

**IN THE SUPREME COURT OF THE
STATE OF NEVADA**

E&T VENTURES, LLC,
Petitioner,

vs

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE
HONORABLE JOANNA KISHNER,
DISTRICT JUDGE,
Respondent,

EUPHORIA WELLNESS, LLC a
Nevada limited liability company,
Real Party in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 84133

District Court Case: A-19-796919-B

**REPLY TO OPPOSITION TO EMERGENCY MOTION UNDER NRAP
27(E) TO STAY EVIDENTIARY HEARING ON DISCOVERY SANCTIONS
[ACTION REQUIRED ON OR BEFORE FEBRUARY 7, 2022 AT 5PM]**

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MEMORANDUM OF POINTS AND AUTHORITIES

E&T Ventures, LLC (“Petitioner”) is not wrongfully seeking to avoid the evidentiary hearing set by the district court pursuant to its Order Setting Evidentiary Hearing filed on January 20, 2022. See App., **Exh. A** (the “Subject Order”) (App. 00005-00008).¹ The purpose of the evidentiary hearing is to consider **case ending** discovery sanctions frivolously requested by Euphoria Wellness, LLC (“Euphoria”) and entertained by the district court. See App., **Exhs. B-1, B-2 and B-3** (Euphoria’s Motion for Sanctions, Appendix and Motion for Order Shortening Time) (App. 00009-00299) (Vols. 1-3 of Appendix, Dkt. 22-02591-93), **Exhs. C-1 and C-2** (Petitioner’s Opposition/Counter-motion and Appendix) (App. 00300-00882) (Vols. 3-6, Dkt. 22-02593-96 of Appendix), **Exh. D** (Euphoria’s Reply/Opposition) (App. 00883-0094) (Vol. 7, Dkt. 22-02597), and **Exh. E** (Petitioner’s Reply) (App. 00905-00915) (Vol. 7, Dkt. 22-02597).² Petitioner believes the district court’s decision to set an evidentiary hearing lacks good cause given the matters actually before it at the hearing on January 4, 2022. See Transcript of Hearing on January 4, 2022. See

¹ Petitioner’s Appendix and Exhibits to the Appendix shall be referred to herein as “App.” and “Exh.” or “Exhs.” respectively. The Appendix includes Volumes 1-7 (Dkt. Nos. 22-02591 through 22-02597).

² Petitioner contends there have been no violation of any discovery orders and good cause for the evidentiary hearing does not exist.

Exh. F (App. 00916-01061) (Vol. 7, Dkt. 22-02597).³ Setting aside this contention, the Subject Order requires non-party, Kristin Taracki, to appear, and Petitioner's counsel to serve her with notice.

The district court was informed multiple times by Petitioner and Euphoria that Ms. Taracki is not a party to the case and was no longer affiliated with E&T. See e.g., Exh. F (App. 00916-01061) (Vol. 7, Dkt. 22-02597) (Exchange between Nicole Lovelock as attorney for Euphoria at App. 00941) and (Exchange between Mitchell Stipp as attorney for Petitioner at App. 00948-00960); see also Exh. D (App 00883-00904) (Vol. 7, 00891-93) Most importantly, counsel for Petitioner advised the district court at the hearing on January 4, 2022 that he could not agree to produce Ms. Taracki at the evidentiary hearing. See Exh. F (App. 01040-41). In response, Judge Kushner responded angrily as follows:

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³ All supplemental discovery responses were true, accurate and complete. Ms. Taracki as the authorized agent of Petitioner supplied a declaration in support of Petitioner's responses to interrogatories served by Euphoria on Petitioner. Petitioner supplied the addresses for the members of Petitioner as shown by the records of the Nevada Secretary of State. See Exhibit E, Reply to Opposition (App. 00905-00915) (Vol. 7, Dkt. 22-02597) (Exhibit 1, App. 00913-00915).

THE COURT: Oh. Counsel. Counsel. You're being ordered to. Let me be clear. Kristin Taracki is being ordered. She needs to appear at the evidentiary hearing. That is a Court order, okay. Because she signed -- she signed interrogatory responses. I need to hear from her. Anybody else you wish to provide is going to be your option, but she is ordered by the Court to be present at the evidentiary hearing. Okay.

Id. (emphasis added). As briefed, the Subject Order is a clear abuse of judicial power, and the order itself is void because of a lack of jurisdiction. See Cunningham v. District Court, 102 Nev. 551, 729 P.2d 1328 (1986); Quinn v. Eighth Judicial Dist. Court of Nev., 410 P.3d 984 (Nev. 2018) (citing to Phillips Petroleum Co. v. OKC Ltd. P'ship, 634 S.2d 1186, 1187-88 (La 1984) and NRS 14.065(1) and (2)); and Dekker/Perich/Sabatini Ltd. v. The Eighth Judicial Dist. Court of the State, 137 Nev. Adv. Op. 53, 8 (Nev. 2021) (quoting Singh v. Mooney, 541 S.E.2d 549, 551 (Va. 2001)). The fact that Petitioner is being afforded the opportunity to produce other witnesses does not resolve the due process issues raised by the district court's decision.

