

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 21
(Nos. 3335–3481)

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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

Exhibits

Title: WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.

PLTF: WILLIAM A. LEONARD, TRUSTEE

**PATY: ERIKA PIKE TURNER, ESQ.
GABRIELLE A. HAMM, ESQ.
TERESA M. PILATOWICZ, ESQ.**

**DEFT: SUPERPUMPER, INC.
EDWARD WILLIAM BAYUK LIVING TRUST
SALVATORE MORABITO
SNOWSHOE PETROLEUM, INC.**

DATY: FRANK GILMORE, ESQ.

Case No: CV13-02663

Dept. No: 4

Clerk: M. Stone

Date: 10/29/2018

Exhibit No.	Party	Description	Marked	Offered	Admitted
1	Plaintiff	<i>Transcript of Proceedings, Judge's Ruling, Case No. CV07-02764, September 13, 2010</i> (LMWF_SUPP_23097-23121)	10/25/18	Stipulation	10/29/18
2	Plaintiff	<i>Finding of Facts & Conclusions of Law, Case No. CV07-02764, October 12, 2010</i> (WL002855 – WL002870)	10/25/18	Stipulation	10/29/18
3	Plaintiff	<i>Judgment, Case No. CV07-02764, August 23, 2011</i> (WL002853 – WL002854)	10/25/18	Stipulation	10/29/18
4	Plaintiff	<i>Confession of Judgment, Case No. CV07-02764, June 18, 2013</i> (WL002871 – WL002895)	10/25/18	No Objection	10/29/18

Exhibits

Title: **WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.**

PLTF: **WILLIAM A. LEONARD, TRUSTEE**

PATY: **ERIKA PIKE TURNER, ESQ.
GABRIELLE A. HAMM, ESQ.
TERESA M. PILATOWICZ, ESQ.**

DEFT: **SUPERPUMPER, INC.
EDWARD WILLIAM BAYUK LIVING
TRUST
SALVATORE MORABITO
SNOWSHOE PETROLEUM, INC.**

DATY: **FRANK GILMORE, ESQ.**

Case No: **CV13-02663**

Dept. No: **4** Clerk: **M. Stone**

Date: **10/29/2018**

Exhibit No.	Party	Description	Marked	Offered	Admitted
5	Plaintiff	November 30, 2011 Settlement Agreement (WL002188-2319)	10/25/18	Objection Overruled	10/29/18 w/caveat
6	Plaintiff	March 1, 2013 Forbearance Agreement (WL003103 – WL003111)	10/25/18	Objection Overruled	10/29/18
7	Plaintiff	<i>Involuntary Petition</i> , Case 13-51237, ECF No. 1, June 20, 2013	10/25/18	Objection Sustained w/Stip.	
8	Plaintiff	<i>Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings</i> , Case 13-51237. ECF No. 94, 12/17/2013	10/25/18	Stipulation	10/29/18
9	Plaintiff	<i>Order</i> , Case 13-51237, ECF No. 123, July 10, 2014 RETURNED TO PARTY	10/25/18		

Exhibits

Title: **WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.**

PLTF: **WILLIAM A. LEONARD, TRUSTEE**

PATY: **ERIKA PIKE TURNER, ESQ.
GABRIELLE A. HAMM, ESQ.
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DEFT: **SUPERPUMPER, INC.
EDWARD WILLIAM BAYUK LIVING
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SALVATORE MORABITO
SNOWSHOE PETROLEUM, INC.**

DATY: **FRANK GILMORE, ESQ.**

Case No: **CV13-02663**

Dept. No: **4** Clerk: **M. Stone**

Date: **10/29/2018**

Exhibit No.	Party	Description	Marked	Offered	Admitted
10	Plaintiff	Order for Relief, Case 13-51237, ECF No. 162, December 17, 2014 RETURNED TO PARTY	10/25/18		
11	Plaintiff	Findings of fact and Conclusions of Law in support of Order Granting Summary Judgment and Judgment, Case 13-51237, ECF No. 160, December 17, 201 RETURNED TO PARTY	10/25/18		
12	Plaintiff	Order Granting Summary Judgment and Judgment, Case 13-51237, ECF No. 161, December 17, 2014 RETURNED TO PARTY	10/25/18		

Exhibits

Title: **WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.**

PLTF: **WILLIAM A. LEONARD, TRUSTEE**

PATY: **ERIKA PIKE TURNER, ESQ.
GABRIELLE A. HAMM, ESQ.
TERESA M. PILATOWICZ, ESQ.**

DEFT: **SUPERPUMPER, INC.
EDWARD WILLIAM BAYUK LIVING
TRUST
SALVATORE MORABITO
SNOWSHOE PETROLEUM, INC.**

DATY: **FRANK GILMORE, ESQ.**

Case No: **CV13-02663**

Dept. No: **4** Clerk: **M. Stone**

Date: **10/29/2018**

Exhibit No.	Party	Description	Marked	Offered	Admitted
13	Plaintiff	<i>Amended Findings of fact and Conclusions of Law in support of Order Granting Summary Judgment and Judgment, Case 13-51237, ECF No. 167, December 22, 2014</i> RETURNED TO PARTY	10/25/18		
14	Plaintiff	<i>Amended Order for Relief, Case No. 13-51237, ECF No. 168, December 22, 2014</i> RETURNED TO PARTY	10/25/18		
15	Plaintiff	<i>Schedules and Statements, Case No. 13-51237, ECF No. 211 (WL003132 – WL003167)</i> RETURNED TO PARTY	10/25/18		

Exhibits

Title: **WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.**

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DEFT: **SUPERPUMPER, INC.
EDWARD WILLIAM BAYUK LIVING
TRUST
SALVATORE MORABITO
SNOWSHOE PETROLEUM, INC.**

DATY: **FRANK GILMORE, ESQ.**

Case No: **CV13-02663**

Dept. No: **4** Clerk: **M. Stone**

Date: **10/29/2018**

Exhibit No.	Party	Description	Marked	Offered	Admitted
16	Plaintiff	<i>Amended Schedules of Financial Affairs</i> , Case No. 13-51237, ECF No. 249 (WL003168 – WL003183) RETURNED TO PARTY	10/25/18		
17	Plaintiff	JH, Inc. Jerry Herbst and Berry-Hinckley Industries Amended Proof of Claim filed in Bankruptcy Case No. 13-51237 RETURNED TO PARTY	10/25/18		
18	Plaintiff	Remaining Claims filed in Case No. 13-51237 (WL002909 -WL002936, Claim No. 4 filed 2/24/16 and Claim No. 5 filed 2/20/18) RETURNED TO PARTY	10/25/18		

Exhibits

Title: **WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.**

PLTF: **WILLIAM A. LEONARD, TRUSTEE**

PATY: **ERIKA PIKE TURNER, ESQ.
GABRIELLE A. HAMM, ESQ.
TERESA M. PILATOWICZ, ESQ.**

DEFT: **SUPERPUMPER, INC.
EDWARD WILLIAM BAYUK LIVING TRUST
SALVATORE MORABITO
SNOWSHOE PETROLEUM, INC.**

DATY: **FRANK GILMORE, ESQ.**

Case No: **CV13-02663**

Dept. No: **4**

Clerk: **M. Stone**

Date: **10/29/2018**

Exhibit No.	Party	Description	Marked	Offered	Admitted
19	Plaintiff	<i>Report of Undisputed Election – Appointment of Trustee, Case No. 13-51237, ECF No. 220</i>	10/25/18	No Objection	11/2/18
20	Plaintiff	<i>Stipulation and Order to Substitute a Party Pursuant to NRCP 17(a), Case No. CV13-02663, May 15, 2015</i>	10/25/18	Stipulation	10/29/18
21	Plaintiff	<i>Non-Dischargeable Judgment Regarding Plaintiff's First and Second Causes of Action, Case No. 15-05019-GWZ, ECF No. 123, April 30, 2018</i>	10/25/18	Objection Overruled with Court taking Judicial Notice	10/29/18
22	Plaintiff	<i>Memorandum & Decision Case No. 15-05019-GWZ, ECF No. 124, April 30, 2018</i>	10/25/18	Objection Overruled with Court taking Judicial Notice	10/29/18

Exhibits

Title: **WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.**

PLTF: **WILLIAM A. LEONARD, TRUSTEE**

PATY: **ERIKA PIKE TURNER, ESQ.
GABRIELLE A. HAMM, ESQ.
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DEFT: **SUPERPUMPER, INC.
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DATY: **FRANK GILMORE, ESQ.**

Case No: **CV13-02663**

Dept. No: **4**

Clerk: **M. Stone**

Date: **10/29/2018**

Exhibit No.	Party	Description	Marked	Offered	Admitted
23	Plaintiff	<i>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</i>	10/25/18	Objection Overruled with Court taking Judicial Notice	10/29/18
24	Plaintiff	<i>Complaint for Fraudulent Transfer and Injunctive Relief, Case No. 15-05046, ECF No. 1, October 15, 2015</i> RETURNED TO PARTY	10/25/18		
25	Plaintiff	September 15, 2010 e-mail from Yalamanchili to Vacco and P. Morabito (LMWF SUPP 082393 – LMWF SUPP 082394)	10/25/18	Stipulation	10/29/18

Exhibits

Title: WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.

