

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD BAYUK LIVING TRUST; SALVATORE MORABITO, an individual; and SNOWSHOE PETROLEUM, INC., a New York corporation,

Appellants,

vs.

WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito,

Respondent.

Case No. 79355

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Appeal from the Second Judicial
District Court, the Honorable Connie
J. Steinheimer Presiding

APPELLANTS' APPENDIX, VOLUME 1
(Nos. 1–190)

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10	September 20, 2010 email from P. Morabito to Dennis and Yalamanchili RE: Attorney client privileged communication	Vol. 12, 1868–1870
11	September 20, 2010 email string RE: Attorney client privileged communication	Vol. 12, 1871–1875
12	Appraisal of Real Property: 370 Los Olivos, Laguna Beach, CA, as of Sept. 24, 2010	Vol. 12, 1876–1903
13	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 12, 1904–1919
14	P. Morabito Redacted Investment and Bank Report from Sept. 1 to Sept. 30, 2010	Vol. 12, 1920–1922
15	Excerpted Transcript of June 25, 2015 Deposition of 341 Meeting of Creditors	Vol. 12, 1923–1927
16	Excerpted Transcript of December 5, 2015 Deposition of P. Morabito	Vol. 12, 1928–1952
17	Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 27, 2010	Vol. 12, 1953–1961
18	First Amendment to Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 28, 2010	Vol. 12, 1962–1964
19	Appraisal Report providing market value estimate of real property located at 8355 Panorama Drive, Reno, NV as of Dec. 7, 2011	Vol. 12, 1965–1995

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
20	An Appraisal of a vacant .977± Acre Parcel of Industrial Land Located at 49 Clayton Place West of the Pyramid Highway (State Route 445) Sparks, Washoe County, Nevada and a single-family residence located at 8355 Panorama Drive Reno, Washoe County, Nevada 89511 as of October 1, 2010 a retrospective date	Vol. 13, 1996–2073
21	APN: 040-620-09 Declaration of Value (dated 12/31/2012)	Vol. 14, 2074–2075
22	Sellers Closing Statement for real property located at 8355 Panorama Drive, Reno, NV 89511	Vol. 14, 2076–2077
23	Bill of Sale for real property located at 8355 Panorama Drive, Reno, NV 89511	Vol. 14, 2078–2082
24	Operating Agreement of Baruk Properties LLC	Vol. 14, 2083–2093
25	Edward Bayuk, as trustee of the Edward William Bayuk Living Trust’s Answer to Plaintiff’s First Set of Interrogatories (dated 09/14/2014)	Vol. 14, 2094–2104
26	Summary Appraisal Report of real property located at 1461 Glenneyre Street, Laguna Beach, CA 92651, as of Sept. 25, 2010	Vol. 14, 2105–2155
27	Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262	Vol. 15, 2156–2185
28	Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262	Vol. 15, 2186–2216

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
29	Membership Interest Transfer Agreement between Arcadia Trust and Bayuk Trust entered effective as of Oct. 1, 2010	Vol. 15, 2217–2224
30	PROMISSORY NOTE [Edward William Bayuk Living Trust (“Borrower”) promises to pay Arcadia Living Trust (“Lender”) the principal sum of \$1,617,050.00, plus applicable interest] (dated 10/01/2010)	Vol. 15, 2225–2228
31	Certificate of Merger dated Oct. 4, 2010	Vol. 15, 2229–2230
32	Articles of Merger Document No. 20100746864-78 (recorded date 10/04/2010)	Vol. 15, 2231–2241
33	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 15, 2242–2256
34	Grant Deed for real property 1254 Mary Fleming Circle, Palm Springs, CA 92262; APN: 507-520-015 (recorded 11/04/2010)	Vol. 15, 2257–2258
35	General Conveyance made as of Oct. 31, 2010 between Woodland Heights Limited (“Vendor”) and Arcadia Living Trust (“Purchaser”)	Vol. 15, 2259–2265
36	Appraisal of Real Property as of Sept. 24, 2010: 371 El Camino Del Mar, Laguna Beach, CA 92651	Vol. 15, 2266–2292
37	Excerpted Transcript of December 6, 2016 Deposition of P. Morabito	Vol. 15, 2293–2295
38	Page intentionally left blank	Vol. 15, 2296–2297
39	Ledger of Edward Bayuk to P. Morabito	Vol. 15, 2298–2300

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
40	Loan Calculator: Payment Amount (Standard Loan Amortization)	Vol. 15, 2301–2304
41	Payment Schedule of Edward Bayuk Note in Favor of P. Morabito	Vol. 15, 2305–2308
42	November 10, 2011 email from Vacco RE: Baruk Properties, LLC/P. Morabito/Bank of America, N.A.	Vol. 15, 2309–2312
43	May 23, 2012 email from Vacco to Steve Peek RE: Formal Settlement Proposal to resolve the Morabito matter	Vol. 15, 2313–2319
44	Excerpted Transcript of March 12, 2015 Deposition of 341 Meeting of Creditors	Vol. 15, 2320–2326
45	Shareholder Interest Purchase Agreement between P. Morabito and Snowshoe Petroleum, Inc. (dated 09/30/2010)	Vol. 15, 2327–2332
46	P. Morabito Statement of Assets & Liabilities as of May 5, 2009	Vol. 15, 2333–2334
47	March 10, 2010 email from Naz Afshar, CPA to Darren Takemoto, CPA RE: Current Personal Financial Statement	Vol. 15, 2335–2337
48	March 10, 2010 email from P. Morabito to Jon RE: ExxonMobil CIM for Florida and associated maps	Vol. 15, 2338–2339
49	March 20, 2010 email from P. Morabito to Vacco RE: proceed with placing binding bid on June 22nd with ExxonMobil	Vol. 15, 2340–2341

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
50	P. Morabito Statement of Assets & Liabilities as of May 30, 2010	Vol. 15, 2342–2343
51	June 28, 2010 email from P. Morabito to George R. Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 15, 2344–2345
52	Plan of Merger of Consolidated Western Corp. with and into Superpumper, Inc. (dated 09/28/2010)	Vol. 15, 2346–2364
53	Page intentionally left blank	Vol. 15, 2365–2366
54	BBVA Compass Proposed Request on behalf of Superpumper, Inc. (dated 12/15/2010)	Vol. 15, 2367–2397
55	Business Valuation Agreement between Matrix Capital Markets Group, Inc. and Superpumper, Inc. (dated 09/30/2010)	Vol. 15, 2398–2434
56	Expert report of James L. McGovern, CPA/CFF, CVA (dated 01/25/2016)	Vol. 16, 2435–2509
57	June 18, 2014 email from Sam Morabito to Michael Vanek RE: SPI Analysis	Vol. 17, 2510–2511
58	Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry-Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring, or Disposing of or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee; Case No. BK-N-13-51237 (filed 07/01/2013)	Vol. 17, 2512–2516

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
59	State of California Secretary of State Limited Liability Company – Snowshoe Properties, LLC; File No. 201027310002 (filed 09/29/2010)	Vol. 17, 2517–2518
60	PROMISSORY NOTE [Snowshoe Petroleum (“Maker”) promises to pay P. Morabito (“Holder”) the principal sum of \$1,462,213.00] (dated 11/01/2010)	Vol. 17, 2519–2529
61	PROMISSORY NOTE [Superpumper, Inc. (“Maker”) promises to pay Compass Bank (the “Bank” and/or “Holder”) the principal sum of \$3,000,000.00] (dated 08/13/2010)	Vol. 17, 2530–2538
62	Excerpted Transcript of October 21, 2015 Deposition of Salvatore R. Morabito	Vol. 17, 2539–2541
63	Page intentionally left blank	Vol. 17, 2542–2543
64	Edward Bayuk’s Answers to Plaintiff’s First Set of Interrogatories (dated 09/14/2014)	Vol. 17, 2544–2557
65	October 12, 2012 email from Stan Bernstein to P. Morabito RE: 2011 return	Vol. 17, 2558–2559
66	Page intentionally left blank	Vol. 17, 2560–2561
67	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 17, 2562–2564
68	Snowshoe Petroleum, Inc.’s letter of intent to set out the framework of the contemplated transaction between: Snowshoe Petroleum, Inc.; David Dwelle, LP; Eclipse Investments, LP; Speedy Investments; and TAD Limited Partnership (dated 04/21/2011)	Vol. 17, 2565–2572

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
69	Excerpted Transcript of July 10, 2017 Deposition of Dennis C. Vacco	Vol. 17, 2573–2579
70	April 15, 2011 email from P. Morabito to Christian Lovelace; Gregory Ivancic; Vacco RE: \$65 million loan offer from Cerberus	Vol. 17, 2580–2582
71	Email from Vacco to P. Morabito RE: \$2 million second mortgage on the Reno house	Vol. 17, 2583–2584
72	Email from Vacco to P. Morabito RE: Tim Haves	Vol. 17, 2585–2586
73	Settlement Agreement, Loan Agreement Modification & Release dated as of Sept. 7, 2012, entered into by Bank of America and P. Morabito	Vol. 17, 2587–2595
74	Page intentionally left blank	Vol. 17, 2596–2597
75	February 10, 2012 email from Vacco to Paul Wells and Timothy Haves RE: 1461 Glenneyre Street, Laguna Beach – Sale	Vol. 17, 2598–2602
76	May 8, 2012 email from P. Morabito to Vacco RE: Proceed with the corporate set-up with Ray, Edward and P. Morabito	Vol. 17, 2603–2604
77	September 4, 2012 email from Vacco to Edward Bayuk RE: Second Deed of Trust documents	Vol. 17, 2605–2606
78	September 18, 2012 email from P. Morabito to Edward Bayuk RE: Deed of Trust	Vol. 17, 2607–2611
79	October 3, 2012 email from Vacco to P. Morabito RE: Term Sheet on both real estate deal and option	Vol. 17, 2612–2614

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
80	March 14, 2013 email from P. Morabito to Vacco RE: BHI Hinckley	Vol. 17, 2615–2616
81	Page intentionally left blank	Vol. 17, 2617–2618
82	November 11, 2011 email from Vacco to P. Morabito RE: Trevor’s commitment to sign	Vol. 17, 2619–2620
83	November 28, 2011 email string RE: Wiring \$560,000 to Lippes Mathias	Vol. 17, 2621–2623
84	Page intentionally left blank	Vol. 17, 2624–2625
85	Page intentionally left blank	Vol. 17, 2626–2627
86	Order for Relief Under Chapter 7; Case No. BK-N-13-51236 (filed 12/22/2014)	Vol. 17, 2628–2634
87	Report of Undisputed Election (11 U.S.C § 702); Case No. BK-N-13-51237 (filed 01/23/2015)	Vol. 17, 2635–2637
88	Amended Stipulation and Order to Substitute a Party to NRCP 17(a) (filed 06/11/2015)	Vol. 17, 2638–2642
89	Membership Interest Purchase Agreement, entered into as of Oct. 6, 2010 between P. Morabito and Edward Bayuk	Vol. 17, 2643–2648
90	Complaint; Case No. BK-N-13-51237 (filed 10/15/2015)	Vol. 17, 2649–2686
91	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/2010)	Vol. 17, 2687–2726

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Objection to Recommendation for Order filed August 17, 2017 (filed 08/28/2017)		Vol. 18, 2727–2734
Exhibit to Objection to Recommendation for Order		
Exhibit	Document Description	
1	Plaintiff’s counsel’s Jan. 24, 2017, email memorializing the discovery dispute agreement	Vol. 18, 2735–2736
Opposition to Objection to Recommendation for Order filed August 17, 2017 (filed 09/05/2017)		Vol. 18, 2737–2748
Exhibit to Opposition to Objection to Recommendation for Order		
Exhibit	Document Description	
A	Declaration of Teresa M. Pilatowicz, Esq., in Support of Opposition to Objection to Recommendation for Order (filed 09/05/2017)	Vol. 18, 2749–2752
Reply to Opposition to Objection to Recommendation for Order filed August 17, 2017 (dated 09/15/2017)		Vol. 18, 2753–2758
Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)		Vol. 18, 2759–2774
Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)		Vol. 18, 2775–2790

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Defendants' Separate Statement of Disputed Facts in Support of Opposition to Plaintiff's Motion for Partial Summary Judgment		
Exhibit	Document Description	
1	Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 08/23/2011)	Vol. 18, 2791–2793
2	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 18, 2794–2810
3	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings Pursuant to 11 U.S.C §305(a)(1); Case No. BK-N-13-51237 (filed 12/17/2013)	Vol. 18, 2811–2814
4	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 18, 2815–2826
5	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 18, 2827–2857
6	Appraisal	Vol. 18, 2858–2859
7	Budget Summary as of Jan. 7, 2016	Vol. 18, 2860–2862
8	Excerpted Transcript of March 24, 2016 Deposition of Dennis Banks	Vol. 18, 2863–2871
9	Excerpted Transcript of March 22, 2016 Deposition of Michael Sewitz	Vol. 18, 2872–2879
10	Excerpted Transcript of April 27, 2011 Deposition of Darryl Noble	Vol. 18, 2880–2883

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
11	Copies of cancelled checks from Edward Bayuk made payable to P. Morabito	Vol. 18, 2884–2892
12	CBRE Appraisal of 14th Street Card Lock Facility (dated 02/26/2010)	Vol. 18, 2893–2906
13	Bank of America wire transfer from P. Morabito to Salvatore Morabito in the amount of \$146,127.00; and a wire transfer from P. Morabito to Lippes for \$25.00 (date 10/01/2010)	Vol. 18, 2907–2908
14	Excerpted Transcript of October 21, 2015 Deposition of Christian Mark Lovelace	Vol. 18, 2909–2918
15	June 18, 2014 email from Sam Morabito to Michael Vanek RE: Analysis of the Superpumper transaction in 2010	Vol. 18, 2919–2920
16	Excerpted Transcript of October 21, 2015 Deposition of Salvatore R. Morabito	Vol. 18, 2921–2929
17	PROMISSORY NOTE [Snowshoe Petroleum (“Maker”) promises to pay P. Morabito (“Holder”) the principal sum of \$1,462,213.00] (dated 11/01/2010)	Vol. 18, 2930–2932
18	TERM NOTE [P. Morabito (“Borrower”) promises to pay Consolidated Western Corp. (“Lender”) the principal sum of \$939,000.00, plus interest] (dated 09/01/2010)	Vol. 18, 2933–2934
19	SUCCESSOR PROMISSORY NOTE [Snowshoe Petroleum (“Maker”) promises to pay P. Morabito (“Holder”) the principal sum of \$492,937.30, plus interest] (dated 02/01/2011)	Vol. 18, 2935–2937

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
20	Edward Bayuk's wire transfer to Lippes in the amount of \$517,547.20 (dated 09/29/2010)	Vol. 18, 2938–2940
21	Salvatore Morabito Bank of Montreal September 2011 Wire Transfer	Vol. 18, 2941–2942
22	Declaration of Salvatore Morabito (dated 09/21/2017)	Vol. 18, 2943–2944
23	Edward Bayuk bank wire transfer to Superpumper, Inc., in the amount of \$659,000.00 (dated 09/30/2010)	Vol. 18, 2945–2947
24	Edward Bayuk checking account statements between 2010 and 2011 funding the company with transfers totaling \$500,000	Vol. 18, 2948–2953
25	Salvatore Morabito's wire transfer statement between 2010 and 2011, funding the company with \$750,000	Vol. 18, 2954–2957
26	Payment Schedule of Edward Bayuk Note in Favor of P. Morabito	Vol. 18, 2958–2961
27	September 15, 2010 email from Vacco to Yalamanchili and P. Morabito RE: Follow Up Thoughts	Vol. 18, 2962–2964
Reply in Support of Motion for Partial Summary Judgment (dated 10/10/2017)		Vol. 19, 2965–2973
Order Regarding Discovery Commissioner's Recommendation for Order dated August 17, 2017 (filed 12/07/2017)		Vol. 19, 2974–2981

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Order Denying Motion for Partial Summary Judgment (filed 12/11/2017)		Vol. 19, 2982–2997
Defendants’ Motions in Limine (filed 09/12/2018)		Vol. 19, 2998–3006
Exhibits to Defendants’ Motions in Limine		
Exhibit	Document Description	
1	Plaintiff’s Second Supplement to Amended Disclosures Pursuant to NRCP 16.1(A)(1) (dated 04/28/2016)	Vol. 19, 3007–3016
2	Excerpted Transcript of March 25, 2016 Deposition of William A. Leonard	Vol. 19, 3017–3023
3	Plaintiff, Jerry Herbst’s Responses to Defendant Snowshoe Petroleum, Inc.’s Set of Interrogatories (dated 02/11/2015); and Plaintiff, Jerry Herbst’s Responses to Defendant, Salvatore Morabito’s Set of Interrogatories (dated 02/12/2015)	Vol. 19, 3024–3044
Motion in Limine to Exclude Testimony of Jan Friederich (filed 09/20/2018)		Vol. 19, 3045–3056
Exhibits to Motion in Limine to Exclude Testimony of Jan Friederich		
Exhibit	Document Description	
1	Defendants’ Rebuttal Expert Witness Disclosure (dated 02/29/2016)	Vol. 19, 3057–3071
2	Condensed Transcript of March 29, 2016 Deposition of Jan Friederich	Vol. 19, 3072–3086

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Opposition to Defendants' Motions in Limine (filed 09/28/2018)		Vol. 19, 3087–3102
Exhibits to Opposition to Defendants' Motions in Limine		
Exhibit	Document Description	
A	Declaration of Teresa M. Pilatowicz, Esq. in Support of Opposition to Defendants' Motions in Limine (filed 09/28/2018)	Vol. 19, 3103–3107
A-1	Plaintiff's February 19, 2016, Amended Disclosures Pursuant to NRCP 16.1(A)(1)	Vol. 19, 3108–3115
A-2	Plaintiff's January 26, 2016, Expert Witnesses Disclosures (without exhibits)	Vol. 19, 3116–3122
A-3	Defendants' January 26, 2016, and February 29, 2016, Expert Witness Disclosures (without exhibits)	Vol. 19, 3123–3131
A-4	Plaintiff's August 17, 2017, Motion for Partial Summary Judgment (without exhibits)	Vol. 19, 3132–3175
A-5	Plaintiff's August 17, 2017, Statement of Undisputed Facts in Support of his Motion for Partial Summary Judgment (without exhibits)	Vol. 19, 3176–3205
Defendants' Reply in Support of Motions in Limine (filed 10/08/2018)		Vol. 20, 3206–3217
Exhibit to Defendants' Reply in Support of Motions in Limine		
Exhibit	Document Description	

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
1	Chapter 7 Trustee, William A. Leonard's Responses to Defendants' First Set of Interrogatories (dated 05/28/2015)	Vol. 20, 3218–3236
Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich (filed 10/08/2018)		Vol. 20, 3237–3250
Exhibits to Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich		
Exhibit	Document Description	
1	Excerpt of Matrix Report (dated 10/13/2010)	Vol. 20, 3251–3255
2	Defendants' Rebuttal Expert Witness Disclosure (dated 02/29/2016)	Vol. 20, 3256–3270
3	November 9, 2009 email from P. Morabito to Daniel Fletcher; Jim Benbrook; Don Whitehead; Sam Morabito, etc. RE: Jan Friederich entered consulting agreement with Superpumper	Vol. 20, 3271–3272
4	Excerpted Transcript of March 29, 2016 Deposition of Jan Friederich	Vol. 20, 3273–3296
Defendants' Objections to Plaintiff's Pretrial Disclosures (filed 10/12/2018)		Vol. 20, 3297–3299
Objections to Defendants' Pretrial Disclosures (filed 10/12/2018)		Vol. 20, 3300–3303
Reply to Defendants' Opposition to Plaintiff's Motion in Limine to Exclude the Testimony of Jan Friederich (filed 10/12/2018)		Vol. 20, 3304–3311

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Minutes of September 11, 2018, Pre-trial Conference (filed 10/19/2018)		Vol. 20, 3312
Stipulated Facts (filed 10/29/2018)		Vol. 20, 3313–3321
Defendants’ Points and Authorities RE: Objection to Admission of Documents in Conjunction with the Depositions of P. Morabito and Dennis Vacco (filed 10/30/2018)		Vol. 20, 3322–3325
Plaintiff’s Points and Authorities Regarding Authenticity and Hearsay Issues (filed 10/31/2018)		Vol. 20, 3326–3334
Clerk’s Trial Exhibit List (filed 02/28/2019)		Vol. 21, 3335–3413
Exhibits to Clerk’s Trial Exhibit List		
Exhibit	Document Description	
1	Certified copy of the Transcript of September 13, 2010 Judge’s Ruling; Case No. CV07-02764	Vol. 21, 3414–3438
2	Findings of Fact, Conclusions of Law, and Judgment; Case No. CV07-02764 (filed 10/12/2010)	Vol. 21, 3439–3454
3	Judgment; Case No. CV07-0767 (filed 08/23/2011)	Vol. 21, 3455–3456
4	Confession of Judgment; Case No. CV07-02764 (filed 06/18/2013)	Vol. 21, 3457–3481
5	November 30, 2011 Settlement Agreement and Mutual Release	Vol. 22, 3482–3613
6	March 1, 2013 Forbearance Agreement	Vol. 22, 3614–3622

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
8	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings, Case 13-51237. ECF No. 94, (filed 12/17/2013)	Vol. 22, 3623–3625
19	Report of Undisputed Election– Appointment of Trustee, Case No. 13-51237, ECF No. 220	Vol. 22, 3626–3627
20	Stipulation and Order to Substitute a Party Pursuant to NRCF 17(a), Case No. CV13-02663, May 15, 2015	Vol. 22, 3628–3632
21	Non-Dischargeable Judgment Regarding Plaintiff’s First and Second Causes of Action, Case No. 15-05019-GWZ, ECF No. 123, April 30, 2018	Vol. 22, 3633–3634
22	Memorandum & Decision; Case No. 15-05019-GWZ, ECF No. 124, April 30, 2018	Vol. 22, 3635–3654
23	Amended Findings of Fact, Conclusions of Law in Support of Judgment Regarding Plaintiff’s First and Second Causes of Action; Case 15-05019-GWZ, ECF No. 122, April 30, 2018	Vol. 22, 3655–3679
25	September 15, 2010 email from Yalamanchili to Vacco and P. Morabito RE: Follow Up Thoughts	Vol. 22, 3680–3681
26	September 18, 2010 email from P. Morabito to Vacco	Vol. 22, 3682–3683
27	September 20, 2010 email from Vacco to P. Morabito RE: Spirit	Vol. 22, 3684–3684
28	September 20, 2010 email between Yalamanchili and Crotty RE: Morabito -Wire	Vol. 22, 3685–3687

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
29	September 20, 2010 email from Yalamanchili to Graber RE: Attorney Client Privileged Communication	Vol. 22, 3688–3689
30	September 21, 2010 email from P. Morabito to Vacco and Cross RE: Attorney Client Privileged Communication	Vol. 22, 3690–3692
31	September 23, 2010 email chain between Graber and P. Morabito RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3693–3694
32	September 23, 2010 email from Yalamanchili to Graber RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3695–3696
33	September 24, 2010 email from P. Morabito to Vacco RE: Superpumper, Inc.	Vol. 22, 3697–3697
34	September 26, 2010 email from Vacco to P. Morabito RE: Judgment for a fixed debt	Vol. 22, 3698–3698
35	September 27, 2010 email from P. Morabito to Vacco RE: First Amendment to Residential Lease executed 9/27/2010	Vol. 22, 3699–3701
36	November 7, 2012 emails between Vacco, P. Morabito, C. Lovelace RE: Attorney Client Privileged Communication	Vol. 22, 3702–3703
37	Morabito BMO Bank Statement – September 2010	Vol. 22, 3704–3710
38	Lippes Mathias Trust Ledger History	Vol. 23, 3711–3716

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
39	Fifth Amendment & Restatement of the Trust Agreement for the Arcadia Living Trust dated September 30, 2010	Vol. 23, 3717–3755
42	P. Morabito Statement of Assets & Liabilities as of May 5, 2009	Vol. 23, 3756–3756
43	March 10, 2010 email chain between Afshar and Takemoto RE: Current Personal Financial Statement	Vol. 23, 3757–3758
44	Salazar Net Worth Report (dated 03/15/2011)	Vol. 23, 3759–3772
45	Purchase and Sale Agreement	Vol. 23, 3773–3780
46	First Amendment to Purchase and Sale Agreement	Vol. 23, 3781–3782
47	Panorama – Estimated Settlement Statement	Vol. 23, 3783–3792
48	El Camino – Final Settlement Statement	Vol. 23, 3793–3793
49	Los Olivos – Final Settlement Statement	Vol. 23, 3794–3794
50	Deed for Transfer of Panorama Property	Vol. 23, 3795–3804
51	Deed for Transfer for Los Olivos	Vol. 23, 3805–3806
52	Deed for Transfer of El Camino	Vol. 23, 3807–3808
53	Kimmel Appraisal Report for Panorama and Clayton	Vol. 23, 3809–3886
54	Bill of Sale – Panorama	Vol. 23, 3887–3890
55	Bill of Sale – Mary Fleming	Vol. 23, 3891–3894
56	Bill of Sale – El Camino	Vol. 23, 3895–3898

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
57	Bill of Sale – Los Olivos	Vol. 23, 3899–3902
58	Declaration of Value and Transfer Deed of 8355 Panorama (recorded 12/31/2012)	Vol. 23, 3903–3904
60	Baruk Properties Operating Agreement	Vol. 23, 3905–3914
61	Baruk Membership Transfer Agreement	Vol. 24, 3915–3921
62	Promissory Note for \$1,617,050 (dated 10/01/2010)	Vol. 24, 3922–3924
63	Baruk Properties/Snowshoe Properties, Certificate of Merger (filed 10/04/2010)	Vol. 24, 3925–3926
64	Baruk Properties/Snowshoe Properties, Articles of Merger	Vol. 24, 3927–3937
65	Grant Deed from Snowshoe to Bayuk Living Trust; Doc No. 2010-0531071 (recorded 11/04/2010)	Vol. 24, 3938–3939
66	Grant Deed – 1461 Glenneyre; Doc No. 2010000511045 (recorded 10/08/2010)	Vol. 24, 3940–3941
67	Grant Deed – 570 Glenneyre; Doc No. 2010000508587 (recorded 10/08/2010)	Vol. 24, 3942–3944
68	Attorney File re: Conveyance between Woodland Heights and Arcadia Living Trust	Vol. 24, 3945–3980
69	October 24, 2011 email from P. Morabito to Vacco RE: Attorney Client Privileged Communication	Vol. 24, 3981–3982

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
70	November 10, 2011 email chain between Vacco and P. Morabito RE: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.	Vol. 24, 3983–3985
71	Bayuk First Ledger	Vol. 24, 3986–3987
72	Amortization Schedule	Vol. 24, 3988–3990
73	Bayuk Second Ledger	Vol. 24, 3991–3993
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75	March 30, 2012 email from Vacco to Bayuk RE: Letter to BOA	Vol. 24, 4054–4055
76	March 10, 2010 email chain between P. Morabito and jon@aim13.com RE: Strictly Confidential	Vol. 24, 4056–4056
77	May 20, 2010 email chain between P. Morabito, Vacco and Michael Pace RE: Proceed with placing a Binding Bid on June 22nd with ExxonMobil	Vol. 24, 4057–4057
78	Morabito Personal Financial Statement May 2010	Vol. 24, 4058–4059
79	June 28, 2010 email from P. Morabito to George Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 24, 4060–4066
80	Shareholder Interest Purchase Agreement	Vol. 24, 4067–4071
81	Plan of Merger of Consolidated Western Corporation with and Into Superpumper, Inc.	Vol. 24, 4072–4075

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84	Unanimous Written Consent of the Directors and Shareholders of Consolidated Western Corporation	Vol. 24, 4081–4083
85	Arizona Corporation Commission Letter dated October 21, 2010	Vol. 24, 4084–4091
86	Nevada Articles of Merger	Vol. 24, 4092–4098
87	New York Creation of Snowshoe	Vol. 24, 4099–4103
88	April 26, 2012 email from Vacco to Afshar RE: Ownership Structure of SPI	Vol. 24, 4104–4106
90	September 30, 2010 Matrix Retention Agreement	Vol. 24, 4107–4110
91	McGovern Expert Report	Vol. 25, 4111–4189
92	Appendix B to McGovern Report – Source 4 – Budgets	Vol. 25, 4190–4191
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105	Superpumper Successor Note in the amount of \$939,000 (dated 02/01/2011)	Vol. 25, 4196–4197

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106	Superpumper Stock Power transfers to S. Morabito and Bayuk (dated 01/01/2011)	Vol. 25, 4198–4199
107	<i>Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry- Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee, Case 13-51237, ECF No. 22 (filed 07/01/2013)</i>	Vol. 25, 4200–4203
108	October 12, 2012 email between P. Morabito and Bernstein RE: 2011 Return	Vol. 25, 4204–4204
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110	P. Morabito – Term Note in the amount of \$939,000.000 (dated 09/01/2010)	Vol. 25, 4214–4214
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112	Consent Agreement (dated 12/28/2010)	Vol. 25, 4245–4249
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122	Salvatore Morabito Term Note \$2,563,542.00 as of December 31, 2010	Vol. 26, 4324–4325
123	Edward Bayuk Term Note \$2,580,500.00 as of December 31, 2010	Vol. 26, 4326–4327
125	April 21, 2011 Management letter	Vol. 26, 4328–4330
126	Bayuk and S. Morabito Statements of Assets & Liabilities as of February 1, 2011	Vol. 26, 4331–4332
127	January 6, 2012 email from Bayuk to Lovelace RE: Letter of Credit	Vol. 26, 4333–4335
128	January 6, 2012 email from Vacco to Bernstein	Vol. 26, 4336–4338
129	January 7, 2012 email from Bernstein to Lovelace	Vol. 26, 4339–4343
130	March 18, 2012 email from P. Morabito to Vacco	Vol. 26, 4344–4344
131	April 21, 2011 Proposed Acquisition of Nella Oil	Vol. 26, 4345–4351
132	April 15, 2011 email chain between P. Morabito and Vacco	Vol. 26, 4352

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134	April 16, 2012 email from Vacco to Morabito	Vol. 26, 4354–4359
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137	August 24, 2011 email from Vacco to P. Morabito RE: Tim Haves	Vol. 26, 4366
138	November 11, 2011 email from Vacco to P. Morabito RE: Getting Trevor's commitment to sign	Vol. 26, 4367
139	November 16, 2011 email from P. Morabito to Vacco RE: Vacco's litigation letter	Vol. 26, 4368
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141	December 7, 2011 email from Vacco to P. Morabito RE: Moreno	Vol. 26, 4371
142	February 10, 2012 email chain between P. Morabito Wells, and Vacco RE: 1461 Glenneyre Street - Sale	Vol. 26, 4372–4375
143	April 20, 2012 email from P. Morabito to Bayuk RE: BofA	Vol. 26, 4376
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148	September 4, 2012 email from Bayuk to Vacco RE: Wire	Vol. 26, 4423–4426
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152	September 3, 2012 email from P. Morabito to Vacco RE: Wire	Vol. 26, 4435
153	March 14, 2013 email chain between P. Morabito and Vacco RE: BHI Hinckley	Vol. 26, 4436
154	Paul Morabito 2009 Tax Return	Vol. 26, 4437–4463
155	Superpumper Form 8879-S tax year ended December 31, 2010	Vol. 26, 4464–4484
156	2010 U.S. S Corporation Tax Return for Consolidated Western Corporation	Vol. 27, 4485–4556
157	Snowshoe form 8879-S for year ended December 31, 2010	Vol. 27, 4557–4577
158	Snowshoe Form 1120S 2011 Amended Tax Return	Vol. 27, 4578–4655

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161	December 18, 2012 email from Vacco to P. Morabito RE: Attorney Client Privileged Communication	Vol. 27, 4659
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174	October 15, 2015 Certificate of Service of copy of Lippes Mathias Wexler Friedman’s Response to Subpoena	Vol. 27, 4670
175	Order Granting Motion to Compel Responses to Deposition Questions ECF No. 502; Case No. 13-51237-gwz (filed 02/03/2016)	Vol. 27, 4671–4675
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189	Mortgage – Mary Fleming	Vol. 28, 4864
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191	Settlement Statement – 370 Los Olivos	Vol. 28, 4866
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193	Mortgage – 8355 Panorama Drive	Vol. 28, 4869–4870
194	Compass – Certificate of Custodian of Records (dated 12/21/2016)	Vol. 28, 4871–4871
196	June 6, 2014 Declaration of Sam Morabito – Exhibit 1 to Snowshoe Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4872–4874
197	June 19, 2014 Declaration of Sam Morabito – Exhibit 1 to Superpumper Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4875–4877
198	September 22, 2017 Declaration of Sam Morabito – Exhibit 22 to Defendants’ SSOF in Support of Opposition to Plaintiff’s MSJ – filed in Case No. CV13-02663	Vol. 28, 4878–4879

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225	Bank of America Records for Edward Bayuk (dated 09/05/2012)	Vol. 28, 4887–4897
226	June 11, 2007 Wholesale Marketer Agreement	Vol. 29, 4898–4921
227	May 25, 2006 Wholesale Marketer Facility Development Incentive Program Agreement	Vol. 29, 4922–4928
228	June 2007 Master Lease Agreement – Spirit SPE Portfolio and Superpumper, Inc.	Vol. 29, 4929–4983
229	Superpumper Inc 2008 Financial Statement (dated 12/31/2008)	Vol. 29, 4984–4996
230	November 9, 2009 email from P. Morabito to Bernstein, Yalaman RE: Jan Friederich – entered into Consulting Agreement	Vol. 29, 4997
231	September 30, 2010, Letter from Compass to Superpumper, Morabito, CWC RE: reducing face amount of the revolving note	Vol. 29, 4998–5001
232	October 15, 2010, letter from Quarles & Brady to Vacco RE: Revolving Loan Documents and Term Loan Documents between Superpumper and Compass Bank	Vol. 29, 5002–5006

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235	August 31, 2010 Superpumper Inc., Valuation of 100 percent of the common equity in Superpumper, Inc on a controlling marketable basis	Vol. 29, 5014–5059
236	June 18, 2014 email from S. Morabito to Vanek (WF) RE: Analysis of Superpumper Acquisition in 2010	Vol. 29, 5060–5061
241	Superpumper March 2010 YTD Income Statement	Vol. 29, 5062–5076
244	Assignment Agreement for \$939,000 Morabito Note	Vol. 29, 5077–5079
247	July 1, 2011 Third Amendment to Forbearance Agreement Superpumper and Compass Bank	Vol. 29, 5080–5088
248	Superpumper Cash Contributions January 2010 thru September 2015 – Bayuk and S. Morabito	Vol. 29, 5089–5096
252	October 15, 2010 Letter from Quarles & Brady to Vacco RE: Revolving Loan documents and Term Loan documents between Superpumper Prop. and Compass Bank	Vol. 29, 5097–5099
254	Bank of America – S. Morabito SP Properties Sale, SP Purchase Balance	Vol. 29, 5100
255	Superpumper Prop. Final Closing Statement for 920 Mountain City Hwy, Elko, NV	Vol. 29, 5101
256	September 30, 2010 Raffles Insurance Limited Member Summary	Vol. 29, 5102

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257	Equalization Spreadsheet	Vol. 30, 5103
258	November 9, 2005 Grant, Bargain and Sale Deed; Doc #3306300 for Property Washoe County	Vol. 30, 5104–5105
260	January 7, 2016 Budget Summary – Panorama Drive	Vol. 30, 5106–5107
261	Mary 22, 2006 Compilation of Quotes and Invoices Quote of Valley Drapery	Vol. 30, 5108–5116
262	Photos of 8355 Panorama Home	Vol. 30, 5117–5151
263	Water Rights Deed (Document #4190152) between P. Morabito, E. Bayuk, Grantors, RCA Trust One Grantee (recorded 12/31/2012)	Vol. 30, 5152–5155
265	October 1, 2010 Bank of America Wire Transfer –Bayuk – Morabito \$60,117	Vol. 30, 5156
266	October 1, 2010 Check #2354 from Bayuk to P. Morabito for \$29,383 for 8355 Panorama funding	Vol. 30, 5157–5158
268	October 1, 2010 Check #2356 from Bayuk to P. Morabito for \$12,763 for 370 Los Olivos Funding	Vol. 30, 5159–5160
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270	Bayuk Payment Ledger Support Documents Checks and Bank Statements	Vol. 31, 5163–5352
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277	Assessor's Map/Home Comparisons for 8355 Panorama Drive, Reno, NV	Vol. 32, 5401–5437
278	December 3, 2007 Case Docket for CV07-02764	Vol. 32, 5438–5564
280	May 25, 2011 Stipulation Regarding the Imposition of Punitive Damages; Case No. CV07-02764 (filed 05/25/2011)	Vol. 33, 5565–5570
281	Work File for September 24, 2010 Appraisal of 8355 Panorama Drive, Reno, NV	Vol. 33, 5571–5628
283	January 25, 2016 Expert Witness Report Leonard v. Superpumper Snowshoe	Vol. 33, 5629–5652
284	February 29, 2016 Defendants' Rebuttal Expert Witness Disclosure	Vol. 33, 5653–5666
294	October 5, 2010 Lippes, Mathias Wexler Friedman, LLP, Invoices to P. Morabito	Vol. 33, 5667–5680
295	P. Morabito 2010 Tax Return (dated 10/16/2011)	Vol. 33, 5681–5739
296	December 31, 2010 Superpumper Inc. Note to Financial Statements	Vol. 33, 5740–5743
297	December 31, 2010 Superpumper Consultations	Vol. 33, 5744

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301	September 15, 2010 email from Vacco to P. Morabito RE: Tomorrow	Vol. 33, 5749–5752
303	Bankruptcy Court District of Nevada Claims Register Case No. 13-51237	Vol. 33, 5753–5755
304	April 14, 2018 email from Allen to Krausz RE: Superpumper	Vol. 33, 5756–5757
305	Subpoena in a Case Under the Bankruptcy Code to Robison, Sharp, Sullivan & Brust issued in Case No. BK-N-13-51237-GWZ	Vol. 33, 5758–5768
306	August 30, 2018 letter to Mark Weisenmiller, Esq., from Frank Gilmore, Esq.,	Vol. 34, 5769
307	Order Granting Motion to Compel Compliance with the Subpoena to Robison, Sharp, Sullivan & Brust filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5770–5772
308	Response of Robison, Sharp, Sullivan & Brust's to Subpoena filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5773–5797
309	Declaration of Frank C. Gilmore in support of Robison, Sharp, Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5798–5801
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Minutes of November 2, 2018, Non-Jury Trial, Day 5 (filed 11/08/2018)	Vol. 39, 6818–7007
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Minutes of November 6, 2018, Non-Jury Trial, Day 7 (filed 11/08/2018)	Vol. 41, 7170–7269
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Plaintiff’s Motion to Reopen Evidence (filed 01/30/2019)		Vol. 46, 7894–7908
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Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff’s Motion to Reopen	Vol. 46, 7909–7913
1-A	September 21, 2017 Declaration of Salvatore Morabito	Vol. 46, 7914–7916
1-B	Defendants’ Proposed Findings of Fact, Conclusions of Law, and Judgment (Nov. 26, 2018)	Vol. 46, 7917–7957
1-C	Judgment on the First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 123 (April 30, 2018)	Vol. 46, 7958–7962
1-D	Amended Findings of Fact and Conclusions of Law in Support of Judgment Regarding Plaintiffs’ First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 126 (April 30, 2018)	Vol. 46, 7963–7994
1-E	Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 191 (Sept. 10, 2018)	Vol. 46, 7995–8035

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1-F	Order Granting Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 229 (Jan. 3, 2019)	Vol. 46, 8036–8039
1-G	Response of Robison, Sharp, Sullivan & Brust[] To Subpoena (including RSSB_000001 – RSSB_000031) (Jan. 18, 2019)	Vol. 46, 8040–8067
1-H	Excerpts of Deposition Transcript of Sam Morabito as PMK of Snowshoe Petroleum, Inc. (Oct. 1, 2015)	Vol. 46, 8068–8076
Errata to: Plaintiff's Motion to Reopen Evidence (filed 01/30/2019)		Vol. 47, 8077–8080
Exhibit to Errata to: Plaintiff's Motion to Reopen Evidence		
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1	Plaintiff's Motion to Reopen Evidence	Vol. 47, 8081–8096
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Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 02/04/2019)		Vol. 47, 8103–8105
Supplement to Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)		Vol. 47, 8106–8110

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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Exhibit	Document Description	
1	Supplemental Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)	Vol. 47, 8111–8113
1-I	Declaration of Frank C. Gilmore in Support of Robison, Sharp Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 259 (Jan. 30, 2019)	Vol. 47, 8114–8128
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Plaintiff's Reply to Defendants' Response to Motion to Reopen Evidence (filed 02/07/2019)		Vol. 47, 8136–8143
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[Defendants' Proposed Amended] Findings of Fact, Conclusions of Law, and Judgment (filed 03/08/2019)		Vol. 47, 8225–8268
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Memorandum of Costs and Disbursements (filed 04/11/2019)		Vol. 48, 8341–8347
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Exhibit	Document Description	
1	Ledger of Costs	Vol. 48, 8348–8370
Application for Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)		Vol. 48, 8371–8384
Exhibits to Application for Attorneys’ Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Declaration of Teresa M. Pilatowicz In Support of Plaintiff’s Application for Attorney’s Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)	Vol. 48, 8385–8390
2	Plaintiff’s Offer of Judgment to Defendants (dated 05/31/2016)	Vol. 48, 8391–8397
3	Defendant’s Rejection of Offer of Judgment by Plaintiff (dated 06/15/2016)	Vol. 48, 8398–8399
4	Log of time entries from June 1, 2016 to March 28, 2019	Vol. 48, 8400–8456

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
5	Plaintiff's Memorandum of Costs and Disbursements (filed 04/11/2019)	Vol. 48, 8457–8487
Motion to Retax Costs (filed 04/15/2019)		Vol. 49, 8488–8495
Plaintiff's Opposition to Motion to Retax Costs (filed 04/17/2019)		Vol. 49, 8496–8507
Exhibits to Plaintiff's Opposition to Motion to Retax Costs		
Exhibit	Document Description	
1	Declaration of Teresa M. Pilatowicz In Support of Opposition to Motion to Retax Costs (filed 04/17/2019)	Vol. 49, 8508–8510
2	Summary of Photocopy Charges	Vol. 49, 8511–8523
3	James L. McGovern Curriculum Vitae	Vol. 49, 8524–8530
4	McGovern & Greene LLP Invoices	Vol. 49, 8531–8552
5	Buss-Shelger Associates Invoices	Vol. 49, 8553–8555
Reply in Support of Motion to Retax Costs (filed 04/22/2019)		Vol. 49, 8556–8562
Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/25/2019)		Vol. 49, 8563–8578
Exhibit to Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Plaintiff's Bill Dispute Ledger	Vol. 49, 8579–8637

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Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/25/2019)		Vol. 49, 8638–8657
Defendant, Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/26/2019)		Vol. 50, 8658–8676
Exhibits to Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60		
Exhibit	Document Description	
1	February 27, 2019 email with attachments	Vol. 50, 8677–8768
2	Declaration of Frank C. Gilmore in Support of Edward Bayuk's Motion for New Trial (filed 04/26/2019)	Vol. 50, 8769–8771
3	February 27, 2019 email from Marcy Trabert	Vol. 50, 8772–8775
4	February 27, 2019 email from Frank Gilmore to eturner@Gtg.legal RE: Friday Trial	Vol. 50, 8776–8777
Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/30/2019)		Vol. 50, 8778–8790
Exhibit to Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321	Vol. 50, 8791–8835

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Plaintiff's Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 05/07/2019)		Vol. 51, 8836–8858
Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Reply in Support of Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCp 52, 59, and 60 (filed 05/14/2019)		Vol. 51, 8859–8864
Declaration of Edward Bayuk Claiming Exemption from Execution (filed 06/28/2019)		Vol. 51, 8865–8870
Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution		
Exhibit	Document Description	
1	Copy of June 22, 2019 Notice of Execution and two Write of Executions	Vol. 51, 8871–8896
2	Declaration of James Arthur Gibbons Regarding his Attestation, Witness and Certification on November 12, 2005 of the Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 06/25/2019)	Vol. 51, 8897–8942
Notice of Claim of Exemption from Execution (filed 06/28/2019)		Vol. 51, 8943–8949
Edward Bayuk's Declaration of Salvatore Morabito Claiming Exemption from Execution (filed 07/02/2019)		Vol. 51, 8950–8954
Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution		
Exhibit	Document Description	
1	Las Vegas June 22, 2019 letter	Vol. 51, 8955–8956

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
2	Writs of execution and the notice of execution	Vol. 51, 8957–8970
Minutes of June 24, 2019 telephonic hearing on Decision on Submitted Motions (filed 07/02/2019)		Vol. 51, 8971–8972
Salvatore Morabito’s Notice of Claim of Exemption from Execution (filed 07/02/2019)		Vol. 51, 8973–8976
Edward Bayuk’s Third Party Claim to Property Levied Upon NRS 31.070 (filed 07/03/2019)		Vol. 51, 8977–8982
Order Granting Plaintiff’s Application for an Award of Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)		Vol. 51, 8983–8985
Order Granting in part and Denying in part Motion to Retax Costs (filed 07/10/2019)		Vol. 51, 8986–8988
Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5) (filed 07/11/2019)		Vol. 52, 8989–9003
Exhibits to Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5)		
Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 52, 9004–9007
2	11/30/2011 Tolling Agreement – Edward Bayuk	Vol. 52, 9008–9023
3	11/30/2011 Tolling Agreement – Edward William Bayuk Living Trust	Vol. 52, 9024–9035

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
4	Excerpts of 9/28/2015 Deposition of Edward Bayuk	Vol. 52, 9036–9041
5	Edward Bayuk, as Trustee of the Edward William Bayuk Living Trust’s Responses to Plaintiff’s First Set of Requests for Production, served 9/24/2015	Vol. 52, 9042–9051
6	8/26/2009 Grant Deed (Los Olivos)	Vol. 52, 9052–9056
7	8/17/2018 Grant Deed (El Camino)	Vol. 52, 9057–9062
8	Trial Ex. 4 (Confession of Judgment)	Vol. 52, 9063–9088
9	Trial Ex. 45 (Purchase and Sale Agreement, dated 9/28/2010)	Vol. 52, 9089–9097
10	Trial Ex. 46 (First Amendment to Purchase and Sale Agreement, dated 9/29/2010)	Vol. 52, 9098–9100
11	Trial Ex. 51 (Los Olivos Grant Deed recorded 10/8/2010)	Vol. 52, 9101–9103
12	Trial Ex. 52 (El Camino Grant Deed recorded 10/8/2010)	Vol. 52, 9104–9106
13	Trial Ex. 61 (Membership Interest Transfer Agreement, dated 10/1/2010)	Vol. 52, 9107–9114
14	Trial Ex. 62 (\$1,617,050.00 Promissory Note)	Vol. 52, 9115–9118
15	Trial Ex. 65 (Mary Fleming Grant Deed recorded 11/4/2010)	Vol. 52, 9119–9121
Notice of Entry of Order Denying Defendants’ Motions for New Trial and/or to Alter or Amend Judgment (filed 07/16/2019)		Vol. 52, 9122–9124

