

**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,

Respondents,

EUPHORIA WELLNESS, LLC a
Nevada limited liability company,

Real Party in Interest.

Electronically Filed
Mar 07 2022 08:03 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. TBD

District Court Case: A-19-796919-B

**APPENDIX IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION
OR, IN THE ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS
[VOLUME II]**

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DATED this 4th day of March, 2022

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

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Exhibit 1	Application to Disqualify Judge Joanna Kishner	ppe i
Exhibit 2	Response by Judge Joana Kishner	ppe i
Exhibit 3	Decision by Chief Judge Linda Bell (Application to Disqualify)	ppe i
Exhibit 4	Motion to Withdraw/Reconsider Decision	ppe i
Exhibit 5	Notice of Hearing	ppe i
Exhibit 6	Certificate of Service	ppe i
Exhibit 7	Amended Order	ppe i
Exhibit 8	Minutes from Evidentiary Hearing	ppe i
Exhibit 9	Decision by Chief Judge Bell (Motion to Withdraw/Reconsider)	ppe i

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of March, 2022, I filed the foregoing **APPENDIX IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS**, using the court's electronic filing system. Notice of the filing of the Petition 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

Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

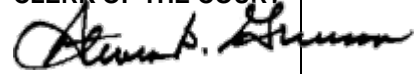
Euphoria Wellness, LLC as Real Parties-in- Interest:

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By: /s/ Mitchell Stipp

Mitchell Stipp pl ee ice Mitchell Stipp

EXHIBIT 2



DISTRICT COURT
CLARK COUNTY, NEVADA

E&T VENTURES, LLC, a Nevada limited liability company,

Plaintiff,

v.

EUPHORIA WELLNESS, LLC, a Nevada limited liability company; DOE Individuals I-X, inclusive; and ROE ENTITIES 1-10, inclusive;

Defendant.

EUPHORIA WELLNESS, LLC, a Nevada limited liability company,

Counterclaimant,

v.

E&T VENTURES, LLC, a Nevada limited liability company;

Counter-Defendant.

EUPHORIA WELLNESS, LLC, a Nevada limited liability company,

Third- Party Plaintiff,

v.

MIRAL CONSULTING, LLC, a Nevada limited liability company; HAPPY CAMPERS, LLC, a Nevada limited liability company; CBD SUPPLY CO, LLC, a Nevada limited liability company; DOE Individuals I-X, inclusive; and ROE ENTITIES 1-10, inclusive;

Third-Party Defendants.

CASE NO. A-19-796919-B

DEPT NO.: XXXI

WRITTEN RESPONSE

1 **WRITTEN RESPONSE OF JOANNA S. KISHNER, PURSUANT TO NRS 1.235, IN**
2 **RESPONSE TO E&T VENTURES, LLC.'S MOTION TO DISQUALIFY JUDGE**

3 1. I am a District Court Judge, presiding in Department XXXI of the Eighth
4 Judicial District Court.

5 2. I make this Written Response to the purported Application of E&T
6 Ventures LLC To Disqualify Judge Joanna Kishner and Affidavit Pursuant to NRS
7 1.235 and Errata to Application of E&T Ventures LLC To Disqualify Judge Joanna
8 Kishner and Affidavit Pursuant to NRS 1.235 to Disqualify Hon. Joanna Kishner
9 ("Application"). While the Application bears a file- stamp of 6:56 p.m. on February 2,
10 2022, and the Errata bears the file-stamp of 9:23 p.m., neither of these documents
11 comply with NRS 1.235.¹ Specifically, NRS 1.235 mandates that: "At the time the
12 affidavit is filed, a copy must be served upon the judge sought to be disqualified.
13 Service must be made by delivering the copy to the Judge personally or by leaving it
14 at the judges chambers with some person of suitable age and discretion employed
15 therein." As of the time that this written response is being finalized, the undersigned
16 has not been personally served. Further, in checking with my team, no copy was left
17 with them or in the Chambers box located outside the Courtroom. Further, there is no
18 Certificate of Service filed even asserting service was even attempted. Second, while
19 the document sets forth it is an "Affidavit", the last paragraph, prior to the typed
20 signature, sets forth that counsel is submitting a declaration as it states, "I submit the
21 above-titled declaration in support...." Third, NRS 1.235 requires that "The affidavit of
22 a party represented by an attorney must be accompanied by a certificate of the
23 attorney of record that the affidavit is filed in good faith and not interposed for delay."
24 Regardless of whether the statement of counsel is intended to be an Affidavit or a
25

26 _____
27 ¹ The Errata sets forth that it merely corrects an Exhibit reference, and thus, it does not remedy any of
28 the deficiencies set forth herein. Further, given the Errata is not substantive, the Court, when referring
to the Application, refers to the document file-stamped at 6:56 p.m. unless otherwise stated.

1 declaration as noted above, it does not contain the mandatory Certificate. In addition,
2 as the document attaches over 200 pages of "Exhibits", it is non -compliant with EDCR
3 2.27.

4
5 3. Given the Evidentiary Hearing at issue in the "Application" is set to be
6 heard at 8:30 am on February 8, 2022, however; and without waiving the Movant and
7 its counsel's failure to comply with the statutory provisions of NRS 1.235 and the
8 EDCR; the Court hereby provides this written answer to "challenge [the] affidavit"
9 consistent with NRS 1.235(6) and is doing so in less than the five judicial days
10 provided for in the statute. While the entire "written answer" is to be reviewed for
11 purposes of NRS 1.235 demonstrating that the Court has and will continue to preside
12 fairly and impartially over the instant matter, case number A-19-796919-B, the Court
13 has first outlined the procedural posture of the case, including the rulings of the Court,
14 and then addresses the upcoming February 8, 2022, Evidentiary Hearing which
15 appears to be the basis of the Application.

16 4. I am currently assigned to preside over A-19-796919-B wherein Movant
17 E&T Ventures is the Plaintiff and Counter-Defendant. Euphoria Wellness is the
18 Defendant and Counter-Claimant and Euphoria Wellness is also the Third-Party
19 Plaintiff with respect to Miral Consulting, LLC, Happy Campers, LLC, and CBD Supply
20 Co. LLC, which are also represented by the same counsel, Mr. Stipp, who filed the
21 Application.

22
23 5. Based on the Court's Odyssey system, this case was filed on June 18,
24 2019, and since it was filed as a Business Court case designation, it was assigned to
25 Department XXVII, the Honorable Judge Nancy Allf. On February 4, 2020, Michael
26 Stipp substituted in as counsel for E &T Ventures LLC. The two names set forth as
27 the authorized agents who approved the substitution of counsel were listed as Kristin
28

1 Taracki (who is also known as Kristin Ehasz²) and Alex Taracki. Thereafter, on June
2 18, 2020, counsel Michael Stipp also appeared in the case for Cross-Defendants
3 Kristin Ehasz, (aka Kristin Taracki), Alexander Taracki, and other parties. After Judge
4 Allf's recusal in June of 2020, the case was reassigned to Department XVI, the
5 Honorable Judge Timothy Williams. On June 23, 2020 a Preemptory Challenge was
6 filed as to Judge Williams, so the case was reassigned to the Honorable Judge
7 Elizabeth Gonzalez. Thereafter, on or about September 7, 2021, the case was re-
8 assigned to the instant Department, Department XXXI, upon the retirement of Judge
9 Gonzalez.
10

11 6. At the time the case was reassigned, there were approximately 169
12 entries listed on Odyssey which included various requests for injunctive relief, Orders
13 to Show Cause hearings set regarding other clients of the counsel who filed the
14 Application, a Motion to Disqualify counsel who filed the Application, several Discovery
15 Motions and Orders, Motions for Attorney's Fees, Dispositive Motion(s), and
16 Motions/Stipulations to Extend Discovery and/or the Trial. Some of these matters
17 were still outstanding at the time the case was reassigned to the instant Court.
18 Accordingly, the Court heard the pending matters, as well as new Discovery matters
19 (including Countermotions and Motions for Sanctions and/or Attorney Fees) that arose
20 (including those set due to a properly submitted and filed Order Shortening Time) at
21 hearings on September 23, 2021; October 14, 2021; November 4, 2021; November
22 23, 2021, (Chambers); December 17, 2021, (Chambers); all prior to the hearing on
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27 ² Kristin Ehasz and Kristin Taracki are used interchangeably as the former was stated to be her maiden
28 name and the latter is her married name and both have been used in pleadings and documents.

1 January 4, 2022, where the Court set the Evidentiary Hearing which appears to be the
2 basis of the instant Application.³

3
4 7. As set forth in the Record through *inter alia* the recordings of the
5 hearings, transcripts, Minutes, Minute Orders, and Orders of the Court, the Court
6 granted several of the aspects of requested relief posited by Mr. Stipp, who is counsel
7 for the instant Movant on behalf of his different clients, since the Court was assigned
8 the case. Specifically, the Court ruled in favor of Movant and found that Defendant
9 had not provided a Privilege log in accordance with the NRCP and not only ordered
10 that they supplement the Privilege Log, but also awarded attorney fees. Prior to
11 awarding the fees, the Court, in order to minimize expense to their clients, offered the
12 parties an opportunity to meet and confer to reach agreement on an attorney fee
13 amount and then allowed each party to file a supplemental brief on the fee issue if
14 they could not reach an agreement. It is the general custom and practice of the
15 instant Court, where appropriate, to provide the parties an opportunity to come to an
16 agreement and/or allow the opportunity for additional briefing and/or set an evidentiary
17 hearing so that all parties can have a full opportunity to present their case before the
18 Court makes rulings regarding certain motions, including motions for sanctions or
19 attorney fees. This process is consistent with appellate case law including, but not
20 limited to, *Young v Johnny Ribeiro Bldg. Inc.*, 106 Nev 88 (1990) and *Bahena v.*
21 *Goodyear Tire & Rubber Co.*, 126 Nev.243 (2010)
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26 ³ Originally, there was an additional hearing set on December 28, 2021, due to the large number of
27 filings by the parties; but, for the convenience of the parties, although the Court was in session on the
28 28th, it combined their hearings with the matters already set for January 4, 2022, and notified the parties
by Minute Order on December 17, 2021.

1 8. On January 4, 2022, there were multiple hearings before the Court.
2 First, the Court addressed the Motions to Seal part of the Exhibits attached to the
3 pending Motions, and after discussion, the parties agreed on the action to be taken.
4 Next, the Court addressed the two Motions filed by Euphoria Wellness and two
5 Countermotions filed by Movant's counsel on behalf of some of his clients. Euphoria
6 Wellness had filed a Motion for Discovery Sanctions against several of Movants'
7 counsel's clients including E&T Ventures⁴ (Documents 198 and 205). In response,
8 E&T Ventures filed a Countermotion for Discovery Sanctions against Euphoria
9 Wellness (Document 212). Defendant Euphoria Wellness had also filed a Motion for
10 Sanctions against E&T Ventures for failure to file a privilege log (Document 203) and
11 E & T Ventures filed a Countermotion for Sanctions (Document 216).

12 9. From a review of the Application, it appears that the Movant disagrees
13 with the Court's determination to provide Corporate entities the opportunity to have an
14 Evidentiary Hearing where they could present evidence and testimony in response to
15 the Motion for Discovery Sanctions filed by Defendant Counter-Claimant Euphoria
16 Wellness, which included *inter alia* a request to Strike the Answer of E&T Ventures.
17 Indeed, the very process of holding an Evidentiary Hearing prior to making a
18 determination of whether sanctions should or should not be imposed is the favored
19 method articulated in several appellate opinions including *inter alia* *Young v. Johnny*
20 *Ribeiro Bldg. Inc.*, and *Bahena v. Goodyear Tire & Rubber Co.* Indeed, the Court in
21 these cases discusses how sanctions are awarded and that while an Evidentiary
22 Hearing is not required, even when case terminating sanctions are sought, it is a
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26 ⁴ Throughout the pleadings, the hearing, and in the Application, Movant's counsel uses the term E&T
27 Ventures to apply to that client individually as well as his group of clients. The Court uses that name as
28 applicable herein consistent with his usage although the Supplemental Interrogatory Responses
discussed below are as to E&T Ventures LLC itself.

1 preferred method to ensure the due process rights of the parties. Here, the Court
2 following the dictates of *Johnny Ribeiro* and other appellate cases, determined that it
3 would allow E&T Ventures the opportunity to provide evidence and testimony
4 regarding its compliance or non-compliance with the NRCP and prior Court Order(s)
5 (including an Order to Show Cause issued by Judge Gonzalez) before the Court made
6 a ruling on Defendant Counter-Claimants Motion for Discovery Sanctions.
7

8 10. In the instant case, as of the January 4, 2022, hearing, it was asserted
9 by Euphoria Wellness in their November 24, 2021, Motion for Sanctions that E&T
10 Ventures (and other parties represented by movant) had already not complied with
11 prior Discovery requests and at least one prior Order of the Court to provide
12 supplemental responses to Discovery.⁵ In their Motion and in oral argument, Euphoria
13 Wellness set forth that one clear example of how E&T Ventures did not comply with
14 the Court-Ordered supplementation of Discovery responses was the non-compliant
15 Supplemental Interrogatory Responses which were served on October 25, 2021, less
16 than a month before the Motion had been filed. As set forth beginning on Page 16 of
17 the transcript of that hearing (attached to Movant's Application as Exhibit A and is also
18 filed on January 5, 2022), Euphoria Wellness contended that the responses to the
19 Supplemental Interrogatories were false and questioned the validity of the Verification
20 signed by Kristin Ehasz (a/k/a Kristin Taracki). Specifically, Interrogatory Number 1
21 asked: "Please provide the name and address for the principals of E& T." In the
22 Supplemental Response to Interrogatory Number 1, it was stated that Kristin Ehasz
23 (a/k/a Kristin Taracki) and her husband Alex Taracki were the principals and their
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25
26 ⁵ The Court had Granted Euphoria Wellness' Motion to Compel previously, but had denied without
27 prejudice the portion of the Motion seeking sanctions and attorney fees; and instead, gave movant's
28 clients the benefit of the doubt and allowed them an opportunity to supplement their deficient responses
to various Discovery.

1 current residence (i.e. as of October 2021) was in Henderson, Nevada and the
2 response provided an address on Summerwind Circle in Henderson, Nevada. These
3 same October 25, 2021, Supplemental Interrogatory Responses were verified by
4 Kristin Ehasz (a/k/a Taracki) as a principal of E&T Ventures. (See, e.g Appendix, Page
5 70 to Euphoria's Motion). Euphoria Wellness contended that there was an issue as to
6 whether Ms. Ehasz (a/k/a Taracki) actually resided at that Henderson address as of
7 the date of the Verification given the listed address had shown up on records as being
8 sold the previous year and they had been informed that she may live in Tennessee
9 when they tried to subpoena her. They further contended that Ms. Ehasz' Verification
10 on behalf of E&T to an address that she would know if it was accurate or not
11 demonstrated that there was sanctionable non-compliance and violation of a Court
12 Order. Euphoria Wellness then set forth other examples of what they contended were
13 non-compliant supplementation and purported violation of Court Order(s).

