

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

1 KIRK B. LENHARD, ESQ., Nevada Bar No. 1437
NIKKI L. BAKER, ESQ., Nevada Bar No. 6562
2 BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
3 Las Vegas, NV 89106-4614
Telephone: 702.382.2101
4 Facsimile: 702.382.8135
Email: klenhard@bhfs.com
5 Email: nbaker@bhfs.com

6 DENNIS H. HRANITZKY, ESQ.
(admitted *pro hac vice*)
7 DECHERT LLP
1095 Avenue of the Americas
8 New York, NY 10036-6797
Telephone: 212.698.3500
9 Facsimile: 212.698.3599
Email: dennis.hranitzky@dechert.com

10 *Attorneys for NML Capital, Ltd.*

11
12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 NML CAPITAL, LTD.,
15 Plaintiff,
16 v.
17 THE REPUBLIC OF ARGENTINA,
18 Defendant.

CASE NO.: 2:14-cv-00492-JAD-VCF

**NML CAPITAL, LTD.’S MEMORANDUM
IN RESPONSE TO NON-PARTY MF
CORPORATE SERVICES (NEVADA)
LIMITED’S MOTION TO QUASH
SUBPOENA AND/OR FOR PROTECTIVE
ORDER; AND IN SUPPORT OF NML’S
CROSS MOTION TO COMPEL**

19
20
21
22 Plaintiff NML Capital, Ltd. (“NML”), by and through its attorneys of record Brownstein
23 Hyatt Farber Schreck, LLP and Dechert LLP, hereby responds to the Motion to Quash Subpoena
24 and/or for Protective Order (the “**Motion**”) brought by Non-Party M.F. Corporate Services
25 (Nevada) Limited (“**MF Nevada**”) and moves to compel MF Nevada to comply fully with the
26 subpoena served on it by NML on or about June 20, 2014 (the “**Subpoena**”).
27
28

BROWNSTEIN HYATT FARBER SCHRECK, LLP
 100 North City Parkway, Suite 1600
 Las Vegas, NV 89106-4614
 702.382.2101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT.....	1
FACTUAL BACKGROUND & PROCEDURAL HISTORY	3
I. The Alleged Báez Embezzlement Scheme	3
II. NML’s Previous Efforts To Obtain Discovery Relating To The Báez Scheme.	5
A. NML’s August 13, 2013 Subpoena To MF Nevada And MF Nevada’s Document Production.	5
B. NML’s Subpoena To The Báez Entities And The Court’s Order Granting NML’s Motion To Compel.	5
C. NML’s Subpoena to Patricia Amunategui	7
D. The Subpoena At Issue.....	10
ARGUMENT	11
I. NML Is Entitled To Discover Information That May Lead To Assets Embezzled Through The Báez Entities.....	11
A. The Legal Standard Under Rule 69(a)(2).....	11
B. Post-Judgment Discovery Is Warranted As Long As The Judgment Creditor Can Make A Threshold Showing That Connects The Third Party With Discoverable Information	12
C. The Discovery Sought Through The Subpoena Is Directly Relevant To NML’s Judgment Enforcement Efforts.	12
D. Complying With The Subpoena Will Not Unduly Burden Mossack Fonseca Or MF Nevada.	13
E. The Unsupported Assertion That The Mossack Subpoena Seeks “Personal And Confidential Material” Is Unavailing	14
II. The Subpoena Is Enforceable Against Mossack Fonseca.....	15
A. MF Nevada Is The Alter Ego of Mossack Fonseca	16
B. MF Nevada Is A Mere Department of Mossack Fonseca	17
C. The Court Should Conduct An Evidentiary Hearing If It Finds Ms. Amunategui’s Testimony to be Inconclusive.	19
III. NML Was Not Required To Seek Discovery Through The Inter-American Convention On Letters Rogatory	19
IV. This Court Can Compel Mossack Fonseca To Designate A Person Within the Court’s Jurisdiction To Appear For Deposition.	20
CONCLUSION	22

BROWNSTEIN HYATT FARBER SCHRECK, LLP
 100 North City Parkway, Suite 1600
 Las Vegas, NV 89106-4614
 702.382.2101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES

1st Tech., LLC v. Rational Enter. LTDA,
 2007 WL 5596692 (D. Nev. Nov. 13, 2007) 12

Aerotel, Ltd. v. Sprint Corp.,
 100 F. Supp. 2d 189 (S.D.N.Y. 2000)..... 15, 18

Ado Fin., AG v. McDonnell Douglas Corp.,
 931 F. Supp. 711 (C.D. Cal. 1996) 16, 17

Alamo Rent-A-Car, Inc. v. Mendenhall,
 937 P.2d 69 (Nev. 1997) 13

Convolve, Inc. v. Dell, Inc.,
 2011 WL 1766486 (N.D. Cal. May 9, 2011) 14

Collins v. NDOC,
 2014 WL 4656232 (D. Nev. Sept. 17, 2014) 15

Diamond State Ins. Co. v. Rebel Oil Co.,
 157 F.R.D. 691 (D.Nev. 1994)..... 15

Doe, I v. Unocal Corp.,
 248 F.3d 915 (9th Cir. 2001)..... 16

Eitzen Bulk A/S v. Bank of India,
 827 F. Supp. 234 (S.D.N.Y. 2011)..... 11

EM Ltd. v. Republic of Argentina,
 720 F. Supp. 2d 273 (S.D.N.Y. 2010), *vacated on other grounds*, 652 F.3d 172 (2d
 Cir. 2011) 1, 11

Goodyear Dunlop Tires Operations, S.A. v. Brown,
 131 S.Ct. 2846 (2011) 16

Great Am. Ins. Co. of N.Y. v. Vegas Const. Co., Inc.,
 251 F.R.D. 534 (D. Nev. 2008)..... 20

Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements Ltd.,
 328 F.3d 1122 (9th Cir. 2003)..... 15, 17

Illinois Bell Tel. Co., Inc. v. Global NAPs Illinois, Inc.,
 551 F.3d 587 (7th Cir. 2008)..... 6

Henry v. Rizzolo,
 2012 WL 13725 (D. Nev. Jan. 4, 2012)..... 12

BROWNSTEIN HYATT FARBER SCHRECK, LLP
 100 North City Parkway, Suite 1600
 Las Vegas, NV 89106-4614
 702.382.2101

