IN THE SUPREME COURT OF THE STATE OF NEVADA

VINCENT T. SCHETTLER,

Appellant,

Case No. 83408

vs.

PACIFIC WESTERN BANK,

Respondent. /

REPLY IN SUPPORT OF:

MOTION UNDER NRAP 8 AND 27 FOR STAY PENDING APPEAL

(Stay requested by September 15, 2021)

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

1. Appellant, Vincent T. Schettler, is an individual.

2. Alan D. Freer and Alexander G. LeVeque of Solomon Dwiggins Freer & Steadman, Ltd., and Rusty J. Graf of Black & Wadhams, represented Appellant in the district court. Alexander G. LeVeque of Solomon Dwiggins Freer & Steadman, Ltd., and Robert L. Eisenberg of Lemons Grundy & Eisenberg, have appeared before this Court.

3. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Dated this 7th day of September, 2021.

/s/ Alexander G. LeVeque

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I. A Stay Does Not Require the Posting of a Supersedeas Bond.

In its Opposition, the Bank ignores the district court's denial of Vincent's right to a stay under NRCP 62(d)(2). Instead, it argues that if a stay be granted, Vincent should be required to post a full supersedeas bond. A supersedeas bond, however, is not available to a litigant appealing the appointment of a receiver. NRCP 62(d)(1). Rather, a litigant is entitled to a stay of a receivership "by providing a bond or other security." NRCP 62(d)(2). Vincent is not appealing the underlying judgment. The proper inquiry, therefore, is what the appropriate amount of security would be to account for potential harm in the event Vincent does not prevail. NRAP 8(a)(2)(E). Vincent submits that no such security is required because the Bank continues to accrue post-judgment interest on the judgment and failed in its Opposition to articulate any particularized harm. Indeed, the Bank admitted that any such harm is "speculative."[1]

II. The Bank Admits Its and the District Court's Conflicting Positions.

In one breath, the Bank argues that Vincent is not likely to prevail on appeal because the district court appointed a receiver by solely finding under NRS 32.010(4) that execution was returned unsatisfied or Vincent refused to apply property in satisfaction of the judgment.[2] Yet, in another breath, the Bank argues that the "relevant" findings supporting the district court appointment of a receiver were Finding Nos. 3-11 in the Receiver Order; all of which are findings irrelevant to the district court's

[1] *See* Opposition, at 7.
[2] *Id.*

repeated representations that it was narrowly construing NRS 32.010(4).[3] These findings are inflammatory and were disputed with material evidence below.

For example, Receiver Order states that Vincent "will falsify the truth while in the very act of acknowledging it is a federal crime to do so."[4] During the receivership motion practice, the Bank alleged that Vincent falsely represented in a mortgage application that he was not subject to any judgments.[5] In opposition, Vincent presented evidence, including the sworn testimony of the mortgage broker, that the application was made by the Schettler Family Trust, not Vincent, individually. Accordingly, the representation regarding no judgments against the Schettler Family Trust was true.[6]

The bottom line is that both the district court and the Bank repeatedly insisted that no *Medipro* or *Aviation Supply* analysis is required under Nevada law for the appointment of a post-judgment receiver yet the Receiver Order includes the sort of findings that would be made under such an analysis, without the aid of an evidentiary hearing; findings that the Bank knew would have to exist to survive appellate scrutiny yet were made despite genuine issues of material fact concerning collection efforts.[7]

Finally, the Bank contends that Vincent did not submit a proposed order with detailed findings. Not true. Vincent submitted an order with findings relevant to the

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[3] *See* Opposition, at 2-3.

[4] *See* Receiver Order, at 4:15-18.

[5] *See* Bank's Reply in Support of Receiver Motion, without exhibits, at 3:4-20, attached hereto as **Exhibit 1**.

[6] *See* Vincent's Opposition to Receiver Motion, without exhibits, at 18:4-9:11, attached hereto as **Exhibit 2**.

[7] Vincent recently filed a motion for reconsideration of these findings under NRCP 62.1, which is scheduled to be heard by the district court on November 3, 2021. *See* Motion for Reconsideration, without exhibits, attached hereto as **Exhibit 3**.

district court's Minute Order, which stated that the court was appointing a receiver under NRS 32.010(4) and that it was not considering the respective interests of the Bank and Vincent, or whether the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of judgment.[8]

III. Recent Foreign Caselaw Reviewing Post-Judgment Receivers, Including Caselaw Relied Upon by the District Court, Supports Reversal.

In its Receiver Order, the district court cites (1) *Morgan Stanley Smith Barney LLC v. Johnson*, 952 F.3d 978 (8th Cir. 2020); (2) *Otero v. Vito*, 2008 WL 4004979 (M.D.Ga.2008); and (3) *U.S. v. Hoffman*, 560 F.Supp.2d 772 (D.Minn.2008), as authority supporting the appointment of a post-judgement receiver.[9] All three federal cases however followed the standard set forth in *Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc.* 999 F.2d 314, 316 (8th Cir. 1993) which generally provides that "[a] receiver is an extraordinary equitable remedy that is only justified in extreme situations." *Id.*, at 316.[10] *Aviation Supply* sets forth factors that federal courts in the Eighth Circuit should consider before appointing a post-judgment receiver which include:

> (a) a valid claim by the party seeking the appointment; (b) the probability that fraudulent conduct has occurred or will occur to frustrate that claim; (c) imminent danger that property will be concealed, lost, or diminished in value; (d) inadequacy of legal remedies; (e) lack of a less drastic equitable remedy; and (f) likelihood that appointing the receiver will do more good than harm. *Id.*

In this case, the district court expressly stated that it was not weighing any such factors notwithstanding the well-reasoned *Aviation Supply* decision and all of the

[8] *See* Vincent's Proposed Order, attached hereto as **Exhibit 4**.
[9] *See* Receiver Order, at 4:22-5:2; 6:15-20; 7:6-10.
[10] A copy of the *Aviation Supply* decision is attached hereto as **Exhibit 5**.

federal cases cited by the district court which followed *Aviation Supply*. Had the district court performed such an analysis, the factors would have weighed heavily in Vincent's favor as the majority of assets targeted by the Bank are LLC membership interests. If Vincent has a right to distributions from those entities, charging orders would be the more appropriate (and less draconian) remedy.

California has adopted a similar standard as the Eighth Circuit. Despite its liberal statute authorizing such receiverships, California "strongly discourages" them because they are "rarely a necessity and, as a consequence, may not ordinarily be used for the enforcement of a simple money judgment."[11]

IV. Seeking Relief from the District Court of Its Overbroad Receiver Order Imposes an Undue Burden on Vincent.

The Bank suggests that to the extent the Receiver Order infringes on spendthrift trust protections and/or charging order limitations, Vincent's remedy would be to seek emergency relief from the district court.[12] Such a process would be backwards and further supports a stay of the Receiver Order and its ultimate reversal.

A. The Receiver Order cannot be construed as a charging order.

The Bank's underlying motion was for the appointment of a receiver, not for charging orders. Had the motion been the latter, evidence relating to the ownership and control of the enumerated entities would have been relevant and considered by the district court because NRS 86.401(1) requires the filing of an application "by any judgment creditor of a member" of a limited-liability company. No such applications

[11] *Medipro Medical Staffing LLC v. Certified Nursing Registry Inc.*, 60 Cal.App.5th 622, 628 (Cal.App.2021), attached hereto as **Exhibit 6**.
[12] *See* Opposition, at 6-7.

were filed by the Bank. Furthermore, the Bank made no showing that Vincent, individually, is a member of all the twenty-five (25) separate LLCs enumerated in the Receiver Order. Vincent, individually, is a member of only one.

The Bank in its Opposition also contends that the Receiver Order "does not force any LLC to make a distribution to the receiver."[13] Not true. The Receiver Order reads exactly like a charging order.[14]

B. The district court is without jurisdiction in the first place to compel a trustee of a spendthrift trust to direct distributions to a receiver.

Unlike the receivership in *Morgan Stanley* (where the federal court's post-judgment receivership permitted the receiver to investigate assets and then make recommendations for liquidation of the same upon due notice and hearing), the district court's Receiver Order permits immediate liquidation of assets and application to the judgment. The district court has no power to compel a trustee to direct distributions from a spendthrift trust under NRS 166.120(2) and *Klabacka*. There are more trusts at issue other than the Schettler Family Trust.

V. CONCLUSION

Accordingly, Vincent respectfully requests that the Court grant his Motion.

DATED: September 7, 2021.

/s/ Alexander G. LeVeque

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[13] *See* Opposition, at 6.
[14] *See* Receiver Order, at 8:27-9:16.

EXHIBIT 1

RPLY
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DISTRICT COURT

CLARK COUNTY, NEVADA

PACIFIC WESTERN BANK, a California corporation,

Plaintiff,

v.

JOHN A. RITTER, an individual; DARREN D. BADGER, an individual; VINCENT T. SCHETTLER, an individual; and DOES 1 through 50,

Defendants.

Case No. A-14-710645-B

Dept. No. 16

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR APPOINTMENT OF RECEIVER OVER JUDGMENT DEBTOR VINCENT T. SCHETTLER'S ASSETS

AND

OPPOSITION TO SCHETTLER'S COUNTERMOTION FOR APPOINTMENT OF SPECIAL MASTER

Date of Hearing: April 21, 2021
Time of Hearing: 9:00 a.m.

I.
INTRODUCTION

Judgment debtor, Vincent T. Schettler ("Schettler"), has two hearings on April 21, 2021. The first is in this case at 9:00 a.m. on the instant Receiver Motion. The second is at 1:30 p.m. in bankruptcy court (regarding co-judgment debtor John Ritter's bankruptcy case) where the court will likely approve a settlement involving Schettler, individually, and a Schettler-controlled entity (VTS Investments ("VTSI")). That settlement will, among other things, pay nearly $1,000,000 in

cash and transfer several parcels of real property to VTSI. A receiver should have the opportunity to evaluate whether Schettler is purposefully directing all his consideration to VTSI in order to thwart Pacific Western Bank's ("PacWest's") collection of its judgment against Schettler, i.e., to evaluate whether Schettler is entitled to receive any of this settlement distribution and, if so, to enable the receiver to ask the court to freeze any funds VTSI may be paid until the court can ensure Schettler, individually, receives his fair share (and to contemporaneously ensure that PacWest receives a partial payment on its judgment).

Otherwise, Schettler's 27-page Opposition contains much frosting and little cake. Indeed, the legal argument does not start until page 19. When the Opposition is stripped of its lengthy Introduction, the even longer Procedural History section, and the protracted "Response" to the Motion's Background section, the legal analysis consists of just eight pages (not including the countermotion). Schettler's allocation of space demonstrates the lack of legal substance to his Opposition.

At bottom, PacWest obtained a multi-million dollar judgment against Schettler more than 6.5 years ago, and Schettler has not paid a penny even though he lives an extravagant lifestyle. He clearly has access to substantial funds. As he twice told Judge Williams in open court (trying to portray himself as reasonable and PacWest as unreasonable): "[I] made an offer of a million dollars." (*See* Hrg. Trans. (7/29/20) at 13:12-13, and Hrg. Trans. (10/14/20) at 13:19-20). These statements to the Court are admissions that Schettler has access to substantial sums of money but chooses to pay nothing.

NRS 32.010(4) allows the appointment of a receiver post-judgment to facilitate collection of the judgment. That assistance is needed here. Schettler opposes a receiver by suggesting hurdles that exist in other areas of receivership law (and, most notably, under California's different statute) but are not found anywhere in NRS 32.010(4).

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II.

LEGAL ARGUMENT

A. SCHETTLER CANNOT BE TRUSTED TO TELL THE TRUTH, EVEN TO THIS COURT

1. Schettler Misrepresents The Truth Regarding His $2,000,000 Home Loan

The present Motion opened with a section designed to show that Schettler has access to substantial wealth but pays nothing toward the judgment, and that he cannot be trusted to tell the truth. (Mtn. at 2:3). As two of many examples, the Motion demonstrated that (1) Schettler qualified to buy the $2,000,000 home he lives in by representing to his lender that "[m]y monthly pre-tax income is $77,231.00," (which is either true and demonstrates he has substantial income but chooses to pay nothing, or is false and demonstrates he cannot be trusted to tell the truth), and (2) Schettler misrepresented to his lender, under penalty of perjury, that he (a) was not a party to any lawsuits, and (b) had no judgments against him, even though he has been a party here for the past 6.5 years and most certainly has at least one multi-million dollar judgment against him (which, again, demonstrates Schettler cannot be trusted to tell the truth). *Id.* at 2:12-16, and Ex. 2 attached thereto.

In response, Schettler now contends that "The Schettler Family Trust, not Vincent, applied for the loan." (Opp. at 14:10-11). This is demonstrably false. And, faced with evidence of mortgage fraud, Schettler now suggests that his sworn representations regarding no judgments and not being a party to any lawsuits were made regarding The Schettler Family Trust. (Opp. at 18:5-7). This, too, is demonstrably false.

First, regardless of who ultimately took title to the home, the Court need look no further than Schettler's own exhibit (Ex. V) to confirm that Schettler, not The Schettler Family Trust, was the borrower/loan applicant. Indeed, because this exhibit directly contradicts Schettler's claim, it is curious why he reproduced it in his Opposition at page 15, which is reproduced here to highlight that the identified "Borrower" is "Vincent T. Schettler," not The Schettler Family Trust:

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iQM Alt Doc Income: 12 Month Bank Statement

Business or "Co-Mingled" Personal Option using EXPENSE FACTOR

PLEASE COMPLETE BLUE SECTIONS

Loan No.:	3117000901	Borrower:	Vincent T Schettler
Business / Co-Mingled Personal	Business	Name of Business:	Vision Commercial One LLC
Bank Name:	Bank of Nevada #9415	Type of Business:	Consultant
Last 4 digits of Account Number Used:	9415		

Acct #	Deposits	Month	Year	Total Deposits on Bank Statements	Non-Business Related Deposits (Excluded)	Adjusted Deposits used for qualifying	Beginning Balance	Ending Balance	NSF/ Overdrafts (if fee is
9415	1	JUN	2019	$165,000.00	$165,000.00	$0.00	$132,270.04	$5,545.04	0
9415	2	MAY	2019	$146,445.55	$71,445.55	$75,000.00	$7,762.88	$132,270.04	0
9415	3	APR	2019	$30,000.00	$23,000.00	$7,000.00	$712.88	$7,762.88	0
9415	4	MAR	2019	$42,000.00	$0.00	$42,000.00	$110,339.23	$712.88	0
9415	5	FEB	2019	$18,950.00	$0.00	$18,950.00	$135,402.78	$110,339.23	0
9415	6	JAN	2019	$0.00	$0.00	$0.00	$226,058.69	$135,402.78	0
9415	7	DEC	2018	$573,492.16	$255,000.00	$318,492.16	$1,483.43	$226,058.69	0
9415	8	NOV	2018	$3,048.75	$0.00	$3,048.75	$328,233.43	$1,483.43	0
9415	9	OCT	2018	$695,801.66	$0.00	$695,801.66	$37,045.65	$328,233.43	0
9415	10	SEP	2018	$280,015.00	$280,015.00	$0.00	$1,077,178.05	$37,045.65	0
9415	11	AUG	2018	$199.28	$0.00	$199.28	$1,441,608.89	$1,077,178.05	0
9415	12	JUL	2018	$90,000.00	$0.00	$90,000.00	$1,355,108.89	$1,441,608.89	0

iQM Alt Doc Income: 12 Month Bank Statement

Business or "Co-Mingled" Personal Option using EXPENSE FACTOR

PLEASE COMPLETE BLUE SECTIONS

Loan No.:	3117000901	Borrower:	Vincent T Schettler
Business / Co-Mingled Personal	Business	Name of Business:	Vincent T Schettler LLC
Bank Name:	Bank of Nevada #9324	Type of Business:	Consultant
Last 4 digits of Account Number Used:	9324		

Acct #	Deposits	Month	Year	Total Deposits on Bank Statements	Non-Business Related Deposits (Excluded)	Adjusted Deposits used for qualifying	Beginning Balance	Ending Balance	NSF/ Overdrafts (if fee is
9324	1	JUN	2019	$11,545.00	$525.00	$11,020.00	$28,811.78	$14,560.07	0
9324	2	MAY	2019	$19,994.88	$0.00	$19,994.88	$39,624.59	$28,811.78	0
9324	3	APR	2019	$37,153.64	$0.00	$37,153.64	$32,061.46	$39,624.59	0
9324	4	MAR	2019	$48,270.00	$21,000.00	$27,270.00	$14,683.73	$32,061.46	0
9324	5	FEB	2019	$27,829.88	$25,000.00	$2,829.88	$18,658.01	$14,683.73	0
9324	6	JAN	2019	$2,220.00	$0.00	$2,220.00	$54,022.45	$18,658.01	0
9324	7	DEC	2018	$710,357.94	$681,044.19	$29,313.75	$16,714.86	$54,022.45	0
9324	8	NOV	2018	$6,374.91	$3,248.96	$3,125.95	$315,343.92	$16,714.86	0
9324	9	OCT	2018	$285,710.74	$280,267.74	$5,443.00	$92,396.18	$315,343.92	0
9324	10	SEP	2018	$11,702.44	$0.00	$11,702.44	$475,753.73	$92,396.18	0
9324	11	AUG	2018	$1,424.88	$0.00	$1,424.88	$549,949.02	$475,753.73	0
9324	12	JUL	2018	$348,152.10	$0.00	$348,152.10	$332,001.96	$549,949.02	0

Brazenly, Schettler represents to this Court (misrepresents to this Court) that the Schettler Family Trust was the borrower, while cutting-and-pasting into his brief the very evidence that refutes his claim. That Vincent T. Schettler, the individual judgment debtor here, was the borrower is demonstrated by numerous other loan documents, just two of which include:

1. Uniform Residential Loan Application. This document is attached to the Motion as Ex. 9. In Section III of this document (GUILD02603), the "Borrower" is identified as "Vincent T. Schettler." And, on the last page (GUILD02606), which bears Schettler's signature, the "Borrower" is again identified as "Vincent T. Schettler." Schettler's signature does not indicate any representative capacity, such as trustee of the Schettler Family Trust. Although title

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to the home was ultimately placed in the name of the Schettler Family Trust, such does not change the fact that Schettler, individually, applied for the loan as the borrower. In short, there is no more compelling evidence regarding who the "borrower" was than the loan application itself. The loan application identifies "Vincent T. Schettler" as the borrower in several locations and does not mention the Schettler Family Trust anywhere. Schettler signed this loan application acknowledging "it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above listed facts . . .", which presumably includes the fact of who was seeking the loan. (*Id.*). And, this is the document where Schettler misrepresented there were no judgments against him and that he was not a party to any lawsuits. (*Id.* at GUILD02605). If Schettler cannot be trusted to tell the truth when acknowledging that falsifying information in a loan document is a federal crime, he certainly cannot be trusted to tell the truth to PacWest. A receiver is required to reveal the truth regarding Schettler's assets and to apply executable assets in satisfaction of PacWest's judgment.

2. Nevada "Commercially Reasonable Means or Mechanism" Worksheet. This document is attached to the Motion as Exhibit 2 and is where Schettler represented that "[m]y monthly pre-tax income is $77,231.00." Here, again, the "BORROWER" is identified as "VINCE SCHETTLER" and his wife, not The Schettler Family Trust. As a matter of law, this document is required only when the borrower is a natural person, and thus excludes The Schettler Family Trust. *See* NRS 598D.100. More particularly, in response to predatory lending practices prevalent during the early 2000's, the Nevada Legislature adopted NRS 598D and provided "borrowers" with certain protections, including that lenders must use a "commercially reasonable means or mechanism" to determine "the borrower has the ability to repay the home loan." (NRS 598D.100(1)(b), emphasis added). The statute defines "borrower" to be only "a natural person." (NRS 598D.020). However, "a trust is not a natural person." *See e.g.*, *Boshernitsan v. Bach*, ___ Cal. Rptr.3d ___, 2021 WL 936580, at *1 (Cal. Ct. App., March 12, 2021), *accord*, *Deutsche Bank Nat'l Trust Co. v. Independence II HOA*, 2019 WL 1245781, at *2 (D. Nev., March 18, 2019) (quoting *Mathis v. County of Lyon*, 2014 WL 1413608, at *2 (D. Nev., April 11, 2014) ("A

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trust . . . is not a natural person . . . .”). Thus, Schettler’s representation regarding his monthly income can only apply to himself, Vincent T. Schettler, a natural person. Again, either this representation is true and Schettler has more than $925,000 in annual income but refuses to pay any of it toward PacWest’s judgment, or the representation is just another of Schettler’s false statements that demonstrates his willingness to significantly misrepresent the truth. Either way, Schettler cannot be trusted.

In short, only an independent receiver will bring credibility to the process. If Schettler has no executable assets, as he claims, he has nothing to hide and nothing to lose with the appointment of a receiver.

As a final thought before leaving this issue—despite the foregoing evidence demonstrating Schettler was the borrower, it does not matter if the borrower later changed to The Schettler Family Trust, except that it evidences the continuous transfer of assets from Schettler to his related entities. That it, it is not relevant for present purposes whether Schettler or The Schettler Family Trust was ultimately the borrower. What matters is who the representations were made about when they were made. In that regard, the relevant representations regarding Schettler’s income and the existence of no judgments or lawsuits against him were made on documents identifying the borrower as Schettler, not The Schettler Family Trust.

In short, when Schettler signed the foregoing documents (and many others), the borrower was identified as Schettler, individually. Therefore, all references to the borrower regarded Schettler, not The Schettler Family Trust. Schettler’s claim now that his representations regarded The Schettler Family Trust, even on documents that do not mention the trust anywhere, is simply more evidence of Schettler’s gamesmanship and his willingness to say whatever he thinks is expedient under any given circumstance. Here, Schettler knows that an independent, court-appointed receiver—with all the powers vested in receivers—will dispel his charade of being judgment proof and dismantle all illegitimate barriers to paying the judgment.

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2. Response to Other Matters Raised in the Opposition's "Response to the Bank's False and/or Misleading Factual Assertions"

a. Mrs. Schettler's Deposition

PacWest sought to take Mrs. Schettler's deposition and she filed a motion for protective order toward the end of 2019. Schettler is correct that that motion remains pending and has not been ruled upon (even though Judge Williams stated in open court that he was inclined to allow the deposition to proceed and the only issue was on what terms). Schettler incorrectly asserts that "the Bank has since abandoned its subpoena." (Opp. at 16:12-13). It has not. PacWest vigorously opposed the motion for protective order by filing an opposition brief and by arguing in opposition to Mrs. Schettler's motion at the hearing. That the Court has not yet ruled on Mrs. Schettler's motion does not demonstrate PacWest's abandonment of its fully briefed and argued position. If anything, the silence by Mrs. Schettler constitutes an abandonment of her motion. More reasonable, the silence doesn't mean an abandonment of either side's fully briefed and argued position—the Court simply has not yet ruled.

While PacWest is not privy to information regarding Mrs. Schettler's medical condition, one thing is certain. Either Schettler lied to his lender when, in July 2019, he told his lender that "my wife's health is much better over the past two years" (Mtn. at Ex. 8) or Schettler lied two months later when he represented to PacWest that "her health is not good," unless her health went from "much better" to "not good" in those two months, which has not been evidenced or even suggested. (*See* Email (9/11/19) from Tim Cory (Schettler's counsel) to Dan Waite (PacWest's counsel), attached hereto as Ex. 1). Tellingly, as PacWest continued to press for Mrs. Schettler's deposition, the health claim intensified: "Mrs. Schettler . . . is in extremely poor health." (Mtn. at Ex. 7).[1] Either way, the purpose of mentioning Mrs. Schettler's deposition was simply to

[1] The September-October 2019 representations regarding Mrs. Schettler's "extremely poor health"—i.e., allegedly so grave that she could not submit to a 2-3 hour deposition, with breaks every 15-20 minutes—must viewed in context of her credit card charges during the same period, which tell a different story. Although PacWest had to file a motion to compel production of the billing statements, the statements show during this time that Mrs. Schettler regularly incurred charges at restaurants, spas, nail salons, grocery stores, other stores like Target and Best Buy, gas stations, etc. The statements also show she incurred charges at movie theatres, and over $17,000 associated with a mid-August 2019 cruise to Alaska which she was apparently healthy enough to participate in with Mr. Schettler and four others. (*See* Ex. 2, attached hereto). In just the six days immediately preceding the representation that "Mrs. Schettler . . . is in extremely poor health," the credit card statement shows she incurred charges for shopping at Tivoli Village, Trader Joe's, Living Spaces, two nail salons, Smith's, and Starbucks. (*Id.*). In short, Schettler attempts to

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emphasize that Schettler cannot be trusted to tell the truth. A receiver is needed to obtain trustworthy information.

b. Schettler's interest in a Hawaii vacation condo

The Opposition twice mentions that a receiver should not be appointed because Schettler owns a 1/3 interest in a limited liability company that owns a condominium unit in Hawaii, but PacWest "has done nothing to pursue it." (Opp. at n.5; *see also*, *id.* at 22:11-12). First, as Schettler notes, he does not own the condo—he owns a fractional interest in the company that owns the condo. Second, Schettler's rights in the condo are akin to a timeshare that he shares with three others. (Depo. of Vincent T. Schettler, Vol. I (7/30/19) at 157:6-15, attached hereto as Ex. 3). Thus, it makes no sense for PacWest to execute on Schettler's visitation rights to a condo in Hawaii—such does not provide a convenient or cost-effective means to value the satisfaction amount Schettler would be entitled to receive. The only way to monetize Schettler's timeshare-like rights would be for PacWest (a bank) to become a landlord and lease out Schettler's visitation rights, but the administration costs would likely exceed the revenue generated from such leasing activity.

