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ewalther@klnevada.com

Attorneys for Plaintiff,
CASUN INVEST, A.G.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

CASUN INVEST, A.G., a Swiss corporation,

Plaintiff,

vs.

MICHAEL H. PONDER, an individual;
LEZLIE GUNN, an individual; and NVWS
PROPERTIES LLC, a Nevada limited liability
company,

Defendants.

CASE NO.: 2:16-cv-02925-JCM-GWF

**REQUEST FOR INTERNATIONAL
JUDICIAL ASSISTANCE
PURSUANT TO THE HAGUE
CONVENTION OF 18 MARCH 1970
ON THE TAKING OF EVIDENCE
ABROAD IN CIVIL OR
COMMERCIAL MATTERS**

LEZLIE GUNN, an individual,

Third-Party Plaintiff,

vs.

HANS-PETER WILD, an individual,

Third-Party Defendant.

KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

**REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE PURSUANT TO THE
HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING OF EVIDENCE
ABROAD IN CIVIL OR COMMERCIAL MATTERS**

The United States District Court, District of Nevada (“the Court”), presents its compliments to the High Court and the Cantonal Court of Zug under the Hague Convention on the Taking of Evidence Abroad in Civil of Commercial Matters (“Hague Evidence Convention”) and, pursuant to Article 17 of the Hague Evidence Convention, requests international judicial assistance to obtain evidence to be used in a civil proceeding before this Court in the above-captioned matter. This Court respectfully requests that the High Court of Zug forward this request to the Cantonal Court of Zug, that the latter recognize this Letter of Request from this Court and accompanying Commission, and that the Federal Department of Justice and Police authorizes the taking of evidence in the territory of Switzerland by the commissioners appointed for this purpose as developed below, in adherence to Article 17 of the Hague Evidence Convention and in the interest of comity.¹

A. *Sender*

Office of the Clerk
United States District Court for the District of Nevada
Lloyd D. George Federal Courthouse
333 Las Vegas Boulevard South
Las Vegas, Nevada 89101
T: (702) 464-5400

B. *Central Authority of the Requested State*

Obergericht Zug
Rechtshilfe
Kirchenstrasse 6
Postfach 760
CH-6301 Zug
T: +41 41 723 62 20
F: +41 41 723 62 30

¹ Pursuant to Article 4 of the Hague Convention, this Letter of Request will be provided to the High Court of Zug with a German translation.

1 **C. *Person to Whom the Authorized Commission is to be Returned***

2 Aaron R. Maurice, Esq.
3 Kolesar & Leatham
4 400 South Rampart Boulevard, Suite 400
5 Las Vegas, Nevada 89145
6 T: (702) 362-7800
7 F: (702) 362-9472

8 **D. *Purpose of Evidence Sought and Requested Date of Receipt of the Response to***
9 ***the Letter of Request***

10 The requested commission will permit the collection of evidence to be used by the Plaintiff
11 to support its claims and refute the testimony of the Defendants. Dr. Hans-Peter Wild has indicated
12 that he is willing to voluntarily appear for his deposition in Zug, Switzerland on October 31, 2018.
13 Accordingly, the Court requests a prompt response to this Letter of Request.

14 **I. HAGUE EVIDENCE CONVENTION REQUIREMENTS**

15 This Court requests the assistance more specifically described herein as necessary in the
16 interests of justice. In conformity with Article 3 of the Hague Evidence Convention, the
17 undersigned applicant has the honor to submit the following request:

18 **A. *Requesting Judicial Authority***

19 Office of the Clerk
20 United States District Court for the District of Nevada
21 Lloyd D. George Federal Courthouse
22 333 Las Vegas Boulevard South
23 Las Vegas, Nevada 89101
24 T: (702) 464-5400

25 **B. *Central Authority of the Requested State***

26 Obergericht Zug
27 Rechtshilfe
28 Kirchenstrasse 6
 Postfach 760
 CH-6301 Zug
 T: +41 41 723 62 20
 F: +41 41 723 62 30

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C. Name of the Case and Identifying Number

