

Case No. 81594

In the Supreme Court of Nevada

EDWARD N. DETWILER,
Appellant,

vs.

BAKER BOYER NATIONAL BANK, a
Washington corporation,
Respondent.

Electronically Filed
Sep 09 2020 04:25 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court Case No.
A760779

MOTION TO DISMISS APPEAL

This Court has already dismissed one appeal from this appellant for lack of jurisdiction. This current attempt suffers the same fatal defects—and new flaws, too. This is an appeal from a charging order issued pursuant to NRS 86.401. Such orders are, by their nature, interlocutory. Even assuming it were final, the appellant is a nonparty seeking review of a contempt-related order, meaning the only mode of appellate review available is an original writ proceeding (which appellant has already instituted in a related case). Finally, even assuming this appeal were substantively proper, it is moot. The appellant argued that the charging order violated the Governor’s pandemic-inspired moratorium against collecting judgments, which expired months ago. This appeal should, therefore, be immediately dismissed.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

This Is a Foreign Judgment Collection Action

In 2013, respondent Baker Boyer National Bank (the “Bank”) loaned over \$1 million to James P. Foust, Jr. (“Debtor”). (Ex. 1, p. 2.) The Debtor refused to repay the loan, and the Bank obtained \$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 cars like a Ferrari, a Porsche, and a Lamborghini. (*Id.*) But when ordered to surrender the vehicles, the Debtor claimed he had already sold them to Harry Hildibrand, LLC (the “Fraudulent Transferee”) and others. (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), “without

the necessity of an independent action,” NRS 31.070(2).¹ The Fraudulent Transferee insisted that it was a bona fide purchaser that had acquired the vehicles at arm’s length, cutting off the Bank’s claim.

Detwiler Testified as Manager of the Fraudulent Transferee

To resolve the competing claims to the vehicles, the district court ordered three depositions (including the appellant’s); conducted about ten standard hearings with parties present (and many more in chambers); and received evidence on six days between February and November, 2018. (Ex. 2, p. 10–11.) The appellant, Edward N. Detwiler, gave sworn testimony on four occasions (*id.*) and participated in all proceedings in a representative capacity—as the Fraudulent Transferee’s manager. Detwiler was never personally named as a party.

The Debtor 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 (the “Turn-Over Order”). (Ex. 1,

¹ *See also Elliot v. Denton & Denton*, 109 Nev. 979, 980, 860 P.2d 725, 726 (1993).

p. 22.) No one appealed the Turn-Over order; it is final in all respects.

Detwiler Was Held in Contempt

While under oath, Detwiler for years disclaimed any knowledge or control of the collection. (Ex. 3, p. 10.) Apparently believing the district court would be none the wiser, Detwiler, as manager, subsequently put the Fraudulent Transferee into bankruptcy and listed 20 of the vehicles as estate assets. (Ex. 3, p. 6–7.) Detwiler also gave sworn testimony in the bankruptcy about his access to and care for the vehicles. (Ex. 3, p. 7–8.) The district court received this unexpected information and cited his stunning contradictions as perjury (Ex. 3, p. 10; Ex. 4, p. 3–4), and regarded the dramatic bankruptcy court revelations as incontrovertible evidence of Detwiler’s ability to comply with the Turn-Over Order (Ex. 4, p. 5–6.)

Detwiler’s Perjury Prevented the Bank from Collecting Its Judgment

Detwiler perpetuated his ruse for so long that Debtor, who was also held in contempt (Ex. 5), died (Ex. 6), even as cars were sold in violation of orders (Ex. 7). Detwiler further perjured himself by inventing the existence of a supposed owner of the Fraudulent Transferee (Ex. 8)

from whom he said he was taking direction, even though compelling evidence, generated by Detwiler himself, showed he was conspiring with Debtor (Ex. 4, p. 3–4).

The District Court Ordered Detwiler to Make Compensation for His Contempt

The district court assessed Detwiler \$218,855.52 in attorney fees and ordered him to pay \$100,000 to the Bank (Ex. 9; the “Contempt Order”), about one fifth of the value of the vehicles Detwiler listed as bankruptcy estate assets. (Ex. 3.)

This Court Has Already Dismissed Detwiler’s First Appeal

This Court dismissed Detwiler’s first appeal for lack of jurisdiction because, as a nonparty appealing a contempt ruling, he was required to seek appellate review through a writ. (*Detwiler v. Baker Boyer National Bank*, No. 81017 (Document 20-17193).) Detwiler subsequently filed a writ petition, which is currently in the briefing stage. (See No. 81220.)

Detwiler Now Appeals from an NRS 86.401 Charging Order

In an effort to enforce the \$318,855.52 Contempt Order, the district court granted a charging order (Ex. 10) pursuant to NRS 86.401 against Detwiler’s membership interest in three Nevada limited liabil-

ity companies (Ex. 11).² “A charging order directs the LLC to make distributions to the creditor that it would have made to the member.”

Weddell v. H2O, Inc., 128 Nev. 94, 103, 271 P.3d 743, 749 (2012) (citation omitted). Detwiler appeals this charging order.

I.

CHARGING ORDERS ARE INTERLOCUTORY

A final judgment is one that resolves all of the issues presented in the case, leaving nothing for the future consideration of the court except for post-judgment issues. *See Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000).

Although this Court does not seem to have had the occasion to consider the appealability of a charging order, its peers regard it as interlocutory. *Jack M. Sanders Family Ltd. P’ship v. Roger T. Fridholm Revocable, Living Tr.*, 434 S.W.3d 236, 244 (Tex. Ct. App. 2014) (finding a charging order was not a final order because it did not dispose of all issues raised at that particular stage of the proceedings); *91st Street Joint Venture v. Goldstein*, 691 A.2d. 272, 279, 282 (Md. Ct. App. 1997) (charging order was not final order, since it was subject to revision and

² The Bank learned about Detwiler’s three companies during discovery, including his deposition.

challenge at the trial court level).

Charging orders do not qualify as final because they are “subject to the trial court’s discharge or revision at a later date”; they do not provide a method for determining” the third-party company’s obligation towards the creditor, “if any”; and they give no direction concerning the amount due, the method of payment, nor how the payments are to be “allocated” among multiple potentially responsible third parties. *Sanders Family Ltd. P’ship*, 434 S.W.3d at 244–45.

The charging order in question exhibits these tentative attributes. It directs three companies to make payments to the Bank that would otherwise go to Detwiler and to provide operating agreements demonstrating the percentage interest Detwiler has in the companies. (Ex. 11.) The charging order is in the process of being served, but no charged company has yet responded. Despite his own earlier deposition testimony to the contrary, Detwiler now denies any interest in one of the companies. The trial court may need to resolve this and other disputes concerning Detwiler’s percentage of ownership in the three companies and, therefore, the amount of distributions to be redirected from

Detwiler to the Bank. The charging order here merely states the objective to be achieved without determining to what extent the objective exists or the means of achieving that objective. This order is not final. No appeal lies.

II.

ALTERNATIVELY, EVEN IF THE CHARGING ORDER WERE FINAL, DETWILER'S NON-PARTY STATUS LIMITS HIM TO WRIT REVIEW

This Court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. *Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984). And no statute or court rule provides for an appeal from a contempt order, see NRAP 3A(b); *State, Div. of Child & Family Servs. v. Dist. Ct.*, 120 Nev. 445, 449-50, 92 P.3d 1239, 1242 (2004) (explaining that a contempt order is not appealable and the proper way for a party to challenge a contempt order is through a writ petition), or from an order aggrieving a nonparty, see *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994). Because the Contempt Order exhibited these two attributes, this Court dismissed Detwiler's first appeal for lack of

jurisdiction. (*Detwiler v. Baker Boyer National Bank*, No. 81017 (Document 20-17193; May 6, 2020).)

The charging order against Detwiler does not change this analysis. It merely enforces the underlying contempt order, which is already the subject of a separate original writ proceeding. (*See* No. 81220.) The charging order does not confer party status because Detwiler remains a person who has not been formally named in the lawsuit or served with a summons. *See Ginsburg*, 110 Nev. at 448, 874 P.2d at 735. He was, instead, a subpoenaed witness who participated on behalf of the Fraudulent Transferee as its manager.

Likewise, because the charging order is ancillary to and dependent upon the contempt order, it assumes the contempt order's nature for purposes of determining the mode of appellate review. *Cf. Consolidated Generator–Nevada v. Cummins Engine*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (explaining that while a contempt order is not independently appealable, it may be appealed in the context of an otherwise substantively proper appeal); *Vaile v. Vaile*, 133 Nev. 213, 217, 396 P.3d 791, 794 (2017) (same).

III.

EVEN ASSUMING AN APPEAL WERE PROPER, IT IS MOOT

As a general rule, this Court will decline to hear a moot case. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). Detwiler objected to the charging order principally because he said its issuance (i) violated a district-court stay and (ii) a pandemic-related emergency order issued by the Governor that imposed a moratorium on judgment collection, particularly by restricting writs of execution and garnishment under NRS Chapters 17 and 21. (Ex. 10, ¶¶ 1–4.) The district court rejected both arguments. (*Id.*) However, these deadlines passed on May 29, 2002 (*Id.*), and June 30, 2020 (*Compare* Ex. 12 to Ex. 13, § 7), respectively, anyway. Therefore, this appeal is moot. The charging order has so far resulted in no payment to the Bank. Even if Detwiler could convince this Court that the lower court has erred, he cannot show any harm now that the prohibitions have expired anyway.

CONCLUSION

For these reasons, this appeal should be dismissed.

Dated this 9th day of September, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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CERTIFICATE OF SERVICE

I certify that on September 9, 2020, I submitted the foregoing “Motion to Dismiss Appeal” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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I further certify that I served a copy of the foregoing by United States mail, postage prepaid, at Las Vegas, Nevada, to the following:

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Settlement Judge

/s/ Jessie M. Helm
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EXHIBIT 1

EXHIBIT 1

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

10 **BAKER BOYER NATIONAL BANK, a**
Washington corporation,
11 **Plaintiff/Judgment Creditor,**

12 **vs.**

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

15 **Defendant/Judgment Debtor.**

Case No.: A-17-760779-F

Dept. No.: II

Hearing Date: November 5, 2018

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss on Ground(s)	<input type="checkbox"/> Judgment of Arbitration

MP

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

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

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

Introduction

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

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

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

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

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

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

17 **Findings of Fact Related to the Motorcoach and HH’s Claim Thereto**

- 18 1. Mr. Foust has not voluntarily paid the Judgment.
- 19 2. The Bank filed a “Motion for an Order Requiring Judgment Debtor to Deliver
20 Possession of Classic Car Collection to Satisfy Nearly \$1 million Judgment” on December 20,
21 2017. Mr. Foust opposed the motion, claiming he no longer owned any of the cars. This Court
22 ordered discovery, including depositions, and set two separate evidentiary hearings concerning
23 who owns the vehicles in question.
- 24 3. On February 15, 2018, this Court held the first evidentiary hearing concerning just
25 the Motorcoach. (*See* 3/8/18 Judgment, Introduction, on file herein.)
- 26 4. This Court received extensive documentary and testimonial evidence and issued a
27 detailed ruling. (*See generally* 3/8/18 Judgment, on file herein (hereinafter the “Prior
28 Judgment”).) The Court ruled for the Bank and against Mr. Foust in every respect, including that

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Court is further convinced that Mr. Foust and HH¹ are in privity and that the Prior Judgment
2 should apply to HH.

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

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

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


11 18. Although HH is ostensibly a Montana-based company, HH petitioned for
12 bankruptcy relief in California, where Mr. Foust resides. The bankruptcy occurred after the Prior
13 Hearing and stayed this Court's proceedings for several months; the bankruptcy was ultimately
14 dismissed for HH's subsequent failure to participate. *See In re: Harry Hildibrand, LLC*, 2:18-bk-
15 18727-NB, ECF No. 20 (Bankr. C.D. Cal. Sept. 7, 2018).

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

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

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

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

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

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

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

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

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

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

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

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

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

2 28. These Wyoming reports are signed under penalty of perjury, and, according to
3 Wyoming law, must be submitted by a company officer or a “fiscal” agent. Wy. St. § 17-29-
4 209(a) (2018).

5 29. Mr. Detwiler, the supposed manager of HH, agreed on cross examination that this
6 Wyoming corporate documentation showed that Mr. Foust “ultimately owned” HH; he said “Boy,
7 I didn’t get an A in deducement, but it’s – I – *yeah*.” (11/5/18 Hr’g Trans., p. 65–66:13 (emphasis
8 supplied).)

