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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NML CAPITAL LTD.,

Plaintiff,

vs.

THE REPUBLIC OF ARGENTINA,

Defendant.

Case No. 2:14-cv-492-RFB-VCF

ORDER

This matter involves NML Capital, Ltd.’s post-judgment execution proceeding against the Republic of Argentina. Before the court is NML’s Motion to Compel (#1¹), which seeks discovery from 123 nonparty corporations. NML and the nonparties filed four supplemental briefs, (Docs. #20, #22, #29, #30), and the court held three hearings. (Mins. Proceedings #12, #26, #31). For the reasons stated below, NML’s Motion to Compel is granted.

BACKGROUND

In 2001, the Republic of Argentina underwent a depression and sovereign-default crisis. The majority of Argentina’s bondholders voluntarily restructured their investments and suffered a 70% loss. However, one bondholder refused: NML Capital Ltd. (“NML”). Beginning in 2003, NML commenced eleven collection actions against Argentina in the Southern District of New York. NML argued that its debt—which totals \$1.7 billion—should be repaid in full. The court agreed. *See EM Ltd. v. Republic of Argentina*, 695 F.3d 201, 203 n.1 (2d Cir. 2012) *aff’d Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250, 2251 (2014).

¹ Parenthetical citations refer to the court’s docket.

1 To date, Argentina has failed to satisfy NML's judgments.² This has caused NML to travel the
2 globe in search of property owned by Argentina, which NML may attach to execute its judgments.
3 See *NML Capital, Ltd. v. Republic of Argentina*, No. 03-cv-8845-TPG, 2011, WL 3897828, at *1
4 (S.D.N.Y. Sept. 2, 2011) (affirmances omitted). This search brought NML to Las Vegas, Nevada.

5 NML suspects that 123 Nevada corporations were used to launder \$65 million of embezzled
6 Argentine funds. Now, as Argentina suffers its second sovereign default in thirteen years—(in part
7 because of this action³)—NML seeks information from these corporations to locate the \$65 million. In
8 August of 2013, NML served subpoenas on the 123 corporations and their commercial registered agent,
9 M.F. Corporate Services. M.F. Corporate Services produced responsive documents; but the corporations
10 did not. They contend that no responsive documents exist.⁴ NML contends this is false.

11 NML asserts that the 123 corporations have responsive documents for two reasons. First, in April
12 2013, the Argentine government initiated an investigation, dubbed *La Ruta Del Dinero K* (i.e., “the K
13 Money Trail”), into Argentina's former president, Néstor Kirchner, his wife, current Argentine President
14 Cristina Fernández de Kirchner, their confidant Lázaro Báez, and the trios' sordid financial affairs. All
15 three allegedly embezzled millions of pesos from public-infrastructure projects and laundered the
16 proceeds and other embezzled funds through Panama and various international shell corporations. The
17 investigation's lead prosecutor, José María Compagnoli, authored a report stating that Báez laundered
18 \$65 million through 150 Nevada corporations. The report also states that all 150 Nevada corporations
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21 ² See, e.g., *NML Capital, Ltd. v. Banco Cent. de la Republica Argentina*, 652 F.3d 172, 196 (2d Cir. 2011)
22 (recalling Argentina's appalling record of keeping its promises to its creditors); *EM Ltd. v. The Republic of*
23 *Argentina*, 720 F. Supp. 2d 273, 279 (S.D.N.Y. 2010) (“In all the years of litigation, the Republic has shown not
24 the slightest recognition of this obligation to pay. And it is clear beyond any question that the Republic, as it went
25 on from the crisis of 2001, has at times had resources at its command to pay the judgments, or at least to make
substantial part-payments. But the Republic thus far pays nothing on these judgments.”).

³ See, e.g., Chris Wright, *Second Time Around: What Argentina's Second Default Means for Investors*, FORBES,
July, 31, 2014.

⁴ (See Baker Aff. (#1-7) at Ex. 1) (appending 114 affidavits on behalf of the 123 corporations).

1 have the same director, Aldyne, Ltd., a Seychellois corporation. After submitting the report to
2 Argentina’s National Supreme Court of Justice, the Kirchner government retaliated and removed
3 Compagnoli from office.

4 Second, NML suspects that the 123 corporations are the same 150 corporations referred to in
5 Compagnoli’s report because the 123 corporations’ registered agent, M.F. Corporate Services, produced
6 documents connecting the 123 corporations to Aldyne, Ltd. and other Seychellois entities. These
7 documents are mirror-image operating agreements for 17 of the 123 corporations. (See Ex. List #34).
8 Each of the operating agreements identifies M.F. Corporate Services as the registered agent and Aldyne,
9 Ltd., Gairns Ltd., or both as the corporations’ member and director. The addresses for Aldyne and
10 Gairns are identical: Suite, 13, First Floor, Oliaji Trade Centre, Francis Rachel Street, Victoria, Mahe,
11 Republic of Seychelles. This address is also shared by a Panamanian law firm, Mossack & Fonseca.
12 See MOSSACK & FONSECA, GLOBAL PRESENCE, SEYCHELLES, [http://www.mossackfonseca.com/
13 our_offices/seychelles/](http://www.mossackfonseca.com/our_offices/seychelles/) (last visited August 2, 2014). Mossack & Fonseca is known for incorporating
14 shell companies. *Shells and Shelves*, THE ECONOMIST, April 7, 2012, available at: [http://www.
15 economist.com/node/21552196](http://www.economist.com/node/21552196).⁵

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17 Accordingly, on April 1, 2014, NML filed the instant motion to compel. NML argues that the
18 corporations should either comply with the document subpoenas or produce a deponent to explain why

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24 ⁵ These facts are merely recalled for background purposes. Nonetheless, “[i]t is not uncommon for courts to take
25 judicial notice of factual information found on the world wide web.” *O’Toole v. Nothrop Grumman*, 499 F.3d
1218, 1225 (10th Cir. 2007) accord *Daniels–Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010).