3. Response to the Opposition's "Relevant Procedural History"

Schettler's Opposition curiously devotes more than eight (8) pages setting forth *some* of the six-year procedural history of this case. The lengthy docket in this case only serves to demonstrate (1) how active this post-judgment collection action has been for most of the six years since PacWest domesticated its judgment here, (2) how vigorously Schettler has resisted PacWest at every opportunity, and (3) how much a receiver is needed given that Schettler has paid nothing toward the judgment.

deflect attention from his inconsistent statements by characterizing the revelation of those inconsistent statements as "callous and offensive." (Opp. at 16:6-7). Such is classic misdirection or "shame on you for catching me in a lie." PacWest does not doubt that Mrs. Schettler has/had health issues; however, Schettler no doubt exaggerates those issues to keep her from testifying, i.e., he will say whatever needs to be said to serve his purposes in that moment, regardless of its truth or consistency, even to the point of trying to obtain a multi-million dollar loan by saying her health is "much better" or trying to avoid paying a multi-million dollar judgment by saying her health is "not good."

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While most of the procedural history identified by Schettler is accurate, some of his gloss and conclusions are far from accurate. Two stunning mischaracterizations require a response and demonstrate why a receiver is needed.

a. PacWest did not sit on its rights for three years

Schettler argues in a section heading that "The Bank sat on its rights for over three years . . ." (Opp. at 9:20-10:22, emphasis in original). The section then includes timeline entries that begin with "9/29/17" and end with "8/18/18." (*Id.*)

First, this period is less than 11 months, not more than three years. And, as even Schettler acknowledges, PacWest filed a document with the Court during that referenced 11-month period "stating the case needs to remain open to continue to enforce the judgment against Schettler." (Opp. at 10:1-2).

Second, much that happens in a case is not reflected in the court docket. Therefore, just because the court docket does not reflect activity for a period of time does not mean nothing is happening in the background.

Third, a judgment creditor is not obligated to do anything to collect its judgment. To the contrary, "a judgment debtor is under a legal obligation to satisfy the judgment against him." *See U.S. v. Neidor*, 522 F.2d 916, 919 n.5 (9th Cir. 1975). Thus, even if PacWest had undertaken no collection efforts for three years, such is not relevant because Schettler, as the judgment debtor, is obligated to pay the judgment without PacWest having to exercise a single collection right.

Fourth, as Schettler acknowledges, PacWest vigorously pursued its collection rights for several years once the judgment was domesticated in Nevada. The fact that a judgment creditor vigorously pursues but collects nothing renders it reasonable to take a break from collection efforts to allow a judgment debtor to (1) acquire more assets over time, and (2) become complacent in his scheme to conceal those assets, before the judgment creditor starts anew with vigorous collection efforts.

Lastly, and assuming *arguendo*, without conceding, that PacWest took a three year break from its collection efforts during the 6.5 years this judgment has been pending, Schettler fails to

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explain or cite any authority regarding why PacWest's unsuccessful collection efforts for a combined 3.5 years does not warrant the appointment of a receiver, i.e., a receiver is needed to investigate how he can live so richly but pay nothing in satisfaction of his multi-million dollar judgment obligation.

b. Schettler's attempt to portray his production of documents as cooperative and timely evidences a warped perspective and helps demonstrate why a receiver is needed—i.e., to Schettler, bad faith is good faith

Schettler's procedural history timeline includes an entry for "9/11/20" and, with bolded font, he proudly declares: "**Literally the day after the Court entered its order granting the Bank's Motion to Compel, [Schettler] supplement's [*sic*] his responses to the Bank's RFPDs.**" (Opp. at 12:12-13, emphasis in original). With this emphasized commentary, Schettler portrays himself as cooperative and timely. Schettler's aggrandizement is not even remotely close.

Schettler seems to forget (or perhaps his new counsel did not know) that the production he finally made on September 11, 2020, was in response to formal document requests propounded by PacWest ***seven months earlier***. Such is hardly timely.

And, Schettler forgets that his production on September 11, 2020, came only after he broke numerous express promises to produce and only after PacWest was forced to file a motion to compel. The Court granted that motion on July 8, 2020, and ordered Schettler to produce the documents no later than July 22, 2020. However, the Court was bothered enough by Schettler's conduct that a status hearing was set for July 29, 2020, to determine whether Schettler "fully and timely complied with this Order" and to consider PacWest's request for fees and costs. (*See* Order (filed 7/24/20) at 2:13-19).

When Schettler made his after-hours production on July 22, 2020, it contained no less than 26 general objections and each specific document response included many additional objections. The production was far from complete and the documents that were produced contained an inordinate amount of redactions (some full pages were redacted), rendering the documents next to useless. (*See* PacWest's Status Report (filed 7/28/20)).

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At the July 29 status hearing, the Court ordered: "I'm going to have the documents produced. Then I'll consider fees. Because [I'll] probably grant some fees in this matter." (*See* PacWest's Second Status Report (filed 8/31/20) at 2:23-26). A second status hearing was scheduled for September 2, 2020, to again evaluate Schettler's compliance and sanction. Despite the Court's orders, Schettler failed to produce a single additional document between the first status hearing on July 29 and the second status hearing more than a month later on September 2. (*Id.* at 4:4-9).

At the second status hearing on September 2, the Court again ordered Schettler to make a full and complete production, this time "no later than 5:00 p.m. on September 9, 2020." (*See* Order (filed 9/10/20) at 9:26-27). This is the Order that contains several very strong Findings against Schettler, including that he (1) "did not act in good faith" but instead chose to "delay and obfuscate as much as possible" (*id.* at Finding No. 31), (2) "sought to exploit benefits from the Administrative Orders that were neither needed nor meant for [him]" (*id.* at Finding No. 38), (3) acted in "bad faith" (*id.* at Finding No. 39), (4) "multiplied these proceedings and caused [PacWest] to needlessly incur additional delays and expenses" (*id.* at Finding No. 42), (5) "engaged in discovery stonewalling" (*id.*), and (6) the Court suggested Schettler was as "a recalcitrant party" (*id.* at Conclusion No. 8). Based on the foregoing and as noted above, Judge Williams ordered Schettler to make a full and complete production no later than **September 9**. The Court also noted that it "intends to award fees and costs in favor of [PacWest] and against Schettler." (*Id.* at Order ¶ 5). Finally, the Court issued a stern warning to Schettler: "the Court takes this opportunity to admonish Schettler and warn that future stonewalling efforts will not be tolerated and, if they continue, harsher sanctions will result." (*Id.* at Order ¶ 7).[2]

Despite the foregoing, Schettler astonishingly failed to produce the ordered documents by the September 9 deadline. Instead, he produced them two days late on September 11. However, because the Court signed the above-referenced Order on September 10, Schettler apparently

[2] As this Court is aware and as Schettler admits, he thereafter thwarted the Constable's effort to levy pursuant to a writ of execution served on Schettler at his home. (*See* Opp. at 13:6-9 ("Vincent denied the deputies entry into his residence")).

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believes his production a day later (but two days after the court-ordered September 9 deadline) was an act of good faith. As the foregoing history shows, it was not. Schettler had adverse findings entered against him, was sanctioned, and sternly warned.

The important point from the foregoing is to demonstrate the never-ending length of distortion Schettler is willing perpetrate. Only someone as recalcitrant, brazen, and blind to the truth as Schettler would characterize conduct, which the Court expressly found demonstrated bad faith, as good faith. Schettler cannot be trusted. An independent and trustworthy receiver is needed.

B. A RECEIVER IS NOT A "REMEDY OF LAST RESORT" IN THE POST-JUDGMENT CONTEXT AND, EVEN IF IT WERE, SUCH IS APPROPRIATE AND REQUIRED HERE

In a desperate attempt to avoid a post-judgment receiver, Schettler argues that it is a "remedy" of "last resort" and that it should be used only when justice requires. (Opp. at 19). His argument fails for several reasons. First, with this argument, Schettler attempts to incorporate the heightened standards for prejudgment receiverships into these post-judgment collection proceedings, where they are unwarranted and inconsistent with Nevada's post-judgment receivership statute, NRS 32.010(4). There is simply no basis in Nevada case law or NRS 32.010(4) to treat a post-judgment receiver as available only after all other collection methods are exhausted. And doing so is incompatible with the text of NRS 32.010(4).

Second, with the Nevada authorities against him, Schettler relies largely on *Medipro*, a California case that applies a statute that does not exist in Nevada to a set of facts that are almost the exact opposite of the facts at issue here. (Opp. at 20-21 (relying heavily on *Medipro Med. Staffing LLC v. Certified Nursing Registry, Inc.*, 60 Cal. App. 5th 622, 624, 274 Cal. Rptr. 3d 797, 798 (2021)). *Medipro* is not applicable, let alone persuasive, and it provides no basis to import a "remedy of last resort" requirement into the plain language of NRS 32.010(4).

Third, even if the Court accepts Schettler's attempt to rewrite NRS 32.010(4) into a post-judgment provision of last resort, PacWest is, in fact, using that statute as a remedy of last resort. Indeed, PacWest has utilized all the standard tools in a judgment creditor's toolbox, including

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writs of garnishment, writs of execution, a judgment debtor examination, post-judgment document requests (directed to Schettler), and post-judgment subpoenas duces tecum (directed to numerous third parties). All of these efforts were intended to collect something—anything—on the judgment. PacWest has spent more than $500,000 on these efforts over the past 6.5 years (attributable to efforts to collect the judgment from Schettler and does not include fees incurred pursuing collection from his co-debtors). Yet, PacWest has faced constant obstruction and gamesmanship at every turn, and still has not received a penny from Schettler. Indeed, PacWest has been attempting to collect for so long, that it has been forced to renew its judgment. If these aren't "last resort" circumstances, it is unclear what circumstances would qualify.

Schettler has significant assets—he is using a web of financial arrangements to keep them just out of reach, and absent a receiver he will continue evading this Court's judgment. *See Morgan Stanley Smith Barney LLC v. Johnson*, 952 F.3d 978, 983 (8th Cir. 2020) (a receiver is appropriate to "investigate and determine what assets [a judgment debtor] possesses, whether in the LLC's or otherwise, and to determine whether the arrangements are a subterfuge for avoiding [judgment debtor's] debt.") (internal quotation marks omitted); *Otero v. Vito*, 2008 WL 4004979, at *4 (M.D. Ga. 2008) (a receiver was needed to "unravel[] the complicated web of entities and transactions woven by [judgment debtors]").

1. Schettler Wrongly Relies On Prejudgment Cases And Due Process Concerns That Are Not Applicable Here

Schettler's "remedy of last resort" argument misunderstands the law, including the Nevada authorities Schettler cites, and the plain language of NRS 32.010(4). For example, Schettler confuses the standard for a prejudgment receiver—which requires special due process protections—with the statutory standard for a post-judgment receiver, which does not. Specifically, he attempts to apply Nevada's heightened standard for appointing a prejudgment receiver to this post-judgment collection proceeding. (*Id.* (citing *Bowler v. Leonard*, 70 Nev. 370, 383, 269 P.2d 833, 839 (1954) (discussing the standard for prejudgment receiver, also known as a "receiver pendente lite."); *Hines v. Plante*, 99 Nev. 259, 261, 661 P.2d 880, 881 (1983) (explaining the standard for a receiver "pendente lite" and ruling that such prejudgment receivers

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should be used "sparingly")). Notably, all of the Nevada cases Schettler cites for his "remedy of last resort" argument concern prejudgment receivers, not post-judgment collection receivers. (*See id.*).

As noted by Schettler's cited authorities, appointing a receiver during prejudgment proceedings is analogous to granting a preliminary injunction. *E.g.*, *Bowler*, 70 Nev. at 383, 269 P.2d at 839 (comparing the appointment of a prejudgment receiver to entering an "interlocutory injunction"). Indeed, when a court appoints a receiver in the prejudgment context, the court transfers control of a litigant's property to that party's adversary before the adversary's right to the property is adjudicated. *See, e.g.*, *Bowler*, 70 Nev. at 383, 269 P.2d at 839; *Hines*, 99 Nev. at 261, 661 P.2d at 881. Thus, in the prejudgment context, a receivership—like other prejudgment deprivations—is generally and rightfully a "remedy of last resort," *Bowler*, 70 Nev. at 383, or a remedy that "should be used sparingly," *Hines*, 99 Nev. at 261, 661 P.2d at 881.

However, in post-judgment collection actions, like this one, such due process concerns and safeguards are not implicated, because the parties' rights have already been adjudicated. *Dionne v. Bouley,* 757 F.2d 1344, 1351 (1st Cir. 1985) ("the process due a debtor *after* judgment was less than that due before judgment") (emphasis in original); *accord*, *Endicott-Johnson Corp. v. Encyclopedia Press, Inc.*, 266 U.S. 285, 288 (1924) ("[T]he established rules of our system of jurisprudence do not require that a defendant who has been granted an opportunity to be heard and has had his day in court, should, after a judgment has been rendered against him, have a further notice and hearing before supplemental proceedings are taken to reach his property in satisfaction of the judgment.").

Specifically, in the post-judgment context, a court has already determined that the judgment creditor is entitled to an amount of the judgment debtor's nonexempt property sufficient to satisfy the judgment. There is no lingering question about who will prevail or whether the judgment debtor will be wrongfully deprived. In short, the issues that create due process concerns (and corresponding safeguards) in the prejudgment context simply do not exist in the post-judgment context. Thus, in post-judgment actions, the prejudgment reasons for appointing a

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receiver as a remedy of "last resort" do not exist. This, of course, is why Nevada's post-judgment receivership statute, NRS 32.010(4), says nothing even remotely suggesting that post-judgment receiverships are remedies of last resort.

2. In Post-judgment Collection Proceedings, A Receivership Is Available Upon Satisfaction of Any of NRS 32.010(4)'s Straightforward Conditions

The instant Receiver Motion was made and based on the authority of NRS 32.010(4), and its independent bases for appointing a receiver "after judgment." The Opposition, however, treats NRS 32.010(4) as a brief rest stop before speeding on to its intended destination of California law. More specifically, after mentioning the Nevada statute, and perceiving that California law is more favorable to his position, Schettler crosses the state line and ventures into California law. In doing so, Schettler bypasses any analysis of NRS 32.010(4) and instead notes that Nevada's appellate courts have not interpreted NRS 32.010(4) since its adoption in 1911—110 years ago—as if such is a bad thing. (Opp. at 20:2-4). However, the fact that the statute has not required interpretation by Nevada's appellate courts in over a century merely evidences how clear and unambiguous it is. Only recalcitrant judgment debtors, like Schettler, who fight everything, will attempt to read conditions into the statute that do not exist.

More specifically, the clear and unconditional language of NRS 32.010(4) provides:

> **A receiver may be appointed by the court in which an action is pending . . .**
>
> **4. After judgment,** to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or **in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment.**

There is no requirement that a receiver be appointed only as a means of last resort. Schettler's citation to cases holding such in a pre-judgment context—i.e., before the plaintiff has demonstrated her entitlement to ANY relief—are unavailing here since PacWest has already prevailed and been awarded a multi-million dollar judgment. (Opp. at footnotes 1-3, 58-60). Indeed, by definition, NRS 32.010(4) applies only "after judgment." Thus, cases discussing the appointment of a receiver *pendente lite* are not relevant to the present discussion.

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Regarding the independent bases for appointment of receiver under NRS 32.010(4), which are completely disregarded by Schettler in his Opposition, a receiver is needed here "in aid of execution," because either "an execution [against Schettler] has been returned unsatisfied," or because Schettler "refuses to apply [his] property in satisfaction of the judgment." Again, Schettler does not even address these conditions.

Appointing a receiver will aid PacWest's execution efforts because a receiver will have the power to fully investigate the scope and location of Schettler's assets. Schettler suggests a receiver is unnecessary; essentially saying: "Trust me, I've been open and honest about providing information." However, Schettler seems to forget that this Court found he has not been open with information. Instead, this Court expressly found that Schettler has acted in "bad faith," "multiplied these proceedings," "engaged in [post-judgment] discovery stonewalling," and chose to "obfuscate and delay as long as possible." (*See* Order (9/10/20) at Finding Nos. 31, 39, and 42). Indeed, this Court indirectly referred to Schettler as a "recalcitrant party." (*See id*. at Conclusion No. 8). Instead of accepting Schettler's unreliable word, a receiver will be able to independently investigate whether Schettler's disclosures have been complete and honest, or whether, like a child who steals from the cookie jar, only shows his mother the open hand that doesn't hold the cookie, while the cookie is tightly clutched in the child's other hand hidden behind his back. A receiver is warranted under NRS 32.010(4) as an aid to execution.

Additionally, a receiver is warranted under NRS 32.010(4) because a recent execution against Schettler was returned unsatisfied. The Court will recall that the Constable recently attempted to levy on Schettler's non-exempt assets located at his home pursuant to a writ of execution. Yet, Schettler thwarted the Constable by denying his deputies access. Thus, the writ of execution was returned unsatisfied. A receiver is therefore warranted under the express language of NRS 32.010(4) for this reason as well.

Finally, yet another independent basis exists for appointing a receiver because Schettler "refuses to apply [his] property in satisfaction of the judgment." (NRS 32.010(4)). Schettler does not dispute that he's paid NOTHING in more than six years since the judgment was entered

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against him. Not a penny. Thus, Schettler, who is self-employed and is entitled to compensation, even if he pays himself only "very infrequently," (Mtn. at Ex. 1, at 190:25-192:5), clearly refuses to apply any of his property in satisfaction of the judgment. When asked during his 2019 judgment debtor examination if he intended to pay the judgment, Schettler responded that he would simply "contribute" to the judgment on condition that PacWest was "fair." (*See* V. Schettler Depo, Vol. 1 (7/30/19) at 23:1-6, attached hereto as Ex. 3). A judgment debtor's willingness to merely "contribute" to a judgment he owes and, even then, only on condition that he subjectively perceives the judgment creditor to be "fair" demonstrates an astonishing level of recalcitrance. Inconsistently, Schettler testified that "I can't afford to pay much toward [the judgment]," (*id.* at 24:7-22); yet, he's twice found it advantageous to mention in open court that he "made an offer of a million dollars." (*See* Hrg. Trans. (7/29/20) at 13:12-13, and Hrg. Trans. (10/14/20) at 13:19-20). In other words, Schettler admits he has at least $1,000,000 to pay in partial satisfaction of the judgment but, in the language of NRS 32.010(4), he "refuses to apply [his] property in satisfaction of the judgment." Thus, a receiver is independently warranted for this reason as well.

3. The California Decision In *Medipro* Isn't Applicable, Let Alone Persuasive

Schettler relies extensively on California law, as if it is the holy grail of receivership law, and largely ignores the very statute PacWest moves under—NRS 32.010(4). First, while Nevada does find California law persuasive when it comes to interpreting NRS 32.010 because it was adopted from California in 1911, it is only California's pre-1911 case law that matters. The Opposition's heavy reliance on *Medipro Medical Staffing LLC v. Certified Nursing Registry, Inc.*, 274 Cal. Rptr.3d 797, 801, (Cal. Ct. App. 2021) is thus entirely misplaced.

Although California's and Nevada's versions of what is now NRS 32.010(4) were the same in 1911, they are vastly different now, as shown by the following side-by-side comparison:

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Cal. Code of Civ. Proc. § 564(b)(4)	NRS 32.010(4)
(b) A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge of that court, in the following cases: (4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010)), or after sale of real property pursuant to a decree of foreclosure, during the redemption period, to collect, expend, and disburse rents as directed by the court or otherwise provided by law.	A receiver may be appointed by the court in which an action is pending, or by the judge thereof: (4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment. (Emphasis added to identify the language relied upon by PacWest but not found in California's version).

As can be seen, the language in NRS 32.010(4) that PacWest relies upon does not exist in California's comparable statute. Indeed, the underlined language was removed from California's version 39 years ago, in 1982. (*See generally* Cal. Law Revision Commission Comments regarding 1982 Amendment to Cal. Code of Civ. Proc. § 564). Thus, California cases construing Cal. Code of Civ. Proc. § 564(4) after 1911 have little, if any, value as a guide to interpreting NRS 32.010(4). Clearly, however, cases interpreting the California statute after 1982 (like *Medipro*) have absolutely no relevance because, after 1982, the California version bears no similarity to Nevada's NRS 32.010(4).

Schettler disregards the foregoing history and the differences between the Nevada and California statutes and suggests that the Nevada Supreme Court is likely to follow *Medipro* because, 110 years ago, Nevada borrowed its receiver statute from California's then-existing statute. (*See* Opp. at 20-21). However, as shown above, the two statutory schemes now differ significantly, and *Medipro* turns on a California provision that has never existed in Nevada.[3] *See*

[3] More particularly, California's scheme for appointing a post-judgment receiver requires a judicial finding that, "after considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment." *Medipro*, 274 Cal. Rptr. 3d at 798 (applying Cal. Civ. Proc. Code § 708.620). The *Medipro*, court focused on this unique California requirement and found that the record lacked any evidence of its satisfaction. *Id*. Because of that failed requirement, the court reversed the receivership appointment. *Id.* In Nevada, however, the receivership statute includes no such requirement or anything close to it. *See* NRS 32.010(4). *Medipro* has no application here.

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Medipro, 274 Cal. Rptr. 3d at 798. That unique California provision controlled the outcome in *Medipro*. *Id*. Accordingly, it is not applicable to this dispute.

Finally, *Medipro* involved very different facts. Most relevantly, in *Medipro* there was "no evidence"—none whatsoever—"that the judgment debtors had obfuscated or frustrated the creditor's collection efforts." 274 Cal. Rptr. 3d at 798 (emphasis added). Here, this Court expressly found that Schettler has not acted "in good faith" and chooses "to delay and obfuscate as long as possible." (Order (9/10/20) at Finding No. 31, emphasis added). Likewise, in *Medipro*, there was "no evidence that less intrusive collection methods were inadequate or ineffective." *Id.* And because of that complete lack of evidence, the California court was concerned that if a receiver were permitted on the *Medipro* facts, a receiver would be warranted in every collection action. *Id.* at 802. Here, as demonstrated throughout these papers, there is ample evidence that Schettler has obfuscated, frustrated, obstructed, and even mocked PacWest's numerous collection efforts at every turn. Similarly, there is ample evidence that other collection methods have proven inadequate. Thus, this action involves very different facts from those at issue in *Medipro.* Schettler's invitation to rely on *Medipro* is an invitation to err.

4. PacWest Has Sought Receivership As A Remedy of Last Resort

Even if the Court accepts Schettler's inapplicable authorities and implies a "last resort" requirement into NRS 32.010(4) when none is expressed, a receiver is still warranted. Indeed, even though NRS 32.010(4) imposes no "last resort" requirement, PacWest is using it as such here.

To this point, PacWest has invested over $500,000 in fees and costs attempting to collect on the judgment against Schettler (through attempted garnishments, executions, judgment debtor exams, document discovery (from both Schettler and numerous third parties), motions, etc.). PacWest has spent so much time on the matter that the judgment has already had to be renewed once. Through all of these extremely expensive, time-consuming collection efforts, Schettler has not paid even a penny of what he owes. He used (and continues to use) a complicated web of financial arrangements and diverted payment schemes in order to evade PacWest's collection

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efforts. So, at this point, if PacWest is to recover anything from Schettler, it needs the assistance of a duly empowered post-judgment receiver—such a receiver may well be PacWest's last resort.

Without one, Schettler will almost certainly continue using his financial web to flout this Court's judgment and treat it as unenforceable. Indeed, without a receiver, Schettler will remain emboldened to treat this Nevada judgment as meaningless, at PacWest's enormous expense. Indeed, without a receiver, Schettler will be emboldened to continue paying his personal attorneys hundreds of thousands of dollars in order to thwart PacWest from collecting a cent. Nevada law, NRS 32.010(4), authorizes this Court to avoid that result by appointing a receiver under these circumstances, and PacWest respectfully requests the Court to do so now.

C. IF SCHETTLER HAS EMPLOYED VALID ASSET PROTECTION AND ESTATE PLANNING, HE HAS NOTHING TO FEAR FROM A RECEIVER

Schettler argues that a receiver should not be appointed over his assets because Nevada is a business-friendly state. (Opp. at 24:17-27:17). While PacWest agrees that "valid asset protection and estate planning is not a basis for the appointment of a receiver" (Opp. at 24:18-19), neither is it a shield from the appointment of a receiver. Importantly, there has been no determination that Schettler's "asset protection" and "estate planning" are valid. What Schettler calls "valid asset protection," this Court, following an investigation and recommendation from an independent receiver, may conclude is in reality "invalid asset concealment." Thus, if Schettler's efforts have been valid and not intended to defraud, hinder, or delay his creditors, he has nothing to fear from a receiver.

Schettler also argues that a receiver is not proper because "[t]he Bank has presented no evidence of fraudulent transfers, no evidence of alter egos, no evidence of post-judgment planning." (Opp. 26:3-4). Yet, as set forth above, NRS 32.010(4) does not require a finding of any of these things before a receiver can be appointed after judgment.

To be sure, PacWest's proposed order empowers the receiver to look for and, if evidence exists, initiate fraudulent transfer and/or alter ego actions. (*See* Proposed Order attached to Mtn. as Ex. 10 at Sect. 1(l) ("The Receiver is authorized to institute ancillary proceedings . . . to pursue

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claims for alter ego and fraudulent transfers."). However, again, finding a fraudulent transfer or alter ego is not required under NRS 32.010(4) before appointing a receiver.

Relevantly, Schettler "does not dispute the Bank's flowchart on page 4 of its Motion." (Opp. at 26:7-8). Indeed, Schettler admits he is an employee of Vincent T. Schettler, LLC, which "is an operational entity for the commission income ***Vincent earns*** as a licensed real estate broker." (*Id.* at 26:16-17, emphases added). In other words, Schettler admits he (the individual judgment debtor) goes to work every day for Vincent T. Schettler, LLC, and provides valuable services as a licensed real estate broker. ***He***, the judgment debtor, earns the commissions. Yet, as the flowchart shows (and as Schettler testified during his judgment debtor examination), the commissions (and other compensation) are not paid to Schettler. Instead, Schettler diverts the commissions and other compensation to The Schettler Family Trust, which then pays Schettler's opulent living expenses.

