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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 BEMO USA CORPORATION, et al.,

13 Plaintiff,

14 vs.

15
16 JAKE'S CRANE, RIGGING &
TRANSPORT INTERNATIONAL, INC., et
17 al.,

18 Defendant.
19

Case Number:

2:08-cv-00745-JCM-PAL

20
21 **MOTION TO EXTEND TIME TO FILE**
OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL
[ECF No. 90]

(SECOND REQUEST)

22 Jake's Crane, Rigging & Transport International, Inc., as well as the other entities
23 (collectively, "Jake's") by and through its counsel of record Albert G. Marquis, Esq., Chad
24 F. Clement, Esq., and James Beckstrom, Esq., of the law firm of Marquis Aurbach Coffing,
25 hereby submits its Motion to Extend Time to File its Opposition to Plaintiff's Motion to
26 Compel from its current due date, that being Monday, November 13, 2017, for fourteen (14)
27 calendar days; which would make the due date November 28, 2017. This Motion is made

1 and based upon the papers and pleadings on file herein and the following Memorandum of
2 Points and Authorities. This motion is filed on November 13, 2017. See LR 6-1.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 Jake's hereby moves this Court for a two week extension of time to file an
6 Opposition to Bemo USA Coporation's Motion to Compel Compliance with Subpoena
7 Duces Tecum to Rich Wightman & Company. This Motion is supported by good cause as
8 indicated by the Declaration of Chad Clement, Esq., attached hereto, and made without the
9 intent to delay, hinder, or frustrate proceedings.

10 **II. FACTS RELEVANT TO THIS REQUEST**

11 The instant Motion follows diligent efforts by the counsel for Jake's to timely
12 resolve the underlying objections to the subpoena duces tecum to Rich Wightman &
13 Company ("Wightman") without judicial intervention. Counsel has diligently worked with
14 opposing counsel Phillip Varricchio, Esq. and Rachel J. Holzer, Esq., in an attempt to avoid
15 having to file the instant Motion to no avail.

16 The Subpoena Duces Tecum was issued to Wightman, a non-party accountant for
17 Jake's, seeking production of records on February 1, 2017. Within that Subpoena, Plaintiff
18 sought production of nearly twenty-five years of documents relating to six non-party
19 entities, containing no proximal limitation. Additionally, the Subpoena sought information
20 that contained privileged accountant-client information, as to the same six non-party entities.

21 The subpoena requested Wightman produce:

22 "[A]ny and all documentation of financial records (including but not limited
23 to tax returns, bank statements, income statements, general deposits, balance
24 sheets, patents, patent license agreements, patent assignments) which name,
25 benefit and/or identify the following entities: (1) Jake's Crane Rigging and
26 Transport International; (2) Construction Management Co.; (3) Ganesh, LLC;
27 (4) Ganesh II, LLC; (5) Robb Technologies, LLC; (6) Transworld
Manufacturing Company; and (7) Lift Equipment Certification Company,
Inc."

See Exhibit 1, attached to ECF DKT. No. 90.

1 On February 10, 2017, counsel for Wightman, Frank Ellis, Esq. served a written
2 objection pursuant to FRCP 45(2)(B). Additionally, Jake's served a written objection on
3 March 6, 2017. Following the written objections by both Jake's and Wightman, Plaintiff
4 had limited contact with Jake's or Wightman for almost eight months. Based on the
5 understanding the parties were working towards an amicable solution to narrow the scope
6 and proximity of the requests, counsel for both Jake's and Wightman waited for Bemo to
7 provide further information as to how they would agree to narrow the requests at issue.

8 On October 18, 2017, Bemo, after months of no communication with Jake's or
9 Wightman, filed the underlying Motion to Compel. As set forth in the Declaration of Chad
10 Clement, Esq., since the filing of Bemo's Motion to Compel, Jake's has made numerous
11 good faith efforts to contact his clients. Additionally, Jake's counsel has reached out to
12 Bemo in an attempt to narrow the scope of information requested and produce the requested
13 information without judicial intervention. However, based on counsel's current trial
14 schedule and Mr. Ellis being out of the jurisdiction from November 6, 2017 through
15 November 10, 2017, counsel has been unable to meaningfully discuss the underlying
16 requests. During this time, Counsel for Jake's has been working diligently to discuss the
17 requests with Jake's, but due to conflicting schedules, over twenty-five years of documents
18 being requested, and the fact the subpoenaed entities have different ownership structures,
19 counsel has been unable to fully investigate any opposition to such requests.

20 On November 3, 2017, Bemo, Wightman, and Jake's stipulated to extend the
21 Opposition Deadline to November 13, 2017, in order for Jake's and Wightman to further
22 contact their clients and narrow the scope of information requested. However, as indicated
23 *supra*, because of conflicting schedules between Wightman and Jake's counsel, as well as
24 their respective clients, counsel has been unable to obtain such information before the
25 looming November 13, 2017 deadline. On November 13, 2017, counsel for Jake's contacted
26 counsel for Bemo by telephone and email to request a stipulation under the above noted
27 circumstances. However, counsel was unwilling to extend such extension. Additionally, on

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1 November 13, 2017, the James A. Beckstrom, Esq., again contacted Bemo’s counsel Phillip
2 Varricchio, Esq. and Rachel Holzer, Esq., by electronic mail and telephone to express the
3 reasons for delay and to ask for a two week continuance. However, Bemo was again
4 unwilling to extend such extension and waited until 3:55 PM to inform Jake’s of their
5 refusal to extend the two week continuance.

6 **III. LEGAL ARGUMENT**

7 Pursuant to LR 6-1, a Court may grant an extension of time upon a showing of good
8 cause. As indicated by the Declaration of Chad Clement, Esq., good cause exists and
9 therefore, the Motion to Extend Time should be granted.