15 11. In response to Euphoria's Motion and argument, Movant's counsel, Mr.
16 Stipp, contended that he had attached to his Reply as an Exhibit from the Nevada
17 Secretary of State's website showing that as of December 2021, that the Managing
18 Member of E&T was Kristin Ehasz and that her address was the Summerwind
19 address in Henderson, Nevada (See Transcript starting at Page 35). When the Court
20 asked directly, "Is that the correct address, the Henderson address listed in the actual
21 supplemental interrogatories?" Mr. Stipp responded: "Yes it is". (Id. Page 36) The
22 Court then asked if she owned the house and could be located at that address for
23 purposes of a subpoena, and Mr. Stipp said he could not answer the question. (Id.)
24 He then confirmed that Kristin Ehasz (a/k/a Taracki) verified the Supplemental
25 Interrogatories on behalf of E&T. (Id.) Mr. Stipp then set forth that he was the one
26 who typed Kristin Taracki's name with her consent as the person who was verifying
27

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1 the Supplemental Responses on behalf of E&T Ventures. (Id.38) When asked if the
2 Supplemental Responses were provided by Mr. Stipp directly to Krisitn Ehasz (aka
3 Kristin Taracki) for her review, he then contended that, "I believe she received them
4 from Mr. Kennedy." There was no response, however, as to the inconsistency as to
5 why Mr. Kennedy would provide Ms. Ehasz' Supplemental Interrogatory Responses to
6 Verify under Oath, if only he and not she were a principal of E&T Ventures. (Id. Pg.
7 40) Instead, counsel for Movant stated that, "At the end of the day, I'm informing the
8 court. I completed the electronic signature personally. I did so with Kristin Taracki's
9 permission. I have no reason to believe that the information that's being provided is
10 not accurate." (Id.)

12 12. As is clear from the various statements made to the Court at the hearing,
13 there was conflicting information provided to the Court. In such a situation, while the
14 Court had the authority to rule on January 4th on the pending Motion for Sanctions, it
15 wanted to ensure all parties had a full opportunity to provide evidence to support their
16 conflicting positions given what was stated at the hearing. As set forth above, holding
17 an Evidentiary Hearing is an encouraged process to ensure all parties due process
18 rights are taken into consideration in similar situations. Thus, Movant's contention that
19 the Court is somehow biased as it has already made up its mind on some issues is not
20 accurate. As noted above, while there is ample Appellate authority affirming that a
21 District Court could impose sanctions including dispositive sanctions, without an
22 Evidentiary Hearing, there is no case law cited that setting an Evidentiary Hearing is
23 improper prior to ruling on a Motion for Sanctions. Instead, *Young v. Johnny Ribeiro*
24 and several other cases state the opposite -- they encourage evidentiary hearings as
25 they allow more evidence to be taken into consideration prior to making a ruling.
26

1 13. Movant appears to assert that having Kristin Ehasz (a/k/a Kristin
2 Taracki) appear at the Evidentiary Hearing is somehow evidence of bias. It is
3 undisputed that a Court has the authority to Order a party to appear. As a corporation
4 or LLC can only speak through its agents/principals, it is also clear that the Court
5 could Order a Principal of that Corporation or entity to appear. In the instant case,
6 based on the only evidence presented to the Court, Kristin Taracki was, at the time, a
7 Principal of E&T Ventures. She signed the Supplemental Interrogatories in that
8 capacity. Movant 's counsel, Mr. Stipp, even asserted that he attached to his Reply,
9 on or about December 21, 2021, an Exhibit from the Secretary of State website that
10 showed her to be a Principal of E&T Ventures. Both the Supplemental Interrogatory
11 Responses verified by Kristin Ehasz (a/k/a Taracki) and the Secretary of State Exhibit
12 attached to Movant's Reply, show her address as being Henderson, Nevada. The
13 Court specifically asked counsel for Movant if the title and address were correct and
14 he did not assert that they were incorrect to his knowledge or that as an Officer of the
15 Court that he had specific new information that was different that what was on the
16 Supplemental Interrogatory Responses and the Secretary of State Exhibit he chose to
17 attach to his Reply in December. Thus, based on what was provided by Movant itself
18 and through its counsel, as of the January 4, 2022, hearing, the Court could Order
19 Kristin Ehasz (a/k/a Kristin Taracki) to attend the Evidentiary Hearing as she was
20 asserted to be a Principal of E&T Ventures who lives in Henderson, Nevada and the
21 one who signed the Verification for the Supplemental Interrogatories that were at
22 issue. It is also clear that having her attend the Evidentiary Hearing was the fair
23 determination. As it was stated that Movant's counsel thought Mr. Kennedy provided
24 her the Interrogatories, yet her name is on the Verification, she should have an
25 opportunity to explain why she, on behalf of E&T Ventures, set forth the answers that
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1 were in the Supplemental Responses that bear her signature on the Verification
2 page.⁶

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4 14. Movant also mentions in his Application that the Court did not set an
5 admittedly improperly-filed Order Shortening Time Motion on for hearing on shortened
6 time. Movant's counsel is aware that the EDCR 2.20 sets forth the rules regarding
7 Motions, and EDCR 2.26 sets forth the procedure when a Motion is sought to be
8 heard on Shortened Time. The Electronic Filing Rules set forth the procedure if a
9 document is electronically filed incorrectly. Movant does not dispute that its counsel
10 did not comply with each of these rules. It apparently concedes that its counsel
11 improperly filed a Motion requesting shortened time with the Clerk without first
12 submitting his proposed Motion to the Department. The Clerk properly filed and
13 served a Notice of Non-Conforming Document. From the Odyssey Record and the
14 Order in the Court application, it does not appear that Movant's counsel attempted to
15 fix the Non-Conforming Document or attempt to file a proper Proposed Order
16 Shortening Time consistent with the Rules. As set forth in further detail in the Minute
17 Order dated February 1, 2022, (which was served upon all parties) the Court became
18 aware of the improperly-filed document and re-reviewed it to determine if it could be
19 signed. It could not as it already had a file-stamped date and time as set forth in the
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21
22 ⁶ Movant also contends, inaccurately, that the Court stated its Order "angrily". As the transcript and the
23 recording of the hearing clearly show, the Court had to repeat its ruling in response to a point of
24 clarification raised by counsel for Euphoria Wellness as to the scope of the hearing and who could and
25 should attend. Moreover, as counsel was appearing remotely and the Court was in person in the
26 Courtroom, wearing a mask in accordance with the mandated mask policy, it is unclear how Movant
27 could even make such a contention though its counsel. Neither Movant, or its counsel, know what
28 emotions the Court had, and if either did it/he would know there was no anger by the Court. The Court
merely had to reiterate some statements, as it has had to do so at several hearings on several cases,
either due to other parties not muting themselves which causes parties not to hear the Court; counsel
speaking at the same time as the Court; a counsel needing something repeated due to their own
computer audio issues; or a party not hearing the Court's pronouncement for any other reason. These
are common occurrences in remote appearances and sometimes even require the Court to speak
louder to ensure all parties can hear.

1 Clerk's Notice of Non-Conforming Document and had other errors. The Court
2 returned the Order in the Order in the Court Application using the Return button.
3 Although not required, the Court also issued a Minute Order notifying all parties. Even
4 after that Minute Order was served, Movant still chose not to file a proper proposed
5 Order Shortening Time. Thus, there was nothing for the Court to consider. The Court
6 and the Clerk's Office followed the written letter of the law as set forth in the Rules.
7 While Movant acknowledges he did not submit and file his proposed pleading
8 correctly, he appears to contend that the Court following the Rules was somehow
9 biased. It is not and cannot be considered biased for a Court to follow the Rule of Law
10 and then even give Movant notice of why the improper document could not be signed
11 so that if he chose to do so, he could fix the errors and submit a correct pleading.
12

13 15. As is clear from the above, this Court can and will continue to rule fairly
14 and impartially in the instant case. Further, decisions of any court are public record
15 and the undersigned takes its obligation to rule fair and impartially with all solemnity as
16 when the oath was first given. Moreover, I have a duty to sit and "preside to the
17 conclusion of all proceedings, in the absence of some statute, rule of court, ethical
18 standard, or other compelling reason to the contrary." City of Las Vegas Downtown
19 Redevelopment Agency v. Eighth Judicial Dist. Court ex rel. Cnty of Clark, 116 Nev.
20 640, 643, 5 P.3d, 1059, 1061 (2000) (quoting Ham v. Eighth Judicial Dist Court, In &
21 for Clark Cnty., 93 Nev. 409, 415, 566 P.2d 420, 424 (1977)).
22

23 16. I wish to honor my duty to sit in the absence of any rule, statute, case
24 law, ethical duty, or otherwise. If I were to remain on the case, I would continue to rule
25 fairly and impartially as I have done in every matter. As a Judge, I am also tasked
26 with ensuring that each party have their case heard without distraction or concern that
27 a party may raise an issue to attempt to delay the case. Thus, the Court notes that
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1 the Application was filed a few days before the hearing set for February 8, 2022, so
2 the parties should be informed as soon as practicable whether that hearing will go
3 forward so that their clients do not incur extra expense.
4

5 17. As is clearly set forth herein, there is no merit to the Motion to Disqualify
6 and thus, if the appropriate court after reviewing the instant affidavit wishes the
7 undersigned to provide any further information, it would gladly do so.
8

9 Dated this 7th day of February 2022.
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12 _____
13 HON. JOANNA S. KISHNER
14 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

ALL REGISTERED COUNSEL and/or PARTIES IN PROPER PERSON SERVED VIA ELECTRONIC SERVICE

/s/ Tracy L. Cordoba
TRACY L. CORDOBA
Judicial Executive Assistant

EXHIBIT 3

1 **DAO**

2 **EIGHTH JUDICIAL DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4
5 E&T VENTURES LLC,

6 Plaintiff,

7 vs.

8 EUPHORIA WELLNESS LLC, ET AL.

9 Defendant(s).

A-19-796919-B

Case No.

~~A-19-769919-B~~

Dept. No.

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12 **DECISION AND ORDER**

13 Plaintiff E&T Ventures (“E&T” or “Plaintiff”) filed an Motion/Application to Disqualify
14 Judge Kishner on February 2, 2022. Plaintiff alleges that Judge Kishner has demonstrated bias
15 and/or prejudice as a result of decisions and rulings made during official proceedings. Based on a
16 review of the Affidavit, Judge Kishner’s response, and the relevant record, pursuant to EDCR
17 2.23(c), Plaintiff’s request is denied.

18 **I. Factual and Procedural Background**

19 On June 18, 2019, Plaintiff initiated the instant case against Defendant by filing a Complaint
20 in Business Court. On September 7, 2021, after varying reassignments, the case was assigned to
21 Judge Kishner. On January 4, 2022, the parties appeared before Judge Kishner for a hearing on
22 multiple motions. On February 2, 2022, Plaintiff filed a Motion/Application to Disqualify Judge
23 Kishner. Plaintiff alleges that Judge Kishner improperly ordered a non-party individual (Kristin
24 Taracki) to appear at an upcoming evidentiary hearing, and alleged that Taracki is no longer
25 involved with the Plaintiff entity. Plaintiff alleges that Judge Kishner abused her judicial power in
26 ordering such an appearance, because Taracki allegedly no longer resides in Nevada. While Taracki
27 was previously involved in the instant matter, at least to the extent that she executed a declaration as
28 to discovery responses in the litigation and approved Plaintiff’s current counsel substitution into the

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 case, her involvement with Plaintiff has allegedly ceased. Plaintiff alleges that Judge Kushner
2 ordering Taracki to appear constitutes a procedural defect resulting in abuse of judicial power that is
3 disqualifying because the risk of bias is present. Plaintiff also argues that Judge Kushner's refusal to
4 consider a request for stay constitutes a basis for disqualification. Plaintiff's Motion/Application did
5 not certify that it was served upon Judge Kushner pursuant to NRS 1.235(4).

6 On February 7, 2022, Judge Kushner responded to the instant Motion. Judge Kushner denies
7 bias, and states that the order(s) subject to the instant Motion was as a result of the information
8 before her. Further, Judge Kushner states that where there was conflicting information presented at
9 the January 4, 2022 hearing, she decided to set the matter for an evidentiary hearing prior to making
10 her final ruling on a motion for sanctions.

11 As a result of the above, this Court now finds as follows.

12 **II. Discussion**

13 **A. Legal Standard**

14 Nevada Revised Statute 1.230 provides the statutory grounds for disqualifying district Court
15 judges. The statute in pertinent part provides:

- 16 1. A judge shall not act in an action or proceeding when the judge entertains actual
17 bias or prejudice for or against one of the parties to the action.
- 18 2. A judge shall not act as such in an action or proceeding when implied bias exists
19 in any of the following respects:
 - 20 (a) When the judge is a party to or interested in the action or proceeding.
 - 21 (b) When the judge is related to either party by consanguinity or affinity within the
22 third degree.
 - 23 (c) When the judge has been attorney or counsel for either of the parties in the
24 particular action or proceeding before the court.
 - 25 (d) When the judge is related to an attorney or counselor for either of the parties by
26 consanguinity or affinity within the third degree. This paragraph does not apply
27 to the presentation of ex parte or contested matters, except in fixing fees for an
28 attorney so related to the judge.

24 Rule 2.7 of the Revised Nevada Code of Judicial Conduct (NCJC) provides that a "judge shall hear
25 and decide matters assigned to the judge, except when disqualification is required by Rule 2.11," the
26 rule which details substantive grounds for judicial disqualification. Pursuant to NCJC 2.11(A):

1 (A) A judge shall disqualify himself or herself in any proceeding in which the
2 judge's impartiality might reasonably be questioned, including but not limited to the
3 following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's
lawyer, or personal knowledge of facts that are in dispute in the proceeding.

4 A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might
5 be reasonably questioned. Ybarra v. State, 247 P.3d 269, 271 (Nev. 2011). The test for whether a
6 judge's impartiality might be reasonably questioned is objective and courts must decide whether a
7 reasonable person, knowing all the facts, would harbor reasonable doubts about a judge's
8 impartiality. Id. at 272.

9 The burden is on the party asserting the challenge to establish sufficient factual and legal
10 grounds warranting disqualification. Las Vegas Downtown Redevelopment Agency v. District
11 Court, 116 Nev. 640, 643 (2000). A judge has a duty to preside to the conclusion of all proceedings,
12 in the absence of some statute, rule of court, ethical standard, or compelling reason otherwise. Id. A
13 judge is presumed to be unbiased. Millen v. District Court, 148 P.3d 694, 701 (Nev. 2006). A judge
14 is presumed to be impartial, and the burden is on the party asserting the challenge to establish
15 sufficient factual grounds warranting disqualification. Ybarra, 247 P.3d at 272. Additionally, the
16 Court must give substantial weight to a judge's determination that the judge may not voluntarily
17 disqualify themselves, and the judge's decision cannot be overturned in the absence of clear abuse of
18 discretion. In re Pet. To recall Dunleavy, 104 Nev. 784 (1988).

19 The Nevada Supreme Court has stated "rulings and actions of a judge during the course of
20 official judicial proceedings do not establish legally cognizable grounds for disqualifications." Id. at
21 789. The personal bias necessary to disqualify must "stem from an extrajudicial source and result in
22 an opinion on the merits on some basis other than what the judge learned from participation in the
23 case." Id. at 790 "To permit an allegation of bias, partially founded upon a justice's performance of
24 his [or her] constitutionally mandated responsibilities, to disqualify that justice from discharging
25 those duties would nullify the court's authority and permit manipulation of justice, as well as the
26 court." Id.

