

EXECUTION COPY

STOCK PURCHASE AGREEMENT

By and Between

Nob Hill Holdings, Inc.,

as Buyer

And

Michael Tricarichi,

as Seller

Dated as of September 9, 2013

WSC0004

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WSC0009

## STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (this "Agreement"), dated as of September 9, 2003, is made by and between Nob Hill Holdings, Inc., a Delaware corporation, as buyer (in such capacity, "Buyer"), and Michael Tricarichi, a Nevada resident who is the sole shareholder of West Side Cellular, Inc., an Ohio corporation ("Company"), as seller (in such capacity, "Seller").

### WITNESSETH:

WHEREAS, Seller is the sole shareholder of record and the beneficial owner of all of the authorized, issued and outstanding shares (the "Shares") of capital stock, no par value per share, of Company; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, the Shares of Company pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the premises and promises herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.1 Defined Terms. When used in this Agreement, each of the terms set forth in this Article I has the meaning indicated below; other terms are defined throughout the body of this Agreement:

"AAA Rules" shall have the meaning ascribed thereto in Section 11.9.

"Actual Knowledge Date" shall have the meaning ascribed thereto in Section 10.6.

"Affiliate" of any Person means any Person directly or indirectly controlling, controlled by such Person. For the purposes of this definition, "control" (including, with correlative meaning, the terms "controlling" and "controlled") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Agreement" has the meaning ascribed thereto in the preamble.

"Arbitration Order" shall have the meaning ascribed thereto in Section 11.9.

"Assigned Company Liabilities" shall have the meaning ascribed thereto in Section 5.10.

"Beachwood Lease Assumption Agreement" shall have the meaning ascribed thereto in Section 5.10.

WSC0010

"Beachwood Premises" means the building(s) located and described as 23632 Mercantile Road, Units C & D, Beachwood, Ohio previously leased by Company prior to Closing.

"Business Day" means any day, other than a Saturday or a Sunday, that commercial banks are open for business in New York, New York.

"Buyer" has the meaning ascribed thereto in the preamble.

"Buyer Indemnified Parties" shall have the meaning ascribed thereto in Section 10.3.

"Cash Portion of the Purchase Price" shall have the meaning ascribed thereto in Section 2.1.

"Closing" shall mean the closing of the sale of the Shares to Buyer as provided for herein in Article 2.

"Closing Date" shall have the meaning ascribed thereto in Section 7.1.

"Code" means the Internal Revenue Code of 1986, as amended, as of the date of this Agreement and future provisions thereof.

"Company Bank Accounts" shall mean the bank accounts of Company as set forth on Schedule 3.2(a).

"Conditions of Confidentiality" means any condition(s) limiting a Person's disclosure of the structure or tax aspects of a Transaction in any way by an express or implied understanding or agreement with or for the benefit of any Person who makes or provides a statement, oral or written, (or for whose benefit a statement is made or provided) as to the potential tax consequences that may result from the Transaction, whether or not such understanding or agreement is legally binding. A Transaction also is considered offered under conditions of confidentiality if a taxpayer knows or has reason to know that the taxpayer's use or disclosure of information relating to the structure or tax aspects of the Transaction is limited in any other manner (such as where the Transaction is claimed to be proprietary or exclusive) for the benefit of any Person, other than the taxpayer, who makes or provides a statement, oral or written, (or for whose benefit a statement is made or provided) as to the potential tax consequences that may result from the Transaction. The foregoing definition shall be interpreted in a manner consistent with Treasury Regulations Section 1.6011-4(b)(3) and any successor provisions of the Treasury Regulations.

"Confidential Transaction" means a Transaction that is offered under Conditions of Confidentiality for purposes of Treasury Regulations Section 1.6011-4(b)(3).

"Contractual Obligation" means, as to any Person, any provision of any material security issued by such Person or of any material agreement, instrument or undertaking to which such Person is a party or by which it or any of its property is bound.

"Contractual Protection" means protection provided to a Person against the possibility that part or all of the intended tax consequences from a Transaction will not be sustained, including, but not limited to, rescission rights, the right to a full or partial refund of fees paid to

any Person, fees that are contingent on the Person's realization of tax benefits from the Transaction, insurance protection with respect to the tax treatment of the Transaction, or a tax indemnity or similar agreement (other than a customary indemnity provided by a principal to the Transaction that did not participate in the promotion or offering of the Transaction to the Person). The foregoing definition shall be interpreted in a manner consistent with Treasury Regulations Section 1.6011-4(b)(4) and any successor provisions of the Treasury Regulations.

"Disputed Master" shall have the meaning ascribed thereto in Section 11.2.

"Environment" means soil, land surface or subsurface strata, real property, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins and wetlands), groundwater, water body sediments, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

"Environmental Law" means any Law with respect to the preservation of the Environment, including but not limited to any Law whatsoever relating to the use of Hazardous Materials, drinking water, surface water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, air quality, air emissions, waste emissions or wells. Without limiting the generality of the foregoing, the term will encompass each of the following statutes and the regulations promulgated thereunder, and any similar applicable state, local or foreign Law, each as amended: (a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; (b) the Solid Waste Disposal Act; (c) the Hazardous Materials Transportation Act; (d) the Toxic Substances Control Act; (e) the Clean Water Act; (f) the Clean Air Act; (g) the Safe Drinking Water Act; (h) the National Environmental Policy Act of 1969; (i) the Superfund Amendments and Reauthorization Act of 1986; (j) Title III of the Superfund Amendments and Reauthorization Act; (k) the Federal Insecticide, Fungicide and Rodenticide Act; (l) the provisions of the Occupational Safety and Health Act of 1970 relating to the handling of and exposure to Hazardous Materials and similar substances; and (m) the National Environmental Policy Act.

"Environmental Liabilities" means all Losses incurred: (a) to comply with any Environmental Law other than expenses arising from activities considered to be ordinary and routine maintenance, replacement and repair, or normal operation expenses; (b) as a result of a Release of any Hazardous Materials; or, (c) as a result of any environmental conditions present at, created by or arising out of the past or present operations of Company through the Closing Date, or of any prior owner or operator of a facility or site that Company now owns or operates, or has previously owned or operated.

"Environmental Permit" means any Permit or authorization from any Governmental Authority required under, issued pursuant to, or authorized by any Environmental Law.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and all regulations promulgated thereunder.

"Final Return" shall have the meaning ascribed thereto in Section 3.2(f).

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Hazardous Materials" means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance that is defined, determined or identified as hazardous, toxic or controlled under any Environmental Law or the Release of which is prohibited under any Environmental Law but does not mean ordinary household materials used according to their intended purpose. Without limiting the generality of the foregoing, the term will include, without limitation: (a) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, or Title III of the Superfund Amendments and Reauthorization Act and regulations promulgated thereunder, each as amended; (b) "hazardous waste" as defined in the Solid Waste Disposal Act and regulations promulgated thereunder, each as amended; (c) "hazardous materials" as defined in the Hazardous Materials Transportation Act and the regulations promulgated thereunder, each as amended; (d) "chemical substance or mixture" as defined in the Toxic Substances Control Act and regulation promulgated thereunder, each as amended; (e) petroleum and petroleum products and byproducts and; (f) asbestos.

"Knowledge" means facts or circumstances actually known to, or should have been reasonably known by, the current executive officers (with respect to Company this shall be limited to Michael Tricarichi) or directors of a party, and includes all information existing in the books, records and files of such party or its current Affiliates.

"Law" means any constitutional provision, statute, law, rule, regulation, Permit, decree, injunction, judgment, order, ruling, determination, finding or writ of any Governmental Authority.

"Liability" or "Liabilities" mean any liability or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether due or to become due), including without limitation any liability for Taxes.

"Lien" or "Liens" mean any mortgage, pledge, security interest, charge, claim or other encumbrance, other than (a) mechanics', materialmen's and similar liens with respect to amounts not yet due and payable; (b) liens for Taxes not yet due and payable; and (c) liens securing rental payments under capital lease arrangements.

"Listed Transaction" means a Transaction that is the same as or substantially similar to one of the types of Transactions that the Internal Revenue Service has determined to be a tax avoidance Transaction and identified by notice, regulation, or other form of published guidance as a Listed Transaction. The foregoing definition shall be interpreted in a manner consistent with Treasury Regulations Section 1.6011-4(b)(2) and any successor provisions of the Treasury Regulations.

"Losses" means any and all Liabilities, obligations, judgments, Liens, injunctions, charges, orders, decrees, rulings, damages, dues, assessments, Taxes, losses, fines, penalties,

expenses, fees, costs (including reasonable attorneys' and expert witness fees and disbursements in connection with investigating, defending or settling any action or threatened action), or amounts paid in settlement.

"Loss Transaction" means any Transaction resulting in, or that is reasonably expected to result in, a taxpayer claiming a loss under Section 165 of the Code of at least the applicable amounts specified in Treasury Regulations Section 1.6011-4(b)(5). The foregoing definition shall be interpreted in a manner consistent with Treasury Regulations Section 1.6011-4(b)(5) and any successor provisions of the Treasury Regulations.

"LKV" shall have the meaning ascribed thereto in Section 5.1(f).

"Material Adverse Effect" means a material adverse effect on the business, assets, prospects, results of operations or condition of Company, financial or otherwise, or on the ability of Seller to perform its respective obligations under this Agreement.

"Permit" or "Permits" mean any license, permit, franchise, certificate of authority or order, or any waiver of the foregoing, issued by any Governmental Authority.

"Person" means an individual or any corporation, association, partnership, limited liability company, joint venture, estate, trust, joint-stock company, unincorporated organization or other legal entity, or any government, or any agency or political subdivision thereof.

"Post Closing Date Audits" shall have the meaning ascribed thereto in Section 10.2.

"Pro-Forma Financials" shall have the meaning ascribed thereto in Section 3.2(f).

"Purchase Price" has the meaning ascribed thereto in Section 2.1.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning or disposing into the Environment in more than a de minimis amount.

"Requirement of Law" means as to any Person, the certificate or articles of incorporation and by-laws, code of regulations or other organizational or governing documents of such Person, and any law, treaty, rule or regulation, or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Safety Law" means any Law or legal requirement relating to health or safety, including the Occupational Safety and Health Act, as amended, as now or hereinafter in effect relating to (a) exposure of employees to any Hazardous Materials or (b) the physical structure, use or condition of a building, facility, fixture or other structure, including, without limitation, those relating to equipment or manufacturing processes, or the management, Release, cleanup or removal of any Hazardous Materials.

"Safety Liabilities and Costs" means all Losses incurred to comply with any Safety Law (other than expenses arising from activities considered to be ordinary and routine maintenance, replacement and repair, or normal operation expenses) or as a result of any health or safety



conditions present at, created by or arising out of the past or present operations of Company through the Closing Date.

"Seller" has the meaning ascribed thereto in the preamble.

"Seller Indemnified Parties" shall have the meaning ascribed thereto in Section 10.2.

"Seller Loan" means, collectively, all loans made by Company to Seller, in the aggregate principal amount of \$575,000, as evidenced by the Promissory Note, dated as of May 15, 2003, made by Seller in favor of Company and the subsequent advances of funds to Seller made on July 11, 2003 and August 19, 2003, respectively.

"Seller Loan Advance Check" shall have the meaning ascribed thereto in Section 2.1.

"Shares" has the meaning ascribed thereto in the recitals.

"Significant Book-Tax Difference" means a difference in the federal income tax treatment of any item or items from a Transaction, or a reasonably expected difference, of greater than \$10,000,000 on a gross basis from the treatment of the item or items for book purposes in any taxable year. For purposes of this determination, offsetting items shall not be netted for either tax or book purposes. For these purposes, book income is determined by applying United States generally accepted accounting principles for worldwide income. Adjustments to any reserves for taxes are disregarded for purposes of determining book-tax difference. The foregoing definition shall be interpreted in a manner consistent with Treasury Regulations Section 1.6011-4(b)(6) and any successor provisions of the Treasury Regulations.

"Subsidiaries" shall have the meaning ascribed thereto in Section 3.2(g).

"Taxes" mean all taxes, levies, duties, tariffs, imposts, or other assessments, charges or fees, including, without limitation, income, franchise, gross receipts, excise, real or personal property, sales, value added, use, license, stamp, transfer, payroll, unemployment, withholding, social security, workers' compensation, franchise, capital, stamp, estate, estimated income or other governmental taxes, imposed by any government or subdivision or agency thereof, whether of the United States or a foreign country, on Company and/or any of its respective business activities; and such term shall include any interest, penalties or additions to tax attributable to such taxes, levies or assessments.

"Transaction" means and includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan, and any series of substantially similar transactions entered into in the same taxable year. The foregoing definition shall be interpreted consistently with Treasury Regulations Section 1.6011-4(b)(1) and any successor provisions of the Treasury Regulations.

"Transaction with a Brief Asset Holding Period" means a Transaction resulting in, or that is reasonably expected to result in, a federal income tax credit exceeding \$250,000 (including a foreign tax credit) if the underlying asset giving rise to the credit is held by the taxpayer for less than 45 days. For purposes of determining the holding period, the principles of Sections 246(c)(3) and (c)(4) of the Code shall apply.



"Transaction with Contractual Protection" means a Transaction for which the taxpayer has been provided Contractual Protection for purposes of Treasury Regulations Section 1.6011-4(b)(4).

"Transaction with a Significant Book-Tax Difference" means a Transaction with a Significant Book-Tax Difference for purposes of Treasury Regulations Section 1.6011-4(B)(6).

"Treasury Regulations" means regulations (including temporary regulations) published by the U.S. Treasury Department pursuant to the Code, including successor provisions to such regulations.

"UAFC" means Uirechi-America Finance Co.

Section 1.2 Interpretation. In this Agreement, unless the contrary intention appears:

(a) a reference to an Article, Section or Exhibit is a reference to an Article or Section of, or Exhibit to, this Agreement and references to this Agreement include any recital in, or Exhibit to, this Agreement;

(b) any agreement referred to herein shall mean such agreement as amended, supplemented and modified as of the Closing Date to the extent permitted by the applicable provisions thereof, and shall include all exhibits, schedules, and other documents or agreements attached thereto;

(c) a reference to a statute, ordinance, code or other law includes regulations under it and consolidations, amendments, reenactments or replacements thereof;

(d) the singular includes the plural and vice versa; and

(e) whenever the words "include," "includes" or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation."

## ARTICLE 2

### PURCHASE AND SALE OF SHARES

Section 2.1 Purchase and Sale. Upon the terms and subject to the conditions set forth herein, Seller shall sell, convey, transfer, assign and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, all of the Shares, as set forth on Schedule 3.2(b) to this Agreement, for an aggregate purchase price of Thirty-Five Million One Hundred Ninety-Nine Thousand Three Hundred Seventy-One Dollars and Eighty-Three Cents (\$35,199,371.83 (such amount, the "Purchase Price"). Buyer shall, upon satisfaction or waiver of all the conditions in Section 6.1 of this Agreement, and once all of the necessary documents have been delivered (or the delivery of such documents has been waived) to Buyer in accordance with Section 7.2 of this Agreement, pay to Seller: (i) cash in the amount of Thirty-Four Million Six Hundred and Twenty-One Thousand Five Hundred and Ninety-Four Dollars and Six Cents (\$34,621,594.06 (such amount, the "Cash Portion of the Purchase Price") in immediately available funds by wire transfer in accordance with the wire instructions attached hereto as Exhibit A; and (ii) a check

in the amount of Five Hundred and Seventy-Seven Thousand Seven Hundred and Seventy-Seven Dollars and Seventy-Seven Cent (\$577,777.77 made payable to Seller as an advance to repay the Seller Loan (such check, the "Seller Loan Advance Check"). Seller, upon satisfaction or waiver of all of the conditions in Section 6.2 and once all of the necessary documents have been delivered to Seller (or the delivery of such documents has been waived) in accordance with Section 7.4, shall transfer the Shares to Buyer.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES OF SELLER

Section 3.1 Representations of Seller. Seller represents and warrants to Buyer that the following are true and correct as of the date hereof and shall be true and correct as of the Closing Date:

(a) Government and Other Consents. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required to be obtained or made, and no consent of any third party is required to be obtained by Seller for the due execution, delivery and performance by Seller of this Agreement, other than any filing or registration required by any applicable provision of the Code and the regulations promulgated therewith.

(b) No Violation of Statute or Breach of Contract. Seller is not in default under or in violation of: (i) to Seller's knowledge, any material applicable Requirement of Law affecting Company or the Shares or (ii) any material Contractual Obligation to which Seller is a party affecting Company or the Shares. Seller has not received notice that any Person claims that Seller has committed such a default or violation. The execution of this Agreement by Seller will not constitute a default under or a violation of any Requirement of Law nor any material Contractual Obligation to which Seller is a party.

(c) Enforceable Obligations. This Agreement has been duly executed and delivered on behalf of Seller and constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(d) No Litigation. No litigation, investigation by any Governmental Authority or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of Seller, threatened by or against Seller with respect to Company, this Agreement or any of the transactions contemplated hereby.

(e) Ownership of the Shares. Seller is the owner of the number of issued and outstanding Shares listed as being owned by him on Schedule 3.2(b). All of the Shares are free and clear of any liens, claims or encumbrances other than transfer restrictions imposed by applicable securities laws. Seller has the right to transfer title to the Shares to Buyer. There are no commitments, agreements or rights relating to the purchase, sale or other disposition of the Shares or any interest therein (including, without limitation, any subscription agreement, preemptive right or right of first refusal) that, individually or cumulatively, would adversely

affect Buyer's or Seller's rights or obligations hereunder or the transactions contemplated hereby. None of the Shares are subject to any voting trust, voting agreement, or other similar agreement or understanding with respect to the voting or control thereof, nor is any proxy in existence with respect to any such Shares. Upon the sale of the Shares to Buyer pursuant to this Agreement, Buyer will own all such Shares free and clear of all liens, claims and encumbrances, other than transfer restrictions imposed by applicable securities laws.

(f) Disclosure. No representation or warranty made by Seller in this Agreement and no schedule, certificate or exhibit required to be furnished to Buyer pursuant to this Agreement contains, or will contain, any untrue statement of a material fact or omits or will omit any material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

(g) Exemption from Securities Laws. The offer, sale and transfer of the Shares contemplated hereby are exempt from, or not subject to, the registration requirements of the securities laws of the United States and the states of Ohio, Delaware and California (provided that, for purposes of this Section 3.1(g), Seller has relied on the representations of Buyer in Section 3.1(f)).

(h) Seller's Assets. Seller, directly or indirectly, owns sufficient assets to cover all valid claims for indemnity that might be brought by the Seller Indemnified Parties pursuant to Article 10.

Section 3.2 Representations of Seller as to Seller and Company. Seller represents and warrants to Buyer that the following with respect to Seller and/or Company, as applicable, are true and correct as of the date hereof and shall be true and correct as of the Closing Date:

(a) Organization, Standing and Qualification of Company. Company: (i) is a corporation duly organized and validly existing under the laws of the State of Ohio; (ii) is duly qualified and in good standing in all jurisdictions in which it is doing business as required by the laws of that particular jurisdiction except where the failure to qualify would not have a Material Adverse Effect; and (iii) has all necessary corporate power and authority to engage in the business in which it is presently engaged. Seller has delivered, or caused to be delivered, to Buyer true, correct and complete copies of the articles of incorporation and code of regulations of Company, and all amendments thereto.

(b) Capital Structure of Company. The authorized capital of Company is set forth on Schedule 3.2(b). No other class or series of capital stock of Company is or has been authorized nor has Company authorized or issued, nor does Company have outstanding, any other securities (including, without limitation, options, warrants, conversion privileges or other rights, contingent or otherwise, to purchase any capital stock or other securities of Company). All of the Shares of Company set forth on Schedule 3.2(b) are duly authorized, validly issued, fully paid and nonassessable. All of the Shares of Company set forth on Schedule 3.2(b) were issued in compliance with all applicable Requirements of Law (including securities laws) and in compliance with the articles of incorporation and code of regulations of Company in effect at the time of such issuance. There are no outstanding subscriptions for any securities to be issued by Company.

(c) No Violation of Statute or Breach of Contract. Company is not in default under, or in violation of, (i) to Seller's knowledge, any material applicable Requirement of Law, or (ii) any material Contractual Obligation. Company has not received notice that any Person claims that Company has committed such a default or violation.

(d) Government and Other Consents. No consent, authorization, license, permit, registration or approval, or other action by any Governmental Authority is required to be obtained or made, and no consent of any third party is required to be made or obtained by Company in connection with the execution and delivery of this Agreement or with the consummation of the transactions contemplated hereby, other than any filing or registration required by any applicable provision of the Code and the regulations promulgated therewith.

(e) Effect of Agreement. Execution and delivery of this Agreement by Seller, performance of the obligations of Seller hereunder, and consummation of the transactions contemplated hereby will not (i) cause Company to violate any Requirement of Law, (ii) result in the breach of, or be in conflict with, any term, covenant or provision of any Contractual Obligation of Company, or (iii) result in the creation or imposition of any Lien upon any assets of Company.

(f) Pro-Forma Financials and Final Returns. Company's balance sheet, as of the Closing Date (the "Closing Date Balance Sheet"), and Company's statement of operations for Company's interim fiscal period from January 1, 2003 through the Closing Date are attached hereto as Exhibit B (such statement of operations, together with the Closing Date Balance Sheet, the "Pro-Forma Financials"). Copies of final United States federal and Ohio State income tax returns for Company's fiscal year ending December 31, 2002, are attached hereto as Exhibit C (the "Final Returns"), which such Final Returns shall have been filed prior to or on the Closing Date. The Final Returns have been prepared by Company based upon the applicable tax rules and are complete and accurate in all material respects. The Pro-forma Financials are complete and accurate in all material respects.

(g) Business and Assets. As of the Closing Date, Company is not engaged in any material business or material business activity. The sole assets of Company, (i) cash in the Company Bank Accounts (in the amount of \$39,949,373), and the \$50,000 that has previously been deposited by Seller in Bayer's attorney's trust account that is described in Section 9.2 of this Agreement, and (ii) the Seller Loan, are set forth on Schedule 3.2(g), which schedule reflects these assets as of the date hereof and as of the Closing Date. Prior to the Closing Date, no cash or other distributions shall be made to Seller or others that would reduce the amount of cash in the Company Bank Accounts to less than \$39,949,373.

(h) Absence of Liabilities. Except for: (i) liabilities and obligations arising out of or resulting from United States federal, state and local income and franchise taxes attributable to income earned during its tax year beginning January 1, 2003; (ii) an obligation of \$2,134 for worker's compensation premium; and (iii) an obligation for personal property tax in the amount of \$3,646 (each as disclosed in the Closing Date Balance Sheet and for which there has been an adequate reduction made in the calculation of cash in the Company Bank Accounts), Company does not have any existing debt, liability, or obligation as of the Closing Date of any nature, absolute or contingent, asserted or unasserted, liquidated or unliquidated.

(i) Tax Returns and Payments. All tax returns (including, but not limited to, federal, state and local tax returns) and reports required to be filed by Company on or prior to the Closing Date have been filed prior to the Closing Date. All Taxes shown on such returns or reports or otherwise due and payable by Company (in each case, including penalties and interest) have been paid. Except for United States federal, state and local income and franchise taxes attributable to income earned during the tax year commencing on January 1, 2003 (as disclosed in the Pro Forma Financials), Company neither has nor will have any liability for any unpaid Taxes. Seller has no Knowledge of any deficiency assessments against Company with respect to any Taxes. Neither Seller nor Company is a party to, or has Knowledge of, any outstanding agreements or waivers extending the statute of limitations applicable for assessment or collection for any Taxes, or for the filing of any tax return by Company for any period. Company is not now, nor has it ever been, a party to any tax sharing agreement. To Seller's Knowledge, no tax returns of Company have been examined by the Internal Revenue Service or any other taxing authority. Seller has heretofore made available to Buyer copies of all tax returns or reports Company filed within five (5) years prior to the Closing.

(j) Material Contracts. Except as set forth on Schedule 3.2(i) attached hereto, Company is not a party to any material contracts, personal property leases, licenses, agreements or other Contractual Obligations, written or oral, absolute or contingent. Except as set forth on Schedule 3.2(i) attached hereto, there are no defaults or breaches, or to Seller's Knowledge, threatened defaults or breaches by Company of any prior contract or Contractual Obligation.

(k) Litigation. There is no claim, action, suit, arbitration, investigation or other proceeding against Company or its predecessors, subsidiaries, if any, or Affiliates, pending or, to Seller's Knowledge, threatened before or by any court, administrative or regulatory body, or other Governmental Authority. There is no outstanding order, judgment, writ, injunction or decree of any court, arbitrator or Governmental Authority against Company or any of its assets, properties or business.

(l) Judgments. Company is not subject to or bound by any judgment, decree, order or settlement that could have a Material Adverse Effect on Company.

(m) Employees. Company does not have any employees. Company is not now a party to an "employee benefit plan" as defined in Section 3(3) of ERISA.

(n) Bank Accounts, Powers of Attorney, Signatories. Schedule 3.2(n) attached hereto lists (i) the names and addresses of each person holding a power of attorney on behalf of Company, (ii) the names and addresses of the banks or other financial institutions in which Company has an account deposit or safe-deposit box, including the number of such account, deposit and safe-deposit box (the "Company Bank Accounts"), and (iii) a list of persons authorized as signatories on the Company Bank Accounts.

(o) Insurance. As of the Closing Date, Company has no insurance policies in effect, and with respect to insurance previously maintained by or on behalf of Company there are no claims or notice of any claims currently pending with respect to which Company is the party in interest.



(p) Subsidiaries. Except as set forth on Schedule 3.2(p), Company does not have any direct or indirect ownership interest in the capital stock or other equity securities of any corporation, limited liability company or other legal entity (collectively, "Subsidiaries"). Company does not have any obligation to acquire any capital stock or other equity securities of any Person. Company has no liability associated with any former Subsidiaries as of the Closing Date.

(q) Minute Books. The stock books, stock ledgers and minute books of Company have previously been made available to Buyer for review, to the extent that such records and books exist.

(r) WARN Act. Company has not engaged in any "plant closing" or "mass layoff" (as such terms are defined in the Worker Adjustment and Retraining Notification Act ("WARN Act") as amended).

(s) Company Debt. Subject to Section 3.2(h), Company has no debt as of the Closing Date.

(t) Investment Company. Company is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(u) Company Environmental Matters. At all times on and prior to the Closing Date:

(i) To Seller's Knowledge, Company and any predecessor entity as so continued under any applicable Environmental Law, has been in material compliance with all applicable Environmental Laws and Safety Laws, or all such prior instances of noncompliance have been addressed or fully resolved by Company;

(ii) Company has been in material compliance with the conditions of all Environmental Permits required for the conduct of the business of Company in the manner conducted, or all such prior instances of noncompliance have been addressed or fully resolved by Company;

(iii) neither Company nor Seller, nor the present or past assets, properties, business, leaseholds or operations of Company has received or been subject to any outstanding order, decree, judgment, complaint, agreement, claim, citation, or notice or is subject to any ongoing judicial or administrative proceeding indicating that Company, or the past or present assets, properties, business, leasehold or operations of Company are, or may be: (A) in violation of any Environmental Laws; (B) in violation of any Safety Laws; (C) responsible for the on-site or off-site storage or Release of any Hazardous Materials; or, (D) liable for any Environmental Liabilities or Safety Liabilities and Costs; and

(iv) neither Company nor Seller have any reason to believe that Company will become subject to a matter identified in Section 3.2(m)(iii); and, no investigation or review with respect to such matters has been made by Company or for Company, and none is pending or, to the Knowledge of Company or Seller, threatened, nor has any Governmental Authority or other third-party indicated an intention to conduct the same.

(v) No Brokers or Finders. Seller has not incurred any liability or obligation -- whether contingent or otherwise -- for a brokerage commission, a finder's fee, or any other similar payment in connection with this Agreement for which Buyer or Company will be liable.

(w) Conditions of Confidentiality. The Transactions contemplated by this Agreement are not subject to any Conditions of Confidentiality with respect to Seller or Company.

(x) Contractual Protections. Seller has not obtained any Contractual Protection with respect to the transactions contemplated by this Agreement.

(y) Absence of Certain Transactions; Absence of Certain Advice. During the period commencing on January 1, 2003, and continuing through the period ending immediately prior to the Closing Date, Company has not directly or indirectly participated in any Listed Transaction, Confidential Transaction, Transaction with Contractual Protection, Loss Transaction, Transaction with a Significant Book-Tax Difference, or Transaction with a Brief Asset Holding Period.

(z) Compliance with Applicable Laws and Rules. Both Seller (with regard to Company) and Company are in compliance with the International Money Laundering Abatement and Anti-Terrorist Act of 2001, as amended, the USA Patriot Act of October 26, 2001, and any and all other applicable rules and regulations promulgated thereunder by the United States government.

#### ARTICLE 4

##### REPRESENTATIONS AND WARRANTIES OF BUYER

Section 4.1 Representations of Buyer. Buyer hereby represents and warrants to Seller that the following are true and correct as of the date hereof and shall be true and correct as of the Closing Date:

(a) Existence. Buyer is a corporation duly organized, validly existing and in good standing under the laws of Delaware.

(b) Corporate Authorization; No Violation. The execution, delivery and performance by Buyer of this Agreement are within Buyer's corporate powers, have been duly authorized by all necessary corporate action and do not contravene in any material respect any Requirement of Law or any Contractual Obligation of Buyer. Buyer has delivered, or caused to be delivered, to Seller true, correct and complete copies of the certificate of incorporation and by-laws of Buyer, and all amendments thereto.

(c) Government Authorization. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other party is required to be obtained or made by Buyer for the due execution, delivery and performance by Buyer of this Agreement, other than any filing of registration required by any applicable provision of the Code and the regulations promulgated therewith.

(d) Enforceable Obligations. This Agreement has been duly executed and delivered on behalf of Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(e) No Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of Buyer, threatened by or against Buyer or any of its subsidiaries, or Affiliates, if any, with respect to this Agreement or any of the transactions contemplated hereby or otherwise.

(f) Investment Intent. Buyer:

(i) has the knowledge and experience in financial and business matters necessary to make Buyer capable of evaluating the merits and risks of an investment in the Shares;

(ii) has had the opportunity to ask questions and receive answers concerning Company and the terms and conditions of the Shares, and to obtain any additional information deemed necessary by Buyer to evaluate the merits and risks of an investment in the Shares. Buyer has obtained all of the information desired in connection with the Shares;

(iii) is acquiring the Shares solely for Buyer's own account, for investment, and not with a view to or for resale in connection with any distribution of the Shares;

(iv) has no oral or written agreement or plan to sell, transfer, or pledge or otherwise dispose of the Shares;

(v) understands that Buyer must bear the economic risk of owning the Shares for an indefinite period of time;

(vi) understands that the Shares have not been registered under the Securities Act of 1933 or any state securities laws and that Company is not obligated to register the Shares; and

(vii) is an "accredited investor" as such term is defined in Regulation D promulgated under the Securities Act of 1933, as amended.

(g) Disclosure. No representation or warranty by Buyer contained in this Agreement and no schedule, certificate or exhibit required to be furnished to Seller pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit any material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

(h) Effect of Agreement. Execution and delivery of this Agreement by Buyer, performance of the obligations of Buyer hereunder, and consummation of the transactions contemplated hereby will not: (i) cause Buyer to violate any Requirement of Law; (ii) result in the breach of, or be in conflict with, any term, covenant or provision of any Contractual



Obligation of Buyer; or (iii) result in the creation or imposition of any lien, pledge, mortgage, claim, charge or encumbrance upon any assets of Buyer.

(i) Buyer's Assets. Buyer, directly or indirectly, owns sufficient assets to cover all valid claims for indemnity that might be brought by the Buyer Indemnified Parties pursuant to Article 10.

(j) No Brokers or Finders. Buyer has not incurred any liability or obligation – whether contingent or otherwise – for a brokerage commission, a finder's fee, or any other similar payment in connection with this Agreement for which Seller will be liable.

(k) Conditions of Confidentiality. The Transactions contemplated by this Agreement are not subject to any Conditions of Confidentiality with respect to Buyer.

(l) No Registration; Absence of Certain Advice. Neither Buyer nor its Affiliates has registered the transactions contemplated by this Agreement under Section 6111 of the Code. Neither Buyer nor any of Buyer's Affiliates has been advised by their respective professional advisors that the transactions contemplated by this Agreement (separately or in combination) must be registered under Section 6111 of the Code or constitute direct or indirect participation by them in a Listed Transaction, a Confidential Transaction, a Transaction with Contractual Protection, a Loss Transaction, a Transaction with a Significant Book-Tax Difference, or a Transaction with a Brief Asset Holding Period.

(m) No Change to Accelerate Company's Current Tax Year End. Buyer shall not take, or cause or permit to be taken (by Company or any other Person), any action(s), including without limitation any action(s) related to the acquisition of the Shares, that will cause the tax year of Company that began on January 1, 2003 to end on or prior to the Closing Date.

(n) No Intention to Cause Company to Engage in Certain Transactions. Buyer has no intention to cause Company to, directly or indirectly, engage in or be a party to any Listed Transaction, Confidential Transaction, Transaction with Contractual Protection, Loss Transaction, Transaction with a Significant Book-Tax Difference or Transaction with a Brief Asset Holding Period.

## ARTICLE 5

### COVENANTS

Section 5.1 Seller's Covenants. Seller hereby covenants to Buyer as follows:

(a) Incurrence of Liabilities. Prior to the Closing, Seller shall neither cause, nor permit Company to, without the express prior written consent of Buyer, incur or agree to incur, any liability or obligation, absolute or contingent, or take any action outside the ordinary course of business for Company.

(b) Merger, Consolidation, Establishment of Business Organization. Prior to the Closing, Seller shall not cause, or permit Company to enter into, any merger, consolidation,

reorganization, or liquidation, or enter into or participate in the establishment of any joint venture, partnership, corporation, company or other business organization.

(c) Capitalization, Options and Dividends. Prior to the Closing, Seller shall not transfer any of the Shares held by Seller and as reflected on Schedule 3.2(b). Seller shall not cause or permit Company to: (i) make any change in Company's articles of incorporation or code of regulations; (ii) issue, reclassify or alter any shares of Company's outstanding or unissued capital stock; (iii) issue or grant or agree to issue or grant options, warrants or other rights of any kind to purchase any shares of Company's capital stock or outstanding options; or (iv) declare, pay, set aside or make any dividends or other distributions or payment in respect of Company's capital stock.

(d) Litigation. Prior to the Closing, Seller shall advise Buyer in writing promptly of the commencement of any litigation, proceeding or government investigation, in which Seller or Company has been made a party, and of which Seller or Company, as the case may be, has Knowledge.

(e) Books and Records. Prior to the Closing, Seller shall cause Company to maintain its books, accounts and records in the usual and ordinary manner on a basis consistent with prior years.

(f) Tax Returns. Seller shall cause Company to prepare, at Company's own cost and expense, all United States federal, state and local income, payroll and other tax returns for all periods ending prior to the Closing Date that Company is obligated to file prior to the Closing Date, and to pay all Taxes shown as due on such returns, including any penalties and/or interest accrued thereon. Moreover, Seller shall, at the appropriate time subsequent to the Closing Date, prepare and file on behalf of Company any and all necessary Form W-2's, Form 1099's, payroll tax returns and related documentation with respect to each and every individual that was an employee of Company prior to the Closing Date for periods that end on or prior to the Closing Date.

(g) Transfer Taxes. Seller shall bear all share transfer taxes, recording fees and other sales, transfer, use, purchase, stamp or similar taxes resulting from or arising out of the transactions contemplated by this Agreement customarily paid by a seller in a similar transaction. Buyer shall bear any and all other transfer taxes.

(h) UAFC Cooperation. Seller shall cooperate with UAFC, Buyer's financing source, for the purchase of the Shares, with respect to all of UAFC's commercially reasonable requests, including, but not limited to, the execution of a non-confidentiality certificate prepared by UAFC, in substantially the form attached hereto as Exhibit D.

(i) Assumption of Lease of Beachwood Premises. On or prior to the Closing Date, Seller shall provide Buyer with a fully executed copy of an agreement (such agreement, the "Beachwood Lease Assumption Agreement") entered into by and between Company and LXV GROUP, LLC, an Ohio limited liability company ("LXV"), pursuant to which LXV shall (A) agree to become the new tenant under that certain lease of the Beachwood Premises and (B) assume and become responsible for any and all liabilities for the lease of the Beachwood

Premises. Accordingly, Seller shall indemnify and hold harmless Buyer and Company from any and all liabilities under or relating to the prior lease of the Beachwood Premises.

(i) Seller Minimum Net Worth. Seller shall maintain a net worth of not less than \$1,000,000 during the five- (5) year period following the Closing Date.

#### Section 5.2 Buyer's Covenants.

(a) Tax Returns; Discharge of Tax Liabilities. Subject to Section 3.1(f), Buyer shall cause Company to prepare and timely file at its own cost and expense all returns for Taxes required to be filed by Company in respect of periods ending after the Closing Date. Buyer shall cause Company to satisfy fully all United States federal, state and local income and franchise taxes, penalties and interest required to be paid by Company attributable to income earned during the tax year commencing on January 1, 2003 and for all tax years thereafter.

(b) Subsequent Conduct of Active Business and Related Matters. Buyer shall maintain the existence of Company for a period of at least five (5) years following Closing and, during such time period, Company shall, at all times, be engaged in an active trade or business. Buyer shall maintain a net worth of no less than \$1,000,000 during such time period. Company shall not amend its returns for Taxes for any period that ends on or prior to the Closing Date if the effect of any such amendment shall result in Taxes being imposed on Seller.

### ARTICLE 6

#### CONDITIONS TO CLOSING

Section 6.1 Conditions Precedent to Obligations of Buyer. All of the obligations of Buyer under this Agreement with respect to the purchase and acceptance of the Shares and payment therefor shall be subject to the satisfaction of each of the following conditions, any or all of which may be waived, in whole or in part, by Buyer prior to or at the Closing:

(a) Representations and Warranties. The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects when made and as of the Closing.

(b) Covenants. Seller shall have observed and performed in all material respects all covenants to be observed and performed by Seller as of the Closing Date in accordance with the provisions of this Agreement.

(c) Closing Documents. Each and every document and instrument required by Section 7.2 to be delivered to Buyer at or before the Closing Date shall have been delivered to Buyer.

(d) Satisfaction of Conditions. All other conditions for the benefit of Buyer contained herein shall have been either satisfied or waived by Buyer prior to or at the Closing.

(e) Approvals and Consents. All consents and approvals, or the absence of disapprovals within applicable time periods, of Governmental Authorities (or exemptions from

the requirements therefor), and all approvals of any third parties, the granting or absence of which is necessary for the consummation of the transactions contemplated by this Agreement by Seller, shall have been obtained, or, in the case of such disapprovals, shall be absent.

(f) Assets. Company shall have, at the Closing Date, only the assets set out in Schedule 3.2(g) under the heading "Closing Assets."

(g) Financing. Buyer shall have secured financing for the Purchase Price through UAFC.

(h) Establishment of Company Account at Rabobank. Seller shall deliver to Buyer prior to the Closing Date, information reasonably acceptable to Buyer that Company has established an account with Rabobank Nederland, New York Branch and that all of the cash described in Section 6.1(f) (other than the \$50,000 deposit being held in Buyer's attorney's trust account as described in Section 9.2) has been transferred to such Company bank account at Rabobank Nederland, New York Branch. Upon confirmation of the wire transfer of the Purchase Price from Buyer to Seller, Seller shall transfer possession and control of such bank account to Buyer or its representatives, as owner of Company. Such transfer of control over Company's bank account shall be evidenced by delivery of the documents described in Section 7.2(d).

(i) Benefit Plan Obligations. Buyer shall have been provided evidence reasonably satisfactory to Buyer that any and all obligations of Company under health insurance, pension and other benefits plans covering employees, officers, directors and other personnel of Company that existed on or before the Closing Date shall have been: (A) terminated as of the Closing Date or (B) transferred to a third party such that there are no remaining obligations of Company under any such benefit plan(s).

(j) Evidence of Assumption of the Lease of Beachwood Premises and the Assigned Company Liabilities. Buyer shall have been provided a duly authorized and executed copy of each of: (i) the Beachwood Lease Assumption Agreement and (ii) documentation reasonably satisfactory to Buyer regarding the complete and absolute assignment to, and assumption by, LKV of the Assigned Company Liabilities.

(k) Evidence of Repayment of Seller Loan. Immediately subsequent to Seller's receipt of the Cash Portion of the Purchase Price, Seller shall endorse over to Company, without recourse, the Seller Loan Advance Check delivered by Buyer to Seller pursuant to Section 2.1 and Company shall return to Seller the documentation for the Seller Loan marked "Paid-in-full."

Section 6.2 Conditions Precedent to Obligations of Seller. All of the obligations of Seller hereunder with respect to the sale and delivery of the Shares are subject to the satisfaction of each of the following conditions, any or all of which may be waived, in whole or in part, by Seller prior to or at the Closing:

(a) Representations and Warranties. The representations and warranties of Buyer contained herein shall be true and correct in all material respects when made and as of the Closing Date.

(b) Covenants. Buyer shall have observed and performed in all material respects all covenants to be observed and performed by Buyer as of the Closing Date in accordance with the provisions of this Agreement.

(c) Closing Documents. Each and every document and instrument required by Section 7.4 to be delivered to Seller on or before the Closing shall have been delivered to Seller, as the case may be.

(d) Satisfaction of Conditions. All other conditions for the benefit of Seller contained herein shall have been either satisfied or waived by Seller prior to or at the Closing.

(e) Approvals and Consents. All consents and approvals, or the absence of disapprovals within applicable time periods, of Governmental Authorities (or exemptions from the requirements therefor), and all approvals of any third party, the granting or absence of which is necessary for the consummation of the transactions contemplated by this Agreement by Buyer shall have been obtained, or, in the case of such disapprovals, shall be absent.

Section 6.3 Sale of Less than All the Shares. Seller and Buyer hereby affirm that the purpose of this Agreement is to require Seller to sell and Buyer to purchase all of the Shares.

## ARTICLE 7

### THE CLOSING

Section 7.1 Time and Place. The Closing shall take place on September 9, 2003 at 9:00 a.m. Pacific Standard Time (12:00 p.m. Eastern Standard Time) at the offices of Bitner & Company, LLC at 388 Market Street, Suite 1520, San Francisco, CA 94111, or at such other time and place as the parties may agree. The date on which the Closing occurs is herein referred to as the "Closing Date." The Closing will be deemed to have occurred only once all deliveries have been made and/or received, as applicable, in accordance with Section 2.1 and Section 7.2.

