Case No. 81220

In the Supreme Court of Nevada

EDWARD N. DETWILER,

Petitioner,

vs.

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

Respondent,

and

BAKER BOYER NATIONAL BANK,

Real Party in Interest.

District Court Case No. A760779

OPPOSITION TO MOTION TO STAY EXECUTION

This motion presents two principal issues. First, granting a stay without bond is exceptionally rare and should occur only where this Court has absolute confidence that the judgment debtor will be able to promptly pay the full judgment, with interest, after an unsuccessful appeal. Here, the petitioner himself freely admits in his motion that he lacks the funds to procure a bond or pay the judgment.

Second, to secure a stay of execution under *Hansen v. District Court*, a judgment debtor must show that appellate review would be

pointless without it. A debtor cannot simply argue that she will lose money if the judgment is enforced. Appellate review does not stop judgment enforcement. Despite this, the petitioner complains that he will be "irreparably harmed" simply because he claims that he cannot afford a bond premium and plans to file bankruptcy. Again, such talk militates against, not in favor of, a stay.

RELEVANT PROCEDURAL BACKGROUND

This Is a Foreign Judgment Collection Action

Real party in interest Baker Boyer National Bank (the "Bank") loaned money to James Foust (the "Debtor"). (Ex. 1, p. 2.) The Debtor refused to repay the loan, and the Bank obtained a $1.4 million judgment from a Washington State court, later domesticated here. (*Id.*)

The Debtor Was Ordered to Surrender His Exotic Car Collection to Satisfy the Judgment

When he applied for the loan, the Debtor represented that he owned a collection of 59 exotic vehicles, valued at over $5 million, including Porsches and Lamborghinis. (*Id.*) But when ordered to surrender the vehicles, the Debtor claimed he had already sold them to Harry Hildibrand, LLC (the "Fraudulent Transferee"). (Ex. 1, p. 3.)

The Fraudulent Transferee Became a Party to the Action

The Fraudulent Transferee intervened in the action (Ex. 1, p. 3–4), pursuant to Nevada's garnishment statute, NRS 31.070, which permits "a hearing to determine title to property," NRS 31.070(5). *See also Elliot v. Denton & Denton*, 109 Nev. 979, 980, 860 P.2d 725, 726 (1993).

Detwiler Testified as Manager of the Fraudulent Transferee

The district court conducted multiple trials over two years to resolve the competing claims to the vehicle collection. (*See generally* Ex. 1.) Detwiler appeared at depositions and at the trials in a representative capacity—as the Fraudulent Transferee's manager.

The Debtor, the Fraudulent Transferee, and Detwiler Cooperated to Commit Fraud

The Bank prevailed in every respect. (*See generally* Ex. 1.) The district court ruled that the Debtor and Detwiler had lied repeatedly under oath and had attempted to fraudulently transfer the vehicles. (*Id.*) The lower court's order, consequently, required both the Debtor and Detwiler to surrender the vehicles. (Ex. 1, p. 22.)

Detwiler Was Held in Contempt

After all involved still refused to surrender the vehicles, the district court punished them for contempt: the Debtor was ordered to be in-

carcerated until he complied (Ex. 2, p. 39–43), and Detwiler was personally sanctioned $100,000 and assessed $218,855.52 in costs. (Exs. 3–5.) Detwiler's conduct over the years "exhibited a deliberate [and] cynical disregard of [its] orders," the lower court summarized. (Ex. 5, p. 75.)

Detwiler filed this writ petition.[1] No other party has appealed.

I.

DETWILER IS NOT ENTITLED TO A TOTAL SUPERSEDEAS BOND WAIVER

Detwiler asserts that he lacks the funds to procure a bond and plans to file for bankruptcy. (Motion, p. 19, 22.) But rather than proposing alternate security, he seeks a total waiver. Especially given the circumstances of Detwiler's contempt, this is improper. *E.g.*, *In re Carlson*, 224 F.3d 716, 719 (7th Cir. 2000) (denying total waiver of bond and holding lack of confidence that party will eventually pay required bond).

II.

DETWILER IS NOT ENTITLED TO A STAY

A. The Object of Detwiler's Petition Will Not be Defeated

For this factor to apply, the stay denial would have to make "any

[1] This Court has already dismissed an appeal by Detwiler for lack of jurisdiction. *Detwiler v. Baker Boyer National Bank*, No. 81017 (May 5, 2020).

victory on appeal . . . hollow." *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252, 89 P.3d 36, 39 (2004); *Hansen v. District Court*, 116 Nev. 650, 658, 6 P.3d 982, 986 (2000). But here no appellate issues depend on a stay; if they were preserved at trial, they can be raised in the writ. If a stay is denied, Detwiler will merely be required to pay a sanction.

B. Detwiler Will Not Suffer Irreparable Harm

"Mere injuries, however substantial, in terms of money . . . necessarily expended in the absence of a stay are not enough" to show irreparable harm. *Hansen*, 116 Nev. at 658, 6 P.3d at 987 (quoting *Wisconsin Gas Co. v F.E.R.C.*, 758 F.2d 699, 674 (D.C. Cir 1985)).

Despite this universally recognized standard, Detwiler casts his supposed harm exclusively in financial terms. "A denial of the stay would force Detwiler to either post a supersedeas bond, which he is likely unable to do, or file for bankruptcy." (Motion, p. 19.)

C. In Contrast, the Bank Will Suffer Irreparable Harm

Detwiler actively frustrated the district court's efforts to enforce the judgment for years. Among other things, Detwiler's contempt took the form of perjury: beginning in 2018, he invented a person that did not exist (Ex. 8, p. 95–96); he testified over years in depositions and at

multiple trials that this imaginary man owned and controlled the Fraudulent Transferee (Ex. 4, p. 68–69); and Detwiler, through this duplicity, made it seem as if the vehicles were sold to a bone fide purchaser for value, which he managed. To accord due process, the district court cautiously explored every nuance of this fabricated man and this sham company. Detwiler brazenly promoted this ruse for so long that the Debtor actually died in January (Ex. 9), before the Bank could collect the judgment. Even worse, while lying to the Court, the Fraudulent Transferee—which Detwiler managed—auctioned off two of the cars for $132,000 in August, 2019 (Ex. 10, p. 111–113), directly flouting the repeated orders. But for Detwiler's studied dishonesty, the Bank could have recovered its judgment. To stay the execution now would reward and embolden a known bad actor.[2]

D. Detwiler Is Unlikely to Prevail on the Merits

1. The District Court Properly Applied the Exclusionary Rule

Although he accuses the district court of denying him "the opportunity to confront and cross-examine" the Debtor (Mot***ion***, p. 9),

[2] Detwiler cites the Bank for violating the district court's stay order by filing an application for a charging order under NRS 86.401(1) motion for a charging order. (Motion, p. 9.) The hearing is actually set for June 22, 2020, about a month after the stay expires. (*See* Ex. 11.)

Detwiler called no witnesses at his contempt trial. (App'x Vol. II, PA351–412.) He offered only his own testimony. (*Id.*) At the separate, bifurcated contempt trial for the *Debtor* (*id.* at PA347–51, 412–13, 416, 418, 474), Detwiler was rightly excluded during the *Debtor's* testimony and before the *Debtor* called Detwiler as a *friendly* witness (*id.* at PA349–50, 469–474). But this only underscores the district court's wisdom in separating these two confederates, *see City of Las Vegas v. Dist. Ct.*, 133 Nev. 658, 660, 405 P.3d 110, 112 (2017) (witness sequestration "detect[s] falsehood by exposing inconsistencies"), and the absurdity of Detwiler's phantom right to cross-examine, *see* NRS 50.145 (only parties and the judge may examine witnesses); NRS 50.155(2)(a) (the exclusion rule is inapplicable to parties, but applies to witnesses).

2. The District Court Afforded All Applicable Constitution Protections

We resist the rigid classification of the lower court's contempt orders that Detwiler urges, recognizing that, "while usually called civil or criminal," they "are, strictly speaking, neither . . . and may partake of the characteristics of both." *Warner v. Dist. Ct.*, 111 Nev. 1379, 906, P.2d 707 (1995) (citation omitted). For instance, even if a contempt or-

der imposes an unconditional monetary fine that punishes for past disobedience rather than a contingent fine that coerces future compliance—otherwise features of a criminal contempt, *see Lewis v. Lewis*, 132 Nev. 453, 457, 373 P.3d 878, 880 (2016)—if the fine "compensates the complainant for losses sustained" it is civil in nature, *e.g., United Mine Workers v. Bagwell*, 512 U.S. 821, 829 (1994); *Koninklijke Philips Elec. N.V. v. KXD Tech., Inc.*, 539 F.3d 1039, 1042 (9th Cir. 2008). Here the district court fined Detwiler $100,000 because it represented "less than one-fifth of the total value of the cars" that he, as the Fraudulent Transferee's manager, refused to surrender when he "had control." (App'x Vol. IV, PA870.) The contempt ruling compensated for loss. None of the constitutional protections afforded the criminally accused apply. *Bagwell*, 512 U.S. at 827; *Lewis*, 132 Nev. at 457, 373 P.3d at 880.

3. The Bank Exists

Given that Detwiler perjured himself by inventing a man, his demand for reversal because the Bank is a "nonexistent entity" (Motion, p. 13) is indeed ironic. Since 1889, the Bank has operated under a federal charter. (Ex. 8., p. 91.) Under the National Banking Act, 12 U.S.C. § 1, *et seq.*, a national bank has the power "[t]o sue and be sued, complain

and defend, in any court of law and equity, as fully as natural persons." 12 U.S.C. § 24.

The responsible federal regulator maintains a list of all active federally chartered banks. (Ex. 8, p. 93.) One can instantly verify the Bank's status on the Internet.[3] Detwiler's search for the Bank as a Washington business entity (App'x Vol. IV, PA989, 991) is irrelevant because federal law preempts any state registration requirements. *E.g., Citibank N.A. v. City of Burlington*, 971 F. Supp. 2d 414, 435–36 (D. Vt. 2013) (collecting cases).

4. The District Court's Orders Are Clear

The orders adjudging Detwiler in contempt are unusually detailed. Collectively, they run to over 30 pages. (*See* Exs. 3–5.)

5. The Peremptory Challenge Was Months Late

The contempt statutes permit a prospective contemnor to request that a different judge preside over a contempt trial. NRS 22.030(3). Here, however, the contempt trial concluded on May 21, 2019 (App'x Vol. III, PA520; Ex. 3, p. 46), but Detwiler did not challenge the trial court judge until January 30, 2020 (App'x Vol. III, PA676–77)—eight

[3] It is available at Office of the Comptroller of the Currency, << https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/indexfinancial-institution-lists.html >>.

months late. A belated request is ineffectual. *City of Las Vegas Downtown Redevelopment Agency v. Hecht*, 113 Nev. 644, 651, 940 P.2d 134, 139 (1997) ("Grounds for disqualifying a judge can be waived by failure to timely assert such grounds."). By his delay, Detwiler was just gambling on his contempt trial's outcome.

6. The District Court Properly Used EDCR 7.60

Company agents are punishable for contempt where they direct the company's violations. *Cf. In re Waters of Humboldt River*, 118 Nev. 901, 903, 59 P.3d 1226, 1227 (2002) (concluding that "the district court has the power to sentence a government official to jail for criminal contempt committed in an official capacity"). Here, the district court appropriately fined Detwiler under EDCR 7.60 as the manager who caused his company to commit the contempt.

CONCLUSION

Detwiler presents no compelling reasons to grant a stay of execution or a total waiver of the normal bond requirement. This Court should deny the motion.

Dated this 27th day of May, 2020.

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CERTIFICATE OF SERVICE

I certify that on May 27, 2020, I submitted the foregoing "Opposition to Motion to Stay Execution" for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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EXHIBIT 1

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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

Hearing Date: November 5, 2018

☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☐ Motion to Dismiss by Deft(s)
☒ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration

MH

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL JUDGMENT

This matter having come on for an evidentiary hearing and non-jury trial before the Honorable Richard Scotti on November 5, 2018 and pertaining to plaintiff and judgment creditor Baker Boyer National Bank's (the "Bank") request that this Court's prior Findings of Fact, Conclusions of Law, and Final Judgment issued on March 8, 2018 apply to third party claimant Harry Hildibrand, LLC ("HH") and that the Court resolve HH's claim of ownership over certain vehicles that the Bank seeks to levy and execute against to satisfy a judgment against judgment debtor and defendant James P. Foust, Jr. for approximately $1,000,000; Mr. Foust having been represented by Cody S. Mounteer and Tom W. Stewart of Marquis Aurbach Coffing; the Bank having been represented by John E. Bragonje of Lewis Roca Rothgerber Christie LLP; HH having been represented by Joseph West of Holland & Hart LLP; the Court having read and considered all relevant pleadings and papers on file in the above-captioned case, having reviewed the

documents admitted into evidence during the trial and briefs and points and authorities filed by the parties, and having heard and carefully considered the testimony of the witnesses called to testify, the Court, with the intention of resolving the evidentiary issues pertaining to this dispute, hereby enters the following facts and states the following conclusions of law:

Introduction

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

When he applied for the loan that created the obligation that, when breached, led to the Judgment, Mr. Foust represented that he owned a collection of 59 expensive, rare, and exotic vehicles, including Corvettes, a Cadillac, Mercedes, Porsches, and Lamborghinis. On December 20, 2017, the Bank filed a motion seeking an order requiring Mr. Foust to deliver possession of the cars to satisfy the judgment. This hearing and ruling resolves two main issues.

Res Judicata. In a prior evidentiary hearing, this Court determined that a 1998 Prevost Car, Inc. Marathon motor coach (the "Motorcoach") belonged to Mr. Foust and that the Bank could lawfully seize and sell it to satisfy the Judgment. Thereafter, HH intervened in these proceedings and claimed that it, not Mr. Foust, owned the Motorcoach. Pursuant to *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), HH is bound by the earlier judgment under the doctrine of res judicata, particularly because Mr. Foust and HH are in privity. Privity exists where there is a substantial identity between the parties, as in corporate relationships involving controlling owners. This Court ruled that Mr. Foust owned HH. HH filed bankruptcy after the first evidentiary hearing and claimed repeatedly that a company called StarDust Classic, LLC was its sole member and owner. Mr. Foust owns and/or controls StarDust Classic, so he owns HH. Mr. Foust and HH cooperated with each other in all aspects of the dispute related to the Motorcoach.

Turnover of Other Cars. When Mr. Foust obtained the loan that led to the Judgment, he

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told the Bank he owned 59 expensive, rare, and exotic vehicles. Mr. Foust bears the burden of proving he no longer owns the cars. HH claims in bankruptcy schedules to own 20 of these cars. Neither Mr. Foust nor HH (sometimes collectively the "defense" or the "defendants") offered any documentary evidence—such as car titles, contracts for sale, or evidence of payment—showing any legitimate sale of cars by Mr. Foust to HH. Defendants could not even say what the purchase price for these alleged sales was. Additionally, even if some bare transfer of title did occur, it was fraudulent and voidable, for the reasons discussed herein. ~~The NRS Chapter 112 "badges of fraud" from the Uniform Fraudulent Transfer Act are on full display here. Typifying the concealment that shows fraud, the defendants lied about the cars' locations in depositions before this Court, and then told the bankruptcy court the cars were in North Dakota (and other places), where Mr. Foust, not HH, conducts business. This Court concludes that Mr. Foust and HH have attempted to perpetrate a fraud on creditors and that all cars originally identified to the Bank as Mr. Foust's ought to be made available to satisfy the Judgment.~~

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

Findings of Fact Related to the Motorcoach and HH's Claim Thereto

1. Mr. Foust has not voluntarily paid the Judgment.

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

3. On February 15, 2018, this Court held the first evidentiary hearing concerning just the Motorcoach. (*See* 3/8/18 Judgment, Introduction, on file herein.)

4. This Court received extensive documentary and testimonial evidence and issued a detailed ruling. (*See generally* 3/8/18 Judgment, on file herein (hereinafter the "Prior Judgment").) The Court ruled for the Bank and against Mr. Foust in every respect, including that

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

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

(3/8/18 Prior Judgment, on file herein, Conclusions ¶¶ 2–3.)

5. After the first evidentiary hearing had concluded, HH filed an application pursuant to NRS 31.070, seeking a ruling that it, not Mr. Foust, owned the Motorcoach.