27 The Nevada Supreme Court has noted that while the general rule is that what a judge learns
28 in his or her official capacity does not result in disqualification, "an opinion formed by a judge on

1 the basis of facts introduced or events occurring in the course of the current proceedings, or of prior
2 proceedings, constitutes a basis for a bias or partiality motion where the opinion displays ‘a deep-
3 seated favoritism or antagonism that would make fair judgment impossible.’ Kirksey v. State, 923
4 P.2d 1102, 1107 (Nev. 1996); Liteky v. U.S., 510 U.S. 540 (1994) (“...judicial remarks during the
5 course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their
6 cases, ordinarily do not support a bias or partiality challenge.”). However, “remarks of a judge made
7 in the context of a court proceeding are not considered indicative of improper bias or prejudice
8 unless they show that the judge has closed his or her mind to the presentation of all the evidence.”
9 Cameron v. State, 968 P.2d 1169, 1171 (Nev. 1998).

10 **B. Disqualification is not warranted because Plaintiff has not established sufficient factual**
11 **and legal grounds for disqualification.**

12 As the party seeking disqualification, Plaintiff bears the burden of establishing sufficient
13 factual grounds to warrant disqualification. Las Vegas Downtown Redevelopment Agency v.
14 District Court, 5 P.3d 1059, 1061 (Nev. 2000). However, the rulings and actions of a judge during
15 the course of official judicial proceedings do not establish legally cognizable grounds for
16 disqualification. In re Pet. To recall Dunleavy, 104 Nev. 784, 789 (1988). Here, Plaintiff has not
17 met the burden of establishing sufficient facts for disqualification.

18 The Court also notes that NRS 1.235 provides that at the time an affidavit to disqualify a
19 judge is filed, “a copy must be served upon the judge sought to be disqualified.” NRS 1.235(4).
20 Here, there is no evidence that Plaintiff’s Motion was properly served upon Judge Kishner or
21 chambers. This procedural defect requires denial of the Motion. Even if the lack of personal service
22 of the Motion was not fatal, Plaintiff has not demonstrated sufficient grounds to support the
23 disqualification of Judge Kishner.

24 Plaintiff takes issue with Judge Kishner’s January 4, 2022 ruling(s). However, disagreement
25 with a judge’s decisions and rulings during official proceedings does not alone warrant
26 disqualification. Further, Plaintiff argues a calendar setting and/or denial of a stay is indicative of
27 bias. The personal bias necessary to disqualify a judge must result from an extrajudicial source.
28 Here, the rulings and decisions do not appear to be based on bias for or against any party in the

1 matter. While Plaintiff argues that Judge Kushner has closed her mind to evidence, what is before
2 this Court does not suggest that Judge Kushner has made decisions based on bias, nor does it appear
3 she has closed her mind to evidence. Further, it does not appear that a risk of bias is present such that
4 would warrant disqualification for the reasons set forth herein. The objective, reasonable test for bias
5 is not met here.

6 To the extent Plaintiff disagrees with procedural questions in the matter, this Court does not
7 address those arguments or make any findings. The question before this Court is strictly one of
8 judicial disqualification, and as such, the Court does not address the substance of a judge's
9 determinations beyond that which is necessary to address the question of bias. Further
10 determinations from this Court would be improper.

11 Conclusion

12 Plaintiff has offered no legal basis or facts of bias or prejudice which would warrant
13 disqualification. Based on what is before this Court, Judge Kushner has not demonstrated a deep-
14 seated favoritism, nor has she taken other actions which warrant disqualification. Because the
15 rulings and actions of a judge in official proceedings do not, absent other circumstances, establish
16 sufficient grounds for disqualification, Plaintiff's request is DENIED.

17 Dated this 10th day of February, 2022

18 

20 _____
21 C7A 365 14E3 F8EF
22 Linda Marie Bell
23 District Court Judge
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 E&T Ventures LLC, Plaintiff(s) | CASE NO: A-19-796919-B
7 vs. | DEPT. NO. Department 31
8 Euphoria Wellness LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Decision and Order was served via the court's electronic eFile system
to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/10/2022

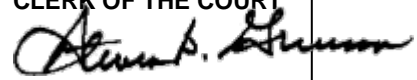
15 Amy Reams	areams@naylorandbrasterlaw.com
16 John Naylor	jnaylor@naylorandbrasterlaw.com
17 Jennifer Braster	jbraster@naylorandbrasterlaw.com
18 Michael Detmer	mdetmer@ag.nv.gov
19 Justin Jones	jjones@joneslovelock.com
20 Nicole Lovelock	nlovelock@joneslovelock.com
21 Alison Anderson	aanderson@joneslovelock.com
22 Lorie Januskevicius	ljanuskevicius@joneslovelock.com
23 Mitchell Stipp	mstipp@stipplaw.com
24 Nicole Lovelock	nlovelock@joneslovelock.com
25 Ashley Balducci	abalducci@ag.nv.gov

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Georlen Spangler	jspangler@joneslovelock.com
Daenna Kaapana	Dbekaapana@ag.nv.gov

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 2/11/2022

Louis Humphrey III	Humphrey Law PLLC Attn: Louis Humphrey III, Esq 201 W. Liberty Street, Suite 350 Reno, NV, 89501
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EXHIBIT 4



MITCHELL D. STIPP, ESQ.
Nevada Bar No. 7531
LAW OFFICE OF MITCHELL STIPP
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144
Telephone: 702.602.1242
mstipp@stippplaw.com
Attorneys for Plaintiff, E&T Ventures, LLC

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

E&T VENTURES, LLC, a Nevada limited liability company,

Plaintiff,

v.

EUPHORIA WELLNESS, LLC, a Nevada limited liability company; DOE Individuals I-X, inclusive; and ROE ENTITIES 1-10, inclusive;

Defendants.

ET AL.

CASE NO.: A-19-796919-B
DEPT. NO.: XXXI

**MOTION FOR WITHDRAWAL/
RECONSIDERATION, EVIDENTIARY
HEARING ON DISQUALIFICATION, OR
ALTERNATIVELY FOR STAY PENDING
WRIT PETITION TO NEVADA SUPREME
COURT**

HEARING REQUESTED

E&T Ventures, LLC, by and through Mitchell Stipp, Esq., of the Law Office of Mitchell Stipp, files the above-referenced motion.

This motion is based on the papers and pleadings on file in this case, the memorandum of points and authorities that follow, the exhibits attached hereto or filed separately but concurrently herewith, and the argument of counsel at the hearing.

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1 DATED this 11th day of February, 2022.

2 **LAW OFFICE OF MITCHELL STIPP**

3
4 /s/ Mitchell Stipp

5
6 MITCHELL STIPP, ESQ.
7 Nevada Bar No. 7531
8 1180 N. Town Center Drive, Suite 100
9 Las Vegas, Nevada 89144
10 *Attorneys for Plaintiff, E&T Ventures, LLC*

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MEMORANDUM OF POINTS AND AUTHORITIES

On February 2, 2022, Plaintiff, E&T Ventures, LLC, a Nevada limited liability company ("Plaintiff"), filed an application to disqualify Judge Joanna Kishner in Department 31, from continuing to preside over the above-referenced case, and the Affidavit of Mitchell Stipp, counsel for Plaintiff, pursuant to NRS 1.235 in support ("Motion to Disqualify"). Subsequently, Plaintiff filed an errata to the Motion to Disqualify on the same date. Judge Kishner filed her written response on February 7, 2022. Chief Judge Linda Bell issued a decision on the matter, which was filed on February 10, 2022 ("Chief Judge's Decision").

NRS 1.235 provides the procedure for disqualifying Judge Kishner, which is set forth below:

1. Any party to an action or proceeding pending in any court other than the Supreme Court or the Court of Appeals, who seeks to disqualify a judge for actual or implied bias or prejudice must file an affidavit specifying the facts upon which the disqualification is sought. **The affidavit of a party represented by an attorney must be accompanied by a certificate of the attorney of record that the affidavit is filed in good faith and not interposed for delay.** Except as otherwise provided in subsections 2 and 3, the affidavit must be filed:

- (a) Not less than 20 days before the date set for trial or hearing of the case; or
- (b) Not less than 3 days before the date set for the hearing of any pretrial matter.

2. Except as otherwise provided in this subsection and subsection 3, if a case is not assigned to a judge before the time required under subsection 1 for filing the affidavit, the affidavit must be filed:

- (a) Within 10 days after the party or the party's attorney is notified that the case has been assigned to a judge;

1 (b) Before the hearing of any pretrial matter; or

2 (c) Before the jury is empaneled, evidence taken or any ruling made in the trial or
3 hearing,

4 whichever occurs first. If the facts upon which disqualification of the judge is sought are
5 not known to the party before the party is notified of the assignment of the judge or before any
6 pretrial hearing is held, the affidavit may be filed not later than the commencement of the trial or
7 hearing of the case.

8 3. If a case is reassigned to a new judge and the time for filing the affidavit under
9 subsection 1 and paragraph (a) of subsection 2 has expired, the parties have 10 days after notice
10 of the new assignment within which to file the affidavit, and the trial or hearing of the case must
11 be rescheduled for a date after the expiration of the 10-day period unless the parties stipulate to
12 an earlier date.

13 **4. At the time the affidavit is filed, a copy must be served upon the judge sought**
14 **to be disqualified. Service must be made by delivering the copy to the judge personally or by**
15 **leaving it at the judge's chambers with some person of suitable age and discretion employed**
16 **therein.**

17 5. Except as otherwise provided in subsection 6, the judge against whom an
18 affidavit alleging bias or prejudice is filed shall proceed no further with the matter and shall:

19 (a) If the judge is a district judge, immediately transfer the case to another
20 department of the court, if there is more than one department of the court in the district, or request
21 the judge of another district court to preside at the trial or hearing of the matter;

22 (b) If the judge is a justice of the peace, immediately arrange for another justice of
23 the peace to preside at the trial or hearing of the matter as provided pursuant to NRS 4.032, 4.340
24 or 4.345, as applicable; or

25 (c) If the judge is a municipal judge, immediately arrange for another municipal
26 judge to preside at the trial or hearing of the matter as provided pursuant to NRS 5.023 or 5.024,
27 as applicable.

28 6. A judge may challenge an affidavit alleging bias or prejudice by filing a written
answer with the clerk of the court within 5 judicial days after the affidavit is filed, admitting or
denying any or all of the allegations contained in the affidavit and setting forth any additional
facts which bear on the question of the judge's disqualification. **The question of the judge's**
disqualification must thereupon be heard and determined by another judge agreed upon by the
parties or, if they are unable to agree, by a judge appointed:

(a) If the judge is a district judge, by the presiding judge of the judicial district in
judicial districts having more than one judge, or if the presiding judge of the judicial district
is sought to be disqualified, by the judge having the greatest number of years of service;

(b) If the judge is a justice of the peace, by the presiding judge of the justice court in
justice courts having more than one justice of the peace, or if the presiding judge is sought to be
disqualified, by the justice of the peace having the greatest number of years of service;

(c) If the judge is a municipal judge, by the presiding judge of the municipal court
in municipal courts having more than one municipal judge, or if the presiding judge is sought to

1 be disqualified, by the municipal judge having the greatest number of years of service; or

2 (d) If there is no presiding judge, by the Supreme Court.

3 (emphasis added).

4 EDCR 2.24(b) permits rehearing of a matter upon a motion filed for such relief within fourteen (14)
5 days after service of written notice of entry of the subject order. The court also has the inherent authority to
6 reconsider its prior orders. Trail v. Faretto, 91 Nev. 401, 536 P.2d 1026 (1975). Reconsideration should be
7 granted when “there is a reasonable probability that the court may have arrived at an erroneous conclusion
8 or overlooked some important question necessary to a full and proper understanding of the case.” State v. Fitch,
9 68 Nev. 422, 233 P.2d 1070, 1072 (1951); accord, Moore v. City of Las Vegas, 92 Nev. 402, 551 P.2d 244, 246
10 (1976); Geller v. McCown, 64 Nev. 102, 178 P.2d 380, 381 (1947). “In a concise and non-argumentative
11 manner, such a petition should direct attention to some controlling matter which the court has overlooked
12 or misapprehended.” Matter of Ross, 99 Nev. 657, 668 P.2d 1089 (1983). The court may also relieve a party
13 from an order for any reason that justifies relief. See NRCP 60(b)(6).

15 **II. Basis for Withdrawal/Reconsideration and Evidentiary Hearing on Disqualification.**

16 **A. Chief Judge Bell’s Decision was Premature.**

17
18 NRS 1.235(6) permits the parties to agree on the judge to hear and decide the Motion to Disqualify.
19 The parties were working to reach an agreement on the district court judge to hear and decide the matter before
20 the Chief Judge’s Decision was filed on February 10, 2022 at 7:52 a.m. See Emails attached hereto as Exhibit
21 1. Accordingly, Chief Judge Bell’s decision to consider the matter and rule *sua sponte* was premature, and the
22 decision should be withdrawn. Euphoria’s counsel provided Plaintiff until 9:00 a.m. on February 10, 2022 to
23 provide its own list of judges or accept Euphoria’s suggestions. Id. For this reason, the decision should be
24 withdrawn as premature. If Chief Judge Bell decides not to withdraw the decision, E&T reserves its right to
25 file a petition for a writ to the Nevada Supreme Court. In any event, the Chief Judge’s Decision should be
26 reconsidered and an evidentiary hearing on disqualification set.

27 ///

28 ///

1 **B. Extrajudicial Source is not required.**

2 The Chief Judge’s Decision denies the Motion to Dismiss based on the following:

3 Plaintiff takes issue with Judge Kushner’s January 4, 2022 ruling(s). However,
4 disagreement with a judge’s decisions and rulings during official proceedings does not
5 alone warrant disqualification. Further, Plaintiff argues a calendar setting and/or denial of
6 a stay is indicative of bias. The personal bias necessary to disqualify a judge must result
7 from an extrajudicial source.

8 See Chief Judge’s Decision, page 4 (lines 24-27). Plaintiff’s allegation of bias is based on Judge Kushner’s
9 abuse of judicial power. Despite facts and law to the contrary (i.e., closed mind), she ordered a non-party (Kristin
10 Taracki) to appear at an evidentiary hearing and for Plaintiff’s attorney to serve the non-party. Euphoria does
11 not dispute that Ms. Taracki is not a party and is no longer affiliated with Plaintiff. Rather than explain her
12 decision as an error or misunderstanding of the facts, Judge Kushner actually misrepresents the record in her
13 written response filed on February 7, 2022 to justify her abuse of judicial power and avoid disqualification.
14 Judge Kushner’s decision to misrepresent the record confirms that she *displays a deep-seated favoritism toward*
15 *Euphoria and/or antagonism against E&T that would make fair judgment impossible.*

16 Any judge who presides over the matter of disqualification can and should not ignore the following:

17 1. Plaintiff has no objection to participating in an evidentiary hearing before a district court judge
18 who considers the facts and applies the law (even if the judge makes a mistake). Judge Kushner frames the
19 evidentiary hearing as “an opportunity” for Plaintiff and Third Party Defendants to avoid case ending discovery
20 sanctions. Judge Kushner’s order requiring Ms. Taracki to appear and for counsel to Plaintiff to serve her *is not*
21 *an opportunity.* There is a clear distinction between ordering an evidentiary hearing (proper exercise of judicial
22 power even if there is no good cause) and ordering Plaintiff and its counsel to produce a non-party for an
23 appearance at an evidentiary hearing and for Plaintiff’s counsel personally to serve the non-party (clear abuse
24 of judicial power). See Cunningham v. District Court, 102 Nev. 551, 729 P.2d 1328 (1986). The fact that
25 Plaintiff is being afforded the “opportunity” to produce other witnesses does not resolve the due process issues
26 raised by Judge Kushner’s decision.
27
28

2. “An order is void ab initio if entered by a court in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the court had no power to render it, or if the mode of procedure used by the court was one that the court could ‘not lawfully adopt.’ 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)). A party (and its attorney as its agent/representative) is required to follow court orders, even erroneous ones, until overturned or terminated. Walker v. City of Birmingham, 388 U.S. 307, 320–21, 87 S.Ct. 1824, 18 L.Ed.2d 1210 (1967) (holding that order violating civil rights should have nevertheless been followed until overturned); see also Howat v. Kansas, 258 U.S. 181, 190, 42 S.Ct. 277, 66 L.Ed. 550 (1922) (“It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.”); see also Rish v. Simao, 368 P.3d 1203, 1210 (Nev. 2016).

