

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 18
(Nos. 2727–2964)

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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

1 **2620**
2 **FRANK C. GILMORE, ESQ. - NSB #10052**

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10 Attorneys for Defendants Snowshoe Petroleum,
11 Inc., Superpumper, Inc., Edward Bayuk, individually
12 and as Trustee of the Edward William Bayuk Living
13 Trust, and Salvatore Morabito.

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

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

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

CASE NO.: CV13-02663

DEPT. NO.: B4

18 Plaintiffs,

19 vs.

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

26 Defendants.

27 **OBJECTION TO RECOMMENDATION FOR ORDER**

28 Defendants above named, by and through their attorneys of record, hereby object to the
Recommendation for Order filed August 17, 2017.

On July 18, 2017, Defendants filed a *Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP*. On July 24, 2017, Plaintiff filed an *Opposition to Motion to Quash Subpoena, or, in the Alternative, for a Protective order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP* and a

1 *Countermotion for Sanctions to compel Resetting of 30(b)(6) Deposition of Hodgson Russ LLP.*
2 On August 3, 2017, Defendants filed a *Reply in Support of Motion to Quash Subpoena, or, in the*
3 *Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson*
4 *Russ LLP and Opposition to Countermotion for Sanctions to compel Resetting of 30(b)(6)*
5 *Deposition of Hodgson Russ LLP.* On August 9, 2017, Plaintiff filed a *Reply in Support of*
6 *Countermotion for Sanctions to compel Resetting of 30(b)(6) Deposition of Hodgson Russ LLP.*
7 The Discovery Commissioner held a Telephonic hearing on August 10, 2017, and issued a
8 Recommendation for Order on August 17, 2017.

9 Defendants object to the Recommendation for Order based on the following:

- 10 1. **The Discovery Commissioner overlooked the importance of the parties' meet**
11 **and confer agreements related to the dispute.**

12 The discovery dispute at hand arose following a meet and confer in January, 2017
13 regarding the scope of a Rule 30(b)(6) deposition. Discovery closed in March, 2016. Plaintiff
14 filed a Notice of Deposition and Notice of Issuance of Subpoena on Hodgson Russ, LLP ("HR")
15 in January, 2017. HR is a law firm from Buffalo, New York, that was counsel for Mr. Paul
16 Morabito, and a law firm that may have discoverable information relating to the present action.
17 Defendants immediately disputed the veracity of the Notice of Deposition and Notice of Issuance
18 of Subpoena because both were filed after the close of discovery. Defendants requested a meet
19 and confer. The parties then met and conferred on the issue of whether Plaintiff could depose HR.
20 As background, prior to January, 2017, Defendants agreed to a limited extension of discovery for
21 information that could not have been reasonably known prior to the disclosing of a large set of
22 documents that the parties refer to as the Vacco documents. In conjunction with that agreement,
23 Defendants in January, 2017, agreed to a deposition of HR so long as the scope of the deposition
24 was limited to information contained in the Vacco documents. The agreement was for the parties
25 to depose HR in New York the day after the parties were scheduled to depose another witness in
26 New York, thereby extending their trip for only one day.

27 The agreement is reflected in Plaintiff's email sent to Defendants on January 24, 2017. *See*
28 **Exhibit 1**, Plaintiff's counsel's January 24, 2017 email memorializing the discovery dispute

1 agreement. In this email, Plaintiff attached several emails from the Vacco documents, and stated
2 “attached please find the e-mails that I intend to discuss at the deposition of Hodgson Russ.” The
3 email reflected a discussion between counsels during which Defendants’ counsel agreed that HR
4 could be deposed regarding information only pursuant to the previous discovery extension for the
5 Vacco documents.

6 Once the parties held a meet and confer, it was Defendants’ understanding that the parties
7 came to an agreement on the scope of the deposition. Based on this understanding, Defendants in
8 good faith suspended the HR deposition after Plaintiff began asking information beyond the scope
9 agreed upon and refused to follow the agreement. Defendants maintain that there was a meeting
10 of the minds binding Plaintiff to the agreement to limit the scope of the HR deposition. At the
11 very least, Defendants urge the Court to recognize that Defendant and Plaintiff met and conferred
12 in response to the dispute months before the deposition took place, following appropriate
13 procedure for a discovery dispute. Thus, the extent of the sanctions recommended are
14 inappropriate.

15 The Discovery Commissioner did not “question the veracity of Defendants’ belief that an
16 agreement was reached with Plaintiff’s counsel regarding the scope of the HR Deposition.”
17 However, the Discovery Commissioner applied District Court Rule 16 (“DCR”) and found that
18 Plaintiff could not be held to the agreement because Defendants did not provide “the Court with a
19 written agreement signed by Plaintiff’s counsel.” Defendants respectfully disagree.

20 DCR 16 requires that an agreement “be in **writing subscribed by the party against**
21 **whom the same shall be alleged, or by his attorney,**” for the Court to take notice of that
22 agreement. DCR 16 (emphasis added). The definition of writing is “any intentional recording of
23 words in a visual form . . . this includes hard-copy documents, electronic documents on computer
24 media, audio and videotapes, (and) emails.” BLACK’S LAW DICTIONARY (10th ed. 2014). To
25 subscribe is “to put (one’s signature) on a document . . . to sign one’s name to a letter or other
26 document in acknowledgment of being its writer or creator.” *Id.*

27 Here, Plaintiff’s counsel’s January 24, 2017 email memorializing the discovery dispute
28 agreement is an agreement complying with DCR 16. *See Exhibit 1.* While this email is not a

1 traditional, formal agreement signed by both parties with lengthy terms and conditions, it is a
2 signed writing for the purposes of DCR 16 and enough to show that there was an agreement that
3 the Court should hold Plaintiff to. The email from Plaintiff was an intentional recording of words,
4 a "writing," communicated to Defendants; moreover, the definition of writing specifically includes
5 emails. Plaintiff's attorney subscribed the email writing by placing her name at the bottom of the
6 email, communicating that she was the writer of that email. The email explains what Plaintiff's
7 counsel intended to discuss at the HR deposition, clearly implying that the deposition was limited
8 to such. Plaintiff used this agreement to get its foot in the door, and once the parties incurred the
9 expense of extending their stay in New York for the deposition, Plaintiff then tried to expand the
10 agreement. Having relied upon the agreement and not prepared for a full scope deposition,
11 Defendants suspended the HR deposition. This email amounts to a signed writing, and reflects an
12 agreement made during a meet and confer between the parties.

13 For the sake of judicial economy and efficiency, the State of Nevada has set forth rules
14 regarding discovery disputes. Defendants relied on these rules and are now being punished for not
15 carrying out a formal dispute action. The meet and confer is an integral part of the discovery
16 dispute resolution process, which Defendants actively engaged in with Plaintiff to come to an
17 agreement. Defendants should not now be punished for what the Discovery Commissioner does
18 not question, that Defendants believed it had an agreement to limit the scope of the HR deposition
19 as a result of the meet and confer. Based on that perceived agreement, Defendants suspended the
20 HR deposition when Plaintiff insisted the deposition go beyond the agreed scope. Even if the
21 Court cannot hold Plaintiff to its agreement with Defendants, the Court should not sanction
22 Defendants for its good faith belief that the parties agreed to a limited scope at the HR deposition.

23 **2. The recommended \$3,000 sanction for "reasonable expenses" is arbitrary.**

24 The Discovery Commissioner recommended that the Court order Defendants to pay
25 Plaintiff "the sum of \$3,000, as and for the reasonable expenses incurred in connection with this
26 discovery dispute." Defendants object to this recommendation for sanction.

27 Due process requires that "sanctions for discovery abuses be just and that sanctions relate
28 to the claims which were at issue in the discovery over which is violated." Young v. Johnny

1 Ribeiro Bldg., Inc., 106 Nev. 88, 93, 787 P.2d 777, 780 (1990). In the case at hand, the parties
2 have no information regarding expenses incurred by Plaintiff in carrying out this dispute. The
3 Recommendation unilaterally determines that \$3,000 is a reasonable amount for expenses without
4 any support or calculation as to what makes that amount reasonable. This amount is arbitrary and
5 unjust without further information relating it to the alleged discovery abuse. Defendants further
6 assert that the present dispute before this Court is carried out in good faith, based on Defendants'
7 belief that the parties entered into an agreement; and, therefore, a sanction for causing a dispute is
8 not warranted.

9 For the reasons mentioned above, Defendants object to the Discovery Commissioner's
10 Recommendation for Order.

11 **AFFIRMATION**
12 **Pursuant to NRS 239B.030**

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

15 DATED this 28th day of August, 2017.

16 ROBISON, BELAUSTEGUI, SHARP & LOW
17 A Professional Corporation
18 71 Washington Street
19 Reno, Nevada 89503

20 /s/ Frank C. Gilmore
21 FRANK C. GILMORE, ESQ.
22 Attorneys for Defendants Snowshoe Petroleum,
23 Inc., Superpumper, Inc., Edward Bayuk, individually
24 and as Trustee of the Edward William Bayuk Living
25 Trust, and Salvatore Morabito.
26
27
28

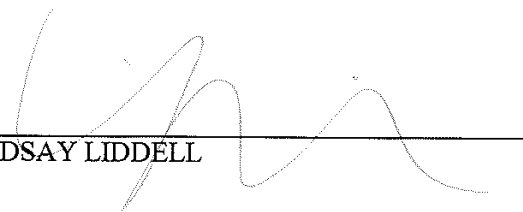
DECLARATION OF LINDSAY LIDDELL

I, Lindsay Liddell, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in all courts in the State of Nevada, and am an associate with the law firm of Robison, Belaustegui, Sharp & Low.

2. Attached to the Objection to Recommendation for Order as Exhibit 1 is a true and accurate copy of Trustee's counsel's email of January 24, 2017.

DATED this 28th day of August, 2017.


LINDSAY LIDDELL

J:\WPData\FCG\23246.001 Snowshoe adv. Herbst\P-Dec Lindsay 8-28-17.doc

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of Robison, Belaustegui, Sharp & Low, and that on this date I caused to be served a true copy of the OBJECTION TO RECOMMENDATION FOR ORDER 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

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

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

by personal delivery/hand delivery addressed to:

by email addressed to:

Gerald Gordon, Esq.
Email: ggordon@Gtg.legal
Mark M. Weisenmiller, Esq.
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Teresa M. Pilatowicz, Esq.
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by facsimile (fax) addressed to:

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

DATED: This 28th day of August, 2017.



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LIST OF EXHIBITS

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>NO. OF PAGES</u>
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1	January 24, 2017 email	1
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EXHIBIT 1

EXHIBIT 1

Frank Gilmore

From: Teresa Pilatowicz <tpilatowicz@Gtg.legal>
Sent: Tuesday, January 24, 2017 8:09 AM
To: Frank Gilmore
Cc: Ricky Ayala
Subject: Leonard v. Superpumper - Hodgson Russ Correspondence
Attachments: Re++Follow+Up+Thoughts.msg (1).pdf; Re++Follow+Up+Thoughts.msg (2).pdf; RE++Follow+Up+Thoughts.msg (3).pdf; RE++Follow+Up+Thoughts.msg (4).pdf; RE++Follow+Up+Thoughts.msg (5).pdf; RE++Follow+Up+Thoughts.msg (6).pdf; RE++Follow+Up+Thoughts.msg (7).pdf; RE++Follow+Up+Thoughts.msg (8).pdf; RE++Follow+Up+Thoughts.msg (9).pdf; RE++Follow+Up+Thoughts.msg (10).pdf; RE++Follow+Up+Thoughts.msg (11).pdf; Attorney+Client+Privileged+Communication 2.msg.pdf; Follow+Up+Thoughts.msg (1).pdf; FW++.msg (1).pdf; RE+.msg.pdf; Re++Checking+in.msg.pdf

Frank,

Attached please find the e-mails that I intend to discuss at the deposition of Hodgson Russ. I intend to provide Hodgson Russ with the notice of waiver of privilege tomorrow.

If you have any questions, please let me know.

Thanks,

Teresa M. Pilatowicz

Attorney

Phone: 702 478 0559 | Fax: 725 777 3112

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13 Las Vegas, Nevada 89119
14 Telephone 725-777-3000
15 *Special Counsel to Trustee*

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

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

15 Plaintiff,

16 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,

24 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: B4

**OPPOSITION TO OBJECTION TO
RECOMMENDATION FOR ORDER**

24 Plaintiff William A. Leonard (the “Trustee” or “Plaintiff”), by and through its counsel,
25 the law firm of Garman Turner Gordon LLP, hereby opposes (the “Opposition”) the *Objection to*
26 *Recommendation for Order* (the “Objection”) filed by Defendants SUPERPUMPER, INC., an
27 Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD
28

1 WILLIAM BAYUK LIVING TRUST; SALVATORE MORABITO, and individual; and
2 SNOWSHOE PETROLEUM, INC., a New York corporation (collectively, the “Defendants”).
3 The Objection asks this Court to reconsider the Discovery Commissioner’s detailed
4 Recommendation for Order (the “Recommendation”) entered on August 10, 2017.

5 The Opposition is brought pursuant to the provisions of DCR 16; NRCP 16.1; NRCP 26;
6 NRCP 30; and NRCP 37. The Opposition is supported by the attached memorandum of points
7 and authority and the Declaration of Teresa M. Pilatowicz attached hereto as **Exhibit A**, the
8 other papers and pleadings on file herein, of which Plaintiff requests this Court take judicial
9 notice, and any oral argument the Court may permit at the hearing of this matter.

10 Dated this 5th day of September, 2017.

11 GARMAN TURNER GORDON LLP

12 /s/ Michael Esposito
13 GERALD E. GORDON, ESQ.
14 TERESA M. PILATOWICZ, ESQ.
15 MICHAEL R. ESPOSITO, ESQ.
16 650 White Drive, Ste. 100
17 Las Vegas, Nevada 89119
18 Telephone 725-777-3000
19 *Special Counsel for Trustee*

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I.**
22 **INTRODUCTION**

23 The Objection rehashes arguments that were clearly addressed, and rejected, in the
24 Recommendation and seeks this Court to reconsider the same based on two points. First,
25 Defendants contend that, despite the Discovery Commissioner specifically finding that no
26 written agreement existed that could satisfy DCR 16 after reviewing the Pilatowicz E-mail (as
27 defined herein), that a written agreement exists based thereon. Second, Defendants contend that
28 the \$3,000 in sanctions awarded was arbitrary.

With regard to the first point, Defendants do not dispute that the Discovery

1 Commissioner vetted all of the arguments made in the Objection, they simply contend that the
2 Discovery Commissioner should have found the arguments that he specifically rejected as
3 meritorious. Specifically, Defendants contend that the Pilatowicz E-mail that the Discovery
4 Commissioner discussed at length, at determined was not a writing sufficient to satisfy DCR 16,
5 is somehow erroneous. This contention ignores controlling statutory authority and caselaw and is
6 insufficient to rebuke the variety of reasons why the Discovery Commissioner properly found
7 that Defendants' arguments were without merit.

8 As to the second point, Defendants apply the wrong standard to the discovery sanctions,
9 demanding that the Discovery Commissioner set forth a detailed accounting as to how the
10 sanction relates to the discovery abuses. The heightened standard of review that requires a more
11 detailed order relating to discovery sanctions applies to dispositive sanctions, not merely
12 monetary ones. In this regard, a simple abuse of discretion standard of review applies and the
13 Recommendation plainly and sufficiently sets forth the various reasons for implementation of the
14 sanction.

15 **II.** 16 **OPPOSITION**

17 **A. The Appropriate Standard of Review.**

18 When a District Court reviews the recommendation of a Special Master appointed
19 pursuant to NRCP 53, it applies the clearly erroneous standard of review to findings of fact.
20 *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court of State ex rel. Cty. of Clark*, 118
21 Nev. 124, 132, 41 P.3d 327, 331 (2002); *In re A.B.*, 128 Nev. Adv. Op. 70, 291 P.3d 122, 127
22 (2012). Comparatively, in federal courts, magistrate judges hear discovery disputes and are
23 subject to similar review, where the courts apply a clearly erroneous standard: "The district court
24 must affirm the magistrate judge's order unless the district court is left with the 'definite and firm
25 conviction that a mistake has been committed.'" *In re First Am. Corp. ERISA Litig.*, 263 F.R.D.
26 549, 561 (C.D. Cal. 2009) (*quoting Burdick v. Comm'r*, 979 F.2d 1369, 1370 (9th Cir. 1992)).
27 The clearly erroneous standard requires a court to uphold the recommendation unless it is
28 "clearly erroneous or not supported by substantial evidence." *Breshears v. Turner*, No. 68773,

1 2016 WL 5340231, at *2 (Nev. App. Sept. 13, 2016). Here, the Discovery Commissioner is akin
2 to a Special Master, albeit with even broader authority pursuant to NRCp 16.3, or a magistrate
3 judge and therefore, these decisions are instructive. Thus, for the initial review of the
4 Recommendation, the appropriate standard of review is clearly erroneous.

5 With regards to discovery sanctions specifically, Nevada courts apply an abuse of
6 discretion standard. See e.g. *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 92, 787 P.2d 777
7 (1990); *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 258, 235 P.3d 592, 602 (2010);
8 *Freemon v. Fischer*, 281 P.3d 1173 (Nev. 2009) (examining both the District Court's and
9 Discovery Commissioner's findings and applying an abuse of discretion standard to the District
10 Court's approval of the applicable recommendation despite not following the *Young* factors.).
11 Notably, the "*Young* factors" requiring a review of whether or not sanctions "relate to the claims
12 at issue" only apply to dispositive sanctions (otherwise cited as "case concluding" sanctions), not
13 merely monetary sanctions. See e.g. *Foster v. Dingwall*, 126 Nev. 56, 65, 227 P.3d 1042, 1048
14 (2010); *McDonald v. Shamrock Investments, LLC*, 127 Nev. 1158, 373 P.3d 941 (2011). Thus,
15 as to the specific objection to the sanctions awarded, absent a finding of abuse of discretion, a
16 discovery sanction should be adopted.

17 **B. The Recommendation.**

18 This dispute arose after Defendants improperly suspended the depositions of Garry M.
19 Graber and Sujata Yalamanchili, the designated persons most knowledgeable for the law firm of
20 Hodgson Russ LLP ("HR"). After the parties had traveled to Buffalo and after Graber started
21 testifying unfavorably to Defendants, Defendants "suspended" the depositions. Defendants'
22 alleged suspension was based, in part, upon Defendants' false contention that an agreement
23 existed between counsel for the Parties to limit the scope of the depositions to the contents of
24 attachments to a January 24, 2017 email from Plaintiff's counsel (the "Pilatowicz Email").
25 Plaintiff immediately and vigorously disputed this point.

26 On July 18, 2017, Defendants filed their *Motion to Quash Subpoena, or, in the*
27 *Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson*
28 *Russ LLP* (the "Motion to Quash"). The Motion to Quash set forth the same facts, and presented

1 the same legal arguments as the Objection. Specifically, the Motion to Quash argued, *inter alia*,
2 that the Pilatowicz E-mail constituted a written stipulation between the parties that limited the
3 scope of the HR Deposition. *See* Motion to Quash at 5, 11-12.

4 Plaintiff filed his (1) *Opposition to Motion to Quash Subpoena, or, in the Alternative, for*
5 *a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP*; and (2)
6 *Counter-motion for Sanctions and to Compel Resetting of 30(B)(6) Deposition of Hodgson Russ*
7 *LLP* (the “Opposition and Counter-motion”) on July 24, 2017 clarifying that the Pilatowicz Email
8 was not an agreement to limit the scope and that it was never Ms. Pilatowicz’ intent to enter into
9 such an agreement via the Pilatowicz Email. Plaintiff further argued that the lack of an
10 agreement is supported by the parties’ actions after the Pilatowicz Email which included
11 continuing to seek additional documents from HR without objection and multiple notices of
12 deposition that contained no limit, whatsoever, as to the deposition and to the contrary, listed
13 multiple topics for discussion. *Opposition and Counter-motion* at 7, 18.

14 Discovery Commissioner Wesley Ayres heard lengthy argument on this dispute on
15 August 10, 2017. The Court considered the arguments relating to the Pilatowicz Email, the meet
16 and confer calls between counsel, and all other arguments relating to the alleged limitation of the
17 scope of the HR deposition. On August 17, 2017,¹ the Recommendation was entered, and it
18 specifically addressed the arguments as to any alleged agreement to limit the scope of the
19 deposition. The Discovery Commissioner rejected any allegation that there is a limitation.
20 Specifically, the Discovery Commissioner, in a 10-page written opinion, found that the
21 Pilatowicz Email was not a signed written agreement that could satisfy the requirements of DCR
22 16 for several reasons, including that the email failed to state that the examination would be
23 limited to the enclosed documents.

24 Defendants now seek to rehash the same arguments rejected by the Discovery
25 Commissioner on the basis that the “Discovery Commissioner overlooked the importance of the
26 parties’ meet and confer agreements related to the dispute.” *Objection* at 2. Inherent in that

27 ¹ The Recommendation for Order contains a scrivener’s error and is erroneously dated 2016. The accompanying
28 Certificate of Service evidences the correct 2017 date.

1 language is an admission that the Discovery Commissioner in fact considered the arguments set
2 forth in the Objection. Defendants have failed entirely to present any evidence or argument that
3 the Discovery Commissioner's Recommendation was clearly erroneous or contrary to law.
4 Therefore, the Objection, like Defendants initial Motion to Quash, must be denied.

5 **C. The Pilatowicz Email was Unquestionably Not an Agreement to Limit the**
6 **Deposition Under DCR 16.**

7 Rule of the District Courts of the State of Nevada ("DCR") 16 states in full:

8 No agreement or stipulation between the parties in a cause or their attorneys, in
9 respect to proceedings therein, will be regarded unless the same shall, by consent,
10 be entered in the minutes in the form of an order, or unless the same shall be in
writing subscribed by the party against whom the same shall be alleged, or by his
attorney.

11 DCR 16.

12 DCR 16 requires compliance not just with the "procedural requirements," but with the
13 "general principles of contract law." *Grisham v. Grisham*, 128 Nev. Adv. Op. 60, 289 P.3d 230,
14 234 (2012). Accordingly, where "material terms are lacking or are insufficiently certain or
15 definite" such that a Court cannot determine what is required of each respective party from the
16 writing, a "valid contract cannot exist." *Id.* (citing *May v. Anderson*, 121 Nev. 668, 672, 119
17 P.3d 1254, 1257 (2005)). These essential terms must be part of that writing. *Grisham*, 128 Nev.
18 Adv. Op. 60, 289 P.3d at 234.² Furthermore, any ambiguity as to the lack of the existence of a
19 contract may be ascertained by looking at the parties' conduct following the alleged agreement.
20 *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. Adv. Op. 35, 283 P.3d 250, 255 (2012)
21 (citing Restatement (Second) of Contracts § 131 cmt. g (1981)).

22 As a threshold matter, the Recommendation does not state that an email *cannot* be a
23 written agreement between the Parties, merely that in this particular case, no written agreement
24 that complies with DCR 16 exists. Notably, Ms. Pilatowicz, who is the author of the Pilatowicz
25 Email disputes that the Pilatowicz Email was an agreement to limit the scope of the deposition

26 ² In at least one unpublished opinion citing to the same legal authority, the Court rejected an argument that emails
27 between counsel constituted an agreement under DCR 16 because they did not include "an express asset to the
28 material terms of the settlement agreement." *KB Home Nevada Inc. v. Eighth Judicial Dist. Court of State ex rel.*
Cty. of Clark, No. 62545, 2013 WL 1121327, at *1 (Nev. Mar. 15, 2013) (unpublished disposition).

1 for several separate and distinct reasons. See Pilatowicz Decl. ¶ 2. Among them, that there could
2 not have been an agreement to limit the scope of a deposition when a subpoena, unquestionably
3 without limitation, was still pending. Furthermore, the parties' actions were absolutely
4 inconsistent with any perceived agreement, as the parties twice entered into stipulations to
5 continue the discovery deadlines for the specific purposes of completing the HR Deposition
6 *without limitation* and notices of deposition *without* limitation were filed twice after the
7 Pilatowicz Email.

8 Defendants ignore all this and instead, simply contend that because an email *can be* a
9 writing sufficient to constitute an agreement between the parties the Pilatowicz Email *was* an
10 agreement complaint with DCR 16. The Discovery Commissioner addressed this in making
11 clear that, even if the email *can* constitute a form sufficient to act as an agreement, the content of
12 the Pilatowicz Email itself does not meet the requirements of DCR 16. *See* Recommendation at
13 5 – 6.

14 The Discovery Commissioner actually went one step further: “the email does not purport
15 to set forth any limitation.” Recommendation at 6. In fact, the Discovery Commissioner
16 indicated that there are multiple plausible explanations as to why the Pilatowicz Email was sent.
17 To be clear, the Pilatowicz Email was sent for the purposes of identifying emails that disclosed
18 HR’s involvement in the fraudulent transfers and to answer Defendants’ counsel questions as to
19 why the HR Deposition had not been noticed earlier. In any event, as this dispute makes clear,
20 the Pilatowicz Email cannot be certain nor definite enough to inform the Court as to the
21 agreement between the parties (because no such agreement was ever actually entered into) and
22 therefore, cannot be deemed to satisfy the requirements of DCR 16.

23 Furthermore, Defendants argue that alleged conversations between counsel during the
24 meet and confer regarding the HR Deposition cure the lack of satisfactory written agreement
25 required under DCR 16. *See* Objection at 2. The Discovery Commissioner properly forecloses
26 upon this contention as well, noting that “this is precisely the kind of situation that DCR 16 was
27 intended to address – a dispute between parties, or their counsel, about whether an agreement
28 was reached, or about the terms of an unwritten agreement.” Recommendation at 6.

Moreover, the Discovery Commissioner again went further, to address that the Parties' actions were inconsistent with any alleged agreement. First, the Discovery Commissioner notes: "Plaintiff did not withdraw or otherwise modify the HR subpoena" which evidences the *lack of agreement*. Recommendation for Order at 5. Second, the Discovery Commissioner notes that Plaintiff served Defendants with two amended deposition notices that maintained the same "alleged pre-agreement" topics of discussion, which notified Defendants that there was no agreement to limit the HR Deposition. *Id.* at fn. 4.

Based on the foregoing, there is nothing to show that the Discovery Commissioner's Recommendation was clearly erroneous or contrary to law. To the contrary, the Recommendation was a 10 page, well thought out opinion on the arguments raised by counsel. The Recommendation, therefore, should not be disturbed.

D. The \$3,000.00 Award Was Not Arbitrary or Unreasonable and is Far Below the Actual Fees Incurred.

The Court has the authority to sanction a party via both NRCP 37 and via its inherent equitable powers to deter abusive litigation practices. *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). The imposition of discovery sanctions are generally reviewed for an abuse of discretion. *See e.g. Foster v. Dingwall*, 126 Nev. —, —, 227 P.3d 1042, 1048 (2010).

In the Recommendation, the Discovery Commissioner identified three primary reasons for the imposition of sanctions: (1) "Defendants did not have a legitimate basis for suspending the HR deposition on July 12, 2017;" (2) suspension of the HR deposition was not permissible absent "evidence sufficient to support a finding that such an agreement actually existed;" and (3) the failure to raise privilege issues in Defendants' "motion, reply brief, or opposition to countermotion effectively invalidates the decision to suspend the deposition on that basis." Recommendation at 9. Based on these findings, the Court awarded, among other sanctions, \$3,000 for expenses related to the dispute. This award of sanctions was abundantly appropriate in light of Defendants' egregious actions in unilaterally suspending Plaintiff's noticed depositions over seven months after it was noticed, after the Parties had travelled across the

1 country to Buffalo, *after the HR Deposition had already commenced*. Nonetheless, Defendants’
2 challenge the monetary sanction of \$3,000.00 for expenses incurred related to the dispute (the
3 “Dispute Sanction”) because, according to Defendants, the Recommendation does not provide
4 “any support or calculation as to what makes that amount reasonable.” Opposition at 5.
5 Defendants do not challenge the variety of other sanctions contained in the Recommendation,
6 nor do they allege that the basis for those sanctions is unfounded or unsupported.

7 The Discovery Commissioner, who is tasked with addressing these types of discovery
8 disputes, is keenly aware of what a reasonable sanction for this type of abusive litigation practice
9 amounts to, having a wealth of experience in the area dealing with similar counsel and similar
10 parties raising similar discovery disputes. Ultimately, the Discovery Commissioner determined
11 that \$3,000.00 for the Dispute Sanction was sufficient. In reality, Plaintiff actually incurred
12 significantly more in expenses, which amount continues to increase as a result of the Objection.

13 For the avoidance of doubt, in briefing the opposition to the Motion to Quash, the
14 Opposition and Countermotion, the Reply, and preparing for and attending the original hearing,
15 Plaintiff incurred \$10,068.50 in fees. Plaintiff can supplement its response to include the time
16 necessary to address the Objection upon completion of this matter. Plaintiff contends that the
17 amounts awarded for the Dispute Sanction were reasonable as they amount to even less than
18 Plaintiff actually incurred. Should this Court prefer to consider the actual amounts incurred,
19 Plaintiff requests that the awarded be increased to \$10,068.50 plus the amounts incurred in
20 connection with the Objection.

21 IV.

22 CONCLUSION

23 Trustee respectfully requests that the Court enter an order confirming the
24 Recommendation for Order, and denying the Objection in its entirety.

25 AFFIRMATION

26 Pursuant to NRS 239B.030

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

Dated this 5th day of September 2017.

GARMAN TURNER GORDON LLP

/s/ Michael R. Esposito
GERALD E. GORDON, ESQ.
TERESA M. PILATOWICZ, ESQ.
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INDEX OF EXHIBITS

Exhibit	Description	Pages ³
A	Declaration of Teresa M. Pilatowicz, Esq. in Support of Opposition to Objection to Recommendation for Order	4

³ Exhibit page counts are exclusive of exhibit slip sheets.

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 **OPPOSITION**
4 **TO OBJECTION TO RECOMMENDATION FOR ORDER** on the parties as set forth
5 below:

6
7 XXX Placing an original or true copy thereof in a sealed envelope placed for collection
8 and mailing in the United States Mail, Reno, Nevada, postage prepaid, following
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 addressed as follows:

16 Barry Breslow
17 Frank Gilmore
18 ROBISON, BELAUSTEGUI, SHARP & LOW
19 71 Washington Street
Reno, NV 89503

20 DATED this 5th day of September, 2017.

21
22 /s/ Ricky H. Ayala

23 An Employee of GARMAN TURNER
24 GORDON LLP
25
26
27
28

EXHIBIT A

EXHIBIT A

1 **1950**
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15 *Special Counsel to Trustee*

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO. 1

**DECLARATION OF TERESA M.
PILATOWICZ, ESQ. IN SUPPORT OF
OPPOSITION TO OBJECTION TO
RECOMMENDATION FOR ORDER**

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

1. I am an attorney with the law firm of Garman Turner Gordon LLP, counsel for Plaintiff William A. Leonard ("Plaintiff"). I am licensed to practice law in the State of Nevada since 2005. I make this declaration in support of Plaintiff's Opposition (the "Opposition")¹ to the

¹ All capitalized, undefined terms shall have the meanings ascribed to them in the Opposition, while capitalized undefined terms in the Reply have the meanings ascribed to them in the Memorandum.

1 *Objection to Recommendation for Order* (the “Objection”) filed by Defendants
2 SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as
3 Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST; SALVATORE MORABITO,
4 and individual; and SNOWSHOE PETROLEUM, INC., a New York corporation (collectively,
5 the “Defendants”). The Objection asks this Court to reconsider the Discovery Commissioner’s
6 detailed Recommendation for Order (the “Recommendation”) entered on August 10, 2017.

7 2. I authored the Pilatowicz Email. The Pilatowicz Email was not an agreement to limit the
8 scope of the HR Deposition. Among other reasons, t there could not have been an agreement to
9 limit the scope of a deposition when a subpoena seeking additional documents, unquestionably
10 without limitation, was still pending. Furthermore, the parties’ actions were absolutely
11 inconsistent with any perceived agreement, as the parties twice entered into stipulations to
12 continue the discovery deadlines for the specific purposes of completing the HR Deposition
13 *without limitation* and notices of deposition *without* limitation were filed twice after the
14 Pilatowicz Email.