1 no documents exist.⁶ The corporations oppose NML's motion, arguing that no responsive documents
2 exist and that the court cannot compel a witness to appear for a deposition on behalf of the 123
3 corporations because none the corporations have representatives within the court's subpoena power. In
4 support, the corporations rely on the affidavit of Letcia Montoya. Montoya is one of Aldyne, Ltd.'s
5 corporate officers, the custodian of records for some of the 123 corporations, and an attorney with the
6 Panamanian law firm, Mossack & Fonseca—which employs M.F. Corporate Services as an independent
7 contractor in Nevada. Montoya asserts that no responsive documents exist and that none of the
8 companies reside in or regularly conduct business within 100 miles of Las Vegas.

9 The difficulty NML faces is appreciable. Normally, if a person responds to a discovery request
10 and asserts that no responsive documents exist, the Federal Rules of Civil Procedure provide
11 mechanisms for testing the responding person's assertion. Rules 30 and 45 authorize the requesting
12 party to subject the responding person to a deposition, if the responding person is within the court's
13 subpoena power. *See* FED. R. CIV. P. 30(a)(1) (“The deponent's attendance may be compelled by
14 subpoena under Rule 45”). Similarly, Rule 26(g) requires counsel for a responding party (or an
15 unrepresented party personally) to certify, after a reasonable inquiry, that the response is correct.
16 *See* FED. R. CIV. P. 26(g)(1). Additionally, Rule 28 authorizes the requesting party to depose the
17 responding person in a foreign country, pursuant to an applicable treaty or convention. *See* FED. R. CIV.
18 P. 28(b)(1).
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23 ⁶ On June 19, 2014, NML also served two additional subpoenas on M.F. Corporate Services and its general
24 manager and sole employee, Patricia Amunategui. These subpoenas contain approximately twenty pages of
25 requests. Some of the requests concern the 123 corporations. M.F. Corporate Services and Amunategui responded
to the subpoenas with objections and a motion for a protective order. The motion did not argue that no responsive
documents exist; rather, it asserted that the subpoenas are overbroad and that compliance would be unduly
burdensome. The parties stipulated to vacate the briefing schedule on this motion. (*See* Order & Stip. (#24) at 2).

1 Montoya is not a party and she resides in Panama, thousands of miles beyond the court's
2 subpoena power. Additionally, Panama is not a signatory to the Hague Evidence Convention, the
3 standard Rule 28 treaty used to obtain evidence abroad. Panama is a party to the Inter-American
4 Convention on Letters Rogatory, 28 U.S.C. § 1781 (1998), *et seq.* Obtaining discovery under this
5 Convention is difficult: the procedure is cumbersome and compliance by the foreign nation is
6 discretionary. *See* 8A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE:
7 CIVIL 3d § 2083. These circumstances deprive NML of the standard fallback discovery devices created
8 by Rules 26(g), 28, 30, and 45.

9 While this dispute was pending, the United States Supreme Court decided *Republic of Argentina*
10 *v. NML Capital, Ltd.*, 134 S. Ct. 2250 (2014). The question presented was whether the Foreign Services
11 Immunities Act of 1976, 28 U.S.C. §§ 1330, 1602, *et seq.*, limits the scope of discovery available to a
12 judgment creditor in a post-judgment execution proceeding against a foreign sovereign. *NML Capital,*
13 *Ltd.*, 134 S. Ct. at 2253. The court held that it does not: “We thus assume without deciding that . . . in a
14 run-of-the-mill execution proceeding . . . the district court would have been within its discretion to order
15 the discovery from third-part[ies] about the judgment debtor’s assets located outside the United States.”
16 *Id.* at 2254 (quotation marks and citation omitted). NML’s motion to compel presents the question of
17 how to exercise that discretion.

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19 To do so, the court held three hearings, which focused on three questions: (1) whether the court
20 should compel the nonparty corporations to comply with NML’s document subpoena; (2) whether the
21 court may compel Montoya’s deposition in Las Vegas; and (3) whether counsel for the nonparty
22 corporations has a duty to certify Montoya’s representations under Federal Rules of Civil Procedure
23 11(b), 26(g), or the Nevada Rules of Professional Conduct. This order follows.
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LEGAL STANDARD

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2 Federal courts have ancillary jurisdiction in post-judgment execution proceedings to exercise the
3 federal courts' "inherent power to enforce its judgments." *Peacock v. Thomas*, 516 U.S. 349, 356
4 (1996). As stated by the Supreme Court, "[w]ithout jurisdiction to enforce a judgment entered by a
5 federal court, 'the judicial power would be incomplete and entirely inadequate to the purposes for which
6 it was conferred by the Constitution.'" *Id.* (quoting *Riggs v. Johnson Cnty*, 6 Wall 166 (1868)). The
7 court's power to enforce judgments includes the power to hear proceedings under Federal Rule of Civil
8 Procedure 69. *See, e.g., Bryan v. Erie Cnty. Office of Children & Youth*, 752 F.3d 316, 321 (3d Cir.
9 2014); 12 CHARLES A. WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, FEDERAL PRACTICE AND
10 PROCEDURE: CIVIL 2d § 3013, p. 158.⁷

11 Rule 69 governs the procedure for executing judgments and obtaining discovery in aid of the
12 execution. Rule 69(a)(2) states: "In aid of the judgment or execution, the judgment creditor or a
13 successor in interest whose interest appears of record may obtain discovery from any person—including
14 the judgment debtor—as provided in these rules or by the procedure of the state where the court is
15 located." This rule is designed to "allow the judgment creditor to identify assets from which the
16 judgment may be satisfied." 13 JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE—CIVIL § 69.04
17 (2008). As a result, discovery under Rule 69 is "quite permissive." *Republic of Argentina v. NML*
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21 ⁷ In addition to having jurisdiction, venue is also proper in the District of Nevada. When NML first subpoenaed
22 the 123 corporations and M.F. Corporate Services in August 2013, it complied with Federal Rules of Civil
23 Procedure 45(a)(2)(B) and (c)(2), as they existed at that time. They stated that "[a] subpoena must issue . . . from
24 the court for the district where the deposition is to be taken" and that "[t]he issuing court must enforce" subpoenas
25 and "impose an appropriate sanction . . . on a party or attorney who fails to comply." These provisions changed on
December 1, 2013. New Rule 45(a)(2) and (d)(3)(A) now govern. They state that "[a] subpoena must issue from
the court where the action is pending" but "the court for the district where compliance is required must quash or
modify" disputed subpoenas. When NML served M.F. Corporate Services and Amunategui with additional
subpoenas on June 19, 2014, NML complied with the new rules. *See also* FED. R. CIV. P. 37(a)(2) ("A motion for
an order to a nonparty must be made in the court where the discovery is or will be taken.").