6. Although originally a non-party, by invoking NRS 31.070, HH subjected itself to this Court's jurisdiction as a third-party claimant. *Cooper v. Liebert*, 81 Nev. 341, 344, 402 P.2d 989, 991 (Nev. 1965) ("We hold that N.R.S. 31.070 is a complete and valid remedy to third persons whose property has been attached, that the remedy therein provided is exclusive . . . and that the term 'property' includes both real and personal property."). While the statute's operation typically begins when a levy occurs, NRS 31.070(1), in this case HH voluntarily submitted to this Court's jurisdiction by waiving the levy predicate. (*See* Transcript of April 18, 2018 hearing; *accord* 5/22/18 Order Setting Future Hearing Date, on file herein, at ¶ 4 ("This is an Evidentiary Hearing under NRS 31.070. The parties agreed that this Evidentiary Hearing may proceed before the [Bank] has levied upon the subject cars.")).

7. After briefing by the parties, on April 18, 2018, the Court held a hearing pursuant to NRS 31.070 to consider whether HH was bound by the Prior Judgment, which concluded that Mr. Foust owned the Motorcoach. At this hearing, the Court determined that the outcome of the issue preclusion question is governed by *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), *holding modified by Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015), which states "the following factors are necessary for application of issue preclusion: (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated."

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8. As to factor (1), the Court finds that the issue of title to the Motorcoach was decided at the prior evidentiary hearing on February 15, 2018 (the "Prior Hearing") and that issue—ownership of the Motorcoach—is identical to the issue again before the Court based on HH's continued assertion that it owns the Motorcoach.

9. As to factor (2), the initial ruling arising from the Prior Hearing was on the merits and has become final. (*See generally* 3/8/18 Prior Judgment, on file herein.)

10. As to factor (4), obviously the issue of ownership was actually and necessarily litigated because the Court received extensive documentary and testimonial evidence at the Prior Hearing and argument and made a binding ruling based on such evidence.

11. As to factor (3), whether Mr. Foust and HH are in privity, the Court resolved certain issues and made certain factual findings at the Prior Hearing that are relevant to the question of privity: Mr. Foust was an officer and/or member of HH, in fact he was the sole owner and member of HH; HH, through Mr. Foust, had notice of the Prior Hearing; Mr. Foust represented the interests of HH at the Prior Hearing because he actually tried to prove that HH was the owner of the Motorcoach; Mr. Foust, the sole owner and member of HH, never complained that HH was not a party to the hearing; HH, despite having some notice of the Prior Hearing by Mr. Foust, never sought to intervene in the proceeding in which the Court determined that Mr. Foust owned the Motorcoach; Mr. Foust's counsel actually notified this Court that HH intended to intervene in the matter on March 7, 2018, so there was obviously some communication between Mr. Foust and HH and their respective counsel—Mr. Foust told the Court what HH intended to do before it happened; at the hearing on March 7, 2018, Mr. Foust's counsel also asserted due process rights on behalf of HH.

12. The Court then ordered the parties to present evidence on *Five Star Capital* factor (3) to see whether HH could develop any additional facts to contravene these findings from the Prior Hearing.

13. HH then filed a Chapter 11 bankruptcy case in California, which was dismissed. The Court then scheduled another evidentiary hearing.

14. After this second evidentiary hearing, which occurred on November 5, 2018, the

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Court is further convinced that Mr. Foust and HH[1] are in privity and that the Prior Judgment should apply to HH.

15. HH offered no significant evidence on the privity issue, as ordered; rather HH attempted to re-try the factual issues the Prior Judgment resolved. The Bank, on the other hand, did present compelling, clear, and convincing evidence that the HH and Mr. Foust are in privity.

16. The cooperation between Mr. Foust and HH is even more pronounced than originally apparent at the Prior Hearing.

17. During HH's presentation of evidence, HH's counsel of record, Mr. Joseph Went, actually examined Mr. Foust as a friendly witness, rather than Mr. Foust's own counsel of record, Cody Mounteer, handling the examination. (11/5/18 Hr'g Trans., p. 71 *et seq.*)

18. Although HH is ostensibly a Montana-based company, HH petitioned for bankruptcy relief in California, where Mr. Foust resides. The bankruptcy occurred after the Prior Hearing and stayed this Court's proceedings for several months; the bankruptcy was ultimately dismissed for HH's subsequent failure to participate. *See In re: Harry Hildibrand, LLC*, 2:18-bk-18727-NB, ECF No. 20 (Bankr. C.D. Cal. Sept. 7, 2018).

19. HH's bankruptcy counsel of record , a Los Angeles-based attorney named James Lezie, concurrently represents Mr. Foust in one of the underlying, out of state lawsuits that resulted in the Judgment which has been subsequently domesticated in Nevada. Mr. Lezie, said, in seeking a pro hac vice admission in North Dakota, that he is "a long time [sic] associate of James Paterson Foust" and that he had "served as counsel to Mr. Foust on previous matters."

20. This is a striking statement because Mr. Foust has sworn under oath repeatedly before this Court, and in depositions ordered by this Court, that he disassociated from HH in 2008. If that were true, his long-time personal attorney would have no involvement in HH's 2018 bankruptcy, which occurred in a court located close to Mr. Foust's home in Los Angeles.

21. Similarly, during the Section 341 creditors meeting, Mr. Lezie also testified under oath that Mr. Foust, though supposedly separate from HH since 2008, helped make the decision to put HH into bankruptcy. These two ostensibly separate parties, Mr. Foust and HH, actually work

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

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as one under common legal representation coordinated in multiple judicial fora.

22. The appearance of Mr. Lezie under these circumstances is another example of Mr. Foust's willingness to lie to this Court and to attempt to obscure the truth. The Court reaffirms its ruling from the Prior Hearing that Mr. Foust's demeanor is untrustworthy and that he demonstrates a propensity to say whatever seems convenient at the moment, without regard for established or incontrovertible facts.

23. This Court has already ruled that Mr. Foust was an "an officer and/or member of HH [and that] HH, through Mr. Foust, had notice of the Prior Hearing." (5/22/18 Order Setting Future Hearing, on file herein, ¶ 3(d).) Although Mr. Foust has steadfastly denied any involvement in HH since 2008, and although Mr. Edward Detwiler, who testified that he is a manager of HH, claims HH was owned by the heirs of a deceased man named Harry Hildibrand (*see* 11/5/18 Hr'g Trans., p. 26:9–16),[2] the bankruptcy pointed up Mr. Foust's direct ownership of HH yet again.

24. In the bankruptcy filings, which papers Mr. Detwiler repeatedly signed under penalty of perjury, and the testimony given during the 341 meeting of creditors, HH repeatedly contended that it is wholly owned by a Wyoming limited liability company called StarDust Classic.

25. The official records of the Wyoming Secretary of State indicate that Mr. Foust and his daughter have been filing the annual reports and paying the annual dues for StarDust Classic since its organization in 2016.

26. In fact, the 2016 articles of organization for StarDust Classic give its office and mailing address as the very same location of Mr. Foust's Las Vegas Motorcoach Resort property where he kept the Motorcoach before the Bank seized it pursuant to this Court's writs.

27. Mr. Foust's daughter, Jocelyn, signed StarDust Classic's annual report in 2017 and

[2] HH attempted to introduce a document allegedly showing ownership interests in HH. This document was not produced before the hearing and will not be considered. The disclosures end at Bates range HHLLC 000074, and this new documents bears the Bates number HHLLC 000075. The Court excludes this evidence. *See, e.g.*, NRCP 16.1(e)(3)(B) (providing that failure to disclose a document before trial justifies an "order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited, or exchanged pursuant to Rule 16.1(a)"). In any event, this document does not undo the other, extensive evidence of Mr. Foust's control and ownership over HH.

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Mr. Foust himself signed the 2019 annual report on March 27, 2018, and paid the registration fee.

28. These Wyoming reports are signed under penalty of perjury, and, according to Wyoming law, must be submitted by a company officer or a "fiscal" agent. Wy. St. § 17-29-209(a) (2018).

29. Mr. Detwiler, the supposed manager of HH, agreed on cross examination that this 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 supplied).)

30. At the Prior Hearing, the Court rejected Mr. Foust's claim that he divested himself of any interest in HH because, on the hand, he "produced no documentary evidence of this alleged divestment" while, on the other hand, this Court received evidence of official corporate filings and annual reports generated by the Montana Secretary of State showing that Mr. Foust was "the sole member and/or manager for Harry Hildibrand, LLC." (3/8/18 Prior Judgment, on file herein, Findings ¶¶ 10–11.)

31. This Court again rejects Mr. Foust's naked denials of involvement in StarDust Classic when the official corporate records for Wyoming demonstrate just the opposite, especially because these papers were generated before this dispute started (beginning in 2016) and before Mr. Foust had a motive to change his story.

32. Mr. Foust and Mr. Detwiler both gave superficial testimony to the effect that HH purchased the Motorcoach from Mr. Foust. However, the defense produced no actual evidence of a sale, such as evidence of the alleged $5,000 purchase price changing hands.

33. This proceeding began by a motion that the Bank filed on December 20, 2017. In nearly one year's time, the defendants, with the aid of two able law firms assisting them, responded to a subpoena duces tecum directed to HH, responded to formal document requests ordered by this Court, sat for three separate depositions, and testified in two evidentiary hearings. Each of these circumstances demanded the defense produce actual proof of money changing hands to evidence the alleged sale of the Motorcoach. There is no such evidence, at long last.

34. The defendants have belatedly produced what they claim is a contract for the sale

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of the Motorcoach, which the Court finds unpersuasive given the circumstances of its disclosure and given that it never appears it was performed because no money changed hands.[3]

35. Mr. Foust testified at this second evidentiary hearing that he received a $5,000 "cash" payment. (11/5/18 Hr'g Trans., p.72:2–5.) This contradicts his earlier deposition testimony that he could not "remember" the payment method but that it was "a check, probably."

36. Mr. Detwiler, the supposed manager of HH, conceded it was "very possible" HH never paid Mr. Foust and that he had "no idea as the manager if that money was ever paid." (11/5/18 Hr'g Trans., p. 38:9–17.)

37. Even if HH had actually made a cash payment, HH would still be able to produce a bank record showing such a large withdrawal—after all the alleged transaction closed only about a year ago. This Court is convinced there is no such evidence because the payment never happened.

38. HH and Mr. Foust claim that HH also agreed to assume the Motorcoach purchase-money loan, but here again the documentary evidence that HH itself produced—documents from the lienholder's records custodian responsive to an HH subpoena—show only Mr. Foust's involvement.

39. First, only Mr. Foust, not HH, appears as the debt obligor.

40. Second, only Mr. Foust or his daughter ~~and frequent collaborator~~, Jocelyn, signed the monthly payment checks produced by the lienholder, including after the supposed transfer of the Motorcoach to HH.

41. There is a total failure of any documentary evidence whatsoever showing an actual sale of the Motorcoach. This "sale" is a transparent attempt to defraud the Bank.

Findings of Fact Related to All Other Cars Mr. Foust Claimed to Own Before the Judgment

42. This Court's order establishing the scope of this evidentiary hearing required the parties to focus on three issues: (1) "whether Mr. Foust is the owner of those certain cars over which HH claims an interest"— *i.e.* the "HH cars"; (2) "whether Mr. Foust is the owner of those

[3] The authenticity of this alleged sales contract is suspect. Despite this Court's February 5, 2018 order for Mr. Foust and HH to produce "a copy of any contract" related to the Motorhome, neither defendant produced this alleged contract until June 25, 2018, after Mr. Foust had been deposed not once but twice and after the Prior Hearing. (*See* 3/1/18 Order Regarding Hearings on Classic Car Collection, on file herein, at ¶ 10(d).) The defense offered no explanation for this remarkable delay.

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certain cars that HH contends it purchased from Mr. Foust and then sold to third parties"— *i.e.* the "HH Sold Cars"; and (3) "whether Mr. Foust is the owner of those certain cars that he contends were transferred directly to third parties"—*i.e.* the "Third Party Cars." (5/22/18 Order Setting Future Hearing, on file herein, ¶¶ 4–6.)

43. Neither Mr. Foust nor HH offered evidence on these subjects, other than a cursory statement. It is no exaggeration to say that the evidence these defendants offered focused on the Motorcoach and little else. By contrast, the Bank offered a treasure trove of evidence showing that although Mr. Foust claims he sold certain cars to HH and others, these same cars remain under the control of Mr. Foust.

44. Mr. Russ Colombo, the Bank's Vice President and Senior Credit Administrator, offered extensive testimony concerning Mr. Foust's written representations to the Bank regarding his car collection.

45. Mr. Foust is a rich man. When Mr. Foust applied for the loan in 2013, he claimed to have a net worth of no less than $9,493,574. His liquid assets alone included $716,854 in cash and $129,332 in stocks and bonds, according to documents submitted to the Bank. The loan application stated that Mr. Foust personally owned assets he identified as "Classic Cars – Est. Value using Mkt. [market] Prices" with a value of $5,120,130.

46. There is no doubt that Mr. Foust represented that he owned these vehicles in his personal capacity: the document is entitled a "personal" financial statement and Mr. Foust wrote "Foust"—his name—in the "Name(s) Registered In" field on the form.

47. Mr. Foust also provided an inventory of the cars which he entitled "Foust Classic Cars"—again emphasizing his personal ownership of these vehicles—that details each vehicle's make, model, year, vehicle identification number, and value. Mr. Foust's collection comprises 59 vehicles that he valued at $5,120,130. These cars are identified in Exhibit A to this judgment. The value of the car collection on the personal financial statement submitted to the Bank is the same as that given on the list of cars.

48. After the loan proceeds were disbursed, Mr. Foust continued to represent to the Bank that he owned these valuable automobiles by way of financial statements submitted to the

Bank. For example, in a balance sheet prepared by Mr. Foust and submitted to the Bank and dated April 30, 2015—years after the loan was made—Mr. Foust gives the value of his "Automobiles – Classic" as $3,242,930. In the most recent balance sheet the Bank has, which is dated December 31, 2015, Mr. Foust gave the value of his "Automobiles – Classic" as $1,381,320.

49. The vehicles identified by Mr. Foust in these pre-lawsuit bank records (Exhibit A) are the same that HH identified in its bankruptcy petition—except that there are approximately 39 fewer cars listed in the bankruptcy schedules. The list of cars that HH identified in is bankruptcy papers is attached hereto as Exhibit B.

50. Neither Mr. Foust nor HH produced any documentary evidence or offered any testimony to show that Mr. Foust did not own the "HH cars," as he told the Bank he did; that Mr. Foust did not in fact own the HH Sold Cars, as he told the Bank he did; or that Mr. Foust did not continue to own the "Third Party Cars" he claims he sold.

51. The only actual evidence before this Court conclusively proves that Mr. Foust continues to own and control all the cars mentioned on any list, and certainly those that HH claimed to own in the bankruptcy.

52. The defense failed to offer into evidence any contracts for sale of any of the cars in question, the HH cars, the HH Sold Cars, or the Third Party Cars.

53. During his deposition, Mr. Foust testified that he sold cars 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. At the 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.) ~~Ever willing to say what is convenient without regard to the record~~, Mr. Foust claimed that these supposed sales contracts were "retrievable" and perhaps in his file cabinet in California or with HH's Montana attorneys.

54. This testimony ignores this Court's prior order and a subpoena duces tecum directed to HH, both of which sought these same alleged sales contracts. This Court has allowed three depositions and two evidentiary hearings, and the defense has never produced any contract for the sale of cars between HH and Mr. Foust. The Court is convinced no such contract or

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contracts exist.

55. Similarly, the defense offers no evidence about the price HH allegedly paid Mr. Foust to purchase any of the cars. Mr. Foust allowed at the hearing that he had no recollection of the price received from these alleged sales. (*Id.* at 75:22–76:6.) At his deposition he was flippant about this subject, claiming "I might have got a dollar, I might have got a million dollars. I don't know."

56. Finally, HH failed to offer into evidence car titles showing transfer of the cars in question to HH or anyone else. The only evidence this Court has is that Mr. Foust, on multiple occasions and in writing, swore to the Bank that he owned at least the 20 cars that HH now claims to own in the bankruptcy, and, in fact, many more. The few car titles the Bank offered, showed Mr. Foust buying a car and then immediately transferring its title to HH without any consideration, as discussed below.

57. Mr. Foust, in earlier filings with this Court, admitted that he has possession of four vehicles HH claimed to own. In an affidavit given to this Court as part of an opposition to the original motion that gave rise to this evidentiary hearing, Mr. Foust swore under oath that he has "sold and ha[s] received a leaseback on the following vehicles: (a) 2000 GMC Yukon; (b) a 2007 Mercedes S550; (c) a 2007 Mercedes CLK 550; and (d) a 2007 Mercedes M50." The alleged owner and lessor is HH. During his deposition, Mr. Detwiler agreed that these cars were in the possession of Mr. Foust, his wife, or his daughters and that HH had not received any money from Mr. Foust for them. No lease documents were ever produced or offered into evidence, despite specific requests and orders from this Court.