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

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

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

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

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


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

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

6 36. Mr. Detwiler, the supposed manager of HH, conceded it was “very possible” HH
7 never paid Mr. Foust and that he had “no idea as the manager if that money was ever paid.”
8 (11/5/18 Hr’g Trans., p. 38:9–17.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Bank. For example, in a balance sheet prepared by Mr. Foust and submitted to the Bank and dated
2 April 30, 2015—years after the loan was made—Mr. Foust gives the value of his “Automobiles –
3 Classic” as \$3,242,930. In the most recent balance sheet the Bank has, which is dated December
4 31, 2015, Mr. Foust gave the value of his “Automobiles – Classic” as \$1,381,320.

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

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

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

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

18 53. During his deposition, Mr. Foust testified that he sold cars to HH “in a lot all at the
19 same time” and that there was a single contract related to the sale of a group of cars. At the
20 evidentiary hearing, Mr. Foust changed his story, claiming that “there were several contracts at
21 different times” in 2011 and 2012 relating to “a series of cars that were sold to [HH] by me.”
22 (11/5/18 Hr’g Trans., p. 75:12–23.) ~~Ever willing to say what is convenient without regard to the~~
23 ~~record,~~ Mr. Foust claimed that these supposed sales contracts were “retrievable” and perhaps in his
24 file cabinet in California or with HH’s Montana attorneys.

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

1 contracts exist.

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


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

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

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

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

1 And the December 31, 2015 Income Statement shows \$8,361.03 in expenses for all four cars for
2 2015 and the first month of 2016. If HH really owned these cars, then HH would be paying these
3 costs, not Mr. Foust.

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

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

20 61. The financial statements given to the Bank show regular payments by Mr. Foust to
21 this law office for fees and vehicle registration. The Income Statement for April 30, 2015 shows
22 \$100 for "Heggen - Autos" and \$250 for "Heggen - Fee's" for the first months of 2015 and \$340
23 for registration fees in 2014 and \$300 in attorney fees for 2014. Similarly, the Income Statement
24 dated December 31, 2015 shows \$1,080 for registration fees and \$1,487.99 for attorney fees in
25 2016 and \$1,714.18 in registration fees and \$340 in attorney fees for 2015. The defense did not
26 even attempt to contradict this evidence. This Court believes that if HH really owned these cars,
27 then HH would be paying the registration costs and attorney fees, not Mr. Foust.

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

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

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

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

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

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

23 67. The evidence is uncontroverted and overwhelming that Mr. Foust "retained
24 possession or control of the property transferred after the transfer." *See* NRS 112.180(2)(b). Mr.
25 Foust and Mr. Detwiler admitted in their depositions that Mr. Foust and his wife and daughters
26 have possession of and use three Mercedes and a GMC Yukon that HH claimed to own in its
27 bankruptcy schedules. As for the balance of the 20 cars HH claims in its bankruptcy, Mr. Foust
28 controls them because he owns HH and StarDust Classic. Someone must control these cars. Mr.

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

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

6 68. Here, the alleged "transfer or obligation was ~~disclosed or~~ concealed." See NRS
7 112.180(2)(c). Mr. Foust did not inform the Bank of this alleged transfer of the 20 cars HH now
8 claims in its bankruptcy, nor of the transfer of any other cars. Mr. Foust was silent until this
9 dispute arose.

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

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

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

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

26 73. For example, with respect to the 2000 GMC Yukon, Mr. Foust purchased it on
27 October 20, 2014 and purported to "sell" it to HH on December 3, 2014. And then ~~the defense~~ ^{Mr. Foust}
28 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

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

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

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

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

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

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

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

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

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

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

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

23 Q. Were they [the three Mercedes] all sold at the same time?

24 Mr. Foust: It appears to be so, yes.

25 Q. Were you involved in the sale?

26 Mr. Foust: No.

27 Q. Do you know the sales price?

28 Mr. Foust: No.

Q. Was money paid for these cars?

Mr. Foust: I have no idea.

Q. Would your daughters know?

Mr. Foust: Harry Hildibrand would know.

Q. And your daughters and your wife continue to own and use these cars?

1 Mr. Foust: I have no idea.

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

11 **Conclusions of Law and Final Judgment**

12 The Court concludes the following:

- 13 1. The Court has jurisdiction over the parties and venue is proper in this Court.
- 14 2. The Court enters judgment in favor of the Bank and against HH and Mr. Foust,
15 including ~~all persons or entities claiming an ownership interest in HH~~, all entities owned or
16 controlled by Mr. Foust, including HH and StarDust Classic, on all claims.
- 17 3. Mr. Foust, HH, and StarDust Classic are and have been agents of one another with
18 respect to any past action involving the cars at issue in these proceedings (Exhibits A and B) and
19 have been agents of one another regarding notice of these proceedings.

20 ***Conclusions Related to the Motorcoach***

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

1 between a corporation and a person who owns or controls the corporation to establish privity);
2 18A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE: JURISDICTION, § 4460
3 (2d ed. 2018) (“Many of the decisions that extend preclusion through corporate relationships
4 involve controlling owners.”).

5 5. The Bank offered clear and convincing evidence that Mr. Foust owned HH, both
6 directly (as set forth in the Prior Judgment related to the Motorcoach and issued on March 8,
7 2018) and indirectly (*i.e.*, though proof that Mr. Foust owns and/or is an officer of StarDust
8 Classic, the alleged owner of HH according to the bankruptcy filings).

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

14 7. This Court’s Prior Judgment related to the Motorcoach and issued on March 8,
15 2018 applies to and is binding upon HH in every respect.

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

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

21 ***Conclusions of Law Related to Other Cars***

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

24
25 **NRS 21.320 Judge may order property applied toward satisfaction of**
26 **judgment.** The judge or master may order any property of the judgment debtor
not exempt from execution, in the hands of such debtor *or any other person*, or
due to the judgment debtor, to be applied toward the satisfaction of the judgment.

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

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

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

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

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

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

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

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

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

10 17. The Bank has offered ^{substantial and credible} ~~a treasure trove~~ of evidence showing that Mr. Foust still
11 owns, possesses, and controls the cars in question, including especially the four cars he openly
12 admits he and his family use (the three Mercedes and the 2000 GMC Yukon) and the 20 cars that
13 HH claims to own in the bankruptcy.

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

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

18 20. Mr. Foust is the owner of all of the cars that HH contends or has contended that it
19 obtained from Mr. Foust and transferred to some third parties.

20 21. Mr. Foust is the owner of all cars, believed to number 59 (Exhibit A), which he
21 owned or claimed to own at the time he became indebted to Bank, and/or which he contends or
22 has contended were transferred by him to some third parties or party.

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

24 23. Pursuant to NRS 112.180(1)(a), even if any sale or transfer of the cars listed in
25 Exhibits B from Mr. Foust to HH or StarDust Classic did occur, it was made with the actual intent
26 to hinder, delay, and defraud the Bank. The record indicates that many, if not all, of the so-called
27 "badges" that demonstrate actual fraud occurred here. The alleged sale of cars by Mr. Foust to
28 HH is a scam and a fraudulent transfer.

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

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

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

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

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

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

in a manner that protects the cars from any damage

~~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

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

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

5 Dated this 19 day of December, 2018.

6
7
8 

9 DISTRICT COURT JUDGE

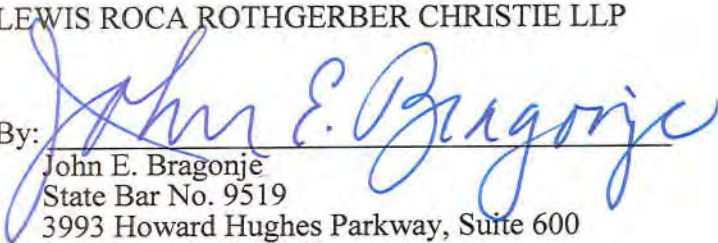
10
11
12 33. LIMITATION. Notwithstanding the foregoing, TM Nothing
13 contained herein shall have the effect of precluding
14 any person or entity not referenced herein from
15 exercising any rights, if any, that may exist under
16 NRS 31.070 in a new proceeding.

17 

18
19
20
21
22 Respectfully submitted by:

23 LEWIS ROCA ROTHGERBER CHRISTIE LLP

24
25 By:

26 
27 John E. Bragonje
State Bar No. 9519
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

28 Attorneys for Judgment Creditor Baker Boyer National Bank

Exhibit A

Exhibit A

FOUST Classic Cars

Autos.xlsx

Foust Classic Cars

YEAR	MAKE	DESCRIPTION	Buy	COST	Est. Value	VIN	STATE	From
1955	CADILLAC	V-12 COUPE	1996	\$44,000.00	\$100,000.00	4100743	CAL	THOMAS CADILLAC
1989	CHAPARRAL	TRAILER	2000	\$25,000.00	\$25,000.00	1S9SC4532K1090654	ND	Shirley Muldowney
1956	CHEV	CORVETTE	1982	\$10,000.00	\$50,000.00	VE56S003290	NO, DAK	ROBERT HILTON
1957	CHEV	BEL AIR CONV. (FI)	1989	\$50,000.00	\$100,000.00	VC570141640	KENTUCKY	O.B. SMITH
1957	CHEV	CORVETTE	1988	\$45,000.00	\$50,000.00	E57S103094	KENTUCKY	SOUTHLAND INVEST.
1966	CHEV	TURBO CORVAIR	1990	\$5,000.00	\$5,000.00	107376L110678	CAL	R & S
2007	CHEV	Corvette Z06	2007	\$80,000.00	\$50,000.00	1G1YY26E375121069	Montana	Chevrolet
1957	CHRYSLER	300 C CONV.	1988	\$27,000.00	\$150,000.00	3N571810	Montana	Joe Bortz
2002	Crysler	PT Cruiser	2001	\$35,000.00	\$5,000.00	3C 8FY68852T216202	NV	Crysler
2005	Crysler	PT Cruiser	2005	\$20,000.00	\$5,000.00	3C3AY75S05T701409	Montana	Crysler
2009	Crysler	PT Cruiser	2009	\$13,000.00	\$5,000.00	3ABFY68899T510047	Montana	Crysler
1965	DODGE	SAVOY Acid dip car	1989	\$33,000.00	\$100,000.00	W0512245600	ILL.	JAMES JACKSON
1990	FERRARI	TESTAROSSA	1995	\$104,000.00	\$75,000.00	ZFFSG17AGL0083464	ND	Jerry Buss
1937	FORD	Coupe	2006	\$75,000.00	\$75,000.00	3541190	Montana	R & S
1940	FORD	Coupe	2007	\$40,000.00	\$40,000.00	AZ152801	Montana	Spencer Shakstad
1955	FORD	T-BIRD (96 MILES)	1988	\$45,000.00	\$45,000.00	P5FH186138	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	D7LV182233	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	7T0AT118534 *	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
1973	FORD	PANTERIA	1988	\$15,000.00	\$15,000.00	THPNLY01620	Montana	ORAN BERC
1975	FORD	PANTERIA - \$300,000 Rest.	2003	\$63,000.00	\$100,000.00	THPNNU05291	Montana	IRS Auction
1988	FORD	#11 Budweiser NASCAR	2000	\$40,000.00	\$40,000.00	MRE #unknown	None	Bill Elliot
1991	FORD	#9 COORS LITE NASCAR	2000	\$54,060.00	\$54,060.00	MRE #21	BILL OF SALE	RON HUBER
2008	Harley-Davidson	Motor Cycle	2008	\$21,470.00	\$21,470.00	1HD 1KB 4398 Y 652 304	Cal	Golden Gate
2009	Harley-Davidson	Motor Cycle	2010	Trade 2008 H/D	Trade 2008 H/D	1HD1HPH349K810543	Montana	Golden Gate
1987	HONDA	SCOOTER	2000	\$800.00	\$100.00	JH2HF0316HS202130	CAL	Honda
1992	HONDA	SCOOTER	2000	\$800.00	\$100.00	3H1HF031OND700204	CAL	Honda
1991	INTERNATIONAL	4000 SERIES	2000	\$50,000.00	\$25,000.00	1HTSDNHL4MH321753	ND	Shirley Muldowney
1951	JAGUAR	XK 120 RACE CAR	2000	\$45,050.00	\$45,050.00	5671966	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	JKAZX2A13FB505428/ZX900	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	Virginia	R & S
1977	Mercedes	380 4 DR SEDAN	1977	\$35,000.00	\$35,000.00	10704412035568	ND	Mercedes
1987	Mercedes	450SL	2007	\$37,000.00	\$37,000.00	WD88A48D5HA059358	Montana	Mercedes
2006	Mercedes	S500	2008	\$43,000.00	\$25,000.00	WD8NG75J76A482303	Montana	Mercedes
2007	Mercedes	M50 SUV	2007	\$65,000.00	\$25,000.00	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	1P3EW6SG1YV603597	Montana	Harry Hildibrand
1969	PONTIAC	JUDGE	1988	\$9,000.00	\$40,000.00	Get From Bob Wokel	ND	Bob Wokel
1958	PORSCHE	CABRIOLET	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