1 *Capital, Ltd.*, 134 S. Ct. 2250, 2254 (2014); *see also* WRIGHT & MILLER, *supra*, § 3014, pp. 160–62
2 (“The scope of examination is very broad, as it must be if the procedure is to be of any value.”).

3 There is no question that Rule 69(a)(2) permits a judgment creditor to propound discovery on
4 third parties. *See* FED. R. CIV. P. 69(a)(2) (stating that discovery may be obtained “from any person”);
5 *NML Capital, Ltd.*, 134 S. Ct. at 2255 (citation omitted); WRIGHT & MILLER, *supra*, § 3014, pp. 160–61
6 (“[T]hird persons can be examined”). Similarly, there is no question that Rule 69(a)(2) permits a
7 judgment creditor to seek disclosures related to assets held outside the jurisdiction of the court where the
8 discovery request is made. *EM Ltd.*, 695 F.3d at 208 (citing, *inter alia*, *Eitzen Bulk A/S v. Bank of India*,
9 827 F. Supp. 2d 234, 238–39 (S.D.N.Y. 2011) (holding that a subpoena on the New York branch of an
10 Indian Bank “reaches all responsive materials within the corporation’s control, even if those materials
11 are located outside New York.”)) *aff’d* *NML Capital, Ltd.*, 134 S. Ct. at 2255.

12 Rule 69 provides judgment creditors with two paths for propounding discovery on third parties:
13 federal law or the state law in which the district court sits. *See* FED. R. CIV. P. 69(a)(2); *NML Capital*,
14 *Ltd.*, 134 S. Ct. at 2254; WRIGHT & MILLER, *supra*, § 3014, p. 160. In both cases, the judgment creditor
15 must make a threshold showing connecting the third party with discoverable information before
16 propounding discovery on the third party. Under federal common law, the judgment creditor must show
17 either (1) “the necessity and relevance of [the] discovery sought” or (2) that “the relationship between
18 the judgment debtor and the nonparty is sufficient to raise a reasonable doubt about the bona fides of the
19 transfer of assets.” WRIGHT & MILLER, *supra*, § 3014, p. 162 (citing *Tr. of N. Florida Operating Eng’g*
20 *Health & Welfare Fund v. Lane Crane Serv., Inc.*, 148 F.R.D. 662, 664 (M.D. Fla. 1993); *Strick Corp.*
21 *v. Thai Teak Prod. Co., Ltd.*, 493 F. Supp. 1210, 1218 (E.D. Pa. 1980)).
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23 Under Nevada law, the judgment creditor must show that “the relationship between the judgment
24 debtor and nonparty raises reasonable suspicion as to the good faith of asset transfers between the two.”
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1 *Rock Bay, LLC v. Dist. Ct.*, 129 Nev. Adv. Op. 21, 298 P.3d 441, 443 (2013). Reasonable suspicion
2 exists “if there are specific, articulable facts” in support of the inference that the asset transfers were not
3 made in good faith. *See, e.g., State v. Cantsee*, 130 Nev. Adv. Op. 24, 321 P.3d 888, 893 (2014)
4 (citations omitted) (defining reasonable suspicion).

5 If the judgment creditor satisfies either standard, Rule 69 opens the doors of discovery and
6 permits the judgment creditor to use any discovery device afforded by the Federal Rules. *See* FED. R.
7 Civ. P. 69, Advisory Comm. Notes (1970) (“The amendment assures that, in aid of execution on a
8 judgment, all discovery procedures provided in the rules are available and not just discovery via the
9 taking of a deposition.”).

10 DISCUSISON

11 NML’s motion to compel presents four questions: (1) whether NML satisfied its threshold
12 showing under Rule 69; (2) whether the 123 corporations should be protected from the pending
13 discovery proceedings against them; (3) whether counsel for the nonparty corporations has a duty to
14 certify Montoya’s response under Federal Rules of Civil Procedure 11(b), 26(g), or the Nevada Rules of
15 Professional Conduct; and (4) whether the court may compel Montoya, or another Rule 30(b)(6)
16 deponent, to appear for a deposition in Las Vegas. Each question is addressed below.

18 I. Whether NML Satisfied its Threshold Showing under Rule 69

19 The court must first determine whether NML satisfied its threshold showing, connecting the 123
20 corporations with discoverable information. *Thai Teak*, 493 F. Supp. at 1218; *Rock Bay*, 298 P.3d
21 at 443; *see also NML Capital, Ltd. v. Republic of Argentina*, No. 12–cv–80185, 2013 WL 655211, at *2
22 (N.D. Cal. Feb. 21, 2013) (finding that NML did not satisfy its threshold showing with regard to a
23 different third party). Under Rule 69, the lowest standard is under Nevada law: it permits discovery on
24 third-parties in post-judgment proceedings if the judgment creditor shows that “the relationship between
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1 the judgment debtor and nonparty raises reasonable suspicion as to the good faith of asset transfers
2 between the two.” *Rock Bay*, 298 P.3d at 443. Reasonable suspicion exists “if there are specific,
3 articulable facts” in support of the inference that the asset transfers were not made in good faith.
4 *See, e.g., Cantsee*, 321 P.3d at 893.

