

1 **JESSE LASLOVICH**  
2 **BRETT O'NEIL**

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10 Attorneys for Plaintiff

FILED  
PAIGE TRAUTWEIN, CLERK

SEP 03 2013

DEPUTY

11 **MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,**  
12 **RAVALLI COUNTY**

13 STATE OF MONTANA,	) Cause No.: DC-11-116/4
	) Dept. No.: 1
14 Plaintiff,	)
	) <b>BRIEF IN SUPPORT OF MOTION TO</b>
15 vs.	) <b>AMEND BENCH WARRANT ISSUED</b>
	) <b>FOR JAMES BRYANT</b>
16 JAMES "JEB" BRYANT,	)
	)
17 Defendant.	)

18 The State of Montana, through its counsel of record, Jesse Laslovich and Brett O'Neil,  
19 has moved this Court to amend its bench warrant issued for James "Jeb" Bryant.

20 On September 26, 2011, the State filed this cause against the Defendant. On September  
21 27, 2011, the Court issued its bench warrant for the Defendant and bail was set for \$200,000.  
22 Bench Warrant, Attached as Exhibit 1. As of the date of this pleading, the Defendant has not  
23 been arrested. Rather, the Defendant, an alleged co-conspirator with Harris Himes,<sup>1</sup> has been  
24 living in Mexico as a fugitive. Aff. of James Edward Bryant (Aug. 22, 2013), Attached as  
25 Exhibit 2.

<sup>1</sup> Mr. Himes' case is set to go to trial on September 16, 2013, with the Honorable Loren Tucker presiding.

1 It was recently brought to the attention of the State by Mr. Himes that he is going to  
2 subpoena Mr. Bryant to testify in Mr. Himes' case-in-chief. In fact, Mr. Bryant implied in his  
3 affidavit that he would like to come and testify on Mr. Himes's behalf. Judge Tucker recently  
4 issued the subpoena to Mr. Bryant. Bryant Subpoena, Attached as Exhibit 3.

5 Mr. Himes argues that the Defendant is exempt from arrest pursuant to Mont. Code Ann.  
6 § 46-15-120(1). Additionally, Mr. Himes argued at a recent hearing that any statements made by  
7 the Defendant would be immune under § 46-15-331.<sup>2</sup> The purpose of the State's motion before  
8 this Court is to address Mr. Himes' first request.<sup>3</sup>

9 The statute cited by the Defendant appears to allow a person to avoid arrest while  
10 obeying a subpoena to testify. Specifically, § 46-15-120(1) provides:

11 **Exemption from arrest and service of process.** (1) If a person comes into this state in  
12 obedience to a subpoena directing the person to attend and testify in this state, the person  
13 may not, while in this state pursuant to the subpoena or order, be subject to arrest or the  
14 service of process, civil or criminal, in connection with matters that arose before the  
person's entrance into this state under the subpoena.

15 Here, it appears that with the issuance of the subpoena to the Defendant by Judge Tucker, the  
16 State cannot arrest the Defendant while he comes into Montana in obedience to the subpoena. It  
17 should be noted that the statute only exempts the State from arresting the Defendant while he is  
18 in Montana obeying the subpoena.

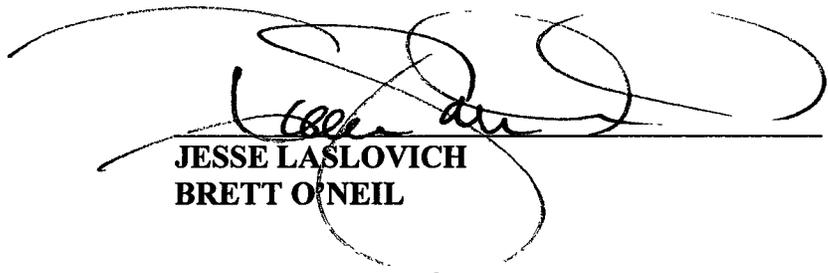
19 As a result of the language of § 46-15-120 and to ensure that the State is not liable for a  
20 possible wrongful arrest, the State requests that this Court amend its bench warrant to provide a  
21 specific and limited time period solely to exempt the Defendant from arrest while he is obeying  
22 the subpoena and for matters that arose before his entrance into the State. Mr. Himes provided  
23

24  
25 <sup>2</sup> Nothing in this motion and brief should be construed as the State agreeing that the Defendant's testimony should be immune in any way under § 46-15-331. To that end, the parties will raise this issue prior to the initiation of Mr. Himes' trial with Judge Tucker.

