

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

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

Respondent.

Case No. 79355

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

APPELLANTS' APPENDIX, VOLUME 10
(Nos. 1461–1723)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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16
17 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
18 **THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE**

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

22 Plaintiff,

23 vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: B1

**(1) OPPOSITION TO MOTION TO QUASH
SUBPOENA, OR, IN THE ALTERNATIVE,
FOR A PROTECTIVE ORDER
PRECLUDING TRUSTEE FROM SEEKING
DISCOVERY FROM HODGSON RUSS
LLP; AND**

**(2) COUNTERMOTION FOR SANCTIONS
AND TO COMPEL RESETTING OF
30(B)(6) DEPOSITION OF HODGSON RUSS
LLP**

Plaintiff William A. Leonard (the "Trustee" or "Plaintiff"), by and through its counsel,
the law firm of Garman Turner Gordon LLP, hereby opposes (the "Opposition") the *Motion to
Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking*

1 *Discovery from Hodgson Russ LLP* (the “Motion”) filed by Defendants SUPERPUMPER, INC.,
2 an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD
3 WILLIAM BAYUK LIVING TRUST; SALVATORE MORABITO, and individual; and
4 SNOWSHOE PETROLEUM, INC., a New York corporation (collectively, the “Defendants”).

5 In conjunction with his Opposition to the Motion, Trustee moves this Court for sanctions
6 against the Defendants for their failure to cooperate in discovery and bad faith interference
7 therewith, for a continuance of the discovery cut-off to allow for the deposition(s) of the
8 person(s) most knowledgeable of Hodgson Russ LLP, and for entry of an Order clarifying once
9 and for all the Trustee’s authority to waive the attorney-client privilege related to any
10 communications Paul Morabito may have had with various counsel regarding the fraudulent
11 transfers (the “Countermotion”).

12 The Opposition and Countermotion are brought pursuant to the provisions of NRCP 16.1;
13 NRCP 26; NRCP 30; and NRCP 37. The Opposition and Countermotion are supported by the
14 attached memorandum of points and authority and the Declaration of Teresa M. Pilatowicz
15 attached hereto as **Exhibit A**, the other papers and pleadings on file herein, of which Plaintiff
16 requests this Court take judicial notice, and any oral argument the Court may permit at the
17 hearing of this matter.

18 Dated this 24th day of July, 2017.

19 GARMAN TURNER GORDON LLP

20
21 /s/ Teresa M. Pilatowicz
22 GERALD E. GORDON, ESQ.
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.
3 INTRODUCTION

4 On July 12, 2017, the Defendants' flagrant disregard for the orders of this Court and the
5 United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court") derailed the
6 depositions (the "Deposition") of Garry M. Graber and Sujata Yalamanchili, the designated
7 persons most knowledgeable for the law firm of Hodgson Russ LLP ("HR"). Specifically,
8 without any legal authority whatsoever, the Defendants unilaterally suspended the Deposition,
9 which was scheduled by the Plaintiff, after their counsel made several indefensible and factually
10 inaccurate objections as to the scope and timing of the Deposition.

11 At the Deposition, the Defendants objected on the basis that the Deposition was noticed
12 after the discovery cut-off date, despite the facts that: (1) the extent of HR's involvement in the
13 fraudulent transfers was not disclosed until the production of the Vacco E-mails (as defined
14 herein); (2) the Defendants themselves has disclosed HR as a party having knowledge after the
15 close of discovery; (3) the Deposition had been scheduled since January 2017, and (4)
16 Defendants expressly agreed to extend the discovery cut-off to complete the Deposition of HR.
17 Further, the Defendants knowingly raised objections as to waiver of Paul Morabito's attorney-
18 client privilege that had already been rejected by the Discovery Commissioner in this case, the
19 Court in this case, and the Bankruptcy Court in the related bankruptcy proceedings of Paul
20 Morabito. Indeed, Defendants did so without ever having previously objected to the subpoena
21 issued and Notice of Deposition filed that listed ten specific topics for testimony including, *inter*
22 *alia*, communications between members of HR and Paul Morabito, and communications among
23 members of HR.

24 Ultimately it is clear that the only reason the Defendants interfered with the otherwise
25 valid Deposition was to prevent harmful testimony from being given, as the decision to
26 completely suspend the deposition occurred after Mr. Graber testified:

27 Q. And what were you asked to do for Paul Morabito?

1 A. I was asked to consider whether there were ways in which he
2 could evade the judgment through bankruptcy, or I shouldn't say
3 evade the judgment. That's not correct. If there are ways he could
4 protect himself against -- protect his assets and/or escape liability
5 on account of the judgment.

6 See Ex. A-11, p. 17, ll. 3-11. The Defendants knowingly and improperly interfered with the
7 Deposition simply to prevent further such testimony from being put on the record.

8 Now, in order to provide cover for their bad acts, Defendants (1) seek to quash the
9 subpoena to HR without standing to do so and over seven months after the subpoena was issued
10 and responded to, (2) seek a protective order preventing testimony that they have agreed to allow
11 (and if the Defendants are to be believed, on topics where any privilege has been waived), and
12 (3) seek fees and costs for unilaterally and improperly suspending the Deposition after it had
13 already begun. The Motion contradicts itself on several key points, ignores this Court's prior
14 orders, and generally evidences nothing more than faux outrage to obfuscate the facts supporting
15 the Trustee's inevitable motion for sanctions, which is contained herein.

16 **II.**
17 **STATEMENT OF RELEVANT FACTS**

18 **A. Defendants Fail to Properly Disclose HR as a Person Likely to Have Discoverable**
19 **Information Prior to the Discovery Cut-Off.**

20 1. This matter was originally filed in December 2013 asserting claims related to
21 certain fraudulent transfers (the "Fraudulent Transfers"). At the time it was commenced, Paul
22 Morabito and the Arcadia Living Trust were, in addition to the Defendants, named defendants in
23 the case. (Ex. A ¶ 2).

24 2. On December 1, 2015, the Defendants, including Paul Morabito and the Arcadia
25 Living Trust, filed their initial disclosures, purportedly identifying those "persons likely to have
26 discoverable information" regarding the Fraudulent Transfers. (See Ex. A ¶ 3; Ex. A-1).

27 3. At no time prior to January 2017 was HR ever disclosed as a party having
28 discoverable information by any of the Defendants, including Paul Morabito, the person who
apparently retained HR with respect to the Fraudulent Transfers. (Ex. A ¶ 4).

4. From July 2014 to January 2015, this matter was effectively procedurally stayed

1 as a result of the filing of involuntary bankruptcy case no. BK-S-13-51237-GWZ (the
2 “Bankruptcy Case”) against Paul Morabito in the Bankruptcy Court. (Ex. A ¶ 5).

3 5. In January 2015, the Bankruptcy Court entered an Order for Relief against Paul
4 Morabito and, in May 2015, Paul Morabito was removed as a defendant from this case and the
5 Trustee was substituted in as Plaintiff. (Ex. A ¶ 6).

6 **B. The Bankruptcy Court and this Court Hold that the Attorney-Client Privilege Does**
7 **Not Apply to Paul Morabito’s Communications with Certain Counsel Related to the**
8 **Fraudulent Transfers Because of the Crime-Fraud Exception and, Even If It Did,**
9 **the Trustee Can Waive the Attorney-Client Privilege.**

10 6. In September 2015, Plaintiff issued a subpoena to Lippes, Mathias, Wexler &
11 Friedman (“LMWF”) and Dennis Vacco for documents related to the Fraudulent Transfers. In
12 October 2015, LMWF produced approximately 400 pages of documents. At that time, LMWF
13 claimed that it did not withhold any documents on the basis of attorney-client privilege. (Ex. A ¶
14 7).

15 7. On October 20, 2015, Plaintiff conducted the deposition of Mr. Vacco, during
16 which Defendants’ counsel, on behalf of Paul Morabito, asserted the attorney-client privilege and
17 advised Vacco not to answer certain questions (the “Attorney-Client Privilege Assertion”). (Ex.
18 A ¶ 8).

19 8. Plaintiff properly brought the Attorney-Client Privilege Assertion before the
20 Bankruptcy Court and, on February 3, 2016, the United States Bankruptcy Court for the District
21 of Nevada in case no BK-S-13-51237-GWZ (the “Bankruptcy Court”) entered an order holding
22 that, *inter alia*, (a) the crime/fraud exception to the attorney-client privilege was established; and
23 (b) the Plaintiff had met his burden to waive the Debtor’s attorney-client privilege, expressly
24 establishing that the Trustee had the power to waive the Debtor’s privilege (the “Privilege
25 Order”). (Ex. A ¶ 9; Ex. A-2).

26 9. On June 13, 2016, following the Defendants’ *Motion to Partially Quash or, in the*
27 *Alternative, for a Protective Order Precluding Trustee from Seeking Discovery Protected by the*
28 *Attorney Client Privilege*, Discovery Commissioner Wesley M. Ayres entered a
Recommendation for Order that cited to the Privilege Order and reaffirmed that communications

1 to which Paul Morabito was a party were not protected. (Ex. A ¶ 10; Ex. A-3).

2 10. On July 6, 2016, this Court entered a *Confirming Order* confirming, approving,
3 and adopting the *Recommendation for Order*. (Ex. A ¶ 11; Ex. A-4).

4 **C. LMWF Finally Produces Communications Regarding the Fraudulent Transfers,**
5 **Which Reveal the Involvement of HR, Over a Year After the Original Subpoena**
6 **Was Issued.**

7 11. Despite the Privilege Order, Recommendation for Order, and Confirming Order
8 having been entered in February, June, and July, respectively, it was not until December 2016 –
9 and after multiple further attempts by Plaintiff – that LMWF finally produced communications
10 originally requested in the September 2015 Subpoena (the “December 2016 Production”). (Ex. A
11 ¶ 12).

12 12. The December 2016 Production contained thousands of e-mail communications
13 that had never previously been disclosed (the “Vacco E-mails”), specifically communications
14 between Vacco, on the one hand, and Garry Graber and Sujata Yalamachili of HR, discussing
15 different proposed strategies for protecting Morabito’s assets from collection, including the
16 Fraudulent Transfers. (Ex. A ¶ 13).

17 13. Following the receipt and review of the December 2016 Production, it became
18 clear that, despite having never been disclosed by Defendants previously, HR was heavily
19 involved in the Fraudulent Transfers. (Ex. A ¶ 14).

20 14. As a result, on or about January 3, 2017, Trustee served a Subpoena (the
21 “Subpoena”) requesting documents and testimony and filed a Notice of Deposition (the “Notice
22 of Deposition”) on the person most knowledgeable of HR. (Ex. A ¶ 15; Exs. A-5, A-6).

23 15. The Subpoena listed nineteen requests for document production and the Notice of
24 Deposition listed ten topics for testimony for the Deposition. (Ex. A ¶ 16; Ex. A-5).

25 16. From January 3, 2017 to January 4, 2017, emails were exchanged between
26 Defendants’ counsel and Plaintiff’s Counsel. Plaintiff’s counsel’s email made clear that Plaintiff
27 was concerned about Defendants’ lack of compliance with NRCP 16.1 in that they failed to
28 disclose HR’s involvement in the Fraudulent Transfer. *See* Motion Ex. 3; (Ex. A ¶ 17).

1 17. The parties held a telephonic meet and confer on January 5, 2017. The
2 Defendants' counsel represented to Trustee's counsel that they had no prior knowledge of HR's
3 involvement, and asked to see the emails produced from Mr. Vacco that precipitated the
4 Subpoena. (Ex. A ¶ 18).

5 18. On January 24, 2017, in response to the request to see the e-mails from HR,
6 Trustee's counsel sent Defendants' counsel the communications received from Mr. Vacco (the
7 "January 24 E-mail"). See Motion Ex. 5; (Ex. A ¶ 19).

8 19. While Plaintiff's counsel advised that she intended to use the Vacco E-mails in
9 the Deposition, the Parties never agreed to any limitation as to the scope of the Deposition. To
10 be sure, at the time of the telephonic conference, HR had not yet even responded to the requests
11 for production of documents. Furthermore, there was never any limitation on the topics listed in
12 the Notice of Deposition, and the same ten topics were listed on the Amended Notices filed on
13 March 29, 2017 and April 27, 2017. See Motion Ex. 5; (Ex. A ¶ 20).

14 20. Furthermore, and confirming prior communications, the January 24, 2017 email
15 also advised Defendants' and Paul Morabito's counsel that the Trustee was going to waive the
16 attorney-client privilege as to HR. See Motion Ex. 5; (Ex. A ¶ 21).

17 21. The subsequent letter to HR's general counsel advising of the waiver (the
18 "Privilege Waiver Letter") was delivered on January 25, 2017 and the Defendants' and Paul
19 Morabito's counsel, Frank Gilmore, was copied. (Ex. A ¶ 22; Ex. A-7).

20 **D. The Defendants Expressly Stipulate to the Deposition of HR After the Original**
21 **Close of Discovery, Without Any Limitation.**

22 22. On January 30, 2017, Plaintiff and the Defendants executed and filed a *Stipulation*
23 *Regarding Continued Discovery Dates (Sixth Request)* (the "Sixth Discovery Stipulation") with
24 this Court, which the Court approved by Order on February 3, 2017. (Ex. A ¶ 23; Ex. A-8).

25 23. The Sixth Discovery Stipulation expressly stated that the late production of the
26 Vacco E-mails "caused the Trustee to issue a subpoena on Hodgson Russ seeking documents and
27 a deposition of the person most knowledgeable of Hodgson Russ (the "Hodgson Deposition")."
28 (Ex A-8 at 3 ¶ 10.) The Defendants agreed to this statement of fact. (Ex. A ¶ 24).

1 24. The Defendants further stipulated that the discovery cut-off would be extended, at
2 that time to May 31, 2017, “for the purpose of conducting the . . . Hodgson Deposition. . .” (Ex.
3 A ¶ 25; Ex. A-8 at 4 ¶ 1).

4 25. On May 25, 2017, the Parties again entered into a *Stipulation Regarding*
5 *Continued Discovery Dates (Seventh Request)* (the “Seventh Discovery Stipulation”), which was
6 approved by the Court on May 26, 2017. (Ex. A ¶ 26).

7 26. The Seventh Discovery Stipulation again expressly stated that the late production
8 of the Vacco E-mails “caused the Trustee to issue a subpoena on Hodgson Russ seeking
9 documents and a deposition of the person most knowledgeable of Hodgson,” and extended the
10 discovery cut-off to July 31, 2017 for the purpose of conducting the Hodgson Deposition. (Ex.
11 A ¶ 27; Ex. A-9 at 3 ¶ 10.)

12 27. For the avoidance of all doubt, on May 3, 2017, after the original discovery cut-
13 off, but within the extended discovery deadline for information discovered from the LMWF
14 production and the time to conduct the Deposition, *Defendants themselves* disclosed that the
15 Person Most Knowledgeable for HR was a party with knowledge in this case, having knowledge
16 regarding “of the intent and processes of the alleged wrongful transfers”. (Ex. A ¶ 28; Ex. A-
17 10).

18 **E. Despite the Subpoena, Notice of Deposition, and Privilege Waiver Letter, All Issued**
19 **In January 2017, Defendants Never Challenge the HR Deposition.**

20 28. Following notice of the Subpoena to HR, the Notice of Deposition, and delivery
21 of the Privilege Waiver Letter, absolutely no motions were filed in either Nevada or New York
22 seeking to quash the subpoena or otherwise seeking a protective order or any other relief. (Ex. A
23 ¶ 29).

24 29. As a result, on March 7, 2017, HR delivered its response to the Subpoena which
25 included a production of approximately 9000 pages of documents (the “HR Production”).
26 Following the HR Production, there was likewise no objection to the documents produced or
27 waiver of the attorney-client privilege, or any attempts to obtain a protective order. (Ex. A ¶ 30).

28 30. Instead, the Defendants waited until the parties had traveled to Buffalo, New

1 York, and arrived at the Deposition before verbally raising improper objections to the scope and
2 timing of the Deposition, and raising allegations that the attorney-client privilege had not been
3 waived. (Ex. A ¶ 31).

4 **F. The Defendants Improperly Unilaterally Suspend the HR Deposition.**

5 31. On July 12, 2017, Plaintiff commenced the deposition of Garry M. Graber, Esq.,
6 one of the two people deemed by HR to be most knowledgeable regarding certain topics listed in
7 the Notice of Deposition. (Ex. A ¶ 32).

8 32. Plaintiff's counsel asked Mr. Graber what he was asked to do for Paul Morabito.
9 (Ex. A-11, p. 15, ll. 3-4).

10 33. Mr. Graber responded:

11 "I was asked to consider whether there were ways in which he could evade the
12 judgment through bankruptcy, or I shouldn't say evade the judgment. That's not
13 correct. If there are ways he could protect himself against - - **protect his assets**
and/or escape liability on account of the judgment."

14 (Ex. A-11, p. 15, ll. 5-11) (emphasis added).

15 34. Shortly thereafter, Mr. Graber was asked about his first conversation with Paul
16 Morabito. This prompted counsel for the Defendants to interrupt the Deposition to make
17 several objections. (Ex. A-11, p. 16, l. 10 – p. 19, l. 24).

18 35. The Defendants' counsel objected on the grounds that there was no court order
19 "explicitly waiving the attorney/client privilege with respect to Hodgson Russ' representation of
20 Paul Morabito," a contention that largely ignores the legal findings of the Privilege Order,
21 Recommendation for Order, and Confirming Order. The objection further ignores that the
22 Privilege Waiver Letter was delivered in January 2017 without objection from Defendants or
23 Paul Morabito. (Ex. A-11, p. 16, ll. 21-24).

24 36. The Defendants' counsel then stated that while he would not instruct the witness
25 not to answer, he was making a standing objection as to "any questions asked which attempt to
26 invade the attorney/client privilege which I believe has not been affirmatively waived by a court
27 of law. . ." (Ex. A-11, p. 17, ll. 12-22).

28 37. Furthermore, despite executing the Sixth Discovery Stipulation and Seventh

1 Discovery Stipulation and receiving the topics of deposition more than seventh months prior, the
2 Defendants' counsel further objected to the scope of the Deposition because (a) the deposition
3 was noticed after the close of discovery; and (b) because he believed the scope was beyond the
4 scope of the emails provided in the January 24 E-mail. (Ex. A-11, p. 18, ll. 117 – p. 19, l. 20).

5 38. Even if such a limitation were in place, which it was not, the Defendants' counsel
6 made no representation as to what was beyond the scope of the e-mails which, themselves are
7 very broad including the following types of discussions:

8 I caught up with Garry (who is back in Buffalo today) on our
9 conversation from yesterday.

10 Garry had a number of additional ideas, including a possible
11 marital split between Paul and Edward pursuant to which Edward
12 could retain some of Paul's assets. We need to better understand
13 California domestic partner laws, first.

14 Let me know if/when you want to talk.

15 Sujata

16

17 Hi Paul,
18 I don't think you should change your State of residence without
19 first comparing the exemption statutes. Also, what about the CA
20 tax residency lawsuit ?

21 Do the furnishings have any material value especially in the
22 present economy in view of the fact that they are used ? And
23 doesn't Edward already own some of the furnishings ? If not
24 exempt and if there is value, It may make more sense for Edward
25 to use his money to buy the stuff back at the auction the creditor
26 would have to hold instead of giving you money that the creditor
27 will just take from you.

28 As we discussed yesterday, used clothing rarely has much resale
value - even if originally very expensive. And much of it, if not all
of it, could be exempt. Unless you are talking about furs or
something for which there is a market, I wouldn't worry about it as
I don't think that the creditor will try to take it.

I am not sure that the Amex points are transferable. That needs to
be checked. If so, you want to start using redeeming them for
flights, entertainment, household goods and the like.

1 Garry M. Graber
2 Partner
3 Hodgson Russ LLP
4 tel: 716.848.1273 | fax: 716.819.4666
5 mobile: 716.440.1777
6 ggrabber@hodgsonruss.com

7 From: Paul Morabito [mailto:pmorabito@cowestco.com]
8 Sent: Thursday, September 23, 2010 10:47 AM
9 To: Graber, Garry
10 Subject:

11 Garry

12 I have a few questions.

13 Edward and I plan on changing our primary residence from Reno
14 to Laguna Beach.

15 Change DMV, voter registration, cancel Nevada club
16 memberships, burial plot, resign from State Boards etc

17 Should Edward buy our household furniture etc from me for the
18 Reno and Palm Springs houses that are not primary ? We have
19 receipts from 2006 for everything worth around \$225,000 new.

20 Also, what about my clothes ? I was in the hospital for 5 months
21 last year and came out 200 pounds lighter. I spent \$200,000
22 on a new wardrobe since November.

23 Finally, are my 2 million American Express airline miles
24 something I can do something with or is that an asset, too ?

25 Paul Morabito
26 mobile: (775) 223-3585 efax: (480) 222-1062
27 email: paulmorabito1964@gmail.com

28 (Ex. A ¶ 33; Ex. A-12).

III. OPPOSITION

29 Plaintiff opposes the Defendants' late attempts, lacking any factual or legal basis, to
30 quash the Subpoena. Plaintiff further seeks sanctions on the basis that the suspension of the
31 Deposition was a bad faith effort to, among other things, preclude Mr. Graber, and later Ms.

1 Yalamachili, from, among other topics, expanding on Paul Morabito’s attempts to “protect his
2 assets and escape liability on account of the judgment.” (Ex. A ¶ 34; Ex. A-11, p. 15, ll. 5-11)

3 **A. The Defendants Lack Standing to Quash the Subpoena and Any Request is**
4 **Untimely.**

5 NRCP 45(c)(2)(B) provides that a person subject to a subpoena must serve upon the
6 issuing party a “written objection to inspection or copying of any or all of the designated
7 materials or of the premise” within 14-days after service of the subpoena. HR was served on or
8 about January 3, 2017. (Ex. A-5). HR did not object to the Subpoena, verbally or in writing, and
9 did not raise any objections on the day of the Deposition. (Ex. A-11 at p. 20 ll. 7 – p. 21 l. 16). In
10 fact, counsel for HR specifically noted, on the record, the fact that Defendants had six months to
11 object to the deposition and failed to do so and, as a result, HR was prepared to testify. *Id.*

12 Defendants now request that the Court quash the Subpoena under NRCP 45(c)(3)(A).
13 Defendants do not have standing to bring the motion. While NRCP 45(c)(3) permits a court to
14 quash or modify a subpoena, it only permits the modification or quashing of a subpoena “to
15 protect a person *subject to or affected by* the subpoena.” NRCP 45(c)(3)(B). Accordingly, only
16 the party subject to the subpoena may seek a motion to quash under NRCP 45(c)(3)(A);¹ *In re*
17 *Rhodes Companies, LLC*, 475 B.R. 733, 740 (D. Nev. 2012) (Recognizing “the primary purpose
18 of Rule 45(c) is to protect the person subject to the subpoena, and unless explicitly stated, as in
19 subsection (c)(3)(B), the Rule should be interpreted as applying *to the person subject to the*
20 *subpoena only.*”)(emphasis added); *In re Yassai*, 225 B.R. 478, 481 (Bankr. C.D. Cal. 1998)
21 (holding that if “[i]f the drafters of the FRCP had intended FRCP 45(c)(3)(A) to apply to parties
22 who are not directly subject to the subpoena, they would have so stated.”); *in accord Salem*
23 *Vegas, L.P. v. Guanci*, 2013 WL 5493126, at *2–3 (D. Nev. Sept. 30, 2013) (finding that a party
24 “does not have standing to quash a subpoena pursuant to Rule 45(c)(3)(A)(iii)”); *Proficio*
25 *Mortgage Ventures, LLC v. Fed. Sav. Bank*, 2016 WL 1465333, at *2 (D. Nev. Apr. 14, 2016);
26 *Leal v. Target Corp.*, 214CV00846APGNJK, 2015 WL 7294936, at *1 (D. Nev. June 24,
27
28 ¹ *McClendon v. Collins*, 132 Nev. Adv. Op. 28, 372 P.3d 492, 494 (2016) (reinforcing that “Federal cases
interpreting the Federal Rules of Civil Procedure ‘are strong persuasive authority, because the Nevada Rules
of Civil Procedure are based in large part upon their federal counterparts.”).

1 2015)(noting “[t]here is a general rule that only the party to which a subpoena is directed has
2 standing to challenge that subpoena.”); *Russo v. Lopez*, 2:11-CV-00284-PMP, 2012 WL
3 3860827, at *2 (D. Nev. Sept. 5, 2012);

4 The District Court in *In re Rhodes Companies, LLC* considered whether a party could
5 seek the quashing of a subpoena “because the subpoenas . . . subjected the subpoenaed parties to
6 an undue burden.” 475 B.R. 733. The District Court concluded that only the party subject to the
7 subpoena may bring a motion to quash under Rule 45(c)(3)(A). *Id.* at 740. This is especially so
8 when the party subject to the subpoena has not objected to the subpoena. *See First Am. Title Ins.*
9 *Co. v. Commerce Associates, LLC*, 2:15-CV-832-RFB-VCF, 2017 WL 53704, at *1 (D. Nev.
10 Jan. 3, 2017) (“A party's objection that the subpoena issued to the non-party seeks irrelevant
11 information or imposes an undue burden on the non-party are not grounds on which a party has
12 standing to move to quash a subpoenas issued to a non-party, especially where the non-party,
13 itself, has not objected.”)(internal citations omitted). The Defendants have no standing to
14 demand that this Court quash the Subpoena.

15 Furthermore, the time in which a party must object to a subpoena is set at 14 days. Here,
16 the Defendants did not object to the Subpoena within fourteen days, instead waiting over six
17 months to do so. Moreover, the Defendants expressly agreed to the setting of the HR Deposition
18 in both the Sixth Discovery Stipulation and Seventh Discovery Stipulation. Therefore, even if
19 the Defendants had standing to object to the Subpoena, which they do not, they have failed to
20 bring a timely objection and therefore, the Motion must be denied.

21 **B. The Defendants Are Not Entitled to a Protective Order Because the Deposition is**
22 **Timely, the Scope is Proper, and Defendants Were Noticed with the Deposition for**
23 **Over Six Months Ago.**

24 Under NRCP 26(b), “parties may obtain discovery regarding any matter, not privileged,
25 which is relevant to the subject matter involved in the pending action, whether it relates to the
26 claim or defense of the party seeking discovery or to the claim or defense of any other party.”
27 The scope of discovery under NRCP 45 is identical to that under NRCP 26. *Wells Fargo Bank,*
28 *N.A. v. Iny*, 2014 WL 1796216, at *2 (D. Nev. May 6, 2014)(“It is well established that the scope

1 of discovery under a subpoena issued pursuant to Rule 45 is the same as the scope of discovery
2 allowed under Rule 26(b)(1).”).

3 “The scope of discovery is broad and discovery should be allowed unless the information
4 sought has no conceivable bearing on the case.” *Jackson v. Montgomery Ward & Co., Inc.*, 173
5 F.R.D. 524, 528 (D. Nev. 1997). The “broad right of discovery is based on the general principle
6 that litigants have a right to “every man's evidence, and that wide access to relevant facts serves
7 the integrity and fairness of the judicial process by promoting the search for the truth. *Shoen v.*
8 *Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993); *Moore v. Conliffe*, 7 Cal. 4th 634, 643 (1994)(holding
9 “discovery is broad to afford parties the opportunity to expose the bias of witnesses and the
10 falsity of evidence”).

- 11 1. The Defendants failed to properly disclose HR as a person likely to have
12 discoverable information until after the Vacco E-mails were produced.

13 NRCP 16.1 mandates that a party disclose the name “then known or reasonably believed
14 to have knowledge of any facts relevant to the allegations of any pleading filed by any party to
15 the action.” NRCP 16.1(b)(5). Each party is bound by rule to seasonably supplement these
16 disclosures at appropriate intervals if it learns that the disclosed information is incomplete or
17 incorrect. NRCP 26(e). Accordingly, if a party knows, believes, or subsequently learns or
18 develops said belief through the discovery process, that a party has an affirmative obligation to
19 disclose that party. A failure to comply with NRCP 16.1 obligations gives rise to NRCP 37
20 sanctions. *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 249, 235 P.3d 592, 596
21 (2010); *Clark County Sch. Dist. v. Richardson Const., Inc.*, 123 Nev. 382, 168 P.3d 87 (2007).

22 The Defendants belief that Plaintiff had knowledge of HR’s specific involvement in the
23 Fraudulent Transfers is belied by the evidence, and by their own conduct. As a threshold matter,
24 the fact that Morabito testified that HR was previously his personal and corporate counsel is far
25 from demonstrative evidence that the Trustee knew of the extent of HR’s involvement in the
26 Fraudulent Transfers. Paul Morabito² could have, and should have, disclosed HR’s involvement

27 ² Plaintiff also issued a subpoena to Paul Morabito requesting correspondence regarding the Fraudulent Transfers.
28 The Vacco E-mails, on which Paul Morabito was copied, were not produced by Paul Morabito.

1 in the initial disclosures and chose not to do so. (*See* Ex. A-1). The Defendants failed to identify
2 HR as a party with knowledge in this matter over the course of fifteen separate disclosures, only
3 electing to do so in May 2017 (thus, now expressly identifying HR as a person with knowledge
4 but, at the same time, seeking to prohibit Plaintiff from completing its deposition). (Ex. A-9).
5 Simply put, the Defendants cannot seek to benefit from hiding information.

6 Similarly, during the telephonic meet and confer between counsel in January 2017,
7 Plaintiff's counsel stated that based upon her review of the Vacco E-mails, Defendants should
8 have included HR in their disclosures long before the discovery cut-off. In response, the
9 Defendants' counsel³ represented that Defendants did not have prior knowledge of HR's
10 involvement in the Fraudulent Transfers and could not have disclosed them. It is antithetical to
11 argue that Plaintiff did, or should have known, the extent of HR's involvement when Defendants
12 claim that they, themselves, were not aware.

13 Finally, the Defendants' execution of the Sixth Discovery Stipulation and Seventh
14 Discovery Stipulation, and their own disclosure that "Hodgson Russ attorneys have knowledge
15 of the intent and processes of the alleged wrongful transfers" in their sixteenth supplement sent
16 in May 2017, is conclusive evidence of their admission that the late disclosure of the Vacco E-
17 mails is what created the need for the Deposition. To be sure, the only exhibits that intended to
18 use in the Deposition are only those produced in the Vacco E-mails and by HR in the HR
19 Production.

20 2. The Defendants are estopped from arguing that the Subpoena was
21 untimely.

22 Despite the extensive exposé on the alleged history of matters related to this case, the
23 Defendants fail to explain to the Court why it should ignore its own orders approving the Sixth
24 Discovery Stipulation and Seventh Discovery Stipulation. In these Stipulations, the Defendants
25 expressly acknowledged that: "The [Vacco E-mails] caused the Trustee to issue a subpoena on
26 Hodgson Russ seeking documents and a deposition of the person most knowledgeable of

27 ³ It should not be lost on this Court that Defendants' counsel is on record stating that he is also Paul Morabito's
28 counsel, a prior defendant in this case, when discussing the Defendants' collective knowledge at the time of
disclosure.

1 Hodgson Russ.” The Stipulations further expressly extended the discovery cut-off for the
2 purpose of conducting the Deposition.

3 The fact remains that the Stipulations, along with the Defendants own disclosure of HR
4 as a party with knowledge in May 2017, were a result of the parties’ joint determination that
5 the information “could not have been reasonably known or knowable prior to the disclosure”
6 (*quoting* Motion Ex. 1), which resulted in the specific and unambiguous continuance of the
7 discovery cut-off date for the purpose of deposing the person most knowledgeable of HR.

8 3. Plaintiff’s Counsel Did Not “Sandbag” Defendants in the Deposition.

9 The Defendants contend that Plaintiff’s counsel agreed to limit the exhibits for the
10 Deposition to those attached to the January 24 E-mail. There was no such agreement. To be
11 sure, HR had not even responded to the Subpoena at the time of the January 24 E-mail and
12 therefore, Plaintiff would have never agreed to such a limitation. As such, the Defendants’
13 allegations that the suspension of the Deposition resulted by Plaintiff “sandbagging” Defendants
14 is without merit and nonsensical.

15 Furthermore, the exhibits that were to be used at the Deposition only included those that
16 were sent in the January 24 E-mail and those subsequently produced by HR. Both are well within
17 the proper limits for testimony, as set forth in the Subpoena and Notice of Deposition.
18 Furthermore, even assuming there was an agreement to limit the Deposition, which there was
19 not, the overwhelming majority of the exhibits *still* likely fell within the Defendants’ alleged
20 agreement. The Defendants’ improper claim of “sandbagging” is completely without merit and
21 does not form a basis to suspend the Deposition.

22 4. The Defendants are not entitled to sanctions for unilaterally, and without
23 legal authority, suspending the Deposition.

24 The Defendants allege that they forbore on seeking a protective order “only because the
25 Trustee’s counsel confirmed the precise limited scope of the HR deposition.” *See* Motion at 12.
26 This allegation is not borne out by Defendants’ exhibits, is contrary to the actual discussion at
27 the meet and confer, and is noticeably absent from the terms of the Sixth Discovery Stipulation
28 and Seventh Discovery Stipulation, which fails to limit the scope or nature of the Deposition

1 what-so-ever. If the Defendants truly believed they had reached such an agreement they would
2 have clarified, memorialized, or otherwise included such an agreement in the various stipulations
3 they executed with Plaintiff. The Defendants could have further objected to the two amended
4 Notices of Deposition resetting the Deposition that expressly set forth the same ten topics of
5 testimony for Deposition. The Defendants also would have informed HR of any alleged
6 agreement prior to the HR Production, which produced documents in response to the original
7 Subpoena without any limitation. Finally, Defendants would have responded to the Privilege
8 Waiver Letter sent to HR waiving the privilege and requesting a response to the Subpoena,
9 without limitation. The Defendants took no such actions because there was no such agreement.

10 Regardless, even assuming an agreement existed (which it did not), implied in the
11 allegation of the agreement is the admission that (1) the Deposition was properly scheduled and
12 agreed upon and (2) that *at least* certain topics of the the Deposition were proper. Thus, at best,
13 the Defendants could have objected to certain topics of testimony or particular exhibits as they
14 were presented. The Defendants did not. They suspended the entire Deposition to prevent any
15 further damaging testimony. The Defendants were not entitled to suspend the entire Deposition
16 to prohibit HR from providing any testimony. The Defendants should not be awarded for their
17 extreme and unwarranted violations of the discovery rules. Instead, this Court should hold the
18 Defendants accountable for their bad faith actions and award sanctions in favor of Plaintiff.

19 **IV.**
20 **COUNTERMOTION⁴**

21 **A. Sanctions Against Defendants for Failure to Cooperate with Discovery and Bad**
22 **Faith Conduct in the Deposition are Warranted.**

23 A party that fails to permit discovery pursuant to a court order may be subject to
24 sanctions, including being ordered to pay the reasonable expenses, including attorney's fees,
25 caused by that failure. NRCP 37(b)(2); *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243,
26 251, 235 P.3d 592, 598 (2010) (upholding sanctions, citing the District Court's observation that
27 the applicable recommendation from the discovery commissioner was "very clear on its face")

28 ⁴ The Opposition is incorporated herein, as if fully set forth herein.