15 3. The law firm of Garman Turner Gordon LLP performed services for Plaintiff relating to
16 the Motion to Quash, the Opposition and Countermotion, and Reply, and preparing for the
17 hearing on the discovery dispute. GTG incurred \$10,068.50 as attorney fees in connection with
18 such work.

19 4. Should this Court elect to amend the discovery sanction in the Recommendation,
20 approval is sought for fees in the amount of \$7,068.50 in addition to the \$3,000.00 already
21 awarded to Plaintiff for a total sanction of \$10,068.50.

22 5. I have reviewed the Plaintiff’s redacted invoices, and believe them to be correct and
23 reasonable.

24 Dated this 5th of September, 2017.

25 /s/ Teresa M. Pilatowicz
26 TERESA M. PILATOWICZ
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 5th day of September 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
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Special Counsel for Trustee

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3 fgilmore@rssblaw.com

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5 lliddell@rssblaw.com

6 Robison, Simons, Sharp & Brust

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., Edward Bayuk, individually
14 and as Trustee of the Edward William Bayuk Living
15 Trust, and Salvatore Morabito.

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

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

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

CASE NO.: CV13-02663

DEPT. NO.: B4

20 Plaintiffs,

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.

REPLY TO OPPOSITION TO OBJECTION TO RECOMMENDATION FOR ORDER

Defendants above named, by and through their attorneys of record, hereby reply to the
Opposition to Defendants' Objection to the Recommendation for Order filed August 17, 2017.

This Reply is supported by the attached memorandum of points and authorities, and the other
papers and pleadings on file herein.

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. Introduction**

3 The purpose of an objection to a Discovery Commissioner's Recommendation for Order is
4 to set forth a party's disagreements with the recommendation so that the finder of fact can make a
5 final and informed decision on the matter. An objection to a Discovery Commissioner's
6 Recommendation for Order need not and should not present new arguments not raised before the
7 commissioner. *Valley Health System, LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167173, 252
8 P.3d 676, 680 (2011). In essence, it is an opportunity to rehash arguments that were before the
9 Discovery Commissioner, tailoring them specifically to the Recommendation for Order.

10 Defendants' Objection respectfully shows the Court that there was a mistake committed in
11 the Discovery Commissioner's Recommendation for Order. The Recommendation for Order
12 erroneously concluded that the parties did not make an agreement under the DCR 16 standard.
13 The Recommendation for Order further erroneously awarded monetary sanctions even though
14 Defendants in good faith carried out the discovery dispute. Defendants have and continue to act in
15 good faith throughout this litigation. Defendants do not have any purpose for the present dispute
16 other than protecting themselves from harassment and protecting their interests within the confines
17 of the law and Rules of Civil Procedure.

18 This is a dispute centered on a deposition of two attorneys designated the persons most
19 knowledgeable of the law firm Hodgson Russ LLP ("HR") based in Buffalo, New York. The
20 parties stayed an extra day after a previously scheduled matter in Buffalo, New York, to conduct
21 the HR depositions. Months prior to the date of the HR depositions, in January 2017, the parties'
22 reached disagreement about the validity of the subpoena to depose HR. Defendants maintain that
23 the subpoena was issued after the close of discovery and not within a previous limited extension
24 for discovery. The parties conducted a "meet and confer" to resolve the dispute. Ultimately, the
25 parties agreed that because they would already be in Buffalo, New York, Plaintiff could conduct a
26 brief deposition of HR so long as it was limited to the meet and confer agreement.

27 Plaintiff then disavowed the existence of the agreement on the day of the depositions, and
28 attempted to carry out a full scope deposition. Because Defendants were not prepared for full

1 scope depositions, and upon belief that the subpoena was invalid to begin with, Defendants elected
2 to terminate the deposition and seek protection.

3 **2. The Meet and Confer Agreements**

4 The Recommendation for Order erroneously determined that the parties' written agreement
5 did not limit the scope of the HR deposition. Defendants concede that the written agreement does
6 not, in black and white, say "the parties agreed to limit the scope of the deposition." However, the
7 Recommendation for Order erred in finding that the agreement did not purport to limit the scope
8 of the deposition.

9 Plaintiff's email following the parties' meet and confer discussing the discovery dispute
10 can only be read in one way, under the circumstances: that Plaintiff's counsel agreed to limit the
11 scope of the HR depositions. After the subpoena was served, Defendants' emails evidence the
12 scope of the dispute. The dispute was resolved when Plaintiff's counsel confirmed the documents
13 she intended to rely on in the HR depositions. Plaintiff's confirming email is Plaintiff's written
14 confirmation, stating "attached please find the emails that I intend to discuss at the deposition of
15 Hodgson Russ." The emails attached were a portion of the Vacco emails. Given the context, this
16 email can only be read to conclude that a limitation was agreed to. Plaintiff limited the scope of
17 the depositions. If Plaintiff's counsel was not limiting the scope in an effort to resolve a dispute,
18 then the transmission of the Vacco emails makes no sense, and there would be no reason for
19 counsel to send the email. Plaintiff claims this email was not an agreement, but also does not
20 dispute that the discovery dispute was resolved as of the sending of that confirming email. For
21 efficiency's sake, civil practice does not generally involve a formal written agreement for every
22 discovery dispute. Instead, regular and customary practice regularly involves short and simple
23 confirmation emails like the email at hand. Plaintiff acknowledges that the parties carried out a
24 meet and confer on this issue. Yet, Plaintiff offers no other outcome of the meet and confer.

25 Even if the Court accepted Plaintiff's position that the writing presented is not a contract,
26 the Court should allow Defendants to carry out its discovery dispute as presented in the Motion to
27 Quash. If there was never a meeting of the minds as to the deposition's limited scope, Defendants
28 should be permitted to carry out its dispute of the validity of the subpoena relating back to the time

1 of the original dispute, as surely that issue would have been raised had the meet and confer not
2 ended in agreement.

3 Ultimately, the Recommendation for Order clearly erred in finding that the email writing
4 did not comply with the DCR 16 requirement that an agreement be in writing and signed by the
5 party against whom it is being enforced. The email was a writing, and the email signature made it
6 a signed writing. The context and contents of the email provide the material terms of the
7 agreement following the dispute of the validity of the HR subpoena. Therefore, this writing
8 complies with DCR 16, and is an enforceable agreement against Plaintiff.

9 **3. The recommended \$3,000 sanction is arbitrary.**

10 The Recommendation for Order's reasoning as recited in Plaintiff's Opposition for
11 awarding sanctions against Defendants relate to other severe sanctions recommended, but not to
12 the sanction for reasonable expenses. The Recommendation for Order recommends that the Court
13 order Defendants to pay Plaintiff's attorney fees and costs of the court reporter for the HR
14 deposition that already took place, Plaintiff's travel costs of the second HR deposition, and \$3,000
15 in connection with this dispute. The reasons set forth in the Recommendation for Order center on
16 that Defendants should not have suspended the deposition once it had started. The \$3,000
17 sanction did not relate to the deposition suspension; instead, it was for expenses incurred during a
18 good faith discovery dispute.

19 The \$3,000 recommended sanction for reasonable expenses was an abuse of discretion.
20 Defendants acted in good faith in filing the present Motion. Plaintiff issued a subpoena after the
21 close of discovery. Defendants disputed it. Plaintiff and Defendants came to, what Defendants
22 understood, was an agreement to limit the scope of the deposition. When Plaintiff did not uphold
23 this agreement, Defendants filed a Motion to Quash the subpoena in its entirety. The
24 Recommendation for Order of a \$3,000 sanction for bringing that Motion is an abuse of discretion.
25 Parties should not be discouraged from pursuing their discovery rights in good faith. Hence, the
26 Recommendation for Order abused its discretion in regards to this sanction.

27 For the reasons mentioned above, Defendants object to the Discovery Commissioner's
28 Recommendation for Order.

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 15th day of September, 2017.

ROBISON, SIMONS, SHARP & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

/s/ Frank C. Gilmore
FRANK C. GILMORE, ESQ.
Attorneys for Defendants Snowshoe Petroleum,
Inc., Superpumper, Inc., Edward Bayuk, individually
and as Trustee of the Edward William Bayuk Living
Trust, and Salvatore Morabito.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Robison, Simons, Sharp & Brust, and that on this date I caused to be served a true copy of the **REPLY TO OPPOSITION TO OBJECTION TO RECOMMENDATION FOR ORDER** 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:

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

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

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

CASE NO.: CV13-02663

DEPT. NO.: B1

Plaintiffs,

vs.

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

Defendants. /

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Defendants SUPERPUMPER, INC., EDWARD BAYUK, individually and as Trustee of
the EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO, and
SNOWSHOE PETROLEUM, INC. (collectively, "Defendants") oppose the Motion for Partial
Summary Judgment filed by plaintiff WILLIAM A. LEONARD, Trustee for the Bankruptcy
Estate of Paul Anthony Morabito ("Trustee"). This Opposition is made and supporting by the

1 following Memorandum of Points and Authorities, the attached exhibits, the attached
2 Declarations, and the Statement of Disputed Facts in Support of Defendants' Opposition to
3 Plaintiff's Motion for Partial Summary Judgment ("SOF") filed concurrently herewith, the
4 pleadings and papers on file herein.

5 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION**

6 **I. INTRODUCTION**

7 The instant Motion seeks this court's summary adjudication as to Plaintiff's
8 allegation that "the transfers described in the Complaint are actually fraudulent." (Motion, p.
9 2). Plaintiff then seeks to parlay that determination of intent into a "judgment on account
10 thereof." *Id.* The Motion cannot be granted because the Plaintiff's claims raise genuine
11 disputed questions of fact which cannot be determined in summary judgment. Plaintiff's
12 own words preclude the relief he seeks. Plaintiff concedes that issues of material fact remain
13 related to the amount of the claimed damages, and that the value of the property transferred
14 is hotly contested. See, Motion, pp. 2:2-3; 10:29; 36:13. Thus, under no scenario is a
15 judgment for damages appropriate. *O'Dell v. Martin*, 101 Nev. 142, 144, 696 P.2d 996, 997
16 (1985). This precludes summary judgment as to the amount of damages.

17 Additionally, Plaintiff's request for summary judgment as to the actual fraudulent
18 intent of Paul Morabito, the transferor – who is not a Defendant in this action –
19 unquestionably raises issues of material fact. *Dickenson v. State Dept. of Wildlife*, 110 Nev.
20 934, 937, 877 P.2d 1059 (1994); *Servaites v. Lowden*, 99 Nev. 240, 245, 660 P.2d 1008,
21 1012 (1983); *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987);
22 *Lutz v. Kinney*, 24 Nev. 38, 49 P. 453, 454 (1897) ("The question of fraudulent intent is a
23 question of fact, and not of law"). Accordingly, in order to avoid summary judgment, the
24 Defendants need only produce evidence which establishes genuine material issues of fact
25 related to: (1) Paul Morabito's actual intent in transferring the property; (2) the Defendants'
26 good faith intent in receiving the property; and (3) the reasonably equivalent value
27 exchanged by the Defendants. Defendants easily meet that burden. Accordingly, the Motion
28 must be denied.

1 Turning to the specifics of the allegations, Plaintiff's Motion deals exclusively with
2 the alleged fraudulent intent of Paul Morabito (hereinafter "Paul").¹ The Motion entirely
3 omits any discussion or presentation of evidence related to whether the Defendants "took in
4 good faith and for a reasonably equivalent value." NRS 112.220. Pursuant to Nevada law,
5 taking in good faith and for reasonably equivalent value is a total defense to a claim for
6 fraudulent transfer. In such a case, where the transferees take in good faith, "a transfer or
7 obligation is not voidable." *Id.*

8 Plaintiff spends not a single paragraph addressing the Defendants' intent, state of
9 mind, and the value they paid to receive the property they took. Accordingly, Plaintiff's
10 Motion cannot be granted. The evidence presented below more than establishes that
11 Defendants had their own legitimate reasons for dividing their jointly-held property with
12 Paul, and that they did so fairly, honestly, transparently, and in good faith. The evidence
13 establishes that the Defendants went to great lengths to ensure that they paid fair market
14 value for the property they acquired, and that they received fair market value for the property
15 they gave to Paul. Imputing Paul's motives or intent to the Defendants is neither factually
16 supportable, nor permitted under Nevada's Uniform Fraudulent Transfer Act ("UFTA").

17 This case presents anything but the typical fraudulent transfer scenario. The typical
18 fraudulent transfer case involves an underhanded exchange between a judgment debtor (or
19 soon-to-be-judgment-debtor), who secretly and impulsively unloads his property to a third
20 party with *no* justification for the transfer other than to frustrate the creditor. Nothing about
21 this case mirrors that typical fact pattern. First, the Defendants, who had been sued by the
22 Herbst parties, and defended themselves at extreme cost and expense of time, were expressly
23 and unambiguously exonerated by Judge Adams. Judge Adams determined that they did
24 nothing wrong, and they did not deserve to be in the Herbst crosshairs. Second, nearly
25 everything that Paul owned was held jointly with his former partner, Edward Bayuk, and his
26 brother, Sam Morabito. That co-ownership included everything from business interests to

27 ¹ Defendants will refer to Paul Morabito as "Paul" to differentiate him from Salvatore
28 "Sam" Morabito, his brother.

1 furniture. When Sam and Bayuk were exonerated by Judge Adams, and Paul was hit with an
2 enormous judgment, the Defendants had one goal in mind: *separating themselves and their*
3 *co-owned assets from Paul in order to avoid the post-judgment collection efforts which they*
4 *accurately predicted would be fierce and relentless.*

5 The Defendants' good faith intent has been clearly established. It is undisputed that
6 the Defendants met with their counsel, Dennis Vacco, a prominent New York attorney who
7 had previously served as the Attorney General of the State of New York, and the United
8 States Attorney for the Western District of New York, and sought advice as to how the
9 Defendants could avoid the harassment that would surely come when the Herbst parties
10 attempt to execute the judgment upon the Defendants' jointly-held assets. Vacco himself
11 developed, articulated, formulated, documented, and accomplished the plan of division.
12 Being fully aware of the law, Vacco and his firm engaged highly-qualified and certified
13 appraisers for the jointly-held real property, and Vacco retained one of the country's
14 preeminent petroleum company appraisers to value their jointly held company,
15 Superpumper, Inc. Vacco and his firm endeavored to ensure that Sam and Bayuk received
16 their share of the property that they desired, and that Paul received his share of the property,
17 and that it was done transparently and equitably. Vacco and his firm oversaw the entire
18 process. Vacco testified that they knew and intended that the property division they
19 designed would set Paul up to be "a ripe target for the Herbsts and their collection efforts."
20 (See SOF **Exhibit 1**, p. 53). This evidence is not disputed. What is disputed is the inference
21 that is to be drawn from this evidence. However, as this Court is well aware, all reasonable
22 inferences that can be drawn from the evidence presented are to be resolved in the
23 Defendant's favor. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).
24 Thus, summary judgment cannot be granted.

25 Plaintiff has presented no evidence establishing that Defendants played any part in an
26 effort to deprive the Herbst parties of any collection remedies. Plaintiff focuses instead on
27 Paul, and alleges many facts which are neither relevant nor persuasive. Defendants and their
28 counsel have testified under oath that the transfers were accomplished, from their

1 perspective, in order to remove them from the Herbst target, and, if anything, to make Paul's
2 assets MORE accessible to the Herbst, not less so.

3 Critically, what Paul did with the assets he received in the transfers is not the concern
4 of the Defendants, nor is Paul's conduct properly imputed to Defendants. Plaintiff's Motion
5 spends all of its many pages addressing Paul's conduct, his emails, and his post-judgment
6 conduct. None of this has any relevance to this case or to Defendants' liability to the
7 Plaintiff. This case involves only the intent and reasonably equivalent exchange of the
8 Defendants. Paul Morabito is not on trial here. The Defendants are on trial, and it is their
9 intent that should be examined. Plaintiff spent no effort examining the Defendants' conduct
10 and intent. Accordingly, the Motion must fail.

11 II. STANDARD OF REVIEW

12 When reviewing a motion for summary judgment, "the evidence, and any reasonable
13 inferences drawn from it, must be viewed in a light most favorable to the nonmoving party."
14 *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment
15 is only appropriate if the "pleadings and other evidence on file demonstrate that no genuine
16 issue of material fact remains and that the moving party is entitled to judgment as a matter of
17 law." *Id.* (internal alterations and quotations omitted); *see also* NRCP 56(c).

18 Disputes over facts that may affect the outcome of the case "will properly preclude
19 the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48
20 (1986). Where the crucial fact dispute concerns characterization of a party's conduct, which
21 in turn involves elusive questions of intent and motive, summary judgment should be denied.
22 *Servaites v. Lowden*, 99 Nev. 240, 245, 660 P.2d 1008, 1012 (1983). If an ambiguity exists
23 that requires "extrinsic evidence to discern the parties' intent, summary judgment is
24 improper." *Dickenson v. State Dept. of Wildlife*, 110 Nev. 934, 937, 877 P.2d 1059 (1994).

25 "[T]he moving party must establish the foundational facts necessary to determine the
26 issue" in their favor. *Torres v. Farmers Ins. Exch.*, 106 Nev. 340, 345, 793 P.2d 839, 842
27 (1990). If the moving party fails to support their motion with competent evidence, the
28 motion need not be considered by this Court. *Collins v. Union Fed. Sav. & Loan Ass'n*, 99

1 Nev. 284, 299 n.7, 662 P.2d 610, 619 n.7 (1983). Moreover, “all of the non-movant’s
2 statements must be accepted as true, all reasonable inferences that can be drawn from the
3 evidence must be admitted,” and this Court may not “decide issues of credibility based upon
4 the evidence submitted in the motion.” *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706,
5 714, 57 P.3d 82, 87 (2002).

6 **III. ARGUMENT**

7 **A. There Exist Multiple Questions of Material Fact Regarding Paul’s Intent.**

8 The question of whether a fraudulent conveyance took place is solely a question of
9 fact to be determined by the fact-finder. *Dickenson v. State Dept. of Wildlife*, 110 Nev. 934,
10 937, 877 P.2d 1059 (1994); *Servaites v. Lowden*, 99 Nev. 240, 245, 660 P.2d 1008, 1012
11 (1983); *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987); *Lutz*
12 *v. Kinney*, 24 Nev. 38, 49 P. 453, 454 (1897)(“The question of fraudulent intent is a question
13 of fact, and not of law”). *Cottrell v. Cottrell*, 133 Conn. App. 52, 33 A.3d 839, 846 (2012).
14 Viewing the evidence in the light most favorable to Defendants, Plaintiff cannot establish the
15 absence of genuine issues of material fact that Paul had fraudulent intent when he divided his
16 assets with Bayuk and Sam. There exist serious disputes about the “badges of fraud” which
17 Plaintiff promotes. At minimum, there is an abundance of disputes of material fact, and thus
18 summary judgment should be denied.

19 Nevada’s codified Uniform Fraudulent Transfer Act sets forth two types of
20 fraudulent transfers. The first is “actual fraud, while the other is generally called
21 “constructive fraud.” The law explains that a “transfer made or obligation incurred by a
22 debtor is fraudulent as to a creditor . . . if the debtor made the transfer or incurred the
23 obligation.”

24
25 (a) **With actual intent to hinder, delay or defraud any creditor of the
debtor; or**

26 (b) **Without receiving a reasonably equivalent value in exchange for
27 the transfer or obligation, and the debtor:**

28 (1) Was engaged or was about to engage in a business transaction

for which the remaining assets of the debtor were unreasonably small in relation to the business; or

- (2) Intended to incur, or believed to reasonably should have believed that the debtor would incur, debts beyond his or her ability to pay as they became due. NRS 112.180(1) (emphasis added).

To summarize, a creditor must prove either (1) actual intent to defraud or (2) that the debtor did not receive reasonably equivalent value and was insolvent. *Sportsco Enterprises v. Morris*, 112 Nev. 625, 631, 917 P.2d 934, 937 (1996).

In determining whether actual fraud exists, Nevada law further provides the following factors through which the fact finder can determine the presence of actual intent to defraud, labeled “badges of fraud:”

- (a) The transfer or obligation was to an insider;
- (b) The debtor retained possession or control of the property transferred after the transfer;
- (c) The transfer or obligation was disclosed or concealed;
- (d) Before the transfer was made or the obligation was incurred, the debtor had been sued or threatened with suit;
- (e) The transfer was of substantially all of debtor’s assets;
- (f) The debtor absconded;
- (g) The debtor removed or concealed assets;
- (h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (i) The debtor was insolvent or became insolvent shortly after the transfer was made or obligation was incurred;
- (j) The transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

NRS 112.18 (2).

Under the Uniform Fraudulent Transfer Act, a creditor must prove the elements of a fraudulent transfer by **clear and convincing evidence**, a higher standard than the ordinary preponderance of the evidence. *See G.M. Houser, Inc. v. Rodgers*, 204 S.W.3d 836 (Tex.App. 2006); *In re Grove-Merritt*, 406 B.R. 778 (Bkrtcy.S.D.Ohio 2009); *Comcast of IL X v. Multi-Vision Electronics, Inc.*, 504 F.Supp.2d 740 (D.Neb.2007). The creditor generally bears the burden of proof with respect to both insolvency of the debtor and inadequacy of consideration. *Sportsco Enterprises v. Morris*, 112 Nev. 625, 632, 917 P.2d 934, 938 (1996). If a transfer is made for adequate consideration, it is not voidable. *Scholes v.*

1 *Lehmann*, 56 F.3d 750 (CA 1995).

2 The question of whether a debtor had fraudulent intent in conveying property is
3 predominantly a question of fact for the jury or the Court. *See Flores v. Robinson Roofing &*
4 *Const. Co., Inc.*, 161 S.W.3d 750, 754 (Tex. App. 2005). Intent can only be deduced from
5 the badges of fraud, which must be submitted to the trier of fact who can draw inferences
6 and weigh the credibility of the witness. *Id.*; *Essex Crane Rental Corp. v. Carter*, 371 S.W.3d
7 366 (Tex.App.2012); *Wieselman v. Hoeniger*, 930 A.2d 768, 103 Conn.App. 591
8 (Conn.App.2007). Therefore, the determination of fraudulent intent is completely
9 inappropriate for summary judgment.

10 1. Questions of Fact Exist With Respect to Each of the Badges of Fraud.

11 Plaintiff does not have direct proof of fraudulent intent. Thus, Plaintiff relies on
12 circumstantial proof of intent based on discovery Plaintiff has conducted in this case. All of
13 the circumstantial evidence Plaintiff relies on raise disputed questions of fact. Accordingly,
14 summary judgment is not appropriate.

15 Much of Plaintiff's supporting evidence comes directly from Paul, in emails to his
16 own lawyers who were facilitating the transfers. Plaintiff tries to spin these conversations
17 into communications where Paul is attempting to convince his lawyers to go along with
18 scheme. Yet, the undisputed facts establish that it was Paul's lawyers, and not Paul, who
19 first considered the property division. It was the attorneys at the firm of Hodgson Russ, one
20 of Buffalo, New York's most respected and prestigious firms that proposed to Paul the
21 mechanics of the asset division. **Exhibit 27 to SOF**. Paul explained to them, in emails to
22 his lawyers, which Paul could never have anticipated would be produced in discovery, that
23 his intention was simply to extricate himself from Bayuk and Sam. "I hold assets with them,
24 and they had long standing options to own a majority of Superpumper, Inc. We agreed
25 amongst ourselves that I was best standing alone with my assets, and on advice of Counsel
26 we sought independent, third party appraisers to do just that." (Motion, Exhibit 10). Paul's
27 own words indicate that desired to ensure that Sam and Bayuk, who had both been
28 exonerated by Judge Adams, would not be snared up in the Herbst collection efforts.

1 Defendants are entitled to all reasonable inferences that can be drawn from these statements.
2 That means that Defendants, at the summary judgment stage, are entitled to the benefit of the
3 doubt. Plaintiff's citations to these statements confirm that the issue of intent is rife with
4 questions of material fact.

- 5 i. *The transfers to Bayuk were not made to an insider; even so,*
6 *questions of fact as to his insider status preclude summary*
7 *judgment.*

8 Plaintiff concedes that Bayuk is not a statutory insider. However, Plaintiff attempts
9 to define Bayuk as a non-statutory insider, which derives primarily from bankruptcy law.
10 There is not a single Nevada case which supports Plaintiff's definition of a "non-statutory
11 insider." Plaintiff's reliance on the bankruptcy code is not appropriate as there is no
12 indication that Nevada intended to include the possibility of a non-statutory insider into its
13 UFTA scheme. Even so, when the Plaintiff attempted to seek summary judgment on
14 Bayuk's status as a non-statutory insider in the Bankruptcy Court, the Court declined to do
15 so, indicating that there existed genuine disputes of material fact on Bayuk's insider status.
16 Declaration of Frank C. Gilmore attached hereto, ¶ 4). Whether a Bayuk is an insider is a
17 factual inquiry that must be conducted on a case-by-case basis. *See, e.g., In re Friedman,*
18 *126 B.R. 63, 70-71 (B.A.P. 9th Cir. 1991)(describing in detail the alleged insiders'*
19 *relationships with the debtor).*

- 20 ii. *There is No Competent or Compelling Evidence Supporting*
21 *Plaintiff's Claim that Paul Continued to Control the Property*
22 *After He Divided it.*

23 Plaintiff offers a few out-of-context emails and statements from Paul which suggest
24 that Paul was attempting to put together various deals with Snowshoe. This evidence is
25 hardly compelling. First, the Plaintiff cannot show that the ideas Paul was espousing were
26 anything more than white-board concepts. Plaintiff offers nothing suggesting that Paul ever
27 consummated or even took any active steps to consummate any of these ideas. Second, the
28 undisputed proof shows that the Defendants, and not Paul, contributed to Snowshoe to keep
it solvent after the transfer. The undisputed evidence shows that Sam and Bayuk solely

1 operated Snowshoe after the transfer. In other words, aside from a few random emails (out
2 of the hundreds of thousands of pages of emails produced in this case), there is no
3 compelling evidence that Paul maintained control after the transfers. Sam, who maintained
4 the daily operation of Snowshoe, vehemently denies this contention. (See **SOF Exhibit 22**,
5 ¶ 10.)

6 iii. *Paul Owed Herbst No Duty to Disclose His Asset Protection;
Moreover, the Transfers Were Public Record and Transparent.*

7 There is no evidence presented by Plaintiff that Paul owed Herbst a duty to disclose
8 his private activities. Thus, this badge is inapposite. Moreover, the transfers were
9 accomplished with appraisers, documented with legal contracts and deeds prepared by
10 lawyers, and the properties were transferred with publicly recorded deeds. The contention
11 that this was done and concealed from Herbst is a meritless charge.

12 iv. *The Transfers Were Not a Disposal of All Of Paul's Assets.*

13 Each of the assets divided between Sam, Bayuk, and Paul were documented,
14 appraised, and exchanged with fair market value. Paul received the same value for what he
15 sold. Plaintiff's arguments on this point are totally off-base. Even by the Plaintiff's count,
16 before the exchange with the Defendants, Paul had \$6mm with the Sefton Trustees. This
17 money was not transferred to Defendants, nor did Defendants have anything to do with the
18 transfer. Accordingly, the transfers of which Plaintiff complains against Defendants did not
19 consist of all of Paul's assets. Plaintiff's attempt to wrongfully lump the Sefton Trust into
20 this case does nothing but establish that Paul was nowhere near judgment proof as a result of
21 the property divisions.

22 Moreover, Paul received no less than he gave. He received title to a \$4,000,000
23 home in exchange for the two \$2mm homes in Laguna Beach. He received the card lock
24 properties in exchange for cash buy-outs of Sam and Bayuk. The card locks were worth \$1.5
25 million at the time. (**SOF Exhibit 12**). Paul received over a million in cash from the
26 Superpumper sale, and a note of another \$492,000. And, Paul was the beneficiary of a \$1.67
27 million note from Bayuk. All of these assets were available for Herbst to execute upon had
28 they even bothered to try. This badge of fraud cuts in Defendants' favor.

1 v. *Paul Received Reasonably Equivalent Value In Exchange.*

2 The test to determine whether a debtor received reasonably fair consideration for a
3 transfer is “whether the disparity between the true value of the property transferred and the
4 price paid is so great as to shock the conscience and strike the understanding at once with the
5 conviction that such transfer could never have been made in good faith.” *Matusik v. Large*,
6 85 Nev. 202, 208, 452 P.2d 457, 460 (1969). Agreements to pay off debt in exchange for an
7 asset is fair consideration. *Id.* 85 Nev. at 207. The question on whether the transfer is for
8 “reasonably equivalent value” is largely a question of fact “in which the trier of fact is given
9 considerable latitude and must analyze all the circumstances surrounding the conveyance in
10 question.” *In re Kemmer*, 265 B.R. 224, 232 (Bnkr.E.D.Cal.2001). *United States v.*
11 *Capriotti*, No. 1:11-CV-00847-SAB, 2013 WL 1563214, at *22 (E.D. Cal. Apr. 12, 2013).
12 A finding of “reasonably equivalent value” is an intensively factual determination. *In re*
13 *Cedar Funding, Inc.*, No. 08-52709-MM, 2011 WL 5855441, at *4 (Bankr. N.D. Cal. Nov.
14 22, 2011). Therefore, the issue of whether a debtor received reasonably equivalent value is a
15 question of fact for the fact finder.

16 As set forth above, all the properties, except one, were appraised prior to the
17 transfers. And the one which was not, Clayton Way, was valued well above the \$75,000 that
18 Plaintiff attributes to it. Thus, there exist multiple questions of fact as to the issue of value.
19 Those issues can only be resolved at trial.

20 **B. Questions of Fact Remain As To Defendants’ Status As Good-Faith**
21 **Transferees.**

22 Even if Plaintiff were to convince this Court that Paul had actual intent to defraud the
23 Herbst parties in making the property divisions, that finding alone would not achieve
24 summary judgment for Plaintiff. Defendants are entitled to trial on their “complete defense”
25 as good faith transferees. *Herup v. First Boston Fin., LLC*, 123 Nev. 228, 234, 162 P.3d
26 870, 874 (2007).

27 Defendants have good and justifiable reasons for engaging in the transfers. The
28 Adams judgment excluded Bayuk and Sam from liability. Dennis Vacco confirmed that

1 “Edward and Sam didn’t want to be – be chased because they had an equity interest in
2 properties that were also attached to Paul.” (SOF Exhibit 2, p. 52). The Defendants “went
3 to great lengths to avoid these claims,” including hiring numerous appraisers to assess the
4 value of the assets now at issue. (*Id.* at p. 57). The asset separation was “just a matter of
5 simple math based upon independent third-party property valuations. (*Id.* at p. 63). Plaintiff
6 has not alleged, let alone proved, that Defendants were aware of or participated in Paul’s
7 alleged intent to defraud his creditors. The issue of good faith is a question of fact that
8 cannot be decided at summary judgment. *Herup v. First Boston Fin., LLC*, 123 Nev. 228,
9 236, 162 P.3d 870, 875 (2007).

10 Moreover, as set forth above, Defendants exchanged fair market value for the assets
11 they acquired. From the perspective of the creditor Herbst, the transfers left Paul no less
12 susceptible to execution than before. Plaintiff would have the Court substitute its judgment
13 in place of a qualified, trained, and experienced professional. The value of the Laguna
14 properties is hotly contested, with both parties engaged in a “battle of the experts” on the
15 alleged value of the properties. This type of dispute cannot be settled in summary judgment.
16 With respect to Superpumper, both parties have hired experts and appraisers to dispute the
17 fair market value of the company. Vacco explained, “we went to Matrix to get an
18 independent third-party appraisal of the so-called Superpumper asset. We just didn’t stick a
19 finger in the wind because Nevada law said that you can make these transfers, as long as
20 they’re arm’s length and for fair market value. That was our understanding of Nevada law.”
21 (SOF Exhibit 2 at p. 57). The disputes about the value of the properties cannot be settled on
22 the summary judgment briefs.

23 C. **Plaintiff’s Argument That Herbst Was “Forced” To File Involuntary**
24 **Bankruptcy Petitions Is Wholly Without Merit, and Undercuts Plaintiff’s**
Entire Case; Plaintiff Failed To Mitigate His Own Alleged Damages.

