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10 File No. 45,658

11 Attorneys for Creditors HILARY DEZOTELL, KEN HODEN,
12 AND BRUCE WAGONER

13 UNITED STATES BANKRUPTCY COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 In re:) CASE NO. 98-51326 ASW-7
17)
18 KEITH HENSON,)
19)
20 Debtor.)

21 HILARY DEZOTELL, an individual;) ADV. NO. 035136
22 KEN HODEN, an individual; and)
23 BRUCE WAGONER, an individual,)

24 Plaintiffs,)
25 vs.) NOTICE OF HEARING RE (1) MOTION FOR
26) PROTECTIVE ORDER TO PRECLUDE
27) SERVICE OF INTERROGATORIES UPON
28) NONPARTIES AND PRECLUDING
H. KEITH HENSON, an individual,) INQUIRING INTO CERTAIN MATTERS
Debtor,) PURSUANT TO F.R.C.P. 26(c), APPLICABLE
Defendant.) HEREIN UNDER Bkrty.C. § 7026(c) AND (2)
DEBTOR'S EX PARTE MOTION TO JOIN
CERTAIN PARTIES FOR INTERROGATORY
SERVICE RE EXTRINSIC FRAUD

Date: September 6, 2005
Time: 11:30 a.m.
Courtroom: 3099
Judge: Arthur A. Weissbrodt

TO DEFENDANT, AND TO ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on the 6th day of September, 2005 at the hour of 11:30
a.m., or as soon thereafter as the matter can be heard in Courtroom 3099, before the Honorable

NOTICE OF HEARING RE (1) MOTION FOR PROTECTIVE ORDER TO PRECLUDE SERVICE OF
INTERROGATORIES UPON NONPARTIES AND PRECLUDING INQUIRING INTO CERTAIN MATTERS
PURSUANT TO F.R.C.P. 26(c), APPLICABLE HEREIN UNDER Bkrty.C. § 7026(c) AND (2) DEBTOR'S EX
PARTE MOTION TO JOIN CERTAIN PARTIES FOR INTERROGATORY SERVICE RE EXTRINSIC FRAUD
CASE NO. 98-51326 ASW-7/ADV. NO. 035136

1 Arthur A. Weissbrodt, Judge of the United States Bankruptcy Court, whose address is 280 So.
2 First Street, San Jose, CA 95113. Plaintiffs HILARY DEZOTELL, an individual, KEN HODEN,
3 an individual, and BRUCE WAGONER, an individual, will and do hereby move this court for the
4 following relief:

5 1. For an order prohibiting Defendant from the service of Interrogatories, **or any other**
6 **discovery device**, served upon nonparties, including but not limited to, judges, clerks, witnesses,
7 district attorneys, attorneys, jurors, or for that matter, any other person or party peripherally
8 associated with the underlying civil case.

9 2. For an order prohibiting Defendant from inquiring into certain matters which are not
10 relevant to the subject matter of the action, subject to attorney-client privilege, matters which are
11 not reasonably calculated to lead to the discovery of admissible evidence, and matters which
12 themselves are outside the scope of any discovery, at all, **whether raised by Interrogatories, or**
13 **otherwise.**

14 3. For an order prohibiting Defendant from inquiring into certain matters constituting the
15 conduct, filings, legal process, jury selection, trial process and proceedings, occurring during or
16 around the prior state criminal and civil process, which led to both the criminal and civil
17 judgments which if they were even well taken, which they are not, **could at best constitute**
18 **claims of "intrinsic fraud."**

19 4. For an order prohibiting and precluding such discovery, an order quashing the service
20 of such discovery, and for an order allowing monetary sanctions in the amount of \$6,375.

21 This motion is made upon the grounds that Defendant has served multiple sets of
22 interrogatories upon third parties, that the subject matter of the discovery inquires into matters
23 which are not relevant, not reasonably calculated to lead to the discovery of admissible evidence,
24 deals with matters which are subject to attorney-client privilege, and moreover, deals with matters
25 which seek to attack the validity of the underlying Judgments in the criminal and civil
26 proceedings, and which were raised or could have been raised in the criminal and/or civil justice
27

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PURSUANT TO F.R.C.P. 26(c), APPLICABLE HEREIN UNDER Bkrty.C. § 7026(c) AND (2) DEBTOR'S EX
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1 system. The basis of this motion is also that Defendant seeks to inquire into matters which are
2 "intrinsic" to the underlying criminal and civil process, such as and including, jury selection,
3 choice of the trial judge, conduct at the trial itself, actual participation by the parties at the trial.
4 and like matters. These issues were raised in the state courts and were rejected and HENSON was
5 barred by the state appellate court from raising them on appeal because he is a fugitive.

6 This motion is based upon this Notice of Hearing, the Motion, the Memorandum of Points
7 and Authorities, the Declaration of David J. Cook, Esq., the Declaration of Bruce Wagoner, upon
8 all pleadings, papers and other matters on file herein, and upon all oral evidence and argument
9 which may be presented at the hearing hereof.

10 DATED: August 31, 2005

COOK, PERKISS & LEW, P.L.C.

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12 By: /s/ David J. Cook
13 DAVID J. COOK, ESQ. (SB# 060859)
14 Attorneys for Creditors HILARY DEZOTELL,
15 KEN HODEN, AND BRUCE WAGONER

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