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7 **UNITED STATES DISTRICT COURT**  
 8 **FOR THE DISTRICT OF NEVADA**

9 REPUBLIC OF KAZAKHSTAN,

10 Plaintiff,

11 v.

12 BIG SKY ENERGY CORPORATION

13 Defendants.

Case No.: 2:22-cv-00509-JCM-BNW

**OBJECTION TO SUBPOENAS AND  
 MOTION TO QUASH OR  
 MODIFY SUBPOENAS**

14 **1. Introduction.**

15 Defendant Big Sky Energy Corporation (“Big Sky”), by and through its counsel of  
 16 record, Hutchison & Steffen, PLLC, respectfully request that the Court quash or modify the  
 17 subpoenas served on Big Sky and its counsel, W. Scott, Lawler (“Mr. Lawler”). The  
 18 subpoenas at issue are attached hereto as Exhibits 1 and 2 (“Subpoenas”) and were issued by  
 19 plaintiff Republic of Kazakhstan (“ROK”). Big Sky objects to the Subpoenas and moves to  
 20 quash or modify them as, among other things, they are overbroad and require undue expense  
 21 on Big Sky, and constitute an abuse of process as they are purportedly in connection with an  
 22 attempt to collect on a judgment but in reality seek information well outside the permissible  
 23 scope. Notably, ROK has requested this information in two prior proceedings and been denied  
 24 it in the context of the underlying arbitration from which the current judgment arose. Now,  
 25 despite purportedly only seeking to collect on a judgment, ROK seeks information wholly  
 26 unrelated to collection on a purported judgment and instead seeks a third bite at the apple to  
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1 attempt to obtain information they were not, and are not, entitled to, including without  
2 limitation, privileged information and information related to other entities that are not parties to  
3 this litigation. Big Sky has no problem producing relevant information and as the declaration  
4 of Mr. Lawler makes clear, Big Sky has no assets on which ROK can collect and is not  
5 currently operating, nor has it done so for nearly a decade. *See* Declaration of Scott Lawler  
6 (“Lawler Declaration”), attached as Exhibit 3 hereto. Accordingly, there is little information  
7 for ROK to legitimately seek. However, Big Sky is willing to produce that information and, in  
8 fact, conducted a meet and confer call with counsel for ROK to see if the parties could reach a  
9 mutual agreement to produce this documentation in satisfaction of the Subpoenas. But, ROK  
10 would not agree to this reasonable request, necessitating the instant motion.

11 ROK has no legitimate reason to seek the volume and scope of documents from the  
12 individuals and entities listed below, and as such Big Sky respectfully requests that the Court  
13 quash or modify these Subpoenas.

## 14 **2. Factual Background.**

15 A default judgment was entered in this case on July 28, 2022 (Doc. 21). The default  
16 judgment arose out of an ICSID Case No. ARB/17/22 which was an arbitration between ROK  
17 and Big Sky (“Arbitration”). In the underlying Arbitration, ROK sought virtually the same  
18 documents it now seeks against Big Sky and was denied the requested documents in  
19 Arbitration. *See* Lawler Declaration at ¶¶ 2-19. Moreover, the documents at issue were also  
20 sought by ROK in case no. MC-19-00035-PHX-DWL in the federal District Court of the  
21 District of Arizona, which was an application pursuant to 17 U.S.C. § 1782 for document  
22 discovery. ROK’s request for the documents at issue was denied in that proceeding as well.  
23 *See* Order quashing ROK’s subpoena, Exhibit 4.