25 In an effort to convince the Court that the property division was somehow inequitable
26 to the Plaintiff, the Plaintiff makes the totally false and unsupportable allegation that because
27 of the property division, the Herbst were left with no remedy against Paul other than to seek
28 involuntary bankruptcy. Of course, Plaintiff offers no evidence in support of this claim, only

1 self-serving argument. The fact is that immediately upon receipt of the oral pronouncement
2 of the judgment, the Herbst parties had options to secure their ability to collect on their
3 eventual judgment. The Supreme Court has explained that under NRS 31.010, “the plain
4 language of this provision allows the unusual procedure of using a writ of attachment post-
5 judgment.” *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 902, 8 P.3d 841, 845 (2000)
6 This remedy could have been achieved, “at any time.” *Id.* The Herbst parties not only failed
7 to exercise the obvious post-judgment collection remedies, but they failed to exercise even
8 the basic steps for collection available to a judgment creditor. Plaintiff did not domesticate
9 the judgment in California and obtain a writ of execution, the Plaintiff did not seek or pursue
10 post-judgment debtor interrogatories, and the Herbst parties can present no evidence that
11 they did ANYTHING which would have enabled them to execute on Paul’s assets at or
12 shortly after the time of the transfers. Had the Herbst been diligent in their efforts, all of the
13 non-exempt assets which Paul had would have been available for execution, including the
14 cash and note that he received in the property division. Plaintiff now complains to the Court
15 that as a result of the transfers there were no assets remaining – or fewer assets, to be precise
16 – upon which Plaintiff could execute. It was not the transfers that prevented Plaintiff from
17 executing, it was the Herbst own lack of diligence in enforcing the judgment once it had
18 been orally pronounced. This was neither the Defendants fault nor problem.

19 **IV. CONCLUSION**

20 The Motion cannot be granted because the Plaintiff’s claims raise genuine disputed
21 questions of fact which cannot be determined in summary judgment. Plaintiff’s own words
22 preclude the relief he seeks. Plaintiff’s request for summary judgment as to the actual
23 fraudulent intent of Paul Morabito, the transferor – who is not a Defendant in this action –
24 unquestionably raises issues of material fact. Questions of fact exist as to the badges of
25 fraud which Plaintiff asserts establish intent. Questions of fact exist related to the reasonably
26 equivalent value component. Finally, the Motion does not discuss or address the complete
27 “good faith” transferee defense. For these reasons, the Motion cannot be granted.

28 ///

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 22nd day of September, 2017

ROBISON, SIMONS, SHARP & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

/s/ Frank C. Gilmore
FRANK C. GILMORE, ESQ.
LINDSEY L. LIDDELL, ESQ.
Attorneys for Defendants Snowshoe Petroleum,
Inc., Superpumper, Inc., Edward Bayuk,
individually
and as Trustee of the Edward William Bayuk
Living
Trust, and Salvatore Morabito.

1
2 **DECLARATION OF FRANK C. GILMORE, ESQ. IN SUPPORT OF OPPOSITION**
3 **TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

4 I, Frank C. Gilmore, declare under penalty of perjury as follows:

5 1. I am an attorney licensed to practice law in all courts in the State of Nevada, and am
6 counsel of record for the Defendants in this action. I am a shareholder in the law firm of Robison,
7 Simons, Sharp & Brust, and have been licensed to practice law in this State since 2006.

8 2. I am counsel of record for Edward Bayuk in the case captioned *Leonard v. Bayuk et*
9 *al*, currently pending in the United States Bankruptcy Court, District of Nevada, Case No. BK-N-
10 13-51237, Chapter No. 7, Adv. No. 15-05046-GWZ.

11 3. On April 18, 2017, Plaintiff Leonard filed a Motion for Partial Summary Judgment
12 in which he contended that Bayuk was a "non-statutory insider" pursuant to the Bankruptcy Code.

13 4. On July 27, 2017, Leonard's Motion was heard by the Honorable Gregg Zive.
14 During that hearing, among other things, Judge Zive found that there exist genuine issues of
15 material fact as to whether Bayuk qualifies as a non-statutory insider. Accordingly, he denied
16 Leonard's Motion.

17 5. All of the exhibits attached to the Defendants' Statement of Disputed Fact were
18 documents which were produced in discovery.

19 Dated this 22nd day of September, 2017.

20
21 
22 FRANK C. GILMORE
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Robison, Simons, Sharp & Brust, and that on this date I caused to be served a true copy of the **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** all parties to this action by the method(s) indicated below:

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

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

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

Gerald Gordon, Esq.
Email: ggordon@Gtg.legal
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by email addressed to:

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by facsimile (fax) addressed to:

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DATED: This 22nd day of September, 2017.



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Attorneys for Defendants

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

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

Plaintiffs,

CASE NO.: CV13-02663
DEPT. NO.: B1

vs.

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

Defendants. /

DEFENDANTS' SEPARATE STATEMENT OF DISPUTED FACTS IN SUPPORT OF
OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants SUPERPUMPER, INC., EDWARD BAYUK, individually and as Trustee of
the EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO, and
SNOWSHOE PETROLEUM, INC. (collectively, "Defendants"), by and through their counsel,
Robison, Simons, Sharp & Low, hereby submits their Statement of Disputed Facts in Support of
their Opposition to Plaintiff's Motion for Partial Summary Judgment, filed concurrently herewith,
as follows:

1 **I. STATEMENT OF RELEVANT FACTS**

2 **A. Origin of the Debt**

3 As explained in the Plaintiff's Statement of Undisputed Fact ("PSOF"), prior to 2007, Paul
4 Morabito controlled a company called Berry-Hinckley Industries ("BHI"), that owned gas station,
5 convenient stores, and a wholesale fuel business in Northern Nevada. PSOF ¶1. Sam Morabito
6 and Edward Bayuk were minority owners of BHI. A dispute arose between Jerry Herbst and his
7 company, JH, Inc. ("Herbst parties"), related to the sale of BHI to the Herbst Parties. Paul filed
8 suit and the Herbst parties counterclaimed, bringing claims against Bayuk and Sam (the "2007
9 Lawsuit"). After a lengthy and expensive trial, in late 2010, Judge Adams found in favor of the
10 Herbst parties, entering a judgment against Paul and one of his entities. After the addition of fees,
11 costs, interest, and a stipulated amount of punitive damages, judgment was rendered in the amount
12 of \$149,444,777.80. (See Judgment dated August 23, 2011, attached hereto as **Exhibit 1**).
13 Importantly, Judge Adams specifically "exonerated" Edward and Sam, dismissing them from the
14 case. (See Deposition of Dennis Vacco, **Exhibit 2** at p. 50).

15 Paul appealed the judgment, but did not seek a stay of the execution pending appeal. Post-
16 judgment, the Herbst parties did almost nothing to collect their judgment. They did not
17 domesticate the judgment in California where Paul lived. The Herbst parties did not seek or
18 obtain a writ of execution, nor did they seek to obtain any post-judgment writs of attachment or
19 injunctions against Paul. The 2007 Lawsuit docket evidences the fact that the Herbst parties
20 engaged in no post-judgment collection efforts before they sought involuntary bankruptcy.¹
21 Indeed, the Herbst parties did not even take Paul's debtor's exam until after the bankruptcy court
22 stayed the bankruptcy case so that the Herbst could use the state court collection remedies instead
23 of using the Bankruptcy Court as their debt collector. In responding to Paul's Motion to Dismiss
24 the imprudently filed Involuntary Petitions, the Bankruptcy Court explained, "This Court is not the
25 proper forum for the [Herbst Parties] to seek to collect on their judgment against [Paul], and the
26

27 ¹ See CV07-02764, activity from the entry of Judgment, August 23, 2011, and the date of the
28 filing of the Involuntary Petitions on June 20, 2013, evidencing that the Herbst parties engaged in
 no discovery post-judgment before they filed the Involuntary Petitions.

1 Bankruptcy Code was not intended for such purposes.” See **Exhibit 3**, Order, ¶ 7. The
2 contention that the Herbst parties were “forced to file an involuntary bankruptcy,” due to
3 something Paul did or did not do is a blatantly false misrepresentation, and is presented only to
4 curry favor with this Court and to further mislead the Court about what really occurred. (Motion,
5 p. 25).

6 **B. The Defendants’ Co-Ownership Conundrum.**

7 As of September 2010, Paul had received an oral pronouncement of Judge Adams’ intent
8 to enter a large judgment against him. PSOF, ¶ 6. At the time, Paul co-owned three residential
9 properties with Bayuk, they co-owned two residential properties, and both of them co-owned an
10 interest in a Nevada corporation that held all the stock of Superpumper, Inc., an Arizona gas
11 station company. PSOF, ¶ 46.

12 Upon pronouncement of the anticipated judgment, Bayuk and Sam were rightfully
13 concerned that their assets were co-owned with Paul’s and that Paul was about to face a vigorous
14 and vindictive collection effort. As Vacco explained, “Edward and Sam didn’t want to be – be
15 chased because they had an equity interest in properties that were also attached to Paul. (**Exhibit**
16 **2** at 52). They sought legal advice as to how they could appropriate extricate themselves from the
17 Herbst/Paul dispute. They consulted with Dennis Vacco, the former New York Attorney General
18 and former United States Attorney for the Western District of New York. Vacco identified the
19 problem. He explained, “the goal was very simple . . . the effort was because they owned --- all
20 three of them, in many instances, owned assets together.” (*Id.* at 49–50). “The goal, after
21 researching Nevada law and consulting with Nevada counsel, was to right-size the investment so
22 that everybody walked away with their proportionate share of the investment. (*Id.* at 58). “So the
23 goal was to essentially take all of those assets and to – to identify the value of (Paul) Morabito’s
24 stake in those assets, and to transfer that value exclusively to him, and then separate the equity, if
25 you will, to the extent it existed for Edward and Sam, because they were now relieved of this
26 lawsuit.” (*Id.* at 50). Vacco explained that the asset separation was all “in an effort not to embroil
27 them, ironically, as they are now, in litigation.” (*Id.* at 51). Unfortunately, the above-board, by-
28 the-book asset division “turned into this schnozzle.” (**Exhibit 4**, Deposition of Paul A. Morabito at

1 76).

2 To add more stress and motive to separate assets, Edward and Paul's personal relationship
3 was deteriorating. (**Exhibit 5**, Deposition of Edward Bayuk at pp. 175–76). Paul described the
4 status of their relationship in September 2010, “we were more part time I think we were
5 parting. I thought we had parted by then, but I don't recall the exact date.” (**Exhibit 4** at 58–59).
6 Edward explained, “I basically said that, you know, I wanted to separate things and make things
7 simple for me and so, hence, that's why I hired the appraisers and hired them to do whatever. And
8 the agreements were written by a lawyer.” (**Exhibit 5** at p. 175). Like most endings of long term
9 relationships, Edward said “we had talked about it for a while . . . I think you know, probably
10 throughout the summer, and then became more talking about it more. So October is when we did
11 it. But we talked about it way before then.” (*Id.* at p. 175). Edward concluded “I was going to
12 separate things and, you know, live on my own and do things and be independent.” (*Id.* at p. 201).

13 Edward hired Vacco to formally handle their separation. (*Id.* at p. 176). Vacco testified
14 that he devised the plan.

15 [T]he properties were, again, valued and moved so that everybody, at the
16 end of the day, as you took . . . the percentages that each one of them
17 owned in the whole, the goal was to have [Paul] Morabito walk away with
the same value that he had in the whole, while separating from [Paul]
Morabito the interest that Edward and Sam also owned.

18 . . .

19 We separated Edward's interest, ownership interest, in that so the property
20 located in Nevada would be a ripe target for the Herbsts and their
collection efforts

21 (*Id.* at pp. 51, 53). In doing so, Vacco was careful to research Nevada law on these types of
22 transfers to ensure everything was done fairly and by the book. (*Id.* at pp. 56–57). “We were very
23 cognizant of the claims that are made in this lawsuit now. And we went to great lengths to avoid
24 these claims.” (*Id.* at p. 57).

25 1. The Residences

26 Over the course of their partnership, Edward and Paul acquired three residential properties
27 that they lived in at different times of the year. Two properties were in Laguna Beach: the Los
28 Olivos property and the El Camino property, and one was in Reno, on Panorama Drive. (*See*

1 Exhibit 17 to Motion).

2 Because the parties were separating both their legal ownership and their personal lives at
3 the time, this was not a simple asset division. Bayuk explained that “Paul was deciding where he
4 was going to live, and I was going to decide where I was going to live.” (**Exhibit 5** at p. 178).

5 The decisions on who would own what were made in meetings with Vacco. He explained:

6 Edward, either individually or through his trust, wanted to . . . shake the
7 dust of Reno from his sandals as a result of Judge Adams’ decision and get
8 as far away from the Herbsts as possible, it made perfect sense, since the
judgment was a Nevada judgement, that . . . Paul Morabito, should own the
Nevada property.

9 (**Exhibit 2** at 64).

10 Paul agreed to take complete ownership of the Reno home, giving the Herbsts a direct shot
11 on the Reno home to collect their judgment, while Edward kept the Laguna Beach homes. *Id.*
12 Vacco testified, “why would we have given the Nevada property to Edward, who was looking to
13 cut – sever his ties with Nevada and distance himself from the Herbst litigation machine? . . . We
14 made it easier for the Herbst . . . by stating that the property in Nevada that is most – most
15 reachable by the Herbsts, belongs to the judgment debtor.” (*Id.* at pp. 64-65).

16 To effectuate the property divisions, the parties had the properties individually appraised
17 by certified MAI appraisers. Edward paid for the appraisals. (**Exhibit 5** at p. 181). The result of
18 the appraisals were used to prepare a property division matrix which true-up the division. See
19 **Exhibit 6**.

20 The Reno home appraised at nearly twice the value (\$4,000,000) of the two Laguna Beach
21 homes. (*See* Exhibit 19 to Motion at 1). The Los Olivos property in Laguna Beach appraised for
22 \$1,900,000. (*See* Exhibit 12 to Motion at 1). The El Camino property in Laguna Beach appraised
23 for \$1,950,000. (*See* Exhibit 36 to Motion at 1). The properties each had substantial mortgages,
24 \$1,045,046 on Los Olivos, \$871,359 on El Camino, and \$1,028,864 on Panorama Drive.
25 (**Exhibit 6**). These appraisals and mortgages were netted out to derive the equity. Edward took
26 the Laguna properties and Paul took the Reno property. (**Exhibit 2** at p. 64). The difference in
27 value between that exchange was \$60,117. To true-up the difference, Edward wrote a check to
28 Paul. (**Exhibit 6**; *see also* **Exhibit 5** at p. 181. Edward took sole possession of the Laguna

1 properties, and Paul moved from the Reno home to Los Angeles. (**Exhibit 5** at p. 178).

2 Paul retained the Reno home so it could be sold to satisfy the Herbst. (*See* Exhibit 17 to
3 Motion). Plaintiff contends that the Reno home was intentionally undervalued so that Paul could
4 give Edward more value than Paul was receiving. (Motion, p.10) Plaintiff admits that the value
5 of the Reno home is “heavily disputed.” Plaintiff’s valuation is self-serving at best, and ignores
6 the condition of the property when it was exchanged. When Bayuk and Paul bought the house in
7 2005, they paid \$2,650,000. (*See* Exhibit 19 to Motion at 4). They completely gutted the interior,
8 exterior, and re-did the landscaping, spending over \$2.3 million on the remodel itself. (*See* Dennis
9 Banks Budget Summary attached hereto as **Exhibit 7**; *see also* Deposition of Bennis Banks
10 attached hereto as **Exhibit 8** at pp. 30-31). They remodeled the property with the best materials
11 and workmanship money could buy. Dennis Banks, a local contractor, described it, as
12 “spectacular,” stating that he has not seen anything better in the Reno area. (*Id.* at pp. 34-35).
13 Michael Sewitz, a world famous Los Angeles interior decorator who specializes in high-end
14 design trade, did the interior decorating for the remodel. When asked about the quality of the
15 house, he called it a “top-of-the-line house,” and “couldn’t believe that (he would) ever see a
16 house like this in Reno,” comparing it to the top properties in Palisades or Malibu. (**Exhibit 9** at
17 pp. 7, 24). The \$4,000,000 Reno appraisal was done by local appraiser Darrell Noble, who
18 testified back in his 2011 deposition that he had conducted an exhaustive appraisal of the home,
19 and he concluded that “I determined from the inspection, the interior finishes of the home had, you
20 know, really expensive finishes, blue granite and high-quality carpeting and all those finishes.”
21 (**Exhibit 10**, Darrell Noble Deposition, p. 25).

22 As evidenced above, the residential property division was equitable, reasonable,
23 transparent, and supervised by professionals who have all testified that the exchange was for fair
24 value. Edward even paid Paul over \$100,000 for the estimated value of the furniture which
25 Edward received in the exchange. *See* **Exhibit 11**.

26 2. *The Commercial Properties (Baruk Properties LLC)*

27 Paul and Edward each held a 50% interest in Baruk Properties LLC, a Nevada limited
28 liability company. Baruk held four pieces of real property. (PSOF, ¶35). Two of the properties

1 are located in Laguna Beach (“Glenneyre properties”) and are in commercial use. The other
2 property was a residence in Palm Springs, CA on Mary Fleming Circle. As with the other
3 residences, Vacco arranged for certified appraisers to value the properties. MAI Certified
4 appraisers delivered appraisals for each property. (See Exhibits 26, 27 to Motion). The Mary
5 Fleming property appraised at \$1,050,000 (Exhibit 27 to Motion at 2). 1461 Glenneyre appraised
6 at \$1,400,000. (Exhibit 26 to Motion at 1). 570 Glenneyre appraised at \$2,500,000. (Exhibit 6).
7 Mary Fleming had a mortgage of \$344,921, and 570 Glenneyre had a mortgage of \$1,370,979.
8 (*Id.*) Edward, who desired to remain in Orange County, bought Paul out of his share using the
9 appraised values. (Exhibit 29 to Motion). Edward executed a promissory note for \$1,617,050,
10 representing half the equity in the Laguna properties and the Palm Springs house. (Exhibit 6; see
11 also Exhibit 30 to Motion).

12 3. The \$1,617,050 Note.

13 The true-up of the Baruk properties exchange was no sham. Bayuk executed a promissory
14 note in Paul’s favor. (Exhibit 30 to Motion). Although Bayuk testified that he was erratic at
15 paying the Note, he paid the Note in full by June 2013. There is no dispute that Bayuk paid Paul,
16 in cash, and in paying down various obligations of Paul’s. A payment ledger, and all the back-up
17 documentation to support the ledger, has been provided to Plaintiff. (Exhibit 41 to the Motion).
18 Further, the payment ledger reflects that Bayuk credited Paul’s balance in the amount of \$50,000,
19 for “Clayton Way Property” on October 4, 2010. *Id.* Clayton Way was the name of the
20 unimproved parcel of land in Sparks, Nevada, owned by Baruk Properties, which Bayuk retained.
21 (See Motion, p.36:3-9). Plaintiff’s contention that Bayuk and Paul failed to include consideration
22 of the Clayton Way property was the result of “the rush” to get assets out of Paul’s name is
23 squarely refuted. Bayuk acquired Paul’s interest in Baruk Properties, and he paid Paul \$50,000 for
24 his interest in Clayton Place.

25 Plaintiff attempts to establish the Note as a sham by introducing statements of non-parties
26 related to the various discrepancies related to the pay-off and amortization. (Motion, p.13)
27 Despite Plaintiff’s spin on these facts, the Plaintiff cannot, and has not, refuted the evidence
28 provided by Bayuk that the Note was paid in full and that Paul received the full benefit of the Note

1 proceeds. Plaintiff's insinuations do not defeat the facts, nor does Plaintiff receive the benefit of
2 these insinuations at summary judgment.

3 4. The Superpumper Properties LLC, Card Locks

4 Superpumper Properties LLC was a Nevada limited liability company that owned three
5 "card locks," two in Elko, NV, and one in Lovelock, NV. (See **Exhibit 6**). A card lock is
6 essentially an un-manned gas station terminal. (See **Exhibit 5** at 191). Paul held a 50% interest in
7 the company, while Bayuk and Sam each owned a 25% interest. (**Exhibit 6**). At the time of the
8 property division, the parties hired appraisers who valued the property. (See CBRE Summary
9 Appraisal Report, **Exhibit 12**). In total, the properties appraised for \$1,615,000. (See **Exhibit 6**).
10 The mortgage for the properties totaled \$1,030,413. (*Id.*). Thus, the net equity in the Card Lock
11 properties in 2010 was \$584,587. (*Id.*).

12 Sam and Bayuk sold their interests in the Card Locks to Paul. (See **Exhibit 5** at p. 192).
13 Paul paid Edward and Sam each \$146,000 to buy them out of their share of Superpumper, LLC.
14 (*Id.* at p. 192; See also Bank of America Records attached herein as **Exhibit 13**). This was a fair
15 exchange, for value.

16 5. Superpumper, Inc.

17 Superpumper, Inc. was an Arizona corporation that owned and operated gas stations and
18 convenient stores in Scottsdale. (See **Exhibit 4** at p. 110). Paul owned an 80% interest while
19 Edward held 10% and Sam held 10%. (*Id.* at p. 40). Edward was heavily involved in the business
20 operations. (**Exhibit 45** to Motion). As part of the property division, Edward and Sam determined
21 that they would buy Paul out of the company, because they desired to own and operate an income
22 producing company now that they had sold their former company, BHI. (See **Exhibit 5** at p. 190).
23 In order to determine the fair market value of the assets of Superpumper, Bayuk and Sam engaged
24 a nationally-recognized firm who specializes in business valuations to obtain an independent third
25 party valuation of the company. (*Id.* at p. 201). After they obtained the appraisals, Vacco and his
26 firm assisted Bayuk and Sam by documenting and closing the transaction. (Deposition of Christian
27 Mark Lovelace, **Exhibit 14** at p. 16).

28 ///

1 i. *The Plan to Buy Superpumper*

2 Edward and Sam decided to buy out Paul's shares because they thought it would be a good
3 opportunity. Edward was looking into other opportunities at the time and decided that his
4 familiarity with Superpumper would be an advantage over other opportunities. (See **Exhibit 5** at
5 pp. 193-94). Meanwhile, Paul "didn't want to be involved anymore to do anything in the industry
6 whatsoever," after the stress of the lawsuit. (See **Exhibit 4** at p. 192). Vacco enlisted a transaction
7 attorney in his firm, Christian Lovelace, to assist in drafting the documents for the transaction.
8 (**Exhibit 14** at p. 7). Vacco hired Matrix Capital Markets Group on behalf of Sam and Bayuk to
9 appraise the assets. (PSOF, ¶ 51). As Lovelace explained, "we wanted to be sure with a third-
10 party, arm's length valuation, so we engaged Matrix which gave us some preliminary numbers."
11 (**Exhibit 14** at p. 12).

12 ii. *Overview of the Sale*

13 The Superpumper, Inc. transaction was complicated because it involved a lot of
14 moving parts. Matrix appraised the value of Superpumper, Inc. at \$6,484,515. (See Christian
15 Lovelace Analysis of Superpumper Acquisition Email attached hereto as **Exhibit 15**.) The
16 purpose of the valuation was to obtain a third party, arm's length valuation in so that Paul received
17 reasonably equivalent value for his shares. (**Exhibit 2** at p. 50). The Matrix valuation did not
18 take into account all of the existing Superpumper Compass debt, which was approximately
19 \$1,682,000. (**Exhibit 15**). The outstanding balance of this working line of credit reduced the fair
20 market value to \$4,802,514. (*Id.*)

21 After the valuation was received and reduced based on the line of credit, Lovelace
22 decided that a risk-discount rate of 35% (equal to \$1,680,880) was appropriate. As Lovelace
23 explained under oath, and will testify at trial, the company at the time was in defaults on loans and
24 leases, and the future of the company was unsure. (See **Exhibit 14** at p. 14; see also **Exhibit 15**).
25 "A risk discount is a normalizing number used with valuations and closely held companies to
26 come up with . . . the actual value is based on outlying risks." (**Exhibit 14** at p. 14). With the
27 purchase of a corporation, "there's always some sort of risk taken into account, whether it be a
28 minority risk or traditional ones." (*Id.*) In the Superpumper transaction, "the risk discount was a

1 combination of the defaults with the Compass credit facilities, the term and the line, there's
2 defaults on both. Compass Bank was well aware of the defaults." (*Id.*) "The risk was that
3 Compass would pull everything, that we wouldn't get the 939 back, and the discount was
4 appropriate to the -- to the risk of the company failing . . . because if that line of credit was
5 cancelled, the way that the business of Superpumper operated, it collapse." (*Id.* at p. 16). Thus, the
6 risk discount was applied to obtain a third party value to the company.

7 Lovelace testified, "Sam and Edward would likely have to capitalize the company in order
8 to make the company good on all of its defaults with Compass Bank." (*Id.* at pp. 14-15).

9 Lovelace testified that "the risk discount was a number that we had discussed with different
10 accountants, including Matrix on a call. And, you know, standard discounts in the industry range
11 from 10 -- 10 to 40 percent, depending on the combination of discounts and what they are. And at
12 the time the 35 percent was, I think, a group discussion in what everybody felt was fair. And I
13 think it lined up with what we felt Edward and Sam were out because of the bank defaults." (*Id.* at
14 16). Sam concurred. He testified that "And also, in my opinion, just that Superpumper is a good
15 company but it's also a company that's very susceptible to competition. So it's not your typical
16 convenience store in that you -- it has very high rents, very high rents, and to make those rents the
17 business is predicated on high gas margins, and the business is extremely susceptible to
18 competition." (Deposition of Salvatore Morabito, **Exhibit 16**, p. 101).

19 Applying the 35% discount, Superpumper's equity was valued at \$3,121,634. (**Exhibit**
20 **15**). Paul's 80% ownership interest equaled \$2,497,307. (*Id.*) Sam and Bayuk formed Snowshoe
21 Petroleum, Inc., as a holding company to take the Superpumper stock. Snowshoe issued a
22 promissory note to Paul Morabito for \$1,462,213, representing the remainder of the purchase
23 price. (*Id.*; see also Promissory Note attached hereto **Exhibit 17**).

24 However, prior to the exchange, Superpumper had also drawn down on a term loan in the
25 amount of \$3,000,000. (See **Exhibit 5** at p. 205). Paul's share of the term loan was \$939,000,
26 which share of the Bayuk and Sam were not willing to assume in their purchase of the company.
27 (**Exhibit 16**, p. 100-101). Accordingly, that \$939,000 was used to off-set the remaining amount
28 owed to Paul on the purchase price. (See Term Note attached hereto as **Exhibit 18**). After the off-

1 set, Paul was owed a total of \$1,528,031. Of that purchase price, \$1,035,094 was to be paid in
2 cash, and the balance was paid through a note which Snowshoe Petroleum, Inc. issued in the
3 amount of \$492,937.30. (See Successor Promissory Note attached hereto as **Exhibit 19**).

4 *iii. Payment of the Purchase Price*

5 Contrary to Plaintiff's contention, Bayuk and Sam paid both Paul \$1,035,094 in cash, by
6 each wiring Paul \$517,547.20. (2010 Wire Transfers attached hereto as **Exhibit 20**). Moreover,
7 the Snowshoe Note was paid in full on November 28, 2011, when Sam wired \$560,000.00 to pay
8 off one of Paul's obligations, at Paul's request. (See Sam Morabito Bank of Montreal September
9 2011 Wire Transfer attached hereto as **Exhibit 21**). The wire transfer represented payment on the
10 note, plus interest accrued and fees associated with the transaction. (*Id.*; Salvatore Morabito
11 Declaration, **Exhibit 22**, ¶ 4). At that point, Sam and Bayuk had paid off Paul, and Paul had no
12 further involvement in the company other than his maintained guaranty, which the lender required.
13 (**Exhibit 22**, ¶ 5).

14 *iv. Snowshoe Petroleum, Inc.'s Maintenance of Superpumper Inc.*

15 Plaintiff contends that the Superpumper sale was a sham and that Paul has maintained
16 control of Superpumper notwithstanding the sale. Defendants hotly contest this accusation. (*Id.*, ¶
17 6). Snowshoe Petroleum Inc. is the parent company of Superpumper, and Bayuk and Sam each
18 own 50% interest in Snowshoe. (See **Exhibit 5** at pp. 190–91). As they anticipated, in order to
19 keep Superpumper from having its loans called, Sam and Bayuk were required to fund the
20 company shortfalls. (**Exhibit 16**, pp. 119-122). The undisputed evidence shows that Sam and
21 Bayuk each wired \$659,000 on September 30, 2010 to keep the company afloat and reduce the
22 line of credit. *Id.*; see also Bank of Montreal and Bank of America Wire Transfer Records
23 attached hereto as **Exhibit 23**). Between 2010 and 2011 Bayuk funded the company with
24 transfers totaling \$500,000. (See Bayuk checking account statements attached hereto as **Exhibit**
25 **24**). Likewise, between 2010 and 2011, Sam funded the company with \$750,000. (See Sam
26 Morabito wire transfer statements attached hereto as **Exhibit 25**). Contrary to Plaintiff's
27 contentions, Paul has neither contributed a dime to the company since the sale, nor has he had any
28 role in its operation. (**Exhibit 22**, ¶ 7; see also **Exhibit 4** at p. 44). Any communications that

1 Paul might have had related to Snowshoe or Superpumper after the sale were “whiteboard”
2 discussions about involving Snowshoe or Superpumper in one of Paul’s many contemplated deals,
3 none of which came to pass. (**Exhibit 22**, ¶ 8).

4 6. Sefton Trust

5 Plaintiff references a transfer of funds from Paul to the Sefton Trustees in the amount of
6 \$6,000,000 to bolster his case against Defendants. (Motion, p. 9). Defendants have no personal
7 knowledge about this transfer, and there is no allegation in the Motion that the Defendants had
8 anything to do with this transfer or that they somehow benefitted from it. The transfer is
9 referenced clearly only to smear Paul, but it has nothing to do with the Defendants in this matter.
10 (**Exhibit 2** at 106). Moreover, discovery has established that every dollar of the funds transferred
11 to the Sefton Trust were paid directly to the Herbst toward satisfaction of their claim. (**Exhibit 2**
12 at p. 109; *see also* **Exhibit 4** at pp. 247-48).

13 7. The Alleged Funding of Paul’s Extravagant Lifestyle.

14 Plaintiff makes the unsupported allegation that since 2010, Sam and Bayuk fund Paul’s
15 lifestyle. The only evidence offered to support this allegation is Paul’s deposition transcript, taken
16 out of context, wherein Paul stated that Edward advances him money when he needs it. (Motion,
17 p. 22). When taken out of context, this may raise questions. However, as set forth above, Bayuk
18 owed Paul more than \$1.6mm after the exchange. That Note was paid off through Edward
19 advancing Paul money when he needed it, or when Paul had obligations that needed to be covered.
20 (*See* Payment Schedule of Edward Bayuk Note in favor of Paul Morabito attached hereto as
21 **Exhibit 26**). After the note was paid, Bayuk continued to provide Paul with money for his living
22 expenses because he believed that was the humane thing to do in light of the fact that Paul had
23 been a lifelong friend and Bayuk believed it was the right thing to do. (**Exhibit 5** at p. 119).
24 Plaintiff has provided no proof that Sam provides Paul money to support his lifestyle, other than
25 the payments from Sam which constituted the repayment of the Superpumper purchase. From the
26 time of the exchange until this lawsuit was filed, Sam was not in the practice of supporting Paul’s
27 lifestyle and there is no evidence submitted by Plaintiff supporting this claim. (**Exhibit 22**, ¶ 90).

28 It was the attorneys at the firm of Hodgson Russ, one of Buffalo, New York’s most

1 respected and prestigious firms that proposed to Paul the mechanics of the asset division. (See
2 Email string regarding asset division attached hereto as **Exhibit 27**).

3
4 **AFFIRMATION**
5 **Pursuant to NRS 239B.030**

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

8 DATED this 22nd day of September, 2017

9
10 ROBISON, SIMONS, SHARP & BRUST
11 A Professional Corporation
12 71 Washington Street
13 Reno, Nevada 89503

14 /s/ Frank C. Gilmore
15 FRANK C. GILMORE, ESQ.
16 LINDSEY L. LIDDELL, ESQ.
17 Attorneys for Defendants Snowshoe Petroleum,
18 Inc., Superpumper, Inc., Edward Bayuk, individually
19 and as Trustee of the Edward William Bayuk Living
20 Trust, and Salvatore Morabito.
21
22
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Robison, Simons, Sharp & Brust, and that on this date I caused to be served a true copy of the **DEFENDANTS' SEPARATE STATEMENT OF DISPUTED FACTS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** all parties to this action by the method(s) indicated below:

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

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

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

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

by personal delivery/hand delivery addressed to:

by email addressed to:

Gerald Gordon, Esq.
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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 22nd day of September, 2017.