PLTF: WILLIAM A. LEONARD, TRUSTEE

**PATY: ERIKA PIKE TURNER, ESQ.
GABRIELLE A. HAMM, ESQ.
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**DEFT: SUPERPUMPER, INC.
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DATY: FRANK GILMORE, ESQ.

Case No: CV13-02663

Dept. No: 4

Clerk: M. Stone

Date: 10/29/2018

Exhibit No.	Party	Description	Marked	Offered	Admitted
26	Plaintiff	September 18, 2010 email from P. Morabito to Vacco (LMWF_SUPP_030151-030152)	10/25/18	Objection Overruled	11/2/18
27	Plaintiff	September 20, 2010 e-mail from Vacco to P. Morabito (HR0000317)	10/25/18	Objection Overruled	11/6/18
28	Plaintiff	September 20, 2010 e-mail between Yalamanchili and Crotty (HR000218 – HR0000220)	10/25/18	Stipulation	10/29/18
29	Plaintiff	September 20, 2010 e-mail from Yalamanchili to Graber (HR0000376 – HR0000377)	10/25/18	Objection Overruled	11/1/18

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
30	Plaintiff	September 21, 2010 email from Morabito to Vacco and Cross (LMWF_SUPP_030154-030156)	10/25/18	No Objection	11/1/18
31	Plaintiff	September 23, 2010 e-mail chain between Graber and P. Morabito (LMWF_SUPP_098309 - 098310)	10/25/18	Objection Overruled	11/2/18
32	Plaintiff	September 23, 2010 e-mail from Yalamanchili to Graber (HR0000837 – HR0000838)	10/25/18	No Objection	11/1/18
33	Plaintiff	September 24, 2010 e-mail from P. Morabito to Vacco (LMWF_SUPP_035138)	10/25/18	No Objection	10/31/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
34	Plaintiff	September 26, 2010 email from Vacco to P. Morabito (LMWF_SUPP_087535)	10/25/18	Objection Overruled	11/2/18
35	Plaintiff	September 27, 2010 e-mail from P. Morabito to Vacco (LMWF_SUPP_035071-035073)	10/25/18	No Objection	10/29/18
36	Plaintiff	11/07/2012 emails between Vacco, P. Morabito, C. Lovelace (LMWF_SUPP_042884-042885)	10/25/18	Objection Overruled	11/6/18
37	Plaintiff	Morabito BMO Bank Statement – September 2010 (Morabito (341).005349-005355)	10/25/18	No Objection	11/2/18

Exhibits

Title: **WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.**

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Exhibit No.	Party	Description	Marked	Offered	Admitted
38	Plaintiff	Lippes Mathias Trust Ledger History (LMWF000478 – 000483)	10/25/18	Stipulation	10/29/18
39	Plaintiff	Fifth Amendment & Restatement of the Trust Agreement for the Arcadia Living Trust dated September 30, 2010 (RBSL001868 – 001906)	10/25/18	Stipulation	10/29/18
40	Plaintiff	Florida Revocable Arcadia Living Trust dated August 25, 1998 (CG000043 – CG000099) RETURNED TO PARTY	10/25/18		

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
41	Plaintiff	10-14-2005 Spendthrift Trust Agreement for the Arcadia Living Trust dated October 14, 2005 (RBSL001907 – 001942) RETURNED TO PARTY	10/25/18		
42	Plaintiff	Paul A. Morabito Statement of Assets & Liabilities as of May 5, 2009 (Gursey023422)	10/25/18	Stipulation	10/29/18
43	Plaintiff	March 10, 2010 e-mail chain between Afshar and Takemoto dated 3/10/10 (Gursey004094 – 004095)	10/25/18	Stipulation	10/29/18
44	Plaintiff	Salazar Net Worth Report Dated March 15, 2011 (WL004530 – WL004543)	10/25/18	Stipulation	10/29/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
45	Plaintiff	Purchase and Sale Agreement (Morabito (341).006971-006978)	10/25/18	Stipulation	10/29/18
46	Plaintiff	First Amendment to Purchase and Sale Agreement (Morabito (341).002363-002364)	10/25/18	Stipulation	10/29/18
47	Plaintiff	Panorama – Estimated Settlement Statement (Morabito (341).006929-006938)	10/25/18	Stipulation	10/29/18
48	Plaintiff	El Camino – Final Settlement Statement (Morabito (341).006939)	10/25/18	Stipulation	10/29/18
49	Plaintiff	Los Olivos – Final Settlement Statement (Morabito (341).006940)	10/25/18	Stipulation	10/29/18

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
50	Plaintiff	Deed for Transfer of Panorama Property	10/25/18	Stipulation	10/29/18
51	Plaintiff	Deed for Transfer for Los Olivos (Morabito (341).006950)	10/25/18	Stipulation	10/29/18
52	Plaintiff	Deed for Transfer of El Camino (Morabito (341).006949)	10/25/18	Stipulation	10/29/18
53	Plaintiff	Kimmel Appraisal Report for Panorama and Clayton (Kimmel 000001-78)	10/25/18	Stipulation	10/29/18
54	Plaintiff	Bill of Sale – Panorama (Morabito (341).002433-002436)	10/25/18	Stipulation	10/29/18
55	Plaintiff	Bill of Sale – Mary Fleming (Morabito (341).002437-002440)	10/25/18	Stipulation	10/29/18

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
56	Plaintiff	Bill of Sale – El Camino (Morabito (341).002445-002448)	10/25/18	Stipulation	10/29/18
57	Plaintiff	Bill of Sale – Los Olivos (Morabito (341).002441-002444)	10/25/18	Stipulation	10/29/18
58	Plaintiff	8355 Panorama – 12/31/2012 Declaration of Value and Transfer Deed (WL004575 – WL004577)	10/25/18	Stipulation	10/29/18
59	Plaintiff	8355 Panorama – 12/31/2012 sale closing statement (SBCPA001789) RETURNED TO PARTY	10/25/18		
60	Plaintiff	Baruk Properties Operating Agreement (Morabito (341).006908-6917)	10/25/18	Stipulation	10/29/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
61	Plaintiff	Baruk Membership Transfer Agreement (Morabito (341).006901-006907)	10/25/18	Stipulation	10/29/18
62	Plaintiff	Promissory Note for \$1,617,050 (Morabito (341).006918-006920)	10/25/18	Stipulation	10/29/18
63	Plaintiff	Baruk Properties/Snowshoe Properties, Certificate of Merger (Morabito (341).006921-006922)	10/25/18	Stipulation	10/29/18
64	Plaintiff	Baruk Properties/Snowshoe Properties, Articles of Merger (Morabito (341).006891-006900)	10/25/18	Stipulation	10/29/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
65	Plaintiff	Grant Deed from Snowshoe to Bayuk Living Trust (Morabito (341).006956)	10/25/18	Stipulation	10/29/18
66	Plaintiff	Grant Deed – 1461 Glenneyre, Recorded 10/8/2010 (Morabito (341).007096)	10/25/18	Stipulation	10/29/18
67	Plaintiff	Grant Deed – 570 Glenneyre, Recorded 10/8/2010 (Morabito (341).007094-007095)	10/25/18	Stipulation	10/29/18
68	Plaintiff	Attorney File re: Conveyance between Woodland Heights and Arcadia Living Trust (Lippes PAM0001413-0001448)	10/25/18	Objection Overruled	11/2/18

