

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

HEWLETT-PACKARD COMPANY,	§	
	§	
<i>Plaintiff,</i>	§	Civ. A. No. 4:18-CV-00762
v.	§	
	§	
QUANTA STORAGE, INC. and	§	
QUANTA STORAGE AMERICA,	§	
INC.,	§	JURY TRIAL DEMANDED
	§	
<i>Defendants.</i>	§	
	§	

**QUANTA STORAGE, INC.’S SHOWING OF CAUSE WHY QUANTA  
SHOULD NOT BE HELD IN CONTEMPT OR SANCTIONED**

Comes now, Defendant Quanta Storage, Inc. (“Quanta”), and files this Showing of Cause Why Quanta Should Not Be Held in Contempt or Sanctioned. In support thereof, Quanta would show the Court as follows:

**INTRODUCTION**

Over four weeks, this Court sequentially issued three separate orders relating to the turnover of Quanta’s assets. *See* Dkt. 424, 430, 434. Those orders are referred to herein as the “First Turnover Order” (Dkt. 424), the “Second Turnover Order” (Dkt. 430), and the “Third Turnover Order” (Dkt. 434) (collectively, the “turnover orders”). This pleading explains why Quanta should not be held in contempt for any failure to comply with those turnover orders.

On April 1, 2020, this Court issued its First Turnover Order requiring Quanta to turn over all its non-exempt property. Dkt. 424. Even though that First Turnover Order did not contain a deadline by which Quanta must comply, and notwithstanding disruptions from the pandemic, Quanta began working on its asset turnover almost immediately. Ex. A (Decl. of Jake Wang). By April 14, Quanta was in the process of preparing assignments of its U.S. patents and trademarks. Dkt. 426-1 at 2 ¶3; Ex. A (Decl. of Jake Wang). Quanta prioritized its turnover of those U.S. patents and trademarks because, in its filings with this Court, HP had specifically identified Quanta’s U.S. patents and trademarks as assets that HP wanted Quanta to turn over. *See, e.g.*, Dkt. 402 at 1-2; Dkt. 421 at 2-3; Ex. A (Decl. of Jake Wang).

On April 22, 2020, this Court ordered, for the first time, that Quanta must complete its asset turnover by May 1, 2020 (the “Second Turnover Order”). Dkt. 430. That order gave Quanta just nine (9) calendar days (until May 1, 2020) “**fully**” to complete the turnover of Quanta’s assets—including factories and equipment in Taiwan and China. *Id.* If Quanta did not turn over 100% of its assets in that nine-day period, the order threatens Quanta with contempt and sanctions of \$50,000/day. *Id.*

