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## STATEMENT OF THE FACTS

¶1 The Defendant's Statement of Facts contains an outline of the history of this matter, but in order to address the Defendant's efforts to minimize the history of deliberate false conduct perpetrated by Thomas Lockhart throughout this case, and his consistent refusal to follow the Orders of the Court, the Plaintiff presents the following additional facts.

¶2 A central element in this matter has been the outrageous behavior of the Defendant, Thomas Lockhart. As noted in the Defendant's brief, on February 23, 2018, the Plaintiffs filed a Motion for Sanctions as a result of Lockhart submitting a false answer to an Interrogatory. (See Defendant's Brief at ¶8). The answer provided by Lockhart is worth considering in the context of the present contempt issue. In the interrogatory, and answer, are as follows:

### **INTERROGATORY NO. 17:**

Please set forth with specificity each and every fact related to the unforeseen circumstances described in your answer which precluded initial and/or timely payment Saddle Butte for the two wellhead processing units ("WPUS") referenced in paragraph 7 of your Answer and please further state when such payment was ultimately made for the said WPUs.

### **ANSWER:**

Defendant Tom Lockhart retained Attorney Gary Daniel from the state of Texas. Attorney Daniel also maintained an office in the Cayman Islands, as well as a trust account in the Cayman Islands. Funds to purchase WPUs were placed in the Cayman Islands trust account. Attorney Daniel suffered a stroke, and due to particularities of Cayman Islands law, the money was not accessible while Attorney Daniel was incapacitated. Attorney Daniel passed away, and that time his wife, Rita David was able to procure access to the trust account. The funds were returned to Defendant Lockhart and then used to pay Saddle Butte the amount owed for the two WPU's. Said payment was made on July 1, 2015.

[¶3] In the Plaintiffs’ motion for sanctions, made to address this outrageous answer, Plaintiff Thomas Arnold submitted an affidavit, which pointed out that the emails purportedly from Gary Daniel produced by Lockhart used both Gary Daniel and Gary Daniels as the name of the Caymanian attorney, and that the IP address from which the emails of both Daniel/Daniels and Lockhart were sent was identical, and that it corresponded geographically to the residence of Thomas Lockhart in North Carolina. For this reason, Thomas Arnold believed that Gary Daniels did not in fact exist. [App. 70-74]. On July 12, 2018, the Court entered an Order granting sanctions against the Defendant. The Court specifically wrote that, “the Answer of the Defendants, Trident Resources, LLC and Thomas Lockhart to Interrogatory No. 17 of the Plaintiff’s Discovery Requests, is false, and was made in order to frustrate the Plaintiffs, increase the cost of litigation and cause unnecessary delay in this matter.” [App. 99].

[¶4] On March 1, 2019, after trial, but prior to the entry of Judgment in this matter, the parties, including Defendant Thomas Lockhart, entered into a stipulation, which provided that, “Should any assets of Trident Resources, LLC be sold, either by consent of the Parties or by permission of the Court, any funds derived by such sale shall be placed on deposit with the Court or deposited in an interest bearing account to be released in a manner consistent with the final Judgment entered in this action.” [App. 107]. This stipulation was approved by the Court on March 24, 2019. [App. 109].

[¶5] On April 12, 2019, a few weeks after the stipulation was approved by the Court, some of the property subject to the stipulation went missing. This property is described as a “WPU” or “the WPU”. Plaintiffs made a motion to the Court requesting that the Court immediately schedule a hearing and require the Defendants to explain where the property

went. [App. 121]. The parties had previously agreed, based on representations made by Lockhart, to sell the property to a company called Saddle Butte and place all funds in the escrow account of the Plaintiffs' attorney. [App. 136-138]. When the property went missing without communication from Lockhart, the Plaintiffs became suspicious that Lockhart was up to something again, and filed their motion with the Court. [App. 142]. A hearing on this Motion was held on May 9, 2019. Prior to the hearing, Lockhart caused \$300,000 to be deposited into the Trust Account of the Plaintiffs' Attorney. [Tr. 19:13-15]. After this hearing, on May 24, 2019, the Court ordered Lockhart to provide a list of information relating to the sale of the WPU to the Court. This information included the following:

- a. the specific location of the WPU
- b. the date it was transferred
- c. the name of the entity who transferred the WPU, and any costs associated with that transfer,
- d. the name of the entity in possession of the WPU,
- e. Detailed information concerning the buyer of the WPU, including the name and address of the said buyer, the names of any officers, owners or principals of said buyer, and contact information where these individuals can be contacted during regular business hours. [App. 146]

On June 5, 2019, Lockhart provided an affidavit to the Court which purported to provide the information requested. In this affidavit, Lockhart stated that the WPU had been sold to a company called Black Butte Resources in Pennsylvania. [App. 148-149]. This affidavit included a copy of a purchase agreement purportedly signed by Black Butte resources. [App. 150].

