

1 that's not what I ended up with, so I can't answer that.

2 MS. TURNER: Object.

3 BY MR. MORRILL:

4 Q. But in this e-mail you did tell me to make these
5 changes and we're good?

6 A. But I didn't get those changes.

7 Q. That wasn't my question. Does your declaration or
8 not state --

9 A. Okay.

10 Q. "Please make these handwritten changes"?

11 MR. CARTER: Object to form. It's not a
12 declaration. It's an e-mail.

13 MS. TURNER: Join.

14 THE WITNESS: Can I say what I want?

15 MR. CARTER: Please. My objection is for the
16 record.

17 THE WITNESS: I have to tell you. This is -- I
18 just wanted to come in and talk about the truth. I just
19 want to talk about ManhattanWest. But we had been
20 subpoenaed in, what, June by your firm. Somehow that got
21 cancelled for whatever reasons. So we received a phone call
22 on August 24th, or a few days before that, from your
23 coassociate --

24 BY MR. MORRILL:

25 Q. Martin.

* CONFIDENTIAL *

1 A. -- wanting to know if we could come in and, out of
2 the kindness of our heart, come and meet you. And you know
3 what, Jim and I do our business very straightforward. We
4 had no problem coming in discussing whatever. The truth is
5 the truth. So that's what we did. So we met at his office.

6 Q. Right.

7 A. I have to tell, you based on that hour or so we
8 spent with you, that was quite intimidating. We heard
9 things that I was stunned by. By the time we left there, we
10 were ready to prepare an affidavit and we felt very
11 pressured, very pushed. We've got someone from Martin's
12 office standing on our office doorstep. We've got people
13 e-mailing us and calling us from the office to sign and
14 notarize this form. And we weren't happy with the
15 corrections and the changes. So of course, at that point,
16 we felt the letters need to stand on their own merit, and
17 that's why we did not sign it.

18 But I will tell you now that I was stunned by some
19 of the things that I heard within that hour's meeting. I
20 was told, and I'm going to be honest, Jim and I were both
21 told, and both Mr. Morrill and Mr. Muckleroy were there,
22 that Alex and his father had committed bank fraud, that they
23 were con artists basically that -- you explained who Bank of
24 Oklahoma was and these 30 investors. We had no idea who
25 these people were. This is knowledge we had no part of.

* CONFIDENTIAL *

SCOTT APP 000245

1 Q. Right.

2 A. All I want to do is my job.

3 Q. I understand.

4 A. I'm being very honest with you, that I felt just
5 stunned when I left your office that I'd been told these
6 things.

7 Q. When you left Martin's office.

8 A. You were there.

9 Q. Right.

10 A. The one thing that shocked me the most is you,
11 yourself, and Martin and Corrin, who we've known through the
12 industry here, said we have a spotless reputation. That we
13 have a wonderful reputation. And then I come in and I'm
14 faced with I've been working with con artists and bank fraud
15 people and people that did things for the price of a dollar
16 and blah, blah, blah. And I've got to tell you, I felt that
17 was extremely unprofessional. And you know what, at that
18 point, I just wanted to go.

19 Q. I understand.

20 A. And so you prepared your affidavit. We didn't
21 necessarily feel that was honest. And so, you know, we
22 wanted changes, but then we thought, you know what, our work
23 is our work. We stand behind our work. And I know nothing
24 else about anything else and that's where it ends. So if
25 you want honesty, there it is.

* CONFIDENTIAL *

SCOTT APP 000246

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| 208 | P001558-001560 | Purchase and Sale Agreement for Condominium Unit by Mike and Shirley Melkonian |
| 209 | P001561-001563 | Purchase and Sale Agreement for Condominium Unit by Carlos and Daynelis Arias |
| 210 | P001564-001566 | Purchase and Sale Agreement for Condominium Unit by Peter Smith and Backwall Development, LLC |
| 211 | P001567-001569 | Purchase and Sale Agreement for Condominium Unit by Harvey Friedman |
| 212 | P001570-001575 | Purchase and Sale Agreement for Condominium Unit by Jim Bish |
| 213 | P001576-001578 | Purchase and Sale Agreement for Condominium Unit by Richard Baird |
| 214 | P001579-001581 | Purchase and Sale Agreement for Condominium Unit by Cheryl Veneziano |
| 215 | P001582-001584 | Purchase and Sale Agreement for Condominium Unit by Traci, and Andrew Rivera and Harvey Friedman |
| 216 | P001585-001587 | Purchase and Sale Agreement for Condominium Unit by Sean and Jovey Arce |
| 217 | P001588-001590 | Purchase and Sale Agreement for Condominium Unit by Giulia Delpriore |
| 218 | P001591-001594 | Purchase and Sale Agreement for Condominium Unit by Jaime and Ken Kefalas |
| 219 | P001595-001597 | Purchase and Sale Agreement for Condominium Unit by Sonny Barton and Christopher Hammond |
| 220 | P001598-001600 | Purchase and Sale Agreement for Condominium Unit by Michael Resnick and Ira Sage |
| 221 | P001601-001603 | Purchase and Sale Agreement for Condominium Unit by Jennifer Spanheimer |
| 222 | P001604-001606 | Purchase and Sale Agreement for Condominium Unit by Eleanor Ahern |
| 223 | P001607-001609 | Purchase and Sale Agreement for Condominium Unit by James Raymond and James Robin Peoples |
| 224 | P001610-001613 | Purchase and Sale Agreement for Condominium Unit by Mark and Kristina Chatow |
| 225 | P001614-001616 | Purchase and Sale Agreement for Condominium Unit by Ray Rhodes |
| 226 | P001617-001619 | Purchase and Sale Agreement for Condominium Unit by The Poh Living Trust (Aloysius and Maria Poh) |
| 227 | P001620-001622 | Purchase and Sale Agreement for Condominium Unit by Brenda and John Zablockis |

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| 228 | P001623-001625 | Purchase and Sale Agreement for Condominium Unit by Harold Rosenthal |
| 229 | P001626-001628 | Purchase and Sale Agreement for Condominium Unit by Marisela Diaz |
| 230 | P001629-001632 | Purchase and Sale Agreement for Condominium Unit by APCO Construction (Randy Nickerl) |
| 231 | P001633-001635 | Purchase and Sale Agreement for Condominium Unit by Michael and Kelby Brandow |
| 232 | P001636-001638 | Purchase and Sale Agreement for Condominium Unit by Lizzette Morales |
| 233 | P001639-001641 | Purchase and Sale Agreement for Condominium Unit by Lynn and Tom DeMann |
| 234 | P001642-001644 | Purchase and Sale Agreement for Condominium Unit by Elizabeth Edelstein |
| 235 | P001645-001647 | Purchase and Sale Agreement for Condominium Unit by Scott Schafer |
| 236 | P001648-001651 | Purchase and Sale Agreement for Condominium Unit by Soupharack Vannasing |
| 237 | P001652-001654 | Purchase and Sale Agreement for Condominium Unit by Holly and Anothly Angotti |
| 238 | P001655-001657 | Purchase and Sale Agreement for Condominium Unit by James Horning and Laura Duryea |
| 239 | P001658-001660 | Purchase and Sale Agreement for Condominium Unit by ZB Holdings (Roy Zilling) |
| 240 | P001661-001663 | Purchase and Sale Agreement for Condominium Unit by Dave Tina |
| 241 | P001664-001666 | Purchase and Sale Agreement for Condominium Unit by Peter Smith |
| 242 | P001667-001669 | Purchase and Sale Agreement for Condominium Unit by Dana and Roberta Kopka |
| 243 | P001670-001672 | Purchase and Sale Agreement for Condominium Unit by Ronald Lyles |
| Building 9 | | |
| 244 | P001673-001675 | Purchase and Sale Agreement for Condominium Unit by Mike and Beth Carlucci |
| 245 | P001676-001678 | Purchase and Sale Agreement for Condominium Unit by Santa Rita Management Company |
| 246 | P001679-001682 | Purchase and Sale Agreement for Condominium Unit by Francis and Linda Liu |

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| 247 | P001683-001685 | Purchase and Sale Agreement for Condominium Unit by Joyce Jesuitas and Nicolas Azizian |
| 248 | P001686-001688 | Purchase and Sale Agreement for Condominium Unit by Kristy Cramer and Debra LePage |
| 249 | P001689-001691 | Purchase and Sale Agreement for Condominium Unit by Santa Rita Management Company (Charles Edelstein) |
| 250 | P001692-001694 | Purchase and Sale Agreement for Condominium Unit by The 2003 Michele Fano Trust |
| 251 | P001695-001697 | Purchase and Sale Agreement for Condominium Unit by Jeremy Sand |
| 252 | P001698-001700 | Purchase and Sale Agreement for Condominium Unit by Santa Rita Management Company |
| 253 | P001701-001703 | Purchase and Sale Agreement for Condominium Unit by Joseph Lambright and Steve Gallagher |
| 254 | P001704-001706 | Purchase and Sale Agreement for Condominium Unit by Rosalito Ortega |
| 255 | P001707-001709 | Purchase and Sale Agreement for Condominium Unit by Jason Hedrick |
| 256 | P001710-001712 | Purchase and Sale Agreement for Condominium Unit by Michael and Tami Stafanatos |
| 257 | P001713-001715 | Purchase and Sale Agreement for Condominium Unit by Michael and Tami Stafanatos |
| 258 | P001716-001718 | Purchase and Sale Agreement for Condominium Unit by Darin and Sandra Chavez |
| 259 | P001719-001721 | Purchase and Sale Agreement for Condominium Unit by Lawrence and Yvonne Greenberg |
| 260 | P001722-001724 | Purchase and Sale Agreement for Condominium Unit by Josefina and Dario Sabio |
| 261 | P001725-001727 | Purchase and Sale Agreement for Condominium Unit by Yun Cheung |
| 262 | P001728-001730 | Purchase and Sale Agreement for Condominium Unit by Amanda and Carson Wagstaff |
| 263 | P001731-001733 | Purchase and Sale Agreement for Condominium Unit by Vilma Miranda, Norma Galvan and Frankie Lee |
| 264 | P001734-001736 | Purchase and Sale Agreement for Condominium Unit by Alexander and Kathleen Poulos |
| 265 | P001737-001739 | Purchase and Sale Agreement for Condominium Unit by Lynne Phillips and Steven Gilmour |

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| 266 | P001740-001742 | Purchase and Sale Agreement for Condominium Unit by Tyus Edney |
| 267 | P001743-001745 | Purchase and Sale Agreement for Condominium Unit by Cheryl Veneziano |
| 268 | P001746-001748 | Purchase and Sale Agreement for Condominium Unit by Sara Edelstein |
| 269 | P001749-001751 | Purchase and Sale Agreement for Condominium Unit by Dorian Carson and Denise Chen |
| 270 | P001752-001754 | Purchase and Sale Agreement for Condominium Unit by Priscilla Field |
| 271 | P001755-001757 | Purchase and Sale Agreement for Condominium Unit by Brian and Charles Krueger |
| 272 | P001758-001760 | Purchase and Sale Agreement for Condominium Unit by Jason and Rita Recabarren |
| 273 | P001761-001763 | Purchase and Sale Agreement for Condominium Unit by Andrew Carson |
| 274 | P001764-001766 | Purchase and Sale Agreement for Condominium Unit by Barbara and Edwin Earp |
| 275 | P001767-001769 | Purchase and Sale Agreement for Condominium Unit by Jerry and Julie Song |
| 276 | P001770-001772 | Purchase and Sale Agreement for Condominium Unit by Robert Walden |
| 277 | P001773-001775 | Purchase and Sale Agreement for Condominium Unit by Devin and Christine Ballard |
| 278 | P001776-001778 | Purchase and Sale Agreement for Condominium Unit by David Grosh |
| 279 | P001779-001781 | Purchase and Sale Agreement for Condominium Unit by Eugene and Michael Orlando |
| 280 | P001782-001784 | Purchase and Sale Agreement for Condominium Unit by Rashmi Kumar |
| 281 | P001785-001787 | Purchase and Sale Agreement for Condominium Unit by Richard Moskal and Ilanit Behar |
| 282 | P001788-001790 | Purchase and Sale Agreement for Condominium Unit by Seehan Sung |
| 283 | P001791-001793 | Purchase and Sale Agreement for Condominium Unit by Jane Garras |
| 284 | P001794-001796 | Purchase and Sale Agreement for Condominium Unit by Cynthia Zepeda |
| 285 | P001797-001799 | Purchase and Sale Agreement for Condominium Unit by Bernard and Wendy Stroum |

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| 286 | P001800-001803 | Purchase and Sale Agreement for Condominium Unit by Dave Tina |
| 287 | P001804-001806 | Purchase and Sale Agreement for Condominium Unit by Brad Scott |
| 288 | P001807-001809 | Purchase and Sale Agreement for Condominium Unit by Kathleen Beyer |
| 289 | P001810 | Note stating that Yun Cheung has Lennox Unit 259 and Luke Halton has Lennox Unit 461 |
| Sales - Commercial | | |
| 290 | P001811-001891 | Lease Agreement Between Gemstone Development West and Gemstone Coffee House |
| 291 | P001892-001970 | Lease Agreement Between Gemstone Development West and Gemstone Development, LLC |
| 292 | P001971-002052 | Lease Agreement Between Gemstone Development West and Gemstone Development, LLC |
| 293 | P002053-002132 | Lease Agreement Between Gemstone Development West and ManhattanWest Residential, Inc. |
| Sales - Commercial | | |
| 294 | P002133-002187 | Purchase and Sales Agreement for Condominium Unit for Santa Rita Management Company |
| FATCO Confirmed Deposit Report | | |
| 295 | P002188-002202 | Deposit Report by First American Title Company with confirmed escrows |
| PREQUALIFICATION LETTERS | | |
| Building 7 | | |
| 296 | P002203 | Letter from First Horizon regarding Alex Edelstein |
| 287 | P002204 | Letter from First Horizon regarding Alex Edelstein |
| 288 | P002205 | Letter from First Horizon regarding Michael and Leslie Cuddy |
| 289 | P002206 | Letter from First Horizon regarding Shawna Kneesel |
| 290 | P002207 | Letter from Mortgage Loan Specialist regarding Michael Grassi |
| 291 | P002208 | Letter from Residential Pacific Mortgage regarding Raffi Khatchadourian |
| 292 | P002209 | Letter from First Horizon regarding Charles Edelstein |
| 293 | P002210 | Letter from First Horizon regarding Benjamin Hadary |

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| 294 | P002211 | Letter from First Horizon regarding Benjamin Black |
| 295 | P002212 | Letter from Envision Lending Group regarding Royal Peterson |
| 296 | P002213 | Letter from Washington Mutual regarding Michael Barnes |
| 297 | P002214 | Letter from First Horizon regarding Charles Edelstein |
| 298 | P002215 | Letter from First Horizon regarding Benjamin Black |
| 299 | P002216 | Letter from Countrywide regarding Sarkis Shirinyan |
| 300 | P002217 | Letter from First Horizon regarding Charles Edelstein |
| 301 | P002218 | Letter from All Western Mortgage regarding Lauren Stark |
| 302 | P002219 | Letter from First Horizon regarding Charles Edelstein |
| 303 | P002220 | Letter from First Horizon regarding Marianne and Nicholas Pepe |
| 304 | P002221 | Letter from First Horizon regarding Charles Edelstein |
| 305 | P002222 | Letter from First Horizon regarding Alexander Edelstein |
| 306 | P002223 | Letter from First Horizon regarding Alexander Edelstein |
| 307 | P002224 | Letter from Mortgage Loan Specialists regarding Kevin Sorci |
| 308 | P002225 | Letter from First Horizon regarding Melven and Sally Goldberg |
| Building 8 | | |
| 309 | P002226 | Letter from IndyMacBank regarding Darla Safire |
| 310 | P002227 | Letter from First Horizon regarding Neal and Sharon Fenton |
| 311 | P002228 | Letter from Chase regarding Clara McMillan |
| 312 | P002229 | Letter from First Horizon regarding Greg Hibbard |
| 313 | P002230 | Letter from Trusted Home Lending regarding Michael and Paul Argier and Charles Ford |
| 314 | P002231 | Letter from First Horizon regarding Michael Melkonian |

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| 315 | P002232 | Letter from Chase regarding Carlos and Daynelis Arias |
| 316 | P002233 | Letter from First Horizon regarding Peter Smith and Steven Reuben |
| 317 | P002234 | Letter from Meridias Capital regarding James Bish |
| 318 | P002235 | Letter from Southern Fidelity Mortgage regarding Richard Baird |
| 319 | P002236 | Letter from Signature One Mortgage regarding Cheryl Veneziano |
| 320 | P002237-002238 | Balance from Wells Fargo regarding Harvey and Francine Friedman |
| 321 | P002239 | Letter from Countrywide regarding Jovan Arce |
| 322 | P002240 | Certificate of Deposit from Wells Fargo regarding Giulia Del Phore |
| 323 | P002241 | Letter from Osist & Howard (CPA) regarding Kenneth and Debbie Kefalas |
| 324 | P002242 | Letter from First Horizon regarding Sonny Barton |
| 325 | P002243 | Letter from FCC Mortgage Corporation regarding Michael Resnick |
| 326 | P002244 | Letter from First Horizon regarding Jennifer Spanheimer |
| 327 | P002245 | Letter from First Horizon regarding Eleanor Ahern |
| 328 | P002246 | Letter from Chase regarding James Peoples |
| 329 | P002247 | Letter from First Horizon regarding Mark Chatow and Kristina Schauppner |
| 330 | P002248 | Letter from First Horizon regarding Ray Rhodes |
| 331 | P002249 | Letter from Bank of America regarding Mr and Mrs Aloysius Poh |
| 332 | P002250 | Letter from Meridias Capital regarding Brenda Zablockis |
| 333 | P002251 | Letter from E-Loan regarding Harold Rosenthal |
| 334 | P002252 | Letter from First Horizon regarding Marisela Diaz |
| 335 | P002253 | Analysis Statement from Bank of America regarding APCO Construction |
| 336 | P002254 | Letter from Navy Federal Credit Union regarding Kelby and Michael Brandow |
| 337 | P002255-002256 | Letter from First Horizon regarding Thomas and Lynn De Mann |

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| 338 | P002257 | Letter from First Horizon regarding Elizabeth Edelstein |
| 339 | P002258 | Letter from First Horizon regarding Scott Schaefer |
| 340 | P002259 | Letter from Aspen Mortgage regarding Anthony and Holly Angotti |
| 341 | P002260 | Letter from First Horizon regarding James Horning and Laura Duryea |
| 342 | P002261 | Mortgage Loan Commitment from First Class Mortgage regarding Jared Zitting |
| 343 | P002262 | Letter from Washington Mutual regarding Dave Tina |
| 344 | P002263 | Letter from First Horizon regarding Peter Smith |
| 345 | P002264 | Letter from First Horizon regarding Dana and Roberta Kopka |
| 346 | P002265 | Letter from First Horizon regarding Ronald Lyles |
| Building 9 | | |
| 347 | P002266 | Letter from Meridias Capital regarding Michael and Beth Carlucci |
| 348 | P002267 | Letter from First Horizon regarding Charles Edelstein |
| 349 | P002268 | Letter from First Horizon regarding Joyce Jeuitas |
| 350 | P002269 | Letter from Residential Mortgage Services regarding Kristy Cramer and DebraLee Rehel |
| 351 | P002270 | Letter from First Horizon regarding Charles Edelstein |
| 352 | P002271 | Letter from First Horizon regarding Charles Edelstein |
| 353 | P002272 | Letter from First Horizon regarding Joseph Lambright |
| 354 | P002273 | Letter from Family Mortgage regarding Rosalito Ortega |
| 355 | P002274 | Letter from Wells Fargo regarding Jason Hedrick |
| 356 | P002275 | Letter from USA Mortgage regarding Michael and Tami Stefanatos |
| 357 | P002276 | Letter from USA Mortgage regarding Michael and Tami Staefanatos |
| 358 | P002277 | Letter from City Fund regarding Darin Chavez |
| 359 | P002278 | Letter from First Horizon regarding Larry and Yvonne Greenberg |

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| 360 | P002279 | Letter from Wells Fargo regarding Dario and Josefina Sabio |
| 361 | P002280 | Letter from First Horizon regarding Amanda and Carson Wagstaff |
| | P002281 | Intentionally left blank |
| 362 | P002282 | Letter from First Horizon regarding Vilma Miranda and Norma Galvan |
| | P002283 | Intentionally left blank |
| 363 | P002284 | Letter from Bank of America regarding Alexander Poulos |
| | P002285 | Intentionally left blank |
| 364 | P002286 | Letter from City Fund regarding Tyus Edney |
| | P002287 | Intentionally left blank |
| 365 | P002288 | Letter from Signature One Mortgage regarding Cheryl Veneziano |
| 366 | P002289 | Letter from First Horizon regarding Sara Edelstein |
| 367 | P002290 | Letter from Countrywide regarding Denise Chen |
| | P002291 | Intentionally left blank |
| 368 | P002292 | Letter from Meridias Capital regarding Priscilla Fields |
| | P002293 | Intentionally left blank |
| 369 | P002294 | Letter from First Horizon regarding Brian and Charles Krueger |
| | P002295 | Intentionally left blank |
| 370 | P002296 | Letter from Wells Fargo regarding Jason and Rita Recabarren |
| | P002297 | Intentionally left blank |
| 371 | P002298 | Letter from Countrywide regarding Andrew Carson |
| 372 | P002299 | Letter from First Horizon regarding Jerry and Julie Song |
| 373 | P002300 | Letter from First Horizon regarding Robert Walden |
| 374 | P002301 | Letter from First Horizon regarding Devin and Christine Ballard |
| 375 | P002302 | Letter from Signature One Mortgage regarding David Grosh |
| 376 | P002303 | Letter from CTX Mortgage Company regarding Rashmi Kumar |

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| 377 | P002304 | Letter from Countrywide regarding Richard Moskal and Ilanit Behar |
| 378 | P002305 | Letter from Fusion Home Loans regarding Jane Garras |
| 379 | P002306 | Letter from Chase regarding Elissa Aquirre |
| 380 | P002307 | Letter from ICON Mortgage regarding Bernard and Wendy Stroum |
| 381 | P002308 | Letter from Washington Mutual regarding Dave Tina |
| 382 | P002309 | Memo regarding Brad and Margo Scott's financial Statement |
| 383 | P002310-002311 | Letter from Bank of America regarding Kathleen Beyer |
| CASH BUYER PROOF FUNDS | | |
| Building 7 | | |
| 384 | P002312-002324 | Trust Account Portfolio from Charles Schwab regarding Aleksandar Totic |
| 385 | P002325 | E-mail regarding paying cash for the Construction Financial Services units |
| 386 | P002326 | E-mail regarding paying cash for the Construction Financial Services units |
| Building 8 | | |
| 387 | P002327-002329 | Wells Fargo account portfolio regarding Harvey Friedman |
| 388 | P002330-002331 | Wells Fargo account portfolio regarding Harvey Friedman |
| 389 | P002332 | Wells Fargo Certificate of Deposit receipt regarding Giulia Del Phore |
| Building 9 | | |
| 390 | P002333 | Memo regarding Brad and Margo Scott's Financial Statement |
| 391 | P002334 | Letter from Bank of America regarding Kathleen Beyer |
| DEPOSIT BONDS | | |
| Building 7 | | |
| 392 | P002335-002337 | Deposit Bond for Benjamin Hadary |
| 393 | P002338-002343 | Deposit Bond for Patrick Llewellyn |

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| Building 8 | | |
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| 394 | P002344-002349 | Deposit Bond for Soupharack Vannasing |
| 395 | P002350-002352 | Deposit Bond for James Horning and Laura Duryea |
| 396 | P002353-002355 | Deposit Bond for Dana Kopka |
| Building 9 | | |
| 397 | P002356-002361 | Deposit Bond for Francis and Linda Liu |
| 398 | P002362-002367 | Deposit Bond for Lynne Phillips |
| 399 | P002368-002373 | Deposit Bond for Barbara and Edwin Earp |
| Commercial | | |
| 400 | P002374-002375 | Deposit Bond for Santa Rita Management Company |
| TITLE INSURANCE | | |
| 401 | P002376-002404 | Title Commitment for Insurance on behalf of LandAmerica Commonwealth |
| DRAW DOCUMENTS | | |
| 402 | P002405-002421 | Manhattan West Draw Summary |
| 403 | P002422 | Wiring Instructions to Scott Financial Corporation |
| GUARANTOR INFORMATION | | |
| 404 | P002423-002893 | Gary Tharaldson Tax Return and K1's |
| 405 | P002894-002895 | Tharaldson Family Flowchart |
| 406 | P002896-002897 | Tharaldson Family Cash Flow Summary |
| LIEN & LITIGATION SEARCHES | | |
| 407 | P002898 | Work Results Summary regarding Lien Search of Gary D. Tharaldson |
| 408 | P002899 | Work Results Summary regarding Lien Search of Alexander Edelstein |
| 409 | P002900-002909 | Work Results Summary regarding Lien Search of Gemstone Apache, LLC (attaches a UCC Statement) |
| 410 | P002910 | Work Results Summary regarding Lien Search of Gemstone Apache Development LLC & Inc. |
| 411 | P002911-002915 | Work Results Summary regarding Lien Search of Gemstone Development West, Inc. (attaches a UCC Statement) |
| 412 | P002916-002918 | Work Results Summary regarding Civil Judgment Search of Gary D. Tharaldson (attaches a Notice of Pendency of Action) |

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| 413 | P002919 | Work Results Summary regarding Judgments/Lien Search of Gary D. Tharaldson |
| 414 | P002920 | Work Results Summary regarding Civil Judgment Search of Alexander Edelstein |
| 415 | P002921 | Work Results Summary regarding Judgments/Lien Search of Alexander Edelstein |
| INSURANCES | | |
| 416 | P002922 | Architect Professional Liability Certificate |
| 417 | P002923 | Builders Risk Certificate |
| 418 | P002924-002925 | Flood Certificate - Not in Flood Zone |
| 419 | P002926-002931 | John Hancock Assignment of Life Insurance Policy |
| 420 | P002932-002937 | Northwestern Mutual Assignment of Life Insurance Policy |
| 421 | P002938 | Workers Comp Insurance - APCO Construction |
| 422 | P002939 | Waterfield Insurance General Liability Insurance Certificate |
| SURVEY | | |
| 423 | P002940 | UV Zoning Survey |
| 424 | P002941 | Reliance Letter regarding UV Zoning Survey |
| 425 | P002942-002943 | Reliance Legal Description regarding UV Zoning Survey |
| 426 | P002944 | Reliance Letter by Geotechnical |
| EDELSTEIN/GEMSTONE MANHATTAN HOLDINGS I, LLC ORIGINAL LOAN DOCUMENTS | | |
| 427 | P002945-002947 | Edelstein Note - \$13 million |
| 428 | P002948-002949 | 1 st Amendment to Edelstein Note |
| 429 | P002950-002953 | Rental Line of Credit Note |
| 430 | P002954-002978 | Loan Agreement Edelstein |
| 431 | P002979-002985 | 1 st Amendment to Loan Agreement Edelstein |
| 432 | P002986-002988 | 2 nd Amendment to Loan Agreement Edelstein |
| 433 | P002989-002992 | 3 rd Amendment to Loan Agreement Edelstein |
| 434 | P002993-003000 | 4 th Amendment to Loan Agreement Edelstein |
| 435 | P003001-003030 | Junior Third Party Deed of Trust and Security Agreement with Assignment of Rents and Fixture Filing (Line of Credit) (\$38 million) |

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| 436 | P003031-003035 | 1 st Amendment to Junior Third Party Deed of Trust (Manhattan Serene) |
| 437 | P003036-003055 | 3 rd Deed of Trust \$13 million (Manhattan West) |
| 438 | P003056-003062 | 1 st Amendment to 3 rd Deed of Trust (Manhattan West) |
| 439 | P003063-003068 | 2 nd Amendment to 3 rd Deed of Trust (Manhattan West) |
| 440 | P003069-003073 | Resolution for Borrowing and Pledging Assets GMHI, LLC |
| 441 | P003074-003090 | Pledge Agreement Alexander Edelstein |
| 442 | P003091-003107 | Pledge Agreement Gemstone Development, LLC |
| 443 | P003108-003111 | Resolution for Pledge Gemstone Development, LLC |
| 444 | P003112-003114 | Consent & Acknowledgment to Pledge Agreement Gemstone Development, LLC |
| 445 | P003115-003117 | Consent & Acknowledgment to Pledge Agreement Gemstone LVS, LLC |
| 446 | P003118-003122 | Consent Manager to Pledge of Gemstone LVS, LLC |
| 447 | P003123-003137 | Pledge Agreement Gemstone Development West, LLC |
| 448 | P003138-003140 | Consent & Acknowledgment to Pledge Agreement Gemstone Development West, LLC |
| 449 | P003141-003146 | Resolution for Borrowing and Pledging Assets Gemstone Development West, LLC |
| 450 | P003147-003149 | Consent & Acknowledgment to Pledge Agreement Gemstone Apache, LLC |
| 451 | P003150-003152 | Consent to Assignment Urban Village |
| 452 | P003153-003165 | Security Agreement Gemstone LVS, LLC |
| 453 | P003166-003177 | Security Agreement Gemstone Apache, LLC |
| 454 | P003178-003180 | Environmental Indemnity |
| 455 | P003181-003184 | ADA Indemnity |
| 456 | P003185-003186 | Accommodation Recording Agreement Gemstone LVS, LLC (\$38 million DOT Manhattan Serene) |
| 457 | P003187-003212 | Title Insurance (\$38 million) (Gemstone Apache, LLC) |
| TITLE REPORT DECEMBER 2008 | | |
| 458 | P003213-003230 | Preliminary Title Report |

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| 459 | P003231-003235 | Assessor's Parcels Map |
| 460 | P003236-003239 | Vesting Deed Gemstone Development West, LLC |
| 461 | P003240-003304 | Exception No. 4 |
| 462 | P003305-003351 | Exception No. 5 |
| 463 | P003352-003397 | Exception No. 6 |
| 464 | P003398-003444 | Exception No. 7 |
| 465 | P003445-003452 | Exception No. 8 |
| 466 | P003453-003458 | Exception No. 9 |
| 467 | P003459-003466 | Exception No. 10 |
| 468 | P003467-003471 | Exception No. 11 |
| 469 | P003472-003511 | Exception No. 12 |
| 470 | P003512-003521 | Exception No. 13 |
| 471 | P003522-003564 | Exception No. 14 |
| 472 | P003565-003613 | Exception No. 15 |
| 473 | P003614-003622 | Exception No. 16 |
| 474 | P003623-003633 | Exception No. 17 |
| 475 | P003634-003655 | Exception No. 18 |
| 476 | P003656-003695 | Exception No. 19 |
| 477 | P003696-003741 | Exception No. 20 |
| 478 | P003742-003788 | Exception No. 21 |
| 479 | P003789-003802 | Exception No. 22 |
| 480 | P003803-003808 | Exception No. 23 |
| 481 | P003809-003810 | Exception No. 24 |
| 482 | P003811-003812 | Exception No. 25 |
| 483 | P003813-003818 | Exception No. 26 |
| 484 | P003819-003824 | Exception No. 27 |
| 485 | P003825-003826 | Exception No. 28 |
| 486 | P003827-003828 | Exception No. 29 |
| 487 | P003829-003831 | Exception No. 30 |
| 488 | P003832 | Exception No. 31 |
| 489 | P003833-003836 | Exception No. 32 |

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| 1 | 490 | P003837-003838 | Exception No. 33 |
| 2 | 491 | P003839-003844 | Exception No. 34 |
| 3 | 492 | P003845-003848 | Exception No. 35 |
| 4 | 493 | P003849-003854 | Exception No. 36 |
| 5 | 494 | P003855-003868 | Exception No. 37 |
| 6 | 495 | P003869-003870 | Exception No. 38 |
| 7 | 496 | P003871-003872 | Exception No. 39 |
| 8 | 497 | P003873-003897 | Exception No. 40 |
| 9 | 498 | P003898-003899 | Exception No. 41 |
| 10 | 499 | P003900-003901 | Exception No. 42 |
| 11 | 500 | P003902-003903 | Exception No. 43 |
| 12 | 501 | P003904-003905 | Exception No. 44 |
| 13 | 502 | P003906-003950 | Exception No. 45 |
| 14 | 503 | P003951-003953 | Exception No. 46 |
| 15 | 504 | P003954-003955 | Exception No. 47 |
| 16 | 505 | P003956-003957 | Exception No. 48 |
| 17 | 506 | P003958 | Exception No. 49 |
| 18 | 507 | P003959-003962 | Exception No. 50 |
| 19 | 508 | P003963 | Exception No. 51 |
| 20 | 509 | P003964-003967 | Exception No. 52 |
| 21 | 510 | P003968-003971 | Exception No. 53 |
| 22 | 511 | P003972-003973 | Exception No. 54 |
| 23 | 512 | P003974-003975 | Exception No. 55 |
| 24 | 513 | P003976-003977 | Exception No. 56 |
| 25 | 514 | P003978-003979 | Exception No. 57 |
| 26 | 515 | P003980-003981 | Exception No. 58 |
| 27 | 516 | P003982-003983 | Exception No. 59 |
| 28 | 517 | P003984-003987 | Exception No. 60 |
| | 518 | P003988-003989 | Exception No. 61 |
| | 519 | P003990 | Exception No. 62 |
| | 520 | P003991 | Exception No. 63 |

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| 521 | P003992 | Exception No. 64 |
| 522 | P003993-003994 | Exception No. 65 |
| 523 | P003995-003997 | Exception No. 66 |
| 524 | P003998-004004 | Exception No. 67 |

Given the volume of the materials being disclosed, any inadvertent disclosure of privileged information should not be considered a waiver of the privilege with respect to that or any other documents, and any such materials must promptly be returned. Because of the sheer volume of these materials, please consider this material to be confidential, subject to later reconsideration upon request. Plaintiffs reserve the right to supplement this disclosure statement as discovery continues in this matter.

2. *Categories of Documents Discoverable Under Rule 26(b).*

Plaintiffs have identified categories of documents that may contain discoverable information. Not all of the categories listed below are documents within Plaintiffs' possession. Some these documents may be in the possession of one or more of the Defendants or third-parties.

1. Any and all documents related to the Manhattan West project, including, but not limited to, loan files, loan documents, underwriting files, due diligence files, lending policies and guidelines.
2. Correspondence, emails and other evidence of communications between and among any of the following: Scott and Scott Financial, Tharaldson and any Tharaldson-related company, Bank of Oklahoma, any of the 29 participating lenders, Gemstone West, title company, general and subcontractors on the Manhattan West project, and any other person or entity involved in the financing and construction of the Manhattan West project.
3. Documents, including, but not limited to, correspondence and emails, loan files, underwriting files, due diligence files, title insurance policies, loan administration and servicing files, related to each of the following projects:

- 1 A. \$65,600,000 construction loan and \$38,900,000 construction loan to
2 Gemstone LVS, LLC made in June, 2004 in which Tharaldson Financial
3 Group, Inc. was lender and SFC was its financial consultant in the
4 underwriting, documentation and servicing, secured by Phase 1 and Phase
5 2 respectively of the Manhattan Project in Las Vegas, Nevada.
- 6 B. \$10,000,000 construction loan made October 2005 and subsequently
7 modified and extended, \$2,000,000 second loan made in March 2006, and
8 \$3,750,000 inventory loan made in September 2008, in all of which
9 Mesquite Investor Group is the borrower, SFC is lender, and Tharaldson
10 Financial Group, L.L.C. is the 100% participant and owner of the Lender's
11 interest, secured by a condominium project in Mesquite, Nevada.
- 12 C. \$2,400,000 subordinate loan and \$4,000,000 senior loan to 40th Street and
13 Baseline, LLC made in March, 2006, in which SFC is the Lender and
14 CVFS is the 100% participant and owner of the Lender's interest, secured
15 by real property located in Phoenix, Arizona.
- 16 D. \$2,250,000 subordinate loan and \$3,750,000 senior loan to El Mirage and
17 Camelback, LLC made March, 2006, in which SFC is the Lender and
18 CVFS is the 100% participant and owner of the Lender's interest, secured
19 by real property located in Phoenix, Arizona.
- 20 E. \$46,000,000 land loan to Desert Springs Partners, L.L.C. and Ave. 48
21 Investment Group, L.L.C. made in August 2006 with a maturity of January
22 1, 2009, in which SFC is the Lender and CVFS is the majority participant
23 and majority owner of the Lender's interest, secured by land located in
24 Palm Springs, California.
- 25 F. \$10,000,000 subordinate and \$20,000,000 senior land loan to Torrey Pines
26 Development, LLC, ABCDW, LLC, and Vanderbilt Farms, LLC with SFC
27 as the Lender and CVFS as the 100% participant and owner of the
28 Lender's interest, made in September 2006 with a maturity of December

1 31, 2008, secured by land in western Maricopa County, Arizona.

2 G. \$20,000,000 subordinate and \$82,000,000 senior land loan to Vanderbilt
3 Farms, Vineyard Farms, ABCDS, and Gillespie Properties with SFC as
4 Lender and CVFS as the majority participant and majority owner of the
5 Lender's interest, made in September 2006 with a maturity of December
6 31, 2008, secured by land in western Maricopa County, Arizona.

7 H. \$1,890,000 subordinate and \$3,150,000 senior loan to Leadermark
8 Communities made in February, 2007, in which SFC was the Lender and
9 CVFS was the 100% participant and owner of the Lender's interest,
10 secured by real property located in Phoenix, Arizona.

11 **C. COMPUTATION OF DAMAGES.**

12 Plaintiffs have not completed their computation of damages. As of the date of this Initial
13 Disclosure Plaintiffs have not made a final decision on whether they will employ expert
14 witnesses to testify as to the computation as to any category of their damages, but anticipate that
15 they probably will do so.

16 First and foremost Plaintiffs seek declaratory relief. The declaratory relief Plaintiffs seek
17 is as follows:

18 A. Declaring that CVFS has terminated all of the CVFS Pre-Senior Participation
19 Agreements and the CVFS Senior Loan Participation Agreement, that SFC has no
20 authority to act for CVFS with respect to any of the loans covered thereby, and
21 ordering SFC to execute and deliver appropriate assignments of those loans and
22 related documents to CVFS.

23 B. Declaring that the Senior Loan Documents were induce by fraud,
24 misrepresentation, omission and/or mistake and are not the valid, legally binding,
25 and/or enforceable obligations of Plaintiffs.

26 C. Declaring that, upon CVFS's restoration to the Fiduciary Defendants as agent for
27 the Senior Loan Participants of the net \$10,000,000 paydown received from the
28 Senior Loan proceeds together with interest thereon, the Subordination is

1 rescinded.

2 D. Declaring that the Deeds of Trust securing the Prior Loan are prior and superior
3 to the Senior Loan Deed of Trust and to any liens for construction work performed
4 on the Property after July 5, 2006, and to any and all other liens or encumbrances
5 on the Project recorded subsequent to recordation of the Deeds of Trust securing
6 the Prior Loans and constitute first lien positions on the Property.

7 E. Declaring that Plaintiffs have one or more valid legal defenses to the Plaintiffs'
8 Senior Loan Documents if those documents would otherwise be the valid, legally
9 binding, or enforceable obligation of Plaintiffs.

10 In the alternative, Plaintiffs seek a declaration reforming the Tharaldson Guaranty and
11 the TM2I Guaranty due to fraud and/or mistake to affirm the single action rule and the fair
12 market value defense that was part of Plaintiffs' understanding with the Fiduciary Defendants.

13 In the alternative, Plaintiff seek an order that the Fiduciary Defendants jointly and
14 severally, disgorge to Plaintiffs any and all direct benefit they have obtained in connection with
15 their breaches of fiduciary duties. Plaintiffs have not calculated these damages and most of the
16 information needed to establish this item of damages is in the possession of the Fiduciary
17 Defendants.

18 In the alternative, Plaintiffs seek an award of compensatory damages against the Fiduciary
19 Defendants jointly and severally, in an amount equal to all direct, consequential, and other
20 damages they have suffered, in amounts to be proved at the trial of this matter. Plaintiffs have
21 not completed a calculation of their compensatory damages. Plaintiffs' compensatory damages
22 include, but are not limited to, the following elements:

23 • In the event that the subordination transaction is not invalidated, or in the event
24 that the lien position of CVFS is not found to be senior to construction liens on the project,
25 CVFS will suffer damages of up to \$49,778,059, plus accrued and accruing interest and fees, all
26 of which damages are potentially caused by CVFS' potential loss of lien priority.

27 • CVFS is entitled to recover \$327,486, plus interest thereon, for its participating
28 interest in the Senior Manhattan West Loan.

1 • Plaintiff Gary Tharaldson is entitled to recover damages on his defamation claim
2 in an amount as yet undetermined and which will be further developed and determined through
3 ongoing investigation and discovery.

4 • Plaintiffs are entitled to recover compensatory damages caused by Defendants'
5 wrongful conduct as described in the Amended Complaint in an amount as yet undetermined and
6 which will be further developed and determined through ongoing investigation and discovery.