Section 7.2 Deliveries to Be Made by Seller at the Closing. At the Closing, Seller shall deliver or cause to be delivered to Buyer the following instruments in form and substance reasonably satisfactory to Buyer and Buyer's counsel:

(a) The certificates representing the Shares, registered in the name of Seller as set forth on Schedule 3.2(b) attached hereto, duly endorsed by Seller for transfer to Buyer or accompanied by stock powers for the Shares duly executed by Seller, in proper form for transfer;

(b) A certificate of valid existence for Company and a certified copy of Company's Articles of Incorporation, both issued by the Secretary of State of the State of Ohio not more than ten (10) Business Days prior to the Closing Date;

(c) The stock books, stock ledgers and minute books of Company to the extent they exist;

(d) Resignations of all officers and directors of Company;

(e) The statements of account for the Company Bank Accounts as of the Closing Date.

(f) All of Company's contracts and written agreements, originals or copies of its books and records and all other written data relating to the business of Company; and

(g) As to Seller, a legal opinion of counsel to Seller, in substantially the form attached hereto as Exhibit E.

Section 7.3 Transfer of Control. Simultaneously with the deliveries described in Sections 7.2 and 7.4, Seller shall take all additional actions that are reasonably necessary to place Buyer in actual possession and control of Company.

Section 7.4 Deliveries to be Made by Buyer at the Closing. At the Closing, Buyer shall deliver or cause to be delivered to Seller:

(a) The Cash Portion of the Purchase Price and the Seller Loan Advance Check shall be delivered to Seller in accordance with the provisions of Section 2.1;

(b) A written consent of the sole director of Buyer authorizing Buyer's execution and delivery of this Agreement and the performance of Buyer's obligations hereunder;

(c) One or more written consents of Buyer, as the new shareholder of Company, appointing John P. McNabola as the new officer and director of Company, effective upon the acquisition of the Shares by Buyer, and authorizing John P. McNabola to execute the Company Joinder to this Agreement on behalf of Company.

(d) An officer's certificate with respect to the office and authority of the officer of Buyer executing this Agreement, duly executed by the president and secretary of Buyer;

(e) A certificate of good standing for Buyer and a certified copy of Buyer's Certificate of Incorporation, both issued by the Secretary of State of the State of Delaware not more than ten (10) Business Days prior to the Closing Date; and

(f) A legal opinion of Counsel to Buyer, in substantially the form attached hereto as Exhibit E.

## ARTICLE 8

### PRE- AND POST-CLOSING COVENANTS

Section 8.1 Tax Returns and Payments. Seller shall have caused Company to prepare and timely file all tax returns and reports required to be filed by Company on or prior to the Closing Date, *provided that*, for purposes of determining when a tax return or report is required to be filed, no allowance shall be made for any extension(s) of the filing date. Seller shall also cause Company to pay all Taxes (in each case, including penalties and interest) required to be paid by Company before the Closing Date (except all United States federal, state and local income and franchise taxes required to be paid by Company attributable to income earned



during the tax year commencing on January 1, 2003). In furtherance and not in limitation of the foregoing, Seller shall be responsible for the timely filing of all returns and the payment of all Taxes, other than all United States federal, state and local income and franchise taxes required to be paid by Company attributable to income earned during the tax year commencing on January 1, 2003, in respect of all periods ending on or before the Closing; *provided, however*, that: (i) Buyer shall control exclusively any proceeding relating to any amount that would be considered United States federal, state or local income or franchise taxes required to be paid by Company attributable to income earned during the tax year commencing on January 1, 2003 and for all tax years commencing thereafter; (ii) in respect of any tax liability of Company, Seller and Buyer shall provide each other with copies of all correspondence, notices, and other written materials received from any taxing authority and related to any such liability of Company for Taxes; (iii) the parties shall give each other the opportunity to review, and, other than for United States federal, state and local income and franchise taxes required to be paid by Company attributable to income earned during the tax year commencing on January 1, 2003, approve any submission, which approval shall not be unreasonably withheld, to be made to such taxing authority prior to such submission for the periods or portions thereof ending on or before the Closing; (iv) Seller shall not settle any dispute with regard to Taxes without the prior written consent of Buyer, which consent shall not be unreasonably withheld; and (v) other than all United States federal, state and local income and franchise taxes required to be paid by Company attributable to income earned during the tax year commencing on January 1, 2003, Buyer shall not settle any dispute with regard to any amount that would be considered a tax liability for periods or portions thereof ending on or before the Closing without a prior written consent of Seller, which consent shall not be unreasonably withheld.

Section 8.2 Assistance with Preparation of Financial Statements, Tax Returns and Annual Reports. For a time period equal to the greater of three (3) years after the Closing and the applicable statute of limitations, Seller shall provide to Buyer, at Buyer's written request, reasonable cooperation and assistance in connection with the preparation of financial statements, tax returns and annual reports with respect to Company's operations during 2003.

Section 8.3 Access to Company Records. Buyer shall allow Seller reasonable access to all books and records of Company in order to enable Seller to comply with his obligations to Buyer under this Agreement. Further, for a time period equal to the greater of two (2) years following the Closing and the applicable statute of limitations, Buyer shall allow Seller reasonable access to existing books and records of Company that are in Buyer's possession and that relate to the periods before the Closing to enable Seller (i) to respond to any Government Authority, including without limitation, the Internal Revenue Service, and (ii) to comply with any Requirement of Law. To the extent that Buyer has such books and records of Company, Buyer will retain such books and records for a time period equal to the greater of two (2) years following the Closing and the applicable statute of limitations.

Section 8.4 Employee Contracts Termination. At or prior to the Closing, Company shall have terminated all employee contracts, if any, with no liability to Company.

Section 8.5 Further Assurances. Seller and Buyer covenant that they shall cooperate and take any such actions to execute further instruments and documents as shall reasonably be requested by either party to carry out the transactions contemplated by this Agreement, so long

as the execution of such documents or such requested actions do not violate any Requirement of Law.

Section 8.6 Repayment of the Seller Loan. Upon receipt of the Purchase Price, Seller shall immediately repay, or cause the repayment of, the Seller Loan to the Company in accordance with the requirements of Section 6.2(k) of this Agreement.

## ARTICLE 9

### TERMINATION AND ABANDONMENT

Section 9.1 Termination. This Agreement may be terminated and the transactions herein contemplated may be abandoned at any time prior to or at the Closing: (a) by written mutual consent of Seller and Buyer; (b) by Seller or Buyer upon a five- (5) day written notice as set forth in Section 11.2, if there has been a material misrepresentation or a material breach of a warranty or covenant contained herein or in any exhibit, schedule or certificate delivered by Seller or Buyer, as the case may be, in connection with this Agreement; or (c) by Seller or Buyer if any of the conditions to its or their obligations specified in Article 6 have not been satisfied on or before the Closing Date.

Section 9.2 Effect of Termination. If this Agreement is terminated pursuant to Section 9.1, all further obligations of Seller or Buyer under this Agreement shall terminate without liability to Seller or Buyer. Notwithstanding the foregoing, Seller agrees to compensate Buyer for all reasonable professional costs (including but not limited to legal and accounting costs), up to a maximum amount of \$50,000, if the transaction contemplated hereby fails to close based on factors within Seller's control. In addition, Buyer agrees to compensate Seller for all reasonable professional costs (including but not limited to legal and accounting costs), up to a maximum amount of \$50,000, if the transaction contemplated hereby fails to close based on factors within Buyer's control. Company has deposited the sum of \$50,000 with Buyer's attorney's trust account to satisfy the obligation of Seller as described in this Section 9.2, which amount shall be credited towards Company's assets in calculating the Purchase Price in the event that the Closing occurs.

## ARTICLE 10

### INDEMNIFICATION

Section 10.1 Survival of Representations. The parties agree that, notwithstanding any right or ability of Buyer to fully investigate the affairs of Company, any knowledge of facts determined or determinable by Buyer pursuant to such investigation or right or ability to investigate, or any qualifications contained in the opinions of Seller's counsel, Buyer has the right to rely fully upon the representations, warranties, covenants and agreements of Seller contained in this Agreement and on the accuracy of any Schedule, Exhibit, document or certificate annexed hereto or delivered to Buyer pursuant hereto. All representations and warranties of the parties contained herein shall survive the Closing until the expiration of the time periods set forth in Section 10.5.



Section 10.2 Indemnification by Seller. Seller shall indemnify and hold harmless Buyer, Company and each of its Affiliates and the officers, partners, directors, employees, agents, successors and assigns thereof (the "Seller Indemnified Parties") from any loss, damage, liability or expense (including, without limitation, reasonable expenses of investigation and reasonable attorneys' fees and expenses and costs incurred in connection with any action, suit, cause or proceeding brought against any thereof) incurred or suffered by the Seller Indemnified Parties, and arising out of or resulting from (provided, however, that the same damages may not be collected more than once): (i) any breach or inaccuracy of any representation or warranty made by Seller in this Agreement, including without limitation Section 3.2(h) relating to the Absence of Liabilities of Company; (ii) any breach of any covenant made by Seller herein; (iii) all audits or examinations (the "Post Closing Date Audits") by any Governmental Authority pertaining to any tax returns filed in connection with any tax-year or period ending prior to the Closing Date other than Company's fiscal year commencing on January 1, 2003; or (iv) any and all liabilities of Company arising prior to the Closing Date (other than taxes due for Company's fiscal year commencing on January 1, 2003).

Section 10.3 Indemnification by Buyer. Buyer and Company, jointly and severally, shall indemnify and hold harmless Seller and his Affiliates and the officers, partners, directors, employees, agents, successors and assigns of any of them (the "Buyer Indemnified Parties"), from any loss, damage, liability or expense (including, without limitation, reasonable expenses of investigation and reasonable attorneys' fees and expenses and costs incurred in connection with any action, suit, cause or proceeding brought against any thereof) incurred or suffered by the Buyer Indemnified Parties, and arising out of or resulting from (provided, however, that the same damages may not be collected more than once): (i) any breach or inaccuracy of any representation or warranty made by Buyer in this Agreement; (ii) any breach of any covenant made by Buyer herein; or (iii) any and all liabilities of Company arising on or after the Closing Date.

Section 10.4 Indemnification Ceiling. The maximum amount of liability of Buyer and Seller, respectively, under this Article 10, including costs, fees or expenses incurred by any indemnified party hereunder, shall not exceed Five Million Three Hundred Thousand Dollars (\$5,300,000); provided, however, that in the event that Losses incurred by either Seller or Buyer, and their respective Affiliates, are as a result of intentional fraud by the other party or its respective Affiliates, there shall be no limit on the maximum liability of the harming party under this Agreement; provided further, however, that there shall be no limit on the maximum liability of the harming party under this Agreement: (A) in the event that Losses incurred by Buyer or its Affiliates are a result of: (i) a breach of any representation or warranty set forth in Section 3.2(i); or (ii) a breach of any representation or warranty set forth in Sections 3.2(d) or 3.2(h) that arises out of a violation or potential violation of any Environmental Law; or (B) in the event that Losses incurred by Seller, his spouse or his Affiliates are as a result of a violation of Buyer's and/or Company's obligations set forth in Section 2.1 of this Agreement.

Section 10.5 Time Periods. The indemnification obligations under this Article 10 shall continue for such time as specified below:

(s) as to representations and warranties set forth in Sections 3.2(h), (i), (k), and (n) and the covenant contained in Section 8.1, until the lapse of the statute of limitations applicable to the matters described therein; and

8

20030515  
03488

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s) 176-08-611-015

FOR RECORDERS OPTIONAL USE ONLY	
Document Instrument No.:	
Book:	Page:
Date of Recording:	
Notes:	

2. Type of Property:

- a) ☐ Vacant Land
- b) ☒ Single Fam Res
- c) ☐ Condo/Twnhse
- d) ☐ 2-4 Plex
- e) ☐ Apt. Bldg
- f) ☐ Comm'l/Ind'l
- g) ☐ Agricultural
- h) ☐ Mobile Home
- i) ☐ Other

3. Total Value/Sales Price of Property: \$450,000.00  
Deed in Lieu of Foreclosure Only (value of property) \$  
Transfer Tax Value per NRS 375.010, Section 2: \$450,000.00  
Real Property Transfer Tax Due: \$1,125.00

4. If Exemption Claimed

- a. Transfer Tax Exemption, per NRS 375.090, Section \_\_\_\_\_
- b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.034, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: \_\_\_\_\_ Capacity: Buyer  
Signature: \_\_\_\_\_ Capacity: Seller

SELLER (GRANTOR) INFORMATION

(Required)  
Print Name: Timothy A. Dinunso  
Address: 341 Harbour Garden Ave  
City/State/Zip: Las Vegas, NV 89144

BUYER (GRANTEE) INFORMATION

(Required)  
Print Name: MICHAEL TRICARICI  
Address: 12830 Kingsway Dr.  
City/State/Zip: CHESTERLAND, OH 44026

COMPANY REQUESTING RECORDING

Co. Name: Pioneer National Title of Nevada, Inc.  
7548 West Sahara Avenue #101  
Las Vegas, NV 89117

Esc #: 3036401-LS

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

3488

DVI

20030515  
03488

APN No.: 176-08-611-015

Space Above for Recorder's Use Only

Escrow No. 3036401-LS  
R.P.T.T: \$1,125.00

**Grant, Bargain, Sale Deed**

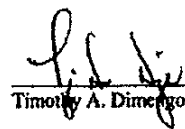
THIS INDENTURE WITNESSETH: That Timothy A. Dimengo and Linda S. Dimengo, husband and wife as Joint Tenants

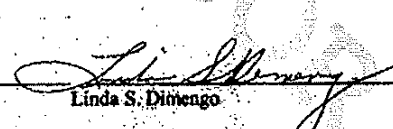
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and

Convey to Michael A. Tricarichi and Barbara H. Tricarichi,  
husband and wife as Community  
Property with rights of Survivorship  
all that real property situated in the County of Clark, State of Nevada, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

  
Timothy A. Dimengo

  
Linda S. Dimengo

SEE PAGE TWO (2) FOR NOTARY ACKNOWLEDGEMENT

080295

20030515  
03488

**NOTARY ACKNOWLEDGEMENT FOR GRANT BARGAIN SALE DEED**  
Escrow No. 3036401-1S

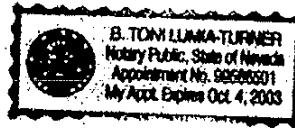
STATE OF NEVADA  
COUNTY OF CLARK

ss:

This instrument was acknowledged before me on May 15, 2003  
by Timothy A. Dimango and Linda S. Dimango  
B. Toni Luma-Turner  
NOTARY PUBLIC  
B. TONI LUMIA-TURNER

(Notary Seal)

WHEN RECORDED MAIL TO:  
Michael A. Tricarichi  
12830 Kingsway Dr  
Chesterland, OH 44026



MAIL TAX STATEMENTS TO:  
Michael A. Tricarichi  
12830 Kings Way Drive  
Chesterland, OH 44026

20030515  
03488

EXHIBIT A

PARCEL I:

Lot Fifteen (15) in Block One (1) of RHODES RANCH PHASE II - UNIT 1, as shown by map thereof on file in Book 89 of Plats, Page 5, in the Office of the County Recorder of Clark County, Nevada.

PARCEL II:

A non-exclusive easement of use access in and to the "Common Area" as further defined in that certain Declaration of Covenants, Conditions and Restrictions Rhodes Ranch, a Planned Community, recorded August 13, 1997 in Book 970813 of Official Records, as Document No. 01479, in the Office of the County Recorder of Clark County.

\*\*\*\*\* CLARK COUNTY, NEVADA \*\*\*\*\*  
RECORDED AT REQUEST OF: PIONEER NATIONAL TITLE  
05-15-2003 15:18 JSB PAGE COUNT: 3  
OFFICIAL RECORDS  
BOOK/INSTR: 20030515-03488 FEE: 16.00  
NOTT: 1,125.00



## Introduction

Aug 25, 2016

Welcome to the new  
OpenWeb (Beta)[Take a tour](#)

Note: Access the non-beta version of OpenWeb in Internet Explorer browsers:

[gisgate.co.clark.nv.us/openweb/](http://gisgate.co.clark.nv.us/openweb/)[\(http://gisgate.co.clark.nv.us/openweb/\)](http://gisgate.co.clark.nv.us/openweb/)[\(http://gisgate.co.clark.nv.us/openweb/\)](http://gisgate.co.clark.nv.us/openweb/)

Current Tool: Select Property

Coordinates in State Plane ft

[\(http://gisgate.co.clark.nv.us/openweb/\)](http://gisgate.co.clark.nv.us/openweb/)[\(http://gisgate.co.clark.nv.us/openweb/\)](http://gisgate.co.clark.nv.us/openweb/)

Current View: Assessor Map

1: 8,000



## Quick Look-up

I Want To...

Most Popular

Assessor's Office

Services

FAQ

Forms

Video Library

Contact Us

About Us

Property Records

Statistics/Reports

Aircraft Assessment

Assessment Roll

Personal Property

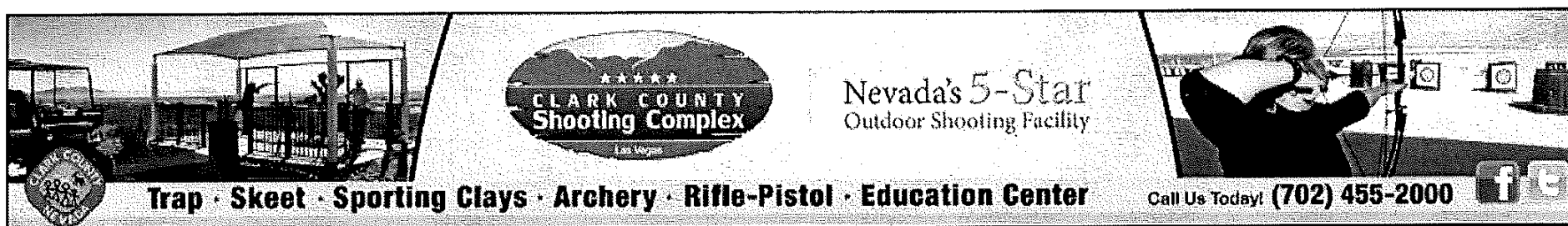
General Information

Manufactured Homes

Parcel Info &amp; Maps

Real Property

Tax Rates



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EXHIBIT PAGE ONLY



**EXHIBIT B**

STATE OF NEVADA  
DEPARTMENT OF MOTOR VEHICLES  
RECEIPT

OPERATOR ID: 2422  
LOCATION: FLAMINGO DMV-LV

DATE: 06/24/2003  
TIME: 16:33:32  
F Y: 2003

Super Tran Id : 15292648

Completed Transactions

	<u>Fees</u>	<u>Date Paid</u>
1. NEVADA LICENSE FOR TRICARICHI, BARBARA H	\$21.75	06-24-2003
DL DIGITIZED PHOTO FEE	\$2.25	
DL ORIGINAL CLASS C	\$19.50	
2. NEVADA LICENSE FOR TRICARICHI, MICHAEL	\$21.75	06-24-2003
DL DIGITIZED PHOTO FEE	\$2.25	
DL ORIGINAL CLASS C	\$19.50	
Total Fees Due:	\$43.50	

Method of Payment

<u>Payment Type</u>	<u>Payment Number</u>	<u>Paid Amount</u>	<u>Date Paid</u>
CREDIT CARD		\$43.50	06-24-2003
Total Fees Paid:		\$43.50	



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EXHIBIT PAGE ONLY



**EXHIBIT C**

**STATE OF NEVADA  
VOTER REGISTRATION APPLICATION  
THIS SPACE FOR OFFICE USE ONLY**

RECEIVED FROM:	<input checked="" type="checkbox"/> AGENCY	<input type="checkbox"/> FIELD REGISTRAR	<input type="checkbox"/> MAIL	<input type="checkbox"/> OTHER
CANCELLED:		INACTIVE:		PRECINCT CODE:
RECEIVED BY:	<i>[Signature]</i>			

☐ CHECK THIS BOX TO RECEIVE A SAMPLE BALLOT IN LARGER TYPE.

**USE BLACK INK—PLEASE PRINT CLEARLY**

Reason(s) for registration:					<input checked="" type="checkbox"/> New Registration	<input type="checkbox"/> Address Change	<input type="checkbox"/> Party Change	<input type="checkbox"/> Name Change
1	First Name	Middle Name	Last Name		Jr. Sr. II III IV			
	<i>MICHAEL</i>		<i>TRULOGHI</i>					
2	Home Address	Apt. #	City	State	Zip Code			
	<i>341 ARBORN GARDEN AVE</i>		<i>LAS VEGAS</i>	<i>NV</i>	<i>89148</i>			
3	Mailing Address	Apt. #	City	State	Zip Code			
	<i>341 ARBORN GARDEN AVE</i>		<i>LAS VEGAS</i>	<i>NV</i>	<i>89148</i>			
4	Birth Date (mo/day/year)	5	Place of Birth	6	Identification No. (see instructions)	7	Telephone No. (optional)	
	<i>10/30/53</i>		<i>CLEVELAND, OH</i>		<b>REDACTED</b>		<i>(702) 597-0002</i>	
8	Party Registration—Check Only One							
	<input type="checkbox"/> Democratic Party		<input type="checkbox"/> Green Party		<input type="checkbox"/> Independent American Party		<input type="checkbox"/> Libertarian Party	
	<input type="checkbox"/> Natural Law Party		<input checked="" type="checkbox"/> No Party Affiliation		<input type="checkbox"/> Other Party (write in) _____		<input type="checkbox"/> Reform Party	
	<input type="checkbox"/> Republican Party							
9	"I swear or affirm that: • I am a citizen of the United States. • On the date of the next election I will have attained the age of 18 years; • I will have continuously resided in the State of Nevada, in my county at least 30 days and in my precinct at least 10 days before the next election; • The present address listed herein is my sole legal place of residence and I claim no other place as my legal residence, and • I am not laboring under any felony conviction or other loss of civil rights which would make it unlawful for me to vote."							
10	"I declare under penalty of perjury that the foregoing is true and correct." Date Executed: <i>6/24/03</i> SIGNATURE OF APPLICANT REQUIRED—SIGN IN BOX TO THE RIGHT							
11	Name and Address of Your Last Voter Registration						Application Number	
	<i>MICHAEL TRULOGHI 12820 E. SUNDY CR CHANDLER, AZ 85226</i>						<b>AB 36002</b>	
12	Important! If you are assisting a person to register to vote and you are not a field registrar appointed by a County Clerk/Registrar or an employee of a voter registration agency, you MUST complete the following. Failure to do so is a felony.							
	Name	Mailing Address	City/State/Zip Code		Signature			

Carson City Clerk  
885 E. Moyer St., Ste. 1025  
Carson City, NV 89701-4475  
775/987-2987

Churchill County Clerk  
155 N. Taylor St., Ste. 110  
Fallon, NV 89406-2748  
775/423-4028

Clark County Registrar  
500 S. Grand Central Parkway  
PO Box 3989  
Las Vegas, NV 89127-3989  
702/425-0803

Douglas County Clerk  
1504 Esmeralda St.  
PO Box 218  
Minden, NV 89423-0218  
775/782-8023

Elko County Clerk  
571 Idaho St., 3rd Floor  
County Courthouse  
Elko, NV 89801-3700  
775/752-4600

Esmeralda County Clerk  
Corner of Crook & Eschle  
PO Box 547  
Goldfield, NV 89813-0547  
775/485-6367

Eureka County Clerk  
10 S. Main St.  
PO Box 877  
Eureka, NV 89316-0677  
775/237-5262

Humboldt County Clerk  
50 W. 5th St., #207  
Winnemucca, NV 89445-3199  
775/623-6343

Lander County Clerk  
315 S. Humboldt St.  
Battle Mountain, NV 89820-9948  
775/635-5738

Lincoln County Clerk  
1 N. Main St.  
PO Box 30  
Hoehe, NV 89043-0030  
775/952-5360

Lyon County Clerk  
27 S. Main St.  
Yerington, NV 89447  
775/453-0501

Mineral County Clerk  
105 S. "A" St., Ste. 1  
PO Box 1450  
Hawthorne, NV 89631-1450  
775/535-5450

Nye County Clerk  
101 Padel Road  
PO Box 1031  
Tonopah, NV 89049-1031  
775/482-8127

Perkins County Clerk  
388 Main St.  
PO Box 828  
Lovelock, NV 89419-0828  
775/273-2206

Storey County Clerk  
County Courthouse "B" St.  
Drawer "D"  
Virginia City, NV 89440-0139  
775/847-0800

Washoe County Registrar  
1001 E. Ninth St.  
PO Box 11138  
Reno, NV 89520-0027  
775/826-3670

White Pine County Clerk  
Courthouse Complex  
501 Clark St., Ste. 4  
Ely, NV 89301-1994  
775/235-2341

STATE OF NEVADA

JUN 24 2003

VALIDATED

PINK - VOTER'S COPY

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EXHIBIT PAGE ONLY



**EXHIBIT D**

TEMPORARY - STATE OF NEVADA MOTOR VEHICLE LIABILITY INSURANCE CARD

☒ State Farm Mutual Automobile Insurance Company

☐ State Farm Fire and Casualty Company



SUNLAND OFFICE

2700 South Sunland Drive, Tempe, Arizona 85282-3387

CAR-YEAR/MAKE/VEHICLE IDENTIFICATION NUMBER

2000 HONDA ODYSSEY "EX" ODYSSEY

2HKRL1867YH574168

POLICY NUMBER 28 -2209-U32

Name and Address of Insured

EFFECTIVE DATE  
(Not valid for more  
than 60 days from  
effective date.)

TRICARICHI, MICHAEL & BARBARA  
341 ARBOUR GARDEN  
LAS VEGAS, NV 89148

JUL-14-2003

AGENT: WALSER, JEREMY H

PHONE # 702-367-1991

ANY ALTERATION WILL VOID THIS CARD

This card has been approved by the Commissioner of Insurance.

THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE  
FOR PRODUCTION UPON DEMAND. - SEE REVERSE SIDE

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EXHIBIT PAGE ONLY



**EXHIBIT E**

STATE OF NEVADA  
DEPARTMENT OF MOTOR VEHICLES  
RECEIPT

OPERATOR ID: 3087  
LOCATION: FLAMINGO DMV-LV

DATE: 08/13/2003  
TIME: 16:27:44  
F Y: 2004

Super Tran Id : 15900867

Completed Transactions

	<u>Fees</u>	<u>Date Paid</u>
1. STANDARD TITLE FOR 2HKRL1867YH574168/ HOND/ ODYSSEY/ 2000/	\$1,093.36	08-13-2003
TITLE FEE	\$20.00	
LOCAL GOV FULL SALES TAX - CLARK	\$777.26	
GENERAL FUND FULL SALES TAX - CLARK	\$296.10	
2. NEW REGISTRATION FOR 2HKRL1867YH574168/ HOND/ ODYSSEY/ 2000/ LVA409	\$395.00	08-13-2003
LV COMMEMORATIVE PLATE ORIGINAL	\$35.00	
LV COMMEMORATIVE PLATE FUND ORIGINAL	\$25.00	
VIN INSPECTION	\$1.00	
PRISON INDUSTRY FEE	\$1.00	
REGISTRATION FEE - PASSENGER VEHICLES	\$33.00	
BASIC GOV SERVICES TAX - CLARK	\$240.00	
SUPPLEMENTAL GOV SERVICES TAX - CLARK	\$60.00	
Total Fees Due:	\$1,488.36	

Method of Payment

<u>Payment Type</u>	<u>Payment Number</u>	<u>Paid Amount</u>	<u>Date Paid</u>
CHECK	106	\$1,488.36	08-13-2003
Total Fees Paid:		\$1,488.36	

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EXHIBIT PAGE ONLY



**EXHIBIT F**



**Nob Hill Holdings, Inc.**

744 Montgomery Street, 3<sup>rd</sup> Floor  
San Francisco, CA 94111  
(415) 288-9435

July 22, 2003

Michael Tricarichi  
314 Arbour Gardens  
Las Vegas, NV 89148

Re: Purchase of All of the Stock of Westside Cellular

Mr. Tricarichi:

Nob Hill Holdings, Inc., a Delaware corporation ("Purchaser"), is pleased to indicate the principal terms upon which it is prepared to purchase all of the issued and outstanding capital stock (the "Stock") of Westside Cellular, an Ohio corporation (the "Company"), from its sole shareholder ("Seller") pursuant to a stock purchase transaction (the "Share Purchase").

This binding offer is made subject to the terms and conditions set forth below.

Seller: Michael Tricarichi, an individual

Purchaser: Nob Hill Holdings, Inc., a Delaware corporation

Stock to be Purchased: Purchaser will purchase 100% of the issued and outstanding Stock of the Company at the time of the Share Purchase.

Purchase Price: \$34,900,000 in cash (such amount, the "Stock Purchase Price").

Purchase Price Adjustment:

The actual amount of the Stock Purchase Price shall be determined by good faith negotiations by the parties hereto and shall be reflected in the Stock Purchase Agreement as hereinafter defined. The Stock Purchase Price shall be adjusted:

1. upward or downward, as the case may be, by the amount by which the "Available Cash", as defined below, differs from the amount of cash held by the Company at the time of closing, on a dollar for dollar basis; and

2. downward by amount of any undisclosed liability of the Company, which is not contained in this Letter of Intent as of the closing date (the "Undisclosed Liability") on a dollar for dollar basis.

Assets and Liabilities:

1. The Company's assets shall consist of cash held by the Company, after all liabilities (other than local, state and federal income tax liabilities for the current fiscal year) have been paid, or otherwise provided for, by the Company, in the sum of \$40,000,000 (such amount, "Available Cash"); and
2. The Company will have no liabilities other than the liabilities associated with the Company's earned income and capital gains for the fiscal year ending December 31, 2003; provided that, in the event that such liabilities associated with the Company's earned income and capital gains for the fiscal year ending December 31, 2003 are greater than the \$40,000,000 amount previously disclosed to representatives of Purchaser prior to the execution of this Letter of Intent, the Stock Purchase Price shall be adjusted downward proportionately but no such adjustment to the Stock Purchase Price shall be made if such liabilities associated with the Company's earned income and capital gains for the fiscal year ending December 31, 2003 are lower than previously disclosed to representatives of Purchaser.

Stock Purchase Agreement:

Subject to the satisfactory completion of Purchaser's due diligence. Seller and Purchaser will enter into a definitive agreement (the "Stock Purchase Agreement").

The Stock Purchase Agreement shall contain representations, warranties, covenants and indemnities in form and substance satisfactory to Purchaser and Seller, including (without limitation):

1. Representations, warranties and covenants by Seller in favor of Purchaser (all of which shall not be assignable by Purchaser) including:
  - a. organization, qualification, and corporate power and authority of the Company;

- b. capitalization of the Company;
  - c. disclosure of subsidiaries of the Company, if any;
  - d. title to and liens on assets of the Company;
  - e. lack of litigation involving the Company; and
  - f. covenant regarding cooperation with Purchaser's financing source.
- 2. Representations, warranties and covenants by Purchaser in favor of Seller including:
  - a. organization, qualification, and corporate power and authority of Purchaser; and
  - b. lack of litigation involving Purchaser.

Conditions Precedent:

The obligation of Purchaser to consummate the Stock Purchase Agreement shall be subject to the following additional conditions precedent:

- 1. As of the Closing Date, the description of the assets and liabilities of the Company as set forth in the Stock Purchase Agreement will be accurate in all material respects;
- 2. As of the Closing Date, the Company will not have any material contracts, commitments, guarantees, or contingent or other liabilities, except for those specifically identified in the Stock Purchase Agreement;
- 3. On or prior to the Closing Date, all consents or waivers required in connection with the transactions contemplated hereby will have been obtained;
- 4. As of the Closing Date, there will be no legal actions or other proceedings, which seek to enjoin, arise out of or otherwise relate to the purchase or sale of the Stock or any other transactions contemplated hereby;
- 5. Purchaser will have secured financing for the Stock Purchase Price;

6. As of the Closing Date, Sellers shall draft and submit, and all parties must agree on, a pro forma federal tax return of the Company for the period from January 1, 2003 through the Closing Date; and
7. Agreement on the terms of the Stock Purchase Agreement.

Indemnifications:

Seller shall indemnify Purchaser for any and all liabilities of the Company arising prior to the Closing Date (other than taxes due for the current fiscal year), and for any non-compliance with the representations and warranties set forth in the definitive Stock Purchase Agreement. Purchaser shall indemnify Seller for any and all liabilities of the Company arising on or after the Closing Date, and for non-compliance with the representations and authority set forth in the definitive Stock Purchase Agreement.

Due Diligence:

Seller agrees to promptly provide Purchaser with all requested information to enable Purchaser to conduct a due diligence review of the corporate, financial, accounting and legal records of the Company. Purchaser agrees to begin such review promptly after the execution of this Letter of Intent. Purchaser agrees to promptly provide Seller with all requested information to enable Seller to conduct a due diligence review of the corporate, financial, tax, county and legal records of Purchaser. Seller agrees to begin such review promptly after the execution of this Letter of Intent.

Other Negotiations:

Seller represents and warrants that it is not negotiating with any other party for the sale of the Stock of the Company and agrees that it will not, before August 31, 2003, negotiate for the sale of or offer to sell the Stock of the Company to any other party without Purchaser's consent.

Transaction Costs:

Seller will pay all filing and transfer fees with respect to the transfer of the shares of the Company. Each party is responsible for the fees of its own counsel and other costs applicable to this transaction.

Notwithstanding the foregoing, Seller has simultaneously deposited herewith the sum of \$50,000 with the Purchaser's attorney's escrow account. Seller agrees to compensate Purchaser for all reasonable professional costs (including but not limited to legal and accounting costs), up to a maximum amount of \$50,000, if the transaction fails to close based on factors within Seller's control (assuming no changes in the Purchase Price and other material terms of this Letter of Intent). In

addition, Purchaser agrees to compensate Seller for all reasonable professional costs (including but not limited to legal and accounting costs), up to a maximum amount of \$50,000, if the transaction fails to close based on factors within Purchaser's control (assuming no changes in the material terms of this Letter of Intent); provided that, for purposes of this sentence, if Purchaser requests any adjustment(s) to the Stock Purchase Price or related change(s) to the terms of this Letter Intent as the result of information discovered during Purchaser's due diligence review of the Company and Seller refuses to agree to such changes such that the transaction fails to close, this shall not be deemed a failure to close the transaction that is based upon factors within Purchaser's control.

Transaction Schedule:

Sign Term Sheet:	July 23, 2003
Complete Due Diligence:	August 4, 2003 or earlier
Sign Stock Purchase Agreement:	August 15, 2003 or earlier
Close Transaction:	August 15, 2003 or earlier

Additional Provisions:

1. This Letter of Intent may be signed in one or more counterparts and by facsimile.
2. The parties hereto shall cooperate with Purchaser's lender or financing sources for the contemplated transaction with respect to all of such lender's commercially reasonable requests.
3. This Letter of Intent may be amended only by a written agreement signed by each party.
4. This Letter of Intent contains the entire understanding of the parties regarding the subject matter of this Letter of Intent and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Letter of Intent.

(Remainder of page intentionally left blank; signature page follows.)

If you are in accord with the foregoing terms, kindly sign the enclosed copy of this letter and return same to the undersigned's attention at your earliest opportunity.

Very truly yours,

Nob Hill Holdings, Inc.

By: \_\_\_\_\_  
Tim Conn  
Manager

Above Confirmed & Agreed by:

Michael Tricarichi

\_\_\_\_\_

[SIGNATURE PAGE TO LETTER OF INTENT]

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**EXHIBIT G**



**F O R T R E N D**  
**I N T E R N A T I O N A L**

August 13, 2003

Sent Via Email: [Chris.Kortlandt@nyc.rabobank.com](mailto:Chris.Kortlandt@nyc.rabobank.com)

Chris G. Kortlandt, Executive Director  
Corporate Finance Officer  
Rabobank New York Branch  
245 Park Avenue  
New York, New York 10167-0062

Re: West Side Cellular

Dear Chris:

This letter will set forth the basic information concerning the acquisition of West Side Cellular, Inc. ("CellNet"), an Ohio corporation, by our client Nob Hill Holdings, Inc. ("Nob Hill"), a Delaware corporation.

Nob Hill will purchase 100% of the stock of CellNet from its sole shareholder, Michael Tricarichi ("Seller"), an individual, pursuant to a stock purchase transaction (the "Share Purchase"). The Share Purchase is scheduled to close on August 27, 2003.

Nob Hill will purchase 100% of the stock of CellNet for a purchase price of approximately \$34.9M (the "Stock Purchase Price"). Nob Hill intends to continue various investment strategies through this corporation for a number of years. CellNet will be re-engineered to enter into the business of investing in, collecting and reinvesting in distressed receivables, including certain cellular phone receivables currently held by CellNet. CellNet will purchase suitable debt instruments and engage in various related aspects of the asset recovery business. Nob Hill's analysis indicates that the new business shall be profitable and is expected to show a positive cumulative internal rate of return over an extended period of time. Accordingly, both Nob Hill and CellNet believe that the new line of business will result in economic profitability for both Nob Hill and CellNet. In order to acquire CellNet and pursue this business strategy, Nob Hill is seeking a short-term loan of \$29.9M from Rabobank. Nob Hill has cash in the amount of \$5M, which it will deposit in a new account with Rabobank prior to closing.

On the date that Nob Hill purchases CellNet, the only assets of CellNet will be cash in the amount of \$40M realized from the settlement of litigation ("Available Cash") and certain accounts receivable from cell phone customers. There will be no liabilities at closing.

Immediately prior to the Share Purchase, Seller will transfer all of CellNet's cash assets to a new account at Rabobank. Nob Hill will have opened an account at Rabobank and deposited its \$5M; the loan funds will be transferred into that account. On the closing date, Rabobank, on behalf of Nob Hill, will transfer \$34.9M to Seller, and Seller will relinquish control of CellNet's bank account to Nob Hill. Immediately thereafter, Nob Hill will satisfy the loan and fees to Rabobank.

Additional information concerning Nob Hill and CellNet is as follows:

Acquiring Entity: Nob Hill Holdings, Inc.  
Delaware corporation  
Formed: November 15, 2001  
Attn: John P. McNabola, President

FORTREND INTERNATIONAL, LLC  
220 JACKSON STREET  
3<sup>RD</sup> FLOOR  
SAN FRANCISCO, CA 94111  
TEL - (415) 986 - 2940 • FAX - (415) 394 - 9730

NEW YORK • ATLANTA • SAN FRANCISCO • MIAMI • MELBOURNE

EXHIBIT 34-J  
Docket No. 23630-12  
Page 1 of 2

**RABO-F- 0005525**

APP1526

**F O R T R E N D**

**I N T E R N A T I O N A L**

Address: 50 Francisco Street  
San Francisco, CA 94133  
Phone: (415) 591-0100 ext. 594 / Fax: (415) 399-9212

Shareholders: Millennium Recovery Fund  
c/o John P. McNabola, Director  
50 Francisco Street  
San Francisco, CA 94133  
Attn: John P. McNabola, President  
Phone: (415) 591-0100 ext. 594 / Fax: (415) 399-9212

Counsel: Charles Klink  
Klink & Associates  
1734 Granville Ave., #6  
Los Angeles, CA 90025  
Phone: (310) 979-0922 / Fax: (310) 979-0180

Target Company: Westside Cellular  
Ohio corporation  
Formed: March 14, 1988  
Attn: - Michael Tricarichi - President

Address: 23632 Mercantile Road  
Beachwood, Ohio

Counsel: Hahn Loeser & Parks  
330 BP Tower  
Cleveland, Ohio 44114-2031  
Randy J. Hart, Esq.  
Phone: (216) 274-2410 / Fax: (216) 274-2511  
Cell: (216) 978-9150  
[rihart@hahnlaw.com](mailto:rihart@hahnlaw.com)

Shareholder: Michael Tricarichi  
314 Arbour Gardens  
Las Vegas, Nevada 89148

Please give me a call at your earliest convenience to discuss the process of loan approval and the various documents required.

Very truly yours,



Alice Dill Wendland

cc: Charles Klink, Esq.

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EXHIBIT 34-J  
Docket No. 23630-12  
Page 2 of 2

**RABO-F- 0005526**

**APP1527**

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**EXHIBIT H**

# DDA Signature Card

Account No.  Date Account Opened



Rabobank  
New York Branch  
245 Park Avenue  
New York, NY 10167-0007 U.S.A.

Name of Company

WEST SIDE CELLULAR, INC.

Address 341 ARBOUR GARDENS

LAS VEGAS, NV 89148

Statement Address

Business

Identification (if a new customer), Introduced By, or Other Account Numbers

Approved By

Will you refer

☐ Yes ☐ No

- ☐ Resolution as to Signing Authority
- ☐ Operation of Account Agreement
- ☐ Partnership Agreement for Opening Account

Tax Identification No.

S.I.C. No.

Telephone No.

415-986-2940

Transferred From

- ☐ Other Bank
- ☐ Other Financial Institution
- ☐ Employer's Effort (initial)
- ☐ Depositor's Request

**Rabobank  
International**

*Title of Account please print or type*

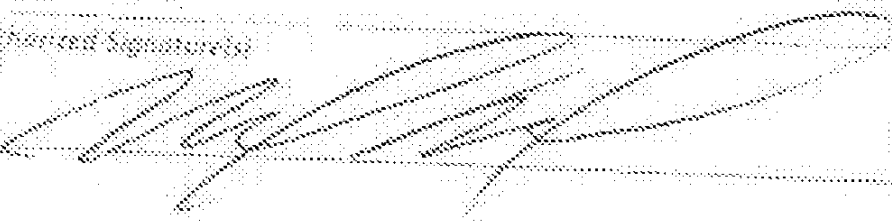
WEST SIDE CELLULAR, INC.

*Account No.*

*In Account With* Coöperatieve Centrale Raiffeisen-Boerenleenbank, B.A.  
Rabobank Nederland, New York Branch

*You are authorized to mail or to deliver by messenger to during office hours each month statement of our/our checking  
account and certified vouchers. Your customary maintenance charges as effective from time to time may be deducted  
from this account.*

*Authorized Signature(s)*



PRESIDENT & DIRECTOR

## General Resolution

I, the undersigned Secretary of WEST SIDE CELLULAR, INC.  
(Exact Name of Corporation)

a corporation duly organized and existing under the laws of OHIO  
(Name of State where Incorporated)

and having its principal place of business in LAS VEGAS, NV hereby CERTIFY  
(Name of City or Town and State)

that the following is a true copy of a certain resolution duly adopted by the Board of Directors of the said corporation in accordance with its By Laws at, and recorded in the minutes of, a meeting of the said Board duly held on

AUGUST 19TH

(Date of Meeting)

2003 and not subsequently rescinded or modified

## Resolved

1. That COÖPERATIEVE CENTRALE RAFFESBIN-BOERENLEENDANK B.A., "TABOBANK NEDERLAND", NEW YORK BRANCH (hereinafter called the "Bank") be and hereby is designated a Depository of Funds of this Corporation, and

MICHAEL TRICARICHI, PRESIDENT AND DIRECTOR

(If officer(s), designate officer(s) only, for example, President, Treasurer, etc.; if person(s) other than officer(s), insert name(s).)

