IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Mar 27 2024 09:13 PM
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 87411

WESPAC; GREG CHRISTIAN,

Appellants

--against--

GREGORY GARMONG,

Respondent

Appeal from the Second Judicial District Court of Washoe County, Nevada
Judge Lynne Jones, Case No. CV12-01271

RESPONDENT'S APPENDIX

Carl M. Hebert, Esq.
Nevada Bar No. 250
2215 Stone View Drive
Sparks, Nevada 89436
(775) 323-5556

Attorney for Respondent
Gregory Garmong

INDEX TO RESPONDENT'S APPENDIX

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Exhibit 9 to Opposition to Defendants' Motion for Sanctions and Attorney's Fees, filed October 23, 2023	RA-22
Motion for Sanctions and Attorney's Fees for Failure to Answer Interrogatories and Requests for Production after April 10, 2023 Order Granting Motion to Compel (NRCP 37(b)), filed October 9, 2023	RA-1
Opposition to Defendants' Motion for Sanctions and Attorney's Fees for Failure to Answer Post-Judgment Discovery, filed October 23, 2023	RA-11

Order Confirming Recommendation Re: Plaintiff's Motion for Relief from Order Compelling Post-Judgment Discovery and Defendant's Motion for Sanctions for Failure to Answer Interrogatories and Requests for Production After April 10, 2023 Order Granting Motion to Compel, filed March 11, 2024 RA-61

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Alicia L. Lerud
Clerk of the Court
Transaction # 9931030

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STEPHEN S. KENT, ESQ.
Nevada Bar No. 1251
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MANSUKHANI, LLP
1 East Liberty Street, Suite 424
Reno, NV 89501
Telephone: (775) 467-2603
Facsimile: (775) 460-4901
E-mail: skent@grsm.com

Attorneys for Defendants Wespac and Greg Christian

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

GREGORY O. GARMONG, Plaintiff, vs. WESPAC; GREG CHRISTIAN; DOES 1-10,inclusive, Defendants.	CASE NO. CV12-01271 Dept. No. 6

MOTION FOR SANCTIONS AND ATTORNEY'S FEES FOR FAILURE TO ANSWER INTERROGATORIES AND REQUESTS FOR PRODUCTION AFTER APRIL 10, 2023, ORDER GRANTING MOTION TO COMPEL (NRCP 37(b))

Defendants, WESPAC and GREG CHRISTIAN, by and through their counsel of record, STEPHEN S. KENT, ESQ., of GORDON REES SCULLY MANSUKHANI, LLP, moves the court pursuant to NRCP 37(b) for sanctions for plaintiff Gregory O. Garmong's failure to answer November 28, 2022 interrogatories and respond to November 28, 2022 requests for production after the Court Ordered that he respond in its April 10, 2023 Order.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

On April 10, 2023 this Court ordered Plaintiff Garmong to answer interrogatories and respond to requests or production. Despite this order, Garmong did not respond to the discovery and is in violation of the Court's Order despite the passage of five (5) months.

On September 18, 2023, Defendants counsel requested by letter, Exhibit 1, and e-mail that Garmong answer the discovery, Exhibit 2.

The discovery is short and still relevant to defendants efforts to collect all of their fees and to determine where Plaintiff Garmongs assets are, if he has moved any assets and to where and to inquire about other judgment that may impair his ability to pay and also establish that he is a serial vexatious litigant.

Plaintiff Garmong should be sanctioned and immediately ordered to respond to this short discovery.

ARGUMENT

I.

PURSUANT TO NRCP 37(b) PLAINTIFF GARMONG SHOULD BE SANCTIONED AND PAY DEFENDANTS' FEES FOR THIS MOTION

Plaintiff Garmong still owes Defendant fees and costs as explained in their October 4, 2023 Motion for Fees Related to Second Writ, if this motion is granted. Responses to Defendants six (6) November 28, 2022 interrogatories and six (6) requests for production have never been made by Plaintiff Garmong despite this Court's April 10, 2023 Order that Plaintiff Garmong respond and several request by defendants counsel that he respond.

The discovery is short and still relevant to defendants efforts to determine where Plaintiff Garmongs assets are, if he has moved any assets and to where and to inquire about other judgment that may impair his ability to pay and also establish that he is a serial vexatious litigant.

NRCP 37(b) provides that a party who fails to comply with a court's order compelling discovery should be sanctioned:

> (b) Sanctions for Failure to Comply With a Court Order.
>
> (1) For Not Obeying a Discovery Order. If a party or a party's officer, director, or managing agent – or a witness designated under Rule 30(b)(6) or 31(a)(4) – fails to obey an order to provide or permit discovery, including an order under Rule 35 or 37(a), the court may issue further just orders that may include the following:
>
> (A) directing that he matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
>
> (B) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in

evidence;

(C) striking pleadings in whole or in part;
(D) staying further proceedings until the order is obeyed;
(E) dismissing the action or proceeding in whole or in part;
(F) rendering a default judgment against the disobedient party; or
(G) treating as contempt of court the failure to obey any order except in order to submit to a physical or mental examination.

(2) For Not Producing a Person For Examination. If a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(1), unless the disobedient party shows that it cannot produce the other person.

(3) Payment of Expenses. Instead of in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

Here there is no dispute plaintiff Garmong has ignored the Court's Order and failed to answer interrogatories and respond to requests for production, waiving all objections necessitating this motion.

As reflected on Exhibits 1 and 2 Defendants counsel again requested Plaintiff Garmong comply with this Court's Order on September 18, 2023.

Defendants would suggest Garmong (an attorney), and his attorney, be sanctioned for ignoring this Court's Order by being held in contempt pursuant to NRCP 37(b)(G) and that an award of the expenses of this motion and the reply and request for submission be granted against Mr. Garmong.

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///

AFFIRMATION

The undersigned hereby declares that the within document does not contain the Social Security Number of any person.

DATED this 9th day of October, 2023.

GORDON REES SCULLY MANSUKHANI, LLP

By: _____

STEPHEN S. KENT, ESQ.
Nevada Bar No. 1251
1 East Liberty Street, Suite 424
Reno, NV 89501
Telephone: (775) 467-2603
Facsimile: (775) 460-4901
skent@grsm.com
Attorneys for Defendants Wespac and Greg Christian

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify that I am an employee of Gordon Rees Scully Mansukhani, LLP, and that on this date, I served a true and correct copy of the attached document(s) as follows:

____ By placing the document(s) in a sealed envelope with first-class U.S. postage prepaid, and depositing it for mailing with the U.S. Postal Service in Reno, Nevada addressed to the person at the address listed below.

_X_ By electronic service. By filing the document with the court's electronic filing system which serves counsel listed below electronically.

____ By personally delivering the document(s) listed above, addressed to the person at the address as set forth below.

____ By Federal Express.

____ By facsimile.

Carl Hebert, Esq.
2215 Stone View Drive
Sparks, NV 89436

DATED this 9th day of October, 2023.

Sam Baker

Sam Baker

INDEX OF EXHIBITS

NO.	DESCRIPTION
1.	September 13, 2023 letter to Carl Hebert
2.	September 18, 2023 e-mail to Carl Hebert

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2023-10-09 03:44:45 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9931030

Exhibit 1

Exhibit 1

STEPHEN S. KENT
SKENT@GRSM.COM
DIRECT DIAL: (775) 467-2603
DIRECT FAX: (775) 460-4901

GORDON&REES
SCULLY MANSUKHANI
YOUR 50 STATE PARTNER

ATTORNEYS AT LAW
201 WEST LIBERTY STREET, SUITE 320
RENO, NV 89501
ATTORNEYS AT LAW
WWW.GRSM.COM

September 13, 2023

Carl Hebert
2215 Stone View Drive
Sparks, NV 89436

Re: Gregory Garmong v. WESPAC, Greg Christian
Washoe County District Court Case No. CV12-01271, Dept. No. 6

Dear Carl:

I enclose the Court's August 10, 2023 Order awarding $2,835.00 in fees related to the motion to compel. Please have your client pay these fees immediately. If they are not paid, I will be forced to ask the court to add them to the judgment and then execute on your clients money and/or assets and seek fees and costs for this that will have been caused by your clients failure to pay what the court ordered.

Very truly yours,

GORDON REES SCULLY MANSUKHANI, LLP

Stephen S. Kent

SSK:sb

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2023-10-09 03:44:45 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9931030

Exhibit 2

Exhibit 2

Stephen Kent

From: Stephen Kent
Sent: Monday, September 18, 2023 11:28 AM
To: Carl Hebert Law
Subject: Garmong v. Wespac

Carl,

Please see attached correspondence, the court ordered April 10, 2023 that Mr. Garmong pay defendants attorney's fees of $2835. And I am demanding payment immediately. If payment is not made then defendant will be forced to file motions to collect this award. Also Mr. Garmong has not responded to defendants interrogatories or request for production even after the court ordered him to do so. Unless we get answers without objection by Friday I will move pursuant to NRCP 37 (b) for sanction for his failure to comply with the court's order.

Steve

STEPHEN S. KENT | Of Counsel

GORDON REES SCULLY MANSUKHANI
YOUR 50 STATE PARTNER®

1 East Liberty Street, Suite 424
Reno, NV 89501 Office: 775-467-2601 Direct: 775-467-2603 Fax: 775-324-9803
skent@grsm.com
www.grsm.com
vCard

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Transaction # 9956732 : csulezic

CARL M. HEBERT, ESQ.
Nevada Bar #250
2215 Stone View Drive
Sparks, NV 89436
(775) 323-5556

Attorney for plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

GREGORY O. GARMONG,

Plaintiff,

vs.