7 • In the event Plaintiffs Tharaldson and TM2I are liable for or required to pay any
8 monies on their Guarantees, Tharaldson and TM2I will have compensable damages equal to such
9 amount paid on the Guarantees.

10 In the alternative and in addition to compensatory damages, Plaintiffs seek an award of
11 punitive damages in an amount not more than three times the compensatory damages proved at
12 trial.

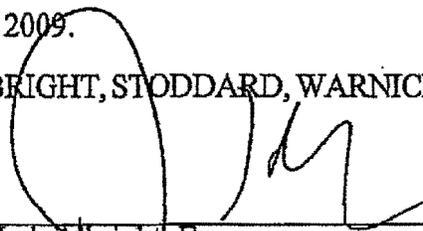
13 Plaintiffs also seek an award of their costs of suit, expenses of litigation, including but
14 not limited to expert fees and reasonable attorneys fees.

15 **D. INSURANCE AGREEMENTS**

16 Plaintiffs do not have any insurance agreement which may be liable to satisfy part or all
17 of any parties liability in this action.

18 DATED this 24 day of July, 2009.

19 ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, P.C.

20
21 By 

22 Mark Albright, Esq.
23 D. Chris Albright, Esq.
24 801 South Rancho Drive
25 Quail Park - Suite D-4
26 Las Vegas, Nevada 89106
27 *Local Counsel for Plaintiffs*

28 MORRILL & ARONSON, P.L.C.
K. Layne Morrill
Martin A. Aronson
John T. Moshier
One East Camelback Road, Suite 340
Phoenix, AZ 85012
Counsel for Plaintiffs

1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 24th day of July, 2009, the foregoing PLAINTIFFS' RULE
3 16.1(A)(1) INITIAL DISCLOSURES was served on the following persons by mailing a copy
4 thereof, first class mail, postage prepaid, to:

5 J. Randall Jones
6 Mark M. Jones
7 Matthew S. Carter
8 Kemp, Jones & Coulthard, LLP
9 3800 Howard Hughes Parkway
10 Seventeenth Floor
11 Las Vegas, Nevada 89169
12 Attorneys for Scott Financial Corporation and
13 Bradley L. Scott

14 Von S. Heinz
15 Abran E. Vigil
16 Ann Marie McLoughlin
17 Lewis and Roca LLP
18 Suite 600
19 3993 Howard Hughes Parkway
20 Las Vegas, Nevada 89169
21 Attorneys for Bank of Oklahoma

22 John D. Clayman, Esq.
23 Frederic Dorwart Lawyers
24 Old City Hall
25 124 East Fourth Street
26 Tulsa, Oklahoma 74103-5010
27 Attorneys for Bank of Oklahoma

28 Gwen Rutar Mullins, Esq.
Howard & Howard
3800 Howard Hughes Parkway
Suite 1400
Las Vegas, Nevada 89169
Attorneys for Defendant APCO


Employee of Morrill & Aronson, PLC

EXHIBIT L

SUPP

1 COOKSEY, TOOLEN, GAGE, DUFFY & WOOG
2 MARTIN A. MUCKLEROY, ESQ.
3 Nevada Bar No. 009634
4 3930 Howard Hughes Parkway, Suite 200
5 Las Vegas, Nevada 89169
6 Telephone: (702) 949-3100

7 MORRILL & ARONSON, P.L.C.
8 K. LAYNE MORRILL, ESQ.
9 Arizona Bar No. 004591
10 MARTIN A. ARONSON, ESQ.
11 Arizona Bar No. 009005
12 JOHN T. MOSHIER, ESQ.
13 Arizona Bar No. 007460
14 One E. Camelback Road, Suite 340
15 Phoenix, Arizona 85012
16 Telephone: (602) 263-8993

17 *Attorneys For Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

18 CLUB VISTA FINANCIAL SERVICES, L.L.C., a)
19 Nevada limited liability company; THARALDSON)
20 MOTELS II, INC., a North Dakota corporation;)
21 and GARY D. THARALDSON,)

22 Plaintiffs,

23 v.

24 SCOTT FINANCIAL CORPORATION, a North)
25 Dakota corporation; BRADLEY J. SCOTT; BANK)
26 OF OKLAHOMA, N.A., a national bank;)
27 GEMSTONE DEVELOPMENT WEST, INC., a)
28 Nevada corporation; ASPHALT PRODUCTS)
CORPORATION D/B/A APCO CONSTRUCTION,)
a Nevada corporation; DOE INDIVIDUALS 1-100;)
and ROE BUSINESS ENTITIES 1-100,)

Defendants.

Case No. A579963
Department No. 13
Consolidated With
Case No. A-10-609288-C

**PLAINTIFFS' FIRST
SUPPLEMENTAL RULE 16.1(A)(1)
DISCLOSURE STATEMENT**

AND RELATED COUNTERCLAIMS

1 CLUB VISTA FINANCIAL SERVICES, L.L.C., a
Nevada limited liability company; THARALDSON
2 MOTELS II, INC., a North Dakota corporation;
and GARY D. THARALDSON,

3 Plaintiffs,

4 v.

5 ALEXANDER EDELSTEIN, an individual,

6 Defendant.

7
8 Plaintiffs Club Vista Financial Services, LLC, Tharaldson Motels II, Inc., and Gary D.
9 Tharaldson (collectively, "Plaintiffs"), by and through counsel undersigned, hereby submit their First
10 Supplemental Disclosure Statement pursuant to Rule 16.1(a)(1), Nevada Rules of Civil Procedure.
11 Disclosure and discovery is just beginning in this action, and Plaintiffs reserve the right to modify,
12 supplement and amend these disclosures as additional information is obtained through disclosure and
13 discovery.

14 **A. INDIVIDUALS WITH POSSIBLE DISCOVERABLE INFORMATION.**

15 As of the date of this First Supplemental Disclosure Statement, the following individuals who
16 may have information discoverable under Rule 26(b), Nevada Rules of Civil Procedure, have been
17 identified. A brief description of the subject matter each individual may possess is included below
18 when ascertainable. Plaintiffs reserve the right to modify and supplement as information is learned
19 during disclosure and discovery. Furthermore, by listing witnesses or exhibits herein, Plaintiffs are
20 not agreeing that such testimony or exhibits are necessarily admissible, and Plaintiffs reserve all
21 rights to object to the admissibility of evidence offered herein.

22 **Defendants' counsel is instructed that they may not initiate contact with any of**
23 **Plaintiffs' current or former employees, without the prior written consent of Plaintiffs' counsel.**

- 24
25 1. Lynn DeMann
26 Gemstone Development
27 9121 W. Russell Rd. Suite 117
28 Las Vegas, NV 89148
Tel: (702) 614-3193
Fax: (702) 614-0669

1 In addition to the matters previously disclosed, Ms. DeMann is expected to testify consistent
2 with her deposition testimony given in this matter and the exhibits to the deposition.

3 2. Alexander Edelstein
4 Gemstone Development
5 Chief Executive Officer
6 9121 W. Russell Rd. Suite 117
7 Las Vegas, NV 89148
8 Tel: (702) 614-3193
9 Fax: (702) 614-0669
10 AlexEd@gemstonedev.com

11 In addition to the matters previously disclosed, Mr. Edelstein is expected to testify consistent
12 with his deposition testimony given in this matter and the exhibits to the deposition. He may also
13 have discoverable information relating to failure to achieve \$60 million in qualified presales and
14 preleases, material adverse change in the financial condition of the borrower slowing sales at
15 ManhattanWest and increased cancellations at Manhattan, the 2009-10 settlement on the Edelstein
16 Note, construction scheduling and bid scope issues at ManhattanWest, sales at ManhattanWest where
17 a Gemstone entity paid the buyer's deposit bond and that CVFS' subordination to the Senior Lien was
18 treated as equity on project proformas.

19 3. Phillippe Pageau Goyette
20 Diversified Group
21 145 E. Warm Springs
22 Las Vegas, NV 89119
23 Tel: (702) 385-4988
24 Fax: (702) 385-4975
25 Philippe@diversifiedgrp.com

26 In addition to the matters previously disclosed, Mr. Goyette is expected to testify consistent
27 with his deposition testimony given in this matter and the exhibits to the deposition.

28 4. Penny Heaberlin
Maslon Edelman Borman & Brand, LLP
Attorney
3300 Wells Fargo Center 90 South Seventh Street
Minneapolis, MN 55402-4140
Tel: (612) 672-8315
Fax: (612) 642-8315
Penny.Heaberlin@maslon.com

In addition to the matters previously disclosed, Ms. Heaberlin is expected to testify consistent
with her deposition testimony given in this matter and the exhibits to the deposition. She is also

1 expected to have discoverable information relating to her approval of conditions precedent to the
2 Lender's funding of the project.

3 5. Tim James
4 Bank of Oklahoma
5 Senior Vice President, Commercial Real Estate Lending
6 Tel: (918) 588-6840

7 In addition to the matters previously disclosed, Mr. James is expected to testify consistent
8 with his deposition testimony given in this matter and the exhibits to the deposition. He is expected
9 to have discoverable information regarding BOK's duties as Co-Lead and lack of appropriate due
10 diligence by SFC and BOK. He is expected to have discoverable knowledge that the Senior Loan
11 was "highly profitable" for BOK, and to the lack of \$60 million in qualified presales. He is expected
12 to have discoverable information regarding BOK's dissatisfaction with SFC's loan underwriting
13 leading to BOK requiring the TM2I Guaranty. He is also expected to have discoverable information
14 about BOK's failure to disclose material adverse changes to the project proforma and that CVFS'
15 subordination was treated as equity on the project proforma.

16 6. Ryan Kucker, CPA
17 Tharaldson Companies
18 CPA / Accountant
19 2518 Anthem Village Dr. Suite 104
20 Henderson, NV 89052
21 Tel: (702) 260-8443 Ext. 4
22 Fax: (702) 897-4336
23 Mobile: (702) 469-2514

24 In addition to the matters previously disclosed, Mr. Kucker is expected to testify consistent
25 with his deposition testimony given in this matter and the exhibits to the deposition.

26 7. Layne Morrill
27 Morrill & Aronson, PLC
28 Attorney
29 One East Camelback Road, Suite 340
30 Phoenix, Arizona 85012
31 Tel: (602) 650-4121
32 lmorrill@maazlaw.com
33 Attorney for Plaintiffs

34 Plaintiffs do not believe Mr. Morrill has any discoverable information relevant to this lawsuit.

35 Any knowledge Mr. Morrill has about this case is protected by the attorney/client and/or work

1 product privileges. As Alex Edelstein testified, Mr. Morrill may have discoverable information
2 about the negotiations with Mr. Edelstein concerning the workout reached to the Manhattan Serene
3 loans, but that subject is not relevant to this lawsuit.

4 8. Kyle Newman
5 Tharaldson Ethanol
6 knewman@tharaldsonethanol.com

7 In addition to the matters previously disclosed, Mr. Newman is expected to testify consistent
8 with his deposition testimony given in this matter and the exhibits to the deposition. Mr. Newman
9 also has information about Plaintiffs' damages.

10 9. Brad Scott
11 Scott Financial Corporation
12 1501 Sundown Drive
13 Bismarck, ND 58503
14 Tel: (701) 255-2215
15 Fax: (701) 223-7299
16 brad@scottfinancialcorp.com

17 In addition to the matters previously disclosed, Mr. Scott is expected to testify consistent with
18 his deposition testimony given in this matter and the exhibits to the deposition. Mr. Scott is also
19 expected to have discoverable information regarding the TMZI Guaranty, SFC's longstanding
20 relationship with Gary Tharaldson and his companies, and the lack of appropriate due diligence on
21 the Senior Loan by SFC, and SFC knowing the project was not feasible as of the first funding on
22 February 6, 2008. He is also expected to have discoverable knowledge regarding changes in project
23 proformas and the proforma's treatment of CVFS' subordination as project equity. He is expected
24 to have discoverable information that conditions to loan funding, including the requirement for \$60
25 million in project presales were not met and to SFC's knowledge of deteriorating financial prospects
26 for ManhattanWest that were not disclosed to Plaintiffs.

27 10. Margo Scott (Klein)
28 Scott Financial Corporation
1501 Sundown Drive
Bismarck, ND 58503
Tel: (701) 255-2215
Fax: (701) 223-7299
margo@scottfinancialcorp.com

1 In addition to the matters previously disclosed, Ms. Klein is expected to testify consistent with
2 her deposition testimony given in this matter and the exhibits to the deposition.

3 11. Peter Smith
4 Attorney
{Contact information unknown}

5 In addition to the matters previously disclosed, Mr. Smith is expected to testify consistent with
6 his deposition testimony given in this matter and the exhibits to the deposition.

7 12. Gary Tharaldson
8 Tharaldson Companies
9 Chief Executive Officer
10 2518 Anthem Village Dr. Suite 104
11 Henderson, NV 89052
Tel: (702) 260-8443
Fax: (702) 897-4336

12 In addition to the matters previously disclosed, Mr. Tharaldson is expected to testify consistent
13 with his deposition testimony given in this matter and the exhibits to the deposition. He is further
14 expected to have discoverable information about his belief that TM2I may not have executed the
15 TM2I Guaranty and that there was no corporate resolution of TM2I approving execution of the TM2I
16 Guaranty.

17 13. Jason Ulmer, MBA
18 Scott Financial Corporation
19 Commercial Loan Analyst
20 1501 Sundown Drive
21 Bismarck, ND 58503
22 Tel: (701) 255-2215
Fax: (701) 223-7299
Mobile: (701) 730-1988
jason@scottfinancialcorp.com

23 In addition to the matters previously disclosed, Mr. Ulmer is expected to testify consistent
24 with his deposition testimony given in this matter and the exhibits to the deposition.

25 14. Dana Berggren
26 (Prudential)

27 Ms. Berggren is expected to testify consistent with her deposition testimony given in this
28

matter and the exhibits to the deposition.

1
2 15. Miriam Campos-Root
3 (Prudential)

4 Ms. Campos-Root is expected to testify consistent with her deposition testimony given in this
5 matter and the exhibits to the deposition.

6
7 16. Zack Hussain
8 (CB Richard Ellis)

9 Mr. Hussain is expected to testify consistent with his deposition testimony given in this matter
10 and the exhibits to the deposition.

11
12 17. Mark Chatow
13 (Former employee of Gemstone)
14 (310) 922-8665

15 Mr. Chatow is expected to testify consistent with his deposition testimony given in this matter
16 and the exhibits to the deposition .

17 18. Sara Edelstein

18 Ms. Edelstein is expected to testify consistent with her deposition testimony given in this
19 matter and the exhibits to the deposition .

20
21 19. Charles Edelstein

22 Mr. Edelstein is expected to testify consistent with his deposition testimony given in this
23 matter and the exhibits to the deposition. He is also expected to have discoverable information
24 relating to the failure to achieve \$60 million in qualified presales and preleases.

25
26 20. Robert Leikam

27 Mr. Leikam is expected to testify consistent with his deposition testimony given in this matter
28 and the exhibits to the deposition.

21. Cheryl Veneziano

1 Ms. Veneziano is expected to testify consistent with her deposition testimony given in this
2 matter and the exhibits to the deposition.

3
4 22. Paul Mesmer
Bank of Oklahoma
5 c/o John Clayman, Lewis & Roca

6 Mr. Mesmer is expected to testify consistent with his deposition testimony given in this matter
7 and the exhibits to the deposition.

8
9 23. Randy Nickerl
APCO
10 c/o Howard & Howard

11 Mr. Nickerl is expected to testify consistent with his deposition testimony given in this matter
12 and the exhibits to the deposition.

13
14 24. Joe Pelan
APCO
15 c/o Howard & Howard

16 Mr. Pelan is expected to testify consistent with his deposition testimony given in this matter
17 and the exhibits to the deposition.

18
19 25. Lisa Lynn
APCO
20 c/o Howard & Howard

21 Ms. Lynn is expected to testify consistent with her deposition testimony given in this matter
22 and the exhibits to the deposition.

23
24 26. Fred Ball
Chairman of the Board
Bank of Texas
25 5956 Sherry Lane
Suite 1400
26 Dallas, Texas 75225

27 Mr. Ball is expected to testify consistent with his deposition testimony given in this matter and
28 the exhibits to the deposition.

27. Richard Solberg

1 Mr. Solberg is expected to testify consistent with his deposition testimony given in this matter
2 and the exhibits to the deposition.

28. Kevin Prodoehl

3
4
5 Mr. Prodoehl is expected to testify consistent with his deposition testimony given in this
6 matter and the exhibits to the deposition.

29. Chad Scott

7
8
9 Mr. Scott is expected to testify consistent with his deposition testimony given in this matter
10 and the exhibits to the deposition.

11
12 30. Charles Cotter
Bank of Oklahoma
c/o John Clayman, Lewis & Roca
13

14 Mr. Cotter is expected to testify consistent with his deposition testimony given in this matter
15 and the exhibits to the deposition.

16
17 31. Vicki Sheppard

18 Ms. Sheppard is expected to testify consistent with her deposition testimony given in this
19 matter and the exhibits to the deposition.

20
21 32. Brooks Burgum

22 Mr. Burgum is expected to testify consistent with his deposition testimony given in this matter
23 and the exhibits to the deposition.

24
25 33. Kim Kautzman
Bank of North Dakota

26
27 Ms. Kautzman is expected to testify consistent with her deposition testimony given in this
28 matter and the exhibits to the deposition.

B. DOCUMENTS, DATA COMPILATIONS, AND TANGIBLE THINGS

1 Plaintiffs have produced the following documents. (CD with documents being produced will
2 be provided with a Receipt of Copy)

3 **1. Plaintiffs' Documents.**

4 CVFS-GEN-000001 – 000762 were produced on 12/22/2009.

5 CVFS-PRJ-000001 – 005297 were produced on 12/22/2009.

6 CVFS-RK-000001 – 015574 were produced on 12/22/2009.

7 CVFS-SFC-00001 – 01922 were produced on 12/22/2009.

8 P 000001- 004004 were produced on 12/22/2009.

9 CVFS-KN 00001 – 004671 were produced on 2/23/2010.

10 CVFS-GT 000001-006817 were produced on 2/23/2010.

11 P004005 - P018333 were produced on 4/23/2010.

12 CVFS-RK015575 through CVFS-RK029227 were produced on 6/2/2010.

13 P018334-018376 were produced on 9/24/2010.

14 CVFS-RK029228-29760 were produced on 9/24/2010.

15 P018377-P020139 were produced on 10/1/2010.

16 **2. Non-Party Documents.**

17 Participating Bank Documents:

18 State Bank of Wheaton were produced on 3/3/2010.

19 Arvest Bank were produced on 3/3/2010.

20 FNB Wellington were produced on 3/3/2010.

21 Citizens State Bank were produced on 3/3/2010.

22 McKenzie County Bank were produced on 3/3/2010.

23 Bank of North Dakota were produced on 3/3/2010.

24 Alerus Financial were produced on 3/3/2010.

25 Choice Financial Group were produced on 3/3/2010.

26 American State Bank were produced on 6/21/2010.

27 Security National Bank were produced on 6/21/2010.

28 Sunflower Bank were produced on 6/21/2010.

1 BankWest were produced on 6/21/2010.
2 First State Bank of ND were produced on 6/21/2010.
3 Border State Bank were produced on 6/21/2010.
4 First Western-Eden were produced on 6/21/2010.
5 First Western Bank (MIN) were produced on 6/21/2010.
6 Goose River Bank were produced on 6/21/2010.
7 Ramsey National Bank were produced on 6/21/2010.
8 National Bank of Harvey were produced on 6/21/2010.
9 United Community Bank were produced on 6/21/2010.
10 United Valley Bank were produced on 6/21/2010.
11 Bank VI-Salina were produced on 6/21/2010.
12 Citizens State Bank of KS were produced on 6/21/2010.
13 Equitable Bank were produced on 6/21/2010.
14 Landmark Bank were produced on 6/21/2010.
15 Starion were produced on 6/21/2010.
16 Union State Bank were produced on 6/21/2010.
17 MANW-AE0001-01335 were produced on 3/12/2010.
18 WF-0001-WF-03606 were produced on 6/21/2010.
19 FATCO-000001-FATCO-010507 were produced on 6/21/2010.
20 Abacus 000001-3880 were produced on 7/28/2010.
21 Backwall 000001-86 were produced on 7/28/2010.
22 Edelstein 000001-4136 were produced on 7/28/2010.
23 Commonwealth 000001-3300 were produced on 7/28/2010.
24 FATCO (FAT-000001-2277) were produced on 7/28/2010.
25 Horning 000001-37 were produced on 7/28/2010.
26 Lee & Assoc. 000001-1329 were produced on 7/28/2010.
27 QBE 000001-3240 were produced on 7/28/2010.
28 Title One 00001-9519 were produced on 7/28/2010.
Wells Fargo 03607-5240 were produced on 7/28/2010.

CBRE-00001-001253 were produced on 9/24/2010.

Backwall-000087-000114 were produced on 9/24/2010.

Chase-CV-00001-00646 were produced on 9/24/2010.

NSB-000001-000250 were produced on 9/24/2010.

NAI Horizon (Horizon-000001-000036) were produced on 9/24/2010.

PRU-000001-001899 were produced on 9/24/2010.

QBE-003241-3344 were produced on 9/24/2010.

RYN-00001-07633 were produced on 9/24/2010.

WF-05241-05271 were produced on 9/24/2010.

Gemstone (GEM000001-146768) were produced on 6/18/10.

Given the volume of the materials being disclosed, any inadvertent disclosure of privileged information should not be considered a waiver of the privilege with respect to that or any other documents, and any such materials must promptly be returned. Because of the sheer volume of these materials, please consider this material to be confidential, subject to later reconsideration upon request. Plaintiffs reserve the right to supplement this disclosure statement as discovery continues in this matter.

C. COMPUTATION OF DAMAGES.

Pursuant to Rule 16.1(a)(1)(C) of the Nevada Rules of Procedure for District Courts, the Plaintiffs hereby update their previous disclosures on damages.

This updated damages disclosure is presented by type or category of claim. Under each category, Plaintiffs provide a narrative explanation of the basis for computation, a chart summarizing the computation, and supporting schedules with workpaper references to documents supporting the dates and amounts on the schedules. Plaintiffs also identify the witnesses who will testify as to Plaintiffs' damages computations and the documents that will be offered in proof of damages.

The updated damages disclosures presented herein are subject to revision and/or supplementation based upon any future developments in the case.

A. *Nevada Securities Law.*

Under NRS 90.660(1) and (4), Plaintiffs are entitled to recover damages from Scott Financial Corporation ("SFC"), Brad Scott ("Scott"), Gemstone Development West Inc. ("Gemstone"),

Alexander Edelstein ("Edelstein"), and Bank of Oklahoma ("BOK") consisting of: (1) the consideration paid for the security, plus (2) interest at the legal rate of this State from the date of payment, less (3) the amount of income received on the security, plus (4) costs and attorneys' fees. That right to recovery pre-supposes a tender consisting of a "notice of willingness to exchange the security for the amount specified" (NRS 90.660), which tender may be made at any time "before entry of judgment." (NRS 90.700). Plaintiffs will determine "before the entry of judgment" whether tender under NRS 90.660 and 90.700 will be made, and if such tender is made, Plaintiffs damages will be calculated as described below.

The amount Plaintiffs have paid for the security consists of: (1) the total amount that was owed to Club Vista Financial Services LLC ("CVFS") on the Prior Loan Note, the LOC Loan Note, and the Construction LOC Loan Note (collectively, the "Pre-Senior Notes") immediately prior to the closing of the Senior Loan, which Pre-Senior Notes and the deeds of trust securing them (the "Pre-Senior Deeds of Trust") SFC subordinated to the Senior Loan; (2) reduced by principal payments on the Pre-Senior Notes and on the Edelstein Note received from Senior Loan proceeds; (3) increased by all advances CVFS made on the Mezzanine Note at or after the closing of the Senior Loan; and (4) increased by all advances made by CVFS on its Senior Loan Participation, both prior to and after the default of Gemstone Development West Inc. ("Gemstone") under the Senior Loan.

Plaintiffs are entitled to recover statutory interest "from the date of payment." In this case, most of the payment for the security occurred at the closing of the Senior Loan when SFC subordinated the Pre-Senior Notes and the Pre-Senior Deeds of Trust. Payments for the security also occurred after the Senior Loan Closing, as advances were made under CVFS's Senior Loan Participation and under the Mezzanine Note. In Nevada, the legal rate of interest is determined under NRS 99.040 as two percentage points above the "prime rate." See Schedule 6. The "prime rate" under NRS 99.040 when the Pre-Senior Notes were converted to the Mezzanine Note and SFC executed the Subordination of the Pre-Senior Notes and Pre-Senior Deeds of Trust and made the first advance on the Senior Loan (the "Transaction Dates") was 7.25% per annum. See Schedule 7. Two percentage points above the Prime Rate is 9.25% per annum, which is the rate to which Plaintiffs are entitled as this component of damages.

The income Plaintiffs have earned on the security, which must be subtracted from the sum of

1 payments made and statutory interest, consists of: (1) loan, guaranty, and subordination fees accrued
2 at the closing or first funding of the Senior Loan; and (2) interest received or accrued after the closing
3 of the Senior Loan on: (a) the CVFS Senior Loan Participation; (b) the Mezzanine Note; and (c)
4 interest spread on the Senior Loan as consideration for guaranty and subordination.

5 Plaintiffs' present computation of its damages under NRS 90.660 is presented at Tab A
6 attached hereto, which refers to supporting schedules which are found under Tab G attached hereto.
7 As noted under Tab A, the amount of costs and attorneys' fees to be recovered will be determined at
8 or after the trial of this matter, but Plaintiffs anticipate that those attorneys' fees and costs will be
9 similar to the overall totals expended by Defendants.

10 **B. Breach of Fiduciary Duty and Aiding and Abetting Breach of Fiduciary Duty.**

11 Under applicable law, for breaches of fiduciary duty by SFC, Scott, and BOK (collectively the
12 "Fiduciary Defendants") and Gemstone and Edelstein (the "Aider and Abetter Defendants") Plaintiffs
13 are entitled to avoid any further obligations of Plaintiffs under any documents relating to the Senior
14 Loan and are entitled to recover all losses suffered by Plaintiffs as a result of the breaches of fiduciary
15 duty and the aiding and abetting.

16 The Plaintiffs' losses are determined as follows: (1) the total amount that was owed to CVFS
17 on the Pre-Senior Notes immediately prior to the closing of the Senior Loan, which Pre-Senior Notes
18 and Pre-Senior Deeds of Trust SFC subordinated to the Senior Loan; (2) reduced by principal
19 payments on the Pre-Senior Notes and on the Edelstein Note received from Senior Loan proceeds; (3)
20 increased by all advances CVFS made on the Mezzanine Note at or after the closing of the Senior
21 Loan; and (4) increased by all advances made by CVFS on its Senior Loan Participation, both prior to
22 and after Gemstone's default under the Senior Loan.

23 The losses described above are offset by income received or accrued by Plaintiffs to date
24 which consists of: (1) loan, guaranty, and subordination fees accrued at the closing or first funding of
25 the Senior Loan; and (2) interest received or accrued by Plaintiffs after the closing of the Senior Loan
26 on: (a) the CVFS Senior Loan Participation; (b) the Mezzanine Note; and (c) interest spread on the
27 Senior Loan as consideration for guaranty and subordination.

28 In addition, Plaintiffs are entitled to require SFC and BOK to disgorge any and all benefits they
received related to the Senior Loan transaction. Plaintiffs estimate, based upon information provided

1 by SFC and BOK, that the amounts to be disgorged by SFC is approximately \$575,000 and the
2 amount to be disgorged by BOK is approximately \$757,000.

3 Finally, any and all of Plaintiffs obligations of further performance under any and all
4 documents relating to the Senior Loan are discharged by the breaches of fiduciary duty.

5 To the extent this right of recovery may depend upon an appropriate tender of rescission of
6 Plaintiffs' obligations under documents related to the Senior Loan, the computations shown below
7 assume such a tender, which may be made at any time prior to the conclusion of the trial in this
8 matter.

9 Plaintiffs are entitled to prejudgment interest under NRS 90.040 on those losses from the date
10 each loss was incurred through the entry of judgment. In Nevada, the legal rate of interest is
11 determined under NRS 99.040 as two percentage points above the "prime rate." See Schedule 6.
12 The "prime rate" under NRS 99.040 at the Transaction Dates was 7.25% per annum. See Schedule
13 7. Two percentage points above the Prime Rate is 9.25% per annum, which is the rate to which
14 Plaintiffs are entitled as this component of damages.

15 Upon proof of breach of fiduciary duty and any other required elements Plaintiffs will also be
16 entitled to recover punitive damages. The amount of punitive damages Plaintiffs will request cannot
17 be determined until the conclusion of the trial.

18 Under Section 14(g) of the CVFS Senior Loan Participation Agreement, which is a source of
19 the fiduciary duties of the Fiduciary Defendants to Plaintiffs, Plaintiffs are entitled to recover "all
20 direct costs and expenses, including attorneys' fees," incurred as a result of breaches of fiduciary and
21 contractual duties under the CVFS Senior Loan Participation Agreement and under all Loan
22 Documents as defined in Section 1(h) of the Senior Loan Participation Agreement. The amount of
23 "all direct costs and expenses, including attorneys' fees" to be recovered will be determined at or after
24 the trial of this matter, but Plaintiffs anticipate that those will be similar to the overall totals expended
25 by Defendants.

26 Plaintiffs' present computation for damages for breach of fiduciary duty is set forth under Tab
27 B and is supported by the Schedules referred to in that computation, which are found at Tab G. If for
28 any reason, Plaintiffs do not elect to or are deemed to be precluded from electing to avoid further
performance on all documents related to the Senior Loan and recover their rescissionary damages,

1 Plaintiffs' damages recoverable from the Fiduciary Defendants and the Aider and Abetter Defendants
2 will increase by the full amount of any liability adjudged under the Guaranty and/or the TM2I
3 Guaranty.

4 *C. Contract.*

5 Under applicable law, the misrepresentations of material fact and omissions to state material
6 facts by Defendants either: (a) prevented the formation of the Subordination Agreement, the
7 Guaranty, the CVFS Senior Loan Participation, and (to the extent it was ever properly authorized or
8 agreed to) the TM2I Guaranty; or (b) enable Plaintiffs to rescind those contracts. In either event,
9 Plaintiffs are entitled to recover all losses they suffered in performance under any and all documents
10 relating to the Senior Loan.

11 Under applicable law, the non-satisfaction of conditions precedent to advances under the
12 Senior Loan Agreement prior to the funding of each and every advance under the Senior Loan entitles
13 Plaintiffs to a declaratory judgment that no further performance is required by Plaintiffs of any
14 obligations of Plaintiffs under any and all documents relating to the Senior Loan. Further, Plaintiffs
15 are entitled to recover all losses they suffered in performance under any and all documents relating to
16 the Senior Loan.

17 Under applicable law, numerous breaches of contract by SFC and BOK have discharged any
18 duty of further performance by Plaintiffs of any obligations of Plaintiffs under any and all documents
19 connected with the Senior Loan. Further Plaintiffs are entitled to recover all losses they have
20 suffered in performance under the documents relating to the Senior Loan.

21 The losses suffered consist of: (1) the total amount that was owed to CVFS on the Pre-Senior
22 Notes immediately prior to the closing of the Senior Loan, which Pre-Senior Notes and Pre-Senior
23 Deeds of Trust SFC subordinated to the Senior Loan; (2) reduced by principal payments on the
24 Pre-Senior Notes and on the Edelstein Note received from Senior Loan proceeds; (3) increased by all
25 advances CVFS made on the Mezzanine Note at or after the closing of the Senior Loan; and (4)
26 increased by all advances made by CVFS on its Senior Loan Participation, both prior to and after
27 Gemstone's default under the Senior Loan.

28 The losses described above are offset by income received or accrued by Plaintiffs to date
which consists of: (1) loan, guaranty, and subordination fees accrued at the closing or first funding of

1 the Senior Loan; and (2) interest received or accrued by Plaintiffs after the closing of the Senior Loan
2 on: (a) the CVFS Senior Loan Participation; (b) the Mezzanine Note; and (c) interest spread on the
3 Senior Loan as consideration for guaranty and subordination.

4 To the extent this right of recovery may depend upon an appropriate tender of rescission of
5 Plaintiffs' obligations under documents related to the Senior Loan, the computations shown below
6 assume such a tender, which may be made at any time prior to the conclusion of the trial in this
7 matter.

8 Under Section 14(g) of the CVFS Senior Loan Participation Agreement, Plaintiffs are entitled
9 to recover from Fiduciary Defendants "all direct costs and expenses, including attorneys' fees"
10 incurred as a result of their breaches of fiduciary and contractual duties under the CVFS Senior Loan
11 Participation Agreement and under all Loan Documents as defined in Section 1(h) of the Senior Loan
12 Participation Agreement. The amount of "all direct costs and expenses, including attorneys' fees" to
13 be recovered will be determined at or after the trial of this matter, but Plaintiffs anticipate that those
14 will be similar to the overall totals expended by Defendants.

15 Plaintiffs are entitled to prejudgment interest under NRS 90.040 on those losses from the
16 date each loss was incurred through the entry of judgment. In Nevada, the legal rate of interest is
17 determined under NRS 99.040 as two percentage points above the "prime rate." See Schedule 6.
18 The "prime rate" under NRS 99.040 at the Transaction Dates was 7.25% per annum. See Schedule
19 7. Two percentage points above the Prime Rate is 9.25% per annum, which is the rate to which
20 Plaintiffs are entitled as this component of damages.

21 Plaintiffs' present computation for damages for their contract claims is set forth under Tab C
22 and is supported by the Schedules referred to in that computation, which are found at Tab G. If for
23 any reason, Plaintiffs do not elect to or are deemed to be precluded from electing to avoid further
24 performance on all documents related to the Senior Loan and recover their rescissionary damages,
25 then: (a) Plaintiffs' damages recoverable from SFC, Scott and BOK will increase by the full amount of
26 any liability adjudged under the Guaranty and/or the TM2I Guaranty; (b) Plaintiffs will be entitled,
27 under the Nevada single action rule, to a conveyance of the Property; and (c) Defendants will be
28 obligated to deliver such title free and clear of all mechanics liens.

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D. Fraudulent Misrepresentations; Fraudulent Omissions; Constructive Fraud; Civil Conspiracy.

Under applicable law, Plaintiffs are entitled to recover from the Fiduciary Defendants and from the Aider and Abetter Defendants the pecuniary amount required to place Plaintiffs in the same position they would have been in had the fraud not been committed. Under the circumstances, Plaintiffs calculate damages under an out of pocket measure equal to the amount paid by Plaintiffs in the transaction less the true value of what they received in the transaction.

The amount that Plaintiffs paid in the transaction includes: (1) the total amount that was owed to CVFS on the Pre-Senior Notes immediately prior to the closing of the Senior Loan, which Pre-Senior Notes and Pre-Senior Deeds of Trust SFC subordinated to the Senior Loan; (2) reduced by principal payments on the Pre-Senior Notes and on the Edelstein Note received from Senior Loan proceeds; (3) increased by all advances CVFS made on the Mezzanine Note at or after the closing of the Senior Loan; and (4) increased by all advances made by CVFS on its Senior Loan Participation, both prior to and after Gemstone's default under the Senior Loan.

The value Plaintiffs received from the transaction includes: (1) loan, guaranty, and subordination fees accrued at the closing or first funding of the Senior Loan; (2) interest received or accrued by Plaintiffs after the closing of the Senior Loan on: (a) the CVFS Senior Loan Participation; (b) the Mezzanine Note; (c) interest spread on the Senior Loan as consideration for guaranty and subordination; and (3) the true value immediately after the Senior Loan closing, in light of the misrepresentations, omissions, and breaches of duty now known, of: (a) the Mezzanine Loan; and (b) the CVFS Senior Loan Participation.

Plaintiffs are entitled to prejudgment interest under NRS 90.040 on those losses from the date each loss was incurred through the entry of judgment. In Nevada, the legal rate of interest is determined under NRS 99.040 as two percentage points above the "prime rate." See Schedule 6. The "prime rate" under NRS 99.040 at the Transaction Dates was 7.25% per annum. See Schedule 7. Two percentage points above the Prime Rate is 9.25% per annum, which is the rate to which Plaintiffs are entitled as this component of damages.

Upon proof of fraudulent conduct and any other required elements, under applicable law, Plaintiffs will also be entitled to recover punitive damages. The amount of punitive damages

Plaintiffs may request cannot be determined prior to conclusion of the trial.

1 Under Section 14(g) of the CVFS Senior Loan Participation Agreement, Plaintiffs are entitled
2 to recover "all direct costs and expenses, including attorneys' fees," incurred as a result of breaches by
3 SFC and BOK of their duties under the CVFS Senior Loan Participation Agreement and under all
4 Loan Documents as defined in Section 1(h) of the CVFS Senior Loan Participation Agreement. The
5 claims covered in this part arose out of breaches of fiduciary and contractual duties created by the
6 relationship governed by the Senior Loan Participation Agreement and Plaintiffs are entitled to
7 recover "all direct costs and expenses, including attorneys' fees" on these claims as well. The
8 amount of "all direct costs and expenses, including attorneys' fees" to be recovered will be
9 determined at or after the trial of this matter, but Plaintiffs anticipate that those will be similar to the
10 overall totals expended by Defendants.

11 Plaintiffs' present computation for damages for their fraud claims is set forth under Tab D and
12 is supported by the Schedules referred to in that computation, which are found at Tab G. If for any
13 reason, Plaintiffs do not elect to or are deemed to be precluded from electing to avoid further
14 performance on all documents related to the Senior Loan and recover their rescissionary damages,
15 Plaintiffs' damages recoverable from SFC, Scott, BOK, and Edelstein will increase by the full amount
16 of any liability adjudged under the Guaranty and/or the TM2I Guaranty.

17 *E. Negligence and Negligent Misrepresentation.*

18 Under applicable law, Plaintiffs are entitled to recover from the Fiduciary Defendants and
19 from Gemstone and Edelstein the amount which is required to place Plaintiffs in the same position
20 they would have been in had the torts not been committed. Under the circumstances, Plaintiffs
21 employ an out of pocket measure of damages equal to the amount paid by Plaintiffs in the transactions
22 less the true value of what they received in the transactions.

23 The amount that Plaintiffs paid in the transaction includes: (1) the total amount that was owed
24 to CVFS on the Pre-Senior Notes immediately prior to the closing of the Senior Loan, which
25 Pre-Senior Notes and the Pre-Senior Deeds of Trust SFC subordinated to the Senior Loan; (2) reduced
26 by principal payments on the Pre-Senior Notes and on the Edelstein Note received from Senior Loan
27 proceeds; (3) increased by all advances CVFS made on the Mezzanine Note at or after the closing of
28 the Senior Loan; and (4) increased by all advances made by CVFS on its Senior Loan Participation,

both prior to and after Gemstone Development West Inc.'s default under the Senior Loan.

1 The value Plaintiffs received from the transaction includes: (1) loan, guaranty, and
2 subordination fees accrued at the closing of the Senior Loan; (2) interest received or accrued after the
3 closing of the Senior Loan on: (a) the CVFS Senior Loan Participation; (b) the Mezzanine Note; (c)
4 interest spread on the Senior Loan as consideration for guaranty and subordination; and (3) the true
5 value immediately after the Senior Loan closing, in light of the misrepresentations, omissions, and
6 breaches of duty now known of: (a) the Mezzanine Loan; and (b) the CVFS Senior Loan
7 Participation.

8 Plaintiffs are entitled to prejudgment interest under NRS 90.040 on those losses from the
9 date each loss was incurred through the entry of judgment. In Nevada, the legal rate of interest is
10 determined under NRS 99.040 as two percentage points above the "prime rate." See Schedule 6.
11 The "prime rate" under NRS 99.040 at the Transaction Dates was 7.25% per annum. See Schedule
12 7. Two percentage points above the Prime Rate is 9.25% per annum, which is the rate to which
13 Plaintiffs are entitled as this component of damages.

14 Under Section 14(g) of the CVFS Senior Loan Participation Agreement, Plaintiffs are entitled
15 to recover "all direct costs and expenses, including attorneys' fees" incurred as a result of breaches by
16 SFC and BOk of their duties under the CVFS Senior Loan Participation Agreement and under all
17 Loan Documents as defined in Section 1(h) of the CVFS Senior Loan Participation Agreement. The
18 claims covered in this part arose out of the relationship governed by the Senior Loan Participation
19 Agreement and Plaintiffs are entitled to recover all direct costs and expenses, including attorneys'
20 fees, on these claims as well. The amount of "all direct costs and expenses, including attorneys'
21 fees" to be recovered will be determined at or after the trial of this matter, but Plaintiffs anticipate that
22 those will be similar to the overall totals expended by Defendants.

23 Plaintiffs' present computation for damages for their negligence and negligent
24 misrepresentation claims is set forth under Tab E and is supported by the Schedules referred to in that
25 computation, which are found at Tab G. If for any reason, Plaintiffs do not elect to or are deemed to
26 be precluded from electing to avoid further performance on all documents related to the Senior Loan
27 and recover their rescissionary damages, Plaintiffs' damages recoverable from SFC, Scott, BOk and
28 Edelstein will increase by the full amount of any liability adjudged under the Guaranty and/or the

TM2I Guaranty.