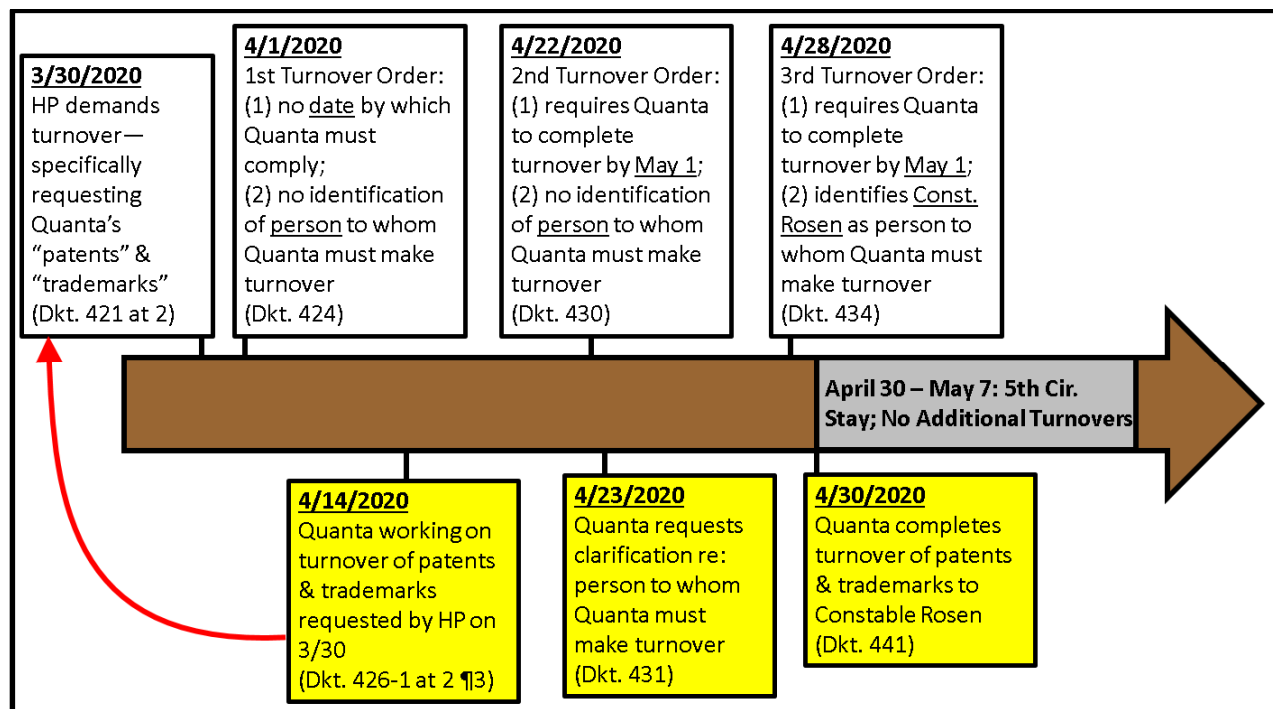
As Quanta was finalizing its assignments of its U.S. patents and trademarks, Quanta realized that neither the First Turnover Order nor the Second Turnover Order contained the name of the person to whom Quanta was to make its turnover. Dkt.

431; Ex. A (Decl. of Jake Wang). Quanta was thus compelled to seek clarification from the Court to ensure that a turnover to Constable Rosen—the person to whom HP requested that Quanta make its turnover—would satisfy the requirements of the Court’s turnover orders. Dkt. 431; Ex. A (Decl. of Jake Wang).

The Court’s Third Turnover Order, signed April 27, 2020 (and entered April 28, 2020), required, for the first time, that Quanta must make its turnover to Constable Rosen. Dkt. 434. That Third Turnover Order did not otherwise amend the prior turnover orders. *Id.* Thus, the Third Turnover Order gave Quanta three (3) calendar days to turn over, to Constable Rosen, all Quanta’s non-exempt assets.

Once again, Quanta began complying almost immediately: just two (2) days after this Court ordered Quanta to make the turnover to Constable Rosen, Quanta turned over to Constable Rosen—with copies to this Court and HP—assignments of Quanta’s U.S. trademarks and patents, worth \$825,533.00 (NT\$24,766,000.00). Dkt. 441. Again, those are the very assets that HP had repeatedly mentioned as assets that HP wanted Quanta to turn over.

On April 30, 2020, the Fifth Circuit ordered “a temporary administrative stay of all proceedings in the district court.” In compliance with that order, Quanta did not turn over additional assets between April 30 and May 7, when the Fifth Circuit lifted that stay. The timeline below shows Quanta’s compliance in relation to this Court’s turnover orders:



Thus, Quanta has made significant progress in its turnover. And, following the Court’s Third Turnover Order—which completed the turnover order by identifying to whom the turnover should be made—Quanta had only two (2) days prior to the Fifth Circuit’s issuance of its stay of the turnover orders. Given this timeline, Quanta would ask this Court, rather than holding Quanta in contempt, to set a new due date, giving Quanta reasonable time for turnover, now that the Court’s turnover order is complete and no longer stayed by the appellate court.