Casun Invest, A.G. v. Ponder, Civil Case No. 2:16-CV-02925-JCM-GWF

D. Names and Addresses of the Parties and their Representatives

1. Plaintiff

Casun Invest, A.G.
Dammstrasse 19
CH-6300 Zug
hrwild@schweigerlaw.ch

2. Plaintiff's Representatives

Aaron R. Maurice, Esq.
Brittany Wood, Esq.
Eric D. Walther, Esq.
Kolesar & Leatham
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
amaurice@klnevada.com
bwood@klnevada.com
ewalther@klnevada.com
T: (702) 362-7800
F: (702) 362-9472

3. Defendants

Michael H. Ponder
4045 South Buffalo Drive, #A101-283
Las Vegas, Nevada 89147
mikehponder@yahoo.com

Lezlie Gunn
4045 South Buffalo Drive, #A101-171
Las Vegas, Nevada 89147
lezlieusa@yahoo.com

NVWS Properties LLC
701 S. Carson Street, Suite 200
Carson City, Nevada 89701
lezlieusa@yahoo.com

4. Defendants' Representatives

Brian W. Boschee, Esq.
Donna DiMaggio, Esq.
Holley Driggs Walch Fine Wray Puzey & Thompson
400 S. Fourth Street, Third Floor
Las Vegas, Nevada 89101
bboschee@nevadafirm.com
ddimaggio@nevadafirm.com

1 T: (702) 791-0308
2 F: (702) 791-1912

3 5. Third-Party Plaintiff

4 Lezlie Gunn
5 4045 South Buffalo Drive, #A101-171
6 Las Vegas, Nevada 89147
7 lezlieusa@yahoo.com

8 6. Third-Party Plaintiff's Representatives

9 Brian W. Boschee, Esq.
10 Donna DiMaggio, Esq.
11 Holley Driggs Walch Fine Wray Puzey & Thompson
12 400 S. Fourth Street, Third Floor
13 Las Vegas, Nevada 89101
14 bboschee@nevadafirm.com
15 ddimaggio@nevadafirm.com
16 T: (702) 791-0308
17 F: (702) 791-1912

18 7. Third-Party Defendant

19 Dr. Hans-Peter Wild
20 Kirchenstrasse 4
21 CH-6300 Zug
22 wild@hpwh.ch

23 8. Third-Party Defendant's Representatives

24 Aaron R. Maurice, Esq.
25 Brittany Wood, Esq.
26 Eric D. Walther, Esq.
27 Kolesar & Leatham
28 400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
bboschee@nevadafirm.com
ddimaggio@nevadafirm.com
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Dr. jur. Georg Naegeli
Dr. jur. Roman Baechler
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E. Nature of the Proceedings and Summary of the Case and Relevant Facts

The above-captioned case is a civil lawsuit brought by Plaintiff Casun Invest, A.G. (“Casun”) against Defendants seeking money damages and equitable relief resulting from the fraudulent conveyance of a piece of real property. The Plaintiff’s Complaint alleges the following causes of action against the Defendants: (1) constructive trust; (2) equitable lien; (3) unjust enrichment; (4) breach of fiduciary duty; (5) aiding and abetting breach of fiduciary duty, (6) constructive fraud, and (6) civil conspiracy.

The Complaint alleges that in April of 2013, Defendant Michael H. Ponder (“Ponder”), a Direktor of Plaintiff, executed a Grant Deed that conveyed real property in Woodside, California (“Woodside Property”) to Defendant NVWS Properties LLC (“NVWS”) (an entity owned and controlled by Defendant Lezlie Gunn (“Gunn”)) without obtaining the approval of Casun’s Board of Directors. The Grant Deed contained information indicating that the Woodside Property was sold for \$1,500,000 (far below the property’s fair market value). However, no sales proceeds were ever remitted by Ponder to Casun in connection with the purported sale.

The Defendants assert that Dr. Wild – who was neither an officer nor Direktor of Casun – somehow authorized Ponder to sell the Woodside Property and that Defendant Gunn provided jewelry to Dr. Wild as consideration for the purchase of the Woodside Property.

Gunn has filed a Third-Party Complaint against Dr. Wild alleging that Dr. Wild is contractually obligated to indemnify Gunn – even against damages caused by her own intentional misconduct.