58. Despite Mr. Foust's claims that HH owns these four cars that he and his family drive through this alleged "leaseback," the financial statements given to the Bank before this dispute arose show that Mr. Foust personally spent his own money on these four cars, even though he claims they are owned by HH.

59. The "Expense" page of Mr. Foust's 2014 Income Statement provided to the Bank shows $6,439.50 in expenses for a two-year period for the Mercedes. The Expense page of the April 25, 2015 Income Statement shows $5,143.13 in expenses for two of the 2007 Mercedes.

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And the December 31, 2015 Income Statement shows $8,361.03 in expenses for all four cars for 2015 and the first month of 2016. If HH really owned these cars, then HH would be paying these costs, not Mr. Foust.

60. Similarly, before this litigation arose and Mr. Foust had a motive to prevaricate, he submitted financial statements to the Bank showing that he was paying the attorney fees to a Montana attorney that acts as the registered agent for HH; HH is a Montana limited liability company. The name of the law firm is the Heggen Law Office, P.C. It is located in Missoula, Montana. This law office is the place of business given for HH in Montana corporate records on file with the secretary of state. This is significant when it comes to the subject of the cars because this law firm specializes in vehicle registration; its webpage says:

> Form your Limited Liability Company in Montana and our knowledgeable and experienced staff can help you to save thousands on automobile, motorhome & RV, boat and airplane registration. Montana has no sales or property tax on vehicles such as RVs and luxury high-performance cars. By establishing a Montana Limited Liability Company (LLC) or Corporation, you may title your vehicle in the name of the business and purchase the vehicle free of sales tax even if your purchase is outside the state of Montana. In addition to your savings on vehicle taxes, you will also be able to take advantage of Montana's low vehicle registration fees.

61. The financial statements given to the Bank show regular payments by Mr. Foust to this law office for fees and vehicle registration. The Income Statement for April 30, 2015 shows $100 for "Heggen – Autos" and $250 for "Heggen – Fee's" for the first months of 2015 and $340 for registration fees in 2014 and $300 in attorney fees for 2014. Similarly, the Income Statement dated December 31, 2015 shows $1,080 for registration fees and $1,487.99 for attorney fees in 2016 and $1,714.18 in registration fees and $340 in attorney fees for 2015. The defense did not even attempt to contradict this evidence. This Court believes that if HH really owned these cars, then HH would be paying the registration costs and attorney fees, not Mr. Foust.

62. A second, independently sufficient basis for ruling in the Bank's favor exists: even assuming for the sake of argument that a transfer of the 20 cars that HH identifies in its bankruptcy schedules (Exhibit B) did occur, there is clear and convincing evidence that such a sale is a voidable, fraudulent transfer.

63. Transfers to insiders demonstrate fraud. *See* NRS 112.180(2)(a)). Mr. Foust

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transferred the 20 cars identified in the HH bankruptcy to himself because Mr. Foust owns and controls HH.

64. At the Prior Hearing, this Court rejected Mr. Foust's claim that he divested himself of any interest in HH because, on the one hand, he "produced no documentary evidence of this alleged divestment" while, on the other hand, and this Court received evidence of official corporate filings and annual reports generated by the Montana Secretary of State showing that Mr. Foust was "the sole member and/or manager for Harry Hildibrand, LLC." (3/8/18 Prior Judgment, on file herein, Findings ¶¶ 10–11.) *See also* NRS 112.150(7)(a) (stating that if the debtor is a natural person, an insider includes a transfer to a corporation in which the debtor is "a director, officer or person in control").

65. A like circumstance has occurred at this second hearing: HH claimed in its bankruptcy filings that it is wholly owned by StarDust Classic, an entity that Mr. Foust owns and/or controls according to the Wyoming Secretary of State, as shown above. Mr. Foust did make a bare assertion that he "believe[s]" someone named Ron Vega—a name never mentioned before by the defendants in any of the three depositions or the prior evidentiary hearing—owned StarDust Classic. (*See* 11/5/18 Hr'g Trans., p. 72:17–21.)

66. The Court rejects this *ipse dixit* when the official records of Wyoming, which were generated between 2016 and 2018 before this dispute over the cars came before this Court, show Mr. Foust's role as an officer and owner of StarDust Classic. This is yet another example of what this Court previously found regarding Mr. Foust's demeanor: he appears untrustworthy because he seems to be willing to say whatever appears convenient to him in the moment without regard to established or incontrovertible facts.

67. 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. Mr.

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Detwiler, the supposed manager of HH, claimed during his deposition that he knew nothing about any cars HH owned except for the four in Mr. Foust's and his family's possession:

> Q: So other than those four vehicles, Harry Hildibrand doesn't own anything else?
> Mr. Detwiler: Not that I'm aware of. Not that I have had conversation about or know about.

68. Here, the alleged "transfer or obligation was ~~disclosed or~~ concealed." *See* NRS 112.180(2)(c). Mr. Foust did not inform the Bank of this alleged transfer of the 20 cars HH now claims in its bankruptcy, nor of the transfer of any other cars. Mr. Foust was silent until this dispute arose.

69. Even after these preceding began, HH attempted to cover up the transactions by withholding bills of sale under a bogus claim of attorney-client privilege; this later came to this Court's attention during a motion to compel preceding this hearing.

70. The Court finds that HH in particular engaged in gamesmanship and misconduct in attempting to withhold bills of sale related to the cars in question, ultimately introduced into evidence by the Bank, under a facially bogus attorney-client privilege claim. The only motive for such conduct was to attempt to suppress incriminating evidence.

71. The only bills of sale in evidence show transfers in 2016 (1966 Ford Thunderbird and Kawasaki motorcycle) and 2014 (2000 GMC Yukon and 2007 Mercedes S550). These alleged transfers took place after the loan was made that gave rise to the Judgment (October, 2013) and around the time Mr. Foust was originally sued (December, 2016). The alleged transfer also occurred after Mr. Foust had received the loan proceeds. *See* NRS 112.180(2)(d).

72. The debtor's absconding or removing or concealing assets indicates fraud. *See* NRS 112.180(2)(f) *and* (g). Here, Mr. Foust was purporting to transfer away a substantial percentage of many of his valuable vehicles after he received the loan proceeds in an attempt to move the assets beyond the reach of the Bank.

73. For example, with respect to the 2000 GMC Yukon, Mr. Foust purchased it on October 20, 2014 and purported to "sell" it to HH on December 3, 2014. And then mr. Foust ~~the defense~~ tried to hide this fact by asserting attorney-client privilege over the bill of sale. Mr. Foust also bought the 2007 Mercedes and "sold" it to HH two months later. The bills of sale were all signed

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by Mr. Foust as both buyer and seller—even though he tells this Court he's been disassociated with HH since 2008. The defense attempted to lie to the Court and then attempted to conceal this misconduct behind a sham privilege claim.

74. The Court's prior orders recognize Mr. Foust and HH as capable of dishonesty and gamesmanship. The defense lied repeatedly about the cars' location in attempt to keep the location secret from this Court and the Bank. During three depositions sessions, Mr. Foust and Mr. Detwiler claimed they did not know where the cars were or even which cars HH owned. For example:

> Q: So other than those four vehicles, Harry Hildibrand doesn't own anything else?
> Mr. Detwiler: Not that I'm aware of. Not that I have had conversation about or know about.

75. The Bank asked Mr. Foust about every car on the original lists submitted to the Bank (Exhibit A). With respect to the 2007 Corvette, Mr. Foust said he once owned it but that HH bought it and subsequently resold it to an unknown person. Mr. Foust said he sold the 1966 Ford Thunderbird to a museum named Kuck in Nebraska and a 1955 Thunderbird to an auction house called Russo Steele. Yet, all these cars appear on HH's bankruptcy schedules (Exhibit B). Mr. Foust generally testified during his deposition that he had "no idea" where the cars were that he allegedly sold to HH.

76. Then during the bankruptcy, HH, through Mr. Foust's long-time personal attorney, James Lezie, and Mr. Detwiler, matter-of-factly testified at a creditors meeting that HH's cars were located in a warehouse in Compton, California, and at undisclosed locations in Montana and North Dakota. The North Dakota location, where HH says it has six cars, is significant because Mr. Foust was engaged in business there and sought the loan from the Bank to further his enterprises there. HH, according to Mr. Detwiler, is defunct and has no business at all and, therefore, no operations in North Dakota.

77. The point is these defendants do not scruple to lie in depositions conducted under this Court's orders and then totally change their testimony in bankruptcy court when they perceive an advantage to be had. Mr. Foust's conduct epitomizes concealing assets associated with fraudulent transfer. Mr. Detwiler, in particular, signed the bankruptcy petition and schedules on behalf of

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HH, which revealed the cars' locations, but he claimed to know nothing about that subject in depositions before this Court. This is just one example of several points during the hearing, and especially on cross examination, where Mr. Detwiler's demeanor was untrustworthy. Mr. Detwiler appeared to be willing to say whatever seemed convenient at the moment, without regard for established or incontrovertible facts, especially concerning representations he made in bankruptcy court that contradicted his prior deposition testimony before this Court.

78. In this case, "the value of the consideration received by the debtor was [not] reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred." *See* NRS 112.180(2)(h). Neither HH nor Mr. Foust has offered any evidence that any money changed hands for the 20 cars HH lists in its bankruptcy filings (Exhibit B) or any of the 59 cars Mr. Foust claimed he owned (Exhibit A).

79. As shown above, despite Court orders and a subpoena, ~~the defense has~~ Mr. Foust failed to produce any contracts for sale. Likewise ~~the defense has~~ Mr. Foust failed to produce any evidence of payment, such as cancelled checks or evidences of wire transfer.

80. The few bills of sale in the record (which HH attempted to suppress through its false claim of attorney-client privilege) show "$N/A," or not applicable, as the amount HH paid to Mr. Foust to "purchase" the 1966 Ford Thunderbird, the 2000 GMC Yukon, and the 2007 Mercedes from Mr. Foust.

81. Consistent with the vague answers generally given, with respect to the three Mercedes his wife and daughters drive, that HH allegedly owns and leases back to Mr. Foust and his family, Mr. Foust claimed in deposition to be totally ignorant on the subject of whether any money changed hands with HH:

> Q. Were they [the three Mercedes] all sold at the same time?
> Mr. Foust: It appears to be so, yes.
> Q. Were you involved in the sale?
> Mr. Foust: No.
> Q. Do you know the sales price?
> Mr. Foust: No.
> Q. Was money paid for these cars?
> Mr. Foust: I have no idea.
> Q. Would your daughters know?
> Mr. Foust: Harry Hildibrand would know.
> Q. And your daughters and your wife continue to own and use these cars?

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Mr. Foust: I have no idea.

82. With respect to the remaining 16 cars HH claims to own, Mr. Foust allowed at the hearing that he had no recollection of the price received from these alleged sales. At his deposition he was flippant about this subject, claiming "I might have got a dollar, I might have got a million dollars. I don't know." Mr. Detwiler, the supposed manager, never testified on this subject at the trial or during his depositions. On the most basic question—purchase price—the defense could not produce the most elementary evidence—an amount—let alone proof that money actually changed hands. This whole alleged relationship between Mr. Foust and HH appears to the Court to be a scam for frustrating creditors' claims. Mr. Foust and HH have acted willfully and maliciously with the intent to harm the Bank.

Conclusions of Law and Final Judgment

The Court concludes the following:

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

2. The Court enters judgment in favor of the Bank and against HH and Mr. Foust, including all persons or entities claiming an ownership interest in HH, all entities owned or controlled by Mr. Foust, including HH and StarDust Classic, on all claims.

3. Mr. Foust, HH, and StarDust Classic are and have been agents of one another with respect to any past action involving the cars at issue in these proceedings (Exhibits A and B) and have been agents of one another regarding notice of these proceedings.

Conclusions Related to the Motorcoach

4. Privity in the res judicata context exists between business entities and their owners. *Mendenhall v. Tassinari*, 132 Nev., Adv. Op. ___, 403 P.3d 364, 369 (2017) (acknowledging that "contemporary courts have broadly construed the concept of privity, far beyond its literal and historic meaning, to include any situation in which the relationship between the parties is sufficiently close to supply preclusion," and adopting the Ninth Circuit's concept of privity, which "encompass a relationship in which there is substantial identity between parties, that is, when there is sufficient commonality of interest" (internal quotation marks omitted)); *In re Gottheiner*, 703 F.2d 1136, 1139–40 (9th Cir. 1983) (holding that there is sufficient commonality of interest

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between a corporation and a person who owns or controls the corporation to establish privity); 18A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE: JURISDICTION, § 4460 (2d ed. 2018) ("Many of the decisions that extend preclusion through corporate relationships involve controlling owners.").

5. The Bank offered clear and convincing evidence that Mr. Foust owned HH, both directly (as set forth in the Prior Judgment related to the Motorcoach and issued on March 8, 2018) and indirectly (*i.e.*, though proof that Mr. Foust owns and/or is an officer of StarDust Classic, the alleged owner of HH according to the bankruptcy filings).

6. Under the circumstances apparent in the record, this Court concludes that there is privity for res judicata purposes between Mr. Foust and HH because there is substantial identity between these defendant parties and a commonality of interest, namely attempting to hide cars that Mr. Foust told the Bank he owned when he obtained the loan now that the Bank has a judgment, including the Motorcoach.

7. This Court's Prior Judgment related to the Motorcoach and issued on March 8, 2018 applies to and is binding upon HH in every respect.

8. HH does not have title to the Motorcoach, and the Court denies HH's NRS 31.070 application and request and resolves the claim in favor of the Bank and against HH.

9. The Laughlin Constable, Mr. Jordan Ross, or any other authorized law enforcement officer or person, is hereby empowered and ordered to release or restore possession of the Motorcoach to the Bank, consistent with this order.

Conclusions of Law Related to Other Cars

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

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

(Emphasis supplied.) This law is known as a turnover statute. The turnover statute is a procedural device to assist judgment creditors in post-judgment collection. *E.g. Davis v. West*, 317 S.W.3d

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301, 309 (Tex. App. 2009). A turnover order is a type of post-judgment enforcement order. In Nevada, this remedy is listed under the heading "Proceedings Supplementary to Execution" in NRS Chapter 21, Nevada's judgment enforcement statute. A "supplementary proceeding" is "held in connection with the enforcement of a judgment, for the purpose of identifying and locating the debtor's assets available to satisfy the judgment." BLACK'S LAW DICTIONARY (8th ed. 2004).

11. A judgment debtor bears the burden of proving it no longer owns assets it previously claimed. "Once a creditor presents evidence that the debtor owns property, a presumption arises that the assets are in the debtor's possession, and the burden shifts to the debtor to account for the assets." 33 C.J.S. EXECUTIONS § 589 (2018).

12. Where a party bears the burden of production, that party's failure to satisfy the burden necessitates a finding against the party. *See, e.g.,Fergason v. LVMPD,* 131 Nev., Adv. Op. 94, 364 P.3d 592, 595 (2015) ("When the party moving for summary judgment fails to bear his burden of production, the opposing party has no duty to respond on the merits and summary judgment may not be entered against him." (internal quotation marks omitted)); *Morgan v. State*, 134 Nev., Adv. Op. 27, 416 P.3d 212, 224-26 (2018) (affirming the district court's overruling of defendant's *Batson* challenge where defendant failed to bear his burden in demonstrating that the State engaged in discriminatory peremptory challenge); *Goodwin v. Jones*, 132 Nev., Adv. Op. 12, 368 P.3d 763, 769 (Nev. Ct. App. 2016) (affirming the denial of unemployment compensation to claimant, who failed to demonstrate, after the burden of production shifted to her, that her conduct was not misconduct in that it was reasonable and justified under the circumstances); *Tom v. Innovative Home Sys., LLC*, 132 Nev., Adv. Op. 15, 368 P.3d 1219 (Nev. Ct. App. 2016) (reversing the district court's grant of summary judgment in favor of movant where movant "failed to meet its initial burden of production to show the absence of a genuine issue of material fact").

13. Mr. Foust failed to carry his burden because he offered no evidence of actual sales or transfers of any cars, whether the 59 cars originally identified for the bank (Exhibit A) or the 20 cars HH now claims to own in the bankruptcy (Exhibit B).