1 and that the offending party simply needed to “read it and comply with it.”). Similarly, this Court
2 may impose monetary sanctions on any person who “impedes, delays, or frustrates the fair
3 examination of the deponent.” NRCp 30(d)(2). Finally, this Court has “inherent equitable
4 powers” that “permit sanctions for discovery and other litigation abuses not specifically
5 proscribed by statute.” *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. at 252, 235 P.3d at
6 598. As with the *Bahena* recommendation, the orders in this case could not be more clear, and
7 yet the Defendants failed to simply read and comply.

8 Suspending a deposition on the basis of demonstrably false “objections” is an egregious
9 abuse of the discovery process. The Defendants knew at the time they suspended the Deposition
10 that the objections Defendants’ counsel set forth on the record (and then included in the Motion)
11 were patently false.

12 1. The Deposition was unquestionably timely and properly noticed.

13 The Sixth Discovery Stipulation and Seventh Discovery Stipulation, and orders thereon,
14 expressly extended the discovery cut-off to complete the Deposition. (See Exs. A-8; A-9). The
15 Stipulations also expressly set forth that the reason the Deposition was not conducted earlier was
16 because HR’s involvement was not discovered until the production Vacco E-mails. (*Id.*) As a
17 result, any argument based on the timeliness of the Deposition, including the contention raised
18 on the day of Deposition that “it was inappropriate notice because discovery had closed” is a bad
19 faith and false representation that directly defies this Court’s orders, and is made for an
20 improper, ulterior purpose.

21 2. The scope of the Deposition was properly set forth since January 2017 without
22 objection.

23 The Subpoena was issued and served in January 2017. (Ex. A-5). The Notice of
24 Deposition, listing the ten topics for testimony, was filed and served in January 2017, with
25 amended notices – but with the same ten topics – filed and served in March and April 2017. (Ex.
26 A-6). There was never any agreement to limit the scope of the Deposition, nor was there any
27 agreement to limit the documents explored in the Deposition to those sent in the January 24 E-
28 mail. Notably, additional documents (9000 pages) were produced by HR in March 2017. These

1 documents, as well as those original Vacco E-mails delivered to Defendants' counsel, were the
2 intended, and proper, scope of the Deposition.

3 3. The attorney-client privilege was properly waived prior to the Deposition.

4 Any argument that the attorney-client privilege has not been waived is directly contrary
5 to the Discovery Commissioner's Recommendation for Order, this Court's Confirming Order,
6 and the Bankruptcy Court's Privilege Order.

7 First, In the Privilege Order, the Bankruptcy Court held that Paul Morabito's attorney-
8 client privilege did not apply as a result of the crime-fraud exception and, even if it did, it had
9 been waived by the Trustee. (*See* Ex. A-2). The Discovery Commissioner's *Recommendation*
10 *for Order* and this Court's *Confirming Order* affirmed the fact that no attorney-client privilege as
11 to communications with Paul Morabito regarding the Fraudulent Transfers existed. (*Compare*
12 Ex. A-3 and Ex. A-4). The fact that the Trustee's right to waive this privilege was recognized in
13 the context of communications with Dennis Vacco is irrelevant. The same exact Fraudulent
14 Transfers are being discussed so there can be no different analysis, and many of the
15 communications include Vacco. The Trustee position was asserted, without objection, in the
16 Privilege Waiver Letter to HR in January 2017. (Ex. A-7).

17 Second, the Defendants' allegations evidence a waiver of any privilege as to the emails
18 contained in the January 24 E-mail. The Defendants (who are represented by Paul Morabito's
19 counsel) admit that they reviewed the circulated emails and allege that they agreed to allow
20 testimony on topics related to those communications. As set forth herein, *infra*, the topics in the
21 e-mails themselves are incredibly broad and include communications between counsel and Paul
22 Morabito. Accordingly, even if this Court accepts the Defendants' narrative, the privilege has
23 been unquestionably waived.

24 Finally, neither Paul Morabito nor the Defendants elected not to seek a protective order
25 in the six months leading up to the Deposition, including when HR was asked to, and did,
26 produced communications between its attorneys and Paul Morabito, and between members of
27 HR. The Defendants were further notified on January 24, 2017 in the Privilege Waiver Letter
28 that Plaintiff contended that no privilege existed and, if it did, he controlled it and was waiving it.

1 4. With the notice, scope, and waiver of privilege being proper, the Defendants'
2 unilateral suspension without any legal authority to do so, can only have been done in
3 bad faith and for ulterior purposes.

4 The Defendants' false representations, followed by the act of suspending the Deposition
5 for the same reasons, is a bad faith frustration of the fair examination of HR. Specifically, the
6 Defendants acknowledged the timeliness of the Deposition in two Stipulation and the Defendants
7 never objected to the scope of the Deposition. Finally, this Court has recognized that the
8 crime/fraud exception to the attorney-client privilege applies with regard to Paul Morabito's
9 communications with his counsel, and that in any event, the Trustee had the right to waive those
10 communications on behalf of Paul Morabito. Thus, the Defendants had no basis, factual or legal,
11 to suspend the deposition of their conduct must be sanctioned.

12 Furthermore, the timing of the objections and suspension is nothing short of abusive.
13 Despite having notice of the Deposition since January, having notice of the scope of the
14 Deposition since January, and having notice of the waiver of the attorney-client privilege since
15 January, the Defendants waited until the morning of the Deposition in Buffalo, New York, to
16 raise their objections and seek to suspend the Deposition. Notably, it was only after Garry
17 Graber testified that he:

18 was asked to consider whether there were ways in which he could
19 evade the judgment through bankruptcy, or I shouldn't say evade
20 the judgment. That's not correct If there are ways he could protect
21 himself against -- protect his assets and/or escape liability on
22 account of the judgment.⁵

23 that Defendants opted to shut down the Deposition entirely.

24 5. The requested sanctions are proper and appropriate in light of the Defendants' bad
25 faith conduct in suspending the Deposition.

26 Plaintiff requests that this Court enter an order imposing sanctions against the Defendants
27 in the amount of (1) Plaintiff's counsel's fees and costs incurred in connection with the originally
28 scheduled Deposition; (2) Plaintiff's counsel's fees and costs incurred in connection with a
29 rescheduled Deposition, to the extent duplicative; and (3) Plaintiff's counsel's fees and costs

⁵ (See Ex. A-11, p. 15, ll. 5-11).

1 incurred in the making and defense of this Opposition and Motion. Trustee will provide this
2 Court with a Memorandum of Fees and Costs associated with the Deposition and the making and
3 defense of this Motion upon entry of an order granting sanctions.

4 Given the flagrant disregard for this Court's prior rulings, and the transparent attempt by
5 the Defendants to prevent the Deposition from moving forward without proper cause, the
6 requested monetary sanction is far less severe than possible dispositive sanctions against the
7 Defendants, while still properly penalizing the Defendants for their egregious, bad faith abuses
8 of the discovery process.

9 **B. The Court Should Continue the Discovery Cut-Off to Allow the Resetting of the**
10 **Deposition and Clarify the Trustee's Authority to Waive the Privilege.**

11 In addition to the requested sanctions, Plaintiff requests an order from this Court so that
12 no further delay can be attempted by the Defendants at the Rescheduled deposition of HR.
13 Specifically, Plaintiff requests, to the extent necessary, an extension of the discovery cut-off and
14 an order confirming that the crime-fraud exception applies to the attorney-client privilege or that
15 it has otherwise been waived,

16 First, this Court has the authority to extend the discovery cut-off date to require the
17 Defendants to comply with its prior orders. Currently, the discovery cut-off date is July 31,
18 2017. In all likelihood that date will have passed before any argument on this Motion is heard.
19 Accordingly, Plaintiff requests⁶ that the Court enter an order extending the discovery cut-off date
20 for the sole purpose of taking the Deposition until August 31, 2017, or such other date as HR is
21 available for a rescheduled Deposition.

22 Furthermore, Plaintiff requests that an order be entered confirming this Court's adoption
23 of the Privilege Order, and entry of the Recommendation for Order and Confirming Order.
24 Defendants have now expressly challenged this Court's determination that the crime-fraud
25 exception applies, and the Trustee may properly waive the attorney-client privilege in this case.
26 Accordingly, the Court should enter an order confirming the crime-fraud exception applies and

27

⁶ Plaintiff does not believe an order is required as the Deposition has commenced but, in an abundance of caution,
28 requests the extension of the discovery cut-off.

1 that the Trustee's waiver of the attorney-client privilege as it applies to the topics of Deposition
2 set forth in the Subpoena and Notice of Deposition.

3 **IV.**

4 **CONCLUSION**

5 Trustee respectfully requests that the Court enter an order:

- 6 1. Denying the Motion in its entirety;
- 7 2. Granting the Countermotion in its entirety;
- 8 3. Imposing Sanctions against the Defendants, jointly and severally, in the amount
9 of fees and costs incurred in connection with the original Deposition;
- 10 4. Imposing Sanctions against the Defendants, jointly and severally, in the amount
11 of fees and costs incurred in connection with the rescheduled Deposition, to the extent
12 duplicative
- 13 5. Imposing additional sanctions against the Defendants, jointly and severally, for
14 the costs incurred by Plaintiff in the defends of the Motion and prosecution of the
15 Countermotion;
- 16 6. Continuing the discovery cut-off date in the above-captioned matter until August
17 31, 2017, or such other date that HR is available for a rescheduled Deposition, for the sole
18 purpose of conducting the deposition(s) of the person(s) most knowledgeable for HR;
- 19 7. Confirming this Court's prior order that the crime-fraud exception to the attorney-
20 client privilege applies or, alternatively, that the Trustee has waived the attorney-client privilege
21 as to the topics set forth in the Subpoena; and
- 22 8. Awarding such and further relief as to this Court is just and equitable under the
23 facts of this case.

24 . . .

25 . . .

26 . . .

27 . . .

28 . . .

AFFIRMATION
Pursuant to NRS 239B.030

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

Dated this 24th day of July, 2017.

GARMAN TURNER GORDON LLP

/s/ Teresa M. Pilatowicz
GERALD E. GORDON, ESQ.
TERESA M. PILATOWICZ, ESQ.
MICHAEL R. ESPOSITO, ESQ.
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel for Trustee

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this
3 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached **(1)**
4 **OPPOSITION TO MOTION TO QUASH SUBPOENA, OR, IN THE ALTERNATIVE,**
5 **FOR A PROTECTIVE ORDER PRECLUDING TRUSTEE FROM SEEKING**
6 **DISCOVERY FROM HODGSON RUSS LLP; and (2) COUNTERMOTION FOR**
7 **SANCTIONS AND TO COMPEL RESETTING OF 30(B)(6) DEPOSITION OF**
8 **HODGSON RUSS LLP ON APPLICATION FOR ORDER SHORTENING TIME** on the
9 parties as set forth below:

10
11 XXX Placing an original or true copy thereof in a sealed envelope placed for collection
12 and mailing in the United States Mail, Reno, Nevada, postage prepaid, following
ordinary business practices

13 _____ Certified Mail, Return Receipt Requested

14 _____ Via Facsimile (Fax)

15 _____ Via E-Mail

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

18 _____ Federal Express (or other overnight delivery)

19 addressed as follows:

20 Barry Breslow
21 Frank Gilmore
22 ROBISON, BELAUSTEGUI, SHARP & LOW
23 71 Washington Street
Reno, NV 89503

24 DATED this 24th day of July, 2017.

25
26 /s/ Ricky H. Ayala

27 An Employee of GARMAN TURNER
28 GORDON LLP

Exhibit	Description	Pages⁷
A	DECLARATION OF TERESA M. PILATOWICZ, ESQ. IN SUPPORT OF (1) OPPOSITION TO MOTION TO QUASH SUBPOENA, OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER PRECLUDING TRUSTEE FROM SEEKING DISCOVERY FROM HODGSON RUSS LLP; and (2) COUNTERMOTION FOR SANCTIONS AND TO COMPEL RESETTING OF 30(B)(6) DEPOSITION OF HODGSON RUSS LLP	8
A-1	DEFENDANTS' NRCP DISCLOSURE OF WITNESSES AND DOCUMENTS	103
A-2	ORDER GRANTING MOTION TO COMPEL RESPONSES TO DEPOSITION QUESTIONS	5
A-3	RECOMMENDATION FOR ORDER	12
A-4	CONFIRMING ORDER	2
A-5	SUBPOENA – CIVIL	13
A-6	NOTICE OF DEPOSITION OF PERSON MOST KNOWLEDGABLE OF HODGSON RUSS LLP	4
A-7	JANUARY 25, 2017 LETTER TO HODGSON RUSS LLP	9
A-8	STIPULATION REGARDING CONTINUED DISCOVERY DATES (SIXTH REQUEST)	9
A-9	STIPULATION REGARDING CONTINUED DISCOVERY DATES (SEVENTH REQUEST)	9
A-10	DEFENDANTS' SIXTEENTH SUPPLEMENT TO NRCP DISCLOSURE OF WITNESSES AND DOCUMENTS	12
A-11	ROUGH DRAFT TRANSCRIPT OF GARRY M. GRABER, DATED JULY 12, 2017 (JOB NUMBER 394849)	36
A-12	EMAILS BY AND BETWEEN HODGSON RUSS LLP AND OTHER PARTIES	3

⁷ Exhibit page counts are exclusive of exhibit slip sheets.

EXHIBIT A

EXHIBIT A

1 GARMAN TURNER GORDON LLP
2 GERALD M. GORDON, ESQ.
3 Nevada Bar No. 229
4 E-mail: ggordon@gtg.legal
5 TERESA M. PILATOWICZ, ESQ.
6 Nevada Bar No. 9605
7 E-mail: tpilatowicz@gtg.legal
8 ERICK T. GJERDINGEN, ESQ.
9 Nevada Bar No. 11972
10 E-mail: egjerdingen@gtg.legal
11 650 White Drive, Ste. 100
12 Las Vegas, Nevada 89119
13 Telephone 725-777-3000
14 Attorneys for William A. Leonard

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

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

14 Plaintiff,

15 vs.

17 SUPERPUMPER, INC., an Arizona
18 corporation; EDWARD BAYUK,
19 individually and as Trustee of the EDWARD
20 WILLIAM BAYUK LIVING TRUST;
21 SALVATORE MORABITO, and individual;
22 and SNOWSHOE PETROLEUM, INC., a
23 New York corporation,

21 Defendants.

CASE NO.: CV13-02663

DEPT. NO. 1

**DECLARATION OF TERESA M.
PILATOWICZ, ESQ. IN SUPPORT OF (1)
OPPOSITION TO MOTION TO QUASH
SUBPOENA, OR, IN THE ALTERNATIVE,
FOR A PROTECTIVE ORDER
PRECLUDING TRUSTEE FROM SEEKING
DISCOVERY FROM HODGSON RUSS
LLP; and (2) COUNTERMOTION FOR
SANCTIONS AND TO COMPEL
RESETTING OF 30(B)(6) DEPOSITION OF
HODGSON RUSS LLP**

22 I, Teresa M. Pilatowicz, declare under penalty of perjury as follows:

23 1. I am an attorney with the law firm of Garman Turner Gordon LLP, counsel for
24 Plaintiff William A. Leonard (“Trustee” or “Plaintiff”). I am, and have been, licensed to practice
25 law in the State of Nevada since 2005. I make this declaration in support of Trustee’s opposition
26 (the “Opposition”) to the *Motion to Quash Subpoena, or, in the Alternative, for a Protective*
27 *Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP* (the “Motion”) filed
28

1 by Defendants SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK,
2 individually and as Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST;
3 SALVATORE MORABITO, and individual; and SNOWSHOE PETROLEUM, INC., a New
4 York corporation (collectively, the “Defendants”) and Trustee’s *Counter-motion for Sanctions*
5 *and to Compel Resetting of 30(B)(6) Deposition of Hodgson Russ LLP*.

6 2. This matter was originally filed in December 2013 asserting claims related to
7 certain fraudulent transfers (the “Fraudulent Transfers”). At the time it was commenced, Paul
8 Morabito and the Arcadia Living Trust were, in addition to the Defendants, named defendants in
9 the case.

10 3. On December 1, 2015, the Defendants, including Paul Morabito and the Arcadia
11 Living Trust, filed their initial disclosures, purportedly identifying those “persons likely to have
12 discoverable information” regarding the Fraudulent Transfers. A true and accurate copy of the
13 *Defendants’ NRCP Disclosure of Witnesses and Documents* dated December 1, 2014 is attached
14 hereto as **Exhibit A-1**.

15 4. At no time prior to January 2017 was HR ever disclosed as a party having
16 discoverable information by any of the Defendants, including Paul Morabito, the person who
17 apparently retained HR with respect to the Fraudulent Transfers.

18 5. From July 2014 to January 2015, this matter was effectively procedurally stayed
19 as a result of the filing of involuntary bankruptcy case no. BK-S-13-51237-GWZ (the
20 “Bankruptcy Case”) against Paul Morabito in the Bankruptcy Court.

21 6. In January 2015, the Bankruptcy Court entered an Order for Relief against Paul
22 Morabito and, in May 2015, Paul Morabito was removed as a Defendant from this case and the
23 Trustee was substituted in as Plaintiff.

24 7. In September 2015, Plaintiff issued a subpoena to Lippes, Mathias, Wexler &
25 Friedman (“LMWF”) and Dennis Vacco for documents related to the Fraudulent Transfers. In
26 October 2015, LMWF produced approximately 400 pages of documents. At that time, LMWF
27 claimed that it did not withhold any documents on the basis of attorney-client privilege.

28 8. On October 20, 2015, Plaintiff conducted the deposition of Mr. Vacco, during

1 which the Defendants' counsel, on behalf of Paul Morabito, asserted the attorney-client privilege
2 and instructed Mr. Vacco not to answer certain questions (the "Attorney-Client Privilege
3 Assertion").

4 9. Plaintiff properly brought the Attorney-Client Privilege Assertion before the
5 Bankruptcy Court and, on February 3, 2016, the United States Bankruptcy Court for the District
6 of Nevada (the "Bankruptcy Court") in case no BK-S-13-51237-GWZ (the "Bankruptcy Case")
7 entered an order holding that, *inter alia*, (a) the crime/fraud exception to the attorney-client
8 privilege was established; and (b) the Plaintiff had met his burden to waive the Debtor's
9 attorney-client privilege, expressly establishing that the Trustee had the power to waive the
10 Debtor's privilege (the "Privilege Order"). A true and accurate copy of the Privilege Order is
11 attached hereto as **Exhibit A-2**.

12 10. On June 13, 2016, following the Defendants' *Motion to Partially Quash or, in the*
13 *Alternative, for a Protective Order Precluding Trustee from Seeking Discovery Protected by the*
14 *Attorney Client Privilege*, Discovery Commissioner Wesley M. Ayres entered a
15 *Recommendation for Order* that cited to the Privilege Order and reaffirmed that communications
16 to which Paul Morabito was a party were not protected. A true and accurate copy of the
17 *Recommendation for Order* is attached hereto as **Exhibit A-3**.

18 11. On July 6, 2016 this Court entered a *Confirming Order* confirming, approving,
19 and adopting the *Recommendation for Order*. A true and accurate copy of the *Confirming Order*
20 is attached hereto as **Exhibit A-4**.

21 12. Despite the Privilege Order, Recommendation for Order, and Confirming Order
22 having been entered in February, June, and July, respectively, it was not until December 2016 –
23 and after multiple further attempts by Plaintiff – that LMWF finally produced communications
24 originally requested in the September 2015 Subpoena (the "December 2016 Production").

25 13. The December 2016 Production thousands of e-mail communications that had
26 never previously been disclosed (the "Vacco E-mails"), specifically communications between
27 Mr. Vacco, on the one hand, and Garry Graber and Sujata Yalamachili of HR, discussing
28 different proposed strategies for protecting Morabito's assets from collection, including the

1 Fraudulent Transfers.

2 14. Following the receipt and review of the December 2016 Production, it became
3 clear that, despite having never been disclosed by the Defendants previously, HR was heavily
4 involved in the Fraudulent Transfer.

5 15. As a result, on or about January 3, 2017, Trustee served a Subpoena (the
6 “Subpoena”) requesting documents and testimony and a Notice of Deposition (the “Notice of
7 Deposition”) on the person most knowledgeable of HR. True and accurate copies of the
8 Subpoena with Affidavit of Service and Notice of Deposition are attached hereto as **Exhibit A-5**
9 and **Exhibit A-6**, respectively.

10 16. The Subpoena listed nineteen requests for document production and the Notice of
11 Deposition listed ten topics for testimony for the Deposition.

12 17. From January 3, 2017 to January 4, 2017, the Defendants’ counsel and I
13 exchanged multiple e-mails I. My email made clear that Plaintiff was concerned about the
14 Defendants’ lack of compliance with NRCP 16.1 in that they failed to disclose HR’s
15 involvement in the Fraudulent Transfer. *See* Motion Ex. 3.

16 18. The parties held a telephonic meet and confer on January 5, 2017. Defendants’
17 counsel represented to me that the Defendants had no prior knowledge of HR’s involvement, and
18 asked to see the emails produced from Mr. Vacco that precipitated the Subpoena.

19 19. On January 24, 2017, in response to the request to see the e-mails from HR, I sent
20 the Defendants’ counsel certain of the communications received from Mr. Vacco (the “January
21 24 E-mail”). *See* Motion Ex. 5.

22 20. While I advised that I intended to use the Vacco E-mails in the Deposition, I
23 never agreed to any limitation as to the scope of the Deposition. To be sure, at the time of the
24 telephonic conference, HR had not yet even responded to the requests for production of
25 documents. Furthermore, there was never any limitation on the topics listed in the Notice of
26 Deposition, and the same ten topics were listed on the Amended Notices filed on March 29, 2017
27 and April 27, 2017. *See id.*

28 21. Furthermore, and confirming prior communications, the January 24, 2017 email

1 also advised the Defendants' and Paul Morabito's counsel that the Trustee was going to waive
2 the attorney-client privilege as to HR. *Id.*

3 22. The subsequent letter to HR's general counsel advising of the waiver (the
4 "Privilege Waiver Letter") was delivered on January 25, 2017 and the Defendants' and Paul
5 Morabito's counsel, Frank Gilmore, was copied. A true and accurate copy of the Privilege
6 Waiver Letter is attached hereto as **Exhibit A-7**.

7 23. On January 30, 2017, Plaintiff and the Defendants executed and filed a *Stipulation*
8 *Regarding Continued Discovery Dates (Sixth Request)* (the "Sixth Discovery Stipulation") with
9 this Court, which the Court approved by Order on February 3, 2017. A true and accurate copy of
10 the Sixth Discovery Stipulation is attached hereto as **Exhibit A-8**.

11 24. The Sixth Discovery Stipulation expressly stated that the late production of the
12 Vacco E-mails "caused the Trustee to issue a subpoena on Hodgson Russ seeking documents and
13 a deposition of the person most knowledgeable of Hodgson Russ (the "Hodgson Deposition")."
14 (Ex A-8 at 3 ¶ 10.) The Defendants agreed to this statement of fact.

15 25. The Defendants further stipulated that the discovery cut-off would be extended, at
16 that time to May 31, 2017, "for the purpose of conducting the . . . Hodgson Deposition. . ." *Id.* at
17 4 ¶ 1.

18 26. On May 25, 2017, the Parties again entered into a *Stipulation Regarding*
19 *Continued Discovery Dates (Seventh Request)* (the "Seventh Discovery Stipulation"), which was
20 approved by the Court on May 26, 2017. A true and accurate copy of the Seventh Discovery
21 Stipulation is attached hereto as **Exhibit A-9**.

22 27. The Seventh Discovery Stipulation again expressly stated that the late production
23 of the Vacco E-mails "caused the Trustee to issue a subpoena on Hodgson Russ seeking
24 documents and a deposition of the person most knowledgeable of Hodgson," and extended the
25 discovery cut-off to July 31, 2017 for the purpose of conducting the Hodgson Deposition. (Ex
26 A-9 at 3 ¶ 10.)

27 28. For the avoidance of all doubt, on May 3, 2017, after the original discovery cut-
28 off, but within the time to conduct the Deposition, the *Defendants themselves* disclosed that the

1 Person Most Knowledgeable for HR was a party with knowledge in this case, having knowledge
2 regarding “of the intent and processes of the alleged wrongful transfers.” A true and accurate
3 copy of the Defendants’ Sixteenth Supplement to NRCP Disclosure of Witnesses and Documents
4 is attached hereto as **Exhibit A-10**.

5 29. Following notice of the Subpoena to HR, the Notice of Deposition, and delivery
6 of the Privilege Letter, absolutely no motions were filed in either Nevada or New York seeking
7 to quash the subpoena or otherwise seeking a protective order or any other relief.

8 30. As a result, on March 7, 2017, HR delivered its response to the Subpoena which
9 included a production of approximately 9000 pages of documents (the “HR Production”).
10 Following the HR Production, there was likewise no objection to the documents produced or
11 waiver of the attorney-client privilege, or any attempts to obtain a protective order.

12 31. Instead, the Defendants waited until the parties had traveled to Buffalo, New
13 York, and arrived at the Deposition before verbally raising improper objections to the scope and
14 timing of the Deposition, and raising allegations that the attorney-client privilege had not been
15 properly waived.

16 32. On July 12, 2017, Plaintiff commenced the deposition of Garry M. Graber, Esq.,
17 one of the two people deemed by HR to be most knowledgeable regarding certain topics listed in
18 the Notice of Deposition. A true and accurate copy of the deposition transcript of Garry M.
19 Graber, Esq. dated July 12, 2017 (Job Number 394849) is attached hereto as **Exhibit A-11**.

20 33. Even if an agreement to limit the scope of the Deposition, which it was not, the
21 Defendants’ counsel made no representation as to what was beyond the scope of the e-mails
22 which themselves are very broad including the following types of discussions:

23 I caught up with Garry (who is back in Buffalo today) on our
24 conversation from yesterday.

25 Garry had a number of additional ideas, including a possible
26 marital split between Paul and Edward pursuant to which Edward
27 could retain some of Paul's assets. We need to better understand
28 California domestic partner laws, first.

Let me know if/when you want to talk.

1
2 Sujata

3
4 Hi Paul,

5 I don't think you should change your State of residence without
6 first comparing the exemption statutes. Also, what about the CA
7 tax residency lawsuit ?

8 Do the furnishings have any material value especially in the
9 present economy in view of the fact that they are used ? And
10 doesn't Edward already own some of the furnishings ? If not
11 exempt and if there is value, It may make more sense for Edward
12 to use his money to buy the stuff back at the auction the creditor
13 would have to hold instead of giving you money that the creditor
14 will just take from you.

15 As we discussed yesterday, used clothing rarely has much resale
16 value - even if originally very expensive. And much of it, if not all
17 of it, could be exempt. Unless you are talking about furs or
18 something for which there is a market, I wouldn't worry about it as
19 I don't think that the creditor will try to take it.

20 I am not sure that the Amex points are transferable. That needs to
21 be checked. If so, you want to start using redeeming them for
22 flights, entertainment, household goods and the like.

23 Garry M. Graber
24 Partner
25 Hodgson Russ LLP
26 tel: 716.848.1273 | fax: 716.819.4666
27 mobile: 716.440.1777
28 ggrab@hodgsonruss.com

From: Paul Morabito [mailto:pmorabito@cowestco.com]
Sent: Thursday, September 23, 2010 10:47 AM
To: Graber, Garry
Subject:

Garry

I have a few questions.

Edward and I plan on changing our primary residence from Reno
to Laguna Beach.

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Change DMV, voter registration, cancel Nevada club memberships, burial plot, resign from State Boards etc

Should Edward buy our household furniture etc from me for the Reno and Palm Springs houses that are not primary ? We have receipts from 2006 for everything worth around \$225,000 new.

Also, what about my clothes ? I was in the hospital for 5 months last year and came out 200 pounds lighter. I spent \$200,000 on a new wardrobe since November.

Finally, are my 2 million American Express airline miles something I can do something with or is that an asset, too ?

Paul Morabito
mobile: (775) 223-3585 efax: (480) 222-1062
email: paulmorabito1964@gmail.com

True and accurate copies of these emails are attached hereto as **Exhibit A-12**.

Dated this 24th of July, 2017.

/s/ Teresa M. Pilatowicz
TERESA M. PILATOWICZ

EXHIBIT A-1

EXHIBIT A-1

1 **DISCOVERY**

2 **BARRY L. BRESLOW, ESQ. – NSB #3023**

3 bbreslow@rbsllaw.com

4 **FRANK C. GILMORE, ESQ. - NSB #10052**

5 fgilmore@rbsllaw.com

6 **Robison, Belaustegui, Sharp & Low**

7 A Professional Corporation

8 71 Washington Street

9 Reno, Nevada 89503

10 Telephone: (775) 329-3151

11 Facsimile: (775) 329-7169

12 Attorneys for Defendants Snowshoe Petroleum,
13 Inc., Superpumper, Inc., Paul Morabito, individually
14 and as Trustee of the Arcadia Living Trust
15 Edward Bayuk, individually and as Trustee of the
16 Edward William Bayuk Living Trust, and
17 Salvatore Morabito.

18 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**

19 **IN AND FOR THE COUNTY OF WASHOE**

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

CASE NO.: CV13-02663

DEPT. NO.: B1

24 **Plaintiffs,**

25 **vs.**

26 **PAUL MORABITO, individually and as Trustee**
27 **of the ARCADIA LIVING TRUST;**
28 **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.

29 **DEFENDANTS' NRCP DISCLOSURE OF WITNESSES AND DOCUMENTS**

30 Defendants above named, by and through their attorneys of record and pursuant to NRCP
31 16.1(a)(1), hereby provide their its initial disclosure of documents produced and persons likely to
32 have discoverable information as follows:

1 **WITNESSES**

- 2 1. Edward Bayuk
3 c/o Robison, Belaustegui, Sharp & Low
4 71 Washington Street
5 Reno, Nevada 89503

6 Mr. Bayuk is a Defendant and has knowledge of the events alleged in Plaintiff's
7 Complaint.

- 8 2. Salvatore Morabito
9 c/o Robison, Belaustegui, Sharp & Low
10 71 Washington Street
11 Reno, Nevada 89503

12 Mr. is a Defendant and has knowledge of the events alleged in Plaintiff's Complaint.

- 13 3. Paul A. Morabito
14 c/o Robison, Belaustegui, Sharp & Low
15 71 Washington Street
16 Reno, Nevada 89503

17 Mr. is a Defendant and has knowledge of the events alleged in Plaintiff's Complaint.

- 18 4. Person Most Knowledgeable of the Lippes Mathias Wexler Friedman, LLP
19 665 Main Street, Suite 300
20 Buffalo, New York 14203

21 The Person Most Knowledgeable of Lippes Mathias Wexler Friedman, LLP is expected to
22 have knowledge of the events alleged in Plaintiff's Complaint.

- 23 5. Person Most Knowledgeable of Spencer P. Cavalier, DVA, ASA
24 Sean P. Dooley
25 Matrix Capital Markets Group, Inc.
26 100 S. Charles Street, Suite 1350
27 Baltimore, MD 21201

28 The Person Most Knowledgeable of the Spencer P. Cavalier, DVA, ASA, Sean P. Dooley,
Matrix Capital Markets Group, Inc. is expected to have knowledge of the events alleged in
Plaintiff's Complaint.

6. All persons identified by any other party in this lawsuit.

Defendants reserve the right to supplement this list of individuals should more information
become available.

///

1 **DOCUMENTS**

2 1. Promissory Note (Bates No. Superpumper 000001-Superpumper 000010, a copy of
3 which is attached hereto.

4 2. Arizona Corporation Commission letter dated October 21, 2010 (Bates No.
5 Superpumper 000011-Superpumper 000018, a copy of which is attached hereto.

6 3. Stock Power (Bates No. Superpumper 000019-Superpumper 000020, a copy of
7 which is attached hereto.

8 4. Unanimous Written Consent of the Board of Directors and Sole Shareholder of
9 Superpumper, Inc. (Bates No. Superpumper 000021-Superpumper 000026, a copy of which is
10 attached hereto.

11 5. Articles of Merger. (Bates No. Superpumper 000027-Superpumper 000032, a copy
12 of which is attached hereto.

13 6. Shareholder Interest Purchased Agreement. (Bates No. Superpumper 000033-
14 Superpumper 000037, a copy of which is attached hereto.

15 7. Consent Agreement (Bates No. Superpumper 000038-Superpumper 000042, a
16 copy of which is attached hereto.

17 8. Assignment Agreement (Bates No. Superpumper 000043-Superpumper 000045, a
18 copy of which is attached hereto.

19 9. Plan of Merger of Consolidated Western Corporation with and into Superpumper,
20 Inc. (Bates No. Superpumper 000046-Superpumper 000063, a copy of which is attached hereto.

21 10. Superpumper, Inc. Valuation of 100 Percent of the Common Equity in
22 Superpumper, Inc. on a Controlling, Market Basis as of August 31, 2010 (Bates No. Superpumper
23 000064-Superpumper 000096, a copy of which is attached hereto.

24 11. Email from Sam Morabito to Michael Vanek. (Bates No. Superpumper 000097-
25 Superpumper 000098, a copy of which is attached hereto.

26 12. All previously produced documents in the *Morabito v. JH, Inc.* litigation ///

27 ///


28 ///

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 1 day of December, 2014.

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



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

PROMISSORY NOTE

\$1,462,213.00

Scottsdale, Arizona
November 1, 2010

FOR VALUE RECEIVED, the undersigned, Snowshoe Petroleum, Inc., a New York corporation, with an address at 14631 N. Scottsdale Road, Suite 125, Scottsdale Arizona 85254 ("Maker") promises to pay to Paul A. Morabito, an individual, with an address at 8581 Santa Monica Blvd., Suite 708, West Hollywood, CA 90069 ("Holder"), pursuant to a certain Shareholder Interest Purchase Agreement dated as of September 30, 2010, the principal sum of One Million Four Hundred Sixty Two Thousand Two Hundred Thirteen Dollars and 00/100 (\$1,462,213.00), together with interest thereon as follows:

The principal balance of this Note shall accrue interest at a rate of four percent (4 %) per annum, compounded annually, and be payable on the original principal balance of this Note. The principal balance of this Note, with interest thereon, shall be repaid by Maker in eighty four (84) monthly installments of Nineteen Thousand Nine Hundred Eighty Six Dollars and 71/100 (\$19,986.71) commencing on December 1, 2010, and on the same day of each month thereafter for the immediately following eighty three (83) months.

Maker shall make all of its payments to Holder at the address of Holder first mentioned above or at such other place as Holder may designate to Maker.

The Maker shall have the right to prepay, in whole or in part, the unpaid interest and principal on this note at any time without premium or penalty. Any prepayments shall be applied first to accrued and unpaid interest and late fees, if any, and then to the principal amount hereof.

Maker waives presentment for payment, demand, notice of nonpayment, protest, and notice of protest, and consent to the terms hereof and to any extension or postponement of the time for payment or any other indulgence and shall remain fully liable hereunder in the event of any such extension, postponement or other indulgence.

Neither this Note nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to a party at the

Superpumper 000001

address for such party set forth above or to such other address as a party hereto may designate in writing to the other parties.

This Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof.

SNOWSHOE PETROLEUM, INC.

