get to that.

17 MR. BRAGONJE: Yeah.

18 THE COURT: Okay.

19 MR. BRAGONJE: I don't think -- yeah, I don't, on
20 Mr. Detweiler, personally, I don't believe he was served with a subpoena.

21 THE COURT: All right. So then --

22 MR. BRAGONJE: To my memory I don't recall that.

23 THE COURT: Right.

24 MR. BRAGONJE: I suppose I would have been the one -- I
25 mean, I think Harry Hildibrand, for whom Mr. Foust was a

1 representative --

2 THE COURT: So there are some findings --

3 MR. BRAGONJE: -- was served with a subpoena.

4 THE COURT: There are some findings, March 2018 dealt with
5 a motorcoach, and then there was order on Harry Hildibrand's third party
6 claim, that was in April 2018.

7 All right. Then the main order of that precipitates all of this,
8 is the order of January 9th, 2019. In this order, at the first page, it talks
9 about -- well, first of all this order names the Defendant judgment Debtor
10 is James Patterson Foust, individually and his marital community.

11 And then in the findings of fact, conclusions of law, and final
12 judgment, it references prior findings against Harry Hildibrand, and then
13 indicates, it says, you're asking the Court resolve Harry Hildibrand's
14 claim of ownership over certain vehicles that the bank seeks to levy, and
15 execute against, to satisfy a judgment against judgment Debtor, and
16 Defendant, James Foust, for approximately one million.

17 So at least in the findings, the findings recognize the request
18 to get a judgment against Harry Hildibrand and Foust to turn over the
19 cars. But then on page -- all right. Then we move forward to page 4,
20 paragraph 6, it says: "Although originally a non-party, by invoking
21 31.070, Harry Hildibrand subjected itself to this Court's jurisdiction.

22 I haven't seen anything on Detweiler, yet. And then at the
23 bottom of paragraph 6 it says, "This is an evidentiary hearing under
24 31.070. The parties agree that this evidentiary hearing may proceed
25 before the bank has levied upon the subject cars. So the parties, again,

1 the way this is written up that page, would be Foust and Harry
2 Hildibrand.

3 And then you move forward, it says "Harry Hildibrand and
4 Foust are in privity," that's paragraph 11. On page 18, conclusions of
5 law, paragraph 1, the Court has jurisdiction over the parties. It doesn't
6 specify Mr. Detweiler. And then you see paragraph 2, where it says:
7 "The Court enters judgment in favor of the bank, and against Harry
8 Hildibrand and Mr. Foust, and then it goes on to say, including all
9 persons or entities claiming an ownership in Harry Hildibrand; and then I
10 crossed that part out, and initialed it.

11 So that would be persons claiming ownership. I was saying,
12 no, it wouldn't include debt, because it was just Harry Hildibrand. I know
13 Detweiler, at that point in time, was believed to be and subsequently
14 found to believe, a managing member of Harry Hildibrand.

15 But at this point in time I believe Detweiler had only
16 appeared in this proceeding, and provided an affidavit, up to this point in
17 time, as a witness. And I don't think there's anything up through that
18 point of time that would give notice to Mr. Detweiler, that he's actually a
19 party.

20 MR. BRAGONJE: Yeah. I would agree, I don't know, and I
21 don't think Mr. Detweiler has ever been a named party in this.

22 THE COURT: Well, I'm trying to find out. You do get to
23 referencing Mr. Detweiler, on page 22 of this order; this is under the
24 "conclusions." Page 22, paragraph 29, says:

25 "Mr. Foust and Harry Hildibrand, and then any other

1 respective agents, employees, affiliates (including without
2 limitation, Mr. Detweiler, and Stardust Classic, and any of its
3 agents) are order on penalty of contempt to deliver up,
4 surrender possession of, and turn over to the bank, promptly,
5 all cars identified in Exhibits A and B, with any cost or
6 expense involved in delivery to the bank, to be borne by Mr.
7 Foust, and/or HH."

8 My concern up to this point is that Mr. Detweiler could have
9 reasonably believed that he wasn't named as a party, he had only been a
10 witness. The evidentiary hearing that led to this order on January 9th,
11 was only an evidentiary hearing as to the parties; because that's what I
12 read earlier, and it specifically referenced that HH subjected it to --
13 objected itself to jurisdiction.

14 Nowhere does it say Mr. Detweiler has subjected himself to
15 jurisdiction, and yet, you know, kind of in the middle, this is on page 22,
16 it's ordering him to turn over any cars in his possession. Not only is it
17 kind of, and I hate to use the word, it's not hidden, but it's not hidden at
18 all, it's plainly stated in that paragraph, that just given the context of the
19 rest of this, the beginning of, he might have come to two different
20 conclusions.

21 Either, number 1, he had no obligations under here, or
22 number 2, he had an obligation to turn anything over that he had, or he
23 could have thought, number 3, the duty was on Harry Hildibrand to try
24 get them from him and turn them over, and he didn't have any actual
25 obligation to the Court.

1 I think that one is less likely, and more likely it's an order that
2 says he's got to turn it over. I'm not sure if I had jurisdiction over him to
3 actually issue the order, because at this point in time I don't think -- well,
4 he wasn't named as party to the complaint.

5 MR. BRAGONJE: Correct.

6 THE COURT: I've seen, you know, complaints amended to
7 have claims against a garnishee, or I'm not sure how else it's done, but
8 I've seen that.

9 MR. BRAGONJE: Uh-huh.

10 THE COURT: So he's not a party to the complaint. He hasn't
11 stipulated to jurisdiction; he hasn't filed anything with the Court in which
12 he's making a claim. He provided an affidavit, which was in support of
13 Foust and Harry Hildibrand, but he also wasn't served with a subpoena,
14 as far as I can tell; I think you'll check on that.

15 MR. BRAGONJE: Yeah. I --

16 THE COURT: So I don't -- at this point in time I don't know if
17 I had jurisdiction over him to issue an order.

18 MR. BRAGONJE: Order to show cause, you mean?

19 THE COURT: An order that he -- we're not at the order to
20 show cause yet --

21 MR. BRAGONJE: Yeah.

22 THE COURT: -- we're at the --

23 MR. BRAGONJE: I agree. I think that he -- I think that he's
24 appeared in these proceedings purely in a representative capacity. Our
25 work over the years has produced evidence that I think is uncontroverted

1 that he is really the only -- he and Mr. Foust are really the only people
2 behind Harry Hildibrand. So Mr. Foust was certainly a party, Harry
3 Hildibrand was certainly a party, they stipulated to jurisdiction.

4 THE COURT: Well, Harry Hildibrand, so I --

5 MR. BRAGONJE: LLC, I should say.

6 THE COURT: Right.

7 MR. BRAGONJE: I mean, it's confusing, because it's a
8 person's name, I'm speaking about the entity. So unquestionably those
9 two people are subject to this course of jurisdiction. Mr. Foust, he's the
10 originally named debtor, and Harry Hildibrand, because it invoked the
11 third-party claims statute.

12 It came into this Court and said, you know, we're the ones
13 that own the motorcoach and all the classy cars, and then this Court said,
14 "Well, there's a statutory proceeding where we have an evidentiary
15 hearing and we sort out who this stuff really belongs to."

16 And when Harry Hildibrand invoked that statute, and I
17 apologize I don't have it in front of me, I'm sure it's in all the orders.

18 THE COURT: No, that's good. Because --

19 MR. BRAGONJE: I don't have it --

20 THE COURT: -- you didn't expect me --

21 MR. BRAGONJE: -- on the tip of my tongue.

22 THE COURT: -- to talk about all this.

23 MR. BRAGONJE: Yeah. So when Harry Hildibrand invoked
24 that statute, and we have on record, and I believe we've got the citations
25 and the order, they said, "We accept jurisdiction." At that time they were

1 represented by the Holland & Hart --

2 THE COURT: Harry Hildibrand.

3 MR. BRAGONJE: Harry Hildibrand LLC. They were
4 represented by the Holland & Hart Law Firm. So what I think the Court is
5 saying is, well, how can Mr. Detweiler effectively go to jail for Harry
6 Hildibrand?

7 THE COURT: Well --

8 MR. BRAGONJE: And I think that I addressed that. I think
9 the only --

10 THE COURT: Can I interrupt for one second --

11 MR. BRAGONJE: Of course, of course --

12 THE COURT: -- if you don't mind?

13 MR. BRAGONJE: -- yeah, yeah. Yes. Please, please.

14 THE COURT: So I don't see us -- I don't see either the Court
15 or Baker Boyer accomplishing, or doing the same thing that was done
16 with Mr. Foust. And let me just set forth three things, and then I'll let you
17 get back to your explanation --

18 MR. BRAGONJE: Please. I'm here --

19 THE COURT: -- which is very helpful.

20 MR. BRAGONJE: -- to do your will, yes.

21 THE COURT: Well, Mr. Foust was named as a party,
22 Mr. Detweiler wasn't named as a party. Mr. Foust was found specifically
23 to be the alter ego of Harry Hildibrand, Mr. Detweiler wasn't found to be
24 an alter ego.

25 MR. BRAGONJE: Correct.

1 THE COURT: Harry Hildibrand participated in the litigation
2 such that the Court accepted jurisdiction over him, that's why them filing
3 a claim. The Court never issued anything indicating it accepted
4 jurisdiction over Mr. Detweiler. And finally, Mr. Detweiler never
5 stipulated to jurisdiction. So I think we've dealt with Mr. Foust a lot
6 differently than we dealt with Mr. Detweiler.

7 MR. BRAGONJE: I agree.

8 THE COURT: And that gives me concern, because, yes, I did
9 issue an order commanding him, on page 22, paragraph 29, to turn over
10 the cars. I did certainly command Mr. Detweiler to do that, and he didn't
11 do that. So he violated the Court's order. But was it a lawful order, and
12 if it's not a lawful order, it would be a gross breach of this Court's
13 obligation to have him arrested; so I'm concerned.

14 MR. BRAGONJE: Right. Well, I think the --

15 THE COURT: There's ways to cure it, going forward, but that
16 would --

17 MR. BRAGONJE: Sure.

18 THE COURT: -- probably take another month.

19 MR. BRAGONJE: We are willing to do whatever the Court
20 wishes us to do. I am of the opinion that there is no problem with
21 jurisdiction. The basis for incarcerating Mr. Detweiler is his contempt of
22 Court. Ultimately, we're talking about a limited liability company here.
23 A limited liability company cannot be incarcerated, it's a diacritical
24 person, it's an idea.

25 Corporations, any entity, a corporation, or a limited liability

1 company, when they're found to be in contempt of Court must, by logic
2 be -- those orders must be enforced against the actors who motivate the
3 company. And that's why in our most recent order to the Court, that
4 established the contempt of Mr. Detweiler, personally; and this page 15
5 of the Court's signed order --

6 THE COURT: Right.

7 MR. BRAGONJE: -- we go through that and we provide the
8 Court with authorities for the proposition that companies are punished
9 through their representative.

10 So I think the basis for incarcerating Mr. Detweiler is not that
11 he was ever, or ever will be, ever was, or ever will be a named party in
12 these proceedings. The basis for incarcerating him is he is the
13 representative of a company that has thumbed its nose for years at this
14 Court.

15 THE COURT: Right.

16 MR. BRAGONJE: And if these Court's orders are to be
17 enforced, they have to be enforced against the company's
18 representatives. You can't put an idea in jail, you've got to put a
19 company's representatives in jail, and that's why we -- I was sensitive --

20 THE COURT: Right.

21 MR. BRAGONJE: -- to this issue, as well, and so I spent some
22 time --

23 THE COURT: Okay.

24 MR. BRAGONJE: -- researching it.

25 THE COURT: Okay.

1 MR. BRAGONJE: And that's why I put it in -- so it's page 15,
2 this is -- pardon me, here.

3 THE COURT: Okay.

4 MR. BRAGONJE: This is --

5 THE COURT: The last order issued by the Court.

6 MR. BRAGONJE: Yeah. You signed it on the 16th of
7 December. I don't know when it was filed, but probably the 16th or 17th of
8 December; and this is page 15 of that order. And I'm looking at
9 paragraph 23, and I really think this is the law anywhere in our nation. I
10 think it's the law in Nevada, I think it's the law in Hawaii, the law in
11 Florida --

12 THE COURT: Okay. Okay.

13 MR. BRAGONJE: -- everywhere.

14 THE COURT: Okay.

15 MR. BRAGONJE: "The officers or agents of a company are
16 guilty of a contempt if, and they may be attached and
17 punished therefore. Thus corporate officers, or corporate
18 agents are punishable for contempt, where they have
19 knowledge or notice of an order directed to the company."

20 Which Mr. Detweiler certainly had, "and they are responsible
21 for the company's violation thereof."

22 THE COURT: What's the cite to that?

23 MR. BRAGONJE: So this is -- that is, *In re Waters of Humbolt*
24 *River*, that's 118 Nev. 903.

25 THE COURT: Brandon, can you pull that for me, please, 118

1 Nev. 903. Does it reference a statute?

2 MR. BRAGONJE: No. And I've got some other citations in
3 that same paragraph.

4 THE COURT: What's your position on whether I would --

5 MR. BRAGONJE: And the following --

6 THE COURT: -- need to give notice to Mr. Detweiler, that the
7 purpose of the evidentiary hearing is to find out if he is the alter ego of
8 the company; would he need notice of that? Because I know the main
9 point of the evidentiary hearing is, where are the cars, and who owns the
10 cars? I think that was the --

11 MR. BRAGONJE: Right.

12 THE COURT: -- expressed purpose of the evidentiary
13 hearing.

14 MR. BRAGONJE: Right. No, I don't think --

15 THE COURT: What about an alter ego?

16 MR. BRAGONJE: I don't think that's a necessary -- alter ego
17 is never anything the bank asked for. We're not asking for a ruling, that
18 Mr. Detweiler is the same thing as Harry Hildibrand. I think the basis for
19 the contempt order, and therefore the warrant for his arrest, is that he
20 was the only managing member. He testified to that in two places. He
21 was in front --

22 THE COURT: He did, right.

23 MR. BRAGONJE: He was in front of this Court and he said
24 that, and then in the bankruptcy proceedings he said, in effect, I'm
25 paraphrasing, "I'm the guy, I get stuff done for Harry Hildibrand." So the

1 idea of holding him in contempt, is that we've already got Mr. Foust, he
2 won't turn over the cars. And then we got Harry Hildibrand, and they
3 refused to obey the Court's orders. And then you've got Mr. Detweiler,
4 who says, I'm the guy, I am Harry Hildibrand, I'm the managing member.
5 If the Court's orders are to be enforced there's got to be a force against a
6 representative.

7 THE COURT: That was my thinking --

8 MR. BRAGONJE: Yeah.

9 THE COURT: -- and then I took another look. No, I mean,
10 back to the geniuses of the authority --

11 MR. BRAGONJE: Oh.

12 THE COURT: -- which is NRS 31.100.

13 MR. BRAGONJE: Oh.

14 THE COURT: And that one says, I mean, to summarize, I'm
15 going to give it to you in a second.

16 MR. BRAGONJE: Okay. Thank you.

17 THE COURT: It basically says, if you have a person, and I
18 think you're interpreting "person" to be broad enough to include the LLC
19 and its controlling entities --

20 MR. BRAGONJE: Sure.

21 THE COURT: -- right? But it says, if there is a person that
22 you believe, or have reason to believe, controls the property that you're
23 seeking to obtain. So if you have a person that you reasonably believe
24 has the property, then you may subpoena that person to come forward
25 and be examined; and then, the Court may issue such orders as may be

1 just, with respect to the property.

2 So I think he was a person, if you --

3 MR. BRAGONJE: Right.

4 THE COURT: -- interpret it broadly, consistent with NRS
5 118.903.

6 MR. BRAGONJE: Uh-huh.

7 THE COURT: And it was believed that he had control, all
8 right, and he did attend an evidentiary hearing.

9 MR. BRAGONJE: Right.

10 THE COURT: And the Court issued an order that it thought
11 was just, and he didn't comply with that order.

12 MR. BRAGONJE: Right.

13 THE COURT: The only thing missing, I'm sure as you
14 noticed, is there was no service of the actual subpoena on him --

15 MR. BRAGONJE: Right.

16 THE COURT: -- which I think is the mechanism to officially
17 obtain jurisdiction, where he's -- where he didn't voluntarily appear, and
18 is not named as a party, and wasn't served with a -- and not served with
19 a summons and complaint.

20 MR. BRAGONJE: Yeah.

21 THE COURT: Just look at this, because --

22 MR. BRAGONJE: Yeah. Thank you.

23 THE COURT: And I don't think that interpretation is
24 inconsistent with the authority you just apprised the Court.

25 MR. BRAGONJE: I agree.

1 THE COURT: Believe me --

2 MR. BRAGONJE: I agree.

3 THE COURT: I don't want to have to revisit this issue if I
4 don't have to.

5 MR. BRAGONJE: No, I understand.

6 THE COURT: But I don't want to further delay the
7 proceedings where the Court has found that your client is entitled to the
8 cars.

9 MR. BRAGONJE: Right.

10 THE COURT: That there's been obstruction in you getting the
11 information that you need as to who owns them, and obstruction in you
12 locating the cars, and violation of the Court's orders.

13 MR. BRAGONJE: Right.

14 THE COURT: I agree with you on all of that.

15 MR. BRAGONJE: Thank you. Yes.

16 THE COURT: What I'm not sure, is if my order gave valid
17 notice to Mr. Detweiler, that the Court was entertaining jurisdiction over
18 him, and I'm not sure, under these facts, if this Court ever actually had
19 personal jurisdiction over him, aside from any --

20 MR. BRAGONJE: Yeah.

21 THE COURT: -- jurisdiction I had over Harry Hildibrand.

22 MR. BRAGONJE: I see what you're saying. I see what you're
23 saying.

24 THE COURT: So I --

25 MR. BRAGONJE: I --

1 THE COURT: And I know you respect the Court's analysis
2 here, and --

3 MR. BRAGONJE: Yes.

4 THE COURT: -- you've done such a good job in the various
5 steps you've taken, with this one thing, and I went back and looked
6 through the record, and I don't think I'm misstating the facts, but if I am, I
7 need to know.

8 MR. BRAGONJE: I don't think you are misstating the facts. I
9 don't believe Mr. Detweiler received a subpoena. My position is, I don't
10 think that's necessary. I mean, a subpoena --

11 THE COURT: I know.

12 MR. BRAGONJE: A subpoena is for a third party to a lawsuit.
13 Mr. Detweiler, he appeared in a representative capacity. He
14 was the managing member of Harry Hildibrand. We didn't need to send
15 a subpoena to Harry Hildibrand. Harry Hildibrand was already a party,
16 and we issued an order to show cause. That order to show cause was
17 served on Harry Hildibrand as an entity, and it was served on Mr.
18 Detweiler. It wasn't a subpoena, but it was an order to show cause.

19 THE COURT: Yeah. Can you get me Chapter 31 of the
20 statutes?

21 MR. BRAGONJE: So that's my position. Is, yeah, I think if
22 you had a person who was a third party to a lawsuit that -- you know, say
23 you just had some stranger that for some reason stole property that
24 belonged to the Debtor, then you might have to --

25 THE COURT: Right, right.

1 MR. BRAGONJE: --- send them a subpoena, because they're
2 a third party. In this case Harry Hildibrand was never -- they were never
3 a third -- well --

4 THE COURT: Well, they were, but they came in.

5 MR. BRAGONJE: They came in. They were a party,
6 effectively became a named party in the lawsuit, because they
7 intervened. What they are is intervening.

8 THE COURT: It think it was at one part, Marquis Auerbach --

9 MR. BRAGONJE: Yes.

10 THE COURT: -- and then it was Maysher [phonetic], who
11 stepped in, arguing at one point that there was improper procedure to
12 execute on the cars, supposedly belonging to Harry Hildibrand, and then
13 you did an additional attachment writ --

14 MR. BRAGONJE: Right.

15 THE COURT: -- levy procedure to --

16 MR. BRAGONJE: And then they admitted there was
17 jurisdiction. They, on the record they said, "Yeah, we're properly in the
18 case," so --

19 THE COURT: Give me one more moment to --

20 MR. BRAGONJE: Yes. Thank you.

21 [Pause]

22 THE COURT: I remember Mr. Detweiler was doing some
23 work in the Bahamas, or something like that?

24 MR. BRAGONJE: Yeah. I don't even know if he's still in the
25 country, to be honest with you.

1 THE COURT: Well, I believe --

2 MR. BRAGONJE: Yeah, Honduras.

3 THE COURT: -- there was an effort to serve him with a
4 warrant, right --

5 MR. BRAGONJE: We did.

6 THE COURT: -- at his house?

7 MR. BRAGONJE: Well, I don't -- no, no, no.

8 THE COURT: And I don't know what contact, if any, was
9 made with him.

10 MR. BRAGONJE: I don't believe any contact was made.
11 Certainly as soon as Your Honor signed the warrant, I approached a
12 constable and said, let's try and find if he's still around. But I don't
13 believe they ever got to that point of actually making contact. I think it all
14 stopped in their office. But, yes, we did move expeditiously once Your
15 Honor signed the warrant, for sure, yeah.

16 THE COURT: Give me a moment just to --

17 MR. BRAGONJE: No problem.

18 THE COURT: -- study something --

19 MR. BRAGONJE: No problem, yes.

20 THE COURT: -- in light of -- you can sit down if you want,
21 you've been standing awhile.

22 MR. BRAGONJE: I'm going to look up Chapter 31, too.

23 THE COURT: Yeah. What I'm looking at now, if I were to
24 vacate the warrant --

25 MR. BRAGONJE: Uh-huh.

1 THE COURT: -- and require that you serve a subpoena,
2 pursuant to 31.100, how quickly can you serve it, and then what is the
3 next step, and how quickly would you be able to do the next step?

4 MR. BRAGONJE: Yeah. That means --

5 THE COURT: And I know you don't need any more steps,
6 because your client must be very frustrated, and I --

7 MR. BRAGONJE: Well, we have to do Your Honor's order,
8 we're here to do that, we're here to be cooperative; we want to do the
9 right thing as well, and this is complicated.

10 THE COURT: And I know you think you have done the right
11 thing, and I could see why.

12 MR. BRAGONJE: Uh-huh. I just don't know what a next
13 step would be. I mean, if we were to serve him with a subpoena, what
14 would we do after that? We've already had a contempt trial, in which he
15 appeared twice and gave testimony. It's not as if he didn't have notice.
16 Your Honor warned him many times that he was under threat of going to
17 jail. He expressed concern about that. He was certainly aware; we could
18 look back at the record.

19 So I don't know what else we would do. We could serve him
20 with a subpoena --

21 THE COURT: Yeah.

22 MR. BRAGONJE: -- and have him come in, but then to what
23 effect? I mean, he won't change his testimony, it's already set in stone.

24 THE COURT: I suppose we could ask him, is there any
25 additional information that you would provide to the Court, besides your

1 affidavit --

2 MR. BRAGONJE: We could always do that.

3 THE COURT: -- and what you've already testified to.

4 MR. BRAGONJE: Right.

5 THE COURT: And he would probably say, no.

6 MR. BRAGONJE: Right.

7 THE COURT: And then at that point -- well, let me -- let's
8 read this together.

9 MR. BRAGONJE: Yeah.

10 [Pause]

11 THE COURT: Well, I suppose under 31.100, if a subpoena
12 served and he appeared and had nothing new to say, on the very same
13 day, because it says I could do what is just, under the totality of the
14 circumstances I could issue the order --

15 MR. BRAGONJE: Uh-huh.

16 THE COURT: -- that he immediately turns over the property,
17 as a prior order, and give him a week to do so, and at the end of that
18 week, then I could hold him in contempt.

19 MR. BRAGONJE: Yes.

20 THE COURT: And issue the warrant. So I guess it's all
21 contingent upon how quickly you could get a subpoena served on him.

22 MR. BRAGONJE: And I don't know. I don't know where he
23 is. My --

24 THE COURT: I mean, I suppose if you could serve him with a
25 warrant you could serve him with a subpoena?

1 MR. BRAGONJE: Yeah. I don't have contact with him. I've
2 deposed him once; I've examined him in here Court. Other than that I
3 don't know his whereabouts.

4 THE COURT: Did you have an address you were trying to
5 serve him on?

6 MR. BRAGONJE: I got is address when I deposed him, I
7 asked for that, so we were going to use that address to try to serve him.

8 THE COURT: Once you get him served with a subpoena the
9 Court has personal jurisdiction, and the Court can issue any order that is
10 just, including --

11 MR. BRAGONJE: Uh-huh.

12 THE COURT: -- you know, having him turn over the property
13 within a week, because he's already had notice. And then if he doesn't
14 the Court can immediately issue an order, consistent with the exact same
15 order I've issued --

16 MR. BRAGONJE: Right.

17 THE COURT: Well, not a contempt order -- well, yeah, it
18 would be a contempt order.

19 MR. BRAGONJE: Right.

20 THE COURT: It would be the same exact order --

21 MR. BRAGONJE: Uh-huh.

22 THE COURT: -- that I issued before.

23 MR. BRAGONJE: We thank the Court --

24 THE COURT: I feel comfortable doing that, Mr. Bragonje.

25 MR. BRAGONJE: Yeah.

1 THE COURT: Notwithstanding -- I'm not saying your
2 interpretation is wrong --

3 MR. BRAGONJE: Uh-huh, okay.

4 THE COURT: -- and you can tell your client that the Court
5 said that, that the Court, you know, believes there's a high probability
6 that your interpretation is correct. But the Court has a 20 percent
7 concern that perhaps we need to button this up a little bit more.

8 MR. BRAGONJE: Well, we thank the Court for its concern,
9 and its analysis is not something that we rebuff. I am just looking again
10 at my own order, if Your Honor will bear with me. Your Honor is citing
11 to Section 31, but the contempt powers that we proceeded under, were
12 under Chapter 22.

13 THE COURT: Right. But Chapter 22 allows the Court to issue
14 an order of contempt for violation of a court order.

15 MR. BRAGONJE: Right.

16 THE COURT: And so that gets us back to, when the Court
17 issued that January 9th, 2019 order, did the Court have jurisdiction to do
18 that?

19 MR. BRAGONJE: Right, right, right.

20 THE COURT: So, yes, I could hold him in contempt for
21 violating an invalid order, but he would be able on a motion to quash
22 that contempt.

23 MR. BRAGONJE: Uh-huh.

24 THE COURT: And, frankly, if the court order is invalid
25 because I didn't have jurisdiction, I don't want him to have to go through

1 the trouble of --

2 MR. BRAGONJE: Uh-huh.

3 THE COURT: -- questioning a contempt order, if the
4 contempt order is invalid.

5 MR. BRAGONJE: Uh-huh. Okay.

6 THE COURT: In fact, I don't want him to bring an action
7 against you for, you know, --

8 MR. BRAGONJE: False imprisonment.

9 THE COURT: -- abuse of process --

10 MR. BRAGONJE: Yeah. Yeah. Right.

11 THE COURT: -- or false imprisonment.

12 MR. BRAGONJE: Right.

13 THE COURT: Or attorney's fees. I have to be mindful of that,
14 as well.

15 MR. BRAGONJE: Right. So --

16 THE COURT: So --

17 MR. BRAGONJE: Okay. I think I understand --

18 THE COURT: Yeah. What I'm going to do --

19 MR. BRAGONJE: I think I understand --

20 THE COURT: I hate to do this.

21 MR. BRAGONJE: -- what the Court is saying.

22 THE COURT: After all the time and trouble, and the difficulty
23 that might be attended, tracking him down again, I'm going to vacate the
24 existing warrant, vacate the order of contempt. Grant you leave of Court
25 to serve a subpoena on him --

1 MR. BRAGONJE: To appear here?

2 THE COURT: A subpoena for him to appear before this
3 Court, and to give deposition, or explanation to this Court, under oath,
4 as to why, as to the matters stated within 31.100, which includes whether
5 he possesses the subject property, or the subject property as under his
6 control, and whether he's entitled to any credits as to such property that
7 may belong to the Defendant.