<sup>3</sup> The State is filing this motion before this Court because this Court still retains jurisdiction over Mr. Bryant's case.

1 the State with Mr. Bryant's travel schedule. Exhibit 4 Attached. Based on Mr. Bryant's travel  
2 schedule, the State proposes that this Court amend its September 27, 2011, Bench Warrant to  
3 prevent the Defendant from being arrested beginning September 18, 2013, and expiring on  
4 September 22, 2013 at 3:00 PM Pacific time.

5  
6 DATED this 31<sup>st</sup> day of September, 2013.

7  
8   
9  
10 **JESSE LASLOVICH**  
11 **BRETT O'NEIL**

**CERTIFICATE OF SERVICE**

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I hereby certify that a true and accurate copy of the foregoing was served on the 3<sup>rd</sup> day of September, 2013, by US mail, first-class postage paid, to the following:

Hon. Loren Tucker  
2 S. Pacific  
Dillon, MT 59725

Via Email: dkaatz@mt.gov  
mgee2@mt.gov

James Bryant  
Costa Chica, Futura 64  
Puerto Escondido, Municipio de San Pedro Mixtepec  
Zip Code 71981, Oaxaca, Mexico



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1 **HON. JEFFREY H. LANGTON**  
District Judge, Department No. 1  
2 **HON. JAMES A. HAYNES**  
District Judge, Department No. 2  
3 Twenty-first Judicial District  
4 Ravalli County Courthouse  
205 Bedford Street  
5 Hamilton, MT 59840-2853  
6 Phone: (406) 375-6780

**FILED**  
**DEBBIE HARMON, CLERK**

SEP 27 2011  
*Daniel Brown*  
DEPUTY

7  
8 **MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,**  
**RAVALLI COUNTY**

9  
10 STATE OF MONTANA, ) Case No.: DC -11-116/4  
11 Plaintiff, )  
12 vs. ) Dept. No. 1  
13 JAMES "JEB" BRYANT, ) **BENCH WARRANT**  
14 Defendant ) **SHUTTLE STATES**  
 ) **NATIONWIDE**  
 ) **IN-STATE**  
 )

15 **THE STATE OF MONTANA TO ALL PEACE OFFICERS OF THE STATE OF**  
16 **MONTANA, GREETINGS:**

17 An Information having been filed on the 27<sup>th</sup> of *September*, in the above-entitled  
18 Court, charging the above-named Defendant with the crimes of: COUNT I – THEFT, a  
19 Felony, in violation of Mont. Code Ann. 45-6-301(2)(c); COUNT II – FAILURE TO  
20 REGISTER AS A SALESPERSON, a Felony, in violation of Mont. Code Ann. § 30-10-  
21 201(1); COUNT III – FAILURE TO REGISTER A SECURITY, a Felony, in violation of  
22 Mont. Code Ann. § 30-10-202(1); COUNT IV – FRAUDULENT PRACTICES, a Felony, in  
23 violation of Mont. Code Ann. § 30-10-301(1)(b); COUNT V -- CONSPIRACY TO COMMIT  
24 THEFT, a Felony, in violation of Mont. Code Ann. §§ 45-6-301(2)(c) and 45-4-102(1);  
25 COUNT VI – CONSPIRACY TO COMMIT FRAUDULENT PRACTICES, a Felony, in  
violation of Mont. Code Ann. §§ 30-10-301(1)(b) and 45-4-102(1).