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
69	Plaintiff	October 24, 2011 e-mail from P. Morabito to Vacco with list of things to do (LMWF_SUPP_029661-029662)	10/25/18	Objection Overruled	11/6/18
70	Plaintiff	November 10, 2011 e-mail chain between Vacco and P. Morabito (LMWF_SUPP_077068-077070)	10/25/18	Objection Overruled	11/2/18
71	Plaintiff	Bayuk First Ledger (Morabito (341).0000110-000111)	10/25/18	Stipulation	10/29/18
72	Plaintiff	Amortization Schedule (Morabito (341).000002-000004)	10/25/18	Stipulation	10/29/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
73	Plaintiff	Bayuk Second Ledger (Superpumper 002110-002112)	10/25/18	Stipulation	10/29/18
74	Plaintiff	Declaration of Edward Bayuk, Case No. 13-51237, ECF No. 146, dated October 3, 2014	10/25/18	No Objection	10/30/18
75	Plaintiff	March 30, 2012 e-mail from Vacco to Bayuk (LMWF_SUPP_71829)	10/25/18	Stipulation	10/30/18
76	Plaintiff	March 10, 2010 e-mail chain between P. Morabito and jon@aim13.com (LMWF_SUPP_048623)	10/25/18	Objection Overruled	11/6/18
77	Plaintiff	May 20, 2010 e-mail chain between P. Morabito, Vacco and Michael Pace (LMWF_SUPP_042578)	10/25/18	Objection Overruled	10/29/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
78	Plaintiff	Morabito Personal Financial Statement May 2010 (Compass 00085)	10/25/18	Objection Overruled	11/2/18
79	Plaintiff	June 28, 2010 e-mail from P. Morabito to George Garner (LMWF_SUPP_043995-044001)	10/25/18	Objection Overruled	10/29/18 – Must be Authentic. By Leonard – 11/2/18
80	Plaintiff	Shareholder Interest Purchase Agreement (Superpumper 000033-000037)	10/25/18	Stipulation	10/29/18
81	Plaintiff	Plan of Merger of Consolidated Western Corporation with and Into Superpumper, Inc. (Superpumper 000046-000049)	10/25/18	Stipulation	10/29/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
82	Plaintiff	Articles of Merger of Consolidated Western Corporation with and Into Superpumper, Inc. (Superpumper 000050-000051)	10/25/18	Stipulation	10/29/18
83	Plaintiff	Unanimous Written Consent of the Board of Directors and Sole Shareholder of Superpumper, Inc. (Superpumper 000021-000023)	10/25/18	Stipulation	10/29/18
84	Plaintiff	Unanimous Written Consent of the Directors and Shareholders of Consolidated Western Corporation (Superpumper 000024-000026)	10/25/18	Stipulation	10/29/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
85	Plaintiff	Arizona Corporation Commission Letter dated October 21, 2010 (Superpumper 000011-000018)	10/25/18	Stipulation	10/29/18
86	Plaintiff	Nevada Articles of Merger (Superpumper 000027-000032)	10/25/18	Stipulation	10/29/18
87	Plaintiff	New York Creation of Snowshoe	10/25/18	Stipulation	10/29/18
88	Plaintiff	April 26, 2012 e-mail from Vacco to Afshar (Superpumper 001379-001381)	10/25/18	Objection Overruled	10/29/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
89	Plaintiff	April 8, 2011 email from Vacco to Takemoto and Bayuk (Superpumper 001382-001384) RETURNED TO PARTY	10/25/18		
90	Plaintiff	Matrix Retention Agreement (LMWF000001 – 00004)	10/25/18	Stipulation	10/29/18
91	Plaintiff	McGovern Expert Report (MG000001 – MG000076)	10/25/18	Stipulation	10/29/18
92	Plaintiff	Appendix B to McGovern Report – Source 4 – Budgets (Superpumper 001005-001006)	10/25/18	Stipulation	10/29/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
93	Plaintiff	Appendix B to McGovern Report – Source 8 – Gas Station Mini Mart MD DE 2011 (MG02201 – MG02233) RETURNED TO PARTY	10/25/18		
94	Plaintiff	Appendix B to McGovern Report – Source 9 – Convenience-Stores-Industry – Center for Economic Vitality, Western Washington University, College of Business and Economics Snapshot (MG02193 – MG02200) RETURNED TO PARTY	10/25/18		

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Date: **10/29/2018**

Exhibit No.	Party	Description	Marked	Offered	Admitted
95	Plaintiff	Appendix B to McGovern Report – Source 10 – Pratt’s Stats Transaction Reports – gas stations with convenience stores NAICS code 447110 (MG00663 – MG00664) RETURNED TO PARTY	10/25/18		
96	Plaintiff	Appendix B to McGovern Report – Source 11 – The National Economic Report – September 2010 – compiled by KeyValueData (MG02236 – MG02255) RETURNED TO PARTY	10/25/18		

Exhibits

Title: **WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.**

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DEFT: **SUPERPUMPER, INC.
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DATY: **FRANK GILMORE, ESQ.**

Case No: **CV13-02663**

Dept. No: **4**

Clerk: **M. Stone**

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Exhibit No.	Party	Description	Marked	Offered	Admitted
97	Plaintiff	Appendix B to McGovern Report – Source 12 - Business Valuation Resources report IRS 2010 Returns for Gasoline Stations with asset range between 10M-25M (MG02234 – MG02235) RETURNED TO PARTY	10/25/18		
98	Plaintiff	Appendix B to McGovern Report – Source 14 - DELAWARE OPEN MRI RADIOLOGY ASSOC.-Tax Affecting S Corp RETURNED TO PARTY	10/25/18		

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
99	Plaintiff	Appendix B to McGovern Report – Source 15 – Duff & Phelps Cost of Equity Calculator (MG00681 – MG00702) RETURNED TO PARTY	10/25/18		
100	Plaintiff	Appendix B to McGovern Report – Source 16 - The Market Approach to Valuing Businesses – Pratt RETURNED TO PARTY	10/25/18		
101	Plaintiff	Appendix B to McGovern Report – Source 17a – Superpumper Answers to Plaintiffs First Set of Interrogatories RETURNED TO PARTY	10/25/18		

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
102	Plaintiff	Appendix B to McGovern Report – Source 17b – Answer to Interrogatories (2nd set) by Superpumper RETURNED TO PARTY	10/25/18		
103	Plaintiff	Superpumper Note (Superpumper 000001-000002)	10/25/18	Stipulation	10/29/18
104	Plaintiff	Superpumper Successor Note (Superpumper 000003-000004)	10/25/18	Stipulation	10/29/18
105	Plaintiff	Superpumper Successor Note in the amount of \$939,000 (Superpumper 000005-000006)	10/25/18	Stipulation	10/29/18

Exhibits

Title: **WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.**

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Exhibit No.	Party	Description	Marked	Offered	Admitted
106	Plaintiff	Superpumper Stock Power transfers to Sam Morabito and Bayuk dated January 1, 2011 (Superpumper 000019-000020)	10/25/18	Stipulation	10/29/18
107	Plaintiff	Declaration of Paul A. 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	10/25/18	No Objection	10/31/18

Exhibits

Title: WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.

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Exhibit No.	Party	Description	Marked	Offered	Admitted
108	Plaintiff	October 12, 2012 e-mail between P. Morabito and Bernstein (SBCPA001388)	10/25/18	Stipulation	10/29/18
109	Plaintiff	Compass Term Loan (Compass 000618 – 000625)	10/25/18	Stipulation	10/29/18
110	Plaintiff	Paul Morabito – Term Note (Superpumper 001364)	10/25/18	Stipulation	10/29/18
111	Plaintiff	Loan Agreement between Compass Bank and Superpumper (Compass 000577 – 000605)	10/25/18	Stipulation	10/29/18
112	Plaintiff	Consent Agreement (Superpumper 000038-000042)	10/25/18	Stipulation	10/29/18

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
113	Plaintiff	Superpumper Financial Statement dated December 31, 2007 (Superpumper 000292-000305)	10/25/18	Stipulation	10/29/18
114	Plaintiff	Superpumper Financial Statement dated December 31, 2009 (Superpumper 000319-000331)	10/25/18	Stipulation	10/29/18
115	Plaintiff	Notes Receivable Interest Income Calculation dated 12/31/09 (Gurse023421)	10/25/18	Stipulation	10/29/18
116	Plaintiff	Audit Conclusions Memo (Gurse003426 – 003431)	10/25/18	Stipulation	10/29/18

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
117	Plaintiff	Superpumper YTD Income Statement and Balance Sheets (Superpumper 001264-001278)	10/25/18	Stipulation	10/29/18
118	Plaintiff	Management Letter dated 3/12/2010 (Gursey004848 – 004850)	10/25/18	Stipulation	10/29/18
119	Plaintiff	Superpumper - Unaudited 2010 Balance Sheet (Superpumper 001002-001006)	10/25/18	Stipulation	10/29/18
120	Plaintiff	Superpumper Financial Statements 12-31-10 (Superpumper 000332-000346)	10/25/18	Stipulation	10/29/18
121	Plaintiff	Notes Receivable Balance as of 9-30-10 (Superpumper 001284)	10/25/18	Stipulation	10/29/18

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
122	Plaintiff	Salvatore Morabito Term Note (Superpumper 001280-001281)	10/25/18	Stipulation	10/29/18
123	Plaintiff	Edward Bayuk Term Note – (Superpumper 001282-001283)	10/25/18	Stipulation	10/29/18
124	Plaintiff	Statement of Financial Accounting Standards No. 78 (WL004544 – WL004556) RETURNED TO PARTY	10/25/18		
125	Plaintiff	Management Letter dated 4/21/2011 (Gursey005430 – 005432)	10/25/18	Stipulation	10/29/18

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
126	Plaintiff	Bayuk and S. Morabito Statements of Assets & Liabilities dated 2/1/2011 (Gurse003470; Gursey003424)	10/25/18	Stipulation	10/29/18
127	Plaintiff	January 6, 2012 e-mail from Bayuk to Lovelace re Letter of Credit (LMWF_SUPP_068551-068553)	10/25/18	Stipulation	10/29/18
128	Plaintiff	January 6, 2012 e-mail from Vacco to Bernstein (LMWF_SUPP_090409-090411)	10/25/18	No Objection	10/29/18
129	Plaintiff	January 7, 2012 e-mail from Bernstein to Lovelace (LMWF_SUPP_090404-090408)	10/25/18	Objection Overruled	10/30/18 w/caveat of Court's further review