(If two or more are designated, indicate whether they are to sign singly, any two, jointly or otherwise.)

is (are) hereby authorized to sign for and on behalf of this Corporation, any and all checks, drafts and other orders with respect to any funds at any time(s) to the credit of this Corporation with the Bank and/or against any account(s) of this Corporation maintained at any time(s) with the Bank, inclusive of any such checks, drafts and other orders in favor of any of the above designated officer(s) and/or other person(s), and to enter into one or more agreements with the Bank concerning the operation of the account or the person executing such agreement shall deem appropriate and that the Bank be and hereby is authorized (a) to pay the same to the debit of any account(s) of this Corporation then maintained with it; (b) to receive for deposit to the credit of this Corporation and/or for collection for the account of this Corporation, any and all checks, drafts, notes and other instruments for the payment of money, whether or not endorsed by this Corporation, which may be submitted to it for such deposit and/or collection, it being understood that each such item shall be deemed to have been unqualifiedly endorsed by this Corporation, and (c) to receive, as the act of this Corporation, any and all stop payment instructions (inclusive of any relative agreement) with respect to any such checks, drafts and other orders as aforesaid and reconciliation(s) of account when signed by any one or more of the officer(s) and/or other person(s) as hereinbefore designated.

2. That MICHAEL TRICARICHI, PRESIDENT AND DIRECTOR

(If officer(s), designate officer(s) only, for example, President, Treasurer, etc.; if person(s) other than officer(s), insert name(s).)

(If two or more are designated, indicate whether they are to sign singly, any two, jointly or otherwise.)

is (are) hereby authorized, for and on behalf of this Corporation, to transact any and all other business with or through the Bank which at any time(s) may be deemed by the said officer(s) and/or other person(s) transacting the same to be advisable, including, without limiting the generality of the foregoing, authority to: (a) discount and/or negotiate notes, drafts and other commercial paper; (b) apply for letters of credit; (c) borrow money, with or without security; (d) assign, transfer, pledge or otherwise hypothecate any property of the Corporation; (e) purchase, exchange, sell or otherwise deal in or with any stocks, bonds and other securities; (f) execute and deliver automated customer services agreements and agreements relative to performance of various computer services; (g) enter into contracts orally or in writing for the purchase and/or sale of foreign exchange (spot or forward) and enter into contracts orally or in writing for any rate swap, commodity swap, equity swap, interest rate option, cap, collar, floor, currency swap or similar transaction including any option with respect to any of these transactions) and give oral instructions regarding payments in settlement of any of the foregoing, and (h) in reference to any of the business or transactions hereinbefore in this subdivision "2" referred to, make, enter into, execute and deliver to the Bank such negotiable or non-negotiable instruments, indemnity and other agreements, confirmations, obligations, assignments, endorsements, hypothecations, security agreements, financing statements, pledges, receipts and/or other documents as may be deemed by the officer(s) and/or other person(s) acting to be necessary or desirable.

3. That any and all withdrawals of money and/or other transactions heretofore had in behalf of this Corporation with the Bank are hereby ratified, confirmed and approved, and that the Bank (and any interested third party) may rely upon the authority conferred by this entire resolution unless, and except to the extent that, this resolution shall be revoked or modified by a subsequent resolution of the board, and until a certified copy of such subsequent resolution has been received by the Bank.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Corporation this

19<sup>TH</sup>

day of AUGUST

2003

Secretary

•

(Corporate Seal)

Note: If the Secretary signing the above certificate is one of the officers authorized to sign, the President of the Corporation should complete the following additional certificate:

I, the undersigned President of the Corporation named above, do hereby certify that the person who executed the foregoing certificate is the duly elected Secretary of the Corporation and that such certificate is accurate in all respects.

Dated

AUGUST 19<sup>TH</sup>

2003

President

•



## Names of Directors and Officers

To:

Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A.,

"Rabobank Nederland",

New York Branch

245 Park Avenue

New York, NY 10167-0062 U.S.A.



I hereby certify the following to be the Directors and Officers of

WEST SIDE CELLULAR, INC.

(the "Corporation")

(Name of Corporation)

namely:

Directors:

MICHAEL TRICARICH

Officers:

Title

PRES., DIRECTOR

Name

MICHAEL TRICARICH

THE CORPORATION HEREBY undertakes to notify you of any changes in its directors or officers, and of any changes in its by-laws or its Articles of Incorporation or any other document respecting the authority of directors, officers or agents to sign on its behalf. You may assume that the above named are the directors and officers of the Corporation and in charge of its affairs and that its by-laws and resolutions of which you hold copies are in full force and effect, until you are notified in writing to the contrary.

Dated at SAN FRANCISCO

this 19<sup>TH</sup>

day of AUGUST

2003

(Affix Corporate Seal)

Secretary

## Operation of Account Agreement



The UNDERSIGNED ("Customer") for good and valuable consideration agrees with Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank Nederland" ("Bank") that the operation of each account ("Account") the Customer now or hereafter has with the Bank at any of its branches or agencies and the carrying on of other banking business by the Customer with the Bank at any of its branches or agencies shall be subject to the following terms and conditions:

### 1. Waiver of Protest

Subject to instructions given to the Bank in writing by the Customer, the Customer waives in favor of the Bank presentment, notice of dishonor and protest of all bills of exchange, promissory notes, checks, orders for payment of money, security, coupons, notes (all or any of which are hereinafter collectively or separately referred to as "instruments" or "instrument" as the case may be) drawn, made, accepted or endorsed by the Customer and now or hereafter delivered to the Bank at any of its branches or agencies for any purpose. The Customer shall remain liable to the Bank as if presentment, notice of dishonor and protest had been duly made or given. The Bank may note or protest any instrument because of any endorsement other than that of the Customer or for any other reason if the Bank, in its discretion, considers it in the best interest of the Customer or the Bank. The Bank will not, in any circumstances, be responsible or liable for failure or omission to note or protest any instrument.

### 2. Use of Agents

The Bank may use the services of any bank or agent as it may deem advisable in connection with any banking business of the Customer. Such bank or agent is deemed to be the agent of the Customer, and the Bank will not, in any circumstances, be responsible or liable to the Customer by reason of any act or omission of such bank or agent, however caused, in the performance of such services or by reason of the loss, theft, destruction or delayed delivery of any instrument while in transit to or from, or in the possession of, such bank or agent.

### 3. Authority to Charge Accounts

#### (a) For Instruments Drawn on Accounts

The Bank may charge the Account with the amount of any instrument payable by the Customer at any branch or agency of the Bank.

#### (b) Unpaid Instruments

The Bank may charge against the Account the amount of any instrument cashed or negotiated by the Bank for the Customer or credited to the account for which payment is not received by the Bank and to charge the Account with the amount of any other indebtedness or liability of the Customer to the Bank.

Any expenses incurred by the Bank in connection with paying a dishonored or unpaid instrument may be charged to the Account. The Customer is liable to the Bank for the amount charged and will pay on demand any overdraft, together with interest thereon at the interest rate charged by the Bank from time to time for overdrafts. Notwithstanding such charging, all rights and remedies of the Bank against all parties are preserved. No charging of unpaid instruments shall be deemed to be payment of such instruments.

#### (c) Lost or Stolen Instruments

Should any instrument received by the Bank for the account of the Customer by way of deposit, discount, collection or otherwise be lost or stolen or otherwise disappear from any cause whatsoever other than negligence on the part of the Bank, the Bank may charge the Account with the amount of such instrument, and the Customer agrees to pay the same.

#### (d) For Operation of Account

The Bank may make a reasonable service charge against the Account for the operation of the Account and may debit the Account from time to time with the amount of such charge.

#### (e) Multiple Accounts

If the Customer shall have more than one Account, and if there should be insufficient funds in an Account to pay an instrument drawn against such Account or to pay any other amount which the Bank may charge against such Account, the Bank is authorized to pay such instrument or charge out of any other Account of the Customer at any branch or agency of the Bank.

### 4. Use of Checks

The Customer will draw encoded checks only on the Account for which the checks are encoded. The Bank will not be liable in any circumstances for any loss or damage arising from the wrongful acceptance of a check, or wrongful refusal by the Bank to honor a check drawn by the Customer on an Account other than the Account for which the check is encoded.

**Rabobank**

5. **Verification of Account**

Upon the receipt from the Bank of a statement of the Account together with checks and other vouchers for amounts charged to the Account appearing therein, the Customer will examine the said checks and check the credit and debit entries in the said statement, and within thirty days of the delivery thereof to the Customer or, if the Customer has instructed the Bank to mail the said statement and checks, within thirty days of the mailing thereof to the Customer, will notify the Bank in writing of any errors, irregularities or omissions therein or therefrom, and at the expiration of the said thirty days (except as to any errors, irregularities or omissions of which the Bank has been so notified and except as to payments made on forged or unauthorized endorsements) it shall be conclusively settled as between the Bank and the Customer that such statement and the amount of the balance shown thereon is correct and the said checks and vouchers are genuine and properly chargeable to and charged against the Account and that the Customer was not entitled to be credited with any sum not credited in the said statement.

6. **Mailing**

The Customer instructs the Bank to mail to the Customer at the Customer's address recorded on the books of the Bank a statement of the Account together with checks for amounts charged to the Account. These instructions will continue in force until contrary instructions in writing are received by the Bank from the Customer. The Customer will advise the Bank promptly if the statement has not been received within ten days of the date upon which it is normally received.

7. **Statement of Printed Endorsements**

The Customer, having adopted a rubber stamped and/or printed endorsement, authorizes the Bank to accept an impression of the said stamp or other similar stamp or the printed endorsement as a sufficient endorsement by the Customer on all instruments deposited to the credit of the account of the Customer at the Bank or which may from time to time be pledged as collateral security by the Customer or discounted by the Bank for the account of the Customer. The Customer shall be bound by all such stamped or printed endorsements as amply and effectually as if such endorsements were written by or with the authority of the Customer, and the Customer shall fully indemnify and hold harmless the Bank and its employees and agents at all times from all claims and demands in respect of all instruments bearing such stamped or printed endorsements, whether by reason of such stamped or printed endorsement having been made without authority or otherwise.

8. **No FDIC Insurance**

Deposits held by the Bank for the Customer are not insured by the Federal Deposit Insurance Corporation (FDIC).

9. **This Agreement shall be Governed by the Laws of the State of New York without giving effect to any conflict of law principles.**

Dated

AUGUST 19TH 2003

Name of Customer

WEST SIDE CELLULAR, INC.

(By) Signature

(His) Title

PRESIDENT + DIRECTOR

# Request for Taxpayer Identification Number and Certification

Give form to the  
requester. Do not  
send to the IRS.

Name (See Specific Instructions on page 2)  
**WEST SIDE CELLULAR, INC.**

Business name, if different from above. (See Specific Instructions on page 2.)

Check appropriate box:  
☐ Individual sole proprietor  
☒ Corporation  
☐ Partnership  
☐ Other

Address (number, street, and apt. or suite no.)  
**341 ARBOUR GARDENS**

City, state, and ZIP code  
**LAS VEGAS, NV 89148**

Requester's name and address (optional)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 2.

Enter your TIN in the appropriate box:  
Social security number  
or  
Employer identification number

List all accounts numbered here (optional)

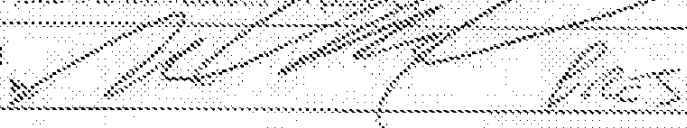
**For U.S. Payees Exempt From Backup Withholding** (See the instructions on page 2.)

## Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number or I am waiting for a number to be issued to me, and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. person (including a U.S. resident alien).

Certification instructions: You must check out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions.)

Sign Here: Signature of U.S. person  Date: **8/19/03**

### Purpose of Form

A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien) to give your correct TIN to the person requesting a line request, and, when applicable, to:

1. Certify the TIN you are giving is correct for you, or waiting for a number to be issued.
2. Certify you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

If you are a foreign person, use the appropriate Form W-8. See Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Corporations*.

Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

### What is backup withholding?

Persons making certain payments to you must withhold and pay to the IRS 31% of each payment under certain conditions. This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and dealer exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

If you give the requester your correct TIN, make the proper certification, and report all your taxable interest and dividends on your tax return, payments you receive will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or
2. You do not certify your TIN when required (see the Part III instructions on page 2 for details), or
3. The IRS tells the requester that you furnished an incorrect TIN, or
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return the reportable interest and dividends only, or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above for reportable interest and dividend accounts opened after 1983 (see).

### Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Abuse of TINs. If the requester misuses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

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EXHIBIT PAGE ONLY



**EXHIBIT I**

**Nob Hill Holdings, Inc.**

50 Francisco Street  
San Francisco, CA 94133  
(415) 591-0100

August 28, 2003

Michael Tricarichi  
341 Arbour Gardens  
Las Vegas, NV 89148

Re: First Amendment to the Letter of Intent

Reference is made herein to that certain Letter of Intent dated July 22, 2003 (the "Letter of Intent") by and between Nob Hill Holdings, Inc. ("Purchaser") and yourself, as sole shareholder (in such capacity, "Seller") of West Side Cellular, Inc.. This letter shall serve to amend the paragraph entitled "Other Negotiations" of the Letter of Intent by extending the exclusivity period referred to therein through and including September 15, 2003. Except as set forth in the preceding sentence, all other terms, conditions and provisions of the Letter of Intent shall not be amended or otherwise modified and shall remain in full force and effect.

This letter may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same agreement.

*(Remainder of the page intentionally left blank; signature page follows)*

Michael Tricarichi  
August 28, 2003  
page 2

Please confirm your acceptance of the foregoing by signing one copy of this letter where indicated below and return the same to the undersigned's attention at your earliest opportunity.

Very truly yours,

NOB HILL HOLDINGS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Above Confirmed & Agreed by:

MICHAEL TRICARICHI

A handwritten signature in black ink, appearing to read 'Michael Tricarichi', is written over a horizontal line.



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EXHIBIT PAGE ONLY



**EXHIBIT J**

## Credit Application

Reference

MFAid

**SUMMARY** Credit report dated August 29, 2003 by Chris Kortlandt of Corporate Finance NY.

Ultimate Parent

WWID

Client

Nob Hill Holdings, Inc ("Nob Hill"), a Delaware company.

WWID

Business

Acquisition Finance

SIC

Application

Approve an up to 30 day, USD29.9mm secured loan to Nob Hill to complete a Stock Purchase Agreement between Nob Hill and the shareholders West Side Cellular, Inc ("CellNet") owned by Michael Tricarichi, a US individual.

Next internal review date

N/A

Purpose

To allow Nob Hill to purchase 100% of the stock of CellNet, the target company, for approximately \$34.9mm. After the acquisition CellNet will be re-engineered to enter into the business of investing in, collecting and re-investing in distressed receivables, including certain cellular phone receivables currently held by CellNet.

Exposure Client

Existing:

Incl. Application:

Principal

USD 29,900,000

Exposure Group

Country of Risk (ISO)

USA

Existing Protection

N/A

New/Changes in Protection

Pledge of the Rabobank account of our borrower, Nob Hill, and West Side Cellular, Inc., with cash balances in excess of USD 38 mm (held at Rabobank in New York) to transfer those balances from West Side Cellular to Nob Hill (which funds will be used to pay-off our loan).

Alternatively, we will receive irrevocable payment instructions from an acceptable financial institution to transfer cash balances of USD 38 mm to our borrower, which funds will be immediately used to pay-off our loan (also by way of irrevocable payment instructions). In such case, we will obtain, separately, a limit allocation to cover the bank risk.

Rabobank Risk Rating

N/A, or based on collateral:R-1 (cash)

Rating Date

August 29, 2003

1

EXHIBIT 35-J

Docket No. 23630-12

Page 1 of 6

RABO-F- 0005528

## Credit Application

Reference

MFA id

**SUMMARY** Credit report dated August 29, 2003 by Chris Kortlandt of Corporate Finance NY.

Ultimate Parent

WWID

Client

Nob Hill Holdings, Inc ("Nob Hill"); a Delaware company.

WWID

Business

Acquisition Finance

SIC

Application

Approve an up to 30 day, USD29.9mm secured loan to Nob Hill to complete a Stock Purchase Agreement between Nob Hill and the shareholders West Side Cellular, Inc ("CellNet") owned by Michael Tricarichi, a US individual.

Next internal review date

N/A

Purpose

To allow Nob Hill to purchase 100% of the stock of CellNet, the target company, for approximately \$34.9mm. After the acquisition CellNet will be re-engineered to enter into the business of investing in, collecting and re-investing in distressed receivables, including certain cellular phone receivables currently held by CellNet.

Exposure Client

Existing

Incl Application

Principal

USD 29,900,000

Exposure Group

Country of Risk (ISO)

USA

Existing Protection

N/A

New/Changes in Protection

Pledge of the Rabobank account of our borrower, Nob Hill, and West Side Cellular, Inc., with cash balances in excess of USD 38 mm (held at Rabobank in New York) to transfer those balances from West Side Cellular to Nob Hill (which funds will be used to pay-off our loan).

Alternatively, we will receive irrevocable payment instructions from an acceptable financial institution to transfer cash balances of USD 38 mm to our borrower, which funds will be immediately used to pay-off our loan (also by way of irrevocable payment instructions). In such case, we will obtain, separately, a limit allocation to cover the bank risk.

Rabobank Risk Rating

N/A, or based on collateral: R-1 (cash)

Rating Date

August 29, 2003

1

EXHIBIT 35-J

Docket No. 23630-12

Page 2 of 6

RABO-F- 0005528

APP1542

Loan Quality  
Classification Good

Loan Loss Provision

Public Risk Score N/A

Listed/Exchange N/A

Use of Rabobank  
Facilities

Return on Solvency (RoS) Infinite

Solvency Use 0

*Executive summary*

This transaction was referred to us by Fortrend International LLC. The Fortrend group is an investment banking firm specializing in structuring economic transactions to solve specific corporate and estate or accounting issues. Fortrend and its affiliates have acted as principal or investment banker in numerous transactions, ranging from \$10MM to in excess of \$1 billion in assets.

We have entered into various acquisition financing transactions with Fortrend over the past five years, all of which have been concluded satisfactorily. Rabobank has been offered the opportunity to assist in the acquisition financing of a transaction for Fortrend.

Rabobank has been offered the opportunity to assist in the completion of a stock purchase transaction for Nob Hill. Rabobank's role will be that of a lending bank to the acquirers.

Opinion CAM,  
Underwriting Committee

Decision SAC

Decision Local Credit  
Committee

Opinion IAD

Decision CCI/CRCRG

Decision Executive Board

## II. CLIENT INFORMATION

### A. GENERAL

*Name Borrower/Guarantor:*

Nob Hill Holdings, Inc., Delaware

*Business:*

Structured Finance

*Management & Organisation:*

John P. McNabola, president

*Shareholders*

Millenium Recovery Funds, with John P McNabola as Director

*Application*

*Facility*

Approve an up to 30 day secured loan for an amount up to USD29.9mm

*Purpose:*

To allow Nob Hill to purchase the stock "CellNet". The only assets of CellNet are cash in excess of \$38mm, resulting from a settlement of litigation, and certain accounts receivable from cell phone customers. At closing there will be no liabilities outstanding. Scheduled closing date: first week of September.

*Repayment/Maturity:*

Although the loan will be provided for up to 30 days, it is expected to be repaid in approximately a week.

*Fee:*

Up front fee of USD125,000

*Interest:*

Rabobank's Base Rate

*Protection:*

Pledge of the Rabobank account of our borrower, Nob Hill, and pledge of the CellNet account, and irrevocable payment instructions executed by the newly acquired subsidiary CellNet, with cash balances in excess of USD 38 mm (held at Rabobank in New York) to transfer those balances to Nob Hill (which funds will be used to pay-off our loan).

Alternatively, we will receive irrevocable payment instructions from an acceptable financial institution to transfer cash balances of USD 38 mm to our borrower, which funds will be immediately used to pay-off our loan (also by way of irrevocable payment instructions) in full. If the irrevocable payment instruction option is used, and funds are not deposited with Rabobank, we will obtain, separately, a limit allocation to cover the bank risk.

At all times will the loan amount be covered by cash in the pledged account, and the irrevocable payment instructions. The total amount will be more than sufficient to cover our loan, interest and fees.

Rabobank's role: Lender providing funds to Nob Hill, which will enable them to effect a Stock Purchase Agreement.

Country Risk: USA

#### *General Comments*

The transaction is contemplated as follows:

- A Delaware company, Nob Hill, borrows from Rabobank an amount of up to USD 29.9 mm. Together with \$5mm in cash deposited in the Nob Hill account at Rabobank, our client will use the total amount to purchase the shares of West Side Cellular, Inc.
- Prior to Rabobank advancing the loan, West Side Cellular has either (i) placed an amount of USD 38 mm in an account held at Rabobank, and has provided us with irrevocable payment instructions to transfer the funds to Nob Hill, or (ii) has provided us with irrevocable payment instructions, accepted and agreed, by an acceptable financial institution, to transfer an amount of USD 38 mm to Rabobank. The instructions are to pay the USD 38 mm to Rabobank as lender.
- The amount of USD 38 mm in the CellNet account or the irrevocable wire instructions, will be used to repay our loan in full.

West Side Cellular, Inc. is an Ohio company owned by Michael Tricarichi, a US individual.

#### **B FINANCIAL ANALYSIS**

N/A

#### **III CLIENT RELATIONSHIP ASPECTS**

##### *Protection*

Pledge of the Rabobank account of our borrower, Nob Hill and West Side Cellular, and irrevocable payment instructions to transfer the cash balances of USD 38mm in the West Side Cellular account to Nob Hill. Alternatively, we will receive irrevocable payment instructions from an acceptable financial institution to transfer USD 38 mm to Rabobank.

The Legal Department in New York will adequately address the documentation and reputation risk.

All the Know-Your-Customer guidelines will be followed.

*Relationship aspects*

Nob Hill Holdings, Inc is a Delaware company formed in November 2001 but has not been used by Fortrend International until now. The company will be used for the purpose of completing this transaction. The principals of Fortrend are highly regarded and well known to Shearman & Sterling, a law firm that has represented Rabobank in numerous financings. Our experience with Fortrend has been highly satisfactory, with the dozens of transactions we have concluded to date.

*Concluding remarks*

R-1, due to the fact that our loan will at all times be cash collateralized or covered by irrevocable payment instruction.

Prepared by:   
Chris Kortlandt  
Structured Finance NY

Supported by:   
Raymond Gagne  
Credit Department NY

Supported by: \_\_\_\_\_  
J.W. den Baas  
Structured Finance NY

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EXHIBIT PAGE ONLY



**EXHIBIT K**



**Internal Memorandum**



**Rabobank**  
New York Branch

**To:** Distribution  
**From:** Moyeen Lagman  
**Subject:** NYCC of August 29, 2003  
**Date:** August 29, 2003

Following are the results of today's meeting, which was chaired by Hans Hannaart, with Ian Reece and Ned Peyser. Please make the requested changes and return the final versions to me as soon as possible.

Applications:

(NON-RESPONSIVE INFORMATION  
REDACTED)

Nob Hill Holdings – Approved. RR rating should be N.A. NYCC asked that the "Know Your Customer" policy and compliance with the Dutch Central Bank ruling on back-to-back transactions should be addressed in all future applications for this type of transaction.

**Rabobank**  
**International**

**RABO-F- 000554**

EXHIBIT  
Docket No. 23630-12  
Page 1 of 1

**ADMIN\_TRI00299**

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EXHIBIT PAGE ONLY



**EXHIBIT L**

*Internal Memorandum*



Rabobank Nederland  
New York Branch

To: File  
From: Chris Kortlandt  
Subject: Nob Hill closing  
Date: September 8, 2003

Nob Hill Holdings, Inc has to transfer the purchase price to the Sellers of West Side cellular, Inc. However, in order for Rabobank to execute the wire transfer (financed by Rabobank), we want to make sure that the Sellers of West Side Cellular, Inc. resign their positions in West Side Cellular, Inc, including the West Side cellular account signatories.

West Side Cellular is only willing to resign upon their confirmation of receipt of the purchase price. Rabobank is only willing to release funds upon Rabo's execution of the transfer (not receipt by the other party).

In order to accommodate the closing, which works for all parties involved, client will set up an escrow account at Rabobank. The purchase price will go into that account first, and then the Sellers of West Side Cellular, Inc. will resign their positions in West Side Cellular, Inc, including the West Side cellular account signatories.

After that Rabobank will receive an instruction to transfer the funds out of this escrow account.

**Rabobank**

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EXHIBIT PAGE ONLY



**EXHIBIT M**

09/08/03 FRI 15:48 FAX 212 808 2584

RABO CORP FIN NY

003

**DDA Signature Card**

Account No.

Date Account Opened



Rabobank Nederland  
New York Branch  
201 Park Avenue  
New York, NY 10167-0002 U.S.A.

Home of Company

MICHAEL TRICARICHI, ESCROW ACCOUNT

Address

341 BEDOUK GARDENS AVE, LAS VEGAS, NV 89148

Statement Address

SAME

Business

Identification (if a new document, introduced by, or Other Account Number)

Approved By

Signature Letter  
☐ Yes ☐ No

- ☐ Resolution as to Signing Authority
- ☐ Operation of Account Agreement
- ☐ Partnership Agreement for Opening Account

**Rabobank**

Title of Account (Please print or type)  
MICHAEL TRICARICHI, ESCROW ACCOUNT

Account No.

In Account With

COOPERATIVE CENTRAL BUILDING-ROSENBERG, B.A.  
(Rabobank Nederland), New York Branch

You are authorized to send or to deliver by mail or to deliver by messenger to every address each month, statement of current checking account and certified checks. Your company's responsibility extends as effective from date to date may be deducted from the account.

Authorized Signatures

*[Signature]*

NY 128-94-95

09/05/03 PRI 15:48 FAX 212 608 2884

RABO CORP FIN NY

0004

**General Resolution**I, the undersigned Secretary of MICHAEL TRICARICH ESCROW ACCOUNT

(Exact Name of Corporation)

a corporation duly organized and existing under the laws of NEVADA

(Name of State where incorporated)

and having its principal place of business in 3414ARBOR GARDEN AVE

(Name of City or Town and State)

, hereby CERTIFY

that the following is a true copy of a certain resolution duly adopted by the Board of Directors of the said corporation in accordance with its By-Laws or, and recorded in the minutes of a meeting of the said Board duly held on

9/8/03

(Date of Meeting)

and not subsequently rescinded or modified.

**Resolved**

1. That COOPERATIVE CENTRALE RAUFESSENBOERENBANK B.A., "RABOBANK NEDERLAND", NEW YORK BRANCH (hereinafter called the "Bank") be and hereby is designated a Depository of Funds of this Corporation, and

MICHAEL TRICARICH

(If officer, designate officer(s) only, for example, President, Treasurer, etc.; if person(s) other than officer(s), insert name(s))

(If two or more are designated, indicate whether they are to sign singly, any two, jointly or otherwise.)

is (are) hereby authorized to sign for and on behalf of this Corporation, any and all checks, drafts and other orders with respect to any fund or any thereof to the credit of this Corporation with the Bank and/or against any account(s) of this Corporation maintained at any time(s) with the Bank, inclusive of any such checks, drafts and other orders in favor of any of the above-designated officer(s) and/or other person(s), and to enter into one or more agreements with the Bank concerning the operation of the account as the person executing such agreement shall deem appropriate and that the Bank be and hereby is authorized (a) to pay the same to the credit of any account(s) of this Corporation then maintained with it (b) to receive for deposit for the credit of this Corporation and/or for collection for the account of this Corporation, any and all checks, drafts, notes and other instruments for the payment of money, whether or not endorsed by this Corporation, which may be submitted to it for such deposit and/or collection, it being understood that each such item shall be deemed to have been unqualifiedly endorsed by this Corporation, and (c) to receive, as the act of this Corporation, any and all stop-payment instructions (inclusive of any relative agreement) with respect to any such checks, drafts and other orders as aforesaid and recommendations of account when signed by any one or more of the officer(s) and/or other person(s) as hereinafter designated.

2. That MICHAEL TRICARICH

(If officer(s), designate officer(s) only, for example, President, Treasurer, etc.; if person(s) other than officer(s), insert name(s).)

(If two or more are designated, indicate whether they are to sign singly, any two, jointly or otherwise.)

is (are) hereby authorized, for and on behalf of this Corporation, to transmit any and all other business with or through the Bank which at any time(s) may be deemed by the said officer(s) and/or other person(s) executing the same to be advisable, including, without limiting the generality of the foregoing, authority for (a) discount and/or negotiate notes, drafts and other commercial paper; (b) apply for letters of credit; (c) borrow money, with or without security; (d) assign, transfer, pledge or otherwise hypothecate any property of the Corporation; (e) purchase, exchange, sell or otherwise deal in or with any stock, bonds and other securities; (f) execute and deliver authorized customer service agreements and agreements relative to performance of various computer services; (g) enter into contracts orally or in writing for the purchase and/or sale of foreign exchange (spot or forward) and enter into contracts orally or in writing for any rate swap, commodity swap, equity swap, interest rate option, cap, collar, floor, currency swap or similar transaction (including any option with respect to any of these transactions) and give and instruct regarding payments in settlement of any of the foregoing; and (h) in reference to any of the business or transactions hereinafter in this resolution "I" referred to, make, enter into, execute and deliver to the Bank such negotiable or non-negotiable instruments, indemnity and other agreements, confirmations, obligations, assignments, endorsements, hypothecations, security agreements, financing statements, pledges, receipts and/or other documents as may be deemed by the officer(s) and/or other person(s) so acting to be necessary or desirable.

ATTEST May 03

(continued on reverse side)

09/08/03 MON 15:23 [TX/RX NO 6403]

EXHIBIT 29-J  
Docket No. 23630-12  
Page 2 of 7

RABO-F- 0005481

APP1553

09/08/03 FRI 15:48 FAX 212 608 2584

RABO CORP FIN NY

0005

3. That any and all withdrawals of money and/or other transactions heretofore had by or on behalf of this Corporation with the Bank are hereby ratified, confirmed and approved, and that the Bank (and any interested third party) may rely upon the authority conferred by this ratification resolution unless, and except to the extent that, this resolution shall be rescinded or modified by a subsequent resolution of the Board, and until a certified copy of such subsequent resolution has been received by the Bank.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Corporation this

EIGHTH

day of SEPTEMBER

2003

(Corporate Seal)

Note: If the Secretary signing the above certificate is one of the officers authorized to sign, the President of the Corporation should complete the following additional certification:

I, the undersigned President of the Corporation named above, do hereby certify that the person who executed the foregoing certificate is the duly elected Secretary of the Corporation and that such certificate is accurate in all respects.

Dated

9/8/2003

2003

President



AMZDA May 98

0004

09/05/03 FRI 15:47 FAX 212 608 2584

RABO CORP FIN NY

0007

## Operation of Account Agreement



The UNDERSIGNED ("Customer") for good and valuable consideration agrees with Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank Nederland" ("Bank") that the operation of each account ("account") the Customer now or hereafter has with the Bank at any of its branches or agencies and the carrying on of other banking business by the Customer with the Bank at any of its branches or agencies shall be subject to the following terms and conditions:

### 1. Waiver of Protest

Subject to instructions given to the Bank in writing by the Customer, the Customer waives in favor of the Bank presentment, notice of dishonor and protest of all bills of exchange, promissory notes, checks, orders for payment of money, security, coupons, notes (all or any of which are hereinafter collectively or separately referred to as "instruments" or "instrument" as the case may be) drawn, made, accepted or endorsed by the Customer and now or hereafter delivered to the Bank at any of its branches or agencies for any purpose. The Customer shall remain liable to the Bank as if presentment, notice of dishonor and protest had been duly made or given. The Bank may note or protest any instrument because of any endorsement other than that of the Customer or for any other reason if the Bank, in its discretion, considers it in the best interest of the Customer or the Bank. The Bank will not, in any circumstances, be responsible or liable for failure or omission to note or protest any instrument.

### 2. Use of Agents

The Bank may use the services of any bank or agent as it may deem advisable in connection with any banking business of the Customer. Such bank or agent is deemed to be the agent of the Customer, and the Bank will not, in any circumstances, be responsible or liable to the Customer by reason of any act or omission of such bank or agent, however caused, in the performance of such services or by reason of the loss, theft, destruction or delayed delivery of any instrument while in transit to or from, or in the possession of, such bank or agent.

### 3. Authority to Charge Accounts

#### (a) For Instruments Drawn on Accounts

The Bank may charge the Account with the amount of any instrument payable by the Customer at any branch or agency of the Bank.

#### (b) Unpaid Instruments

The Bank may charge against the Account the amount of any instrument cashed or negotiated by the Bank for the Customer or credited to the account for which payment is not received by the Bank and to charge the Account with the amount of any other indebtedness or liability of the Customer to the Bank.

Any expenses incurred by the Bank in connection with paying a dishonored or unpaid instrument may be charged to the Account. The Customer is liable to the Bank for the amount charged and will pay on demand any overdraft, together with interest thereon at the interest rate charged by the Bank from time to time for overdrafts. Notwithstanding such charging, all rights and remedies of the Bank against all parties are preserved. No charging of unpaid instruments shall be deemed to be payment of such instruments.

#### (c) Lost or Stolen Instruments

Should any instrument received by the Bank for the account of the Customer by way of deposit, discount, collection or otherwise be lost or stolen or otherwise disappear from any cause whatsoever other than negligence on the part of the Bank, the Bank may charge the Account with the amount of such instrument, and the Customer agrees to pay the same.

#### (d) For Operation of Account

The Bank may make a reasonable service charge against the Account for the operation of the Account and may debit the Account from time to time with the amount of such charge.

#### (e) Multiple Accounts

If the Customer shall have more than one Account, and if there should be insufficient funds in an Account to pay an instrument drawn against such Account or to pay any other amount which the Bank may charge against such Account, the Bank is authorized to pay such instrument or charge out of any other Account of the Customer at any branch or agency of the Bank.

### 4. Use of Checks

The Customer will draw encoded checks only on the Account for which the checks are encoded. The Bank will not be liable in any circumstances for any loss or damage arising from the wrongful acceptance of a check, or wrongful refusal by the Bank to honor a check, drawn by the Customer on an Account other than the Account for which the check is encoded.

# Rabobank

(continued on reverse side)

AM204 May '95

EXHIBIT 29-J  
Docket No. 23630-12  
Page 4 of 7

BITTNER/ADEN

09/08/03 MON 10:45 FAX 4154337185

09/08/03 MON 14:46 [TX/RX NO 6402]

RABO-F- 0005483

APP1555



09/08/03 FRI 15:47 FAX 212 608 2584

RABO CORP PIN NY

008

The payment  
will not apply  
if contrary  
instructions  
received by  
the bank.

The bank  
and subject  
to the  
approval  
of the  
customer.

**5. Verification of Account**  
Upon the receipt from the Bank of a statement of the Account together with checks and other vouchers for amounts charged to the Account appearing therein, the Customer will examine the said checks and debit entries in the said statement and, within thirty days of the delivery thereof to the Customer or if the Customer has instructed the Bank to mail the said statement and checks, within thirty days of the mailing thereof to the Customer, will notify the Bank in writing of any error, irregularities or omissions therein or therefrom, and of the upbaiter of the said thirty days except as to any error, irregularities or omissions of which the Bank has been so notified and except as to payments made on forged or unauthorized endorsements it shall be conclusively settled as between the Bank and the Customer that such statement and the amount of the balance shown thereon is correct and the said checks and vouchers are genuine and properly chargeable to and charged against the Account and that the Customer was not notified to be credited with any sum not credited in the said statement.

#### **6. Mailing**

The Customer instructs the Bank to mail to the Customer at the Customer's address recorded on the books of the Bank a statement of the Account together with checks for amounts charged to the Account. These instructions will continue in force until contrary instructions in writing are received by the Bank from the Customer. The Customer will advise the Bank promptly if the statement has not been received within ten days of the date upon which it is normally mailed.

#### **7. Statement of Printed Endorsements**

The Customer, having adopted a rubber stamped endorsement, authorizes the Bank to accept in impression of the said stamp or other similar stamp or the printed endorsement as a sufficient endorsement by the Customer on all instruments deposited to the credit of the account of the Customer at the Bank or which may from time to time be pledged as collateral security by the Customer or disclosed by the Bank for the account of the Customer. The Customer shall be bound by all such stamped or printed endorsements as simply and effectively as if such endorsements were written by or with the authority of the Customer, and the Customer shall fully indemnify and hold harmless the Bank and its employees and agents at all times from all claims and demands in respect of all instruments bearing such stamped or printed endorsements, whether by reason of such stamped or printed endorsements having been made without authority or otherwise.

#### **8. No FDIC Insurance**

Deposits held by the Bank for the Customer are not insured by the Federal Deposit Insurance Corporation (FDIC).

9. This Agreement shall be governed by the Laws of the State of New York without giving effect to any conflict of law principles.

Dated

September 8th, 2003

Name of Customer

MICHAEL TRICACCHI, ESCROW AGENT

(By) Signature



(By) Title

Pres - ESCROW AGENT

ADEN May 20

09/08/03 FRI 15:46 FAX 212 808 2884

RABO CORP FIN NY

006

**Names of Directors and Officers**

To:  
Cobden/Leve Capital Partners-Bankersbank B.A.  
Rabobank Nederland,  
New York Branch  
345 Park Avenue  
New York NY 10107-0001 USA.

I hereby certify the following to be the Directors and Officers of

MICHAEL TRICACCHI ESCROW ACCOUNT

(Name of Corporation)

name(s)  
Director(s)

MICHAEL TRICACCHI

Officers:

Title

MICHAEL TRICACCHI  
ESCROW AGENT

Name

THE CORPORATION HEREBY undertakes to notify you of any changes in the directors or officers, and of any changes in its by-laws or its Articles of Incorporation or any other document respecting the governance of the corporation, officers or agents so sign on its behalf. You may assume that the above named and the director and officer of the Corporation and in change of its officer and that its by-laws and resolutions of which you hold copies are in full force and effect, until you are notified in writing to the contrary.

Dated at SAN FRANCISCO this 8TH day of SEPTEMBER 19 2003

(AND Corporate Seal)

Secretary

Agents May Be

**Rabobank**

0008

09/08/03 FRI 15:47 FAX 212 608 2584

RABO CORP FIN NY

0009

BITNER/ADEN

09/08/03 MON 10:48 FAX 4154337185

Form **W-9**  
(Rev. December 2000)  
Department of the Treasury  
Internal Revenue Service

**Request for Taxpayer  
Identification Number and Certification**

Give forms to the  
requester. Do not  
send to the IRS.

Name (See Specific Instructions on page 2)  
**MICHAEL TRICARICHI ESCROW ACCT**

Check appropriate box ☐ Individual/sole proprietor ☐ Corporation ☐ Partnership ☒ Other - **ESCRW ACCT**

Address (Include street, apt. or suite no.)  
**341 ARBOUR GARDEN AVE**

City, state, and ZIP code  
**LAS VEGAS NV 89148**

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)  
Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 2. *Note: If this account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.*

Social security number  
or  
Employer identification number

Part II For U.S. Payees Exempt From Backup Withholding (See the instructions on page 2)

Part III Certification  
Under penalties of perjury, I certify that:  
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and  
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and  
3. I am a U.S. person (including a U.S. resident alien).  
Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 2.)

Sign Here Signature of U.S. person *[Signature]* Date **9/8/2003**

**Purpose of Form**  
A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.  
Use Form W-9 only if you are a U.S. person (including a resident alien) to give your correct TIN to the person requesting it (the requester) and, when applicable, to:  
1. Certify the TIN you are giving is correct (or you are waiting for a number to be issued).  
2. Certify you are not subject to backup withholding, or  
3. Claim exemption from backup withholding if you are a U.S. exempt payee.  
If you are a foreign person, use the appropriate Form W-8. See Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Corporations.  
*Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.*

**What is backup withholding?** Persons making certain payments to you must withhold and pay to the IRS 31% of such payments under certain conditions. This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.  
If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, payments you receive will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:  
1. You do not furnish your TIN to the requester, or  
2. You do not certify your TIN when required (see the Part III instructions on page 2 for details), or  
3. The IRS tells the requester that you furnished an incorrect TIN, or  
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (or reportable interest and dividends only), or  
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).  
Certain payees and payments are exempt from backup withholding. See the Part II instructions and the separate instructions for the Requester of Form W-9.  
**Penalties**  
Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.  
Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.  
Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.  
Misuse of TINs. If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

Cat. No. 10211K

Form W-9 (Rev. 12-2000)

EXHIBIT 29-J  
Docket No. 23630-12  
Page 7 of 7

09/08/03 MON 14:46 [TX/RX NO 6402]

RABO-F- 0005486

APP1558

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**EXHIBIT N**

9/9/2003

Michael Tricarichi  
341 Arbour Garden Avenue  
Las Vegas, Nv 89140

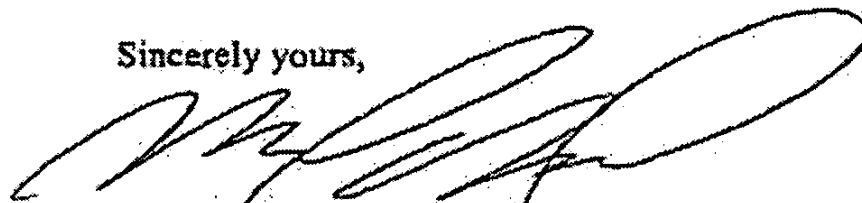
To:  
Chris Kortlandt  
Rabobank Nederland, New York Branch  
245 Park Ave.  
37<sup>th</sup> Floor  
New York, NY 10167  
Fax # 212-808-2584

Dear Chris:

Attached are Resignations pursuant to which Barbara Tricarichi and I resign our positions as directors and officers of West Side Cellular, Inc., an Ohio corporation.

Please be advised that these Resignations are not effective, and may not be relied upon by Rabobank, until such time as Rabobank has credited an amount no less than \$34,621,594 to Rabobank account no. 1595 in the name of Michael Tricarichi, Escrow Account.