CASE NO. : CV12-01271

WESPAC; GREG CHRISTIAN;
DOES 1-10, inclusive,

DEPT. NO. : 6

Defendants.
_____/

OPPOSITION TO DEFENDANTS' MOTION FOR SANCTIONS AND ATTORNEY'S FEES FOR FAILURE TO ANSWER POST-JUDGMENT DISCOVERY

Plaintiff and judgment debtor Garmong submits the following points and authorities in opposition to the "Motion for Sanctions and Attorney's Fees for Failure to Answer Interrogatories and Requests for Production After April 10, 2023 Order Granting Motion to Compel (NRCP 37(b)," served on October 9, 2023.

INTRODUCTION AND PROCEDURAL HISTORY

On July 16, 2021 this Court entered judgment against the plaintiff for attorney's fees in the total amount of $156,734.46, with interest at the legal rate. On January 12, 2022 the defendants, judgment creditors, (collectively "WESPAC") had issued and filed four writs of execution with garnishment to the Sheriff of Washoe County. Exhibit 1, writs of

execution. The total amount of the judgment with interest was, on the date of issuance of the writs, $174,003.36.

The transmittal letter to the Civil Division of the Washoe County Sheriff's Office, dated March 24, 2022, which accompanied the writs, directed the Sheriff's Office to execute on investment/brokerage accounts held by the plaintiff/judgement debtor at Fidelity Investments/Fidelity Brokerage Services in Reno, Nevada. Exhibit 1, first page.

The Sheriff's Office served garnishment interrogatories on Fidelity Investments. NRS 31.290 (requiring interrogatories to garnishee). Exhibit 2, declaration of service. Answers to the garnishment interrogatories were returned by Fidelity on May 10, 2022. Exhibit 3, answers to garnishment interrogatories. In answer to the third interrogatory requesting to know if Fidelity held any money on account for the plaintiff, Fidelity answered: "Yes, we have Individual brokerage accounts [redacted] with a balance in excess of the judgment and with a balance in excess of the judgment [sic]; both accounts are registered to Gregory Garmong." *Id.*, highlighted.

Fidelity paid the total amount of the writ of execution, $174,003.36, out of the plaintiff's accounts. Exhibit 4, § C, declaration of Stephen S. Kent, dated September 1, 2022.

On November 28, 2022 WESPAC served the plaintiff with onerous post-judgment discovery in aid of execution, NRCP 69(a)(2). Exhibit 5, interrogatories and requests for production. An example of the type of discovery sought can be found in request for production # 5: "Please produce for inspection and copying copies of any demands for payment made by anyone who claims you owe them money." The scope is unlimited in time; the plaintiff is in his late 70's and presumably this request includes a lifetime of

ordinary bills by, for example, a utility company or local taxing authorities. Further, it does not even make sense; it would seem more relevant, when looking for assets on which to execute, to find individuals who *owe* money to the plaintiff. The other interrogatories and requests for production are similarly unlimited in breadth.

WESPAC then sought interest on the principal amount of the judgment for the period of time the Sherriff's Office took to serve the writs of execution—from the delivery of the writs to the Sheriff to the date of execution some months later. Without having responses to its discovery broadside, the defendants issued and filed a second writ of execution in the amount of $7,750.53. Exhibit 6, writ of execution with garnishment, filed January 11, 2023. The writ directed the Carson City Sheriff to execute on the Fidelity accounts and gave the account numbers (redacted from the exhibit). This writ was issued before the defendants filed their motion to compel discovery responses on January 24, 2023.

The second execution was satisfied by Fidelity on April 14, 2023, when it issued a check in the amount of $7,610.31 to the Carson City Sheriff's Office. Exhibit 7, Fidelity responses to garnishment interrogatories, dated April 17, 2023.

Prior to the second execution, on April 10, 2023, this Court entered its order granting the defendants' motion to compel discovery. The plaintiff was further ordered to pay the reasonable expenses of the motion to compel. *Id.* at 11: 11-16.

After the second execution, on April 26, 2023, the defendants filed their "Motion for Fees and Costs Pursuant to Order Granting Motion to Compel." The plaintiff opposed this motion on the grounds outlined above, that the discovery was completely unnecessary given that the defendants knew exactly where to execute on the judgment and, in fact, did so without ever having the sought-after discovery responses. On August 10, 2023 this

Court awarded attorney's fees of $2,835.00 for preparation of the motion to compel discovery. Order Granting, in Part, and Denying, in Part, Motion for Fees and Costs, at 13: 6-9.

On September 18, 2023 counsel for the defendants sent a demand for payment of the $2,835.00 in fees. Counsel for the plaintiff asked, by e-mail, if $2,835.00 was the total amount owed. Defendants' counsel responded in the affirmative. Exhibit 8, e-mail exchange between counsel on September 28, 2023.

On September 21, 2023 counsel for the plaintiff hand-delivered a check in the amount of $2,835.00 to the office of defense counsel. Exhibit 9. At that point, the plaintiff satisfied the judgment, post-judgment interest and any attorney's fees awarded by the Court.

THE JUDGMENT HAS BEEN SATISFIED; SANCTIONS ARE UNNECESSARY

Judgment creditors may obtain discovery in aid of execution as provided by the Rules of Civil Procedure. NRCP 69(a)(2). The scope of post-judgment discovery under Rule 69(a)(2) is broad and "constrained principally in that it must be calculated to assist in collecting on a judgment." EM Ltd. v. Republic of Argentina, 695 F.3d 201, 207 (2d Cir. 2012). Further, NRCP 26(b)(1) regulates the use of discovery:

> Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(Emphasis added).

The judgment has been satisfied. Plaintiff Garmong has paid the judgment and all orders directing him to pay attorney's fees. Exhibit 8.[1]

The post-judgment discovery is unnecessary and cannot "be calculated to assist in collecting on a judgment." EM Ltd. v. Republic of Argentina, 695 F.3d at 207. It is the very definition of disproportional to the needs of the case. NRCP 26(b)(1). The Court's order compelling this discovery, dated April 10, 2023, is currently the subject of the plaintiff's "Motion for Relief from Order Compelling Post-Judgment Discovery," filed September 23, 2023.

Somehow, the defendants believe the post-judgment discovery still serves a purpose: "The discovery is short and still relevant to defendants [sic] efforts to determine where Plaintiff Garmongs [sic] assets are, if he has moved any assets and to where and to inquire about other judgment [sic] that may impair his ability to pay and also establish that he is a serial vexatious litigant." Motion for sanctions 2: 17-19. In response, there is no need determine where the plaintiff's assets are since the judgment and all ancillary amounts have been paid. In any event, the defendants knew where to successfully execute *without any answers to the discovery*. Exhibits 3 and 7, Fidelity answers to garnishment interrogatories.

---

[1] There is currently on file yet another motion for attorney's fees from the defendants—this time seeking fees for the second execution on the judgment. As explained, the Carson City Sheriff's Office took several months to act on the original execution, issued in January of 2022, exhibit 1. The second execution was for the interest earned on the judgment during this period of time. The amount of the funds taken by the second execution was $7,750.53. Exhibit 6, writ of execution with garnishment, filed January 11, 2023. This motion has not yet been submitted to the Court for decision.

Worse, the defendants claim to need responses to the discovery to establish that Garmong is a "serial vexatious litigant." There is no explanation on how this information might assist in collecting on an already satisfied judgment. The fact is that the defendants are the party filing the great majority of the post-judgment motions in this case, as the Court will readily see from examining its docket. The defendants themselves might qualify for the label of vexatious litigants for filing an appeal from the Court's denial of $2,034.25 of their fees in its order of August 10, 2023.

Because the defendants achieved a result better than their offer of judgment in the underlying arbitration, they now have undertaken a campaign of filing motions which are frivolous, such as this one, and rise to the level of abuse of process. At this point, the plaintiff is nothing more than a source of attorney's fees to counsel for the defendants. The plaintiff has no doubt that, at some future date, the defendants will file a motion for fees for the appeal. They are already asking for fees for the filing of this motion for sanctions. Motion for sanctions 3: 16-20.

The defendants now want both the plaintiff and his counsel held in contempt under NRCP 37(b)(1)(G) for not responding to pointless discovery. *Id.* Given the vexatious conduct of the defendants and their counsel, the plaintiff anticipated further motions based on the order compelling discovery and filed their "Motion for Relief from Order Compelling Post-Judgment Discovery" mentioned above. This motion has not yet completed the briefing cycle and will be shortly submitted for decision.

NRCP 37(b)(3) provides:

> *Payment of Expenses.* Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney fees, caused by the

> failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(Emphasis added). An award of expenses (and holding the plaintiff and his counsel in contempt) is unjust and supremely unnecessary, considering that the judgment has been satisfied. The motion for sanctions is at least a borderline violation of NRCP 11 and should be denied. Sanctions and expenses are discretionary with the Court. NRCP 37(b)(1) ("the court may issue just orders[.]"); NRCP 37(b)(3) ("unless the failure was substantially justified or other circumstances make an award of expenses unjust."). Under the circumstances, this Court should exercise its discretion not to hold the plaintiff and his counsel in contempt or award attorney's fees.

CONCLUSION

For the reasons stated above, the plaintiff respectfully requests that this Court deny the defendants' motion for sanctions and the payment of fees.

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THIS DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.

DATED this 23rd day of October, 2023.

/S/ Carl M. Hebert
CARL M. HEBERT, ESQ.