1	<i>Kreimerman v. Casa Veerkamp, S.A. de C.V.</i> ,	
2	22 F.3d 634 (5th Cir. 1994).....	20
3	<i>Mayatextil, S.A. v. Liztex U.S.A., Inc.</i> ,	
4	994 WL 198696 (S.D.N.Y. May 19, 1994).....	20
5	<i>Medeco Sec. Locks, Inc. v. Swiderek</i>	
6	680 F.2d 37 (7th Cir. 1981).....	19
7	<i>Mount Hope Church v. Bash Back!</i> ,	
8	705 F.3d 418 (9th Cir. 2012).....	14
9	<i>NML Capital Ltd. v. Republic of Argentina</i> ,	
10	2014 WL 3898021 (D. Nev. Aug. 11, 2014)	passim
11	<i>Platinum Air Charters, LLC v. Aviation Ventures, Inc.</i> ,	
12	2007 WL 121674 (D. Nev. Jan. 10, 2007).....	13
13	<i>Premium Service Corp. v. Sperry & Hutchinson Co.</i> ,	
14	511 F.2d 225 (9th Cir. 1975).....	14
15	<i>PVC Windows, Inc. v. Babbittbay Beach Const., N.V.</i> ,	
16	598 F.3d 802 (11th Cir. 2010).....	19
17	<i>Republic of Argentina v. NML Capital, Ltd.</i> ,	
18	134 S. Ct. 2250 (2014)	11
19	<i>Robinson v. Goldfield Merger Mines Co.</i> ,	
20	46 Nev. 291, 206 P. 399 (1922) <i>aff'd</i> , 46 Nev. 291, 213 P. 103 (1923)	13
21	<i>Rock Bay, LLC v. Dist. Ct.</i> ,	
22	129 Nev. Adv. Op. 21, 298 P.3d 441 (2013)	12
23	<i>State v. Cantsee</i> ,	
24	130 Nev. Adv. Op. 24, 321 P.3d 888 (2014).	12
25	<i>VFS Fin., Inc. v. Specialty Fin. Corp.</i> ,	
26	2013 WL 1413024 (D. Nev. Apr. 4, 2013).....	11
27	<i>Wells Fargo & Co. v. Wells Fargo Exp. Co.</i> ,	
28	556 F.2d 406 (9th Cir. 1977).....	15
	<i>Wultz v. Bank of China Ltd.</i>	
	298 F.R.D. 91 (S.D.N.Y. 2014)	21
	STATUTES	
	Argentine Criminal Code	13

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OTHER AUTHORITIES

4A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure:
Civil 3d § 1069..... 16, 19

8A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure:
Civil 3d § 3014..... 11, 12

Federal Rule of Civil Procedure 30..... 1, 20, 21

Federal Rule of Civil Procedure 69..... 3, 11, 12

1
2
3
4
5
6
7
8
9

PRELIMINARY STATEMENT

NML currently holds judgments against Argentina totaling more than \$1.7 billion. To avoid its payment obligations, Argentina has engaged in elaborate schemes to shield and hide its assets from creditors. *EM Ltd. v. Republic of Argentina*, 720 F. Supp. 2d 273, 279-80 (S.D.N.Y. 2010), *vacated on other grounds*, 652 F.3d 172 (2d Cir. 2011). As a result of Argentina’s misconduct, NML and other similarly-situated creditors have been forced to resort to unconventional means to identify, trace, and seize Argentina’s assets wherever they may be located around the world. *Id.*

10
11
12
13
14
15
16

Since August of 2013, NML has been actively seeking to trace funds that appear to have been misappropriated and embezzled by Lázaro Báez—an Argentine national tied to the current President of Argentina and her late husband and predecessor. As the Court already knows, Báez is under investigation by Argentine prosecutors for embezzling over \$65 million of funds misappropriated from the state through a web of shell corporations. Among these shell corporations are 123 Nevada entities linked to Báez by Argentine prosecutors (the “**Báez Entities**”), which NML subpoenaed in August 2013.

17
18
19
20
21
22
23

Following extensive motion practice, the Court compelled the Báez Entities to provide the information sought by NML through those subpoenas. *NML Capital Ltd. v. Republic of Argentina*, 2014 WL 3898021, at **12-13 (D. Nev. Aug. 11, 2014). In the same decision, the Court found that Mossack Fonseca & Co. (“**Mossack Fonseca**”)—a Panamanian law firm notorious for its alleged role in assisting kleptocrats and other scofflaws in channeling funds to international tax havens—played an integral role in the establishment of the Báez Entities. *Id.* at *5.

24
25
26
27
28

Motivated by the Báez Entities’ intransigence in complying with NML’s subpoenas, on or about June 20, 2014, NML served a subpoena on Mossack Fonseca seeking, among other things, information about asset flows in connection with Báez’s embezzlement scheme (the “**Mossack Subpoena**”). More specifically, in addition to seeking to depose a Rule 30(b)(6) witness, the Mossack Subpoena seeks information relating to the formation and operation of the Báez Entities,

BROWNSTEIN HYATT FARBER SCHRECK, LLP
 100 North City Parkway, Suite 1600
 Las Vegas, NV 89106-4614
 702.382.2101

1 the transfer of funds into or out of those entities, and the true nature of the relationship between
 2 Mossack Fonseca and MF Nevada. Because Mossack Fonseca maintains no officially
 3 acknowledged branch office in Nevada, NML served MF Nevada as Mossack Fonseca’s agent.
 4 As was apparent to NML at the time it served the Mossack Subpoena—and as subsequently
 5 confirmed by the deposition testimony of MF Nevada’s only employee—MF Nevada is an alter
 6 ego of Mossack Fonseca. Consequently, MF Nevada’s jurisdictional contacts with Nevada are
 7 attributable to Mossack Fonseca, and NML’s service of the Mossack Subpoena on MF Nevada
 8 constituted effective service on Mossack Fonseca.

9 As NML demonstrates below, MF Nevada’s alter ego status is readily apparent from the
 10 evidence already available to NML. Redacted

11
 12 ¹ MF
 13 Nevada’s only employee, Patricia Amunategui, Redacted
 14 . Mossack Fonseca Redacted
 15 ² Mossack Fonseca
 16 Redacted
 17 ³ And Ms. Amunategui’s employment
 18 contract with MF Nevada was counter-signed by Redacted . In short, MF
 19 Nevada is the Nevada outpost of Mossack Fonseca.⁴

20 MF Nevada’s motion to quash the Mossack Subpoena ignores all of these facts. It also
 21 ignores the Court’s prior determination that information about the movement of funds in

22
 23 ¹ Deposition of Patricia Amunategui, dated September 11, 2014 (“Amunategui Dep.”) at 138:19-139:22. (Relevant
 excerpts of the Amunategui Deposition are attached as Exhibit A).

24 ² *Id.* at 53:5-54:15, 55:22-25, 56:10-12.

25 ³ *Id.* at 27:8-16, 28:16-25, 65:8-16, 133:18-134:10.

26 ⁴ In the event that the Court finds Ms. Amunategui’s deposition testimony inconclusive on the issue of MF Nevada’s
 27 alter ego status, NML respectfully requests that the Court conduct an evidentiary hearing at which Ms. Amunategui
 28 can be cross-examined under oath. As NML demonstrates below, at various points during her deposition Ms.
 Amunategui was extraordinarily evasive and overtly obfuscated the facts regarding MF Nevada’s relationship with
 Mossack Fonseca. NML believes that rather than crediting the evasive portions of Ms. Amunategui’s testimony the
 Court may benefit from the opportunity to observe her demeanor, and possibly pose its own questions to her, in open
 court.

1 connection with the Báez scheme is the proper subject of discovery under Federal Rule of Civil
 2 Procedure 69(a)(2) and Nevada law. Finally, MF Nevada's objections that complying with the
 3 Mossack Subpoena would be unduly burdensome and would require it to divulge confidential
 4 information are easily addressed. As it has done in the past, NML is willing to cover the
 5 reasonable costs of compliance. And NML is willing to agree to extend the confidentiality
 6 stipulation and order in effect in the related action, *NML Capital, Ltd. v. Republic of Argentina*,
 7 2:14-cv-00492 (D. Nev. 2014), to any production made in response to the Mossack Subpoena.
 8 There is therefore simply no basis for Mossack Fonseca to refuse compliance with the Mossack
 9 Subpoena, it should be compelled to do so, and MF Nevada's motion to quash should be denied.

