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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

WPH ARCHITECTURE, INC., a Nevada Corporation,	)	CASE NO.: 54389
	)	
Appellant(s),	)	
	)	
vs.	)	
	)	
EIGHTH JUDICIAL DISTRICT COURT and THE HONORABLE JESSIE WALSH,	)	
	)	
Respondent(s),	)	
	)	
and	)	
	)	
VEGAS VP, LP, a Nevada Limited Partnership,	)	
	)	
Real Party in Interest.	)	
	)	

**CERTIFICATE OF SERVICE**

JEAN A. WEIL, ESQ.  
Nevada Bar No. 006532  
WEIL & DRAGE, APC  
2500 Anthem Village Drive  
Henderson, NV 89052  
(702) 314-1905 • Fax (702) 314-1909  
Attorneys for Appellant,  
WPH ARCHITECTURE, INC.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20th day of May, 2014, I caused the foregoing APPELLANT, WPH ARCHITECTURE, INC.'S MOTION TO RECALL REMITTITUR AND REINSTATE APPEAL; DECLARATION OF JEAN A. WEIL IN SUPPORT OF WPH ARCHITECTURE, INC.'S MOTION TO RECALL REMITTITUR AND REINSTATE APPEAL to be electronically filed with the Clerk of the Supreme Court of Nevada using the E-FLEX system which will automatically send e- mail notification of such filings to the attorneys of record in this litigation.

Mark E. Ferrario, Esq.  
Tami D. Cowden, Esq.  
Greenberg Traurig, LLP  
3773 Howard Hughes Pkwy., Suite 400 North  
Las Vegas, NV 89169  
P: (702) 938-6874  
**Attorneys for Real Party in Interest,  
VEGAS VP, LP**

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FOX ROTHSCHILD  
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**Attorneys for Real Party in Interest,  
VEGAS VP, LP**

Bill C. Hammer  
8224 Blackburn Ave., Suite 100  
Los Angeles, CA 90048  
**Mandatory Settlement Conference Judge**

Stephen E. Haberfeld  
[JudgeHaberfeld@ca.rr.com](mailto:JudgeHaberfeld@ca.rr.com)  
**Mandatory Settlement Conference Judge**

I HEREBY CERTIFY that on the 20<sup>th</sup> day of May, 2014, I caused the foregoing APPELLANT, WPH ARCHITECTURE, INC.'S MOTION TO RECALL REMITTITUR AND REINSTATE APPEAL; DECLARATION OF JEAN A. WEIL IN SUPPORT OF WPH ARCHITECTURE, INC.'S MOTION TO RECALL REMITTITUR AND REINSTATE APPEAL to be mailed in a sealed envelope, postage prepaid, via certified U.S. mail to the following party below:

VEGAS VP, LP  
Attn: Randall Davis/Randall Davis Company  
1210 West Clay Street, Suite 10  
Houston, TX 77019  
**Real Party in Interest,  
VEGAS VP, LP**

1 I HEREBY CERTIFY that on the 20<sup>th</sup> day of May, 2014, I caused the foregoing APPELLANT,  
2 WPH ARCHITECTURE, INC.'S MOTION TO RECALL REMITTITUR AND  
3 REINSTATE APPEAL; DECLARATION OF JEAN A. WEIL IN SUPPORT OF WPH  
4 ARCHITECTURE, INC.'S MOTION TO RECALL REMITTITUR AND REINSTATE  
5 APPEAL to be mailed in a sealed envelope, postage prepaid, to the following party below:

6 The Honorable Jessie Walsh  
7 EIGHTH JUDICIAL DISTRICT COURT  
8 DISTRICT OF NEVADA  
9 Department X  
10 Regional Justice Center  
200 Lewis Avenue, Courtroom 14B  
Las Vegas, NV 89155

11  
12 /s/ *Michelle R. Wood*

13 \_\_\_\_\_  
Michelle R. Wood  
An employee of WEIL & DRAGE  
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1 Appeal (the "Motion") as *Exhibit 1* is a true and correct copy of WPH's December 3, 2010  
2 Proof of Claim.

3 4. On or about June 20, 2011, and after an extensive meet and confer effort, my  
4 office sent the bankruptcy trustee, Mr. Ronald J. Sommers (the "Trustee"), a detailed letter  
5 requesting that he stipulate, recommend and/or authorize the lifting of the bankruptcy stay as to  
6 WPH for the limited purpose of perfecting WPH's appeal. Attached to WPH's concurrently  
7 filed Motion as *Exhibit 2* is a true and correct copy of WPH's June 20, 2011 letter to the  
8 Trustee.

9 5. The Trustee verbally denied WPH's request set forth in the June 20, 2011 letter,  
10 contending that allowing the stay to be lifted, albeit for a limited purpose, would not benefit Real  
11 Party in Interest/Respondent, Vegas VP, LP's ("Vegas VP") estate. The Trustee further advised  
12 my office that if WPH filed a motion to lift the automatic stay, he would vehemently oppose it.

13 6. On or about September 16, 2011, WPH retained the firm of Bracewell & Giuliani  
14 as its bankruptcy counsel in Houston, Texas. After being retained, WPH's bankruptcy counsel  
15 recommended that WPH wait until *after* the Trustee objected to WPH's December 3, 2010 Proof  
16 of Claim to file a motion to lift the bankruptcy stay.

17 7. While privileged, the reasons proffered by WPH's bankruptcy counsel generally  
18 concerned WPH having a greater chance of success on such a motion *after* an Objection to  
19 WPH's Proof of Claim was filed. To the extent this Court requests further rationale on this  
20 strategy, I am willing to submit to an *in-camera* hearing.

21 ////  
22

1           8.       Unfortunately, Vegas VP's bankruptcy proceedings have been plagued with delay,  
2 and are *still* not completely resolved. It appears that the delay has primarily been due to an  
3 underlying action by a Mr. Barry Shulman against Vegas VP (Mr. Shulman was the owner of the  
4 penthouse unit at the high-rise building which was the subject of the underlying arbitration  
5 which led to WPH's instant appeal). However, Mr. Shulman was not a party to the underlying  
6 arbitration as between Vegas VP and WPH.

7           9.       It was not until March 7, 2013, that the Trustee, through his counsel, filed an  
8 Objection to WPH's Proof of Claim. Attached to WPH's concurrently filed Motion as *Exhibit 3*  
9 is a true and correct copy of the Trustee's Objection to WPH's Proof of Claim.

10          10.      On March 20, 2013, the Bankruptcy Court entered an Order setting a hearing on  
11 the Trustee's Objection to WPH's Proof of Claim for May 1, 2013. Attached to WPH's  
12 concurrently filed Motion as *Exhibit 4* is a true and correct copy of the March 20, 2013,  
13 Bankruptcy Court Order.

14          11.      The hearing was eventually continued to July 24, 2013. Attached to WPH's  
15 concurrently filed Motion as *Exhibit 5* is a true and correct copy of the Bankruptcy Court's  
16 Order continuing the hearing to July 24, 2013.

17          12.      In the interim, on June 19, 2013, and pursuant to further meet and confer efforts  
18 between counsel for WPH and the Trustee, WPH filed an Agreed Motion for Relief from the  
19 Automatic Stay to Pursue Appeal. Attached to WPH's concurrently filed Motion as *Exhibit 6* is  
20 a true and correct copy of the Agreed Motion for Relief from the Automatic Stay to Pursue  
21 Appeal.  
22

1           13.     On July 3, 2013, **the Bankruptcy Court granted WPH's Agreed Motion for**  
2 **Relief from the Automatic Stay to Pursue Appeal.** Attached to WPH's concurrently filed  
3 Motion as *Exhibit 7* is a true and correct copy of the Bankruptcy Court's Order granting WPH's  
4 Agreed Motion for Relief from the Automatic Stay to Pursue Appeal.

5           14.     On July 11, 2013, a further Order was entered by the Bankruptcy Court on the  
6 Trustee's Objection to WPH's Proof of Claim; therein, the Bankruptcy Court confirmed that  
7 WPH's Proof of Claim against Vegas VP is an allowable claim against the estate of Vegas VP.  
8 Attached to WPH's concurrently filed Motion as *Exhibit 8* is a true and correct copy of the  
9 Bankruptcy Court's July 11, 2013, further Order.


10           15.     None of Vegas VP's other creditors or claimants have appealed or otherwise  
11 objected to the Bankruptcy Court's Orders set forth above, and the time for such an appeal in the  
12 Bankruptcy Court has lapsed. In fact, on March 27, 2014, the Trustee filed his Final Report and  
13 Application for Compensation. Attached to WPH's concurrently filed Motion as *Exhibit 9* is a  
14 true and correct copy of the Trustee's March 27, 2014 Final Report.

15           16.     On or about April 17, 2014, the Bankruptcy Court entered an Order approving the  
16 Trustee's compensation and expenses, which represents the last document filed in the  
17 Bankruptcy Court to date. Attached to WPH's concurrently filed Motion as *Exhibit 10* is a true  
18 and correct copy of the Bankruptcy Court's Order approving the Trustee's compensation and  
19 expenses.

20           17.     **Vegas VP's Bankruptcy is still ongoing, and Vegas VP has not received a**  
21 **discharge from the Bankruptcy Court to date.**  
22

18. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 19th day of May at Laguna Hills, California.

