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 Electronically Filed Jun 02 2020 03:00 p.m. Elizabeth A. Brown Clerk of Supreme Court Appeal from the Second Judicial District Court, the Honorable Connie J. Steinheimer Presiding

APPELLANTS' APPENDIX, VOLUME 4
(Nos. 575–725)

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A-11	Rough Draft Transcript of Garry M. Graber, Dated July 12, 2017 (Job Number 394849)	Vol. 10, 1683–1719
A-12	Sept. 15-Sept. 23, 2010 emails by and between Hodgson Russ LLP and Other Parties	Vol. 10, 1720–1723
Reply in Support of Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP, and Opposition to Motion for Sanctions (filed 08/03/2017)		Vol. 11, 1724–1734
Reply in Support of Countermotion for Sanctions and to Compel Resetting of 30(b)(6) Deposition of Hodgson Russ LLP (filed 08/09/2017)		Vol. 11, 1735–1740
Minutes of August 10, 2017 hearing on Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP, and Opposition to Motion for Sanctions (filed 08/11/2017)		Vol. 11, 1741–1742
Recommendation for Order RE: *Defendants' Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP*, filed on July 18, 2017 (filed 08/17/2017)		Vol. 11, 1743–1753
Motion for Partial Summary Judgment (filed 08/17/2017)		Vol. 11, 1754–1796
Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment (filed 08/17/2017)		Vol. 11, 1797–1825

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment		
Exhibit	**Document Description**	
1	Declaration of Timothy P. Herbst in Support of Separate Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment	Vol. 12, 1826–1829
2	Findings of Fact, Conclusions of Law, and Judgment in *Consolidated Nevada Corp., et al v. JH. et al.;* Case No. CV07-02764 (filed 10/12/2010)	Vol. 12, 1830–1846
3	Judgment in *Consolidated Nevada Corp., et al v. JH. et al.;* Case No. CV07-02764 (filed 08/23/2011)	Vol. 12, 1847–1849
4	Excerpted Transcript of July 12, 2017 Deposition of Garry M. Graber	Vol. 12, 1850–1852
5	September 15, 2015 email from Yalamanchili RE: Follow Up Thoughts	Vol. 12, 1853–1854
6	September 23, 2010 email between Garry M. Graber and P. Morabito	Vol. 12, 1855–1857
7	September 20, 2010 email between Yalamanchili and Eileen Crotty RE: Morabito Wire	Vol. 12, 1858–1861
8	September 20, 2010 email between Yalamanchili and Garry M. Graber RE: All Mortgage Balances as of 9/20/2010	Vol. 12, 1862–1863
9	September 20, 2010 email from Garry M. Graber RE: Call	Vol. 12, 1864–1867

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

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<tr><td colspan="2">Objection to Recommendation for Order filed August 17, 2017 (filed 08/28/2017)</td><td>Vol. 18, 2727–2734</td></tr>
<tr><td colspan="2">Exhibit to Objection to Recommendation for Order</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Plaintiff’s counsel’s Jan. 24, 2017, email memorializing the discovery dispute agreement</td><td>Vol. 18, 2735–2736</td></tr>
<tr><td colspan="2">Opposition to Objection to Recommendation for Order filed August 17, 2017 (filed 09/05/2017)</td><td>Vol. 18, 2737–2748</td></tr>
<tr><td colspan="2">Exhibit to Opposition to Objection to Recommendation for Order</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>A</td><td>Declaration of Teresa M. Pilatowicz, Esq., in Support of Opposition to Objection to Recommendation for Order (filed 09/05/2017)</td><td>Vol. 18, 2749–2752</td></tr>
<tr><td colspan="2">Reply to Opposition to Objection to Recommendation for Order filed August 17, 2017 (dated 09/15/2017)</td><td>Vol. 18, 2753–2758</td></tr>
<tr><td colspan="2">Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)</td><td>Vol. 18, 2759–2774</td></tr>
<tr><td colspan="2">Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)</td><td>Vol. 18, 2775–2790</td></tr>
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DOCUMENT DESCRIPTION		LOCATION
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 *Consolidated Nevada Corp., et al v. JH. et al.*; 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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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**	

DOCUMENT DESCRIPTION		LOCATION
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

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

	DOCUMENT DESCRIPTION	LOCATION
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
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34	September 26, 2010 email from Vacco to P. Morabito RE: Judgment for a fixed debt	Vol. 22, 3698–3698
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<tr><td colspan="2">Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)</td><td>Vol. 48, 8334–8340</td></tr>
<tr><td colspan="2">Memorandum of Costs and Disbursements (filed 04/11/2019)</td><td>Vol. 48, 8341–8347</td></tr>
<tr><td colspan="2">Exhibit to Memorandum of Costs and Disbursements</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Ledger of Costs</td><td>Vol. 48, 8348–8370</td></tr>
<tr><td colspan="2">Application for Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)</td><td>Vol. 48, 8371–8384</td></tr>
<tr><td colspan="2">Exhibits to Application for Attorneys’ Fees and Costs Pursuant to NRCP 68</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>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)</td><td>Vol. 48, 8385–8390</td></tr>
<tr><td>2</td><td>Plaintiff’s Offer of Judgment to Defendants (dated 05/31/2016)</td><td>Vol. 48, 8391–8397</td></tr>
<tr><td>3</td><td>Defendant’s Rejection of Offer of Judgment by Plaintiff (dated 06/15/2016)</td><td>Vol. 48, 8398–8399</td></tr>
<tr><td>4</td><td>Log of time entries from June 1, 2016 to March 28, 2019</td><td>Vol. 48, 8400–8456</td></tr>
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DOCUMENT DESCRIPTION		**LOCATION**
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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<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">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)</td><td>Vol. 49, 8638–8657</td></tr>
<tr><td colspan="2">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)</td><td>Vol. 50, 8658–8676</td></tr>
<tr><td colspan="2">Exhibits to Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>February 27, 2019 email with attachments</td><td>Vol. 50, 8677–8768</td></tr>
<tr><td>2</td><td>Declaration of Frank C. Gilmore in Support of Edward Bayuk's Motion for New Trial (filed 04/26/2019)</td><td>Vol. 50, 8769–8771</td></tr>
<tr><td>3</td><td>February 27, 2019 email from Marcy Trabert</td><td>Vol. 50, 8772–8775</td></tr>
<tr><td>4</td><td>February 27, 2019 email from Frank Gilmore to eturner@Gtg.legal RE: Friday Trial</td><td>Vol. 50, 8776–8777</td></tr>
<tr><td colspan="2">Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/30/2019)</td><td>Vol. 50, 8778–8790</td></tr>
<tr><td colspan="2">Exhibit to Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321</td><td>Vol. 50, 8791–8835</td></tr>
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<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Plaintiff's Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 05/07/2019)</td><td>Vol. 51, 8836–8858</td></tr>
<tr><td colspan="2">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)</td><td>Vol. 51, 8859–8864</td></tr>
<tr><td colspan="2">Declaration of Edward Bayuk Claiming Exemption from Execution (filed 06/28/2019)</td><td>Vol. 51, 8865–8870</td></tr>
<tr><td colspan="2">Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Copy of June 22, 2019 Notice of Execution and two Write of Executions</td><td>Vol. 51, 8871–8896</td></tr>
<tr><td>2</td><td>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)</td><td>Vol. 51, 8897–8942</td></tr>
<tr><td colspan="2">Notice of Claim of Exemption from Execution (filed 06/28/2019)</td><td>Vol. 51, 8943–8949</td></tr>
<tr><td colspan="2">Edward Bayuk's Declaration of Salvatore Morabito Claiming Exemption from Execution (filed 07/02/2019)</td><td>Vol. 51, 8950–8954</td></tr>
<tr><td colspan="2">Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Las Vegas June 22, 2019 letter</td><td>Vol. 51, 8955–8956</td></tr>
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DOCUMENT DESCRIPTION		LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

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<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Exhibits to Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim</td><td>Vol. 53, 9241–9245</td></tr>
<tr><td>2</td><td>Defendant's comments on Findings of Fact</td><td>Vol. 53, 9246–9247</td></tr>
<tr><td>3</td><td>Defendant's Proposed Order Denying Claim of Exemption and Third-Party Claim</td><td>Vol. 53, 9248–9252</td></tr>
<tr><td colspan="2">Minutes of July 22, 2019 hearing on Objection to Claim for Exemption (filed 08/02/2019)</td><td>Vol. 53, 9253</td></tr>
<tr><td colspan="2">Order Denying Claim of Exemption (filed 08/02/2019)</td><td>Vol. 53, 9254–9255</td></tr>
<tr><td colspan="2">Bayuk's Case Appeal Statement (filed 08/05/2019)</td><td>Vol. 53, 9256–9260</td></tr>
<tr><td colspan="2">Bayuk's Notice of Appeal (filed 08/05/2019)</td><td>Vol. 53, 9261–9263</td></tr>
<tr><td colspan="2">Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Case Appeal Statement (filed 08/05/2019)</td><td>Vol. 53, 9264–9269</td></tr>
<tr><td colspan="2">Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Notice of Appeal (filed 08/05/2019)</td><td>Vol. 53, 9270–9273</td></tr>
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<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Exhibits to Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.’s, Notice of Appeal</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)</td><td>Vol. 53, 9274–9338</td></tr>
<tr><td>2</td><td>Order Denying Defendants’ Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)</td><td>Vol. 53, 9339–9341</td></tr>
<tr><td>3</td><td>Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)</td><td>Vol. 53, 9342–9345</td></tr>
<tr><td>4</td><td>Order Granting Plaintiff’s Application for an Award of Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)</td><td>Vol. 53, 9346–9349</td></tr>
<tr><td colspan="2">Plaintiff’s Reply to Defendants’ Objection to Plaintiff’s Proposed Order Denying Claim of Exemption and Third-Party Claim</td><td>Vol. 53, 9350–9356</td></tr>
<tr><td colspan="2">Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)</td><td>Vol. 53, 9357–9360</td></tr>
<tr><td colspan="2">Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim (filed 08/09/2019)</td><td>Vol. 53, 9361–9364</td></tr>
<tr><td colspan="2">Exhibit to Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)</td><td>Vol. 53, 9365–9369</td></tr>
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DOCUMENT DESCRIPTION		LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

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<tr><th colspan="2">DOCUMENT DESCRIPTION</th><th>LOCATION</th></tr>
<tr><td colspan="2">Errata to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/20/2019)</td><td>Vol. 57, 9891–9893</td></tr>
<tr><td colspan="2">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)</td><td>Vol. 57, 9894–9910</td></tr>
<tr><td colspan="2">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)</td><td>Vol. 57, 9911–9914</td></tr>
<tr><td colspan="2">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</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Gabrielle A. Hamm, Esq.</td><td>Vol. 57, 9915–9918</td></tr>
<tr><td>2</td><td>Plaintiff's Amended NRCP 16.1 Disclosures (February 19, 2016)</td><td>Vol. 57, 9919–9926</td></tr>
<tr><td>3</td><td>Plaintiff's Fourth Supplemental NRCP 16.1 Disclosures (November 15, 2016)</td><td>Vol. 57, 9927–9930</td></tr>
<tr><td>4</td><td>Plaintiff's Fifth Supplemental NRCP 16.1 Disclosures (December 21, 2016)</td><td>Vol. 57, 9931–9934</td></tr>
<tr><td>5</td><td>Plaintiff's Sixth Supplemental NRCP 16.1 Disclosures (March 20, 2017)</td><td>Vol. 57, 9935–9938</td></tr>
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<tr><td colspan="2">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)</td><td>Vol. 57, 9939–9951</td></tr>
<tr><td colspan="2">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</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>19</td><td>Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)</td><td>Vol. 57, 9952–9993</td></tr>
<tr><td>20</td><td>Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)</td><td>Vol. 57, 9994–10010</td></tr>
<tr><td colspan="2">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)</td><td>Vol. 57, 10011–10019</td></tr>
<tr><td colspan="2">Bayuk’s Case Appeal Statement (filed 12/06/2019)</td><td>Vol. 57, 10020–10026</td></tr>
<tr><td colspan="2">Bayuk’s Notice of Appeal (filed 12/06/2019)</td><td>Vol. 57, 10027–10030</td></tr>
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<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Exhibits to Bayuk’s Notice of Appeal</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Denying [Morabito’s] Claim of Exemption (filed 08/02/19)</td><td>Vol. 57, 10031–10033</td></tr>
<tr><td>2</td><td>Order Denying [Bayuk’s] Claim of Exemption and Third Party Claim (filed 08/09/19)</td><td>Vol. 57, 10034–10038</td></tr>
<tr><td>3</td><td>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)</td><td>Vol. 57, 10039–10048</td></tr>
<tr><td colspan="2">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)</td><td>Vol. 57, 10049–10052</td></tr>
<tr><td colspan="2">Exhibit to Notice of Entry of Order</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>A</td><td>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)</td><td>Vol. 57, 10053–10062</td></tr>
<tr><td colspan="2">Docket Case No. CV13-02663</td><td>Vol. 57, 10063–10111</td></tr>
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Jacqueline Bryant
Clerk of the Court
Transaction # 4955617

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Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

STIPULATION AND ORDER TO FILE AMENDED COMPLAINT

Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito ("Plaintiff"), by and through his attorneys of record, Gordon Silver, and Defendants Superpumper, Inc.; Edward Bayuk, individually and as Trustee of the Edward William Bayuk Living Trust; Snowshoe Petroleum, Inc.; and Salvatore Morabito (collectively, "Defendants"), by and through their attorneys of record, Robison, Belaustegui, Sharp and Low, hereby jointly agree and stipulate as follows:

1. On December 17, 2013, JH, Inc., Jerry Herbst, and Berry-Hinckley Industries filed a Complaint in this Court against Paul Morabito, individually and as Trustee of the Arcadia

Living Trust; Superpumper, Inc.; Edward Bayuk, individually and as Trustee of the Edward William Bayuk Living Trust; Snowshoe Petroleum, Inc.; and Salvatore Morabito. ("Complaint," on file herein.)

2. On July 28, 2014, Defendants Superpumper, Inc. and Snowshoe Petroleum, Inc. filed their Answer to the Complaint.

3. On September 29, 2014, Defendants Edward Bayuk, individually and as Trustee of the Edward William Bayuk Living Trust, and Salvatore Morabito filed their Answer to the Complaint.

4. Plaintiff now seeks to amend the Complaint.

5. Because it has been more than 20 days since Defendants served their Answer to the Complaint, NRCP 15(a) requires either Defendants' written consent to amend their Complaint or leave from the Court.

6. Accordingly, Defendants, pursuant to NRCP 15(a), consent to allow Plaintiff to file an Amended Complaint, a copy of which is attached as **Exhibit 1**.

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Gordon Silver
Attorneys At Law
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100 West Liberty Street
Reno, Nevada 89501
(775)343-7500

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 13th day of May, 2015.

GORDON SILVER

By: _____
JOHN P. DESMOND
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Attorneys for Plaintiff

ROBISON, BELEAUSTEGUI, SHARP AND LOW

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Attorneys for Defendants

ORDER TO FILE AMENDED COMPLAINT PURSUANT TO NRCP 15(a)

Pursuant to the foregoing Stipulation, IT IS SO ORDERED.

DATED this 14th day of May, 2015.

_____
DISTRICT COURT JUDGE

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 **STIPULATION AND [PROPOSED] ORDER TO FILE AMENDED COMPLAINT** on the parties as set forth below:

X 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)

____ Via CM/ECF

addressed as follows:

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

DATED this 4th day of May, 2015.

Mira Reel
An Employee of GORDON SILVER

Gordon Silver
Attorneys At Law
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EXHIBIT TABLE

Exhibit	Description	Pages[1]
1	First Amended Complaint	13

[1] Exhibit page counts are exclusive of exhibit slip sheets.

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Exhibit 1

Exhibit 1

1090
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Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, Plaintiff, vs. SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST; SALVATORE MORABITO, and individual; and SNOWSHOE PETROLEUM, INC., a New York corporation, Defendants.	**CASE NO.: CV13-02663** **DEPT. NO.: 7**

FIRST AMENDED COMPLAINT

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

Plaintiff WILLIAM A. LEONARD hereby alleges the following:

I.

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff William A. Leonard is an individual serving as the Chapter 7 Trustee in the bankruptcy proceeding of Paul Morabito (hereinafter referred to as the "Debtor"), *In re:*

Paul A. Morabito, Case 13-51237 in the United States Bankruptcy Court for the District of Nevada.

2. 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.

3. 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 the Debtor. Bayuk is also the President of Superpumper.

4. 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.

5. 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 the Debtor. Salavatore Morabito was the recipient of certain fraudulent transfers originating in Washoe County, Nevada.

6. Upon information and belief, Defendant Snowshoe Petroleum, Inc. ("Snowshoe Petroleum," together with 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.

7. 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

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Washoe County, Nevada; and/or Defendants have expressly agreed to submit themselves to the jurisdiction of this Court.

8. 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

9. Plaintiff repeats, realleges, and incorporates the allegations set forth in the proceeding paragraphs of this Complaint as if fully set forth herein.

10. 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 Berry-Hinckley Industries ("BHI") from PAMCO. Herbst was the guarantor of the JH obligations under the ARSPA, and the Debtor guaranteed the obligations of PAMCO.

THE STATE COURT ACTION

11. A dispute developed between JH, Inc., Jerry Herbst, and BHI (collectively, the "Herbst Entities") on the one hand and the Debtor and CNC on the other regarding the sale of the BHI stock to JH.

12. On December 3, 2007, the Debtor and CNC filed a lawsuit against theHerbst Entities, captioned Consolidated Nevada Corp., et al. v. JH, et al., (the "State Court"), Case No. CV07-02764 (together with all claims and counterclaims, the "State Court Action").

13. The Herbst Entities filed numerous counterclaims in the State Court Action against the Debtor and CNC, including, but not limited to, fraud in the inducement, misrepresentation, and breach of contract relating to the ARSPA.

14. On September 13, 2010, the State Court entered an oral judgment against the Debtor and CNC in favor of the Herbst Entities. Specifically, the State Court found that the

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Debtor and CNC fraudulently induced JH and Herbst to enter into the ARSPA and ruled in favor of JH and Herbst against the Debtor on other fraud-based claims.

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

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

THE SETTLEMENT AGREEMENT AND FORBEARANCE AGREEMENT

17. While the Debtor and CNC's appeal of the State Court Judgment (the "Appeal") was pending before the Nevada Supreme Court, the Debtor, CNC, and the Herbst Entities entered into a Settlement Agreement and Mutual Release dated November 30, 2011 (the "Settlement Agreement"). Pursuant to the terms of the Settlement Agreement:

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

(b) The parties agreed to execute a *Confession of Judgment and Stipulation to Confess Judgment in the Amount of $85,000,000.00* (referred to collectively as the "Confessed Judgment"), which, in the event that the Settlement Agreement was breached and not cured, Plaintiffs would be permitted to file *ex parte* and without notice in Department 6 of the Second Judicial District Court in and for the County of Washoe;

(c) The Debtor and CNC agreed to comply with the timely payment of numerous financial obligations set forth therein; and

(d) The Debtor and CNC agreed to submit themselves to the jurisdiction of the court of Washoe County, Nevada for any dispute relating to the Settlement Agreement.