10 **FACTUAL BACKGROUND & PROCEDURAL HISTORY**

11 **I. The Alleged Báez Embezzlement Scheme.**

12 Lázaro Báez is an Argentine national who, according to the findings of Argentine
 13 prosecutors and journalists, amassed a personal fortune with the help of Argentine President
 14 Cristina Fernández de Kirchner, her now-deceased husband, former Argentine President Néstor
 15 Kirchner, and others associated with the Kirchners. As the Court has previously found, Báez and
 16 the Kirchners "allegedly embezzled millions of pesos from public-infrastructure projects and
 17 laundered the proceeds and other embezzled funds through Panama and various international
 18 shell corporations." *NML Capital Ltd. v. Republic of Argentina*, 2014 WL 3898021, at *1 (D.
 19 Nev. Aug. 11, 2014).⁵ Beginning in April 2013, one of Argentina's top journalists, Jorge Lanata,
 20 ran a series of televised reports presenting findings that Báez was involved in illegal financial
 21 activity and rampant political corruption. Lanata's reports featured videotaped statements by two
 22 alleged associates of Báez who testified that they boarded Báez's corporate jets with sacks filled
 23 with cash, embezzled the cash out of Argentina, and placed it in dozens of anonymous companies
 24 scattered among tax havens around the world, including Panama.⁶

25 _____
 26 ⁵ *Accord* Hugo Alconada Mon, "Báez 'Rented' Three Hotels belonging to the Kirchners' for \$14.5 Million," LA
 27 NACION, December 17, 2013 (a copy of which is attached as Exhibit B); Hugo Alconada Mon, "Báez Secretly
 28 Promised Millions in Income to Kirchner," LA NACION, December 15, 2013 (a copy of which is attached as Exhibit
 C).

⁶ "Jorge Lanata Unearths the Lázaro Báez's Money Trail," LA NACION, April 15, 2013 (a copy of which is
 attached as Exhibit D).

1 Shortly after the first of these reports was televised, Argentine prosecutors launched a
 2 series of raids on Báez’s operations in Argentina. The evidence uncovered revealed extensive
 3 financial dealings between Báez and the Kirchners—including secret property deals entered into
 4 after Néstor Kirchner became President—as well as other “sordid financial affairs.” *NML*
 5 *Capital*, 2014 WL 3898021, at *1.⁷ José María Campagnoli, the lead Argentine prosecutor
 6 investigating Báez’s dealings with the Kirchners, submitted these findings (and others) to an
 7 Argentine court in two detailed reports on May 22, 2013 (the “**Campagnoli Dictamen**”) and June
 8 19, 2013 (the “**Campagnoli Report**”). *Id.* The Campagnoli Dictamen linked Báez’s illicit
 9 financial flows to the Báez Entities—which are controlled by a network of shell companies in the
 10 Republic of Seychelles.⁸ Campagnoli further found that the Báez Entities were set up by
 11 Mossack Fonseca.⁹

12 Operating through a network of offices in tax havens and remote islands, Mossack
 13 Fonseca is a Panamanian law firm notorious for allegedly assisting wealthy individuals—many of
 14 whom are known criminals—in channeling funds to off-shore accounts without detection. For
 15 example, in 2012, Mossack Fonseca attracted attention when it was found to have orchestrated
 16 the illicit financial network through which Muammar Qaddafi laundered hundreds of millions of
 17 dollars worth of assets misappropriated from the Libyan state.¹⁰ As *The Economist* observed in a
 18 2012 article:

19 The [Mossack Fonseca] customer need only click on the company desired,
 20 perhaps adding some optional extras such as a bank account, an offshore
 21 credit card, mail-forwarding or letterhead, and then heads to the checkout.
 22 Just £349 (\$560) buys you a company in the Seychelles, with no local
 taxation, no public disclosure of directors or shareholders and no
 requirement to file accounts.¹¹

23 ⁷ *Accord* Hugo Alconada Mon, “Báez ‘Rented’ the Three Hotels belonging to the Kirchners’ for \$14.5 Million,” *LA*
 24 *NACION*, December 17, 2013 (Exhibit B); Hugo Alconada Mon, “Báez Secretly Promised Millions in Income to
 Kirchner,” *LA NACION*, December 15, 2013 (Exhibit C).

25 ⁸ Campagnoli Report, dated June 19, 2013; Bureau for International Narcotics and Law Enforcement Affairs,
 26 International Narcotics Control Strategy Report, <http://www.state.gov/documents/organization/184329.pdf>, at p. 41
 (last visited Nov. 5, 2014) (a copy of which is attached as Exhibit E).

27 ⁹ *Id.*

28 ¹⁰ “Tracing the Riches of Former Dictator Gaddafi in Panama,” [http://www.economista.net/component/content/
 article/139775-rastrear-riquezas-de-gaddafi-en-panama](http://www.economista.net/component/content/article/139775-rastrear-riquezas-de-gaddafi-en-panama) (a copy of which is attached as Exhibit G).

¹¹ Shells and Shelves, *THE ECONOMIST*, April 7, 2012, <http://www.economist.com/node/21552196> (last visited Nov.
 5, 2014 (a copy of which is attached as Exhibit F).

1 MF Nevada’s only employee testified at her deposition that Mossack Fonseca **Redacted**

2
3 .¹² **Redacted**

4
5 13

6 **II. NML’s Previous Efforts To Obtain Discovery**
7 **Relating To The Báez Scheme.**

8 In an attempt to trace (and eventually seize) the funds Campagnoli found to have been
9 embezzled by Báez, beginning mid-2013, NML has actively sought information about the flow of
10 funds through the Báez Entities and the formation and operation of those Entities.

11 **A. NML’s August 13, 2013 Subpoena To MF Nevada**
12 **And MF Nevada’s Document Production.**

13 On August 13, 2013, NML served a subpoena seeking information about the Báez scheme
14 on MF Nevada. In response, MF Nevada made a limited production, including “mirror-image”
15 operating agreements for most of the 123 Báez Entities. *NML Capital*, 2014 WL 3898021, at
16 *12. Documents from that production revealed, among other things, that the Báez Entities
17 received capital transfers totaling millions of dollars—most of which came from a Seychelles
18 entity called Gairns, Ltd.—and that nearly all the Báez Entities are managed by another
19 Seychelles entity called Aldyne Ltd. Campagnoli has connected both Gairns and Aldyne to
20 Mossack Fonseca.¹⁴

21 **B. NML’s Subpoena To The Báez Entities And The Court’s**
22 **Order Granting NML’s Motion To Compel.**

23 On August 13, 2013, NML also served subpoenas on each of the Báez Entities. The Báez
24 Entities refused to comply, and instead submitted affidavits from Leticia Montoya, a Panamanian
25 national employed by Mossack Fonseca who identified herself as an “agent” of the Mossack

26
27 ¹² Amunategui Dep. at 109:4-112:3 (Exhibit A).

¹³ *Id.* at 39:3-10.

¹⁴ Campagnoli Report (Exhibit E).