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Exhibit No.	Party	Description	Marked	Offered	Admitted
130	Plaintiff	March 18, 2012 e-mail from P. Morabito to Vacco (LMWF_SUPP_045806)	10/25/18	Objection Overruled	11/6/18
131	Plaintiff	April 2011 Nella Oil Documents (Lippes.PAM0001457-0001463)	10/25/18	Stipulation	10/29/18
132	Plaintiff	April 15, 2011 e-mail chain between P. Morabito and Vacco (Lippes.PAM0001465)	10/25/18	No Objection	10/31/18
133	Plaintiff	April 5, 2011 e-mail from P. Morabito to Vacco (Lippes.PAM0001466)	10/25/18	Objection Overruled	11/6/18
134	Plaintiff	April 16, 2012 e-mail from Vacco to Morabito (LMWF_SUPP_068534-068539)	10/25/18	Stipulated	10/30/18

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
135	Plaintiff	August 7, 2011 e-mail chain between Vacco and P. Morabito (LMWF_SUPP_076610)	10/25/18	Objection Overruled	11/2/18
136	Plaintiff	August 2011 Lovelace letter to Timothy Halves (LIPPES.PAM0002925-0002929)	10/25/18	Objection Overruled	10/29/18
137	Plaintiff	August 24, 2011 e-mail chain between Vacco and P. Morabito (LMWF_SUPP_102772)	10/25/18	Stipulation	10/29/18
138	Plaintiff	November 11, 2011 e-mail from Vacco to P. Morabito (LMWF_SUPP_076609)	10/25/18	Objection Overruled	11/2/18
139	Plaintiff	November 16, 2011 e-mail from P. Morabito to Vacco (LMWF_SUPP_029579)	10/25/18	Objection Overruled	11/2/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
140	Plaintiff	November 28, 2011 e-mail chain between Vacco, S, Morabito and P. Morabito (LMWF_SUPP_084849-084850)	10/25/18	No Objection	10/31/18
141	Plaintiff	December 7, 2011 e-mail from Vacco to P. Morabito (LMWF_SUPP_087520)	10/25/18	Objection Overruled	11/2/18
142	Plaintiff	February 10, 2012 e-mail chain between P. Morabito Wells, and Vacco (LMWF_SUPP_075549 – 075552)	10/25/18	Objection Overruled	11/6/18
143	Plaintiff	April 20, 2012 e-mail from P. Morabito to Bayuk (LMWF_SUPP_043179)	10/25/18	No Objection	10/30/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
144	Plaintiff	April 24, 2012 e-mail from P. Morabito to Vacco re SPI Loan Detail (SPI NO PAM0000018-19)	10/25/18	Objection Overruled	10/29/18 – Must be Authentic. By Leonard – 11/2/18
145	Plaintiff	September 4, 2012 e-mail chain between Vacco and Bayuk (LMWF SUPP 100011-100050)	10/25/18	Objection Overruled	10/30/18
146	Plaintiff	September 7, 2012 BofA and Morabito Settlement Agreement (WL002794 – WL002801) RETURNED TO PARTY	10/25/18		

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147	Plaintiff	September 4, 2012 e-mail from P. Morabito to Vacco (LMWF_SUPP_045298-045301)	10/25/18	Objection Overruled	10/30/18 – Provisional Admission pending briefing
148	Plaintiff	September 4, 2012 e-mail from Bayuk to Vacco (LMWF_SUPP_086881-086884)	10/25/18	Objection Sustained/ Re-Offered/ Objection Overruled	11/7/18
149	Plaintiff	December 6, 2012 e-mail from Vacco to P. Morabito re: BOA and the path of money (LMWF_SUPP_086836-086837)	10/25/18	Objection Overruled	11/6/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
150	Plaintiff	September 18, 2012 e-mail chain between P. Morabito and Bayuk (LMWF_SUPP_043640 - 043643)	10/25/18	Objection Overruled	11/6/18
151	Plaintiff	October 3, 2012 e-mail chain between Vacco and P. Morabito (LMWF_SUPP_093077-093078)	10/25/18	No Objection	10/30/18
152	Plaintiff	September 3, 2012 e-mail from P. Morabito to Vacco (LMWF_SUPP_050441)	10/25/18	Objection Overruled	11/6/18
153	Plaintiff	March 14, 2013 e-mail chain between P. Morabito and Vacco (LMWF_SUPP_043081)	10/25/18	Objection Overruled	11/6/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
154	Plaintiff	Morabito 2009 Tax Return (Morabito (341).000408 - 000437)	10/25/18	Objection Overruled	11/6/18
155	Plaintiff	Superpumper Form 8879-S tax year ended 12-31-10 (Superpumper000416 – 000436)	10/25/18	Stipulation	10/29/18
156	Plaintiff	2010 U.S. S Corporation Tax Return for Consolidated Western Corporation (SBCPA002422 – 002493)	10/25/18	Stipulation	10/29/18
157	Plaintiff	Snowshoe form 8879-S for year ended 12-31-10 (Superpumper 000271 – 000291)	10/25/18	Stipulation	10/29/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
158	Plaintiff	Snowshoe Form 1120S 2011 Amended Tax Return (Superpumper 000193 – 000270)	10/25/18	Stipulation	10/29/18
159	Plaintiff	September 14, 2012 e-mail from Vacco to P. Morabito (LMWF_SUPP_089954-089955)	10/25/18	Objection Overruled	11/2/18
160	Plaintiff	October 1, 2012 e-mail from P. Morabito to Vacco (LMWF_SUPP_045273)	10/25/18	Objection Overruled	11/6/18
161	Plaintiff	December 18, 2012 e-mail from Vacco to P. Morabito (LMWF_SUPP_076553)	10/25/18	Objection Overruled	11/2/18
162	Plaintiff	April 24, 2013 e-mail from P. Morabito to Vacco (LMWF_SUPP_043086)	10/25/18	Objection Overruled	11/2/18

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Date: **10/29/2018**

Exhibit No.	Party	Description	Marked	Offered	Admitted
163	Plaintiff	Membership Interest Purchases, Agreement – Watch My Block (Morabito (341).007100 – 007104)	10/25/18	Stipulation	10/29/18
164	Plaintiff	Watch My Block organizational documents (WL4578 – 4591)	10/25/18	Stipulation	10/29/18
165	Plaintiff	9/15/15 Edward Bayuk's Answers to Plaintiff's First Set of Interrogatories RETURNED TO PARTY	10/25/18		
166	Plaintiff	9/14/15 Snowshoe Petroleum, Inc.'s Answers to Plaintiff's First Set of Interrogatories RETURNED TO PARTY	10/25/18		

Exhibits

Title: **WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.**

PLTF: **WILLIAM A. LEONARD, TRUSTEE**

PATY: **ERIKA PIKE TURNER, ESQ.
GABRIELLE A. HAMM, ESQ.
TERESA M. PILATOWICZ, ESQ.**

DEFT: **SUPERPUMPER, INC.
EDWARD WILLIAM BAYUK LIVING TRUST
SALVATORE MORABITO
SNOWSHOE PETROLEUM, INC.**

DATY: **FRANK GILMORE, ESQ.**

Case No: **CV13-02663**

Dept. No: **4** Clerk: **M. Stone**

Date: **10/29/2018**

Exhibit No.	Party	Description	Marked	Offered	Admitted
167	Plaintiff	9/15/15 Edward Bayuk, as Trustee of the Edward William Bayuk Living Trust's Answers to Plaintiff's First Set of Interrogatories RETURNED TO PARTY	10/25/18		
168	Plaintiff	10/16/15 Salvatore Morabito's Answers to Plaintiff's First Set of Interrogatories RETURNED TO PARTY	10/25/18		
169	Plaintiff	02/02/16 Superpumper, Inc.'s Supplemental Answers to Plaintiff's Second Set of Interrogatories RETURNED TO PARTY	10/25/18		
170	Plaintiff	9/24/15 Subpoena to Dennis Vacco RETURNED TO PARTY	10/25/18		

Exhibits

Title: WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.