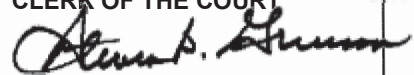
HARRY HILDBRAND

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	THPNU05291	
1951	JAGUAR	XK 120 RACE CAR	\$ 20,000	S671966	
1957	OLDSMOBILE	98 ROCKET	\$ 18,000	579M27665	
1966	PLYMOUTH	BELVADIRE	\$ 15,000	RACE CAR BODY & SHELL - N	
2000	PLYMOUTH	PROWLER	\$ 21,000	1P3EW65G1YV603597	
2007	Mercedes	CLK 550	\$ 12,000	WDBTK72F27T081009	
2000	GMC	Yukon	\$ 8,000	1GKEK13T9YJ1740142	
2007	Mecedes	S550	\$ 25,000	WDDNG71X57A075860	
1963	CHEV	425/409 S/S	\$ 25,000	31847L144085	
1998	MARATHON	COACH	\$ 129,875	2PCM3349XV1026183	
2016	KAWASAKA	kr10	\$ 11,700	JKAZX2A13FB505	
Total			\$ 521,575		

SUPPORT FOR 206 A/B #46, PAGE 5

EXHIBIT 2

EXHIBIT 2



1 **AFFT**

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

6 *Attorney for Plaintiff Baker Boyer National Bank*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

11 **Plaintiff/Judgment Creditor,**

12 **vs.**

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

16 **Defendant/Judgment Debtor.**

Case No.: A-17-760779-F

Dept. No.: 2

**AFFIDAVIT OF JOHN E. BRAGONJE
IN SUPPORT OF LEWIS AND ROCA
ATTORNEY FEES AND COSTS
INCURRED IN CONNECTION WITH
MR. DETWILER AND HARRY
HILDIBRAND, LLC**

16 **STATE OF NEVADA**

17 **COUNTY OF CLARK**

}
} SS:
}

19 John E. Bragonje, being first duly sworn, deposes and says:

20 1. I am an attorney licensed to practice law in the State of Nevada and am a partner of
21 the law firm of LEWIS ROCA ROTHGERBER CHRISTIE LLP (hereinafter "Lewis and Roca"). I am
22 counsel to plaintiff/judgment creditor Baker Boyer National Bank (the "Bank") in the above-
23 captioned matter. I am over the age of 18 years and a resident of Clark County, Nevada. I make
24 this affidavit based upon personal knowledge (except where stated to be upon information and
25 belief, and as to that information, I believe it to be true). If called upon to testify as to the
26 contents of this affidavit, I am legally competent to testify thereto in a court of law. I base this
27 affidavit upon my review of the time records of Lewis and Roca, all of which are records kept in
28 the ordinary course of business.

2. This Affidavit is made in connection with this Court holding Harry Hildibrand, LLC and Edward N. Detwiler in civil contempt of this Court's January 9, 2019, Findings of Fact, Conclusions of Law, and Final Judgment ("Order"), and awarding the Bank its reasonable attorney fees and costs incurred in connection with all of the proceedings seeking to enforce the Order since the time that Harry Hildibrand, LLC intervened in this case.

3. Thus, the purpose of this Affidavit is to support Lewis and Roca's total fee request—specifically \$218,855.52, consisting of \$208,889.00 in attorney fees and \$9,441.52 in costs advanced and \$525.00 for a cost bond.

LEWIS AND ROCA'S BILLING PRACTICES

4. Lewis and Roca attorneys and paraprofessionals have kept accurate, contemporaneous records of time expended using the firm's computerized legal billing system in this matter. The information Lewis and Roca attorneys and paraprofessionals input into the system was used to generate time entries and cost summaries and back-up to support the amounts of fees and costs requested in this Affidavit ("Supporting Documents"). Contemporaneous with the filing of this Affidavit, the undersigned will promptly submit the Supporting Documents to the Court's chambers for *in camera* review.

5. Lewis and Roca attorneys enter time regularly. In addition, it is Lewis and Roca's custom and practice when preparing its monthly time records for the responsible attorneys to review the draft time records to insure that the time listed was reasonably and necessarily incurred.

6. Based on my review of Lewis and Roca's time records, the firm has rendered no fewer than 487.7 hours of work in this matter in connection with all of the proceedings seeking to enforce the Order since the time Harry Hildibrand, LLC intervened in this lawsuit. Harry Hildibrand, LLC first appeared in this action and intervened pursuant to NRS 31.070 on March 2, 2018, which request was supported by a declaration from Mr. Detwiler. As a result of the work of Lewis and Roca, the Bank has incurred no less than \$208,889.00 in attorney fees.

7. The Bank has been paying its attorney fee invoices on a monthly basis since this matter began. There are no amounts that have been billed but not paid—other than work in progress.

1 8. As with time entries, Lewis and Roca paraprofessionals have kept accurate,
2 contemporaneous records of cost advances using the firm's computerized legal billing system.
3 The information Lewis and Roca professionals have input into the system was used to generate the
4 accounting of the costs itemized by amount and the date the cost was incurred or paid, which is
5 part of the Supporting Documents that will be submitted to the Court's chambers for *in camera*
6 review.

7 9. The costs sought are supported by receipts from, and proof of payments to, vendors
8 and will also be included in the Supporting Documents. As in the case of fees, costs advanced
9 have actually been paid to the various vendors by Lewis and Roca, and the Bank has reimbursed
10 Lewis and Roca for these expenses.

11 10. “If the [Court] determines that attorney fees are warranted, it must [] consider the
12 *Brunzell* factors in determining whether the requested fee amount is reasonable and justified.”
13 *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev., Adv. Op. 31, 416 P. 249, 258
14 (2018).

15 11. The *Brunell* factors include: “(1) *the qualities of the advocate*: his ability, his
16 training, education, experience, professional standing and skill; (2) *the character of the work to be*
17 *done*: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed
18 and the prominence and character of the parties where they affect the importance of the litigation;
19 (3) *the work actually performed by the lawyer*: the skill, time and attention given to the work; (4)
20 *the result*: whether the attorney was successful and what benefits were derived. *Gunderson v.*
21 *D.R. Horton, Inc.*, 130 Nev. 67, 81, 319 P.3d 606, 615-16 (2014) (quoting *Brunzell v. Golden Gate*
22 *Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

23 12. The Court need not make explicit findings with respect to the above factors;
24 “[i]nstead, the [Court] need only demonstrate that it considered the required factors, and the award
25 must be supported by substantial evidence.” *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139,
26 1143 (2015); *Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 1049, 881 P.2d 638, 642 (1994)
27 (providing that the district court “need not . . . make explicit findings as to all of the factors where
28 support for an implicit ruling regarding one or more of the facts is clear on the record”); *see also*

1 *Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 252 n. 16, 955 P.2d 661, 673 n. 16 (1998) (providing
2 that “no one factor . . . is determinative”).

3 13. Regarding the first *Brunzell* factor, Lewis and Roca’s rates are reasonable and
4 accurately reflect the prevailing market rates in Las Vegas for attorneys and paraprofessionals of
5 similar skill, experience, and reputation.

6 14. The rates reported herein are the rates that Lewis and Roca clients are actually
7 charged and which they actually pay—including the Bank. The attorneys’ hourly rates were set by
8 the firm’s executive committee after considering each attorney’s experience, skill, and reputation
9 in the community, as well as the rates charged by attorneys at other major law firms in Las Vegas
10 and the Southwest.

11 **LEWIS AND ROCA ATTORNEYS’ QUALIFICATIONS**

12 15. Lewis and Roca used a number of attorneys on this case in order to maximize
13 efficiency wherever possible. For instance, we used associates instead of partners for discrete
14 research tasks. We also used associates to edit draft papers and “shepardize” legal citations. The
15 number of attorneys on this case reflects our practice of using whichever associate is available at
16 the time of need, assuming the task required does not demand extensive background knowledge of
17 the case.

18 16. The Lewis and Roca lawyers and paraprofessional who worked on this matter are
19 as follows:

- 20 a. **John E. Bragonje**, partner at the firm, who billed 221.8 hours at the rate of
21 \$465.00; 128.8 hours at the rate of \$485; and 31.6 hours at the rate of \$495;
22 b. **Jason Furedy**, a partner at the firm, who billed .2 hours at the rate of \$530;
23 c. **Justin Henderson**, partner at the firm, who billed 7.1 hours at the rate of \$470;
24 d. **G. Warren Bleeker**, a partner at the firm ,who billed 3.2 hours at the rate of \$600;
25 e. **Mike Koplow**, an associate at the firm, who billed 5.1 hours at the rate of \$410;
26 f. **Abraham G. Smith**, an associate at the firm who billed .2 hours at the rate of
27 \$350;
28 g. **Brian D. Blakley**, associate at the firm, who billed 2.2 hours at the rate of \$375.00;

- h. **Matthew Tsai**, associate at the firm, who billed 10 hours at the rate of \$250; and 32.9 hours at the rate of \$275;
- i. **Erik J. Foley**, an associate at the firm, who billed 4.1 hours at the rate of \$335;
- j. **Adrienne Brantley-Lomeli**, an associate at the firm, who billed 6.7 hours at the rate of \$250;
- k. **Jessica Helm**, paralegal at the firm, who billed 8.4 hours at the rate of \$140; and 6.5 hours at the rate of \$150;
- l. **Emily Baxter**, paralegal at the firm, who billed .5 hours at the rate of \$135;
- m. **Ricky McCann**, paralegal at the firm, who billed .4 hours at the rate of \$140; and 2.1 hours at the rate of \$175;
- n. **Chris Wilhelm**, paralegal at the firm, who billed 6.5 hours at the rate of \$210;
- o. **Monica Switzer**, paralegal at the firm, who billed 2.4 hours at the rate of \$245;
- p. **Patti Miller**, private investigator/paralegal at the firm, who billed .4 hours at the rate of \$255.

17. I am informed, believe, and thereon allege that the qualifications of my attorney and paraprofessional colleagues set forth in the motion and this affidavit are accurate. I have based them on publicly available information displayed on Lewis and Roca's website and other official sources and documentation.

18. I did not set my hourly rate. I am informed and believe that my final hourly rate of \$495.00 reflects my partners' judgment that my skill, expertise, and reputation distinguish me as a leading litigator in Las Vegas. I graduated *cum laude* from Brigham Young University's J. Reuben Clark Law School in 2005. My practice has particular emphasis on complex corporate business litigation, arbitration, and mediation—including the representation of individual and corporate clients in the areas of commercial, construction, real estate, and fiduciary litigation. I am the author of several publications, including the chapter on Construction Defect Statutes in the *Nevada Civil Practice Manual* and the section on "Lateral and Subjacent Support; Party Walls" in a forthcoming Nevada Bar publication. I was named to *Nevada Business*' 2013 Legal Elite in the "Southern Nevada Best" category, and in the "Top 100" category in 2018-2019. I

1 have also been featured in *Mountain States Super Lawyers* for about the past ten years, including
2 2020. My final hourly rate of \$495.00 is within industry norms for someone of my caliber,
3 expertise, and experience.

4 19. **G. Warren Bleeker** is a partner at Lewis Roca. He is a summa cum laude graduate
5 of Emporia State University (1996) and a graduate of the University of California, Berkley,
6 School of Law (2000). Mr. Bleeker's final hourly rate of \$600 is within industry norms for
7 someone of his caliber, expertise, and experience.

8 20. **Justin Henderson** is a partner at Lewis Roca. He focuses his practice on
9 bankruptcy and assisted after HH petitioned for relief under the bankruptcy laws. He holds these
10 degrees: J.D., *summa cum laude*, Order of the Coif, Arizona State University - Sandra Day
11 O'Connor College of Law, 2008 and B.S., University of Arizona, 1998. He is a former clerk to a
12 justice on the Arizona Supreme Court. He has been featured in SuperLawyers for nearly a decade.
13 He is admitted to practice in Nevada and Arizona. Mr. Henderson's final hourly rate of \$470 is
14 within industry norms for someone of his caliber, expertise, and experience.