By: 

Edward Bayuk, President

SUCCESSOR PROMISSORY NOTE

\$492,937.30

Scottsdale, Arizona
February 1, 2011

FOR VALUE RECEIVED, the undersigned, Snowshoe Petroleum, Inc., a New York corporation, with an address at 14631 N. Scottsdale Road, Suite 125, Scottsdale, Arizona 85254 ("Maker") promises to pay to Paul A. Morabito, an individual, with an address at 8581 Santa Monica Blvd., Suite 708, West Hollywood, CA 90069 ("Holder"), the principal sum of Four Hundred Ninety Two Thousand Nine Hundred Thirty Seven Dollars and 30/100 (\$492,937.30), together with interest thereon as follows:

The principal balance of this Note shall accrue interest at a rate of four percent (4%) per annum, compounded annually, and be payable on the original principal balance of this Note. The principal balance of this Note, with interest thereon, shall be repaid by Maker in eighty four (84) monthly installments of Six Thousand Seven Hundred Thirty Seven Dollars and 86/100 (\$6,737.86), commencing on March 1, 2011, and on the same day of each month thereafter for the immediately following eighty three (83) months.

Maker shall make all of its payments to Holder at the address of Holder first mentioned above or at such other place as Holder may designate to Maker.

The Maker shall have the right to prepay, in whole or in part, the unpaid interest and principal on this note at any time without premium or penalty. Any prepayments shall be applied first to accrued and unpaid interest and late fees, if any, and then to the principal amount hereof.

Maker waives presentment for payment, demand, notice of nonpayment, protest, and notice of protest, and consent to the terms hereof and to any extension or postponement of the time for payment or any other indulgence and shall remain fully liable hereunder in the event of any such extension, postponement or other indulgence.

Neither this Note nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

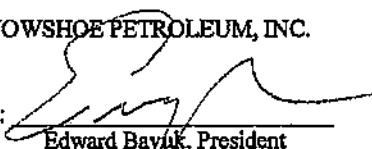
All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to a party at the address for such party set forth above or to such other address as a party hereto may designate in writing to the other parties.

Superpumper 000003

This Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof.

SNOWSHOE PETROLEUM, INC.

By:



Edward Bayuk, President

SUCCESSOR PROMISSORY NOTE

\$939,000.00

Scottsdale, Arizona
February 1, 2011

FOR VALUE RECEIVED, the undersigned, Snowshoe Petroleum, Inc., a New York corporation, with an address at 14631 N. Scottsdale Road, Suite 125, Scottsdale, Arizona 85254 ("Maker") promises to pay to Superpumper, Inc., an Arizona corporation with offices at 14631 N. Scottsdale Road, Suite 125, Scottsdale, Arizona 85254 ("Holder"), the principal sum of Nine Hundred Thirty Nine Thousand Dollars and 00/100 (\$939,000.00), together with interest thereon as follows:

The principal balance of this Note shall accrue interest at a rate of four and 00/100 percent (4 %) per annum, compounded annually, and be payable on the original principal balance of this Note. The principal balance of this Note, with interest thereon, shall be repaid by Maker in eighty four (84) monthly installments of Twelve Thousand Eight Hundred Thirty Five Dollars and 01/100 (\$12,835.01), commencing on March 1, 2011, and on the same day of each month thereafter for the immediately following eighty three (83) months.

Maker shall make all of its payments to Holder at the address of Holder first mentioned above or at such other place as Holder may designate to Maker.

The Maker shall have the right to prepay, in whole or in part, the unpaid interest and principal on this note at any time without premium or penalty. Any prepayments shall be applied first to accrued and unpaid interest and late fees, if any, and then to the principal amount hereof.

Maker waives presentment for payment, demand, notice of nonpayment, protest, and notice of protest, and consent to the terms hereof and to any extension or postponement of the time for payment or any other indulgence and shall remain fully liable hereunder in the event of any such extension, postponement or other indulgence.

Neither this Note nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to a party at the address for such party set forth above or to such other address as a party hereto may designate in writing to the other parties.

Superpumper 000005

This Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof.

SNOWSHOE PETROLEUM, INC.

By: 

Edward Bayuk, President

ASSIGNMENT AGREEMENT

This Assignment Agreement (the "Agreement") is entered into as of the 1st day of February, 2011, by and between Superpumper, Inc., an Arizona corporation ("Assignee"), Paul A. Morabito, an individual ("Assignor") and Snowshoe Petroleum, Inc., a New York corporation, with an address at 14631 N. Scottsdale Road, Suite 125, Scottsdale Arizona 85254 ("SnowPet").

WITNESSETH:

WHEREAS, the parties hereto are parties to a certain term note dated September 1, 2010 in the principal amount of \$939,000.00 in which the Assignor is the Maker and the Assignee is the successor corporation following a merger with the original Holder, Consolidated Western Corporation, the merger having been consummated September 29, 2010 (the "PM Note"); and

WHEREAS, the Assignor is a Holder under a certain promissory note dated November 1, 2010 in the principal amount of \$1,462,213.00, in which SnowPet is the Maker (the "SnowPet Note"); and

WHEREAS, the Assignor wishes to assign and the Assignee desires to assume payments in the principal amount of \$939,000 from SnowPet (the "Assigned Payments"); and

WHEREAS, upon the assignment herein, Assignee shall forgive all amounts due to Assignor by Assignor under the PM Note.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The above recitals are hereby incorporated herein and made a part of this Agreement.
2. Assignment. As of the date hereof, the Assignor assigns, transfers, conveys and delivers over to the Assignee, and the Assignee accepts delivery of, the Assigned Payments.
3. Assumption. The Assignee fully and completely succeeds to, assumes the Assigned Payments from SnowPet under a Successor Note (as hereafter defined) and further agrees to discharge and forgive all obligations of Assignor under the PM Note.
4. Successor Notes. On the date hereof, successor notes to the SnowPet Note shall be delivered to Assignee and Assignor by SnowPet in the principal amounts of \$939,000 and \$492,937.30 (being the remaining principal balance on the SnowPet Note as of the date hereof and following the assignment herein), respectively, along substantially the same terms and conditions of the SnowPet Note (each, a "Successor Note").

Superpumper 000007

5. Further Assurances. Each party agrees to perform such further acts and deliver such further documents as may be reasonably necessary to carry out the terms and intent of this Agreement.

6. Benefits: Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any other person other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

7. Governing Law. This Agreement shall be governed by, and shall be construed and interpreted in accordance with, the laws of the State of New York, without regard to conflicts of laws provisions thereof.

8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which taken together shall constitute a single agreement.

[Remainder of page intentionally blank; Signature page follows]

Superpumper 000008

[Signature page to Assignment Agreement]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first written above.

ASSIGNOR:



Paul A. Morabito

ASSIGNEE:

SUPERPUMPER, INC.

By: 

Name: Edward Bayuk
Title: President

SNOWPET:

SNOWSHOE PETROLEUM INC.

By: 

Name: Edward Bayuk
Title: President

Superpumper 000009

TERM NOTE

\$939,000.00

West Hollywood, California
As of September 1, 2010

FOR VALUE RECEIVED, intending to be legally bound, the undersigned PAUL A. MORABITO, an individual, ("Borrower"), promises to pay to the order of Consolidated Western Corporation, a Nevada corporation, ("Lender") on the dates set forth below, the principal sum of Nine Hundred and Thirty Nine Thousand Dollars and 00/100 (\$939,000.00) (the "Principal") plus interest as agreed below and all fees and costs (including without limitation attorneys' fees and disbursements) the Lender incurs in order to collect any amount due under this Note ("Expenses").

The unpaid Principal of this Note shall earn interest calculated on the basis of a 360-day year for the actual number of days of each year (365 or 366) from and including the date the proceeds of this Note were disbursed to, but not including, the date all amounts hereunder are paid in full, at a rate per year which shall on each day be Four Percent (4%). It is the intent of the Lender and Borrower that in no event shall interest be payable at a rate in excess of the maximum rate permitted by applicable law (the "Maximum Legal Rate"). Solely to the extent necessary to prevent interest under this Note from exceeding the Maximum Legal Rate, any amount that would be treated as excessive under a final judicial interpretation of applicable law shall be deemed to have been a mistake and automatically canceled, and, if received by the Lender, shall be refunded to Borrower.

The Maturity Date of this Note is September 1, 2016. Borrower shall pay interest only in forty-seven (47) consecutive monthly installments commencing on January 1, 2012 and on the first day of each month thereafter and ONE (1) FINAL INSTALLMENT on the Maturity Date in an amount equal to the outstanding Principal together with all other amounts outstanding hereunder including, without limitation, accrued interest, costs and Expenses. Payments shall be made in immediately available United States funds.

Borrower shall have the right to prepay the outstanding balance of this Note in whole, at any time, or in part, from time to time, without premium or penalty, but with accrued interest on the principal being paid to the date of prepayment.

This Note shall be governed by the law of the State of California without regard to principals of conflicts of laws.



PAUL A. MORABITO

Superpumper 000010

COMMISSIONERS
KRISTINK HAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



ARIZONA CORPORATION COMMISSION

ERNEST G. JOHNSON
Executive Director
JEFF GRANT
Director
Corporations Division

October 21, 2010

CT Corporation System
% Gail Elock
2394 E Camelback Rd
Phoenix, AZ 85016

Re: SUPERPUMPER, INC.

We are pleased to notify you that your Articles of Amendment and Merger have been approved.

☒ You must publish the Articles of Amendment and Merger in their entirety. The publication must be in a newspaper of general circulation in the county of the known place of business in Arizona for three consecutive publications. A list of acceptable newspapers in each county is enclosed and is also available on the Commission website. Publication must be completed WITHIN 60 DAYS after October 21, 2010, which is the date the document was approved for filing by the Commission. The entity may be subject to administrative dissolution if it fails to publish. You may file the Affidavit of Publication you will receive from the newspaper, but filing it is not mandatory.

☐ No publication is required.

We strongly recommend that you periodically monitor the company's record with the Commission, which can be viewed at www.azcc.gov/Divisions/Corporations. If you have questions or need further information please contact us at (602) 542-3026 or Toll Free (Arizona residents only) at 1-800-345-5819.

Sincerely,

Lottie Hawkins
Examiner
Corporations Division

1300 WEST WASHINGTON, PHOENIX, ARIZONA 85007-4509
TOLL FREE 1-800-345-5819 • (602) 542-3026

Superpumper 000011

AZ CORPORATION COMMISSION
FILED

SEP 29 2010

FILE NO. 0150875-8

ARTICLES OF AMENDMENT AND MERGER

OF

AZ CORPORATION COMMISSION
FILED

CONSOLIDATED WESTERN CORPORATION
(a Nevada Corporation)

M-1635058-8

INTO

OCT 12 2010

FILE NO. 0150875-8

SUPERPUMPER, INC.
(An Arizona Corporation)

0150875-8

(ARS, §§ 10-1101, 10-1105)

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

PAID
135.00


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Superpumper 000012

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

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

SUPERPUMPER, INC.

By: 
Name: Salvatore Morabito
Title: Vice President

Superpumper 000013

**PLAN OF MERGER
OF
CONSOLIDATED WESTERN CORPORATION**

WITH AND INTO

SUPERPUMPER, INC.

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

RECITALS:

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

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

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

**ARTICLE 1.
THE MERGER**

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

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

Superpumper 000014

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

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

ARTICLE 2. SHAREHOLDER APPROVAL

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

ARTICLE 3. ARTICLES OF INCORPORATION AND BYLAWS

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

ARTICLE 4. DIRECTORS AND OFFICERS

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

ARTICLE 5.
MANNER AND BASIS OF CONVERTING SHARES

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

ARTICLE 6.
EFFECTIVE TIME

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

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

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

CONSOLIDATED WESTERN
CORPORATION

By: 
Name: Salvatore Morabito
Title: Vice President

SUPERPUMPER, INC.

By: 
Name: Salvatore Morabito
Title: Vice President

C T CORPORATION SYSTEM, having been designated to act as statutory

~~agent, hereby consents to act in that capacity until it is removed, or submits its~~

resignation.

C T CORPORATION SYSTEM

By: Virginia G. Flock
Virginia G. Flock
Special Assistant Secretary

RE: Superpumper, Inc.

Superpumper 000018

Stock Power

For Value Received, Edward Bayuk, an individual, does hereby sell, assign and transfer unto Snowshoe Petroleum, Inc., a New York corporation, Ten (10) of the shares of the Common Stock of Superpumper, Inc., an Arizona corporation, standing in his name on the books of said corporation represented by Certificate No. 5 herewith, and does hereby irrevocably constitute and appoint _____ attorney to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated: January 1, 2011



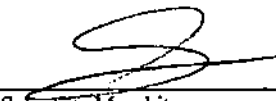
Edward Bayuk

Superpumper 000019

Stock Power

For Value Received, Salvatore Morabito, an individual, does hereby sell, assign and transfer unto Snowshoe Petroleum, Inc., a New York corporation, Ten (10) of the shares of the Common Stock of Superpumper, Inc., an Arizona corporation, standing in his name on the books of said corporation represented by Certificate No. 6 herewith, and does hereby irrevocably constitute and appoint _____ attorney to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated: January 1, 2011



Salvatore Morabito

Superpumper 000020

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

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

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

NOW, THEREFORE, be it

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

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

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

Sep 28 2010 10:04am P001/000

Superpumper 000021

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

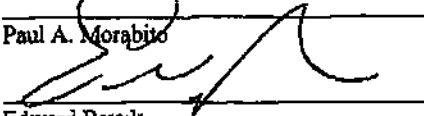
RESOLVED, that the proper officers of the Company be, and they hereby are, authorized and directed to execute and file the articles of merger with the Arizona Secretary of State and to file such other certificates or articles as are required or appropriate with the Secretary of State of the jurisdiction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

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

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

BOARD OF DIRECTORS:


Paul A. Morabito


Edward Bayuk

Salvatore Morabito

SHAREHOLDER:

Consolidated Western Corporation

By: _____
Salvatore Morabito, Vice President

EXHIBIT A

PLAN OF MERGER

Sep 29 2010 10:04am P003/006

Superpumper 000023

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

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

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

NOW, THEREFORE, be it

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

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

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

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

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Superpumper 000024

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

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

DIRECTORS:

Paul A. Morabito

Edward Bayuk

Salvatore Morabito

SHAREHOLDERS:

Paul A. Morabito

Edward Bayuk

Salvatore Morabito

Sep 28 2010 18:04am P005/005

Superpumper 000025

EXHIBIT A

PLAN OF MERGER

Sep 29 2010 10:04am P005/005


Superpumper 000026



140109



ROSS MILLER
Secretary of State
354 North Carson Street, Suite 1
Carson City, Nevada 89701-4530
(775) 654-6703
Website: www.nvsoe.gov

Filed in the office of  Ross Miller Secretary of State State of Nevada	Document Number 20100733183-68 Filing Date and Time 09/29/2010 12:30 PM Entity Number E0156052006-2
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Articles of Merger
(PURSUANT TO NRS 92A.200)
Page 1

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

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

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

Consolidated Western Corporation

Name of merging entity

Nevada

Jurisdiction

Corporation

Entity type *

Name of merging entity

Jurisdiction

Entity type *

Name of merging entity

Jurisdiction

Entity type *

Name of merging entity

Jurisdiction

Entity type *

And,

Superpumper, Inc.

Name of surviving entity

Arizona

Jurisdiction

Corporation

Entity type *

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

Filing Fee: \$350.00

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merger Page 1
Revised: 9-20-10

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ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4620
(775) 684-6758
Website: www.nvss.gov

Articles of Merger

(PURSUANT TO NRS 92A.200)

Page 2

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- 2) Forwarding address where copies of process may be sent by the Secretary of State of Nevada (if a foreign entity is the survivor in the merger - NRS 92A.1 92):

Attn: Superpumper, Inc.

c/o: 14631 North Scottsdale Road, Suite 123
Scottsdale, Arizona 85254-2711

- 3) Choose one:

- ☒ The undersigned declares that a plan of merger has been adopted by each constituent entity (NRS 92A.200).
- ☐ The undersigned declares that a plan of merger has been adopted by the parent domestic entity (NRS 92A.160).

- 4) Owner's approval (NRS 92A.200) (options a, b or c must be used, as applicable, for each entity):

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

(a) Owner's approval was not required from

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

and, or

Name of surviving entity, if applicable

This form must be accompanied by appropriate fees.

Nevada Secretary of State N/A Merger Page 2
Revised: 9-20-10

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ROSS MILLER
Secretary of State
304 North Carson Street, Suite 1
Carson City, Nevada 89701-4820
(775) 684-6708
Website: www.nvsec.gov

Articles of Merger
(PURSUANT TO NRS 92A.200)
Page 3

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

Consolidated Western Corporation

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

and, or:

Superpumper, Inc.

Name of surviving entity, if applicable

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

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merger Page 3
Revised: 8-25-15

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ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
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Website: www.nvsec.gov

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

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

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

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

and, or,

Name of surviving entity, if applicable

This form must be accompanied by appropriate fees.

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

Superpumper 000030



ROSS MELLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4020
(775) 684-6708
Website: www.nvssa.gov

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

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

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

☐ (a) The entire plan of merger is attached;

or,

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

7) Effective date (optional)**: September 28, 2010

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

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

This form must be accompanied by appropriate fees.

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

Superpumper 000031

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ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4820
(775) 684-6708
Website: www.nvssos.gov

Articles of Merger
(PURSUANT TO NRS 92A.200)
Page 6

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

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

Consolidated Women Corporation

Name of merging entity

X  Salvatore Morabito, Vice Pres 09/29/10
Signature Title Date

Name of merging entity

X _____
Signature Title Date

Name of merging entity

X _____
Signature Title Date

Name of merging entity

X _____
Signature Title Date

and

Superpumper, Inc.

Name of surviving entity

X  Salvatore Morabito, Vice Pres 09/29/10
Signature Title Date

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

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

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merge Page 6
Revised 3-25-10

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SHAREHOLDER INTEREST PURCHASE AGREEMENT

THIS SHAREHOLDER INTEREST PURCHASE AGREEMENT ("Agreement") is dated as of the 30 day of September, 2010, by and between PAUL MORABITO, an individual residing at 8581 Santa Monica Blvd., Suite 708, West Hollywood, CA 90069 ("Seller") and SNOWSHOE PETROLEUM, INC., a New York corporation with offices at 14631 N. Scottsdale Road, Suite 125, Scottsdale, Arizona 85254 (the "Company").

WITNESSETH:

WHEREAS, Seller is a shareholder of Superpumper, Inc., an Arizona corporation with offices at 14631 N. Scottsdale Road, Suite 125, Scottsdale, Arizona 85254, (hereinafter "Superpumper") and owns Eighty (80) shares (the "Shares") of the common stock of Superpumper, representing Eighty Percent (80%) of the issued and outstanding shares; and

WHEREAS, Seller wishes to sell all of his Shares to the Company and the Company wishes to purchase the Shares from Seller, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and mutual representations, warranties and covenants contained herein, the parties agree as follows:

ARTICLE 1. PURCHASE AND SALE

1.1 Sale of Shares. Subject to all other terms and conditions of this Agreement, Seller will sell and transfer to the Company, and the Company will purchase from Seller all of the Seller's right, title and interest in Eighty (80) Shares in Superpumper for a purchase price of One Million Thirty Five Thousand Ninety Four Dollars (\$1,035,094) (the "Initial Purchase Price"). The parties acknowledge and agree that the Initial Purchase Price is based upon a preliminary appraisal of the Seller's Shares and that such Initial Purchase Price may be adjusted upward (but not downward) based upon a final appraisal to be completed subsequent to the Closing. To the extent that the Initial Purchase Price is adjusted upward, the Company shall issue to Seller a promissory note (the "Note") for the amount of such adjustment. The Note shall be subordinate to any bank financing of the Company at the time of issuance or any future bank financing and shall be amortized over a seven (7) year term with principal paid annually and interest at a rate of four percent (4%) per annum paid monthly. The parties further acknowledge that the Seller may assign the principal and interest payments from the Company pursuant to the Note to a third party creditor.

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ARTICLE 2.
CLOSING DOCUMENTS

2.1 Closing Documentation. The closing of the purchase and sale of the Seller's Shares (the "Closing") shall be held at the offices of the Company on September 30, 2010 or at such other place as is mutually agreed to between the Company and Seller (the "Closing Date"). At the Closing, Seller shall deliver to the Company an original certificate evidencing Eighty (80) shares duly endorsed for transfer, and the Company shall deliver to Seller the Initial Purchase Price with such payment to be made by wire transfer of immediately available funds to an account designated by Seller. In lieu of a payment directly from the Company, the shareholders of the Company may transfer the Initial Purchase Price directly to the Seller and such transfer shall be deemed a capital contribution to the Company by the shareholders in the amount of the Initial Purchase Price and a corresponding payment by the Company to the Seller in satisfaction of the Initial Purchase Price..

ARTICLE 3.
REPRESENTATIONS AND WARRANTIES OF SELLER

3.1 Seller represents and warrants to the Company as follows:

(a) This Agreement constitutes a legal, valid and binding obligation of Seller enforceable against him in accordance with its terms. Seller shall effectively transfer to the Company good and marketable title to the Shares free and clear of all liabilities, liens, encumbrances and other restrictions.

(b) Seller has concluded an assessment satisfactory prior to entering into this Agreement that the Purchase Price reflects adequate consideration for the purchase of the Shares.

ARTICLE 4.
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

4.1 The Company represents and warrants to Seller as follows:

(a) Organization, Corporate Power, Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of New York. The Company has the power and authority to (i) own and hold its properties and to carry on its business as now conducted; (ii) execute and deliver and perform its obligations under this Agreement, and all other documents required to be delivered by the Company hereunder (collectively the "Transaction Documents"); and (iii) to acquire the Seller's Shares.

(b) Validity. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company,

enforceable in accordance with its terms, subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency and similar laws and to general principles of equity. The Transaction Documents, when executed and delivered by the Company in accordance with this Agreement, will constitute the legal, valid and binding obligations of the Company, enforceable in accordance with their respective terms, subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency and similar laws and to general principles of equity.

(c) No Violation. Neither the execution and delivery of this Agreement and the other Transaction Documents, nor the consummation by the Company of the transactions contemplated hereby and thereby, will: (1) violate any statute or law, or any rule or regulation; (2) violate any order, writ, injunction or decree of any court or governmental authority; or (3) violate or conflict with or constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, or will result in the termination of, or accelerate the performance required by, any term or provision of: (i) the Certificate of Incorporation and the By-Laws of the Company; or (ii) any lease, contract, commitment, understanding, arrangement, agreement or restriction of any kind or character to which the Company is a party or by which the Company or any of its assets or properties may be bound or affected. No filing with or consent, approval, authorization or action by any governmental or regulatory authority is required in connection with the execution and delivery by the Company of this Agreement or the consummation by the Company of the transactions contemplated hereby.

(d) Brokers. Neither the Company, nor any of its officers, directors or employees, as the case may be, has employed any broker or finder or incurred any liability for brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement.

ARTICLE 5. MISCELLANEOUS

5.1 Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof and no party shall be liable or bound to the other in any manner by any warranties, representations, covenants or agreements except as specifically set forth herein or expressly required to be made or delivered pursuant hereto.

5.2 Modifications. Any amendment, change or modification of this Agreement shall be void unless in writing and signed by all parties hereto.

5.3 Further Assurances. Seller and the Company shall execute and deliver to the other party such instruments as may be reasonably required in connection with the performance of this Agreement and each shall take all further actions as may be reasonably requested to carry out the transactions contemplated by this Agreement.

5.4 Binding Effect and Benefits. This Agreement shall be binding upon and shall inure to the benefit of the Company and Seller and their respective successors, assigns, transferees and legal representatives.

5.5 Notices. Any notices or other communications required or permitted to be given pursuant to this Agreement shall be deemed to be given if in writing and delivered personally or sent by certified mail, postage prepaid addressed as follows:

(a) To Seller:

Paul Morabito
8581 Santa Monica Blvd.
Suite 708
West Hollywood, CA 90069

(b) To the Company:
Snowshoe Petroleum, Inc.
14631 Scottsdale Road, Suite 125
Scottsdale, AZ 85254

With a copy to:

Lippes Mathias Wexler Friedman LLP
665 Main Street - Suite 300
Buffalo, NY 14203
Attention: Dennis C. Vacco, Esq.

or such other address as shall be furnished in writing by Seller or the Company to the other party.

5.6 Governing Law. This Agreement shall be governed, construed and enforced in accordance with the internal laws of the State of New York without regard to conflicts of laws principles.

5.7 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement.

[The Remainder of this Page Intentionally Blank]

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Agreement as of the date first written above.

SELLER:

PAUL MORABITO

COMPANY:

SNOWSHOE PETROLEUM, INC.

By: _____

Edward Bayuk, Shareholder and Director

CONSENT AGREEMENT

THIS CONSENT AGREEMENT (the "Consent") is made as of 12/22/10 (the "Effective Date"), by and among SUPERPUMPER, INC., an Arizona corporation ("Lessee"); PAUL A. MORABITO, an unmarried individual ("Morabito"); and SPIRIT SPE PORTFOLIO 2007-3, LLC, a Delaware limited liability company ("Lessor").

RECITALS

A. Lessee and Lessor are parties to that certain Master Lease Agreement dated as of July 2, 2007, as amended by that certain First Amendment to Master Lease Agreement dated July 3, 2007 (as further amended or modified, the "Lease").

B. Morabito made that certain Unconditional Guaranty of Payment and Performance dated as of July 2, 2007 (the "Morabito Guaranty"), guaranteeing certain Lessee obligations under the Lease.

C. On September 29, 2010, the 100% shareholder of Lessee was merged into Lessee. On September 30, 2010 Morabito sold his controlling interest in Lessee to Snowshoe Petroleum, Inc., a New York corporation ("Snowshoe"). Such merger and sale of interest are collectively referred to as the "Transaction."

D. Pursuant to Section 23(B) of the Lease, the Transaction constitutes a Change of Control requiring the prior written consent of Lessor.

E. A Change of Control made in violation of Section 23 of the Lease is voidable at the sole option of Lessor.

F. Lessor is willing to grant consent for the Transaction on the terms and conditions of this Consent.

FOR VALUABLE CONSIDERATION, it is agreed as follows:

1. Defined Terms. Capitalized terms used and not defined herein shall have the meanings set forth in the Lease.

2. Representations and Warranties of Lessee and Morabito. Each of Lessee and Morabito represents and warrants to Lessor as follows:

(a) Lessee is the sole lessee under the Lease and is the sole owner and holder of the lessee's interest thereunder and of the leasehold estate.

(b) The Lease is in full force and effect as of the date hereof, enforceable against Lessee in accordance with its terms.

(c) The Morabito Guaranty is in full force and effect as of the date hereof, enforceable against Morabito in accordance with its terms.

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(d) There are no actions, suits, proceedings or claims pending or threatened with respect to or in any manner affecting the Lease, nor are there any facts or circumstances which could reasonably form the basis for any such actions, suits, claims or proceedings.

(e) Other than with respect to the Transaction, Lessee is not in default under any provision of the Lease, and no event has occurred which, with the passage of time or action, would result in a default under the Lease.

(f) The Transaction is being made in the ordinary course of Lessee's and Morabito's business and is not done with the intent or design to defeat, delay or defraud creditors of Lessee or Morabito.

(g) Snowshoe is 100% owned by Edward Bayuk, an unmarried individual, and Salvatore Morabito, an unmarried individual.

3. Conditions to Lessor Consent.

(a) Only to the extent required by Lessor's lender, Lessor's consent is conditioned on Lessor receiving the written approval of Lessor's lender to this Consent and the Transaction.

(b) Together with Lessee's execution of this Consent, Lessee shall deliver executed originals of the Unconditional Guaranty of Payment and Performance executed by Edward Bayuk and Salvatore Morabito substantially in the form attached hereto as Exhibit A.

(c) Lessor's consent is given in reliance on the representations and warranties contained in Section 2. If any of the representations or warranties are untrue as of the date of this Consent, Lessor, at Lessor's election, may revoke Lessor's consent to the Transaction.

(d) In any action or proceeding involving any laws affecting the right of creditors, if (i) the obligations of Lessee under the Lease or Morabito under the Morabito Guaranty may be held or determined to be void, invalid or unenforceable on account of this Consent or (ii) a creditor brings any claim against Lessor for consenting to the Transaction, then, Lessor, at Lessor's election, may revoke Lessor's consent to the Transaction.

(e) In the event Lessor revokes consent to the Transaction, the Transaction shall be deemed a Change of Control in violation of the Lease.

4. Lessor's Expenses. Lessee agrees to pay Lessor's costs and expenses related to this Consent, including, without limitation, Lessor's attorney's fees.

5. Affirmation of Morabito Guaranty. Morabito reaffirms all terms, conditions, responsibilities, obligations and liabilities of the Morabito Guaranty.

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6. Binding Effect. This Consent shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns.

7. Choice of Law. This Consent shall be construed in accordance with the laws of the State of Arizona.

8. Attorneys' Fees. Should either party institute any legal action or proceeding to enforce the provisions of this Consent, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with the exercise of its rights and remedies hereunder as well as court costs and expert witness fees as the court shall determine.

9. Counterparts. This Consent may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Consent as of the date first set forth above.

SUPERPUMPER, INC., an Arizona corporation

By: 

Name.

Edward Ewert

Title:

President, Superpumper Inc

"Lessee"


PAUL A. MORABITO

"Morabito"

SPIRIT SPE PORTFOLIO 2007-3, LLC, a
Delaware limited liability company

By: 

Name.

SEAN HUFFORD

Title:

VP

"Lessor"

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EXHIBIT A
FORM OF GUARANTY

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ASSIGNMENT AGREEMENT

This Assignment Agreement (the "Agreement") is entered into as of the 1st day of February, 2011, by and between Superpumper, Inc., an Arizona corporation ("Assignee"), Paul A. Morabito, an individual ("Assignor") and Snowshoe Petroleum, Inc., a New York corporation, with an address at 14631 N. Scottsdale Road, Suite 125, Scottsdale Arizona 85254 ("SnowPet").

WITNESSETH:

WHEREAS, the parties hereto are parties to a certain term note dated September 1, 2010 in the principal amount of \$939,000.00 in which the Assignor is the Maker and the Assignee is the successor corporation following a merger with the original Holder, Consolidated Western Corporation, the merger having been consummated September 29, 2010 (the "PM Note"); and

WHEREAS, the Assignor is a Holder under a certain promissory note dated November 1, 2010 in the principal amount of \$1,462,213.00, in which SnowPet is the Maker (the "SnowPet Note"); and

WHEREAS, the Assignor wishes to assign and the Assignee desires to assume payments in the principal amount of \$939,000 from SnowPet (the "Assigned Payments"); and

WHEREAS, upon the assignment herein, Assignee shall forgive all amounts due to Assignee by Assignor under the PM Note.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The above recitals are hereby incorporated herein and made a part of this Agreement.
2. Assignment. As of the date hereof, the Assignor assigns, transfers, conveys and delivers over to the Assignee, and the Assignee accepts delivery of, the Assigned Payments.
3. Assumption. The Assignee fully and completely succeeds to, assumes the Assigned Payments from SnowPet under a Successor Note (as hereafter defined) and further agrees to discharge and forgive all obligations of Assignor under the PM Note.
4. Successor Notes. On the date hereof, successor notes to the SnowPet Note shall be delivered to Assignee and Assignor by SnowPet in the principal amounts of \$939,000 and \$492,937.30 (being the remaining principal balance on the SnowPet Note as of the date hereof and following the assignment herein), respectively, along substantially the same terms and conditions of the SnowPet Note (each, a "Successor Note").

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5. Further Assurances. Each party agrees to perform such further acts and deliver such further documents as may be reasonably necessary to carry out the terms and intent of this Agreement.

6. Benefits; Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any other person other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

7. Governing Law. This Agreement shall be governed by, and shall be construed and interpreted in accordance with, the laws of the State of New York, without regard to conflicts of laws provisions thereof.

8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which taken together shall constitute a single agreement.

[Remainder of page intentionally blank; Signature page follows]

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[Signature page to Assignment Agreement]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first written above.

ASSIGNOR:



Paul A. Morabito

ASSIGNEE:

SUPERPUMPER, INC.

By: 

Name: Edward Bayuk

Title: President

SNOWPET:

SNOWSHOE PETROLEUM INC.

By: 

Name: Edward Bayuk

Title: President

Superpumper 000045

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

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

RECITALS:

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

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

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

ARTICLE 1.
THE MERGER

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

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

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

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

ARTICLE 2. SHAREHOLDER APPROVAL

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

ARTICLE 3. ARTICLES OF INCORPORATION AND BYLAWS

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

ARTICLE 4. DIRECTORS AND OFFICERS

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

ARTICLE 5.
MANNER AND BASIS OF CONVERTING SHARES

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

ARTICLE 6.
EFFECTIVE TIME

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

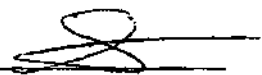
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IN WITNESS WHEREOF, the undersigned corporations have executed this Plan of Merger as of the date first set forth above.

CONSOLIDATED WESTERN
CORPORATION

By: 
Name: Salvatore Morabito
Title: Vice President

SUPERPUMPER, INC.

By: 
Name: Salvatore Morabito
Title: Vice President

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

INTO

SUPERPUMPER, INC.
(An Arizona Corporation)

(ARS, §§ 10-1101, 10-1105)

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

Superpumper 000050

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

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

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

SUPERPUMPER, INC.

By: 

Name: Salvatore Morabito

Title: Vice President

Superpumper 000051

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

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

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

NOW, THEREFORE, be it

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

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

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

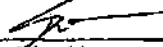
RESOLVED, that each officer of the Company be, and each of them hereby is, authorized and empowered to do or cause to be done all such acts, deeds and things and to make, execute and deliver, or cause to be made, executed or delivered, all such agreements, undertakings, documents, instruments or certificates,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

Superpumper 000052


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

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

DIRECTORS:

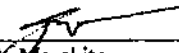


Paul A. Morabito

Edward Bayuk


Salvatore Morabito

SHAREHOLDERS:



Paul A. Morabito

Edward Bayuk


Salvatore Morabito

Superpumper 000053

EXHIBIT A

PLAN OF MERGER

Superpumper 000054

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

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

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

NOW, THEREFORE, be it

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

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

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

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

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

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

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

BOARD OF DIRECTORS:


Paul A. Morabito

Edward Bayuk

Salvatore Morabito

SHAREHOLDER:

Consolidated Western Corporation

By: 
Salvatore Morabito, Vice President

EXHIBIT A

PLAN OF MERGER

Superpumper 000057



140302



ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(775) 684-6700
Website: www.nvsos.gov

Articles of Merger

(PURSUANT TO NRS 92A.200)

Page 1

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Articles of Merger

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

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

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

Consolidated Western Corporation

Name of merging entity

Nevada

Corporation

Jurisdiction

Entity type *

Name of merging entity

Jurisdiction

Entity type *

Name of merging entity

Jurisdiction

Entity type *

Name of merging entity

Jurisdiction

Entity type *

and,

Superpumper, Inc.

Name of surviving entity

Arizona

Corporation

Jurisdiction

Entity type *

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

Filing Fee: \$350.00

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merger Page 1
Revised: 9-25-10

Superpumper 000058



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

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

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- 2) Forwarding address where copies of process may be sent by the Secretary of State of Nevada (if a foreign entity is the survivor in the merger - NRS 92A.190):

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

- 3) Choose one:

- ☒ The undersigned declares that a plan of merger has been adopted by each constituent entity (NRS 92A.200).
☐ The undersigned declares that a plan of merger has been adopted by the parent domestic entity (NRS 92A.180).

- 4) Owner's approval (NRS 92A.200) (options a, b or c must be used, as applicable, for each entity):

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

(c) Owner's approval was not required from

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

and, or:

Name of surviving entity, if applicable

This form must be accompanied by appropriate fees.