[¶]6 On August 14, 2019, the Plaintiffs made a Motion for Contempt to the Court, on the basis that the entirety of the affidavit provided by Lockhart to the Court was false. [App 157-158]. In support of this motion, Plaintiff Doug Arnold filed an affidavit,

wherein he relayed that on June 26, 2019, he had received a phone call from Eric Brown, an employee with a company called Geo Petro in Ohio. Geo Petro had actually purchased the WPU subject to the Court's previous order from Lockhart, and had purchased it for \$500,000, not \$300,000. [App. 185-186]. Both Thomas Arnold and Douglas Arnold, as well as the undersigned, attempted to verify the existence of Black Butte, but were not able to do so. In the undersigned's affidavit, I note that internet searches for Black Butte revealed that the entity was not registered with the Pennsylvania Secretary of State, and that the address provided was a residential neighborhood. [App. 124]. In his affidavit, Thomas Arnold notes that the office address does not actually exist, as the street numbers in that neighborhood begin at a number higher than the number provided by Lockhart, and there are no property tax records for the entity. [App. 160-161]. In his affidavit, Thomas Arnold also notes that certain bank statements, provided in electronic form by Thomas Lockhart's attorney to the Plaintiffs, and which showed a wire transfer from Black Butte to Trident Resources, had metadata embedded within them which demonstrated that they were falsified. [App. 159-160].

[¶7] Defendant Lockhart did not file a response to the Plaintiffs' Motion. However, on August 29, 2019, the date that Lockhart's response was due to the Court, his attorney, William Black, filed a motion to request an extension of time to respond, and to allow himself to withdraw as attorney for Lockhart. [Doc Id. 182-185]. The Court denied this motion on September 13, 2019. [Doc Id. 188]. A hearing in this matter was held on September 30, 2019. At the outset of the hearing, Lockhart admitted that the statements in his affidavit were false. [Tr. 5:8-15]. Lockhart further admitted that the WPU in

question had not been sold to Black Butte, but had actually been sold to Geo Petro for \$500,000. [Id.].

[¶8] While he has admitted that the WPU was sold to Geo Petro in Ohio, and that the information contained in his previous affidavit was false, Defendant Lockhart has not, to this date, ever provided the specific location of the WPU, has never indicated the date it was transferred to Ohio, and has, with regard to Geo Petro, never provided detailed information concerning the buyer of the WPU, including the name and address of the said buyer, or the names of any officers, owners or principals of said buyer, and contact information where these individuals can be contacted during regular business hours.

[¶9] At the conclusion of the hearing in this matter, the Court requested that the Plaintiffs explain their objection to their requested relief, and then made extensive findings as to the nature of the Defendant's contempt. This exchange goes as follows:

[¶10] THE COURT: Mr. Kalil, can you address any of that information?

[¶11] MR. KALIL: 27-10-01.4, Your Honor, in 1(e) says a sanction other than the sanctions specified in subdivisions (a) through (d) if the Court expressly finds that those sanctions, (a) through (d), would be ineffectual to terminate a continuing contempt. I would argue this is a continuing contempt, Your Honor. He has indicated he sees no reason why he should have to notify my clients of anything.

MR. BLACK: That was not his testimony, Your Honor.

MR. KALIL: That was his testimony, Your Honor.

THE COURT: All right. Keep going, Mr. Kalil.

[¶12] MR. KALIL: In fact, under this statute, Your Honor, you can even impose jail time, which quite frankly I think you should throw that in here today as well. Because, again, how many more lies are we going to allow Mr. Lockhart to bring to this Court? You shouldn't have to explain to someone that you don't just get to lie to the Court. But in this case it seems to be, some further action appears to be necessary. So I think everything I

have asked for falls into the 1(e) and 2(a) and (b) allow you to put someone in jail. I think all of that is appropriate, Your Honor.