1 ***F. Defamation.***

2 Under applicable law, defamatory statements which injure a plaintiff in his business or
3 profession are deemed per se defamatory and damages are presumed. The trier of fact is allowed to
4 determine the amount of general damages without specific proof of damages.

5 Plaintiffs will request an award against the Fiduciary Defendants as general damages for
6 defamation \$1 or such greater amount as the jury may determine after hearing all the evidence.

7 At the present time, Plaintiffs do not intend to request any amount as special damages for
8 defamation.

9 On the defamation claim, Mr. Tharaldson would be entitled to pre-judgment interest from the
10 date of service of the complaint. NRS 37.130. See Schedule 8. The summons and complaint was
11 served on SFC and Scott on January 17, 2009 and was served on BOK on January 21, 2009. See
12 Schedule 9. The "prime rate" under NRS 37.130 at the date of the service of the summons and
13 complaint was 3.25% per annum. Two percentage points above the Prime Rate is 5.25% per annum,
14 which is the rate to which Plaintiffs are entitled.

15 Upon proof of defamation and any other required elements, under applicable law, Plaintiffs
16 will also be entitled to recover punitive damages. The amount of punitive damages Plaintiffs may
17 request cannot be determined prior to conclusion of the trial.

18 A format for Mr. Tharaldson's computation for damages for defamation is set forth under
19 Tab F and is supported by the Schedules referred to in that computation, which are found at Tab G.

20 ***G. Supporting Schedules.***

21 Nine (9) schedules in support of Plaintiffs damages computations are provided in Tab G.

22 Schedule 1 relates to the Pre-Senior Notes (which became the Mezzanine Note) all of which
23 (including the Mezzanine Note) SFC subordinated to the Senior Loan (the "Subordinated Notes"). It
24 provides the balances on the Subordinated Notes immediately prior to the Senior Loan; deducts the
25 principal payments received on the Pre-Senior Notes and the Edelstein Note at the first funding of the
26 Senior Loan; and then itemizes all principal advances made on the Subordinated Notes at and after the
27 closing and first funding of the Senior Loan. It reports the interest accrued by Plaintiffs on the
28 Subordinated Notes. It also calculates interest at the statutory rate (non-compounded) at the time of

1 each principal advance and each principal payment and cumulates that statutory interest to the
2 estimated conclusion of trial, which is then carried to the damage computations. Schedule 1
3 identifies the documentary support for each entry; and the supporting documents for all Schedules are
4 found under Tab H.

5 Schedule 2 relates to the CVFS Senior Loan Participation. It tracks all of the advances made
6 by CVFS on its Senior Loan Participation. It reports the interest received by CVFS on the Senior
7 Loan Participation. It also calculates interest at the statutory rate (non-compounded) at the time of
8 each principal advance (no principal payments having occurred) and cumulates that interest to the
9 estimated conclusion of trial, which is then carried to the damages computations. Schedule 2
10 identifies the documentary support for each entry; and the supporting documents for all Schedules are
11 found under Tab H.

12 Schedule 3 relates to the Guaranty and Subordination. It itemizes the fees accrued at closing
13 or first funding of the Senior Loan for loan, guaranty, and subordination fees. It also summarizes the
14 interest spread received by Plaintiffs in connection with the Guaranty and the Subordination. Finally,
15 it calculates interest at the statutory rate (non-compounded) at the time of each fee and interest
16 payment received by Plaintiffs and cumulates those interest amounts to the estimated conclusion of
17 trial; which is then carried forward to the damages computations. Schedule 3 identifies the
18 documentary support for each entry; and the supporting documents for all Schedules are found under
19 Tab H.

20 Schedule 4 summarizes all advances made on the Senior Loan, both pre-default and
21 post-default, and reflects the total unpaid principal at the time of each advance. It also calculates the
22 gross interest accrued on the Senior Loan as of the date of each advance (no principal payments
23 having been made) and the portion of that interest that was received by SFC and by the Senior Loan
24 Participants. It also calculates the portion of the Senior Loan Participant Interest that was received
25 by BOK. These values are used in Schedule 5. Schedule 4 identifies the documentary support for
26 each entry; and the supporting documents for all Schedules are found under Tab H.

27 Schedule 5 itemizes the benefits received by SFC and BOK from the Senior Loan transaction
28 which they should be required to disgorge, based on the values calculated in Schedule 4. It also
calculates statutory interest on those amounts to be disgorged from the date each item of benefit was

1 received through the estimated date of trial, which is then carried forward to the damages
2 computations at Tab B. Schedule 5 identifies the documentary support for each entry; and the
3 supporting documents for all Schedules are found under Tab H.

4 Schedule 6 is a copy of NRS 99.040, the statutory interest provision applicable to all claims
5 other than the defamation claim.

6 Schedule 7 is a copy of NRS 37.130, the pre-judgment interest provision applicable to the
7 defamation claim.

8 Schedule 8 is a copy of the Nevada Department of Financial Institutions Commissioner's
9 publication identifying the biennial interest rates applicable under NRS 99.040 and NRS 37.130.

10 Schedule 9 is a copy of Affidavits of Service of the Summons and Complaint on SFC, Scott,
11 and BOk.

12 ***G. Damages Witnesses.***

13 Mr. Kyle Newman, an employee of the Tharaldson companies with a degree in accounting,
14 will testify concerning the business records of Plaintiffs and the damages reflected by those business
15 records.

16 Mr. Craig Craner, an expert in evaluation and accounting for real estate development projects,
17 will testify concerning his expert review of the business records on which the damages computations
18 are based, the reflection of those business records in the damages computation worksheets, and the
19 formulas and logic reflected in the computations reflected in Plaintiffs' damages computations
20 reflected in Tabs A-G and Schedules 1-9.

21 ***H. Damages Documents.***

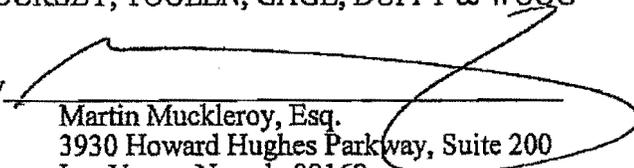
22 With respect to proof of compensatory damages, Plaintiffs intend to use a supporting
23 documents: (1) all of the documents identified on Schedules 1-9 and collected under Tab H; (2) all
24 internal loan review and evaluation reports related produced by Bank of Oklahoma with respect to its
25 \$24 million participation in the Senior Loan; and (3) any and all other documents pertinent to
26 damages that have previously been produced by any person in this litigation or which may hereafter
27 be produced.

28 With respect to punitive damages, Plaintiffs intend to use as additional damages documents:
(1) the SFC Annual Report for 2006, 2007, and 2008 and related financial information already

1 produced in this litigation together with any and all additional financial information or tax returns that
2 may yet be produced in the litigation; (2) financial information requested of Scott Financial and Brad
3 Scott but not yet produced in this litigation; (3) the publicly available Annual Reports of BOK
4 Financial Corporation (including Bank of Oklahoma) for the years 2007-2010 and schedules relating
5 thereto contained in the expert report of Mr. Schwickerath; and (4) any and all other documents
6 pertinent to punitive damages that have been previously produced by any person in this litigation or
7 which may hereafter be produced.

8 RESPECTFULLY SUBMITTED this 29th day of October, 2010.

9 COOKSEY, TOOLEN, GAGE, DUFFY & WOOG

10 By 

11 Martin Muckleroy, Esq.
12 3930 Howard Hughes Parkway, Suite 200
13 Las Vegas, Nevada 89169
14 *Local Counsel for Plaintiffs*

15 *AND*

16 MORRILL & ARONSON, P.L.C.
17 K. Layne Morrill
18 Martin A. Aronson
19 John T. Moshier
20 One East Camelback Road, Suite 340
21 Phoenix, AZ 85012
22 Counsel for Plaintiffs
23
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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 29th day of October, 2010, the foregoing **PLAINTIFFS' FIRST SUPPLEMENTAL RULE 16.1(A)(1) DISCLOSURES** was e-served on the following persons:

1
2 J. Randall Jones, Esq.
3 Mark M. Jones, Esq.
4 Matthew S. Carter, Esq.
5 Kemp, Jones & Coulthard, LLP
6 3800 Howard Hughes Parkway
7 Seventeenth Floor
8 Las Vegas, Nevada 89169
9 Attorneys for Scott Financial Corporation and
10 Bradley L. Scott

11 Von S. Heinz, Esq.
12 Abran E. Vigil, Esq.
13 Ann Marie McLoughlin, Esq.
14 Lewis and Roca LLP
15 Suite 600
16 3993 Howard Hughes Parkway
17 Las Vegas, Nevada 89169
18 Attorneys for Bank of Oklahoma

19 John D. Clayman, Esq.
20 Piper Turner, Esq.
21 Frederic Dorwart Lawyers
22 Old City Hall
23 124 East Fourth Street
24 Tulsa, Oklahoma 74103-5010
25 Attorneys for Bank of Oklahoma

26 Gwen Rutar Mullins, Esq.
27 Wade Gochnour, Esq.
28 Howard & Howard
3800 Howard Hughes Parkway
Suite 1400
Las Vegas, Nevada 89169
Attorneys for Defendant APCO

P. Kyle Smith
Smith Law Office
10161 Park Run Dr.
Las Vegas, Nevada 89145
Attorneys for Gemstone Development West, Inc.

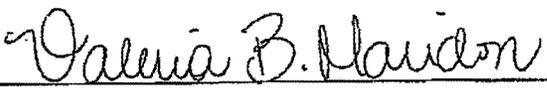
26
27 
28 Employee of Cooksey, Toolen, Gage, Duffy & Woog

EXHIBIT M

DISTRICT COURT
CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL SERVICES, L.L.C., a Nevada)
Limited Liability Company; THARALDSON MOTELS, II,)
INC., a North Dakota corporation; and GARY D.) Case No.
THARALDSON,) A579963

Plaintiffs,) Dept. No.
v.) XIII

SCOTT FINANCIAL CORPORATION, a North Dakota)
corporation; BRADLEY J. SCOTT; BANK OF OKLAHOMA,)
N.A., a national bank; GEMSTONE DEVELOPMENT WEST,)
INC., a Nevada corporation; ASPHALT PRODUCTS)
CORPORATION D/B/A APCO CONSTRUCTION, a Nevada)
corporation; DOES INDIVIDUALS 1-100; and)
ROE BUSINESS ENTITIES 1-100,)

Defendants.)

SCOTT FINANCIAL CORPORATION, a foreign)
corporation,)

Counterclaimant,)

v.)

GARY D. THARALDSON,)

Counterdefendant.)

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF VICKI SHEPPARD

LAS VEGAS, NEVADA

OCTOBER 1, 2010

REPORTED BY: HOLLY J. PIKE, CCR NO. 680, RPR, CSR
LST JOB NO. 128099

SCOTT APP 000243

EXHIBIT F

1 SMO
 2 FLOYD A. HALE, ESQ.
 Nevada Bar No. 1873
 3 JAMS
 2300 W. Sahara, #900
 4 Las Vegas, NV 89102
 Ph: (702) 457-5267
 5 Fax: (702) 437-5267
 6 *Special Master*

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 CLUB VISTA FINANCIAL SERVICES, L.L.C.
 10 a Nevada limited liability company;
 THARALDSON MOTELS II, INC., a North
 11 Dakota corporation; and GARY D.
 12 THARALDSON,

CASE NO.: A579963
 DEPT. NO.: XIII

13 Plaintiffs,

14 v.

15 SCOTT FINANCIAL CORPORATION, a North
 16 Dakota corporation; BRADLEY J. SCOTT;
 17 BANK OF OKLAHOMA, N.A., a national
 bank; GEMSTONE DEVELOPMENT WEST,
 18 INC., a Nevada corporation; ASPHALT
 PRODUCTS CORPORATION D/B/A APCO
 19 CONSTRUCTION, a Nevada corporation; DOE
 INDIVIDUALS 1-100; and ROE BUSINESS
 20 ENTITIES 1-100,

21 Defendants.

22
23 SPECIAL MASTER ORDER STAYING K. LAYNE MORRILL AND MARTIN A.

24 ARONSON DEPOSITIONS

25 I have received requests for a November 9, 2010 emergency hearing regarding Motions to
 26 Quash filed in Arizona related to the November 10 - 11, 2010 depositions of K. Layne Morrill and
 27

1 Martin A. Aronson. These depositions were scheduled by Scott Financial Corporation and Bradley
 2 Scott. The filing of the Motions to Quash in the Arizona Court is in direct conflict with the local
 3 District Court Case Management Order indicating that discovery disputes are to be submitted to the
 4 Special Master. The Arizona Motions to Quash, however, were submitted on behalf of the
 5 individual deponents, Morrill and Aronson, Plaintiffs' counsel. The Plaintiffs could have submitted
 6 this issue to the Special Master for resolution, with a request to Stay the depositions until a ruling
 7 was issued.
 8

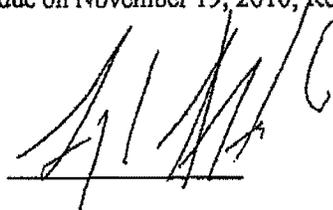
9 It is understandable that the deponents submitted a Motion to Quash to the Arizona Court,
 10 which does have jurisdiction over disputes related to Subpoenas issued by that Court. I have no
 11 authority over a District Court, particularly an Arizona Court. I do have authority over the parties,
 12 including Scott Financial Corporation and Bradley Scott.
 13

14 IT IS ORDERED THAT:

- 15 1. The November 10 - 11, 2010 depositions of K. Layne Morrill and Martin A.
 16 Aronson are Stayed pending a Special Master Order or Recommendation to
 17 the Clark County District Court regarding the issues raised in the Motion to
 Quash submitted to the Maricopa County, Arizona Superior Court;
- 18 2. The Motion to Quash will be considered by the Special Master as a Motion
 19 for Protective Order to preclude the Morrill and Aronson depositions;
- 20 3. Opposition briefs are due on November 19, 2010; Reply briefs are due
 21 December 3, 2010.

22 DATED: November 9, 2010.

23 By:



24 FLOYD A. HALE, Special Master
 25 Nevada Bar No. 1873
 26 2300 W. Sahara #900
 27 Las Vegas, NV 89102

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CERTIFICATE OF FACSIMILE

I hereby certify that on the 9th day of November, 2010, I faxed a true and correct copy of the foregoing to the following:

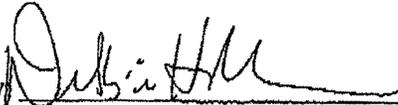
Martin Muckleroy, Esq.
Cooksey, Toolen, Gage, Duffy & Woog
3930 Howard Hughes Pkwy. #200
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Attorneys for Plaintiff
Fax No. 949-3104

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Wade Gochnour, Esq.
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Attorneys for APCO Construction
Fax No. 567-1568

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P. Kyle Smith, Esq.
Smith Law Office
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Attorneys for Gemstone Development West
Fax No. 318-6501

J. Randall Jones, Esq.
Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Pkwy., 17th Fl.
Las Vegas, NV 89169
Attorneys for Scott Financial Corporation;
Bradley J. Scott
Fax No. 385-6001

By 
Employee of JAMS

Von S. Heinz, Esq.
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Fax No. 949-8351

John Clayman, Esq.
Frederic Dorwart Lawyers
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Tulsa, OK 74103
Attorneys for Bank of Oklahoma, N.A.
Fax No. 918-584-2729

EXHIBIT G

Logout My Account Search Menu New District Civil/Criminal Search Refine Search Back

Location : District Court Civil/Criminal Help

REGISTER OF ACTIONS

CASE NO. 09A579963

Club Vista Financial Services LLC, Tharaldson Motels II Inc, et al §
 vs Scott Financial Corp, Bradley Scott, et al §
 §
 §
 §
 §

Case Type: **Business Court**
 Subtype: **Other Business Court Matters**
 Date Filed: **01/13/2009**
 Location: **Department 13**
 Conversion Case Number: **A579963**

RELATED CASE INFORMATION

Related Cases

A-10-608563-C (Consolidated)

A-10-609288-C (Consolidated)

PARTY INFORMATION

Lead Attorneys

Cross Claimant **APCO Construction**

Gwen Rutar Mullins*Retained*

7024747557(W)

Cross Claimant **Asphalt Products Corporation**

Gwen Rutar Mullins*Retained*

7024747557(W)

Cross Defendant **Gemstone Development West Inc**

Cross Defendant **Scott Financial Corporation**

Jon Randall Jones*Retained*

7023856000(W)

Defendant **Asphalt Products Corporation**

Gwen Rutar Mullins*Retained*

7024747557(W)

Defendant **Bank Of Oklahoma NA**

Abran E. Vigil*Retained*

7029498226(W)

Defendant **Gemstone Development West Inc**

Defendant **Scott Financial Corp**

Jon Randall Jones*Retained*

7023856000(W)

| | |
|---|---|
| <p>Defendant Scott, Bradley J</p> | <p>Jon Randall Jones <i>Retained</i> 7023856000(W)</p> |
| <p>Doing APCO Business As</p> | <p>Gwen Rutar Mullins <i>Retained</i> 7024747557(W)</p> |
| <p>Doing APCO Business As</p> | <p>Gwen Rutar Mullins <i>Retained</i> 7024747557(W)</p> |
| <p>Doing APCO Construction Business As</p> | <p>Gwen Rutar Mullins <i>Retained</i> 7024747557(W)</p> |
| <p>Plaintiff Club Vista Financial Services LLC</p> | <p>Griffith H. Hayes <i>Retained</i> 7029493100(W)</p> |
| <p>Plaintiff Tharaldson Motels II Inc</p> | <p>John T. Moshier <i>Retained</i> 602-650-4123(W)</p> |
| <p>Plaintiff Tharaldson, Gary D</p> | <p>Griffith H. Hayes <i>Retained</i> 7029493100(W)</p> |

EVENTS & ORDERS OF THE COURT

06/09/2010 Minute Order (9:30 AM) (Judicial Officer Denton, Mark R.)
 Minute Order Re: Telephonic Conference Call

Minutes

06/09/2010 9:30 AM

IN CHAMBERS: Counsel appearing telephonically. Mr. Jones stated they are on the record in the continuing deposition of Ryan Tucker in Fargo; and requested a clarification on a dispute, noting Mr. Tucker and Mr. Tharaldson were the people most knowledgeable about the incidents that arose in this Complaint; referred to the Complaint and the Counterclaim for breach of a guarantee; noted new allegations that some of the key operative documents may allegedly be forged; stated that in his questioning of Mr. Tucker as to the forged documents, Ms. Taradash instructed him not to answer; and argued that those questions are important to his clients. Ms. Taradash responded that there is no allegation as to forgery; noted the issue came up this morning as to attorney/client privilege and work product privilege; made statements as to the documents; and argued that she objects to their asking Mr. Tucker about conversations with her or other counsel about various documents, as they infringe on attorney/client privilege. Mr. Jones referred to the question; noted apparently there are some questions about these documents with Mr. Tharaldson; stated he just needs to know if there was a forgery; referred to the trial date and expert depositions; and argued this is a factual issue. COURT finds that the questions indicated are appropriate and ORDERED, Objection OVERRULED as to the questions instructed not

to answer. Mr. Clayman noted Mr. Tucker has been identified as one of the three (3) most knowledgeable people; argued they are entitled to know what those facts are; he is seeking facts and not confidential information or advice given; and requested the Court give them guidelines as to factual information that is part of this case. Court stated they are entitled to facts. Ms. Taradash agreed they are entitled to facts; and stated Mr. Tucker is testifying as to his personal knowledge. Court stated he can testify as to his personal knowledge and if asked questions about facts, that is appropriate; if it is a matter of facts that is being sought, counsel is entitled to seek it and if he does not have any personal knowledge about it, he can say so. Further statements by Mr. Jones that communicating a fact to his lawyer is still a fact.

[Parties Present](#)

[Return to Register of Actions](#)

EXHIBIT H

09A579963

DISTRICT COURT
CLARK COUNTY, NEVADA

Business Court

COURT MINUTES

July 06, 2010

09A579963 Club Vista Financial Services LLC, Tharaldson Motels II Inc, et al
vs
Scott Financial Corp, Bradley Scott, et al

July 06, 2010 9:00 AM Defendants Scott Financial Corporation, Bradley J Scott, and Bank of Oklahoma's Joint Motion to Compel Deposition Testimony

HEARD BY: Denton, Mark R. COURTROOM: RJC Courtroom 12A

COURT CLERK: Susan Burdette

RECORDER: Debbie Winn

PARTIES

PRESENT: Gochnour, Wade B. Attorney for Defendant Asphalt Products Corporation
Jones, Jon Randall Attorney for Defendants Bradley J. Scott and Scott Financial Corp
McLoughlin, Ann M. Attorney for Defendant Bank of Oklahoma NA
Muckleroy, Martin A. Attorney for Plaintiff

JOURNAL ENTRIES

Also present: P. Kyle Smith, Esq., on behalf of Defendant Alexander Edelstein in Case A609288.

Court noted this motion relates to the telephonic conference of the deposition taken in Fargo; in which the Court found the questions were appropriate and were to be answered. Mr. Jones noted that Mr. Tucker does not work for any of the Plaintiffs in this case, and that brings up the question as to whether privilege exists.

Arguments by Mr. Jones as to Mr. Tucker's deposition, referring to Mr. Tucker's statement as to his assistance in drafting the Complaint, and that in the deposition, he continued asking for facts and the witness was instructed not to answer based on attorney/client privilege; and cited Rule 11. Upon Court's inquiry, Mr. Jones stated the questions are those that the Court specifically told him to answer. Mr. Muckleroy referred to work product and attorney/client privilege. Arguments by counsel as to legal theory of the case, and this being a 30(b)(6) deposition.

Court noted his understanding of the motion is as to factual things that are being sought. Mr.

PRINT DATE: 07/14/2010

Page 1 of 2

Minutes Date: July 06, 2010

09A579963

Jones concurred, and argued further. COURT finds that if Plaintiff wants to proceed with allegations that make them the source of those allegations, factual information will have to be disclosed; witnesses should answer questions as to the allegations made; and ORDERED, Motion to Compel, going to the factual things, GRANTED; the Court will not award additional sanctions for fees as this issue can be confusing when talking about information derived by a witness, and is from now on, going forward with the depositions; the Court expects that the witnesses will not be instructed to not answer questions going to their factual understanding.

Upon Mr. Muckleroy's inquiry as to asking what they know or what they heard from others, and still making objections as to privilege, Court concurred, but stated counsel cannot instruct the witness not to answer; and referred to Rule 30. Further statements by Mr. Jones.

Mr. Jones to prepare the Order and have Mr. Muckleroy review.

EXHIBIT I

ORIGINAL

FILED

OCT 02 2009

Alvin J. Williams
CLERK OF COURT

1 0063

DISTRICT COURT
CLARK COUNTY, NEVADA

4 CLUB VISTA FINANCIAL SERVICES, LLC, et)
al.,)

5)
6 Plaintiff(s),)

7 vs.)

CASE NO. A579963-B

) DEPT. NO. XIII

8 SCOTT FINANCIAL CORPORATION, a North)
Dakota corporation, et al.,)

09A579963

436442

9)
10 Defendant(s).)



CASE MANAGEMENT ORDER (NRC P 16(e))

12
13 Having conducted a conference herein under NRC P 16, and after notice to and
14 consideration of the positions of all parties to this matter,

15 IT IS HEREBY ORDERED:

16 **1. Electronic Communication.**

17 All counsel shall provide to the Court and each other with one or more e-mail addresses
18 at which they consent to receive notices from the Court and each other.
19

20 **2. Compliance with Disclosure Requirements of Nev. R. Civ. P. 16.1**

21 The parties shall make their initial disclosures pursuant to Nev. R. Civ. P. 16.1 on or
22 before October 16, 2009.

23 **3. Document Production Protocols**

24 All documents to be produced shall be control numbered by the producing party before
25 production. Documents shall be produced in the same manner as they are kept in the ordinary
26 course of business.
27

28 **MARK R. DENTON**
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

1 All documents shall be produced in electronic form. Production shall occur by e-mailing
 2 or delivering on a CD or Data DVD images of the documents. Documents shall be produced in
 3 PDF format. Upon production of documents, the producing party shall give formal notice of that
 4 production to all parties to this action. That notice shall contain a list of the control numbers
 5 corresponding to the documents produced, and a description of those documents by category. A
 6 party that subpoenas documents from a non-party shall be responsible for control numbering
 7 those documents and giving formal notice, within ten (10) business days of receipt of those
 8 documents, to all parties to this action and to provide copies of the documents in electronic form,
 9 in the manner required by this Order.
 10
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12 **4. Electronic Discovery**

13 The procedures outlined in paragraph 3 above shall not apply to any request for
 14 Electronically Stored Information (as that term is used in Fed. R. Civ. P. 26). Copies of
 15 Electronically Stored Information produced to any party shall be provided by the Receiving Party
 16 to any other party upon request, provided that the reasonable cost of duplication is paid by the
 17 party requesting a copy of the Electronically Stored Information. Any party producing
 18 Electronically Stored Information shall give notice to all other parties at the time of production.
 19 Nothing in this Order shall prevent any party from seeking a more specific order relating to the
 20 discovery of Electronically Stored Information.
 21
 22

23 **5. Depositions**

24 Absent stipulation of the parties or further Order of the Court, depositions shall be set
 25 only according to the following procedures:

- 26 a. Any party seeking to notice a deposition shall give written notice of a minimum of
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fifteen (15) days of the intent to notice a deposition.

b. Wherever possible, the parties shall use the services of one court reporting and deposition videotaping service. Nothing in this Order shall require a party to videotape a deposition, but any party shall have the right to request that a deposition be videotaped, provided notice is given within three (3) business days of receipt of the Notice of Deposition, or no less than fifteen (15) days before the commencement of the deposition, whichever is later. If such request is made, only the requesting party and each party ordering a copy of the videotape shall be responsible for the cost of videotaping.

Wherever possible, the court reporter shall make available Real Time reporting services to those counsel who request it. The cost of Real Time services shall be borne by the counsel who request it.

c. The parties shall use common numerical exhibit numbers in depositions. Once a document has been marked with a particular exhibit number, it shall bear that exhibit number in all subsequent depositions and at trial.

d. Except with the consent of the witness and his/her counsel, all non-expert depositions shall take place within seventy-five (75) miles of the business or residence address of the witness.

e. Except with the consent of all participating parties, all expert depositions shall take place within the boundaries of Clark County, Nevada.

f. Full day depositions shall commence no later than 9:30 a.m., Pacific, and shall conclude no later than 5:30 p.m., Pacific. Half day depositions shall conclude no later than 5:30 p.m., Pacific. Exceptions to this schedule may be made with the unanimous

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consent of all counsel appearing at the deposition.

g. Except in cases of unforeseen emergency, any party seeking to cancel a deposition shall give all other parties seventy-two (72) hours notice via e-mail.

h. Depositions of a properly noticed witness shall continue day-to-day until conclusion of questioning by all attending parties. There shall be no time limit restriction for these depositions. In the event that a deponent, or counsel for the deponent, is able to show that the continued questioning is for purposes of harassment or delay, he or she may file a motion for protective order with this Court.

i. Counsel for the parties agree to use their best efforts to achieve mutually convenient dates for witness and expert witness depositions before deposition notices are served.

6. Written Discovery Requests

All written discovery requests shall be served on all counsel via e-mail, at the propounding party's option of either Microsoft Word format, or WordPerfect format, or plain text format. Nothing in this paragraph shall require a party to e-mail written discovery requests in a format that includes transmission of metadata.

7. Discovery Motions

All discovery motions shall be subject to the "meet and confer" requirements of EDCR 2.34(d). Notwithstanding anything to the contrary contained in EDCR 2.34, discovery motions shall be heard before this Court and, absent further order of this Court, this case shall be deemed to be complex litigation and discovery disputes shall not be referred to the Discovery Commissioner.

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8. Discovery and Pretrial Scheduling

The following deadlines shall be in place with respect to the case's discovery and pretrial scheduling needs and obligations:

- a. Percipient witness depositions shall be completed on or before October 15, 2010.
- b. Initial expert disclosures shall be made, including Rule 26 reports, on or before July 15, 2010.
- c. Rebuttal expert disclosures shall be made, including Rule 26 reports, on or before August 16, 2010.
- d. Expert depositions shall be completed and written discovery shall be completed on or before October 15, 2010.

9. Motion Hearings

With the exception of motions heard pursuant to an Order Shortening Time, all motions, including discovery motions, shall be scheduled on the first civil motion calendar of the month at 9:00 a.m. It is the responsibility of the counsel for the moving party to serve and file any motion sufficiently in advance of the intended hearing date in compliance with EDCR 2.20, and counsel must complete the notice of hearing with the applicable first Monday hearing date before filing the motion electronically.

10. Motion Deadlines

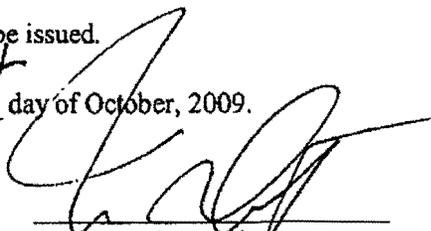
- a. Dispositive motions shall be filed and served on or before December 15, 2010.
- b. Motions in limine shall be filed and served on or before January 14, 2011.

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11. Calendar Call and Trial

A separate trial order will be issued.

DATED this 2nd day of October, 2009.



MARK R. DENTON
DISTRICT JUDGE

CERTIFICATE

I hereby certify that on the date filed, I placed a copy of this Order in the attorney's folder in the Clerk's Office or mailed a copy to:

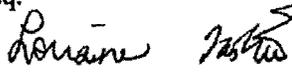
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
Attn: Martin A. Muckleroy, Esq./Dustin A. Johnson, Esq.

Martin A. Aronson, Esq.
One E Camelback Road, Suite 340
Phoenix, AZ 85012

KEMP, JONES & COULTHARD
Attn: Mark M. Jones, Esq.

HOWARD & HOWARD
Attn: Wade B. Gochnour, Esq.

LEWIS AND ROCA
Attn: Von S. Heinz, Esq.



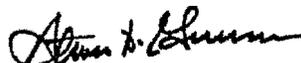
LORRAINE TASHIRO
Judicial Executive Assistant
Dept. No. XIII

EXHIBIT J

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VON S. HEINZ
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Admitted Pro Hac Vice
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(918) 583-9965
(918) 584-2729 (fax)
Attorneys for Defendant
BANK OF OKLAHOMA, N.A.

DISTRICT COURT
CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL SERVICES,
L.L.C., a Nevada limited liability company;
THARALDSON MOTELS II, INC., a North
Dakota corporation; and GARY D.
THARALDSON,

Plaintiffs,

v.

SCOTT FINANCIAL CORPORATION, a
North Dakota corporation; BRADLEY J.
SCOTT; BANK OF OKLAHOMA, N.A., a
national bank; GEMSTONE DEVELOPMENT
WEST, INC., a Nevada corporation;
ASPHALT PRODUCTS CORPORATION
D/B/A APCO CONSTRUCTION, a Nevada
corporation; DOE INDIVIDUALS 1-100; and
ROE BUSINESS ENTITIES 1-100,

Defendants.

Case No.: A579963
Dept. No.: XIII
Consolidated With
Case No. A-10-609288-C

STIPULATION AND ORDER FOR
APPOINTMENT OF FLOYD A. HALE
AS DISCOVERY SPECIAL MASTER

Hearing Date: N/A
Hearing Time: N/A

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DISTRICT COURT DEPT# 13

Lewis and Roca LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169

1 Plaintiffs Club Vista Financial Services, L.L.C., Tharaldson Motels II, Inc. and Gary D.
2 Tharaldson (collectively "Club Vista") and defendants Scott Financial Corporation, and Bradley J.
3 Scott (together, "SFC"), Bank of Oklahoma, N.A. ("BOK"), Asphalt Products Corporation d/b/a
4 APCO Construction ("APCO"), and Alexander Edelstein ("Edelstein") stipulate and agree as
5 follows:

6 1. Floyd A. Hale shall serve as the discovery special master for this case.

7 2. Mr. Hale shall bill his services at the rate of \$375.00 per hour, and submit to the
8 parties his billing statements on a monthly basis. Mr. Hale's monthly billing shall include a case
9 management fee of ten percent (10%), with that fee determined by the total amount of time billed
10 by Mr. Hale for that monthly period.

11 3. Mr. Hale's billing shall be divided as follows: (a) one-half (50%) shall be billed to
12 counsel for Club Vista, and (b) one-half (50%) shall be billed to counsel for SFC, on behalf of
13 defendants SFC, BOK, APCO and Edelstein.

14 4. The paragraph numbered seven of the Court's October 2, 2009 Case Management
15 Order which provides, among other things, that "discovery motions shall be heard before this
16 Court" shall be deemed to be amended so as to delete that provision and this Order shall empower
17 Mr. Hale to hear and rule upon the parties' disputed discovery scheduling needs as well as their
18 discovery disputes.

19 5. Unless otherwise agreed to by the parties, through written stipulation and
20 [proposed] recommendation and order by the special master, the local rules for motion practice
21 shall govern the parties' practice before the special master, and the provisions of EDCR 2.55 shall
22 apply to the discovery scheduling orders that govern this case.

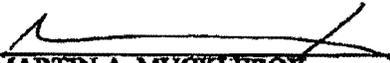
23 6. The Court has already entered a scheduling order for discovery and trial. The
24 Special Master will not recommend the alteration, amendment or change of the trial date. Only
25 the Court shall have the authority to make such alterations, amendments or changes to the trial
26 date. The Special Master shall have the authority to recommend interim alterations, amendments
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or changes to various discovery deadlines but not in a manner so as to alter, amend or change the trial date.

DATED: August 9, 2010

MORRILL & ARONSON, P.L.C.
- and -
COOKSEY, TOULSEN GAGE, DUFFY & WOOG

By 
MARTIN A. MUCKLEROY
3930 Howard Hughes Parkway #200
Las Vegas, Nevada 89169
Attorneys for Plaintiffs

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By 
J. RANDALL JONES
MARK M. JONES
MATTHEW S. CARTER
3800 Howard Hughes Parkway
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Las Vegas, Nevada 89169
Attorneys for Defendants
Scott Financial Corporation and
Bradley J. Scott

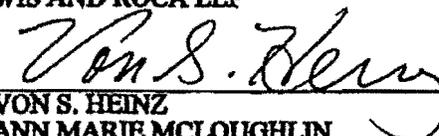
HOWARD & HOWARD ATTORNEYS PLLC

By 
GWEN MULLINS
WADE GOCHNOUR
3800 Howard Hughes Parkway #1400
Las Vegas, Nevada 89169
Attorneys for Defendant
APCO Construction

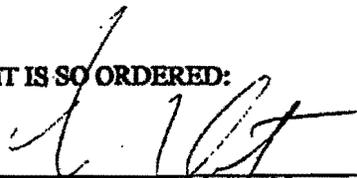
LAW OFFICES OF P. KYLE SMITH

By 
P. KYLE SMITH
10161 Park Run Drive #150
Las Vegas, Nevada 89145
Attorney for ALEXANDER
EDELSTEIN

JOHN D. CLAYMAN
PIPER W. TURNER
Admitted Pro Hac Vice
FREDERIC DORWART, LAWYERS
- and -
LEWIS AND ROCA LLP

By 
VON S. HEINZ
ANN MARIE MCLOUGHLIN
3993 Howard Hughes Parkway #600
Las Vegas, Nevada 89169
Attorneys for Defendant
BANK OF OKLAHOMA, N.A.

IT IS SO ORDERED:



Judge, District Court
Dated: August 13, 2010

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Submitted by:
JOHN D. CLAYMAN
PIPER W. TURNER
Admitted Pro Hac Vice
FREDERIC DORWART, LAWYERS
- and -
LEWIS AND ROCA LLP

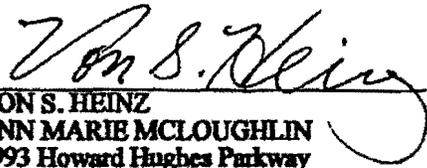
By 
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ANN MARIE MCLOUGHLIN
3993 Howard Hughes Parkway
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Attorneys for Defendant
BANK OF OKLAHOMA, N.A.

EXHIBIT K

1 ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, P.C.
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 2 Nevada Bar No. 001394
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 3 Nevada Bar No. 004904
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 4 Quail Park - Suite D-4
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 5 Telephone: (702) 384-7111
Attorneys for Plaintiffs

6 MORRILL & ARONSON, P.L.C.
 7 K. LAYNE MORRILL, ESQ.
 Arizona Bar No. 004591
 8 MARTINA A. ARONSON, ESQ.
 Arizona Bar No. 009005
 9 STEPHANIE L. SAMUELSON, ESQ.
 Arizona Bar No. 018099
 10 One E. Camelback Road, Suite 340
 Phoenix, Arizona 85012
 11 Telephone: (602) 2638993
 Pro Hac Vice Application Pending

13 DISTRICT COURT
 14 CLARK COUNTY, NEVADA

16 CLUB VISTA FINANCIAL SERVICES,
 L.L.C., a Nevada limited liability company;
 17 THARALDSON MOTELS II, INC., a North
 Dakota corporation; and GARY D.
 18 THARALDSON,

Case No. 09-A-579963-B
 Department No. 13

19 Plaintiffs,

PLAINTIFFS' RULE 16.1(A)(1)
 INITIAL DISCLOSURES

20 v.

21 SCOTT FINANCIAL CORPORATION, a
 North Dakota corporation; BRADLEY J.
 22 SCOTT; BANK OF OKLAHOMA, N.A., a
 national bank; GEMSTONE DEVELOPMENT
 23 WEST, INC., a Nevada corporation;
 ASPHALT PRODUCTS CORPORATION
 24 D/B/A APCO CONSTRUCTION, a Nevada
 corporation; DOE INDIVIDUALS 1-100; and
 25 ROE BUSINESS ENTITIES 1-100,

26 Defendants.

27
 28

1 Plaintiffs Club Vista Financial Services, LLC, Tharaldson Motels II, Inc., and Gary D.
2 Tharaldson (collectively, "Plaintiffs"), by and through counsel undersigned, hereby submit these
3 initial disclosures pursuant to Rule 16.1(a)(1), Nevada Rules of Civil Procedure. Disclosure and
4 discovery is just beginning in this action, and Plaintiffs reserve the right to modify, supplement
5 and amend these disclosures as additional information is obtained through disclosure and
6 discovery.

7 **A. INDIVIDUALS WITH POSSIBLE DISCOVERABLE INFORMATION.**

8 As of the date of this Initial Disclosure, the following individuals who are likely to have
9 information discoverable under Rule 26(b), Nevada Rules of Civil Procedure, have been
10 identified. A brief description of the subject matter each individual may possess is included
11 below when ascertainable. This list is incomplete, and Plaintiffs reserve the right to modify and
12 supplement as information is learned during disclosure and discovery.

13 **Defendants' counsel is instructed that they may not initiate contact with any of**
14 **Plaintiffs' current or former employees, without the prior written consent of Plaintiffs'**
15 **counsel.**

- 16 1. John Auchenbach
17 Leadermark Group
john@leadermarkgroup.com

18 The individual may have discoverable information related to the Leadermark, Camelback,
19 and South Mountain projects.

- 20 2. Audrie Bergman
21 Gemstone Development
22 Controller
23 9121 W. Russell Rd. Suite 117
24 Las Vegas, NV 89148
Tel: (702) 614-3193
Fax: (702) 614-0669
AudrieB@gemstonedev.com

25 The individual may have discoverable information related to the Manhattan West project
26 and Alex Edelstein.

27 ///

28 ///

1 3. Eileen Besa
2 Diversified Group
3 145 E. Warm Springs
4 Las Vegas, NV 89119
5 Tel: (702) 385-4988 x208
6 Fax: (702) 385-4975

7 The individual may have discoverable information related to Parkview/ParkPlace
8 projects.

9 4. Bo Bingham
10 Bingham and Snow
11 Attorney
12 840 Pinnacle Court, Suite 202
13 Mesquite, Nevada 89027
14 Tel: (702) 346-7300
15 Fax: (702) 346-7313
16 bo@binghamsnow.com

17 This individual may have discoverable information. The anticipated subject matter of this
18 individual's knowledge is presently undetermined. To the extent that this individual has given
19 advise or counsel to Plaintiffs, such information is protected by the attorney/client and/or work
20 product privileges.

21 5. Joe Blagg
22 Diversified Group
23 Project Manager
24 145 E. Warm Springs
25 Las Vegas, NV 89119
26 Tel: (702) 385-4988 x205
27 Fax: (702) 385-4975
28 Mobile: (702) 821-6442
jblagg@diversifiedgrp.com

The individual may have discoverable information related to ParkPlace, Parkview; Desert
Springs, Avenue 48 and Alpine Development Properties.