15 21. **Mike Koplow**, an associate at the firm, holds a J.D. from the New York University
16 School of Law and a Ph.D. in mechanical engineering from the University of California, Berkeley.
17 Mr. Koplow's final hourly rate of \$410 is within industry norms for someone of his caliber,
18 expertise, and experience.

19 22. **Abraham G. Smith** is a senior associate at Lewis Roca. He focuses his practice
20 on appellate work and works directly with Daniel F. Polsenberg, this state's preeminent appellate
21 lawyer. Mr. Smith holds these degrees: J.D., Duke University School of Law, 2013, *magna cum*
22 *laude*, *Order of the Coif*; LL.M., Duke University School of Law, 2013, *magna cum laude*, *Order*
23 *of the Coif*; B.M., Indiana University Jacobs School of Music, 2010, *with High Distinction*, *with*
24 *Honors*. Mr. Smith's final hourly rate of \$350 in within industry norms for someone of his
25 caliber, expertise, and experience.

26 23. **Brian Blakley** is a senior associate in Lewis Roca's litigation practice group,
27 where he focuses his practice on complex disputes, class actions, and multidistrict litigation. He
28 graduated in the top 10% of his class from Brigham Young University's J. Reuben Clark Law

1 School in 2013 and served as a law clerk to U.S. District Judge Robert C. Jones in the United
2 States District Court for the District of Nevada. He obtained his Nevada law license in 2013 and
3 has litigated numerous Nevada cases and complex discovery disputes since then. Additionally, he
4 regularly represents defendants in class actions in U.S. District Courts around the country. Mr.
5 Blakley is consistently named as one of “Southern Nevada’s Top Attorneys” and one of the “Best
6 Up and Coming Attorneys” in Nevada Business Magazine’s annual list of “Legal Elite.” Mr.
7 Blakley’s final hourly rate of \$375 is within industry norms for someone of his caliber, expertise,
8 and experience.

9 24. **Matthew Tsai** is a second-year associate in Lewis Roca’s litigation practice group.
10 Matthew Tsai graduated *cum laude* from the William S. Boyd School of Law. Mr. Tsai previously
11 served for two years as law clerk for the Honorable Ron Parraguirre at the Supreme Court of
12 Nevada. Mr. Tsai was named as one of “Southern Nevada’s Top Attorneys” in Nevada Business
13 Magazine’s annual list of “Legal Elite” for 2019. Mr. Tsai’s final hourly rate of \$275 is within
14 industry norms for someone of his caliber, expertise, and experience.

15 25. **Adrienne Brantley-Lomeli** is a third-year associate in Lewis Roca’s litigation
16 practice group. Ms. Brantley-Lomeli graduated *suma cum laude* from the William S. Boyd School
17 of Law. She previously served as an extern to the Honorable Ron Israel at the Eighth Judicial
18 District Court. Ms. Brantley-Lomeli’s final hourly rate of \$250 is within industry norms for
19 someone of his caliber, expertise, and experience.

20 26. **Erik J. Foley** is a four-year associate in Lewis Roca’s litigation practice group.
21 Mr. Foley graduated *suma cum laude* from the William S. Boyd School of Law. Mr. Foley was
22 recognized by the State Bar of Arizona for “the outstanding accomplishment of achieving the
23 highest score on the February 2018 Arizona Bar Examination.” Mr. Foley’s final hourly rate of
24 \$335 is within industry norms for someone of his caliber, expertise, and experience.

25 27. **Jessica Helm** is a Paralegal – Litigation Support Project Manager at Lewis Roca
26 who has worked in the legal services industry for over 10 years. She joined Lewis and Roca in
27 2012 and has worked on an array of matters, including bad faith insurance defense cases, medical
28 malpractice suits, and securities litigation. Jessica routinely provides support on high-profile cases

1 and matters with complex legal and discovery issues. She has specialized training and work
2 experience in appeals and eDiscovery. Jessica has a Bachelor of Science in Finance from the
3 University of Nevada, Las Vegas and is pursuing a Masters of Legal Studies from the University
4 of Illinois, Springfield. Ms. Helm's final hourly rate of \$150.00 is within industry norms for
5 someone of her caliber, expertise, and experience.

6 28. **Emily Baxter** is a paralegal at the firm with about five years' worth of experience.
7 Her rate of \$135 is within industry norms for someone of her caliber, expertise, and experience.

8 29. **Ricky McCann** is a paralegal at the firm with over 13 years of law firm
9 experience. His final rate of \$175 is within industry norms for someone of his caliber, expertise,
10 and experience.

11 30. **Chris Wilhelm** is a paralegal at the firm with over 10 years of experience in the
12 legal industry. His final rate of \$210 is within industry norms for someone of his caliber,
13 expertise, and experience.

14 31. **Monica Switzer** is a 34-year paralegal at the firm with vast legal experience. Her
15 rate of \$245 is within industry norms for someone of her caliber, expertise, and experience.

16 32. **Patti Miller** is a 23-year private investigator/paralegal at the firm and is a member
17 of the National Association of Legal Investigators. Her rate of \$255 is within industry norms for
18 someone of her caliber, expertise, and experience.

19 **THE OTHER BRUNZELL FACTORS**

20 33. The other three *Brunzell* factors to be considered by this Court in determining
21 whether Lewis and Roca's requested fee amount is reasonable and justified are as follows: (1) the
22 character of the work to be done: its difficulty, its intricacy, its importance, time and skill required,
23 the responsibility imposed; (2) the work actually performed by the lawyer: the skill, time and
24 attention given to the work; and (3) the result: whether the attorney was successful and what
25 benefits were derived.

26 34. The underlying matter entails the Bank obtaining a judgment in the original amount
27 of \$933,616.30, including fees and costs, against Mr. Foust in the Superior Court of Washington
28 in and for Walla Walla County (the "Judgment"), and the Bank, through the representation of

1 Lewis and Roca, domesticating the Judgment in the State of Nevada and enforcing it against Mr.
2 Foust. The Judgement now exceeds \$1.3 million as costs and interest continue to accrue.

3 35. When he applied for the loan that created the obligation that, when breached, led to
4 the Judgment, Mr. Foust represented that he owned a collection of 59 expensive, rare, and exotic
5 vehicles, including Corvettes, a Cadillac, Mercedes, Porsches, and Lamborghinis.

6 36. Almost immediately after this lawsuit began, Mr. Foust and Harry Hildibrand, LLC
7 (“HH”) insisted that the vehicles had been transferred to HH. Mr. Detwiler introduced himself as
8 a “managing director of HH.” (Decl. E. Detwiler, ¶ 2, attached to 3/2/18 Application for Hearing
9 within 10 Days on Third Party’s Claim of Interest in Property Levied Upon, on file herein.)

10 37. This declaration inaugurated a broad range of procedures during which Mr.
11 Detwiler testified extensively under oath concerning his role as HH’s manager and his dealings
12 with the vehicles. Specifically, Mr. Detwiler has given testimony under oath on four occasions: at
13 deposition ordered by this Court (July, 2018); during the Section 341 meeting of creditors during
14 HH’s bankruptcy (August, 2018); at the hearing resolving HH’s third party claim under NRS
15 31.070 (November, 2018); and during the contempt proceedings (April and May, 2019). He has
16 submitted many additional sworn statements.

17 38. This Court has previously found that Mr. Detwiler’s testimony is untrustworthy.
18 This made this lawsuit more expensive than was necessary. Mr. Detwiler’s multi-year campaign
19 to withhold information and hide the truth about the assets has greatly multiplied this case’s
20 difficulty, intricacy, time and skill required. *Gunderson*, 130 Nev. at 81, 319 P.3d at 615-16
21 (quoting *Brunzell*, 85 Nev. at 349, 455 P.2d at 33).

22 39. Furthermore, Mr. Detwiler’s actions and conduct “raised the stakes,” *see id.*,
23 because he single handedly represented an entity, HH, that claimed to own property that could be
24 used to satisfy the Judgment. Mr. Detwiler’s activities mutated this lawsuit from a debt collection
25 action into a fight over who controlled assets that then spawned into an obvious conspiracy to hide
26 assets, including through filing a spurious bankruptcy. Because of Mr. Detwiler’s involvement,
27 the lawsuit now had two defendants, Mr. Foust and HH (after the time it intervened under NRS
28 31.070). Mr. Detwiler’s participation effectively doubled the complexity of this case.

1 40. The “the work actually performed by the lawyer,” *Gunderson*, 130 Nev. at 81, 319
2 P.3d at 615-16 (quoting *Brunzell*, 85 Nev. at 349, 455 P.2d at 33) has covered the full range of
3 civil practice from pleadings to discovery to trial.

4 41. The Bank conducted extensive discovery of HH’s involvement, which included
5 directing a subpoena duces tecum to HH. This was notable because HH withheld obviously
6 relevant documents (car titles) under a bogus claim of attorney-client privilege. Mr. Detwiler also
7 had to be compelled to sit for his deposition. The Court ordered Mr. Detwiler to appear for his
8 deposition by a date certain after which a fine of \$1,000 per day was to be imposed. The Court
9 observed that “there has been gamesmanship on the part of HH.” (7/27/18 Order Resolving
10 Motion to Compel and Order Setting Future Hearing, on file herein.) This episode typified the
11 discovery process with HH, a constant battle of issues that should not have been complicated or
12 controversial. Mr. Detwiler appeared for a deposition thereafter. The Bank also deposed Mr.
13 Foust twice. Because the testimony of the two men conflicted, the depositions raised more
14 questions than they answered, and again spun the complexity of the case up beyond what should
15 have been necessary.

16 42. To resolve the issue of ownership, the Court conducted evidentiary hearings on six
17 different days (February 5, 15, 2018; March 7, 2018; April 18, 2018; July 31, 2018; and
18 November 5, 2018). The court conducted a contempt trial, in which Mr. Detwiler featured
19 prominently, over four days (April 1, 24, 2019; May 17, 21, 2019). Just since HH intervened
20 through Mr. Detwiler, the Court has conducted no fewer than 10 hearings with parties present—
21 and many, many more chambers hearings. The parties have filed over 90 papers, with the Bank
22 alone having submitted approximately 30 briefs or proposed orders and factual findings. While
23 the Bank has had just one law firm, three other fine firms or attorneys have represented Foust and
24 HH: Holland & Hart, Marquis Aurbach Coffing, Michael Mazur, and now Kolesar Leatham.
25 Newly appearing counsel have always requested extensions and continuances to come up to speed
26 and have sought reconsideration of prior decisions, which itself has significantly increased the
27 Court’s time and the parties’ costs. When summarizing this case, we are talking about thousands
28 of pages written and reviewed, many weeks in deposition and evidentiary hearings, and many days

1 in argument before the court. This lawsuit has been more procedurally complex than most and has
2 required the constant attention of Lewis Roca attorneys, and especially the undersigned.

3 43. The “results” or answering Brunzell’s call to report on whether “the attorney was
4 successful and what benefits were derived,” *Gunderson*, 130 Nev. at 81, 319 P.3d at 615-16
5 (quoting *Brunzell*, 85 Nev. at 349, 455 P.2d at 33), have been totally one-sided in favor of the
6 Bank and against Mr. Detwiler and HH. Both decisions resolving the ultimate questions in the
7 case (ownership and control of the vehicles and Mr. Detwiler’s and HH’s contempt) and
8 incremental decisions along the way (e.g., motion to compel, motions for reconsideration) have
9 uniformly favored the Bank. We do not believe that HH or Mr. Detwiler have won a single
10 motion or prevailed on a single issue for the duration of this action. The most they have ever
11 succeeded in doing is securing continuances or reconsiderations of decisions that have, in the final
12 analysis, resolved in favor of the Bank. In the end, the Bank has succeeded in proving that HH,
13 acting through Mr. Detwiler, had the ability to deliver vehicles that could have partially satisfied
14 the Judgment, but that they committed contempt for failing to do so. This Court has imposed a
15 \$100,000 sanction against Mr. Detwiler personally. This is an unmitigated victory for the Bank.

16 44. In addition to the aforementioned work performed by Lewis and Roca, part of the
17 Supporting Documents that will be submitted to the Court’s chambers for *in camera* review entails
18 Lewis and Roca invoices that provide a complete itemization and description of all work
19 performed by Lewis and Roca attorneys and paraprofessional in connection with all of the
20 proceedings seeking to enforce the Order. Rather than burdening the Court by repeating the
21 details of those invoices here, the same are incorporated herein by reference. This matter is
22 ongoing: neither Mr. Detwiler, Foust, nor HH, has yet complied with this Court’s orders. In light
23 of the continuing nature of these proceedings, we will submit the Supporting Documents in
24 underacted form for *in camera* review only. Neither Mr. Foust nor Mr. Detwiler should be able to
25 obtain the Bank’s strategy notes so that he can further evade the consequences of the Judgment
26 and this Court’s turn over and contempt orders.