14. Mr. Foust also failed to carry his burden because he offered only a few lines of superficial testimony that he sold his cars to HH, though he failed to say which cars, what the

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purchase price was, or when the transaction occurred. Mr. Foust literally introduced no documentary evidence himself, and what little testimony he offered related primarily to the Motorcoach. (11/5/18 Hr'g Trans., p. 71 *et seq.*)

15. Similarly, the documentary evidence HH adduced related solely the Motorcoach

16. On the other hand, the Bank gave clear, convincing, and compelling evidence of Mr. Foust's ownership and control of the cars in question: his repeated, written statements concerning his car collection and expenses related thereto given to the Bank over a period of years and bills of sale that Mr. Foust signed transferring some of the cars to HH without consideration right after Mr. Foust purchased the cars.

17. The Bank has offered ~~a treasure trove of~~ 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.

18. Mr. Foust is the owner of all cars over which HH claims an interest, including those cars identified in the bankruptcy (Exhibit B).

19. Mr. Foust is the owner of all cars over which StarDust Classic claims an interest, including those cars identified in the bankruptcy (Exhibit B).

20. 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.

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.

22. Mr. Foust is the owner, member, and/or officer of StarDust Classic.

23. Pursuant to NRS 112.180(1)(a), even if any sale or transfer of the cars listed in Exhibits B from Mr. Foust to HH or StarDust Classic did occur, it was made with the actual intent to hinder, delay, and defraud the Bank. The record indicates that 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.

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24. Any alleged sale or transfer of the 20 that HH still claims to own (Exhibit B) is void ab initio and is of no effect whatsoever so that the Bank may satisfy its claim and enforce its Judgment by levying execution against such cars. *See* NRS 112.210(1)(a).

25. Any alleged sale or transfer of the 59 cars that Mr. Foust claimed to own when obtained the loan from the Bank (Exhibit A) is void ab initio and is of no effect whatsoever so that the Bank may satisfy its claim and enforce its Judgment by levying execution against such cars. *See* NRS 112.210(1)(a).

26. Any alleged sale or transfers of any cars to StarDust Classic, including those listed in Exhibits A and B is void ab initio and is of no effect whatsoever so that the Bank may satisfy its claim and enforce its Judgment by levying execution against such cars. *See* NRS 112.210(1)(a).

27. A certified copy of this order shall constitute conclusive proof, to any person, entity, or governmental agency or other authority, including regulators charged with registering vehicles, that HH has been fully and completely divested of any and all title to any vehicles or automobiles in which it claims an interest, including those identified in Exhibit B, and that such title and interest resides in Mr. Foust, subject to the rights of the Bank set forth herein.

28. Any attachment or garnishment of any cars identified in Exhibits A and B is confirmed as valid, lawful, and regular in every respect. *See* NRS 112.210(1)(b).

29. Mr. Foust and HH and any of their respective agents, employees, or affiliates (including without limitation Mr. Detwiler and StarDust Classic and any of its agents) are ordered, on penalty of contempt, to deliver up, surrender possession of, and turn over to the Bank promptly, all cars identified in Exhibits A and B, with any cost or expense involved in delivery to the Bank to be borne by Mr. Foust and/or HH.

30. It is further ordered that, in the event it develops that the cars identified in Exhibits A and B are damaged in any way while in defendants' possession or in transit, Mr. Foust and HH shall be liable for any repairs that are required to be made to restore the property to its condition when possession was first taken by Mr. Foust or HH.

31. Mr. Foust and HH are and shall be permanently enjoined from any further attempt to dispose, sell, transfer, hypothecate, or pledge any cars identified in Exhibits A and B, or any

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assets traceable to the sale of such cars, or from interfering with the Bank's right to repossess, keep, and sell said cars. *See* NRS 112.210(1)(c)(1).

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

Dated this 19 day of December, 2018.

DISTRICT COURT JUDGE

TM

33. LIMITATION. Notwithstanding the foregoing, Nothing contained herein shall have the effect of precluding any person or entity not referenced herein from exercising any rights, if any, that may exist under NRS 31.070 in a new proceeding.

Respectfully submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: John E. Bragonje

John E. Bragonje
State Bar No. 9519
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Attorneys for Judgment Creditor Baker Boyer National Bank

Exhibit A

Exhibit A

Autos.xlsx

Foust Classic Cars

YEAR	MAKE	DESCRIPTION	Buy	COST	Est. Value	VIN	STATE	From
1955	CADILLAC	V-12 COUPE	1996	$44,000.00	$100,000.00	4100743	CAL	THOMAS CADILLAC
1989	CHAPARRAL	TRAILER	2000	$25,000.00	$25,000.00	1S9SC4532K1090654	ND	Shirley Muldowney
1956	CHEV	CORVETTE	1982	$10,000.00	$50,000.00	VE56S003290	NO, DAK	ROBERT HILTON
1957	CHEV	BEL AIR CONV. (FI)	1989	$50,000.00	$100,000.00	VC570141640	KENTUCKY	O.B. SMITH
1957	CHEV	CORVETTE	1988	$45,000.00	$50,000.00	E57S103094	KENTUCKY	SOUTHLAND INVEST.
1966	CHEV	TURBO CORVAIR	1990	$5,000.00	$5,000.00	107376L110678	CAL	R & S
2007	CHEV	Corvette Z06	2007	$80,000.00	$50,000.00	1G1YY26E375121069	Montana	Chevrolet
1957	CHRYSLER	300 C CONV.	1988	$27,000.00	$150,000.00	3N571B10	Montana	Joe Bortz
2002	Crysler	PT Cruser	2001	$35,000.00	$5,000.00	3C 8FY68B52T216202	NV	Crysler
2005	Crysler	PT Cruser	2005	$20,000.00	$5,000.00	3C3AY75S05T701409	Montana	Crysler
2009	Crysler	PT Cruser	2009	$13,000.00	$5,000.00	3A8FY68899T510047	Montana	Crysler
1965	DODGE	SAVOY Acid dip car	1989	$35,000.00	$100,000.00	W0512245600	ILL.	JAMES JACKSON
1990	FERRARI	TESTAROSSA	1995	$104,000.00	$75,000.00	ZFFSG17AGL0083464	ND	Jerry Buss
1937	FORD	Coupe	2006	$75,000.00	$75,000.00	3541190	Montana	R & S
1940	FORD	Coupe	2007	$40,000.00	$40,000.00	AZ152801	Montana	Spencer Shakstad
1955	FORD	T-BIRD (96 MILES)	1988	$45,000.00	$45,000.00	P5FH166138	CAL	PS Auction
1955	FORD	T-BIRD (CHEV)	1976	$15,000.00	$15,000.00	P5FH240647	CAL	DEDE
1957	FORD	T-BIRD (MATTOX)	1990	$5,000.00	$5,000.00	D7FH251424 *	CAL	BOB MATTAX
1957	FORD	FAIRLANE 500	1990	$7,500.00	$25,000.00	D7LV162233	Montana	DALE VALURE
1963	FORD	427 GALAXY (R-CAR)	1990	$23,000.00	$100,000.00	3W66R131679	KANSAS	RICHARD PETTY
1964	FORD	THUNDERBIRD - BLACK	1992	$17,000.00	$17,000.00	4Y85Z127518	GEORGIA	WILLIARD CARROLL
1966	FORD	THUNDERBIRD - RED	1990	$19,000.00	$19,000.00	6Y85Z104010	S. CAROLINA	TRANSOUTH
1967	FORD	MUSTANG Convertible	1990	$5,500.00	$40,000.00	7T03T118534 *	Montana	Barret Jackson
1968	FORD	COBRA JET MUSTANG	1990	$20,000.00	$50,000.00	8R02R1688059	MONTANA	ROBERT KWAPY
1970	FORD	BOSS 429 - Drew Alcazar	1990	$90,000.00	$200,000.00	0F02Z137925/KK2459	WISCONSIN	LIEN, MARK
1971	FORD	PANTERIA	1988	$15,000.00	$15,000.00	THPNLY01620	Montana	ORAN BERCH
1973	FORD	PANTERIA - $300,000 Rest.	2003	$63,000.00	$100,000.00	THPNNU05291	Montana	IRS Auction
1988	FORD	#11 Budweiser NASCAR	2000	$40,000.00	$40,000.00	MRE #unknown	None	Bill Elliot
1991	FORD	#9 COORS LITE NASCAR	2000	$54,060.00	$54,060.00	MRE #21	BILL OF SALE	RON HUBER
2008	Harley-Davidson	Motor Cycle	2008	$21,470.00	$21,470.00	1HD 1KB 4398 Y 652 304	Cal	Golden Gate
2009	Harley-Davidson	Motor Cycle	2010	Trade 2008 H/D	Trade 2008 H/D	1HD1HPH349K810543	Montana	Golden Gate
1987	HONDA	SCOOTER	2000	$800.00	$100.00	JH2HF0316HS202130	CAL	Honda
1992	HONDA	SCOOTER	2000	$800.00	$100.00	3H1HF031ONO700204	CAL	Honda
1991	INTERNATIONAL	4000 SERIES	2000	$50,000.00	$25,000.00	1HTSDNHL4MH321753	ND	Shirley Muldowney
1951	JAGUAR	XK 120 RACE CAR	2000	$45,050.00	$45,050.00	S671966	Montana	Dana Mecham auctions
1964	JAGUAR	XKE	1999	$39,000.00	$39,000.00	881364	CAL	WILLIAM LAZARIS
1985	KAWASAKA	NINJA 900	1985	$1,500.00	$1,500.00	JKAZX2A13FB505429/ZX90(	Montana	KAWASAKA
1957	LAMBORGHINI	MUIRA (3571)	1975	$13,000.00	$250,000.00	3571	CAL	Private Party ??

FOUST Classic Cars

1988	LAMBORGHINI	COUNTACH	1995	$64,500.00	$64,500.00	ZA9CA05A8JLA12269	Montana	Al Bertoni
1998	MARATHON	COACH	2003	$420,000.00	$200,000.00	2PCM3349XV1026183	DEALER	MARATHON
1956	Mercedes	300 SL - Scott Resto.	1978	$50,000.00	$750,000.00	198 980 650086	CAL	Stock Broker
1968	Mercedes	280 SL	2006	$60,850.00	$60,850.00	11304412000874	Virgina	R & S
1977	Mercedes	380 4 DR SEDAN	1977	$35,000.00	$35,000.00	10704412035568	ND	Mercedes
1987	Mercedes	450SL	2007	$37,000.00	$37,000.00	WDB8A48D5HA059358	Montana	Mercedes
2006	Mercedes	S500	2008	$43,000.00	$25,000.00	WDBNG75J76A482303	Montana	Mercedes
2007	Mercedes	M50 SUV	2007	$65,000.00	$25,000.00	4JGBB75E07A222537	Montana	Mercedes
1957	OLDSMOBILE	98 ROCKET	1990	$30,000.00	$30,000.00	579M27665	Montana	DUFFY SHAMBURGER
1957	PACKARD	CLIPPER	1982	$8,000.00	$8,000.00	57L1582	N.D.	Bowman Chev
1962	PLYMOUTH	Savoy w/413 - Ramchargers	1989	$46,000.00	$75,000.00	512 216 59 86	MICH.	TOM POLIDAN
1964	PLYMOUTH	HEMI (ALUMINUM BODY)	1990	$25,000.00	$50,000.00	RACE CAR - No Title	PLYMOUTH	Jim (Car Covers)
1966	PLYMOUTH	HEMI BELVADIRE	1989	$45,000.00	$45,000.00	RP23H67303290	Montana	JOHN KEROLA
2000	PLYMOUTH	PROWLER	2000	$51,000.00	$30,000.00	1P3EW65G1YV603597	Montana	Harry Hildibrand
1969	PONTIAC	JUDGE	1988	$9,000.00	$40,000.00	Get From Bob Wokel	ND	Bob Wokel
1958	PORSCHE	CABROLET	1990	$20,000.00	$20,000.00	NR150801	CAL	R & S
1983	PORSCHE	CARREA	1988	$35,000.00	$35,000.00	WP0EA0915DS170119	CAL	Santa Monica dealer
1980	ROLLS ROYCE	SILVER CLOUD II	1990	$22,500.00	$22,500.00	SRL41595C	CAL	DUDLEY HAINES
1965	SHELBY	427 Cobra - Org. Comp Car	2000	$550,000.00	$1,500,000.00	CSX3012	Not Titled	Original MSO
1968	SHELBY	GT500	1991	$21,500.00	$75,000.00	8T02S14955001843	CAL	JIM SHIPLEY
1966	SHELBY	427 COBRA - Ford Cammer	1991	$50,000.00	$50,000.00	SP25692LA	CAL	kentucky Lawyer
				$2,885,030	$5,120,130			

Exhibit B

Exhibit B

HARRY HILDIBRAND

Titles as on BBB 7/26/2018 0:15

YEAR	MAKE	Model	Value	VIN
2007	CHEV	Corvette Z06	$ 35,000	1G1YY26E375121069
2007	Mercedes	M50 SUV	$ 11,000	4JGBB75E07A222537
1940	FORD	Coupe	$ 35,000	AZ152801
1957	CHEV	BEL AIR CONV. (FI)	$ 25,000	VC570141640
1957	CHRYSLER	300 C CONV.	$ 35,000	3N571810
1955	FORD	T-BIRD (CHEV)	$ 5,000	P5FH240647
1957	FORD	FAIRLANE 500	$ 15,000	D7LV162233
1966	FORD	THUNDERBIRD - red	$ 15,000	6Y85Z104010
1971	FORD	PANTERIA	$ 25,000	THPNLY01620
1973	FORD	PANTERIA -GT4	$ 35,000	THPNNU05291
1951	JAGUAR	XK 120 RACE CAR	$ 20,000	S671966
1957	OLDSMOBILE	98 ROCKET	$ 18,000	579M27665
1966	PLYMOUTH	BELVADIRE	$ 15,000	RACE CAR BODY & SHELL - N
2000	PLYMOUTH	PROWLER	$ 21,000	1P3EW65G1YV603597
2007	Mercedes	CLK 550	$ 12,000	WDBTK72F27T081009
2000	GMC	Yukon	$ 8,000	1GKEK13T9YJ1740142
2007	Mecedes	S550	$ 25,000	WDDNG71X57A075860
1963	CHEV	425/409 S/S	$ 25,000	31847L144085
1998	MARATHON	COACH	$ 129,875	2PCM3349XV1026183
2016	KAWASAKA	kr10	$ 11,700	JKAZX2A13FB505
		Total	$ 521,575	

SUPPORT FOR Z06 A/B #46, PAGE 5

5A

EXHIBIT 2

EXHIBIT 2

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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

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:

JUN 18 2019

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 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

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

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

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

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

6. 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 . . . ." (1/9/2019 Order, Conclusions of Law, ¶ 29, on file herein.) The list of twenty (20) vehicles identified in Exhibit B to this Court's January 9, 2019, Order, is attached hereto as **Exhibit A**.

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

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

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

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

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January 15 and 23, 2019.

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

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

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

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

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

16. 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; he presented no valid excuse for violating the Court's Order; he presented no valid excuse for failing to turn over the subject vehicles; and he presented no evidence of any effort whatsoever to attempt to retrieve the subject vehicles from their present locations.

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

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

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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

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

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

28. This Court further incorporates herein any other evidentiary findings in the January 9, 2019, 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.

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

CONCLUSIONS OF LAW

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

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

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

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

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

6. 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 turn over the subject vehicles; and he presented no evidence of any effort whatsoever to attempt to retrieve the subject vehicles from their present locations.

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

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

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

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

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

11. The Court's January 9, 2019 Order is unmistakable. It required, among other things, that 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 . . . ." The Order further identifies the subject vehicles by make, model, and VIN.

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

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

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

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

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

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

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

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

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arrest of a person guilty of contempt:

> **NRS 22.040 Issuance of warrants of attachment and commitment**. When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer, or, 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.

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

> **NRS 22.100 Penalty for contempt.**
>
> 1. Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeded against is guilty of the contempt charged.
>
> 2. Except as otherwise provided in NRS 22.110, if a person is found guilty of contempt, a fine may be imposed on the person not exceeding $500 or the person may be imprisoned not exceeding 25 days, or both.
>
> 3. In addition to the penalties provided in subsection 2, if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.

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

> **NRS 22.110 Imprisonment until performance if contempt is omission to perform an act; penalty for failure or refusal to testify before grand jury.**
>
> 1. Except as otherwise provided in subsection 2, when the contempt 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:

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> 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).

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 18th day of June, 2019

DISTRICT COURT JUDGE

TM

Respectfully submitted,

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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Exhibit A

Exhibit A

HARRY HILDIBRAND

Titles as on BBB 7/26/2018 0:15

YEAR	MAKE	Model	Value	VIN
2007	CHEV	Corvette Z06	$ 35,000	1G1YY26E375121059
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

EXHIBIT 3

EXHIBIT 3

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

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

INTRODUCTION

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

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

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

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

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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 owned a single one of the 59 vehicles that were the subject of the motion and which he pledged to the Bank to secure the loan.