8 MR. BRAGONJE: Okay. I think I understand.

9 THE COURT: Just track the language, you could probably
10 say it better than me.

11 MR. BRAGONJE: Uh-huh.

12 THE COURT: I would include in there, and whether he is the
13 alter ego of Harry Hildibrand.

14 MR. BRAGONJE: Okay.

15 THE COURT: And/or whether he should be bound to the
16 same extent that Harry Hildibrand has provided --

17 MR. BRAGONJE: Right, right, right.

18 THE COURT: -- under 118. I don't know that you need all of
19 that, you probably just need to track the statute. I'll leave that part to
20 your discretion.

21 MR. BRAGONJE: Okay.

22 THE COURT: The Court would be satisfied with you just
23 tracking the beginning sentence --

24 MR. BRAGONJE: Uh-huh, okay.

25 THE COURT: -- of the statute.

1 MR. BRAGONJE: I think I understand.

2 THE COURT: And maybe you want to put in there, that at
3 such hearing the Court will incorporate by reference all other testimony
4 that he has provided to this Court --

5 MR. BRAGONJE: In the past.

6 THE COURT: -- in the past and hear any additional testimony
7 that he would like to give.

8 MR. BRAGONJE: Okay.

9 THE COURT: Something to that effect.

10 MR. BRAGONJE: I think I understand.

11 THE COURT: It incorporates every -- but it gives him notice
12 that we're holding him personally responsible, and I'm giving him an
13 opportunity, just to speak his peace, if there's anything more he wants to
14 say.

15 MR. BRAGONJE: Okay.

16 THE COURT: And put in there, because I can issue such
17 order, as the Court deems just.

18 MR. BRAGONJE: Uh-huh.

19 THE COURT: Put in there that if he fails to appear the Court
20 will hold him in civil contempt of court and issue a warrant for his arrest.
21 Put that in there too.

22 MR. BRAGONJE: Okay.

23 THE COURT: I hope I said that clearly, so that --

24 MR. BRAGONJE: I think I understand.

25 THE COURT: -- you understand what it is.

1 MR. BRAGONJE: I think I understand.

2 THE COURT: Maybe you want to prepare it for the Court's
3 signature. As soon as I get it, you can call up the law clerk and say, hey,
4 it's there, can we get it signed right away.

5 MR. BRAGONJE: Uh-huh. Uh-huh.

6 THE COURT: You can probably have this to me tomorrow,
7 the day before Christmas and get it to your process server, and get it --

8 MR. BRAGONJE: Yeah. We --

9 THE COURT: -- served on him right away.

10 MR. BRAGONJE: So --

11 THE COURT: Which is what you're trying to do too.

12 MR. BRAGONJE: Right.

13 THE COURT: All this does -- and tell him to come here in ten
14 days. All this does --

15 MR. BRAGONJE: Okay.

16 THE COURT: -- is delay your warrant by ten days.

17 MR. BRAGONJE: Oh, I think I understand Your Honor is
18 making the hard choices, and that's why you wear the robe, and we
19 stand up when you come into the room; so we respect that. We thank
20 Your Honor and we will be glad to do that.

21 THE COURT: To the extent you can simplify this summons
22 too, that would be fine.

23 MR. BRAGONJE: Yeah.

24 THE COURT: Maybe you can call it -- call it maybe an order --
25 I guess I can't do an order. You call it a summons to appear for the

1 purpose -- just summons to appear, and then in the body you'd explain
2 whatever you need to explain.

3 MR. BRAGONJE: Uh-huh.

4 THE COURT: Put to Mr. Detweiler, you're hereby
5 commanded to appear, date and time, in this matter, for the following
6 reasons. And then set it forth, failure to do so, contempt of Court, you
7 know, bench warrant. I think it's probably a 1 to 2-page document, right?

8 MR. BRAGONJE: Oh, yeah, yeah. I think it's pretty simply.
9 Although, probably it ought to contain that language -- it ought to be
10 titled, I think maybe a subpoena and/or summons or something like that,
11 because we probably want to track the NRS 31.100 language about the --

12 THE COURT: 31.100 says --

13 MR. BRAGONJE: -- subpoena. It speaks in terms of the
14 subpoena.

15 THE COURT: Subpoena, right.

16 MR. BRAGONJE: Not a summons.

17 THE COURT: Right, that's what I'm talking about, use
18 "subpoena" --

19 MR. BRAGONJE: Okay.

20 THE COURT: And whatever other additional language that
21 you think --

22 MR. BRAGONJE: Yeah.

23 THE COURT: -- that you might need, based on your analysis.

24 MR. BRAGONJE: Okay.

25 THE COURT: I know you have a different interpretation. I

1 have to, when you're trying to arrest somebody for a million-dollar debt,
2 in a situation like this I want to be extra cautious.

3 MR. BRAGONJE: Thank you, Your Honor, that's fine.

4 THE COURT: So thank you for being understanding.

5 MR. BRAGONJE: That's fine. Does Your Honor wish to have
6 this back, here?

7 THE COURT: Yes, please.

8 MR. BRAGONJE: May I approach?

9 THE COURT: Yes. All right. Thank you very much.

10 MR. BRAGONJE: You're welcome.

11 I have one other unrelated things --

12 THE COURT: Yeah. Have you located Mr. Foust?

13 MR. BRAGONJE: No. That's what I was going to ask about.

14 So I think the Court had set a status conference for the 30th, on Mr.

15 Foust. A warrant --

16 THE COURT: Oh, because I thought he would be arrested by
17 then --

18 MR. BRAGONJE: Right.

19 THE COURT: -- and that was just a notice to the Court that
20 we might need to make sure he's not locked up somewhere.

21 MR. BRAGONJE: Right.

22 THE COURT: So --

23 MR. BRAGONJE: No, we haven't found him. You know,
24 frankly, it looks like he's not in Nevada. I mean, perhaps not surprisingly,
25 he's kind of fled the --

1 THE COURT: There's a way you could perfect this in other
2 States.

3 MR. BRAGONJE: Well, we've looked into that. It's very
4 difficult. I think, unlike a criminal warrant, where States will cooperate
5 and sort of effectively extradite someone, in a civil matter we've talked
6 through, working through our law enforcement here in Nevada, they
7 have reached out too -- we think he's just in Los Angeles, I don't think
8 he's far away, but the California people, and I don't know that it's
9 different anywhere else, they really don't -- they don't cooperate --

10 THE COURT: I think you want civil.

11 MR. BRAGONJE: -- for civil extradition.

12 THE COURT: I think you want to serve civil. You can arrest
13 him and hold him until such time as the property is turned over.

14 MR. BRAGONJE: Oh, certainly, yeah.

15 THE COURT: Criminal it's just a punishment and then he's
16 out.

17 MR. BRAGONJE: Oh, yes. No, no, no. I don't mean to
18 suggest that this is a criminal contempt --

19 THE COURT: Okay.

20 MR. BRAGONJE: But my point --

21 THE COURT: But the procedure is easier?

22 MR. BRAGONJE: My point in mentioning that, is just that we
23 haven't been able to find him. We haven't been able to get him, even
24 though he's in LA, because he's not in within the boundaries of Nevada.
25 So I'd like the warrant and that order to remain outstanding beyond the

1 30th; that's what I'm asking.

2 THE COURT: Absolutely.

3 MR. BRAGONJE: Okay.

4 THE COURT: The warrant remains effective, let's say for
5 another six months.

6 MR. BRAGONJE: Okay.

7 THE COURT: And/or until further order of this Court.

8 MR. BRAGONJE: Okay. And then the --

9 THE COURT: You could put in there, the Court orders that
10 this warrant is effective for any jurisdiction with the United states,
11 provided appropriate compliance is made with respect to the laws of that
12 jurisdiction.

13 MR. BRAGONJE: Uh-huh. Uh-huh.

14 THE COURT: If you want to get a revised warrant, if you
15 think that's necessary at some point, submit it.

16 MR. BRAGONJE: Okay, yeah. Thank you for the offer. I
17 don't know that that would make a difference. So I think what we're
18 going to try and do, is just to keep looking for him. And, you know, I
19 don't think he's going to stay out of Nevada forever. And I think when he
20 comes back --

21 THE COURT: Yeah.

22 MR. BRAGONJE: -- we'll try and find him.

23 THE COURT: Have you made any UCC filings, with respect to
24 these cars, so in the event that they're sold, there's --

25 MR. BRAGONJE: Not --

1 THE COURT: And the reason I ask is not because I'm trying
2 to help you, I'm trying to make sure that we followed, you know, proper
3 attachment procedures to minimize the risk of the individual being
4 arrested.

5 MR. BRAGONJE: Right. No. No, we have not.

6 THE COURT: All right. I'll let you --

7 MR. BRAGONJE: We'll look into that.

8 THE COURT: -- to your own devices.

9 MR. BRAGONJE: Yeah. We'll look into that.

10 So then am I excused from appearing on the 30th?

11 THE COURT: You're excused from appearing on the 30th. All
12 I would ask is if he is arrested, to your knowledge, contact my law clerk
13 and let him know that --

14 MR. BRAGONJE: You bet.

15 THE COURT: -- CCDC is pretty good at letting the department
16 know --

17 MR. BRAGONJE: Okay.

18 THE COURT: -- but I didn't want it to be missed.

19 MR. BRAGONJE: Okay.

20 THE COURT: All right. Off the record.

21 [Court and Clerk confer]

22 THE COURT: Vacating the status check. I had -- and we're
23 vacating the warrant, recalling and vacating the warrant. Let your
24 process server know --

25 MR. BRAGONJE: Yeah.

1 THE COURT: -- that in place of the warrant you're serving the
2 subpoena or summons.

3 MR. BRAGONJE: I mean, if it is a subpoena, does Your
4 Honor even need to sign it? I mean, normally just attorneys sign the
5 subpoenas. I'm happy to have Your Honor sign it. Maybe that's best in
6 this situation, if Your Honor signs it.

7 THE COURT: You want to put me on the hook, huh?

8 MR. BRAGONJE: I'm happy to sign.

9 THE COURT: I'll sign it. Get it to me, and the Court will say,
10 you know, approved, or it is so ordered.

11 MR. BRAGONJE: Uh-huh. Right, right.

12 THE COURT: Whatever.

13 MR. BRAGONJE: Okay.

14 THE COURT: Something like that, okay?

15 MR. BRAGONJE: It may be a few days, just with the holiday
16 and everything like that, I've got to talk with my client, so --

17 THE COURT: Jordan Ross, that's your --

18 MR. BRAGONJE: That's on us, not on the Court.

19 THE COURT: Your process server is Jordan Ross.

20 MR. BRAGONJE: Correct, yeah.

21 THE COURT: And perhaps you want something to him, in
22 writing, indicating that the warrant has been permanently recalled.

23 MR. BRAGONJE: Uh-huh.

24 THE COURT: Okay. Off the record.

25 /////

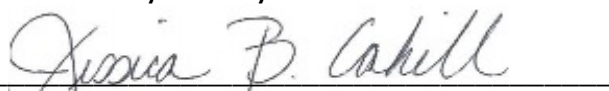
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MR. BRAGONJE: Thank you, Your Honor.

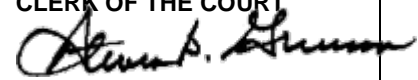
THE COURT: Thank you, Mr. Bragonje.

[Proceedings adjourned at 10:09 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.

A handwritten signature in cursive script, reading "Jessica B. Cahill", is written over a horizontal line.

Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708



1 **SR**
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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,**

16 **Plaintiff/Judgment Creditor,**

17 **vs.**

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

21 **Defendant/Judgment Debtor.**

Case No.: A-17-760779-F

Dept. No.: II

NOTICE OF SERVING SUBPOENA ON
EDWARD NEWLIN DETWILER

22 Please take notice that on January 16, 2020, Edward Newlin Detwiler was served with a
23 Subpoena. Subpoena and Affidavit of Service is attached herewith.

24 DATED this 22nd day of January, 2020.

25 LEWIS ROCA ROTHGERBER CHRISTIE LLP

26 By: /s/ John E. Bragonje

27 John E. Bragonje
28 State Bar No. 9519
jbragonje@lrrc.com
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Attorneys for Plaintiff/Judgment Creditor Baker
Boyer National Bank

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed and served the
3 foregoing document entitled “**Notice of Serving Subpoena on Edward Newlin Detwiler**”
4 through the Court’s electronic filing system on all registered parties in this matter.

5 Michael D. Mazur, Esq.
6 **MAZUR & BROOKS**
7 **A PROFESSIONAL CORPORATION**
8 2355 Red Rock Street, Suite 100
9 Las Vegas, NV 89146
10 *Attorneys for Defendant James Patterson Foust, Jr.*

11 Via Email to:

12 Brenoch Wirthlin
13 **KOLESAR & LEATHAM**
14 400 S. Rampart Blvd., Ste. 400
15 Las Vegas, NV 89145
16 bwirthlin@knevada.com

17 DATED this 22nd day of January, 2020.

18 /s/ Luz Horvath

19 An employee of Lewis Roca Rothgerber Christie LLP
20
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CC03
John E. Bragonje
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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

SUBPOENA – CIVIL

☒ **REGULAR** ☐ **DUCES TECUM**

THE STATE OF NEVADA SENDS GREETINGS TO:

EDWARD N. DETWILER

YOU ARE HEREBY COMMANDED that all and singular, business and excuses set aside, you appear and attend on the 29th day of January, 2020, at the hour of 9:00 A.M. in Department No. II of the District Court, Clark County, Nevada. The address where you are required to appear is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your attendance is required to give testimony and/or to produce and permit inspection and copying of designated books, documents or tangible things in your possession, custody or control, or to permit inspection of premises.

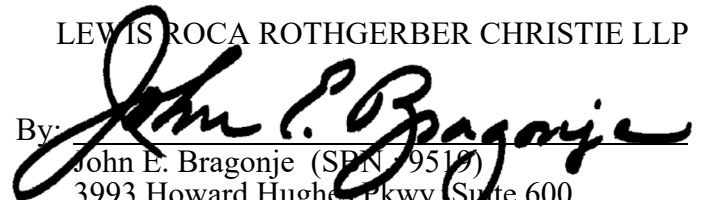
You are required to appear pursuant to NRS 31.100 and to give testimony and be examined under oath concerning the following matters: (1) your status as a person owing debts to the defendant and judgment debtor James Patterson Foust Jr. or having in your possession or under

1 your control any credits or other personal property belonging to the defendant and judgment
2 debtor James Patterson Foust Jr.; (2) whether you are an alter ego of Harry Hildibrand, LLC; (3)
3 any updates or additions to the testimony you previously gave before this Court on April 1, April
4 24, May 17, and May 21, 2019 and pertaining to this Court's Order to Appear and Show Cause
5 Why Defendants Should Not Be Held in Civil Contempt for violating this Court's prior Findings
6 of Fact, Conclusions of Law, and Final Judgment issued on January 9, 2019; and (4) any other
7 matter properly within the scope of NRS 31.100.

8 **CONTEMPT:** Your failure to appear will place you at risk of civil contempt. Failure by
9 any person without adequate excuse to obey a subpoena served upon that person may be deemed a
10 contempt of court. NRCP 45(e). If you fail to attend, you may be liable to pay \$100, plus all
11 damages caused by your failure to appear, and may be committed to jail. NRS 50.195, 50.205.
12 Additionally, the court may issue a warrant for your arrest pursuant to its civil contempt powers.
13 NRS 22.010(3); NRS 1.210(2); NRS 21.340. Please see Exhibit "A" attached hereto for
14 information regarding the rights of the person subject to this Subpoena.

15
16 LEWIS ROCA ROTHGERBER CHRISTIE LLP

17 By:


18 John E. Bragonje (SPN 9519)
19 3993 Howard Hughes Pkwy, Suite 600
20 Las Vegas, NV 89169-5996

21 *Attorneys for Plaintiff Baker Boyer National Bank*
22
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EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

107427712_1

1 (1) A person responding to a subpoena to produce documents shall produce them as
2 they are kept in the usual course of business or shall organize and label them to correspond with
3 the categories in the demand.

4 (2) When information subject to a subpoena is withheld on a claim that it is privileged
5 or subject to protection as trial preparation materials, the claim shall be made expressly and shall
6 be supported by a description of the nature of the documents, communications, or things not
7 produced that is sufficient to enable the demanding party to contest the claim.
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1 **AFFT**

2 Lewis, Roca, Rothgerber, Christie LLP

3 John E. Bragonje

3993 Howard Hughes Parkway, Suite 600

Las Vegas, NV 89169

State Bar No.: 9519

Attorney(s) for: Plaintiff(s)


**DISTRICT COURT
CLARK COUNTY, NEVADA**

Case No.: **A-17-760779-F**Dept. No.: **II**Date: **January 29, 2020**Time: **9:00AM****Baker Boyer National Bank, a Washington corporation****vs*****Plaintiff(s)/Judgment Creditor*****James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually, and his marital community, if any*****Defendant(s)/Judgment Debtor*****AFFIDAVIT OF SERVICE**

I, **Leonard Jay Hirschhorn**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received the **Subpoena - Civil: Check for Witness Fee \$40.00**, on the **16th** day of **January, 2020** and served the same on the **17th** day of **January, 2020** at **11:23am** by: delivering a copy to the witness **Edward N. Detwiler** by leaving copies with **Edward N. Detwiler**, at **Kolesar & Leatham, 400 S. Rampart Blvd. #400, Las Vegas, NV 89145**.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law
of the state of Nevada that the foregoing is true and correct.
Executed this 17th day of January 2020


Affiant – **Leonard Jay Hirschhorn** #: **R-2018-03419**
Legal Process Service, License # 604
Work Order # 20009300580



AFFT

Lewis, Roca, Rothgerber, Christie LLP
John E. Bragonje
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
State Bar No.: 9519
Attorney(s) for: Plaintiff(s)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Case No.: A-17-760779-F

Dept. No.: II

Date: January 15, 2020
Time: 9:00AM

Baker Boyer National Bank, a Washington corporation
vs **Plaintiff(s)/Judgment Creditor**
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually, and his marital community, if any
Defendant(s)/Judgment Debtor

**AFFIDAVIT OF
ATTEMPTED SERVICE**

I, Leonard Jay Hirschhorn, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action: That the affiant received the within Subpoena - Civil; Check for Witness Fee \$40.00 on the 6th day of January, 2020 and attempted to effect service on Edward N. Detwiler at the following: 817 Windhook St., Las Vegas, NV 89144, as follows:

<u>Date</u>	<u>Time</u>	<u>Address</u>	<u>Outcome</u>
01/06/2020	6:25pm	817 Windhook St.	Address is a 2 story house in community of Sycamore Ridge. There were some interior lights on but no answer and/or any visible activity.
01/08/2020	8:17am	817 Windhook St.	There was no change from previous attempt. Affiant left a delivery notice.
01/09/2020	12:40pm	817 Windhook St.	Delivery notice was still posted. There was no answer and/or any activity.
01/11/2020	11:17am	11268 Rising Ridge	Affiant spoke with male resident who said that subject does not live there.

I declare under penalty of perjury under the law
of the state of Nevada that the foregoing is true and correct.
Executed this 16th day of January 2020

Affiant – Leonard Jay Hirschhorn #: R-2018-03419
Legal Process Service, License # 604
Work Order No 200019A00581





Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255



AFFT
 Lewis, Roca, Rothgerber, Christie LLP
 John E. Bragonje
 3993 Howard Hughes Parkway, Suite 600
 Las Vegas, NV 89169
 State Bar No.: 9519
 Attorney(s) for: Plaintiff(s)

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

Case No.: A-17-760779-F

Dept. No.: II

Date: January 15, 2020
 Time: 9:00AM

Baker Boyer National Bank, a Washington corporation
vs **Plaintiff(s)/Judgment Creditor**
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually, and his marital community, if any
Defendant(s)/Judgment Debtor

**AFFIDAVIT OF
 ATTEMPTED SERVICE**

I, Jennifer Lynn Jones, being duly sworn deposes and says: That Affiant is and was on the day when she attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not contain the social security number of any person. That the affiant received the within Subpoena - Civil: Check for Witness Fee \$40.00 on the 13th day of January, 2020 and attempted to effect service on Edward N. Detwiler at the following: Coldwell Banker Premier Realy 10120 S. Eastern Ave., #300, Henderson, NV 89052. Below are listed the date(s) and time(s) of attempted service:

<u>Date</u>	<u>Time</u>	<u>Address</u>	<u>Outcome</u>
01/13/2020	11:55am	As above	Affiant spoke with receptionist, Krissy. She advised that subject was not in the office and said to check with Coldwell Banker at 8290 W. Sahara Ave. A subsequent call was made to Coldwell Banker on W. Sahara and subject was not in the office, 702 817 9500.

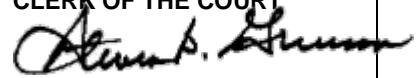
I declare under penalty of perjury under the law of the state of Nevada that the foregoing is true and correct.
 Executed this 15th day of January 2020

Jennifer Lynn Jones #R-2018-02711

Legal Process Service License # 604

WorkOrderNo 2000199 RA00582





BREF

John E. Bragonje
State Bar No. 9519
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Las Vegas, NV 89169-5996
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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

**BRIEF IN SUPPORT OF CONTINUING
REQUEST TO HOLD EDWARD N.
DETWILER IN CIVIL CONTEMPT OF
COURT**

Date: January 31, 2020

Time: 8:30 a.m.

Introduction

The plaintiff and judgment creditor Baker Boyer National Bank (the “Bank”) asks that this Court adjudge Edward N. Detwiler in contempt of Court and issue a warrant for his arrest. The Bank asks that Mr. Detwiler be taken into custody when he is scheduled to appear on January 31, 2020. This remedy is warranted because Mr. Detwiler is the person that controls Harry Hildibrand, LLC (“HH”), and HH has—for more than one year now—defied this Court’s repeated orders to surrender a collection of vehicles to satisfy the underlying judgment.

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Relevant Background

This matter has been pending since August 31, 2017. More than one year ago—on January 9, 2019—the Court issued its Findings of Fact, Conclusions of Law, and Final Judgment (the “Order”), resolving a series of prior supplemental proceedings in favor of the Bank and against Mr. Foust and third party claimant HH. The Order required “Mr. Foust and HH and any of their respective agents, employees, or affiliates [] *including without limitation Mr. Detwiler* . . . on penalty of contempt, to deliver up, surrender possession of, and turn over to the Bank promptly, in a manner that protects the cars from any damage all 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.” (Order, Conclusion of Law ¶ 29 (emphasis supplied), on file herein.)

Mr. Detwiler has refused to obey the Order. As a consequence, this Court conducted an evidentiary hearing pursuant to its contempt powers. Pursuant to an order to show cause, Mr. Detwiler testified during the May 17 and May 21, 2019 contempt trial. (See transcripts of testimony filed herein on 6/12/19, and incorporated by this reference.) After considering the extensive documentary evidence and testimony, this Court issued the following minute order:

The Court GRANTS Plaintiff/Judgment Creditor’s Motion to hold Mr. Detwiler and Harry Hildebrand in Civil Contempt of Court. At the Evidentiary Hearing on this matter Mr. Detwiler and Harry Hildebrand both had the ability to comply with this Court’s prior Order to surrender and turnover the subject cars, but intentionally and knowingly failed to comply, without justification. Mr. Detwiler argued that he was merely a figure-head of Harry Hildebrand, LLC, but that argument was clearly negated by the evidence; at all relevant times Mr. Detwiler was the controlling Manager of Harry Hildebrand, LLC, and as such accepted and possessed the responsibility to control the assets of Harry Hildebrand, LLC, including its classic cars. The Court ORDERS that a Warrant of Commitment (Arrest) be issued as to Mr. Detwiler, commanding his confinement until such time as he surrenders that sub-set of the 20 cars that he swore were in the possession, custody, and/or control of Harry Hildebrand LLC at the time of the Court’s turnover Order. Bond shall be required in the amount of \$100,000.00. Further, pursuant to NRS 22.100, the Court fines Harry Hildebrand LLC \$ 500.00, for its Contempt of Court, and further sanctions Harry Hildebrand and Orders it to pay the total amount of Plaintiff Baker Boyer’s fees and costs incurred in connection with this matter. Baker Boyer shall prepare the Order herein, including appropriate context and authorities, consistent with this Minute Order and the evidence presented at the hearing. Plaintiff shall attach to such Order its Affidavit of Fees and Costs. Plaintiff shall also prepare the Warrant of Commitment against Mr. Detwiler.

(11/19/19 Minute Order, on file herein.)

1 The Bank respectfully reminds the Court of the order it signed on December 16, 2019 to
2 implement this minute entry, a copy of which is attached hereto as Exhibit 1. The Bank asks that
3 the Court consider the order it previously signed (Exhibit 1) as the Bank's continuing argument
4 and summation of the evidence.

5 There is no need for extensive additional testimony or other procedures going forward.
6 This record of Mr. Detwiler's misconduct is extensive. He has given testimony under oath on four
7 occasions: at deposition ordered by this Court (July, 2018); during the Section 341 meeting of
8 creditors during HH's bankruptcy proceeding (August, 2018); at the hearing resolving HH's third
9 party claim under NRS 31.070 (November, 2018); and during the contempt proceedings (May,
10 2019).

11 Given the great volume of testimony that Mr. Detwiler has already offered, the Bank will
12 only examine Mr. Detwiler about a small item of additional information discussed below. It
13 would be inappropriate, moreover, to allow Mr. Detwiler to alter or multiply his prior extensive
14 statements. *See* NRS 50.115(1) ("The judge shall exercise reasonable control over the mode and
15 order of interrogating witnesses and presenting evidence . . . [t]o avoid needless consumption of
16 time."). The Bank has waited too long for justice to be required now, at long last, to revisit Mr.
17 Detwiler's days' worth of previous testimony. *See* NRCP 1 (procedure exists "to secure the just,
18 speedy, and inexpensive determination of every action and proceeding."). As many wise jurists
19 have said, "all things must come to an end, and that includes litigation." *E.g., Lara v. Best Dry*
20 *Cleaners, Inc.*, No. 6:17-CV-99-ORL-28TBS, 2017 WL 11037318, at *3 (M.D. Fla. Aug. 1,
21 2017), report and recommendation adopted, No. 6:17-CV-99-ORL-28TBS, 2017 WL 11037319
22 (M.D. Fla. Sept. 25, 2017). The time for decision is now.

23 **Mr. Detwiler Has Had Repeated Notice and Opportunity to Be Heard**

24 At the hearing on December 23, 2019, this Court expressed an interest that Mr. Detwiler be
25 served a subpoena under NRS 31.100. At the time of the hearing, speaking extemporaneously, the
26 undersigned did not believe Mr. Detwiler had been served with a subpoena. However, with the
27 benefit of the chance to consult the extensive record, we have determined that Mr. Detwiler was
28 indeed served with a subpoena long ago—on June 19, 2018. (*See* Exhibit 2 hereto). Mr. Detwiler

appeared and gave deposition testimony pursuant to this subpoena on July 6, 2018. The subpoena was served through the Court's electronic system upon the law firm then representing Mr. Detwiler, Holland & Hart. (*Id.*) Mr. Detwiler was also served with a *second* subpoena requiring his attendance at the forthcoming hearing. (*See* 1/22/20 Status Report, on file herein.) And most significantly of all, Mr. Detwiler was personally served with an order to appear and show cause why he should not be held in contempt. The service of this Court's order to show cause (Exhibit 3), which identifies Mr. Detwiler by name, was personally served upon him on March 19, 2019 (Exhibit 4). There are no due process defects. Mr. Detwiler has had three separate, independently sufficient instances of notice and an opportunity to be heard.

**Additional Evidence Shows the Close Relationship Between
Messrs. Foust and Detwiler**

Mr. Detwiler has tried to distance himself from Mr. Foust when speaking before this Court. The evidence, as summarized in Exhibit 1, has always been to the contrary. There is more for the Court to consider. Even after all of the hearings and depositions in two states, both men are owners and principals of *active* entities registered with the Nevada Secretary of State that share the same office located at office space 10120 South Eastern Avenue, Henderson:

Entity Name	Officer
JPF ENTERPRISES, LLC	James P Foust, Manager
PSV DEVELOPMENT, LLC	Edward N Detwiler, Managing Member
NAI'A RESORTS LLC	Edward N Detwiler, Manager
DALLAS WEST MANAGEMENT LLC	Edward N Detwiler, Managing Member

The reports from which this table are generated are offered as Exhibit 5.