1 Fonseca-affiliated Seychelles entity Aldyne, Ltd. In each of her affidavits, Ms. Montoya
 2 contended, implausibly, that the Báez Entities had no responsive documents. Based on
 3 documents produced by MF Nevada, NML concluded that Ms. Montoya’s statements were untrue
 4 and that the Báez Entities were withholding documents. NML thus moved to compel the Báez
 5 Entities to comply fully with the subpoenas.¹⁵

6 On August 11, 2014, after several rounds of briefing and three hearings, the Court granted
 7 NML’s motion to compel in its entirety—ordering the Báez Entities to produce documents and a
 8 witness to testify about their response to NML’s subpoenas. *NML Capital*, 2014 WL 3898021, at
 9 *13. In support of this ruling, the Court first found that “NML made a substantial showing that
 10 Báez[] laundered money [through] the [Báez Entities] and that Mossack [] Fonseca controls the
 11 [Báez Entities] and Aldyne.” *Id.* at *12. As the Court explained:

12 A company cannot purposefully avail itself of the law’s benefits by
 13 incorporating in this jurisdiction and then excuse itself from the court’s
 14 subpoena power by abusing the corporate form. This would allow a
 15 corporation to exploit the benefits created by the law without shouldering
 16 the concomitant burdens and responsibilities imposed by the law. By
 incorporating in the State of Nevada, the [Báez Entities] assented to this
 court’s power to impose a burden. . . on Nevada residents to testify. . . .
 Abuse of the corporate form cannot render this burden surplusage. . .

17 *Id.* at *11. The Court went on to find that “[t]here is no doubt that the [Báez Entities] are shell
 18 corporations. . . . Similarly, there is no doubt that shell corporations are routinely formed to
 19 commit fraud.” *Id.* (citing *Illinois Bell Tel. Co., Inc. v. Global NAPs Illinois, Inc.*, 551 F.3d 587,
 20 598 (7th Cir. 2008) (Posner, J.) (“It is hard to imagine why, except to commit such a fraud, a
 21 businessman would create shell corporations.”)).

22 Most importantly for purposes of this motion, with regard to Mossack Fonseca’s role in
 23 the Báez scheme, the Court observed:

24 In the amount of time it takes a jury to return a verdict, a standard
 25 wireless device enables a prospective judgment debtor to incorporate
 26 shell companies in far-off lands [through Mossack Fonseca] and transfer
 27 their assets beyond discovery’s reach—all while sitting at counsel’s table.
 As a result, if the judgment creditor returns to court, and requests

28 ¹⁵ Declaration of Dennis H. Hranitzky, dated November 7, 2014, (“**Hranitzky Decl.**”) ¶ 2.

1 discoverable information regarding those assets, the Federal Rules of
2 Civil Procedure permit the shell corporations to submit evidence in
3 opposition to a meritorious motion to compel—all while purporting to be
4 beyond the court’s subpoena power. This frustrates court process and
5 weakens the judicial power bestowed by the Constitution, which exists to
6 finalize cases and controversies. . . . Conduct that “exalt[s] artifice above
7 reality,” *see Abramski*, 134 S. Ct. at 2270, should not free a deponent
8 from the burdens of complying with an otherwise valid subpoena.

9 *NML Capital*, 2014 WL 3898021 at *12. Accordingly, the Court compelled the Báez Entities to
10 produce documents and a deponent in response to NML’s subpoenas, and directed counsel for the
11 Báez Entities to certify the accuracy of the Báez Entities’ responses to the subpoenas. *Id.* at *13.

12 Finally, the Court determined that Mossack Fonseca has “control over” the Báez Entities
13 for several reasons:

- 14 (1) MF Nevada acts as the Báez Entities’ registered agent;
- 15 (2) MF Nevada is Mossack Fonseca’s Nevada-based independent contractor;
- 16 (3) Ms. Montoya is simultaneously employed by Mossack Fonseca as an attorney,
17 Aldyne as an officer, and some of the Báez Entities as a custodian of records;
- 18 (4) Documents produced by MF Nevada relating to the Báez Entities state that
19 Mossack & Fonseca and Aldyne share the same office; and
- 20 (5) “[Ms.] Montoya, an attorney with Mossack & Fonseca, speaks on behalf of the
21 123 corporations and Aldyne in the same breath.”

22 *Id.* at *5.

23 **C. NML’s Subpoena to Patricia Amunategui.**

24 On June 24, 2014, NML subpoenaed MF Nevada’s sole employee, Patricia Amunategui,
25 seeking information regarding (1) MF Nevada’s relationship to Mossack Fonseca, (2) funds
26 transferred by or to the Báez Entities, (3) the identity of the owners and organizational structure
27 of the Báez Entities, and (4) the flow of funds into and out of accounts maintained by the Báez
28 Entities that were set up by Mossack Fonseca through MF Nevada. NML’s subpoena also called
for Ms. Amunategui’s deposition.¹⁶

In response to that subpoena, Ms. Amunategui made two document productions—largely

¹⁶ Hranitzky Decl. ¶ 3.

1 consisting of corporate formation documents for the Báez Entities. These included documents
2 from the Nevada Secretary of State, Nevada state business licenses, annual lists of managers or
3 managing members and registered agents, articles of organization, limited liability company
4 charters, operating agreements, and membership certificates. The documents produced by
5 Amunategui also confirmed that Aldyne Ltd. is the current or former manager for over 100 of the
6 Báez Entities.¹⁷

7 On September 11, 2014, Ms. Amunategui was deposed by NML's counsel. A significant
8 focus of that deposition was the relationship between MF Nevada and Mossack Fonseca. Ms.
9 Amunategui testified that Redacted

10 .¹⁸ Ms.
11 Amunategui also discussed Redacted

12 . As she explained, Redacted
13 And Redacted¹⁹

14
15 20
16 Amunategui also testified about her employment relationship with MF Nevada. The
17 employment agreement governing that relationship—which was signed by both Redacted
18 on behalf of MF Nevada—provides that “Redacted
19 ”²¹ During her deposition, Ms.

20 Amunategui confirmed that Redacted
21 ²² The employment agreement also states that
22 Redacted

23 Amunategui testified that Redacted
24

25 ¹⁷ *Id.* ¶ 3.

26 ¹⁸ Amunategui Dep. at 138:19-139:22 (Exhibit A).

27 ¹⁹ *Id.* at 27:8-16, 28:16-25, 65:8-16, 133:18-134:14.

28 ²⁰ *Id.* at 27:8-16, 28:16-25.

²¹ Employment Agreement between MF Nevada and Patricia Amunategui, dated May 16, 2001 (“Amunategui Employment Contract”) (a copy of which is attached as Exhibit H).

²² Amunategui Dep. at 53:5-54:15, 55:22-25, 56:10-12 (Exhibit A).

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

1 Redacted

23

2 Finally, Ms. Amunategui described Redacted

3

4 24 Amunategui testified that Redacted

5

6

7

8 25

9 At various points during her deposition Ms. Amunategui was obstinate and evasive—
10 refusing to answer many straightforward questions, denying knowledge of even the most basic
11 information relating to MF Nevada (even though she is its sole employee and manager), and
12 providing facially questionable testimony on other issues. For example, despite having been the
13 Secretary of MF Nevada for thirteen years, she could not Redacted

14 26 She also claimed not to know Redacted

15

16 27 She claimed she could
17 not provide Redacted

18 Even after acknowledging that Redacted

19

20 Amunategui could not identify Redacted

21 nor could she provide Redacted

22

28

23 And though she Redacted

24 Amunategui inexplicably could not Redacted 29

25

23 *Id.* at 57:7-58:6.

26

24 *Id.* at 39:3-10.

27

25 *Id.* at 129:23-131:16.

28

26 *Id.* at 67:7-72:1.

29

27 *Id.* at 52:21-53:3.

30

28 *Id.* at 33:20-34:16, 36:7-36:19.

29 *Id.* at 45:24-46:18.

