



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
June 22, 2022

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

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In re:

QUICKER LIQUOR LLC,

Debtor.

Case No. 22-10331-mkn  
Chapter 11  
(Jointly administered)

In re:

NEVADA WINE CELLARS, INC.

Debtor.

Case No. 22-10332-mkn  
Chapter 11

Date: June 16, 2022  
Time: 1:30 p.m.

**ORDER ON MOTION FOR ENTRY OF AN ORDER OF DEBTORS' CONTEMPT OF  
RULE 2004 ORDERS AND SUBPOENAS FOR DEBTORS' PRODUCTION OF  
DOCUMENTS AND INSPECTION OF EQUIPMENT BY TODD SHIREY, MOTION TO  
COMPEL PRODUCTION AND FOR SANCTIONS<sup>1</sup>**

On June 16, 2022, a hearing was held on the Motion for Entry of an Order of Debtors' Contempt of Rule 2004 Orders and Subpoenas for Debtors' Production of Documents and Inspection of Equipment by Todd Shirey, Motion to Compel Production and for Sanctions ("Contempt and Compel Motion"), brought on behalf of secured creditor The Ernest W. Moody Revocable Trust. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

<sup>1</sup> In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the above-captioned case as they appear on the docket maintained by the clerk of the court. All references to "Section" are to provisions of the Bankruptcy Code, 11 U.S.C. §101, et seq. All references to "Bankruptcy Rule" are to the provisions of the Federal Rules of Bankruptcy Procedure. All references to "Civil Rule" are to the Federal Rules of Civil Procedure. All references to "FRE" are to the Federal Rules of Evidence.

**BACKGROUND<sup>2</sup>**

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2 On January 31, 2022, Quicker Liquor LLC (“QL”) and Nevada Wine Cellars, Inc.  
3 (“NWC”), filed separate “skeleton” Chapter 11 petitions. (QL ECF No. 1; NWC ECF No. 1).  
4 Both Chapter 11 petitions were filed by the law firm of Larson & Zirzow, LLC (“L&Z Firm”).  
5 On the same date, a Notice of Chapter 11 Bankruptcy Case was entered informing parties in  
6 interest of the QL and NWC Chapter 11 bankruptcy proceedings; the deadline of June 1, 2022,  
7 for creditors to file a proof of claim and August 1, 2022, for any governmental unit to file a proof  
8 of claim; and set a meeting of creditors (“341 Meeting”) for March 3, 2022.

9 On February 3, 2022, QL and NWC filed separate emergency motions for order directing  
10 joint administration of their respective Chapter 11 cases for “procedural convenience and cost  
11 efficiencies” (“Joint Admin Motion”). (QL ECF No. 7; NWC ECF No. 7).

12 On February 4, 2022, an order was entered shortening time for the Joint Admin Motion to  
13 be heard on February 9, 2022, along with other motions. (QL ECF No. 16; NWC ECF No. 18).  
14 The other motions consisted of additional requests (“First Day Motions”) by QL and NWC.  
15 Those consisted of the following: (1) First Day Motion Authorizing Debtors to Pay Employee  
16 Wages, etc. (“Employee Wages Motion”); (2) First Day Motion Authorization to: (i) Continue  
17 Using Existing Cash Management System..., (ii) to Honor Certain Prepetition Obligations  
18 Related to the Use of Cash Management System, and (iii) Maintain Existing Bank Accounts  
19 (“Cash Management System Motion”); (3) First Day Motion to Approve Kathy Trout as the  
20 Designated Responsible Person in Their Chapter 11 Cases (“Designated Person Motion”); and  
21 (4) First Day Motion for Continuation of Utility Service and Approval of Adequate Assurance of  
22 Payment to Utility Company (“Utilities Motion”). (QL ECF Nos. 8-11; NWC ECF Nos. 8-11).  
23 The Joint Admin Motion and the First Day Motions were all scheduled to be heard on February  
24 9, 2022.

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26 <sup>2</sup> Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the  
27 docket in the above-captioned bankruptcy case. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir.  
28 1980). See also Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee  
Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015) (“The Court may consider the records in this  
case, the underlying bankruptcy case and public records.”).

1 On February 4, 2022, an omnibus declaration of Kathy Trout (“Trout”) in support of the  
2 First Day Motions was filed (“First Trout Declaration”).<sup>3</sup> (QL ECF No. 17; NWC ECF No. 14).  
3 QL is the holder of 100% of the shares in NWC, while NWC is the owner and operator of  
4 Pahrump Valley Winery (“PVW”). See First Trout Declaration at ¶ 2.

5 On February 8, 2022, an order was entered authorizing the Moody Trust to conduct an  
6 examination under Civil Rule 2004 (“2004 Examination”)<sup>4</sup> of the person most knowledgeable for  
7 QL (“QL 2004 Examination Order”). (QL ECF No. 22).

8 On February 8, 2022, an order was entered authorizing Moody Trust to conduct a 2004  
9 Examination of the person most knowledgeable for NWC (“NWC 2004 Examination Order”).  
10 (NWC ECF No. 22).