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

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

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

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

7. 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).) The list of 20 vehicles identified in Exhibit B to this Court's January 9, 2019, Order, is attached hereto as **Exhibit B** also.

8. 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.

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

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and the Bank's requests for compliance.

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

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

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

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

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

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

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

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

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18. Mr. Detwiler was not a credible witness. He gave self-serving testimony concerning his role with HH: Mr. Detwiler repeatedly claimed he was a mere "figurehead" of HH (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-to-day operations knowledge" (*id.* at 20:9-16)—a manager in name only without any control over the situation. Additional evidence received by the Court proved, in a clear and convincing manner, just the opposite. Mr. Detwiler exercised completed control over HH.

19. Mr. Detwiler testified that HH has no employees and no payroll. (5/21/19 Vol. I 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.)

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

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

> Q: And you're the sole—
> Mr. Detwiler: At least to my knowledge.
> Q: —manager, correct?
> Mr. Detwiler: I'm—I'm a manager.
> Q: Who are the other managers?
> Mr. Detwiler: I don't know.

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

> Q: You are the only manager of Harry Hildibrand, LLC, correct?
> Mr. Detwiler: That I'm aware of, yes.

(5/17/19 Hr'g Trans., p. 28:6-7.)

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

23. No one besides Mr. Detwiler claiming a connection with HH or purporting to 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

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

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

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

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

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

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

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

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

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

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

> Trustee: Does anyone regularly use these vehicles? Any of them? Regularly use them?
> Mr. Detwiler: Some of them fairly regularly will drive, yeah.
> Trustee: No, does someone regularly drive the vehicle, any of them, on a routine basis?
> Mr. Detwiler: Yeah the ones in Los Angeles will be, you know, alternated just to keep them, you know, operational.
> Trustee: Because the only reason I ask that is other than the comprehensive collision type of insurance, the issue is bodily injury, personal liability that kind of thing.
> Mr. Detwiler: Sure.

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

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

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

> I think it's just purchase value because most – the vehicles that I've seen require work, you know, I think that the purchase criteria was based on what they thought that they could sell for if a certain amount was invested. It's like buying rehab real estate. How much do you put into it and how much can you get out of it so there 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.)

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

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

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

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

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

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

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

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

46. This Court previously found that, at all relevant times herein, Mr. Foust, HH, and StarDust 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.)

47. 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

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

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

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

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

51. 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.)

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

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

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

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and claimed he was a mere "figurehead" with no authority or power generally and no knowledge of the vehicles specifically.

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

56. During bankruptcy, he gave detailed information about the cars' location; now he claims ignorance on that subject. During bankruptcy he elaborated about the financing for the vehicles, allegedly through StarDust providing $521,000 to finance purchases over time, but now he claims "I don't know how they're 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.)

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

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

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

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

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failed to comply, without justification.

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

10. The Court's January 9, 2019 Order is unmistakable. 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.) The Order further identifies the subject vehicles by make, model, and VIN.

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

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

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

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

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

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

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

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

> **NRS 22.040 Issuance of warrants of attachment and commitment**. When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer, or, 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.

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

> **NRS 22.100 Penalty for contempt.**
>
> 1. Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeded against is guilty of the contempt charged.
> 2. Except as otherwise provided in NRS 22.110, if a person is found guilty of contempt, a fine may be imposed on the person not exceeding $500 or the person may be imprisoned not exceeding 25 days, or both.
> 3. In addition to the penalties provided in subsection 2, if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.

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

> **NRS 22.110 Imprisonment until performance if contempt is omission to perform an act; penalty for failure or refusal to testify before grand jury.**
>
> 1. Except as otherwise provided in subsection 2, when the contempt 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:

> 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

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

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

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

23. 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 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

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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.").

24. 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.

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

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

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.

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

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

29. 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 possession of, and turns over to the Bank, in a manner that protects the vehicles 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.

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

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

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

Dated this 16th day of December, 2019

DISTRICT COURT JUDGE

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Respectfully submitted,

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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EXHIBIT B

EXHIBIT B

HARRY HILDIBRAND

Titles as on BBB		7/26/2018 0:15		
YEAR	MAKE	Model	Value	VIN
2007	CHEV	Corvette Z06	$ 35,000	1G1YY26E375121069
2007	Mercedes	M50 SUV	$ 11,000	4JGBB75E07A222537
1940	FORD	Coupe	$ 35,000	AZ162801
1957	CHEV	BEL AIR CONV. (FI)	$ 25,000	VC57O141640
1957	CHRYSLER	300 C CONV.	$ 35,000	3N571810
1955	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	THPNNU05291
1951	JAGUAR	XK 120 RACE CAR	$ 20,000	S671986
1957	OLDSMOBILE	98 ROCKET	$ 18,000	579M27685
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	31847L144085
1998	MARATHON	COACH	$ 129,875	2PCM3349XV1026183
2016	KAWASAKA	kr10	$ 11,700	JKAZX2A13FB505
		Total	$ 521,575	

SUPPORT FOR 206 A/B #46, PAGE 5

EXHIBIT 4

EXHIBIT 4

ORDR

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Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a Washington corporation,

Plaintiff/Judgment Creditor,

vs.

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

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

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

Date: February 18, 2020

Time: 9:00 a.m.

Introduction

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

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

Second, on February 5, 2020, Mr. Detwiler filed his "(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." The Bank filed its opposition on February 10, 2020, Mr. Detwiler filed his reply on February 11, 2020, and this Court held a hearing on February 12, 2020. At all points, Mr. Brenoch represented Mr. Detwiler, and John Bragonje of Lewis Roca Rothgerber Christie LLP represented the Bank.

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

Additional Findings of Fact

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

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

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

3. The resignation letter, furthermore, reinforces an aspect of the Court's earlier findings. 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 . . . ." (1/9/19 Findings of Fact, Conclusions of Law, and Final Judgment at Conclusion ¶ 3.)

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

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

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

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

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

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

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

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

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

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

The Court:	Okay. And each of these vehicles, the seven, are currently in the control or possession of Mr. Vega, then?
Mr. Larkin:	Yes.
The Court:	Okay. Any of the vehicles, do you have a specific location where they're –
Mr. Larkin:	I don't have an address or location. I suspect they're in wherever they were located or wherever he consolidated them to, whatever storage facility.
The Court:	Okay. And do you know who would have the knowledge of where these vehicles are located?
Mr. Larkin:	Mr. Vega or his agent, his repossession agent.
The Court:	Okay. And do you know who Mr. Vega's repossession agent is?
Mr. Larkin:	I don't. I don't know that.

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

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

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

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

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

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

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

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

18. The Court, however, will give Mr. Detwiler the maximum benefit of the doubt. The Court will regard the resignation letter as effective to terminate his service as HH's manager. The Court will consider Mr. Detwiler's agency for HH terminated for purposes of the Contempt Order from the time he tendered the letter to HH's registered agent on February 11, 2020.[2] The Court cannot regard the original transmission of the letter as effective because it was sent to persons (Mr. Foust, for example) that Mr. Detwiler previously said had no say whatsoever in HH's ownership or management.

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

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

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

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

Conclusions of Law

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

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

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

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

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

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

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IT IS SO ORDERED.

Dated this 16th day of March, 2020

DISTRICT COURT JUDGE

A-17-760779-F

ORDER AWARDING SANCTIONS AGAINST EDWARD M. DETWILER AND HALL PRADO, LLC.

Respectfully submitted,

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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EXHIBIT 5

EXHIBIT 5

JUDG
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Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a Washington corporation,

Plaintiff/Judgment Creditor,

vs.

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

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

ORDER AND JUDGMENT

☐ Non-Jury Disposed After Trial Start
☒ Non-Jury Judgment Reached
☐ Transferred before Trial
☐ Jury Disposed After Trial Start
☐ Jury Verdict Reached
☐ Other - _____

MH

ORDER AND JUDGMENT

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

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

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

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

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

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

Dated this 23rd day of March, 2020

DISTRICT COURT JUDGE

A-17-760779-F

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Respectfully submitted,

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EXHIBIT 6

EXHIBIT 6

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

BAKER BOYER NATIONAL BANK, a Washington corporation, Plaintiff, v. JAMES PATTERSON FOUST, JR., individually, Defendant.	CASE NO.: A-17-760779-F DEPT NO.: II **NOTICE OF APPEAL**

Notice is hereby given that Edward N. Detwiler ("Mr. Detwiler"), a non-party[1] to the underlying action, hereby appeals to the Supreme Court of Nevada from the following: (1) Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, Its Manager entered in this action on the 30th day of January, 2020; (2) Order Awarding Sanctions Against Edward N. Detwiler and Harry Hildibrand, LLC entered in this action on the 12th day of March, 2020; (3) Order and Judgment entered in this action on the 30th day of March, 2020; and (4) Order and Judgment entered in this action on April 1, 2020.

DATED: April 8, 2020.

HUTCHISON & STEFFEN

By */s/ Brenoch Wirthlin, Esq.*
BRENOCH WIRTHLIN, ESQ.
(NV SBN 10282)
10080 W. Alta Dr., Suite 200
Las Vegas, Nevada 89145
Attorneys for Non-party Edward Detwiler

[1] As will be further addressed in Mr. Detwiler's appellate briefs, motions and related papers, Mr. Detwiler maintains his non-party status in the underlying action and further reserves any and all of his defenses and arguments related thereto which were raised before the District Court. Regardless, Mr. Detwiler has standing to bring this appeal as the Orders, to which he seeks an appeal from, were improperly entered against him.

PROOF OF SERVICE

I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **NOTICE OF APPEAL** on the following parties, via the manner of service indicated below, on April 8, 2020:

Via Electronic Service through Odyssey E-filing System:

John Bragonje (JBragonje@lrrc.com)
Attorney for Plaintiff

Via US Mail:

James Foust
8175 Arville St.
Las Vegas, Nevada 89139
Phone No.: 310-490-4499
Defendant

Harry Hildibrand, LLC
3011 American Way
Missoula, Montana 59808
Phone No.: 406-327-0401
Third Party

Dated: April 8, 2020.

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

EXHIBIT 7

EXHIBIT 7

HUTCHISON & STEFFEN
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Attorneys for Non-party Edward Detwiler

IN THE EIGHTH JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

BAKER BOYER NATIONAL BANK, a Washington corporation, Plaintiff, v. JAMES PATTERSON FOUST, JR., individually, Defendant.	CASE NO.: A-17-760779-F DEPT NO.: II **CASE APPEAL STATEMENT**

1. Name of appellant filing this case appeal statement: Edward N. Detwiler ("Non-party Appellant" or "Mr. Detwiler").

2. Identify the judge issuing the decision, judgment, or order appealed from: Judge Richard Scotti, Department II of the Clark County District Court.

3. Identify each appellant and the name and address of counsel for each appellant: Non-party Appellant is the sole appellant and his counsel is Brenoch Wirthlin, Esq., Hutchison & Steffen, 10080 W. Alta Dr., Suite 200, Las Vegas, Nevada 89145.

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel): The Respondent is purportedly Baker Boyer National Bank, a Washington corporation (the "Bank" or

"Respondent")[1] and, presumably, its appellate counsel will be John Bragonje, Esq., Lewis Roca Rothgerber Christie, 3993 Howard Hughes Pkwy., Suite 600, Las Vegas, Nevada 89169.

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission): Mr. Wirthlin and Mr. Bragonje are both licensed to practice in Nevada.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court: Appellant retained Mr. Wirthlin to represent him in the District Court case and Mr. Wirthlin appeared in the District Court case on January 28, 2020; however, prior to such date, Appellant was unrepresented.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal: Appellant has retained Mr. Wirthlin represent him on the appeal.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave: No such request was requested or granted.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed): Foreign Judgment against non-appellant/Defendant James Foust was domesticated in the District Court on August 31, 2017. The first time a court order was entered in any way related to non-party Mr. Detwiler was January 9, 2019.

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[1] As set forth more fully in Non-Party Appellant's forthcoming motion for a stay, the Bank's claim to be a Washington corporation is false, resulting in the judgment in this matter against Non-part Appellant having been issued by the Trial Court to a non-existent entity. This fact alone renders the judgment against Non-party Appellant void *ab initio*.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

While Mr. Detwiler is a non-party to the underlying action,[2] in the Findings of Fact, Conclusions of Law and Final Judgment dated January 9, 2019 (the "January 2019 Order"), the Honorable Richard Scotti ("Trial Court") included Mr. Detwiler in the order to turnover certain vehicles ("Vehicles"). **However, in the January 2019 Order the Trial Court made multiple findings that Defendant James Foust ("Defendant Foust") – not Mr. Detwiler – owned, controlled and possessed all of the Vehicles**. Thus, the January 2019 Order ordered multiple individuals and entities to turnover the Vehicles, despite finding unequivocally that the Vehicles were "owned, controlled and possessed" by Mr. Foust, not Mr. Detwiler or the entity of which Mr. Detwiler formerly was a limited manager, Harry Hildibrand, LLC ("HH"). **Based upon said findings it was wholly inconsistent and a violation of Nevada law for the Trial Court to find Non-party Appellant in contempt for failing to turn over Vehicles which the Trial Court itself had found were "owned, controlled and possessed" by another individual, namely Defendant Foust.** In addition, the Trial Court's findings of contempt were in direct violation of Nevada law, as this Court has held that "[**a]n order on which a judgment of contempt is based must be clear and unambiguous**, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him." *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 80, 439 P.3d 397, 409 (2019). How can the January 2019 Order, upon which the later judgment and contempt order against Non-party

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[2] As will be further addressed in Mr. Detwiler's appellate briefs, motions and related papers, Mr. Detwiler maintains his non-party status in the underlying action and further reserves any and all of his defenses and arguments related thereto which were raised before the District Court. Regardless, Mr. Detwiler has standing to bring this appeal as the Orders, to which he seeks an appeal from, were entered against him.

Appellant are based, be "clear and unambiguous" when the January 2019 Order required Non-party Appellant to turn over the Vehicles which the Trial Court found were "owned, controlled and possessed" by a separate individual?

Although Mr. Detwiler never had the ability to turn over the Vehicles – which the Trial Court found repeatedly were "owned controlled and possessed" by Defendant Foust, **not Mr. Detwiler** – *and even resigned from HH in September of 2019*, the Bank sought to hold him in contempt of court based upon an alleged failure to comply with the Trial Court's January 2019 Order. However, this was not a good faith act by the Bank, as it is clear from the proceedings that the Bank took little to no action to pursue the actual judgment debtor, Defendant Foust, and instead unlawfully threatened Non-party Appellant with jail time on multiple occasions to coerce him into paying money to the Bank based upon a judgment against another entity, namely Defendant Foust.

Further, despite Non-party Appellant having filed his Objection pursuant to NRS 22.030 to Judge Richard Scotti entering any order of contempt against Non-Party Appellant – ***prior to entry of any order finding Non-party Appellant in contempt*** – the Trial Court refused to recuse himself despite NRS 22.030's unequivocal requirement that he do so. After such improper refusal, the Trial Court issued an Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, Its Manager (entered on January 30, 2020) (the "Contempt Order"), wherein the Trial Court held Mr. Detwiler in contempt, issued a bench warrant against him and ordered him to turn over his passport to his counsel within 24 hours.

On February 5, 2020, Mr. Detwiler filed a Motion requesting relief from the Contempt Order and, among other things, a new trial. In entering a decision on such Motion, the Trial Court issued an Order Awarding Edward N. Detwiler and Harry Hildibrand, LLC (entered on March 12, 2020) (the "Order for Sanctions") – from which Non-party Appellant is also appealing – wherein he vacated the Contempt Order and related bench warrant, finding that Non-party Appellant could not comply with the January 2019 Order because he had resigned from HH (and because in that

Order the Trial Court found that Defendant Foust owned and possessed the Vehicles) – an entity controlled by Defendant Foust. However, in an end run around the notice and hearing required in order to find that any sanctions were warranted, the Trial Court sanctioned Non-party Appellant the sum of $100,000 and attorneys' fees ("Sanctions Order") based on a purported finding that Non-party Appellant had committed contempt. Both were violations of Nevada law. In issuing the Sanctions Order, the Trial Court committed reversible error by ignoring NRS 22.100 which provides in relevant part that "**if a person is found guilty of contempt, a fine may be imposed on the person not exceeding $500 or the person may be imprisoned not exceeding 25 days, or both**". Nev. Rev. Stat. Ann. § 22.100 (West). Despite this clear limitation on penalties for purported contempt, as noted above the Trial Court sanctioned Non-party Appellant $100,000 – ***200 times the permissible award under NRS 22.100***. In addition, the Trial Court also awarded attorneys' fees in excess of $218,888.52 – ***over $118,000 of which were incurred prior to the January 2019 Order was even entered***! Thus, the Trial Court's attorney fee award included over $118,000 of fees and costs purportedly incurred by the Bank *before Mr. Detwiler was even ordered to do anything by the Trial Court*! The unlawful and draconianly punitive measures taken by the Trial Court highlight exactly the concern underscoring the requirement that a judge recuse him or herself upon notice of an objection pursuant to NRS 22.030. As this Court held in *Awad v. Wright*, 106 Nev. 407, 410–11, 794 P.2d 713, 715 (1990), *abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 5 P.3d 569 (2000):

> **Judge Shearing's refusal to recuse herself, coupled with her fining Awad $2,000.00 when the maximum fine provided by NRS 22.100 was only $500.00, are strong indications of a bias against Awad.** The purpose of the legislature in passing an automatic recusal was *precisely to avoid such situations*. Based on NRS 22.030 and on the McCormick case, Judge Shearing committed reversible error when she did not recuse herself when Awad requested her to do so. We therefore reverse the order holding Awad in contempt because Judge Shearing presided over a hearing regarding charges which arose outside the immediate view and presence of her court, and Awad filed a timely and proper objection to her presiding.