5 NML satisfied this standard. First, for the purpose of this action, there is no dispute that Báez
6 embezzled Argentine funds and that an embezzler or “thief acquires no title to the property which he
7 steals.” *Robinson v. Goldfield Merger Mines Co.*, 46 Nev. 291, 206 P. 399, 401 (1922) *aff’d*, 46 Nev.
8 291, 213 P. 103 (1923); *accord* CÓDIGO PENAL art. 23, 303 (Arg.). Second, NML made a substantial
9 showing that Báez’s money laundering activities involved the 123 Nevada corporations. Facts
10 supporting this include: (1) Compagnoli’s report, which was submitted to Argentina’s National Supreme
11 Court of Justice and states that Báez laundered \$65 million through Panama and 150 Nevada
12 corporations managed by Aldyne, Ltd.;⁸ (2) the Montoya affidavit, which concedes that the 123
13 corporations are shell corporations without any offices, business, or personnel in Nevada;⁹ (3) mirror-
14 image operating agreements from a sample of the 123 Nevada corporations that were produced by the
15 corporations’ registered agent, M.F. Corporate Services, stating that the corporations are managed by
16 Aldyne and Gairns;¹⁰ (4) evidence that Aldyne and Gairns share the same office in the Seychelles;¹¹
17 and (5) evidence that the 123 Nevada corporations, M.F. Corporate Services, Aldyne, and Gairns are
18 shell companies controlled by Mossack & Fonseca, a law firm based in Panama.¹²
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22 ⁸ (*See generally* Ex. Q #1).

23 ⁹ (Montoya Aff. (#25) at ¶¶ 7, 9–10). Additionally, the caption to the Montoya affidavit identifies the 123
24 corporations as “THE BAEZ ENTITIES.” (*Id.* at 1).

25 ¹⁰ (*See* Mins. Proceedings #31) (admitting Ex. 1 #34).

¹¹ (*Id.*)

¹² Compagnoli’s report states that Báez hid embezzled Argentine funds in Panama.

1 Facts supporting Mossack & Fonseca control over the shell entities include: (1) M.F. Corporate
2 Services acts as the 123 corporations' registered agent;¹³ (2) M.F. Corporate Services is Mossack &
3 Fonseca's Nevada-based independent contractor;¹⁴ (3) Montoya is simultaneously employed by
4 Mossack & Fonseca as an attorney, Aldyne as an officer, and some of the 123 corporations as a
5 custodian of records;¹⁵ (4) documents produced by M.F. Corporate Services relating to the 123
6 corporations state that Mossack & Fonseca, Aldyne, and Gairns share the same office;¹⁶ and
7 (5) Montoya, an attorney with Mossack & Fonseca, speaks on behalf of the 123 corporations and Aldyne
8 in the same breath.

9 Additionally, the court concludes that NML satisfied its threshold showing because counsel for
10 both parties stipulated that there is at least reasonable suspicion to doubt the good faith of the asset
11 transfers under Nevada law. (*See* Mins. Proceedings #31).

12 **II. Whether the 123 Corporations Satisfied their Burden under Rule 37**

13 NML's motion presents a second question: whether the 123 Corporations satisfied their burden
14 under Rule 37 with regard to the document subpoena. In August of 2013, NML served subpoenas on the
15 123 corporations, seeking: (1) documents regarding the transfer of funds or property since January 1,
16 2010, from or to any of the 123 corporations and (2) documents produced in connection with any
17 investigation into Báez. The corporations responded, saying that no documents exist. This prompted
18 NML's motion, which seeks compliance with the subpoenas. The court begins its analysis of NML's
19 motion to compel by reviewing the relevant law.
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23 ¹³ (*Id.*)

24 ¹⁴ (*See* Mins. Proceedings #31); (Mot. to Quash (#14) at 5:1–2).

25 ¹⁵ (Montoya Aff. (#25) at ¶¶ 3, 6).

¹⁶ (*See generally* Ex. 1 #34); MOSSACK & FONSECA, GLOBAL PRESENCE, SEYCHELLES, http://www.mossackfonseca.com/our_offices/seychelles/ (last visited August 2, 2014).

1 **A. *Legal Standard***

2 Federal Rule of Civil Procedure 26(b)(1) governs discovery's scope and limits. In pertinent part,
3 Rule 26(b)(1) provides that "[p]arties may obtain discovery regarding any nonprivileged matter that is
4 relevant to any party's claim or defense." FED. R. CIV. P. 26(b)(1). Rule 26 defines relevant information
5 as any information that "appears reasonably calculated to lead to the discovery of admissible evidence."
6 *Id.* Rule 26 is liberally construed. *Seattle Times, Co. v. Rhinehart*, 467 U.S. 20, 34 (1984); *see also NML*
7 *Capital, Ltd.*, 134 S. Ct. at 2251 (stating that Rule 26 governs discovery requests in Rule 69
8 proceedings).

9 Where, as here, a person resists discovery, the requesting party may file a motion to compel
10 under Rule 37. The person resisting discovery carries the heavy burden of showing why discovery
11 should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). The person must
12 show that the discovery request is overly broad, unduly burdensome irrelevant. *Teller v. Dogge*, No.
13 2:12-cv-00591-JCM-GWF, 2013 WL 1501445 (D. Nev. Apr. 10, 2013) (Foley, M.J.) (citing *Graham*
14 *v. Casey's General Stores*, 206 F.R.D. 251, 253-4 (S.D. Ind. 2000). To meet this burden, the objecting
15 person must allege specific facts, which indicate the nature and extent of the burden, usually by affidavit
16 or other reliable evidence or sufficient detail regarding the time, money and procedures required to
17 comply with the purportedly improper request. *Jackson v. Montgomery Ward & Co., Inc.*, 173 F.R.D.
18 524 (D. Nev. 1997) (citations omitted).

19 The court has broad discretion in controlling discovery, *see Little v. City of Seattle*, 863 F.2d
20 681, 685 (9th Cir. 1988), and in determining whether discovery is burdensome or oppressive. *Diamond*
21 *State Ins. Co. v. Rebel Oil. Inc.*, 157 F.R.D. 691, 696 (D. Nev. 1994). The court may fashion any order
22 which justice requires to protect a party or person from undue burden, oppression, or expense. *United*
23 *States v. Columbia Board. Sys., Inc.*, 666 F.2d 364, 369 (9th Cir.1982) *cert. denied*, 457 U.S. 1118
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1 (1982).