Conclusion

The Bank respectfully submits that this Court has the authority to commit Mr. Detwiler to prison under NRS Chapter 22, as more particularly described at paragraphs 16 to 25 in the Conclusions of Law of this Court's December 16, 2019 order (Exhibit 1).

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1 The Bank asks that Mr. Detwiler be taken into custody when he is scheduled to appear on January
2 31, 2020.

3 DATED this 24th day of January, 2020.

4 LEWIS ROCA ROTHGERBER CHRISTIE LLP

5
6 By: /s/ John E. Bragonje

7 John E. Bragonje

8 State Bar No. 9519

9 jbragonje@lrrc.com

10 3993 Howard Hughes Parkway, Suite 600
11 Las Vegas, NV 89169

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

14 3993 Howard Hughes Pkwy, Suite 600
15 Las Vegas, NV 89169-5996

16 **Lewis Roca**
17 ROTHGERBER CHRISTIE

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Exhibit 1

Exhibit 1

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

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

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

5 INTRODUCTION

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

11 When he applied for the loan that created the obligation that, when breached, led to the
12 Judgment, Mr. Foust represented that he owned a collection of 59 expensive, rare, and exotic
13 vehicles, including Corvettes, a Cadillac, Mercedes, Porsches, and Lamborghinis. On January 9,
14 2019, the Court issued a Findings of Fact, Conclusions of Law, and Final Judgment (the "Order"),
15 resolving a series of prior supplemental proceedings in favor of the Bank and against Mr. Foust
16 and third party claimant Harry Hildibrand, LLC ("HH"). The Order required "Mr. Foust and HH
17 and any of their respective agents, employees, or affiliates [] *including without limitation Mr.*
18 *Detwiler* . . . on penalty of contempt, to deliver up, surrender possession of, and turn over to the
19 Bank promptly, in a manner that protects the cars from any damage, all [twenty] cars identified in
20 [Exhibit B] with any cost or expense involved in delivery to the Bank to be borne by Mr. Foust
21 and/or HH." (Order, Conclusion of Law ¶ 29 (emphasis supplied).)

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

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

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

3 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

1 and the Bank's requests for compliance.

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

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

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

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

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

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

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

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

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

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

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

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

13 Q: And you’re the sole—

14 Mr. Detwiler: At least to my knowledge.

15 Q: —manager, correct?

16 Mr. Detwiler: I’m—I’m a manager.

17 Q: Who are the other managers?

18 Mr. Detwiler: I don’t know.

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

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

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

22 (5/17/19 Hr’g Trans., p. 28:6-7.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Mr. Detwiler: Sure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 failed to comply, without justification.

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

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

8 **CONCLUSIONS OF LAW**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **NRS 22.100 Penalty for contempt.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 *Id.*

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

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

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

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

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

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

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

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

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

20 Dated this 16th day of December, 2019

21
22
23 
24 DISTRICT COURT JUDGE
25 

1 Respectfully submitted,

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3
4 By: 

5 John E. Bragonje

6 State Bar No. 9519

7 jbragonje@lrrc.com

8 3993 Howard Hughes Parkway, Suite 600

9 Las Vegas, NV 89169

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

EXHIBIT B

EXHIBIT B

HARRY HILDBRAND

Titles as on BBB		7/26/2018 0:15			
YEAR	MAKE	Model	Value	VIN	
2007	CHEV	Corvette Z06	\$ 35,000	1G1YY28E375121089	
2007	Mercedes	M50 SUV	\$ 11,000	4JGBB75E07A222537	
1940	FORD	Coupe	\$ 35,000	AZ162801	
1957	CHEV	BEL AIR CONV. (FI)	\$ 25,000	VC570141640	
1957	CHRYSLER	300 C CONV.	\$ 35,000	3N571810	
1958	FORD	T-BIRD (CHEV)	\$ 5,000	P5FH240847	
1957	FORD	FAIRLANE 500	\$ 15,000	D7LV162233	
1966	FORD	THUNDERBIRD - red	\$ 15,000	6Y85Z104010	
1971	FORD	PANTERIA	\$ 25,000	THPNLY01620	
1973	FORD	PANTERIA -GT4	\$ 35,000	THPNU05291	
1951	JAGUAR	XK 120 RACE CAR	\$ 20,000	S671986	
1957	OLDSMOBILE	98 ROCKET	\$ 18,000	579M27885	
1966	PLYMOUTH	BELVADIRE	\$ 15,000	RACE CAR BODY & SHELL - N	
2000	PLYMOUTH	PROWLER	\$ 21,000	1P3EW65G1YV603597	
2007	Mercedes	CLK 550	\$ 12,000	WDBTK72F27T081009	
2000	GMC	Yukon	\$ 8,000	1GKEK13T9YJ1740142	
2007	Mecedes	S550	\$ 25,000	WDDNG71X57A075880	
1963	CHEV	425/409 S/S	\$ 25,000	31847L144086	
1998	MARATHON	COACH	\$ 129,875	2PCM3349XV1026183	
2016	KAWASAKA	kr10	\$ 11,700	JKAZX2A13FB505	
Total			\$ 521,575		

SUPPORT FOR 206 A/B #46, PAGE 5

Exhibit 2

Exhibit 2

SUB

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

SUBPOENA

THE STATE OF NEVADA SENDS GREETINGS TO:

ED DETWILER

YOU ARE HEREBY COMMANDED, that all and singular, business and excuses set aside, you appear and attend on the 22nd day of JUNE, 2018, at the hour of 10:00 a.m. at the offices of Lewis and Roca LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, Nevada 89169 to give testimony; Plaintiff in the above-named action will take your deposition. The deposition will be upon oral examination before a Notary Public, or before some other officer authorized by law to administer oaths and shall be recorded by stenographic means. Plaintiff reserves the right to record the deposition by videotape and to conduct the deposition using instant visual display.

IF YOU FAIL TO ATTEND, you will be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your failure to appear. Your attendance is required to give testimony and/or to produce and permit inspection and copying of designated books, documents or tangible things in your possession, custody or control, or to permit inspection of premises. You are required to bring with you at the time of your appearance any items set forth below. Please see Exhibit "A" attached hereto for information regarding the rights of the person subject to this Subpoena.

1 Issued at the request of officer of the court licensed to practice in Nevada (NRCP 45(a)(3)):

2 Dated this 18th day of June, 2018

3 LEWIS ROCA ROTHGERBER CHRISTIE LLP

4
5 By: 

6 John E. Bragonje (SBN 9517)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

7 *Attorneys for Plaintiff/Judgment Creditor*

ITEMS TO BE PRODUCED

Kindly produce all documents you intend to attempt to introduce into evidence at the evidentiary hearing set for June 29, 2018.

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

Lewis Roca
ROTHGERBER CHRISTIE

EXHIBIT A

NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

NOTC
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

**NOTICE OF SERVING
SUBPOENA DUCES TECUM**

Pursuant to Nevada Rule of Civil Procedure 45(b)(1), Plaintiff Baker Boyer National Bank
by and through counsel of record John Bragonje of Lewis Roca Rothgerber Christie LLP, hereby
give notice that they are serving the attached Subpoena Duces Tecum on:

Ed Detwiler
c/o Joseph Went
HOLLAND & HART
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Dated this 19th day of June, 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

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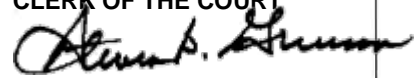
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Exhibit 3

Exhibit 3



ORDR

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

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

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

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

HEARING REQUIRED

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

TO: JAMES P. FOUST, JR.

HARRY HILDIBRAND, LLC

EDWARD DETWILER

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

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

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

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

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

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

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

13
14
15
16 
DISTRICT COURT JUDGE

17 TM

18
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

Exhibit 4

Exhibit 4

1 **AFFT**

2 Lewis, Roca, Rothgerber, Christie LLP

3 John E. Bragonje

4 3993 Howard Hughes Parkway, Suite 600

5 Las Vegas, NV 89169

6 State Bar No.: 9519

7 Attorney(s) for: Plaintiff/Judgment Creditor Baker Boyer

Electronically Filed

2/28/2019 12:42 PM

Steven D. Grierson

CLERK OF THE COURT

Steven D. Grierson

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

Case No.:

A-17-760779-F

Dept. No.: **II**

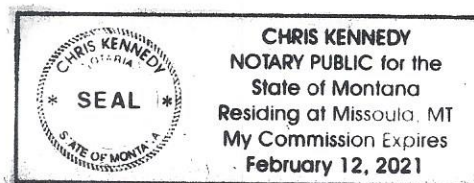
Date: **April 1, 2019**

Time: **9:00 a.m.**

10 **Baker Boyer National Bank, a Washington corporation**
11 **vs**
12 **James Patterson Foust, Jr., also known as James P. Foust, Jr.,**
13 **individually and his marital community, if any**
14 **Plaintiff/Judgment Creditor**
15 **Defendant/Judgment Debtor**

AFFIDAVIT OF SERVICE

15 Donald M. Branda, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the
16 United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made.
17 The affiant received 1 copy(ies) of the Order to Appear and Show Cause Why Defendants Should Not Be
18 Held in Civil Contempt: Application for Order to Show Cause Why Defendants Should Not Be Held in Civil
19 Contempt: Notice of Entry of Order to Appear and Show Cause Why Defendants Should Not Be Held in
20 Civil Contempt on the 25th day of February, 2019 and served the same on the 26th day of February, 2019 at
21 11:51AM by serving the Respondent(s), Harry Hildibrand, LLC by personally delivering and leaving a copy at
22 the address of the registered agent, Jared S. Heggen, 3011 American Way, Missoula, MT 59808 with Lauren
23 Towsley (Caucasian female, approximately 25 years old and 5'8" and 135lbs., blonde hair) pursuant to NRS
24 14.020 as a person of suitable age and discretion at the above address, which address is the address of the
25 registered agent as shown on the current certificate of designation filed with the Secretary of State.
26 Pursuant to NRS 239B.030 this document does not contain the social security number of any person.



32 State of Montana, County of Missoula

33 SUBSCRIBED AND SWORN to before me on this
34 26th day of February, 2019

35 *Donald M. Branda*
36 Affiant: **Donald M. Branda**
Process Server

330 Notary Public

Chris Kennedy

WorkOrderNo 1901210



Exhibit 5

Exhibit 5

ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

DALLAS WEST MANAGEMENT LLC

Entity Number:

E0008092018-1

Entity Type:

Domestic Limited-Liability Company (86)

Entity Status:

Default

Formation Date:

01/05/2018

NV Business ID:

NV20181013137

Termination Date:

Perpetual

Annual Report Due Date:

1/31/2019

Series LLC:

☐

Restricted LLC:

☐

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

PETER J SHOOBRIDGE

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Non-Commercial Registered Agent

NV Business ID:

Office or Position:

Jurisdiction:

Street Address:

1313 BAINBERRY RIDGE LANE, LAS VEGAS, NV, 89144, USA

Email Address:

Mailing Address:

Individual with Authority to Act:

Contact Phone Number:

Fictitious Website or Domain Name:

PRINCIPAL OFFICE ADDRESS

Address:

Mailing Address:

OFFICER INFORMATION

☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Managing Member	OLLIE J BORER	3412 GRANADA AVE, #201, DALLAS, TX, 75205, USA	01/22/2018	Active
Managing Member	EDWARD N DETWILER	10120 S EASTERN AVENUE, SUITE 300, HENDERSON, TX, 89052 - 7070, USA	01/22/2018	Active
Managing Member	VASKEN H SETRAKIAN	57 FAWN HILL ROAD, UPPER SADDLE RIVER, TX, 07458, USA	01/22/2018	Active
Managing Member	PETER J SHOOBRIDGE	1313 BAINBERRY RIDGE LANE, LAS VEGAS, TX, 89144 - 4153, USA	01/22/2018	Active
Managing Member	JEFFREY R BORER	3412 GRANADA AVE, #201, DALLAS, TX, 75205, USA	01/22/2018	Active
Page 1 of 1, records 1 to 5 of 5				
Filing History Name History Mergers/Conversions				

[Return to Search](#)[Return to Results](#)

ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

JPF ENTERPRISES, LLC

Entity Number:

E0319092013-2

Entity Type:

Domestic Limited-Liability Company (86)

Entity Status:

Active

Formation Date:

06/28/2013

NV Business ID:

NV20131390289

Termination Date:

Perpetual

Annual Report Due Date:

6/30/2020

Series LLC:

☐

Restricted LLC:

☐

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

JPF ENTERPRISES, LLC C/O OWNER

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Non-Commercial Registered Agent

NV Business ID:

Office or Position:

Jurisdiction:

Street Address:

10821 WOODSTREAM CT, LAS VEGAS, NV, 89135, USA

Email Address:

Mailing Address:

Individual with Authority to Act:

Contact Phone Number:

Fictitious Website or Domain Name:

PRINCIPAL OFFICE ADDRESS

Address:

Mailing Address:

OFFICER INFORMATION

☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Manager	JAMES P FOUST	10120 S EASTERN AVE, HENDERSON, NV, 89052, USA	05/31/2019	Active
Page 1 of 1, records 1 to 1 of 1				
Filing History Name History Mergers/Conversions				

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ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

NAI'A RESORTS LLC

Entity Number:

E0397622017-5

Entity Type:

Domestic Limited-Liability Company (86)

Entity Status:

Active

Formation Date:

08/21/2017

NV Business ID:

NV20171528849

Termination Date:

Perpetual

Annual Report Due Date:

8/31/2020

Series LLC:

☐

Restricted LLC:

☐

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

PETER J SHOOBRIDGE

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Non-Commercial Registered Agent

NV Business ID:

Office or Position:

Jurisdiction:

Street Address:

1313 BAINBERRY RIDGE LANE, LAS VEGAS, NV, 89144, USA

Email Address:

Mailing Address:

Individual with Authority to Act:

Contact Phone Number:

Fictitious Website or Domain Name:

PRINCIPAL OFFICE ADDRESS

Address:

Mailing Address:

OFFICER INFORMATION

☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Manager	EDWARD N DETWILER	10120 S EASTERN AVENUE, SUITE 300, HENDERSON, NV, 89052 - 7070, USA	07/17/2018	Active
Manager	PETER J SHOOBRIDGE	1313 BAINBERRY RIDGE LANE, LAS VEGAS, NV, 89144 - 4153, USA	07/17/2018	Active
Manager	CHARLES OSWALD	1550 WOODS OF RIVERCHASE DR, STE 100, HOOVER, AL, 35244, USA	07/17/2018	Active
Manager	VASKEN H SETRAKIAN	1313 BAINBERRY RIDGE LANE, LAS VEGAS, NV, 89144 - 4153, USA	07/17/2018	Active
Manager	CARL BAZARIAN	20 DUNES ROW, AMELIA ISLAND, FL, 32024, USA	07/17/2018	Active
Page 1 of 1, records 1 to 5 of 5				
Filing History Name History Mergers/Conversions				

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ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

PSV DEVELOPMENT, LLC

Entity Number:

E0613832014-0

Entity Type:

Domestic Limited-Liability Company (86)

Entity Status:

Active

Formation Date:

12/05/2014

NV Business ID:

NV20141749107

Termination Date:

Perpetual

Annual Report Due Date:

12/31/2019

Series LLC:

☐

Restricted LLC:

☐

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

EDWARD N. DETWILER

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Non-Commercial Registered Agent

NV Business ID:

Office or Position:

Jurisdiction:

Street Address:

10120 S. EASTERN AVE., SUITE 300, HENDERSON, NV, 89052, USA

Email Address:

Mailing Address:

Individual with Authority to Act:

Contact Phone Number:

Fictitious Website or Domain Name:

PRINCIPAL OFFICE ADDRESS

Address:

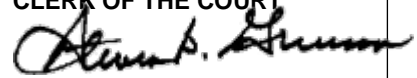
Mailing Address:

OFFICER INFORMATION

☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Managing Member	EDWARD N DETWILER	10120 S. EASTERN AVE #300, HENDERSON, NV, 89052, USA	12/27/2018	Active
Managing Member	PETER J SHOOBIDGE	10120 S EASTERN AVENUE, SUITE 300, HENDERSON, NV, 89052, USA	12/27/2018	Active
Managing Member	KEN D SARNA	10120 S. EASTERN AVE #300, HENDERSON, NV, 89052, USA	12/27/2018	Active
Page 1 of 1, records 1 to 3 of 3				
Filing History Name History Mergers/Conversions				

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NCOA (CIV)
BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)
AMANDA K. BAKER, ESQ. (NV SBN 15172)
KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Telephone: (702) 362-7800
Facsimile: (702) 362-9472
E-Mail: bwirthlin@klnvada

Attorneys for Edward Detwiler

DISTRICT COURT
CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff,

vs.

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

Defendant

CASE NO. A-17-760779-F

DEPT NO. 2

NOTICE OF APPEARANCE

NOTICE OF APPEARANCE

YOU AND EACH OF YOU PLEASE TAKE NOTICE that Brenoch Wirthlin, Esq.,
(Nevada Bar No. 10282), Kolesar & Leatham, 400 South Rampart Blvd., Suite 400, Las Vegas,
Nevada 89145, on behalf of his client, EDWARD DETWILER, hereby submits this NOTICE OF
APPEARANCE in the above-entitled cause of action and hereby requests that all further papers

//

//

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 and pleadings herein, except original process, be served upon Plaintiff Baker Boyer National Bank
2 and Defedant James Pattterson Foust, Jr., through their respective attorneys of record via the
3 Court's electronic filing system

4 DATED this 27th day of January 2020.

5 **KOLESAR & LEATHAM**

6
7 By /s/ **BRENOCH WIRTHLIN**
8 **BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)**
9 **AMANDA K. BAKER, ESQ. (NV SBN 15172)**
10 **KOLESAR & LEATHAM**
11 400 South Rampart Boulevard, Suite 400
12 Las Vegas, Nevada 89145
13 Telephone: (702) 362-7800
14 Facsimile: (702) 362-9472
15 E-Mail: bwirthlin@klnevada

16 *Attorneys for Edward Detwiler*
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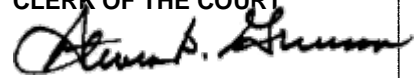
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Kolesar & Leatham, and that on the 27th day of
3 January 2020, I caused to be served a true and correct copy of foregoing **NOTICE OF**
4 **APPEARANCE** in the following manner:

5 (ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced
6 document was electronically filed on the date hereof and served through the Notice of Electronic
7 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master
8 Service List.

9
10 /s/ **S. DIANNE POMONIS**
11 An Employee of KOLESAR & LEATHAM

12
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24
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KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472



1 **MPOR**
2 **KOLESAR & LEATHAM**
3 BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)
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7 Telephone: (702) 362-7800
8 Facsimile: (702) 362-9472
9 Email: bwirthlin@klnevada.com
10 Email: abaker@klnevada.com
11 Attorneys for Non-party Edward Detwiler

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

14 * * *

15 BAKER BOYER NATIONAL BANK,
16 a Washington corporation,

17 Plaintiff,

18 v.

19 JAMES PATTERSON FOUST, JR.,
20 individually,

21 Defendants.

CASE NO.: A-17-760779-F

DEPT NO.: II

22 **NON-PARTY EDWARD DETWILER'S**
23 **MOTION FOR ENTRY OF A**
24 **PROTECTIVE ORDER AND**
25 **CONTINUANCE OF HEARING**
26 **ON ORDER**
27 **SHORTENING TIME**

28 **HEARING REQUESTED ON ORDER**
SHORTENING TIME

29 Pursuant to Rules 26(c) and 45(c) of the Nevada Rules of Civil Procedure, non-party
30 Edward Detwiler ("Mr. Detwiler"), hereby submits his motion ("Motion") requesting the Court
31 issue a protective order relative to the subpoena recently served on Mr. Detwiler commanding he
32 appear before this Honorable Court on January 29, 2020, at 9:00 a.m. ("Subpoena")¹. In addition,
33 as set forth herein, it appears a hearing with respect to the Subpoena and additional matters has
34 been set with this Court for January 31, 2020. Further, because counsel for plaintiff Baker Boyer
35 National Bank (the "Bank" or "Plaintiff"), who issued the subpoena, has agreed to combine the
36 deposition referenced in the Subpoena with the hearing on January 31, 2020 (collectively referred
37 _____
38

¹ A copy of the Subpoena is attached hereto as Exhibit 1.

HEARING REQUIRED
DATE: 1/30/2020
TIME: 1:30 PM

PA00638

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

to herein as the "Hearing"), Mr. Detwiler hereby submits this Motion to this Court to continue the Hearing to enable Mr. Detwiler and his newly retained undersigned counsel to prepare for the Hearing, particularly given the fact that the Bank is seeking Mr. Detwiler's **indefinite imprisonment** until he pays a judgment that is not even against him, and cannot properly be so construed.

As set forth more fully herein, the undersigned law firm has only become involved in this case in the last few days and given the very broad scope of the Subpoena, the length of the proceedings that have already transpired in this matter, in addition to what appears to be the attempts by the Bank to hold Mr. Detwiler – a non-party – somehow responsible for a judgment against defendant James Foust, Jr. ("Defendant" or "Mr. Foust"), and the very serious nature of the potential consequences of this matter – including the fact that a bench warrant for Mr. Detwiler's arrest was issued and then apparently vacated² due to the Bank's failure to serve Mr. Detwiler (and the order of contempt against Mr. Detwiler was also vacated) – Mr. Detwiler hereby requests time to prepare for this matter.

This Motion and accompanying request for order shortening time are made and based upon the following Memorandum of Points and Authorities, the Declaration of Brenoch R. Wirthlin ("Wirthlin Declaration"), the Declaration of Mr. Detwiler ("Detwiler Declaration"), any argument the Court may entertain at a hearing on this matter, and all papers and pleadings on file herein.

DATED this 27th day of January, 2020.

KOLESAR & LEATHAM

By


BRENOCH WIRTHLIN, ESQ.

(NV SBN 10282)

AMANDA K. BAKER, ESQ.

(NV SBN 15172)

KOLESAR & LEATHAM

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Attorneys for Non-party Edward Detwiler

² The Court's minutes state the warrant and order of contempt regarding Mr. Detwiler were vacated. The journal entries mention a stay of proceedings. Both have been included herein as Exhibit 4.

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

ORDER SHORTENING TIME

Based upon the Declaration of Brenoch R. Wirthlin, Esq., and good cause appearing therefor,

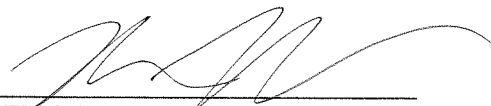
IT IS HEREBY ORDERED that the hearing on **NON-PARTY EDWARD DETWILER'S MOTION FOR ENTRY OF A PROTECTIVE ORDER AND CONTINUANCE OF HEARING ON ORDER SHORTENING TIME** shall be shortened and

hearing before the above-entitled Court in front of the this Court, Department II, on the 30th day of January, 2020, at the hour of 1:30 PM, or as soon thereafter as counsel may be heard, at the Regional Justice

Center, 200 Lewis Avenue, Las Vegas, NV 89155. *The 1/31/20 hearing at 8:30 AM is still going forward.*


DISTRICT COURT JUDGE

Respectfully Submitted by:
KOLESAR & LEATHAM

By 
BRENOCH WIRTHLIN, ESQ.
(NV SBN 10282)
AMANDA K. BAKER, ESQ.
(NV SBN 15172)
KOLESAR & LEATHAM
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Email: abaker@klnevada.com
Attorneys for Non-party Edward Detwiler

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As set forth herein,³ the Bank's request to imprison Mr. Detwiler indefinitely is extremely problematic for multiple reasons, including without limitation, the following:

1. First, in its Brief, the Bank makes clear it is seeking to imprison Mr. Detwiler as a way of extorting him to pay a judgment owed, not by him, but by Mr. Foust. This is wholly improper, violative of binding Nevada Supreme Court precedent as set forth in *Callie v. Bowling*, 123 Nev. 181, 182, 160 P.3d 878, 878 (2007) – which requires that a separate action be filed to establish any liability for a non-party under an *alter ego* theory. The Bank's improper actions also appear to be a violation of NRS § 207.190 (coercion), and also may give rise to an abuse of process claim by Mr. Detwiler against the Bank.
2. Second, under Nevada's civil contempt statutes, including without limitation NRS § 22.110, the draconian and extreme punishment of indefinite imprisonment may only be imposed on an individual where the contempt "consists in the omission to perform an act which is yet in the power of the person to perform..." Here, Mr. Detwiler's testimony, and the other evidence in this case, has been grossly misrepresented to this Court. The truth is, Mr. Detwiler's testimony has been consistent that he never had involvement with, or ownership of, the vehicles at issue ("Vehicles"). Moreover, Mr. Detwiler resigned as a manager of Harry Hildibrand, LLC (the "Company") effective September 10, 2019. See Declaration of Edward N. Detwiler, attached as **Exhibit 2** hereto, and Mr. Detwiler's letter of resignation, attached hereto as **Exhibit 3**.⁴ There can be

³ In addition to the instant Motion, Mr. Detwiler will file a formal and complete response ("Response") to the Bank's Brief in Support of Continuing Request to Hold Edward N. Detwiler in Civil Contempt of Court, filed herein on January 24, 2020 (the Bank's "Brief"). Mr. Detwiler incorporates all arguments and assertions from said response herein.

⁴ See also *Montana Code Annotated*, § 35-8-307

35-8-307. Management and voting

(1) Unless the articles of organization or the operating agreement provide otherwise, in a member-managed company:

(a) each member has equal rights in the management and conduct of the company's business; and

(b) except as provided in subsection (3), any matter relating to the business of the company may be decided by a majority of the members.

(2) Unless the articles of organization or the operating agreement provide otherwise, in a manager-managed company:

(a) each manager has equal rights in the management and conduct of the company's business;

(b) except as provided in subsection (3), any matter relating to the business of the company

no basis to hold Mr. Detwiler in contempt.

3. Finally, the Bank makes multiple inaccurate assertions in its Brief, and its proposed Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, Its Manager (“Vacated Contempt Order”), which will be fully addressed in Mr. Detwiler’s Response to the Brief. However, one glaring and false representation to this Court is that Mr. Detwiler has been represented by counsel in this case, including by the law firm of Holland & Hart. *See* Brief at p. 4. This is false. Holland & Hart represented the Company, never Mr. Detwiler. The Company’s attorney once accepted service of a subpoena on behalf of Mr. Detwiler, but the entirety of this case since Mr. Detwiler’s appearance has seen Mr. Detwiler without proper representation of any kind. The Bank has clearly taken advantage of this fact, and seeks to continue to do so. For example, despite the Subpoena’s extremely broad command that Mr. Detwiler appear and be required to testify about “[a]ny updates or additions to the testimony” he previously gave on numerous occasions (itself a violation of NRC 30 since Mr. Detwiler has already been deposed), now that Mr. Detwiler has retained an attorney, suddenly the Bank does not want this Court to permit Mr. Detwiler to testify about these issues. *See* Brief at p. 3.

In other words, the Bank wants to violate Mr. Detwiler’s Constitutional due process rights, ignore binding Nevada Supreme Court case precedent by effectively obtaining a judgment against him without following any of the required procedures, stifle his ability to testify about what the Bank itself subpoenaed him to address, and then throw him in jail indefinitely until he pays a judgment against someone else or surrenders Vehicles purportedly in the control of an entity from which he has resigned all affiliation.

Given the Bank’s egregious behavior, the numerous due process violations that the Bank has committed against Mr. Detwiler, and the voluminous documentary, testimonial and other evidence in this case, as well as the unfounded and egregious – but still existent – attempts by the

may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(c) a manager:

(i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

(ii) holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

Mont. Code Ann. § 35-8-307 (West) (emphasis added); *see also* NRS §47.250 (13) (regarding the presumption that “a letter duly directed and mailed was received in the regular course of mail).