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18. Consistent with the terms of the Settlement Agreement, the State Court Action was dismissed with prejudice and the Debtor, CNC, and the Herbst Entities executed the Confessed Judgment.

19. Unbeknownst to the Herbst Entities, at the time the parties began negotiating and subsequently executed the Settlement Agreement, the Debtor and CNC had no intention of complying with its terms. Instead, the Debtor and CNC induced the Herbst Entities to execute the Settlement 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 the Herbst Entities' collection of the State Court Judgment.

20. Shortly after execution, the Debtor and CNC defaulted under the terms of the Settlement Agreement by failing to comply with several of their financial obligations, including complying with obligations under the related Moreno settlement agreement (the "Moreno Default"), failing to pay amounts due and owing under the Hinckley Note (the "Hinckley Note Default"), 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 (the "Cash Payment Default") (collectively, the "Continuing Defaults").

21. After defaulting under the terms of the Settlement Agreement, the Debtor and CNC requested that the Herbst Entities forbear from exercising their rights and remedies set forth in the Settlement Agreement, until December 1, 2013.

22. Accordingly, the Debtor, CNC and the Herbst Entities entered into that certain Forbearance Agreement dated March 1, 2013 (the "Forbearance Agreement").

23. Pursuant to the Forbearance Agreement, the Debtor and CNC made the following acknowledgments:

> (i) The Continuing Defaults have occurred and are continuing; (ii) [Paul Morabito and CNC] are unable to cure the Cash Payment Default; (iii) [Paul Morabito and CNC] are unable to cure the Hinckley Note Default; (iv) pursuant to the terms of the Settlement Agreement, as a result of the occurrence of the Continuing Defaults, [Plaintiffs] currently have the right to immediately exercise any one or more of the rights and

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> remedies under the Settlement Agreement, at law or in equity, as they, in their sole discretion, deem necessary or desirable; and (v) [Paul Morabito and CNC] do not have any defenses, legal or equitable, to the Continuing Defaults, and/or any other events of Default that may exist under the Settlement Agreement or the exercise by [Plaintiffs] of anyone or more of their rights and remedies under the Settlement Agreement.

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

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

26. Upon information and belief, as with the Settlement Agreement, at the time the parties began negotiating and subsequently executed the Forbearance Agreement, the Debtor and CNC had no intention of complying with its terms. Instead, the Debtor and CNC induced the Herbst Entities 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 the Herbst Entities collection of the State Court Judgment.

27. The Debtor and CNC failed to comply with the terms of the Forbearance Agreement by, among other things, failing to pay the required April, May, or June payments and failing to obtain or deliver the Hinckley Forbearance Agreement.

28. Based on the express terms of the Settlement Agreement, on June 18, 2013, the Herbst Entities filed the Confessed Judgment with the Second Judicial District Court in and for the State of Nevada. Pursuant to the Confessed Judgment, the Debtor and CNC are jointly and

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severally indebted to the Herbst Entities in the amount of $85,000,000.00, less any credits or offsets for any payments made under the Settlement Agreement.

29. Despite the oral findings of fact and conclusions of law, State Court Judgment, Settlement Agreement, Forbearance Agreement, and Confessed Judgment, the Debtor and CNC have failed to make the required payments to the Herbst Entities in satisfaction of the amounts due and owing them.

THE FRAUDULENT TRANSFERS

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

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

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

(c) Although the Debtor claimed this $6,000,000 transfer was made as a settlement relating to his obligation on a guaranty, no documentation supporting said guaranty obligation was ever provided to the Herbst Entities and the Debtor subsequently denied under oath that the transfer was made to satisfy an obligation under a guaranty.

(d) Upon information and belief, on September 21, 2010, the Debtor next transferred $355,000 to Salvatore Morabito, the Debtor's brother, and $420,250 to Bayuk.

(e) Upon information and belief, prior to September 28, 2010, the Debtor resided at 8355 Panorama Drive in Reno, Nevada (the "Reno Property"). The Debtor

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owned a two-thirds interest in the Property and Bayuk owned the remaining one-third of the Reno Property.

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

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

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

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

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

(k) Upon information and belief, prior to October 1, 2010, the Arcadia Living Trust and Bayuk held a joint interest in Baruk Properties. On October 1, 2010, the Debtor transferred the Arcadia Living Trust's 50% interest in Baruk Properties to Bayuk as Trustee of the Edward William Bayuk Living Trust for a promissory note with a principal amount of $1,617,050, which was then assigned to the principals of Woodland Heights Ltd. for a 20% interest in a joint venture.

(l) Upon information and belief, the appraised value of Baruk Properties at the time of the transfer was $9,266,600 less a mortgage of $1,440,000, for a net equity value

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of $7,826,600, making the Debtor's 50% worth $3,913,000, exceeding the value of the promissory note received in exchange by $2,295,950.

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

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

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

(p) Lastly, upon information and belief, at some point subsequent to the State Court's oral judgment, the Debtor executed a promissory note in favor of Bayuk in the amount of $600,000. The Debtor has refused to produce any evidence relating to the underlying obligation to Bayuk or payments made on said obligation and Bayuk claims that the note is in good standing despite the fact that the Debtor purportedly failed to make any payments on the note to Bayuk.

31. Upon information and belief, these transfers were done in an effort to avoid the Herbst Entities' efforts to collect on the State Court Judgment and the subsequently executed Confession of Judgment.

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THE BANKRUPTCY PROCEEDINGS

32. On June 20, 2013, the Herbst Entities filed an involuntary petition for relief under Chapter 7 of the Bankruptcy Code, thereby commencing the Chapter 7 involuntary proceeding against the Debtor and CNC.

33. On December 17, 2013, the Bankruptcy Court entered an Order in which it suspended the proceedings and abstained from hearing the case.

34. On July 10, 2014, the Bankruptcy Court lifted the suspension, vacating its prior suspension Order.

35. The Herbst Entities subsequently filed a motion for summary judgment.

36. The Bankruptcy Court granted the Herbst Entities' motion for summary judgment, and also entered an Order for Relief against Morabito.

37. On December 18, 2014, an interim trustee was appointed.

38. In January 2015, Plaintiff was elected to serve as the Chapter 7 Trustee in the bankruptcy proceedings.

III.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
[FRAUDULENT TRANSFERS NRS § 112.140 – ALL DEFENDANTS]

39. Plaintiff repeats, realleges and incorporates each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

40. At all times relevant herein, the Herbst Entities have been a creditor of the Debtor, and Paul Morabito is a debtor within the definitions set forth in NRS § 112.150.

41. Upon information and belief, between August 29, 2009 and October 1, 2010, the Debtor engaged in a transfer or series of transfers whereby several of his assets were transferred to Defendants or on behalf of Defendants.

42. Upon information and belief, the transfers by the Debtor to the Defendants were made with the actual intent to hinder, delay, or defraud the Herbst Entities as a creditor of the Debtor , pursuant to NRS § 112.180.

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43. Before the transfers were made, the Herbst Entities had obtained an oral judgment against the Debtor on claims for fraud and fraud in the inducement.

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

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

46. Upon further information and belief, said transfers were made without the Debtor receiving reasonably equivalent value from Defendants, and left the Debtor with debts which he lacked the means to pay, including the State Court Judgment owed to Plaintiffs.

47. Upon information and belief, at the time of the transfers to Defendants, the Debtor was engaged or was about to engage in a business or a transaction for which his remaining assets were unreasonably small in relation to his business or transaction.

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

49. Upon further information and belief, at the time of the transfers to Defendants, the Debtor was insolvent or was rendered insolvent by the transfers.

50. As a direct, natural, and foreseeable consequence of the Debtor and Defendants' actions, the Bankruptcy Estate has been damaged in an amount to be proven at trial.

51. Plaintiff is entitled to the remedies provided in NRS § 112.210, including, but not limited to:

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

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

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

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

(e) Any other relief the circumstances may require.

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

53.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For an award of compensatory damages against Defendants in an amount to be proven at trial;

2. For an award of punitive damages against Defendants in an amount to be proven at trial;

3. For an award to Plaintiff of reasonable attorneys' fees and costs;

4. For garnishment against Defendants, the recipients of the fraudulent obligation.

5. For avoidance of the transfer or obligation to the extent necessary to satisfy Plaintiff's claim.

6. For attachment or other provisional remedy against the asset transferred or other property of Defendants in accordance with the procedure prescribed by law in obtaining such remedy.

7. For such other and further relief as this Court deems appropriate.

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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 14th day of May, 2015.

GORDON SILVER

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FILED
Electronically
2015-05-15 04:52:00 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4956616 : csulezic

1090
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Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 7

FIRST AMENDED COMPLAINT

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

Plaintiff WILLIAM A. LEONARD hereby alleges the following:

I.

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff William A. Leonard is an individual serving as the Chapter 7 Trustee in the bankruptcy proceeding of Paul Morabito (hereinafter referred to as the "Debtor"), *In re:*

Paul A. Morabito, Case 13-51237 in the United States Bankruptcy Court for the District of Nevada.

2. 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.

3. 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 the Debtor. Bayuk is also the President of Superpumper.

4. 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.

5. 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 the Debtor. Salavatore Morabito was the recipient of certain fraudulent transfers originating in Washoe County, Nevada.

6. Upon information and belief, Defendant Snowshoe Petroleum, Inc. ("Snowshoe Petroleum," together with 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.

7. 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

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Washoe County, Nevada; and/or Defendants have expressly agreed to submit themselves to the jurisdiction of this Court.

8. 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

9. Plaintiff repeats, realleges, and incorporates the allegations set forth in the proceeding paragraphs of this Complaint as if fully set forth herein.

10. 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 Berry-Hinckley Industries ("BHI") from PAMCO. Herbst was the guarantor of the JH obligations under the ARSPA, and the Debtor guaranteed the obligations of PAMCO.

THE STATE COURT ACTION

11. A dispute developed between JH, Inc., Jerry Herbst, and BHI (collectively, the "Herbst Entities") on the one hand and the Debtor and CNC on the other regarding the sale of the BHI stock to JH.

12. On December 3, 2007, the Debtor and CNC filed a lawsuit against theHerbst Entities, captioned Consolidated Nevada Corp., et al. v. JH, et al., (the "State Court"), Case No. CV07-02764 (together with all claims and counterclaims, the "State Court Action").

13. The Herbst Entities filed numerous counterclaims in the State Court Action against the Debtor and CNC, including, but not limited to, fraud in the inducement, misrepresentation, and breach of contract relating to the ARSPA.

14. On September 13, 2010, the State Court entered an oral judgment against the Debtor and CNC in favor of the Herbst Entities. Specifically, the State Court found that the

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Debtor and CNC fraudulently induced JH and Herbst to enter into the ARSPA and ruled in favor of JH and Herbst against the Debtor on other fraud-based claims.

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

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

THE SETTLEMENT AGREEMENT AND FORBEARANCE AGREEMENT

17. While the Debtor and CNC's appeal of the State Court Judgment (the "Appeal") was pending before the Nevada Supreme Court, the Debtor, CNC, and the Herbst Entities entered into a Settlement Agreement and Mutual Release dated November 30, 2011 (the "Settlement Agreement"). Pursuant to the terms of the Settlement Agreement:

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

(b) The parties agreed to execute a *Confession of Judgment and Stipulation to Confess Judgment in the Amount of $85,000,000.00* (referred to collectively as the "Confessed Judgment"), which, in the event that the Settlement Agreement was breached and not cured, Plaintiffs would be permitted to file *ex parte* and without notice in Department 6 of the Second Judicial District Court in and for the County of Washoe;

(c) The Debtor and CNC agreed to comply with the timely payment of numerous financial obligations set forth therein; and

(d) The Debtor and CNC agreed to submit themselves to the jurisdiction of the court of Washoe County, Nevada for any dispute relating to the Settlement Agreement.

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18. Consistent with the terms of the Settlement Agreement, the State Court Action was dismissed with prejudice and the Debtor, CNC, and the Herbst Entities executed the Confessed Judgment.

19. Unbeknownst to the Herbst Entities, at the time the parties began negotiating and subsequently executed the Settlement Agreement, the Debtor and CNC had no intention of complying with its terms. Instead, the Debtor and CNC induced the Herbst Entities to execute the Settlement 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 the Herbst Entities' collection of the State Court Judgment.

20. Shortly after execution, the Debtor and CNC defaulted under the terms of the Settlement Agreement by failing to comply with several of their financial obligations, including complying with obligations under the related Moreno settlement agreement (the "Moreno Default"), failing to pay amounts due and owing under the Hinckley Note (the "Hinckley Note Default"), 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 (the "Cash Payment Default") (collectively, the "Continuing Defaults").

21. After defaulting under the terms of the Settlement Agreement, the Debtor and CNC requested that the Herbst Entities forbear from exercising their rights and remedies set forth in the Settlement Agreement, until December 1, 2013.

22. Accordingly, the Debtor, CNC and the Herbst Entities entered into that certain Forbearance Agreement dated March 1, 2013 (the "Forbearance Agreement").

23. Pursuant to the Forbearance Agreement, the Debtor and CNC made the following acknowledgments:

> (i) The Continuing Defaults have occurred and are continuing; (ii) [Paul Morabito and CNC] are unable to cure the Cash Payment Default; (iii) [Paul Morabito and CNC] are unable to cure the Hinckley Note Default; (iv) pursuant to the terms of the Settlement Agreement, as a result of the occurrence of the Continuing Defaults, [Plaintiffs] currently have the right to immediately exercise any one or more of the rights and

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> remedies under the Settlement Agreement, at law or in equity, as they, in their sole discretion, deem necessary or desirable; and (v) [Paul Morabito and CNC] do not have any defenses, legal or equitable, to the Continuing Defaults, and/or any other events of Default that may exist under the Settlement Agreement or the exercise by [Plaintiffs] of anyone or more of their rights and remedies under the Settlement Agreement.

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

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

26. Upon information and belief, as with the Settlement Agreement, at the time the parties began negotiating and subsequently executed the Forbearance Agreement, the Debtor and CNC had no intention of complying with its terms. Instead, the Debtor and CNC induced the Herbst Entities 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 the Herbst Entities collection of the State Court Judgment.

27. The Debtor and CNC failed to comply with the terms of the Forbearance Agreement by, among other things, failing to pay the required April, May, or June payments and failing to obtain or deliver the Hinckley Forbearance Agreement.

28. Based on the express terms of the Settlement Agreement, on June 18, 2013, the Herbst Entities filed the Confessed Judgment with the Second Judicial District Court in and for the State of Nevada. Pursuant to the Confessed Judgment, the Debtor and CNC are jointly and

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severally indebted to the Herbst Entities in the amount of $85,000,000.00, less any credits or offsets for any payments made under the Settlement Agreement.

29. Despite the oral findings of fact and conclusions of law, State Court Judgment, Settlement Agreement, Forbearance Agreement, and Confessed Judgment, the Debtor and CNC have failed to make the required payments to the Herbst Entities in satisfaction of the amounts due and owing them.

THE FRAUDULENT TRANSFERS

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

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

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

(c) Although the Debtor claimed this $6,000,000 transfer was made as a settlement relating to his obligation on a guaranty, no documentation supporting said guaranty obligation was ever provided to the Herbst Entities and the Debtor subsequently denied under oath that the transfer was made to satisfy an obligation under a guaranty.

(d) Upon information and belief, on September 21, 2010, the Debtor next transferred $355,000 to Salvatore Morabito, the Debtor's brother, and $420,250 to Bayuk.

(e) Upon information and belief, prior to September 28, 2010, the Debtor resided at 8355 Panorama Drive in Reno, Nevada (the "Reno Property"). The Debtor

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owned a two-thirds interest in the Property and Bayuk owned the remaining one-third of the Reno Property.

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

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

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

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

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

(k) Upon information and belief, prior to October 1, 2010, the Arcadia Living Trust and Bayuk held a joint interest in Baruk Properties. On October 1, 2010, the Debtor transferred the Arcadia Living Trust's 50% interest in Baruk Properties to Bayuk as Trustee of the Edward William Bayuk Living Trust for a promissory note with a principal amount of $1,617,050, which was then assigned to the principals of Woodland Heights Ltd. for a 20% interest in a joint venture.

(l) Upon information and belief, the appraised value of Baruk Properties at the time of the transfer was $9,266,600 less a mortgage of $1,440,000, for a net equity value

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of $7,826,600, making the Debtor's 50% worth $3,913,000, exceeding the value of the promissory note received in exchange by $2,295,950.

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

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

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

(p) Lastly, upon information and belief, at some point subsequent to the State Court's oral judgment, the Debtor executed a promissory note in favor of Bayuk in the amount of $600,000. The Debtor has refused to produce any evidence relating to the underlying obligation to Bayuk or payments made on said obligation and Bayuk claims that the note is in good standing despite the fact that the Debtor purportedly failed to make any payments on the note to Bayuk.

31. Upon information and belief, these transfers were done in an effort to avoid the Herbst Entities' efforts to collect on the State Court Judgment and the subsequently executed Confession of Judgment.

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THE BANKRUPTCY PROCEEDINGS

32. On June 20, 2013, the Herbst Entities filed an involuntary petition for relief under Chapter 7 of the Bankruptcy Code, thereby commencing the Chapter 7 involuntary proceeding against the Debtor and CNC.

33. On December 17, 2013, the Bankruptcy Court entered an Order in which it suspended the proceedings and abstained from hearing the case.

34. On July 10, 2014, the Bankruptcy Court lifted the suspension, vacating its prior suspension Order.

35. The Herbst Entities subsequently filed a motion for summary judgment.

36. The Bankruptcy Court granted the Herbst Entities' motion for summary judgment, and also entered an Order for Relief against Morabito.

37. On December 18, 2014, an interim trustee was appointed.

38. In January 2015, Plaintiff was elected to serve as the Chapter 7 Trustee in the bankruptcy proceedings.

III.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
[FRAUDULENT TRANSFERS NRS § 112.140 – ALL DEFENDANTS]

39. Plaintiff repeats, realleges and incorporates each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

40. At all times relevant herein, the Herbst Entities have been a creditor of the Debtor, and Paul Morabito is a debtor within the definitions set forth in NRS § 112.150.

41. Upon information and belief, between August 29, 2009 and October 1, 2010, the Debtor engaged in a transfer or series of transfers whereby several of his assets were transferred to Defendants or on behalf of Defendants.

42. Upon information and belief, the transfers by the Debtor to the Defendants were made with the actual intent to hinder, delay, or defraud the Herbst Entities as a creditor of the Debtor , pursuant to NRS § 112.180.

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43. Before the transfers were made, the Herbst Entities had obtained an oral judgment against the Debtor on claims for fraud and fraud in the inducement.