  
Jean A. Weil



IN THE SUPREME COURT OF THE STATE OF NEVADA

WPH ARCHITECTURE, INC., a	)	No. 54389
Nevada Corporation,	)	Electronically Filed
	)	May 20 2014 01:44 p.m.
Appellant,	)	Tracie K. Lindeman
	)	Clerk of Supreme Court
vs.	)	<b>APPELLANT WPH</b>
	)	<b>ARCHITECTURE INC.'S</b>
EIGHTH JUDICIAL DISTRICT	)	<b>MOTION TO RECALL</b>
COURT and THE HONORABLE	)	<b>REMITTITUR AND</b>
JESSIE WALSH,	)	<b>REINSTATE APPEAL</b>
	)	
Respondent,	)	
	)	
and	)	
	)	
VEGAS VP, LP, a Nevada Limited	)	
Partnership,	)	
	)	
Real Party in Interest.	)	

**APPELLANT WPH ARCHITECTURE INC.'S**  
**MOTION TO RECALL REMITTITUR AND**  
**REINSTATE APPEAL**

JEAN A. WEIL, ESQ.  
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2500 Anthem Village Drive  
Henderson, NV 89052  
(702) 314-1905  
(702) 314-1909 – FAX  
Attorneys for Appellant,  
WPH ARCHITECTURE, INC.

1 **APPELLANT WPH ARCHITECTURE INC.'S**

2 **MOTION TO RECALL REMITTITUR AND REINSTATE APPEAL**

3 **I. INTRODUCTION**

4 COMES NOW Appellant WPH ARCHITECTURE, INC. ("WPH"), by and through its  
5 counsel of record, and submits this Motion to Recall Remittitur and Reinstate Appeal pursuant to  
6 Nevada Rules of Appellate Procedure Rule 27.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 **A. WPH's Appeal to the Nevada Supreme Court**

9 On August 21, 2009, WPH filed its Notice of Appeal in this matter. (Document 09-  
10 20375) On January 22, 2010, WPH and Real Party in Interest/Respondent, Vegas VP, LP  
11 ("Vegas VP") submitted to a Settlement Conference, which, unfortunately, did not result in  
12 settlement of the dispute. (Document 10-01978)

13 On May 4, 2010, WPH timely filed its Opening Brief. (Document 10-11465) On June 11,  
14 2010, Vegas VP filed its Answering Brief. (Document 10-15221) On July 20, 2010, WPH filed  
15 its Reply Brief in this matter, thus closing the briefing of the issues on appeal. (Document 10-  
16 18523)

17 On or about September 10, 2010, and less than two months after the appeal was fully-  
18 briefed, Vegas VP served this Court with a Suggestion of Bankruptcy. (Document 10-23866)  
19 This Court then issued an Order directing counsel of record for Vegas VP to provide this Court  
20 with a status report regarding Vegas VP's potential bankruptcy and file the bankruptcy petition  
21 with this Court. (Document 10-23865)  
22

1 Vegas VP failed to file a status report with this Court pursuant to its Order. Thus, on  
2 October 15, 2010, WPH filed a Status Report regarding the bankruptcy petition of Vegas VP.  
3 (Document 10-26979) In its Status Report, WPH provided this Court with the documentation  
4 (including the bankruptcy petition) which this Court had requested that Vegas VP provide. (See  
5 Document 10-26979) WPH requested that this Court retain jurisdiction of its appeal and not  
6 dismiss the appeal for the reasons set forth in its Status Report. (See Document 10-26979)

7 On November 12, 2010, this Court issued an Order Dismissing Appeal. (Document 10-  
8 29646) Therein, this Court dismissed WPH's appeal, **without prejudice**, to the parties' right to  
9 move for reinstatement of the appeal upon either lifting the bankruptcy stay or final resolution of  
10 the bankruptcy proceedings. (See Document 10-29646) On December 7, 2010, this Court  
11 issued a Remittitur to District Court Clerk of the Eighth Judicial District Court noting that  
12 WPH's appeal had been dismissed without prejudice. (Document 10-31761) On June 8, 2011,  
13 counsel for WPH filed a Notice of Change of Address in this Court, which represents the last  
14 document filed in this appeal to date. (Document 11-16910)

#### 15 **B. Vegas VP's Ongoing Houston Bankruptcy**

16 On December 3, 2010, WPH filed a Proof of Claim in the United States Bankruptcy Court  
17 for the Southern District of Texas in Case No. 10-37197 (the "Bankruptcy Court"). (*Exhibit 1*)  
18 Therein, WPH set forth the amount of its claim against Vegas VP in the amount of \$651,525.88  
19 (the same amount sought by WPH in its appeal to this Court). (See *Exhibit 1*)

20 On or about June 20, 2011, and after an extensive meet and confer effort, WPH, through  
21 its counsel of record, sent the bankruptcy trustee, Mr. Ronald J. Sommers (the "Trustee"), a  
22

1 detailed letter requesting that he stipulate, recommend and/or authorize the lifting of the  
2 bankruptcy stay as to WPH for the limited purpose of perfecting WPH's appeal. (*Exhibit 2*)  
3 The Trustee verbally denied WPH's request, contending that allowing the stay to be lifted, albeit  
4 for a limited purpose, would not benefit the Vegas VP estate. The Trustee advised counsel for  
5 WPH that if WPH filed a motion to lift the automatic stay he would vehemently oppose it.

6 On or about September 16, 2011, WPH retained the firm of Bracewell & Giuliani as its  
7 bankruptcy counsel in Houston, Texas. After being retained, WPH's bankruptcy counsel  
8 recommended that WPH wait until *after* the Trustee objected to WPH's December 3, 2010 Proof  
9 of Claim to file a motion to lift the bankruptcy stay.<sup>1</sup>

10 Unfortunately, Vegas VP's bankruptcy proceedings have been plagued with delay, and  
11 are *still* not completely resolved. It appears that the delay has primarily been due to an  
12 underlying action by a Mr. Barry Shulman against Vegas VP (Mr. Shulman was the owner of the  
13 penthouse unit at the high-rise building which was the subject of the underlying arbitration  
14 which led to WPH's instant appeal). However, Mr. Shulman was not a party to the underlying  
15 arbitration as between Vegas VP and WPH.

16 It was not until March 7, 2013, that the Trustee, through his counsel, filed an Objection to  
17 WPH's Proof of Claim. (*Exhibit 3*) On March 20, 2013, the Bankruptcy Court entered an Order  
18 ///

---

20 <sup>1</sup> While privileged, the reasons proffered by WPH's bankruptcy counsel generally concerned  
21 WPH having a greater chance of success on such a motion *after* an Objection to WPH's Proof of  
22 Claim was filed. To the extent this Court requests further rationale on this strategy, counsel for  
WPH is willing to submit to an *in-camera* hearing.

1 setting a hearing on the Trustee's Objection to WPH's Proof of Claim for May 1, 2013. (*Exhibit*  
2 *4*) The hearing was eventually continued to July 24, 2013. (*Exhibit 5*)

3 In the interim, on June 19, 2013, and pursuant to further meet and confer efforts between  
4 counsel for WPH and the Trustee, WPH filed an Agreed Motion for Relief from the Automatic  
5 Stay to Pursue Appeal. (*Exhibit 6*) On July 3, 2013, the Bankruptcy Court *granted* WPH's  
6 Agreed Motion for Relief from the Automatic Stay to Pursue Appeal. (*Exhibit 7*) On July  
7 11, 2013, a further Order was entered by the Bankruptcy Court on the Trustee's Objection to  
8 WPH's Proof of Claim; therein, the Bankruptcy Court confirmed that WPH's Proof of Claim  
9 against Vegas VP is an allowable claim against the estate of Vegas VP. (*Exhibit 8*)

10 None of Vegas VP's other creditors or claimants have appealed or otherwise objected to  
11 the Bankruptcy Court's Orders set forth above, and the time for such an appeal in the  
12 Bankruptcy Court has lapsed. In fact, on March 27, 2014, the Trustee filed his Final Report and  
13 Application for Compensation. (*Exhibit 9*) On or about April 17, 2014, the Bankruptcy Court  
14 entered an Order approving the Trustee's compensation and expenses, which represents the last  
15 document filed in the Bankruptcy Court to date. (*Exhibit 10*)

16 Vegas VP's Bankruptcy is still ongoing, and Vegas VP has not received a discharge  
17 from the Bankruptcy Court to date.

18 **III. RELIEF SOUGHT**

19 By and through the instant Motion, WPH requests that this Court recall its Remittitur  
20 (Document 10-31761) and reinstate WPH's appeal in this matter. As set forth above, the  
21 dismissal of WPH's appeal was **without prejudice** to WPH's right to move for reinstatement  
22

1 after lifting the bankruptcy stay or final resolution of the bankruptcy proceedings. (See  
2 Document 10-29646) As set forth above, WPH has received an Order from the Bankruptcy  
3 Court lifting the bankruptcy stay, which cannot now be appealed. WPH notes that there has not  
4 yet been a final resolution of the bankruptcy proceedings.

5 WPH acknowledges that quite some time has elapsed since this Court issued its  
6 December 7, 2010 Remittitur in this matter. However, WPH maintains that such delay was  
7 primarily the result of (i) the bankruptcy Trustee's failure to informally stipulate as to the lifting  
8 of the automatic stay as to WPH for the limited purpose of perfecting WPH's appeal; (ii) the  
9 inherent delay in bankruptcy proceedings in the Bankruptcy Court, including the underlying  
10 action by Mr. Shulman against Vegas VP; and (iii) WPH's local bankruptcy counsel's strategy as  
11 to the timing of bringing WPH's motion to lift the bankruptcy stay (which ultimately led to a  
12 successful motion at minimal cost to all parties involved).