Id. (Internal footnote omitted) (emphasis added). Exactly the same situation is present here, only instead of awarding $2,000 (four times the limit) in violation of NRS 22.100's limitation of $500, the Trial Court here awarded **over 200 times the permissible limit under NRS 22.100 and attorneys' fees on top of that for a total amount of $318,888.52**, egregiously in excess of the permissible amount. In doing so the Trial Court "strong indications of a bias" against Mr. Detwiler and committed reversible error.

While Mr. Detwiler sought a stay of execution during the pendency of the appeal or waiver of a supersedeas bond before the Trial Court, the requested relief was denied by the Trial Court. Instead the Trial Court ordered Mr. Detwiler to post a supersedeas bond in the amount of $350,000.00 – in excess of even the egregious and unlawful "judgment" amount with no legal basis – and issued a 45 day stay from the date the Order Denying Stay/Waiver is entered with the District Court.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding: This case has not previously been the subject of an appeal or original writ proceeding in the Supreme Court.

12. Indicate whether this appeal involves child custody or visitation: Appeal does not involve child custody or visitation.

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13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: As there has been prior settlement discussions, this appeal involves the possibility of settlement.

DATED: April 16, 2020.

HUTCHISON & STEFFEN

By */s/ Brenoch Wirthlin, Esq.*
BRENOCH WIRTHLIN, ESQ.
(NV SBN 10282)
10080 W. Alta Dr., Suite 200
Las Vegas, Nevada 89145
Attorneys for Non-party
Edward Detwiler

PROOF OF SERVICE

I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **CASE APPEAL STATEMENT** on the following parties, via the manner of service indicated below, on April 16, 2020:

Via Electronic Service through Odyssey E-filing System:

John Bragonje (JBragonje@lrrc.com)
Attorney for Plaintiff

Via US Mail:

James Foust
8175 Arville St.
Las Vegas, Nevada 89139
Phone No.: 310-490-4499
Defendant

Harry Hildibrand, LLC
3011 American Way
Missoula, Montana 59808
Phone No.: 406-327-0401
Third Party

Dated: April 16, 2020.

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

EXHIBIT 8

EXHIBIT 8

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 RESPONSE TO MR. DETWILER'S ARGUMENTS

The Status of Baker Boyer National Bank

Mr. Detwiler has argued recently that Baker Boyer National Bank ("Baker Boyer") does not exist, apparently because Mr. Detwiler's counsel could not find evidence of registration of this entity with the Washington Secretary of State. Mr. Detwiler has threatened to raise this issue on appeal, apparently to claim that Baker Boyer is not the real party in interest. This is a totally false and fabricated charge—and it is indicative of the conspiratorial nature of the arguments leveled at Baker Boyer during the course of these proceedings and which have needlessly increased costs.

Baker Boyer National Bank is a federally chartered bank—and has been so since 1889. We include a copy of the original charter as Exhibit 1 hereto. As a federally chartered bank, Baker Boyer is registered with the Office of the Comptroller of the Currency (the "OCC"). The OCC maintains an official list of all active federally chartered banks. This list is easily accessible on the internet and is available at

https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/index-financial-institution-lists.html

The federal bank charter number associated with Baker Boyer on the official list (Exhibit 2)—3956—matches the number of on the original charter. (*Compare with* Exhibit 1.) There is no question but that Baker Boyer is an active, legitimate entity with the capacity to sue and to enforce contracts and other rights arising under applicable laws, as it has done in this case for many years now.

Harry Hildibrand, Jr. Is Not a Real Person

Mr. Foust and Mr. Detwiler gave extensive, sworn testimony over many years—at both deposition and trial—concerning their dealings with a person they referred to as Harry Hildibrand, Jr. This Mr. Hildibrand never appeared in this matter and never offered any writings, such as affidavits, declarations, or other signed papers. Recently the Bank has received information that caused it to question whether this Mr. Hildirbrand was even a real person. The Bank believes now that Mr. Hildibrand was simply another invention of Misters Foust and Detwiler to frustrate Baker Boyer's lawful collection efforts and to flout this Court's orders. Patti Miller, an accredited member of the National Association of Legal Investigators, offers a declaration (Exhibit 3) to the effect that Mr. Hildibrand was not a real person.

DATED this 3rd day of April, 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

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Lewis Roca ROTHGERBER CHRISTIE

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed and served the foregoing document entitled ***"Notice of Response to Mr. Detwiler's Arguments"*** through the Court's electronic filing system on all parties on the Court's e-service list.

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

Brenoch Wirthlin, Esq.
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Attorneys for Edward Detwiler

The Following Served via U.S. Mail:

HARRY HILDIBRAND, LLC
c/o Registered Agent
Jared S. Heggen
3011 American Way
Missoula, MT 59808

HARRY HILDIBRAND, LLC
c/o Registered Agent
Jared S. Heggen
P.O. Box 16270
Missoula, MT 59808

DATED this 3rd day of April, 2020.

/s/ *Luz Horvath*
An employee of Lewis Roca Rothgerber Christie LLP

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Lewis Roca ROTHGERBER CHRISTIE

Exhibit 1

Exhibit 1

TREASURY DEPARTMENT

Office of Comptroller of the Currency.

Washington, January 8th 1889.

Whereas, by satisfactory evidence presented to the undersigned, it has been made to appear that "The Baker-Boyer National Bank of Walla Walla," in the City of Walla Walla, in the County of Walla Walla, and ~~State of~~ Territory of Washington has complied with all the provisions of the ~~Revised~~ Statutes of the United States, required to be complied with before an association shall be authorized to commence the business of Banking:

Now therefore Jesse D. Abrahams, Deputy and acting Comptroller of the Currency, do hereby certify that "The Baker-Boyer National Bank of Walla Walla," in the City of Walla Walla, in the County of Walla Walla, and ~~State of~~ Territory of Washington is authorized to commence the business of Banking as provided in Section Fifty one hundred and sixty nine of the Revised Statutes of the United States.

In testimony whereof witness my hand and Seal of office this 8th. day of January 1889.

J. D. Abrahams

Deputy and Acting Comptroller of the Currency.

No. 2956.

Engraved & Printed at the Bureau, Engraving & Printing.

Exhibit 2

Exhibit 2

National Banks Active As of 2/29/2020

CHARTER NO	NAME	CITY	STATE	CERT	RSSD
8709	1st National Bank	Lebanon	OH	6646	480723
15592	Academy Bank, National Association	Kansas City	MO	19600	535753
25173	ADP Trust Company, National Association	Wilmington	DE	59194	5397639
25154	Affiliated Bank, National Association	Arlington	TX	34885	965789
14688	Albany Bank and Trust Company National Association	Chicago	IL	17230	2732
13790	Alerus Financial, National Association	Grand Forks	ND	3931	933256
14206	Amarillo National Bank	Amarillo	TX	14531	353555
16804	Amerant Bank, National Association	Coral Gables	FL	22953	83638
24470	Amerant Trust, National Association	Coral Gables	FL	57852	3266825
24369	American Bank and Trust Company, National Association	Davenport	IA	34955	2733263
16320	American Bank National Association	Dallas	TX	21567	494654
22286	American Bank, National Association	Lemars	IA	5800	345345
15820	American Bank, National Association	Corpus Christi	TX	20241	807955
17319	American Bank, National Association	Waco	TX	23886	307361
24456	American Commerce Bank, National Association	Bremen	GA	57686	3272956
25151	American Express National Bank	Sandy	UT	27471	1394676
23521	American First National Bank	Houston	TX	34656	2694681
15037	American Heritage National Bank	Long Prairie	MN	8843	61757
18613	American National Bank	Oakland Park	FL	26398	481430
15435	American National Bank	Omaha	NE	19300	660655
22553	American National Bank - Fox Cities	Appleton	WI	33812	2051127
16617	American National Bank & Trust	Wichita Falls	TX	22373	498362
9343	American National Bank and Trust Company	Danville	VA	6837	958727
24219	American National Bank of Minnesota	Baxter	MN	26499	306159
24716	American Plus Bank, National Association	Arcadia	CA	58469	3623110
24182	AMG National Trust Bank	Boulder	CO	57295	3015939
16625	Anahuac National Bank	Anahuac	TX	22381	424352
5525	Anna-Jonesboro National Bank	Anna	IL	3759	855844
8796	Armed Forces Bank, National Association	Ft. Leavenworth	KS	4666	983457
23006	Asian Pacific National Bank	San Gabriel	CA	33013	1462986
23695	Associated Bank, National Association	Green Bay	WI	5296	917742
23250	Associated Trust Company, National Association	Milwaukee	WI	27102	1629903
24425	Atlantic Capital Bank, National Association	Atlanta	GA	35525	3555695
5581	Austin Bank, Texas National Association	Jacksonville	TX	3276	548351
25139	Axiom Bank, National Association	Maitland	FL	31390	408875
3956	Baker Boyer National Bank	Walla Walla	WA	2987	69678
1253	Ballston Spa National Bank	Ballston Spa	NY	6959	505
25080	Banc of California, National Association	Santa Ana	CA	35498	200378
12152	BancCentral, National Association	Alva	OK	4033	251352
4975	Bank First, National Association	Manitowoc	WI	5304	594947
24077	Bank of America California, National Association	San Francisco	CA	25178	1443266
13044	Bank of America, National Association	Charlotte	NC	3510	480228
24153	Bank of Brenham, National Association	Brenham	TX	57102	3042234
10844	Bank of Bridger, National Association	Bridger	MT	2224	17950
16976	Bank of Brookfield-Purdin, National Association	Brookfield	MO	9385	236256
20415	Bank of Desoto National Association	Desoto	TX	26542	638355
14510	Bank of Hillsboro, National Association	Hillsboro	IL	16276	659341
4865	Bank of Houston, National Association	Houston	TX	3178	583754
24100	Bank of Southern California, National Association	San Diego	CA	57044	3076453
17548	Bank of Whittier, National Association	Whittier	CA	24211	209362
16643	BankChampaign, National Association	Champaign	IL	22434	436739

Prepared by Supervision Support

Exhibit 3

Exhibit 3

DECLARATION OF PATTI G. MILLER

1. I am an accredited member of the National Association of Legal Investigators. I make my living as a private investigator and paralegal. I have over thirty years of legal and investigative experience.

2. I am a licensed private investigator in the State of Arizona, license number 1538954.

3. I was asked by attorney John Bragonje to identify and locate an individual referred to as Harry Hildibrand, Jr.; I understand that said Harry Hildibrand, Jr. has been repeatedly referred as involved in the events concerned in Clark County, Nevada, district court case No. A-17-760779-F, *Baker Boyer National Bank v. James Patterson Foust Jr., et al*.

4. My investigation included, but was not limited to, investigative information database searches and other investigative sources to determine current identifying information and address information for Harry Hildibrand Jr.

5. The database searches I used (Westlaw, Accurint, TLO, etc.) compile information from credit histories, motor vehicle records, utilities, public records, phone records, property records, court records, employment information, motor vehicle records, driver's license information, recorded documents, and other forms of recorded information. I also utilized other reliable sources to obtain information on Harry Hildibrand Jr.

6. My findings determined that no individual exists in the United States with the name Harry Hildibrand, Jr. Further, I did not locate any Harry Hildibrand, Jr. throughout my searches which also cover worldwide databases and available information.

7. I was able to located two men named Harry Hildibrand in the United States through the United States Census records gathered by www.Ancestry.com; both individuals have been deceased for several decades.

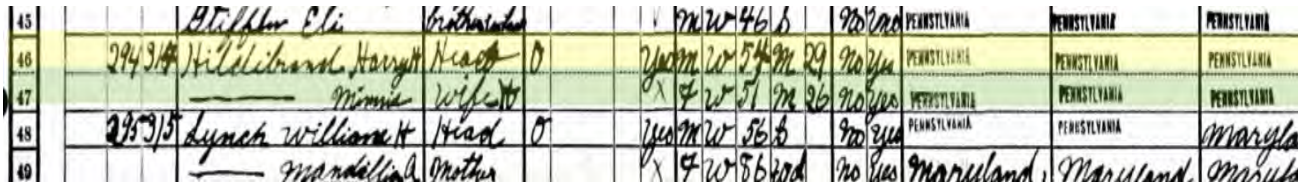
1930 United States Federal Census
1930S
View Image

Name **Harry H Hildibrand**
Birth location
Residence 1930 township city York Pennsylvania USA

1920 United States Federal Census
1920S
View Image

Name **Harry Hildibrand**
Birth location
Residence 1920 city Dundy Nebraska USA

8. Below is a screenshot from the 1930 United States Federal Census and Harry H. Hildibrand was residing in Pennsylvania and he was 54 years old. This person died in 1962.



9. Below is a screenshot from the 1920 United States Federal Census; it shows that a person named Harry Hildibrand was residing in Nebraska and that he was 14 years old at the time. Were he alive, this person would currently be 114 years old.

10. The investigative database search engines I use are an excellent source for compiling information on current and past residences of individuals and businesses. I believe the investigative search engines utilized, as well as additional information obtained through other sources which I employed in this search, have a high probability of accuracy. Further, I use

various databases to ensure that the information obtained is consistent (and because some investigative database search engines compile information from sources that others do not).

11. I believe at this time that I have exhausted all efforts to locate a person named Harry Hildibrand, Jr. Based on my searching, I do not believe that there is such a person as Harry Hildibrand, Jr.