11 On February 9, 2022, an order was entered granting joint administration of the cases and  
12 QL was designated as the lead debtor in possession (collectively “Debtors”). (QL ECF No. 24;  
13 NWC ECF No. 23). A Notice of Deadline to File Combined Matrix was also filed. (QL ECF  
14 No. 25). On this same date, interim orders were entered granting the Cash Management System  
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17 <sup>3</sup> Among other things, Trout attested that in January 2019, QL borrowed \$6,956,271.34  
18 from the Ernest W. Moody Revocable Trust (“Moody Trust”) to acquire 100% of the common  
19 stock in NWC. See First Trout Declaration at ¶ 7. In June 2020 and June 2021, QL and the  
20 Moody Trust executed several amendments to the promissory note. Id. at ¶ 12. In August 2021,  
October 2021, and January 2022, QL and the Moody Trust entered into three separate  
forbearance agreements. Id. at ¶¶ 14, 15, and 18.

21 <sup>4</sup> Any party in interest may request permission to conduct a 2004 Examination.  
22 FED.R.BANKR.P. 2004(a). The examination “may relate only to the acts, conduct, or property or  
23 to the liabilities and financial condition of the debtor, or to any matter which may affect the  
24 administration of the debtor’s estate, or to the debtor’s right to a discharge.” FED.R.BANKR.P.  
25 2004(b). The “...production of documents or electronically stored information ...may be  
26 compelled as provided in Rule 9016 for the attendance of a witness as a hearing or trial.”  
27 FED.R.BANKR.P. 2004(c). Bankruptcy Rule 9016 provides for the attendance of witnesses to be  
28 compelled by issuance of a subpoena under Civil Rule 45. See FED.R.BANKR.P. 9016. In  
addition to compelling a witness to give testimony, subpoenas issued under Civil Rule 45 also  
may compel the production of documents and electronically stored information, as well as the  
inspection of premises. See FED.R.CIV.P. 45(a)(1)(C and D). In addition to a civil contempt  
remedy for noncompliance with a subpoena, see FED.R.CIV.P. 45(g), a recalcitrant witness who  
refuses to testify without just cause is subject to incarceration for a period not exceeding eighteen  
months. See 28 U.S.C. §1826(a).

1 Motion, Employee Wages Motion, the Utilities Motion, and Designated Person Motion. (QL  
2 ECF Nos. 26, 27, 29, and 32).

3 On February 11, 2022, Debtors filed their consolidated matrix for the jointly administered  
4 cases. (QL ECF No. 34).

5 On February 14, 2022, Debtors filed an application for authorization to employ the L&Z  
6 Firm as bankruptcy counsel for both Chapter 11 debtors in possession, supported by the  
7 Declaration of Matthew Zirzow (“First Zirzow Declaration”). (QL ECF Nos. 38 and 39).

8 On February 14, 2022, Debtors filed their schedules of assets and liabilities  
9 (“Schedules”)<sup>5</sup> along with, *inter alia*, their statements of financial affairs (“SOFA”).<sup>6</sup> (QL ECF  
10 No. 40; NWC ECF No. 28).<sup>7</sup> The Schedules and SOFA for both Debtors are signed under

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12 <sup>5</sup> QL Schedule “D” lists one secured creditor, the Moody Trust, as having a claim in the  
13 amount of \$7,978,266.66, secured by “100% of the common stock of Nevada Wine Cellars, Inc.”  
14 The claim is designated as disputed, therefore requiring the Moody Trust to timely file a proof of  
15 claim. See FED.R.BANKR.P. 3003(c)(2). QL Schedule “E/F” lists zero priority unsecured  
16 creditors, and three nonpriority unsecured claims in unknown amounts owed to three creditors:  
17 JEH Investments, Inc. (“JEH”), John Hobbs (“Hobbs”), and PCC Holdings, LLC (“PCC  
Holdings”). JEH and Hobbs appear to be insiders of QL. None of the unsecured claims  
scheduled by QL are designated as contingent, unliquidated or disputed, and therefore no timely  
proofs of claim are required. See FED.R.BANKR.P. 3003(b)(1). None of the claims scheduled by  
QL are owed to NWC.

18 NWC Schedule “D” lists four secured creditors having claims totaling \$226,771.14.  
19 NWC Schedule “E/F” lists thirty-one priority unsecured claims totaling \$43,663.98, thirty of  
20 which are for unpaid employee wages, in addition to five nonpriority unsecured claims totaling  
21 \$243,540.62 (the majority of which is owed to the Debtors’ principal). None of the claims  
scheduled by NWC are designated as contingent, unliquidated or disputed, and therefore no  
timely proofs of claim are required. None of the claims scheduled by NWC are owed to QL.  
None of the claims scheduled by NWC includes any amount owed to the Moody Trust.

22 <sup>6</sup> QL attests that it had one legal action pending within one year of the commencement of  
23 the Chapter 11 proceeding involving the liquor license for the restaurant at PVW which action  
24 had been concluded and was not on appeal. See QL SOFA at Item 7. NWC attests that it had  
25 two legal proceedings pending within one year of the commencement of the Chapter 11  
26 proceeding involving the same liquor license matter and an employee theft incident, both of  
27 which actions had been concluded and were not on appeal. See NWC SOFA at Item 7. NWC  
also attests that its assets include potential claims and causes of action against the Moody Trust,  
Nye County, and others of unknown value that are subject to investigation. See NWC Schedule  
“A/B” at Item 75.

28 <sup>7</sup> Hereinafter, all references to “ECF No.” are to the jointly administered Chapter 11 case,  
Quicker Loans LLC, denominated “lead” Case No. 22-10331-mkn.