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibit to Notice of Entry of Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment		
Exhibit	Document Description	
1	Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)	Vol. 52, 9125–9127
Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/16/2019)		Vol. 52, 9128–9130
Exhibit to Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)	Vol. 52, 9131–9134
Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/16/2019)		Vol. 52, 9135–9137
Exhibit to Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs		
Exhibit	Document Description	
1	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)	Vol. 52, 9138–9141

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Plaintiff's Objection to Notice of Claim of Exemption from Execution Filed by Salvatore Morabito and Request for Hearing (filed 07/16/2019)		Vol. 52, 9142–9146
Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon (filed 07/17/2019)		Vol. 52, 9147–9162
Exhibits to Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon		
Exhibit	Document Description	
1	March 3, 2011 Deposition Transcript of P. Morabito	Vol. 52, 9163–9174
2	Mr. Bayuk's September 23, 2014 responses to Plaintiff's first set of requests for production	Vol. 52, 9175–9180
3	September 28, 2015 Deposition Transcript of Edward Bayuk	Vol. 52, 9181–9190
Reply to Plaintiff's Objection to Notice of Claim of Exemption from Execution (filed 07/18/2019)		Vol. 52, 9191–9194
Declaration of Service of Till Tap, Notice of Attachment and Levy Upon Property (filed 07/29/2019)		Vol. 52, 9195
Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019)		Vol. 52, 9196–9199
Exhibits to Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim		
Exhibit	Document Description	
1	Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 52, 9200–9204

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
2	Bayuk and the Bayuk Trust's proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 52, 9205–9210
3	July 30, 2019 email evidencing Bayuk, through counsel Jeffrey Hartman, Esq., requesting until noon on July 31, 2019 to provide comments.	Vol. 52, 9211–9212
4	July 31, 2019 email from Teresa M. Pilatowicz, Esq. Bayuk failed to provide comments at noon on July 31, 2019, instead waiting until 1:43 p.m. to send a redline version with proposed changes after multiple follow ups from Plaintiff's counsel on July 31, 2019	Vol. 52, 9213–9219
5	A true and correct copy of the original Order and Bayuk Changes	Vol. 52, 9220–9224
6	A true and correct copy of the redline run by Plaintiff accurately reflecting Bayuk's proposed changes	Vol. 52, 9225–9229
7	Email evidencing that after review of the proposed revisions, Plaintiff advised Bayuk, through counsel, that Plaintiff agree to certain proposed revisions, but the majority of the changes were unacceptable as they did not reflect the Court's findings or evidence before the Court.	Vol. 52, 9230–9236
Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019)		Vol. 53, 9237–9240

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim		
Exhibit	Document Description	
1	Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 53, 9241–9245
2	Defendant's comments on Findings of Fact	Vol. 53, 9246–9247
3	Defendant's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 53, 9248–9252
Minutes of July 22, 2019 hearing on Objection to Claim for Exemption (filed 08/02/2019)		Vol. 53, 9253
Order Denying Claim of Exemption (filed 08/02/2019)		Vol. 53, 9254–9255
Bayuk's Case Appeal Statement (filed 08/05/2019)		Vol. 53, 9256–9260
Bayuk's Notice of Appeal (filed 08/05/2019)		Vol. 53, 9261–9263
Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Case Appeal Statement (filed 08/05/2019)		Vol. 53, 9264–9269
Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Notice of Appeal (filed 08/05/2019)		Vol. 53, 9270–9273

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Notice of Appeal		
Exhibit	Document Description	
1	Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)	Vol. 53, 9274–9338
2	Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)	Vol. 53, 9339–9341
3	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)	Vol. 53, 9342–9345
4	Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCp 68 (filed 07/10/2019)	Vol. 53, 9346–9349
Plaintiff's Reply to Defendants' Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim		Vol. 53, 9350–9356
Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)		Vol. 53, 9357–9360
Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim (filed 08/09/2019)		Vol. 53, 9361–9364
Exhibit to Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim		
Exhibit	Document Description	
1	Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)	Vol. 53, 9365–9369

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Notice of Entry of Order Denying Claim of Exemption (filed 08/12/2019)		Vol. 53, 9370–9373
Exhibit to Notice of Entry of Order Denying Claim of Exemption		
Exhibit	Document Description	
1	Order Denying Claim of Exemption (08/02/2019)	Vol. 53, 9374–9376
Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/19/2019)		Vol. 54, 9377–9401
Exhibits to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration		
Exhibit	Document Description	
1	Order Denying Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 54, 9402–9406
2	Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 11/12/05)	Vol. 54, 9407–9447
3	Spendthrift Trust Agreement for the Arcadia Living Trust (dated 10/14/05)	Vol. 54, 9448–9484
4	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/10)	Vol. 54, 9485–9524
5	P. Morabito's Supplement to NRCP 16.1 Disclosures (dated 03/01/11)	Vol. 54, 9525–9529

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
6	Transcript of March 3, 2011 Deposition of P. Morabito	Vol. 55, 9530–9765
7	Documents Conveying Real Property	Vol. 56, 9766–9774
8	Transcript of July 22, 2019 Hearing	Vol. 56, 9775–9835
9	Tolling Agreement JH and P. Morabito (partially executed 11/30/11)	Vol. 56, 9836–9840
10	Tolling Agreement JH and Arcadia Living Trust (partially executed 11/30/11)	Vol. 56, 9841–9845
11	Excerpted Pages 8–9 of Superpumper Judgment (filed 03/29/19)	Vol. 56, 9846–9848
12	Petitioners' First Set of Interrogatories to Debtor (dated 08/13/13)	Vol. 56, 9849–9853
13	Tolling Agreement JH and Edward Bayuk (partially executed 11/30/11)	Vol. 56, 9854–9858
14	Tolling Agreement JH and Bayuk Trust (partially executed 11/30/11)	Vol. 56, 9859–9863
15	Declaration of Mark E. Lehman, Esq. (dated 03/21/11)	Vol. 56, 9864–9867
16	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 56, 9868–9871
17	Assignment and Assumption Agreement (dated 07/03/07)	Vol. 56, 9872–9887
18	Order Denying Morabito's Claim of Exemption (filed 08/02/19)	Vol. 56, 9888–9890

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Errata to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/20/2019)		Vol. 57, 9891–9893
Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)		Vol. 57, 9894–9910
Errata to Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)		Vol. 57, 9911–9914
Exhibits to Errata to Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085		
Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 57, 9915–9918
2	Plaintiff's Amended NRCP 16.1 Disclosures (February 19, 2016)	Vol. 57, 9919–9926
3	Plaintiff's Fourth Supplemental NRCP 16.1 Disclosures (November 15, 2016)	Vol. 57, 9927–9930
4	Plaintiff's Fifth Supplemental NRCP 16.1 Disclosures (December 21, 2016)	Vol. 57, 9931–9934
5	Plaintiff's Sixth Supplemental NRCP 16.1 Disclosures (March 20, 2017)	Vol. 57, 9935–9938

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs (filed 09/04/2019)		Vol. 57, 9939–9951
Exhibits to Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs		
Exhibit	Document Description	
19	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9952–9993
20	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9994–10010
Order Denying Defendants’ Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff’s Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/2019)		Vol. 57, 10011–10019
Bayuk’s Case Appeal Statement (filed 12/06/2019)		Vol. 57, 10020–10026
Bayuk’s Notice of Appeal (filed 12/06/2019)		Vol. 57, 10027–10030

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Bayuk's Notice of Appeal		
Exhibit	Document Description	
1	Order Denying [Morabito's] Claim of Exemption (filed 08/02/19)	Vol. 57, 10031–10033
2	Order Denying [Bayuk's] Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 57, 10034–10038
3	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10039–10048
Notice of Entry of Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 12/23/2019)		Vol. 57, 10049–10052
Exhibit to Notice of Entry of Order		
Exhibit	Document Description	
A	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10053–10062
Docket Case No. CV13-02663		Vol. 57, 10063–10111

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17 *Attorneys for Plaintiffs*18 **IN THE SECOND JUDICIAL DISTRICT COURT OF**19 **THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE**20 JH, INC., a Nevada corporation; JERRY
21 HERBST, an individual; and BERRY-
22 HINCKLEY INDUSTRIES, a Nevada
23 corporation,

24 Plaintiffs,

25 vs.

26 PAUL MORABITO, individually and as
27 Trustee of the ARCADIA LIVING TRUST;
28 SUPERPUMPER, INC., an Arizona
corporation; EDWARD BAYUK,
individually and as Trustee of the EDWARD
WILLIAM BAYUK LIVING TRUST; and
SNOWSHOE PETROLEUM, INC., a New
York corporation,

Defendants.

CASE NO.:

DEPT. NO.:

COMPLAINT**[EXEMPT FROM ARBITRATION – DAMAGES IN EXCESS OF \$50,000]**

Plaintiffs JH, Inc. ("JH"), a Nevada corporation, Jerry Herbst ("Herbst"), an individual, and Berry-Hinckley Industries ("BHI," together with JH and Herbst, the "Plaintiffs"), a Nevada corporation, hereby allege the following:

///

I.

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff JH is a Nevada corporation with its principal place of business in Washoe County, Nevada. JH is the owner of BHI.

2. Plaintiff Herbst is a resident of Nevada and the owner of JH.

3. Plaintiff BHI is a Nevada corporation with its principal place of business in Washoe County, Nevada.

4. Upon information and belief, Defendant Paul Morabito ("Paul Morabito") is and was at all times relevant hereto, a resident of both Washoe County, Nevada and Los Angeles County, California.

5. Upon information and belief, Paul Morabito is also the Trustee of the Arcadia Living Trust and the settlor of that trust.

6. Upon information and belief, Defendant Superpumper, Inc. ("Superpumper") is and was at all times relevant hereto an Arizona corporation with its principal place of business in Maricopa County, Arizona. Superpumper was the recipient of certain fraudulent transfers originating in Washoe County, Nevada.

7. Upon information and belief, Defendant Edward Bayuk ("Bayuk") is and was at all times relevant hereto a resident of both Washoe County Nevada and Los Angeles County, California and is the domestic partner of Paul Morabito. Bayuk is also the President of Superpumper.

8. Upon information and belief, Bayuk is also the Trustee of the Edward William Bayuk Living Trust. Bayuk, individually, and as Trustee of the Edward William Bayuk Living Trust, was the recipient of certain fraudulent transfers originating in Washoe County, Nevada.

9. Upon information and belief, Defendant Salvatore Morabito ("Salvatore Morabito") is and was at all times relevant hereto a resident of Washoe County, Nevada and Maricopa County, Arizona and the Secretary and Vice President of Superpumper. Salvatore Morabito is the brother of Paul Morabito. Salavatore Morabito was the recipient of certain fraudulent transfers originating in Washoe County, Nevada.

10. Upon information and belief, Defendant Snowshoe Petroleum, Inc. ("Snowshoe Petroleum," together with Paul Morabito, Superpumper, Bayuk, and Salvatore Morabito, collectively referred to as the "Defendants") is a New York corporation. Bayuk is the President of Snowshoe Petroleum. Snowshoe Petroleum and Bayuk, individually, and as Trustee of the Edward William Bayuk Living Trust, were the recipients of certain fraudulent transfers originating in Washoe County, Nevada.

11. This Court has jurisdiction over this matter on the basis that the Defendants reside or are located in Washoe County, Nevada; the activities complained of herein occurred in Washoe County, Nevada; the fraudulent transfers outlined in the complaint originated from Washoe County, Nevada; and/or Defendants have expressly agreed to submit themselves to the jurisdiction of this Court.

12. Venue is proper in Washoe County, Nevada pursuant to NRS § 13.010 because the rights, obligations and activities that give rise to this action occurred in Washoe County, Nevada and Defendants have already agreed that Washoe County, Nevada is an appropriate venue.

II.

GENERAL ALLEGATIONS

13. Plaintiffs repeat, reallege and incorporate the allegations set forth in the proceeding paragraphs of this Complaint as if fully set forth herein.

14. On or about June 28, 2007, JH and P.A. Morabito & Co., Ltd. ("PAMCO"), the predecessor-in-interest to Consolidated Nevada Corporation ("CNC"), entered into an Amended and Restated Stock Purchase Agreement (the "ARSPA"), whereby JH purchased the stock of BHI from PAMCO. Herbst was the guarantor of the JH obligations under the ARSPA, and Paul Morabito guaranteed the obligations of PAMCO.

THE STATE COURT ACTION

15. A dispute developed between the Plaintiffs and Paul Morabito and CNC regarding the sale of the BHI stock to JH.

1 16. On December 3, 2007, Paul Morabito and CNC filed a lawsuit against the
2 Plaintiffs, captioned Consolidated Nevada Corp., et al. v. JH, et al., (the "State Court"), Case
3 No. CV07-02764 (together with all claims and counterclaims, the "State Court Action").

4 17. Plaintiffs filed numerous counterclaims in the State Court Action against Paul
5 Morabito and CNC, including, but not limited to, fraud in the inducement, misrepresentation,
6 and breach of contract relating to the ARSPA.

7 18. On September 13, 2010, the State Court entered an oral judgment against Paul
8 Morabito and CNC in favor of Plaintiffs. Specifically, the State Court found that Paul Morabito
9 and CNC fraudulently induced JH and Herbst to enter into the ARSPA and ruled in favor of JH
10 and Herbst against Morabito on other fraud-based claims.

11 19. On October 12, 2010, the State Court entered its findings of fact and conclusions
12 of law which set forth the legal and factual basis for a forthcoming state court judgment,
13 including fraud in the inducement.

14 20. On August 23, 2011, the State Court entered a judgment awarding Plaintiffs total
15 damages in the amount of \$149,444,777.80 for actual fraud, representing both compensatory
16 and punitive damages as well as an award of attorneys' fees and costs (the "Nevada Court
17 Judgment").

18 **THE SETTLEMENT AGREEMENT AND FORBEARANCE AGREEMENT**

19 21. While Paul Morabito and CNC's appeal of the State Court Judgment (the
20 "Appeal") was pending before the Nevada Supreme Court, Paul Morabito, CNC, and Plaintiffs
21 entered into a Settlement Agreement and Mutual Release dated November 30, 2011 (the
22 "Settlement Agreement"). Pursuant to the terms of the Settlement Agreement:

23 (a) The parties agreed to file a *Stipulation to Vacate Appeal and a Stipulation*
24 *to Vacate Judgment and Findings of Fact and Conclusions of Law entered by the State*
25 *Court*;

26 (b) The parties agreed to execute a *Confession of Judgment and Stipulation*
27 *to Confess Judgment in the Amount of \$85,000,000.00* (referred to collectively as the
28 "Confessed Judgment"), which, in the event that the Settlement Agreement was

1 breached and not cured, Plaintiffs would be permitted to file *ex parte* and without notice
2 in Department 6 of the Second Judicial District Court in and for the County of Washoe;

3 (c) Paul Morabito and CNC agreed to comply with the timely payment of
4 numerous financial obligations set forth therein; and

5 (d) Paul Morabito and CNC agreed to submit themselves to the jurisdiction
6 of the court of Washoe County, Nevada for any dispute relating to the Settlement
7 Agreement.

8 22. Consistent with the terms of the Settlement Agreement, the State Court Action
9 was dismissed with prejudice and Paul Morabito, CNC, and the Plaintiffs executed the
10 Confessed Judgment.

11 23. Unbeknownst to Plaintiffs, at the time the parties began negotiating and
12 subsequently executed the Settlement Agreement, Paul Morabito and CNC had no intention of
13 complying with its terms. Instead, Paul Morabito and CNC induced Plaintiffs to execute the
14 Settlement Agreement as a delay tactic to avoid execution and collection efforts on the State
15 Court Judgment and in an effort to obtain more time to transfer and dissipate assets in
16 furtherance of their attempts to thwart Plaintiffs' collection of the State Court Judgment.

17 24. Shortly after execution, Paul Morabito and CNC defaulted under the terms of the
18 Settlement Agreement by failing to comply with several of their financial obligations, including
19 complying with obligations under the related Moreno settlement agreement (the "Moreno
20 Default"), failing to pay amounts due and owing under the Hinckley Note (the "Hinckley Note
21 Default"), and failing to make the cash payment of Four Million and No/100ths Dollars
22 (\$4,000,000.00) due to Plaintiffs on or before March 1, 2013 (the "Cash Payment Default")
23 (collectively, the "Continuing Defaults").

24 25. After defaulting under the terms of the Settlement Agreement, Paul Morabito and
25 CNC requested that Plaintiffs forbear from exercising their rights and remedies set forth in the
26 Settlement Agreement, until December 1, 2013.

27 26. Accordingly, Paul Morabito, CNC and Plaintiffs entered into that certain
28 Forbearance Agreement dated March 1, 2013 (the "Forbearance Agreement").

1 27. Pursuant to the Forbearance Agreement, Morabito and CNC made the following
2 acknowledgments:

3 (i) The Continuing Defaults have occurred and are continuing; (ii)
4 [Paul Morabito and CNC] are unable to cure the Cash Payment Default;
5 (iii) [Paul Morabito and CNC] are unable to cure the Hinckley Note
6 Default; (iv) pursuant to the terms of the Settlement Agreement, as a result
7 of the occurrence of the Continuing Defaults, [Plaintiffs] currently have
8 the right to immediately exercise any one or more of the rights and
9 remedies under the Settlement Agreement, at law or in equity, as they, in
10 their sole discretion, deem necessary or desirable; and (v) [Paul Morabito
11 and CNC] do not have any defenses, legal or equitable, to the Continuing
12 Defaults, and/or any other events of Default that may exist under the
13 Settlement Agreement or the exercise by [Plaintiffs] of anyone or more of
14 their rights and remedies under the Settlement Agreement.

15 28. In exchange for Plaintiffs' agreement to grant a forbearance, Paul Morabito and
16 CNC agreed to (1) by no later than March 15, 2013, provide Plaintiffs with a fully executed
17 forbearance agreement between Paul Morabito, CNC, and the holders of the Hinckley Note; (2)
18 to make certain payments of deferred principal on the payment due on March 1, 2013 under the
19 Settlement Agreement; and (3) to make certain additional payments to Plaintiffs commencing
20 with a payment of \$68,437 on or before May 21, 2013.

21 29. In the event of a default under the terms of the Forbearance Agreement or the
22 Settlement Agreement, other than the Continuing Defaults, Plaintiffs were entitled under the
23 Forbearance Agreement to "immediately, and without expiration of any notice and cure period,
24 exercise and enforce their rights and remedies under the Settlement Agreement or at law."

25 30. Upon information and belief, as with the Settlement Agreement, at the time the
26 parties began negotiating and subsequently executed the Forbearance Agreement, Paul Morabito
27 and CNC had no intention of complying with its terms. Instead, Paul Morabito and CNC
28 induced Plaintiffs to execute the Forbearance Agreement as a delay tactic to avoid execution and
collection efforts on the State Court Judgment and in an effort to obtain more time to transfer and
dissipate assets in furtherance of their attempts to thwart Plaintiffs' collection of the State Court
Judgment.

1 31. Paul Morabito and CNC failed to comply with the terms of the Forbearance
2 Agreement by, among other things, failing to pay the required April, May, or June payments and
3 failing to obtain or deliver the Hinckley Forbearance Agreement.

4 32. Based on the express terms of the Settlement Agreement, on June 18, 2013,
5 Plaintiffs filed the Confessed Judgment with the Second Judicial District Court in and for the
6 State of Nevada. Pursuant to the Confessed Judgment, Paul Morabito and CNC are jointly and
7 severally indebted to Plaintiffs in the amount of \$85,000,000.00, less any credits or offsets for
8 any payments made under the Settlement Agreement.

9 33. Despite the oral findings of fact and conclusions of law, State Court Judgment,
10 Settlement Agreement, Forbearance Agreement, and Confessed Judgment, Morabito and CNC
11 have failed to make the required payments to Plaintiffs in satisfaction of the amounts due and
12 owing them.

13 THE FRAUDULENT TRANSFERS

14 34. Upon information and belief, Defendants engaged in a series of fraudulent
15 transfers in an effort to prevent Plaintiffs from collecting on the State Court Judgment and/or the
16 Confessed Judgment and to protect Paul Morabito from having any of his assets seized. The vast
17 majority of those transfers occurred shortly after the State Court entered its oral findings of fact
18 and conclusions of law. The transfers were intentional and in contravention of the District
19 Court's findings made in the State Court Judgment. The transfers, include, but are not limited to,
20 the following:

21 (a) On or about September 15, 2010, a mere two days after the State Court
22 issued its oral findings of fact and conclusions of law, Paul Morabito transferred
23 \$6,000,000 out of his account with Bank of Montreal in Canada to an entity identified as
24 Sefton Trustees in New Zealand.

25 (b) Upon information and belief, Sefton Trustees is an entity that specializes in
26 offshore trusts.

27 (c) Although Paul Morabito claimed this \$6,000,000 transfer was made as a
28 settlement relating to his obligation on a guaranty, no documentation supporting said

1 guaranty obligation was ever provided to Plaintiffs and Paul Morabito subsequently
2 denied under oath that the transfer was made to satisfy an obligation under a guaranty.

3 (d) Upon information and belief, on September 21, 2010, Paul Morabito next
4 transferred \$355,000 to Salvatore Morabito, Paul Morabito's brother, and \$420,250 to
5 Bayuk.

6 (e) Upon information and belief, prior to September 28, 2010, Paul Morabito
7 resided at 8355 Panorama Drive in Reno, Nevada (the "Reno Property"). Paul Morabito
8 owned a two-thirds interest in the Property and Bayuk owned the remaining one-third of
9 the Reno Property.

10 (f) Upon information and belief, on October 1, 2010, Paul Morabito and
11 Bayuk transferred the Reno Property to Paul Morabito as Trustee of the Arcadia Living
12 Trust for \$981,341. It was later discovered that the appraised value of the Reno Property
13 was \$4,300,000 with a corresponding mortgage of \$1,021,000.

14 (g) Upon information and belief, are Bayuk, who holds a 70% beneficial
15 interest, and Salvatore Morabito, who holds a 30% beneficial interest.

16 (h) Upon information and belief, up until September 28, 2010, Paul Morabito
17 was the 80% owner of Consolidated Western Corporation ("CWC"). Salvatore Morabito
18 and Bayuk each also held a 10% interest in CWC. At the time, CWC held an interest in
19 Superpumper.

20 (i) Upon information and belief, on September 28, 2010, CWC was merged
21 into Superpumper. At the time, Paul Morabito's 2009 personal income tax return showed
22 his stock basis in the company was \$5,588,661.

23 (j) On September 30, 2010, despite Paul Morabito's 2009 \$5,588,661 stock
24 basis, Paul Morabito sold his interest in Superpumper to Snowshoe Petroleum for
25 approximately \$2,500,000. Snowshoe Petroleum was incorporated on September 29,
26 2010 for the sole purpose of receiving the transfer from Paul Morabito.

27 (k) Upon information and belief, prior to October 1, 2010, the Arcadia Living
28 Trust and Bayuk held a joint interest in Baruk Properties. On October 1, 2010, Paul

1 Morabito transferred the Arcadia Living Trust's 50% interest in Baruk Properties to
2 Bayuk as Trustee of the Edward William Bayuk Living Trust for a promissory note with a
3 principal amount of \$1,617,050, which was then assigned to the principals of Woodland
4 Heights Ltd. for a 20% interest in a joint venture.

5 (l) Upon information and belief, the appraised value of Baruk Properties at the
6 time of the transfer was \$9,266,600 less a mortgage of \$1,440,000, for a net equity value
7 of \$7,826,600, making Paul Morabito's 50% worth \$3,913,000, exceeding the value of
8 the promissory note received in exchange by \$2,295,950.

9 (m) Upon information and belief, in or around September 2010, Paul Morabito
10 as Trustee of the Arcadia Living Trust, and Bayuk, held joint ownership of a property
11 located at 1254 Mary Flemming Circle in Palm Springs, California (the "Palm Springs
12 Property").

13 (n) Upon information and belief, the Palm Springs Property was subsequently
14 transferred to Bayuk as Trustee of the Edward William Bayuk Living Trust. No
15 documentation has ever been provided to Plaintiffs demonstrating that this transfer was
16 made for any form of consideration.

17 (o) Upon information and belief, Paul Morabito and Bayuk also transferred
18 real property consisting of a personal residence located at 371 El Camino Del Mar,
19 Laguna Beach, California (Parcel No. 644-032-01) (the "Laguna Beach Property") to
20 Paul Morabito as Trustee for the Arcadia Living Trust, and Bayuk as trustee for Edward
21 William Bayuk Living Trust, on or around August 20, 2009. Ownership of the California
22 Property was subsequently transferred in whole to the Edward William Bayuk Living
23 Trust, despite the fact that Paul Morabito admitted that he did not know if it was for
24 consideration.

25 (p) Lastly, upon information and belief, at some point subsequent to the State
26 Court's oral judgment, Paul Morabito executed a promissory note in favor of Bayuk in
27 the amount of \$600,000. Paul Morabito has refused to produce any evidence relating to
28 the underlying obligation to Bayuk or payments made on said obligation and Bayuk

1 claims that the note is in good standing despite the fact that Paul Morabito purportedly
2 failed to make any payments on the note to Bayuk.

3 35. Upon information and belief, these transfers were done in an effort to avoid
4 Plaintiffs' efforts to collect on the State Court Judgment and the subsequently executed
5 Confession of Judgment.

6 **III.**

7 **CLAIMS FOR RELIEF**

8 **FIRST CLAIM FOR RELIEF**

9 **[FRAUDULENT TRANSFERS NRS § 112.140 – ALL DEFENDANTS]**

10 36. Plaintiffs repeat, reallege and incorporate each and every allegation contained in
11 the preceding paragraphs of this Complaint as though fully set forth herein.

12 37. At all times relevant herein, Plaintiffs have been a creditor of Paul Morabito, and
13 Paul Morabito is a debtor, within the definitions set forth in NRS § 112.150.

14 38. Upon information and belief, between August 29, 2009 and October 1, 2010, Paul
15 Morabito engaged in a transfer or series of transfers whereby several of his assets were
16 transferred to the remaining Defendants or on behalf of the remaining Defendants.

17 39. Upon information and belief, the transfers by Paul Morabito to the remaining
18 Defendants were made with the actual intent to hinder, delay, or defraud Plaintiffs as a creditor of
19 Paul Morabito, pursuant to NRS § 112.180.

20 40. Before the transfers were made, Plaintiffs had obtained an oral judgment against
21 Paul Morabito on claims for fraud and fraud in the inducement.

22 41. Upon information and belief, the transfers were made to insiders.

23 42. Upon further information and belief, Paul Morabito retained possession or control
24 of at least some of the property transferred after the transfer and continued to control the actions
25 of Bayuk and Salvatore Morabito and continues to presently control their actions.

26 43. Upon further information and belief, said transfers were made without Paul
27 Morabito receiving reasonably equivalent value from the remaining Defendants, and left Paul
28

1 Morabito with debts which he lacked the means to pay, including the State Court Judgment owed
2 to Plaintiffs.

3 44. Upon information and belief, at the time of the transfers to the remaining
4 Defendants, Paul Morabito was engaged or was about to engage in a business or a transaction for
5 which his remaining assets were unreasonably small in relation to his business or transaction.

6 45. Upon information and belief, at the time of the transfers to the remaining
7 Defendants, Paul Morabito intended to incur, or believed or reasonably should have believed that
8 he would incur debts beyond his ability to pay as they became due.

9 46. Upon further information and belief, at the time of the transfers to Defendants,
10 Paul Morabito was insolvent or was rendered insolvent by the transfers.

11 47. As a direct, natural, and foreseeable consequence of Defendants' actions,
12 Plaintiffs have been damaged in an amount to be proven at trial.

13 48. Plaintiffs are entitled to the remedies provided in NRS § 112.210, including, but
14 not limited to:

15 (a) Avoidance of the transfer or obligation to the extent necessary to satisfy
16 Plaintiffs' claim.

17 (b) Garnishment against Defendants as transferor and recipients of the
18 fraudulent obligations, in accordance with the procedure prescribed by law in obtaining
19 such remedy.

20 (c) An attachment or other provisional remedy against the asset transferred or
21 other property of Defendants in accordance with the procedure prescribed by law in
22 obtaining such remedy.

23 (d) Imposition of a constructive trust over the assets fraudulently transferred.

24 (e) Any other relief the circumstances may require.

25 49. It has been necessary for Plaintiffs to retain the services of counsel to prosecute
26 this action, and Plaintiffs are entitled to recover the attorneys' fees and costs incurred herein.

27 ///

28 ///

SECOND CLAIM FOR RELIEF
[BREACH OF CONTRACT – AGAINST PAUL MORABITO]

50. Plaintiffs repeat, reallege and incorporate each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

51. Plaintiffs and Paul Morabito entered into valid and existing contracts, specifically the Settlement Agreement and Forbearance Agreement.

52. Plaintiffs have fully performed under the terms of the Settlement Agreement, by, among other things, executing the voluntary dismissal of the State Court Action.

53. Paul Morabito has failed and/or refused to comply with his obligations under the Settlement Agreement by, among other things, failing to comply with several of the financial obligations set forth therein, including complying with the related Moreno settlement agreement, failing to pay amounts due and owing pursuant to the lease for 425 Maestro, failing to pay amounts due and owing under the Hinckley Note, and failing to make the cash payment of Four Million and No/100ths Dollars (\$4,000,000.00) due to Plaintiffs on or before March 1, 2013.

54. Plaintiffs have also fully performed under the terms of the Forbearance Agreement by agreeing to forbear from exercising their rights and remedies set forth in the Settlement Agreement.

55. Paul Morabito has failed and/or refused to comply with his obligations under the Forbearance Agreement by, among other things, failing to, by no later than March 15, 2013, provide Plaintiffs with the Hinckley Forbearance Agreement, failing to make the required payments of deferred principal on the payment due on March 1, 2013 under the Settlement Agreement, and failing to make certain additional payments to Plaintiffs commencing with a payment of \$68,437 on or before May 21, 2013.

56. As a direct and proximate cause of Paul Morabito's breach of the Settlement Agreement and Forbearance Agreement, Plaintiffs have suffered damages in an amount in excess of \$10,000.

57. It has been necessary for Plaintiffs to retain the services of counsel to prosecute this action, and Plaintiffs are entitled to recover the attorneys' fees and costs incurred herein.

THIRD CLAIM FOR RELIEF
[BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING -
AGAINST PAUL MORABITO]

58. Plaintiffs repeat, reallege and incorporate each and every allegation the preceding paragraphs of this Complaint as though fully set forth herein.

59. Plaintiffs and Paul Morabito entered into a contract, specifically the Settlement Agreement and Forbearance Agreement.

60. Implied in the Settlement Agreement and Forbearance Agreements between the parties was the obligation of good faith and fair dealing.

61. Paul Morabito breached the implied covenant of good faith and fair dealing by, among other things, misrepresenting his intention to comply with either the Settlement Agreement or Forbearance Agreement, and by engaging in fraudulent transfers in an attempt to prevent Plaintiffs from collecting on the State Court Judgment or the subsequently filed Confessed Judgment.

62. As a direct and proximate cause of Paul Morabito's breach of the implied covenant of good faith and fair dealing, Plaintiffs have suffered damages in an amount in excess of \$10,000.

63. It has been necessary for Plaintiffs to retain the services of counsel to prosecute this action, and Plaintiffs are entitled to recover the attorneys' fees and costs incurred herein.

FOURTH CLAIM FOR RELIEF
[FRAUDULENT INDUCEMENT/MISREPRESENTATION - PAUL MORABITO]

64. Plaintiffs repeat, reallege and incorporate each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

65. In connection with the execution of the Settlement Agreement and Forbearance Agreement, Paul Morabito made representations to Plaintiffs that he intended to comply with the terms of said agreements and would not take any actions to thwart Plaintiffs' ability to collect on the State Court Judgment or Confessed Judgment in the event that Paul Morabito failed to comply with the terms of the Settlement Agreement and/or Forbearance Agreement.

1 66. Those representations were false, as Paul Morabito had no intention of complying
2 with the terms of the Settlement Agreement and Forbearance Agreement and took overt steps to
3 prevent Plaintiffs' from collecting the amounts due and owing pursuant to the State Court
4 Judgment or Confessed Judgment, by, among other things, fraudulently transferring his assets to
5 the remaining Defendants.

6 67. Paul Morabito knew or believed that his representations were false or that he had
7 an insufficient basis of information for making his representations.

8 68. Paul Morabito made these representations with the intent to induce Plaintiffs to
9 act or refrain from acting upon his misrepresentation, including executing the Settlement
10 Agreement, Forbearance Agreement, and refraining from executing upon or continuing
11 collection efforts on the State Court Judgment.

12 69. Plaintiffs justifiably relied upon Paul Morabito's false misrepresentation that he
13 intended to comply with the terms of the Settlement Agreement and/or Forbearance Agreement
14 when entering into the Settlement Agreement and Forbearance Agreement and when delaying
15 their efforts to collect under the State Court Judgment and/or Confessed Judgment.

16 70. Plaintiffs have been damaged as a result of relying on Paul Morabito's
17 misrepresentations in an amount in excess of \$10,000.

18 71. In committing the acts herein above alleged, Paul Morabito is guilty of
19 oppression, fraud, and malice toward Plaintiffs. Therefore, in addition to general damages,
20 Plaintiffs are entitled to recover punitive damages from Paul Morabito for the purpose of
21 deterring him and others similarly situated from engaging in like conduct in the future.

22 72. It has been necessary for Plaintiffs to retain the services of counsel to prosecute
23 this action, and Plaintiffs are entitled to recover the attorneys' fees and costs incurred herein.

24 **FIFTH CLAIM FOR RELIEF**
25 **(CIVIL CONSPIRACY – AGAINST ALL DEFENDANTS)**

26 73. Plaintiffs repeat, reallege and incorporate each and every allegation contained in
27 the preceding paragraphs of this Complaint as though fully set forth herein.
28

1 74. Plaintiffs and Paul Morabito entered into the Settlement Agreement and Forbearance
2 Agreement in order to settle their dispute pending in State Court and to allow the parties to reach an
3 amicable settlement regarding the State Court Judgment and to provide Plaintiffs an expeditious
4 remedy in the event that Paul Morabito breached the Settlement Agreement and/or Forbearance
5 Agreement.

6 75. Despite Paul Morabito's representations that he intended to comply with the terms of
7 the Settlement Agreement and Forbearance Agreement, and that he would not take any steps to
8 prevent Plaintiffs from collecting on the State Court Judgment and/or Confessed Judgment in the
9 event that Paul Morabito breached said agreements, Paul Morabito had no intention of complying and
10 instead went to great lengths to fraudulently transfer his assets so as to prevent Plaintiffs' ability to
11 collect.

12 76. Defendants acted in concert with the intention to fraudulently induce Plaintiffs into
13 executing the Settlement Agreement and Forbearance Agreement in order to give Paul Morabito
14 additional time to dilute his assets and prevent Plaintiffs from collecting on the State Court Judgment
15 and/or Confessed Judgment.

16 77. Defendants also acted in concert to fraudulently transfer Paul Morabito's assets
17 without fair consideration and with an intent to hinder, delay, or defraud Plaintiffs as a creditor of
18 Paul Morabito.

19 78. All of these activities by the Defendants were done with the unlawful objective of
20 defrauding Plaintiffs and fraudulently transferring assets that should be utilized to satisfy the State Court
21 Judgment and/or Confessed Judgment.

22 79. As a direct and proximate result of Defendants' misconduct as set forth herein,
23 Plaintiffs have been damaged in an amount in excess of \$10,000.

24 80. As a further direct and proximate result of Defendants' conspiracy to accomplish an
25 unlawful objective as set forth herein, Plaintiffs are entitled to an award of punitive damages sufficient
26 to deter these Defendants' misconduct.

27 81. It has been necessary for Plaintiffs to retain the services of counsel to prosecute
28 this action, and Plaintiffs are entitled to recover the attorneys' fees and costs incurred herein.

1 **SIXTH CLAIM FOR RELIEF**
2 **(AIDING AND ABETTING FRAUDULENT MISREPRESENTATION – AGAINST BAYUK, SALVATORE**
3 **MORABITO, SNOWSHOE PETROLEUM, AND SUPERPUMPER)**

4 82. Plaintiffs repeat, reallege and incorporate each and every allegation contained in
5 the preceding paragraphs of this Complaint as though fully set forth herein.

6 83. Bayuk, Salvatore Morabito, Snowshoe Petroleum, and Superpumper substantially
7 assisted or encouraged Paul Morabito's conduct in breaching his duties and obligations to
8 Plaintiffs as addressed above.

9 84. Plaintiffs have sustained damage resulting from Bayuk, Salvatore Morabito,
10 Snowshoe Petroleum, and Superpumper's acts.

11 85. It has been necessary for Plaintiffs to retain the services of counsel to prosecute
12 this action, and Plaintiffs are entitled to recover the attorneys' fees and costs incurred herein.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray for relief as follows:

- 15 1. For an award of compensatory damages against Defendants in an amount to be
16 proven at trial;
- 17 2. For an award of punitive damages against Defendants in an amount to be proven
18 at trial;
- 19 3. For an award to Plaintiffs of reasonable attorneys' fees and costs;
- 20 4. For garnishment against Defendants, the recipients of the fraudulent obligation.
- 21 5. For avoidance of the transfer or obligation to the extent necessary to satisfy
22 Plaintiffs' claim.
- 23 6. For attachment or other provisional remedy against the asset transferred or other
24 property of Defendants in accordance with the procedure prescribed by law in obtaining such
25 remedy.
- 26 7. For such other and further relief as this Court deems appropriate.

27 ///

28 ///

///

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 17th day of December, 2013.

GORDON SILVER

By: /s/ John P. Desmond
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Attorneys for Defendant Snowshoe Petroleum, Inc.

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JH, INC., a Nevada corporation; JERRY
HERBST, an individual; and BERRY-
HINCKLEY INDUSTRIES, a Nevada
corporation

CASE NO.: CV13-02663

DEPT. NO.: B1

Plaintiffs,

vs.

PAUL MORABITO, individually and as Trustee
of the ARCADIA LIVING TRUST;
SUPERPUMPER, INC., an Arizona corporation;
EDWARD BAYUK, individually and as Trustee
of the EDWARD WILLIAM BAYUK LIVING
TRUST; and SNOWSHOE PETROLEUM,
INC., a New York corporation,

Defendants.

**DECLARATION OF SALVATORE MORABITO IN SUPPORT OF SNOWSHOE
CAPITAL'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

I, SALVATORE MORABITO, being first duly sworn under penalty of perjury, deposes
and says:

1. I am an individual above the age of 18 and make the following statements on my
own personal knowledge, except where stated to be on my information and belief.

2. Snowshoe Petroleum, Inc. ("SPI") was incorporated in the State of New York on or

1 about September 29, 2010. It was incorporated at my direction.

2 3. I am a dual Canadian/American citizen and presently a resident of the State of
3 Arizona

4 4. SPI's attorneys in Buffalo, New York, prepared the articles and other filings and
5 provided advice to Morabito from New York.

6 5. SPI's principal office is located in Buffalo, New York, and has been located there
7 since the date of incorporation.

8 6. SPI has never transacted business in Nevada.

9 7. SPI has never sold products or offered services in Nevada.

10 8. SPI has never had any employees who worked in Nevada.

11 9. Since its formation, SPI has never had any contacts with the State of Nevada.

12 10. SPI owns an interest in Defendant Superpumper, an Arizona corporation with no
13 assets or business in Nevada.

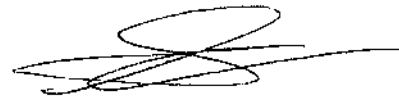
14 11. Defendant Paul Morabito previously owned an interest in Defendant Superpumper.
15 That interest was sold to SPI in September 2010.

16 12. It was this transaction that forms the basis for Herbst's complaint against SPI. The
17 Transfer was facilitated in New York, with New York counsel, under the application of New York
18 law. No portion of the Transfer was conducted in Nevada.

19 13. At the time the Transfer occurred, I was a resident of the State of California.

20 14. No portion of the Transfer was conducted in Nevada, and SPI has never had a
21 physical, business, or economic presence in Nevada.

22 Dated this 9th day of May, 2014.

23
24 

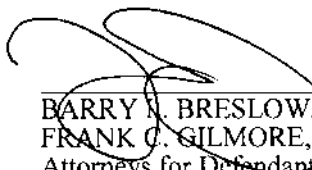
25 SALVATORE MORABITO
26
27
28

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 12th day of May, 2014.

ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, Nevada 89503



BARRY N. BRESLOW, ESQ.
FRANK C. GILMORE, ESQ.
Attorneys for Defendant Snowshoe Petroleum, Inc.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Robison, Belaustegui, Sharp & Low, and that on this date I caused to be served a true copy of the **DECLARATION OF SALVATORE MORABITO IN SUPPORT OF SNOWSHOE CAPITAL'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION** all parties to this action by the method(s) indicated below:

by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

Gerald Gordon, Esq.
John Desmond, Esq.
Brian Irvine, Esq.
Gordon Silver
100 West Liberty Street, Suite 940
Reno, Nevada 89501

by using the Court's CM/ECF Electronic Notification System addressed to:

Gerald Gordon, Esq.
ggordon@gordonsilver.com

John Desmond, Esq.
jdesmond@gordonsilver.com

Brian Irvine, Esq.
birvine@gordonsilver.com

by personal delivery/hand delivery addressed to:

by facsimile (fax) addressed to:

by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 12th day of May, 2014.



1 **2315**
2 **BARRY L. BRESLOW, ESQ. – NSB #3023**
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4 **FRANK C. GILMORE, ESQ. - NSB #10052**
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8 **71 Washington Street**
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12 **Attorneys for Defendant Snowshoe Petroleum, Inc.**

13 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
14 **IN AND FOR THE COUNTY OF WASHOE**

15 JH, INC., a Nevada corporation; JERRY
16 HERBST, an individual; and BERRY-
17 HINCKLEY INDUSTRIES, a Nevada
18 corporation

CASE NO.: CV13-02663

DEPT. NO.: B1

19 Plaintiffs,

20 vs.

21 PAUL MORABITO, individually and as Trustee
22 of the ARCADIA LIVING TRUST;
23 SUPERPUMPER, INC., an Arizona corporation;
24 EDWARD BAYUK, individually and as Trustee
25 of the EDWARD WILLIAM BAYUK LIVING
26 TRUST; and SNOWSHOE PETROLEUM,
27 INC., a New York corporation,

28 Defendants.


29 **DEFENDANT SNOWSHOE PETROLEUM, INC.'S MOTION TO DISMISS COMPLAINT**
30 **FOR LACK OF PERSONAL JURISDICTION**
31 **(NRCp 12(b)(2))**

32 Defendant Snowshoe Petroleum, Inc. ("SPI"), by and through its attorneys of record,
33 hereby moves this Court for its Order dismissing Plaintiff's Complaint against it, on the basis that
34 this Court lacks personal jurisdiction pursuant to Nevada's long-arm statute. This Motion is made
35 and supported by NRCp 12(b)(2), the Memorandum of Points and Authorities below, and the

1 Declaration of Salvatore Morabito.

2 DATED this 12th day of May, 2014.

3 ROBISON, BELAUSTEGUI, SHARP & LOW
4 A Professional Corporation
5 71 Washington Street
6 Reno, Nevada 89503

7 
8 BARRY C. BRESLOW, ESQ.
FRANK C. GILMORE, ESQ.
9 Attorneys for Defendant Snowshoe Petroleum, Inc.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Plaintiff's JH, Inc., Jerry Herbst, and Berry-Hinckley Enterprises (collectively "Herbst")
13 have filed this lawsuit in an effort to hale SPI (and others) into Nevada courts to answer for an
14 alleged conspiracy which has no connection to Nevada. Herbst does not even allege that SPI had
15 any contacts with this forum state, because Herbst well knows that SPI has *never* had any contacts
16 with Nevada, for any reason. Accordingly, SPI is not subject to the jurisdiction of this Court and
17 cannot be haled into Court on Herbst's claims for fraud and conspiracy.

18 **II. RELEVANT FACTS**

19 Herbst's Complaint contains only three paragraphs that allege facts regarding SPI. None of
20 the allegations support a basis for personal jurisdiction in Nevada. Herbst has alleged that SPI is a
21 New York corporation, that Defendant Bayuk is the President, and that SPI was a recipient of
22 transfers originating in Washoe County, Nevada. (Complaint, ¶ 10). Herbst then alleges that
23 Defendant Paul Morabito "sold his interest in Superpumper to Snowshoe Petroleum . . . and that
24 Snowshoe Petroleum was incorporated on September 29, 2010 for the sole purpose of receiving
25 the transfer from Paul Morabito." (Complaint, ¶ 34 (j)). Finally, Herbst contends that SPI
26 "substantially assisted or encouraged" Defendant Paul Morabito in breaching certain alleged duties
27 to Herbst. (Complaint, ¶ 83). As shown below, SPI has never had any transactions that
28 "originated" in Washoe County, and SPI has never had any contact with Nevada that justifies the

1 exercise of personal jurisdiction against it.

2 SPI was incorporated in the State of New York on or about September 29, 2010. It was
3 incorporated by Salvatore Morabito, a dual Canadian/American citizen and presently a resident of
4 the State of Arizona. (See Declaration of Salvatore Morabito, ¶¶ 2, 3) (hereinafter "Morabito
5 Decl."). SPI's attorneys in Buffalo, New York, prepared the articles and other filings and provided
6 advice to Morabito from New York. (Morabito Decl., ¶ 4). SPI's principal office is located in
7 Buffalo, New York, and has been located there since the date of incorporation. (*Id.*, ¶ 5). SPI has
8 never transacted business in Nevada. (*Id.*, ¶ 6). SPI has never sold products or offered services in
9 Nevada. (*Id.*, ¶ 7). SPI has never had any employees who worked in Nevada. (*Id.*, ¶ 8). Since its
10 formation, SPI has never had any contacts with the State of Nevada. (*Id.*, ¶ 9). SPI owns an
11 interest in Defendant Superpumper, an Arizona corporation with no assets or business in Nevada.
12 (*Id.*, ¶ 10).

13 Defendant Paul Morabito previously owned an interest in Defendant Superpumper. That
14 interest was sold to SPI in September 2010. (*Id.*, ¶ 11). It was this transaction that forms the
15 basis for Herbst's complaint against SPI (hereinafter the "Transfer"). The Transfer was facilitated
16 in New York, with New York counsel, under the application of New York law. No portion of the
17 Transfer was conducted in Nevada. (Morabito Decl., ¶ 12). At the time the Transfer occurred,
18 Salvatore Morabito was a resident of the State of California. (*Id.*, ¶ 13). No portion of the
19 Transfer was conducted in Nevada, and SPI has never had a physical, business, or economic
20 presence in Nevada. (*Id.*, ¶ 14).

21 III. ARGUMENT

22 A. SPI Is Not Subject To This Court's Jurisdiction Under Nevada's 23 Long-Arm Statute Or The Requirements Of Due Process.