3. Plaintiff filed a petition for a writ on January 26, 2022. Judge Kishner was served with a copy and presumably reviewed the same. Judge Kishner has the inherent power to vacate or modify her order at any time. See Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967); see also Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 650, 5 P.3d 569, 571 (2000) (the district court retains jurisdiction over an order that is being challenged in appellate courts by way of a writ petition). Despite the writ, she has refused to vacate or modify the order. In fact, after the Chief Judge’s Decision was issued and the Nevada Supreme Court denied the writ on February 10, 2022 (see Exhibit 2 attached hereto), Judge Kishner “doubled-down” and issued an amended order at 2:34 p.m. ordering Ms. Taracki to appear and for Plaintiff’s counsel to serve her. See Exhibit

3. Plaintiff expected the Nevada Supreme Court to deny the writ since the evidentiary hearing has not occurred.¹

4. Judge Kishner misrepresents the supplemental response by Plaintiff to Interrogatory No. 1

¹ Extraordinary and discretionary intervention may not be warranted if Judge Kishner does not impose any sanctions for the failure to produce and serve Ms. Taracki, who is a non-party.

propounded by Euphoria. For an accurate description, please see Plaintiff's opposition/countermotion filed on December 10, 2021 at 1:52 p.m. (Page 11). The supplemental response is as follows:

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:

For purposes of responding to this Interrogatory, E&T will assume the term "principals" mean the members of E&T. The members of E&T are Alex and Kristin Taracki. E&T is informed and believes based on available records for E&T that Mr. and Mrs. Taracki's address is as follows:

2244 Summerwind Circle
Henderson 89053

Compare id. with Judge Kushner's description in her written response filed on February 7, 2022 (Paragraph 11).

5. Judge Kushner misrepresents the record concerning the print-out from the website of the Nevada Secretary of State attached to E&T's reply filed on December 21, 2021 at 1:34 p.m. See Reply, page 5 and Exhibit 1 thereto. E&T represented to Judge Kushner that the print-out was the last annual list filed, which if reviewed clearly states it **was filed on July 1, 2019**. Compare id. with Judge Kushner's description in her written response filed on February 7, 2022 (Paragraph 12). E&T's counsel simply printed the record on December 21, 2021 and attached it (because Euphoria claimed while not required there was no evidentiary support for the response). According to the records of Plaintiff at the time of the supplemental response, the address provided in response to Euphoria's Interrogatory No. 1 was accurate. Ms. Taracki—as a managing member of E&T at the time—provided a declaration in support.

6. Plaintiff's counsel also represents Miral Consulting, LLC, CBD Supply Co., LLC, and Happy Campers, LLC ("Third Party Defendants") pursuant to a joint defense agreement with Plaintiff. Euphoria has referred to E&T and Third Party Defendants as "E&T Parties" in its filings. **Counsel for Plaintiff and Third Party Defendants have never referred to Plaintiff and Third Party Defendants as "E&T Ventures" and would challenge Judge Kushner to identify any papers and pleadings, which support her false claims.** See Footnote 4 to Judge Kushner's written response to disqualification on February 7, 2022. Counsel for Euphoria has repeatedly sought to have the district court treat Plaintiff and Third Party Defendants as "alter egos." Judge

1 Kishner has ordered an evidentiary hearing to consider (among other things) Euphoria’s request to have E&T,
2 the Third-Parties, and their respective principals deemed alter egos. The fact that Judge Kishner admits to
3 “treating” E&T and the Third Party Defendants as the same is evidence of her closed mind.

4
5 7. Plaintiff filed its motion for a stay on January 26, 2022 at 6:36 p.m. The clerk of the district
6 court accepted the filing but issued a notice of non-conforming document. See Notice, filed on January 27, 2022
7 at 11:47 a.m. The notice clearly indicates that the proposed notice of hearing included in the filing was provided
8 to chambers for the district court’s consideration. Id. The district court provided its response on February 1,
9 2022 via court minutes. See Court Minutes, February 1, 2022. The proposed notice was not filed stamped by
10 the clerk of the court. If the court preferred not to use the notice of hearing provided by Plaintiff in the filing,
11 the district court had the power (and opportunity) to prepare a minute order advancing the hearing date. That
12 effort would likely have required less judicial resources than preparing the minutes.

13
14 8. While Plaintiff has previously requested an order shortening time, it was not successful using
15 the method required by Judge Kishner. After the hearing on January 4, 2022, Plaintiff submitted to chambers
16 (rather than filed) a request to hear its motion for a protective order on shortened time concerning a deposition
17 set by Euphoria for 8:00 a.m. on January 7, 2022. Plaintiff’s counsel disclosed at the hearing on January 4, 2022
18 that he and his family were impacted by COVID-19. In addition to COVID-19 issues, Euphoria refused to
19 participate in a discovery conference on the substantive objections to the NRCP 30(b)(6) topics. On January
20 6, 2022 at 6:47 p.m. (just over 12 hours before the in-person deposition) the district court prepared and filed a
21 three (3) page order denying the request to hear the matter on shortened time. See Order, filed January 6, 2022
22 at 6:47 p.m. Plaintiff’s ex parte request did not become part of the record in the case because the court did not
23 file it (notwithstanding the court’s ruling on the application). Accordingly, Plaintiff filed (rather than submitted)
24 its motion and request for an order shortening time.

25
26 **C. Plaintiff has provided good cause for an evidentiary hearing, and the motion should not have**
27 **been denied summarily.**

28 As set forth above, Plaintiff has provided legally cognizable grounds supporting an inference of bias or

1 prejudice making summarily dismissal of the Motion for Disqualification inappropriate. See Hogan v. Warden,
2 112 Nev. 553, 560, 916 P.2d 805, 809 (1996); see also Ainsworth u. Combined Ins. Co. of Am., 105 Nev. 237,
3 270 774 P.2d 1003, 1026 (1989), abrogated on other grounds by Powers u. United Servs. Auto. Ass'n, 114 Nev.
4 690, 962 P.2d 596 (1998); In re Petition to Recall Dunleavy, 104 Nev. 784, 789, 769 P.2d 1271, 1274 (1988)).
5 The Chief Judge's Decision was based on the assumption that Plaintiff sought disqualification based solely on
6 the rulings and actions of Judge Kushner. Plaintiff's allegation of bias is based on Judge Kushner's abuse of
7 judicial power (used against Plaintiff and its attorney) and her misrepresentations of the record to justify the
8 abuse and avoid disqualification. Plaintiff does not contend that holding an evidentiary hearing on discovery
9 sanctions is or should be the basis for disqualification (regardless of how Judge Kushner wants to spin it).
10 Despite facts and law to the contrary (i.e., closed mind), Judge Kushner ordered a non-party to appear at an
11 evidentiary hearing on case ending discovery sanctions and for Plaintiff's attorney to serve the non-party. Judge
12 Kushner's misrepresentations contained in her written response filed on February 7, 2022 to justify her abuse of
13 judicial power confirms that she displays a deep-seated favoritism toward Euphoria and/or antagonism against
14 Plaintiff that would make fair judgment impossible. If Judge Kushner is willing to misrepresent the record to
15 avoid disqualification, there is risk of bias present to warrant disqualification. For this reason, it is unclear why
16 Chief Judge's Decision states "it does not appear that a risk of bias is present such that would warrant
17 disqualification[.]" A review of Judge Kushner's written response together with the record cited in the Motion
18 to Disqualify would lead a reasonable person to conclude that Judge Kushner is biased: she has ignored the
19 facts and law before her (closed mind), abused her judicial power, and misrepresented the record to justify
20 her abuse of judicial power and to avoid disqualification.

21
22
23 **D. If Chief Judge Bell refuses to withdraw or reconsider her decision and/or schedule an**
24 **evidentiary hearing, Plaintiff requests a stay of case pending a writ petition to be filed with**
25 **the Nevada Supreme Court.**

26 The Nevada Rules of Appellate Procedure provide a mechanism for seeking a stay pending a decision
27 from the Supreme Court. Under NRAP 8(a)(1), a party must ordinarily first seek a stay from the district court.
28 In considering whether to grant the requested stay, the Nevada Supreme Court considers: "(1) whether the object
of the ... writ petition will be defeated if the stay ... is denied; (2) whether [] petitioner will suffer irreparable

1 or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer
2 irreparable or serious injury if the stay ... is granted; and (4) whether [] petitioner is likely to prevail on the
3 merits in the appeal or writ petition.” NRAP 8(c), Hansen v. Eighth Jud. Dist. Ct., 116 Nev. 650, 657, 6 P.3d
4 982, 986 (2000). Any one factor is not more important than the others; however, where “one or two factors are
5 especially strong, they may counterbalance other weak factors.” Mikohn Gaming Corp. v. McCrea, 120 Nev.
6 248, 251, 89 P.3d 36, 38 (2004). Here, these factors, both individually and collectively, justify granting
7 Plaintiff’s requested stay. Any decision issued by Judge Kisher pending disqualification is void. See
8 Debiparshad v. The Eighth Judicial Dist. Court of State, 137 Nev. Adv. Op. 71 (Nev. 2021) (quoting Christie v.
9 City of El Centro, 37 Cal.Rptr.3d 718, 725 (Ct. App. 2006) (“[Disqualification occurs when the facts creating
10 disqualification arise, not when disqualification is established.”)). If Judge Kishner wants to continue to preside,
11 she should welcome an evidentiary hearing on her conduct. That evidentiary hearing would provide Plaintiff
12 and Judge Kishner an opportunity to present evidence (rather than allow Judge Kishner to misrepresent the
13 record). There is no harm to any party in the case from a stay.

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16 [AFFIDAVIT/DECLARATION/CERTIFICATION FOLLOWS]
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AFFIDAVIT/DECLARATION/CERTIFICATION PURSUANT TO NRS 1.235

The undersigned, MITCHELL STIPP, ESQ., declares under penalty of perjury, as follows:

1. I am counsel of record for E&T Ventures, LLC, a Nevada limited liability company (“E&T”)—the Plaintiff in the above-referenced case.

2. Joseph Kennedy is the sole manager and member of E&T.

3. The motion for disqualification (including my affidavit) filed on February 2, 2022 was served in accordance with NRS 1.235 via the district court’s e-service system on February 2, 2022 and delivered to the chambers of Judge Kishner on February 3, 2022. The motion for disqualification (including my affidavit) and the above motion (and this affidavit/declaration/certification) have been filed in good faith and not interposed for delay.

4. The facts set forth in the above motion are true and accurate. Such facts support withdrawal/reconsideration of the decision by Chief Judge Bell, an evidentiary hearing concerning the disqualification of Judge Kishner, and/or a stay of the case pending resolution of the issue of disqualification. I have personal knowledge of the facts contained in this filing unless otherwise qualified by information and belief or such knowledge is based on the record in this case, and I am competent to testify thereto, and such facts are true and accurate to the best of my knowledge and belief.

5. The exhibits attached to the above motion are true, accurate and complete.

DATED this 11th day of February, 2022.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

MITCHELL STIPP, ESQ.
Nevada Bar No. 7531
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144
Attorneys for Plaintiff, E&T Ventures, LLC

EXHIBIT 1

Mitchell Stipp <mstipp@stipplaw.com>

Re: Motion to Disqualify

1 message

Nicole Lovelock <nlovelock@joneslovelock.com>
To: Mitchell Stipp <mstipp@stipplaw.com>

Thu, Feb 10, 2022 at 7:44 AM

We will be filing the notice at 9 am. We will attach our communications thereto.

Thanks.

On Feb 10, 2022, at 7:35 AM, Mitchell Stipp <mstipp@stipplaw.com> wrote:

I will not be able to respond by 9am. Thank you for your patience.



Mitchell D. Stipp

Law Office of Mitchell Stipp, P.C.
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144

T: 702.602.1242 | M: 702.378.1907

E: mstipp@stipplaw.com

www.stipplaw.com

On Feb 9, 2022, 7:51 PM -0800, Nicole Lovelock <nlovelock@joneslovelock.com>, wrote:

Mitchell,
If we don't get a response by 9 am, we are filing the notice.

Good night.

On Feb 9, 2022, at 4:41 PM, Nicole Lovelock <nlovelock@joneslovelock.com> wrote:

I suggest Judge Bell, Judge Alf, Judge Denton, Judge Williams, or Judge Johnson. The Chief Judge or any of the Business Court Judges.

PLEASE NOTE OUR NEW ADDRESS

Nicole E. Lovelock, Esq.

<image001.png>

[6600 Amelia Earhart Ct., Suite C](#)

[Las Vegas, NV 89119](#)

P (702) 805-8450

F (702) 805-8451

E nlovelock@joneslovelock.com

Appendix 277

CONFIDENTIALITY NOTICE: This e-mail transmission (and/or the attachments accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the intended recipient. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. Please promptly notify the sender by reply e-mail, and then destroy all copies of the transmission.

From: Mitchell Stipp <mstipp@stipplaw.com>
Sent: Wednesday, February 9, 2022 4:37 PM
To: Nicole Lovelock <nlovelock@joneslovelock.com>
Subject: Re: Motion to Disqualify

Judge Kishner supplied her written response on Monday, February 7. Please provide a list of your choices for consideration. It is bad faith to represent to the court that no agreement was reached when no attempt was made.



www.stipplaw.com

Mitchell D. Stipp

Law Office of Mitchell Stipp, P.C.
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144

T: 702.602.1242 | **M:** 702.378.1907

E: mstipp@stipplaw.com

On Wed, Feb 9, 2022 at 4:29 PM Nicole Lovelock <nlovelock@joneslovelock.com> wrote:

Mitchell,

We haven't heard from you regarding your motion to disqualify the Judge. The rule provides, in relevant part:

6. A judge may challenge an affidavit alleging bias or prejudice by filing a written answer with the clerk of the court within 5 judicial days after the affidavit is filed, admitting or denying any or all of the allegations contained in the affidavit and setting forth any additional facts which bear on the question of the judge's disqualification. The question of the judge's disqualification must thereupon be heard and determined by another judge agreed upon by the parties or, if they are unable to agree, by a judge appointed:

(a) If the judge is a district judge, by the presiding judge of the judicial district in judicial districts having more than one judge, or if the presiding judge of the judicial district is sought to be disqualified, by the judge having the greatest number of years of service;

...