1 penalty of perjury by Trout on behalf of the managing member of QL and as secretary/treasurer  
2 of NWC.<sup>8</sup>

3 On February 17, 2022, Debtors filed a motion to employ the law offices of Timothy  
4 Elson (“Elson”) as special counsel, accompanied by the Declaration of Timothy Elson. (ECF  
5 No. 42 and 43). On the same date, Debtors filed a notice of hearing setting the motions to  
6 employ the L&Z Firm and Elson to be heard on March 23, 2022. (ECF No. 44).

7 On March 3, 2022, the 341 Meeting was concluded. (ECF No. 60).

8 On March 25, 2022, Debtors filed their monthly operating report for the period ending  
9 February 28, 2022 (“February MOR”). (ECF No. 75).

10 On March 29, 2022, the Moody Trust filed in the QL case a proof of claim in the amount  
11 of \$8,602,810.32. On the same date, the Moody Trust filed in the NWC case a proof of claim in  
12 the same amount.

13 On March 30, 2022, the Moody Trust filed a motion to prohibit the Debtors’ use of cash  
14 collateral (“Cash Collateral Prohibition Motion”), supported by the Declaration of David Keys  
15 (“First Keys Declaration”). (ECF Nos. 81 and 82). The motion was noticed to be heard on April  
16 27, 2022. (ECF No. 84).

17 On April 11, 2022, an order was entered authorizing the Debtors’ employment of the  
18 L&Z Firm (“L&Z Employment Order”). (ECF No. 91).

19 On April 11, 2022, an order was entered denying authorization for the Debtors to employ  
20 Elson. (ECF No. 92).

21 On April 22, 2022, Debtors filed their monthly operating report for the period ending  
22 March 31, 2022 (“March MOR”). (ECF No. 111).

23 On April 25, 2022, Debtors objected to the proof of claim filed by the Moody Trust in the  
24 NWC estate. (ECF No. 115).

25 On April 27, 2022, an order was entered denying the Cash Collateral Prohibition Motion.  
26 (ECF No. 121).

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28 <sup>8</sup> Both Debtors filed their Schedules and SOFAs within 14 days after commencement of  
the Chapter 11 proceedings under Bankruptcy Rule 1007(c).

1 On May 3, 2022, the Moody Trust filed a notice of issuance of subpoena for inspection of  
2 the premises of NWC (“Inspection Subpoena”). (ECF No. 127).

3 On May 4, 2022, an order was entered approving the Moody Trust’s withdrawal without  
4 prejudice of its proof of claim filed against NWC and vacating the hearing scheduled on the  
5 claim objection. (ECF No. 129).

6 On May 17, 2022, the L&Z Firm filed a motion to withdraw as counsel for the Debtors  
7 (“L&Z Withdrawal Motion”), supported by the Declaration of Matthew C. Zirzow (“Second  
8 Zirzow Declaration”). (ECF Nos. 133 and 134).

9 On May 23, 2022, an order shortening time was entered authorizing the L&Z Withdrawal  
10 Motion to be heard on June 1, 2022. (ECF No. 143).

11 On May 25, 2022, Debtors filed their monthly operating report for the period ending  
12 April 30, 2022 (“April MOR”). (ECF No. 145).

13 On May 25, 2022, Debtor’s Motion to Extend Exclusivity (First Request) (“Exclusivity  
14 Extension”) was filed by NWC, along with a supporting declaration of Kathy Trout (“Second  
15 Trout Declaration”). (ECF Nos. 149 and 150).

16 On May 25, 2022, the Moody Trust filed the instant Contempt and Compel Motion, along  
17 with supporting declarations of Ogonna M. Brown, Esq. (“First Brown Declaration”)<sup>9</sup> and Todd  
18 Shirey (“Shirey Declaration”). (ECF Nos. 154, 155, and 157).

19 On May 25, 2022, a Motion to Dismiss for Bad Faith under 11 U.S.C. § 1112(b)(1) and  
20 (b)(4)(A), (B), (E), (I) and (J), or Alternatively, Motion to Terminate Automatic Stay under 11  
21 U.S.C. § 362(d)(1) and (d)(2), and Waiver of 14-Day Stay under Rule 4001(a)(3) (“Dismissal  
22 Motion”) was filed by the Moody Trust, along with supporting declarations of David Keys  
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24 <sup>9</sup> Attached to the First Brown Declaration are copies of documents separately marked as  
25 eighteen numbered exhibits. Exhibits 1 and 2 are the subpoenas issued with the 2004  
26 Examinations (“2004 Examination Subpoenas”). Each subpoena includes a list of “ITEMS TO  
27 BE PRODUCED.” Exhibits 3, 4, 5, 10, 12, 13, 14, 15, 16, 17, and 18 are email messages  
28 exchanged between counsel. Exhibits 6, 7, 8, and 9 are excerpts of the transcript of an  
examination taken of Trout on March 11, 2022. Exhibit 11 is a letter dated April 20, 2022, from  
Moody Trust’s counsel to former counsel for the Debtors. In that letter, the Moody Trust asserts  
deficiencies in the Debtors’ responses to the document production subpoenas (“April 20  
Deficiency Letter”).