Bank to imprison Mr. Detwiler indefinitely for a debt against someone else, Mr. Detwiler would request 60 days in order to prepare for the Hearing in this matter.⁵

II. DECLARATION OF BRENOCH R. WIRTHLIN, ESQ. IN SUPPORT NON-PARTY EDWARD DETWILER'S MOTION FOR ENTRY OF A PROTECTIVE ORDER AND CONTINUANCE OF HEARING ON ORDER SHORTENING TIME

I, Brenoch R. Wirthlin, declare as follows:

1. I am a shareholder at the law firm of Kolesar & Leatham ("K&L").

2. I make this declaration in support of non-party Edward Detwiler's ("Mr. Detwiler")'s Motion for Entry of a Protective Order on Order Shortening Time ("Motion") in the above-captioned matter.

3. K&L was very recently contacted to represent Mr. Detwiler in connection with a deposition and/or evidentiary hearing currently set for January 31, 2020.

4. It is my understanding that Mr. Detwiler was served with the Subpoena only a few days ago, on January 17, 2019.

5. The Subpoena, a copy of which is attached hereto as Exhibit 1, is extremely broad in the scope of the testimony it seeks from Mr. Detwiler, including without limitation:

a. (1) His status as a person owing debts to the defendant and judgment debtor James Patterson Foust Jr. or having in his possession or under his control any credits or other personal property belonging to the defendant and judgment debtor James Patterson Foust Jr.;

b. (2) Whether Mr. Detwiler is an alter ego of Harry Hildebrand, LLC;

c. (3) Any updates or additions to the testimony he previously gave before this Court on April 1, April 24, May 17, and May 21, 2019, and pertaining to this Court's Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt for violating this Court's prior Findings of Fact, Conclusions of Law, and Final Judgment issued on January 9, 2019; and

d. (4) any other matter properly within the scope of NRS 31.100

6. In addition, after a review of the Court's docket, it appears an order of contempt

⁵ Should this Court see fit to continue the pending Hearing, Mr. Detwiler would, of course, be amenable to a briefing schedule to respond to the Brief consistent with the Court's schedule.

1 and bench warrant were issued against Mr. Detwiler, after which the Court vacated the warrant
2 and the order of contempt due to the Court's concern that the Bank had never served Mr. Detwiler
3 with a Subpoena. *See* Court Minutes from December 23, 2019, attached hereto as **Exhibit 4** for
4 the Court's convenience.

5 7. Given the very broad scope of the Subpoena – which would be at a minimum the
6 second deposition of Mr. Detwiler and he objects to this as a deposition in violation of NRCP 30(a)
7 – as well as the fact that it appears that the Bank is attempting to hold Mr. Detwiler, a non-party,
8 somehow responsible for a judgment against Defendant Foust, and the very serious nature of the
9 potential consequences of this matter, Mr. Detwiler will need time to prepare for the above
10 deposition and the pending Hearing. Undersigned counsel, who was only contacted within the last
11 few days to represent Mr. Detwiler, will also need time to prepare.

12 8. In addition, it appears the Bank has committed, and asked this Court via its Brief to
13 assist in committing, numerous violations of Nevada law and Mr. Detwiler's Constitutional due
14 process. In its Brief, it is clear the Bank is seeking to imprison Mr. Detwiler as a way of extorting
15 him to pay a judgment owed – not by him – but by Mr. Foust.

16 9. The Bank's brief attaches as Exhibit 1 thereto the Vacated Contempt Order. The
17 Vacated Contempt Order states that Mr. Detwiler can only be released from prison by delivering the
18 Vehicles at issue **"or paying the Bank in immediately available funds the value of the vehicles**
19 **listed in Exhibit B, \$521,575..."** *See* Vacated Contempt Order, Exhibit 1 to the Bank's Brief, at p.
20 17, ¶ 31 (emphasis added).

21 10. This is wholly improper and violative of binding Nevada Supreme Court precedent
22 as set forth in *Callie v. Bowling*, 123 Nev. 181, 182, 160 P.3d 878, 878 (2007), in which the Court
23 held as follows:

24 **A party who wishes to assert an alter ego claim must do so in an independent**
25 **action against the alleged alter ego with the requisite notice, service of process,**
26 **and other attributes of due process.** When the judgment creditor employs the
27 proper procedure, the defendant who is subject to the alter ego claim is assured a
28 full opportunity of notice, discovery, and an opportunity to be heard before
potentially being found liable. **The failure to abide by this procedure results in**
a deprivation of due process.

Callie, 123 Nev. at 185, 160 P.3d at 881 (emphasis added).

11. There is no dispute that the judgment at issue is not against Mr. Detwiler. The Bank requests in its Subpoena testimony by Mr. Detwiler as to where he is an “alter ego” of the Company (which is also removed from the actual judgment debtor, Mr. Foust).

12. Yet, as of the date of this Motion the Bank has not so much as initiated the required separate action against Mr. Detwiler, much less obtained the required judgment against him. Despite this gross lack of due process on the Bank’s part, it seeks to have Mr. Detwiler imprisoned to pay a debt he does not owe.

13. In addition, it appears that the Bank’s behavior in threatening indefinite imprisonment against Mr. Detwiler until he pays someone else’s debt may be a violation of not only NRS § 207.190 (coercion), but also may give rise to an abuse of process claim by Mr. Detwiler against the Bank.

14. Moreover, Nevada’s civil contempt statutes, including without limitation NRS § 22.110, provide that the draconian and extreme punishment of *indefinite imprisonment* may only be imposed on an individual where the contempt “consists in the omission to perform **an act which is yet in the power of the person to perform**...”

15. Here, it appears clear that Mr. Detwiler’s testimony, and the other evidence in this case, has been grossly misrepresented to this Court, and that Mr. Detwiler’s testimony has been consistent that he never had control of the Vehicles at issue, and would have turned them over if it was “in his power to perform.”

16. Mr. Detwiler has confirmed that he sent his resignation as a manager of Harry Hildibrand, LLC, effective September 10, 2019. *See* Declaration of Edward N. Detwiler, attached as Exhibit 2 hereto, and Mr. Detwiler’s letter of resignation, attached hereto as Exhibit 3.

17. There can be no basis to hold Mr. Detwiler in contempt.

18. Finally, while prior counsel for the Company (Holland & Hart) may have previously accepted service of a subpoena on Mr. Detwiler’s behalf, he has not been represented by counsel in this case. He has now retained the undersigned law firm, and requests that he and the undersigned firm be given sufficient time to prepare for the upcoming Hearing, given the serious nature of the remedies improperly sought by the Bank.

19. Pursuant to NRCP 26(c), as well as EDCR 2.34, I have reached out to Mr. John

1 Bragonje, counsel for the Bank, via email (on January 21, 2020) and telephone (on January 22,
2 2020), to discuss a continuance of the date set in this matter for Mr. Detwiler's testimony.

3 20. Mr. Bragonje and I were able to speak on January 22, 2020, for approximately ten
4 (10) minutes.

5 21. During that phone call, I asked Mr. Bragonje if the Bank would agree to a continuance
6 of the upcoming deposition of Mr. Detwiler to allow for adequate preparation. Mr. Bragonje said
7 the Bank would not agree to a continuance.

8 22. Later, however, Mr. Bragonje contacted me to say that no hearing was set regarding
9 the Subpoena, and that he had contacted the Court and would agree to have this matter set for January
10 31, 2020.

11 23. During that second phone call, I informed Mr. Bragonje that I would agree to move
12 the hearing and/or date for compliance with the Subpoena from January 29 to January 31, but that I
13 reserved the right to file the instant Motion requesting additional time given the fact that the Bank
14 sought to imprison Mr. Detwiler indefinitely to pay a debt that is not even his. Mr. Bragonje
15 acknowledged that he understood.

16 24. Accordingly, counsel for the movant has in good faith conferred with other affected
17 parties in an effort to resolve the instant matter without Court action, but was unable to do so, as set
18 forth herein.

19 25. Mr. Detwiler therefore requests that the Court grant an extension of 60 days to allow
20 Mr. Detwiler and undersigned counsel to prepare.

21 26. Given the fact that the deposition in front of this Court is set for January 31, 2020, an
22 order shortening time for a hearing on the Motion is respectfully requested as there is not sufficient
23 time to hear this Motion in the ordinary course.

24 27. Mr. Detwiler respectfully requests that this Court hear this Motion on shortened time
25 so it may be heard prior to the scheduled deposition/Hearing.

26 28. I am providing a copy of this Motion to the Bank's counsel at the same time I am
27 submitting it to chambers today, January 27, 2020. In addition, I personally informed the Bank's
28 counsel, Mr. Bragonje, via telephone this morning that the instant Motion would be submitted today.

29. This Motion is brought in good faith and not for purposes of delay.

I declare the following to be true and correct to the best of my knowledge and belief under penalty of perjury of the laws of the State of Nevada.

Dated January 22, 2020.


BRENOCH R. WIRTHLIN

III. CERTIFICATION OF COUNSEL

As set forth in the Wirthlin Declaration, undersigned counsel certifies that, pursuant to NRCP 26(c), as well as EDCR 2.34, undersigned counsel has reached out to Mr. John Bragonje, counsel for the Bank, via email and telephone on multiple occasions to discuss a continuance of the date set in this matter for Mr. Detwiler's testimony and the upcoming Hearing, but counsel has not been able to resolve this matter.

IV. CONCLUSION

For all these reasons, non-party Mr. Detwiler respectfully requests this Court set a hearing on the instant Motion on shortened time, as soon as practicable, and grant Mr. Detwiler a 60-day extension of the pending Hearing, to allow sufficient time to respond to the Bank's Brief and prepare for a hearing/deposition in this matter.

DATED this 22nd day of January, 2020.

KOLESAR & LEATHAM

By


BRENOCH WIRTHLIN, ESQ.

(NV SBN 10282)

AMANDA K. BAKER, ESQ.

(NV SBN 15172)

KOLESAR & LEATHAM

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Email: bwirthlin@klnevada.com

Email: abaker@klnevada.com

Attorneys for Non-party Edward Detwiler

EXHIBIT 1

EXHIBIT 1

1 **CC03**
2 John E. Bragonje
3 State Bar No. 9519
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6 3993 Howard Hughes Pkwy, Suite 600
7 Las Vegas, NV 89169-5996
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9 Fax: 702.949.8398

10 *Attorneys for Plaintiff Baker Boyer National Bank*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 BAKER BOYER NATIONAL BANK, a
14 Washington corporation,

15 Plaintiff/Judgment Creditor,

16 vs.

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

20 Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

SUBPOENA – CIVIL

☒ **REGULAR** ☐ **DUCES TECUM**

21 **THE STATE OF NEVADA SENDS GREETINGS TO:**

22 EDWARD N. DETWILER

23 **YOU ARE HEREBY COMMANDED** that all and singular, business and excuses set
24 aside, you appear and attend on the 29th day of January, 2020, at the hour of 9:00 A.M. in
25 Department No. II of the District Court, Clark County, Nevada. The address where you are
26 required to appear is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your
27 attendance is required to give testimony and/or to produce and permit inspection and copying of
28 designated books, documents or tangible things in your possession, custody or control, or to
29 permit inspection of premises.

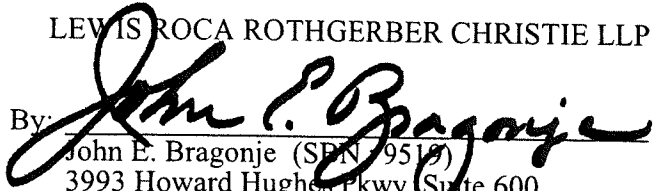
30 You are required to appear pursuant to NRS 31.100 and to give testimony and be examined
31 under oath concerning the following matters: (1) your status as a person owing debts to the
32 defendant and judgment debtor James Patterson Foust Jr. or having in your possession or under

1 your control any credits or other personal property belonging to the defendant and judgment
2 debtor James Patterson Foust Jr.; (2) whether you are an alter ego of Harry Hildibrand, LLC; (3)
3 any updates or additions to the testimony you previously gave before this Court on April 1, April
4 24, May 17, and May 21, 2019 and pertaining to this Court's Order to Appear and Show Cause
5 Why Defendants Should Not Be Held in Civil Contempt for violating this Court's prior Findings
6 of Fact, Conclusions of Law, and Final Judgment issued on January 9, 2019; and (4) any other
7 matter properly within the scope of NRS 31.100.

8 **CONTEMPT:** Your failure to appear will place you at risk of civil contempt. Failure by
9 any person without adequate excuse to obey a subpoena served upon that person may be deemed a
10 contempt of court. NRCP 45(e). If you fail to attend, you may be liable to pay \$100, plus all
11 damages caused by your failure to appear, and may be committed to jail. NRS 50.195, 50.205.
12 Additionally, the court may issue a warrant for your arrest pursuant to its civil contempt powers.
13 NRS 22.010(3); NRS 1.210(2); NRS 21.340. Please see Exhibit "A" attached hereto for
14 information regarding the rights of the person subject to this Subpoena.

15
16 LEWIS ROCA ROTHGERBER CHRISTIE LLP

17 By:


18 John E. Bragonje (SPN 9519)
19 3993 Howard Hughes Pkwy, Suite 600
20 Las Vegas, NV 89169-5996

21 *Attorneys for Plaintiff Baker Boyer National Bank*
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EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

107427712_1

1 (1) A person responding to a subpoena to produce documents shall produce them as
2 they are kept in the usual course of business or shall organize and label them to correspond with
3 the categories in the demand.

4 (2) When information subject to a subpoena is withheld on a claim that it is privileged
5 or subject to protection as trial preparation materials, the claim shall be made expressly and shall
6 be supported by a description of the nature of the documents, communications, or things not
7 produced that is sufficient to enable the demanding party to contest the claim.
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EXHIBIT 2

EXHIBIT 2

DEC
KOLESAR & LEATHAM
BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)
AMANDA K. BAKER, ESQ. (NV SBN 15172)
400 South Rampart Boulevard, Suite 400
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Telephone: (702) 362-7800
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Email: bwirthlin@knevada.com
Email: abaker@knevada.com
Attorneys for Non-party Edward Detwiler

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

BAKER BOYER NATIONAL BANK,
a Washington corporation,

Plaintiff,

v.

JAMES PATTERSON FOUST, JR.,
individually,

Defendants.

CASE NO.: A-17-760779-F

DEPT NO.: II

**DECLARATION OF NON-PARTY
EDWARD DETWILER IN SUPPORT OF
HIS MOTION FOR ENTRY OF A
PROTECTIVE ORDER AND
CONTINUANCE OF HEARING
ON ORDER
SHORTENING TIME**

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

1. I, Edward N. Detwiler, hereby declare that I am over the age of 18 (eighteen) years of age and I am competent to give the testimony set forth below. Testimony is given from my own personal knowledge. If called as a witness, I could and would competently and truthfully testify as to the facts set forth herein.

2. I am a non-party with respect to the above-captioned action.

3. I make this Declaration in support of my MOTION FOR ENTRY OF A PROTECTIVE ORDER AND CONTINUANCE OF HEARING ON ORDER SHORTENING TIME ("Motion").

EXHIBIT 3

EXHIBIT 3

Edward Detwiler
Coldwell Banker Premier Realty

September 10, 2019

Jim Foust
7 Avenida De Magnolia
Ranch Palos Verdes, CA 90275

Ron Vega, c/o Tom Larkin
2201 Corte Sabio #2201
San Diego, CA 92128

Re: Resignation as Manager of Harry Hildebrand, LLC

Gentlemen,

As you are aware, I am a licensed real estate agent in Nevada, and I had agreed to serve as manager of the Harry Hildebrand, LLC in anticipation of performing real property acquisition services here in Nevada. The need for those services has not materialized, and due to Ron Vega's health circumstances, it seems the need for such services are unlikely to materialize.

On the other hand, I have just received and reviewed the Entry of Findings of Fact, Conclusions of Law and Final Judgment dated December 19, 2018 regarding the Baker Boyer National Bank versus Jim Foust matter. - - By the way, I am a bit concerned, to say the least, that I was not provided a copy of this sooner.

In reviewing this ruling, I find the following findings compelling to my circumstance as manager of Harry Hildebrand, LLC (HH).

According to Paragraph 29 I have been ordered to "deliver up, surrender possession of, and turn over to the Bank promptly all cars identified in Exhibits A and B."

However, I have no idea where any of these cars might be currently located. I have only seen a few of these cars, and that was some time ago. I am not in possession of any titles to any of the subject cars, I have no keys to any such cars, I have no access to any location where any of these cars might be located, and again, I do not know where any of these cars are currently located. Additionally, I have no financial means to "deliver up" these cars even if the foregoing issues were resolved, and I have no control over any HH bank account that might exist in order to finance any such "delivering up" process.

Based upon the above, and the fact the court concluded that Jim Foust was the owner, and in possession and control of the cars, I am not sure what role I could play in delivering up any of the identified cars. Especially since on Page 8, Paragraph 29,

Page 9, Paragraph 36, and Page 15, Line 1, I am referred to as a "supposed manager of HH." Furthermore, the ruling also cites and recites my testimony on Page 15, Lines 1 through 5 confirming that I know nothing of any vehicles other than the four vehicles I saw being utilized by Mr. Foust and/or his family.

This reality is further mentioned at Page 16, Paragraph 74, where again my testimony is cited and recited confirming I am unaware of vehicles other than the four being utilized by Mr. Foust and/or members of his family.

Furthermore, Page 10, Lines 8 & 9, and Page 11 Paragraph 51, states that Mr. Foust owns and controls the subject cars.

In fact, Page 14, Paragraph 67 states "that the evidence is uncontroverted and overwhelming that Mr. Foust "retained possession or control of the property transferred after the transfer [to HH]."" Then again, under Conclusions of Law and Final Judgment – relate to Other Cars, on Page 21, Paragraphs 16 through 22, the court concluded, "Mr. Foust still owns, possesses and controls the cars in question..."

Consequently, I am not sure why the court, based upon its own findings and conclusions, would order ME to produce the subject cars; as it is an impossibility.

Accordingly, based upon all of the foregoing, I have no means to comply with the court order, and frankly, if I was somehow provided with the financial resources to "deliver up" said cars, I would not know where to begin.

Consequently, I must, and I hereby do, resign as manager of Harry Hildebrand, LLC, a Montana Limited Liability Company, effective immediately.

Please advise your respective legal counsels and advisors.

Sincerely,

A handwritten signature in cursive script, appearing to read "Edward Detwiler", written over a horizontal line.

Edward Detwiler

EXHIBIT 4

EXHIBIT 4

REGISTER OF ACTIONS**CASE NO. A-17-760779-F****Baker Boyer National Bank, Plaintiff(s) vs. James Foust, Jr., Defendant(s)**§
§
§
§
§
§Case Type: **Foreign Judgment**Date Filed: **08/31/2017**Location: **Department 2**Cross-Reference Case Number: **A760779****PARTY INFORMATION**
Defendant  **Foust, James Patterson, Jr. Also Known As Foust, James P, Jr.**
Lead Attorneys
Michael D. Mazur, ESQ
Retained
 702-564-3128(W)

Plaintiff **Baker Boyer National Bank**
John E. Bragonje
Retained
 702-949-8200(W)
EVENTS & ORDERS OF THE COURT
 12/23/2019 **Status Check** (9:00 AM) (Judicial Officer Scotti, Richard F.)
Status Check: Warrant
Minutes

12/23/2019 9:00 AM

- Court expressed concern regarding whether a subpoena was ever served on Mr. Detwiler. Mr. Bragonje stated he did not believe Mr. Detwiler was served with a subpoena, however had been the subject of an Order to Show Cause. Court stated in the Order entered on November 20, 2019, James Foust was named the judgment debtor and reviewed prior findings. Mr. Bragonje reviewed the last Order of the Court. COURT ORDERED, warrant VACATED, and Order of Contempt VACATED. Court directed Mr. Bragonje to serve a subpoena on Mr. Detwiler to appear before the Court and to give deposition or explanation under oath as to the matters stated within NRS 31.100, to inquire whether Mr. Detwiler is the alter ego of Harry Hildibrand, and to possibly include the Court to include by reference all other testimony provided to the Court in the past, and any additional testimony he may want to give, and include if he fails to appear, the Court will hold him in civil contempt of court and issue a warrant. Mr. Bragonje stated he had not been able to locate Mr. Foust in Nevada, believed he was in Los Angeles, and requested the warrant extended beyond December 30. COURT FURTHER ORDERED, the warrant effective within any jurisdiction in the United States, for an additional six months; December 30, 2019 Status Check VACATED.

[Return to Register of Actions](#)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Foreign Judgment

COURT MINUTES

December 19, 2019

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

December 19, 2019 10:00 AM Minute Order

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

COURT CLERK: Elizabeth Vargas

PARTIES Minute Order- No parties present.

PRESENT:

JOURNAL ENTRIES

- The Court, sua sponte, hereby issues a temporary STAY on the execution and enforcement of the Warrant of Arrest and Commitment of Edward N. Detwiler until December 30, 2019 at 5PM (PST). This Stay is effective immediately. Further, a Status Check Hearing on the Warrant is hereby set for Monday, December 23, 2019 at 9AM.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Elizabeth Vargas, to all registered parties for Odyssey File & Serve. //ev 12/19/19

1 **CERTIFICATE OF SERVICE**

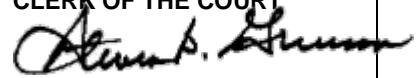
2 I hereby certify that I am an employee of Kolesar & Leatham, and that on the 29th day of
3 January, 2020, I caused to be served a true and correct copy of foregoing **NON-PARTY**
4 **EDWARD DETWILER'S MOTION FOR ENTRY OF A PROTECTIVE ORDER AND**
5 **CONTINUANCE OF HEARING ON ORDER SHORTENING TIME** in the following
6 manner:

7 (ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced
8 document was electronically filed on the date hereof and **served through the Notice of Electronic**
9 **Filing automatically generated by the Court's facilities to those parties listed on the Court's**
10 **Master Service List.**

11
12 /s/ **S. DIANNE POMONIS**

13 An Employee of KOLESAR & LEATHAM
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KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472



OPPS

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 NON-PARTY
EDWARD DETWILER'S MOTION
FOR ENTRY OF A PROTECTIVE
ORDER AND CONTINUANCE OF
HEARING ON ORDER SHORTENING
TIME**

and

**ERRATUM PROVIDING CORRECT
AFFIDAVIT OF SERVICE UPON
EDWARD DETWILER**

Date: January 30, 2020

Time: 1:30 p.m.

INTRODUCTION

The plaintiff and judgment creditor Baker Boyer National Bank (the "Bank") opposes the referenced motion and asks the Court to deny the requested 60-day continuance. This paper also provides the Court with the correct exhibit to the brief filed on January 24, 2020. Exhibit 4 to that brief was to have been an affidavit of service upon Edward Detwiler commanding him to appear for the contempt trial. We accidentally provided the affidavit for Harry Hildebrand, LLC not Mr. Detwiler. Exhibit 1 to this paper is the correct affidavit.

I.

NON-PARTIES CAN BE HELD IN CONTEMPT, AND THE BANK IS ONLY ASKING THIS.

Mr. Detwiler’s new counsel repeatedly argue that the Bank is attempting “to hold Mr. Detwiler—a non-party—somehow responsible for the judgment.” (Opp’n 2:9.) This is false. The underlying judgment exceeds \$1.25 million. The Bank has never requested this from Mr. Detwiler. The repeated citations to *Callie v. Bowling*, 123 Nev. 118, 160 P.3d 878 (2007) are inapposite because, unlike that case, the Bank has never attempted to amend this foreign judgment to add Mr. Detwiler as a party. Rather, Mr. Detwiler is being called before the Court on contempt charges because he is the officer of the company that flouts this Court’s orders for more than one year running. Non-parties can obviously be held in contempt under Nevada law (and we are sure the law of every other jurisdiction). The law of supplemental proceeding, proceedings in aid of execution in, is set forth in NRS Chapter 21. This statute explicitly contemplates contempt for non-parties and witnesses:

NRS 21.340 Disobedience of master’s orders; contempts. 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.

(Emphasis supplied.) The contempt statutes themselves likewise obviously empower a court to enforce its orders against non-parties. *See* NRS 22.040.

II.

IF THE OFFICERS OR AGENTS OF A COMPANY ARE GUILTY OF A CONTEMPT

THEY MAY BE ATTACHED AND PUNISHED THEREFORE.

If the officers or agents of a company are guilty of a contempt, they may be attached and punished therefore. *See generally* 17 C.J.S. CONTEMPT § 57. Thus, corporate officers or company agents are punishable for contempt where they have knowledge or notice of an order directed to the company and they are responsible for the company’s violation thereof. *C.f. In re Waters of Humboldt River*, 118 Nev. at 903, 59 P.3d at 1227 (concluding that “the district court has the power to sentence a government official to jail for criminal contempt committed in an official capacity”); *see also N.L.R.B. v. Sequoia Dist. Council of Carpenters, AFL-CIO*, 568 F.2d 628, 634

(9th Cir. 1977) (quotation marks omitted) (collecting cases) (“A command to a corporation is in effect a command to those who are officially responsible for the conduct of its affairs.”); *United States v. Laurins*, 857 F.2d 529, 535 (9th Cir. 1988) (“A nonparty may be held liable for contempt if he or she either abets or is legally identified with the named defendant An order to a corporation binds those who are legally responsible for the conduct of its affairs.”); *Nikko Materials USA, Inc. v. R.E. Serv. Co.*, No. C 03-2549 SBA, 2006 WL 1749550, at *4 (N.D. Cal. June 22, 2006) (“When a corporation refuses to abide by an order directing the corporation to perform an act, and the corporation is under the control of a single corporate officer or managing agent, the Ninth Circuit has held that a district court may hold the corporate officer in contempt, as well as the corporation, even when the corporate officer is not a party to the underlying action.”).

Because companies and corporations can only act through their agents, a contempt order need not explicitly warn agents of potential liability for contumacious conduct. 17 C.J.S.

CONTEMPT § 57. More careful practice, however, dictates an explicit warning directed to named agents:

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

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

Id.

Here, the Court’s order explicitly commanded Mr. Detwiler by name, on penalty of contempt, to turn over the 20 vehicles. (*See* 1/19/10, Order, Conclusion of Law ¶ 29, on file herein.) Mr. Detwiler could have had no reasonable doubt about how he would need to act to avoid punishment. Harry Hildibrand, LLC (“HH”) is a foreign limited liability company. It cannot be incarcerated. When a company acts in contempt of court, the agents that direct such actions must be punished. If the law were otherwise, business organizations would be free to disobey orders. That is absurd. The Bank is simply asking Mr. Detwiler in his capacity as

1 manager of HH to comply with this Court's orders to turn over the vehicles—or pay their value as
2 listed in the bankruptcy schedules that Mr. Detwiler himself prepared.

3 **III.**

4 **MR. DETWILER HAD AND HAS THE ABILITY TO COMPLY.**

5 Mr. Detwiler again claims he had no ability to company. This is prevarication. The Court
6 need not take our word for it; consider instead to Mr. Detwiler's own testimony he has given in his
7 deposition, at the bankruptcy proceedings, and in other documents filed with regulators, all of
8 which show his personal control over HH ability to comply. We respectfully refer the Court to
9 Exhibit 1 to our January 24, 2020 brief, the order previously signed by this Court which collects
10 this varied evidence that spans years.