MR. BLACK: I would like to respond, Your Honor.

THE COURT: You may.

[¶13] MR. BLACK: Essentially selling out the remaining assets of Trident Resources would – and allowing a sale to go through or the equipment to be sold and winding down this business with a total accounting of expenses and what not, would get the Arnolds and Mr. Lockhart out of business together. Get this done. And basically there would be no opportunity for an ongoing contempt.

[¶14] THE COURT: A couple of things. And thank you, Mr. Black. A couple of things, Mr. Lockhart, are of concern to me. It says contempt of court means intentional misconduct in the presence of the court which interferes with the court proceedings or with the administration of justice or which impairs respect to the court. That's under (a).

[¶15] It goes on to talk about intentional nonpayment of a sum of money ordered by the court be paid in the case. Intentional disobedience, resistance or obstruction of the authority, process or order of the court. Intentional refusal of a witness to appear for examination. That doesn't apply. Intentional refusal to produce a record, document, or other object, possible.

Intentional behavior and degradation, derogation, of any provision of the summons issued. Not really. Any other act, omission specified by the court.

When I look over at 10.4 or, what was it again?

MR. KALIL: 27-10-01.4.

[¶16] THE COURT: I am sorry. 01.4 talks about things that I can do. One or more of the following remedial sanctions. Payment of a sum of money sufficient to compensate complainant other than the court for loss or injury suffered as a result of contempt. Imprisonment if the contempt of court is of a type included in subsections B, C, D, E or F.

[¶17] I am kind of at a loss here because I thought the first one was the one more if someone has intentional misconduct in front of the court, in the presence of the court. I thought that was an easy one. But it appears maybe that doesn't quite fit there.

[¶18] But B, C, and D are three of the ones I read to you. I think all of them would apply or at least B and C in the sense of your disobedience to do what the Court ordered you to do.

[¶19] It says the imprisonment may extend for as long as the contemnor - - that would be you -- continues the contempt or six months, whichever is shorter. So it could be up to six months. Forfeiture not to exceed \$2,000 each day for contempt, an order designed to ensure compliance or sanctions other than sanctions provided if the court expressly finds that those sanctions would be ineffectual to terminate continuing contempt. So, again, all those things seem to be applicable here. [Emphasis added]. Or a lot of them do. The problem I have here, Mr. Lockhart, is pretty straightforward. You seem to be a very, I don't know what the term would be, maybe shrewd businessman. I can't imagine you have been doing this for as long as you have and not garnered some kind of information that would make this easy for you.

[¶20] I know when the Court had the trial and issued its order I thought I gave you a gift, Mr. Lockhart. I really did. I understand the Arnolds kind of bailed toward the end there. I got all that. But I thought there was -- and I gave them what I thought I could to, within the bounds of the law of what I was allowed to do. And I thought simply it was just a gift, because all you had to do was we have two pieces of equipment that are worth something to somebody, maybe. I didn't even get the impression they were worth much to anybody. There was already a debt on them. The debt I was understand to believe was just the rent for having them stored at whatever company that is up in Tioga. And I honestly don't remember the name of the business.

[¶21] But my understanding is that was it. They were paid for. They were traveled. They were bought. There was no debts on them as far as fixing them. They were just there. And they were rotting because they weren't being used. But the only debt was you got to pay the rent and then you can have them.

[¶22] I didn't know if you were going to do anything with that or not or just walk away which I think you probably could have done and tried to let it just die an easy death. And I thought the Arnolds got screwed. So that's the way I felt about it when I wrote the order. But I gave them what I thought I could based on the information that was given to the Court and within the bounds of the law.

[¶23] And then we sold one, or you sold one, or that was the plan. So I am thinking, oh great. They got their money out of it. They can get certain money back for their time and effort. At least their percentage based on the 15 percent and good deal.

[¶24] And then I find out that, well, it's not quite that clean. And then you come to court and I get this information. And I am thinking that's great, okay, we did get it. But somehow we are not getting it done properly. I didn't think my previous order was anything hugely out of the ordinary. Just where to go, who's got it, and how much money are we going to get, and when are we going to get it. That was the plan there for the Arnolds. They just want some money out of the deal for their time and their effort and what they went through. I was kind of excited about that. They would at least get some kind of cash flow. And then I get this new one and I am thinking, okay, so now we got this other problem that doesn't exist. It's made up something. And I was real concerned about this.