The services that Schettler provides to his employer are entitled to be compensated to Schettler. The commissions that Schettler earns as the licensed real estate broker are entitled to be paid to Schettler. A receiver can ensure that those compensatory benefits are no longer diverted but paid directly to Schettler, the one who earns them. And, the receiver can direct part of that compensation and those commissions to be paid to PacWest in satisfaction of Schettler's judgment obligation.

D. SCHETTLER OFFERS NO OBJECTION TO EITHER OF THE TWO PROPOSED RECEIVERS OR THE PROPOSED ORDER

The Court should take note that Schettler's Opposition does not contest the qualifications, experience, independence, or integrity of either proposed receiver. (*See* Mtn. at Exs. 11-12). Nor does Schettler oppose any part of the proposed Order Appointing Receiver. (*Id.* at Ex. 10).

Thus, if the Court grants the Receiver Motion, PacWest (1) defers to the Court's judgment and discretion regarding which receiver to appoint, and (2) requests entry of the proposed Order Appointing Receiver.

(End of Reply Brief)

(Beginning of Opposition to Schettler's Countermotion)

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OPPOSITION TO SCHETTLER'S COUNTERMOTION FOR APPOINTMENT OF SPECIAL MASTER

In the Motion, PacWest predicted that Schettler would resort to meritless tactics in a last-ditch effort to avoid a receiver, and with his countermotion, he's done exactly that. Specifically, he moves this Court to appoint a special master—to adjudicate discovery disputes, exemption disputes, and disputes over the balance owed on the judgment (i.e., all reactionary tasks regarding matters initiated by the parties)—instead of a receiver empowered to investigate and take control of his assets and to facilitate payment of the judgment. (*See* Opp. at 28-28). As demonstrated below, Schettler's countermotion is meritless, and it fails for at least three reasons: (1) with the request for a special master, Schettler is essentially "judge shopping;" (2) unlike a receiver, a special master handles only disputes brought before it, and it could do nothing to actively investigate Schettler's assets and dealings, which is what this case requires; and (3) as a matter of law, Rule 53(a) precludes the Court from appointing the proposed special master. For these reasons, the Court should deny the countermotion and view it for exactly what it is: a desperate two-for-one attempt to both avoid a receiver and obtain a new judge—a proposal that would do nothing to aid in the enforcement of PacWest's judgment.

A. Schettler Is Shopping For A New Judicial Officer

With the countermotion, Schettler hopes to not only avoid a receiver, but also to avoid having Judge Williams decide the parties' future disputes. That is, with his request for the appointment of a special master, Schettler seeks a new judicial officer to hear future disputes arising from his adjudicated "bad faith" scheme to hinder and delay PacWest's collection of its judgment. (*See* Order (9/10/20) at Finding Nos. 31, 39). To date, Schettler's tactics and arguments have been less than successful before this Court, and he has earned some very unfavorable rulings. (*Id.*). Now, he seeks to bring future disputes before a different judicial officer—one that lacks this Court's knowledge of Schettler's prior bad faith—in hopes of getting different results. While Schettler might prefer having a new special master to decide discovery disputes and exemption disputes, there is no legitimate reason to conclude that this Court cannot continue deciding such matters. Likewise, his thinly disguised attempt to judge-shop is no basis to

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appoint a special master—especially at the expense of a much needed receiver. This is yet another reason to deny the countermotion.

B. This Action Requires an Active Receiver, Not a Reactionary Special Master

First, this action requires a receiver, not a special master. If Schettler has made anything clear, it is that he will continue to use his business dealings and financial arrangements to conceal nonexempt assets and obstruct collection efforts and—if successful—pay nothing on the judgment. The appointment of a special master will not change that. Unlike a receiver, a special master would lack any ability or authority to actively investigate Schettler's assets or to take control over and route Schettler's nonexempt assets to PacWest—and this is especially true of the special master role that Schettler proposes here. Indeed, the special master Schettler proposes would be a purely reactionary extension of the Court, empowered to adjudicate discovery motions initiated by the parties, resolve exemption disputes initiated by the parties, and calculate the judgment balance when such a question is raised by the parties. (*See* Opp. at 28-28). To be clear, Schettler asks this Court to appoint a new judicial officer to decide the kinds of motions that this Court is already deciding. But this case doesn't need a second judge to decide motions, and PacWest certainly doesn't seek one. Instead, PacWest takes the position that this Court has skillfully and promptly adjudicated the disputes that have come before it in this action. Schettler does not even attempt to argue otherwise, and he does not argue that the Court is unable to continue "effectively and timely" adjudicating the matters he would assign to the special master. *See* NRCP 53(a)(2)(b). Thus, he offers no reason to conclude that this action requires a special master or that appointing a special master would legitimately benefit the parties. This is because no such reason exists.

Instead, as thoroughly demonstrated in the Motion and here, what this action needs is a duly empowered receiver to actively investigate Schettler's finances and dealings and identify any nonexempt, collectible assets. Unlike a special master, a receiver would not be a reactionary, second judicial officer that decides motions. Instead, a receiver will take an active role—as an officer and extension of the Court—by investigating Schettler's complex dealings, dismantling

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his deceptions, uncovering collectible assets, facilitating PacWest's collection of those assets, and thereby aiding in the enforcement of the Court's judgment. As PacWest has repeatedly demonstrated, this is exactly what this case requires—not a special master to decide motions this Court is more than competent to decide.

Of course, it is possible (even if unlikely) that the receiver will conduct its investigation and determine that all of Schettler's business and financial arrangements are completely legitimate, and that he truly has no assets with which to satisfy the judgment. But even if that occurs, the receiver will have performed a valuable service to all parties and the Court. Indeed, were the receiver to report that Schettler lacks any collectable assets, the scope of disputed issues in these proceedings would decrease drastically, and the incentive to continue collection efforts could conceivably disappear. But again, PacWest believes such findings are highly unlikely.

Further, to the extent Schettler claims that all of his business and financial dealings are, in fact, legitimate and that he lacks any collectible assets, he has no reason to fear the receiver's active investigation. Indeed, if he is concealing collectible assets, PacWest is entitled to find out, and if he isn't, all involved—including Schettler—will benefit from the receiver reporting that fact to the Court.

C. The Countermotion Violates NRCP 53(a)(2)

Finally, the countermotion fails to satisfy NRCP 53(a)(2), which governs the appointment of special masters in Nevada. Rule 53(a)(2) mandates that "a court may appoint a master only to: (A) perform duties consented to by the parties; (B) address pretrial or posttrial matters that cannot be effectively and timely addressed by an available judge;" or (C) address some "exceptional condition" or perform some "difficult" accounting or computation of damages. NRCP 53(a)(2). None of these conditions exist here, and therefore, the countermotion fails as a matter of law.

With respect to Rule 53(a)(2)(A), PacWest does not consent to appointing a special master to perform the duties described in the countermotion. Nor does it consent to pay for a special master to perform such duties. Thus, a special master cannot be appointed under Rule 53(a)(2)(A).

The same is true of Rule 53(a)(2)(B). Throughout these proceedings, this Court has

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skillfully handled the kind of issues that Schettler seeks to reassign to a special master, and the Court is more than capable to continue doing so (Schettler does not contend otherwise). There is no basis to conclude the Court cannot continue to "effectively and timely" address the issues Schettler seeks to re-assign to a special master. Thus, the countermotion fails to satisfy Rule 53(a)(2)(B).

Last, Rule 53(a)(2)(C) is not satisfied because Schettler doesn't even attempt to argue that this action presents some "exceptional condition" that requires assistance to the Court from a special master. Quite the opposite, Schettler seems to suggest that a special master would be appropriate if the Court merely finds that "oversight is necessary." (Opp. at 27:20). That is, he does not even attempt to establish that some "exceptional condition" exists to warrant a special master. Rather, Schettler contends that if the Court finds a reason to delegate its authority to anyone, "a special master should suffice." (*Id.*). Such is insufficient to establish the existence of an "exceptional condition" requiring the appointment of a special master.

Similarly, Schettler fails to explain how or why calculating the balance he owes on a single judgment (for which he has paid nothing) would be so "difficult" that it would require the Court to assign that task to a special master. *See* NRCP 53(a)(2)(C). And even if that task were sufficiently "difficult," Schettler fails to justify assigning any other duty—such as deciding discovery motions or exemption disputes—to a special master. Thus, his countermotion fails to satisfy Rule 53(a)(2), and it should be rejected on that basis alone.

For all the foregoing reasons, the Court should GRANT THE MOTION and DENY THE COUNTERMOTION.

DATED this 15th day of April, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Lewis Roca Rothgerber Christie LLP, and that on this day, I electronically filed and served the forgoing documents entitled ***"PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR APPOINTMENT OF RECEIVER OVER JUDGMENT DEBTOR VINCENT T. SCHETTLER'S ASSETS AND OPPOSITION TO SCHETTLER'S COUNTERMOTION FOR APPOINTMENT OF SPECIAL MASTER"*** via the Court's Odyssey E-File and Serve system on the following counsel of record:

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Dated this 15th day of April, 2021

/s/ Luz Horvath
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EXHIBIT 2

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DISTRICT COURT

CLARK COUNTY, NEVADA

PACIFIC WESTERN BANK, a California corporation, Plaintiff/Judgment Creditor, v. JOHN A. RITTER, an individual; DARREN D. BADGER, an individual; VINCENT T. SCHETTLER, an individual; and DOES 1 through 50, Defendants/Judgment Debtors.	Case No.: A-14-710645-B Dept.: XVI **VINCENT T. SCHETTLER'S OPPOSITION TO:** **MOTION FOR APPOINTMENT OF RECEIVER OVER JUDGMENT DEBTOR VINCENT T. SCHETTLER'S ASSETS** **-AND-** **COUNTERMOTION FOR APPOINTMENT OF SPECIAL MASTER**

Defendant, Vincent T. Schettler ("Vincent"), by and through his attorneys, Alan D. Freer and Alexander G. LeVeque of the law firm Solomon Dwiggins Freer & Steadman, Ltd., hereby submits his Opposition to Plaintiff's *Motion for Appointment of Receiver over Judgment Debtor Vincent T. Schettler's Assets* ("Opposition") and Countermotion for Appointment of Special Master ("Countermotion"). This Opposition and Countermotion are made and based upon the Memorandum of Points and Authorities below, the pleadings and papers already on file with the Court, and any oral argument the Court will entertain at the time of hearing.

Dated this 31st day of March, 2021.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Alexander G. LeVeque

Alan D. Freer (#7706)
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

"Receivership is generally regarded as a remedy of last resort."[1]

Receiverships are disfavored because they are "a harsh and extreme remedy which should be used sparingly and only when the securing of ultimate justice requires it."[2] Indeed, Nevada law requires that if the desired outcome "may be achieved by some method other than appointing a receiver, then this course should be followed."[3]

With the exception of an order from this Court compelling Vincent to produce documents responsive to Rule 34 requests which has since been complied with[4], there are no other findings that Vincent has not been fully cooperative in the Bank's post-judgment discovery. Indeed, Vincent has produced thousands of pages of documents and has submitted to two days of judgment debtor examination.

The record establishes that the Bank's motive for the appointment of a receiver is not to redress any malfeasance committed by Vincent, but is rather to pass the buck and assign its judgment collection responsibilities to someone else because it is apparently unwilling to exercise its collection rights under Nevada law.[5] Make no mistake about it: The Bank seeks a Court-sanctioned collection agent, not a neutral that is merely an extension of the Court.[6]

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[1] *Bowler v. Leonard*, 70 Nev. 370, 384, 269 P.2d 833, 840 (1954).

[2] *Hines v. Plante*, 99 Nev. 259, 261, 661 P.2d 880, 881-82 (1983).

[3] *Id.* (citing *State v. District Court*, 146 Mont. 362, 406 P.2d 828 (Mont. 1965) and *Hawkins v. Aldridge*, 211 Ind. 332, 7 N.E.2d 34 (Ind. 1937).

[4] *See* Defendant's Notice of Production of Documents (without attached exhibits), e-served on September 11, 2020, attached hereto as **Exhibit A**.

[5] For example, the Bank is aware of a significant asset held in Vincent's individual capacity (a 1/3 interest in a condominium in Hawaii) but has done nothing to pursue it. *See* Judgment Debtor Examination, at 156:17-157:5 and 159:17-19, excerpt being attached hereto as **Exhibit B**.

[6] *See* Bank's Proposed Receivership Order, at 4:4-6, attached to their Motion as Exhibit 10, wherein it would "authorize and empower [the receiver] to liquidate non-exempt assets of the Receivership Estate and/or apply the non-exempt portion of the proceeds to satisfaction of the judgment that Schettler owes to Pac West."

The Bank can only blame itself for its failure to diligently pursue its collection remedies. The Bank sat on its rights for over three years – to the point where this Court administratively closed the case due to the Bank's failure to prosecute and its counsel's failure to appear at a status hearing. This case lay dormant for so long that three judges – Judge Gonzalez, Judge Hardy, and Judge Williams – have presided over the matter.

Prior to the Bank ghosting these proceedings from January 2016 through the early part of April 2019, all of its attempted efforts to execute on property were thwarted; not by Vincent, but by this Court as a result of quashing improper writs of garnishment and execution and exempting certain property from execution. And even after the Bank hired new counsel and revived these stale proceedings, it has only attempted to execute on property once, the propriety of which this Court has made no rulings on because the writ of execution at issue expired on December 1, 2020, rendering Vincent's then pending motion for protective order moot. Moreover, the Bank issued the relevant writ of execution on property that it undoubtedly knew was still at issue in Probate Court.[7]

In the occurrence of receivership appointment in judgment collection proceedings, the law from sister states (there is no such case law in Nevada) provides that receivers are usually appointed after findings of repeated abuse of process, contempt, a failure of progressive remedies, and/or credible evidence of fraudulent transfers. Glaringly absent from the Bank's instant Motion are any facts or evidence of such circumstances. Instead, the Bank seeks receivership over all of Vincent's property (and certain third-parties that have not been properly joined)[8] because it thinks certain

[7] Notably, the Probate Court still has not entered a final order as to the assets of the Schettler Family Trust.

[8] The Bank's mention of certain non-party LLCs in its proposed receivership order has already caused harm. The Bank has been provided on numerous occasions thousands of documents related to the various LLCs in which Vincent T. Schettler, LLC or Vision Commercial One, LLC manage. Thus, the bank is fully aware that many of the LLCs that it mentions in its proposed order in the Motion are owned by third-party investors that are non-parties to this action. Despite this knowledge, Mosaic Five, LLC, one of the numerous LLCs liberally mentioned by the Bank in its proposed order, is currently in the midst of a real estate development project. It's lender on the project, Sound Capital Loans, discovered the filing of this instant Motion. Based on the direct actions of the Bank liberally choosing to include non-party entities, including Mosaic Five, LLC, the lender has now chosen to put a hold on the loan. *See* Sound Capital Letter, attached hereto as **Exhibit AA**. Such a hold on its funding could directly harm third-party investors that are non-parties to this action, as the project now lays in the middle of development and now without funding.

expenses are objectionable such as buying charitable Christmas presents for a child with cancer and paying someone to pick up dog droppings at the Schettler residence due to the physical disabilities of both Vincent and his wife.[9] The Bank cites no law – because there is no law – for the proposition that a receiver should be appointed over a judgment debtor when the judgment debtor spends money on things the judgment creditor disagrees with.

In its Motion, the Bank essentially admits that it is speculating that Schettler's businesses are not legitimate and wants this Court to sanction a "deep-dive" fishing expedition into Vincent's "personal business and make determinations regarding his assets."[10] As set forth in detail below, courts impose a high evidentiary burden to warrant a post-judgment receiver. The Nevada Supreme Court gives "great weight" to California receivership law which provides that receivers may not ordinarily be used for the enforcement of a simple money judgment, and that the appointment of a receiver to enforce a money judgment is reserved for "exceptional" circumstances where the judgment creditor's conduct makes a receiver necessary.

Finally, the Bank infers that Vincent's estate and business planning is objectionable, and ergo, is cause for receivership. There is nothing illegal or actionable about having valid asset protection in place to mitigate exposure to creditors and judgments. Taking measures to make oneself "judgment proof" is not only permitted under the law, it is encouraged; especially in Nevada. The subtext of the Bank's request for a receiver is that it shouldn't have the burden of challenging Vincent's asset protection; someone else should and at Vincent's expense. This is simply not the law and sanctioning the use of a receiver to attack a judgment debtor's asset protection – especially in cases where the record is devoid of any fraudulent transfers – would run

[9] *See* Vincent T. Schettler's Handicap Placards, attached hereto as **Exhibit C**. Vincent was diagnosed with Ewing's Sarcoma (a rare form of bone cancer) at the age of 22. Since his diagnosis, Vincent had undergone numerous surgeries, including an internal Hemi-Pelvectomy recission in which his left pelvic region was removed in its entirety, causing him to require the assistance of several services, such as the use of Pooper Scoopers, in conducting many everyday tasks.

[10] *See* Motion, at 9:18-22. Indeed, the appointment of a post-judgment receiver to go on a fishing expedition is improper. *See* 33 C.J.S. Executions § 598 (Grounds for and right to receivership) (citing *Benlian v. Vartabedian,* 398 N.Y.S.2d 984 (N.Y.Civ.Ct. 1977).

contrary to Nevada's nationally recognized policy of robust asset protection.[11] It cannot be overstated that Vincent has not changed his business operations, asset protection, and estate planning since well before a default on the Bank loan occurred.

The Bank has come nowhere close to making a case for the appointment of a receiver under NRS 32.010(4) and the well-settled high burden that a movant must overcome. Accordingly, the Motion should be denied.

Although the Bank's Motion should be denied in its entirety, Vincent counter-moves for the appointment of a special master pursuant to EDCR 2.20 (f) and NRCP 53(a) in the event the Court determines that some degree of oversight is necessary but is not willing to impose the draconian and extremely costly remedy of a receiver. In the event that this Court determines that the appointment of a special master is necessary, Vincent requests that such costs associated with a special master be borne by both the Bank and Vincent in equal shares unless the special master reaches a determination that certain costs should only be paid by one party under applicable law (e.g. filing frivolous pleadings, unnecessarily multiplying proceedings, etc.).

II.

RELEVANT PROCEDURAL HISTORY

THE JUDGMENT AGAINST THE DEFENDANTS

09/26/14: Judgment is entered in the Superior Court of the State of Nevada, County of Orange, against John Ritter ("Ritter"), Darren Badger ("Badger") & Vincent, jointly and severally, in the amount of $2,717,490.79, in favor of the Bank.[12]

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[11] *See e.g. Klabacka v. Nelson*, 133 Nev. 164, 178, 394 P.3d 940, 951 (2017) (acknowledging the uniqueness of Nevada's self-settled spendthrift trust framework which was created in an effort to "attract the trust business of those individuals seeking maximum asset protection.") (quoting Michael Sjuggerud, *Defeating the Self-Settled Spendthrift Trust in Bankruptcy*, 28 Fla. St. U. L. Rev. 977, 986 (2001)); and Jeremy K. Cooper and David M. Grant, *Nevada Takes the Lead: Charging Order Protection is Now Available for Small Corporations*, Communique Magazine, Vol. 30, No. 5 (May 2009), pp. 28-20 ("Because of its overtly business-friendly environment, it is hardly a surprise that Nevada makes the charging order the exclusive remedy available to creditor's in actions against debtor's interests in partnerships and LLCs.").

[12] *See* California Judgment, attached hereto as **Exhibit D**. Note that the California Judgment is comprised of the principal sum of $2,497,468.73, plus accrued interest through December 5, 2012

12/03/14: The Bank files an Application for Foreign Judgment Against Ritter, Badger and Vincent in the amount of $2,717,490.79, in this Court.

THE BANK'S IMPROPER WRITS OF GARNISHMENT AND EXECUTION, THE COURT'S QUASHING OF THE SAME, AND DETERMINATION OF CLAIMED EXEMPTIONS

04/21/15 – 5/05/15: The Bank causes the issuance of several writs of garnishment and execution to various entities and financial institutions, including, the Schettler children's 529 education accounts at Wells Fargo, the Schettler Family Trust account at Bank of Nevada, and TD Ameritrade account owned by the Vincent T. Schettler, LLC Profit Sharing Plan.[13]

05/15/15: Vincent files an Affidavit Claiming Exempt Property for the 529 accounts and $1,000 of money held in Wells Fargo 529 accounts.[14]

05/19/15: Kelly E. Schettler (Vincent's wife, "Mrs. Schettler") files a Claim of Exemption for the Bank of Nevada Held by Schettler Family Trust.[15]

05/22/15: The Bank files an Objection to the Schettler's Claim of Exemption from Execution,[16] as well as an Objection to Mrs. Schettler's Claim of Exemption from Execution for the Bank of Nevada Held by Schettler Family Trust.[17]

06/11/15: Vincent files a Motion for Order Determining the Exemption of Certain Assets, namely, the Wells Fargo 529 accounts, the Schettler Family Trust, and the Vincent T. Schettler, LLC Profit Sharing Plan (a qualified ERISA plan). The Bank files an opposition to the same on June 29, 2015.

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in the amount of $10,406.54, and *per diem* interest, at the daily rate of $346.88 from December 5, 2012 through August 1, 2014 in the amount of $209,515.52.

[13] *See* Writs of Execution and Writs of Garnishment, attached hereto as **Exhibit E**.

[14] *See* Claim of Exemption from Execution, on file with the Court.

[15] *See* Claim of Exemption from Execution [Bank of Nevada Held by Schettler Family Trust], on file with the Court.

[16] *See* Objection to Claim of Exemption from Execution, on file with the Court..

[17] *See* Objection to Claim of Exemption from Execution [Bank of Nevada Held by Schettler Family Trust], on file with the Court.

06/12/15: The Bank files a Notice of Issuance of SDTs for Deposition and Records, which seeks records related to all three defendants: Ritter, Badger, and Vincent.[18]

- PMK at Collier Nevada, LLC dba Collier International
- Nicol Montalto (executive assistant of Vincent)
- PMK at Valley Bank of Nevada f/k/a Bank of North Las Vegas
- PMK at Piercy, Bowler, Taylor and Kern Certified Public Accountants & Business Advisors A Professional Corporation

07/01/15: Vincent files an Emergency Motion for a Protective Order which sought, inter alia:

- Protective order regarding SDTs seeking private, confidential, privileged information and/or information regarding assets that are exempt;
- Discharge of writs of execution previously issued because no notice was given; and
- Injunction against any further collection efforts.[19]

The Bank opposed Vincent's motion on July 6, 2015, and Vincent replied on July 7, 2015.

07/15/15: **The Court grants Vincent's emergency motion and issues a Protective Order which provided**[20]:

> ORDERED that the Motion for Protective Order filed on behalf of Defendant Vincent T. Schettler is hereby GRANTED as provided below; it is further
>
> ORDERED that all Writs of Execution and Writs of Garnishment issued in this case are hereby quashed including without limitation those served on TD Ameritrade, Bank of Nevada, and Wells Fargo Bank; it is still further
>
> ORDERED that nothing in this order prevents Plaintiff from conducting discovery pursuant to the applicable rules, nor is Plaintiff prohibited from obtaining issuance of appropriate Writs in

[18] *See* Notice of Issuance of Subpoena Duces Tecums for Deposition and Records, on file with the Court.

[19] *See* Defendant Schettler's Emergency Motion for Protective Order on an Order Shortening Time, on file with the Court.

[20] *See* Order re Emergency Motion, attached hereto as **Exhibit F**.

furtherance of its efforts to collect on the judgment herein, provided, however, that should Plaintiff obtain the issuance of any new Writs of Execution or Garnishment, that in addition to the notice requirements of NRS 21.075 and NRS 21.076, Plaintiff shall concurrently give notice to the parties and their counsel upon service of any Writs of Execution or Garnishment by the sheriff or constable; it is still further

ORDERED that based upon this Court's quashing of all previously issued Writs of Garnishment and Execution, Plaintiff's objections to Claims of Exemption filed on behalf of the parties, together with Defendant Vincent T. Schettler's Motion for Order Determining Exemption of Certain Assets, are moot and shall be taken off calendar.

IT IS SO ORDERED this 17th day of July, 2015.

DISTRICT COURT JUDGE

Accordingly, all of the previous writs of garnishment and execution were quashed and the Court expressly ordered the Bank to concurrently give notice to the parties and their counsel upon service of any further writs of execution or garnishment on the sheriff or constable.[21]

08/10/15: Vincent files a Renewed Motion for Order Determining the Exemption of Certain Assets, including, (1) The Schettler Family Trust because it is a separate entity and not a judgment debtor, (2) Vincent's ERISA plan because is a qualified retirement plan; and (3) the 529 accounts for the benefit of Vincent's children.