27 45. Finally, the Court is familiar with the quality of work performed by the attorneys
28 and paraprofessionals of Lewis and Roca, including the skill, time, and attention given to the

work. *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev., Adv. Op. 31, 416 P.3d 249, 259 n. 7 (2018) (“[T]he district court’s familiarity with the work quality of the parties’ attorneys and the submitted invoices permitted the district court to properly consider the *Brunzell* factors.”).

46. The Court, it bears emphasis, need not engage in a detailed, line-by-line analysis of time entries:

We emphasize, as we have before, that the determination of fees “should not result in a second major litigation.” The fee applicant . . . must, of course, submit appropriate documentation to meet “the burden of establishing entitlement to an award.” But trial courts need not, and indeed should not, become green-eyeshade accountants. *The essential goal in shifting fees . . . is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney’s time.* And appellate courts must give substantial deference to these determinations, in light of “the district court’s superior understanding of the litigation.” *We can hardly think of a sphere of judicial decision making in which appellate micromanagement has less to recommend it.*

Fox v. Vice, 131 S. Ct. 2205, 2216 (2011) (Kagan, J.) (emphasis added) (internal citations omitted). Indeed, if the number of hours worked is consistent the court’s “overall sense of [the] suit,” it should award fees accordingly. *See id.*

47. Accordingly, the *Brunzell* factors weigh in favor of this Court finding that Lewis and Roca’s requested fee amount is reasonable and justified.

LEWIS AND ROCA COST ADVANCES

48. Since this Court entered its Order on January 9, 2019, Lewis and Roca has advanced costs for the total amount of \$2,632.06, which are itemized with back-up for these costs and will be included in the Supporting Documents.

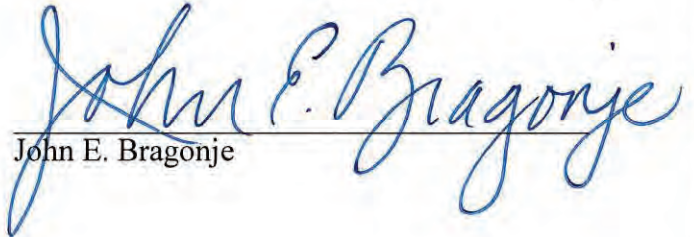
TOTAL AMOUNT SOUGHT BY LEWIS AND ROCA

49. Based on the foregoing, Lewis and Roca seeks a total of \$218,855.52, consisting of \$208,889.00 in attorney fees and \$9,966.52 in costs advanced.¹

¹ The Bank reserves the right to add all collection costs, including attorney fees, to the Judgment, in accordance with applicable law and the fee-shifting provision of the underlying contract giving rise to the Judgment. *See* 8/31/17 Notice of Filing of Foreign Judgment, on file herein (the original judgment stating that the “court retains jurisdiction to add attorneys’ fees and costs to the judgment amount beyond what are ordered as part of the motion, if any are incurred and sought by Baker Boyer in collecting on its judgment”).

1 50. Further your affiant saith naught.

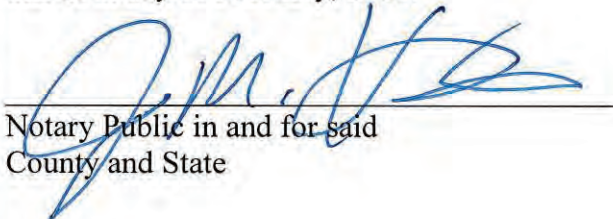
2
3 Dated this 25th day of February, 2020.

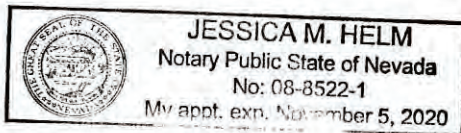
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5
6 
John E. Bragonje

7
8 STATE OF NEVADA)
9 COUNTY OF CLARK) ss:

10 On this 25th day of February, 2020, personally appeared before me, a Notary Public, in
11 and for said County and State, John E. Bragonje, known to me to be the person described, and
12 executed the foregoing instrument in the capacity set forth therein, who acknowledged to me that
13 he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

14 SUBSCRIBED and SWORN to before me
15 this 25th day of February, 2020.

16
17 
18 Notary Public in and for said
19 County and State



1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed and served
3 the foregoing document entitled “*Affidavit of John E. Bragonje In Support of Lewis and Roca*
4 *Attorney Fees and Costs Incurred in Connection with Mr. Detwiler and Harry Hildibrand,*
5 *LLC*” through the court’s electronic filing system on all registered parties in this case.

6 Michael D. Mazur, Esq.
7 **MAZUR & BROOKS**
8 **A PROFESSIONAL CORPORATION**
9 2355 Red Rock Street, Suite 100
10 Las Vegas, NV 89146

Attorneys for Defendant James Patterson Foust, Jr.

11 Brenoch Wirthlin, Esq.
12 Amanda K. Baker, Esq.
13 **KOLESAR & LEATHAM**
14 400 South Rampart Boulevard, Suite 400
15 Las Vegas, NV 89145
16 *Attorneys for Edward Detwiler*

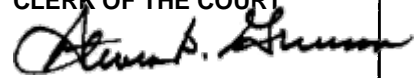
17 DATED this 25th day of February, 2020.

18 /s/ Luz Horvath

19 An employee of Lewis Roca Rothgerber Christie LLP
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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

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

5 INTRODUCTION

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

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

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

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

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

3 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

1 and the Bank's requests for compliance.

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

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

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

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

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

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

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

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

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

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

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

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

13 Q: And you’re the sole—

14 Mr. Detwiler: At least to my knowledge.

15 Q: —manager, correct?

16 Mr. Detwiler: I’m—I’m a manager.

17 Q: Who are the other managers?

18 Mr. Detwiler: I don’t know.

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

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

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

22 (5/17/19 Hr’g Trans., p. 28:6-7.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Mr. Detwiler: Sure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 failed to comply, without justification.

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

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

8 **CONCLUSIONS OF LAW**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **NRS 22.100 Penalty for contempt.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 *Id.*

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

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

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

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

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

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

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

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

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

20 Dated this 16th day of December, 2019

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22
23 
24 DISTRICT COURT JUDGE
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26
27
28

1 Respectfully submitted,

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3
4 By: 

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EXHIBIT B

EXHIBIT B

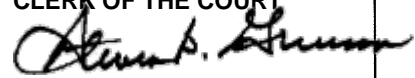
HARRY HILDBRAND

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

SUPPORT FOR 206 A/B #46, PAGE 5

EXHIBIT 4

EXHIBIT 4



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Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

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

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

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

Date: February 18, 2020

Time: 9:00 a.m.

Introduction

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

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

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

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

17 **Additional Findings of Fact**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Mr. Larkin: Yes.

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

27 Mr. Larkin: I don't have an address or location. I suspect they're in wherever
28 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions of Law

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

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

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

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

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

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

...

...

...

IT IS SO ORDERED.

Dated this 16th day of March, 2020


DISTRICT COURT JUDGE

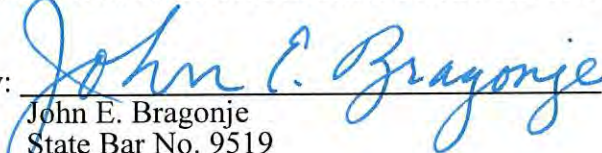
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A-17-760779-F

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

Respectfully submitted,

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: 

John E. Bragonje
State Bar No. 9519

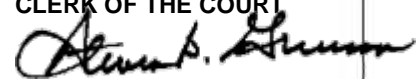
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EXHIBIT 5

EXHIBIT 5



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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

**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

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Lewis Roca
ROTHGERBER CHRISTIE

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”

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:

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

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

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

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

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

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

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

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

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

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

1 January 15 and 23, 2019.

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

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

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

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

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

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

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

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

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

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

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

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

22. The official records of the Wyoming Secretary of State indicate that Mr. Foust and his daughter have been filing the annual reports and paying the annual dues for StarDust since its organization in 2016. (*Id.*, Findings of Fact, ¶ 25.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the original suit” and “is not an independent proceeding or the commencement of a new action.”

2 *See State ex rel. Groves v. Dist. Ct.*, 61 Nev. 269, 276, 125 P.2d 723, 726 (1942).

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

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

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

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

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

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

1 arrest of a person guilty of contempt:

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

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

10 **NRS 22.100 Penalty for contempt.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 Dated this 18th day of June, 2019

7
8 
9 DISTRICT COURT JUDGE

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19
20 Respectfully submitted,

21 LEWIS ROCA ROTHGERBER CHRISTIE LLP

22
23 By: 
24 John E. Bragonje
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27 3993 Howard Hughes Parkway, Suite 600
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Tel: 702-474-2625
Fax: 702-216-6173

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

Exhibit A

Exhibit A

HARRY HILDBRAND

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

EXHIBIT 6

EXHIBIT 6

STATE OF CALIFORNIA

CERTIFICATION OF VITAL RECORD

COUNTY OF LOS ANGELES

REGISTRAR-RECORDER/COUNTY CLERK

3052020005321

CERTIFICATE OF DEATH

3202019001143

STATE FILE NUMBER		LOCAL REGISTRATION NUMBER	
1 NAME OF DECEDENT - FIRST (Given)		2 MIDDLE	
JAMES		PATTERSON	
3 LAST (Family)		FOUST	
4 DATE OF BIRTH (month/day/year)			
05/09/1940			
5 AGE Yrs			
79			
6 SEX			
M			
7 DATE OF DEATH (month/day/year)			
01/01/2020			
8 HOUR: 1620			
9 BIRTH STATE/PROVINCE/COUNTRY			
TX			
10 SOCIAL SECURITY NUMBER			
549-50-4161			
11 EVER IN U.S. ARMED FORCES?			
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK			
12 MARITAL STATUS (at time of death)			
MARRIED			
13 EDUCATION - Highest level attained			
SOME COLLEGE			
14 WAS DECEDENT HISPANIC/LATINO/SPANISH? (check one)			
<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES			
15 DECEDENT'S RACE - (Use only 1 race; may be listed race worked on before)			
WHITE			
16 USUAL OCCUPATION - Type of work for most of life. DO NOT USE RETIRED			
BUSINESS OWNER			
17 KIND OF BUSINESS OR INDUSTRY (e.g., grocery store, meat distributor, employment agency, etc.)			
COMPUTER PROGRAMMER			
18 YEARS IN OCCUPATION			
40			
19 DECEDENT'S RESIDENCE (Street and number, or location)			
7 AVENIDA DE MAGNOLIA			
20 CITY			
RANCHO PALOS VERDES			
21 COUNTY/PROVINCE			
LOS ANGELES			
22 ZIP CODE			
90275			
23 YEARS IN COUNTY			
70			
24 STATE/PROVINCE/COUNTRY			
CA			
25 INFORMANT'S NAME, RELATIONSHIP			
MIRIAM N. FOUST, WIFE			
26 ADDRESS (Street and number, or location)			
AVENIDA DE MAGNOLIA, RANCHO PALOS VERDES, CA 90275			
27 NAME OF SURVIVING SPOUSE/SPOUSE-FIRST			
MIRIAM			
28 MIDDLE			
N			
29 LAST (BIRTH NAME)			
AGUILAR			
30 NAME OF FATHER/PARENT-FIRST			
JAMES			
31 MIDDLE			
P.			
32 LAST			
FOUST			
33 BIRTH STATE			
TX			
34 NAME OF MOTHER/PARENT-FIRST			
VERA			
35 MIDDLE			
L			
36 LAST (BIRTH NAME)			
PUREFOY			
37 BIRTH STATE			
TX			
38 DEPOSITION DATE (month/day/year)			
01/16/2020			
39 PLACE OF FINAL DISPOSITION			
ST. JOHN FISHER CHURCH COLUMBARIUM			
5448 CREST ROAD, RANCHO PALOS VERDES, CA 90275			
40 TYPE OF DISPOSITION			
CR/REL			
41 SIGNATURE OF EMBALMER			
NOT EMBALMED			
42 LICENSE NUMBER			
FD1113			
43 SIGNATURE OF LOCAL REGISTRAR			
MUNTU DAVIS, M.D.			
44 DATE (month/day/year)			
01/14/2020			
45 PLACE OF DEATH			
ST FRANCIS MEDICAL CENTER			
46 IF IN HOSPITAL, SPECIFY ONE			
<input checked="" type="checkbox"/> Inpatient <input type="checkbox"/> Outpatient <input type="checkbox"/> Home <input type="checkbox"/> Other			
47 COUNTY			
LOS ANGELES			
48 FACILITY ADDRESS OR LOCATION (Street and number, or location)			
3630 EAST IMPERIAL HWY			
49 CITY			
LYNWOOD			
50 CAUSE OF DEATH			
IMMEDIATE CAUSE (if final cause or condition resulting in death)			
(a) DEFERRED			
(b) _____			
(c) _____			
(d) _____			
(e) _____			
51 OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE IMMEDIATE CAUSE GIVEN IN 50			
NONE			
52 WAS OPERATOR EMPLOYED FROM ANY CERTIFICATION IN 1981, 1971, 1972 (Yes, list type of operation and area)			
NO			
53 IF FEMALE, PREGNANT IN LAST YEAR			
<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK			
54 I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED			
55 SIGNATURE AND TITLE OF CERTIFIER			
56 LICENSE NUMBER			
57 DATE (month/day/year)			
58 TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, TITLE			
59 I CERTIFY THAT IN MY OPINION DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED			
60 MANNER OF DEATH			
<input type="checkbox"/> Natural <input type="checkbox"/> Accident <input type="checkbox"/> Homicide <input type="checkbox"/> Suicide <input checked="" type="checkbox"/> Pending Investigation <input type="checkbox"/> Could not be determined			
61 PLACED AT WORK?			
<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK			
62 INJURY DATE (month/day/year)			
63 INJURY LOCATION			
64 DESCRIBE HOW INJURY OCCURRED (Events which resulted in injury)			
65 LOCATION OF INJURY (Street and number, or location, and city, and state)			
66 SIGNATURE OF CORONER/DEPUTY CORONER			
REGINA AUGUSTINE			
67 DATE (month/day/year)			
01/09/2020			
68 TYPE NAME/TITLE OF CORONER/DEPUTY CORONER			
REGINA AUGUSTINE, DEP. CORONER			
STATE REGISTRAR			
A B C D E			
FAX AUTH.			
CENSUS TRACT			
010001004409125			