Counsel for plaintiff Garmong

INDEX OF EXHIBITS

Number	Description	Pages
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3	Answers to garnishment interrogatories, dated May 10, 2022	2
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5	Post-judgment discovery in aid of execution	6
6	Writ of execution dated January 11, 2023	8
7	Answers to garnishment interrogatories, dated April 17, 2023	3
8	E-mail exchange between counsel re final amount due	2
9	Payment to defendants' counsel re final amount	2

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Alicia L. Lerud
Clerk of the Court
Transaction # 9956732 : csulezic

EXHIBIT 8

EXHIBIT 8

Carl Hebert Law

From: Stephen Kent <skent@grsm.com>
Sent: Monday, September 18, 2023 1:01 PM
To: Carl Hebert Law
Subject: Garmong v. Wespac

Carl,

The $2,835. is the total currently due. My client may decide to seek relief to seek the rest of the amount he asked for in fees for the motion to compel as well as for having to prepare a second writ of execution as well as any other fees he incurs.

Steve

STEPHEN S. KENT | Of Counsel

GORDON REES SCULLY MANSUKHANI
YOUR 50 STATE PARTNER®

1 East Liberty Street, Suite 424
Reno, NV 89501 Office: 775-467-2601 Direct: 775-467-2603 Fax: 775-324-9803
skent@grsm.com
www.grsm.com
vCard

From: Carl Hebert Law <carl@cmhebertlaw.com>
Sent: Monday, September 18, 2023 12:50 PM
To: Stephen Kent <skent@grsm.com>
Subject: RE: Garmong v. Wespac

Steve:

Is this the entire amount remaining owed by Mr. Garmong to WESPAC and Christian? $2,835.00? If Mr. Garmong decides to pay it, how should he make the check payable?

Thanks,

Carl

From: Stephen Kent <skent@grsm.com>
Sent: Monday, September 18, 2023 11:28 AM

To: Carl Hebert Law <carl@cmhebertlaw.com>
Subject: Garmong v. Wespac

Carl,

Please see attached correspondence, the court ordered April 10, 2023 that Mr. Garmong pay defendants attorney's fees of $2835. And I am demanding payment immediately. If payment is not made then defendant will be forced to file motions to collect this award. Also Mr. Garmong has not responded to defendants interrogatories or request for production even after the court ordered him to do so. Unless we get answers without objection by Friday I will move pursuant to NRCP 37 (b) for sanction for his failure to comply with the court's order.

Steve

STEPHEN S. KENT | Of Counsel

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Transaction # 9956732 : csulezic

EXHIBIT 9

EXHIBIT 9

CARL M. HÉBERT, ESQUIRE

2215 Stone View Drive, Sparks, Nevada 89436

September 21, 2023

HAND-DELIVERED

Stephen S. Kent, Esq.
Gordon Rees Scully Mansukhani, LLP
1 East Liberty Street, suite 424
Reno, Nevada 89501

Re: **Garmong v. WESPAC; Christian—Satisfaction of fee award**

Dear Steve:

Enclosed is my trust account check in the amount of $2,835.00 in satisfaction of the award of fees against Mr. Garmong in the Court's order entered on August 10, 2023.

Sincerely,

Carl M. Hebert, Esq.

Enclosure: Check for $2,835.00

VOICE : 775-772-5556
EMAIL : CARL@CMHEBERTLAW.COM

CARL M. HEBERT, ATTORNEY AT LAW
TRUST ACCOUNT
2215 STONE VIEW DR
SPARKS, NV 89436-3694
775-323-5556

140

94-72/1224 NV
61293

DATE 9/21/23

PAY TO THE ORDER OF Gordon Rees Scully Mansukhani $2,835/00

Two Thousand Eight Hundred Thirty-Five even DOLLARS

Photo Safe Deposit® Details on back

BANK OF AMERICA

ACH R/T 122400724

FOR fee award - Garmong v. Wynn

Carl M. Hebert

MP

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CV12-01271
2023-12-18 09:38:53 AM
Alicia L. Lerud
Clerk of the Court
Transaction # 10052484

CODE NO. 3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

GREGORY O. GARMONG, Case No. CV12-01271

Plaintiff, Dept. No. 6

vs.

WESPAC; GREG CHRISTIAN;
DOES 1-10, inclusive,

Defendants.
_____/

ORDER REFERRING DISCOVERY MOTIONS
TO COMMISSIONER FOR RECOMMENDATION

Before this Court are the following discovery motions, which the Court hereby refers to the Discovery Commissioner for recommendation pursuant to WDCR 24:

1. *Motion for Relief from Order Compelling Post-Judgment Discovery* (filed September 23, 2023); *Opposition to September 23, 2023 Motion for Relief from April 10, 2023 Order to Compel* (October 9, 2023); and *Reply in Support of Motion for Relief from Order Compelling Post-Judgment Discovery* (October 23, 2023); and

2. *Motion for Sanctions and Attorney's Fees for Failure to Answer Interrogatories and Requests for Production After April 10, 2023, Order Granting Motion to Compel (NRCP 37(b))* (filed October 9, 2023); *Opposition to Defendants' Motion for Sanctions and*

Attorney's Fees for Failure to Answer Post-Judgment Discovery (filed October 23, 2023); and *Reply in Support of Motion of October 10, 2023 Motion for Sanctions* (filed October 30, 2023)

The Court, having reviewed the filings and other documents on file, and good cause appearing therefor,

IT IS HEREBY ORDERED.

DATED this 17th day of December, 2023.

LYNNE K. JONES
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 18th day of December, 2023, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

STEPHEN KENT, ESQ.
CARL HEBERT, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Holly W. Longe

F I L E D
Electronically
CV12-01271
2024-01-10 09:37:04 AM
Alicia L. Lerud
Clerk of the Court
Transaction # 10090022

CODE NO. 3025

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

GREGORY O. GARMONG,

Plaintiff,

v.

WESPAC; GREG CHRISTIAN;
DOES 1-10, inclusive,

Defendants.
_____/

Case No. CV12-01271

Dept. No. 6

ORDER GRANTING MOTION FOR ATTORNEY FEES AND COSTS

Before this Court is the *Motion for Attorney Fees and Costs Related to Second Writ of Execution* ("*Motion"*) filed by Defendants WESPAC and GREG CHRISTIAN (collectively "Defendants" unless individually referenced), by and through their counsel of record, Stephen S. Kent, Esq. ("Mr. Kent")

Plaintiff GREGORY O. GARMONG ("Mr. Garmong"), filed his *Opposition to Motion for Attorney's Fees and Costs Related to Second Writ of Execution* ("*Opposition*"), by and through his counsel of record, Carl M. Hebert, Esq.

Defendants filed their *Reply in Support of Motion for Attorney Fees and Costs Related to Second Writ of Execution* ("*Reply*") and the matter was submitted to the Court for consideration.

I. **PROCEDURAL BACKGROUND.**

The instant *Motion* arises from an action for breach of a financial management agreement and carries with it a robust procedural history. Mr. Garmong filed his *Complaint* on May 9, 2012, alleging the following claims for relief:

1) Breach of Contract;
2) Breach of Nevada Deceptive Trade Practices Act;
3) Breach of Implied Covenant of Good Faith and Fair Dealing;
4) Unjust Enrichment;
5) Breach of Fiduciary Duty;
6) Malpractice; and
7) Negligence.

Complaint, *generally.*

On September 19, 2012, Defendants filed their *Motion to Dismiss and Compel Arbitration*. On December 13, 2012, this Court entered its *Order* granting Defendants' request to compel arbitration but denying the motion to dismiss. Mr. Garmong then filed his *Combined Motions for Leave to Rehear and for Rehearing of the Order of December 13, 2012 Compelling Arbitration* ("*Reconsider Motion*"). The *Reconsider M*otion was opposed by Defendants. Mr. Garmong did not file a reply and this case was stagnant for nearly a year until January 13, 2014, when the Court entered its *Order to Proceed*. Mr. Garmong filed his reply on February 3, 2014. The *Reconsider Motion* was denied on April 2, 2014.

Mr. Garmong then sought writ relief from the Nevada Supreme Court. On December 18, 2014, the Nevada Supreme Court entered its *Order Denying Petition for Writ of*

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Mandamus or Prohibition, entered its *Order Denying Rehearing* on March 18, 2015, and, subsequently, entered its *Order Denying En Banc Reconsideration* on May 1, 2015.

After the Nevada Supreme Court's orders were entered, this Court entered its *Order for Response* on November 17, 2015, instructing Mr. Garmong to proceed. In response, the parties indicated they initiated an arbitration proceeding with JAMS in Las Vegas. *Notice of Status Report*, December 1, 2015.

On June 8, 2016, Mr. Garmong filed his *Motion for a Court-Appointed Arbitrator* arguing the JAMS arbitrators were prejudiced against him. This matter was fully briefed; and, on July 12, 2016, this Court entered its *Order re: Arbitration* requiring each party to submit the names of three arbitrators to the Court. The parties then stipulated to one arbitrator, to reduce costs. *Stipulation to Select One Arbitrator*, October 17, 2016. Thereafter, this Court entered its *Order Appointing Arbitrator* on October 31, 2016, appointing Michael G. Ornstil, Esq., as arbitrator. After it was determined Mr. Ornstil was unavailable, Mr. Garmong stipulated to the appointment of either retired Judge Phillip M. Pro ("Judge Pro") or Lawrence R. Mills, Esq.

On November 13, 2017, this Court entered its *Order Granting Motion to Strike* which stayed the proceeding pending the outcome of the arbitration, and directed the parties to file an amended complaint and other responsive papers at the direction of Judge Pro. *Order Granting Motion to Strike*, p. 2. On February 21, 2017, this Court entered its *Order Appointing Arbitrator*, appointing Judge Pro.