24 Herbst has failed to plead, and cannot ultimately prove, sufficient facts to establish
25 personal jurisdiction over SPI. It is undisputed that SPI is a New York corporation. Thus, to
26 determine whether a non-resident defendant should be subject to personal jurisdiction in Nevada,
27 this Court must consider the reach of Nevada's long-arm statute and the constitutional limitations
28 of due process. Because neither avenue provides a basis for jurisdiction over SPI, this Court

1 should dismiss the claims against SPI.

2 Once a defendant has challenged personal jurisdiction, the “plaintiff has the burden of
3 introducing competent evidence of essential facts which establish a prima facie showing that
4 personal jurisdiction exists.” *Abbott-Interfast v. Eighth Judicial Dist. Court*, 107 Nev. 871, 873,
5 821 P.2d 1043, 1044 (1991). To make its prima facie showing, the plaintiff must produce “some
6 evidence in support of all facts necessary for a finding of personal jurisdiction” and may not
7 simply rely upon its allegations in the complaint. *Trump v. Eighth Judicial Dist. Court*, 109 Nev.
8 687, 692, 857 P.2d 740, 744 (1993). This burden of proof *never* shifts to defendant. *Id.* Thus, to
9 obtain jurisdiction over a non-resident defendant, the plaintiff must produce some evidence to
10 show: (1) the requirements of the forum state’s long-arm statute have been satisfied, and (2) due
11 process is not offended by the exercise of jurisdiction. *Id.* at 698. Because Nevada’s long-arm
12 statute does not enumerate specific bases for jurisdiction and merely extends personal jurisdiction
13 to the limits of due process, the two-part test may be collapsed into a single constitutional inquiry.
14 *Id.*; NRS §14.065(1) (“A court of this state may exercise jurisdiction over a party to a civil action
15 on any basis not inconsistent with the constitution of this state or the Constitution of the United
16 States.”).

17 **1. SPI Lacks Minimum Contacts with Nevada to Justify the**
18 **Exercise of Personal Jurisdiction.**

19 Due process prevents the exercise of personal jurisdiction over SPI in this Court. To
20 comply with the constitutional requirement of due process, Herbst must demonstrate the existence
21 of sufficient “minimum contacts” between SPI and the forum state, “such that the maintenance of
22 the suit does not offend traditional notions of fair play and substantial justice.” *Trump*, 109 Nev.
23 at 698. Simply put, SPI “must have sufficient contacts with the forum state to reasonably
24 anticipate being haled into court there.” *Id.* at 699.

25 Even if the plaintiff establishes sufficient minimum contacts between defendant and the
26 forum state, the plaintiff must also show that the exercise of jurisdiction is reasonable. *Id.* The
27 Nevada courts recognize two types of personal jurisdiction over a non-resident defendant: general
28 and specific. *Id.* General jurisdiction approximates a defendant’s physical presence within the

1 forum, and requires that the defendant's presence within the forum be so substantial or
2 "continuous and systematic" that it may be subject to suit in the forum for any claim. *Id.* Specific
3 jurisdiction, by contrast, may only be exercised over claims arising from the defendant's specific
4 contacts with the forum as that contact relates to the claims asserted. *Id.*

5 To establish specific jurisdiction, the plaintiff must show that (1) the defendant
6 purposefully availed itself of the privileges or laws of the forum state, or purposely established
7 contacts with the forum and affirmatively directed its conduct toward the forum; and (2) the
8 plaintiff's cause of action arises out of defendant's purposeful conduct with the forum. *Id.* at 699-
9 700. In this case, Herbst cannot satisfy the requirements for general or specific personal
10 jurisdiction over SPI.

11 **2. *Herbst cannot establish general personal jurisdiction over SPI.***

12 SPI has no contacts with Nevada. Herbst does not allege that SPI has a systematic and
13 continuous presence within this State. Herbst only alleged that SPI is a New York corporation,
14 and that the alleged transfer "originated" in Washoe County. By omitting any allegation regarding
15 a continuous presence inside Nevada, Herbst concedes that no general jurisdiction exists.¹
16 (Complaint, ¶10).

17 Moreover, even if Herbst had attempted to allege general jurisdiction, it could never meet
18 its factual burden to prove general jurisdiction. The burden for proving general jurisdiction is a
19 substantial one. General jurisdiction only exists when a defendant has contacts with the forum that
20 are so substantial to deem the defendant "present within the forum" for all purposes. *Trump*, 109
21 Nev. At 699. The Nevada courts have concluded that general jurisdiction may not lie where the
22 defendant is a non-resident and the plaintiff has presented no evidence that (1) the defendant owns
23 an interest in any property within the forum; (2) has physically entered the state; (3) has conducted
24 business or engaged in any persistent course of conduct within the state; or (4) derives any
25 revenues from any goods consumed or services rendered within the state. *Id.* at 701-02.

26
27 ¹ To the extent that plaintiff attempts to allege conspiracy jurisdiction, this theory – if at all viable
28 – only applies to specific jurisdiction and may not support a claim of general jurisdiction.
Menalco, FZE v. Buchan, 602 F. Supp. 2d 1186, 1194 (D. Nev. 2009).

1 In the instant case, SPI lacks even the minimum contacts with Nevada necessary for
2 specific jurisdiction, let alone the higher threshold for general jurisdiction. SPI has never had *any*
3 contact with Nevada whatsoever. There is no basis for general jurisdiction against SPI in Nevada.

4 **B. There Is No Basis For “Conspiracy Jurisdiction” Against SPI.**

5 It is possible that Herbst will contend that SPI should be subject to suit here because it
6 allegedly conspired with one-time Nevada residents. Without addressing the lack of merit of a
7 claim that essentially pleads that the shareholders of SPI conspired with themselves, it is clear that
8 any such conspiracy jurisdiction allegation must fail. Although the Nevada courts have not
9 expressly rejected the theory of conspiracy jurisdiction, the Ninth Circuit has noted that “a great
10 deal of doubt” surrounds the conspiracy theory's legitimacy.² *Menalco, FZE v. Buchan*, 602 F.
11 Supp. 2d 1186, 1194 (D. Nev. 2009) (citing *Chirila v. Conforte*, 47 Fed. App'x 838, 842 (9th Cir.
12 2002) (unpublished)). Several courts have outright rejected conspiracy jurisdiction because it
13 conflicts with the Supreme Court's requirement that each defendant's connection with the forum
14 state be examined independently. *See, e.g., Gutierrez v. Givens*, 1 F. Supp. 2d 1077, 1083 n.1
15 (S.D. Cal. 1998); *Kipperman v. McCone*, 422 F. Supp. 860, 873 n.14 (N.D. Cal. 1976).

16 Even if this Court adopted the theory of conspiracy jurisdiction, Herbst cannot establish the
17 necessary facts to support this theory. The majority of courts that recognize conspiracy
18 jurisdiction require the plaintiff to allege specific overt acts that occurred within the forum state to
19 further the alleged conspiracy, or to allege substantial acts in furtherance of the conspiracy within
20 the forum, and that the co-conspirator knew or should have known his co-conspirator would
21 perform those acts in the forum. *Menalco, FZE*, 602 F. Supp. 2d at 1193 (citing *Underwager v.*
22 *Channel 9 Australia*, 69 F.3d 361,364 (9th Cir. 1995)). A bare allegation of a conspiracy between
23 the defendant and a person within the personal jurisdiction of the court is simply not enough to
24 establish jurisdiction. *Chirila*, 47 Fed. App'x at 843 (quoting *Stauffacher v. Bennett*, 969 F.2d

25 _____
26 ² In *Davis v. Eighth Judicial District Court*, 97 Nev. 332, 338-39, 629 P.2d 1209, 1213 (1981), the
27 Nevada Supreme Court held that it was “reasonable and constitutionally permissible” to require
28 out-of-state defendants to defend their actions in Nevada where the plaintiff alleged that they
participated in a conspiracy to cause injury to property located within the state of Nevada. The
court's decision, however, was not based on a theory of conspiracy jurisdiction.

1 455, 460 (7th Cir. 1992)). Further, if a plaintiff is attempting to assert jurisdiction based on the
2 contacts of a defendant's co-conspirator, the plaintiff must establish the conspiracy relationship
3 through which the contacts are attributed to defendants by at least prima facie evidence. See
4 *Trump*, 109 Nev. at 694-95 (discussing principle in terms of agency relationship).

5 Here, Herbst has put forth only a bare allegation of a conspiracy between SPI and the other
6 Defendants. (Complaint, ¶ 83). Herbst has not alleged any overt act committed in Nevada as part
7 of the purported conspiracy, or that SPI knew or should have known that any acts in further of the
8 conspiracy would be committed in Nevada.

9 **C. SPI Has Never Purposely Directed Any Conduct Toward Nevada.**

10 To establish specific jurisdiction, the plaintiff must show by prima facie evidence that the
11 defendant purposely established contacts with the forum and affirmatively directed its conduct at
12 the forum. *Trump*, 109 Nev. at 699-700. SPI has done neither.

13 SPI was formed in New York, by New York counsel. SPI does business only in Arizona.
14 SPI owns an interest in an Arizona corporation with no assets in Nevada. SPI has never availed
15 itself of the privileges of doing business in Nevada. See *Menalco, FZE*, 602 F. Supp.2d at 1194
16 ("Evidence of availment is typically action taking place in the forum"). SPI's lack of minimum
17 contacts with Nevada precludes the exercise of personal jurisdiction over them in Nevada.

18 Herbst cannot show that the Transfer had any relation to this forum. Specific jurisdiction
19 requires that the cause of action be intimately related to the forum, and not based on a "random,"
20 "fortuitous," or "attenuated" relationship. *Trump*, 109 Nev. at 700 (citing *Munley v. Dist. Court*,
21 104 Nev. 492, 495-96 (1988)). "The cause of action must arise from the consequences in the
22 forum state of the defendant's activities, and those activities, or the consequences thereof, must
23 have a substantial enough connection with the forum state to make the exercise of jurisdiction over
24 the defendant reasonable." *Trump*, 109 Nev. at 700 (citations omitted). The quality rather than the
25 quantity of the defendant's contacts will affect the determination of jurisdiction. *Id.*

26 At no time has SPI had contacts with Nevada. At no time did SPI purposely direct any
27 action towards this forum to subject them to the jurisdiction of Nevada. Because SPI lacks any
28 contacts with Nevada, requiring it to defend claims in this forum exceeds the reach of the long-arm

1 statute and offends the traditional notions of fair play and substantial justice.

2 **IV. CONCLUSION**


3 There is no basis for exercise of personal jurisdiction over SPI. SPI has never had any
4 contact with Nevada. Plaintiff cannot sustain its burden by producing facts showing that SPI has
5 ever availed itself of the laws and protections of Nevada, nor that it would be reasonable for SPI to
6 be haled into court here. The Motion to Dismiss should be granted, and SPI prays the Court do so.

7 **AFFIRMATION**
8 **Pursuant to NRS 239B.030**

9 The undersigned does hereby affirm that this document does not contain the social security
10 number of any person.

11 DATED this 10th day of May, 2014.

12 ROBISON, BELAUSTEGUI, SHARP & LOW
13 A Professional Corporation
14 71 Washington Street
15 Reno, Nevada 89503

16 
17 BARRY L. BRESLOW, ESQ.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Robison, Belaustegui, Sharp & Low, and that on this date I caused to be served a true copy of the **DEFENDANT SNOWSHOE PETROLEUM, INC.'S MOTION TO DISMISS COMPLAINT FOR LACK OF PERSONAL JURISDICTION (NRCP 12(b)(2))**

all parties to this action by the method(s) indicated below:

_____ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

Gerald Gordon, Esq.
John Desmond, Esq.
Brian Irvine, Esq.
Gordon Silver
100 West Liberty Street, Suite 940
Reno, Nevada 89501

✓ _____ by using the Court's CM/ECF Electronic Notification System addressed to:

Gerald Gordon, Esq.
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DATED: This 6th day of May, 2014.



1 2645

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17 *Attorneys for Plaintiffs*

18 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
19 **THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE**

20 JH, INC., a Nevada corporation; JERRY
21 HERBST, an individual; and BERRY-
22 HINCKLEY INDUSTRIES, a Nevada
23 corporation,

24 Plaintiffs,

25 vs.

26 PAUL MORABITO, individually and as
27 Trustee of the ARCADIA LIVING TRUST;
28 SUPERPUMPER, INC., an Arizona
corporation; EDWARD BAYUK,
individually and as Trustee of the EDWARD
WILLIAM BAYUK LIVING TRUST; and
SNOWSHOE PETROLEUM, INC., a New
York corporation,

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

OPPOSITION TO MOTION TO DISMISS

Plaintiffs JH, INC. ("JH"), JERRY HERBST ("Herbst") and BERRY-HINCKLEY INDUSTRIES ("BHI," together with JH and Herbst, the "Plaintiffs"), hereby respectfully submit their Opposition to Defendant Snowshoe Petroleum, Inc.'s ("Snowshoe") Motion to Dismiss Complaint for Lack of Personal Jurisdiction (NRCP 12(b)(2)) (the "Motion"). This Opposition is supported by the following Memorandum of Points and Authorities and exhibits thereto, the

1 pleadings and papers on file herein, and any other material this Court may wish to consider.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I.**

4 **Introduction**

5 Through a series of fraudulent corporate transactions, Defendants Paul Morabito,
6 Salvatore Morabito, Edward Bayuk and Snowshoe have deprived Plaintiffs the opportunity to
7 collect on or commence execution proceedings on judgment debtor Paul Morabito's assets that
8 were previously located in the State of Nevada. Specifically, the individual Defendants formed
9 Snowshoe as a New York corporation solely for the purpose of having a shell entity the could
10 control and manipulate receive Paul Morabito's assets for little to no value in a deliberate
11 attempt to both avoid Plaintiffs' collection efforts and also to attempt to avoid the jurisdiction of
12 this Court.

13 Snowshoe is not an innocent New York corporation that has no contact with the State of
14 Nevada. Rather, Snowshoe is the ultimate recipient of more than \$5.5 million in assets that were
15 owned by Paul Morabito and located in the State of Nevada at the time the Second Judicial
16 District Court entered an oral judgment against him for fraud. Snowshoe is subject to the
17 jurisdiction of this Court due to its receipt of these Nevada assets, knowingly and without value.
18 This is especially true because the fraudulent transfer of those assets to Snowshoe was
19 choreographed by individual Defendants who formed, owned, controlled and manipulated
20 Snowshoe, and all of whom were Nevada residents in 2010. For these reasons, the motion
21 should be denied.

22 **II.**

23 **Factual and Procedural Background**

24 ***A. The Prior State Court Action and Judgment***

25 This action was filed on December 17, 2013. This action is related to and stems from a
26 prior case before Second Judicial District Court. That case resolved a dispute between Plaintiffs
27 and Paul Morabito and Consolidated Nevada Corporation ("CNC") regarding the sale of BHI
28 stock to JH pursuant to an Amended and Restated Stock Purchase Agreement (the "ARSPA").
In that case, Paul Morabito and CNC filed a lawsuit against the Plaintiffs, captioned

1 *Consolidated Nevada Corp., et al. v. JH, et al.*, (the "State Court"), Case No. CV07-02764
2 (together with all claims and counterclaims, the "State Court Action"). Plaintiffs filed numerous
3 counterclaims in the State Court Action against Paul Morabito and CNC, including, but not
4 limited to, fraud in the inducement, misrepresentation, and breach of contract relating to the
5 ARSPA. Plaintiffs also filed a Third-Party Complaint in the State Court Action against the
6 shareholders of CNC, including Salvatore Morabito (Paul Morabito's brother), and Edward
7 Bayuk (Paul Morabito's "boyfriend and longtime companion"). **Exhibit 1**, Affidavit of John P.
8 Desmond; **Exhibit 2**, Fifth Amendment and Restatement of the Trust Agreement for the Arcadia
9 Living Trust at ¶1.1.

10 On September 13, 2010, the State Court entered an oral judgment against Paul Morabito
11 and CNC in favor of Plaintiffs. Specifically, the State Court found that Paul Morabito and CNC
12 fraudulently induced JH and Herbst to enter into the ARSPA and ruled in favor of JH and Herbst
13 against Morabito on other fraud-based claims. On October 12, 2010, the State Court entered its
14 findings of fact and conclusions of law which set forth the legal and factual basis for a
15 forthcoming state court judgment, including fraud in the inducement. On August 23, 2011, the
16 State Court entered a judgment awarding Plaintiffs total damages in the amount of
17 \$149,444,777.80 for actual fraud, representing both compensatory and punitive damages as well
18 as an award of attorneys' fees and costs (the "Nevada Court Judgment").

19 **B. Punitive Damages Discovery and the Fraudulent Transfers**

20 The parties subsequently conducted discovery related to the net worth of Paul Morabito
21 to prepare for a hearing on punitive damages. As part of that discovery, Plaintiffs obtained
22 certain documents and deposed Mr. Morabito. **Exhibit 1**, Affidavit of John P. Desmond.
23 Plaintiffs learned through net worth discovery that almost immediately following the State
24 Court's oral pronouncement of judgment, Defendants had engaged in a series of fraudulent
25 transfers in an effort to prevent Plaintiffs from collecting on the State Court Judgment and to
26 protect Paul Morabito from having any of his assets seized. *Id.* The vast majority of those
27 transfers occurred shortly after the State Court entered its September 2010 oral findings of fact
28

1 and conclusions of law. *Id.* Plaintiffs believe that the transfers were intentional and in direct
2 contravention of the State Court's findings made in the State Court Judgment. *Id.*

3 The transfer that is implicated in this Opposition is the fraudulent transfer of Paul
4 Morabito's interest, through various corporate transactions, in a Nevada corporation formerly
5 known as Consolidated Western Corporation ("CWC"). Up until September 28, 2010 (about two
6 weeks after this Court entered its oral fraud judgment against Paul Morabito), CWC had three
7 shareholders, Paul Morabito, Salvatore Morabito and Bayuk. **Exhibit 3**, Unanimous Written
8 Consent of the Directors and Shareholders of CWC. At the time, CWC was the sole owner of an
9 Arizona corporation, Superpumper, Inc. ("Superpumper"). **Exhibit 4**, Unanimous Written
10 Consent of the Board of Directors and Sole Shareholder of Superpumper.

11 On September 28, 2010, nearly two weeks to the day after oral pronouncement of the
12 State Court judgment, CWC was merged into Superpumper. **Exhibit 5**, Plan of Merger; **Exhibit**
13 **6**, Articles of Merger; **Exhibit 4**, Unanimous Written Consent of the Board of Directors and Sole
14 Shareholder of Superpumper. At the time of the merger, Paul Morabito's 2009 personal income
15 tax return showed the tax basis of Paul Morabito's shares of stock in CWC to be \$5,588,661.
16 **Exhibit 7**, 2009 Federal Income Tax Return for Paul A. Morabito at RBSL 00427.

17 Snowshoe was incorporated after the State Court's oral pronouncement of judgment on
18 September 29, 2010 for the sole purpose of receiving the transfer of Superpumper from Paul
19 Morabito. **Exhibit 8**, May 21, 2014 printout from New York Secretary of State. Snowshoe was
20 incorporated by Dennis Vacco, Paul Morabito's attorney of record who was admitted pro hac
21 vice in the State Court Action, and maintains its Principal Executive Office at Mr. Vacco's office
22 address. *Id.* Mr. Vacco has also represented both Salvatore Morabito and Bayuk. **Exhibit 9**,
23 May 9, 2008 Letter from Garrett Gordon to John Desmond (indicating that Mr. Vacco would be
24 associating as counsel for Plaintiffs and Counterdefendants in the State Court Action). Mr.
25 Vacco remains listed as resident agent for Snowshoe. **Exhibit 8**, May 21, 2014 printout from
26 New York Secretary of State. Upon its formation, Bayuk was a shareholder and director of
27 Snowshoe. **Exhibit 10**, Shareholder Interest Purchase Agreement. Salvatore Morabito
28 apparently serves as Snowshoe's Chief Executive Officer, **Exhibit 8**, May 21, 2014 printout

1 from New York Secretary of State, and Snowshoe was apparently incorporated at the direction of
2 Salvatore Morabito. Declaration of Salvatore Morabito in support of Snowshoe's Motion to
3 Dismiss for Lack of Personal Jurisdiction, on file herein, at ¶2.

4 On September 30, 2010, one day after Salvatore Morabito and Bayuk formed Snowshoe,
5 Paul Morabito sold his post-merger interest in Superpumper to Snowshoe for an initial price of
6 only approximately \$1,035,094.¹ **Exhibit 10**, Shareholder Interest Purchase Agreement. The
7 sale price appears to be an obviously fraudulent transfer, in that Paul Morabito's 2009 tax return
8 showed a tax basis of \$5,588,661 for his shares of stock in CWC, about \$3 - \$4.5 million more
9 than he received from Snowshoe.

10 In sum, Snowshoe was formed by Paul Morabito's domestic partner, who lived in Reno
11 and owned real property in Reno, **Exhibit 11**, Relevant portions of the January 22, 2010
12 Deposition of Edward Bayuk at p.8, lines 17-20; **Exhibit 12**, November 10, 2005 Grant Bargain
13 and Sale Deed,² and by Paul Morabito's brother Salvatore Morabito, the current Chief Executive
14 Officer of Showshoe, who admittedly was also a resident of Reno, Nevada as of January 2010,
15 approximately eight months before the fraudulent transfers at issue in this case occurred.³
16 **Exhibit 13**, Relevant portions of the January 11, 2010 Deposition of Salvatore Morabito at p. 9,
17 lines 7-14. Snowshoe, at the direction of Bayuk and Salvatore Morabito, knowingly received
18 fraudulent transfer of a significant interest in CWC, a Nevada corporation, from Paul Morabito, a
19 Nevada judgment debtor. Snowshoe was apparently created post-judgment for the sole purpose
20 of owning an interest in Superpumper (formerly CWC). See Declaration of Salvatore Morabito
21 in support of Snowshoe's Motion to Dismiss for Lack of Personal Jursidiction, on file herein, at
22 ¶10. No other business purpose of Snowshoe is mentioned. *Id.* These actions by Snowshoe are

23 ¹ The actual sale price of Superpumper to Snowshoe may have been somewhat higher – approximately \$2.5 million.
24 However, in any event, it appears that Paul Morabito sold Superpumper to his domestic partner and/or brother, using
Snowshoe as a vehicle, for at least \$3 million less than the tax basis value of his interest.

25 ² It is interesting to note that Paul Morabito and Bayuk purchased a residence in 2005 in Washoe County as tenants
26 in common. **Exhibit 12**. However, on September 28, 2010, only about two weeks after this Court entered its oral
27 judgment against Morabito and the same day when Morabito was acting to divest himself of his interest in CWC,
that residence was transferred to Paul Morabito's personal trust, again in an obvious effort to stop, delay or hinder
collection efforts. **Exhibit 14**, October 1, 2010 Grant, Bargain and Sale Deed.

28 ³ In fact, Salvatore Morabito had both a residence and a business address in Reno during 2010. **Exhibit 13**,
Relevant portions of the January 11, 2010 Deposition of Salvatore Morabito at p. 9, lines 7-14.

1 intentional, significant and directly specific to this case and this forum. Accordingly, personal
2 jurisdiction over Snowshoe has been satisfied.

3 III.

4 Legal Argument

5 To be clear, Plaintiffs are not asserting that this Court has general jurisdiction over
6 Snowshoe. Instead, specific jurisdiction exists over Snowshoe, "which exists where a cause of
7 action arises from a defendant's contacts with the forum." *Casentini v. Ninth Judicial Dist. Ct.*,
8 110 Nev. 721, 726, 877 P.2d 535, 538-39 (1994). This Court can exercise specific jurisdiction
9 over a non-resident defendant when (1) the non-resident defendant purposefully directed its
10 activities toward the forum state or performed some act by which it purposefully availed itself of
11 the privileges of conducting activities in the forum; (2) the plaintiff's claim arises out of or
12 relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction is
13 reasonable. *Casentini*, 110 Nev. at 726-27, 877 P.2d at 539; *Pat Clark Sports, Inc. v. Champion*
14 *Trailers, Inc.*, 487 F.Supp2d 1172, 1176 (D. Nev. 2007). Under this three-prong test, "the
15 plaintiff bears the burden of satisfying the first two prongs of the test, but if the plaintiff does so,
16 'the burden then shifts to the defendant to 'present a compelling case' that the exercise of
17 jurisdiction would not be reasonable.'" *Pat Clark Sports, Inc.*, 487 F.Supp.2d at 1176.

18 Moreover, it is critical to note that the plaintiff opposing a motion to dismiss "is not
19 required to immediately show by a preponderance of the evidence that jurisdictional requisites
20 are met. Initially, the opposing party need only make a prima facie showing of jurisdiction."
21 *Casentini*, 110 Nev. at 725. In *Trump v. District Court*, 109 Nev. 687, 857 P.2d 740 (1993), the
22 Nevada Supreme Court explained this point and stated:

23 Once a defendant challenges personal jurisdiction, the plaintiff may proceed to
24 show jurisdiction by one of two distinct processes. In the more frequently utilized
25 process, a plaintiff may make a prima facie showing of personal jurisdiction prior
26 to trial and then prove jurisdiction by a preponderance of the evidence at trial.
"When a challenge to personal jurisdiction is made, the plaintiff has the burden of

27 ⁴ Snowshoe attempts to argue in its Motion that it is the Plaintiffs' burden to show that the exercise of personal
28 jurisdiction is reasonable. This statement is incorrect and is belied by the court's analysis in *Pat Clark Sports, Inc.*
v. Champion Trailers, Inc., 487 F.Supp2d 1172, 1176 (D. Nev. 2007).

1 introducing competent evidence of essential facts which establish a prima facie
2 showing that personal jurisdiction exists." [Citations omitted.]

3 ... "In determining whether a prima facie showing has been made, the district
4 court is not acting as a fact finder. It accepts properly supported proffers of
5 evidence by a plaintiff as true." [Citation omitted.] However, the plaintiff must
6 introduce some evidence and may not simply rely on the allegations of the
7 complaint to establish personal jurisdiction.

8 *Id.* at 692-93, 857 P.2d at 743-44.

9 Here, Plaintiffs have presented this Court with evidence outside of the allegations in the
10 Complaint that make a prima facie showing that (1) Snowshoe performed acts by which it
11 purposely availed itself to this Court's jurisdiction; and (2) Plaintiffs' claims against Snowshoe
12 arise directly out of Snowshoe's Nevada-related activities. In addition, the exercise of personal
13 jurisdiction in this case comports with notions of fair play and substantial justice.

14 ***A. Snowshoe performed acts by which it purposely availed itself to this Court's
15 jurisdiction, and Plaintiffs' claims against Snowshoe arise directly out of
16 Snowshoe's Nevada-related activities.***

17 Snowshoe was formed with the specific purpose of accepting a fraudulent transfer of a
18 significant Nevada asset from a Nevada judgment debtor, without paying adequate value. Given
19 the timing, and the effort to move the asset from Nevada to an entity formed in New York and
20 from Paul Morabito to related third-parties, it seems clear that this was done at the direction of
21 Paul Morabito and his co-conspirators with the intent to stop or hinder Plaintiffs from collecting
22 on their judgment. Specifically:

- 23 • Snowshoe was formed on September 29, 2010, about two weeks after the State Court
24 orally entered a multi-million dollar judgment against Paul Morabito. Exhibit 8.
- 25 • It was formed by Paul Morabito's New York lawyer, Dennis Vacco, who has also
26 represented Bayuk and Salvatore Morabito and was admitted pro hac vice in the State
27 Court Action. Exhibit 8; Exhibit 15, Order admitting Dennis Vacco. Mr. Vacco formed
28 Snowshoe at the direction of Paul Morabito's brother, Salvatore Morabito, who also
serves as Snowshoe's CEO. Exhibit 8. Bayuk, Paul Morabito's domestic partner, was a
shareholder and director of Snowshoe when it was formed and when it purchased Paul
Morabito's interest in Superpumper. Exhibit 10.

- Paul Morabito, Bayuk and Salvatore Morabito were all admittedly residents of the State of Nevada sometime during 2010. Exhibit 11, Exhibit 12, Exhibit 13.
- Snowshoe received what had been an asset owned and controlled by Paul Morabito – over \$5.5 million of shares in CWC – a Nevada corporation, for less than fair value. Exhibit 10.

All of these facts, taken together, show that Snowshoe, through its directors, officers and shareholders⁵ (who were Nevada residents in 2010) intentionally availed itself to jurisdiction in Nevada by accepting the fraudulent transfer of the Nevada asset with full knowledge of the purpose of the transfer and of the fact that the transfer was made for less than full value. This is especially true given the presumption that the Nevada Supreme Court has applied in favor of plaintiffs, that "[w]hen factual disputes arise in a proceeding that challenges personal jurisdiction, those disputes must be resolved in favor of the plaintiff." *Levinson v. Dist. Ct.*, 103 Nev. 404, 407, 742 P.2d 1024, 1026 (1987).

Moreover, these acts directly give rise to Plaintiffs' claims against Snowshoe. The transfer of Paul Morabito's interest in CWC/Superpumper to Snowshoe forms the sole basis for the claims against Snowshoe for fraudulent transfer (NRS 112.140), civil conspiracy and aiding and abetting Paul Morabito's fraudulent misrepresentation. See Complaint, on file herein at ¶¶34(h)-(j), 36-49, 73-81 and 82-85. Accordingly, Plaintiffs have met their burden and made a prima facie showing that (1) Snowshoe performed an act by which it purposely availed itself to this Court's jurisdiction; and (2) Plaintiffs' claim against Snowshoe arises directly out of Snowshoe's Nevada-related activities.

Snowshoe spends a great deal of time in its motion arguing that personal jurisdiction is inappropriate under a "conspiracy theory." Motion at 6-7. However, the motion misapprehends the basis for jurisdiction. Snowshoe did not merely participate in a conspiracy here. Instead, it was the ultimate recipient of a Nevada asset from a Nevada judgment creditor, and it knowingly took the asset for less than fair value. This is similar to the scenario in *Casentini*, where the

⁵ It is axiomatic that a corporation "can only act through an officer, agent or attorney." *Heintelman v. L'Amoureux*, 3 Nev. 377, 379 (1867). All of Snowshoe's acts here were taken by Bayuk and/or Salvatore Morabito, both of whom were Nevada residents in 2010 when the acts were taken.

1 Court held that it had personal jurisdiction over a California resident who took shares of stock in
2 a Nevada corporation from his son, who was a Nevada judgment debtor and who had transferred
3 earnings and personal property into that corporation. *Casentini*, 110 Nev. at 727-28. Although
4 there were other ties to Nevada in *Casentini* that are not present here, it remains markedly
5 similar. The Court in *Casentini* considered the fact that the California resident had engaged "in
6 stock transfers involving the Nevada corporation with his son William, a Nevada resident, which
7 transfers form the basis of the present suit against him" to be an important factor in concluding
8 that jurisdiction existed. *Id.* at 728.

9
10 **B. The exercise of personal jurisdiction over Snowshoe comports with notions of
fair play and substantial justice**

11 Though Plaintiffs have satisfied their burden and have made a prima facie showing that
12 (1) Snowshoe performed an act by which it purposely availed itself to this Court's jurisdiction,
13 and (2) Plaintiffs' claim against Snowshoe arises directly out of Snowshoe's Nevada-related
14 activities, Snowshoe may still attempt to argue that the exercise of personal jurisdiction over it is
15 somehow unfair. In assessing this argument, this Court will consider "whether the assertion of
16 personal jurisdiction would comport with [traditional notions of] 'fair play and substantial
17 justice.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476, 105 S.Ct. 2174, 2184
18 (1985)(quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 320, 66 S.Ct. 154, 160
19 (1945)). In analyzing these factors in *Trump*, the Nevada Supreme Court stated:

20 Factors relevant to this [reasonableness] inquiry are: (1) the interstate judicial
21 system's interest in obtaining the most efficient resolution of controversies; (2)
22 the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in
23 obtaining convenient and effective relief; and (4) the interest of the several states
in furthering substantive social policies.

24 *Trump*, 109 Nev. at 701, 857 P.2d at 749 (citation omitted). These factors clearly weigh in favor
25 of Plaintiffs.

26 First, the State of Nevada has an interest in keeping this case intact and in Nevada. The
27 State Court Judgment was entered in Nevada against Paul Morabito, who was at that time a
28 Nevada resident, and in favor of Plaintiffs, all of whom are Nevada residents. Paul Morabito has

1 taken drastic and improper actions to avoid that judgment by transferring his assets to various
2 insiders that also used to reside in Nevada but have now fled Nevada and claim to no longer be
3 residents so they could better serve as recipients of Paul Morabito's assets and as active
4 participants in his fraudulent scheme. One of the vehicles that was used to accomplish the series
5 of fraudulent transfers that took place after this Court's oral judgment was Snowshoe. Nevada
6 has an interest in overseeing judgment collection cases that arise from Nevada judgments, and in
7 enforcing Chapter 112 of the Nevada Revised Statutes, which the Nevada Legislature chose to
8 adopt to protect its citizens.

9 Second, Plaintiffs have chosen Nevada as their forum and believe that this action affords
10 them the most convenient and effective state court relief available. It is certainly not efficient for
11 either Plaintiffs or the interstate judicial system to require this case to be litigated in multiple
12 forums. Indeed, it would only reward Defendants for their fraudulent conduct. Moreover, the
13 position in the motion, that Snowshoe should be considered a distinct and innocent New York
14 entity with no ties to Nevada is made all the more ridiculous by the fact that its attorneys
15 represent or have represented all of the other Defendants in this case.

16 Finally, there are no policy reasons for this case to be brought in New York. It certainly
17 appears that Snowshoe was formed with the sole purpose of receiving and holding an asset that
18 has been fraudulently transferred from another state. There are no policy implications
19 whatsoever.

20 IV. 21 Conclusion

22 For the reasons set forth above, Plaintiffs respectfully request that this Court deny
23 Snowshoe's Motion to Dismiss for Lack of Personal Jurisdiction.

24 ///

25 ///

26 ///

27 ///

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 29th day of May, 2014.

GORDON SILVER

By: 

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I am an employee of GORDON SILVER, and that on this date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached **OPPOSITION TO MOTION TO DISMISS** on the parties as set forth below:

XXX Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, Reno, Nevada, postage prepaid, following ordinary business practices

____ Certified Mail, Return Receipt Requested

____ Via Facsimile (Fax)

____ Via E-Mail

____ Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered

____ Federal Express (or other overnight delivery)

addressed as follows:

Barry Breslow
Frank Gilmore
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, NV 89503

DATED this 29th day of May, 2014.


An Employee of GORDON SILVER

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1	Affidavit of John P. Desmond	4
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9	May 9, 2008 Letter from Garrett Gordon to John Desmond	1
10	Shareholder Interest Purchase Agreement	5
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12	November 10, 2005 Grant Bargain and Sale Deed	3
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15	Order admitting Dennis Vacco	2

⁶ Exhibit page counts are exclusive of exhibit slip sheets.

EXHIBIT 1

EXHIBIT 1

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9 *Attorneys for Plaintiffs*

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
11 **THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE**

12 JH, INC., a Nevada corporation; JERRY
HERBST, an individual; and BERRY-
13 HINCKLEY INDUSTRIES, a Nevada
corporation,

14 Plaintiffs,

15 vs.

16 PAUL MORABITO, individually and as
Trustee of the ARCADIA LIVING TRUST;
17 SUPERPUMPER, INC., an Arizona
corporation; EDWARD BAYUK,
18 individually and as Trustee of the EDWARD
WILLIAM BAYUK LIVING TRUST; and
19 SNOWSHOE PETROLEUM, INC., a New
York corporation,
20

21 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

22
23 **AFFIDAVIT OF JOHN P. DESMOND**

24 STATE OF NEVADA)
25 :ss
26 COUNTY OF WASHOE)

27 I, JOHN P. DESMOND, do hereby swear under penalty of perjury that the following
28 assertions are true:

1 1. Affiant is a duly licensed attorney at law in the State of Nevada and is a member
2 of the law firm of GORDON SILVER, attorneys for Plaintiffs JH, INC., a Nevada corporation;
3 JERRY HERBST, an individual; and BERRY-HINCKLEY INDUSTRIES, a Nevada
4 corporation in a Civil Action 13-02663 pending in the Second Judicial District Court in the State
5 of Nevada.

6 2. Attached to the Opposition to the Motion to Dismiss as **Exhibit 2** is a true and
7 correct copy of the Fifth Amendment and Restatement of the Trust Agreement for the Arcadia
8 Living Trust dated September 30, 2010.

9 3. Attached to the Opposition to the Motion to Dismiss as **Exhibit 3** is a true and
10 correct copy of a unanimous Written Consent of the Directors and Shareholders of Consolidated
11 Western Corporation, dated September 28, 2010.

12 4. Attached to the Opposition to the Motion to Dismiss as **Exhibit 4** is a true and
13 correct copy of a unanimous Written Consent of the Board of Directors and Sole Shareholder of
14 Superpumper, Inc., dated September 28, 2010.

15 5. Attached to the Opposition to the Motion to Dismiss as **Exhibit 5** is a true and
16 correct copy of a Plan of Merger of Consolidated Western Corporation with and into
17 Superpumper, Inc., dated September 28, 2010.

18 6. Attached to the Opposition to the Motion to Dismiss as **Exhibit 6** is a true and
19 correct copy of the Articles of Merger of Consolidated Western Corporation into Superpumper,
20 Inc., dated September 29, 2010.

21 7. Attached to the Opposition to the Motion to Dismiss as **Exhibit 7** is a true and
22 correct copy of Paul A. Morabito's 2009 Tax Return, prepared by Paul Morabito's accountant
23 Stanton R. Bernstein, CPA.

24 8. Attached to the Opposition to the Motion to Dismiss as **Exhibit 8** is a true and
25 correct copy of a printout of the information contained in the New York State Department of
26 State Database for Snowshoe Petroleum, Inc., current through May 20, 2014.

1 9. Attached to the Opposition to the Motion to Dismiss as **Exhibit 9** is a true and
2 correct copy of a May 9, 2008 letter from Garrett D. Gordon to myself and Louis Bubala who
3 was also counsel of record for JH and Jerry Herbst at the time.

4 10. Attached to the Opposition to the Motion to Dismiss as **Exhibit 10** is a true and
5 correct copy of a Shareholder Interest Purchase Agreement between Paul A. Morabito and
6 Showshoe Petroleum, Inc., dated September 30, 2010.

7 11. Attached to the Opposition to the Motion to Dismiss as **Exhibit 11** is a true and
8 correct copy of the relevant portions of the January 22, 2010, Deposition of Edward Bayuk.

9 12. Attached to the Opposition to the Motion to Dismiss as **Exhibit 12** is a true and
10 correct copy of a Grant, Bargain and Sale Deed for a piece of real property situated in the County
11 of Washoe, State of Nevada to Paul Morabito and Edward Bayuk, dated November 10, 2005.

12 13. Attached to the Opposition to the Motion to Dismiss as **Exhibit 13** is a true and
13 correct copy of the relevant portions of the January 11, 2010, Deposition of Salvatore Morabito.

14 14. Attached to the Opposition to the Motion to Dismiss as **Exhibit 14** is a true and
15 correct copy of a Grant, Bargain and Sale Deed for a piece of real property situated in the County
16 of Washoe, State of Nevada from Paul Morabito and Edward Bayuk to Paul A. Morabito,
17 Trustee of The Arcadia Living Trust, dated November 1, 2010.

18 15. Attached to the Opposition to the Motion to Dismiss as **Exhibit 15** is a true and
19 correct copy of an Order Admitting Dennis Vacco to Practice in Case No. CV07-02764 in the
20 Second Judicial District Court of the State of Nevada in and for the County of Washoe.

21 16. Plaintiffs filed numerous counterclaims in the State Court Action against Paul
22 Morabito and CNC, including, but not limited to, fraud in the inducement, misrepresentation, and
23 breach of contract relating to the ARSPA. Plaintiffs also filed a Third-Party Complaint in the
24 State Court Action against the shareholders of CNC, including Salvatore Morabito (Paul
25 Morabito's brother), and Edward Bayuk (Paul Morabito's self-described "boyfriend and
26 longtime companion").

1 17. The parties subsequently conducted discovery related to the net worth of Paul
2 Morabito to prepare for a hearing on punitive damages. As part of that discovery, Plaintiffs
3 obtained documents and deposed Mr. Morabito.

4 18. Plaintiffs learned through net worth discovery that Defendants had engaged in a
5 series of transfers in an effort to prevent Plaintiffs from collecting on the State Court Judgment
6 and to protect Paul Morabito from having any of his assets seized.

7 19. The vast majority of those transfers occurred shortly after the State Court issued
8 its September 2010 oral findings of fact and conclusions of law.

9
10 DATED this 29th day of May, 2014.

11
12 
13 JOHN P. DESMOND

14
15
16
17 SUBSCRIBED and SWORN to before me
18 this 29th day of May, 2014, by
19 JOHN P. DESMOND.

20 
21 NOTARY PUBLIC in and for said
22 County and State

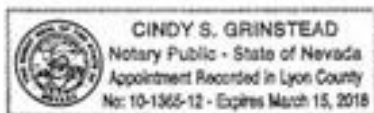


EXHIBIT 2

EXHIBIT 2

CONFIDENTIAL

**FIFTH AMENDMENT AND RESTATEMENT OF THE TRUST AGREEMENT FOR THE ARCADIA
LIVING TRUST**

CONFIDENTIAL

RB6L 001888

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CONFIDENTIAL

RBSL 001874

FIFTH AMENDMENT AND RESTATEMENT OF THE TRUST AGREEMENT FOR THE ARCADIA SPENDTHRIFT TRUST HENCEFORTH TO BE KNOWN AS THE ARCADIA LIVING TRUST

I, PAUL A. MORABITO, as Grantor and Trustee, declare that I have entered into this FIFTH Amendment and Restatement of the Trust Agreement for the ARCADIA LIVING TRUST on Thursday, September 30th, 2010.

I established the ARCADIA LIVING TRUST on February 14, 2006 and amended and restated it its entirety – and changed its name to the Arcadia Spendthrift Trust – on November 17, 2009. In January, 2010, under Article 2 of the Trust Agreement, I reserved the right to amend, modify, or revoke the Trust Agreement or any of its provisions, in whole or in part, at any time by a writing signed by me. Exercising that right, I completely amended and restated the Trust Agreement in its entirety as set forth below in this document, so that none of the previous provisions shall continue to be in effect, and changed its name back to the ARCADIA LIVING TRUST. This complete amendment and restatement, and any subsequent amendments, shall constitute the entire and exclusive statement of the terms of the ARCADIA LIVING TRUST.

The property I have transferred to myself as Trustee and all property subsequently transferred to the Trustee shall be administered as provided in this FIFTH Amendment and Restatement and any subsequent amendments. The revocable trust established under this Trust Agreement shall now be known as the ARCADIA LIVING TRUST. Successor trusts established under this Trust Agreement shall be known by the names designated below in this Trust Agreement or as named by the Trustee. The Trustee may refer to these trusts by reference to the name of the income beneficiaries of these trusts or the tax elections made with respect to these trusts.

**ARTICLE 1
DECLARATIONS**

1.1 Family Information

I am not married, and am a resident of the City of West Hollywood, California. I live part time with my boyfriend and longtime companion EDWARD WILLIAM BAYUK. I have no living or deceased children. My father is SALVATORE ROBERT MORABITO, SR, of St. Catharines, Ontario. My mother Mary Dora Lorraine Morabito is now deceased. I have one brother, SALVATORE ROBERT MORABITO, JR., also known as Sam Morabito, of St. Catharines, Ontario, Canada; SALVATORE is in a committed relationship with my brother's longtime companion DR. ANNA KOBYLECKY, of St. Catharines, Ontario, Canada. I have two sisters, KATHARINE LYNN FAZZARI of St. Catharines, Ontario, Canada, and GLORIA JEAN MORABITO, also known as Goldie Morabito, of Belmont, California. I have two nephews, the sons of my sister KATHARINE LYNN FAZZARI, SAMUEL FAZZARI and VINCENT FAZZARI, both of St. Catharines, Ontario, Canada.

1.2 Property Information

At this time, all my property is my separate property.

**ARTICLE 2
RIGHTS RESERVED BY ME**

As Grantor, I reserve the following rights under this Trust Agreement.

2.1 Right to Add Property to the Trust Estate

I reserve the right to transfer additional property to the Trustee during my lifetime and at my death. All such property transferred to the Trustee shall be added to the trust estate and administered as provided in this Trust Agreement. The Trustee is authorized and directed to accept the additions to the trust estate. Any other person may transfer property to the Trustee to be added to the trust estate, provided the property is acceptable to me (if living) and the Trustee.

2.2 Right to Withdraw Property from the Trust Estate

I reserve the right to withdraw at any time all or any portion of my property held in the trust estate.

The property described in any notice of withdrawal shall be delivered immediately to me. Upon any withdrawal, the property shall be transferred to me as if the trust had not been created.

2.3 Right to Amend the Trust Agreement

I reserve the right to amend at any time all or any part of this Trust Agreement, without obtaining the consent of or giving notice to any beneficiary.

2.4 Right to Revoke the Trust Agreement

I reserve the right to revoke at any time all or any part of this Trust Agreement, without obtaining the consent of or giving notice to any beneficiary. If this Trust Agreement is revoked in whole or in part during my lifetime, the Trustee shall immediately deliver to me the entire trust estate or the portion of the trust estate subject to revocation. Upon any such revocation, the property shall be transferred to me as if the trust had not been created. Upon my death, this Trust Agreement, and all trusts established under this Trust Agreement, shall become irrevocable and not subject to amendment.

2.5 Right to Appoint and Remove Trustees

I reserve the right to appoint, designate, and remove trustees.

2.6 Right to Direct and Approve the Trustee's Actions

I reserve the right to direct and approve the Trustee's actions, including the Trustee's investment decisions and the use of trust property as collateral for any personal obligations of mine. My approval of the Trustee's actions shall be binding upon all other beneficiaries.

2.7 Exercise of My Reserved Rights by Others

The rights reserved to me as described above are personal to me and shall not be exercisable on my behalf by any other person.

2.8 Manner of Exercise of My Reserved Rights

I may exercise the rights reserved to me only by a signed writing delivered to the Trustee. This Trust Agreement may not, however, be revoked or amended by me in my Will.

**ARTICLE 3
THE GRANTOR'S TRUST**

The following provisions shall apply to the distribution of the trust estate during my lifetime.

3.1 Distributions of Income and Principal

During my lifetime, the Trustee shall distribute to me that amount of net income and principal as I direct. Further, if I become incapacitated, the Trustee is authorized to distribute to any person whom I am then legally obligated to support or who has been receiving support from me that amount of net income and principal as the Trustee deems appropriate in his or her discretion to continue this support. Also, the Trustee is authorized to distribute to me that amount of net income and principal, up to the whole of the trust estate, as the Trustee deems appropriate in the exercise of his or her discretion, using my accustomed manner of living as a guide and without regard to my other sources of support. The Trustee shall exercise this discretion in a liberal manner, and the rights of remainder beneficiaries shall be of no importance. The Trustee shall accumulate and add any undistributed net income to principal.