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

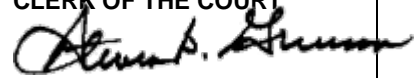
0007686338 - 02 - E

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

CALOSANG02

EXHIBIT 7

EXHIBIT 7



OPPM

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Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

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

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

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

Date: March 30, 2020

Time: 9:00 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

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

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

15 **II. STANDARD**

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

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

21 **III. MR. DETWILER IS NOT ENTITLED TO A TOTAL SUPERSEDEAS BOND** 22 **WAIVER**

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

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

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

7 The purpose of security for a stay pending appeal is to protect the judgment
8 creditor's ability to collect the judgment if it is affirmed by preserving the status quo and
9 preventing prejudice to the creditor arising from the stay. *Nelson v. Heer*, 121 Nev. 832,
10 835, 122 P.3d 1252, 1254 (2005). Inability to pay a judgment due to a party's financial
11 condition weighs in favor of *requiring* a bond, not waiving that requirement. *Avirgan v.*
12 *Hull*, 125 F.R.D. 185, 187 (S.D. Fla. 1989) (requiring a supersedeas bond because
13 uncertain financial condition defeats the contention that a bond is unnecessary or
14 alternative collateral properly could be posted); *see also In re Carlson*, 224 F.3d 716, 719
15 (7th Cir. 2000) (denying total waiver of bond and holding lack of confidence that party will
16 eventually pay required bond). Total waiver of the bond requirement should be permitted
17 only where the appellant has a clearly demonstrated ability to satisfy the judgment in the
18 event the appeal is unsuccessful and there is no other concern that the other party's rights
19 will be compromised by a failure to adequately secure the judgment. *In re Carlson*, 224
20 F.3d 716, 719 (7th Cir. 2000); *see also Fowler ex rel. Fowler v. Unified Sch. Dist. No. 259*,
21 907 F. Supp. 348, 351 (D. Kan. 1995) (waiving bond because the party had a well-funded
22 risk management fund which could be easily accessed if the judgment was affirmed and
23 had an effective procedure for paying the judgment within thirty days following
24 completion of appellate proceedings), *rev'd on other grounds*, 107 F.3d 797 (10th Cir.
1997).

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

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

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

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

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

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

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

1. *Complexity of the Collection Process*

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

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

7 Indeed, just since the last time we were before this Court, the Bank has learned of
8 additional malfeasance. Harry Hildibrand, LLC (“HH”) (necessarily with the cooperation
9 or authorization of its only agents, Mr. Foust and/or Mr. Detwiler) auctioned two of the
10 cars that are the subject of this Court’s orders, a 1951 Jaguar XK120 and a 1971
11 DeTomaso Pantera, which collectively fetched \$132,000 in August, 2019. (*See* email from
12 Mr. D. Alcazar, CEO of Russo & Steel, Ex. 1 hereto.) The auction house indicated the cars
13 came from HH. (*Id.*) This auction occurred, of course, well after this Court’s turnover
14 order (January, 2019), after the contempt trial (April and May, 2019), and even after the
15 final contempt order had issued against Mr. Foust (June, 2019). Critically, the auction
16 occurred before Mr. Detwiler claims he resigned as HH’s manager on or about September
17 20, 2019.¹ The Bank expects to develop more evidence like this as it continues its efforts
18 to locate and seize the vehicles.

19 The Bank should just collect its judgment against Mr. Foust, Mr. Detwiler urges,
20 making collection simple. (Mot. to Stay, 7:11-16.) This is a false choice. The Bank now
21 has two independent orders or judgments to collect, one against Mr. Detwiler and HH
22 (\$318,855.52), on the one hand, and one against Mr. Foust and his marital community
23 (almost \$1.4 million), on the other hand. Mr. Detwiler seeks a bond reduction, not Mr.
24 Foust, so Mr. Detwiler must speak to the collectability of his separate, unique judgment.
25 His motion does not even attempt that analysis. Further, Mr. Detwiler fails to articulate
26 how a reduced bond amount would allow for a more simple collection process. Therefore,

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

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

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

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

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

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

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

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

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

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

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

12 A precarious financial situation includes the inability to remain in the same state of
13 solvency throughout the appeal. *Avirgan*, 125 F.R.D. at 187. Mr. Detwiler admits to no
14 other creditors. His counsel makes the naked claim that posting a supersedeas bond “will
15 impair his ability to pay other creditors and debts, *if any*.” (Mot. to Stay, 13:12-13
16 (emphasis supplied).) Counsel’s argument is not competent evidence of solvency or risk to
17 other creditors. *See* EDCR 2.21 (requiring “factual contentions involved in any pretrial or
18 post-trial motion” to be supported by declaration, affidavit, deposition answer, and written
19 discovery responses); *Nevada Ass’n Servs., Inc. v. Dist. Ct.*, 130 Nev. 949, 957, 338 P.3d
20 1250, 1255 (2014) (“Arguments of counsel, however, are not evidence and do not establish
21 the facts of the case.”).

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

27 **V. MR. DETWILER IS NOT ENTITLED TO A STAY**

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

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

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

7 The object of Mr. Detwiler's appeal will not be defeated if a stay is denied. *C.f.*
8 NRAP 8(c)(1). For this factor to apply, the denial of a stay would have to make "any
9 victory on appeal . . . hollow." *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252,
10 89 P.3d 36, 39 (2004); *Hansen*, 116 Nev. at 658, 6 P.3d at 986. Here, however, no
11 appellate issues depend on a stay; if they were preserved at trial, they can be raised on
12 appeal, even if the Bank in the meantime executes on the judgment. The judgment against
13 Mr. Detwiler involves an award of money. If a stay is denied Mr. Detwiler will merely be
14 required to comply with the judgment. Accordingly, the object of the appeal will still be
15 intact.

16 **B. Mr. Detwiler Will Not Suffer Irreparable Harm**

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

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

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

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

C. In Contrast, the Bank Will Suffer Irreparable Harm

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

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

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

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

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

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

4 **VI. CONCLUSION**

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

8 DATED this 27th day of March, 2020.

9 LEWIS ROCA ROTHGERBER CHRISTIE LLP

10 By: /s/ John E. Bragonje

11 John E. Bragonje

12 State Bar No. 9519

13 jbragonje@lrrc.com

14 3993 Howard Hughes Parkway, Suite 600

15 Las Vegas, NV 89169

16 *Attorneys for Plaintiff Baker Boyer National Bank*

1 **CERTIFICATE OF SERVICE**

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

7
8 Michael D. Mazur, Esq.
9 **MAZUR & BROOKS**
10 **A PROFESSIONAL CORPORATION**
11 2355 Red Rock Street, Suite 100
12 Las Vegas, NV 89146
13 *Attorneys for Defendant James Patterson Foust, Jr.*

14 Brenoch Wirthlin, Esq.
15 **HUTCHISON & STEFFEN, PLLC**
16 Peccole Professional Park
17 10080 W. Alta Drive, Suite 200
18 Las Vegas, NV 89145
19 *Attorneys for Edward Detwiler*

20 **The following served via U.S. Mail:**

21 **HARRY HILDIBRAND, LLC**
22 c/o Registered Agent
23 Jared S. Heggen
24 3011 American Way
25 Missoula, MT 59808

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

DATED this 27th day of March, 2020.

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

Exhibit 1

Exhibit 1

DECLARATION OF JOHN E. BRAGONJE

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

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

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

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

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

5. Further your declarant saith naught.

DATED this 27th day of March, 2020.


JOHN E. BRAGONJE

Exhibit A

Exhibit A

Bragonje, John

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

[EXTERNAL]

Dear Mr. Bragonge,

Our Law Firm forwarded your correspondence attached.

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

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

6438		1957	Chevrolet	Bel Air	Convertible
------	--	------	-----------	---------	-------------

8098 - Monterey Auction, August 2019 (Showing sold)

8098	TH263	1971	DeTomaso	Pantera	Coupe
------	-------	------	----------	---------	-------

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

6444		1951	Jaguar	XK 120	Roadster
------	--	------	--------	--------	----------

Consignment Number 8098 – 1971 DeTomaso Pantera Coupe, Sold for \$65,000.00 and 8097 – 1951 Jaguar XK120, Sold for \$67,000.00.

Both vehicles were Titled to Harry Hildibrand LLC. Provided State of Montana Titles were free of any liens or recorded encumbrances.

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

Sincerely,
Drew

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

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

www.russoandsteele.com

O: 602-252-2697 ext. 321

F: 602-252-6260



Confidential Statement:

This e-mail and any files transmitted with it are the property of the Russo and Steele, LLC. and/or its affiliates, are confidential, and are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this e-mail in error, please notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing or copying of this e-mail is strictly prohibited.

From: Olexa, Garrett <GOlexa@jsslaw.com>

Sent: Monday, March 16, 2020 2:08 PM

To: Drew Alcazar <Drew@russoandsteele.com>

Subject: Notice Letter re: James P. Foust

Drew,

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

Garrett J. Olexa

golexa@jsslaw.com

[vCard](#) | [bio](#)

P 602.262.5863 | **F** 602.495.2683

Jennings, Strouss & Salmon, P.L.C.

16150 North Arrowhead Fountains Center Drive, Suite 250

Peoria, AZ 85382-4754

jsslaw.com | [map](#)



Kindly consider the environment before printing this email.

This electronic mail is intended to be received and read only by certain individuals. It may contain information that is attorney-client privileged or protected from disclosure by law. If it has been misdirected, or if you suspect you have received this in error, please notify me by replying and then delete both the message and reply. Thank you.

Exhibit B

Exhibit B

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

702.949.8200 main
702.949.8398 fax
lrrc.com

John Bragonje
Partner
Admitted in Nevada
(702) 474-2625 direct
(702) 216-6173 fax
JBragonje@lrrc.com

March 13, 2020

Our File Number: 21322-00108

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

CONFIDENTIAL

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

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

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

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

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

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

To Whom It May Concern:

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

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

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

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

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

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

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

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

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

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

Conclusion.