Sincerely yours,



Michael Tricarichi, President  
West Side Cellular, Inc.

09/08/03 MON 18:55 [TX/RX NO 6405]

EXHIBIT 49-J  
Docket No. 23630-12  
Page 1 of 3

RABO-F- 0005376

APP1560

RESIGNATION

I, Michael Tricarichi, do hereby resign my positions as Director, President and Secretary and from any other office of West Side Cellular, Inc., an Ohio corporation, to which I may have been elected, such resignation to be effective as of September 9, 2003.

  
Michael Tricarichi

CLE - 802695.1

09/08/03 MON 15:55 [TX/RX NO 6405]

EXHIBIT 49-J  
Docket No. 23630-12  
Page 2 of 3

RABO-F- 0005377

APP1561

RESIGNATION

I, Barbara Tricarichi, do hereby resign my positions as Director, Vice President and Treasurer and from any other office of West Side Cellular, Inc., an Ohio corporation, to which I may have been elected, such resignation to be effective as of September 9, 2003.

  
Barbara Tricarichi

, CLE - 802695.1

09/08/03 MON 18:55 [TX/RX NO 6405]

EXHIBIT 49-J  
Docket No. 23630-12  
Page 3 of 3

RABO-F- 0005378

APP1562

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**EXHIBIT O**



TELEFAX



Rabobank Nederland  
New York Branch  
245 Park Avenue  
New York, NY 10167-0062

**CONFIDENTIALITY NOTE:** The information contained in this facsimile message is only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential or exempt from disclosure under applicable law. If the reader of this facsimile is not the intended recipient or the person responsible for delivering this facsimile to the intended recipient, you are hereby notified that any use, distribution or copying of this information is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and destroy this facsimile. Thank you.

DATE: September 9, 2003

FAX NUMBER: \

TO: Funds Transfer

COMPANY: \

PHONE NUMBER: \

FROM: Chris Kortlandt

DEPT.: Structured Finance

PHONE NUMBER: (212) 916-7810

FAX NUMBER: (212) 922-0969

TOTAL NUMBER OF PAGES (INCLUDING COVER): 2 + 1

Ok to pay outgoing wire from the M. Tricarichi Escrow account.  
Funds have been credited to the account this morning.

*As part of closing.*

**Rabobank**

EXHIBIT 55-J  
Docket No. 23630-12  
Page 1 of 2

**RABO-F- 0005488**

APP1564

9/9/2003

Mike Tricarichi  
341 Arbour Garden Avenue  
Las Vegas, Nv 89140

To:  
Chris Kortlandt  
Rabobank Nederland, New York Branch  
245 Park Ave.  
37<sup>th</sup> Floor  
New York, Ny 10167  
Fax # 212-808-2584

Dear Chris:

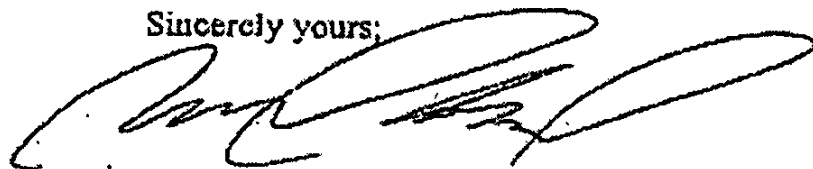
Amount: \$34,621,594.<sup>06</sup>

Please wire all funds in Acct. 1595 (Michael Tricarichi Escrow Account) to:

Chase NYC ABA#021000021  
DLJ Pershing Division 930-1-1032992  
F/C Michael Tricarichi 31V-001918

The amount therein should be approximately \$34,621,594. Thank you for your cooperation in this matter. If you have any questions or problems, please contact me at 216-978-9000

Sincerely yours;



Michael Tricarichi  
Escrow Agent

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**EXHIBIT Q**

## The Rabobank Group

Rabobank's businesses in the Americas are part of the Rabobank Group, a leading global financial services provider serving more than 10 million customers worldwide. Headquartered in The Netherlands, the Rabobank Group operates in 48 countries, providing clients in every market with industry expertise, extensive experience, innovative resources - and deep local market and sector knowledge.

With our long history of financial expertise in the food and agriculture industry, we also help farmers, ranchers, and agribusiness companies grow their agribusinesses throughout the United States, Canada, Argentina, Brazil, Chile, and Mexico.

[Learn more about the Rabobank Group >](#)

### One of the World's Safest Banks

In business for more than 110 years and posting strong, consistent growth over the past century, the Rabobank Group is one of the world's largest banks with total assets of over \$900 billion. It has been rated one of the world's safest banks by *Global Finance* magazine.

[See the latest annual results for the Rabobank Group >](#)

### A Rich History

- Rabobank was founded in the 1890s by farmers as a small cooperative of banks serving their rural communities. The cooperative model was designed to provide a fair and reliable source of credit to local customers through a system of shared liabilities, pooled resources, and reservation of profits.
- Rabobank expanded its business scope and geographic presence throughout the 20th century, adding a broader range of banking and financial services to meet the needs of its customers in the Netherlands and internationally.
- Even as the bank grew into one of the world's largest financial institutions, the Rabobank Group has remained a cooperative organization - operating on the same principles, and dedicated to serving our customers and their communities.

[Read more about Rabobank's focus and history >](#)

### About Our Name and Logo

Pronounced *RAH' boh bank*, our unique name is derived from two banking cooperatives that began operating in the Netherlands at the end of the 19th century:

- The Cooperative Association of Raiffeisen Banks
- The Cooperative Central Boerenleenbank (in English: Farmer's Credit Bank)

These banks merged in 1972 to form a single cooperative bank: Cooperatieve Centrale Raiffeisen Boerenleenbank BA. The Ra from Raiffeisen and Bo from Boerenleenbank were merged into the new entity Rabobank.

Our sundial logo symbolizes how Rabobank stands by customers as their needs change over time - helping them achieve their financial goals at every stage of life. The people, businesses, and communities we serve will always be at the heart of our business.



**Rabobank**

*We stand by our customers over time.*

### Utrecht-America Holdings, Inc.

[Public disclosure of Utrecht-America Holdings, Inc. \(UAH\) 2016 Dodd-Frank Act Stress Test \(DFAST\) results >](#)

Did you find the information on this page helpful?

Personal and Business banking products are offered by Rabobank, N.A. Agricultural products are offered by Rabobank, N.A., Rabo AgriFinance, and Cooperatieve Rabobank U.A. Rabobank, N.A. is a Member FDIC and an Equal Housing Lender. Rabo AgriFinance is an Equal Housing Lender. Member FDIC is not applicable to Rabo AgriFinance or Cooperatieve Rabobank U.A. Online account opening available to residents of California only. © Rabobank 2016. NMLS # 649477. [Disclaimer](#)

[Legal](#) | [IAT Rule Change](#)

# United States of America

In the United States, Rabobank is a valued financial partner for individuals, small and medium-sized agribusiness companies, and other select institutions.

## **Personal, Business, and Commercial Banking**

Rabobank N.A. is a premier California community bank known for personalized service and a wide range of banking, lending and investment products for individual, business and food and agribusiness clients. The bank's 119 branches, and innovative online and mobile banking services empower customers to bank when, where and how they want. We take pride in helping to improve their communities personally and professionally.

## **Agricultural Finance**

Rabo AgriFinance is a leading financial services provider for agricultural producers and agribusinesses in the United States, and adds value using industry expertise, client-focused solutions, and by creating long-term business relationships. Rabo AgriFinance offers a comprehensive portfolio of services that give producers the right products to prepare for, and take advantage of, market opportunities. Rabo AgriFinance representatives offer a wide array of financial services and knowledge to help customers realize their ambitions. This comprehensive suite of services includes loans, insurance, middle market, input financing and sophisticated risk management products.

## **Corporate / Wholesale Banking**

Rabobank is a leading financial services provider to the corporate food, beverage and agribusiness industry and a leading financier in the renewable energy and project finance arena, as well as a specialist provider of Capital Markets and Corporate Finance solutions.

In the United States, Rabobank has wholesale representative offices in Atlanta, Chicago, Dallas, St. Louis, and San Francisco, with branch headquarters in New York.

## **Wholesale Products & Services\***

Corporate Food & Agribusiness Banking

Credit and Lending  
Risk Management  
Loan Syndications  
Securitization

Acquisition Finance (<https://www.rabobank.com/en/products-services/business-banking/global-acquisition-finance/index.html>)

Project Finance / Renewable Energy Finance (<https://www.rabobank.com/en/products-services/business-banking/rabo-project-finance/index.html>)

Tailored Financing Solutions

Capital Structure and Liquidity Management

Trade and Commodity Finance (<https://www.rabobank.com/en/products-services/business-banking/trade-commodity-finance/index.html>)

Private Equity

Food & Agribusiness Research and Advisory (<https://www.rabobank.com/en/research/food-agribusiness/index.html>)

*\*In the United States, these banking services are provided by Rabobank Nederland, and any securities-related business is provided by Rabo Securities USA, Inc., which is a member of SIPC and FINRA.*

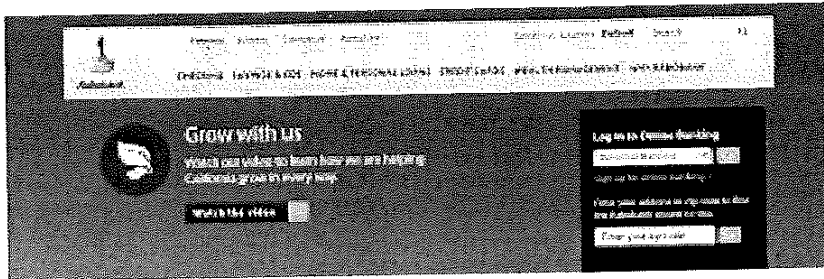
### **International Desk for Dutch international business clients**

The International Desk USA & Canada, dedicated to serve Dutch international business clients in the USA, is located in New York and Los Angeles. Click [here](https://rabowereldwijd.nl/united-states-economic-and-political-outline/c/2280?t=5) (<https://rabowereldwijd.nl/united-states-economic-and-political-outline/c/2280?t=5>) for more information about the International Desk USA & Canada.

### **More information**

[More contact information in the United States \(/en/locate-us/americas/usa/contact.html\)](/en/locate-us/americas/usa/contact.html)

Retail Banking



(<http://www.rabobankamerica.com>)



## Wholesale Banking

The banner features a black and white photograph of a city skyline, likely New York City, with the Empire State Building prominently visible. Overlaid on the image is the text 'North America Wholesale Banking' in a large, white, serif font. Below this, in a smaller white font, is the tagline 'The financial link in the global food chain'. On the right side of the banner, there is a dark, semi-transparent box containing a list of links with right-pointing arrows: 'About us', 'Privacy Statement', 'Offices', 'Our Clients', and 'Products & Services'. Above the banner, the Rabobank logo and a navigation menu are visible.

(<http://naw.rabobank.com>)

# United States of America

## **Personal, Business, and Commercial Banking**

Rabobank, N.A.  
915 Highland Pointe Drive  
Roseville, CA 95678

## **Agricultural Finance**

Rabo AgriFinance  
12443 Olive Blvd.  
Suite 50  
St. Louis, MO 63141  
314-317-8000

## **International Desk**

Email: [International Desk North America \(mailto:InternationalDeskNorthAmerica@rabobank.com\)](mailto:InternationalDeskNorthAmerica@rabobank.com)

## **Wholesale Banking U.S.**

### **New York**

Rabobank International  
245 Park Avenue,  
37th Floor  
New York, NY 10167  
212-916-7800

### **Chicago**

Rabobank International  
123 North Wacker Drive,  
Suite 2100  
Chicago, IL 60606  
312-408-8200

### **Atlanta**

Rabobank International  
1180 Peachtree Street,  
Suite 2200  
Atlanta, GA 30309  
404-870-8000

### **St. Louis**

Rabobank International  
12443 Olive Blvd.,  
Suite 50  
St. Louis, MO 63141  
314-317-8000



**Dallas**

Rabobank International  
15305 North Dallas Parkway,

972-419-6300

**San Francisco**

Rabobank International  
Four Embarcadero,

415-782-7800

# Products & Services

## What we offer in North America

Rabobank North America Wholesale offers products and services in the areas of banking, capital markets, research and advisory services.

### **Corporate Lending**

Our Loan Product Group offers the full spectrum of corporate loan solutions, including acquisition and event financing, working capital facilities, letters of credit and backstop liquidity facilities.

### **Trade & Commodity Finance (TCF)**

Our TCF team provides a wide range of products related to the trading of physical commodities, including short- to medium-term credit facilities, structured inventory products, trade finance services products and export trade finance products.

### **Food & Agribusiness Research (FAR)**

We provide expertise, research products and services that position us as the knowledge and information leader in the F&A sector. Our FAR team creates and delivers value-added, insightful research and analysis that benefits our clients and differentiates Rabobank from other financial service providers in North America.

### **Mergers & Acquisitions Advisory (M&A)**

The M&A group provides advisory services, focusing on transactions for corporates and financial sponsors in the F&A space. This team is organized globally around our six F&A sectors, allowing for deeper knowledge and idea generation to benefit our clients.

### **Capital Structuring Advisory**

analysis, peer evaluation and ratings advisory services, in order to assist clients with determining the optimal capital structure for them to achieve their goals.

### **Capital Markets**

We offer a wide range of capital raising solutions in the public and private debt and equity markets, including syndicated loans, private placements, high grade and high yield bonds, and common and preferred equity. Our Capital Markets team is organized globally and is integrated across origination, syndicate, sales and trading to provide the best execution for our clients.

### **Risk Management**

We offer the full slate of interest rate, foreign exchange and commodity derivatives solutions in support of the risk management activities of our clients. This activity is supported by a globally-integrated team of sales, trading and research professionals in order to deliver the best advice and solutions to our clients.

### **Asset-Based Finance (ABF)**

We offer a wide range of structured solutions related to securitized asset-based lending, receivables purchase financing, inventory finance, portfolio finance and supplier finance. Our ABF team focuses on the integrated provision of these solutions and transaction support on a standardized basis where possible.

### **Global Client Solutions (GCS)**

GCS is our center of financial innovation and provides bespoke, structured corporate finance solutions to help clients efficiently optimize their capital structure. The business aims to provide dependable and superior solutions through continuous development and innovation in areas such as balance sheet and capital management, risk management and other custom solutions.

### **Acquisition Finance (AF)**

We are active in the origination, structuring, execution and management of event-driven financings involving a financial sponsor. Our AF team creates tailor-made solutions to support our clients' ambitions.

solar and bioenergy. Our Project Finance team also offers tailor-made financing solutions (structuring, execution, and advisory) for projects sponsored by F&A clients.

### **Private Equity**

The private equity business conducts investment activities in stand-alone operating entities which make equity investments focused on companies in the F&A sector, while also providing greater insights into emerging trends, technologies, and innovation within the F&A industry.

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HUTCHISON & STEFFEN  
A PROFESSIONAL LLC

EXHIBIT R



## Utrecht-America Holdings, Inc.

2016 DODD-FRANK ACT COMPANY-RUN STRESS TEST RESULTS DISCLOSURE

OCTOBER 20, 2016

## ABOUT UTRECHT-AMERICA HOLDINGS, INC.

Utrecht-America Holdings, Inc. (the Company or UAH) is a U.S. bank holding company with \$25.8 billion in assets at December 31, 2015. The Company's subsidiaries include Rabobank, N.A., a nationally chartered banking association based in California, and Rabo AgriFinance LLC, which focuses on food and agriculture-based lending to small and medium sized enterprises.

The Company is a subsidiary of Coöperatieve Rabobank U.A. (Rabobank), a Dutch multinational banking and financial services company headquartered in Utrecht, Netherlands. Rabobank and its consolidated subsidiaries (collectively Rabobank Group) had total assets of €670 billion at December 31, 2015. Rabobank Group is a global leader in food and agri financing and sustainability-oriented banking.

## REGULATORY REQUIREMENT

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or DFA) and its associated regulations require that annual company-run stress tests be performed by certain financial institutions, referred to as covered institutions, that have total consolidated assets between \$10 and \$50 billion. The Company reported total assets of \$25.8 billion as of December 31, 2015, and is thus a covered institution subject to these company-run Dodd-Frank Act Stress Test (DFAST) requirements. Pursuant to DFAST, the Company is required to conduct an annual company-run stress test and disclose annually the results of the supervisory severely adverse scenario of the stress test.

The stress test is designed to evaluate whether the financial institution has sufficient capital to withstand a severe economic downturn and thereby assist regulators in assessing the resilience of the financial institution and the U.S. banking system as a whole under severe economic conditions. The supervisory severely adverse scenario is a hypothetical scenario provided by the Company's primary regulator, the Board of Governors of the Federal Reserve System (FRB). Key attributes of this scenario include high levels of unemployment, rapid reductions in asset prices, and widening credit spreads. To evaluate its ability to withstand such harsh conditions, the Company has developed methodologies and models as described below.

The projections of the Company's pre-provision net revenue, losses, net income, and capital ratios pursuant to the FRB's severely adverse scenario represent projections based on a hypothetical economic scenario more adverse than expected. The projections herein are not the Company's actual projections of expected pre-provision net revenue, losses, net income, and capital ratios.

The results of the Company's annual DFA company-run stress test indicate that the Company would remain strongly capitalized, with capital in excess of regulatory minimum levels throughout the course of a severe recession, as modeled by the supervisory severely adverse

scenario. Please see Table 1 for the Company's capital ratios under the supervisory severely adverse scenario.

The supervisory variables, as well as the narrative describing the underlying scenarios, are available at the FRB's website:

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160128a2.pdf>.

#### **DESCRIPTION OF THE TYPES OF RISKS INCLUDED IN THE STRESS TEST**

Credit risk related to loans represents the Company's most significant risk pursuant to the Company's business model. The Company's appetite for interest rate risk is primarily related to the interest rate risk position arising from the Company's retail banking activities. The Company has limited appetite for market risk.

The Company's stress test captures the risk types identified below:

##### Credit Risk

Credit risk is the risk to earnings and capital arising from an obligor's or counterparty's failure to meet the terms of any contract with the Company.

##### Interest Rate Risk

Interest rate risk is the risk to earnings and capital from movements in interest rates.

##### Market Risk

Market risk is the risk to earnings and capital from movements in the value of traded financial instruments. Market risk results from changes in the level, volatility, or correlation among financial market rates or prices, including but not limited to interest rates, foreign exchange rates, equity prices, and commodity prices.

##### Operational Risk

Operational risk is the risk to earnings and capital from external events, inadequate or failed internal processes, systems, and human factors.

#### **DESCRIPTION OF THE METHODOLOGIES USED IN THE STRESS TEST**

The Company's methodologies address the relationship between the macroeconomic variables of the DFAST scenarios and the Company's assets, liabilities, commitments, and exposures. The stress testing process relies on econometric models, other quantitative methods, and qualitative assessments to produce hypothetical outcomes under the three supervisory scenarios.

In addition, the Company uses qualitative adjustments to ensure a sufficiently conservative approach is taken in the stress test. The Company believes that such adjustments improve the quality of the stress test results in evaluating capital adequacy.



Additional information on the methodologies used for five core components of the Company's projections is presented below.

#### Credit Loss Projections

The Company employed statistical models to project credit losses. The modeling process started with the determination of the macroeconomic variables that were the most important drivers of credit loss for each loan type. The Company considered all of the supervisory variables specified in the DFAST scenarios and supplemented these variables with additional variables based on the Company's unique exposures. Multivariable regression models built from these variables were used to estimate credit losses across the DFAST horizon.

#### Interest Income and Expense Projections

The Company's interest income and expense projections are based on the interest rate levels of the DFAST scenarios, and the contractual and projected characteristics of the Company's assets and liabilities. Principal balances, prepayment cash flows, and the interest rate levels of the Company's assets and liabilities were modeled in projecting interest income and expense.

#### Non-Interest Income and Expense Projections

Non-interest income is projected based on the scenario's macroeconomic variables and uses other drivers, such as asset balances, to project key components of non-interest income.

Non-interest expense projections are primarily based on forecasted asset balances, levels of distressed loans, and operational losses.

#### Balance Sheet Projections

Total asset projections are driven by loan balance expectations as the Company's assets are primarily comprised of loans. The composition of liabilities is driven by deposit balance expectations, with "other borrowed money" as the other primary source of funding.

#### Capital and Capital Ratios

Regulatory capital and capital ratios are calculated pursuant to regulatory requirements. Risk-weighted assets are determined by applying risk weights to the projected asset balances.

### **ESTIMATES UNDER THE SEVERELY ADVERSE SCENARIO**

The Company's 2016 DFAST severely adverse scenario results, covering the nine-quarter planning horizon from December 31, 2015 through March 31, 2018, show that the Company has the financial resources to withstand a severe and protracted economic downturn, and would maintain capital levels that exceed regulatory minimums.

The Company does not currently pay a dividend on its equity securities, and no dividend, capital distribution, or other capital action is projected over the nine-quarter planning horizon of the

severely adverse scenario. Additionally, no redemption or issuance of any regulatory capital instrument is assumed in the severely adverse scenario projections.

The table below presents the Company's starting capital ratios, and the projected pro forma ending and lowest capital ratios under the FRB's severely adverse scenario. The lowest capital ratios occur at the end of the scenario, so the scenario-end and lowest capital ratios have the same values.

**Table 1: Regulatory Capital Ratios under the Severely Adverse Scenario (in %)**

Ratio	Regulatory Minimum	Actual Q4 2015	Stressed Capital Ratios	
			Pro Forma Scenario end	Pro Forma Scenario
			Q1 2018	Minimum
Common equity tier 1 risk-based capital	4.50	10.21	8.16	8.16
Tier 1 risk-based capital	6.00	10.21	8.16	8.16
Total risk-based capital	8.00	12.63	10.90	10.90
Tier 1 leverage	4.00	8.42	7.75	7.75

The table below presents the Company's projected aggregate losses, pre-provision net revenue, provision for loan and lease losses, and net income over the nine-quarter planning horizon under the FRB's severely adverse scenario.

**Table 2: Projected Cumulative Values under the Severely Adverse Scenario**

Quantity	Projected Cumulative Value over the Nine Quarters of the Severely Adverse Scenario	
	In \$ 000s	Percent of Average Assets <sup>1</sup>
Aggregate losses	271,494	1.08
Pre-provision net revenue	-191,936	-0.76
Provision for loan and lease losses	410,276	1.63
Net income before tax	-602,212	-2.39
Net income	-632,468	-2.51

Pre-provision net revenue (PPNR) and net income include the write-off of \$296 million of goodwill and other intangibles. The write-off does not impact capital, as goodwill and other intangibles are excluded in the calculation of regulatory capital.

<sup>1</sup> Average assets is the nine-quarter average of total assets.

## EXPLANATION OF THE MOST SIGNIFICANT CAUSES FOR THE CHANGES IN REGULATORY CAPITAL RATIOS

The table below presents the most significant causes for the projected change in the Company's common equity tier 1 and tier 1 risk-based capital ratios over the nine-quarter planning horizon. The Company's tier 1 capital is comprised of solely common equity tier 1 capital, and as a result the Company's common equity tier 1 and tier 1 risk-based capital ratios have the same value.

**Table 3: Causes for Tier 1 Common and Tier 1 Risk-based Capital Ratio Changes (in %)**

<u>Item</u>	<u>Impact on Tier 1 Ratios</u>
Provision expense on capital	-1.90
Nonaccrual on RWA	-0.44
Basel III transition on capital	-0.25
Tax expense on capital	-0.14
Loan growth on RWA	-0.07
Other impacts on RWA	-0.14
Other impacts on capital	0.02
DTA impact on capital	0.42
<u>PPNR on capital</u>	<u>0.43</u>
Total change in capital ratio	-2.05

Guide:

RWA: Risk-weighted assets

DTA: Deferred tax assets

PPNR: Pre-provision net revenue

In the FRB's severely adverse scenario, the common equity tier 1 and tier 1 risk-based capital ratios are projected to decline by 2.05% from 10.21% to 8.16%. The weakening in the capital ratios is primarily due to provision expense and the increase in risk-weighted assets related to an increased balance of nonaccrual assets. These negative impacts are partially offset by pre-provision net revenue and the inclusion of a greater balance of deferred tax assets in regulatory capital.<sup>2</sup> Basel III transition provisions reduce the tier 1 ratio by 25 basis points.

In Table 3, provision expense is the item with the largest negative impact on capital. This result reflects the Company's business model, where credit risk is the predominant risk.

### Total risk-based capital

Total risk-based capital includes tier 2 capital, which for the Company is comprised of subordinated notes and the allowance for loan and lease losses (ALLL) balance allowable for

<sup>2</sup> PPNR excluding goodwill and other intangibles is the relevant PPNR measure in determining PPNR's impact on capital. PPNR excluding goodwill impairment and other intangible losses is \$104 million.

inclusion in tier 2 capital (defined as the portion of the ALLL not exceeding 1.25% of adjusted total risk-weighted assets). Primarily due to this increase in the ALLL in tier 2 capital, the total capital ratio declines by a smaller amount than tier 1 capital, by 1.73% from 12.63% to 10.90% over the nine-quarter horizon.

#### CHANGES IN CAPITAL RATIOS OVER PLANNING HORIZON FOR DEPOSITORY INSTITUTION SUBSIDIARY

The Company has one depository subsidiary, Rabobank, N.A. (RNA), a national banking association. At December 31, 2015, RNA had total assets of \$14.77 billion, representing slightly less than 60% of the Company's total assets. The table below presents RNA's starting capital ratios and the projected pro forma ending and lowest capital ratios under the FRB's severely adverse scenario.

**Table 4: Regulatory Capital Ratios under the Severely Adverse Scenario for Depository Subsidiary Rabobank, N.A. (in %)**

Ratio	Regulatory Minimum	Actual Q4 2015	Stressed Capital Ratios	
			Pro Forma Scenario end	Pro Forma Scenario
			Q1 2018	Minimum
Common equity tier 1 risk-based capital	4.50	13.42	11.92	11.92
Tier 1 risk-based capital	6.00	13.42	11.92	11.92
Total risk-based capital	8.00	14.67	13.18	13.18
Tier 1 leverage	4.00	10.12	9.74	9.74

Changes in RNA's regulatory capital ratios under the FRB's severely adverse scenario are driven by three key factors: 1) credit losses (leading to higher provision expense), 2) asset growth (resulting in higher risk-weighted assets), and 3) net income excluding impairments from credit losses. Specifically, with respect to the common equity tier 1 and tier 1 risk-based capital ratios:

- 1) Credit Losses: Credit losses and allowance requirements reduced the tier 1 risk-based capital ratio by 133 basis points;
- 2) Asset Growth: The higher risk-weighted assets stemming from growth in the loan book reduced the tier 1 risk-based capital ratio by 77 basis points; and
- 3) Net income excluding provision expense: Net income excluding provision expense increased the tier 1 risk-based capital ratio by 75 basis points.

Other miscellaneous items, including Basel III impacts, have an aggregate negative impact of 14 basis points.<sup>3</sup>

<sup>3</sup> Values do not sum to the 1.50% decline in the common equity tier 1 and tier 1 risk-based capital ratios due to rounding.

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**EXHIBIT S**

# RABO AGRIFINANCE LLC

## Business Entity Information

Status:	Active	File Date:	10/9/1984
Type:	Foreign Limited-Liability Company	Entity Number:	C6832-1984
Qualifying State:	DE	List of Officers Due:	10/31/2017
Managed By:		Expiration Date:	
NV Business ID:	NV19841013845	Business License Exp:	10/31/2017

## Additional Information

Central Index Key:	
--------------------	--

## Registered Agent Information

Name:	THE CORPORATION TRUST COMPANY OF NEVADA	Address 1:	701 S CARSON ST STE 200
Address 2:		City:	CARSON CITY
State:	NV	Zip Code:	89701
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

## Financial Information

No Par Share Count:	0	Capital Amount:	\$ 1,000.00
Par Share Count:	1,000.00	Par Share Value:	\$ 1.00

## ☐ Officers

☐ Include Inactive Officers

Manager - UTRECHT-AMERICA HOLDINGS, INC.

Address 1:	245 PARK AVENUE	Address 2:	
City:	NEW YORK	State:	NY
Zip Code:	10167	Country:	USA
Status:	Active	Email:	

## ☐ Actions\Amendments

Action Type:	Foreign Qualification		
Document Number:	C6832-1984-001	# of Pages:	0
File Date:	10/9/1984	Effective Date:	
(No notes for this action)			
Action Type:	Amendment		

Document Number:	C6832-1984-003	# of Pages:	1
File Date:	12/7/1993	Effective Date:	
CERTIFIED COPY OF CERTIFICATE OF AMENDMENT REPORTING A CHANGE TO THE PURPOSE			
IN HOMESTATE. P T			
Action Type:	Amendment		
Document Number:	C6832-1984-004	# of Pages:	2
File Date:	1/26/1998	Effective Date:	
CERTIFICATE OF FACT OF CERTIFICATE OF AMENDMENT FILED AMENDING NAME. (2)PGS.			
DMF			
EQUITABLE AGRI-BUSINESS, INC. DMFB P % 00001			
Action Type:	Amendment		
Document Number:	C6832-1984-005	# of Pages:	2
File Date:	7/17/1998	Effective Date:	
CERTIFICATE OF FACT OF NAME CHANGE FILED. (2)PGS. DMF			
ERE YARMOUTH AGRI-BUSINESS, INC. DMFB SU 00002			
Action Type:	Annual List		
Document Number:	C6832-1984-012	# of Pages:	1
File Date:	12/30/1998	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C6832-1984-011	# of Pages:	1
File Date:	10/6/1999	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Address Change		
Document Number:	C6832-1984-006	# of Pages:	299
File Date:	10/29/1999	Effective Date:	
CORPORATION TRUST COMPANY OF NEVAD KFA			
ONE EAST FIRST STREET RENO NV 89501 KFA			
Action Type:	Annual List		
Document Number:	C6832-1984-013	# of Pages:	2
File Date:	9/26/2000	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C6832-1984-008	# of Pages:	1
File Date:	10/4/2001	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C6832-1984-010	# of Pages:	1
File Date:	9/18/2002	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C6832-1984-009	# of Pages:	1

File Date:	11/6/2003	Effective Date:	
(No notes for this action)			
Action Type:	Amendment		
Document Number:	C6832-1984-007	# of Pages:	2
File Date:	12/30/2004	Effective Date:	
CERTIFICATE OF FACT (DE) FILED FOR NAME CHANGE. (2)PGS MLJ			
LEND LEASE AGRI-BUSINESS, INC. MLJBD 00003			
Action Type:	Annual List		
Document Number:	C6832-1984-002	# of Pages:	1
File Date:	1/4/2005	Effective Date:	
List of Officers for 2004 to 2005			
Action Type:	Annual List		
Document Number:	20050567789-49	# of Pages:	2
File Date:	11/22/2005	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060528806-67	# of Pages:	2
File Date:	8/18/2006	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20070621423-37	# of Pages:	2
File Date:	9/11/2007	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20080579645-26	# of Pages:	2
File Date:	8/29/2008	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20090644161-83	# of Pages:	2
File Date:	8/27/2009	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20100716296-64	# of Pages:	2
File Date:	9/23/2010	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20110721868-16	# of Pages:	2
File Date:	10/5/2011	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20120623523-96	# of Pages:	1
File Date:	9/11/2012	Effective Date:	



(No notes for this action)			
Action Type:	Annual List		
Document Number:	20130587567-54	# of Pages:	1
File Date:	9/6/2013	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20140687163-18	# of Pages:	2
File Date:	9/26/2014	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20150368536-89	# of Pages:	2
File Date:	8/18/2015	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20160347923-57	# of Pages:	1
File Date:	8/4/2016	Effective Date:	
16-17			
Action Type:	Convert In		
Document Number:	00010380742-35	# of Pages:	3
File Date:	8/4/2016	Effective Date:	
(No notes for this action)			
Action Type:	Application for Foreign Registration		
Document Number:	00010380743-46	# of Pages:	1
File Date:	8/4/2016	Effective Date:	
(No notes for this action)			
Action Type:	Amendment		
Document Number:	20160355208-62	# of Pages:	1
File Date:	8/10/2016	Effective Date:	
(No notes for this action)			

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**EXHIBIT T**

**UNITED STATES TAX COURT**

MICHAEL A. TRICARICHI, TRANSFEREE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 23630-12
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	Filed Electronically
	)	
Respondent.	)	

**STIPULATION OF FACTS**

In accordance with Tax Court Rule '91, the below-signed parties agree to this Stipulation of Facts pursuant to the general terms of this preamble unless specifically expressed otherwise, subject to the rights of the parties to introduce other and further evidence not inconsistent with this stipulation (including any subsequent or supplemental stipulations of fact). The statements in the numbered paragraphs below shall be considered facts. All stipulated exhibits shall be considered authentic. All copies shall be considered electronic reproductions of the originals and shall be treated as if originals. Unless otherwise expressly stipulated, the parties are not stipulating to the truth of the contents, or any part thereof, of the attached stipulated exhibits. The truth of assertions within stipulated exhibits may be rebutted or corroborated with additional evidence. Unless otherwise expressly stipulated, the parties are not stipulating that petitioner was provided with a copy of any exhibit or

with the Stock Purchase Agreement (collectively WSC0004 through WSC0178).

4. Copies of the West Side Articles of Incorporation and a Certificate of Good Standing are attached at pages 80-82. (WSC0082-WSC0084) and page 104 (WSC0102) of Exhibit 1-J.

5. Petitioner and Barbara Tricarichi served as directors of West Side from March 13, 1988 until September 9, 2003.

6. Attached as Exhibit 2-J are the appointment of petitioner and Barbara Tricarichi as directors of West Side and their acceptance of the appointments. (WSC0392-0394) Petitioner was the sole shareholder of West Side from the date of its incorporation until the time his stock was sold on September 9, 2003.

7. At the time of the stock sale, petitioner lived in Nevada.


8. Scott Ginsburg, Lawrence Dubin, and Patrick Scaravilli were employees of West Side. Messrs. Ginsburg, Dubin and Scaravilli became officers of West Side as of July 1, 2003.

9. Attached as Exhibit 3-J is a copy of the Board of Directors action electing these individuals as officers of West Side. (PET\_LIT000013).

10. They each resigned as officers on September 5, 2003.

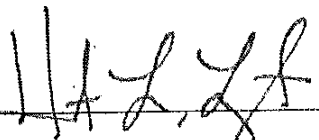
180. Copies of the PWC billing records are attached as Exhibit 105-J. (PWC-WS 1214-PWC-WS 1219).

WILLIAM J. WILKINS  
Chief Counsel  
Internal Revenue Service

  
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Tax Court Bar No. DM0366  
THE LAW OFFICES OF MICHAEL  
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Counsel for Petitioner

By:   
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Special Trial Attorney  
(Large Business &  
International)  
Tax Court Bar No. LH0357  
4050 Alpha Rd., 14<sup>th</sup> Floor  
MC2500  
Dallas, Texas 75244  
Telephone: (972) 308-7928

Date: April 11, 2014

Date: April 11, 2014

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**EXHIBIT U**

Kortlandt, GC (Chris)

---

From: Rogers, N (Natalie)  
Sent: Monday, September 08, 2003 4:19 PM  
To: Kortlandt, GC (Chris)  
Cc: Hennrich, GT (George); John, TA (Terry); Hobson, PH (Pamela); Curry, C (Clarence); Joshi, B (Bhavik); Lyew, BD (Brenda)  
Subject: M. Tricarichi Escrow Account

Chris,

As per your request, the following account has been opened for M. Tricarichi Escrow Account:

CIF# 9285 DDA# 21535

Regards,  
*Natalie Rogers*  
Data Standards & Control  
212-916-3775

9/8/2003

RABO-F- 0005475

RABOBANK INTERNATIONAL	
US A	
Compliance Manual	Subject: Regulation

Name of potential client or counterparty: H. Tricacchi Escrow Acct

Address: 341 Arbor Garden  
Las Vegas, NV 89148

Is the potential client or counterparty a financial institution?

Yes No

☐ ☒

If Yes:

- Local Regulator (FRB, NASD, NYSED, etc.) and/or Foreign Authority (DNB, SFA, etc.) \_\_\_\_\_
- Tax Identification Number (W-9 or W-8 Form) \_\_\_\_\_
- Clearing Bank \_\_\_\_\_

If No: The following legal documents must be obtained prior to opening account and deal execution (if not applicable, state reason):

- Articles of Incorporation or Partnership Agreement or Limited Liability Company Agreement and/or Trade Name Registration ☒ ☐
- Corporate Resolution (with authorized signatories) ☒ ☐
- Tax Identification Number (W-9 or W-8 Form) ☒ ☐
- Audited Financial Statements ☐ ☐
- Bank References ☐ ☐
- Others \_\_\_\_\_
- Comments: 1) Rejected by standard acct opening documentation  
Part of Web Hill acquisition financing

The above information and documents have been reviewed and verified for authenticity:

Signature: \_\_\_\_\_  
Sales Person/Trader/Relationship Mgr.

C. Karthick 9/8/03  
Print name Date

Signature: M. Guzman  
Compliance Department

M. Guzman 9/8/03  
Print name Date



# Customer Information Form

☒ New Entry

DATE: 8/8/2003

☐ Modification

1 Customer No:	<input type="text" value="113"/>	2 P/S/S	<input type="text" value="P"/>	3 Parent No:	<input type="text" value=""/>
4 Name:	<input type="text" value="M. Tricarichi Escrow account"/>	13 Res/Res:	<input type="text" value="2"/>	14 Res/Res:	<input type="text" value=""/>
5 Contact:	<input type="text" value="MICHAEL TRICARICHI"/>	15 Cus Type:	<input type="text" value="3"/>	16 Cus Type:	<input type="text" value=""/>
6 Address:	<input type="text" value="211 ARBOR BLVD"/>	17 Refst Code:	<input type="text" value="2"/>	18 Bk Rating:	<input type="text" value="9"/>
	<input type="text" value="LAS VEGAS, NV"/>	19 District No:	<input type="text" value="N/A"/>	20 Swift No:	<input type="text" value=""/>
Zip code:	<input type="text" value="89148"/>	21 Chgs No:	<input type="text" value=""/>	22 Telex No:	<input type="text" value=""/>
7 Telephone No:	<input type="text" value=""/>	23 Tax Payer No:	<input type="text" value="36-8888448"/>	24 Lang Code:	<input type="text" value="N/A"/>
8 Short Name:	<input type="text" value="Tricarichi Escrow acct"/>	25 Mail Indicate:	<input type="text" value="Y"/>	26 Confirm Days:	<input type="text" value=""/>
9 Front Off Name:	<input type="text" value="Thompson E"/>	27 City:	<input type="text" value=""/>	28 Payment Flag:	<input type="text" value=""/>
10 Country Res:	<input type="text" value="1007"/>				
11 Country Risk:	<input type="text" value="1007"/>				
Account Mgr:	<input type="text" value=""/>				
12 Industry Code:	<input type="text" value="5000"/>				
14 Branch Code:	<input type="text" value="1"/>				

PREPARED BY:	<input type="text" value=""/>	DATE:	<input type="text" value="8/8/2003"/>
APPROVED BY:	<input type="text" value=""/>	DATE:	<input type="text" value=""/>
ENTERED BY:	<input type="text" value=""/>	DATE:	<input type="text" value=""/>
AUDITED BY:	<input type="text" value=""/>	DATE:	<input type="text" value=""/>

THE LOTUS FORMAT HAS BEEN PROTECTED. ONLY THOSE AREAS HIGHLIGHTED IN BLUE CAN ACCEPT ENTRY

SHOULD YOU HAVE ANY QUESTIONS ON THIS FORMAT OR REQUIRE ADDITIONAL COPIES PLEASE CONTACT

THE ACCOUNTING & REPORTING DEPARTMENT X 7000 FOR ASSISTANCE

RABO-F- 0005477

Rabobank

Demand Deposit Account Input Form

New York Branch



1	ADD/MODIFY 1=ADD 2=MODIFY	1	2	DDA ACCOUNT #	3	CD ACCOUNT #
4	CUSTOMER NAME	M. Tricarichi Escrow Account			5	F. TYPE

## FOR USE BY DATA STANDARDS &amp; CONTROL DEPT ONLY

6	BRANCH NUMBER	7	PARENT DDA ACCOUNT #	8	CORPORATE DDA ACCT #
9	CHARGE INTEREST TO DDA ACCOUNT #	10	CHARGE FEES TO DDA ACCOUNT #		
11	GENERAL LEDGER TYPE CODE	12	GL ACCOUNT #		
13	CURRENCY CODE	USD	14	STATEMENT CYCLE	431
16	ACCURAL BASIS	1	17	SECURITY CODE	NA
15	INTEREST START FREQ				
18	ACCOUNT TYPE	000			
19	NUMBER OF NOTICE DAYS	NA		20	CALL ACCT #
21	MINIMUM ACCOUNT BALANCE	NA		12	MAX ACCOUNT BALANCE

## FEES AND CHARGES

Are transaction fees to be charged to this account yes/no (Y/N)					N
IF NO THIS FORM MUST BE APPROVED BY THE DEPARTMENT MANAGER					
1	MINIMUM MONTHLY FEE	YES/NO	N	MINIMUM FEE AMOUNT	\$ -
2	MAXIMUM MONTHLY FEE	YES/NO	N	MAXIMUM FEE AMOUNT	\$ -
3	OVERDRAFT FEE %	YES/NO	N	PERCENT AMOUNT	-
4	TRANSACTION CHARGE %	YES/NO	N	PERCENT AMOUNT	-
5	USE TRANSACTION TABLE	YES/NO	N	TABLE NUMBER	-
6	FREE TRANSACTIONS PER MONTH	YES/NO	N	NUMBER OF TRANSACTIONS	NA
7	USE MINIMUM BALANCE CHARGE	YES/NO	N	AMOUNT TO CHARGE	\$ -

## CREDIT LIMITS &amp; RATE BANDS

1	MINIMUM BALANCE	\$ -	2	CREDIT LIMIT	\$ -
3	CREDIT LIMIT	\$ -	4	CREDIT TERM	YEAR MONTH DAY
5	CREDIT TERM	YEAR MONTH DAY	6	INTEREST RATE	YEAR MONTH DAY
7	CREDIT RATE	-	8	CREDIT RATE	-
9	CREDIT RATE	-	10	CREDIT RATE	-

Use postage table for postage charge yes/no (Y/N) N

PREPARED BY:	DATE	APPROVED BY:	DATE
INPUT BY:	DATE	VERIFIED BY:	DATE

Amended 02-15-99

RABO-F- 0005478

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**EXHIBIT P**

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

MICHAEL A. TRICARICHI,

Appellant,

v.