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

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

46. Upon further information and belief, said transfers were made without the Debtor receiving reasonably equivalent value from Defendants, and left the Debtor with debts which he lacked the means to pay, including the State Court Judgment owed to Plaintiffs.

47. Upon information and belief, at the time of the transfers to Defendants, the Debtor was engaged or was about to engage in a business or a transaction for which his remaining assets were unreasonably small in relation to his business or transaction.

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

49. Upon further information and belief, at the time of the transfers to Defendants, the Debtor was insolvent or was rendered insolvent by the transfers.

50. As a direct, natural, and foreseeable consequence of the Debtor and Defendants' actions, the Bankruptcy Estate has been damaged in an amount to be proven at trial.

51. Plaintiff is entitled to the remedies provided in NRS § 112.210, including, but not limited to:

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

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

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

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

(e) Any other relief the circumstances may require.

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

53.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For an award of compensatory damages against Defendants in an amount to be proven at trial;

2. For an award of punitive damages against Defendants in an amount to be proven at trial;

3. For an award to Plaintiff of reasonable attorneys' fees and costs;

4. For garnishment against Defendants, the recipients of the fraudulent obligation.

5. For avoidance of the transfer or obligation to the extent necessary to satisfy Plaintiff's claim.

6. For attachment or other provisional remedy against the asset transferred or other property of Defendants in accordance with the procedure prescribed by law in obtaining such remedy.

7. For such other and further relief as this Court deems appropriate.

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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 15th day of May, 2015.

GORDON SILVER

By: /s/ John P. Desmond

JOHN P. DESMOND
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Attorneys for Plaintiff

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 **FIRST AMENDED COMPLAINT** on the parties as set forth below:

_____ 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)

__X__ Via CM/ECF

addressed as follows:

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

DATED this 15th day of May, 2015.

/s/ Mina Reel
An Employee of GORDON SILVER

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Attorneys for Plaintiffs

IN THE SECOND JUDICIAL DISTRICT COURT OF

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,

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; SALVATORE MORABITO, and individual; and SNOWSHOE PETROLEUM, INC., a New York corporation,

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

STIPULATION AND ORDER TO SUBSTITUTE A PARTY PURSUANT TO NRCP 17(a)

Plaintiffs JH, Inc., Jerry Herbst, and Berry-Hinckley Industries (collectively, the "Herbst Entities"), by and through their attorneys of record, Gordon Silver, and Defendants Paul Morabito, individually and as Trustee of the Arcadia Living Trust; Superpumper, Inc.; Edward Bayuk, individually and as Trustee of the Edward William Bayuk Living Trust; Snowshoe Petroleum, Inc.; and Salvatore Morabito (collectively, "Defendants"), by and through their

attorneys of record, Robison, Belaustegui, Sharp and Low, hereby jointly agree and stipulate as follows:

1. To remove the Herbst Entities as plaintiffs to this action;

2. To substitute William A. Leonard, Jr., the Trustee for the Bankruptcy Estate of Paul A. Morabito, as the plaintiff to this action under NRCP 17(a); and

3. To remove Paul Morabito as a Defendant to this action, both individually and as Trustee of the Arcadia Living Trust.

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 13th day of May, 2015.

GORDON SILVER

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Attorneys for Plaintiffs

ROBISON, BELEAUSTEGUI, SHARP AND LOW

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Attorneys for Defendants

ORDER TO SUBSTITUTE A PARTY PURSUANT TO NRCP 17(a)

Pursuant to the foregoing Stipulation, IT IS SO ORDERED.

DATED this 14th day of May, 2015.

DISTRICT COURT JUDGE

Gordon Silver
Attorneys At Law
Suite 940
100 West Liberty Street
Reno, Nevada 89501
(775)343-7500

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 **STIPULATION AND [PROPOSED] ORDER TO SUBSTITUTE A PARTY PURSUANT TO NRCP 17(a)** on the parties as set forth below:

X 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)

____ Via CM/ECF

addressed as follows:

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

DATED this 14th day of May, 2015.

Mina Reel
An Employee of GORDON SILVER

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Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 7

SUBSTITUTION OF COUNSEL

John P. Desmond, Esq. and Brian R. Irvine, Esq. and the firm GORDON SILVER, attorneys for Plaintiff, WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul

///

Anthony Morabito, do hereby consent, pursuant to WDCR 23(2)(a), to the substitution of Gerald M. Gordon, Esq., Teresa M. Pilatowicz, Esq., and Mark M. Weisenmiller, Esq. and the law firm of GARMAN TURNER GORDON in the above-entitled matter in their place and stead.

DATED this 21st day of May, 2015.

GORDON SILVER
100 West Liberty Street, Suite 940
Reno, NV 89501

BY: _____
Brian R. Irvine, Esq. (NSB #7758)
John P. Desmond, Esq. (NSB #5618)

Gerald M. Gordon, Esq., Teresa M. Pilatowicz, Esq., and Mark M. Weisenmiller, Esq. and the law firm of GARMAN TURNER GORDON, do hereby agree, pursuant to WDCR 23(2)(a), to be substituted in the place of John P. Desmond, Esq. and Brian R. Irvine, Esq., as the attorneys for Plaintiff, WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, in the above-entitled matter.

DATED this 21 day of May, 2015.

GARMAN TURNER GORDON
650 White Drive, Ste. 100
Las Vegas, NV 89119

BY: _____
Gerald M. Gordon, Esq. (NSB #229)
Mark M. Weisenmiller, Esq. (NSB #12128)
Teresa M. Pilatowicz, Esq. (ASB #9605)

///

///

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Plaintiff, WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, in the above entitled case consent, pursuant to WDCR 23(2)(a), to the substitution of Gerald M. Gordon, Esq., Teresa M. Pilatowicz, Esq., and Mark M. Weisenmiller, Esq. and the law firm of GARMAN TURNER GORDON, as their attorney of record.

DATED this 21 day of May, 2015.

WILLIAM A. LEONARD

BY: _____

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 26th day of May, 2015.

GORDON SILVER

By: /s/ John P. Desmond
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Attorneys for Plaintiff

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 **SUBSTITUTION OF COUNSEL** on the parties as set forth below:

____ 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)

X Via CM/ECF

addressed as follows:

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

DATED this 26th day of May, 2015.

Mina Reel
An Employee of GORDON SILVER

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2015-06-02 09:09:41 AM
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Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

vs.

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

Defendants.
_____/

CASE NO.: CV13-02663

DEPT. NO.: B1

DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT

Defendants, and each of them ("Defendants"), by and through counsel, Robison, Belaustegui, Sharp & Low, hereby respond to the First Amended Complaint ("Complaint") filed in this matter as follows:

1. These answering Defendants deny the allegations contained in paragraph 1 of the Complaint.

2. These answering Defendants admit that Superpumper is an Arizona corporation with its principal place of business in Maricopa County, Arizona, but deny the remainder of the allegations contained in paragraph 2 of the Complaint.

3. These answering Defendants admit that Bayuk is President of Superpumper but deny the remaining allegations contained in paragraph 3 of the Complaint.

4. These answering Defendants admit that Bayuk is the trustee of his living trust, but deny the remaining allegations contained in paragraph 4 of the Complaint.

5. These answering Defendants admit that Morabito is Vice-President of Superpumper but deny the remaining allegations contained in paragraph 5 of the Complaint.

6. These answering Defendants admit that Snowshoe Petroleum is a New York Corporation, but deny the remainder of the allegations contained in paragraph 6 of the Complaint.

7. These answering Defendants deny the allegations contained in paragraph 7 of the Complaint.

8. These answering Defendants deny the allegations contained in paragraph 8 of the Complaint.

9. In response to the allegations contained in paragraph 9 of the Complaint, these answering Defendants incorporate their responses to the proceeding allegations contained in the Complaint as if fully set forth herein.

10. These answering Defendants admit the allegations contained in paragraph 10 of the Complaint.

11. These answering Defendants admit the allegations contained in paragraph 11 of the Complaint.

12. These answering Defendants admit the allegations contained in paragraph 12 of the Complaint.

13. These answering Defendants admit the allegations contained in paragraph 13 of the Complaint.

14. The Judgment referred to in paragraph 14 of the Complaint speaks for itself, but has since been voided nunc pro tunc.

15. The Judgment referred to in paragraph 15 of the Complaint speaks for itself, but has since been voided nunc pro tunc.

16. The Judgment referred to in paragraph 16 of the Complaint speaks for itself, but has

Robison, Belaustegui, Sharp & Low
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Reno, NV 89503
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since been voided nunc pro tunc.

17. These answering Defendants admit that the document speaks for itself.

18. These answering Defendants admit the allegations contained in paragraph 18 of the Complaint.

19. These answering Defendants deny the allegations contained in paragraph 19 of the Complaint.

20. These answering Defendants admit the allegations contained in paragraph 20 of the Complaint.

21. These answering Defendants admit the allegations contained in paragraph 21 of the Complaint.

22. These answering Defendants admit the allegations contained in paragraph 22 of the Complaint.

23. The document referred to in paragraph 23 of the Complaint speaks for itself.

24. The document referred to in paragraph 24 of the Complaint speaks for itself.

25. The document referred to in paragraph 25 of the Complaint speaks for itself.

26. These answering Defendants deny the allegations contained in paragraph 26 of the Complaint.

27. These answering Defendants admit the allegations contained in paragraph 27 of the Complaint.

28. These answering Defendants admit that Plaintiffs improperly filed the Confession and deny the remaining allegations contained in paragraph 28 of the Complaint.

29. These answering Defendants deny the allegations contained in paragraph 29 of the Complaint.

30. These answering Defendants deny allegations contained in paragraph 30 of the Complaint.

31. These answering Defendants deny the allegations contained in paragraph 31 of the Complaint.

32. In response to the allegations contained in paragraph 32 of the Complaint, these

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71 Washington St.
Reno, NV 89503
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answering Defendants incorporates their responses to the proceeding allegations contained in the Complaint as if fully set forth herein.

33. These answering Defendants admit the allegations contained in paragraph 33 of the Complaint.

34. These answering Defendants admit the allegations contained in paragraph 34 of the Complaint.

35. These answering Defendants admit the allegations contained in paragraph 35 of the Complaint.

36. These answering Defendants admit the allegations contained in paragraph 36 of the Complaint.

37. These answering Defendants admit the allegations contained in paragraph 37 of the Complaint.

38. These answering Defendants admit the allegations contained in paragraph 38 of the Complaint.

39. In response to the allegations contained in paragraph 39 of the Complaint, these answering Defendants incorporates their responses to the proceeding allegations contained in the Complaint as if fully set forth herein.

40. These answering Defendants admit the allegations contained in paragraph 40 of the Complaint.

41. These answering Defendants admit the allegations contained in paragraph 41 of the Complaint.

42. These answering Defendants deny the allegations contained in paragraph 42 of the Complaint.

43. These answering Defendants deny the allegations contained in paragraph 43 of the Complaint.

44. These answering Defendants deny the allegations contained in paragraph 44 of the Complaint.

45. These answering Defendants deny the allegations contained in paragraph 45 of the

Robison, Belaustegui, Sharp & Low
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Reno, NV 89503
(775) 329-3151

Complaint.

46. These answering Defendants deny the allegations contained in paragraph 46 of the Complaint.

47. These answering Defendants deny the allegations contained in paragraph 47 of the Complaint.

48. These answering Defendants deny the allegations contained in paragraph 48 of the Complaint.

49. These answering Defendants deny the allegations contained in paragraph 49 of the Complaint.

50. These answering Defendants deny the allegations contained in paragraph 50 of the Complaint.

51. These answering Defendants deny the allegations contained in paragraph 51 of the Complaint.

52. These answering Defendants deny the allegations contained in paragraph 52 of the Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiffs have waived their claims.

2. Plaintiffs are estopped from proceeding with their claims.

3. Plaintiffs proceeded in bad faith and in violation of their duty to provide Defendants with the benefit of the bargain.

4. Plaintiffs have breached their contractual promises.

5. To the extent Plaintiffs are attempting to enforce unwritten provisions, the statute of frauds prohibits them from doing so.

6. Plaintiffs have been unjustly enriched by virtue of their false assertions and by and through instituting this legal proceeding.

7. The Plaintiffs' Complaint is an abuse of process and is being maliciously prosecuted.

8. The Plaintiffs, by and through their representatives and partners, were actively negligent.

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9. The Plaintiffs, by and through their representatives and partners, are comparatively negligent to the extent that Plaintiffs' negligence exceeds the negligence, if any, of these answering Defendants.

10. The Plaintiffs have failed and refused to mitigate the damages, if any, they have sustained.

11. Laches bars Plaintiffs' claims.

12. The Plaintiffs, by and through their manager, representatives and partners, expressly consented to and authorized the conduct of the Defendants now complained of and Plaintiffs are therefore estopped from recovering on their claim.

13. The cause of Plaintiffs' damages, if any, is a result of their own inept conduct and in the alternative, is caused by third parties unrelated to the Defendants named herein.

14. Plaintiffs' negligent conduct proximately caused whatever damages they have sustained.

15. These answering Defendants is entitled to setoff.

16. All alleged improper acts allegedly committed by these answering Defendants was accepted, approved and ratified by the Plaintiffs.

17. Plaintiffs' Complaint fails to state claims upon which relief can be granted.

18. Plaintiffs' claims are barred by the election of remedies.

19. Discovery has not yet commenced and these answering Defendants reserve the right to amend this Answer to include additional affirmative defenses as the discovery process proceeds.

20. Plaintiff's claims are barred by the applicable statute of limitations.

WHEREFORE, Defendants requests judgment in their favor against the Plaintiffs and further requests that said judgment include an award of attorney's fees and Court costs against the Plaintiffs.

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///

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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 1st day of June, 2015.

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

/s/ FRANK C. GILMORE
BARRY L. BRESLOW, ESQ.
FRANK C. GILMORE, ESQ.
Attorneys for Defendants

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 **ANSWER TO AMENDED COMPLAINT** all parties to this action by the method(s) indicated below:

X 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.
Mark M. Weisenmiller, Esq.
Teresa M. Pilatowicz, Esq.
GARMAN TURNER GORDON
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Attorneys for Plaintiff

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

Gerald Gordon, Esq.
Email: ggordon@Gtg.legal
Mark M. Weisenmiller, Esq.
Email: mweisenmiller@Gtg.legal
Teresa M. Pilatowicz, Esq.
Email: tpilatowicz@Gtg.legal

___ by personal delivery/hand delivery addressed to:

___ by facsimile (fax) addressed to:

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

DATED: This 2 day of June, 2015.



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FILED
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2015-06-16 03:45:45 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5003411

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Proposed Attorneys to Trustee

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, Plaintiff, vs. SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST; SALVATORE MORABITO, and individual; and SNOWSHOE PETROLEUM, INC., a New York corporation, Defendants.	**CASE NO.: CV13-02663** **DEPT. NO.: 1**

AMENDED STIPULATION AND ORDER TO SUBSTITUTE A PARTY PURSUANT TO NRCP 17(a)

Plaintiff William A. Leonard, Jr. ("Leonard"), trustee for the Bankruptcy Estate of Paul Anthony Morabito, by and through his counsel of record, Garman Turner Gordon, LLP, and Defendants Superpumper, Inc.; Edward Bayuk, individually and as Trustee of the Edward

William Bayuk Living Trust; Snowshoe Petroleum, Inc.; and Salvatore Morabito (collectively, "Defendants") by and through their attorneys of record, Robison, Belaustegui, Sharp & Low, hereby jointly agree and stipulation as follows:[1]

1. To remove JH, Inc., Jerry Herbst, and Berry-Hinkley Industries as plaintiff to this action;

2. To substitute Leonard, the trustee for the Bankruptcy Estate of Paul A. Morabito, as the plaintiff in this action under NRCP 17(a);

3. To remove Paul Morabito as a defendant to this action, both individually and as a Trustee of the Arcadia Living Trust;

4. To remove the Arcadia Living Trust as a defendant to this action.

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 1 day of June, 2015.

GARMAN TURNER GORDON LLP

/s/ Teresa M. Pilatowicz
GERALD E. GORDON, ESQ.
ERIKA PIKE TURNER, ESQ.
TERESA M. PILATOWICZ, ESQ.
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000

Proposed Attorneys for Trustee

ROBISON BELAUSTEGUI SHARP & LOW

BARRY L. BRESLOW, ESQ.
FRANK C. GILMORE, ESQ.
71 Washington Street
Reno, Nevada 89503
Telephone 775-329-3151

Attorneys for Defendants

...

[1] Plaintiffs JH, Inc., Jerry Herbst, and Berry-Hinckley Industries and Defendants, including Paul Morabito, individually and as trustee of the Arcadia Living Trust, previously submitted a stipulation to substitute Leonard, which was approved. The purpose of this Amended Stipulation is to clarify that all Leonard is substituting if for all three previous plaintiffs, and that the Arcadia Living Trust is being removed as a defendant

4030
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Proposed Attorneys to Trustee

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

ORDER APPROVING AMENDED STIPULATION TO SUBSTITUE A PARTY PURSUANT TO NRCP 17(a)

Pursuant to the foregoing Stipulation, IT IS SO ORDERED.

Dated this 15th day of June, 2015.

Janet Berry
DISTRICT COURT JUDGE

GARMAN TURNER GORDON LLP
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 16th day of June, 2015, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed the individuals listed herein and/or electronically filed the foregoing document with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following: :

VIA ECF
Barry Breslow, Esq.
Frank Gilmore, Esq.

VIA MAIL
Gerald Gordan, Esq.
Teresa Pilotowicz, Esq.
650 White Drive, Ste. 100
Las Vegas, NV 89119

JUDICIAL ASSISTANT

FILED
Electronically
2016-03-10 04:27:24 PM
Jacqueline Bryant
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Transaction # 5411376 : mcholico

2405
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FRANK C. GILMORE, ESQ. - NSB #10052
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Telephone: (775) 329-3151
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Attorneys for Defendants Snowshoe Petroleum, Inc., Superpumper, Inc., Edward Bayuk, individually and as Trustee of the Edward William Bayuk Living Trust, and Salvatore Morabito.

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

vs.

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

Defendants.
_____/

CASE NO.: CV13-02663

DEPT. NO.: B1

MOTION TO PARTIALLY QUASH, OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER PRECLUDING TRUSTEE FROM SEEKING DISCOVERY PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE

Defendants SUPERPUMPER, INC., EDWARD BAYUK, individually and as Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO, and SNOWSHOE PETROLEUM (collectively, "Defendants") hereby move this Court to partially quash, or, in the alternative, enter a protective order regarding the subpoena issued to non-party DENNIS VACCO ("Vacco"), by plaintiff WILLIAM A. LEONARD, Trustee for the Bankruptcy

Estate of Paul Anthony Morabito ("Trustee"). This motion is made pursuant to NRCP 45, NRCP 27, and NRCP 37, and is based upon the attached memorandum of points and authorities, exhibits and affidavits, and the pleadings and papers on file herein.

DATED this 10th day of March, 2016.