1 (“Second Keys Declaration”), Derek Groff (“Groff Declaration”),<sup>10</sup> Glenn J. Rigdon, MA, IFAS,  
2 ASA (“Rigdon Declaration”),<sup>11</sup> and Ogonna M. Brown, Esq. (“Second Brown Declaration”).<sup>12</sup>  
3 (ECF Nos. 165-169).

4 On May 26, 2022, a Notice of Hearing and Notice of Entry of Order Granting Ex Parte  
5 Application for Order Shortening Time to Hear Debtor’s Motion to Extend Exclusivity was filed  
6 setting the hearing for June 1, 2022. (ECF No. 177).

7 On May 27, 2022, an order shortening time was entered authorizing both the Dismissal  
8 Motion, as well as the Contempt and Compel Motion to be heard on June 15, 2022. (ECF No.  
9 180).

10 On May 31, 2022, a joinder to the Exclusivity Extension was filed by QL. (ECF No.  
11 188).

12 On May 31, 2022, a stipulation was filed for the law firm of Kung & Brown (“K&B  
13 Firm”) to substitute as Chapter 11 counsel for QL in place of the L&Z Firm. (ECF No. 187).

14 On May 31, 2022, an opposition to the Exclusivity Extension was filed by the Moody  
15 Trust, along with a supporting declaration of Ogonna M. Brown, Esq. (“Third Brown  
16 Declaration”). (ECF Nos. 189 and 190).

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19 <sup>10</sup> Attached to the Groff Declaration are copies of documents separately marked as three  
20 lettered exhibits. Exhibit A is a curriculum vitae of Derek A. Groff. Exhibit B is the signed  
21 retention agreement between Derek Groff and the Moody Trust to determine the value of the  
22 NWC business, including tangible and intangible assets. Exhibit C is an expert report of Derek  
Groff dated May 20, 2022. As of January 31, 2022, the value of NWC was \$6,091,000.

23 <sup>11</sup> Attached to the Rigdon Declaration are copies of documents separately marked as three  
24 lettered exhibits. Exhibit A is a statement of real estate appraisal qualifications of Glenn J.  
25 Rigdon. Exhibit B is a letter dated March 15, 2022, from Glenn J. Rigdon to Moody Creek  
26 Winery for an engagement to appraise the real property of NWC. Exhibit C is an appraisal  
report of Glenn J. Rigdon dated April 27, 2022, having a valuation date of January 31, 2022. As  
of that date, the value of the NWC real property was \$3,570,000.

27 <sup>12</sup> Attached to the Second Brown Declaration are copies of documents separately marked  
28 as three numbered exhibits. Exhibits 1 and 2 are transcript excerpts of Trout’s testimony from  
the meeting of creditors held of March 3, 2022. Exhibit 3 is an excerpt of the transcript of the  
2004 Examination taken of Trout on March 11, 2022.



1 On May 31, 2022, a proposed joint Chapter 11 plan of reorganization was filed on behalf  
2 of QL and NWC. (ECF No. 192).

3 On June 1, 2022, an order was entered granting the L&Z Withdrawal Motion. (ECF No.  
4 199). On the same date, the K&B Firm filed an application for authorization to be employed as  
5 Chapter 11 counsel for QL, along with a supporting Declaration of A.J. Kung, Esq. (ECF No.  
6 197). The application was noticed to be heard on July 13, 2022. (ECF No. 198).

7 On June 1, 2022, a proof of claim in the amount of \$249,654.00 was filed by JEH NV  
8 Investments, Inc., in the QL case.<sup>13</sup>

9 On June 1, 2022, the hearing on the Exclusivity Extension was continued to June 16,  
10 2022. (ECF No. 202).

11 On June 10, 2022, a joint opposition to the Contempt and Compel Motion (“Joint  
12 Contempt and Compel Opposition”),<sup>14</sup> including a Countermotion for Protective Order  
13 (“Protective Countermotion”) was filed by the Debtors, along with supporting declarations of  
14 Kathy Trout (“Third Trout Declaration”) and Tracy M. O’Steen, Esq. (“First O’Steen  
15 Declaration”).<sup>15</sup> (ECF Nos. 213-215).

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19 <sup>13</sup> The following day, the proof of claim was amended to identify the creditor as JEH NV  
20 Investments, Inc. (and/or John Hobbs) with the other name used by the creditor as “JEH  
Investments, Inc.”

21 <sup>14</sup> Attached to the Joint Contempt and Compel Opposition are copies of documents  
22 separately marked as ten separately lettered exhibits. Exhibit A is a spreadsheet describing the  
23 Debtors’ response to the document subpoenas received from the Moody Trust. Exhibit B is a  
24 copy of attachment to Item 30 of the NWC SOFA. Exhibits C, D, E, and F are excerpts of  
25 certain tax documents filed by the Debtors. Exhibit G is a transcript excerpt from a deposition of  
26 David Keys apparently taken on June 8, 2022. Exhibit H is an email message dated July 5, 2020,  
filed under seal. Exhibit I consists of transcript excerpts of Trout’s testimony at the creditors  
meeting held on March 3, 2022. Exhibit J is a transcript excerpt from a deposition of Ernest  
William Moody taken on June 8, 2022.

27 <sup>15</sup> These two declarations seek to authenticate the ten lettered exhibits attached to the  
28 Joint Contempt and Compel Opposition.