**Exhibit 1**

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NOW, THEREFORE, you are hereby commanded forthwith to arrest the above-named Defendant and bring him/her before this Court, or any other Court, without unnecessary delay, as provide by law.

BAIL is hereby set at \$ 200,000.00

DATED this 27<sup>th</sup> day of September, 2011  
  
\_\_\_\_\_, District Judge

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

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STATE OF MONTANA, )  
 )  
 ) Case No.DC-11-117  
 )  
 ) Plaintiff, )  
 )  
 )  
 ) vs. )  
 )  
 )  
 ) HARRIS HIMES, )  
 )  
 )  
 ) Defendant. )  
 )

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**AFFIDAVIT OF  
JAMES EDWARD BRYANT**

STATE OF MONTANA )  
 )  
 ) :ss.  
 )  
 ) County of Ravalli )

I, JAMES EDWARD BRYANT, being first duly sworn, do hereby state and allege as follows:

1. I am the alleged co-conspirator in this case and am over 18 years of age and have personal knowledge of the matters discussed herein.
2. I live at: Costa Chica, Futura 64  
Puerto Escondido, Municipio de San Pedro Mixtepec.  
Zip Code 71981, Oaxaca, México
3. Without waiving any of my rights, Constitutional and otherwise, and without admitting any guilt, in the event that immunity is granted to me and the State will withdraw its warrant during the pendency of the trial in order for me to come from Mexico and return to

**Exhibit 2**

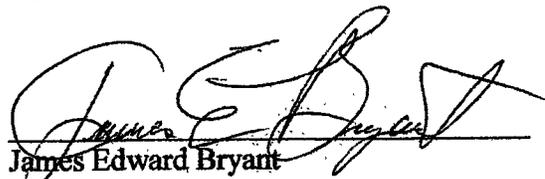


Mexico without hindrance in order to continue managing Duratherm's operations, I would testify variously, but not exclusively, to the following:

- I have reviewed the charges in this action against Harris Himes in addition to the charges against me.
- Aside from introducing Mr. Serata to me, I am unaware of any part Harris Himes had in the transaction which is the subject of this criminal action involving Mr. Geoffrey Serata, Image of Truth, Duratherm Building Systems, Inc., and me.
- In fact, Mr. Himes warned me not to allow Mr. Serata to invest in the transaction, because he is so unpredictable: he can be your friend one second and, unexpectedly, against you the next.
- I am the one who prepared the unexecuted Subscription Agreement and sent it to Mr. Himes for Mr. Serata's signature.
- I am familiar with the financial dealings involved in this action, including the fact that Mr. Himes never received any of the funds which Mr. Serata invested in the transaction through his nonprofit corporation, Image of Truth.
- I am familiar with any agreements, discussions, and communications which took place during the course of the above transaction.
- I am familiar with the current status of Duratherm Building Systems S.A. de C.V.

FURTHER AFFIANT SAYETH NOT.

DATED this 22<sup>nd</sup> day of August, 2013.

  
James Edward Bryant



(Notary)

Subscribed and sworn before me this 22<sup>nd</sup>  
day of August 2013

*Tamora J. Nobilski*

**Tamora J. Nobilski**  
**U.S. Consular Agent - Oaxaca**



**MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT  
RAVALLI COUNTY**

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STATE OF MONTANA,	)	Case No. DC 11-117
	)	[Assigned to the Honorable Loren Tucker]
Plaintiff,	)	
	)	<b>TRIAL SUBPOENA</b>
	)	
vs.	)	
	)	
HARRIS HIMES,	)	
	)	
Defendant.	)	
	)	

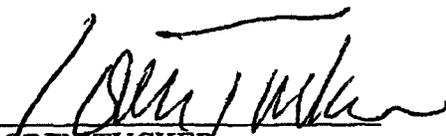
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THE STATE OF MONTANA TO: JAMES EDWARD BRYANT:

YOU ARE HEREBY COMMANDED, all business and excuses laid aside, to appear for the purpose of testifying at the trial in this matter to be held in Judge Haynes' Courtroom at the Ravalli County Courthouse, 205 Bedford Street, Hamilton, Montana, on September 16, 2013, at 9 a.m., then and there to testify on behalf of Defendant Harris Himes in the above-entitled matter now pending before the Twenty-First Judicial District for the State of Montana.