13 **In any event, WPH's appeal has already been fully briefed by both WPH and Vegas**  
14 **VP. WPH is not requesting additional briefing in this Court** and will submit on its Opening  
15 Brief and Reply Brief previously filed with this Court.

16 **In addition, the matters within WPH's appeal itself – including the applicability of**  
17 **Nevada's offer of judgment statutes in arbitration proceedings – are one of first impression**  
18 **in the Nevada Supreme Court, and there is therefore an important public policy interest in**  
19 **having these issues adjudicated by this Court.** Without redress by this Court, this issue will  
20 continue to repeat itself in other matters before arbitrators and District Courts charged with  
21 enforcement of arbitration awards.  
22


1 **IV. CONCLUSION**

2 For the reasons set forth above, WPH requests that this Court grant the instant Motion to  
3 Recall Remittitur and Reinstate Appeal. This Court previously dismissed WPH's appeal  
4 **without prejudice** after Vegas VP filed for bankruptcy after the appeal was fully-briefed. WPH  
5 was compelled to retain local bankruptcy counsel in Houston, Texas, and has now been given  
6 leave of the Bankruptcy Court to perfect its appeal in this Court. WPH requests any further  
7 relief this Court deems just and proper.

8 DATED this 19th day of May, 2014.

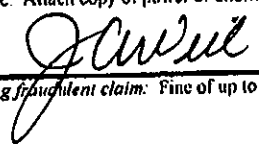
WEIL & DRAGE, APC

9  
10 By: \_\_\_\_\_

  
JEAN A. WEIL, ESQ. (Nevada Bar No. 006532)  
WEIL & DRAGE, APC,  
2500 Anthem Village Drive  
Henderson, NV 89052  
(702) 314-1905 • Fax (702) 314-1909  
Attorneys for Appellant,  
WPH ARCHITECTURE, INC.

# EXHIBIT 1



UNITED STATES BANKRUPTCY COURT      Southern District of Texas		PROOF OF CLAIM
Name of Debtor: <b>Vegas VP, LP</b>		Case Number: <b>10-37297</b>
<i>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>WPH Architecture, Inc.</b>		Check this box to indicate that this claim amends a previously filed claim.  <input type="checkbox"/>
Name and address where notices should be sent: <b>c/o Jean A. Well, Esq. Well &amp; Drago, APC 6085 W. Twain Avenue, Suite 203, Las Vegas, NV 89103</b>		Court Claim Number: _____ (if known)
Telephone number: <b>(702) 314-1905</b>		Filed on: _____
Name and address where payment should be sent (if different from above): <b>Same as above</b>		Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/>
Telephone number:		Check this box if you are the debtor or trustee in this case.  <input type="checkbox"/>
1. Amount of Claim as of Date Case Filed:      \$ <u>651,525.68</u>		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim.  Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).  Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).  Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7).  Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).  Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(...)  Amount entitled to priority:  \$ _____  <small>*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		
2. Basis for Claim: <u>Attorney's Fees and Costs</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: <u>N/A</u>  3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff:      Real Estate      Motor Vehicle      Other Describe:  Value of Property: \$ _____ Annual Interest Rate _____ %  Amount of arrearage and other charges as of time case filed included in secured claim,  If any: \$ _____ Basis for perfection: _____  Amount of Secured Claim: \$ _____ Amount Unsecured: \$ <u>651,525.68</u>		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain:		
Date: <u>12/3/10</u>  Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  		<b>FOR COURT USE ONLY</b>

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.*

**Items to be completed in Proof of Claim form****Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

**Creditor's Name and Address:**

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**Ja. Debtor May Have Scheduled Account As:**

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**4. Secured Claim:**

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).**

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**

Attach to this proof of claim redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

**Date and Signature:**

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

**DEFINITIONS****Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (5).

**Claim**

A claim is the creditor's right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. §506(a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. §507(a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

**INFORMATION****Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system ([www.pacer.uscourts.gov](http://www.pacer.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. §101 et seq.), and any applicable orders of the bankruptcy court.



**WPH'S REVISED MEMORANDUM OF COSTS  
AND DISBURSEMENTS AGAINST VEGAS VP**

**COSTS**

Reporter's Fees for Depositions .....	\$11,571.58
Fees for Witnesses .....	\$66.00
Expert Fees for Hank Falstad Deposition .....	\$1,771.00
Fees for Process Servers .....	\$345.00
Photocopies .....	\$13,595.35
Postage .....	\$2,935.57
Travel .....	\$8,091.26
Long Distance Phone Calls .....	\$283.64
Arbitration Costs .....	\$72,144.66
Miscellaneous Reasonable and Necessary Expenses .....	\$138.75
Expert Fees: Arris Builders .....	\$92,751.52
Expert Fees: Matsui Consulting Group .....	\$168,623.09
Thomas W. Gibbons, Architect .....	\$12,939.10
	\$385,256.52
<b>SUBTOTAL OF COSTS .....</b>	

**DISBURSEMENTS**

Attorneys' Fees .....	\$229,249.00
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**ALLOWABLE INTEREST**

Interest on WPH's Costs .....	\$12,843.87
Interest on WPH's Disbursements .....	\$24,176.29

<b><u>GRAND TOTAL</u> .....</b>	<b>\$651,525.68</b>
---------------------------------	---------------------

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

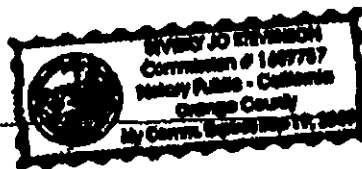
JEAN A WEIL, ESQ., being first duly sworn, deposes and says that Affiant is an attorney for WPH ARCHITECTURE, INC. and has personal knowledge of the above-listed costs, disbursements and allowable interest expenses; that the items in the memorandum are true and that the said disbursements have been actually and necessarily incurred in this action. The grounds for an award of the above-listed disbursements are pursuant to court rule, NRS 18.010 *et seq.*, NRCP 68, NRS 17.115 and the authorities set forth WPH's Second Revised Motion for Costs, Attorneys Fees' and Interest Thereon.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Affiant  
JEAN A. WEIL, ESQ.

**SUBSCRIBED AND SWORN** to before  
me this 21 day of January, 2009.

~~NOTARY PUBLIC~~, In and For Said  
County and State of California

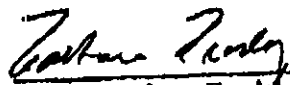


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 21st day of January, 2009, service of the foregoing WPH ARCHITECTURE, INC.'S SECOND REVISED VERIFIED MEMORANDUM OF COSTS, DISBURSEMENTS AND ALLOWABLE INTEREST was made this date by e-mailing a true and correct copy of the same to:

Richard D. Daly, Esq.  
CADDELL & CHAPMAN  
1331 Lamar Street, Suite 1070  
Houston, TX 77010  
Phone: (713) 751-0400  
Fax: (713) 751-0906  
E-mail: [rdc@caddellchapman.com](mailto:rdc@caddellchapman.com)  
E-mail: [fdl@caddellchapman.com](mailto:fdl@caddellchapman.com)  
Attorney for Claimant, Counter-Respondent, VEGAS VP, LP

AMERICAN ARBITRATION ASSOCIATION  
Western Case Management Center  
Helen L. Trovino, Case Manager  
6795 North Palm Avenue, 2<sup>nd</sup> Floor  
Fresno, CA 93704  
Phone: (877) 528-0880  
Direct: (559) 650-8026  
Fax: (559) 490-1919  
E-Mail: [hrevlinoh@adr.org](mailto:hrevlinoh@adr.org)

  
Barbara Brody, an Employee of  
WEIL & DRAGE, APC

# **EXHIBIT 2**

JEAN A. WEIL\*†  
CHRISTINE E. DRAGE\*  
HARRY V. PEETRIS II\*  
JACQUELINE C. PONS-BUNNEY†††  
ROBERT S. RUCCI\*\*  
JOHN T. WENDLAND††  
PETER L. STACY\*\*

**WEIL & DRAGE**  
ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION

JENIFER J. BRANNEN\*\*  
MARTHA L. BRINGARD†††  
DONNA DiMAGGIO\*\*\*  
SANDRA B. HURN\*\*  
JEREMY R. KILBER  
KATHRYN L. KIM\*\*  
THOMAS A. LARMORE\*  
SHEILA K. McDONALD\*\*  
JIHAN MURAD♦  
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JAMES E. CAVANAUGH, Of Counsel\*

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\* Also Admitted in California  
\*\* Only Admitted in California  
\*\*\* Also Admitted in Massachusetts  
† Also Admitted in Colorado  
†† Also Admitted in Arizona  
††† Admitted in California and Arizona  
♦ Admitted in California and Illinois

June 20, 2011

**\*\*VIA E-MAIL & U.S. MAIL**

Mr. Ronald J. Sommers  
2800 Post Oak Blvd., 61st Floor  
Houston, TX 77056  
[rsommers@nathansommers.com](mailto:rsommers@nathansommers.com)

Re: **WPH Architecture, Inc. v. Vegas VP, LP**  
Our File No. : 2022.015  
Bankruptcy Case No. : 10-37297

Dear Mr. Sommers:

Please recall that our office represents WPH Architecture, Inc. ("WPH") in the above-referenced matter. After communications between our office and both you and Mr. Rick Kincheloe, ***please consider this correspondence as a formal request to recommend and/or authorize the lifting of the bankruptcy stay as to WPH for the limited purpose as set forth herein.***

**WPH'S CLAIM AGAINST DEBTOR, VEGAS VP,**

As set forth in WPH's Proof of Claim which was filed in this bankruptcy matter, **WPH currently asserts a \$651,525.68 claim against the debtor, Vegas VP, LP ("Vegas VP").** (*Exhibit I*) Attached to the Proof of Claim is WPH's detailed Second Revised Memorandum of Costs, Disbursements and Allowable Interest, which sets forth in detail the line items that comprise WPH's claim. (See *Exhibit I*)



Mr. Ronald J. Sommers

Re: *WPH Architecture, Inc. v. Vegas VP, LP*

June 20, 2011

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By way of brief background, WPH's claim against Vegas VP arises from the result of an arbitration hearing and subsequent award in Las Vegas, Nevada conducted by a panel of three American Arbitration Association ("AAA") arbitrators. On or about March 7, 2007, Vegas VP served a demand for mediation on WPH related to Vegas VP's claims of WPH's errors and omissions in its design of a 71-unit mid-rise condominium complex known as Metropolis Lofts and Flats, located on Desert Inn Road near the Convention Center in Las Vegas, Nevada (the "Project"). *Vegas VP sought \$1,486,666* (subsequently revised to \$1,455,276) for 76 Change Proposal Requests, which it asserted were attributable to and the responsibility of WPH. (See Claimant's Detailed Statement of Claim, *Exhibit 2*) Vegas VP was formed for the purpose of the design and construction of the Project (however, as further set forth below, other Randall Davis entities, including Randall Davis Company, were involved in the Project on behalf of Randall Davis). Following an unsuccessful mediation, Vegas VP filed an arbitration demand with AAA.