On March 27, 2017, Mr. Garmong filed *Plaintiff's Objection Pursuant to NRS 38.231(3) and 38.241(e) That There is No Agreement to Arbitrate; Notification of Objection*

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to the Court. Despite prior determinative orders entered by this Court, Mr. Garmong again objected to arbitration on the basis there was no agreement to arbitrate.

On May 23, 2017, this Court entered its *Order to Show Cause Why Action Should not be Dismissed for Want of Prosecution Pursuant to NRCP 41(E)* ("*OSC Order*"), finding "Mr. Garmong and Defendants have been ordered numerous times to participate in arbitration as early as December 13, 2012." The Court found the file did not contain any evidence the parties had proceeded to arbitration as ordered. *OSC Order,* p. 4. Accordingly, the Court ordered the parties to show cause why the action should not be dismissed for want of prosecution and required each party to file one responsive brief. *OSC Order,* p. 4. In the responsive briefs, the parties state they attended their first arbitration conference in April 2017. In its June 30, 2017 *Order*, the Court found sufficient cause was shown.

On July 22, 2018, without asking for leave of Court to lift stay, Mr. Garmong filed *Plaintiff's Motion to Disqualify Arbitrator Pro, Vacate Order Denying Motion for Summary Judgment and Appoint New Arbitrator.* The Court thereafter entered its *Order Denying Plaintiff's Motion to Disqualify Arbitrator Pro; Order Denying Motion to Vacate Order Denying Motion for Summary Judgment; Order Denying Motion to Appoint New Arbitrator* ("*Arbitrator Order*") on November 29, 2018.

Defendants thereafter filed their *Motion for Limited Relief From Stay to File Motion for Attorney's Fees and Sanctions* ("*Motion for Sanctions*") requesting limited relief from this Court's order staying the proceeding pending the outcome of arbitration. While the *Motion for Sanctions* was under consideration, Defendants filed their *Notice of Completion of Arbitration Hearing* on October 22, 2018. The Court found, with completion of the arbitration, Defendants' *Motion for Sanctions* was moot. Additionally, the Court took notice

of Defendants' *Notice of Completion of Arbitration* and determined there were additional decisions to be rendered regarding the *Notice of Completion of Arbitration.*

Judge Pro found Mr. Garmong's claims for: (1) Breach of Contract, (2) Breach of Implied Warranty, (3) Breach of the Implied Covenant of Good Faith and Fair Dealing, (4) Nevada's Deceptive Trade Practices Act; (5) Breach of Fiduciary Duty of Full Disclosure, (6) Intentional Infliction of Emotional Distress, and (7) Unjust Enrichment failed as a matter of law because Mr. Garmong did not prove his claims by a preponderance of the evidence. See *Final Award*, p. 8-9. Furthermore, after weighing the necessary factors required by Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), Judge Pro found Defendants were entitled to an award of reasonable attorneys' fees in the amount of $111,649.96. *Final Award*, p. 11.

After the *Final Award,* the litigation continued with several filings. On August 8, 2019, this Court entered its *Order re Motions* ("*ORM*"): (1) granting *Defendants' Petition for an Order Confirming Arbitrator's Final Award and Reducing Award to Judgment, Including, Attorneys' Fees and Costs*; (2) denying *Plaintiff's Motion to Vacate Arbitrator's Final Award*; (3) denying *Plaintiff's Motion to Vacate Arbitrator's Award of Attorneys' Fees*; (4) denying *Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion for Partial Summary Judgment and for the Court to Decide and Grant Plaintiff's Motion for Partial Summary Judgment*; and (5) granting *Defendants' Motion for an Order to File Exhibit as Confidential*. *ORM*, p. 15-16.

On August 27, 2019, this Court entered its *Order*: (1) directing WESPAC to file an *Amended Motion for the Award of Attorneys' Fees*; (2) allowing Mr. Garmong the standard response time to file and serve his opposition to Defendants' *Amended Motion for the*

Award of Attorneys' Fees; and (3) directing WESPAC was not be required to file its proposed final judgment until ten (10) days following this Court's ruling on WESPAC's *Amended Motion for the Award of Attorneys' Fees*. *Order*, p. 1.

On December 6, 2019, this Court entered its *Order Denying Motion to Alter or Amend Judgment* ("*AA Order*") maintaining its prior rulings within the *ORM,* resulting in a judgment ("*Judgment")*. On January 7, 2020, Mr. Garmong filed his *Notice of Appeal* of this Court's *Arbitrator Order*, *ORM*, and *AA Order*. On December 9, 2019, *Defendants' Amended Motion for Attorney's Fees* was filed. Due to Mr. Garmong's pending appeal, this Court entered its *Order Holding Issuance of Order on Defendants' Amended Motion for Attorney's Fees in Abeyance*. On December 1, 2020, the Nevada Court of Appeals issued its *Order of Affirmance* upholding the *Judgment* in its entirety and noting Defendants may seek amended fees pursuant to the fee shifting provision in NRCP 68 which extends to fees incurred on and after appeal.

On February 18, 2021, Defendants filed *Defendants' Second Amended Motion for Attorney's Fees*. On February 22, 2021, the Nevada Court of Appeals entered its *Order Denying Rehearing* pursuant to NRAP 40(c).

Next, the parties stipulated to extend the time for Mr. Garmong to file his opposition to *Defendants' Second Amended Motion for Attorney's Fees.* The stipulation was approved on March 1, 2021, by this Court's *Order Extending Time for Plaintiff to File Points and Authorities in Opposition to the Defendants' Second Amended Motion for Fees*.

On April 6, 2021, the Nevada Supreme Court entered its *Order Denying Petition for Review*. On July 16, 2021, this Court entered its *Order Granting Defendants' Second Amended Motion for Attorney's Fees; Order Confirming Arbitrator's Final Award* ("*July 16,*

2021, Order"), confirming Judge Pro's arbitration award of $111,649.96, and awarding Defendants attorneys' fees in the amount of $45,084.50. On August 10, 2021, Mr. Garmong filed his *Notice of Appeal*, appealing the *July 16, 2021, Order* to the Nevada Supreme Court.

On November 3, 2021, Defendants filed a *Substitution of Attorney*, substituting Stephen S. Kent, Esq. as counsel of record for Thomas C. Bradley, Esq. On April 4, 2022, Defendants filed their *Affidavit of Judgment* and *Judgment Lien Abstract of Judgment and Affidavit of Judgment* both naming Mr. Garmong as the judgment debtor. On May 10, 2022, Defendants filed a *Declaration of Service* of the writ of execution and attachment on Fidelity Investments/Fidelity Brokerage Services, LLC evidencing service by the Washoe County Sheriff's Office on May 3, 2022.

On July 25, 2022, the Nevada Court of Appeals entered its *Order of Affirmance* affirming the *July 16, 2021, Order* in its entirety. On October 24, 2022, the Nevada Supreme Court entered its *Order Denying Rehearing* pursuant to NRAP 40(c) and issued its *Remittitur* on January 17, 2023. On April 10, 2023, the Court entered its *Order Granting Motion to Compel and Request for Expenses of Motion*. On April 26, 2023, Defendants filed their *Motion for Fees and Costs Pursuant to Order Granting Motion to Compel* and on August 10, 2023, the Court entered its *Order Granting, in Part, and Denying, in Part, Motion for Fees and Costs* ("*August 10 Order*"). The *Notice of Entry of Order* was filed on September 14, 2023. Thereafter, on October 4, 2023, Defendants filed their *Notice of Appeal* of this Court's *August 10 Order*.

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A. MOTION FOR FEES AND COSTS.

Defendants, pursuant to NRS 18.170, seek an award of fees and costs incurred in the execution of the *Second Writ of Execution* ("*Writ*"). *Motion*, pp. 2, 4. Defendants contend, prior to proceeding with execution, on multiple occasions, their counsel requested Mr. Garmong pay the balance of the judgment to avoid additional fees involved in executing the *Writ*. Defendants assert Mr. Garmong refused to pay the balance. *Motion*, pp. 2-3. Defendants argue Mr. Garmong's refusal necessitated Defendants' execution of the *Writ,* causing additional fees and costs to be incurred. *Motion*, p. 3.

B. OPPOSITION TO MOTION.

Mr. Garmong argues the *Writ* was unnecessary and executed to collect interest which was the result of delay and inefficiency of Defendants' counsel. *Opposition*, p. 2. Mr. Garmong asserts he should not have to pay fees for two (2) executions when one (1) execution would have sufficed. Id. Mr. Garmong contends Defendants' counsel spent more time than necessary preparing the *Writ* and claims the fees sought are excessive. Id.

C. REPLY IN SUPPORT OF MOTION.

The *Reply* asserts the funds received from the first *Writ of Execution* did not satisfy the *Judgment*. The Defendants argue the purpose of the *Writ* at issue was collection of the principal of Seven Thousand Five Hundred Twenty Dollars and 21/100 ($7,520.21) which remained due on the *Judgment*. *Reply*, p. 2.

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II. APPLICABLE LAW AND ANALYSIS.

A. JURISDICTION.

When an appeal is perfected, the district court is divested of jurisdiction to revisit issues pending before the appellate court. However, the district court retains jurisdiction to enter orders on matters collateral to and independent from the appealed order. Mack-Manley v. Manley, 122 Nev. 849, 855, 138 P.3d 525, 529–30 (2006).

On October 4, 2023, Defendants filed their *Notice of Appeal* of this Court's *August 10 Order*. This matter remains before the Nevada Supreme Court. In their *Case Appeal Statement*, Defendants indicate they contest this Court's interpretation and application of NRCP 37 as it relates to Defendants' *Motion to Compel and Request for Expenses of Motion*. The Court finds and determines the matters presented in the instant *Motion* are independent of and collateral to the subject of the Defendants' appeal. Therefore, this Court maintains jurisdiction to rule on the instant matter.