We assume that your silence meant that you will not agree to any of our choices and we can file notice that no agreement has been reached. If we do not hear from you by 5 pm, we will file notice that no agreement has been reached.

Appendix 278

Thanks,

PLEASE NOTE OUR NEW ADDRESS

Nicole E. Lovelock, Esq.

<image001.png>

6600 Amelia Earhart Ct., Suite C

Las Vegas, NV 89119

P (702) 805-8450

F (702) 805-8451

E nlovelock@joneslovelock.com

CONFIDENTIALITY NOTICE: This e-mail transmission (and/or the attachments accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the intended recipient. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. Please promptly notify the sender by reply e-mail, and then destroy all copies of the transmission.

EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

E&T VENTURES, LLC,
Petitioner,

vs.

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

Respondents,

and

EUPHORIA WELLNESS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Real Party in Interest.

No. 84133

FILED

FEB 10 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION*

This original petition for a writ of mandamus or prohibition challenges a district court order setting an evidentiary hearing to determine discovery sanctions, directing the nonparty who verified interrogatory responses on behalf of petitioner to appear, and directing counsel for petitioner to serve the order on the nonparty.

Having considered the petition and supporting documentation, we are not convinced that our extraordinary and discretionary intervention is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (observing that the party seeking writ relief bears the burden of showing such relief is warranted); *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (recognizing that writ

relief is an extraordinary remedy and that this court has sole discretion in determining whether to entertain a writ petition). Accordingly, we

ORDER the petition DENIED.¹

1 Hardesty, J.
Hardesty

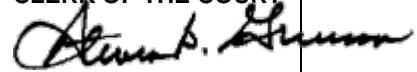
Stiglich, J.
Stiglich

Herndon, J.
Herndon

cc: Hon. Joanna Kishner, District Judge
Law Office of Mitchell Stipp
Jones Lovelock
Eighth District Court Clerk

¹In light of this order, petitioner's emergency motion for stay is denied as moot.

EXHIBIT 3



OSH

**DISTRICT COURT
CLARK COUNTY, NEVADA**

E&T VENTURES, LLC, a Nevada
limited liability company;

Case No.: A-19-796919-B

Dept. No.: XXXI

PLAINTIFF(S),

VS.

EUPHORIA WELLNESS, LLC, a
Nevada limited liability company;
DOE Individuals I-X, inclusive; and
ROE ENTITIES 1-10, inclusive;

DEFENDANT(S).

AMENDED¹ ORDER SETTING EVIDENTIARY HEARING

PLEASE TAKE NOTICE that the Court has ORDERED that the above-entitled matter be placed on calendar for an Evidentiary Hearing, as set forth at the hearing on January 4, 2022, for the appearance of Kristin Taracki, who is **ORDERED** to appear at the hearing as the person who verified the interrogatory responses in her role on behalf of E & T Ventures. The Evidentiary Hearing will

¹ This Amended Order is additional notice regarding the change in the date and time of the hearing which, as noted above, is February 11, 2022, as 3:00 p.m. and which date and time which was specifically set forth in the Notice provided to the parties that was filed and served on February 7, 2022. In addition, the change of hearing date has been publically available to all parties electronically. Such hearing was reset to accommodate Plaintiff. The prior Order dated January 20, 2022, remains in full force and affect; however, for the convenience of the parties the Court is providing this Amended Order which sets forth the continued date and time. In addition, this Amended Order is consistent with Administrative Order 22-04.

1 take place on **FEBRUARY 11, 2022, at 3:00 p.m.**, in Department XXXI, located at
2 the Regional Justice Center, 200 Lewis Avenue, Las Vegas, NV, 16th Floor,
3 **Courtroom 16B**. Counsel for Plaintiff, E & T Ventures, LLC. shall serve a copy of
4 this Order on Ms. Kristin Taracki.

5
6 The hearing may be attended remotely via Bluejeans if any party has a
7 health or safety concern, or parties may appear in-person. However, if any party
8 intends to appear remotely via Bluejeans, appearances must be attended
9 **audiovisually**. Telephonic appearances are not permitted.

10
11 **The Bluejeans connection information is:**

12 **Phone Dial-in**

13 [+1.408.419.1715](tel:+14084191715) (United States(San Jose))

14 [+1.408.915.6290](tel:+14089156290) (United States(San Jose))

15 [\(Global Numbers\)](#)

16 From internet browser, copy and paste:

17 <https://bluejeans.com/360511198/2386>

18 **Room System**


19 199.48.152.152 or bjn.vc

20 Meeting ID: **360 511 198**

21 Participant Passcode: **2386**

22 Failure to appear at the hearing may result in an Order to Show Cause being
23 issued with sanctions, up to and including, contempt of court and/or dismissal of
24 case.

25 Dated this 10th day of February, 2022

26 

27 HON. JOANNA S. KISHNER
28 DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

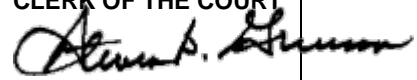
ALL REGISTERED COUNSEL AND/OR PARTIES APPEARING IN PROPER PERSON SERVED VIA ELECTRONIC SERVICE

/s/ Tracy L. Cordoba
TRACY L. CORDOBA-WHEELER
JUDICIAL EXECUTIVE ASSISTANT

EXHIBIT 5

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
2/11/2022 8:56 AM
Steven D. Grierson
CLERK OF THE COURT



E&T Ventures LLC, Plaintiff(s)
vs.
Euphoria Wellness LLC, Defendant(s)

Case No.: A-19-796919-B
Department 31

NOTICE OF HEARING

Please be advised that the Motion for Withdrawal/Reconsideration, for Evidentiary Hearing on Disqualification, or Alternatively for Stay Pending Writ Petition to Nevada Supreme Court in the above-entitled matter is set for hearing as follows:

Date: March 17, 2022
Time: 8:30 AM
Location: RJC Courtroom 16B
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

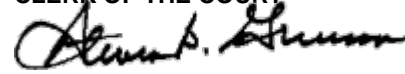
By: /s/ Chaunte Pleasant
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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

By: /s/ Chaunte Pleasant
Deputy Clerk of the Court

EXHIBIT 6



MITCHELL D. STIPP, ESQ.
Nevada Bar No. 7531
LAW OFFICE OF MITCHELL STIPP
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144
Telephone: 702.602.1242
mstipp@stipplaw.com
Attorneys for Plaintiff, E&T Ventures, LLC

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

E&T VENTURES, LLC, a Nevada limited liability company,

Plaintiff,

v.

EUPHORIA WELLNESS, LLC, a Nevada limited liability company; DOE Individuals I-X, inclusive; and ROE ENTITIES 1-10, inclusive;

Defendants.

ET AL.

CASE NO.: A-19-796919-B
DEPT. NO.: XXXI

CERTIFICATE OF SERVICE

The undersigned counsel for Plaintiff, E&T Ventures, LLC, a Nevada limited liability company ("E&T"), certifies that the motion and notice of hearing attached hereto as Exhibit A were served on Judge Joanna Kishner by filing the same in the above-referenced case on February 10, 2022, via email to Judge Kishner's Judicial Executive Assistant on February 11, 2022 (See Exhibit B), and personally via Legal Wings in accordance with NRS 1.235 on February 14, 2022 (See Exhibit C).

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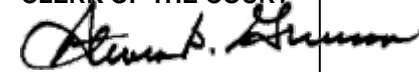
DATED this 15th day of February, 2022.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

MITCHELL STIPP, ESQ.
Nevada Bar No. 7531
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144
Attorneys for Plaintiff, E&T Ventures, LLC

EXHIBIT A



MITCHELL D. STIPP, ESQ.
Nevada Bar No. 7531
LAW OFFICE OF MITCHELL STIPP
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144
Telephone: 702.602.1242
mstipp@stipplaw.com
Attorneys for Plaintiff, E&T Ventures, LLC

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

E&T VENTURES, LLC, a Nevada limited
liability company,

Plaintiff,

v.

EUPHORIA WELLNESS, LLC, a Nevada
limited liability company; DOE Individuals I-X,
inclusive; and ROE ENTITIES 1-10, inclusive;

Defendants.

ET AL.

CASE NO.: A-19-796919-B
DEPT. NO.: XXXI

**MOTION FOR WITHDRAWAL/
RECONSIDERATION, EVIDENTIARY
HEARING ON DISQUALIFICATION, OR
ALTERNATIVELY FOR STAY PENDING
WRIT PETITION TO NEVADA SUPREME
COURT**

HEARING REQUESTED

E&T Ventures, LLC, by and through Mitchell Stipp, Esq., of the Law Office of Mitchell Stipp, files the
above-referenced motion.

This motion is based on the papers and pleadings on file in this case, the memorandum of points and
authorities that follow, the exhibits attached hereto or filed separately but concurrently herewith, and the
argument of counsel at the hearing.

///

///

///

1 DATED this 11th day of February, 2022.

2 **LAW OFFICE OF MITCHELL STIPP**

3
4 /s/ Mitchell Stipp

5
6 MITCHELL STIPP, ESQ.
7 Nevada Bar No. 7531
8 1180 N. Town Center Drive, Suite 100
9 Las Vegas, Nevada 89144
10 *Attorneys for Plaintiff, E&T Ventures, LLC*

11
12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 On February 2, 2022, Plaintiff, E&T Ventures, LLC, a Nevada limited liability company (“Plaintiff”),
14 filed an application to disqualify Judge Joanna Kishner in Department 31, from continuing to preside over the
15 above-referenced case, and the Affidavit of Mitchell Stipp, counsel for Plaintiff, pursuant to NRS 1.235 in
16 support (“Motion to Disqualify”). Subsequently, Plaintiff filed an errata to the Motion to Disqualify on the
17 same date. Judge Kishner filed her written response on February 7, 2022. Chief Judge Linda Bell issued a
18 decision on the matter, which was filed on February 10, 2022 (“Chief Judge’s Decision”).

19 NRS 1.235 provides the procedure for disqualifying Judge Kishner, which is set forth below:

20 1. Any party to an action or proceeding pending in any court other than the Supreme
21 Court or the Court of Appeals, who seeks to disqualify a judge for actual or implied bias or
22 prejudice must file an affidavit specifying the facts upon which the disqualification is sought.
23 **The affidavit of a party represented by an attorney must be accompanied by a certificate of the**
24 **attorney of record that the affidavit is filed in good faith and not interposed for delay.** Except
25 as otherwise provided in subsections 2 and 3, the affidavit must be filed:

26 (a) Not less than 20 days before the date set for trial or hearing of the case; or

27 (b) Not less than 3 days before the date set for the hearing of any pretrial matter.

28 2. Except as otherwise provided in this subsection and subsection 3, if a case is not
assigned to a judge before the time required under subsection 1 for filing the affidavit, the
affidavit must be filed:

(a) Within 10 days after the party or the party’s attorney is notified that the case has
been assigned to a judge;

1 (b) Before the hearing of any pretrial matter; or

2 (c) Before the jury is empaneled, evidence taken or any ruling made in the trial or
3 hearing,

4 whichever occurs first. If the facts upon which disqualification of the judge is sought are
5 not known to the party before the party is notified of the assignment of the judge or before any
6 pretrial hearing is held, the affidavit may be filed not later than the commencement of the trial or
7 hearing of the case.

8 3. If a case is reassigned to a new judge and the time for filing the affidavit under
9 subsection 1 and paragraph (a) of subsection 2 has expired, the parties have 10 days after notice
10 of the new assignment within which to file the affidavit, and the trial or hearing of the case must
11 be rescheduled for a date after the expiration of the 10-day period unless the parties stipulate to
12 an earlier date.

13 **4. At the time the affidavit is filed, a copy must be served upon the judge sought**
14 **to be disqualified. Service must be made by delivering the copy to the judge personally or by**
15 **leaving it at the judge's chambers with some person of suitable age and discretion employed**
16 **therein.**

17 5. Except as otherwise provided in subsection 6, the judge against whom an
18 affidavit alleging bias or prejudice is filed shall proceed no further with the matter and shall:

19 (a) If the judge is a district judge, immediately transfer the case to another
20 department of the court, if there is more than one department of the court in the district, or request
21 the judge of another district court to preside at the trial or hearing of the matter;

22 (b) If the judge is a justice of the peace, immediately arrange for another justice of
23 the peace to preside at the trial or hearing of the matter as provided pursuant to NRS 4.032, 4.340
24 or 4.345, as applicable; or

25 (c) If the judge is a municipal judge, immediately arrange for another municipal
26 judge to preside at the trial or hearing of the matter as provided pursuant to NRS 5.023 or 5.024,
27 as applicable.

28 6. A judge may challenge an affidavit alleging bias or prejudice by filing a written
answer with the clerk of the court within 5 judicial days after the affidavit is filed, admitting or
denying any or all of the allegations contained in the affidavit and setting forth any additional
facts which bear on the question of the judge's disqualification. **The question of the judge's**
disqualification must thereupon be heard and determined by another judge agreed upon by the
parties or, if they are unable to agree, by a judge appointed:

(a) If the judge is a district judge, by the presiding judge of the judicial district in
judicial districts having more than one judge, or if the presiding judge of the judicial district
is sought to be disqualified, by the judge having the greatest number of years of service;

(b) If the judge is a justice of the peace, by the presiding judge of the justice court in
justice courts having more than one justice of the peace, or if the presiding judge is sought to be
disqualified, by the justice of the peace having the greatest number of years of service;

(c) If the judge is a municipal judge, by the presiding judge of the municipal court
in municipal courts having more than one municipal judge, or if the presiding judge is sought to

1 be disqualified, by the municipal judge having the greatest number of years of service; or

2 (d) If there is no presiding judge, by the Supreme Court.

3 (emphasis added).

4 EDCR 2.24(b) permits rehearing of a matter upon a motion filed for such relief within fourteen (14)
5 days after service of written notice of entry of the subject order. The court also has the inherent authority to
6 reconsider its prior orders. Trail v. Faretto, 91 Nev. 401, 536 P.2d 1026 (1975). Reconsideration should be
7 granted when “there is a reasonable probability that the court may have arrived at an erroneous conclusion
8 or overlooked some important question necessary to a full and proper understanding of the case.” State v. Fitch,
9 68 Nev. 422, 233 P.2d 1070, 1072 (1951); accord, Moore v. City of Las Vegas, 92 Nev. 402, 551 P.2d 244, 246
10 (1976); Geller v. McCown, 64 Nev. 102, 178 P.2d 380, 381 (1947). “In a concise and non-argumentative
11 manner, such a petition should direct attention to some controlling matter which the court has overlooked
12 or misapprehended.” Matter of Ross, 99 Nev. 657, 668 P.2d 1089 (1983). The court may also relieve a party
13 from an order for any reason that justifies relief. See NRCp 60(b)(6).
14

15 **II. Basis for Withdrawal/Reconsideration and Evidentiary Hearing on Disqualification.**

16 **A. Chief Judge Bell’s Decision was Premature.**

17
18 NRS 1.235(6) permits the parties to agree on the judge to hear and decide the Motion to Disqualify.
19 The parties were working to reach an agreement on the district court judge to hear and decide the matter before
20 the Chief Judge’s Decision was filed on February 10, 2022 at 7:52 a.m. See Emails attached hereto as Exhibit
21 1. Accordingly, Chief Judge Bell’s decision to consider the matter and rule *sua sponte* was premature, and the
22 decision should be withdrawn. Euphoria’s counsel provided Plaintiff until 9:00 a.m. on February 10, 2022 to
23 provide its own list of judges or accept Euphoria’s suggestions. Id. For this reason, the decision should be
24 withdrawn as premature. If Chief Judge Bell decides not to withdraw the decision, E&T reserves its right to
25 file a petition for a writ to the Nevada Supreme Court. In any event, the Chief Judge’s Decision should be
26 reconsidered and an evidentiary hearing on disqualification set.
27

28 ///

///

1 **B. Extrajudicial Source is not required.**

2 The Chief Judge’s Decision denies the Motion to Dismiss based on the following:

3 Plaintiff takes issue with Judge Kushner’s January 4, 2022 ruling(s). However,
4 disagreement with a judge’s decisions and rulings during official proceedings does not
5 alone warrant disqualification. Further, Plaintiff argues a calendar setting and/or denial of
6 a stay is indicative of bias. The personal bias necessary to disqualify a judge must result
7 from an extrajudicial source.