1 On June 10, 2022, an opposition (“Dismissal Opposition”)<sup>16</sup> to the Dismissal Motion was  
2 filed by the Debtors, along with supporting declarations of Kathy Trout (“Fourth Trout  
3 Declaration”) and Tracy M. O’Steen, Esq. (“Second O’Steen Declaration”). (ECF Nos. 220-  
4 222).

5 On June 13, 2022, Debtors filed a disclosure statement to accompany joint plan of  
6 reorganization (“Disclosure Statement”). (ECF No. 223). A hearing to approve the Disclosure  
7 Statement was noticed to be heard on July 13, 2022. (ECF No. 224).

8 On June 13, 2022, an order was entered shortening time to allow the Protective  
9 Countermotion to be heard on June 16, 2022, in conjunction with the Contempt and Compel  
10 Motion. (ECF No. 231).

11 On June 13, 2022, an order was entered granting Debtors’ request to file a certain  
12 document marked as Exhibit “H” under seal. (ECF No. 232).

13 On June 13, 2022, a reply in support of the Contempt and Compel Motion was filed  
14 (“Contempt and Compel Reply”), along with a declaration of Ogonna M. Brown, Esq. (“Fourth  
15 Brown Declaration”) in support thereof. (ECF Nos. 235 and 236).

16 On June 13, 2022, a reply in support of the Dismissal Motion was filed along with  
17 supporting declarations of David Keys (“Third Keys Declaration”) and Ogonna M. Brown, Esq.  
18 (“Fifth Brown Declaration”).<sup>17</sup> (ECF Nos. 238-240).

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21 <sup>16</sup> Attached to the Dismissal Opposition are copies of documents separately marked as  
22 four separately lettered exhibits. Exhibit A is an order filed on May 28, 2021, by the Fifth  
23 Judicial District Court, Nye County, Nevada, in NV Wine Cellars, et al. v. Nye County  
24 Licensing and Liquor Board, Case No. CV20-0706 (“Liquor License Proceeding”). Exhibit B is  
25 an email dated June 9, 2022, acknowledging receipt of an installment payment for Nye County  
26 real property taxes. Exhibit C is a transcript excerpt from a deposition of Ernest William Moody  
27 taken on June 8, 2022. Exhibit D is a transcript excerpt of Trout’s testimony at the creditors  
28 meeting held on March 3, 2022.

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31 <sup>17</sup> Attached to the Fifth Brown Declaration are copies of documents separately marked as  
32 three lettered exhibits. Exhibit A is a transcript excerpt of Trout’s testimony from the meeting of  
33 creditors held of March 3, 2022. Exhibit B is a transcript excerpt of Trout’s testimony from the  
34 2004 Examination conducted on March 11, 2022. Exhibit C is an excerpt of the transcript of the  
35 deposition of David Keys taken on June 8, 2022.

1 On June 14, 2022, Debtors filed an errata to the Disclosure Statement to include Exhibit 3  
2 – “Debtors’ Pro Forma Projection” and Exhibit 4 – Debtors’ “Joint Liquidation Analysis” to the  
3 Disclosure Statement. (ECF No. 243).

4 On June 14, 2022, a stipulated order was entered approving the stipulation for protective  
5 order. (ECF No. 244).

6 On June 15, 2022, an opposition to Protective Countermotion was filed by the Moody  
7 Trust, along with a supporting declaration of Ogonna M. Brown, Esq. (“Sixth Brown  
8 Declaration”).<sup>18</sup> (ECF Nos. 248 and 249).

9 On June 15, 2022, a supplemental declaration of Ogonna M. Brown, Esq. in support of  
10 the Dismissal Motion was filed (“Seventh Brown Declaration”).<sup>19</sup> (ECF No. 250).

11 On June 16, 2022, a concurrent expedited hearing was held on the Dismissal Motion,  
12 Exclusivity Extension, Contempt and Compel Motion, and Protective Countermotion. Separate  
13 orders on each matter are entered contemporaneously herewith.

#### 14 **DISCUSSION**

15 By the instant Contempt and Compel Motion, the Moody Trust requests “entry of an  
16 Order (1) compelling Debtors to comply with the Rule 2004 Subpoena and produce all  
17 documents and information therein with (sic) two weeks of an entry of an Order by this Court;  
18 (2) granting sanctions against Debtors and their counsel for violating the Rule 2004 Subpoenas  
19 and Subpoenas for Inspection of Premises and (3) such other and further relief as the court may  
20 deem just and proper.” Contempt and Compel Motion at 16:2-6. As previously mentioned, the  
21 QL 2004 Examination Order as well as the NWC 2004 Examination Order were entered on  
22 February 8, 2022. Subpoenas to compel attendance, production of documents, and inspection of  
23 premises apparently were issued.

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25 <sup>18</sup> Attached as Exhibit 1 to the Sixth Brown Declaration is an excerpt of the transcript of  
26 the 2004 Examination taken of Trout on March 11, 2022. Attached as Exhibits 2 and 3 are  
copies of emails exchanged between Debtors’ current counsel and the Moody Trust’s counsel.

27 <sup>19</sup> Attached as Exhibit 1 to the Seventh Brown Declaration is a copy of a Wells Fargo  
28 Combined Statement of Accounts for NWC dated January 31, 2022.