6. Tamara Bonggi
Hood & Strong LLP
Accounting / CPA
10 Almaden Blvd., Suite 250
San Jose, CA 95113
Tel: (408) 998-8400
Fax: (408) 998-8485
Mobile: (650) 534-6324
Tbonggi@hoodstrong.com

The individual may have discoverable information related to tax advice involving Alex
Edelstein related to 2007 tax liability (pledged as collateral to Manhattan West project).

1 7. Laurie Bonn
2 Tharaldson Companies
3 Accounting Manager
4 2518 Anthem Village Dr. Suite 104
 Henderson, NV 89052
 Tel: (702) 260-8443
 Fax: (702) 897-4336

5 The individual may have discoverable information related to the business dealings
6 between Tharaldson Companies and Scott Financial.

7 8. Cassie Bowers
8 Scott Financial Corporation
9 1501 Sundown Drive
 Bismarck, ND 58503
 Tel: (701) 255-2215
 Fax: (701) 223-7299
10 cassie@scottfinancialcorp.com

11 The individual may have discoverable information related to Manhattan West and Bella
12 Vista Projects.

13 9. Lance Bradford
14 lanceb@llbradford.com
 {Contact information unknown}

15 The individual may have discoverable information related to Leadermark and Manhattan
16 West projects.

17 10. Javier Corzo
18 Alpine Development Group
19 Special Projects Manager
 39-755 Berkey Dr. Ste. A
 Palm Desert, CA 92211
 Tel: (760) 404-1927
 Mobile: (818) 631-2092
20 jcorzo@alpinedevelopmentgroup.com

21 The individual may have discoverable information related to dealings between Scott
22 Financial and Tharaldson on Desert Springs project.

23 11. Neil Cumsky
24 Princeton Resorts
25 27501 N. Lake Pleasant Parkway
 Peoria, Arizona 85383
 Tel: (623) 889-6700
 Fax: (623) 889-6777
26 Attorney for Gary Tharaldson and related companies

27 The individual may have discoverable information relating to the dealings between Scott
28

1 Financial and Tharaldson and related companies. Information related to advice to Plaintiffs is
2 protected by the attorney/client and/or work product privileges.

3 12. Patricia Curtis
4 Snell & Wilmer
5 Attorney
6 3883 Howard Hughes Parkway, Suite 1100
7 Las Vegas, NV 89169
8 Tel: (702) 784-5226
9 Fax: (702) 784-5252
10 Mobile: (702) 274-6808
11 pcurtis@swlaw.com

12 The individual may have discoverable information related to dealings between Scott
13 Financial and Tharaldson and related companies and the Manhattan West project. Information
14 related to advice to Plaintiffs is protected by the attorney/client and/or work product privileges.

15 13. Lynn DeMann
16 Gemstone Development
17 9121 W. Russell Rd. Suite 117
18 Las Vegas, NV 89148
19 Tel: (702) 614-3193
20 Fax: (702) 614-0669

21 This individual may have discoverable information. The anticipated subject matter of this
22 individual's knowledge is presently undetermined.

23 14. Thomas DeVine
24 Snell & Wilmer
25 Attorney
26 1200 Seventeenth Street, Suite 1900
27 Denver, CO 80202
28 Tel: (303) 634-2074
tdevine@swlaw.com

The individual may have discoverable information related to the Leadermark and Desert
Springs projects. Information related to advice to Plaintiffs is protected by the attorney/client
and/or work product privileges.

15. Brian Dorrah
Vistoso Partners
1121 W. Warner, #109
Tempe, Arizona 85284
Tel: (480) 831-2000
Fax: (480) 323-2953
Mobile: (602) 677-5517
briand@vistoso.net

The individual may have discoverable information related to the dealings between Scott

1 Financial and Tharaldson on the Harquahala project.

2 16. Alexander Edelstein
3 Gemstone Development
4 Chief Executive Officer
5 9121 W. Russell Rd. Suite 117
6 Las Vegas, NV 89148
7 Tel: (702) 614-3193
8 Fax: (702) 614-0669
9 AlexEd@gemstonedev.com

10 The individual may have discoverable information related to involvement in Manhattan
11 and Manhattan West projects.

12 17. Brandon Frisch
13 Gemstone Development
14 Operations Manager
15 9121 W. Russell Rd. Suite 117
16 Las Vegas, NV 89148
17 Tel: (702) 614-5963
18 BrandonF@gemstonedev.com

19 The individual may have discoverable information related to Manhattan Phase 1 unit sales
20 and closings.

21 18. Phillipe Pageau Goyette
22 Diversified Group
23 145 E. Warm Springs
24 Las Vegas, NV 89119
25 Tel: (702) 385-4988
26 Fax: (702) 385-4975
27 Philippe@diversifiedgrp.com

28 The individual may have discoverable information related to the dealings between Scott
Financial and Tharaldson on the Desert Springs and Avenue 48 projects.

19 19. Brooks Griffith
20 Grubb & Ellis / BRE
21 BGriffith@brephoenix.com
22 {Contact information unknown}

23 The individual may have discoverable information related to investor interests in various
24 Scott Financial and Tharaldson real estate or financing projects.

25 20. Connie Haugen
26 Tharaldson Companies
27 Executive Assistant
28 2518 Anthem Village Dr. Suite 104
Henderson, NV 89052
Tel: (702) 260-8443
Fax: (702) 897-4336

1 The individual may have discoverable information related to the dealings between Scott
2 Financial and Tharaldson on the Vanderbilt Project.

3 21. Penny Heaberlin
4 Maslon Edelman Borman & Brand, LLP
5 Attorney
6 3300 Wells Fargo Center 90 South Seventh Street
7 Minneapolis, MN 55402-4140
8 Tel: (612) 672-8315
9 Fax: (612) 642-8315
10 Penny.Heaberlin@maslon.com

11 The individual may have discoverable information related to the Manhattan West project.
12 Information related to advice to Plaintiffs is protected by the attorney/client and/or work product
13 privileges.

14 22. Robert ("Bob") Henry
15 Snell & Wilmer
16 Attorney
17 One Arizona Center
18 Phoenix, Arizona 85004-0020
19 Tel: (602) 382-6259
20 Fax: (602) 382-6070
21 bhenry@swlaw.com

22 The individual may have discoverable information related to the Leadermark projects.
23 Information related to advice to Plaintiffs is protected by the attorney/client and/or work product
24 privileges.

25 23. James Horning
26 Gemstone Development
27 Vice President and CFO of Business Development
28 9121 W. Russell Rd. Suite 117
Las Vegas, NV 89148
Tel: (702) 614-3193
Fax: (702) 614-0669
Mobile: (206) 930-6866

The individual may have discoverable information related to Manhattan Phase 1 and
business dealings between Scott Financial and Tharaldson.

24 24. Tim James
25 Bank of Oklahoma
26 Senior Vice President, Commercial Real Estate Lending
27 Tel: (918) 588-6840

28 The individual may have discoverable information related to business dealings between
Bank of Oklahoma, Scott Financial and/or Tharaldson on the Manhattan West Project.

1 25. Ryan Kucker, CPA
2 Tharaldson Companies
3 CPA / Accountant
4 2518 Anthem Village Dr. Suite 104
5 Henderson, NV 89052
6 Tel: (702) 260-8443 Ext. 4
7 Fax: (702) 897-4336
8 Mobile: (702) 469-2514

9 The individual may have discoverable information related to the dealings between Scott
10 Financial and Tharaldson, and the facts and circumstances surrounding various real estate and
11 financing projects.

12 26. Rick Larson
13 {Contact information unknown}

14 The individual may have discoverable information related to the dealings between Scott
15 Financial and Tharaldson on the Desert Springs and Avenue 48 projects.

16 27. Lane Lowry
17 Alpine Development Group
18 Chief Executive Officer
19 39-755 Berkey Dr. Ste. A
20 Palm Desert, CA 92211
21 Tel: (760) 404-1927
22 Mobile: (760) 272-0382
23 lanelowry@hotmail.com and Lane@alpinedevelopmentgroup.com

24 The individual may have discoverable information related to dealings between Scott
25 Financial and Tharaldson on the Desert Springs project.

26 28. Layne Morrill
27 Morrill & Aronson, PLC
28 Attorney
One East Camelback Road, Suite 340
Phoenix, Arizona 85012
Tel: (602) 650-4121
lmorrill@maazlaw.com
Attorney for Plaintiffs

The individual may have discoverable information related to dealings between Scott
Financial and Tharaldson and related companies. Information related to advice to Plaintiffs is
protected by the attorney/client and/or work product privileges.

///
///
///

1 29. Kyle Newman
2 Tharaldson Ethanol
3 knewman@tharaldsonethanol.com

4 The individual may have discoverable information related to the dealings between Scott
5 Financial and Tharaldson.

6 30. David Schaller
7 HomeNational
8 Market President
9 126 South Summit
10 Arkansas City, KS 67005
11 Tel: 620-441-2111
12 Mobile: 580-761-6906
13 Dschaller@homenational.com

14 The individual may have discoverable information related to the dealings between Scott
15 Financial and Tharaldson on the Park Place project.

16 31. Brad Scott
17 Scott Financial Corporation
18 1501 Sundown Drive
19 Bismarck, ND 58503
20 Tel: (701) 255-2215
21 Fax: (701) 223-7299
22 brad@scottfinancialcorp.com

23 The individual may have discoverable information related to the dealings between Scott
24 Financial and Tharaldson and the facts and circumstances surrounding various real estate and
25 financing projects.

26 32. Jordan Scott
27 Diversified Group
28 145 E. Warm Springs
29 Las Vegas, NV 89119
30 Tel: (602) 750-8407
31 Fax: (602) 926-8960
32 Jscott@diversifiedgrp.com

33 The individual may have discoverable information related to the ParkPlace (Surprise,
34 Arizona) and the Desert Springs projects.

35 33. Margo Scott
36 Scott Financial Corporation
37 1501 Sundown Drive
38 Bismarck, ND 58503
39 Tel: (701) 255-2215
40 Fax: (701) 223-7299
41 margo@scottfinancialcorp.com

1 The individual may have discoverable information related to the dealings between Scott
2 Financial and Tharaldson and the facts and circumstances surrounding various real estate and
3 financing projects.

4 34. Jeff Singletary
5 Snell & Wilmer
6 Attorney
7 600 Anton Blvd. Suite 1400
8 Costa Mesa, CA 92626
9 Tel: (714) 427-7000
10 jsingletary@swlaw.com

11 The individual may have discoverable information related to relationship between Scott
12 Financial and Tharaldson and related companies on various projects. Information related to
13 advice to Plaintiffs is protected by the attorney/client and/or work product privileges.

14 35. Peter Smith
15 Attorney
16 {Contact information unknown}

17 The individual may have discoverable information related to relationship between Scott
18 Financial and Tharaldson and related companies on various projects, including the Manhattan
19 West project. Information related to advice to Plaintiffs is protected by the attorney/client
20 and/or work product privileges.

21 36. Vincent Tatum
22 Gemstone Development
23 9121 W. Russell Rd. Suite 117
24 Las Vegas, NV 89148
25 Tel: (702) 614-3193
26 Fax: (702) 614-0669

27 The individual may have discoverable information related to the Manhattan West Project
28 and business dealings between Scott Financial and Tharaldson.

37. Gary Tharaldson
Tharaldson Companies
Chief Executive Officer
2518 Anthem Village Dr. Suite 104
Henderson, NV 89052
Tel: (702) 260-8443
Fax: (702) 897-4336

The individual may have discoverable information related to the dealings between Scott
Financial and Tharaldson and the facts and circumstances surrounding various real estate and

1 financial deals.

2 38. Matt Tharaldson
3 Tharaldson Companies
4 2518 Anthem Village Dr. Suite 104
5 Henderson, NV 89052
6 Tel: (702) 260-8443
7 Fax: (702) 897-4336

8 The individual may have discoverable information related to the dealings between Scott
9 Financial and Tharaldson on various projects.

10 39. Jason Ulmer, MBA
11 Scott Financial Corporation
12 Commercial Loan Analyst
13 1501 Sundown Drive
14 Bismarck, ND 58503
15 Tel: (701) 255-2215
16 Fax: (701) 223-7299
17 Mobile: (701) 730-1988
18 jason@scottfinancialcorp.com

19 The individual may have discoverable information related to the dealings between Scott
20 Financial and Tharaldson and the facts and circumstances surrounding various real estate and
21 financing projects.

22 40. Mike Wecker
23 Alpine Development Group
24 39-755 Berkey Dr. Ste. A
25 Palm Desert, CA 92211
26 Tel: (760) 404-1927
27 mwecker@alpinedevelopmentgroup.com

28 The individual may have discoverable information related to dealings between Scott
Financial and Tharaldson on the Desert Springs project.

41. Individuals with Scott Financial with information related to various aspects of the
Manhattan West lending and financing transaction and participation in the lending syndication.

42. Individuals with Bank of Oklahoma with information related to various aspects
of the Manhattan West lending and financing transaction and participation in the lending
syndication.

43. Individuals with Bank of North Dakota with information related to various aspects
of the Manhattan West lending and financing transaction and participation in the lending
syndication.

1 44. Individuals with Arvest Bank with information related to various aspects of the
2 Manhattan West lending and financing transaction and participation in the lending syndication.

3 45. Individuals with First Western Bank & Trust in Minot North Dakota with
4 information related to various aspects of the Manhattan West lending and financing transaction
5 and participation in the lending syndication.

6 46. Individuals with Landmark National Bank with information related to various
7 aspects of the Manhattan West lending and financing transaction and participation in the lending
8 syndication.

9 47. Individuals with Sunflower Bank with information related to various aspects of
10 the Manhattan West lending and financing transaction and participation in the lending
11 syndication.

12 48. Individuals with Choice Financial with information related to various aspects of
13 the Manhattan West lending and financing transaction and participation in the lending
14 syndication.

15 49. Individuals with Citizens State Bank with information related to various aspects
16 of the Manhattan West lending and financing transaction and participation in the lending
17 syndication.

18 50. Individuals with McKenzie County Bank with information related to various
19 aspects of the Manhattan West lending and financing transaction and participation in the lending
20 syndication.

21 51. Individuals with Equitable Bank with information related to various aspects of the
22 Manhattan West lending and financing transaction and participation in the lending syndication.

23 52. Individuals with Alerus Financial with information related to various aspects of
24 the Manhattan West lending and financing transaction and participation in the lending
25 syndication.

26 53. Individuals with Bank VI with information related to various aspects of the
27 Manhattan West lending and financing transaction and participation in the lending syndication.

28 54. Individuals with BankWest with information related to various aspects of the

1 Manhattan West lending and financing transaction and participation in the lending syndication.

2 55. Individuals with First State Bank of ND with information related to various aspects
3 of the Manhattan West lending and financing transaction and participation in the lending
4 syndication.

5 56. Individuals with First Western Bank & Trust in Eden Prairie Minnesota with
6 information related to various aspects of the Manhattan West lending and financing transaction
7 and participation in the lending syndication.

8 57. Individuals with Ramsey National Bank with information related to various aspects
9 of the Manhattan West lending and financing transaction and participation in the lending
10 syndication.

11 58. Individuals with United Community Bank of ND with information related to
12 various aspects of the Manhattan West lending and financing transaction and participation in the
13 lending syndication.

14 59. Individuals with First National Bank with information related to various aspects
15 of the Manhattan West lending and financing transaction and participation in the lending
16 syndication.

17 60. Individuals with American State Bank & Trust with information related to various
18 aspects of the Manhattan West lending and financing transaction and participation in the lending
19 syndication.

20 61. Individuals with Citizens Bank of Kansas with information related to various
21 aspects of the Manhattan West lending and financing transaction and participation in the lending
22 syndication.

23 62. Individuals with State Bank of Wheaton with information related to various
24 aspects of the Manhattan West lending and financing transaction and participation in the lending
25 syndication.

26 63. Individuals with Border State Bank with information related to various aspects of
27 the Manhattan West lending and financing transaction and participation in the lending
28 syndication.

1 64. Individuals with Goose River Bank with information related to various aspects of
2 the Manhattan West lending and financing transaction and participation in the lending
3 syndication.

4 65. Individuals with Security National Bank of Enid with information related to
5 various aspects of the Manhattan West lending and financing transaction and participation in the
6 lending syndication.

7 66. Individuals with Starion Financial with information related to various aspects of
8 the Manhattan West lending and financing transaction and participation in the lending
9 syndication.

10 67. Individuals with First Holding company of Cavalier, Inc. with information related
11 to various aspects of the Manhattan West lending and financing transaction and participation in
12 the lending syndication.

13 68. Individuals with National Bank of Harvey with information related to various
14 aspects of the Manhattan West lending and financing transaction and participation in the lending
15 syndication.

16 69. Individuals with Union State Bank with information related to various aspects of
17 the Manhattan West lending and financing transaction and participation in the lending
18 syndication.

19 **B. DOCUMENTS, DATA COMPILATIONS, AND TANGIBLE THINGS**

20 For purposes of this disclosure, Plaintiffs are producing copies of certain documents in
21 their possession that may contain discoverable information. In addition, Plaintiffs have
22 identified certain categories of documents that may also be relevant to the issues in this case and
23 discoverable under Rule 26(b). Plaintiffs are in the process of identifying and compiling all of
24 the documents in their possession that are discoverable under Rule 26(b). Plaintiffs are also in
25 the process of reviewing documents for privilege. After Plaintiffs have identified additional
26 discoverable documents and completed privilege review they will disclose the documents to
27 Defendants, pursuant to Rule 16.1.

28 1. *Documents Produced With This Disclosure.*

1 Plaintiffs are producing the following documents with this Initial Disclosure Statement.

| No. | Bates Numbers | Description |
|------------------------|----------------|--|
| JUNE 2006 LOANS | | |
| 1 | P000001-000032 | Loan Agreement (Gemstone Apache) |
| 2 | P000033-000035 | Senior Deed of Trust Note |
| 3 | P000036-000038 | Junior Deed of Trust Note |
| 4 | P000039-000058 | Senior Deed of Trust and Security Agreement with Assignment of Rents and Fixture Filing (Line of Credit) (\$15,000,000) (recorded) |
| 5 | P000059-000077 | Junior Deed of Trust and Security Agreement with Assignment of Rents and Fixture filing (Line of Credit) (\$10,000,000) (recorded) |
| 6 | P000078-000088 | Nonrecourse Participation Agreement with attached Addendum to Nonrecourse Participation Agreement and Loan Participation Certificate |
| 7 | P000089 | Commitment to Participate (Borrower - Gemstone Apache, LLC) |
| 8 | P000090-000106 | Pledge Agreement (Alexander Edelstein) |
| 9 | P000107-000109 | Consent and Acknowledgment (Gemstone Apache, LLC) |
| 10 | P000110-000137 | Loan Agreement (Edelstein) |
| 11 | P000138-000139 | Edelstein Note |
| 12 | P000140-000160 | Third Deed of Trust and Security Agreement with Assignment of Rents and Fixture Filing (Line of Credit) (\$13,000,000) (recorded) |
| 13 | P000161-000190 | Junior Third Party Deed of Trust and Security Agreement with Assignment of Rents and Fixture Filing (Line of Credit) (\$38,000,000) (recorded) |
| 14 | P000191-000201 | Nonrecourse Participation Agreement with attached Loan Participation Certificate, Addendum to Nonrecourse Participation Agreement |
| 15 | P000202 | Commitment to Participate (Borrower - Alexander Edelstein) |
| 16 | P000203-000215 | Security Agreement (Gemstone LVS, LLC) |
| 17 | P000216-000220 | Consent of the Member and Manager of Gemstone LVS, LLC |
| 18 | P000221-000223 | Consent and Acknowledgment (Gemstone LVS, LLC) |
| 19 | P000224-000225 | Consent to Assignment |

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| 20 | P000226-000228 | Environmental and Toxic Mold Indemnification Agreement |
| 21 | P000229-000240 | Security Agreement (Gemstone LVS, LLC) |
| 22 | P000241-000244 | ADA Indemnification Agreement |
| 23 | P000245-000261 | Pledge and Security Agreement (Gemstone Development, LLC) |
| 24 | P000262-000264 | Consent and Acknowledgment (Gemstone Development, LLC) |
| 25 | P000265-000268 | Resolution for Pledging Assets (Gemstone Development, LLC) |
| 26 | P000269-000283 | Pledge Agreement (Gemstone Development West, LLC) |
| 27 | P000284-000286 | Consent and Acknowledgment (Gemstone Development West, LLC) |
| 28 | P000287-000292 | Resolution for Borrowing and Pledging Assets (Gemstone Development West, LLC) |
| 29 | P000293-000306 | Letter from Dean Bennett at Santoro, Driggs, Walch, Kearney, Johnson & Thompson to Scott Financial Corporation legal opinion with attached Certificates of Existence with Status in Good Standing for Gemstone Development, LLC, Gemstone Development West, LLC, Gemstone Apache, LLC, and Gemstone LVS, LLC |
| 30 | P000307-000323 | Letter from Brian Klein of Maslon to First American Title Insurance Company regarding Lender's Instructions |
| 31 | P000324-000330 | Amended Special Escrow Instructions |
| 32 | P000331-000335 | Lender's Closing Statement for Manhattan West Condominiums |
| MAY 2007 AMENDMENT | | |
| 33 | P000336-000341 | First Amendment to Loan Agreement |
| 34 | P000342-000344 | Additional Line of Credit Note |
| 35 | P000345-000356 | First Amendment Junior Deed of Trust and Security Agreement with Assignment of Rents and Fixture Filing (Line of Credit) (recorded) |
| 36 | P000357-000367 | Nonrecourse Participation Agreement and attached Addendum to Nonrecourse Participation Agreement and Loan Participation Certificate |
| 37 | P000368 | Commitment to Participate |

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| 38 | P000369-000370 | Endorsement - Attached to Policy No. NCS-240336-PVL issued by First American Title Insurance Company |
| 39 | P000371-000376 | Letter from Caroline Brorby at Northwestern Mutual Financial Network to Scott Financial transmitting Specification pages for Alex Edelstein's policies and Northwestern Mutual Life and John Hancock (only includes attached 9/25/2007 letter from Northwestern Mutual to Scott Financial and Assignment of Life Insurance Policy as Collateral from Northwestern Mutual) |
| 40 | P000377-000382 | Letter from Michael Hamilton of John Hancock to Alexander Edelstein transmitting the attached policy specifications and Assignment of Life Insurance Policy as Collateral |
| OCTOBER 2007 AMENDMENT (EDELSTEIN) | | |
| 41 | P000383-000386 | First Amendment to Loan Agreement |
| 42 | P000387-000388 | First Amendment to Edelstein Note |
| 43 | P000389-000391 | Senior Debt Construction Line of Credit Note |
| 44 | P000392-000397 | First Amendment to Third Deed of Trust and Security Agreement with Assignment of Rents and Fixture Filing (Line of Credit) (recorded) |
| 45 | P000398-000408 | Nonrecourse Participation Agreement with attached Addendum to Nonrecourse Participation Agreement |
| 46 | P000409 | Commitment to Participate |
| OCTOBER 2007 AMENDMENT (GEMSTONE APACHE) | | |
| 47 | P000410-000412 | Second Amendment to Loan Agreement |
| JANUARY 2008 AMENDMENT | | |
| 48 | P000413-000418 | Assumption Agreement (recorded) |
| 49 | P000419-000423 | Fourth Amendment to Mezzanine Loan Agreement (Gemstone Development West, Inc.) |
| 50 | P000424-000426 | Mezzanine Note (Gemstone Development West, Inc.) |
| 51 | P000427-000436 | Nonrecourse Participation Agreement |
| 52 | P000437-000442 | First Amendment to Senior Deed of Trust and Security Agreement with Assignment of Rents and Fixture Filing (Line of Credit) (Mezzanine) (recorded) |

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| 53 | P000443-000448 | Second Amendment to Junior Deed of Trust and Security Agreement with Assignment of Rents and Fixture Filing (Line of Credit) (Mezzanine) (recorded) |
| 54 | P000449-000464 | Mezzanine Deeds of Trust Subordination Agreement (recorded) |
| AUGUST 2008 AMENDMENT | | |
| 55 | P000465-000479 | Fourth Amendment to Loan Agreement (Edelstein) |
| 56 | P000480-000489 | Rental Line of Credit Note with attached First Amendment to Edelstein Note |
| 57 | P000490-000494 | First Amendment and Assumption Agreement to Junior Third Party Deed of Trust and Security Agreement with Assignment of Rents (Line of Credit) (\$38,000,000) (recorded) with attached Accommodation Recording Agreement dated September 5, 2008 |
| 58 | P000495-000499 | Resolution for Borrowing and Pledging Assets (Gemstone Manhattan Holdings I, LLC) |
| 59 | P000500-000510 | Nonrecourse Participation Agreement with attached Addendum to Nonrecourse Participation Agreement |
| 60 | P000511-000518 | Accommodation Recording Agreement regarding the Grant Bargain Sale Deed between Gemstone LVS, LLC and Gemstone Manhattan Holdings I, LLC (recorded) with attached Declaration of Value |
| PREQUALIFICATION LETTERS | | |
| Building 7 | | |
| 61 | P000519 | Letter from Wells Fargo Home Mortgage regarding Ann Manser |
| 62 | P000520 | Letter from Wachovia regarding Sally Szofran |
| 63 | P000521-000523 | Letter from Bask Financial Group regarding Raul Abejuela (with attached fax transmittal sheet dated 1/11/08 and data sheet) |
| 64 | P000524 | Letter from Deposit Alternative regarding Art and Elizabeth Farrell |
| 65 | P000525 | Letter from Preferred Mortgage Inc. regarding Terry O'Donnell |
| Building 8 | | |
| 66 | P000526 | Letter from First Horizon Home Loans regarding Samuel Ricchiazzi, Jr. |
| 67 | P000527 | Letter from Washington Mutual regarding Lizzette Morales |

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| 68 | P000528 | Letter from Evofi One Mortgage regarding Nadeem Ahmad |
| 69 | P000529 | Letter from Five Star Mortgage regarding Jeremy Prevost |
| Building 9 | | |
| 70 | P000530 | Letter from Washington Mutual regarding Lizzette Morales |
| 71 | P000531 | Mortgage Loan Commitment from The Simons Group regarding Jeremy Sand |
| 72 | P000532 | Letter from Chase Home Finance regarding Robert and Darice Coe |
| 73 | P000533 | Letter from Lake Elmo Bank regarding Patricia Hurd |
| 74 | P000534 | Letter from First Horizon regarding Robert McDaniel |
| 75 | P000535 | Letter from CTX Mortgage Company regarding Rashmi Kumar |
| 76 | P000536 | Letter from First Horizon Home Loans regarding Mark Chatow and Kristina Schauppner |
| PURCHASE AND SALE AGREEMENTS FOR CONDO UNITS | | |
| Building 7 | | |
| 77 | P000537-000540 | Purchase and Sale Agreement for Condominium Unit by Ann Manser |
| 78 | P000541-000543 | Purchase and Sale Agreement for Condominium Unit by Sally Szofran and Russell Gaidzik |
| 79 | P000544-000547 | Purchase and Sale Agreement for Condominium Unit by Art and Elizabeth Farrell |
| 80 | P000548-000550 | Purchase and Sale Agreement for Condominium Unit by James Day |
| Building 8 | | |
| 81 | P000551-000553 | Purchase and Sale Agreement for Condominium Unit by Randon Russell |
| 82 | P000554-000556 | Purchase and Sale Agreement for Condominium Unit by Simon Saw |
| 83 | P000557-000559 | Purchase and Sale Agreement for Condominium Unit by Bill Daniel |
| 84 | P000560-000562 | Purchase and Sale Agreement for Condominium Unit by James Ross |
| 85 | P000563-000565 | Purchase and Sale Agreement for Condominium Unit by Norval Campbell |

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| 86 | P000566-000568 | Purchase and Sale Agreement for Condominium Unit by William and Jennifer Daniel |
| 87 | P000569-000572 | Purchase and Sale Agreement for Condominium Unit by Nadeem Ahmad |
| 88 | P000573-000576 | Purchase and Sale Agreement for Condominium Unit by Jeremy Prevost |
| 89 | P000577-000579 | Purchase and Sale Agreement for Condominium Unit by Norval Campbell |
| Building 9 | | |
| 90 | P000580-000582 | Purchase and Sale Agreement for Condominium Unit by Michael and Jana Chase |
| 91 | P000583-000585 | Purchase and Sale Agreement for Condominium Unit by Robert and Darcie Coe |
| 92 | P000586-000588 | Purchase and Sale Agreement for Condominium Unit by Alan Tripp |
| 93 | P000589-000591 | Purchase and Sale Agreement for Condominium Unit by Jesse Boone |
| 94 | P000592-000595 | Purchase and Sale Agreement for Condominium Unit by Ben Hansen |
| 95 | P000596-000598 | Purchase and Sale Agreement for Condominium Unit by Simon Saw |
| 96 | P000599-000601 | Purchase and Sale Agreement for Condominium Unit by Richard Hertan |
| 97 | P000602-000605 | Purchase and Sale Agreement for Condominium Unit by Phil Ross |
| 98 | P000606-000608 | Purchase and Sale Agreement for Condominium Unit by Patricia Hurd |
| 99 | P000609-000611 | Purchase and Sale Agreement for Condominium Unit by Robert McDaniel |
| 100 | P000612-000615 | Purchase and Sale Agreement for Condominium Unit by Rashmi Kumar |
| 101 | P000616-000618 | Purchase and Sale Agreement for Condominium Unit by Jane Garras |
| 102 | P000619-000621 | Purchase and Sale Agreement for Condominium Unit by Holly Marz |
| 103 | P000622-000624 | Purchase and Sale Agreement for Condominium Unit by Ian Peterson |
| Commercial | | |
| 104 | P000625-000679 | Purchase and Sale Agreement for Condominium Unit by Santa Rita Management Company |

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| DEPOSIT BONDS | | |
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| Building 7 | | |
| 105 | P000680-000682 | Deposit Bond for Ann Manser |
| 106 | P000683-000685 | Deposit Bond for Benjamin Hadary |
| 107 | P000686-000688 | Deposit Bond for Patrick Llewellyn |
| 108 | P000689-000691 | Deposit Bond for Arthur and Elizabeth Farrell |
| 109 | P000692-000694 | Deposit Bond for James and Betty Day |
| Building 8 | | |
| 110 | P000695-000697 | Deposit Bond for Bill Daniel |
| 111 | P000698-000700 | Deposit Bond for Randon Russell |
| 112 | P000701-000703 | Deposit Bond for Simon Saw |
| 113 | P000704-000706 | Deposit Bond for Jim Ross |
| 114 | P000707-000709 | Deposit Bond for Norval Campbell |
| 115 | P000710-000712 | Deposit Bond for William and Jennifer Daniel |
| 116 | P000713-000715 | Deposit Bond for Soupharack Vannasing |
| 117 | P000716-000718 | Deposit Bond for James Horning |
| 118 | P000719-000721 | Deposit Bond for Dana and Roberta Kopka |
| 119 | P000722-000724 | Deposit Bond for Norval Campbell |
| Building 9 | | |
| 120 | P000725-000727 | Deposit Bond for Michael and Jana Chase |
| 121 | P000728-000730 | Deposit Bond for Francis and Linda Liu |
| 122 | P000731-000733 | Deposit Bond for Alan Tripp |
| 123 | P000734-000736 | Deposit Bond for Lynne Phillips |
| 124 | P000737-000739 | Deposit Bond for Aaron Peterson |
| 125 | P000740-000742 | Deposit Bond for Jesse Boone |
| 126 | P000743-000745 | Deposit Bond for Ben Hansen |
| 127 | P000746-000748 | Deposit Bond for Simon Saw |
| 128 | P000749-000751 | Deposit Bond for Barbara and Edwin Earp |
| 129 | P000752-000754 | Deposit Bond for Phil Ross |
| 130 | P000755-000757 | Deposit Bond for Holly Marz |
| 131 | P000758-000760 | Deposit Bond for Ian Peterson |

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| CASH BUYER PROOF FUNDS | | |
|-------------------------------|----------------|--|
| Building 9 | | |
| 132 | P000761 | Cash Buyer Proof of Funds for Rick Hertan |
| LEASE AGREEMENTS | | |
| 133 | P000762-000842 | Lease Agreement between Gemstone Development West, Inc. and Gemstone Coffee House, LLC |
| 134 | P000843-000922 | Lease Agreement between Gemstone Development West, Inc. and Manhattan West Residential, Inc. |
| 135 | P000923-001004 | Lease Agreement between Gemstone Development West, Inc. and Gemstone Development, LLC |
| 136 | P001005-001083 | Lease Agreement between Gemstone Development West, Inc. and Gemstone Development, LLC |
| SENIOR DEBT FINANCING | | |
| 137 | P001084-001131 | Senior Debt Loan Agreement |
| 138 | P001132-001134 | Senior Debt Construction Note |
| 139 | P001135-001137 | Senior Debt Contingency Note |
| 140 | P001138-001152 | Security Agreement |
| 141 | P001153-001157 | UCC Financing Statement |
| 142 | P001158-001201 | Senior Debt Deed of Trust and Security Agreement with Assignment of Rents and Fixture Filing (Construction) |
| 143 | P001202-001206 | Guaranty (\$100,000,000 Senior Debt Construction Note) (Unlimited - Gary D. Tharaldson, Individually) (with attached Addendum to Guaranty) |
| 144 | P001207-001210 | Guaranty (Unlimited - Tharaldson Motels II, Inc.) |
| 145 | P001211-001212 | Assignment of Deposit Bond |
| 146 | P001213-001218 | Assignment of Construction Contract, Plans and Specifications |
| 147 | P001219-001220 | Architect's Acknowledgment and Consent |
| 148 | P001221 | Consent of General Contractor |
| 149 | P001222-001239 | Certificate as to Sworn Construction Statement and Sworn Construction and Project Cost Statement |
| 150 | P001240-001242 | Environmental and Toxic Mold Indemnification Agreement |
| 151 | P001243-001246 | ADA Indemnification Agreement |
| 152 | P001247-001252 | Secretary's Certificate of Gemstone Development West, Inc. |

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| 153 | P001253-001255 | Action by Unanimous Written Consent of the Sole Member of the Board of Directors of Gemstone Development West, Inc. |
| 154 | P001256-001264 | Deposit Account Control Agreement (Sales Deposits) |
| 155 | P001265-001272 | Deposit Account Control Agreement (Upgrades) |
| 156 | P001273-001278 | Debt Subordination Agreement |
| 157 | P001279-001286 | Mezzanine Deeds of Trust Subordination Agreement |
| 158 | P001287-001302 | Grant, Bargain, Sale Deed (includes Declaration of Value, Construction Loan Escrow Instructions, Privacy Policy Notice, GAP Indemnity, Statement of Understanding, General Provisions) |
| 159 | P001303-001306 | Grant, Bargain, Sale Deed (recorded) (undated) |
| 160 | P001307-001312 | Letter from Penny Heaberlin at Maslon to Commonwealth Land Title Insurance Company regarding Lender's Instructions |
| 161 | P001313-001321 | Letter from Holland & Hart to Scott Financial Corporation legal opinion |
| 162 | P001322-001325 | Work Results Summary and attached Certificate of Existence with Status in Good Standing of Gemstone Development, LLC |
| 163 | P001326-001329 | Work Results Summary and attached Certificate of Existence with Status in Good Standing of Gemstone LVS, LLC |
| 164 | P001330-001333 | Work Results Summary and attached Certificate of Existence with Status in Good Standing of Gemstone Development West, Inc. |
| 165 | P001334-001338 | Work Results Summary with attached UCC Filing Status and UCC Financing Statement |
| 166 | P001339-001340 | Lender's Closing Statement (Manhattan West Phase 1 Senior Construction Note) |
| 167 | P001341-001369 | Letter from Brien Steven Pidgeon of LandAmerica Commonwealth to Scott Financial Corporation with attached ALTA 2006 Loan Policy of Title Insurance |
| 168 | P001370-001389 | Nonrecourse Participation Agreement with attached Loan Participation Certificate |
| 169 | P001390-001409 | Nonrecourse Participation Agreement with attached Loan Participation Certificate |
| 170 | P001410-001428 | Manhattan West Draw Summary |
| 171 | P001429-001442 | Lender Approved Residential Sales - SFC Reviewed |

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| CONDITIONS PRECEDENT ACHIEVED LETTER | | |
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| 172 | P001443 | Letter from Penny Haeberlin of Maslon to Scott Financial regarding conditions precedent status for the advances under the Senior Debt Loan Agreement |
| SALES CONTRACTS | | |
| Building 7 | | |
| 173 | P001444-001447 | Purchase and Sale Agreement for Condominium Unit |
| 174 | P001448-001451 | Purchase and Sale Agreement for Condominium Unit |
| 175 | P001452-001454 | Purchase and Sale Agreement for Condominium Unit by Michael Cuddy |
| 176 | P001455-001457 | Purchase and Sale Agreement for Condominium Unit by Shawna Kneesel |
| 177 | P001458-001460 | Purchase and Sale Agreement for Condominium Unit by Michael Grassi |
| 178 | P001461-001466 | Purchase and Sale Agreement for Condominium Unit by Aleksandar Totic |
| 179 | P001467-001469 | Purchase and Sale Agreement for Condominium Unit by Raffi Khatchadourian |
| 180 | P001470-001473 | Purchase and Sale Agreement for Condominium Unit by Charles Edelstein |
| 181 | P001474-001476 | Purchase and Sale Agreement for Condominium Unit by Benjamin Hadary |
| 182 | P001477-001480 | Purchase and Sale Agreement for Condominium Unit by Ben Black |
| 183 | P001481-001483 | Purchase and Sale Agreement for Condominium Unit by Royal Peterson |
| 184 | P001484-001486 | Purchase and Sale Agreement for Condominium Unit by Michael Barnes |
| 185 | P001487-001489 | Purchase and Sale Agreement for Condominium Unit by Raul and Imelda Abejuela |
| 186 | P001490-001492 | Purchase and Sale Agreement for Condominium Unit by Santa Rita Management Company |
| 187 | P001493-001496 | Purchase and Sale Agreement for Condominium Unit by Ben Black |
| 188 | P001497-001499 | Purchase and Sale Agreement for Condominium Unit by Patrick Llewellyn |
| 189 | P001500-001502 | Purchase and Sale Agreement for Condominium Unit by Sarkis Shinrinyan |

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| 190 | P001503-001505 | Purchase and Sale Agreement for Condominium Unit by Santa Rita Management Company |
| 191 | P001506-001508 | Purchase and Sale Agreement for Condominium Unit by David Groh |
| 192 | P001509-001511 | Purchase and Sale Agreement for Condominium Unit by Santa Rita Management Company |
| 193 | P001512-001514 | Purchase and Sale Agreement for Condominium Unit by Nicholas and Marianne Pepe |
| 194 | P001515-001517 | Purchase and Sale Agreement for Condominium Unit by Santa Rita Management Company |
| 195 | P001518-001520 | Purchase and Sale Agreement for Condominium Unit by Construction Financial Services, LLC (Mark Henry) |
| 196 | P001521-001523 | Purchase and Sale Agreement for Condominium Unit by Alexander Edelstein |
| 197 | P001524-001526 | Purchase and Sale Agreement for Condominium Unit by Alexander Edelstein |
| 198 | P001527-001529 | Purchase and Sale Agreement for Condominium Unit by Kevin Sorci |
| 199 | P001530-001533 | Purchase and Sale Agreement for Condominium Unit by Melvin and Sally Goldberg |
| 200 | P001534-001536 | Purchase and Sale Agreement for Condominium Unit by Construction Financial Services, LLC (Mark Henry) |
| Building 8 | | |
| 201 | P001537-001539 | Purchase and Sale Agreement for Condominium Unit by Darla Safire |
| 202 | P001540-001542 | Purchase and Sale Agreement for Condominium Unit by Neal Fenton |
| 203 | P001543-001545 | Purchase and Sale Agreement for Condominium Unit by Donald and Geraldine Hibbard |
| 204 | P001546-001548 | Purchase and Sale Agreement for Condominium Unit by Clara McMillan |
| 205 | P001549-001551 | Purchase and Sale Agreement for Condominium Unit by Greg Hibbard |
| 206 | P001552-001554 | Purchase and Sale Agreement for Condominium Unit by Samuel Ricciuzzi, Jr. |
| 207 | P001555-001557 | Purchase and Sale Agreement for Condominium Unit by Michael and Paul Argier and Charles Ford |

1 A. Yes.

2 Q. Was there any specific attorney or attorneys you
3 were working with, with respect to the claims against my
4 client?

5 A. You know, it would have been either Marty or Layne
6 at that firm.

7 Q. You said at some point a recommendation was made
8 that a suit should be brought against my client personally
9 and you approved that lawsuit?

10 A. Yes. Based on what they told me.

11 Q. In providing your approval to go forward, did you
12 look at any of the evidence that your attorneys had amassed
13 against my client?

14 A. I took their word on what they had told me was
15 accurate.

16 Q. Were you aware before you sue someone that
17 essentially there's an obligation to make sure that a claim
18 exists in good faith?

19 MR. ARONSON: Objection. Form.

20 Go ahead.

21 THE WITNESS: I believe this claim has been made
22 in good faith.

23 BY MR. SMITH:

24 Q. Just to make sure we're clear, before you brought
25 suit against my client, did you review the complaint that

* CONFIDENTIAL *

1 your attorneys had prepared?