COÖPERATIEVE RABOBANK U.A.,  
UTRECHT-AMERICA FINANCE CO.  
and SEYFARTH SHAW LLP,

Respondents.

Electronically Filed  
Sep 19 2017 01:44 p.m.  
Elizabeth A. Brown  
Supreme Court Clerk of Supreme Court  
Case No. 73175

District Court Case No.  
A-16-735910-B

**APPEAL**

From the Eighth Judicial District Court, Department XV  
Clark County, Nevada  
Hon. Joe Hardy, District Court Judge

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**JOINT APPENDIX**  
**Volume VII**

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Mark A. Hutchison (4639)  
Michael K. Wall (2098)  
Todd W. Prall (9154)  
HUTCHISON & STEFFEN, LLC  
10080 West Alta Drive, Suite 200  
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[mhutchison@hutchlegal.com](mailto:mhutchison@hutchlegal.com)  
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Scott F. Hessell  
Thomas D. Brooks  
(Admitted *Pro Hac Vice*)  
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[shessell@sperling-law.com](mailto:shessell@sperling-law.com)  
[tdbrooks@sperling-law.com](mailto:tdbrooks@sperling-law.com)

*Attorneys for the Appellant, Michael A. Tricarichi*

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## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, LLC and that on this 19<sup>th</sup> day of September, 2017, I caused the document entitled JOINT APPENDIX VOLUME VII to be served on the following by Electronic Service to:

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Service by regular U.S. Mail as follows:

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and Utrecht-America Finance Co.*

  
An employee of HUTCHISON & STEFFEN, LLC

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REDIRECT - MICHAEL TRICARICHI

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1 A It did.

2 Q Okay. And your general understanding what  
3 did it cover?

4 A Well, we were indemnified against basically  
5 anything that happened after the stock sale and any  
6 taxes that were due on revenue received from January  
7 1st, of 2003, forward.

8 Q Okay. And then Exhibit 26-J we looked at,  
9 you can go ahead if you want to, that was not the  
10 final agreement. That wasn't the last word on  
11 indemnification, was it?

12 A No.

13 Q Okay.

14 A The stock purchase agreement was.

15 Q The stock purchase, Exhibit 1-J?

16 A Correct.

17 MR. DESMOND: Thank you. I have no further  
18 questions, Your Honor.

19 THE COURT: Recross, Ms. Lampert?

20 MS. LAMPERT: Your Honor, may I have one  
21 moment?

22 THE COURT: Yes, you may.

23 (Brief pause.)

24 RECROSS-EXAMINATION

25 BY MS. LAMPERT:

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RECROSS - MICHAEL TRICARICHI

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1 Q Just to clarify some testimony that you  
2 gave earlier. We talked about the Key Bank account  
3 that was -- that Westside had that was opened after  
4 the stock closing.

5 A Never said that.

6 Q You said -- you testified that there was a  
7 check that was written for \$3.1 million in November  
8 of 2003 to the Government for excise taxes; is that  
9 correct?

10 A Yeah. But that's not what you just said.

11 Q But was that account not still open after  
12 the stock closing?

13 A Okay. You just asked me if we opened a Key  
14 Bank account after the stock sale and that's not  
15 true.

16 Q Okay. I apologize.

17 A The Key Bank account that that check was  
18 written on was Westside's Key Bank account for years  
19 prior to the stock sale.

20 Q I apologize. I misspoke. The Key Bank  
21 account that you wrote the August 2003 check for \$3.1  
22 million from and the same one that you wrote the \$3.1  
23 million check from in November 2003, that was a Key  
24 Bank account that Westside had; is that correct?

25 A That's correct.

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RECROSS - MICHAEL TRICARICHI

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1 Q And it remained open after the stock  
2 closing; is that correct?

3 A It remained opened -- it would have self-  
4 closed as soon as the IRS check was cashed.

5 Q Okay.

6 A But since the IRS check wasn't cashed, it  
7 remained open until the funds in it was exhausted.  
8 It was set to self-close when the IRS cashed the  
9 check.

10 Q Okay.

11 A Which they didn't do.

12 Q Were there any other Westside bank accounts  
13 that were opened after the stock purchase happened  
14 other than the Rabobank account that Westside had?

15 A I don't believe there were, but that would  
16 be a question for Mr. Ginsburg. I don't -- I don't  
17 know the answer to that.

18 Q I'm sorry, that would be a question for?

19 A I said that would be a question for Mr.  
20 Ginsburg. I don't know the answer to that question.

21 Q To your knowledge there were no other  
22 accounts?

23 A Well, there was probably one account, which  
24 would have been the account that the ACH went into.  
25 The check was written on an ACH account. And an ACH

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RECROSS - MICHAEL TRICARICHI

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1 account is an automatic clearing account that  
2 basically lets you see the checks before they get  
3 cashed.

4 So there's two bank accounts associated  
5 with an ACH account. There's a primary account and a  
6 secondary account. I don't know what happened to the  
7 secondary account, but usually the secondary account  
8 doesn't have any money in it.

9 Q Okay. So to your knowledge, there was no  
10 money in that secondary account?

11 A I don't think there was, no.

12 Q Okay.

13 A But I can't swear to it.

14 MS. LAMPERT: May I have a moment, Your  
15 Honor?

16 THE COURT: Yes.

17 MS. LAMPERT: Your Honor, we have no  
18 further questions for this witness at this time.

19 THE COURT: Okay. I have a few questions  
20 if you have a minute.

21 And my rules on this are counsel can object  
22 to any of my questions. I take -- I mean that  
23 seriously and I will rule as objectively as I can.  
24 And I will give you both an opportunity to follow up  
25 after the witness answers my questions.



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1           So, Mr. Tricarichi, the first thing I  
2   wanted to ask about was the formation of LXV  
3   corporation.

4           THE WITNESS: Okay.

5           THE COURT: Now I think you said that you  
6   formed LXV and it was owned one quarter by you and a  
7   quarter each by the three key employees; is that  
8   correct?

9           THE WITNESS: So I said.

10          THE COURT: So you continued to service  
11   your customers?

12          THE WITNESS: Out of that account. Out of  
13   that business, yes.

14          THE COURT: Right. So what does that mean  
15   exactly? because I thought that you couldn't  
16   continue to offer self-service because of the  
17   settlement deal.

18          THE WITNESS: We didn't.

19          THE COURT: So how were you going to  
20   service your customers through LXV?

21          THE WITNESS: The way we were doing it was  
22   Cellnet provided its own billing and its own customer  
23   service to the customers.

24          What we did was initially we sold the  
25   customer base for a recurring revenue stream to

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1 Cellnet in Michigan. They weren't originally  
2 equipped to deal with the customers because they  
3 would have had to convert our billing system to their  
4 billing system and there would have been a lot of  
5 internal things that they needed to happen in order  
6 to continue to service the customer base.

7           So what we did was we provided the billing  
8 services, LXV provided the billing services to  
9 Cellnet in Michigan. And we also provided local  
10 customer service -- because they were in Michigan, we  
11 provided local customer service to the customers.

12           And since we provided the billing services,  
13 we also collected the money -- actually, did we  
14 collect the money? No. I think they collected the  
15 money. I think the money went to them because I  
16 think we put their address -- their lockbox address  
17 on the bill.

18           So what LXV -- LXV basically did was it  
19 serviced the customers by providing the billing  
20 services. We would get the tapes from Cellular One,  
21 convert them into bills, and send them out on behalf  
22 of Cellnet of Michigan.

23           And then Cellnet of Michigan would remit a  
24 revenue stream back to LXV, which was partly for the  
25 service that LXV provided and partly for the payment

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1 for the customer base. Does that make sense?

2 THE COURT: Yeah. Okay. I see. At the  
3 time you transferred the customer list, you  
4 transferred all the other operating assets of  
5 Westside to LXV, right?

6 THE WITNESS: We transferred disks and  
7 things that were needed to continue to support the  
8 business.

9 THE COURT: And I think trade names,  
10 trademarks?

11 THE WITNESS: The trade name -- the  
12 trademark, the trade name, yeah. Because that was  
13 stuff that was still being used at that point by  
14 Cellnet of Michigan.

15 THE COURT: Now, you first met with the  
16 Fortrend people when?

17 THE WITNESS: Sometime -- it was after  
18 Midcoast definitely, so it would have been sometime  
19 probably in spring of 2003.

20 THE COURT: Now, the stock purchase  
21 agreement states as a condition that there was  
22 supposed to be nothing left in Westside at the time  
23 of closing except cash and tax liabilities.

24 THE WITNESS: Okay.

25 THE COURT: So did that have anything to do

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1 with why you transferred all the operating assets out  
2 of Westside prior to the --

3 THE WITNESS: No.

4 THE COURT: No?

5 THE WITNESS: No. The only thing -- the  
6 only thing when we transferred the stuff into LXV, it  
7 was stuff that LXV needed in order to continue to do  
8 business. That's what we transferred, okay.

9 The lease and that kind of stuff, I think,  
10 stayed in the name of Westside. I'm pretty sure it  
11 did.

12 THE COURT: The what now?

13 THE WITNESS: The lease on the building.

14 THE COURT: No. I don't know about that.  
15 Maybe there'll be evidence about that.

16 But you're saying you met with Fortrend in,  
17 say, February or March 2003?

18 THE WITNESS: Something like that, yeah.

19 THE COURT: And you did the transfer to LXV  
20 in May of 2003?

21 THE WITNESS: I believe that's true.

22 THE COURT: You're saying that's not  
23 because Fortrend had told you that they wanted only  
24 to buy the cash and the tax liability?

25 THE WITNESS: No. Because we hadn't made a

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1 deal with Fortrend by that time. We would have had  
2 nothing -- we would have had no reason to do anything  
3 with Westside prior to the Fortrend purchase  
4 agreement, which wasn't done until September of 2003.

5 THE COURT: Okay. Now, I'd like to look at  
6 the -- at the PWC engagement letter that's 24-J. And  
7 I mentioned to you before --

8 THE WITNESS: Right.

9 THE COURT: -- that there was a sentence in  
10 here which talks about treasury regulations,  
11 requiring that taxpayers disclose to the IRS their  
12 participation in reportable transactions.

13 THE WITNESS: Right.

14 THE COURT: And the following sentence in  
15 the original version of the letter it says: You  
16 agree to advise us if you determine that any matter  
17 covered by this agreement is a reportable transaction  
18 that is required to be disclosed under treasury  
19 regulations.

20 And that was struck out.

21 THE WITNESS: Right.

22 THE COURT: And you said before that those  
23 are your initials next to the strike-out line?

24 THE WITNESS: They are my initials.

25 THE COURT: Okay. And why do you

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1 understand that was struck out?

2 THE WITNESS: Well, partly because I  
3 wasn't -- Hahn Loesure was looking into that issue  
4 for us as far as whether this transaction would be a  
5 reportable transaction.

6 And what I didn't want to have happen is I  
7 didn't want finger-pointing going back and forth as  
8 far as if something happened later on that somebody  
9 should have known that it was a reportable  
10 transaction.

11 I didn't want PWC to be able to rely on  
12 this and say, Oh, you should have told us that it was  
13 a reportable transaction. I wanted PWC to make its  
14 own determination as to whether it was a reportable  
15 transaction or not so that's why I struck this.

16 I struck it, A, because Hahn Loesure was  
17 looking at it and, B, because I wanted a second --  
18 the whole purpose of me getting PWC was to get a  
19 second opinion on Hahn Loesure. So I didn't want to  
20 strike anything out of PWC and just leave it for Hahn  
21 Loesure to determine. Does that make sense?

22 THE COURT: Yeah. Now, do you know what  
23 reportable transaction referred to?

24 THE WITNESS: That was what Folkman told  
25 me. It referred to some section of the IRS Code, but

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1 other than that I don't know.

2 THE COURT: You mean before having that  
3 struck out you didn't ask?

4 THE WITNESS: What I asked -- the question  
5 I asked Folkman was what -- what's a reportable  
6 transaction?

7 And he said there are certain types of  
8 transactions that have to be reported to the  
9 Government when you file your tax return. He said  
10 this isn't one of them.

11 And I said, Okay. Fine. And then when I  
12 saw this on the PWC engagement letter, basically,  
13 what I said to PWC is, I want you to make that  
14 determination as to whether this is a reportable  
15 transaction. But they did as well and they said it  
16 wasn't a reportable transaction, too. So I don't  
17 think anybody has yet said that it was a reportable  
18 transaction, even them.

19 THE COURT: Okay. I believe that at some  
20 point, and I guess this is -- is it true that at some  
21 point a fee of a million dollars was paid to Midcoast  
22 even though you turned down their offer?

23 THE WITNESS: Yeah. We found that out -- I  
24 don't know if Ms. McCaskill told us that or Candace  
25 over there told us that. But when they interviewed

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1 me in November of 2007, I was told that Fortrend --  
2 we were always wondering why Midcoast dropped out.

3 And I was told that Fortrend claimed a  
4 million dollar deduction on one of their tax returns.  
5 And after they investigated it, they determined that  
6 the million dollars was paid to Midcoast to get out  
7 of the deal.

8 THE COURT: Oh, I see. So nobody from your  
9 side paid Midcoast?

10 THE WITNESS: Oh, no, no, no, no, no, no.  
11 Fortrend paid Midcoast to back away from the deal.  
12 Matter of fact --

13 THE COURT: And you learned that relatively  
14 recently?

15 THE WITNESS: I learned that in 2000- --  
16 well, I learned that, yeah, way after the transaction  
17 was done. If I would have known that, you know,  
18 could a, would a, should a.

19 THE COURT: Okay. And just a couple  
20 questions about the purchase price for Westside. As  
21 I understand it at the point the stock sale closed,  
22 Westside had no assets except about \$40.5 million of  
23 cash and it had tax liabilities?

24 THE WITNESS: Correct.

25 THE COURT: And they were computed to be



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1 about 16.8 million?

2 THE WITNESS: Well, that's what our guys  
3 computed --

4 THE COURT: Right.

5 THE COURT: -- them to be.

6 THE COURT: So that would mean that it had  
7 a shareholder equity of 23.7 million, give or take?

8 THE WITNESS: If -- assuming that there  
9 were no other deductions or setoffs or anything else.

10 THE COURT: Well, I think they had to be  
11 taken into account. I think our guys had plugged in  
12 a small bad debt deduction and other stuff and they  
13 determined that your liability -- Westside's  
14 liability would have been 16.8 million.

15 THE WITNESS: Yeah. If we would have -- if  
16 we would --

17 THE COURT: If you had, right.

18 THE WITNESS: -- if we would have done it,  
19 yes, it would have been that.

20 THE COURT: Now, why did you think that  
21 Fortrend was willing to pay you 34.6 million, which  
22 is 11 million more than the value of the company?

23 THE WITNESS: Because we believed that they  
24 had some type of strategy for reducing the \$16  
25 million down to some lower number. And we were told

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1 that they were in the debt collection business. And  
2 I know a little bit about bad debt. You know, I  
3 collected a lot of bad debt in my time and I got  
4 stuck with a lot of bad debt, too. So I know that on  
5 many occasions, bad debt is deductible.

6 So, you know, and that's -- again, that's  
7 the reason why I hired PWC and why I hired Hahn  
8 Loesure was to basically figure that out. Tell me  
9 what -- make sure that this is okay, you know what I  
10 mean?

11 THE COURT: You know, a lot of times  
12 companies will pay premiums to buy ongoing companies  
13 with good technology. But why would a company pay an  
14 \$11 million premium to buy a company whose only asset  
15 was cash?

16 THE WITNESS: Well, I know that if, for  
17 example -- and I'll give you an example. If I had a  
18 lot of loss trapped somewhere and I wanted to cash  
19 out my loss, that would be a way to do it.

20 THE COURT: So you'd buy a tax liability,  
21 you're saying?

22 THE WITNESS: Basically. I don't know how  
23 that would work technically to be able to make it  
24 work. But that would -- that would certainly allow  
25 you to do that.

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APPENDIX0130

APP1400

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1 THE COURT: And why did Fortrend tell you  
2 that they wanted to buy your company?

3 THE WITNESS: Why -- they never told me why  
4 they wanted to buy it. They just came to me and said  
5 we want to buy your company. My guess was that they  
6 were looking for a way to cash out losses.

7 THE COURT: And I think you said your  
8 understanding was that Nob Hill, the acquisition  
9 vehicle, was going -- initially you thought was going  
10 to borrow all the money to acquire Westside.

11 THE WITNESS: That was my understanding  
12 originally, yeah. I didn't find out about the 5  
13 million until this case.

14 THE COURT: But Westside's only asset was  
15 cash. Why would somebody want to borrow \$34 million  
16 in cash to acquire cash?

17 THE WITNESS: Well, they were getting more  
18 cash than they were borrowing. They were getting 5-  
19 some million dollars more --

20 THE COURT: And they had a --

21 THE WITNESS: -- than they were borrowing.

22 THE COURT: -- \$16 million tax liability --

23 THE WITNESS: I understand. But if they  
24 could have reduced the \$16 million tax liability to  
25 4, they would have been a million ahead and they

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1 would have cashed out a million dollars' worth of  
2 losses.

3 So it's not for me to explain. I mean,  
4 I'll try the best I can. But I don't know what was  
5 behind the door there. I do know that people have  
6 propriety strategies for dealing with hazardous  
7 waste, for dealing asbestos removal. And there are a  
8 lot of situations where people buy companies that  
9 have, for example, large obligations and will pay  
10 more than what the obligation is because they have a  
11 technology for reducing the obligation.

12 THE COURT: Companies sometimes will write  
13 off assets if I owned a company. But writing up a  
14 liability seems very unusual why you would -- you  
15 would voluntarily incur a liability of \$16 million.

16 THE WITNESS: That's a question --

17 THE COURT: If you only get \$5 million for  
18 it.

19 THE WITNESS: That's a question that if  
20 they were in this courtroom today, that would be a  
21 question that you could ask them.

22 THE COURT: But you're a sophisticated guy.  
23 Didn't any of this seem fishy to you?

24 THE WITNESS: That's why I -- that's why I  
25 hired one of the largest accounting firms in the

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APP1402

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1 country. That's why I hired an accounting -- or a  
2 law firm that I had been with for 20 years was to  
3 look at this. That's exactly why I did it.

4 Otherwise, I would have just -- if it  
5 didn't seem fishy to me, I would have just done the  
6 deal and I wouldn't have spent what I spent in terms  
7 of analyzing the deal.

8 So, you know, you scratch your head and you  
9 look and you say could a, would a, should a. What --  
10 what more could I have done to vet this deal?

11 I go to the largest -- one of the largest  
12 accounting firms in the country, Big 4. I go to my  
13 lawyer for 20 years. They both tell me it's a good  
14 deal. There's nothing wrong with it. We don't see  
15 any problem with it.

16 I'm not a tax guy. Tax law is like Chinese  
17 to me. So when I go -- if I don't understand  
18 something, I hire somebody that does. And I did.  
19 And not only did I hire one person, but I hired two  
20 and I got the same response from both of them.

21 THE COURT: Well, didn't PWC tell you that  
22 the apparent plan by Nob Hill or Fortrend involved a  
23 very aggressive tax strategy that's vulnerable to IRS  
24 challenge?

25 THE WITNESS: They didn't tell me that.

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APPENDIX0133

APP1403

## Capital Reporting Company

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1 (Whereupon, page 202 and continuing are  
2 attached under separate cover.)  
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APPENDIX0134

APP1404

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1 CERTIFICATE OF TRANSCRIBER AND PROOFREADER

2 CASE NAME: Michael A. Tricarichi v. Commissioner

3 DOCKET NO.: 23630-12

4 We the undersigned, do hereby certify that  
5 the foregoing pages, numbers 101 through 201,  
6 inclusive, are the true, accurate and complete  
7 transcript prepared from the verbal recording made by  
8 electronic recording by Natasha Thomas on June 9,  
9 2014, before the United States Tax Court at its  
10 session in Washington, DC, in accordance with the  
11 applicable provisions of the current verbatim  
12 reporting contract of the Court, and have verified  
13 the accuracy of the transcript by comparing the  
14 typewritten transcript against the verbal recording.

15

16

Lisa Beauchamp 7/2/14

17

Lisa Beauchamp July 2, 2014

18

(Transcriber) (Date)

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Connie Armstrong 7/8/14

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Connie F. Armstrong 7/8/14

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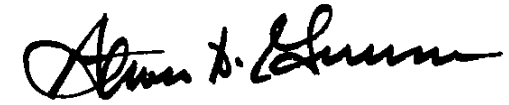
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APPENDIX0135

APP1405



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DISTRICT COURT  
CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI,  
  
Plaintiff,

Case No. A-16-735910-B

Dept. No. XV

vs.

PRICEWATERHOUSECOOPERS, LLP,  
COÖPERATIEVE RABOBANK, U.A.,  
UTRECHT-AMERICA FINANCE CO.,  
SEYFARTH SHAW LLP and GRAHAM R.  
TAYLOR,

**COÖPERATIEVE RABOBANK U.A. AND  
UTRECHT-AMERICA FINANCE CO.'S  
REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF MOTION TO DISMISS**

Defendants.

Defendants Coöperatieve Rabobank, and U.A. Utrecht-America Finance Company, by and through their undersigned attorneys of record, hereby request that this Court take judicial notice of the exhibits to the affidavits of Dan R. Waite and Geert Christiaan Kortlandt filed in support of Rabobank and Utrecht's motion to dismiss (the "Affidavits"), and reserve all rights to be heard before the Court with respect to the Request.

The exhibits to the Affidavits are central to Mr. Tricarichi's claims and their authenticity cannot be questioned. The exhibits are official, publicly-available Tax Court records and/or are



1 repeatedly referred to by Mr. Tricarichi's Complaint. (*See, e.g.,* Compl. ¶¶ 47, 48, 79.) Moreover,  
2 the hearing transcripts from the Tax Court proceedings are central to the Tax Court's findings, and  
3 the Tax Court's decision incorporated by reference the joint exhibits submitted by Mr. Tricarichi  
4 in that action. (*See* Waite Aff. Ex. 1, at \*5 ("The parties filed . . . exhibits that are incorporated by  
5 this reference").) The Affidavits' exhibits are thus "[c]apable of accurate and ready determination  
6 by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject  
7 to reasonable dispute." NRS 47.130(2)(b).

8 WHEREFORE for the reasons stated above, the Court is requested to take judicial notice  
9 of the Affidavits' exhibits pursuant to NRS 47.150(2).

10 DATED this 19th day of October, 2016.

11 LEWIS ROCA ROTHGERBER CHRISTIE LLP

12  
13 By: 

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**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed the foregoing document with the Clerk of the Court and caused a true and accurate copy of the same to be served *via* the Court's E-Filing System DAP/Wiznet, upon the following counsel of record. The date and time of the electronic service is in place of the date and place of deposit in the mail.

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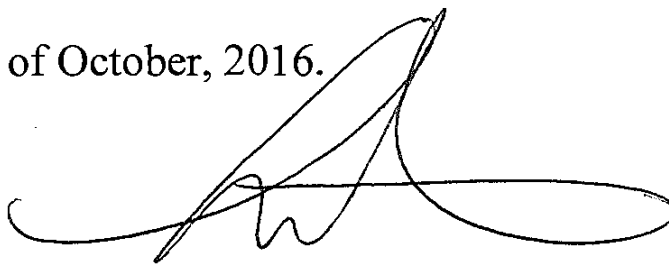
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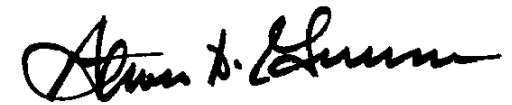
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Dated this 1<sup>st</sup> day of October, 2016.



An Employee of Lewis Roca Rothgerber Christie LLP



CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

MICHAEL A. TRICARICHI,

Plaintiff,

vs.

PRICewaterhouseCOOPERS, LLP,

SEYFARTH SHAW, LLP, UTRECHT-

AMERICA FINANCE CO., GRAHAM R.)

TAYLOR,

Defendants.

CASE NO. A-16-735910

DEPT. NO. XV

**Transcript of Proceedings**

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

**ALL PENDING MOTIONS**

WEDNESDAY, NOVEMBER 16, 2016

APPEARANCES:

For the Plaintiff: MARK A. HUTCHISON, ESQ.  
SCOTT F. HESSELL, ESQ.  
THOMAS D. BROOKS, ESQ.

For the Defendants: DAN R. WAITE, ESQ.  
PETER B. MORRISON, ESQ.  
STEVE L. MORRIS, ESQ.

RECORDED BY: MATTHEW YARBROUGH, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

1 WEDNESDAY, NOVEMBER 16, 2016 AT 10:07 A.M.

2

3 THE CLERK: *Tricarichi versus*  
4 *PricewaterhouseCoopers, LLP.*

5 MR. WAITE: Is it all right if we sit over here,  
6 Judge?

7 THE COURT: You're welcome to sit wherever or  
8 stand wherever.

9 MR. MORRISON: Hello, Your Honor.

10 THE COURT: I'm going to apologize up front if I  
11 can't remember everyone here, but let's go my right to left  
12 with your appearances.

13 MR. MORRIS: Good morning, Your Honor. Steve  
14 Morris on behalf of Seyfarth Shaw.

15 MR. GORDON: Thank you. And Richard Gordon, bar  
16 number 9036, on behalf of defendant,  
17 Pricewaterhousecoopers. And with me today is Peter  
18 Morrison and Winston Hsiao who are pro hac vice admitted to  
19 this action. Mr. Morrison will argue Pricewaterhouse's  
20 Motion today.

21 MR. MORRISON: Good morning, Your Honor.

22 MR. HSIAO: Good morning.

23 THE COURT: Good morning.

24 MR. HUTCHISON: Good morning, Your Honor. Mark  
25 Hutchison on behalf of the plaintiff and have counsel with

1 me as well, who can introduce themselves. My client is  
2 also here in the courtroom with us today, Your Honor.

3 MR. BROOKS: Good morning, Your Honor. Thomas  
4 Brooks also on behalf of the plaintiff, Michael Tricarichi.

5 MR. HESSELL: And Scott Hessel also on behalf of  
6 Mr. Tricarichi.

7 MR. WAITE: Good morning, Your Honor. Dan Waite.  
8 I should actually be over on that side but there's not  
9 enough room. I represent the defendants, Rabobank and  
10 Utrecht-America. We have a Motion to Dismiss but it's not  
11 set for -- I think that I just saw that it got moved to  
12 January. So, I'm just sitting over here.

13 THE COURT: Okay. All right. Welcome, everyone.

14 So what I think I have on for this morning is a --  
15 is it -- how do you say it? Seyfarth?

16 MR. MORRIS: Seyfarth.

17 THE COURT: Seyfarth. Seyfarth Shaw's Motion to  
18 Dismiss and PWC's Motion to Dismiss. Let's do Seyfarth  
19 Shaw's first and, so you all know, I did review the Motion,  
20 the Opposition, and Errata, an Appendix, a Reply, probably  
21 some other items as well, including several of the cases  
22 cited, which gave me pause to remember how long ago it was  
23 that I went to law school and these cases weren't around  
24 back then. But, having said that, I welcome arguments of  
25 counsel, whoever, I guess, on this side is going to argue.

1           MR. MORRIS: Sure, Your Honor. I can shorten my  
2 argument considerably if you will grant us the same favor  
3 you did about four motions back when you said to the  
4 plaintiff, who was the movant, I agree, I've read your  
5 papers, I agree with your motion, and I agree with the  
6 points made in your Reply. And if you would say that to  
7 me, I would then turn this over to the opposition. But I'm  
8 not assuming you will.

9           I would like to summarize our position. I believe  
10 that our position and the Opposition to it is very well  
11 developed in the papers that have been filed. We are here  
12 on a very narrow, single issue. Do you have jurisdiction  
13 over Seyfarth Shaw as a consequence of Graham Taylor, a  
14 former partner at Seyfarth Shaw, writing a letter to  
15 Millennium Fund Recovery --

16           THE COURT: In Ireland?

17           MR. MORRIS: Pardon me?

18           THE COURT: In Ireland?

19           MR. MORRIS: In Ireland, yes.

20           And, as a consequence of that, that letter -- as a  
21 consequence of that letter, which did not address, concern,  
22 or in any way refer to or implicate the plaintiff in this  
23 case. The plaintiff contends that that letter in some  
24 manner, his word is facilitated dealings I had later in  
25 time with respect to another transaction that enabled the

1 people I was dealing with to perpetuate a fraud on me.  
2 That's in essence what he has to say.

3           The letter to Millennium in 2003 referred to a  
4 transaction, it was an opinion with respect to a  
5 transaction that is completely and adequately described in  
6 Exhibit B to our Motion and it refers to a transaction in  
7 2001 that in no way involves this plaintiff. Now, with  
8 that said, Your Honor, the manner in which the plaintiff  
9 contends that the absence of facts to show any contact  
10 between him and Seyfarth or an agent of Seyfarth is  
11 overcome by, he says, the fact that Seyfarth from time to  
12 time has had lawyers appear in this state in other  
13 litigation pro hac, they've attended seminars here, and one  
14 of their partners who joined them in 2005, years after the  
15 transaction, which is in dispute here, one of their  
16 partners is a member of the Nevada Bar. That's it.

17           The *Baker* case addresses that point, membership in  
18 the Nevada Bar as a point conferring jurisdiction and says  
19 membership in the bar is not sufficient to confer  
20 jurisdiction over the defendant, a nonresident defendant.  
21 That doesn't establish that the defendant is here for the  
22 purpose of doing business or for specifically dealing with  
23 the plaintiff in this case. The same is true with respect  
24 to general jurisdiction. Our Court just recently addressed  
25 an exhaustive opinion by Justice Hardesty, both general and

1 specific jurisdiction, in the *Viega* case.

2 THE COURT: The good news is that's one of the  
3 ones I read.

4 MR. MORRIS: Pardon me?

5 THE COURT: That's one of the cases I read.

6 MR. MORRIS: That case has been frequently and  
7 profusely discussed in court in other proceedings in which  
8 I've been involved and probably in which you have been  
9 involved, too. That case has a lot to say to us in this  
10 case. It says with respect to general jurisdiction, our  
11 Court, although it articulated it in words slightly  
12 different from the words utilized by the U.S. Supreme Court  
13 in *Daimler*, our Supreme Court said:

14 Unless the plaintiff -- I'm sorry. The defendant,  
15 in this case *Seyfarth*, is at home in Nevada, unless it  
16 conducts and has conducted systematic and continuing  
17 business in Nevada or is incorporated here, neither of  
18 which is true, and neither of which is alleged in the  
19 Opposition papers, there isn't any basis for the exercise  
20 of general jurisdiction.

21 Now the Supreme Court went on to discuss the  
22 elements of specific jurisdiction. The Court said, and I  
23 know you have read this as many times as I have, and I hope  
24 I don't mispronounce this word, purposefully, the Court  
25 said with respect to a specific jurisdiction, that for that



1 to be sustained against a defendant, that defendant must  
2 have purposefully availed himself or itself or herself of  
3 Nevada law and directed acts within this jurisdiction or  
4 undertook acts within this jurisdiction that resulted in  
5 the injury, the specific injury that the plaintiff  
6 complains of.

7           None of that happened here. And none of that and  
8 the absence of facts that would flesh out a basis for a  
9 specific jurisdiction are addressed in the Opposition to  
10 this Motion. All that is addressed in the Opposition is  
11 the -- is anecdotal.

12           The plaintiff has been injured and the defendants  
13 -- and they put that in the plural, but, in particular,  
14 Seyfarth is a bad actor, that it's been involved in  
15 litigation elsewhere and some of its partners have been  
16 involved in litigation elsewhere or legal proceedings  
17 elsewhere that have nothing to do with these plaintiffs or  
18 this plaintiff. But that you should nevertheless consider  
19 that in determining whether Seyfarth was in this state  
20 dealing with or directed another to deal with the plaintiff  
21 in this state to produce the injury that the plaintiff  
22 complains of. That is not here, Your Honor.

23           We're not asking you to pass on the moral status  
24 of any defendant that is named or discussed in this  
25 litigation. We're just here simply to ask this. Take a

1 look at what contacts there might have been between  
2 Seyfarth and the state of Nevada with respect to the  
3 transaction and the plaintiff who brings the transaction  
4 here to determine whether it would be appropriate for you  
5 to exercise jurisdiction over Seyfarth. And I believe the  
6 answer to that, Your Honor, if you -- and I know you've  
7 done this. Mr. Brooks is here and he can talk about it,  
8 too. He filed an affidavit. He said he's -- conducted a  
9 Google search to determine and to bring before you the  
10 pervasive and continuing contacts of Seyfarth with this  
11 state.

12           And what does he have? He has largely what I  
13 described to you earlier. He has members of Seyfarth  
14 coming here for social purposes, for legal education  
15 purposes, or in pro hac vice, or appearances in other  
16 litigation. He doesn't have anything, anything at all to  
17 establish -- and look at the affidavit of Lori Roeser and -  
18 - Roeser in this case who is the Deputy General Counsel for  
19 Seyfarth in Chicago. She describes for you the absence of  
20 any relationship, contacts, or otherwise directing agents,  
21 for example, or others, between Seyfarth, and the state of  
22 Nevada, and the plaintiff, and the transaction he brings to  
23 this court.

24           There just isn't anything more here, Your Honor.  
25 In fact, there is nothing at all here to link Seyfarth to

1 Nevada and this transaction to enable you to reasonably  
2 decide that you can exercise, and should exercise, specific  
3 jurisdiction over Seyfarth Shaw.

4           That's essentially, Your Honor, our case. Our  
5 Supreme Court supports this. The *Viega* case, I believe,  
6 supports this. It has not only language, but it has facts  
7 that I grant you are not identical, they don't involve a  
8 tax fraud, but they do discuss the bases for jurisdiction,  
9 general and specific. The *Viega* case is not even addressed  
10 by the plaintiff in Opposition. Don't mention it.

11           What they rely on is their 35-year old case from  
12 Nevada and a very brief opinion written by Justice John  
13 Mowbray involving Chester Davis and a lot of folks who were  
14 here at the time. Howard Hughes was in his hay day here in  
15 reclusion of course -- in seclusion of course, but all  
16 Justice Mowbray said in *Davis* is one who directs an act  
17 from out of state at Nevada for the purpose of injuring  
18 someone in Nevada has to answer in Nevada for that conduct.

19           If that case remains good -- and I point out to  
20 Your Honor that case has not been cited by the Nevada  
21 Supreme Court for that point since it was decided in 1985  
22 or 1981. It hasn't been -- it wasn't decided by our  
23 Supreme Court when they published its exhaustive opinion in  
24 *Viega*. Hasn't been decided at all.

25           And as we point out in our papers, it may very

1 well be that the case has no significance any longer at all  
2 under *Walden versus Fiore*, the United States Supreme Court  
3 case which has been acknowledged and applied and followed  
4 in this state, both in State and Federal Court. It says  
5 this. The fact that somebody deals with a person outside  
6 of Nevada that may produce an injury to that person later  
7 in Nevada is not a basis for the exercise of specific  
8 jurisdiction because what the sine qua non of specific  
9 jurisdiction is: Purposeful activity directed at Nevada  
10 that produces an injury to the plaintiff in Nevada. And  
11 that, Your Honor, is not present either in this case with  
12 respect to Seyfarth. And I thank you for your attention.

13 THE COURT: Thank you.

14 MR. HUTCHISON: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. HUTCHISON: Let me read to you from the *Davis*  
17 decision and I hope that's one of the opinions that you did  
18 read as well.

19 THE COURT: I did.

20 MR. HUTCHISON: I'm sure it is. Right?

21 THE COURT: Yes.

22 MR. HUTCHISON: So, counsel has suggested it may  
23 not be good law, until the Supreme Court tells us  
24 otherwise. It's good law. Thirty-five year old cases,  
25 that's young compared to some of the cases.

1 THE COURT: That's not unusual in --

2 MR. HUTCHISON: I've seen lawyers in this  
3 courtroom cite going --

4 THE COURT: -- Nevada. Right?

5 MR. HUTCHISON: -- back to the 1800s. Right? We  
6 cite those kind of cases when in our favor.

7 Here's what the Court said in that *Davis* case,  
8 which, by the way, Seyfarth relegated to a footnote.  
9 Right? One-sentence footnote.

10 It says that in the Complaint it's alleged that  
11 the defendants had, quote: Conspired out of state of  
12 Nevada. Conspired out of state of Nevada to cause injury  
13 to assume a property located in Nevada.

14 What the Supreme Court said there was -- and this  
15 is a conspiracy case, just like this one. There's  
16 conspiracy alleged and the question is, Judge -- and it  
17 really comes down to whether or not you believe *Davis* is  
18 still good law. If *Davis* is still good law, we win.  
19 You've got co-conspirators. *Davis* says if you've got  
20 conspirators outside the state of Nevada conspiring to  
21 injure a defendant -- a plaintiff in the state of Nevada,  
22 then, as the Court said, we conclude that it's reasonable  
23 and constitutionally permissible to require the defendants  
24 to appear and defend their actions in Nevada where the  
25 alleged injuries occurred, not where they conducted

1 activities or directed their activities, but where the  
2 injury occurred.

3           So, you know the scenario, Judge. I don't want to  
4 repeat it because you're shaking your head. The --

5           THE COURT: No, that's fine.

6           MR. HUTCHISON: Then you understand what I'm  
7 saying.

8           Conspirators outside of Nevada engaging in  
9 conspiracy that's going to result in injury in Nevada. The  
10 Davis case says you come to Nevada and you answer for those  
11 actions. And, in fact, that's great policy for us in the  
12 state of Nevada. From a policy perspective, we want  
13 plaintiffs who are Nevada residents, who have been injured  
14 in Nevada, to be able to call into court in Nevada those  
15 who have conspired against them outside the state of Nevada  
16 to answer for their actions, otherwise, the policy will be:  
17 No, go chase them down, Nevada residents, anywhere they  
18 live in the world. That's not what *Davis* said.

19           As a matter of fact, counsel -- the arguments we  
20 just heard counsel make were probably the very same  
21 arguments that the defendants in the *Davis* case made.  
22 We're not Nevada residents. We didn't direct our actions  
23 towards Nevada. How can you hall us into court here? And  
24 the Court said: Well, because you were co-conspirators or  
25 at least because it was alleged you're co-conspirators.

1 Now you get to answer here in the state of Nevada.

2           And this idea that, you know, it's kind of silly  
3 to be citing the contacts generally that the law firm has  
4 had in the state of Nevada, it just goes to the point,  
5 Judge, in addition to the general jurisdiction point that  
6 I'll make in just a minute, it's not unfair to bring this  
7 law firm into the state of Nevada when they've practiced  
8 repeatedly here, when they come to conventions here, when  
9 they do research about Nevada law and advise their clients  
10 about Nevada law, when they've conducted their litigation  
11 practice extensively in the state of Nevada. It's pro hac  
12 vice, I admit it, but to say that this is some big burden  
13 to travel all the way from Illinois, you know, to Las Vegas  
14 to defend yourself just is not evident in terms of their  
15 activities that have been here thus far.

16           So, Judge, really if you want to get to the nub of  
17 the issue is: Do you still think *Davis* is good law?  
18 There's been nothing that's been cited here to suggest that  
19 it's been overturned. There's been nothing to suggest that  
20 the Supreme Court has rejected it. There's nothing in the  
21 Supreme Court's recent juris prudence to suggest otherwise.  
22 In a conspiracy environment, in a co-conspirator alleged  
23 Complaint, like the *Davis* case, like this case, you come  
24 here and answer for your conspiratorial actions that cause  
25 injury in Nevada. And that's the nub of our personal

1 jurisdiction argument on specific jurisdiction.

2           Your Honor, I can go through more of the points  
3 with the Court if need be, but the bottom-line is that we  
4 believe we've proven and demonstrated and shown -- I've  
5 proven that in our Complaint and in the affidavits shown  
6 sufficient facts to demonstrate that Seyfarth was part of a  
7 conspiracy by providing a bogus opinion letter that  
8 justified a component and an important part of the  
9 conspiracy that the DAD scheme, that distressed asset debt  
10 conspiracy that we've seen before and the scheme we've seen  
11 before, that Seyfarth either knew or clearly should have  
12 known, was not a legal or viable basis to claim losses  
13 against [indiscernible], subjects them to the jurisdiction  
14 of this Court.

15           We provide the Court with very clear examples of  
16 the IRS's really two years or I think two and a half years  
17 -- not really, but an opinion where they let everybody know  
18 that this is a fraudulent scheme. This was the -- on page  
19 11 of our brief, the notice, 2001-16 that the defendants  
20 and Seyfarth and Fortrend, who was actually a client of  
21 Seyfarth which perpetrated the tax fraudulent scheme, all  
22 had notice, you know, two years before this was even  
23 presented to my client, that this was a fraudulent scheme.

24           And, oh, by the way, the idea that, you know, a  
25 partner, Graham Taylor, you know, wrote a letter and --



1 that's the only connection and it has nothing to do with  
2 this case at all, well, you know, Graham Taylor is no  
3 longer a lawyer. He plead guilty to conspiracy to commit  
4 tax fraud and was disbarred. That's what we're alleging  
5 here. We're alleging tax fraud by Mr. Taylor not directed  
6 at maybe the person to whom he was disbarred about or he  
7 plead guilty to, but my client was in the very same  
8 position. It's all part of this scheme and this conspiracy  
9 that happened outside the state of Nevada, admittedly, but,  
10 nevertheless, Fortrend directed specific activities to the  
11 state of Nevada, an important principal player in the  
12 conspiracy along with Seyfarth and when -- and we've  
13 demonstrated, you know, that letters were sent here and the  
14 communications were sent here and that Fortrend went after  
15 my client and his business with this tax shelter fraud here  
16 in the state of Nevada.

17           Your Honor, we believe that we've demonstrated  
18 under the conspiracy, personal jurisdiction theory that we  
19 set forth in *Davis*, that we have jurisdiction here. Now,  
20 as an alternative to that, we do suggest that there are  
21 sufficient allegations and sufficient points raised in our  
22 Complaint in the papers that we present to the Court,  
23 extensive papers that we present to the Court that there  
24 is, in fact, general jurisdiction and we point to the  
25 numerous ways in which Seyfarth has consistently appeared

1 and presented itself in the state of Nevada. They've  
2 represented clients on significant Nevada matters. They  
3 regularly attend professional events here in Nevada. They  
4 have publications addressing Nevada law. They have the  
5 admission of various Seyfarth lawyers here in Nevada. The  
6 totality of those contacts, Your Honor, we suggest,  
7 demonstrate a general jurisdiction of purposeful availment  
8 within the state of Nevada and its jurisdiction.