3.2 Gifts

The Trustee is authorized to make distributions directly to persons designated by me. Furthermore, the Trustee is authorized to make gifts to continue any gift program I start, including gifts made to use my available federal gift tax annual exclusion amounts or lifetime exemption or exclusion amounts, at the same level and to the same persons as I made gifts. The Trustee may fulfill any charitable pledges made by me. Gifts may be made outright or in trust. In making the gifts authorized under this section, the Trustee may follow the directions given him or her by any agent acting for me under a durable power of attorney that expressly grants to the agent the power to continue my plan of giving. Also, the Trustee may distribute income or principal to an agent acting under a durable power of attorney executed by me to enable the agent to make gifts as provided under the durable power of attorney, including gifts to charitable organizations.

3.3 Qualification for Government Benefits

I authorize the Trustee to take any actions that the Trustee determines to be appropriate or necessary in connection with my qualification for or receipt of government benefits, including benefits (whether income, medical, disability, or otherwise) from any agency (whether state, federal, or otherwise), such as Social Security, Medicare, or supplemental security income/state supplemental programs.

ARTICLE 4

ALLOCATION AND DISPOSITION OF THE TRUST ESTATE

Upon my death, subject to the payment of, or satisfactory provision being made for, all debts and taxes (including Estate taxes), the following allocations and dispositions of the trust estate shall be made by the Trustee.

4.1 Disposition Upon My Death

Upon my death, the Trustee shall allocate the entire trust estate, including the property held in the trust estate at the date of my death and the property transferred to the trust estate by reason of my death, as follows:

- (a) Gifts of Tangible Personal Property
The Trustee shall make distributions of my tangible personal property as provided in Article 5.
- (b) Gifts of Real Property
The Trustee shall make distributions of my real property as provided in Article 6.
- (c) Gifts of Money and Other Property
The Trustee shall make distributions of money and other property as provided in Article 7.
- (d) Balance of the Trust Estate

The balance of the trust estate shall be held in trust and administered as the Residuary Trust in accordance with the provisions of Article 8 below until the date ten (10) years following my death. On the tenth anniversary of my death, any remaining balance of the trust estate shall be distributed as follows:

- (i) Seventy percent (70%) to my longtime companion EDWARD WILLIAM BAYUK, provided he survives me. If EDWARD does not survive me, the gift shall be distributed to my brother SALVATORE ROBERT MORABITO, JR., if he is then living, and if he is not this distribution shall be made in equal shares to my nephews SALVATORE FAZZARI and VINCENT FAZZARI.
- (ii) Thirty percent (30%) to my brother SALVATORE ROBERT MORABITO, JR., provided he survives me. If SALVATORE does not survive me, the gift shall be distributed to my partner EDWARD WILLIAM BAYUK, if he is then living, and if he is not this distribution shall be made in equal shares to my nephews SAMUEL FAZZARI and VINCENT FAZZARI.

In selecting assets to satisfy gifts and fund shares, property that would produce income recognition if allocated to fund a pecuniary amount shall, if possible, be allocated to fund non-pecuniary shares. These assets should be allocated on a non-pro rata basis when funding fractional shares. These assets include: items of income in respect of a decedent (particularly interests in pension plans or contracts of deferred compensation paid in installments); installment sale contracts; and life insurance contracts to which the transfer for value rule under I.R.C. §101 may apply.

ARTICLE 5

GIFTS OF TANGIBLE PERSONAL PROPERTY

Upon my death, subject to the payment of, or satisfactory provision being made for, all my debts and taxes (including all Estate taxes), the following distributions shall be made by the Trustee from the

trust estate.

All my interest in my tangible personal property, together with any insurance on such property, shall be distributed by the Trustee outright to my longtime companion EDWARD WILLIAM BAYUK, if he is then living, and if he is not said tangible personal property shall be distributed to my brother SALVATORE ROBERT MORABITO, JR.

**ARTICLE 6
GIFTS OF REAL PROPERTY**

Upon my death, subject to the payment of, or satisfactory provision being made for, all my debts and taxes (including all Estate taxes), no distributions shall be made by the Trustee.

**ARTICLE 7
GIFTS OF MONEY AND OTHER PROPERTY**

Upon my death, subject to the payment of, or satisfactory provision being made for, all my debts and taxes (including all Estate taxes), the following distributions shall be made by the Trustee.

**7.1 Gifts of Money
& Publicly Traded Securities**

None.

**ARTICLE 8
THE RESIDUARY TRUST**

All trust property allocated to the RESIDUARY TRUST shall be held by the Trustee in trust and shall be administered according to the terms of this Trust Agreement, specifically including the following provisions, until the date ten (10) years following my death. On the date ten (10) years after my death, all trust assets remaining in the Residuary Trust shall be distributed in accordance with the provisions of Section 4.1(d) above. All references in this Trust Agreement to the "RESIDUARY TRUST" shall be to the trust established under this article.

8.1 Maintenance of Real Property

None

8.2 Distribution of Net Income

After providing for the expenses outlined in Sections 8.1 and 8.2 above, the Trustee shall distribute the remaining net income in monthly or other convenient installments, but at least annually, to the following beneficiaries in the percentages indicated until the trust terminates on the tenth anniversary of my death:

- (a) Seventy percent (70%) to my longtime companion EDWARD WILLIAM BAYUK.
- (b) Thirty percent (30%) to my brother SALVATORE ROBERT MORABITO, JR.

If a beneficiary under this Section 8.3 dies before the trust terminates on the tenth anniversary of my death, the deceased beneficiary's share of net income shall be reallocated on an ongoing basis to the other beneficiary named in this section if then living.

8.3 Final Distribution of Trust Estate

On the tenth anniversary of my death, or upon the earlier death of the last to survive of the beneficiaries named in Section 8.3, the Residuary Trust shall terminate and the Trustee shall distribute the remaining assets of the trust estate in accordance with the provisions of Section 4.1(d) above.

**ARTICLE 9
GENERATION-SKIPPING PROVISIONS**

9.1 Generation-Skipping Transfer Tax

I intend to use effectively all available generation-skipping transfer tax exemptions, including the exemption available under the election authorized in I.R.C. §2652(a)(3). All provisions of my Will and this Trust Agreement shall be construed in a manner consistent with that objective, and to the extent possible, so as to create and maintain trusts or shares of the trust estate that have inclusion ratios of either zero or one and are entirely exempt or nonexempt from GST tax.

9.2 Allocation of GST Exemption

In allocating my GST exemption, the Trustee may include or exclude from that allocation any property as to which I am the transferor for GST tax purposes, including property transferred prior to my death. The Trustee's decisions may be based on my estate tax return, gift tax returns, and other information known to the Trustee. The Trustee shall allocate the exemption in good faith, but shall not be required to allocate the exemption to benefit the various transferees or beneficiaries of the property equally, proportionally, or in any other particular manner.

9.3 Division of Trusts

The Trustee (other than I or mine) may divide any trust into two or more separate trusts to create one or more trusts with assets completely exempt from any application of any GST tax or to create trusts so that the federal generation-skipping tax inclusion ratio for each such trust shall be either zero or one. Divisions shall be made based on the fair market value of the assets at the time of the division. If permitted by the regulations under the GST tax, the allocation of property between or among separate trusts created from a single trust or trust share may be unequal in amount and in the type of assets, and the division may be non-pro rata. All trusts so established shall be administered under the same terms as would have applied to the undivided trust or trust share. The Trustee is directed to divide any trust that may be subject to the GST tax into two separate sub-trusts of equal or unequal value, but with the same terms and with the same beneficiaries, so that the transferor's exemption under I.R.C. §2631 may be allocated to one sub-trust to the exclusion of the other or disproportionately between them.

9.4 Allocation of Assets

The Trustee may allocate any property payable or distributable to the trust or any of its sub-trusts so that all trusts or property with an inclusion ratio of zero shall be allocated to a trust with an inclusion ratio of zero and all trusts or property with an inclusion ratio of other than zero shall be allocated to a trust with an inclusion ratio of other than zero. The Trustee may allocate any property that may become payable or distributable to the trust to one of its sub-trusts to the exclusion of the other trusts or disproportionately between the sub-trusts.

9.5 General Power of Appointment Granted to Beneficiary

If upon the death of an issue of mine who is a beneficiary of an irrevocable trust created under this Trust Agreement, the trust estate of his or her trust would pass to or in trust for the beneficiary's issue (whether directly or by the beneficiary's failure to exercise a power of appointment), then the beneficiary shall have the power to appoint to the beneficiary's estate by his or her Will (whether or not admitted to probate) expressly referring to and exercising this power, the smallest fractional share of the trust that would be necessary to reduce to the minimum the aggregate Estate taxes and GST taxes payable upon the beneficiary's death.

9.6 General Power of Appointment Conferred by Trustees

The Trustee may grant a beneficiary a general power of appointment, as that term is defined in I.R.C. §2041, over that beneficiary's share of the trust estate, pursuant to which that beneficiary may appoint the principal and or undistributed income of that share to one or more persons and entities, including his or her own estate, and on those terms and conditions, either outright or in trust, as he or she may appoint by a Will (whether or not admitted to probate) or other written instrument expressly referring to and exercising this general power of appointment. A grant of power may limit the amount subject to any general power of appointment, require that it be exercised jointly with another person or persons, or otherwise impose limits or conditions on its exercise. The Trustee may also eliminate or modify, at any time and for any reason, a general power of appointment granted by the Trustee. The Trustee shall

promptly notify the beneficiary in writing that they have granted a general power of appointment to the beneficiary over trust assets.

The foregoing provisions shall not apply to a beneficiary who is serving as a Trustee or Co-Trustee, except that a Co-Trustee or successor Trustee may exercise the foregoing power to grant a general power of appointment in favor of the beneficiary who is a Trustee. No beneficiary shall have the power under this Section 9.6 to amend his or her share of the trust estate in a manner that would increase his or her benefits, or to grant himself or herself a general power of appointment.

9.7 No Trustee Liability

The Trustee shall not be liable for any exercise or nonexercise of any of the powers granted under this article.

**ARTICLE 10
DISCLAIMERS**

10.1 Disclaimers Allowed

In addition to any rights granted by law, any person granted any right, title, interest, benefit, privilege, or power under this Trust Agreement may at any time renounce, release, or disclaim all or any part of that right, title, interest, benefit, privilege, or power, including his or her right, title, and interest in and to trust income or principal. The natural or legal guardians of a minor shall have the authority and power to disclaim the interests of the minor; the conservator of the estate of the person shall have the authority and power to disclaim the interests of the conservatee; the fiduciary of a trust or estate shall have the authority and power to disclaim the interests of the trust or estate; and the youngest adult ancestor of any unborn, unknown, or unascertained issue shall have the power to disclaim the interests of those issue.

10.2 Disclaimers of Property Interests

In general, a disclaimer or renunciation of a property interest shall accelerate the succeeding interest. Except as otherwise expressly provided in this Trust Agreement, any interest in property so disclaimed shall be allocated or distributed as if the beneficiary had predeceased the person from whom the interest in the property would have been received. Further, except as otherwise expressly provided in this Trust Agreement, if a beneficiary disclaims his or her entire interest in one or more specific assets held in any trust, the assets shall be distributed from the trust as if the beneficiary predeceased the person from whom the interest in the assets would have been received. If all living current and contingent beneficiaries disclaim their interests in the trust, any contingent remainder interest shall be destroyed and the remaining trust property shall pass as provided in Section 4.2.

10.3 Disclaimers by Trustees

Any person granted any fiduciary power, authority, right, privilege, or discretion ("Fiduciary Power") under this Trust Agreement or under the law applicable to this trust may at any time renounce, release, or disclaim all or any part of such Fiduciary Power. Unless otherwise expressly provided in the disclaimer, if any Fiduciary Power shall be disclaimed, the power shall cease to exist and shall not pass to any successor fiduciary. The disclaimer may expressly provide that the Fiduciary Power shall be exercisable by the remaining Trustees, if any, or any successor Trustees.

10.4 Effective Disclaimers

To be effective, disclaimers must be in writing, signed by the disclaiming person, and irrevocable. Disclaimers shall be effective only upon delivery to the Trustee or to a court having jurisdiction over the administration of the trust.

**ARTICLE 11
PAYMENT OF DEBTS AND EXPENSES**

The following provisions shall apply upon my death to the payment of my debts and expenses.

11.1 Payment of Debts and Expenses

Upon my death, the Trustee may pay on my behalf, in the manner and at the time the Trustee

determines, any and all of my outstanding unsecured debts (including unpaid tax liabilities arising prior to my death and interest and penalties imposed on those tax liabilities), expenses of last illness, burial and funeral claims, expenses of estate administration, any allowances by court order for those persons dependent upon me, and any other proper expenses of my estate.

11.2 Payment from Trust

The Trustee is authorized to pay from the assets of the trust my debts and expenses that my Executor may request. If there are insufficient assets in my probate estate to make any gifts provided under my Will or to pay my debts and expenses, or if there are sufficient assets in my probate estate but, in the sole judgment of the Trustee, it would be to the advantage of the estate that those gifts or payments be made from the assets in the trust, the Trustee may pay from the assets of the trust all of those gifts, debts, and expenses. If the assets of my probate estate (exclusive of residential real property and tangible personal property) are insufficient to pay all unsecured debts, funeral expenses, and expenses of administration, the Trustee may pay to my estate from the principal of the trust estate that amount that my Executor may request for those purposes. The Trustee shall not be under any duty to take part in determining the amount of those debts or expenses, and may rely upon the written certification of my Executor for the amount to be paid as authorized by these provisions. The Trustee shall be under no duty to see to the application of any such payment. The Trustee shall not require any reimbursement for payments made to my Executor.

ARTICLE 12

PAYMENT OF ESTATE TAXES AND GENERATION-SKIPPING TRANSFER TAXES

12.1 Payment of Estate Taxes

All Estate taxes and charges imposed upon any property by reason of my death, whether passing under the Will or not, shall be paid (1) first, by my Executor out of the residue of my probate estate, to the extent funds are sufficient, and (2) second, by the Trustee out of the residue of the trust estate. All Estate taxes shall be paid without proration or reimbursement from any other property or person.

12.2 Payment of Generation-Skipping Transfer Taxes

All GST taxes attributable to a direct skip occurring upon my death, and with respect to which I was the transferor, shall be paid by the Trustee from and charged against property constituting the transfer, as provided in I.R.C. §2603(a)(3) and §2603(b). All GST taxes attributable to a taxable distribution occurring with respect to any trust established under this Trust Agreement shall be paid by the transferee, as provided in I.R.C. §2603(a)(1) and §2603(b). All GST taxes attributable to a taxable termination occurring with respect to any trust established under this Trust Agreement shall be paid by the Trustee and charged against the property transferee, as provided in I.R.C. §2603(a)(2) and §2603(b).

12.3 No Proration

No portion of the Estate taxes or GST taxes payable under these provisions shall be charged against, prorated among, or recovered from any person entitled to benefits under this instrument.

12.4 Reserves

The Trustee may establish reserves from trust income and principal that he or she considers necessary for the payment of Estate taxes.

12.5 Tax Elections

The Trustee shall have the power, in his or her discretion, to take any action and to make any election to minimize the tax liabilities of my probate estate, any trust, and the beneficiaries. The Trustee may make those elections and allocations under the tax laws as he or she deems advisable. The Trustee may, but shall not be required to, allocate the benefits of an election among the various beneficiaries or make adjustments in the rights of any beneficiaries or between the income and principal accounts to compensate for the consequences of any tax election or any investment or administrative decision made by the Trustee that may have had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over another.

ARTICLE 13
THE APPOINTMENT OF TRUSTEES

The following provisions shall apply to the appointment, designation, and removal of the Trustee.

13.1 My Powers of Appointment, Designation, and Removal

. During my lifetime, I shall have the power to appoint, designate, and remove, with or without cause, Trustees and Co-Trustees. I may appoint or designate individuals or entities to serve as Trustee. I may appoint or designate Trustees to serve alone, to serve with me, or to serve with other persons and to serve currently or in the future. I may also prescribe the conditions and terms governing the actions, authority, and duties of the Trustees I appoint or designate. Further, I may designate a series of persons to serve as Trustees following my death or following the death, resignation, or inability, failure, or refusal to serve of any Trustee. There shall be no limit on the number of times I may exercise the foregoing powers. The appointments and designations shall be in writing and shall be filed with the current Trustee of the trust. All my appointments and designations shall be revocable and amendable by me unless I provide otherwise. All my appointments and designations shall continue to be effective after my death and shall take precedence over the appointments made under any other provisions of this article.

13.2 Initial Trustee

. Pursuant to my powers to appoint Trustees, I appoint myself as the Initial Trustee under this Trust Agreement.

13.3 Successor Trustees

. Upon my death or incapacity, I appoint ROBERT BERTRAM BURKE to serve as Trustee. If ROBERT BERTRAM BURKE should fail or become unable or unwilling to serve as Trustee, I appoint JAMES RAVENSCROFT to serve as Trustee.

13.4 Filling Vacancies

. If a vacancy in a Trustee position is not filled as otherwise provided in this Trust Agreement, the California court having jurisdiction over the trust shall appoint one or more Trustees upon the application of any former Trustee or any trust beneficiary, current or contingent.

13.5 Temporary Incapacity of a Trustee

. If, due to illness or other cause, an individual Trustee is temporarily, but not permanently, unable to give prompt and intelligent consideration to the financial and administrative matters affecting the trusts for which he or she serves as Trustee, the other Trustees may, during such temporary incapacity, make any and all decisions regarding the trust estate as though the incapacitated Trustee were not then serving. In determining the temporary incapacity of an individual Trustee, the other Trustees may rely on a certificate or other written statement from a licensed physician who has examined the incapacitated individual Trustee. The other Trustees shall incur no liability whatsoever to any beneficiary as a result of any action taken under this section.

13.6 Removal of Trustees

. Following my death EDWARD WILLIAM BAYUK may remove any Trustee of the trust and appoint a Trustee or Trustees other than himself to succeed the removed Trustee, provided at least one adult income beneficiary and one adult presumptive remainder beneficiary join in the exercise of this power.

13.7 Effective Dates

. Any and all appointments, designations, removals, or revocations affecting a Trustee position shall be made by a written instrument executed by the person entitled to make the appointment, designation, removal, or revocation. The written instrument shall be effective upon its delivery to the current Trustee; provided, however, that the appointment of a successor Trustee or Co-Trustee shall become effective only upon the new Trustee's written acceptance of the appointment and the delivery of this written acceptance to the person who appointed him or her, the other Trustees, or the current beneficiaries.

13.8 No Bond

. No bond or other security shall be required of any Trustee named in this Trust Agreement or of any

Trustee appointed or designated in the manner provided under this Trust Agreement unless the terms of the appointment or designation require a bond. The foregoing provisions shall apply whether the Trustee serves alone or together with one or more other Trustees.

13.9 Administrator. The Administrator shall provide such services to the Trustee by way of accounting, tax and planning purposes, and advise the Trustee and the Beneficiaries as to the intent and implementation of each and every provision of this Trust. The Administrator shall be reimbursed based on his normal hourly rate, as well as receive an annual base stipend of one dollar (\$1.00).

ARTICLE 14 THE PROTECTION PROVIDED THE TRUSTEES

The following provisions shall apply to each of the Trustees serving under this Trust Agreement.

14.1 Resignation

. Each Trustee shall have the right to resign his or her position at any time without the consent of any beneficiary or the approval of any court. A Trustee may resign for any reason by delivering a written resignation signed by him or her to the successor Trustees. The resignation shall be effective according to its terms. But, if the resigning Trustee is the sole Trustee, the resigning Trustee shall continue to be responsible for the trust property until it is delivered to the successor Trustee and shall continue to hold title and custody to the trust assets and administer the trust assets and perform the actions that are reasonably necessary to preserve the trust property and to complete the Trustee's administration of the trust, until a successor Trustee has been appointed and has accepted the position of Trustee.

14.2 Compensation

. The Trustee shall be entitled to pay himself an annual fee of one hundred and twenty thousand dollars (\$120,000) for the performance of his or her duties and services rendered as Trustee. A Trustee that is a corporation or partnership shall be entitled to compensation for its services in the amount and at the time specified in its Schedule of Fees and Charges established from time to time by it for the administration of trust accounts of a character similar to this one and in effect when services are rendered. This compensation may be paid without prior court approval. The Trustee shall be reimbursed for reasonable expenses actually and properly incurred by him or her in the administration of the trust.

The Trustee also is authorized to pay to the attorneys and accountants retained by the Trustee to advise him or her in the administration of the trust those amounts for fees and costs as the Trustee shall determine in his or her discretion. The Trustee is authorized to pay these fees and costs without first obtaining approval of the trust beneficiaries or the court having jurisdiction over the trust. These fees and costs shall not be offset against the compensation payable to the Trustee.

A Trustee may waive his or her right to compensation for his or her services to be rendered to the trust estate. The waiver must be in writing and signed by the person in advance of rendering the services for which compensation is being waived. A waiver may be limited in duration or limited to specific services.

14.3 Dual Compensation

. A Trustee serving as a director, officer, partner, or employee of any corporation, partnership, or other business in which the trust owns an interest shall also be entitled to receive reasonable compensation for his or her services rendered as Trustee in addition to the compensation being paid to him or her by such business. The compensation paid to the Trustee in either capacity shall not be offset against the other. A Trustee who is an investment advisor, attorney, accountant, or other professional shall not be disqualified from rendering professional services to the trust and being compensated on a reasonable basis therefore in addition to any compensation that he or she otherwise is entitled to receive as Trustee. Neither shall a firm with which a Trustee is associated as a partner, officer, or employee be disqualified from dealing with, rendering services to, or discharging duties for the trust and being compensated therefore on a reasonable basis. A Trustee is authorized to retain himself or herself or any firm with which he or she is associated to render investment, legal, accounting, or other professional services.

14.4 Right of Indemnification and Reimbursement

A Trustee shall be entitled to indemnification and reimbursement for any expense, loss, damage, liability, costs, or claim (including, without limitation, attorney's fees and costs of litigation) incurred by the Trustee by reason of any act performed or omitted to be performed by the Trustee, acting in good faith, in the administration of the trust. The Trustee shall be deemed to have acted in good faith on behalf of the trust if the Trustee acted in a manner reasonably believed by the Trustee to be within the scope of his or her authority and in the best interest of the trust and its beneficiaries. Notwithstanding the foregoing, a Trustee shall not be indemnified or reimbursed with respect to any expense, loss, damage, or claim incurred by reason of any breaches of trust, by acts or omissions, committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of the beneficiaries.

14.5 Notice to the Trustee

Until the Trustee receives written notice of any birth, marriage, death, or other event affecting the rights of beneficiaries to payments or distributions from the trust, the Trustee shall incur no liability to any persons whose interests may have been affected by that event for payments or distributions made by the Trustee in good faith as though the event had not occurred.

14.6 Confidentiality of Trust Agreement

Except as otherwise provided in this Trust Agreement, the Trustee shall not disclose the contents of this Trust Agreement, or the fact of its existence unless required to do so by law or applicable regulation, regulatory authorities, or legal process, without my prior written consent. The Trustee may, however, disclose the terms of this Trust Agreement where necessary to carry out his or her powers, to enforce the rights and remedies belonging to the trust, or as required by a court in its supervision of the trust. The Trustee may also disclose the contents of this Trust Agreement to persons employed by him or her to advise or assist him or her in the administration of the trusts, including attorneys and accountants, provided these professionals agree to keep the disclosed information confidential on the same terms as provided in this section.

14.7 Disclosure to the Beneficiaries

During my lifetime, the Trustee shall have no duty to provide any information regarding the trust to anyone other than me.

14.8 Reports and Accounts

I hereby waive all statutory requirements, that the Trustee render a report or account to the beneficiaries of the trust. The Trustee shall not be required to make any current reports or render any annual or other periodic accounts to any trust beneficiary or to any court, whether or not required by statute, except pursuant to court order. The Trustee may take action for the approval of his or her accounts at the times and before the courts, or without court proceedings, as he or she determines in the exercise of his or her discretion. The Trustee shall pay the costs and expenses of such action, including the compensation and expenses of accountants, attorneys, and guardians, from the principal or income, or both, of the trust as he or she determines.

14.9 My Right to Release Trustee

I reserve the right to execute a release, with or without an account, approving the administration of the trust by the Trustee. A release shall discharge the Trustee from any accountability and liability to me or my estate or to any other persons interested or claiming to be interested in the trust as to all matters covered by the release or in the account, if any, with the same effect as if an account of the Trustee for the period concerned had been judicially settled and allowed in a proceeding to which these other persons (including all interested persons) were parties. No beneficiary other than me or my Executor shall have the right to question or assert any liability by the Trustee for the Trustee's acts or omissions during my lifetime.

14.10 Right of Trustee to Secure Releases

The Trustee is authorized to secure from any beneficiary a full and complete release from any and all liabilities arising from the Trustee's administration of the trust and the beneficiary's written approval of any account or report of the Trustee. The release or approval shall be binding and conclusive upon the beneficiary and upon all of the beneficiary's issue (including then unborn, unknown, and unascertained

issue) and other successors in interest who may then have or later acquire any interest in the separate trust. All written instruments to be delivered to or executed by a beneficiary may be delivered to or executed by the legally appointed conservator of any incompetent beneficiary or a parent or legal guardian of a minor beneficiary. When so delivered or executed, the written instrument shall be binding upon the beneficiary and shall be of the same force and effect as if delivered to or executed by a beneficiary acting under no legal disability. The foregoing provisions shall apply to all reports, statements, accounts, releases, and notices, as well as documents appointing, removing, or designating Trustees. However, the Trustee may not condition the performance of his or her duties on the delivery of such a release.

14.11 Consultation with Legal Counsel

The Trustee may retain and consult with California based legal counsel on any matters related to the administration of the trust or the construction or interpretation of this Trust Agreement, and I encourage the Trustee to do so. The Trustee may select the legal counsel to advise or represent him or her, and the Trustee is expressly authorized to pay the fees and costs of the legal counsel from the trust estate. The time, place, subject matter, and content of any such consultation with legal counsel, all communication (written or oral) between the Trustee and legal counsel, and all work product of legal counsel shall be privileged and confidential and shall be absolutely protected and free from any duty or right of disclosure to any successor Trustee or any beneficiary and any duty to account. The Trustee shall, however, include the amount of any disbursement for the legal counsel fees and costs in any report or account prepared by the Trustee for the period during which the expenses were paid.

14.12 Reliance on Experts and Others

The Trustee shall be entitled to rely on the information, opinions, reports, or statements (including financial statements and other financial data) prepared by his or her managers, attorneys, accountants, brokers, investments counselors, and other experts, even if they are associated with a Trustee, prepared by such persons as to matters which the Trustee reasonably believes to be within that person's profession or expert competence, and shall not be liable for losses resulting therefrom. The Trustee may act without independent investigation upon the recommendations of any attorneys, auditors, accountants, investment advisers, appraisers, or other qualified experts retained by the Trustee, even if they are associated or affiliated with the Trustee. The written opinion of any such expert submitted to the Trustee shall be a full and complete authorization and protection with respect to any action taken or not taken by the Trustee in good faith.

14.13 Extent of Liability

I do not want the Trustee to be personally liable for his or her good faith efforts in administering the trust estate.

(a) In general

A Trustee shall not be personally liable to the trust or its beneficiaries, and shall be held harmless, for any loss, expense, damage, or claim incurred by the Trustee by reason of any act performed or omitted to be performed by the Trustee, acting in good faith, in the administration of the trust. The Trustee shall be deemed to have acted in good faith on behalf of the trust if the Trustee acted in a manner reasonably believed by the Trustee to be within the scope of his or her authority and in the best interest of the trust and its beneficiaries. Further, a Trustee shall not be personally liable for obligations arising from the Trustee's ownership or control of trust property or for torts committed in the course of the Trustee's administration of the trust unless the Trustee is personally at fault. Notwithstanding the foregoing, a Trustee shall be personally liable for his or her breach of trust by acts or omissions, committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of the beneficiaries, and as to any profit that the Trustee derives from any breach of trust.

(b) While trust is revocable

During my lifetime, the Trustee shall follow all written directions given from time to time to him or her by me or by the person or persons to whom I delegate the right to direct the Trustee. In consenting to and carrying out those directions, the Trustee shall not be liable to any person having a vested or contingent interest in the trust for any act performed or omitted pursuant to those directions. Moreover,

the Trustee may follow those directions regardless of any fiduciary obligations to which the directing party may also be subject.

(c) As to other Trustees

The liability of the Trustee is further limited as follows.

(i) As to prior Trustees

No successor Trustee shall be responsible or liable for any acts, omissions, or default of any prior Trustee. Unless requested in writing by a beneficiary within 60 days of the appointment of the successor Trustee, no successor Trustee shall be required or have any duty to review or investigate the actions or omissions of a prior Trustee. A successor Trustee shall not be required or have any duty or obligation to review, audit, or examine the transactions, accounts, or records of any prior Trustee, or any allocation of the trust estate made by any prior Trustee. No successor Trustee shall have any obligation to take any action to obtain redress for any breach of trust by any prior Trustee unless instructed by a court to do so. Each Trustee is responsible only for those assets that are actually delivered to the Trustee's custody or control.

(ii) As to Co-Trustees

A Trustee shall be liable to the beneficiaries for the acts or omissions of a Co-Trustee only as provided required by law.

(d) As to agents and investment managers

I want the Trustee to be able to rely on the advice of professionals hired to advise him or her. Accordingly, the Trustee's liability is further limited as follows.

(i) As to agents

A Trustee shall be liable to the beneficiaries for the acts or omissions of an agent only as provided by applicable law.

(ii) As to investment managers

A Trustee shall not be liable for the acts or omissions of any investment manager, or be under an obligation to invest or otherwise manage any asset that is subject to the management of an investment manager.

(e) As to taxes

I want the Trustee to be aggressive in minimizing the taxes, including estate and income taxes, imposed on the trust estate. Accordingly, the Trustee shall not be liable for any accuracy-related penalty, such as is currently imposed under I.R.C. §6662, arising from the preparation and filing of any income tax or estate tax return.

(f) Liability insurance

Individual Trustees may carry errors and omissions or fiduciary liability insurance and may charge the premiums to trust income or principal, or both, as a cost of administration.

ARTICLE 15

THE AUTHORITY OF THE TRUSTEES

The following provisions shall apply to each of the Trustees serving under this Trust Agreement. A successor Trustee shall be vested with all the rights, powers, and authority of an original Trustee.

15.1 Trustee Authority

Except as otherwise expressly provided, a successor Trustee upon commencing to serve as Trustee shall immediately become vested with all the rights, titles, powers (including discretionary powers), and obligations, with like effect as if named as an initial Trustee. Where this Trust Agreement states that the Trustee "shall" perform an act, the Trustee is required to perform that act. Where this Trust Agreement states that the Trustee "may" do an act or Trustee is "authorized" to act, the Trustee is expressly permitted or authorized to do the act described, and his or her decision to do or not to do the act shall be made in the Trustee's sole and absolute discretion in the exercise of his or her fiduciary powers and duties. The decision of the Trustee as to all discretionary actions and decisions shall be conclusive and binding on all persons.

15.2 Trustee Discretion

. The discretionary powers granted to the Trustee under this Trust Agreement shall be absolute. This means that the Trustee can act arbitrarily, so long as he or she does not act in bad faith, and that no requirement of reasonableness shall apply to the exercise of his or her absolute discretion. This does not mean that the Trustee may do as he or she pleases, but rather that I want the Trustee to use his or her own personal, subjective best judgment. For this purpose, I waive the requirement that the Trustee's conduct at all times must satisfy the standard of judgment and care exercised by a reasonable, prudent person. In particular, the decision of the Trustee as to the distributions to be made to beneficiaries under the distribution standards provided in this Trust Agreement shall be conclusive on all persons.

15.3 Release of Power or Authority by a Trustee

. The Trustee may at any time release, surrender, disclaim, relinquish, either in whole or in part, or may reduce or restrict in scope, any of the powers, rights, authority, or discretion granted to the Trustee under this Trust Agreement, either expressly or implied. Such action shall be taken by means of a written notice filed in the records of the trust, signed and dated by the releasing Trustee, and mailed to all of the adult current beneficiaries. Unless otherwise specified by the releasing Trustee, any such action as it affects that Trustee shall be irrevocable. Such action shall be effective only as to the Trustee giving such written notice and shall in no way affect the rights, powers, authority, and discretion of successor Trustees. The powers, rights, authority, or discretion released or restricted shall continue to exist as to all Trustees and successor Trustees other than the releasing Trustee.

15.4 Trustee's Consideration of Beneficiary's Other Assets

. Except as otherwise provided in this Trust Agreement, in exercising his or her discretion to distribute trust funds to any beneficiary, the Trustee may, but shall not be required or have any duty to, consider all income and assets, including other sources of income or financial support, reasonably available to the beneficiary, as are actually known to the Trustee. The Trustee shall have no duty of inquiry as to the property owned by or held for the benefit of the beneficiary. In making discretionary distributions from any trust created under this Trust Agreement, the Trustee may rely absolutely upon a declaration executed under penalty of perjury by the beneficiary describing his or her expenses and financial needs and any other financial resources available to him or her, without further investigation. The Trustee may continue to rely upon a declaration until otherwise advised in another declaration from the beneficiary.

15.5 Limitation on Discretion of a Beneficiary Serving as Trustee

. Notwithstanding any other provisions of this Trust Agreement, a Trustee (other than me) who is also a beneficiary of the trust shall not have, and shall not participate in the exercise of, the power to use, apply, or distribute trust principal for his or her own benefit, except as necessary to provide for his or her health, education, maintenance, and support in his or her accustomed manner of living. Further, a Trustee who is also a beneficiary of the trust shall not participate in the exercise of any power to advance or loan funds to himself or herself or to guarantee or secure any debt of such beneficiary/Trustee.

15.6 Voting

. While more than two Trustees are serving, the decision of the majority of the Trustees shall prevail and be binding with respect to all matters affecting the trust estate. If one or more Trustees are excluded or precluded from participating in making a decision with respect to a particular matter, the remaining Trustees acting by majority vote shall make the decision. Any act by or instrument executed by the majority of the Trustees shall constitute the action of the Trustees as if done by all Trustees. Any dissenting or nonconcurring Trustee shall not be liable to any person for the action or failure to act of the other Trustees acting by majority vote.

15.7 Delegation by One Trustee

. Each Trustee may at any time, by a signed revocable instrument, delegate to another Trustee the exercise of all or less than all of the powers conferred on a Trustee. Nonetheless, the delegating Trustee shall be liable for the proper exercise of the delegated powers by the other Trustees.

15.8 Delegation by All Trustees

. The Trustees may delegate their powers to one or more of the Trustees in a writing signed by all of them. The writing must state the powers delegated to the particular Trustees and provide a date when

the delegation will terminate automatically if not previously terminated. Any delegation shall be revocable by any one Trustee in a writing delivered to the delegate. A Trustee acting pursuant to a delegation shall have the authority to bind the trust and third persons may rely on his or her authority to act for the trust. Any act by or instrument executed by a Trustee acting pursuant to this delegation shall constitute the action of the Trustees as if done by all Trustees.

15.9 Delegation of Power to Expend

The Trustees may delegate to one or more of the Trustees, for any period, the power to bind the trust in any transaction obligating the trust to expend up to or less than a certain sum of money as specified by the delegating Trustees. The Trustee to whom the power is delegated may be the sole signatory of all checks necessary to accomplish the expenditure. The Trustees may also delegate to a property management company authority to be the sole signatory of all checks written on behalf of the trust relating to real estate owned by the trust or on checks written on behalf of the trust in an amount less than the amount specified by the Trustees.

15.10 Delegation of Investment Authority

The Trustees, acting by majority vote, may delegate to one or more Trustees or to agents (including independent investment advisors, investment counsel or managers, banks, or trust companies) the power and authority to act for the Trustees in the investment and reinvestment of trust assets. The Trustees, acting by majority vote, may also authorize the payment of compensation for investment advisory or management services. The Trustees may delegate to the retained investment counsel the power to instruct the custodian of trust property with respect to all matters affecting the property, and the custodian shall comply with those instructions.

15.11 Agents

The Trustee may act under this Trust Agreement through an agent or attorney-in-fact acting under a power of attorney duly executed by the Trustee.

15.12 Dealing with the Trustees

If a third person dealing with the Trustee or assisting him or her in the conduct of a transaction acts in good faith and for a valuable consideration and without actual knowledge that the Trustee is exceeding the Trustee's powers or improperly exercising them, the third person is not bound to inquire whether the Trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise. That third person shall be fully protected in dealing with or assisting the Trustee just as if the Trustee has and is properly exercising the powers the Trustee purports to exercise. In addition, that person has no duty to see to the application of any money paid or property transferred to or upon the order of one or more Trustees.

15.13 Reliance on Representations by the Trustees

A third person dealing with the Trustee also shall be fully protected in relying on written statements of fact, certified or declared under penalty of perjury by any one or more of the persons who appear from the original or certified copy of this Trust Agreement (or documents of appointment) to be a Trustee or successor Trustee, regarding the Trustee's authority to act under this Trust Agreement, the calling of any meeting of the Trustees, the giving of any notice of a meeting, the action taken at a meeting, and other facts concerning the trusts established under this Trust Agreement. Anyone may rely on a copy of this Trust Agreement certified by a Trustee, by the Trustee's legal counsel, or by a Notary Public, to be a counterpart or true copy of this Trust Agreement.

15.14 Reliance on the Authority of Trustees

No persons or organizations employed by the Trustee or retained by the Trustee as provided in this article shall be required to oversee or supervise the activities of the Trustee or to inquire into the Trustee's powers, authority, or discretion. Each person or organization so employed or retained may rely implicitly upon the written instructions of the Trustee with respect to the property and business of the trust, including instructions of the Trustee to deal directly with investment counsel employed by the Trustee. In no event shall any person or organization so employed or retained be liable for any act or omission of any Trustee in which that person or organization may also have participated.

ARTICLE 16
THE POWERS OF THE TRUSTEE

Subject in all instances to his or her fiduciary duties and the limitations set forth elsewhere in this Trust Agreement, with regard to the entire trust estate and all trusts established under this Trust Agreement, the Trustee shall have all the powers described below, all powers granted by law, and all powers reasonably necessary to carry out his or her duties as Trustee to administer, manage, protect, and invest the trust estate. The Trustee in his or her discretion, without court approval, authorization, or supervision, may exercise these powers except as expressly required in this Trust Agreement.

16.1 To Accept Property

The Trustee may accept or receive additions and contributions to the trust estate from me or any other person and hold the property in trust under the provisions of this Trust Agreement. If the Trustee receives property from another fiduciary and if the Trustee believes the action to be in the best interests of the trust estate, the Trustee is authorized to waive an accounting from the fiduciary, to approve his or her actions, to consent to his or her proposed actions, and to consent to his or her discharge.

16.2 To Disclaim or Reject Property

The Trustee may renounce or otherwise disclaim all or any part of any interest in property passing to the trust, by gift or bequest, and any right, power, privilege, or discretion granted the Trustee under this Trust Agreement. The Trustee may reject any property or interest in property passing to the trust, including property that by reason of hazardous materials or substance the Trustee determines (after investigation at the expense of the trust) would be detrimental to the trust purpose.

16.3 To Retain Property

The Trustee may retain trust property received at the inception of the trust or at any other time, from me or any other person until, in the judgment of the Trustee, disposition or distribution of the property should be made. The property may be retained even though the property is unproductive, is property in which a Trustee is personally interested or in which the Trustee owns an undivided interest personally or as trustee of another trust, or there is known or later discovered to be hazardous materials or substances requiring remedial action pursuant to environmental laws. The Trustee shall have no duty to dispose of any part of the trust property included in the trust at the time of its creation, or later added to the trust by me or another person, that would not be a proper investment for the Trustee to make. The Trustee may, without liability, continue to hold that property. The Trustee may hold trust property in bearer form so that title may pass by delivery, or in the name of any one Trustee or a nominee without indication of any fiduciary capacity by the nominee. The Trustee may keep all or part of the trust property at any place within the United States or abroad.

16.4 To Operate a Business

The Trustee may continue or participate in the operation of any business or other enterprise (including a partnership as a general or limited partner) that is part of the trust property for as long as the Trustee deems advisable, at the risk of the trust estate and not at the risk of the Trustee. The Trustee may incorporate, dissolve, or change the form of the organization of the business or enterprise, or operate it as a partnership or in any other form. The profits and losses from any business or other enterprise shall be chargeable to and borne by the trust, and not the Trustee. A Trustee, as an individual, may continue to be a shareholder, director, officer, employee, or partner of any business or enterprise in which the trust holds any interest.

16.5 To Invest and Reinvest Trust Property

The Trustee may invest and reinvest trust property (including income and principal) in any kind of property, whether real, personal, or mixed, including (1) real property (including leaseholds; royalty interests; interests in mines, oil and gas wells, timberlands, and other wasting assets), (2) intangible personal property (including common and preferred stock and all other kinds of securities (on margin or otherwise); investment company shares, mutual funds, index funds, common trust funds (including any common trust fund under the management of a corporate trustee) and other collective investment

vehicles; interests in partnerships (whether as a general or limited partner); commodities; governmental obligations of every kind; obligations of corporations or unincorporated associations; and patents, copyrights, trademarks, and other intangible rights), and (3) tangible personal property (including precious metals, works of art, and other collectibles). The Trustee is authorized to establish and maintain brokerage accounts, including margin accounts, for the purpose of purchasing, acquiring, possessing, pledging, hypothecating, selling and otherwise disposing of, and generally dealing in and with any of the foregoing types of investments.

16.6 To Administer Securities

. The Trustee may purchase, exchange, or sell stocks, bonds, futures contracts, and other securities, and puts, calls, straddles, and other options. The Trustee may maintain brokerage accounts, including margin and commodity accounts, and in connection with such accounts, may borrow, pledge securities, make short sales, and sell on margin or otherwise. With respect to all securities held by in the trust estate, the Trustee may exercise the rights, powers, and privileges, and responsibilities of an owner, including the right to vote; to give general or limited proxies; to pay calls, assessments, and other sums; to participate in voting trusts, pooling arrangements, foreclosures, reorganizations, consolidations, mergers, and liquidations; to deposit securities with and transfer title to any protective or other committee; and to exchange, exercise, or sell stock subscription or conversion rights. The Trustee may also accept and retain as an investment any securities received through the exercise of any of the foregoing powers.

16.7 To Conduct Banking Activities

. The Trustee may establish financial accounts of any kind, including checking, money market, and savings accounts, with any bank, savings and loan association, credit union, brokerage firm, or other financial institution (including such accounts in the banking department of a Trustee that is a corporation or partnership). The Trustee may deposit trust funds into such accounts, withdraw funds from such accounts, and transfer funds among such accounts. The Trustee may designate in writing the persons, whether or not Trustees, who may conduct such banking activities, and the financial institutions may rely, without liability, on such designations.

16.8 To Purchase and Sell Trust Property

. The Trustee may buy, purchase, acquire, sell, convey, dispose of, exchange, or otherwise transfer any trust property, or any interest in property, for cash or on credit, at public or private sale, with or without notice, and for the prices and upon the terms as the Trustee determines. The Trustee may grant or acquire options and rights of first refusal involving the acquisition or disposition of any trust property. The Trustee may also subdivide or develop land; create restrictions, easements, and other servitudes, with or without consideration; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving consideration; and dedicate real property to public use with or without consideration.

16.9 To Manage Trust Property

. The Trustee may manage, control, divide, develop, improve, repair, exchange, partition, change the character of, or abandon trust property or any interest in trust property. The Trustee may enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust. The Trustee may amend or extend existing leases. The Trustee may also demolish or remove buildings or other improvements on trust property.

16.10 To Borrow Money and Encumber Trust Property

. The Trustee may borrow money for any trust purpose from any person upon such terms and conditions as may be determined by the Trustee, and obligate the trust to make repayment from trust property. For the Trustee may loan or advance funds to the trust, and the loans or advances together with the interest charged shall be treated as a first lien on the trust estate until repaid. The Trustee may also encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in the Trustee, or to create restrictions, easements, or other servitudes on trust property.

16.11 Providing Guarantees

The Trustee may guarantee any indebtedness incurred by me, or by any entity owned directly or indirectly by me or by the trust, as I may direct.

16.12 To Make Loans

The Trustee may loan or advance trust property of any kind (including money) for any trust purpose to any person on terms and conditions as determined by the Trustee, subject to limitations stated in this Trust Agreement. The Trustee may make loans out of trust property to the current beneficiary on terms and conditions that the Trustee determines are fair and reasonable under the circumstances, and guarantee loans to the current beneficiary by encumbrances on trust property.

16.13 To Purchase Liability Insurance

The Trustee may purchase and pay the premiums on policies to insure the property of the trust estate against damage or loss and to insure the Trustee against liability with respect to third persons. The Trustee shall not be liable for any omission to purchase any type or amount of insurance. The premiums shall be a proper expense to be charged against the trust.

16.14 To Purchase and Administer Life Insurance

The Trustee may purchase, own, and pay the premiums on life insurance on my life, and collect the proceeds of life insurance policies payable to the trust. The Trustee shall have the power to compromise, arbitrate, or otherwise adjust any claim, dispute, or controversy arising under any policy payable to the trust and shall have authority to initiate, defend, settle, and compromise any legal proceeding necessary in the Trustee's discretion to collect the proceeds of any policy. The Trustee's receipt to any insurer shall be a sufficient release of the insurer. The insurer shall not be under any duty to inquire concerning the Trustee's application of the policy proceeds.

16.15 To Pay, Contest, and Settle Claims

The Trustee may pay or contest any claim; settle a claim by or against the trust by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the trust.

16.16 To Litigate

In accordance with his or her duties to enforce claims and defend actions, the Trustee may prosecute or defend actions, claims, or proceedings for the protection of the trust estate and the Trustee in the performance of his or her duties.

16.17 To Deal with Environmental Hazards

The Trustee may deal with matters involving the actual or threatened contamination of trust assets (whether real or personal) by hazardous substances, or involving compliance with environmental laws and regulations, including conducting environmental assessments, audits, and site monitoring, and taking remedial action (whether or not required by governmental authorities) to contain, clean up, or remove any environmental hazard.

16.18 To Pay and Allocate Trust Expenses

The Trustee may pay taxes and other assessments imposed on the trust estate or trust income; reasonable compensation of the Trustee and of the employees and agents of the trust; and other expenses incurred in the collection, care, management, administration, and protection of the trust estate. In allocating the payment of expenses, the Trustee shall have the power to determine which expenses are chargeable to income or principal or partly to each. The Trustee is authorized, but not directed, to allocate and charge post-death expenses incurred in the administration of the trusts or sub-trusts to post-death income. In particular, all expenses of administration claimed as income tax deductions may be entirely allocated to and charged against post-death income. In making these determinations, the Trustee shall be guided by the principles set forth in the Uniform Principal and Income Act, but his or her final determination shall be binding.