1 **D. The Subpoena At Issue.**

2 On or about June 20, 2014, NML served the Mossack Subpoena on MF Nevada as the
3 agent for Mossack Fonseca. Like the subpoena NML served on MF Nevada itself, the Mossack
4 Subpoena seeks information about (1) funds transferred by or to the Báez Entities, (2) the identity
5 of the owners and organizational structure of the Báez Entities, and (3) the flow of funds into and
6 out of accounts maintained by the Báez Entities.³⁰ In addition, the Mossack Subpoena seeks
7 information about the relationship between MF Nevada and Mossack Fonseca and MF Nevada.³¹

8 Mossack Fonseca never responded to the Mossack Subpoena. However, MF Nevada
9 objected and responded to it on July 7, 2014.³² NML and MF Nevada met and conferred
10 recording MF Nevada’s compliance with the Mossack Subpoena. But those discussions ended on
11 an impasse.³³ On July 10, 2014, MF Nevada moved to quash the Mossack Subpoena, citing three
12 grounds: (1) it imposes undue burden and expense on MF Nevada, (2) the information sought is
13 “personal and confidential,” and (3) it is improper to the extent that it asserts jurisdiction over
14 Mossack Fonseca based on its relationship with MF Nevada.³⁴ Because MF Nevada brought its
15 motion before the Court issued its decision granting NML’s motion to compel compliance with
16 the subpoenas served on the Báez Entities, its motion does not address the fact that the Court has
17 already ruled that those subpoenas—which sought information similar to that sought by the
18 Mossack Subpoena—were proper. MF Nevada’s motion also fails to address the evidence
19 elicited through Ms. Amunategui’s deposition and document production that demonstrates that
20 MF Nevada is an alter ego of Mossack Fonseca.

21
22
23
24
25 _____
³⁰ Mossack Subpoena (a copy of which is attached as Exhibit I)

³¹ *Id.*

³² MF Nevada’s Objections and Responses to the Mossack Subpoena, dated July 7, 2014 (a copy of which is attached as Exhibit J).

³³ Decl. of Kent Woods in Support of MF Nevada and Amunategui’s Motion to Quash, ¶¶ 24-28.

³⁴ MF Nevada also moved to quash the Mossack Subpoena on the grounds that it did not provide a reasonable time to respond. As this response date has now come and gone, that objection is moot.

1 **ARGUMENT**

2 **I. NML Is Entitled To Discover Information That May Lead**
 3 **To Assets Embezzled Through The Báez Entities.**

4 **A. The Legal Standard Under Rule 69(a)(2).**

5 The legal standard governing discovery in proceedings such as these where the discovery
 6 sought is intended to assist in the enforcement of a judgment is set forth in Rule 69(a)(2) of the
 7 Federal Rules of Civil Procedure. Rule 69(a)(2) entitles a judgment creditor to discovery from
 8 “any person” relating to the judgment debtor’s assets “wherever located”—including “outside the
 9 jurisdiction of the court where the discovery request is made.” *EM Ltd.*, 695 F.3d at 207-08
 10 (internal citation omitted); *see also VFS Fin., Inc. v. Specialty Fin. Corp.*, 2013 WL 1413024, at
 11 *3 (D. Nev. Apr. 4, 2013) (Rule 69(a)(2) entitles a judgment creditor “to identify assets that can
 12 be used to satisfy a judgment” and “to discover concealed or fraudulently transferred assets.”)
 13 (internal citations omitted). Discovery under Rule 69 is therefore “quite permissive.” *NML*
 14 *Capital*, 2014 WL 3898012, at *4 (citing *Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct.
 15 2250, 2254 (2014); 8A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure:*
 16 *Civil 3d* § 3014, p. 160-62).

17 The liberal standard for post-judgment discovery applies with equal force to discovery
 18 sought from third-parties. Rule 69(a)(2) expressly permits discovery from “any person.” Thus,
 19 “[a] judgment creditor may obtain discovery from both parties and non-parties alike.” *VFS Fin.,*
 20 *Inc.*, 2013 WL 1413024, at *4 (internal quotations omitted); *see also NML Capital*, 2014 WL
 21 3898012, at *4 (“There is no question that Rule 69(a)(2) permits a judgment creditor to propound
 22 discovery on third parties.”). A subpoena “reaches all responsive materials within the
 23 corporation’s control, even if those materials are located outside” the court’s jurisdiction. *NML*
 24 *Capital*, 2014 WL 3898012, at *4 (quoting *Eitzen Bulk A/S v. Bank of India*, 827 F. Supp. 234,
 25 238-39 (S.D.N.Y. 2011)).

26 Applying these rules, courts in Nevada and elsewhere commonly allow judgment creditors
 27 to conduct “broad” discovery of “information from parties and nonparties alike—including
 28 information about assets upon which execution can issue or about assets that have been

1 fraudulently transferred.” *Henry v. Rizzolo*, 2012 WL 13725 (D. Nev. Jan. 4, 2012), at *3; *see*
 2 *also 1st Tech., LLC v. Rational Enter. LTDA*, 2:06-cv-01110-RLH-GWF, 2007 WL 5596692, at
 3 *4 (D. Nev. Nov. 13, 2007) (post-judgment discovery has “broad scope”).

4 **B. Post-Judgment Discovery Is Warranted As Long As The**
 5 **Judgment Creditor Can Make A Threshold Showing That**
 6 **Connects The Third Party With Discoverable Information.**

7 When seeking discovery from third parties, the “judgment creditor must make a threshold
 8 showing connecting the third party with discoverable information before propounding discovery
 9 on the third party.” *NML Capital*, 2014 WL 3898012, at *4. To do so “[u]nder federal common
 10 law, the judgment creditor must show either (1) ‘the necessity and relevance of [the] discovery
 11 sought’ or (2) that ‘the relationship between the judgment debtor and the nonparty is sufficient to
 12 raise a reasonable doubt about the bona fides of the transfer of assets.’” *Id.* (quoting *WRIGHT &*
MILLER, supra, p. 162).

13 “Under Nevada law, the judgment creditor must show that ‘the relationship between the
 14 judgment debtor and nonparty raises reasonable suspicion as to the good faith of asset transfers
 15 between the two.’” *Id.* (quoting *Rock Bay, LLC v. Dist. Ct.*, 129 Nev. Adv. Op. 21, 298 P.3d 441,
 16 443 (2013)). “Reasonable suspicion exists ‘if there are specific, articulable facts’ in support of
 17 the inference that the asset transfers were not made in good faith.” *Id.* (quoting *State v. Cantsee*,
 18 130 Nev. Adv. Op. 24, 321 P.3d 888, 893 (2014)). As the Court explained in its recent August
 19 11, 2014 Opinion, “[i]f the judgment creditor satisfies either [the common law or Nevada]
 20 standard, Rule 69 opens the doors of discovery and permits the judgment creditor to use any
 21 discovery device afforded by the Federal Rules.” *Id.*

22 **C. The Discovery Sought Through The Subpoena Is Directly**
 23 **Relevant To NML’s Judgment Enforcement Efforts.**

24 On the basis of the Court’s own findings, NML has made its threshold showing under
 25 Rule 69. The funds allegedly trafficked through the Báez Entities are potential assets that could
 26 be attached by NML in satisfaction of its judgments, and NML is therefore entitled to information
 27 that may assist in tracing them. Báez embezzled funds through the Báez Entities, which were set
 28

1 up by Mossack Fonseca through MF Nevada. *NML Capital*, 2014 WL 3898012, at *11. And the
 2 Court has already held that NML’s allegations of Báez’s embezzlement scheme using the Báez
 3 Entities are sufficient to show the requisite “specific, articulable facts” that the asset transfers
 4 were not made in good faith. *NML Capital*, 2014 WL 3898012, at *5.