B. ATTORNEY FEES.

NRS 18.010 governs attorney fees[1] and provides:

> 1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.
> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
> (a) When the prevailing party has not recovered more than $20,000; or
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous

[1] The underlying agreement does not specifically rovide for attorneys' fees in the post-judgment circumstances at hand.

> or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.
> 3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.
> 4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

NRS 18.010. The Nevada Supreme Court reviews an award of attorney fees for an abuse of discretion and will affirm an award which is supported by substantial evidence. Logan v. Abe, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). Affidavits or other evidence meeting the factors in *Brunzell* constitute substantial evidence to support a request of attorneys' fees. Miller v. Wilfong, 121 Nev. 619, 623–24, 119 P.3d 727, 730 (2005). Counsel's testimony regarding the nature and extent of the services performed constituted substantial evidence. Brunzell v. Golden Gate Nat'l. Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

In Nevada, "the method upon which a reasonable fee is determined is subject to the discretion of the court." Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 864, 124 P.3d 530, 548 (2005). A court is not limited to one specific approach; rather, a court may analyze a request for fees pursuant to "any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee." Id. "The lodestar approach involves multiplying 'the number of hours reasonably spent on a case by a reasonable hourly rate.'" Id.

"[W]hichever method is chosen…the court must continue its analysis by considering the requested amount in light of the factors enumerated by this court in *Brunzell v. Golden Gate National Bank*." Shuette, 121 Nev. at 865. Express findings on each factor are not

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necessary. Instead, the district court need only demonstrate it considered the required factors, and the award is supported by substantial evidence. Logan, 131 Nev. at 266.

The factors set forth in Brunzell, are as follows:

> (1) *the qualities of the advocate:* his ability, his training, education, experience, professional standing and skill; (2) *the character of the work to be done:* its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) *the work actually performed by the lawyer:* the skill, time and attention given to the work; (4) *the result:* whether the attorney was successful and what benefits were derived.

Brunzell, 85 Nev. at 349.

A reviewing court will not substitute its judgment for a trial court in the absence of an abuse of discretion because "[t]he value to be placed on the services rendered by counsel lies in the exercise of sound discretion by the trier of facts." Id. at 350. However, a trial court's failure to analyze the Brunzell factors is an abuse of discretion. Gunderson v. D.R. Horton, Inc., 130 Nev. 67, 319 P.3d 606 (2014).

Here, Defendants' successful execution of the *Writ* resulted in the collection of Seven Thousand Five Hundred Twenty Dollars and 21/100 ($7,520.21) toward satisfaction of the *Judgment*. Defendants provided Mr. Garmong an opportunity to satisfy the balance of the *Judgment* prior to executing the *Writ*. In fact, Defendants filed the *Writ*, asserted their intent to execute the *Writ*, and advised Mr. Garmong they would not execute the *Writ* if Mr. Garmong satisfied the judgment. However, Mr. Garmong failed to respond to Defendants.

Mr. Garmong does not dispute the balance due on the *Judgment*, Defendants' entitlement to the balance owed, or his ability to satisfy the judgment. Despite this, Mr. Garmong forced Defendants to proceed with execution of the *Writ* and incur the costs and fees associated with its execution. Mr. Garmong provides no reasonable basis for this.

Based on the successful recovery by way of execution, the Court finds and determines Defendants are the prevailing party on the *Writ* and are entitled to reasonable attorneys' fees.

Attached to the instant *Motion* is the *Affidavit of Stephen S. Kent in Support of Motion and Memorandum of Points and Authorities in Support of Motion for Attorneys Fees Related to Second Writ* ("*Declaration*"). Mr. Kent dedicated ten and one-half (10.5) hours and incurred attorneys' fees in the amount of Three Thousand Two Hundred Thirty-Two Dollars ($3,232.00). *Declaration*, pp. 2-3. Mr. Kent attests the fees and costs were actually and necessarily incurred in a reasonable and customary manner. *Declaration*, p. 4. The Court finds the *Declaration,* Defendants' papers, and attached exhibits provide sufficient and appropriate evidentiary support for the Brunzell analysis.

The Court finds counsel's advocacy is of high quality. Mr. Kent is licensed and in good standing with the State Bar of Nevada and has over forty-three (43) years of litigation experience. *Declaration*, p. 3. The litigation was of great importance to Defendants. Mr. Kent's efforts secured funds in satisfaction of the *Judgment* entered in 2019. Mr. Kent conducted calculations, drafted the *Writ*, and corresponded with opposing counsel, and the Carson City Sheriff's Office. *Declaration*, p. 2. Mr. Kent obtained a favorable result for his client by successfully recovering monies owed and prevailing on the instant *Motion*.

The Court finds and determines Defendants' requested attorneys' fees are reasonable and actually incurred. The Court determines an award for attorneys' fees in the amount of Three Thousand Two Hundred Thirty-Two Dollars ($3,232.00) is appropriate in this matter.

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C. DEFENDANTS' COSTS.

Chapter 18 of the Nevada Revised Statutes ("NRS") governs the award of costs. It is within the sound discretion of the district court award costs and a district court's decision awarding costs will not be overturned absent an abuse of discretion. Sheehan & Sheehan v. Nelson Malley and Co., 121 Nev. 481, 493, 117 P.3d 219, 227 (2005). Before awarding any costs pursuant to NRS Chapter 18, "the district court must have evidence before it demonstrating that the costs were reasonable, necessary, and actually incurred that goes beyond a mere memorandum of costs." Frazier v. Drake, 131 Nev. 632, 651, 357 P.3d 365, 378 (2015).

NRS 18.160 provides, in pertinent part:

> 1. A judgment creditor may claim costs for one or more of the following items:
> …
> (c) Statutory fees for issuing a writ of execution, or any writ for the enforcement of any order or judgment.
> …
> (e) Statutory fees of sheriffs or constables in connection with serving, executing or levying any writ or making any return, or for keeping or caring for property held by virtue of such a writ.
> …
> 2. A judgment creditor shall serve upon the adverse party either personally or by mail, and file at any time or times not more than 6 months after the items have been incurred and before the time the judgment is fully satisfied, a memorandum of the items of the judgment creditor's costs and necessary disbursements, verified by the judgment creditor or the judgment creditor's attorney, stating that to the best of his or her knowledge and belief the items are correct, and that they have been necessarily or reasonably incurred in the action or proceeding.

NRS 18.160. NRS 18.170 provides:

> A judgment creditor claiming costs or necessary disbursements reasonably incurred in aid of the collection of a judgment or of any execution issued thereon, other than those specified in NRS 18.160, including items which have been disallowed by the judge in the supplemental proceeding, shall serve the adverse party either personally or by mail, and file, at any time or times not more than 6 months after such item has been incurred and prior to the time

> the judgment is fully satisfied, a notice of motion for an order allowing the same, specifying the items claimed and the amount thereof, and supported by an affidavit of the party or the party's attorney or agent stating that to the best of his or her knowledge and belief the items are correct and showing that the costs were reasonable, and the disbursements reasonably and necessarily incurred. The court or judge hearing such motion shall make such order respecting the costs or disbursements so claimed **as the circumstances justify**, allowing the same in whole or in part, or disallowing the same.

NRS 18.170 (emphasis added).

Defendants seek costs incurred in execution of the *Writ* in the amount of Forty-Nine Dollars ($49.00). The total includes Ten Dollars ($10) paid to the Second Judicial District Court ("SJDC"), Thirty-Four Dollars ($34.00) paid to the Carson City Sheriff's Office ("Sheriff's Office"), and Five Dollars ($5.00) paid to FidelityInvestments ("Fidelity"). *Motion*, p. 4.

On January 25, 2023, Defendants filed their *Certificate of Service of January 11, 2023, Writ of Execution*. The *Writ* was served on Fidelity on February 27, 2023. *Declaration of Service*. Fidelity tendered a check to the Sheriff's Office on April 14, 2023. *Fidelity Investments Interrogatories*, p. 2. Defendants filed their *Proof of Service* on August 15, 2023.

In the *Affidavit of Stephen S. Kent in Support of Motion and Memorandum of Points and Authorities in Support of Motion for Attorneys' Fees Related to Second Writ* ("*Affidavit*"), Mr. Kent declares under penalty of perjury, he has personal knowledge of the costs and disbursements in this matter, as well as the fact the costs were necessarily incurred and paid in this matter. Mr. Kent declares the stated costs and total amount reflected in the *Affidavit* are true.

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After reviewing all papers and considering the matter, the Court finds and concludes the circumstances warrant an award of costs and the costs were reasonable, necessary, and actually incurred. Accordingly, an award of costs is appropriate.

III. <u>ORDER</u>.

Accordingly, and good cause appearing therefor,

IT IS HEREBY ORDERED:

1. Defendants' *Motion for Attorney Fees and Costs Related to Second Writ of Execution* is GRANTED;.

2. Defendants are awarded attorneys' fees in the amount of Three Thousand Two Hundred Thirty-Two Dollars ($3,232.00); and,

3. Defendants are awarded costs in the amount of Forty-Nine Dollars ($49.00).

Dated this 9th day of January, 2024.