Nevada Secretary of State S2A Merger Page 2
Revised: 9-20-10

Superpumper 000059



ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(775) 684-5738
Website: www.nysos.gov

Articles of Merger
(PURSUANT TO NRS 82A.200)
Page 3

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

Consolidated Western Corporation

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

and, or;

Superpumper, Inc.

Name of surviving entity, if applicable

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

This form must be accompanied by appropriate fees.

Nevada Secretary of State 82A Merger Page 3
Revised: 9-25-12

Superpumper 000060



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

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

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(c) Approval of plan of merger for Nevada non-profit corporation (NRS 92A.160):

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

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

and, or:

Name of surviving entity, if applicable

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merger Page 4
Revised: 9-23-13

Superpumper 000061



ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(775) 684-6708
Website: www.nvsec.gov

Articles of Merger

(PURSUANT TO NRS 92A.200)

Page 5

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

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

☐ (a) The entire plan of merger is attached;

or,

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

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

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

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

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merger Page 5
Revised: 9-20-10

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

Articles of Merger

(PURSUANT TO NRS 92A.200)

Page 6

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

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

Consolidated Western Corporation

Name of merging entity

X

Signature

Salvatore Morabito, Vice Pres

Title

09/29/10

Date

Name of merging entity

X

Signature

Title

Date

Name of merging entity

X

Signature

Title

Date

Name of merging entity

X

Signature

Title

Date

and,

Superpumper, Inc.

Name of surviving entity

X

Signature

Salvatore Morabito, Vice Pres

Title

09/29/10

Date

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

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

This form must be accompanied by appropriate fees.

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

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SUPERPUMPER, INC.

**VALUATION OF 100 PERCENT OF THE COMMON EQUITY IN
SUPERPUMPER, INC. ON A CONTROLLING, MARKETABLE BASIS
As of August 31, 2010**

Prepared for:
Superpumper, Inc.
c/o Dennis Vacco, Esquire
Lippes Mathias Wexler Friedman, LLP
665 Main Street, Suite 300
Buffalo, NY 14203

Prepared by:
Spencer P. Cavalier, CFA, ASA
Sean P. Dooley
Matrix Capital Markets Group, Inc.
100 S. Charles Street, Suite 1350
Baltimore, MD 21201

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Superpumper 000064

MATRIX

CAPITAL MARKETS GROUP

Maximizing The Value Of Private Business

October 13, 2010

PERSONAL AND CONFIDENTIAL

Superpumper, Inc.
c/o Dennis Vacco, Esquire
Lippas Mathias Wexler Friedman, LLP
665 Main Street, Suite 300
Buffalo, NY 14203

RE: Superpumper, Inc.

Dear Mr. Vacco:

At your request, we have performed a valuation engagement to determine the fair market value of 100 percent of the common equity (Subject Interest) in Superpumper, Inc. (Superpumper or the Company), on a controlling, marketable basis, as of August 31, 2010 (the Valuation Date).

Fair market value is based in large part upon the expectation of future benefits to be received by the prospective purchaser and to be given up by the prospective seller, which are directly attributable to the asset being transferred.

Fair market value is defined in Section 25.2512-1 of the U.S. Treasury regulations as:

"The price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts."

The objective of a valuation is to express an unambiguous opinion as to the value of the business, business ownership interest, or security, which is supported by all procedures that the valuator deems to be relevant to the valuation.

A valuation has the following qualities:

1. Its conclusion of value is expressed as either a single dollar amount or a range.

Superpumper, Inc.
c/o Dennis Vacco, Esquire
October 13, 2010
Page 2

2. It considers all relevant information as of the valuation date available to the valuator at the time of the performance of the valuation.
3. The valuator conducts appropriate procedures to collect and analyze all information expected to be relevant to the valuation.
4. The valuation is based upon consideration of all conceptual approaches deemed to be relevant by the valuator.

For our valuation, we used standard valuation approaches and methodologies. The financial information in this valuation, including the accompanying exhibits, is presented solely to assist in the development of our conclusion of value, and it should not be used for any other purpose. Because of the limited purpose of this information, it may contain departures from generally accepted accounting principles. The conclusion of value given is based on information provided in part by the management of Superpumper.

This report is a restricted-use report and is an abridged version of the information that would be provided in a detailed valuation report and therefore does not contain the same level of detail as a detailed report. This restricted-use report is restricted for use by the shareholders of Superpumper for corporate planning purposes only. No other third parties should rely on the information contained in this report without seeking professional advice. We have no obligation to update this report or our conclusion of value for information that comes to our attention after the date of this report.

Based on our analysis as described in this valuation report, it is our estimate that the fair market value of 100 percent of the common equity in Superpumper, Inc., on a controlling, marketable basis, as of August 31, 2010 is \$6,484,514.


This conclusion or opinion of value is subject to the Statement of Valuation Assumptions and Limiting Conditions included in the report on pages 5 through 7. Neither Matrix Capital Markets Group, Inc. nor the individuals involved in preparing this valuation has any present or contemplated future interest in Superpumper, Inc. or any other interests that might tend to prevent making a fair and unbiased valuation. The details of the valuation and the basis for conclusions are summarized in this report and the details of

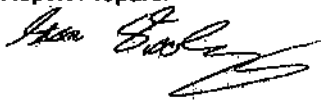
Superpumper 000066

Superpumper, Inc.
c/o Dennis Vacco, Esquire
October 13, 2010
Page 3

our conclusions are included in our workpaper files. This restricted-use report is to be used solely by you for corporate planning purposes and should not be used for any other purpose. If you have any questions, please contact Spencer P. Cavalier or Sean P. Dooley, the report preparers.

Matrix Capital Markets Group
MATRIX CAPITAL MARKETS GROUP


Spencer P. Cavalier, CFA, ASA
Report Preparer


Sean P. Dooley
Report Preparer

Superpumper 000067

SUPERPUMPER, INC.
VALUATION OF 100 PERCENT OF THE COMMON EQUITY IN
SUPERPUMPER, INC. ON A CONTROLLING, MARKETABLE BASIS
As of August 31, 2010

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Superpumper 000068

INTRODUCTION AND BACKGROUND

A. Purpose of the Valuation

Matrix Capital Markets Group, Inc. (Matrix) was retained to determine the fair market value of 100 percent of the common equity in Superpumper, Inc. (Superpumper or the Company), on a controlling, marketable basis as of August 31, 2010 (the Valuation Date). It is our understanding that this restricted-use valuation report will be utilized by the Company and its shareholders for corporate planning purposes.

B. Standard of Value and Premise of Value

Fair market value is based in large part upon the expectation of future benefits to be received by the prospective purchaser and to be given up by the prospective seller, which are directly attributable to the asset being transferred.

Fair market value is defined in Section 25.2512-1 of the U.S. Treasury regulations as:

"The price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts."

Our valuation analysis was conducted under the premise of value in continued use, as a going concern enterprise. It is our opinion that this value represents the appropriate premise of value of the Subject Interest.

C. Description of Information Considered

In formulating our opinion of value, we have relied upon numerous sources of information including, but not limited to, the following:

- U.S. economy sources include: Business Valuation Resources: "Economic Outlook, 2nd Quarter 2010."
- Interest Rates from <http://www.federalreserve.gov/releases/h15/data.htm>
- Ibbotson Associates "Stocks, Bonds, Bills, and Inflation 2010 Yearbook"
- Other Company information, as provided by the Company, including, but not limited to store and corporate level financials for the years ending December 31, 2007, 2008, and 2009, as well as for the trailing twelve month period ended August 31, 2010.

This information is believed to be reliable, but we make no representation as to the accuracy or completeness of the information made publicly available or as furnished to us by the management of Superpumper.

THE APPRAISAL PROCESS

A. Revenue Ruling 59-60

Our valuation analysis takes into consideration Revenue Ruling 59-60. Revenue Ruling 59-60 outlines and reviews the general factors to be considered in the valuation of capital stock of closely held companies and thinly traded public corporations, as follows:

- The nature of the business and the history of the enterprise from its inception.
- The economic outlook in general and the conditions and outlook of the specific industry in particular.
- The book value of the stock and financial condition of the business.
- The earnings capacity of the Company.
- The dividend paying capacity.
- Whether or not the Company has goodwill or other intangible value.
- Sales of the stock and the size of the block of stock to be valued.
- The market prices of stocks of corporations engaged in the same or a similar line of business having their stock actively traded in a free and open market, either on an exchange or over-the-counter.

B. Approaches and Methods Considered

Three approaches and several methods are available for valuing closely held corporate interests in accordance with generally accepted valuation principles. The three generally accepted approaches are: (1) the Income Approach, (2) the Market Approach, and (3) the Cost (or Asset-Based) Approach. That is, the value of an entity or its securities is based upon either: (1) the present value of an income stream generated by or attributable to the property being valued, (2) arms-length transactions of generally similar entities or securities, or (3) the aggregate value of the underlying assets. These three approaches are defined by the American Society of Appraisers as follows:

Income Approach - A general way of determining a value indication of a business, business ownership interest, or security using one or more methods wherein a value is determined by converting anticipated benefits. This approach is based on the fundamental valuation principle that the value of a business is equal to the present worth of the future benefits of ownership.

Market Approach - A general way of determining a value indication of a business, business ownership interest, or security using one or more methods that compare the subject to similar businesses, business ownership interests, or securities that have been sold.

Cost Approach - A general way of determining a value indication of a business' assets and/or equity interest using one or more methods based directly on the value of the assets of the business less liabilities.

The approaches and methods used depend upon the purpose of the engagement, type of business being valued, and the nature of the business being valued. In some cases, all three approaches may be called for; in others, only one may be appropriate.

APPRAISAL PROCEDURES AND VALUATION METHODS USED

A. Methods Used or Not Used on a Specific Basis

For our valuation, we considered the use of the following five valuation methods:

Income Approach – Discounted Cash Flow Method – This method is based on the premise that the value of a business, business ownership interest, or security interest is estimated by the present value of the future benefits of ownership.

Income Approach – Capitalization of Net Cash Flow Method – This method is based on the premise that the value of a business, business ownership interest, or security interest is estimated by dividing the expected business economic benefit, such as the seller's discretionary cash flow, by the capitalization rate.

Market Approach – Guideline Publicly Traded Company Method – This method is based on the premise that the value of the business, business ownership interest, or security interest is estimated based upon what astute and rational capital market investors would pay to own such an interest.

Market Approach – Guideline Merged and Acquired Company Method – This method is based on the premise that the value of the business, business ownership interest, or security interest is estimated by comparing the subject company to guideline companies that have been merged or acquired during a time period near the valuation date.

Cost (or Asset-Based) Approach – Adjusted Balance Sheet Method – The current values of all the subject company's assets is discretely estimated and accumulated. In addition, the current values of all of the subject company's liabilities are estimated. The value of the equity of the business enterprise is the current value of all of the assets of the subject company less the current value of all of the subject company's liabilities.

In our valuation, we used (1) the capitalization of net cash flow method – both adjusted historical cash flow and normalized single period (Income Approach), (2) the guideline publicly traded company method (Market Approach), and (3) the adjusted balance sheet (Cost Approach).

SUMMARY AND CONCLUSION

A. Summary of Value Indications and Conclusion of Value

Exhibit 4 presents the indicated value of a 100 percent common equity ownership interest in Superpumper on a controlling, marketable basis using the Capitalization of Normalized Single Period Cash Flow Method, Capitalization of Adjusted Historical Cash Flow Method, Guideline Publicly Traded Company Method, and the Adjusted Balance Sheet Method.

This resulted in a concluded fair market value of 100 percent of the common equity in Superpumper, Inc., on a controlling, marketable basis, as of August 31, 2010 of \$6,484,514.

This valuation engagement was conducted in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation. This valuation engagement is subject to the Statement of Valuation Assumptions and Limiting Conditions included in the report on pages 5 through 7.

Neither Matrix Capital Markets Group, Inc. nor the individuals involved in preparing this valuation have any present or contemplated future interest in Superpumper, Inc. or any other interests that might tend to prevent making a fair and unbiased valuation. The details of the valuation and the basis for conclusions are summarized in this restricted-use report and the details of our conclusions are included in our workpaper files. This valuation engagement was performed solely for the purpose described in this restricted-use report and the resulting estimate of value should not be used for any other purpose. The estimate of value resulting from a valuation engagement is expressed as a conclusion of value. We have no obligation to update the report or the conclusion of value for information that comes to our attention after the date of the report. If you have any questions, please contact please contact Spencer P. Cavalier or Sean P. Dooley, the preparers of this report.

**STATEMENT OF VALUATION ASSUMPTIONS
AND LIMITING CONDITIONS**

Superpumper 000073

STATEMENT OF VALUATION ASSUMPTIONS AND LIMITING CONDITIONS

This valuation report has been prepared pursuant to the following general assumptions and limiting conditions:

1. Full compliance with all applicable Federal, state, and local regulations and laws is assumed. The valuation has been prepared in conformity with, and is subject to, the requirements of the code of professional ethics and standards of professional conduct of the American Society of Appraisers as well as Standard 10 of the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation (USPAP).
2. No part of the contents of this report, especially any conclusions of value, the identity of the valuers, or the firm with which the valuers are associated or any reference to any of their professional designations, shall be disseminated to the public through advertising, public relations, reproduction, news, sales, or other media without our prior written consent and approval. Should you reproduce, disclose, or distribute this report and its conclusions in violation of this agreement, you agree to defend and indemnify us for defense costs and any resulting liability that may be incurred due to such unauthorized release.
3. The opinion of value presented in this report applies to this valuation only and may not be used out of the context presented herein. This valuation is valid only for the valuation date or dates, and transfer date or dates specified herein and only for the appraisal purpose or purposes specified herein. Our value opinion is based on the purchasing power of the United States dollar as of the appraisal date.
4. Neither Matrix Capital Markets Group, Inc. nor any individual signing or associated with this report have any present or future contemplated interest in the assets valued.
5. Neither our employment nor our compensation in connection with this report is in any way contingent upon the conclusions reached or values estimated. The concluded value determined by Matrix Capital Markets Group, Inc. was not based on a minimum valuation, a specific valuation, or the approval of a loan.
6. Information furnished by others, upon which all or portions of this report are based, is believed to be reliable but has not been verified in all cases. No warranty is given as to the accuracy of such information and we assume no responsibility for such information.

7. This valuation report cannot be included, or referred to, in any Securities and Exchange Commission filings or other public documents.
8. Neither Matrix Capital Markets Group, Inc. nor any individuals signing or associated with this report shall be required by reason of this report to give testimony or appear in court or other legal proceedings, unless specific arrangements therefore have been made.
9. The concluded value is predicated on the financial structure prevailing as of the effective date of this report.
10. No responsibility is taken for changes in market conditions, and no obligation is assumed to revise this report to reflect events or conditions which occur subsequent to the date hereof. We have no obligation to update the report or the conclusion of value for information that comes to our attention after the date of the report.
12. It is assumed that all required licenses, certificates of occupancy, consents, intangible assets, intellectual property, trademarks, trade names, franchise rights, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
13. An independent appraisal of the fixed assets of Superpumper, Inc. was not obtained. Had an independent appraisal been obtained, the resulting opinion of value may have been different, which would cause our opinion of value to be different.
14. We have relied, in part, on management's forecasts for Superpumper, Inc. We do not provide assurance on the achievability of the results forecasted by management because events and circumstances frequently do not occur as expected; differences between actual and expected results may be material; and achievement of the forecasted results is dependent on actions, plans, and assumptions of management. Accordingly, if management's assumptions were to change, our valuation conclusions may change.
15. The conclusion of value arrived at herein is based in the assumption that the current level of management expertise and effectiveness would continue to be maintained, and that the character and integrity of the enterprise through any sale, reorganization, exchange, or diminution of the owners' participation would not be materially or significantly changed.

16. This report and the conclusion of value arrived at herein are for the exclusive use of our client for the sole and specific purposes as noted herein. They may not be used for any other purpose or by any other party for any purpose. Furthermore, the report and conclusion of value are not intended by the author and should not be construed by the reader to be investment advice in any manner whatsoever. The conclusion of value represents the considered opinion of Matrix Capital Markets Group, Inc., based on information furnished to them by Superpumper, Inc. and other sources.
17. No change of any item in this appraisal report shall be made by anyone other than Matrix Capital Markets Group, Inc., and we shall have no responsibility for any such unauthorized change.
18. Unless otherwise stated, no effort has been made to determine the possible effect, if any, on the subject business due to future Federal, state, or local legislation, including any environmental or ecological matters or interpretations thereof.
19. We have conducted interviews with the Chief Executive Officer, Chief Financial Officer and other personnel of Superpumper concerning past, present, and prospective operating results of the Company.
20. Except as noted, we have relied on the representations of the Company and other third parties concerning the value and useful condition of all equipment, real estate, investments used in the business, and any other assets or liabilities except as specifically stated to the contrary in this report. We have not attempted to confirm whether or not all assets of the business are free and clear of liens and encumbrances or that the entity has good title to all assets.
21. Matrix Capital Markets Group, Inc. has not made a specific compliance survey or analysis of the subject property or store locations to determine whether it is subject to, or in compliance with, the Americans With Disabilities Act of 1990, and this valuation does not consider the effect, if any, of noncompliance.
22. The parties for which the information and use of the valuation report is restricted are identified; the valuation report is not intended to be and should not be used by anyone other than such parties.

VALUATORS' REPRESENTATION AND CERTIFICATION

Superpumper 000077

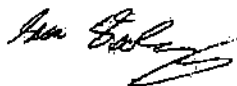
VALUATORS' REPRESENTATION AND CERTIFICATION

We hereby certify, to the best of our knowledge and belief, the following statements regarding this valuation engagement:

1. The statements of facts contained in this report, upon which the analyses, opinions, and conclusions expressed herein are based, are assumed to be true and correct.
2. The reported analyses, opinions, and conclusions of value included in the valuation report are subject to the specified assumptions and limiting conditions and they are the personal analyses, opinions, and conclusion of value of the valuation analyst.
3. We have no present or prospective future interest in Superpumper, Inc.
4. We have no personal interest or bias with respect to the subject matter of this report or the parties involved.
5. Our compensation is fee-based and is not contingent on any action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.
6. The valuation has been prepared in conformity with, and is subject to, the requirements of the code of professional ethics and standards of professional conduct of the American Society of Appraisers as well as Standard 10 of the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation (USPAP).
7. The economic and industry data included in the valuation report have been obtained from various printed or electronic reference sources that the valuation analyst believes to be reliable. The valuation analyst has not performed any corroborating procedures to substantiate that data.
8. The valuation analyst has no obligation to update the report or the opinion of value for information that comes to his or her attention after the date of the report.



Spencer P. Cavalier, CFA, ASA
Report Preparer



Sean P. Dooley
Report Preparer

VALUATORS' QUALIFICATIONS

Superpumper 000079

Spencer P. Cavalier, CFA, ASA

Spencer is a member of the Energy & Multi-Site Retail Team. He is responsible for client development and co-managing all aspects of transactions including preparing selling memoranda and providing valuation and corporate finance expertise. Prior to joining Matrix, Mr. Cavalier was a senior business valuation consultant with Ellin & Tucker, Chartered, a nationally recognized business valuation, consulting and accounting firm and a commercial lender with NationsBank (now Bank of America).

As a holder of the Chartered Financial Analyst designation, he is a member of the CFA Institute and is also recognized as an Accredited Senior Appraiser by the American Society of Appraisers. Spencer holds a B.S. degree (with honors) from West Virginia University and an M.B.A. from Baylor University. He is actively involved with The Bennett Institute's Physically Challenged Sports Program at Kennedy Krieger and previously served on the Board of Visitors for University of Maryland's Hospital for Children and the Board of Directors for The CollegeBound Foundation. He is qualified as a Series 7, Series 63 and Series 79 FINRA General Securities Representative.

Sean P. Dooley

Sean is a member of the Energy & Multi-Site Retail Team and is responsible for conducting financial, industry, and buyer research, creating valuation and financing models, and preparing selling and private placement memoranda. Prior to joining Matrix in 2010, Sean was an associate in the Forensic and Valuation Services Group for the public accounting firm of Ellin & Tucker, Chartered in Baltimore, Maryland, where his experience included a variety of valuation engagements.

Sean also held an analyst position in the Federal Systems Group of Unisys Corporation. Sean received a B.S.B.A. with a concentration in Finance from East Carolina University. He is a candidate member of the American Society of Appraisers.

EXHIBITS

Superpumper 000082

SUPERPUMPER, INC.
VALUATION ANALYSIS

AS OF :
August 31, 2010

Matrix Capital Markets Group, Inc.

Superpumper 000083

SUPERPUMPER, INC.

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Superpumper 000084

Matrix Capital Markets Group, Inc.

SUPERPUMPER, INC.

VALUATION OVERVIEW

OBJECTIVE:	To perform a calculation of value of invested capital and common equity of Superpumper, Inc.
PURPOSE:	Corporate Planning Purposes
STANDARD OF VALUE:	Fair Market Value: "the amount at which property would change hands between a willing seller and a willing buyer when neither is under compulsion and when both have reasonable knowledge of the relevant facts."
BASIS:	Controlling, Marketable
AS OF:	August 31, 2010
PRIMARY ASSUMPTIONS:	No potential future acquisitions were incorporated into normalized cash flow.

Superpumper 000085

SUPERPUMPER, INC.
RECONCILIATION OF VALUATION APPROACHES

Exhibit No.	Valuation Approach and Methodology	Control, Marketable Common Equity Value	Weight	Estimated Value
5	Income Approach: Capitalization of Normalized Single Period Cash Flow Method	5,785,976	50.0%	\$2,892,988
5	Income Approach: Capitalization of Adjusted Historical Cash Flow Method	8,331,845	10.0%	833,184
6	Market Approach: Guideline Public Company Method	6,713,197	10.0%	671,320
7	Cost Approach: Adjusted Balance Sheet Method	6,956,737	30.0%	2,087,021
Implied Value of Common Equity on a Control, Marketable Basis			100.0%	<u>\$ 6,484,514</u>

Superpumper 0000086

SUPERPUMPER, INC.
Capitalization of Historical and Normalized Single Period Cash Flow

Money Paid (in million)

Food Revenues
 Cost of Food
 Food Gross Profit
 Pooled Food Margin, cpg

Grocery and Merchandise Revenues
 Cost of Grocery and Merchandise Sold
 Grocery and Merchandise Gross Profit
 Gross Profit Margin

Oil with, Program, Lottery and Other Income, net
 Interest Income
 Gain on termination of capital lease
 Total Other Income

Total Gross Profit and Other Income

GRG (ex. Depreciation & Amortization & Interest)

EBITDA

Adjustments to EBITDA

Interest Income
 Return Given
 Gain on termination of capital lease
 Normalized Return as a % of
 Total Adjustments
 Pooled Food Margin as a % of Return Adjustment, cpg

Adjusted EBITDA

Less: Depreciation and Amortization

Adjusted EBIT

Less: Taxes

Adjusted Earnings After Taxes

Plus: Depreciation and Amortization

Adjusted Gross Cash Flow

Plus: Decrease in Adjusted Working Capital - Normalized
 Capital Expenditures - Unlevered, Capitalized Maintenance CAPEX
 Adjusted Net Free Cash Flow

Weighted Average Adjusted Net Free Cash Flow

Weighted Average Levered Capital Adj Net Free Cash Flow

Normalized Levered Capital Adj Net Free Cash Flow

Mid Year Convention Adjustment Factor

Estimated Net Free Cash Flow to Capitalists

Weighted Average Cost of Capital

Normalized Growth

Capitalization Rate to Use

Implied Value of Levered Capital, Control, Marketable Seat

Less: Interest Bearing Debt

Implied Value of Stockholder's Equity, Control, Marketable Seat

	Dec-07	Dec-08	Dec-09	TTM Avg-10	Normalized Single Period Cash Flow
Money Paid (in million)	28,711,928	22,734,438	21,349,724	21,847,669	22,500,000
Food Revenues	\$82,061,891	\$77,182,918	\$84,899,599	\$81,115,377	
Cost of Food	72,882,624	69,879,296	61,012,864	55,938,845	
Food Gross Profit	9,179,267	7,303,622	23,886,735	25,176,532	6,412,500
Pooled Food Margin, cpg	25.1	32.1	31.5	31.1	24.1
Grocery and Merchandise Revenues	17,090,598	15,318,568	17,049,332	17,888,191	15,500,000
Cost of Grocery and Merchandise Sold	11,653,128	10,818,442	9,618,096	9,854,332	9,850,000
Grocery and Merchandise Gross Profit	5,437,470	4,500,126	7,431,236	8,033,859	5,650,000
Gross Profit Margin	31.9%	32.0%	31.7%	31.9%	32.0%
Oil with, Program, Lottery and Other Income, net	3,350,254	3,350,048	3,708,240	3,772,447	3,350,000
Interest Income	340,919	335,474	329,717	334,145	335,000
Gain on termination of capital lease	1,141,032	-	-	-	-
Total Other Income	2,737,233	1,445,320	1,428,960	1,372,608	2,330,000
Total Gross Profit and Other Income	16,420,992	17,470,240	17,810,132	15,005,900	13,402,500
GRG (ex. Depreciation & Amortization & Interest)	11,690,134	11,630,718	10,336,872	10,964,334	11,000,000
EBITDA	4,730,858	3,853,562	2,033,274	2,849,556	1,402,500
Adjustments to EBITDA					
Interest Income	(843,919)	(753,474)	(325,717)	(1)	-
Return Given	(609,966)	(821,445)	(609,261)	(606,107)	(600,000)
Gain on termination of capital lease	(1,141,032)	-	-	-	-
Normalized Return as a % of	424,979	341,012	312,246	327,715	337,500
Total Adjustments	(1,630,048)	(1,333,907)	(638,732)	(878,393)	(262,500)
Pooled Food Margin as a % of Return Adjustment, cpg	32.1	32.8	32.0	31.8	27.3
Adjusted EBITDA	3,100,810	2,519,655	1,394,542	1,971,163	1,140,000
Less: Depreciation and Amortization	(739,871)	(730,708)	(775,232)	(735,332)	(700,000)
Adjusted EBIT	2,360,939	1,788,947	619,310	1,235,831	440,000
Less: Taxes	(1,095,641)	(434,540)	(407,120)	(543,704)	(234,400)
Adjusted Earnings After Taxes	1,265,298	1,354,407	212,190	692,127	205,600
Plus: Depreciation and Amortization	239,971	530,705	372,372	383,323	300,000
Adjusted Gross Cash Flow	1,505,269	1,885,112	584,562	1,075,450	505,600
Plus: Decrease in Adjusted Working Capital - Normalized	n/a	333,713	370,813	344,597	330,000
Capital Expenditures - Unlevered, Capitalized Maintenance CAPEX	(294,802)	(72,470)	(102,040)	(136,000)	(130,000)
Adjusted Net Free Cash Flow	1,210,467	1,815,355	852,335	1,283,947	705,600
Weight	0	1	2	1	
Weighted Average Adjusted Net Free Cash Flow	10	\$1,214,416	\$2,715,596	\$1,454,063	
Weighted Average Levered Capital Adj Net Free Cash Flow				1,337,895	
Normalized Levered Capital Adj Net Free Cash Flow				1,041,392	
Mid Year Convention Adjustment Factor				1.1191	1.2201
Estimated Net Free Cash Flow to Capitalists				1,296,597	2,371,242
Weighted Average Cost of Capital				14.30%	14.60%
Normalized Growth				-1.00%	-1.00%
Capitalization Rate to Use				15.30%	13.60%
Implied Value of Levered Capital, Control, Marketable Seat				\$ 11,277,244	\$ 8,741,240
Less: Interest Bearing Debt				(3,955,290)	(3,955,290)
Implied Value of Stockholder's Equity, Control, Marketable Seat				\$ 8,321,954	\$ 4,785,950

Superpumper 000087

Matrix Capital Markets Group, Inc. (NASDAQ: MCGP) - 2010.10.20														
Financial Summary and Valuation Data														
Key Metrics and Assumptions														
Item	Value	Unit	Value	Unit	Value	Unit	Value	Unit	Value	Unit	Value	Unit	Value	Unit
Revenue	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM
Operating Profit	20.00	MM	20.00	MM	20.00	MM	20.00	MM	20.00	MM	20.00	MM	20.00	MM
Net Income	15.00	MM	15.00	MM	15.00	MM	15.00	MM	15.00	MM	15.00	MM	15.00	MM
EPS	1.50	\$/Share	1.50	\$/Share	1.50	\$/Share	1.50	\$/Share	1.50	\$/Share	1.50	\$/Share	1.50	\$/Share
Market Cap	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM
P/E Ratio	10.00	Ratio	10.00	Ratio	10.00	Ratio	10.00	Ratio	10.00	Ratio	10.00	Ratio	10.00	Ratio
EV/EBITDA	8.00	Ratio	8.00	Ratio	8.00	Ratio	8.00	Ratio	8.00	Ratio	8.00	Ratio	8.00	Ratio
WACC	10.00	%	10.00	%	10.00	%	10.00	%	10.00	%	10.00	%	10.00	%
Discount Rate	10.00	%	10.00	%	10.00	%	10.00	%	10.00	%	10.00	%	10.00	%
Terminal Value	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM
Enterprise Value	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM
Equity Value	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM
Debt Value	0.00	MM	0.00	MM	0.00	MM	0.00	MM	0.00	MM	0.00	MM	0.00	MM
Minority Interest	0.00	MM	0.00	MM	0.00	MM	0.00	MM	0.00	MM	0.00	MM	0.00	MM
Preferred Stock	0.00	MM	0.00	MM	0.00	MM	0.00	MM	0.00	MM	0.00	MM	0.00	MM
Other	0.00	MM	0.00	MM	0.00	MM	0.00	MM	0.00	MM	0.00	MM	0.00	MM
Total Value	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM	100.00	MM

SUPERPUMPER, INC.
Adjusted Balance Sheet

	As of 8/31/10	Adjustments	Adjusted Balance Sheet
ASSETS			
CURRENT ASSETS			
Cash and cash equivalents	\$862,055	-	\$862,055
Accounts receivable	560,151	-	560,151
Inventories	1,253,257	-	1,253,257
Prepaid expenses	126,233	-	126,233
Total Current Assets	2,801,696	-	2,801,696
Fixed Assets			
Buildings & improvements	542,190	(542,190)	-
Equipment	1,942,774	(1,942,774)	-
Vehicles	35,411	-	35,411
Total Fixed Assets	2,520,374	(2,484,964)	35,411
Depreciation	(1,311,787)	1,311,787	-
Net Fixed Assets	1,524,106	(1,173,176)	350,930
OTHER ASSETS			
Retail Assets Marked-to-FMV	-	9,888,012	9,888,012
Due from affiliates	8,925,708	(8,925,708)	-
Trademarks	1,482,063	(1,482,063)	-
Rent deposits	117,128	-	117,128
Total Other Assets	10,524,899	(519,759)	10,005,140
TOTAL ASSETS	\$14,850,701	(1,692,935)	13,157,766
LIABILITIES & EQUITY			
CURRENT LIABILITIES			
Accounts payable	\$2,168,784	-	\$2,168,784
Accrued liabilities	1,076,855	-	1,076,855
Line of credit	2,955,215	-	2,955,215
Total Current Liabilities	6,200,854	-	6,200,854
LONG-TERM DEBT			
Due to shareholder	175	-	175
Total Long-Term Liabilities	175	-	175
Total Liabilities	6,201,029	-	6,201,029
STOCKHOLDER'S EQUITY			
Common stock	10,000	-	10,000
Additional paid-in capital	4,284,605	-	4,284,605
Retained earnings	4,355,068	(1,692,935)	2,662,132
Total Stockholder's Equity	8,649,672	(1,692,935)	6,956,737
Total Liabilities & Stockholder's Equity	14,850,701	(1,692,935)	13,157,766
Total interest bearing debt			2,955,390

SUPERPUMPER, INC.**Cost of Capital**

Risk Free Rate as of	8/31/2010	20 Year T-Note Constant Maturity Yield	3.23%
Market Risk Premium (Supply Side) from Ibbotson's SBBi 2010 Valuation Yearbook			5.20%
Small Company Risk Premium from Ibbotson's SBBi 2010 Valuation Yearbook (Decile 10)			6.28%

Specific Company Risk:

Volatility of supply and wholesale price of fuel	2.00%
Declining motor fuels volumes	2.00%
Concentrated geographical region	2.00%
Unknown risk related to unknown environmental remediation	1.00%
Potential threat of new competition	1.50%
Credit card fees	1.00%
Labor turnover	1.00%
Alternative fuels	0.50%

Specific Company Risk	11.00%
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		Rounded
Next Year's Equity Discount Rate	25.71%	25.50%
Less: Normalized Growth Rate of Cash Flow	-1.00%	
Next Year's Equity Capitalization Rate	24.71%	24.50%

Weighted Average Cost of Capital**Invested Capital Analysis**

<u>Use of Market or Industry Standard</u>	<u>% of Total</u>	<u>Market Return</u>	<u>% Contribution</u>	<u>Rounded</u>
1) Market Value of Equity	50.00%	25.50%	12.75%	
2) Market Value of Debt	50.00%	3.36%	1.68%	
Total Invested Capital	100.00%		14.43%	14.40%
Historical WACC Rate	14.26%			

Notes

- 1) Market return of equity based on calculation above
 2) Estimated weighted average cost of debt
 Debt also has a tax shield that should be considered

Cost of Debt (Baa Rated Bond as of 8/31/10):	5.48%
Tax Shield @ 38.62%	-2.12%
After Tax Cost of Debt	3.36%

Superpumper 000090

SUPERPUMPER, INC.
Balance Sheet Analysis

ASSETS	Audited Dec-07	Audited Dec-08	Audited Dec-09	Internal Aug-10
CURRENT ASSETS				
Cash and cash equivalents	\$1,139,621	\$906,632	\$930,033	\$862,055
Accounts receivable	385,619	234,400	158,132	560,151
Inventories	1,817,684	1,289,197	1,347,016	1,252,257
Prepaid expenses	77,050	90,830	124,815	126,233
Total Current Assets	3,419,984	2,121,059	2,560,996	2,801,696
PROPERTY AND EQUIPMENT				
Net Fixed Assets	1,877,164	1,727,508	1,610,337	1,524,106
OTHER ASSETS				
Due from affiliates	3,958,932	5,718,135	7,663,918	8,925,708
Trademarks	1,482,063	1,482,063	1,482,063	1,482,063
Rent deposits	117,128	117,128	117,128	117,128
Loan costs	-	-	6,536	-
Total Other Assets	5,558,123	7,317,326	9,269,655	10,524,899
TOTAL ASSETS	\$10,855,271	\$11,165,893	\$13,469,998	\$14,850,701

SUPERPUMPER, INC.
Balance Sheet Analysis

LIABILITIES & EQUITY	Audited Dec-07	Audited Dec-08	Audited Dec-09	Internal Aug-10
CURRENT LIABILITIES				
Accounts payable	\$2,136,794	\$948,672	\$1,501,413	\$2,168,784
Accrued liabilities	578,208	901,120	1,167,929	1,076,833
Line of credit	435,088	1,535,000	2,270,000	2,955,215
Current maturities of equipment loan	-	-	21,666	-
Total Current Liabilities	3,150,090	3,384,792	4,963,028	6,200,834
LONG-TERM DEBT				
Equipment loan, net of current portion	-	-	92,566	-
Due to shareholder	-	-	-	175
Total Long Term Debt	-	-	92,566	175
TOTAL LIABILITIES	3,250,090	3,384,792	5,055,594	6,201,009
STOCKHOLDER'S EQUITY				
Common stock	10,000	10,000	10,000	10,000
Additional paid-in capital	4,284,603	4,284,603	4,284,603	4,284,603
Retained earnings	3,310,576	3,486,496	4,119,799	4,355,088
Total Stockholder's Equity	7,605,181	7,781,101	8,414,404	8,649,692
TOTAL LIABILITIES & STOCKHOLDER'S EQUITY	\$10,855,271	\$11,165,893	\$13,469,998	\$14,850,701