11 One new point merits brief comment. Mr. Detwiler now argues that he cannot comply
12 because he has resigned as a manager. The timing of this resignation allows this argument to be
13 dismissed out of hand. Here is the timeline:

- 14 • **January 10, 2019:** The Court enters the order requiring HH and all its agents, including
15 specifically Mr. Detwiler, to turn over the vehicles. Notice of judgment is given to
16 Holland & Hart, which represented Mr. Detwiler. (1/10/19 Notice of Entry of Judgment,
17 on file herein.)
- 18 • **January 23, 2019:** Counsel writes to Mr. Detwiler by email and regular mail demanding
19 turnover of vehicles. (See Exhibit 1 to 2/21/19 Application, on file herein.)
- 20 • **February 21, 2019:** Mr. Detwiler is served with the Application for Order to Show Cause
21 Why Defendants Should Not Be Held in Civil Contempt. (On file herein.)
- 22 • **March 19, 2019:** Mr. Detwiler is personally served with Order to Show Cause. (See
23 Exhibit 3 to 1/24/20 Brief, on file herein.) *NB: the brief we filed on January 24, 2019*
24 *accidentally included the affidavit of service for HH, not for Mr. Detwiler personally. Mr.*
25 *Detwiler was personally and separately served with the order to show cause on March 19,*
26 *2019, as stated in the brief. We are including this affidavit of service as Exhibit 2 hereto*
27 *by way of this erratum.*
28

- **May 17 and 21, 2019:** Mr. Detwiler appears and testifies in his own behalf and in behalf of HH during the contempt proceedings.

Mr. Detwiler claims that he resigned from HH on September 10, 2019. This was of course months after the contempt trial had concluded and nine months after this Court gave its order.

An company officer cannot escape contempt charges simply by resigning after the fact. The Ninth Circuit, for instance, teaches that an officer's "resignation does not immunize him from liability for contempt [for his conduct when he was director]." *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y*, 774 F.3d 935, 956 (9th Cir. 2014).

The Sixth Circuit reached a similar conclusion when it affirmed an order of contempt against a director who had resigned because the contemptuous conduct occurred prior to the director's resignation: "We affirm as to Director Turner because the district court's contempt award was based in part on conduct that occurred after entry of the Consent Order in July *399 2006 but before Cullman resigned on November 28, 2006." *Williamson v. Recovery Ltd. P'ship*, 467 F. App'x 382, 398–99 (6th Cir. 2012). *See also Hoffman Beverage Co. v. Forrest Mart Tid Bit Shop*, 135 N.Y.S.2d 795, 797 (City Ct. 1954) ("It is the Court's opinion that under the circumstances disclosed here the officer of the corporate judgment-debtor may not hide . . . on the ground that he had resigned as a director and vicepresident."); 55 C.J.S. MANDAMUS § 445 ("A resignation by a public officer for the purpose of evading the performance of a mandamus writ compelling an official duty is not of itself a contempt if the official resigns before it becomes his or her duty to obey the writ. However, if the mandate is served and the officer fails to obey it, the later resignation from office will not exempt the officer from punishment for the disobedience prior to the resignation.").

CONCLUSION

The Bank respectfully submits that this Court has the authority to commit Mr. Detwiler to prison under NRS Chapter 22, as more particularly described at paragraphs 16 to 25 in the Conclusions of Law of this Court's December 16, 2019 order.

...

...

1 The Bank asks that Mr. Detwiler be taken into custody when he is scheduled to appear on January
2 31, 2020.

3 DATED this 29th day of January, 2020.

4 LEWIS ROCA ROTHGERBER CHRISTIE LLP

5
6 By: /s/ John E. Bragonje

7 John E. Bragonje

8 State Bar No. 9519

9 jbragonje@lrrc.com

10 3993 Howard Hughes Parkway, Suite 600
11 Las Vegas, NV 89169

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

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

Lewis Roca
ROTHGERBER CHRISTIE

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed and served the
3 foregoing document entitled ***“OPPOSITION TO NON-PARTY EDWARD DETWILER’S***
4 ***MOTION FOR ENTRY OF A PROTECTIVE ORDER AND CONTINUANCE OF HEARING***
5 ***ON ORDER SHORTENING TIME and ERRATUM PROVIDING CORRECT AFFIDAVIT***
6 ***OF SERVICE UPON EDWARD DETWILER”*** through the Court’s electronic filing system on
7 all parties on the Court’s e-service list.

8
9 Michael D. Mazur, Esq.
10 **MAZUR & BROOKS**
11 **A PROFESSIONAL CORPORATION**
12 2355 Red Rock Street, Suite 100
13 Las Vegas, NV 89146
14 *Attorneys for Defendant James Patterson Foust, Jr.*

15 Brenoch Wirthlin
16 **KOLESAR & LEATHAM**
17 400 S. Rampart Blvd., Ste. 400
18 Las Vegas, NV 89145
19 bwirthlin@klnevada.com

20 DATED this 29th day of January, 2020.

21 /s/ Luz Horvath

22 An employee of Lewis Roca Rothgerber Christie LLP
23
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25
26
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Exhibit 1

Exhibit 1

Steven D. Grierson

AFFT
Lewis, Roca, Rothgerber, Christie LLP
John E. Bragonje
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
State Bar No.: 9519
Attorney(s) for: Plaintiff/Judgment Creditor

DISTRICT COURT
CLARK COUNTY, NEVADA

Case No.: A-17-760779-F

Dept. No.: II

Date: April 1, 2019

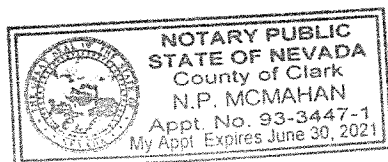
Time: 9:00 a.m.

Baker Boyer National Bank, a Washington corporation
vs *Plaintiff/Judgment Creditor*
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually and his marital community, if any
Defendant/Judgment Debtor

AFFIDAVIT OF SERVICE

I, Lisa Anne Wharton, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt ; Application for Order to Show Cause Why Defendants Should Not Be Held in Civil Contempt ; Notice of Entry of Order to Appear and Show Cause why Defendants Should Not Be Held in Civil Contempt on the 19th day of March, 2019 and served the same on the 19th day of March, 2019 at 10:40am by delivering and leaving a copy with the Defendant, Edward Detwiler at Arranged pick-up at office of Legal Process Service, 724 S. 8th St., Las Vegas, NV 89101.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.



State of Nevada, County of Clark

SUBSCRIBED AND SWORN to before me on this

19th day of March 2019

Notary Public N.P. McMahan

Lisa Anne Wharton
Affiant - Lisa Anne Wharton # R-2019-01148

Legal Process Service License # 604

WorkOrderNo 1901208



AFFT

Lewis, Roca, Rothgerber, Christie LLP
John E. Bragonje
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
State Bar No.: 9519
Attorney(s) for: Plaintiff/Judgment Creditor

DISTRICT COURT
CLARK COUNTY, NEVADA

Case No.: A-17-760779-F

Dept. No.: II

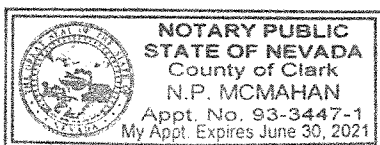
Baker Boyer National Bank, a Washington corporation
vs **Plaintiff/Judgment Creditor**
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually and his marital community, if any
Defendant/Judgment Debtor

Date: April 1, 2019
Time: 9:00 a.m.

**AFFIDAVIT OF
ATTEMPTED SERVICE**

I, Bradford Nielsen, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action: That the affiant received the within Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt : Application for Order to Show Cause Why Defendants Should Not Be Held in Civil Contempt ; Notice of Entry of Order to Appear and Show Cause why Defendants Should Not Be Held in Civil Contempt on the 15th day of March, 2019 and attempted to effect service on Edward Detwiler at the following address(es): 845 Rusty Anchor Way, Henderson, NV 89002, as follows:

Date	Time	Address	Outcome
3/15/2019	8:00 am	As above	Address corresponds to a 1 story house. There was an Inco Utility Construction truck, white Toyota truck and grey Jeep in the driveway. There was no answer at the door and a delivery notice was left.
3/16/2019	10:00 am	As above	Delivery notice left on prior try was still in place. Affiant called 702-493-7801 and left a message for subject. A call back was received and Mr. Detwiler said he was coming to the office of Legal Process Service on Tuesday, 3/19/2019, to pick up the document. Affiant later received a call from 858-267-2880 and male identified himself as the resident at above address. He said that Edward Detwiler used to date his sister but that the does not live there.



State of Nevada, County of Clark
SUBSCRIBED AND SWORN to before me on this
19th day of March 2019

Notary Public N.P. McMahan

Affiant – Bradford Nielsen #: R-065985
Legal Process Service - License # 604

WorkOrderNo 1901208



AFFT

Lewis, Roca, Rothgerber, Christie LLP
John E. Bragonje
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
State Bar No.: 9519
Attorney(s) for: Plaintiff/Judgment Creditor

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Case No.: A-17-760779-F

Dept. No.: II

Date: April 1, 2019

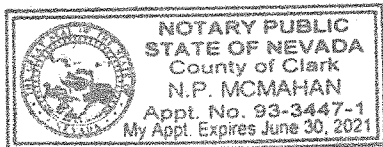
Time: 9:00 a.m.

Baker Boyer National Bank, a Washington corporation
vs
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually and his marital community, if any
Plaintiff/Judgment Creditor
Defendant/Judgment Debtor

**AFFIDAVIT OF
ATTEMPTED SERVICE**

I, Leonard Jay Hirschhorn, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not contain the social security number of any person. That the affiant received the within Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt ; Application for Order to Show Cause Why Defendants Should Not Be Held in Civil Contempt ; Notice of Entry of Order to Appear and Show Cause why Defendants Should Not Be Held in Civil Contempt on the 13th day of March, 2019 and attempted to effect service on Edward Detwiler at the following address (es): 20 Tapadero Lane, Las Vegas, NV 89135. Below are listed the date(s) and time(s) of attempted service:

<u>Date</u>	<u>Time</u>	<u>Address</u>	<u>Outcome</u>
3/13/2019	8:02 pm	As above	Address corresponds to a two story house in the gated and guarded community known as The Ridges. Per male occupant, Patrick (white 30's, 5'9", 155 lbs, brown hair and beard), defendant does not live here and is unknown.



State of Nevada, County of Clark

SUBSCRIBED AND SWORN to before me on this

15th day of March 2019

Notary Public N.P. McMAHAN

[Signature of Leonard Jay Hirschhorn]

Affiant - Leonard Jay Hirschhorn #R-2018-03419

Legal Process Service License # 604

WorkOrderNo 1901208



1 AFFT

2 Lewis, Roca, Rothgerber, Christie LLP
3 John E. Bragonje
4 3993 Howard Hughes Parkway, Suite 600
5 Las Vegas, NV 89169
6 State Bar No.: 9519
7 Attorney(s) for: Plaintiff/Judgment Creditor

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DISTRICT COURT
CLARK COUNTY, NEVADA

Case No.: A-17-760779-F

Dept. No.: II

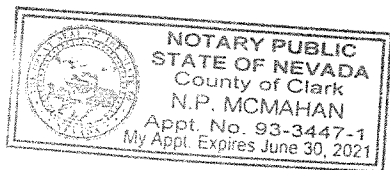
Baker Boyer National Bank, a Washington corporation
vs
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually and his marital community, if any
Plaintiff/Judgment Creditor
Defendant/Judgment Debtor

Date: April 1, 2019
Time: 9:00 a.m.

**AFFIDAVIT OF
ATTEMPTED SERVICE**

I, Jennifer Lynn Jones, being duly sworn deposes and says: That Affiant is and was on the day when she attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action: That the affiant received the within Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt : Application for Order to Show Cause Why Defendants Should Not Be Held in Civil Contempt : Notice of Entry of Order to Appear and Show Cause why Defendants Should Not Be Held in Civil Contempt on the 27th day of February, 2019 and attempted to effect service on Edward Detwiler at the following address(es): Coldwell Banker, 10120 S Eastern Ave., #300, Henderson, NV 89052, as follows:

<u>Date</u>	<u>Time</u>	<u>Address</u>	<u>Outcome</u>
2/27/2019	10:48 am	As above	Per Cosette at front desk, subject is not in the office and that Affiant could check back later with one the "team members" to see if they know when subject will be in the office.
2/27/2019	2:36 pm	As above	Affiant spoke with Marie who said subject was not in the office and that they were not sure if he would be in that day.
2/28/2019	11:09 am	As above	Affiant spoke with Cosette again who said that subject is randomly in the office. Affiant left a message asking subject to call regarding a delivery.
3/1/2019	9:51 am	As above	Affiant spoke with Cosette who said that subject was not there. She said would call when he is in the office. She said he lives here and Texas and goes back and forth.



State of Nevada, County of Clark

SUBSCRIBED AND SWORN to before me on this
19th day of March 2019

Notary Public N.P. McMAHAN

Jennifer Lynn Jones
Affiant - Jennifer Lynn Jones #: R-2018-02711
Legal Process Service - License # 604

WorkOrderNo 1901208



1 **AFFT**

2 Lewis, Roca, Rothgerber, Christie LLP
3 John E. Bragonje
4 3993 Howard Hughes Parkway, Suite 600
5 Las Vegas, NV 89169
6 State Bar No.: 9519
7 Attorney(s) for: Plaintiff/Judgment Creditor

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

Case No.: A-17-760779-F

Dept. No.: II

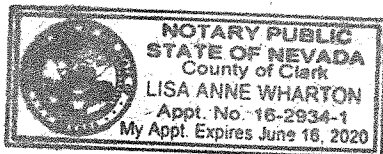
12 **Baker Boyer National Bank, a Washington corporation**
13 **vs** **Plaintiff/Judgment Creditor**
14 **James Patterson Foust, Jr., also known as James P. Foust, Jr.,**
15 **individually and his marital community, if any**
16 **Defendant/Judgment Debtor**

Date: April 1, 2019
Time: 9:00 a.m.

17 **AFFIDAVIT OF**
18 **ATTEMPTED SERVICE**

19 I, Leonard Jay Hirschhorn, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve
20 the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under
21 license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not
22 contain the social security number of any person. That the affiant received the within Order to Appear and Show Cause
23 Why Defendants Should Not Be Held in Civil Contempt : Application for Order to Show Cause Why Defendants Should
24 Not Be Held in Civil Contempt on the 22nd day of February, 2019 and attempted to effect service on Edward Detwiler at the
25 following address(es): 817 Windhook St., Las Vegas, NV 89144. Below are listed the date(s) and time(s) of attempted service:

Date	Time	Address	Outcome
2/22/2019	6:30 pm	As above	Address corresponds to a one story house. The house was completely dark and there were flyers and cards stuck into the door. Affiant was able to see into the house and it is vacant.



30 **State of Nevada, County of Clark**

31 SUBSCRIBED AND SWORN to before me on this
32 25th day of February 2019

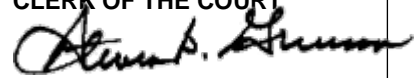
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36 Notary Public Lisa Anne Wharton

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Affiant - Leonard Jay Hirschhorn #R-2018-03419
Legal Process Service License # 604

WorkOrderNo 1991208





NTC
BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)
AMANDA K. BAKER, ESQ. (NV SBN 15172)
KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Telephone: (702) 362-7800
Facsimile: (702) 362-9472
E-Mail: bwirthlin@klnevada.com
Attorneys for Edward Detwiler

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff,

vs.

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

Defendant

CASE NO. A-17-760779-F

DEPT NO. 2

**NON-PARTY EDWARD DETWILER'S
NOTICE OF OBJECTION PURSUANT
TO NRS § 22.030**

COMES NOW non-party Edward Detwiler ("Mr. Detwiler"), by and through counsel, and hereby submits his objection pursuant to NRS § 22.030 to the Honorable Judge Richard Scotti presiding at any further proceedings regarding a issues related to a determination of whether Mr. Detwiler has committed any acts constituting contempt of Court.

DATED this 30th day of January, 2020.

KOLESAR & LEATHAM

By /s/ BRENOCH WIRTHLIN
BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)
KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Attorneys for non-party Edward Detwiler

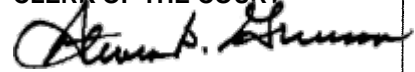
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Kolesar & Leatham, and that on the 30th day of
3 January 2020, I caused to be served a true and correct copy of foregoing **NON-PARTY EDWARD**
4 **DETWILER'S NOTICE OF OBJECTION PURSUANT TO NRS § 22.030** in the following
5 manner:

6 (ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced
7 document was electronically filed on the date hereof and served through the Notice of Electronic
8 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master
9 Service List.

10
11 /s/ **S. DIANNE POMONIS**
12 An Employee of KOLESAR & LEATHAM
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KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472



RPLY
KOLESAR & LEATHAM
BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)
AMANDA K. BAKER, ESQ. (NV SBN 15172)
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Telephone: (702) 362-7800
Facsimile: (702) 362-9472
Email: bwirthlin@klnevada.com
Email: abaker@klnevada.com
Attorneys for Non-party Edward Detwiler

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

BAKER BOYER NATIONAL BANK,
a Washington corporation,

Plaintiff,

v.

JAMES PATTERSON FOUST, JR.,
individually,

Defendants.

CASE NO.: A-17-760779-F

DEPT NO.: II

**NON-PARTY EDWARD DETWILER'S
REPLY IN SUPPORT OF MOTION FOR
ENTRY OF A PROTECTIVE ORDER
AND CONTINUANCE OF HEARING**

Hearing date: January 30, 2020

Hearing time: 1:30 p.m.

Non-party Edward Detwiler ("Mr. Detwiler"), hereby submits his reply in support of his MOTION FOR ENTRY OF A PROTECTIVE ORDER AND CONTINUANCE OF HEARING ON ORDER SHORTENING TIME ("Motion") as follows:

I. NOTICE OF OBJECTION PURSUANT TO NRS § 22.030

Pursuant to NRS § 22.030, Mr. Detwiler has filed his objection ("Objection")¹ to this Honorable Court presiding over any further proceedings regarding a issues related to a determination of whether Mr. Detwiler has committed any acts constituting contempt of Court. Undersigned counsel informed counsel for the Bank² that Mr. Detwiler would be submitting his

¹ Counsel for Mr. Detwiler has endeavored to submit courtesy copies of both the Objection and this Reply to the Court's chambers at the earliest possible opportunity.

² Unless otherwise stated, all capitalized terms have the meaning ascribed to them in the Motion.

1 Objection during a phone call that took place at approximately 4:30 p.m. on January 29, 2020. As
2 set forth in the Bank's opposition to the Motion ("Opposition"), the Bank seeks to hold Mr.
3 Detwiler in contempt for a purported refusal to comply with an order of this Court directing the
4 Company and Mr. Foust to turn over the Vehicles. *See* Opposition at p. 2. While Mr. Detwiler
5 has no objection to this Honorable Court generally – and undersigned counsel has great respect for
6 His Honor, having practiced in front of him many times including when he was a Judge for the
7 State Contractors' Board – given the nature of the Bank's request Mr. Detwiler feels compelled to
8 exercise his rights under NRS 22.030.³ This decision is based on the fact that the prior Vacated
9 Contempt Order was vacated by this Court at its December 23, 2019 hearing⁴ (and does not appear
10 to have ever been filed or entered on the docket), and due to the new and additional evidence that
11 is and will be submitted regarding the Bank's numerous inaccurate and factually incorrect
12 statements regarding Mr. Detwiler.⁵

13 II. ARGUMENT

14 In its ("Opposition") to the Motion, the Bank makes several misstatements of fact and law.
15 Glaringly, the Bank now asserts that that it only seeks to hold Mr. Detwiler in contempt until he
16 turns over the Vehicles he purportedly has the ability to turn over. This is inaccurate. In the
17 Vacated Contempt Order, the Bank clearly attempted to effectively hold Mr. Detwiler in prison
18 until he turned over the Vehicles **"or pa[id] the Bank in immediately available funds the value**
19 **of the vehicles listed in Exhibit B, \$521,575..."** *See* Vacated Contempt Order, Exhibit 1 to the
20 Bank's Brief, at p. 17, ¶ 31 (emphasis added). The Bank knows that Mr. Detwiler has no access
21 to the Vehicles, so its requested order would – as the Bank is very well aware – be a judgment
22 against Mr. Detwiler for the money owed by Mr. Foust, from which Mr. Detwiler could only be
23 relieved by paying the judgment against Mr. Foust. Contrary to the Bank's assertion, it also seeks
24

25
26 ³ The Bank's citation to NRS § 22.040 clearly evinces the fact that the Bank seeks to hold Mr. Detwiler in contempt
for acts "not committed in the immediate view and presence of the court or judge", making NRS § 22.030(3) directly
applicable.

27 ⁴ *See* Transcript of the December 23, 2019, hearing, on file herein.

28 ⁵ Further, while Mr. Detwiler addresses the Bank's Opposition to the Motion given today's hearing, he reserves all
rights and privileges, including those under NRS § 22.030.

1 to question him about whether he is an “alter ego” of the Company. *See* Subpoena at Exhibit 1 to
2 the Motion. Without a proper claim asserted against Mr. Detwiler as required by the Supreme
3 Court of Nevada in *Callie*, no such inquiry is proper or relevant. Yet, undoubtedly, the Bank
4 intends to continue its campaign against Mr. Detwiler’s due process and attempt to hold Mr.
5 Detwiler liable under the judgment against Mr. Foust as an “alter ego” of the Company, which
6 attempt has numerous due process and statutory violations inherent therein.

7 Moreover, the Bank suggests that NRS § 21.340 – mentioned by the Bank for what appears
8 to be the first time in this entire proceeding – can somehow overcome the requirement of Nevada
9 law that the Bank demonstrate clearly and convincingly that contempt, and especially
10 imprisonment, is warranted against Mr. Detwiler due to his ability to comply. Tellingly, while the
11 Bank alleges that this Court can hold Mr. Detwiler in contempt and “commit Mr. Detwiler to prison
12 under NRS Chapter 22”, the Bank ignores entirely the fact that under Nevada’s civil contempt
13 statutes, including without limitation NRS § 22.110, the draconian and extreme punishment of
14 indefinite imprisonment may only be imposed on an individual where the contempt “consists in
15 the omission to perform an act which is yet in the power of the person to perform...” Here,
16 Mr. Detwiler’s testimony, and the other evidence in this case, has been grossly misrepresented to
17 this Court. The truth is, Mr. Detwiler’s testimony has been consistent that he never had
18 involvement with, or ownership of, Vehicles. Moreover, Mr. Detwiler resigned as a manager of
19 the Company effective September 10, 2019. *See* Declaration of Edward N. Detwiler, attached as
20 Exhibit 2 to the Motion, and Mr. Detwiler’s letter of resignation, attached hereto as Exhibit 3 to
21 the Motion.

22 Not only that, but common sense belies the Bank’s abusive accusations – there is no doubt
23 that Mr. Detwiler never had any ownership interest in the Company or the Vehicles. Why would
24 he not have turned them over long ago? He has nothing to gain by refusing to turn over the
25 Vehicles – and as set forth in Mr. Detwiler’s forthcoming brief, the Bank has not even shown, nor
26 can it, that the Vehicles were ever in control of Mr. Detwiler’s authority to turn them over.⁶ There
27

28 ⁶ In addition, as set forth more fully in his forthcoming response to the Brief, Mr. Detwiler has absolutely no business
dealings with Mr. Foust, and the records of the entities the Bank cites to in its Brief make that clear by showing that

1 can be no basis to hold Mr. Detwiler in contempt, and even if there was, a proceeding to make that
2 determination would have to take place in a separate department as set forth above.

3 The Bank's citations to CJS generally and other non-Nevada authorities – while
4 misconstrued by the Bank as set forth below – do not change the binding Nevada statutory and
5 case law precedent cited by Mr. Detwiler which demonstrates that there is no grounds to hold Mr.
6 Detwiler in contempt. Moreover, the Bank's assertions that Mr. Detwiler "has the ability to
7 comply" to turn over the Vehicles, which can only properly be heard before a separate department
8 based on Mr. Detwiler's objections as noted above, are also inaccurate:

- 9 1. The Bank falsely asserts – again – that Mr. Detwiler was "represented" by Holland
10 & Hart. This is not true. Holland & Hart only represented the Company, not Mr.
11 Detwiler. Therefore, notice of the order requiring the Company to turn over the
12 Vehicles was not notice to Mr. Detwiler.
- 13 2. Counsel for the Bank asserts he wrote to Mr. Detwiler by "regular mail" and email
14 demanding turnover of the Vehicles. Absent is any return receipt showing Mr.
15 Detwiler received counsel's communications, and Mr. Detwiler will testify he did
16 not, in fact, receive them.
- 17 3. The Bank asserts that Mr. Detwiler was served with an application for order to show
18 cause, and he was served with the Order to Show Cause. But the question remains
19 – so what? Service of these documents in no way proves, or even suggests, that
20 Mr. Detwiler could turn over the Vehicles!
- 21 4. In fact, numerous facts demonstrate unequivocally that Mr. Detwiler could not, in
22 fact, turn over the Vehicles, including without limitation the following:
 - 23 a. Mr. Detwiler testified, and the (unauthenticated) transcript of the
24 Bankruptcy Hearing confirmed, that whatever knowledge he had of vehicles
25 at all came from the Bank's attorney Mr. Lezei;
 - 26 b. Mr. Detwiler saw some vehicles at a warehouse in Compton ***the day before***
27 ***the bankruptcy hearings***, but the Bank has **never** shown or even provided
28 any evidence that those vehicles were the same Vehicles the Bank now
seeks;
 - c. Mr. Detwiler will testify that, contrary to the Bank's false assertions, Mr.
Detwiler never inspected any vehicles, and only knew that some did not run
because some of the vehicles at the warehouse (again, no evidence that those
are the Vehicles the Bank seeks) had their engines next to the vehicles,
which is a fair indication the vehicle is inoperable;

they are not the managers or members of any of the same entities! The assertion they share office space is also false.

- 1 d. Mr. Detwiler will testify that only other vehicles he ever saw were a Yukon
2 and Mercedes driven by Foust. But again, no indication or evidence from
3 the Bank that those are even part of the list of Vehicles the Bank seeks, and
4 Mr. Detwiler will testify they were always in Mr. Foust's possession and he
5 never inspected them or had reason to do so;
6
7 e. The Bank has never even disputed that Mr. Detwiler ever had any ownership
8 interest in the Company, or the Vehicles, or anything else that would enable
9 him to turn over the Vehicles;
10
11 f. Mr. Detwiler will testify he was never made aware of the Vacated Contempt
12 Order until after he had obtained counsel and the order itself had been
13 vacated;
14
15 g. There are numerous material inconsistencies between the various orders the
16 Bank has submitted to this Court, themselves extremely problematic to the
17 Bank's position regarding Mr. Detwiler, but also evincing a clear intent by
18 the Bank to attempt to extort from Mr. Detwiler payment of some or all of
19 the judgment against Mr. Foust, **under threat of indefinite imprisonment,**
20 giving rise to serious due process concerns, violation of Nevada's anti-
21 coercion laws, and very likely constituting abuse of process by the Bank
22 against Mr. Detwiler.

23 While the Bank's evidence will be properly before another department, it is very clear the
24 Bank has been extremely fast and loose with the facts, to put it mildly, in its attempt to attack the
25 easier target, Mr. Detwiler, simply because he has shown up. As necessary, Mr. Detwiler will
26 provide an affidavit and/or testimony confirming the above, as well as additional bases
27 demonstrating the Bank's request that he be held in contempt is improper.

28 Finally, the case law cited by the Bank is inapposite at best. The only Nevada Supreme
Court case cited by the Bank is misrepresented. In fact, that case, *In re Determination of Relative
Rights of Claimants & Appropriators of Waters of Humboldt River Stream Sys. & Tributaries*, 118
Nev. 901, 903, 59 P.3d 1226, 1227 (2002), involved **criminal contempt, not civil**, and the Court
that the contempt finding at issue was "an abuse of discretion":

The district court may order that, if a contemnor continues in its contempt, it must
post a bond as security to cover costs incurred as a result of the contempt.
Additionally, the district court has the power to sentence a government official to
jail for **criminal contempt committed in an official capacity, but, under the
facts here, it was an abuse of discretion to do so.**⁷

⁷ Unless otherwise stated, all emphases are added to case citations.