8 See Chief Judge’s Decision, page 4 (lines 24-27). Plaintiff’s allegation of bias is based on Judge Kushner’s
9 abuse of judicial power. Despite facts and law to the contrary (i.e., closed mind), she ordered a non-party (Kristin
10 Taracki) to appear at an evidentiary hearing and for Plaintiff’s attorney to serve the non-party. Euphoria does
11 not dispute that Ms. Taracki is not a party and is no longer affiliated with Plaintiff. Rather than explain her
12 decision as an error or misunderstanding of the facts, Judge Kushner actually misrepresents the record in her
13 written response filed on February 7, 2022 to justify her abuse of judicial power and avoid disqualification.
14 Judge Kushner’s decision to misrepresent the record confirms that she *displays a deep-seated favoritism toward*
15 *Euphoria and/or antagonism against E&T that would make fair judgment impossible.*

16 Any judge who presides over the matter of disqualification can and should not ignore the following:

17 1. Plaintiff has no objection to participating in an evidentiary hearing before a district court judge
18 who considers the facts and applies the law (even if the judge makes a mistake). Judge Kushner frames the
19 evidentiary hearing as “an opportunity” for Plaintiff and Third Party Defendants to avoid case ending discovery
20 sanctions. Judge Kushner’s order requiring Ms. Taracki to appear and for counsel to Plaintiff to serve her *is not*
21 *an opportunity.* There is a clear distinction between ordering an evidentiary hearing (proper exercise of judicial
22 power even if there is no good cause) and ordering Plaintiff and its counsel to produce a non-party for an
23 appearance at an evidentiary hearing and for Plaintiff’s counsel personally to serve the non-party (clear abuse
24 of judicial power). See Cunningham v. District Court, 102 Nev. 551, 729 P.2d 1328 (1986). The fact that
25 Plaintiff is being afforded the “opportunity” to produce other witnesses does not resolve the due process issues
26 raised by Judge Kushner’s decision.
27
28

2. “An order is void ab initio if entered by a court in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the court had no power to render it, or if the mode of procedure used by the court was one that the court could ‘not lawfully adopt.’ 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)). A party (and its attorney as its agent/representative) is required to follow court orders, even erroneous ones, until overturned or terminated. Walker v. City of Birmingham, 388 U.S. 307, 320–21, 87 S.Ct. 1824, 18 L.Ed.2d 1210 (1967) (holding that order violating civil rights should have nevertheless been followed until overturned); see also Howat v. Kansas, 258 U.S. 181, 190, 42 S.Ct. 277, 66 L.Ed. 550 (1922) ("It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished."); see also Rish v. Simao, 368 P.3d 1203, 1210 (Nev. 2016).

3. Plaintiff filed a petition for a writ on January 26, 2022. Judge Kishner was served with a copy and presumably reviewed the same. Judge Kishner has the inherent power to vacate or modify her order at any time. See Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967); see also Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 650, 5 P.3d 569, 571 (2000) (the district court retains jurisdiction over an order that is being challenged in appellate courts by way of a writ petition). Despite the writ, she has refused to vacate or modify the order. In fact, after the Chief Judge’s Decision was issued and the Nevada Supreme Court denied the writ on February 10, 2022 (see Exhibit 2 attached hereto), Judge Kishner “doubled-down” and issued an amended order at 2:34 p.m. **ordering Ms. Taracki to appear** and for Plaintiff’s counsel to serve her. See Exhibit

3. Plaintiff expected the Nevada Supreme Court to deny the writ since the evidentiary hearing has not occurred.¹

4. Judge Kishner misrepresents the supplemental response by Plaintiff to Interrogatory No. 1

¹ Extraordinary and discretionary intervention may not be warranted if Judge Kishner does not impose any sanctions for the failure to produce and serve Ms. Taracki, who is a non-party.

propounded by Euphoria. For an accurate description, please see Plaintiff's opposition/countermotion filed on December 10, 2021 at 1:52 p.m. (Page 11). The supplemental response is as follows:

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:

For purposes of responding to this Interrogatory, E&T will assume the term "principals" mean the members of E&T. The members of E&T are Alex and Kristin Taracki. E&T is informed and believes based on available records for E&T that Mr. and Mrs. Taracki's address is as follows:

2244 Summerwind Circle
Henderson 89053

Compare id. with Judge Kushner's description in her written response filed on February 7, 2022 (Paragraph 11).

5. Judge Kushner misrepresents the record concerning the print-out from the website of the Nevada Secretary of State attached to E&T's reply filed on December 21, 2021 at 1:34 p.m. See Reply, page 5 and Exhibit 1 thereto. E&T represented to Judge Kushner that the print-out was the last annual list filed, which if reviewed clearly states it **was filed on July 1, 2019**. Compare id. with Judge Kushner's description in her written response filed on February 7, 2022 (Paragraph 12). E&T's counsel simply printed the record on December 21, 2021 and attached it (because Euphoria claimed while not required there was no evidentiary support for the response). According to the records of Plaintiff at the time of the supplemental response, the address provided in response to Euphoria's Interrogatory No. 1 was accurate. Ms. Taracki—as a managing member of E&T at the time—provided a declaration in support.

6. Plaintiff's counsel also represents Miral Consulting, LLC, CBD Supply Co., LLC, and Happy Campers, LLC ("Third Party Defendants") pursuant to a joint defense agreement with Plaintiff. Euphoria has referred to E&T and Third Party Defendants as "E&T Parties" in its filings. **Counsel for Plaintiff and Third Party Defendants have never referred to Plaintiff and Third Party Defendants as "E&T Ventures" and would challenge Judge Kushner to identify any papers and pleadings, which support her false claims.** See Footnote 4 to Judge Kushner's written response to disqualification on February 7, 2022. Counsel for Euphoria has repeatedly sought to have the district court treat Plaintiff and Third Party Defendants as "alter egos." Judge

1 Kishner has ordered an evidentiary hearing to consider (among other things) Euphoria’s request to have E&T,
2 the Third-Parties, and their respective principals deemed alter egos. The fact that Judge Kishner admits to
3 “treating” E&T and the Third Party Defendants as the same is evidence of her closed mind.

4
5 7. Plaintiff filed its motion for a stay on January 26, 2022 at 6:36 p.m. The clerk of the district
6 court accepted the filing but issued a notice of non-conforming document. See Notice, filed on January 27, 2022
7 at 11:47 a.m. The notice clearly indicates that the proposed notice of hearing included in the filing was provided
8 to chambers for the district court’s consideration. Id. The district court provided its response on February 1,
9 2022 via court minutes. See Court Minutes, February 1, 2022. The proposed notice was not filed stamped by
10 the clerk of the court. If the court preferred not to use the notice of hearing provided by Plaintiff in the filing,
11 the district court had the power (and opportunity) to prepare a minute order advancing the hearing date. That
12 effort would likely have required less judicial resources than preparing the minutes.

13
14 8. While Plaintiff has previously requested an order shortening time, it was not successful using
15 the method required by Judge Kishner. After the hearing on January 4, 2022, Plaintiff submitted to chambers
16 (rather than filed) a request to hear its motion for a protective order on shortened time concerning a deposition
17 set by Euphoria for 8:00 a.m. on January 7, 2022. Plaintiff’s counsel disclosed at the hearing on January 4, 2022
18 that he and his family were impacted by COVID-19. In addition to COVID-19 issues, Euphoria refused to
19 participate in a discovery conference on the substantive objections to the NRCP 30(b)(6) topics. On January
20 6, 2022 at 6:47 p.m. (just over 12 hours before the in-person deposition) the district court prepared and filed a
21 three (3) page order denying the request to hear the matter on shortened time. See Order, filed January 6, 2022
22 at 6:47 p.m. Plaintiff’s ex parte request did not become part of the record in the case because the court did not
23 file it (notwithstanding the court’s ruling on the application). Accordingly, Plaintiff filed (rather than submitted)
24 its motion and request for an order shortening time.

25
26 **C. Plaintiff has provided good cause for an evidentiary hearing, and the motion should not have**
27 **been denied summarily.**

28 As set forth above, Plaintiff has provided legally cognizable grounds supporting an inference of bias or

prejudice making summarily dismissal of the Motion for Disqualification inappropriate. See Hogan v. Warden, 112 Nev. 553, 560, 916 P.2d 805, 809 (1996); see also Ainsworth u. Combined Ins. Co. of Am., 105 Nev. 237, 270 774 P.2d 1003, 1026 (1989), abrogated on other grounds by Powers u. United Servs. Auto. Ass'n, 114 Nev. 690, 962 P.2d 596 (1998); In re Petition to Recall Dunleavy, 104 Nev. 784, 789, 769 P.2d 1271, 1274 (1988)). The Chief Judge's Decision was based on the assumption that Plaintiff sought disqualification based solely on the rulings and actions of Judge Kushner. Plaintiff's allegation of bias is based on Judge Kushner's abuse of judicial power (used against Plaintiff and its attorney) and her misrepresentations of the record to justify the abuse and avoid disqualification. Plaintiff does not contend that holding an evidentiary hearing on discovery sanctions is or should be the basis for disqualification (regardless of how Judge Kushner wants to spin it). Despite facts and law to the contrary (i.e., closed mind), Judge Kushner ordered a non-party to appear at an evidentiary hearing on case ending discovery sanctions and for Plaintiff's attorney to serve the non-party. Judge Kushner's misrepresentations contained in her written response filed on February 7, 2022 to justify her abuse of judicial power confirms that she displays a deep-seated favoritism toward Euphoria and/or antagonism against Plaintiff that would make fair judgment impossible. If Judge Kushner is willing to misrepresent the record to avoid disqualification, there is risk of bias present to warrant disqualification. For this reason, it is unclear why Chief Judge's Decision states "it does not appear that a risk of bias is present such that would warrant disqualification[.]" A review of Judge Kushner's written response together with the record cited in the Motion to Disqualify would lead a reasonable person to conclude that Judge Kushner is biased: she has ignored the facts and law before her (closed mind), abused her judicial power, and misrepresented the record to justify her abuse of judicial power and to avoid disqualification.

D. If Chief Judge Bell refuses to withdraw or reconsider her decision and/or schedule an evidentiary hearing, Plaintiff requests a stay of case pending a writ petition to be filed with the Nevada Supreme Court.

The Nevada Rules of Appellate Procedure provide a mechanism for seeking a stay pending a decision from the Supreme Court. Under NRAP 8(a)(1), a party must ordinarily first seek a stay from the district court. In considering whether to grant the requested stay, the Nevada Supreme Court considers: "(1) whether the object of the ... writ petition will be defeated if the stay ... is denied; (2) whether [] petitioner will suffer irreparable

1 or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer
2 irreparable or serious injury if the stay ... is granted; and (4) whether [] petitioner is likely to prevail on the
3 merits in the appeal or writ petition.” NRAP 8(c), Hansen v. Eighth Jud. Dist. Ct., 116 Nev. 650, 657, 6 P.3d
4 982, 986 (2000). Any one factor is not more important than the others; however, where “one or two factors are
5 especially strong, they may counterbalance other weak factors.” Mikohn Gaming Corp. v. McCrea, 120 Nev.
6 248, 251, 89 P.3d 36, 38 (2004). Here, these factors, both individually and collectively, justify granting
7 Plaintiff’s requested stay. Any decision issued by Judge Kisher pending disqualification is void. See
8 Debiparshad v. The Eighth Judicial Dist. Court of State, 137 Nev. Adv. Op. 71 (Nev. 2021) (quoting Christie v.
9 City of El Centro, 37 Cal.Rptr.3d 718, 725 (Ct. App. 2006) (“[Disqualification occurs when the facts creating
10 disqualification arise, not when disqualification is established.”)). If Judge Kishner wants to continue to preside,
11 she should welcome an evidentiary hearing on her conduct. That evidentiary hearing would provide Plaintiff
12 and Judge Kishner an opportunity to present evidence (rather than allow Judge Kishner to misrepresent the
13 record). There is no harm to any party in the case from a stay.

14
15
16 [AFFIDAVIT/DECLARATION/CERTIFICATION FOLLOWS]
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AFFIDAVIT/DECLARATION/CERTIFICATION PURSUANT TO NRS 1.235

The undersigned, MITCHELL STIPP, ESQ., declares under penalty of perjury, as follows:

1. I am counsel of record for E&T Ventures, LLC, a Nevada limited liability company (“E&T”)—the Plaintiff in the above-referenced case.

2. Joseph Kennedy is the sole manager and member of E&T.

3. The motion for disqualification (including my affidavit) filed on February 2, 2022 was served in accordance with NRS 1.235 via the district court’s e-service system on February 2, 2022 and delivered to the chambers of Judge Kishner on February 3, 2022. The motion for disqualification (including my affidavit) and the above motion (and this affidavit/declaration/certification) have been filed in good faith and not interposed for delay.

4. The facts set forth in the above motion are true and accurate. Such facts support withdrawal/reconsideration of the decision by Chief Judge Bell, an evidentiary hearing concerning the disqualification of Judge Kishner, and/or a stay of the case pending resolution of the issue of disqualification. I have personal knowledge of the facts contained in this filing unless otherwise qualified by information and belief or such knowledge is based on the record in this case, and I am competent to testify thereto, and such facts are true and accurate to the best of my knowledge and belief.

5. The exhibits attached to the above motion are true, accurate and complete.

DATED this 11th day of February, 2022.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

MITCHELL STIPP, ESQ.
Nevada Bar No. 7531
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144
Attorneys for Plaintiff, E&T Ventures, LLC

EXHIBIT 1

Mitchell Stipp <mstipp@stiplaw.com>

Re: Motion to Disqualify

1 message

Nicole Lovelock <nlovelock@joneslovelock.com>
To: Mitchell Stipp <mstipp@stiplaw.com>

Thu, Feb 10, 2022 at 7:44 AM

We will be filing the notice at 9 am. We will attach our communications thereto.

Thanks.

On Feb 10, 2022, at 7:35 AM, Mitchell Stipp <mstipp@stiplaw.com> wrote:

I will not be able to respond by 9am. Thank you for your patience.