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

BARRY L. BRESLOW, ESQ.
FRANK C. GILMORE, ESQ.
Attorneys for Defendants Snowshoe Petroleum, Inc., Superpumper, Inc., Edward Bayuk, individually and as Trustee of the Edward William Bayuk Living Trust, and Salvatore Morabito.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants seek an order from this Court partially quashing the subpoena issued to non-party Dennis Vacco to the extent that subpoena seeks information protected by the Defendants' attorney-client privilege. Alternatively, Defendants request that this Court enter a protective order precluding the Trustee from seeking discovery of this information.[1] This relief is warranted because the information that the Trustee intends to seek at Mr. Vacco's deposition, set to be conducted on March 18, 2016, is protected by the attorney-client privilege. There has been no waiver of that privilege, and the bankruptcy court's waiver of non-party Paul Morabito's attorney-client privilege with Mr. Vacco did not and cannot waive Defendant's attorney-client privileges. Because the right and existence of a privilege is a question of state law, this issue is properly before this Court and is not within the jurisdiction of the bankruptcy court to rule upon. However,

[1] Defendants properly seek this alternative relief from this Court in this motion. *See* WDCR 10(9) (permitting motions to be filed in the same document if the motions are "pleaded in the alternative").

should the Trustee seek to compel disclosure of this information from Mr. Vacco, the Trustee will need to file his motions in New York, where Mr. Vacco is located, pursuant to NRCP 37.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND.

As this Court is aware, this dispute arises from the Trustee's contention that certain conveyances made by non-party Paul Morabito to Defendants were intended to hide assets from the creditors of Mr. Morabito's bankruptcy estate. Mr. Morabito's bankruptcy proceeding is currently pending before Judge Zive. Part of that proceeding involves a dispute regarding the discoverability of Mr. Morabito's communications with his New York attorney, Dennis Vacco.

Mr. Vacco also, at various times, represented Defendants. On March 9, 2016, counsel received a letter from Mr. Vacco's law firm in which counsel was informed that the Trustee had issued a subpoena to Mr. Vacco that touched upon information protected by the attorney-client privilege. *See* **Exhibit 1** (March 9, 2016 Letter from Lippes); *see also* **Exhibit 2** (Affidavit of Frank C. Gilmore, Esq.) at ¶ 4.

The subpoena to Mr. Vacco was issued by this Court and was served pursuant to a commission from the New York court of relevant jurisdiction on September 2015. The subpoena, as issued by this Court, does not, on its face, seek the disclosure of information protected by the attorney-client privilege. *See* **Exhibit 3** (Subpoena). It was not until Mr. Vacco's law firm revealed that the information that had been included clearly attorney-client and work product privileged material. Exh. 2 at ¶ 5.

Pursuant to WDCR 12(6),[2] Defendants immediately contacted the Trustee to discuss this issue. In that communication, Defendants advised the Trustee that they were unaware of the scope the Trustee was seeking with regard to the documents and communications between Vacco and Defendants. *See* **Exhibit 4** (Email chain); *see also* Exh. 2 at ¶ 6. As the Trustee made clear in its response, he intends to seek **any** communication between Vacco, Mr. Morabito, and Defendants.

The Trustee bases his position on an order issued by Judge Zive in which Judge Zive waived the attorney-client privilege between Vacco and Mr. Morabito. *See id.* That order did not

[2] "All discovery motions shall include the certificate of moving counsel certifying that after consultation with opposing counsel, they have been unable to resolve the matter." WDCR 12(6).

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waive the attorney-client privilege between Defendants and Vacco. Judge Zive has no jurisdiction to waive that privilege. This Court is the only court that can make that determination. Accordingly, Defendants bring this current motion to quash, or, alternatively, for a protective order protecting their privileged information.

III. ARGUMENT

A. STANDARD OF REVIEW

On a timely motion, "the court by which a subpoena was issued shall quash or modify the subpoena if it . . . requires disclosure of privileged or other protected matter and no exception or waiver applies." NRCP 45(c)(3)(A)(iii). In addition, and alternatively, this Court has discretion to enter a protective order "which justice requires to protect a person from annoyance, embarrassment, oppression or undue burden or expense." NRCP 26(c). This includes an order mandating "that the discovery not be had," or "that the discovery may be had only on specified terms and conditions." NRCP 26(c)(1)-(2).

B. THE TRUSTEE IS NOT ENTITLED TO DISCOVER INFORMATION PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE.

The attorney-client privilege "protects communications between clients or client representatives and lawyers when made in furtherance of legal services." *Coyote Springs Inv., LLC v. Eighth Jud. Dist. Ct.*, 131 Nev. ___, ___, 347 P.3d 267, 270 (2015). The client and/or their attorney may refuse to disclose these communications. *Sloan v. State Bar of Nev.*, 102 Nev. 436, 441, 726 P.2d 330, 333 (1986). "The attorney-client privilege rests on the theory that encouraging clients to make full disclosure to their attorneys enables the latter to act more effectively, justly, and expeditiously, ***a benefit outweighing the risks posed to truth-finding***." *Haynes v. State*, 103 Nev. 309, 317, 739 P.2d 497, 502 (1987) (emphasis added).

It is well established that "[a] party is not entitled to discovery of information protected by the attorney-client privilege." *Navajo Nation v. Confederated Tribes & Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003). The attorney-client privilege is "the most sacred of all legally recognized privileges, and its preservation is essential to the just and orderly operation of our legal system." *United States v. Bauer*, 132 F.3d 504, 510 (9th Cir. 1997). Thus,

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"where the attorney-client privilege is concerned, ***hard cases should be resolved in favor of the privilege, not in favor of disclosure***." *United States v. Mett*, 178 F.3d 1058, 1065 (9th Cir. 1999) (emphasis added).

Here, the Trustee seeks information from Vacco that is unquestionably protected by the attorney-client privilege. The Trustee is not entitled to discovery of this information. *Navajo Nation,* 331 F.3d at 1046.

The Trustee cannot argue that the privilege as to Defendant's communications with Vacco has been waived because there has been no order entered establishing that Defendants' communications with Vacco have been waived. The only order entered pertains to Mr. Morabito and that order does not waive the protection of communications between Vacco and Defendants. Accordingly, the subpoena must be quashed or modified to preclude discovery of this information.

C. THIS COURT, AND NOT THE BANKRUPCY COURT, IS THE PROPER TRIBUNAL TO DECIDE THIS ISSUE.

Where a state court action and a pending bankruptcy action involve the same parties, the state court possesses jurisdiction over discovery disputes. *See, e.g., Lodi Mem'l Hosp. Ass'n, Inc. v. Blue Cross of Am.*, No. CIV. 12-1071 WBS GGH, at *13 (E.D. Cal. Aug. 22, 2012) (federal court refused to impose a fine relating to the filing of a frivolous notice of removal in order to "refrain from exceeding its jurisdiction and inserting itself into disputes that occurred in state court"); *GP Indus., LLC v. Bachman,* Nos. 8:06CV50, 8:06CV51, 2007 WL 4245786, at *2 n.3 (D. Neb. Nov. 29, 2007) (stating that where a party is accused "of failing to provide discovery in a related matter now pending in state court, this court does not have the inclination – or jurisdiction – to resolve any discovery disputes that arise in the state court proceeding.").

Moreover, whether the attorney-client privilege applies is a substantive state law issue, and Judge Zive conceded this point during his hearing in which he waived the privilege as to Morabito, but did not waive the privilege as to Defendants. Accordingly, this Court is the proper tribunal to modify the subpoena to prevent the Trustee from seeking communications and information protected by the attorney-client privilege.

///

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D. ANY MOTION TO COMPEL MUST BE BROUGHT IN NEW YORK.

Because discovery to set to occur in New York, any motion to compel must be filed in New York. "An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being, or is to be, taken." NRCP 37(a)(1). Accordingly, because this is not the district where discovery will be taken, any motions to compel Vacco's compliance must be brought in New York.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court enter an order modifying or quashing the subpoena, or in the alternative, enter a protective order, precluding the Trustee from seeking discovery of communications and information protected by the attorney-client privilege from Vacco. Defendants do not wish to obstruct the Trustee's right to discover non-privileged information; Defendants merely wish to protect their privileged communications. Accordingly, Defendants respectfully request that this Court grant their motion.

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 10th day of March, 2016.

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

BARRY L. BRESLOW, ESQ.
FRANK C. GILMORE, ESQ.
Attorneys for Defendants Snowshoe Petroleum, Inc., Superpumper, Inc., Edward Bayuk, individually and as Trustee of the Edward William Bayuk Living Trust, and Salvatore Morabito.

J:\WPData\BLB\14359.001 Snowshoe adv. Herbst\P-Mtn Quash or Modify Vacco Subpoena 3-10-16.doc

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 **MOTION TO PARTIALLY QUASH, OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER PRECLUDING TRUSTEE FROM SEEKING DISCOVERY PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE** 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.
Mark M. Weisenmiller, Esq.
Teresa M. Pilatowicz, Esq.
GARMAN TURNER GORDON
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Attorneys for Plaintiff

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

Gerald Gordon, Esq.
Email: ggordon@Gtg.legal
Mark M. Weisenmiller, Esq.
Email: mweisenmiller@Gtg.legal
Teresa M. Pilatowicz, Esq.
Email: tpilatowicz@Gtg.legal

____ by personal delivery/hand delivery addressed to:

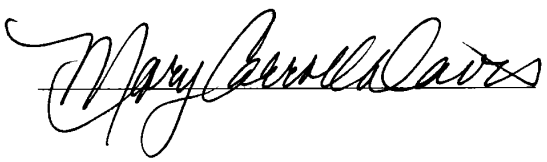
____ by email addressed to:

Gerald Gordon, Esq.
Email: ggordon@Gtg.legal
Mark M. Weisenmiller, Esq.
Email: mweisenmiller@Gtg.legal
Teresa M. Pilatowicz, Esq.
Email: tpilatowicz@Gtg.legal

____ by facsimile (fax) addressed to:

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

DATED: This 10th day of March, 2016.



Robison, Belaustegui, Sharp & Low
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Reno, NV 89503
(775) 329-3151

LIST OF EXHIBITS

EXHIBIT NO.	DOCUMENT	NO. OF PAGES
1	March 9, 2016 Letter from Lippes	2
2	Affidavit of Frank C. Gilmore, Esq.	2
3	Subpoena	14
4	Email chain	2

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Sharp & Low
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Reno, NV 89503
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2016-03-10 04:27:24 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5411376 : mcholico

EXHIBIT 1

EXHIBIT 1

Lippes **Mathias** Wexler **Friedman** LLP
Attorneys at Law

Kevin Burke
Partner
kburke@lippes.com

March 9, 2016

Via Electronic Mail and First Class Mail

tlukas@hollandhart.com
Timothy A. Lukas
Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

fgilmore@rbsllaw.com
Frank C. Gilmore, Esq.
Robison, Belaustegui, Sharp and Low, P.C.
71 Washington Street
Reno, Nevada 89503

Re: Morabito - Subpoena

Dear Counselors:

I write to advise you of a subpoena that may impact the rights of your client(s). A copy of the subpoena is attached.

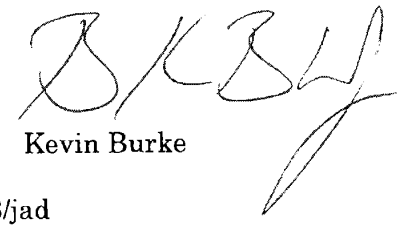
I have been advised that there are at least two pending motions concerning the subpoena. Although I am not personally familiar with the full scope of the factual and legal arguments at issue in these motions, I understand that the subjects of the motions touch upon attorney-client privilege and/or crim-fraud exception issues raised by the subpoena.

Please be advised that Mr. Vacco, the subject of the subpoena (and a related deposition notice), has been asked to appear and give testimony about records potentially relating to your client on Friday, March 18, 2016, at 50 Fountain Plaza, Suite 1700, Buffalo, New York 14202. If you intend to

challenge any part of the subpoena, please do so with a court of competent jurisdiction (New York State Supreme Court, County of Erie) prior to March 18, 2016. Kindly notify me if you do, in fact, intend to seek an order in Erie County as soon as possible.

Very truly yours,

LIPPES MATHIAS WEXLER FRIEDMAN LLP

By: 

Kevin Burke

BKB/jad
Enclosure
cc: Garman Turner Gordon LLP

F I L E D
Electronically
2016-03-10 04:27:24 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5411376 : mcholico

EXHIBIT 2

EXHIBIT 2

AFFIDAVIT OF FRANK C. GILMORE, ESQ., IN SUPPORT OF MOTION TO MODIFY SUBPOENA, OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER PRECLUDING TRUSTEE FROM SEEKING DISCOVERY PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

I, FRANK C. GILMORE, being duly sworn, depose and state under penalty of perjury the following:

1. I am an attorney licensed in Nevada and am counsel representing Defendants in this matter. I am a shareholder with the law firm of Robison, Belaustegui, Sharp & Low.

2. I have personal knowledge of the facts set forth in this affidavit, and if I am called as a witness, I would and could testify competently as to each fact set forth herein.

3. I submit this affidavit in support of Defendants' Motion to Modify Subpoena, or, in the Alternative, For a Protective Order Precluding Trustee From Seeking Discovery Protected By the Attorney-Client Privilege ("Motion"), to which this affidavit is attached as Exhibit 2.

4. Attached as Exhibit 1 to the Motion is a true and correct copy of the March 9, 2016 letter that I received from Dennis Vacco's law firm.

5. From that letter, I first learned the scope of the documents the Trustee intends to seek, which are discovery of communications protected by the attorney-client privilege.

6. Attached as Exhibit 4 to the Motion is a true and correct copy of the email chain between me and counsel for Trustee, summarizing the meet and confer that we telephonically conducted on this issue.

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Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 10th March, 2016.

FRANK C. GILMORE, ESQ.

STATE OF NEVADA)
):ss.
COUNTY OF WASHOE)

Subscribed and sworn to before me
On this 10th day of March, 2016 by
Frank C. Gilmore, Esq.

NOTARY PUBLIC

MARY CARROLL DAVIS
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 94-0407-2 - Expires November 22, 2018

J:\WPData\BLB\14359.001 Snowshoe adv. Herbst\P-Aff FCG ISO Mtn PO 3-10-16.doc

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Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

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Transaction # 5411376 : mcholico

EXHIBIT 3

EXHIBIT 3

2610
GARMAN TURNER GORDON LLP
GERALD M. GORDON, ESQ.
Nevada Bar No. 229
E-mail: ggordon@gtg.legal
TERESA M. PILATOWICZ, ESQ.
Nevada Bar No. 9605
E-mail: tpilatowicz@gtg.legal
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000

Attorneys for William A. Leonard

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, Plaintiff, vs. SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST; SALVATORE MORABITO, and individual; and SNOWSHOE PETROLEUM, INC., a New York corporation, Defendants.	**CASE NO.: CV13-02663** **DEPT. NO.: 1** **NOTICE OF ISSUANCE OF SUBPOENA TO DENNIS VACCO**

Plaintiff, WILLIAM A LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, by and through his counsel, GERALD M. GORDON and TERESA M. PILATOWIZ, of the law firm of Garman Turner Gordon, hereby provide notice to Defendants of the issuance of a Subpoena to testify at a deposition and produced documents upon Dennis Vacco. A copy of the subpoena is attached hereto as Exhibit "1."

///

///

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 January 2015.

GARMAN TURNER GORDON LLP

/s/ Teresa M. Pilatowicz
GERALD M. GORDON, ESQ.
Nevada Bar No. 229
TERESA M. PILATOWICZ, ESQ.
Nevada Bar No. 9605
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Tel: (735) 777-3000
Attorneys for William A. Leonard

GARMAN TURNER GORDON LLP
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

CERTIFICATE OF SERVICE

The undersigned, an employee of Garman Turner Gordon, hereby certifies that on the 29th day of September, 2015, she served a copy of the NOTICE OF ISSUANCE OF SUBPOENA TO DENNIS VACCO, to all interested parties via e-mail and U.S Mail system addressed to:

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

An employee of Garman Turner Gordon

GARMAN TURNER GORDON LLP
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

EXHIBIT 1

EXHIBIT 1

3980
GARMAN TURNER GORDON LLP
GERALD M. GORDON, ESQ.
Nevada Bar No. 229
E-mail: ggordon@gtg.legal
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Attorneys for William A. Leonard

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, Plaintiff, vs. SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST; SALVATORE MORABITO, and individual; and SNOWSHOE PETROLEUM, INC., a New York corporation, Defendants.	**CASE NO.: CV13-02663** **DEPT. NO.: 1** **SUBPOENA - CIVIL** XX Regular XX Duces Tecum

THE STATE OF NEVADA SENDS GREETINGS TO:

Dennis Vacco
Lippes Mathias Wexler Friedman LLP
665 Main Street, Suite 300
Buffalo, New York 14203

YOU ARE HEREBY COMMANDED that all and singular, business and excuses set aside, you (1) shall produce the documents requested below for inspection and copying[1] on

[1] Alternatively, the documents may be delivered electronically to tpilatowicz@gtg.legal prior to October 15, 2015. If documents are provided electronically, no appearance to produce and permit inspection is necessary on October

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October 15, 2015 at 10:00 a.m. and (2) shall appear and attend to present testimony on the 20th day of October, 2015 at 10:00 a.m.. The address where you are required to appear is Key Center, 50 Fountain Plaza, Suite 1400, Buffalo, New York 14202. Your attendance is required to give testimony and/or produce and permit inspection and copying of designated books, documents or tangible things in your possession, custody or control, or to permit inspection of premises. If you fail to attend, you may be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your failure to appear. Please see Exhibit "A" attached hereto for information regarding the rights of the person subject to this Subpoena.

Dated this 24th day of September, 2015.

GARMAN TURNER GORDON LLP

/s/ Teresa M. Pilatowicz
GERALD E. GORDON, ESQ.
TERESA M. PILATOWICZ, ESQ.
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000

Attorneys for William A. Leonard

ITEMS TO BE PRODUCED

DEFINITIONS

1. "Action" means the above-captioned case pending in the Second Judicial District Court, Washoe County, Nevada, at Case No. A CV13-02663.

2. "Communication" means any contact, oral or written, formal or informal, at any time or any place under any circumstance whatsoever whereby any information of any nature was transmitted or transferred, including but not limited to personal conversation, conferences, telephone conversations, memoranda, letters, correspondence, electronic correspondence, texts, reports, and publications.

3. "Document" shall be deemed to mean any printed, typewritten, handwritten, electronic,

(Continued)

15, 2015.