08/19/15: The Court enters an Order Determining Exemption of 529 Educational Accounts:[22]

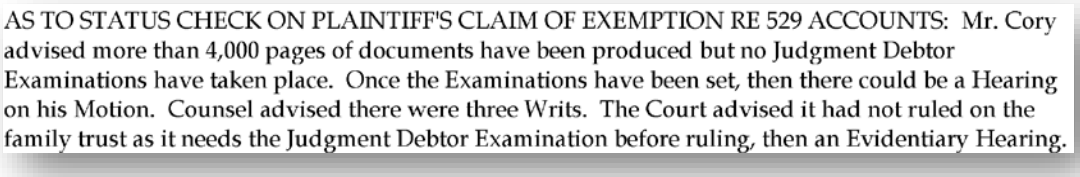
IT IS HEREBY ORDERED that the 529 educational accounts at Wells Fargo Advisors for the benefit of Anthony and Taylor Schettler are hereby determined to be exempt;

IT IS FURTHER ORDERD that any funds from the 529 educational accounts at Wells Fargo Advisors which have been turned over to the Constable's office pursuant to the renewed Writ of Execution and Writ of Garnishment dated July 15, 2015 are directed to be immediately returned to the respective accounts;

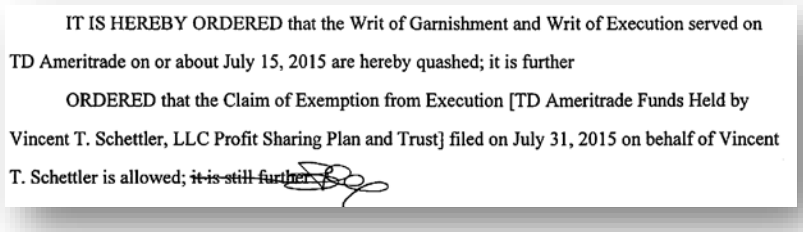
[21] It should be noted that the Court entered an Amended Order on August 19, 2015, which clarified that the writs of garnishment and execution quashed were those issued prior to July 9, 2015, and ordered the refund of any monies actually garnished by the quashed writs to the Schettler Family Trust. *See* Amended Order, attached hereto as **Exhibit G**. On March 2, 2021, the Court again amended the order to require notice of any further writs of garnishment or execution within one business day following service of the same by the sheriff or constable. *See* Order Granting In Part Plaintiff's Counter Motion for Relief or to Clarify 8/19/15 Order, attached hereto as **Exhibit H**.

[22] *See* Order re 529 Accounts, attached hereto as **Exhibit I**.

09/01/15: The Court (Judge Gonzalez) hears several pending matters, including, the disputes over claimed exemptions made by all of the defendants, including Vincent's remaining claims for the Schettler Family Trust. Notably, the Court stated that a judgment debtor examination and then, an evidentiary hearing, would be needed before a determination could be made regarding the claimed exemption over the Schettler Family Trust[23]:


AS TO STATUS CHECK ON PLAINTIFF'S CLAIM OF EXEMPTION RE 529 ACCOUNTS: Mr. Cory advised more than 4,000 pages of documents have been produced but no Judgment Debtor Examinations have taken place. Once the Examinations have been set, then there could be a Hearing on his Motion. Counsel advised there were three Writs. The Court advised it had not ruled on the family trust as it needs the Judgment Debtor Examination before ruling, then an Evidentiary Hearing.

11/02/15: The Court enters an Order regarding Claim of Exemption Vincent's qualified ERISA retirement plan. The writs of garnishment and execution served on TD Ameritrade are quashed and the funds held at TD Ameritrade and declared to be exempt from execution[24]:


IT IS HEREBY ORDERED that the Writ of Garnishment and Writ of Execution served on TD Ameritrade on or about July 15, 2015 are hereby quashed; it is further

ORDERED that the Claim of Exemption from Execution [TD Ameritrade Funds Held by Vincent T. Schettler, LLC Profit Sharing Plan and Trust] filed on July 31, 2015 on behalf of Vincent T. Schettler is allowed; ~~it is still further~~

01/11/16: The Court denies the Bank's Motion for Reconsideration of Renewed Motion for Order Determining the Exemption of Certain Assets.

THE BANK SAT ON ITS RIGHTS FOR OVER THREE YEARS AND CAUSED THE ADMINISTRATIVE CLOSURE OF THE CASE FOR FAILURE TO PROSECUTE AND TO APPEAR

09/29/17: The Court (Judge Hardy) issues an Order to Show Cause why the case should not be dismissed.

[23] *See* 9/1/15 Court Minutes, attached hereto as **Exhibit J**.

[24] *See* Order re TD Ameritrade, attached hereto as **Exhibit K**.

10/06/17: The Bank files a response to the Order to Show Cause stating the case needs to remain open to continue to enforce the judgment against Vincent. [25] The Court set status checks every six months to see if the case should remain open[26]:

JOURNAL ENTRIES

- Upon Court's inquiry, Mr. Olson affirmed that Vincent T. Schettler was the only remaining Defendant. Regarding the status of the case, Mr. Olson stated that Plaintiff had no intention of abandoning the judgment, and would be pursuing collection. The Court noted that, in March of 2017, Plaintiff's counsel notified the Court that Plaintiff would be filing a number of Motions as to Defendant Schettler, and there would be no need for any further status checks. Mr. Olson stated that Plaintiff had decided not to file any Motions, but they may do so in the future. COURT ORDERED a status check was hereby SET, and status checks would be set every six months, if necessary. The Court noted that the parties could file a status report prior to the status check, if the parties wished for the hearing to be vacated.

04/18/18: The Court (Judge Hardy) convened its first six-month status check. The Bank's counsel failed to appear. The Court ordered that the case be administratively closed because it only kept the same open due to representations by the Bank's counsel that it was still pursing judgment collection against Vincent:

JOURNAL ENTRIES

Mr. Lipman represented that there were no updates on the Defendants' side, noting that he expected Plaintiff's counsel to appear for the instant hearing. Upon Court's inquiry, Mr. Lipman advised that he had not received any communications from Plaintiff's counsel in the last few months. COURT ORDERED the instant case was hereby administratively CLOSED, FINDING that the sole basis for the case remaining open previously, were representations by Plaintiff's counsel.

04/26/18: The Court (Judge Hardy) administratively closes this case as a result of the Bank's failure to prosecute.[27]

08/18/18: This case is reassigned to Department 16, the current Department.

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[25] *See* Response to Order to Show Cause, attached hereto as **Exhibit L**.

[26] *See* 10/18/17 Minute Order, attached hereto as **Exhibit M**.

[27] *See* Order, entered on April 26, 2018, attached hereto as **Exhibit N.**

THE BANK RETAINS NEW COUNSEL AND, AFTER A 3 YEAR HIATUS, RESUMES JUDGMENT DEBTOR DISCOVERY AND EXECUTION, AND INITIATES TRUST PROCEEDINGS AGAINST THE SCHETTLER FAMILY TRUST

04/19/19: The Bank files an Ex Parte Application for Examination of Judgment Debtor, which is granted that same day.

07/30/19: Vincent submits to the Bank's Judgment Debtor Examination.[28]

11/25/19: The Bank files a petition in probate court to take jurisdiction of the Schettler Family Trust, to confirm trustees, and to declare assets of trust subject to claims against the settlor pursuant to NRS 164.033(1)(c) (the "Trust Petition"). Vincent and Mrs. Schettler, the trustees of the Schettler Family Trust, file their objection to the Trust Petition on January 9, 2020.

01/17/20: The Probate Commissioner hears the Trust Petition and issues a Report and Recommendation on March 9, 2020, wherein he recommends, inter alia, that the Court declare that the Schettler Family Trust is subject to Vincent's debts to the extent the Schettler Family Trust holds assets owned by Vincent, and that the trust is funded with both community and separate property.[29]

02/18/20: The Bank propounds requests for production of documents on Vincent.

03/18/20: Vincent and Mrs. Schettler file their objection to the Probate Commissioner's Report and Recommendation.

03/20/20: The Bank serves a SDT on the Schettler Family Trust.

04/23/20: Judge Sturman hears the Trustees' Objection to the Report and Recommendation and adopts, in part, and modifies, in part the Report and Recommendation. Notably, Judge Sturman clarifies that all rights that Vincent and Mrs. Schettler have concerning exemptions relating to community and separate property are reserved. Due to competing orders being submitted, however, Judge Sturman has not yet entered an order regarding the same.[30] Vincent and Mrs. Schettler have

[28] The Judgment Debtor Examination of Vincent T. Schettler was initially conducted on July 20, 2019. Vincent also submitted to a second day of examination on September 13, 2019.

[29] *See* Probate Commissioner's Report and Recommendation, attached hereto as **Exhibit O**.

[30] *See* Alan Freer's Letter to Judge Sturman, dated March 12, 2021, attached hereto as **Exhibit P**.

made efforts to politely remind Judge Sturman that no order has yet been entered. The Bank, however, has made no such efforts.

05/29/20: The Bank files a Motion to Compel against Vincent and the Schettler Family Trust due to a dispute over the production of documents responsive to the RFPDs to Vincent and the SDT to the Schettler Family Trust. Vincent and the Schettler Family Trust oppose the motion and counter-move for fees on June 8, 2020.

09/10/20: The Court, after originally hearing the Motion to Compel and Vincent's counter-motion on July 8, 2020, and convening two status hearings on July 29, 2020, and September 2, 2020, grants the Motion to Compel and orders Vincent to produce documents responsive to RFPD Nos. 1-3, including statements for Vincent's American Express charge card and certain tax documents.[31]

9/11/20: Literally the day after the Court entered its order granting the Bank's Motion to Compel, Vincent supplement's his responses to the Bank's RFPDs, which includes over 400 pages of American Express statements, tax returns, and other documents responsive to the requests.[32]

10/1/20: The Bank obtains from the Clerk of the Court a Writ of Execution (the "House Writ"), which directed the constable or sheriff to take:

> All non-exempt personal property belonging to Vincent T. Schettler, a total value not to exceed NET BALANCE reflected above, that can be found located on, at, or within the property or residence at 9521 Tournament Canyon Drive, Las Vegas, Nevada 89144, including money, art, sports memorabilia, tools, jewelry, collections, books, entertainment systems, televisions, etc.[33]

Problematic with the House Writ is the fact that there is obviously personal property within Vincent's residence that is not his property and, therefore, should not be levied. The constable or sheriff would have no way of knowing what personal property was Vincent's and therefore would

[31] *See* Order Granting Plaintiff's Motion to Compel, filed on September 10, 2020, attached hereto as **Exhibit Q**.

[32] *See* Ex. A.

[33] *See* October 1, 2020 Writ of Execution, attached hereto as **Exhibit R**.

put the constable or sheriff in the unenviable position of either taking all personal property within the residence (which could give rise to a tort claim against the Bank and/or the constable or sheriff[34]), or making speculative guesses as to what property was Vincent's and what wasn't. And while NRS 31.070 provides Vincent's family a remedy for wrongful execution, patently overbroad writs of execution can constitute an abuse of process.

11/14/20: Deputies from the Laughlin Township Constable's Office, along with two thirty-foot moving trucks, show up at Vincent's residence who requested entry into the home "to seize property to comply with the [House Writ.]"[35] Based on the advice of counsel, Vincent denied the deputies entry into his residence.[36]

11/20/20: Vincent files a Motion for Protective Order Seeking to Quash the Writ of Execution and for an Order to Show Cause why the Bank Should Not Be Held in Contempt and for Sanctions (the "House Writ Motion").[37]

12/1/20: The House Writ expires pursuant to NRS 21.040.

12/11/20: The Bank files an opposition to the House Writ Motion wherein it admits that the House Writ expired and would be required to obtain a new writ for any additional execution efforts.

03/02/21: The Court denies the House Writ Motion because the same was moot "since the subject [House Writ] expired on December 1, 2020."[38]

03/11/21: The Bank files the instant motion for receivership.

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[34] *See Elliott v. Denton & Denton*, 109 Nev. 979, 860 P.2d 725, at n. 1; and *In re Charleston Associates, LLC*, 590 B.R. 510, 516 (Bkrtcy.D.Nev. 2018) (citing *Elliott*).

[35] *See* Declaration of Craig Dahlheimer, attached hereto as **Exhibit S**.

[36] *Id.*

[37] *See* Defendant Vincent T. Schettler's Objection and Motion for Protective Order Quashing Plaintiff's Writs of Execution and Motion for Order to PWB to Show Cause as to Why It Should Not Be Held in Contempt and Sanctioned Pursuant to NRS 22.030, on file with the Court.

[38] *See* Order Denying Motion for Protective Order Quashing Plaintiff's Writs of Execution and Order to Show Cause, on file with the Court.

III.

VINCENT'S RESPONSE TO THE BANK'S FALSE AND/OR MISLEADING FACTUAL ASSERTIONS

- *Vincent purchased a $2,000,000 home in a gated and guarded community during the summer of 2019.*[39]
  - **Response:** Vincent did not purchase the home. The Schettler Family Trust purchased the home as evidenced by the Grant, Bargain, and Sale Deed.[40]
- *Vincent qualified for a loan to purchase the home by representing that his income was $77,231.00 per month.*[41]
  - **Response:** The Schettler Family Trust, not Vincent, applied for the loan, as evidenced by the testimony of Aaron Gordon, the mortgage broker, who has no dog in this fight.[42] Mr. Gordon has further testified that the loan is a bank statement loan, where qualification is based on the amount in deposits that went through the assessed accounts during a given period of time, not the income of the applicant.[43] Mr. Gordon has further testified that there were no accounts or statement of action for Vincent used or evaluated in this process.[44] Mr. Gordon's testimony is corroborated with documents the Bank subpoenaed from the mortgage company. Specifically, IMPAC produced spreadsheets summarizing the deposits into bank accounts held by Vision Commercial One LLC (#9415) and Vincent T Schettler LLC (#9324) which formed the basis for its income calculation[45]:

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[39] *See* Motion at 2:10-12.

[40] *See* Grant, Bargain, and Sale Deed, attached as **Exhibit T**.

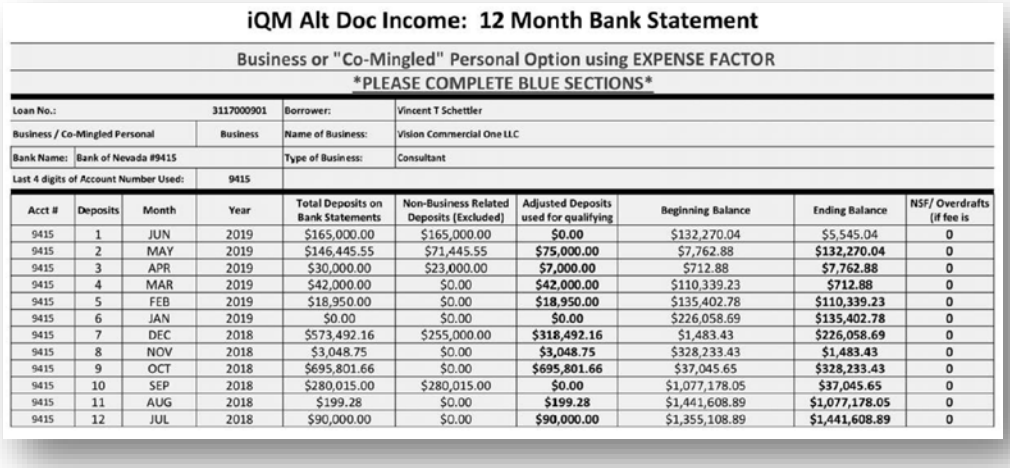
[41] *See* Motion at 2:12-16.

[42] *See* Declaration of Aaron Gordon, at ¶3-4, attached hereto as attached hereto as **Exhibit U**.

[43] *Id.*, at ¶ 6-10.

[44] *Id.*, at ¶ 7.

[45] *See* IMPAC00113-116, attached hereto as **Exhibit V**; and IMPAC00040, which is internal IMPAC memo that explains the income figure used for the loan application was based on deposits to the two LLC's bank accounts, attached hereto as **Exhibit W**.



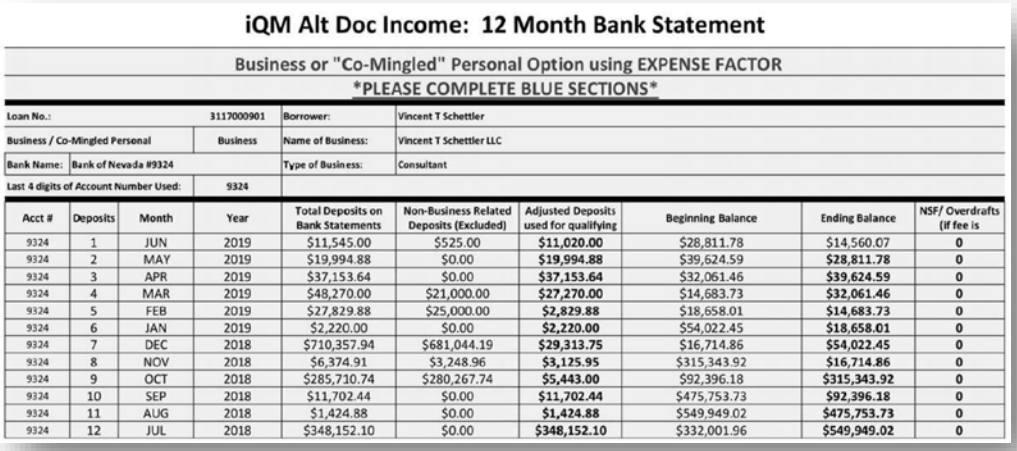
iQM Alt Doc Income: 12 Month Bank Statement

Business or "Co-Mingled" Personal Option using EXPENSE FACTOR

PLEASE COMPLETE BLUE SECTIONS

Loan No.:	3117000901	Borrower:	Vincent T Schettler
Business / Co-Mingled Personal	Business	Name of Business:	Vision Commercial One LLC
Bank Name:	Bank of Nevada #9415	Type of Business:	Consultant
Last 4 digits of Account Number Used:	9415		

Acct #	Deposits	Month	Year	Total Deposits on Bank Statements	Non-Business Related Deposits (Excluded)	Adjusted Deposits used for qualifying	Beginning Balance	Ending Balance	NSF/ Overdrafts (if fee is
9415	1	JUN	2019	$165,000.00	$165,000.00	**$0.00**	$132,270.04	$5,545.04	0
9415	2	MAY	2019	$146,445.55	$71,445.55	**$75,000.00**	$7,762.88	**$132,270.04**	0
9415	3	APR	2019	$30,000.00	$23,000.00	**$7,000.00**	$712.88	**$7,762.88**	0
9415	4	MAR	2019	$42,000.00	$0.00	**$42,000.00**	$110,339.23	**$712.88**	0
9415	5	FEB	2019	$18,950.00	$0.00	**$18,950.00**	$135,402.78	**$110,339.23**	0
9415	6	JAN	2019	$0.00	$0.00	**$0.00**	$226,058.69	**$135,402.78**	0
9415	7	DEC	2018	$573,492.16	$255,000.00	**$318,492.16**	$1,483.43	**$226,058.69**	0
9415	8	NOV	2018	$3,048.75	$0.00	**$3,048.75**	$328,233.43	**$1,483.43**	0
9415	9	OCT	2018	$695,801.66	$0.00	**$695,801.66**	$37,045.65	**$328,233.43**	0
9415	10	SEP	2018	$280,015.00	$280,015.00	**$0.00**	$1,077,178.05	**$37,045.65**	0
9415	11	AUG	2018	$199.28	$0.00	**$199.28**	$1,441,608.89	**$1,077,178.05**	0
9415	12	JUL	2018	$90,000.00	$0.00	**$90,000.00**	$1,355,108.89	**$1,441,608.89**	0



iQM Alt Doc Income: 12 Month Bank Statement

Business or "Co-Mingled" Personal Option using EXPENSE FACTOR

PLEASE COMPLETE BLUE SECTIONS

Loan No.:	3117000901	Borrower:	Vincent T Schettler
Business / Co-Mingled Personal	Business	Name of Business:	Vincent T Schettler LLC
Bank Name:	Bank of Nevada #9324	Type of Business:	Consultant
Last 4 digits of Account Number Used:	9324		

Acct #	Deposits	Month	Year	Total Deposits on Bank Statements	Non-Business Related Deposits (Excluded)	Adjusted Deposits used for qualifying	Beginning Balance	Ending Balance	NSF/ Overdrafts (if fee is
9324	1	JUN	2019	$11,545.00	$525.00	**$11,020.00**	$28,811.78	$14,560.07	0
9324	2	MAY	2019	$19,994.88	$0.00	**$19,994.88**	$39,624.59	**$28,811.78**	0
9324	3	APR	2019	$37,153.64	$0.00	**$37,153.64**	$32,061.46	**$39,624.59**	0
9324	4	MAR	2019	$48,270.00	$21,000.00	**$27,270.00**	$14,683.73	**$32,061.46**	0
9324	5	FEB	2019	$27,829.88	$25,000.00	**$2,829.88**	$18,658.01	**$14,683.73**	0
9324	6	JAN	2019	$2,220.00	$0.00	**$2,220.00**	$54,022.45	**$18,658.01**	0
9324	7	DEC	2018	$710,357.94	$681,044.19	**$29,313.75**	$16,714.86	**$54,022.45**	0
9324	8	NOV	2018	$6,374.91	$3,248.96	**$3,125.95**	$315,343.92	**$16,714.86**	0
9324	9	OCT	2018	$285,710.74	$280,267.74	**$5,443.00**	$92,396.18	**$315,343.92**	0
9324	10	SEP	2018	$11,702.44	$0.00	**$11,702.44**	$475,753.73	**$92,396.18**	0
9324	11	AUG	2018	$1,424.88	$0.00	**$1,424.88**	$549,949.02	**$475,753.73**	0
9324	12	JUL	2018	$348,152.10	$0.00	**$348,152.10**	$332,001.96	**$549,949.02**	0

- *Vincent uses a semi-private jet service when flying to Southern California to visit family.*[46]
    - **Response:** As Vincent testified in his judgment debtor examination, JetSuiteX is a commercial airline (not a private or semi-private jet) that advertises rates that are oftentimes less than larger commercial airlines like Southwest.[47] The fact that JetSuiteX planes operate from a smaller terminal is irrelevant.

[46] *See* Motion at 3:3-4.

[47] Indeed, a round trip flight from Las Vegas to Burbank for the weekend of April 2-4, 2021, is $198.00. *See* JSX Printout, attached hereto as **Exhibit X**. On Southwest, for flights around the same time, the price is $217.96, $19.96 more than the JSX rates. *See* Southwest Printout, attached hereto as **Exhibit Y**.

- *The Schettlers regularly charge and pay more than $40,000 per month on the American Express card.*
    - **Response:** As Vincent testified in his judgment debtor examination, the American Express card is used for both personal and business expenses.[48]

IV.

QUESTIONING THE LEGITIMACY OF MRS. SCHETTLER'S MEDICAL CONDITION IS NOT ONLY CALLOUS AND OFFENSIVE, IT IS A RED HERRING

For some reason, the Bank believes that its desire to depose Mrs. Schettler, a non-debtor, has been thwarted by Vincent. First of all, Mrs. Schettler has been represented by her own counsel during these proceedings.[49] Second, Mrs. Schettler, not Vincent, rightfully sought a protective order back in December of 2019, on not only medical grounds, but also under the spousal privilege.[50] Third, this Court has never ruled on the motion for protective order and the Bank has since abandoned its subpoena. But this is again par for the course. The Bank misrepresents, and in some cases completely omits from its analysis, the procedural history to support its narrative that Vincent

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[48] A: … [A]nd this has been this way for ten years or so -- things are charged on my personal credit card, many of which are for clients of mine. And then we get -- collect payments from all reimbursables on a monthly basis from the credit cards, we get reimbursements from every LLC or every company or whatever that I make charges for, get reimbursements.

Everything gets dumped into - - I believe it's a Schettler Family Trust account, and sometimes my wife makes the payment, and then it all gets sent over to Amex in one payment just to make it easier.

…

Q. Let's come back and reset the stage. So you use the black Amex card for business expenses, which are paid by the Schettler Family Trust using funds that they've received from clients of yours, correct?

A. Correct.

Q. And you use the black Amex card for personal expenses, personal family expenses, for which the Schettler Family Trust pays for because you are a beneficiary to the trust? Am I correct so far?

A. Correct.

See Ex. B, at 49:19-50:5, 68:19-69:4.

[49] *See* Non-Party Kelly Schettler's Motion to Quash Subpoena and for Protective Order on Order Shortening Time, on file with the Court.

[50] *See Id*.

is a recalcitrant judgment debtor. It is pretty bold for a litigant – especially a sophisticated financial institution – to try impeaching the credibility of a witness's medical condition without rebuttal medical opinion. In its Motion, the Bank omits the fact that several of Mrs. Schettler's physicians provided letters in support of her motion for protective order, including:

- George Tu, M.D. – who stated that Mrs. Schettler has been a patient for over 10 years, who frequently experiences respiratory related exacerbations, which are triggered by multiple factors including stress. Dr. Tu further opined and advised that Mrs. Schettler should avoid stressful physical, environmental, and/or psychological conditions.[51]
- Robert Fox, M.D. – who stated that he treats Mrs. Schettler for seronegative rheumatoid arthritis, which is exacerbated by stress, which may adversely affect her health. On December 4, 2019, Dr. Fox opined that Mrs. Schettler should not sit for a deposition if possible as she was then suffering from coughing and asthma attacks.[52]
- Cindy Busto LCSW, DCSW – who stated that she has been treating Mrs. Schettler with therapy weekly for the past two years. Ms. Busto has observed "consistently" that Mrs. Schettler often becomes quite ill during very stressful situations. Ms. Busto opined that if Mrs. Schettler has to sit for a deposition, "it may well create a dangerous health situation for her."[53]

The bottom line is that Mrs. Schettler's medical professionals opined that she was not in a condition to have her deposition taken back in December of 2019.[54] This court has never compelled her deposition. The Bank has never sought to depose her since December of 2019. The fact that Vincent stated in July of 2019 (five months before Mrs. Schettler filed her motion for a protective order) that Mrs. Schettler medical's condition had improved when they relocated to Southern California is irrelevant to the request for a receivership. Just because a medical condition improves

[51] *See Id*, at Exhibit "A."

[52] *See Id*., at Exhibit "A" and Exhibit "B."

[53] *See Id*, at Exhibit "B."

[54] Worth noting is the fact that Mrs. Schettler's doctors were correct, in that the stress incurred from this case directly resulted in her hospitalization.

does not mean a medical condition is eliminated. In any event, the Bank has not pursued taking Mrs. Schettler's deposition for well over a year nor has it availed itself of requesting a ruling from this Court on Mrs. Schettler's motion for protective order.

V.