Superpumper 000091

SUPERPUMPER, INC.
Common Stock - Balance Sheet Analysis

ASSETS	Audited Dec-07	Audited Dec-08	Audited Dec-09	Internal Aug-10
CURRENT ASSETS				
Cash and cash equivalents	10.50%	4.54%	6.90%	5.80%
Accounts receivable	3.55%	2.10%	1.17%	3.77%
Inventories	16.74%	11.55%	10.00%	8.44%
Prepaid expenses	0.71%	0.81%	1.00%	0.85%
Total Current Assets	31.51%	19.00%	19.08%	18.87%
FIXED ASSETS				
Net Fixed Assets	17.29%	15.47%	11.95%	10.26%
OTHER ASSETS				
Due from affiliates	36.47%	51.21%	57.04%	60.10%
Trademarks	13.65%	13.27%	11.00%	9.98%
Rent deposits	1.08%	1.05%	0.87%	0.75%
Loan costs	0.00%	0.00%	0.05%	0.00%
Total Other Assets	51.20%	65.53%	68.97%	70.87%
TOTAL ASSETS	100.00%	100.00%	100.00%	100.00%

SUPERPUMPER, INC.
Common Stock - Balance Sheet Analysis

LIABILITIES & EQUITY	Dec-07	Dec-08	Dec-09	Aug-10
CURRENT LIABILITIES				
Accounts payable	19.68%	8.50%	11.15%	14.60%
Accrued liabilities	6.25%	8.07%	8.67%	7.25%
Line of credit	4.01%	13.75%	16.85%	19.90%
Current maturities of equipment loan	0.00%	0.00%	0.18%	0.00%
Total Current Liabilities	29.94%	30.31%	36.85%	41.75%
LONG-TERM DEBT				
Equipment loan, net of current portion	0.00%	0.00%	0.69%	0.00%
Due to shareholder	0.00%	0.00%	0.00%	0.00%
Total Long Term Debt	0.00%	0.00%	0.69%	0.00%
TOTAL LIABILITIES	29.94%	30.31%	37.53%	41.76%
STOCKHOLDER'S EQUITY				
Common stock	0.09%	0.09%	0.07%	0.07%
Additional paid-in capital	39.47%	38.37%	31.81%	28.85%
Retained earnings	30.30%	31.22%	30.59%	29.33%
Total Stockholder's Equity	70.06%	69.69%	62.47%	58.24%
TOTAL LIABILITIES & STOCKHOLDER'S EQUITY	100.00%	100.00%	100.00%	100.00%

Superpumper 000092

SUPERPUMPER, INC.
Income Statement Analysis

	Audited Dec-07	Audited Dec-08	Audited Dec-09	Internal - TTM Aug-10
Motor Fuels (in gallons)	28,271,928	22,734,468	22,169,724	21,847,669
Revenues				
Fuel	\$82,043,891	\$77,122,928	\$54,959,599	\$63,155,277
Grocery and merchandise	17,090,598	15,318,568	13,969,353	13,888,181
Car wash, propane and other income, net	1,249,698	1,128,787	1,178,267	1,245,940
Lottery, net	100,586	121,259	120,976	127,727
Total Revenues	100,484,773	93,691,542	70,228,195	78,417,125
Cost of Sales				
Cost of Fuel	73,805,624	69,829,296	48,023,664	\$55,928,885
Cost of grocery and merchandise sold	11,645,128	10,418,440	9,614,096	9,454,332
Total Cost of Sales	85,450,752	80,247,736	57,637,760	65,383,217
Total Gross Profit	15,034,021	13,443,806	12,590,435	13,033,908
Fuel Gross Profit	8,238,267	7,293,632	6,935,935	7,226,393
Grocery and Merchandise Gross Profit	5,445,470	4,900,128	4,355,257	4,433,848
Operating Expenses				
G&A (ex. Depreciation & Amortization & Interest)	11,690,184	11,655,718	10,886,878	10,964,354
Total Operating Expenses	11,690,184	11,655,718	10,886,878	10,964,354
Income from Operations	3,343,837	1,788,088	1,703,557	2,069,554
Other Income				
Interest income	245,919	235,474	329,717	1
Gain on termination of capital lease	1,141,052	-	-	-
Total Other Income	1,386,971	235,474	329,717	1.00
EBITDA	4,730,808	2,023,562	2,033,274	2,069,555
Depreciation/Amortization	239,971	330,705	372,372	383,332
EBIT	4,490,837	1,692,857	1,660,902	1,686,222
Interest	157,538	66,937	77,599	81,213
EBT	\$4,333,299	\$1,625,920	\$1,583,303	\$1,605,009
Income Taxes	-	-	-	-
Net Income	\$ 4,333,299	\$ 1,625,920	\$ 1,583,303	\$ 1,605,009

Superpumper 000093

SUPERPUMPER, INC.
Income Statement Analysis

	Audited Dec-07	Audited Dec-08	Audited Dec-09	Internal - TTM Aug-10
Revenues				
Fuel	81.6%	82.3%	78.3%	80.5%
Grocery and merchandise	17.0%	16.4%	19.9%	17.7%
Car wash, propane and other income, net	1.2%	1.2%	1.7%	1.6%
Lottery, net	0.1%	0.1%	0.2%	0.2%
Total Revenues	100.00%	100.00%	100.00%	100.00%
Cost of Sales				
Cost of Fuel	73.4%	74.3%	68.4%	71.3%
Cost of grocery and merchandise sold	11.6%	11.1%	13.7%	12.1%
Total Cost of Sales	85.0%	85.7%	82.1%	83.4%
Total Gross Profit	14.96%	14.3%	17.9%	16.6%
Fuel Gross Profit	10.0%	9.3%	12.6%	11.4%
Grocery and Merchandise Gross Profit	31.9%	32.0%	31.2%	31.9%
Operating Expenses				
G&A (ex. Depreciation & Amortization & Interest)	11.63%	15.11%	19.81%	17.36%
Total Operating Expenses	11.63%	15.11%	19.81%	17.36%
Income from Operations	3.3%	1.9%	2.4%	2.6%
Other Income				
Interest income	0.2%	0.3%	0.5%	0.0%
Gain on termination of capital lease	1.1%	0.0%	0.0%	0.0%
Total Other Income	1.4%	0.3%	0.5%	0.0%
EBITDA	4.7%	2.2%	2.9%	2.6%
Depreciation/Amortization	0.2%	0.4%	0.5%	0.5%
EBIT	4.3%	1.8%	2.4%	2.2%
Interest	0.2%	0.1%	0.1%	0.1%
EBT	4.3%	1.7%	2.3%	2.0%
Income Taxes	0.0%	0.0%	0.0%	0.0%
Net Income	4.3%	1.7%	2.3%	2.0%

Superpumper 000094

SUPERPUMPER, INC.
Ratio Analysis

	Dec-07	Dec-08	Dec-09	TTM Ending Aug-10	FY07 - TTM 8:31:10 Average	Compound Growth
<u>LIQUIDITY</u>						
Current Ratio	1.05	0.63	0.52	0.45		
Quick Ratio	0.47	0.22	0.22	0.23		
<u>ASSET MANAGEMENT</u>						
AR Turn	54.54	71.70	51.17	61.47		
Days Inv	7.76	5.86	8.53	7.00		
Inv Turn	47.01	62.25	42.79	52.17		
Asset Turn	9.26	8.39	5.21	5.28		
FA Turn	53.53	54.24	43.61	51.45		
Working Capital/Sales	0.17%	-1.35%	-3.41%	-4.33%	-2.23%	
Sales/Working Capital	591.46	(74.14)	(29.35)	(23.07)		
<u>DEBT MANAGEMENT</u>						
Times Interest Earned	28.51	25.29	21.40	20.76		
Interest Bearing Debt/Equity	0.06	0.20	0.28	0.34		
Interest Bearing Debt/Adjusted EBITDA	0.1	1.0	1.7	1.6		
Total Liab/Equity	0.43	0.44	0.60	0.72		
EBIT/Sales	4.47%	1.81%	2.37%	2.15%	2.70%	
EBT/Sales	4.31%	1.74%	2.25%	2.05%	2.59%	
EBT/Assets	39.92%	14.56%	11.75%	10.81%		
EBT/Equity	56.98%	20.90%	18.82%	18.56%		
<u>GROWTH</u>						
Gallons	28,271,928	22,734,488	22,169,724	21,847,669		-9.24%
Gallons, Annual Growth		-19.59%	-2.48%	-1.45%		
Revenues	100,484,773	93,691,542	70,228,195	78,417,125		-8.90%
Rev Annual Growth		-6.76%	-25.04%	11.66%		
EBT	4,333,299	1,625,920	1,583,303	1,605,009		
EBT Growth		-62.48%	-2.62%	1.37%		
<u>RETURN ON EQUITY</u>						
EBT Profit Margin	4.31%	1.74%	2.25%	2.05%		
Pre-Tax Return on Assets	41.37%	15.16%	12.33%	11.35%		
Financial Leverage	1.43	1.44	1.60	1.72		
Pre-Tax ROE	56.98%	20.90%	18.82%	18.56%		
EBT	4,333,299	1,625,920	1,583,303	1,605,009		
Distributions	1,892,064	1,450,000	950,000	-		
Retention	56.34%	10.82%	40.00%	100.00%		
Sustainable Growth	32.10%	2.26%	7.53%	18.56%	15.11%	

Matrix Capital Markets Group, Inc.

Ratios

Exhibit 13 of 14

Superpumper 000095

SUPERPUMPER, INC.

Tax Calculator

Adjusted EBIT
State Tax 7.00%
Adjusted EBIT after State

Historical			
FY Dec-07	FY Dec-08	FY Dec-09	TTM Aug-10
\$2,836,979	\$1,176,956	\$1,054,170	\$1,407,830
198,589	82,387	73,792	98,548
2,638,390	1,094,569	980,378	1,309,282

Normalized
Single Period Normalized
\$840,000
58,800
781,200

Federal Taxes:

Above	Below	Tax Rate
-	50,000	15.00%
50,000	75,000	25.00%
75,000	100,000	34.00%
100,000	335,000	39.00%
335,000	10,000,000	34.00%
10,000,000	15,000,000	35.00%
15,000,000	18,333,333	38.00%
18,333,333	n/a	35.00%

Sum of Federal Taxes

State Taxes
Total Taxes

Effective Historical Taxes

38.62%

7,500	7,500	7,500	7,500	7,500
6,250	6,250	6,250	6,250	6,250
8,500	8,500	8,500	8,500	8,500
91,650	91,650	91,650	91,650	91,650
783,153	258,253	219,428	331,256	151,708
-	-	-	-	-
-	-	-	-	-
-	-	-	-	-
897,053	372,153	333,328	445,156	265,608
198,589	82,387	73,792	98,548	58,800
\$1,095,641	\$454,540	\$407,120	\$543,704	\$324,408
38.62%	38.62%	38.62%	38.62%	38.62%

Frank Gilmore

From: Sam Morabito <smorabito@superpumper.com>
Sent: Wednesday, June 18, 2014 4:19 PM
To: Michael.Vanek@wellsfargo.com
Subject: FW: SPI Analysis
Attachments: image001.png

Michael, here is an analysis of the Superpumper transaction in 2010, from our attorney. As discussed Edward and I (through Snowshoe) also assumed a large obligation on the LOC at Compass (some 2.5 million dollars). Note that we already owned 20% of the company, hence the 80% acquisition value.

Sam

Analysis of Superpumper Acquisition

Matrix Appraised Value:	\$6,484,515
Compass Term Loan:	\$1,682,000
Net Value:	\$4,802,514
Risk Discount (35%)	\$1,680,880

Discounted Net Value:	\$3,121,634
80% Acquisition Value ⁽¹⁾ :	\$2,497,307
Less Cash Paid:	\$1,035,094

Balance Due:	\$1,462,213
--------------	-------------

Christian M. Lovelace
Partner



Lippes Mattheis Weider Ridenour LLP

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Circular 230 Disclosure. Any federal tax advice included in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding U.S. federal tax-related penalties or (ii) promoting or recommending to another party any tax-related matter addressed herein.

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

^[1] Consolidated Western Corporation (CWC) owned 80% of SPI. Bayuk and Sam Morabito owned 10% each of SPI.

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 DEFENDANTS' NRCP DISCLOSURE OF WITNESSES AND DOCUMENTS all parties to this action by the method(s) indicated below:

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

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

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

Gerald Gordon, Esq.
ggordon@gordonsilver.com

John Desmond, Esq.
jdesmond@gordonsilver.com

Brian Irvine, Esq.
birvine@gordonsilver.com

by personal delivery/hand delivery addressed to:

by facsimile (fax) addressed to:

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


DATED: This 15th day of December, 2014.



EXHIBIT A-2

EXHIBIT A-2

The undersigned has reviewed the objection to proposed order, the response, the transcript of the December 22, 2015 hearing and the underlying pleadings prior to executing this order.


Honorable Gregg W. Zive
United States Bankruptcy Judge



Entered on Docket
February 03, 2016

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Attorneys for William Leonard, Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

PAUL A. MORABITO,

Debtor.

Case No.: BK-S-13-51237-GWZ
Chapter: 7

Hearing:
Date: December 22, 2015
Time: 9:00 a.m.

**ORDER GRANTING MOTION TO COMPEL
RESPONSES TO DEPOSITION QUESTIONS**

The *Motion to Compel Responses to Deposition Questions* [ECF No. 452] (the "Motion"), filed by William Leonard, Chapter 7 Trustee (the "Trustee"), by and through his counsel, the law firm of Garman Turner Gordon LLP, with regard to the deposition of Dennis Vacco ("Vacco") in the State Court Case¹ came on for hearing before the above-captioned Court

¹ Terms not otherwise defined in this Order are as defined in the Motion.

1 on December 22, 2015, at 9:00 a.m. (the "Hearing"). Gerald M. Gordon, Esq. of Garman Turner
2 Gordon LLP appeared as special counsel and John F. Murtha, Esq. of Woodburn & Wedge
3 appeared as general counsel on behalf of the Trustee. Frank C. Gilmore, Esq. of Robison
4 Belaustegui Sharp & Low and Jeffrey L. Hartman, Esq. of Hartman & Hartman appeared on
5 behalf of the debtor Paul A. Morabito (the "Debtor"). Timothy A. Lukas, Esq. of Holland &
6 Hart appeared on behalf of USHF Cellular Communications, LLC and Janet L. Chubb, Esq. of
7 Kaempfer Crowell appeared on behalf of Virsenet, LLC. Holly Estes, Esq. of Walter & Wilhelm
8 Law Group appeared on behalf of Edward Bayuk and the Meadow Farms Irrevocable Trust. All
9 other appearances were noted on the record at the Hearing.

10 The Court having reviewed the Motion and all matters submitted therewith as well as the
11 oppositions [ECF Nos. 460 & 461] and the Trustee's omnibus reply [ECF No. 466] filed thereto;
12 notice of the Motion having been proper; the Court finding and concluding that: (a) the Court has
13 jurisdiction to hear and decide the Motion; (b) the attorney-client privilege related to Lippes
14 Mathias Wexler Friedman, LLP's ("Lippes Mathias") production of documents and Vacco's
15 testimony during the deposition is that of the Debtor; (c) it is the Debtor's obligation to provide a
16 privilege log with respect to the documents being withheld on the basis of privilege because the
17 Debtor is asserting the privilege; (d) the invocation of the privilege by the Debtor affects
18 property of his estate pursuant to Section 541 of the Bankruptcy Code that is alleged to have
19 been fraudulently transferred; (e) the Trustee has made a prima facie showing of fraud as
20 required by the crime/fraud exception to the attorney-client privilege, which showing has not
21 been rebutted; (f) the inquiry required by the crime/fraud exception is focused on what the client
22 wanted to accomplish – whether the client intended to further some fraudulent activity and
23 engage counsel to assist in that activity; the timing of the legal services or whether the attorney's
24 legal services were closely related have no effect on whether the crime/fraud exception is
25 established; (g) the Trustee has met his burden to waive the Debtor's attorney-client privilege
26 under the balancing test; and (h) as a result, the Trustee has, consistent with applicable law,
27 waived the Debtor's attorney-client privilege with Lippes Mathias and Vacco. Having stated the
28 Court's additional findings of fact and conclusions of law on the record at the Hearing, which are

1 hereby incorporated herein by reference in accordance with Rule 52 of the Federal Rules of Civil
2 Procedure, made applicable pursuant to Rule 9014 of the Federal Rules of Bankruptcy
3 Procedure; and good cause appearing therefore,

4 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

5 1. The Motion is granted as provided herein.

6 2. The elimination of Debtor's attorney-client privilege with Lippes Mathias and
7 Vacco as provided for herein extends to the Disputed Questions that were asked and objected to
8 in the deposition of Vacco, any other questions that may be asked of Vacco at the continued
9 deposition, and any documents that may have been withheld by Lippes Mathias, the Debtor, or
10 Debtor's counsel in response to the subpoenas for documents on grounds that disclosure was not
11 required because of the Debtor's attorney-client privilege with Lippes Mathias and Vacco.

12 3. Lippes Mathias and Vacco shall disclose and make available to the Trustee
13 documents and information related to the representation of the Debtor that would otherwise be
14 protected from disclosure under the privilege.

15 4. Within ten (10) calendar days of entry of this Order, the Debtor shall provide the
16 Trustee a privilege log with respect to all documents withheld on the basis of privilege.

17 5. The deposition of Vacco shall recommence in the State Court Case.

18 6. The parties may submit briefs simultaneously of no longer than ten (10) pages, by
19 5:00 p.m. on the last business day which is ten (10) calendar days prior to the recommenced
20 deposition, in which the parties may brief attorney-client privilege issues and disputes that the
21 Debtor and parties to the State Court Case anticipate arising at the continued deposition to
22 expedite the resolution any additional disputes.

23 7. The parties shall coordinate with the Court's staff so that the Court is available
24 telephonically to resolve any disputes that arise during the continued deposition.

25 **IT IS SO ORDERED.**

1 **PREPARED AND SUBMITTED:**

2 GARMAN TURNER GORDON LLP

3
4 /s/ Mark M. Weisenmiller
5 GERALD M. GORDON, ESQ.
6 Nevada Bar No. 229
7 TERESA M. PILATOWICZ, ESQ.
8 Nevada Bar No. 9605
9 MARK M. WEISENMILLER, ESQ.
10 Nevada Bar No. 12128
11 650 White Drive, Suite 100
12 Las Vegas, Nevada 89119
13 Tel: (735) 777-3000
14 Attorneys for Chapter 7 Trustee,
15 William A. Leonard
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17
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21
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23
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LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies as follows:

- ☐ The Court waived the requirement of approval under LR 9021(b)(1).
- ☐ No party appeared on the Motion at the hearing or filed an objection to the Motion.
- ☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order as stated below.

FRANK C. GILMORE, ESQ. & JEFFREY L. HARTMAN, ESQ. – For Debtor – **DISAPPROVED**

TIMOTHY A. LUKAS, ESQ. – For USHF Cellular Communications, LLC – APPROVED

HOLLY ESTES, ESQ. – For Edward Bayuk and Meadow Farms Irrevocable Trust – **DISAPPROVED**

JOHN F. MURTHA, ESQ. – for Chapter 7 Trustee – APPROVED

- ☐ I have certified that under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objection to the form or content of the order.

###

EXHIBIT A-3

EXHIBIT A-3

1 CODE NO. 1945

2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

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

11 Plaintiff,

Case No. CV13-02663

12 vs.

Dept. No. B1

13 SUPERPUMPER, INC., an Arizona corporation,
14 et al.,

15 Defendants.
16 _____/

17 **RECOMMENDATION FOR ORDER**

18 This action began with the filing of a complaint by JH, Inc., Jerry Herbst, and Berry-Hinckley
19 Industries ("Herbst") on December 17, 2013; however, an amended complaint was filed by Plaintiff
20 William A. Leonard, as Trustee for the Bankruptcy Estate of Paul A. Morabito, on May 15, 2015.
21 Essentially, Plaintiff alleges that Herbst prevailed against Paul A. Morabito and Consolidated
22 Nevada Corporation ("CNC") in a separate lawsuit, with the Court informing the parties that Herbst
23 was entitled to a substantial money judgment on September 13, 2010.¹ Thereafter, those parties
24 negotiated and entered into a settlement agreement and a subsequent forbearance agreement.
25 Ultimately, the judgment debtors defaulted under these agreements, which led Herbst to file an
26 involuntary petition for relief against Mr. Morabito and CNC under Chapter 7 of the Bankruptcy Code

¹ The supporting findings of fact and conclusions of law were entered on October 12, 2010, and a final judgment was entered on August 23, 2011.

1 (among other measures).² Plaintiff claims that the judgment debtors induced Herbst to negotiate
2 and enter into these agreements as a delay tactic to avoid execution and collection efforts, and to
3 allow them to thwart collection efforts by transferring and dissipating assets. He alleges that various
4 fraudulent transfers occurred, and that these transfers began shortly after September 13, 2010.
5 Defendants—Superpumper, Inc., Edward Bayuk, individually and as trustee of the Edward William
6 Bayuk Living Trust, Salvatore Morabito, and Snowshoe Petroleum, Inc.—are individuals and entities
7 who received real and personal property that were the subject of those alleged fraudulent transfers.
8 Plaintiff seeks compensatory and punitive damages, garnishment, avoidance of transfers or
9 obligations, attachment, and other relief. Defendants deny any liability to Plaintiff and oppose his
10 requests for relief.

11 Based upon the relief sought, this case is automatically exempt from the Court Annexed
12 Arbitration Program. See NAR 3(A); see also NRS 38.255(3) (2015) (cases that must be excluded
13 from mandatory arbitration). Counsel for both sides participated in an early case conference on
14 October 20, 2014, and the parties filed a joint case conference report on November 6, 2014. The
15 parties are scheduled to commence trial in this action on October 31, 2016.

16 Dennis Vacco is a New York attorney with the law firm of Lippes Mathias Wexler Friedman
17 LLP ("LMWF"). Mr. Vacco represents Mr. Morabito, and apparently has represented Defendants at
18 various times. On August 20, 2015, Plaintiff served Defendants with a notice informing them that he
19 would be taking the deposition of Mr. Vacco in New York, on October 20, 2015. On September 29,
20 2015, Plaintiff caused a New York subpoena duces tecum to be served on Mr. Vacco and LMWF,
21 which directed them to produce various documents—including documents relating to specified
22 transfers of property involving Mr. Morabito—at Mr. Vacco's deposition. On that same date, Plaintiff
23 served Defendants with a Notice of Issuance of Subpoena to Dennis Vacco.³

24
25 ² The petition was filed in Nevada. See In re Morabito, No. BK-S-13-51237-GWZ (Bankr. D. Nev. filed June 20,
2013). Plaintiff was elected to serve as the Chapter 7 Trustee in the bankruptcy proceedings in January 2015.

26 ³ The New York subpoena effectively incorporated the provisions of a subpoena duces tecum directed to Mr.
Vacco that was issued by this Court on September 24, 2015. The Nevada subpoena, along with a commission issued by
this Court, was the basis for issuance of the New York subpoena. Defendants were served with a copy of the Nevada
subpoena.

1 On October 15, 2015, Mr. Vacco and LMWF served Plaintiff with their Response to
2 Subpoena. Mr. Vacco and LMWF raised objections to almost all categories of the subpoena—
3 including objections based upon various privileges—but also referred Plaintiff to various documents
4 already produced in the Morabito bankruptcy proceeding (as well as 180 pages of documents
5 produced with the response). The response did not contain or reference a privilege log for any
6 responsive documents withheld from production, nor did it state that a privilege log would be
7 forthcoming. During his deposition on October 21, 2015, Mr. Vacco testified that he and his firm
8 were not actually withholding any documents based on the attorney-client privilege, despite raising
9 those objections in the response. However, he was instructed by Defendants' counsel not to answer
10 certain questions about communications between himself and Mr. Morabito, based upon the
11 attorney-client privilege.

12 Thereafter, Plaintiff filed a motion in the bankruptcy court to determine the extent to which
13 Mr. Vacco could refuse to provide testimony and documents based upon the attorney-client
14 privilege.⁴ In an order entered on February 3, 2016, the bankruptcy court concluded, *inter alia*, that

15 (b) the attorney-client privilege related to . . . [LMWF's] production of documents and
16 Vacco's testimony during the deposition is that of the Debtor; (c) it is the Debtor's
17 obligation to provide a privilege log with respect to the documents being withheld on
18 the basis of privilege because the Debtor is asserting the privilege; (d) the invocation
19 of the privilege by the Debtor affects property of his estate pursuant to Section 541 of
20 the Bankruptcy Code that is alleged to have been fraudulently transferred; (e) the
21 Trustee has made a prima facie showing of fraud as required by the crime/fraud
22 exception to the attorney-client privilege, which showing has not been rebutted; (f) the
23 inquiry required by the crime/fraud exception is focused on what the client wanted to
24 accomplish—whether the client intended to further some fraudulent activity and
25 engage counsel to assist in that activity; the timing of the legal services or whether
26 the attorney's legal services were closely related have no effect on whether the
27 crime/fraud exception is established; (g) the Trustee has met his burden to waive the
28 Debtor's attorney-client privilege under the balancing test; and (h) as a result, the
29 Trustee has, consistent with applicable law, waived the Debtor's attorney-client
30 privilege with . . . [LMWF]. . . .

31 The bankruptcy court therefore granted Plaintiff's motion, and ordered that Mr. Vacco re-appear for
32 his continued deposition in the state court action. In that regard, it ruled that the attorney-client

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⁴ Although the deposition took place in connection with this pending state court action, Plaintiff believed that any withholding of documents and refusal to answer questions by Mr. Vacco was based upon an improper assertion of Mr. Morabito's attorney-client privilege, an issue that implicated the bankruptcy estate.

1 privilege had been waived as to the questions asked during the first deposition, and that waiver
2 would extend to "any other questions that may be asked of Vacco at the continued deposition, and
3 any documents that may have been withheld . . . on grounds that disclosure was not required
4 because of the Debtor's attorney-client privilege with" LMWF. Vacco and LMWF were directed to
5 provide information and documents that were previously withheld based upon the attorney-client
6 privilege, and Mr. Morabito was directed to provide Plaintiff with a privilege log regarding all
7 documents previously withheld on the basis of privilege. In connection with the renewed deposition,
8 the parties were directed to coordinate with the bankruptcy court's staff so that the judge would be
9 available telephonically to resolve any disputes that might arise during the continued deposition.

10 On or about February 18, 2016, Plaintiff served Defendants with a notice informing them that
11 the continued deposition of Mr. Vacco would be held on March 18, 2016 in New York. Plaintiff's
12 counsel also contacted LMWF to discuss the production of documents requested in the earlier
13 subpoena. Ultimately, LMWF acknowledged that it had possession of fifteen boxes of documents
14 and electronically stored information that may be responsive to the subpoena, but that were not
15 previously produced.

16 In a letter emailed on March 9, 2016, LMWF advised Defendants' counsel of the subpoena
17 directed to Mr. Vacco requiring him to appear and produce documents, and asked that counsel
18 notify the firm if Defendants intend to challenge any part of that subpoena. Defendants' counsel
19 then contacted Plaintiff's counsel to discuss his concerns about the Plaintiff's request and the extent
20 to which Defendants can assert privileges to preclude Mr. Vacco and LMWF from providing
21 information and documents. Counsel thereafter exchanged emails on this matter, but were unable
22 to resolve their disagreement in that regard.

23 On March 10, 2016, Defendants filed a *Motion to Partially Quash, or, in the Alternative, for a*
24 *Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client*
25 *Privilege*. Defendants observe that at Mr. Vacco's renewed deposition, Plaintiff intends to seek
26 information and documents regarding their confidential communications with him. Defendants

1 maintain that their confidential communications with Mr. Vacco are protected by the attorney-client
2 privilege.⁵ They acknowledge the bankruptcy court's order concerning communications between Mr.
3 Morabito and Mr. Vacco, but they argue that this order did not purport to affect their confidential
4 communications with Mr. Vacco. Moreover, they contend that only this Court can determine whether
5 those communications are protected, and that Plaintiff must bring a motion in the appropriate New
6 York court if he wishes to compel Mr. Vacco to provide information and documents that previously
7 were withheld by him.

8 *Plaintiff's Opposition to Defendants' Motion to Partially Quash, or, in the Alternative, for a*
9 *Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client*
10 *Privilege* was filed on March 25, 2016. Plaintiff notes that his request is limited to those documents
11 and communications to which Mr. Morabito was a party. Plaintiff maintains that the bankruptcy court
12 has already determined that those communications between Mr. Morabito and Mr. Vacco are not
13 protected from disclosure, and that they remain unprotected irrespective of Defendants' involvement
14 in some of those communications. Indeed, Plaintiff contends that Defendants have not established
15 that Mr. Vacco even had an attorney-client relationship with them. In any event, he argues that Mr.
16 Vacco's client file for Mr. Morabito is now property of the bankruptcy estate, and that as trustee of
17 that estate he is entitled to disclosure of Mr. Vacco's communications with co-clients to the same
18 extent that Mr. Morabito would be entitled to such disclosure. Further, those co-clients have now
19 become adversarial, which precludes application of any attorney-client privilege as to the requested
20 documents and communications. Plaintiff also argues that Defendants' motion is untimely, and that
21 their failure to expressly assert and support their privilege claims earlier has resulted in a loss of any
22 protection.

23 *Defendants' Reply in Support of Motion to Modify Subpoena, or, in the Alternative, for a*
24 *Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client*
25 *Privilege* was filed on April 6, 2015. Defendants again emphasize that they do not dispute the loss

26 ⁵ Defendants recognize Plaintiff's right to discover nonprivileged information, and they seek no relief in that regard.

1 of protection for communications between Mr. Morabito and Mr. Vacco. But Defendants maintain
2 that they have a right to assert protection as to any such communications that also involved them,
3 under either a joint-defense or common-interest theory. They again observe that protections for
4 their communications with Mr. Vacco have not been waived, and that Mr. Morabito's involvement in
5 those communications does not preclude them from asserting their privilege in this action. In that
6 regard, they note that for a waiver to be effective under either a joint-defense or common-interest
7 theory, all clients must concur in the waiver. Defendants also deny that they are adverse to Mr.
8 Morabito in this case. Finally, they argue that this motion is timely. The motion was submitted for
9 decision on April 6, 2015.

10 However, on April 8, 2016, Plaintiff filed *Plaintiff's Ex Parte Motion for Leave to File a*
11 *Supplement to Plaintiff's Opposition to Defendants' Motion to Partially Quash, or, in the Alternative,*
12 *for a Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client*
13 *Privilege*. In that motion, Plaintiff maintains that the Court should consider another factor that arose
14 on April 5, 2016—the bankruptcy court's rejection of the same arguments that Defendants have
15 made in the underlying motion and reply brief. On April 13, 2016, Defendants filed their *Opposition*
16 *to Ex Parte Motion for Leave to File a Supplement to Plaintiff's Opposition to Defendants' Motion to*
17 *Quash*. Defendants contend that the bankruptcy court's rulings have no bearing on this state court
18 action and should not be considered in connection with the underlying motion. Plaintiff filed his
19 *Reply in Support of Motion to File Supplement* on April 25, 2016, and that motion was submitted for
20 decision on that same date.

21 As an initial matter, the Court will grant Plaintiff's motion for leave to supplement his
22 opposition to the underlying motion. In that motion, Plaintiff merely seeks to advise of the Court of a
23 new development that he contends should be considered in connection with Defendants' motion.
24 Because the bankruptcy court order at issue was entered on April 5, 2016, it could not have been
25 included within Plaintiff's opposition filed on March 26, 2016. Whatever impact that order should
26 have on the Court's resolution of Defendants' motion, Plaintiff could properly request to supplement

1 its opposition with a matter that he could not have included in his original opposition, and the Court
2 is persuaded that he should be permitted to advise the Court of that new development.

3 The subpoena to Mr. Vacco contains fourteen categories, but nine of those categories are
4 not implicated in this motion (since they do not in any way seek documents that pertain to
5 Defendants). In Category Nos. 5, 6, 7, 8, and 9, Plaintiff asks Mr. Vacco and LMWF to produce
6 "[a]ny and all Documents constituting, relating to, or referring to services performed by you with
7 respect to" the transfer or sale of certain real or personal property identified in each category on or
8 about October 1, 2010, to the persons identified therein, which include Defendants Edward William
9 Bayuk Living Trust and Snowshoe Petroleum, Inc. Defendants were served with a copy of this
10 subpoena on September 29, 2015. To the extent that Mr. Vacco and LMWF represented
11 Defendants in connection with the referenced transactions, Defendants arguably should have
12 appreciated that the scope of these categories, as drafted, could encompass privileged
13 communications between themselves and Mr. Vacco, and timely sought any desired relief prior to
14 Mr. Vacco's deposition (or, at the latest, at that deposition).⁶

15 Defendants, however, maintain that they were not aware that Plaintiff might be seeking their
16 privileged documents until Mr. Vacco advised them of that possibility in his letter of March 9, 2016.
17 In that regard, the Court notes that most or all of the other categories of the subpoena appear to be
18 clearly focused on Mr. Vacco's representation of Mr. Morabito. Further, Defendants' counsel
19 attended Mr. Vacco's deposition on October 21, 2016. While he instructed Mr. Vacco not to answer
20 certain questions, he apparently provided that instruction to protect Mr. Morabito's attorney-client
21 privilege. The Court has not been advised of any question, objection, or discussion at that
22 deposition concerning confidential communications between Mr. Vacco and any Defendants.
23 Finally, Defendants brought the pending motion one day after being advised by Mr. Vacco about the
24 possibility that Plaintiff may seek Defendants' protected information at his upcoming deposition. On

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26 ⁶ Alternatively, of course, Defendants could have contacted Plaintiff to determine whether Plaintiff was actually seeking documents that Defendants believe are protected from disclosure.

1 this record, the Court finds that the motion is timely or, alternatively, that any untimeliness is
2 excused.⁷

3 Nevertheless, Defendants' motion is problematic. Defendants essentially seek an order
4 relieving Mr. Vacco from having to provide any information or documents that are protected by
5 Defendants' attorney-client privilege, or precluding Defendants from seeking such information and
6 documents. But NRCP 26(b)(1) already limits the scope of discovery to information that is relevant
7 and nonprivileged. More important, this request begs the question of whether specific information or
8 documents are, in fact, protected from disclosure. However, Defendants have not identified specific
9 information or documents that they believe are protected and which they believe Plaintiff will request
10 during Mr. Vacco's deposition. The closest Defendants come to doing so in the motion is a
11 reference to "Defendants' communications with Vacco," but not every communication Defendants
12 have had with Mr. Vacco is automatically protected from disclosure by the attorney-client privilege.