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or otherwise recorded matter of whatever character, whether original, master or copy (whether still active, archived or transparent) and any copies or reproductions that are not identical to the original, that is or has been in the possession, control or custody of you, your attorney and/or all other person acting in your behalf or of which any of the aforementioned persons have knowledge, other person acting in your behalf or of which any of the aforementioned persons have knowledge, including, but not limited to, letters, e-mail (internal and external), communications, correspondence, memoranda, confirmations, facsimile transmittal sheets, transmittal forms, telegrams, notes, summaries, minutes, contracts, subcontracts, purchase orders, leases, amendments, change orders, proposals, requests for proposal, bids, marketing documents, reports, studies, drawings, charts, diagrams, sketches, estimates, specifications, addenda, schedules, directives, records of telephone conversations, staffing projections, records of meetings and conferences, including lists of persons attending meetings or conferences, summaries and records of personal conversations or interviews, exhibits, transcripts, books, manuals, publications, diaries, logs, daily reports, status reports, minutes of meetings, records, journals, entries in journals, charts, financial records and/or summaries of financial records, work papers, bills, ledgers, financial statements, audit reports, financial data, status sheets, contract status reports, tax returns, certificate of insurance, agreements of suretyship and/or indemnification, insurance policies, calendars, summaries of investigations and/or surveys, statistical compilations, audio or visual recordings, photographs, cpm schedules, spreadsheets, computer or magnetic records, computer memory (including that of any "transparent" information, information deleted from the personal computer or file but not from the system), hard drives, floppy discs, optical discs, CD-ROM discs, Bernoulli discs and their equivalents, magnetic tape, disaster recovery back-up, compact disks, computer generated reports or summaries, drafts of original or preliminary notes on and marginal comments appearing on any documents, other reports and records, any other paper or physical thing containing writing, photographic, imaged, or electronically recorded data, every copy of such writing or records where the original is not in the possession, custody or control of the aforementioned persons, and every copy of every such writing or record where such copy contains any commentary or notation whatsoever that does not appear on the original.

4. "Morabito" means Paul Morabito.

5. "Plaintiff" or "Leonard" refers to Plaintiff William A. Leonard, Trustee.

6. "Relate" or "Relating to" or "Relative to" means constituting, comprising, containing, setting forth, showing, disclosing, describing, explaining, summarizing, concerning, or referring to directly or indirectly.

7. "YOU" OR "YOUR" means Dennis Vacco and Lippes Mathias Wexler Friedman LLP and their agents, employees, heirs, assignees or representatives.

INSTRUCTIONS

1. These requests shall be deemed continuing and as additional information concerning the answers is secured, such additional information shall be supplied to Plaintiff.

2. You shall produce all Documents in the manner in which they are maintained in the usual

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course of business and/or shall organize and label Documents to correspond with the categories of these requests. A request shall be deemed to include a request for any and all file folders within which the document was contained, transmittal sheets, cover letters, exhibits, enclosures, or attachments to the Document in addition to the Document itself.

3. In producing Documents and other materials, You are requested to furnish all Documents or things in Your possession, custody, or control, regardless of whether such Documents or materials are possessed by You directly or Your directors, officers, agents, employees, representatives, subsidiaries, managing agents, affiliates, investigators, or by Your attorneys or their agents, employees, representatives, or investigators.

4. If any Document is held under claim of privilege, please identify the Document for which there is a claim of privilege and a full description thereof, including without limitation:

    1. The date it bears;
    2. The name of each person who prepared it or who participated in any way in its preparation;
    3. The name of each person who signed it;
    4. The name of each person to whom it, or a copy of it was addressed;
    5. The name of each person who presently has custody of it or a copy of it;
    6. The subject matter and its substance; and
    7. What factual basis there is for the claim of privilege.

5. If any Document requested to be produced was but is no longer in Your possession or control, or is no longer in existence, state whether it is (1) missing or lost, (2) destroyed, (3) transferred voluntarily or involuntarily to others and if so to whom, or (4) otherwise disposed of; and in each instance explain the circumstances surrounding an authorization of such disposition thereof and state the approximate date thereof.

6. In the event that Documents called for by any particular request have been lost or destroyed, please state: (i) the date on which the Document(s) were lost or destroyed; (ii) the manner in which the Document(s) were lost or destroyed; (iii) the identity of the Document(s); (iv) the information contained within such Document(s) and the nature of the Document(s); and (v) and the identity of any person(s) who has knowledge of the contents of the Document(s) or has received a copy of such Document(s).

7. Documents attached to each other should not be separated.

8. Documents not otherwise responsive to these requests shall be produced if such Documents mention, discuss, refer to, or explain the Documents that are called for in a request.

9. The term "and" as well as "or" shall be construed either disjunctively or conjunctively, as necessary, to bring within the scope of these requests any information which might otherwise be construed to be outside their scope.

10. Whenever appropriate, the singular form of a word shall be interpreted as plural and the masculine gender shall be deemed to include feminine.

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725-777-3000

11. The fact that a Document has been produced by You or any other defendant in any other litigation does not relieve You of Your obligation to produce your copy of the same Document, even if the two Documents are identical

DISCOVERY REQUESTS

1. Any and all Documents constituting, relating to, or referring to your engagement as counsel for Morabito between January 1, 2007 and December 31, 2014.

2. Any and all statements from January 1, 2010 through December 31, 2010 detailing the descriptions of and amount billed for services provided by you to Paul A. Morabito or any third party on his behalf.

3. Any and all documents sufficient to identify any and all payments made from January 1, 2010 through December 31, 2010 to you by Paul Morabito or a third party on his behalf.

4. Any and all documents sufficient to identify any and all payments made by You to any third party on Morabito's behalf from January 1, 2010 through December 31, 2010.

5. Any and all Documents constituting, relating to, or referring to services performed by you with respect to the transfer of property located at 8355 Panorama Drive, Reno, Nevada to the Arcadia Living Trust on or about October 1, 2010. This includes, but is not limited to, opinion letters, written agreements relating to the transfer, including drafts, and valuations of the real and personal property located at 8355 Panorama Drive, Reno, Nevada whether ordered by You, obtained by You, or otherwise in Your file.

6. Any and all Documents constituting, relating to, or referring to services performed by you with respect to the transfer of property located at 371 El Camino Del Mar, Laguna Beach, California to the Edward William Bayuk Living Trust (the "Bayuk Living Trust") on or about October 1, 2010. This includes, but is not limited to, opinion letters, written agreements relating to the transfer, including drafts, and valuations of the real and personal property located at 371 El Camino Del Mar, Laguna Beach, California whether ordered by You, obtained by You, or otherwise in Your file.

7. Any and all Documents constituting, relating to, or referring to services

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performed by you with respect to the transfer of property located at 370 Los Olivos, Laguna Beach, California to the Bayuk Living Trust on or about October 1, 2010. This includes, but is not limited to, opinion letters, written agreements relating to the transfer, including drafts, and valuations of the real and personal property located at 370 Los Olivos, Laguna Beach, California whether ordered by You, obtained by You, or otherwise in Your file.

8. Any and all Documents constituting, relating to, or referring to services performed by you with respect to the transfer of the Arcadia Living Trust's ownership interest in Baruk Properties, LLC on or about October 1, 2010. This includes, but is not limited to, opinion letters, written agreements relating to the transfer, including drafts, and valuations of the assets owned by Baruk Properties, LLC whether ordered by You, obtained by You, or otherwise in Your file. Such assets include, but are not limited to, the real and personal property located at 1254 Mary Flemming Circle, Palm Springs, California; 1461 Glenneyre St., Laguna Beach, California; 520 Glenneyre St., Laguna Beach, California; and 49 Clayton Place, Sparks, Nevada.

9. Any and all Documents constituting, relating to, or referring to services performed by you relating to the sale of Paul A. Morabito's 80% interest in Superpumper, Inc. to Snowshoe Petroleum on or about September 30, 2010. This includes, but is not limited to, opinion letters, written agreements relating to the transfer, including drafts, and valuations of Morabito's interest in Superpumper, Inc. whether ordered by You, obtained by You, or otherwise in Your file.

10. Any and all Documents constituting, relating to, or referring to Communications between you and any employee of Matrix Capital Markets Group, Inc. regarding any valuations requested by You of Superpumper, Inc.

11. Any and all promissory notes drafted by You between January 1, 2010 and December 31, 2010 at the request of Morabito, or at the request of any third party on Morabito's behalf.

12. Any and all Documents related to or referring to promissory notes drafted by You between January 1, 2010 and December 31, 2010 at the request of Morabito, or at the request of any third party on Morabito's behalf including, but not limited to, any ledgers regarding

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payments on such promissory notes.

13. Any and all Communications between You and any third party regarding promissory notes drafted by You between January 1, 2010 and December 31, 2012 at the request of Morabito, or at the request of any third party on Morabito's behalf.

14. Any and all Documents sufficient to identify any and all payments Received in any of Your accounts from Sefton Trustees on Morabito's behalf between September 15, 2010 and the date of Your response to these requests.

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725-777-3000

AFFIDAVIT OF SERVICE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

_____, being duly sworn says: That at all times herein affiant was over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received the Subpoena on the __ day of _____, 2015, and served the same on the _____ day of _____, 2015 by delivering a copy to the witness at: _____

_____.

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

EXECUTED this ___ day of _____, 2015.

_____
Signature of person making service

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850 White Drive, Ste. 100
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EXHIBIT "A"

NEVADA RULES OF CIVIL PROCEDURE

Rule 45:

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected material and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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Jacqueline Bryant
Clerk of the Court
Transaction # 5411376 : mcholico

EXHIBIT 4

EXHIBIT 4

Frank Gilmore

From: Teresa Pilatowicz <tpilatowicz@Gtg.legal>
Sent: Thursday, March 10, 2016 10:56 AM
To: Frank Gilmore
Cc: Mary Carroll Davis; Vicki DiMaio; Gerald Gordon
Subject: RE: Superpumper

Please see my responses below

Teresa M. Pilatowicz
Attorney

Phone: 725 777 3000
Direct: 702 478 0559
Fax: 725 777 3112

GARMAN | TURNER | GORDON
2415 E. CAMELBACK RD., SUITE 700
PHOENIX, ARIZONA 85016

Visit us online at www.gtg.legal

From: Frank Gilmore [mailto:FGilmore@rbsllaw.com]
Sent: Thursday, March 10, 2016 11:16 AM
To: Teresa Pilatowicz <tpilatowicz@Gtg.legal>
Cc: Mary Carroll Davis <MDavis@rbsllaw.com>
Subject: Superpumper

Teresa,

Confirming our call just now:

1. It was my understanding that Judge Zive had requested that we confer prior to the filing of a brief on the issue of the Vacco deposition. I saw the brief and was a little surprised it was filed prior to us discussing the issues; nevertheless, we have now had the chance to discuss them.

I reviewed the Order Granting Motion to Compel Responses to Deposition Questions (the "Order") again and disagree there was any requirement to confer prior to the filing of the brief. As such, we filed the brief ten days prior to the deposition, as required by the Order.

2. Debtor will not be asserting a privilege on the existing Vacco subpoena. I have tried to make that as clear as possible.

3. I was not aware that the trustee was seeking documents and communications which do not involve the debtor. I understand the trustee seeks documents and communications related to the transfers, irrespective of Morabito's involvement therein. In other words, I understand that the Trustee is taking the position that Judge Zive's waiver of debtor's privilege with Vacco entirely eviscerated ALL the Superpumper Defendants' privileges with Vacco, as to all files, papers, and communications.

For purposes of Vacco's deposition and the subpoena relating thereto, we will not seek documents to which Morabito is not a party. We reserve all rights to do so in the future.

4. As to the issue of privilege, I believe there is a fundamental legal difference between communications with Vacco and Edward or Sam alone, and communications with Vacco, Edward, Sam and Morabito together. You have told me that the trustee seeks both types of communications, provided that they relate to the transactions at issue in the Superpumper case. Even if a joint interest privilege has been waived as to communications with Morabito (which I do not concede), I do not agree that the Trustee can then waive the privilege as to communications with non-debtor entities or persons when the debtor was not involved in the communication, irrespective of the topic areas. Because we now have a dispute about this where I was not aware that one existed previously, I will instruct Vacco, on behalf of the Superpumper defendants, to not produce any documents until a court of competent jurisdiction can make a ruling on the privilege issue. Moreover, now that we understand the scope of the Trustee's intent, the documents must be made available to the privilege holders to determine if/how a privilege applies prior to any effort to disclose them to the trustee.

The first issue is resolved by the Trustee's agreement to seek only seek production of communications to which Debtor is a party. The Trustee reserves his rights to seek such documents in the future. With respect to the documents to which Debtor is a party, the Bankruptcy Court has ordered that the privilege has been waived as to the Debtor. As is clear from the Nevada Bankruptcy Court Case of In re Hotels Nevada, Inc.*, 458 B.R. 560, this includes all communications with Debtor, whether or not they include other parties. Therefore these documents must be produced. This is not a new dispute of which you just became aware. This has been an ongoing dispute with respect to other documents sought in the bankruptcy cases. Furthermore, the subpoena was first served in September 2015. It generally sought all documents regarding the transfers that are the subject of the state court case. The Order Granting Motion to Compel Responses to Deposition Questions was entered on February 3. Notwithstanding that the subpoena was issued six months ago and the order regarding the subpoena was issued over a month ago, we have never been provided any sort of privilege log from any party asserting any privileges. As you know, the party asserting the privilege has the burden of proving its application. No effort has been made to do so in this case.*

5. We do not agree that the Bankruptcy court has jurisdiction to (a) waive any joint interest privilege for any non-debtor entities or persons, and (2) compel Vacco to produce documents. We believe the proper venue is the state court in the venue where the documents are being sought: Eire County, New York.

As was determined by the Bankruptcy Court at the initial hearing on this matter, the Bankruptcy Court properly has jurisdiction over issues regarding the Debtor's privilege. The Bankruptcy Court has ordered that there is no privilege as to the Debtor's communications as a result of the crime fraud exception and, to the extent there is a privilege the Trustee has waived it. As a result, Vacco has been instructed to by Trustee and the Court to turn over the Debtor's communications. Any refusal to provide documents to which the Trustee holds the privilege is a matter for the Bankruptcy Court.

Please advise if you think I have not adequately stated our respective positions on the telephone.

FRANK C. GILMORE, ESQ.
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PH: (775) 329-3151
FAX: (775) 329-7169
fgilmore@rbsllaw.com

F I L E D
Electronically
2016-03-17 08:26:57 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5421150

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO
02/24/16 HONORABLE JANET J. BERRY DEPT. NO. 1 M. Schuck (Clerk) E. Ferretto (Reporter) Deputy Manor (Bailiff)	**PRE-TRIAL CONFERENCE** Plaintiff, William Leonard, Jr., present and represented by Gabrielle Hamm, Esq. and Teresa Pilatowicz, Esq. Defendant, Superpumer, without a representative present and represented by Barry Breslow, Esq. and Frank Gilmore, Esq. Defendant Edward Bayuk, not present and Barry Breslow, Esq. and Frank Gilmore, Esq. Defendant, Edward William Bayuk Living Trust, without a representative present and represented by Barry Breslow, Esq. and Frank Gilmore, Esq. Defendant, Snowshoe Petroleum, Inc., without a representative present and represented by Barry Breslow, Esq. and Frank Gilmore, Esq. Defendant, Salvatore Morabito, not present and represented by Barry Breslow, Esq. and Frank Gilmore, Esq. John Murtha, Esq. was present behind the bar. JH, Inc., Jerry Herbst, Berry-Hinckley Industries, Paul Morabito and Arcadia Living Trust were substituted as per stipulation and order filed on May 15, 2015. Court convened at 1:45 p.m. Counsel Pilatowicz indicated the parties were working through discovery, referenced the March 31, 2016 deadline for depositions, noted depositions were scheduled. She noted the parties had discussed trial length and further noted defense counsel had a different view on the trial length. She suggested new dates be discussed. She addressed issues with depositions for Mr. Bernstein and witness deposition that was completed five years ago. Plaintiffs believe a new deposition was necessary as to Daryl Noble. She referenced disclosure of tax and noted there were approximately eight to nine depositions. Counsel Gilmore noted there were approximately ten depositions and believed Mr. Bernstein's deposition would be at least one day. Counsel Pilatowicz discussed testimony via depositions and referenced the pretrial order deadlines. Court addressed and explained the submission process to be followed by counsel. She noted any discovery dispute would be handled by the discovery commissioner. She noted trial statements were to include causes of action, articulation the witnesses, case authority and the elements. Court referenced the pending trial setting.	6/06/16 at 9:30 a.m. for Bench Trial (3 weeks)

She directed Counsel to meet and confer and designate on how they wanted to interpose objections accompanied with legal basis as to the video depositions. She addressed trial logistics.
Counsel Gilmore addressed case history as to Mr. Stanton Bernstein and questioned as to why he was the last witness to be deposed, he further addressed discovery issues pending with Commissioner Ayres.
Court noted she would take issue with Counsel regarding Mr. Bernstein.
Counsel Gilmore indicated they would have approximately 15 live witnesses and 4 depos would be read from the stand. He was concerned there would be more witnesses than time.
Court indicated trial could commence on June 6, 2016.
Counsel Breslow requested trial commence on June 8, 2016 due to a prior engagement.
COURT ORDERED: Trial reset to June 06, 2016 at 9:30 a.m. and noted Counsel Breslow could be excused for the first two days as Counsel Gilmore could handle the pretrial motions and any other pending issues that would be taken up during the first two days of trial. Court indicated she would conduct a criminal calendar only on Tuesday of said week, so the rest of the week would be dedicated to the trial.
Counsel Gilmore addressed appraisals and valuations.
Court questioned if briefing would be necessary; Counsel Pilatowicz explained Plaintiff's position and addressed privity.
Counsel Hamm addressed the issue with the files following the many different attorneys that were previously on the matter.
Counsel Pilatowicz continued to explain her position.
Counsel noted Mr. Bernstein was a critical witness, she directed Counsel to contact his attorney, indicated the Court wanted to review his deposition and directed all Counsel to meet and confer prior to leaving the courtroom with their calendars. She suggested Counsel offer to move up the deposition and not back. Further suggested Counsel cross check their files and indicated if matters needed attention Counsel could do a setting form.
Court and Counsel discussed a settlement conference.
COURT ORDERED: Final pre-trial conference set for week of April 11, 2016. Counsel to set with Court's Judicial Assistant. Further Counsel to discuss setting a settlement conference in April or first part of May.
Matter concluded at 3:05 p.m.

4185
SUNSHINE LITIGATION
151 Country Estates Circle
Reno, Nevada 89512

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE JANET J. BERRY, DISTRICT JUDGE

-oOo-

JH, INC.; et al.,	:	
Plaintiffs,	:	
vs	:	Case No. CV13-02663
PAUL MORABITO; et al.,	:	Dept. No. 1
Defendants.	:	

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TRANSCRIPT OF PROCEEDINGS

PRE-TRIAL CONFERENCE

WEDNESDAY, FEBRUARY 24TH, 2016

Reno, Nevada

Reported By: ERIN T. FERRETTO, RPR, CCR #281

A P P E A R A N C E S

FOR THE PLAINTIFFS:

TERESA PILATOWICZ, ESQ.
GABRIELLE HAMM, ESQ.
Garman Turner Gordon
2415 E. Camelback Road
Suite 700
Phoenix, Arizona 85016

FOR THE DEFENDANTS:

FRANK GILMORE, ESQ.
BARRY L. BRESLOW, ESQ.
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, Nevada 89503

ALSO PRESENT:

JOHN MURTHA, ESQ.