Petitioner was not required to file a motion for reconsideration before seeking relief from this Court. A motion for reconsideration was pointless given the district court's statement to Petitioner's counsel at the conclusion of the hearing on January 4, 2022. Euphoria also claims that Petitioner purposely failed to request a stay before the district court on shortened time because the request was filed rather than submitted to chambers. This argument lacks merit. Petitioner filed its motion on January 26, 2022 at 6:36 p.m. See Exhibit 1 to Motion, Dkt. 22-03024. The clerk of the district court accepted the filing but issued a notice of non-conforming document. See Exhibit 1 filed separately herewith. The notice clearly indicates that the proposed notice of hearing included in the filing was provided to chambers for the district court's consideration. Id. The district court provided its response on **February 1, 2022** via court minutes. See Exhibit 2 filed separately herewith. The proposed notice **was not filed stamped** by the clerk of the court. See Exhibit 1 to Petitioner's Motion, Dkt. 22-03024. If the court preferred not to use the notice of hearing provided by Petitioner, the district court had the power and opportunity to prepare a minute order advancing the hearing date. That effort would likely have required less judicial resources than preparing the minutes attached as **Exhibit 2** filed separately herewith.

While Petitioner has previously requested an order shortening time, it was not successful using the method described by Euphoria in its opposition. After the hearing on January 4, 2022, Petitioner submitted to chambers (rather than filed) a request to hear its motion for a protective order on shortened time concerning a deposition set by Euphoria for 8:00 a.m. on January 7, 2022. See Exhibit 3 filed separately herewith. Petitioner's counsel disclosed at the hearing on January 4, 2022 that he and his family were impacted by COVID-19. See Exh. F (App. 00916-01061) (Vol. 7, Dkt. 22-02597) (App. 01040); see also Declaration of Mitchell Stipp included in Exhibit 3 filed separately herewith (paragraph 9).⁴ In addition to COVID-19 issues, Euphoria refused to participate in a discovery conference on the substantive objections to the NRCP 30(b)(6) topics. See Exhibit 3 filed separately herewith. On January 6, 2022 at 6:47 p.m. (just over 12 hours before the in-person deposition) the district court prepared and filed a three (3) page order denying the request to hear the matter on shortened time. See Exhibit 4 filed separately herewith. The request attached as Exhibit 3 did not become part of the record in the case because the court did not file it (notwithstanding the court's ruling on the application).

⁴ The reference in paragraph 9 to January 3, 2022 should be January 4, 2022.

Despite claims to the contrary, there was nothing nefarious about Joseph Kennedy's acquisition of the membership interests of Alex and Kristin Taracki in Petitioner. Mr. Kennedy through his entity, Valjo, Inc., loaned money to Petitioner, which loan is secured by Petitioner's equipment that is the subject of litigation in the district court with Euphoria, Petitioner has not repaid the loan, and Euphoria has blocked repossession. See **Exhibit 5** filed separately herewith. The fact that Mr. Kennedy is paying all of the attorney's fees and costs of litigation against Euphoria should further explain the business purpose behind the acquisition. Id.

Euphoria's reliance on the caselaw for the position that the district court in fact has personal jurisdiction over Ms. Taracki to order her appearance is misplaced. No one disputes that Ms. Taracki *could be* subject to the jurisdiction of the courts in the Eighth Judicial District Court of Clark County, State of Nevada, if causes of action arising out of her activities as a former manager/member of Petitioner were asserted against her in a complaint, and she was served with the complaint and a summons. **However, there are no causes of action pending against Ms. Taracki in the case below.** The fact that Euphoria has asked, and the district court is actually considering an order finding that Ms. Taracki is an alter-ego of Petitioner at the

evidentiary hearing is more evidence that the district court does not consider the due process rights of a party or non-party. See Exhibit B-1, Motion for Discovery Sanctions, Vol. 1 (App. 00009-00037) (Dkt. 22-02591); see also Euphoria's Opposition to Stay, Dkt. 22-003799 (page 5-6) ("Euphoria sought several sanctions against Petitioner and Third-Party Defendants, including dispositive sanctions and an order finding that Ms. Taracki is an alter-ego of Petitioner.") and (page 9) (Footnote 27).

Petitioner has every right to seek disqualification of the district court below given the district court's disregard of basic due process. Exhibit 6 (which is filed separately herewith) is a copy of the request filed on February 2, 2022 and errata to the same. As set forth in the filing, the district court has closed its mind to the facts and law of the case concerning discovery and discovery sanctions. Petitioner is more than willing to appear at an evidentiary hearing if there is good cause to do so before a court which does not abuse its judicial powers, affords parties and non-parties the right to due process, and makes decisions based on the facts and the law.

For the reasons set forth in Petitioner's Motion and this Reply, Petitioner seeks to have this Court enter an order staying the evidentiary hearing on discovery sanctions.

DATED this 3rd day of February, 2022

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of February, 2022, I filed the foregoing **REPLY**, using the court's electronic filing system.

Notice of the filing of the Reply was made upon acceptance by the Nevada Supreme Court using the District Court's electronic filing system to the following e-service participants in District Court Case and by mail to the addresses as indicated:

Judge Joanna Kishner:

Dept31lc@clarkcountycourts.us

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By: /s/ Amy Hernandez

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