2 A. No, I did not.

3 Q. So as we sit here today, you're not a hundred
4 percent sure of exactly what that complaint says?

5 A. I don't know what the complaint says, but I would
6 assume that it's been very accurate based on what they've
7 done in the past.

8 Q. You think it's very accurate?

9 A. Very accurate, yeah. That's my assumption.

10 Q. So I guess to get at the heart of what specific
11 evidence -- you said you didn't do any due diligence before
12 bringing suit against my client.

13 Did you tell your attorneys -- did you like
14 specifically pull out documents or did you tell them, I was
15 lied to on this occasion, or did you provide them any kind
16 of conversations like that?

17 A. No.

18 MR. ARONSON: Okay --

19 MR. SMITH: I apologize.

20 MR. ARONSON: You're not intending to invade the
21 privilege and his answer is not intending to waive any
22 privilege.

23 Okay. Go ahead.

24 MR. SMITH: That's sort of a standing issue
25 through all these depositions.

1 A. I know they said they were going to file a
2 complaint and I'm not sure beyond that.

3 Q. Maybe another way to say it is, do you remember
4 specifically giving your approval to your attorneys to bring
5 this lawsuit?

6 A. We discussed it, and I said, Yeah, it's okay.

7 Q. Before you gave that approval, did you make sure
8 that the claims and representations, as they were drafted by
9 your attorneys, were accurate?

10 MR. ARONSON: Objection. Form.

11 THE WITNESS: I felt that they knew enough about
12 the case to make an -- they knew probably more about the
13 case than I did. So they could make an accurate claim,
14 complaint in this case.

15 BY MR. SMITH:

16 Q. Could we turn to the second page of this
17 complaint?

18 A. Okay.

19 Q. I'd like to direct your attention to the second
20 paragraph on page 2. Can you read the first sentence of
21 that second paragraph?

22 A. "Plaintiffs Club Vista Services LLC, Gary
23 Tharaldson, Tharaldson Motels II, Incorporated, were lenders
24 and guarantors of the project."

25 Q. I just want to focus on that first sentence for a

1 BY MR. SMITH:

2 Q. Would you agree the best way to figure out where
3 these conclusions come from is to sit down with your
4 attorneys and ask them what they relied upon?

5 MR. ARONSON: Objection, form.

6 THE WITNESS: I wouldn't have a problem with that.

7 BY MR. SMITH:

8 Q. There's no way to, sitting here today, for you or
9 me to know what the basis is of some of these provisions
10 unless we talk specifically to your attorneys; true?

11 MR. ARONSON: Objection. Form.

12 THE WITNESS: We haven't went through the document
13 that has the allegations against your client.

14 BY MR. SMITH:

15 Q. Sir, the complaint is filed against my client.

16 A. So --

17 MR. ARONSON: Gary. He has not asked a question.
18 That's a statement.

19 THE WITNESS: Okay.

20 MR. ARONSON: Let's take our 2 o'clock break,
21 please. Thank you.

22 THE VIDEOGRAPHER: We're off the record at 1:57
23 p.m.

24 (A short break was taken.)

25 THE VIDEOGRAPHER: We're back on the record at

EXHIBIT B

RYAN KUCKER DEPOSITION TRANSCRIPT

VOLUME 1

05/05/2010

Page 1

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 CLUB VISTA FINANCIAL SERVICES, L.L.C., a)
3 Nevada Limited Liability Company;)
4 THARALDSON MOTELS II, INC., a North)
4 Dakota corporation; and GARY D.)Case No.
5 THARALDSON,)A579963
5 Plaintiffs,)Dept. No.
6 v.)XIII
6)
7 SCOTT FINANCIAL CORPORATION, a North)
7 Dakota corporation; BRADLEY J. SCOTT;)
8 BANK OF OKLAHOMA, N.A., a national bank;)
8 GEMSTONE DEVELOPMENT WEST, INC., a)
9 Nevada corporation; ASPHALT PRODUCTS)
9 CORPORATION D/B/A APCO CONSTRUCTION, a)
10 Nevada corporation; DOES INDIVIDUALS)
10 1-100; and ROE BUSINESS ENTITIES 1-100,)
11)
11 Defendants.)
12 _____)

22 whether you trusted him or not doesn't necessarily mean that
23 you didn't think there was a problem with this. Do you see
24 my point?

25 A. Uh-huh.

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1 Q. So that's why I want to get -- make sure I
2 understand clearly what your answer is. So just to make
3 sure, I'll ask the question again.

4 A. Sure.

5 Q. At the time that you heard about the release of
6 Mr. Edelstein's deposit, you didn't believe that was
7 creating a -- well, let me rephrase it now.

8 At the time you heard about the release of
9 Mr. Edelstein's father's deposit, you didn't think that that
10 was a problem caused by Scott Financial or Brad Scott;
11 correct?

12 MR. ARONSON: Form.

13 Go ahead.

14 THE WITNESS: Can you ask me that one again?

15 BY MR. JONES:

16 Q. Sure. You never had any concern or saw any
17 problem with the release of Mr. Edelstein's father's deposit
18 until you met with the attorneys for Mr. Tharaldson;
19 correct?

20 MR. ARONSON: Form.

21 Go ahead.

22 THE WITNESS: I didn't form an opinion on it prior
23 to that. I -- same answer. I didn't form an opinion prior
24 to that.

25 ///

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1 BY MR. JONES:

2 Q. If you didn't form an opinion, then you didn't
3 think it was a problem?

4 MR. ARONSON: Form.

5 Go ahead.

6 THE WITNESS: I don't think that's appropriate.
7 It wasn't my responsibility to determine if it was a problem
8 or not.

9 BY MR. JONES:

10 Q. Whether you thought it was your responsibility or
11 not, you didn't think it was a problem, did you?

12 MR. ARONSON: Form.

13 THE WITNESS: Say that one again?

14 BY MR. JONES:

15 Q. Whether it was your responsibility or not, you
16 didn't think it was a problem?

17 MR. ARONSON: Form.

18 THE WITNESS: I didn't form an opinion on it.

19 BY MR. JONES:

1 Q. You also said in your answer, though, a minute ago
2 that insiders may impair the quality of presales. Even
3 though you didn't discuss that issue with Mr. Tharaldson or
4 Mr. Newman in that April meeting, do you still stand by that
5 statement that insider sales may impair the quality of
6 presales?

7 A. I know that now, yes.

8 Q. You know that since the filing of the complaint;
9 is that correct?

10 A. Yeah, that's fair to say.

11 Q. You weren't -- you never had been informed of that
12 by any source prior to the filing of the complaint; correct?

13 A. I did not realize -- I may have not realized how
14 important presales were to a deal like this as of April.

15 Q. Did Mr. Tharaldson at any time, and I'm not
16 talking about lawyer. I'm talking about Mr. Tharaldson.
17 Did Mr. Tharaldson ever at any time tell you that so-called
18 insiders would impair the quality of the presales?

19 A. I don't recall him mentioning that, no.

20 Q. Did Mr. Newman ever tell you that presales to
21 insiders would impair the quality of the presales?

22 A. No, I do not recall.

23 Q. And so this would be something that you learned
24 after the complaint was filed?

25 A. Yes, me personally.

1 Q. Okay. And how are the presales impaired by sales
2 to insiders?

3 MR. ARONSON: It's difficult. Please ignore your
4 communications with any of your attorneys. And if you can
5 answer the question without those, great. If you can't,
6 then you need to let Mr. Jones know.

7 THE WITNESS: I don't think I have any experience
8 with this matter other than what's been discussed with
9 counsel.

10 BY MR. JONES:

11 Q. Okay. Define an "insider" for me.

12 A. When it comes to mind, it comes back to my
13 accounting background, related party through any ownership
14 in entities, friends, family, what's kind of known in the
15 tax world as friendly -- I guess, friendly parties are I
16 just told you, friends.

17 Q. Okay. All right. Was there ever any discussion
18 that you can recall at any time with Mr. Tharaldson or
19 Mr. Newman about a concern of presales to friends, families,
20 affiliates or related parties?

21 A. I don't recall us discussing the matter.

22 Q. All right. It says April 30, 2007, Tharaldson
23 executes first financing commitment letter. Did you --
24 you've already told me you did review that commitment
25 letter; right?

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL SERVICES, L.L.C., a)
Nevada Limited Liability Company;)
THARALDSON MOTELS II, INC., a North)
Dakota corporation; and GARY D.) Case No.
THARALDSON,) A579963
Plaintiffs,) Dept. No.

v.) XIII
)

SCOTT FINANCIAL CORPORATION, a North)
Dakota corporation; BRADLEY J. SCOTT;)
BANK OF OKLAHOMA, N.A., a national bank;)
GEMSTONE DEVELOPMENT WEST, INC., a)
Nevada corporation; ASPHALT PRODUCTS)
CORPORATION D/B/A APCO CONSTRUCTION, a)
Nevada corporation; DOES INDIVIDUALS)
1-100; and ROE BUSINESS ENTITIES 1-100,)
Defendants.)

SCOTT FINANCIAL CORPORATION, a foreign)
corporation,)
Counterclaimant,)

v.)
)

GARY D. THARALDSON,)
Counterdefendant.)

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF RYAN KUCKER

VOLUME II

PAGES 250-421

LAS VEGAS, NEVADA

MAY 6, 2010

REPORTED BY: HOLLY J. PIKE, CCR NO. 680, RPR, CSR
LST JOB NO. 121874

1 performance?

2 MR. ARONSON: Form.

3 Go ahead.

4 THE WITNESS: I do believe now there was some --
5 misled the plaintiffs based on counsel's information.

6 BY MR. JONES:

7 Q. All right. But prior to that date, you had no
8 such belief?

9 A. Prior to that date, no.

10 Q. What evidence, what factual evidence do you have
11 that there was this intent to mislead as indicated in this
12 paragraph? Separate and apart from anything that the
13 lawyers told you?

14 A. Nothing separate from what the attorneys have told
15 me.

16 MR. JONES: Okay. Thank you. We'll take a break.

17 THE VIDEOGRAPHER: Off the record at 11:34.

18 (A short break was taken.)

19 THE VIDEOGRAPHER: Back on the record at 11:47.

20 BY MR. JONES:

21 Q. The paragraph 138 is kind of something we've
22 already talked about. It says, "The fiduciary defendants
23 later admitted to plaintiffs orally in October, 2008, and in
24 writing in December, 2008, that their underwriting of the
25 senior loan had relied solely on the financial resources of

1 BY MR. JONES:

2 Q. So you knew about that only post closing. Is that
3 your testimony?

4 A. Yes, that is correct.

5 Q. Did you see -- at any time prior to meetings with
6 lawyers, did you see the sale or prelease of commercial
7 space to parties related to or connected with Gemstone
8 West, Inc., to be a problem in connection with the
9 Tharaldson loans?

10 MR. ARONSON: Objection. Form.

11 THE WITNESS: Will you say that again?

12 BY MR. JONES:

13 Q. Sure. At any time prior to the meetings with the
14 lawyers, did you see the sale or prelease of commercial
15 space to parties related to or connected with Gemstone West
16 to be a problem in connection with the Tharaldson loans?

17 MR. ARONSON: Form.

18 Go ahead.

19 THE WITNESS: I don't believe I considered it
20 prior to meeting the attorneys.

21 BY MR. JONES:

22 Q. Okay. Do you believe the related party sales and
23 leases are highly questionable?

24 MR. ARONSON: Form.

25 Go ahead.

1 Q. So you don't really know anything about this
2 paragraph at all?

3 A. No.

4 Q. By the way, let me ask you a question. You
5 understand that the lawyers are not witnesses in the case;
6 right?

7 A. Yes. I understand that.

8 Q. Okay. So I need to make my inquiries of the
9 witnesses in the case and not the lawyers. So my question
10 to you is this: Who do you think is the person most
11 knowledgeable of all the factual allegations that give rise
12 to this case?

13 A. Mr. Tharaldson.

14 Q. Okay. So in your mind he would be the person that
15 would have the most information about these factual
16 allegations?

17 A. In my mind, yes.

18 Q. Okay. Thank you. And besides Mr. Tharaldson, who
19 would be the next most knowledgeable person about the
20 factual allegations in this case?

21 A. Probably myself.

22 Q. And then after you, who would it be?

23 A. Mr. Newman.

24 Q. That was what my anticipated order would be.
25 Maybe potentially you and Mr. Tharaldson switched. But then

1 after Mr. Newman, who do you think would be on the
2 Tharaldson side of the equation, so to speak, if anybody?

3 A. No one comes to mind.

4 Q. All right. Thank you. Now, let me digress for
5 just a moment. There was some discussion yesterday about
6 alleged substantial fees that Scott Financial made from the
7 Tharaldson entities over time. Do you recall that?

8 A. I do recall that.

9 Q. How much in fees did Mr. -- well, strike that.

10 How much in compensation did Mr. Goyette make in
11 deals that he did with Mr. Tharaldson?

12 A. How much he's been paid to date?

13 Q. Yes, sir.

14 A. You know, I don't know all the historical stuff,
15 especially before I started. Do you want me just to tell
16 you what I do know?

17 Q. Yes, sir.

18 A. He received some fees associated with the sale of
19 Fort Worth. The sale was 55 million. I'm guessing he made
20 a million or 2 million.

21 Q. Okay. So there's one.

22 A. He was paid a salary. I believe it was 30,000 a
23 month.

24 Q. Okay. From the time that he worked for --

25 A. For DRG.

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DISTRICT COURT
CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL SERVICES,
L.L.C., a Nevada Limited Liability
Company; THARALDSON MOTELS II, INC.,
a North Dakota corporation; and GARY
D. THARALDSON,

Plaintiffs,

vs.

Case No.: A579963
Dept. No.: XIII

SCOTT FINANCIAL CORPORATION, a
North Dakota corporation; BRADLEY
J. SCOTT; BANK OF OKLAHOMA, N.A,
a national bank, GEMSTONE DEVELOPMENT
WEST, INC., a Nevada corporation,
ASPHALT PRODUCTS CORPORATION D/B/A APCO
CONSTRUCTION, a Nevada corporation; DOES
INDIVIDUALS 1-100; and ROE BUSINESS
ENTITIES 1-100,

Defendants.

D E P O S I T I O N

of

RYAN KUCKER

June 9, 2010

9:10 o'clock A.M.

Taken at: DOUG KETCHAM & ASSOCIATES
118 Broadway, Suite 200
Fargo, North Dakota

REPORTER: DOUGLAS T. KETCHAM

(PURSUANT TO NOTICE)

DOUG KETCHAM & ASSOCIATES

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2 that's all he needed.

3 Q. So what would you do with the
4 originals?

5 A. Probably would have got shredded.

6 Q. Okay. Has Mr. Tharaldson told you
7 since his deposition that his signature was
8 forged on any documents?

9 A. There may have been some discussion
10 with counsel present.

11 Q. Okay. Have you seen any documents
12 that, I'm talking about literally seen them, that
13 Mr. Tharaldson has indicated he believes his
14 signature was forged on?

15 MS. TARADASH: Object to form.

16 MR. JONES: Even with presence of counsel
17 I'm asking him a factual question if he's seen a
18 document that's allegedly forged with Mr.
19 Tharaldson, let me rephrase that.

20 Q. My question, Mr. Kucker, is have you
21 seen any documents that allegedly have Mr.
22 Tharaldson's forged signature on them?

23 MS. TARADASH: Object to form.

24 A. The one I have seen is, I became
25 aware with counsel present.

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1 MS. TARADASH: No.

2 Q. So what document was that? I don't

3 care if counsel was present or not. That's a
4 factual question and I'm entitled to an answer on
5 that. We'll call a discovery commission, or a
6 judge if we have an issue over that. I'm
7 absolutely entitled to know. That's factual
8 information.

9 MS. TARADASH: It involves --

10 MR. JONES: I don't care. So what.
11 I'm not asking for discussion, I'm asking for a
12 document?

13 MS. TARADASH: His knowledge relates to
14 discussions with counsel so I instruct you not
15 answer that question.

16 MR. JONES: Okay. We're going to have to
17 call the Court on that one.

18 MR. CLAYMAN: Off the record for one
19 second.

20 (A discussion was held off the record.)

21 MR. JONES: Back on the record.

22 THE VIDEOGRAPHER: We are now back on the
23 record.

24 Q. Okay. Have you ever seen Mr.
25 Tharaldson incapacitated by prescription drugs?

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□

1 A. I think we covered this in the first
2 one. I don't have personal knowledge of seeing
3 him affected by any drugs. If he takes drugs.

4 Q. Have you ever felt that Mr.

1 talked to Brad and he is going to get a
2 commitment letter to clarify exactly what Gary is
3 willing to do." You see that?

4 A. I do see that.

5 Q. Do you recall the conversation with
6 Brad and Mr. Tharaldson about this subject?

7 A. No. Not specifics. Reading this
8 e-mail it brings back. I think we took him
9 through what Gary's understanding and what he
10 wanted to do and we wanted to have Brad basically
11 document the agreement.

12 Q. So Mr. Tharaldson essentially told
13 Brad what he wanted in terms of this new
14 agreement or commitment letter, right?

15 MS. TARADASH: Object to form.

16 A. Right.

17 Q. Okay. If you go to the next page, you
18 will see that it's my understanding Mr. Edelstein
19 is essentially saying he wants kind of a
20 blessing?

21 MR. JONES: Hello.

22 THE CLERK: Hello. Is everybody ready?

23 MR. JONES: Everybody's ready.

24 THE VIDEOGRAPHER: We are going off the
25 video record.

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1 MR. JONES: Hello?

2 JUDGE DENTON: Hello.

3 MR. JONES: Yes, Your Honor. Good
4 morning.

5 JUDGE DENTON: Yes.

6 MR. JONES: Your Honor, for your
7 information we are on the record in a deposition,
8 actually the continued deposition of Ryan Kucker
9 here in Fargo. Mr. Kucker was the subject of some
10 earlier dispute where you ordered that Mr. Kucker's
11 deposition go forward in Las Vegas. We took two
12 days of his deposition in Las Vegas and I won't get
13 into all the details. The parties have agreed to do
14 an additional, at least two days here in Fargo and
15 possibly another day later. In the meantime, just
16 so you know who is here with me, is John Clayman who
17 represents some of the other defendants in the case,
18 Bank of Oklahoma specifically. By the way, this is
19 Randall Jones representing Scott Financial and Brad
20 Scott. Also Wade Gochnour represents another
21 defendant APCO. He's on the line, not here
22 personally. He's on the telephone. Christine
23 Taradash is here on behalf of all the Plaintiffs
24 along with Mr. Kucker. First of all, let me thank
25 you for agreeing to hear this. We have a question

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1 that we would like some clarification from you in
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KUCKER.I.txt

2 connection with this deposition and witness
3 testimony.

4 JUDGE DENTON: I'm in chambers and the
5 clerk is here with me taking minutes.

6 MR. JONES: Very good. Thank you, Your
7 Honor. Let me give you a little bit of context of
8 this situation and how we got to this point in this
9 dispute. During the deposition of Mr. Kucker in Las
10 Vegas some weeks ago and Mr. Tharaldson, the
11 principal of the Plaintiffs' companies and
12 personally named Plaintiff it came out that Mr.
13 Kucker and Mr. Tharaldson were the people most
14 knowledgeable about the incidents that give rise to
15 this Complaint. And as the Court may be aware or
16 recall, this is about a 57-page Complaint that has
17 multiple fraud allegations in it, breaches of
18 fiduciary duty allegations, breach of contract,
19 fraud by inducement. It's a fairly comprehensive
20 Complaint, and, as I say, 57 pages of extensive
21 factual details, factual allegations. We have filed
22 a counterclaim for breach of a guaranty. Mr.
23 Tharaldson personally guaranteed these promissory
24 notes that are at issue, about a hundred million
25 dollar claim one way or the other.

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1 And it came out in the deposition that
2 Mr. Tharaldson and Mr. Kucker both had very little,

3 if any, personal knowledge of the allegations in the
4 Complaint and they both testified on the record that
5 they were not aware really of any of these
6 allegations until they met with counsel. We've had
7 a dispute over that issue that we may have to brief
8 and bring to the Court in more detail, but it's come
9 up, this issue has come up again today.

10 There has been a recent allegation, a
11 new allegation about a year and a half into this
12 litigation that now some of the key operative
13 documents may be, allegedly been forged. Again,
14 this is new information. I think, in fact, the
15 Complaint alleges that the documents were not
16 forged, that they were signed by Mr. Tharaldson, and
17 I believe he's testified in his deposition that at
18 least one of documents, one of the guaranties he
19 personally signed, although I haven't gotten to the
20 point with him on the other documents to ask him
21 about that, but his Complaint does say that.

22 In light of these recent allegations,
23 and the reason we know about these allegations,
24 counsel has sent us a request to have the forensic
25 examiner examine the original documents.

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1 I was inquiring of Mr. Kucker about
2 these alleged forged documents and which documents
3 they were and Mr. Kucker's consistent with what's
4 been said in some of the past depositions about
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KUCKER.I.txt

5 communications said, "well, I know about those
6 forged documents." I said, "what document was it
7 that you understand to be forged?" And he said,
8 "well, I can't tell you." That came up in a
9 conversation with counsel. Miss Taradash instructed
10 him not to answer and I believe it is improper, in
11 fact, it's critical for the defense of my client to
12 know what documents are allegedly forged and they're
13 not allowing me to inquire into that subject. So
14 that's my perspective on this issue, Your Honor, and
15 I'm sure Miss Taradash has a different perspective.

16 MS. TARADASH: Good morning. Christine
17 Taradash. I'm with the firm Morrill & Aronson and I
18 represent all the Plaintiffs in the case and I don't
19 want to go into too much detail but I just want to
20 say that I disagree with Mr. Jones' characterization
21 of my client and Mr. Kucker's knowledge of the
22 allegations in this Complaint. But on the issue of
23 this alleged forgery, there has been no allegation
24 of forgery. There was a letter that we sent out
25 last week asking that certain original documents be

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1 sent to a document examiner, but there has been no
2 allegation at this point in this case about forgery.

3 The issues that have come up this
4 morning concerns attorney-client privilege and work
5 product privilege. The question's been asked of Mr.

KUCKER.I.txt

6 Kucker. Mr. Kucker is the accountant and tax
7 advisor for Tharaldson companies and he did not sign
8 any of these documents that are at issue in this
9 litigation. Everything was signed or purportedly
10 signed, I guess you might say, by Gary Tharaldson.
11 Nothing has ever been signed by Mr. Kucker. He has
12 no personal knowledge of this. Questions have been
13 asked of Mr. Kucker what conversations have you had
14 with Gary Tharaldson about the signing of documents
15 and those questions we have permitted him to answer.
16 Mr. Kucker has been asked about various signatures
17 on various documents and those questions are
18 appropriate. The questions that are not appropriate
19 and we have objected to and I advised Mr. Kucker to
20 not respond to questions about conferences with me
21 or other counsel about these documents. That's not
22 appropriate. That invades the attorney-client
23 privilege, the work product privilege and being very
24 careful to protect those. But Mr. Kucker has this
25 morning answered detailed questions about various

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1 documents and signatures on various documents that
2 are within his personal knowledge or that are not
3 based on discussions with counsel. And that's our
4 position and if you have any questions.

5 JUDGE DENTON: Do you have an example of
6 a question?

7 MR. JONES: Yes, Your Honor. I should
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8 have had it marked in the transcript. We'd go back
9 and get the exact question. Essentially what I
10 recall my question to be is did Mr. Tharaldson tell
11 you any of these documents appear to be forgery or
12 did Mr. Tharaldson indicate to you any of these
13 documents don't appear to be his signature or did
14 Mr. Tharaldson tell you he believed that any of
15 these documents were forgeries. And the problem is
16 apparently that there was some conversation about
17 this subject with Mr. Tharaldson but with, which Mr.
18 Kucker was privy to that were in the presence of
19 counsel. The problem I have is that, you know, I'm
20 trying to find out if there is an alleged forgery
21 here and there is clearly something going on because
22 they are, they won't answer the question and I just
23 need to know is there a forgery or not. We have got
24 a discovery deadline that's coming up this year. We
25 have got a trial date, you set a firm trial date in

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1 March of next year. We have expert designations
2 that are due shortly and we need to know, and, Your
3 Honor, our problem is this is a factual issue, this
4 is not a legal issue.

5 JUDGE DENTON: I find that the questions
6 you have indicated are appropriate so I'll overrule
7 the instruction not to answer them.

8 MR. JONES: Thank you, Your Honor. I

9 have nothing further at this point anyway.

10 MS. TARADASH: Those were the questions
11 that I believe I told you were appropriate.

12 MR. CLAYMAN: Well, Your Honor, the
13 problem is that -- John Clayman. It is a difficult
14 process when the information that, and let me start
15 by saying it is inappropriate or incorrect to have
16 said that Mr. Kucker is somehow limited. He was the
17 designated corporate representative for Club Vista,
18 one of the Plaintiffs, and he has been identified as
19 one of the three most knowledgeable people on behalf
20 of the Plaintiff in this litigation and repeatedly
21 throughout the deposition process we have heard that
22 these folks don't have personal knowledge, that the
23 information, the factual information they know with
24 the Complaint has come through conversations with
25 their lawyers. We are entitled to know what those

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1 facts are.

2 JUDGE DENTON: I agree. You're seeking
3 facts, you are not seeking --

4 MR. CLAYMAN: We are not seeking the
5 consultations they have had, the advice they have
6 been given, we are just seeking the facts and I'm
7 concerned once we get off the record because of Miss
8 Taradash's take on this, we are going to get another
9 objection to the very same questions we are trying
10 to use and, I'm sorry if this sounds confrontational
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11 but we have a vast dispute on interpretation. So if
12 the Court can give us some guidelines that factual
13 information that is part of this case is
14 discoverable that would be appreciated.

15 JUDGE DENTON: It is. As far as I'm
16 concerned it is. Communications from the client to
17 the lawyer are protected but these are facts. As
18 far as I'm concerned they're entitled to them.

19 MS. TARADASH: Your Honor, this is
20 Christine Taradash again. We agree that they're
21 entitled to facts. Mr. Kucker is not a designated
22 individual, his deposition was noticed and he's
23 testifying as to his personal information.

24 JUDGE DENTON: Let him so testify. If he
25 doesn't know about something he can so say.

DOUG KETCHAM & ASSOCIATES

118 BROADWAY, SUITE 200, FARGO, ND 58102 (701) 237-0275
115

□

1 MR. JONES: Your Honor, I understand you
2 have got a busy calendar. I don't want to take up
3 any more of your time. Unless you have anything
4 else or any counsel have anything.

5 JUDGE DENTON: My position is that, you
6 know, you ask him questions about facts, that's
7 appropriate. If it's something that claims to be
8 communicated to a lawyer and if it's a communication
9 that's protected, that's one thing. If it's a
10 factual, it's a matter of fact that you're seeking,
11 you're entitled to seek it and he doesn't have any

KUCKER.I.txt

12 personal knowledge about it say so.

13 MR. JONES: Yes, Your Honor. We
14 understand. We are only seeking to get the factual
15 allegations that give rise to the Complaint and even
16 if he communicated a factual allegation to his
17 counsel, the way I would understand that is still a
18 fact he's aware of and just because he gave those
19 facts to his lawyer doesn't mean I can't ask the
20 witness about the fact he gave to his lawyer.

21 JUDGE DENTON: I agree with that. All
22 right.

23 MS. TARADASH: That's not what we are
24 talking about.

25 MR. JONES: Thank you, Your Honor. We

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□

1 won't take any more of your time.

2 MR. CLAYMAN: We are still going to have
3 a disagreement.

4 JUDGE DENTON: Thank you.

5 MR. JONES: Thank you, Judge.

6 (Recess taken.)

7 THE VIDEOGRAPHER: We are now back on the
8 record.

9 Q. (By Mr. Jones) All right. Mr.
10 Kucker, I'm going to digress where we were when
11 we went off the record. We were on the record on
12 paper anyway with Judge Denton, but let me go
13 back and ask you some of the questions that I

Page 110

1 DISTRICT COURT
CLARK COUNTY, NEVADA

2

3 CLUB VISTA FINANCIAL SERVICES,
L.L.C., a Nevada Limited Liability
4 Company; THARALDSON MOTELS II, INC.,
a North Dakota corporation; and GARY
5 D. THARALDSON,

6 Plaintiffs,

7 vs. Case No.: A579963
Dept. No.: XIII

8 SCOTT FINANCIAL CORPORATION, a
North Dakota corporation; BRADLEY
9 J. SCOTT; BANK OF OKLAHOMA, N.A,
a national bank, GEMSTONE DEVELOPMENT
10 WEST, INC., a Nevada corporation,
ASPHALT PRODUCTS CORPORATION D/B/A APCO
11 CONSTRUCTION, a Nevada corporation; DOES
INDIVIDUALS 1-100; and ROE BUSINESS
12 ENTITIES 1-100,

13 Defendants.

14

15 VIDEOTAPED
DEPOSITION

16 of

17 RYAN KUCKER

18 June 10, 2010

19 9:00 O'clock A.M.

20

21 Taken at: DOUG KETCHAM & ASSOCIATES
118 Broadway, Suite 200
22 Fargo, North Dakota

23

24 REPORTER: DOUGLAS T. KETCHAM

2 MS. TARADASH: Again, other than
3 conversations with counsel.

4 A. I guess my answer is the same as last
5 time. I think in general, he was talking about
6 something with them. I don't remember anything
7 specific.

8 Q. So it would be fair to say before
9 this -- now you think could be some time in
10 September of '08 that you would have started
11 having communications with the Morrill, Morrill
12 Aronson Firm?

13 A. Correct.

14 Q. Before December of '08 you never
15 heard Mr. Tharaldson have any critical comment
16 about Bank of Oklahoma in its role in the
17 ManhattanWest Senior Loan transaction?

18 A. I don't recall any.

19 Q. Other than Mr. Aronson, I'm sorry,
20 other than Mr. Tharaldson and disregarding what
21 the attorneys have told you, has anyone else, not
22 your lawyer, has anyone else told you Bank of
23 Oklahoma failed to do something they were
24 required to do as co-lead in the ManhattanWest
25 Senior Loan transaction?

1 A. Not that I can recall.

2 Q. Do you know if Bank of Oklahoma had
3 any responsibility with regard to the
4 ManhattanWest loan before the time they agreed to
5 be co-lead?

6 A. I don't know the timing when they
7 agreed or their involvement before that. So I
8 don't have personal knowledge of that.

9 Q. When was the first time you heard
10 they were going to be co-lead?

11 A. December or January, December '07.
12 January of '08 around that time frame.

13 Q. Did Mr. Tharaldson ever tell you that
14 he had an expectation that Bank of Oklahoma was
15 supposed to somehow help him or his companies
16 with regard to the ManhattanWest loan
17 transaction?

18 A. No. I don't recall anything.

19 Q. Did Kyle Newman ever say, boy, I'm
20 sure glad Bank of Oklahoma is involved. They're
21 going to help us finish up the ManhattanWest
22 Senior Loan transaction?

EXHIBIT C

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL SERVICES, L.L.C., a)
Nevada Limited Liability Company;)
THARALDSON MOTELS II, INC., a North)
Dakota corporation; and GARY D.) Case No.
THARALDSON,) A579963

Plaintiffs,) Dept. No.

v.) XIII

SCOTT FINANCIAL CORPORATION, a North)
Dakota corporation; BRADLEY J. SCOTT;)
BANK OF OKLAHOMA, N.A., a national bank;)
GEMSTONE DEVELOPMENT WEST, INC., a)
Nevada corporation; ASPHALT PRODUCTS)
CORPORATION D/B/A APCO CONSTRUCTION, a)
Nevada corporation; DOES INDIVIDUALS)
1-100; and ROE BUSINESS ENTITIES 1-100,)

Defendants.)

SCOTT FINANCIAL CORPORATION, a foreign)
corporation,)

Counterclaimant,)

v.)

GARY D. THARALDSON,)
Counterdefendant.)

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF KYLE NEWMAN

LAS VEGAS, NEVADA

MAY 4, 2010

REPORTED BY: HOLLY J. PIKE, CCR NO. 680, RPR, CSR
LST JOB NO. 121878

1 BY MR. JONES:

2 Q. Because he owned the company?

3 A. He owned Club Vista Holdings, which I believe
4 owned all of Club Vista Financial.

5 Q. I know it's getting close to noon. Before we
6 break, I know that counsel wanted to break for lunch.
7 Before we break, let me ask you a couple questions about the
8 complaint itself. Did you have any input into the drafting
9 of the complaint?

10 A. No.

11 Q. Did you see the complaint before it was filed?

12 A. I don't -- I'm not sure, but I don't think so. I
13 think I received it after it was filed.

14 Q. Did you talk to anybody -- again, without
15 disclosing what the information was if you talked to a
16 lawyer. But did you talk to anybody, a lawyer, Mr. Kucker,
17 Mr. Tharaldson, anybody else about any of the allegations
18 that were being made in the complaint before the complaint
19 was filed to your knowledge?

20 A. Not to my knowledge.

21 Q. Nobody sought you out and said, hey, I need to run
22 this by you and see what you remember about what happened
23 and get your input and make sure this complaint is accurate?

24 A. Not to my knowledge.

25 Q. Did you know the complaint was going to be filed

1 Q. With respect to -- I'm afraid if I do this, it
2 will take the rest of the afternoon. I don't want to do
3 that. Look at page 36 of the complaint. At the bottom of
4 that page it says, "First Claim for Relief, Fraudulent
5 Misrepresentation." Are you personally aware of any
6 fraudulent misrepresentation that Brad Scott has made to
7 Gary Tharaldson or any of his employees or companies? By
8 that I mean where you have personal knowledge of that as
9 opposed to somebody else telling you that?

10 A. I don't have personal knowledge, no.

11 Q. Let me ask you about the second claim for relief,
12 which is on page 39. It is titled "Fraudulent Concealment,
13 Fraudulent Omission." Do you again have personal knowledge
14 of anything that Brad Scott or Scott Financial intentionally
15 concealed or omitted from telling Gary Tharaldson or anybody
16 in any of his companies?

17 A. On the projects I worked on with Brad,
18 pre-ManhattanWest, I did not experience fraudulent
19 concealment or fraudulent omissions.

20 Q. Looking at page 42, do you know if -- well, are
21 you aware of any events, circumstances where you felt that
22 Scott Financial or Brad Scott was negligent in connection
23 with what it was charged with doing for Club Vista Financial
24 Services or Gary Tharaldson?

25 A. On the projects I worked on, I didn't see anything

1 like that. I don't remember anything like that.

2 Q. Just to clarify that, Mr. Newman, you said any of
3 the projects you worked on. And I took that to mean in all
4 of the answers you've given me so far that you had not seen
5 any evidence of either fraud or fraudulent concealment or
6 negligence. But since I understood you to have worked on
7 the ManhattanWest project up to a certain point in time, I
8 assumed you meant to include the ManhattanWest project in
9 your answers that you just gave me, up to at least the point
10 in time where you were involved in those projects. Is that
11 an accurate statement?

12 A. Up until the time that I was involved, I didn't
13 personally come across that, correct.

14 Q. In all your prior answers, you meant to include
15 the ManhattanWest projects up to the time that you were no
16 longer involved; correct?

17 A. Correct.

18 Q. Thank you. I wanted to clarify that. By the way,
19 you have no knowledge of any securities fraud by Scott
20 Financial or Brad Scott; is that true? No personal
21 knowledge of securities fraud?

22 A. What exactly is securities fraud?

23 Q. That's a good question. I think there's a bit of
24 debate between counsel as to that issue itself. In
25 connection with the -- well, I'm asking you for a lay

1 A. Correct.

2 Q. You were required to disclose that because
3 Mr. Tharaldson had decided to sue the banks; correct?

4 MR. ARONSON: Form.

5 THE WITNESS: I was told by Mr. Tharaldson to
6 forward it.

7 BY MR. JONES:

8 Q. If Mr. Tharaldson hadn't filed that lawsuit, there
9 wouldn't have been anything to send to the banks; correct?

10 MR. ARONSON: Form.

11 THE WITNESS: Yeah. At that moment in time, yeah.

12 BY MR. JONES:

13 Q. I know it's pretty obvious, but sometimes lawyers
14 are forced to ask the obvious question.

15 Did any bank participants ever tell you that Brad
16 Scott or Scott Financial had said anything negative or
17 pejorative or adverse about Gary Tharaldson or Club Vista?

18 A. I don't have any personal -- no, I don't know
19 that.

20 Q. Have you heard from any source, anybody else ever
21 tell you, whether it's a bank or somebody else, besides
22 Mr. Tharaldson or anybody that worked for Mr. Tharaldson,
23 has anybody else told you that Brad Scott or Scott Financial
24 has said anything bad about Gary Tharaldson or Club Vista?

25 A. I don't have personal knowledge of that, no.

1 THE WITNESS: That's the way I read this
2 complaint, yes.

3 BY MR. JONES:

4 Q. The next line says, "The statements made by Scott
5 Financial and Bank of Oklahoma as co-lead lenders were
6 published to the other 27 senior loan participants and
7 potentially republished to numerous other people, including
8 but not limited to persons employed by the 27 senior loan
9 participants, persons doing business with the 27 senior loan
10 participants, and persons in the community in and around the
11 property and project." Do you see that?

12 A. Yes.

13 Q. Do you have any personal knowledge that the three
14 statements we've just been talking about on page 48 of the
15 amended complaint were ever published to the 27 senior loan
16 participants?

17 A. I don't have any personal knowledge.

18 Q. You have no knowledge that those statements were
19 republished to anyone else; correct?

20 A. Correct.

21 Q. Now in light of the financing problems that you've
22 referenced related to the ethanol dryer, do you disagree
23 with any of these statements being made here? In other
24 words, that when a loan is not paid, timely paid, that it
25 will have far reaching negative implications for a banking

1 person you know in Brad Scott in your working and dealing
2 with him?

3 MR. ARONSON: Form.

4 THE WITNESS: My workings and dealings with Brad,
5 I found him to be an honest person.

6 BY MR. JONES:

7 Q. So it wouldn't make sense to you, at least based
8 on your dealings with Mr. Scott, that he would defraud Gary
9 Tharaldson for a couple hundred thousand dollars or even if
10 it was \$400,000; correct?

11 MR. ARONSON: Form.

12 THE WITNESS: I'm surprised -- I'm surprised by
13 the information that was shared with me with my attorney on
14 this project.

15 BY MR. JONES:

16 Q. All right. You certainly understand too that
17 you've heard one side of the story; correct?

18 A. I've heard one side of the story.

19 Q. By the way, you have no knowledge of Bank of
20 Oklahoma aiding or abetting any breaches of fiduciary duty
21 against Mr. Tharaldson or his companies; correct?

22 A. I didn't deal with Bank of Oklahoma.

23 Q. I appreciate you bringing that up. In fact, is it
24 true that by the time you got out of the deal so to speak,
25 the ManhattanWest deal, Bank of Oklahoma had not even been

1 had something else he had to attend to this afternoon.

2 MR. CLAYMAN: He's looking for Elvis.

3 MR. JONES: Thank you, Mr. Clayman, for that
4 comment.

5 Q. Mr. Newman, I just wanted to make sure I followed
6 up completely on this issue about defamation. Has
7 Mr. Tharaldson ever told you that anyone else, any other
8 banks or anybody else, has read this memo that's referred to
9 in the complaint?

10 A. You mean outside of the complaint itself?

11 Q. Yes, sir.

12 A. I don't have any personal knowledge of that.

13 Q. Mr. Tharaldson has never come to you and said so
14 and so banker, bank so and so, or somebody from such and
15 such bank has commented to me about how Brad Scott or anyone
16 at Bank of Oklahoma had said bad things about him?
17 Mr. Tharaldson's never told you that?

18 A. Never told me these things specifically here or
19 anything?

20 Q. No, that somebody else had ever talked badly about
21 him or that he's heard from somebody else, some other bank
22 that they had heard those things?

23 A. I don't recall hearing that from Mr. Tharaldson.

24 Q. How about Mr. Kucker, has Mr. Kucker ever told you
25 that any of the other banks that Mr. Tharaldson does

1 business with have indicated they've heard about this memo
2 or seen this memo?

3 A. No.

4 Q. You're not aware of any other allegedly defamatory
5 statements that either Bank of Oklahoma people or Brad Scott
6 made about Mr. Tharaldson or his company?

7 A. I'm not aware.

8 MR. JONES: For the record, let's mark the
9 complaint as Exhibit 1013 since we've been talking about it.

10 (Deposition Exhibit Number 1013
11 was marked for identification.)

12 BY MR. JONES:

13 Q. Page 49 we have the ninth claim for relief,
14 "Acting in Concert." Do you have any personal knowledge
15 that Scott Financial and APCO or Alex Edelstein or Gemstone
16 or Bank of Oklahoma acted together in some way or any of
17 them, not necessarily the whole group, but part of the group
18 acted in any way together to harm Mr. Tharaldson or any of
19 his companies?

