

Case No.:09 OC 00279 1B

Dept. No.: 1

THE O'MARA LAW FIRM, P.C.
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Counsel for Defendant

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY**

JED MARGOLIN, an individual,

Plaintiff,

v.

OPTIMA TECHNOLOGY
CORPORATION, a California corporation,
OPTIMA TECHNOLOGY
CORPORATION, a Nevada corporation,
REZA ZANDIAN, aka GOLDEMREZA
ZANDIANJAZI, aka GHOLEM REZA
ZANDIAN, aka REZA JAZI, aka J. REZA
JAZI aka G. REZA JAZI aka
GHONOREZA ZANDIAN JAZI, an
individual, DOE Companies 1-10, DOE
Corporations 11-20, and DOE Individuals
21-30, inclusive,

Defendants.

**MOTION TO QUASH AMENDED
ARRESET WARRANT**

1 Gholam Reza Zandian, aka Reza Zandian, (“Defendant”) by and through his attorney,
2 David C. O’Mara, Esq., of The O’Mara Law Firm, P.C., moves this court to quash the Amended
3 Arrest Warrant that was issued June 7, 2019, and the Arrest Warrant that was issued on February
4 3, 2016. Defendant has sought to have this motion and petition heard on an expedited basis and
5 has filed an ex parte motion to shorten time in conjunction with this pleading. This pleading is
6 based upon the Memorandum of Points and Authorities, the Declaration of David C. O’Mara, Esq.
7 in Support of the Motion to Quash, and is made in good faith.

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 INTRODUCTION

10 On January 14, 2016, Plaintiff filed a motion for order to show cause regarding contempt
11 and ex parte motion for order shortening time. Plaintiff sought to hold Defendant in contempt of
12 court for failing to produce documents related to Defendants. Not included in the motion for order
13 to show cause was an affidavit required under NRS 22.030(2). *See* O’Mara Decl., Exhibit 1.

14 On January 22, 2016, the Court issued an order to show cause and set a hearing for February
15 3, 2016. At the February 3, 2016, hearing, Defendant was not present and thus, this Court found
16 that “*based on the failure to comply with this Court’s Order* and additionally failing to appear
17 before this Court, *Defendant is in contempt of this Court pursuant to NRS 22.010.*” *See* O’Mara
18 Decl., Exhibit 2. (emphasis added). An Arrest Warrant was issued on the same day, in which the
19 Court stated, “by virtue of this Warrant of Arrest, you are hereby commanded to arrest the above-
20 named Defendant, and bring him before this Court, pursuant to NRS 22.010, NRS 22.040, NRS
21 22.050 and 22.100. *See* O’Mara Decl., Exhibit 3. A subsequent Amended Arrest Warrant was
22 issued on June 7, 2019, which is substantially the same, save and except the case number was
23 modified to include the proper case number.

24 The Defendant was recently arrested on the improper arrest warrant and is currently being
25 restrained at the Maple River Correctional Facility in Riverside, California, and he remains in
26 custody today. The time in which Defendant could be restrained in California and subsequently in
27 Nevada is likely to exceed the 25 days allowed as a punishment pursuant to NRS 22.100.

LEGAL DISCUSSION

A. The District Court did not have jurisdiction to find Defendant in contempt.

On January 14, 2016, a motion for order to show cause regarding contempt and ex parte motion for order shortening time was filed against Defendant by the Plaintiff. Defendant sought to hold Defendant in contempt for his failure to produce documents required by Court Order. The Plaintiff's allegation of contempt by Defendant was based on Defendant's inaction to produce documents that were not committed in the immediate view and presence of the court or judge.

Considering Plaintiff's allegations that contempt was committed outside the view and presence of the court or judge, Plaintiff was required to present an "affidavit" "to the court or judge of the facts constituting the contempt." See NRS 22.030.

The law is clear in Nevada that before a court can assume jurisdiction to hold a person in contempt, an affidavit must be filed. See *Steeves v. District Court*, 59 Nev. 405, 413, 94 P.2d 1093, 1095–96 (1939). In *Awad v. Wright*, 106 Nev. 407, 794 P.3d 713 the Nevada Supreme Court specifically stated that, because the party "did not file an affidavit with the order to show cause, the district court did not have jurisdiction to hold Awad in contempt of court." See *Awad v. Wright*, 106 Nev. 407, 794 P.3d 713, see also *Pengilly v. Rancho Sante Fee Homeowners Ass'n*, 116 Nev. 646, 650, 5 P.3d 569 ("A writ of prohibition is available where the district court clearly exceeded its jurisdiction—for example, when a finding of indirect contempt is not based upon a proper affidavit.")