16.19 To Hire and Employ Persons

The Trustee may hire and employ persons (including individuals, corporations, partnerships, associations, and other companies), including accountants, attorneys, auditors, investment advisers, appraisers, or other agents or experts, even if they are associated or affiliated with a Trustee, to advise or assist the Trustee in the performance of his or her duties and obligations. The Trustee may grant

discretionary authority to such persons, but may not delegate either the administration of the trust or acts that are not delegable except as expressly provided in this Trust Agreement.

16.20 To Maintain Custody

The Trustee may keep any or all of the trust property at any place in California or elsewhere, within the United States or abroad, or with a depository or custodian at those places. If no bank or trust company is acting as sole or a Co-Trustee hereunder, the Trustee is authorized to appoint a bank or trust company as custodian for securities and any other trust assets. Any appointment shall terminate when a bank or trust company begins to serve as sole or as a Co-Trustee under this Trust Agreement. The custodian shall keep the deposited property; collect and receive the income and principal; and hold, invest, disburse, or otherwise dispose of the property or its proceeds (specifically including selling and purchasing securities and delivering securities sold and receiving securities purchased) upon the order of the Trustee. The custodian shall not be liable to any person interested in the trust for any action taken pursuant to the order or instructions of the Trustee or his or her authorized agents.

16.21 To Use a Nominee

The Trustee may hold securities or other property of the trust estate in the name of the Trustee, in the name of a nominee, or in street name accounts with brokers, or in the name of a custodian (or its nominee) selected by the Trustee, with or without disclosure of this Trust Agreement. The Trustee shall be responsible for the acts of such custodian, broker, or nominee affecting such property. The Trustee may also acquire and retain securities in unregistered form so that ownership passes by delivery.

16.22 To Execute and Deliver Instruments

The Trustee may execute and deliver all documents and instruments (including checks withdrawing or disbursing trust funds, stock powers, deeds and other conveyances, receipts, releases, contracts, and other agreements and transfer documents) which are needed to accomplish or facilitate the exercise of the powers vested in the Trustee, and to disclose the provisions of this Trust Agreement whenever in the Trustee's discretion disclosure is appropriate.

16.23 Other Powers

- (a) The Trustee may invest in obligations of the United States Government.
- (b) The Trustee may deposit trust funds at reasonable interest in accounts, whether or not the account is insured by a government agency or collateralized. The accounts may be maintained in the name of any one of the Trustees or in the name of a nominee.
- (c) The Trustee may make repairs, alterations, and improvements, and perform the other acts affecting trust property.
- (d) The Trustee may develop land.
- (e) The Trustee may enter into leases and other arrangements regarding minerals.
- (f) The Trustee may grant or take options.
- (g) The Trustee may exercise the powers of voting rights, payment of calls and assessments, stock subscriptions and conversions, and consent to change in form of business and participation in voting trusts.
- (b) The Trustee may hold securities and deposit securities in a securities depository.

ARTICLE 17

SPECIAL DISCRETIONARY POWERS OF THE TRUSTEE

The following provisions shall apply to each of the Trustees serving under this Trust Agreement.

17.1 To Deal with My Estate

The Trustee may loan money to and borrow money from, sell property to and buy property from, exchange property with, and otherwise deal with, on reasonable, arm's-length terms (including adequate security, fair market prices, and market rates of interest), my estate or the Trustees of other trusts created by me, for the purpose of providing liquidity to the estate or trusts or for any other purpose. The Trustee shall not be obligated to make any such loans or purchases.

17.2 To Make Payments and Distributions

The Trustee shall have the discretion to make any payments or transfers of income or principal or other sums distributable to a beneficiary in any one or more of the following ways. The Trustee shall not be required to supervise or inquire into the application of any funds so paid or applied, and the receipt of the payee shall be full acquittance and discharge of the Trustee. The Trustee may withhold from distribution all or any part of any trust property, so long as the Trustee, exercising its discretion, determines that such property may be subject to conflicting claims, tax deficiencies, or liabilities (contingent or otherwise) properly incurred in the administration of the trust.

- (a) By payment directly to the beneficiary or by deposit in any bank or similar account designated by the beneficiary even if the beneficiary is a minor or under a legal disability, without the intervention of a custodian, guardian, or conservator. Payments may be made directly to minor beneficiaries who, in the Trustee's judgment, have attained sufficient age and discretion to manage their own funds.
- (b) By payment to the legally appointed guardian or conservator of the beneficiary's person or estate or by payment for the benefit of the beneficiary to any person with whom the beneficiary resides or to any person who has custody of the beneficiary, without the intervention of a guardian or conservator.
- (c) If the beneficiary entitled to distribution is a minor, by transferring the trust property to a custodian for the beneficiary under the California Uniform Transfers to Minors Act or a similar law of any other state in which the beneficiary or custodian resides. The custodian shall be named by the Trustee, and may, but need not be, the beneficiary's parent or legal guardian or person already serving as custodian for other property. The Trustee shall provide that the trust property shall be held under the custodianship until the minor reaches a certain age selected by the Trustee, but not past age 25 or the maximum age then allowed under the applicable Uniform Transfers to Minors Act. Alternatively, the Trustee may deposit the payment for the beneficiary in a savings or similar account in the minor's name payable to the minor when he or she reaches age 18, or the Trustee may distribute the share to the Trustee of any other trust maintained for the minor, provided no other person will become entitled to any interest in the funds, and all the accumulated income and principal of the funds will be distributed to the minor when he or she reaches age 18 or, upon the minor's death, to his or her estate.
- (d) By payment to any person or organization furnishing health care, education, maintenance, or support of the beneficiary.
- (e) By making expenditures directly for the benefit of the beneficiary or for the reasonable health, education, maintenance, and support of persons whom the

beneficiary has a legal obligation to support.

- (f) By purchasing an annuity contract or other property for the benefit of a beneficiary entitled to receive a distribution.

17.3 To Sell Trust Assets

The Trustee may sell trust assets to obtain cash with which to pay my debts, income taxes, Estate taxes, expenses of administration, and other liabilities of the trust, or to satisfy pecuniary gifts provided for under this Trust Agreement. The Trustee's selection of assets to be sold for these purposes, and the tax effects of that selection, shall not be subject to question by any beneficiary. Property, assets, or funds otherwise excludable from my gross estate for federal estate tax purposes shall not be used to make any of these payments.

17.4 To Postpone Distributions

Notwithstanding other provisions of this Trust Agreement, the Trustee shall have the power to postpone the distribution of any fractional portion or part of the principal of any trust estate or of an entire trust estate of any trust created under this Trust Agreement for any person other than me if the Trustee determines that there is a compelling reason to postpone the distribution. Compelling reasons shall include, but are not limited to, a serious disability, drug addiction or dependency, a pending divorce, a potential financial difficulty, pending or threatened litigation, a serious tax disadvantage, or similar substantial cause affecting the beneficiary who otherwise would be entitled to the distribution. In that event, the distribution from or termination of any trust may be postponed, and any postponement may be continued from time to time, up to and including the entire lifetime of the beneficiary. During the postponement, the retained portion or part of the trust estate shall be administered under the same terms as applied immediately prior to the postponement.

17.5 To Determine Values and Allocate Property

The Trustee, in his or her discretion, shall determine the valuations of trust property for purposes of divisions, allocations, and distributions, and those valuations, reasonably determined, shall be final and binding on all beneficiaries and other persons having an interest in the trust. The Trustee may adjust any valuations retroactively if a different valuation is finally determined for federal estate tax purposes. The Trustee is authorized to effect the division, allocation, or distribution of trust property in divided or undivided interests, in cash or in kind or partly in both, pro rata or non-pro rata, as the Trustee shall determine, and to sell any property in connection with the division, allocation, or distribution if the Trustee deems that action necessary or appropriate. A distribution in kind may be made pro rata or non-pro rata, and a beneficiary may receive all or a portion of any asset as part of a distribution or allocation in kind. The Trustee may allocate or distribute property (or the right to receive property) which is subject to estate tax and federal income tax as income in respect of a decedent ("IRD") to any one or more of the trusts created under this Trust Agreement or the beneficiaries of any trust. The Trustee shall not be under any obligation to equalize any disproportionate allocation or distribution of items of IRD to any one or more trusts or beneficiaries. In making such divisions, allocations, and distributions, the Trustee is not required to consider the income taxes bases of such assets or the potential income tax consequences to the beneficiaries receiving the assets.

17.6 To Make Allocations between Principal and Income

The Trustee shall determine what is principal or income of the trust estate, and what items shall be charged or credited to principal or income, or both. For example, Trustee fees, attorney's fees, accounting fees, and custodian fees shall be charged against income or principal, or both, in such proportions (or all against either income or principal) as the Trustee determines. In exercising such discretion, the Trustee may use the Uniform Principal and Income Act as a guide.

The Trustee shall not be required to establish any reserves. The Trustee may, however, establish reserves for depreciation, depletion, amortization, obsolescence, or repair and improvement of capital assets; for operating capital; or to amortize loans from income. If the Trustee determines to establish a reserve, he or she may fund the reserve by appropriate charges against the income of the trust estate, in

such amounts as the Trustee determines. If any security is purchased for a premium or at a discount, such premium or discount may be amortized in a reasonable manner. In addition, the Trustee may establish such reserves as he or she considers necessary for the payment of all taxes.

17.7 To Retain or Purchase Unproductive or Under-productive Property

The Trustee may retain, purchase, or otherwise acquire property that is unproductive or under-productive of current income. Because of the substantial potential for appreciation presented by unproductive assets such as unimproved real estate and growth stocks, I want the Trustee to have broad discretion to acquire those assets. The Trustee shall have a duty to make the trust property productive, but property may be made productive by appreciation in value as well as by the production of income. The Trustee may acquire and retain assets for appreciation as part of a portfolio that produces a reasonable level of current income.

17.8 To Invest Trust Assets Together

Each of the trusts and trust shares created under this Trust Agreement shall be a separate trust for trust accounting, tax, and all other purposes. The Trustee shall keep an account for each trust and may, but shall not be required to, segregate trust assets. Rather, the Trustee may invest together the property of the separate trusts, allotting to each separate trust its proportionate undivided interest in the collective fund. The undivided interest always shall be equal to that trust's proportionate contribution to the mingled assets.

17.9 To Consolidate Trusts

If a trust is to be established or exists under this Trust Agreement for a beneficiary for whom another trust has been established under this Trust Agreement, the Trustee may allocate the property for the one trust to the other trust. Similarly, if I have established a trust for a beneficiary for whom a trust is to be established or exists under this Trust Agreement, and the dispositive provisions of that trust are substantially the same as the dispositive provisions of the trust to be established or existing under this Trust Agreement, the Trustee may transfer the property for the trust to be established or existing under this Trust Agreement to the Trustee of the other trust, to be held on the terms of that other trust. Further, where the dispositive provisions of each trust or trust share are substantially similar, the Trustee shall have the discretion to combine any trusts or trust shares into one trust because of changed circumstances, litigation among beneficiaries, administrative difficulties, or other reasons suggesting a need for such a combination. A combination must not materially impair the interests of any beneficiaries. Trusts may be combined or consolidated whether created inter vivos or by will, by the same or different trust instruments, whether the Trustee is the same, and regardless of where the trusts were created or administered. When combining trusts, however, the Trustee shall only combine Exempt Trusts with other Exempt Trusts.

17.10 To Divide Trusts

With respect to all trusts established under this Trust Agreement, the Trustee shall have the discretionary power, exercisable without need of court approval, to divide the trust into two or more separate trusts for any purpose, including, without limitation, any of the following purposes.

- (a) To create one or more separate trusts that qualify as a qualified S corporation shareholder or as any other type of special trust provided for under the I.R.C.
- (b) To create one or more separate trusts with assets completely exempt from any application of any generation-skipping transfer tax. If the Trustee exercises the election provided by I.R.C. §2652(a)(3) as to any trust, the Trustee is authorized in his or her discretion to hold the property of the trust in two separate fractional share trusts, one in an amount equal to my GST exemption allocated to the trust and one in an amount equal to the balance of the property of the trust.
- (c) To create one or more separate trusts to accomplish other proper tax planning purposes.

- (d) To create a separate trust as to any share or portion of a trust disclaimed by a beneficiary, and to sever the disclaimed portion to be administered as a separate trust.
- (e) To create a separate trust for each current income beneficiary of a trust or trust share, and to divide any trust along family lines to be administered as separate trusts.
- (f) To create one or more separate trusts because of changed circumstances, litigation among beneficiaries, administrative difficulties, or other reasons suggesting a need for a division.

The allocation of property between or among separate trusts created from a single trust or trust share may be unequal in amount and in the type of assets, and the division may be non-pro rata. The fair market values of the trust property at the date or dates of allocation shall be used in making the allocations. All trusts so established shall be designated and named by the Trustee and the property allocated to the divided trusts shall be held and administered under the same terms and provisions as would have applied to the undivided trust or trust share. With regard to planning for the S corporation election, the GST tax inclusion ratio, or other tax purposes, this power to divide trusts shall be exercised in a manner that complies with the I.R.C. and applicable Treasury regulations.

17.11 To Terminate Trusts

I recognize that circumstances may change so that continuation of a trust provided for in this Trust Agreement may not be in the best interests of its current beneficiary, taking into account all relevant factors, including the costs of administration and tax consequences. Accordingly, after my death, the Trustee may for any reason terminate any trust created under this Trust Agreement and distribute any remaining trust estate, including principal and undistributed income, to any one or more of the current beneficiaries or the presumptive remainder beneficiaries of the trust in those proportions as the Trustee determines, in a manner that conforms as nearly as possible to my intention. In exercising his or her discretion to terminate a trust, the Trustee may, but shall have no obligation to, consider the interests of any person other than the current income beneficiary, including any remainder beneficiaries.

17.12 To Permit Use of Personal Residence

The Trustee is authorized to permit me and, following my death, the current beneficiary of a trust to occupy rent-free any residence held in the trust and to use the furnishings in the residence. The Trustee shall pay from the trust all taxes, insurance premiums, assessments, costs of repairs, and maintenance for these residences. The Trustee may sell the residence and, in his or her discretion, acquire other residences from trust property. The Trustee may also permit the guardian of a minor current beneficiary of the trust, along with the guardian's family, to reside rent free with the minor beneficiary in the residence so long as the minor beneficiary is entitled to reside there.

17.13 To Hold Personal Articles in Trust

If the Trustee of any trust receives furniture or furnishings, household items, clothing and other personal effects, or vehicles or accessories to vehicles, the Trustee may distribute that property to the current beneficiary or beneficiaries of the trust, at the times and in the manner the Trustee, in his or her discretion, determines to be proper. In addition, the Trustee may allow the current beneficiaries to use this property. Neither the Trustee nor any beneficiary who uses this property shall be liable to other beneficiaries for permitting the use of this property or for the loss or damage of this property.

17.14 To Make Distributions from Qualified S Trusts

The Trustee is authorized to distribute to the beneficiary of any trust that has made a qualified S Corporation election under I.R.C. §1361 et seq. from income or principal, or both, funds sufficient to pay the federal and state income taxes imposed on the beneficiaries for the income or gain passing to the beneficiary from the S Corporation. No such distribution is required.

ARTICLE 18
DISINHERITANCE AND NO CONTEST

18.1 Disinheritance Clause

I have intentionally omitted from this Trust Agreement any provision for any of my heirs, issue, relatives, or other persons who are not named, mentioned, designated, or described in this Trust Agreement. I have intentionally omitted any person who would be a pre-termitted heir under applicable law. Except as specifically provided in this Trust Agreement, I have intentionally omitted any provision for any of my children now alive or hereafter born or adopted, or for the issue of any of my children who may predecease me. After-born children shall have no rights in my trust estate other than those expressly given my children in my Will or this Trust Agreement. I also intentionally do not provide for any stepchildren or foster children that I now have or may later acquire. I generally and expressly disinherit each and every person whomsoever claiming to be and who may be determined to be my heirs at law, except as they are otherwise expressly provided for in this Trust Agreement.

18.2 No Contest Clause

I want the greatest deterrence against interference with my estate plan that the law allows. If any heir, issue, relative, legatee, devisee, beneficiary, or other interested person; or any person who is provided for under this Trust Agreement, my Will, any beneficiary designation, or any Will substitute; or any person who would be entitled to any of my property under the laws of succession or otherwise, alone or in conjunction with any other person or persons, directly or indirectly (1) institutes any legal proceeding that attacks or contests this Trust Agreement or my Will (or any amendment or codicil to this Trust Agreement or my Will), or seeks to impair, nullify, void, or invalidate such documents or any of their provisions; (2) asserts or pursues in any manner any claim, including any creditor's claim, against my estate or property other than as permitted in this Trust Agreement and my Will; (3) attacks or contests or seeks to change any beneficiary designation under an insurance policy, employee benefit plan, deferred compensation plan, retirement plan, annuity, or other Will substitute of mine; or (4) conspires with or voluntarily assists any person or persons attempting to do any of these things, I direct that that person (the "Contestant") and all persons conspiring with or assisting him or her shall take none of my property and nothing from my estate. All these persons are expressly disinherited. Any and all gifts or property that otherwise would have gone to these persons shall be forfeited and shall pass as if these persons had predeceased me without leaving living issue. The foregoing provisions shall apply to any persons who claim that I entered into an oral agreement providing for the disposition or transfer of property to those persons or others in any way inconsistent with the provisions of this Trust Agreement or my Will. The foregoing provisions shall also apply to any action or proceeding brought by any person, other than me (or my authorized agents) during my lifetime, to change the ownership title of my property already characterized in a document signed by me (excluding any action by my Executor or Trustee to confirm ownership of my property in the trust or my estate) and any challenge to the validity of an instrument, contract, agreement, beneficiary designation, or other document providing for or directing the disposition of my property.

The foregoing provisions shall not be violated by (1) the disclaimer of any right or interest in trust property; (2) the assertion or submission of any creditors' claims, supported by consideration, by any person to my Executor or the Trustee that are believed by such person, in good faith, to be owed by me to that person or the prosecution of an action based upon any such creditor's claims; (3) the participation in a mediation or settlement discussions or the filing of a petition for settlement or compromise affecting the terms of this Trust Agreement, my Will, or other documents governing the disposition of my estate or property; (4) the filing of any petition or the taking of other action by the Trustee or my Executor seeking judicial construction or interpretation of this Trust Agreement or my Will, or of any amendment or codicil to this Trust Agreement or my Will; or (5) the commencement of any proceeding for declaratory relief to determine whether any action by any person would constitute a contest under these provisions.

18.3 Expenses of Contest

. My Executor and the Trustee serving under this Trust Agreement are expressly authorized to defend against any and all of the actions described in Section 18.2, including any contest or attack of any nature upon this Trust Agreement, my Will, or any of their provisions. All expenses incurred in the defense of any of the actions or matters described in Section 18.2 shall be paid, as the Trustee determines, from either my probate estate or the trust estate as expenses of administration. If, however, a Contestant is or becomes entitled to receive any property or property interests included in my probate estate or the trust estate, whether under this Trust Agreement, my Will, or any other instrument, then all expenses incurred by the Trustee or my Executor in the defense of the actions undertaken by the Contestant shall be charged against and paid from the property or property interests that the Contestant otherwise would be entitled to receive, whether or not the Trustee or my Executor was successful in the defense of the Contestant's actions.

ARTICLE 19 GENERAL TRUST PROVISIONS

The following provisions shall apply in all matters of construction and interpretation of this Trust Agreement.

19.1 Rules of Construction

. Unless the specific provision or term being construed or the context of the provision or term otherwise requires, and except as otherwise expressly provided in this Trust Agreement, the general provisions and rules of construction and interpretation set forth in applicable law and in this article and the definitions set forth in Article 20 (Definitions) shall govern the construction and interpretation of this Trust Agreement. Where the provisions and rules of construction or definitions set forth in applicable law and in this article and Article 20 conflict, the provisions and rules and definitions set forth in this article and Article 20 shall govern.

19.2 Governing Law

. This Trust Agreement has been executed in California, and its validity and construction, including the determination of all rights of the beneficiaries, shall be governed by the laws of California regardless of where the trusts are administered. Further, except as otherwise provided in this section, the trusts established under this Trust Agreement shall be administered in California regardless of where the Trustee or beneficiaries reside, and all matters and questions related to their administration shall be governed by the laws of California. Notwithstanding the foregoing, with the consent of a majority in percentage interest of all the beneficiaries of the trust then entitled to trust income (whether discretionary or not), the Trustee may transfer the situs of a trust established under this Trust Agreement to another state of the United States as he or she determines to be in the best interests of the trust beneficiaries. After any change of situs for a trust, the laws of the state of the new situs shall govern the administration of the transferred trust, but the validity of this Trust Agreement and its construction shall continue to be governed by the laws of California.

19.3 Successors in Interest

. This Trust Agreement shall be binding upon my heirs, executors, successors, and assigns, the Trustee and the successor Trustee, and all the beneficiaries and interested persons under this Trust Agreement.

19.4 Court Supervision

. Under California law the California courts have jurisdiction to consider petitions concerning each trust created by this Trust Agreement.

19.5 References to Statutes

. Whenever a reference is made to any portion of the Internal Revenue Code or to any other law, the statutory reference shall be construed to refer to the statutory section mentioned, related successor or substitute sections, and corresponding provisions of any subsequent law, including all amendments and additions.

19.6 Gender, Tense, and Numbers

. Unless the context clearly requires another construction, the masculine, feminine, and neuter genders

shall each include the others as appropriate; the present tense shall include the past and future tenses, and the future tense shall include the present tense; and the singular number shall include the plural, and the plural shall include the singular.

19.7 Effect of Headings

Article, section, and paragraph numbers and headings, as well as titles, used in this Trust Agreement are used for convenience of reference only and shall not be considered in the construction or interpretation of this Trust Agreement. They are not intended to have any legal effect or to affect the scope, meaning, or intent of the provisions of this Trust Agreement.

19.8 Severability

If any part, clause, or provision of this Trust Agreement, or the application of any part, clause, or provision of this Trust Agreement to any person or circumstances, is held to be void, invalid, unenforceable, or inoperative, this invalidity shall not affect any other parts, clauses, or provisions or applications of this Trust Agreement that can be given effect without the invalid provision or application. The remaining provisions of this Trust Agreement shall be effective and fully operative as though the part, clause, or provision had not been contained in this Trust Agreement. To this end, the provisions of this Trust Agreement are severable.

**ARTICLE 20
DEFINITIONS**

The following definitions shall apply in all matters of construction and interpretation of this Trust Agreement.

20.1 Administer

The term "administer" means to hold, manage, administer, allocate, and distribute.

20.2 Agent

The term "agent" means (1) an individual's attorney-in-fact acting under a power of attorney, to the extent the power of attorney specifically authorizes the attorney-in-fact to take the proposed actions, or (2) an individual's court-appointed conservator or guardian, to the extent the conservator or guardian has obtained, from the court that appointed the agent as conservator or guardian, approval of its proposed actions at a hearing for which the Trustee received timely notice.

20.3 Beneficiary

The terms "beneficiary" or "beneficiaries" mean a person to whom a donative transfer of property or a distribution from a trust is or could be made or that person's successor in interest, and shall include an heir, devisee, legatee, a person with any interest in a trust, and any person entitled to enforce a charitable trust.

20.4 Charitable Organization

The term "charitable organization" means an organization or trust described in L.R.C. §170(c), §2055(a), and §2522(a) to which contributions or bequests are deductible for both federal income and estate tax purposes.

20.5 Child, Parent, and Issue

The term "child" means any individual entitled to take as a child by intestate succession from the parent whose relationship is involved. References to "child" or "children" mean descendants in the first degree of the parent designated. A child of mine shall include a child born or adopted after the execution of my Will and this Trust Agreement. The term "parent" means any individual entitled to take as a parent by intestate succession from the child whose relation is involved. The terms "issue" or "descendants" of a person means all the person's lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of parent and child. The term "grandchild" includes only a child of a child of the person referred to.

(a) Limitations as to Adopted Children

The terms "child," "children," "issue," and "descendant" shall include "adopted children." The term "adopted children" means all persons adopted by someone other than me only if the person was adopted

before reaching the age of eighteen (18), or lived in the home of the adopting parent before reaching the age of eighteen (18) if not actually adopted before that time. Anyone that I adopt shall be included as a child of mine regardless of the adopted person's age at the time of the adoption. An adopted child and the adopted child's issue shall be considered issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or of either of the adopting parents.

(b) Limitations as to Stepchildren and Foster Children

The terms "child," "children," "issue," and "descendants" shall not include a foster child or a stepchild, even if a parent-child relationship existed between the foster parent and the foster child or between the stepparent and the stepchild.

20.6 Distribute

The term "distribute" means to pay directly to, or apply for the benefit of, the designated beneficiary, donee, or transferee or that person's agent.

20.7 Education

The term "education" shall include, but not be limited to, elementary, primary, secondary, college, graduate, postgraduate, and professional study or schooling, and vocational training, as well as instruction in drama, music, art, science, computers, and other subjects taught before or after a regular school day. Payments for education shall include tuition, books, supplies, tutors, and the beneficiary's reasonable related living and travel expenses, including clothing, room and board, and a reasonable living allowance.

20.8 Estate Taxes

The term "Estate taxes" means all estate, inheritance, transfer, succession, legacy, death, and other similar taxes, including any interest or penalties on these taxes, that may be imposed by reason of my death. "Estate taxes" excludes any income tax, generation-skipping transfer tax, excise tax, and other similar taxes.

20.9 Executor

The term "Executor" means an executor, administrator, administrator with the will annexed, special administrator, personal representative, or a person who performs substantially the same function under the law of another jurisdiction governing the person's status, including all successors or persons holding the office temporarily. If, however, there is no Executor serving within the United States, the term means the Trustee of this trust for purposes of the property held in the trust estate, as provided in I.R.C. §2203. The terms "Executor" and "Executors" each include both the singular and the plural.

20.10 Expenses of Estate Administration

The term "expenses of estate administration" means those expenses incurred following my death by my estate or by the Trustee of the trust that are deductible (whether or not so deducted) for estate tax purposes pursuant to I.R.C. §2053. Such expenses shall include attorney's, appraiser's, and accountant's fees and all expenses incurred in determining the amount of any Estate tax.

20.11 Federal Estate Tax Value

The term "federal estate tax value" means the value of property included in my gross estate, valued either as of my date of death or the alternate valuation date, as finally determined for federal estate tax purposes. The federal estate tax value of any property acquired after my death shall be deemed to be its adjusted basis at the time of its acquisition as finally determined for federal income tax purposes. References to "adjusted gross estate" shall mean my gross estate as finally determined for federal estate tax purposes, but excluding property includible in my gross estate pursuant to I.R.C. §2044 and subtracting allowable deductions under I.R.C. §2053 and §2054.

20.12 Generation-Skipping Transfer Tax

The terms "generation-skipping transfer tax" or "GST tax" refer to the federal generation-skipping transfer tax imposed by Chapter 13 of the I.R.C. The term "GST exemption" refers to the exemption provided in I.R.C. §2631(a). "Unused GST exemption" means the amount of a person's GST exemption that is then remaining available for allocation to property or a trust as to which the person is the transferor. A "GST exempt trust" is a trust that has an inclusion ratio of zero for purposes of the GST tax.

A "GST nonexempt trust" is a trust that has an inclusion ratio of greater than zero for purposes of the GST tax. The terms "GST reverse QTIP election" or "reverse QTIP election" refer to the election provided for qualified terminable interest property under I.R.C. §2652(a)(3) to treat all of a QTIP trust as if, for purposes of the GST tax, the QTIP election had not been made.

20.13 Gifts

The term "gifts" mean devises, legacies, bequests, and all other types of donative transfers, inter vivos and testamentary.

20.14 Guardian

The term "guardian" means the court-appointed guardian of the person or estate of a minor person. The term "natural guardian" means the child's parents.

20.15 Health

The term "health" refers to all matters related to the health of the designated person, including medical, dental, hospital, and nursing expenses and expenses of home care and therapy incurred for the person's benefit.

20.16 Heirs at Law

The terms "heirs at law" or "heirs" mean the persons determined according to the California laws of intestate succession then in effect relating to separate property not acquired from a previously deceased spouse.

20.17 Incapacity

The term "incapacity" when used with respect to any person appointed to serve or serving as Trustee shall have the following meaning. A person shall be considered to be incapacitated, and unable to serve or continue to serve as a Trustee, if the person is under a legal disability or by reason of illness or mental or physical disability is or would be unable to give prompt and intelligent consideration to the financial and administrative matters affecting the trust or trusts for which he or she serves as Trustee. The determination of a person's inability at any time shall be made by either (1) the person's primary physician, or (2) an order of a court appointing a conservator for that person.

20.18 Interested Person

The term "interested person" includes (1) an heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against the trust estate; (2) any person having priority for appointment as a fiduciary under this Trust Agreement; and (3) a fiduciary representing an interested person.

20.19 Internal Revenue Code

The term "Internal Revenue Code" or "I.R.C." means the United States Internal Revenue Code of 1986, as amended from time to time, and corresponding provisions of any subsequent federal internal revenue law.

20.20 Investment Counsel

The term "investment counsel" means reputable, professional, independent, and disinterested investment counsel that is (1) currently managing at least five other accounts of equal or larger size, (2) compensated for services on a fee basis, but not on any percentage of the price of assets purchased or sold, and (3) not personally or financially interested in the sale or purchase of assets to or by the trust. The term "discretionary investment counsel" means investment counsel that has been given the authority to manage the investment of all or any portion of the trust estate with full discretion to act without seeking the approval of the Trustee as to individual transactions.

20.21 May and Shall

Wherever used in this Trust Agreement, the term "may" is discretionary and means the Executor or Trustee is authorized, at his or her option, to take or not take an action as he or she determines, in his or her sole and absolute discretion. The term "shall" is mandatory and means that the Executor or Trustee must take the designated action.

20.22 Property

The term "property" means anything that may be the subject of ownership and includes real and

personal property, tangible and intangible property, and any interest in such property.

- (a) The term "real property" (including any residence) includes the land (including all easements appurtenant to the land), all buildings and improvements on the land, all policies of insurance on the land and buildings and improvements on the land, and all oil, gas, mineral, and similar interests. A gift of real property, including any gift of a residence, shall be made subject to any and all liens, mortgages, deeds of trust, or other encumbrances on the property or secured by the property, whether or not recorded in the official county records, unless otherwise provided in this Trust Agreement.
- (b) The term "tangible personal property" includes clothing, jewelry, and other personal effects; household furniture, furnishings, equipment, and appliances (including rugs, linen, and other household decorations); china, silverware, glassware, crystal, and other household items of use and decoration; books, pictures, works of art (including paintings, sculptures, and works on paper), antiques, stamp and coin collections, wine, and other collectibles; automobiles, boats, other vehicles, and accessories to vehicles; and other items of domestic, household, or personal use. "Tangible personal property" shall not include ordinary currency, cash, or bullion or property primarily held for investment purposes, such as investment funds, or any property held for use in a trade or business.
- (c) The term "intangible property" includes rights in literary or musical properties, rights in works of art, contract rights, copyrights, publishing rights, and rights to a deceased personality's name, voice, signature, photograph, or likeness.

20.23 Residence

The term "residence" means that dwelling or dwellings, as the case may be, in which I normally lived prior to my death. The term "residence" includes the fixtures, exterior planting, built-in appliances, and other items that in the ordinary course of the sale and purchase of the dwellings would remain in or be regarded as part of the dwellings.

20.24 Residue

The term "residue" means the property remaining after the payment of all expenses of administration and debts and the distribution of all specific gifts and tangible personal property, and before the payment of Estate taxes. Estate taxes shall be handled separately, and shall be paid and charged as specifically provided in this Trust Agreement.

20.25 Share

The term "share" means a beneficiary's proportional interest as determined by the provisions of this Trust Agreement in the principal and accumulated income of the trusts established under this Trust Agreement.

20.26 Survivorship

The term "survive" or "survivorship" means to live for at least thirty (30) days past the designated event. No beneficiary shall be considered to have survived my death, the death of a prior beneficiary, or the event terminating any trust (and be entitled to any trust funds) unless the beneficiary survives for at least thirty (30) days after the event. Any beneficiary required to survive any other person, who fails to survive the other person by thirty (30) days, shall be deemed to have predeceased that person. If it cannot be established whether a beneficiary has survived by thirty (30) days, the beneficiary shall be deemed to have failed to survive for the required time. Except as otherwise expressly provided, any gift or bequest to any person made contingent upon the survivorship of that person shall lapse and shall not be made if the conditions of survivorship stated in this section or elsewhere in this Trust Agreement are not met. The lapsed gifts or bequests shall pass instead as part of the residue of the trust.

20.27 Trust Estate

The term "trust estate" means property transferred to the Trustee, in trust, to be administered under the terms of this Trust Agreement, including the property transferred to the Trustee following my death, and all the income from and appreciation in the property transferred to the Trustee. As a matter of convenience, all property at any time subject to this Trust Agreement is collectively referred to as the "trust estate."

20.28 Trustee

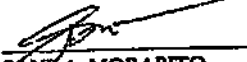
The terms "Trustee" or "Trustees" mean the persons who are serving from time to time as the Trustees or Co-Trustees under this Trust Agreement, including each initial, additional, or successor Trustee, whether or not appointed or confirmed by any court. Unless otherwise expressly provided, all references in this Trust Agreement to the "Trustees" shall include all Trustees. The terms "Trustee" and "Trustees" each include both the singular and the plural. The term "corporate Trustee" means a corporation, a bank, a trust company, or other entity that is authorized by law to serve as a professional Trustee. The term "Independent Trustee" means a Trustee who is not any of the following: (1) a beneficiary of the trust for which he or she is serving as Trustee, (2) a person who has transferred property to such trust or joined in any such transfer, or (3) a person who is a related or subordinate party as to any such beneficiary or grantor. In addition, if a General Power of Appointment held by a beneficiary of a trust may only be exercised with the consent of an Independent Trustee, the term "Independent Trustee" also means a person who does not have a substantial interest in the property subject to the power which interest is adverse to the exercise of the power in favor of the beneficiary, his or her estate, his or her creditors, or the creditors of his or her estate.

ARTICLE 21

RELIANCE ON CERTIFIED COPIES

To the same effect as if it were the original, anyone may rely upon a copy of this Trust Agreement, or any part of this Trust Agreement, certified by a Grantor or Trustee or their legal counsel to be a true and correct copy of all or any part of this Trust Agreement, or of any document required to be filed with or maintained at the office of the Trustee. Anyone may rely upon any statements of fact concerning this trust certified by anyone who appears from an original document, or a certified copy, to be serving as a Trustee under this Trust Agreement.

I have executed this Trust Agreement on September 30th, 2010 in West Hollywood, California.


PAUL A. MORABITO
Grantor and Trustee

WITNESS:

I attest that Paul Morabito signed this document in my presence, and that he appears to be of sound mind, total competence, and that he has affirmed to me that the contents of this document fully and absolutely represent his intentions and desires, and further that he attests that he is under no outside or third party influence in having written this document, determined its contents, or now signing it before me and _____, the Notary.

name: _____

NOTARY:

State of California }
County of Los Angeles }

On September 30th, 2010, before me, _____, personally appeared Paul Morabito, who

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proved to me on the basis of satisfactory evidence to be the person whose name subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

SEE Attached

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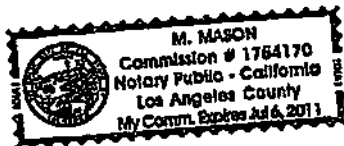
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On September 30, 2010 before me, M. NASH Notary Public

personally appeared PAUL MORABITO



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature M. NASH

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: FIFTH AMENDMENT AND RESTATEMENT OF THE TRUST

Document Date: N/A Number of Pages: 3

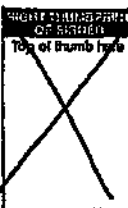
Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: PAUL MORABITO

- ☒ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: Self



Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____

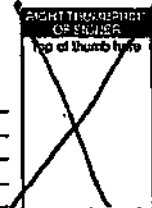


EXHIBIT 3

EXHIBIT 3

CONFIDENTIAL

UNANIMOUS WRITTEN CONSENT
OF THE DIRECTORS AND SHAREHOLDERS OF
CONSOLIDATED WESTERN CORPORATION

THE UNDERSIGNED, being the directors and shareholders of Consolidated Western Corporation, a Nevada corporation (the "Company"), hereby take the following actions and consent to the adoption of the following resolutions without a meeting, pursuant to the applicable provisions of the Nevada Business Corporations Act:

1. It has been proposed that the Company merge with and into Superpumper, Inc., an Arizona corporation ("SPI"), with SPI being the surviving corporation, pursuant to the Plan of Merger, a copy of which is attached hereto as Exhibit A (the "Plan"); and
2. The undersigned are of the opinion that said merger is in the best interests of the Company.

NOW, THEREFORE, be it

RESOLVED, that the directors and the shareholders hereby adopt the Plan; and it is further

RESOLVED, that Consolidated Western Corporation (the "Company") merge, and it hereby does merge, itself into Superpumper, Inc. ("SPI"), in accordance with the terms of the Plan; and it is further

RESOLVED, that the proper officers of the Company be, and they hereby are, authorized and directed to execute and file Articles of Merger with the Nevada Secretary of State in order to effectuate said merger; and it is further

RESOLVED, that each officer of the Company be, and each of them hereby is, authorized and empowered to do or cause to be done all such acts, deeds and things and to make, execute and deliver, or cause to be made, executed or delivered, all such agreements, undertakings, documents, instruments or certificates, in the name and on behalf of the Company otherwise, as he may

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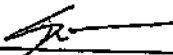
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deem necessary, advisable or appropriate to effectuate or fulfill the purposes and intent of the foregoing resolutions.

IN WITNESS WHEREOF, the undersigned have executed this Consent this 28th day of September, 2010.

DIRECTORS:

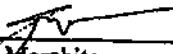


Paul A. Morabito

Edward Bayuk


Salvatore Morabito

SHAREHOLDERS:



Paul A. Morabito

Edward Bayuk


Salvatore Morabito

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RBSL 001417

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EXHIBIT A

PLAN OF MERGER

CONFIDENTIAL

RBSL 001418

EXHIBIT 4

EXHIBIT 4

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UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS
AND
SOLE SHAREHOLDER
OF
SUPERPUMPER, INC.

THE UNDERSIGNED, being the board of directors and the sole shareholder of SUPERPUMPER, INC., an Arizona corporation (the "Company"), hereby take the following actions and consents to the adoption of the following resolutions without a meeting, pursuant to the provisions of the Arizona Business Corporations Law:

1. The Company is lawfully owned solely by Consolidated Western Corporation (the "Parent").
2. The Company desires to merge the Parent into itself, and to possess all of the respective estate, property, rights, privileges and franchises of the Parent, pursuant to the Plan of Merger between the Company and the Parent, a copy of which is attached hereto as Exhibit A (the "Plan"), and the board of directors is of the opinion that said merger is in the best interests of the Company.

NOW, THEREFORE, be it

RESOLVED, that the board of directors hereby adopts the Plan;
and it is further

RESOLVED, that Superpumper, Inc. (the "Company") merge, and it hereby does merge, said Parent into itself and assumes all of its respective liabilities and obligations, in accordance with the terms of the Plan; and be it further

RESOLVED, that the merger shall become effective upon the date of filing of a Articles of Merger with the Arizona Secretary of State and the filing of such other certificates or articles as are required or

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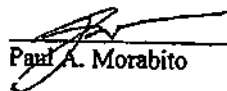
appropriate with the Secretary of State of the jurisdiction of formation of the Parent; and it is further

RESOLVED, that the proper officers of the Company be, and they hereby are, authorized and directed to execute and file the articles of merger with the Arizona Secretary of State and to file such other certificates or articles as are required or appropriate with the Secretary of State of the jurisdiction of formation of the Parent in order to effectuate said merger; and be it further

RESOLVED, that each officer of the Company be, and each of them hereby is, authorized and empowered to do or cause to be done all such acts, deeds and things and to make, execute and deliver, or cause to be made, executed or delivered, all such agreements, undertakings, documents, instruments or certificates, in the name and on behalf of the Company otherwise, as he may deem necessary, advisable or appropriate to effectuate or fulfill the purposes and intent of the foregoing resolutions.

IN WITNESS WHEREOF, the undersigned has executed this Consent this 28th day of September, 2010.

BOARD OF DIRECTORS:


Paul A. Morabito

Edward Bayuk

Salvatore Morabito

SHAREHOLDER:

Consolidated Western Corporation

By: 
Salvatore Morabito, Vice President

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EXHIBIT A

PLAN OF MERGER

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RBSL 001421



ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(775) 684-8708
Website: www.nvssa.gov

Articles of Merger
(PURSUANT TO NRS 92A.200)
Page 1

USE BLACK INK ONLY - DO NOT HIGHLIGHT

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Articles of Merger
(Pursuant to NRS Chapter 92A - excluding 92A.200(4b))

1) Name and jurisdiction of organization of each constituent entity (NRS 92A.200):

☐ If there are more than four merging entities, check box and attach an 8 1/2" x 11" blank sheet containing the required information for each additional entity from article one.

Consolidated Western Corporation	
Name of merging entity	
Nevada	Corporation
Jurisdiction	Entity type *
Name of merging entity	
Jurisdiction	Entity type *
Name of merging entity	
Jurisdiction	Entity type *
Name of merging entity	
Jurisdiction	Entity type *
and,	
Superpumper, Inc.	
Name of surviving entity	
Arizona	Corporation
Jurisdiction	Entity type *

* Corporation, non-profit corporation, limited partnership, limited-liability company or business trust.

Filing Fee: \$350.00

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merger Page 1
Revised: 8-20-10

RBSL 001422



Articles of Merger
(PURSUANT TO NRS 92A.200)
Page 2

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- Attn: Superpumper, Inc.
c/o: 14631 North Scottsdale Road, Suite 125
Scottsdale, Arizona 85254-2711

☒ The undersigned declares that a plan of merger has been adopted by each constituent entity (NRS 92A.360).

☐ The undersigned declares that a plan of merger has been adopted by the parent domestic entity (NRS 92A.180).

- ☐ If there are more than four merging entities, check box and attach an 8 1/2" x 11" blank sheet containing the required information for each additional entity from the appropriate section of article four.

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

and, or,

Name of surviving entity, if applicable

Nevada Secretary of State 82A Mergers Page 2
Revised 8-20-10

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ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(775) 684-5708
Website: www.nvsos.gov

Articles of Merger

(PURSUANT TO NRS 92A.200)

Page 3

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(b) The plan was approved by the required consent of the owners of ":

Consolidated Western Corporation

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

and, or,

Supergump, Inc.

Name of surviving entity, if applicable

* Unless otherwise provided in the certificate of trust or governing instrument of a business trust, a merger must be approved by all the trustees and beneficial owners of each business trust that is a constituent entity in the merger.

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merger Page 3
Revised: 9-20-10

RBSL 001424



ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4620
(775) 684-6708
Website: www.nvsec.gov

Articles of Merger
(PURSUANT TO NRS 92A.200)
Page 4

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(c) Approval of plan of merger for Nevada non-profit corporation (NRS 92A.180):

The plan of merger has been approved by the directors of the corporation and by each public officer or other person whose approval of the plan of merger is required by the articles of incorporation of the domestic corporation.

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

and, or:

Name of surviving entity, if applicable

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merger Page 4
Revised: 9-25-10

RBSL 001425



ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(775) 684-5768
Website: www.nvsos.gov

Articles of Merger
(PURSUANT TO NRS 92A.200)
Page 5

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5) Amendments, if any, to the articles or certificate of the surviving entity. Provide article numbers, if available, (NRS 92A.200)*:

6) Location of Plan of Merger (check a or b):

☐

(a) The entire plan of merger is attached;

or,

☒

(b) The entire plan of merger is on file at the registered office of the surviving corporation, limited-liability company or business trust, or at the records office address if a limited partnership, or other place of business of the surviving entity (NRS 92A.200).

7) Effective date (optional)**: September 29, 2010

* Amended and restated articles may be attached as an exhibit or integrated into the articles of merger. Please entitle them "Restated" or "Amended and Restated," accordingly. The form to accompany restated articles prescribed by the secretary of state must accompany the amended and/or restated articles. Pursuant to NRS 92A.180 (merger of subsidiary into parent - Nevada parent owning 90% or more of subsidiary), the articles of merger may not contain amendments to the constituent documents of the surviving entity except that the name of the surviving entity may be changed.

** A merger takes effect upon filing the articles of merger or upon a later date as specified in the articles, which must not be more than 90 days after the articles are filed (NRS 92A.240).

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merger Page 6
Revised: 9-20-10

RBSL 001426



ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(775) 684-5708
Website: www.nvsos.gov

Articles of Merger

(PURSUANT TO NRS 92A.200)

Page 6

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8) Signatures - Must be signed by: An officer of each Nevada corporation; All general partners of each Nevada limited partnership; All general partners of each Nevada limited-liability limited partnership; A manager of each Nevada limited-liability company with managers or one member if there are no managers; A trustee of each Nevada business trust (NRS 92A.230)*

☐ If there are more than four merging entities, check box and attach an 8 1/2" x 11" blank sheet containing the required information for each additional entity from article eight.

Consolidated Western Corporation

Name of merging entity

X

Signature

Salvatore Morabito, Vice Pres

Title

09/29/10

Date

Name of merging entity

X

Signature

Title

Date

Name of merging entity

X

Signature

Title

Date

Name of merging entity

X

Signature

Title

Date

and,

Superpumper, Inc.

Name of surviving entity

X

Signature

Salvatore Morabito, Vice Pres

Title

09/29/10

Date

* The articles of merger must be signed by each foreign constituent entity in the manner provided by the law governing it (NRS 92A.230). Additional signature blocks may be added to this page or as an attachment, as needed.

IMPORTANT: Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merger Page 6
Revised: 9-25-10

RBSL 001427

EXHIBIT 5

EXHIBIT 5

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**PLAN OF MERGER
OF
CONSOLIDATED WESTERN CORPORATION
WITH AND INTO
SUPERPUMPER, INC.**

This Plan of Merger, is dated as of September 28, 2010, by and between Consolidated Western Corporation, a Nevada corporation with offices at 14631 North Scottsdale Road, Suite 125, Scottsdale, Arizona 85254-3456 ("CWC") and Superpumper, Inc., an Arizona corporation with offices at 14631 North Scottsdale Road, Suite 125, Scottsdale, Arizona 85254-3456 ("SPI").

RECITALS:

The Boards of Directors of CWC and SPI deem it advisable and in the best interests of each such corporation and their respective stockholders that CWC be merged with and into SPI in accordance with the terms of this Plan of Merger (the "Merger").

The Boards of Directors of CWC and SPI have adopted resolutions authorizing and approving the proposed merger of CWC with and into SPI according to the terms and conditions of this Plan and Agreement of Merger, authorizing the submission to their respective shareholders of the proposal to approve the merger of CWC with and into SPI according to the terms and conditions of this Plan and Agreement of Merger, and recommending the approval by their respective shareholders of the proposal to merge CWC with and into SPI according to the terms and conditions of this Plan of Merger.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**ARTICLE 1.
THE MERGER**

1.01 Surviving Corporation. At the Effective Time (as defined in Article 6 hereof), CWC shall be merged with and into SPI (sometimes referred to herein as the "Surviving Corporation"), which shall continue to be governed by the laws of the State of Arizona, and the separate corporate existence of CWC shall thereupon cease. The Merger shall be completed pursuant to the provisions of the Arizona Corporation Law.