20 MR. ARONSON: I didn't catch it. Did the
21 beginning of the question say personal knowledge?

22 MR. JONES: It did.

23 MR. ARONSON: That's fine.

24 THE WITNESS: I don't have personal knowledge.

25 ///

1 BY MR. JONES:

2 Q. Then with respect to the next claim, it's on page
3 50. It's "Breach of Contract." Do you have any personal
4 knowledge that Scott Financial or Bank of Oklahoma breached
5 any contracts with Gary Tharaldson or Club Vista?

6 A. Other than what I've discussed with my attorney,
7 no.

8 Q. So in other words outside of your discussions with
9 your attorney, you don't know of any specific facts yourself
10 that you became aware of during the course of your dealings
11 with any of the parties; correct?

12 A. That would be correct.

13 Q. Then with respect to negligence, that's the next
14 claim that I wanted to ask you about. It's on page 51. I
15 think you already kind of answered this, but just to make
16 sure. Up to the time that you dealt with Brad Scott and
17 Scott Financial in connection with the ManhattanWest loan,
18 you have no personal knowledge of Scott Financial being
19 negligent in any of its dealings with Gary Tharaldson or any
20 of his entities; is that correct?

21 A. I don't have personal knowledge.

22 MR. JONES: Let me take a quick break. I need to
23 bring in the credit displays which is a lot of paper. I'll
24 be right back.

25 THE VIDEOGRAPHER: Off the record.

1 A. I don't even recall APCO until the litigation
2 here, until your name came up then.

3 Q. Earlier in your testimony you had talked about
4 certain procedures that I believe Mr. Scott went through. I
5 think you talked about some sort of due diligence checklist.
6 Was there an actual checklist that Mr. Scott had for doing
7 due diligence that you saw?

8 A. I was e-mailed a checklist, yeah. It was his
9 typical checklist for doing projects.

10 Q. Do you know if there was a similar checklist
11 started or used on the ManhattanWest project?

12 A. I don't recall. I just recall him having a
13 checklist.

14 Q. Do you have any knowledge about whether
15 construction began on the ManhattanWest project prior to
16 the -- we'll call it the construction loan, the \$110 million
17 construction financing?

18 A. I believe there was -- I don't know for sure, but
19 I believe there was some site work -- yeah, I believe there
20 were some items done prior to the senior loan closing.

21 Q. Where did you get that information from?

22 MR. ARONSON: Other than me.

23 BY MR. GOCHNOUR:

24 Q. Other than any conversations with Mr. Aronson,
25 yes.

1 A. I guess it really didn't come to mind until after
2 reading some of the documents with Mr. Aronson.

3 Q. Do you have any recollection of whether you were
4 informed or involved or knew about construction prior to
5 that senior note closing?

6 A. I don't remember a specific instance, but looking
7 back at the timeline and the sequence of events over the
8 course of the last few days here, I believe there was quite
9 a bit of work that was done prior to the senior loan
10 closing.

11 Q. Do you recall any discussions with anyone at the
12 Tharaldson entities about whether that presented any kind of
13 issues or challenges to the closing of the construction
14 loan?

15 A. I wasn't involved in the closing of the
16 construction loan.

17 Q. You said in February of '07 you moved back to
18 North Dakota. Were you living in some other place --

19 A. In Henderson, Nevada.

20 Q. Up to about February of '07, you were living in
21 Henderson?

22 A. Right, for about approximately three years I was
23 down here.

24 Q. Was that because Mr. Tharaldson lives in Las Vegas
25 now?

EXHIBIT D

KEMP, JONES & COULTHARD
ATTORNEYS AT LAW

WILL KEMP
J. RANDALL JONES
MARK M. JONES
WILLIAM L. COULTHARD
RICHARD F. SCOTT†
JENNIFER COLE DORSEY
SPENCER H. GUNNERSON
MATTHEW S. CARTER†
CAROL L. HARRIS
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September 29, 2010

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Via Facsimile: 602-285-9544
Via E-Mail: maronson@maazlaw.com

Re: Scott Financial, et. al. adv Club Vista Financial Services, et. al.

Dear Marty:

As discussed during a break in Ryan Kucker's deposition yesterday, Scott Financial plans on taking your deposition, Layne Morrill's deposition and Neil Cumsky's deposition. As you know, Matt Carter mentioned this to Martin Muckleroy more than a week ago and requested convenient dates. Mr. Muckleroy indicated he would discuss the matter with you and someone would get back to us. We received no follow up response which is why I brought the subject up with you yesterday.

From our conversation yesterday I understood you wanted me to put my request to take the above depositions in a letter to you and that you will consider my request and respond. This letter is intended to serve as Scott Financial's written request for convenient dates for you, Mr. Morrill and Mr. Cumsky within the current discovery deadline of November 15th. As you know, most of the days between now and November 1st are already scheduled for depositions. There are however, many open days between November 1st and November 15th which remain available. As discussed, I am currently scheduled for a trial in federal court starting on November 1st, and therefore, will likely not be able to take the depositions referred to in this letter, but will make arrangements for others in my office to do so. In any event, because time is limited between now and the discovery deadline I need a response from you by 4:00 p.m. this Friday. If I don't have your agreement to go forward with these depositions between now and November 15th by Friday I will be forced to request direction from the Special Master in order to have this matter resolved in a timely manner.

September 29, 2010

Page 2

As you are aware, having defended the depositions of Gary Tharaldson, Ryan Kucker and Kyle Newman, they acknowledged that they were the only persons with any personal knowledge of the facts of this case other than their attorneys. As you also know, all of the above witnesses testified that you, Layne Morrill and/or Neil Cumsky were the persons who had knowledge of virtually all of the facts contained in the complaint. When specifically asked about their personal knowledge of the factual allegations in the complaint they all deferred to their attorneys. In fact, Judge Denton has now ruled twice on this same issue, once during Ryan Kucker's deposition in Fargo when he was contacted by phone after Ms. Taradash instructed Mr. Kucker not to answer a fact question alleging attorney/client privilege, and once as a result of a motion to compel argued before Judge Denton in open court. Finally, your own client, Mr. Tharaldson, acknowledged that his lawyers were the parties most knowledgeable of the facts alleged in the complaint, and even agreed that we could speak with you about those facts during his last deposition session.

In light of the above, we believe that the only way for the defendants to determine the basis for the factual allegations is to inquire of the plaintiffs' attorneys on the basis of the many factual allegations contained in the complaint. I look forward to your response by this Friday.

Very truly yours,

KEMP, JONES & COULTHARD, LLP

A handwritten signature in black ink, appearing to read "J. Randall Jones", with a small "for" written to the right of the signature.

J. Randall Jones, Esq.

JRJ/jlg

SCOTT APP 000143

EXHIBIT E

Matt Carter

From: Aronson, Martin A [maronson@maazlaw.com]
Sent: Tuesday, October 12, 2010 8:45 AM
To: Randall Jones
Cc: Matt Carter; Aronson, Martin A
Subject: Your September 29th Letter

Randall,

We are in receipt of your September 29th letter regarding your request for the depositions of the attorneys for Gary Tharaldson.

As I told you at Ryan Kucker's deposition, my understanding is that Martin Muckelroy clearly told Matt Carter that Matt would have to contact Layne or me directly to discuss this issue, which Matt did not do.

Without having done any specific legal research, my belief is that the case law in all states is that the deposition of opposing counsel during the pendency of the litigation is extremely disfavored. My recollection is that the case law and the ethical rules in many states indicate that such requests may be for strategic reasons and may be invasive of privileges and may otherwise interfere with opposing counsel's litigation of the pending case.

This is an extraordinary request; and, I believe the burden is on you to cite for my consideration some Nevada law that would allow such depositions to go forward under these circumstances. That is particularly true near the close of discovery, after the production of approximately one million pages of documents, and more than 40 days of deposition testimony of fact witnesses, and the exchange of 10 or more expert reports.

Marty Aronson

1 people, in your mind, dropped out that were
2 prequalified buyers is what makes them not
3 qualified financially for -- for presales?

4 MR. ARONSON: Again, other than
5 discussions with your attorneys is the question.

6 THE WITNESS: I don't have any other
7 thing to add.

8 BY MR. JONES:

9 Q. In other words, any evidence that you
10 would have about that would come from your
11 attorneys?

12 A. That's correct.

13 Q. All right.

14 MR. CLAYMAN: Can we just swear Marty in?
15 He seems to know what's going on in this case.

16 MR. JONES: I'll stipulate to that.

17 BY MR. JONES:

18 Q. Do you know what the rest of the market
19 was doing in terms of presales for condominium
20 units in Las Vegas in or around the summer and fall
21 of 2008, the buyers?

22 A. No, I do not.

23 Q. Do you know if the presale dropout rate
24 was any greater at ManhattanWest than it was at any
25 other condominium project in the greater Las Vegas

1 that right?

2 A. No, I don't.

3 Q. Do you know how a mechanic's lien even
4 gets attached to the title to real property?

5 A. No. Not -- you know, I know that they
6 file a paper and -- and then it gets recorded.

7 Q. So, in other words, a -- a contractor or
8 subcontractor would have to do some work on the
9 property, and then they would file some paperwork,
10 and then their -- their -- their work, the -- the
11 work that they've done in the form of a lien would
12 be recorded against the property? Is that your
13 general understanding?

14 A. That's my understanding.

15 Q. All right. But -- but you don't know how
16 that happened that those -- those mechanic's liens
17 got ahead of the senior debt on the title in this
18 case; correct?

19 A. I -- I don't know other than what, you
20 know, Lance said that, you know, they did something
21 that's not right in order for that to happen.

22 Q. Who did something that's not right?

23 A. The -- the lenders.

24 Q. Mr. Bradford actually said that?

25 A. Well, yeah, they have to -- yeah, I mean

1 if that's how it's -- that's how broken priority is
2 created is that something was not done right.

3 Q. But you don't know what it was that --

4 A. I don't know what it was.

5 Q. In other words, just to be clear on the
6 record, you kind of anticipated my question, you
7 don't know what it was -- was that was done wrong
8 that would allow this to happen.

9 A. I don't know the exact thing that was
10 done wrong.

11 Q. And Mr. Bradford told you this in a
12 meeting in late 2008; correct?

13 A. It was after the meeting we had with Brad
14 and the attorney and Lance and me.

15 Q. Okay. Have you talked to Mr. Bradford
16 since you had the conversations with him -- well,
17 let me just be more clear.

18 Have you talked to Mr. Bradford about
19 this case since late 2008?

20 A. Yes.

21 Q. When was the last time you spoke to him
22 about this case?

23 A. A couple of weeks ago.

24 Q. Okay. And why -- why in particular did
25 you speak with Mr. Bradford about this case?

1 A. Yeah.

2 Q. All right. Well, let me get to this last
3 point before we take a break for lunch.

4 You said the other issue of fraud was the
5 gross maximum price contract, and you believe that
6 was a -- a major -- one of the major factors in the
7 fraud that -- that gives rise to this claim;
8 correct?

9 A. That would be correct.

10 Q. And I don't want to belabor this. I know
11 you already told me something about that before.
12 But tell me -- I guess let me try to put it in
13 specific reference to Scott Financial.

14 What, if anything, do you believe that
15 Scott Financial did wrong in connection with the
16 gross -- or the gross maximum price contract?

17 A. You know, I -- I -- I'm not sure other
18 than what my lawyers have discussed with me.

19 Q. So you have no personal knowledge as you
20 sit here today outside of -- well, you have no
21 personal knowledge, meaning that's something you
22 didn't learn from your lawyers, of any wrongdoing
23 on Scott Financial's part or Brad Scott's part
24 connected with or related to the gross maximum
25 price contract; correct?

1 A. I -- I don't -- I don't believe so.

2 Q. Okay. Do you know if there were any loan
3 covenants of any kind related to sales to friends,
4 family, affiliates or related parties?

5 A. I -- I don't know the specific loan
6 covenants.

7 MR. JONES: Okay. I know it's a little
8 bit before noon, but this is probably a good
9 breaking point. Why don't we take a break for
10 lunch and be back here around 1 o'clock?

11 MR. ARONSON: Sounds good.

12 THE VIDEOGRAPHER: Off the record at
13 11:53.

14 (A lunch recess was taken.)

15 THE VIDEOGRAPHER: Back on the record at
16 1:10.

17 BY MR. JONES:

18 Q. Good afternoon, Mr. Tharaldson, we were
19 talking about before we took the lunch break, we
20 were talking about major contributing factors to
21 the failure of the ManhattanWest project and you
22 gave me four different factors but just real
23 quickly, I wanted to follow-up on one area. Is it
24 your contention in this case that the collapse of
25 the housing market in late 2008 had nothing to do

1 Scott has a -- has a real good background. They
2 continue to do business -- they continued to do
3 business with him at that time, and ...

4 Q. Okay. So let me get back, then, to
5 this -- this qualified sales issue.

6 Do you think this is a banking industry
7 standard about what the sales should be in terms of
8 the quality of the sales?

9 A. I believe they have an industry standard
10 on quality of sales on condo projects.

11 Q. And -- and, again, as you sit here today,
12 do you know if there were any qualification
13 requirements in place for the presales buyers on
14 the ManhattanWest project?

15 MR. ARONSON: Form.

16 Go ahead.

17 THE WITNESS: I -- I don't know.

18 BY MR. JONES:

19 Q. Wouldn't that be important to know if
20 there were, and if there were, what they were
21 before you allege fraud?

22 MR. ARONSON: Form.

23 THE WITNESS: I -- I believe that by the
24 time we alleged fraud, we knew enough about it.

25 And I think I better stop there because

1 MR. CLAYMAN: You don't need to laugh at
2 me.

3 MR. ARONSON: No. I'm -- I'm not in the
4 habit of taking votes of defense counsel on whether
5 they agree with other defense counsel.

6 MR. CLAYMAN: Let's let your --

7 MR. ARONSON: So --

8 MR. CLAYMAN: Let's let your witness just
9 answer.

10 MR. ARONSON: So that's why I was
11 chuckling. And it was not meant as disrespect to
12 you, and please don't take it that way.

13 BY MR. JONES:

14 Q. Mr. Tharaldson, let me ask you the
15 question again. My question is --

16 ^ (A brief off-the-record discussion was
17 held.)

18 MR. JONES: Let's go back on the record.

19 BY MR. JONES:

20 Q. Mr. Tharaldson, my question is: You have
21 no idea whether or not Scott Financial met this
22 industry standard you're talking about because you
23 don't know what the standard is; isn't that true,
24 sir?

25 MR. ARONSON: Objection, form.

1 Go ahead.

2 THE WITNESS: I don't know the exact
3 industrial standard.

4 BY MR. JONES:

5 Q. So you don't know if Scott Financial met
6 it or not; correct?

7 MR. ARONSON: Form.

8 THE WITNESS: My -- my personal knowledge
9 is based on what my attorneys have told me.

10 BY MR. JONES:

11 Q. Would you know if your attorneys know
12 what the lending standard is for the quality of
13 condo -- condo sales?

14 MR. JONES: I'm just asking him if --

15 MR. ARONSON: Oh, yeah, that -- that just
16 calls for a yes or no --

17 MR. JONES: That's all right.

18 MR. ARONSON: -- if, you know, not to the
19 content of communication.

20 THE WITNESS: I would think they do.

21 BY MR. JONES:

22 Q. But you don't -- you're speculating;
23 correct?

24 A. I -- I guess I -- I just think they do is
25 all.

DISTRICT COURT

CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL)
SERVICES, L.L.C., a Nevada)
Limited Liability Company;)
THARALDSON MOTELS II, INC.,)
a North Dakota corporation;)
and GARY D. THARALDSON,)

Plaintiffs,)

) Case No. A579963
) Dept. No. XIII

vs)

SCOTT FINANCIAL)
CORPORATION, a North Dakota)
corporation; BRADLEY J.)
SCOTT; BANK OF OKLAHOMA,)
N.A., a national bank;)
GEMSTONE DEVELOPMENT WEST,)
INC., a Nevada corporation;)
ASPHALT PRODUCTS CORPORATION)
D/B/A APCO CONSTRUCTION, a)
Nevada corporation; DOES)
INDIVIDUALS 1-100; and ROE)
BUSINESS ENTITES 1-100,)

Defendants.)

AND RELATED CROSS-CLAIMS.)

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF GARY THARALDSON

VOLUME II

PAGES 295 - 587

LAS VEGAS, NEVADA

MAY 12, 2010

LST JOB NO. 121869

Reported By: LISA MAKOWSKI, CCR 345, CA CSR 13400

1 DEPOSITION OF GARY THARALDSON, taken at
2 3800 Howard Hughes Parkway, Las Vegas, Nevada, on
3 Wednesday, May 12, 2010, at 9:08 a.m., before Lisa
4 Makowski, Certified Court Reporter, in and for the
5 State of Nevada.

6

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Paul Mesmer

11 Tim James

12 * * * * *

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1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 12, 2010

2 9:08 a.m.

3 -000-

4

5 THE VIDEOGRAPHER: Back on the record at
6 9:08.

7

8 EXAMINATION (continued)

9 BY MR. JONES:

10 Q. Morning, Mr. Tharaldson.

11 A. Morning.

12 Q. When -- when we took a break last
13 evening, we were talking about some of the other
14 investments you made in the Las Vegas area. Before
15 I go back to talk about some more of those issues,
16 I -- I wanted to see if you would agree with the
17 comment that Mr. Kucker made, and I think
18 Mr. Newman made a similar comment. I -- I asked
19 them about anybody that was involved with the
20 Tharaldson companies that would have knowledge
21 related to the ManhattanWest project, and they
22 identified three people, themselves and you. So I
23 just wanted to know if you had a different opinion
24 about that.

25 In other words, is there anybody besides

1 you, Ryan Kucker, or Kyle Newman that have any
2 personal knowledge about the ManhattanWest
3 transaction?

4 MR. ARONSON: Form.

5 Go ahead.

6 THE WITNESS: I -- I don't recall of
7 anybody else.

8 BY MR. JONES:

9 Q. All right.

10 A. I -- I -- I don't believe so.

11 Q. And -- and that's why I just wanted to
12 confirm that. When I say that, I -- and I
13 understand that you may feel that --

14 A. You're talking about the initial
15 transaction; right?

16 Q. I'm talking about anything to do with
17 ManhattanWest for a Tharaldson-related company or
18 entity or regarding your personal business with
19 ManhattanWest, so --

20 A. Well, Lance Bradford. You -- you know,
21 he has. I guess we discussed him before.

22 Q. We have, but he doesn't -- he's not --

23 A. He doesn't work for me. He's an
24 independent company.

25 Q. That -- that's what I was trying to get

1 at.

2 A. Okay. So you want within my company.

3 Q. Yes, sir.

4 A. I don't know of anybody else in my
5 company that's done anything on Manhattan that I
6 can remember.

7 Q. And -- and if -- and I assume if they
8 did, it would have been probably more like a
9 ministerial type thing, like maybe paperwork,
10 moving paperwork around or --

11 A. Yes.

12 Q. Okay.

13 A. Oops, sorry. I answered before you
14 finished.

15 Q. That's all right.

16 Okay. Then, now, let me -- if I may, I'd
17 like to go back and just kind of finish up some of
18 the questions I had about some of the other
19 investments that you made here in the Las Vegas
20 area.

21 Do you recall approximately when you did
22 that Panorama deal on that -- the \$7 million
23 investment on the mezzanine financing, what year?

24 A. I would believe it was in 2006.

25 Q. All right.

1 people -- the person sprawled out in street and the
2 car stopped. And -- and they tell you what's
3 happened. And because they're such a trusted
4 person to you, you believe that -- what they're
5 telling you to be true. But in that case, you
6 don't have personal knowledge of what happened.
7 You're getting it secondhand.

8 Do you understand the distinction I'm
9 making?

10 A. Yeah.

11 Q. All right. So with that understanding
12 of -- of personal knowledge -- and I'm sure all the
13 lawyers here are saying, boy, there could have been
14 a much better example than that, but that's all
15 right, I'll take my lump -- isn't it true that you
16 don't have personal knowledge of these fraud
17 allegations? For the most part, as I understand
18 it, that was information you learned from your
19 lawyers later?

20 A. Yeah, that would -- that would be true.
21 It's -- he went over it and why it was a fraud
22 and -- but I didn't have personal knowledge of it.

23 Q. Okay.

24 A. Unless -- except on maybe an item that he
25 specifically gave me to show me that it did.

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL)
SERVICES, L.L.C., a Nevada)
Limited Liability Company;)
THARALDSON MOTELS II, INC.,)
a North Dakota corporation;)
and GARY D. THARALDSON,)

Plaintiffs,)

) Case No. A579963

) Dept. No. XIII

vs)

SCOTT FINANCIAL)
CORPORATION, a North Dakota)
corporation; BRADLEY J.)
SCOTT; BANK OF OKLAHOMA,)
N.A., a national bank;)
GEMSTONE DEVELOPMENT WEST,)
INC., a Nevada corporation;)
ASPHALT PRODUCTS CORPORATION)
D/B/A APCO CONSTRUCTION, a)
Nevada corporation; DOES)
INDIVIDUALS 1-100; and ROE)
BUSINESS ENTITES 1-100,)

Defendants.)

AND RELATED CROSS-CLAIMS.)

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VOLUME III
PAGES 588 - 891
LAS VEGAS, NEVADA
MAY 13, 2010

LST JOB NO. 121871

Reported By: LISA MAKOWSKI, CCR 345, CA CSR 13400

1 qualified?

2 A. It depend -- it depends on the limits of
3 the -- you know, I think the whole idea is this was
4 to be done towards industry -- industry standard.
5 If it was done within industry standards, I think
6 it would be -- it would be a qualified sale. If it
7 was not in industry standards, it -- it would not
8 be a qualified sale.

9 Q. All right.

10 A. So it would have to meet the industry
11 standards to be a qualified sale.

12 Q. Do -- do you -- do you agree with the
13 language that says "because bona fide third-party
14 presales and preleases for" -- well --

15 MR. ARONSON: I'm -- I'm sorry, Randall.
16 I've lost my place. What page and line are you on
17 so I can follow this?

18 MR. JONES: Page 29, line -- or excuse
19 me, paragraph 140. But -- but I'll withdraw that
20 question anyway.

21 MR. ARONSON: Okay.

22 BY MR. JONES:

23 Q. Let me ask you about paragraph 141. It
24 says:

25 "The fiduciary defendants knew or should

1 have known that the presale condition was
2 commercially atypical and unreasonable because it
3 used language unusual for this type of condition in
4 large commercial loans by not expressly requiring
5 the presales be bona fide sales, parties unrelated
6 to the borrower and its affiliates as this conditio
7 is designed to provide strong evidence of market
8 acceptance of the project from persons whose net
9 worth is not already invested in the project."

10 Did you -- did you have anything to do
11 with that allegation at all?

12 A. I didn't write it.

13 Q. All right. Do -- do you have any facts
14 to support what is a commercially -- what -- what
15 made the presale condition commercially atypical?

16 A. That would have been the lawyers'
17 assessment of it.

18 Q. All right. So just to make sure I -- I'm
19 clear again, you -- you don't have any facts to --
20 to support that.

21 You would be relying on your lawyers for
22 that?

23 A. I don't know what the total industry
24 standards are right -- I mean, I know that Brad
25 agreed that he would go by industry standards. But

1 I -- I don't know. He had an industry -- he had an
2 industry review. In an industry review that he
3 claimed he was going to do, would -- would have
4 that, would provide that, I would think.

5 Q. Okay. That -- in any event, this is
6 not -- the language about what is commercially
7 atypical and unreasonable about this -- these
8 so-called presales is not something you have any
9 personal knowledge about; is that right?

10 A. No, I don't know what the industry
11 standard is.

12 Q. Okay.

13 A. The total industry standard. I have a
14 good idea, but not ...

15 Q. All right. Looking at paragraph 143,
16 that talks about the lender approved presales or
17 preleases and that 45 million are residential
18 presales and 17,250,000 in commercial presales or
19 preleases.

20 A. Uh-huh.

21 Q. Is that information that you became aware
22 of after you met with your lawyers as to the
23 breakdown?

24 A. I believe so.

25 Q. All right. So what did -- did -- did you

1 BY MR. JONES:

2 Q. What we've just talked about?

3 A. Yes.

4 Q. Okay.

5 A. A reasonable standard, yes.

6 Q. Now, we -- we just talked about whether
7 or not you were aware of anything referred to as a
8 first lien condition in the loan documents, and I
9 believe you said prior to the -- to the -- to the
10 closing of the loan, I believe you said you were
11 not; correct?

12 A. Yeah. I don't know what you're saying
13 when you're saying "first lien condition."

14 On what aspect of the loan?

15 Q. Okay. Well, first lien condition that
16 the -- the -- the senior loan would be in a first
17 lien condition.

18 A. Oh. Yeah, I knew that the -- the senior
19 loan would be in a first lien position.

20 Q. Okay. Do you know at the time of closing
21 whether or not the -- the -- the senior loan was a
22 first lien condition?

23 A. I -- I never checked if it was or not.

24 Q. Do you know to this day whether or not it
25 was in a first lien condition at the time of the

1 closing?

2 A. You know, I haven't done enough due
3 diligence to make sure if it was or was not.

4 Q. Okay. Thank you.

5 Is it true, sir, that you were aware that
6 there had been some construction done on that
7 property before the senior loan closed?

8 A. That's correct.

9 Q. In fact, I think it was one of your loans
10 that -- your last loan or what became part of the
11 mezzanine financing was about \$10 million that
12 actually funded the foundation work; correct?

13 A. Yes.

14 Q. And -- and it's my recollection -- we'll
15 look at some documents here later, but it's my
16 recollection that there was discussion between you
17 and Mr. Edelstein about getting that project moving
18 forward?

19 A. Yes.

20 Q. Do you recall that?

21 A. Yes.

22 Q. And -- and that in the discussions, you
23 decided to give another advance, if you will, of
24 \$10 million to -- to get the project really moving
25 forward; is that --

1 that there was actual construction work done on the
2 property before the senior loan was -- was
3 recorded, you don't feel that you had any
4 contributing responsibility for that problem at
5 all?

6 MR. ARONSON: Form.

7 Go ahead.

8 THE WITNESS: I -- I don't -- I certainly
9 didn't -- don't think so.

10 BY MR. JONES:

11 Q. Okay. Let me ask you about paragraph 154
12 on page 31, and that reads:

13 "The fiduciary defendants failed to infor
14 plaintiffs prior to the closing of the senior loan
15 of the existence or amount of any priority
16 construction liens and the fact that they enjoyed a
17 statutory preference over the deed of trust securin
18 the senior loan."

19 Do you see that?

20 A. Yes.

21 Q. Now, do you -- it talks about failing to
22 inform you and your company as plaintiffs prior to
23 the closing of the senior loan of the existence or
24 amount of any priority construction liens.

25 Were there any priority construction

1 liens in place at the time of the closing of the
2 senior loan?

3 A. You know, this is something that my
4 lawyer determined, and that's why he put it in the
5 document.

6 Q. Okay. And -- and, again, that -- and
7 what I'm trying to do here, and I think you just
8 helped me with your answer, is establish what
9 information you had versus what your lawyers had.

10 And so what you're telling me, as I
11 understand your answer, is that you have no
12 knowledge, personal knowledge about the status of
13 any priority construction liens and the amount or
14 the existence of them at the time of the senior
15 loan closing.

16 A. That's correct.

17 Q. Okay. The next paragraph, 155, says:

18 "The fiduciary defendants certified at th
19 closing of the senior loan that the first lien
20 condition had been satisfied."

21 Again, this is information that did not
22 come from you; correct?

23 A. No, it would -- I would not -- no, not
24 from me.

25 Q. All right. So then looking at the next

1 paragraph that says, "this" certification -- excuse
2 me. "This certification was a misrepresentation
3 and a fraud."

4 Now, do you have any personal knowledge
5 whether or not the certification was a
6 misrepresentation and fraud?

7 A. Do I have any personal knowledge?

8 MR. ARONSON: Form.

9 BY MR. JONES:

10 Q. Yes, sir.

11 A. This, again, is through my attorneys. I
12 don't have any personal knowledge, you know,
13 before -- before what he told me.

14 Q. All right. Now, there's this next
15 section, if you will, says:

16 "Insurance over broken priority switched
17 title" -- "switched title insurance companies."

18 Did you know anything about the type of
19 insurance policy that was purchased at the time of
20 the closing of the loan?

21 A. No.

22 Q. Did you know anything about any
23 particular endorsements in the title insurance that
24 was purchased at the time of the closing of the
25 senior loan?

1 and -- and for -- in some states, I know you can
2 just do a metes and bounds and record it.

3 So, yeah, I -- I don't know -- I don't
4 know the length of time that it -- it would do it
5 to take a full rezoning.

6 Q. What about -- do you know if the -- the
7 other bank participants would have been willing to
8 agree to the senior loan commitments if that other
9 land had been parceled out of the -- of the deal?

10 A. I -- I can't speak for them.

11 Q. All right. Looking at paragraph 168 on
12 page 32, it says:

13 "The fiduciary defendants caused a
14 subordination agreement to be drafted in a manner
15 that substantially increased the risk that any
16 priority construction liens would become senior to
17 the prior loan as a result of the subordination.
18 Specifically paragraph 1 provides that the extent o
19 the subordination is 'as though the mezzanine deeds
20 of trust had been recorded subsequent to the
21 recordation of the \$110 million senior debt deed of
22 trust.' Under that hypothetical recording order,
23 the prior loan would also have been subordinate to
24 any previously vested priority construction liens."

25 Do you see that?

1 A. Yes.

2 Q. Now, do you have any knowledge about this
3 sentence we just were talking about, or sentences?

4 A. No. This is -- this is for the lawyers.

5 Q. All right. So anything to do with the --
6 the -- the wording of the subordination agreement
7 in -- in this complaint would really not be
8 something you are aware of or have personal
9 knowledge about?

10 A. Right. That would be correct.

11 Q. Okay. Mr. Tharaldson, and I should have
12 asked you this earlier, but you've -- but you've
13 indicated to me in response to -- response to many
14 of these questions, if not most of them, that you
15 don't have personal knowledge about this -- these
16 paragraphs.

17 Other than coming from your lawyers, are
18 you aware of the source of any of this information
19 other than through your lawyers?

20 A. No, it's strictly through my lawyers.

21 Q. All right. The only --

22 A. I think -- I think virtually everything.
23 I mean, the question's pretty broad and pretty
24 vague, but ...

25 Q. Well, it certainly is broad, and it was

1 meant to be broad. I hope it wasn't vague, but --

2 A. In my mind, it's vague, so ...

3 Q. Well, what I'm asking you is -- is --
4 is -- so as to -- to not make it vague but also to
5 make it as broad as possible, other than your
6 lawyers, are you aware of where or -- well, let me
7 rephrase that.

8 Other than your lawyers, are you aware of
9 who else might have personal knowledge about the --
10 the factual allegations in this complaint other
11 than, say, Mr. Kucker?

12 MR. ARONSON: Form.

13 Go ahead.

14 THE WITNESS: No, I don't.

15 BY MR. JONES:

16 Q. And -- and -- and is it -- I believe you
17 testified earlier, you're not sure which parts, if
18 any, of this complaint Mr. Kucker contributed to;
19 is that correct?

20 A. Correct.

21 Q. Okay. Thank you.

22 Looking at page 35 of the complaint, get
23 to page 35, and I -- and I want you to look at
24 paragraph 185. And that says:

25 "During the course of their administratio

1 February?

2 A. That is correct.

3 Q. All right. So -- so you need more
4 information to know whether or not you really have
5 a legitimate claim against Alex Edelstein or Brad
6 Scott for this issue as -- as -- at least as of
7 today; correct?

8 A. Yes.

9 Q. All right. Thank you.

10 MR. ARONSON: Okay. Let's -- let's take
11 our first break, please.

12 MR. JONES: Okay.

13 THE VIDEOGRAPHER: Off the record at
14 10:03.

15 (A brief recess was taken.)

16 THE VIDEOGRAPHER: Back on the record at
17 10:16.

18 BY MR. JONES:

19 Q. Mr. Tharaldson, we were just talking
20 about the -- the work that was done -- well, the --
21 the \$7.9 million in work on the project that was --
22 was, according to the complaint, improperly done as
23 referenced in paragraph 185.

24 Do you recall that testimony or those
25 questions?

1 A. Yes.

2 Q. Now, if you look at paragraph 186, it
3 says:

4 "During their administration of the senio
5 loan, the fiduciary defendants failed take
6 appropriate action to avert approximately
7 25.8 million in construction liens against the
8 project."

9 First of all, again, you -- you had no
10 direct involvement in any of the allegations in
11 this complaint; correct?

12 A. Any? Any's a pretty broad word. I'd say
13 virtually most all of them, I never had any input.

14 Q. Now, with -- with respect to --

15 A. Other than, you know, there might have
16 been something I changed. I -- I -- you know, it
17 would have been minor.

18 Q. All right. Do you remember specifically
19 any changes that you made?

20 A. No.

21 Q. Okay. Now, with respect to this
22 paragraph 186, it says:

23 "The fiduciary defendants failed to take
24 appropriate action to avert approximately
25 25.8 million in construction liens."

1 the -- these -- these claims for not telling you
2 about things or -- or telling you things that were
3 not true, Mr. Cumsky would also have no personal
4 knowledge of those items either, would he?

5 A. I -- I don't think so.

6 Q. Okay. So -- so just kind of following
7 up, then. You -- with the exceptions of the few
8 items that you've told me about in the last day and
9 a half here about the complaint, you don't know
10 really any specific facts that are contained in the
11 complaint; is that correct?

12 A. No. I mean, I read it. So I guess I
13 would know facts, but I -- you know, nothing jumps
14 out at me.

15 Q. Yeah, and I -- again, probably a bad
16 question on my part.

17 What I meant by that is that you don't
18 have personal knowledge of most of the factual
19 allegations that are alleged in the complaint;
20 right?

21 A. You know, I tried to answer the questions
22 true and honestly. That's all, you know.

23 Q. And so what I'm trying to get at here --
24 and, again, I'm not -- not a trick question here.
25 I'm just trying to get a foundational question so I

1 can ask my next question, just to kind of give us
2 a -- a place to start here with this next series of
3 questions.

4 Other than those few places where you
5 told me yes, I specifically do have some
6 information about that particular fact, where I
7 know it separate from my attorneys, isn't it true
8 that you've testified in the last day and a half
9 that most of the factual allegations, you relied on
10 your attorneys?

11 MR. ARONSON: Form.

12 Go ahead.

13 THE WITNESS: Most of the facts, I -- I
14 relied on my attorneys on most of it, yeah. On
15 virtually, yeah, mostly all of it.

16 BY MR. JONES:

17 Q. All right. And -- and it -- kind of
18 like, as you've described your key employees, that
19 you rely on your key employees to take care of
20 things and protect your interest, that's what
21 you've done to a great extent in terms of the facts
22 of this complaint; correct?

23 MR. ARONSON: Form.

24 Go ahead.

25 THE WITNESS: That would be true except

DISTRICT COURT
CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL SERVICES, L.L.C., a Nevada)
Limited Liability Company; THARALDSON MOTELS, II,)
INC., a North Dakota corporation; and GARY D.) Case No.
THARALDSON,) A579963
Plaintiffs,) Dept. No.
v.) XIII

SCOTT FINANCIAL CORPORATION, a North Dakota)
corporation; BRADLEY J. SCOTT; BANK OF OKLAHOMA,)
N.A., a national bank; GEMSTONE DEVELOPMENT WEST,)
INC., a Nevada corporation; ASPHALT PRODUCTS)
CORPORATION D/B/A APCO CONSTRUCTION, a Nevada)
corporation; DOES INDIVIDUALS 1-100; and)
ROE BUSINESS ENTITIES 1-100,)
Defendants.)

SCOTT FINANCIAL CORPORATION, a foreign)
corporation,)
Counterclaimant,)
v.)
GARY D. THARALDSON,)
Counterdefendant.)

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF GARY D. THARALDSON

VOLUME IV

PAGES 950 THROUGH 1114

LAS VEGAS, NEVADA

SEPTEMBER 8, 2010

REPORTED BY: HOLLY J. PIKE, CCR NO. 680, RPR, CSR
LST JOB NO.: 126486

SCOTT APP 00080

1 A. The reason for that is both APCO and the developer
2 went through the plans, redid the drawings that they needed
3 to have done so there wouldn't be change orders, so that you
4 could bid on a guaranteed maximum price.

5 Q. But you didn't read any of the terms of the GMP
6 agreement; correct?

7 A. No. But that's what I assume happened.

8 Q. Do you have any knowledge of whether the GMP
9 agreement allows for change orders for any plan changes made
10 after a certain date?

11 A. I didn't read them, so I don't know. My attorneys
12 filed the complaint based on the things that they studied in
13 all the documents they got. And that's how they arrived at
14 the scenario we're talking about.

15 Q. I want to go back because we started talking about
16 this because you had testified earlier today that you
17 thought one of the untruthful, or the not truthful things
18 that Brad Scott had -- I don't know whether it's admitted or
19 talked to you about related to the GMP contract.

20 So your testimony is, Brad Scott untruthfully told
21 you that the GMP was a set amount that would never increase;
22 is that correct?

23 A. That's my understanding, that it would not
24 increase.

25 Q. That's something that Brad Scott specifically told

1 Q. Just so I'm clear before we move off of this
2 issue.

3 So Brad Scott told you that the GMP agreement
4 between APCO and Gemstone was a set contract amount that
5 would never be increased?

6 A. Guaranteed maximum price is what it was to be.

7 Q. And he told you that prior to the closing of the
8 senior loan documents?

9 A. Yes. He said it at the time of the commitment
10 letter, when I signed the commitment letter.

11 Q. When you signed the commitment letter, he said
12 that APCO and Gemstone's GMP agreement was a guaranteed
13 maximum price that wouldn't be exceeded; is that right?

14 A. Yeah. That's what GMP means.

15 Q. The next issue was this issue of broken priority.

16 How was Brad Scott not truthful relating to the
17 issue of broken priority?

18 A. Well, there again, my attorneys wrote that in the
19 complaint and they would have all the background knowledge
20 on broken priority.

21 I don't fully understand the broken priority
22 situation because I never had to deal with it before this
23 because I'd always start a project and finish a project. So
24 even though I started it, we never had any issue with broken
25 priority because I was the general contractor.

1 Q. Again, I'm just trying to follow up on the
2 testimony that you gave earlier. You said one of the issues
3 as you understand it is broken priority, and Mr. Scott was
4 not truthful relating to the issue of broken priority.

5 I'm trying to get your understanding of what it is
6 that Mr. Scott wasn't truthful about in relationship to that
7 broken priority issue.

8 A. I think that would be better to be answered by my
9 attorneys because I don't fully understand it. They drew up
10 the complaint, and they put it in there based on the
11 information they had at the time.

12 Q. Do you have any understanding as you sit here
13 today of what broken priority means?

14 MR. ARONSON: Objection. Form.

15 Go ahead.

16 THE WITNESS: Only to the extent that the senior
17 loan was not in place because of start of construction prior
18 to the senior loan being put in place.

19 BY MR. GOCHNOUR:

20 Q. So at the time that the senior loan transaction --
21 at the time you signed the documents for the senior loan
22 transaction, did you have any understanding that contractors
23 in the State of Nevada have a potential priority over loans
24 that are placed after the work of construction began?

25 A. I have no knowledge. Didn't have any knowledge.

DISTRICT COURT

CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL SERVICES, L.L.C., a Nevada)
Limited Liability Company; THARALDSON MOTELS, II,)
INC., a North Dakota corporation; and GARY D.) Case No.
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CORPORATION D/B/A APCO CONSTRUCTION, a Nevada)
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ROE BUSINESS ENTITIES 1-100,)
Defendants.)

SCOTT FINANCIAL CORPORATION, a foreign)
corporation,)
Counterclaimant,)
v.)
GARY D. THARALDSON,)
Counterdefendant.)

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF GARY D. THARALDSON

VOLUME V

PAGES 1115-1315

LAS VEGAS, NEVADA

SEPTEMBER 9, 2010

REPORTED BY: HOLLY J. PIKE, CCR NO. 680, RPR, CSR
LST JOB NO.: 126488

SCOTT APP 000084

1 BY MR. GOCHNOUR:

2 Q. I believe you did, sir. If I'm wrong, I'm trying
3 to get you to clarify it.

4 A. Is it in the complaint?

5 Q. No. It would have been from one of your prior
6 testimony sessions.

7 A. Okay, I base that on -- go ahead and repeat the
8 question.

9 Q. From my notes, I have that you testified from one
10 of the earlier sessions that APCO did not comply with the
11 GMP agreement.

12 Do you feel, here today, that that's an accurate
13 statement?

14 MR. ARONSON: Form.

15 THE WITNESS: Based on my analysis from my
16 attorneys and why they filed the complaint against APCO, I
17 would believe that would be accurate.

18 BY MR. GOCHNOUR:

19 Q. So tell me in your own words what you understand
20 your claims against APCO are.

21 A. Well, I think it's -- in my words?

22 Q. Yes, please.

23 A. I understand that, based on the analysis of my
24 attorneys and what they have put in the complaint -- what
25 they put in the complaint based on their analysis, yes, I

1 would say that it would be fraud. There was fraud involved.