Plaintiff alleges that this Court Ordered Defendant to produce documents to Plaintiff by December 21, 2015, as part of the District Court's Order Granting Plaintiff's Motion for Debtor Examination and to Produce Documents. Even if the Court believes that Defendant did not produce the documents, as it did at the February 3, 2016, hearing, Defendant's failure to act was not in the "immediate view and presence of the court and judge at chambers, and thus, NRS 22.030(2) specifically requires that an affidavit be presented to the court or judge of the facts constituting the contempt." NRS 22.030(2).

1 While the Courts have inherent power “to protect and defend their decrees by contempt
2 proceedings, they are nevertheless bound by statute.” *Awad*, 106 Nev. at 409. The failure of the
3 Court to require Plaintiff to submit an affidavit pursuant to statute is a violation of NRS 22.030(2).

4 Accordingly, because Plaintiff did not file an affidavit with his motion for order to show
5 cause, the District Court did not have jurisdiction to hold Defendant in contempt of court.
6 Additionally, the Court did not have jurisdiction to issue the Order to Show Cause why Defendant
7 should not be held in contempt. Therefore, the arrest warrant must be quashed immediately.

8 **B. The Arrest Warrant violates Nevada Law and is not allowed upon the finding of**
9 **contempt.**

10 The District Court had no legal authority to issue a bench warrant after it had already
11 determined that Defendant was in contempt of court. As stated above, the District Court did not
12 have jurisdiction to find Defendant in contempt, nor did it have jurisdiction to issue the order to
13 show cause.

14 A person cannot be held in contempt for failing to appear if the order they are accused of
15 violating is void. According to Nevada law, disobedience or resistance to any *lawful* writ, order,
16 rule, or process issued by the court or judge at chambers is deemed contempt. *See* N.R.S. 22.010
17 (emphasis added). If the order is void, it is not lawful, and thus disobedience to it cannot constitute
18 contempt.

19 In the case of *Cunningham v. Eighth Judicial Dist. Court*, the Supreme Court of Nevada
20 held that a contempt order issued without jurisdiction is void. *See Cunningham v. Eighth Judicial*
21 *Dist. Court of State of Nev., In and For Clark County*, 102 Nev. 551 (1986) Similarly, in *Steeves v.*
22 *Second Judicial District Court*, the petitioner argued that the show cause order was void because
23 the affidavit upon which it was based did not allege facts showing the petitioner’s ability to comply
24 with the decree, and thus the court lacked jurisdiction to issue the order. *See Steeves v. Second*
25 *Judicial District Court in and for Washoe County*, 59 Nev. 405 (1939)¹

26
27 ¹ In an unpublished decision, the Nevada Court of Appeals, in *Yasol v. Greenhill*, 137 Nev. 980, 480 P.3d. 881 (2021)
28 vacated a contempt order because the affidavit attached to the motion for an order to show cause was facially
deficient.

1 In this case, the District Court already improperly found that Defendant was in contempt,
2 and thus, the arrest warrant was not authorized under Nevada law. Indeed NRS 22.40 only provides
3 authority to issue an arrest warrant to bring the person “charged to answer.” Since the District
4 Court has already improperly determined that Defendant was in contempt, the Court has no
5 authority to arrest Defendant and have him answer to a motion that the District Court lacks
6 jurisdiction to hear.

7 Accordingly, the arrest warrant issued against Defendant must be quashed.

8 **C. The Arrest Warrant must be quashed because it is a criminal sanction that violates**
9 **the protections afforded to Defendant under the Constitution.**

10 The use of an arrest warrant by the District Court is a criminal punishment against
11 Defendant which violates Defendant’s Constitutional Rights. Indeed, “criminal penalties may not
12 be imposed on someone who has not been afforded the protections that the Constitution requires of
13 such criminal proceedings.” *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821,
14 826, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994) (internal quotation marks omitted); *see also City*
15 *Council of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 893-94, 784 P.2d 974, 979 (1989).