LYNNE K. JONES
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 10th day of January, 2024, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

STEPHEN KENT, ESQ.
CARL HEBERT, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Holly W. Longe

F I L E D
Electronically
CV12-01271
2024-02-15 04:58:50 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 10164156

CODE NO. 1945

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

GREGORY O. GARMONG,

Plaintiff,

vs. Case No. CV12-01271

WESPAC et al., Dept. No. 6

Defendants.
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RECOMMENDATION FOR ORDER

BACKGROUND[1]

On July 16, 2021, the Court entered a *Judgment* in favor of Defendants Wespac and Greg Christian, and against Plaintiff Gregory Garmong, in the principal amount of $111,649.96, together with specified interest until satisfied in full. It also awarded Defendants $45,084.50 in attorney fees, together with specified interest until satisfied in full. Defendants filed a *Notice of Entry of Judgment* on July 16, 2021. The file does not reflect the subsequent filing of a supersedeas bond or any other document that would stay enforcement of this judgment.[2]

On January 12, 2022, Defendants obtained a writ of execution with garnishment from the Court, which states that the amount due on the judgment as of that date was $174,003.36. The writ

[1] This decision recounts only background information that is deemed pertinent to resolution of the motions decided herein. The background of this case is set forth in greater detail in prior Court decisions.

[2] On August 10, 2021, Plaintiff filed a *Notice of Appeal* concerning the Court's judgment, its award of attorney fees, and other rulings. However, the Nevada Court of Appeals affirmed the judgment in a decision entered on July 21, 2022.

directed the Washoe County Sheriff's Office ("WCSO") to serve a copy of the writ upon Fidelity Investments/Fidelity Brokerage Services, LLC ("Fidelity"), and to satisfy the judgment out of Plaintiff's personal property in Fidelity's possession. A similar writ dated February 25, 2022, required the Carson City Sheriff's Office ("CCSO") to serve the writ upon Fidelity. Fidelity was served with the CCSO writ on April 18, 2022, and it was served with the WCSO writ on May 3, 2022. On May 10, 2022, Fidelity responded to the WCSO writ and accompanying interrogatories. Fidelity stated that it had already disbursed a check from one of Plaintiff's accounts in response to the CCSO writ, and that no payment would be sent in response to the WCSO writ.[3] On June 22, 2022, the CCSO writ was returned partially satisfied, in the amount of $170,715.79.[4]

Because the judgment had not yet been fully satisfied, Defendants served Plaintiff with post-judgment interrogatories and a request for production of documents on November 28, 2022. In addition, in a letter to Plaintiff's counsel dated January 12, 2023, Defendants' counsel essentially stated that Plaintiff still owed his clients $7,520.21 on the original judgment, plus additional accrued interest and a fee for issuance of a second CCSO writ obtained on January 11, 2023, for a total of $7,750.53.[5] The second CCSO writ of execution stated that the unsatisfied amount of the judgment was $7,750.53, and that it would continue to accrue interest in the amount of $1.11 per day from January 11, 2023, to the date of levy. It directed the CCSO to serve the writ on Fidelity and to satisfy the remainder due from funds in Plaintiff's accounts.

Plaintiff did not respond to Defendants' post-judgment discovery requests or to subsequent inquiries from Defendants' counsel regarding the lack of responses. On January 24, 2023, Defendants filed a *Motion to Compel and Request for Expenses of Motion*. That motion was fully briefed and an *Order Granting Motion to Compel and Request for Expenses of Motion* was entered

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[3] A *Return to Court* filed by the WCSO on January 9, 2023, confirms that the WCSO did not collect any amounts from Fidelity on the WCSO writ served on May 3, 2022.

[4] Plaintiff has stated that Defendants recovered the full amount of the judgment when the CCSO writ of execution was returned. However, in an *Order Denying Application for Debtor's Exam* entered on April 10, 2023, the Court rejected that assertion and found that Defendants had recovered only $170,715.79 as a result of the CCSO writ.

[5] Defendants' counsel also stated that his clients were seeking additional attorney fees and costs totaling $22,607.50.

on April 10, 2023. That order expressly provides that Plaintiff must respond or object to Defendants' post-judgment interrogatories and request for production. It also directs Plaintiff to pay Defendants' reasonable expenses incurred in making the motion to compel. In an order entered on August 10, 2023, the Court found that Plaintiff owed Defendants $2,835.00 in attorney fees associated with the motion to compel.

The second CCSO writ was served upon Fidelity on February 27, 2023. In its answers to the garnishee interrogatories dated April 17, 2023, Fidelity stated that it had located an individual brokerage account with a balance in excess of the judgment, and that it disbursed a check in the amount of $7,610.31 to the CCSO on April 14, 2023. That amount was ultimately forwarded to Defendants. Accordingly, in an email dated September 18, 2023, Defendants' counsel informed Plaintiff's counsel that "[t]he $2,835 is the total currently due," although he added that Defendants may seek additional attorney fees incurred in connection with the motion to compel and the second CCSO writ. On September 21, 2023, Plaintiff's attorney sent Defendants' counsel a check in the amount of $2,835.00 on behalf of his client in satisfaction of the award of attorney fees entered by the Court on August 10, 2023.

In his email of September 18, 2023, Defendants' counsel also informed Plaintiff's counsel that his clients would seek sanctions against Plaintiff unless he served responses to the post-judgment discovery requests by September 22, 2023. On September 23, 2023, Plaintiff filed a *Motion for Relief from Order Compelling Post-Judgment Discovery*. Essentially, Plaintiff argues that Defendants' post-judgment discovery requests are onerous and otherwise improper. In any event, Plaintiff states that he has fully satisfied the judgment and any attorney fees awarded by the Court, and that he should therefore be relieved from the Court's earlier order directing him to respond to Defendants' post-judgment interrogatories and request for production.

As anticipated from their counsel's email of September 18, 2023, Defendants filed a *Motion for Attorney Fees and Costs Related to Second Writ of Execution* on October 4, 2023.[6] Defendants

[6] On that same date, Defendants filed a *Notice of Appeal* regarding the amount of Court's attorney fee award related to their motion to compel. That appeal is pending.

filed their *Opposition to September 23, 2023 Motion for Relief from April 10, 2023 Order to Compel* on October 9, 2023. Defendants state that Plaintiff waived any objections to their discovery requests through his failure to serve timely responses, and that he will owe additional attorney fees and costs in the amount of $3,281.00 if their October 4 motion for attorney fees is granted. Defendants emphasize that the discovery requests are short and that they are relevant to locating Plaintiff's assets, determining whether he has moved any assets, ascertaining the existence of other judgments that may impair his ability to pay the amounts owed to them, and establishing that he is a vexatious litigant.

Also on October 9, 2023, Defendants filed a *Motion for Sanctions and Attorney's Fees for Failure to Answer Interrogatories and Requests for Production After April 10, 2023, Order Granting Motion to Compel*. This motion is essentially based on the same arguments asserted in their parallel opposition to Plaintiff's motion for relief from the Court's order requiring responses to post-judgment discovery requests. Pursuant to NRCP 37(b), Defendants seek an order holding Plaintiff and his counsel in contempt and awarding Plaintiff the expenses associated with this motion for sanctions.

Plaintiff's *Opposition to Defendants' Motion for Sanctions and Attorney's Fees for Failure to Answer Post-Judgment Discovery* was filed on October 23, 2023. Plaintiff maintains that because the judgment has been satisfied, sanctions are unnecessary. On that same date, Plaintiff also filed his *Reply in Support of Motion for Relief from Order Compelling Post-Judgment Discovery*, and that motion was submitted for decision on October 23, 2023. Also on October 23, 2023, Plaintiff filed his *Opposition to Motion for Attorney Fees and Costs Related to Second Writ of Execution*.

On October 30, 2023, Defendants filed their *Reply in Support of October 10, 2023 Motion for Sanctions*, and their motion was submitted for decision on that same date. Also on October 30, 2023, Defendants filed their *Reply in Support of Motion for Attorney Fees and Costs Related to Second Writ of Execution*, and that motion was submitted on that same date. In an order entered on December 18, 2023, the Court referred Plaintiff's motion for relief and Defendants' motion for sanctions to the Discovery Commissioner.

On January 10, 2024, the Court entered its *Order Granting Motion for Attorney Fees and Costs*. Inter alia, the Court notes that "Mr. Garmong does not dispute the balance due on the *Judgment*, Defendants' entitlement to the balance owed, or his ability to satisfy the judgment." Yet despite being provided with the opportunity to satisfy the balance of the judgment prior to executing the second CCSO writ, Plaintiff failed to respond to that offer and forced Defendants to proceed with execution of the writ and incur the costs and fees associated with its execution. Ultimately, the Court determined that Defendants are entitled to an additional $3,232.00 in attorney fees and $49.00 in costs associated with the second CCSO writ. Thus, as a result of the Court's order, Plaintiff presently owes Defendants the sum of $3,281.00.

ANALYSIS

With regard to Plaintiff's obligation to respond to discovery requests, the Court's order of April 10, 2023, states that "Mr. Garmong is ordered to respond or object, in accordance with NRCP 33 to Defendants' November 28, 2022, *Interrogatories to Plaintiff* and *Requests for Production*." Although the order did not set forth a specific deadline for service of those responses, the absence of a specified deadline does not render the order unenforceable. Instead, the order properly would be interpreted as requiring compliance within a reasonable time. See Muze, Inc. v. Digital on Demand, Inc., 356 F.3d 492, 495 (2d Cir. 2004) ("[t]he omission of a time limit for a permitted or required task normally means that the task is to be performed within a reasonable time"); Hadix v. Caruso, 465 F. Supp. 2d 776, 801 (W.D. Mich. 2006) ("[a]n order absent a deadline is not meaningless," and "the best construction of such an order is that it requires action within a 'reasonable time'"); see also Clifford v. Church, No. 2:13-cv-853, 2014 WL 5383929, at *11 (S.D. Ohio Oct. 21, 2014) (award of sanctions denied because "although some of defendant's responses were made after the original discovery completion date of June 2, 2014, the production was made reasonably promptly after the Court's May 20, 2014 Order, which did not specify a different deadline for the production"). Plaintiff acknowledges that he has never responded to Defendants' post-judgment discovery requests as ordered. NRCP 37(b)(1) provides that "[i]f a party . . . fails to obey

an order to provide or permit discovery, . . . the court may issue further just orders." Thus, the Court may impose appropriate sanctions upon Plaintiff for his failure to comply with the Court's discovery order of April 10, 2023.