2 Q. What is your understanding of what the fraud was?

3 A. I'm not quite sure what the fraud was. It's just
4 based on their analysis that there was fraud.

5 Q. So as you sit here today, you can't tell me any
6 ways that you feel APCO defrauded Gary Tharaldson, Club
7 Vista Financial Services, or Tharaldson Motels II, Inc.?

8 A. Well, other than, you know, the guaranteed maximum
9 price did not -- and what Alex has passed on in the e-mails
10 about the fraud that was committed. I don't know anything
11 else, and I haven't investigated it. We're still doing our
12 due diligence to determine the final determination of what
13 the actual fraud is.

14 Q. You just said that Alex in e-mails talked about
15 some fraud. What fraud did Alex talk about in e-mails?

16 A. The e-mails?

17 Q. Yes.

18 A. Should I look back and find it?

19 Q. If you think you can, sure.

20 A. Yeah, I think we went over it yesterday.

21 He uses breach of contract, the word breach of
22 contract. My attorneys used fraud in theirs. But it looks
23 like it's more -- it's strong legal claim and breach of
24 contract. The reason -- let's see. I thought -- this
25 doesn't specifically state that.

1 I believe that the attorneys analysis that there
2 was fraud, I would leave that up to them. I don't know
3 exactly what they were referring to there.

4 Q. As you sit here today, do you feel that APCO made
5 any representations to you or anyone from your entities that
6 made you say, Okay, I'm going to enter this transaction?

7 MR. ARONSON: Form.

8 Go ahead.

9 THE WITNESS: I never talked to APCO, so...

10 BY MR. GOCHNOUR:

11 Q. So again, I'm sorry. I'm not sure that I'm clear
12 on this, but you don't have any independent understanding of
13 the grounds, other than what's stated in the complaint and
14 first amended complaint against APCO; correct?

15 A. That's correct.

16 Q. And are you personally aware of any evidence that
17 would help you support the claims that are actually made
18 against APCO in the complaint or first amended complaint?
19 In other words, are you aware of any documents?

20 A. The only thing -- and Ryan Kucker sent all the
21 e-mails and the documents to the attorneys to draft and I'm
22 sure there is a document in there. I just don't know what
23 document it is.

24 Q. So you don't know how any of these documents might
25 relate to the claims that are made in the first amended

1 complaint?

2 MR. ARONSON: Form.

3 THE WITNESS: No, I do not know.

4 BY MR. GOCHNOUR:

5 Q. And are you aware of any witnesses that would be
6 able to support the claims made against APCO in the first
7 amended complaint?

8 A. Other than my attorneys?

9 Q. Yes.

10 A. No, not unless they showed me the documents. Then
11 I could.

12 Q. Mr. Tharaldson, between the beginning of
13 yesterday's deposition and today, did you review any further
14 documents?

15 A. No, other than I read part of the complaint again.

16 Q. The complaint or the first amended complaint?

17 A. I don't know which one it was.

18 Q. Do you recall what part you read?

19 A. The one part on APCO.

20 Q. Why were you reading the part on APCO?

21 A. Just to familiarize.

22 Q. After reading that, you still don't understand how
23 the claims against APCO --

24 MR. ARONSON: Form.

25 THE WITNESS: Can I read it again? Is that what

1 you want me to do?

2 BY MR. GOCHNOUR:

3 Q. No?

4 A. Let me read it again, please. Let me find it. I
5 don't remember what I read this morning, so let me just
6 double-check. Okay.

7 If you look under page 4 of 57, they list the
8 contractor defendant. Okay?

9 "Defendant Asphalt Products Corporation, APCO
10 Construction, is a Nevada corporation which contracted and
11 which was responsible for construction of the project on the
12 property. Contractor is named as a defendant in this action
13 because it filed liens against the property or has caused
14 liens to be filed against the property directly contrary to
15 its agreement to subordinate it's claims or set forth herein
16 favor of the lender under the senior loan."

17 That's one. I don't know if there's --

18 I don't know if this is --

19 Q. Let's stop and talk about paragraph 11 before we
20 go on, Mr. Tharaldson.

21 A. Okay.

22 Q. You just read me the paragraph 11?

23 A. Yeah.

24 Q. Did you discuss with your attorneys any of the
25 facts that support the contentions made in paragraph 11 of

1 the first amended complaint? I just want the facts. I
2 don't want their legal analysis of it.

3 A. No. It was just based on their legal analysis.
4 That's why they wrote this.

5 Q. Did they tell you what facts support that
6 particular paragraph?

7 A. I don't remember if there's a document that said
8 it, I don't, you know.

9 Q. Let me have you turn in the same document. For
10 the record, this is Exhibit 1013 that was previously marked
11 as the first amended complaint. If I could have you turn to
12 page 19 of 57.

13 A. Okay.

14 Q. Can I have you look at paragraph 96, please. Take
15 a second and read it and then we'll talk.

16 A. Okay.

17 Q. Now in this paragraph there's some more specific
18 allegations made against APCO; correct?

19 A. Yeah, yes.

20 Q. Did you ever have any discussions with your
21 attorneys about the facts that support paragraph 96?

22 A. You know, he was talking this morning and I got a
23 phone call and I don't know what he actually said. I'm
24 sorry.

25 MR. CLAYMAN: You can still bill for your time.

1 Alex are correct.

2 Q. All the information that you've seen occurred post
3 closing of the senior construction loan transaction; isn't
4 that correct?

5 A. Yeah. I've seen it all after the closing of the
6 construction loan.

7 Q. So it's not something that would have affected
8 your decision to enter into the senior construction loan
9 documentation?

10 MR. ARONSON: Form.

11 THE WITNESS: I think that due diligence is
12 still -- we're still trying to determine that one.

13 BY MR. GOCHNOUR:

14 Q. According to what you've seen, everything is after
15 the fact; isn't that true?

16 A. Not according to my attorneys. Based on what they
17 put in the complaint, some of it's before closing.

18 Q. Have they told you what occurred before, or is it
19 just solely based on what's in the complaint that you're
20 talking about?

21 A. What's in the complaint.

22 Q. And you have no discussion of what the facts that
23 support the claims made in the complaint are; is that
24 correct?

25 A. No. I did not discuss the facts. That's their

1 job to present the facts.

2 Q. Isn't it their job to gather the facts from you?

3 MR. ARONSON: Form.

4 THE WITNESS: I don't have the facts. I haven't
5 provided anything to my attorneys. My associates would have
6 provided all the --

7 BY MR. GOCHNOUR:

8 Q. I'm sorry for not being clear. When I say "you,"
9 I mean you and your entities the people who work for you,
10 Club Vista, Tharaldson Motels II, Tharaldson Financial, so
11 forth and such?

12 A. They would have provided the facts to my attorneys
13 and my attorneys analyze the facts. Based on the facts, I
14 would say that they determined that APCO had committed fraud
15 prior to the closing of the senior loan.

16 Q. What is your hope -- what is it you want from APCO
17 out of this lawsuit?

18 MR. ARONSON: Objection. Form.

19 THE WITNESS: To properly compensate for the
20 damages that they have created.

21 BY MR. GOCHNOUR:

22 Q. Do you understand that a portion of your claim is
23 an attempt to try to unwind the transactions to place your
24 \$46 million mezzanine loan back in first position?

25 MR. ARONSON: Form.

1 THE WITNESS: Yes, I understand that.

2 BY MR. GOCHNOUR:

3 Q. Do you have any facts or evidence that you know of
4 that would invalidate the subcontractor mechanic's liens for
5 this project?

6 MR. ARONSON: Objection. Form.

7 THE WITNESS: That's to be determined by my
8 attorneys. They're working on that.

9 BY MR. GOCHNOUR:

10 Q. Do you have any knowledge why Camco -- do you know
11 who Camco is?

12 A. No.

13 Q. You knew another contractor took over the project
14 after APCO left; right?

15 A. Yes, that's Camco --

16 Q. You didn't know that was Camco?

17 A. I don't know names. I know there was another
18 contractor that took over.

19 Q. Do you understand they also have a mechanic's lien
20 on this project?

21 MR. ARONSON: Form.

22 THE WITNESS: No, I don't know who has mechanic's
23 liens on the project.

24 BY MR. GOCHNOUR:

25 Q. Have you ever sought to -- do you feel that Camco

1 every couple months after the project was started
2 construction and stuff, I'd stop over there.

3 Q. So when you wanted to talk to Alex about the
4 ManhattanWest project, how it was progressing, how did you
5 do that? Would you just stop in? Would you give them a
6 call?

7 A. Sometimes I'd stop in or sometimes I'd just
8 have -- for some reason, a lot of times I couldn't find his
9 e-mail so I just asked Ryan to e-mail him and see what his
10 availability would be.

11 Q. Did Ryan Kucker have a role with respect to how
12 money was being spent on the ManhattanWest project?

13 MR. ARONSON: Form.

14 THE WITNESS: None. No role.

15 BY MR. SMITH:

16 Q. This came up shortly ago, but you understand you
17 sued my client for fraud?

18 A. Yes, I understand that.

19 Q. When did you make the decision to sue my client
20 for fraud?

21 A. I think after a bunch of the due diligence had
22 been done and my attorneys told me or discussed --

23 MR. ARONSON: Hold on. Don't get into that,
24 please.

25 THE WITNESS: Okay. I really can't answer the

1 question then because it's all based on my attorneys'
2 decisions.

3 BY MR. SMITH:

4 Q. I'm just looking to make sure my question was
5 clear. My question was, when did you make the decision to
6 sue my client for fraud? Did you make that decision to sue
7 my client?

8 A. How do I answer this without the attorney-client
9 privilege? I don't know.

10 Q. I think the way you answer is it was either your
11 decision or it was your attorney's decision.

12 A. Okay. They made the decision we should do it and
13 I approved it.

14 Q. You realize you've sued my client personally for
15 fraud?

16 A. Yes.

17 Q. Both him personally and then you personally as
18 well? Does my question make sense? That might not be the
19 clearest of questions.

20 A. No, that one I didn't understand.

21 Q. In other words, you haven't just sued Alex's
22 former development entity Gemstone, you've sued Alex
23 personally for fraud?

24 A. Correct. I didn't sue just the company. Well,
25 whatever the complaint says.

1 Q. You didn't sue just on behalf of Club Vista or
2 TMI2. You sued on behalf of yourself, personally, as well?

3 A. I'd have to look at the complaint to see what we
4 did.

5 Q. So as we sit here today without looking at the
6 complaint, you're not positive one way or another --

7 A. I would assume that the right way to do it is, and
8 I think they would probably do it right, that they would sue
9 on behalf of me and all of the companies that were involved.

10 Q. When I asked you a minute ago when did you make
11 the decision to sue my client, you said after the due
12 diligence had been done. What due diligence are you
13 referring to?

14 A. The due diligence that my attorneys did.

15 Q. Did you do any due diligence on your own behalf?

16 A. No, I did not.

17 Q. Did anyone in your related entities do any kind of
18 due diligence?

19 A. I'm not aware of any.

20 Q. So as we sit here today, essentially the suit
21 against my client, Alex Edelstein, was essentially -- the
22 due diligence was done by your law firm; correct?

23 A. Correct.

24 Q. And that law firm was -- is that Morrill and
25 Aronson?

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
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(702) 385-6000
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IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Feb 08 2011 09:59 a.m.
Tracie K. Lindeman

CLUB VISTA FINANCIAL SERVICES,
L.L.C., a Nevada Limited Liability
Company; THARALDON MOTELS II,
INC., a North Dakota corporation; and
GARY D. THARALDSON,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT, COUNTY OF CLARK, STATE OF
NEVADA, AND THE HONORABLE
MARK R. DENTON, DISTRICT JUDGE,

Respondents

and

SCOTT FINANCIAL CORPORATION, a
North Dakota corporation; BRADLEY J.
SCOTT; BANK OF OKLAHOMA, N.A., a
national bank; GEMSTONE
DEVELOPMENT WEST, INC., a Nevada
corporation; ASPHALT PRODUCTS
CORPORATION D/B/A APCO
CONSTRUCTION, a Nevada corporation,

Real Parties in Interest.

Case No.: 57641

District Court Case: A579963

**SUPPLEMENTAL APPENDIX OF
Real Parties in Interest
SCOTT FINANCIAL CORPORATION and BRADLEY J. SCOTT
VOLUME I**

J. Randall Jones (1927)
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3800 Howard Hughes Pkwy. 17th Floor
Las Vegas, Nevada 89169

*Attorneys for Real Parties in Interest SCOTT
FINANCIAL CORPORATION and
BRADLEY J. SCOTT*

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| 3 | Stipulation and Order for Appointment of Floyd A. Hale as Discovery Special Master dated August 17, 2010 | 9-12 |
| 4 | Special Master Order Staying K. Layne Morrill and Martin A. Aronson Depositions dated November 9, 2010 | 13-15 |
| 5 | Opposition to Motion for Protective Order Re: Deposition Subpoenas for K. Layne Morrill and Martin A. Aronson and Counter motions to Compel Deposition Testimony and for Expedited Disposition of Motions dated November 18, 2010 | 16-256 |
| 6 | Order Granting Defendants' Joint Motion to Compel Deposition Testimony dated December 3, 2010 | 257-259 |
| 7 | Special Master Recommendation and District Court Order Compelling Plaintiffs to Produce Attorneys K. Layne Morrill and Martin A. Aronson to Testify as to Factual Matters Supporting Plaintiffs' Claims dated December 13, 2010 | 260-266 |
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Alison D. Johnson
CLERK OF COURT

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0063

DISTRICT COURT
CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL SERVICES, LLC, et al.,

Plaintiff(s),

vs.

SCOTT FINANCIAL CORPORATION, a North Dakota corporation, et al.,

Defendant(s).

CASE NO. A579963-B
DEPT. NO. XIII

CASE MANAGEMENT ORDER (NRCPP 16(e))

Having conducted a conference herein under NRCPP 16, and after notice to and consideration of the positions of all parties to this matter,

IT IS HEREBY ORDERED:

1. Electronic Communication.

All counsel shall provide to the Court and each other with one or more e-mail addresses at which they consent to receive notices from the Court and each other.

2. Compliance with Disclosure Requirements of Nev. R. Civ. P. 16.1

The parties shall make their initial disclosures pursuant to Nev. R. Civ. P. 16.1 on or before October 16, 2009.

3. Document Production Protocols

All documents to be produced shall be control numbered by the producing party before production. Documents shall be produced in the same manner as they are kept in the ordinary course of business.

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

1 All documents shall be produced in electronic form. Production shall occur by e-mailing
2 or delivering on a CD or Data DVD images of the documents. Documents shall be produced in
3 PDF format. Upon production of documents, the producing party shall give formal notice of that
4 production to all parties to this action. That notice shall contain a list of the control numbers
5 corresponding to the documents produced, and a description of those documents by category. A
6 party that subpoenas documents from a non-party shall be responsible for control numbering
7 those documents and giving formal notice, within ten (10) business days of receipt of those
8 documents, to all parties to this action and to provide copies of the documents in electronic form,
9 in the manner required by this Order.
10
11

12 **4. Electronic Discovery**

13 The procedures outlined in paragraph 3 above shall not apply to any request for
14 Electronically Stored Information (as that term is used in Fed. R. Civ. P. 26). Copies of
15 Electronically Stored Information produced to any party shall be provided by the Receiving Party
16 to any other party upon request, provided that the reasonable cost of duplication is paid by the
17 party requesting a copy of the Electronically Stored Information. Any party producing
18 Electronically Stored Information shall give notice to all other parties at the time of production.
19 Nothing in this Order shall prevent any party from seeking a more specific order relating to the
20 discovery of Electronically Stored Information.
21
22

23 **5. Depositions**

24 Absent stipulation of the parties or further Order of the Court, depositions shall be set
25 only according to the following procedures:

- 26 a. Any party seeking to notice a deposition shall give written notice of a minimum of
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fifteen (15) days of the intent to notice a deposition.

b. Wherever possible, the parties shall use the services of one court reporting and deposition videotaping service. Nothing in this Order shall require a party to videotape a deposition, but any party shall have the right to request that a deposition be videotaped, provided notice is given within three (3) business days of receipt of the Notice of Deposition, or no less than fifteen (15) days before the commencement of the deposition, whichever is later. If such request is made, only the requesting party and each party ordering a copy of the videotape shall be responsible for the cost of videotaping.

Wherever possible, the court reporter shall make available Real Time reporting services to those counsel who request it. The cost of Real Time services shall be borne by the counsel who request it.

c. The parties shall use common numerical exhibit numbers in depositions. Once a document has been marked with a particular exhibit number, it shall bear that exhibit number in all subsequent depositions and at trial.

d. Except with the consent of the witness and his/her counsel, all non-expert depositions shall take place within seventy-five (75) miles of the business or residence address of the witness.

e. Except with the consent of all participating parties, all expert depositions shall take place within the boundaries of Clark County, Nevada.

f. Full day depositions shall commence no later than 9:30 a.m., Pacific, and shall conclude no later than 5:30 p.m., Pacific. Half day depositions shall conclude no later than 5:30 p.m., Pacific. Exceptions to this schedule may be made with the unanimous

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consent of all counsel appearing at the deposition.

g. Except in cases of unforeseen emergency, any party seeking to cancel a deposition shall give all other parties seventy-two (72) hours notice via e-mail.

h. Depositions of a properly noticed witness shall continue day-to-day until conclusion of questioning by all attending parties. There shall be no time limit restriction for these depositions. In the event that a deponent, or counsel for the deponent, is able to show that the continued questioning is for purposes of harassment or delay, he or she may file a motion for protective order with this Court.

i. Counsel for the parties agree to use their best efforts to achieve mutually convenient dates for witness and expert witness depositions before deposition notices are served.

6. Written Discovery Requests

All written discovery requests shall be served on all counsel via e-mail, at the propounding party's option of either Microsoft Word format, or WordPerfect format, or plain text format. Nothing in this paragraph shall require a party to e-mail written discovery requests in a format that includes transmission of metadata.

7. Discovery Motions

All discovery motions shall be subject to the "meet and confer" requirements of EDCR 2.34(d). Notwithstanding anything to the contrary contained in EDCR 2.34, discovery motions shall be heard before this Court and, absent further order of this Court, this case shall be deemed to be complex litigation and discovery disputes shall not be referred to the Discovery Commissioner.

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8. Discovery and Pretrial Scheduling

The following deadlines shall be in place with respect to the case's discovery and pretrial scheduling needs and obligations:

- a. Percipient witness depositions shall be completed on or before October 15, 2010. *ev*
- b. Initial expert disclosures shall be made, including Rule 26 reports, on or before July 15, 2010. *ev*
- c. Rebuttal expert disclosures shall be made, including Rule 26 reports, on or before August 16, 2010. *ev*
- d. Expert depositions shall be completed and written discovery shall be completed on or before October 15, 2010. *ev*

9. Motion Hearings

With the exception of motions heard pursuant to an Order Shortening Time, all motions, including discovery motions, shall be scheduled on the first civil motion calendar of the month at 9:00 a.m. It is the responsibility of the counsel for the moving party to serve and file any motion sufficiently in advance of the intended hearing date in compliance with EDCR 2.20, and counsel must complete the notice of hearing with the applicable first Monday hearing date before filing the motion electronically.

10. Motion Deadlines

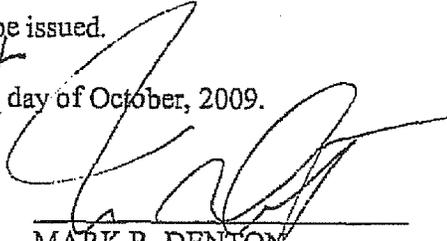
- a. Dispositive motions shall be filed and served on or before December 15, 2010. *ev*
- b. Motions in limine shall be filed and served on or before January 14, 2011. *ev*

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11. Calendar Call and Trial

A separate trial order will be issued.

DATED this 2nd day of October, 2009.



MARK R. DENTON
DISTRICT JUDGE

CERTIFICATE

I hereby certify that on the date filed, I placed a copy of this Order in the attorney's folder in the Clerk's Office or mailed a copy to:

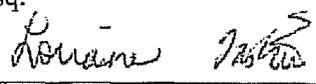
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
Attn: Martin A. Muckleroy, Esq./Dustin A. Johnson, Esq.

Martin A. Aronson, Esq.
One E Camelback Road, Suite 340
Phoenix, AZ 85012

KEMP, JONES & COULTHARD
Attn: Mark M. Jones, Esq.

HOWARD & HOWARD
Attn: Wade B. Gochnour, Esq.

LEWIS AND ROCA
Attn: Von S. Heinz, Esq.



LORRAINE TASHIRO
Judicial Executive Assistant
Dept. No. XIII

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL)
SERVICES, L.L.C., a Nevada)
Limited Liability Company;))
THARALDSON MOTELS II,)
INC., a North Dakota)
corporation; and GARY D.)
THARALDSON,)
)
Plaintiffs,)

) Case No. A579963
) Dept. No. XIII

vs)

SCOTT FINANCIAL)
CORPORATION, a North)
Dakota corporation;)
BRADLEY J. SCOTT; BANK OF)
OKLAHOMA, N.A., a national)
bank; GEMSTONE DEVELOPMENT)
WEST, INC., a Nevada)
corporation; ASPHALT)
PRODUCTS CORPORATION D/B/A)
APCO CONSTRUCTION, a)
Nevada corporation; DOES)
INDIVIDUALS 1-100; and ROE)
BUSINESS ENTITES 1-100,)
)
Defendants.)

_____))
_____))
AND RELATED CROSS-CLAIMS.)
_____)

CONFIDENTIAL
VIDEOTAPED DEPOSITION OF GARY THARALDSON
VOLUME I
Pages 1 - 294
LAS VEGAS, NEVADA
MAY 11, 2010

LST JOB NO. 121867

Reported By: LISA MAKOWSKI, CCR 345, CA CSR 13400

1 A. I have no idea.

2 Q. Would it be more than 20?

3 A. I -- I have no idea. I mean, my finance
4 guys would have put it all together, and I don't
5 know.

6 Q. Okay. By the way, how many hotels have
7 you or your company developed over the years,
8 total?

9 A. About 430 or 40, somewhere in there.

10 Q. And what's the total value of those
11 properties?

12 A. Total value?

13 MR. ARONSON: Form.

14 Go ahead.

15 BY MR. JONES:

16 Q. Best you understand.

17 A. Somewhere between 3 and 4 billion.

18 Q. All right. And were -- were all of those
19 properties financed in one way or the other?

20 A. Yeah, I think they were.

21 Q. And on how many of those properties did
22 you give personal guarantees?

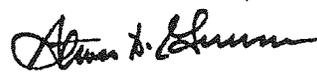
23 MR. ARONSON: Form.

24 THE WITNESS: I believe I guaranteed them
25 all.

nc

ORIGINAL

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08/17/2010 11:03:47 AM


CLERK OF THE COURT

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SAO
VON S. HEINZ
Nevada Bar No. 859
vheinz@lrlaw.com
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Nevada Bar No. 10144
amcloughlin@lrlaw.com
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JOHN D. CLAYMAN
PIPER W. TURNER
Admitted Pro Hac Vice
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(918) 583-9965
(918) 584-2729 (fax)
Attorneys for Defendant
BANK OF OKLAHOMA, N.A.

DISTRICT COURT
CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL SERVICES,
L.L.C., a Nevada limited liability company;
THARALDSON MOTELS II, INC., a North
Dakota corporation; and **GARY D.**
THARALDSON,

Plaintiffs,

v.

SCOTT FINANCIAL CORPORATION, a
North Dakota corporation; **BRADLEY J.**
SCOTT; **BANK OF OKLAHOMA, N.A.,** a
national bank; **GEMSTONE DEVELOPMENT**
WEST, INC., a Nevada corporation;
ASPHALT PRODUCTS CORPORATION
D/B/A APCO CONSTRUCTION, a Nevada
corporation; **DOE INDIVIDUALS 1-100;** and
ROE BUSINESS ENTITIES 1-100,

Defendants.

Case No.: A579963
Dept. No.: XIII
Consolidated With
Case No. A-10-609288-C

STIPULATION AND ORDER FOR
APPOINTMENT OF FLOYD A. HALE
AS DISCOVERY SPECIAL MASTER

Hearing Date: N/A
Hearing Time: N/A

RECEIVED
AUG 09 2010

DISTRICT COURT DEPT# 13

Lewis and Roca LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169

1 Plaintiffs Club Vista Financial Services, L.L.C., Tharaldson Motels II, Inc. and Gary D.
2 Tharaldson (collectively "Club Vista") and defendants Scott Financial Corporation, and Bradley J.
3 Scott (together, "SFC"), Bank of Oklahoma, N.A. ("BOK"), Asphalt Products Corporation d/b/a
4 APCO Construction ("APCO"), and Alexander Edelstein ("Edelstein") stipulate and agree as
5 follows:

6 1. Floyd A. Hale shall serve as the discovery special master for this case.

7 2. Mr. Hale shall bill his services at the rate of \$375.00 per hour, and submit to the
8 parties his billing statements on a monthly basis. Mr. Hale's monthly billing shall include a case
9 management fee of ten percent (10%), with that fee determined by the total amount of time billed
10 by Mr. Hale for that monthly period.

11 3. Mr. Hale's billing shall be divided as follows: (a) one-half (50%) shall be billed to
12 counsel for Club Vista, and (b) one-half (50%) shall be billed to counsel for SFC, on behalf of
13 defendants SFC, BOK, APCO and Edelstein.

14 4. The paragraph numbered seven of the Court's October 2, 2009 Case Management
15 Order which provides, among other things, that "discovery motions shall be heard before this
16 Court" shall be deemed to be amended so as to delete that provision and this Order shall empower
17 Mr. Hale to hear and rule upon the parties' disputed discovery scheduling needs as well as their
18 discovery disputes.

19 5. Unless otherwise agreed to by the parties, through written stipulation and
20 [proposed] recommendation and order by the special master, the local rules for motion practice
21 shall govern the parties' practice before the special master, and the provisions of EDCR 2.55 shall
22 apply to the discovery scheduling orders that govern this case.

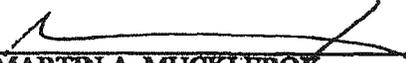
23 6. The Court has already entered a scheduling order for discovery and trial. The
24 Special Master will not recommend the alteration, amendment or change of the trial date. Only
25 the Court shall have the authority to make such alterations, amendments or changes to the trial
26 date. The Special Master shall have the authority to recommend interim alterations, amendments
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or changes to various discovery deadlines but not in a manner so as to alter, amend or change the trial date.

DATED: August 9, 2010

MORRILL & ARONSON, P.L.C.
- and -
COOKSEY, TOOLSEN GAGE, DUFFY & WOOG

By 
MARTIN A. MUCKLEROY
3930 Howard Hughes Parkway #200
Las Vegas, Nevada 89169
Attorneys for Plaintiffs

KEMP, JONES & COULTHARD, LLP

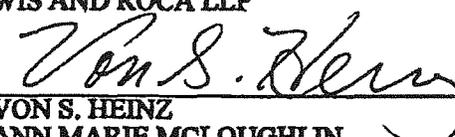
By 
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MARK M. JONES
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Seventeenth Floor
Las Vegas, Nevada 89169
Attorneys for Defendants
Scott Financial Corporation and
Bradley J. Scott

HOWARD & HOWARD ATTORNEYS PLLC LAW OFFICES OF P. KYLE SMITH

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By 
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Attorney for ALEXANDER
EDELSTEIN

JOHN D. CLAYMAN
PIPER W. TURNER
Admitted Pro Hac Vice
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- and -
LEWIS AND ROCA LLP

By 
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ANN MARIE MCLOUGHLIN
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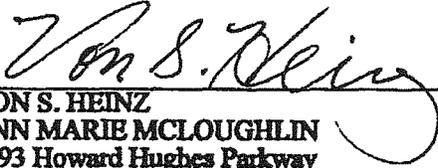
IT IS SO ORDERED:



Judge, District Court 19
Dated: August 13, 2010

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Submitted by:
JOHN D. CLAYMAN
PIPER W. TURNER
Admitted Pro Hac Vice
FREDERIC DORWART, LAWYERS
- and -
LEWIS AND ROCA LLP

By 
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Attorneys for Defendant
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1 SMO
 2 FLOYD A. HALE, ESQ.
 Nevada Bar No. 1873
 3 JAMS
 2300 W. Sahara, #900
 4 Las Vegas, NV 89102
 Ph: (702) 457-5267
 5 Fax: (702) 437-5267
 6 *Special Master*

DISTRICT COURT

CLARK COUNTY, NEVADA

9 CLUB VISTA FINANCIAL SERVICES, L.L.C.
 10 a Nevada limited liability company;
 11 THARALDSON MOTELS II, INC., a North
 12 Dakota corporation; and GARY D.
 THARALDSON,

CASE NO.: A579963
 DEPT. NO.: XIII

Plaintiffs,

v.

15 SCOTT FINANCIAL CORPORATION, a North
 16 Dakota corporation; BRADLEY J. SCOTT;
 17 BANK OF OKLAHOMA, N.A., a national
 18 bank; GEMSTONE DEVELOPMENT WEST,
 INC., a Nevada corporation; ASPHALT
 19 PRODUCTS CORPORATION D/B/A APCO
 CONSTRUCTION, a Nevada corporation; DOE
 20 INDIVIDUALS 1-100; and ROE BUSINESS
 ENTITIES 1-100,

Defendants.

SPECIAL MASTER ORDER STAYING K. LAYNE MORRILL AND MARTIN A.

ARONSON DEPOSITIONS

25 I have received requests for a November 9, 2010 emergency hearing regarding Motions to
 26 Quash filed in Arizona related to the November 10 - 11, 2010 depositions of K. Layne Morrill and
 27

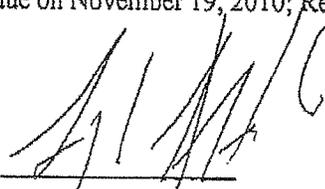
1 Martin A. Aronson. These depositions were scheduled by Scott Financial Corporation and Bradley
 2 Scott. The filing of the Motions to Quash in the Arizona Court is in direct conflict with the local
 3 District Court Case Management Order indicating that discovery disputes are to be submitted to the
 4 Special Master. The Arizona Motions to Quash, however, were submitted on behalf of the
 5 individual deponents, Morrill and Aronson, Plaintiffs' counsel. The Plaintiffs could have submitted
 6 this issue to the Special Master for resolution, with a request to Stay the depositions until a ruling
 7 was issued.
 8

9 It is understandable that the deponents submitted a Motion to Quash to the Arizona Court
 10 which does have jurisdiction over disputes related to Subpoenas issued by that Court. I have no
 11 authority over a District Court, particularly an Arizona Court. I do have authority over the parties,
 12 including Scott Financial Corporation and Bradley Scott.
 13

14 IT IS ORDERED THAT:

- 15 1. The November 10 - 11, 2010 depositions of K. Layne Morrill and Martin A.
 16 Aronson are Stayed pending a Special Master Order or Recommendation to
 17 the Clark County District Court regarding the issues raised in the Motion to
 Quash submitted to the Maricopa County, Arizona Superior Court;
- 18 2. The Motion to Quash will be considered by the Special Master as a Motion
 19 for Protective Order to preclude the Morrill and Aronson depositions;
- 20 3. Opposition briefs are due on November 19, 2010; Reply briefs are due
 21 December 3, 2010.

22 DATED: November 9, 2010.

23 By: 
 24 FLOYD A. HALE, Special Master
 25 Nevada Bar No. 1873
 26 2300 W. Sahara #900
 27 Las Vegas, NV 89102

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CERTIFICATE OF FACSIMILE

I hereby certify that on the 9th day of November, 2010, I faxed a true and correct copy of the foregoing to the following:

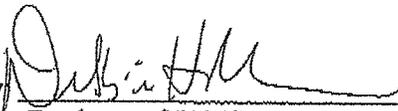
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By 
Employee of JAMS

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Frederic Dorwart Lawyers
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 2 MARK M. JONES, ESQ. (#267)
 3 MATTHEW S. CARTER, ESQ. (#9524)
 4 KEMP, JONES & COULTHARD, LLP
 5 3800 Howard Hughes Parkway
 6 Seventeenth Floor
 7 Las Vegas, Nevada 89169
 8 Tel. (702) 385-6000
 9 Attorneys for Scott Financial Corporation
 10 and Bradley J. Scott

11 DISTRICT COURT
 12 CLARK COUNTY, NEVADA

13 CLUB VISTA FINANCIAL SERVICES,
 14 L.L.C., a Nevada Limited Liability Company;
 15 THARALDSON MOTELS II, INC., a North
 16 Dakota corporation; and GARY D.
 17 THARALDSON,

18 Plaintiffs,

19 v.

20 SCOTT FINANCIAL CORPORATION, a
 21 North Dakota corporation; BRADLEY J.
 22 SCOTT; BANK OF OKLAHOMA, N.A., a
 23 national bank; GEMSTONE
 24 DEVELOPMENT WEST, INC., a Nevada
 25 corporation; ASPHALT PRODUCTS
 26 CORPORATION D/B/A APCO
 27 CONSTRUCTION, a Nevada corporation;
 28 DOES INDIVIDUALS 1-100; and ROE
 BUSINESS ENTITIES 1-100,

Defendants.

Case No.: A579963
 Dept. No.: XIII

**OPPOSITION TO MOTION FOR
 PROTECTIVE ORDER RE:
 DEPOSITION SUBPOENAS FOR K.
 LAYNE MORRILL AND MARTIN A.
 ARONSON AND COUNTERMOTIONS
 TO COMPEL DEPOSITION
 TESTIMONY AND FOR EXPEDITED
 DISPOSITION OF MOTIONS**

(Before the Special Master)

Submitted UNDER SEAL
 because this motion contains
CONFIDENTIAL INFORMATION
 protected by 12/15/09 Confidentiality
 Order

I.

INTRODUCTION

Defendants agree that this is a "most extraordinary situation." What makes it extraordinary, however, is not that Defendants are seeking to depose Plaintiffs' counsel, but that Plaintiffs' counsel have made themselves percipient witnesses in this case. And instead of bringing this motion before the Special Master assigned to adjudicate all discovery disputes in this case, they decided to try their luck in a new forum, apparently hoping that the Arizona Court would simply ignore: (1) Judge Denton's prior, related rulings, (2) Plaintiff Gary Tharaldson's

KEMP, JONES & COULTHARD, LLP
 3800 Howard Hughes Parkway
 Seventeenth Floor
 Las Vegas, Nevada 89169
 (702) 385-6000
 Fax (702) 385-6001

1 own admissions that his attorneys are the persons most knowledgeable of the facts giving rise to
2 his claims, and (3) the shocking evidence that Plaintiffs' counsel tried to pressure witnesses into
3 signing affidavits they knew to be false and, when that effort failed, attempted to destroy the
4 evidence of this disgraceful act.

5 The evidence discovered to date overwhelmingly demonstrates that the Plaintiffs' case
6 was concocted by Plaintiffs' counsel (primarily subpoenaed attorneys K. Layne Morrill and
7 Martin Aronson) with the support, encouragement, and approval of the Plaintiff guarantor, Gary
8 Tharaldson, in a preemptive strike against his lenders to stave off foreclosure on his \$100 million
9 in personal guarantees. As a result, and as Tharaldson has readily admitted, the testimony of
10 numerous witnesses has corroborated, and Plaintiffs' own formal designation of attorney Morrill
11 as one of their witnesses confirms, the facts giving rise to Plaintiffs' claims are known only by
12 the lawyers who spun them into the grandiose and highly fact-intensive theories in their
13 comprehensive 57-page complaint. Judge Denton has already ruled that this fact information is
14 not protected by the attorney-client privilege. Accordingly, these lawyers' request for protection
15 from this necessary and proper discovery must be denied, and their depositions should be ordered
16 to proceed immediately.

17 II.

18 STATEMENT OF FACTS

19 A. General Background of this Litigation.

20 Gary Tharaldson and Tharaldson Motels II, Inc. ("TM2I") agreed to be the guarantors on
21 construction loans totaling approximately \$110 million to build a mixed-use residential and
22 commercial project in Clark County, Nevada, known as the "Manhattan West" condominiums.
23 When the loans went into default, triggering the guarantees, Tharaldson, TM2I, and related entity
24 and loan participant Club Vista Financial Services, LLC ("CVFS") recognized they had no real
25 defenses. Accordingly, in a transparent attempt to deflect the inevitable claims that were about to
26 be initiated against them, Plaintiffs employed the age-old stratagem that *the best defense is a*
27 *good offense* and filed a complaint against Scott Financial Corporation and Bradley J. Scott
28 (collectively, "Scott") and other parties involved in financing the construction of this project.

1 Consequently, the complaint is a smorgasbord of untenable civil claims designed only to create
2 confusion and delay Plaintiffs' obligation to pay on the guaranties. At the heart of Plaintiffs'
3 claims is the premise that Scott fraudulently induced Tharaldson to execute several loan
4 documents, including two loan guarantees that now require Tharaldson and TM2I to pay the
5 defaulted loans in full. But there's one critical problem with their strategy: because it was
6 dreamed up entirely by Plaintiffs' counsel, Tharaldson and Plaintiffs' other representatives
7 cannot offer facts to support the supposed fraud allegations against Scott or co-lead Bank of
8 Oklahoma – or *any claim* for that matter.

9
10 **B. The Only People with Knowledge of the Factual Basis for Plaintiffs' Claims are the Attorneys Who Concocted Them.**

11 When pressed to identify a scintilla of supporting evidence of the nefarious deeds they
12 allege, Plaintiffs' witnesses claim that their only knowledge of those allegations **came from their**
13 **attorneys** and were therefore protected by the attorney client privilege. Judge Denton disagreed
14 and ruled – twice – that the privilege did not apply, thereby compelling the testimony of the
15 Plaintiffs' witnesses regarding the basic factual information supporting their claims.¹ Judge
16 Denton's removal of the privilege did not unlock the factual basis of these claims, however,
17 because the information remained exclusively in the possession of the Plaintiffs' attorneys. As
18 Tharaldson testified, he – the *principal* of the Plaintiff entities – had no involvement in providing
19 the factual basis for his lawsuit even though the complaint was rife with allegations of the worst
20 kinds of frauds, breaches of fiduciary duties, misrepresentation, negligence, defamation, and
21 sundry other kinds of nefarious, tortious acts²; the factual bases are known only to the lawyers
22 who concocted the complaint:

23
24 _____
25 ¹ See Exhibits G and H and argument *infra* at p. 9-10.

26 ² Because Scott's counsel believed from the outset that the allegations in the complaint were nothing
27 more than a preemptive strike by the Plaintiff guarantors to try to buy time on the collection of their
28 guaranty contracts, Scott's counsel took the unusual step of going through the 57-page complaint almost
paragraph by paragraph to determine what factual bases Plaintiffs had for their bold allegations. In
almost every instance in every deposition, the answer was a variation on the same theme: *I don't know;*
my attorney has that information.

1 Q: You said at some point a recommendation was made that a
 2 suit should be brought against my client personally and you
 3 approved that lawsuit?
 4 A: Yes. Based on what they told me.
 5 Q: In providing your approval to go forward, did you look at
 6 any of the evidence that your attorneys had amassed against
 7 my client?
 8 A: I took their word on what they had told me was accurate.

9 Tharaldson deposition at 1197:7-15, relevant portions of which are attached hereto as Exhibit A.

10 Q: Did you tell your attorneys – did you like specifically pull
 11 out documents or did you tell them, I was lied to on this
 12 occasion, or did you provide them any kind of
 13 conversations like that?
 14 A: No.

15 *Id.* at 1198:13-17.