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

Yours very truly,

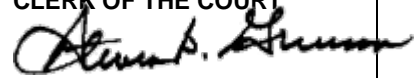
A handwritten signature in black ink, reading "John E. Bragonje". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

John E. Bragonje
Lewis Roca Rothgerber Christie LLP

JB

EXHIBIT 8

EXHIBIT 8



NOTC
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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

**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

1 [https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/index-](https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/index-financial-institution-lists.html)
2 [financial-institution-lists.html](https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/index-financial-institution-lists.html)

3 The federal bank charter number associated with Baker Boyer on the official list (Exhibit
4 2)—3956—matches the number of on the original charter. (*Compare with Exhibit 1.*) There is no
5 question but that Baker Boyer is an active, legitimate entity with the capacity to sue and to enforce
6 contracts and other rights arising under applicable laws, as it has done in this case for many years
7 now.

8 **Harry Hildibrand, Jr. Is Not a Real Person**

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

18
19 DATED this 3rd day of April, 2020.

20
21 LEWIS ROCA ROTHGERBER CHRISTIE LLP

22 By: /s/ John E. Bragonje
23 John E. Bragonje (SBN.: 9519)
24 3993 Howard Hughes Pkwy, Suite 600
25 Las Vegas, NV 89169-5996

26 *Attorneys for Plaintiff Baker Boyer National Bank*
27
28

1 **CERTIFICATE OF SERVICE**

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

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

12 Brenoch Wirthlin, Esq.
13 **HUTCHISON & STEFFEN, PLLC**
14 Peccole Professional Park
15 10080 W. Alta Drive, Suite 200
16 Las Vegas, NV 89145
17 bwirthlin@hutchlegal.com
18 *Attorneys for Edward Detwiler*

19 **The Following Served via U.S. Mail:**

20 **HARRY HILDIBRAND, LLC**
21 c/o Registered Agent
22 Jared S. Heggen
23 3011 American Way
24 Missoula, MT 59808

25 **HARRY HILDIBRAND, LLC**
26 c/o Registered Agent
27 Jared S. Heggen
28 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

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 James 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.

28-3956.

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

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.

<div> <div>1930 United States Federal Census</div> <div>1930S</div> <div>View Image</div> </div>	Name Harry H Hildibrand		
	Birth location		
	Residence 1930 township city York Pennsylvania USA		
<div> <div>1920 United States Federal Census</div> <div>1920S</div> <div>View Image</div> </div>	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.

45		Steffen Eli	brother			M W 46	1	90	100	PENNSYLVANIA	PENNSYLVANIA	PENNSYLVANIA
46	2943/4	Hildibrand Harry	Head	O		M W 54	29	90	100	PENNSYLVANIA	PENNSYLVANIA	PENNSYLVANIA
47		Minnie	wife			F W 51	26	90	100	PENNSYLVANIA	PENNSYLVANIA	PENNSYLVANIA
48	2953/5	Lynch William H	Head	O		M W 56	5	90	100	PENNSYLVANIA	PENNSYLVANIA	Maryle
49		Mandellia	Mother			F W 56	100	90	100	Maryland	Maryland	Maryle

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.

8	175800	Hildibrand Charles	Head	10	F	M W 60	Wd			1	Chas	Nebraska
		Helena	daughter		F	W 22	3m				Helena	Nebraska
		Ruth	daughter		F	W 20	3m				Ruth	Nebraska
		John	son		M	W 19	3m				John	Nebraska
		Ray	son		M	W 16	8				Ray	Nebraska
		Harry	son		M	W 14	8				Harry	Nebraska

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

Steven D. Grierson

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

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

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.


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

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

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

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

22 Dated this 23rd day of March, 2020

23
24
25
26
27
28

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

1 Respectfully submitted,

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3
4 By: 

5 John E. Bragonje

6 State Bar No. 9519

7 jbragonje@lrrc.com

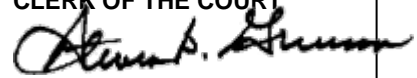
8 3993 Howard Hughes Parkway, Suite 600

9 Las Vegas, NV 89169

10 *Attorneys for Plaintiff Baker Boyer National Bank*

EXHIBIT 10

EXHIBIT 10



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DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK,

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 GRANTING APPLICATION
FOR CHARGING ORDER AGAINST
ALL NEVADA LIMITED LIABILITY
COMPANY MEMBERSHIP
INTERESTS OF EDWARD N.
DETWILER**

AND

DENYING COUNTERMOTION

Date: June 22, 2020

Time: Chambers

ORDER

On May 15, 2020, Baker Boyer National Bank filed its Application for Charging Order Against All Nevada Limited Company Membership Interests of Edward N. Detwiler. On May 29, 2020, Edward Detwiler filed his Opposition to Application for Charging Order and Countermotion to Confirm Stay of Execution Based Upon COVID-19 Orders and Directives; the Bank filed its reply in support of and its opposition to these papers on June 15, 2020; and Mr. Detwiler filed his reply in support of his countermotion on June 17, 2020. The matter having been fully heard and submitted, the Court now grants the Bank's application for a charging order and denies Mr. Detwiler's countermotion for the following reasons.

...

...

1 **FINDINGS**

2 1. For the reasons given in the Bank’s papers, the Court finds that the Bank violated
3 neither this Court’s stay of execution imposed by its order of April 13, 2020, nor the pandemic-
4 related emergency orders issued by the Governor and the Chief Judge of this Court.

5 2. This Court’s stay order did not prohibit the filing of motions. The Bank did not
6 procure a charging order before this Court’s May 29, 2020 deadline; it merely filed an application.
7 The charging order will ultimately issue more than one month after the applicable stay deadline.

8 3. Likewise, Declaration 17 prohibits only “executions of all funds . . . pursuant to
9 NRS chapter 21” and “all writs of garnishment aiding in execution pursuant to NRS chapters 21
10 and 31” *See* Nevada Governor Steve Sisolak, Declaration of Emergency Directive 017, at §§
11 1–2.)¹ Likewise, Administrative Order #20-09 applies only to “writs of execution or writs of
12 garnishment.”²

13 4. These directives, by their own explicit terms, do not apply to charging orders. A
14 charging order arises out of NRS Chapter 86. A charging order provides “the exclusive remedy by
15 which a judgment creditor of a member or an assignee of a member may satisfy a judgment out of
16 the member’s interest of the judgment debtor, whether the limited-liability company has one
17 member or more than one member.” NRS 86.401(2)(a). Therefore, the seeking and granting of a
18 charging order violates no emergency order.

19 5. The Court rejects the argument that counsel for the Bank acted unethically by
20 violating Nevada Rule of Professional Conduct 4.3. Mr. Detwiler has presented no persuasive or
21 credible evidence that the Bank’s counsel violated any rule of professional conduct.

22 6. The Court permits the removal of the designation “a Washington corporation” from
23 the name of the Bank, as that reflects the true identity of the creditor, and the undisputed facts.
24 The name of the Bank in the captions in this case are hereby amended to conform to the proof.
25

26
27 ¹ Available at << [<< http://gov.nv.gov/News/Emergency_Orders/2020/2020-04-30_-_COVID-19_Declaration_of_Emergency_Directive_017_\(Attachments\)/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-04-30_-_COVID-19_Declaration_of_Emergency_Directive_017_(Attachments)/) >> (last visited June 3, 2020).

28 ² Eighth Judicial District Court, Clark County, Nevada, Administrative Order: 20-09, available at << https://eighthjdcourt.files.wordpress.com/2020/03/ao20_09.pdf >> (last visited June 3, 2020).

7. The Court, as it has done previously, overrules Mr. Detwiler's peremptory challenge as untimely.

8. The Court will issue a separate, simple charging order that the Bank will be permitted to serve upon any Nevada limited liability company in which Mr. Detwiler has an interest.

CONCLUSIONS

1. IT IS ORDERED that the Bank's motion for a charging order is GRANTED.

2. IT IS ADDITIONALLY ORDERED that the counter-motion of Mr. Detwiler is DENIED.

Dated this 2nd day of July, 2020


DISTRICT COURT JUDGE
BWS A-17-760779-F

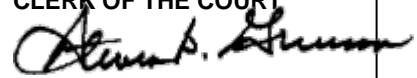
Respectfully submitted,
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Attorneys for Plaintiff Baker Boyer National Bank

EXHIBIT 11

EXHIBIT 11



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Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK,

Case No.: A-17-760779-F

Plaintiff/Judgment Creditor,

Dept. No.: II

vs.

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

Defendant/Judgment Debtor.

CHARGING ORDER AGAINST ALL NEVADA LIMITED LIABILITY

COMPANY MEMBERSHIP INTERESTS OF EDWARD N. DETWILER

Whereas, on or about March 30, 2020, the Court entered a judgment in favor of plaintiff Baker Boyer National Bank and against Edward N. Detwiler in the amount of \$318,855.52, with post-judgment interest continuing to accrue; and

Whereas the Court has considered Baker Boyer National Bank's application for a charging order pursuant to NRS 86.401;

Now therefore, the Court hereby grants the request for a charging order as follows:

1. **IT IS HEREBY ORDERED** that, pursuant to NRS 86.401, Dallas Management LLC; Nai'a Resorts, LLC; and PSV Development, LLC; and any other Nevada limited liability company in which Edward N. Detwiler has an interest be, and hereby are, ordered, upon penalty of contempt, to immediately direct all membership distributions otherwise due to Edward N. Detwiler to be made directly to Baker Boyer National Bank until the judgment issued by this Court against Edward N. Detwiler has been paid in full, including accrued post-judgment interest

1 and continuing costs of collection, such as reasonable attorney fees. For the avoidance of doubt,
2 distributions shall be understood to include, without limitation, earnings, return of capital, noncash
3 distributions, distributions in kind, profits, cash, assets, monies, and any other type of property or
4 consideration due or that shall become due, whether they be interim or liquidating, and whether or
5 not the distribution be expressly labeled salary or other current compensation for services
6 rendered.

7 2. **IT IS FURTHER ORDERED** that Dallas Management LLC; Nai'a Resorts, LLC;
8 and PSV Development, LLC; and any other Nevada limited liability company in which Edward N.
9 Detwiler has an interest be, and hereby are, ordered, upon penalty of contempt, to refrain from
10 distributing to any other person or entity any membership distributions (described in Item 1 above)
11 due to Edward N. Detwiler, including any payments to third-party creditors of Edward N.
12 Detwiler.

13 3. **IT IS FURTHER ORDERED** that Dallas Management LLC; Nai'a Resorts, LLC;
14 and PSV Development, LLC; and any other Nevada limited liability company in which Edward N.
15 Detwiler has an interest be, and hereby are, ordered, upon penalty of contempt, to disclose (a) any
16 and all agreements controlling the interest of Edward N. Detwiler in said companies, including,
17 without limitation, operating agreements and amendments thereto; contracts; articles of merger,
18 conversion, exchange, or domestication; articles of organization; bylaws; documents showing the
19 proportion of Edward N. Detwiler's and others' contribution to company's capital; and documents
20 indicating classes of members with relative rights, powers, and duties, including voting rights, and
21 (b) any and all records, such as financial statements and profit and loss statements, that concern
22 the amounts that would otherwise be distributed to Edward N. Detwiler by the respective
23 company.