THE BANK'S ACCUSATION THAT VINCENT MISREPRESENTED THE TRUTH OF THE JUDGMENT TO HIS LENDER IS THE PRODUCT OF IGNORANCE OR AN INTENTIONAL MISREADING OF THE LOAN DOCUMENTS

The Bank accuses Vincent of making misrepresentations about the existence of the Bank's judgment on an application for the home loan discussed above. What the Bank overlooks is the fact that the Schettler Family Trust, not Vincent, individually, applied for the loan. This is evidenced not only by the incontrovertible fact that the Schettler Family Trust purchased the residence, but by the testimony of the mortgage broker who stated in no uncertain terms that it was the Schettler Family Trust, not Vincent, who applied for the loan[55]:

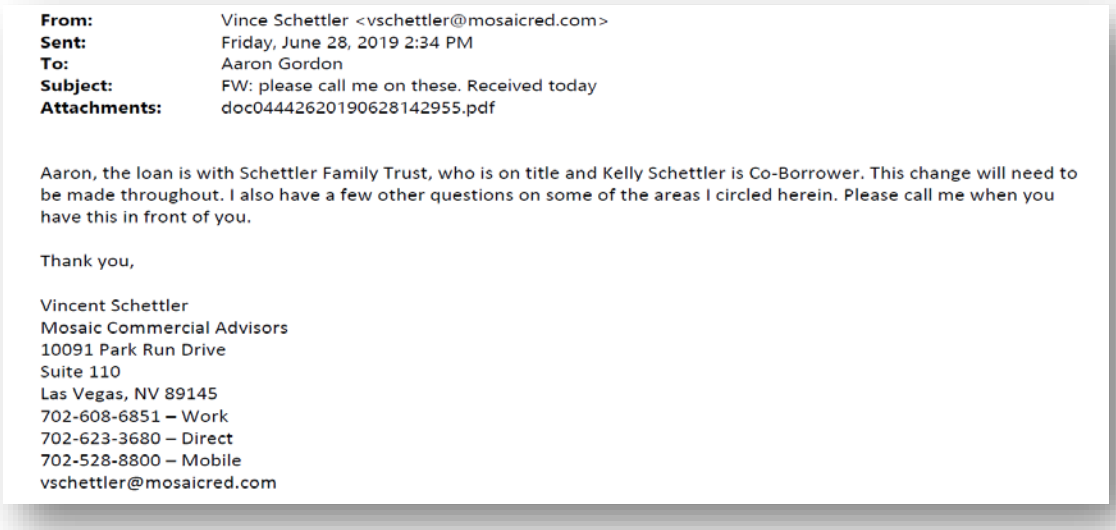
> 3. That Guild Mortgage Company brokered a loan, through Axos Bank, which was used for the Schettler Family Trust's purchase of the real property located at 9521 Tournament Canyon Drive, Las Vegas, Nevada 89144.
>
> 4. That as part of Guild Mortgage Company brokering this loan from Axos Bank, I oversaw the Schettler Family Trust's application for the loan.

When Vincent checked the "no" box on the question of whether the Schettler Family Trust had any judgment against it, that was a true statement.[56] Similarly, when Vincent checked the "no" box on the question of whether the Schettler Family Trust was a party to a lawsuit, that too was a true statement. These facts are further corroborated by an email Vincent sent Mr. Gordon on June

[55] *See* Ex. U, at ¶4.

[56] *See* Motion, at Exhibit 9.

28, 2019, wherein he explained that the loan documents needed to be changed to reflect that the loan is with the Schettler Family Trust[57]:



From: Vince Schettler <vschettler@mosaicred.com>
Sent: Friday, June 28, 2019 2:34 PM
To: Aaron Gordon
Subject: FW: please call me on these. Received today
Attachments: doc04442620190628142955.pdf

Aaron, the loan is with Schettler Family Trust, who is on title and Kelly Schettler is Co-Borrower. This change will need to be made throughout. I also have a few other questions on some of the areas I circled herein. Please call me when you have this in front of you.

Thank you,

Vincent Schettler
Mosaic Commercial Advisors
10091 Park Run Drive
Suite 110
Las Vegas, NV 89145
702-608-6851 – Work
702-623-3680 – Direct
702-528-8800 – Mobile
vschettler@mosaicred.com

VI.

THE BANK HAS NOT MET ITS BURDEN FOR THE APPOINTMENT OF A RECEIVER IN POST-JUDGMENT PROCEEDINGS

"Receivership is generally regarded as a remedy of last resort."[58] Receiverships are disfavored because they are "a harsh and extreme remedy which should be used sparingly and only when the securing of ultimate justice requires it."[59] Indeed, Nevada law requires that if the desired outcome "may be achieved by some method other than appointing a receiver, then this course should be followed."[60]

[57] *See* Email from Vincent Schettler to Aaron Gordon, attached hereto as **Exhibit Z.**

[58] *Bowler v. Leonard*, 269 P.2d 833, 840, 70 Nev. 370, 384 (Nev. 1954) (quoting C.J.S., Receivers, § 9., p. 688; 45 Am.Jur. 28, Receivers, § 26.

[59] *Hines v. Plante*, 99 Nev. 259, 261, 661 P.2d 880, 881-82 (1983).

[60] *Id.* (citing *State v. District Court*, 146 Mont. 362, 406 P.2d 828 (Mont. 1965) and *Hawkins v. Aldridge*, 211 Ind. 332, 7 N.E.2d 34 (Ind. 1937).

Nevada's receivership statute – NRS 32.010 – is the recodified version of section 5193 of Nevada's Revised Laws (1911).[61] Interestingly, the Supreme Court of Nevada has never reviewed or interpreted NRS 32.010(4), the provision that the Bank relies on for the appointment of a receiver after judgment to aid in execution.[62] However, the Supreme Court of Nevada has given "great weight" to California's interpretation of its own receivership statute which served as the model for Nevada's.[63] Just last month, the California Court of Appeals, Second District, reversed a trial court's appointment of a post-judgment receiver because "[i]n light of the sheer number of enforcement mechanisms for collecting money judgments [,] appointment of a receiver is rarely a 'necessity' and, as a consequence, 'may not ordinarily be used for the enforcement of a simple money judgment.'"[64] The court went to reason that "[i]nstead, the appointment of a receiver to enforce a money judgment is reserved for "exceptional" circumstances where the judgment creditor's conduct makes a receiver necessary[.]"[65]

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[61] *See State v. Sec. Jud. Dist. Ct.*, 49 Nev. 145, 241 P. 317 (1925) (quoting the language of section 5193, which is identical to NRS 32.010).

[62] Accordingly, the Supreme Court has never concluded that NRS 32.010(4) can apply to an individual judgment debtor. The Bank's reliance on the definitions in Chapter 32 of the Nevada Revised Statutes is misplaced. The definitions they rely on come from Nevada's 2017 adoption of the Uniform Commercial Real Estate Receivership Act (NRS 32.100 to 32.370, inclusive), which applies only to a receivership "for an interest in real property and any personal property related to or used in operating the real property." NRS 32.220(1).

[63] *See State v. Sec. Jud. Dist. Ct.*, at 49 Nev. 145, 241 P. 317 ("The statute just mentioned is taken from the California statue (Kerr's Cyclopedic Code Civ. Proc. [1907 Ed.] ch. 5, § 564), and has been often construed by the court of that state, and naturally such interpretations are of great weight with us.").

It should be noted that California's statute used to require, like Nevada's statute, a showing that a writ of execution has been returned unsatisfied or that the judgment debtor refuses to apply property in satisfaction of the judgment. However, California amended its statute in 1982 and removed such prerequisites. Now, California's statute only requires a finding that the appointment of a receiver is a "reasonable method to obtain the fair and orderly satisfaction of the judgment." *See* Cal.C.C.P. § 708.620 and Legislative Committee Comments, attached hereto as **Exhibit BB.** What is important about this is that California case law interpreting its receivership statute requires a showing of "exceptional" circumstances notwithstanding Calfornia's1982 broader receivership statute.

[64] *Medipro Medical Staffing LLC v. Certified Nursing Registry, Inc.*, 274 Cal.Rptr.3d 797, 801 (Cal.App. 2 Dist., 2021) (quoting *Jackson*, 253 Cal.App.2d at 1040; and *White v. White*, 130 Cal. 597, 599).

[65] *Id.*

In the *Medipro v. Certified Nursing Registry, Inc.* case, Medipro sued Certified for a variety of business torts.[66] A jury awarded Medipro $2 million in damages against Certified and $450,000 against Certified's founder, Christina Sy ("Sy").[67] After filing a writ of execution on April 26, 2019, Medipro thereafter (1) served levies on 10 financial institutions regarding accounts associated with Certified or Sy, (2) served levies on 11 hospitals to whom Certified provided staffing services regarding their accounts payable to certified, and (3) obtained a charging order against Sy's interest in an LLC owned by her husband.[68] Medipro did not serve any interrogatories requesting information to aid in the collection of the judgment, did not place liens on any of Certified's or Sy's property, and did not seek to compel Sy's or her husband's appearance at debtors' examinations, although it unsuccessfully tried to serve Sy 25 times and served her husband but had yet to conduct the examination.[69]

On October 31, 2019, Medipro filed a motion with the trial court to obtain a receiver to take possession of Certified's funds, books and records, and to enforce the charging order against Sy's interest in the LLC.[70] The trial court granted the motion and appointed a receiver to "take possession, custody and control" of the "accounts receivable and business accounts," to "enter and gain access to the offices," to "take possession of all bank accounts," to "collect all mail," and to "take possession of all the books and records" of both Certified *and* the LLC.[71] The trial court also enjoined Certified and the LLC from interfering with the receiver's performance of his duties.

The court of appeals determined that that trial court abused its discretion in appointing a receiver because "there was no evidence – let alone substantial evidence necessary to sustain a proper exercise of discretion – that Certified or Sy engaged in obfuscation or other obstreperous

[66] *Id*, at 798.
[67] *Id*.
[68] *Id*.
[69] *Id*, at 798-799.
[70] *Id*, at 799.
[71] *Id*.

conduct to the degree that the other collection mechanisms available under [California's] Enforcement of Judgments Law were ineffective."[72]

In the case at bar, the primary bases for the Bank's request for a receiver have nothing do with instances, established with "substantial evidence," that Vincent has engaged in "obfuscation or other obstreperous conduct" to a degree that renders Nevada's statutory collection mechanisms ineffective. As set forth above, the Bank let several years lapse between collection efforts and the collection efforts it has made were largely deemed by this Court to be improper. Moreover, it has, on many occasions, started to pursue remedies but then later abandon the same. For example, the Bank has done nothing to advance its collection remedies against the Schettler Family Trust for nearly a year, has abandoned its right for this Court to make a determination on Mrs. Schettler's motion for protective order, has ignored Mr. Schettler's admission that he holds a membership interest in an LLC that owns property in Hawaii, and has made zero efforts to obtain charging orders for any LLC where either Vincent or the Schettler Family Trust is a member.

Presumably because it could not find any persuasive authority in this jurisdiction or California for a receiver given these circumstances, the Bank heavily relies on decisions from various federal courts, including *Morgan Stanley v. Johnson*, 952 F.3d 978 (8th Cir. 2020).[73] *Morgan Stanley* is distinguishable for several reasons. First, the federal standard for the appointment of a receiver was used because appointments of receivers in federal diversity cases are a procedural matter governed by federal law and federal equitable principles.[74] Here, Nevada law applies and, in the absence of clear law, considers California state receivership law to be persuasive. Second, substantial evidence was presented at the trial court of several transactions where the judgment debtor held an interest or received a distribution, including, the judgment debtor reporting $53 million in stock transactions in 2015 and $30 million in 2016, and purchasing $75k in notes in

[72] *Id*, at 799-800.

[73] The Bank also cites to *Otero v. Vito*, 2008 WL 4004979 (M.D.Ga.2008); *U.S. v. Hoffman*, 560 F.Supp.2d 772 (D.Minn.2008); *Tharp v. Peterson*, 202 F.Supp.80 (S.D.Tex.1960)

[74] *Id*, at 980..

2017.[75] The judgment debtor also did not produce a "scrap of paper" for a business that was operating out of the judgment debtor's business office.[76]

Here, Vincent has provided the Bank everything they have asked for in post-judgment discovery, and then some. Vincent has provided his 2018 federal tax return, for example, which shows where Vincent has received income from that year. Vincent has also provided the Bank the general ledgers for the Schettler Family Trust, from its inception through July of 2020, which identifies each and every deposit into the trust and its source.[77]

The Bank also relies on *Otero v. Vito*, 2008 WL 4004979 (M.D. Ga. 2008), another federal case, for the proposition that a receiver is needed to "unravel the complicated web of entities and transaction woven by the judgment debtors."[78] What the Bank omits from its analysis is the fact that a receiver was appointed in the *Otero* case only after defendants were given the opportunity to provide a court-appointed special master with a detailed explanation of financial activities, yet failed to do so. In *Otero*, the plaintiff attempted to collect on a medical malpractice judgment.[79] Defendants created a number of corporations, trusts, and business entities and engaged in fraudulent transactions to shield assets and thwart collection.[80] Defendants also demonstrated a pattern of obstruction; refusing to respond to discovery and providing fraudulent answers to discovery requests.[81] The Court proceeded to issue an injunction appointing a special master to monitor and oversee the business operations of defendants.[82] Defendants violated the terms of the injunction by making an unauthorized loan, opening an unauthorized bank account, and failing to provide the special master with a detailed reporting of financial.[83] Following a show cause hearing, the court

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[75] *Id*, at 981-982.

[76] *Id*, at 981

[77] See Schettler Family Trust General Ledgers, attached hereto as **Exhibit CC**.

[78] *See* Motion, at 7:19-20.

[79] *Otero*, at *1.

[80] *Id*.

[81] *Id*.

[82] *Id*.

[83] *Id*.

found appointment of a receiver appropriate given the difficulty of obtaining information from Defendants and failure of lesser measures.[84] Going through the six factors provided in *Aviation* (the same case relied upon in the Eighth Circuit's *Morgan Stanley* decision), the court found: (1) plaintiff had a valid claim; (2) the likely conclusion that the entities were designed as the *alter ego* of defendants; (3) that such a finding creates an imminent danger that property could be concealed, lost, or diminished in value; (4) and (5) the failure of less drastic equitable measures; and (6) the appointment of a receiver is more likely to do good than harm.[85]

Here, there have been no findings that Vincent has engaged in fraudulent transactions to shield assets and thwart collection. There have also been no findings that Vincent has provided fraudulent answers to discovery requests. There have also been no progressive measures employed by this Court such as the appointment of a special master to monitor the business operations of Vincent and a violation of a corresponding injunction regarding the same. And finally, the *Otero* court applied the federal receivership standard. Here, Nevada law applies, which should be consistent with the *Medipro* decision explaining that, under California receivership law, the appointment of a receiver is "rarely a necessity and, as a consequence, may not ordinarily be used for the enforcement of a simple money judgment."[86]

VII.

VALID ASSET PROTECTION AND ESTATE PLANNING IS NOT A BASIS FOR THE APPOINTMENT OF A RECEIVER

"Nevada's reputation as a business-friendly state that protect contract rights it an important part of its economy and tax base."[87] Similarly, Nevada is nationally known for being among the top

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[84] *Id*, at *2.

[85] *Id*, at *3-4.

[86] *Medipro Medical Staffing LLC v. Certified Nursing Registry, Inc.*, 274 Cal.Rptr.3d 797, 801 (Cal.App. 2 Dist., 2021) (quoting *Jackson*, 253 Cal.App.2d at 1040; and *White v. White*, 130 Cal. 597, 599).

[87] *Tara Minerals Corp.* v. *Carnegie Mining and Exploration, Inc.*, 2012 WL 6632613 (D.Nev.) ("In fact, Nevada's reputation as a business friendly state that protects contract rights is an important part of its economy and tax base."). See also Julia Gold, Esq., *Series Limited Liability Companies-Too Good to Be True?*, Nev. Law., July 2004, at 18 ("Over recent years, the state of Nevada has been trying to establish itself as a business-friendly state. In that regard, the Nevada legislature has

states for asset protection planning.[88] There is nothing improper about lawfully sheltering assets from future lawsuits and judgments.[89] Indeed, such luminaries as Duncan Osbourne, who has chaired the International Planning Committee of the American College of Trust and Estate Planning (ACTEC), and Gideon Rothschild, who chairs the ABA Special Committee on Asset Protection, have authored articles suggesting not only is it not unethical to do asset protection planning, but it may also be civilly negligent – i.e. legal malpractice – NOT to recommend asset protection planning to clients for whom it is obviously appropriate.[90]

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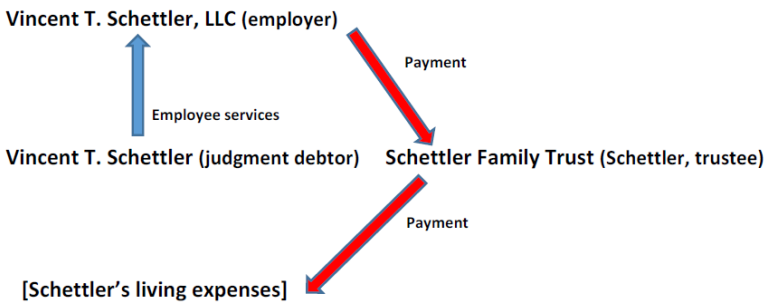
passed legislation to facilitate and promote the location and relocation of businesses in Nevada."); Nicholas Vail, *Cracking Shells: The Panama Papers & Looking to the European Union's Anti-Money Laundering Directive As A Framework for Implementing A Multilateral Agreement to Combat the Harmful Effects of Shell Companies*, 5 Tex. A&M L. Rev. 133, 140 (2017) ("Americans need only look to states such as Delaware and Nevada which are home to some of the most business-friendly secrecy laws in the world."); Cari Ehrlich Waters, *Nevada's Failure to Secure Its Future: An Analysis of the Omission of U.C.C. S 9-318(a) and Its Effect on Asset Securitization*, 3 Nev. L.J. 115, 130 (2002) ("For the past several years, Nevada has made a concerted effort to be a pro-business state. For example, Nevada attempted to become business friendly through the creation of business courts in 1999.").

[88] *See* Brian Layman Esq. and Sarah Reed, Esq., *Top Ten Asset Protection Mistakes Estate Planners Make*, 29 No. 6 Ohio Prob. L.J. NL 7 ("Historically, the top four states for asset protection planning have been Nevada, Alaska, South Dakota, and Delaware."); William S. Forsberg, James C. Worthington, *Income Tax Reimbursement Clauses in Irrevocable Grantor Trusts-When to Use Them and When Not to*, Prob. & Prop., May/June 2005, at 36, 40 ("This variation in state law would not be a problem in an asset protection-friendly state, such as Alaska, Delaware, Missouri, Nevada, Oklahoma, Rhode Island, and Utah.").

[89] "Between these and other limits on UFTA, it's fair to say that there are many circumstances in which a client may lawfully shelter assets against future lawsuits. Moreover, in an era noted for 'runaway juries,' politically motivated judges who indulge such juries, administrative law judges who sue dry cleaners for $67,000,000 over a single lost set of pants, federal courts that allow plaintiffs to sue for emotional distress over incidents they never saw and didn't even comprehend until after the fact, infamous results like the McDonald's hot coffee case, and notoriously abusive plaintiffs' lawyers who rarely, if ever, bear the costs of their ill-founded lawsuits, many people would consider asset protection planning to be an economic necessity and perhaps even a moral imperative. Indeed, certain persons have a fiduciary duty to protect assets, other persons carry a legal duty to support their family, and foreign (much less domestic) asset protection trusts have been expressly sanctioned as serving 'the legitimate purpose of protecting family assets for the benefit of... family members.' **Taken together, all of this shows that asset protection planning is both appropriate and, in some instances, even obligatory.**" John E. Sullivan III, *Asset Protection for Ohioans: Why the Planning Is Better Outside Ohio*, 20 OHPRLJ 74 (2009) (emphasis added).

[90] Frederick J. Tansill, Esq., *Asset Protection Trusts (APTS): Non-Tax Issues*, American Law Institute – American Bar Association Continuing Legal Education, ST012 ALI-ABA 293, 372 (2011).

The Bank apparently takes issue with how Vincent's businesses and financial affairs are organized. It fails to articulate, however, with supporting law, why Vincent's business organization and asset protection warrants a receiver under NRS 32.010(4). The Bank has presented no evidence of fraudulent transfers, no evidence of alter egos, no evidence of post-judgment planning. During Vincent's 11-hour judgment debtor examination, the Bank asked Vincent about many of the entities and trusts that comprise his estate and business planning. Vincent explained to the Bank in great detail how his trusts and his businesses are organized.[91] Vincent does not dispute the Bank's flowchart on page 4 of its Motion, which is pasted here again for the Court's convenience:



Vincent T. Schettler LLC – As the Bank knows, Vincent T Schettler LLC ("VTS LLC") was formed in 2001 and is an operational entity for the commission income Vincent earns as a licensed real estate broker. It pays salaries, expenses, insurance, etc. to employees related to the real estate business.[92] From January 2012 (well before the default on the Bank loan) to the present, VTS LLC is 95% owned by the Schettler Family Trust.[93] Accordingly, if a distribution of income is ever made from VTS LLC, it is made to the Schettler Family Trust. VTS LLC continues to be the entity that receives commissions and **Vincent has made no changes to this structure before or after the litigation with the Bank.**[94]

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[91] *See* Ex. B, at 172:6-272:5, 68:19-69:4.

[92] *See* Vincent T. Schettler, LLC General Ledger as of December 31, 2011, at VTS003616-3466, and attached hereto as **Exhibit DD**.

[93] *See* Vincent T. Schettler, LLC Operating Agreement and Resolution, dated January 1, 2012, attached hereto as **Exhibit EE**.

[94] *Id*.

Schettler Family Trust – The Schettler Family Trust is a revocable trust that does exactly what a revocable family trust should do: hold certain assets for the purpose of avoiding probate and to pay the living expenses of the Schettler family. The fact that Vincent is a co-trustee and, therefore, has the ability to pay family expenses from the trust's assets, is irrelevant. There is no provision in the Schettler Family Trust that requires the trustee to pay the debts of a settlor or beneficiary. As mentioned above, the Bank and the Trustees of the Schettler Family trust submitted competing orders regarding Judge Sturman's decision adopting in part and modifying in part the Probate Commissioner's Report and Recommendation concerning the Bank's request for a declaration that the assets of the Schettler Family Trust as subject to claims against Vincent. The competing orders were submitted in June of 2020. Indeed, it was Vincent, not the Bank, that recently sent Judge Sturman a letter to politely remind her that no order has yet been entered concerning the Bank's trust petition. When said order is entered, that will likely cause the Bank to pursue collection against the Schettler Family Trust's assets, which will in turn cause Vincent and/or Mrs. Schettler to assert claims for exemption under all applicable law, including, marital property law. That, however, is putting the cart before the horse. There is no operative order on file and when it is ultimately entered by Judge Sturman, the Schettler Family Trust and its Trustees will likely have to be joined as defendants in this proceeding.[95]

VIII.

COUNTERMOTION FOR APPOINTMENT OF SPECIAL MASTER

Should the Court nevertheless determine that oversight is necessary, a special master should suffice. As acknowledged in *Medipro*, Receivers are costly and draconian. While Vincent is adamant that he has now fully cooperated with the Bank and the Court in providing post-judgment discovery, if the Court still believes the Bank has established good cause for some judicial oversight of further judgment execution efforts, including, any claims for exemption resulting therefrom, a special master can be appointed by this Court pursuant to NRCP 53(a) to facilitate the same. Indeed, there are several issues which can be referred to a special master in these proceedings, including:

[95] *See* NRCP 17(a)(1)(E) and NRS 21.330.

1. Hearing any further discovery disputes by and between Vincent, the Bank, the Schettler Family Trust, Mrs. Schettler, and subpoenaed third-parties.
2. Hearing any claims for exemption made by Mrs. Schettler, Vincent, the Schettler Family Trust, and other trusts settled by the Schettlers.
3. Hearing any disputes concerning the remaining judgment balance and partial satisfactions of the judgment.

Indeed, Vincent has his own concerns about keeping the Bank's actions in check. For example, the Bank has taken inconsistent positions with regard to what Vincent owes on the judgment. In the instant Motion, filed on March 11, 2021, the Bank asserts that the remaining judgment amount is approximately $3 million.[96] However, on March 31, 2021, the Bank represented that the total amount owed is over $4.1 million. And just six months ago, the Bank represented to the Court under oath that the total judgment against Schettler was then $2,740,503.27.[97] There also remain unresolved issues regarding how payments from the other defendants, who are jointly and severally liable, have been applied to the judgment.

Given the numerosity and relative complexity of the issues (especially those relating to Nevada trust law, asset protection law, community property law, and judgment collection law), Vincent proposes the following individuals who he believes would serve the Court well as a special master in these proceedings:

Hon. Nancy Becker (Ret.)

Hon. Trevor Atkin (Ret.)

Hon. Jennifer Togliatti (Ret.)

Moreover, in the event that this Court determines that the appointment of a special master is necessary, Vincent requests that such costs associated with a special master be borne by both the Bank and Vincent in equal shares unless the special master reaches a determination that certain

[96] *See* Motion, at 2:7-9.

[97] *See* Affidavit of Renewal of Judgment, filed on September 15, 2020, at p. 3, attached hereto as **Exhibit FF**. Note that even with an additional six months of *per diem* interest, the judgment today would still be around $2.8 million based on the Bank's Affidavit.

costs should only be paid by one party under applicable law (e.g. filing frivolous pleadings, unnecessarily multiplying proceedings, etc.).

IX.