Dr. Wild defends against the Third-Party Complaint by pointing out that the indemnity agreement relied upon by Gunn, by its plain terms, only applies to claims that relate to items that Gunn received or will receive from Dr. Wild and/or his estate (which is not how Gunn’s entity – NVWS Properties LLC – acquired title to the Woodside Property) and, under Nevada law, an indemnification agreement only indemnifies an indemnitee as to the legal consequences of his/her negligent or intentional acts if the indemnification agreement explicitly states as much (which the indemnification agreement executed by Gunn an Dr. Wild does not).

1 The parties are currently engaged in discovery, where the parties exchange information
2 concerning their claims and defenses. The Court accordingly has not addressed the merits of the
3 allegations made in the case.

4 Plaintiff contends that the information sought by this request is available to the High Court
5 of Zug. This Court respectfully requests that the High Court of Zug act on this request
6 expeditiously.

7 **F. Evidence to be Obtained**

8 Dr. Wild's testimony is relevant to Casun's claims and the defenses asserted by the
9 Defendants, as well as to Gunn's third-party claim for indemnification. Accordingly, this Court
10 respectfully request that the High Court of Zug recognize the attached Commission, so that the
11 appointed commissioners may lawfully obtain testimony from Dr. Wild, who resides at
12 Kirchenstrasse 4, CH-6300 Zug, on the following topics:

- 13 1. Dr. Wild's relationship with Gunn;
- 14 2. Dr. Wild's knowledge regarding Gunn's background;
- 15 3. Dr. Wild's involvement with Casun;
- 16 4. Dr. Wild's knowledge (if any) regarding the management of Casun in April of
17 2013;
- 18 5. Dr. Wild's knowledge (if any) regarding Casun's acquisition of the Woodside
19 Property;
- 20 6. The litigation between Gunn and Calvin Gunn regarding the Woodside Property;
- 21 7. Dr. Wild's knowledge (if any) regarding the preparation of the Grant Deed
22 purporting to convey Casun's interest in the Woodside Property to NVWS;
- 23 8. Dr. Wild's knowledge (if any) regarding Ponder's execution and delivery of the
24 Grant Deed purporting to convey Casun's interest in the Woodside Property to
25 NVWS ("Woodside Conveyance");
- 26
- 27
- 28

- 1 9. Dr. Wild's knowledge (if any) regarding the recording of the Grant Deed on April
2 25, 2013, in the Official Records of the County of San Mateo, California, as
3 Instrument No. 2013-062730 ("Deed");
- 4 10. Dr. Wild's knowledge regarding Stephanie Mückenmüller's role as Ponder's
5 assistant in April of 2013;
- 6 11. Dr. Wild's knowledge (if any) regarding Gunn's claim that she provided
7 consideration in connection with the Woodside Conveyance;
- 8 12. Dr. Wild's knowledge (if any) regarding the documents produced by Gunn to try
9 to support her claim regarding the consideration allegedly provided in connection
10 with the Woodside Conveyance;
- 11 13. Dr. Wild's relationship with Ponder;
- 12 14. Dr. Wild's knowledge regarding Ponder's background;
- 13 15. Dr. Wild's opinion of Gunn's character for untruthfulness;
- 14 16. Dr. Wild's knowledge regarding Gunn's reputation for untruthfulness;
- 15 17. Dr. Wild's knowledge regarding specific instances in which Gunn has been
16 untruthful;
- 17 18. Dr. Wild's opinion of Ponder's character for untruthfulness;
- 18 19. Dr. Wild's knowledge regarding specific instances in which Ponder has been
19 untruthful; and
- 20 20. The Complaint filed by Casun in United States District Court, District of Nevada,
21 on December 16, 2016, against Ponder, Gunn and NVWS.
- 22 Dr. Wild has executed a declaration indicating a willingness, under certain conditions, to
23 be deposed on October 31, 2018, in Zug, Switzerland. See Declaration of Voluntary Appearance
24 dated August 8, 2018, attached hereto as **Exhibit A**. As set forth in the Declaration of Voluntary
25 Appearance, Dr. Wild's conditions are:
- 26 (i) Any applicable provisions, rules or other measures imposed
27 by Swiss law and/or the Hague Convention of 18 March
28 1970 on the taking of Evidence Abroad in Civil or
Commercial Matters regarding the holding of depositions or

1 otherwise obtaining evidence in Switzerland by a foreign
2 authority will be strictly adhered to;

3 (ii) Any approval required from any Swiss governmental
4 authority to conduct such deposition will be obtained prior
5 to the commencement of the deposition; and

6 (iii) Upon [Dr. Wild's] request, the deposition will either be
7 conducted in German or a German interpreter will be present
8 to translate the questions and answers during the deposition.