On March 5, 2008 WPH submitted a statutory Offer of Judgment to Vegas VP in the amount of \$100,000.00 ("First Statutory Offer"). On April 17, 2008, WPH submitted *another* statutory Offer of Judgment to Vegas VP in the amount of \$200,001.00 ("Second Statutory Offer.") Vegas VP did not accept *either* WPH's First Statutory Offer or Second Statutory Offer, and they were both deemed rejected by operation of law.

On or about January 8, 2009, and after a two-week arbitration hearing from November 3, 2008, through November 14, 2008, *the AAA panel entered a complete defense Award in favor of WPH and against Vegas VP*. Therefore, since WPH "beat" both of its Statutory Offers, pursuant to applicable law, WPH is entitled to an award of the costs, expert expenses, attorneys' fees and interest thereon from Vegas VP which WPH expended in litigating the AAA arbitration. WPH began incurring attorneys' fees and costs when it received Vegas VP's mediation demand on March 7, 2007, and has continued to incur such fees and costs to the present date. These amounts form the basis of WPH's \$651,525.68 claim against Vegas VP.

### **WPH'S POST-AWARD MOTION AGAINST VEGAS VP**

After the AAA panel made its Award, on or about January 13, 2009, WPH timely filed a Post-Award Motion for Costs, Attorneys' Fees, and Interest Thereon ("WPH's Post-Award Motion") pursuant to Nevada statutes, including NRS 18.020 (statute providing that in an action where the plaintiff seeks to recover more than \$2,500, the prevailing party is entitled to recover all costs as a matter of right) and NRS 17.115 and NRCP 68 (Nevada's statutes governing statutory offers of judgment).

When the Panel issued its Award on January 8, 2009, it did not know, nor could have known, that WPH had previously served *two* statutory Offers of Judgment to Vegas VP, both of which were rejected.

Mr. Ronald J. Sommers

Re: *WPH Architecture, Inc. v. Vegas VP, LP*

June 20, 2011

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On February 13, 2009, the Panel issued an Order Denying WPH's Post-Award Motion (the "Order"). (*Exhibit 3*). Notably, in denying WPH's Post-Award Motion, the Panel expressed its reluctance to grant WPH's Motion, because "in authorizing the use of offers of judgment in arbitration proceedings, the Nevada Supreme Court has not made a pronouncement in this area of law. It has likely not been confronted with such an issue. So, even though Nevada may be the proper state, WPH is without a remedy." (*See* Order, p. 2, ln. 26 through p. 3, ln. 2).

**WPH'S DISTRICT COURT MOTION AND SUBSEQUENT APPEAL TO THE NEVADA SUPREME COURT**

On April 7, 2009, WPH filed a timely motion in the Eighth Judicial District Court of Nevada to, among other things, confirm in part, modify or correct the Award to order Vegas VP to pay WPH its attorney's fees, costs and interest as a result of Vegas VP rejecting WPH's Statutory Offers (District Court Case No. A587179). On May 8, 2009, Vegas VP filed an opposition. On May 11, 2009, WPH filed a reply. The Eighth Judicial District Court denied WPH's motion without a hearing and without explanation.

On or about August 19, 2009, WPH timely filed a Notice of Appeal, directly appealing the District Court's ruling. (Supreme Court Case No. 54389) On or about May 4, 2010, WPH filed its Opening Brief with the Nevada Supreme Court. On or about July 11, 2010, Vegas VP filed its Answering Brief. On or about July 20, 2010, WPH filed its Reply Brief.

*Approximately one month after the appeal had been fully briefed by both WPH and Vegas VP, on or about August 27, 2010, Vegas VP submitted its Voluntary Petition for Bankruptcy.* On or about November 12, 2010, and despite the urging of WPH, the Nevada Supreme Court provisionally dismissed WPH's appeal, *without* prejudice, and granted WPH leave to move for reinstatement of the appeal once the automatic stay has been lifted. (*Exhibit 4.*)

**WPH'S REQUEST TO LIFT THE AUTOMATIC STAY FOR A LIMITED PURPOSE**

As set forth above, by way of this correspondence, WPH seeks the bankruptcy stay be lifted as soon as possible as to WPH concerning Vegas VP's pending bankruptcy. As previously discussed, WPH requests that the stay be lifted for the *limited purpose* of allowing WPH to receive a ruling by the Nevada Supreme Court on its appeal, which has *already been fully briefed*. WPH wishes to avoid motioning the court to lift the stay for this limited purpose, and is therefore submitting its request herein.

Mr. Ronald J. Sommers

Re: *WPH Architecture, Inc. v. Vegas VP, LP*

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WPH is aware that it will be necessary to prevail on its appeal in order to continue to assert its claim against Vegas VP. In that sense, it behooves Vegas VP's estate to lift the stay, as the result of the appeal will obviate the need for WPH's continued claim against the Vegas VP estate.

WPH is further aware that it may be difficult to eventually collect the full \$651,525.68 it is seeking from Vegas VP in light of the debtor's limited remaining assets. As previously discussed in your correspondence with our office, if successful on appeal, WPH is prepared to file a separate action against Randall Davis (principal of Vegas VP) for essentially fraudulent transfers and abuse of the corporate process in order to recover the amounts set forth in its claim. WPH believes that it such a suit will be successful for the reasons set forth below.

Vegas VP was formed in mid to late 2003 (*Exhibit 5*, Deposition of Randall Davis, p. 8, ln. 15-16.) Mr. Davis testified at his deposition that Vegas VP was set up for the sole purpose of developing the Project. (See *Exhibit 5*, Deposition of Randall Davis, p. 8, ln. 7 – 14.) The partners to Vegas VP are as follows: Randall Davis (45 % ownership), Gary Bogard (25% ownership), Richard Fant (25% ownership), and Gary Leach (five percent ownership). (See *Exhibit 5*, Deposition of Randall Davis. at p. 8 ln. 20 – p. 9 ln. 19.)

At the September 22, 2010 creditors' meeting related to the Vegas VP bankruptcy, Mr. Davis testified that Vegas VP's general partner, Portland Corporation, is *another* Randall Davis affiliated entity. Mr. Davis is the president of Portland Corporation. Portland Corporation is currently also in Chapter 7 Bankruptcy. At the October 20, 2010 creditors' meeting related to the Portland Corporation bankruptcy, Mr. Davis testified that Portland is a 1% general partner in *several* of Randall Davis' business entities

Mr. Davis conducts business under yet *another* related Randall Davis entity, Randall Davis Company, and which was involved in the Project – according to Mr. Davis, "It gets mixed in." (See *Exhibit 5*, Deposition of Randall Davis, p. 10 ln. 15 – 24). Several more Randall Davis entities were disclosed during the arbitration and creditors' meetings. In fact, Randall Davis was a 40% shareholder in GT Leach Construction Company, yet *another* Randall Davis-affiliated entity which was specifically retained to be the general contractor on the Project.

We believe that WPH can prove that Mr. Davis has a practice of creating numerous business entities in order to abuse the corporate form and do so unjustly and in derogation of the interests of third parties by, among other things: commingling of funds and other assets; failure to segregate funds; the unauthorized diversion of corporate funds or assets to other than corporate uses; the treatment by an individual of the assets of the entity as his own; the failure to maintain minutes or adequate corporate records; the failure to adequately capitalize a business entity; the total absence of entity assets and undercapitalization; the use of an entity as a mere shell; the concealment of personal business activities; the diversion of assets from an entity by or to a stockholder or other person or entity, to the detriment of creditors; and contracting with

Mr. Ronald J. Sommers

Re: *WPH Architecture, Inc. v. Vegas VP, LP*

June 20, 2011

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another with intent to avoid performance by use of a corporate entity as a shield against personal liability.

### **RANDALL DAVIS' DIVERSION OF VEGAS VP'S ASSETS**

The arbitration hearing between WPH and Vegas VP was not the first dispute involving Vegas VP concerning the Project. In January 2004, Vegas VP selected Residential Constructors as the general contractor to construct the Project, with a low bid of \$33,682,860. Construction commenced January 24, 2004. Construction of the Project was completed in November 2005. After construction completed, Residential Constructors submitted a demand for arbitration to Vegas VP whereby Residential Constructors attributed approximately **\$8,000,000** in claims against Vegas VP. WPH actually assisted Vegas VP in the defense of Residential Constructors' claims. On November 20, 2006, Residential Constructors obtained a net arbitration award of **\$517,196** on its \$8 million in claims, of which \$213,226 was withheld retention (*Exhibit 6*).