Briefing is finished on the appeal from this Court’s judgment. The Fifth Circuit granted Quanta’s motion for expedited appeal and has ordered the Clerk to set the appeal of the judgment for submission to a Fifth Circuit panel in June. Because Quanta brings a single-issue appeal—based on HP failing to prove the

quantity of ODDs purchased by HP itself, as opposed to HP's foreign subsidiaries—the appeal should be decided in the near future. Also, Quanta has filed a notice of appeal from this Court's turnover orders, and the Fifth Circuit consolidated that appeal with the appeal from the judgment. Pursuant to the Fifth Circuit's briefing schedule for the turnover appeal, the briefing in the turnover appeal will be complete by the end of May.

Quanta asks the Court not to hold Quanta in contempt, and not to impose sanctions on Quanta, because, as explained below, HP has failed to carry its burden to prove contempt. And even if HP had done so (and it has not), the uncontested evidence proves that Quanta is presently unable to comply with the turnover orders. *Waste Management of Washington, Inc. v. Kattler*, 776 F.3d 336, 341 (5th Cir. 2015) (“an alleged contemnor may defend against a prima facie showing of contempt by demonstrating a present inability to comply with a court order”).

### **STANDARDS FOR CIVIL CONTEMPT**

Contempt “must be exercised with restraint and discretion.” *Hornbeck Offshore Services, L.L.C. v. Salazar*, 713 F.3d 787, 792 (5th Cir. 2013). “A party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order.” *Waste Management of Washington, Inc. v. Kattler*, 776 F.3d 336, 341 (5th Cir. 2015) (emphasis added).

“[T]he movant [here, HP] bears the burden of establishing the elements of contempt by clear and convincing evidence.” *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir. 1995). “Evidence is clear and convincing if it produces in the mind of the trier of fact a firm belief ... so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of precise facts of the case.” *Kattler*, 776 F.3d at 341. “[A]n alleged contemnor may defend against a prima facie showing of contempt by demonstrating a present inability to comply with a court order.” *Id.*

As explained below, HP failed to carry its weighty burden of adducing clear and convincing evidence of contempt. And even if HP’s meager evidentiary showing could somehow suffice, Quanta has shown its present inability to comply with the court’s turnover orders.

## **ARGUMENT**

### **I. HP has failed to carry its burden to adduce clear and convincing evidence of contempt.**

Because the burden of proof is on the *movant* (here, HP), the *movant* bears the burden of adducing “clear and convincing evidence” of contempt; disputes going to the *non-movant’s* evidence are “not sufficient to carry a [movant’s] burden[.]” *Kattler*, 776 F.3d at 341. HP has not carried its burden under *any* standard, and certainly not under the clear-and-convincing-evidence standard.

**A. HP has not carried its burden to show, by clear and convincing evidence, that Quanta failed to comply with the First Turnover Order.**

As noted above, the First Turnover Order, entered April 1, 2020, did not include a deadline for Quanta to complete its turnover, but, rather, permitted Quanta to complete its turnover over time. And Quanta has made significant progress in its turnover by turning over assignments of its U.S. trademarks and patents worth hundreds of thousands of dollars. Dkt. 441. HP has not shown any failure by Quanta to comply with the First Turnover Order.

**B. HP has not carried its burden to show, by clear and convincing evidence, that Quanta failed to comply with the Second Turnover Order.**

Logically, any “turnover” requires two parties: the party who *makes* the turnover, and the party who *receives* the turnover. When the Court issued its Second Turnover Order on April 22, 2020, Quanta **promptly** (on April 23, 2020) filed a motion (1) pointing out that the Second Turnover Order did not identify the person to whom Quanta must make a turnover—*i.e.*, the person who should *receive* Quanta’s turnover—and (2) asking the Court to identify that person so that Quanta could begin turning over assets. Dkt. 432.

In its Third Turnover Order entered April 28, 2020, the Court clarified that it was ordering Quanta to make a turnover to Constable Alan Rosen. Dkt. 434. Based on that Third Turnover Order, Quanta **promptly** (on April 30, 2020) turned over, to

Constable Rosen, assignments of Quanta’s U.S. trademarks and patents. Dkt. 441. Thus, Quanta acted with diligence to correct this critical omission from the Second Turnover Order so that **Quanta could begin turning over assets**.