1 Not surprisingly, Debtors maintain that they have complied with the orders and  
2 subpoenas, and that none of the relief requested is warranted. The Moody Trust does not suggest  
3 that the Debtors entirely failed to comply, but instead maintains that their compliance was  
4 insufficient. There is no dispute that Trout, as the Designated Responsible Person for the  
5 Debtors, appeared for the 2004 Examinations. There is no dispute that the 2004 Examinations  
6 were continued so that they could be completed after subpoenaed documents were received.  
7 There is no dispute that the Debtors have responded to the 2004 Subpoenas. There is no dispute  
8 that a representative of the Moody Trust was permitted to inspect the NWC premises. The  
9 details of the Debtors' compliance with the 2004 Examination subpoenas and Inspection  
10 Subpoena are in dispute.

11 **I. The Document Production.**

12 Documents in compliance with the subpoena apparently have been produced on a  
13 continuing basis. The April 20 Deficiency Letter described various ways in which the Debtors  
14 failed to adequately produce documents required by all 28 categories required by the subpoenas.  
15 At the hearing, the court was referred to a "chart" of the documents outstanding, but there  
16 appears to be no chart of the current deficiencies. Instead, the Moody Trust provided a list of 28  
17 categories for which compliance allegedly was deficient as of June 7, 2022. See Contempt and  
18 Compel Reply at 4:26 to 6:17.<sup>20</sup> With their opposition filed on June 10, 2022, Debtors attach a  
19 spreadsheet describing their responses to the 28 categories of documents, but the last production  
20 date identified on the spreadsheet was for April 19, 2022. See Exhibit "A" to Joint Opposition  
21 and Protective Counter-motion at 3:18-20; First O'Steen Declaration at ¶ 4.<sup>21</sup> With its opposition

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23 <sup>20</sup> Attached as Exhibit 4 to the First Brown Declaration is a copy of an email dated March  
24 2, 2022, from the Debtors' former counsel to the Moody Trust's counsel. The email refers to an  
25 "attached chart" of materials produced by the Debtors in response to the subpoenas, but the chart  
26 is not included as part of Exhibit 4.

27 <sup>21</sup> It is not clear whether the spreadsheet actually is the chart that was mentioned in the  
28 March 2, 2022 email from Debtors' former counsel. See note 20, supra. The spreadsheet itself  
refers to additional documents sent on April 19, 2022. Debtors' current counsel represents that  
the spreadsheet was obtained from former counsel and reflects the Debtors' responses to the  
2004 Examination Subpoenas. That spreadsheet obviously does not account for any additional  
documents produced after April 19, 2022.

1 to the Protective Counter-motion, the Moody Trust confirmed that the Debtors supplemented their  
 2 document production on June 7, 2022, through their new bankruptcy counsel. See Sixth Brown  
 3 Declaration at ¶5. In other words, even though there is no current “chart” of the continuous  
 4 production deficiencies asserted as of the hearing, it appears that the Moody Trust still relies on  
 5 the deficiencies described in its Contempt and Compel Reply.<sup>22</sup>

6       Apparently for the first time, however, Debtors assert that their ability to produce  
 7 responsive documents “has been hampered by thefts of its computer servers” that occurred  
 8 sometime in 2020 and in January 2022. See Third Trout Declaration at ¶¶ 4, 15, and 17. This is  
 9 somewhat unexpected given that the theft of computer servers was never previously mentioned  
 10 by the Designated Responsible Person and both Debtors were able to file their Schedules and  
 11 SOFAs without needing an extension of time. See note 8, supra.<sup>23</sup> Nonetheless, without  
 12 specifically addressing any of the 28 categories of documents requested, Debtors maintain that  
 13 they have fully complied with the subpoenas.<sup>24</sup>

## 14       **II.     The Equipment Inspection.**

15       Inspection of the equipment located at the PVW premises involved a different problem.  
 16 The Inspection Subpoena was dated May 3, 2022, and provided for the inspection to be

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17       <sup>22</sup> Unfortunately, the Contempt and Compel Reply filed on June 13, 2022, makes no  
 18 attempt to reconcile the representations made in the Third Trout Declaration filed on June 10,  
 19 2022.

20       <sup>23</sup> It also may be surprising to the Moody Trust inasmuch as multiple amendments to the  
 21 promissory note and multiple forbearance agreements were obtained by the Debtors after the  
 22 thefts occurred, see note 3, supra, but without complete access to their own records. Whether the  
 23 two thefts of the Debtors’ computer servers were timely reported to law enforcement or to any  
 24 insurance providers is not known. Whether the theft occurred within the disclosure period  
 required by Item 10 of the SOFAs filed in these proceedings also is unknown. A legal  
 proceeding within one year involving an employee theft incident is referenced in the NWC  
 SOFA, see note 6, supra, but no details regarding that incident are disclosed.

25       <sup>24</sup> Unfortunately, many discovery disputes devolve into a Monty Python-esque form of  
 26 argument where the parties simply contradict each other without evidentiary or factual basis.  
 27 See <https://youtu.be/ohDB5gbtaEQ>. By its very nature, discovery encompasses information that  
 28 may never be offered into evidence. When a discovery dispute involves the production of  
 possibly thousands of pages of materials, an accurate picture is difficult to discern unless both  
 sides present a complete record of the materials actually received.