[¶25] And then I find out that you come here and the information I got as your affidavit, which I required you to do in a timely manner, which you did, is false. That's the ruling I have made at this point. The information that you gave me back on June 5, 2019, was false.

[¶26] It appears that there continues to be a little bit of a sham market going on here. And I am angry about it a little bit. Because I don't understand why you would do it. It just doesn't make sense to me. Again, I am not a businessman so probably who knows how that works exactly.

[¶27] The problem I have with what Mr. Kalil is asking for is, do the Arnolds have the wherewithal to do something with the other WPU? I don't know if they have the same connections you do. You seem to have quite a few connections. You are originally from Texas I thought, if I remember correctly. So a lot of oil down there forever and ever. Lots of oil and gas over in Ohio and Pennsylvania. So I am aware of all that. I mean, Ohio goes all the way back to Standard Oil from way back when. So, again, having contacts to sell this equipment for 500,000 when you only paid 300,000, that's 500 each, if I remember correctly. Was it 300 each or 150 each, 300 total? I don't remember exactly.

MR. LOCKHART: 300 each.

[¶28] THE COURT: So good deal. Three years later we are going to turn a profit of almost 40 percent. That would be awesome. So I have a concern about taking you out of the loop just for that reason, but I don't think I can trust you. It seems kind of odd to me. I don't know why, but that's what it seems like. So, Mr. Kalil, your thought was that I just take Mr. Lockhart out of the loop completely and then you guys get stuck with the remaining WPU. The other WPU is already sold. You are saying just make it a wash with the money you have. The other WPU belongs to Trident still, but basically your clients are the ones that are going to be in charge of it.

MR. KALIL: We believe we have the connections to effectuate a sale, Your Honor.

[¶29] THE COURT: And legitimately, then, if I am taking Mr. Lockhart out of the loop as far as his management ability -- I am not taking him out as his ownership ability. So he would still have 70 percent of whatever took place. That's my understanding. Is that correct, from your perspective?

MR. KALIL: Correct, Your Honor, on the second WP unit.

THE COURT: I understand. That's what I am talking about.

MR. KALIL: There are two other tanks that are sort of part of this that we haven't talk about that. But they are there as well.

THE COURT: I have no clue what that is.

MR. BLACK: Those are not owned by Trident, Your Honor.

[¶30] THE COURT: Then they wouldn't be part of the deal. Whatever, if they are or they aren't. I guess it goes to the equipment fee, hotshot fees for moving the equipment or the parts.

[¶31] Well, this is what I believe I should do here, Mr. Lockhart. I am going to agree with what Mr. Kalil is asking for here as part as the contempt. And again, Mr. Black, you always have the option to appeal this if you think I am outside the bounds of the law which is allowed. I am going to take the \$300,000 that's already in the bank account of Mr. Kalil. I guess it's his trust account, I would assume.

MR. KALIL: Yes, Your Honor.

[¶32] THE COURT: That that will be the compensation to Mr. and Mr. Arnold for their half or their portion of whatever Trident owned in the first WPU. So that one's a done deal. Any costs that were associated in selling the WPU will be absorbed by the \$200,000 that you get out of that 500,000. And my understanding is you paid all those. So the 200,000 is your share and 300,000 goes to them to do with what they please. The second WPU still belongs to Trident. I presume you are going to sell it. Because it probably doesn't do any good to you.

MR. KALIL: Yes, Your Honor.

[¶33] THE COURT: Once it is sold, you make an accounting. The accounting will go to all the members of Trident which include Mr. Lockhart. I think that's it. That's all I am going to do. [TR 54:21-63-17].

[¶34] At the conclusion of the hearing, the Plaintiffs requested their attorney's fees, which the Court appears to have considered as part of the \$300,000 sanction:

THE COURT: Okay. Anything else?

MR. KALIL: Attorney's fees, Your Honor.