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LIST OF EXHIBITS

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES
1	Judgment dated August 23, 2011	2
2	Portions of Deposition Transcript of Dennis Vacco dated 10/20/15	16
3	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings Pursuant to 11 U.S.C. § 305(a)(1)	3
4	Portions of Deposition Transcript of Paul A. Morabito dated 3/21/16	11
5	Portions of Deposition Transcript of Edward Bayuk dated 9/28/15	30
6	Appraisal	1
7	Dennis Banks Budget Summary	2
8	Portions of Deposition Transcript of Dennis Banks dated 3/24/16	8
9	Portions of Deposition Transcript of Michael Sewitz	7
10	Portions of Deposition Transcript of Darryl Noble	3
11	Copies of cancelled checks	8
12	CBRE Appraisal Report	13
13	Bank of America records	1
14	Portions of Deposition Transcript of Christian Mark Lovelace dated 10/21/15	9
15	Christian Lovelace Analysis of Superpumper Acquisition Email	1
16	Portion of Deposition Transcript of Salvatore Morabito dated 10/21/15	8
17	Promissory Note	2
18	Term Note	1
19	Successor Promissory Note	2

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

1	20	2010 Wire Transfers	2
2	21	Sam Morabito Bank of Montreal September 2011 Write Transfer	1
3	22	Declaration of Salvatore Morabito	1
4	23	Bank of Montreal and Bank of America Wire Transfer Records	2
5	24	Bayuk checking account statements	5
6	25	Sam Morabito wire transfer statements	2
7	26	Payment Schedule of Edward Bayuk Note in favor of Paul Morabito	3
8	27	Email string	2
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EXHIBIT 1

EXHIBIT 1

FILED

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Howard W. Conyers
Clerk of the Court
Transaction # 2425264

1880

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

CONSOLIDATED NEVADA CORP., et al.,

CASE NO. CV-07-02764

Plaintiffs,

DEPT. NO. 6

vs.

JH, INC., et al.,

Defendants.

JH, INC., et al.,

Counter-Claimants,

vs.

CONSOLIDATED NEVADA CORP., et al.,

Counter-Defendants.

JUDGMENT

This action came on for trial before the Court, the Honorable Brent T. Adams, District Court Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that Defendants/Counter-claimants JH, Inc. and Jerry Herbst recover of the Plaintiffs/Counter-defendants Consolidated Nevada Corporation and Paul A. Morabito, the sum of \$141,278,228.20 (ONE HUNDRED FORTY-ONE MILLION, TWO HUNDRED SEVENTY-EIGHT THOUSAND, TWO HUNDRED TWENTY-EIGHT DOLLARS AND TWENTY CENTS), and their costs of action of \$1,319,060.67 (ONE MILLION, THREE

1 HUNDRED NINETEEN THOUSAND, SIXTY DOLLARS AND SIXTY-SEVEN CENTS), for a
2 total Judgment of \$142,597,288.80 (ONE HUNDRED FORTY-TWO MILLION, FIVE
3 HUNDRED NINETY-SEVEN THOUSAND, TWO HUNDRED EIGHTY-EIGHT DOLLARS
4 AND EIGHTY CENTS). Pursuant to NRS 99.040(1), interest shall accrue at a rate of 5.25 percent
5 or the rate as determined by the State of Nevada, Commissioner of Financial Institutions for the
6 applicable period.

7 IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs/Counter-Defendants take
8 nothing, that their action be dismissed on the merits, and that Defendants/Counter-Claimants
9 recover their costs of action as set forth above.

10 IT IS SO ORDERED. *August*
11 DATED this 23 day of ~~July~~, 2011.

12 
13 _____
DISTRICT COURT JUDGE

14 * * * *

15
16 Prepared and submitted by:

17
18 _____
JOHN P. DESMOND, ESQ.
Nevada State Bar No. 5618
19 BRIAN R. IRVINE, ESQ.
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24 *Attorneys for Defendants and Counter-Claimants*
25
26
27
28

EXHIBIT 2

EXHIBIT 2

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

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

Plaintiff,

- vs - Case No. CV13-02663

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

Defendants.

Examination before trial of DENNIS C.

VACCO, taken pursuant to Subpoena, at
Regus Business Center, 50 Fountain Plaza,
Suite 1400, Buffalo, New York, on October 20, 2015,
commencing at 10:09 a.m., before MARY SCHULZE, RPR,
RMR, Notary Public.

JOB NUMBER: 262502-A

1 A. Well, it was an \$85 million judgment.

2 The judgment that was entered was -- I could be
3 wrong, but that was the settlement amount.

4 Q. Okay. There was a substantial judgment
5 at some point, though, entered.

6 A. There was a substantial judgment,
7 correct.

8 Q. Do you recall when that was entered?

9 A. September 2010.

10 Q. And how were you advised that the
11 judgment was entered?

12 A. Phone call from Leif Reid.

13 Q. And who is Leif Reid?

14 A. Trial counsel on the case in Reno,
15 Nevada.

16 Q. What was your reaction to that
17 judgment?

18 A. Utter surprise.

19 Q. Did you or your office start taking any
20 actions with respect to Morabito's assets?

21 A. There came a point in time when --
22 after having analyzed the decision, so it was a
23 written decision, we -- we worked with Paul and
24 other owners of properties to get valuations on
25 properties and to -- to -- the -- the goal was very

1 simple. The decision entered by Judge Adams, for
2 as much as Herbst and their litigation team wanted
3 to wave that decision around as it related to Paul
4 Morabito, they were not as willing to wave it
5 around as it related to Salvatore Morabito and
6 Edward Bayuk, both of whom were exonerated, if you
7 will, by Judge Adams.

8 Judge Adams found that they were not
9 involved in any of the alleged fraud that was the
10 subject of the judgment, and the -- the decision of
11 Judge Adams dismissed the claims, rejected the
12 claims against Salvatore Morabito and Edward Bayuk.

13 The -- the effort was because they owned --
14 all three of them, in many instances, owned assets
15 together, the goal, after researching Nevada law
16 and consulting with Nevada counsel, was to
17 right-size the investment so that everybody walked
18 away with their proportionate share of the
19 investment, including Paul A. Morabito.

20 For instance, the Panorama property, which
21 was located in Reno, my recollection serves me that
22 it was owned by a Morabito entity and an Edward
23 Bayuk entity but not in equal proportions, if I
24 recall correctly.

25 There were properties in California, Laguna

1 Beach, California, that was jointly owned, again,
2 not in equal proportions.

3 And then there was Superpumper, where all
4 three of them had an ownership interest.

5 So the goal was to essentially take all of
6 those assets and to -- to identify the value of
7 Morabito's stake in those assets, and to transfer
8 that value exclusively to him, and then separate
9 the equity, if you will, to the extent it existed,
10 for Edward and Sam, because they were now relieved
11 of this lawsuit.

12 And in an effort to not embroil them,
13 ironically, as they are now, in litigation, the
14 properties were, again, valued and moved so that
15 everybody, at the end of the day, as you took the
16 whole and you took the percentages that each one of
17 them owned in the whole, the goal was to have
18 Morabito walk away with the same value that he had
19 in the whole, while separating from Morabito the
20 interest that Edward and Sam also owned.

21 Q. When did you start that process?

22 A. Mid -- mid to late September of 2010.

23 Q. Who ultimately decided to commence this
24 separation of the assets?

25 A. Well, the parties.

1 Q. The parties being Paul Morabito, Sam
2 Morabito, and Edward Bayuk?

3 A. Sure. Edward and Sam didn't want to
4 be -- be chased because they had an equity interest
5 in properties that were also attached to Paul.

6 Q. So who raised the idea of separating
7 the assets?

8 A. I don't recall.

9 Q. Do you recall the first discussion
10 regarding separating the assets?

11 A. No.

12 Q. Do you recall any discussions regarding
13 separating the assets?

14 A. Yes.

15 Q. When was the first discussion that you
16 can remember?

17 A. I don't recall.

18 Q. Do you recall what that discussion was?

19 A. No.

20 Q. Do you recall who was present during
21 any of these discussions?

22 A. Keep in mind, most of these discussions
23 were telephonic.

24 Q. Okay.

25 A. So, again, I don't remember.

1 Q. Do you recall who was on any of the
2 phone calls?

3 A. Well, certainly Paul and, from time to
4 time, Edward and Sam. I would say Sam less so
5 than -- than Edward. And the -- the Breslow people
6 too. Belaustegui people.

7 Q. Do you recall whether you raised the
8 idea of separating assets or if it was raised to
9 you?

10 A. It might have come from me, mostly
11 because I was fixated on the fact that Edward and
12 Sam had been exonerated. So the Panorama
13 property's a perfect example. Again, I don't
14 remember the two specific entities that Edward and
15 Paul controlled that were the actual owners of the
16 property. My recollection -- and I could stand
17 corrected on this if you show me a document -- is
18 that the split wasn't 50/50; it was either 60/40 or
19 70/30, including, you know, mortgage obligation.

20 We separated Edward's interest, ownership
21 interest, in that so that the property located in
22 Nevada would be a ripe target for the Herbsts and
23 their collection efforts, minus the satisfaction of
24 the underlying mortgage, because they didn't have
25 to then deal with Edward, and Edward was tired of

1 the litigation, and Edward didn't want to be
2 embroiled in any more litigation with the Herbsts.
3 Judge Adams exonerated him. He wanted out.

4 And this effort was to -- to maintain value,
5 maintain value -- maintain the value of Morabito's
6 ownership interest, while separating the ownership
7 interest of the two individuals who were exonerated
8 by Judge Adams.

9 So going back to the Panorama property, just
10 for illustration purposes, if it was worth a
11 million dollars, but because Edward's ownership
12 interest -- let's just say it was 30 percent as
13 opposed to 50 percent. That means that the best
14 that the Herbsts could do, free and clear of the
15 mortgage, was \$700,000 or Paul's interest in the
16 Panorama property. By virtue of what we did, they
17 now had access to the full million dollar value.

18 Q. Do you recall any of your discussions
19 with Paul Morabito regarding the separation of
20 assets?

21 A. There were many.

22 Q. Do you recall any specific discussions?

23 A. No.

24 Q. Did you represent Edward Bayuk
25 individually?

1 A. I don't recall particular
2 conversations.

3 **Q. Do you recall the general sense of your**
4 **discussions?**

5 A. Again, it was -- so, you know, I have
6 an ownership interest in property X or in asset X.
7 How am I going to get that out?

8 **Q. Other than Paul Morabito, Sam Morabito,**
9 **and Edward Bayuk, was there anyone else that you**
10 **discussed the separation of assets with?**

11 A. So I mentioned the Belaustegui people.
12 But maybe even before then, Leif Reid.

13 **Q. What was your conversation with Leif**
14 **Reid?**

15 MR. GILMORE: I'll ask you not to disclose
16 attorney-client communications --

17 THE WITNESS: Yeah.

18 MR. GILMORE: -- but you can testify as to
19 nonattorney-client communications.

20 THE WITNESS: We -- we were researching
21 Nevada law on these types of transfers. We were --
22 we were -- we were spend -- obviously, we weren't
23 Nevada attorneys, so we were researching Nevada
24 law, and we wanted a better understanding of what
25 the -- the, you know, body of caselaw was out

1 there. So it was more technical nature with --
2 with -- whether it was Leif or with the Belaustegui
3 firm, although, eventually, the Belaustegui firm
4 got more involved in the mechanics, if you will.

5 We were very cognizant of the claims that
6 are made in this lawsuit now. And we went to great
7 lengths to avoid these claims, which is why --
8 eventually, you'll get to it because you asked for
9 it -- why we went to Matrix to get an independent
10 third-party appraisal of the so-called Superpumper
11 asset. We just didn't stick a finger in the wind
12 because Nevada law said that you can make these
13 transfers, as long as they're arm's length and for
14 fair market value. That was our understanding of
15 Nevada law.

16 And that's how we tried to arrange each one
17 of these separations, if you will, of the various
18 equity interest.

19 BY MS. PILATOWICZ:

20 Q. When you say the -- and I can never say
21 the name of Mr. Gilmore's firm.

22 A. Belaustegui.

23 Q. -- Belaustegui were involved in more
24 the mechanics of it, what do you mean by that?

25 A. Well, eventually, so as the -- the

1 Then the next piece of property, the
2 370 Los Olivos, was owned 50/50 between the two of
3 them but did not have the same value, if you will,
4 as the -- the El Camino property.

5 And then the -- it appears from this
6 agreement that they then individually owned
7 interests, two-thirds and one-third, as tenants in
8 common in the Panorama Drive property.

9 So as you were trying to assess, what did
10 the Arcadia Living Trust own, it -- it -- it was --
11 so that that could be segregated and -- and put in
12 Morabito's name, versus what did the Bayuk Trust --
13 and Edward and -- again, was exonerated in Judge
14 Adams' decision, what portion of these properties
15 did he own so that his interests could be
16 separated. It -- it was just a matter of simple
17 math based upon independent third-party property
18 valuations.

19 All of these properties, these three -- so
20 let's stick with these three -- all three had
21 independent third-party appraisals.

22 So we had a fair market value, if you will,
23 as determined by a third-party appraiser, for each
24 of the properties. We then took the ownership
25 interest of each of them, of each of the properties

1 and of each of the entities, to come up with the
2 proportionate value of -- in dollars of -- for both
3 the trust -- the Morabito -- the Arcadia Living
4 Trust and the Bayuk Trust.

5 **Q. Was there -- how was it determined that**
6 **the Arcadia Living Trust would get the Reno**
7 **property, and Edward Bayuk's Trust would get the**
8 **California properties?**

9 **A. I -- I mentioned earlier that because**
10 **Edward, either individually or through his trust,**
11 **wanted to, my words, shake the dust of Reno from**
12 **his sandals as a result of Judge Adams' decision**
13 **and get as far away from the Herbsts as possible,**
14 **it made perfect sense, since the judgment was a**
15 **Nevada judgment, that the -- the judgment debtor,**
16 **Paul Morabito, should own the Nevada property.**

17 **Why would we have given the Nevada property**
18 **to Edward, who was looking to cut -- sever his ties**
19 **with Nevada and distance himself from the Herbst**
20 **litigation machine?**

21 **Q. So the decision was made based on it**
22 **being a Nevada judgment and Edward Bayuk not**
23 **wanting to be affiliated with Nevada anymore?**

24 **A. And -- and the Herbsts. He had been**
25 **exonerated. He didn't want to continue to be**

1 embroiled.

2 If the property -- if the property had
3 not -- had been taken out of Edward's name, it was
4 clear that, sooner or later, through collection
5 efforts on the judgment against Paul, that Edward
6 was -- Edward's interest in that property was going
7 to be implicated.

8 So we made it easier for the Herbsts, if you
9 will -- and I know you understand that -- by -- by
10 saying that the property in Nevada that is most --
11 most reachable by the Herbsts, belongs to the
12 judgment debtor.

13 **Q. Who retained the appraisers to appraise**
14 **the properties?**

15 A. So do you mean who found them?

16 **Q. Yes. Who found them?**

17 A. I -- I don't recall. I want to say
18 that -- that it strikes me that the then sheriff --
19 I don't know if he still is or not, but the sheriff
20 of Washoe County, Sheriff Haley, recommended the
21 appraiser for the Reno property, and I don't know
22 who came up with the appraiser for the California
23 properties.

24 **Q. Did you have any conversations with the**
25 **appraisers?**

1 calling me every day wondering how he's going to be
2 free and clear of the Herbsts. Edward was.

3 Q. So the -- the fast timeline was based
4 on Bayuk's insistence?

5 A. Yes. He was the primary motivator, as
6 far as my recollection serves me.

7 Q. Were there other motivators?

8 A. That was the prime one. I don't -- if
9 there were secondary or tertiary, I don't recall
10 what they were, but Edward wanted out.

11 Q. Do you know what Sefton, S-E-F-T-O-N,
12 Trustees is?

13 A. Well, I came to -- to know it, yes.

14 Q. What is your understanding of what
15 Sefton Trustees is?

16 A. I'm glad you couched it in terms of my
17 understanding, because I don't know precisely. But
18 my understanding is that Sefton Trustees is an
19 international repository of -- of assets.

20 Q. How did you become aware of Sefton
21 Trustees?

22 A. From Paul Morabito.

23 Q. When did you become aware of it?

24 A. Postjudgment and probably --
25 postjudgment in the context of the enforcement

1 MR. GILMORE: Well, there's no allegation
2 that any of the defendant recipients had anything
3 to do with it. You -- you get my drift?

4 So the original complaint had a Sefton
5 allegation because Paul was a defendant. Now
6 Paul's not a party to the lawsuit. The only
7 parties to the lawsuit are Mr. Bayuk, Mr. Sam
8 Morabito, and the respective Superpumper and
9 Snowshoe entities.

10 So I'm having a hard time understanding why
11 we're crossing the streams here on the Sefton
12 Trustee transfers that have nothing to do --
13 there's no allegation in the complaint that has
14 anything to do with the pending defendants.

15 MS. PILATOWICZ: Well, there was a transfer
16 of \$6 million to Sefton Trustees, and we are
17 investigating where it went. And we're entitled in
18 the litigation to investigate what happened to that
19 money.

20 MR. GILMORE: If -- if the -- if you're
21 telling me that the line of questioning is intended
22 to determine whether or not those transfers have
23 some relation to the defendants, then I suppose
24 you're going to get some latitude, but --

25 MS. PILATOWICZ: Mm-hmm.

1 A. Yes.

2 Q. Why was it?

3 A. Because it was going to form the basis
4 of the first cash payment under the Herbst
5 settlement to the Herbsts.

6 Q. Do you know how it got from Sefton
7 Trustees to your trust account?

8 A. Wire transfer.

9 Q. Do you know who initiated that wire
10 transfer?

11 A. Sefton Trustees.

12 Q. Do you know -- do you know -- let me
13 back up.

14 Did your firm have any contact with Sefton
15 Trustees to have that money transferred?

16 A. No.

17 Q. Okay.

18 A. Other than, you know, receiving the
19 wire transfer.

20 Q. When you saw it -- did you see the
21 deposit from Sefton Trustees come in?

22 A. I was aware of it.

23 Q. Okay. Did you question who Sefton --
24 Sefton Trustees was?

25 A. Well, by this time, I knew.

1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 by me to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

16

17

Mary Schulze

18

19

MARY SCHULZE, RPR, RMR,
Notary Public.

20

21

22

23

24

25

EXHIBIT 3

EXHIBIT 3

The court will not, and would not if requested,
award any recovery pursuant to 11 USC 303(i).

Gregg W. Zive

Honorable Gregg W. Zive
United States Bankruptcy Judge



Entered on Docket
December 17, 2013

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

In re:

PAUL A. MORABITO, an individual,

Alleged Debtor.

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

Hearing Date: October 22, 2013
Hearing Time: 10:00 a.m.

**ORDER DENYING MOTION TO DISMISS INVOLUNTARY CHAPTER 7 PETITION
AND SUSPENDING PROCEEDINGS PURSUANT TO 11 U.S.C §305(a)(1)**

These matters came before the Court on October 22, 2013 at 10:00 a.m. on Alleged Debtor PAUL A MORABITO's *Motion to Dismiss Involuntary Chapter 7 Petitions* (Dkt. #42) (the "Motion"). Counsel for the Petitioning Creditors, Brian Irvine and John Desmond, appeared, and Frank Gilmore and Jeff Hartman appeared as counsel for Paul A. Morabito.

The Motion and hearing having been properly noticed; and the Court having considered

Gordon Silver
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104009-003/

1 the pleadings and papers on file herein and the arguments of counsel and having stated its
2 findings of fact and conclusions of law on the record in open court pursuant to Federal Rule of
3 Civil Procedure 52, made applicable by Federal Rules of Bankruptcy Procedure 7052 and good
4 cause appearing, hereby denies the Motion upon the subsequent conditions:

5 1. The Involuntary Petition alleges that the Petitioning Creditors are eligible to file
6 the Involuntary Petitions pursuant to 11 U.S.C. § 303(b). (Dkt. #1 at 1).

7 2. The Involuntary Petition alleges that the Alleged Debtor is a person against whom
8 an order for relief may be entered under title 11 of the United States Code. *See id.*

9 3. The Involuntary Petition avers that the Alleged Debtor is not generally paying his
10 respective debts as they become due. *See id.*

11 4. The Involuntary Petition alleges that the Petitioning Creditors' claims are for
12 \$77,000,000. *See id.*

13 5. The Court finds that, pursuant to Fed. R. Civ. P. 12, made applicable by
14 Bankruptcy Rule 1011, the Involuntary Petition filed by the Petitioning Creditors sets forth
15 sufficient grounds to overcome a challenge to the Petition under Fed. R. Civ. P. 12.

16 6. However, the Court has not been presented evidence that the Alleged Debtor has
17 any significant creditors other than the Petitioning Creditors, and that this is essentially a two-
18 party collection action.

19 7. This Court is not the proper forum for the Petitioning Creditors to seek to collect
20 on their judgment against the Alleged Debtor, and the Bankruptcy Code was not intended for
21 such purposes.

22 8. Accordingly, the Court finds that the best interests of creditors and the debtor
23 would be better served by suspension of this case, and the Court will at this time abstain from
24 hearing this case pursuant to 11 U.S.C. §305(a)(1).

25 **IT IS HEREBY ORDERED** and notice is hereby given that the *Motion to Dismiss*
26 *Involuntary Chapter 7 Petitions* is denied, without prejudice.

27 **IT IS HEREBY FURTHER ORDERED** that all proceedings in this case are suspended
28 pursuant to 11 U.S.C. §305(a)(1). The parties shall appear before this Court for a status

conference on May 6, 2014 at 10:00 a.m..

IT IS HEREBY FURTHER ORDERED that the Automatic Stay pursuant to 11 U.S.C 362 is hereby lifted until further order of the Court.

IT IS SO ORDERED.

In accordance with LR 9021, counsel submitting this document certifies as follows (check one):

1. ☐ The Court has waived the requirement of approval under LR 9021.
2. ☒ This is a Chapter 7 or 13 case, and either with the motion, or at the hearing, I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below.
3. ☐ This is a Chapter 9, 11, or 15 case, and I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below.
4. ☐ I certify that I have served a copy of this order with the motion, and no parties appeared or filed written objections.

~~APPROVED/ DISAPPROVED/ FAILED TO RESPOND~~

ROBISON, BELAUSTEGUI, SHARP & LOW

By: /s/ Frank C. Gilmore
Frank C. Gilmore
Attorneys for Paul A. Morabito

PREPARED AND SUBMITTED:

GORDON SILVER

By: /s/ Brian R. Irvine
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104009-003/

EXHIBIT 4

EXHIBIT 4

1 IN THE SECOND JUDICIAL DISTRICT COURT OF
2 THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE
3
4 WILLIAM A. LEONARD, Trustee for)
5 the Bankruptcy Estate of Paul)
6 Anthony Morabito,)
7 Plaintiff,)
8)
9 vs.)
10)
11 SUPERPUMPER, INC., an Arizona)
12 corporation; EDWARD BAYUK,)
13 individually and as Trustee of)
14 the EDWARD WILLIAM BAYUK LIVING)
15 TRUST; SALVATORE MORABITO, an)
16 individual; and SNOWSHOE)
17 PETROLEUM, INC., a New York)
18 corporation,)
19)
20 Defendants.)
21)
22)
23)
24)
25)

16 Deposition of PAUL MORABITO, a witness herein,
17 noticed by GARMAN TURNER GORDON, taken 8560 West
18 Sunset Boulevard, Suite 400, West Hollywood,
19 California, at 10:04 a.m., Monday, March 21,
20 2016, before Tammie Lynn Hall, CSR No. 11525.

22 Job Number 292780

1 through an entity?

2 A. I don't remember.

3 Q. Do you know what majority percentage you had?

4 A. 70 or 80 percent, I think, thereabouts.

5 Q. Do you know what interest Sam Morabito and
6 Ed Bayuk had?

7 A. A percentage less than that 70 or 80 percent.

8 Q. How did you determine that interest
9 percentages for each of the parties?

10 A. By the -- I presume, at the time, we made a
11 decision as to -- between us how much we would own.

12 Q. Do you recall if there was cash that was put
13 in to finance that purchase?

14 A. My recollection is we bought the properties
15 and financed that and then the business -- I don't
16 remember if we separately financed any of the business.
17 We would have done something with the bank, I'm sure.

18 Q. Why wouldn't you do a third for each party
19 ownership?

20 A. Why would I?

21 Q. Well, that's what I'm asking you.

22 A. You are asking me -- I don't know.

23 Q. Is there a reason you wanted to have the
24 majority ownership?

25 A. I don't really -- never thought of it.

1 Q. Do you know if that role ever changed?

2 A. They ran the -- more themselves when they
3 bought them from me.

4 Q. How do you know that?

5 A. Because the son and son-in-law left, stopped
6 working.

7 Q. So it's your understanding the son and
8 son-in-law worked until the company was sold in 2010?

9 A. Approximately.

10 Q. Do you have a close relationship with Sam
11 Morabito?

12 A. Yes.

13 Q. How often do you talk to him?

14 A. At least once a week.

15 Q. Have you ever discussed the case that we're
16 here on the deposition for?

17 A. Yes.

18 Q. What have you discussed about it?

19 A. The stupidity of it.

20 Q. Well, explain to me, then.

21 A. Fundamental misunderstanding that your side
22 has as to the purchase and the values and whatnot.

23 Q. What are the misunderstandings that my side
24 has?

25 A. I don't know if we have enough time to go

1 Q. Do you know if Mr. Vacco prepared this
2 document?

3 A. I don't know.

4 Q. And just so I'm clear, you don't know
5 why -- as we sit here today, you don't know why this
6 was executed?

7 A. I don't remember -- I don't recall the purpose
8 of the document. I mean, it's an amendment, so...

9 Q. And it looks like the date of it was
10 September 30, 2010.

11 Does that date mean anything to you?

12 A. No.

13 Q. Looking down at Section 1.1, "Family
14 Information," the second sentence says, "I live
15 part-time with my boyfriend and long-time companion,
16 Edward William Bayuk."

17 A. Uh-huh.

18 Q. Does that refresh your recollection at all
19 about when you broke up?

20 A. I think the fact that I said that it was
21 "part-time" is the key phrase there, so...

22 Q. Well, you call him your boyfriend in this.

23 So do you believe you were still dating on
24 September 30th of 2010?

25 A. According to this, yes, but I think -- I think

1 we were more part-time. I think I was -- I think we
2 were parting. I thought we had parted by then, but I
3 don't recall the exact date.

4 Q. If you were parting with Mr. Bayuk, why -- why
5 did you include him in your amendment to your trust?

6 A. I think, unless you are evil and
7 mean-spirited, most people who fall in love with
8 people, mostly stay in love with them most of their
9 lives. They just may not just like them so much.

10 Q. Do you currently have any other trusts today?

11 A. Not that I know of.

12 Q. Do you have a will today?

13 A. No.

14 Q. Do you know how this Fifth Amendment changed
15 the Arcadia Living Trust?

16 A. No.

17 THE REPORTER: Could we take a restroom break?

18 MS. PILATOWICZ: Sure. We can take a restroom
19 break now.

20 THE VIDEOGRAPHER: We are off the record. The
21 time is 11:07.

22 (Recess taken.)

23 THE VIDEOGRAPHER: We are on the record. The time
24 is 11:18.

25 MS. PILATOWICZ:

1 A. Because we've had communications with him and
2 he's -- he helped us -- he was the one that put the
3 plan together to make sure that we follow all the rules
4 when we transferred our assets.

5 **Q. Do you know if Mr. Vacco has ever represented**
6 **Edward Bayuk individually?**

7 A. Well, I don't know if -- and, again, whatever
8 it is in terms of what he did to advise us. We
9 basically gave him a list of everything we had and
10 said, "How do you go about doing this it?" It's a case
11 of no good deed goes unturned. We told him to do this
12 to allow Sam and Ed to get on with their lives and just
13 deal with the Herbsts. And this turned into this
14 schnozzle.

15 **Q. And who retained Mr. Vacco to handle the**
16 **transfers?**

17 A. I don't know. I presume all of us.

18 **Q. Do you know if you signed a retention**
19 **agreement?**

20 A. I don't know if he was retained by the company
21 or by my brother and Edward or -- I don't remember.

22 **Q. Do you know who paid him?**

23 A. I don't remember.

24 **Q. Where would those records be?**

25 A. You would probably have them. You have all of

1 Corporation." And then that refers to Note 10, which
2 reads, "Nevada corporation that owns Superpumper, Inc.,
3 which operates 11 Shell franchise gas stations -- gas
4 service stations and five car washes, gas stations
5 under a job or agreement with Shell Oil Products U.S."

6 A. Well, you can see right off the bat the
7 mistake in this. Right above it, it says I own
8 54 percent of Consolidated Nevada, which we know is not
9 true. And this says I own a hundred percent of Solid
10 Western, which we know is not true because my brother
11 and Edward owned some of it at the time. So whoever
12 prepared this did it inaccurately. Thank you for
13 pointing that out. There is an error on this document.

14 So, obviously, if my accountant, especially
15 Don Whitehead, who knew how much of a company we owned,
16 didn't spot the error and the auditor didn't spot the
17 error, it's impressive that, after all this time, you
18 just did.

19 Q. Did you own a hundred percent of Consolidated
20 Western Corporation?

21 A. I don't believe I did. I believe my brother
22 and Edward owned a piece of it at the time.

23 Q. Well, did Consolidated Western Corporation own
24 80 percent any part of Superpumper, Inc.?

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

1 A. Yes.

2 Q. How did you decide to sell your interest in
3 Superpumper in 2010?

4 A. I think I already testified that he -- after
5 the Adams ruling, my brother and Edward wanted to
6 separate. So we made a decision to have Mr. Vacco come
7 in and appraise everything and separate everything.

8 Q. Did you have any desire to keep your interest
9 in Superpumper?

10 A. No.

11 Q. Why not?

12 A. I didn't want to be involved anymore to do
13 anything in the industry whatsoever.

14 Q. Do you recall what you received in exchange
15 for your 80 percent interest in Superpumper?

16 A. Specifically? No.

17 Q. Was there any cash that you received?

18 A. I believe I received cash and notes. And they
19 assumed a ton of debt and leases and oil obligations
20 and things.

21 Q. Do you recall who Mr. Vacco represented with
22 respect to the Superpumper transfer?

23 A. Who he represented?

24 Q. Yes. He represented you; correct?

25 A. I believe he represented all of us, I think.

1 this case which indicates that Sefton Trustees is a New
2 Zealand trust company of some sort.

3 Does that sound accurate to you?

4 A. I don't know.

5 Q. Okay. Did Mr. Morabito -- Sam Morabito or
6 Edward Bayuk ever have anything to do with Sefton?

7 A. No.

8 Q. Did you ever transfer any of the money from
9 Sefton to Sam Morabito?

10 A. No.

11 Q. Did you ever transfer any of the money from
12 Sefton or instruct Sefton to do so, to transfer any
13 money to Sam Morabito?

14 A. No.

15 Q. Did you ever instruct Dennis Vacco to transfer
16 any of the Sefton money to Sam Morabito?

17 A. No.

18 Q. Did you ever instruct Dennis Vacco to transfer
19 any of the Sefton money to Edward Bayuk?

20 A. No.

21 Q. Did Superpumper have anything to do whatsoever
22 with the Sefton money?

23 A. No.

24 Q. Okay. Where, ultimately, did the Sefton money
25 go?

1 A. To the Herbsts.

2 Q. Why do you say that?

3 A. Because it was money I ended up getting
4 to -- as part of the settlement. I used it as
5 settlement.

6 Q. You testified earlier that you believed you
7 had given the Herbsts approximately \$11 million toward
8 the claim that -- the judgment that they had against
9 you; is that right?