1.02 Effects of the Merger. The Merger shall have the effects set forth in the Arizona Corporation Law, including without limitation, upon the effectiveness of the Merger: (a) the separate existence of CWC shall cease; (b) SPI, as the Surviving Corporation shall possess all of

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the rights, privileges, powers, immunities, purposes and franchises, both public and private, of CWC; (c) all real and personal property, tangible and intangible, of every kind and description belonging to CWC shall be vested in SPI as the Surviving Corporation without further act or deed, and the title to any real estate or any interest therein vested in CWC shall not revert or in any way be impaired by reason of the Merger; (d) SPI, as the Surviving Corporation shall be liable for all the obligations and liabilities of each of CWC and any claim existing or action or proceeding pending by or against SPI may be enforced as if the Merger had not taken place; and (e) neither the rights of creditors nor any liens upon or security interests in the property of CWC shall be impaired by the Merger.

1.03 Service of Process for CWC. The Surviving Corporation hereby appoints the Secretary of State of Nevada as its agent for service of process in a proceeding to enforce (a) any obligation which accrued before the Effective Date or (b) the rights of dissenting owners of CWC.

ARTICLE 2. SHAREHOLDER APPROVAL

2.01 Shareholder Approval. Following execution of this Plan of Merger, this Plan of Merger shall be submitted to the shareholders of CWC and SPI for their approval. The submission of this Plan of Merger to the shareholders of CWC and SPI shall be accompanied by a recommendation from the Board of Directors that the Merger, as provided for by this Plan of Merger, be approved by the shareholders.

ARTICLE 3. ARTICLES OF INCORPORATION AND BYLAWS

3.01 Certificate of Incorporation and By-laws of Surviving Corporation. At the Effective Time, the Articles of Incorporation of SPI, as in effect immediately prior to the Effective Time, shall be the Articles of Incorporation of the Surviving Corporation. At the Effective Time, the Bylaws of SPI as in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation.

ARTICLE 4. DIRECTORS AND OFFICERS

4.01 Directors and Officers of Surviving Corporation. The persons who are directors or officers of SPI at the Effective Time shall, immediately after the Effective Time, be the officers and directors of the Surviving Corporation, until their successors are elected or appointed in accordance with law.

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ARTICLE 5.
MANNER AND BASIS OF CONVERTING SHARES

5.01 Conversion of Shares. The 1,000 common shares, without par value, of SPI, which are issued and outstanding immediately prior to the merger shall, at the effective time of the merger, be cancelled without consideration. Each share of common stock of CWC, having a par value of \$.10 per share which is issued and outstanding at the time of the merger shall be converted to an issued and outstanding share of common stock of SPI having a no par value at the effective time of the merger.

ARTICLE 6.
EFFECTIVE TIME

6.01 Effective Time. As used in this Plan of Merger, the term "Effective Time" shall mean the filing dated of the Articles of Merger.

[Remainder of page intentionally left blank; signature page to follow]

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IN WITNESS WHEREOF, the undersigned corporations have executed this Plan of Merger as of the date first set forth above.

CONSOLIDATED WESTERN
CORPORATION

By: 
Name: Salvatore Morabito
Title: Vice President

SUPERPUMPER, INC.

By: 
Name: Salvatore Morabito
Title: Vice President

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EXHIBIT 6

EXHIBIT 6

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ARTICLES OF MERGER
OF
CONSOLIDATED WESTERN CORPORATION
(a Nevada Corporation)

INTO

SUPERPUMPER, INC.
(An Arizona Corporation)

(ARS, §§ 10-1101, 10-1105)

1. Filed simultaneously with these Articles of Merger is the Plan of Merger which has been adopted by Consolidated Western Corporation, a Nevada corporation, which is the disappearing corporation, and Superpumper, Inc., an Arizona corporation which is the surviving corporation.
2. The name of the surviving corporation is Superpumper, Inc. and its known place of business is 14631 North Scottsdale Road, Suite 125, Scottsdale, Arizona 85254-2711.
3. The name and address of the statutory agent of the surviving corporation is CT Corporation System, 2394 East Camelback Road, Phoenix, Arizona 85016.
4. The Plan of Merger does not contain any amendments to the Articles of Incorporation of the surviving corporation.
5. Approval of the shareholders of both corporations was required. The designations of voting groups in each corporation, the number of votes in each, the number of votes represented at the meeting at which the merger was adopted or represented on each consent to the merger by the shareholders entitled to vote and the votes cast for and against the merger were as follows:
 - a. Regarding Superpumper, Inc., the surviving corporation: There is only one voting group entitled to vote on approval of the merger. The voting group consisting of 1,000 shares of common stock is entitled to 1,000 votes. A written consent was signed and duly authorized by the voting group consisting of 1,000 votes for the merger. The number of votes cast for the merger was sufficient for approval by the voting group.
 - b. Regarding Consolidated Western Corporation, the disappearing corporation: There is only one voting group entitled to vote on approval of the merger. The voting group consisting of 100 shares of common stock is entitled to 100 votes. A written consent was signed and duly authorized by the voting group consisting of

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100 votes all for the merger. The number of votes cast for the merger was sufficient for approval by the voting group.

6. The merger shall become effective on September 29, 2010, at 4:00 P.M.

DATED as of this 29th day of September, 2010.

SUPERPUMPER, INC.

By: 
Name: Salvatore Morabito
Title: Vice President

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EXHIBIT 7

EXHIBIT 7

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2009 TAX RETURN

CLIENT COPY

Client: MORABI-P

Prepared for: PAUL MORABITO
8581 SANTA MONICA BLVD. #708
SANTA MONICA, CA 90069-4120

Prepared by: STANTON R. BERNSTEIN, CPA
STANTON BERNSTEIN, AN ACCOUNTANCY CORP.
6320 CANOGA AVE., 15TH FLOOR
WOODLAND HILLS, CA 91367
(818) 596-2139

Date: OCTOBER 14, 2010

Comments:

Route to: _____

FD02001L 05/13/09

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RBSL 00393

CONFIDENTIAL

STANTON BERNSTEIN, AN ACCOUNTANCY CORP.
8320 CANOGA AVE., 15TH FLOOR
WOODLAND HILLS, CA 91367
(818) 596-2139

October 14, 2010

PAUL MORABITO
8581 SANTA MONICA BLVD. #708
SANTA MONICA, CA 90409-4120

REDACTED FOR
ACCOUNTANT-CLIENT PRIVILEGE

REDACTED FOR
ACCOUNTANT-CLIENT PRIVILEGE

STANTON R. BERNSTEIN, CPA

CONFIDENTIAL

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CONFIDENTIAL

STANTON BERNSTEIN, AN ACCOUNTANCY CORP.
6320 CANOGA AVE., 15TH FLOOR
WOODLAND HILLS, CA 91367
(818) 596-2139

Client MORABITO
October 14, 2010

PAUL MORABITO
8581 SANTA MONICA BLVD. #708
SANTA MONICA, CA 90409-4120

FEDERAL FORMS

Form 1040	2009 U.S. Individual Income Tax Return
Schedule A	Itemized Deductions
Schedule B	Interest and Dividend Income
Schedule C	Profit or Loss From Business
Schedule D	Capital Gains and Losses
Schedule E p2	Supplemental Income and Loss
Schedule R	Making Work Pay & Govt Retiree Credits
Form 4858	Application for Automatic Extension
Form 4952	Investment Interest Expense Deduction
Form 8582	Passive Activity Loss Limitations
Form 8801	Credit for Prior Year Minimum Tax
Form 8879	IRS e-file Signature Authorization

ARIZONA FORMS

Form 140NR	2009 Arizona Nonresident Income Tax Return
Schedule A(NR)	Itemized Deductions, Nonresident
Schedule A	Federal Schedule A
AZ-8879	E-file Signature Authorization

CALIFORNIA FORMS

Form 540NR	2009 California Part-Year/Nonresident Return
Schedule CA-NR	California Adjustments
Schedule D (540NR)	Capital Gain or Loss Adjustment
Schedule D-1	Sales of Business Property
Form 3510	Credit for Prior Year Alternative Minimum Tax
Form 3526	Investment Interest Expense Deduction
Form 3801	Passive Activity Loss Limitations
Form 3805V	NOL Carryover and Disaster Loss Deduction
Form 8879	California e-file Signature Authorization

FEE SUMMARY

Preparation Fee

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RBSL 00395

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Form **8879**

IRS e-file Signature Authorization

OMB No. 1545-0074

2009Department of the Treasury
Internal Revenue Service

- Do not send to the IRS. This is not a tax return.
► Keep this form for your records. See instructions.

Declaration Control Number (DCN)

00-951053-18082-0

Taxpayer's name

Social security number

PAUL MORABITO

Spouse's name

Spouse's social security number

Part I Tax Return Information – Tax Year Ending December 31, 2009 (Whole Dollars Only)

1 Adjusted gross income (Form 1040, line 38; Form 1040A, line 22; Form 1040EZ, line 4).....	1	-1,050,249.
2 Total tax (Form 1040, line 60; Form 1040A, line 37; Form 1040EZ, line 11).....	2	
3 Federal income tax withheld (Form 1040, line 61; Form 1040A, line 38; Form 1040EZ, line 7).....	3	149,462.
4 Refund (Form 1040, line 73a; Form 1040A, line 46a; Form 1040EZ, line 12a; Form 1040-SS, Part I, line 13a).....	4	149,862.
5 Amount you owe (Form 1040, line 75; Form 1040A, line 48; Form 1040EZ, line 13).....	5	

Part II Taxpayer Declaration and Signature Authorization (Be sure you get and keep a copy of your return)

Under penalties of perjury, I declare that I have examined a copy of my electronic individual income tax return and accompanying schedules and statements for the tax year ending December 31, 2009, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that the amounts in Part I above are the amounts from my electronic income tax return. I consent to allow my intermediate service provider, transmitter, or electronic return originator (ERO) to send my return to the IRS and to receive from the IRS (a) an acknowledgment of receipt or reason for rejection of the transmission, (b) an indication of any refund offset, (c) the reason for any delay in processing the return or refund, and (d) the date of any refund. If applicable, I authorize the U.S. Treasury and its designated Financial Agent to initiate an ACH electronic funds withdrawal (direct debit) entry to the financial institution account indicated in the tax preparation software for payment of my Federal taxes owed on this return and/or a payment of estimated tax, and the financial institution to debit the entry to this account. I further understand that this authorization may apply to future Federal tax payments that I direct to be debited through the Electronic Federal Tax Payment System (EFTPS). In order for me to initiate future payments, I request that the IRS send me a personal identification number (PIN) to access EFTPS. This authorization is to remain in full force and effect until I notify the U.S. Treasury Financial Agent to terminate the authorization. To revoke a payment, I must contact the U.S. Treasury Financial Agent at 1-888-353-4537 no later than 2 business days prior to the payment (settlement) date. I also authorize the financial institutions involved in the processing of the electronic payment of taxes to receive confidential information necessary to answer inquiries and resolve issues related to the payment. I further acknowledge that the personal identification number (PIN) below is my signature for my electronic income tax return and, if applicable, my Electronic Funds Withdrawal Consent.

Taxpayer's PIN: check one box only

☒ I authorize STANTON BERNSTEIN, AN ACCOUNTANCY CORP. to enter or generate my PIN 35812
ERO firm name Enter five numbers, but do not enter all zeros

as my signature on my tax year 2009 electronically filed income tax return.

☐ I will enter my PIN as my signature on my tax year 2009 electronically filed income tax return. Check this box only if you are entering your own PIN and your return is filed using the Practitioner PIN method. The ERO must complete Part III below.

Your signature

Date

Spouse's PIN: check one box only

☐ I authorize _____ to enter or generate my PIN _____
ERO firm name Enter five numbers, but do not enter all zeros

as my signature on my tax year 2009 electronically filed income tax return.

☐ I will enter my PIN as my signature on my tax year 2009 electronically filed income tax return. Check this box only if you are entering your own PIN and your return is filed using the Practitioner PIN method. The ERO must complete Part III below.

Spouse's signature

Date

Practitioner PIN Method Returns Only – continue below**Part III Certification and Authentication – Practitioner PIN Method Only**

ERO's EFIN/PIN. Enter your six-digit EFIN followed by your five-digit self-selected PIN 95105321550
do not enter all zeros

I certify that the above numeric entry is my PIN, which is my signature for the tax year 2009 electronically filed income tax return for the taxpayer(s) indicated above. I confirm that I am submitting this return in accordance with the requirements of the Practitioner PIN method and Publication 1345, Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns.

ERO's signature ► STANTON R. BERNSTEIN, CPA

Date

ERO Must Retain This Form – See Instructions
Do Not Submit This Form to the IRS Unless Requested To Do So

BAA For Paperwork Reduction Act Notice, see Instructions.

Form 8879 (2009)

FD/A1701L 10/21/09

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RBSL 00396

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Form 4868 Department of the Treasury Internal Revenue Service (99)		Application for Automatic Extension of Time To File U.S. Individual Income Tax Return		FD-4868 (11-15-09)
For calendar year 2009, or other tax year beginning		2009, ending		2009
Part I Identification		Part II Individual Income Tax		
1 PAUL MORABITO STANTON BERNSTEIN, AN ACCOUNTANCY C 6320 CANOGA AVE., 15TH FLOOR WOODLAND HILLS, CA 91367		4 Estimate of total tax liability for 2009... \$ 149,000. 5 Total 2009 payments... 149,862. 6 Balance due. Subtract line 5 from line 4 (see instructions)... 0. 7 Amount you are paying (see instructions)... 0. 8 Check here if you are "out of the country" and a U.S. citizen or resident (see instructions)... <input type="checkbox"/> 9 Check here if you file Form 1040NR or 1040NR-EZ and did not receive wages as an employee subject to U.S. income tax withholding... <input type="checkbox"/>		

DC MORA 30 D 200912 670

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Form **1040** Department of the Treasury — Internal Revenue Service **U.S. Individual Income Tax Return 2009** (99) (PS Use Only — Do not write or staple in this space.)

For the year Jan 1 - Dec 31, 2009, or other tax year beginning 2009, ending 20, CMA No. 1545-0074

Label (See instructions.) Your first name MI Last name **PAUL MORABITO** Your social security number

Use the IRS label. Otherwise, please print or type. If a joint return, spouse's first name MI Last name Spouse's social security number

Home address (number and street). If you have a P.O. box, see instructions. Apartment no. **8581 SANTA MONICA BLVD. #708**

City, town or post office. If you have a foreign address, see instructions. State ZIP code **SANTA MONICA, CA 90069-4120**

Presidential Election Campaign Check here if you, or your spouse if filing jointly, want \$3 to go to this fund (see instructions). ☐ You ☐ Spouse

Filing Status 1 ☒ Single 4 ☐ Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. 2 ☐ Married filing jointly (even if only one had income) 3 ☐ Married filing separately. Enter spouse's SSN above & full name here. 5 ☐ Qualifying widow(er) with dependent child (see instructions)

Check only one box.

Exemptions 6a ☒ Yourself. If someone can claim you as a dependent, do not check box 6a. 1 b ☐ Spouse. No. of children on the whole ☐ live with you. ☐ did not live with you due to divorce or separation (see instrs). Dependents on the return entered above. Add numbers on lines above. 1

c Dependents: (1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) ☐ If qualifying child for child tax credit (see instrs)

If more than four dependents, see instructions and check here ☐

d Total number of exemptions claimed. 1

Income 7 Wages, salaries, tips, etc. Attach Form(s) W-2. 7 498,206. 8a Taxable interest. Attach Schedule B if required. 8a 64,572. b Tax-exempt interest. Do not include on line 8a. STMT. 2 8b 21,259. 9a Ordinary dividends. Attach Schedule B if required. 9a 141,937. b Qualified dividends (see instrs). 9b

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld. If you did not get a W-2, see instructions.

10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions). STATEMENT. 3 10 0. 11 Alimony received. 11 12 Business income or (loss). Attach Schedule C or C-EZ. 12 -178,641. 13 Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here. ☐ 13 -3,000. 14 Other gains or (losses). Attach Form 4797. 14 15a IRA distributions. 15a b Taxable amount (see instrs). 15b 16a Pensions and annuities. 16a b Taxable amount (see instrs). 16b 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E. 17 -1,573,323. 18 Farm income or (loss). Attach Schedule F. 18 19 Unemployment compensation in excess of \$2,400 per recipient (see instructions). 19 20a Social security benefits. 20a b Taxable amount (see instrs). 20b 21 Other income. 21 22 Add the amounts in the far right column for lines 7 through 21. This is your total income. 22 -1,050,249.

Adjusted Gross Income 23 Educator expenses (see instructions). 23 24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ. 24 25 Health savings account deduction. Attach Form 8889. 25 26 Moving expenses. Attach Form 3903. 26 27 One-half of self-employment tax. Attach Schedule SE. 27 28 Self-employed SEP, SIMPLE, and qualified plans. 28 29 Self-employed health insurance deduction (see instructions). 29 30 Penalty on early withdrawal of savings. 30 31a Alimony paid b Recipient's SSN. 31a 32 IRA deduction (see instructions). 32 33 Student loan interest deduction (see instructions). 33 34 Tuition and fees deduction. Attach Form 8917. 34 35 Domestic production activities deduction. Attach Form 8803. 35 36 Add lines 23 - 31a and 32 - 35. 36 0. 37 Subtract line 36 from line 22. This is your adjusted gross income. 37 -1,050,249.

BAA For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see instructions. FD-00112L 09/17/09 Form 1040 (2009)

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RBSL 00398

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Form 1040 (2009) PAUL MORABITO

Page 2

Tax and Credits	38 Amount from line 37 (adjusted gross income).....	38	-1,050,249.
Standard Deduction for — • People who check any box on line 39a, 39b, or 40b or who can be claimed as a dependent, see instructions. • All others: Single or Married filing separately, \$5,700 Married filing jointly or Qualifying widow(er), \$11,400 Head of household, \$8,350	39a Check if: <input type="checkbox"/> You were born before January 2, 1945, <input type="checkbox"/> Blind. Total boxes checked ▶ 39a		
	<input type="checkbox"/> Spouse was born before January 2, 1945, <input type="checkbox"/> Blind. checked ▶ 39b		
	b If your spouse itemizes on a separate return, or you were a dual-status alien, see instructions and ck here ▶ 39b		
	40a Itemized deductions (from Schedule A) or your standard deduction (see left margin).....	40a	386,449.
	b If you are increasing your standard deduction by certain real estate taxes, new motor vehicle taxes, or a net disaster loss, attach Schedule L and check here (see instructions).....	40b	
	41 Subtract line 40a from line 38.....	41	-1,436,698.
	42 Exemptions. If line 38 is \$123,100 or less and you did not provide housing to a Midwestern displaced individual, multiply \$3,650 by the number on line 6d. Otherwise, see instructions.....	42	3,650.
	43 Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-.....	43	0.
	44 Tax (see instrs). Check if any tax is from: a <input type="checkbox"/> Form(s) 9814 b <input type="checkbox"/> Form 4972.....	44	0.
	45 Alternative minimum tax (see instructions). Attach Form 6251.....	45	0.
46 Add lines 44 and 45.....	46	0.	
47 Foreign tax credit. Attach Form 1116 if required.....	47		
48 Credit for child and dependent care expenses. Attach Form 2441.....	48		
49 Education credits from Form 8863, line 29.....	49		
50 Retirement savings contributions credit. Attach Form 8880.....	50		
51 Child tax credit (see instructions).....	51		
52 Credits from Form: a <input type="checkbox"/> 6336 b <input type="checkbox"/> 8839 c <input type="checkbox"/> 5695.....	52		
53 Other credits from Form: a <input type="checkbox"/> 3800 b <input type="checkbox"/> 8801 c <input type="checkbox"/>	53		
54 Add lines 47 through 53. These are your total credits.....	54		
55 Subtract line 54 from line 46. If line 54 is more than line 46, enter -0-.....	55	0.	
56 Self-employment tax. Attach Schedule SE.....	56		
57 Unreported social security and Medicare tax from Form: a <input type="checkbox"/> 4137 b <input type="checkbox"/> 8919.....	57		
58 Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required.....	58		
59 Additional taxes: a <input type="checkbox"/> AEC payments b <input type="checkbox"/> Household employment taxes. Attach Schedule H.....	59		
60 Add lines 55-59. This is your total tax.....	60	0.	
Payments	61 Federal income tax withheld from Forms W-2 and 1099.....	61	149,462.
62 2008 estimated tax payments and amount applied from 2008 return.....	62		
63 Making work pay and government retiree credit. Attach Schedule M.....	63	400.	
64a Earned income credit (EIC).....	64a		
b Nonrefundable combat pay election..... ▶ 64b			
65 Additional child tax credit. Attach Form 8812.....	65		
66 Refundable education credit from Form 8863, line 16.....	66		
67 First-time homebuyer credit. Attach Form 5405.....	67		
68 Amount paid with request for extension to file (see instructions).....	68		
69 Excess social security and tier 1 RRTA tax withheld (see instructions).....	69		
70 Credits from Form: a <input type="checkbox"/> 2439 b <input type="checkbox"/> 4136 c <input type="checkbox"/> 8801 d <input type="checkbox"/> 8885.....	70		
71 Add lines 61-63, 64a, & 65-70. These are your total payments.....	71	149,862.	
72 If line 71 is more than line 60, subtract line 60 from line 71. This is the amount you overpaid.....	72	149,862.	
73a Amount of line 72 you want refunded to you. If Form 8888 is attached, check here ▶ <input type="checkbox"/>	73a	149,862.	
▶ b Routing number..... ▶ c Type: <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings			
▶ d Account number.....			
74 Amount of line 72 you want applied to your 2010 estimated tax..... ▶ 74			
Amount You Owe	75 Amount you owe. Subtract line 71 from line 60. For details on how to pay, see instructions.....	75	
76 Estimated tax penalty (see instructions).....	76		
Third Party Designee	Do you want to allow another person to discuss this return with the IRS (see instructions)? <input checked="" type="checkbox"/> Yes. Complete the following. <input type="checkbox"/> No		
Designee's name ▶ STANTON R. BERNSTEIN, CPA	Phone no. ▶ 818-596-2139	Personal identification number (PIN) ▶ 21550	
Sign Here	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.		
Joint return? See instructions.	Your signature	Date	Your occupation
Keep a copy for your records.	Spouse's signature, if a joint return, both must sign.	Date	Spouse's occupation
Paid Preparer's Use Only	Preparer's signature ▶ STANTON R. BERNSTEIN, CPA	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN E00185129
	Firm's name (or your self-employment address, and ZIP code) ▶ STANTON BERNSTEIN, AN ACCOUNTANCY CORP.	EIN ▶ 20-2231319	
	6320 CANOGA AVE., 15TH FLOOR	Phone no. (818) 596-2139	
	WOODLAND HILLS, CA 91367		

FD/A0112L 09/17/09

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SCHEDULE A
(Form 1040)**Itemized Deductions**

OMB No. 1545-0074

2009Department of the Treasury
Internal Revenue Service (99)

▶ Attach to Form 1040.

▶ See Instructions for Schedule A (Form 1040).

Attachment
Sequence No. 07

Name(s) shown on Form 1040

Your social security number

PAUL MORABITO

Medical and Dental Expenses		Caution. Do not include expenses reimbursed or paid by others.			
1	Medical and dental expenses (see instructions).....	STATEMENT..4	1	68,723.	
2	Enter amount from Form 1040, line 38.....	2 -1,050,249.			
3	Multiply line 2 by 7.5% (.075).....		3		
4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-.....				4 68,723.
Taxes You Paid		5 State and local (check only one box):			
	a <input type="checkbox"/> Income taxes, or		5	239.	
	b <input checked="" type="checkbox"/> General sales taxes		6	49,548.	
	6 Real estate taxes (see instructions).....		7		
	7 New motor vehicle taxes from line 11 of the worksheet on page 2. Skip this line if you checked box 5b.				
(See instructions.)	8 Other taxes. List type and amount ▶ PERSONAL PROPERTY TAXES	9,352.	8	9,352.	
	9 Add lines 5 through 8.....				9 59,139.
Interest You Paid		10 Home mtg interest and points reported to you on Form 1098. See instrs for spl rules. SEE ST. 5		10	48,183.
	11 Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying number, and address ▶		11		
	12 Points not reported to you on Form 1098. See instrs for spl rules.....		12		
	13 Qualified mortgage insurance premiums (see instructions).....		13		
	14 Investment interest. Attach Form 4952 if required. (See instrs.).....	STMT. 6	14	150,480.	
Note. Personal interest is not deductible.	15 Add lines 10 through 14.....				15 198,663.
Gifts to Charity		16 Gifts by cash or check. If you made any gift of \$250 or more, see instrs. SEE STATEMENT..7		16	35,480.
	17 Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500.....		17		
	18 Carryover from prior year.....		18		
	19 Add lines 16 through 18.....	DISALLOWED CONTRIBUTIONS.....		-35,480.	19 0.
Casualty and Theft Losses		20 Casualty or theft loss(es). Attach Form 4694. (See instructions.)		20	0.
Job Expenses and Certain Miscellaneous Deductions		21 Unreimbursed employee expenses — job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.) ▶		21	
	22 Tax preparation fees.....		22	3,895.	
	23 Other expenses — investment, safe deposit box, etc. List type and amount ▶ SEE STATEMENT..8		23	56,029.	
(See instructions.)	24 Add lines 21 through 23.....		24	59,924.	
	25 Enter amount from Form 1040, line 38.....	25 -1,050,249.	25		
	26 Multiply line 25 by 2% (.02).....		26		
	27 Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-.....				27 59,924.
Other Miscellaneous Deductions		28 Other — from list in the instructions. List type and amount ▶			
	29 Is Form 1040, line 38, over \$166,800 (over \$83,400 if married filing separately)? <input checked="" type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40a. <input type="checkbox"/> Yes. Your deduction may be limited. See instructions for the amount to enter.		29	386,449.	
	30 If you elect to itemize deductions even though they are less than your standard deduction, check here ▶ <input type="checkbox"/>				

BAA For Paperwork Reduction Act Notice, see Form 1040 Instructions.

FD-90301L 11/20/09

Schedule A (Form 1040) 2009

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SCHEDULE B
(Form 1040A or 1040)**Interest and Ordinary Dividends**

OMB No. 1545-0074

2009Department of the Treasury
Internal Revenue Service (99)

▶ Attach to Form 1040A or 1040.

▶ See instructions.

Attachment
Sequence No. 08

Name(s) shown on return

Your social security number

PAUL MORABITO**Part I****Interest**
(See
instructions for
Form 1040A,
or Form 1040,
line 8a.)

1 List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see the instructions and list this interest first. Also, show that buyer's social security number and address.

BANK OF AMERICA

Amount

34,153.

BANK OF AMERICA (2 ACCTS)

22,982.

BANK OF MONTREAL

565.

ROSEMONT SOLEBURY CO-INVESTMENT FUND LP

6,872.

Note: If you received a Form 1099-INT, Form 1099-DIV, or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total interest shown on that form.

2 Add the amounts on line 1.

2

64,572.

3 Excludable interest on series EE and I U.S. savings bonds issued after 1989. Attach Form 8815.

3

4 Subtract line 3 from line 2. Enter the result here and on Form 1040A, or Form 1040, line 8a.

4

64,572.

Note: If line 4 is over \$1,500, you must complete Part III.

Part II
Ordinary Dividends(See
instructions for
Form 1040A, or
Form 1040,
line 9a.)

5 List name of payer.

CONSOLIDATED NEVADA CORPORATION

141,931.

ROSEMONT SOLEBURY CO-INVESTMENT FUND LP

6.

Note: If you received a Form 1099-DIV or substitute statement from a brokerage firm, list the firm's name as the payer and enter the ordinary dividends shown on that form.

6 Add the amounts on line 5. Enter the total here and on Form 1040A, or Form 1040, line 9a.

6

141,937.

Note: If line 6 is over \$1,500, you must complete Part III.

Part III
Foreign Accounts and Trusts(See
instructions.)

You must complete this part if you (a) had over \$1,500 of taxable interest or ordinary dividends; (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.

Yes

No

7a At any time during 2009, did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account? See instructions for exceptions and filing requirements for Form TD F 90-22.1.

X

b If "Yes," enter the name of the foreign country.

8 During 2009, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See instructions.

X

BAA For Paperwork Reduction Act Notice, see Form 1040A or 1040 instructions.

FD-1040/11 06/2009

Schedule B (Form 1040) 2009

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SCHEDULE C
 (Form 1040)

Profit or Loss From Business
 (Sole Proprietorship)

OMB No. 1545-0074

2009
Attachment
Requirement No. 09Department of the Treasury
Internal Revenue Service (99)
 ▶ Partnerships, joint ventures, etc., generally must file Form 1065 or 1063-B.
 ▶ Attach to Form 1040, 1041NR, or 1041. ▶ See instructions for Schedule C (Form 1040).

Name of proprietor

Social security number (SSN)

PAUL MORABITO

A Principal business or profession, including product or service (see instructions)

COWESTCO SPECIAL RISK, LLC

B Enter code from instructions

▶ 524210

C Business name, if no separate business name, leave blank.

D Employer ID number (EIN), if any

26-4359384

E Business address (including suite or room no.) ▶ **59 DAMONTE RANCH PARKWAY # B-335**City, town or post office, state, and ZIP code **RENO, NV 89521**F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶G Did you "materially participate" in the operation of this business during 2009? If "No," see instructions for limit on losses. ☒ Yes ☐ NoH If you started or acquired this business during 2009, check here ☒
Part I Income

1	Gross receipts or sales. Caution. See the instructions and check the box if: • This income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, or • You are a member of a qualified joint venture reporting only rental real estate income not subject to self-employment tax. Also see instructions for limit on losses. <input type="checkbox"/>	1	49,000.
2	Returns and allowances.....	2	
3	Subtract line 2 from line 1.....	3	49,000.
4	Cost of goods sold (from line 42 on page 2).....	4	
5	Gross profit. Subtract line 4 from line 3.....	5	49,000.
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions).....	6	
7	Gross income. Add lines 5 and 6.....	7	49,000.

Part II Expenses. Enter expenses for business use of your home only on line 30.

8	Advertising.....	8		18	Office expense.....	18	
9	Car and truck expenses (see instructions).....	9		19	Pension and profit-sharing plans.....	19	
10	Commissions and fees.....	10		20	Rent or lease (see instructions):	20	
11	Contract labor (see instructions).....	11		a	Vehicles, machinery, and equipment.....	20a	
12	Depletion.....	12		b	Other business property.....	20b	
13	Depreciation and section 179 expense deduction (not included in Part III) (see instructions).....	13		21	Repairs and maintenance.....	21	
14	Employee benefit programs (other than on line 19).....	14		22	Supplies (not included in Part III).....	22	
15	Insurance (other than health).....	15		23	Taxes and licenses.....	23	
16	Interest:			24	Travel, meals, and entertainment:		
a	Mortgage (paid to banks, etc.).....	16a		a	Travel.....	24a	613.
b	Other.....	16b		b	Deductible meals and entertainment (see instructions).....	24b	
17	Legal & professional services.....	17	120,068.	25	Utilities.....	25	
28	Total expenses before expenses for business use of home. Add lines 8 through 27.....	28		26	Wages (less employment credits).....	26	
29	Tentative profit or (loss). Subtract line 28 from line 7.....	29		27	Other expenses (from line 48 on page 2).....	27	106,960.
30	Expenses for business use of your home. Attach Form 8829.....	30					
31	Not profit or (loss). Subtract line 30 from line 29. • If a profit, enter on both Form 1040, line 12, and Schedule SE, line 2 or on Form 1041NR, line 13 (if you checked the box on line 1, see instructions). Estates and trusts, enter on Form 1041, line 3. • If a loss, you must go to line 32.	31	-178,641.				
32	If you have a loss, check the box that describes your investment in this activity (see instructions). • If you checked 32a, enter the loss on both Form 1040, line 12, and Schedule SE, line 2, or on Form 1041NR, line 13 (if you checked the box on line 1, see the line 31 instructions). Estates and trusts, enter on Form 1041, line 3. • If you checked 32b, you must attach Form 6198. Your loss may be limited.			32a	<input checked="" type="checkbox"/> All investment is at risk.		
				32b	<input type="checkbox"/> Some investment is not at risk.		

BAA For Paperwork Reduction Act Notice, see Form 1040 Instructions.

FD-202112L 06/18/09

Schedule C (Form 1040) 2009

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Schedule C (Form 1040) 2009 PAUL MORABITO

Page 2

Part III Cost of Goods Sold (see instructions)

33 Method(s) used to value closing inventory: a ☐ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation)

34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☐ No

35 Inventory at beginning of year. If different from last year's closing inventory, attach explanation	35
36 Purchases less cost of items withdrawn for personal use	36
37 Cost of labor. Do not include any amounts paid to yourself	37
38 Materials and supplies	38
39 Other costs	39
40 Add lines 35 through 39	40
41 Inventory at end of year	41
42 Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on page 1, line 4	42

Part IV Information on Your Vehicle. Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562.

43 When did you place your vehicle in service for business purposes? (month, day, year) _____

44 Of the total number of miles you drove your vehicle during 2009, enter the number of miles you used your vehicle for:
a Business _____ b Commuting (see instructions) _____ c Other _____

45 Was your vehicle available for personal use during off-duty hours? ☐ Yes ☐ No

46 Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No

47 a Do you have evidence to support your deduction? ☐ Yes ☐ No
b If "Yes," is the evidence written? ☐ Yes ☐ No

Part V Other Expenses. List below business expenses not included on lines 8-26 or line 30.

BANK CHARGES	146.
OUTSIDE SERVICES	106,814.
48 Total other expenses. Enter here and on page 1, line 27	106,960.

Schedule C (Form 1040) 2009

FD-20112 09/13/09

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RBSL 00403

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SCHEDULE D
(Form 1040)Department of the Treasury
Internal Revenue Service (99)**Capital Gains and Losses**▶ Attach to Form 1040 or Form 1040NR. ▶ See instructions for Schedule D (Form 1040).
▶ Use Schedule D-1 to list additional transactions for lines 1 and 8.

OMB No. 1545-0074

2009Attachment
Sequence No. 12

Name(s) shown on return

Your social security number

PAUL MORABITO**Part I Short-Term Capital Gains and Losses – Assets Held One Year or Less**

(a) Description of property (Example: 100 shares XYZ Co)	(b) Date acquired (Mo, day, yr)	(c) Date sold (Mo, day, yr)	(d) Sales price (see instructions)	(e) Cost or other basis (see instructions)	(f) Gain or (loss) Subtract (e) from (d)
1 US TREASURY BILL	7/31/08	1/29/09	6,979,658.	6,979,658.	0.
FOREIGN EXCHANGE GAIN			16,121.	0.	16,121.
2 Enter your short-term totals, if any, from Schedule D-1, line 2...		2			
3 Total short-term sales price amounts. Add lines 1 and 2 in column (d).....		3	6,995,779.		
4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824.....					4
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1.....					5
6 Short-term capital loss carryover. Enter the amount, if any, from line 10 of your Capital Loss Carryover Worksheet in the instructions.....					6
7 Net short-term capital gain or (loss). Combine lines 1 through 6 in column (f).....					7 16,121.

Part II Long-Term Capital Gains and Losses – Assets Held More Than One Year

(a) Description of property (Example: 100 shares XYZ Co)	(b) Date acquired (Mo, day, yr)	(c) Date sold (Mo, day, yr)	(d) Sales price (see instructions)	(e) Cost or other basis (see instructions)	(f) Gain or (loss) Subtract (e) from (d)
8 SIERRA VIEW LOC HEALTH CARE DI	9/18/07	2/23/09	447,500.	511,045.	-63,545.
9 Enter your long-term totals, if any, from Schedule D-1, line 9....		9			
10 Total long-term sales price amounts. Add lines 8 and 9 in column (d).....		10	447,500.		
11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824.....					11
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1.....					12
13 Capital gain distributions. See instructions.....					13
14 Long-term capital loss carryover. Enter the amount, if any, from line 15 of your Capital Loss Carryover Worksheet in the instructions.....					14
15 Net long-term capital gain or (loss). Combine lines 8 through 14 in column (f). Then go to Part III on page 2.....					15 -63,545.

BAA For Paperwork Reduction Act Notice, see Form 1040 or Form 1040NR instructions.

Schedule D (Form 1040) 2009

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FD-20612L 02/31/09

RBSL 00404

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Part III Summary

16	Combine lines 7 and 15 and enter the result.....	16	-47,424.
<p>If line 16 is:</p> <ul style="list-style-type: none"> • A gain, enter the amount from line 16 on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below. • A loss, skip lines 17 through 20 below. Then go to line 21. Also be sure to complete line 22. • Zero, skip lines 17 through 21 below and enter -0- on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 22. 			
17	Are lines 15 and 16 both gains?		
	<input type="checkbox"/> Yes. Go to line 18.		
	<input type="checkbox"/> No. Skip lines 18 through 21, and go to line 22.		
18	Enter the amount, if any, from line 7 of the 28% Rate Gain Worksheet in the instructions.....	18	
19	Enter the amount, if any, from line 18 of the Unrecaptured Section 1250 Gain Worksheet in the instructions.....	19	
20	Are lines 18 and 19 both zero or blank?		
	<input type="checkbox"/> Yes. Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the Qualified Dividends and Capital Gain Tax Worksheet in the instructions for Form 1040 (or in the instructions for Form 1040NR). Do not complete lines 21 and 22 below.		
	<input type="checkbox"/> No. Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the Schedule D Tax Worksheet in the instructions. Do not complete lines 21 and 22 below.		
21	If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the smaller of:	21	-3,000.
	<ul style="list-style-type: none"> • The loss on line 16 or • (\$3,000), or if married filing separately, (\$1,500) 		
<p>Note. When figuring which amount is smaller, treat both amounts as positive numbers.</p>			
22	Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b?		
	<input type="checkbox"/> Yes. Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the Qualified Dividends and Capital Gain Tax Worksheet in the instructions for Form 1040 (or in the instructions for Form 1040NR).		
	<input type="checkbox"/> No. Complete the rest of Form 1040 or Form 1040NR.		

Schedule D (Form 1040) 2009

CONFIDENTIAL

FD-1040S12L 08/31/09

RBSL 00405

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Schedule E (Form 1040) 2009

Attachment Sequence No. 13

Page 2

Name(s) shown on return. Do not enter name and social security number if shown on Page 1.

(Your social security number)

PAUL MORABITO

Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations

Note. If you report a loss from an at-risk activity for which any amount is not at risk, you must check the box in column (e) on line 28 and attach Form 6198. See instructions.

- 27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? ☐ Yes ☒ No
If you answered 'Yes,' see instructions before completing this section.

28	(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
A	SEE STATEMENT 9				
B					
C					
D					

Passive Income and Loss		Nonpassive Income and Loss		
(f) Passive loss allowed (attach Form 8582 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4562	(j) Nonpassive income from Schedule K-1
A				
B				
C				
D				
29a Totals	40,704.	40,704.	1,573,323.	
b Totals	40,704.			
30 Add columns (g) and (i) of line 29a			30	40,704.
31 Add columns (f), (h), and (j) of line 29b			31	-1,614,027.
32 Total partnership and S corporation income or (loss). Combine lines 30 and 31. Enter the result here and include in the total on line 41 below			32	-1,573,323.

Part III Income or Loss From Estates and Trusts

33	(a) Name	(b) Employer ID no.
A		
B		

Passive Income and Loss		Nonpassive Income and Loss	
(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1
A			
B			
34a Totals			
b Totals			
35 Add columns (d) and (f) of line 34a		35	
36 Add columns (c) and (e) of line 34b		36	
37 Total estate and trust income or (loss). Combine lines 35 and 36. Enter the result here and include in the total on line 41 below		37	

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) - Residual Holder

38	(a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules D, line 2c (see instructions)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b
39	Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below				39

Part V Summary

40	Net farm rental income or (loss) from Form 4835. Also, complete line 42 below	40	
41	Total income or (loss). Combine lines 26, 32, 37, 39, and 40. Enter the result here and on Form 1040, line 17, or Form 1040NR, line 18	41	-1,573,323.
42	Reconciliation of farming and fishing income. Enter your gross farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), box 14, code B; Schedule K-1 (Form 1120S), box 17, code U; and Schedule K-1 (Form 1041), line 14, code F (see instructions)	42	
43	Reconciliation for real estate professionals. If you were a real estate professional (see instructions), enter the net income or (loss) you reported anywhere on Form 1040 or Form 1040NR from all rental real estate activities in which you materially participated under the passive activity loss rules	43	

BAA

FDZ2302, 10/26/09

Schedule E (Form 1040) 2009

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RBSL 00406

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Form **4952****Investment Interest Expense Deduction**

OMB No. 1545-0191

2009Department of the Treasury
Internal Revenue Service (99)

▶ Attach to your tax return.

Attachment
Sequence No. **51**

Name(s) shown on return

Modifying number

PAUL MORABITO**Part I Total Investment Interest Expense**

1 Investment interest expense paid or accrued in 2009 (see instructions).....	1	72,660.
2 Disallowed investment interest expense from 2008 Form 4952, line 7.....	2	180,147.
3 Total investment interest expense. Add lines 1 and 2.....	3	252,807.

Part II Net Investment Income

4a Gross income from property held for investment (excluding any net gain from the disposition of property held for investment).....	4a	206,509.	
b Qualified dividends included on line 4a.....	4b		
c Subtract line 4b from line 4a.....	4c	206,509.	
d Net gain from the disposition of property held for investment.....	4d		
e Enter the smaller of line 4d or your net capital gain from the disposition of property held for investment (see instructions).....	4e		
f Subtract line 4e from line 4d.....	4f		
g Enter the amount from lines 4b and 4e that you elect to include in investment income (see instructions)....	4g		
h Investment income. Add lines 4c, 4f, and 4g.....	4h	206,509.	
5 Investment expenses (see instructions).....	5	56,029.	
6 Net investment income. Subtract line 5 from line 4h. If zero or less, enter -0.....	6	150,480.	

Part III Investment Interest Expense Deduction

7 Disallowed investment interest expense to be carried forward to 2010. Subtract line 6 from line 3. If zero or less, enter -0.....	7	102,327.
8 Investment interest expense deduction. Enter the smaller of line 3 or 6. See instructions.....	8	150,480.

BAA For Paperwork Reduction Act Notice, see separate instructions.

Form 4952 (2009)

FD-21201L 08/16/09

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RBSL 00407

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Form **8801****Credit for Prior Year Minimum Tax —
Individuals, Estates, and Trusts**

OMB No. 1545-1073

2009Department of the Treasury
Internal Revenue Service (99)

▶ See separate instructions. ▶ Attach to Form 1040, 1040NR, or 1041.

Attachment
Sequence No. 74

Name(s) shown on return

Identifying number

PAUL MORABITO**Part I Net Minimum Tax on Exclusion Items**

1 Combine lines 1, 6, 7, and 11 of your 2008 Form 6251. Estates and trusts, see instructions.	1	-241,007.
2 Enter adjustments and preferences treated as exclusion items (see instructions).	2	164,229.
3 Minimum tax credit net operating loss deduction (see instructions).	3	
4 Combine lines 1, 2, and 3. If zero or less, enter -0- here and on line 15 and go to Part II. If more than \$214,900 and you were married filing separately for 2008, see instructions.	4	0.
5 Enter: \$69,950 if married filing jointly or qualifying widow(er) for 2008; \$46,200 if single or head of household for 2008; or \$34,975 if married filing separately for 2008. Estates and trusts, enter \$22,500.	5	
6 Enter: \$150,000 if married filing jointly or qualifying widow(er) for 2008; \$112,500 if single or head of household for 2008; or \$75,000 if married filing separately for 2008. Estates and trusts, enter \$75,000.	6	
7 Subtract line 6 from line 4. If zero or less, enter -0- here and on line 8 and go to line 9.	7	0.
8 Multiply line 7 by 25% (.25).	8	0.
9 Subtract line 8 from line 5. If zero or less, enter -0-. If under age 24 at the end of 2008, see instructions.	9	0.
10 Subtract line 9 from line 4. If zero or less, enter -0- here and on line 15 and go to Part II. Form 1040NR filers, see instructions.	10	0.
11 • If for 2008 you filed Form 2555 or 2555-EZ, see the instructions for the amount to enter. • If for 2008 you reported capital gain distributions directly on Form 1040, line 13; you reported qualified dividends on Form 1040, line 9b (Form 1041, line 2b(2)); or you had a gain on both lines 15 and 16 of Schedule D (Form 1040) (lines 14a and 15, column (2), of Schedule D (Form 1041)), complete Part III of Form 8801 and enter the amount from line 49 here. Form 1040NR filers, see instructions. • All others: If line 10 is \$175,000 or less (\$87,500 or less if married filing separately for 2008), multiply line 10 by 26% (.26). Otherwise, multiply line 10 by 28% (.28) and subtract \$3,500 (\$1,750 if married filing separately for 2008) from the result. Form 1040NR filers, see instructions.	11	
12 Minimum tax foreign tax credit on exclusion items (see instructions).	12	
13 Tentative minimum tax on exclusion items. Subtract line 12 from line 11.	13	
14 Enter the amount from your 2008 Form 6251, line 35, or 2008 Form 1041, Schedule I, line 55.	14	
15 Net minimum tax on exclusion items. Subtract line 14 from line 13. If zero or less, enter -0-.	15	0.

BAA For Paperwork Reduction Act Notice, see separate instructions.

Form 8801 (2009)

FD-2281-12L 09/25/09

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RBSL 00408

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Part II Current Year Nonrefundable and Refundable Credits and Carryforward to 2010

16	Enter the amount from your 2008 Form 6251, line 36, or 2008 Form 1041, Schedule I, line 56	16	
17	Enter the amount from line 15	17	
18	Subtract line 17 from line 16. If less than zero, enter as a negative amount	18	
19	2008 credit carryforward. Enter the amount from your 2008 Form 8801, line 31	19	340.
20	Enter your 2008 unallowed qualified electric vehicle credit (see instructions)	20	
21	Combine lines 18 through 20. If zero or less, enter -0-	21	340.
22	Enter 50% (.50) of the total interest and penalties you paid before October 3, 2008, on alternative minimum tax attributable to the exercise of incentive stock options for 2007 or any prior year	22	
23	Add lines 21 and 22. If zero or less, stop here and see instructions	23	340.
24	Enter your 2009 regular income tax liability minus allowable credits (see instructions)	24	
25	Enter the amount from your 2009 Form 6251, line 34, or 2009 Form 1041, Schedule I, line 54	25	
26	Subtract line 25 from line 24. If zero or less, enter -0-	26	0.
27	Current year nonrefundable credit. Enter the smaller of line 23 or line 26. Also enter this amount on your 2009 Form 1040, line 53 (check box b); Form 1040eR, line 49 (check box b); or Form 1041, Schedule G, line 2d	27	
28	<p>• Estates and trusts: Leave lines 28 and 29 blank and go to line 30.</p> <p>• Individuals: Did you have a minimum tax credit carryforward to 2007 (on your 2006 Form 8801, line 26) or pay any interest or penalties before October 3, 2008, on alternative minimum tax attributable to the exercise of incentive stock options for 2007 or any prior year?</p> <p><input checked="" type="checkbox"/> No. Leave lines 28 and 29 blank and go to line 30.</p> <p><input type="checkbox"/> Yes. Complete Part IV of Form 8801 to figure the amount to enter</p>	28	
29	Is line 28 more than line 27?	29	
	<p><input type="checkbox"/> No. Leave line 29 blank and go to line 30.</p> <p><input type="checkbox"/> Yes. Subtract line 27 from line 28. This is your current year refundable credit. Enter the result here and on your 2009 Form 1040, line 70 (check box c), or Form 1040eR, line 64 (check box c)</p>	29	
30	Credit carryforward to 2010. Subtract the larger of line 27 or line 28 from line 23. Keep a record of this amount because you may use it in future years	30	340.