24 ROK’s newest Subpoenas are a third bite at the apple under the guise of collecting on a  
25 judgment. However, it is clear that the Subpoenas are simply a pretext for ROK to yet again  
26 seek information that is irrelevant and in fact is not even related to this litigation at all. In fact,  
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1 the Subpoenas seek, without limitation, the following classes of information which is  
2 completely irrelevant to the instant case or otherwise improper:

- 3 • Documents which contain privileged information, including attorney/client privileged  
4 information between Big Sky and its attorney, Scott Lawler;
- 5 • Information ROK wants to improperly obtain regarding unrelated entities that are not  
6 parties to the instant litigation, including Big Sky Energy Kazakhstan Ltd (“Big Sky  
7 Kazakhstan”), Ingalls & Snyder Value Partners, L.P., Mr. Lawler individually,  
8 International Legal Services, Inc., and Vaninn Capital PCC;
- 9 • All communications and documents between parties that do not include Big Sky,  
10 including the above entities;
- 11 • No limitations as to time, merely seeking “all documents” or “all correspondence” or  
12 “all payments” which is extremely burdensome and entirely irrelevant and improper;

13 Moreover, Big Sky has not been in operation since 2015 and has only one employee, its  
14 attorney and officer, Mr. Lawler. *See* Lawler Declaration, Exhibit 3, at ¶¶ 3-16. Moreover, Big  
15 Sky has no assets that ROK could execute on, as it owns no real property, has no bank accounts,  
16 has no accounts receivable, has had no corporate proceedings since 2015, has no cash or cash  
17 equivalents, has no investments, has no inventory, has no fixtures, furniture, machinery,  
18 automobiles, watercraft, aircraft, collectibles, intellectual property, notes receivable, tax  
19 refunds, or interest in insurance policies. *Id.* Big Sky also has no beneficial interests in any  
20 insurance policies or annuities, has no beneficial interests in any trusts, and has no interest in  
21 any other entity. *Id.*

22 Finally, ROK’s Subpoenas include deposition subpoenas for both Mr. Lawler and the  
23 person most knowledgeable for Big Sky *and* to Mr. Lawler individually. It is improper for Big  
24 Sky to depose non-party Mr. Lawler especially when he is the only employee of Big Sky and  
25 will be serving as its person most knowledgeable (“PMK”) for the Big Sky deposition should it  
26 go forward.  
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1 Counsel for Big Sky explained to counsel for ROK that Big Sky has no assets upon  
2 which it can collect and attempted to reach an agreement as to the documents sought improperly  
3 through the overbroad Subpoenas, but were unable to do so. Nevertheless, even though ROK  
4 was not agreeable to Big Sky's reasonable proposal to produce only the documents relating to  
5 its lack of assets – and not any privileged or irrelevant information – Big Sky is in the process  
6 of producing all information related to its lack of assets. It is a difficult and cumbersome  
7 process as Big Sky has only one employee – Mr. Lawler – but in a good faith effort to comply  
8 with reasonable and good faith document requests Big Sky is producing all relevant, non-  
9 privileged information regarding its lack of assets.

### 10 **3. Legal Standard.**

11 Pursuant to FRCP 45, a court must quash or modify a subpoena if it “requires disclosure  
12 of privileged of other protected matter,” or subjects a person to undue burden. Nevada  
13 recognizes both the attorney/client privilege (NRS 49.095) and the accountant/client privilege  
14 (NRS 49.185). Further, regarding the attorney work product doctrine, NRCP 26(b)(3) provides  
15 in relevant part:

16 [A] party may obtain discovery of documents ... discoverable under subdivision (b)(1) of  
17 this rule [can request relevant and unprivileged documents] and prepared in anticipation  
18 of trial ... only upon a showing that the party seeking discovery has substantial need of  
19 the materials in the preparation of the case and that he is unable without undue hardship  
20 to obtain the substantial equivalent by other means.

21 Additionally, the attorney work doctrine “also protects an attorney's mental impressions,  
22 conclusions, or legal theories concerning the litigation, as reflected in memoranda

23 Additionally, the attorney work doctrine “also protects an attorney's mental impressions,  
24 conclusions, or legal theories concerning the litigation, as reflected in memoranda,  
25 correspondence, interviews, briefs, or in other tangible and intangible ways.” *Wardleigh v.*  
26 *Second Judicial Dist. Court In & For Cty. of Washoe*, 111 Nev. 345, 357, 891 P.2d 1180, 1188  
27 (1995) (citing *Hickman v. Taylor*, 329 U.S. 495, 510–11, 67 S.Ct. 385, 393–94, 91 L.Ed. 451  
28 (1947); NRCP 26(b)(3)).