Moreover, the holding involved the National Labor Relations Board and agents thereof actually on the board, who had direct knowledge of the order at issue and the ability to comply (which Mr. Detwiler did not). *See N.L.R.B. v. Sequoia Dist. Council of Carpenters, AFL-CIO*, 568 F.2d 628, 634 (9th Cir. 1977) (“Null and Horn concede they knew the order had issued.”). Tellingly, *Sequoia District* did **not** involve indefinite imprisonment, was not decided under Nevada law, and therefore provides no support for the Bank’s position. The holding in *United States v. Laurins*, 857 F.2d 529 (9th Cir. 1988), is likewise inapplicable as the individual there indisputably maintained complete control of the company and the ability to comply with the order. Conversely, Mr. Detwiler repeatedly testified he had no control to turn over the Vehicles (and would have if he did), and has resigned from the Company well before he knew anything about the Vacated Contempt Order. The holding in *Nikko Materials USA, Inc. v. R.E. Serv. Co., No. C 03-2549 SBA*, 2006 WL 1749550, at *1 (N.D. Cal. June 22, 2006) is facially inapplicable as it involved a “corporation [] under the control of a single corporate officer”. *See* Opposition at p. 3. The orders in this case submitted by the Bank have found expressly that **“Mr. Foust owns and controls Harry Hildibrand, LLC. He is the sole member; he is a manager also.”** *See* Findings of Fact, Conclusions of Law, and Final Judgment entered on March 8, 2018, on file herein. Yet now the Bank wants to assert that this was incorrect and Mr. Detwiler, the resigned former manager (never a member), somehow controls the Company. The Bank’s willingness to state whatever fits its current purpose is disturbing, to say the least.

Finally, the Bank cites a few cases regarding whether resignation effectively purges any possible contempt. None of these cases are Nevada law, and the Bank misstates the holdings, which support Mr. Detwiler’s position. For example, in *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc’y*, 774 F.3d 935, 956 (9th Cir. 2014), the court did hold that a resignation was not effective to shield an individual from contempt. But the Bank leaves out the pertinent facts. In that case, the board member resigned, **but only after he had taken specific action to directly and deliberately disobey the court order at issue:** “It is true that Rieman lacked control over Sea Shepherd US after he resigned in February 2013. But by that time, he had already voted to ratify and implement the separation strategy, and an OZT vessel had already

1 breached the safety perimeter imposed by our injunction.” Conversely, the Bank has not – and
2 cannot – produce any evidence that Mr. Detwiler did anything whatsoever to deliberately violate
3 any order by this Court regarding the Vehicles, and the uncontroverted evidence, including Mr.
4 Detwiler’s own undisputed testimony, shows exactly the opposite.

5 The holding in the unreported Sixth Circuit decision in *Williamson v. Recovery Ltd. P’ship*,
6 467 F. App’x 382, 398–99 (6th Cir. 2012) is similarly inapposite as it based on conduct occurring
7 after the entry of the court’s order. (“We affirm as to Director Turner because the district court’s
8 contempt award was based in part on conduct that occurred after entry of the Consent Order in
9 July 9 2006 but before Cullman resigned on November 28, 2006”). Finally, to the extent the New
10 York “city court” opinion in *Hoffman Beverage Co. v. Forrest Mart Tid Bit Shop*, 135 N.Y.S.2d
11 795, 797–98 (City Ct. 1954) is applicable at all, it serves as the nail in the coffin of the Bank’s
12 argument, so to speak, as it proves that even if it there were some evidence that Mr. Detwiler’s
13 resignation was in bad faith – which there is not because it was not – such a finding would have to
14 be determined at a separate hearing which, based on Mr. Detwiler’s objection, would have to
15 take place in a different department:

16 It is the Court’s opinion that under the circumstances disclosed here the officer of
17 the corporate judgment-debtor may not hide behind a special notice of appearance
18 on the ground either that he individually was not mentioned in the order on the
19 application, but as Joseph Belson, vicepresident, or on the ground that he had
20 resigned as a director and vicepresident. In may be possible that facts may be
21 elicited tending to show that the alleged resignation of the vice-president and
22 director was made in had [*sic*] faith or for an improper and illegal purpose. *Zeltner*
23 *v. Henry Zeltner Brewing Co.*, 85 App.Div. 387, at page 389, 83 N.Y.S. 366, at
24 page 368. This may only be done on a hearing or application to punish, not by a
25 special notice of appearance.

26 Accordingly, the Bank’s Opposition provides no basis for the improper relief it seeks against Mr.
27 Detwiler, and the Motion should be granted to permit this matter to be assigned to a different
28 department.

///

///

///

1 **III. CONCLUSION**

2 For all these reasons, non-party Mr. Detwiler respectfully requests this Court grant the
3 Motion in its entirety and allow this matter to be transferred to a separate department pursuant to
4 NRS § 22.030, and grant such other relief as appropriate.

5 DATED this 30th day of January, 2020.

6 **KOLESAR & LEATHAM**

7
8 By 

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 30th day of January 2020, I caused to be served a true and correct copy of foregoing **NON-PARTY EDWARD DETWILER'S REPLY IN SUPPORT OF MOTION FOR ENTRY OF A PROTECTIVE ORDER AND CONTINUANCE OF HEARING** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and **served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.**

/s/ **S. DIANNE POMONIS**

An Employee of KOLESAR & LEATHAM

Foreign Judgment

COURT MINUTES

January 30, 2020

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

January 30, 2020 01:30 PM Non-Party Edward Detwiler's Motion for Entry of a Protective
Order and Continuance of Hearing on Order Shortening Time

HEARD BY: Scotti, Richard F. COURTROOM: RJC Courtroom 03B

COURT CLERK:

RECORDER: Amoroso, Brittany

REPORTER:

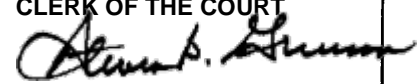
PARTIES PRESENT:

John E. Bragonje Attorney for Plaintiff

JOURNAL ENTRIES

Brenoch Wirthlin, Esq. present on behalf of Mr. Detwiler. Erik Foley, Esq. also present. Court reviewed the history of the case. Mr. Bragonje gave a quick summary of events. Mr. Wirthlin advised Mr. Detwiler was local, was willing to appear, and present evidence. Arguments by counsel regarding the Motion for Entry of a Protective Order. Upon the Court's inquiry, Mr. Bragonje stated he believed Mr. Foust was in Los Angeles and law enforcement there would not extradite him on a civil contempt warrant; stated he believed Mr. Foust and Mr. Detwiler were working together. Mr. Wirthlin argued regarding the Motion, and requested a week or two to conduct a trial. Court noted the trial was broken up into the Detwiler portion and the Foust portion. Mr. Bragonje argued regarding the resignation letter of Mr. Detwiler. COURT ORDERED, prior Contempt Order could be refiled and reissued by the Court and directed Mr. Bragonje to prepare and resubmit the Order. Court stated any motion Mr. Detwiler wished to file would not be precluded. COURT FURTHER ORDERED, hearing date SET. COURT ORDERED, Mr. Detwiler to surrender his passport to Mr. Wirthlin within 24 hours, and matter STAYED through the next hearing date.

2/12/20 9:00 AM HEARING



ORDR

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

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

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

5 INTRODUCTION

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

11 When he applied for the loan that created the obligation that, when breached, led to the
12 Judgment, Mr. Foust represented that he owned a collection of 59 expensive, rare, and exotic
13 vehicles, including Corvettes, a Cadillac, Mercedes, Porsches, and Lamborghinis. On January 9,
14 2019, the Court issued a Findings of Fact, Conclusions of Law, and Final Judgment (the "Order"),
15 resolving a series of prior supplemental proceedings in favor of the Bank and against Mr. Foust
16 and third party claimant Harry Hildibrand, LLC ("HH"). The Order required "Mr. Foust and HH
17 and any of their respective agents, employees, or affiliates [] *including without limitation Mr.*
18 *Detwiler* . . . on penalty of contempt, to deliver up, surrender possession of, and turn over to the
19 Bank promptly, in a manner that protects the cars from any damage, all [twenty] cars identified in
20 [Exhibit B] with any cost or expense involved in delivery to the Bank to be borne by Mr. Foust
21 and/or HH." (Order, Conclusion of Law ¶ 29 (emphasis supplied).)

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

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

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

3 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

1 and the Bank's requests for compliance.

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

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

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

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

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

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

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

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

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

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

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

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

13 Q: And you’re the sole—

14 Mr. Detwiler: At least to my knowledge.

15 Q: —manager, correct?

16 Mr. Detwiler: I’m—I’m a manager.

17 Q: Who are the other managers?

18 Mr. Detwiler: I don’t know.

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

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

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

22 (5/17/19 Hr’g Trans., p. 28:6-7.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Mr. Detwiler: Sure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 failed to comply, without justification.

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

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

8 **CONCLUSIONS OF LAW**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **NRS 22.100 Penalty for contempt.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 *Id.*

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

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

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

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

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

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

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

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

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

20 Dated this 16th day of December, 2019

21
22
23 
24 DISTRICT COURT JUDGE
25 

1 Respectfully submitted,

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3
4 By: 

5 John E. Bragonje

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10
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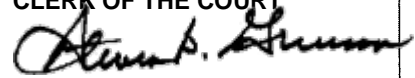
EXHIBIT B

EXHIBIT B

HARRY HILDBRAND

Titles as on BBB		7/26/2018 0:15			
YEAR	MAKE	Model	Value	VIN	
2007	CHEV	Corvette Z06	\$ 35,000	1G1YY28E375121089	
2007	Mercedes	M50 SUV	\$ 11,000	4JGBB75E07A222537	
1940	FORD	Coupe	\$ 35,000	AZ162801	
1957	CHEV	BEL AIR CONV. (FI)	\$ 25,000	VC570141640	
1957	CHRYSLER	300 C CONV.	\$ 35,000	3N571810	
1958	FORD	T-BIRD (CHEV)	\$ 5,000	P5FH240847	
1957	FORD	FAIRLANE 500	\$ 15,000	D7LV162233	
1966	FORD	THUNDERBIRD - red	\$ 15,000	6Y85Z104010	
1971	FORD	PANTERIA	\$ 25,000	THPNLY01620	
1973	FORD	PANTERIA -GT4	\$ 35,000	THPNU05291	
1951	JAGUAR	XK 120 RACE CAR	\$ 20,000	S671986	
1957	OLDSMOBILE	98 ROCKET	\$ 18,000	579M27885	
1966	PLYMOUTH	BELVADIRE	\$ 15,000	RACE CAR BODY & SHELL - N	
2000	PLYMOUTH	PROWLER	\$ 21,000	1P3EW65G1YV603597	
2007	Mercedes	CLK 550	\$ 12,000	WDBTK72F27T081009	
2000	GMC	Yukon	\$ 8,000	1GKEK13T9YJ1740142	
2007	Mecedes	S550	\$ 25,000	WDDNG71X57A075880	
1963	CHEV	425/409 S/S	\$ 25,000	31847L144086	
1998	MARATHON	COACH	\$ 129,875	2PCM3349XV1026183	
2016	KAWASAKA	kr10	\$ 11,700	JKAZX2A13FB505	
Total			\$ 521,575		

SUPPORT FOR 206 A/B #46, PAGE 5



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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff,

v.

JAMES PATTERSON FOUST, JR.,
individually,

Defendants.

CASE NO.: A-17-760779-F

DEPT NO.: II

NON-PARTY EDWARD DETWILER'S:
(1) MOTION FOR RELIEF FROM
CONTEMPT ORDER PURSUANT TO
NRCP 60(b);
(2) MOTION FOR NEW TRIAL
PURSUANT TO NRCP 59;
(3) MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO NRCP 52
AND 59;
(4) MOTION FOR RECONSIDERATION
OF THE COURT'S CONTEMPT ORDER;
AND
(5) OPPOSITION TO PLAINTIFF'S
BRIEF IN SUPPORT OF REQUEST TO
HOLD MR. DETWILER IN CIVIL
CONTEMPT OF COURT

Hearing Date: February 12, 2020

Hearing Time: 8:30 a.m.

COMES NOW non-party Edward N. Detwiler ("Mr. Detwiler"), by and through counsel,
Kolesar & Leatham, and hereby submits to this Honorable Court his (1) MOTION FOR RELIEF

1 FROM CONTEMPT ORDER PURSUAN TO NRCP 60(b); (2) MOTION FOR NEW TRIAL
2 PURSUANT TO NRCP 59; (3) MOTION TO ALTER OR AMEND JUDGMENT PURSUANT
3 TO NRCP 52 AND 59; (4) MOTION FOR RECONSIDERATION OF THE COURT'S
4 CONTEMPT ORDER; AND (5) OPPOSITION TO PLAINTIFF'S BRIEF IN SUPPORT OF
5 REQUEST TO HOLD MR. DETWILER IN CIVIL CONTEMPT OF COURT ("Motion").

6 This Motion is made and based upon the following Memorandum of Points and
7 Authorities, the Declaration of Mr. Detwiler, attached hereto as **Exhibit 1** ("Detwiler
8 Declaration"), any argument the Court may entertain at a hearing on this matter, and all papers and
9 pleadings on file herein.

10 DATED this 5th day of February, 2020.

11 **KOLESAR & LEATHAM**

12
13 By 

14 BRENOCH WIRTHLIN, ESQ.

15 (NV SBN 10282)

16 AMANDA K. BAKER, ESQ.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Contempt Order must be vacated permanently for several reasons, including without limitation, the following:

A. Mr. Detwiler cannot turn over the Vehicles that this Court found are owned, controlled and possessed by Mr. Foust.

- This Court found, expressly, unequivocally and repeatedly in its January 2019 Order that Mr. Foust – not HH¹ and certainly not Mr. Detwiler – owned, controlled and possessed all the Vehicles² at issue.
- The Court further found that there was no contract for sale of the Vehicles from Mr. Foust to HH. Therefore, according to this Court's finding, no transfer of the Vehicles to HH ever even occurred.
- In its June 2019 Order, after all consideration of all the evidence and after Mr. Detwiler's testimony was entirely concluded, this Court reiterated and repeated, including through express incorporation, all evidentiary findings in the January 2019 Order to support Mr. Foust's ownership and control of the Vehicles. The Court further expressly found in the June 2019 Order that Mr. Foust "remains in control" of all of the Vehicles.

B. The Contempt Order is based on improper determinations of alter ego relationships between Mr. Foust and HH, in violation of binding Nevada Supreme Court case law.

- The Contempt Order is based on improper findings that Foust, HH and even StarDust are alter egos of one another. This is wholly improper, violative of binding Nevada Supreme Court precedent as set forth in *Callie v. Bowling*, 123 Nev. 181, 182, 160 P.3d 878, 878 (2007) – which requires that a separate action be filed to establish any liability for a non-party under an alter ego theory.

C. Based on new evidence only now before the Court, Mr. Detwiler has resigned as manager of HH effective September 2019.

- Under Nevada's civil contempt statutes, including without limitation NRS

¹ Defined as "Harry Hildibrand, LLC".

² The term Vehicles is defined as those 10 vehicles referenced in the chart attached as Exhibit B to the Contempt Order.

§ 22.110, the draconian and extreme punishment of indefinite imprisonment may only be imposed on an individual where the contempt “consists in the omission to perform an act which is yet in the power of the person to perform...” Here, Mr. Detwiler’s testimony, and the other evidence in this case, has been grossly misrepresented to this Court. The truth is, Mr. Detwiler’s testimony has been consistent that he never had involvement with, or ownership of, the vehicles at issue (“Vehicles”). Moreover, Mr. Detwiler resigned as a manager of Harry Hildibrand, LLC (the “Company”) effective September 10, 2019. See Declaration of Edward N. Detwiler (“Detwiler Declaration”), attached as **Exhibit 1** hereto, and Mr. Detwiler’s letter of resignation, attached hereto as **Exhibit 2**.³ There can be no basis to hold Mr. Detwiler in contempt.

II. PROCEDURAL HISTORY AND PRIOR COURT ORDERS AND EVIDENCE

A. Findings of Fact, Conclusions of Law and Final Judgment dated 1/9/2019

In its Findings of Fact, Conclusions of Law and Final Judgment dated January 9, 2019, attached hereto as **Exhibit 3**, (“January 2019 Order”), the Court made multiple findings that Mr. Foust, not HH and certainly not Mr. Detwiler, owned, controlled and possessed all of the Vehicles:

³ See also *Montana Code Annotated*, § 35-8-307

35-8-307. Management and voting

(1) Unless the articles of organization or the operating agreement provide otherwise, in a member-managed company:

(a) each member has equal rights in the management and conduct of the company’s business; and

(b) except as provided in subsection (3), any matter relating to the business of the company may be decided by a majority of the members.

(2) Unless the articles of organization or the operating agreement provide otherwise, in a manager-managed company:

(a) each manager has equal rights in the management and conduct of the company’s business;

(b) except as provided in subsection (3), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(c) a manager:

(i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

(ii) holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

Mont. Code Ann. § 35-8-307 (West) (emphasis added); see also NRS §47.250 (13) (regarding the presumption that “a letter duly directed and mailed was received in the regular course of mail”).

- 1 • Neither Mr. Foust nor HH offered evidence on these subjects, other than a cursory
2 statement. It is no exaggeration to say that the evidence these defendants offered
3 focused on the Motorcoach and little else. By contrast, the Bank offered a
4 treasure trove of evidence showing that although Mr. Foust claims he sold
5 certain cars to HH and others, these same cars remain under the control of
6 Mr. Foust. (p. 10).
- 7 • There is no doubt that Mr. Foust represented that he owned these vehicles in his
8 **personal capacity**: the document is entitled a "personal" financial statement and
9 Mr. Foust wrote "Foust"- his name- in the "Name(s) Registered In" field on the
10 form. (p. 10).
- 11 • Neither Mr. Foust nor HH produced any documentary evidence or offered any
12 testimony to show that Mr. Foust did not own the "HH cars," as he told the Bank
13 he did; that Mr. Foust did not in fact own the HH Sold Cars, as he told the Bank he
14 did; or that Mr. Foust did not continue to own the "Third Party Cars" he claims be
15 sold. (p. 11).
- 16 • The only actual evidence before this Court conclusively proves that Mr. Foust
17 continues to own and control all the cars mentioned on any list, and certainly
18 those that HH claimed to own in the bankruptcy. (p. 11).
- 19 • This testimony ignores this Court's prior order and a subpoena duces tecum directed
20 to HH, both of which sought these same alleged sales contracts. This Court has
21 allowed three depositions and two evidentiary hearings, and **the defense has never**
22 **produced any contract for the sale of cars between HH and Mr. Foust.** The
23 Court is convinced no such contract or contracts exist. (pp. 11-12)
- 24 • Finally, HH failed to offer into evidence car titles showing transfer of the cars
25 in question to HH or anyone else. The only evidence this Court has is that Mr.
26 Foust, on multiple occasions and in writing, swore to the Bank that he owned
27 at least the 20 cars that HH now claims to own in the bankruptcy, and, in fact,
28 many more. (p. 12).
- Transfers to insiders demonstrate fraud. *See* NRS 112.180(2)(a)). Mr. Foust
transferred the 20 cars identified in the HH bankruptcy to himself **because Mr.**
Foust owns and controls HH. (pp. 13-14).
- The evidence is uncontroverted and overwhelming that Mr. Foust "retained
possession or control of the property transferred after the transfer." *See* NRS
112.180(2)(b). Mr. Foust and Mr. Detwiler admitted in their depositions that Mr.
Foust and his wife and daughters have possession of and use three Mercedes and a
GMC Yukon that HH claimed to own in its bankruptcy schedules. **As for the**
balance of the 20 cars HH claims in its bankruptcy, Mr. Foust controls them
because he owns HH and StarDust Classic. Someone must control these cars.
(p. 14).

- 1 • Similarly, the documentary evidence HH adduced related solely the Motorcoach.
2 (p. 21).
- 3 • On the other hand, the Bank gave clear, convincing, and compelling evidence of
4 Mr. Foust's ownership and control of the cars in question: his repeated, written
5 statements concerning his car collection and expenses related thereto given to the
6 Bank over a period of years and bills of sale that Mr. Foust signed transferring some
7 of the cars to HH without consideration right after Mr. Foust purchased the cars. (p.
8 21).⁴
- 9 • The Bank has offered substantial and credible evidence showing that Mr. Foust
10 still owns, possesses, and controls the cars in question, including especially the
11 four cars he openly admits he and his family use (the three Mercedes and the
12 2000 GMC Yukon) and the 20 cars that HH claims to own in the bankruptcy. (p.
13 21).
- 14 • Mr. Foust is the owner of all cars over which HH claims an interest, including
15 those cars identified in the bankruptcy (Exhibit B). (p. 21).
- 16 • Mr. Foust is the owner of all cars over which StarDust Classic claims an
17 interest, including those cars identified in the bankruptcy (Exhibit B). (p. 21).
- 18 • Mr. Foust is the owner of all of the cars that HH contends or has contended
19 that it obtained from Mr. Foust and transferred to some third parties. (p. 21).
- 20 • Mr. Foust is the owner of all cars, believed to number 59 (Exhibit A), which
21 he owned or claimed to own at the time he became indebted to Bank, and/or
22 which he contends or has contended were transferred by him to some third parties
23 or party. (p. 21).
- 24 • Mr. Foust is the owner, member, and/or officer of StarDust Classic. (p. 21).
- 25 • Pursuant to NRS 112.180(1)(a), even if any sale or transfer of the cars listed in 25
26 Exhibits B from Mr. Foust to HH or StarDust Classic did occur, it was made with
27 the actual intent to hinder, delay, and defraud the Bank. The record indicates that
28 many, if not all, of the so-called "badges" that demonstrate actual fraud occurred
here. The alleged sale of cars by Mr. Foust to HH is a scam and a fraudulent transfer.
(p. 21).
- Any alleged sale or transfer of the 20 cars that HH still claims to own (Exhibit B)
void ab initio and is of no effect whatsoever... (p. 22).

⁴ Unless otherwise stated, all emphasis is added.

- 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... (p. 22).

B. Order for Punishment of Contempt, Dated June 21, 2019

On June 21, 2019, after all of the evidentiary hearings involving Mr. Detwiler had taken place, the Court issued its "Order for Punishment of Contempt", attached hereto as **Exhibit 4**, ("June 2019 Order"). In the June 2019 Order the Court again reiterated its findings that Mr. Foust, not the Company, owned and controlled the Vehicles, and owned and controlled HH and Stardust. In fact, the Court specifically and expressly incorporated "**any other evidentiary findings in the January 9, 20 19, Order, which is not discussed herein to support Mr. Foust's ownership and control of the subject vehicles directly or indirectly through HH and/or StarDust.**" See June 2019 Order at p. 6, ¶ 28. So, even after all the evidentiary hearings had been completed, all the evidence received, and all testimony by Mr. Detwiler concluded, the Court again reiterated its prior findings of Mr. Foust's "ownership and control" of the Vehicles from the January 2019 Order. The pertinent findings and conclusions from the June 2019 Order are as follows:

- As discussed herein, the Court finds that **Mr. Foust fraudulently testified to this Court that he no longer had any ownership interests in the subject vehicles.** (p. 4).
- The evidence presented in these proceedings to date has proved that, **at all times pertinent hereto, Mr. Foust directly and/or indirectly controlled HH.** (p. 4).
- Mr. Foust was designated as the "managing initial director" through at least 2008, and filings with the Montana Secretary of State shows that **Mr. Foust was the sole member and/or manager of HH.** (p. 5).
- **Mr. Foust has failed to provide into evidence car titles showing transfer of the subject vehicles to HH or anyone else.** (p. 6).
- **This Court further incorporates herein any other evidentiary findings in the January 9, 20 19, Order, which is not discussed herein to support Mr. Foust's ownership and control of the subject vehicles directly or indirectly through HH and/or StarDust.** (p. 6)

- 1 • The Court finds that, at all relevant times herein, Mr. Foust, HH, and StarDust were
2 and are alter egos of each other with respect to all of the subject vehicles listed in
3 Exhibit A. (p. 6 29)
- 4 • Thus, Mr. Foust owns the Mercedes Vehicles and the Yukon either directly or
5 indirectly through HH. Mr. Foust and HH know where the Mercedes Vehicles and
6 the Yukon are located, and Mr. Foust has the right, ability, and duty , under the
7 Order to locate, surrender, and deliver these four (4) vehicles to the Bank. As a
8 result of Mr. Foust's violation of the Order regarding each of the Mercedes Vehicles
9 and the Yukon, Mr. Foust is in civil contempt of Court. (p. 6).
- 10 • A 2016 Kawasaki KRI O ("Kawasaki") is also listed in Exhibit A, and is the subject
11 of the Court's Order for Mr. Foust to surrender and deliver to the Bank. Mr. Foust
12 represents to this Court by sworn declaration on April 8, 2019, that the Kawasaki
13 was in the possession of HH. (4/8/2019 Foust Decl., p. 3:10-12.) Mr. Foust has
14 offered no valid reason, and indeed has no valid reason, to fail to surrender the
15 Kawasaki, which he owns either directly or indirectly through HH. (p. 7).
- 16 • Whether Mr. Foust claimed to own the subject vehicles in his name, or whether
17 they were held indirectly by HH-the entity that Mr. Foust "ultimately owned"-Mr.
18 Foust has no valid excuse for not surrendering all twenty (20) subject vehicles over
19 to the Bank. (p. 7).
- 20 • Furthermore, as noted above, StarDust is an alter ego of Mr. Foust, and thus, Mr.
21 Foust has no valid reason for failing to surrender the aforementioned eleven (11)
22 vehicles in Paragraph 34, which he either owns directly, or indirectly through
23 StarDust. (p. 8).
- 24 • While it is perfectly clear, and supported by clear and convincing evidence, that as
25 of April 1, 2009, the twenty (20) subject vehicles that are identified in Exhibit A
26 hereto, were in the possession, custody, control of, and owned by, either Mr. Foust
27 directly, or by Mr. Foust indirectly through HH, **and remain in the control of Mr. Foust**,
28 this Court will give Mr. Foust the benefit of the doubt and hereby finds that
the four (4) remaining subject vehicles are possibly not held by Mr. Foust, HH, or
StarDust. These four vehicles only are not the proper subject of a contempt citation.
(pp. 8-9)
- Mr. Foust is the owner of all vehicles identified in Exhibit A over which Star Dust
claims an interest. (p. 9)
- Mr. Foust is the owner of all vehicles identified in Exhibit A over which HH claims
an interest. (p. 9)
- **Mr. Foust fraudulently testified to this Court that he no longer had any
ownership interests in the vehicles identified in Exhibit A;** he presented no valid
excuse for violating the Court's Order; he presented no valid excuse for failing to

tum over the subject vehicles; and he presented no evidence of any effort whatsoever to attempt to retrieve the subject vehicles from their present locations. (p. 6).

C. **The Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, its Manager, entered January 30, 2020 ("Contempt Order")**

The Contempt Order, attached hereto as **Exhibit 5**, alleges that Mr. Detwiler refused to comply with the January 2019 Order. This is not accurate. First, as noted above, the January 2019 Order, and the June 2019 Order, both make clear that this Court made dozens of findings of fact and conclusions of law that Mr. Foust owns, possesses and controls the Vehicles. How can Mr. Detwiler comply with orders that found neither he nor HH own, control or possess the Vehicles?

Further, the Contempt Order contains many materially misleading statements by the Bank, including but not limited to the following:

1. **Misleading statement number one:**

The Order required "Mr. Foust and HH and any of their respective agents, employees, or affiliates [] ***including without limitation Mr. Detwiler*** ... on penalty of contempt, to deliver up, surrender possession of, and turn over to the Bank promptly, in a manner that protects the cars from any damage, all [twenty] cars identified in [Exhibit B] with any cost or expense involved in delivery to the Bank to be borne by Mr. Foust and/or HH." (Order, Conclusion of Law ¶ 29 (emphasis supplied).)

See Contempt Order at p. 2.

This is not accurate, and it is telling that the Bank removes from the quotation the parentheticals that make clear the January 2019 Order was against Foust and HH, not Mr. Detwiler.

The full quotation from the January 2019 Order reads as follows:

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..."