10 A. Yes.

11 Q. Can you walk me through where the \$11 million
12 that you testified about would have come from.

13 A. Can I?

14 Q. Yeah, please.

15 If you tell me what you are looking for, I might
16 be able to help you.

17 A. The last document, it says -- and, again, my
18 lawyer prepared this. This is -- I'm sorry. No. 24.

19 \$5 million in two payments, a million and a half
20 from the proceeds of the house, plus a million-dollar
21 bonus that they received on the house. So that's
22 6 1/2, \$7 1/2 million. \$840,000 in payments to Spirit.
23 So that's, like, \$8 1/2 million. And then -- I'm
24 trying to think of the other obligations that we had
25 taken over around Spirit and the buildings and things.

1 STATE OF CALIFORNIA) ss

2

3 I, Tammie Lynn Hall, CSR 11525, do hereby declare:

4

5 That, prior to being examined, the witness named
6 in the foregoing deposition was by me duly sworn
7 pursuant to Section 2093(b) and 2094 of the Code of
8 Civil Procedure;

9

10 That said deposition was taken down by me in
11 shorthand at the time and place therein named and
12 thereafter reduced to text under my direction.

13

14 I further declare that I have no interest in the
15 event of the action.

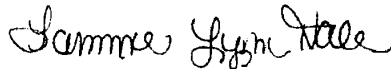
16

17 I declare under penalty of perjury under the laws
18 of the State of California that the foregoing is true
19 and correct.

20

21 WITNESS my hand this 31st day of
22 March, 2016.

23



24 TAMMIE LYNN HALL, CSR 11525

25

EXHIBIT 5

EXHIBIT 5

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

WILLIAM A. LEONARD, Trustee for the)	
Bankruptcy Estate of Paul Anthony)	
Morabito,)	
)	
Plaintiff,)	
)	
vs.)	No. CV13-02663
)	
SUPERPUMPER, INC., an Arizona)	
corporation; et al.,)	
)	
Defendants.)	

DEPOSITION OF EDWARD WILLIAM BAYUK, a defendant
herein, noticed by Garman Turner Gordon, LLP, at
4695 MacArthur Court, Newport Beach, California,
at 10:02 a.m., Monday, September 28, 2015, before
Kathryn D. Jolley, CSR 11333.

JOB NO.: 260711

1 adding to it?

2 A. The one that I lost?

3 Q. No, I'm asking about this one, Exhibit 5
4 (indicating).

5 A. The one I lost was in '10. 2010. The one --
6 The original ledger I lost in 2010.

7 Q. Okay. Well, let's talk about Exhibit 5.

8 A. Right.

9 Q. Did you create this at one time, or you created
10 it over time?

11 A. No, in 2010 I had an Excel, and I was a
12 little -- you know, had a lot of personal information,
13 obviously. And, you know, when I lost it I was lazy,
14 and I didn't -- I should have pulled all the bank
15 records and put it back together again, and I didn't.

16 Q. Okay. But let's talk about Exhibit 5.

17 When did you start making this document?

18 A. I don't remember.

19 Q. Was it a document that you made and added to or
20 as you made loans, or was it something you made at one
21 point in time and put down everything that you made?

22 A. I don't remember.

23 Q. Is this your handwriting on top, "Ledger of
24 Edward Bayuk to Paul Morabito"?

25 A. That's Frank Gilmore's writing.

1 **Q. What payment is that?**

2 A. Paul had a \$2 million line of credit, and it
3 wasn't my line of credit. And Paul had a lawsuit,
4 actually, with Bank of America. And unbeknownst to me,
5 I did not know inside bank documents, that if the bank
6 sues you, and you have a line of credit, and you have
7 mortgages with that bank, they can go after everything.

8 So I got subpoenaed, I guess. I guess we
9 probably -- you get sued, I guess. I don't know.

10 And I said to Paul, "What is this about?"

11 "Oh, this is about my line of credit."

12 "Oh, your personal line of credit of 2 million?"

13 And I said, "Well, that's not my line of credit.
14 That's your money."

15 And so Paul paid Bank of America, and he needed
16 700 -- the balance to pay them off. So I paid the
17 balance of the line of credit off, and I said, "Paul," I
18 said, you know -- I said to Paul, I said, you know --
19 So, yeah, so that's what I did.

20 So it was his line of credit -- his personal line
21 of credit that I paid off with my money.

22 **Q. Okay.**

23 What about the next one, "12/6/2012, "Payroll (PM
24 p/r account)" for 3,600?

25 A. Well, I think -- at this point I think I paid

1 his payroll account.

2 "p/r" means payroll, I guess, so I was paying
3 something on his behalf. Meaning, he -- I believe
4 that's money that I paid something for Paul.

5 **Q. Did he have people on his personal payroll?**

6 A. Yeah. I think so. Yeah.

7 And I paid his payroll for him.

8 **Q. Who did he have?**

9 A. So I classified it as a loan from me to him.
10 Just like this 732-.

11 Honestly, I should have gotten more credit for that
12 because of whatever. But, anyway. So, yeah, I think
13 that was a payroll that --

14 **Q. Okay. Let's move down to March 2013.**

15 **"Spirit Rent - Loan to PAM," what's that?**

16 A. Paul had a mortgagor, a rent or something, and
17 he needed 65,000. So I loaned him 65,000.

18 **Q. Do you know what the rent or mortgage was for?**

19 A. I don't recall what it was for.

20 I think it was -- It was a -- Yeah, that was
21 probably for the Maestro building, which is a building
22 in Reno.

23 **Q. What's the Maestro building?**

24 A. I think it's a building that he was -- had to
25 pay rent on, I believe.

1 Q. Who owned the Maestro building?

2 A. I don't remember who owned it.

3 Well, at the time years ago, it was Barry Hinckley
4 owned it. It was the Barry Hinckley -- one of Barry
5 Hinckley's offices.

6 Q. Do you know what the address of that property
7 was?

8 A. I think 425 Maestro.

9 Q. Okay. Let's move down to the next one,
10 March 22nd, 2013, "Lippes Legal - via USHFCC," in the
11 amount of \$50,000.

12 Was that one?

13 A. I don't know.

14 Q. You don't have any recollection?

15 A. No.

16 Some of this may be mislabeled. But, again, I
17 didn't know this was given to you. This is not a
18 complete document.

19 Q. Let's move to the next one, May 24th, 2013,
20 "PAM bills - 5330," in the amount of \$25,000.

21 What's that payment?

22 A. Probably Paul's personal bills.

23 Q. Do you know what bills?

24 A. No.

25 Q. Do you know what "5330" refers to?

1 A. One of his bank accounts.

2 Q. How would you make these payments?

3 A. Deposit money with a check into his checking
4 account.

5 Q. They're all made by checks?

6 A. I believe so.

7 Q. Moving to the next one, June 12th, 2013, "PAM
8 travel & bills," in the amount of \$50,000.

9 Do you know what that is?

10 A. Again, a deposit into his personal account.

11 Q. Do you know what it refers to when it refers to
12 "travel & bills"?

13 A. Refers to his traveling and his bills.

14 Q. Do you know where he traveled to or --

15 A. No, well, on that day, no.

16 It's his personal bills.

17 Q. Did you generally ask him about why you were
18 giving him money?

19 A. I was giving him money because I still owed him
20 money.

21 Q. But did he come to you and say, "I need \$50,000
22 for travel and bills," and you gave it to him, or did
23 you ask for more information?

24 A. No. No.

25 I owed him. You know, I still -- at this point in

1 it's just not listed correctly.

2 Q. Okay. On July --

3 A. Should be clearer.

4 Q. On July 10, 2013, there's another payment, "PAM
5 travel & bills," for \$70,000.

6 Do you know what that was for?

7 A. Probably traveling. And I think I was just
8 putting a general description.

9 Again, it should have been listed as, EB for PAM
10 Loan.

11 Q. What about 7/17/2013?

12 A. Same thing. Should be loan or --

13 Q. Do you know what you gave him -- why you gave
14 him that \$10,000?

15 A. I give him money whenever he needs it. He's a
16 friend.

17 I give money to a lot of friends, not just Paul,
18 and to charities.

19 Q. Okay.

20 A. And Paul's a close friend. He's an old
21 boyfriend. And I've had boyfriends before him. And I
22 give money to those boyfriends, too.

23 Q. When did you guys stop dating?

24 A. I guess you should -- sometime in -- Well,
25 we're still -- I'm still best friends with all my

1 boyfriends.

2 When did I stop dating Paul? Good question. I
3 have to think about it.

4 Well, we shared houses, so the houses were owned
5 tenant-in-common. When did I stop dating him? Maybe
6 the question is, you should ask him when did he start
7 dating someone else.

8 Q. When would you consider that you stopped
9 dating?

10 A. I don't remember.

11 Q. When you said you owned houses
12 tenants-in-common, what houses are you referring to?

13 A. None of the houses were ever owned joint
14 tenancy.

15 And, you know, gay people didn't have any rights
16 until this year.

17 Q. So are you talking about the properties that
18 we've been discussing today, the Glenneyre, the
19 Panorama, or are there other properties?

20 A. What's the question?

21 Q. When you're referring to the "properties," were
22 there other properties other than the ones we've been
23 discussing today that were transferred in 2010?

24 MR. GILMORE: Were there other properties that were
25 transferred?

1 THE WITNESS: If there's exhibits here, I think
2 it's in the exhibit.

3 MS. PILATOWICZ:

4 Q. Did you transfer it to Desi Moreno?

5 A. Yes.

6 Q. Why did you transfer it to Desi Moreno?

7 A. I believe Paul was sued by him, and Desi wanted
8 it.

9 Q. Why did you transfer a property that you owned
10 for settlement that Paul was a part of?

11 A. Oh, because Paul needed to settle a lawsuit,
12 and that's why I keep referring to the "Paul owes me
13 money for that." He owes me for that, too.

14 Q. Do you know what the lawsuit was about?

15 A. No.

16 Q. Were you named in the lawsuit?

17 A. I don't believe so.

18 Q. Did Paul Morabito provide you anything in
19 return for the transfer of that property to Desi Moreno?

20 A. "Did" what?

21 Q. Did Paul Morabito give you anything in return
22 for you transferring that property to Desi Moreno?

23 A. No.

24 He owes me money for the property, the value of the
25 property. That's not on -- I forgot.

1 1,600,000, so it was just subtracted from what I owed
2 him.

3 Q. And did you say you don't have any written
4 documents about that transaction?

5 A. I don't believe so, but I'll have to check.

6 Q. Who would know, or who would have them?

7 A. Me.

8 I'm the one that would get the Raffles statements,
9 and so that's how I knew I could --

10 Q. I'm not talking about a statement. I'm talking
11 about anything that documents Paul Morabito purchasing
12 your equity interest.

13 A. Yeah, I don't know.

14 Q. Is there any --

15 A. I do know this: Any money that came out of
16 Raffles from that day forward Paul got. That's
17 100 percent.

18 Q. Do you know if an attorney would have worked on
19 that transaction that would have documents?

20 A. I just know that, you know, I said to Paul, "I
21 would like my 25 percent."

22 Just like when I started hiring the appraisers, you
23 know, probably wasn't the most pleasant time.

24 Q. All right. Let's move on.

25 A. And that's why I forgot Clayton Place. Because

1 I was forgetful. Because you're a little emotional, and
2 you're doing this and that, and you start forgetting
3 things.

4 Q. Let's move on to the property in Reno.

5 What was the property located at 8355 Panorama
6 Road, Reno, Nevada?

7 A. What was it?

8 Q. Yes.

9 A. A residential --

10 We're not on the document anymore?

11 Q. No. I'm sorry. Actually, let me go back.

12 I have one more question about the Raffles
13 transfer.

14 A. Yeah.

15 Q. When did you acquire your interest in Raffles?

16 A. In 2005.

17 Q. How did you acquire it?

18 A. When we bought Barry Hinckley.

19 Q. Did you put in any money to acquire it?

20 A. Barry Hinckley -- the company -- When we bought
21 Barry Hinckley, we had a lot of lawyers involved, and
22 bankers, and most of the -- I don't -- you would have to
23 go back to the closing documents in 2005.

24 Q. So are you saying that BH -- that Raffles was a
25 part of the BHI transaction?

1 A. I think that there's a -- Say that again.

2 Q. Did Paul bring this agreement to you, or did
3 you bring this agreement to Paul?

4 A. No, I think it was, you know, I basically said
5 that, you know, I wanted to separate things and make
6 things simple for me, and so, hence, that's why I hired
7 the appraisers and hired them to do whatever.

8 And the agreements were written by a lawyer. And
9 for some reason the appraisals took a while. So, you
10 know, like, so --

11 Q. Well, then let's go back to, when did you first
12 decide you wanted to separate your property from Paul
13 Morabito?

14 A. I forgot, but we've -- we had talked about it
15 for a while, but I forget what time, you know. I think
16 you know, probably throughout the summer, and then
17 became more talking about it more. So October is when
18 we did it. But we talked about it way before then.

19 Q. And you're talking about the summer of 2010?

20 A. Probably, yeah.

21 Q. Was there anything that happened that brought
22 this discussion about?

23 A. Well, I think, you know, I was in Laguna a lot.
24 He was in Reno. And with -- the Herbst case was going
25 on, and so --

1 Q. Did you have discussions about the agreement --

2 And I'm talking about the agreement in general to
3 start transferring properties. Not this specific
4 written agreement --

5 A. Right.

6 Q. -- but that agreement.

7 -- with anyone other than Paul Morabito?

8 A. I think I went to see mutual friends to talk to
9 them. Couple people. Different people. Friends.

10 Q. Which mutual friends?

11 A. I forget who. Honestly, I don't remember
12 everyone I spoke to. Probably talked --

13 Q. What sort of discussions were you having with
14 them?

15 A. You know, basically, "I want" -- "I think it's
16 time for me to buy my interests in whatever, and Paul
17 should buy his interests."

18 And he was still living -- I mean, he still showed
19 living in Reno, and, you know, I moved from Reno in
20 2010. But I actually started coming back to California,
21 living more in California in 2009 and '08. And -- Well,
22 no, I was still living in Reno in '09.

23 Q. So, other than mutual friends, you and Paul
24 Morabito, was there anyone else?

25 A. Yeah. There was a lawyer who typed this. And

1 I don't remember the lawyer who did this.

2 I'm not sure which lawyer did this, but I'm sure I
3 can find out for you.

4 Q. Do you know if it's a lawyer at Dennis Vacco's
5 firm?

6 A. I don't remember. There was -- For some
7 reason, there was another lawyer involved with this. I
8 don't --

9 Q. Do you know who that lawyer was?

10 A. Yeah, I'm not sure. I'm not sure if it was
11 Dennis's firm.

12 Dennis handled the sale of Superpumper and Snowshoe
13 Petroleum.

14 But I probably -- if I go back to one of my
15 checkbooks, I can tell you exactly which lawyer did all
16 these for us.

17 Q. Do you have a name of the lawyer that you're
18 thinking of?

19 A. Well, if I looked in my phone, and there's
20 25 lawyers listed in my phone, I could probably figure
21 out which one did it.

22 Q. But as you sit here --

23 A. I don't recall the name.

24 But I can get you the name if you want it when I
25 get your spreadsheet, finish the other information I owe

1 you.

2 **Q. Was there anyone else involved in the decision**
3 **to transfer the properties other than you and Paul?**

4 A. No, just me and Paul.

5 **Q. How did you decide who got which properties?**

6 A. Well, you know, I think Paul was deciding where
7 he was going to live, and I was going to decide where I
8 was going to live.

9 And Paul moved to Los Angeles after Reno, and then
10 he was -- then he used to come down to Laguna, too, once
11 in a while. Not often, but --

12 **Q. So was your decision --**

13 A. But his base, he lived in Los Angeles.

14 **Q. When did he move to Los Angeles?**

15 A. I think -- I'm speculating.

16 **Q. Was it before 2010 or after 2010?**

17 MR. GILMORE: Don't speculate. If you know --

18 THE WITNESS: I don't know.

19 He still had the house in Reno, but he moved back
20 in 2010, I want to say. But he didn't move back to
21 Laguna. I want to say he moved from Reno to L.A.

22 But you would have to ask him.

23 MS. PILATOWICZ:

24 **Q. Do you know where you came up with the values**
25 **for the properties in this Purchase and Sale Agreement**

1 as Exhibit 15?

2 A. They were, I think, from -- I think --

3 MR. GILMORE: The value -- I'm sorry. The values
4 for what? The values for the real estate?

5 MS. PILATOWICZ: The current fair market value for
6 the real estate.

7 THE WITNESS: Okay. I'm trying to remember all
8 this. I think this document was done prior to the
9 appraisals being done. And so I think I said, "Oh, this
10 was worth 2.5. This is worth 2.5. This is worth 'X'
11 dollars."

12 And then I believe there was another document --
13 supplemental document that had to be signed that
14 inserted all the appraisal numbers because the appraiser
15 was taking so long.

16 And so there was -- there should have been a
17 supplemental document that reflected all the appraisal
18 numbers, so --

19 MS. PILATOWICZ:

20 Q. Let me stop you. Let me mark this --

21 A. I don't want to speculate, but I think there's
22 two documents. One was one document, and one was a
23 later document. Because the appraisal had to come in --

24 I'm sorry. I'm trying to help you.

25 (Whereupon the document referred to is marked by

1 the reporter as Trustee Exhibit 17 for identification.)

2 MS. PILATOWICZ: I'll show you what's been marked
3 as Exhibit 17 (indicating). EXHIBIT 17

4 Q. Is this the document you were referring to as
5 the "supplemental document"?

6 A. Yeah. I was kind of -- you know, five years
7 ago, so -- but yeah.

8 So this was done. And the reason why this first
9 amendment was done is because the appraisals came in and
10 had to be -- this first document had to be redone.

11 Q. Do you recall when you ordered the appraisals?

12 A. No.

13 They were ordered, I guess -- When I called the
14 appraiser, he said -- you know, I kind of said, "Can I
15 have this? Because I have to do this. And if you don't
16 get them to me in time, I have to do another statement."

17 So he finally finished them. He made it a priority
18 to get through the work.

19 Q. How long did it take him to do it after you
20 told him you needed it?

21 A. I don't remember, but it took a while.

22 Q. It took a while when you told him you were
23 drafting --

24 A. I would have to look at my -- Because I think I
25 had the -- You know, he said, oh, "This is my fee."

1 And I'm like, "Okay." So I had to give him a
2 deposit to start. So I could go back to my bank records
3 and look to see how much.

4 Q. Do you know if you gave him the deposit to
5 start before the Purchase and Sale Agreement, or after?

6 A. I don't think anyone works for you for free, so
7 I think I had to give him a deposit.

8 Q. But did you give him the deposit to start the
9 appraisal before the Purchase and Sale Agreement or
10 after this original Purchase and Sale Agreement was
11 executed?

12 A. That I don't remember.

13 But I'll -- I can go back to my bank records and
14 probably figure out when I gave the deposit because I
15 believe he required a deposit. I could be wrong.

16 Q. Now, Exhibit 17, which is the First Amendment
17 to the Purchase and Sale Agreement, in Section 3
18 requires you to make a payment of \$60,117 to Arcadia
19 Trust.

20 Do you see that?

21 A. Made payable to Paul. Right. Payment to Paul.

22 Q. You made it to Paul individually?

23 A. Well, I don't know where he deposited the
24 money, but -- I don't know all the names on all his
25 accounts.

1 note.

2 Do you remember that?

3 MR. GILMORE: Earlier in the testimony?

4 MS. PILATOWICZ: Earlier in the testimony.

5 THE WITNESS: You showed me a promissory note.

6 MS. PILATOWICZ:

7 Q. No. You had referred to -- and if not,

8 that's -- if you don't recall, that's fine.

9 Do you recall ever giving a \$60,000 promissory
10 note -- or \$600,000 promissory note to Paul Morabito?

11 A. I gave a --

12 MR. GILMORE: Hold on.

13 Do you recall ever giving a \$600,000 promissory
14 note to Paul? That was the question.

15 THE WITNESS: Giving Paul a promissory note. I
16 owed -- I signed a promissory note to Paul for about a
17 million six.

18 MS. PILATOWICZ: Okay.

19 Q. Do you recall Paul Morabito giving a promissory
20 note to you for \$600,000?

21 A. Oh, okay. You first said me, I owed Paul.
22 Paul owing me?

23 Q. Right. That's what I'm asking now.

24 A. Oh, okay. I thought you said the opposite.

25 I think Paul called me one day, he was on a trip,

1 and said, "How much money have I borrowed from you?"

2 And I said, "Oh, about 600,000."

3 And he says, "Well, I --" you know --

4 So I think today Paul probably owes me quite a bit
5 of money. And at that point in time, I think the
6 approximate money that he owed me was probably 600,000.

7 Q. What point in time was that? When did that
8 happen?

9 A. Well, if you get me the document, I can tell
10 you.

11 But all I know is he was traveling and was Back
12 East, and it was the last couple years.

13 Q. By "last couple years," you mean 2013?

14 A. It was either -- It was either '13, '14 or '15.
15 I mean, it was one --

16 Q. So it was within the past three years?

17 A. Yeah.

18 Q. Do you recall there being a written promissory
19 note?

20 A. Oh, like, with showing interest and stuff like
21 that?

22 Q. A written document that said Paul owes you
23 \$600,000.

24 A. I think I wrote a note that said, "You owe me
25 approximately \$600,000."

1 He had been borrowing money from me, and he still
2 borrows money from me. And I -- you know, he doesn't --
3 So I think at that point in time, I said approximately
4 600,000.

5 He goes, "Don't you know exactly?"

6 I said, "No, I don't."

7 And I was traveling, and I think it was a one-line
8 sentence.

9 **Q. Do you know where that note is today?**

10 A. I would assume you guys have it.

11 **Q. Was there anything formally, you know, drafted**
12 **up by attorneys with respect to that?**

13 A. No.

14 Like I said, haste makes waste.

15 He called me. He said, "How much money did you
16 lend me?"

17 I said, "I don't know."

18 "How come you don't know?"

19 I said, "Because sometimes I don't keep accurate
20 track." And I don't. Nor do I keep accurate track of
21 how much my friends or past boyfriends ask me. Because
22 usually when you give money to someone, you know, you
23 don't expect it back.

24 In the case of Paul, I know I have to probably file
25 a gift report. I maybe -- I maybe have to file one this

1 explain that transaction.

2 Q. Do you recall if it was merged, if Consolidated
3 Western Corporation and Superpumper were merged?

4 A. Consolidated Western Corporation -- I'm trying
5 to think of the company that owns Superpumper, too.

6 I think you have to check the corporate records
7 because I don't remember the years and the dates.
8 There's -- I think you have documents.

9 MR. GILMORE: Just answer her questions if you
10 know. Okay?

11 THE WITNESS: Okay.

12 MR. GILMORE: If you don't know, then say you don't
13 know. No guessing.

14 MS. PILATOWICZ:

15 Q. Do you still have an ownership interest in
16 Consolidated Western Corporation?

17 A. Well, Consolidated Western Corporation was
18 dissolved when Sam and I bought 80 percent of Paul's
19 interests.

20 Q. It was dissolved?

21 A. Right.

22 Q. Do you currently have an ownership interest in
23 Superpumper, Inc.?

24 A. Yes.

25 Q. What's your ownership interest in Superpumper,

1 Inc.?

2 A. 50 percent.

3 Q. Who owns the other 50 percent?

4 A. Sam Morabito.

5 Q. Do you have an ownership interest in Snowshoe
6 Petroleum?

7 A. Yes.

8 Q. What's your ownership interest in Snowshoe
9 Petroleum?

10 A. 50 percent.

11 Q. And who owns the other 50 percent?

12 A. Sam Morabito.

13 Q. What's Superpumper Properties, LLC?

14 A. It was a property company that owned commercial
15 properties.

16 Q. What commercial properties did it own?

17 A. It owned Card Locks.

18 Q. Does Superpumper Properties, LLC still exist?

19 A. No.

20 Q. When did it cease to exist?

21 A. I don't know.

22 Paul -- I sold my interest. I owned 25 percent.

23 Paul owned 50 percent. And I sold my interest to Paul
24 in 2010.

25 Q. Do you recall when in 2010?

1 A. Around the same time period I sold -- I bought
2 the houses and sold the Reno house.

3 Q. Do you know how much you received in return for
4 your 20 percent interest?

5 A. Yep. About \$146,000 and some change.

6 Q. Do you know where that payment came from?

7 A. It came from Paul.

8 Q. Do you know if it came from him individually or
9 his trust?

10 A. That part I don't know.

11 And we collected rent on those properties. And
12 when I collected my share, I didn't check the rent
13 anymore.

14 Q. What is Snowshoe Petroleum?

15 A. Snowshoe Petroleum is a company that owns
16 Superpumper, Inc.

17 Q. So, just to clarify from what you said earlier,
18 do you own 50 percent of Snowshoe Petroleum that owns
19 Superpumper, or do you have ownership interest in
20 Superpumper and Snowshoe Petroleum?

21 A. Snowshoe Petroleum owns Superpumper.

22 Q. Why was Snowshoe Petroleum created?

23 A. It's a company that was formed to -- company
24 that owns Superpumper, Inc.

25 And I was looking at other opportunities in other

1 places to buy, that I was going to own another type of
2 business like Superpumper, and Snowshoe Petroleum would
3 have owned it as well.

4 **Q. So you created Snowshoe Petroleum to look for**
5 **opportunities to purchase something?**

6 A. Well, no.

7 I created Snowshoe Petroleum because I bought
8 Superpumper. But at the same time, I was looking at
9 other opportunities as well.

10 **Q. Was Snowshoe Petroleum created specifically to**
11 **purchase Superpumper?**

12 A. Well, it was created so that -- it's like a
13 holding company. And then I owned Superpumper, but I
14 was looking at other opportunities. A couple
15 opportunities fell through. And so if I had bought
16 something else, I would have held it in Snowshoe
17 Petroleum.

18 **Q. Do you know who incorporated Snowshoe**
19 **Petroleum?**

20 A. Yes.

21 Dennis Vacco was my attorney for that company.

22 **Q. Why did you incorporate it in New York?**

23 A. Because I think I was looking at a business
24 opportunity in New York. Dennis was in New York. Sam
25 lives close to Dennis's office. It was just -- I go to

1 New York a lot for work. It was just convenient.

2 And I was looking at -- there was a couple business
3 opportunities on the East Coast, so it was just
4 convenient.

5 Q. What do you do in New York for work when you go
6 to New York?

7 A. I meet with all kinds of business people.

8 Q. On behalf of what entity?

9 A. Today the communications company.

10 Q. Is that USHFCC?

11 A. Yes.

12 Q. Does Paul Morabito have an interest in Snowshoe
13 Petroleum?

14 A. No.

15 Q. Has Snowshoe Petroleum ever made any payment to
16 Paul Morabito?

17 A. Snowshoe Petroleum has made payments to Paul?
18 I don't know. If he doesn't own an interest --

19 I would have to check bank records.

20 Q. Does Snowshoe Petroleum employ Paul Morabito?

21 A. No.

22 Q. Has Snowshoe Petroleum ever transferred any
23 cash to Morabito?

24 A. If Snowshoe --

25 Q. To Paul Morabito.

1 10 percent. And it was around the same time period that
2 I decided, you know, I was going to separate things and,
3 you know, live on my own and do things and be
4 independent.

5 And I asked Sam, "Would you buy the 80 percent,
6 help me buy it?" So we hired an appraiser and had the
7 company appraised and --

8 Q. What did you acquire through that purchase?

9 A. Superpumper, Inc.

10 Q. Was it the equity in Superpumper, Inc.?

11 A. Right. Yep. Yep.

12 Q. Now, how did you determine the purchase price
13 for the 80 percent interest?

14 A. We hired an appraiser that specializes in gas
15 stations.

16 Q. And you took that appraisal and paid what the
17 80 percent was?

18 A. Right.

19 I think I'm getting tired or something. I kind of
20 went into a fog there for a second, all these different
21 names.

22 (A discussion is held off the record.)

23 (Whereupon the document referred to is marked by
24 the reporter as Trustee Exhibit 18 for identification.)

25 MS. PILATOWICZ: I've shown you what has been

1 Q. In the first paragraph -- I'll read the
2 sentence -- it says, "As discussed, Edward and I,
3 through Snowshoe, also assumed a large obligation on the
4 LOC at Compass, some \$2.5 million."

5 A. Right.

6 Q. Do you know what that -- I'm assuming it's a
7 line of credit; is that correct?

8 A. I think this e-mail is poorly written.

9 But I note that we are already a little confused
10 because --

11 MR. GILMORE: The question is, do you know what
12 this means, the assumption of the large obligation?
13 That's the question. Do you know?

14 If you know, answer it.

15 THE WITNESS: Well, the line of credit -- There was
16 a line of credit when we bought Superpumper, Inc. from
17 Paul. He owned 80 percent. And there was a line of
18 credit. And it was a big line of credit. And we
19 inherited the line of credit.

20 So I think we always were -- You know, I think
21 we've redone the line of credit four times since that
22 time period.

23 MS. PILATOWICZ:

24 Q. Was Superpumper, Inc. the borrower on the line
25 of credit?

1 Capital was the company that appraised Superpumper,
2 Inc.?

3 A. I think you have a copy of the appraisal, and I
4 think that's the name of the company that did the
5 appraisal.

6 Q. Did you have any communications with Matrix
7 Capital regarding the appraisal?

8 A. No.

9 Q. Do you know who ordered the appraisal?

10 A. I don't remember.

11 Did I ever meet the guy? No.

12 Q. And then the next line is, "Compass Term Loan"
13 for \$1,682,000?

14 A. Right.

15 Q. Do you know what that loan is?

16 A. There was a term loan on the company when the
17 company was bought.

18 Q. Is that term loan different than the line of
19 credit?

20 A. Yes.

21 So there's a term loan and a line of credit.

22 Q. And then there's a risk discount of 35 percent
23 of \$1,680,880.

24 What is that?

25 A. On -- I believe these numbers are from the

1 STATE OF CALIFORNIA) ss

2 I, Kathryn D. Jolley, CSR 11333, do hereby declare:

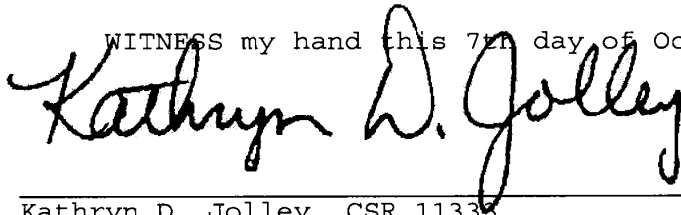
3 That, prior to being examined, the witness named in
4 the foregoing deposition was by me duly sworn pursuant
5 to Section 2093(b) and 2094 of the Code of Civil
6 Procedure;

7 That said deposition was taken down by me in
8 shorthand at the time and place therein named and
9 thereafter reduced to text under my direction.

10 I further declare that I have no interest in the
11 event of the action.

12 I declare under penalty of perjury under the laws
13 of the State of California that the foregoing is true
14 and; correct?