13 A court typically will not issue a broad preemptive order directing the examining party not to
14 engage in behavior that is already prohibited by our discovery rules. The party who is concerned
15 that an opponent will request privileged information at a nonparty's deposition ordinarily must attend
16 that deposition, assert objections as appropriate, and instruct the witness not to answer questions
17 that would require the revelation of privileged information. If necessary, the parties could later
18 present any dispute over those objections and instructions to the appropriate court. With regard to a
19 request that the nonparty produce documents at his or her deposition, the usual procedure is to work
20 with the nonparty to provide a privilege log of any responsive documents that the producing party
21 believes are protected from disclosure, under NRCP 26(b)(5).⁸ If the examining party violates one or
22 more of those rules, the witness or an opposing party could avail itself of any appropriate remedy,
23 which could include suspension of the deposition and moving for a protective order to address
24 specific questions and requests for documents deemed improper by the movant.

25 ⁷ To the extent that Defendants might have been required to provide a privilege log had this motion been brought
26 in October 2016, the same circumstances would excuse that omission.

⁸ The obligation to provide a privilege log would also apply to a nonparty who separately wishes to withhold any responsive documents on the basis of an evidentiary privilege or immunity. See NRCP 45(d)(2).

1 In addition, Plaintiff's counsel provided greater clarity regarding the documents sought from
2 Mr. Vacco in an email to Defendants' counsel sent on March 10, 2016. In that email, Defendants'
3 counsel stated as follows: "For purposes of Vacco's deposition and the subpoena relating thereto,
4 we will not seek documents to which Morabito is not a party." Thus, Plaintiff seeks confidential
5 communications between Mr. Morabito and Mr. Vacco; indeed, the bankruptcy court has already
6 determined that any such protection has been waived. In addition, Plaintiff does not seek
7 confidential communications between any Defendant and Mr. Vacco that did not involve Mr.
8 Morabito (although he has reserved his right to seek such documents in the future). The only
9 dispute concerns confidential communications involving Mr. Vacco, Mr. Morabito, and one or more
10 Defendants.

11 In their reply brief, Defendants indicate that they do not believe Plaintiff is entitled to
12 confidential communications that included Mr. Vacco, Mr. Morabito, and one or more Defendants.
13 Without question, the attorney-client privilege in Nevada extends to "confidential communications . . .
14 [m]ade for the purpose of facilitating the rendition of professional legal services to the client, by the
15 client or the client's lawyer to a lawyer representing another in a matter of common interest." See
16 NRS 49.095(3) (2015); see also id. 49.055 ("[a] communication is 'confidential' if it is not intended to
17 be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of
18 professional legal services to the client or those reasonably necessary for the transmission of the
19 communication").⁹ But no privilege exists "[a]s to a communication relevant to a matter of common
20 interest between two or more clients if the communication was made by any of them to a lawyer

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22 ⁹ To the extent that the law of Nevada and the law of New York differ with regard to the attorney-client privilege
23 (e.g., elements of the privilege, scope of protection, kinds of exceptions, circumstances constituting waiver, burdens or
24 proof, etc.), an application of the rules regarding conflict of laws may be appropriate. See Restatement (Second) of
25 Conflict of Laws § 139 (1971 & 1988 rev.) (addressing privileged communications). However, neither side has raised that
26 issue in connection with this discovery dispute, and the record does not provide sufficient facts for the Court to provide an
appropriate analysis of the issue sua sponte. Therefore, the Court will proceed with the understanding that the relevant
laws of Nevada and New York do not conflict in connection with any of the issues raised by the pending motion. See, e.g.,
Nat'l Ass'n of Sporting Goods Wholesalers, Inc. v. F.T.L. Mktg. Corp., 779 F.2d 1281, 1285 (7th Cir. 1985) ("unless the
parties argue otherwise, it is assumed that the law of the forum and the laws of the applicable jurisdiction are in substance
the same"); BK Entm't Grp., Inc. v. Bendeth, Civil Action No. 11-5432 (SRC), 2013 WL 3821476, at *5 (D.N.J. July 22,
2013) (since no party argued that laws of New Jersey and California were in conflict, federal court in New Jersey applied
New Jersey law).

1 retained or consulted in common, when offered in an action between any of the clients.” See NRS
2 49.115(5) (2015).

3 Although Mr. Morabito and Defendants may have been joint clients of Mr. Vacco and LMWF
4 in connection with certain transfers of property, Plaintiff is now investigating transfers that he
5 believes were made to defraud Mr. Morabito's creditors, and he is doing so on behalf of the
6 bankruptcy estate. Defendants argue that the exception quoted above does not apply because, “[i]n
7 order to stand in Mr. Morabito's shoes for purposes of the joint-defense or common-interest
8 privilege, the Trustee would need to show this Court that the Trustee is the holder, or owner, of Mr.
9 Morabito's attorney-client privileges.” That contention overstates Plaintiff's burden. Mr. Morabito
10 might very well be the holder of his individual attorney-client privilege in contexts unrelated to the
11 bankruptcy proceedings, but Plaintiff does not need to show that he controls that aspect of Mr.
12 Morabito's attorney-client privilege to obtain confidential communications that included Mr. Vacco,
13 Mr. Morabito, and one or more Defendants. Moreover, the bankruptcy court has already determined
14 that Plaintiff is adverse to at least one Defendant, and that “[b]y reason of the adversity as between
15 the Trustee and Bayuk . . . , any Common Interest Privilege that may have protected the
16 communications among Lippes, the Debtor, [and] Bayuk . . . are discoverable by the Trustee who
17 has stepped into the shoes of the Debtor” (emphasis added). That finding has support in decisions
18 from other bankruptcy courts. See In re Taproot Sys., Inc., No. 11-05255-8-JRL, 2012 WL 2253743,
19 at *3 (Bankr. E.D.N.C. June 15, 2012); In re Indiantown Realty Partners, Ltd. P'ship, 270 B.R. 532,
20 538-39 (Bankr. S.D. Fla. 2001); In re Lynch, Nos. 97-10381, 97-1084, 1998 WL 908950, at *2 & n.6
21 (Bankr. D. Vt. Dec. 17, 1998). Moreover, as explained by the bankruptcy court, “[t]he contents of
22 legal files created during the course of a joint representation belong jointly to the clients with each
23 having an undivided ownership interest in them.” See In re Kaleidoscope, Inc., 15 B.R. 232, 244
24 (Bankr. N.D. Ga. 1981). As trustee of the bankruptcy estate, Plaintiff has the same right to review
25 the entire contents of Mr. Vacco's and LMWF's files concerning their representation of him—
26 including communications that involved Mr. Morabito, Mr. Vacco, and any Defendants—as Mr.

1 Morabito would have had prior to Plaintiff's appointment as trustee. Defendants therefore may not
2 claim a privilege to prevent disclosure of these communications to Plaintiff.

3 For the foregoing reasons, the Court finds that Defendants are not entitled to an order
4 partially quashing the subpoena to Mr. Vacco, or the issuance of a protective order. To the extent
5 that categories of the subpoena could be read so broadly as to require production of confidential
6 communications between Defendants and Mr. Vacco, Plaintiff has clarified that he does not we not
7 seek documents to which Mr. Morabito is not a party. Therefore, no protection is needed in that
8 regard. But Plaintiff is entitled to, and may seek information regarding, otherwise confidential
9 communications between Mr. Vacco and any Defendant that fall within the scope of the subpoena
10 served on Mr. Vacco, to the extent that Mr. Morabito was a party to that communication.

11 ACCORDINGLY, Defendants' *Motion to Partially Quash, or, in the Alternative, for a*
12 *Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client*
13 *Privilege* should be DENIED.

14 DATED: This 13th day of June, 2016.

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17 WESLEY M. AYRES
18 DISCOVERY COMMISSIONER
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CERTIFICATE OF SERVICE

CASE NO. CV13-02663

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 13 day of June, 2016, I electronically filed the **RECOMMENDATION FOR ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

TERESA M. PILATOWICZ, ESQ. for WILLIAM A. LEONARD, TRUSTEE OF THE
BANKRUPTCY ESTATE OF PAUL ANTHONY MORABITO

BARRY L. BRESLOW, ESQ. for SUPERPUMPER, INC. et al.

FRANK C. GILMORE, ESQ. for SUPERPUMPER, INC. et al.

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:

Gerald M. Gordon, Esq.
Mark M. Weisenmiller, Esq.
Gabrielle A. Hamm, Esq.
Garman Turner Gordon LLP
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Las Vegas, NV 89119-9018

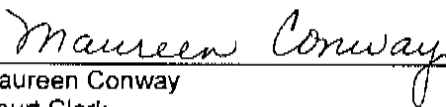

Maureen Conway
Court Clerk

EXHIBIT A-4

EXHIBIT A-4

1 CODE NO. 2690

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5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

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

11 Plaintiff,

Case No. CV13-02663

12 vs.

Dept. No. B1

13 SUPERPUMPER, INC., an Arizona corporation,
14 et al.,

15 Defendants.

16 CONFIRMING ORDER

17 On September 1, 2016, the Discovery Commissioner served a *Recommendation for Order* in
18 this action. None of the parties to this action has filed an objection regarding that recommendation
19 and the period for filing any objection concerning that recommendation has expired. See NRCP
20 16.1(d)(2).

21 ACCORDINGLY, the Court hereby CONFIRMS, APPROVES, and ADOPTS the Discovery
22 Commissioner's Supplemental Recommendation for Order served on August 26, 2016.

23 DATED this 14th day of SEPTEMBER, 2016.

24 Joan Berry
DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CV13-02663

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 16 day of SEPTEMBER, 2016, I electronically filed the **CONFIRMING ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:


TERESA M. PILATOWICZ, ESQ. for WILLIAM A. LEONARD, TRUSTEE OF THE
BANKRUPTCY ESTATE OF PAUL ANTHONY MORABITO

BARRY L. BRESLOW, ESQ. for SUPERPUMPER, INC. et al.

FRANK C. GILMORE, ESQ. for SUPERPUMPER, INC. et al.

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:

Gerald M. Gordon, Esq.
Mark M. Weisenmiller, Esq.
Gabrielle A. Hamm, Esq.
Garman Turner Gordon LLP
650 White Dr., Ste. 100
Las Vegas, NV 89119-9018



A handwritten signature, likely of Gerald M. Gordon, is written over a horizontal line. The signature is stylized and cursive.

EXHIBIT A-5

EXHIBIT A-5

1 **3980**

2 GARMAN TURNER GORDON LLP

3 GERALD M. GORDON, ESQ.

4 Nevada Bar No. 229

5 E-mail: ggordon@gtg.legal

6 TERESA M. PILATOWICZ, ESQ.

7 Nevada Bar No. 9605

8 E-mail: tpilatowicz@gtg.legal

9 650 White Drive, Ste. 100

10 Las Vegas, Nevada 89119

11 Telephone 725-777-3000

12 *Attorneys to Trustee*

13 **IN THE SECOND JUDICIAL DISTRICT COURT OF**

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

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

18 Plaintiff,

19 vs.

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

27 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

SUBPOENA - CIVIL

XX Regular XX Duces Tecum

28 **THE STATE OF NEVADA SENDS GREETINGS TO:**

Person Most Knowledgeable of Hodgson Russ LLP

Hodgson Russ LLP

The Guaranty Building

140 Pearl Street, Suite 100

Buffalo, New York 14202

YOU ARE HEREBY COMMANDED that all and singular, business and excuses set
aside, you (1) shall produce the documents requested below for inspection and copying¹ on

¹ Alternatively, the documents may be delivered electronically to tpilatowicz@gtg.legal prior to January 23, 2017.

1 January 23, 2017 and (2) shall appear and attend to present testimony on the 30th day of January,
2 2017 at 10:00 a.m. The topics for testimony are set forth below:

3 1. Hodgson Russ LLP's engagement as counsel for Paul Morabito ("Morabito")
4 between September 1, 2010 and December 31, 2010.

5 2. Any and all payments made from September 1, 2010 through December 31, 2010
6 to Hodgson Russ LLP by Morabito or a third party on his behalf.

7 3. Any and all payments made by Hodgson Russ LLP to any third party on
8 Morabito's behalf from September 1, 2010 through December 31, 2010.

9 4. Any and all communications between members or employees of Hodgson Russ
10 LLP, including but not limited to Garry Graber and Sujata Yalamanchili, and Morabito regarding
11 the judgment announced against Morabito on or about September 13, 2010 (the "Judgment") in
12 Case No. CV07-02764 styled *Consolidated Nevada Corp. et al v. JH, Inc., et al.* in the Second
13 Judicial District Court of Nevada in Washoe County (the "State Court Case")

14 5. Any and all communications between members or employees of Hodgson Russ
15 LLP, including, but not limited to Garry Graber and Sujata Yalamanchili, and Paul Morabito
16 regarding the transfer and/or sale of any of Paul Morabito's assets including, but not limited to,
17 interests in Superpumper, Inc., Consolidated Western Corporation, Bayuk Properties,
18 Watchmyblock, LLC, and real properties following announcement of the Judgment

19 6. Any and all communications between members or employees of Hodgson Russ
20 LLP, including, but not limited to Garry Graber and Sujata Yalamanchili, and Paul Morabito
21 between September 1, 2010 and December 31, 2010.

22 7. Any and all advice provided by members or employees of Hodgson Russ LLP to
23 Morabito regarding the transfer and/or sale of his assets following announcement of the
24 Judgment, including but not limited to the transfer of assets by and between Morabito and
25 Edward Bayuk.

26 8. Any and all communications between members or employees of Hodgson Russ
27 LLP including, but not limited to Gary Graber and Sujata Yalamochili, with third parties,
28 including but not limited to, Dennis Vacco and/or Roy Cunningham, regarding the transfer
and/or sale of Morabito's assets following announcement of the Judgment.

9. Any and all to communications between Hodgson Russ LLP and any employee of
Hopkins Appraisal or Matrix Capital Markets Group, Inc. regarding any valuations requested by
You or with Your knowledge of Superpumper, Inc.

10. The documents provided in response to the Subpoena issued to Hodgson Russ
LLP in connection with the above-captioned case on or about December 29, 2016.

(Continued)

If documents are provided electronically, no appearance to produce and permit inspection is necessary on October
15, 2015.

1 The address where you are required to appear is Key Center, 50 Fountain Plaza, Suite
2 1400, Buffalo, New York 14202. Your attendance is required to give testimony and/or produce
3 and permit inspection and copying of designated books, documents or tangible things in your
4 possession, custody or control, or to permit inspection of premises. If you fail to attend, you may
5 be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your
6 failure to appear. Please see Exhibit "A" attached hereto for information regarding the rights of
7 the person subject to this Subpoena.

8 Dated this 3rd day of January, 2017.

9
10 GARMAN TURNER GORDON LLP

11 /s/ Teresa M. Pilatowicz
12 GERALD E. GORDON, ESQ.
13 TERESA M. PILATOWICZ, ESQ.
14 650 White Drive, Ste. 100
15 Las Vegas, Nevada 89119
16 Telephone 725-777-3000

17 *Attorneys for Trustee*

18 ITEMS TO BE PRODUCED

19 DEFINITIONS

- 20 2. "Action" means the above-captioned case pending in the Second Judicial District Court,
21 Washoe County, Nevada, at Case No. A CV13-02663.
- 22 3. "Communication" means any contact, oral or written, formal or informal, at any time or
23 any place under any circumstance whatsoever whereby any information of any nature
24 was transmitted or transferred, including but not limited to personal conversation,
25 conferences, telephone conversations, memoranda, letters, correspondence, electronic
26 correspondence, texts, reports, and publications.
- 27 4. "Document" shall be deemed to mean any printed, typewritten, handwritten, electronic,
28 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.

5. “Morabito” means Paul Morabito.
6. “Plaintiff” or “Leonard” refers to Plaintiff William A. Leonard, Trustee.
7. “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.
8. “You” or “Your” means Hodgson Russ LLP, and its members 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 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.

- 1 3. In producing Documents and other materials, You are requested to furnish all Documents
2 or things in Your possession, custody, or control, regardless of whether such Documents
3 or materials are possessed by You directly or Your directors, officers, agents, employees,
4 representatives, subsidiaries, managing agents, affiliates, investigators, or by Your
5 attorneys or their agents, employees, representatives, or investigators.
- 6 4. If any Document is held under claim of privilege, please identify the Document for which
7 there is a claim of privilege and a full description thereof, including without limitation:
8 1. The date it bears;
9 2. The name of each person who prepared it or who participated in any way
10 in its preparation;
11 3. The name of each person who signed it;
12 4. The name of each person to whom it, or a copy of it was addressed;
13 5. The name of each person who presently has custody of it or a copy of it;
14 6. The subject matter and its substance; and
15 7. What factual basis there is for the claim of privilege.
- 16 5. If any Document requested to be produced was but is no longer in Your possession or
17 control, or is no longer in existence, state whether it is (1) missing or lost, (2) destroyed,
18 (3) transferred voluntarily or involuntarily to others and if so to whom, or (4) otherwise
19 disposed of; and in each instance explain the circumstances surrounding an authorization
20 of such disposition thereof and state the approximate date thereof.
- 21 6. In the event that Documents called for by any particular request have been lost or
22 destroyed, please state: (i) the date on which the Document(s) were lost or destroyed; (ii)
23 the manner in which the Document(s) were lost or destroyed; (iii) the identity of the
24 Document(s); (iv) the information contained within such Document(s) and the nature of
25 the Document(s); and (v) the identity of any person(s) who has knowledge of the
26 contents of the Document(s) or has received a copy of such Document(s).
- 27 7. Documents attached to each other should not be separated.
- 28 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.
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
2 1. Any and all Documents constituting, relating to, or referring to your engagement
3 as counsel for Morabito between September 1, 2010 and December 31, 2010.

4 2. Any and all statements or invoices from September 1, 2010 through December 31,
5 2010 detailing the descriptions of and amount billed for services provided by You to Morabito or
6 any third party on his behalf.

7 3. Any and all Documents sufficient to identify any and all payments made from
8 September 1, 2010 through December 31, 2010 to You by Morabito or a third party on his
9 behalf.

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

12 5. Any and all Communications between You and Morabito regarding the judgment
13 announced against him on or about September 13, 2010 (the "Judgment") in Case No. CV07-
14 02764 styled *Consolidated Nevada Corp. et al v. JH, Inc., et al.* in the Second Judicial District
15 Court of Nevada in Washoe County (the "State Court Case")

16 6. Any and all Communications between You and Morabito between September 1,
17 2010 and December 31, 2010.

18 7. Any and all Communications between You and Morabito regarding the transfer
19 and/or sale of any of Morabito's assets following announcement of the Judgment.

20 8. Any and all Documents evidencing advice provided by You to Paul Morabito
21 regarding the transfer and/or sale of his assets following announcement of the Judgment,
22 including but not limited to the transfer of assets by and between Paul Morabito and Edward
23 Bayuk.

24 9. Any and all Documents drafted for, at the request of, on behalf of, or in relation to
25 the representation of Morabito following announcement of the Judgment related to the transfer
26 and/or sale of Morabito's assets including, but not limited to, trusts, purchase and sale
27 agreements, membership transfer agreements, and/or memorandums.
28

1 10. Any and all Communications between you and third parties, including but not
2 limited to, Dennis Vacco and/or Roy Cunningham, regarding the transfer and/or sale of
3 Morabito's assets.

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

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

17 13. Any and all Documents constituting, relating to, or referring to services
18 performed by You with respect to the transfer of property located at 370 Los Olivos, Laguna
19 Beach, California to the Bayuk Living Trust on or about October 1, 2010. This includes, but is
20 not limited to, opinion letters, written agreements relating to the transfer, including drafts, and
21 valuations of the real and personal property located at 370 Los Olivos, Laguna Beach, California
22 whether ordered by You, obtained by You, or otherwise in Your file.

23 14. Any and all Documents constituting, relating to, or referring to services
24 performed by You with respect to the transfer of the Arcadia Living Trust's ownership interest in
25 Baruk Properties, LLC on or about October 1, 2010. This includes, but is not limited to, opinion
26 letters, written agreements relating to the transfer, including drafts, and valuations of the assets
27 owned by Baruk Properties, LLC whether ordered by You, obtained by You, or otherwise in
28 Your file. Such assets include, but are not limited to, the real and personal property located at

1 1254 Mary Flemming Circle, Palm Springs, California; 1461 Glenneyre St., Laguna Beach,
2 California; 520 Glenneyre St., Laguna Beach, California; and 49 Clayton Place, Sparks, Nevada.

3 15. Any and all Documents constituting, relating to, or referring to services
4 performed by You relating to the transfer and/or sale of Morabito's 80% interest in Consolidated
5 Western Corporation and/or Superpumper, Inc. to Snowshoe Petroleum and/or Edward Bayuk
6 and/or Salvatore Morabito on or about September 30, 2010. This includes, but is not limited to,
7 opinion letters, written agreements relating to the transfer, including drafts, and valuations of
8 Morabito's interest in Superpumper, Inc. whether ordered by You, obtained by You, or otherwise
9 in Your file.

10 16. Any and all Documents constituting, relating to, or referring to Communications
11 between You and any employee of Hopkins Appraisal or Matrix Capital Markets Group, Inc.
12 regarding any valuations requested by You, with Your knowledge, or otherwise performed, of
13 Superpumper, Inc,

14 17. Any and all Documents constituting, relating to, or referring to services
15 performed by You relating to the transfer and/or sale of Morabito's 90% interest in
16 Watchmyblock, LLC to Edward Bayuk on or about September 30, 2010. This includes, but is
17 not limited to, opinion letters, written agreements relating to the transfer, including drafts, and
18 valuations of Morabito's interest in Watchmyblock, LLC whether ordered by You, obtained by
19 You, or otherwise in Your file.

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

23 19. Any and all Documents related to or referring to promissory notes drafted by You
24 between September 1, 2010 and December 31, 2010 at the request of Morabito, or at the request
25 of any third party on Morabito's behalf including, but not limited to, any ledgers regarding
26 payments on such promissory notes.

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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 _____, 2016, and served the same on the _____ day of _____, 2016 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 _____, 201__.

Signature of person making service

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.

STATE OF NEW YORK

COUNTY OF ERIE

COUNTY CLERK LOG NO. _____

SUBPOENA

(pursuant to the Uniform Interstate
Deposition and Discovery Act and
CPLR §3119)

William A. Leonard,
Plaintiff/Petitioner,
v.
Superpumper, Inc. et al,
Defendant/Respondent.

Originating State: Nevada

Originating County: Washoe

Originating Court: Second Judicial District

Originating Case number:

CV13-02563

**SUBPOENA/ SUBPOENA DUCES TECUM
pursuant to the Uniform Interstate Discovery Act
(Personal Attendance Required/Not Required)**

TO: Person Most Knowledgeable of Hodgson Russ LLP
140 Pearl Street, Suite 100
Buffalo, NY 14202

WE COMMAND YOU to appear at the time, date, and place set forth below to testify at
a deposition to be taken in this civil action. and
each of you appear and attend before an authorized court reporter
at Key Center, 50 Fountain Plaza, Suite 1400, Buffalo, New York 14202,
on the 30th day of January, 2017, at 10:00 o'clock, in the A.M. noon,
and at any recessed or adjourned date to give testimony in this action on the part of
Plaintiff, William Leonard _____;

and/or that you bring with you, and produce at the time and place aforesaid, the following
documents, electronically stored information, or objects, and permit their inspection, copying,
testing or sampling of the material:

see items requested in "Items to Be Produced" on attached subpoena issued from the Second Judicial
District Court of the State of Nevada, In and for the County of Washoe, to be produced on or before January 23, 2017

and/or that you permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date and location set forth below, so that we may inspect, measure, survey,, photograph, test, or sample the property or any designated object or operation on it

FAILURE TO COMPLY with this SUBPOENA is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed one hundred fifty dollars and all damages sustained by reason of your failure to comply.

Additional Information:

[if any is contained in the Out-of-State subpoena]

**Contact Information of Counsel for all parties
(or contact information for parties pro se)
in the action:**

Frank Gilmore, Esq.
Robinson, Belaustegui, Sharp & Low
71 Washington Street
Reno, Nevada 89503
(775) 636-6809

Attorney for Defendant

Teresa Pilatowicz, Esq.
Garman Turner Gordon
650 White Drive, Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

Attorney for Plaintiff

Dated: JANUARY 3, 2017 (state)
NIAGARA FALLS, NY

BY: 

Ryan Hanna
730 Main St.
Niagara Falls, NY

EXHIBIT A-6

EXHIBIT A-6

1 **2582**
2 GARMAN TURNER GORDON LLP
3 GERALD M. GORDON, ESQ.
4 Nevada Bar No. 229
5 E-mail: ggordon@gtg.legal
6 TERESA M. PILATOWICZ, ESQ.
7 Nevada Bar No. 9605
8 E-mail: tpilatowicz@gtg.legal
9 650 White Drive, Ste. 100
10 Las Vegas, Nevada 89119
11 Telephone 725-777-3000

12 *Special Counsel to Trustee*

13
14
15 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
16 **THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE**

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

20 Plaintiff,

21 vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

TIME: January 30, 2017
DATE: 10:00 a.m.

29
30
31 **NOTICE OF DEPOSITION OF PERSON MOST KNOWLEDGEABLE OF HODGSON**
32 **RUSS LLP**

33 PLEASE TAKE NOTICE that on the 30th day of January 2017, at 10:00 o'clock a.m., at
34 Key Center, 50 Fountain Plaza, Suite 1400, Buffalo, New York 14202, Plaintiff William A.
35 Leonard, by and through his special counsel, Garman Turner Gordon LLP, will take the
36 deposition of the person most knowledgeable of Hodgson Russ LLP. The deposition will cover
37 the following topics:

- 38 1. Hodgson Russ LLP's engagement as counsel for Paul Morabito ("Morabito")

1 between September 1, 2010 and December 31, 2010.

2 2. Any and all payments made from September 1, 2010 through December 31, 2010
3 to Hodgson Russ LLP by Morabito or a third party on his behalf.

4 3. Any and all payments made by Hodgson Russ LLP to any third party on
5 Morabito's behalf from September 1, 2010 through December 31, 2010.

6 4. Any and all communications between members or employees of Hodgson Russ
7 LLP, including but not limited to Garry Graber and Sujata Yalamanchili, and Morabito regarding
8 the judgment announced against Morabito on or about September 13, 2010 (the "Judgment") in
9 Case No. CV07-02764 styled *Consolidated Nevada Corp. et al v. JH, Inc., et al.* in the Second
10 Judicial District Court of Nevada in Washoe County (the "State Court Case")

11 5. Any and all communications between members or employees of Hodgson Russ
12 LLP, including, but not limited to Garry Graber and Sujata Yalamanchili, and Paul Morabito
13 regarding the transfer and/or sale of any of Paul Morabito's assets including, but not limited to,
14 interests in Superpumper, Inc., Consolidated Western Corporation, Bayuk Properties,
15 Watchmyblock, LLC, and real properties following announcement of the Judgment

16 6. Any and all communications between members or employees of Hodgson Russ
17 LLP, including, but not limited to Garry Graber and Sujata Yalamanchili, and Paul Morabito
18 between September 1, 2010 and December 31, 2010.

19 7. Any and all advice provided by members or employees of Hodgson Russ LLP to
20 Morabito regarding the transfer and/or sale of his assets following announcement of the
21 Judgment, including but not limited to the transfer of assets by and between Morabito and
22 Edward Bayuk.

23 8. Any and all communications between members or employees of Hodgson Russ
24 LLP including, but not limited to Gary Graber and Sujata Yalamochili, with third parties,
25 including but not limited to, Dennis Vacco and/or Roy Cunningham, regarding the transfer
26 and/or sale of Morabito's assets following announcement of the Judgment.

27 9. Any and all to communications between Hodgson Russ LLP and any employee of
28 Hopkins Appraisal or Matrix Capital Markets Group, Inc. regarding any valuations requested by
You or with Your knowledge of Superpumper, Inc.

10 10. The documents provided in response to the Subpoena issued to Hodgson Russ
11 LLP in connection with the above-captioned case on or about December 29, 2016.

12 The deposition will be taken upon oral examination and stenographically recorded
13 pursuant to Rules 26 and 30 of the Nevada Rules of Civil Procedure, before a Notary Public, or
14 before some other officer authorized by law to administer oaths. The oral examination will
15 continue from day to day until completed. You are invited to attend and cross-examine.

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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 3rd of January, 2017.

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

Special Counsel for Trustee

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CERTIFICATE OF SERVICE

I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this date, pursuant to NRCp 5(b), I am serving a true and correct copy of the attached **NOTICE OF DEPOSITION OF THE PERSON MOST KNOWLEDGEABLE OF HODGSON RUSS LLP** on the parties as set forth below:

- ☒ XXX Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, Reno, Nevada, postage prepaid, following ordinary business practices
- ☐ Certified Mail, Return Receipt Requested
- ☐ Via Facsimile (Fax)
- ☐ Via E-Mail
- ☐ Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered
- ☐ Federal Express (or other overnight delivery)

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

DATED this 3rd day of January, 2017.

/s/ Ricky Ayala
An Employee of GARMAN TURNER
GORDON LLP

EXHIBIT A-7

EXHIBIT A-7

Hodgson Russ LLP
Garry Graeber, Esq.
Kevin Kearney, Esq.
140 Pearl Street, Suite 100
Buffalo, NY 14202

January 25, 2017

VIA US MAIL AND ELECTRONIC MAIL

Hodgson Russ LLP
Garry Graeber, Esq.
Kevin Kearney, Esq.
140 Pearl Street, Suite 100
Buffalo, NY 14202
ggraeber@hodgsonruss.com
kkearney@hodgsonruss.com

Re:

Dear Messrs. Graeber and Kearney,

As you know, Garman Turner Gordon LLP represents William Leonard (the “Trustee”) in his capacity as the chapter 7 trustee of the bankruptcy estate of Paul Morabito in case no. BK-S-13-51237-GWZ (the “Bankruptcy Case”) pending in the United States Bankruptcy Court for the District of Nevada (the “Bankruptcy Court”). Mr. Leonard is the Plaintiff in the case of *Leonard v. Superpumper, et al*, Case No. CV13-02663, pending in the Second Judicial District Court for the District of Nevada (the “State Court Case”).

As Plaintiff in the State Court Case, the Trustee has issued a subpoena for the production of documents and appearance at a deposition (the “Subpoena”) to Hodgson Russ. The Subpoena requests, among other things, communications between Mr. Morabito and Hodgson Russ between September 1, 2010 and December 31, 2010, and testimony related to the same.

While bankruptcy trustees for corporate debtors have the absolute right to waive the attorney-client privilege for pre-petition communications, the issue of a bankruptcy trustee’s ability to waive the privilege for individual debtors requires analysis.

One approach to the issue is the application of a “balancing test” that balances the possible effects of waiver on the debtor against the inability of a trustee to administer a debtor’s estate if the waiver is not recognized. “Because it impedes full and free discovery of the truth, the attorney-client privilege is strictly construed.” *Id.* (quoting *United States v. Martin*, 278 F.3d 988, 999 (9th Cir. 2002)). The balancing-test approach is the most widely used approach. *In re Pearlman*, 381 B.R. 903, 910 (Bankr. M.D. Fla. 2007) (noting that the majority of courts employ a balancing test whereby “the specific facts of a case are evaluated and balanced, including the risk of harm to the debtor versus the benefit to the estate”).

Another approach to the issue considers a debtor's criminal or tortious acts. *See Duplan Corp. v. Deering Milliken, Inc.*, 397 F.Supp. 1146, 1172 (D.S.C. 1974). In the bankruptcy context, communications about fraudulent transfers or preferences are not protected by the privilege. *In re Blier Cedar*, 10 B.R. 993, 999–1000 (Bankr. D. Me. 1981); *Riggs v. Nat'l Bank v. Andrews (In re Andrews)*, 186 B.R. 219, 222 (Bankr. E.D. Va. 1995); *Feltman v. Leading Edge Group Holdings, Inc.*, 2008 Bankr. LEXIS 4430 at *8 (Bankr. S.D. Fla. 2008 (“The crime fraud exception has been applied by bankruptcy courts to cases involving fraudulent transfers.”)); *see also In re Warner*, 87 B.R. 199, 203–04 (Bankr. M.D. Fla. 1988) (applying the crime-fraud exception when looking into the validity of transfers under Sections 544 and 548 of the Bankruptcy Code); *In re Campbell*, 248 B.R. 435, 439–440 (Bankr. M.D. Fla. 2000) (applying the crime-fraud exception where a creditor sought the production of documents related to the debtor's action in contemplation of, prior to, or during the transfers of assets that were allegedly fraudulent). “Furtherance of a crime or *civil fraud* is unlawful and vitiates the attorney/client privilege.” *In re Blier Cedar Co., Inc.*, 10 B.R. 993 (Bankr. D.Me. 1981) (emphasis added) (ordering production of documents shown on a prima facie basis to have constituted fraudulent transfers). The court in *In re Cutuli*, No. 11-35256-BKC-AJC, 2013 Bankr. LEXIS 3843 (Bankr. S.D. Fla. Sept. 13, 2013), applied the crime-fraud exception with a debtor trying to hide assets and defraud a particular creditor. **The *Cutuli* court noted that: “Bankruptcy courts have held that merely raising an “inference that . . . transfers may have been fraudulent” is sufficient to invoke the crime-fraud exception. *Id.* at *12–13 (citing *In re Campbell*, 248 B.R. 435, 440 (Bankr.M.D.Fla.2000)).**

The Trustee is prosecuting the State Court Case for the benefit of the chapter 7 estate. The State Court Case includes claims for actual and constructive fraudulent transfers by Mr. Morabito based upon, among other things, the transfer of his interests in certain real and personal property and his equity interests in Baruk Properties, Superpumper, Inc., and Watchmyblock, LLC to Edward Bayuk, Salvatore Morabito, and Snowshoe Petroleum, Inc.

In granting the Trustee's *Motion to Compel Responses to Deposition Questions* related to similar document production and testimony from Lippes Mathias Wexler Friedman LLP and Dennis Vacco in the State Court Case, the Bankruptcy Court determined that, among other things, “the Trustee has made a prima facie showing of fraud as required by the crime/fraud exception to the attorney-client privilege, which showing has not been rebutted,” and “the Trustee has met his burden to waive the Debtor's attorney-client privilege under the balancing test.” Based on the reasoning set forth in the *Order Granting Motion to Compel Responses to Deposition Questions*, attached hereto for your convenience, it is clear that either (1) the crime/fraud exception to the attorney-client privilege applies and/or (2) the Trustee may waive the Debtor's attorney-client privilege.

This letter confirms that to the extent any privilege of Mr. Morabito extends to the documents or testimony requested, the Trustee waives the privilege to permit the production of

Garman Turner Gordon LLP

Attorneys and Counselors at Law

January 29, 2017

Page 3

the requested documents and testimony regarding the same. For the avoidance of doubt, the Trustee is not seeking communications or documents after the date of the Order for Relief in the Bankruptcy Case, June 20, 2013.

Should you have any questions or concerns regarding this letter, please feel free to contact me.

Very truly yours,

GARMAN TURNER GORDON LLP




TERESA M. PILATOWICZ, ESQ.

Enclosure: Order

cc: Frank Gilmore, Esq.

The undersigned has reviewed the objection to proposed order, the response, the transcript of the December 22, 2015 hearing and the underlying pleadings prior to executing this order.


Honorable Gregg W. Zive
United States Bankruptcy Judge



Entered on Docket
February 03, 2016

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Attorneys for William Leonard, Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

PAUL A. MORABITO,

Debtor.

Case No.: BK-S-13-51237-GWZ
Chapter: 7

Hearing:
Date: December 22, 2015
Time: 9:00 a.m.