THE COURT: No. I am giving you the 300,000. [TR 67:4-10]

### **ARGUMENT**

#### **I. THE COURT ENTERED AN APPROPRIATE REMEDIAL SANCTION DESIGNED TO ADDRESS AN ONGOING CONTEMPT.**

[¶35] As noted in the extensive citation set forth above, the Court clearly determined that Thomas Lockhart's actions constituted a continuing contempt. [See TR 57:25]. As a consequence of that continuing contempt, the Court entered a remedial sanction designed to compensate the Arnolds and set forth a path by which the parties would ultimately be free of each other. N.D.C.C. 27-10-1.1 defines remedial sanctions as follows:

“Remedial sanction” includes a sanction that is conditioned upon performance or nonperformance of an act required by court order. A sanction requiring payment of a sum of money is remedial if the sanction is imposed to compensate a party or complainant, other than the court, for loss or injury suffered as a result of the contempt.

N.D.C.C. 27-10-1.4 sets forth types of remedial sanctions:

1. A court may impose one or more of the following remedial sanctions:
  - a. Payment of a sum of money sufficient to compensate a party or complainant, other than the court, for a loss or injury suffered as a result of the contempt, including an amount to reimburse the party for costs and expenses incurred as a result of the contempt;
  - b. Imprisonment if the contempt of court is of a type included in subdivision b, c, d, e, or f of subsection 1 of section 27-10-01.1. The

imprisonment may extend for as long as the contemnor continues the contempt or six months, whichever is shorter;

c. A forfeiture not to exceed two thousand dollars for each day the contempt continues;

d. An order designed to ensure compliance with a previous order of the court; or

e. A sanction other than the sanctions specified in subdivisions a through d if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt.

[¶36] As set forth above, a sanction is remedial if it involves the paying of a sum of money to compensate a party for loss or injury suffered as a result of the contempt. A remedial sanction does not have to be conditioned on the performance or nonperformance of an act if it is designed to compensate a party for a loss or injury suffered as a result of a contempt.

[¶37] The ultimate determination of whether or not a contempt has been committed and remedial sanctions are warranted lies within the sound discretion of the trial court, and its decision will not be overturned on appeal unless there is a clear abuse of discretion.; Millang v. Hahn, 1998 ND 152, ¶ 7, 582 N.W.2d 665. A trial court abuses its discretion only when it acts in an arbitrary, unreasonable, or unconscionable manner, or when it misinterprets or misapplies the law. Millang, at ¶ 7.

[¶38] In Johnson v. Gehringer, this Court upheld a remedial sanction involving the payment of a sum of money based solely on the violation of the Court's order. In this case, Johnson violated a non-compete clause contained in a judgment. The Supreme Court wrote that:

Since repair and installation of furnaces and air conditioning equipment accounted for five percent of Propane Services' total business, the district court determined it would be appropriate to require Johnson to pay

Gehring five percent of the purchase price Gehring paid Johnson for Propane Services. Although other measures of compensation for the contempt may also have been appropriate, the amount of the compensation imposed by the district court relates to Gehring's injury which was caused by Johnson's contempt. The district court did not abuse its discretion in its damage award.

Johnson v. Gehring, 2006 ND 157, ¶ 15, 717 N.W.2d 920, 923

[¶39] In this case, the District Court noted that the \$300,000 would be “their compensation for their half or their portion of whatever Trident owned in the first WPU.” In Johnson, this Court stated that, “Although other measures of compensation for the contempt may also have been appropriate, the amount of the compensation imposed by the district court relates to Gehring’s injury which was caused by Johnson’s contempt.” This principle is directly on point here. The compensation awarded to the Arnolds relates to the injury they suffered as a result of the fraud committed by Thomas Lockhart.

[¶40] This fraud is not limited to one instance. Lockhart was ordered to provide information on the WPU to the Court, which he did, but he did so by giving the Court false information. This act violated the Court’s order with regard to the stipulation on March 24, 2019, and the Order dated on May 24, 2019, as Lockhart failed to deposit the money, as required by the stipulation, and then intentionally provided false information about the details of the transaction. To be clear, this false information included failing to mention the extra \$200,000 Trident Resources received as part of the sale to Geo Petro. It’s also worth noting, that the evidence of the money supposedly provided by Black Butte, the bank statements of Trident Resources, were falsified by Thomas Lockhart. [App. 159-160]. Finally, at the hearing in this matter, Thomas Lockhart was unable to state which account the \$200,000 went into. [TR 18:24-20:1]. To this date, this information has never been provided to the Defendants. Contrary to the position of the