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Case No: CV13-02663

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Exhibit No.	Party	Description	Marked	Offered	Admitted
171	Plaintiff	9/29/15 New York Subpoena/Subpoena Duces Tecum to Dennis Vacco, c/o Lippes Mathias Wexler Friedman LLP RETURNED TO PARTY	10/25/18		
172	Plaintiff	9/29/15 Notice of Issuance of Subpoena to Dennis Vacco RETURNED TO PARTY	10/25/18		
173	Plaintiff	10/15/15 Lippes Mathias Wexler Friedman's Response to Subpoena RETURNED TO PARTY	10/25/18		
174	Plaintiff	10/15/15 Certificate of Service of copy of Lippes Mathias Wexler Friedman's Response to Subpoena	10/25/18	Stipulation	10/29/18

Exhibits

Title: **WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.**

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Exhibit No.	Party	Description	Marked	Offered	Admitted
175	Plaintiff	02/03/16 Order Granting Motion to Compel Responses to Deposition Questions (ECF # 502 in Case No. 13-51237-gwz)	10/25/18	Objection Overruled with Court taking Judicial Notice	11/2/18
176	Plaintiff	06/13/16 Recommendation for Order, Case No. CV13-0266 RETURNED TO PARTY	10/25/18		
177	Plaintiff	07/06/16 Order Confirming Master Recommendation, Case No. CV13-02663 RETURNED TO PARTY	10/25/18		
178	Plaintiff	Hodgson Russ LLP Subpoena RETURNED TO PARTY	10/25/18		
179	Plaintiff	Gursey Schneider LLP Subpoena	10/25/18	Stipulation	10/29/18

Exhibits

Title: WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.

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Exhibit No.	Party	Description	Marked	Offered	Admitted
180	Plaintiff	Summary Appraisal of 570 Glenneyre (Morabito (341).002402 - 002432)	10/25/18	Stipulation	10/29/18
181	Plaintiff	Appraisal of 1461 Glenneyre Street (Morabito (341).006842-006890)	10/25/18	Stipulation	10/29/18
182	Plaintiff	Appraisal of 370 Los Olivos (Morabito (341).002462 - 002488)	10/25/18	Stipulation	10/29/18
183	Plaintiff	Appraisal of 371 El Camino Del Mar (Morabito (341).002489 – 002514)	10/25/18	Stipulation	10/29/18

Exhibits

Title: WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.

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Exhibit No.	Party	Description	Marked	Offered	Admitted
184	Plaintiff	Appraisal of 1254 Mary Fleming Circle (Morabito (341).002515 – 002543)	10/25/18	Stipulation	10/29/18
185	Plaintiff	Mortgage – Panorama (Superpumper 1353)	10/25/18	Stipulation	10/29/18
186	Plaintiff	Mortgage - El Camino (Superpumper 1352)	10/25/18	Stipulation	10/29/18
187	Plaintiff	Mortgage – Los Olivos (Superpumper 1351)	10/25/18	Stipulation	10/29/18
188	Plaintiff	Mortgage – Glenneyre (Superpumper 1354)	10/25/18	Stipulation	10/29/18
189	Plaintiff	Mortgage – Mary Fleming (Superpumper 1350)	10/25/18	Stipulation	10/29/18
190	Plaintiff	Settlement Statement – 371 El Camino Del Mar (Morabito (341).006962)	10/25/18	Stipulation	10/29/18

Exhibits

Title: **WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.**

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Exhibit No.	Party	Description	Marked	Offered	Admitted
191	Plaintiff	Settlement Statement – 370 Los Olivos (Morabito (341).006961)	10/25/18	Stipulation	10/29/18
192	Plaintiff	8355 Panorama Dr. – 2010 Declaration of value (Morabito (341).006932-006933)	10/25/18	Stipulation	10/29/18
193	Plaintiff	Mortgage – 8355 Panorama Drive (Morabito (341).006969 – 006970)	10/25/18	Stipulation	10/29/18
194	Plaintiff	Compass – Certificate of Custodian of Records	10/25/18	Stipulation	10/29/18

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
195	Plaintiff	May 12, 2014 Declaration of Salvatore Morabito in Support of Snowshoe Capital's Motion to Dismiss – filed in Case No. CV13-02663 RETURNED TO PARTY	10/25/18		
196	Plaintiff	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	10/25/18	Stipulation	10/29/18
197	Plaintiff	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	10/25/18	Stipulation	10/29/18

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
198	Plaintiff	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	10/25/18	Stipulation	10/29/18
199	Plaintiff	January 22, 2010 Deposition of Edward Bayuk in CV07-02764 RETURNED TO PARTY	10/25/18		
200	Plaintiff	February 22, 2010 Deposition of Paul Morabito in CV07-02764 (Volume 1) RETURNED TO PARTY	10/25/18		
201	Plaintiff	February 23, 2010 Deposition of Paul Morabito in CV07-02764 (Volume 2) RETURNED TO PARTY	10/25/18		

Exhibits

Title: WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.

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Case No: CV13-02663

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Exhibit No.	Party	Description	Marked	Offered	Admitted
202	Plaintiff	March 3, 2010 Deposition of Paul Morabito in CV07-02764 (Volume 3) RETURNED TO PARTY	10/25/18		
203	Plaintiff	March 12, 2015 Transcript of Morabito 341 Meeting of Creditors (Volume 1) RETURNED TO PARTY	10/25/18		
204	Plaintiff	June 19, 2015 Deposition of Spencer Cavalier RETURNED TO PARTY	10/25/18		
205	Plaintiff	June 25, 2015 Transcript of Morabito 341 Meeting of Creditors (Volume 2) RETURNED TO PARTY	10/25/18		

Exhibits

Title: **WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.**

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Exhibit No.	Party	Description	Marked	Offered	Admitted
206	Plaintiff	October 20, 2015 Deposition of Dennis C. Vacco as PMK for Snowshoe RETURNED TO PARTY	10/25/18		
207	Plaintiff	October 20, 2015 Deposition of Dennis C. Vacco, individual RETURNED TO PARTY	10/25/18		
208	Plaintiff	October 21, 2015 Deposition of Christian Lovelace as PMK of Snowshoe RETURNED TO PARTY	10/25/18		
209	Plaintiff	December 5, 2015 Transcript of Morabito Examination (Volume 4) RETURNED TO PARTY	10/25/18		

Exhibits

Title: WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.

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Exhibit No.	Party	Description	Marked	Offered	Admitted
210	Plaintiff	January 27, 2016 Deposition of Mark Justmann RETURNED TO PARTY	10/25/18		
211	Plaintiff	March 16, 2016 Deposition of Gary L. Krausz, CPA RETURNED TO PARTY	10/25/18		
212	Plaintiff	March 21, 2016 Deposition of Paul Morabito RETURNED TO PARTY	10/25/18		
213	Plaintiff	March 22, 2016 Deposition of Michael Sewitz RETURNED TO PARTY	10/25/18		
214	Plaintiff	September 14, 2016 Transcript of Morabito Examination (Volume 3) RETURNED TO PARTY	10/25/18		

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
215	Plaintiff	December 6, 2016 Transcript of Morabito Examination (Volume 5) RETURNED TO PARTY	10/25/18		
216	Plaintiff	May 17, 2017 Deposition of Stanton Bernstein RETURNED TO PARTY	10/25/18		
217	Plaintiff	July 10, 2017 Deposition of Dennis C. Vacco RETURNED TO PARTY	10/25/18		
218	Plaintiff	July 11, 2017 Deposition of Dennis C. Vacco RETURNED TO PARTY	10/25/18		
219	Plaintiff	July 12, 2017 Deposition of Garry Graber RETURNED TO PARTY	10/25/18		

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
220	Plaintiff	May 1, 2018 Deposition of Garry Graber as PMK of Hodgson Russ RETURNED TO PARTY	10/25/18		
221	Plaintiff	May 1, 2018 Deposition of Sujata Yalamanchili as PMK of Hodgson Russ RETURNED TO PARTY	10/25/18		
222	Plaintiff	Kimmel – January 21, 2016, Comment on Alves Appraisal (Kimmel 0000081-84)	10/25/18	Stipulation	11/6/18
223	Plaintiff	September 20, 2010 email from Yalamanchili to Morabito (HR0000358)	10/25/18	Stipulation	10/29/18
224	Plaintiff	March 24, 2011 E-mail from Naz Afshar re “telephone call regarding CWC” (G. Kraus Exh 22)	10/25/18	Stipulation	10/29/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
225	Plaintiff	Bank of America Records for Edward Bayuk re:	11/1/18	Stipulation	11/1/18
226	Defendants	June 11, 2007 Wholesale Marketer Agreement (Kraus Ex. 15)	10/25/18	No Objection	10/31/18
227	Defendants	May 25, 2006 Wholesale Marketer Facility Development Incentive Program Agreement (Superpumper 001862-001868)	10/25/18	No Objection	10/31/18
228	Defendants	June 2007 Master Lease Agreement – Spirit SPE Portfolio and Superpumper, Inc. (Superpumper 000616-00670)	10/25/18	No Objection	10/31/18
229	Defendants	Superpumper Inc 2008 Financial Statement (12/31/08) (Cavalier Ex 7)	10/25/18	Stipulation	10/29/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
230	Defendants	November 9, 2009 Email from P. Morabito to Bernstein, Yalaman re: Jan Friederich – entered into Consulting Agreement	10/25/18	No Objection	11/5/18
231	Defendants	September 30, 2010, Letter from Compass to Superpumper, Morabito, CWC re: reducing face amount of the revolving note (Superpumper 000440-000443)	10/25/18	No Objection	10/31/18
232	Defendants	October 15, 2010, letter from Quarles & Brady to Vacco re: Revolving Loan Documents and Term Loan Documents between Superpumper and Compass Bank (Superpumper 000444-000448)	10/25/18	No Objection	10/31/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
233	Defendants	BMO Account Tracker Banking report (10/1-10/31/10) (Morabito (341) 005357-005363)	10/25/18	No Objection	11/2/18
234	Defendants	September 28, 2010 Bank of Montreal Wire \$517,547 (Superpumper 000606) RETURNED TO PARTY	10/25/18		
235	Defendants	August 31, 2010 Superpumper Inc., Valuation of 100 percent of the common equity in Superpumper, Inc on a controlling marketable basis (Cavalier Ex 3)	10/25/18	Stipulation	11/5/18
236	Defendants	June 18, 2014 Email from S. Morabito to Vanek (WF) re: Analysis of Superpumper Acquisition in 2010 (Superpumper 000097-00098)	10/25/18	No Objection	11/7/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
237	Defendants	Bank of Montreal Customer Service Request Commitment Sam to Superpumper First Loan to Business \$\$659,000 (Superpumper 000605) RETURNED TO PARTY	10/25/18		
238	Defendants	November 28, 2011 Wire transfer from S. Morabito to Lippes (payment to Paul) (Superpumper 000610) RETURNED TO PARTY	10/25/18		
239	Defendants	January 22, 2016 e-mail from Bernstein to S. Morabito re: Consolidated Amounts of Notes Receivable or Payable for CWC from Inception 4/26/2006 - 9/30/10. (Superpumper 001359-1360) RETURNED TO PARTY	10/25/18		