CONCLUSION

Based on the foregoing, Vincent respectfully requests the following relief:

1. That the Court deny the Bank's Motion for a Receiver in its entirety;
2. That, alternatively, the Court appoint a special master instead of a receiver to hear (a) any further discovery disputes by and between Vincent, the Bank, the Schettler Family Trust, Mrs. Schettler, and subpoenaed third-parties; (b) any claims for exemption made by Mrs. Schettler, Vincent, the Schettler Family Trust, and other trusts settled by the Schettlers; and (c) any disputes concerning the remaining judgment balance and partial satisfactions of the judgment; and
3. For any other relief appropriate and warranted under the circumstances.

Dated this 31st day of March, 2021.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Alexander G. LeVeque

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Attorneys for Vincent T. Schettler

CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on March 31st 2021, I served a true and correct copy of VINCENT T. SCHETTLER'S OPPOSITION TO: MOTION FOR APPOINTMENT OF RECEIVER OVER JUDGMENT DEBTOR VINCENT T. SCHETTLER'S ASSETS -AND- COUNTERMOTION FOR APPOINTMENT OF SPECIAL MASTER to the following in the manner set forth below:

Via:

[____] Hand Delivery

[____] U.S. Mail, Postage Prepaid, to the parties identified below

[____] Certified Mail, Receipt No.: _____

[____] Return Receipt Request

[X] E-Service through the Odyssey eFileNV/Nevada E-File and Serve System, as follows:

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EXHIBIT 3

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DISTRICT COURT

CLARK COUNTY, NEVADA

PACIFIC WESTERN BANK, a California corporation, Plaintiff/Judgment Creditor, v. JOHN A. RITTER, an individual; DARREN D. BADGER, an individual; VINCENT T. SCHETTLER, an individual; and DOES 1 through 50, Defendants/Judgment Debtors.	Case No.: A-14-710645-B Dept.: 16 **MOTION FOR RECONSIDERATION OF THE COURT'S AUGUST 16, 2021 ORDER GRANTING APPOINTMENT OF RECEIVER, OR IN THE ALTERNATIVE, TO ALTER OR AMEND ORDER** **HEARING REQUESTED**

Pursuant to NRCP 62.1, EDCR 2.24(b) and NRCP 52(b), Vincent T. Schettler ("Vincent"), by and through his counsel of record, Alan Freer and Alexander LeVeque, of the law firm Solomon Dwiggins Freer & Steadman, Ltd., hereby request leave to seek reconsideration of this Court's Order (1) Appointing Receiver Over Judgment Debtor Vincent T. Schettler's Assets and (2) Denying Countermotion for Special Master, entered on August 16, 2021 (the "Order").

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This Motion is based upon the following Memorandum of Points and Authorities, the pleadings and papers on file, and any argument of counsel at the hearing on this matter.

DATED this 30th day of August, 2021.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This Motion for Reconsideration is not designed to change the final outcome of the case in terms of the appointment of a receiver (that is currently on appeal). Instead, pursuant to EDCR 2.24, this Motion is brought for the purpose of seeking the Court's reconsideration of *how* the Court arrived at its conclusion to conform with its ruling and current Nevada law. The Court was explicit in its ruling: the only thing to be considered is satisfaction of NRS 32.010(4). However, the Order as entered is contrary to that very ruling with its inclusion of irrelevant findings of fact and conclusions of law unrelated to NRS 32.010(4), as well as orders granting the receiver powers that are contrary to well-settled Nevada law. As such, the Order is clearly erroneous.

Alternatively, if the Court is not willing to find the Order clearly erroneous, Vincent requests that the Court amend or alter the findings of fact and conclusions of law of the Order pursuant to NRCP 52(b) to remove certain findings of fact that were never found during the hearing and without an evidentiary hearing.

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II.

STATEMENT OF FACTS

On September 26, 2014, the Superior Court of the State of California entered judgment against John Ritter, Darren Badger, and Vincent, jointly and severally, in the amount of $2,717,490.79, in favor of Pacific Western Bank (the "Bank"). The Bank domesticated the same in Nevada on December 3, 2014.

In 2015, the Bank made several attempts to execute against Vincent's property to apply to the judgment. However, all such attempts were either quashed by the Court or declared to be stale,[1] while certain assets were deemed to be exempt.[2] From the end of 2015 through March of 2019, the Bank did not pursue any judgment collection against Vincent. However, in April of 2019, the Bank resumed its efforts.

On March 11, 2021, the Bank filed its Motion for Appointment of Receiver over Judgment Debtor Vincent T. Schettler's Assets (the "Receiver Motion").[3] Vincent opposed the Receiver Motion and counter-moved for appointment of a special master.[4] On April 28, 2021, the Court heard the Receiver Motion and Vincent's countermotion and took the same under advisement.

On June 21, 2021, the Court entered a minute order granting the Bank's Receiver Motion and denying Vincent's countermotion (the "Minute Order").[5] As an issue of first impression, the Court ruled that appointing a post-judgment receiver under NRS 32.010(4) requires a different

[1] *See* Order re Emergency Motion, at Exhibit F of Vincent Schettler's Opposition to Motion for Appointment of Receiver & Countermotion for Appointment of Special Master (the "Opposition to Receiver Motion"), on file with the Court; Amended Order, at Exhibit G of Opposition to Receiver Motion; and Order Granting In Part Plaintiff's Counter Motion for Relief or to Clarify 8/19/15 Order, at Exhibit H of Opposition to Receiver Motion.

[2] *See* Order re 529 Accounts, at Exhibit I of Opposition to Receiver Motion; Order re TD Ameritrade, at Exhibit K of Opposition to Receiver Motion.

[3] Motion for Appointment of Receiver over Judgment Debtor Vincent T. Schettler's Assets (the "Receiver Motion"), on file with the Court.

[4] Opposition to Receiver Motion.

[5] Minute Order, dated June 21, 2021 (the "Minute Order"), on file with the Court.

analysis than other receiverships and is not considered a harsh and extreme remedy and/or a remedy of last resort:

> *[U]nder the Nevada statutory scheme the appointment of a receiver is not a remedy of last resort because Nevada law does not require the Court to consider the interests of both the judgment creditor and the judgment debtor, and whether the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment.*[6]

Rather, the Court determined that it need only find that (a) an execution has been returned unsatisfied, or (b) a judgment debtor has refused to apply the judgment debtor's property in satisfaction of the judgment:

> *Under the Nevada statute, "[a]fter judgement, to dispose of the property according to the judgment, … in proceedings in aid of execution, when an execution has returned unsatisfied, or when the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment," a receiver may be appointed by the Court. See, NRS 32.010.4.*[7]

According to the Minute Order, the Court granted the Receiver Motion because the Bank demonstrated that its previous execution efforts had been returned unsatisfied:

> *In the instant action Pacific West has utilized the standard debt collection procedures as set forth in its motion. In light of the foregoing, Plaintiff Pacific Western Bank's Motion for the Appointment of Receiver Over Judgment Debtor Vincent T. Schettler's Assets shall be GRANTED.*[8]

Following the entry of the Minute Order, Vincent and the Bank attempted to draft a mutually-approved order. Such efforts were unsuccessful because the Bank's proposed order included several findings of fact that the Court never expressly made and were irrelevant to the Court's narrow interpretation of NRS 32.010(4). The Bank's proposed order also vested the receiver with powers contrary to Nevada law, including, powers to compel distributions from spendthrift

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[6] *Id.*, at 1-2.

[7] *Id.*, at 2.

[8] *Id.*

trusts and limited-liability companies in violation of Nevada trust law and charging order law, respectively. Competing orders were therefore submitted.[9]

On July 21, 2021, the Court convened a status hearing on the competing orders and a hearing on Vincent's motion to stay pending appeal. During that hearing, the Court reiterated that its decision to appoint a post-judgment receiver was solely based on its interpretation of NRS 32.010(4) and did not consider any other jurisprudence including from California and the federal courts, nor did it weigh any evidence of the equities:

> *I look at Moore's Federal Practice and Procedure all the time when it comes to, for example, the rules, because our rules many times there can be differences, but we're moving more and more towards the federal rules, I and look to that for guidance sometimes if we have unsettled principles.*
>
> ***But here I specifically just looked at the statute and interpreted the statute, and that's all I did, you know.*** *And I did consider the California arguments that were made, how they handle things over there, but their statute is different.*
> …
> ***And so I'm not weighing and balancing any harms here, I'm looking at the rights of a creditor, and if they meet the threshold, there's an appointment of a receiver****. If they don't meet the requirements, there's not an appointment of the receiver, and that's what I think would be the analysis.* (Emphasis added).[10]

Moreover, it was ruled that no evidentiary hearing was necessary to establish cause for a receiver under NRS 32.010(4). Notwithstanding, the Court entered the Bank's proposed Order on August 16, 2021.

On August 19, 2021, Vincent filed his Notice of Appeal and corresponding Case Appeal Statement, appealing the Order entered on August 16, 2021.

III.

MOTION FOR RECONSIDERATION

A. LEGAL STANDARD

a. This Motion for Reconsideration is Permitted Pursuant to NRCP 62.1.

[9] *See* Bank's Order Appointing Receiver Over Vincent T. Schettler' Assets, attached hereto as **Exhibit A**; Vincent's Proposed Receiver Order, attached hereto as **Exhibit B**.
[10] *See* July 21, 2021 Hearing Transcript, at 18:16-25; 40:21-25, attached hereto as **Exhibit C**.

Due to the chronological procedural posture of this case, Vincent's filing of his Notice of Appeal divests this District Court of jurisdiction pending appeal. However, based on the Court's rulings in *Foster v. Dingwell*, 126 Nev. 49, 52-53, 228 P.3d 453, 455 (2010), and *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978), NRCP 62.1 sets forth the district court's limited authority to make rulings on motions filed while an appeal is pending. NRCP 62.1 (amended effective March 1, 2019) provides, in relevant part:

> (a) **Relief Pending Appeal.** If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:
>
> (1) defer considering the motion;
> (2) deny the motion; or
> (3) state either that it would grant the motion if the appellate court remands for that purpose or that the motion raises a substantial issue.

"As outlined in *Huneycutt*, prior to filing a motion for remand in [the Supreme Court of Nevada], a party seeking to alter, vacate, or otherwise change or modify an order or judgment challenged on appeal should file a motion for relief from the order or judgment in the district court. . . . In considering such motions, the district court has jurisdiction to direct briefing on the motion, hold a hearing regarding the motion, and enter an order denying the motion, but lacks jurisdiction to enter an order granting such a motion."[11] Accordingly, Vincent seeks the Court holding a hearing on the Motion and certify an inclination to grant this Motion for the appellate court pursuant to NRCP 62.1

b. <u>Reconsideration pursuant to EDCR 2.24(b).</u>

EDCR 2.24(b) provides the proper avenue for bringing a motion for reconsideration:

> A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for such relief within 14 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order.

[11] *Foster*, 126 Nev. at 52-53, 228 P.3d at 455.

A court has the inherent authority to reconsider its prior orders.[12] In particular, "[a] district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous."[13] Moreover, the Court may entertain rehearing if it finds that it overlooked a germane legal or factual matter, which resulted in an erroneous decision.[14]

Reconsideration "is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law."[15] "Clear error occurs when 'the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed.'"[16]

This Motion for Reconsideration is timely filed since the Order was entered on August 16, 2021.

B. THE ORDER INCLUDES FINDINGS OF FACT THAT WERE NOT FOUND BY THE COURT AND MAKES THE ORDER CLEARLY ERRONEOUS.

The Court concluded that the Bank "utilized the standard debt collection procedures" in satisfaction of NRS 32.010(4). However, the Order includes numerous findings of fact that the Court never made nor relied upon in its ruling.

For example, despite the Court's ruling that the Bank had utilized prior execution efforts that were returned unsatisfied, the Order includes findings unrelated to the Court's narrow interpretation of NRS 32.010(4). Instead, many findings are wholly unrelated, but were clearly included to satisfy the other criteria of NRS 32.010(4): where a judgment debtor has refused to apply the judgment debtor's property in satisfaction of the judgment.

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[12] *See* EDCR 2.24.

[13] *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741 (Nev. 1997); see also, *Trail v. Faretto*, 91 Nev. 401, 403 (Nev. 1975) (district court may "for sufficient cause shown, amend, correct, resettle, modify or vacate, as the case may be, an order previously made . . .").

[14] *Cannon v. Taylor*, 88 Nev. 92, 493 P.2d 1313, 13-15 (1972).

[15] *Smith v. Clark County Sch. Dist.*, 727 F.3d 950, 955 (9th Cir. 2013) (quoting *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.1993)).

[16] *Id.* (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948)).

The issue remains that while the Court made clear it was not going to conduct an evidentiary hearing or a balancing of the equities,[17] the order includes findings that were never expressly made by the Court and were disputed by Vincent with material evidence during the motion practice. Taken together, such findings instead seek to demonstrate the harms that the Bank has faced in its collection efforts, and are analogous to a balancing of the equities, which the court explicitly deemed unnecessary.

In addition, the Order includes a finding that the Bank utilized writs of execution as one of its "standard debt collection procedures," to support its conclusion that its previous execution efforts had been returned unsatisfied under NRS 32.010(4).[18] The issue here is that such a finding was never made by the Court at the hearing and moreover, is contrary to the established record of the Court. Prior to the Bank's revival of its collection efforts in April 2019, all of its attempted efforts to execute on Vincent's property were thwarted. The record demonstrates that Vincent, and his wife Kelly Schettler, were forced to file numerous claims of exemption[19] and an emergency motion for a protective order,[20] resulting in the Court quashing the improper writs of garnishment and execution and exempting certain property from execution.[21] And even after the Bank revived its collection efforts after years of inactivity, it has only attempted to execute on Vincent's property once.[22] Due to the problematic language of the writ of execution, Vincent filed a Motion for Protective Order Seeking to Quash the Writ of Execution and for an Order to Show Cause Why the Bank Should Not Be Held in Contempt and for Sanctions.[23] However, pursuant to NRS 21.040, the

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[17] July 21, 2021 Hearing Transcript, at 40:21-25.

[18] Order, at 2:17-19.

[19] *See* Writs of Execution and Writs of Garnishment, at Exhibit E of Opposition to Receiver Motion; Claim of Exemption from Execution, on file with the Court; Claim of Exemption from Execution [Bank of Nevada Held by Schettler Family Trust], on file with the Court.

[20] *See* Defendant Schettler's Emergency Motion for Protective Order on an Order Shortening Time, on file with the Court.

[21] *See* Exhibits E-I and K of Opposition to Receiver Motion.

[22] *See* October 1, 2020 Writ of Execution, at Exhibit R to Opposition to Receiver Motion.

[23] *See* Defendant Vincent T. Schettler's Objection and Motion for Protective Order Quashing Plaintiff's Writs of Execution and Motion for Order to PWB to Show Cause as to Why It Should Not Be Held in Contempt and Sanctioned Pursuant to NRS 22.030, on file with the Court.

Court denied Vincent's Motion for Protective Order "as moot since the subject Writ of Execution expired."[24] As is evident, there was no rendering of a ruling by the Court that the writ was valid, and as such, was returned unsatisfied.

Indeed, the Court's findings should be consistent with the record by limiting findings to those expressly made by the Court and that satisfy its primary ruling: that the Bank "utilized the standard debt collection procedures." If the Court retains the findings as balancing of the equities, the parties should be afforded an opportunity to conduct an evidentiary hearing on those findings.

C. THE ORDER PERMITS THE RECEIVER TO CONDUCT ACTIVITIES THAT ARE CONTRARY TO NEVADA LAW, AND ITS OWN ORDER, WHICH IS CLEARLY ERRONEOUS.

The Order includes an order that it is the be interpreted and applied by the receiver in a manner consistent with *Wendell v. H2O, Inc.*, 128 Nev. 94, 271 P.3d 743 (2012).[25] However, there are numerous provisions within the Order that are directly contrary NRS 86.401 and the *Wendell* case.

The Court in *Wendell* makes clear that a charging order is the exclusive remedy for any type of judgment collection on distributions that would be made to a member of an LLC where that member is subject to a judgment.[26] However, while the Bank has yet to enter a charging order, the Order empowers the receiver to direct distributions from a litany of nonparty LLCs that were enumerated in the Order,[27] in direct violation of subsection 2 of NRS 86.401.

In addition, the Order also grants the receiver managerial powers of those LLCs where Vincent is a manager, but of which he sustains no membership interest.[28] However, even if the Bank were to obtain a charging order for the various LLCs, such a charging order does not entitle the

[24] *See* Order Denying Motion for Protective Order Quashing Plaintiff's Writs of Execution and Order to Show Cause, on file with the Court.

[25] Order, at 15:23-24.

[26] *Wendell*, 128 Nev. at 105-106, 271 P.3d at 750.

[27] *Id*, at 8:27-9:16 and 12:23-26.

[28] Order, at 11:13-19.

Bank or the receiver to managerial rights in those LLCs.[29] Again, this is contrary to the holding in *Wendell* and NRS 85.401, and clearly erroneous as against Nevada law.

D. THE ORDER'S INCLUSION OF NON-NEVADA CASE LAW AND INAPPLICABLE NRS STATUTES, WHICH THE COURT EXPRESSLY DEEMED INAPPLICABLE, IS CLEARLY ERRONEOUS.

At various times throughout the Order, the same relies on non-Nevada case law[30] and specific provisions of NRS Chapter 32 that pertain to the Uniform Commercial Real Estate Receivership Act.[31] However, the Court ruled that under subsection 4 of NRS 32.010, it only needs to determine that (a) an execution has been returned unsatisfied, or (b) a judgment debtor has refused to apply the judgment debtor's property in satisfaction of the judgment. Accordingly, such use is not only irrelevant to the instant case, but also outside the scope of the Court's ruling.

IV.

ALTERNATIVE MOTION TO ALTER OR AMEND THE ORDER

A. LEGAL STANDARD.

In the alternative, NRCP 52(b) provides:

> (b) **Amended or Additional Findings.** On a party's motion filed no later than 28 days after service of written notice of entry of judgment, the court may amend its findings — or make additional findings — and may amend the judgment accordingly. The time for filing the motion cannot be extended under Rule 6(b).

This Motion to Alter or Amend is timely filed since the Order was entered on August 16, 2021.

B. REMOVING CERTAIN FINDINGS AND CONCLUSIONS IN THE ORDER IS PROPER AND WARRANTED.

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[29] *Id*., 128 Nev. at 107, 271 P.3d at 752 ("Pursuant to NRS 86.401, a judgment creditor may obtain the rights of an assignee of the member's interest, receiving only a share of the economic interests in a limited-liability company, including profits, losses, and distributions of assets. Thus, the charging order does not entitle the creditor to [judgment debtor]'s managerial rights in [LLC].")

[30] *Id*, at 4:22-5:2, 6:15-20. and 7:6-10.

[31] *Id*, at 8:16, 13:17-20.

The hearing on the Bank's Motion for Appointment of a Receiver and Vincent's Countermotion for Appointment of a Special Master was not an evidentiary hearing, but the Court did permit oral arguments. During the hearing, the Court made no oral findings and took the Receiver Motion under advisement. The Court issued its Minute Order wherein the Court granted the Receiver Motion, ruling that such a decision was based solely upon the Bank's satisfaction of NRS 32.010(4). However, as explained above, the Order includes numerous findings of fact that the Court never made nor relied upon in its ruling that would otherwise require a balancing of the equities, which was explicitly deemed unnecessary by the Court.

Like the above Motion for Reconsideration, this alternative Motion to Amend or Alter is not designed to change the outcome. Rather, this Motion to Amend or Alter brought for the purpose of making alterations or amendments to the Court's Findings of Facts and Conclusions of Law in the Order that were either never found by the Court, are not legally or factually appropriate, or supported by Nevada law. Accordingly, if the Court is not inclined to reconsider the Order, the following bolded findings and conclusions of law should be stricken from the Order:

a. <u>Findings of Fact</u>

> *2. Schettler lives an affluent lifestyle but has not voluntarily paid anything on the judgment in more than six years. For example:*
>
> > *a.* ***Schettler purchased*** *a $2,000,000 home in a gated and guarded community during the summer of 2019. Title to the home was taken in the name of the Schettler Family Trust.*
> >
> > *b. Associated with the purchase of that home,* ***Schettler qualified for a $1,500,000 loan by representing his income was $77,231 per month, i.e., more than $926,000 annually.***[32]

The Court did not make these findings at the April 28, 2021 hearing on the Receiver Motion,[33] the Minute Order,[34] or the July 21, 2021 hearing on Vincent's motion to stay pending appeal.[35] Vincent has previously provided material evidence that he did not purchase the home

[32] Order, at 2:26-3:6.

[33] *See,* April 28, 2021 Hearing Transcript, attached hereto as **Exhibit D**.

[34] *See*, Minute Order.

[35] *See*, Ex. C.

individually.[36] Rather, it was the Schettler Family Trust that applied for and obtained the loan, which was based not on the income of Vincent, but on the average deposits going into the Schettler Family Trust bank account.[37] Accordingly, such a finding is not factually accurate given the prior evidence provided by Vincent.

> ***c. On one AMEX Centurion card (aka "Black Card"), which Schettler is individually obligated to pay, the Schettlers have a history of charging and paying more than $40,000 per month. In December 2018, the charges exceeded $100,000, which were paid in full the next month. In late 2019 (over a period of 50 days), Schettler used the AMEX card to pay $206,983.72 to one of the many law firms he retains.***[38]

The Court did not make this finding at the April 28, 2021 hearing on the Receiver Motion, the minute Order, or the July 21, 2021 hearing on Vincent's motion to stay pending appeal. If fact, Vincent's own testimony from his judgment debtor examination explains that the card is for both personal and business expense.[39] Such a finding assumes that the Court found that the money could have been used to satisfy the judgment, which the Court did not find. Moreover, such a finding is irrelevant to the Court's ruling that the Bank "utilized standard debt collection procedures," making this finding not legally or factually appropriate.

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[36] *See* Email from Vincent Schettler to Aaron Gordon, at Exhibit Z of Opposition to Receiver Motion.

[37] *See* Declaration of Aaron Gordon, at Exhibit U of Opposition to Receiver Motion.

[38] Order, at 3:6-11.

[39] A: … [A]nd this has been this way for ten years or so -- things are charged on my personal credit card, many of which are for clients of mine. And then we get -- collect payments from all reimbursables on a monthly basis from the credit cards, we get reimbursements from every LLC or every company or whatever that I make charges for, get reimbursements.
Everything gets dumped into - - I believe it's a Schettler Family Trust account, and sometimes my wife makes the payment, and then it all gets sent over to Amex in one payment just to make it easier.
…
Q. Let's come back and reset the stage. So you use the black Amex card for business expenses, which are paid by the Schettler Family Trust using funds that they've received from clients of yours, correct?
A. Correct.
Q. And you use the black Amex card for personal expenses, personal family expenses, for which the Schettler Family Trust pays for because you are a beneficiary to the trust? Am I correct so far?
A. Correct.

See Judgment Debtor Examination, at Exhibit B of Opposition to Receiver Motion, at 49:19-50:5, 68:19-69:4.

> *3. In November 2020, PacWest attempted to execute upon Schettler's personal property located at his home but Schettler, upon the advice of counsel, denied access to the Constable's agents* ***and thwarted any satisfaction of the judgment pursuant to the writ of execution.***[40]

The Court did not make this finding at the April 28, 2021 hearing on the Receiver Motion, the minute Order, or the July 21, 2021 hearing on Vincent's motion to stay pending appeal, nor was an evidentiary hearing ever held as to the validity of the underlying writ of execution that would cause the court to determine Vincent "thwarted" satisfaction.

> *4. Schettler controls a complex network of companies and trusts* ***in an attempt to make himself judgment proof.*** *For example, Schettler is self-employed by Vincent T. Schettler, LLC and he goes to work every day for that company. However, Schettler decides when and how much he gets paid and he pays himself very infrequently.*[41]

The Court did not make this finding at the April 28, 2021 hearing on the Receiver Motion, the minute Order, or the July 21, 2021 hearing on Vincent's motion to stay pending appeal. Indeed, the Bank provided no competent evidence during motion practice supporting such a finding.

> *5. Even if Schettler pays himself only infrequently,* ***he refuses to apply any of his property towards satisfaction of PacWest's judgment. Indeed, on two separate occasions, Schettler has represented in open court that he offered to pay PacWest $1,000,000 in settlement of the judgment he owes PacWest. (See Hrg. Trans. (7/29/20) at 13:12-13, and Hrg. Trans. (10/14/20) at 13:19-20). Thus, while Schettler admits he has access to at least $1,000,000 to pay toward the judgment, he refuses to pay anything voluntarily, i.e., in the language of NRS 32.010(4), he "refuses to apply [his] property in satisfaction of the judgment."***[42]

These findings assume not only that the Court found that the money could have been used to satisfy the judgment, but also assumes the funds were Vincent's property. The Court did not make these findings at the April 28, 2021 hearing on the Receiver Motion, the minute Order, nor the July 21, 2021 hearing on Vincent's motion to stay pending appeal, nor did it hold an evidentiary hearing to conclude the same. In addition, these findings are irrelevant to the Court's ruling that the

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[40] *Id*, at 3:12-15.

[41] *Id*, at 3:16-19.

[42] *Id*, at 3:20-26.

Bank "utilized standard debt collection procedures," making these finding not legally or factually appropriate.

> ***7. Since 2014, Schettler has thumbed his nose at PacWest's judgment and attempted to thwart and frustrate PacWest's collection efforts at every opportunity, forcing PacWest to incur hundreds of thousands of dollars in post-judgment collection efforts, none of which prompted Schettler to pay anything.[43]***

The Court did not make this finding at the April 28, 2021 hearing on the Receiver Motion, the minute Order, or the July 21, 2021 hearing on Vincent's motion to stay pending appeal, the same is an inflammatory opinion, and such a finding is irrelevant to the Court's ruling that the Bank "utilized standard debt collection procedures," making this finding not legally or factually appropriate.

> ***8. Schettler is a very recalcitrant judgment debtor.[44]***

The Court did not make this finding at the April 28, 2021 hearing on the Receiver Motion, the minute Order, or the July 21, 2021 hearing on Vincent's motion to stay pending appeal, the same is an inflammatory opinion, and such a finding is irrelevant to the Court's ruling that the Bank "utilized standard debt collection procedures," making this finding not legally or factually appropriate.