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RENO, NEVADA, WEDNESDAY, FEBRUARY 24TH, 2016, 1:50 P.M.

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THE COURT: Please be seated. Thank you for your patience on the docket.

This is JH, Inc., et al., versus Paul Morabito, CV13-02663. We are scheduled for a 10-day, non-jury trial commencing June 13th, three months from trial.

Counsel, can you tell me where we are?

MS. PILATOWICZ: Good morning, your Honor, Teresa -- or good afternoon, Teresa Pilatowicz and Gabrielle Hamm on behalf the plaintiff. Also present in the courtroom is William Leonard, who is the Chapter 7 trustee and the plaintiff, and his bankruptcy counsel John Murtha.

THE COURT: Okay.

MR. GILMORE: Good afternoon, your Honor. Frank Gilmore and my partner Barry Breslow for the defendant.

MS. PILATOWICZ: Your Honor, the parties have been working through discovery. We have a discovery cutoff date of December -- I'm sorry -- March 31st. We've got approximately 10 to 15 depositions scheduled in March.

We anticipate being able to complete discovery by the end of March with some limited exceptions that we would like to address today to see if we can resolve them.

I think that we had some discussions before the -- before the conference about whether two weeks was still a realistic trial date. I believe the question first for your Honor is whether the courtroom is closed on Friday afternoons?

THE COURT: No. We can now -- we have -- that was two chief judges ago. So now this Chief Judge says we can continue trial through Friday afternoon.

MS. PILATOWICZ: Okay. Then we are looking at a full 10 days. I'm optimistic we can do it in 10 days. I believe the defendants have a different position and I'll let them give you their position.

If we have to go beyond that 10 days, it would be our preference to perhaps set a new trial date so that we're not breaking it up to two weeks and then something later because, in the plaintiff's view, the series of transactions make a whole lot more sense when they're all put together and any loss in time might lead to some confusion.

Do you want me to discuss the discovery issues that we anticipate coming up at the close of discovery?

THE COURT: Sure.

MS. PILATOWICZ: The first issue we have is one deponent, his name is Stanton Bernstein, he is a CPA who is located out in California. He was timely noticed for a deposition in mid-March. His counsel has reached out to me, because he is a CPA, a solo CPA in tax season, it is difficult for him to come in. He requested that his deposition be conducted after April 15th.

Mr. Gilmore and I have spoke about some potential resolutions to get that done. I believe at this point the defendants aren't willing to agree to our proposal, which was that we hold the deposition at the end of April with a limited additional 30 days for discovery in case any other issues come out in that deposition so that discovery would still be completely closed by the end of May, gives a little time before trial. But I don't anticipate any new issues are going to come up from that deposition, though there's always a possibility.

We are prepared to go back to Stanton Bernstein's counsel and let him know if we can't reach an agreement and we have to get it done by March 31st that we'll require him to sit for the deposition. We are trying to accommodate the witness given his job as a CPA. So that's the first issue with depositions.

There's another issue pending of a witness that was deposed five years ago in a -- in the case that led to the judgment after which these transfers occurred. The defendants have requested that we do not depose the same person the same time because they believe that the issues are the same. It's our position that the counsel are different, the parties are different, we're representing the trustee. We have requested a copy of the transcript for that deposition. We're looking it over and have agreed to let counsel know by next week whether we intend to proceed with a new deposition or if we'll use the transcript. That's the second deposition issue.

THE COURT: What is the name of that witness?

MS. PILATOWICZ: Darryl Noble; he is an appraiser.

THE COURT: He's an appraiser?

MS. PILATOWICZ: He is an appraiser, but not a retained appraiser for this case. He did an appraisal back in 2010.

THE COURT: Okay.

MS. PILATOWICZ: There's an issue with disclosure of tax returns that I believe we have reached an agreement on. There was a request from the plaintiff that tax returns be produced. There was an objection

from defendants that the request was too broad. We've agreed to limit it. I believe we're still in discussions but I believe that we can reach an agreement on that so that shouldn't be an issue but it may be something that comes up before the court. And I believe that is the extent of the deposition issues.

There is written discovery outstanding. There's, like I said, still depositions scheduled.

THE COURT: So how many depositions do you have for the month -- from now to the end of March?

MS. PILATOWICZ: We have, I believe, it's eight or nine.

THE COURT: Is that what you understand, Mr. Gilmore?

MR. GILMORE: I suppose it could be as few as eight, it could be as many as ten.

THE COURT: So we have eight to ten depositions left to be completed, and that would include Stanton Bernstein, the solo CPA?

MS. PILATOWICZ: Correct.

THE COURT: What is Mr. Bernstein's global involvement in all of this?

MS. PILATOWICZ: Mr. Bernstein had prepared the tax returns for the individual defendants at the time

that the transfers occurred and the certain audits and tax returns for Superpumper, the value of which is an issue in this case, the value of Superpumper.

THE COURT: So he is an important witness in the case?

MR. GILMORE: Critical. One of the top three probably.

THE COURT: Okay. How long do you think his deposition is going to take?

MS. PILATOWICZ: I believe it could be completed in six hours, likely less but six hours given the outside.

MR. GILMORE: Well, herein lies the difficulty. Nobody really knows what he's going to say. So I'll address this more sort of when it's my turn, but I expect it would be a day or less based on what I expect of his knowledge base and his involvement in the preparation of the tax returns.

THE COURT: Okay. So anything else for the plaintiffs?

MS. PILATOWICZ: I believe those are the discovery issues. We do have some issues that we'd like to preview for trial as far as how stuff will be presented.

There's going to be some testimony by deposition

and we'd like to know how the court is going to handle that so we can start setting dates and preparing for how we're going to address that.

The other issue we had was the pre-trial order has deadlines for motions in limine to be submitted and dispositive motions. Those deadlines are based on the dates that they're submitted. I just wanted some clarification on exactly what we're meaning by *submitted*. Is it after hearing? Is it after the motion is filed? Is it after motion and opposition? Just so we're sure on the deadlines, if we could set the deadlines so we know the dates we're working with.

THE COURT: Okay. Well, we haven't had a trial together before. Do you mainly practice in Vegas or here?

MS. PILATOWICZ: I mainly practice in Vegas.

THE COURT: Okay. So -- and I ask that only because our system is a bit different. There will be -- any time we have motion practice, there will be a motion, an opposition, a reply, and then whoever is the proponent of the motion, you'll file your reply and when you do that you'll file the submission. If you fail to file the submission, I won't know you have a motion. It will never come to court. We do not do law and motion

calendar like they do in Vegas --

MS. PILATOWICZ: Understood.

THE COURT: -- everything is submitted but oftentimes attorneys will forget to submit.

Additionally, any of these discovery disputes that can't be resolved between counsel will go immediately to the discovery commissioner. I won't see them. I can certainly tell you what I think should happen with these things and what I think Commissioner Ayres will recommend and what I would be inclined to believe would be the appropriate outcome of them.

And then generally what we do is I don't address any of your motions in limine. This is a non-jury trial so I don't anticipate having a lot of those. The most important thing that I look for in a non-jury trial is your trial statement. So the recipe that is before the court is your complaint and all of the information you have in your files.

So if you have five causes of action, then my expectation is your trial statement will go over each one of those causes of action, will articulate the witnesses who will support your claims, and will provide me all of the relevant case authority, and all the elements of each of your claims. And if you are going to drop some claims

or not pursue those claims, opposing counsel should meet and confer because in a non-jury trial I have to consider each and every claim before the court. And oftentimes in non-jury trials counsel forgets that and so they just sort of start throwing stuff out there and, to me, I have to apply the law to the facts as you present them, and I have to know what facts you think support your claims by a preponderance of the evidence. So the trial statement can be -- is critical to a trial judge in a non-jury trial.

Motions in limine, you know, not so much. And what I generally do is because you have a June trial date, we will have a final pre-trial conference, we will have -- I imagine this is going to be exhibit intensive --

MS. PILATOWICZ: Yes.

THE COURT: -- would you say?

MS. PILATOWICZ: Yes.

THE COURT: So we will have exhibit marking, and if you have -- are you going to have video depositions?

MS. PILATOWICZ: We anticipate we will.

THE COURT: Okay. So then what we generally do is the Friday before trial you can get in here and you can get everything set up. You have these nice screens that

have been provided -- Maria, ABA? Or, no. Nevada Trial Lawyers?

THE CLERK: It was the Nevada Bar.

THE COURT: Nevada Bar. They were so kind. So we now have -- although, I don't know why they put it so high, it should come down a bit. Anyway, you can get everything set up, and but you're responsible for all the IT stuff.

Additionally, we've been asked to remind counsel that at the conclusion of trial, when everybody is exhausted and everybody wants to go home and you have all to junk here, you've got demonstrative exhibits, you have 10 million books of stuff, the fire marshal is telling us that we have to clean out the evidence room so we will -- the court clerks will be encouraging you to take whatever needs to be taken. Okay? So does that assist a little bit?

MS. PILATOWICZ: That does assist with the deadline for submission.

MS. HAMM: Do you mind if I --

THE COURT: Go ahead, if you have a question.

THE CLERK: Your Honor, also the --

MS. PILATOWICZ: I believe that's all we have at this time, your Honor.

THE COURT: Question?

MS. HAMM: Not yet.

THE COURT: Not yet, okay.

MS. PILATOWICZ: I'm not sure if we want to go through sort of the discovery issues and then deal with the trial issues, specifically the designation of deposition transcripts. That was the inquiry, is whether we're going to set deadlines for them to be exchanged, for objections to be made to the deposition transcripts, if they're going to be published in court, if they're just going to be submitted to your Honor. I wasn't sure if we wanted to get into the trial issue of that just yet.

THE COURT: Well, I'm not going to do that. You'll have to meet and confer and you'll have to designate every portion of the transcript that you want a ruling on. And, again, in a non-jury trial it's not that big of a deal, but for your appellant record certainly it is. So what I've done in the past is -- it's a tremendous amount of time that counsel needs to do if you're sitting depos just objecting, you know, hither and yon, then be ready to spend hours and hours and hours. This has happened in previous cases where every single section of the deposition is notated and you

interpose your objection -- and don't give me objections like, *Objection, doesn't sound good*. I mean, give me a legal basis for each objection, *Objection*, you know, *asked and answered* -- I mean, let's have some relevance there.

So the good news is you don't have a jury; right -- we're non-jury?

MS. PILATOWICZ: Right.

THE COURT: When we've had to do this with jury trials, then you have to go through and redact the entire video. Now, if you want to do that and you want to do that pre-trial, I've done that before where I've spent, you know, six or seven hours with counsel and we go through the entire video and make all the rulings, and then I order all the redactions. It is a substantial amount of work but, again, it's your appellant record so you'll have to make that judgment call.

MS. PILATOWICZ: Then we will meet and confer on that issue.

THE COURT: See how you want to handle it. Okay.

Mr. Gilmore? Mr. Breslow?

MR. GILMORE: Thank you, your Honor.

I think before I get into the four issues that Ms. Pilatowicz mentioned, I think some context is

important.

The court will recall that about May of 2015 there was a substitution of counsel that was necessitated by virtue of the fact that the trustee took over this case, but that's relevant with respect to the discovery disputes because it sort of belies or refutes, if you will, some of the contentions that the plaintiff might be making with respect to what they actually need for discovery, and let me explain to the court what I mean by that.

So, first of all, Stan Bernstein has been on the radar of the trustee since essentially the Involuntary Petitions were filed on Booth Street back in June of 2013.

THE COURT: When you say "Stan Berstein," I thought his name was Denton but it's --

MR. GILMORE: It's Stanton.

THE COURT: Oh, I'm sorry. Stanton.

MR. GILMORE: But we just call him Stan or Berstein.

THE COURT: Okay.

MR. GILMORE: So he has been on the radar of the trustee and the Herbst -- remember, before it was the trustee it was the Herbst plaintiffs -- Stanton Bernstein

has been on their radar for five years, ever since the transactions that occurred that have been alleged in the complaint.

So the idea that -- one of the most important witnesses that the trustee has been trying to track down and depose for five years, he's now receiving a deposition subpoena the last month of discovery when they know he's a CPA, because we dealt with this issue last year. When they tried to get records from Mr. Berstein during tax time, he came back and said, "Guys, I can't do this," and that was with the trustee, not in this case necessarily.

I don't know yet what the Stanton Berstein deposition dispute is going to ultimately become because nobody in this courtroom has any control over him. He is represented by a counsel in Los Angeles, he was deposed by the trustee last month on some unrelated issues. But the problem I have with this, with the Stan Bernstein issue, is present counsel took over from essentially the same firm, the Gordon & Silver firm which imploded last summer. They took over for that firm in May of 2015 and in the motion that they filed in the bankruptcy court, in order to get appointed as counsel for the trustee, they basically said, *New firm is the perfect firm to take over*

the state court case because -- I'm trying to remember the word -- *we are deeply familiar with all of the issues that are being raised in that case*, which would include Stanton Bernstein, your Honor, it would include Darryl Noble -- and I'll explain that in a minute -- and it would include all of the related issues.

So I do want to suggest today as a little bit of a preface that I think it is somewhat disingenuous for the plaintiff to come in here and say, "Well, we really only took over in May, and we didn't really know what Stan was going to do or what he was going to say or what his involvement is." He was disclosed as an initial witness in the very first production that was ever done. He's been on the radar.

So to the extent that the court would say, "Well, I'm going to open -- keep discovery open for the purpose of Stan Bernstein in order to get this accomplished," the defendants' position would be there's been plenty of time to put that on the radar. The one thing we didn't hear from plaintiff's counsel is the reason for the delay. Why is he now the last witness to be disposed?

And, quite frankly, your Honor, depending on what he says could require, from the defendants' standpoint, a tremendous amount of follow-up because we're talking

primarily in this case about appraised value of assets, real estate, interest in various limited liability companies, et cetera, and Stan Bernstein essentially prepared the tax returns for most of those entities and people at some point in time, not the entire time. But he is going to, in his deposition, most likely refer to people who provided him information who are not disclosed as witnesses in this case, probably because today nobody believes they're necessary. But there was a accounting firm in Buffalo that was doing work with the Buffalo law firm that provided a lot of information, I suspect, to Mr. Bernstein in order to have him do his job and I expect he's going to mention those folks in his deposition.

And if his deposition is the last week of April and our pre-trial disclosures are due a week later, how are we then going to be able to say, "Time out. We have to go out to Buffalo and examine what the accountants in Buffalo know," or "We have to re-depose the accountants in Los Angeles that are not Stan Berstein," one of the people that is going to be deposed next month in March. That's the issue I have with the Stan Bernstein thing. He's been on the radar forever, he should have been deposed prior to now, and it's not really an emergency

that anybody is making except for plaintiffs.

So to the extent the court wants to discuss to that further or the court just wants to preface this to what might be coming down, that is the defendants' position.

I understand that the court has indicated that might be an issue for Judge Ayres and that was going to be one of my questions. If we get an issue for Stan Bernstein deposition and the close of discovery that's also going to be related probably to maintenance of the trial date, I was going to ask the court if that's something the court would want to hear directly from us perhaps on shortened notice or if we would be taking that downstairs to Judge Ayres.

THE COURT: I'll take up that issue today with counsel and we can decide how we want to proceed.

MR. GILMORE: Okay. Then if the court doesn't mind, I'll table that issue for now and I'll address the other three and then we can get back to Mr. Berstein.

Darryl Noble was an appraiser in Reno from the Alves & Noble firm who appraised a property that was owned by the defendants. He performed the appraisal, I believe, in February of 2011, and he did so as part of the execution proceedings that predated the bankruptcy.

If the court recalls, there was a judgment from Judge Adams that was rendered in 2010, and for some period of time the Herbst plaintiffs attempted to execute on that judgment by examining these very transactions that are alleged in the complaint that brings us here today.

In other words, the Gordon & Silver firm pursued my clients and Mr. Morabito back in 2011 to discover the information related to these transactions. Specifically, I'm talking about a house over on Windy Hill on Panorama Drive.

THE COURT: These were judgment debtor exams?

MR. GILMORE: Correct. These were judgment debtor exams that were taken in effort -- in aid of execution of the judgment that predated the bankruptcy by a year-and-a-half. So it was Mr. Irvine who was Herbst's counsel who took the deposition in 2011 and the sole source of inquiry was Mr. Noble's valuation of the Panorama property. The valuation of the Panorama property is a key, if not the paramount issue in this case that the court is going to hear in June.

When we saw the deposition subpoena of Mr. Noble, we said to plaintiffs counsel, "Why are we deposing Mr. Noble again? Your partner" -- I should say --

"ex-partner deposed Mr. Noble back in 2011 when most undoubtedly his memory was more fresh then than it is now, over the exact same issue, over the exact the same appraisal that is at issue in this case, over the exact same house we were fighting about before the bankruptcy took over this case and led us here today, why are we going to waste our time taking those kind of redundant depositions when it's already been done?"

There is, indeed, privity at every level. Mr. Breslow was at the deposition five years ago and Teresa's ex-partner -- I say "ex" because the firm split -- Brian Irvine was the one taking the deposition. So our position would be on that there's no reason to take a redundant deposition that is going to add to the ten we're already going to take next month, in addition to the fact that the record on that issue is clear, his appraisal has been produced, plaintiff's counsel should have the deposition transcript. They do now.

So with respect to Darryl Noble, we would suggest that the court simply require that the parties rely on his previous testimony by -- which was taken by Mr. Pilatowicz's former partner.

MR. BRESLOW: Your Honor, one point of clarification, if I may. I believe at that time Mr.

Irvine was with Jones Vargas. I believe he had been then transitioned over to Gordon & Silver. But the rest of what Mr. Gilmore said is our position, the same interests were being represented, the same issues were examined, and so to depose at this time would be redundant.

MR. GILMORE: Indeed. Right, Mr. Breslow is correct, and I did know that. So if I said that he wasn't at Jones Vargas at the time, I misspoke.

But here's the most important point. Brian Irvine and John Desmond filed the complaint in this case after they had taken Darryl Noble's deposition in the debtor's exam. The original complaint, even the amended complaint that named the trustee as the plaintiff, was filed by Brian Desmond and John Irvine -- John Desmond and Brian Irvine, sorry.

MR. BRESLOW: Try again.

MR. GILMORE: Did I get it right the second time?

MR. BRESLOW: Close enough.

MR. GILMORE: I don't want to belabor that, but that is the issue.

Ms. Pilatowicz mentioned the tax returns. Essentially what happened is she subpoenaed Stanton Bernstein for complete copies of the tax returns for the individual defendants for a time period that is relevant

to this case, and I said to her, essentially, well, we're not going to fish up the entire tax return for these individuals but it looks like we've reached resolution whereby the exchange that is at issue here, to the extent it is located on the defendant's tax schedules, we will produce that information. So I don't think that that's an issue. The only reason it hasn't been resolved yet is because it probably only came up last week or so.