See January 2019 Order at p. ¶ 29. The problem with the Bank's position, though, is that the January 2019 Order **also** found that Mr. Foust – **not HH and certainly not Mr. Detwiler** – was

the owner of the Vehicles:

- *The Bank has offered substantial and credible evidence showing that Mr. Foust still owns, possesses, and controls the cars in question, including especially the four cars he openly admits he and his family use (the three Mercedes and the 2000 GMC Yukon) and the 20 cars that HH claims to own in the bankruptcy. (p. 21).*
- **Mr. Foust is the owner of all cars over which HH claims an interest, including those cars identified in the bankruptcy (Exhibit B). (p. 21).**
- **Mr. Foust is the owner of all cars over which StarDust Classic claims an interest, including those cars identified in the bankruptcy (Exhibit B). (p. 21).**
- **Mr. Foust is the owner of all of the cars that HH contends or has contended that it obtained from Mr. Foust and transferred to some third parties. (p. 21).**
- **Mr. Foust is the owner of all cars, believed to number 59 (Exhibit A), which he owned or claimed to own at the time he became indebted to Bank, and/or which he contends or has contended were transferred by him to some third parties or party. (p. 21).**

See January 2019 Order, page citations included.

Further, in case the Bank tries to get around these clear and undeniable findings by this Court – which completely contradict the Contempt Order – by arguing that they were made prior to the evidentiary hearings through 2019, it must be noted that the Court reiterated all of these findings expressly in the June 2019 Order, which was after all of the hearings and testimony by Mr. Detwiler:

- *This Court further incorporates herein any other evidentiary findings in the January 9, 20 19, Order, which is not discussed herein to support Mr. Foust's ownership and control of the subject vehicles directly or indirectly through HH and/or StarDust. (p. 6).*
- While it is perfectly clear, and supported by clear and convincing evidence, that as of April 1, 2009, the twenty (20) subject vehicles that are identified in Exhibit A hereto, were in the possession, custody, control of, and owned by, either Mr. Foust directly, or by Mr. Foust indirectly through HH, **and remain in the control of Mr. Foust**, this Court will give Mr. Foust the benefit of the doubt and hereby finds that the four (4) remaining subject vehicles are possibly not held by Mr. Foust, HH, or

StarDust. These four vehicles only are not the proper subject of a contempt citation. (pp. 8-9).

See June 2019 Order, page citations included.

It is hornbook law that a non-party cannot be forced, by punishment of contempt, to turn over property which it neither owns nor is in its possession. See NRS § 22.110. Yet, despite these clear findings in the January 2019 Order – which clearly negate any inaccurate and baseless assertion by the Bank that Mr. Detwiler (who is not even a manager of HH any longer) can somehow produce the Vehicles out of thin air – the Bank insists on asking this Court to imprison Mr. Detwiler indefinitely, until he magically conjures the Vehicles or, even better for the Bank, pays someone else’s judgment. Of course, the Bank does not wish to afford Mr. Detwiler his constitutionally guaranteed due process by filing a complaint alleging alter ego as required by the Nevada Supreme Court’s holding in *Callie*, because it knows it has no basis to do so. So, instead, the Bank attempts to bully and intimidate Mr. Detwiler – and even threaten indefinite imprisonment – to force him to come up with money he does not owe and Vehicles he never owned. All this despite the fact that the Bank has not produced a single shred of evidence showing Mr. Detwiler ever owned or controlled any of the Vehicles, nor could it. Both the January 2019 Order and the June 2019 Order (the latter entered after all evidentiary hearings) held clearly and unequivocally that Mr. Foust was in possession, custody and control of all Vehicles. Mr. Detwiler cannot turn over what this Court has found is owned, possessed and controlled by Mr. Foust.

2. Misleading statement number two.

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

Contempt Order at p. 3, ¶ 8. While this statement is true, it is also misleading. The fact is, the Bank cannot now challenge or controvert the findings from the January 2019 Order, or the June 2019 Order, finding that Foust “owns, possesses and controls” the Vehicles.

1 3. Misleading statement number three:⁵

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

3 Q: And you're the sole-

4 Mr. Detwiler: At least to my knowledge.

5 Q: -manager, correct?

6 Mr. Detwiler: I'm-I'm a manager.

7 Q: Who are the other managers?

8 Mr. Detwiler: I don't know.

9 (5/21/19 Vol. I Hr'g Trans., p. 10:12-18.)

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

11 Mr. Detwiler: That I'm aware of, yes.

12 (5/17/19 Hr'g Trans., p. 28:6-7.)

13 See Contempt Order at p. 5, ¶ 21.

14 In reality, the Bank is misrepresenting Mr. Detwiler's testimony. He never testified he was
15 the only manager of HH, he only testified he was the only one of which he was aware. In fact, the
16 Bank goes so far as to egregiously misrepresent Mr. Detwilers' testimony. The truth is that Mr.
17 Detwiler testified in his Declaration attached to the 3/2/18 Application for Hearing that: "**I am a**
18 **managing director** of Harry Hildibrand, LLC..." See **Exhibit 6** hereto (emphasis added). This
19 is important because one of the primary issues in this case as it relates to non-party Mr. Detwiler
20 is his status with respect to HH. In fact, the Bank has falsely asserted on multiple occasions that
21 Mr. Detwiler is the only manager of HH. This is demonstrably false and contrary to this Court's
22 findings – which were drafted by the Bank's counsel. The truth is that in its Findings of Fact,
23 Conclusions of Law and Final Judgment entered on March 8, 2018 ("March 2018 Order"), attached
24 hereto as **Exhibit 7**, this Court expressly found as follows:

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

27 See March 2018 Order, at p. 4, ¶ 12.

28 ///

⁵ Emphasis in original.

1 4. **Misleading statement number four.**

2 In the Contempt Order, the Bank grossly misrepresents Mr. Detwiler's purported testimony
3 from the Bankruptcy Hearing. *See* Contempt Order at pp. 6-7, ¶¶ 27 – 43. In fact, The Bank's
4 assertions in the Contempt Order on this issue are demonstrably false. First, the Bank asserts that
5 there is some issue with Mr. Detwiler's credibility in claiming that **on January 23, 2019 – nearly**
6 **five (5) months after the Bankruptcy Hearing**, Mr. Detwiler asserted that he had no knowledge
7 of the Vehicles then current whereabouts. But the Bank has no proof, or even evidence, that Mr.
8 Detwiler could have known where the Vehicles were located, other than what HH's lawyer James
9 Lezie, testified at the Bankruptcy Hearing. In fact, a truthful analysis of the Bankruptcy Transcript
10 makes clear that it was James Lezie, the attorney for HH (and not for Mr. Detwiler) who answered
11 the vast majority of the questions about the locations of the Vehicles (and who, according to the
12 Bank's counsel, is represented in the Bankruptcy Transcript as "JL"):⁶

13 MK The company is located in Montana. Why is the bankruptcy being filed in
14 California?

15 JL One of the jurisdictional requirements is the assets, substantial assets.

16 MK So do you mean that because a number of cars are located in California?

17 JL That's correct.⁷

18 ...

19 MK Page 15 of the original petition lists a number of vehicles we have discussed
20 these. There's 20 vehicles. I'll show it to you so you can see it. It list a
21 value. How was that value determined?

22 JL It was book value. To the best of my knowledge. Yeah, this is the stuff that
23 I – where I spoke with Jim Foust who is much more knowledgeable on
24 vehicles than I was.⁸

25 ...

26 In fact, it was clear from Mr. Detwiler's testimony just how much he did not know about

27

⁶ Again, to the extent the Bankruptcy Transcript is accurate, as it is undoubtedly incomplete.

28 ⁷ *See* Bankruptcy Transcript, **Exhibit 8** hereto, at p. 21, Bates BAKER000100.

⁸ *Id.* at p. 29, Bates no. BAKER000108.

1 the Vehicles or HH's related business dealings:

2
3 MK And does Harry Hildibrand LLC have records indicating the purchase of
each of these vehicles?

4 JL I know they have titles but I don't know, I haven't seen anything other than.

5 **ED I don't know if there's contacts [sic], Mr. Kaplow, I don't know.**

6 MK So you don't know if there's a bill of sale for any of the vehicles?

7 **ED I don't know.**

8 MK Were you involved with the purchase of any of the vehicles?

9 **ED No, sir.**

10 MK Do you know who was involved with the purchase of vehicles?

11 **ED No, sir.**

12 MK Was Mr. Foust involved with the purchase of the vehicles?

13 **ED I have no idea.**

14 MK Do you know if Mr. Foust was involved with the purchase of the vehicles
on behalf of Harry Hildibrand for any of these vehicles?

15 **ED I do not know.⁹**

16 Mr. Detwiler further testified that he had never even driven any of the Vehicles, and was
17 not involved in the purchase of any of the Vehicles (only the Motorcoach which the Bank has
18 already taken):

19 MK Thank you. Have you ever driven any of the vehicles that are owned by
20 Harry Hildibrand LLC?

21 **ED No sir.**

22 MK None of them?

23 **ED None of them.**

24 MK And when the company was operating and buying and selling vehicles,
25

26
27 ⁹ *Id.* at p. 32, Bates no. BAKER000111.
28

1 when was the last vehicle sold other than the airplane?

2 ED I believe and **I wasn't in directly involved in it**, it would have either been
3 the Plymouth Belvedere or the Plymouth Prowler.

4 MK So it would have been either in 2010 or 2012?

5 ED Yes, whichever one sold when, whichever one sold in 2012. **That would**
6 **have been the last one that I would have been aware of but once again,**
7 **I did not participate in any of the profits so I didn't really pay that**
8 **much attention. I've just learned this from sitting here.**¹⁰

9 To the extent that Mr. Detwiler did answer any questions with respect to the Vehicles, it
10 was clear he was merely parroting back what Mr. Lezie had said:

11 MK So the value that's listed for these vehicles is not the present value? This is
12 the value if the vehicles were fixed up to a certain condition?

13 JL No.

14 ED No, sir.

15 JL No, what they were purchased for.

16 MK So this is, the value that's listed is the value of the price that the vehicles
17 were purchased for?

18 JL **Right, they were the old book value, that's right.**

19 AM As opposed to fair market value?

20 ED Correct.

21 JL **Yeah some of them have, you know, are probably worse than what they**
22 **were purchased. Some of them that are maybe rare if you would call it**
23 **that, although I've looked up, I've done a little bit of research when I**
24 **did it and there seems to be a lot of these cars out there so I don't know.**

25 MK Just to clarify my understanding, the value that's listed is the purchase price
26 of the vehicles?

27 JL **That's correct.**

28 MK And is not necessary the blue book value of what the vehicle's worth?

JL **That's correct. That's correct and the other thing is I cannot attest for**
the condition in most cases to be able to establish blue book value
because they have a lot of questions in blue book.¹¹

...

MK Which vehicle's in Montana?

¹⁰ *Id.* at p. 34, Bates no. BAKER000113.

¹¹ *Id.* at p. 30, Bates no. BAKER000109.

1 **ED** **Gosh,**
2 **JL** **I think Gary had that on**
3 **AM** **No he just – the number of vehicles.**
4 **JL** **Ah, you know, just a second I may have that in my notes.**
5 ...
6 **JL** **Yes, I do. Okay you ready?**
7 **MK** **Yes.**
8 **JL** **Let's just go down the list from top to bottom.**
9 **MK** **Sure.**
10 **JL** **Corvette – LA. Next one, LA. Couple – LA. Bellaire – Montana. 300C**
11 **convertible – North Dakota. Tbird Chev – LA. Fairlane 500 – North**
12 **Dakota. Thunderbird red – North Dakota. Pantera misspelled – North**
13 **Dakota. Pantera DT4 – LA. XK race car – North Dakota. Oldsmobile**
14 **Rocket – North Dakota. The next two have – were sold in 2010 and 2012**
15 **respectively. Next one, CK or CLK 500 – LA. Yukon – LA. 550 – LA.**
16 **Chevy 409 – LA. Marathon coach – Las Vegas. Kawasaki the**
17 **motorcycle – LA.¹²**

18 In fact, Mr. Detwiler confirmed that he had nothing to do with the Vehicles, and received
19 no compensation from that aspect of HH's business:

20 ...
21 **MK** And then when it comes to the cars, when cars were bought and sold over
22 time, did you get any commission or compensation with respect to them?
23 **ED** **Absolutely not. None, I didn't get anything. But I wasn't doing anything**
24 **either so I didn't expect, I don't expect to get paid for something I don't**
25 **work for.¹³**

26 The truth is, as Mr. Detwiler has testified on multiple occasions and consistently, he never
27 did have the ability to turn over the Vehicles, as he never had access to them or the ability to
28 control their disposal, and he certainly does not now. *See* Detwiler Declaration, Exhibit 1 hereto,
at ¶ 10. Regardless, he is no longer the manager of HH and has not been for several months, and
therefore cannot produce the Vehicles. Plaintiff's bald, unsupported assertions that Mr. Detwiler
– not HH – failed to comply with any order of this Court without actually proving Mr. Detwiler

¹² *Id.* at p. 31 Bates no. BAKER000110.

¹³ *Id.* at p. 26, Bates no. BAKER000105.

could comply, which the Bank has not come anywhere close to doing, demonstrates the facial invalidity and gross overreach of the Bank's proffered Contempt Order.

5. Misleading statement number five.

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

See Contempt Order at p. 8, ¶ 46. While the January 2019 Order does purport to make such a finding, as set forth herein, under *Callie* such a finding is improper as an alter ego determination requires a separate complaint and appropriate due process, which the Bank has not done. Such a finding – which forms the basis for the Contempt Order – is unlawful and a violation of Mr. Detwiler's due process. If HH is not an alter ego of Foust, how can Mr. Detwiler be required to turn over Vehicles that the Court has found on numerous occasions are in the possession, custody and control of Mr. Foust? Clearly the Bank would like to forego this due process requirement, but binding Nevada case law does not permit it to do so.

6. Misleading statement number six.

HH produced no evidence, such as a promissory note, of any arms-length dealings between it and StarDust. Instead, the documents received into evidence by this Court reveal StarDust to be *another* entity controlled by Mr. Detwiler and/or Mr. Foust and used to frustrate creditors.

See Contempt Order at pp. 8-9, ¶ 47. Here again the Contempt Order has inconsistent findings – does Detwiler control StarDust or Mr. Foust? Clearly Mr. Detwiler has testified he never had any ownership, control, managerial or other interest in StarDust. *See* [Detwiler Testimony]; *see also* Detwiler Declaration, Exhibit 1 hereto, at ¶ 11.

7. Misleading statement number seven.

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

1 See Contempt Order at pp. 9, ¶ 51. Here again the Bank makes false and misleading statements
2 regarding Mr. Detwiler's involvement with HH. In fact, Mr. Detwiler did not draft the said
3 meeting minutes. See Detwiler Declaration, Exhibit 1 hereto, at ¶ 12.

4 **8. Misleading statement number eight.**

5 During the Section 341 Meeting, Mr. Detwiler summarized his duties in an
6 expansive fashion: "I'm head guy in charge of getting stuff done." (11/5/18 Hr'g Ex.
7 3, Control
27 No. 95.)

8 See Contempt Order at pp. 9, ¶ 53. That completed answer makes clear how little control Mr.
9 Detwiler had with respect to HH. "I'm not always privy to what junior and Ronnie do. **I take**
10 **directions not give them.**" See Bankruptcy Transcript, Exhibit 8 hereto, at bates no.
11 BAKER000095.

12 **9. Misleading statement number nine.**

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

18 See Contempt Order at p. 10, ¶ 56. As noted above, the Bank is misrepresenting Mr. Detwiler's
19 testimony in the Bankruptcy Hearing. He never testified gave detailed information about the
20 Vehicles' location, and confirmed he did not know whether any of the cars in the warehouse were
21 the same Vehicles the Bank seeks, never testified about knowing about the Vehicles' financing,
22 and did not testify about "regular" interactions with the purported owners of HH. See referenced
23 testimony; see also Detwiler Declaration, Exhibit 1 hereto, at 13. Further, the Bank's Brief falsely
24 asserts Mr. Detwiler shares office space with one of Mr. Foust's entities. This is false.

25 In fact, Mr. Detwiler's testimony regarding his extremely limited role with the Company,
26 lack of knowledge of or interest in the Vehicles, and inability to turn them over has been consistent
27 throughout these proceedings:

1 THE WITNESS: Yes, sir. Thank you.
2 I have no access to the cars. As I shared with Mr. Bragonje at
3 a deposition in his office some time ago, my role as coming in as being a
4 manager of Harry Hildibrand was to be involved in real estate. That was
5 in 2008. The market spiraled down. Real estate never got off the
6 ground with them. And basically, I've been a figurehead as a manager
7 of that company ever since.
8 I've also shared with Mr. Bragonje that I don't know anything
9 about cars, I don't know about remodeling. Well, I guess it would be
10 restoring cars. I know where the key goes, I know where the gas goes
11 in a car, and that's it.
12 I don't know how they're financed. I don't know how auctions
13 work. It's not anything that I was ever involved in on a basis whatsoever
14 relating to Harry Hildibrand.

15 See May 17, 2019, Transcript, at p. 19.

16 My extent as a
17 manager, I have no day-to-day operations knowledge of the company.
18 I don't know the structure outside of the document that was shown that
19 the Hildibrand children own 99 percent of the company. Mr. Foust
20 owned 1 percent of the company that was established the day I was --
21 the last time I was here to testify.
22 Outside of that, I know nothing about the operations of Harry
23 Hildibrand, nor should I as I -- I don't even have a -- I don't have a
24 financial interest in the company either.

25 *Id.* at p. 20.

26 THE WITNESS: Yeah. I don't know why I can't get through,
27 but I can't get through. My involvement with the cars, I don't -- I've never
28 known anything about the cars and what I shared with the bankruptcy
attorney, the information that I did share was provided to me by the
attorney who filed the bankruptcy.

See Transcript of May 21, 2019 Proceedings, Volume 1, at p. 19.

5 Q And with those 20 vehicles, do you know where those vehicles
6 are located at?
7 A At this point, no, sir. At this time, no.
8 Q And do you have knowledge, is Mr. Foust in possession of
9 those vehicles?
10 A I do not know.

1 11 Q Okay. To your knowledge, does Harry Hildibrand LLC have
2 12 any agreement with Mr. Foust as to those vehicles?
3 13 A I'm unaware of one.
4 14 Q Okay. Do you know who the current owner of those vehicles
5 15 are?
6 16 A No, sir.
7 17 Q Do you know, on those 20 vehicles, when they were acquired?
8 18 A No.
9 19 Q Did you participate in the acquisition of those vehicles?
10 20 A No.
11 21 Q Did you participate in the sale of those vehicles?
12 22 A No.

13
14 See Transcript of May 21, 2019 hearing, Volume 2, at p. 59.

15 **10. Misleading statement number ten.**

16 During his testimony, Mr. Detwiler did not claim that HH did not possess or own
17 the 20 vehicles HH claimed to own (Exhibit B) when if petitioned for bankruptcy
18 in 2018. Instead, he only claimed that he did not have the power to deliver the
19 vehicles to the Bank. The Court rejects this testimony.

20 See Contempt Order at p. 10, ¶ 59. Again, the Bank falsely misconstrues Mr. Detwiler's testimony
21 when it is convenient. The truth is that Mr. Detwiler has always maintained that **he never knew**
22 **the whereabouts of the Vehicles**, or whether they were the same vehicles the Bank now seeks.

23 See Transcripts of evidentiary hearings from April 1, 2019, April 24, 2019, May 17, 2019, May
24 21, 2019 (Volume 1), and May 21, 2019 (Volume 2), attached hereto as **Exhibits 9, 10, 11, 12 and**
25 **13, respectively**; see also Detwiler Declaration, Exhibit 1, at 13. The fact is, the Bank has never
26 proven that any of the Vehicles it seeks were ever in the possession, custody or control of HH,
27 much less Mr. Detwiler; rather, this Court has found over and over that the Vehicles are owned,
28 possessed and controlled by Mr. Foust. Mr. Detwiler cannot turn over what Mr. Foust owns,
possesses and controls.

29 **11. Misleading statement number eleven.**

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

1 See Contempt Order at p. 11, ¶ 4. This holding is the entire basis for the Contempt Order. Of
2 course, if Mr. Foust owns and controls the Vehicles – as the Court finds dozens of times both
3 before and after Mr. Detwiler’s testimony during the evidentiary hearings in the matter – Mr.
4 Detwiler cannot possibly be held in contempt for not turning them over. That is very inconvenient
5 for the Bank, who is attempting to force Mr. Detwiler to pay over \$500,000 of a judgment that is
6 not against him. So, the Bank now submits an order in which the Court finds exactly the opposite
7 of what it found in January, 2019 and June, 2019. The Bank cannot have it both ways. The January
8 2019 Order and the June 2019 Order are final. They both found dozens of times that Mr. Foust,
9 owns, possesses and controls the Vehicles. Mr. Detwiler cannot turn over what the Court already
10 found was owned, possessed and controlled by Foust.

11 **12. Misleading statement number twelve.**

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

17 See Contempt Order at p. 11, ¶ 4. Inaccuracies in this statement by the Bank are legion. Who
18 owns, controls and possess the Vehicles? In the January 2019 Order, this Court found Mr. Foust
19 did. In the June 2019 Order, this Court found Mr. Foust did. Now the Bank suggests that the
20 Vehicles can be turned over by “Mr. Foust, and HH and [Mr. Detwiler]”. Which is it? Can Mr.
21 Detwiler be held in contempt for not turning over what is in Mr. Foust’s possession? The Bank
22 would like this Court to think so, but that defies logic. The Bank cannot even make up its mind as
23 to who owns any of these Vehicles, let alone who possess or controls them. Instead, it is picking
24 the easiest target in an attempt to coerce Mr. Detwiler to pay \$525,000 of a judgment that is not
25 against him, under the threat of indefinite imprisonment if he does not do so.

26 ///

1 **13. Misleading statement number thirteen.**

2 The Court's [January 2019] Order clearly and unambiguously directed Mr. Detwiler
3 and HH to deliver the subject vehicles identified in the Order.

4 *See* Contempt Order at p. 11, ¶ 4. This is just blatantly false. The January 2019 Order found that
5 Mr. Foust owned, possessed and controlled the Vehicles. How could it also direct Mr. Detwiler
6 “and HH” to turn over what it found Mr. Foust owned, possessed and controlled? The truth is it
7 cannot, and the Bank is simply pretending otherwise because it is easier to find Mr. Detwiler than
8 the actual judgment debtor, whom the Court has found dozens of times is the person who actually
9 owns, possesses and controls the Vehicles.

10 **14. Misleading statement number fourteen.**

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

14 *See* Contempt Order at p. 11, ¶ 4. Another clearly false and inconsistent statement by the Bank,
15 for the reasons noted in the immediately preceding paragraph.

16 **15. Misleading statement number fifteen.**

17 Mr. Detwiler's and HH's refusal to turn over each of the 20 subject vehicles
18 identified in Exhibit B which are the subject of the Court's January 9, 2019,
19 Order, constitutes a separate and distinct act of civil contempt of Court, for a total
 of 20 separate acts of civil contempt.

20 *See* Contempt Order at p. 16, ¶ 26. This is a particularly insidious misrepresentation by the Bank.
21 The chart of Vehicles attached as Exhibit B to the Contempt Order (there appears to be no Exhibit
22 A) lists the twenty Vehicles the Bank asserts each of which constitute a separate count of contempt.
23 *See Exhibit 14* hereto for the Court's convenience. This list is grossly misleading. First and
24 foremost, the most valuable item by far, the Marathon Coach, is already in the Bank's possession.
25 Yet the Bank asserts Mr. Detwiler not turning it over to the Bank constitutes a separate count of
26 contempt. But, it gets worse. As set forth in the chart attached hereto as **Exhibit 15** listing the
27

1 Vehicles, their status and location as represented by the testimony in this case, only four (4) of said
2 20 Vehicles have not been sold to third parties, repossessed by Mr. Vega and/or StarDust, or are
3 or were in the possession of Mr. Foust's family members pursuant to his own testimony and that
4 of Mr. Larkin. A summary of the chart, including the locations of the Vehicles as outlined by Mr.
5 Foust's own testimony or affidavit, or Mr. Larkin – both of whom testified under oath at the
6 hearings in May, 2019 – are as follows:

7 ///

8 ///

9 ///

YEAR	MAKE	MODEL	VALUE	VIN	LOCATION PURSUANT TO FOUST/LARKIN TESTIMONY
2007	CHEVY	Corvette Z06	\$ 35,000	1069	Repossessed by Vega/Stardust as testified to by Larkin
2007	MERCEDES	M50 SUV	\$ 11,000	2537	With Foust family or subject to lien by Vegas/StarDust
1940	FORD	Coupe	\$ 35,000	2801	Repossessed by Vega/Stardust as testified to by Larkin
1957	CHEV	BEL AIR CONV. (FI)	\$ 25,000	1640	Subject to lien by Vega/StarDust as testified to by Foust
1957	CHRYSLER	300 C CONV.	\$ 35,000	1810	Subject to lien by Vega/StarDust as testified to by Foust
1955	FORD	T-BIRD (CHEV)	\$ 5,000	0647	Repossessed by Vega/Stardust as testified to by Larkin
1957	FORD	FAIRLANE 500	\$ 15,000	2233	Subject to lien by Vega/StarDust as testified to by Foust
1966	FORD	THUNDERBIRD-red	\$ 15,000	4010	Sold and/or repossessed by Vega/Stardust as testified to by Larkin
1971	FORD	PANTERIA	\$ 25,000	1620	Repossessed by Vega/Stardust as testified to by Larkin
1973	FORD	PANTERIA-GT4	\$ 35,000	5291	Repossessed by Vega/Stardust as testified to by Larkin
1951	JAGUAR	XK 120 RACE CAR	\$ 20,000	1966	Repossessed by Vega/Stardust as testified to by Larkin
1957	OLDSMOBILE	98 ROCKET	\$ 18,000	7665	Subject to lien by Vega/StarDust as testified to by Foust
1966	PLYMOUTH	BELVADIRE	\$ 15,000	Shell	Sold and/or repossessed by Vega/Stardust as testified to by Larkin
2000	PLYMOUTH	PROWLER	\$ 21,000	3597	Sold and/or repossessed by Vega/Stardust as testified to by Larkin
2007	MERCEDES	CLK 550	\$ 12,000	1009	With Foust family or subject to lien by Vega/StarDust
2000	GMC	Yukon	\$ 8,000	0142	With Foust family or subject to lien by Vega/StarDust
2007	MERCEDES	S550	\$ 25,000	5860	With Foust family or subject to lien by Vega/StarDust
1963	CHEV	425/409 S/S	\$ 25,000	4085	Sold and/or repossessed by Vega/Stardust as testified to by Larkin
1998	MARATHON	COACH	\$ 129,875	6183	Already taken by Bank
2016	KAWASAKI	KR10	\$ 11,700	B505	Possessed by Harry Hildebrand, Jr.
		Total	\$521,575		

Yet, despite this uncontroverted evidence elicited by the Bank, it seeks to hold Mr. Detwiler in contempt for not turning over Vehicles that are owned, possessed and controlled by Faust.

16. Misleading statement number sixteen.

Pursuant to NRS 22.100, this Court further hereby orders that Mr. Detwiler shall be imprisoned until he complies with the Order and delivers up, surrenders

1 possession of, and turns over to the Bank, in a manner that protects the vehicles
2 from any damage, all 20 vehicles identified in Exhibit B, or pays to the Bank in
immediately available funds the value of the vehicles listed in Exhibit B, \$521,575.

3 See Contempt Order at p. 17, ¶ 29. This misrepresentation by the Bank is equally disturbing.
4 Despite the testimony of Mr. Foust – who this Court found owns, possesses and controls the
5 Vehicles –and Mr. Larkin, who testified that all but four (4) of the Vehicles are either confirmed
6 to be sold to third parties, in the custody and control of Foust’s family, repossessed by
7 Vega/StarDust, or already possessed by the Bank, the Bank seeks to coerce Mr. Detwiler into
8 paying \$521,575 of the judgment owed by Foust. The Bank makes no deduction for the Vehicles
9 it knows for a fact Mr. Detwiler cannot turn over, including the Marathon Coach which it already
10 possesses.