16 “[W]hether a contempt is civil or criminal turns on the ‘character and purpose’ of the
17 sanction involved. Thus, a contempt sanction is considered civil if it ‘is remedial, and for the benefit
18 of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the
19 authority of the court.’” *Bagwell*, 512 U.S. at 827-28, 114 S.Ct. 2552 (*quoting Gompers v. Bucks*
20 *Stove & Range Co.*, 221 U.S. 418, 441, 31 S.Ct. 492, 55 L.Ed. 797 (1911)). The United States
21 Supreme Court has further explained as follows:

22 The character of the relief imposed is thus ascertainable by applying
23 a few straightforward rules. If the relief provided is a sentence of
24 imprisonment, it is remedial if “the defendant stands committed
25 unless and until he performs the affirmative act required by the
26 court’s order,” and is punitive if “the sentence is limited to
27 imprisonment for a definite period.” [*Gompers*, 221 U.S. at 442, 31
28 S.Ct. 492.] If the relief provided is a fine, it is remedial when it is
paid to the complainant, and punitive when it is paid to the court,
though a fine that would be payable to the court is also remedial when
the defendant can avoid paying the fine simply by performing the
affirmative act required by the court’s order.

1 *Hicks ex rel. Feiock v. Feiock*, 485 U.S. 624, 631-32, 108 S.Ct. 1423, 99 L.Ed.2d 721 (1988)
2 (emphasis added).

3 In *Lewis v. Lewis*, the Nevada Supreme Court held that “in order for a contempt order
4 imposing a determinate sentence to be civil in nature, it must contain a purge clause ... [which]
5 gives the defendant the opportunity to purge himself of the contempt sentence by complying with
6 the terms of the contempt order.” *Lewis*, 132 Nev. at 457, 373 P.3d at 881 (citing *Hicks*, 485 U.S.
7 at 640, 108 S.Ct. 1423). The Supreme Court concluded that an order of incarceration must contain
8 a purge clause to be civil. Incarceration remedies contempt by coercing compliance. A purge clause
9 incentivizes compliance and thereby ensures that incarceration serves its remedial purpose.
10 Conversely, if the defendant has “no way to purge his sentence to avoid or get out of jail,” then the
11 incarceration fails to incentivize any action and can have no purpose but punishment. *Id.* at 458,
12 373 P.3d at 881.

13 In this case, the District Court did not include a purge clause in the arrest warrant so that
14 Defendant could avoid or get out of jail. In fact, while the Court found Defendant in contempt, the
15 Court did not issue any subsequent order that required Defendant to produce the various documents
16 and bring himself in compliance before he was subject to incarceration.

17 Accordingly, the Court’s bench warrant must be quashed because the Court’s sanction
18 violates Defendant’s constitutional rights.

19 CONCLUSION

20 Based upon the facts and circumstances of this case, the District Court did not have
21 jurisdiction to issue an order to show cause order, an order of contempt and/or an arrest warrant.
22 The District Court’s actions violate Nevada law and Defendant’s Constitutional Rights.
23 Accordingly, the District Court must quash the arrest warrant immediately.

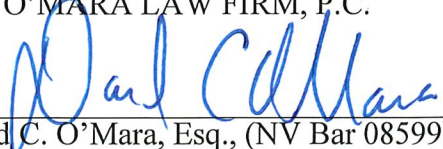
AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above-referenced matter does not contain the social security number of any person.

Dated: April 4, 2025.

THE O'MARA LAW FIRM, P.C.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document on all parties to this action by:

 X Depositing in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, following ordinary business practices

 Personal Delivery

 Facsimile

 Federal Express or other overnight delivery

 Messenger Service

 Certified Mail with Return Receipt Requested

 Electronically through the Court's ECF system

 X Email

addressed as follows:

| | |
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| Frank C. Gilmore, Esq. The Gilmore Law Group, PLLC 3715 Lakeside Drive Reno, NV 89509 frank@gilmoregroupnv.com | Amy N. Tirre, Esq. Law Offices of Amy N. Tirre, APC 3715 Lakeside Drive Reno, NV 89509 amy@amytirrelaw.com |
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DATED: April 4, 2025.



VALERIE WEIS