Between Project completion and resolution of the Vegas VP/Residential Constructors dispute, Randall Davis authored a ***December 20, 2005*** letter to the Vegas VP partners, on Randall Davis Company letterhead, whereby he set forth Vegas VP's estimated net profit at the Project as **\$10,500,000**. (*Exhibit 7*) The letter further references Residential Constructors' claim in arbitration against Vegas VP, as well as a potential counterclaim by Vegas VP. ***In addition, Mr. Davis notes that even as early as 2005, Vegas VP had planned to make a claim against the architect (WPH) for \$1,300,000 related to the Project.***

***A January 12, 2006, statement of Vegas VP's financial condition produced in the arbitration notes that at the time, Vegas VP had \$14,194,000 remaining in cash: \$10,194,000 profit and \$4,000,000 in the partners' equity. (Exhibit 8)***

***However, a September 30, 2008 profit distribution chart produced in the arbitration notes that in July 2006, while still defending a claim against Residential Constructors and while fully contemplating a future claim against WPH, Randall Davis distributed \$8,000,000 in profit to the Vegas VP partners. (Exhibit 9) This included \$3,720,000 in profits that Mr. Davis paid to himself on July 13, 2006. (See check requests, Exhibit 10) This only left Vegas VP with a cash balance of \$177,185 at this time. (See Exhibit 9)***

Thus, between January 12, 2006, when Vegas VP had ***\$14,194,000 in cash on hand*** and September 30, 2008 (when the Vegas VP/WPH arbitration was still on-going), ***Mr. Davis divested Vegas VP of approximately 99% of its assets and left Vegas VP with a mere \$177,185.***

We believe that Mr. Davis intentionally drained the Vegas VP cash account to effectively make Vegas VP judgment proof in the event that Residential Constructors and/or WPH were successful in a counterclaim against Vegas VP or otherwise recovered against Vegas VP. Mr. Davis' actions effectively left Vegas VP as a "shell" with no real assets. This was a calculated

**WEIL & DRAGE**  
ATTORNEYS AT LAW

Mr. Ronald J. Sommers

Re: *WPH Architecture, Inc. v. Vegas VP, LP*

June 20, 2011

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effort by Mr. Davis to avoid payment to WPH of any sums awarded by the AAA panel in arbitration.

**CONCLUSION**

For the reasons set forth above, WPH respectfully requests that you recommend and/or authorize the lifting of the bankruptcy stay as to WPH for the limited purpose of perfecting WPH's appeal. As the appeal is *already* fully briefed, minimal additional fees and costs would be necessary from Vegas VP's estate. The matters within the appeal itself are one of first impression in the Nevada Supreme Court, and there is therefore an interest in having these issues adjudicated. After the Nevada Supreme Court's ruling on the appeal, WPH will make a decision on whether to proceed on its claim against Vegas VP, and as further set forth above, will entertain the prospect of a suit against Randall Davis personally. Notably, Mr. Davis is not a debtor to either of the subject bankruptcy petitions.

Should you require any further documentation in order to make an informed decision, please contact our office and we will provide same.

Thank you for your attention to this matter.

Sincerely,

WEIL & DRAGE, APC

*/s/ Jean A. Weil*

JEAN A. WEIL

JAW/bpr

cc: Brian P. Roteliuk, Esq.

# EXHIBIT 3

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

<b>IN RE:</b>	§	
	§	
<b>VEGAS VP, LP</b>	§	<b>CASE NO. 10-37297-H4-7</b>
	§	
<b>DEBTOR</b>	§	<b>CHAPTER 7</b>

**THE TRUSTEE'S OBJECTION TO CLAIM NO. 2  
FILED BY WPH ARCHITECTURE, INC.**

**THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THIS BANKRUPTCY CASE. YOU SHOULD IMMEDIATELY CONTACT THE OBJECTING PARTY TO RESOLVE THE DISPUTE. IF YOU DO NOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE TO THIS OBJECTION AND SEND A COPY OF YOUR RESPONSE TO THE OBJECTING PARTY WITHIN 21 DAYS AFTER THE OBJECTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE OBJECTION IS NOT VALID. IF YOU DO NOT FILE A RESPONSE WITHIN 21 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED.**

**TO HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

Ronald J. Sommers, chapter 7 trustee of the above-referenced debtor (the "Trustee"), files this Objection to Claim No. 2 filed by WPH Architecture, Inc. (the "Objection").

**Jurisdiction**

1. This Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334(a) and 157(b). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O). Venue is proper in this District pursuant to 28 U.S.C. § 1409(a).

**Relevant Factual Background**

2. Vegas VP, LP (the "Debtor") filed a voluntary petition under chapter 7 of the Bankruptcy Code on August 27, 2010. Ronald J. Sommers is the duly appointed chapter 7 trustee.

3. On or about December 14, 2010, WPH Architecture, Inc. (the "Claimant") filed Claim No. 2, a non-priority, unsecured claim for attorneys' fees and costs in the amount of \$651,525.98 ("Claim No. 2"). The Claimant attached documents filed in an arbitration proceeding to Claim No. 2. The Trustee is informed and believes that the arbitration panel denied the Claimant's request for fees.

**Relief Requested**

4. This Objection is made pursuant to 11 U.S.C. § 502, FED. R. BANKR. P. 3007, and Bankruptcy Local Rule 3007 of the United States Bankruptcy Court for the Southern District of Texas. Section 502(a) of the Bankruptcy Code, provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, . . . objects."

5. The Trustee objects to Claim No. 2 under 11 U.S.C. § 502(b)(1) because the Claimant is not entitled to a claim against the Debtor's Estate for attorneys' fees and costs. Accordingly, Claim No. 2 should be disallowed.

6. The Trustee's Affidavit in support of this Objection is attached hereto and incorporated herein. If no defense to this Objection is raised, the Trustee requests that the Court adjudicate the Claim at the initial hearing on the Trustee's affidavit, per Bankruptcy Local Rule 3007.



Accordingly, the Trustee requests that the Court enter an order disallowing Claim No. 2 in its entirety and grant the Trustee such other and further relief to which he may show himself justly entitled at law or in equity.

Respectfully submitted,

By: /s/ Richard A. Kincheloe

Richard A. Kincheloe  
State Bar No. 24068107  
Nathan Sommers Jacobs,  
A Professional Corporation  
2800 Post Oak Blvd., 61st Floor  
Houston, Texas 77056  
Telephone: 713-960-0303  
Facsimile: 713-892-4800

ATTORNEY FOR RONALD J. SOMMERS,  
TRUSTEE

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing Objection of Trustee to Claim No. 2 filed by WPH Architecture, Inc. has been served on the parties listed below by U.S. mail, first class, postage prepaid on March 7, 2013.

**Claimant**

WPH Architecture, Inc.  
c/o Jean A. Weil, Esq.  
Well & Drage, APC  
6085 W. Twain Avenue, Suite 203  
Las Vegas, NV 89103

**Debtor**

Vegas VP, LP  
1210 West Clay Street, Suite 110  
Houston, TX 77019-4167

**Debtor's Attorney**

Edward L Rothberg  
Hoover Slovacek, LLP  
5847 San Felipe, Suite 2200  
Houston, TX 77057

**US Trustee**

Office of the U.S. Trustee  
515 Rusk Ave., Suite 3516  
Houston, TX 77002

**Parties Requesting Notice:**

Hector Duran  
Office of U S Trustee  
515 Rusk St., Ste 3516  
Houston, TX 77002

By: /s/ Richard A. Kincheloe  
Richard A. Kincheloe  
2800 Post Oak Blvd., 61<sup>st</sup> Floor  
Houston, Texas 77056

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

<b>IN RE:</b>	§	
	§	
<b>VEGAS VP, LP</b>	§	<b>CASE NO. 10-37297-H4-7</b>
	§	
<b>DEBTOR</b>	§	<b>CHAPTER 7</b>

**TRUSTEE'S AFFIDAVIT**

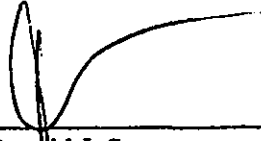
<b>THE STATE OF TEXAS</b>	§
	§
<b>COUNTY OF HARRIS</b>	§

BEFORE ME, the undersigned authority, on this day personally appeared Ronald J. Sommers, who, being known to me and duly sworn, upon oath deposed and stated as follows:


1. My name is Ronald J. Sommers. My business address is 2800 Post Oak Boulevard, 61<sup>st</sup> Floor, Houston, Texas 77056. I am over the age of eighteen (18) years, am fully competent to testify, have never been convicted of a felony or crime of moral turpitude and am in no way disqualified from making this affidavit. I have personal knowledge of every fact contained in this affidavit and they are all true and correct.
2. I am the Chapter 7 Trustee for the above-referenced Debtor.
3. On or about December 14, 2010, WPH Architecture, Inc. (the "Claimant") filed non-priority unsecured claim in the amount of \$651,525.98 ("Claim No. 2"). The Claimant attached documents filed in an arbitration proceeding to Claim No. 2. The Trustee is informed and believes that the arbitration panel denied the Claimant's request for fees.
4. I object to Claim No. 2 under 11 U.S.C. § 502(b)(1) because Claimant is not entitled to a claim against the Debtor's Estate for attorneys' fees and costs.