9           We certainly understand -- there's cases where  
10 courts have said that's not enough and Mr. Morris has  
11 demonstrated that just being a member of the state bar or  
12 being admitted pro hac vice doesn't subject you to the  
13 jurisdiction. We're not suggesting otherwise, we just  
14 think there's more here and we've demonstrated that, I  
15 think, Your Honor.

16           Judge, we ask that the Court consider, if in fact  
17 you're at all inclined to suggest that we've not made a  
18 prima facie case of personal jurisdiction and that's what  
19 we've got to make, a prima facie case. We can wait to  
20 trial on a preponderance of the evidence to prove  
21 jurisdiction, just a prima facie case is all we've got to  
22 show at this point. If you don't think we've made that  
23 yet, then give us the discovery on the jurisdictional  
24 issues.

25           We've set forth, Your Honor, in our papers, the

1 standard. I mean, basically you can show that there's  
2 facts that may lead to jurisdictional discovery that may,  
3 in fact, support your jurisdictional claims. You ought to  
4 be able to get discovery. We've demonstrated, I think,  
5 Judge, and set forth how we believe at a very minimum -- if  
6 we haven't already at least demonstrated a prima facie  
7 showing, we've demonstrated enough here that allows us to  
8 conduct discovery, allow us to take some depositions, as  
9 we've set forth in our papers. We've set forth, Judge, the  
10 subjects that we would like to address.

11 If you'd like more details on that, I'm certainly  
12 happy to do it. But, Your Honor, at the end of the day,  
13 *Davis* is either good law or it's not good law. And it sill  
14 is good law. There's nothing to suggest otherwise.

15 The *Walden* case that counsel has suggested may  
16 call into question never cites *Davis*, was not a  
17 conspiratorial basis for jurisdiction and, in fact, we cite  
18 numerous cases after the *Walden* case where other courts  
19 have said that conspiratorial personal jurisdiction  
20 continues to exist and, in fact, cite and analyze the  
21 *Walden* case in that context.

22 Your Honor, I'm happy to answer any questions,  
23 but, with that, I'll submit it.

24 THE COURT: Thank you.

25 MR. MORRIS: Can I have a moment?

1 THE COURT: You sure may.

2 MR. MORRIS: You know, I like references to  
3 history.

4 THE COURT: Well, so do I.

5 MR. MORRIS: [Indiscernible] that has 35 years  
6 behind it and that's the *Davis* case and some of us, I  
7 reluctantly concede to you, I was one of them, was around  
8 when that case was litigated. I can tell you from looking  
9 at the caption, as you will know, too, and perhaps Mr.  
10 Hutchison might know it too from his longtime practice in  
11 this jurisdiction, that the plaintiffs in the case who were  
12 contesting jurisdiction were for the most part out of state  
13 lawyers who were present in Nevada on a continuing basis  
14 over a period of years and they were alleged of having  
15 hatched in New York a scheme by which they would, in  
16 Nevada, through themselves and their agents, in Nevada,  
17 deprive Howard Hughes and his estate, which brought this,  
18 and injure by depriving them of property in Nevada that was  
19 owned by a defendant in the case when it was filed by the  
20 estate. That's the significance of *Davis*.

21 It's astounding to me that somebody would stand  
22 before you and say, as Mr. Hutchison did a moment ago, the  
23 -- well, the U.S. Supreme Court in *Walden versus Fiore*  
24 didn't overrule *Davis*. They didn't go through, for  
25 example, the 13 states whose law they were overruling with

1 respect to contacts sufficient to produce specific  
2 jurisdiction. They said what they said and that decision  
3 has been accepted at face value. It simply says:

4           Unless the defendant has purposefully availed  
5 themselves of the benefits and burdens of local law and  
6 comes to the state or directs another to come to this  
7 state to perform an act which results in an injury to  
8 the plaintiff, there isn't any specific jurisdiction.

9           They can't get away from the fact that Seyfarth  
10 has no ties with respect to this plaintiff and the  
11 transaction that he alleges. And jurisdiction -- that  
12 would be sufficient to sustain jurisdiction here.

13           Your Honor, the argument that is made that  
14 Seyfarth is subject to the Court's general jurisdiction  
15 just doesn't --

16           THE COURT: If I were you, I wouldn't worry about  
17 that.

18           MR. MORRIS: Hold -- it doesn't hold water. You  
19 agree with me on that?

20           THE COURT: Yes.

21           MR. MORRIS: Okay. Well, if I have an agreement  
22 from you on one point, I think I'll take that as sufficient  
23 to conclude that you hopefully will agree with me on  
24 others. Thank you, Your Honor.

25           THE COURT: Thank you. Which, as a Judge, I tend

1 to have to agree with one side or the other and, in this  
2 instance, I do agree with Seyfarth Shaw's Motion and the  
3 points and authorities therein. So the Motion -- Seyfarth  
4 Shaw's Motion to Dismiss for lack of jurisdiction is  
5 granted. Plaintiff has not met its burden of showing even  
6 a prima facie case of personal jurisdiction over Seyfarth  
7 Shaw. In fact, quite the opposite here. The alleged  
8 contacts pleaded and even contained in plaintiff's  
9 affidavits or declarations, I do find are insufficient to  
10 attach either specific or general jurisdiction over  
11 Seyfarth Shaw.

12           Going into details, as I expect this may rise at  
13 some future date, to the extent *Davis* is still good law,  
14 which I do find and you can -- Mr. Morris, when you prepare  
15 the Order, please put this in there. I do find that  
16 whether *Davis* is good law still in light of *Viega* and  
17 *Walden* and *Daimler*, it's highly, highly questionable.

18           To the extent it remains good law, the facts as  
19 alleged in this case are distinguishable from those even  
20 the limited facts in *Davis* and the opinion. And,  
21 therefore, I find that to the extent that *Davis* is good law  
22 still, which is again, highly, highly questionable, but to  
23 the extent it is, it does not apply in the circumstances as  
24 alleged, even under the prima facie standard here by  
25 plaintiff.

1 I do agree that *Viega*, *Walden*, and *Daimler* do  
2 control and are instructive as set forth in Seyfarth Shaw's  
3 briefs, in particular, -- I'm going through the Motion and,  
4 again, when you prepare the Order, make it very detailed.  
5 I agree plaintiff -- and this is starting on page 6 of the  
6 Motion. Plaintiff has not alleged facts that would  
7 establish personal jurisdiction over Seyfarth as set forth  
8 in the Motion. Subsection B, I agree and so find, because  
9 Seyfarth is not, quote, at home in Nevada, is not subject  
10 to general jurisdiction and that's even under the prima  
11 facie standard and considering the evidence by way of  
12 declaration other -- and exhibits submitted by plaintiff.  
13 Seyfarth's not subject to general jurisdiction because it's  
14 not at home in Nevada.

15 Subsection C, I find plaintiff alleges no facts  
16 that would establish specific jurisdiction over Seyfarth.  
17 The facts of this case are, at least as to Seyfarth Shaw,  
18 readily and easily distinguishable from the facts contained  
19 both in *Davis* as well as even the -- I don't have their  
20 names off the top of my head, but the other cases cited by  
21 plaintiff that are post-*Walden* and go to the conspiracy as  
22 to Seyfarth Shaw, those are -- this is very distinguishable  
23 facts, even as alleged and set forth by plaintiff here.

24 I find that plaintiff's conspiracy and aiding and  
25 abetting claims do not support specific jurisdiction over

1 Seyfarth Shaw. Bear with me a moment.

2           Going to the Reply, that -- I do find there is no  
3 specific jurisdiction over Seyfarth in Nevada based on  
4 Seyfarth's own nonexistent conduct in Nevada as alleged by  
5 plaintiff. I do agree with the arguments and please  
6 include those set forth in subsection B in the Reply,  
7 including the subsections set forth in the Reply.

8           I mean, specifically, as noted on page 9, at the  
9 end there, this is probably a succinct summary but in the  
10 long list of alleged contacts here, the only connection  
11 between Seyfarth and this litigation is that Seyfarth  
12 provided an opinion letter to Millennium in Ireland.  
13 Continuing on, I -- there's just -- there is no  
14 jurisdiction over Seyfarth, whether it be specific or  
15 general.

16           Turning, I think *Walden* is very instructive in  
17 terms of rules that apply here. So this -- beginning on  
18 page 1121 and continuing through 1123, *Walden* sets forth  
19 numerous rules that I do find apply and govern. For  
20 example:

21           The inquiry whether a forum state may assert  
22 specific jurisdiction over a nonresident defendant  
23 focuses on the relationship among the defendant, the  
24 forum, and the litigation.

25           There's no -- even under *prima facie*, there's no



1 relationship among Seyfarth, Nevada, and this litigation.

2           It continues: For a state to exercise  
3 jurisdiction, consistent with due process, the  
4 defendants' suit related conduct must create a  
5 substantial connection with the forum state.

6           That does not exist here.

7           To related aspects of this necessary relationship  
8 or relevant -- in that case, first the relationship must  
9 arise out of conducts that the defendant himself, and the  
10 case emphasizes in italics himself, creates what the forum  
11 state -- simply nonexistent here.

12           Due process limits on the state's adjudicative  
13 authority principally protect the liberty of the  
14 nonresident defendant, not the convenience of  
15 plaintiffs or third parties.

16           We have consistently rejected attempts to satisfy  
17 the defendant focus of minimum contacts inquiry by  
18 demonstrating contacts between the plaintiff or the third  
19 parties in the forum state, which I think that's  
20 essentially what plaintiff's attempting to do here and  
21 under controlling case law is to no avail in this case.

22           It goes on: The unilateral -- and this is quoting  
23 the *Helicopteros* case:

24           The unilateral activity of another party or third  
25 person is not appropriate consideration when

1 determining whether a defendant has sufficient contacts  
2 with the forum state to justify an assertion of  
3 jurisdiction.

4 Applicable here.

5 Second, our minimum contacts analysis looks to the  
6 defendants' contacts with the forum state itself, not  
7 the defendants' contacts with persons who reside there.

8 Again, under that rule, there's no jurisdiction  
9 and this case, at least over Seyfarth.

10 Plaintiff cannot be the only link between the  
11 defendant and the forum. Rather it is the defendants'  
12 conduct that must form the necessary connection with  
13 the forum state that is the basis for its jurisdiction  
14 over him.

15 Again, does not exist here even under the prima  
16 facie standard.

17 To be sure defendants' contacts with the forum  
18 state may be intertwined with his transactions or  
19 interactions with the plaintiff or other parties  
20 [indiscernible] defendants' relationship with the  
21 plaintiff or third party standing alone is an  
22 insufficient basis for jurisdiction.

23 Here there -- I mean, even -- there is no  
24 relationship sufficient to attach jurisdiction here. No  
25 relationship between plaintiff and Seyfarth, at least, as

1 to the jurisdictional question before the Court today.

2           Due process requires that a defendant be haled  
3 into court in a forum state based on his own  
4 affiliation with the state, not based on the random  
5 fortuitous or attenuated contacts he makes by  
6 interacting with other persons affiliated with the  
7 state.

8           Again, applies here.

9           The same principles apply when intentional torts  
10 are involved, which we have allegations of intentional  
11 torts in this case.

12           The forum state's to exercise their jurisdiction  
13 over an out of state intentional tortfeasor must be  
14 based on intentional conduct by the defendant that  
15 creates the necessary contacts with the forum.

16           It doesn't exist here.

17           And *Viega*, obviously, is -- also applies and is  
18 instructive for those same types of reasons, but also to  
19 address -- and so please include this in the Order. *Viega*  
20 specifically addresses, among other things, plaintiff's  
21 alternative request to conduct jurisdictional discovery  
22 before I grant the Motion. Applying the rule -- rules set  
23 forth in *Viega*, I do find that, given that the prima facie  
24 case has not even been closely satisfied here by plaintiff,  
25 as set forth in *Viega*, the alternative request for

1 jurisdictional discovery is denied for the reasons set  
2 forth in *Viega*.

3           As I stated earlier, *Daimler* also applies. I  
4 won't go through it and read substantial portions of it,  
5 but please include that in the Order as well.

6           Should we do the next one?

7           MR. MORRIS: Thank you, Your Honor.

8           THE COURT: Give me a moment.

9           Okay. PWC's Motion to Dismiss.

10          MR. MORRISON: Thank you, Your Honor.

11          THE COURT: Remind me your name again.

12          MR. MORRISON: It's Peter Morrison with Skadden  
13 Arps on behalf of PWC.

14          THE COURT: Okay.

15          MR. MORRISON: Your Honor, I'd like to start very  
16 briefly with how we arrived here because the circumstances  
17 in which this case, this Motion arrives, merely color your  
18 decision today.

19               As you know, plaintiff had a cell service company  
20 in Ohio and he filed an anti-trust lawsuit and as part of  
21 which he received a \$60,000,000 settlement. The plaintiff  
22 then went out looking for a transaction, the Fortrend  
23 transaction, which is the transaction at issue here, to try  
24 to shelter some of those gains from taxes that he otherwise  
25 would have to pay and he went through that transaction.

1           The IRS challenged that transaction, Your Honor,  
2 and after a four-day trial in front of the Tax Court, Your  
3 Honor, the Tax Court found that he was liable for  
4 \$21,000,000 in back taxes, interest, and penalties. Now  
5 what's important about that, Your Honor, is the plaintiff  
6 wasn't liable because he simply entered into the Fortrend  
7 transaction. What the Tax Court found was that the  
8 plaintiff had knowledge or constructive knowledge that the  
9 transaction that he was entering into was a tax avoidance  
10 strategy and what the Tax Court found, Your Honor, is that  
11 the plaintiff engaged in a constructive fraud in order to  
12 try to not pay taxes to the government.

13           And the reason why I start there, Your Honor, is  
14 because this plaintiff hardly comes to the Court as a  
15 victim. He's already to have been found to have knowingly  
16 engaged in a constructive fraud. And, given that  
17 background, Your Honor, it should come to no surprise to  
18 the Court that the claims he's brought against my client  
19 suffer from fatal flaws. There are three, Your Honor, in  
20 particular.

21           First, the claims are clearly time barred, Your  
22 Honor. The parties opted for the application of New York  
23 law in their engagement agreement. There is no question  
24 that New York law applies and the New York statute of  
25 limitations applies. In Nevada, Nevada applies Restatement

1 187 when you have a contractual choice of law provision.  
2 Restatement 187 has three elements, Your Honor. One, was  
3 the contract entered into in good faith? Two, does the  
4 chosen state have a substantial relation to the  
5 transaction? And, three, is the provision not contrary to  
6 Nevada public policy? There's no argument the contract was  
7 not entered into in good faith, Your Honor. In fact, the  
8 contract itself says that the terms of the contract were,  
9 quote/unquote, necessary, to, quote:

10           Achieve mutually agreed upon objectives.

11           The agreement further says that it is, quote: In  
12 accordance with you, meaning plaintiffs, understanding of  
13 our engagement, good faith is satisfied.

14           Substantial relation is satisfied, the second  
15 element. PWC's headquarters is in New York. Principal  
16 place of business in New York satisfies the substantial  
17 relation test.

18           Third, is it against Nevada public policy?  
19 Absolutely not. In fact, it's just the opposite. It  
20 supports Nevada public policy. And we cite the *Izquierdo*  
21 case. Enforcing choice of law provisions, quote:

22           Supports Nevada's long recognized public interest  
23 in protecting the freedom to contract, end quote.

24           Application of 187 to this contract at issue means  
25 that New York law governs, Your Honor, and New York's

1 statutes of limitations govern and that's why we've cited  
2 five or six cases, either Nevada or applying Nevada law,  
3 that absolutely honor, Your Honor, choice of law provisions  
4 that are negotiated in contracts, including the *Mortian*  
5 [phonetic] case, Your Honor, which is a Nevada Supreme  
6 Court case from 2015 which looked at the contractual choice  
7 of law provision to apply the chosen law.

8           The only argument and the only argument you get in  
9 response from the plaintiffs, they ask the Court to apply a  
10 different standard entirely. What they ask the Court to  
11 do, Your Honor, is they say that statutes of limitations  
12 are procedural and not substantive and procedural rules,  
13 you should apply the law of the forum state. Unfortunately  
14 for the plaintiffs, Your Honor, is that those lines of  
15 cases arise in the common law choice of law context, not  
16 the context of where you have a choice of law provision in  
17 a contract. So those -- that line of cases is completely  
18 in opposite and wrong. And if you read the *Izqueirido* case,  
19 it expressly rejects the very argument they're trying to  
20 make and it flies in the face of the *Mortian* [phonetic]  
21 case which is Nevada Supreme Court authority.

22           So, given that, Your Honor, there's no question  
23 that New York law applies and, under New York law, Your  
24 Honor, there is a three-year statute of limitations and the  
25 three-year statute of limitations under CPLR 214 runs from

1 when the advice is given by the accountant. According to  
2 the Complaint, the advice at issue here was given in 2003,  
3 three years from the time that the advice was given is  
4 2006. This case was not filed until 2016. These claims  
5 are more than longtime barred under New York law.

6 Now, even for the -- even accepting for the moment  
7 that Nevada law would apply, and it absolutely does not,  
8 but they're going to stand up and argue that Nevada does,  
9 so let's call this a preemptive strike. Nevada's statute  
10 is a two-year/four-year statute. Two years from the time  
11 that you knew or should have known of the wrongdoing or  
12 four years from the time the services were rendered. Even  
13 under Nevada, Your Honor, if the services were rendered in  
14 2003, which is what they allege in paragraph 39 of their  
15 Complaint, I believe, 2003 plus four years is 2007. It's  
16 still longtime barred under Nevada law.

17 Their only argument in response to that is two-  
18 fold. One, they say: Well, we didn't support our injury  
19 until the Tax Court's opinion and therefore the claims  
20 didn't accrue until 2015. Unfortunately, that's not what  
21 the statute says. The statute says that the statute of  
22 limitations runs from the time the services are rendered.  
23 It doesn't run from when they suffered injury. And, in  
24 fact, Your Honor, the statute used to say that it runs from  
25 when they suffered injury, but the Legislature in Nevada



1 excised that provision making crystal clear that the  
2 statute of limitations runs from when the services are  
3 rendered.

4           Secondly, they say: Well, fraudulent concealment.  
5 Fraudulent concealment. The problem there is, Your Honor,  
6 to allege fraudulent concealment to toll the statute of  
7 limitations, even assuming Nevada law applies, which it  
8 does not, they have to allege several things. First, they  
9 need an affirmative actual act of concealment. Silence  
10 and passivity with knowledge is insufficient.

11           Secondly, Your Honor, whatever is concealed cannot  
12 be the underlying wrongdoing itself. The action has to be  
13 something other than the underlying wrongdoing.

14           So to the extent they're saying, you fraudulently  
15 concealed from me that this was a tax avoidance  
16 transaction, that failed as a matter of law. And if you  
17 read their Complaint, they have two boilerplate paragraphs  
18 of fraudulent concealment where they don't even distinguish  
19 among the defendants about who did what.

20           If that were not enough, Your Honor, they can  
21 never prove fraudulent concealment because the Tax Court  
22 has already found that the plaintiff had construct -- had  
23 knowledge or constructive knowledge that this was a tax  
24 avoidance strategy. PWC couldn't conceal something from  
25 the plaintiff the Tax Court has found he already knew.

1 And, so, whether you apply New York law and the three-year  
2 statute that runs from when the services are rendered, or  
3 Nevada law, when you apply a four-year statute when the  
4 services are rendered, either way, these claims are  
5 absolutely time barred.

6 Now, there's two additional and independent  
7 reasons why we believe the Court should grant the Motion to  
8 Dismiss. Of course, Your Honor, if you plan on agreeing  
9 with me and want me to sit down, given the hour, please let  
10 me know, but until then I will run through my argument.  
11 Thank you.

12 The two additional independent reasons are, one --  
13 the second reason is in pari delicto. The third reason is  
14 they can never prove reasonable reliance. Both the in pari  
15 delicto argument and the reasonable reliance argument rely  
16 on the application of collateral estoppel, which clearly  
17 applies here.

18 There are three elements for the application of  
19 collateral estoppel, Your Honor, in Nevada. One, you have  
20 to have a sufficiently similar issue in both cases. Two,  
21 the issue had to be actually litigated. And, three, the  
22 issue had to be a necessary part of the earlier decision.  
23 All three are easily satisfied here, Your Honor.

24 First, the issues are sufficiently similar. In  
25 the Tax Court case, there is a finding of constructive

1 knowledge on behalf of the plaintiff, that he knew that  
2 this was a tax avoidance strategy and that he committed a  
3 constructive fraud. Here, with respect to the in pari  
4 delicto, the plaintiff's culpability, the fact that he  
5 committed a constructive fraud is the same exact issue.  
6 They're both -- the mental intent and culpability of the  
7 plaintiff.

8           The same thing with respect to reasonable  
9 reliance, Your Honor. If he had constructive knowledge  
10 that this was a tax avoidance strategy already, he couldn't  
11 have reasonably relied on any advice that PWC gave him.  
12 The issues are the same.

13           Second, was it actually litigated? Absolutely,  
14 Your Honor. There was a four-day Tax Court trial.

15           Third, was it a necessary part of the earlier  
16 decision? Absolutely. The reason why the plaintiff was  
17 liable in the earlier Tax Court decision, Your Honor, was  
18 that the Tax Court found that he violated the fraudulent  
19 conveyance statute under Ohio law and the only way you can  
20 violate the fraudulent conveyance statute under Ohio law is  
21 if you commit a constructive fraud and you commit a  
22 constructive fraud if you knew or you had constructive  
23 knowledge that this was a tax avoidance strategy and the  
24 entities that were left would not be able to satisfy any  
25 tax judgment.

1           Clearly the plaintiff's knowledge and its  
2 culpability was a necessary part of the earlier decision  
3 otherwise the Tax Court couldn't have made the finding that  
4 it made. There is no question that all of the findings of  
5 the Tax Court apply here as a matter of collateral estoppel  
6 and those include all of the following, Your Honor. Quote:

7           While clearly suspicious of that Fortrend scheme,  
8 plaintiff engaged in willful blindness and actively  
9 avoided learning the truth. Two, PWC had advised that  
10 this had appeared to be a very aggressive tax motivated  
11 strategy that was subject to IRS challenge. Petitioner  
12 turned his back on this red flag.

13           Three, -- and I'll give you another example. PWC  
14 advised petitioner orally that a position can be taken that  
15 the proposed stock sale would not be reportable, but, in  
16 tax speak, this translates to a low level of confidence on  
17 PWC's part.

18           The Tax Court said: We find as a fact that  
19 petitioner had constructive knowledge that Fortrend  
20 intended to implement an illegitimate scheme. And then,  
21 quote:

22           In some, we find that petitioner, who is the  
23 plaintiff here, had constructive knowledge of  
24 Foetrend's tax avoidance scheme and found the plaintiff  
25 liable for constructive fraud.

1           So what does that mean, Your Honor? That means  
2 that the application of all of those findings means that  
3 the claims are also barred by in pari delicto. Okay? They  
4 are barred by in pari delicto because in pari delicto bars  
5 recovery for any injuries suffered from plaintiff's own  
6 wrongdoing. It's the principle that a wrongdoer should not  
7 profit from his own misconduct is so strong, Your Honor,  
8 that in pari delicto should, quote:

9           Apply even in difficult cases and should not be  
10 weakened by exceptions.

11           And, again, preemptive strike, Your Honor. Courts  
12 regularly apply in pari delicto at the pleading stage.  
13 When you have a collateral estoppel issue, in pari delicto  
14 is regularly applied at the Motion to Dismiss stager. We  
15 cite the *Metro Plaza* case, Your Honor. *Union*  
16 [indiscernible] case. The *Kerman* case, Your Honor, --  
17 *Kerman versus Chenery Associates* -- if you haven't had a  
18 chance to read that case, I would encourage it. It's  
19 literally the same situation as here. It is a tax fraud  
20 case where the Court took collateral estoppel of the Tax  
21 Court opinion and bounced the plaintiff out of court on the  
22 grounds of in pari delicto.

23           So, given that, he has been found to have  
24 committed constructive fraud on the one hand and we are  
25 accused merely of negligence or gross negligence on the

1 other hand. The plaintiff's more culpable than PWC and one  
2 tortfeasor cannot recover from another tortfeasor as a  
3 matter of law under the doctrine of in pari delicto. And,  
4 therefore, the claims should be dismissed on the basis of  
5 in pari delicto as well.

6 Last and finally, Your Honor, reasonable reliance.  
7 Reasonable reliance is an element of their claims. Because  
8 of the Tax Court's finding that the plaintiff had  
9 constructive knowledge that this was a tax avoidance  
10 scheme, because he already knew that, he could not have  
11 reasonably relied on PWC's advice as a matter of law. The  
12 law is this:

13 A plaintiff cannot rely on alleged  
14 misrepresentations when the plaintiff knows the alleged  
15 truth or should have known the alleged truth.

16 That's the *Barraly versus Vinya Capital* [phonetic]  
17 case that we've cited.

18 Secondly, a plaintiff cannot reasonably rely on  
19 misrepresentations when the plaintiff has reasons to  
20 suspect that the representation's incorrect but fails to  
21 undertake further investigation, Your Honor. That's the  
22 *HSH Moorebank* [phonetic] case that we cite *versus UPS*.

23 Based on the Tax Court's findings, Your Honor, the  
24 plaintiff can never prove reasonable reliance because the  
25 Tax Court has found that plaintiff ignored red flags. The

1 Tax Court has found that the plaintiff knew or had  
2 constructive knowledge of the truth. The Tax Court found  
3 that as a sophisticated businessman, the plaintiff should  
4 have been suspicious and he did nothing.

5 So, based on the doctrine of collateral estoppel,  
6 reasonable reliance for any of his claims can absolutely  
7 not be found. And, with that, unless you have questions,  
8 Your Honor, I will sit.

9 THE COURT: Thank you very much.

10 MR. HESSELL: Good morning, Your Honor. I have a  
11 bit of a cold, so if you can't hear me, --

12 THE COURT: That's okay.

13 MR. HESSELL: -- tell me to speak up.

14 Scott Hessel for --

15 THE COURT: How do you spell your last name?

16 MR. HESSELL: H-E-S-S-E-L-L.

17 THE COURT: Okay.

18 MR. HESSELL: May it please the Court?

19 Hearing counsel's argument and reading the actual  
20 Tax Court decision leads me to wonder whether I read the  
21 same Tax Court decision he did because the facts that he  
22 just cited as to why my client constructively knew what the  
23 Tax Court found were -- the choice quotes where it only  
24 referenced petitioner rather than the repeated quotes  
25 throughout the opinion that it was petitioner and his

1 advisers that had knowledge of the transaction, the  
2 repeated findings that the advice that PWC gave my client  
3 was wrong as a matter of law and wrong as a matter of fact  
4 and that the failure by the client to do due diligence was  
5 on the basis of the advice that PWC gave him, which is why  
6 the fact that the Tax Court found that Mr. Tricarichi had  
7 constructive knowledge sufficient to warrant the liability  
8 is because he was saddled with all of the knowledge of the  
9 advisors that -- and the promoters that he relied on,  
10 including Fortrend. The constructive knowledge issue that  
11 was at issue in Tax Court was: Did he do sufficient due  
12 diligence in light of what he knew?

13           The question that was not before the Court is  
14 whether PWC is the one who advised him to take the course  
15 that he did. The facts are quite clear that before he ever  
16 considered the transaction, he asked PWC to give him an  
17 opinion: Should he do the transaction or should he not do  
18 the transaction? They had it available to them -- PWC had  
19 available to them all of the same information he did and  
20 they looked at it and they gave him the opinion that he  
21 would have no successor liability as result of  
22 participating in the transaction. That is what the Tax  
23 Court found was not good advice. He has successor  
24 liability because, according to the Tax Court, he and his  
25 advisors failed to participate in enough due diligence to



1 refute the possibility of constructive knowledge.

2 THE COURT: So I'm going to pause you and ask a  
3 question. You said, I think, PWC told your client that he  
4 would have no successor liability.

5 MR. HESSELL: Right.

6 THE COURT: Show me where that's at because I  
7 think --

8 MR. HESSELL: Well, in the Complaint we allege at  
9 paragraphs -- well two different places. Starting on page  
10 36 and continuing on through 39, we allege that -- at the  
11 bottom of 37, the PWC engagement agreement specifically  
12 noted that he -- that PWC had an obligation to determine  
13 whether plaintiff would be participating in a reportable  
14 transaction. That's one of the facts that's cited in the  
15 Tax Court decision. And, further, that he would not be  
16 subject to imposition of penalty. At paragraph 40, it  
17 alleges that he -- that PWC understood but failed to  
18 properly advise our client that it was a reportable  
19 transaction based on the notices out there and then, at the  
20 actual Complaint allegations, which is at paragraphs 83 and  
21 continuing on into count 2, that they failed to advise him  
22 that his dealings with him would -- they failed to advise  
23 or disclose to the client at all their relationship with  
24 Fortrend that existed before, which was an undisclosed  
25 conflict, that the transaction was not legal or proper or

1 in compliance with the laws or a reportable transaction and  
2 that he might be subject to audit and that the IRS would  
3 subject him to a possible theory of transferee liability.

4           The actual memo that's referenced -- that last one  
5 at 83D is what is referred to. In the Tax Court finding  
6 they referred to an internal PWC memo. That's at page 4 of  
7 the Tax Court decision. That memo came into evidence as to  
8 what did they advise our client orally and our client had  
9 never actually seen the internal memo and it was not at all  
10 consistent with what he had actually been advised by PWC,  
11 but throughout the memo that came -- the internal memo that  
12 came into evidence at Tax Court is the following statement,  
13 which is: This is -- as to whether there's a concern about  
14 transferee liability:

15           This is not Tricarichi's concern as the result  
16 would be a corporate tax liability, not a selling  
17 shareholder liability and, per the discussion below,  
18 Tricarichi has no successor transferee liability for  
19 Westside taxes.

20           That's the advice that they gave him repeatedly  
21 over the phone and in person and in which he relied on in  
22 not doing further due diligence about what Fortrend planned  
23 to do with its distressed debt losses.

24           From the perspective of my client, as was advised  
25 to him by PWC, he was under the belief that he did not dig

1 into whether the tax liability -- or the ways in which  
2 Fortrend was going to avoid tax liability associated with  
3 the transaction. That's the advice PWC expressly gave him  
4 and which the Tax Court says was wrong.

5           And so to suggest that the Tax Court, in finding  
6 that he had constructive knowledge of certain facts, a  
7 number of which are set forth in the opinion, means that  
8 only my client had knowledge of those facts, but PWC did  
9 not is to ignore most of the decision. The Tax Court did  
10 not have before him the issue that you do now. The issue  
11 that is before you now is that as between my client and  
12 PWC, who is responsible for the consequences of -- that are  
13 set forth in the decision.

14           The only issue that the Tax Court -- or, in fact,  
15 the advice of PWC and his advisors was part of the  
16 constructive knowledge that the Tax Court attributed to our  
17 client, which is exactly why the Tax Court's decision is  
18 not entitled to collateral estoppel effect such that you  
19 can find, as a matter of law, on the basis of those  
20 findings, that he's equally or more at fault than PWC was  
21 or that he didn't reasonably rely on PWC because those  
22 issues were simply not before the Tax Court.

23           What was before the Tax Court is: What did he do  
24 and what did his advisors do? That was found to be  
25 deficient. And, in my mind, this whole argument is really

1 leading by the chin in light of what the Tax Court said.  
2 PWC selectively quotes only those parts of the decisions  
3 that say petitioner knew certain things or had constructive  
4 knowledge of things and just ignores the rest of the  
5 decision where it says petitioner and his advisors knew  
6 these things.

7           Further, the -- I think I went through this, but  
8 even the facts that the Tax Court found evidence,  
9 constructive knowledge of my client are really the basis  
10 for our claim for liability against PWC here. That is he  
11 struck a sentence in the engagement agreement with PWC that  
12 said he is going to represent to them whether or not it's a  
13 reportable transaction and he quite rightly struck that  
14 sentence because he was relying on them to tell him it  
15 wasn't a reportable transaction, but in all events, they  
16 gave him the advice that it wasn't and the Tax Court said  
17 that's bad -- that was bad advice.

18           It further says that whether he needed a more  
19 likely or not opinion as to the tax liability associated --  
20 or the transaction that Fortrend was going to use. PWC  
21 told him: You don't need to concern yourself with the  
22 underlying means that Fortrend's going to use to avoid tax  
23 liability. That's not your concern. The Tax Court said  
24 that was bad advice. It's over and over again. The  
25 findings of fact are -- match up exactly with what we

1 allege they did wrong. And that's the point of this case  
2 now.

3 THE COURT: Tell me about the statute of  
4 limitations.

5 MR. HESSELL: Yeah. So, I don't want to spend too  
6 much time on the choice of law issue because, frankly,  
7 Nevada Supreme Court, in the last couple of weeks -- you  
8 know, to the extent that you want to read into what the  
9 significance is of denials of writ, denials of  
10 reconsideration, and reconsideration en banc, Judge  
11 Denton's decision in *Asher v. Cantor* is the exact issue  
12 that you have before you. He cited the -- that was Exhibit  
13 A to our Motion or to our response. He cited the same  
14 cases we do, which they just ignore, which is *Wilcox*. I  
15 get to say I cited an 1896 decision. But also --

16 THE COURT: Welcome [indiscernible].

17 MR. HESSELL: The subsequent authority in *Tipton*  
18 [phonetic] and *Sealey* [phonetic] and other cases, which has  
19 never been overruled, which is in Nevada, statute of  
20 limitation are procedural matters. The fact that the  
21 engagement agreement, and this is the sum total of the  
22 choice of law provision, by the way, the agreement will be  
23 governed by the laws of New York. That's it. It does not  
24 say --

25 THE COURT: I'm assuming that PWC's since revised

1 that to be a little clearer.

2 MR. HESSELL: Well, no, but under New York law,  
3 it's pretty clear that the choice of law provision, in  
4 order to -- in order for a choice -- a general choice of  
5 law provision in a contract to encapsulate the statute of  
6 limitations, it must specifically state that it includes a  
7 statute of limitations under New York law. What do they  
8 say to that? Oh, well, on this minor point, we no longer  
9 want to rely on New York law. We want to rely on Nevada  
10 law and the reason is -- why? The parties at the time of  
11 contracting were operating under New York substantive  
12 choice of law rules or at least that's what their argument  
13 is and New York law says that you have to specifically  
14 include the statute of limitations if you want it to be  
15 governed.

16 In all events, Nevada law is clear that you --  
17 that it's a procedural rule so general choice of law  
18 provisions don't cover it. The *Meridian* case is a Nevada  
19 Court, not surprisingly, enforcing a Nevada choice of law  
20 provision. So, it has no bearing on this because they  
21 didn't choose another state's law. The *Meridian* Nevada  
22 Supreme Court 2015 case just made the unremarkable finding  
23 that a case filed in Nevada with the Nevada choice of law  
24 clause should be subject to Nevada statute of limitations.

25 The *Izquierdo* case is a Federal District Court

1 case, not a Nevada case. It does not even mention any of  
2 the precedent that we cite to, *Wilcox*, *Tipton* [phonetic],  
3 and *Sealey* [phonetic], and it notes that neither party was  
4 arguing for the application of another state's law at all.  
5 So, there were no arguments presented and he just jumps  
6 right into the Restatement analysis.

7           So, Nevada law applies. I think there's really  
8 two fundamental points on why the claims are timely under  
9 Nevada law. Number one is this issue of: Can the statute  
10 of limitations -- the accountant statute of limitations bar  
11 a client's claim where he's not yet suffered injury? The  
12 factual background here is the client entered into a  
13 tolling agreement with PWC as soon as the IRS issued him a  
14 notice of transferee liability. That was the first time  
15 that the IRS had formally found him to be liable. That's  
16 just the background. The question is whether it's subject  
17 to any limitations. The accountant malpractice statute is  
18 subject to any limitations by virtue of the 100-year of  
19 authority that suggests that until a plaintiff has been  
20 subject to injury, there is no statute of limitations.  
21 That's the *Saragosa* case. There's a *Dredge Corp. v. Wells*  
22 *Fargo* [phonetic], but, even better, is the opening  
23 provision of Chapter 11 under the Nevada code for the  
24 commencement of the statute of limitations. That's NRS  
25 11.01 says the following, and it's been in place since

1 1911:

2 Civil actions can only be commenced within the  
3 periods prescribed in this chapter after the cause of  
4 action shall have accrued except when a different  
5 limitation is prescribed by statute.

6 It's the preamble to Chapter 11 where the same  
7 provision that they're relying on is found.

8 So, the whole statutory -- how do you statutorily  
9 analyze the addition of the accounting malpractice statute  
10 in the face of a provision that was on the books and has  
11 been on the books for 100 years must take into account the  
12 fact that, as we are today, that language in NRS 11.010  
13 already makes clear that unless it expressly says that the  
14 claims are barred, notwithstanding that there's no accrual  
15 of a claim, the claims are timely.

16 And in all events, there's this issue of: We have  
17 plead into the statutory exception under the accounting  
18 malpractice statute, that is a fraudulent concealment. We  
19 have alleged in paragraph 73 and 74, and we could put more  
20 meat on the bone if need be, but I think those allegations  
21 are sufficient to merely put them on notice of what the  
22 basis for our arguments are. That's all we're talking  
23 about at the pleading stage. Do they understand that one  
24 of the ways in which we argue that the claims are timely is  
25 because we allege that they made misrepresentations to us



1 in 2003, which between 2003 and 2011, they learned were  
2 false and they never said anything to us? And we allege  
3 that the reason why they didn't come clean is because they  
4 know that that would have prompted the client to take  
5 action in a more timely fashion.

6           The question of whether that's intentional conduct  
7 designed to conceal the cause of action, the question of  
8 whether he knew enough before in light of that, those are  
9 all questions of fact for a trier of fact or at least they  
10 are questions in which we should be entitled to discovery  
11 on to know: What did PWC know or learn about this  
12 transaction between 2003 and 2011 when we entered into the  
13 towing agreement? When did they learn those things and why  
14 didn't they tell us anything about it?

15           Those facts, I think, will reveal, and we allege  
16 that they will reveal, that the reason why they didn't come  
17 clean and say that our prior advice was bad is because it  
18 would have triggered our client to bring suit.

19           In all events, it's quite clear under Nevada law  
20 that when a plaintiff learns they have a claim or whether  
21 it's been concealed, those are questions of fact for  
22 another day, which cannot be disposed of on the pleadings  
23 alone.

24           The citation to cases that say mere silence is not  
25 enough, we don't allege just that they stood silent. We

1 allege that they intentionally stood silent in order to  
2 cover up the cause of action.

3           In all events, there are principals under Nevada  
4 law with respect to -- that would allow you or a finder of  
5 fact to conclude that even if the statute of limitations  
6 might be applicable to the claim, Nevada allows courts  
7 avoid an inequitable result where there is no prejudice to  
8 the defendant and -- under the principles of equitable  
9 tolling. And, here, there's not even a conceivable  
10 argument for prejudice to the defendant. There's no  
11 staleness to these claims. Our client went to Tax Court  
12 and preserved all the evidence, has people under  
13 deposition. His deposition has been taken and they've  
14 known about the case for as long as we knew that the IRS  
15 was going to challenge the case.

16           So, what -- all we have here is a defendant  
17 seeking to take advantage of the fact that they gave us bad  
18 advice now. I would submit to you that we have done enough  
19 or we -- at the very least, should be given the opportunity  
20 to amend to sure up some of these issues if you think that  
21 they're not sufficient on their own -- on -- as they are  
22 right now.

23           THE COURT: Thank you.

24           MR. MORRISON: May I -- if I have to, Your Honor,  
25 and I'll try my best to be brief.

1 THE COURT: I'd appreciate that.

2 MR. MORRISON: Yes. And I'll try to do it in the  
3 order in which counsel took it. Counsel started with in  
4 pari delicto, Your Honor, so let me just deal with some of  
5 those things. His entire argument is a complete  
6 misapplication of in pari delicto. The test isn't what the  
7 Tax Court said about PWC versus what the Tax Court said  
8 about the plaintiff. The test is what the Tax Court said  
9 about the plaintiff, because the PWC wasn't in front of the  
10 Tax Court, versus what plaintiff alleges against PWC here.  
11 That's the comparison. What the Tax Court said about PWC  
12 is irrelevant. It's: What is he alleging against PWC here  
13 versus what the Tax Court said about plaintiff there? The  
14 Tax Court said he committed fraud and the only allegations  
15 against us here are negligence. There isn't any question  
16 that they -- that he is more culpable than we are.

17 But even if you accept counsel's argument, let's  
18 accept everything he said, which I don't, but let's accept  
19 it. Right? At best, it would mean that PWC engaged in  
20 some type of constructive fraud. That puts us on equal  
21 grounds. Constructive fraud and constructive fraud.  
22 That's the meaning of in pari delicto. In pari is if  
23 you're on equal grounds, he cannot recover from us. So  
24 even accepting his misapplication of in pari delicto, they  
25 still lose. That's number one.

1           Number two, this whole idea that the Tax Court  
2 never really allocated fault between PWC and the plaintiff  
3 is entirely besides the point. We're not arguing res  
4 judicata, Your Honor. We're not saying that some court  
5 somewhere has decided claims between plaintiff and PWC.  
6 We're arguing collateral estoppel. So all of that also is  
7 inabusit [phonetic].

8           Now, just so that the record is clear, I did read  
9 the Tax Court opinion that he read and --

10          THE COURT: So did I.

11          MR. MORRISON: Yes. Okay. So I will not go back  
12 through it, but it is crystal clear that the Tax Court  
13 found that PWC gave warnings that were ignored. Okay.

14          And then with respect to statute of limitations,  
15 Your Honor, can we talk about the Denton decision for a  
16 second because he raises it? And he submitted something at  
17 5 o'clock yesterday, which is --

18          THE COURT: Which --

19          MR. MORRISON: Which is a sandbag move, Your  
20 Honor.

21          THE COURT: The good news for you is --

22          MR. MORRISON: Good.

23          THE COURT: -- I don't believe I've seen whatever  
24 it was he submitted at 5 o'clock yesterday. So, --

25          MR. MORRISON: Well can I -- it proves our point,

1 Your Honor, which is why I'm raising it. If I may?

2 THE COURT: Sure.

3 MR. MORRISON: Because if you're going to read it,  
4 I'd like to have the opportunity to address it.

5 THE COURT: I don't think it's --

6 MR. MORRISON: Relevant? Okay.

7 THE COURT: No, I mean, I don't have it, so --

8 MR. MORRISON: okay. Well, if you do consider it,  
9 all I would say is they take the position that the Supreme  
10 Court affirmed the rule of law --

11 THE COURT: Oh he did mention that. Right.

12 MR. MORRISON: Yes. He mentioned that.

13 THE COURT: Yeah.

14 MR. MORRISON: The Supreme Court didn't affirm  
15 anything. All the Supreme Court did was deny a writ. So  
16 they are so desperate to escape statute of limitations,  
17 Your Honor, they want -- they actually say -- can I have it  
18 because I think it's really worth noting?