Form 8801 (2009)

FD-22813L 09/25/09

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RBSL 00409

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Form **8582****Passive Activity Loss Limitations**

OMB No. 1545-1008

Department of the Treasury
Internal Revenue Service (99)▶ See separate instructions.
▶ Attach to Form 1040 or Form 1041.**2009**Attachment
Sequence No. 88

Name(s) shown on return

Identifying number

PAUL MORABITO**Part I 2009 Passive Activity Loss**

Caution: Complete Worksheets 1, 2, and 3 on page 2 before completing Part I.

Rental Real Estate Activities With Active Participation (For the definition of active participation, see Special Allowance for Rental Real Estate Activities in the instructions.)

1a Activities with net income (enter the amount from Worksheet 1, column (a))	1a		
b Activities with net loss (enter the amount from Worksheet 1, column (b))	1b		
c Prior years unallowed losses (enter the amount from Worksheet 1, column (c))	1c		
d Combine lines 1a, 1b, and 1c	1d		
Commercial Revitalization Deductions From Rental Real Estate Activities			
2a Commercial revitalization deductions from Worksheet 2, column (a)	2a		
b Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)	2b		
c Add lines 2a and 2b	2c		
All Other Passive Activities			
3a Activities with net income (enter the amount from Worksheet 3, column (a))	3a	40,704.	
b Activities with net loss (enter the amount from Worksheet 3, column (b))	3b	-126,142.	
c Prior years unallowed losses (enter the amount from Worksheet 3, column (c))	3c	-1,049,644.	
d Combine lines 3a, 3b, and 3c	3d		-1,135,082.

4 Combine lines 1d, 2c, and 3d. If the result is net income or zero, all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Do not complete Form 8582. Report the losses on the forms and schedules normally used.

- If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
 - Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
 - Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

Caution: If your filing status is married filing separately and you lived with your spouse at any time during the year, do not complete Part II or Part III. Instead, go to line 15.

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: Enter all numbers in Part II as positive amounts. See the instructions for an example.

5 Enter the smaller of the loss on line 1d or the loss on line 4	5	
6 Enter \$150,000. If married filing separately, see the instructions	6	
7 Enter modified adjusted gross income, but not less than zero (see instructions). Note: If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8.	7	
8 Subtract line 7 from line 6	8	
9 Multiply line 8 by 50% (.5). Do not enter more than \$25,000. If married filing separately, see instructions	9	
10 Enter the smaller of line 5 or line 9. If line 2c is a loss, go to Part III. Otherwise, go to line 15.	10	0.

Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities

Note: Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.

11 Enter \$25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions	11	
12 Enter the loss from line 4	12	
13 Reduce line 12 by the amount on line 10	13	
14 Enter the smallest of line 2c (treated as a positive amount), line 11, or line 13	14	

Part IV Total Losses Allowed

15 Add the income, if any, on lines 1a and 3a and enter the total	15	40,704.
16 Total losses allowed from all passive activities for 2009. Add lines 10, 14, and 15. See the instructions to find out how to report the losses on your tax return	16	40,704.

BAA For Paperwork Reduction Act Notice, see the instructions.

Form 8582 (2009)

FD-21901L 05/25/09

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RBSL 00410

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Form 8582 (2009) PAUL MORABITO

Page 2

Caution: The worksheets must be filed with your tax return. Keep a copy for your records.

Worksheet 1 – For Form 8582, Lines 1a, 1b, and 1c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 1a)	(b) Net loss (line 1b)	(c) Unallowed loss (line 1c)	(d) Gain	(e) Loss
Total. Enter on Form 8582, lines 1a, 1b, and 1c.					

Worksheet 2 – For Form 8582, Lines 2a and 2b (See instructions.)

Name of activity	(a) Current year deductions (line 2a)	(b) Prior year unallowed deductions (line 2b)	(c) Overall loss
Total. Enter on Form 8582, lines 2a and 2b.			

Worksheet 3 – For Form 8582, Lines 3a, 3b, and 3c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 3a)	(b) Net loss (line 3b)	(c) Unallowed loss (line 3c)	(d) Gain	(e) Loss
BARUK PROPERTIES LLC		121,305.	732,472.		853,777.
SUPERPUMPER PROPERTIES LLC	40,704.		316,340.		275,636.
ROSEMONT SOLEBURY CO-INVESTMENT		1,617.	832.		2,449.
SNOWSHOE CAPITAL LLC		3,220.			3,220.
Total. Enter on Form 8582, lines 3a, 3b, and 3c.	40,704.	126,142.	1,049,644.		

Worksheet 4 – Use this worksheet if an amount is shown on Form 8582, line 10 or 14 (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Special allowance	(d) Subtract column (c) from column (a)
Total			1.00		

Worksheet 5 – Allocation of Unallowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Unallowed loss
BARUK PROPERTIES LLC	SCH E LN 28	853,777.	0.752171	853,777.
SUPERPUMPER PROPERTIES LLC	SCH E LN 28	275,636.	0.242834	275,636.
ROSEMONT SOLEBURY CO-INVESTMENT	SCH E LN 28	2,449.	0.002158	2,449.
SNOWSHOE CAPITAL LLC	SCH E LN 28	3,220.	0.002837	3,220.
Total		1,135,082.	1.00	1,135,082.

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FD-21902L 06/25/09

Form 8582 (2009)

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RBSL 00411

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Form 8582 (2009) PAUL MORABITO

Page 3

Worksheet 6 - Allowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Unallowed loss	(c) Allowed loss
SUPERPUMPER PROPERTIES LLC	SCH E LN 28	316,340.	275,636.	40,704.
ROSEMONT SOLEBURY CO-INVESTMENT	SCH E LN 28	2,449.	2,449.	0.
SNOWSHOE CAPITAL LLC	SCH E LN 28	3,220.	3,220.	0.
Total		322,009.	281,305.	40,704.

Worksheet 7 - Activities With Losses Reported on Two or More Forms or Schedules (See instructions.)

Name of activity	(a)	(b)	(c) Ratio	(d) Unallowed loss	(e) Allowed loss
BARUK PROPERTIES LLC					
Form or schedule and line number to be reported on (see instructions) SCH E LN 28					
1a Net loss plus prior year unallowed loss from form or schedule	544,884.				
b Net income from form or schedule		644,884.	0.755331	644,884.	
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions) FORM 4797					
1a Net loss plus prior year unallowed loss from form or schedule	208,893.				
b Net income from form or schedule		208,893.	0.244669	208,893.	
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Total		853,777.	1.00	853,777.	0.

Name of activity					
Form or schedule and line number to be reported on (see instructions)					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Total		0.	1.00	0.	0.

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FDX190JL 08/31/09

Form 8582 (2009)

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RBSL 00412

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Form **8582**ALTERNATIVE MINIMUM TAX
Passive Activity Loss Limitations

OMB No. 1545-1068

2009Department of the Treasury
Internal Revenue Service (99)See separate instructions.
Attach to Form 1040 or Form 1041.Attachment
Sequence No. 88

Name(s) shown on return

Identifying number

PAUL MORABITO

Part I 2009 Passive Activity Loss

Caution: Complete Worksheets 1, 2, and 3 on page 2 before completing Part I.

Rental Real Estate Activities With Active Participation (For the definition of active participation, see Special Allowance for Rental Real Estate Activities in the instructions.)

1a Activities with net income (enter the amount from Worksheet 1, column (a))....	1a		1d
b Activities with net loss (enter the amount from Worksheet 1, column (b)).....	1b		
c Prior years unallowed losses (enter the amount from Worksheet 1, column (c))..	1c		
d Combine lines 1a, 1b, and 1c.....			

Commercial Revitalization Deductions From Rental Real Estate Activities

2a Commercial revitalization deductions from Worksheet 2, column (a).....	2a		2c
b Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b).....	2b		
c Add lines 2a and 2b.....			

All Other Passive Activities

3a Activities with net income (enter the amount from Worksheet 3, column (a))....	3a	40,704.	3d
b Activities with net loss (enter the amount from Worksheet 3, column (b)).....	3b	-126,079.	
c Prior years unallowed losses (enter the amount from Worksheet 3, column (c))..	3c	-1,050,708.	
d Combine lines 3a, 3b, and 3c.....			

4 Combine lines 1d, 2c, and 3d. If the result is net income or zero, all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Do not complete Form 8582. Report the losses on the forms and schedules normally used.....	4	-1,136,083.
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- If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
 - Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
 - Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

Caution: If your filing status is married filing separately and you lived with your spouse at any time during the year, do not complete Part II or Part III. Instead, go to line 15.

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: Enter all numbers in Part II as positive amounts. See the instructions for an example.

5 Enter the smaller of the loss on line 1d or the loss on line 4.....	5	
6 Enter \$150,000. If married filing separately, see the instructions.....	6	
7 Enter modified adjusted gross income, but not less than zero (see instructions). Notes: If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8.	7	
8 Subtract line 7 from line 6.....	8	
9 Multiply line 8 by 50% (.5). Do not enter more than \$25,000. If married filing separately, see instructions....	9	
10 Enter the smaller of line 5 or line 9..... If line 2c is a loss, go to Part III. Otherwise, go to line 15.	10	0.

Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities

Note: Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.

11 Enter \$25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions.....	11	
12 Enter the loss from line 4.....	12	
13 Reduce line 12 by the amount on line 10.....	13	
14 Enter the smallest of line 2c (treated as a positive amount), line 11, or line 13.....	14	

Part IV Total Losses Allowed

15 Add the income, if any, on lines 1a and 3a and enter the total.....	15	40,704.
16 Total losses allowed from all passive activities for 2009. Add lines 10, 14, and 15. See the instructions to find out how to report the losses on your tax return.....	16	40,704.

BAA For Paperwork Reduction Act Notice, see the instructions.

Form 8582 (2009)

FDZ1501L 08/26/09

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RBSL 00413

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ALTERNATIVE MINIMUM TAX

Form 8582 (2009) PAUL MORABITO

Page 2

Caution: The worksheets must be filed with your tax return. Keep a copy for your records.

Worksheet 1 – For Form 8582, Lines 1a, 1b, and 1c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 1a)	(b) Net loss (line 1b)	(c) Unallowed loss (line 1c)	(d) Gain	(e) Loss
Total. Enter on Form 8582, lines 1a, 1b, and 1c					

Worksheet 2 – For Form 8582, Lines 2a and 2b (See instructions.)

Name of activity	(a) Current year deductions (line 2a)	(b) Prior year unallowed deductions (line 2b)	(c) Overall loss
Total. Enter on Form 8582, lines 2a and 2b			

Worksheet 3 – For Form 8582, Lines 3a, 3b, and 3c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 3a)	(b) Net loss (line 3b)	(c) Unallowed loss (line 3c)	(d) Gain	(e) Loss
BARUK PROPERTIES LLC		121,242.	733,536.		854,778.
SUPERPUMPER PROPERTIES LLC	40,704.		316,340.		275,636.
ROSEMONT SOLEBURY CO-INVESTMENT		1,617.	832.		2,449.
SNOWSHOE CAPITAL LLC		3,220.			3,220.
Total. Enter on Form 8582, lines 3a, 3b, and 3c	40,704.	126,079.	1,050,708.		

Worksheet 4 – Use this worksheet if an amount is shown on Form 8582, line 10 or 14 (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Special allowance	(d) Subtract column (c) from column (a)
Total			1.00		

Worksheet 5 – Allocation of Unallowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Unallowed loss
BARUK PROPERTIES LLC	SCH E LN 28	854,778.	0.752390	854,778.
SUPERPUMPER PROPERTIES LLC	SCH E LN 28	275,636.	0.242620	275,636.
ROSEMONT SOLEBURY CO-INVESTMENT	SCH E LN 28	2,449.	0.002156	2,449.
SNOWSHOE CAPITAL LLC	SCH E LN 28	3,220.	0.002834	3,220.
Total		1,136,083.	1.00	1,136,083.

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FD-21002L 05/05/09

Form 8582 (2009)

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RBSL 00414

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ALTERNATIVE MINIMUM TAX

Form 8582 (2009) PAUL MORABITO

Page 3

Worksheet 6 - Allowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Unallowed loss	(c) Allowed loss
SUPERPUMPER PROPERTIES LLC	SCH E LN 28	316,340.	275,636.	40,704.
ROSEMONT SOLEBURY CO-INVESTMENT	SCH E LN 28	2,449.	2,449.	0.
SNOWSHOE CAPITAL LLC	SCH E LN 28	3,220.	3,220.	0.
Total		322,009.	281,305.	40,704.

Worksheet 7 - Activities With Losses Reported on Two or More Forms or Schedules (See instructions.)

Name of activity	(a)	(b)	(c) Ratio	(d) Unallowed loss	(e) Allowed loss
BARUK PROPERTIES LLC					
Form or schedule and line number to be reported on (see instructions) SCH E LN 28					
1a Net loss plus prior year unallowed loss from form or schedule	645,885.				
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-	645,885.	0.755617	645,885.		
Form or schedule and line number to be reported on (see instructions) FORM 4797					
1a Net loss plus prior year unallowed loss from form or schedule	208,893.				
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-	208,893.	0.244383	208,893.		
Form or schedule and line number to be reported on (see instructions)					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Total	854,778.	1.00	854,778.	0.	

Name of activity					
Form or schedule and line number to be reported on (see instructions)					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Total	0.	1.00	0.	0.	

BAA

FD-21002L 03/17/09

Form 8582 (2009)

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RBSL 00415

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SCHEDULE M
(Form 1040A or 1040)**Making Work Pay and Government
Retiree Credits**

OMB No. 1545-0074

2009Department of the Treasury
Internal Revenue Service (99)

▶ Attach to Form 1040A, 1040, or 1040NR.

▶ See separate instructions.

Attachment
Sequence No. 166

Name(s) shown on return

Your social security number

PAUL MORABITO

1 a Important: See the instructions if you can be claimed as someone else's dependent or are filing Form 1040NR. Check the 'No' box below and see the instructions if (a) you have a net loss from a business, (b) you received a taxable scholarship or fellowship grant not reported on a Form W-2, (c) your wages include pay for work performed while an inmate in a penal institution, (d) you received a pension or annuity from a nonqualified deferred compensation plan or a nongovernmental section 457 plan, or (e) you are filing Form 2555 or 2555-EZ.

Do you (and your spouse if filing jointly) have 2009 wages of more than \$6,451 (\$12,903 if married filing jointly)?

☐ Yes. Skip lines 1a through 3. Enter \$400 (\$800 if married filing jointly) on line 4 and go to line 5.

☒ No. Enter your earned income (see instructions) 1a 279,901.

b Nontaxable combat pay included on line 1a (see instructions) 1b

2 Multiply line 1a by 6.2% (.062) 2 17,354.

3 Enter \$400 (\$800) if married filing jointly 3 400.

4 Enter the smaller of line 2 or line 3 (unless you checked 'Yes' on line 1a) 4 400.

5 Enter the amount from Form 1040, line 38, or Form 1040A, line 22 5 -1,050,249.

6 Enter \$75,000 (\$150,000 if married filing jointly) 6 75,000.

7 Is the amount on line 5 more than the amount on line 6?

☒ No. Skip line 8. Enter the amount from line 4 on line 9 below.

☐ Yes. Subtract line 6 from line 5 7

8 Multiply line 7 by 2% (.02) 8

9 Subtract line 8 from line 4. If zero or less, enter -0- 9 400.

10 Did you (or your spouse, if filing jointly) receive an economic recovery payment in 2009? You may have received this payment if you received social security benefits, supplemental security income, railroad retirement benefits, or veterans disability compensation or pension benefits (see instructions).

☒ No. Enter -0- on line 10 and go to line 11.

☐ Yes. Enter the total of the payments received by you (and your spouse, if filing jointly). Do not enter more than \$250 (\$500 if married filing jointly) 10 0.

11 Did you (or your spouse, if filing jointly) receive a pension or annuity in 2009 for services performed as an employee of the U.S. Government or any U.S. state or local government from work not covered by social security? Do not include any pension or annuity reported on Form W-2.

☒ No. Enter -0- on line 11 and go to line 12.

☐ Yes. • If you checked 'No' on line 10, enter \$250 (\$500 if married filing jointly and the answer on line 11 is 'Yes' for both spouses)

• If you checked 'Yes' on line 10, enter -0- (exception: enter \$250 if filing jointly and the spouse who received the pension or annuity did not receive an economic recovery payment described on line 10) 11 0.

12 Add lines 10 and 11 12

13 Subtract line 12 from line 9. If zero or less, enter -0- 13 400.

14 Making work pay and government retiree credits. Add lines 11 and 13. Enter the result here and on Form 1040, line 63, Form 1040A, line 40, or Form 1040NR, line 60 14 400.

*If you are filing Form 2555, 2555-EZ, or 4563 or you are excluding income from Puerto Rico, see instructions.

BAA For Paperwork Reduction Act Notice, see Form 1040A, 1040, or 1040NR instructions.

Schedule M (Form 1040A or 1040) 2009

FD148501L 10/27/09

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PAGE 1

PAUL MORABITO

STATEMENT 1
FORM 1040
WAGE SCHEDULE

TAXPAYER - EMPLOYER	WAGES	FEDERAL W/H	FICA	MEDI- CARE	STATE W/H	LOCAL W/H
PA MORABITO ARIZONA & CO	498,206.	149,462.	6,622.	7,224.		
GRAND TOTAL	498,206.	149,462.	6,622.	7,224.	0.	0.

STATEMENT 2
FORM 1040, LINE 8B
TAX-EXEMPT INTEREST

PAYER	IN-STATE MUNICIPAL BONDS	PRIVATE ACTIVITY BONDS	TOTAL
BANK OF AMERICA (2 ACCTS)			21,259.
TOTAL	0.	0.	21,259.

STATEMENT 3
FORM 1040, PAGE 1, LINE 10
TAXABLE REFUNDS OF STATE AND LOCAL INCOME TAXES

1. STATE AND LOCAL INCOME TAX REFUNDS (PRIOR YEAR)	\$	40,040.
2. REFUNDS ATTRIBUTABLE TO POST 12/31/2008 PAYMENTS PER IRS PUB. 525		0.
3. NET STATE AND LOCAL INCOME TAX REFUNDS		40,040.
4. STATE AND LOCAL TAXES PAID FROM PRIOR YEAR SCH. A, LINE 5		113,168.
5. PRIOR YEAR ALLOWABLE SALES TAX DEDUCTION		1,704.
6. EXCESS OF INCOME TAXES DEDUCTED OVER SALES TAXES		111,464.
7. ENTER THE SMALLER OF LINE 3 OR LINE 6		40,040.
8. ITEMIZED DEDUCTION FROM PRIOR YEAR SCH. A, LINE 29		321,467.
9. PRIOR YEAR RECOMPUTED ITEMIZED DEDUCTIONS (IF PHASEOUT)		0.
10. PRIOR YEAR BASE STANDARD DEDUCTION	5,450.	
11. PRIOR YEAR ADD'L STANDARD DEDUCTION FOR AGE/BLINDNESS	0.	
12. STATE & LOCAL R/E TAXES FROM PRIOR YEAR SCH. A, LINE 6	28,951.	
13. ENTER \$500, \$1,000 IF MARRIED FILING JOINTLY	500.	
14. ENTER THE SMALLER OF LINE 12 OR LINE 13	500.	
15. PRIOR YEAR DISASTER LOSS (4684, LINE 18A)	0.	
16. PRIOR YEAR TOTAL STANDARD DEDUCTION (ADD LINE 10, 11, 14, AND 15)		5,950.
17. ENTER THE LARGER OF LINE 9 OR LINE 16		5,950.
18. SUBTRACT LINE 17 FROM LINE 8 (NOT LESS THAN 0)		315,517.
19. ENTER THE SMALLER OF LINE 7 OR LINE 18		40,040.
20. NEGATIVE TAXABLE INCOME (PRIOR YEAR)		-244,507.
21. REFUND WITH NO TAX BENEFIT DUE TO AMT OR NONREFUNDABLE CREDITS		0.
22. STATE AND LOCAL REFUNDS TAXABLE THIS YEAR (ADD LINES 19, 20, AND 21, BUT NOT LESS THAN 0)	\$	0.

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FEDERAL STATEMENTS

PAGE 2

PAUL MORABITO

STATEMENT 4
SCHEDULE A, LINE 1
MEDICAL AND DENTAL EXPENSES

DOCTORS, DENTISTS, AND NURSES.....	\$	45,623.
INSURANCE PREMIUMS.....		23,100.
TOTAL	\$	<u>68,723.</u>

STATEMENT 5
SCHEDULE A, LINE 10
HOME MORTGAGE INTEREST REPORTED ON FORM 1098

BANK OF AMERICA.....	\$	48,183.
TOTAL	\$	<u>48,183.</u>

STATEMENT 6
SCHEDULE A, LINE 14
INVESTMENT INTEREST

BANK OF AMERICA.....	\$	26,799.
BANK OF AMERICA LINE OF CREDIT.....		45,849.
INVESTMENT INTEREST CARRYOVER.....		180,147.
INVESTMENT INTEREST FROM K-1.....		12.
DISALLOWED INVESTMENT INTEREST (FORM 4952).....		-102,327.
TOTAL	\$	<u>150,480.</u>

STATEMENT 7
SCHEDULE A, LINE 16
CONTRIBUTIONS BY CASH OR CHECK

AIDS SOCIETY.....	\$	25,000.
AMERICAN CANCER SOCIETY.....		1,000.
CHARITABLE CONTRIBUTIONS FROM K-1.....		9,480.
TOTAL	\$	<u>35,480.</u>

STATEMENT 8
SCHEDULE A, LINE 23
OTHER EXPENSES

BANK OF AMERICA.....	\$	10,393.
BANK OF AMERICA.....		16,407.
INVESTMENT EXP. FROM K-1.....		26,296.
PER INCOME STMT.....		901.
US TRUST.....		2,032.
TOTAL	\$	<u>56,029.</u>

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PAUL MORABITO

STATEMENT 9
SCHEDULE E, PAGE 2
PART II - INCOME OR LOSS FROM PARTNERSHIPS AND S CORPORATIONS

NAME	TYPE	X IF FOREIGN	EMPLOYER ID NO.	ANY INST. NOT AT RISK	PTP	PASSIVE LOSS FROM FORM 990	PASSIVE INC. FROM SCH. K-1	NONPASSIVE LOSS FROM SCH. K-1	SECTION 179 DEDUCTION	NONPASSIVE INCOME FROM K-1
BABUK PROPERTIES LLC	P		88-0423588							
BIG WHEEL GAMING LLC	P		20-5233157					1,372		
BIG WHEEL LODGING LLC	P		20-5233059					1,565		
SUPERJUMPER PROPERTIES LLC	P		26-0218957							
PTA: PASSIVE CARRIOTER	P		26-0218957			\$ 40,704	\$ 40,704			
ROSEMONT SOLERBURY CO-INVESTMENT FUND LP	P		20-0418029							
WATCHDOG BLOCK LLC	P		50-0400287					21,487		
WALSHIDE CONSTRUCTION MGMT SERVICES LLC	P		26-2404735							
SNOWSHOE CAPITAL LLC	P		26-4624150					758,708		
CONSOLIDATED NEVADA CORPORATION	S		20-1307589					780,671		
CONSOLIDATED WESTERN CORPORATION	S		20-4802776							
TOTAL						\$ 40,704	\$ 40,704	\$ 1,573,721	\$ 0	\$ 0

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FEDERAL STATEMENTS

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PAUL MORABITO

STATEMENT 10
SCHEDULE E, LINE 31
BASIS LIMITATION
ACTIVITY NAME: BARUK PROPERTIES LLC

ADJUSTED BASIS AT BEGINNING OF YEAR	1,346,319.
ADJUSTED BASIS END OF YEAR	
CURRENT YEAR DISTRIBUTION OF LOSS	
CURRENT YEAR DISTRIBUTION OF INCOME	
LOSS IN EXCESS OF BASIS AT LIMITATION	-558,465.
CURRENT YEAR ENDING YEAR PORTFOLIO	0.
ADJUSTED BASIS END OF YEAR FOR BASIS LIMITATION	787,854.
LOSS ALLOWED BY BASIS LIMITATION	121,305.
ADJUSTED BASIS AT END OF YEAR	666,549.

	(A) CURRENT YEAR LOSS OR DEDUCTION	(B) PRIOR YEAR UNALLOWED BASIS LOSS	(C) LOSS ALLOWABLE BY BASIS LIMITATION	(D) BASIS CARRYOVER
INCOME OR LOSS				
RRE INCOME (LOSS)	121,305.		121,305.	
REGULAR TAX	121,305.	0.	121,305.	0.
DEDUCTIONS				
REGULAR TAX	0.	0.	0.	0.

ALTERNATIVE MINIMUM TAX

ALT MIN TAX BEGINNING BASIS	1,345,668.
ALT MIN TAX INCOME	63.
CURRENT YEAR ADJUSTMENTS TO BASIS	-558,465.
ALT MIN TAX BASIS USED FOR LIMITATION	787,266.
LOSS ALLOWED BY ALT MIN TAX BASIS	121,305.
ALT MIN TAX FINAL BASIS	665,961.
ALT MIN TAX ADJUSTMENT (FORM 8582)	63.

ALT MIN TAX ORDINARY INCOME (LOSS)	121,305.	0.
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FEDERAL STATEMENTS

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PAUL MORABITO

STATEMENT 10
SCHEDULE E, LINE 31
BASIS LIMITATION
ACTIVITY NAME: BIG WHEEL GAMING LLC

ADDITIONAL BASIS AT BEGINNING OF YEAR	6,810.
ADDITIONAL BASIS ADDED IN CURRENT YEAR	
CURRENT YEAR DISPOSITION OF BASIS	
CURRENT YEAR DISPOSITION OF BASIS	
ADJUST TO PARTNER'S SHARE OF LOSS	1,700.
CURRENT YEAR BASIS LIMITATION	0.
ADDITIONAL BASIS FOR BASIS LIMITATION	8,510.
LOSS ALLOWED BY BASIS LIMITATION	1,372.
ADDITIONAL BASIS AT END OF YEAR	7,138.

	(A) CURRENT YEAR LOSS OR DEDUCTION	(B) PRIOR YEAR UNALLOWED BASIS LOSS	(C) LOSS ALLOWABLE BY BASIS LIMITATION	(D) BASIS CARRYOVER
INCOME OR LOSS				
ORDINARY INCOME (LOSS)	1,372.		1,372.	
REGULAR TAX	1,372.	0.	1,372.	0.
DEDUCTIONS				
REGULAR TAX	0.	0.	0.	0.
ALTERNATIVE MINIMUM TAX				
ALT MIN TAX BEGINNING BASIS			6,810.	
ALT MIN TAX INCOME			1,700.	
CURRENT YEAR ADJUSTMENTS TO BASIS			8,510.	
ALT MIN TAX BASIS USED FOR LIMITATION			1,372.	
LOSS ALLOWED BY ALT MIN TAX BASIS			7,138.	
ALT MIN TAX FINAL BASIS				
ALT MIN TAX ORDINARY INCOME (LOSS)			1,372.	0.

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PAUL MORABITO

STATEMENT 10
SCHEDULE E, LINE 31
BASIS LIMITATION
ACTIVITY NAME: BIG WHEEL LODGING LLC

ADJUSTED BASIS AT BEGINNING OF YEAR	96,683.
ADJUSTED BASIS ADJUSTMENTS TO CURRENT YEAR	
ADJUSTED BASIS END OF YEAR	4,700.
ADJUSTED BASIS END OF YEAR	0.
ADJUSTED BASIS END OF YEAR	101,383.
ADJUSTED BASIS END OF YEAR	3,585.
ADJUSTED BASIS END OF YEAR	97,798.

	(A) CURRENT YEAR LOSS OR DEDUCTION	(B) PRIOR YEAR UNALLOWED BASIS LOSS	(C) LOSS ALLOWABLE BY BASIS LIMITATION	(D) BASIS CARRYOVER
INCOME OR LOSS				
ORDINARY INCOME (LOSS)	3,585.		3,585.	
REGULAR TAX	3,585.	0.	3,585.	0.
DEDUCTIONS				
REGULAR TAX	0.	0.	0.	0.
ALTERNATIVE MINIMUM TAX				
ALT MIN TAX BEGINNING BASIS			96,683.	
ALT MIN TAX INCOME			4,700.	
CURRENT YEAR ADJUSTMENTS TO BASIS			101,383.	
ALT MIN TAX BASIS USED FOR LIMITATION			3,585.	
LOSS ALLOWED BY ALT MIN TAX BASIS			97,798.	
ALT MIN TAX FINAL BASIS				
ALT MIN TAX ORDINARY INCOME (LOSS)			3,585.	0.

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PAUL MORABITO

STATEMENT 10
SCHEDULE E, LINE 31
BASIS LIMITATION
ACTIVITY NAME: SUPERPUMPER PROPERTIES LLC

ADDITIONAL BASIS AT BEGINNING OF YEAR	808,066.
ADDITIONAL BASIS DEDUCTIBLE IN CURRENT YEAR	-39,065.
CURRENT YEAR DEPLETION OF BASIS	-5,636.
ADDITIONAL BASIS DEDUCTIBLE IN SUBSEQUENT YEARS	40,704.
ADDITIONAL BASIS DEDUCTIBLE FOR BASIS LIMITATION	804,069.
ADDITIONAL BASIS DEDUCTIBLE FOR BASIS LIMITATION	0.
ADDITIONAL BASIS AT END OF YEAR	804,069.

	(A) CURRENT YEAR LOSS OR DEDUCTION	(B) PRIOR YEAR UNALLOWED BASIS LOSS	(C) LOSS ALLOWABLE BY BASIS LIMITATION	(D) BASIS CARRYOVER
INCOME OR LOSS				
REGULAR TAX	0.	0.	0.	0.
DEDUCTIONS				
REGULAR TAX	0.	0.	0.	0.

ALTERNATIVE MINIMUM TAX

ALT MIN TAX BEGINNING BASIS	905,681.
ALT MIN TAX INCOME	40,704.
CURRENT YEAR ADJUSTMENTS TO BASIS	-44,701.
ALT MIN TAX BASIS USED FOR LIMITATION	901,684.
LOSS ALLOWED BY ALT MIN TAX BASIS	901,684.
ALT MIN TAX FINAL BASIS	

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PAUL MORABITO

STATEMENT 10
SCHEDULE E, LINE 31
BASIS LIMITATION

ACTIVITY NAME: ROSEMONT SOLEBURY CO-INVESTMENT FUND LP

ADJUSTED BASIS AT BEGINNING OF YEAR	179,680.
ADJUSTED BASIS AT END OF YEAR	
ADJUSTED BASIS AT END OF YEAR	6,878.
ADJUSTED BASIS AT END OF YEAR	186,558.
ADJUSTED BASIS AT END OF YEAR	27,927.
ADJUSTED BASIS AT END OF YEAR	158,631.

	(A) CURRENT YEAR LOSS OR DEDUCTION	(B) PRIOR YEAR UNALLOWED BASIS LOSS	(C) LOSS ALLOWABLE BY BASIS LIMITATION	(D) BASIS CARRYOVER
INCOME OR LOSS				
ORDINARY INCOME (LOSS)	1,617.		1,617.	
REGULAR TAX	1,617.	0.	1,617.	0.

DEDUCTIONS

PORTFOLIO DEDUCTIONS - 23	26,296.		26,296.	
INV. INTEREST EXP - SCH A	12.		12.	
NONDEDUCTIBLE EXPENSES	2.		2.	
REGULAR TAX	26,310.	0.	26,310.	0.

ALTERNATIVE MINIMUM TAX

ALT MIN TAX BEGINNING BASIS	179,680.
ALT MIN TAX INCOME	6,878.
CURRENT YEAR ADJUSTMENTS TO BASIS	
ALT MIN TAX BASIS USED FOR LIMITATION	186,558.
LOSS ALLOWED BY ALT MIN TAX BASIS	27,927.
ALT MIN TAX FINAL BASIS	158,631.

ALT MIN TAX ORDINARY INCOME (LOSS)	27,927.	0.
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PAUL MORABITO

STATEMENT 10
 SCHEDULE E, LINE 31
 BASIS LIMITATION
 ACTIVITY NAME: WATCHMYBLOCK LLC

ADJUSTED BASIS AT BEGINNING OF YEAR	80,615.
ADDITIONAL AMOUNTS INVESTED IN CURRENT YEAR	
CURRENT YEAR DISTRIBUTIONS OF MONEY	
CURRENT YEAR DISTRIBUTION OF PROPERTY	
CHANGE IN PARTNER'S SHARE OF LIABILITIES	2,000.
CURRENT YEAR INCOME FROM PARTNERSHIP	0.
ADJUSTED BASIS USED FOR BASIS LIMITATION	82,615.
LOSS ALLOWED BY BASIS LIMITATION	31,487.
ADJUSTED BASIS AT END OF YEAR	51,128.

	(A) CURRENT YEAR LOSS OR DEDUCTION	(B) PRIOR YEAR UNALLOWED BASIS LOSS	(C) LOSS ALLOWABLE BY BASIS LIMITATION	(D) BASIS CARRYOVER
INCOME OR LOSS				
ORDINARY INCOME (LOSS)	31,487.		31,487.	
REGULAR TAX	31,487.	0.	31,487.	0.
DEDUCTIONS				
REGULAR TAX	0.	0.	0.	0.

ALTERNATIVE MINIMUM TAX

ALT MIN TAX BEGINNING BASIS	80,615.
ALT MIN TAX INCOME	
CURRENT YEAR ADJUSTMENTS TO BASIS	2,000.
ALT MIN TAX BASIS USED FOR LIMITATION	82,615.
LOSS ALLOWED BY ALT MIN TAX BASIS	31,487.
ALT MIN TAX FINAL BASIS	51,128.

ALT MIN TAX ORDINARY INCOME (LOSS)	31,487.	0.
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PAUL MORABITO

STATEMENT 10
SCHEDULE E, LINE 31
BASIS LIMITATION
ACTIVITY NAME: CONSOLIDATED NEVADA CORPORATION

DEBT BASIS AT BEGINNING OF YEAR	0.
ADDITIONAL DEBT BASIS DURING YEAR	
DEBT BASIS AT END OF YEAR	141,931.
DEBT BASIS USED FOR BASIS LIMITATION	141,931.
LOSS ALLOWED BY BASIS LIMITATION	141,931.
DEBT BASIS AT END OF YEAR	0.
PRINCIPAL AMOUNT OF DEBT S CORP OWES TO SHAREHOLDER AT BEGINNING OF YEAR	1,728,762.
DEBT BASIS	1,316,571.
INCOME USED TO RESTORE DEBT BASIS	
LOANS MADE TO S CORP DURING THE YEAR	613,611.
LOAN REPAYMENTS	
DEBT BASIS USED FOR BASIS LIMITATION	1,930,182.
LOSS ALLOWED BY BASIS LIMITATION	614,277.
DEBT BASIS AT END OF YEAR	1,315,905.
PRINCIPAL AMOUNT OF DEBT S CORP OWES TO SHAREHOLDER AT END OF YEAR	2,342,373.

	(A) CURRENT YEAR LOSS OR DEDUCTION	(B) PRIOR YEAR UNALLOWED BASIS LOSS	(C) LOSS ALLOWABLE BY BASIS LIMITATION	(D) BASIS CARRYOVER
INCOME OR LOSS				
ORDINARY INCOME (LOSS)	756,208.		756,208.	
REGULAR TAX	756,208.	0.	756,208.	0.
DEDUCTIONS				
REGULAR TAX	0.	0.	0.	0.

ALTERNATIVE MINIMUM TAX

ALT MIN TAX ORDINARY INCOME (LOSS)	0.
ALT MIN TAX DEDUCTIONS	141,931.
ALT MIN TAX INCOME	613,611.
ALT MIN TAX BASIS LIMITATION	755,542.
ALT MIN TAX BASIS	718,116.
ALT MIN TAX LOSS	37,426.
ALT MIN TAX CARRYOVER (FROM 6251, LINE 19)	38,092.

ALT MIN TAX ORDINARY INCOME (LOSS)

718,116.

0.

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FEDERAL STATEMENTS

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PAUL MORABITO

STATEMENT 10
SCHEDULE E, LINE 31
BASIS LIMITATION
ACTIVITY NAME: CONSOLIDATED WESTERN CORPORATION

DEBT BASIS AT BEGINNING OF YEAR	6,389,485.
INCREASE (DECREASE) DURING YEAR	0.
DEBT BASIS AT END OF YEAR	6,389,485.
LOSS ALLOWED BY BASIS LIMITATION	800,824.
DEBT BASIS AT END OF YEAR	5,588,661.

PRINCIPAL AMOUNT OF DEBT S CORP OWES TO SHAREHOLDER AT BEGINNING OF YEAR

DEBT BASIS	0.
INCOME USED TO RESTORE DEBT BASIS	
LOANS MADE TO S CORP DURING THE YEAR	
LOAN REPAYMENTS	0.
DEBT BASIS USED FOR BASIS LIMITATION	0.
LOSS ALLOWED BY BASIS LIMITATION	0.
DEBT BASIS AT END OF YEAR	0.

PRINCIPAL AMOUNT OF DEBT S CORP OWES TO SHAREHOLDER AT END OF YEAR

	(A) CURRENT YEAR LOSS OR DEDUCTION	(B) PRIOR YEAR UNALLOWED BASIS LOSS	(C) LOSS ALLOWABLE BY BASIS LIMITATION	(D) BASIS CARRYOVER
INCOME OR LOSS				
ORDINARY INCOME (LOSS)	780,671.		780,671.	
REGULAR TAX	780,671.	0.	780,671.	0.
DEDUCTIONS				
CHARITABLE CONTRIBUTIONS	9,480.		9,480.	
NONDEDUCTIBLE EXPENSES	10,673.		10,673.	
REGULAR TAX	20,153.	0.	20,153.	0.

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Declaration Control Number (DCN)

00 951053 18082 0

2009

ARIZONA FORM

AZ-8879

Arizona Department of Revenue
E-file Signature Authorization

Your First Name and Initial PAUL	Last Name MORABITO	You must enter your SSN(s).	Your Social Security No.
If a joint return, Spouse's First Name and Initial	Last Name		Spouse's Social Security No.

PART I PURPOSE

- To certify the truthfulness, correctness, and completeness of the taxpayer's electronic income tax return.
- To authorize the Electronic Return Originator (ERO) to affirm that the taxpayer wishes to use the taxpayer's electronic signature to the taxpayer's federal individual income tax return as the taxpayer's signature to the taxpayer's electronic Arizona individual income tax return.

PART I - TAX RETURN INFORMATION

1 Arizona Adjusted Gross Income	1	-799,120.
2 Balance Of Tax	2	
3 Arizona Income Tax Withheld	3	

Check box 4 or box 5:

4 <input type="checkbox"/> REFUND. Enter the amount of refund	4	
5 <input type="checkbox"/> AMOUNT YOU OWE. Enter the amount owed	5	

Box 4 Checkbox — Refund: You are due a refund based on the information provided on your tax return. Your refund amount will be deposited in the account listed in the Financial Institution Information Section (Part II).

Box 5 Checkbox — Amount You Owe: You owe taxes based on the information provided on your tax return. You have elected to direct debit for payment. The payment will be withdrawn from the account and on the date listed in the Financial Institution Information Section (Part II).

PART II - FINANCIAL INSTITUTION INFORMATION -

Must be present when requesting direct debit or deposit.

☐ Foreign Account Deposit/Debit: See instructions below.

TYPE OF ACCOUNT

☐ Checking ☐ Savings

ROUTING NUMBER

ACCOUNT NUMBER

DIRECT DEBIT REQUEST DATE

DIRECT DEBIT PAYMENT AMOUNT

\$

Foreign Account Deposit/Debit Checkbox: Mark the Foreign Account Deposit/Debit box if your deposit will be ultimately placed in or come from a foreign account. If you mark this box, do not enter your account numbers. If this box is marked, we will not direct deposit or debit your account. If you are due a refund, we will send you a check instead. If you owe tax, you must mail a check to the Arizona Department of Revenue, PO Box 52016, Phoenix, AZ, 85072-2016.

PART III DECLARATION AND SIGNATURE AUTHORIZATION (Sign only after completing Part II)

Under penalties of perjury, I declare that I have examined a paper copy of my electronic Arizona individual income tax return and accompanying schedules and statements for the year ending December 31, 2009, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that the amounts of Arizona adjusted gross income, total tax, Arizona income tax withheld, and refund (or amount owed) listed above are the amounts shown on the paper copy of my electronic Arizona income tax return.

6a ☐ I consent that my refund be directly deposited as designated in the electronic portion of my 2009 Arizona individual income tax return. If I have filed a joint return, this is an irrevocable appointment of the other spouse as an agent to receive the refund.

6b ☒ I do not want direct deposit of my refund or I am not receiving a refund.

6c ☐ I authorize the Arizona Department of Revenue (DOR) and its designated Financial Agent to initiate an ACH electronic funds withdrawal (direct debit) entry to the financial institution account indicated in the tax preparation software for payment of my Arizona taxes owed on this return. I also authorize the financial institutions involved in the processing of the electronic payment of taxes to receive confidential information necessary to answer inquiries and resolve issues related to the payment.

If I have filed a balance due return, I understand that if the DOR does not receive full and timely payment of my tax liability by April 15, 2010, I will remain liable for the tax liability and all applicable interest and penalties. When electronically filing my federal and state tax returns, I understand that if there is an error on my federal return, the electronic portion of my state return will also be rejected.

I consent to my Electronic Return Originator (ERO) or On-Line Service Provider (OLSP) sending my electronic Arizona individual income tax return and accompanying schedules and statements to DOR, and I consent to my ERO or OLSP sending such information to DOR through a transmitter. I consent to DOR sending my ERO, OLSP and/or transmitter an acknowledgement of receipt of transmission and an indication of whether or not the transmission of my return is accepted and, if the return is rejected, the reason(s) for the rejection. If the processing of my return or refund is delayed, I authorize DOR to disclose to my ERO, OLSP and/or transmitter the reason(s) for the delay, or when the refund was sent. If DOR contacts my ERO for a copy of my return, any attachments or schedules to my return, and/or this authorization form, I authorize my ERO to release copies of the requested documents to DOR.

I authorize STANTON BERNSTEIN, AN ACCOUNT to make the election that I want my electronic signature to my electronic federal

(ELECTRONIC RETURN ORIGINATOR)

Individual Income tax return to serve as my signature to my electronic Arizona individual income tax return for the year ending December 31, 2009. I understand that when my ERO makes the election that my electronic signature to my federal individual income tax return will serve as my signature to my Arizona individual income tax return, I will have signed my Arizona individual income tax return and declared under penalties of perjury that to the best of my knowledge and belief the return is true, correct and complete. I further understand that if my ERO fails to make the election of my electronic signature to my federal individual income tax return as my signature to my Arizona individual income tax return, I will need to execute Arizona Form AZ-8453.

P E A S O N S	YOUR PEN AND INK SIGNATURE	DATE
	SPOUSE'S PEN AND INK SIGNATURE	DATE

Do not mail this form to the Arizona Department of Revenue. The ERO must retain this document a minimum of four years.

AZ125011 09/29/09

(2009)

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ARIZONA FORM

140NR

Nonresident Personal Income Tax Return

FOR
CALENDAR YEAR

2009

OR FISCAL YEAR BEGINNING

AND ENDING

(66)

(89) (X)

82F ☒ Check box 82F if filing under extension

Your First Name and Initial 1 PAUL		Last Name MORABITO		Your Social Security No.	
Spouse's First Name and Initial (if box 4 or 6 is checked) 1		Last Name		Spouse's Social Security No.	
Present Home Address — number and street, rural route 2 8581 SANTA MONICA BLVD. #708				Appt. No.	
City, Town or Post Office 3 SANTA MONICA				State Zip Code CA 90069-4120	
Daytime Phone (with area code)				Home Phone (with area code) (34)	
Filing Status: 4 <input type="checkbox"/> Married filing joint return 5 <input type="checkbox"/> Head of household 6 <input type="checkbox"/> Married filing separate return. Enter spouse's name and Social Security Number above. 7 <input checked="" type="checkbox"/> Single Enter the number claimed. Do not put a check mark.					
Examples: 8 <input type="checkbox"/> Age 65 or over (you and/or spouse) 9 <input type="checkbox"/> Blind (you and/or spouse) 10 <input type="checkbox"/> Dependents. From page 2, line A2 — Do not include self or spouse.					

REVENUE USE ONLY. DO NOT MARK IN THIS AREA.