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Exhibit No.	Party	Description	Marked	Offered	Admitted
240	Defendants	December 18, 2015 Email from G. Krausz to S. Morabito re: Combining SPI and CWC – add 2 entities loans to and from Paul _ \$1,917,126 (Superpumper 001361-63) RETURNED TO PARTY	10/25/18		
241	Defendants	Superpumper March 2010 YTD Income Statement (Superpumper 000990-001004)	10/25/18	Stipulation	10/29/18

Exhibits

Title: WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM INC.

PLTF: WILLIAM A. LEONARD, TRUSTEE

**PATY: ERIKA PIKE TURNER, ESQ.
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**DEFT: SUPERPUMPER, INC.
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DATY: FRANK GILMORE, ESQ.

Case No: CV13-02663

Dept. No: 4

Clerk: M. Stone

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Exhibit No.	Party	Description	Marked	Offered	Admitted
242	Defendants	March 20, 2017 Letter from Dept of Treasury to Stanton R Bernstein CPA re: IRS letter to Snowshoe Petroleum re: "No Change to Their Tax Return." (Superpumper 003439 – 03448) RETURNED TO PARTY	10/25/18		
243	Defendants	August 13, 2010 Superpumper 3 Million Dollar Term Loan Initiated by P. Morabito (Superpumper 000458-000462) RETURNED TO PARTY	10/25/18		
244	Defendants	Assignment Agreement for \$939,000 Morabito Note (Superpumper 000007-000009)	10/25/18	Stipulation	10/29/18

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
245	Defendants	\$3mm Line of Credit for SP – (Superpumper 000925-000926) RETURNED TO PARTY	10/25/18		
246	Defendants	December 9, 2010 Letter from Quarles & Brady to Superpumper, Morabito, CWC re: Business Loan Agreement dated 11/5/09 between Superpumper and Compass Bank (Superpumper 000454-000457) RETURNED TO PARTY	10/25/18		
247	Defendants	July 1, 2011 Third Amendment to Forbearance Agreement Superpumper and Compass Bank (Superpumper 000486-000494)	10/25/18	No Objection	11/7/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
248	Defendants	Superpumper Cash Contributions 1/2010 thru 9/2015 – Bayuk and S. Morabito (Superpumper 001371-001378)	10/25/18	No Objection	10/31/18
249	Defendants	Salvatore Morabito Wire Transfers to Superpumper Superpumper 000607-000609 RETURNED TO PARTY	10/25/18		
250	Defendants	11/11 Cash Management Deposit \$450,000, \$449,980 (Superpumper 001860) RETURNED TO PARTY	10/25/18		
251	Defendants	January 6, 2011 Check #102 from S. Morabito to Superpumper for \$250,000 for Capital Infusion (Superpumper 001861) RETURNED TO PARTY	10/25/18		

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Exhibit No.	Party	Description	Marked	Offered	Admitted
252	Defendants	October 15, 2010 Letter from Quarles & Brady to Vacco re: Revolving Loan documents and Term Loan documents between Superpumper Prop. and Compass Bank (Morabito 341.007014-16)	10/25/18	No Objection	11/2/18
253	Defendants	February 26, 2010 Superpumper Properties Summary Appraisal Reports (Morabito (341) 002549-002559) RETURNED TO PARTY	10/25/18		
254	Defendants	Bank of America – S. Morabito SP Properties Sale, SP Purchase Balance (Superpumper 000948)	10/25/18	No Objection	10/31/18
255	Defendants	Superpumper Prop. Final Closing Statement for 920 Mountain City Hwy, Elko, NV (Morabito (341) 002560)	10/25/18	No Objection	11/2/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
256	Defendants	September 30, 2010 Raffles Insurance Limited Member Summary (Morabito (341) 007166)	10/25/18	No Objection	10/31/18
257	Defendants	Equalization Spreadsheet (Morabito (341) 000001)	10/25/18	No Objection	10/31/18
258	Defendants	November 9, 2005 Grant Bargain and Sale Deed Doc #3306300 for Property Washoe County (Morabito (341) 002449-00250)	10/25/18	Stipulation	10/29/18
259	Defendants	February 9, 2009 Paul Morabito/Edward Bayuk Interior Design Furnishings Layout Plans (Sewitz Ex 2) RETURNED TO PARTY	10/25/18		

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Exhibit No.	Party	Description	Marked	Offered	Admitted
260	Defendants	January 7, 2016 Budget Summary – Panorama Drive (Superpumper 001208-001209)	10/25/18	Stipulated	11/2/18
261	Defendants	Mary 22, 2006 Compulation of Quotes and Invoices Quote of Valley Drapery (Sewitz Ex 1)	10/25/18	No Objection	11/7/18
262	Defendants	Photos of 8355 Panorama Home (Superpumper 001825-001859)	10/25/18	Stipulation	11/2/18
263	Defendants	Water Rights Deed (Document #4190152) between P Morabito, E Bayuk, Grantors, RCA Trust One Grantee (Morabito (341-002456-002469)	10/25/18	Stipulation	10/29/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
264	Defendants	Bank of America Payoff Demand Statement for 371 El Camino Del Mar, Laguna Beach, CA 92851 for \$870,569.74 (Superpumper 000439) RETURNED TO PARTY	10/25/18		
265	Defendants	October 1, 2010 Bank of America Wire Transfer – Bayuk – Morabito \$60,117 (Superpumper 000437)	10/25/18	No Objection	10/30/18
266	Defendants	October 1, 2010 Check #2354 from E. Bayuk to P. Morabito for \$29,383 for 8355 Panorama funding (Morabito (341) 006943-006944)	10/25/18	No Objection	10/30/18

Exhibits

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Exhibit No.	Party	Description	Marked	Offered	Admitted
267	Defendants	Bank of America Payoff Demand Statement for 370 Los Olivos, Laguna Beach, CA 92651 for \$1,044,082.73 (Superpumper 000438) RETURNED TO PARTY	10/25/18		
268	Defendants	October 1, 2010 Check #2356 from E. Bayuk to P. Morabito for \$12,763 for 370 Los Olivos Funding (Morabito (341) 006941)	10/25/18	No Objection	10/30/18
269	Defendants	October 1, 2010 Check # 2357 from E. Bayuk to P. Morabito for \$31,284 for 371 El Camino Del Mar Funding (Morabito 341.006945-46)	10/25/18	No Objection	10/30/18
270	Defendants	Bayuk Payment Ledger Support Documents Checks and Bank Statements (Superpumper 002154-002343)	10/25/18	No Objection	10/31/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
271	Defendants	Bayuk Superpumper Contributions (Superpumper 001879-001885)	10/25/18	No Objection	10/31/18
272	Defendants	May 14, 2012 Email String between P. Morabito, D. Vacco, E Bayuk, S. Bernstein re: Info for Laguna purchase (SBCPA 006044-006048)	10/25/18	Portion Offered/ Objection as to only a Portion	10/31/18
273	Defendants	April 15, 2010 Addendum to Incentive Agreement between Shell Oil Products and Superpumper, re: Seller agreeing to assist with costs of the improvements. (Superpumper 001869-001872) RETURNED TO PARTY	10/25/18		