2 **B. *The 123 Corporations Failed to satisfy their Burden***

3 The court finds that the 123 corporations failed to satisfy their burden with regard to the
4 document subpoena for three reasons. First, the 123 corporations do not dispute that the information
5 NML seeks is relevant or contend that the request is overbroad or unduly burdensome under Rule
6 26(c).¹⁷ (*See generally* Opp'n (#14) at 10–15).

7 Second, the only evidence the 123 corporations offer in support of their position that no
8 responsive documents exist is not credible. Montoya's affidavit is conclusory. It merely states: "no
9 documents responsive to NML's subpoena" exist. (Montoya Aff. (#25) at ¶¶ 6–7). This unsupported
10 conclusion lacks credibility in light of M.F. Corporate Services' production. M.F. Corporate Services
11 responded to a substantially similar subpoena from NML by producing some of the 123 corporations'
12 operating agreements. Neither Montoya's affidavit nor the 123 corporations' briefs offer any reason as
13 to why the corporations do not at least have copies of their own operating agreements. The court's
14 review of the Nevada Secretary of State's records demonstrates that many of the 123 corporations are
15 still active.¹⁸

16
17 Third, the 123 corporations waived their right to object to NML's document subpoena. Rule
18 45(d)(2)(B) states that an objection to a subpoena "must be served before the earlier of the time
19 specified for compliance or 14 days after the subpoena is served." *Forsythe v. Brown*, 281 F.R.D. 577,
20 587 (D. Nev. 2012) ("Failure to serve timely objections may constitute a waiver of objections to the
21 subpoena") (citing *In re DG Acquisition Corp.*, 151 F.3d 75, 81 (2nd Cir. 1998)). Here, NML served its
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24 ¹⁷ The corporations' argument that NML's fallback discovery request is unduly burdensome under Rule 45(c) is
discussed later. (*See infra* § IV at pp. 16–22).

25 ¹⁸ (*See infra* § IV.B at p. 18) (discussing that the court took judicial notice of this fact during the August 1, 2014
hearing).

1 subpoenas in August of 2013. To date, no objections have been filed. (*See* Supp. Brief (#30) at 4–5).

2 **III. *Whether Counsel for the Nonparty Corporations has a Duty to Certify Montoya’s Response***

3 NML’s motion presents a third question. Now that Mr. Jason Wiley of Kolesar & Leatham has
4 entered this action, what are his duties when a nonparty client has submitted a facially questionable
5 discovery response?

6 The Federal Rules of Civil Procedure permit broad discovery. *See* FED. R. CIV. P. 26(b),
7 69(a)(2). When a valid discovery request is served, the rules expect disclosures, discovery responses,
8 and factual contentions to be truthful. *See* FED. R. CIV. P. 11(b), 26(g). Indeed, discovery is “the search
9 for truth.” *Jaffee v. Redmond*, 518 U.S. 1, 19 (1996) (citing *United States v. Nixon*, 418 U.S. 683, 710
10 (1974)). Where, as here, a concern arises regarding the truthfulness of a factual contention, the
11 concerned party may invoke Rule 11(b) or Rule 26(g). These rules are designed to assuage concerns
12 regarding the veracity of factual contentions by requiring the attorney to certify that the fact “is not
13 being presented for any improper purpose.” FED. R. CIV. P. 11(b)(1), 26(g)(1)(B)(ii). Together, these
14 rules protect the integrity of the judicial process and, in the context of Rule 69, aid the enforcement of
15 finalized judgments.

16
17 The meaning and applicability of these rules were extensively discussed at oral argument.
18 (*See* Mins. Proceedings #26, #31). NML contends that Rule 26(g) applies here and requires counsel for
19 the 123 corporations to certify the accuracy of Montoya’s affidavit. The 123 corporations respond,
20 asserting that Rule 26(g) does not apply because Montoya is not a party. The court agrees with the
21 corporations.

22 Under Rule 26(g), “every discovery request, response, or objection must be signed by at least
23 one attorney of record” or “by the party personally, if unrepresented.” The rule further provides that
24 “[b]y, signing, an attorney or party certifies that to the best of the person’s knowledge, information, and
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1 belief formed after a reasonably inquiry” the discovery response is “not interposed for any improper
2 purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.”

3 FED. R. CIV. P. 26(g)(1)(B)(ii).

4 Rule 26(g)’s plain language limits its applicability to parties. *See* FED. R. CIV. P. 26(g). Relying
5 on the Advisory Committee Notes, courts have afforded Rule 26(g) protections to nonparties burdened
6 by improper discovery requests. *See Mount Hope Church v. Bash Back!*, 705 F.3d 418, 425–26 (9th Cir.
7 2012); *Micro Motion, Inc. v. Kane Steel Co., Inc.*, 894 F.2d 1318, 1328 (3d Cir. 1990). But, no court
8 appears to have extended Rule 26(g)’s affirmative obligations to subpoenaed nonparties. NML concedes
9 this point. Nonetheless, it argues that the court should extended Rule 26(g)’s affirmative obligations to
10 counsel for the 123 corporations. (*See* Supp. Brief (#30) at 5–6).

11 Here, however, this is unnecessary. Assuming without deciding that Rule 26(g)’s affirmative
12 obligations apply to nonparties, the certification requirement would be inapplicable to counsel for the
13 corporations for two reasons. First, Rule 26(g) takes effect when an attorney signs a discovery response.
14 FED. R. CIV. P. 26(g)(1). Here, no attorney for the corporations signed Montoya’s affidavits. (*See* Baker
15 Aff. (#1-7) at Ex. 1); (Montoya Aff. #25). Second, if a party is unrepresented, Rule 26(g) requires
16 parties who respond to discovery requests to “personally” sign the response and certify that it is “not
17 interposed for any improper purpose.” FED. R. CIV. P. 26(g)(1)(B)(ii). Montoya did this. Her signature
18 moots what NML now requests: that counsel for the corporations make a “reasonable inquiry” and
19 certify her response. Although re-certification would be helpful under these circumstances, it is not
20 required by Rule 26(g).
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22 Nonetheless, when an attorney litigates a position that is based on a nonparty’s facially
23 questionable discovery response, Federal Rule of Civil Procedure (“FRCP”) 11(b) and Nevada Rule of
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1 Professional Conduct (“NRPC”) 3.3(b) govern.¹⁹ FRCP 11(b)(3), which is applicable here,²⁰ states that
2 “[b]y presenting to the court a pleading, written motion, or other paper—whether by signing, filing,
3 submitting, or **later advocating it**—an attorney” “certifies” that “the factual contentions have
4 evidentiary support or, if specifically so identified, will likely have evidentiary support after a
5 reasonable opportunity for further investigation or discovery.” FED. R. CIV. P. 11(b)(3) (emphasis
6 added).