> ***10. As demonstrated by Schettler's misrepresentations to his lender (where, in 2019, he misrepresented that he had no judgments against him and that he was not a party to any lawsuits), the Court finds that Schettler will falsify the truth while in the very act of acknowledging it is a federal crime to do so.***

The Court did not make this finding at the April 28, 2021 hearing on the Receiver Motion, the minute Order, or the July 21, 2021 hearing on Vincent's motion to stay pending appeal, the same is an inflammatory opinion, and such a finding is irrelevant to the Court's ruling that the Bank "utilized standard debt collection procedures," making this finding not legally or factually appropriate.

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[43] *Id*, at 4:6-11.

[44] *Id*, at 4:10.

11. The Court finds that Schettler cannot be trusted to tell the truth. He will say and do whatever is expedient to serve his purposes in the moment and to thwart PacWest's lawful collection efforts. A receiver is needed to obtain trustworthy information.

The Court did not make these finding at the April 28, 2021 hearing on the Receiver Motion, the minute Order, or the July 21, 2021 hearing on Vincent's motion to stay pending appeal, the same is an inflammatory opinion, and such findings are irrelevant to the Court's ruling that the Bank "utilized standard debt collection procedures," making these findings not legally or factually appropriate.

12. A receiver is also needed (1) because Schettler is "a judgment debtor with direct or indirect access to substantial wealth and assets, who [has] frustrated [PacWest's] considerable efforts to collect its judgment," and (2) to "investigate and determine what assets [Schettler] possesses, whether in the LLC's or otherwise, and to determine whether the arrangements are a subterfuge for avoiding [Schettler's personal] debt." Morgan Stanley Smith Barney LLC v. Johnson, 952 F.3d 978, 983 (8th Cir. 2020) (internal quotation marks omitted); accord, Otero v. Vito, 2008 WL 4004979, at *4 (M.D. Ga. 2008) (a receiver was needed to "unravel[] the complicated web of entities and transactions woven by [the judgment debtors]").[45]

The Court did not make these findings at the April 28, 2021 hearing on the Receiver Motion, the minute Order, or the July 21, 2021 hearing on Vincent's motion to stay pending appeal. Moreover, this finding relies upon non-Nevada case law, which is contrary to the Court's ruling that only NRS 32.010(4) was used. As such, this finding is unsupported by Nevada law, and not legally or factually appropriate.

b. <u>Conclusions of Law</u>

4. A receiver is warranted here under NRS 32.010(4) for the following three reasons: (1) to aid PacWest's execution rights against Schettler, (2) a writ of execution was returned unsatisfied, ***and (3) Schettler refuses to apply any of his property toward satisfaction of the judgment. See Morgan Stanley Smith Barney LLC v. Johnson, 952 F.3d 978, 981 (8th Cir. 2020) (receivership appropriate "to protect a judgment creditor's interest in a debtor's property when[, as here,] the debtor has shown an intention to frustrate attempts to collect the judgment.").[46]***

[45] *Id*, at 4:22-5:2.

[46] *Id*, at 6:15-20.

The Court's ruling did not rely on any case law or statutes other than of NRS 32.010(4). This Conclusion of Law's reliance upon non-Nevada case law, in this case, the *Morgan Staley v. Johnson* case, is improper and should be stricken.

> *7. Given that Schettler has not voluntarily paid anything in more than six years since the judgment was entered against him* ***but has somehow managed to live opulently****, the receiver should be given broad powers to locate and apply property of Schettler in satisfaction of the judgment, including commissions Schettler may be entitled to receive.*[47]

The Court did not make this finding at the April 28, 2021 hearing on the Receiver Motion, the minute Order, or the July 21, 2021 hearing on Vincent's motion to stay pending appeal, the same is an inflammatory opinion, and such a finding is irrelevant to the Court's ruling that the Bank "utilized standard debt collection procedures," making this finding not legally or factually appropriate.

> *9. Although Schettler claims his network of business entities and trusts is legitimate business and asset protection planning,* ***the "possibility of legitimate business coexisting with fraudulent schemes" warrants a receiver. See U.S. v. Hoffman, 560 F. Supp.2d 772, 777 (D. Minn. 2008).*** *A receiver can sort out the legitimate from the fraudulent and thereby ensure legitimate business is left alone and fraudulent schemes are dismantled.*[48]

Again, the Court's ruling did not rely on any law or statutes outside of NRS 32.010(4). Court's ruling did not rely on anything outside of NRS 32.010(4). This Conclusion of Law's reliance upon non-Nevada case law, in this case, the *U.S. v. Hoffman* case, is improper and should be stricken.

V.

CONCLUSION

For the above and foregoing reasons, the Order should be reconsidered. Alternatively, the Order should be amended to remove those findings of fact and conclusions of law that go beyond the scope of what the Court actually found. Finally, the Court should make a determination under

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[47] *Id*, at 6:26-7:2.

[48] *Id*, at 7:6-10.

NRCP 62.1(a)(3) that the court would grant this motion if the appellate court remands for that purpose, or that the motion raises a substantial issue.

DATED this 30th day of August, 2021.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

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CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on August 30, 2021, I served a true and correct copy of **MOTION FOR RECONSIDERATION OF THE COURT'S AUGUST 16, 2021 ORDER GRANTING APPOINTMENT OF RECEIVER, OR IN THE ALTERNATIVE, TO ALTER OR AMEND ORDER** to the following in the manner set forth below:

Via:

[____] Hand Delivery

[____] U.S. Mail, Postage Prepaid, to the parties identified below

[____] Certified Mail, Receipt No.: _____

[____] Return Receipt Request

[__X__] E-Service through the Odyssey eFileNV/Nevada E-File and Serve System, as follows:

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/s/ Alexandra Carnival

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EXHIBIT 4

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DISTRICT COURT

CLARK COUNTY, NEVADA

PACIFIC WESTERN BANK, a California corporation,

Plaintiff/Judgment Creditor,

v.

JOHN A. RITTER, an individual; DARREN D. BADGER, an individual; VINCENT T. SCHETTLER, an individual; and DOES 1 through 50,

Defendants/Judgment Debtors.

Case No. A-14-710645-F

Dept. No. XVI

ORDER (1) APPOINTING RECEIVER OVER JUDGMENT DEBTOR VINCENT T. SCHETTLER'S ASSETS and (2) DENYING COUNTERMOTION FOR SPECIAL MASTER

On April 28, 2021, at 9:00 a.m. in Department XVI of the above-captioned Court, (1) Plaintiff/Judgment Creditor PACIFIC WESTERN BANK's (hereinafter "PacWest") Motion for Appointment of a Receiver Over Judgment Debtor Vincent T. Schettler's Assets ("Motion"), and (2) Defendant/Judgment Debtor VINCENT T. SCHETTLER's (hereinafter "Schettler") Countermotion for Appointment of Special Master ("Countermotion"), came on for hearing. Dan R. Waite of Lewis Roca Rothgerber Christie LLP appeared on behalf of PacWest. Alexander G. LeVeque of Solomon Dwiggins Freer & Steadman, Ltd., appeared on behalf of Defendant/Judgment Debtor VINCENT T. SCHETTLER.[1] Based on the papers and pleadings on file, the arguments of counsel, and good cause appearing, the Court rules as follows:

IT IS ORDERED that PacWest's Motion is GRANTED and Schettler's Countermotion is DENIED.

[1] As used throughout this Order, the term "Schettler" shall mean the judgment debtor, Vincent T. Schettler, in his individual capacity.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the conditions upon which a receiver can be appointed post-judgment under (a) California law pursuant to California Civil Procedure Code § 708.620 (2019), versus (b) Nevada law as set forth pursuant to NRS 32.010(4). This appears to be a question of first impression in Nevada. Unlike California, under the Nevada statutory scheme the appointment of a receiver is not a remedy of last resort because Nevada law does not require the Court to consider the interests of both the judgment creditor and the judgment debtor, and whether the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment. Under the Nevada statute, "[a]fter judgment, to dispose of the property according to the judgment, . . . in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment," a receiver may be appointed by the Court. *See* NRS 32.010(4). In the instant action, PacWest has utilized the standard debt collection procedures as set forth in its motion, i.e., judgment debtor examination, requests for production of documents from the judgment debtor, subpoena for documents from numerous third parties, writs of garnishment, writs of execution, etc. In light of the foregoing, the Court finds that it is appropriate to appoint a receiver under the circumstances presented here.

ORDER

Therefore, IT IS ORDERED that a receiver shall be appointed over the Receivership Estate of Vincent T. Schettler. For purposes of this Order, the "Receivership Estate" shall consist of all of Vincent T. Schettler's right, title, claims, demands and/or interest in property and other assets of any kind and nature, including, but not limited to real, personal, intangible, and inchoate property, that Schettler currently has or may hereafter acquire, and includes "receivership property" as defined in NRS 32.185.

IT IS FURTHER ORDERED that, after review of the supplemental briefing by the parties, Cordes & Company, LLC, by and through Bellann Raile, is hereby appointed receiver in this action (the "Receiver") over the Receivership Estate. Ms. Raile appears to have significantly more experience than the receiver candidates proposed by Defendant and charges a lower hourly rate.

Ms. Raile's appointment is subject to the condition that before entering upon its duties as Receiver, it shall execute a Receiver's oath and post a cash bond, or bond from an insurer, in the sum of $_____, to secure the faithful performance of its duties as Receiver herein. The Receiver's oath and bond are to be filed with the Clerk of Court no later than _____, 2021.

IT IS FURTHER ORDERED that, to the extent permissible under Nevada law, any distributions, payments, or other monetary consideration (collectively, "Disbursements") Schettler is or becomes entitled to receive during the term of this receivership shall be paid and tendered to the Receiver, not Schettler. Notwithstanding the foregoing, if Schettler receives a referenced Disbursement, he shall immediately (a) advise the Receiver of such, and (b) deliver the Disbursement in full to the Receiver.

IT IS FURTHER ORDERED that any Disbursement Schettler is or becomes entitled to receive during the term of this receivership from any trust, including, but not limited to, the Schettler Family Trust, shall be paid and tendered to the Receiver, not Schettler. Notwithstanding the foregoing, if Schettler receives a referenced trust Disbursement, he shall immediately deliver such to the Receiver.

IT IS FURTHER ORDERED that the Receiver is directed by this Court to do the following specific acts:

1. Immediately take possession, control, and management of the Receivership Estate, and shall have all power and authority of a receiver provided by law, including, but not limited to, the following powers and responsibilities:

   a. The Receiver is authorized and empowered, but not required, to seize, operate, manage, control, conduct, care for, preserve, and maintain the Receivership Estate, wherever located.

   b. The Receiver is further authorized, but not required, to take possession of and collect any accounts, distributions, commissions, non-exempt wages and bonuses, chattel paper, and general intangibles of every kind hereafter arising out of the Receivership Estate and to have full access to and, if it desires,

take possession of all the books and records, ledgers, financial statements, financial reports, documents and all other records (including, but not limited to, information contained on computers and any and all software relating thereto) relating to the foregoing, wherever located, as the Receiver deems necessary for the proper administration of the Receivership Estate.

c. The Receiver is authorized and empowered, but not required, to demand any and all records from any and all banks and other financial institutions holding accounts which constitute part of the Receivership Estate, including past or closed accounts in existence at any time on or after January 1, 2014.

d. The Receiver shall preserve and protect the assets, tax records, books and records, wherever located, while it acts to operate the affairs of the Receivership Estate. Notwithstanding anything to the contrary herein, Schettler, not the Receiver, shall be responsible for preparing and filing Schettler's state and federal tax returns. However, (1) the Receiver shall timely cooperate with Schettler and his tax preparer as they may reasonably request so that they (i.e., Schettler and/or his tax preparer) can timely prepare and file Schettler's tax returns, and (2) Schettler shall provide (or cause his tax preparer to provide) a copy of each state and federal tax return to the Receiver promptly after the return is filed.

e. The Receiver is authorized and empowered, but not required, to execute and prepare all documents and to perform all acts in the Receiver's own name, which are necessary or incidental to preserve, protect, manage and/or control the Receivership Estate.

f. The Receiver is authorized and empowered, but not required, to demand, collect, and receive all monies, funds, commissions, distributions, and payments arising from or in connection with any sale and/or lease of any assets of the Receivership Estate, including related to any services provided by Schettler.

g. The Receiver may take possession of all Receivership Estate accounts and safe deposit boxes, wherever located, and receive possession of any money or other things on deposit in said accounts or safe deposit boxes. The Receiver also has the authority to close any account(s) that the Receiver deems necessary for operation or management of the Receivership Estate. Institutions that have provided banking or other financial services to Schettler are instructed to assist the Receiver, including by providing records that the Receiver requests. These institutions may charge their ordinary rates for providing this service.

h. The Receiver is empowered, but not required, to establish accounts at any bank or financial institution the Receiver deems appropriate in connection with the operation and management of the Receivership Estate. The Receiver is authorized to use the Defendant's tax identification number to establish such accounts. Any institutions that have accounts and/or funds that are part of the Receivership Estate shall turnover said accounts and/or funds to the custody and control of the Receiver and that institution shall not be held liable for turnover of funds.

i. To the extent feasible, the Receiver shall, within thirty (30) days of its qualification hereunder, file in this action an inventory of all property the Receiver took possession of pursuant to this Order and file quarterly accountings thereafter.

j. The Receiver is authorized, but not required, to institute ancillary proceedings in this state or other states as necessary to obtain possession and control of assets of the Receivership Estate, including, without limitation, to pursue claims for alter ego and fraudulent transfers.

k. The Receiver is empowered to serve subpoenas, when necessary, with court approval.

l. Any entities in which Schettler directly holds an interest are ordered to turn over to the Receiver any funds, profits, cash flow or property that would otherwise be distributable to Schettler, which the Receiver may use in satisfaction of the judgment Schettler owes to PacWest.

m. The Receiver is authorized, but not required, to contact any of Schettler's debtors ("Accounts Receivable Debtors") in order to advise them not to send further accounts receivable payments to Schettler and to instruct the Accounts Receivable Debtors to send any and all payments directly to the Receiver.

2. The Receiver is also authorized, but not obligated, to perform the following:

a. Hire and pay (from Receivership Estate assets) the fees and costs of any professionals, including attorneys, accountants, and property managers to aid and counsel the Receiver in performing its duties.

b. Hire contractors to evaluate and make repairs to assets of the Receivership Estate.

c. Pay (from Receivership Estate assets) such other and ordinary expenses deemed appropriate by the Receiver to carry out the Receiver's duties as specified herein.

d. Pay the Receiver's fees and costs from Receivership Estate assets.

3. Quarterly accounting of Receiver's efforts, income, expenses, and fees ("Receiver's Report"):

a. Each quarter, the Receiver shall prepare and serve on the parties a report identifying (1) the issues it is addressing, (2) an accounting of revenues received, (3) an accounting of expenses incurred, in the administration of the Receivership Estate, including an itemization of the Receiver's own fees and costs incurred for the reported period, and (4) an accounting of payments made to PacWest, if any, in full or partial satisfaction of the judgment Schettler owes to PacWest.

b. The Receiver and its attorneys, accountants, agents and consultants shall be compensated from the assets of the Receivership Estate for its normal hourly charges and for all expenses incurred in fulfilling the terms of this Order. Compensation for the Receiver's other personnel, agents, and consultants shall be at their customary hourly rates. The Receiver shall also be compensated for photocopying, long distance telephone, postage, travel (except travel to and from Nevada necessitated because the Receiver's office is located outside Nevada) and other expenses at actual cost. The Receiver may periodically pay itself and its attorneys, accountants, agents and consultants from the assets of the Receivership Estate, provided that the Receiver shall apply to the Court for approval of these charges quarterly.

IT IS FURTHER ORDERED that PacWest, Schettler, and all other parties to this action, are required to cooperate with the Receiver and upon reasonable request by the Receiver, after a determination of necessity, shall immediately turn over to the Receiver possession, custody, and control of all books and records pertaining to the Receivership Estate, wherever located, whether electronic or hardcopy, as the Receiver deems necessary for the proper administration, management and/or control of the Receivership Estate, necessary to carry out any of the Receiver's duties as set forth in this Order, including but not limited to: all keys, codes, locks, usernames, passwords, security questions to access any systems / online portals, etc. necessary to operate the business, records, books of account, ledgers, and all documents and papers pertaining to the Receivership Estate.

IT IS FURTHER ORDERED that Schettler shall not interfere in any manner with the discharge of the Receiver's rights vested or duties imposed by this Order.

IT IS FURTHER ORDERED that Schettler shall not collect any debts or demands due to him, except as may be requested by or approved in advance by the Receiver in writing.

IT IS FURTHER ORDERED that Schettler shall not commit or permit any waste of the Receivership Estate or take any action to avoid, hinder, delay, or evade the effect of this Order.

IT IS FURTHER ORDERED that Schettler shall not pay out, assign, sell, convey, transfer, encumber, or deliver any of his assets to any person or entity other than the Receiver, except as may be requested by or approved in advance by the Receiver in writing.

IT IS FURTHER ORDERED that Schettler shall not act or fail to act in a manner that, directly or indirectly, hinders, delays, or obstructs the Receiver in the conduct of its duties or otherwise interferes in any manner with the Receiver and the performance of its rights or duties pursuant to this Order.

IT IS FURTHER ORDERED that the Receiver, or any party to this action, may apply to this Court for further orders instructing the Receiver. This Order shall remain in full force and effect until further order of this Court.

IT IS SO ORDERED.

_____

Submitted by:

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Alexander G. LeVeque

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Attorneys for Defendant Vincent T. Schettler

EXHIBIT 5

999 F.2d 314
United States Court of Appeals,
Eighth Circuit.

AVIATION SUPPLY CORPORATION, Plaintiff–Appellee,

v.

R.S.B.I. AEROSPACE, INC., Defendant,
Ross Barber, Defendant–Appellant.

No. 92–2883.
|
Submitted Feb. 15, 1993.
|
Decided July 12, 1993.
|
Rehearing Denied Aug. 6, 1993.

Synopsis
Judgment debtor appealed from order of the United States District Court for the Western District of Missouri, Elmo B. Hunter, J., and Maughmer, Chief United States Magistrate Judge, which appointed receiver. The Court of Appeals, Loken, Circuit Judge, held that: (1) judgment debtor's refusal to respond to questions concerning assets, false disclosures, and transfer to avoid judgment creditor warranted appointment of receiver, and (2) appointment did not violate privilege against self-incrimination.

Affirmed.

West Headnotes (9)

[1] **Federal Courts** Equity and equitable relief in general
Receivers Nature and purpose of remedy
Appointment of receiver in diversity case is procedural matter governed by federal law and federal equitable principles. Fed.Rules Civ.Proc.Rule 66, 28 U.S.C.A.
47 Cases that cite this headnote

[2] **Receivers** Nature and purpose of remedy
Receivers Fraud in obtaining possession of property
Receivers Preservation and protection of property in general
Receiver is extraordinary equitable remedy that is only justified in extreme situations; factors warranting appointment are valid claim by party seeking the appointment, probability that fraudulent conduct has occurred or will occur to frustrate the claim, imminent danger that property will be concealed, lost, or diminished in value, inadequacy of legal remedies, lack of less drastic equitable remedy, and likelihood that appointing the receiver will do more good than harm. Fed.Rules Civ.Proc.Rule 66, 28 U.S.C.A.
97 Cases that cite this headnote

[3] **Federal Courts** Remedial Matters
Decision to appoint a receiver is reviewed for abuse of discretion. Fed.Rules Civ.Proc.Rule 66, 28 U.S.C.A.
3 Cases that cite this headnote

[4] **Receivers** Fraud in obtaining possession of property
Proof of fraud is not required to support district court's discretion or decision to appoint a receiver. Fed.Rules Civ.Proc.Rule 66, 28 U.S.C.A.
10 Cases that cite this headnote

[5] **Receivers** Right or interest in property requiring protection
Judgment debtor's pattern of willful nondisclosure of assets, false disclosures, and transfer to avoid tenacious judgment creditor supported appointment of receiver for the judgment debtor.
15 Cases that cite this headnote

[6] **Receivers** Right or interest in property requiring protection

Refusal to cooperate with discovery of assets, even if grounded in judgment debtor's constitutional right, may be considered in determining whether to appoint receiver. Fed.Rules Civ.Proc.Rule 66, 28 U.S.C.A.

6 Cases that cite this headnote

[7] **Witnesses** Self-Incrimination

Witnesses Privilege as to production of documents

Privilege against self-incrimination protects against compelled testimony, but it does not protect the contents of preexisting or voluntarily prepared documents and records. U.S.C.A. Const.Amend. 5.

2 Cases that cite this headnote

[8] **Federal Courts** Privilege and confidentiality

Witnesses Claim of privilege

Assertion of privilege in dealing with receiver appointed by federal court is a matter of federal law and person for whom receiver is appointed has burden of factually justifying his claim that receivership order violates Fifth Amendment privilege. U.S.C.A. Const.Amend. 5.

23 Cases that cite this headnote

[9] **Witnesses** Particular Subjects of Inquiry

Court order requiring judgment debtor to disclose assets did not violate Fifth Amendment on its face. U.S.C.A. Const.Amend. 5; Fed.Rules Civ.Proc.Rule 66, 28 U.S.C.A.

1 Cases that cite this headnote

Attorneys and Law Firms

***315** E. Ann Wright, Kansas City, MO, argued (Thomas J. Cox, appeared on the brief), for defendant-appellant.

Joe B. Whisler, Kansas City, MO, argued, for plaintiff-appellee.

Before McMILLIAN, MAGILL, and LOKEN, Circuit Judges.

Opinion

LOKEN, Circuit Judge.

Following a hearing, the district court[1] granted judgment creditor Aviation Supply Corporation's (ASC) motion for appointment of a receiver to acquire and liquidate the assets of judgment debtor Ross Barber. Barber appeals, arguing that the district court abused its discretion and violated his constitutional privilege against self-incrimination. We affirm.

I.

In October 1991, RSBI Aerospace, Inc. (RSBI), purchased $320,000 worth of airplane parts from ASC on credit. RSBI's debt to ASC was personally guaranteed by Barber, RSBI's owner and president. Two weeks after the parts arrived at RSBI's warehouse in Blue Springs, Missouri, the warehouse was destroyed by fire. RSBI filed a fire insurance claim, its insurer denied that claim, and federal authorities began investigating the fire's origin.

***316** After unsuccessfully demanding payment, ASC commenced this diversity action against RSBI and Barber. Both consented to entry of judgment ($328,536.14 against RSBI and $325,000.00 against Barber on his guaranty). ASC then commenced postjudgment discovery by deposing Barber pursuant to Fed.R.Civ.P. 69(a).

At his February 1992 deposition, Barber broadly invoked the privilege against self-incrimination under the United States and Missouri Constitutions. ASC moved to compel discovery, and at a March 1992 conference before the district court, counsel for Barber offered to produce Barber's November 30, 1991, financial statement, representing that Barber's financial condition had not substantially changed since that time. ASC accepted this offer and advised the district court that the discovery dispute was resolved.

However, on March 27, ASC moved for appointment of a receiver, explaining that, after it received Barber's November 1991 financial statement, counsel for Barber had telephoned

to report major unreflected asset transfers. ASC argued that "transfers of assets by Mr. Barber coupled with his absolute refusal to discuss his financial condition" justified appointment of a receiver to protect ASC as judgment creditor. In response, the district court scheduled another deposition of Barber for April 2.

On March 30, Barber signed an agreement granting a security interest in all his personal property to Barber & Sons Tobacco Company, a family-owned entity,[2] to secure the payment of antecedent promissory notes to Barber & Sons Tobacco Co. On June 3, citing the lien granted by this March 30 security agreement, Barber & Sons Tobacco Co. moved a Missouri state court to quash two garnishment summons that ASC had served on local banks holding approximately $63,000 of Barber's assets.

On June 4, the district court granted ASC's motion for a temporary restraining order prohibiting Barber "from selling, transferring, pledging, encumbering, giving, or in any other manner diminishing, any of his assets." On July 14, the court granted ASC's motion for a receiver, concluding that a receiver "is necessary for the protection and preservation of the rights of [ASC, which] has no adequate remedy at law." Among other things, the order appointing a receiver directs Barber to prepare and deliver to the receiver "an inventory particularly describing all of his assets" and to "deliver to the receiver any and all Property ... in his possession or under his control," except money for normal living expenses. The bonded receiver is ordered to take possession of Barber's property, to convert that property into money "after receiving permission of the court," and to deposit all funds into a trust account.

After the district court certified its July 14 rulings for interlocutory appeal pursuant to 28 U.S.C. § 1292(b), Barber appealed and agreed to an injunction restraining him from transferring his assets until the conclusion of the appeal. We have jurisdiction of the appeal under 28 U.S.C. § 1292(a)(2) as well as § 1292(b).

II.

[1] **[2]** **[3]** The appointment of a receiver in a diversity case is a procedural matter governed by federal law and federal equitable principles. *See* Fed.R.Civ.P. 66 and Advisory Committee's Note; *New York Life Ins. Co. v. Watt West Inv. Corp.,* 755 F.Supp. 287, 289–92 (E.D.Cal.1991); *Midwest Sav. Ass'n v. Riversbend Assocs. Partnership,* 724 F.Supp. 661 (D.Minn.1989); 12 C. Wright & A. Miller, *Federal Practice and Procedure* § 2983. A receiver is an extraordinary equitable remedy that is only justified in extreme situations. Although there is no precise formula for determining when a receiver may be appointed, factors typically warranting appointment are a valid claim by the party seeking the appointment; the probability that fraudulent conduct has occurred or will occur to frustrate that claim; imminent danger ***317** that property will be concealed, lost, or diminished in value; inadequacy of legal remedies; lack of a less drastic equitable remedy; and likelihood that appointing the receiver will do more good than harm. *See Consolidated Rail Corp. v. Fore River Ry.,* 861 F.2d 322, 326–27 (1st Cir.1988); *Mintzer v. Arthur L. Wright & Co.,* 263 F.2d 823, 826 (3d Cir.1959); *Bookout v. Atlas Fin. Corp.,* 395 F.Supp. 1338, 1342 (N.D.Ga.1974), *aff'd,* 514 F.2d 757 (5th Cir.1975). We review the decision to appoint a receiver for abuse of discretion.