5. I request the Court enter an order disallowing Claim No. 2 in its entirety.

Further Affiant sayeth not.

  
\_\_\_\_\_  
Ronald J. Sommers

SWORN TO AND SUBSCRIBED BEFORE ME this 6<sup>th</sup> day of MARCH, 2013, to  
certify which witness my hand and seal of office.

  
\_\_\_\_\_  
Notary Public in and for the State of Texas



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

<b>IN RE:</b>	§	
	§	
<b>VEGAS VP, LP</b>	§	<b>CASE NO. 10-37297-H4-7</b>
	§	
<b>DEBTOR</b>	§	<b>CHAPTER 7</b>

**ORDER SUSTAINING  
OBJECTION OF TRUSTEE TO CLAIM NO. 2  
FILED BY WPH ARCHITECTURE, INC.**

CAME ON for consideration on this date the Objection to Claim No. 2 filed by WPH Architecture, Inc. (the "Objection"). The Court, after reviewing the Objection, considering the arguments of counsel and considering the evidence, finds that the Objection has been properly served pursuant to the Federal and Local Rules of Bankruptcy Procedure, that the Court has jurisdiction of this matter, and that the Objection is well taken and should be sustained. It is therefore,

ORDERED, ADJUDGED, AND DECREED that the Objection is hereby sustained. Further it is

ORDERED, ADJUDGED, AND DECREED that Claim No. 2 is disallowed in its entirety. Further it is

ORDERED, ADJUDGED, AND DECREED that WPH Architecture, Inc. is not entitled to any distribution from the Debtor's estate by virtue of Claim No. 2.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

# EXHIBIT 4



ENTERED  
03/20/2013

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

IN RE: VEGAS VP, LP

CASE NUMBER: 10-37297

Debtor

Chapter 7

CLAIMANT: CLAIM NO. 2: WPH ARCHITECTURE, INC.

FILED: MARCH 7, 2013

**SCHEDULING ORDER: CLAIM OBJECTION**  
#34

**This Order shall be served by the objector together with the objection, in compliance with BLR 3007-1.**

A claimant must file and serve a written answer to the claim objection within twenty-one (21) days after service.

The hearing on this claim objection will be held May 1, 2013 at 11:00 a.m., on the 6th floor, courtroom 600, Bob Casey Federal Courthouse, 515 Rusk Street, Houston, Texas.

**Unless otherwise ordered by the Court, if no answer is filed to the claim objection, the objector may seek a default order sustaining the objection at the noticed hearing, without the necessity of filing a separate motion seeking a default.**

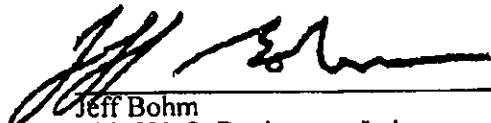
Counsel who attend the hearing shall have authority to bind their client.

**IF THE PARTY MAKING A CLAIM BELIEVES THAT ITS CLAIM SHOULD BE ALLOWED, THE PARTY MUST APPEAR AT THIS HEARING. IF THE PARTY DOES NOT APPEAR, THE COURT MAY DENY THE CLAIM AND THE PARTY MAY BE PAID NOTHING. CLAIMANTS ARE ADVISED TO REVIEW BANKRUPTCY LOCAL RULE 3007 IN FULL SO THAT THEY MAY UNDERSTAND THE PROCEDURE FOR CLAIMS OBJECTIONS AND THE POSSIBILITY OF DEFAULT IF THEY FAIL TO ATTEND THE ABOVE SCHEDULED HEARING.**

**BASELESS OBJECTIONS TO HARASS SMALL OR OUT-OF-TOWN CLAIMANTS WILL BE DEALT WITH UNDER BANKRUPTCY RULE 9011.**

Failure to comply with the requirements of this Order may result in sanctions being imposed on counsel and the parties, including dismissal.

Signed: March 20, 2013

  
Jeff Bohm  
Chief U. S. Bankruptcy Judge

# EXHIBIT 5





ENTERED  
04/18/2013

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

IN RE:

VEGAS VP, LP

DEBTOR.

§  
§  
§  
§  
§

CASE NO. 10-37297-H4-7

CHAPTER 7

**AGREED ORDER CONTINUING CLAIM OBJECTION HEARING**

Upon consideration of the *Expedited Agreed Motion to Continue Hearing on Claim* <sup>#59</sup> *Objection* (the "Motion"), the Court finds that cause exists for the relief granted herein; and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is GRANTED; and it is further

ORDERED that hearing on the Trustee's objection to Claim No. 2 filed by WPH <sup>(#34)</sup> Architecture, Inc. shall be continued to July 24, 2013 at 2:30 PM, on the 6<sup>th</sup> floor, courtroom 600, Bob Casey Federal Courthouse, 515 Rusk Street, Houston, Texas.

Signed this 17<sup>th</sup> day of April, 2013.

  
HONORABLE JEFF BOHM  
UNITED STATES BANKRUPTCY JUDGE

AGREED TO IN FORM AND SUBSTANCE:

/s/ Chris S. Tillmanns

Marcy E. Kurtz  
Texas Bar No. 11768600  
Chris Tillmanns  
Texas Bar No. 24060730  
BRACEWELL & GIULIANI LLP  
711 Louisiana, Suite 2300  
Houston, TX 77002  
(713) 223-2300 - Phone  
(713) 221-1212 - Fax  
ATTORNEYS FOR WPH ARCHITECTURE, INC.

- AND -

/s/ Richard A. Kincheloe

Richard A. Kincheloe  
Texas Bar No. 24068107  
S.D. Tex. Bar No. 1132346  
2800 Post Oak Blvd., 61st Floor  
Houston, TX 77056  
(713) 960-0303 - Phone  
(713) 892-4800 - Fax  
ATTORNEY FOR RONALD J. SOMMERS, TRUSTEE

# EXHIBIT 6

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

IN RE:

VEGAS VP, LP

DEBTOR.

§  
§  
§  
§  
§

CASE NO. 10-37297-H4-7

CHAPTER 7

**AGREED MOTION OF WPH ARCHITECTURE, INC.  
FOR RELIEF FROM THE AUTOMATIC STAY TO PURSUE APPEAL**

**THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF IT IS GRANTED, THE MOVANT MAY ACT OUTSIDE THE BANKRUPTCY PROCESS. IF YOU DO NOT WANT THE STAY LIFTED, IMMEDIATELY CONTACT THE MOVING PARTY TO SETTLE. IF YOU CANNOT SETTLE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY AT LEAST SEVEN DAYS BEFORE THE HEARING. IF YOU CANNOT SETTLE, YOU MUST ATTEND THE HEARING. COVENANTS MAY BE OFFERED AT THE HEARING, AND THE COURT MAY RULE.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

**THERE WILL BE A HEARING ON THIS MATTER ON JULY 9, 2013 AT 9:30 A.M. IN COURTROOM 600, 6TH FLOOR, 515 RUSK AVENUE, HOUSTON, TEXAS 77002.**

TO THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE:

WPH Architecture, Inc. ("WPH"), hereby files this agreed motion (the "Motion") requesting relief from the automatic stay to pursue an appeal in the Nevada Supreme Court. In support of the Motion, WPH respectfully represents as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

## **II. BACKGROUND**

### **A. WPH's Claim for Costs and Attorneys' Fees Against the Debtor**

2. Prior to the Petition Date (as defined below), Vegas VP, LP (the "Debtor"), a company formed for the purpose of the design and construction of a condominium complex in Las Vegas, Nevada (the "Project"), asserted claims against WPH arising from alleged errors and omissions in the design of the Project. Following an unsuccessful mediation, these claims were litigated in arbitration (the "Arbitration"). On or about January 8, 2009, after the Debtor rejected two statutory offers of judgment (the "Statutory Offers") submitted by WPH, a panel of three American Arbitration Association ("AAA") arbitrators entered a complete defense award (the "Award") in favor of WPH and against the Debtor.

3. Following the Award, WPH filed a motion with the AAA panel seeking reimbursement of all costs from the Debtor pursuant to Nev. Rev. Stat. Ann § 17.115 and Nev. R. Civ. P. 68 (based on the fact that the Debtor had rejected the Statutory Offers and the Arbitration resulted in an award in favor of WPH). The AAA panel denied WPH's request for the reimbursement of costs because it was reluctant to grant such relief when the Nevada Supreme Court has not yet addressed whether the use of offers of judgment and reimbursement of costs is applicable to arbitration proceedings.

4. On April 7, 2009, WPH timely filed a motion with the Eighth Judicial District Court of Nevada (the "District Court") to require the Debtor to reimburse all of WPH's fees, costs and interest resulting from the rejection of the Statutory Offers. The District Court denied WPH's motion without a hearing and without explanation.

5. WPH timely appealed the District Court's ruling to the Nevada Supreme Court. All briefing with the Nevada Supreme Court has been completed, but the Nevada Supreme Court

has not yet held oral argument on the appeal (the “Appeal”) because the Debtor filed this bankruptcy case on August 27, 2010 (the “Petition Date”). As a result of the Debtor’s bankruptcy filing, the Nevada Supreme Court dismissed the Appeal *without* prejudice and granted the Debtor leave to move for reinstatement of the Appeal once the automatic stay in the Debtor’s bankruptcy case is lifted. WPH filed this Motion to obtain relief from the stay to reinstate and prosecute the Appeal.

**B. The Debtor’s Bankruptcy Filing and WPH’s Proof of Claim**

6. On the Petition Date, the Debtor filed a voluntary petition for relief under chapter 7, Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Court”). Ronald J. Sommers (the “Trustee”) is the chapter 7 trustee of the Debtor.