**ORDER GRANTING MOTION TO COMPEL
RESPONSES TO DEPOSITION QUESTIONS**

The *Motion to Compel Responses to Deposition Questions* [ECF No. 452] (the "Motion"), filed by William Leonard, Chapter 7 Trustee (the "Trustee"), by and through his counsel, the law firm of Garman Turner Gordon LLP, with regard to the deposition of Dennis Vacco ("Vacco") in the State Court Case¹ came on for hearing before the above-captioned Court

¹ Terms not otherwise defined in this Order are as defined in the Motion.

1 on December 22, 2015, at 9:00 a.m. (the "Hearing"). Gerald M. Gordon, Esq. of Garman Turner
2 Gordon LLP appeared as special counsel and John F. Murtha, Esq. of Woodburn & Wedge
3 appeared as general counsel on behalf of the Trustee. Frank C. Gilmore, Esq. of Robison
4 Belaustegui Sharp & Low and Jeffrey L. Hartman, Esq. of Hartman & Hartman appeared on
5 behalf of the debtor Paul A. Morabito (the "Debtor"). Timothy A. Lukas, Esq. of Holland &
6 Hart appeared on behalf of USHF Cellular Communications, LLC and Janet L. Chubb, Esq. of
7 Kaempfer Crowell appeared on behalf of Virsenet, LLC. Holly Estes, Esq. of Walter & Wilhelm
8 Law Group appeared on behalf of Edward Bayuk and the Meadow Farms Irrevocable Trust. All
9 other appearances were noted on the record at the Hearing.

10 The Court having reviewed the Motion and all matters submitted therewith as well as the
11 oppositions [ECF Nos. 460 & 461] and the Trustee's omnibus reply [ECF No. 466] filed thereto;
12 notice of the Motion having been proper; the Court finding and concluding that: (a) the Court has
13 jurisdiction to hear and decide the Motion; (b) the attorney-client privilege related to Lippes
14 Mathias Wexler Friedman, LLP's ("Lippes Mathias") production of documents and Vacco's
15 testimony during the deposition is that of the Debtor; (c) it is the Debtor's obligation to provide a
16 privilege log with respect to the documents being withheld on the basis of privilege because the
17 Debtor is asserting the privilege; (d) the invocation of the privilege by the Debtor affects
18 property of his estate pursuant to Section 541 of the Bankruptcy Code that is alleged to have
19 been fraudulently transferred; (e) the Trustee has made a prima facie showing of fraud as
20 required by the crime/fraud exception to the attorney-client privilege, which showing has not
21 been rebutted; (f) the inquiry required by the crime/fraud exception is focused on what the client
22 wanted to accomplish – whether the client intended to further some fraudulent activity and
23 engage counsel to assist in that activity; the timing of the legal services or whether the attorney's
24 legal services were closely related have no effect on whether the crime/fraud exception is
25 established; (g) the Trustee has met his burden to waive the Debtor's attorney-client privilege
26 under the balancing test; and (h) as a result, the Trustee has, consistent with applicable law,
27 waived the Debtor's attorney-client privilege with Lippes Mathias and Vacco. Having stated the
28 Court's additional findings of fact and conclusions of law on the record at the Hearing, which are

1 hereby incorporated herein by reference in accordance with Rule 52 of the Federal Rules of Civil
2 Procedure, made applicable pursuant to Rule 9014 of the Federal Rules of Bankruptcy
3 Procedure; and good cause appearing therefore,

4 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

5 1. The Motion is granted as provided herein.

6 2. The elimination of Debtor's attorney-client privilege with Lippes Mathias and
7 Vacco as provided for herein extends to the Disputed Questions that were asked and objected to
8 in the deposition of Vacco, any other questions that may be asked of Vacco at the continued
9 deposition, and any documents that may have been withheld by Lippes Mathias, the Debtor, or
10 Debtor's counsel in response to the subpoenas for documents on grounds that disclosure was not
11 required because of the Debtor's attorney-client privilege with Lippes Mathias and Vacco.

12 3. Lippes Mathias and Vacco shall disclose and make available to the Trustee
13 documents and information related to the representation of the Debtor that would otherwise be
14 protected from disclosure under the privilege.

15 4. Within ten (10) calendar days of entry of this Order, the Debtor shall provide the
16 Trustee a privilege log with respect to all documents withheld on the basis of privilege.

17 5. The deposition of Vacco shall recommence in the State Court Case.

18 6. The parties may submit briefs simultaneously of no longer than ten (10) pages, by
19 5:00 p.m. on the last business day which is ten (10) calendar days prior to the recommenced
20 deposition, in which the parties may brief attorney-client privilege issues and disputes that the
21 Debtor and parties to the State Court Case anticipate arising at the continued deposition to
22 expedite the resolution any additional disputes.

23 7. The parties shall coordinate with the Court's staff so that the Court is available
24 telephonically to resolve any disputes that arise during the continued deposition.

25 **IT IS SO ORDERED.**

1 **PREPARED AND SUBMITTED:**

2 GARMAN TURNER GORDON LLP

3
4 /s/ Mark M. Weisenmiller
5 GERALD M. GORDON, ESQ.
6 Nevada Bar No. 229
7 TERESA M. PILATOWICZ, ESQ.
8 Nevada Bar No. 9605
9 MARK M. WEISENMILLER, ESQ.
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11 650 White Drive, Suite 100
12 Las Vegas, Nevada 89119
13 Tel: (735) 777-3000
14 Attorneys for Chapter 7 Trustee,
15 William A. Leonard
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LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies as follows:

- ☐ The Court waived the requirement of approval under LR 9021(b)(1).
- ☐ No party appeared on the Motion at the hearing or filed an objection to the Motion.
- ☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order as stated below.

FRANK C. GILMORE, ESQ. & JEFFREY L. HARTMAN, ESQ. – For Debtor – **DISAPPROVED**

TIMOTHY A. LUKAS, ESQ. – For USHF Cellular Communications, LLC – APPROVED

HOLLY ESTES, ESQ. – For Edward Bayuk and Meadow Farms Irrevocable Trust – **DISAPPROVED**

JOHN F. MURTHA, ESQ. – for Chapter 7 Trustee – APPROVED

- ☐ I have certified that under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objection to the form or content of the order.

###

EXHIBIT A-8

EXHIBIT A-8

1 **3980**

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12 *Attorneys for William A. Leonard*

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

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

14 Plaintiff,

15 vs.

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

23 Defendants.

CASE NO.: CV13-02663

DEPT. NO. 1

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STIPULATION REGARDING CONTINUED DISCOVERY DATES (SIXTH REQUEST)

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff, William A. Leonard (the "Trustee"), by and through his counsel, Garman Turner Gordon LLP, and Defendants Superpumper, Inc., Edward Bayuk, individually and as trustee of Edward William Bayuk Living Trust, Salvatore Morabito, and Snowshoe Petroleum, Inc. (collectively, "Defendants," and together with Trustee, the "Parties"), by and through their counsel, Robison Belaustegui Sharp & Low, through this *Stipulation Regarding Continued Discovery Dates (Sixth*

1 Request) (the “Stipulation”) as follows:

2 **The Vacco Deposition and Related Discovery**

3 1. WHEREAS on September 29, 2015, the Trustee caused a subpoena (the
4 “Subpoena”) to be issued to Dennis Vacco (“Vacco”) requesting the production of documents on
5 or before October 13, 2015, and scheduling the deposition of Vacco for October 20, 2015.

6 2. WHEREAS on or about October 15, 2015, Vacco produced approximately 200
7 pages of documents in response to the Subpoena.

8 3. WHEREAS on October 20, 2015, the deposition of Vacco was held at which time
9 Paul Morabito (“Debtor”), debtor in a pending bankruptcy case in the United States Bankruptcy
10 Court for the District of Nevada (the “Bankruptcy Court”), asserted the attorney-client privilege
11 as to various questions.

12 4. WHEREAS the Trustee filed a *Motion to Compel Responses to Deposition*
13 *Questions* (the “Motion to Compel”) in the Bankruptcy Court seeking an order determining the
14 scope of Debtor’s privilege, which Motion to Compel was heard on December 22, 2015 and
15 granted on or about February 2, 2016.

16 5. WHEREAS on February 18, 2016, after consultation with Vacco and the
17 Defendants’ counsel, the Trustee filed the *Notice of Continued Deposition of Dennis Vacco* (the
18 “Vacco Deposition Notice”) and demanded the production of any documents that had been
19 withheld based on the attorney-client privilege. As set forth in the Vacco Deposition Notice, the
20 Vacco Deposition was continued to March 18, 2016 (the “Continued Vacco Deposition”).

21 6. WHEREAS on or about February 23, 2016, the Trustee’s counsel was informed
22 there were as many as thirteen banker’s boxes of potentially responsive documents in Vacco’s
23 possession that had not been previously produced (the “Additional Documents”).

24 7. WHEREAS on March 10, 2016, Defendants’ counsel demanded that the
25 Additional Documents not be produced pending resolution of a dispute regarding attorney-client
26 privilege issues.

27 8. WHEREAS on March 10, 2016, Defendants’ counsel filed the *Motion to Partially*
28 *Quash, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery*

1 *Protected by the Attorney-Client Privilege* (the “Motion to Quash”) in the above-captioned case,
2 to which Trustee filed an opposition.

3 9. WHEREAS as a result of the dispute over the Additional Documents including
4 the Motion to Quash, the Trustee could not proceed with the Continued Vacco Deposition as
5 scheduled and could not conduct the Continued Vacco Deposition prior to the original discovery
6 cut-off in the case, which was March 31, 2016 (the “Discovery Cut-Off”).

7 10. WHEREAS the Additional Documents were ultimately produced on or about
8 October 13, 2016. On or about December 8, 2016, Vacco further produced additional documents
9 responsive to the original document request (the “Supplemental Disclosure”). The Supplemental
10 Disclosure caused the Trustee to issue a subpoena on Hodgson Russ seeking documents and a
11 deposition of the person most knowledgeable of Hodgson Russ (the “Hodgson Deposition”).

12 11. WHEREAS multiple extensions have been stipulated to and filed since the
13 Discovery Cut-Off and the current deadline to complete outstanding discovery relating to the
14 Additional Documents and Supplemental Disclosure is February 1, 2017.

15 12. WHEREAS the Trustee scheduled Vacco’s deposition to be completed on January
16 27, 2017 but, due to Vacco’s unavailability, the Trustee has been unable to complete Vacco’s
17 deposition.

18 13. WHEREAS the Trustee scheduled the Hodgson Deposition to be completed on
19 January 30, 2017 but, in an effort to coordinate and limit travel for the Parties to Buffalo, has
20 coordinated with Defendants to continue the Hodgson Deposition to be completed at the same
21 time as the Vacco Deposition.

22 **The Bernstein Deposition**

23 14. WHEREAS on or about February 2, 2016, the Trustee caused a subpoena (the
24 “Bernstein Subpoena”) to be issued to Stanton Bernstein (“Bernstein”) requesting the production
25 of documents on or before March 4, 2016, and scheduling the deposition of Bernstein for March
26 16, 2016 (the “Bernstein Deposition”).

27 15. WHEREAS pursuant to a request by Bernstein, the Parties agreed to continue the
28 Bernstein Deposition to March 29, 2016.

1 16. WHEREAS on March 24, 2016, Bernstein produced documents responsive to the
2 Bernstein Subpoena (the "Bernstein Documents") to Defendants' counsel, which documents
3 were turned over, in part, with certain documents withheld pursuant to a privilege log on April 7,
4 2016.

5 17. WHEREAS, the Bernstein Deposition was continued on multiple occasions, and
6 has not yet been completed, and the Parties have agreed to continue the Bernstein Deposition to
7 May 17, 2017 to accommodate Mr. Bernstein's schedule.

8 18. WHEREAS, trial in this matter is scheduled to commence on October 9, 2017.

9 NOW THEREFORE, the Parties hereby stipulate and agree as follows:

10 1. The Discovery Cut-Off shall be extended to May 31, 2017 only for the purpose of
11 conducting the Continued Vacco Deposition, Hodgson Deposition, and the Bernstein Deposition.

12 2. This Stipulation shall be without prejudice to seeking an additional extension of
13 time for good cause.


14 **AFFIRMATION**
15 **Pursuant to NRS 239B.030**


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

18 DATED this 30th day of January, 2017.

19 GARMAN TURNER GORDON LLP

ROBISON BELAUSTEGUI SHARP & LOW

20 
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22 TERESA M. PILATOWICZ, ESQ.
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26 Attorneys for William A. Leonard

20 
21 BARRY L. BRESLOW, ESQ.
22 FRANK C. GILMORE, ESQ.
23 71 Washington Street
24 Reno, Nevada 89503
25 Telephone 775-329-3151
26 Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this
3 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the foregoing
4 **STIPULATION REGARDING CONTINUED DISCOVERY DATES (SIXTH REQUEST)** on the
5 parties as set forth below:

- 6 X Placing an original or true copy thereof in a sealed envelope placed for collection
7 and mailing in the United States Mail, Reno, Nevada, postage prepaid, following
8 ordinary business practices
9 Certified Mail, Return Receipt Requested
10 Via Facsimile (Fax)
11 Via E-Mail
12 Placing an original or true copy thereof in a sealed envelope and causing the same
13 to be personally Hand Delivered
14 Federal Express (or other overnight delivery)
15 Via CM/ECF

16 addressed as follows:

17 Barry Breslow
18 Frank Gilmore
19 ROBISON, BELAUSTEGUI, SHARP & LOW
20 71 Washington Street
21 Reno, NV 89503

22 DATED this 30th day of January, 2017.

23 /s/ Ricky Ayala
24 An Employee of GARMAN TURNER GORDON
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INDEX OF EXHIBITS

Exhibit	Description	Pages ¹
1	Proposed Order Approving Stipulation Regarding Continued Discovery Dates (Sixth Request)	3

¹ Exhibit page counts are exclusive of exhibit slip sheets.

EXHIBIT 1

EXHIBIT 1

1 **3980**

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12 *Attorneys for William A. Leonard*

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

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

14 Plaintiff,

15 vs.

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

23 Defendants.

CASE NO.: CV13-02663

DEPT. NO. 1

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**ORDER APPROVING STIPULATION REGARDING CONTINUED DISCOVERY
DATES (SIXTH REQUEST)**

29 Pursuant to the *Stipulation Regarding Continued Discovery Dates (Sixth Request)* (the
30 “Stipulation”)¹ of the parties, IT IS HEREBY ORDERED as follows:

31 1. The Discovery Cut-Off shall be extended to May 31, 2017 only for the purpose of
32 conducting the Continued Vacco Deposition, the Hodgson Deposition, and the Bernstein

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¹ Capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the Stipulation.

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Deposition.

2. This Stipulation shall be without prejudice to seeking an additional extension of time for good cause.

IT IS HEREBY ORDERED this ____ day of _____, 2017.

DISTRICT COURT JUDGE

EXHIBIT A-9

EXHIBIT A-9

1 **3980**
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12 *Attorneys for William A. Leonard*

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

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

14 Plaintiff,

15 vs.

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

23 Defendants.

CASE NO.: CV13-02663

DEPT. NO. 1

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**STIPULATION REGARDING CONTINUED DISCOVERY DATES (SEVENTH
REQUEST)**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff, William A. Leonard (the "Trustee"), by and through his counsel, Garman Turner Gordon LLP, and Defendants Superpumper, Inc., Edward Bayuk, individually and as trustee of Edward William Bayuk Living Trust, Salvatore Morabito, and Snowshoe Petroleum, Inc. (collectively, "Defendants," and together with Trustee, the "Parties"), by and through their counsel, Robison

1 Belaustegui Sharp & Low, through this *Stipulation Regarding Continued Discovery Dates*
2 (*Seventh Request*) (the “Stipulation”) as follows:

3 **The Vacco Deposition and Related Discovery**

4 1. WHEREAS on September 29, 2015, the Trustee caused a subpoena (the
5 “Subpoena”) to be issued to Dennis Vacco (“Vacco”) requesting the production of documents on
6 or before October 13, 2015, and scheduling the deposition of Vacco for October 20, 2015.

7 2. WHEREAS on or about October 15, 2015, Vacco produced approximately 200
8 pages of documents in response to the Subpoena.

9 3. WHEREAS on October 20, 2015, the deposition of Vacco was held at which time
10 Paul Morabito (“Debtor”), debtor in a pending bankruptcy case in the United States Bankruptcy
11 Court for the District of Nevada (the “Bankruptcy Court”), asserted the attorney-client privilege
12 as to various questions.

13 4. WHEREAS the Trustee filed a *Motion to Compel Responses to Deposition*
14 *Questions* (the “Motion to Compel”) in the Bankruptcy Court seeking an order determining the
15 scope of Debtor’s privilege, which Motion to Compel was heard on December 22, 2015 and
16 granted on or about February 2, 2016.

17 5. WHEREAS on February 18, 2016, after consultation with Vacco and the
18 Defendants’ counsel, the Trustee filed the *Notice of Continued Deposition of Dennis Vacco* (the
19 “Vacco Deposition Notice”) and demanded the production of any documents that had been
20 withheld based on the attorney-client privilege. As set forth in the Vacco Deposition Notice, the
21 Vacco Deposition was continued to March 18, 2016 (the “Continued Vacco Deposition”).

22 6. WHEREAS on or about February 23, 2016, the Trustee’s counsel was informed
23 there were as many as thirteen banker’s boxes of potentially responsive documents in Vacco’s
24 possession that had not been previously produced (the “Additional Documents”).

25 7. WHEREAS on March 10, 2016, Defendants’ counsel filed the *Motion to Partially*
26 *Quash, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery*
27 *Protected by the Attorney-Client Privilege* (the “Motion to Quash”) in the above-captioned case,
28 to which Trustee filed an opposition.

1 8. WHEREAS as a result of the dispute over the Additional Documents including
2 the Motion to Quash, the Trustee could not proceed with the Continued Vacco Deposition as
3 scheduled and could not conduct the Continued Vacco Deposition prior to the original discovery
4 cut-off in the case, which was March 31, 2016 (the “Discovery Cut-Off”).

5 9. WHEREAS the Additional Documents were ultimately produced on or about
6 October 13, 2016. On or about December 8, 2016, Vacco further produced additional documents
7 responsive to the original document request (the “Supplemental Disclosure”). The Supplemental
8 Disclosure caused the Trustee to issue a subpoena on Hodgson Russ seeking documents and a
9 deposition of the person most knowledgeable of Hodgson Russ (the “Hodgson Deposition”).

10 10. WHEREAS multiple extensions have been stipulated to and filed since the
11 Discovery Cut-Off and the current deadline to complete outstanding discovery relating to the
12 Additional Documents and Supplemental Disclosure is currently May 31, 2017.

13 11. WHEREAS the Trustee scheduled Vacco’s deposition to be completed on January
14 27, 2017 but, due to Vacco’s unavailability, the Trustee has been unable to complete Vacco’s
15 deposition.

16 12. WHEREAS the Trustee scheduled the Hodgson Deposition to be completed on
17 January 30, 2017 but, in an effort to coordinate and limit travel for the Parties to Buffalo, has
18 coordinated with Defendants to continue the Hodgson Deposition to be completed at the same
19 time as the Vacco Deposition.

20 13. WHEREAS to coordinate scheduling between the Parties and the deponants for
21 the Continued Vacco Deposition and Hodgson Deposition, the Continued Vacco Deposition has
22 been scheduled to occur on July 10, 2017 and the Hodgson Deposition has been scheduled to
23 occur on July 12, 2017.

24 14. WHEREAS, trial in this matter is scheduled to commence on October 9, 2017.

25 NOW THEREFORE, the Parties hereby stipulate and agree as follows:

26 1. The Discovery Cut-Off shall be extended to July 31, 2017, only for the purpose of
27 conducting the Continued Vacco Deposition and Hodgson Deposition.

28 2. This Stipulation shall be without prejudice to seeking an additional extension of

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time for good cause.

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 25th day of May, 2017.

GARMAN TURNER GORDON LLP

ROBISON BELAUSTEGUI SHARP & LOW

/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

/s/ Frank C. Gilmore
FRANK C. GILMORE, ESQ.
71 Washington Street
Reno, Nevada 89503
Telephone 775-329-3151
Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this date, pursuant to NRCP 5(b), I am serving a true and correct copy of the foregoing **STIPULATION REGARDING CONTINUED DISCOVERY DATES (SEVENTH REQUEST)** 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)
- ☐ Via CM/ECF

addressed as follows:

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

DATED this 25th day of May, 2017.

/s/ Ricky Ayala
An Employee of GARMAN TURNER GORDON

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INDEX OF EXHIBITS

Exhibit	Description	Pages ¹
1	Proposed Order Approving Stipulation Regarding Continued Discovery Dates (Seventh Request)	3

¹ Exhibit page counts are exclusive of exhibit slip sheets.

Exhibit 1

Exhibit 1

1 **3980**
2 GARMAN TURNER GORDON LLP
3 GERALD M. GORDON, ESQ.
4 Nevada Bar No. 229
5 E-mail: ggordon@gtg.legal
6 TERESA M. PILATOWICZ, ESQ.
7 Nevada Bar No. 9605
8 E-mail: tpilatowicz@gtg.legal
9 650 White Drive, Ste. 100
10 Las Vegas, Nevada 89119
11 Telephone 725-777-3000

12 *Attorneys for William A. Leonard*

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

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

14 Plaintiff,

15 vs.

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

23 Defendants.

CASE NO.: CV13-02663

DEPT. NO. 1

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**ORDER APPROVING STIPULATION REGARDING CONTINUED DISCOVERY
DATES (SEVENTH REQUEST)**

29 Pursuant to the *Stipulation Regarding Continued Discovery Dates (Seventh Request)* (the
30 “Stipulation”)¹ of the parties, IT IS HEREBY ORDERED as follows:

31 1. The Discovery Cut-Off shall be extended to July 31, 2017, only for the purpose of
32 conducting the Continued Vacco Deposition and the Hodgson Deposition.

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¹ Capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the Stipulation.

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2. This Stipulation shall be without prejudice to seeking an additional extension of time for good cause.

IT IS HEREBY ORDERED this ____ day of _____, 2017.

DISTRICT COURT JUDGE

EXHIBIT A-10

EXHIBIT A-10

1 **DISCOVERY**
2 **FRANK C. GILMORE, ESQ. - NSB #10052**
3 fgilmore@rbsllaw.com
4 **Robison, Belaustegui, Sharp & Low**
5 A Professional Corporation
6 71 Washington Street
7 Reno, Nevada 89503
8 Telephone: (775) 329-3151
9 Facsimile: (775) 329-7169
10
11 Attorneys for Defendants
12

13 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
14 **IN AND FOR THE COUNTY OF WASHOE**
15

16 **WILLIAM A. LEONARD, Trustee for the**
17 **Bankruptcy Estate of Paul Anthony Morabito**
18
19 Plaintiffs,
20

CASE NO.: CV13-02663

DEPT. NO.: B1

21 vs.

22 **SUPERPUMPER, INC., an Arizona corporation;**
23 **EDWARD BAYUK, individually and as Trustee**
24 **of the EDWARD WILLIAM BAYUK LIVING**
25 **TRUST; SALVATORE MORABITO, an**
26 **individual; and SNOWSHOE PETROLEUM,**
27 **INC., a New York corporation,**
28

Defendants.
/

29 **DEFENDANTS' SIXTEENTH SUPPLEMENT TO NRCP DISCLOSURE**
30 **OF WITNESSES AND DOCUMENTS**

31 Defendants above named, by and through their attorneys of record and pursuant to NRCP
32 16.1(a)(1), hereby provide their fifteenth supplement to initial disclosure of documents produced
33 and persons likely to have discoverable information as follows (new supplemented documents and
34 witnesses are in bold):
35

36 ///

1 **WITNESSES**

2 1. Edward Bayuk
3 c/o Robison, Belaustegui, Sharp & Low
4 71 Washington Street
5 Reno, Nevada 89503

6 Mr. Bayuk is a Defendant and has knowledge of the events alleged in Plaintiff's
7 Complaint.

8 2. Salvatore Morabito
9 c/o Robison, Belaustegui, Sharp & Low
10 71 Washington Street
11 Reno, Nevada 89503

12 Mr. Morabito is a Defendant and has knowledge of the events alleged in Plaintiff's
13 Complaint.

14 3. Paul A. Morabito
15 c/o Robison, Belaustegui, Sharp & Low
16 71 Washington Street
17 Reno, Nevada 89503

18 Mr. Morabito is a Defendant and has knowledge of the events alleged in Plaintiff's
19 Complaint.

20 4. Person Most Knowledgeable of the Lippes Mathias Wexler Friedman, LLP
21 665 Main Street, Suite 300
22 Buffalo, New York 14203

23 The Person Most Knowledgeable of Lippes Mathias Wexler Friedman, LLP is expected to
24 have knowledge of the events alleged in Plaintiff's Complaint.

25 5. Person Most Knowledgeable of Spencer P. Cavalier, DVA, ASA
26 Sean P. Dooley
27 Matrix Capital Markets Group, Inc.
28 100 S. Charles Street, Suite 1350
Baltimore, MD 21201

The Person Most Knowledgeable of the Spencer P. Cavalier, DVA, ASA, Sean P. Dooley,
Matrix Capital Markets Group, Inc. is expected to have knowledge of the events alleged in
Plaintiff's Complaint.

6. Stanton R. Bernstein, CPA
Stanton Bernstein, An Accountancy Corp.
6320 Canoga Ave., 15th Floor
Woodland Hills, CA

1 7. Paul M. Alves, MAI, SRA
2 Darryl A. Noble
3 Alves Appraisal Associates
4 320 Wonder Street
5 Reno, Nevada 89502
6 (775) 329-8487

7 Conducted the appraisal on the Panorama Property in Reno, Nevada.

8 8. Raymond L. Dozier, MAI
9 Dozier Appraisal Company
10 73-350 El Paseo, Suite 206
11 Palm Desert, CA 92260
12 (760) 776-4200

13 Conducted the appraisal on 1254 Mary Flemming Circle, Palm Springs, CA

14 9. Daniel Christian
15 Mark Justmann
16 ASAP Appraisals
17 118 S. Catalina Avenue
18 Redondo Beach, CA 90277
19 (310) 937-6151

20 Conducted the appraisal on 371 El Camino Del Mar, Laguna Beach, CA 92651, and 370
21 Los Olivos, Laguna Beach, CA 92651.

22 10. Jan Friederich
23 Albuquerque, New Mexico
24 (505) 269-6190

25 Mr. Friederich has knowledge of the Superpumper appraisal.

26 11. Dennis Banks
27 Reno, Nevada

28 Mr. Banks has knowledge of the condition of 8355 Panorama Drive.

12. Michael Sevit
16616 Shoenborn Street
North Hills, CA 91343

Mr. Sevit has knowledge of the condition, quality, and workmanship of the Panorama
House.

13. **Person Most Knowledgeable**
Hodgson Russ, LLP
40 Pearl St Suite 100, Buffalo, NY 14202
Phone: (716) 856-4000

**Hodgson Russ attorneys have knowledge of the intent and processes of the alleged
wrongful transfers.**

1 14. Mark Lehman, Esq.
2 9200 Sunset Blvd, Suite 960 | West Hollywood, CA 90069
3 (310) 276-2670

4 Mark Lehman was involved and has personal knowledge of the intent and processes
5 of the alleged wrongful transfers.

6 Defendants reserve the right to supplement this list of individuals should more information
7 become available.

8 **DOCUMENTS**

9 1. Promissory Note (Bates No. Superpumper 000001-Superpumper 000010, produced
10 in the initial disclosures.

11 2. Arizona Corporation Commission letter dated October 21, 2010 (Bates No.
12 Superpumper 000011-Superpumper 000018, produced in the initial disclosures.

13 3. Stock Power (Bates No. Superpumper 000019-Superpumper 000020 produced in
14 the initial disclosures.

15 4. Unanimous Written Consent of the Board of Directors and Sole Shareholder of
16 Superpumper, Inc. (Bates No. Superpumper 000021-Superpumper 000026 produced in the initial
17 disclosures.

18 5. Articles of Merger. (Bates No. Superpumper 000027-Superpumper 000032,
19 produced in the initial disclosures.

20 6. Shareholder Interest Purchased Agreement. (Bates No. Superpumper 000033-
21 Superpumper 000037, produced in the initial disclosures.

22 7. Consent Agreement (Bates No. Superpumper 000038-Superpumper 000042,
23 produced in the initial disclosures.

24 8. Assignment Agreement (Bates No. Superpumper 000043-Superpumper 000045
25 produced in the initial disclosures.

26 9. Plan of Merger of Consolidated Western Corporation with and into Superpumper,
27 Inc. (Bates No. Superpumper 000046-Superpumper 000063, produced in the initial disclosures.

28 10. Superpumper, Inc. Valuation of 100 Percent of the Common Equity in
Superpumper, Inc. on a Controlling, Market Basis as of August 31, 2010 (Bates No. Superpumper

000064-Superpumper 000096, produced in the initial disclosures.

11. Email from Sam Morabito to Michael Vanek. (Bates No. Superpumper 000097-Superpumper 000098, produced in the initial disclosures.

12. All previously produced documents in the *Morabito v. JH, Inc.* litigation

13. Documents regarding the transfers of residential property (produced in the bankruptcy case), copies of which are contained on the accompanying CD. (produced in the second supplement, May 2015).

14. BBVA Default Notices, Bates Stamped Superpumper 000440-000457, a copy of which is contained on the accompanying CD (produced in the fourth supplement October 2015).

15. BBVA Loan Ledgers, Bates Stamped Superpumper 000458-000462, a copy of which is contained on the accompanying CD (produced in the fourth supplement, October 2015).

16. BBVA Workout Documents, Bates Stamped Superpumper 000463-000603, a copy of which is contained on the accompanying CD (produced in the fourth supplement, October 2015).

17. Capital Invested Chart, Bates Stamped Superpumper 000604, a copy of which is contained on the accompanying CD (produced in the fourth supplement, October 2015).

18. Sam Morabito payments to SPI and Paul Morabito, Bates Stamped Superpumper 000605-000610, a copy of which is contained on the accompanying CD (produced in the fourth supplement, October 2015).

19. SPI Leases, Bates Stamped Superpumper 000611-000924, a copy of which is contained on the accompanying CD (produced in the fourth supplement, October 2015).

20. SPI Loan Ledgers, Bates Stamped Superpumper 000925-000926, a copy of which is contained on the accompanying CD (produced in the fourth supplement, October 2015).

21. Spirit Lease Guarantees, Bates Stamped Superpumper 000927-000946, a copy of which is contained on the accompanying CD (produced in the fourth supplement, October 2015).

22. Wire transfer information (\$355K), Bates Stamped Superpumper 000947, a copy of which is contained on the accompanying CD (produced in the fourth supplement, October 2015).

23. Wire transfer information (\$146+K), Bates Stamped Superpumper 000948, a copy

of which is contained on the accompanying CD (produced in the fourth supplement, October 2015).

24. Shareholder Agreement of Snowshoe Petroleum, Inc., Bates Stamped Superpumper 000949-000968, a copy of which was produced in the fifth supplement, December 2015).

25. Amended and Restated Shareholder Agreement of Superpumper, Inc., Bates Stamped Superpumper 000969-000988, a copy of which was produced in the fifth supplement, December 2015).

26. Cowestco Compensation document, Bates Stamped Superpumper 000989, a copy of which was produced in the fifth supplement, December 2015.

27. Superpumper 2010 Financials (Interim), Bates Stamped Superpumper 000990-001004, a copy of which was produced in the fifth supplement, December 2015.

28. SP budget information, Bates Stamped Superpumper 001005-001006, a copy of which was produced in the fifth supplement, December 2015.

29. Loan Agreement- Superpumper Inc. dated November 16, 2011, Bates Stamped Superpumper 001007-001041, a copy of which was produced in the sixth supplement, January 2016.

30. November 16, 2011 SPI Banking Resolutions, Bates Stamped Superpumper 001042-001064, a copy of which was produced in the sixth supplement, January 2016.

31. Panorama property appraisal documents, Bates Stamped Superpumper 001065-001209, a copy of which was produced in the sixth supplement, January 2016.

32. Superpumper Certificate of Good Standing, Bates Stamped Superpumper 001210, a copy of which was produced in the sixth supplement, January 2016.

33. Fourth Modification to Loan Documents, Bates Stamped Superpumper 001211-001230, a copy of which was produced in the sixth supplement, January 2016.

34. Superpumper Amended and Restated Bylaws, Bates Stamped Superpumper 001231-001241, a copy of which was produced in sixth supplement, January 2016.

35. Superpumper Amended Restated Shareholder Agreement, Bates Stamped Superpumper 001242-001261, a copy of which was produced in the sixth supplement, January

- 1 2016.
- 2 36. Superpumper Consent of Shareholders and Directors, Bates Stamped Superpumper
- 3 001262-001263, a copy of which was produced in the sixth supplement, January 2016.
- 4 37. Superpumper financial documents, Bates Stamped Superpumper 001264-001278, a
- 5 copy of which was produced in the sixth supplement, January 2016.
- 6 38. Superpumper/Morabito Resignation, Bates Stamped Superpumper 001279, a copy
- 7 of which was produced in the sixth supplement, January 2016.
- 8 39. Term Note (\$2,563,542), Bates Stamped Superpumper 001280-001281, a copy of
- 9 which was produced in the sixth supplement, January 2016.
- 10 40. Term Note (\$2,580,500), Bates Stamped Superpumper 001282-001283, a copy of
- 11 which was produced in the sixth supplement, January 2016.
- 12 41. Superpumper Notes Receivable Balance as of 9/30/2010, Bates Stamped
- 13 Superpumper 001284, a copy of which was produced in the seventh supplement, February 2016.
- 14 42. Deposition transcript of Darryl Noble, Bates Stamped Superpumper 001284-
- 15 001349, a copy of which was attached to Defendants' 10th Supplement, March 10, 2016.
- 16 43. 2010 Mortgage documents, Bates Stamped Superpumper 001350-001358, a copy
- 17 of which was attached to Defendants' 10th Supplement March 10, 2016.
- 18 44. Shoreholder loans, Bates Stamped Superpumper 001359-001370, a copy of which
- 19 was attached to Defendants' 10th Supplement, March 10th 2016.
- 20 45. Superpumper Capital Chart, Bates Stamped Superpumper 001371-001378, a copy
- 21 of which was attached to Defendants' 10th Supplement, March 10, 2016
- 22 46. Krausz/Superpumper emails regarding Paul's notes, Bates Stamped Superpumper
- 23 001379-001392, a copy of which was attached to Defendants' 10th Supplement, March 10, 2016.
- 24 47. 3M Term Loan Funding Time, Bates Stamped Superpumper 001393-001394, a
- 25 copy of which was attached to Defendants' 11th Supplement, March 22, 2016.
- 26 48. Bank of America statement for Baruk Properties LLC, Bates Stamped
- 27 Superpumper 001395, a copy of which was attached to Defendants' 11th Supplement, March 22,
- 28 2016.

1 49. March 14, 2016 email from Sean Hufford to Sam Morabito, Bates Stamped
2 Superpumper 001936-001397, a copy of which was attached to Defendants' 11th Supplement,
3 March 22, 2016.

4 50. Jan Friederich subpoenaed documents, Bates Stamped Superpumper 001398-
5 001581, a copy of which was attached to Defendants' 11th Supplement, March 22, 2016.