9 Id.

10 As set forth in the Declaration of Voluntary Appearance, Dr. Wild is: (1) cooperating of
11 his own accord; (2) knows that he cannot be subject to any coercive measures; (3) knows he cannot
12 be forced to participate or to appear; and (4) knows that he has the right to invoke an exemption
13 or a prohibition to give evidence provided for by either the laws of Switzerland or Nevada. Id.

14 **G. Procedure for Obtaining Evidence**

15 If authorized, Dr. Wild's testimony will be obtained by the commissioners at the offices of
16 a law firm in Zug, Switzerland, and will be under oath and recorded by video and stenography. As
17 requested by Dr. Wild, the deposition will either be conducted in German or a German interpreter
18 will be present to translate the questions and answers during the deposition.

19 **II. OTHER REQUIREMENTS**

20 **A. Information Regarding the Deposition (if permitted)**

21 1. Notice to the competent authority of the date and time the evidence will be taken

22 If permitted, the deposition will be conducted on the morning of October 31,
23 2018.

24 2. Notice to the persons from whom the evidence is sought

25 Dr. Wild will be given due notice (in German) of the fact that he is invited to
26 give deposition testimony. Importantly, Dr. Wild has already consented to
27 participate in the requested deposition. See Exhibit A.

28 **B. Fees and Costs**

Plaintiff is responsible for reasonable copy costs and charges associated with the
processing and handling of this request by the High Court of Zug. For the purpose of determining

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the Swiss Confederation, if future circumstances so require.

III. CONCLUSION

This Court, in the spirit of comity and reciprocity, hereby requests international judicial assistance in the form of this Letter of Request seeking the testimony described herein, from the High Court of Zug. This Court extends to all judicial and other authorities of the Swiss Confederation the assurances of its highest consideration.

Dated: September 13, 2018



The Honorable GEORGE W. FOLEY, JR.
UNITED STATES MAGISTRATE JUDGE,
UNITED STATES DISTRICT COURT,
DISTRICT OF NEVADA

EXHIBIT A

Dr. Hans-Peter Wild, Kirchenstrasse 4, 6300 Zug, Switzerland

To
Aaron R. Maurice, Esq.
Kolesar & Leatham
400 S. Rampart Blvd., Suite 400
Las Vegas, NV 89145

Zug, Switzerland, 6 August 2018

Dear Mr. Maurice,

Reference is made to the proceedings filed by Casun Invest AG in United States District Court, District of Nevada, Case No. 2:16-cv-02925-JCM-GWF (**Case**).

I hereby confirm that I am prepared to voluntarily appear for a deposition in Switzerland to be held on 31 October 2018 initiated by the plaintiff, defendants or third-party plaintiff in the Case provided that:

- (i) Any applicable provisions, rules or other measures imposed by Swiss law and/or the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters regarding the holding of depositions or otherwise obtaining evidence in Switzerland by a foreign authority will be strictly adhered to;
- (ii) Any approval required from any Swiss governmental authority to conduct such deposition will be obtained prior to the commencement of the deposition; and
- (iii) Upon my request, the deposition will either be conducted in German or a German interpreter will be present to translate the questions and answers during the deposition.

I hereby declare that by agreeing to and confirming the above:

- (i) I am cooperating of my own accord;
- (ii) I know that I cannot be subjected to any coercive measures;
- (iii) I know that I cannot be forced to participate or to appear; and
- (iv) I know that I have the right to invoke an exemption or a prohibition to give evidence provided for by either the laws of Switzerland or Nevada.

Kind regards



Dr. Hans Peter Wild