12. I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 3rd day of April, 2020.

Patti G. Miller

EXHIBIT 9

EXHIBIT 9

STATE OF CALIFORNIA
CERTIFICATION OF VITAL RECORD

COUNTY OF LOS ANGELES
REGISTRAR-RECORDER/COUNTY CLERK

3052020005321 — STATE FILE NUMBER

CERTIFICATE OF DEATH
STATE OF CALIFORNIA
USE BLACK INK ONLY / PRINT CLEARLY / AVOID USE OF ABBREVIATIONS

3202019001143 — LOCAL REGISTRATION NUMBER

DECEDENT'S PERSONAL DATA

1. NAME OF DECEDENT - FIRST (Given)	2. MIDDLE	3. LAST (Family)
JAMES	PATTERSON	FOUST

AKA. ALSO KNOWN AS - Include full AKA (FIRST, MIDDLE, LAST)	4. DATE OF BIRTH (mm/dd/yyyy)	5. AGE Yrs	IF UNDER ONE YEAR: Months / Days	IF UNDER 24 HOURS: Hours / Minutes	6. SEX
JAMES PATTERSON FOUST JR.	05/09/1940	79			M

9. BIRTH STATE/FOREIGN COUNTRY	10. SOCIAL SECURITY NUMBER	11. EVER IN U.S. ARMED FORCES?	12. MARITAL STATUS/DOMP at time of Death	13. DATE OF DEATH (mm/dd/yyyy)	14. HOUR (24 hour)
TX	549-50-4161	☐ YES ☒ NO ☐ UNK	MARRIED	01/01/2020	1620

15. EDUCATION - Highest Level Degree (see instruction on back)	16. WAS DECEDENT HISPANIC/LATINO/A/SPANISH? (If yes, see instruction on back)	17. DECEDENT'S RACE - (up to 3 races may be listed) (see instruction on back)
SOME COLLEGE	☐ YES ☒ NO	WHITE

18. USUAL OCCUPATION - Type of work for most of life. DO NOT USE RETIRED	19. KIND OF BUSINESS OR INDUSTRY (e.g., grocery store, road construction, employment agency, etc.)	20. YEARS IN OCCUPATION
BUSINESS OWNER	COMPUTER PROGRAMMER	40

USUAL RESIDENCE

21. DECEDENT'S RESIDENCE (Street and number, or location)				
7 AVENIDA DE MAGNOLIA				
22. CITY	**23. COUNTY/PROVINCE**	**24. ZIP CODE**	**25. YEARS IN COUNTY**	**26. STATE/FOREIGN COUNTRY**
RANCHO PALOS VERDES	LOS ANGELES	90275	70	CA

INFORMANT

27. INFORMANT'S NAME, RELATIONSHIP	28. INFORMANT'S MAILING ADDRESS (Street and number, or rural route number, city or town, state and zip)
MIRIAM N. FOUST, WIFE	7 AVENIDA DE MAGNOLIA, RANCHO PALOS VERDES, CA 90275

SPOUSE/RDP AND PARENT INFORMATION

29. NAME OF SURVIVING SPOUSE/RDP-FIRST	30. MIDDLE	31. LAST (BIRTH NAME)	
MIRIAM	N.	AGUILAR	
32. NAME OF FATHER/PARENT-FIRST	**33. MIDDLE**	**34. LAST**	**35. BIRTH STATE**
JAMES	P.	FOUST	TX
36. NAME OF MOTHER/PARENT-FIRST	**37. MIDDLE**	**38. LAST (BIRTH NAME)**	**39. BIRTH STATE**
VERA	L	PUREFOY	TX

FUNERAL DIRECTOR/LOCAL REGISTRAR

39. DISPOSITION DATE (mm/dd/yyyy)	40. PLACE OF FINAL DISPOSITION		
01/16/2020	ST. JOHN FISHER CHURCH COLUMBARIUM 5448 CREST ROAD, RANCHO PALOS VERDES, CA 90275		
41. TYPE OF DISPOSITION(S)	**42. SIGNATURE OF EMBALMER**		**43. LICENSE NUMBER**
CR/REL	▶ NOT EMBALMED		-
44. NAME OF FUNERAL ESTABLISHMENT	**45. LICENSE NUMBER**	**46. SIGNATURE OF LOCAL REGISTRAR**	**47. DATE (mm/dd/yyyy)**
LIGHTHOUSE MEMORIALS & RECEPTIONS	FD1113	▶ MUNTU DAVIS, M.D	01/14/2020

PLACE OF DEATH

101. PLACE OF DEATH	102. IF HOSPITAL, SPECIFY ONE	103. IF OTHER THAN HOSPITAL, SPECIFY ONE	
ST FRANCIS MEDICAL CENTER	☒ IP ☐ ER/OP ☐ DOA	☐ Hospice ☐ Nursing Home/ICF ☐ Decedent's Home ☐ Other	
104. COUNTY	**105. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number, or location)**	**106. CITY**	
LOS ANGELES	3630 EAST IMPERIAL HWY	LYNWOOD	

CAUSE OF DEATH

107. CAUSE OF DEATH — Enter the chain of events — diseases, injuries, or complications — that directly caused death. DONOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE

		Time Interval Between Onset and Death
IMMEDIATE CAUSE (Final disease or condition resulting in death) →	(a) DEFERRED	(a) -
Sequentially list conditions, if any, leading to cause on Line A. Enter UNDERLYING CAUSE (Disease or injury that initiated the events resulting in death) LAST	(b)	(b)
	(c)	(c)
	(d)	(d)

108. DEATH WAS CAUSED BY:	109. WAS DECEDENT PREGNANT IN THE PAST YEAR?	110. DID TOBACCO USE CONTRIBUTE TO DEATH?	111. AUTOPSY PERFORMED?	112. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH?
	☐ YES ☐ NO ☐ UNK	☒ YES ☐ NO	2020-00033	
			110. BIOPSY PERFORMED? ☐ YES ☒ NO	
			111. AUTOPSY PERFORMED? ☒ YES ☐ NO	
			112. USED IN DETERMINING CAUSE? ☒ YES ☐ NO	

113. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 107: NONE

114. WAS OPERATION PERFORMED FOR ANY CONDITION IN ITEM 107 OR 113? (If yes, list type of operation and date.): NO

115. IF FEMALE, PREGNANT IN LAST YEAR? ☐ YES ☐ NO ☐ UNK

PHYSICIAN'S CERTIFICATION

116. I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE DEATH OCCURRED AT THE HOUR, DATE AND PLACE STATED FROM THE CAUSES STATED. Decedent Arrived (Spa): (a) mm/dd/yyyy; Decedent Last Seen Alive: (b) mm/dd/yyyy

117. SIGNATURE AND TITLE OF CERTIFIER: ▶

118. LICENSE NUMBER

119. DATE (mm/dd/yyyy)

120. TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE

CORONER'S USE ONLY

121. I CERTIFY THAT IN MY OPINION DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED.
MANNER OF DEATH: ☐ Natural ☐ Accident ☐ Homicide ☐ Suicide ☒ Pending Investigation ☐ Could not be determined

122. INJURED AT WORK? ☐ YES ☐ NO ☐ UNK

123. INJURY DATE (mm/dd/yyyy)

124. HOUR (24 hour)

125. PLACE OF INJURY (e.g., home, construction site, wooded area, etc.)

126. DESCRIBE HOW INJURY OCCURRED (Events which resulted in injury)

127. LOCATION OF INJURY (Street and number, or location, and city, and zip)

128. SIGNATURE OF CORONER / DEPUTY CORONER: ▶ REGINA AUGUSTINE

129. DATE (mm/dd/yyyy): 01/09/2020

130. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER: REGINA AUGUSTINE, DEP. CORONER

STATE REGISTRAR	A	B	C	D	E		FAX AUTH.#	CENSUS TRACT
						01000104409125		

CALOSANG02

This is to certify that this document is a true copy of the official record filed with the Registrar-Recorder/County Clerk.

Dean C. Logan

DEAN C. LOGAN
Registrar-Recorder/County Clerk

This copy is not valid unless prepared on an engraved border displaying the seal and signature of the Registrar-Recorder/County Clerk.

APR 23 2020

1000003657045

0007686338 - 02 - E

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

EXHIBIT 10

EXHIBIT 10

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

OPPOSITION TO NON-PARTY EDWARD DETWILER'S MOTION TO STAY EXECUTION OF ORDER FOR SANCTIONS PENDING APPEAL AND TO WAIVE SUPERSEDEAS BOND

Date: March 30, 2020
Time: 9:00 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion presents three principal issues, each of which, when considered, resolves in Baker Boyer National Bank's (the "Bank") favor. This Court should deny this motion for the following reasons.

First, granting a stay without bond is exceptionally rare and should occur only where a district court has absolute confidence that the judgment debtor will be able to promptly pay the full judgment, with interest, after an unsuccessful appeal. Here, Mr. Detwiler freely admits he lacks the funds to procure a bond or pay the judgment. This is fatal. Inability to pay a judgment due to a party's financial condition weighs in favor of *requiring* a bond, not waiving that requirement.

Second, the five *Nelson v. Heer* factors, which this Court must consider determining whether to reduce the amount of the bond or allow alternate security, essentially ask whether a judgment creditor can anticipate an easy route to collect its judgment. Here, Mr. Detwiler has engaged in studied and protracted disregard of this Court's orders, which led to his being held in contempt. Contumacious litigants merit no leniency. We have new evidence of this even since our last appearance that we will present in this paper.

Finally, to secure a stay of execution under *Hansen v. District Court*, a debtor must show that an appeal would be pointless without it. A debtor cannot simply argue that she will lose money if the judgment is enforced. Enforcing the judgment is the whole point of a civil action. Though a party can choose to appeal, the appeal does not stop enforcement of the judgment. Despite this, Mr. Detwiler complains that he will be "irreparably harmed" simply because he claims he cannot afford a bond premium and because he claims he could never pay a judgment anyway. Once again, such talk militates against, not in favor of, a stay.

II. STANDARD

Generally, a stay of the judgment lasts just 30 days; after that, the prevailing party may execute on the judgment. NRCP 62(a).

Pursuant to NRCP 62(d), when an appeal is taken the appellant, by giving a supersedeas bond, may obtain a stay. NRCP 62(d). Bond and stay applications are normally initiated in the district court. NRAP 8(a).

III. MR. DETWILER IS NOT ENTITLED TO A TOTAL SUPERSEDEAS BOND WAIVER

The normal way to stay a money judgment is to post a supersedeas bond in an amount that fully secures the judgment, plus any post-judgment interest, through the duration of the appeal. NRCP 62(d). Such a bond protects the judgment creditor pending an appeal, while maintaining the status quo for the judgment debtor. Allowing a party to stay execution of the judgment without posting any bond whatsoever usually violates those principles because it leaves the judgment creditor without protection. So a stay without

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bond is exceptionally rare and should occur only where a district court has absolute confidence that the judgment debtor will be able to promptly pay the full judgment, with interest, after an unsuccessful appeal. Mr. Detwiler cannot demonstrate any of these factors. A total waiver of the bond would not protect the Bank's right to its judgment.

A. Mr. Detwiler Has Totally Failed to Demonstrate His Ability to Pay in the Event of an Unsuccessful Appeal

The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay. *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005). Inability to pay a judgment due to a party's financial condition weighs in favor of *requiring* a bond, not waiving that requirement. *Avirgan v. Hull*, 125 F.R.D. 185, 187 (S.D. Fla. 1989) (requiring a supersedeas bond because uncertain financial condition defeats the contention that a bond is unnecessary or alternative collateral properly could be posted); *see also In re Carlson*, 224 F.3d 716, 719 (7th Cir. 2000) (denying total waiver of bond and holding lack of confidence that party will eventually pay required bond). Total waiver of the bond requirement should be permitted only where the appellant has a clearly demonstrated ability to satisfy the judgment in the event the appeal is unsuccessful and there is no other concern that the other party's rights will be compromised by a failure to adequately secure the judgment. *In re Carlson*, 224 F.3d 716, 719 (7th Cir. 2000); *see also Fowler ex rel. Fowler v. Unified Sch. Dist. No. 259*, 907 F. Supp. 348, 351 (D. Kan. 1995) (waiving bond because the party had a well-funded risk management fund which could be easily accessed if the judgment was affirmed and had an effective procedure for paying the judgment within thirty days following completion of appellate proceedings), *rev'd on other grounds*, 107 F.3d 797 (10th Cir. 1997).

B. Mr. Detwiler's Candid Admission that He Cannot Pay the Judgment Dooms His Request

Mr. Detwiler has not demonstrated his ability to satisfy the judgment in the event of an unsuccessful appeal. In fact, his attorney argues the total opposite. Mr. Detwiler, we

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are frankly told, "does not have the ability to pay the judgment or the bond associated with it." (Mot. to Stay, 5:18-19.) Mr. Detwiler repeats this confession again and again in his papers. Mr. Detwiler's insistence that he is financially insecure negates his argument that a total waiver of a bond is warranted. His admission, in fact, ends the analysis. Accordingly, this Court should deny a stay of execution without the posting of a supersedeas bond in the full amount of the judgment.

IV. MR. DETWILER IS NOT ENTITLED TO A REDUCED BOND AMOUNT

Mr. Detwiler also requests the amount of his supersedeas bond be reduced to just $500. (Mot. to Stay, 6:5-7.) Nevada's *Nelson* decision forbids this.

A. The *Nelson* Factors Do Not Weigh in Favor of Reducing Mr. Detwiler's Bond Amount

To determine whether to reduce or require an alternative to a bond a district court considers five factors: (1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position. *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005). *Nelson* gives the district court to discretion to allow "reliable alternative" for security. 121 Nev. at 835, 122 P.3d at 1254. The ultimate goal is to provide security that will maintain the status quo and protect the judgment creditor pending an appeal. 121 Nev. at 835-26, 122 P.3d at 1254. Mr. Detwiler cannot show that the factors weigh in favor of allowing a stay of execution of judgment with a reduced bond amount. Accordingly, the Court should deny this motion.

1. *Complexity of the Collection Process*

A Court may waive or provide an alternative for the security if the collection process for the alternative is simple. *See Dillon v. City of Chicago*, 866 F.2d 902, 905 (7th

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Cir. 1988) (waiving bond requirement where City submitted affidavits to the district court, which the plaintiff did not dispute, outlining the mode of payment of employment discrimination judgments). The order Mr. Detwiler claims he will appeal arose after more than one full year of contempt proceedings. The entire record and history of this case compel the conclusion that future collection will be—as it has been in the past—surpassingly difficult.

Indeed, just since the last time we were before this Court, the Bank has learned of additional malfeasance. Harry Hildibrand, LLC ("HH") (necessarily with the cooperation or authorization of its only agents, Mr. Foust and/or Mr. Detwiler) auctioned two of the cars that are the subject of this Court's orders, a 1951 Jaguar XK120 and a 1971 DeTomaso Pantera, which collectively fetched $132,000 in August, 2019. (*See* email from Mr. D. Alcazar, CEO of Russo & Steel, Ex. 1 hereto.) The auction house indicated the cars came from HH. (*Id.*) This auction occurred, of course, well after this Court's turnover order (January, 2019), after the contempt trial (April and May, 2019), and even after the final contempt order had issued against Mr. Foust (June, 2019). Critically, the auction occurred before Mr. Detwiler claims he resigned as HH's manager on or about September 20, 2019.[1] The Bank expects to develop more evidence like this as it continues its efforts to locate and seize the vehicles.

The Bank should just collect its judgment against Mr. Foust, Mr. Detwiler urges, making collection simple. (Mot. to Stay, 7:11-16.) This is a false choice. The Bank now has two independent orders or judgments to collect, one against Mr. Detwiler and HH ($318,855.52), on the one hand, and one against Mr. Foust and his marital community (almost $1.4 million), on the other hand. Mr. Detwiler seeks a bond reduction, not Mr. Foust, so Mr. Detwiler must speak to the collectability of his separate, unique judgment. His motion does not even attempt that analysis. Further, Mr. Detwiler fails to articulate how a reduced bond amount would allow for a more simple collection process. Therefore,

[1] While Mr. Detwiler claimed he resigned as HH's manager on September 10, 2019, this Court ruled that the resignation was effective no earlier than February 11, 2020. (*See* 3/12/20 Order Awarding Sanctions, ¶ 18, on file herein.) Either way, Mr. Detwiler was in charge of HH at the time of this order-flouting auction.

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this factor weighs in favor of denying a stay of execution with a reduced bond.

2. ***The Amount of Time Required to Obtain the Judgment***

A Court may waive or reduce a bond where the judgment will still be obtained promptly. *Dillon*, 866 F.2d at 905 (holding a bond was not required where the entire process of payment of the judgment and fees and costs would take less than thirty days, and was guaranteed to be paid from a dedicated fund). Mr. Detwiler fails to demonstrate how a reduced bond amount would allow the Bank to recover its judgment promptly. Conversely, a reduced bond amount (the $500 requested) would permit the Bank to recover only a fraction—far less than one percent—of the judgment in a timely manner. The Bank would then have to spend a considerable amount of time attempting to collect the additional 99.99 percent of the judgment. Given that Mr. Detwiler personally contributed to this unnecessarily long collection process, as this Court has recorded in its two orders holding him in contempt, this factor weighs in favor of denying a stay of execution without a bond or with a reduced bond.

3. ***There is a lack of confidence in Mr. Detwiler's ability to pay***

Where a court lacks confidence in a party's ability to pay, the party should post a bond for the full value of the judgment. *In re Carlson*, 224 F.3d 716, 719 (7th Cir. 2000). Mr. Detwiler's motion generally, and his argument on for this *Nelson* factor specifically (*see* Mot. to Stay, 8:13-28), freely admit that he "has no ability to pay this now or even any foreseeable ability to pay in the future." (*Id.*) In other words, Mr. Detwiler explicitly concedes that he has no grounds to reduce or eliminate the bond requirement under *Nelson*. This factor weighs in favor of denying a stay of execution without a bond or with a reduced bond.

4. ***Mr. Detwiler's ability to pay the judgment is not plain***

Parties who demonstrate a clear ability to satisfy the judgment in the event the appeal is unsuccessful are entitled to reliable alternative to a full bond. *In re Carlson*, 224 F.3d at 719; *see also Fowler*, 907 F. Supp. at 351. For instance, the court in *Avirgan v. Hull*, noted that where a party would have difficulty maintaining the same state of

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solvency through the appellate process, the court must require the movant to post a supersedeas bond. 125 F.R.D. at 187. Further, the *Dillon* court, the inspiration for our *Nelson* decision, allowed a waiver of the bond where a dedicated fund existed that guaranteed payment. 866 F.2d 902 at 905.