1 conducted on a date negotiated and agreed by the Debtors' former counsel. See Exhibits 15, 16,  
 2 17, and 18 to First Brown Declaration.<sup>25</sup> Certain parameters demanded by the Debtors<sup>26</sup> were  
 3 accepted and the inspection was conducted on the May 4, 2022, date and time set forth in the  
 4 Inspection Subpoena. See Shirey Declaration at ¶ 12. Without contradiction, Shirey attested that  
 5 he was not permitted to take photographs during his inspection that were necessary to determine  
 6 and confirm the equipment located on the premises. Id. at ¶ 13. Only after the inspection was  
 7 completed within the time limits agreed among counsel, was Shirey offered an opportunity to  
 8 take the required photographs. Id. at ¶ 19. Because the belated offer would have required him to  
 9 duplicate much of the time allotted by retracing his steps, Shirey declined. Id. at ¶ 20. The  
 10 inability to take photographs prevented Shirey from creating a photo log to create identifying  
 11 information for the subject equipment, see id. at ¶ 21, to assist him in completing a valuation  
 12 analysis. Id. at ¶ 22. None of Shirey's written testimony is refuted, contradicted, or addressed  
 13 by the Debtors.<sup>27</sup> Moreover, the time and expense incurred by the Moody Trust for the  
 14 inspection also are not disputed.<sup>28</sup>

### 15 **III. The Relief Requested.**

16 <sup>25</sup> There is no dispute that the Inspection Subpoena was served on the Debtors' counsel  
 17 by ECF as well as by email sent by the Moody Trust's counsel.

18 <sup>26</sup> Exhibit 16 to the First Brown Declaration is a copy of an email dated April 28, 2022,  
 19 from Debtors' former counsel to the Moody Trusts' counsel. Six parameters were set forth by  
 20 the Debtors as a condition to agreeing to allow Shirey to inspect the premises. Although  
 21 parameter No. 2 specifies that Shirey will be accompanied by a Debtors' representative  
 22 throughout the visit and will be filmed by the security cameras throughout the facility, no  
 suggestion was made that Shirey would be prohibited from taking photographs while conducting  
 the agreed inspection.

23 <sup>27</sup> The Joint Contempt and Compel Opposition is supported by the Third Trout  
 24 Declaration in which the Designated Responsible Person makes no mention whatsoever of the  
 25 equipment inspection. In other words, Debtors do not dispute that Shirey was prohibited from  
 26 taking photographs during the inspection and that he was offered the opportunity to do so only  
 after the limited inspection was completed. Moreover, Debtors provide no explanation why  
 Shirey was prohibited at the commencement of the inspection from taking photographs.

27 <sup>28</sup> Shirey charged the Moody Trust for his time and expenses in the total amount of  
 28 \$4,268.61, see Shirey Declaration at ¶ 24, and the Debtors have not offered any evidence  
 disputing the reasonableness and necessity for the time and expenses incurred.

1 Having considered the written and oral arguments of counsel, along with the record  
2 presented, the court concludes that the Contempt and Compel Motion should be granted in part.

3 **A. Document Production.**

4 In this instance, the 2004 Examination process was initiated by the Moody Trust only  
5 eight days after the Chapter 11 proceedings were commenced. The instant document production  
6 dispute is not governed by Civil Rule 26 because it does not arise out of a contested matter under  
7 Bankruptcy Rule 9014. Rather it is governed by the subpoena provisions of Civil Rule 45 and  
8 the QL 2004 Examination Order as well as the NWC 2004 Examination Order.<sup>29</sup> A document  
9 production subpoena issued under Civil Rule 45 is a command enforceable by civil contempt  
10 sanctions under Civil Rule 45(g), in contrast to a request to produce documents under Civil Rule  
11 34(a)(1)(A) for which a subsequent motion to compel production may be brought under Civil  
12 Rule 37(a)(3)(B). Civil Rule 45 does not include an analogue to the duty to supplement prior  
13 disclosures imposed by Civil Rule 26(e)(1).<sup>30</sup> Nonetheless, Debtors have supplemented their  
14 initial document production.

15 A comparison between the April 20 Deficiency Letter and the deficiencies asserted in the  
16 Contempt and Compel Reply reflect that at least some concerns have been addressed. For at  
17 least 15 out of the 28 categories of document requests, Debtors have responded that there are no  
18 responsive documents at all, i.e., Categories 2, 6, 9, 11, 13, 14, 15, 18, 19, 22, 23, 24, 25, 26, and  
19 28. As the Designated Representative of the Debtors, Trout attests in relevant part:

- 20
  - Debtors have produced all bank statements from January 9, 2019 through  
21 January 31, 2022;

22 <sup>29</sup> The scope of discovery under Civil Rule 26 is subject to limits: “Parties may obtain  
23 discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and  
24 proportional to the needs of the case, considering the importance of the issues at stake in the  
25 action, the amount in controversy, the parties’ relative access to relevant information, the parties’  
26 resources, the importance of the discovery in resolving the issues, and whether the burden or  
27 expense of the proposed discovery outweighs its likely benefit.” FED.R.CIV.P. 26(b)(1)  
(emphasis added). The scope of an examination under Civil Rule 2004 does not include a  
28 similar proportionality limitation. See FED.R.BANKR.P. 2004(b).

29 <sup>30</sup> Civil Rule 45(e) is entitled “Duties in Responding to a Subpoena” and subpart (1) is  
30 entitled “Producing Documents or Electronically Stored Information.” None of the language  
references a duty to supplement a prior response.