7 NRCP 3.3(b) complements FRCP 11. It governs a lawyer’s candor towards the tribunal and
8 states: “[a] lawyer who represents a client in an adjudicative proceeding and who knows that a person
9 intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding
10 shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.”²¹ This duty
11 “continue[s] to the conclusion of the proceeding, and applies even if compliance requires disclosure of
12 [confidential or proprietary] information.” NEV. R. PROF’L CONDUCT 3.3(c); *see also* LR IA 10-7.

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14 Unlike FRCP 26(g), FRCP 11(b) and NRPC 3.3(b) impose continuing duties. Both prohibit
15 counsel from hiding behind his or her client’s misstatements and prolonging proceedings on the basis of
16 that misstatement. Here, continued litigation has demonstrated that Montoya’s affidavit lacks credibility
17 and may contain material misstatements. (*See supra* § I, pp. 8–10). Nonetheless, counsel for the 123
18 corporations continues to advocate a position that takes Montoya’s affidavit as true. This is not to say
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22 ¹⁹ *See* LR IA 10-7 (adopting the Model Rules of Professional Conduct as adopted by the Supreme Court of
23 Nevada).

24 ²⁰ Generally, Rule 11 is inapplicable to discovery. *See* FED. R. CIV. P. 11(d) (stating that Rule 11 does not apply to
25 “discovery requests [and] responses” under “Rules 26 through 37”). Here, however, NML commenced a
discovery proceeding under Rule 69 and propounded discovery under Rule 45.

²¹ Rule 1.0(f) defines “knows,” stating that it “denotes actual knowledge of the fact in question,” which “may be
inferred from circumstances.”

1 that counsel has violated FRCP 11 or any rule of professional conduct.²² Rather, under FRCP 11,
2 counsel’s continued reliance on Montoya’s affidavit now requires a showing that “the factual
3 contentions have evidentiary support or . . . will likely have evidentiary support after a reasonable
4 opportunity for further investigation.” FED. R. CIV. P. 11(b)(3).

5 Therefore, the court orders counsel for the 123 corporations to make a reasonable inquiry and
6 provide evidentiary support for Montoya’s affidavit. It is unnecessary for the court to wait twenty-one
7 days before ordering compliance with FRCP 11(b) and NRPC 3.3(b) because compliance with these is
8 not a Rule 11(c) sanction. *See Willy v. Coastal Corp.*, 503 U.S. 131, 134 (1992) (stating that the court’s
9 power to order compliance with these rules stems from an “inherent power” that is “necessary to the
10 exercise of all other” powers).

11 **IV. Whether the Court may Compel a Rule 30(b)(6) Deponent to Appear in Las Vegas**

12 NML’s motion raises a fourth question: what discovery devices do the Federal Rules of Civil
13 Procedure provide a judgment creditor when a nonparty who resides in the court’s jurisdiction, but is
14 currently beyond the court’s subpoena power, fails to respond to a valid discovery request? That is, may
15 the court compel Montoya—who is in Panama but acts through Nevada residents—to appear for a
16 deposition in Las Vegas? For the reasons stated below, the court concludes that the Federal Rules of
17 Civil Procedure afford the court discretion to compel Montoya, or another Rule 30(b)(6) deponent, to
18 appear in Las Vegas. The court begins by reviewing the governing law.

19 **A. *The Court’s Subpoena Power under Rule 45***

20 Federal Rule of Civil Procedure 45 provides federal courts with robust subpoena powers. A
21 subpoena “may be served at any place within the United States.” FED. R. CIV. P. 45(b)(2). Additionally,
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23

24
25 ²² The representation provided by all attorneys in this matter, including Mr. Hranitzky, Mr. Wiley, and Mr. Woods, has been excellent.

1 under certain circumstances, a subpoena may be served in any foreign country on any “national or
2 resident of the United States who is in a foreign country.” FED. R. CIV. P. 45(b)(3) (incorporating 28
3 U.S.C. § 1783).²³ In general, this means that the only people who cannot be served under Rule 45 are
4 foreign nationals residing in a foreign country.²⁴ *United States v. Sindona*, 636 F.2d 792, 803
5 (2d Cir.1980), *cert. denied*, 451 U.S. 912 (1981); *Relational, LLC v. Hodges*, 627 F.3d 668, 673
6 (7th Cir. 2010); *United States v. Drogoul*, 1 F.3d 1546, 1553 (11th Cir. 1993) (citing *United States*
7 *v. Farfan–Carreon*, 935 F.2d 678, 680 (5th Cir. 1991).

8 The territorial scope of the court’s subpoena power is only limited by Rule 45(c), which governs
9 the place of compliance. Rule 45(c) limits where a subpoena may order compliance to protect a
10 subpoenaed person by reducing the burden of complying with the subpoena. *See Regents of Univ. of*
11 *California v. Kohne*, 166 F.R.D. 463, 464 (S.D. Cal. 1996) (citing FED. R. CIV. P. 45, Advisory Comm.
12 Notes (1991)). Accordingly, although a subpoena may be served anywhere in the world on a “national or
13 resident of the United States,” it may only compel compliance within the state or within 100 miles of
14 where “the person resides, is employed, or regularly transacts business in person.” FED. R. CIV. P.
15 45(c)(1). The “place of compliance” permitted under Rule 45 has grown from “the county wherein that
16 [subpoenaed] person resides” to “within 40 miles from the place of service” to “within 100 miles.”
17 *See id.* Advisory Comm. Notes (1985). This change reflects developments in technology and
18 transportation. *Id.* If a subpoena is unduly burdensome, Rule 45 authorizes the court to modify or quash
19 the subpoena. Courts have broad discretion to determine whether a subpoena is unduly burdensome.
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21 _____
22 ²³ 28 U.S.C. § 1783 authorizes courts to serve subpoenas in foreign countries if (1) the particular testimony or
23 production of the document is “necessary in the interest of justice” and (2) it is not possible to obtain the
24 testimony without personal appearance.