24 **IT IS SO ORDERED.**

25 Dated this 2nd day of July, 2020

26 
27 DISTRICT COURT JUDGE
28 BMT A-17-760779-F

Respectfully submitted,
LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: 
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*Attorneys for Plaintiff Baker Boyer National
Bank*

EXHIBIT 12

EXHIBIT 12



Nevada Governor Steve Sisolak



DECLARATION OF EMERGENCY DIRECTIVE 017 (Attachments)

WHEREAS, on March 12, 2020, I, Steve Sisolak, Governor of the State of Nevada issued a Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic; and

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States declared a nationwide emergency pursuant to Sec. 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"); and

WHEREAS, as of April 30, 2020, the State of Nevada Department of Health and Human Services is reporting 4,898 positive cases of COVID-19, and 237 deaths resulting from COVID-19; and

WHEREAS, close proximity to other persons is currently contraindicated by public health and medical best practices to combat COVID-19; and

WHEREAS, the ability for Nevadans to stay in their homes and avoid gathering in public places is essential to abide by social distancing recommendations that aid in containing the spread of COVID-19; and

WHEREAS, [NRS 414.060](#) outlines powers and duties delegated to the Governor during the existence of a state of emergency, including without limitation, directing and controlling the conduct of the general public and the movement and cessation of movement of pedestrians and vehicular traffic during, before and after exercises or an emergency or disaster, public meetings or gatherings; and

WHEREAS, [NRS 414.070](#) outlines additional powers delegated to the Governor during the existence of a state of emergency, including without limitation, enforcing all laws and regulations relating to emergency

management and assuming direct operational control of any or all forces, including, without limitation, volunteers and auxiliary staff for emergency management in the State; providing for and compelling the evacuation of all or part of the population from any stricken or threatened area or areas within the State and to take such steps as are necessary for the receipt and care of those persons; and performing and exercising such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, *the economic fallout of the COVID-19 pandemic is negatively impacting financial stability of a significant number of individuals, families, and businesses statewide, hindering the ability of Nevadans and businesses to timely meet financial obligations; and*

WHEREAS, *on March 25, 2020, the United States Congress passed an aid-package that is intended to provide substantial economic assistance to individuals, families and businesses throughout the nation; and*

WHEREAS, *the availability of funds for basic needs is essential for all Nevadans; and*

WHEREAS, *a temporary stay of writs of garnishment and writs of execution will give Nevadans facing financial hardship resulting from the COVID-19 pandemic a grace period to obtain financial assistance made available through this extensive aid-package, as well as others; and*

WHEREAS, *these writs can result in the loss of money, personal property and real property and recovering levied money or property requires the filing of a claim of exemption with the clerk of court (with regard to earnings or wages, a claim must be filed after each withholding) and serving the same in accordance with [NRS 21.075](#) and [21.112](#), the personal service of certain documents (e.g. service and execution of writs and taking of property by Sheriff. [NRS 31.060](#); [NRS 31.270](#); [NRS 21.110](#)), may require hearings and therefore likely requires Nevadans to leave their homes, may result in persons being unable to recover the property if a claim of exemption is not timely filed, and increases vulnerability to transmission of COVID-19, which in turn increases the general public health risk resulting from spread of COVID-19; and*

WHEREAS, *to avoid serious health, safety, welfare, and financial consequences that may result from writs of garnishment and writs of execution, it is reasonable and necessary to temporarily stay all proceedings involving writs of garnishment and writs of execution in Nevada; and*

WHEREAS, Article 5, Section 1 of the Nevada Constitution provides: "The supreme executive power of this State, shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada;"

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of Nevada and the United States, and pursuant to the March 12, 2020 Emergency Declaration,

IT IS HEREBY ORDERED THAT:

SECTION 1:	All executions of all funds, including federal stimulus payments, pursuant to NRS Chapter 21 , including but not limited to the issuance and service of writs of execution shall be stayed. No writs of execution pursuant to NRS 21.020 shall be issued or served.
SECTION 2:	All writs of garnishment aiding in execution pursuant to NRS Chapters 21 and 31 shall be stayed. No new writs of garnishment pursuant to NRS 21.120 , NRS 31.260 , and NRS 31.270 shall be issued or served.
SECTION 3:	Funds or property garnished or attached after the date of this order shall be immediately returned to the judgment debtor. The judgment debtor shall not be required to claim an exemption pursuant to NRS 21.112 .
SECTION 4:	Garnishees withholding funds pursuant to a writ of garnishment shall stop such garnishments and withholdings without facing liability for failure to withhold under NRS 31.297 .
SECTION 5:	The stay of garnishments and executions is not applicable to actions for, or any judgment awarding any child support owed to a parent or spousal support or any criminal restitution payable to victims.
SECTION 6:	Though setoffs may otherwise be allowed pursuant to NRS 657.140 , NRS 672.650 (replacing NRS 678.650) and Chapter 104 of the NRS, setoffs from COVID-19 stimulus funds are hereby prohibited.
SECTION 7:	Garnishment and execution actions currently being adjudicated by a court shall be stayed until the state of emergency declared on March 12, 2020 terminates or expires.
	After the termination or expiration of the March 12, 2020 Declaration of Emergency relating to the COVID-19

SECTION 8:	pandemic, and abatement of the financial hardships created by the COVID-19 pandemic, borrowers and lenders are encouraged to negotiate payment plans or other agreements within 30 days of the termination of this Directive to allow borrowers to cure any defaults or missed payments resulting from a financial hardship resulting from the COVID-19 pandemic.
SECTION 9:	This Directive shall remain in effect until the state of emergency declared on March 12, 2020 is terminated or unless renewed by a subsequent Directive promulgated pursuant to the March 12, 2020 Declaration of Emergency to facilitate the State's response to the COVID- 19 pandemic.

COVID-19 Declaration of Emergency Directive 017 Orders



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 30th day of April, in the year two thousand twenty.


Governor of the State of Nevada


Secretary of State


Deputy Secretary of State

[Nevada Health Response Governor Sisolak Signs Directive to Protect Nevadans from Garnishment of COVID-19 Related Funds 5/1/2020](#)

Executive

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EXHIBIT 13

EXHIBIT 13



Nevada Governor Steve Sisolak



DECLARATION OF EMERGENCY DIRECTIVE 026

WHEREAS, in late 2019, the United States Centers for Disease Control and Prevention began monitoring an outbreak of respiratory illness caused by a novel coronavirus first identified in Wuhan, Hubei Province, China; and

WHEREAS, on February 11, 2020, the International Committee on Taxonomy of Viruses named this novel coronavirus "severe acute respiratory syndrome coronavirus 2 (SARS-Co V-2);" and

WHEREAS, on February 11, 2020, the World Health Organization named the disease caused by SARS-CoV- 2, "COVID-19;" and

WHEREAS, the World Health Organization advises that the novel coronavirus that causes COVID-19 virus is highly contagious, and spreads through respiratory transmission, and direct and indirect contact with infected persons and surfaces; and

WHEREAS, the World Health Organization advises that respiratory transmission occurs through both droplet and airborne transmission, where droplet transmission occurs when a person is within 6 feet of someone who has respiratory symptoms like coughing or sneezing, and airborne transmission may occur when aerosolized particles remain suspended in the air and is inhaled; and

WHEREAS, the World Health Organization advises that contact transmission occurs by direct contact with infected people or indirect contact with surfaces contaminated by the novel coronavirus; and

WHEREAS, some persons with COVID-19 may exhibit no symptoms but remain highly infectious; and

WHEREAS, on March 5, 2020, Clark County and Washoe County both reported the first known cases of COVID-19 in the State of Nevada; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a pandemic; and

WHEREAS, on March 12, 2020, I, Steve Sisolak, Governor of the State of Nevada issued a Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic; and

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States declared a nationwide emergency pursuant to Sec. 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 14, 2020, I formed a medical advisory team to provide medical guidance and scientifically based recommendations on measures Nevada could implement to better contain and mitigate the spread of COVID-19; and

WHEREAS, infectious disease and public health experts advised that minimizing interpersonal contact slows the rate at which the disease spreads, and is necessary to avoid overwhelming healthcare systems, commonly referred to as "flattening the curve"; and

WHEREAS, since the March 12, 2020 Declaration of Emergency, I have issued 25 Directives pursuant to that order to provide for the safety, wellbeing, and public health of Nevadans and the administration of the State of Nevada; and

WHEREAS, these Directives were promulgated to reduce interpersonal contact and promote social distancing to flatten the curve; and

WHEREAS, on April 21, 2020, the National Governors Association issued guidance for a staged reopening that protects the public's health while laying a strong foundation for long-term economic recovery; and

WHEREAS, on April 30, 2020, I introduced the *Nevada United: Roadmap to Recovery* plan that outlined a phased approach to reopening Nevada businesses and industry; and

WHEREAS, the *Nevada United: Roadmap to Recovery* plan set forth a collaborative partnership between state and local governments that included the formation of the Local Empowerment Advisory Panel ("LEAP") to serve as a resource to local governments and local

communities; and

WHEREAS, on May 9, 2020, the State of Nevada entered Phase One of the *Nevada United: Roadmap to Recovery* plan; and

WHEREAS, on May 29, 2020, the State of Nevada entered Phase Two of the *Nevada United: Roadmap to Recovery* plan; and

WHEREAS, prior to entering Phase Two, the State of Nevada experienced a consistent and sustainable downward trajectory in the percentage of positive COVID-19 cases, a decrease in the trend of COVID-19 hospitalizations, and a decline in our cumulative test positivity rate from a maximum rate of 12.2% on April 24, 2020 to 6.3% on May 27, 2020 with a 33-day downward trend; and

WHEREAS, the public safety threat posed by the SARS-CoV-2 has not yet abated; and

WHEREAS, the State of Nevada is experiencing an increase in both its cumulative test positivity rate and its seven-day moving average of daily new COVID-19 cases; and

WHEREAS, the State of Nevada is experiencing an increasing trend of hospitalizations for confirmed COVID-19 cases since May 31, 2020; and

WHEREAS, NRS 414.060 outlines powers and duties delegated to the Governor during the existence of a state of emergency, including without limitation, directing and controlling the conduct of the general public and the movement and cessation of movement of pedestrians and vehicular traffic during, before and after exercises or an emergency or disaster, public meetings or gatherings; and

WHEREAS, NRS 414.070 outlines additional powers delegated to the Governor during the existence of a state of emergency, including without limitation, enforcing all laws and regulations relating to emergency management and assuming direct operational control of any or all forces, including, without limitation, volunteers and auxiliary staff for emergency management in the State; providing for and compelling the evacuation of all or part of the population from any stricken or threatened area or areas within the State and to take such steps as are necessary for the receipt and care of those persons; and performing and exercising such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, Article 5, Section 1 of the Nevada Constitution provides: "The

supreme executive power of this State, shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada;" and

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of Nevada and the United States, and pursuant to the March 12, 2020, Emergency Declaration,

IT IS HEREBY ORDERED THAT:


SECTION 1:	To the extent this Directive conflicts with earlier Directives or regulations promulgated pursuant to the March 12, 2020 Declaration of Emergency, the provisions of this Directive shall prevail.
SECTION 2:	Directive 004 shall terminate on June 30, 2020 at 11 :59 pm. All Department of Motor Vehicles (DMV) commercial and non-commercial licenses, commercial and non-commercial instruction permits, identifications cards, Driver Authorization Cards (DAC), vehicle or off-highway vehicle registrations, motor carrier active and temporary credentials, or any other credentials issued by the DMV as required by state law that have expired or will expire between March 12, 2020 and July 15, 2020, shall be valid until September 13, 2020 at 11:59 PM. Where possible, DMV customers are strongly encouraged to renew said licenses, permits, cards and other DMV credentials through DMV's website, portal, or kiosks to the greatest extent practicable.
SECTION 3:	Directive 006 is hereby extended to July 31, 2020 at 11:59 pm, unless specifically terminated prior to that date or renewed by subsequent Directive.
SECTION 4:	Public Gatherings. Directive 007 and all provisions amended by subsequent directives are hereby extended to July 31, 2020, unless specifically terminated prior to that date or renewed by subsequent Directive.
	Directive 009 (Revised) shall terminate on June 30, 2020 at 11 :59 pm. All time tolled by Section 2 shall recommence effective July 31, 2020 at 11 :59 pm. All licenses and permits issued by the State of Nevada, Boards, Commissions, Agencies, or political subdivisions, that expired between March 12, 2020 and June 30, 2020 because reduced government operations due to the state of emergency made timely renewal of the license or

SECTION 5:	<p>permit impracticable or impossible, shall be deemed valid and expire on September 28, 2020 at 11 :59 pm. This provision shall not be construed to extend to any license within the scope of Directive 011.</p> <p>Persons referenced in Section 4 of Directive 009 (Revised) subject to the provisions of NRS 76.130 and whose annual business license renewal fee was due between March 12, 2020 and July 31, 2020, shall be entitled to a grace period expiring on September 30, 2020 to pay the fee without suffering any of the consequences or penalties resulting from the application of subsections 4 and 5 of that statute.</p>
SECTION 6:	<p>Provisions of Directive 016 not amended by subsequent directives are hereby terminated. Provisions of Directive 016 amended by subsequent directives shall remain in effect as amended.</p>
SECTION 7:	<p>Directive 017 shall terminate on June 30, 2020 at 11:59 pm.</p>
SECTION 8:	<p>Directive 021, Phase Two of the <i>Nevada United: Roadmap to Recovery</i> plan, is hereby extended to July 31, 2020 at 11:59 pm, unless specifically terminated prior to that date or renewed by subsequent Directive.</p>
SECTION 9:	<p>This Directive shall remain in effect through July 31, 2020 at 11 :59 pm, unless terminated or extended by a subsequent Directive promulgated pursuant to the March 12, 2020 Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic.</p>

DECLARATION OF EMERGENCY DIRECTIVE 026 HEREBY ORDERS



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 29th day of June, in the year two thousand twenty.


Governor of the State of Nevada

Richard R. Cagaste

Secretary of State

Scott R. Rasmussen

Deputy Secretary of State

Executive

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[Lt. Governor](#)

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