Defendant, Lockhart's actions here, in violation of two Orders of the Court, constitute a contempt that is ongoing to this day. Lockhart did admit to his lies, and did admit that the WPU was sold to Geo Petro, but the remainder of the Court's order with regard to the transaction with Geo Petro has never been complied with. As noted above, this order requires five pieces of information, and the only information provided by Thomas Lockhart, and which he has not admitted is false, is that the WPU was sold to Geo Petro. None of the other categories have been answered in any filings by Lockhart. Plus, the \$200,000 was not deposited in an escrow account, per the Court's order, and to this day its whereabouts are unknown. Thus, the Court's order in this case is designed to address this ongoing, continuing contempt, which is the failure of Thomas Lockhart to accurately explain the details of the transaction, in a filing with the Court, and his failure to deposit the proceeds of the sale in the Plaintiffs' attorney's trust fund.

[¶41] In reviewing the findings made by the Court on the record at the hearing in this matter, it's clear that the Court's order is designed to ensure compliance with the Court's previous order related to the property of the parties, and resolve the issues caused by the Defendant's continuing contempt. The Court's first order, from March 24, 2019, required that property would only be sold per the agreement of the parties or by permission of the Court, and that the proceeds from any sale be deposited in an interest bearing account to be released in concurrence with the Judgment. The second order, entered after Lockhart violated the stipulated order, required him to explain what he had done with Trident Resources' property. The Court's final order resolves the situation; rather than go back and address all of the false information provided by Lockhart, and required by the second order, or address the missing \$200,000, the Court ordered that Lockhart forfeit his

interest in the first \$300,000, but was allowed to keep the \$200,000 that he had never disclosed to the Court. This is directly related to the injury caused by Lockhart. Because Lockhart tried to conceal the \$200,000 from the other owners of Trident Resources, he lost any right to the funds that were properly placed in escrow as required by the stipulated order. This is an appropriate alternative measure of compensation, as contemplated by the Supreme Court in Johnson. The Court specifically calls this sum the compensation of the Arnolds for this act by Lockhart, [TR 63:1-8], and noted that it was given instead of attorney's fees. [TR 67:4-10].

[¶42] Further, the Court's final order also addresses the fact that the parties still have property of Trident Resources, which needs to be disposed of. Given the continuing nature of Thomas Lockhart's contempt, disposing of the additional property Trident Resources would be difficult. By removing Lockhart from the process of selling the property, the Court created a scenario wherein the property could be sold, and proceeds dispersed, without Lockhart being able to interfere with the sale or steal any more money. In its findings at the hearing, the Court noted that it was concerned about taking Thomas Lockhart completely out of the deal because of his perceived business acumen, but ultimately noted that the Court could not trust Thomas Lockhart. [TR 61:2-12]. Since the Court could not trust Lockhart to fairly sell the remaining assets of Trident Resources, the only way to ensure that the property was sold in compliance with the Court's previous orders was to remove Lockhart from the decision making process. To be clear, the order doesn't remove Lockhart from the proceeds of any sale, just the negotiating of the sale, and the handling of the proceeds.

[¶43] This order elegantly ends the situation without requiring further litigation among the parties, and is based on the sound discretion of the Court. This order ensures compliance with the previous orders of the Court, as set out in N.D.C.C. 27-10-1.4 (d), and ends the continuing contempt of Thomas Lockhart, which the Court noted was appropriate under 27-10-1.4 (e). The Court’s order was allowed by the statute, and is not arbitrary, unreasonable or unconscionable.

[¶44] In Johnson, the Supreme Court wrote that:

We have consistently held that the district court must provide an adequate explanation for us to understand the basis for its decision.” In re Spicer, 2006 ND 79, ¶ 8, 712 N.W.2d 640. “However, we will not reverse a district court's decision when ‘valid reasons are fairly discernable, either by deduction or inference.’ ” *Id.* Johnson v. Gehringer, 2006 ND 157, ¶ 11, 717 N.W.2d 920, 922

In this case, valid reasons for the District Court’s order are fairly discernable from the Court’s statements on the record of the hearing, as such, the order should not be reversed.