19 Here's what they say to you, Your Honor. I'm  
20 sorry. I find it stunning.

21 Judge Denton's decision and the subsequent Nevada  
22 Supreme Court repeated affirmances -- there's no repeated  
23 affirmances. It's a denial of a writ. Imagine the  
24 desperation that they have to escape the rule of law we're  
25 suggesting to suggest that the denial of a writ is somehow

1 a repeated affirmance by the Nevada Supreme Court.

2           The last thing I'll say, Your Honor, is he  
3 mentioned *Meridian*, the Nevada Supreme Court case. It did  
4 apply Nevada law. I agree with that. But the point is:  
5 Why did it apply Nevada law? It didn't apply Nevada law  
6 because statute of limitations is procedural versus  
7 substantive. It applied Nevada law because the contract  
8 said Nevada law applied.

9           And, Your Honor, if you look at the other citation  
10 in *Mortian* [phonetic], they cite to a second case that  
11 looks to the contract and applies Alaska law, which is the  
12 law that was in the promissory note at issue.

13           Every -- so the Nevada Supreme Court says you look  
14 at the contract, you apply that law. New York law applies.  
15 It's a three-year statute from when services are rendered.  
16 These claims are all time barred, Your Honor. And with  
17 that -- oh, and the last thing I'll say is he raises the  
18 fraudulent concealment issue and his argument is that we  
19 misrepresented to the plaintiff the tax advice and had they  
20 known, they would have filed suit earlier. That is  
21 precisely what is not allowed under fraudulent concealment.  
22 The underlying wrongdoing itself cannot be the fraudulent  
23 concealment. That's the only argument you heard from  
24 opposing counsel.

25           So, respectfully, Your Honor, whether it's statute

1 of limitations or in pari delicto or no reasonable  
2 reliance, not only do we think this Complaint should be  
3 dismissed, we ask that it be dismissed with prejudice  
4 because none of these issues can be fixed. Thank you.

5 THE COURT: Thank you. Thank you both.  
6 Interesting issues in this one, which I think are more  
7 appropriate for later point perhaps in the case.

8 I'm going to deny, without prejudice, PWC's Motion  
9 to Dismiss, although whether Nevada law applies on the  
10 statute of limitations or New York law applies, I don't  
11 believe it's appropriate to dismiss under the Motion to  
12 Dismiss standard and, therefore, it's denied without  
13 prejudice.

14 As to the other arguments raised, I -- under the  
15 Motion to Dismiss standard, they do state claims and,  
16 again, the denial is without prejudice.

17 So, Mr. Hessell, prepare the Order and submit it  
18 to counsel for review and approval.

19 MR. HESSELL: Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. MORRISON: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MR. HUTCHISON: Thank you, Judge.

24 PROCEEDING CONCLUDED AT 11:31 A.M.

25 \* \* \* \* \*

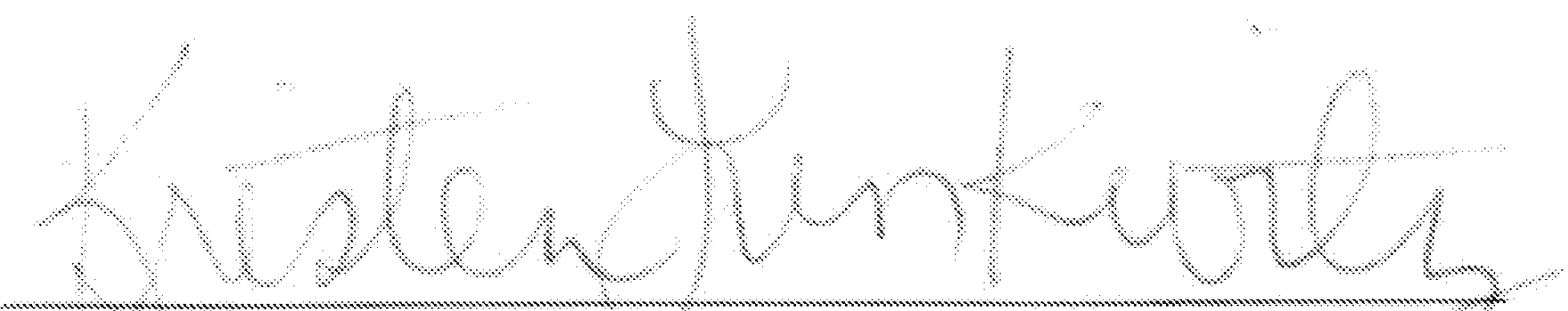
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**CERTIFICATION**

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

A handwritten signature in cursive script, reading "Kristen Lunkwitz", is written over a horizontal dotted line.

KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER



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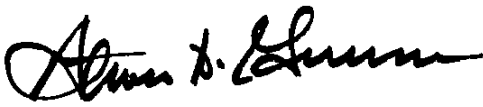
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DISTRICT COURT  
CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI,  
  
Plaintiff,  
  
v.  
  
PRICEWATERHOUSE COOPERS, LLP,  
COÖPERATIEVE RABOBANK U.A.,  
UTRECHT-AMERICA FINANCE CO.,  
SEYFARTH SHAW LLP and GRAHAM R.  
TAYLOR,  
  
Defendants.

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CLERK OF THE COURT

) CASE NO. A-16-735910-B  
) DEPT NO. XV  
)  
)  
) **PLAINTIFF'S (1) OPPOSITION**  
) **TO DEFENDANTS RABOBANK**  
) **AND UTRECHT'S MOTION TO**  
) **DISMISS, AND (2) COUNTER-**  
) **MOTION FOR LEAVE TO TAKE**  
) **JURISDICTIONAL DISCOVERY**  
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) **JURY TRIAL DEMANDED**  
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1	<i>Gulf Oil Corp. v. Gilbert</i> , 330 U.S. 501 ... (1947).....	19
2	<i>Kipnis v. Bayerische Hypo-Und Vereinsbank, AG</i> , 2016 WL 6539470 at *8 (Fla. 2016).....	21
3	<i>Madanes v. Madanes</i> , 981 F.Supp. 241 (S.D.N.Y. 1997).....	16
4	<i>Monkton Ins. Svcs., Ltd. v. Ritter</i> , 768 F.3d 429, 432 (5th Cir. 2014).....	15
5	<i>Oak Grove Investors v. Bell &amp; Gossett Co.</i> , 668 P.2d 1075 (Nev. 1983).....	22
6	<i>PDL Biopharma, Inc. v. Genentech, Inc.</i> , 2011 WL 4433687 (Nev. Dist. Ct. 2011).....	14, 17
7	<i>Peccole v. Eighth Jud. Dist. Ct.</i> , 111 Nev. 968, 899 P.2d 568 (1995).....	13, 14, 15, 16, 17
8	<i>Siragusa v. Brown</i> , 114 Nev. 1384, 1392.....	21, 22
9	<i>Tipton v. Heeren</i> , 109 Nev. 920, 859 P.2d 465 (1993).....	21
10	<i>Trepuk v. Frank</i> , 44 N.Y.2d 723 (N.Y. 1978).....	22
11	<i>Trintec Inds., Inc. v. Pedre Promotional Prods., Inc.</i> , 395 F.3d 1275 (Fed. Cir. 2005).....	18
12	<i>Trump v. Eighth. Dist. Ct.</i> , 109 Nev. 687, 692, 857 P.2d 740, 743 (1993).....	11, 16
13	<i>USACM Liquidating Tr. v. Deloitte &amp; Touche</i> 754 F.3d 645, 647, 649 (9th Cir. 2014).....	20
14	<i>Walden v. Fiore</i> , 134 S.Ct. 1115 (2014).....	14
15	<i>Wilcox v. Williams</i> , 5 Nev. 206 (1869).....	21
16	<b>Statutes</b>	
17	NRS 11.010 .....	21
18	NRS 207.470(3) .....	24
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## POINTS AND AUTHORITIES

### I. INTRODUCTION

Defendants Coöperatieve Rabobank U.A. ("Rabobank") and Utrecht-America Finance Co. ("Utrecht") throw the proverbial kitchen sink at the Complaint of Plaintiff Michael A. Tricarichi by seeking to dismiss part or all of the case against them on six different grounds. Some of their arguments have previously been put forth by the other defendants here. Ultimately, all of the arguments fail, and the motion should be denied.

The motion's arguments, and the reasons why they fail, can be summarized as follows:

- **Personal jurisdiction:** The defendants seek to avoid the jurisdiction of this Court, but they ignore the fact that they purposefully availed themselves of the privilege of acting in Nevada and causing important consequences in Nevada. As such, there is specific personal jurisdiction over them. Alternatively, Rabobank and Utrecht were active participants in a conspiracy that targeted, defrauded and injured Mr. Tricarichi, a Nevada resident, thereby giving rise to jurisdiction here.
- **Forum non conveniens:** Rabobank and Utrecht make a perfunctory argument that New York is a more convenient forum because they are located in New York. But one party's conclusory statement that another forum is more convenient for that party is not sufficient to justify dismissal, particularly since a plaintiff may be denied his choice of forum only in exceptional circumstances, which are not present here.
- **Statute of limitations:** Rabobank and Utrecht base their motion on an argument their co-defendant PricewaterhouseCoopers, LLP ("PwC") recently made on a motion to dismiss. The Court denied PwC's motion from the bench on November 16, and should likewise deny the present motion.
- **Aiding and abetting, and conspiracy:** Rabobank and Utrecht move to dismiss these claims on the basis of the same collateral estoppel argument recently raised by PwC's motion to dismiss, which the Court did not find persuasive. Thus, again, the motion as to these claims should be denied for the same reasons.
- **Racketeering:** The present motion to dismiss the racketeering claims is basically a repeat of the *in pari delicto* argument recently advanced by PwC, which the Court found unpersuasive. The same result – denial of the motion to dismiss – should hold here.
- **Unjust enrichment:** Plaintiff conferred a benefit on Rabobank and Utrecht, and no express written agreement governs in this regard, so the unjust enrichment claim should proceed, notwithstanding defendants' arguments to the contrary.

For these reasons, as discussed below, the motion to dismiss should be denied in its entirety.

1 **II. FACTUAL BACKGROUND**

2 **A. Plaintiff Tricarichi and Defendants Rabobank and Utrecht**

3 Plaintiff, Michael A. Tricarichi, has been a resident of Las Vegas, Nevada since May  
4 2003. (Cmplt. ¶ 9; Tricarichi Aff. ¶ 3) After moving to Nevada, Mr. Tricarichi, the sole  
5 shareholder of Westside Cellular, Inc. ("Westside"), sold his Westside shares in what the  
6 Internal Revenue Service has referred to as a "Midco" transaction. (Cmplt. ¶¶ 24-54)  
7 Defendants' wrongdoing in connection with this sale caused Mr. Tricarichi to suffer millions of  
8 dollars in tax and other liabilities that he otherwise would not have faced. (*Id.* ¶¶ 9, 75-80)

9 Defendant Rabobank, formerly known as Coöperatieve Centrale Raiffeisen-  
10 Boerenleenbank, B.A., is a multinational banking and financial services company organized  
11 as a Dutch cooperative, with principal branches in New York, New York and Utrecht,  
12 Netherlands. (Cmplt. ¶ 11; App. Ex. R at 1)<sup>1</sup> Rabobank and its consolidated subsidiaries  
13 (which include Utrecht) serve more than 10 million customers in 48 countries including the  
14 U.S., and as of December 31, 2015, had total assets of €670 billion (\$712 billion). (App. Exs.  
15 Q, R at 1) Rabobank has numerous offices throughout the U.S. (*See* Ex. Q.)

16 During the period relevant to the complaint, Rabobank's business included financing  
17 and facilitating Midco transactions promoted by third parties including Fortrend International,  
18 LLC ("Fortrend") and Midcoast Credit Corp. ("Midcoast"). (Cmplt. ¶ 11) Rabobank  
19 purposefully did business with Plaintiff in Las Vegas, Nevada in connection with such a  
20 transaction. (*Id.*; Tricarichi Aff. ¶¶ 13-19) Rabobank and Utrecht promoted and made the  
21 transaction possible by moving funds through Plaintiff's and other accounts and by loaning  
22 Fortrend the lion's share of the purchase price for Plaintiff's company, in return for a  
23

24  
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26  
27 <sup>1</sup> Citations to "App. Ex. \_\_\_\_" are to the Appendix of Exhibits in Support of Plaintiff's (1) Opposition to  
28 Defendants Rabobank and Utrecht's Motion to Dismiss, and (2) Counter-Motion for Leave to Take  
Jurisdictional Discovery, which is in turn supported by the accompanying Affidavits of Michael  
Tricarichi and Thomas Brooks.

1 substantial fee — all along knowing that the transaction was improper for tax purposes.

2 (Cmplt. ¶¶ 4, 11-12, 44-52, 54, 97-123)

3 Defendant Utrecht, a wholly-owned subsidiary of Rabobank, is a Delaware  
4 corporation with its principal place of business in New York. (Cmplt. ¶ 12) Utrecht was a  
5 subsidiary via which Rabobank financed transactions promoted by Fortrend, Midcoast and  
6 related entities. (*Id.*) Utrecht loaned Fortrend the vast majority of the purchase price for  
7 Plaintiff's stock. (Cmplt. ¶¶ 4, 11-12, 44-52, 54, 97-123) Utrecht's subsidiaries include  
8 Rabobank, N.A., a national banking association based in California, and Rabo AgriFinance,  
9 LLC, which is registered to do business in Nevada and which focuses on food and  
10 agriculture-based lending. (App. Ex. R at 1, S) Utrecht is the Manager of Rabo AgriFinance,  
11 LLC. (App. Ex. S at 1)

12  
13  
14 **B. Midco Transactions, Rabobank and Notice 2001-16**

15 As the Court is familiar from prior briefing and argument, “Midco” or “intermediary”  
16 transactions, a type of abusive tax shelter, were widely promoted and carried out by Fortrend,  
17 Rabobank and others during the late 1990s and early 2000s. (Cmplt. ¶¶ 24, 49) Midco  
18 transactions were generally promoted to shareholders — like Mr. Tricarichi — of closely held C  
19 corporations with potentially large taxable gains and income, as a purported solution to “double  
20 taxation,” *i.e.*, taxation at both the corporate and individual shareholder levels. (Cmplt. ¶ 25)  
21 Midco promoters like Fortrend (which is now defunct) represented to the target company's  
22 shareholders that they would legitimately net more for their shares than would otherwise be the  
23 case absent the intermediary transaction. (Cmplt. ¶¶ 15, 25) As happened with Plaintiff's  
24 transaction, however, such representations often proved, years later, to be false. (*Id.* ¶ 26)

25  
26 Rabobank frequently partnered with Fortrend in executing Midco deals, and had done  
27 dozens of transactions with Fortrend prior to Plaintiff's transaction. (Cmplt. ¶ 44; App. Ex. J at  
28 3 (Rabobank document noting that “We have entered into various acquisition financing

1 transactions with Fortrend over the past five years, all of which have been concluded  
2 satisfactorily.”)) From 1996 to 2003, Fortrend promoted almost one hundred Midco  
3 transactions, and worked closely with Rabobank to obtain financing for many of those  
4 transactions. (*Id.* ¶ 45) In Plaintiff’s case, of the \$34.6 million agreed purchase price for  
5 Westside’s stock, \$29.9 million would come from Rabobank, via Utrecht. (*Id.*) (The  
6 remainder was loaned to Nob Hill by another Fortrend affiliate, Moffat.) (*Id.*)

8 During the years 1998 – 2002, Rabobank (via subsidiaries including Utrecht) had  
9 financed a total of 88 Midco transactions, at the pace of about 18 transactions per year.  
10 (Cmplt. ¶ 49) Rabobank earned considerable and attractive fees via the loans, which ranged in  
11 amount between \$6 million and \$260 million, and were mostly for terms of only one to three  
12 days. (*Id.*) At the time, Rabobank was experiencing difficulty in other areas of its business,  
13 and opportunistically looked at the Midco financing transactions as “easy money” – short term  
14 loans with high yield and no credit risk. (*Id.*)

16 Notwithstanding multiple representations to Plaintiff that the Fortrend transaction was  
17 proper under the tax laws, Fortrend, Rabobank, Utrecht and the other defendants actually knew  
18 that, on January 18, 2001, the IRS had issued Notice 2001-16. (Cmplt. ¶ 56) The Notice  
19 describes transactions where a corporation disposes of substantially all of its assets and then  
20 the corporation’s shareholders sell their stock to another party who seeks favorable tax  
21 treatment. (*Id.*) Notice 2001-16 states that any transactions that are the same as, or  
22 substantially similar to, those described in the Notice are “listed transactions.” (*Id.*) Listed  
23 transactions are deemed by the IRS to be abusive tax shelters that may result in penalties and  
24 other consequences. (*Id.*) Fortrend, Rabobank, Utrecht and the other defendants failed to  
25 properly advise Plaintiff about the 2001 Tax Notice and its significance for the transaction  
26 being promoted to him. (*Id.* ¶¶ 57-58)



1 Rabobank and the other defendants thus failed despite the fact that, in or about October  
2 2002 – that is, almost a year before the transaction involving Plaintiff closed – Rabobank had  
3 determined that many if not all of the Midco transactions in which it had previously participated  
4 were listed transactions as defined by the IRS. (Cmplt. ¶ 51) As a result, the number of Midco  
5 transactions executed by Rabobank after October 2002 decreased significantly. (*Id.*) Rabobank  
6 took part in only five Midco financing transactions in 2003, one of those being Plaintiff's. (*Id.*)  
7 In 2004, Rabobank undertook only one Midco financing transaction, its last. (*Id.*) A Rabobank  
8 internal audit further found in 2005 that Rabobank's internal controls had been inadequate in  
9 numerous respects with respect to the Midco transactions in which it had participated. (*Id.*) The  
10 audit found, among other things, that it was at least "questionable" whether Midco promoters  
11 like Fortrend could be described as "reputable" companies with which Rabobank should be  
12 doing business. (*Id.*) Rabobank would have stopped financing Midco transactions entirely after  
13 October 2002 were it not for the fact that it did not want to harm its existing relationships with  
14 Midco promoters like Fortrend. (*Id.*)

### 17 C. The Remaining Defendants

18 The co-defendants of Rabobank and Utrecht, and a brief summary of their respective  
19 roles in the case, are as follows:

- 20 • **PricewaterhouseCoopers LLP ("PwC")** is an accounting firm with expertise in tax  
21 matters that Mr. Tricarichi retained to review the proposed transaction. PwC was  
22 grossly negligent in its role. (Cmplt. ¶¶ 3, 10, 37-43, 53, 56-58, 81-96)
- 23 • **Seyfarth Shaw, LLP ("Seyfarth") and Graham R. Taylor:** Seyfarth and Taylor  
24 are a law firm and a now-disbarred attorney who took part in the fraud upon Mr.  
25 Tricarichi by issuing a bogus tax opinion letter to an affiliate of Fortrend, which  
26 promoted the transaction to Plaintiff and purchased the Westside shares. (Cmplt. ¶¶  
27 5, 13, 59-72)

28 Further detail regarding the involvement of PwC and Seyfarth is set forth in Plaintiff's  
oppositions to the motions to dismiss filed by these parties.

1           **D. Plaintiff Becomes Ensnared in the Midco Transaction.**

2           Prior to 2003, Plaintiff was the president and sole shareholder of Westside, which  
3 purchased and resold cellular network access. (Cmplt. ¶ 27) After Westside was forced to sue  
4 certain of its providers for anticompetitive trade practices, and prevailed on liability, the  
5 company reached a settlement regarding damages and in April / May 2003 received net  
6 settlement proceeds of about \$40 million. (*Id.* ¶¶ 27-28) In exchange, Westside was required to  
7 terminate its business as a retail provider of cell phone service. (*Id.* ¶ 28) Plaintiff was then  
8 introduced to both Fortrend and Midcoast, who each represented that they were involved in the  
9 distressed debt receivables business and wanted to purchase Plaintiff's Westside stock as part of  
10 this business. (*Id.* ¶¶ 29-32) Fortrend and Midcoast, another now-defunct tax-shelter promoter,  
11 each proposed a Midco transaction and represented to Plaintiff that the transaction would result  
12 in legitimate tax benefits and a greater net return to Plaintiff than he would otherwise realize on  
13 the sale of Westside. (*Id.* ¶¶ 32-33) Neither party told Plaintiff that the IRS was scrutinizing  
14 and challenging similar transactions as improper tax shelters. (*Id.*) Absent Defendants'  
15 improper actions, Plaintiff would have left the settlement proceeds in Westside, paid the  
16 corporate-level tax and invested in other business ventures through Westside, thereby avoiding  
17 any shareholder-level tax on a distribution from Westside. (*Id.* ¶ 34) Because Plaintiff thought  
18 Midcoast and Fortrend were competitors, he began negotiating with both. (Cmplt. ¶ 35) But  
19 Midcoast and Fortrend secretly agreed Midcoast would step away from the transaction. (*Id.*)

23           **E. Rabobank and Utrecht Reached Out to Nevada and Participated in the**  
24           **Fraud Committed Upon Plaintiff.**

25           As set forth further below, Rabobank knowingly reached out to Nevada and a Nevada  
26 resident when it required Plaintiff to open accounts as part of the Midco transaction. Via these  
27 and other accounts, Rabobank was the key conduit for the funds that changed hands in order to  
28 close the transaction. (Cmplt. ¶ 44) Rabobank and Utrecht also financed the vast majority of

1 the purchase price of the transaction, which Movants knew to be an improper tax-avoidance  
2 mechanism. (*Id.*) Without such participation by Rabobank and Utrecht, the transaction could  
3 not have proceeded, and Plaintiff would not have been injured. (*Id.*)

4 **1. Plaintiff's Nevada Residency**

5 As Plaintiff sets forth in his affidavit in support of this opposition, he has been a  
6 resident of Las Vegas, Nevada, since May 2003. (Tricarichi Aff. ¶ 3) Mr. Tricarichi  
7 purchased and (with his family) moved into a home in Las Vegas in May 2003. (*Id.* ¶ 4; App.  
8 Ex. A) He obtained a Nevada driver's license and registered to vote in Nevada in June 2003;  
9 and also updated his vehicle registration and insurance to reflect his Nevada address that  
10 summer. (Tricarichi Aff. ¶¶ 5-7; App. Exs. B, C, D, E) He also, for example, changed his  
11 mailing address to his Nevada address and opened bank and utility accounts in Nevada.  
12 (Tricarichi Aff. ¶ 8) Since moving to Nevada in May 2003, including during the period May –  
13 September 2003, he has spent most of his time physically present in Nevada. (*Id.* ¶ 9)

14 **2. Rabobank and Utrecht Knowingly Reach Out to Nevada.**

15 In July 2003, Fortrend (via Nob Hill) sent Plaintiff – in Nevada – a letter of intent  
16 regarding the proposed purchase of Plaintiff's Westside stock. (Cmplt. ¶ 41; Tricarichi Aff.  
17 ¶ 10; App. Ex. F) The parties proceeded to discuss and negotiate a proposed stock purchase  
18 agreement. (Cmplt. ¶ 41)

19 On August 13, 2003, Fortrend asked Rabobank for a \$29.9 million short-term loan to  
20 finance the purchase of Plaintiff's Westside stock. (Cmplt. ¶ 46; App. Ex. G; Brooks Aff. ¶ 4)  
21 Fortrend's request – which was produced by Rabobank during the Tax Court proceedings –  
22 notes that Mr. Tricarichi is the shareholder of Westside, and lists his address in Las Vegas,  
23 Nevada. (App. Ex. G. at 2)

24 During the negotiation of the stock purchase, Mr. Tricarichi was informed that Nob Hill  
25 would be financing most of the purchase price via Rabobank, and that Westside would need to  
26

1 open a Rabobank escrow account in order to facilitate the closing if the transaction went  
2 forward. (Tricarichi Aff. ¶ 11) At Rabobank's request, he completed and signed account  
3 opening documents for that Westside account, dated August 19, 2003. (*Id.*; App. Ex. H) With  
4 financing from Rabobank still outstanding, on August 28, 2003 Nob Hill sent to Plaintiff, in  
5 Nevada, an amendment of the letter of intent to extend the period for negotiations.  
6 (Tricarichi Aff. ¶ 12; App. Ex. I)

8 The next day, August 29, 2003, Rabobank considered and approved a credit application  
9 for Nob Hill to borrow the \$29.9 million in order to purchase the shares of Westside from  
10 Plaintiff. (App. Exs. J, K; Brooks Aff. ¶¶ 5, 6; Cmplt. ¶¶ 46-47) The loan would be provided  
11 by Utrecht, Rabobank's subsidiary. (Cmplt. ¶ 12) Rabobank understood Westside would have  
12 cash in excess of \$29.9 million on deposit with Rabobank when the stock purchase closed and  
13 therefore considered the loan to be fully cash collateralized. (Cmplt. ¶¶ 46-47)

15 During the stock-purchase negotiations, Plaintiff had asked that Nob Hill, as part of  
16 the closing, transfer the purchase price for his stock to his account at Pershing bank.  
17 (Tricarichi Aff. ¶13) Nob Hill did not object to this request. (*Id.*) As the closing  
18 approached, however, Rabobank said that it would not proceed with the transaction if the  
19 purchase price was going to be transferred directly to Mr. Tricarichi's Pershing account. (*Id.*  
20 ¶ 14) Rabobank said that, in order for the purchase funds to be released to Plaintiff, it  
21 wanted to make sure that he resigned as a director and officer of Westside. (*Id.*) Rabobank  
22 said that it wanted Plaintiff to resign so that he would not have control over the Westside  
23 account at Rabobank post-closing. (*Id.*) Plaintiff was reluctant to resign, however, without  
24 first knowing that he had received the purchase price. (*Id.*)

26 Rabobank then told Plaintiff that Rabobank needed him to open another account, in  
27 his name, at Rabobank. (Tricarichi Aff. ¶ 15) Rabobank said that the purchase price it was  
28 loaning Nob Hill would be placed into this account by Nob Hill while Plaintiff submitted his

1 resignation as a Westside director and officer into escrow; and that Rabobank would then  
2 release the purchase funds in the account to Plaintiff per his instructions. (*Id.*)

3 So Rabobank sent Plaintiff documents to open this account. (Tricarichi Aff. ¶ 16)  
4 Exhibit M in the Appendix of Exhibits in Support of this Opposition is a copy of the account  
5 opening documents which Plaintiff received from Rabobank, and which he returned to  
6 Rabobank in early September 2003. (*Id.*; App. Ex. M) The documents reflect Plaintiff's  
7 residence in Nevada. (*Id.*) Internal Rabobank documents also reflect the account being opened  
8 in Plaintiff's name, and Plaintiff's address in Nevada. (App. Ex. U; Brooks Aff. ¶ 12)

10 Before the closing of the stock purchase, Plaintiff sent his resignation to Rabobank,  
11 noting that the resignation was not effective until such time as the purchase price had been  
12 credited to his account at Rabobank. (Tricarichi Aff. ¶ 17; App. Ex. N) At this time, Plaintiff  
13 also sent instructions to Rabobank for release of the purchase price from Plaintiff's Rabobank  
14 account to his account at Pershing. (Tricarichi Aff. ¶ 18; App. Ex. O)

16 The stock purchase closed on September 9, 2003. (Tricarichi Aff. ¶ 19; App. Ex. P) As  
17 part of the closing, Nob Hill's Rabobank account was credited with the \$29.9 million Rabobank  
18 loan proceeds; Nob Hill transferred the purchase price from its Rabobank account into the  
19 Rabobank account that Plaintiff had been required to open; Nob Hill acquired Plaintiff's  
20 Westside stock; Rabobank released the purchase price to Mr. Tricarichi's Pershing account per  
21 his instructions, and his resignation from Westside became effective. (Cmplt. ¶¶ 54-55;  
22 Tricarichi Aff. ¶ 20) Nob Hill also repaid the Rabobank loan and paid Rabobank a \$150,000  
23 fee; and Nob Hill merged into Westside. (Cmplt. ¶¶ 54-55)

25 **F. Plaintiff Is Left Holding the Bag.**

26 Unbeknownst to Plaintiff, after the closing of the stock purchase, Fortrend (via another  
27 affiliate, Millennium) contributed certain bad debt to Westside, wrote off that debt based on a  
28

1 bogus opinion letter from defendant Seyfarth, claimed a bad debt deduction of \$42,480,622 on  
2 account of that write-off, and did not pay any taxes. (Cmplt. ¶¶ 42, 60-61, 69)

3       These and other actions by Fortrend and its affiliates were contrary to the  
4 representations those parties had made to Plaintiff. In the stock purchase agreement, for  
5 example, Nob Hill warranted that it would “cause ... [Westside] to satisfy fully all United  
6 States ... taxes, penalties and interest required to be paid by ... [Westside] attributable to  
7 income earned during the [2003] tax year.” (Cmplt. ¶ 42; App. Ex. P at § 5.2(a)) Nob Hill  
8 agreed to indemnify Plaintiff in the event of liability arising from a breach of this warranty,  
9 representing that it had sufficient assets to cover this obligation. (Cmplt. ¶ 42; App. Ex. P)  
10 Nob Hill also warranted it had no intention of causing Westside to engage in an IRS reportable  
11 transaction. (*Id.*) Plaintiff relied on these material representations and warranties in deciding  
12 to proceed with the Fortrend transaction. (Cmplt. ¶ 43) Unbeknownst to Plaintiff, however,  
13 these representations and warranties were false when made; and they were not subsequently  
14 fulfilled. (*Id.*) Westside’s remaining funds, rather than being used to facilitate Fortrend’s debt-  
15 collection business, were drained post-closing by Fortrend’s owners, and Westside did not  
16 engage in the debt-collection business as Fortrend had said it would. (*Id.* ¶ 55)

17       The IRS subsequently audited Westside’s 2003 tax return. (Cmplt. ¶ 75) At the  
18 conclusion of the audit, the IRS disallowed the bad-debt deduction that Fortrend had claimed.  
19 (*Id.*) The IRS sent a notice of deficiency to Westside determining a deficiency of \$15,186,570  
20 and penalties totaling \$6,012,777 under the tax code, but Westside – which had no assets or  
21 resources by that point as a result of Fortrend’s actions – did not pay these amounts and did not  
22 petition the U.S Tax Court for relief. (*Id.* ¶¶ 75-76)

23       The IRS then proceeded with a transferee liability examination concerning Westside’s  
24 2003 tax liabilities. (Cmplt. ¶ 77) Transferee liability is a method of imposing tax liability on  
25 a person (here, Plaintiff) other than the taxpayer (here, Westside) that is directly liable for the  
26  
27  
28

1 tax. (*Id.*) As a result of its examination, the IRS determined that Plaintiff had transferee  
2 liability for Westside's tax deficiency and penalties. (*Id.* ¶ 78)

3 Plaintiff petitioned the U.S. Tax Court for review of the IRS notice of liability. (Cmplt.  
4 ¶ 79) The matter was litigated and proceeded to trial. (*Id.*) After trial, the Tax Court found in  
5 October 2015 that – contrary to what Defendants and Fortrend had led Plaintiff to believe – the  
6 Fortrend transaction was an improper Midco transaction, and Plaintiff was liable under  
7 transferee liability principles for Westside's tax deficiency and penalties. (*Id.*)

8  
9 Before this Court, Plaintiff has brought claims against Rabobank, Utrecht and the  
10 other defendants for, *inter alia*, conspiracy, aiding and abetting fraud and racketeering.

### 11 **III. ARGUMENT**

#### 12 **A. Rabobank and Utrecht Are Subject to Personal Jurisdiction in This State.**

13  
14 “Once a defendant challenges personal jurisdiction, the plaintiff may ... make a *prima*  
15 *facie* showing of personal jurisdiction prior to trial and then prove jurisdiction by a  
16 preponderance of evidence at trial.” *Trump v. Eighth. Dist. Ct.*, 109 Nev. 687, 692, 857 P.2d  
17 740, 743 (1993). As set forth above and in the Complaint, Rabobank and Utrecht (1)  
18 purposefully availed themselves of the privilege of acting in Nevada, dealt directly with Plaintiff  
19 in Nevada, and caused important consequences in Nevada; and (2) also played an important role  
20 in a conspiracy aimed at defrauding Plaintiff, a resident of Nevada. Based on either or both of  
21 these points, there is jurisdiction over these defendants in Nevada.

#### 22 **1. Specific Personal Jurisdiction**

23  
24 As defendants themselves note, “[i]n determining whether specific personal  
25 jurisdiction<sup>2</sup> over a nonresident is proper, Nevada courts consider (1) whether the defendant  
26 purposefully availed itself of the privilege of acting in Nevada or causing important  
27

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28 <sup>2</sup> Plaintiff does not contend that there is general personal jurisdiction over Rabobank and Utrecht in Nevada. Rather, there is specific personal jurisdiction over these entities.

1 consequences in Nevada, (2) whether the cause of action arises out of the defendant's Nevada-  
2 related activities, and (3) whether the exercise of jurisdiction over the defendants is reasonable."  
3 (Mot. at 7-8 (citing *Fulbright & Jaworski v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 5, 10, 342  
4 P.3d 997, 1002 (2015)). Here, the answer to all three questions is yes.

5  
6 Defendants first argue that there is no jurisdiction over them because supposedly  
7 Plaintiff "did not move to Nevada until after the Fortrend transaction." (Mot. at 1) But this is  
8 simply untrue. As reflected in Mr. Tricarichi's affidavit and accompanying documents, Plaintiff  
9 moved to Nevada in May 2003, two months before even receiving a letter of intent from  
10 Fortrend in July 2003, and about four months before the transaction closed in September 2003.

11  
12 Defendants base their argument on a purported "finding" by the Tax Court about when  
13 Plaintiff moved to Nevada. (See Mot. at 1, 9.) But it is not apparent how the Tax Court could  
14 have made such a "finding" – particularly since the parties in the Tax Court proceedings  
15 stipulated that Mr. Tricarichi lived in Nevada at the time of the Westside stock sale. (App. Ex.  
16 T ¶ 7; Brooks Aff. ¶ 11) Defendants similarly maintain that Mr. Tricarichi "conceded that Ohio  
17 law applied in the Tax Court because Ohio was where 'he resided, West Side did business, and  
18 the principal transaction occurred.'" (Mot. at 5, citing Tax Ct. Op. at \*31 (emphasis omitted))  
19 Again, this is inaccurate. In addition to the fact that the parties stipulated that Mr. Tricarichi  
20 lived in Nevada at the time of the stock sale, the authority cited by the Tax Court reflects that  
21 Mr. Tricarichi's residence then was not even pertinent to the choice of law regarding transferee  
22 liability, which is what the Tax Court was discussing at the page of the opinion cited by  
23 Movants. See Tax Ct. Op. at \*31 (citing *Estate of Miller v. Commissioner*, 42 T.C. 593, 598-99  
24 (1964) (looking solely to where transaction occurred to determine choice of law)). See also  
25 *Cullifer v. Commissioner*, 108 T.C. Mem. 408 at \*6 and n.26 (2014) (Texas law applied in  
26 Midco case despite fact that taxpayer resided in Florida, since taxpayer's company was located  
27 in Texas and transaction thus occurred there), *aff'd mem.* 651 Fed. Appx 847 (11<sup>th</sup> Cir. 2016).  
28



1 Thus, Plaintiff resided in Nevada long before the transaction closed, and was here while  
2 it was being negotiated. It was during these negotiations that Rabobank intentionally reached  
3 out to Nevada and Plaintiff. As set forth above, by no later than August 13, 2003, Movants  
4 knew Plaintiff resided in Nevada. On that date, Fortrend asked Rabobank for a loan to finance  
5 the purchase of Plaintiff's stock. (Cmplt. ¶ 46; App. Ex. G; Brooks Aff. ¶ 4) Fortrend's loan  
6 request – which was produced by Rabobank during the Tax Court proceedings – notes that Mr.  
7 Tricarichi is the shareholder of Westside, and lists his address in Las Vegas, Nevada. (App. Ex.  
8 G. at 2) Rabobank approved the loan, to be made by its subsidiary Utrecht to Fortrend's  
9 affiliate Nob Hill. During this process, Movants reached out to Nevada and Plaintiff:  
10

- 11 • First, within a week of receiving the loan request, Rabobank asked Plaintiff to  
12 complete documents to open a Rabobank escrow account for Westside; the  
13 documents list a Nevada address. (Tricarichi Aff. ¶ 11; App. Ex. H)
- 14 • Then, as the closing of the stock purchase approached, Rabobank again went to  
15 Plaintiff and required him to open another Rabobank account. As noted above,  
16 during the stock-purchase negotiations, Plaintiff had asked that Nob Hill, as part  
17 of the closing, transfer the purchase price for his stock to his account at Pershing  
18 bank. (Tricarichi Aff. ¶ 13) While Nob Hill did not object to this request,  
19 *Rabobank* said that it would not proceed with the transaction if the purchase price  
20 was going to be transferred directly to Mr. Tricarichi's Pershing account. (*Id.* ¶¶  
21 13, 14) So, while Westside already had an account at Rabobank, Rabobank  
22 insisted that Plaintiff himself open another account at Rabobank to be used at  
23 closing. (*Id.* ¶ 15) Rabobank sent Plaintiff documents to open this account; those  
24 documents – along with internal Rabobank documents – again reflect Plaintiff's  
25 residence in Nevada. (*Id.* ¶ 16; App. Exs. M, U)

21 By acting as they did, Rabobank and Utrecht purposefully availed themselves of the  
22 privilege of acting in Nevada, or the very least of causing important consequences in Nevada;  
23 and Plaintiff's cause of action arises out of their Nevada-related activities. The Nevada  
24 Supreme Court's decision in *Peccole v. Eighth Jud. Dist. Ct.*, 111 Nev. 968, 899 P.2d 568  
25 (1995), is instructive here. In *Peccole*, which involved fraud and other claims, the Court held  
26 that there was specific personal jurisdiction over two out-of-state defendants who, from  
27 Colorado and via an attorney, telephoned plaintiffs once in Nevada. 111 Nev. at 971; 899 P.2d  
28

1 at 571. Similarly, in *PDL Biopharma, Inc. v. Genentech, Inc.*, 2011 WL 4433687 (Nev. Dist.  
2 Ct. 2011), which involved a tortious interference claim, the district court, citing *Peccole*, held  
3 that there was specific personal jurisdiction over an out-of-state corporate defendant which, via  
4 a subsidiary, sent a letter to plaintiff in Nevada. *See also Chipping v. Fleming Law Firm*, 2012  
5 WL 1188467 at \*3 (D.Utah 2012) (out-of-state firm subjected itself to personal jurisdiction in  
6 Utah by arranging for Utah plaintiff's money to be transferred to firm's escrow account to  
7 facilitate plaintiff's investment with third party).

9       These decisions are consistent with the U.S. Supreme Court's "effects test," which  
10 originated with *Calder v. Jones*, 465 U.S. 783 (1984). As the court in *PDL Biopharma*  
11 explained, in *Calder* the high court "concluded a nonresident defendant who engaged in  
12 intentional actions expressly aimed at the forum, causing harm, the brunt of which is suffered  
13 (and which the defendant knows is likely to be suffered in the forum state) should reasonably  
14 anticipate being haled into court there." *PDL Biopharma*, 2011 WL 4433687 (noting also that  
15 *Peccole* illustrates the effects test). In its more recent decision in *Walden v. Fiore*, 134 S.Ct.  
16 1115 (2014), the U.S. Supreme Court expressly noted that *Calder* is still the law, applying the  
17 principles of that case to the facts before it in *Walden*. 134 S.Ct. at 1123-24. While the Court  
18 found no specific personal jurisdiction in *Walden*, the facts of that case – which involved a  
19 Georgia defendant who happened to interact with the Nevada plaintiffs while they were passing  
20 through the Atlanta airport – are readily distinguishable from Mr. Tricarichi's case, in which  
21 Rabobank, knowing that Tricarichi resided in Nevada, purposefully reached out to him on  
22 multiple occasions to open accounts and take steps Rabobank wanted to be taken as part of a  
23 transaction which Rabobank knew to be improper under the tax laws, and which Rabobank thus  
24 knew was likely to cause harm to Tricarichi in Nevada.<sup>3</sup> Utrecht, as the wholly-owned

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<sup>3</sup> Cf. *Walden*, 134 S.Ct. at 1119. Also, since Rabobank affirmatively reached out to Plaintiff in Nevada, *Fulbright & Jaworski*, which Movants cite, is likewise distinguishable, since in that case it was the

1 Rabobank subsidiary putting up the money to buy Tricarichi's stock, undoubtedly knew about  
2 and participated in these actions. Absent the involvement of Rabobank and Utrecht, including  
3 insisting that Plaintiff open not just a corporate but an individual account with Rabobank, the  
4 transaction that harmed Plaintiff (in Nevada) could not have closed, and Plaintiff would not  
5 have needed to bring the causes of action that he has.

6  
7 Ignoring all of this, Rabobank and Utrecht try to hang their hat on the fact – not  
8 surprising – that certain documents generated by the bank and its subsidiary use their New York  
9 addresses and have other terms referring to New York. (See Mot. at 4, 9.) A defendant's  
10 letterhead is hardly dispositive of jurisdiction, however, and in any event most of the documents  
11 to which defendants refer are "*Nob Hill's* loan documents with Utrecht," which do not involve  
12 Plaintiff. (*Id.* at 4, emphasis added) Defendants also fixate on the fact that their primary offices  
13 are in New York, suggesting that this somehow insulates them. (See *id.* at 4, 9.) It does not,  
14 since "[i]t is not necessary for a defendant to physically enter the forum" in order for personal  
15 jurisdiction to exist there. *Peccole*, 111 Nev. at 971, 899 P.2d at 570. Defendants next  
16 improperly cite an unpublished Nevada Supreme Court order for the proposition that the "mere  
17 act of contracting with a Nevada resident 'is not enough to establish specific personal  
18 jurisdiction,'"<sup>4</sup> but even if this Court looks to the non-precedential order cited, it is not even  
19 applicable on the facts, since Rabobank and Utrecht did more than "merely contract" with Mr.  
20 Tricarichi. They reached out to him as part of committing torts and violating this state's  
21 racketeering statutes, being instrumental in carrying out a transaction that defrauded Plaintiff to  
22 the tune of tens of millions of dollars.