In this case, appointment of the receiver was sought by ASC, a judgment creditor. A receiver may be appointed "to protect a judgment creditor's interest in a debtor's property when the debtor has shown an intention to frustrate attempts to collect the judgment." *Leone Indus. v. Associated Packaging, Inc.,* 795 F.Supp. 117, 120 (D.N.J.1992). *See also Levin v. Garfinkle,* 514 F.Supp. 1160, 1163 (E.D.Pa.1981).

[4] **[5]** **[6]** ASC showed that, following entry of its judgment, Barber purported to grant a superior security interest in all his assets to a family business, which then intervened to quash ASC's efforts at garnishment. Barber argues that none of his actions has been proven fraudulent or otherwise improper. But this transaction "bears two well-defined badges of fraud: transfer pending the writ of execution and transfer to a relative." *Haase v. Chapman,* 308 F.Supp. 399, 405 (W.D.Mo.1969) (citations omitted). It is well settled that proof of fraud is not required to support a district court's discretionary decision to appoint a receiver. *See Citronelle–Mobile Gathering, Inc. v. Watkins,* 934 F.2d 1180, 1184 (11th Cir.1991) (transfers to related entities and funneling money out of the country); *Chase Manhattan Bank v. Turabo Shopping Ctr., Inc.,* 683 F.2d 25, 26–27 (1st Cir.1982) ("evidence [of] unfair and arguably fraudulent dealing"); *New York Life,* 755 F.Supp. at 292–93 (diversion of assets to pay unrelated obligations).

Barber further argues that ASC's normal remedies as a judgment creditor are adequate to permit it to enforce its

claim against competing creditors such as Barber & Sons Tobacco Co., provided ASC is diligent in pursuing those remedies. In most cases, that would be true. However, the remedies of a judgment creditor include the ability to question the judgment debtor about the nature and location of assets that might satisfy the judgment. That remedy has proved unavailing to ASC. Whenever it questioned Barber about his assets, he invoked his constitutional privilege against self-incrimination. Such a refusal to cooperate, even if grounded in a constitutional right, may be considered in determining whether to appoint a receiver. *See United States v. Ianniello,* 824 F.2d 203, 208 (2d Cir.1987). Moreover, when ASC pressed for discovery, Barber provided an inaccurate financial statement. And when Barber's counsel disclosed the existence of significant recent transactions and ASC moved for appointment of a receiver, Barber granted a blanket security interest to the family company to secure prior debts. Faced with this pattern of willful nondisclosure and false disclosure, followed by transfer to avoid a tenacious judgment creditor, the district court was well within its discretion in turning to a drastic remedy such as a receiver.

Finally, Barber argues for the first time on appeal that the order requiring him to prepare an inventory of his assets and to deliver all his books and records to the receiver violates his privilege against self-incrimination. On this record, we disagree.

[7] The privilege protects against compelled testimony; it does not protect the contents of preexisting or voluntarily prepared documents and records. *See United States v. Doe,* 465 U.S. 605, 611–12, 104 S.Ct. 1237, 1241–42, 79 L.Ed.2d 552 (1976). In *In re Harris,* 221 U.S. 274, 31 S.Ct. 557, 55 L.Ed. 732 (1911), the Supreme Court upheld a district court order requiring a bankrupt to deliver "his books of account" to a receiver administering a bankruptcy estate. Justice Holmes explained:

> The question is not of testimony but of surrender—not of compelling the bankrupt to be a witness against himself in a criminal case, present or future, but of compelling him to yield possession of property that he is no longer entitled to keep.

221 U.S. at 279, 31 S.Ct. at 558. Though others had predicted that *Harris* was "no longer controlling," *Butcher v. Bailey,* 753 F.2d 465, 468 (6th Cir.), *cert. dismissed,* 473 U.S. 925, 106 S.Ct. 17, 87 L.Ed.2d 696 (1985), ***318** the Supreme Court recently cited *Harris* favorably in holding that the privilege against self-incrimination "may not be invoked to resist compliance with a regulatory regime constructed to effect the State's public purposes unrelated to the enforcement of its criminal laws." *Baltimore Dept. of Soc. Servs. v. Bouknight,* 493 U.S. 549, 556, 110 S.Ct. 900, 905, 107 L.Ed.2d 992 (1990).

Harris did not deal with the complicating fact that the act of producing evidence such as preexisting books and records usually communicates the producing party's possession or control of the papers and his belief in their authenticity, information that in some situations may be incriminating. *See Fisher v. United States,* 425 U.S. 391, 410, 96 S.Ct. 1569, 1581, 48 L.Ed.2d 39 (1976). On the other hand, the compelled production of tangible property frequently does not implicate legitimate Fifth Amendment concerns—"[w]here nothing more is involved than surrendering materials already in existence, fully identified and requiring no authentication ... testimony is not involved." *United States v. Schlansky,* 709 F.2d 1079, 1082 (6th Cir.1983), *cert. denied,* 465 U.S. 1099, 104 S.Ct. 1591, 80 L.Ed.2d 123 (1984).

[8] **[9]** Here, the record does not permit us to assess these issues. We do not know the factual basis for Barber's assertion of the privilege.[3] We do not know the nature of the assets that the receiver is ordered to possess or how he will take possession. We do not know whether preparation of an asset inventory will add anything to the self-incrimination equation. Though creation of a document is no doubt compulsory and testimonial in nature, such a document may already exist, or its preparation may be no more than an administrative convenience that, like production of the assets themselves, merely communicates that the assets exist and Barber controls them. *See Fisher,* 425 U.S. at 411, 96 S.Ct. at 1581 (no constitutional protection where information is a "foregone conclusion" from other sources).

These are matters not considered by the district court because Barber did not raise them. As we cannot say that the district court's order on its face violates Barber's privilege against self-incrimination, the Fifth Amendment affords him no grounds for reversal. *See United States v. Rue,* 819 F.2d 1488 (8th Cir.1987); *Capitol Prods. Corp. v. Hernon,* 457 F.2d 541 (8th Cir.1972).

The district court's order appointing a receiver filed July 17, 1992, is affirmed, without prejudice to Barber's right to challenge specific aspects of the implementation of that order as violative of his privilege against self-incrimination.

All Citations

999 F.2d 314

Footnotes

1 The HONORABLE JOHN T. MAUGHMER, Chief United States Magistrate Judge for the Western District of Missouri, to whom the case was referred by consent of the parties under 28 U.S.C. § 636(c).

2 Barber's November 1991 financial statement recites:

> At an early age, [Barber] was employed in the candy and tobacco business by his father and grandfather who were then operating Barber & Sons Tobacco Co. He has continually been employed by this company and now occupies the position of Vice President in a corporate structure that is owned by his brother, Anthony F. Barber.

3 In the district court, Barber successfully argued that in a diversity case state law governs assertions of the privilege, *see* Fed.R.Evid. 501, and under Missouri law his mere assertion of the privilege created a presumption of self-incrimination that ASC could not overcome. *See State ex rel. Realty Consultants, Inc. v. Dowd,* 796 S.W.2d 881, 883 (Mo.1990) (en banc). These issues are not before us, and we express no view regarding them. However, assertion of the privilege in dealing with a receiver appointed by a federal court is a matter of federal law; therefore, Barber has the burden of factually justifying his claim that the receivership order violates his Fifth Amendment privilege.

EXHIBIT 6

60 Cal.App.5th 622
Court of Appeal, Second
District, Division 2, California.

MEDIPRO MEDICAL STAFFING LLC et al., Plaintiffs and Respondents,
v.
CERTIFIED NURSING REGISTRY, INC., et al., Defendants and Appellants.

B305910
|
Filed 2/4/2021

Synopsis

Background: Judgment creditor filed motion for appointment of receiver to aid in collection of judgment. The Superior Court, Los Angeles County, No. BC667851, Edward B. Moreton, J., granted motion, and judgment debtor appealed.

[Holding:] The Court of Appeal, Hoffstadt, J., held that trial court abused its discretion in appointing a receiver to assist in enforcement of money judgment, absent evidence that judgment debtor had engaged in any obfuscation or done anything to contribute to judgment creditor's recent difficulties in collection.

Reversed.

West Headnotes (8)

[1] **Receivers** Discretion of court

Trial courts enjoy a large measure of discretion, albeit not entirely an uncontrolled one, in deciding when to exercise their authority to appoint a receiver to aid in collection of judgment. Cal. Civ. Proc. Code § 564(b)(3, 4).

[2] **Appeal and Error** Receivers and receivership

Court of Appeal reviews for abuse of discretion a trial court's decision to appoint a receiver to aid in collection of judgment.

[3] **Receivers** Performance or enforcement of judgment

Because appointment of a receiver transfers property, or a business, out of the hands of its owners and into the hands of receiver, appointment of receiver to aid in collection of judgment is a very drastic, harsh and costly remedy, that is to be exercised sparingly and with caution. Cal. Civ. Proc. Code § 564(b)(3, 4).

[4] **Receivers** Performance or enforcement of judgment

Courts are strongly discouraged, though not strictly prohibited, from appointing a receiver unless the more intrusive oversight of a receiver is a necessity because other, less intrusive remedies for collection of judgment are either inadequate or unavailable. Cal. Civ. Proc. Code § 564(b)(3, 4).

[5] **Receivers** Performance or enforcement of judgment

Availability of other remedies to aid in collection of judgment does not, in and of itself, preclude the use of a receivership. Cal. Civ. Proc. Code § 564(b)(3, 4).

[6] **Receivers** Performance or enforcement of judgment

Appointment of a receiver is rarely a necessity and, as a consequence, may not ordinarily be used for the enforcement of a simple money judgment. Cal. Civ. Proc. Code § 564(b)(3, 4).

[7] **Receivers** Performance or enforcement of judgment

Appointment of a receiver to enforce a money judgment is reserved for exceptional

circumstances, where the judgment debtor's conduct makes a receiver necessary and hence proper, as when judgment debtor has frustrated the judgment creditor's collection efforts through obfuscation, or through otherwise contumacious conduct that has rendered feckless the panoply of less intrusive mechanisms for enforcing a money judgment. Cal. Civ. Proc. Code § 564(b)(3, 4).

[8] **Receivers** Performance or enforcement of judgment

Trial court abused its discretion in appointing a receiver to assist in enforcement of money judgment, where there was no evidence, apart from mere speculation, that judgment debtor had engaged in any obfuscation or been less than cooperative or had done anything to contribute to judgment creditor's recent difficulties in collection. Cal. Civ. Proc. Code § 564(b)(3, 4).

Witkin Library Reference: 8 Witkin, Cal. Procedure (5th ed. 2008) Enforcement of Judgment, § 310 [Appointment of Receiver; In General.]

****798** APPEAL from an order of the Superior Court of Los Angeles County, Edward B. Moreton, Jr., Judge. Reversed. (Los Angeles County Super. Ct. No. BC667851)

Attorneys and Law Firms

Khouri Law Firm, Michael J. Khouri, Irvine, and Michael Tran, Santa Ana, for Defendants and Appellants.

Verus Law Group, Holly Walker, Marina Del Rey, and Mark N. Strom for Plaintiffs and Respondents.

Opinion

HOFFSTADT, J.

***624** By statute, a trial court has the discretion to appoint a receiver to aid in the collection of a judgment if doing so "is a reasonable method to obtain the fair and orderly satisfaction of the judgment." (Code Civ. Proc., §§ 564, subd. (b)(3) & (4), 708.620.)[1] Does a trial court abuse that discretion if it appoints a receiver to aid in the collection of a ***625** money judgment where the record contains no evidence that the judgment debtors had obfuscated or frustrated the creditor's collection efforts and no evidence that less intrusive collection methods were inadequate or ineffective? We hold it does. Accordingly, we reverse the trial court's order appointing a receiver and its subsidiary injunction obligating the judgment debtors to cooperate with the receiver.

FACTS AND PROCEDURAL BACKGROUND

I. The Underlying Judgment

In July 2017, Medipro Medical Staffing, LLC (Medipro) sued Certified Nursing Registry, Inc. (Certified), which was one of its competitors in the nurse staffing industry, and Certified's founder, Christina Sy (Sy), for a variety of business torts. A jury awarded Medipro $2 million in damages against Certified and $450,000 in damages against Sy. These amounts do not include costs, interest, or the $650,000 damages award against the other two defendants for which Certified and Sy are jointly and severally liable. The trial court entered judgment on March 8, 2019, and we affirm that judgment in a separate opinion filed today. (*Medipro Medical Staffing, LLC v. Certified Nursing Registry, Inc.* (Feb. 4, 2021, B294391), 2021 WL 387879 [nonpub. opn.].)

II. Initial Collection Efforts

After filing a writ of execution on April 26, 2019, Medipro thereafter (1) served levies on 10 financial institutions regarding accounts associated with Certified or Sy, (2) served levies on 11 hospitals to whom Certified provided staffing services regarding their accounts payable to Certified, and (3) obtained a charging order against Sy's interest in a limited liability company (LLC) owned by her husband. Medipro did not serve any interrogatories requesting information to aid in the collection ****799** of the judgment (§ 708.020), did not place liens on any of Certified's or Sy's property (§ 695.010 et seq.), and did not seek to compel Sy's or her husband's appearance at debtors' examinations (§ 708.110), although it unsuccessfully tried to serve Sy 25 times and served her husband but had yet to conduct the examination.

For a time, Medipro's collection efforts bore fruit. By September 2019, Medipro had obtained $35,171.77 from the financial institution levies and $374,200.86 from the hospital levies. However, the collections from the hospital levies started to dwindle in August 2019 and stopped altogether in September 2019.

***626 III. Motion for Appointment of Receiver and for Complementary Injunctive Relief**

A. *Briefing and evidence*

On Halloween 2019, Medipro filed a motion with the trial court to obtain (1) an order appointing a receiver authorized to "take possession" of Certified's "funds," "books and records" and to enforce the charging order against Sy's interest in the LLC, and (2) a complementary preliminary injunction requiring Certified and Sy to "giv[e] the receiver access" to "all books and records" of Certified and the LLC. In support of its motion, Medipro submitted the declaration of its attorney, who represented that (1) "Certified is currently conducting its business as usual, and providing staffing" to the hospitals, (2) Certified must be "billing under the name of another entity or person[ ] to circumvent" Medipro's levies because an employee named "Lisa" at one of the hospitals told her that Certified had "canceled" a September 2019 invoice and did not issue any invoices in October 2019, and (3) based on information and belief, the LLC had eight real properties that generated rents but the LLC had not forwarded any distributions to Sy and the attorney "expected that Sy's husband will not comply with the charging order."

Certified and Sy opposed the motion. In support of this opposition, Sy submitted a declaration indicating that Certified's business had "significantly diminished since Medipro began serving levies on the hospitals," causing three of its hospitals to stop business altogether and the remainder to have so few assignments that Certified was no longer sending weekly invoices. Also in support of the opposition, Sy's husband submitted a declaration indicating that the LLC was "financially struggling" and had made "[no] distributions."

Medipro submitted a reply, which included deposition testimony from a Certified independent contractor stating that she was still providing consulting services to Certified and that Certified had issued her paychecks for those services in September, October and November of 2019.

B. *Ruling*

After a hearing, the trial court issued its ruling. As a preliminary matter, the court sustained Certified's evidentiary objections and struck Medipro's counsel's statements that Medipro was conducting "business as usual," counsel's hearsay recounting of what "Lisa" said, and counsel's conjecture that Medipro must be billing its hospital clients under another name. The court nevertheless appointed a receiver and issued injunctive relief. Specifically, the court appointed a receiver to "take possession, custody and control" of the "accounts receivable and business accounts," to "enter and gain access ***627** to [the o]ffices," to "take possession of all bank accounts," to "collect" "all mail," and to "take possession of all the books and records" of both Certified *and* the LLC. The court also enjoined Certified and the LLC from interfering ****800** with the receiver's performance of his duties.

IV. Appeal

Certified and Sy filed this timely appeal.

DISCUSSION

Certified and Sy argue that the trial court erred (1) in appointing the receiver and issuing the complementary preliminary injunction, and (2) in granting relief beyond what Medipro requested. Because the preliminary injunction issued in this case is merely an adjunct to the appointment of the receiver and because the challenge to the breadth of the receiver's powers presupposes that the appointment was proper, Certified and Sy's appeal presents a threshold question: Did the trial court err in appointing the receiver?

It is undisputed that the trial court had the *authority* to appoint a receiver to aid in collection of the judgment. By statute, a court "may" appoint a receiver "[a]fter judgment" "pursuant to the Enforcement of Judgments Law" (§ 564, subd. (b)(4)), and the Enforcement of Judgments Law (§ 680.010 et seq.) empowers a court to appoint a receiver "to enforce the judgment where the judgment creditor shows that, considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment" (§ 708.620). (Accord, *Tucker v. Fontes* (1945) 70 Cal.App.2d 768, 772, 161 P.2d 697 (*Tucker*) [so noting].) It also is undisputed that the trial court had the *authority* to appoint a receiver to enforce the charging order as part of Medipro's collection efforts. By statute, a court "may" "[a]ppoint a receiver of the distributions" to a member of a limited liability company if "necessary to effectuate the collection of distributions pursuant to a charging order." (Corp. Code, § 17705.03, subd. (b)(1).)

[1] **[2]** What we must decide is whether the trial court in this case properly exercised this authority in the post-judgment collections context. Because trial courts enjoy a "large measure" of discretion, albeit "not an entirely uncontrolled one," in deciding when to exercise their authority to appoint a receiver (*Golden State Glass Corp. v. Superior Court of Los Angeles County* (1939) 13 Cal.2d 384, 393, 90 P.2d 75 (*Golden State*)), we review the decision to appoint one solely for an abuse of that discretion (*City and County of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 744, 20 Cal.Rptr.2d 256 (*Daley*)).

***628** **[3]** **[4]** **[5]** Because the appointment of a receiver transfers property—or, in this case, a business—"out of the hands of its owners" and into the hands of a receiver (*Golden State*, *supra*, 13 Cal.2d at p. 393, 90 P.2d 75), the appointment of a receiver is a very "drastic," "harsh," and costly remedy that is to be "exercised sparingly and with caution." (*Jackson v. Jackson* (1967) 253 Cal.App.2d 1026, 1040, 62 Cal.Rptr. 121 (*Jackson*); *Golden State*, at p. 393, 90 P.2d 75; *Cohen v. Herbert* (1960) 186 Cal.App.2d 488, 495, 8 Cal.Rptr. 922 (*Cohen*); *Morand v. Superior Court* (1974) 38 Cal.App.3d 347, 351, 113 Cal.Rptr. 281 (*Morand*).) Due to the "extraordinary" nature of this remedy and the special costs it imposes, courts are strongly discouraged—although not strictly prohibited—from appointing a receiver unless the more intrusive oversight of a receiver is a "necessity" because other, less intrusive remedies are either " 'inadequate or unavailable.' " (*Jackson*, at pp. 1040-1041, 62 Cal.Rptr. 121; *Cohen*, at p. 495, 8 Cal.Rptr. 922; *Morand*, at p. 351, 113 Cal.Rptr. 281; *Rogers v. Smith* (1946) 76 Cal.App.2d 16, 21, 172 P.2d 365; cf. *Daley*, *supra*, 16 Cal.App.4th at p. 745, 20 Cal.Rptr.2d 256 ****801** ["[T]he availability of other remedies does not, in and of itself, preclude the use of a receivership"]; *Gold v. Gold* (2003) 114 Cal.App.4th 791, 808, 8 Cal.Rptr.3d 118 [same].)

[6] **[7]** In light of the sheer number of enforcement mechanisms for collecting money judgments under the Enforcement of Judgments Law (which range from levies to liens to wage garnishment (§§ 695.010 et seq., 697.010 et seq., 699.010 et seq., 699.510 et seq., 706.020 et seq.); accord, *Tucker*, *supra*, 70 Cal.App.2d at p. 773, 161 P.2d 697 ["ordinarily a judgment creditor is able to collect money ... by way of garnishment or levy of execution"]), appointment of a receiver is rarely a "necessity" and, as a consequence, "may not ordinarily be used for the enforcement of a simple money judgment." (*Jackson*, *supra*, 253 Cal.App.2d at p. 1040, 62 Cal.Rptr. 121; accord, *White v. White* (1900) 130 Cal. 597, 599, 62 P. 1062 [receiver may not be appointed to collect a money judgment under section 564, subdivision (b)(3)].) Instead, the appointment of a receiver to enforce a money judgment is reserved for "exceptional" circumstances where the judgment creditor's conduct makes a receiver necessary —and hence "proper." (*Jackson*, at p. 1041, 62 Cal.Rptr. 121; *Olsan v. Comora* (1977) 73 Cal.App.3d 642, 647, 140 Cal.Rptr. 835; *Daley*, *supra*, 16 Cal.App.4th at p. 744, 20 Cal.Rptr.2d 256.) This occurs when the judgment debtor has frustrated the judgment creditor's collection efforts through obfuscation or through otherwise contumacious conduct that has rendered feckless the panoply of less intrusive mechanisms for enforcing a money judgment. (See *Bruton v. Tearle* (1936) 7 Cal.2d 48, 52, 59 P.2d 953 [debtor "entered into a conspiracy" with his employer to arrange wage payments in a manner that "defeat[ed] the collection" of judgment; receiver appropriate]; *Tucker*, at pp. 772-774, 161 P.2d 697 [debtor received money from his business customers and from property, but had structured them to render them immune to ordinary collection mechanisms; receiver appropriate]; *In re Ferguson* (1954) 123 Cal.App.2d 799, 802, 804, 268 P.2d 71 [debtor gave ***629** " 'manifestly evasive' " testimony at debtor's examination; receiver appropriate]; *Daley*, at pp. 744-745, 20 Cal.Rptr.2d 256 [debtors transferred title of property "to avoid responsibility" and "thumb[ ] their noses" at creditor's inspection efforts; receiver appropriate]; see also *Sachs v. Killeen* (1958) 165 Cal.App.2d 205, 214, 331 P.2d 735 [party subject to receiver "conceal[ed] ... actual profits of the business"; receiver pendente lite appropriate].)

[8] The trial court in this case abused its discretion in appointing a receiver to enforce Medipro's money judgment because there was no evidence—let alone the *substantial* evidence necessary to sustain a proper exercise of discretion (*Shoen v. Zacarias* (2019) 33 Cal.App.5th 1112, 1118, 245 Cal.Rptr.3d 683)—that Certified or Sy had engaged in obfuscation or other obstreperous conduct to the degree that the other collection mechanisms available under the Enforcement of Judgments Law were ineffective. Excising the evidence the trial court ruled inadmissible, the remaining evidence in support of Medipro's motion showed, at best, that (1) Certified's accounts receivable had slowed in August 2019 and stopped in September 2019, even though Certified continued to have funds to pay its consultant, and (2) the LLC did not make any distributions to Sy. But the court did not have before it any evidence as to *why*, and, more specifically, did not have before it any evidence that Certified or Sy had actually earned accounts receivable or distributions despite the slowdowns or that they had engineered these

slowdowns to confound Medipro's collection efforts. ****802** Indeed, the only evidence in the record on these points came from Certified and Sy, and indicated that the slowdowns were due to factors beyond their control—namely, that Medipro's collection efforts had severely crippled Certified's business and reduced the frequency and amount of its accounts receivable, and that the LLC had not turned any profit that would allow for a distribution.

Medipro argues that the trial court could have reasonably inferred that the slowdowns in Certified's accounts receivable and the LLC's distributions were due to nefarious conduct by Certified or Sy, but this inference is based on nothing but speculation and thus is not a *reasonable* inference. (*People v. Redmond* (1969) 71 Cal.2d 745, 755, 79 Cal.Rptr. 529, 457 P.2d 321 [speculation is "not a sufficient basis for an inference of fact"]; *Advent, Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA* (2016) 6 Cal.App.5th 443, 459, 211 Cal.Rptr.3d 685 ["Speculation also differs from a reasonable inference"].) Medipro's fear that Sy's husband might try to subvert its collection efforts in the future is based on nothing more than its counsel's "information and belief," and is thus also "insufficient." (*A.G. Col Co. v. Superior Court* (1925) 196 Cal. 604, 614-615, 238 P. 926.) And Medipro offered no evidence that the remaining arrows in its Enforcement of Judgments Law quiver would be insufficient; nor could it, as Medipro had barely sought to employ any of them.

***630** In sum, Medipro's evidentiary showing demonstrated that it had, at most, encountered some difficulty in its initial efforts to collect on its money judgment. If this was sufficient to constitute the "necessity" required to justify the "extraordinary" remedy of the appointment of a receiver to take over a judgment debtor's business, it is difficult to see how the appointment of receivers would not become a routine part of the collection of judgments—a result at odds with the solid wall of precedent holding to the contrary. The trial court accordingly abused its discretion in appointing a receiver on the record in this case.[2]

DISPOSITION

The order is reversed, without prejudice to Medipro filing a subsequent motion for appointment of a receiver. Certified and Sy are entitled to their costs on appeal.

We concur:

LUI, P. J.

ASHMANN-GERST, J.

All Citations

60 Cal.App.5th 622, 274 Cal.Rptr.3d 797, 21 Cal. Daily Op. Serv. 1344, 2021 Daily Journal D.A.R. 1300

Footnotes

1 All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

2 This holding in no way precludes Medipro from re-submitting a motion for appointment of a receiver based on competent evidence that meets the standards set forth above.