15 WITNESS my hand this 7th day of October, 2015.

16 

17 Kathryn D. Jolley, CSR 11333

EXHIBIT 6

EXHIBIT 6

1 PERSONAL RESIDENCES

		Los Olivos Laguna Beach		El Camino Laguna Beach			Panorama Drive Reno
estimated appraised value		\$ 1,900,000		\$ 1,950,000			\$ 4,300,000
mortgages		\$ (1,045,048)		\$ (871,359)			\$ (1,028,884)
net equity		\$ 854,954		\$ 1,078,641			\$ 3,271,136
Paul Morabito	50%	\$ 427,477	75%	\$ 808,981	\$ 1,238,458	70%	\$ 2,289,795
Edward Bayuk	50%	\$ 427,477	25%	\$ 269,660	\$ 697,138	30%	\$ 981,341
difference							\$ 255,117
LESS							\$ (45,000)
		excess water rights		Edward Bayuk			\$ (150,000)
		theatre equipment		Edward Bayuk			
Edward Bayuk writes a check to Paul Morabito							\$ 60,117

2 BARUK PROPERTIES LLC

		Mary Fleming Circle Palm Springs		1461 Glenneyre Laguna Beach			570 Glenneyre Laguna Beach
estimated appraised value		\$ 1,050,000		\$ 1,400,000			\$ 2,500,000
mortgages		\$ (344,821)		\$ -			\$ (1,370,879)
net equity		\$ 705,079		\$ 1,400,000			\$ 1,129,021
Paul Morabito	50%	\$ 352,540	50%	\$ 700,000		50%	\$ 584,510
Edward Bayuk	50%	\$ 352,540	50%	\$ 700,000		50%	\$ 584,510
Net amount owed by Edward Bayuk to Paul Morabito - see reconciliation, below							\$ 1,617,050

3 SUPERPUMPER PROPERTIES LLC

appraised February, 2010 for BBVA Compass Bank	14th Street, Elko, NV	\$ 500,000
appraised February, 2010 for BBVA Compass Bank	500 Industrial Way, Lovelock, NV	\$ 585,000
appraised February, 2010 for BBVA Compass Bank	920 Mt. City Hwy., Elko, NV	\$ 550,000
	total	\$ 1,615,000
BBVA Compass mortgage	mortgage	\$ (1,030,413)
	net equity	\$ 584,587
	Sam Morabito	25% \$ 146,147
	Edward Bayuk	25% \$ 146,147
	Paul Morabito	50% \$ 292,294

MORABITO (341).000001

EXHIBIT 7

EXHIBIT 7

BUDGET SUMMARY

AS OF 1/17/2016

Budget Code	Prolog Description	Informal Budget as of 8/10/06	Total Commit'd Costs in Prolog As of 9/19/06	Adjusted Budget as of 9/20/06	Comments
01000	Plans	\$10,000.00	\$647.30	\$750.00	
01100/01300/01320	Temp Facilities/Temp Utilities/Temp Light & Power				
01120	Job Office	\$3,000.00	\$3,887.72	\$5,000.00	
01400	Clean up Labor & Materials	\$0.00	\$43.14	\$45.00	
01420	Rubbish Removal	\$5,155.00	\$13,597.95	\$16,000.00	
01500	Protection and Safety	\$0.00	\$1,588.25	\$2,000.00	
01600	Permits	\$0.00	\$1,066.01	\$1,200.00	
01800	Property Management	\$3,000.00	\$4,377.13	\$4,377.13	
01810/01820	Project Mgmt/Supervisors	\$0.00	\$99.16	\$100.00	
01830	Engineering Services	\$50,000.00	\$64,113.07	\$75,000.00	
01880	Clerical Labor & Postage Costs	\$8,000.00	\$2,550.00	\$2,550.00	
01890 -LA	General Labor	\$0.00	\$543.58	\$750.00	
02000 -PO	Sitework	\$0.00	\$645.31	\$1,000.00	
02050 -SC	Demolition	\$200.00	\$500.00	\$1,000.00	
02200 -LA	Earthwork	\$41,532.00	\$53,367.33	\$60,000.00	
02210 -LA	Site Grading	\$0.00	\$360.00	\$500.00	
02220 -PO	Excavation and Backfill	\$0.00	\$652.50	\$2,000.00	
02450 -MA	Fences and Gates	\$1,500.00	\$8,776.09	\$10,000.00	
02480 -LA	Landscaping	\$32,500.00	\$968.91	\$12,500.00	
02800 -LA	Operating Backhoe for Power and Communication Lines	\$30,000.00	\$19,868.05	\$40,000.00	
03000 -SC	Rebar	\$0.00	\$10,380.01	\$10,400.00	
03100 -LA	Concrete Formwork	\$0.00	\$1,198.83	\$1,200.00	
03300 -SC	Cast in Place Concrete	\$20,000.00	\$15,008.63	\$16,000.00	
04000 -SC	Masonry	\$0.00	\$5,248.00	\$20,000.00	
05120 -PO	Structural Steel	\$95,318.25	\$95,319.25	\$118,000.00	
06100 -LA	Rough Carpentry Labor & Materials	\$0.00	\$13,796.76	\$14,000.00	
06200 -LA	Finish Carpentry Labor & Materials	\$77,400.00	\$168,256.35	\$175,000.00	
06410 -LA	Cabinetry - Labor & Materials	\$30,000.00	\$86,126.89	\$90,000.00	
07110 -PO	Sheet Membrane Waterproofing	\$125,000.00	\$86,804.08	\$140,000.00	
07200 -PO	Insulation	\$0.00	\$162.41	\$500.00	
08200 -PO	Wood Doors	\$800.00	\$2,790.00	\$2,800.00	
08520 -LA	Aluminum Windows	\$30,000.00	\$32,924.74	\$40,000.00	
08600 -PO	Wood and Plastic Windows	\$0.00	\$4,106.43	\$4,200.00	
08910 -PO	Asbestos Testing	\$66,620.00	\$70,556.51	\$75,000.00	
09200 -SC	Lath and Plaster	\$0.00	\$350.41	\$351.00	
09250 -SC	Drywall	\$1,000.00	\$12,477.00	\$22,000.00	
09300 -SC	Tile/Granite	\$28,595.00	\$37,315.00	\$38,000.00	
09900 -SC	Painting	\$185,866.00	\$25,223.53	\$82,000.00	
11050/11130	Home Theater & Whole House AV	\$15,000.00	\$9,720.00	\$55,000.00	
		\$428,851.24	\$441,725.63	\$470,000.00	Did Paul pay part of this??

BUDGET SUMMARY

AS OF 1/7/2016

Budget Code	Prolog Description	Informal Budget as of 8/10/06	Total Commit'd Costs in Prolog As of 9/19/06	Adjusted Budget as of 9/20/06	Comments
15400 -SC	Plumbing	\$50,000.00	\$52,083.86	\$53,000.00	
15600 -SC	HVAC	\$12,000.00	\$38,182.50	\$40,000.00	Increased to \$40,000.00
16000 -MA	Light Fixtures	\$133,240.00	\$65,897.07	\$100,000.00	Total Labor and Materials Not to Exceed \$200,000.00
16000 -SC	Electrical	\$111,000.00	\$97,564.39	\$100,000.00	
18400 -PO	Electrical Service and Distribution	\$10,000.00	\$14,737.99	\$15,000.00	
40000 -LA	Architectural Design	\$15,801.46	\$17,312.93	\$17,315.00	
07300	Roof Cover	\$0.00	\$0.00	\$15,200.00	For Maid's Qtrs Only
03350	Decorative Concrete Paltos	\$0.00	\$0.00	\$20,000.00	TBD
11450	Appliances - Allowance	\$67,691.35	\$0.00	\$82,000.00	
10800	Shower Doors, Mirrors, Acc.	\$3,500.00	\$0.00	\$3,500.00	
09550	Flooring/Carpet (Allowance)	\$50,000.00	\$0.00	\$50,000.00	
02520	Rain Gutters	\$18,000.00	\$0.00	\$28,000.00	
02500	Asphalt Driveway	\$0.00	\$0.00		
11010	Central VAC	\$750.00	\$0.00		
	SUBTOTALS:	\$1,777,321.30	\$1,560,901.70	\$2,133,238.13	
90000	P & O:	\$220,613.99	\$187,308.20	\$256,988.58	
	GRAND TOTALS:	\$1,997,935.29	\$1,748,209.90	\$2,389,226.71	

EXHIBIT 8

EXHIBIT 8

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

-000-

WILLIAM A. LEONARD, :
Trustee for the :
Bankruptcy Estate of Paul :
Anthony Morabito, :
Plaintiff, : Case No. CV13-02663

vs. : Department No. 1

SUPERPUMPER, INC., an :
Arizona corporation; :
EDWARD BAYUK, :
individually and as :
Trustee of the EDWARD :
WILLIAM BAYUK LIVING :
TRUST; et al, :
Defendants.

=====

DEPOSITION OF DENNIS BANKS

THURSDAY, MARCH 24, 2016

RENO, NEVADA

REPORTED BY:

ERIN T. FERRETTO, CCR #281, RPR
JOB NO. 294429

1 was in the ballpark of the amount that the homeowners
2 paid you for the work?

3 A It seems similar.

4 Q And the \$2.3 million, would that have been labor,
5 materials, and P & O?

6 A Yes.

7 Q I'm sorry. Labor, materials, and profit and
8 overhead?

9 A Yes.

10 Q Was this a cost-plus job, or how did you bill this
11 job?

12 A Cost-plus, yes.

13 Q Meaning you billed the clients actual costs for
14 the materials and then you increased the price of that
15 contract by some fixed amount or percentage; is that
16 right?

17 A The cost of labor and materials, and then a profit
18 and overhead percentage, yes.

19 Q And all of that total came to in the ballpark of
20 perhaps \$2.3 million, to your memory?

21 A Yeah, it sounds familiar.

22 Q At the time that Dennis Banks Construction was
23 doing the work on this house, were there other tradesmen
24 in the house doing work that were not Dennis Banks subs?

25 A I believe there were a couple going on, but I

1 can't remember exactly.

2 Q For example, was Dennis Banks buying and
3 installing the chandeliers?

4 A I can't remember that exactly.

5 Q Okay. Do you recall if Dennis Banks was involved
6 in acquiring and installing the window dressings?

7 A That I would say we did not do and typically
8 don't.

9 Q Okay. The same thing about the upholstered walls,
10 did Dennis Banks do the upholstery on the walls?

11 A I do not think so.

12 Q So all of those, if I can say, upgrades to the
13 house in the remodel would not have been done by Dennis
14 Banks; is that right?

15 A Most likely.

16 Q Okay. Did you know the Panorama neighborhood?

17 A Yes.

18 Q And did you know it prior to the construction?

19 A Yes.

20 Q Okay. Would you characterize this as an entire
21 gut and remodel of the Panorama house --

22 A Yes.

23 Q -- the work that you did?

24 A Yes, and addition.

25 Q Right, and addition. Including the exterior;

1 right?

2 A Yes.

3 Q In terms of the facade?

4 A Yes.

5 Q Prior to the construction, did the Panorama
6 house -- would you say it was consistent with the quality
7 and finishes of the other houses in the neighborhood?

8 A Prior to?

9 Q Prior to construction.

10 A I mean, that area has -- has every -- I mean, it
11 has too many choices to answer that --

12 Q Okay.

13 A -- accurately. There's a lot of variety of levels
14 in that area.

15 Q Okay. Prior to construction, it was essentially a
16 ranch home; right?

17 A Yes.

18 Q On some bare acreage; right?

19 A Yes.

20 Q Okay. And you didn't change any of the dimensions
21 necessarily of the property outside the footprint of the
22 house other than the additions; correct?

23 MS. HAMM: Objection; vague.

24 You can still answer.

25 THE WITNESS: I'm lost a little bit.

1 BY MR. GILMORE:

2 Q So we have the overall acreage?

3 A Right.

4 Q Then we have the footprint of the house?

5 A Yes.

6 Q And the overall acreage was pasture land and a
7 driveway, et cetera; right?

8 A Uh-huh.

9 Q Okay. You didn't change anything with respect to
10 the general condition of the property with the exception
11 of the footprint of the house and the slight addition to
12 it; is that right?

13 A I think we did a new driveway --

14 Q Okay.

15 A -- trees --

16 Q Okay.

17 A -- things of that nature.

18 Q Anything else that you did to the property, in
19 general, other than just inside the footprint of the
20 house?

21 A Not that I recall.

22 Q Okay. And did you ever see the house
23 post-construction after all of the other tradesmen had
24 completed their work at the house?

25 A Yes.

1 Q So you actually saw the finished product where it
2 was sort of move-in ready?

3 A Yes.

4 Q Okay. Can you compare that post-construction,
5 move-in ready condition to other properties that you've
6 seen in Reno or in Washoe County?

7 A Compare it?

8 Q Yes.

9 A Yes. It was spectacular.

10 Q Would you say high end?

11 A Yes.

12 Q How high?

13 A Well, like I said, it was as high as you can get
14 pretty much that I know of.

15 Q Have you ever worked on a house in Reno that was
16 as high quality materials and finish as this house?

17 A Not for the overall 100 percent every aspect of
18 it.

19 Q Okay. Meaning soup to nuts, essentially?

20 A Every -- yep.

21 Q Okay. You've seen houses that have nice
22 countertops or houses that have nice doors or houses that
23 have nice carpeting, but you haven't seen a house in Reno
24 that had the types of quality finish and workmanship that
25 this house had from A to Z; is that right?

1 A I may have seen one or two, but I haven't seen any
2 better.

3 Q Fair enough. Okay.

4 Do you have any -- did you have any sense
5 pre-construction as to what the market value of the
6 property would have been?

7 A No.

8 Q Okay. And the same question, do you have any
9 sense as to what the market value of the property might
10 have been post-construction?

11 A Not during the last five years of not knowing
12 anything about any sale residential, because I do a lot
13 of that and nobody knows the last few years. It's
14 whatever you happen to get lucky or not --

15 Q Understood.

16 A -- in the market.

17 Q So in addition to the approximately \$2.3 million
18 that Dennis Banks received for the construction, do you
19 have a sense of what the entire remodel for the house was
20 including the trades that Dennis Banks did not perform?

21 A I don't.

22 Q Was there somebody on the property regularly who
23 had more day-to-day involvement on the project than did
24 you?

25 A Yes. Chris Foreman.

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3) ss.
4 WASHOE COUNTY)

5 I, ERIN T. FERRETTO, Certified Court
6 Reporter for the State of Nevada, do hereby certify;

7 That on Thursday, March 24, 2016, at
8 Woodburn and Wedge, 6100 Neil Road, Suite 500, Reno,
9 Nevada, personally appeared DENNIS BANKS, who was duly
10 sworn by me to testify the truth, the whole truth and
11 nothing but the truth, and thereupon was deposed in the
12 matter entitled herein;

13 That said deposition was taken in verbatim
14 stenotype notes by me, and thereafter transcribed into
15 typewriting as herein appears; that the foregoing
16 transcript, consisting of pages 1 through 40, is a full,
17 true and correct transcription of my stenotype notes of
18 said deposition.

19 That I am not related to or employed by any
20 parties or attorneys herein, nor financially interested
21 in the outcome of these proceedings;

22 DATED: This 4th day of April, 2016.

23 

24 ERIN T. FERRETTO, CCR #281, RPR
25

EXHIBIT 9

EXHIBIT 9

1 IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA
2 IN AND FOR THE COUNTY OF WASHOE
3

4 WILLIAM A. LEONARD, TRUSTEE)
FOR THE BANKRUPTCY ESTATE OF)
5 PAUL ANTHONY MORABITO,)
6 Plaintiffs,)
7 vs.) CASE NO. CV13-02663
8 SUPERPUMPER, INC., AN ARIZONA) DEPT. NO. B1
CORPORATION; EDWARD BAYUK,)
9 INDIVIDUALLY AND AS TRUSTEE)
OF THE EDWARD WILLIAM BAYUK)
10 LIVING TRUST; SALVATORE)
MORABITO, AN INDIVIDUAL; AND)
11 SNOWSHOE PETROLEUM, INC.,)
A NEW YORK CORPORATION,)
12 Defendants.)
13 -----)

14
15
16 DEPOSITION OF
17 MICHAEL SEWITZ
18 NORTH HILLS, CALIFORNIA
19 MARCH 22, 2016
20

21 ATKINSON-BAKER, INC.
COURT REPORTERS
22 (800) 288-3376
www.depo.com
23

24 REPORTED BY: DENISE MILLER, CSR No. 3673
25 FILE NO. AA028A0

1 A Well, I go out on appointments and meet with
2 decorators or their clients.

3 That's half of the day.

4 And the rest of the day is running this
5 business.

6 Q Okay.

7 And what types of services does your company
8 provide, generally?

9 A Anything that goes on windows, beds, walls,
10 upholstery, custom draperies.

11 Basically anything that covers a window.

12 Q Okay.

13 And would you say, in the drapery business, that
14 you have a specific specialty?

15 A We cater to the high-end design trade, for the
16 most part.

17 We do very little retail, if at all.

18 Q Okay.

19 When you say "high-end," do you mean high-end
20 residential?

21 A High-end residential.

22 We do a little bit of commercial. But 90
23 percent is residential.

24 Q Okay.

25 And you, personally, what would you say is your

1 Q Okay.

2 Now, we're here today to talk about the house
3 in Reno.

4 When was the first time that you can recall a
5 conversation or a discussion about the design work that
6 was going to happen at Edward's house in Reno?

7 A It was probably when I flew up there. I'm
8 trying to think if Mark Paul was there at the time with
9 me. I can't remember. But either he was there or he
10 had laid the groundwork of what we were doing.

11 But I have to think that that has to be about
12 maybe 2007 or '16.

13 Q Okay.

14 A I don't remember the exact date.

15 Q And you were invited to Reno to view the house?

16 A Yes.

17 I went to view the house and to measure.

18 Q Okay.

19 And when you viewed the house, what was the
20 condition of the house? At the time, I mean in terms of
21 the construction, was it complete?

22 A I don't think so. It wasn't fully complete.

23 I know there was a lot of stuff going on. But
24 a lot of it was complete because I can't really measure
25 until all the areas that I'm measuring are complete.

1 all the paneling that I remember.

2 So I've seen (indicating) this.

3 Q Tell me about the aesthetic quality of the
4 millwork of the house, that you recall.

5 A I was amazed that somebody out in Reno would
6 put a house together like this. Because I didn't think
7 that anybody could ever buy it from them based on what
8 the quality and the expense that I assume a house like
9 this must cost.

10 Q Okay.

11 Do you make that statement in regard to the
12 general market price of Reno property?

13 A Yes, exactly.

14 Q Okay.

15 A Exactly.

16 I mean, if I saw this house in Los Angeles, I
17 would say it's -- you know, it's a top-of-the-line
18 house. I see houses like this. I couldn't believe that
19 I'd ever see a house like this in Reno.

20 Q Okay.

21 And you wouldn't expect to go out into the
22 ranch properties in Reno and walk into a ranch house
23 that has this type of finish work?

24 A I would be amazed.

25 Q Okay.

1 Q I would just like to have you check your notes
2 and give me any feedback that you have.

3 A Let me find the folder.

4 (Whereupon, a brief recess
5 was taken.)

6 MR. GILMORE: Let's go back on the record.

7 BY MR. GILMORE:

8 Q Michael, you've had a chance to look at your
9 file.

10 Can you tell us what you just said before we
11 went back on the record. The total amount of your
12 contract.

13 A It looks like this adds up to about \$90,000.

14 Q Okay.

15 And is there any way for you to estimate, based
16 on that, what the cost of the fabric would have been,
17 that you installed?

18 A Okay. We don't provide the fabric.

19 Q I understand that. But what I'm saying is, do
20 you have any idea as to what the cost of the fabric
21 might have been to the client, that you had installed?

22 Can you give us an estimate?

23 A I'm trying to remember. Those walls were silk,
24 I think. And silk can be, you know, anywhere from 70 to
25 a hundred dollars a yard. Yeah. That is silk. I mean,

1 of the designer? Is there any way for you to estimate
2 that?

3 A There isn't. But it's a lot. It's impossible
4 for me -- I'm trying to --

5 Q Is this a several-hundred-thousand-dollar
6 project or --

7 A Probably, with the fabrics -- I mean, if I'm
8 close to 80, and there is lots of yardage -- and this
9 fabric can be close to \$100 a yard -- it could easily be a
10 couple hundred.

11 Q Okay. Well . . .

12 A I'm just trying to see if I did those walls.
13 Because that . . . that may be separate. (Indicating)
14 These are all silks.

15 Let me just -- give me two minutes --

16 Q Sure.

17 A -- to see what -- if I really haven't -- see,
18 I'm wondering if someone else did that wall upholstery
19 in the passageway that's right by the theater. Oh. But
20 not necessarily. Because (indicating) here is a
21 23,000-dollar bill.

22 Q You mind if I look at it?

23 A Yeah.

24 But without me, unfortunately, looking for what
25 the backup is to that -- I'm just trying to see -- now,

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REPORTER'S CERTIFICATE

I, DENISE MILLER, CSR No. 3673, Certified
Shorthand Reporter, certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;

That the testimony of the witness, the
questions propounded, and all objections and statements
made at the time of the examination were recorded
stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney of the parties, nor financially
interested in the action.

I declare under penalty of perjury under the
laws of California that the foregoing is true and
correct.

Dated this _____ day of April, 2016.

DENISE MILLER, CSR No. 3673

EXHIBIT 10

EXHIBIT 10

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

-o0o-

CERTIFIED COPY

CONSOLIDATED NEVADA CORP.,
a Nevada corporation, and PAUL
A. MORABITO, an individual,

Plaintiffs, Case No. CV07-02764, Dept. 6

vs.

JH, INC., a Nevada corporation,
and JERRY HERBST, an individual,

Defendants.

_____/
and related cross-claims.

_____/
Pages 1 to 65, inclusive.

DEPOSITION OF DARRYL NOBLE

Wednesday, April 27, 2011
Reno, Nevada

REPORTED BY: CHRISTINA AMUNDSON
CCR #641 (Nevada)
CSR #11883 (California)

MOLEZZO REPORTERS - 775.322.3334

Superpumper 001725

1 A The cost rank, yes.

2 Q Okay. And how do you -- well, first of all, what
3 are the options? What can you put in in the cost rank spot?

4 A They range from one being below and up to
5 excellent.

6 Q Okay. So where does this fall in the spectrum as
7 high value for --

8 A That's actually higher than what I could put into
9 the system. It only goes so high.

10 Q Okay.

11 A So then what I had to do is apply another factor at
12 the end of it that said this value is higher than the
13 excellent, basically. The Washoe County Assessor's Office
14 also applies those same factors. High value one, two, three
15 and four is the highest of the high value homes, basically.

16 Q Okay.

17 A And that I determined from the inspection, the
18 interior finishes of the home had, you know, really expensive
19 finishes, blue granite and high-quality carpeting and all
20 those finishes.

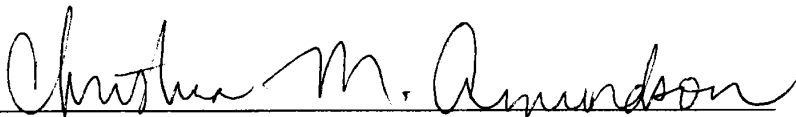
21 Q When you're making that determination as to what
22 the quality is, is there an objective set of criteria that
23 you apply as a residential appraiser or is -- have some
24 discretion on your end? Can you describe to me how you go
25 through that process?

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)
4

5 I, CHRISTINA MARIE AMUNDSON, a Certified Court Reporter
6 in and for the State of Nevada, do hereby certify:

7 That I was personally present for the purpose of acting
8 as Certified Court Reporter in the matter entitled herein;
9 that the witness was by me duly sworn;

10 That said transcript which appears hereinbefore was
11 taken in verbatim stenotype notes by me and thereafter
12 transcribed into typewriting as herein appears to the best of
13 my knowledge, skill, and ability and is a true record
14 thereof.

15 
16

17 Christina Marie Amundson, CCR #641 (NV), CSR #11883, (CA)
18

19 -oOo-
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EXHIBIT 11

EXHIBIT 11



Online Banking

Checking : Check Image

Check Image:

EDWARD BAYUK 2356
10-40/228
1007
6/01/10
PAID TO THE ORDER OF Paul Morabito \$ 12,763.00
Twelve Thousand Seven Hundred Sixty Three and 00/100
Bank of America Customer Service
370 Los Olivos Farming
000012763000

MORABITO (341).006941

2885



Online Banking

Checking Check Image

Check Image:

07-1-10
BANK OF AMERICA, N.A.
6360850048
4500-14
1225-001
97634

A handwritten signature in black ink, appearing to be a stylized "P" or "B".

MORABITO (341).006942

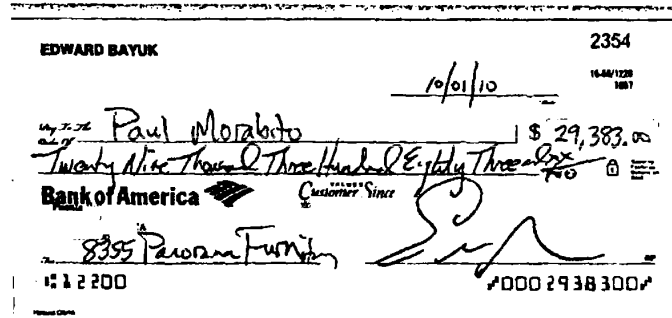
2886



Online Banking

Checking - : Check Image

Check Image:



MORABITO (341).006943

2887



Online Banking

Checking - : Check Image

Check Image:

6360850619
4580-11
12/22/20

97640

A handwritten signature in black ink, appearing to be a stylized "D" or "O" followed by a flourish.

MORABITO (341).006944

2888



Online Banking

Checking · Check Image

Check Image:

EDWARD BAYUK		2357
10/01/10		10-01/10 1007
Paul Morabito	\$ 31,284.00	
Thirty One Thousand Two Hundred Eighty Four and 00/100		
Bank of America	Customer Since	
371 El Camino Del Mar	CA	
121	0003128400	

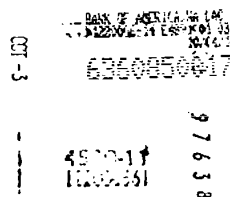
MORABITO (341).006945

2889



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MORABITO (341).006946

2890



Online Banking

Checking - Check Image

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EDWARD BAYUK		2355
10/01/10		10-00/1225 1007
4475.76 PAID TO	Paul Morabito	\$ 44,756.00
Forty Four Thousand Seven Hundred Fifty Six and 00/100		
Bank of America		Customer Since
1254 Mary Fleming Circle Fort Lauderdale, FL 33304		
⑆ 62200		⑆ 00044756007

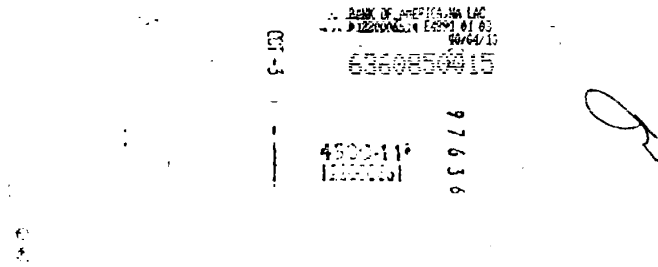
MORABITO (341).006947



Online Banking

Checking | Check Image

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MORABITO (341).006948

EXHIBIT 12

EXHIBIT 12



14TH STREET CARD LOCK FACILITY
205 14th Street
Elko, Elko County, Nevada 89801
CBRE File No. 10-275LV-0057
Client Reference No. 10-000330-03-1

Summary Appraisal Report

Prepared For:

Bryan Keen
BBVA COMPASS
40 N.E. Loop 410, Suite 515
San Antonio, Texas 78216

VALUATION & ADVISORY SERVICES

CBRE
CB RICHARD ELLIS

MORABITO (341).002548



6980 Sierra Center Parkway, Suite 160
Reno, NV, 89511

T (775) 823-6931
F (775) 356-6181

www.cbre.com

February 26, 2010

Bryan Keen
BBVA COMPASS
40 N.E. Loop 410, Suite 515
San Antonio, Texas 78216

RE: Appraisal of 14th Street Card Lock Facility
205 14th Street
Elko, Elko County, Nevada
CBRE File No 10-275LV-0057
Client Reference No 10-000330-03-1

Dear Mr. Keen:

At your request and authorization, CB Richard Ellis (CBRE) has prepared an appraisal of the market value of the referenced property. Our analysis is presented in the following Summary Appraisal Report.

The subject is an un-manned card lock fuel facility along with a small office building. The improvements are situated on a 0.253 acre parcel identified as 205 14th Street, Elko, Nevada. Site and fueling improvements included paving, lighting, fuel islands, fuel pumps and underground fuel storage tanks. The site is located in central Elko across from a bulk fuel facility.

Based on the analysis contained in the following report, the market value of the subject is concluded as follows:

MARKET VALUE CONCLUSION			
Appraisal Premise	Interest Appraised	Date of Value	Value Conclusion
As Is	Fee Simple Estate	February 23, 2010	\$500,000
Compiled by CBRE			

Data, information, and calculations leading to the value conclusion are incorporated in the report following this letter. The report, in its entirety, including all assumptions and limiting conditions, is an integral part of, and inseparable from, this letter.

MORABITO (341).002549

Bryan Keen
February 26, 2010
Page 2


The following appraisal sets forth the most pertinent data gathered, the techniques employed, and the reasoning leading to the opinion of value. The analyses, opinions and conclusions were developed based on, and this report has been prepared in conformance with, our interpretation of the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice (USPAP), the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. It also conforms to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and Title XI Regulations.

The report is for the sole use of the client; however, client may provide only complete, final copies of the appraisal report in its entirety (but not component parts) to third parties who shall review such reports in connection with loan underwriting or securitization efforts. The appraiser is not required to explain or testify as to appraisal results other than to respond to the client for routine and customary questions. Please note that our consent to allow an appraisal report prepared by CBRE or portions of such report, to become part of or be referenced in any public offering, the granting of such consent will be at our sole discretion and, if given, will be on condition that we will be provided with an Indemnification Agreement and/or Non-Reliance letter, in a form and content satisfactory to us, by a party satisfactory to us. We do consent to your submission of the reports to rating agencies, loan participants or your auditors in its entirety (but not component parts) without the need to provide us with an Indemnification Agreement and/or Non-Reliance letter.

CBRE hereby expressly grants to Client the right to copy this report and distribute it to other parties in the transaction for which this report has been prepared, including employees of Client, other lenders in the transaction, and the borrower, if any. It has been a pleasure to assist you in this assignment. If you have any questions concerning the analysis, or if CBRE can be of further service, please contact us.

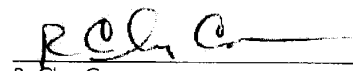
Respectfully submitted,

CBRE - VALUATION & ADVISORY SERVICES



Jason Buckholz
Real Estate Analyst
NV Certified General Appraiser #A.0007369-CG

Phone: (775) 823-6931
Fax: (775) 823-6990
Email: jason.buckholz@cbre.com



R. Clay Carson
Managing Director
NV Certified General Appraiser #A.0003310-CG

Phone: (702) 933-6761
Fax: (702) 933-6766
Email: clay.carson@cbre.com


CBRE
CB RICHARD ELLIS

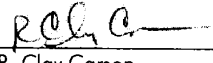
MORABITO (341).002550

CERTIFICATION OF THE APPRAISAL

We certify to the best of our knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are our personal, impartial and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in or bias with respect to the property that is the subject of this report and have no personal interest in or bias with respect to the parties involved with this assignment.
4. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
5. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
6. This appraisal assignment was not based upon a requested minimum valuation, a specific valuation, or the approval of a loan.
7. Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal, as well as the requirements of the State of Nevada.
8. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.
9. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
10. Jason Buckholz has while Clay Carson not made a personal inspection of the property that is the subject of this report.
11. No one provided significant real property appraisal assistance to the persons signing this report.
12. Valuation & Advisory Services operates as an independent economic entity within CBRE. Although employees of other CBRE divisions may be contacted as a part of our routine market research investigations, absolute client confidentiality and privacy are maintained at all times with regard to this assignment without conflict of interest.


Jason Buckholz
NV Certified General Appraiser #A.0007369-CG


R. Clay Carson
NV Certified General Appraiser #A.0003310-CG

CBRE
CB RICHARD ELLIS

MORABITO (341).002551



LOVELOCK CARD LOCK FACILITY
500 Industrial Way
Lovelock, Pershing County, Nevada 89419
CBRE File No. 10-275LV-0056
Client Reference No. 10-000330-02-1

Summary Appraisal Report

Prepared For:

Bryan Keen
BBVA COMPASS
40 N.E. Loop 410, Suite 515
San Antonio, Texas 78216

VALUATION & ADVISORY SERVICES

CBRE
CB RICHARD ELLIS

MORABITO (341).002552



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F (775) 356-6181

www.cbre.com

February 26, 2010

Bryan Keen
BBVA COMPASS
40 N.E. Loop 410, Suite 515
San Antonio, Texas 78216

RE: Appraisal of Lovelock Card Lock Facility
500 Industrial Way
Lovelock, Pershing County, Nevada
CBRE File No 10-275LV-0056
Client Reference No 10-000330-02-1

Dear Mr. Keen:

At your request and authorization, CB Richard Ellis (CBRE) has prepared an appraisal of the market value of the referenced property. Our analysis is presented in the following Summary Appraisal Report.

The subject is an un-manned card lock fuel facility along with a small warehouse building. The improvements are situated on a 1.0 acre parcel identified as 500 Industrial Way, Lovelock, Nevada. Site and fueling improvements included paving, lighting, fuel islands, fuel pumps and above grade fuel storage tanks. The site is located in central Lovelock with Interstate 80 exposure.

Based on the analysis contained in the following report, the market value of the subject is concluded as follows:

MARKET VALUE CONCLUSION			
Appraisal Premise	Interest Appraised	Date of Value	Value Conclusion
As Is	Fee Simple Estate	February 23, 2010	\$565,000
Compiled by CBRE			

Data, information, and calculations leading to the value conclusion are incorporated in the report following this letter. The report, in its entirety, including all assumptions and limiting conditions, is an integral part of, and inseparable from, this letter.