1 Generally courts utilize a six-factor test for determining if an undue burden exists: “ (1)  
2 relevance of the information requested; (2) the need of the party for the documents; (3) the  
3 breadth of the discovery request; (4) the time period covered by the request; (5) the particularity  
4 with which the party describes the requested documents; and (6) the burden imposed.’ ”  
5 *Precourt v. Fairbank Reconstruction Corp.*, 280 F.R.D. 462, 467 (D.S.D. 2011). If the sought  
6 after documents are not relevant, “then any burden whatsoever imposed... [is] by definition  
7 undue.” *Compaq Computer Corp. v. Packard Bell Elecs.*, 163 F.R.D. 329, 335-36 (N.D.Cal  
8 1995).

9 Further, a subpoena is facially overbroad if it (1) fails to specify the documents or things  
10 sought with appropriate particularity, (2) covers an unreasonable time period, or (3) extends to  
11 documents or materials of limited or no relevance in the action. *See Mattel, Inc. v. Walking*  
12 *Mountain Prods.*, 353 F.3d 792, 813 (9th Cir. 2003) (subpoena was properly quashed where it  
13 sought testimony and documents regarding topics that had “no bearing” on the claims at issue);  
14 *Williams v. City of Dallas*, 178 F.R.D. 103, 109 (N.D. Tex. 1998) (holding subpoena was  
15 overbroad where it “is not limited in time or topic to any issue of consequence to this litigation  
16 or to any other litigation”); *Broadcort Capital Corp. v. Flagler Sec., Inc.*, 149 F.R.D. 626, 629  
17 (D. Colo. 1993) (holding subpoena was facially overbroad where “[n]othing has been provided  
18 that would indicate any relevance or potential relevance of telephone or financial records from  
19 January 1, 1992 on” and subpoena was therefore not limited to relevant time period).

20 FRCP 45(d)(3) lays out the requirements for quashing or modifying a subpoena. A  
21 federal court is required to quash or modify a subpoena that “subjects a person to undue  
22 burden.”<sup>1</sup> The court may also quash a subpoena “to protect a person subject to or affected by a  
23 subpoena...if it requires disclosing a trade secret or other confidential research, development, or  
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<sup>1</sup> FRCP 45(d)(3)(A)(iv).

1 commercial information.”<sup>2</sup> This Court has, in the past, held the following with regard to a  
2 party’s moving to quash a subpoena served on a third party:

- 3 1. ***A party may move to quash a third party subpoena if it has a specific interest in***  
4 ***the documents requested.*** “In general, a party has no standing to move to quash a  
5 subpoena served upon a third party *unless the party claims a personal right or*  
6 *privilege with respect to the documents requested in the subpoena.*”<sup>3</sup> Thus, a party  
7 may move to quash a subpoena which seeks documents in which the moving party  
8 has a “personal right or privilege.”
- 9 2. ***A party may move to quash a third party subpoena if the subpoena will cause an***  
10 ***undue burden for the party itself.*** “A party lacks standing to quash a subpoena on  
11 grounds that it is overbroad or unduly burdensome *on a third party.*”<sup>4</sup> However,  
12 there is no restriction on standing if a party seeks to quash a third-party subpoena  
13 because it will cause an undue burden on the party itself. Indeed, courts *must* quash  
14 or modify a subpoena if it “subjects *a person* to an undue burden.”<sup>5</sup> FRCP 45 does  
15 not limit the burdened person to the individual or entity that is subject to the  
16 subpoena. Of course, “[t]he party that moves to quash a subpoena has the burden of  
17 persuasion,”<sup>6</sup> meaning that it must clearly demonstrate the burden that the subpoena  
18 will create.
- 19 3. ***Subpoenas cannot be used to circumvent other methods of discovery.*** The primary  
20 method of discovery is, of course, written discovery between the parties. Therefore,  
21 “[t]he court also has an obligation to protect non-parties from being burdened with  
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23 <sup>2</sup> FRCP 45(d)(3)(B).