As the trial date and the length of trial, the duration of trial, I am optimistic. I want to be optimistic but I've also tried enough cases that have a lot less complexity than this and a lot fewer witnesses and experts that have taken us a lot longer than two weeks. We will have no less than, just on the plaintiff's side, 15 witnesses --

MR. BRESLOW: Defendants.

MR. GILMORE: I'm sorry, did I say "plaintiff's" again? I apologize, your Honor.

Just on my side of the table, we will have at least 15 witnesses, probably 11 of which will be live and four of which might be deposition transcripts, which we would probably read from the stand just in order to maintain the cleanest record.

So that doesn't even include the plaintiff's

expert witnesses, of which I think at least there are three. If there's no other additional witnesses identified in the next month, we're talking a minimum of 18 witnesses in 10 court days on very complex issues, including the gentleman from New York who will be coming here likely to be on the stand at least a day or two, if not more.

THE COURT: Who is the gentleman from New York?

MR. GILMORE: Oh. The lawyers from New York who facilitated the transfers.

THE COURT: Okay.

MR. GILMORE: His name is Mr. Vacco, an attorney from Buffalo, New York. He and one of his partners will be here to testify live as to who was driving the ship, so to speak, with respect to these transfers. And his deposition, we were there in Buffalo taking depositions for two days on those gentlemen, so I expect we're going to have at least two days of trial testimony just from those two gentlemen. So that leaves us eight days, your Honor.

THE COURT: They're fine, deputy.

Go ahead and take a seat. You're here trying to get your hours for your government class; is that right?

How did I know?

MR. GILMORE: Couldn't have picked a more exciting day.

THE COURT: This is a real barn burner, kids. Look out. It's murder, mayhem, all sorts of stuff.

MR. GILMORE: So simply the point I was making is even if we assume that Mr. Vacco and his partner are going to be on the stand for two days, then we're talking about 17, 16 witnesses in eight court days so --

THE COURT: Okay.

MR. GILMORE: -- I want to be optimistic but I don't know if that's pragmatic.

THE COURT: But you're not.

MR. GILMORE: So what we discussed before the meeting -- the hearing today was if we were forced with the realization in the next month or two that we have more witnesses than we have time, what would we do? Would we divide the trial up into sort of Package A and Package B? Which I think would probably not be the ideal way but we would agree to do that if it meant that we could maintain some of the trial dates.

Alternatively, as plaintiff's counsel said, they would really not want to do that because their entire case is built on the continuity of these entire transactions, and I understand that. So I think it might

be wise for us to put in the back of our minds or at least in the horizon, your Honor, the possibility that we're going to need three weeks sometime after June, or in June if we can get it.

THE COURT: Well, we could back this trial date up to June 6th, I suppose.

MR. GILMORE: And take then the three weeks back to back to back?

THE COURT: Well, the Nevada State Bar, I think, starts on the 24th, and I am scheduled to be attending that with a committee, so we would have -- we could work on the weekend, I suppose, but we'd have -- do I have any murder trials?

THE CLERK: I'm looking now, your Honor.

THE COURT: June 6th?

THE CLERK: No. Only two civil matters.

THE COURT: So we could back you up and start June 6th instead of June 13th, and then we could -- I mean, generally we can -- most of the judges in our district will cross cover on our non- -- I mean, sometimes I'll have to do a couple of criminal hearings that I just have to do if it's a murder case or a life case, but we can get in a pretty lengthy trial day.

MR. GILMORE: Okay.

THE COURT: Like 9:00 to 5:00 and keep our recesses relatively short. So we could start on the 6th and just moving, and I could probably give you until the 22nd or 23rd. I don't know quite the dates that I have to go. I mean, we may be able to go to the 24th. I can't -- I think -- I think I have to leave on the 24th or 25th. I'm not sure.

MR. GILMORE: Okay. The position I'm trying to relay is we want to be as flexible as possible. I just -- I didn't want anybody to not have the ability to hear me say that this is not a ten-day bench trial. So I don't know --

THE COURT: Just for future reference, counsel. When you fill out your setting form -- this is truly the problem with complex civil litigation. I mean, you guys don't even know what's coming in March. If you're doing ten depos in March and people start puking other stuff out that they didn't think -- I mean, we don't know what we don't know. So you could have witnesses who start saying, "Well, yeah, we did this," "We did that?" And you're, "What? I have to have this and I got to have that." And I don't know why we're all -- procrastination has no destination. We end up getting all this stuff at the end, and then you all come in and say, "Oh, no, this

isn't going to work."

And it's only in civil practice. And I've only had one trial go over in 23 years and it was a civil case, and I will warn you all, if you have a jury trial here, I make you all turn around -- I think you've had one in here -- and you tell the jury, "I'm going to ask this much of your time," and you get no more. And I will put you on a clock. So this is not just some endless food chain that we go into.

But in fairness to you, you guys still have a huge chunk of discovery to finish and maybe those depositions are what you fully anticipate and maybe they're not. I don't know. I mean, it's your movie. This is what I have so far -- and this isn't even your whole thing because we don't get files anymore. It drives me crazy.

MR. GILMORE: Most of the file is at Booth Street, your Honor, because the dispute we had on NRCP Rule 37 for Mr. Vacco in Buffalo was actually heard by Judge Zive across the street -- on Booth Street.

THE COURT: I understand. I understand.

MR. GILMORE: So really what's happened is as the plaintiff has further developed their case it has mushroomed. This person identifies a witness and now we have to go track him down. This person identifies a

witness, that's natural. It's unfortunate but it's natural.

Your Honor, my proposal would be, I don't know that we have to make a decision today on the record as to the trial date issue. I simply --

THE COURT: We do.

MR. GILMORE: Oh, do we?

THE COURT: Because I have over a thousand cases. I have people everyday saying -- so -- and she sits over here with this tortured look. So what we're going to do today is reset the trial to start on the 6th and then once you complete your depos, we can go back to the 13th, but I will give you that extra week. That's all I can give you unless you wanted to move to the month of December.

MR. BRESLOW: May I be heard, your Honor?

THE COURT: Yes.

MR. BRESLOW: Although Mr. Gilmore is likely to be lead trial counsel, it's assumed that I will have a speaking role as well. Your Governor decided to appoint me to a commission, a state commission that oversees all homeowner associations in the state.

THE COURT: Oh. Poor you.

MR. BRESLOW: I thought he was my friend, right?

But I know he has a lot going on today also if anyone turns on CNN.

But, anyway, my point, your Honor, is this. Our quarterly meetings in Las Vegas are pretty stacked with stuff and I'm -- last year I was the chair, this year I'm the vice chair. We've set our meetings to be that week, June 6, 7, 8, and so certainly I could miss a meeting because people miss meetings for other things but would it -- would the court be inclined perhaps, and would counsel agree, if we could start the trial, say, the 8th and give ourselves three extra days of court trial -- or the 9th, give ourselves two extra days? I believe 10 -- excuse me, your Honor, I believe 12 court days this case gets tried, 13 certainly, 10 very close, 15 is probably too much, and that would -- I could --

THE COURT: I wouldn't want to start on a Thursday. I could start you on Wednesday, the 8th.

MR. BRESLOW: That would work much better, your Honor, with my calendar, if that would please the court.

MS. HAMM: Your Honor, may we turn our phones on to check our calendars?

THE COURT: Oh, sure, go right ahead. Go right ahead.

So the only reason -- I mean, you guys might get

through your ten depos or your eight depos and you might say, "Look, we just don't need that much time. We can winnow this down. We can" -- you know, that's fine. But if I don't give it to you now, I'm not going to have it.

And so what we will do is we'll go ahead and set it for Monday, and what we might do -- we're going to pre-trial this again. Then I'll see where we are with any kind of pre-trial motions, any housekeeping stuff we may have to do.

And then maybe, even if you're in your meeting, depending on -- if he's going to have an opening statement, sometimes I have to do a bunch of pre-trial orders, usually for jury trials, but we'll have that time set aside and what I'll do is I'll take my criminal calendar for Thursday of that week, we'll just -- and what we'll do is maybe do a huge calendar on Tuesday.

THE CLERK: That's better. Tuesdays are better than Thursdays.

MR. BRESLOW: Thank you, your Honor.

MR. GILMORE: It also just occurred to me that something that we've been discussing for a month or so with respect to the necessity of putting on the stand all of these property appraisers, so we have a whole host of real properties that were appraised back in 2010 and now

the plaintiff has sort of retroactively appraised them. And our original appraisers will be here, who is Darryl Noble and some others, and the plaintiff has disclosed his experts which will be battling essentially our 2010 appraisals, if I can put it that way. So, yeah, that is --

THE COURT: So I'll have a 2010 appraisal and then I'm having an appraisal from current date?

MR. GILMORE: Well, it's retroactive to that date of valuation but it would have been prepared in the last couple of months. That is going to be three to four days trial and it occurred to me as we were -- that's just the nature of the claims and the nature of the transactions is essentially the plaintiff is trying to prove that the transactions that were made in 2010 were done for less than equivalent value.

THE COURT: Okay.

MR. GILMORE: That's the simplest way I can put it. And so in order for them to do that, they're going back to our appraisal and saying, "Well, you didn't do this, you didn't did this," or whatever, and that is what's to be ultimately established at trial.

So it occurred to me that we've been discussing the possibility of trying not to have to use all of the

appraisers in trial for those properties where the valuations between our 2010 appraisal and their present day appraisal retroactive to the same date of valuation are within the same ballpark. The problem is we just haven't been able to figure out a way that works for us to avoid having to put all the appraisers on the stand and also sort of maintain the integrity of what the plaintiffs believe are the heart of their claims.

So I think perhaps either today or some other date, with the court's assistance, I think we can probably figure out a way to cut out two or three of these appraisers, and let me give you one example. So there are -- there's a property in Palm Springs and -- a residential property in Palm Springs that was transferred as part of these allegations, and then there was a number of properties in Laguna Beach. Well, the Palm Springs property, the plaintiff's appraisal came in at the exact dollar value as our 2010 appraisal.

So I called Ms. Pilatowicz and I said, "It looks like we don't have a dispute as to the valuation on Palm Springs, we're not going to call that expert to the stand, let's just stipulate that your guy came back with this valuation and our guy came back with this valuation and it just happened to be identical." Which is good for

Palm Springs because there was zero *delta*.

But then we when looked at one of the properties in Laguna Beach, a $2.1 or $2.2 million property, the plaintiff's appraiser came in $50,000 different from ours. And so I'll just be very frank with the court, I called Teresa and I said, "On this one property in Laguna Beach, we're $50,000 apart on a $2 million property, it seems to me we shouldn't even have to depose these guys." We shouldn't have to depose them and spend the money to go -- he was in Redondo Beach, California, to depose him, and then bring him here to testify, and then have the plaintiff's expert has to cross-examine him, that could take a day, or half a day if it got more intense than it needed to be.

So I don't think we figured out the solution to that yet but I think the time is right to try that. And I don't know if the court thinks that briefing would be the best way to do it or if the court wants some sort of further background information from plaintiff's counsel on that so that we could narrow it down today, but I think that if we were to resolve that cuts a day out of the trial, and then we're a lot we're closer to the 10 days than we were hoping for.

MS. PILATOWICZ: Let me just clarify our position

on that. When Mr. Gilmore called and said, "I think we can maybe work something out and not do this deposition on Friday," and this was on a Wednesday, we agreed and said, "Let's sit down and work it out." We just haven't received any proposals. We're certainly not trying to waste time or waste expenses in this case, so we are -- we continue to work on that. There just hasn't been any proposals back and forth. I think in the next week or so we can talk about that, and if we can't come to an agreement, either come to the court or maybe the discovery commissioner. I think it's probably a court issue.

I want to address a couple of other things that were raised as to the Stanton Bernstein and Darryl Noble. There was a lot of discussion about privity, and the only -- the discussion came from the law firms, and there's been three now. There was Jones Vargas, which was very distinct from Gordon Silver, and very distinct from Garman Turner Gordon. There was Gordon Silver that had some members of -- some members went over to Garman Turner Gordon. The members that didn't go over were Brian Irvine and John Desmond. They're now at Dickinson Wright.

The same attorneys who were working on this case

on behalf of different parties back five years ago are not the same attorneys that are trying it now. And, more importantly, it's not the same party. We've got a trustee in place and the trustee has the duty to all the creditors in the bankruptcy, not just the Herbst and the plaintiffs, he has a duty to all of them. He has a duty -- he has an obligation and a right to put on his case, that means deposing witnesses, taking the discovery that is necessary. Just because people who -- from my old firm were involved in another firm that went into my old firm took the deposition doesn't mean that I don't get to take them again.

So we've agreed to look at the issue, as I indicated. We just haven't had an opportunity to because one of the other problems is this being it's third firm now, is we don't have a physical file. We've asked for it, we've tried to get it, it hasn't been given to us. It's not lack for of trying.

MS. HAMM: And if I can add to that, too. Obviously that is a failure of counsel at some point along the way to not have the originals but --

THE COURT: Failure of what counsel?

MS. HAMM: I don't want to cast aspersions on anybody but either certain files did not make it from

Jones Vargas over to Gordon & Silver, or they did not make it from Gordon & Silver over to Garman Turner Gordon. Obviously that's not something that should happen. The original deposition transcripts should be there, they are not.

But at the same time, and with respect to Mr. Noble, this is actually, I think, a fairly minor issue. It's not a lengthy deposition but we don't think that our client should be penalized for an error of either ours or former counsel in the case.

THE COURT: No, I agree with counsel. I don't have a problem with that.

Any other issues?

MS. PILATOWICZ: The other issue was with the deposition of Stanton Bernstein. Again, there's been sort of a imputed knowledge on me that was from attorneys three firms ago. Yes, we knew Stanton Bernstein was a witness. We had the right to gather information about what he might know, as do the other parties. We deposed Salvatore Morabito out in Buffalo in October. We asked him questions that we thought we could get the information from him. He indicated that Stanton Bernstein had that information, so we went ahead and started to notice up Stanton Bernstein. He's in

California.

We started the process back in January. California has a lengthy state court subpoena process where notice to consumers have to be given and the subpoena issued. We are not here today a month before discovery closes saying we need more time to schedule his deposition. We timely noticed it.

We're trying to make sure that we're not going to get into another fight out in California over whether he's going to sit. But then, you know, on the outcome of that, we might be back before you asking for an extension of a discovery deadline. We're just trying to deal with it proactively and reach a resolution.

THE COURT: This is what I would suggest as to Mr. Bernstein. Because he is a critical witness -- I mean, do you agree with that?

MS. PILATOWICZ: I do agree with that, your Honor.

THE COURT: Okay. Why don't we do this. Why don't -- why don't you contact his counsel. I'd like to see the deposition -- I don't know why -- you've got it scheduled now for mid-March?

MS. PILATOWICZ: It's scheduled for, I believe, March 15th -- March 16th or 15th.

THE COURT: Why don't you meet and confer while

you're here with your calendars and move -- see if you can move him up. Contact his attorney and say, "We'll come on a weekend," "We'll come start it in the evening and then finish in the morning," I mean, I don't care if he's a solo CPA, he must have something shaking and baking if he was doing all this stuff. Maybe not. But you could offer to move the deposition up rather than move it back, because we have a trial date.

And if they won't do that and if there are problems, then we will reconvene on the telephone conference and determine what we have to do. But I am somewhat concerned that by attempting to accommodate this person, you're going to accommodate yourselves out of a trial date because it just happens, particularly with critical witnesses, they will blurt out something or say something that may or may not necessitate further discovery, and then you're spending your time and your money filing motions to shorten time, motions to compel, motions to extend discovery deadlines. It's all just a bunch of drama.

So tell the attorney what our problems are and, you know, if they'll stipulate -- and get everything in writing from them -- if they'll stipulate to move it up, move it up. And if Mr. Breslow has to go or Mr. Gilmore,

you guys -- you know, if you're beefing about it, then you get somebody there. You've got somebody in your firm to go.

As to Noble, I agree with counsel, it may or may not be redundant but it's her movie. It's their movie and they have the burden as plaintiffs. So if in their judgment as counselors at law on behalf of their client they feel they have to re-depose Darryl Noble, then so be it. If you guys want to beef about it, file your motions, go to the discovery commissioner. But if he was deposed five years ago, I suspect the discovery commissioner would deny your objection to that deposition. It's irrelevant that maybe these folks were once associated. You know, it is what it is.

But you can't tell the plaintiff, "No, you don't need this," and "You don't need that," because then you're the guy standing in the well of my courtroom saying, "Well, they didn't produce this," "They didn't do that," "They didn't ask those questions," "They have the burden of proof," "They haven't met their burden, too bad, so sad, go away, I'm done."

If it's a beef, file motions, but I'm not going to preclude or find that the plaintiff's desire to depose witnesses who they believe necessary to meet their burden

of proof are necessary and the defense is saying, "Well, gee, I think they're redundant because three firms ago, two firms ago they had all these."

With that said, I think plaintiff's counsel, obviously their clients are here, they're not going to spend money needlessly, I think you have a duty to meet and confer, go over these issues. What I'm going to suggest, based upon Ms. Hamm's comments, which I find very interesting, as I understand, you're saying that with the -- like in a criminal case, when one criminal defense lawyer is removed from a case, then that criminal defense lawyer has an obligation to take the entire physical file or everything they've done and hand it to the next lawyer. When I was in private practice that was kind of the plan.

Is that still the plan, Mr. Breslow?

MR. BRESLOW: It is.

THE COURT: Okay. So I don't know, Mr. Gilmore is saying no.

MR. GILMORE: Well, there are some qualifications to that. So, for example, if prior counsel is still owed money --

THE COURT: Oh, I know.

MR. GILMORE: -- then prior counsel has the

ability to hold the file.

THE COURT: So is that what's happening?

MS. PILATOWICZ: That's not the issue here. The issue is, in part, that it was paperless, or at some point transitioning maybe at Jones Vargas or Gordon Silver to a paperless firm. Everyone thinks the file has been transferred from the old Gordon & Silver but there are things that don't appear to be in there; such as the -- the Noble deposition.

I'm not suggesting that we haven't gotten the file and reviewed the file, we haven't reviewed everything we have, we have, but there are some certain things that, you know, we've attempted to locate that aren't there.

THE COURT: This is what I was going to suggest. What we do in criminal cases is we do a file review. And I think, again, we're all here, you're welcome to use the courtroom, I'll leave, you can yell at each other, you can talk to each other, you can have some nice government coffee --

Do we have any food? We might have some prisoner food.

THE CLERK: I think there's candy in there, your Honor.

THE COURT: Candy. But maybe sit down and

basically do a cross file check either with Mr. Gilmore, Mr. Breslow, what do you have that we don't have. Because I see their point. It's like, look, you have all this stuff. And then it's all over in the bankruptcy court and you may need to deploy a minion over there to do a cross file check but --

MS. HAMM: We are the bankruptcy court minion as well.