- 1 • Debtors have produced all payroll records consisting of all paychecks and  
2 check registers from January 9, 2019 through January 31, 2022;
- 3 • Debtor have made no distributions to equity holders and monthly consulting  
4 fees have been paid by NWC to Hobbs as reflected in the SOFA;
- 5 • Copies of corporate tax returns for 2019 and 2020, including all of the  
6 documents used to prepare the returns, previously were provided to Moody  
7 Trust that include income/expense and balance sheet information;
- 8 • Debtors have produced all bank records and check registers, which reflect  
9 all loan payments;
- 10 • Equipment leases and a grower contract with RNG Inc., previously were  
11 provided to the Moody Trust;
- 12 • All bank statements, check registers, records of receipts, payroll records, and  
13 the income/expense report for 2021 have been provided to Moody Trust;
- 14 • Debtors have no documents in the form of letters of intent, purchase  
15 agreements, letters of interest, and offers to purchase; and
- 16 • Debtors have produced a transaction history of expenditures, as well as any  
17 bills of lading in their possession, with respect to Moody Creek Winery.

18 See Third Trout Declaration at ¶¶ 6, 8, 9, 10, 11, 12, 13, 15, 19, 20, 24, 25, and 26. Although the  
19 declaration from the Designated Responsible Person is signed under penalty of perjury, the  
20 Moody Trust apparently disputes the accuracy or veracity of the witness' statements: it still  
21 maintains that documents encompassing some or all of the 28 categories have never been  
22 produced.

23 Rather than resolving a factual dispute over the sufficiency of the production without  
24 evidence of the materials actually produced, the court concludes that the alleged deficiencies are  
25 best explored through the continued 2004 Examinations of the Designated Responsible Person.  
26 With respect to the document production, the Contempt and Compel Motion will be denied  
27 without prejudice. In the event compliance with the 2004 Examination Subpoenas remains in  
28 substantial dispute, relief may be sought through civil contempt sanctions or coercive



1 incarceration. See note 4, supra.<sup>31</sup>

2 **B. Equipment Inspection.**

3 Debtors' refusal to permit Shirey to take photographs during the equipment inspection  
4 was inexcusable. The parameters for the inspection were negotiated amongst counsel well  
5 before the inspection took place. It was not a sudden inspection as implied at the hearing in this  
6 matter. Although it was a cooperative inspection, it also was accompanied by the Inspection  
7 Subpoena that apparently came as no surprise to the Debtors' former counsel. In essence,  
8 Debtors' voluntary accommodation became an obligation. The interference with Shirey's  
9 performance of his inspection was misguided.

10 In this instance, there is no suggestion that the amount charged by Shirey for performing  
11 the equipment inspection, see note 28, supra, was in any way increased as a result of the  
12 interference. Shirey does not attest that the inability to take photographs during the inspection  
13 prevented or will prevent him from performing the valuation for which he was employed. For  
14 these reasons, the Moody Trust's request to sanction the Debtors for the full amount billed by  
15 Shirey is excessive even though the matter was properly raised before the court. Instead, the  
16 court will require the Debtors to pay the Moody Trust for two hours of attorney's fees incurred  
17 by its counsel.

18 **IT IS THEREFORE ORDERED** that the Motion for Entry of an Order of Debtors'  
19 Contempt of Rule 2004 Orders and Subpoenas for Debtors' Production of Documents and  
20 Inspection of Equipment by Todd Shirey, Motion to Compel Production and for Sanctions,  
21 brought on behalf of secured creditor The Ernest W. Moody Revocable Trust, Docket No. 154,  
22 be, and the same hereby is, **DENIED IN PART** and **GRANTED IN PART**.

23 **IT IS FURTHER ORDERED** that the Contempt and Compel Motion is **DENIED**  
24 **WITHOUT PREJUDICE** as to the production of documents portion of the request, subject to  
25 renewal by the moving party in the event enforcement of the subject orders and subpoenas is

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27 <sup>31</sup> The failure, reluctance, or refusal of parties to disclose or produce information can be  
28 considered in assessing their credibility. Parties who commence legal proceedings and who bear  
the burdens of proof and persuasion presumably understand this.

1 required.

2 **IT IS FURTHER ORDERED** that the Debtors must supplement or correct their  
3 disclosures or responses in a timely manner if the Debtors learn that in some material respect the  
4 prior disclosures or responses are incomplete or incorrect, and if the additional or corrective  
5 information has not otherwise been made known to the party conducting the examination or  
6 issuing the subpoena.

7 **IT IS FURTHERED ORDERED** that the Contempt and Compel Motion is **GRANTED**  
8 as to the inspection of equipment located at the Nevada Wine Cellars premises. As a sanction for  
9 Debtors' interference with the equipment inspection, Debtors shall pay counsel for the moving  
10 party an amount equal to two hours of services charged. Counsel for the moving party shall  
11 advise Debtors' counsel of that total amount **no later than June 29, 2022**, and the Debtors shall  
12 remit that amount to moving party's counsel **no later than July 6, 2022**.

13

14 Copies sent via CM/ECF ELECTRONIC FILING

15 Copy sent via BNC to:

16 QUICKER LIQUOR LLC  
17 NEVADA WINE CELLARS, INC.  
18 ATTN: OFFICER OR MANAGING AGENT  
19 7582 LAS VEGAS BLVD., STE. 484  
20 LAS VEGAS, NV 89123

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