6 51. 2011 Noble Deposition Exhibit 740, Bates Stamped Superpumper 001582-001629,
7 a copy of which was attached to Defendants' 11th Supplement, March 22, 2016.

8 52. 2011 Noble Deposition Exhibit 741, Bates Stamped Superpumper 001630-001666,
9 a copy of which was attached to Defendants' 11th Supplement, March 22, 2016.

10 53. 2011 Noble Deposition Exhibit 742, Bates Stamped Superpumper 001667-001724,
11 a copy of which was attached to Defendants' 11th Supplement, March 22, 2016.

12 54. Certified copy of 2011 Noble Deposition, Bates Stamped Superpumper 001725-
13 001789, a copy of which was attached to Defendants' 11th Supplement, March 22, 2016.

14 55. Color photos of Panorama Property, Bates Stamped Superpumper 001790-001859,
15 a copy of which was attached to Defendants' 11th Supplement, March 22, 2016.

16 56. SPI ledger of payments from Bayuk and S. Morabito, Bates Stamped Superpumper
17 001860, a copy of which was attached to Defendants' 11th Supplement, March 22, 2016.

18 57. Copy of Wells Fargo SP cash infusion, Bates Stamped Superpumper 001861, a
19 copy of which was attached to Defendants' 11th Supplement, March 22, 2016.

20 58. Wholesale Marketer Facility Development Incentive Program Agreement, Bates
21 Stamped Superpumper 001862-001868, a copy of which was attached to Defendants' 11th
22 Supplement, March 22, 2016.

23 59. Addendum to Incentive Agreement, Bates Stamped Superpumper 001869-001872,
24 a copy of which was attached to Defendants' 11th Supplement, March 22, 2016.

25 60. Volume Amendment, Bates Stamped Superpumper 001873-001876, a copy of
26 which was attached to Defendants' 11th Supplement, March 22, 2016.

27 61. Spreadsheet regarding Superpumper Unam Incentives, Bates Stamped
28 Superpumper 001877, a copy of which was attached to Defendants' 11th Supplement, March 22,

- 1 2016.
- 2 62. Home Loan Statement for Mary Fleming Circle for November 2005, Bates
- 3 Stamped Superpumper 001878, a copy of which was attached to Defendants' 11th Supplement,
- 4 March 22, 2016.
- 5 63. Backup documents purchase of Superpumper, Bates Stamped Superpumper
- 6 001879-Superpumper 001885, a copy of which was produced in the twelfth supplement, March
- 7 2016.
- 8 64. Email regarding 2013 Superpumper Modification, Bates Stamped Superpumper
- 9 001886-Superpumper 001887, a copy of which was produced in the twelfth supplement, March
- 10 2016.
- 11 65. Fourth Modification to Loan Documents, Bates Stamped Superpumper 001888-
- 12 Superpumper 001898, a copy of which was produced in the twelfth supplement, March 2016.
- 13 66. Gage Leases, Bates Stamped Superpumper 001899-Superpumper 001926, a copy
- 14 of which was produced in the twelfth supplement, March 2016.
- 15 67. Pinnacle Pk Property Assignment, Bates Stamped Superpumper 001927-
- 16 Superpumper 001930, a copy of which was produced in the twelfth supplement, March 2016.
- 17 68. Pinnacle Pk Property Lease, Bates Stamped Superpumper 001931-Superpumper
- 18 001947, a copy of which was produced in the twelfth supplement, March 2016.
- 19 69. Pinnacle Pk Property Lease Amendment 1, Bates Stamped Superpumper 001948--
- 20 Superpumper 001953, a copy of which was produced in the twelfth supplement, March 2016.
- 21 70. Shea & Tatum Ground Lease (First Amendment), Bates Stamped Superpumper
- 22 001954-Superpumper 001981, a copy of which was produced in the twelfth supplement, March
- 23 2016.
- 24 71. Shea & Tatum Lease – Second Amendment, Bates Stamped Superpumper 001982-
- 25 Superpumper 001987, a copy of which was produced in the twelfth supplement, March 2016.
- 26 72. Spirit Master Lease – Fully Executed, Bates Stamped Superpumper 001988-
- 27 Superpumper 002042, a copy of which was produced in the twelfth supplement, March 2016.
- 28 73. Superpumper Covenant Calculation Explanation 3-29-16, Bates Stamped

1 Superpumper 002043, a copy of which was produced in the twelfth supplement, March 2016.

2 74. Vestar Lease, Bates Stamped Superpumper 002044-Superpumper 002107, a copy
3 of which was produced in the twelfth supplement, March 2016.

4 75. BBVA Compass Covenant Testing, Bates Stamped Superpumper 002108-
5 Superpumper 002109, a copy of which was produced in the twelfth supplement, March 2016.

6 76. Bayuk Ledger of Payments to Morabito, Bates Stamped Superpumper 002110-
7 002112, a copy of which is contained on the accompanying CD.

8 77. Documents related to Loan to Paul Morabito 2009, Bates Stamped Superpumper
9 002113-002127, a copy of which was produced in the twelfth supplement, March 2016.

10 78. Documents related to Loan to Paul Morabito 2010, Bates Stamped Superpumper
11 002128-002182, a copy of which was produced in the twelfth supplement, March 2016.

12 79. Documents related to Loan to Paul Morabito 2011, Bates Stamped Superpumper
13 002183-002295, a copy of which was produced in the twelfth supplement, March 2016.

14 80. Documents related to Loan to Paul Morabito 2012, Bates Stamped Superpumper
15 002296-002332, a copy of which was produced in the twelfth supplement, March 2016.

16 81. Documents related to Loan to Paul Morabito 2013, Bates Stamped Superpumper
17 002333-002343, a copy of which was produced in the twelfth supplement, March 2016.

18 82. Documents responsive to the subpoena served on Lippes Mathias, Bates Stamped
19 SPI NO PAM0000001-SPI NO PAM0000743, copies of which was produced in the thirteenth
20 supplement, July 27, 2016.*

21 83. Documents related to insurance, Bates Stamped Superpumper 002344-002359,
22 copies of which were produced in the fourteenth Supplement, March 14, 2017.

23 84. Documents related to insurance for 1254 Mary Fleming Circle, Bates Stamped
24 Superpumper 002604-002536, copies of which are contained on the accompanying CD.

25 85. Documents related to insurance for 370 Los Olivos, Bates Stamped Superpumper
26 002537-002746, copies of which are contained on the accompanying CD.

27 86. Documents related to insurance for 371 Camino Del Mar, Bates Stamped
28 Superpumper 002747-002986, copies of which are contained on the accompanying CD.

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 DEFENDANTS'

SIXTEENTH SUPPLEMENT TO NRCP DISCLOSURE OF WITNESSES AND

DOCUMENTS 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

Courtesy Copy to:
John Murtha, Esq.
Woodburn & Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511

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 4th day of May, 2017.

Myra Carroll Davis

EXHIBIT A-11

EXHIBIT A-11

In the Matter Of:

Leonard vs. Superpumper, Inc., et al

GARRY M. GRABER ROUGH DRAFT

July 12, 2017

Job Number: 394849

1 G A R R Y M. G R A B E R, 140 Pearl Street,
2 Buffalo, New York 14202, after being duly called
3 and sworn, testified as follows:
4 EXAMINATION BY MS. PILATOWICZ:
5 Q. Good morning, Mr. Graber.
6 A. Good morning.
7 Q. My name is Teresa Pilatowicz. We met
8 off the record. I represent William Leonard, who
9 is the Chapter 7 trustee, in the bankruptcy case of
10 Paul Morabito. My representation for this
11 deposition is in a State Court matter.
12 Do you understand that?
13 A. I do. State Court in Arizona?
14 Q. In Nevada.
15 A. Nevada? Okay.
16 Q. In Washoe County, Reno, Nevada.
17 A. Okay.
18 Q. And before we start today, I just want
19 to go over a couple of ground rules to make sure
20 that we're all on the same page, okay?
21 A. Sure.
22 Q. You've been given an oath by the court
23 reporter. Do you understand that that is the same
24 oath that you would take in a court of law even
25 though we're sitting in a conference room?

1 A. I do.

2 Q. And you've met the court reporter, and
3 her job is to get a clear record today. In order
4 to help her do that, I'll ask that you allow me to
5 finish my question before starting your answer. I,
6 in turn, will try to allow you to finish your
7 answer before starting my next question.

8 Is that fair?

9 A. It's definitely fair.

10 Q. And also to help get a clear record,
11 I'll ask that you give audible answers. Head
12 shakes, nods, don't translate on the record.
13 Uh-huhs and uh-uhs don't as well.

14 Do you understand that?

15 A. I do.

16 Q. If you don't understand a question that
17 I've asked, go ahead and ask me to rephrase it. If
18 you don't ask me to rephrase it, I'll assume that
19 you understood my question, okay?

20 A. Yes.

21 Q. And I don't want you to guess, but I'm
22 entitled to your best estimate.

23 Do you understand the difference?

24 A. We'll see what happens if we arrive at
25 that kind of a circumstance.

1 Q. So if you think that I'm asking you for
2 a guess or estimate, you'll ask me at that time?

3 A. I'll clarify.

4 Q. Okay. And at the end of the day today,
5 the court reporter will have a final record of the
6 transcript. She'll -- you'll have an opportunity
7 to review that transcript and make any changes.

8 A. Okay.

9 Q. If you do make changes, then myself or
10 any other counsel will have the opportunity to
11 comment on those changes either at a hearing on the
12 matter or a trial on the matter.

13 Do you understand that?

14 A. I do.

15 Q. Are you under the influence of any
16 drugs, alcohol, or medication that would impair
17 your ability to be truthful today?

18 A. I'm not.

19 Q. Are you under the influence of anything
20 that would impair your ability to remember anything
21 today?

22 A. Only old age.

23 Q. But I'm assuming you still feel
24 comfortable going forward; is that correct?

25 A. I do.

1 **Q. Do you know any reason why we can't go**
2 **forward with giving your best testimony today?**

3 A. I do not.

4 The following were marked for Identification:

5 EXHIBIT 1 Subpoena

6 EXHIBIT 2 Amended Notice of Deposition of

7 Person Most Knowledgeable of

8 Hodgson Russ LLP

9 BY MS. PILATOWICZ:

10 **Q. Mr. Graber, you've been handed what's**
11 **been marked Exhibit 1 and Exhibit 2. The first**
12 **Exhibit 1 it looks like you have in your hand.**

13 A. Mm-hmm.

14 **Q. Do you recognize that document?**

15 A. Yes.

16 **Q. What is it?**

17 A. It says it's a subpoena.

18 **Q. Have you seen the subpoena before?**

19 A. Yes.

20 **Q. And Exhibit 2, have you seen Exhibit 2**
21 **before?**

22 A. Oops, I'm sorry.

23 MR. KEARNEY: No, that's all right. That's
24 marked 1, the same as that.

25 THE WITNESS: Okay. I think I've seen this,

1 yes.

2 BY MS. PILATOWICZ:

3 Q. And is it pursuant to these documents
4 that you're appearing here today?

5 A. Yes.

6 Q. And you're appearing as a person most
7 knowledgeable at Hodgson Russ; is that accurate?

8 MR. KEARNEY: Object to form.

9 THE WITNESS: Pardon?

10 MR. KEARNEY: Object to the form. You can
11 answer.

12 THE WITNESS: Yes.

13 BY MS. PILATOWICZ:

14 Q. If you can turn to page 2 of Exhibit 1.
15 On page 2 of Exhibit 1, there are a list of topics.
16 I'm going to go through them one by one and ask you
17 to let me know if you are the person most
18 knowledgeable from Hodgson Russ as to that topic.

19 Nudge one, Hodgson Russ's engagement as
20 counsel for Paul Morabito between September 1st,
21 2010, and December 31st, 2010.

22 A. I am not.

23 Q. Who would be that person?

24 A. I believe it's Sujata Yalamancili.

25 Q. Okay. Number 2, any and all payments

1 made from September 1st, 2010, through December
2 31st, 2010, to Hodgson Russ by Morabito or third
3 party on his behalf?

4 A. I'm not.

5 Q. Would that also be Sujata?

6 A. Yes.

7 Q. Is there anybody else who would have
8 information on that?

9 MR. KEARNEY: Object to the form.

10 MR. GILMORE: Objection.

11 BY MS. PILATOWICZ:

12 Q. And, I'm sorry, let me clarify.

13 Is there anybody else who you understand
14 would be the person most knowledgeable as to that
15 topic?

16 A. No.

17 Q. Number 3, any and all payments made by
18 Hodgson Russ LLP to any third parties on Morabito's
19 behalf from September 1st, 2010, through December
20 31st, 2010.

21 A. Not me. Sujata.

22 Q. Number 4, any and all communications
23 between members or employees of Hodgson Russ LLP,
24 including, but not limited to, Garry Graber and
25 Sujata Yalamancili and Morabito regarding the

1 judgment announced against Morabito on or about
2 September 13th, 2010, in case number CV07-02764
3 styled Consolidated Nevada Corp. V. JH, Inc., in
4 the Second Judicial District of Nevada in Washoe
5 County.

6 A. The question on that being am I the
7 primary person with primary knowledge? Is that
8 what you're saying?

9 Q. Are you the person most knowledgeable?

10 A. Well, I'm the person most knowledgeable
11 from my point of view on the conversations that I
12 had with Sujata and/or Paul Morabito, which is what
13 this seems to relate to.

14 Q. Okay.

15 A. But I'm certainly not the person that
16 had the majority of the conversations with
17 Mr. Morabito.

18 Q. Would that be Sujata?

19 A. Yes. Well, as far as I know.

20 Q. Okay. And that's all I'm.

21 A. I understand.

22 Q. Is to the best of your knowledge.

23 A. Right.

24 Q. Number 5, any and all communications
25 between members or employees of Hodgson Russ,

1 including, but not limited to, Garry Graber and
2 Sujata Yalamancili and Paul Morabito regarding the
3 transfer and/or sale of any of Paul Morabito's
4 assets, including, but not limited to, interests in
5 Superpumper, Inc., Consolidated Western
6 Corporation. It says Bayuk Properties. I'll
7 represent to you that's a typo. It should be Baruk
8 Properties. WatchMyBlock, LLC, and real properties
9 following announcement of the judgment.

10 A. I did not talk to anybody within the
11 firm on any of those issues other than Sujata and
12 Paul Morabito, outside the firm.

13 Q. Number 6, any and all communications
14 between members or employees of Hodgson Russ LLP,
15 including, but not limited to, Garry Graber and
16 Sujata Yalamancili and Paul Morabito between
17 September 1st, 2010, and December 31st, 2010.

18 A. What's the question with respect to
19 that?

20 Q. Are you the person most knowledgeable
21 on those topics, on that topic?

22 A. I'm most knowledgeable from point of
23 view and the conversations I had with Sujata and
24 Paul. How many they had with each other, I do not
25 know.

1 Q. Okay. Number 7, any and all advice
2 provided by members or employees of Hodgson Russ to
3 Morabito regarding the transfer and/or sale of his
4 assets following announcement of the judgment,
5 including, but not limited to, transfer of assets
6 by and between Morabito and Edward Bayuk.

7 A. Yes.

8 Q. Yes, you are the person most
9 knowledgeable?

10 A. No, I'm not the person most
11 knowledgeable, but I have knowledge of them.

12 Q. You have knowledge?

13 A. Yes.

14 Q. Other than Sujata, is there anybody
15 else who would have knowledge?

16 A. No. To my best recollection, this was
17 Sujata's matter and her client, and I don't recall
18 anybody else from Hodgson Russ being involved in it
19 during any point in time in which I was involved
20 with it.

21 Q. Okay. And I'll skip -- can you just
22 read 8 to yourself and let me know if you have a
23 different answer for number 8.

24 A. Well, I was involved in conversations
25 with Dennis Vacco around the same time. I don't

1 recall who Roy Cunningham is.

2 Q. Okay.

3 A. So I don't recall any conversations
4 with him.

5 Q. And number 9, any and all
6 communications between Hodgson Russ and any
7 employee of Hopkins Appraisal or Matrix Capital
8 Markets Group, Inc., regarding any evaluations
9 requested by you or with your knowledge of
10 Superpumper, Inc.

11 A. No.

12 Q. You have no knowledge on that?

13 A. No. I have no recollection on it.

14 Q. And number 10, the documents provided
15 in response to the subpoena issued to Hodgson Russ
16 LLP in connection with the above-captioned case on
17 or about December 29th, 2016?

18 A. What about it?

19 Q. Are you the person most knowledgeable
20 as to that?

21 A. I think my counsel was the person most
22 knowledgeable as to that.

23 Q. Your counsel being Kevin Kearney?

24 A. Yes.

25 Q. Did you assist in the production of

1 documents?

2 A. I did not.

3 Q. Have you testified under oath
4 previously in a deposition?

5 A. Yes.

6 Q. How many times?

7 A. Once or twice.

8 Q. When was the most recent time?

9 A. Years ago. Decades ago. But I've
10 testified in court, so I'm familiar with the
11 process.

12 Q. When was the last time you testified in
13 court?

14 A. Oh, about two years ago.

15 Q. Have you ever testified in court or in
16 a deposition in an action related to Paul Morabito?

17 A. No.

18 Q. Did you communicate with anyone about
19 being deposed today?

20 A. Only my counsel and Sujata Yalamancili.

21 Q. You didn't discuss anything with Paul
22 Morabito?

23 A. No.

24 Q. Or Salvatore Morabito?

25 A. No.

1 Q. Or Edward Bayuk?

2 A. No.

3 Q. Or Frank Gilmore?

4 A. No.

5 Q. Did you review any documents in
6 preparation for your deposition?

7 A. I did not, other than Exhibits 1 and 2.

8 Q. Other than the discussions you
9 referenced with your counsel and Sujata and
10 reviewing Exhibits 1 and 2, did you do anything
11 else to prepare for your deposition today?

12 A. Nothing.

13 Q. How are you currently employed?

14 A. I'm a partner in Hodgson Russ, LLP.

15 Q. How long have you been employed in that
16 capacity?

17 A. Since -- as a partner?

18 Q. As a partner.

19 A. Since 1986.

20 Q. And before that, were you an associate?

21 A. I was.

22 Q. For how long?

23 A. Six years. I began my career with
24 Hodgson Russ on January 8th, 1980.

25 Q. Do you have any specialties in your

1 **practice of law?**

2 A. Yes. I practice insolvency and
3 bankruptcy law. I don't think we're supposed to
4 use the word specialty here in New York, but that's
5 what most of my practice is concentrated in.

6 **Q. Fair enough. I appreciate that**
7 **clarification. And are you a licensed attorney in**
8 **New York?**

9 A. I am.

10 **Q. Are you licensed anywhere else?**

11 A. I am licensed in Florida, and I'm also
12 admitted to practice in the Western District of
13 Pennsylvania.

14 **Q. Has your -- I understand that it's**
15 **not -- the term in New York is not barred. Are you**
16 **licensed?**

17 A. Licensed to practice is the phrase we
18 use.

19 **Q. The practice.**

20 A. I'm licensed to practice in each one of
21 the locations I just mentioned.

22 **Q. Okay. Has your license to practice**
23 **ever been suspended or revoked?**

24 A. No.

25 **Q. Do you know when Hodgson Russ was**

1 originally employed by or retained by Paul

2 Morabito?

3 A. I do not.

4 Q. When was the first time that you met

5 Paul Morabito?

6 A. I can't give you the exact date without
7 doing a little research, but it was shortly after
8 the judgment that you just mentioned.

9 Q. Okay. When was the --

10 A. The entry of it.

11 Q. Thank you. When was the first time you
12 heard of Paul Morabito?

13 A. Around that same time. I knew nothing
14 about him before. I spoke to Sujata and/or him
15 about the judgment.

16 Q. And explain to me how you came to know
17 Paul Morabito.

18 A. I was introduced to him by Sujata.

19 Q. And you mentioned that it was in
20 connection with the judgment that was entered?

21 A. Yes, it was.

22 Q. So explain to me, did Sujata come into
23 your office and say I need your help on something?

24 A. Yes. I'm one of the guys around here
25 who engages in assisting clients who have issues

1 that may require my areas of expertise, including
2 bankruptcy.

3 **Q. And what were you asked to do for Paul**
4 **Morabito?**

5 A. I was asked to consider whether there
6 were ways in which he could evade the judgment
7 through bankruptcy, or I shouldn't say evade the
8 judgment. That's not correct. If there are ways
9 he could protect himself against -- protect his
10 assets and/or escape liability on account of the
11 judgment.

12 **Q. Okay. We'll go into those discussions**
13 **a little bit later.**

14 A. Sure.

15 **Q. Do you know if Hodgson Russ still**
16 **represents Paul Morabito?**

17 A. I don't know for sure, but I believe
18 not.

19 **Q. When was the last time you had any**
20 **interactions with Paul Morabito?**

21 A. Within a month or two at the most of --
22 probably 30 days of having been introduced to him.

23 **Q. So no later than the end of October**
24 **2010; is that fair?**

25 A. I guess, yeah. I don't know the exact

1 date, but it was maybe a month after I first met
2 him, which was shortly after the judgment was
3 entered.

4 **Q. Okay. And you mentioned --**

5 A. And to tell you the honest truth, I
6 don't remember if it was when the judgment was
7 entered or if it was affirmed on appeal or
8 something like that, but it was when he became
9 concerned about what that would mean for him.

10 **Q. Okay. Tell me about your first**
11 **conversation with Paul Morabito. Was it by**
12 **telephone or in person?**

13 A. Every conversation I had --

14 MR. GILMORE: I'm sorry, I'm going to
15 interrupt because I have a couple of objections and
16 I'm going to interject.

17 I've notified counsel that that was my
18 intention, but I want to make it clear for the
19 record.

20 THE WITNESS: That's fine.

21 MR. GILMORE: There has been no court order
22 explicitly waiving the attorney/client privilege
23 with respect to Hodgson Russ's representation of
24 Paul Morabito. The trustee has taken the position
25 notwithstanding the absence of the court order that

1 he owns and holds the privilege and that he has
2 affirmatively waived the privilege with respect to
3 Mr. Morabito's prepetition attorney/client
4 privilege with Hodgson Russ.

5 I am appearing today in my capacity as
6 counsel for the defendants in the State Court
7 action, which is the caption of this deposition,
8 but I am also appearing in my capacity as counsel
9 for Paul Morabito, the involuntary debtor in the
10 Chapter 7 bankruptcy case which is proceeding in
11 Bankruptcy Court in the District of Nevada.

12 I am not going to instruct the witness not
13 to answer questions which I believe would otherwise
14 be attorney/client privilege, would be seeking
15 attorney/client privileged information. However, I
16 am going to make a standing objection that any
17 questions asked which attempt to invade the
18 attorney/client privilege which I believe has not
19 been affirmatively waived by a court of law, so
20 that rather than suspend the deposition, have that
21 issue litigated and then come back, I'm simply
22 going to assert that objection.

23 I don't intend to object on every question,
24 but I want to make sure for the record it's very
25 clear that it's our position that the privilege has

1 not been waived by a court of law and that there is
2 no cause to waive the privilege, but with that --
3 with that in mind, I'm also going to affirm that
4 even in the court orders which have waived the
5 privilege, Mr. Morabito's privilege, for example,
6 with respect to the Lippes Mathias firm, there was
7 no waiver of the work product privilege.

8 In other words, the privilege that was
9 maintained between counsel at Lippes Mathias for
10 their own personal work product has not been
11 waived.

12 So to the extent there was work product
13 created for the benefit of Mr. Morabito, I would
14 also assert that we believe that privilege has not
15 been waived and has never been waived and cannot be
16 waived.

17 Moreover, when this deposition was noticed
18 discovery in the State Court action had already
19 closed. Accordingly, when I was notified by
20 plaintiff's counsel of the intent to subpoena
21 Hodgson Russ for appearance at a deposition, my
22 contention was that it was inappropriate notice
23 because discovery had closed, and the exchange I
24 had with plaintiff's counsel was that she was
25 intending to examine only a small subject of

1 areas -- did I say that right? And I asked her to
2 provide for me the scope of her intended deposition
3 to which on January 24th, 2017, she sent me an
4 email with approximately 17 or 18 emails indicating
5 that that -- these were the emails that she was
6 intending to investigate with respect to the
7 Hodgson Russ depositions.

8 I was made aware this morning that the scope
9 of the anticipated deposition has since been
10 expanded, so I'm going to make an objection to the
11 extent that the subject matter of this deposition
12 exceeds the 18 emails that I was provided in
13 January. I have not had the opportunity to assert
14 any objections to the usage of those depositions --
15 the usage of those documents or exhibits at this
16 deposition, and I maintain my right to file any
17 motion to have the testimony or the documents
18 stricken from the record on the basis that they
19 were sought, obtained, and questions were asked as
20 to those documents after the close of discovery.

21 THE WITNESS: Well --

22 MR. KEARNEY: You're not going to say
23 anything.

24 MR. GILMORE: That's it.

25 MR. KEARNEY: Okay. Thank you. And on

1 behalf of the witness and on behalf of Hodgson
2 Russ, the subpoena was served on the firm I believe
3 in January of 2017. At that time I made a
4 good-faith inquiry into the status of the privilege
5 and was advised by the attorney who issued the
6 subpoena that the privilege had been waived.

7 It is my understanding in looking at Exhibit
8 1 that all parties in the Nevada State Court action
9 had received a copy of the subpoena and that the
10 subject matter of the subpoena and, in fact, who
11 the subpoena was issued to, i.e., law firm, would
12 certainly put counsel on notice that the issue of
13 privileged information or information that it was
14 at one time privileged would be an issue in the
15 deposition.

16 I'll note that I am not aware of any motion
17 brought in that action or in any court in the State
18 of New York raising that issue and directing
19 Hodgson Russ or any of its attorneys not to appear
20 and answer questions in connection with the
21 subpoena.

22 So to the extent that there is a dispute
23 over privilege, you have my assurance that
24 certainly Hodgson Russ will not disclose the
25 transcript of this and any witnesses and anyone who

1 works with me in the office of general counsel will
2 be directed not to share any information that arose
3 during this deposition.

4 I trust that each of you will take that same
5 position while the issue of privilege remains live
6 so that to the extent a privilege does exist, that
7 it is reasonably protected until such time as a
8 court with jurisdiction over the issue makes a
9 determination.

10 But based on what I have been told to date
11 and my understanding, I am not going to direct
12 Mr. Graber or Ms. Yalamancili, to the extent we
13 need to put this same colloquy on the record in
14 that deposition, I am not going to direct them not
15 to answer any proper question on the basis of
16 either attorney/client or work product privilege.

17 MS. PILATOWICZ: And on behalf of the
18 trustee, with respect to the attorney/client
19 privilege, it has been waived by the Bankruptcy
20 Court on two separate grounds. First, the
21 crime-fraud exception and, second, on the basis
22 that Mr. Morabito is a Chapter 7 debtor and the
23 privilege, the prepetition privilege has passed
24 with the trustee. The trustee has waived the
25 privilege for purposes of the State Court case.

1 In addition, following up on what
2 Mr. Kearney said, this deposition has been noticed
3 by subpoena and notice of deposition since January
4 of 2017. The topics listed are expressed in that
5 they are intend to be questions related to
6 communications between firm members, communications
7 between members of Hodgson Russ and Paul Morabito,
8 and to date there has never been an objection.

9 With respect to the -- the late disclosure
10 of Hodgson Russ, Hodgson Russ was disclosed after
11 emails were disclosed from Dennis Vacco indicating
12 their involvement. At that time they were added to
13 the witness list. The subpoena was issued, the
14 notice of deposition was issued. There has not
15 been an objection to the disclosure of Hodgson Russ
16 since that time.

17 MR. GILMORE: My client's instructed me he
18 wants to talk to me off the record, so before we
19 have any additional questions, can we take a
20 two-minute break?

21 MS. PILATOWICZ: That is fine.

22 THE WITNESS: And I'm going to take the
23 opportunity to talk to my counsel, too.

24 MS. PILATOWICZ: That's fine.

25 (A recess was then taken.)

1 MR. GILMORE: After discussion with my
2 client that it -- unfortunately I believe that it's
3 appropriate and necessary for this deposition to be
4 suspended, and by that I mean any witnesses which
5 Hodgson Russ was intending to produce with respect
6 to the person most knowledgeable deposition, the
7 deposition is going to be suspended because, as I
8 stated earlier on the record, and I don't mean to
9 belabor the point, it was defendants' understanding
10 that pursuant to a meet and confer that occurred in
11 January of 2017, plaintiff's counsel and
12 defendants' counsel were on the same page with
13 respect to the scope of the intended PMK
14 depositions and the documents that were intended to
15 be introduced during the deposition.

16 This morning, before the record opened,
17 plaintiff's counsel and defendants' counsel had a
18 conversation wherein it was disclosed that
19 plaintiff's counsel intends to introduce documents
20 in addition to those which were produced in the
21 email of January pursuant to the meet and confer.

22 So because defendants are not adequately
23 prepared and have not had the opportunity to review
24 the full scope of the testimony and the documents
25 that plaintiff's counsel now intends to pursue,

1 defendants feel like they are forced to suspend the
2 deposition so that they can go back and assert any
3 protections, scope related or otherwise, before the
4 depositions can be reconvened.

5 Secondarily, off the record counsel have
6 discussed and agreed that there will be no request
7 to reconvene the Hodgson Russ depositions until
8 there is either a satisfactory stipulation between
9 the parties with respect to the scope of the
10 attorney/client privilege or there is a court order
11 definitively outlining the scope of the
12 attorney/client privilege.

13 It was my representation to Hodgson Russ
14 counsel that obviously the privilege is my client's
15 privilege to maintain or to waive, at least that's
16 their position. The trustee's position is that the
17 trustee owns the privilege and can be waived or
18 maintained, but I wanted to make it clear that the
19 onus would be upon my office and my clients to
20 litigate and assert any privilege that was related
21 to the representation of Hodgson Russ and Paul
22 Morabito.

23 Have I stated that fairly, counsel?

24 MR. KEARNEY: I think that's fairly stated.

25 MS. PILATOWICZ: The trustee objects to the

1 suspension of the deposition. The deposition --
2 the subpoena was issued in January of 2017. The
3 most recent amended notice of deposition was filed
4 in April of 2017. It is now July 12th, 2017.
5 There has never been an objection to the
6 attorney/client privilege, notwithstanding the fact
7 that both the subpoena and the notice of deposition
8 listed ten specific topics for testimony, many of
9 which specifically referenced issues that would go
10 to the attorney/client privilege.

11 Further, the attorney/client privilege has
12 been waived by the Bankruptcy Court with respect to
13 the transfers in this matter. The trustee has
14 asserted repeatedly, which has been confirmed by
15 the Bankruptcy Court and I believe the State Court,
16 that the privilege has been waived both as to --
17 based on the crime-fraud exception and based on the
18 fact that Mr. Morabito is a Chapter 7 debtor and
19 the prepetition privilege belongs to the trustee,
20 and the trustee has waived that privilege.

21 As to the -- the disclosure of Hodgson Russ
22 after the close of discovery, again, that was done
23 in January of 2017. There was a meet and confer
24 where certain documents were sent. There was
25 certainly no representation that those were the

1 only documents that would be -- would be discussed.

2 I believe after that email that Mr. Gilmore
3 referenced Hodgson Russ produced over 9,000 pages
4 of documents. Mr. Gilmore off the record had made
5 the representation that 18 emails had been sent to
6 him. I informed Mr. Gilmore that I have 24
7 exhibits. I'm not sure where the difference S-but
8 there's certainly not a substantial difference as
9 is being represented.

10 The trustee intends to seek sanctions
11 related to the suspension of the deposition,
12 including buildup not limited to cost related to
13 the appearance of the deposition today, including
14 travel cost and any cost for a future rescheduling
15 of the deposition.

16 MR. GILMORE: Thank you. I'd like to
17 canvass my client on the record.

18 Mr. Morabito, you have been here, and you
19 have heard the on the record and off the record
20 discussions between counsel related to the
21 suspension of the deposition, correct?

22 SALVATORE MORABITO: Yes.

23 MR. GILMORE: Okay. Do you concur with my
24 representations on the record and those which you
25 heard off the record that it is your instruction to

1 me to suspend the deposition?

2 SALVATORE MORABITO: Yes.

3 MR. GILMORE: Do you understand, as Miss
4 Pilatowicz said, that if it is later determined
5 that the suspension of this deposition was done
6 without cause or in bad faith that you may be
7 subject to a sanction which could include, among
8 other things, costs and attorney's fees for having
9 to reconvene the deposition at a later time?

10 SALVATORE MORABITO: Yes.

11 MR. GILMORE: Okay. And in light of that
12 possibility, your instruction remains that we are
13 to suspend the deposition until such time as the
14 issue related to the scope of the attorney/client
15 privilege and to revisit the issue related to the
16 meet and confer that occurred in January, it's
17 still your position and your instruction that we
18 should suspend the depositions today?

19 SALVATORE MORABITO: Yes.

20 MR. GILMORE: Okay. And I think let's --
21 unless Mr. Kearney has anything to add, I think we
22 can close the record, and this can be reconvened at
23 another date.

24 MR. KEARNEY: Nothing to add.

25 (Deposition adjourned at 10:39 a.m.)

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EXHIBIT A-12

EXHIBIT A-12

From: Yalamanchili, Sujata [SYalaman@hodgsonruss.com]
Sent: Wednesday, September 15, 2010 3:40 PM
To: Paul Morabito; Dennis Vacco
CC: Graber, Garry
Subject: Follow Up Thoughts

I caught up with Garry (who is back in Buffalo today) on our conversation from yesterday.

Garry had a number of additional ideas, including a possible marital split between Paul and Edward pursuant to which Edward could retain some of Paul's assets. We need to better understand California domestic partner laws, first.

Let me know if/when you want to talk.

Sujata

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From: Graber, Garry [GGraber@hodgsonruss.com]
Sent: Thursday, September 23, 2010 3:10 PM
To: 'Paul Morabito'
CC: Yalamanchili, Sujata; Dennis Vacco
Subject: RE:

Hi Paul,

I don't think you should change your State of residence without first comparing the exemption statutes. Also, what about the CA tax residency lawsuit ?

Do the furnishings have any material value especially in the present economy in view of the fact that they are used ? And doesn't Edward already own some of the furnishings ? If not exempt and if there is value, It may make more sense for Edward to use his money to buy the stuff back at the auction the creditor would have to hold instead of giving you money that the creditor will just take from you.

As we discussed yesterday, used clothing rarely has much resale value - even if originally very expensive. And much of it, if not all of it, could be exempt. Unless you are talking about furs or something for which there is a market, I wouldn't worry about it as I don't think that the creditor will try to take it.

I am not sure that the Amex points are transferable. That needs to be checked. If so, you want to start using redeeming them for flights, entertainment, household goods and the like.

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From: Paul Morabito [mailto:pmorabito@cowestco.com]
Sent: Thursday, September 23, 2010 10:47 AM
To: Graber, Garry
Subject:

Garry

I have a few questions.
Edward and I plan on changing our primary residence from Reno to Laguna Beach.

Change DMV, voter registration, cancel Nevada club memberships, burial plot, resign from State Boards etc

Should Edward buy our household furniture etc from me for the Reno and Palm Springs houses that are not primary ? We have receipts from 2006 for everything worth around \$225,000 new.

Also, what about my clothes ? I was in the hospital for 5 months last year and came out 200 pounds lighter. I spent \$200,000 on a new wardrobe since November.

Finally, are my 2 million American Express airline miles something I can do something with or is that an asset, too ?

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