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Exhibit No.	Party	Description	Marked	Offered	Admitted
274	Defendants	January 14, 2013 Superpumper Inc, Executive Summary Business Plan (Superpumper 001398- 001408) RETURNED TO PARTY	10/25/18		
275	Defendants	March 30, 2013 Email from J. Friederick to S. Morabito, E. Bayuk re: She just prepared the EBITDA comparison (Superpumper 001415) RETURNED TO PARTY	10/25/18		
276	Defendants	September 21, 2010 Appraisal of 8355 Panorama Drive Reno, NV by Alves Appraisal	10/25/18	Stipulation	11/2/18
277	Defendants	Assessor's Map/Home Caparisons for 8355 Panorama Drive, Reno, NV (Noble 741) (Superpumper 001113- 001149)	10/25/18	No Objection	11/6/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
278	Defendants	December 3, 2007 - Case Docket for CV07-02764	10/25/18	Stipulation	10/29/18
279	Defendants	May 12, 2011 Expert Report of Craig L. Greene, CPA/CFF, CFE, MCJ	10/25/18	Objection Sustained	
280	Defendants	May 25, 2011 Stipulation Regarding the Imposition of Punitive Damages	10/25/18	No Objection	10/29/18
281	Defendants	Work File for September 24, 2010 Appraisal of 8355 Panorama Drive, Reno, NV (Noble 742) (Superpumper 001667-001724)	10/25/18	No Objection	11/6/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
282	Defendants	January 7, 2016 Email string between James McGovern, CPA and Teresa Pilatowicz re: completing the Valuation Report without receiving the documents that are missing. McGovern says he can prepare a "limiting condition" to the report and update/supplement as needed. (WL003829-003834) RETURNED TO PARTY	10/25/18		
283	Defendants	January 25, 2016 Expert Witness Report Leonard v. Superpumper Snowshoe	10/25/18	Stipulation	11/1/18
284	Defendants	February 29, 2016 Defendants' Rebuttal Expert Witness Disclosure	10/25/18	Stipulation	11/1/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
285	Defendants	February 3, 2016 Email S. Morabito to F. Gilmore re: attaching 2 spreadsheets for CWC which shows the detail in the account due from P. Morabito. (Bernstein Ex 21) RETURNED TO PARTY	10/25/18		
286	Defendants	2015 Budget (Superpumper 001516-001518) RETURNED TO PARTY	10/25/18		
287	Defendants	2012-2015 Superpumper Inc Store Income Expense Data (Superpumper 001432-001446) RETURNED TO PARTY	10/25/18		
288	Defendants	January 19, 2016 Email from Justmann to F. Gilmore re: Glenneyre (Justmann Ex 1) RETURNED TO PARTY	10/25/18		

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Exhibit No.	Party	Description	Marked	Offered	Admitted
289	Defendants	September 21, 2010 Property Comparison Summary Report (Justmann Ex 4) RETURNED TO PARTY	10/25/18		
290	Defendants	2008-Present – Summary Report of Sold Office Properties (Justmann Ex 5) RETURNED TO PARTY	10/25/18		
291	Defendants	Listing for 460 S. Coast Hwy, Laguna Beach, 92651 (Justmann Ex 6) RETURNED TO PARTY	10/25/18		
292	Defendants	January 23, 2016 Email from Justmann to F. Gilmore attaching his resume (Justmann Ex 9) RETURNED TO PARTY	10/25/18		

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Exhibit No.	Party	Description	Marked	Offered	Admitted
293	Defendants	September 20, 2010 – Lehman Appraisal Notes for California Real Estate Transaction (Justmann Ex 10) RETURNED TO PARTY	10/25/18		
294	Defendants	October 5, 2010 Lippes, Mathias Wexler Friedman, LLP, Invoices to P. Morabito (LMWF 000532-000553)	10/25/18	No Objection	11/1/18
295	Defendants	P. Morabito 2010 Tax Return Morabito (341).000112-171)	10/25/18	No Objection	11/7/18
296	Defendants	December 31, 2010 Superpumper Inc. Note to Financial Statements (SBCPA008347-008350)	10/25/18	Stipulation	11/7/18
297	Defendants	December 31, 2010 Superpumper Consultations (Kraus Exh. 19)	10/25/18	Objection Overruled	11/2/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
298	Defendants	April 19, 2011 Memo from D. Takemoto re: "Workpapers" re: Notes Receivable and Loan Refinancing (Kraus Exh. 21) RETURNED TO PARTY	10/25/18		
299	Defendants	Superpumper Lease & Rent Information (Cavalier Exh 11) RETURNED TO PARTY	10/25/18		
300	Defendants	9/20/10 Email Chain between Yalmanchili and Graber re: Attorney Client Privileged Communication (Graber Exh. 8)	11/1/18	Stipulation	11/1/18
301	Defendant	9/15/10 Email from Vacco to Paul Morabito re: Tomorrow (Yalamanchili Exh. 15)	11/1/18	No Objection	11/1/18
302	Plaintiff	Designation Portions of the Video Deposition of Paul Morabito	11/1/18	Stipulation	11/5/18

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Exhibit No.	Party	Description	Marked	Offered	Admitted
303	Plaintiff	Bankruptcy Court District of Nevada Claims Register case no. 13-51237	11/2/18	Objection Overruled	11/2/18
304	Defendant	4/14/18 Email from Allen to Krausz re: Superpumper (Krausz Exh. 20)	11/2/18	Stipulation	11/2/18
305	Plaintiff	Subpoena In a Case Under the Bankruptcy Code to Robison Sharp Sullivan Brust issued in case no. BK-N-13-51237-GWZ	2/8/19	No Objection	2/8/19
306	Plaintiff	Letter to Mark Weisenmiller, Esq., from Frank Gilmore, Esq., dated 8/30/18	2/8/19	No Objection	2/8/19
307	Plaintiff	Order Granting Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust filed in case no. BK-N-13-51237-GWZ	2/8/19	No Objection	2/8/19

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Case No: **CV13-02663**

Dept. No: **4**

Clerk: **M. Stone**

Date: **10/29/2018**

Exhibit No.	Party	Description	Marked	Offered	Admitted
308	Plaintiff	Response of Robison, Sharp, Sullivan & Brust's to Subpoena filed in case no. BK-N-13-51237-GWZ	2/8/19	No Objection	2/8/19
309	Plaintiff	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	2/8/19	No Objection	2/8/19

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IN THE SECOND JUDICIAL DISTRICT COURT

STATE OF NEVADA, COUNTY OF WASHOE

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

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 25, inclusive.

TRANSCRIPT OF PROCEEDINGS
JUDGE'S RULING
Monday, September 13, 2010

REPORTED BY:

Christina Amundson, CCR #641
Molezzo Reporters, 322.3334

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12 -oOo-

1 RENO, NEVADA - MONDAY, SEPTEMBER 13, 2010

2 JUDGE'S RULING

3 THE COURT: Thank you, Mr. Reid. I know the hour's
4 late, so I'll be quick. I do want to very sincerely thank
5 all the lawyers representing both parties in this case. This
6 is a difficult case, particularly for someone who doesn't
7 have any special expertise in commerce or in accountancy.

8 I was thinking yesterday that virtually every
9 witness in the case has been an expert of some kind, either
10 in accountancy or construction or construction management or
11 business. And a number of the subjects discussed have been
12 arcane and despite the detour we had on the problem with the
13 rule of exclusion, I think all the lawyers have just done a
14 magnificent job in presenting this case. Usually if somebody
15 makes our lives' easier, we appreciate their efforts. In
16 judging when they make your life harder, they're doing a good
17 job, and that's what you've done. Thank you very much.

18 I also believe in the truth of what President
19 Reagan once said. He said, There is a simplicity which lies
20 beyond complexity." There's a very great risk in a case like
21 this that a person can be consumed with details. I've spent
22 hours thinking about the interesting distinction between
23 capital and operating leases and trying to remember what the
24 letters of EBITDA stand for. But I've also tried to step

1 back a little bit and make some overall observations.

2 In 1928 — and I'm paraphrasing now from the
3 Meridian Business Advisors Purchase Price Allocation and
4 Impairment Report, which I believe is Exhibit 5190. But in
5 1928 Berry-Hinckley Industries began operations. When Wayne
6 Hinckley and Warran Semenza assumed the lease of the Flying
7 Ace Service Station on 2nd and West Streets in Reno — I'm
8 not going to read you all of this, by the way.

9 And eventually in the late 1970s Art Hinckley, Ward
10 Hinckley's son, joined the business supervising the
11 administrative staff of three employees. This business was
12 very successful literally for generations. The stock of BHI
13 was purchased on October 14th, 2005, by PAMCO, a company
14 owned by Mr. Morabito for approximately \$95 million, and Mr.
15 Morabito as the controlling owner was appointed president and
16 CEO. All real properties owned by BHI and by related
17 entities as operated by BHI were separately sold to PAMCO and
18 then sold to third parties.