However, the Second Turnover Order did not identify Constable Rosen, or anyone else, as the person to whom Quanta should make a turnover. Because the Second Turnover Order did not identify the person to whom Quanta must make a turnover, HP cannot show that Quanta failed to comply with a “definite and specific order” requiring Quanta to perform a “particular act or acts.” *Kattler*, 776 F.3d at 341.

**C. HP has not carried its burden to show, by clear and convincing evidence, that Quanta failed to comply with the Third Turnover Order.**

As noted above, for civil contempt, the movant, HP, bears the weighty burden to come forward, not just with evidence, but with clear and convincing evidence, of contempt. *Kattler*, 776 F.3d at 341. HP thus bears the heavy evidentiary burden to show Quanta’s non-compliance with the Third Turnover Order issued April 28, 2020—especially given the Fifth Circuit’s stay of the Court’s turnover orders from April 30 to May 7. But HP has not adduced any evidence whatsoever in the 9 days since the Court’s Third Turnover Order of April 28, 2020. HP cannot carry its evidentiary burden by wholly failing to adduce evidence.



Prior to April 28, 2020, HP adduced evidence in February and March, but that evidence is limited and outdated and contains obvious inaccuracies. For example, in February and March, HP repeatedly adduced evidence of, and focused on, Quanta's failure to turn over a list of patents and trademarks. *See* Dkt. 402, Ex. A, B, C, D; Dkt. 421 Ex. A, B, C, D. Since then, Quanta has turned over assignments of those U.S. patents and trademarks, which constitute all Quanta's assets located in the United States. Dkt. 441; Ex. A (Decl. of Jake Wang). HP's evidence is stale. Ex. A (Decl. of Jake Wang).

HP has failed to carry its burden to show, by clear-and-convincing evidence, any contempt by Quanta. For that reason alone, the Court's inquiry should end here; HP's request for contempt sanctions must be denied.<sup>1</sup> But even if HP had somehow carried its burden, as shown below, no contempt sanctions should issue because Quanta has demonstrated a present inability to comply. *Kattler*, 776 F.3d at 341.

Quanta should not be held in violation of this Court's turnover orders because, since the Court issued its Third Turnover Order, Quanta had only two days to comply prior to the Fifth Circuit's stay of the turnover orders, which was just lifted on May 7. Therefore, following this Court's completion of its turnover order (when the

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<sup>1</sup> If HP, in the future, elects to file additional contempt motions, or to supplement its previously-filed motion with new evidence, then Quanta would request a reasonable opportunity for cross-examination and rebuttal.

Court issued its Third Turnover Order), Quanta has had only two days to comply with the Court's turnover order. Quanta would ask the Court to set a new date to give Quanta a reasonable time to comply with the Third Turnover Order.

**II. Quanta has demonstrated a present inability to comply with the requirement for Quanta to complete its asset turnover on the schedule set by the Court's three turnover orders.**

**A. The turnover orders compel "full[]"—not partial—compliance.**

This Court's turnover orders, read together, impose one obligation on Quanta: the obligation to turn over **all** of Quanta's assets to Constable Rosen by May 1. After all, the Second Turnover Order "**ORDERS** that Quanta must **fully** comply [with the turnover order] by May 1, 2020" (Dkt. 430 at 3), and the Third Turnover Order—after directing Quanta to make a turnover to Constable Rosen—expressly states that the Court "declines to grant any extension of time." Dkt. 434 at 4. Thus, taken with the Second Turnover Order, the Third Turnover Order directs Quanta to turn over **all** of Quanta's assets by May 1.

In its filings with this Court, HP has selectively cited particular assets, such as U.S. intellectual property or financial documentation, as assets that Quanta could convey in a partial turnover. Of course, Quanta has already made such a partial turnover: Quanta turned over its U.S. patents and trademarks, and Quanta turned over detailed financial documentation. Dkt. 441; Dkt. 413-1. But Quanta's partial turnover is irrelevant for purposes of compliance with the turnover orders. The

Court has not ordered Quanta to turn make partial turnovers in stages over time. Rather, by the plain language of the turnover orders, the Court has ordered Quanta to make a full turnover of all Quanta's non-exempt assets by May 1, 2020.