[¶45] Finally, it is worth pointing out that at the hearing, the Defendant’s attorney, William Black, proposed a solution remarkably similar to what the Court ultimately order. Consider this statement from Mr. Black:

“Essentially selling out the remaining assets of Trident Resources would – and allowing a sale to go through or the equipment to be sold and winding down this business with a total accounting of expenses and what not, would get the Arnolds and Mr. Lockhart out of business together. Get this done. And basically there would be no opportunity for an ongoing contempt.” [TR 55:24-56:6]

As Black himself states, the sale of the assets of Trident Resources would remove the opportunity for ongoing contempt by Thomas Lockhart, and this is precisely what the Court did. However, because the Court could not trust Lockhart, the Court removed Lockhart’s ability to engage in further contempt, by taking away his ability to negotiate the sale of the assets. This Court’s order here fairly compensates the Arnolds for the time

and effort needed to address Lockhart's contempt, and provides the parties with a way to wind up the company and dispose of the assets without future opportunities for misbehavior. This was a sound decision by the District Court, and should not be overturned.

**II. EVEN IF THE SUPREME COURT ACCEPTS THE ARGUMENTS OF THE DEFENDANT, REVERSAL IS NOT THE APPROPRIATE REMEDY.**

[¶46] If the Supreme Court determines that the sanction imposed by the Court in this matter was not a proper remedial sanction, the remedy requested by the Defendant, reversal, is still not appropriate. This body has continually ruled that where the appropriate procedure was not followed, and a punitive sanction imposed without the requirement of N.D.C.C. 27-10-1.3 being followed, the appropriate remedy is a remand to the District Court to determine if the proper proceeding should be initiated. *See Endersbe v. Endersbe* 555 N.W. 2d 580 ¶9, *Holkesvig v. Welte*, 2012 ND 14, ¶ 14, 809 N.W.2d 323, 328; *Millang v. Hahn*, 1998 ND 152, ¶ 19, 582 N.W.2d 665, 669.

[¶47] If the Plaintiffs' arguments above are unpersuasive, then the Supreme Court should remand this case to the District Court for a determination as to whether a punitive or remedial sanction should be imposed. In this case, there is no dispute that the Defendant is in contempt, he himself admits this. A reversal would essentially absolve the Defendant of this contempt without any repercussions, which in light of his continued behavior, and his admitted contempt, is not appropriate, and not in keeping with this Court's previous jurisprudence. As such, in the event the Supreme Court does not affirm the District Court, a remand is the second most appropriate remedy.

**ORAL ARGUMENT STATEMENT**

[¶48] Pursuant to Rule 28(h) of the North Dakota Rules of Appellate Procedure, the Plaintiff requests oral argument on this matter. Oral argument is appropriate in order to allow the Court to ask questions of the parties. The facts of this matter, particularly with regard to the many falsehoods perpetrated by the Defendant, are quite convoluted, and so the ability of the Court to ask, and the ability of the parties to answer, questions is important. Accordingly, the Plaintiff respectfully requests that the Court schedule oral argument.

**CONCLUSION**

[¶49] The District Court's order in this matter is in compliance with the statute, and North Dakota law, and is not arbitrary, unreasonable or capricious. Accordingly, the Plaintiffs request that the Court AFFIRM the District Court in this matter.

Respectfully submitted this 4<sup>th</sup> day of March, 2020.

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**CERTIFICATE OF COMPLIANCE**

[¶50] The undersigned, as attorney for Appellees in the above matter, hereby certifies, in compliance with Rule 32 of the North Dakota Rules of Appellate Procedure, that the above brief was prepared with proportional spaced, 12 point font typeface, and the total number of pages of the above Brief totals 21 pages, inclusive.

Dated this 4<sup>th</sup> day of March, 2020.

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**CERTIFICATE OF SERVICE**

[¶51] I hereby certify that on March 4, 2020, I filed and served the foregoing document on the following by electronic mail transmission, pursuant to Rules 25 and 31 of the N.D.R.App.P.:

**Clerk of the Supreme Court  
supclerkofcourt@ndcourts.gov**

**William C. Black  
wblack@bismarcklaw.com**

and mailed by first class mail, postage paid, to the following non E-filing participants:

**American Power Company  
P.O. Box 187  
Algona, IA 50511**

**American Power Group Corporation  
213 N Lantry St  
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Dated this 4<sup>th</sup> day of March, 2020.

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**CERTIFICATE OF SERVICE**

[¶51] I hereby certify that on March 11, 2020, I filed and served the foregoing document on the following by electronic mail transmission, pursuant to Rules 25 and 31 of the N.D.R.App.P.:

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