7. On December 14, 2010, WPH filed a proof of claim (the “Claim”) in the amount of \$651,525.98 against the Debtor to recover the fees and costs incurred by WPH as a result of the Debtor’s rejection of the Statutory Offers. As a result of its subrogation rights, the insurance company of WPH, Travelers Insurance Company (“Travelers”), is entitled to receive certain amounts recovered by WPH on account of the Claim.

8. On March 7, 2013, the Trustee filed an objection [Dkt. No. 34] (the “Claim Objection”) to the Claim.

9. A hearing to consider the Claim Objection is currently scheduled to be held on July 24, 2013 at 2:30 p.m. (*See* Dkt. No. 62).

10. WPH and the Trustee have reached an agreement with respect to the Claim Objection that is conditioned on the Court’s approval of this Motion. The agreement with

respect to the Claim Objection is set forth in the proposed agreed order (the “Proposed Agreed Claim Objection Order”) attached hereto as **Exhibit A**.

**C. WPH’s Bankruptcy in Nevada and the Abandonment of the Claim by WPH’s Estate**

11. On July 14, 2010, WPH filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada, Las Vegas Division (the “Nevada Bankruptcy Court”).<sup>1</sup> William A. Leonard (the “WPH Trustee”) is the chapter 7 trustee of WPH’s bankruptcy estate.

12. On May 9, 2013, WPH filed a motion (the “Abandonment Motion”) in the Nevada Bankruptcy Court requesting the Nevada Bankruptcy Court to enter an order requiring the abandonment of WPH’s estate’s interest, if any, in the Claim. WPH filed the Abandonment Motion out of an abundance of caution and in order to proceed with this Motion and resolve the Claim Objection without any concerns of violating the automatic stay in WPH’s bankruptcy case.

13. On May 24, 2013, the Nevada Bankruptcy Court entered an order (the “Abandonment Order”) granting the Abandonment Motion. A true and correct copy of the Abandonment Order is attached hereto as **Exhibit B**. The Abandonment Order (i) requires the WPH Trustee to abandon any interest in the Claim; and (ii) authorizes WPH to proceed with its settlement of the Claim in this Court, which includes seeking relief from the automatic stay as requested herein.<sup>2</sup>

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<sup>1</sup> The case number for WPH’s bankruptcy case is 10-20947, the Honorable Bruce T. Beesley presiding.

<sup>2</sup> The term “Settlement” in the Abandonment Order is defined by reference to the Abandonment Motion which defines “Settlement” as an agreement that would (i) resolve the Claim Objection; and (ii) allow WPH to obtain relief from the automatic stay on a consensual basis in order to pursue the Claim in the Nevada Supreme Court.

### **III. RELIEF REQUESTED**

14. WPH requests the entry of an order granting WPH relief from the automatic stay to pursue the Appeal.<sup>3</sup>

### **III. ARGUMENTS AND AUTHORITIES**

15. Pursuant to § 362(d)(1) of the Bankruptcy Code, the automatic stay may be terminated, annulled or modified for “cause”. 11 U.S.C. § 362(d)(1). The following test has been applied by courts in this District when deciding whether “cause” exists to lift the automatic stay and allow litigation against a debtor to proceed outside of the bankruptcy court:

In determining whether to lift the automatic stay to allow litigation against a debtor to proceed outside this court, the court should consider whether lifting the stay will result in any great prejudice to the debtor or the bankruptcy estate, whether any hardship to a non-debtor of continuation of the stay outweighs any hardship to debtor, and whether the creditor has a probability of prevailing on the merits of the case.

*In re CDX Gas, LLC*, 2009 Bankr. LEXIS 215, \*5 (Bankr. S.D. Tex. Feb. 5, 2009); *see also In re Wells*, 2008 Bankr. LEXIS 3246, \*3 (Bankr. S.D. Tex. Sep. 5, 2008).

16. Cause exists for the Court to grant WPH relief from the automatic stay to allow WPH to prosecute the Appeal.

17. Allowing WPH to proceed with the Appeal outside of this Court will not result in any prejudice to the Debtor’s estate; in fact, the Debtor’s estate will substantially benefit from an order granting WPH relief from the automatic stay. If relief from the stay is granted, then the Debtor’s estate will not need to spend valuable resources litigating the Claim on Appeal because the Appeal has already been fully briefed and only oral argument remains to be completed before the Nevada Supreme Court will render its decision.

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<sup>3</sup> The Trustee has agreed to the relief requested herein subject to the Court also approving the Proposed Claim Objection Order, a copy of which is attached hereto as Exhibit A.



18. In addition, and more importantly, as evidenced by the Proposed Agreed Claim Objection Order attached hereto as Exhibit A, if the Court grants this Motion, then WPH has agreed not to seek any distribution from the Debtor's estate on account of its Claim. Therefore, the estate will suffer no prejudice if relief from the stay is granted; rather, the Debtor's estate will substantially benefit from the stay relief because granting such relief (in connection with the Proposed Agreed Claim Objection) will effectively reduce the filed and outstanding unsecured claims that may be entitled to receive distributions in this case by 63.5% or \$651,525.98 (i.e. the amount of WPH's Claim). The Trustee acknowledges this great benefit to the estate and accordingly supports the relief requested herein.

19. On the other hand, however, WPH will suffer great prejudice if the relief requested in this Motion is not granted. WPH intends to pursue various claims against non-debtor third-parties that are dependent on WPH first successfully litigating the Appeal with the Nevada Supreme Court. Accordingly, if WPH is not granted relief from the automatic stay, then WPH will be prevented from pursuing, and ultimately recovering on, its third-party claims.

20. Finally, WPH has a probability of prevailing on the merits of its Claim. WPH's arguments with respect to its Claim are set forth in its brief filed with the Nevada Supreme Court, a true and correct copy of which is attached hereto as Exhibit C. Moreover, where, as is the case here, there is no showing of any prejudice to the Debtor, relief from the stay should be granted without the need to analyze the underlying merits of the claim. *See In re Wells*, 2008 Bankr. LEXIS 3246 at \*3-4 (granting relief from the stay to allow litigation outside of bankruptcy to proceed without analyzing the merits of the claims where there was no showing of prejudice to the Debtor). This should be especially so where, as is the case here, the Trustee supports the requested relief and the relief benefits the Debtor's estate.

21. Accordingly, based on the foregoing arguments, cause exists to lift the automatic stay to allow WPH to prosecute the Appeal in the Nevada Supreme Court.

**IV. PRAYER**

WHEREFORE, WPH respectfully requests that the Court enter an order (i) granting WPH relief from the automatic stay to reinstate and prosecute the Appeal; and (ii) granting such other and further relief to which it may be legally or equitably entitled.

Dated: June 19, 2013

Respectfully submitted,

**BRACEWELL & GIULIANI LLP**

By: /s/ Chris S. Tillmanns

Marcy E. Kurtz  
Texas Bar No. 11768600  
Marcy.Kurtz@bgllp.com  
Chris S. Tillmanns  
Texas Bar No. 24060730  
Chris.Tillmanns@bgllp.com  
711 Louisiana, Suite 2300  
Houston, Texas 77002  
Telephone: (713) 223-2300  
Facsimile: (713) 221-1212

**ATTORNEYS FOR  
WPH ARCHITECTURE, INC.**

**CERTIFICATE OF CONFERENCE**

I, Chris Tillmanns, certify that I have conferred with counsel for the Trustee, and the Trustee supports the relief requested herein.

By: /s/ Chris S. Tillmanns  
Chris S. Tillmanns

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Motion has been served (i) via electronic means on the parties receiving notice through the court's ECF noticing system; and (ii) by regular U. S. First Class Mail on the parties listed on the attached Service List on June 19, 2013.

By: /s/ Chris S. Tillmanns  
Chris S. Tillmanns

# EXHIBIT 7



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

ENTERED  
07/03/2013

IN RE:

VEGAS VP, LP

DEBTOR.

§  
§  
§  
§  
§

CASE NO. 10-37297-H4-7

CHAPTER 7

AGREED ORDER GRANTING WPH ARCHITECTURE, INC.  
RELIEF FROM THE AUTOMATIC STAY

(65)

Upon consideration of the *Agreed Motion of WPH Architecture, Inc. for Relief From the Automatic Stay to Pursue Appeal* (the "Motion"); and after having been advised that the Trustee and WPH have reached an agreement with respect to the relief requested in the Motion;<sup>1</sup> the Court finds that cause exists for the relief granted herein; and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is GRANTED; and it is further

ORDERED that WPH Architecture, Inc. is granted relief from the automatic stay to move for reinstatement of the Appeal and prosecute the Appeal in the Nevada Supreme Court.

Signed this 3rd day of July, 2013.

  
HONORABLE JEFF BOHM  
UNITED STATES BANKRUPTCY JUDGE

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

AGREED TO IN FORM AND SUBSTANCE:

/s/ Chris S. Tillmanns

Marcy E. Kurtz  
Texas Bar No. 11768600  
Chris Tillmanns  
Texas Bar No. 24060730  
BRACEWELL & GIULIANI LLP  
711 Louisiana, Suite 2300  
Houston, TX 77002  
(713) 223-2300 - Phone  
(713) 221-1212 - Fax  
ATTORNEYS FOR WPH ARCHITECTURE, INC.