24 <sup>3</sup> *Dale Evans Parkway 2012, LLC v. Nat'l Fire & Marine Ins. Co.*, No. EDCV15979JGBSPX,  
25 2016 WL 7486606, at \*3 (C.D. Cal. Oct. 27, 2016).

26 <sup>4</sup> *Id.*

27 <sup>5</sup> Fed. R. Civ. P. 45(d)(3)(A)(iv)

28 <sup>6</sup> *Dinkins v. Schinzel*, 2017 WL 4183115, at \*1 (D. Nev. Sept. 19, 2017)

1 subpoenaeas for documents that can more easily and inexpensively be obtained from  
2 the opposing party.”<sup>7</sup>

3 **4. Legal Argument.**

4  
5 **A. The Subpoenas should be quashed or modified to prohibit requests related**  
6 **to any privileged or confidential material, and any documents related to**  
7 **entities not a party to the instant litigation.**

8 NRS 49.095 provides as follows:

9 A client has a privilege to refuse to disclose, and to prevent any other  
10 person from disclosing, confidential communications:

- 11 1. Between the client or the client’s representative and the client’s  
12 lawyer or the representative of the client’s lawyer.
- 13 2. Between the client’s lawyer and the lawyer's representative.
- 14 3. Made for the purpose of facilitating the rendition of  
15 professional legal services to the client, by the client or the client’s  
16 lawyer to a lawyer representing another in a matter of common interest.

17 Nev. Rev. Stat. Ann. § 49.095 (West). As set forth above, any communications between Lawler  
18 and Big Sky are privileged and confidential. The Subpoenas seek such information in violation  
19 of Nevada’s attorney/client privilege. To this extent they are improper, bordering on an abuse  
20 of process, and must be quashed or limited.

21 Moreover, the Subpoenas are unduly burdensome and facially overbroad. Regarding the  
22 *Precourt* factors, any information sought not directly related to the assets of Big Sky, such  
23 information is completely irrelevant. If the sought after documents are not relevant, “then any  
24 burden whatsoever imposed... [is] by definition undue.” *Compaq Computer Corp. v. Packard*  
25 *Bell Elecs.*, 163 F.R.D. 329, 335-36 (N.D.Cal 1995). Regarding the remaining factors, the  
26 information sought is overly broad and appears to contain no limitations as to time, requesting

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28 <sup>7</sup> *McCall v. State Farm Mut. Auto. Ins. Co.*, No. 216CV01058JADGWF, 2017 WL 3174914, at  
\*6 (D. Nev. July 26, 2017)

1 merely “all communications” and “all documents.” The documents and information sought are  
2 clearly part of an improper fishing expedition by ROK to seek information that is not in any  
3 way related to its judgment and merely to harass Big Sky and to get information on other, non-  
4 party entities. In fact, as noted above, the Subpoenas seek information from entities that are not  
5 parties to this litigation, including Big Sky Energy Kazakhstan Ltd (“Big Sky Kazakhstan”),  
6 Ingalls & Snyder Value Partners, L.P., Mr. Lawler individually, International Legal Services,  
7 Inc., and Vaninn Capital PCC.