Here again, Mr. Detwiler writes this opposition for us. He says of this *Nelson* factor that, "[a]s mentioned above," he "does not have the ability to pay the sanctions and attorneys' fees, nor does he have the ability to pay for a supersedeas bond." (Mot. to Stay, 8:21-22.) This factor, too, weighs in favor of denying a stay of execution without a bond or with a reduced bond.

5. *Mr. Detwiler has not proven a precarious financial situation affecting other creditors*

A precarious financial situation includes the inability to remain in the same state of solvency throughout the appeal. *Avirgan*, 125 F.R.D. at 187. Mr. Detwiler admits to no other creditors. His counsel makes the naked claim that posting a supersedeas bond "will impair his ability to pay other creditors and debts, ***if any***." (Mot. to Stay, 13:12-13 (emphasis supplied).) Counsel's argument is not competent evidence of solvency or risk to other creditors. *See* EDCR 2.21 (requiring "factual contentions involved in any pretrial or post-trial motion" to be supported by declaration, affidavit, deposition answer, and written discovery responses); *Nevada Ass'n Servs., Inc. v. Dist. Ct.*, 130 Nev. 949, 957, 338 P.3d 1250, 1255 (2014) ("Arguments of counsel, however, are not evidence and do not establish the facts of the case.").

This is especially so when the counsel's argument on its face establishes that there *are* no other creditors for whom a bond might be destabilizing. Our rules of civil procedure do not permit the waiving of even something as trifling as filing fees without a sworn affidavit to proceed in forma pauperis. NRS 12.015. This Court must forbid Mr. Detwiler's gambit to breeze by this *Nelson* prong with one sentence of counsel argument.

V. MR. DETWILER IS NOT ENTITLED TO A STAY

In deciding whether to issue a stay, a court generally considers (1) whether the

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object of the appeal or writ petition will be defeated if the stay is denied; (2) whether appellant will suffer irreparable or serious injury if the stay is denied; (3) whether respondent will suffer irreparable or serious injury if the stay is granted; and (4) whether appellant is likely to prevail on the merits in the appeal or writ petition. *Hansen v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000).

A. The Object of Mr. Detwiler's Appeal Will Not be Defeated

The object of Mr. Detwiler's appeal will not be defeated if a stay is denied. *C.f.* NRAP 8(c)(1). For this factor to apply, the denial of a stay would have to make "any victory on appeal . . . hollow." *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252, 89 P.3d 36, 39 (2004); *Hansen*, 116 Nev. at 658, 6 P.3d at 986. Here, however, no appellate issues depend on a stay; if they were preserved at trial, they can be raised on appeal, even if the Bank in the meantime executes on the judgment. The judgment against Mr. Detwiler involves an award of money. If a stay is denied Mr. Detwiler will merely be required to comply with the judgment. Accordingly, the object of the appeal will still be intact.

B. Mr. Detwiler Will Not Suffer Irreparable Harm

Mr. Detwiler would not suffer irreparable or serious injury if the stay is denied. "Mere injuries, however substantial, in terms of money . . . necessarily expended in the absence of a stay are not enough" to show irreparable harm. *Hansen*, 116 Nev. at 658, 6 P.3d at 987 (quoting *Wisconsin Gas Co. v F.E.R.C.*, 758, F.2d 699, 674 (D.C. Cir 1985)).

Despite this universally recognized standard, Mr. Detwiler casts his supposed harm exclusively in financial terms. "Paying for a supersedeas bond in the full amount," Mr. Detwiler contends, would interfere with his "ability to prosecute the appeal." (Mot. to Stay, 12:19-19.) Alleged financial hardship is simply not a recognized "irreparable harm" under Nevada law (or the decisions of other jurisdictions for that matter).

Mr. Detwiler also again conjures the false narrative of a double recovery. The Bank cannot "double-dip" by collecting the judgment against Mr. Foust and Mr. Detwiler, he complains. The Bank has two judgments now; it can lawfully collect both. That is not

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double recovery. There is no irreparable harm on this score, either.

C. In Contrast, the Bank Will Suffer Irreparable Harm

There will be a serious risk of injury to the Bank if Mr. Detwiler's stay is granted. Mr. Detwiler stands in contempt of this Court. He actively frustrated the Bank's efforts to collect the underlying debt for years. This Court ultimately concluded that Mr. Detwiler and HH followed a contumacious, conscious, willful, and deliberate policy throughout this litigation of cynical disregard and disdain of this Court's orders, particularly the order to turnover and surrender certain vehicles to the Bank, as detailed in the Court's order and judgment of January 9, 2019, all of which this Court memorialized in two lengthy orders issued on January 30, 2020, and March 12, 2020. To stay the execution now would exonerate Mr. Detwiler when he has repeatedly demonstrated his refusal to be forthcoming and honest. A stay would only embolden a known bad actor. Thus, this factor weighs in favor of denying a stay of execution.

D. Mr. Detwiler Has Failed to Show That He Is Likely to Prevail on the Merits

When moving for a stay pending an appeal or writ proceedings, the movant must present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay. *Hansen*, 116 Nev. at 659, 6 P.3d at 987.

Mr. Detwiler presents no new argument on this critical point. Instead, Mr. Detwiler merely recycles the issues he claims he will present on appeal from his prior briefs. Contempt orders are reviewed under the difficult abuse of discretion standard. *See In re Water Rights of the Humboldt River*, 118 Nev. 901, 906–07, 59 P.3d 1226, 1229–30 (2002) (explaining that the district court has "inherent power to protect dignity and decency in its proceedings, and to enforce its decrees" and because it has particular knowledge of whether contemptible conduct occurred, its contempt decisions are reviewed for an abuse of discretion). Mr. Detwiler fails to discuss how he will overcome the years-long evidentiary record against him under the applicable standard. Accordingly, this factor

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weighs in favor of denying a stay of execution without any bond.

Mr. Detwiler has not been candid with the Court, none of the *Hansen* factors weigh in his favor, and, accordingly, he is not entitled to a stay of execution without a bond.

VI. CONCLUSION

Mr. Detwiler presents no compelling reasons to grant a stay of execution or a total waiver of the normal bond requirement. This Court should deny a stay pending appeal and require Mr. Detwiler to post a bond or, failing that, to be subject to execution.

DATED this 27th day of March, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ John E. Bragonje*

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

Attorneys for Plaintiff Baker Boyer National Bank

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Las Vegas, NV 89169-5996
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CERTIFICATE OF SERVICE

Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed and served the foregoing document entitled **"OPPOSITION TO NON-PARTY EDWARD DETWILER'S MOTION TO STAY EXECUTION OF ORDER FOR SANCTIONS PENDING APPEAL AND TO WAIVE SUPERSEDEAS BOND"** through the Court's electronic filing system on all parties on the Court's e-service list.

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

Brenoch Wirthlin, Esq.
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
10080 W. Alta Drive, Suite 200
Las Vegas, NV 89145
bwirthlin@hutchlegal.com
Attorneys for Edward Detwiler

The following served via U.S. Mail:

HARRY HILDIBRAND, LLC
c/o Registered Agent
Jared S. Heggen
3011 American Way
Missoula, MT 59808

HARRY HILDIBRAND, LLC
c/o Registered Agent
Jared S. Heggen
P.O. Box 16270
Missoula, MT 59808

DATED this 27th day of March, 2020.

/s/ *Luz Horvath*
An employee of Lewis Roca Rothgerber Christie LLP

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Las Vegas, NV 89169-5996
Lewis Roca ROTHGERBER CHRISTIE

Exhibit 1

Exhibit 1

DECLARATION OF JOHN E. BRAGONJE

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

1. I am an attorney licensed to practice law in the State of Nevada and am a partner of the law firm of LEWIS ROCA ROTHGERBER CHRISTIE LLP. I am counsel to the plaintiff and judgment creditor Baker Boyer National Bank (the "Bank") in the lawsuit styled *Baker Boyer National Bank v. Foust*, Clark County, Nevada, district court case number A-17-760779-F.

2. As part of the Bank's continuing efforts to repossess the vehicles at issue in this lawsuit, I sent, on or about March 13, 2020, notice to certain auction houses that the Bank has recently learned were potentially doing business with Mr. Foust, Harry Hildibrand, LLC, and/or Mr. Detwiler. A true and correct copy of the correspondence is attached hereto as Exhibit "B."

3. One of the addressees, Russo & Steele, responded through an email sent by its CEO and owner, Drew Alcazar. A true and correct copy of this correspondence is attached hereto as Exhibit "A."

4. The letter and email attached to this declaration and true and correct copies of the originals.

5. Further your declarant saith naught.

DATED this 27th day of March, 2020.

JOHN E. BRAGONJE

Exhibit A

Exhibit A

Bragonje, John

From: Drew Alcazar <Drew@russoandsteele.com>
Sent: Tuesday, March 17, 2020 2:11 PM
To: Bragonje, John
Cc: 'golexa@jsslaw.com'
Subject: FW: Notice Letter re: James P. Foust
Attachments: 20200316145902247.pdf

[EXTERNAL]

Dear Mr. Bragonge,

Our Law Firm forwarded your correspondence attached.

Please be kindly advised – of the vehicles listed the Exhibits, this is the past disposition relating to Russo and Steele:

6438 - Monterey Auction, August 2006 (Show No sale)

6438		1957	Chevrolet	Bel Air	Convertible

8098 - Monterey Auction, August 2019 (Showing sold)

8098	TH263	1971	DeTamaso	Pantera	Coupe

6444 - Monterey Auction, August -2006 (Showing No Sale) - RECONSINGED 8097 – Monterey Auction, August – 2019 (Showing Sold)

6444		1951	Jaguar	XK 120	Roadster

Consignment Number 8098 – 1971 DeTomaso Pantera Coupe, Sold for $65,000.00 and 8097 – 1951 Jaguar XK120, Sold for $67,000.00.
Both vehicles were Titled to Harry Hildibrand LLC. Provided State of Montana Titles were fee of any liens or recorded encumbrances.

Should you require any further information, please contact me directly.
Sincerely,
Drew

Andrew M. Alcazar
CEO/Owner
Russo and Steele, LLC

Collector Automobile Auctions
7722 East Gray Road, Suite C
Scottsdale, AZ 85260

www.russoandsteele.com
O: 602-252-2697 ext. 321
F: 602-252-6260

From: Olexa, Garrett <GOlexa@jsslaw.com>
Sent: Monday, March 16, 2020 2:08 PM
To: Drew Alcazar <Drew@russoandsteele.com>
Subject: Notice Letter re: James P. Foust

Drew,

Please review the attached letter and the enclosures accompanying the same which was received in our office today.

Garrett J. Olexa
golexa@jsslaw.com
vCard | bio

P 602.262.5863 | **F** 602.495.2683

Jennings, Strouss & Salmon, P.L.C.
16150 North Arrowhead Fountains Center Drive, Suite 250
Peoria, AZ 85382-4754
jsslaw.com | map

Jennings Strouss
LAW FIRM

Kindly consider the environment before printing this email.

Exhibit B

Exhibit B

Lewis Roca
ROTHGERBER CHRISTIE

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John Bragonje
Partner
Admitted in Nevada
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March 13, 2020

Our File Number: 21322-00108

VIA U.S. MAIL
VIA E-MAIL (JIMLEZIE@GMAIL.COM; TOMLARKIN28@GMAIL.COM)

CONFIDENTIAL

James Philip Lezie
2512 Artesia Blvd., Ste. 210
Redondo Beach, CA 90278-3280

Tom Larkin
12250 Corte Sabio, Number 2201
San Diego, CA 92128

Barrett-Jackson Auction Company, L.L.C.
Attn: Legal Department
c/o Capitol Corporate Services, Inc.
8825 N. 23rd Ave., Suite 100
Phoenix, AZ 85021

Russo and Steele, LLC
Attn: Legal Department
c/o Jennings Strouss & Salmon PLC 16150
N. Arrowhead Fountains Center Dr., Ste 250
Peoria, AZ 85382

Attn: Legal Department
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

RE: FRAUD ALERT AS TO VEHICLES PURPORTEDLY OWNED BY JAMES P. FOUST; NAOMI FOUST; HARRY HILDIBRAND, LLC; STARDUST CLASSIC, LLC; OR RON VEGA

To Whom It May Concern:

The purpose of this letter is to warn you about a case of fraud that may affect your businesses. We respectfully request that you refuse any dealings with respect to vehicles listed in Exhibit 1 to this letter because they are stolen. We provide additional details below and welcome any inquiries you may have.

We Are Attorneys Representing a Bank that Now Owns the Vehicles.

We represent Baker Boyer National Bank (the "Bank"). James P. Foust received a loan in the original amount of $1,077,600 from the Bank. After his refusal to repay the loan, the Bank obtained a judgment in Washington State on July 20, 2017. The judgment is against both Mr. James P. Foust and his marital community and is presently valued at approximately $1.4 million. The judgment was later registered or enrolled in the courts of the States of Nevada and California on August 31, 2017, and April 12, 2018, respectively.

The Vehicles Were Ordered to Be Surrendered to the Bank to Satisfy a Judgment.

When he applied for the loan, Mr. Foust represented to the Bank that he owned a collection of 59 expensive, rare, and exotic vehicles, including Corvettes, Shelby Cobras, a Cadillac, Mercedes, Porsches, and Lamborghinis. In response to court orders to turn over the vehicle collection to satisfy the judgment, Mr. Foust claimed he had sold all vehicles to an entity called Harry Hildibrand, LLC and other third parties or that a company called StarDust Classic, LLC or a person called Ron Vega possessed the cars. The Nevada court conducted multiple trials over the next two years to resolve these issues and the competing claims to the cars. Ultimately, the Nevada court ruled that Mr. Foust had had lied repeatedly under oath and had engaged in fraudulent dealings designed to frustrate the Bank's lawful collection efforts. The court ruled that Mr. Foust still possessed and controlled all the vehicles and ordered him and his agents—Harry Hildibrand and its manager Mr. Edward Detwiler, StarDust, and Ron Vega—to surrender all vehicles to the Bank.

When these defendants refused to obey the court's orders, they were held in contempt: Mr. Foust was ordered to be incarcerated until he complied, and Mr. Detwiler was personally fined $100,000. These persons are the worst kinds of scofflaws and frauds; activities such as theirs make lending more expensive for everyone. A list of the vehicles ordered to be surrendered is included as Exhibit 1 to this letter. We collect the surrender order and the contempt orders in Exhibit 2.

Mr. Foust and His Associates Continue to Defy Court Orders.

We are given to understand that despite the court's repeated orders over many years, Mr. Foust's wife, Naomi Foust, and potentially certain other of Mr. Foust's associates involved in the proceedings, intend to sell the vehicles that are the subject of the court's turn over and contempt orders. We understand that Mr. Foust has previously done business with Russo and Steele and The Hagerty Group, LLC. We believe these persons may intend to use other auction houses such as Barret Jackson. Given the extensive campaign of fraud waged by Mr. Foust, Mr. Detwiler, and their associates, we are writing to ask that you refuse to do any business with respect to these vehicles, including insuring them or offering them for sale or auction at any time. We ask that you cooperate, as responsible corporate citizens, so that the Bank may continue the lawful repossession of this collateral. The Bank intends to sue any alleged transferee of these cars to quiet title in its name, to recover damages for fraudulent transfer, and any other appropriate remedy.

The Bank Issues a Separate Warning for Mr. Foust's Associates.

Quite separately, we warn the other individual persons addressed in this letter—not the businesses. We know from the Nevada court proceedings that you, Mr. Lezie and Mr. Larkin, have assisted Mr. Foust and Mr. Detwiler in their multi-year campaign of deception. The Bank will exercise all lawful means to hold you personally accountable for any continued cooperation in this conspiracy, including any continuing attempt to sell or abscond with the vehicles. We think by now you understand the Bank's resolve, so you know this is no idle comment.

Conclusion.

We thank you businesses for your attention and anticipated cooperation. I can be reached at the contact information indicated in this letter. We would be pleased to address any concerns or questions you may have. Thank you for your anticipated cooperation.

Yours very truly,

John E. Bragonje
Lewis Roca Rothgerber Christie LLP

JB

EXHIBIT 11

EXHIBIT 11

Electronically Filed
5/18/2020 6:57 AM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
****

Baker Boyer National Bank, Plaintiff(s) vs. James Foust, Jr., Defendant(s)	Case No.: A-17-760779-F Department 2

NOTICE OF HEARING

Please be advised that the Application for Charging Order Against All Nevada Limited Company Membership Interests of Edward N. Detwiler in the above-entitled matter is set for hearing as follows:

Date: June 22, 2020

Time: Chambers

Location: RJC Courtroom 03B
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Kadira Beckom
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Kadira Beckom
Deputy Clerk of the Court