5 The Mossack Subpoena seeks nothing more than documents and deposition testimony that
 6 would further assist NML in tracing the funds embezzled through the Báez scheme. As the Court
 7 has previously found, “there is no dispute that Báez embezzled Argentine funds and that an
 8 embezzler or “thief acquires no title to the property which he steals.” *Id.* (citing *Robinson v.*
 9 *Goldfield Merger Mines Co.*, 46 Nev. 291, 206 P. 399, 401 (1922) *aff’d*, 46 Nev. 291, 213 P. 103
 10 (1923)). If the investigations into embezzlement by Baéz result in convictions, any funds
 11 traceable to the crime may become Argentina’s property under both Nevada and Argentine law.
 12 *Alamo Rent-A-Car, Inc. v. Mendenhall*, 937 P.2d 69, 73-74 (Nev. 1997).³⁵ NML therefore has a
 13 right to seek discovery to find information that may assist it in tracing those assets.

14 Moreover, NML made a “substantial showing” that this embezzlement scheme involved
 15 the Báez Entities set up by MF Nevada at the request of Mossack Fonseca, and that Mossack
 16 Fonseca exercises “control over” over them. *NML Capital*, 2014 WL 3898012, at *5. Where the
 17 Court has already held that discovery related to the Báez Entities is relevant, *id.* at **5-6, there
 18 can be no doubt that information regarding the formation and operation of those entities is not
 19 likewise relevant.

20 **D. Complying With The Subpoena Will Not Unduly**
 21 **Burden Mossack Fonseca Or MF Nevada.**

22 Even if, as MF Nevada claims, it will take time and expense to respond to the Mossack
 23 Subpoena, that would not justify quashing it. “The mere fact that discovery requires work and
 24 may be time consuming is not sufficient to establish undue burden.” *Platinum Air Charters, LLC*
 25 *v. Aviation Ventures, Inc.*, 2007 WL 121674, at *6 (D. Nev. Jan. 10, 2007); *see also NML*
 26 *Capital*, 2014 WL 3898021, at *6-7 (rejecting the Baéz Entities’ argument that responding to
 27

28 ³⁵ *See also* Argentine Criminal Code, Art. 23 (a copy of which is attached as Exhibit K).

1 NML’s subpoenas would be unduly burdensome). NML’s good faith belief that Mossack
2 Fonseca is in possession of information that could lead to attachable assets in satisfaction of its
3 judgments against Argentina is sufficient to compel its compliance with the Mossack Subpoena.
4 *See Mount Hope Church v. Bash Back!*, 705 F.3d 418, 429 (9th Cir. 2012) (“[W]e do not think
5 that the mere need to respond to an opponent’s advocacy in our civil justice system should be
6 viewed as unduly burdensome when legal arguments are advanced in good faith.”).

7 The cases relied on by MF Nevada in making this objection are inapposite. In *Convolve,*
8 *Inc. v. Dell, Inc.*, a non-party in that case had already responded to an initial subpoena and
9 provided over 22,000 pages of documents. *Convolve*, 2011 WL 1766486, at *1 (N.D. Cal. May
10 9, 2011). Unsatisfied, the requesting party then served multiple subpoenas seeking additional
11 documents. *Id.* By contrast, Mossack Fonseca has failed to produce any documents, and the
12 Báez Entities have consistently stonewalled discovery relating to its embezzlement schemes. And
13 in *Premium Service Corp. v. Sperry & Hutchinson Co.*, the subpoena at issue requested
14 documents relating “in any way, to any dealing, transaction, agreement or understanding”
15 between the parties—without any demonstration that those documents were relevant to the
16 litigation, let alone a showing that the need for those documents outweighed the burden to the
17 nonparty. 511 F.2d 225, 227 (9th Cir. 1975). Yet here, the Court has already determined that
18 information relating to the Báez embezzlement scheme is relevant to its judgment enforcement
19 efforts, and that NML is therefore entitled to that discovery. *NML Capital*, 2014 WL 3898021.

20 Finally, just as it has to every other third party it has subpoenaed for information relating
21 to the Báez embezzlement scheme, NML is willing to compensate Mossack Fonseca for the
22 reasonable cost of complying with the Mossack Subpoena in order to resolve any resulting
23 financial burden.

24 **E. The Unsupported Assertion That The Mossack Subpoena**
25 **Seeks “Personal And Confidential Material” Is Unavailing.**

26 MF Nevada’s objection to the Mossack Subpoena on the grounds that it demands
27 “personal and confidential material” is equally unavailing. There is no privilege against
28 discovery of a party’s allegedly confidential information. Rather, any confidentiality concerns

1 raised by compliance with a subpoena are generally addressed through entry of a confidentiality
2 order such as the order already entered by the Court in a related proceeding. Stipulated Protective
3 Order, *NML Capital, Ltd. v. Republic of Argentina*, 2:14-cv-00492 (D. Nev. Aug. 14, 2014); *see*
4 *also Collins v. NDOC*, 2014 WL 4656232, at *3 (D. Nev. Sept. 17, 2014) (“Typically, any
5 assertion of a document’s confidentiality is resolved via a protective order.”). NML would have
6 no objection to extension of the confidentiality order already in place in the related proceeding to
7 the information sought through the Mossack Subpoena.

8 Furthermore, any confidentiality designation made pursuant to such an order should be
9 “expressly made and supported by a sufficient description of the nature of the documents,
10 communications, or things not produced so as to enable the demanding party to contest the
11 claim.” *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 697-98 (D. Nev. 1994). MF
12 Nevada (and by extension, Mossack Fonseca) have utterly failed to meet this burden. MF
13 Nevada’s motion fails to set forth *any* description of the nature of the documents or the
14 confidential information they allegedly contain. Instead, MF Nevada simply makes the assertion,
15 without any supporting evidence, that the documents sought contain confidential information
16 pertaining to Mossack Fonseca’s downstream clients. Mot. at 11.

17 **II. The Subpoena Is Enforceable Against Mossack Fonseca.**

18 Mossack Fonseca is subject to this Court’s subpoena power by virtue of its relationship
19 with MF Nevada. As shown below, MF Nevada is a mere alter ego and “department” of Mossack
20 Fonseca. MF Nevada’s jurisdictional contracts can therefore be attributed to MF Nevada.
21 *Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1134 (9th Cir.
22 2003) (jurisdictional contacts may be imputed where one company is the “alter ego” of another);
23 *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 425 (9th Cir. 1977) (jurisdictional
24 contacts may be imputed where domestic entity is “mere ‘division[.]’ or ‘branch[.]’” of the foreign
25 entity); *Aerotel, Ltd. v. Sprint Corp.*, 100 F. Supp. 2d 189, 193 (S.D.N.Y. 2000) (Where an
26 affiliate is “essentially a separately incorporated department or instrumentality of a foreign
27 corporation,” the activities of the affiliate will be “attributed” to the foreign company for purposes
28

1 of determining the foreign company’s “amenability to personal jurisdiction.”) (internal quotations
 2 omitted); 4A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure: Civil 3d* §
 3 1069 1(personal jurisdiction over corporate defendants appropriate where subsidiary is “acting as
 4 merely one of [parent’s] departments”).