If you fail to appear at the time and place required, you can be punished for contempt of court as provided by law.

DATED: Aug 09, 2013

  
LOREN TUCKER  
District Judge

**Exhibit 3**

**Rule 45(c). Protection of persons subject to or affected by subpoenas.**

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2)
  - (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
  - (B) Subject to subparagraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying, or any person affected thereby, may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, and to any affected person who has served written objection, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
- (3)
  - (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it
    - (i) fails to allow reasonable time for compliance; or
    - (ii) requires in the case of a deposition or production prior to hearing or trial, a person to travel beyond the 100 mile radius provided in subparagraph (b)(2) of this rule; or
    - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
    - (iv) subjects a person to undue burden.
  - (B) If a subpoena
    - (i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or

- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**Rule 45(d). Duties in responding to subpoena.**

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**Laslovich, Jesse**

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**To:** bigskycc@aol.com  
**Subject:** RE: BRYANT'S SCHEDULE

HERE IS BRYANT'S SCHEDULE.

Blessings,  
Harris

**Leave** **Wed, Sep 18** **10hr 39min Total time**

**Depart** **Mexico City**  **United Airlines 1085**  
6:50 AM Benito Juarez Airport (MEX) | Terminal 1 **Economy | Boeing 737**  
764 mi | 2hr 24min

**Stop 1** **Houston, Texas**

**9:14 AM** George Bush Airport (IAH) | Terminal E

Seats: 26-A , 26-D , 26-C | Seats are confirmed. | Meal: Food and drinks for purchase

Change planes. Time between flights: 2hr 9min

**Depart** **Houston, Texas**  **United Airlines 737**  
11:23 AM George Bush Airport (IAH) | Terminal C **Economy | Boeing 757**  
876 mi | 2hr 28min

**Stop 2** **Denver, Colorado**

**12:51 PM** Denver International Airport (DEN)

Seats: 37-E , 37-D , 37-F | Seats are confirmed. | Meal: Food and drinks for purchase

Change planes. Time between flights: 1hr 37min

**Depart** **Denver, Colorado**  **United Airlines 5519**  
2:28 PM Denver International Airport (DEN) **Economy | Canadair**  
676 mi | 2hr 1min

**Arrive** **Missoula, Montana**

**4:29 PM** Johnson-Bell Field (MSO)

Seats: 12-D , 12-C | Seats are confirmed.

Flight 5519 Operated by /SKYWEST DBA UNITED EXPRESS

**Return** **Sun, Sep 22** **7hr 11min Total time**

**Depart** **Missoula, Montana**  **United Airlines 5534**  
6:25 AM Johnson-Bell Field (MSO) **Economy | Canadair**  
676 mi | 2hr 2min

**Stop 1** **Denver, Colorado**

**8:27 AM** Denver International Airport (DEN)

Seats: 11-A | Seats are confirmed.

Flight 5534 Operated by /SKYWEST DBA UNITED EXPRESS

Change planes. Time between flights: 1hr 42min

**Depart** **Denver, Colorado**  **United Airlines 1493**  
10:09 AM Denver International Airport (DEN) **Economy | Boeing 737**  
1,448 mi | 3hr 27min

**Arrive** **Mexico City**

**2:36 PM** Benito Juarez Airport (MEX) | Terminal 1

**Exhibit 4**



MONICA J. LINDEEN  
COMMISSIONER OF SECURITIES & INSURANCE  
OFFICE OF THE STATE AUDITOR  
840 HELENA AVENUE  
HELENA, MT 59601

RECEIVED  
STATE AUDITORS  
OFFICE  
HELENA, MONTANA  
2013 SEP -9 A 10:02



Commissioner of Securities and Insurance,  
Montana State Auditor  
Attention: Legal Bureau  
840 Helena Ave.  
Helena, MT 59601