In that regard, the record reflects that four days after entry of the Court's order compelling discovery responses, Fidelity responded to the second CCSO writ by sending payment for the remainder of the judgment owed by Plaintiff. At that point, Plaintiff could properly assume that the amount recovered would be sent to Defendants, and that the underlying judgment would thereby be fully satisfied. The Court's discovery order was premised on the existence of an unsatisfied judgment against Plaintiff. Once that judgment was fully satisfied, Plaintiff reasonably could have believed and understood that he would no longer be required to respond to Defendants' post-judgment discovery requests. Indeed, NRCP 69(a)(2) makes clear that post-judgment discovery is authorized "[i]n aid of the judgment or execution." Once the judgment is fully satisfied, discovery is no longer "[i]n aid of the judgment or execution." Perhaps full satisfaction of the judgment did not automatically negate the Court's discovery order; but Plaintiff at that point reasonably could believe that since the entire judgment had been satisfied, Defendants would no longer be seeking—or have any legitimate need for—useless responses to their post-judgment discovery requests.

Of course, the Court's discovery order also stated that Defendants were entitled to the expenses incurred in connection with their motion to compel. However, the specific amount of expenses to be awarded was not set forth in the Court's order; rather, it was to be determined by the Court in connection with Defendants' motion for fees and costs filed on April 26, 2023. Until the amount to be awarded was determined by the Court, Plaintiff was not required to pay those expenses.[7] More important, an order awarding expenses in connection with a discovery motion is not, by itself, an enforceable "judgment" for purposes of NRCP 69(a)(2). See Tobias v. Lake Forest Partners, LLC, 931 N.E.2d 757, 761 (Ill. App. Ct. 2010) ("[a]ny claim which Tobias may have for

[7] Plaintiff opposed Defendants' motion regarding the specific amount of expenses to be awarded. In fact, had the Court agreed with Plaintiff's position in full, the award of expenses would have been vacated. But even if Plaintiff should have anticipated that some amount of expenses would be awarded to Defendants, he might rationally have delayed service of his discovery responses because he intended to pay the amount awarded (which, in fact, he did).

post-judgment attorney fees incurred in the collection of his underlying judgment can only become a lien upon the personal property of any of the judgment debtors in the possession of a third party after that claim has been reduced to an enforceable judgment and a citation to discover assets has been served") (emphasis added); World Class Capital Grp., LLC v. Gibson, Dunn & Crutcher LLP, No. 03-21-00360-CV, 2023 WL 2697881, at *6 (Tex. App. Mar. 30, 2023) (quoting Arndt v. Farris, 633 S.W.2d 497, 500 n.5 (Tex. 1982)) ("[a]n order imposing monetary sanctions, however, would be final and appealable when the sanctions are reduced to a judgment and execution is authorized thereon") (emphasis added); cf. Yount v. Criswell Radovan, LLC, 136 Nev. 409, 414 n.3, 469 P.3d 167, 171 n.3 (2020) ("order denying post-judgment discovery is not appealable, as it issued after the final judgment and does not alter any rights in that judgment"). Put differently, Defendants' right to conduct post-judgment discovery proceedings under NRCP 69(a)(2) existed only so long as they had a judgment that had not been satisfied. The expenses awarded to Defendants in connection with the motion to compel did not automatically become part of the original underlying judgment and have not been added to the original judgment, nor is the discovery order an independent, enforceable judgment that would support issuance of a writ of execution or post-judgment discovery proceedings under NRCP 69(a)(2).[8]

As noted previously, the Court awarded additional attorney fees and costs to Defendants through its order of January 10, 2024. Those fees and costs were not awarded in connection with discovery proceedings; rather, they were awarded in connection with Defendants' successful execution of the second CCSO writ (in the amount of $7,520.21) pursuant to NRS 18.010, 18.160, and 18.170. Nevertheless, the Court's order has not yet been reduced to a judgment that can be enforced by Defendants through a writ of execution or post-judgment discovery proceedings under NRCP 69(a)(2). Therefore, at this time, an order imposing sanctions against Plaintiff in connection with his previous failures to respond to Defendants' post-judgment interrogatories and request for

[8] The remedy for a party who seeks to enforce a post-judgment order awarding expenses in connection with a motion to compel under NRCP 37(a)(5) is to proceed "as provided in these rules." NRCP 69(a)(2). In that regard, NRCP 37(b)(1) allows the Court to enforce its discovery orders through any "just" orders. Thus, the Court could grant a request that the judgment be amended to include the award of expenses, or that the award of expenses otherwise be reduced to a judgment. Contempt penalties would also be available, as appropriate. Id. 37(b)(1)(G).

production of documents is not warranted. The necessary predicate to requiring Plaintiff to serve discovery responses—that is, an enforceable judgment—no longer exists.[9]

In his motion for relief, Plaintiff essentially asks that the Court vacate its order compelling his responses to Defendants' post-judgment discovery requests. But at this time, Defendants have an order entitling them to $3,281.00 in additional fees and costs incurred in connection with the second CCSO writ. Unless that amount is paid promptly by Plaintiff, the Court presumes that Defendants will take appropriate steps to reduce that award to an enforceable judgment upon which they can execute. Although Plaintiff is not presently required to serve responses to Defendants' post-judgment discovery requests, the Court is not persuaded that they should be forced to serve new post-judgment discovery requests once they reduce to judgment the amount owed by Plaintiff.

Plaintiff argues that Defendants' post-judgment discovery requests are improper, but he is precluded from asserting any objections to those requests. Under NRCP 37(d)(2), a party's failure to serve its answers, objections, or written responses to properly served interrogatories or a request for production "is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c)." Plaintiff was required to assert any objections to these requests within the time for service of his responses. See NRCP 33(b)(2), (4) (responding party must serve answers to interrogatories and objections within 30 days after being served with the interrogatories, and untimely objections are waived unless court excuses the failure for good cause), 34(b)(2) (response to request for production is due within thirty days after service of request, and must include any objections responding party wishes to assert); see also, e.g., Davis v. Fendler, 650 F.2d 1154, 1160 (9th Cir. 1981) (failure to object to interrogatories within the time fixed by rule generally constitutes a waiver of any objection); Lopez v.

[9] In their motion for sanctions, Defendants request "an award of the expenses of this motion and the reply and request for submission be granted against Mr. Garmong." Because that motion is being denied, Defendants are not entitled to an award of those expenses. Further, under the facts presented here, the Court finds that Plaintiff's failure to serve discovery responses was substantially justified or that other circumstances would make an award of expenses unjust under the circumstances. Specifically, the Court notes that the entire underlying judgment was satisfied shortly after entry of the Court's discovery order, and that Plaintiff also paid the award of expenses associated with Defendants' motion to compel very shortly after Defendants' counsel confirmed the amount owed by Plaintiff as of September 18, 2023. The Court also observes that Defendants waited several months to bring their motion for sanctions, and that nothing in the record shows any communications with Plaintiff about Defendants' belief that his discovery responses were still necessary until their counsel's email of September 18, 2023.

Cardenas Mkts., Inc., No. 2:11-cv-00323-ECR-CWH, 2011 WL 4738111, at *2 (D. Nev. Oct. 5, 2011) (quoting Senat v. City of N.Y., 255 F.R.D. 338, 339 (E.D.N.Y. 2009)) ("there is consistent authority that a failure to serve timely responses to interrogatories and document requests serves as a waiver of objections"). Moreover, a motion for protective order ordinarily should be filed prior to the date set for providing the requested discovery. E.g., Williams v. Big Picture Loans, LLC, No. 3:17-cv-461, 2020 WL 7680551, at *2 (E.D. Va. Dec. 18, 2020); Barten v. State Farm Mut. Auto. Ins. Co., No. CV-12-00399-TUC-CKJ (LAB), 2014 WL 348215, at *1 (D. Ariz. Jan. 31, 2014); Brittain v. Stroh Brewery Co., 136 F.R.D. 408, 413 (1991). As the record makes clear, Plaintiff did not respond in any way to Defendants' discovery requests prior to the deadline for service of responses. In addition, Plaintiff previously asserted his concerns about these requests in opposition to Defendants' motion for attorney fees incurred in connection with the motion to compel, but the Court implicitly rejected those concerns by awarding expenses.

Based upon the foregoing, the Court finds that Plaintiff is not presently entitled to an order relieving him from having to serve responses to Defendants' post-judgment discovery requests. Instead, the Court will stay compliance with that order until (1) Defendants have obtained an enforceable judgment in connection with their award of attorney fees and costs concerning the second CCSO writ, and (2) Plaintiff is served with written notice that Defendants have obtained that judgment. Plaintiff's discovery responses will be due within thirty days after being served with the written notice of judgment. However, if Plaintiffs pay Defendant $3,281 by February 29, 2024, any order requiring Plaintiff to serve responses to Defendants' post-judgment discovery re quests may be deemed automatically vacated upon Defendants' receipt of that payment.

ACCORDINGLY, Plaintiff's *Motion for Relief from Order Compelling Post-Judgment Discovery* should be DENIED.

FURTHER, Defendants' *Motion for Sanctions and Attorney's Fees for Failure to Answer Interrogatories and Requests for Production After April 10, 2023, Order Granting Motion to Compel* should be DENIED.