THE COURT: I understand, so minion away. But if we don't have all the depos, if we don't -- you know, we -- obviously there's going to be stuff like that that may be missing so --

MR. GILMORE: Could I briefly speak to that?

THE COURT: Go ahead.

MR. GILMORE: Thank you, your Honor. I appreciate the latitude.

You have the Herbst original judgment creditors and we just call them the Herbst parties. The Herbst parties have been represented by Gerry Gordon, in some form or another, basically since the time of the judgment and here's the important part. In June of 2015, Gerry Gordon filed a motion in the bankruptcy court asking to be employed as special counsel for this case. He files a declaration -- I think there are at least two

declarations, and he says -- this is so important because I think it really gives the true color to what is really going on here -- Gerry Gordon and his firm had represented Herbst basically from the beginning. And he confirms it with the bankruptcy court when he asks the court to allow his firm to represent the petitioning creditors, the Herbst, to represent the trustee in one of the adversarial actions, which is this one, and then to represent -- I'm sorry -- represent the petitioning creditors, to represent the trustee in this case -- okay -- he says:

> On May 15, 2015, I, together with eight other shareholders and numerous associates of Gordon Silver, left the employ of Gordon Silver to join Garman Turner Gordon effective immediately. Gordon Silver currently represents the plaintiffs in the state court action, who are also the petitioning creditors in this bankruptcy. The petitioning creditors have elected to retain the services of Garman Turner in this bankruptcy case in place of Gordon Silver. As such, the representation of

the petitioning creditors in this bankruptcy and such representation in the state court action upon approval of the application will continue concurrently. As a result, Garman Turner Gordon's attorneys are deeply familiar with the state court action.

And they're asking to be appointed as litigation counsel here in place of John Desmond and Brian Irvine because of the declarations that Gordon filed in the bankruptcy court explaining that it is a perfectly seamless transition.

THE COURT: Well, he didn't say that. Let's be fair, Mr. Gilmore. He didn't say, "This is a perfectly seamless transition." Obviously Judge Zive would have thought about this and said, "Well, heck, how can this be seamless when John Desmond and Brian Irvine are my guys on this. Where did they go?"

What happened? Did Judge Zive ask that question?

MR. GILMORE: No, because it was unopposed.

THE COURT: Why was it unopposed?

MR. GILMORE: Because there was no creditor to oppose it. This is a one-creditor dispute.

MS. PILATOWICZ: Well, your Honor --

THE COURT: Why didn't John Desmond jump in there and say, "I'm a seamless man"?

MR. GILMORE: Because Herbst had told John Desmond -- this is a true story. We were in a bankruptcy hearing -- this is a true story, Judge -- and Judge Zive was there, there were all three of them sitting at the table -- Gordon, Desmond and Irvine -- was Desmond there? They're all sitting at the table and the judge said -- in the middle of a sentence, he said, "Oh, I probably shouldn't mention this from the bench but I read the newspaper about Gordon Silver breaking up. Which one of you guys is going to take the file?"

MS. PILATOWICZ: Your Honor, we've identified one issue thus far and that is the Noble deposition. I'm not sure we need to go into all of this.

THE COURT: No --

MS. PILATOWICZ: We've gotten knowledge, we've gotten what we can. My point was we haven't located that deposition. I told them I would review it. I asked them to send it. As soon as they send it, we said we would review it, but doesn't limit our ability to take his deposition again.

THE COURT: I understand, but he's reading from this affidavit. I'm just curious, what did Judge Zive

do? Because Ms. Hamm says with all these law firms blowing up or going under or changing hands, the file is gone.

MS. HAMM: No, your Honor. I'm sorry to interrupt. No, there's no paper file. But like Teresa -- Ms. Pilatowicz said, things were primarily electronic so we do have a ton of discovery that was previously done in both the -- this action and then in the action that led up to this action that was completely Jones Vargas in the first place. We have significant amounts of documents, they're all electronic, but there's no paper file. So if there was a certified deposition transcript, it would have been in that paper file and we don't have that. That's what I'm staying.

Now, as far as what Judge Zive said, with all due respect to Mr. Gilmore, I think that he sometimes misconstrues what Judge Zive says in the bankruptcy case. I wasn't at this particular meeting --

MR. GILMORE: I was.

MS. HAMM: -- but we've had fights about orders and such where people interpret what other people meant, and the judge says, "No, that is not at all what I meant. I'll write it down for you all." So I think this is sort of a sideshow but --

THE COURT: I started it. You kind of started it, Ms. Hamm.

MS. HAMM: That's absolutely true.

THE COURT: There's no file but -- and he didn't say "a seamless transition." What happened was Mr. Gordon got the business; right?

MR. GILMORE: And I'm not trying to change the court's mind. I only wanted to tell the story because it is an interesting story, and let me finish it very briefly.

THE COURT: Go ahead.

MR. GILMORE: He said, "Which one of you guys at the table" -- he actually said, "I don't know that I should ask this on the record but I'm going to anyway." He said, "Which one of you at the table is going to take this file?"

And Gordon, who was standing kind of -- I was sitting right here and Gordon was standing right there, on Booth Street -- and Gordon looked at Irvine and he sort of looked up and said -- he was totally caught flatfooted, no doubt -- and he said, "Your Honor, it's Wednesday, we don't know the answer to that, but we'll know by Friday."

And then probably within two weeks or so, we all

went down in Gerry Gordon's new office doing a deposition in the bankruptcy case, because Gordon's office had taken it.

The point I'm trying to make by all of that is that this not one law firm from Lewis & Roca to Holland & Hart to whoever, no. It's all been Herbst and the file has just gone around like this by the different amalgamations. But the people who deposed Darryl Noble, who subpoenaed Darryl Noble were trying to get the exact same relief that the plaintiffs are trying to get here. No doubt about it.

THE COURT: Well, we have new counsel and they -- again, because they bear the burden of proof --

Young students, this is a civil action, and in a civil action the burden of proof is by a preponderance of the evidence. And the plaintiffs, who always sit over here, they go first in everything, and they have to prove their case. And, as such, they're entitled to do their discovery.

As impassioned and as eloquent as your argument is, Mr. Gilmore --

MR. GILMORE: Thank you. I'll take that.

THE COURT: Yes, it was very, very fine -- but with all of these things, it's just like when I get three

different criminal defense counsel and I look at it and I think, *What the heck did you guys do here*? And it's a train wreck by the third counsel. It's not a good situation because there's a disconnect, a disconnect, a disconnect.

And if the tables were turned, Mr. Gilmore, and they were saying, "Look, Mr. Gilmore, doesn't need to depose these folks, we talked to them five years ago," and you had the burden of proof, you'd be squealing like a stuck pig. I know that. So -- so --

MR. GILMORE: I would be saying it's not just preponderance of the evidence in all these claims, some of these are clear and convincing. Maybe I just proved the court's point there.

THE COURT: There you go.

MR. GILMORE: Let them have the deposition because it's actually clear and convincing.

THE COURT: All right. So what we're going to do is we're going to reset trial to -- I'll hold that Monday, because if this thing blows up -- because I'm probably am going to terminate your trial, and I will do it -- I will advise you before trial begins as to how much time you're going to get and you will get no more than the time I give you, so I'm adding time to you but

what I'm going to do is I'm going to give you a new setting form while you're all here, go ahead and set it for Monday, June 6th.

And then, Maria, in parentheses on the setting form, June 6th and 7th will be pre-trial preparation with the trial to commence June 8th.

THE CLERK: I'm going to have Ms. Clements come in here, your Honor, and take that from them.

THE COURT: And then what we're going to do is trial will not go beyond June 23rd, and -- but this is what I'm going to need from you after your discovery close. If everything is blowing up, if Mr. Bernstein is like, "Oh, my gosh you're kidding me? These are bombshells of information, I've got to fly to Tahiti and depose these ten people who invested in the Tahitian house," then you might come back to me and say, "Okay, Judge, we've got to start Monday morning at 9 o'clock. We've got to rock'n'roll." And if that's the case, I'll call Governor Sandoval and say, "Your man Breslow cannot be there, as much as you need him there," and by then, he may be sitting on the U.S. Supreme Court with -- you know, they have these tragic chambers there, little card tables that they sit at like gnomes, I don't see the govern enjoying that life but --

MR. BRESLOW: We shall see.

THE COURT: I was late because I was conferring with Chief Justice Parraguirre and we were talking about some various cases and issues, and he said, "I so miss the trial courts. I miss the action."

I said, "Yeah, you're in the land of the living dead now." So I don't know if it's the best job in the world but it's probably very intellectually stimulating.

So that's our plan. If you guys are going to beef about Noble's depo, file your motions and go see Commissioner Ayres. As to the tax returns, it sounds like you guys can meet and confer. We'll reset the trial to give you more time.

And as to Mr. Bernstein, I'd like you to get some move-up dates, give them some options, and get him done sooner rather than later. And if that's going to be a problem and we're going to have, you know -- he can do whatever he's going to do, I guess, in the California courts, but it's not going to get any better for him. And he could be a solo practitioner but why did they involve him in all this if he's a one little guy office and he doesn't have any support? What's the story there?

MR. GILMORE: That will come out in the trial.

THE COURT: It may come out, I don't know. So,

anyway, you think it's one day. Six hours is a full day deposition. But if he wants to do it on a weekend, then make yourself available. Do a 5:00 to 9:00, you know, one evening and then the next morning, you know. How much tax stuff could the guy have? It's all a QuickBooks; right? It's all done by the computer.

All right. Do we have anything else that we need to take up?

Now that you're all here, stay here, look at your calendars for the Bernstein -- I just keep thinking of the Bernstein Bears when I see this guy's name.

Mr. Murtha, anything from your side of the audience?

MR. MURTHA: No, your Honor, nothing from the bankruptcy arena.

THE COURT: So is that what happened with Judge Zive? Did he say, "Who is taking the file?"

MR. MURTHA: It wasn't the file itself that was the question, it was only whichever personnel didn't know about the case. I don't think it was, "Where is the file," "Where are the depos"; it was just, "Who are the attorneys?"

THE COURT: Well, I think John Desmond just wanted out.

MR. MURTHA: I don't know. Could be.

MR. GILMORE: You were there when the judge -- when Judge Zive asked them that.

MR. MURTHA: I was there when the judge said, "What's going to happen," yes.

MR. BRESLOW: As was I.

THE COURT: But there was no, "This will be seamless and elegant."

MR. GILMORE: Different hearing. Different hearing.

MR. MURTHA: Not that I can recall.

THE COURT: All right. I think I've tortured you all sufficiently enough this afternoon. Anything else for the good of the order? Anything else we need to take up?

MR. BRESLOW: Not from this side, your Honor.

THE COURT: So what we're going to do is we're going to reset trial date. And, also, I forgot to tell you, I'll want another pre-trial here and we will see where we are with everything. So where we are today? Why don't we set, looking at your calendar, sometime the week of April 11th, sometime that week? And I'll tell Tiffany. And if that week is not going to work, then maybe the first week of May. But look at those and then

Tiffany -- if you'll come into my office, she will do the resetting form and we'll get all that on there.

So I'll reset the trial so we have almost three weeks, we'll do another pre-trial to see where the issues are, and then you guys are going to be in deposition heaven for the month of March; right?

MS. PILATOWICZ: And one last question, your Honor.

Your pre-trial order indicates that the parties to be present at the pre-trial conference. I notice the defendants aren't here. I want to clarify whether you expect the parties to be present at the hearing, at the pre-trial conferences?

THE COURT: Do you want them here?

MS. PILATOWICZ: I just want to be able to confer with the client on days that we're going to require him to be here. He certainly is here today as part of this process.

THE COURT: I'm so sorry about that. Have you had an enjoyable day?

UNIDENTIFIED SPEAKER: A wonderful day, your Honor.

THE COURT: I'm so happy you enjoyed it. You know, I forget that we put that nonsense in that order

and good lawyers such as yourselves -- this is such a weird deal. If you want to be here -- it's always kind of good but the purpose is generally to try to do settlement.

And I forgot to ask you, we're not settling this case; is that right? Have we had any settlement conferences?

MS. PILATOWICZ: We have not had a settlement conference to date. From our side, we're always open to a settlement conference. I never see them being harmful. We haven't discussed it.

THE COURT: Have you discussed it with your client?

MR. GILMORE: Here's what I'd be willing to say. There's has been settlement overture. That's as specific as I'm willing to make it today. We are definitely open to the idea. I think it gets a little bit complex because a settlement that we agreed to here has to then go on to Booth Street, has to get the process run through by Mr. Leonard and whoever else, but --

THE COURT: No, we can do a global. I've done global settlements in bankruptcy court and federal court. What we do is we just all come together. I can go over to Booth Street and we can do a global over there. But

I'm the trial judge so I can get somebody else to go do a global over there, if you like.

MR. GILMORE: We actually had an offer in one of the first couple of hearings where Judge Zive actually presided over a global. The problem is that we have essentially three different trials going in kind of three different tracks. So Mr. Murtha is lead counsel on an adversarial action just sort of ramping up in this case in Booth Street, and then here we're sort of nearing trial, and then I have another case with your partner, Mark Weisenmiller on another essentially complaint that is pending in the bankruptcy and that's just right in its infancy.

MR. BRESLOW: Excuse me.

Your Honor, what I understood you to say, global as to resolving this case in front of your Honor, not necessarily all the issues that are currently in front of the Judge Zive and the bankruptcy court because that would take -- that would take a long, long time because of all -- so many moving parts here, unless I misunderstood your Honor.

MS. HAMM: I will point out that Judge Zive is mediating the Orange County case so he's pretty good at the whole --

MR. GILMORE: He offered and we said absolutely, if we could to get in a position to do that we would want to.

THE COURT: You have to finish your discovery. We have to get Mr. Bernstein apparently and get that hammered down. And then as I understood Mr. Gilmore's comments is that the only way we could get this case settled is to --

MR. BRESLOW: No, your Honor. I think what Mr. Gilmore is saying is if we resolve this, we would need the blessing of the bankruptcy court, because right now it's the trustee's case and the trustee can propose a settlement that is brokered by your Honor or some other qualified person but it would still be subject to approval by the bankruptcy court.

MR. GILMORE: And it could be opposed -- excuse me -- could be potentially opposed by other creditors for the estate. So if I misunderstood the court's reference to *global*, I thought that you meant that we all go over to Booth Street and sort of everybody who has a stake in this thing, that is still a potential and Mr. Murtha and I have actually talked about that, but I don't think we're there yet.

I do believe that we could exchange settlement

overtures and see if this case alone could be settled and packaged in a way that it could be sent to Booth Street and most likely streamlined for approval.

THE COURT: Why don't we do this? I know you don't think you're in that position as yet, but what again happens in many civil actions is about the time you think you're in that position, we're on the eave of trial and there's hundreds of hours of trial preparation, witness preparation, witness fees, costs associated. This will be a costly trial, even though it's a non-jury, so what I'd like you to do, again, while you're all here today, is to talk about perhaps setting a settlement conference sometime in April or the first part of May because -- I mean, it would be better in April because by May you have to turn to trial prep and I -- I've got lots of cases and lots of various dockets going on, so what most attorneys do is they sort of think, I'm going to wait until I get ready. And then, okay, do you want have a to settlement conference? Yeah. Well, there's nobody available.

In this type of complex civil litigation with multiple jurisdictions, you're going to need somebody who can get their head around this pretty quickly. So if Judge Zive has indicated a willingness, that's fine. If

you want Judge Zive and I to work together, your clients would all have to sign a waiver because this is a non-jury trial, or if you want to get another judge in this district who would be amenable to going over to the bankruptcy court and working with Judge Zive on this case, that's fine too. But, you know, I'm more than willing to do whatever we have to do but you need to get it set down.

No judge will ever be upset if you say, "Hey, you know what, we need to cancel that settlement conference." But judges will say, "Gosh, you're on the eave of trial and you want a two-day settlement conference or an all day settlement conference?" I mean, we do the best we can to accommodate folks like that because it's generally just -- because you're waiting to get where you want to get, but you're going to get there because you have a trial date coming up. You're what? You're eight weeks from trial?

MR. GILMORE: Four months and change, I think.

THE COURT: Four months? I'm not good at math. Where are we? March, April, May --

MS. PILATOWICZ: Three-and-a-half.

THE COURT: Three months, four months.

MR. BRESLOW: We're close.

THE COURT: We're close. We're close. You know what I'm saying? All right.

So let's -- let's talk about that, get those dates set. And do I need to issue a settlement form? I mean, I don't think I do in this kind of case, do I? We don't have any carriers or any insurance. We're fighting over limited funds; right?

MR. GILMORE: We don't have anything like a carrier that would be required to be compelled to be here. I can tell you that my clients, if they believed that the plaintiffs were interested in actually engaging in good faith settlement, they would both be here.

One of my clients is part-time, he winters in Scottsdale and he summers at his family's home in St. Catherines in Ontario, so it's not easy to just get people here, but they would come for that. They would.

MS. PILATOWICZ: Mr. Leonard would certainly make himself available.

THE COURT: Let's work on this. This is Tiffany Clements, my administrative assistant. You all can stay in here and chat amongst yourselves, pick your dates, fight over your dates.

Tiffany, I'd like to see them on the next pre-trial if we have availability the week of April 11th.

Answering your question again, I kind of went off the rails there, normally as we -- when we confirm trial, I do like the parties here, because a lot of times -- I tried a case not long ago where the guy, he did come and I did warn him, but he didn't just think he could ever lose and then the jury verdict was $750,000 against him and he just didn't get it.

But you guys have folks who -- I mean I think you know the back story on this and you know what litigation costs. That's generally why we want the parties here. If there's a question or if your clients are -- I imagine they know what is going on; right?

MR. GILMORE: (No audible response.)

THE COURT: And they know the perils of trial? Particularly from somebody like me. I mean, my gosh, you're all in trouble now.

All right. So we'll get this set up and I always welcome the clients being here, but I hate to impose upon folks. And I apologize, I know the order said that. You can always call and just say, "My client doesn't want to come, is that okay?"

MS. PILATOWICZ: Mr. Leonard was happy to come.

THE COURT: Thank you, sir. Thank you, sir.

All right. So we'll let you get set up and if any

issues come up, she can grab me. Pleasure visiting with all of you. Love to hear about the bankruptcy court. It's just like shock and awe over there; right?

Thank you.

MS. PILATOWICZ: Thank you.

(At 3:00 p.m., the hearing concluded.)

* * *

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, ERIN T. FERRETTO, an Official Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, DO HEREBY CERTIFY:

That I was present in Department No. 1 of the above-entitled Court on WEDNESDAY, FEBRUARY 24TH, 2016, and took verbatim stenotype notes of the proceedings had upon the matter captioned within, and thereafter transcribed them into typewriting as herein appears;

That the foregoing transcript is a full, true and correct transcription of my stenotype notes of said proceedings.

DATED: This 5th day of January, 2020.

/s/ Erin T. Ferretto
ERIN T. FERRETTO, CCR #281