Quanta is presently unable to make the full turnover of all its assets by May 1, 2020. Indeed, as to **major categories** of assets, Quanta presently cannot make a turnover. Quanta cannot be held in contempt or sanctioned—for failing to turn over all of Quanta's assets by May 1—when Quanta is unable to do so. *Kattler*, 776 F.3d at 341.

**B. Quanta is presently unable to turn over its real property in Taiwan and China.**

It is undisputed that Quanta's primary assets are real property (*e.g.*, factories) in Taiwan and China. Dkt. 426-1 ¶4. Both parties' declarants on Taiwanese law—Mr. Wang (for Quanta) and Mr. Cheng (for HP)—agree, and the undisputed evidence shows, that because Quanta is a publicly traded company on the Taiwan Stock Exchange, before Quanta can turn over this real property, Taiwan's Securities and Exchange Act requires Quanta to have the real property appraised. Dkt. 432-2 ¶8 (Mr. Cheng); Dkt. 429-1 ¶7 (Mr. Wang); Ex. A (Decl. Jake Wang). Mr. Cheng does not dispute Mr. Wang's opinion that this significant turnover would require two separate appraisals, and each appraisal, in turn, would require third-party inspections. Dkt. 429-1 ¶8; Ex. A (Decl. Jake Wang). There is no contrary evidence.

Mr. Cheng also does not dispute Mr. Wang’s conclusion that the COVID-19 pandemic creates, for Quanta, “a present inability to obtain the required appraisals.” Dkt. 429-1 ¶9; Ex. A (Decl. Jake Wang). Nor does Mr. Cheng dispute Mr. Wang’s conclusion that “it is not possible for Quanta—in the nine days required by the Second Turnover Order or the three days required by the Third Turnover Order—to obtain the required third-party inspections and appraisals of Quanta’s factories.” Ex. A (Decl. Jake Wang). Mr. Cheng contends that Quanta could “turn[] over its real property after the appraisals” are complete (Dkt. 432-2 ¶8), but it is undisputed that Quanta has a “present inability” have this real property inspected and appraised in the timeline established by this Court’s turnover orders, especially considering the restrictions caused by COVID-19. This requirement for appraisals, standing alone, establishes that Quanta is presently unable to turn over all its non-exempt property by May 1.

And other laws prevent Quanta from turning over its major, real property assets. HP’s Taiwanese declarant Mr. Cheng does not dispute Mr. Wang’s statements that Taiwanese authorities have imposed “scores of measures on all companies to aid in containing [COVID-19],” and that such measures have effectively “divested” Quanta of its “operational capacities in order to comply with Taiwanese regulations against the COVID-19 pandemic.” Dkt. 426-1 ¶4-7. Those orders require Quanta to screen its employees for COVID-19, collect tracking data

on its employees, assist the Taiwanese government with “case identification” and “containment” measures, and provide facilities for quarantine. *Id.* Logically, to comply with these orders, Quanta needs assets, including real property (*e.g.*, property on which to screen employees). Here again, Quanta is presently unable to turn over 100% of its assets to HP.

**C. Quanta is presently unable to turn over all its cash and cash equivalents—all of which is located overseas.**

Quanta needs cash simply to comply with the turnover order—*e.g.*, to hire appraisers and inspectors in connection with the disposal of Quanta’s real property, to pay employees who will oversee and coordinate the turnover, and to retain attorneys to handle assignments. Quanta similarly needs cash to comply with the Taiwanese government’s emergency pandemic orders; Quanta must pay employees who perform COVID-19 screening, pay fees associated with tracking employee data and communicating that data to the government, and pay for quarantine facilities.