- AND -

/s/ Richard A. Kincheloe

Richard A. Kincheloe  
Texas Bar No. 24068107  
S.D. Tex. Bar No. 1132346  
2800 Post Oak Blvd., 61st Floor  
Houston, TX 77056  
(713) 960-0303 - Phone  
(713) 892-4800 - Fax  
ATTORNEY FOR RONALD J. SOMMERS, TRUSTEE

# **EXHIBIT 8**





ENTERED  
07/11/2013

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

IN RE:	§	CASE NO. 10-37297-H4-7
VEGAS VP, LP	§	
	§	CHAPTER 7
DEBTOR.	§	
	§	

**AGREED ORDER REGARDING CLAIM OF WPH ARCHITECTURE, INC.**  
(Relates to Dkt. No. 34 and Claim No. 2)

Came on for consideration the *Trustee's Objection to Claim No. 2 Filed by WPH Architecture, Inc.* [Dkt. No. 34] (the "Claim Objection") filed by Ronald J. Sommers, the chapter 7 trustee of Vegas VP, LP (the "Trustee"); and the Court having considered the Claim Objection and the Court having been advised that the Trustee and WPH Architecture, Inc. ("WPH") have reached an agreement with respect to the Claim Objection as set forth in this Order, and otherwise being fully advised, hereby finds that Claim No. 2 (the "Claim") filed by WPH against Vegas VP, LP is an allowable claim against the estate of Vegas VP, LP and is of the Opinion that this Order should be entered. Accordingly, it is therefore

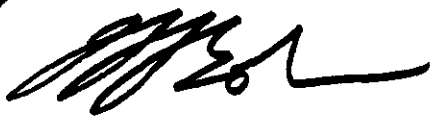
ORDERED that, upon entry of an order (the "Relief From Stay Order") granting the *Agreed Motion of WPH Architecture, Inc. for Relief From the Automatic Stay to Pursue Appeal* [Dkt. No. 65] (the "Stay Motion"), and notwithstanding the otherwise allowable Claim of WPH, WPH shall not, based solely on its agreement with the Trustee, be entitled to any distribution from the estate of Vegas VP; and it is further

ORDERED that this Order fully resolves the Claim Objection; and it is further

ORDERED that nothing in this Order shall prejudice the rights of WPH or Travelers

Insurance Company to pursue claims against third parties, including but not limited to claims that are derivative of, or otherwise based on, the Claim.

Signed this 11<sup>th</sup> day of July, 2013.

  
\_\_\_\_\_  
HONORABLE JEFF BOHM  
UNITED STATES BANKRUPTCY JUDGE

AGREED TO IN FORM AND SUBSTANCE:

/s/ Chris S. Tillmanns

Marcy E. Kurtz  
Texas Bar No. 11768600  
Chris Tillmanns  
Texas Bar No. 24060730  
BRACEWELL & GIULIANI LLP  
711 Louisiana, Suite 2300  
Houston, TX 77002  
(713) 223-2300 - Phone  
(713) 221-1212 - Fax  
ATTORNEYS FOR WPH ARCHITECTURE, INC.

- AND -

/s/ Richard A. Kincheloe

Richard A. Kincheloe  
Texas Bar No. 24068107  
S.D. Tex. Bar No. 1132346  
2800 Post Oak Blvd., 61st Floor  
Houston, TX 77056  
(713) 960-0303 - Phone  
(713) 892-4800 - Fax  
ATTORNEY FOR RONALD J. SOMMERS, TRUSTEE

# EXHIBIT 9

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>  <b>VEGAS VP, LP</b>   <b>Debtor(s)</b>	§ § § § § §	<b>Case No. 10-37297</b>
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**NOTICE OF TRUSTEE'S FINAL REPORT AND  
APPLICATION FOR COMPENSATION  
AND DEADLINE TO OBJECT (NFR)**

Pursuant to Fed. R. Bankr. P. 2002(a)(6) and 2002(f)(8), please take notice that Ronald J. Sommers, trustee of the above styled estate, has filed a Final Report and the trustee and the trustee's professionals have filed final fee applications, which are summarized in the attached Summary of Trustee's Final Report and Applications for Compensation.

The complete Final Report and all applications for compensation are available for inspection at the Office of the Clerk, at the following address:

515 Rusk, 5th Floor, Houston, TX 77002

Any person wishing to object to any fee application that has not already been approved or to the Final Report, must file a written objection within 21 days from the mailing of this notice, together with a request for a hearing and serve a copy of both upon the trustee, any party whose application is being challenged and the United States Trustee. If no objections are filed, the Court will act on the fee applications and the trustee may pay dividends pursuant to FRBP 3009 without further order of the Court.

Date Mailed: 02/20/2014

By: /s/ Ronald J. Sommers  
Trustee

Ronald J. Sommers  
2800 POST OAK BLVD  
61st Floor  
Houston, TX, 77056

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	§	Case No. 10-37297
	§	
VEGAS VP, LP	§	
	§	
	§	
Debtor(s)	§	

**SUMMARY OF TRUSTEE'S FINAL REPORT  
AND APPLICATIONS FOR COMPENSATION**

<i>The Final Report shows receipts of</i>	<u>\$17,080.77</u>
<i>and approved disbursements of</i>	<u>\$10,880.80</u>
<i>leaving a balance on hand of<sup>1</sup>:</i>	<u>\$6,199.97</u>

Claims of secured creditors will be paid as follows: NONE

Total to be paid to secured creditors:	<u>\$0.00</u>
Remaining balance:	<u>\$6,199.97</u>

Applications for chapter 7 fees and administrative expenses have been filed as follows:

Reason/Applicant	Total Requested	Interim Payments to Date	Proposed Payment
Ronald J. Sommers, Trustee Fees	\$2,458.08	\$0.00	\$2,458.08

Total to be paid for chapter 7 administrative expenses:	<u>\$2,458.08</u>
Remaining balance:	<u>\$3,741.89</u>

Applications for prior chapter fees and administrative expenses have been filed as follows: NONE

Total to be paid to prior chapter administrative expenses:	<u>\$0.00</u>
Remaining balance:	<u>\$3,741.89</u>

<sup>1</sup> The balance of funds on hand in the estate may continue to earn interest until disbursed. The interest earned prior to disbursement will be distributed pro rata to creditors within each priority category. The trustee may receive additional compensation not to exceed the maximum compensation set forth under 11 U.S.C. § 326(a) on account of disbursement of the additional interest.

In addition to the expenses of administration listed above as may be allowed by the Court, priority claims totaling \$0.00 must be paid in advance of any dividend to general (unsecured) creditors.

Allowed priority claims are: NONE

Total to be paid to priority claims: \$0.00  
Remaining balance: \$3,741.89

The actual distribution to wage claimants included above, if any, will be the proposed payment less applicable withholding taxes (which will be remitted to the appropriate taxing authorities).

Timely claims of general (unsecured) creditors totaling \$686,796.93 have been allowed and will be paid pro rata only after all allowed administrative and priority claims have been paid in full. The timely allowed general (unsecured) dividend is anticipated to be 0.5 percent, plus interest (if applicable).

Timely allowed general (unsecured) claims are as follows:

Claim No.	Claimant	Allowed Amt. of Claim	Interim Payments to Date	Proposed Amount
1	Greenberg Traurig, LLP	\$35,270.95	\$0.00	\$192.17
2	WPH Architecture, Inc.	\$651,525.98	\$0.00	\$3,549.72

Total to be paid to timely general unsecured claims: \$3,741.89  
Remaining balance: \$0.00

Tardily filed claims of general (unsecured) creditors totaling \$0.00 have been allowed and will be paid pro rata only after all allowed administrative, priority and timely filed general (unsecured) claims have been paid in full. The tardily filed claim dividend is anticipated to be 0.0 percent, plus interest (if applicable).

Tardily filed general (unsecured) claims are as follows: NONE

Total to be paid to tardily filed general unsecured claims: \$0.00  
Remaining balance: \$0.00

Subordinated unsecured claims for fines, penalties, forfeitures, or damages and claims ordered subordinated by the Court totaling \$0.00 have been allowed and will be paid pro rata only after all allowed administrative, priority and general (unsecured) claims have been paid in

full. The dividend for subordinated unsecured claims is anticipated to be 0.0 percent, plus interest (if applicable).

Subordinated unsecured claims for fines, penalties, forfeitures or damages and claims ordered subordinated by the Court are as follows: NONE

Total to be paid for subordinated claims:	<u>\$0.00</u>
Remaining balance:	<u>\$0.00</u>

Prepared By: /s/ Ronald J. Sommers  
Trustee

Ronald J. Sommers  
2800 POST OAK BLVD  
61st Floor  
Houston, TX, 77056

STATEMENT: This Uniform Form is associated with an open bankruptcy case, therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

**RECEIVED**

MAR 27 2014

WELL & DRUGG  
Attorneys at Law



# **EXHIBIT 10**



ENTERED  
04/18/2014

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	CASE NO. 10-37297-H4-7
	§	
VEGAS VP, LP	§	
	§	CHAPTER 7
	§	
DEBTORS	§	


**ORDER APPROVING TRUSTEE'S COMPENSATION AND EXPENSES**

It is ordered that the chapter 7 trustee is allowed compensation in the amount of \$2,458.08; it is further

Ordered that the chapter 7 trustee is allowed \$0.00 as a reimbursement of expenses; and it is further

Ordered that in the event additional interest income accrues on estate funds prior to the distribution of funds by the chapter 7 trustee, the chapter 7 trustee shall be entitled to fees on the distribution of the additional interest amounts in accordance with 11 U.S.C. § 326(a), without further Order of the Court.

Signed: April 17, 2014

  
Jeff Bohm  
Chief United States Bankruptcy Judge