16 Q: **Would you agree the best way to figure out where these**
 17 **conclusions come from is to sit down with your**
 18 **attorneys and ask them what they relied upon?**
 19 A: **I wouldn't have a problem with that.**

20 *Id.* at 1232:2-6 (emphasis added). Indeed, the three key Plaintiffs' witnesses, Gary Tharaldson,
 21 Ryan Kucker, and Kyle Newman, universally disclaim any knowledge of the bases for Plaintiffs'
 22 claims and defer to Morrill and Aronson to do so, painting the very clear picture that the only
 23 way to discover the factual bases for Plaintiffs' claims is to ask Plaintiffs' counsel:

| <u>Witness</u> | <u>Testimony</u> | <u>Page/Line</u> |
|-----------------|---|------------------|
| Gary Tharaldson | Only three people associated with Plaintiffs, apart from Plaintiffs' attorneys, have knowledge related to the project in this case: Gary Tharaldson, Ryan Kucker, and Kyle Newman. | 299:18-301:6 |
| Ryan Kucker | The three persons most knowledgeable about this case are: (1) Gary Tharaldson, (2) Ryan Kucker, and (3) Kyle Newman. | 339:8-340:3 |
| Gary Tharaldson | Is unaware of anyone other than Kucker and his attorneys who might have personal knowledge about the factual allegations of the Complaint. | 633:8-14 |

28

| | | | |
|----|-----------------|---|-------------------------|
| 1 | Gary Tharaldson | Has had no discussion with his attorneys as to what the facts are that support the claims in the Complaint. He says, "No. I did not discuss the facts. That's their [the attorneys'] job to present the facts. . . . I don't have the facts. I haven't provided anything to my attorneys." | 1156:14-1157:6 |
| 2 | Gary Tharaldson | Is not aware of any source of information for the First Amended Complaint other than his attorneys. He specifically says, "it's strictly through my lawyers." | 632:11-20 |
| 3 | Gary Tharaldson | Neither Gary Tharaldson nor any of his entities conducted any "due diligence" to determine whether a lawsuit should be brought in this matter. They relied entirely on Plaintiffs' attorneys. | 1196:10-23 |
| 4 | Gary Tharaldson | Has relied on his attorneys for "mostly all" of the factual allegations made by the Plaintiffs in this matter. | 678:23-679:15 |
| 5 | Gary Tharaldson | Felt that his attorneys knew more about the case than he did when the Complaint was filed. | 1216:3-14 |
| 6 | Gary Tharaldson | "[W]ouldn't have a problem" with defense attorneys questioning Plaintiffs' attorneys regarding what evidence they relied upon in creating the Complaint. | 1232:2-13 |
| 7 | Gary Tharaldson | His attorneys, not him, made the decision to sue Alex Edelstein for fraud. | 1194:19-1195:13 |
| 8 | Gary Tharaldson | His understanding that APCO did not comply with its contract is "[b]ased on analysis from my attorneys and why they filed the complaint against APCO." | 1128:9-13 |
| 9 | Gary Tharaldson | Is not aware of any witnesses other than his attorneys that would be able to support the claims made against Defendant APCO in Plaintiffs' Complaint. | 1131:5-11 |
| 10 | Gary Tharaldson | Does not know the provisions of the Gross Maximum Price contract because he "didn't read them." He states that his "attorneys filed the complaint based on the things that they studied in all the documents they got." [sic] | 1102:8-14 |
| 11 | Gary Tharaldson | When asked how Defendant Brad Scott was not truthful relating to the issue of broken priority, Witness testifies that "again, my attorneys wrote that in the complaint and they would have all the background knowledge on broken priority." Witness confesses that the doesn't fully understand "the broken priority situation." | 1104:16-1105:18 |
| 12 | Gary Tharaldson | Does not know the extent of alleged fraudulent representations because discovery has not been completed. | 31:20-32:3 |
| 13 | Gary Tharaldson | Did not know about allegation of poor presale quality until complaint was filed by attorneys. | 44:10-20 and 46:13-47:3 |

| | | | |
|----|-----------------|--|---------------|
| 1 | Gary Tharaldson | Has no knowledge to support fraud claims against Defendant APCO. | 72:16-73:18 |
| 2 | Gary Tharaldson | Has no knowledge that Defendant Scott Financial Corporation or Brad Scott committed fraud in any capacity in connection with APCO contract. | 73:19-74:11 |
| 3 | Gary Tharaldson | Does not discuss factual allegations behind “broken priority” fraud because “ this is the discussions with the lawyers. ” | 74:13-75:8 |
| 4 | Gary Tharaldson | “ Has nothing to add ” in terms of factual allegations to what his attorneys say, and so does not testify regarding how he knew that presales were made to buyers who could not qualify for loans. | 106:8-107:12 |
| 5 | Gary Tharaldson | Witness “[does not] know the exact thing that was done wrong” with regard to Plaintiffs’ mechanic’s lien allegations. | 123:15-124:10 |
| 6 | Gary Tharaldson | Is “ not sure ” what Scott Financial Corporation did wrong in connection with the gross maximum price contract, “other than what my lawyers have discussed with me,” and has no personal knowledge on the subject. | 127:14-128:1 |
| 7 | Gary Tharaldson | Does not know what the prequalification requirements were for the project. | 221:11-17 |
| 8 | Gary Tharaldson | Personal knowledge of whether Scott Financial Corporation met or violated any standards “ is based on what my attorneys have told me. ” | 228:20-229:9 |
| 9 | Gary Tharaldson | Admits that he has no personal knowledge of fraud allegations and learned what information he does have from his attorneys. | 425:11-22 |
| 10 | Gary Tharaldson | Admits that he does not have any evidence, apart from what lawyers assessed , supporting the First Amended Complaint’s allegation that the presale condition in the Senior Loan Agreement was commercially atypical. | 599:23-600:17 |
| 11 | Gary Tharaldson | Was not aware of amounts of residential and commercial sales/lease activity until after he met with his attorneys. | 601:15-24 |
| 12 | Gary Tharaldson | Does not know the meaning of the term “first lien condition” that is used repeatedly in the Complaint drafted by his attorneys. | 606:6-13 |
| 13 | Gary Tharaldson | Has no knowledge (though his attorneys may) regarding whether Plaintiffs were informed of any “priority construction liens” as discussed in the First Amended Complaint. | 625:11-626:16 |
| 14 | Kyle Newman | Believes that Brad Scott is an “honest person” and was “ surprised ” by the information conveyed to him by Plaintiffs’ attorneys regarding the allegations against Brad Scott. | 151:4-14 |

| | | | |
|----|-----------------|---|--|
| 1 | Gary Tharaldson | Has no knowledge regarding allegation of fraud in closing certifications by Scott Financial – he testifies that this information came “ through my attorneys . . . what he [the attorney] told me.” | 626:17-627:13 |
| 2 | | | |
| 3 | Kyle Newman | Has no knowledge of Brad Scott or Scott Financial Corporation committing fraud in connection with any project. | 134:1-19 |
| 4 | | | |
| 5 | Kyle Newman | Has no knowledge of Brad Scott or Scott Financial Corporation being negligent in connection with any project. | 134:20-135:17 |
| 6 | | | |
| 7 | Kyle Newman | Has no knowledge of any facts regarding defamation by Brad Scott or Scott Financial Corporation. | 143:15-25, 146:4-20, 153:5-12, and 154:4-7 |
| 8 | | | |
| 9 | Kyle Newman | Has no knowledge of any of the defendants acting in concert to harm Gary Tharaldson or his companies. | 154:13-24 |
| 10 | | | |
| 11 | Kyle Newman | Has no knowledge of any breach of contract by Scott Financial Corporation or Bank of Oklahoma, other than what Plaintiffs’ attorneys have told him. | 155:2-12 |
| 12 | | | |
| 13 | Kyle Newman | Has no knowledge of whether construction began prior to the closing of the Senior Loan, apart from conversations with Plaintiffs’ attorneys. | 233:14-234:2 |
| 14 | | | |
| 15 | Gary Tharaldson | Agrees that he would need more information to know whether he really has a legitimate claim against Defendants Brad Scott and Alex Edelstein. | 645:3-8 |
| 16 | | | |
| 17 | Ryan Kucker | Other than the lawyers and Gary Tharaldson, nobody has told Witness that Bank of Oklahoma failed to do something it was required to do. | 45:19-46:1 |
| 18 | | | |
| 19 | Gary Tharaldson | With regard to “virtually all” of the allegations in the Complaint prepared by his attorneys, he never had any input. He does not remember making any changes to this Complaint. | 646:9-20 |
| 20 | | | |
| 21 | Gary Tharaldson | Confesses that he does not know whether or what fraud was allegedly discussed by Alex Edelstein in e-mails. He says, “I believe that the attorneys [sic] analysis that there was fraud, I would leave that up to them. I don’t know exactly what they were referring to there. ” | 1129:14-1130:3 |
| 22 | | | |
| 23 | Gary Tharaldson | Did not discuss with his attorneys any of the facts that support the contentions made in paragraph 11 of the First Amended Complaint. He does not remember any facts that support it. | 1132:24-1133:8 |
| 24 | | | |
| 25 | Gary Tharaldson | Does not have any facts or evidence that would invalidate the subcontractor mechanic’s liens against the Manhattan West Project. He says, “ That’s to be determined by my attorneys. They’re working on that.” | 1158:3-8 |
| 26 | | | |
| 27 | | | |
| 28 | | | |

| | | | |
|----|-----------------|---|------------------------|
| 1 | Gary Tharaldson | Did not look at any of the evidence that was amassed by attorneys prior to approving lawsuit. He “took their word on what they had told me was accurate.” [sic] | 1197:7-15 |
| 2 | | | |
| 3 | Gary Tharaldson | Did not provide any information to his attorneys about specific instances that he believed he was lied to with regard to this project. | 1198:13-17 |
| 4 | | | |
| 5 | Ryan Kucker | Only formed an opinion that the release of certain deposits was improper after he spoke with Plaintiffs’ attorneys. | 140:8- 24 |
| 6 | | | |
| 7 | Ryan Kucker | Did not think that presales to “insiders” would impair the quality of those sales until after the Complaint was filed. He does not have “any experience with this matter other than what’s been discussed with counsel. ” | 240:20-241:9 |
| 8 | | | |
| 9 | Ryan Kucker | Believes that Plaintiffs were misled, but has no evidence “separate from what the attorneys have told me.” | 293:10-15 |
| 10 | | | |
| 11 | Ryan Kucker | Did not believe that sales to parties related to the Developer were a problem until he met with Plaintiffs’ attorneys. | 314:13-20 |
| 12 | | | |
| 13 | Kyle Newman | Nobody spoke to him prior to filing of complaint and asked whether the factual allegations were accurate. | 107:14-23 ³ |
| 14 | | | |

15 **C. Attorney Morrill is a Percipient Witness.**

16 In addition to refusing to allow Scott to inquire into the facts supporting the complaint

17 allegations, Plaintiffs have formally and repeatedly designated attorney Morrill as a percipient

18 witness from the inception of the case.⁴ Even if that were not the case, however, Morrill has

19 made himself a fact witness by his conduct with third party witnesses, including evidence that he

20 tried to influence witness testimony, and may even have tried to intimidate witnesses or pressure

21 them into signing false affidavits, and then suggesting that one of them destroy the evidence of

22 these shenanigans. As part of Morrill’s attempt to persuade these witnesses to sign these

23 affidavits, he also allegedly defamed Scott and other defendants, claiming that they had

24 committed “bank fraud” to help persuade these witnesses to want to help plaintiffs in this case.

25 _____

26 ³ The relevant portions of the depositions of Messrs. Kucker, and Newman are attached hereto as Exhibits B and C, respectively.

27

28 ⁴ See Plaintiffs’ initial 16.1 disclosures, attached hereto as Exhibit K, their most recent supplement, attached hereto as Exhibit L, and argument *infra* at p. 15.

1 **D. Plaintiffs' Counsel's Strategy with These Depositions and this Motion Is an**
2 **Extension of the Gamesmanship That Has Already Been Disapproved by Judge**
3 **Denton.**

4 Despite being aware of all of the foregoing for months, and being aware of Defendants'
5 plan to depose attorneys Aronson and Morrill for more than a month and a half,⁵ it was not until a
6 week before those depositions were actually scheduled to start that counsel for Plaintiffs filed
7 their objection to those depositions in Arizona. The filing of that motion in a new forum and at
8 that late hour (and so near to the close of discovery in this case) created an artificial urgency for
9 the Arizona Court, which has no familiarity with the facts of this case or Tharaldson's useless
10 testimony. As the Special Master recognized in his Order Staying K. Layne Morrill and Martin
11 A. Aronson Depositions, attached hereto as Exhibit F, the most proper procedure would have
12 been for Plaintiffs to file their motion before the Special Master, not start with a clean slate in
13 Arizona.

14 Scott suspects that the reason that Plaintiffs' counsel picked Arizona is that Judge Denton
15 would likely disapprove of yet another discovery abuse by Plaintiffs, who have already been
16 admonished for improperly instructing witnesses not to attend properly noticed depositions and
17 improperly instructing them not to answer deposition questions. During the deposition of
18 Plaintiffs' witness, Ryan Kucker, in June 2010, Plaintiffs' counsel repeatedly instructed Mr.
19 Kucker not to answer questions regarding the factual basis for Plaintiffs' claims, citing privilege.
20 Judge Denton conducted a telephonic hearing during the deposition, overruled the objections,
21 and ordered that the questions be answered. *See* June 9, 2010, Minute Order, attached hereto as
22 Exhibit G. When the instructions not to answer persisted, Defendants filed a motion to compel
23 testimony. Again, Judge Denton ruled that the information is not privileged, reasoning, "if
24 Plaintiff wants to proceed with allegations that make them the source of those allegations, actual
25 information will have to be disclosed; witnesses should answer questions as to the allegations
26 made; and ORDERED, Motion to Compel going to the factual things, GRANTED. . . . as to

27 ⁵ *See* letter dated September 29, 2010, from J. Randall Jones to Martin Aronson, attached hereto as
28 Exhibit D, as well as email dated October 12, 2010, from Aronson to Jones, attached hereto as Exhibit E
(in which Aronson acknowledges receipt of letter and prior conversation regarding these depositions).

1 asking what they know or what they heard from others, and still making objections as to
2 privilege, Court concurred, but stated counsel cannot instruct the witness not to answer.” July 6,
3 2010, Court Minutes, attached hereto as Exhibit H. No different conclusion is now dictated, and
4 the Special Master should expedite the hearing on this Motion, deny the Motion, and compel
5 these attorneys to appear for their depositions.

6 **III.**

7 **ARGUMENT**

8
9 **A. The Information that Morrill and Aronson Seek to Protect with the Instant Motion**
10 **Is Not Privileged, and Their Depositions Should Be Compelled Since that Is the**
11 **Only Way for Plaintiffs to Determine What Factual Support Plaintiffs Have for**
12 **Their Claims.**

13 Morrill and Aronson’s Motion must be denied because the discovery sought from them is
14 proper and not subject to any protection. Nevada’s general rule regarding the scope of discovery
15 is that “Parties may obtain discovery regarding any matter, not privileged, which is relevant to
16 the subject matter involved in the pending action, whether it relates to the claim or defense of the
17 party seeking discovery. . . .” NRCP 26(b)(1). As the deposition testimony summarized supra
18 demonstrates, attorneys Morrill and Aronson appear to be the only individuals in possession of
19 the facts that supposedly support Plaintiffs’ claims in this matter. All of the Plaintiff-identified
20 persons most knowledgeable answered at various times that **it was their attorneys, not**
21 **themselves**, who were in possession of the operative facts in this matter. See, e.g., Exhibit A at
22 632:11-20, 1196:10-23, 678:23-679:15, and 1216:3-14; Exhibit B at 140:8- 24 and 240:20-241:9;
23 and Exhibit C at 151:4-14, 155:2-12, and 233:14-234:2. Tharaldson himself even ostensibly
24 waived the attorney-client privilege by agreeing that questioning his own attorneys regarding the
25 facts may be the best course of action for defense counsel. See Exhibit A at 1232:2-13.

26 It is clear from all of this testimony that what the Defendants seek from Morrill and
27 Aronson is not their legal theories or thought processes regarding the case. It is not their analyses
28 of the law, nor is it their legal advice to Plaintiffs. The Defendants seek only one thing from the
depositions of Morrill and Aronson: the factual support for Plaintiffs’ claims to which the
Plaintiffs themselves simply could not testify. Admittedly, that is a rather long list, but the

1 authority on this subject firmly holds that parties such as Defendants are entitled to discover the
2 facts that have been communicated to a client by his or her attorney. For example, the United
3 States Supreme Court in Upjohn Co. v. United States held that facts do not become cloaked with
4 the privilege merely because they are relayed to a lawyer:

5
6 “[T]he protection of the privilege extends only to communications
7 and not to facts. **A fact is one thing and a communication**
8 **concerning that fact is an entirely different thing.** The client
9 cannot be compelled to answer the question, ‘What did you say or
 write to the attorney?’ **but may not refuse to disclose any**
 relevant fact within his knowledge merely because he
 incorporated a statement of such fact into his communication
 to his attorney.’”

10 449 U.S. 383, 395-96 (1981) (quoting Philadelphia v. Westinghouse Electric Corp., 205 F.Supp.
11 830, 831 (D.C. Pa. 1962)) (emphasis added); accord, Great American Ins. Co. of New York v.
12 Vegas Const. Co., Inc., 251 F.R.D. 534, 541 (D. Nev. 2008) (“**clients cannot refuse to disclose**
13 **facts which their attorneys conveyed to them and which the attorneys obtained from**
14 **independent sources.**”) Nor does work-product immunity protect the facts that an adverse party
15 may have learned or the persons from whom the facts were garnered. Laxalt v. C.K. McClatchy,
16 116 F.R.D. 438, 442-43 (D.Nev. 1987) (emphasis added).

17 Therefore, it cannot reasonably be disputed by attorneys Morrill and Aronson that the
18 facts that Defendants seek to discover are not protected by the attorney-client communication or
19 work product privileges. Indeed, according to the testimony of Plaintiffs and their most
20 knowledgeable representative, there are no other witnesses who could provide this information,
21 and so Defendants simply **must** ask these questions of the true persons most knowledgeable:
22 Plaintiffs’ lawyers.

23 Morrill and Aronson argue that a three-part test from Shelton v. American Motors
24 Corporation, 805 F.2d 1323 (8th Cir. 1986) should be applied. Even if the Special Master
25 accepts that standard, its application, too, would allow the depositions of Morrill and Aronson to
26 go forward. The test proposed by the Shelton court was as follows: (1) no other means exist to
27 obtain the information than to depose opposing counsel . . . [citation omitted]; (2) the
28 information sought is relevant and nonprivileged; and (3) the information is crucial to the

1 preparation of the case. Id. at 1327. Here, all three factors are met.

2 On the first factor, the self-identified persons most knowledgeable for the Plaintiffs all
3 either admitted that they had no knowledge regarding critical facts supporting the claims made on
4 their behalf or stated that their attorneys had knowledge of those facts. After days of testifying to
5 this point, even Tharaldson agreed that defense counsel could question his attorneys about the
6 facts allegedly giving rise to the claims (which is, ostensibly, a clear waiver of the privilege
7 itself). Because the only source for this information (according to the plaintiff himself and his
8 representatives) is plaintiffs' counsel, the first prong of the Shelton factors is satisfied.

9 The second part of the Shelton test is fulfilled because the facts sought by Defendants are
10 not privileged information as a matter of law, as explained supra.

11 Finally, it is difficult to imagine what factual information could be more crucial to the
12 preparation of Defendants' case than **the factual bases of Plaintiffs' claims**. All told,
13 Defendants have spent more than a week deposing witnesses who are supposedly the most
14 knowledgeable about Plaintiffs' claims and have virtually no factual information to show for it.
15 All of those depositions, however, point to the same place as the genesis of the allegations:
16 attorneys Aronson and Morrill. If Defendants are not allowed to question these two witnesses on
17 this crucial information, they will be handicapped in a way that no defendants should ever be
18 handicapped – they simply will not have access to the only witnesses who allegedly have the
19 facts that support the claims. While Scott does not believe that there are any facts that support
20 these claims, and that is why no Plaintiff witnesses can testify about the facts and why the
21 Plaintiffs' attorneys are so adamant that they not have their depositions taken, Scott has the right
22 to defend itself; one of the primary ways any defendant defends itself is to confront the witnesses
23 making the allegations against it. In this case, the only witnesses who appear to have any factual
24 information against the defendants are the Plaintiffs' attorneys.

25 The analysis need go no farther than this: it is a violation of basic due process to allow
26 Plaintiffs to testify that they don't know of any facts supporting the claims, their lawyers do, but
27 forbid Defendants from asking question of lawyers because of a claim of privilege. Plaintiffs
28 have created the proverbial Catch 22, and it's not right or fair that Defendants should suffer

1 because of it.

2 Indeed, this has been the consistent approach of Judge Denton, who has twice ruled that
3 factual information obtained by Plaintiffs' attorneys is **not** privileged, and the witnesses must
4 therefore answer questions about those facts. While Defendants agree that the taking of opposing
5 counsel's depositions is an unusual situation, Plaintiffs and their attorneys are the root cause of
6 the dilemma they now find themselves in. Accordingly, and in harmony with the prior rulings
7 made by Judge Denton on this subject, the Special Master should promptly deny Plaintiffs'
8 motion and order the depositions of attorneys Morrill and Aronson to go forward.

9 **B. Apart from Being a Witness Regarding the Facts Supporting the Allegations Made**
10 **by Plaintiffs, Morrill Has Also Made Himself a Fact Witness in this Case for Other**
11 **Reasons and Must Be Deposed on that Separate Basis.**

12 Defendants must also be allowed to depose attorney Morrill because, through his own
13 actions and the actions of his firm, he made himself a witness in this case. Plaintiffs themselves
14 have formally designated Morrill as a witness in this matter on multiple occasions. In Plaintiffs'
15 very first witness disclosures, attached hereto as Exhibit K, Morrill is listed as a witness on page
16 8, which states that Morrill "**may have discoverable information** related to dealings between
17 Scott Financial and Tharaldson and related companies." *Id.* (emphasis added). Importantly, this
18 first disclosure also makes the distinction between this "discoverable information" and
19 information related to legal advice. *Id.*

20 While it is not surprising that Plaintiffs have since changed their position on how
21 discoverable Morrill's testimony is, Morrill is **still** listed as a witness on Plaintiffs' most recent
22 witness disclosures, attached hereto as Exhibit L. Considering that both sides have deposed each
23 other's transactional counsel thus far, it is neither surprising nor unusual that Defendants would
24 seek to take the deposition of designated-witness Morrill. It is even less remarkable considering
25 that Morrill himself placed his own name on the witness list on at least two occasions – inviting a
26 deposition.

27 Even if Morrill had not listed himself as a witness, his behavior in this case has also
28 placed him squarely in the center of a controversy regarding important witnesses in the case.
Two relationship managers for the Manhattan West project's preferred lender First Horizon

1 Mortgage, Jim and Vicki Sheppard, have testified under oath that Morrill contacted them and
2 attempted to pressure and intimidate them into signing affidavits that contained false testimony.
3 See, e.g., Depo. of Vicki Sheppard, selected portions of which are attached hereto as Exhibit M,
4 at 81:4-83:18. Jim Sheppard was unequivocal on this point:

5 Q. . . .Based upon all this whole experience, going all the way
6 back to the first meeting you had with Mr. Muckleroy and Mr.
7 **Morrill, do you feel, especially considering the totality of**
8 **everything that had happened up to this point, September 9th**
9 **of 2010, that Mr. Muckleroy and Mr. Morrill were trying to**
10 **pressure you or intimidate you into signing false affidavits?**

11 MR. ARONSON: Objection. Form.

12 THE WITNESS: **Of course. Yeah, the affidavits were composed**
13 **by him and he wanted his own words in our affidavit. Of**
14 **course I objected strongly in every conversation I had.**

15 Q. **And did you feel that they were attempting, essentially, to**
16 **intimidate you into signing these things?**

17 MR. ARONSON: Objection. Form.

18 THE WITNESS: **Yeah, they were using the affidavit in lieu of,**
19 **You know what, if you do this you're probably not going to be**
20 **deposed. It was using that against, you guys don't want to be**
21 **dragged through all that. We get it. We understand. Let's just do**
22 **the affidavit and that probably will be the end of it. So, sure.**

23 Q. **When you didn't want to sign it because you weren't**
24 **comfortable with the language that Mr. Morrill had chosen,**
25 **did you feel that he was attempting to -- the manner in which**
26 **he tried to follow up to get you to sign it was trying to pressure**
27 **you to sign that?**

28 A. **Yeah. I think he realized --**

MR. ARONSON: Objection. Form.

THE WITNESS: **It was pretty clear to me he had realized at**
that point that he went down the wrong path of trying to
convince us and pressure us to sign the affidavit, sure.

Depo. of Jim Sheppard, selected portions of which are attached hereto as Exhibit N, at 107:1-
108:9 (emphasis added). After it became clear that the Sheppards would not sign the affidavits
prepared by Morrill and Aronson's firm, Morrill told him to destroy the communications
evidencing this intimidation:

1 Q. The next entry reads, September 9 of 2010, Layne returned a
2 call to our cell phone and I reiterated what I left on the voice
3 message. **At that time he instructed me for mine and Vicki's
4 own good to destroy any and all e-mails and correspondence
5 between us as it would shorten our deposition time with the
6 other attorneys?**

7 A. **Yes. He said, From now on let's communicate by phone
8 and if I were you, ha, ha, ha, I would get rid of those e-mails
9 because, if you are deposed, it would maybe take half the time.**

10 Q. **So did you get the impression that he was telling you to,
11 essentially, destroy evidence?**

12 A. **Absolutely.**

13 MR. ARONSON: Objection. Form.

14 THE WITNESS: **It was pretty clear.**

15 ...

16 Q. **But did you believe that was really the reason he thought
17 you should destroy the evidence, for your good, or did you
18 believe it was for his good?**

19 MR. ARONSON: Objection. Form.

20 THE WITNESS: **I think it was pretty obvious it was for his
21 good, yeah.**

22 Id. at 104:21-106:10 (emphasis added).

23 Apart from attempting to intimidate witnesses, suborn perjury, and destroy evidence,
24 Morrill and Plaintiffs' Nevada counsel also indicated to the Sheppards that Morrill had quite a bit
25 of factual information about this case. As Vicki Sheppard testified:

26 But I will tell you now that I was stunned by some of the things
27 that I heard within that hour's meeting. I was told, and I'm going to
28 be honest, Jim and I were both told, and both Mr. Morrill and Mr.
Muckleroy were there, that Alex and his father had committed
bank fraud, that they were con artists basically that -- you
explained who Bank of Oklahoma was and these 30 investors. We
had no idea who these people were. This is knowledge we had no
part of.

Exhibit M at 82:18-25. Jim Sheppard confirmed that this was what happened. See, e.g., Exhibit
L at 59:21-61:17. Therefore, according to the sworn witness testimony that has thus far been
obtained in this case, Morrill does have factual information pertaining to Plaintiffs' claims that is
absolutely discoverable by Defendants.

IV.

CONCLUSION

In sum, the evidence reveals that:

- Plaintiffs' counsel repeatedly listed Morrill as a witness in their formal written witness disclosures; most recently about two weeks ago;
- The key Plaintiff witnesses in this case admit that they know virtually nothing about the facts allegedly giving rise to the Plaintiffs' claims;
- Those same key Plaintiff witnesses all testified that Plaintiffs' counsel told them what the facts were that gave rise to the claims alleged in the 57-page complaint, most of which are highly fact-specific fraud, negligence, and breach of fiduciary duty claims;
- When Plaintiffs were instructed not to answer questions about the factual basis for their claims, Plaintiffs' counsel instructed them not to answer on the basis of attorney-client privilege, even though operative facts giving rise to claims are not protected by the attorney/client privilege;
- Judge Denton has twice rejected the application of the attorney-client privilege to this situation and has instructed Plaintiffs' witness to provide the facts told to them by counsel; still, Plaintiffs' counsel persisted in hiding behind the privilege and refusing to allow the witnesses to testify;
- Tharaldson believes that between himself and his lawyer, his lawyer knows more about the facts of the case, and he doesn't mind if defense counsel talks to his lawyers about those facts; and
- Two independent fact witnesses were intimidated and pressured by Plaintiffs' counsel to sign affidavits supporting Plaintiffs' claims, but refused to do so because the affidavits were either false or misleading, and after repeated attempts to pressure these witnesses to sign the affidavits, Morrill advised one of the witnesses that he should destroy the e-mails exchanged between them on the ostensible basis that it would be for the witnesses' own good to destroy them.

Morrill and Aronson may complain that this situation is unusual, but it is one that is entirely of their own creation. They chose to list Morrill as a fact witness in this case. They chose to independently investigate the facts of these claims, then not share that information with their clients. They chose to file a complaint without verifying the allegations of that complaint with their clients. And they chose to interfere with and intimidate witnesses in this case, while communicating facts that they allege to know about Defendants.

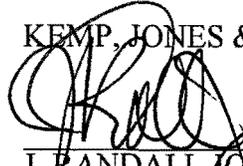
Defendants must be allowed to defend themselves from Plaintiffs' allegations. Morrill and Aronson have created a situation where Defendants have no choice but to depose the only witnesses who are in possession of the evidence the Defendants need: the attorneys. Unusual or

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1 not, Defendants are entitled to the facts, and Morrill's and Aronson's constant attempts to hide
2 the ball are an affront to fairness and the integrity of the judicial process. Accordingly, and for
3 all the foregoing reasons, the Special Master should expedite the hearing on this matter, deny the
4 instant motion, and order the depositions of Morrill and Aronson to proceed immediately.

5 DATED this 18th day of November, 2010.

6 KEMP, JONES & COULTHARD, LLP



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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of November, 2010, the foregoing **OPPOSITION TO MOTION FOR PROTECTIVE ORDER RE: DEPOSITION SUBPOENAS FOR K. LAYNE MORRILL AND MARTIN A. ARONSON AND COUNTERMOTIONS TO COMPEL DEPOSITION TESTIMONY AND FOR EXPEDITED DISPOSITION OF MOTIONS** was served on the following persons

by e-mailing to the e-mail addresses listed as follows:

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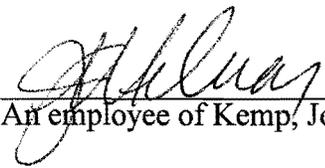

An employee of Kemp, Jones & Coulthard, LLP

EXHIBIT A

DISTRICT COURT

CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL)
SERVICES, L.L.C., a Nevada)
Limited Liability Company;))
THARALDSON MOTELS II,)
INC., a North Dakota)
corporation; and GARY D.)
THARALDSON,)
)
Plaintiffs,)

) Case No. A579963
) Dept. No. XIII

vs)

SCOTT FINANCIAL)
CORPORATION, a North)
Dakota corporation;)
BRADLEY J. SCOTT; BANK OF)
OKLAHOMA, N.A., a national)
bank; GEMSTONE DEVELOPMENT)
WEST, INC., a Nevada)
corporation; ASPHALT)
PRODUCTS CORPORATION D/B/A)
APCO CONSTRUCTION, a)
Nevada corporation; DOES)
INDIVIDUALS 1-100; and ROE)
BUSINESS ENTITES 1-100,)

Defendants.)

_____))
_____))
AND RELATED CROSS-CLAIMS.)
_____)

CONFIDENTIAL
VIDEOTAPED DEPOSITION OF GARY THARALDSON
VOLUME I
Pages 1 - 294
LAS VEGAS, NEVADA
MAY 11, 2010

LST JOB NO. 121867

Reported By: LISA MAKOWSKI, CCR 345, CA CSR 13400

1 Q. Okay. Thank you.

2 Now, as I said earlier, if the only way
3 that Scott Financial would get paid most of its fee
4 would be if the deal was successful, then there
5 would be no reason for Mr. Scott to try to defraud
6 you in that deal, would there be?

7 MR. ARONSON: Form.

8 BY MR. JONES:

9 Q. At least for -- not for a monetary
10 motive; correct?

11 MR. ARONSON: Form.

12 THE WITNESS: Well, if he wouldn't get
13 paid until the end?

14 BY MR. JONES:

15 Q. Yes.

16 A. I think that's the reason he had the --
17 the -- the deal to -- to defraud me was because he
18 wouldn't get his fees unless -- unless he -- he
19 created the fraud.

20 I think if he'd have told me the truth --
21 if he'd have told me the truth, the deal would not
22 have went forward. If he'd have told the banks the
23 truth, it would not have went forward.

24 Q. Okay. Well, let me ask you, then: Tell
25 me what the truth was that you're referring to that

1 you weren't told.

2 A. Well, first of all, there weren't --
3 there weren't qualified presales according to --
4 according to what a bank would accept. They -- the
5 second -- another one would be is there was a gross
6 maximum price, and a GM -- gross maximum price and
7 that -- and I'm not sure if that was a valid
8 contract either because why would you get rid of
9 the contractor if you had a gross maximum price?
10 So that's two.

11 Let me see. And I -- and I think, also,
12 if I'd have been -- if I'd have known about the
13 broken priority and -- and that it wasn't properly
14 corrected, you know, that would -- that would --
15 that, in my mind, that creates -- creates problems
16 that not -- not only I wouldn't have went along
17 with it, but the -- the participant banks that are
18 in the same position as me would not have went
19 along with the deal.

20 Q. Any -- any other information that you
21 believe that had you known about it at the -- the
22 time of the transaction, you would not have gone
23 forward with it?

24 MR. ARONSON: Form.

25 Go ahead.

1 THE WITNESS: You know, we haven't done
2 all of our discovery yet. So -- you know, so I --
3 I would wait to reserve it until full discovery.

4 MR. CLAYMAN: Objection, nonresponsive.

5 MR. ARONSON: He's entitled to object for
6 the record. You don't have to respond to any of
7 those objections.

8 BY MR. JONES:

9 Q. Okay. So let me ask you, Mr. Tharaldson,
10 as you -- as you sit here right now, can you think
11 of any other reasons that -- that -- any other, if
12 you will, truths that you've become aware of that
13 had you known at the time that you signed off on
14 the guarantee and closed this senior debt, you
15 would not have gone forward with the transaction --

16 MR. ARONSON: Form.

17 BY MR. JONES:

18 Q. -- than the -- than the three that you
19 mentioned?

20 MR. ARONSON: Form.

21 Go ahead.

22 THE WITNESS: I -- I can't think of them
23 now.

24 BY MR. JONES:

25 Q. Okay. Now, let me -- let me ask you,

1 so-called frauds that you were aware of that had
2 you been -- that you became aware of. And you told
3 me about three things. One was the -- the
4 presales, they weren't qualified according to what
5 a bank would accept; the gross maximum price
6 contract; and the broken priority issue. And I
7 asked you when you first found about this alleged
8 fraud of the presales, and you told me August of
9 '08.

10 And so that -- that -- I understand you
11 now to be changing your testimony and saying that
12 the alleged fraud with respect to the quality of
13 the presales, not the -- not the dollar amount but
14 the quality of the presales, was something you
15 didn't find out about until you talked to your
16 lawyers; is that correct?

17 MR. ARONSON: Form.

18 THE WITNESS: No. I found out, I
19 believe, that -- at the time that the complaint was
20 filed.

21 BY MR. JONES:

22 Q. All right. So let me just go back, then,
23 a moment here.

24 In -- in August of '08, Mr. Edelstein
25 came to you and he told you about his father wasn't

1 Q. Okay. So but -- but my -- my question to
2 you is, that the -- you said that was a default
3 because of the amount of the presale requirement
4 under the loan covenants; correct?

5 A. I said you had to have \$60 million of
6 qualified sales. And -- and if -- if -- if that is
7 a qualified sale and you take it out of there, then
8 you would be in default.

9 Q. All right. So at that point, you talked
10 to him about the dollar amount required for
11 qualified presales; right?

12 A. Right.

13 Q. And you -- I think you just testified a
14 moment ago that you didn't find out anything about
15 this quality of the sale, in other words, this
16 so-called friend and family problem as a fraud
17 until you met with your lawyers later in January of
18 '09; correct?

19 MR. ARONSON: Form.

20 Go ahead.

21 THE WITNESS: Okay. Could you repeat
22 that?

23 MR. JONES: Sure. Could you read it

24 back.

25 / / /

1 (The requested portion of the record was
2 read by the court reporter.)

3 THE WITNESS: That would be correct, yes.

4 BY MR. JONES:

5 Q. All right. So -- so you didn't really
6 understand this to be a fraud of this sale to Alex
7 Edelstein's father until approximately January of
8 '09; correct?

9 MR. ARONSON: Form.

10 Go ahead.

11 THE WITNESS: I didn't have enough --
12 that's correct. I didn't have enough information
13 at that time to determine that.

14 BY MR. JONES:

15 Q. All right. So --

16 A. You're correct.

17 Q. All right. So let me -- let's just talk
18 about what information you did have in August of
19 '08.

20 In -- in August of '08, isn't it true
21 that you knew unequivocally that Alex Edelstein had
22 done a sale of a commercial property to his father?

23 A. I'm not -- I don't believe I knew.

24 Q. I think you just testified under oath
25 that in August of '08, you met with Alex Edelstein

1 A. Correct.

2 Q. And -- and that means you, as the
3 developer, have the authority to -- to negotiate
4 and declare a general contractor in default;
5 correct?

6 A. Correct.

7 Q. All right. So in this case -- by the
8 way, isn't it true that Alex Edelstein and Scott
9 Financial did withhold the money immediately after
10 Apco claimed that it was charging all these change
11 orders?

12 A. I'm not sure of that.

13 Q. You -- you never investigated that
14 yourself?

15 A. No.

16 Q. So as you sit here today, you have no
17 idea what actions Ap -- or excuse me, what actions
18 Gemstone, Alex Edelstein, or Scott Financial did to
19 contest the positions taken by the general
20 contractor, Apco, in the ManhattanWest project?

21 MR. GOCHNOUR: Objection to the form.

22 MR. ARONSON: Join.

23 Go ahead.

24 THE WITNESS: I believe that is all to be
25 discovered during the discovery process.

1 BY MR. JONES:

2 Q. So the answer to my question is you

3 have --

4 A. Right now, no.

5 Q. All right. So -- so as you sit here

6 today, you don't know if, in fact, there's any

7 fraud related to the general contractor and the

8 maximum -- gross maximum price contract; correct?

9 MR. ARONSON: Form.

10 Go ahead.

11 THE WITNESS: Is there fraud? I don't

12 know for sure, no.

13 BY MR. JONES:

14 Q. Well, you don't have any personal

15 knowledge that there is -- was any fraud --

16 A. No.

17 Q. I'm sorry.

18 A. No, I don't.

19 Q. You -- you kind of anticipated my

20 question, Mr. Tharaldson. Let me just make sure

21 it's complete on the record.

22 As you sit here today, Mr. Tharaldson,

23 you have no personal knowledge that Scott Financial

24 committed any fraud in connection with the gross

25 maximum price contract with Apco; correct?

1 A. I'm not -- Brad Scott?

2 Q. Yes, sir.

3 A. Not in his role as a lender.

4 Q. Do you have any evidence in Mr. Scott's
5 role in any other capacity?

6 A. He -- he -- I -- I don't -- I don't know.
7 But as a consultant to Gemstone, you know, I
8 don't -- we're still in the discovery stage there.

9 Q. So I understand anything's possible. I'm
10 asking you if you have --

11 A. I don't have any knowledge today.

12 Q. All right. Thank you.

13 So then we -- that brings us to the third
14 basis of -- of what you, I think, said were -- was
15 information that you were not provided that had you
16 been provided that information, you would not have
17 signed the -- the guarantee, and that's the broken
18 priority.

19 And I tried to accurately write down what
20 you said there, and you said with respect to broken
21 priority, as I have noted here, and -- and correct
22 me if I get this wrong, if I'd have known that it
23 was not properly corrected, neither I or the
24 participating banks would have done this deal.

25 Does that sound generally correct about

1 your position with respect to broken priority?

2 A. Yes.

3 Q. Now, I -- I noted you say if it had

4 not -- if it was not properly corrected.

5 What did you mean by that, not properly

6 corrected, the broken priority?

7 A. I think this is the discussions with the

8 lawyers.

9 Q. Okay. Because it -- because my question

10 was what information you had before you talked to

11 your lawyers, and broken priority was one of them.

12 So is it true, then, that the -- in -- in

13 hindsight, in thinking about this, that you have no

14 evidence of any fraud related to broken priority

15 until you met with your lawyers?

16 A. You know, I think -- I think the thing

17 is, I started gathering that information in the

18 late fall when Brad couldn't get the liens and

19 stuff off of it. I -- I knew that he -- he

20 probably -- well, I knew then he didn't disclose to

21 me the issues that he had with broken priority

22 and -- and how he solved it. He tried to solve it,

23 rather.

24 Q. He -- he -- Mr. Scott did try to solve

25 the broken priority issue?

1 where you believe fraud had been committed, and one
2 was the -- the quality of the presales; correct?

3 A. Correct.

4 Q. Now, what was it about the quality of the
5 presales that caused the ManhattanWest project to
6 fail?

7 A. I -- I -- I believe that either they
8 didn't qualify financially or there was too many --
9 according to industry standards, there -- there was
10 too many friends -- friends and family or -- or
11 affiliated companies that -- that -- that the
12 lender counted as sales.

13 Q. Okay. All right. How many didn't
14 qualify financially of the presales?

15 A. I don't know the number.

16 Q. Then how do you know there were any that
17 didn't qualify financially?

18 MR. ARONSON: Other than discussions with
19 your attorneys.

20 THE WITNESS: That's correct.

21 BY MR. JONES:

22 Q. What would it take to qualify financially
23 for a presale?

24 A. I had --

25 MR. ARONSON: Form.

1 Go ahead.

2 THE WITNESS: You know, I -- I wasn't in
3 charge of that part of it. Whatever the industry
4 standards would have been would -- that would have
5 been what should -- and I don't know what the
6 industry standards are for sure.

7 BY MR. JONES:

8 Q. How do you know that they didn't qualify,
9 then? If you don't know what the standard is and
10 you don't know how many met or didn't meet the
11 standard, then how do you know if any didn't
12 qualify financially?

13 A. Why were they dropping off like that,
14 then?

15 Q. I guess I'll turn the question around,
16 and why were they?

17 A. Well, I -- I think they couldn't qualify
18 for financial.

19 Q. What evidence do you have of that?

20 A. I don't have specific evidence.

21 Q. Do you -- could it be --

22 A. That's my belief.

23 Q. What's your belief based on?

24 A. The number of people that dropped out.

25 Q. So is it the mere fact that a lot of