Moreover, under Taiwanese law, a vote by Quanta’s Board of Directors is required before Quanta can make a major disposition of cash or cash equivalents or to reveal Quanta’s confidential commercial information. Dkt. 429-1 ¶10; Ex. A (Decl. of Jake Wang). HP says that Quanta’s Board of Directors may not choose to disobey this Court’s turnover order, but HP misunderstands the position of Quanta’s Board of Directors. Ex. A (Decl. of Jake Wang). Domestication of the judgment is not an act of disobedience; instead, it is the process that must be followed before the

Board of Directors can comply with the turnover orders. *Id.* After all, under Taiwanese law, Quanta's Board of Directors owes fiduciary duties to Quanta and its shareholders, and the Directors could breach those fiduciary duties, and be subject to criminal penalties, if (1) they approve a major disposition of assets based on a foreign court's judgment or order, and (2) a Taiwanese court later concludes that the foreign court's judgment or order was unenforceable. Ex. A (Decl. of Jake Wang). The process of complying with this Court's turnover orders necessarily requires domestication of this judgment in Taiwan.

Such a procedural safeguard—*i.e.*, the requirement that this judgment must be domesticated in Taiwan—is only reasonable considering that the turnover order requires a publicly traded company to dispose of **all** its assets in response to a judgment from a foreign court. (The judgment is more than all Quanta's assets.) This is especially true because, as explained in Quanta's Fifth Circuit Brief of Appellant, which Quanta has provided to this Court, the judgment here may well contain (most likely contains) damages based on ODD purchases by HP's foreign subsidiaries—when, due to concerns for international comity, U.S. antitrust law does not reach purchases by HP's foreign subsidiaries. *Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816 (7th Cir. 2015) (Posner, J.).

HP cites no decisions from the Fifth Circuit holding that, despite concerns about international comity, the Texas turnover statute can properly be used to require

Quanta's board to turn over foreign assets in foreign countries without domestication of the judgment in Taiwan. And a Taiwanese court may well take offense at a U.S. judgment that appears to apply U.S. antitrust law to purchases by HP's foreign subsidiaries.

**D. Given Quanta's present inability to turn over its assets on the timeline established by the Court's turnover orders, contempt or contempt sanctions would violate Quanta's due process rights.**

The Due Process Clause regulates the "deliberate decisions of government officials to deprive a person of life, liberty, or property." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). For such a deprivation to satisfy the requirements of due process, the deprivation must be preceded by "procedures [that] meet the essential standard of fairness." *Landon v. Plasencia*, 459 U.S. 21, 35 (1982).

The turnover orders lack such fair procedures because (1) they do not give Quanta adequate time to comply, and (2) they compel Quanta to act in a way that would violate Taiwanese law and would expose Quanta to criminal liability under Taiwanese law. To hold Quanta in contempt for failure to comply with the turnover orders, or to impose contempt sanctions on Quanta for failure to comply with the turnover orders, would violate Quanta's due process rights because the Court has not given Quanta a reasonable opportunity to comply with the turnover orders in a way that is consistent with the requirements of Taiwanese law.

**III. Judgment debtor Quanta (as opposed to HP) should not be required to seek domestication of this judgment in Taiwan.**

The undisputed opinion of Taiwanese attorney Jake Wang establishes that Quanta could, at least in part, remedy its present inability to comply with the turnover orders by initiating proceedings to domesticate this judgment in Taiwan. Dkt. 429-1 at 5. But neither the Texas turnover statute nor international comity would tolerate such a requirement.

The Texas turnover statute does not, on its face, contain any provision authorizing a court to order a foreign judgment debtor to domesticate a judgment in a foreign country. Tex. Civ. Prac & Rem Code §31.002. And Texas law is clear that efforts to enforce a domestic judgment in a foreign country may need to comport with the laws of that foreign country. *Reeves v. Federal Savings & Loan Insurance Corp.*, 732 S.W.2d 380, 381 (Tex. App.—Dallas 1987, no writ). By effectively requiring Quanta to domesticate this judgment in Taiwan, the Court impermissibly amended the Texas turnover statute. *In re Geomet Recycling LLC*, 578 S.W.3d 82, 87 (Tex. 2019) (“It is not our place to judicially amend the statute.”).