5 The collaborative role played by MF Nevada and Mossack Fonseca in setting up the Baéz
 6 Entities in Nevada to aid Baéz in his embezzlement scheme makes the exercise of jurisdiction
 7 over Mossack Fonseca is entirely proper. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*,
 8 131 S.Ct. 2846, 2851 (2011) (exercise of specific jurisdiction proper where there is some
 9 “affiliation between the forum and the underlying controversy”). The focus of the Mossack
 10 Subpoena is the formation and operation of the Baéz Entities, through the “on the shelf” Nevada
 11 LLC formation process instituted by Mossack Fonseca. It was the formation of those entities
 12 which allowed Baéz to perpetuate his scheme and abscond with misappropriated Argentine state
 13 property. Furthermore, Ms. Amunategui concedes that **Redacted**

14 , and MF Nevada’s document production confirms the same.³⁶
 15 Thus, the claim in this post-judgment proceeding that the Baéz Entities may have been used to
 16 embezzle funds is entirely related to Mossack Fonseca’s activities in Nevada through its alter ego,
 17 MF Nevada.

18 **A. MF Nevada Is The Alter Ego of Mossack Fonseca.**

19 An entity is the alter ego of another where “(1) [] there is such unity of interest and
 20 ownership that the separate personalities of the two entities no longer exist and (2) [] failure to
 21 disregard their separate identities would result in fraud or injustice.” *Doe, I v. Unocal Corp.*, 248
 22 F.3d 915, 926 (9th Cir. 2001) (internal quotations omitted). Based on the evidence adduced from
 23 MF Nevada’s document production and the document production and deposition of Patricia
 24 Amunategui, it is readily apparent that MF Nevada is Mossack Fonseca’s alter ego.

25 In *Ado Fin., AG v. McDonnell Douglas Corp.*, the court held that “unity of interest”
 26 existed between a domestic affiliate and foreign entity so as to render the domestic affiliate the

27
 28 ³⁶ Amunategui Dep. at 119:19-120:21.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

1 alter ego of foreign entity where the domestic affiliate’s affairs were “managed and controlled”
2 by the foreign entity. 931 F. Supp. 711, 717-18 (C.D. Cal. 1996). The court based this on the
3 deposition testimony of the domestic affiliate’s “sole employee,” in which he stated that the
4 foreign parties directed the domestic affiliate’s business decisions and managed its daily
5 operations. *Id.* at 718. Similarly, Ms. Amunategui, MF Nevada’s sole employee, testified that

6 Redacted

7

8

37

9 Mossack Fonseca’s complete control over Redacted

10 —also establishes MF Nevada’s alter ego status. The Ninth Circuit has held that where a
11 foreign parent is responsible for drafting agreements at issue in the litigation, this indicates the
12 necessary “control over day-to-day activities” of the domestic affiliate that would be required to
13 make a finding of alter ego status. *Harris Rutsky & Co. Ins. Services, Inc.*, 328 F.3d at 1135.³⁷
14 This is precisely the case with Mossack Fonseca and MF Nevada. Mossack Fonseca is
15 responsible for Redacted

16

17

39 Redacted

18

19

20

40

21 **B. MF Nevada Is A Mere Department of Mossack Fonseca.**

22 The evidence also establishes that MF Nevada is nothing more than a “department” of
23 Mossack Fonseca. Four factors often considered by courts in determining whether an affiliate is a
24 “mere department” of a foreign entity: (1) the “financial dependency” of the affiliate on the

25

³⁷ Amunategui Dep. at 27:8-16, 28:16-25, 53:5-54:15, 55:22-25, 56:10-12, 65:8-16, 133:18-134:10 (Exhibit A).

26

³⁸ The court in *Harris Rutsky* ultimately concluded that it did not have sufficient information to determine whether the alter ego test was met, and ordered jurisdictional discovery in part on the basis that the evidence set forth suggested that further discovery would “demonstrate facts sufficient to constitute a basis for jurisdiction.” *Harris Rutsky*, 328 F.3d at 1135.

27

³⁹ Amunategui Dep. at 129:23-131:16 (Exhibit A).

28

⁴⁰ *Id.* at 39:3-10.

1 foreign company; (2) the degree to which the foreign company “interferes with the selection and
2 assignment of the [affiliate’s] executive personnel and fails to observe corporate formalities;” (3)
3 the degree of control exercised by the foreign company over “the marketing and operational
4 policies” of the affiliate; and (4) common ownership. *Aerotel, Ltd.*, 100 F.Supp.2d at 194. The
5 evidence collected by NML to date conclusively establishes the first three of these factors, and
6 suggests that the fourth is present as well.

7 First, MF Nevada is financially dependent on Mossack Fonseca. Indeed, Ms.
8 Amunategui’s testimony revealed that Redacted

9
10 ⁴¹ Without Mossack Fonseca, Redacted

11 Furthermore, Mossack Fonseca

12 Redacted

13 ⁴²

14 Second, Mossack Fonseca exercises complete control over MF Nevada’s employees. Ms.
15 Amunategui, who is MF Nevada’s only employee, conceded at her deposition Redacted

16 ⁴³ Redacted

17 ⁴⁴

18 Third, Mossack Fonseca controls the marketing and operational policies of MF Nevada.
19 As discussed, Redacted ⁴⁵ Mossack Fonseca
20 is Redacted ; and indeed, Mossack Fonseca’s website specifically
21 advertises MF Nevada’s ability to obtain Nevada limited liability companies as a client service
22 for *Mossack Fonseca’s clients*.⁴⁶ In an advertisement for UNLV, Amunategui is identified as
23 “the Vice President of the Nevada office of Mossack Fonseca,”⁴⁷ and even Amunategui’s email
24

25 ⁴¹ *Id.* at 138:19-139:22.

26 ⁴² *Id.* at 27:8-16, 28:16-25.

27 ⁴³ *Id.* at 53:5-54:15, 55:22-25, 56:10-12.

28 ⁴⁴ *Id.* at 57:7-58:6.

⁴⁵ *Id.* at 53:5-54:15, 55:22-25, 56:10-12.

⁴⁶ *Id.* at 115:18-116:7; Mossack Fonseca webpage “Nevada, USA” (a copy of which is attached as Exhibit L).

⁴⁷ UNLV Advertisement, “Go Back to Get Ahead” (a copy of which is attached as Exhibit M).

1 signature identifies her as “Head of Nevada Office.”⁴⁸

2 Fourth, the evidence indicates that MF Nevada and Mossack Fonseca share a
3 parent/subsidiary relationship. Specifically, Ms. Amunategui’s employment contract was signed

4 **Redacted**

5 ⁴⁹ While the existence of a parent/subsidiary relationship does not in and of itself give
6 rise to jurisdictional veil piercing, when taken together with the control exercised by Mossack
7 Fonseca over MF Nevada, it is clear that the requisite “semblance of independence” does not
8 exist between MF Nevada and Mossack Fonseca, and MF Nevada is “merely one of its
9 departments.” WRIGHT & MILLER § 1069.