Mitchell D. Stipp

Law Office of Mitchell Stipp, P.C.
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144

T: 702.602.1242 | M: 702.378.1907

E: mstipp@stiplaw.com

www.stiplaw.com

On Feb 9, 2022, 7:51 PM -0800, Nicole Lovelock <nlovelock@joneslovelock.com>, wrote:

Mitchell,
If we don't get a response by 9 am, we are filing the notice.

Good night.

On Feb 9, 2022, at 4:41 PM, Nicole Lovelock <nlovelock@joneslovelock.com> wrote:

I suggest Judge Bell, Judge Alf, Judge Denton, Judge Williams, or Judge Johnson. The Chief Judge or any of the Business Court Judges.

PLEASE NOTE OUR NEW ADDRESS

Nicole E. Lovelock, Esq.

<image001.png>

[6600 Amelia Earhart Ct., Suite C](#)

[Las Vegas, NV 89119](#)

P (702) 805-8450

F (702) 805-8451

E nlovelock@joneslovelock.com

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From: Mitchell Stipp <mstipp@stiplaw.com>
Sent: Wednesday, February 9, 2022 4:37 PM
To: Nicole Lovelock <nlovelock@joneslovelock.com>
Subject: Re: Motion to Disqualify

Judge Kishner supplied her written response on Monday, February 7. Please provide a list of your choices for consideration. It is bad faith to represent to the court that no agreement was reached when no attempt was made.



www.stiplaw.com

Mitchell D. Stipp

Law Office of Mitchell Stipp, P.C.
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144

T: 702.602.1242 | **M:** 702.378.1907

E: mstipp@stiplaw.com

On Wed, Feb 9, 2022 at 4:29 PM Nicole Lovelock <nlovelock@joneslovelock.com> wrote:

Mitchell,

We haven't heard from you regarding your motion to disqualify the Judge. The rule provides, in relevant part:

6. A judge may challenge an affidavit alleging bias or prejudice by filing a written answer with the clerk of the court within 5 judicial days after the affidavit is filed, admitting or denying any or all of the allegations contained in the affidavit and setting forth any additional facts which bear on the question of the judge's disqualification. The question of the judge's disqualification must thereupon be heard and determined by another judge agreed upon by the parties or, if they are unable to agree, by a judge appointed:

(a) If the judge is a district judge, by the presiding judge of the judicial district in judicial districts having more than one judge, or if the presiding judge of the judicial district is sought to be disqualified, by the judge having the greatest number of years of service;

...

We assume that your silence meant that you will not agree to any of our choices and we can file notice that no agreement has been reached. If we do not hear from you by 5 pm, we will file notice that no agreement has been reached.

Thanks,

PLEASE NOTE OUR NEW ADDRESS

Nicole E. Lovelock, Esq.

<image001.png>

6600 Amelia Earhart Ct., Suite C

Las Vegas, NV 89119

P (702) 805-8450

F (702) 805-8451

E nlovelock@joneslovelock.com

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EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

E&T VENTURES, LLC,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JOANNA KISHNER, DISTRICT
JUDGE,
Respondents,
and
EUPHORIA WELLNESS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Real Party in Interest.

No. 84133

FILED

FEB 10 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION*

This original petition for a writ of mandamus or prohibition challenges a district court order setting an evidentiary hearing to determine discovery sanctions, directing the nonparty who verified interrogatory responses on behalf of petitioner to appear, and directing counsel for petitioner to serve the order on the nonparty.

Having considered the petition and supporting documentation, we are not convinced that our extraordinary and discretionary intervention is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (observing that the party seeking writ relief bears the burden of showing such relief is warranted); *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (recognizing that writ



relief is an extraordinary remedy and that this court has sole discretion in determining whether to entertain a writ petition). Accordingly, we

ORDER the petition DENIED.¹

Hardesty, J.
Hardesty

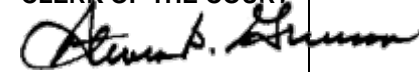
Stiglich, J.
Stiglich

Herndon, J.
Herndon

cc: Hon. Joanna Kishner, District Judge
Law Office of Mitchell Stipp
Jones Lovelock
Eighth District Court Clerk

¹In light of this order, petitioner's emergency motion for stay is denied as moot.

EXHIBIT 3



1 OSH
2
3

4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 E&T VENTURES, LLC, a Nevada
7 limited liability company;

Case No.: A-19-796919-B

8 PLAINTIFF(S),

Dept. No.: XXXI

9 VS.

10
11 EUPHORIA WELLNESS, LLC, a
12 Nevada limited liability company;
13 DOE Individuals I-X, inclusive; and
14 ROE ENTITIES 1-10, inclusive;

DEFENDANT(S).

15
16 **AMENDED¹ ORDER SETTING EVIDENTIARY HEARING**

17
18 PLEASE TAKE NOTICE that the Court has ORDERED that the above-
19 entitled matter be placed on calendar for an Evidentiary Hearing, as set forth at the
20 hearing on January 4, 2022, for the appearance of **Kristin Taracki**, who is
21 **ORDERED** to appear at the hearing as the person who verified the interrogatory
22 responses in her role on behalf of E & T Ventures. The Evidentiary Hearing will
23

24
25 ¹ This Amended Order is additional notice regarding the change in the date and time of the hearing which, as
26 noted above, is February 11, 2022, as 3:00 p.m. and which date and time which was specifically set forth in the
27 Notice provided to the parties that was filed and served on February 7, 2022. In addition, the change of
28 hearing date has been publically available to all parties electronically. Such hearing was reset to accommodate
Plaintiff. The prior Order dated January 20, 2022, remains in full force and affect; however, for the
convenience of the parties the Court is providing this Amended Order which sets forth the continued date and
time. In addition, this Amended Order is consistent with Administrative Order 22-04.

1 take place on **FEBRUARY 11, 2022, at 3:00 p.m.**, in Department XXXI, located at
2 the Regional Justice Center, 200 Lewis Avenue, Las Vegas, NV, 16th Floor,
3 **Courtroom 16B**. Counsel for Plaintiff, E & T Ventures, LLC. shall serve a copy of
4 this Order on Ms. Kristin Taracki.

5 The hearing may be attended remotely via Bluejeans if any party has a
6 health or safety concern, or parties may appear in-person. However, if any party
7 intends to appear remotely via Bluejeans, appearances must be attended
8 **audiovisually**. Telephonic appearances are not permitted.

10
11 **The Bluejeans connection information is:**

12 **Phone Dial-in**

13 [+1.408.419.1715](tel:+14084191715) (United States(San Jose))

14 [+1.408.915.6290](tel:+14089156290) (United States(San Jose))

([Global Numbers](#))

15 From internet browser, copy and paste:

16 <https://bluejeans.com/360511198/2386>

17 **Room System**


18 199.48.152.152 or bjn.vc

19 Meeting ID: **360 511 198**

20 Participant Passcode: **2386**

21 Failure to appear at the hearing may result in an Order to Show Cause being
22 issued with sanctions, up to and including, contempt of court and/or dismissal of
23 case.

24 Dated this 10th day of February, 2022

25
26 

27 HON. JOANNA S. KISHNER
28 DISTRICT COURT JUDGE

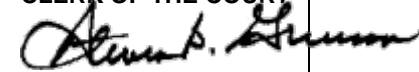
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

ALL REGISTERED COUNSEL AND/OR PARTIES APPEARING IN PROPER PERSON SERVED VIA ELECTRONIC SERVICE

/s/ Tracy L. Cordoba
TRACY L. CORDOBA-WHEELER
JUDICIAL EXECUTIVE ASSISTANT



DISTRICT COURT
CLARK COUNTY, NEVADA

E&T Ventures LLC, Plaintiff(s)

Case No.: A-19-796919-B

vs.

Euphoria Wellness LLC, Defendant(s)

Department 31

NOTICE OF HEARING

Please be advised that the Motion for Withdrawal/Reconsideration, for Evidentiary Hearing on Disqualification, or Alternatively for Stay Pending Writ Petition to Nevada Supreme Court in the above-entitled matter is set for hearing as follows:

Date: March 17, 2022

Time: 8:30 AM

Location: RJC Courtroom 16B
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Chaunte Pleasant
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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

By: /s/ Chaunte Pleasant
Deputy Clerk of the Court

EXHIBIT B

Mitchell Stipp <mstipp@stipplaw.com>

RE: CASE NO.: A-19-796919-B

1 message

Cordoba-Wheeler, Tracy <cordt@clarkcountycourts.us>
To: Mitchell Stipp <mstipp@stipplaw.com>
Cc: Nicole Lovelock <nlovelock@joneslovelock.com>

Mon, Feb 14, 2022 at 2:39 PM

Mr. Stipp,

Thank you. I appreciate the clarification.

Tracy L. Cordoba
Judicial Executive Assistant to the
Honorable Joanna S. Kishner
Office number: 702-671-3634
Email: cordt@clarkcountycourts.us

From: Mitchell Stipp [mailto:mstipp@stipplaw.com]
Sent: Monday, February 14, 2022 2:35 PM
To: Cordoba-Wheeler, Tracy
Cc: Nicole Lovelock
Subject: RE: CASE NO.: A-19-796919-B

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Ms. Cordoba-Wheeler:

Than you for the response. As you should see, the email was copied to Nicole Lovelock who represents Euphoria Wellness, LLC. It was not ex parte. Further, the attachments are documents filed in the case. They were previously e-served. The attachments are merely courtesy copies.

I apologize for any confusion.



www.stipplaw.com

Mitchell D. Stipp

Law Office of Mitchell Stipp, P.C.
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144

T: 702.602.1242 | M: 702.378.1907

E: mstipp@stiplaw.com

On Feb 14, 2022, 2:26 PM -0800, Cordoba-Wheeler, Tracy <cordt@clarkcountycourts.us>, wrote:

Mr. Stipp,

Unfortunately, the Court is unable to read the correspondence from counsel and/or a party as it could be viewed as an ex parte communication or an improper communication to the Court or the Department. In the future, in order to avoid the appearance of any ex parte communication to the Court by any party, or its counsel, please do not email any correspondence to the Court unless specifically directed by the Court, or as specifically set forth in a rule and/or Administrative Order, ensuring all parties are copied. All correspondence to the Court must comply with all rules, including-but not limited to-EDCR 2.22, 7.25, 7.26, and 7.74. All parties and/or their counsel, and the sending party/counsel, must ensure that all parties and/or counsel are copied on the correspondence. Unsolicited emailed communications cannot be responded to pursuant to the rules.

Thank you,

Tracy L. Cordoba

Judicial Executive Assistant to the

Honorable Joanna S. Kishner

Office number: 702-671-3634

Email: cordt@clarkcountycourts.us

From: Mitchell Stipp [mailto:mstipp@stiplaw.com]

Sent: Friday, February 11, 2022 5:35 PM

To: Cordoba-Wheeler, Tracy

Cc: Nicole Lovelock

Subject: CASE NO.: A-19-796919-B

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Ms. Cordoba-Wheeler:

Attached are courtesy copies of the notices filed today before the evidentiary hearing and the renewed motion for disqualification (together with the notice of hearing regarding the same). As disclosed on the record, the motion was filed on February 10, 2022 and a hearing scheduled for March 17, 2022.

I have also included the email from JONES LOVELOCK providing Euphoria's proposed exhibits for the evidentiary hearing today, which were only provided to me at 2:24 p.m. (less than an hour before the hearing). These exhibits were not admitted into evidence at the evidentiary hearing and do not contain any of the actual documents disclosed as referenced in the supplemental disclosures and discovery responses (despite Ms. Lovelock's statements to the contrary).

I will follow up on the hard copy of the renewed motion for disqualification sent down to chambers for personal service by my office.



www.stipplaw.com

Mitchell D. Stipp

Law Office of Mitchell Stipp, P.C.
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144

T: 702.602.1242 | **M:** 702.378.1907

E: mstipp@stipplaw.com

EXHIBIT C

Mitchell Stipp <mstipp@stiplaw.com>

1000156523

1 message

Court <court@legalwings.com>
To: "mstipp@stiplaw.com" <mstipp@stiplaw.com>

Mon, Feb 14, 2022 at 10:10 AM

Good morning,

Please see the attached delivery to Dept. 31. Per Tracy place in box and she will come out and retrieve.

Thank you,
Amanda Meier
Legal Wings Inc.
[1118 Fremont St.](#)
[Las Vegas, NV 89101](#)
(702) 384-0305 Ext. 110
Business Hours: M-F 9am-4pm

3 attachments



IMG_0838.jpg
2294K



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2052K



IMG_0840.jpg
2364K

DISTRICT COURT
DEPT. 31 - DELIVERIES

2/14/22, 7:00 AM

RUN: # 205 (T & TH, PM)
FIRM Law Office of Mitchell Stipp
ADDR 1180 N. Town Center # 100, Las Vegas, NV 89144
PH # 702.602.1242
CASE NAME E&T Ventures, LLC vs. Euphoria Wellness, LLC
Documents Motion for Withdrawal/Reconsideration
2022-02-13-332-Service_Package-
Motion_for_Withdrawal_and_Clerks_Notice_of_Hearing.pdf
REF # Judge Kishner
Limit of Liability: \$100.00 per form

1118 Fremont Street
Las Vegas, NV 89101
Ph 384-0305 Fax 384-8638

PILB #389
1000156523
ATTN: Mitchell Stipp DATE: 02/13/2022
EXT:
NO. 31
CK #

☐ Return Copy ☐ Return Original ☐ No Documents Uploaded
Pick-up Location Documents Submitted Electronically

1. Deliver to Chambers of Judge Kishner at RJC: Must be personally handed to Judge or staff member of Judge. DO NOT PLACE IN JUDGE'S BOX. USE CALL BOX TO REQUEST MEMBER OF JUDGE'S STAFF TO RECEIVE A COPY BY HAND.

2. Must be delivered between 8:00 am and 10am on February 24, 2022.

3. Please confirm delivery via email to mstipp@stipplaw.com.

4.

☐ NEXT SCHED DAY ☐ SPECIAL (4HRS) ☒ EXPEDITED (2HRS)

Statute Expires

May be subject to an additional charge.

LAST DATE: 02/14/2022 10am
RETURN DATE: 02/14/2022 12pm

Received by
Date 2/14/2022 Time
☐ NOT COMPLETE DUE TO

☒ DISTRICT
☐ DISCOVERY
☐ ARB
☐ FAMILY
☐ JUSTICE
☐ MUNI CT.
☐ RECORDER
☐ FEDERAL
☐ BANKRUPTCY
☐ SECRETARY OF STATE
☐ HEARING OFFICER
☐ APPEALS OFFICER

24 PGS

Per Tracy in Dept. 31 leave in drop box
and she will pick up. Call Mitchell Stipp
and inform. Requested by atty to email
pictures of delivery.

DISTRICT COURT
DEPT. 31 - DELIVERIES

Electronically Filed
2/10/2022 7:10 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 MITCHELL D. STIPP, ESQ.
2 Nevada Bar No. 7531
3 **LAW OFFICE OF MITCHELL STIPP**
4 1180 N. Town Center Drive, Suite 100
5 Las Vegas, Nevada 89144
6 Telephone: 702.602.1242
7 mstipp@stippplaw.com
8 *Attorneys for Plaintiff, E&T Ventures, LLC*

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

E&T VENTURES, LLC, a Nevada limited
liability company,

Plaintiff,

v.