8 In evaluating whether the scope of a subpoena is overbroad, courts must ensure that the  
9 requested information is relevant to the truth or falsity of the particular statements at issue.  
10 *Gilmore v. Jones*, 339 F.R.D. 111, 123 (W.D. Va. 2021); *see also Sheindlin v. Brady*, No.  
11 1:21cv1124, 2021 WL 2075483, at \*3–5 (S.D.N.Y. May 24, 2021) (quashing multiple nonparty  
12 subpoenas, through which defendant sought evidence to prove that his allegedly defamatory  
13 statements were true because defendant had failed to show that the information he sought was  
14 relevant and necessary to the claims or defenses in the action); *Weinstein*, 2020 WL 1485960, at  
15 \*4, \*6 (quashing in part nonparty subpoenas that sought “fifty-six categories of documents” and  
16 broadly requested “all documents pertaining to [the nonparties'] financial transactions, financial  
17 statements, audit files, formation and management agreements,” none of which was relevant to  
18 the veracity of the alleged defamatory statements or to any other claims or defenses in the  
19 action); *Eshelman*, 2017 WL 5919625, at \*5, \*8 (granting in part motion to quash nonparty  
20 subpoena that requested all documents produced in “all” prior civil lawsuits involving the  
21 nonparties because the subpoena was “facially overbroad” and constituted a “fishing  
22 expedition” that likely would require production of “wholly irrelevant documents”); *In re*  
23 *Biovail Corp. Sec. Litig.*, 247 F.R.D. 72, 74 (S.D.N.Y. 2007) (quashing multiple nonparty  
24 subpoenas where “the virtually limitless financial and other information” plaintiffs sought was  
25 “unnecessary and irrelevant” to the case and “the burden the[ ] demands place[d] on the  
26 subpoenaed non-parties and diversion of their staff to provide it far outweigh[ed] any probative  
27 value of the information”).  
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1 Here the documents requested in the Subpoenas are completely improper outside of  
2 those directly related to Big Sky's (not Big Sky Kazakhstan which is a separate entity) ability,  
3 or inability, to pay a judgment. The Subpoenas should be quashed or modified to the extent  
4 they seek any information outside that limited basis. Accordingly, even if the Subpoenas did  
5 not seek privileged information, which they do, those Subpoenas should be quashed due to the  
6 fact that they are facially overbroad and unduly burdensome.

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8 **5. Certification**

9 Undersigned counsel hereby certifies that on June 27, 2024, at 11:00 am, he had a  
10 telephone call with counsel for ROK which lasted approximately 30 minutes in an effort to  
11 resolve the above dispute. *See* Declaration of Brenoch Wirthlin, Exhibit 5 hereto. Counsel  
12 discussed the fact that Big Sky lacks any assets to pay a judgment and the possibility of a  
13 potential resolution whereby Big Sky would produce the documents demonstrating that fact but  
14 not any privileged or irrelevant documents. *Id.* Counsel for ROK stated that he would discuss  
15 the proposal with his client, but subsequently informed undersigned counsel that no agreement  
16 could be reached. *Id.* Thus, undersigned counsel certifies pursuant to LR IA 1-3(f) that despite  
17 a sincere effort to resolve or narrow the dispute during the meet-and-confer conference, the  
18 parties were unable to resolve or narrow the dispute without court intervention. *Id.*  
19 Accordingly, Big Sky has complied with its local and federal rule requirements to attempt to  
20 meet and confer to try to resolve the instant matter before filing the instant motion. *Id.* Counsel  
21 for Big Sky and ROK agreed that Big Sky could have until July 8, 2024, to file its response to  
22 the Subpoenas, which is constituted by the instant motion. *Id.*

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1 **6. Conclusion**

2 For all these reasons, Big Sky respectfully requests an order to quash or, at the very  
3 least, modify the Subpoenas at issue, and grant such other and further relief as the Court deems  
4 necessary.

5 DATED this 8<sup>th</sup> day of July, 2024.

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HUTCHISON & STEFFEN, PLLC

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*/s/ Brenoch Wirthlin*

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date below, I electronically transmitted the foregoing **OBJECTION TO SUBPOENAS AND MOTION TO QUASH OR MODIFY SUBPOENAS** to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

Dated this 8th day of July, 2024.

/s/ Danielle Kelley  
An Employee of Hutchison & Steffen, PLLC