10 **C. The Court Should Conduct An Evidentiary Hearing If It**
11 **Finds Ms. Amunategui’s Testimony to be Inconclusive.**

12 NML submits it is evident the current record that MF Nevada is the alter ego and a mere
13 department of Mossack Fonseca. However, if the Court finds Ms. Amunategui’s testimony on
14 this issue to be inconclusive, NML respectfully requests that the Court hold an evidentiary
15 hearing at which the Court can ask questions of Ms. Amunategui and observe her demeanor under
16 cross examination. *See PVC Windows, Inc. v. Babbitbay Beach Const., N.V.*, 598 F.3d 802, 810
17 (11th Cir. 2010) (court may hold evidentiary hearing on jurisdictional issues so, among other
18 things, it can “determine[] the credibility of witness testimony”); *Medeco Sec. Locks, Inc. v.*
19 *Swiderek*, 680 F.2d 37, 39 (7th Cir. 1981) (“The trial court’s reading of such a deposition is an
20 inadequate substitute for the hearing of oral testimony and the observing of a witness’ demeanor
21 in these highly contested cases where the proper characterization of the factual occurrences is
22 crucial and where credibility is a major determinative factor.”).

23 **III. NML Was Not Required To Seek Discovery Through**
24 **The Inter-American Convention On Letters Rogatory.**

25 In its Motion to Quash, MF Nevada erroneously argues that NML may only obtain
26 discovery from Mossack Fonseca pursuant to the Inter-American Convention on Letters Rogatory

27 ⁴⁸ Email from Patricia Amunategui to “Nevada office,” dated January 17, 2014 (a copy of which is attached as
Exhibit N).

28 ⁴⁹ Amunategui Employment Contract (Exhibit H).

1 (the “**Convention**”). However, courts routinely hold that the Convention does not provide the
 2 exclusive means for service within the jurisdictions of parties to the Convention. *See, e.g.,*
 3 *Kreimerman v. Casa Veerkamp, S.A. de C.V.*, 22 F.3d 634 (5th Cir. 1994) (“the Inter-American
 4 Convention on Letters Rogatory does not foreclose other methods of service among parties
 5 residing in different signatory nations”). As then Judge, now Justice Sotomayor declared over 20
 6 years ago, “[t]he [Inter-American] Convention merely provides one possible method of service . .
 7 . . It is neither mandatory nor exclusive.” *Mayatextil, S.A. v. Liztex U.S.A., Inc.*, 994 WL 198696,
 8 at *5 (S.D.N.Y. May 19, 1994).

9 In *Kreimerman*, the Fifth Circuit conducted an exhaustive exegesis of the Convention to
 10 determine whether it provides the exclusive means of serving process on parties residing in a
 11 signatory country. Following this review, the court concluded:

12 The convention ‘states that it shall apply to letters rogatory . . . [but it]
 13 does not state that letters rogatory are the only means of serving process
 14 in the signatory countries’ As rogatory letters (or letters of request)
 15 are – by definition –merely one of many procedural mechanisms by
 16 which a court in one country may request authorities in another country to
 17 assist the initiating court in its administration of justice, the Conventions
 18 scope appears to be limited to regulating that one procedural mechanism.

19 *Id.* at 639-640 [internal citations omitted]. The Convention was not an attempt to “supplant all
 20 alternative methods of service” but rather controlled “the delivery of letters rogatory among the
 21 signatory states.” *Id.* at 640.

22 **IV. The Court Can Compel Mossack Fonseca To Designate A Person**
 23 **Within the Court’s Jurisdiction To Appear For Deposition.**

24 Finally, MF Nevada’s contention that Mossack Fonseca is beyond the Court’s subpoena
 25 power because it is located more than 100 miles away is without merit. Rule 30(b)(6) requires a
 26 subpoenaed entity to “produce one or more witnesses knowledgeable about the subject matter” in
 27 the subpoena. *Great Am. Ins. Co. of N.Y. v. Vegas Const. Co., Inc.*, 251 F.R.D. 534, 538 (D. Nev.
 28 2008). The Federal Rules of Civil Procedure, however, do not require the witness to “have
 personal knowledge on the designated subject matter.” *Id.* Instead, a subpoenaed entity has “a
 duty to make a conscientious, good-faith effort to designate knowledgeable persons for Rule

1 30(b)(6) depositions and to prepare them to fully and unequivocally answer questions about the
2 designated subject matter.” *Id.* at 539 (internal quotation marks omitted). If no employee,
3 representative, or agent of Mossack Fonseca with knowledge of the matters contained in the
4 subpoena resides or regularly conducts business within a 100-mile radius of Las Vegas, the Court
5 has the power to compel Mossack Fonseca under Rule 30(b)(6) to designate a representative
6 within 100 miles of Las Vegas and to educate that person concerning the subjects set forth in the
7 subpoena. As an employee of MF Nevada—which, as shown above is an alter ego and/or a mere
8 department of Mossack Fonseca—Ms. Amunategui, could be instructed to perform this role.

9 Indeed, the Court resolved this very issue when it ordered the Báez Entities to produce a
10 witness for deposition in response to NML’s subpoenas. *NML Capital*, 2014 WL 3898021, at
11 *13 (“[T]he unique status of the corporate person permits a federal court to compel a non-party
12 resident corporation to designate a nonresident employee to ‘thoroughly educate’ an in forum
13 employee to testify on the corporation’s behalf.”). As the Court went on to note in that decision,
14 other courts have granted similar relief against third parties served with a Rule 45 subpoena. For
15 example, in *Wultz v. Bank of China Ltd.*, 298 F.R.D. 91 (S.D.N.Y. 2014), a bank in Israel moved
16 to quash a third-party subpoena seeking deposition testimony under Rule 30(b)(6), arguing that it
17 employed no knowledgeable employees in the forum and that educating an in-forum employee
18 was “simply not reasonable or practicable.” *Id.* at 99. The court denied the bank’s motion to
19 quash, reasoning that “[e]ven if [the Israeli bank] is a non-party witness and all of the documents
20 or knowledgeable persons are in Jerusalem, compliance with the 30(b)(6) subpoena is not an
21 undue burden when weighed against” the parties’ need for the testimony. *Id.* An in-forum
22 representative could “easily be educated” by a person knowledgeable about the topics by
23 “telephone, email or videoconference,” and the bank could “avoid the burden of educating a[n]
24 [in-forum] employee altogether by agreeing to a deposition by video.” *Id.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

For the foregoing reasons, NML respectfully requests that this Court deny MF Nevada's Motion and grant NML's cross-motion to compel. If the Court finds that the evidence that MF Nevada is the alter ego and a mere department of Mossack Fonseca is inconclusive, NML respectfully requests that the Court hold an evidentiary hearing at which the Court can ask questions of Ms. Amunategui and observe her demeanor under cross examination.

DATED this 7th day of November 2014.

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

By: /s/ Kirk B. Lenhard
Kirk B. Lenhard, Esq.
Nevada Bar No. 1437
Nikki L. Baker, Esq.
Nevada Bar No. 6562
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

Dennis H. Hranitzky
(admitted *pro hac vice*)
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036-6797

Attorneys for NML Capital Ltd.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

CERTIFICATE OF SERVICE

Pursuant to Fed.R.Civ.P.5(b), I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing NML CAPITAL, LTD.'S MEMORANDUM IN RESPONSE TO NON-PARTY MF CORPORATE SERVICES (NEVADA) LIMITED'S MOTION TO QUASH SUBPOENA AND/OR FOR PROTECTIVE ORDER; AND IN SUPPORT OF NML'S CROSS MOTION TO COMPEL was served via electronic service to all electronic registered CM/ECF users in this matter.

DATED this 7th day of November, 2014.

/s/ Emily Ellis
an employee of Brownstein Hyatt Farber Schreck, LLP

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28