25 ²⁴ However, this may not be true with regard to Panama. *See S.E.C. v. Int’l Swiss Inv. Corp.*, 895 F.2d 1272, 1275
n. 3 (9th Cir. 1990) (holding that the unratified Inter-American Convention on Letters Rogatory did not supersede
Rules of Civil Procedure with respect to service and stating that “[w]e do not decide whether the now ratified
treaty supersedes the Federal Rules of Civil Procedure with respect to foreign service of process”).

1 *Exxon Shipping Co. v. U.S. Dep't of Interior*, 34 F.3d 774, 779 (9th Cir. 1994).

2 However, Rule 45(c)'s territorial limits place no barriers on the information that a properly
3 served subpoena can reach. Given the unique status of the corporate person, a federal court's subpoena
4 power reaches all documents—no matter where they are located—that are within a resident
5 corporation's custody or control. *EM Ltd.*, 695 F.3d at 208 (citing, *inter alia*, *Bank of India*, 827
6 F. Supp. 2d at 238–39) *aff'd NML Capital, Ltd.*, 134 S. Ct. at 2255. Similarly, the unique status of the
7 corporate person permits a federal court to compel a non-party resident corporation to designate a non-
8 resident employee to “thoroughly educate” an in forum employee to testify on the corporation's behalf.
9 *Wultz v. Bank of China Ltd.*, 298 F.R.D. 91, 99 (2014) (“Even if Hapoalim is a non-party witness and all
10 of the documents or knowledgeable persons are in Jerusalem, compliance with the 30(b)(6) subpoena is
11 not an undue burden”).

12 **B. *The Court May Compel Montoya's Deposition in Las Vegas***

13 These rules demonstrate that the court may compel Montoya, or another Rule 30(b)(6) deponent,
14 to appear for a deposition. As a preliminary matter, there is no doubt that the 123 corporations are
15 Nevada residents subject to the court's subpoena power. As stated by the Seventh Circuit, “a corporation
16 is a corporation is a corporation” and “determining citizenship is as simple as looking at the state where
17 it has been incorporated and where it has its principal place of business.” *See, e.g., Dexia Credit Local*
18 *v. Rogan*, 629 F.3d 612, 620 (7th Cir. 2010) (citing *Cote v. Wadel*, 796 F.2d 981, 983 (7th Cir. 1986)).
19

20 During the August 1, 2014 hearing, the court took judicial notice of the Nevada Secretary of
21 State's website, which demonstrates that the entities are incorporated in Nevada. (*See Mins. Proceedings*
22 *#31*); *Daniels–Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (permitting the court to
23 take judicial notice of publically available information on governmental websites). Accordingly, in a
24 run-of-the-mill discovery dispute, there would be no question that it is within the court's discretion to
25

1 order these corporations to comply with their duty under Rule 30(b)(6) and designate an in forum
2 employee to testify on their behalf. *Wultz*, 298 F.R.D. at 99.

3 This, however, is not a run-of-the-mill discovery dispute. NML is attempting to execute a valid
4 judgment against a sovereign nation and obtain discovery from in forum shell corporations, which
5 purport to be beyond the court's subpoena power. Relying on Montoya's affidavit, the corporations
6 argue that the court should strictly construe Rule 45 and "excuse" their noncompliance because (1) none
7 of the corporations employ personnel within Rule 45(c)'s territorial limits and, (2) although the
8 corporations are Nevada residents, Rule 45(c) protects flesh-and-blood deponents from the undue
9 burden of traveling more than 100 miles. (*See* Brief (#20) at 10–12).

10 The court disagrees. The Federal Rules of Civil Procedure are applied, neither blindly nor
11 mechanically, but through the court's careful exercise of its broad discretion. *NML Capital, Ltd.*, 134
12 S. Ct. at 2254; *Exxon Shipping Co.*, 34 F.3d at 779. Rule 1 instructs federal courts to "construe and
13 administer" the rules to "secure the just, speedy, and inexpensive determination of every action and
14 proceeding." But, the corporations propose construing the Federal Rules of Civil Procedure narrowly
15 and frustrating an otherwise valid discovery request by rendering the corporations immune from Rule
16 45(c).

17 A company cannot purposefully avail itself of the law's benefits by incorporating in this
18 jurisdiction and then excuse itself from the court's subpoena power by abusing the corporate form. This
19 would allow a corporation to exploit the benefits created by the law without shouldering the concomitant
20 burdens and responsibilities imposed by the law. By incorporating in the State of Nevada, the
21 corporations assented to this court's power to impose a burden under Rule 45(c): the limited but real
22 burden that the United States District Court for the District of Nevada may impose on Nevada residents
23 to testify. *See Kohne*, 166 F.R.D. at 464 (stating the Rule 45(c)'s "only concern" is "the burden to the
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25

1 witness”). Abuse of the corporate form cannot render this burden surplusage.

2 Accordingly, after weighing the corporations’ potential burden against the need for testimony,
3 the court concludes that the Federal Rules of Civil Procedure afford the court the discretion to compel
4 Montoya, or another Rule 30(b)(6) deponent, to appear.

5 There is no doubt that the 123 companies are shell corporations. (*See* Montoya Aff. (#25) at 7–
6 10). Similarly, there is no doubt that shell corporations are routinely formed to commit fraud.
7 *See Illinois Bell Tel. Co., Inc. v. Global NAPs Illinois, Inc.*, 551 F.3d 587, 598 (7th Cir. 2008) (Posner,
8 J.) (“It is hard to imagine why, except to commit such a fraud, a businessman would create shell
9 corporations”). If a natural person abuses the corporate form, it is well accepted that the court may place
10 that a natural person in the corporation’s shoes and hold that person liable as the corporation. *Berkey*
11 *v. Third Ave. Ry. Co.*, 244 N.Y. 84, 93–94 (1926) (Cardozo, J.) (piercing the corporate veil).