MORABITO (341).002553

Bryan Keen
February 26, 2010
Page 2


The following appraisal sets forth the most pertinent data gathered, the techniques employed, and the reasoning leading to the opinion of value. The analyses, opinions and conclusions were developed based on, and this report has been prepared in conformance with, our interpretation of the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice (USPAP), the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. It also conforms to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and Title XI Regulations.

The report is for the sole use of the client; however, client may provide only complete, final copies of the appraisal report in its entirety (but not component parts) to third parties who shall review such reports in connection with loan underwriting or securitization efforts. The appraiser is not required to explain or testify as to appraisal results other than to respond to the client for routine and customary questions. Please note that our consent to allow an appraisal report prepared by CBRE or portions of such report, to become part of or be referenced in any public offering, the granting of such consent will be at our sole discretion and, if given, will be on condition that we will be provided with an Indemnification Agreement and/or Non-Reliance letter, in a form and content satisfactory to us, by a party satisfactory to us. We do consent to your submission of the reports to rating agencies, loan participants or your auditors in its entirety (but not component parts) without the need to provide us with an Indemnification Agreement and/or Non-Reliance letter.

CBRE hereby expressly grants to Client the right to copy this report and distribute it to other parties in the transaction for which this report has been prepared, including employees of Client, other lenders in the transaction, and the borrower, if any. It has been a pleasure to assist you in this assignment. If you have any questions concerning the analysis, or if CBRE can be of further service, please contact us.


Respectfully submitted,

CBRE - VALUATION & ADVISORY SERVICES



Jason Buckholz
Real Estate Analyst
NV Certified General Appraiser #A.0007369-CG

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Fax: (775) 823-6990
Email: jason.buckholz@cbre.com



R. Clay Carson
Managing Director
NV Certified General Appraiser #A.0003310-CG

Phone: (702) 933-6761
Fax: (702) 933-6766
Email: clay.carson@cbre.com



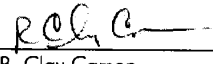
MORABITO (341).002554

CERTIFICATION OF THE APPRAISAL

We certify to the best of our knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are our personal, impartial and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in or bias with respect to the property that is the subject of this report and have no personal interest in or bias with respect to the parties involved with this assignment.
4. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
5. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
6. This appraisal assignment was not based upon a requested minimum valuation, a specific valuation, or the approval of a loan.
7. Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal, as well as the requirements of the State of Nevada.
8. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.
9. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
10. Jason Buckholz has while Clay Carson not made a personal inspection of the property that is the subject of this report.
11. No one provided significant real property appraisal assistance to the persons signing this report.
12. Valuation & Advisory Services operates as an independent economic entity within CBRE. Although employees of other CBRE divisions may be contacted as a part of our routine market research investigations, absolute client confidentiality and privacy are maintained at all times with regard to this assignment without conflict of interest.


Jason Buckholz
NV Certified General Appraiser #A.0007369-CG


R. Clay Carson
NV Certified General Appraiser #A.0003310-CG

CBRE
CB RICHARD ELLIS

MORABITO (341).002555



MT. CITY HWY CARD LOCK FACILITY
920 Mt. City Highway
Elko, Elko County, Nevada 89801
CBRE File No. 10-275LV-0055
Client Reference No. 10-000330-01-1

Summary Appraisal Report

Prepared For:

Bryan Keen
BBVA COMPASS
40 N.E. Loop 410, Suite 515
San Antonio, Texas 78216

VALUATION & ADVISORY SERVICES

CBRE
CB RICHARD ELLIS

MORABITO (341).002556



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Reno, NV, 89511

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F (775) 356-6181

www.cbre.com

February 26, 2010

Bryan Keen
BBVA COMPASS
40 N.E. Loop 410, Suite 515
San Antonio, Texas 78216

RE: Appraisal of Mt. City Hwy Card Lock Facility
920 Mt. City Highway
Elko, Elko County, Nevada
CBRE File No 10-275LV-0055
Client Reference No 10-000330-01-1

Dear Mr. Keen:

At your request and authorization, CB Richard Ellis (CBRE) has prepared an appraisal of the market value of the referenced property. Our analysis is presented in the following Summary Appraisal Report.

The subject is an un-manned card lock fuel facility. The fueling improvements are situated on a 0.245 acre parcel identified as 920 Mountain City Highway, Elko, Nevada. Site and fueling improvements included paving, lighting, fuel islands, fuel pumps and underground fuel storage tanks. The site is located in near proximity to Interstate 80 in Southwest Elko.

Based on the analysis contained in the following report, the market value of the subject is concluded as follows:

MARKET VALUE CONCLUSION			
Appraisal Premise	Interest Appraised	Date of Value	Value Conclusion
As Is	Fee Simple Estate	February 23, 2010	\$550,000
Compiled by CBRE			

Data, information, and calculations leading to the value conclusion are incorporated in the report following this letter. The report, in its entirety, including all assumptions and limiting conditions, is an integral part of, and inseparable from, this letter.

MORABITO (341).002557

Bryan Keen
February 26, 2010
Page 2


The following appraisal sets forth the most pertinent data gathered, the techniques employed, and the reasoning leading to the opinion of value. The analyses, opinions and conclusions were developed based on, and this report has been prepared in conformance with, our interpretation of the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice (USPAP), the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. It also conforms to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and Title XI Regulations.

The report is for the sole use of the client; however, client may provide only complete, final copies of the appraisal report in its entirety (but not component parts) to third parties who shall review such reports in connection with loan underwriting or securitization efforts. The appraiser is not required to explain or testify as to appraisal results other than to respond to the client for routine and customary questions. Please note that our consent to allow an appraisal report prepared by CBRE or portions of such report, to become part of or be referenced in any public offering, the granting of such consent will be at our sole discretion and, if given, will be on condition that we will be provided with an Indemnification Agreement and/or Non-Reliance letter, in a form and content satisfactory to us, by a party satisfactory to us. We do consent to your submission of the reports to rating agencies, loan participants or your auditors in its entirety (but not component parts) without the need to provide us with an Indemnification Agreement and/or Non-Reliance letter.

CBRE hereby expressly grants to Client the right to copy this report and distribute it to other parties in the transaction for which this report has been prepared, including employees of Client, other lenders in the transaction, and the borrower, if any. It has been a pleasure to assist you in this assignment. If you have any questions concerning the analysis, or if CBRE can be of further service, please contact us.


Respectfully submitted,

CBRE - VALUATION & ADVISORY SERVICES



Jason Buckholz
Real Estate Analyst
NV Certified General Appraiser #A.0007369-CG

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Fax: (775) 823-6990
Email: jason.buckholz@cbre.com



R. Clay Carson
Managing Director
NV Certified General Appraiser #A.0003310-CG

Phone: (702) 933-6761
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Email: clay.carson@cbre.com


CBRE
CB RICHARD ELLIS

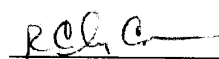
MORABITO (341).002558

CERTIFICATION OF THE APPRAISAL

We certify to the best of our knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are our personal, impartial and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in or bias with respect to the property that is the subject of this report and have no personal interest in or bias with respect to the parties involved with this assignment.
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5. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
6. This appraisal assignment was not based upon a requested minimum valuation, a specific valuation, or the approval of a loan.
7. Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal, as well as the requirements of the State of Nevada.
8. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.
9. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
10. Jason Buckholz has while Clay Carson not made a personal inspection of the property that is the subject of this report.
11. No one provided significant real property appraisal assistance to the persons signing this report.
12. Valuation & Advisory Services operates as an independent economic entity within CBRE. Although employees of other CBRE divisions may be contacted as a part of our routine market research investigations, absolute client confidentiality and privacy are maintained at all times with regard to this assignment without conflict of interest.


Jason Buckholz
NV Certified General Appraiser #A.0007369-CG


R. Clay Carson
NV Certified General Appraiser #A.0003310-CG

CBRE
CB RICHARD ELLIS

MORABITO (341).002559

Seller: SUPERPUMPER PR RTIES, LLC
 Property: 920 Mountain City Highway, Elko, NV

DESCRIPTION	DEBITS	CREDITS
TOTAL CONSIDERATION		1,470,000.00
PRORATIONS/ADJUSTMENTS:		
August Rent-Cedar @ 4,303.16 per 1 month(s) 8/26/2011 to 9/01/2011	717.19	
August Rent-Industrial Parkway @ 4,303.16 per 1 month(s) 8/26/2011 to 9/01/2011	717.19	2151.57
August Rent 14th & 15th Street @ 4,303.16 per 1 month(s) 8/26/2011 to 9/01/2011	717.19	
TITLE CHARGES		
Sub-Escrow Fee: First American Title Company	125.00	
Clark County Transfer Tax \$3.90 per \$1000.00: First American Title Company	3,823.95	
Wire Fee/Overnight Delivery (Payoff): First American Title Company	50.00	
Owner's Premium-for Cedar Property: First American Title Company	1,701.00	
Owner's Premium-15th Street: First American Title Company	1,358.70	
Owner's Premium-14th Street: First American Title Company	898.60	
Owners Premium for Industrial Prkwy: First American Title Company	1,701.00	
Record Reconveyance Post Closing: First American Title Company	75.00	
ESCROW CHARGES TO: Citywide Escrow Services, Inc.		
Escrow Fee	3,061.50	
Administration Fee	25.00	
Messenger Fee-Fed Ex Fees	50.00	
LOAN PAYOFF: BBVA Compass		
Principal Balance	974,869.29	
Interest Per Diem From 8/11/2011 To 8/29/2011, 18 Days, @ 108.3200	1,949.76	
Current Interest Due	216.64	
Total Loan Payoff	977,035.69	
ADDITIONAL DISBURSEMENTS:		
Document Transfer Tax: Pershing County Recorder-Auditor	1,911.00	
BALANCE DUE YOU	476,031.95	
TOTALS	1,470,000.00	1,470,000.00

Selling Expense 14,780⁷⁵

Open POSTED TO Books 476,292⁶³
 ✓ From Escrow 476,031⁹⁵

Cost to Sell Adjustment < 260.64 >

I HEREBY CERTIFY THAT THIS IS A TRUE AND
 CORRECT COPY OF THE ORIGINAL THEREOF.
 CITYWIDE ESCROW SERVICES, INC.

BY [Signature]

14520¹¹

THIS IS A FINAL CLOSING STATEMENT

MORABITO (341).002560

EXHIBIT 13

EXHIBIT 13



Bank of America



H

PAGE 1 OF 1
BANK OF AMERICA, N.A.
WIRE TRANSFER ADVICE
1 FLEET WAY
SCRANTON, PA
PA6-580-04-05
18507

WX 0000 000 433 013544 0001 AT 0.357
SALVATORE MORABITO
AKA SAM MORABITO
3983 S MCCARRAM BLVD # 104
RENO NV 89502-7510

DATE: 10/01/10
DIRECT INQUIRIES TO:
800.729.9473 OPTION 2
ACCOUNT: ~~XXXXXXXXXX~~

THE FOLLOWING WIRE WAS CREDITED TODAY:

USD AMOUNT \$146,127.00

TRANSACTION REF: 2010100100347015
SENDER'S REF: 1010015106011740
IMAD: 201010010687001C011740
ORIGINATOR: MR PAUL A. MORABITO
ORIGINATOR'S BANK: BANK OF MONTREAL
SENDING BANK: MACHOVIA NY INTL
BENEFICIARY: SALVATORE MORABITO

SERVICE REF: 011740
RELATED REF: OP321338723
ID: 32134513982
ID: 80FMCAM2
ID: 026005092
ID: 1114560091

PAYMENT DETAIL: CONTACT YOLANDA SMITH OR KAREN FALEN (760)636-7508 /REC/YR 73 525 EI P
ASEO SUITE 2504 PALM DESERT CA

THE FOLLOWING WIRE WAS DEBITED TODAY:

USD AMOUNT \$25.00

TRANSACTION REF: 2010100100346507
RELATED REF: TS20101001045140
INSTRUCTING BANK: TRUSTMEB
BENEFICIARY: LIPPES MATHIAS WEXLER FRIEDMAN LLP
BENEFICIARY'S BANK: MANUFACTURERS AND TRADERS BANK

SERVICE REF: 017060
IMAD: 201010010687HU1R017060
ID: TRMB
ID: 15210958
ID: 022000046

PAYMENT DETAIL: CLIENT TRUST ACCOUNT 15210958 /ACC CLIENT TRUST ACCOUNT 15210958

SP
Properties
Sale
SP
Purchase
Balance
Superpumper
Properties

10/01/2010

Superpumper 000948

2908

EXHIBIT 14

EXHIBIT 14

CHRISTIAN MARK LOVELACE

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

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

Plaintiff,

- vs - Case No. CV13-02663

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

Defendants.

Examination before trial of CHRISTIAN
MARK LOVELACE, taken pursuant to Notice, at Regus
Business Center, 50 Fountain Plaza, Suite 1400,
Buffalo, New York, on October 21, 2015, commencing
at 2:51 p.m., before MARY E. BLACK, Notary Public.

1 Morabito's interest in Superpumper to Snowshoe
2 Petroleum, Inc., that took place in September of
3 2010?

4 A. I am.

5 Q. How are aware of that?

6 A. I communicated with Paul Morabito
7 and/or the other shareholders of Snowshoe Petroleum
8 and assisted in drafting documents for the
9 transaction.

10 Q. When did you become involved in helping
11 with that transaction?

12 A. On or about maybe August of 2010.

13 Q. Do you recall how you became involved
14 in working on the transaction?

15 A. I don't exactly, but I would imagine
16 e-mail and phone calls.

17 Q. From who?

18 A. From Dennis Vacco directing the client
19 work.

20 Q. You talked to Paul Morabito --

21 A. I did.

22 Q. -- you said?

23 Did you talk to -- who else did you talk to
24 about the -- let me back up. I'm going to refer to
25 the actual sale of Superpumper to Snowshoe as the

1 in any area?

2 A. A few.

3 Q. What are those areas?

4 A. Mergers, acquisitions, franchise, and I
5 have a large book of debt collection and debt buyer
6 national clients.

7 Q. Were -- do you recall how the purchase
8 price for the sale of Paul Morabito's interest in
9 Superpumper was determined?

10 A. The purchase price was a Matrix
11 valuation. I think we had rough estimates of what
12 the company was worth, but we wanted to be sure
13 with a third-party, arm's-length valuation, so we
14 engaged Matrix which gave us some preliminary
15 numbers. And we went with some preliminary numbers
16 to at least draft the stock purchase agreement and
17 do the transaction, close the transaction, with
18 obviously the outlier that there would be an uptick
19 when the actual valuation was finalized by Matrix.
20 And then when we finally got the number, we
21 adjusted it with the debt and the risk discounts
22 and the current situation at the time with Compass
23 Bank.

24 Q. Okay. I'm going to hand you what has
25 been marked as Exhibit 13. Do you recognize

1 Exhibit 13?

2 A. I do.

3 Q. Did you prepare that chart in Exhibit
4 13?

5 A. I drafted that chart.

6 Q. And the chart that I'm referring to is
7 the analysis of Superpumper acquisition?

8 A. Yes.

9 Q. Okay. The first number, is that the
10 number that you received from Matrix?

11 A. Yes.

12 Q. Okay. I don't got my copy in front of
13 me. The Compass term loan, what does that refer
14 to?

15 A. The Compass term loan was a -- well,
16 there's two loans. And I think that term loan was
17 a mistake because I've looked at it since. I think
18 that the Compass term loan is supposed to be the
19 line, the Compass line, because that's about right,
20 the 1.6 was the line.

21 The term loan was I think a \$3 million loan
22 at the time -- that was fully drawn on at the time
23 of the acquisition, so that's my recollection of
24 that number.

25 Q. Do you know why the Compass term loan

1 is noted separately in that chart?

2 A. Because it wasn't taken into account by
3 Matrix from what I remember, and I don't know why.

4 Q. You don't recall why it was taken?

5 A. No, why it wasn't taken into account by
6 Matrix.

7 Q. Okay. On the bottom of the first set
8 of numbers there is a risk discount of 35 percent.

9 Do you see that?

10 A. I do.

11 Q. What does that refer to?

12 A. It's -- well, a risk discount is a
13 normalizing number traditionally used with
14 valuations and closely held companies to come up
15 with, you know, what the parties feel the actual
16 value is based on outlying risks. You know,
17 there's always some sort of risk taken into
18 account, whether it be a minority risk or
19 traditional ones.

20 At the time, the risk discount was a
21 combination of the defaults with the Compass credit
22 facilities, the term and the line, there's defaults
23 on both. Compass Bank was well aware of the
24 defaults. It was also a factor of the present
25 situation with Paul Morabito in October.

1 Q. What do you mean by that?

2 A. Well, that he had litigation and
3 judgments assessed against him, and the fact of
4 buying the percentage of the company at the time
5 was a risk assessment of, you know, do we want to
6 separate -- if we separate ourselves from Paul
7 Morabito, there's always going to be risk.

8 Q. I don't entirely understand what you
9 mean by that. Could you explain that further?

10 A. Sure. Because of a judgment assessed
11 against Paul and because the company was already in
12 default, Paul had drawn on the term loan, right,
13 and money was with Paul. We're probably not going
14 to get that back because of the litigation. Sam
15 and Edward would likely have to capitalize the
16 company in order to make the company good on all of
17 its defaults with Compass Bank. The guaranties for
18 Compass Bank, there's only one, Paul. In order to
19 do this the right way, where Compass would put them
20 in good graces, Edward and Sam would have to sign
21 on.

22 So all of that taken together, because of
23 Paul's situation of his litigation, right, the
24 litigation itself is a massive default on Compass
25 and the guaranty, so Edward and Sam wouldn't have

1 to take on a guaranty.

2 The risk was that Compass would pull
3 everything, that we wouldn't get the 939 back, and
4 the discount was appropriate to the -- to the risk
5 of the company failing and the -- because if that
6 line of credit was canceled, the way that the
7 business of Superpumper operated, it collapses,
8 because you've got to have that bridge credit
9 facility.

10 Q. So how did you come up with the 35
11 percent discount rate?

12 A. Yeah. And from what I recall, the 35
13 percent was a number that we had discussed with
14 different accountants, including Matrix on a call.
15 And, you know, standard discounts in the industry
16 range from 10 -- 10 to 40 percent, depending on the
17 combination of discounts and what they are. And at
18 the time the 35 percent was, I think, a group
19 discussion in what everybody felt was fair. And I
20 think it lined up with what we felt Edward and Sam
21 were out because of the bank defaults.

22 Q. What do you mean that they were out?

23 A. Well, you know, Paul took out 939. You
24 know, if we lost the line of credit, we'd lose
25 about 1.5 to \$2 million. It was a big, big risk.

1 account at the time of the Superpumper transaction?

2 A. Of course not.

3 Q. Okay. What is -- how would that relate
4 to the sale of his -- of Mr. Morabito's equity
5 interest in Superpumper?

6 A. It wouldn't.

7 Q. Okay. Why do you say that it wouldn't?

8 A. Because the stock basis doesn't have
9 anything to do with the value of stock in selling
10 the company. It it only has effect for tax
11 purposes and to identify a capital account for the
12 stockholder.

13 If the stockholder put 5.5 million into a
14 company and then the following year it tanked
15 because the company, the business failed, the
16 product wasn't want anymore, the company is still
17 not worth 5.5 million. It's only a tax basis.

18 Q. Okay. Did you have any involvement in
19 drafting the notes for the Superpumper transaction?

20 A. Yes.

21 Q. And by notes, I refer to the note from
22 the Snowshoe or -- I'm sorry -- the note from
23 Paul -- I'm sorry -- the note from Snowshoe to Paul
24 Morabito.

25 A. Yes.

1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

16

17

18

Mary E. Black

19

MARY E. BLACK,
Notary Public.

20

21

22

23

24

25

EXHIBIT 15

EXHIBIT 15

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 Mathias Wexler Friedman LLP

665 Main Street, Suite 300
Buffalo, New York 14203-1425
Tel: (716) 853-5100
Fax: (716) 853-5199
E-Mail: clovelace@lippes.com
Web: <http://www.lippes.com>

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.

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EXHIBIT 16

EXHIBIT 16

SALVATORE R. MORABITO

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

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

Plaintiff,

- vs - Case No. CV13-02663

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

Defendants.

Examination before trial of SALVATORE R.
MORABITO, Defendant, taken pursuant to Notice, at
Regus Business Center, 50 Fountain Plaza, Suite
1400, Buffalo, New York, on October 21, 2015,
commencing at 9:29 a.m., before MARY E. BLACK,
Notary Public.

1 A. Oh, from the time we took the money it
2 was always intended to be either used for this new
3 entity or paid back immediately. If we're not
4 going to use it for an entity, we weren't going to
5 take \$3 million out for nothing.

6 Q. Did it come out approximately a million
7 dollars to each of you?

8 A. \$939,000 apiece we took.

9 Q. And what happened with the \$939,000
10 that went to you?

11 A. I put it in my bank account.

12 Q. And then what happened to it?

13 A. I took the \$639,000 of it and Edward
14 took \$639,000 of his 939, and we used it to put it
15 back into the line of credit on or about
16 September 28th.

17 Q. And then what happened --

18 A. So we reduced that 2.9 line of credit
19 to now it's 1.6 million, and at that point we're
20 still available credit of 2.5 million, so now we
21 can still operate the company.

22 Q. Do you know what Paul Morabito did with
23 the money that he received?

24 A. He kept it.

25 Q. Do you know what he did with it,

1 keeping it?

2 A. Well, it became a note to Superpumper.
3 That was the formation of the 900 -- approximately
4 939 or 9 something note to Superpumper.

5 Q. If you look down on the analysis of
6 Superpumper' acquisition, there is a risk discount
7 of 35 percent?

8 A. Correct.

9 Q. What is your understanding of what that
10 risk discount is?

11 A. It's a risk discount that was applied
12 by primarily Christian and his firm, based on the
13 fact that we were in -- we were purchasing a
14 company that was in default with the bank which was
15 on the verge of having its line of credit shut
16 down, on the verge of being shut down. And also,
17 in my opinion, just that Superpumper is a good
18 company but it's also a company that's very
19 susceptible to competition. So it's not your
20 typical convenience store in that you -- it has
21 very high rents, very high rents, and to make those
22 rents the business is predicated on high gas
23 margins, and the business is extremely susceptible
24 to competition.

25 And I tried to explain that to Christian and

1 Q. Do you know if Edward Bayuk made a
2 payment of the same amount at the same time?

3 THE WITNESS: Yes, I believe he did. We
4 both made identical payments.

5 The following was marked for Identification:

6 EXHIBIT 22 Document Bates Stamped
7 Superpumper 000605.

8 BY MS. PILATOWICZ:

9 Q. You've been handed Exhibit 22, but I
10 have one more question on 21 before we move on.

11 A. Okay.

12 Q. Where did you obtain those funds to
13 make that payment on September 28th, the 517,000?

14 A. Well, they came from my personal Bank
15 of Montreal account, BMO Harris Bank.

16 Q. Did they come from the \$939,000 of
17 Superpumper?

18 A. No, they came from my own funds.

19 Q. Okay. You've been handed what's been
20 marked Exhibit 22.

21 A. Yes.

22 Q. Do you recognize Exhibit 22?

23 A. Yes.

24 Q. What is Exhibit 22?

25 A. That's a wire from again my bank of

1 Montreal, BMO Harris account, directly into
2 Superpumper, Inc.'s BBVA Compass, Phoenix, Arizona
3 account.

4 **Q. What was this payment for?**

5 A. That was the first loan to business
6 that reduced the line of credit which was at
7 roughly \$2.9 million to get it down to a reasonable
8 amount where we could still operate, so it was a
9 reduction in the line of credit. And this was my
10 half cash injection. Edward I believe wired the
11 exact same amount of money into Compass Bank.

12 **Q. And it was structured as a loan from**
13 **you to Superpumper?**

14 A. I'm not sure if it was structured as a
15 loan. It was structured as a capital injection.

16 But I can tell you that the funds did come
17 from the 939,000 that we took off that term loan,
18 so that was partial payback of that term loan money
19 that we all took the 900 and whatever thousand
20 dollars so that we each put 659 back into it, into
21 the company, so now Edward and I are recipients of
22 roughly \$300,000 each of that term loan.

23 **Q. Have you been repaid the 659,000?**

24 A. No.

25 **Q. Were there any documents between you**

1 and Superpumper regarding the 659,000?

2 A. Well, not set up formally as a loan,
3 but I have a capital -- Edward and I have a capital
4 contribution account which is one of the documents
5 I supplied to you in all the documents I supplied
6 last week. So Edward and I, we have a running tab
7 of the money that we put into the company.

8 Q. Is it expected that this money is to be
9 repaid?

10 A. Actually, you know what, I think --
11 believe -- I think this money actually is not
12 credited toward our capital account. I think it
13 was credited as a repayment of the funds. In other
14 words, we're basically giving -- I believe the way
15 this was booked is that Edward and I are giving the
16 money back that we took from the loan, so it was
17 not credited toward us. So we're never going to
18 get this 659 back, that particular 659 back. It's
19 gone into the company.

20 Q. Okay. The writing -- is that your
21 handwriting on top?

22 A. Yeah.

23 Q. So what did you mean when you wrote,
24 first loan to business?

25 A. Well, whenever I inject money into the

1 company, I always call it a loan. And this is
2 probably incorrectly termed. It's -- this is a
3 payback of the line of credit or -- sorry --
4 payback of the term loan to be put against the
5 letter of credit -- line of credit.

6 Q. Why do you always call money you put
7 into the company a loan?

8 A. Because companies are usually funded on
9 their own, and any injection you put of your
10 capital into the company is a loan to the business.
11 But again this is probably mistermmed. That is a
12 payback of a loan. It's payback of a draw on the
13 note, on the term note. So that money, paying it
14 back.

15 Q. And you haven't been repaid that money?

16 A. No.

17 Q. The \$659,000 that went into the
18 business from that payment you haven't received
19 back?

20 THE WITNESS: No, no.

21 The following was marked for Identification:

22 EXHIBIT 23 Document Bates Stamped

23 Superpumper 000607.

24 BY MS. PILATOWICZ:

25 Q. You have been handed what's been marked

1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

16

17

18

19

Mary E. Black

20

MARY E. BLACK,
Notary Public.

21

22

23

24

25

EXHIBIT 17

EXHIBIT 17

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

EXHIBIT 18

EXHIBIT 18

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

EXHIBIT 19

EXHIBIT 19

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

EXHIBIT 20

EXHIBIT 20

PA 603



Superpumper



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PAGE 1 OF 1
BANK OF AMERICA, N.A.
WIRE TRANSFER ADVICE
1 FLEET WAY
SCRANTON, PA
FA6-580-04-05
18507

|||||
WX 0000 000 661 025185 #001 AT 0.357
EDWARD BAYUK

[REDACTED]

DATE: 09/29/10
[REDACTED]

THE FOLLOWING WIRE WAS DEBITED TODAY:

USD AMOUNT \$517,547.20

TRANSACTION REF: [REDACTED]
RELATED REF: [REDACTED]
INSTRUCTING BANK: [REDACTED]
BENEFICIARY: LIPES MATHIAS WEXLER FRIEDMAN LLP
BENEFICIARY'S BANK: MANUFACTURERS AND TRADERS BANK

SERVICE REF: [REDACTED]
IMAD: [REDACTED]
ID: [REDACTED]
ID: [REDACTED]
ID: [REDACTED]

PAYMENT DETAIL: [REDACTED]

Superpumper 001882

Sept 28 2010

SAM → LIPPES
FIRST PAYMENT TO PAUL

BMO Bank of Montreal

Regulation for Wire Transfer

29/SEP/2010

Serial Number	321338393	Posting Date	29/SEP/2010	Amount USD	517,547.20
ORDERING CUSTOMER					
Name	MR SALVATORE ROBERT MORABITO				
Source of Funds	ACCOUNT				
QUOTED RATE & EXCHANGE	N/A				
BENEFICIARY					
Name	LIPPES MATHIAS WEXLER FRIEDMAN LLP				
Address	86 MAIN ST SUITE 300				
City	BUFFALO				
State	NEW YORK				
Country	UNITED STATES				
ZIP Code	14203				
BENEFICIARY BANK					
Bank Name	BANK OF AMERICA				
Address	ONE FOUNTAIN PLAZA				
City	BUFFALO				
State	NEW YORK				
Country	UNITED STATES				
ZIP Code	14203				
Bank ID	FEDWIRE 022000046				
CORRESPONDENT BANK					
Bank Name	WELLS FARGO BANK N.A.				
Code	1000106				
DETAILS OF PAYMENT					
Notify by Phone	NO				
Credit Account	YES Account				
Remittance Information	ABA NUMBER 022000046				
WIRE TRANSFER AGREEMENT					
<p>In consideration of the Bank of Montreal (the "Bank") processing and reaching wire transfers ("Transfers") from time to time for our account, we agree as follows:</p> <p>We acknowledge that the Bank is not responsible for and we agree to indemnify and save the Bank harmless from and against any and all charges, expenses, losses, costs, damages, penalties, suits or inconveniences resulting to us or any other person arising from any delay or failure of performance due to causes beyond the control of the Bank, including, without limitation, the acts or omissions of or the insolvency or bankruptcy of other financial institutions or systems failures respecting the processing and receipt of Transfers. The Bank is not liable to us or any other person for incorrect or improper payment to or from us in any person arising out of the processing of any Transfer, unless caused solely by the negligence or willful misconduct of the Bank.</p> <p>We acknowledge that the Bank may delay the sending of a Transfer in the event that any restriction applicable to the Bank in any clearing system used to effect the Transfer, including, without limitation, insufficient credit or other funds delay the Bank from sending the Transfer. We acknowledge that the Bank and other financial institutions involved in processing Transfers may rely solely on any account or identification number (if provided) and will not seek to confirm whether the number (if) specified corresponds with the name of the payee or the payee's financial institution provided in the payment order and are not obliged in any other way to verify the information contained in the payment order. The payee may be required to provide identification to the collection of the paying financial institution.</p> <p>Transfers executed by the Bank are irrevocable. While the Bank shall use its best efforts to request a return of funds upon our instructions, the Bank cannot guarantee a return of funds or a return of funds without charge or fee to us. If the Bank is able to obtain a return of funds, the Bank will credit our account less any applicable charge or fee, of the bank's quoted rate of exchange (where foreign currency exchange is requested by us on the date such credit is made). The funding account number information may be provided to the beneficiary's financial institution as part of processing this Transfer.</p> <p>We agree to pay any Bank charges or fees and to reimburse the Bank for any fees or deductions charged by other financial institutions, withholding or other taxes, interest and penalties that may be paid by the Bank, in connection with any Transfers. We acknowledge that other financial institutions may charge or deduct a fee for processing Transfers (including fees for return requests and corrections).</p> <p>Transfers are subject to cut-off times, time zone differences and local laws and regulations of the destination country, including Canada.</p>					

Customer Signature

M. ME
Completed by

L. LI
Authorized by

Form 00135

Customer Copy

Superpumper 000606

2940

EXHIBIT 21

EXHIBIT 21

Nov. 28 2011

SAM to Lippes
Payment to Paul

BMO Bank of Montreal		Regulation for Wire Transfer		28/NOV/2011	
Serial Number	321382834	Posting Date	28/NOV/2011	Amount USD	580,000.00
ORDERING CUSTOMER					
Name MR SALVATORE ROBERT MORABITO					
Source of Funds ACCOUNT					
QUOTED RATE & EXCHANGE N/A					
BENEFICIARY					
Name LIPPES MATTHIAS WEXLER FRIEDMAN LLP					
Address 665 MAIN STREET, SUITE 300					
City BUFFALO					
State NEW YORK					
ZIP Code 14203					
Country UNITED STATES					
BENEFICIARY BANK					
Bank Name M AND T BANK					
Address ONE MT PLAZA					
City BUFFALO					
State NEW YORK					
ZIP Code 14203					
Bank ID FEDWIRE 022000046					
CORRESPONDENT BANK					
Bank Name WELLS FARGO BANK N.A.					
Code 1000106					
DETAILS OF PAYMENT					
Notify by Phone NO					
Credit Account YES Account					
Pay on Application & Identification NO					
Remittance Information CLIENT TRUST ACCOUNT-15210958, ABA 0220					
00046					
WIRE TRANSFER AGREEMENT					
In consideration of the Bank of Montreal (the "Bank") processing and receiving wire transfers ("Transfers") from time to time for our account, we agree as follows:					
We acknowledge that the Bank is not responsible for and we agree to indemnify and save the Bank harmless from and against any and all charges, expenses, losses, errors, damages, penalties, costs or inconveniences resulting to us or any other person arising from any delay or failure whatsoever due to causes beyond the control of the Bank, including, without limitation, the acts or omissions of or the insolvency or bankruptcy of other financial institutions or systems failures respecting the processing and receipt of Transfers. The Bank is not liable to us or any other person for loss or damage to funds or for loss or damage to any person arising out of the processing of any Transfer, unless caused solely by the negligence or willful misconduct of the Bank.					
We acknowledge that the Bank may delay the sending of a Transfer in the event that any restriction applicable to the Bank in any clearing system used to effect the Transfer, including, without limitation, insufficient credit or other funds delay the Bank from sending the Transfer. We acknowledge that the Bank and other financial institutions involved in processing Transfers may rely solely on any account or identification number (as provided) and will not seek to confirm whether the number (as specified) corresponds with the name of the payee or the payee's financial institution provided in the payment order and are not obliged in any other way to verify the information contained in the payment order. The payee may be required to provide identification to the collection of the paying financial institution.					
Transfers accepted by the Bank are irrevocable. While the Bank shall use its best efforts to request a return of funds upon our instructions, the Bank cannot guarantee a return of funds or a return of funds without charge or fee to us. If the Bank is able to obtain a return of funds, the Bank will credit our account less any applicable charges or fees, at the bank's quoted rate of exchange (unless foreign currency exchange is requested by us on the date such credit is made). The funding account number information may be provided to the beneficiary's financial institution as part of processing this Transfer.					
We agree to pay any Bank charges or fees and to reimburse the Bank for any fees or debits charged by other financial institutions, including but not limited to withholding or other taxes, interest and penalties that may be paid by the Bank, in connection with any Transfers. We acknowledge that other financial institutions may charge or deduct a fee for processing Transfers (including fees for refund requests and corrections) and that the Bank may receive communication from the other financial institutions.					
Transfers are subject to cut-off times, time zone differences and local laws and regulations of the destination country, including Canada.					