IT SHOULD, THEREFORE, BE ORDERED that compliance with the Court's order of April 10, 2023, requiring Plaintiff to serve responses to Defendants' post-judgment discovery requests is stayed until (1) Defendants have obtained an enforceable judgment in connection with their award of attorney fees and costs concerning the second CCSO writ, and (2) Plaintiff is served with written notice that Defendants have obtained that judgment.

IT SHOULD FURTHER BE ORDERED that Plaintiff's discovery responses will be due within thirty days after being served with the written notice of judgment.

IT SHOULD FURTHER BE ORDERED that if Plaintiffs pay Defendant $3,281 by February 29, 2024, any order requiring Plaintiff to serve responses to Defendants' post-judgment discovery requests may be deemed automatically vacated upon Defendants' receipt of that payment.

DATED: This 15th day of February 2024.

WESLEY M. AYRES
DISCOVERY COMMISSIONER

CERTIFICATE OF SERVICE

CASE NO. CV12-01271

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 15th day of February 2024, I electronically filed the **RECOMMENDATION FOR ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

STEPHEN SMILEY KENT, ESQ. for GREG CHRISTIAN, WESPAC

CARL MARTIN HEBERT, ESQ. for GREGORY GARMONG

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada: [NONE]

Danielle Spinella
Administrative Secretary

F I L E D
Electronically
CV12-01271
2024-02-29 08:52:04 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 10191274 : csulezic

CARL M. HEBERT, ESQ.
Nevada Bar #250
2215 Stone View Drive
Sparks, NV 89436
(775) 323-5556

Attorney for plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

GREGORY O. GARMONG,

Plaintiff,

vs.

CASE NO. : CV12-01271

WESPAC; GREG CHRISTIAN;
DOES 1-10, inclusive,

DEPT. NO. : 6

Defendants.
_____/

RESPONSE TO RECOMMENDATION FOR ORDER BY DISCOVERY COMMISSIONER AND NOTICE OF SATISFACTION OF ORDER OF JANUARY 10, 2024

Plaintiff Gregory O. Garmong submits the following response to the Recommendation for Order filed by the Discovery Commissioner on February 15, 2024 and notifies the Court that he satisfied the order of the Court entered on January 10, 2024.

POINTS AND AUTHORITIES

On January 10, 2024 the Court entered its Order Granting Motion for Fees and Costs, which directed the plaintiff to pay a total of $3,281.00 to the defendants for fees and costs associated with having a second writ of execution issued and served. On January 19, 2024 counsel for the plaintiff mailed to counsel for the defendants a trust account check in that amount. Exhibit 1, cancelled check and transmittal letter. As of January 26, 2024, when the check posted, the order of January 10, 2024 had been satisfied and *all*

sums owing to the defendants had been paid.

In his Recommendation for Order, the Discovery Commissioner recommended that if the plaintiff paid the amount of $3,281.00 by February 29, 2024 the order to serve responses to discovery requests in aid of execution would be deemed automatically vacated. As stated, payment was made on January 26, 2024 when the defendants cashed the trust check and received the payment. Based on the Recommendation for Order, the plaintiff will consider that he is not required to serve any discovery responses.

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THIS DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.

DATED this 29th day of February, 2024

/S/ Carl M. Hebert
CARL M. HEBERT, ESQ.

INDEX OF EXHIBITS

Number	Description	Pages
1	Letter of January 19, 2024 and cancelled trust check	2

F I L E D
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2024-02-29 08:52:04 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 10191274 : csulezic

EXHIBIT 1

EXHIBIT 1

CARL M. HÉBERT, ESQUIRE

2215 Stone View Drive, Sparks, Nevada 89436

January 19, 2024

Stephen S. Kent, Esq.
Gordon Rees Scully Mansukhani, LLP
1 East Liberty Street, suite 424
Reno, Nevada 89501

Re: **Garmong v. WESPAC; Christian—Satisfaction of fee award order of January 10, 2024**

Dear Steve:

Enclosed is my trust account check in the amount of $3,281.00 in satisfaction of the award of fees and costs against Mr. Garmong in the Court's order entered on January 10, 2024. These were fees and costs from the second execution on Mr. Garmong's Fidelity account.

Mr. Garmong has now completely satisfied the judgment against him and any subsequent awards of fees and costs. I request that the defendants enter a satisfaction of judgment, as provided by NRS 17.200, and remove any judgment liens against Mr. Garmong's real property. See NRS 17.150(2)(c).

Sincerely,

Carl M. Hébert

Carl M. Hebert, Esq.

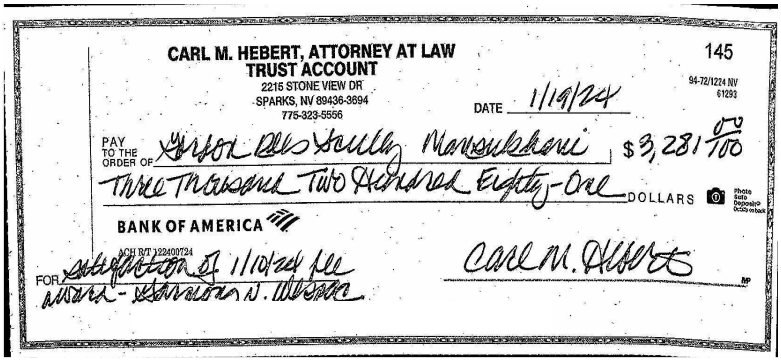
Enclosure: Check for $3,281.00

VOICE : 775-772-5556
EMAIL : CARL@CMHEBERTLAW.COM

Bank of America Online Banking

Public Service Trust - : Account Activity Transaction Details

Check number:	00000000145
Post date:	01/26/2024
Amount:	-3,281.00
Type:	Check
Description:	Check
Merchant name:	Check
Merchant information:	
Transaction category:	Cash, Checks & Misc: Checks


CARL M. HEBERT, ATTORNEY AT LAW
TRUST ACCOUNT
2215 STONE VIEW DR
SPARKS, NV 89436-3694
775-323-5556

145

94-72/1224 NV
61293

DATE 1/19/24

PAY TO THE ORDER OF Gordon Rees Scully Mansukhani $3,281 00/100

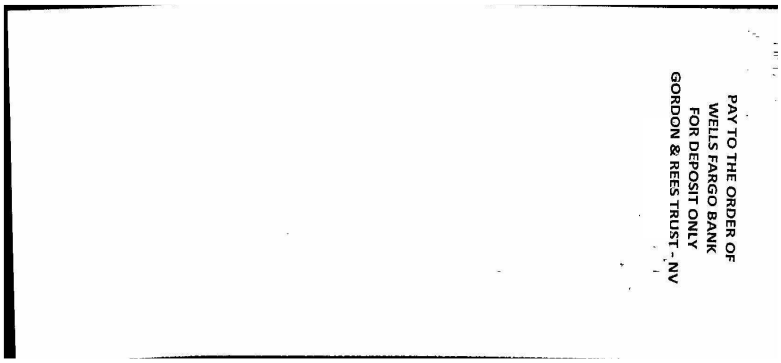
Three Thousand Two Hundred Eighty-One DOLLARS

BANK OF AMERICA

ACH R/T 122400724

FOR Inspection of 1/10/24 file
Mark - Gordon N. Wilson

Carl M. Hebert


PAY TO THE ORDER OF
WELLS FARGO BANK
FOR DEPOSIT ONLY
GORDON & REES TRUST - NV

RA-60

F I L E D
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2024-03-11 03:28:00 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 10210463

CODE NO. 2690

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

GREGORY O. GARMONG, Case No. CV12-01271

Plaintiff, Dept. No. 6

v.

WESPAC; GREG CHRISTIAN;
DOES 1-10, inclusive,

Defendants.
_____/

**ORDER CONFIRMING RECOMMENDATION RE:
PLAINTIFF'S MOTION FOR RELIEF FROM ORDER COMPELLING
POST-JUDGMENT DISCOVERY AND DEFENDANTS' MOTION FOR SANCTIONS
FOR FAILURE TO ANSWER INTERROGATORIES AND REQUESTS FOR
PRODUCTION AFTER APRIL 10, 2023, ORDER GRANTING MOTION TO COMPEL**

On February 15, 2024, the Discovery Commissioner served a *Recommendation for Order* in this action. None of the parties to this action has filed an objection regarding the recommendation and the period for filing any objection concerning the recommendation has expired. See NRCP 16.3(c)(2).

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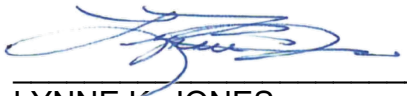
IT IS HEREBY ORDERED the Court hereby CONFIRMS, APPROVES, and ADOPTS the Discovery Commissioner's recommendation for order served on February 15, 2024.

DATED this 11th day of March, 2024.



LYNNE K. JONES
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 11th day of March, 2024, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

CARL HEBERT, ESQ.
STEPHEN KENT, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Holly W. Longe

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESPAC; GREG CHRISTIAN,
Appellants,
vs.
GREGORY O. GARMONG,
Respondent.
_____/

No. 87411

District Court #: CV12-01271

PROOF OF SERVICE OF RESPONDENT'S APPENDIX

I, Carl M. Hebert, certify that, on March 27, 2024, I served the Respondent's Appendix on Stephen S. Kent, Esq., counsel for appellants Wespac and Greg Christian, through the Court's electronic filing system to his e-mail address, skent@grsm.com, consistent with Nevada Electronic Filing and Conversion Rule 9(c).

DATED this 27th day of March, 2024.

/S/ Carl M. Hebert
CARL M. HEBERT, ESQ.

Counsel for respondent Garmong