12 The corporations overlook this. Every opinion cited by the corporations regarding Rule 45’s 100-
13 mile limit is distinguishable from this matter because none of the cited opinions involve shell
14 corporations.²⁵ The fact that the subpoenaed entities are shell corporations cannot be overlooked.
15 *Abramski v. United States*, 134 S. Ct. 2259, 2270 (2014) (citing *Gregory v. Helvering*, 293 U.S. 465,
16 470 (1935) (stating that shell corporations “exalt artifice above reality”)).

17 In the amount of time it takes a jury to return a verdict, a standard wireless device enables a
18 prospective judgment debtor to incorporate shell companies in far-off lands and transfer their assets
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22 ²⁵ (*See* Brief (#20) at 10–12) (citing, *inter alia*, *Jackson v. Brinker*, 147 F.R.D. 189 (S.D. Ind. 1993) (a legitimate
23 Indiana corporation); *JJK Mineral Co., LLC v. Swiger*, 292 F.R.D. 323, 328 (N.D.W. Va. 2013) (natural person);
24 *In re Denture Cream Products Liab. Litig.*, 292 F.R.D. 120, 122 (D.D.C. 2013) (legitimate pharmaceutical
25 companies); *Wultz*, 298 F.R.D. at 99 (legitimate Israel corporation); *Price Waterhouse LLP v. First Am. Corp.*,
182 F.R.D. 56 (S.D.N.Y. 1998) (legitimate British accounting firm); *Cates v. LTV Aerospace Corp.*, 480 F.2d 620
(5th Cir. 1973) (the United States Navy)). Similarly, none of the opinions cited in *Estate of Klieman v. Palestinian*
Authority, 293 F.R.D. 235, 239–40 (D. D.C. 2013), which provides a very persuasive analysis of Rule 45(c)’s
100-mile rule, involve shell corporations.

1 beyond discovery's reach—all while sitting at counsel's table.²⁶ As a result, if the judgment creditor
2 returns to court, and requests discoverable information regarding those assets, the Federal Rules of Civil
3 Procedure permit the shell corporations to submit evidence in opposition to a meritorious motion to
4 compel—all while purporting to be beyond the court's subpoena power. This frustrates court process
5 and weakens the judicial power bestowed by the Constitution, which exists to finalize cases and
6 controversies. *See Peacock*, 516 U.S. at 356.

7 Conduct that “exalt[s] artifice above reality,” *see Abramski*, 134 S. Ct. at 2270, should not free a
8 deponent from the burdens of complying with an otherwise valid subpoena. Therefore, the court
9 concludes that the Federal Rules of Civil Procedure afford the court discretion to compel a witness to
10 travel more than 100 miles where the issuing party demonstrates: (1) a meritorious Rule 69 discovery
11 request; (2) a substantial nexus among the subpoenaed nonparty, resident shell corporations, and
12 property subject to the judgment; (3) frustration of court process by the subpoenaed nonparty; and (4) a
13 stipulation to mitigate costs. Additionally, the issuing party must show that the particular testimony or
14 production is (5) necessary in the interest of justice and (6) impossible to obtain elsewhere. *See* 28
15 U.S.C. § 1783. This exception to the 100-mile rule is rooted in Rule 1, the court's inherent power to
16 enforce judgments, *see Peacock*, 516 U.S. at 356, and the fact that Rule 45(c)'s “place of compliance”
17 was crafted to reflect “today's conditions.” *See* FED. R. CIV. P. 45, Advisory Comm. Notes (1985).²⁷
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22 ²⁶ *See, e.g., Shells and Shelves*, THE ECONOMIST, April 7, 2012, available at: <http://www.economist.com/node/21552196> (discussing Mossack & Fonseca: “The customer need only click on the company desired, perhaps adding some optional extras such as a bank account, an offshore credit card, mail-forwarding or letterhead, and then heads to the checkout. 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.”).

23
24 ²⁷ Despite rapid development in technology and transportation, which have significantly changed “today's
25 conditions,” the 100-mile rule has not enlarged for over a quarter of a century. *See* FED. R. CIV. P. 45, Advisory Comm. Notes (1985).

1 NML satisfied these elements. First, it propounded a meritorious Rule 69 discovery request.
2 (*See supra* § II, pp. 10–13). Second, it demonstrated a substantial nexus among the subpoenaed
3 nonparty, resident shell corporations, and property subject to the judgment. As discussed above, NML
4 made a substantial showing that Báez’s laundered money through the 123 Nevada corporations and that
5 Mossack & Fonseca controls the 123 shell corporations and Aldyne. (*See supra* § I, pp. 8–10). Third,
6 there is no question that the nonparty has frustrated court process. Montoya’s affidavit appears to
7 contain material misstatements, leading to NML’s motion to compel, four supplemental briefs, and three
8 hearings. Fourth, NML stipulated to mitigate all reasonable costs and expenses the corporations’
9 deponent may incur. (*See* Mins. Proceedings #31). Fifth, Montoya’s testimony is necessary in the
10 interest of justice because NML is seeking to execute a valid federal judgment. Finally, Montoya’s
11 testimony is impossible to obtain elsewhere because she claims that no documents exist and that none of
12 the 123 corporations have in forum employees.

13
14 ACCORDINGLY, and for good cause shown,

15 IT IS ORDERED that NML’s Motion to Compel (#1) is GRANTED in full.

16 IT IS FURTHER ORDERED that NML and the 123 corporations will MEET & CONFER to
17 determine the scope of Mr. Wiley’s certification, the extent of NML’s mitigation of the 123
18 corporations’ certification and deposition costs, and the timing of Mr. Wiley’s certification and the 123
19 corporations’ deposition.

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1 IT IS FURTHER ORDERED that NML and the 123 corporations will file a JOINT STATUS
2 report regarding the certification process and depositions by September 12, 2014.

3 IT IS SO ORDERED.

4 DATED this 11th day of August, 2014.

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9 _____
10 CAM FERENBACH
11 UNITED STATES MAGISTRATE JUDGE
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