11 III. STANDARD OF REVIEW

12 NRCP 60(b) provides as follows:

13 **(b) Grounds for Relief From a Final Judgment, Order, or Proceeding.** On
14 motion and just terms, the court may relieve a party or its legal representative from
a final judgment, order, or proceeding for the following reasons:

- 15 (1) mistake, inadvertence, surprise, or excusable neglect;
- 16 (2) newly discovered evidence that, with reasonable diligence, could not have been
discovered in time to move for a new trial under Rule 59(b);
- 17 (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or
misconduct by an opposing party;
- 18 (4) the judgment is void;
- 19 (5) the judgment has been satisfied, released, or discharged; it is based on an earlier
judgment that has been reversed or vacated; or applying it prospectively is no longer
20 equitable; or
- (6) any other reason that justifies relief.

21 Nev. R. Civ. P. 60. As set forth herein, subsections (1), (2), (3), (4) and (6) all justify relief. There
22 have clearly been numerous mistakes by the Bank; newly discovered evidence – including without
23 limitation Mr. Detwiler’s resignation – justifies vacating the Contempt Order; the Bank has
24 misrepresented the facts to this Court; the Contempt Order is void as it entirely contradicts the
25 January 2019 and June 2019 Orders (purported violation of which forms the basis for the Contempt
26 Order), and other reasons justify relief, including without limitation, due process and fairness
27

1 considerations. Further, the relief requested by Mr. Detwiler is well within this Court's jurisdiction
2 to grant. *See A-Mark Coin Co. v. Redfield's Estate*, 94 Nev. 495, 498, 582 P.2d 359, 361 (1978)
3 (recognizing, in the probate context, that a court "has jurisdiction to vacate a prior order upon
4 learning that it was entered through mistake" and further confirms that "[o]ur remedial rule, NRCP
5 60(b), contemplates such action.") (citation omitted). The instant Motion is timely filed within six
6 (6) months from service of the notice of entry of the Contempt Order.

7 Additionally, pursuant NRCP 52(a)(6), findings of fact must be set aside when they are
8 "clearly erroneous." Nev. R. Civ. P. 52. As set forth herein, given that the Court's January 2019
9 and June 2019 Orders found the Vehicles to be in the possession, custody and control of Mr. Foust,
10 the Contempt Order is clearly erroneous and must be set aside. *See also* NRCP 59(e) (providing
11 for the alteration or amendment of a judgment); *see Stevo Design, Inc. v. SBR Mktg. Ltd.*, 919 F.
12 Supp. 2d 1112, 1117 (D. Nev. 2013) (holding that Rule 59 may be employed to prevent "manifest
13 injustice").

14 NRCP 59(a) provides that a new trial may be ordered under certain circumstances, many
15 of which have been shown to exist here:

16 **(a) In General.**

17 (1) *Grounds for New Trial.* The court may, on motion, grant a new trial on all or
18 some of the issues--and to any party--for any of the following causes or grounds
19 materially affecting the substantial rights of the moving party:

20 (A) irregularity in the proceedings of the court, jury, master, or adverse party or in
21 any order of the court or master, or any abuse of discretion by which either party
22 was prevented from having a fair trial;

23 (B) misconduct of the jury or prevailing party;

24 (C) accident or surprise that ordinary prudence could not have guarded against;

25 (D) newly discovered evidence material for the party making the motion that the
26 party could not, with reasonable diligence, have discovered and produced at the
27 trial;

28 (E) manifest disregard by the jury of the instructions of the court;

(F) excessive damages appearing to have been given under the influence of passion
or prejudice; or

(G) error in law occurring at the trial and objected to by the party making the
motion.

1 Nev. R. Civ. P. 59. As noted above, Mr. Detwiler substantial misconduct by the Bank exists in
2 this matter; newly discovered evidence which could not have been brought before the Court has
3 come to light; errors in law occurred at the proceedings in this matter, including the request of the
4 Bank and inclusion in the January 2019 and June 2019 orders of “findings” of alter ego
5 relationships without appropriate due process requirements having been met; and it would be an
6 abuse of discretion to permit the Contempt Order to stand when it purports to hold Mr. Detwiler
7 in contempt for not doing something this Court found he cannot do. *See e.g., Whise v. Whise*, 36
8 Nev. 16, 131 P. 967, 968 (1913) (holding that material new evidence warrants a new trial).

9 **IV. ARGUMENT**

10 **A. The Court cannot hold Mr. Detwiler in contempt for not doing what it has**
11 **found he cannot do. The January 2019 and June 2019 Orders make clear Mr.**
12 **Foust owns, controls and possesses the Vehicles. Accordingly, Mr. Detwiler**
13 **cannot be held in contempt for not turning them over to the Bank.**

14 As set forth above, under Nevada’s civil contempt statutes, including without limitation
15 NRS § 22.110, the draconian and extreme punishment of *indefinite imprisonment* may only be
16 imposed on an individual where the contempt “**consists in the omission to perform an act which**
17 **is yet in the power of the person to perform...**”. As the Court in *Alper v. Eighth Jud. Dist. Ct.*
18 recognized:

19 Civil sanctions, on the other hand, are remedial in nature, as the sanctions
20 are intended to benefit a party by coercing or compelling the contemnor's future
21 compliance, not punishing them for past bad acts. Moreover, a civil contempt order
22 is indeterminate or conditional; the contemnor's compliance is all that is sought and
23 with that compliance comes the termination of any sanctions imposed.

24 *See Alper*, 131 Nev. 430, 434, 352 P.3d 28, 31 (2015) (*citing Rodriguez v. Eighth Judicial Dist.*
25 *Court ex rel. Cty. of Clark*, 120 Nev. 798, 805, 102 P.3d 41, 46 (2004) (footnote omitted); *Int'l*
26 *Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827, 114 S.Ct. 2552, 129 L.Ed.2d
27 642 (1994) (explaining that civil contempt sanctions “are considered to be coercive and avoidable
28 through obedience”)). Further, it is binding United States Supreme Court precedent that

1 "punishment may not be imposed in a civil contempt proceeding when it is clearly established
2 that the alleged contemnor is unable to comply with the terms of the order." Hicks on Behalf of
3 Feiock v. Feiock, 485 U.S. 624, 638, 108 S. Ct. 1423, 1433, 99 L. Ed. 2d 721 (1988) (citing United
4 States v. Rylander, 460 U.S. 752, 757, 103 S.Ct. 1548, 1552, 75 L.Ed.2d 521 (1983); Shillitani,
5 supra, 384 U.S., at 371, 86 S.Ct., at 1536; Oriel, 278 U.S., at 366, 49 S.Ct., at 175.) (emphasis
6 added); see also State ex rel. Foster v. McKenzie, 683 S.W.2d 270, 270 (Mo. Ct. App. 1984 (citing
7 Huber v. Huber, 649 S.W.2d 955, 958 (Mo.App.1983); Mechanic v. Gruensfelder, 461 S.W.2d
8 298, 304 (Mo.App.1970)) ("The contemnor must have the ability to purge himself of his
9 contempt to justify imprisonment for civil contempt."); Shell Offshore Inc. v. Greenpeace, Inc.,
10 815 F.3d 623, 629 (9th Cir. 2016) (citing Int'l Union, United Mine Workers of Am. v. Bagwell, 512
11 U.S. 821, 829, 114 S. Ct. 2552, 2558, 129 L. Ed. 2d 642 (1994); Lasar v. Ford Motor Co., 399
12 F.3d 1101, 1110 (9th Cir. 2005)) ("Thus, the ability to purge is perhaps the most definitive
13 characteristic of coercive civil contempt.").

14 At the May, 2019 hearing, this Court confirmed this principle to Mr. Detwiler:

15 8 You can't do something, of course, that you're -- that's a
16 9 physical impossibility. Okay. So if there's something that's a physical
17 10 impossibility, you can't be held in contempt of court. All right. So that's
18 11 what we're trying to find out here is have you done all that's in your
19 12 power to do so satisfy my order. And that's all I'm looking for. Right?
20 13 THE WITNESS: Okay.
21 14 THE COURT: And so if there's more you can do over the
22 15 weekend or Monday, I don't know if there is, maybe you want to talk to
23 16 Harry Jr., this guy Ron Vega. **But understood, sir, you're only**
24 17 **responsible for what's in your power to control. Okay?**

25 See May 2019 Transcript, at p. 54.

26 Here, Mr. Detwiler's testimony, and the other evidence in this case, has been grossly
27 misrepresented to this Court. The truth is, this Court found that Mr. Foust owns, possesses and
controls the Vehicles. It is the height of unfairness and manifestly unjust to imprison Mr. Detwiler
indefinitely until he turns over Vehicles this Court has found he cannot turn over. The Contempt
Order must be vacated.

1 B. Under binding Nevada Supreme Court precedent, “alter ego” claims must be
2 asserted in an independent action with the requisite notice, service of process,
3 and opportunity to defend. The Contempt Order is based on multiple findings
4 of alter ego relationships purportedly justifying the Bank’s attempt to
 imprison Mr. Detwiler indefinitely, and therefore the Contempt Order must
 be vacated.

5 The Contempt Order states that Mr. Detwiler can only be released from prison by delivering
6 the Vehicles at issue “**or paying the Bank in immediately available funds the value of the**
7 **vehicles listed in Exhibit B, \$521,575...**” See Contempt Order, at p. 17, ¶ 31 (emphasis added).
8 In addition, as set forth above, the Contempt Order is based on this Court’s finding that Mr. Foust,
9 HH and StarDust are purportedly alter egos of each other. This is wholly improper and violative
10 of binding Nevada Supreme Court precedent as set forth in *Callie v. Bowling*, 123 Nev. 181, 182,
11 160 P.3d 878, 878 (2007), in which the Court held as follows:

12 A party who wishes to assert an alter ego claim must do so in an independent
13 action against the alleged alter ego with the requisite notice, service of process,
14 and other attributes of due process. When the judgment creditor employs the
15 proper procedure, the defendant who is subject to the alter ego claim is assured a
16 full opportunity of notice, discovery, and an opportunity to be heard before
 potentially being found liable. The failure to abide by this procedure results in
 a deprivation of due process.

17 *Callie*, 123 Nev. at 185, 160 P.3d at 881 (emphasis added).

18 There is no dispute that the judgment at issue is not against Mr. Detwiler, or HH, or StarDust.
19 There is also no dispute that the Bank has not so much as filed a complaint regarding the purported
20 alter ego nature of Mr. Detwiler, HH, or StarDust. Despite this lack of due process on the Bank’s
21 part, it seeks to have Mr. Detwiler imprisoned to pay a debt he does not owe, based on a finding of
22 an alter ego relationship between Foust, HH and StarDust in violation of *Callie*. This is improper
23 and the Contempt Order must be vacated on this ground alone.¹⁴

24 _____
25 ¹⁴ In addition, it appears that the Bank’s behavior in threatening indefinite imprisonment against Mr. Detwiler until he
26 pays someone else’s debt may be a violation of not only NRS § 207.190 (coercion), but also may give rise to an abuse
27 of process claim by Mr. Detwiler against the Bank.
28

There can be no legitimate dispute that Mr. Detwiler has resigned as manager of HH. *See* Exhibits 1 and 2 herein. Mr. Detwiler did everything he could to reach out to anyone who might have been able to turn over the Vehicles, would be willing to execute whatever he was authorized to execute, or do anything else within the bounds of the law to do whatever this Court wanted done with respect to the Vehicles, and used his best efforts to contact whomever he could to get the Vehicles delivered to the Bank. *See* Detwiler Declaration at ¶ 14. He has never had an ownership interest in the Vehicles or HH. *Id.* Mr. Detwiler resigned as a manager of HH effective September 10, 2019, which could not have been provided to the Court during prior proceedings. *Id.* at ¶ 15; *see also* Mr. Detwiler’s letter of resignation, attached hereto as Exhibit 2. There can be no basis to hold Mr. Detwiler in contempt. Were this Court to allow the Contempt Order to stand, Mr. Detwiler clearly would lack the “prison keys” to get out of jail except to pay over half a million dollars of a judgment that is not against him, providing the Bank an egregious end run around due process by effectively obtaining a judgment in that amount against Mr. Detwiler for a debt that is not his. *See Shillitani v. United States*, 384 U.S. 364, 368 (1966).

For all these reasons, Mr. Detwiler respectfully requests that this Court grant this Motion in its entirety, including without limitation for relief from the Contempt Order pursuant to NRCp 60(b); for a new trial pursuant to NRCp 59; for alteration and/or amendment of the Contempt Order to remove any imprisonment or judgment with respect to Mr. Detwiler and to determine that he has complied with this Court's order to the extent he is able to do so; for reconsideration of the Contempt Order; and for denial of the request sought in the Bank's Brief; and for such other and

PA00737

1 further relief as the Court deems appropriate.

2 DATED this 5th day of February, 2020.

3 **KOLESAR & LEATHAM**

4
5 By


BRENOCH WIRTHLIN, ESQ.

(NV SBN 10282)

AMANDA K. BAKER, ESQ.

(NV SBN 15172)

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Attorneys for Non-party Edward Detwiler

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 5th day of February 2020, I caused to be served a true and correct copy of foregoing **NON-PARTY**

EDWARD DETWILER'S:

(1) MOTION FOR RELIEF FROM CONTEMPT ORDER PURSUANT TO NRCP 60(b);

(2) MOTION FOR NEW TRIAL PURSUANT TO NRCP 59;

(3) MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 52 AND 59;

(4) MOTION FOR RECONSIDERATION OF THE COURT'S CONTEMPT ORDER;

AND

(5) OPPOSITION TO PLAINTIFF'S

BRIEF IN SUPPORT OF REQUEST TO HOLD MR. DETWILER IN CIVIL

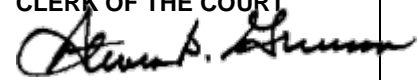
CONTEMPT OF COURT

in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.



An Employee of KOLESAR & LEATHAM



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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

**PLAINTIFF'S OPPOSITION TO NON-
PARTY EDWARD DETWILER'S:
(1) MOTION FOR RELIEF FROM
CONTEMPT ORDER PURSUANT TO
NRCPC 60(B); (2) MOTION FOR NEW
TRIAL PURSUANT TO NRCPC 59;
(3) MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO NRCPC 52
AND 59; (4) MOTION FOR
RECONSIDERATION OF THE
COURT'S CONTEMPT ORDER; AND
(5) OPPOSITION TO PLAINTIFF'S
BRIEF IN SUPPORT OF REQUEST TO
HOLD MR. DETWILER IN CIVIL
CONTEMPT OF COURT**

Hearing Date: February 12, 2020

Hearing Time: 8:30 a.m.

INTRODUCTION

The plaintiff and judgment creditor Baker Boyer National Bank (the "Bank") opposes the referenced motions and requests that they be denied in their entirety.

This opposition paper will make 28 filings that the Bank has made in support of its years-long effort to force Mr. Foust and Harry Hildibrand, LLC ("HH") to surrender the vehicles to satisfy the judgment. This latest motion from Mr. Detwiler, by and large, presents no new argument and no new evidence. The Bank respectfully rests on its prior. One item of new

evidence—the so-called resignation letter—bears a brief response. Far from exonerating Mr. Detwiler, the emergence of this document further proves Mr. Detwiler’s culpability and the appropriateness of this Court’s contempt order against him.

I. MR. DETWILER TESTIFIED FOR YEARS THAT HE TOOK DIRECTION FROM HARRY HILDIBRAND, JR., BUT HE SENT THE ALLEGED RESIGNATION LETTER TO MR. FOUST.

In the past, Mr. Detwiler attempted to distance himself from Mr. Foust. Mr. Detwiler testified in his deposition and during multiple evidentiary hearings that he took direction in his role as HH’s manager from Harry Hildibrand, Jr. only—not Mr. Foust.

A. Mr. Detwiler First Gave this Testimony at His July, 2018 Deposition.

Mr. Detwiler first gave such testimony at his July, 2018 deposition:

Q: So in your opinion, who makes the ultimate decisions for Harry Hildibrand?

Mr. Detwiler: Harry Jr., the person. He's the top shareholder, and I don't know if he has a proxy for the other two or not. It's like I said, it's -- I'm not really involved in the day-to-day business of what they do, and they have so little, you know.

* * *

Q: Do you -- in your opinion does Jim Foust run Harry Hildibrand? Does he make all the decisions for Harry Hildibrand?

Mr. Detwiler: No, sir. No.

Q: That would be Harry Hildibrand Jr. that makes the decisions?

Mr. Detwiler: Yes, sir. To the best of my knowledge when -- if Harry were to call me, like he has, and had me do -- and I go do things when Harry asks me to.

(7/6/18 Dep. E. Detwiler, Ex. 1 hereto, 18:7-14; 18:21-19:4.)

Similarly, Mr. Detwiler claimed that three of the children of the late Harry Hildibrand, Sr. owned roughly equal shares in HH since their father’s passing in 2010. (*Id.* at 28:1-10; 9:12-19.)

B. Mr. Detwiler Gave the Same Testimony When Examined by His Own Attorney in November, 2018.

Mr. Detwiler reaffirmed that Harry Hildibrand, Jr. leads HH during the second evidentiary hearing before this Court, in November, 2018. HH’s own attorney, Mr. Joseph Went of the Holland & Hart law firm, adduced this evidence:

1 Q: So when you became a manager of Harry Hildibrand LLC, who was
2 responsible for issuing instructions to you about Harry Hildibrand LLC business?

3 Mr. Detwiler: Well, originally it was Senior, and then after his passing it was
4 Junior. But there was a long, long lapse in between communications.
5 Because there wasn't anything that I was doing on their behalf. It wasn't
6 until the coach was missing that -- that I had any involvement in HH for --
7 for a very long time.

8 Q: At any point in time after you became a manager of Harry
9 Hildibrand LLC, did you take instructions from Jim Foust about the
10 business of Harry Hildibrand LLC?

11 Mr. Detwiler: No, sir.

12 (11/5/18 Hr'g Trans., Ex. 2 hereto, 22:1-12.) Mr. Detwiler again repeated his deposition
13 testimony to the effect that the children Harry Hildibrand owned roughly one third of the
14 company, with Mr. Foust owning a one percent interest. (*Id.* at 23:9-16.)

15 C. **Mr. Detwiler Gave the Same Testimony Again at His Contempt Trial in May,**
16 **2019.**

17 At the contempt trial, Mr. Detwiler also testified that he had been trying to telephone Harry
18 Hildibrand, Jr. to convince him to comply with this Court's order to turn over the vehicles. (*See*
19 5/17/19 Hr'g Trans., Ex. 3 hereto, 33:5-24.) Mr. Detwiler claimed he felt a sense of "loyalty" to
20 Harry Hildibrand, Jr. (*id.* at 37:7-14)—even to the point that he was paying his own expenses to
21 fly from Las Vegas to Los Angeles for HH's bankruptcy proceedings (*id.* at 37:16-25).

22 D. **In a Revealing About-Face Mr. Detwiler Allegedly Tendered His Resignation**
23 **to Mr. Foust.**

24 After all this, Mr. Detwiler sent the purported resignation letter to James Foust! (*See*
25 Exhibit 2 Motion.) We submit this constitutes a new and glaring demonstration of Mr. Detwiler's
26 untruthfulness to the Court. We are convinced that Harry Hildibrand, Jr. is either not a real person
27 or that he was uninvolved. If he were, Mr. Detwiler would have tendered his alleged resignation
28 to the person he repeatedly testified controlled HH—Harry Hildibrand, Jr.

Furthermore, in his supporting declaration, Mr. Detwiler states that he sent the resignation
letter to HH's attorney "Jim Lizzei at the address the forth on the Letter of Resignation." (Exhibit
1 to Motion, ¶ 4.) This statement makes no sense because the letter is not addressed to Mr. Lezzei.

1 The letter does not include the name Jim Lezzei anywhere. The letter was supposedly sent to
2 James Foust at his home address in the Los Angeles area. (See Exhibit 2 to Motion.) Even if the
3 resignation letter were addressed to Jim Lezzie, that would only further point up Mr. Detwiler's
4 connection to Mr. Foust. This Court found that Jim Lezzie represented HH in the bankruptcy and
5 that he had submitted a pro hac vice application in which he described himself as "a long time
6 [sic] associate of James Paterson Foust" who had "served as counsel to Mr. Foust on previous
7 matters." (1/9/19 Findings of Fact, Conclusions of Law, and Final Judgment, at Finding of Fact ¶
8 19, on file herein.)

9 **II. MR. DETWILER PORTRAYS MR. FOUST AS A STRANGER, BUT THE**
10 **RECORD SHOWS OTHERWISE.**

11 Every time Mr. Detwiler has the chance to submit arguments to the Court, he reveals
12 additional inconsistencies in his testimony. These men are not, as Mr. Detwiler insists, strangers.
13 The more time that passes the more it appears that Mr. Foust and Mr. Detwiler are working
14 together—perhaps even to move assets outside the country to evade this Court's orders.

15 **A. Mr. Detwiler Apparently Now Argues that Mr. Foust, not HH, Had Possession**
16 **of the Vehicles.**

17 At the last hearing Mr. Detwiler's new counsel argued that Mr. Detwiler believed that Mr.
18 Foust owned a warehouse holding the vehicles. This statement contradicts Mr. Detwiler's
19 bankruptcy hearing testimony; there he testified that HH or StarDust Classic rented a warehouse
20 located at 901 West Allondra in Compton, California, and that the vehicles were stored there.
21 (Exhibit 3 to 11/5/18 Hr'g, at control numbers Baker 83-85.) Mr. Detwiler's new counsel's
22 argument underscores a further inconsistency in Mr. Detwiler's testimony.

23 **B. Nevada Secretary of State Filings Show that Messrs. Foust and Detwiler Use**
24 **the Same Office Space.**

25 Mr. Detwiler has testified that he spends his time developing a luxury resort in Roatan,
26 Honduras. He has stated his intention to live in Honduras either permanently or for an extended
27 period. At his deposition Mr. Detwiler adamantly denied that Mr. Foust had any interest in this
28 venture—"absolutely not" were his exact words. (7/6/18 Dep. E. Detwiler, Ex. 1 hereto, 19:17-

24.) But Mr. Foust claimed a \$721,905.62 interest in “Roatan West bay” as an asset on a balance sheet submitted to the Bank in January, 2016, before this judgment was domesticated in Nevada. (Exhibit 5 to 11/5/18 Hr’g, at control numbers Baker 28.) Mr. Detwiler is a manager for Nai’a Resorts, LLC, the entity he testified owns the Roatan venture. Mr. Foust is the manager for JPF Enterprises, LLC. Both men give the same address, 10120 South Eastern Avenue, Suite 300, Henderson, as their official addresses. (See Exhibit 5 to 1/24/20 Brief in Support of Continuing Request to Hold Edward N. Detwiler in Civil Contempt of Court, on file herein.) The two seem to be sharing operating resources.

III. CONCLUSION

This Court previously found that “Mr. Foust, HH, and StarDust Classic have been agents of one another with respect to any past action involving the cars at issue in these proceedings” (*Id.* at Conclusion ¶ 3.) HH is a real entity, organized under Montana law. Mr. Detwiler is the manager of the entity—and was at all relevant times even if we assume the seemingly bogus resignation letter is legitimate. He has and has had the ability to comply for the reasons already argued. Mr. Detwiler refuses because, as it is increasingly clear, he conspires with Mr. Foust rather than taking direction from Harry Hildibrand, Jr. For these reasons, we request that the court deny this motion in its entirety.

Dated this 10th day of February, 2020.

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 and served the
3 foregoing document entitled ***“PLAINTIFF’S OPPOSITION TO NON-PARTY EDWARD***
4 ***DETWILER’S: (1) MOTION FOR RELIEF FROM CONTEMPT ORDER PURSUANT TO***
5 ***NRCP 60(B); (2) MOTION FOR NEW TRIAL PURSUANT TO NRCP 59; (3) MOTION TO***
6 ***ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 52 AND 59; (4) MOTION FOR***
7 ***RECONSIDERATION of the COURT’S CONTEMPT ORDER; AND (5) OPPOSITION TO***
8 ***PLAINTIFF’S BRIEF IN SUPPORT OF REQUEST TO HOLD MR. DETWILER IN CIVIL***
9 ***CONTEMPT OF COURT”*** through the Court’s electronic filing system on all parties on the
10 Court’s e-service list.

11 Michael D. Mazur, Esq.
12 **MAZUR & BROOKS**
13 **A PROFESSIONAL CORPORATION**
14 2355 Red Rock Street, Suite 100
15 Las Vegas, NV 89146
16 *Attorneys for Defendant James Patterson Foust, Jr.*

17 Brenoch Wirthlin
18 **KOLESAR & LEATHAM**
19 400 S. Rampart Blvd., Ste. 400
20 Las Vegas, NV 89145

21 **The Following Served via U.S. Mail:**

22 **HARRY HILDIBRAND, LLC**
23 c/o Registered Agent
24 Jared S. Heggen
25 3011 American Way
26 Missoula, MT 59808

27 **HARRY HILDIBRAND, LLC**
28 c/o Registered Agent
Jared S. Heggen
P.O. Box 16270
Missoula, MT 59808

DATED this 10th day of February, 2020.

/s/ Luz Horvath

An employee of Lewis Roca Rothgerber Christie LLP

Exhibit 1

Exhibit 1

Baker Boyer National Bank v. Foust, Jr.

Deposition of:
Edward Detwiler

July 6, 2018



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1 came into town, and I sold them 1300 homes in 11
2 months.

3 And so I'm very good at what I do, and
4 that was the whole idea behind transitioning
5 Hildibrand from automobiles into real estate. And
6 with the market turning like it did in '8 and going
7 like this, never got off the ground. Never did any
8 real estate transactions. I would have liked to have
9 done for Hildibrand and Harry what I did for Colony.
10 Just never got around to being able to get it off the
11 ground.

12 Q. So you knew Mr. Hildibrand, the name sake,
13 of Harry Hildibrand, LLC?

14 A. I spoke with him. I've never met him.

15 Q. Is he dead now?

16 A. He is.

17 Q. When did he --

18 A. He passed in 2010, I believe.

19 Q. I want to follow up on some of the things
20 that you said. You gave me the impression that the
21 business of Harry Hildibrand was cars, and it was
22 intended that that business transition into real
23 estate.

24 So beginning with what you said first, can
25 you give me your understanding of what the nature of

1 Q. Thank you. I know that's a little bit
2 tedious but...

3 A. Yes. Yes.

4 Q. When did you ask Harry Hildibrand Jr. for
5 the contracts?

6 A. I have not.

7 Q. So in your opinion, who makes the ultimate
8 decisions for Harry Hildibrand?

9 A. Harry Jr., the person. He's the top
10 shareholder, and I don't know if he has a proxy for
11 the other two or not. It's like I said, it's -- I'm
12 not really involved in the day-to-day business of what
13 they do, and they have so little, you know.

14 In retrospect in 2009 or '10 when we
15 weren't going to move towards real estate
16 acquisitions, it would have been in my best interest
17 to resign because there isn't anything for me to do.
18 And because I didn't, now I'm here today because of a
19 motor coach that I thought we could make a quick buck
20 on. It's turned into a nightmare so...

21 Q. Do you -- in your opinion does Jim Foust
22 run Harry Hildibrand? Does he make all the decisions
23 for Harry Hildibrand?

24 A. No, sir. No.

25 Q. That would be Harry Hildibrand Jr. that

1 makes the decisions?

2 A. Yes, sir. To the best of my knowledge
3 when -- if Harry were to call me, like he has, and had
4 me do -- and I go do things when Harry asks me to.
5 But the only thing he's ever asked me to do is, hey,
6 go get my coach back. So I did, and I'm sitting here
7 now.

8 Q. So did you hire the counsel that's here
9 with you today, or did Harry Hildibrand, the entity,
10 hire the counsel?

11 A. Harry Hildibrand hired the counsel. Their
12 office is about four minutes from my house at 817
13 Windhook Street.

14 Q. So you personally haven't been paying any
15 of the legal fees for this?

16 A. I have not.

17 Q. Now, when I talked with Jim Foust I talked
18 to him at some length on two different occasions. He
19 has mentioned a development project in Roatan. Does
20 that have anything to do with Harry Hildibrand?

21 A. Absolutely not.

22 Q. Is Mr. Foust involved in this Roatan
23 project?

24 A. Absolutely not.

25 Q. What is the project?