11-13 Residency Status (check one): 11 <input checked="" type="checkbox"/> Nonresident 12 <input type="checkbox"/> Nonresident Active Military 13 <input type="checkbox"/> Composite Return	
This box may be blank or may contain a printed barcode of data from your return.	
14 Fed AGI... 14 -1,050,249. 15 Arizona income (from page 2, line 815)..... 15 -780,671. 16 Additions to income (from page 2, line C20)..... 16 17 Add lines 15 and 16..... 17 -780,671. 18 Subtractions. Number from line C25a..... 18 181 19 Arizona AGI. Line 17 minus line 18..... 19 -799,120. 20 <input checked="" type="checkbox"/> STANDARD 20 287,248. 21 Personal exemptions..... 21 1,561. 22 AZ taxable income. Line 19 minus lines 20 & 21..... 22 0. 23 Compute the tax: Use Tax Table X or Y..... 23 0. 24 Tax from recapture of credits..... 24 25 Subtotal of tax: Add lines 23 and 24..... 25 26-27 <input checked="" type="checkbox"/> 1 <input type="checkbox"/> YOURSELF <input type="checkbox"/> SPOUSE 28 Reduced tax: Subtract line 27 from line 25..... 28 29 Credits from Arizona Form 301, line 59, or Forms 321, 322 and 323 if Form 301 is not required..... 29 30 Credit type: Enter form no. of each credit claimed..... 30 3 3 3 3 3 31 Clean Elections Fund Tax Credit. From worksheet in the instructions..... 31 32 Balance of tax. Subtract lines 29 and 31 from line 28. If the sum of lines 29 and 31 is more than line 28, enter zero..... 32 0. 33 Arizona income tax withheld during 2009..... 33 34 Arizona estimated tax payments for 2009..... 34 35 2009 Arizona extension payment (Form 204)..... 35 36 Total payments: Add lines 33 through 35..... 36 37 TAX DUE: If line 32 is larger than line 36, subtract line 36 from line 32, and enter amount of tax due. Skip lines 38, 39 and 40..... 37 38 OVERPAYMENT: If line 36 is larger than line 32, subtract line 32 from line 36, and enter amount of overpayment..... 38 39 Amount of line 38 to be applied to 2010 estimated tax..... 39 40 Balance of overpayment. Subtract line 39 from line 38..... 40	
41-50 Voluntary Gifts to: Add to Education (include refund ways)..... 41 Citizens Donor Deduct..... 43 Domestic Violence Shelter..... 45 Neighborhood Helping Neighbors..... 47 National Securities Fund..... 49 Arizona Wildlife..... 42 Child Abuse Prevention..... 44 National Guard Relief Fund..... 46 Special Olympics..... 48 Political Gifts..... 50	
51 Check only one if making a political gift: 51 1 <input type="checkbox"/> Democratic 51 2 <input type="checkbox"/> Green 51 3 <input type="checkbox"/> Libertarian 51 4 <input type="checkbox"/> Republican 52 Estimated payment penalty and MSA withdrawal penalty..... 52 53 Check applicable boxes: 53 1 <input type="checkbox"/> Adjusted Other 53 2 <input type="checkbox"/> Farmer or Fisherman 53 3 <input type="checkbox"/> Form 221 attached 53 4 <input type="checkbox"/> MSA Penalty 54 Total of lines 41 through 50 and 52..... 54 55 REFUND. Subtract line 54 from line 40. If less than zero, enter amount owed on line 55..... 55 Direct Deposit of Refund: Check box 55A if your deposit will be ultimately placed in a foreign acct; see instructions ROUTING NUMBER..... ACCOUNT NUMBER..... 55A <input type="checkbox"/> Checking or <input type="checkbox"/> Savings 56 AMOUNT OWED. Add lines 37 and 54. Make check payable to Arizona Department of Revenue; include SSN on payment..... 56 0. <input type="checkbox"/> Payment enclosed. Check the box, and enclose but do not attach payment. PLEASE DO NOT SEND CASH.	

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Your Name (as shown on page 1) **PAUL MORABITO** Social Security No. _____

PART A: Dependents – do not list yourself or spouse

A1 List children and other dependents. If more space is needed, attach a separate sheet.

FIRST AND LAST NAME	SOCIAL SECURITY NO.	RELATIONSHIP	NO. OF MONTHS LIVED IN YOUR HOME BY 2009

A2 Enter total number of persons listed in A1 here and on page 1 of this form, box 10 **TOTAL** **A2** **0**

A3 a Enter the names of the dependents listed above who do not qualify as your dependent on your federal return:

b Enter dependents listed above who were not claimed on your federal return due to education credits:

PART B: Arizona Percent of Total Income

	2009 FEDERAL Amount from Federal Return	2009 ARIZONA Source Amount Only
B4 Wages, salaries, tips, etc.	B4 498,206.	
B5 Interest	B5 64,572.	
B6 Dividends	B6 141,937.	
B7 Arizona income tax refunds	B7	
B8 Business income (or loss) from federal Schedule C	B8 -178,641.	
B9 Gains (or losses) from federal Schedule D	B9 -3,000.	
B10 Rents, royalties, partnerships, estates, trusts, small business corporations from federal Schedule E	B10 -1,573,323.	-780,671.
B11 Other income reported on your federal return	B11	
B12 Total Income: Add lines B4 through B11	B12 -1,050,249.	-780,671.
B13 Other federal adjustments. Attach your own schedule	B13	
B14 Federal adjusted gross income. Subtract line B13 from line B12 in the FEDERAL column	B14 -1,050,249.	
B15 Arizona income: Subtract line B13 from line B12 in the ARIZONA column. Enter here and on page 1 of this form on line 15	B15	-780,671.
B16 Arizona percentage: Divide line B15 by line B14, and enter the result (not over 100%)	B16	74.33 8

PART C: Additions to Income

C17 Early withdrawal of Arizona Retirement System contributions	C17
C18 Total depreciation included in Arizona gross income	C18
C19 Other additions to income. See instructions and attach your own schedule	C19
C20 Total: Add lines C17 through C19. Enter here and on page 1 of this form, line 16	C20

PART D: Subtractions from Income

D21 Exemption: Age 65 or over. Multiply the number in box 8, page 1, by \$2,100	D21
D22 Exemption: Blind. Multiply the number in box 9, page 1, by \$1,500	D22
D23 Exemption: Dependents. Multiply the number in box 10, page 1, by \$2,300	D23
D24 Total exemptions: Add lines D21 through D23	D24
D25 Multiply line D24 by the percentage on line B16, and enter the result	D25
D26 Interest on U.S. obligations such as U.S. savings bonds and treasury bills included in the ARIZONA column	D26
D27 Arizona state lottery winnings included on line B11 in the ARIZONA column (up to \$5,000 only)	D27
D28 Agricultural crops contributed to Arizona charitable organizations	D28
D29 Construction of an energy efficient residence. See instructions. Enter number then amount	D29a
D30 Other subtractions from income. See instructions and attach your own schedule	STMT 1
D31 Total: Add lines D25 through D30. Enter here and on page 1 of this form, line 18	D31 18,449.

PART E: Last Name(s) Used in Prior Years – if different from name(s) used in current year

E32

I have read this return and any attachments with it. Under penalties of perjury, I declare that in the best of my knowledge and belief, they are true, correct and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

PLEASE SIGN HERE	YOUR SIGNATURE	DATE	BUSINESSMAN OCCUPATION
	SPOUSE'S SIGNATURE	DATE	SPOUSE'S OCCUPATION
	PAID PREPARER'S SIGNATURE	DATE	FIRM'S NAME (PREPARER'S IF SELF-EMPLOYED)
	PAID PREPARER'S TIN	PAID PREPARER'S ADDRESS	PAID PREPARER'S PHONE NO.

STANTON R. BERNSTEIN, CPA **6320 CANOGA AVE., 15TH FLOOR** **(818) 596-2139**
WOODLAND HILLS, CA 91367

If you are also sending a payment, mail to Arizona Department of Revenue, PO Box 52016, Phoenix, AZ 85072-2016 (PO Box 29204, Phoenix, AZ 85038-9204 if your return has a barcode).
 If you are not sending a payment, mail to Arizona Department of Revenue, PO Box 52138, Phoenix, AZ 85072-2138 (PO Box 29205, Phoenix, AZ 85038-9205 if your return has a barcode).

AZ Form 140NR (2009)

Page 2
(2009)

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AZ140NR 10/27/09

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ARIZONA SCHEDULE
A(NR)Itemized Deductions
For Nonresidents
Attach to your return

2009

Your Name as shown on Form 140NR PAUL MORABITO	Your Social Security Number
Spouse's Name as shown on Form 140NR	Spouse's Social Security Number

Adjustment to Medical and Dental Expenses

1 Medical and dental expenses	1	68,723.
2 Amount of medical savings account (MSA) distributions used to pay qualified medical expenses included on line 1	2	
3 Medical expenses allowed to be taken as a federal itemized deduction	3	68,723.
4 Add line 2 and line 3, and enter the result	4	68,723.
5 If line 1 is the same as or more than line 4, subtract line 4 from line 1; otherwise, go to line 6	5	
6 If line 4 is more than line 1, subtract line 1 from line 4	6	

Adjustment to Interest Deduction

7 If you received a federal credit for interest paid on mortgage credit certificates (from federal Form 8396), enter the amount of mortgage interest you paid for 2009 that is equal to the amount of your 2009 federal credit	7	
--	---	--

Adjustment to Gambling Losses

8 Wagering losses allowed as a federal itemized deduction	8	
9 Total gambling winnings included in your federal adjusted gross income	9	
10 Arizona lottery subtraction from Form 140NR, page 2, line D27	10	
11 Maximum allowable gambling loss deduction: Subtract line 10 from line 9	11	
12 If line 11 is less than line 8, subtract line 11 from line 8; otherwise enter "zero"	12	

Adjustment to Charitable Contributions

13 Amount of charitable contributions for which you are taking a credit under Arizona law	13	
---	----	--

Itemized Deductions

14 Add the amounts on lines 5 and 7	14	
15 Add the amounts on lines 6, 12 and 13	15	
16 Total federal itemized deductions allowed to be taken on federal return	16	386,449.
17 Enter the amount from line 14 above	17	
18 Add lines 16 and 17	18	386,449.
19 Enter the amount from line 15 above	19	
20 Adjusted itemized deductions: Subtract line 19 from line 18	20	386,449.
21 Enter your Arizona percentage from Form 140NR, page 2, line B16	21	74.33 %
22 Arizona itemized deductions: Multiply line 20 by the percentage on line 21. Enter the result here and on Form 140NR, page 1, line 20	22	287,248.

NOTE: You must attach a copy of federal Form 1040, Schedule A to your return if you itemize your deductions.

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SCHEDULE A
(Form 1040)**Itemized Deductions**
ARIZONA COPY

OMB No. 1545-0074

2009Department of the Treasury
Internal Revenue Service (99)

▶ Attach to Form 1040.

▶ See instructions for Schedule A (Form 1040).

Attachment
Sequence No. 07

Name(s) shown on Form 1040

Your social security number

PAUL MORABITO

Medical and Dental Expenses		Caution. Do not include expenses reimbursed or paid by others.				
1	Medical and dental expenses (see instructions).....	STATEMENT 2	1	68,723.		
2	Enter amount from Form 1040, line 38.....	2 -1,050,249.	3			
3	Multiply line 2 by 7.5% (.075).....		4	68,723.		
4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-.....					
Taxes You Paid		5 State and local (check only one box):				
a <input type="checkbox"/> Income taxes, or		b <input checked="" type="checkbox"/> General sales taxes.....		5	239.	
6 Real estate taxes (see instructions).....		7 New motor vehicle taxes from line 11 of the worksheet on page 2. Skip this line if you checked box 5b.....		6	49,548.	
8 Other taxes. List type and amount ▶ PERSONAL PROPERTY TAXES		9 Add lines 5 through 8.....		7		
				8	9,352.	
				9	59,139.	
Interest You Paid		10 Home mtg interest and points reported to you on Form 1098.....		SEE ST. 3	10	48,183.
11 Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying number, and address ▶		12 Points not reported to you on Form 1098. See instrs for spec rules.....		11		
13 Qualified mortgage insurance premiums (see instructions).....		14 Investment interest. Attach Form 4952 if required. (See instrs.).....		12		
14		15 Add lines 10 through 14.....		13		
				14	150,480.	
				15	198,663.	
Gifts to Charity		16 Gifts by cash or check. If you made any gift of \$250 or more, see instrs.....		SEE STATEMENT 5	16	35,480.
17 Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500.....		18 Carryover from prior year.....		17		
19 Add lines 16 through 18.....		DISALLOWED CONTRIBUTIONS.....		18		
				19	0.	
Casualty and Theft Losses		20 Casualty or theft loss(es). Attach Form 4684. (See instructions.).....			20	0.
Job Expenses and Certain Miscellaneous Deductions		21 Unreimbursed employee expenses — job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.) ▶		21		
22 Tax preparation fees.....		23 Other expenses — investment, safe deposit box, etc. List type and amount ▶ SEE STATEMENT 6		22	3,895.	
24 Add lines 21 through 23.....		25 Enter amount from Form 1040, line 38.....		23	56,029.	
25		26 Multiply line 25 by 2% (.02).....		24	59,924.	
27 Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-.....		28 Other — from list in the instructions. List type and amount ▶		25	-1,050,249.	
28				26		
				27	59,924.	
Other Miscellaneous Deductions				28	0.	
Total Itemized Deductions		29 Is Form 1040, line 38, over \$166,800 (over \$83,400 if married filing separately)? <input checked="" type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40a. <input type="checkbox"/> Yes. Your deduction may be limited. See instructions for the amount to enter.		29		386,449.
30 If you elect to itemize deductions even though they are less than your standard deduction, check here ▶ <input type="checkbox"/>						

BAA For Paperwork Reduction Act Notice, see Form 1040 Instructions.

FDX0301L 11/29/09

Schedule A (Form 1040) 2009

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2009

ARIZONA STATEMENTS

PAGE 1

PAUL MORABITO

STATEMENT 1
FORM 140NR, LINE D30
OTHER SUBTRACTIONS FROM INCOME

ADJUSTMENT FOR IRC SEC. 179 EXPENSE NOT ALLOWED IN 2007..... \$ 18,449.
TOTAL \$ 18,449.

STATEMENT 2
SCHEDULE A, LINE 1
MEDICAL AND DENTAL EXPENSES

DOCTORS, DENTISTS, AND NURSES..... \$ 45,623.
 INSURANCE PREMIUMS..... 23,100.
TOTAL \$ 68,723.

STATEMENT 3
SCHEDULE A, LINE 10
HOME MORTGAGE INTEREST REPORTED ON FORM 1098

BANK OF AMERICA..... \$ 48,183.
TOTAL \$ 48,183.

STATEMENT 4
SCHEDULE A, LINE 14
INVESTMENT INTEREST

BANK OF AMERICA..... \$ 26,799.
 BANK OF AMERICA LINE OF CREDIT..... 45,849.
 INVESTMENT INTEREST CARRYOVER..... 180,147.
 INVESTMENT INTEREST FROM K-1..... 12.
 DISALLOWED INVESTMENT INTEREST (FORM 4952)..... -102,327.
TOTAL \$ 150,480.

STATEMENT 5
SCHEDULE A, LINE 16
CONTRIBUTIONS BY CASH OR CHECK

AIDS SOCIETY..... \$ 25,000.
 AMERICAN CANCER SOCIETY..... 1,000.
 CHARITABLE CONTRIBUTIONS FROM K-1..... 9,480.
TOTAL \$ 35,480.

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RBSL 00433

CONFIDENTIAL

2009

ARIZONA STATEMENTS

PAGE 2

PAUL MORABITO

STATEMENT 6
SCHEDULE A, LINE 23
OTHER EXPENSES

BANK OF AMERICA.....	\$	10,393.
BANK OF AMERICA.....		16,407.
INVESTMENT EXP. FROM K-1.....		26,296.
PER INCOME STMT.....		901.
US TRUST.....		2,032.
TOTAL	\$	<u>56,029.</u>

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RBSL 00434

EXHIBIT 8

EXHIBIT 8

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through May 20, 2014.

Selected Entity Name: SNOWSHOE PETROLEUM, INC.

Selected Entity Status Information

Current Entity Name: SNOWSHOE PETROLEUM, INC.

DOS ID #: 4001059

Initial DOS Filing Date: SEPTEMBER 29, 2010

County: ERIE

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

DENNIS C. VACCO, ESQ.

LIPPES MATHIAS WEXLER FRIEDMAN

665 MAIN STREET, SUITE 300

BUFFALO, NEW YORK, 14203

Chief Executive Officer

SALVATORE MORABITO

10645 N TATUM #200-626

PHOENIX, ARIZONA, 85028

Principal Executive Office

SNOWSHOE PETROLEUM

665 MAIN ST, SUITE 300

BUFFALO, NEW YORK, 14203

Registered Agent

NONE

This office does not record information regarding
the names and addresses of officers, shareholders
or directors of nonprofessional corporations except

the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by viewing the certificate.

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
200	No Par Value	

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
SEP 29, 2010	Actual	SNOWSHOE PETROLEUM, INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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EXHIBIT 9

EXHIBIT 9

May 9, 2008

VIA EMAIL

jpd@jonesvargas.com
lbubala@jonesvargas.com

John Desmond
Louis Bubala
Jones Vargas
100 West Liberty Street
Twelfth Floor
Reno, Nevada 89501

Re: Association with Dennis C. Vacco, Esq. (CNC et al., v. JH, Inc., et al.)

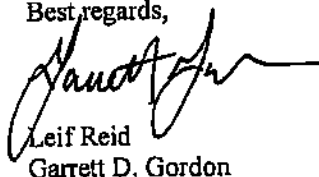
Dear John:

The purpose of this letter is to inform you that we intend to file a motion to associate with Dennis C. Vacco, Esq. in the above captioned case.

Mr. Vacco was the Attorney General for the State of New York, and prior to that the United States Attorney for the Western District of New York. Currently, he is with the Albany, New York firm of Crane Vacco and Sanders. Mr. Vacco is experienced in Securities & Exchange Commission matters, white collar crime investigations and complex business litigation. Mr. Vacco plans to be present at our June mediation.

It is my understanding that you will not oppose this motion. Please advise me if your position has changed.

Best regards,



Leif Reid
Garrett D. Gordon

cc: Client

EXHIBIT 10

EXHIBIT 10

SHAREHOLDER INTEREST PURCHASE AGREEMENT

THIS SHAREHOLDER INTEREST PURCHASE AGREEMENT ("Agreement") is dated as of the 30 day of September, 2010, by and between PAUL MORABITO, an individual residing at 8581 Santa Monica Blvd., Suite 708, West Hollywood, CA 90069 ("Seller") and SNOWSHOE PETROLEUM, INC., a New York corporation with offices at 14631 N. Scottsdale Road, Suite 125, Scottsdale, Arizona 85254 (the "Company").

WITNESSETH:

WHEREAS, Seller is a shareholder of Superpumper, Inc., an Arizona corporation with offices at 14631 N. Scottsdale Road, Suite 125, Scottsdale, Arizona 85254, (hereinafter "Superpumper") and owns Eighty (80) shares (the "Shares") of the common stock of Superpumper, representing Eighty Percent (80%) of the issued and outstanding shares; and

WHEREAS, Seller wishes to sell all of his Shares to the Company and the Company wishes to purchase the Shares from Seller, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and mutual representations, warranties and covenants contained herein, the parties agree as follows:

**ARTICLE 1.
PURCHASE AND SALE**

1.1 Sale of Shares. Subject to all other terms and conditions of this Agreement, Seller will sell and transfer to the Company, and the Company will purchase from Seller all of the Seller's right, title and interest in Eighty (80) Shares in Superpumper for a purchase price of One Million Thirty Five Thousand Ninety Four Dollars (\$1,035,094) (the "Initial Purchase Price"). The parties acknowledge and agree that the Initial Purchase Price is based upon a preliminary appraisal of the Seller's Shares and that such Initial Purchase Price may be adjusted upward (but not downward) based upon a final appraisal to be completed subsequent to the Closing. To the extent that the Initial Purchase Price is adjusted upward, the Company shall issue to Seller a promissory note (the "Note") for the amount of such adjustment. The Note shall be subordinate to any bank financing of the Company at the time of issuance or any future bank financing and shall be amortized over a seven (7) year term with principal paid annually and interest at a rate of four percent (4%) per annum paid monthly. The parties further acknowledge that the Seller may assign the principal and interest payments from the Company pursuant to the Note to a third party creditor.

ARTICLE 2.
CLOSING DOCUMENTS

2.1 Closing Documentation. The closing of the purchase and sale of the Seller's Shares (the "Closing") shall be held at the offices of the Company on September 30, 2010 or at such other place as is mutually agreed to between the Company and Seller (the "Closing Date"). At the Closing, Seller shall deliver to the Company an original certificate evidencing Eighty (80) shares duly endorsed for transfer, and the Company shall deliver to Seller the Initial Purchase Price with such payment to be made by wire transfer of immediately available funds to an account designated by Seller. In lieu of a payment directly from the Company, the shareholders of the Company may transfer the Initial Purchase Price directly to the Seller and such transfer shall be deemed a capital contribution to the Company by the shareholders in the amount of the Initial Purchase Price and a corresponding payment by the Company to the Seller in satisfaction of the Initial Purchase Price..

ARTICLE 3.
REPRESENTATIONS AND WARRANTIES OF SELLER

3.1 Seller represents and warrants to the Company as follows:

(a) This Agreement constitutes a legal, valid and binding obligation of Seller enforceable against him in accordance with its terms. Seller shall effectively transfer to the Company good and marketable title to the Shares free and clear of all liabilities, liens, encumbrances and other restrictions.

(b) Seller has concluded an assessment satisfactory prior to entering into this Agreement that the Purchase Price reflects adequate consideration for the purchase of the Shares.

ARTICLE 4.
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

4.1 The Company represents and warrants to Seller as follows:

(a) Organization, Corporate Power, Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of New York. The Company has the power and authority to (i) own and hold its properties and to carry on its business as now conducted; (ii) execute and deliver and perform its obligations under this Agreement, and all other documents required to be delivered by the Company hereunder (collectively the "Transaction Documents"); and (iii) to acquire the Seller's Shares.

(b) Validity. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company,

enforceable in accordance with its terms, subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency and similar laws and to general principles of equity. The Transaction Documents, when executed and delivered by the Company in accordance with this Agreement, will constitute the legal, valid and binding obligations of the Company, enforceable in accordance with their respective terms, subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency and similar laws and to general principles of equity.

(c) No Violation. Neither the execution and delivery of this Agreement and the other Transaction Documents, nor the consummation by the Company of the transactions contemplated hereby and thereby, will: (1) violate any statute or law, or any rule or regulation; (2) violate any order, writ, injunction or decree of any court or governmental authority; or (3) violate or conflict with or constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, or will result in the termination of, or accelerate the performance required by, any term or provision of: (i) the Certificate of Incorporation and the By-Laws of the Company; or (ii) any lease, contract, commitment, understanding, arrangement, agreement or restriction of any kind or character to which the Company is a party or by which the Company or any of its assets or properties may be bound or affected. No filing with or consent, approval, authorization or action by any governmental or regulatory authority is required in connection with the execution and delivery by the Company of this Agreement or the consummation by the Company of the transactions contemplated hereby.

(d) Brokers. Neither the Company, nor any of its officers, directors or employees, as the case may be, has employed any broker or finder or incurred any liability for brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement.

ARTICLE 5. MISCELLANEOUS

5.1 Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof and no party shall be liable or bound to the other in any manner by any warranties, representations, covenants or agreements except as specifically set forth herein or expressly required to be made or delivered pursuant hereto.

5.2 Modifications. Any amendment, change or modification of this Agreement shall be void unless in writing and signed by all parties hereto.

5.3 Further Assurances. Seller and the Company shall execute and deliver to the other party such instruments as may be reasonably required in connection with the performance of this Agreement and each shall take all further actions as may be reasonably requested to carry out the transactions contemplated by this Agreement.

CONFIDENTIAL

5.4 Binding Effect and Benefits. This Agreement shall be binding upon and shall inure to the benefit of the Company and Seller and their respective successors, assigns, transferees and legal representatives.

5.5 Notices. Any notices or other communications required or permitted to be given pursuant to this Agreement shall be deemed to be given if in writing and delivered personally or sent by certified mail, postage prepaid addressed as follows:

(a) To Seller:

Paul Morabito
8581 Santa Monica Blvd.
Suite 708
West Hollywood, CA 90069

(b) To the Company:
Snowshoe Petroleum, Inc.
14631 Scottsdale Road, Suite 125
Scottsdale, AZ 85254

With a copy to:

Lippes Mathias Wexler Friedman LLP
665 Main Street - Suite 300
Buffalo, NY 14203
Attention: Dennis C. Vacco, Esq.

or such other address as shall be furnished in writing by Seller or the Company to the other party.

5.6 Governing Law. This Agreement shall be governed, construed and enforced in accordance with the internal laws of the State of New York without regard to conflicts of laws principles.

5.7 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement.

[The Remainder of this Page Intentionally Blank]

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Agreement
as of the date first written above.

SELLER:

PAUL MORABITO

COMPANY:

SNOWSHOE PETROLEUM, INC.

By: _____

Edward Bayuk, Shareholder and Director

CONFIDENTIAL

-5-

RBSL 001432

EXHIBIT 11

EXHIBIT 11

1 IN THE SECOND DISTRICT COURT OF THE STATE OF NEVADA
 2 IN AND FOR THE COUNTY OF WASHOE

3
 4 ----- **CERTIFIED
 TRANSCRIPT**

5 CONSOLIDATED NEVADA CORP., et al.,)
 6 Plaintiffs,)
 7 vs.) No. CV07-02764
 8 JH, INC., et al.,) VOLUME I
 9 Defendants.)

10 -----
 11 AND RELATED COUNTERCLAIM.)
 12 -----

13
 14 Deposition of EDWARD BAYUK, at
 15 611 Anton Boulevard, Costa Mesa,
 16 California, commencing at 10:45 A.M.,
 17 Friday, January 22, 2010, before
 18 Judith A. Mango, CSR No. 5584.

19
 20
 21
 22
 23
 24
 25 PAGES 1 - 216

1 APPEARANCES OF COUNSEL:

2
3 FOR THE PLAINTIFFS AND COUNTERDEFENDANTS:

4
5 LEWIS AND ROCA LLP

6 BY: DARREN J. LEMIEUX, ESQ.

7 50 West Liberty Street

8 Suite 410

9 Reno, Nevada 89501-1922

10 (775) 321-3422

11 dlemieux@lrlaw.com

12
13 FOR THE DEFENDANTS AND COUNTERCLAIMANTS:

14
15 JONES VARGAS

16 BY: LOUIS M. BUBALA, ESQ.

17 100 West Liberty Street

18 12th Floor

19 Reno, Nevada 89504-0281

20 (775) 786-5000

21 lbubala@jonesvargas.com

22
23 ALSO PRESENT:

24
25 DANIEL BERMUDEZ, VIDEO OPERATOR

1 VIDEO OPERATOR: Okay. Good morning. We
2 are on the record at 10:45 A.M. on January 22, 2010.
3 This is the videotaped deposition of Edward Bayuk.
4 My name is Daniel Bermudez, here with our court
5 reporter, Judith A. Mango. We are here from Veritext 10:45
6 National Deposition and Litigation Services at the
7 request of counsel for defendants.

8 This deposition is being held at 611 Anton
9 Boulevard in the City of Costa Mesa. The caption of
10 this case is Consolidated Nevada Corp., et al., 10:45
11 versus JH, Inc., et al., Case No. CV 0702764.

12 Please note that audio and video recording
13 will take place unless all parties agree to go off
14 the record. Microphones are sensitive and may pick
15 up whispers, private conversations and cellular 10:45
16 interference.

17 At this time would counsel please identify
18 yourselves and state whom you represent.

19 MR. LEMIEUX: Darren Lemieux on behalf of
20 the plaintiffs and counterdefendants from Lewis and 10:45
21 Roca.

22 MR. BUBALA: Louis Bubala with Jones Vargas
23 on behalf of the defendants and counterclaimants.

24 VIDEO OPERATOR: Thank you. The witness
25 will be sworn in and we can proceed. 10:45

1 EDWARD BAYUK,
2 the witness, having been administered an oath in
3 accordance with CCP Section 2094, testified as
4 follows:

5
6 EXAMINATION

7 BY MR. BUBALA:

8 Q. Welcome on this rainy day. I guess it's
9 still raining but we all made it. So it's Bayuk?

10 A. Bayuk. 10:46

11 Q. Bayuk?

12 A. Yes.

13 Q. That's Bayuk. All right. Let me write that
14 down and I'll try to get that right.

15 A. That's okay. 10:46

16 Q. Bubala is not an easy one either.

17 A. No, that's not an easy one either.

18 Q. Let me go through some of the ground rules
19 on how a deposition works and then I'll go through
20 some questions, go through some people, some 10:46
21 companies. As I said, we will have some documents
22 here in a little while and then we will go through
23 those.

24 You know, Darren and I have agreed that this
25 will be done by 5:00. I don't anticipate it will go 10:46

1 all the way to 5:00. You know, when noon gets here
2 we can talk if we want to take a break, short break.

3 A. Okay.

4 Q. But we will get that -- get to that, you
5 know, when we do. 10:47

6 How long is the videotaped?

7 VIDEO OPERATOR: Two hours.

8 MR. BUBALA: Two hours. Okay.

9 Q. Have you ever had your deposition taken
10 before? 10:47

11 A. Yes.

12 Q. How many times?

13 A. I don't recall. It's a long time ago.

14 Q. Okay.

15 A. Like more than 15 years ago. 10:47

16 Q. Okay. All right. So this is what we go
17 through here.

18 You have been sworn in by the court
19 reporter. You know, we are in a conference room here
20 but this is -- for all intents and purposes this is a 10:47
21 courtroom where you have been sworn in and you have
22 sworn to tell the truth.

23 So kind of the starting point is: Is there
24 any reason that you would not be able to tell the
25 truth and respond truthfully today? 10:47

1 A. No.

2 Q. Any medical condition or disability of some
3 sort that would interfere with your ability to --

4 A. No.

5 Q. And, you know, generally the deposition is 10:47
6 designed for me on behalf of my clients to ask you
7 questions under oath.

8 A. Right.

9 Q. This would be set up where I'll go through
10 all the questions, all the topics I want to ask you. 10:48
11 Mr. Lemieux on your behalf may then take an
12 opportunity to ask additional questions of you. And
13 then there's potentially a little back and forth
14 between, you know, some final questions there.

15 Some of these things, you know, the purchase 10:48
16 and sale of Berry-Hinckley Industries, I mean, I
17 think we commonly agree that's what the core of this
18 litigation is. We are cognizant that some of these
19 things did not happen yesterday.

20 So answer the questions to the best of your 10:48
21 ability. If you don't remember, you don't remember.
22 We're all cognizant of the time period that's
23 involved here.

24 As I ask questions Mr. Lemieux may object
25 to, say, the form of the question. You know, object 10:49

1 that it's vague, unclear. You are still obligated to
2 answer the question.

3 A. All right.

4 Q. However, obviously, if you don't understand
5 the question, tell me that. 10:49

6 A. Okay.

7 Q. I'll try to rephrase it or we can talk
8 through it to figure out -- so I can be more specific
9 and you'll understand what I'm asking about.

10 You're obligated to answer the question 10:49
11 unless Mr. Lemieux directs you not to. That would
12 typically be in a case where there is an
13 attorney-client privilege where you said you have had
14 a conversation with Mr. Lemieux or another attorney
15 that represents you. 10:49

16 And I think kind of a general ground rule is
17 we are being videotaped, but to the extent you can
18 answer a question yes or no as opposed to uh-huh or
19 unh-uh --

20 A. Okay. 10:50

21 Q. -- or shaking your head, it's difficult for
22 the court reporter to take some of those down or to
23 be absolutely certain what we're -- what the response
24 is. We recognize that this is just a conversation in
25 many ways and we slip into those common habits, but, 10:50

1 you know, someone may say is that a yes or no.

2 A. Right.

3 Q. They are not trying to badger you.

4 A. Okay.

5 Q. But just make a clear record of what the 10:50

6 answer is. So those are kind of general basic rules.

7 Darren, anything you want to add?

8 MR. LEMIEUX: No.

9 BY MR. BUBALA:

10 Q. Okay. Can you spell your name for me. 10:50

11 A. Sure. Last name B A Y U K, pronounced

12 BAY-UK.

13 Q. Okay. Your first name is Edward?

14 A. Correct.

15 Q. And what's your middle name? 10:50

16 A. William.

17 Q. Okay. And where do you live?

18 A. Reno, Nevada.

19 Q. Okay. And how long have you lived in Reno?

20 A. Since 2005. 10:51

21 Q. Okay. And do you have residences in other
22 locations?

23 A. Yes.

24 Q. And where are your other residences?

25 A. Laguna Beach, Palm Springs, New Jersey. 10:51

1 going off the record at 4:27 P.M.

2 (TIME NOTED: 4:27 P.M.)

3

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1 STATE OF CALIFORNIA) ss:
2 COUNTY OF LOS ANGELES)

3

4 I, JUDITH A. MANGO, C.S.R. No. 5584, do hereby
5 certify:

6 That the foregoing deposition of EDWARD BAYUK
7 was taken before me at the time and place therein set
8 forth, at which time the witness was placed under
9 oath and was sworn by me to tell the truth, the whole
10 truth, and nothing but the truth;

11 That the testimony of the witness and all
12 objections made at the time of the examination were
13 recorded stenographically by me and were thereafter
14 transcribed under my direction and supervision, and
15 that the foregoing pages contain a full, true and
16 accurate record of all proceedings and testimony to
17 the best of my skill and ability.

18 I further certify that I am neither counsel for
19 any party to said action, nor am I related to any
20 party to said action, nor am I in any way interested
21 in the outcome thereof.

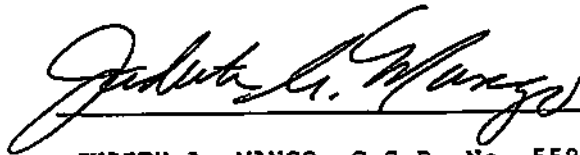
22

23

24

25

1
2 IN WITNESS WHEREOF, I have subscribed my name
3 this 28th day of January, 2010.
4

5
6 
7

JUDITH A. MANGO, C.S.R. No. 5584

EXHIBIT 13

EXHIBIT 13

IN THE SECOND JUDICIAL CIRCUIT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CERTIFIED COPY

CONSOLIDATED NEVADA CORP.,
a Nevada corporation, and PAUL
A. MORABITO, an individual,

Plaintiffs, Case No. CV07-0264, Dep. 1

vs.
JH, INC., a Nevada corporation,
and JERRY HERBERT, an individual,
Defendants.
ALL THE ABOVE NAMED PARTIES
AND RELATED ORGANIZATIONS.

Page 1 to 161, inclusive.

VIDEOTAPED DEPOSITION OF SALVATORE MORABITO

Monday, January 11, 2010
Reno, Nevada

REPORTED BY: CHRISTINA HERBERT
CCH 4841 (Nevada)
CCH 411405 (California)

NEVADA REPORTERS - 775.322.3334

APPEARANCES

FOR DEFENDANTS/COUNTER-CLAIMANTS:

JONES, VARGAS
BY: BRIAN IRVINE, ATTORNEY AT LAW
100 West Liberty Street, 12th Floor
Reno, NV 89504
775.786.5000

FOR PLAINTIFF/COUNTER-DEFENDANTS:

LEWIS & ROCA LLP
BY: DARREN LEMIEUX, ATTORNEY AT LAW
50 West Liberty Street, Suite 410
Reno, NV 89501
775.823.9200

ALSO PRESENT:

A. DAVID CORRAO, VIDEOGRAPHER
BY: DAVID CORRAO
5375 Kietzke Lane
Reno, NV 89511

-000-

MOLEZZO REPORTERS - 775.322.3334

2

INDEX

Videotaped Deposition of SALVATORE MORABITO

EXAMINATION BY	PAGE
Mr. Irvine	6,146
Mr. Lemieux	134,155

EXHIBITS

EXH. NO.	DESCRIPTION	PAGE
491	10/27/05 email chain	40
492	2/23/06 email chain	47
493	4/11/06 email chain	52
494	6/13/06 email chain	54
495	4/24/06 email to Hinckley, Cashell, Bayuk, Sam Morabito, Lloyd from Paul Morabito	71
496	7/18/06 email to Hardon, Bixler, Chou	76
497	1/6/06 email to Tripoli and Langan from Paul Morabito	83
498	2/1/06 email chain	86
499	3/9/06 email chain	89
500	3/13/06 email chain	92
501	8/23/06 email chain	93
502	8/24/06 email chain	99
503	Construction Management Agreement	105
504	10/12/06 email chain	126

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3

EXHIBITS (Continued)

EXH. NO.	DESCRIPTION	PAGE
505	11/29/06 email chain	128
506	3/22/07 email chain	130
507	4/19/07 email chain	131

-000-

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4

1 A No.
2 Q Okay. Where is your date -- what's your date of
3 birth, sir?
4 A August 7th, 1961.
5 Q And where were you born?
6 A Saint Katherine's, Ontario, Canada.
7 Q What's your current address?
8 A 8355 Panorama Drive in Reno, Nevada.
9 Q Is that a home address or a business address, sir?
10 A That's a home address.
11 Q Okay. Do you have a business address as well?
12 A I have a mailing address.
13 Q Okay. Where is that?
14 A 3983 South McCarran, No. 104, Reno, Nevada 89502.
15 Q Thank you. Do you have any -- prior to this
16 lawsuit do you have any experience in lawsuits as either a
17 plaintiff or a defendant?
18 A No.
19 Q Okay. Lucky. Did you do anything to prepare for
20 your deposition today?
21 A Not particularly.
22 Q Okay. Did you speak with anyone prior to your
23 deposition about the deposition?
24 A My lawyer.
25 Q Okay. And anyone else?

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9

1 A No.
2 Q And when you say your lawyer, do you mean
3 Mr. Lemieux?
4 A Uh-huh, yes.
5 Q When did you speak with Mr. Lemieux?
6 A Roughly 45 minutes ago.
7 Q So I take it that that conversation lasted somewhat
8 less than 45 minutes?
9 A Yes.
10 Q Okay. And is that the only time you spoke to
11 Mr. Lemieux about your deposition?
12 A No. We spoke a few days ago.
13 Q Sometime last week?
14 A Yes.
15 Q Okay. And how long did you speak with him then?
16 A Total time over the period, I would say 2 hours.
17 Q Okay. And did you review any documents to prepare
18 for your deposition?
19 A One or two.
20 Q Okay. Do you remember what they were?
21 A Some emails.
22 Q Do you remember what the subject matter of the
23 emails that you reviewed was?
24 A Not particularly.
25 Q Any -- how about generally?

MOLEZZO REPORTERS - 775.322.3334

10

1 A Something -- just something about Berry-Hinckley
2 but I don't particularly remember what it was.
3 Q How many emails did you review?
4 A Actually, you know what, it was one. It was just
5 one.
6 Q Is there anything you remember about that email
7 other than the general idea that it was about Berry-Hinckley?
8 MR. LEMIEUX: I'm just gonna object on the basis of
9 attorney-client privilege and not to reveal anything that we
10 discussed.
11 BY MR. IRVINE:
12 Q Right. And that's a good admonition. I don't want
13 to know anything that you and Mr. Lemieux discussed. I don't
14 want to know anything that you've discussed with your
15 attorneys over the entire course of the facts we're going to
16 be talking about here today.
17 I'm just asking about -- and so that's a good
18 caution, but I would like to know anything you might remember
19 about the email you reviewed in preparation.
20 A Just that there was a -- one of the people on the
21 email, he asked me if I knew who that was and --
22 MR. LEMIEUX: Objection. I mean, I'm gonna
23 instruct you not to answer. You can tell him what you recall
24 about the document but don't -- don't tell him anything about
25 what I said or anything like that.

MOLEZZO REPORTERS - 775.322.3334

11

1 THE WITNESS: Okay.
2 MR. IRVINE: Right.
3 MR. LEMIEUX: So if you have any knowledge of what
4 you remember on the document that I didn't tell you, you can
5 answer.
6 THE WITNESS: It's just -- the only thing that
7 struck me was that there was a name on there that I hadn't
8 heard in a while.
9 BY MR. IRVINE:
10 Q Who was that? What name?
11 A Her name is Audrey Hanson.
12 Q She was an employee of BHI. Is that right?
13 A Right.
14 Q When I say "BHI," just so we're on the same page,
15 that's Berry-Hinckley Industries.
16 A Berry-Hinckley, yeah.
17 Q What was your understanding as to her role with
18 Berry-Hinckley?
19 A She was -- you know, that's a good question. I
20 think she was in the finance department but I can't
21 specifically remember. That's why -- that's what struck me
22 about it, is that it was a name that I hadn't heard in a long
23 time. That's what popped out in my memory.
24 Q And she was -- do you remember what -- what line
25 she appeared on in the email? Was it a to, a from? Was she

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12

158

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160180

EXHIBIT 14

EXHIBIT 14

DOC #3928897

10/01/2010 04:12:36 PM

Electronic Recording Requested By

FIRST AMERICAN TITLE RENO

Washoe County Recorder

Kathryn L. Burke - Recorder

Fee: \$18.00 RPTT: \$4024.15

Page 1 of 5

A.P.N.: 040-620-09

File No: 121-2401499 (KLB)

R.P.T.T.: \$4,024.15 C

\$981,341.00

When Recorded Mail To: Mail Tax Statements To:

Arcadia Living Trust

8581 Santa Monica Blvd., #708

West Hollywood, CA 90089

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Paul Morabito, a single man as to an undivided 2/3rd interest and Edward Bayuk, a single man as to an undivided 1/3rd interest, as tenants in common

do(es) hereby *GRANT, BARGAIN and SELL* to

Paul A. Morabito, Trustee of The Arcadia Living Trust

the real property situate in the County of Washoe, State of Nevada, described as follows:

See Exhibit "A" attached

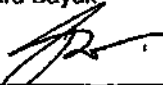
Subject to

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Date: 09/28/2010



Edward Bayuk



Paul Morabito

STATE OF _____)
COUNTY OF _____) ss.

This instrument was acknowledged before me on _____ by
Paul Morabito and Edward Bayuk.

Notary Public
(My commission expires: _____)

This Notary Acknowledgement is attached to that certain Grant, Bargain Sale Deed dated
September 28, 2010 under Escrow No. **121-2401499.**

See Attached

COPY

EXHIBIT 'A'

BEGINNING AT A POINT ON THE WEST LINE OF THE NE 1/4 OF THE SE 1/4 OF SECTION 1, TOWNSHIP 18 NORTH, RANGE 19 EAST, M.D.B & M., AS SHOWN ON RECORD OF LICENSE SURVEY FOR JOHN J. DIERINGER, FILE NO. 232365, WHENCE THE NORTHWEST CORNER OF SAID SUBDIVISION BEARS NORTH 0°03'50" EAST 1200.96 FEET IN CENTER LINE OF HUFFAKER LANE; THENCE SOUTH 89°56'10" EAST 930.00 FEET TO THE WESTERN LINE OF A 50 FOOT ROAD; THENCE SOUTH 0°03'50" WEST ALONG SAID ROAD 25.0 FEET; THENCE SOUTH 49°28'50" WEST 381.8 FEET; THENCE NORTH 89°56'10" WEST 640.0 FEET; THENCE NORTH 0°03'50" EAST 273.4 FEET TO THE POINT OF BEGINNING; SITUATE IN THE E 1/2 OF SE 1/4 OF SAID SECTION 1.

NOTE : THE ABOVE METES AND BOUND DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED NOVEMBER 10, 2005, IN BOOK N/A, PAGE N/A, AS INSTRUMENT NO. 3306300

TOGETHER WITH any and all water rights.

SUBJECT TO that certain existing Note and First Deed of Trust originally in favor of BANK OF AMERICA, N.A. in the original amount of \$1,100,000.00, recorded in the office of the County Recorder of Washoe County, State of Nevada, on November 10, 2005, as Instrument No. 3306301, Official Records, which Grantee agrees to assume and pay.

A.P.N. 040-620-09

CALIFORNINA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On September 29, 2010, before me, **Virginia A. Pool**

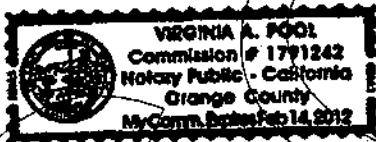
personally appeared **Paul Morabito**

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY Under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Virginia A. Pool



CALIFORNINA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On September 29, 2010, before me, **Virginia A. Pool**

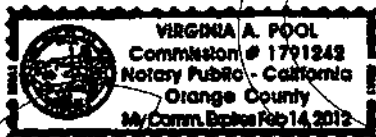
personally appeared **Edward Bayuk**

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY Under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Virginia A. Pool



DV-3928897

10/01/2010 04:12:36 PM

Electronic Recording Requested By
 FIRST AMERICAN TITLE RENO
 Washoe County Recorder
 Kathryn L. Burke - Recorder
 Fee: \$0 RPTT: \$4024.15
 Page 1 of 1

**STATE OF NEVADA
 DECLARATION OF VALUE**

1. Assessor Parcel Number(s)
 a) 040-620-09
 b) _____
 c) _____
 d) _____

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 _____

FOR RECORDERS OPTIONAL USE

Book _____ Page: _____
 Date of Recording: _____
 Notes: _____

3. a) Total Value/Sales Price of Property:
 b) Deed in Lieu of Foreclosure Only (value of)
 c) Transfer Tax Value:
 d) Real Property Transfer Tax Due

\$ 981,341.00
 (\$ 981,341.00)
 \$ 4,024.15

4. **If Exemption Claimed:**

- a. Transfer Tax Exemption, per 375.090, Section:
 b. Explain reason for exemption:

No exemptions apply

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 parties agree that 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 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: _____
 Signature: _____

Capacity: Seller
 Capacity: Buyer

SELLER (GRANTOR) INFORMATION
 (REQUIRED)

Print Name: Edward Bayuk
 Address: 608 North Pacific Coast Hwy #517
 City: Laguna Beach
 State: CA Zip: 92651

BUYER (GRANTEE) INFORMATION
 (REQUIRED)

Print Name: Paul Morabito Trustee of the Arcadia Trust
 Address: 8581 Santa Monica Blvd #708
 City: West Hollywood
 State: CA Zip: 90069

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

First American Title Insurance
 Print Name: Company File Number: 121-2401499 KLB/cl
 Address: 5310 Kietzke Lane, Suite 100
 City: Reno State: NV Zip: 89511-2043

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

EXHIBIT 15

EXHIBIT 15

FILED

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02-16-2011:02:45:03 PM
Howard W. Conyers
Clerk of the Court
Transaction # 2038814

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8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE

10 CONSOLIDATED NEVADA CORPORATION,
11 a Nevada corporation, and PAUL A.
12 MORABITO, an individual,

CASE NO. CV07-02764

DEPT. NO. B6

13 Plaintiffs,

14 vs.

15 JH, INC., a Nevada corporation, and JERRY
16 HERBST, an individual,

17 Defendants.

18 JH, Inc., et al.,

19 Counter-Claimants,

20 vs.

21 CONSOLIDATED NEVADA CORPORATION, a
22 Nevada corporation, et al.,

23 Counter-Defendants.

24 ORDER ADMITTING TO PRACTICE

25 Dennis Carmen Vacco, Esq. having filed his Motion to Associate Counsel under
26 Nevada Supreme Court Rule 42, together with a Verified Application for Association of
27 Counsel, a Certificate of Good Standing from the Supreme Court of the State of New
28

1 York Appellate Division, Fourth Department, Rochester, New York , and the State Bar
2 of Nevada Statement; and the Court being fully apprised in the premises, and good
3 cause appearing,

4 IT IS HEREBY ORDERED that said application is hereby granted and Dennis
5 Carmen Vacco, Esq. is hereby admitted to practice in the above-entitled Court for the
6 purposes of the above-entitled matter only.

7
8 DATED: This 16th day of February, 2011.

9
10 
11 DISTRICT JUDGE
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13
14
15

16 Submitted by:

17 ROBISON, BELAUSTEGUI, SHARP & LOW
18 A Professional Corporation
19 71 Washington Street
20 Reno, NV 89503

21 By: 

22 KENT R. ROBISON, ESQ. (SBN 1167)
23 BARRY L. BRESLOW, ESQ. (SBN 3023)
24 FRANK C. GILMORE, ESQ. (SBN 10052)
25 Attorneys for Plaintiffs/
26 Counter-Defendants Consolidated
27 Nevada Corporation and Paul A. Morabito
28

J:\WPData\SLB\14283.001 Morabito and Consolidated NV Corp v JH, Inc. and HarbaNP-Order Admitting to Practice (Vacco) 02-11-11.wpd