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26 plaintiff who solicited the defendant. 131 Nev. Adv. Op. 5, 342 P.2d at 1000. *Monkton Ins. Svcs., Ltd. v.*  
27 *Ritter*, also cited by Movants, is similarly distinguishable because in that case parties other than the  
28 moving defendant had initiated the contacts with the forum state. 768 F.3d 429, 432 (5<sup>th</sup> Cir. 2014).

<sup>4</sup> Mot. at 9, citing *Affinity Network Inc. v. Schreck*, 2013 WL 7155071 (Nev. 2013).

1                   **2. Conspiracy Personal Jurisdiction**

2           While the foregoing is sufficient to establish specific personal jurisdiction, the record  
3 moreover reflects that Rabobank and Utrecht were active participants in a conspiracy aimed at  
4 defrauding and injuring a Nevada resident, and are thus subject to conspiracy personal  
5 jurisdiction here. Plaintiff recognizes the Court's recent ruling regarding conspiracy personal  
6 jurisdiction in the context of Seyfarth's motion to dismiss. In the present procedural posture,  
7 though, Plaintiff at least wishes to preserve the argument vis-à-vis Rabobank and Utrecht as  
8 well. Accordingly, Plaintiff incorporates herein by reference his briefing and argument in  
9 opposition to Seyfarth's motion to dismiss. As set forth therein, *inter alia*, in *Davis v. Eighth*  
10 *Jud. Dist.*, 97 Nev. 332, 629 P.2d 1209 (1981), the Nevada Supreme Court held that Nevada  
11 courts have personal jurisdiction over out-of-state defendants who participate in a conspiracy to  
12 injure a Nevada resident. As set forth above and in the Complaint, Movants' actions were an  
13 integral part of a scheme whereby they and others defrauded Plaintiff – in Nevada – and profited  
14 via the process. Numerous courts have found personal jurisdiction to exist in similar  
15 circumstances. *See, e.g., Cleft of the Rock Foundation v. Wilson*, 992 F.Supp. 574, 583-84  
16 (E.D.N.Y. 1998) (denying motion to dismiss by attorney defendant who was alleged to have  
17 "facilitated the conspiracy by laundering the proceeds of the scheme through his attorney trust  
18 account"); *Madanes v. Madanes*, 981 F.Supp. 241, 261 (S.D.N.Y. 1997) (finding jurisdiction  
19 over foreign corporation whose role in conspiracy was to conceal funds).

20                   **3. Exercise of Jurisdiction Over These Defendants Is Reasonable.**

21           "Where, as here, 'a defendant who purposefully has directed his activities at forum  
22 residents seeks to defeat jurisdiction, he must present a *compelling case* that the presence of  
23 some other considerations would render jurisdiction unreasonable.'" *Peccole*, 111 Nev. at 971,  
24 899 P.2d at 570 (emphasis added, citations omitted). *See also Trump*, 109 Nev. at 703, 857 P.2d  
25

1 at 750 (“Where possible, a Nevada resident should be able to obtain judicial redress in the most  
2 convenient, cost-effective manner, which in this case would be within Nevada.”).

3       Movants have not presented any case, let alone a compelling one, that the exercise of  
4 jurisdiction over them in Nevada would be unreasonable. Given the facts set forth above, the  
5 overall nature of this dispute, the policy interests at stake, and the broad geographic scope of  
6 these defendants’ business, it is hardly unreasonable to require them to defend this case here.  
7 *See Peccole*, 111 Nev. at 971, 899 P.2d at 570 (finding exercise of jurisdiction to be reasonable  
8 where movants did not make an adequate showing to the contrary); *PDL Biopharma*, 2011 WL  
9 4433687 (“[T]his Court concludes the exercise of jurisdiction is reasonable. Nevada provides  
10 an efficient and convenient forum for resolving this dispute without interfering with other  
11 jurisdictions, Nevada has a recognized interest in providing an effective means of redress for its  
12 residents, and there is no discernable conflict among the several states in furthering substantive  
13 social policies.”) Movants purposefully reached out to Nevada causing harm, the brunt of  
14 which was suffered (and which Movants knew was likely to be suffered) in Nevada, so they  
15 could reasonably anticipate being haled into court here. Moreover, Rabobank, a multinational  
16 banking and financial services company, has numerous offices throughout the U.S. (*see Ex. Q.*);  
17 and Utrecht’s subsidiaries include Rabo AgriFinance, LLC – which is registered to do business  
18 in Nevada, and of which Utrecht is the Manager – and Rabobank, N.A., a national banking  
19 association based in neighboring California. (App. Ex. R at 1, S) It is hardly unreasonable for  
20 entities with such a presence to appear and defend themselves in Las Vegas, Nevada. Indeed, as  
21 the Court is familiar, Plaintiff’s related claims against PwC will already be proceeding here in  
22 this case, making it all the more efficient for the claims against Movants to proceed here, too.

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26       **4. In the Alternative, Jurisdictional Discovery Should Be Permitted.**

27       Plaintiff submits that the foregoing makes a more than adequate showing that personal  
28 jurisdiction exists here over Rabobank and Utrecht. Assuming *arguendo* that the Court has

1 reservations in this regard, Plaintiff would request, in the alternative, an opportunity to take  
2 jurisdictional discovery to address any such concerns. *See, e.g., Consipio Holding, BV v.*  
3 *Private Media Group, Inc.*, 2011 WL 6015547 (Nev. Dist. Ct. 2011) (denying motion to dismiss  
4 without prejudice pending completion of jurisdictional discovery); *Trintec Inds., Inc. v. Pedre*  
5 *Promotional Prods., Inc.*, 395 F.3d 1275 (Fed. Cir. 2005) (jurisdictional discovery appropriate  
6 where party can supplement jurisdictional allegations through said discovery). For example,  
7 regarding the reasonableness factor discussed above, Rabobank and Utrecht may possess more  
8 information – unavailable to Plaintiff – regarding the scope of their business dealings in Nevada.  
9 Similarly, the Movants (and others) may possess further information (again unavailable to  
10 Plaintiff) regarding the scope of their Midco promotions with Fortrend and others, and the scope  
11 of such activity in Nevada. And Movants (and others) may also possess additional information,  
12 which Plaintiff does not, regarding the specific Midco transaction that targeted Plaintiff in  
13 Nevada, and Movants’ role therein. In light of the showing that Plaintiff has already made,  
14 discovery can be expected to shed even more light on these subjects.

17 **B. Defendants Have Made No Showing to Support Their *Forum Non***  
18 ***Conveniens* Argument.**

19 Rabobank and Utrecht make a perfunctory argument that New York is a more  
20 convenient forum because Rabobank and Utrecht have offices in New York. They cite no  
21 Nevada cases in support. Indeed, Nevada law is to the contrary. “[T]he mere fact that another  
22 court is more convenient for one party is not sufficient to justify dismissal. A plaintiff may be  
23 denied his choice of forum only in exceptional circumstances when the factors weigh strongly in  
24 favor of another forum.... In considering a motion to dismiss based on the doctrine of *forum*  
25 *non conveniens*, Nevada district courts must carefully examine the supporting affidavits to  
26 determine the existence of the ... factors. The moving party may not rely on general allegations  
27 concerning inconvenience ... or hardship. A specific factual showing must be made.” *4V, LLC*  
28

1 v. RREEF Global Opportunities Fund II, LLC, 2013 WL 11271433 at \*2 (Clark Cty., Nev. Dist.  
2 Ct. June 19, 2013) (citations and internal quotations omitted; emphasis added). Rabobank and  
3 Utrecht have not made such a showing. As the court in 4V explained:

4 In *Eaton v. District Court*, the Nevada Supreme Court set forth the standard for  
5 district courts to follow when considering motions to dismiss based on the  
6 doctrine of *forum non conveniens*. 96 Nev. 773, 616 P.2d 400 (1980)....  
7 *Eaton* ... adopts a balancing approach involving numerous factors, including (a)  
8 the location of the defendant, (b) the public and private interests, such as access  
9 to sources of proof ..., (c) the availability of compulsory process for unwilling  
10 witnesses, (d) the cost of obtaining testimony from willing witnesses, and (e) the  
11 enforceability of a judgment. *Eaton*, 96 Nev. at 774, 616 P.2d at 401 (citing *Gulf  
Oil Corp. v. Gilbert*, 330 U.S. 501 ... (1947)). The district courts "should also  
consider whether failure to apply the doctrine would subject the defendant to  
harassment, oppression, vexatiousness or inconvenience." *Id.* (citing *Swisco, Inc.*,  
79 Nev. 414, 385 P.3d 772 (1963)).

12 *Id.* (denying *forum non conveniens* motion). See also *Dean v. Nationwide Life Ins. Co.*, 2012  
13 WL 11954969 (Clark Cty., Nev. Dist. Ct. Nov. 5, 2012) (same). The opinion in 4V continues on  
14 to list the numerous public and private interests that a court should consider when ruling on a  
15 *forum non conveniens* motion. Rabobank and Utrecht address none of them. Indeed, there is no  
16 reason to believe that New York is a better forum than Nevada for the case as a whole and for  
17 all the parties collectively, particularly since Plaintiff and defendant PwC reside in Nevada, and  
18 Plaintiff's choice of forum is entitled to significant deference.

19  
20 **C. Statute of Limitations: Plaintiff Could Not Have Had "Constructive  
21 Knowledge" of His Claims Before They Even Accrued.**

22 Movants' statute-of-limitations argument is based entirely on the contention that "[t]he  
23 Tax Court found that Mr. Tricarichi had constructive knowledge that the tax shelter was illegal  
24 in September 2003, at the latest." (Mot. at 11-12) But this is essentially the same contention  
25 that was at the heart of PwC's motion to dismiss, which the Court found unpersuasive and  
26 denied last month. As set forth in Plaintiff's opposition and argument regarding PwC's motion  
27 (and regarding PwC's request for judicial notice of the Tax Court opinion), which are  
28 incorporated herein by reference, the Tax Court did not find Mr. Tricarichi solely responsible

1 for entering into the Midco transaction knowing that it was illegitimate. (*See* Opp. to PwC Mot.  
2 at 16-20 – App. Ex. V.) The Tax Court instead expressly found that Plaintiff’s advisers,  
3 including PwC, which is also a defendant here, did not act appropriately in evaluating the  
4 proposed transaction. (*Id.* at 16-17, quoting Tax Ct. Op. at \*50, \*53) The Tax Court did not  
5 decide, as between Plaintiff and PwC – or any of the other defendants to the instant case,  
6 including Rabobank and Utrecht – who was ultimately to blame for Plaintiff’s entry into the  
7 transaction, because that was not the Tax Court’s job. The Tax Court’s job was to decide  
8 whether taxes were owed to the U.S. Treasury in the wake of the transaction. It is, however, the  
9 job of this Court, and/or a jury empaneled by this Court, to look at matters as between Plaintiff  
10 and the defendants here and decide whether the defendants are liable for their actions.  
11

12       Movants also seem to suggest that the Tax Court found Plaintiff had “constructive  
13 knowledge of Rabobank’s and Utrecht’s alleged fraud,” but there is no factual basis for such an  
14 assertion, and Movants cite none. (*See* Mot. at 12.) Going yet one more step, Rabobank and  
15 Utrecht next contend that Plaintiff’s then non-existent knowledge of their fraud “precludes him  
16 from invoking any tolling or discovery principles.” (*Id.*) Movants cite one case for this  
17 proposition, but the case, *USACM Liquidating Tr. v. Deloitte & Touche*, is readily distinguished.  
18 In *USACM*, the court imputed to a corporation the knowledge of its owners and controllers, who  
19 themselves perpetrated the fraudulent schemes complained of. 754 F.3d 645, 647, 649 (9<sup>th</sup> Cir.  
20 2014). This is not the situation in Mr. Tricarichi’s case. *Curtis Investment Co., LLC v.*  
21 *Bayerische Hypo-Und Vereinsbank, AG*, which Movants also cite, is similarly distinguishable.  
22 There the court found plaintiff had “actual knowledge” triggering the statute of limitations  
23 when, *inter alia*, it signed a contract containing terms at odds with the alleged representations on  
24 which it based its fraud claim. 341 Fed. Appx. 487, 495-96 (9<sup>th</sup> Cir. 2011) (emphasis added).  
25 Not even Rabobank and Utrecht claim that Tricarichi had such actual knowledge.  
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1 Plaintiff's claims are timely even without reference to the discovery rule or tolling. NRS  
2 11.010 states, "Civil actions can only be commenced within the periods prescribed in this  
3 chapter, **after the cause of action shall have accrued**, except where a different limitation is  
4 prescribed by statute."<sup>5</sup> NRS 11.010 (emphasis added). *See also Dredge Corp. v. Wells Cargo*,  
5 80 Nev. 99 (Nev. 1964) ("The statute of limitations has application to the time within which  
6 civil actions may be commenced 'after the cause of action shall have accrued.'"). Similarly, in  
7 *Siragusa v. Brown*, the Nevada Supreme Court rejected the idea that a claim could be barred  
8 before it was ripe or discovered, stating, "[P]laintiffs should not be foreclosed from judicial  
9 remedies before they know that they have been injured." 114 Nev. 1384, 1392, 971 P.2d 801,  
10 806-07 (1998). *See also* Mot. at 11 (noting accrual and discovery rules under both Nevada and  
11 New York statutes of limitation). Here, Plaintiff had no injury, and his claims did not accrue,  
12 prior to resolution of the Tax Court litigation, where the post-trial opinion finding Plaintiff liable  
13 for Westside's taxes etc. did not issue until October 2015. (*See* Cmplt. ¶ 79.) *See, e.g., Kipnis*  
14 *v. Bayerische Hypo-Und Vereinsbank, AG*, 2016 WL 6539470 at \*8 (Fla. 2016) (holding, in tax  
15 shelter case, that taxpayer plaintiffs' claims accrued "at the time their action in the tax court  
16 became final, following expiration of the ninety-day period for appealing the tax court's  
17 judgment"). Plaintiff filed his Complaint in April 2016, well within all the statutes of limitation,  
18 under either Nevada or New York law.  
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22 <sup>5</sup> Movants contend in a footnote (Mot. at 11 n.10) that New York statutes of limitation control, but that  
23 is incorrect. Statutes of limitations are governed by the law of the forum. *Wilcox v. Williams*, 5 Nev.  
24 206, 211 (1869) ("[T]he law of the forum always governs the remedy ... and the Statute of Limitations  
25 applies only to a remedy...."); *see also, e.g., Asian Am. Entm't Corp. v. Las Vegas Sands, Inc.*, 324 F.  
26 App'x 567, 568 (9th Cir. 2009) ("The relevant choice-of-law rule ... is the rule of *lex fori*: i.e., that 'the  
27 Statute of Limitations of the forum [will] govern the remedy....'" (quoting *Wilcox*); *Tipton v. Heeren*,  
28 109 Nev. 920, 922, 859 P.2d 465, 466 (1993) (Nevada law governed procedural issue despite contractual  
choice-of-law provision specifying Wyoming law, which applies to substantive issues); *G & H Assocs. v.*  
*Ernest W. Hahn, Inc.*, 113 Nev. 265, 272, 934 P.2d 229, 233 (1997) ("Statutes of limitation are procedural  
bars ..."); *Cantor G&W (Nevada) Holdings, L.P. v. Asher*, Case No. A-11-646021, at ¶¶ 9-11 (Dist. Ct.,  
Clark Cty., Nev.) (writ denied) ("The defense that a claim is barred by the statute of limitations is a  
procedural matter governed by the law of the forum.... [A] choice of law provision will only include the  
statute of limitations of the chosen jurisdiction if their inclusion is specifically noted.").

1 Plaintiff could not have discovered his claims any sooner, particularly in light of  
2 Defendants' concealment of their wrongdoing. (See Cmplt. ¶¶ 73-74.) This further warrants  
3 denial of the motion to dismiss, since "[w]hen the plaintiff knew or in the exercise of proper  
4 diligence should have known of the facts constituting the elements of his cause of action is a  
5 question of fact for the trier of fact [and] the time of discovery may be decided as a matter of  
6 law only where uncontroverted evidence proves [when] the plaintiff discovered or should have  
7 discovered the fraudulent conduct." *Siragusa*, 971 P.2d at 806 (internal quotation marks  
8 omitted). *See also Oak Grove Investors v. Bell & Gossett Co.*, 668 P.2d 1075, 1079 (Nev. 1983)  
9 (party seeking summary judgment on statute of limitations grounds bears burden of  
10 demonstrating absence of genuine issue of material fact as to when other party discovered or  
11 should have discovered facts underlying claim); *Trepuk v. Frank*, 44 N.Y.2d 723 (N.Y. 1978)  
12 ("Where it does not conclusively appear that a plaintiff had knowledge of facts from which the  
13 fraud could reasonably be inferred, a complaint should not be dismissed on motion and the  
14 question should be left to the trier of the facts."). Particularly given the Complaint's allegations  
15 regarding Defendants' concealment of their wrongdoing, dismissing Plaintiff's claims now  
16 would be premature. Plaintiff should at least be allowed discovery regarding the concealment of  
17 the acts, errors and omissions that caused Plaintiff's injuries.

20 **D. Aiding and Abetting, and Conspiracy: Collateral Estoppel Does Not Apply.**

21 Rabobank and Utrecht again incorrectly argue "the Tax Court found that Mr. Tricarichi  
22 had advance constructive knowledge that his tax shelter was ... illegal" and that he is thus  
23 collaterally estopped from proceeding with claims that these defendants aided and abetted fraud  
24 and engaged in a conspiracy. (Mot. at 13) As discussed above and in opposition to defendant  
25 PwC's motion to dismiss, however, the Tax Court's opinion does not collaterally estop  
26 Plaintiff's claims. Plaintiff was relying on the representations and advice of PwC, Rabobank,  
27 Utrecht and others in deciding whether to proceed with the transaction. As alleged in the  
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1 Complaint, unbeknownst to Plaintiff at the time, such representations and advice were  
2 fraudulent and wrong. But that issue was not before the Tax Court, which was tasked with  
3 deciding only whether taxes and related penalties and interest were owed the U.S Treasury – not  
4 whether third parties such as Rabobank and Utrecht should be held liable to Plaintiff for leading  
5 him astray in the first place.  
6

7 **E. There Is No Basis for Dismissal of the Racketeering Claims.**

8 Movants argue that Plaintiff's racketeering claims should be dismissed "because the Tax  
9 Court found that he participated in the alleged predicate acts." (Mot. at 13) As set forth above  
10 and in the opposition to PwC's motion to dismiss, this is not true. The argument now made by  
11 Rabobank and Utrecht is a warmed-over version of the *in pari delicto* argument previously  
12 made by PwC and rejected by the Court. As Plaintiff explained in responding to PwC, this  
13 argument fails for similar reasons as the collateral estoppel argument already discussed. (See  
14 Opp. to PwC Mot. at 20 *et seq.* – App. Ex. V.) First, the Tax Court never made the  
15 "constructive knowledge" finding that defendants say it did. And second, even if the Tax Court  
16 had made such a finding, it would not help defendants' argument. This is because Plaintiff  
17 alleges Rabobank and Utrecht participated in *actual* – not constructive – fraud as part of their  
18 racketeering activities. See Cmplt. Cts. IV–VII; *Grand Union Mount Kisco Employees Federal*  
19 *Credit Union v. Kanaryk*, 848 F. Supp. 446, 455 (S.D.N.Y. 1994) ("[T]here are two varieties of  
20 fraud ... actual and constructive.... Constructive fraud requires the same showing as actual  
21 fraud, except for one crucial aspect – the element of the defendant's scienter, or knowledge of  
22 the falsity of his or her representation, need not be proven."). As such, there is no basis for an  
23 argument, based on the Tax Court opinion, that Plaintiff "participated" in defendants' acts. At  
24 the very least, Movants' argument, like PwC's argument, raises fact issues not appropriate for  
25 resolution on a motion to dismiss. See Opp. to PwC Mot. at 22 (App. Ex. V).  
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1 Movants also argue that the RICO claims should be dismissed pursuant to NRS  
2 207.470(3), which states that “Any civil action or proceeding [for racketeering] must be  
3 instituted in the district court of the State in the county in which the prospective defendant  
4 resides or *has committed any act which subjects him or her to criminal or civil liability....*”  
5 (emphasis added) Rabobank and Utrecht apparently contend that they have committed no such  
6 act in this county. As set forth above in the personal jurisdiction discussion, however,  
7 Rabobank and Utrecht purposefully reached out to Plaintiff in this county and induced him to  
8 sign documents that were instrumental in carrying out a fraud and a racketeering enterprise that  
9 injured Plaintiff here. As such, this argument is baseless. At a minimum it raises fact issues not  
10 appropriately resolved via motion to dismiss.  
11

12 **F. Since Plaintiff Conferred a Benefit on Defendants and No Express Written**  
13 **Agreement Governs, the Unjust Enrichment Claim Should Proceed.**

14 Defendants make two arguments for why the unjust enrichment count should be  
15 dismissed. Neither has merit. Defendants first argue that Mr. Tricarichi cannot show that he  
16 conferred any benefit on Rabobank and Utrecht, saying that Tricarichi “seeks to recover the  
17 \$29.9 million payment that Nob Hill made to Utrecht to repay the loan that Utrecht made to Nob  
18 Hill.” (Mot. at 14) Actually, Plaintiff seeks to recover the \$29.9 million in Westside settlement  
19 proceeds that Nob Hill (unbeknownst to Plaintiff) used for this purpose, which – absent the  
20 transaction that Rabobank and Utrecht facilitated – would have otherwise gone to Plaintiff as  
21 the sole shareholder of Westside. (See Cmplt. ¶ 123.) By going forward with the transaction,  
22 which resulted in those funds being used this way, Plaintiff conferred a benefit on Rabobank  
23 and Utrecht – since Nob Hill otherwise had no means to repay the Utrecht loan. (See Cmplt. ¶¶  
24 42-43.) As such, defendants had and retained a benefit which in equity and good conscience  
25 belongs to another – Plaintiff.  
26  
27  
28

1 Defendants also argue that “an action for unjust enrichment cannot lie where, like here,  
2 there are express written agreements governing the relationship at issue.” (Mot. at 14) But  
3 Rabobank and Utrecht do not explain what agreements “govern the relationship at issue” –  
4 because there is no such agreement between Rabobank/Utrecht and Plaintiff. The “relationship  
5 at issue” is the relationship whereby Rabobank/Utrecht acquired \$29.9 million in Westside  
6 funds that otherwise rightfully belonged to Plaintiff. Rabobank/Utrecht on the one hand, and  
7 Plaintiff on the other, did not agree on that. Accordingly, there is no basis for defendants’  
8 argument. *See Davis v. Citibank, N.A.*, 2015 WL 928117 at \*3 (E.D.Mo. 2015) (“I will deny the  
9 motion to dismiss, as it appears [plaintiff’s] unjust enrichment claim is not based on terms  
10 contained within the parties’ explicit written agreement.”).

11  
12 **IV. CONCLUSION**

13 WHEREFORE, for all the foregoing reasons, Plaintiff Michael A. Tricarichi respectfully  
14 requests that the Court DENY Defendants Rabobank and Utrecht’s motion to dismiss; or in the  
15 alternative, as to Defendants’ personal jurisdiction argument, allow Plaintiff jurisdictional  
16 discovery and a further response, while denying the remainder of Defendants’ motion.  
17

18 SPERLING & SLATER, P.C.

19 

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21 Thomas D. Brooks  
22 (*Pro Hac Vice*)  
23 55 West Monroe, Suite 3200  
Chicago, IL 60603

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25 Mark A. Hutchison  
26 Todd L. Moody  
27 Todd W. Prall  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145

28 *Attorneys for Plaintiff Michael A. Tricarichi*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, LLC and that on this 7th day of December, 2016, I caused the document entitled **PLAINTIFF’S (1) OPPOSITION TO DEFENDANTS RABOBANK AND UTRECHT’S MOTION TO DISMISS, AND (2) COUNTER-MOTION FOR LEAVE TO TAKE JURISDICTIONAL DISCOVERY** to be served on the following by Electronic Service to:

**ALL PARTIES ON THE E-SERVICE LIST**

/s/ Madelyn B. Carnate-Peralta  
An employee of Hutchison & Steffen, LLC

1 **AFFT**  
2 Mark A. Hutchison (4639)  
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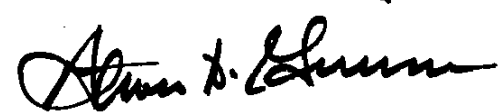
13 Scott F. Hessel  
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23 *Attorneys for Plaintiff*

24 DISTRICT COURT  
25 CLARK COUNTY, NEVADA

26 MICHAEL A. TRICARICHI,  
27  
28 Plaintiff,  
29  
30 v.  
31  
32 PRICEWATERHOUSE COOPERS, LLP,  
33 COÖPERATIEVE RABOBANK U.A.,  
34 UTRECHT-AMERICA FINANCE CO.,  
35 SEYFARTH SHAW LLP and GRAHAM R.  
36 TAYLOR,  
37  
38 Defendants.

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CLERK OF THE COURT

) CASE NO. A-16-735910-B  
) DEPT NO. XV  
)  
)  
) **AFFIDAVIT OF MICHAEL A.**  
) **TRICARICHI IN SUPPORT OF**  
) **(1) PLAINTIFF'S OPPOSITION**  
) **TO DEFENDANTS RABOBANK**  
) **AND UTRECHT'S MOTION TO**  
) **DISMISS, AND (2) COUNTER-**  
) **MOTION FOR LEAVE TO TAKE**  
) **JURISDICTIONAL DISCOVERY**  
)  
)  
) JURY TRIAL DEMANDED

1 I, Michael A. Tricarichi, having first been duly sworn upon oath, hereby depose and  
2 state as follows:

3 1. I am over 18 years of age, and otherwise am fully competent to execute this  
4 affidavit. I have personal knowledge of all of the facts stated herein.

5 2. I am the Plaintiff in the above-captioned case.

6 3. I have been a resident of Las Vegas, Nevada, since May 2003.

7 4. I purchased and (with my family) moved into a home at 341 Arbour Garden  
8 Avenue in Las Vegas in May 2003. Exhibit A in the Appendix of Exhibits in Support of  
9 Plaintiff's Opposition to Defendants Rabobank and Utrecht's Motion to Dismiss (the  
10 "Appendix") are records from the Clark County Assessor's Office reflecting this purchase.

11 5. In June 2003 I obtained a Nevada driver's license. Exhibit B in the Appendix is  
12 a receipt, dated June 24, 2003, reflecting this.

13 6. In June 2003 I registered to vote in Nevada. Exhibit C in the Appendix is a copy  
14 of my voter registration application dated June 24, 2003.

15 7. I changed the insurance on my vehicle to reflect my Nevada address in July  
16 2003. Exhibit D in the Appendix is a Nevada motor vehicle insurance card reflecting this, dated  
17 July 14, 2003. I also changed the registration on my vehicle to reflect my Nevada address in  
18 August 2003. Exhibit E in the Appendix is a receipt reflecting this, dated August 13, 2003.

19 8. In addition to doing these things upon moving to Nevada, at that time I also, for  
20 example, changed my mailing address to my Nevada address and opened bank and utility  
21 accounts in Nevada.

22 9. Since moving to Nevada in May 2003, including during the period May –  
23 September 2003, I have spent most of my time physically present in Nevada.

24 10. Exhibit F in the Appendix is a copy of the letter of intent that Fortrend affiliate  
25 Nob Hill Holdings, Inc. ("Nob Hill") sent to me in Las Vegas, Nevada on or about July 22,



1 2003, in connection with Nob Hill's purchase of all the stock in my company, Westside  
2 Cellular, Inc. ("Westside").

3 11. During the negotiation of the stock purchase, I was informed that Nob Hill would  
4 be financing most of the purchase price via Rabobank, and that Westside would need to open a  
5 Rabobank escrow account in order to facilitate the closing if the transaction went forward.  
6 Exhibit H in the Appendix are account opening documents for that Westside account, dated  
7 August 19, 2003, which I completed and signed then at Rabobank's request.  
8

9 12. Exhibit I in the Appendix is a copy of an amendment of the letter of intent that  
10 Nob Hill sent to me in Las Vegas, Nevada on or about August 28, 2003.

11 13. During the stock-purchase negotiations, I had asked that Nob Hill, as part of  
12 the closing, transfer the purchase price for my stock to my account at Pershing bank. Nob  
13 Hill did not object to this request.  
14

15 14. As the closing approached, however, Rabobank, which I understood was  
16 loaning most of the purchase price to Nob Hill, said that it would not proceed with the  
17 transaction if the purchase price was going to be transferred directly to my Pershing account.  
18 Rabobank said that, in order for the purchase funds to be released to me, it wanted to make  
19 sure that I resigned as a director and officer of Westside. Rabobank said that it wanted me to  
20 resign so that I would not have control over the Westside account at Rabobank post-closing.  
21 I was reluctant to resign, however, without first knowing that I had received the purchase  
22 price.  
23

24 15. Rabobank then told me that Rabobank needed me to open another account, in  
25 my name, at Rabobank. Rabobank said that the purchase price it was loaning Nob Hill  
26 would be placed into this account by Nob Hill while I submitted my resignation as a  
27 Westside director and officer into escrow; and that Rabobank would then release the  
28 purchase funds in the account to me per my instructions.

1 16. So Rabobank sent me documents to open this account. Exhibit M in the  
2 Appendix is a copy of the account opening documents which I received from Rabobank, and  
3 which I returned to Rabobank in early September 2003. The documents reflect my residence in  
4 Nevada.

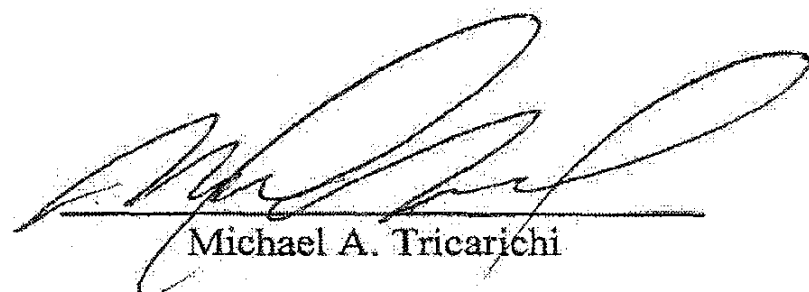
5 17. Before the closing of the stock purchase, I sent my resignation to Rabobank,  
6 noting that the resignation was not effective until such time as the purchase price had been  
7 credited to my account at Rabobank. This is reflected in Exhibit N to the Appendix, which  
8 contains a copy of a letter and resignation I sent to Rabobank.  
9

10 18. At this time, I also sent instructions to Rabobank for release of the purchase price  
11 from my Rabobank account to my account at Pershing. Exhibit O in the Appendix includes a  
12 copy of those instructions.  
13

14 19. The stock purchase closed on September 9, 2003. Exhibit P in the Appendix is a  
15 copy of the Stock Purchase Agreement between Nob Hill, as buyer, and myself, as seller, dated  
16 as of September 9, 2003

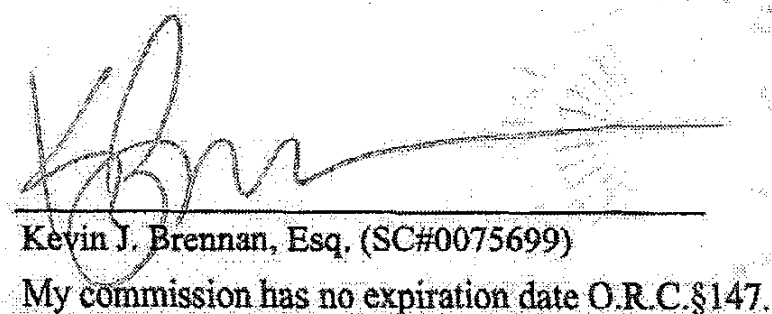
17 20. Rabobank released the purchase price to my Pershing account per my  
18 instructions, and my resignation from Westside became effective.

19 Further affiant sayeth not.  
20

21   
22 Michael A. Tricarichi

23 Subscribed and sworn to before me

24 this 6th day of December, 2016.  
25

26   
27 Kevin J. Brennan, Esq. (SC#0075699)  
28 My commission has no expiration date O.R.C. §147.

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23 *Attorneys for Plaintiff*

24 DISTRICT COURT  
25 CLARK COUNTY, NEVADA

26 MICHAEL A. TRICARICHI,  
27  
28 Plaintiff,  
  
v.  
  
PRICewaterhouse COOPERS, LLP,  
COÖPERATIEVE RABOBANK U.A.,  
UTRECHT-AMERICA FINANCE CO.,  
SEYFARTH SHAW LLP and GRAHAM R.  
TAYLOR,  
  
Defendants.

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CLERK OF THE COURT

) CASE NO. A-16-735910-B  
) DEPT NO. XV  
)  
)  
) **AFFIDAVIT OF THOMAS D.**  
) **BROOKS IN SUPPORT OF (1)**  
) **PLAINTIFF'S OPPOSITION TO**  
) **DEFENDANTS RABOBANK AND**  
) **UTRECHT'S MOTION TO**  
) **DISMISS, AND (2) COUNTER-**  
) **MOTION FOR LEAVE TO TAKE**  
) **JURISDICTIONAL DISCOVERY**  
)  
)  
) JURY TRIAL DEMANDED

1 I, Thomas D. Brooks, having first been duly sworn upon oath, hereby depose and state as  
2 follows:

3 1. I am over 18 years of age, and otherwise am fully competent to execute this  
4 affidavit. I have personal knowledge of all of the facts stated herein.

5 2. I am one of the attorneys for the Plaintiff in the above-captioned case.

6 3. In connection with drafting both the Complaint in this matter, and Plaintiff's  
7 Opposition to Defendant Rabobank and Utrecht's Motion to Dismiss, I located and reviewed  
8 various documents, as discussed further below. Submitted with this affidavit is the Appendix  
9 of Exhibits in Support of (1) Plaintiff's Opposition to Defendant Rabobank and Utrecht's  
10 Motion to Dismiss, and (2) Counter-Motion for Leave to Take Jurisdictional Discovery (the  
11 "Appendix").  
12

13 4. Exhibit G in the Appendix is a copy of Fortrend International's August 13, 2003  
14 request to Rabobank for a \$29.9 million short-term loan to finance Nob Hill Holdings' purchase  
15 of the shares of Westside Cellular. On page 2, the request notes that Michael Tricarichi is the  
16 shareholder of Westside Cellular, and lists his address in Las Vegas, Nevada. The document  
17 was produced by Rabobank during the proceedings in *Michael A. Tricarichi v. Commissioner*  
18 *of Internal Revenue*, U.S. Tax Court Docket No. 23630-12, and was a joint exhibit (Exhibit  
19 34-J) for the trial of that matter in June 2014.  
20

21 5. Exhibit J in the Appendix is a copy of the credit application, dated August 29,  
22 2003, for Nob Hill Holdings to borrow \$29.9 million from Rabobank in order to purchase the  
23 shares of Westside Cellular from Michael Tricarichi. The document was produced by  
24 Rabobank during the proceedings in *Michael A. Tricarichi v. Commissioner of Internal*  
25 *Revenue*, U.S. Tax Court Docket No. 23630-12, and was a joint exhibit (Exhibit 35-J) for the  
26 trial of that matter in June 2014.  
27  
28

1           6.       Exhibit K in the Appendix is a Rabobank internal memorandum, dated August  
2 29, 2003, approving Nob Hill Holdings' application for the aforementioned loan. The document  
3 was produced by Rabobank during the proceedings in *Michael A. Tricarichi v. Commissioner*  
4 *of Internal Revenue*, U.S. Tax Court Docket No. 23630-12, and was an exhibit for the trial of  
5 that matter in June 2014.

6  
7           7.       Exhibit L in the Appendix is a Rabobank internal memorandum, dated  
8 September 8, 2003, regarding Mr. Tricarichi setting up a Rabobank account and resigning from  
9 Westside Cellular in connection with the closing of Nob Hill Holdings' purchase of the shares  
10 of Westside Cellular. The document was produced by Rabobank during the proceedings in  
11 *Michael A. Tricarichi v. Commissioner of Internal Revenue*, U.S. Tax Court Docket No.  
12 23630-12, and was a joint exhibit (Exhibit 50-J) for the trial of that matter in June 2014.

13           8.       Exhibit Q in the Appendix contains pages from the Rabobank Group website.

14           9.       Exhibit R in the Appendix is Utrecht-America Holdings, Inc.'s ("Utrecht")  
15 2016 Dodd-Frank Act Company-Run Stress Test Results Disclosure, which is publicly  
16 available via a link on the first website page included in Exhibit Q, above.

17           10.      Exhibit S in the Appendix is a record, publicly available on the Nevada  
18 Secretary of State's website, reflecting that Rabo AgriFinance, LLC, a subsidiary of Utrecht,  
19 is actively registered to do business in Nevada, and that Utrecht is the Manager of that LLC.  
20

21           11.      Exhibit T in the Appendix is a highlighted excerpt from the Stipulation of Facts  
22 entered into by the parties in *Michael A. Tricarichi v. Commissioner of Internal Revenue*, U.S.  
23 Tax Court Docket No. 23630-12.

24           12.      Exhibit U in the Appendix are internal Rabobank documents, dated September 8,  
25 2003, reflecting a Rabobank account being opened in Mr. Tricarichi's name and Mr.  
26 Tricarichi's address in Las Vegas, Nevada. The documents were produced by Rabobank during  
27 the IRS investigation regarding Westside and Mr. Tricarichi.  
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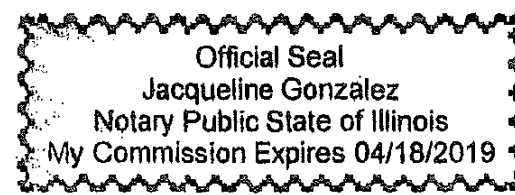
Further affiant sayeth not.



Thomas D. Brooks

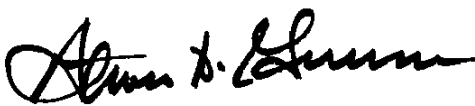
Subscribed and sworn to before me

this 6<sup>th</sup> day of December, 2016.



1 **APEN**  
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3 Todd L. Moody (5430)  
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11 [tmoody@hutchlegal.com](mailto:tmoody@hutchlegal.com)  
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18 *Attorneys for Plaintiff*

19 DISTRICT COURT

20 CLARK COUNTY, NEVADA

21 MICHAEL A. TRICARICHI,  
22  
23 Plaintiff,

24 v.

25 PRICEWATERHOUSE COOPERS, LLP,  
26 COÖPERATIEVE RABOBANK U.A.,  
27 UTRECHT-AMERICA FINANCE CO.,  
28 SEYFARTH SHAW LLP and GRAHAM R.  
TAYLOR,

Defendants.

) CASE NO. A-16-735910-B  
) DEPT NO. XV  
)  
)  
) **APPENDIX OF EXHIBITS IN**  
) **SUPPORT OF (1) PLAINTIFF'S**  
) **OPPOSITION TO DEFENDANTS**  
) **RABOBANK AND UTRECHT'S**  
) **MOTION TO DISMISS, AND (2)**  
) **COUNTER-MOTION FOR**  
) **LEAVE TO TAKE**  
) **JURISDICTIONAL DISCOVERY**  
)  
)  
) JURY TRIAL DEMANDED

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<u>Exhibit</u>	<u>Description</u>
A	Clark County Assessor's Office records
B	Receipt for Nevada driver's license
C	Nevada voter registration application
D	Nevada motor vehicle insurance card
E	Receipt for Nevada vehicle registration
F	Letter of intent
G	Fortrend loan request
H	Rabobank account opening documents for Westside
I	Amendment of letter of intent
J	Loan application
K	Rabobank memorandum approving loan application
L	Rabobank memorandum re Tricarichi bank account and resignation
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R	Utrecht's 2016 Dodd-Frank Act disclosure
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T	Excerpt from Stipulation of Facts in <i>Tricarichi v. Commissioner</i>
U	Rabobank documents re Tricarichi account and Nevada address
V	Opposition to PwC motion to dismiss



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EXHIBIT PAGE ONLY



**EXHIBIT A**

**Assessor****PARCEL OWNERSHIP HISTORY**[Assessor Map](#)[Aerial View](#)[Comment Codes](#)[Current Ownership](#)[New Search](#)**ASSESSOR DESCRIPTION**

RHODES RANCH-PHASE 2-UNIT 1 PLAT BOOK 89 PAGE 5 LOT 15 BLOCK 1

CURRENT PARCEL NO.	CURRENT OWNER	%	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DIST	EST SIZE	COMMENTS
176-08-611-015	LERTKHACHONSUK ROBERT		20110520:00925	5/20/2011	NS	417	.18 AC	

PARCEL NO.	PRIOR OWNER(S)	%	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DIST	EST SIZE	COMMENTS
176-08-611-015	TRICARICHI MICHAEL A & BARBARA H		20030515:03488	05/15/2003	RS	417	SUBDIVIDED LOT	
176-08-611-015	DIMENGO TIMOTHY A & LINDA S		20010223:00107	02/23/2001	JT	417	SUBDIVIDED LOT	
176-08-611-015	RHODES RANCH G P		20000531:03622	05/31/2000	NS	417	SUBDIVIDED LOT	
176-08-611-015	WESTERN STATES CONTRACTING INC		19990713:01226	07/13/1999	NS	417	SUBDIVIDED LOT	
176-08-611-015	RHODES RANCH L P		19990208:01604	02/08/1999	NS	417	SUBDIVIDED LOT	
176-08-611-015	RHODES RANCH LAND HOLDINGS L P		19960711:00940	07/11/1996	NS	417	SUBDIVIDED LOT	
176-08-601-004	RHODES RANCH LAND HOLDINGS L P		19960711:00940	07/11/1996	NS	417	23.89 AC	
176-08-501-005	RHODES RANCH LAND HOLDINGS L P		19960711:00940	07/11/1996	NS	417	121.92 AC	.27A TO RD 980320:1258
176-08-501-005	RHODES RANCH LAND HOLDINGS L P		19960711:00940	07/11/1996	NS	417	122.19 AC	
176-08-601-001	RHODES RANCH LAND HOLDINGS L P		19960711:00940	07/11/1996	NS	125	422.28 AC	+11.60A COR
176-08-601-001	RHODES RANCH LAND HOLDINGS L P		19960711:00940	07/11/1996	NS	125	410.68 AC	FR 176-08-201-018,301- 007,401-02,03,801-01,02

Note: Only documents from September 15, 1999 through present are available for viewing.


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