EUPHORIA WELLNESS, LLC, a Nevada
limited liability company; DOE Individuals I-X,
inclusive; and ROE ENTITIES I-10, inclusive;

Defendants.

ET AL.

CASE NO.: A-19-796919-B
DEPT. NO.: XXXI

MOTION FOR WITHDRAWAL/
RECONSIDERATION, EVIDENTIARY
HEARING ON DISQUALIFICATION, OR
ALTERNATIVELY FOR STAY PENDING
WRIT PETITION TO NEVADA SUPREME
COURT

HEARING REQUESTED

E&T Ventures, LLC, by and through Mitchell Stipp, Esq., of the Law Office of Mitchell Stipp, files the
above-referenced motion.

This motion is based on the papers and pleadings on file in this case, the memorandum of points and
authorities that follow, the exhibits attached hereto or filed separately but concurrently herewith, and the
argument of counsel at the hearing.

///

DISTRICT COURT
DEPT. 31 - DELIVERIES

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MITCHELL D. STIPP, Esq.
COURT REPORTER & VIDEO
1000 N. Green Valley Road, Suite 100
Las Vegas, Nevada 89106
702.735.1100
mitchell@stipp.com
www.mitchellstipp.com

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

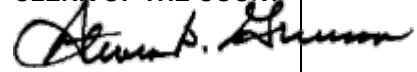
E&T VENTURES, LLC, a Nevada limited liability company, Plaintiff,	CASE NO. 18-000000-0 DEPT. NO. XXX
vs. EUPHORIA WELLNESS, LLC, a Nevada limited liability company; D&W Individuals I-X, Inc.; and KUI ENTITIES 1-10, Inc.; Defendants.	DEFENDANT PERS. WITHDRAWAL / RECONSIDERATION, SUPERVISORY HEARING ON DISCIPLINARY ACTION, AND ALTERNATIVES FOR STAY PENDING WRIT PETITION TO NEVADA SUPREME COURT
ET AL.	HEARING REQUESTED

E&T Ventures, LLC, by and through Mitchell Stipp, Esq., of the Law Office of Mitchell Stipp, files the above-referenced motion.

This motion is based on the papers and pleadings on file in this case, the memorandum of points and authorities that follow, the exhibits attached hereto or filed separately but concurrently herewith, and the argument of counsel at the hearing.

1

EXHIBIT 7



OSH

**DISTRICT COURT
CLARK COUNTY, NEVADA**

E&T VENTURES, LLC, a Nevada
limited liability company;

Case No.: A-19-796919-B

Dept. No.: XXXI

PLAINTIFF(S),

VS.

EUPHORIA WELLNESS, LLC, a
Nevada limited liability company;
DOE Individuals I-X, inclusive; and
ROE ENTITIES 1-10, inclusive;

DEFENDANT(S).

AMENDED¹ ORDER SETTING EVIDENTIARY HEARING

PLEASE TAKE NOTICE that the Court has ORDERED that the above-entitled matter be placed on calendar for an Evidentiary Hearing, as set forth at the hearing on January 4, 2022, for the appearance of Kristin Taracki, who is **ORDERED** to appear at the hearing as the person who verified the interrogatory responses in her role on behalf of E & T Ventures. The Evidentiary Hearing will

¹ This Amended Order is additional notice regarding the change in the date and time of the hearing which, as noted above, is February 11, 2022, as 3:00 p.m. and which date and time which was specifically set forth in the Notice provided to the parties that was filed and served on February 7, 2022. In addition, the change of hearing date has been publically available to all parties electronically. Such hearing was reset to accommodate Plaintiff. The prior Order dated January 20, 2022, remains in full force and affect; however, for the convenience of the parties the Court is providing this Amended Order which sets forth the continued date and time. In addition, this Amended Order is consistent with Administrative Order 22-04.

1 take place on **FEBRUARY 11, 2022, at 3:00 p.m.**, in Department XXXI, located at
2 the Regional Justice Center, 200 Lewis Avenue, Las Vegas, NV, 16th Floor,
3 **Courtroom 16B**. Counsel for Plaintiff, E & T Ventures, LLC. shall serve a copy of
4 this Order on Ms. Kristin Taracki.

5
6 The hearing may be attended remotely via Bluejeans if any party has a
7 health or safety concern, or parties may appear in-person. However, if any party
8 intends to appear remotely via Bluejeans, appearances must be attended
9 **audiovisually**. Telephonic appearances are not permitted.

10
11 **The Bluejeans connection information is:**

12 **Phone Dial-in**

13 [+1.408.419.1715](tel:+14084191715) (United States(San Jose))

14 [+1.408.915.6290](tel:+14089156290) (United States(San Jose))

15 [\(Global Numbers\)](#)

16 From internet browser, copy and paste:

17 <https://bluejeans.com/360511198/2386>

18 **Room System**


19 199.48.152.152 or bjn.vc

20 Meeting ID: **360 511 198**

21 Participant Passcode: **2386**

22 Failure to appear at the hearing may result in an Order to Show Cause being
23 issued with sanctions, up to and including, contempt of court and/or dismissal of
24 case.

25 Dated this 10th day of February, 2022

26 

27 HON. JOANNA S. KISHNER
28 DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

ALL REGISTERED COUNSEL AND/OR PARTIES APPEARING IN PROPER PERSON SERVED VIA ELECTRONIC SERVICE

/s/ Tracy L. Cordoba
TRACY L. CORDOBA-WHEELER
JUDICIAL EXECUTIVE ASSISTANT

EXHIBIT 8

A-19-796919-B E&T Ventures LLC, Plaintiff(s)
vs.
Euphoria Wellness LLC, Defendant(s)

February 11, 2022 03:00 PM All Pending Motions

HEARD BY: Kishner, Joanna S. COURTROOM: RJC Courtroom 16B

COURT CLERK: Rapel, Stephanie

RECORDER: Wood, Velvet

REPORTER:

PARTIES PRESENT:

Justin C. Jones Attorney for Counter Claimant, Cross
Claimant, Defendant

Marta D. Kurshumova Attorney for Counter Claimant, Cross
Claimant, Defendant

Mitchell D. Stipp Attorney for Counter Defendant, Cross
Defendant, Plaintiff

Nicole E. Lovelock Attorney for Counter Claimant, Cross
Claimant, Defendant

JOURNAL ENTRIES

STATUS CHECK MOTION TO SEAL EXHIBITS TO EUPHORIA WELLNESS, LLC'S
MOTION FOR PARTIAL SUMMARY JUDGMENT EUPHORIA WELLNESS, LLC'S MOTION
FOR PARTIAL SUMMARY JUDGMENT MOTION FOR PROTECTIVE ORDER ON
EUPHORIA'S NRCP 30(B)(6) DEPOSITION OF E&T VENTURES, LLC MOTION TO SEAL
EXHIBITS TO REPLY IN SUPPORT OF EUPHORIA WELLNESS, LLC'S MOTION FOR
PARTIAL SUMMARY JUDGMENT PLAINTIFF'S MOTION FOR ATTORNEY FEES AND
COSTS EVIDENTIARY HEARING

Court noted the history of the matter and advised Evidentiary hearing was regarding whether or not there was compliance with discovery responses and if sanctions were warranted. Mr. Stipp stated he objected to the Evidentiary hearing moving forward and he filed a Motion for disqualification and an affidavit yesterday. Colloquy regarding Court's authority to proceed with the matter and supplemental disclosures and exhibits. Court noted the first day of the evidentiary hearing was completed due to timing issues and for the Court to review exhibits and recent filings. Court to determine whether or not there was compliance and if another evidentiary hearing was necessary. Court to contact parties regarding status and to reschedule Motion hearings.

EXHIBIT 9

1 **ORDR**

2 **EIGHTH JUDICIAL DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 E&T VENTURES LLC,

5 Plaintiff,

6 vs.

7 EUPHORIA WELLNESS LLC, ET AL.

8 Defendant(s).

Case No. A-19-796919-B

Dept. No. 31

9
10 **ORDER**

11 On February 10, 2022, Plaintiff E&T Ventures (“E&T” or “Plaintiff”) filed a Motion to
12 Reconsider/Withdraw this Court’s Decision and Order Denying Disqualification. Plaintiff alleges
13 that this Court’s Decision and Order was premature, and that an evidentiary hearing should have
14 been held on the matter. Based on a review of the Motion and the relevant record, pursuant to EDCR
15 2.23(a), the Motion is denied.

16 *I. Withdrawal of Decision*

17 The Chief Judge regularly determines questions of disqualification in the Eighth Judicial
18 District Court pursuant to NRS 1.235(6). Motions to disqualify are typically handled as
19 expeditiously as possible, given the nature of such a request and the effect it has on a case. This is
20 further indicated by the use of “thereupon” in the statute. Thereupon, Black’s Law Dictionary (11th
21 ed. 2019) (defined as “Immediately; without delay; promptly”). Because disqualification is
22 considered a question requiring prompt resolution, pursuant to NRS 1.235(6) once a judge has
23 responded to a disqualification request, the matter is considered procedurally ready for decision.

24 Here, Plaintiff alleges this Court’s Decision was premature. Plaintiff states the parties were
25 permitted to select a judge to hear the disqualification pursuant to NRS 1.235(6). However, no
26 indication was provided in the original motion or by other means regarding parties considering or
27 agreeing to a judge. Plaintiff attached an exhibit to the instant Motion to Reconsider demonstrating
28 that the parties were attempting to select a judge via email, but the emails do not show an agreement

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 was reached. This Court issued its decision three days following Judge Kishner's response to the
2 motion to disqualify. The matter was ready for decision, and this Court has the proper authority to
3 determine such questions. Plaintiff's assertion that opposing counsel provided a deadline of 9 a.m.
4 on February 10, 2022 does not affect this Court's decision. Plaintiff's request that this Court
5 withdraw its Decision on the basis of it being premature is DENIED.

6 *II. NRCP 60(b)(6) Reconsideration*

7 In the request for reconsideration, Plaintiff cites to EDCR 2.24(b) and NRCP 60(b)(6). Rule
8 60(b) of the Nevada Rules of Civil Procedure permit the reconsideration of a district court order
9 based on six grounds. The grounds for reconsideration are

10 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered
11 evidence which by due diligence could not have been discovered in time to move for
12 a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or
13 extrinsic), misrepresentation or other misconduct of an adverse party; (4) the
14 judgment is void; or, (5) the judgment has been satisfied, released, or discharged, or a
prior judgment upon which it is based has been reversed or otherwise vacated, or it is
no longer equitable that an injunction should have prospective application; or (6) any
other reason that justifies relief.

15 As a new addition to the Nevada Rules of Civil Procedure, the Nevada Court of Appeals recently
16 analyzed the federal analog to NRCP 60(b)(6) to address its application. The court found NRCP
17 60(b)(6) "has a limited and unique application" and is generally "available only in extraordinary
18 circumstances," Byrd v. Byrd, 137 Nev. Adv. Op. 60, 501 P.3d 458, 463 (Nev. App. 2021) (quoting
19 Buck v. Davis, 137 S.Ct. 759, 766 (2017)), circumstances not addressed by the "first five numbered
20 clauses...and only as a means to achieve substantial justice." Id. (quoting Tanner v. Yukins, 776
21 F.3d 434, 443 (6th Cir. 2015)). In Byrd, the court found that because the respondent's request for
22 relief under NRCP 60(b)(6) was inappropriate because relief was possible under one or more of the
23 other five enumerated clauses. Byrd, at 463.

24 Rule 60 reconsideration is generally appropriate in three instances: (1) when there has been
25 an intervening change of controlling law; (2) new evidence has come to light; or (3) when necessary
26 to correct a clear error or prevent manifest injustice. School District No. 1J v. ACandS, Inc., 5 F.3d
27 1255, 1262 (9th Cir. 1993). Here, Plaintiff appears to argue clear error, as no new evidence or
28 changes in law are provided. The Court proceeds under a clear error analysis.

As to Plaintiff's contention that it was inappropriate for this Court to deny the motion to disqualify without a hearing, the request to hold a hearing and/or reconsider on that basis is denied. As stated in the Decision, this Court found Plaintiff did not bring legally cognizable grounds to support disqualification, and therefore, pursuant to EDCR 2.23(c), no hearing was held. Matter of Dunleavy, 104 Nev. 784, 789 (1988); Las Vegas Sands Corp. v. Eighth Judicial Dist. Court of State ex rel. County of Clark, 132 Nev. 998 (2016) 2016 WL 2842901 (unpublished disposition) ("It is well-founded in Nevada that, where a disqualification challenge fails to allege legally cognizable grounds supporting an inference of bias or prejudice, summary dismissal of the challenge is appropriate and a hearing on the matter is unnecessary.").

Plaintiff states that without a hearing, this Court's Decision was "based solely on the rulings and actions of Judge Kishner," and incorrectly disregarded Plaintiff's arguments regarding "abuse of judicial power." This Court's Decision stated the factual and procedural background of the matter, including a recitation of Plaintiff's stated grounds for disqualification. As discussed in the Decision, Plaintiff's facts and grounds were considered, and found to not be legally cognizable grounds for disqualification. However, and which appears to be the crux of Plaintiff's arguments, this Court did not make substantive findings or rulings with regard to the procedural questions or errors asserted. As stated by this Court in the original Decision, procedural questions and alleged error from judicial rulings are not a basis for disqualification, when, as here, the court does not find such allegations to be based in bias. Plaintiff's request that this Court reconsider under NRCP 60(b)(6) is DENIED.

Finally, Plaintiff's request for a Stay of Case is not properly made to this Court, as only the limited question of disqualification is appropriately before this Court pursuant to NRS 1.235.

The Court declines to find clear error in its previous Decision and Order denying disqualification, as the Court did not find legally cognizable grounds for disqualification and a hearing was therefore unnecessary. In accordance with the above, the Motion to Withdraw/Reconsider is DENIED. The hearing set for March 3, 2022 is VACATED.

Dated this 3rd day of March, 2022



BF8 DD4 10A9 AF9A
3 Linda Marie Bell
District Court Judge

Appendix 335

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 E&T Ventures LLC, Plaintiff(s) | CASE NO: A-19-796919-B
7 vs. | DEPT. NO. Department 31
8 Euphoria Wellness LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 3/3/2022

16 Amy Reams	areams@naylorandbrasterlaw.com
17 John Naylor	jnaylor@naylorandbrasterlaw.com
18 Jennifer Braster	jbraster@naylorandbrasterlaw.com
19 Michael Detmer	mdetmer@ag.nv.gov
20 Justin Jones	jjones@joneslovelock.com
21 Nicole Lovelock	nlovelock@joneslovelock.com
22 Alison Anderson	aanderson@joneslovelock.com
23 Lorie Januskevicius	ljanuskevicius@joneslovelock.com
24 Mitchell Stipp	mstipp@stipplaw.com
25 Nicole Lovelock	nlovelock@joneslovelock.com
26 Ashley Balducci	abalducci@ag.nv.gov

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Emily Bordelove	ebordelove@ag.nv.gov
Georlen Spangler	jspangler@joneslovelock.com
Daenna Kaapana	Dbekaapana@ag.nv.gov

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 3/4/2022

Louis Humphrey III	Humphrey Law PLLC Attn: Louis Humphrey III, Esq 201 W. Liberty Street, Suite 350 Reno, NV, 89501
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