To the extent the turnover orders apply to Quanta’s assets in Taiwan and China, the turnover orders also contravene international comity. “The doctrine of comity contains a rule of ‘local restraint’ which guides courts reasonably to restrict the extraterritorial application of sovereign power.” *Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 371 (5th



Cir. 2003). “Comity has been defined as the ‘recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another.’” *Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1004 (5th Cir. 1990).

International comity and reciprocity dictate that a court should not compel a foreign judgment debtor (here, Quanta) to file suit in a foreign court (here, the courts of Taiwan) to request recognition of a judgment. After all, if Quanta requests domestication of this judgment in Taiwan, then the domestication proceeding will essentially be stipulated. See *Reading & Bates Const. Co. v. Baker Energy Resources Corp.*, 976 S.W.2d 702, 706 (Tex. App.—Houston [1 Dist.] 1998, pet. denied) (foreign judgment conclusive unless contested by judgment debtor). The Taiwanese courts, in turn, will be deprived of a genuine opportunity—in a contested proceeding (in which Quanta is free to challenge domestication of the judgment)—to determine whether this judgment is valid and enforceable under Taiwanese law. Of course, applying Taiwanese law to determine whether a foreign judgment is valid and enforceable in Taiwan is a sovereign prerogative of the courts of Taiwan.

For protection of U.S. companies operating abroad, it is important that U.S. courts respect the sanctity of foreign adversary proceedings to recognize and domesticate judgments. If U.S. courts short-circuit foreign countries’ judgment-domestication procedures by ordering foreign judgment debtors to domesticate

judgments in a foreign court—and thereby to forfeit their defenses to domestication—then foreign courts might reciprocate; such decision would not comport with the teaching made by this Court in *Kattler*, 776 F.3d at 340. In other words, foreign courts might order U.S. companies, under threat of contempt, to domesticate judgments against them in U.S. courts without an opportunity to litigate whether the foreign judgment would be enforceable under U.S. law.

Given that, as shown by Quanta’s Brief of Appellant filed in the Fifth Circuit, Quanta believes that the judgment is, in effect, improperly allowing HP to recover for antitrust damages that could only have been sustained by HP’s foreign subsidiaries, a Taiwanese court might well conclude that the judgment violates Taiwanese law by improperly applying U.S. antitrust law to overseas purchases by HP’s foreign subsidiaries. Indeed, the Seventh Circuit has held that U.S. law does not apply to such foreign subsidiary purchases. *Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816 (7th Cir. 2015) (Posner, J.).

### **PRAYER**

For the foregoing reasons, Quanta asks the Court to not hold Quanta in contempt, and not to sanction Quanta, for any failure to comply with the Court’s turnover orders of April 1, 2020 (Dkt. No. 424), April 22, 2020 (Dkt. No. 430), and April 28, 2020 (Dkt. No. 434).

DATE: May 7, 2020

Respectfully submitted,

/s/ Marie R. Yeates

Harry Reasoner  
Southern Dist. No. 538  
Marie R. Yeates  
Southern Dist. No. 568  
Michael A. Heidler  
Southern Dist. No. 1013896  
VINSON & ELKINS L.L.P.  
1001 Fannin Street, Suite 2500  
Houston, Texas 77002  
Telephone: (713) 758-3256  
Email: [myeates@velaw.com](mailto:myeates@velaw.com)

Bryan U. Gividen  
Southern Dist. No. 2839561  
VINSON & ELKINS L.L.P.  
2001 Ross Ave, Suite 3900  
Dallas, Texas 75201

***ATTORNEYS FOR DEFENDANT QUANTA STORAGE. INC.***

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of May, 2020, all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing instrument via the Court's CM/ECF filing system.

/s/ Marie R. Yeates

Marie R. Yeates

*Attorney for Quanta Storage, Inc.*