Asper 521-323461737
Customer Signature

[Signature]
Completed by

[Signature]
Authorized by

Form 80135

Customer Copy

Superpumper 000610

2942

EXHIBIT 22

EXHIBIT 22

DECLARATION OF SALVATORE MORABITO

I, SALVATORE MORABITO, being first duly sworn under penalty of perjury, depose and say:

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

2. Snowshoe Petroleum, Inc. ("SPT") was incorporated in the State of New York on or about September 29, 2010. It was incorporated at my direction.

3. The wire transfer represented payment on the note, plus interest accrued and fees associated with the transaction.

4. At that point, Bayuk and I had paid off the Note owed by Snowshoe to Paul, and Paul had no further involvement in the company other than his maintained guaranty, which the lender required.

5. Plaintiff contends that the Superpumper sale was a sham and that Paul Morabito has maintained control of Superpumper notwithstanding the sale. We hotly contest this accusation.

6. Contrary to Plaintiff's contentions, Paul has neither contributed a dime to the company since the sale, nor has he had any role in its operation.

7. Any communications that Paul might have had related to Snowshoe or Superpumper after the sale were "whiteboard" discussions about involving Snowshoe or Superpumper in one of Paul's many contemplated deals, none of which came to pass.

8. From the time of the property exchange until this lawsuit was filed, I was not in the practice of supporting Paul's lifestyle.

9. Bayuk and I solely operated Snowshoe after the transfer. I maintained the daily operation of Snowshoe, and vehemently deny that Paul had any involvement.

Dated this 21 day of September, 2017.


SALVATORE MORABITO

EXHIBIT 23

EXHIBIT 23

00000

Bank of America



PAGE 1 OF 1
BANK OF AMERICA, N.A.
WIRE TRANSFER ADVICE
1 FLEET WAY
SCRANTON, PA 18507



WX [REDACTED]
EDWARD BAYUK
[REDACTED]
[REDACTED]

DATE: 09/30/10
[REDACTED]
[REDACTED]

THE FOLLOWING WIRE WAS DEBITED TODAY:

USD AMOUNT \$659,000.00

TRANSACTION REF: [REDACTED]
RELATED REF: [REDACTED]
INSTRUCTING BANK: [REDACTED]
BENEFICIARY: SUPERPUMPER INC
BENEFICIARY'S BANK: COMPASS BANK

SERVICE REF: [REDACTED]
IMAD: [REDACTED]
ID: [REDACTED]
ID: [REDACTED]
ID: [REDACTED]

Recycled Paper

Superpumper 001883

2946

SAM to SP

First Loan to Business

BMO  Bank of Montreal

Sept 30 2010

659,000 ^{0.00}/_{xx}

to reduce LOC

CUSTOMER SERVICE REQUEST COMMITMENT

Legal Name:
Trade Name:
Title: MR
First Name: SALVATORE
Middle Name: ROBERT
Last Name: MORABITO
Suffix:

Employee's Name: LUDOVINA DE SA
Employee's Phone #: (416) 359-7549
Employee's Branch: BMO HARRIS PRIVATE BANKING - TORONTO
Employee's Transit: 3213

Type: Financial Transactions
Sub-Type: Wire Transfer
Service Request Reference #: 1-2876169562
Created Date/Time: 30/09/2010 10:48:35 AM
Committed Response Date: 01/10/2010
Account Number:

Additional Information:

Please wire 659000. U.S from Salvatore's U.S account to the following:
BBVA Compass Bank
2850 E Camelback Road
Suite 140
Phoenix, Arizona 85016
Bank contact: Brian Hellenbach (602) 522-6890
Account Name: Superpumper Inc
14631 North Scottsdale Road
Suite 125
Scottsdale Arizona 85254
Account #
Routing #: 122105744

Received instructions from client Sept 30, 2010 11:03am, spoke to client at 2:18am, verbal on file.

659,000 ^{0.00}/_{xx}

L.O.C. Reduction

Page 1 of 1

Superpumper 000605

2947

EXHIBIT 24

EXHIBIT 24

Activity summary

Balance on 9/1	██████████
Deposits/Additions	██████████
Withdrawals/Subtractions	██████████
Balance on 9/30	██████████

Account number: [REDACTED]

Wells Fargo Bank, N.A. California (Member FDIC)

Questions about your account: 1-877-646-8560

Worksheet to balance your account and General Statement Policies can be found towards the end of this statement.

Interest you've earned

Interest earned this month _____
Average collected balance this month _____
Annual percentage yield earned _____
Interest paid this year _____

Interest withheld

Transaction history

[illegible]

Key to symbols: A **Converted check:** Paper check converted to an electronic form by your payee or designated representative
Converted checks cannot be returned, copied or imaged

PMA® Prime Checking Account

Activity summary

Balance on 6/1	[REDACTED]
Deposits/Additions	[REDACTED]
Withdrawals/Subtractions	[REDACTED]
Balance on 6/30	[REDACTED]

Account number: [REDACTED]

EDWARD WILLIAM BAYUK LIVING TRUST
EDWARD BAYUK TTE

Wells Fargo Bank, N.A., California (Member FDIC)

Questions about your account: 1-877-646-8580

Worksheet to balance your account and General
Statement Policies can be found towards the
end of this statement.

Interest you've earned

Interest earned this month	[REDACTED]
Average collected balance this month	[REDACTED]
Annual percentage yield earned	[REDACTED]
Interest paid this year	[REDACTED]

Interest withheld

Transaction history

Date	Description	Check No.	Deposits/ Additions	Withdrawals/ Subtractions	Ending Daily Balance
	Beginning balance on 6/1				[REDACTED]
6/1	[REDACTED]			[REDACTED]	[REDACTED]
6/1	[REDACTED]		[REDACTED]		[REDACTED]
6/1	[REDACTED]			[REDACTED]	[REDACTED]
6/29	WT Fadd08074 Compass Bank /P/B/RT-Superpumper Inc 8/8/			100,000.00	[REDACTED]
6/30	[REDACTED]		[REDACTED]		[REDACTED]
	Ending balance on 6/30				[REDACTED]
	Totals		[REDACTED]	[REDACTED]	[REDACTED]

Save time with Online Bill Pay

Save time, avoid late fees, and save on postage costs. Be at ease knowing your payments get there fast-with over 90% of our top payees able to receive payments in 2 days or less. You can even make same day payments to Wells Fargo credit accounts, and to other select merchants. Pay your bills efficiently with Wells Fargo Bill Pay-backed by our Payment Guarantee. We guarantee your payments will be paid as scheduled, on time, every time. Go to wellsfargo.com or wellsfargo.com/btz to sign up or sign on today.

Balance on 7/1	
Deposits/Additions	
Withdrawals/Subtractions	
Balance on 7/31	

Account number: [REDACTED]
EDWARD WILLIAM BAYUK LIVING TRUST
EDWARD BAYUK TTE

Wells Fargo Bank, N.A., California (Member FDIC)

Questions about your account: 1-877-646-8560

Worksheet to balance your account and General Statement Policies can be found towards the end of this statement.

Interest you've earned

Interest earned this month	_____
Average collected balance this month	_____
Annual percentage yield earned	_____
Interest paid this year	_____

Interest withheld

Transaction history

[illegible]

Summary of checks written (checks listed are also displayed in the preceding Transaction history section)

Number	Date	\$ Amount	Number	Date	\$ Amount	Number	Date	\$ Amount
000	00	000000	000	00	000000	000	00	000000
000	00	000000	000	00	000000	000	00	000000

* Gap in check sequence.

Enjoy your summer! Whether camping, beachcombing, bicycling, hiking, exploring museums, or visiting family or friends, enjoy summer and easily manage your money with free access to Mobile Banking*. Take the Wells Fargo Mobile service with you on your next weekend trip or vacation! Online Banking customers can access the Wells Fargo Mobile service with their online username and password. Just go to wfb.com—our optimized mobile website. Or visit wellsfargo.com/mobile to learn more.

*Your mobile carrier's text messaging and web access charges may apply.

Whether camping, beachcombing, bicycling, hiking, exploring museums, or visiting family or friends, enjoy summer and easily manage your money with free access to Mobile Banking*. Take the Wells Fargo Mobile service with you on your next weekend trip or vacation! Online Banking customers can access the Wells Fargo Mobile service with their online username and password. Just go to wf.com-our optimized mobile website. Or visit wellsfargo.com/mobile to learn more.

*Your mobile carrier's text messaging and web access charges may apply.

EDWARD BAYUK

Pin 1 Type AD Date 12-15-10

1151
16-24/1220 4965
3470466917

Pay to the Order of Superpumper Inc \$ 250,000.00

Two Hundred Fifty Thousand & no/100 Dollars

Wells Fargo Bank N.A.
California
wellsfargo.com

THE PRIVATE BANK

For Acct # [REDACTED]

Acct # [REDACTED]

Do not cash if:

- any of the features listed above are missing
- the serial number is not assigned to the serial number listed on the back of the check
- the serial number is not assigned to the serial number listed on the back of the check
- the serial number is not assigned to the serial number listed on the back of the check
- the serial number is not assigned to the serial number listed on the back of the check

Do not cash if:

- any of the features listed above are missing
- the serial number is not assigned to the serial number listed on the back of the check
- the serial number is not assigned to the serial number listed on the back of the check
- the serial number is not assigned to the serial number listed on the back of the check
- the serial number is not assigned to the serial number listed on the back of the check

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<https://oibservices.wellsfargo.com/OIB/ControllerServlet>

2/19/2016

Superpumper 001885

2952

PMA® Prime Checking Account

Activity summary

Balance on 12/1 [REDACTED]
 Deposits/Additions [REDACTED]
 Withdrawals/Subtractions [REDACTED]
 Balance on 12/31 [REDACTED]

Account number [REDACTED]

EDWARD WILLIAM BAYUK LIVING TRUST
 EDWARD BAYUK TTE

Wells Fargo Bank, N.A., California (Member FDIC)

Questions about your account: 1-800-400-3339

Worksheet to balance your account and General
 Statement Policies can be found towards the
 end of this statement.

Interest you've earned

Interest earned this month [REDACTED]
 Average collected balance this month [REDACTED]
 Annual percentage yield earned [REDACTED]
 Interest paid this year [REDACTED]

Interest withheld

Interest withheld this period [REDACTED]
 Interest withheld this year [REDACTED]

Transaction history

Date	Description	Check No.	Deposits/ Additions	Withdrawals/ Subtractions	Ending Daily Balance
Beginning balance on 12/1					
12/10	Bank Originated Debit				[REDACTED]
12/15	Check	1151			[REDACTED]
12/31	Interest Payment			250,000.00	[REDACTED]
12/31	Federal Tax Withheld				[REDACTED]
Ending balance on 12/31					
Totals					

Summary of checks written (checks listed are also displayed in the preceding Transaction history section)

Number Date \$ Amount

[REDACTED]

EXHIBIT 25

EXHIBIT 25

SAM → SP - Loan to Business
Apr. 18 2011

BMO Bank of Montreal

Regulation for Wire Transfer

18/APR/2011

Serial Number	321355857	Posting Date	18/APR/2011	Amount USD	200,000.00
ORDERING CUSTOMER					
Name MR SALVATORE ROBERT MORABITO					
Source of Funds ACCOUNT					
QUOTED RATE & EXCHANGE					
N/A					
BENEFICIARY					
Name SUPERPUMPER INC					
Address 14631 NORTH SCOTTSDALE RD, SUITE 125					
City SCOTTSDALE					
State ARIZONA					
Country UNITED STATES					
BENEFICIARY BANK					
Bank Name BEVA COMPASS BANK					
Address 2850 E CAMELBACK ROAD, SUITE 140					
City PHOENIX					
State ARIZONA					
Country UNITED STATES					
CORRESPONDENT BANK					
Bank Name WELLS FARGO BANK N.A.					
Code 1000106					
DETAILS OF PAYMENT					
Notify by Phone NO					
Credit Account YES Account					
Remittance Information BANK CONTACT SHAWN HOLLIBACH (602)522-5890.					
WIRE TRANSFER AGREEMENT					
<p>In consideration of the Bank of Montreal (the "Bank") processing and resolving wire transfers ("Transfers") from time to time for our account, we agree as follows:</p> <p>We acknowledge that the Bank is not responsible for and we agree to indemnify and save the Bank harmless from and against any and all charges, expenses, losses, costs, damages, penalties, costs or inconveniences resulting to us or any other person arising from any delay or failure of performance due to causes beyond the control of the Bank, including, without limitation, the acts or omissions of or the bankruptcy or insolvency of other financial institutions or systems failures respecting the processing and receipt of Transfers. The Bank is not liable to us or any other person for interest or improper payment to or from us or any person arising out of the processing of any Transfer, unless caused solely by the negligence or willful misconduct of the Bank.</p> <p>We acknowledge that the Bank may delay the sending of a Transfer in the event that any restrictions applicable to the Bank in any clearing system used to effect the Transfer, including, without limitation, insufficient credit or other funds delay the Bank from sending the Transfer. We acknowledge that the Bank and other financial institutions involved in processing Transfers may rely solely on any account or identification number (a) provided and will not seek to confirm whether the number (a) specified corresponds with the name of the payee or the payee's financial institution provided in the payment order and we are obliged in any other way to verify the information contained in the payment order. The payee may be required to provide identification to the satisfaction of the paying financial institution.</p> <p>Transfers executed by the Bank are irrevocable. While the Bank shall use its best efforts to request a return of funds upon our instructions, the Bank cannot guarantee a return of funds or a return of funds without charge or fee to us. If the Bank is able to obtain a return of funds, the Bank will credit our account less any applicable charges or fees, at the bank's quoted rate of exchange before foreign currency exchange is requested by us on the date such credit is made. The funding account number information may be provided to the beneficiary's financial institution as part of processing this Transfer.</p> <p>We agree to pay any Bank charges or fees and to reimburse the Bank for any fees or deductions charged by other financial institutions, withholding or other taxes, interest and penalties that may be paid by the Bank, in connection with any Transfers. We acknowledge that other financial institutions may charge or deduct a fee for processing Transfers (including fees for refund requests and corrections).</p> <p>Transfers are subject to cut-off times, time zone differences and local laws and regulations of the destination country, including Canada.</p>					

Customer Signature

Completed by

Authorized by

Form 90135

Superpumper 000607

2955

SAM → SP

July 28 2011

Loan to Business

BMO Bank of Montreal

Regulation for Wire Transfer

28JUL/2011

Serial Number	321300046	Posting Date	28/JUL/2011	Amount USD	100,000.00
ORDERING CUSTOMER					
Name MR SALVATORE ROBERT MORABITO					
Source of Funds ACCOUNT					
QUOTED RATE & EXCHANGE N/A					
BENEFICIARY					
Name SUPERPUMPER INC					
Address 14631 NORTH SCOTTSDALE RD, SUITE 125					
City SCOTTSDALE					
State ARIZONA					
Country UNITED STATES					
BENEFICIARY BANK					
Bank Name BVA COMPASS BANK					
Address 2950 E CAMELBACK ROAD, SUITE 140					
City PHOENIX					
State ARIZONA					
Country UNITED STATES					
CORRESPONDENT BANK					
Bank Name WELLS FARGO BANK N.A.					
Code 1000106					
DETAILS OF PAYMENT					
Notify by Phone NO					
Credit Account YES Account Regular Number Number					
Pay on Application & Identification NO					
Remittance Information BANK CONTACT SHAWN HOLLENBACH (602) 822-4890					
WIRE TRANSFER AGREEMENT					
<p>In consideration of the Bank of Montreal (the "Bank") processing and sending wire transfers ("Transfers") from time to time for our account, we agree as follows:</p> <p>We acknowledge that the Bank is not responsible for and we agree to indemnify and save the Bank harmless from and against any and all charges, expenses, losses, costs, damages, penalties, costs or inconveniences resulting to us or any other person arising from any delay or failure of performance due to causes beyond the control of the Bank, including, without limitation, the acts or omissions of or the insolvency or bankruptcy of other financial institutions or systems failures regarding the processing and receipt of Transfers. The Bank is not liable to us or any other person for inaccuracy or improper payment to or from us or any person arising out of the processing of any Transfer, unless caused solely by the negligence or willful misconduct of the Bank.</p> <p>We acknowledge that the Bank may delay the sending of a Transfer in the event that any restrictions applicable to the Bank in any clearing system used to effect the Transfer, including, without limitation, insufficient credit or other limits delay the Bank from sending the Transfer. We acknowledge that the Bank and other financial institutions involved in processing Transfers may rely solely on any account or identification number (as provided) and will not seek to confirm whether the number (as specified) correspond with the name of the payee or the payee's financial institution provided in the payment order and are not obliged in any other way to verify the information contained in the payment order. The payee may be required to provide identification to the institution of the paying financial institution.</p> <p>Transfers executed by the Bank are irrevocable. While the Bank shall use its best efforts to request a return of funds upon our instruction, the Bank cannot guarantee a return of funds or a return of funds without charge or fee to us. If the Bank is able to obtain a return of funds, the Bank will credit our account less any applicable charges or fees, at the bank's quoted rate of exchange (where foreign currency exchanges is requested by us) on the date such credit is made. The funding account number information may be provided to the beneficiary's financial institution as part of processing this Transfer.</p> <p>We agree to pay any Bank charges or fees and to reimburse the Bank for any fees or debits charged by other financial institutions, including but not limited to withholding or other taxes, interest and penalties that may be paid by the Bank, in connection with any Transfers. We acknowledge that other financial institutions may charge or deduct a fee for processing Transfers (including fees for refund requests and corrections) and that the Bank may receive reimbursement from the other financial institutions.</p> <p>Transfers are subject to cut-off times, time zone differences and local laws and regulations of the destination country, including Canada.</p>					

Customer Signature

Completed by

Authorized by

Form 90135

Customer Copy

Superpumper 000608

2956

SAM → SP
Loan to Business

Nov 18 2011

BMO Bank of Montreal

Regulation for Wire Transfer

18/NOV/2011

Serial Number	321381884	Posting Date	18/NOV/2011	Amount USD	480,000.00
ORDERING CUSTOMER					
Name MR SALVATORE ROBERT MORABITO					
Source of Funds ACCOUNT					
QUOTED RATE & EXCHANGE N/A					
BENEFICIARY					
Name SUPERPUMPER INC					
Address 14631 NORTH SCOTTSDALE RD, SUITE125					
City SCOTTSDALE					
State ARIZONA					
Country UNITED STATES					
BENEFICIARY BANK					
Bank Name BBVA COMPASS BANK					
Address 2850 E CAMELBACK ROAD, SUITE 140					
City PHOENIX					
State ARIZONA					
Country UNITED STATES					
CORRESPONDENT BANK					
Bank Name WELLS FARGO BANK N.A.					
Code 1000106					
DETAILS OF PAYMENT					
Notify by Phone NO					
Credit Account YES Account					
Remittance Information BANK CONTACT SHAWN HOLLENBACH (602) 522-6890					
WIRE TRANSFER AGREEMENT					
In consideration of the Bank of Montreal (the "Bank") processing and receiving wire transfers ("Transfers") from time to time for our account, we agree as follows:					
We acknowledge that the Bank is not responsible for and we agree to indemnify and save the Bank harmless from and against any and all charges, expenses, losses, costs, damages, penalties, costs or inconveniences resulting to us or any other person arising from any delay or failure to perform our obligations to the Bank, including, without limitation, the acts or omissions of or the insolvency or bankruptcy of other financial institutions or systems failure reporting the processing and receipt of Transfers. The Bank is not liable to us or any other person for honest or innocent payment to or from us or any person arising out of the processing of any Transfer, unless caused solely by the negligence or willful misconduct of the Bank.					
We acknowledge that the Bank may delay the sending of a Transfer in the event that any restriction applicable to the Bank in any clearing system used to effect the Transfer, including, without limitation, insufficient credit or other limits delay the Bank from sending the Transfer. We acknowledge that the Bank and other financial institutions involved in processing Transfers may rely solely on any account or identification number (as provided) and will not seek to confirm whether the number (as specified) correspond with the name of the payee or the payee's financial institution provided in the payment order and are not obliged in any other way to verify the information contained in the payment order. The payee may be required to provide identification to the satisfaction of the paying financial institution.					
Transfers executed by the Bank are irrevocable. While the Bank shall use its best efforts to request a return of funds upon our instructions, the Bank cannot guarantee a return of funds or a return of funds without charge or fee to us. If the Bank is able to obtain a return of funds, the Bank will credit our account less any applicable charges or fees, at the bank's quoted rate of exchange (where foreign currency exchange is requested by us) on the date such credit is made. The funding account number information may be provided to the beneficiary's financial institution as part of processing this Transfer.					
We agree to pay any Bank charges or fees and to reimburse the Bank for any fees or deductions charged by other financial institutions, including but not limited to withholding or other taxes, interest and penalties that may be paid by the Bank, in connection with any Transfers. We acknowledge that other financial institutions may charge or deduct a fee for processing Transfers (including fees for refund requests and cancellations) and that the Bank may receive remuneration from the other financial institutions.					
Transfers are subject to cut-off times, time zone differences and local laws and regulations of the destination country, including Canada.					

Customer Signature

Completed by

Authorized by

L. De Sa

Form 90135

Customer Copy

Superpumper 000609

2957

EXHIBIT 26

EXHIBIT 26

Payment Schedule of Edward Bayuk Note in Favor of Paul Morabito		
Date	Description	Amount
9/28/2010	Paul Morabito	\$ 7,000.00
9/29/2010	Paul Morabito	\$ 10,000.00
9/29/2010	Granite Mountain Marble	\$ 1,790.25
10/4/2010	American Vector	\$ 15,161.00
10/4/2010	American Vector	\$ 4,500.00
10/4/2010	Clayton Way Property	\$ (50,000.00)
10/6/2010	John Blake	\$ 6,352.82
10/8/2010	Mitchell's Wilkes Basan	\$ 1,089.53
10/13/2010	Kim's Marble Inc	\$ 900.00
10/14/2010	Doheny Builders Supply	\$ 850.00
10/21/2010	American Geotechnical	\$ 10,108.35
10/29/2010	American Vector	\$ 15,161.00
10/31/2010	Mary Fleming Mortgage Balance "PM Chase Loan 12/1/10" Records stop	\$ 341,952.69
10/31/2010	2005 to 2010 Interest and principal adjustment to Mary Fleming total \$167,705 / 2 = \$83,758.50	\$ 83,758.50
11/9/2010	Riley - Jerrils LLC	\$ 5,000.00
11/10/2010	MSI Granite - AMEX	\$ 4,616.22
11/12/2010	American Vector	\$ 15,161.00
11/17/2010	Kim's Marble & Granite	\$ 4,000.00
11/24/2010	American Vector	\$ 15,161.00
12/2/2010	DC Plumbing	\$ 1,100.00
12/2/2010	Doheny Builders Supply	\$ 944.38
12/3/2010	Beard Painting Inc	\$ 7,000.00
12/4/2010	Riley - Jerrils LLC	\$ 9,207.00
12/5/2010	Kim's Marble & Granite	\$ 1,000.00
12/5/2010	American Vector	\$ 15,616.00
12/9/2010	Mark Paul Designs	\$ 2,462.51
12/13/2010	Nieman-Marcus	\$ 2,218.49
12/16/2010	American Vector	\$ 15,616.00
12/17/2010	Beard Painting Inc	\$ 11,120.00
12/27/2010	Atlas Sheet Metal Inc	\$ 75.00
12/31/2010	Phillip Alexander 2010 AMEX Charges	\$ 8,087.52
1/1/2011	Comerica Jan 2011 - Payments on behalf of PM	\$ 5,060.78
1/1/2011	Anthem Blue Cross	\$ 693.00
1/9/2011	American Vector	\$ 15,161.00
2/1/2011	Comerica Feb 2011 - Payments on behalf of PM	\$ 10,221.99
2/1/2011	Anthem Blue Cross	\$ 693.00
3/1/2011	Comerica March 2011 - Payments on behalf of PM	\$ 2,691.51
3/1/2011	Anthem Blue Cross	\$ 693.00
4/1/2011	Comerica April 2011 - Payments on behalf of PM	\$ 12,557.50
4/1/2011	Anthem Blue Cross	\$ 693.00
4/13/2011	Brian Haley	\$ 1,050.00
5/1/2011	Comerica May 2011 - Payments on behalf of PM	\$ 3,689.85
5/1/2011	Anthem Blue Cross	\$ 693.00
5/5/2011	Moana Nursery	\$ 3,087.63
6/1/2011	Comerica June 2011 - Payments on behalf of PM	\$ 2,313.86
6/1/2011	Anthem Blue Cross	\$ 693.00
7/1/2011	Comerica July 2011 - Payments on behalf of PM	\$ 2,260.62
7/1/2011	Anthem Blue Cross	\$ 693.00
7/11/2011	Alitalia	\$ 7,041.60
7/11/2011	Penninsula Hotel	\$ 2,174.91

Payment Schedule of Edward Bayuk Note in Favor of Paul Morabito		
8/1/2011	Comerica Aug 2011 - Payments on behalf of PM	\$ 5,143.05
8/1/2011	Anthem Blue Cross	\$ 693.00
9/1/2011	Comerica Sep 2011 - Payments on behalf of PM	\$ 3,718.03
9/1/2011	John Blake	\$ 1,200.00
9/1/2011	Anthem Blue Cross	\$ 693.00
9/2/2011	John Blake	\$ 400.00
10/1/2011	Comerica Oct 2011 - Payments on behalf of PM	\$ 1,913.93
10/1/2011	Anthem Blue Cross	\$ 693.00
10/4/2011	Moreno Valley Auto	\$ 2,500.00
10/11/2011	Galpin Ford Service	\$ 3,000.00
10/20/2011	Galpin Ford Service	\$ 11,878.92
10/20/2011	John Blake	\$ 2,300.00
11/1/2011	Comerica Nov 2011 - Payments on behalf of PM	\$ 6,182.93
11/1/2011	Anthem Blue Cross	\$ 693.00
12/1/2011	Comerica Dec 2011 - Payments on behalf of PM	\$ 2,455.71
12/1/2011	Anthem Blue Cross	\$ 693.00
12/21/2011	PM Payment (B of A)	\$ 3,000.00
12/23/2011	PM Payment (B of A)	\$ 1,500.00
12/29/2011	PM Payment (B of A)	\$ 2,500.00
12/31/2011	Phillip Alexander AMEX Charges for 2011	\$ 40,102.66
12/31/2011	Philip & Ron Salary	\$ 109,990.40
1/5/2012	Chase Card Charges - Ron Gregory	\$ 884.18
1/12/2012	PM Payment (B of A)	\$ 2,000.00
1/20/2012	PM Payment (B of A)	\$ 4,000.00
2/2/2012	Citi Card Charges - Ron Gregory	\$ 21,209.98
2/5/2012	Chase Card Charges - Ron Gregory	\$ 683.30
2/7/2012	PM Payment (WF)	\$ 4,500.00
2/16/2012	PM Payment (B of A)	\$ 2,000.00
3/2/2012	Citi Card Charges - Ron Gregory	\$ 2,841.63
3/5/2012	Chase Card Charges - Ron Gregory	\$ 891.91
3/28/2012	PM Payment (B of A)	\$ 1,200.00
3/30/2012	PM Payment (B of A)	\$ 3,500.00
4/5/2012	Chase Card Charges - Ron Gregory	\$ 11,172.21
4/5/2012	Chase Card Charges - Ron Gregory	\$ 843.37
4/16/2012	PM Payment (B of A)	\$ 1,200.00
5/5/2012	Chase Card Charges - Ron Gregory	\$ 14,374.35
5/5/2012	Chase Card Charges - Ron Gregory	\$ 994.90
5/22/2012	PM Payment (WF)	\$ 2,000.00
6/5/2012	Chase Card Charges - Ron Gregory	\$ 1,911.91
8/22/2012	PM Payment (WF)	\$ 3,500.00
8/30/2012	BMO to Wells A/C 6917	\$ (449,980.00)
9/5/2012	Lippes Mathias Wexler	\$ 351,626.82
9/17/2012	PAM - Wells a/c 5330	\$ 98,353.18
11/19/2012	Willy Caipo	\$ 4,000.00
12/4/2012	EWB pays off PM line of credit - "\$749,349.75"	\$ 732,124.75
12/6/2012	Top Project	\$ 1,800.00
12/6/2012	Payroll (PM p/r account)	\$ 3,600.00
12/13/2012	PM Payment (WF)	\$ 5,000.00
1/10/2013	PM Payment - B of A	\$ 5,000.00
1/28/2013	PM Payment - B of A	\$ 5,000.00
2/14/2013	PM Payment - WF	\$ 4,400.00

Payment Schedule of Edward Bayuk Note in Favor of Paul Morabito		
3/15/2013	PM Payment - WF	\$ 5,000.00
5/24/2013	PM Payment - WF	\$ 25,000.00
6/12/2013	PM Payment - WF	\$ 50,000.00
6/17/2013	Transfer to 5330 from EWB Household - WF	\$ 35,000.00
		\$ 1,796,054.63

EXHIBIT 27

EXHIBIT 27

Message

From: Dennis Vacco [dvacco@lippes.com]
Sent: 9/15/2010 10:03:17 PM
To: Yalamanchili, Sujata [SYalaman@hodgsonruss.com]; Paul Morabito [pmorabito@cowestco.com]
CC: Graber, Garry [GGraber@hodgsonruss.com]
Subject: RE: Follow Up Thoughts

Sujata,

I leave in the morning at 8:00 and arrive at noon, 3:00PM eastern. It would be of great assistance if you would consider a transaction whereby PAM sells his interest in CoWestco to Edward and Sam as you proposed. Paul will sell his interest in exchange for a promissory note. I would be interested in your and Garry's suggestions concerning the terms of this note. Paul would like the note to take into account the amount owed by him to Superpumer. In other words there would be an offset made by the company against the promissory note payments in order to defray the amount owed to the company.

Thanks,

Dennis

From: Yalamanchili, Sujata [mailto:SYalaman@hodgsonruss.com]
Sent: Wednesday, September 15, 2010 4:40 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

Sujata Yalamanchili, Esq.

Hodgson Russ LLP

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