10 **IV. CONCLUSION**

11 Based on the foregoing, Jake’s respectfully asks this Court to grant a two week
12 extension to file an opposition to the Motion to Compel, with the new deadline to be
13 November 28, 2017.

14 DATED this 13th day of November, 2017.

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By /s/ Chad F. Clement
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DECLARATION OF CHAD F. CLEMENT, ESQ., IN SUPPORT OF MOTION TO EXTEND TIME TO FILE OPPOSITION TO MOTION TO COMPEL COMPLIANCE WITH SUBPOENA DUCES TECUM TO RICH WIGHTMAN & COMPANY

Chad F. Clement, Esq., declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am a Director with the law firm of Marquis Aurbach Coffing (“MAC”), counsel of record for defendant Jake’s Crane, Rigging & Transport International, Inc., as well as the other entities (collectively, “Jake’s”) in this case. I make this Declaration in support of the Motion to Extend Time to File Opposition to Motion to Compel Compliance with Subpoena Duces Tecum (“Motion”).

3. The Subpoena Duces Tecum (“Subpoena”) was issued to Wightman, a non-party accountant for Defendant Jake’s Crane, seeking production of records on February 1, 2017.

4. On February 10, 2017, counsel for Wightman, Frank Ellis, Esq. served a written objection pursuant to FRCP 45(2)(B).

5. Additionally, Jake’s served a written objection on March 6, 2017. The basis for the objection was on the grounds the information requested (1) calls for accountant-client privileged information, NRS 49.125-49.2.05, as it calls for “any and all documentation of financial records . . . ;” (2) calls for sensitive, confidential, and/or proprietary personal and business information, as it calls for financial information from entities who were not parties to the case and are not subject to the judgment; (3) is overly broad and unduly burdensome, as the request contains no time limitation, is extremely broad, calling for “any and all documentation of financial records . . . which name, benefit and/or identify [7 entities],” and calls for information from entities who were not parties to the case and are not subject to the judgment; (4) is duplicative, as some of the requested documents have already been produced; (5) is vague and ambiguous, given its breadth and scope; (6) calls for irrelevant information, given its breadth and scope; and (7) seeks case or liability related discovery, not post-judgment discovery.

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1 6. Following the written objections by both Jake's and Wightman, Bemo's counsel
2 agreed to narrow the scope of its requests within the Subpoena to avoid judicial intervention.

3 7. Counsel for Bemo failed to contact the undersigned for approximately eight
4 months after the discussions.

5 8. On or about October 18, 2017, Bemo filed a Motion to Compel Compliance with
6 Subpoena Duces Tecum to Rich Wightman & Company.

7 9. Counsel for Bemo did not have a substantive meet and confer with the
8 undersigned before filing the Motion to Compel.

9 10. On October 31, 2017, the undersigned had a telephone conversation with Bemo
10 counsel Phillip Varricchio, where the Subpoena requests were discussed at length and the parties
11 agreed to attempt to narrow the scope of the requests.

12 11. Following the October 31, 2017, telephone call with opposing counsel, the
13 undersigned diligently attempted to contact Jake's to discuss the information requested in the
14 Subpoena. However, because of conflicting schedules, the undersigned has been unable to
15 meaningfully discuss the requested information contained with the Subpoena before the
16 November 13, 2017 deadline.

17 12. Additionally, the undersigned has been unable to discuss the feasibility of
18 producing the requested information with Wightman's counsel or determine what types of
19 information Wightman has in his possession.

20 13. Upon information and belief of the undersigned, a large number of the documents
21 requested within the Subpoena are subject to accountant-client privilege.

22 14. On November 3, 2017, Bemo, Wightman, and Jake's stipulated to extend the
23 Opposition Deadline to November 13, 2017, in order for Jake's and Wightman to further contact
24 their clients and narrow the scope of information requested.

25 15. Because of conflicting schedules between Wightman and Jake's counsel, as well
26 as their respective clients, and a shortened week due to Veterans Day, the undersigned has been
27 unable to obtain such information before the looming November 13, 2017 deadline.

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1 16. Additionally, the undersigned was subject to prescheduled depositions, hearings,
2 and conferences the entire week November 6, 2017, and Frank Ellis, counsel for Wightman was
3 out of the office the week of November 6, 2017.

4 17. To avoid filing the instant Motion, on November 13, 2017 the undersigned
5 contacted Bemo counsel Phillip Varricchio, Esq. and Rachel Holzer, Esq., by telephone to
6 express the reasons for delay and to ask for a two week continuance, but was unable to reach
7 counsel either Mr. Varricchio or Ms. Holzer.

8 18. Additionally, on November 13, 2017, the undersigned's associate James A.
9 Beckstrom, Esq., again contacted Bemo's counsel Phillip Varricchio, Esq. and Rachel Holzer,
10 Esq., by electronic mail and telephone to express the reasons for delay and to ask for a two week
11 continuance.

12 19. Counsel for Bemo refused any such continuance to both requests, therefore
13 necessitating the instant Motion.


14 Pursuant to 28 U.S.C. § 1746 and NRS § 53.045, I declare under penalty of perjury, that
15 the foregoing is true and correct.

16 Dated this 13th day of November, 2017.

17
18
19 /s/ Chad F. Clement
Chad F. Clement, Esq.

20
21 **IT IS ORDERED** that defendant shall have until November 28, 2017, to file an
22 opposition to the motion, and plaintiff shall have until December 5, 2017, to file a reply.
23 The hearing on the Motion to Compel (ECF No. 90) is set for **10:30 a.m., December**
19, 2017.

24 Dated: November 28, 2017

25 
26 Peggy A. Leen
United States Magistrate Judge