19 As part of these sales, new leases were entered
20 into with BHI as the lessee and the leases were at
21 above-market rates. JH, Inc. owned by Jerry Herbst and
22 perhaps members of the Herbst family — I'm not sure — was
23 formed for the purpose of acquiring BHI. It is a related
24 party to the Terrible Herbst company and to the Herbst family

1 who have decades of experience operating gas stations and
2 convenience markets and in recent years some experience in
3 the gaming industry.

4 By no later than December 31st, 2008, this
5 company had zero value and the story of how that occurred is
6 in the long record of these proceedings, although, not
7 entirely relevant to the outcome of the case. As we all
8 know, the agreement between these parties is entitled the
9 "Amended and Restated Stock Purchase Agreement," or "the
10 ARSPA." It's dated June 28th, 2007.

11 The substance of the agreement, really, has two
12 components. First is what are known as the development
13 sites. The sites are real property that were partially
14 improved or would be improved to create convenience stores
15 and gas stations and then the remaining assets of Berry
16 Hinckley exclusive of assets sold prior to the closing of
17 this sale, principally what's known as the Nella assets. And
18 the primary assets in the second category were the operating
19 convenience stores.

20 There has been no evidence that I recall of any
21 kind creating any personal liability on the part of
22 plaintiffs, Edward Bayuk, Salvatore Morabito or Trevor Lloyd
23 and, therefore, any claims against them are hereby dismissed.

24 As to the development sites, Section 2.8(c) of the

1 ARSPA obligates the seller to enter into a construction
2 management agreement with the buyer and that agreement is
3 attached as Exhibit E to the ARSPA. I'll just briefly cite
4 some pertinent provisions of that agreement. And I also
5 note, by the way, that all obligations the seller under the
6 ARSPA are personally guaranteed by Mr. Morabito and all
7 obligations of the buyer under the ARSPA are personally
8 guaranteed by Mr. Jerry Herbst.

9 The construction management agreement provides
10 that, in consideration for the purchase of the development
11 sites by owner, the construction manager, which is Washoe
12 Construction Management Services, LLC, a company created by
13 Mr. Morabito and owned by him, the construction manager has
14 agreed to act as the construction manager for the project;
15 and, that is, Mr. Morabito's company is acting as
16 construction manager for this project in consideration for
17 the purchase of the development sites by the owner.

18 Article 1 provides, "The construction manager will
19 assist the owner with the management of the project including
20 monitoring project costs, endeavoring to keep costs within
21 the fixed-sum contracts entered into by and between owner and
22 Dennis Banks Construction for certain of the development
23 sites and within the budgets developed by owner and the
24 construction or manager for the balance of the development

1 sites for which the owner will have entered into cost-plus
2 contracts with the contractor and working with the contractor
3 to schedule the work of the project efficiently so that the
4 project will be ready for occupancy on the dates set forth in
5 the construction contract."

6 Article 2.1 provides that "The construction manager
7 will review all plans and specifications and advise on
8 systems and materials, construction feasibility, time
9 retirements for procurement, installation and construction,
10 relative cost and provide recommendations for economies as
11 appropriate. The construction manager is hereby authorized
12 to act as the owner's agent in dealing with the architect,
13 the construction contract, subcontractors and their
14 respective employees and agents."

15 Paragraph 2.3 provides that, "The construction
16 manager will work with the contractor to assure completion of
17 the project within the time period set forth in the
18 construction contract. In the event any change order or
19 other adjustment is requested by owner to be made to any
20 construction contract, construction manager will work with
21 the contractor to assure proper inclusion of such change."
22 Also, in paragraph 3.2 the relevant terms and conditions of
23 the ARSPA are incorporated into this agreement.

24 The Court was impressed by the testimony of

1 Mr. Doug Browne. He's a graduate in mathematics at the
2 University of Notre Dame. He was in the United States Marine
3 Corps. He was involved in engineering for — instructional
4 engineering for six years. He's been involved in
5 construction engineering and management for a substantial
6 period of time including at Q&D Construction Company. And he
7 described generally to the Court the role of a construction
8 manager. I won't detail his testimony as I I've taken it
9 down in my notes, but it involves many duties.

10 Essentially, he said the role of the construction
11 manager is to be the owner's representative to assure costs
12 and time are adhered to, both the schedule of the
13 construction project and its costs. The construction manager
14 asks questions and looks at the long-term items of a
15 contract. The construction manager works directly with
16 subcontractors, taking bids, evaluating the costs of various
17 components of the construction, creating a construction
18 timeline, making, at a minimum, monthly reports to the owner
19 so the owner's advised consistently of the milestones of
20 construction.

21 A good construction manager facilitates the process
22 and ensures proper and responsible accounting of the owner's
23 money on the project. The construction manager, he says, in
24 his experience is usually involved in the construction daily

1 and the construction site frequently. You would meet — you
2 would review the construction schedule with the contractor
3 and meet with the contractor weekly.

4 In Mr. Browne's opinion, the plaintiff construction
5 company and Mr. Morabito certainly performed none of the
6 services contemplated by the construction management
7 agreement. Mr. Morabito made it absolutely plain that in his
8 view the only purpose of the construction management
9 agreement was for him to get paid.

10 He actually said — I believe this is a direct
11 quotation from his testimony. It's something I wrote down
12 from his testimony: "What does the management of the
13 construction site mean? I have no idea what that means."

14 The only other human beings involved in this
15 construction management company were, first of all, Mr.
16 Gordon, who is an attorney with the firm of Lewis & Roca in
17 Reno, Nevada. Mr. Gordon made extremely plain in his
18 testimony that he doesn't have any competence in construction
19 supervision. He was called, I believe he said, every single
20 day. Every time the sun would rise and set, he was called by
21 Mr. Morabito, who wanted to know where's that building permit
22 so I can get my money. Mr. Gordon's job was to secure Mr.
23 Morabito's money by getting building permits or certificates
24 of occupancy.

1 The second person involved in the company is
2 Mr. Alonso who, although not a lawyer, is also associated
3 with the law firm and, apparently, played the same role as
4 Mr. Gordon.

5 The third person is Mr. Tripoli. And, again,
6 because the hour's late, I don't see any reason to belabor
7 this. But I watched his videotaped testimony and it is
8 ludicrous to think that he has any capacity to or did in any
9 significant way supervise this project. He even said that he
10 doesn't -- he does all the communicating with the owner of
11 the project. In the words of Mr. Browne, Mr. Morabito wasn't
12 managing the construction project. He was managing his
13 money.

14 Given the fact that the obligations undertaken in
15 the construction management agreement are consideration for a
16 purchase of development sites by the owner and the fact that
17 the Court finds that, not only were every one of those
18 obligations breached by the company and Mr. Morabito, but the
19 Court further finds by clear and convincing evidence, and
20 given all the circumstances I've just recited, that Mr.
21 Morabito never for a single second had any intention to
22 perform the services of construction management.

23 His representations to that effect in the
24 construction management agreement were false and

1 intentionally false. They were made for the purpose of
2 inducing the purchase of the development sites by the owner.
3 The owner reasonably relied on those representations and the
4 owner, as a result, has been damaged in the sum of
5 \$19,869,159. The plaintiff's claims for compensation under
6 the construction management agreement are denied.

7 The more difficult subject is the claims of the
8 defendants for fraudulent inducement. And this is very, very
9 difficult for the Court for a number of reasons. As I've
10 observed during the trial, all the parties in this case are
11 very significant — are very sophisticated. They are all
12 very experienced in commercial transactions.

13 The period of time, as I've noted earlier, in our
14 community and country between 2006 and today has been
15 extraordinary in that many, many businesses, businesses just
16 like Berry-Hinckley which have been successful for decades,
17 have failed. It is always difficult to parse through the
18 wreckage of a company and try to determine how it failed and
19 to what extent each circumstance may have played a role.

20 But as I mentioned to Mr. Desmond a while ago,
21 there is another approach, which I think is the more
22 straightforward approach and is applicable in this case; and,
23 that is, to work through the analysis of whether or not a
24 fraud was committed, whether there was reliance on fraudulent

1 misrepresentations, and then ask the simple question, if
2 there were fraudulent statements, if I relied on them and if
3 I knew the truth, is it reasonable to say I or the buyer, in
4 this case the Herbsts, would have bought the company.

5 If the answer is no, then the cost of buying the
6 company is recoverable as compensatory damages. On the one
7 hand, this transaction entailed a very extensive review of
8 the financial documents by representatives of the buyer
9 including certified public accountants, including people with
10 an expertise in obtaining commercial financing including, as
11 an example, Ms. Yalamanchili, who, obviously, has a high
12 level of expertise in drafting contracts of business
13 transactions of this nature.

14 The defendants also had their own experience and
15 expertise to rely on. They could and did fly to Reno. They
16 could and did physically see the properties. They could and
17 did talk to Mr. Hinckley about his experience. And so it is
18 understandable that, for the most part, the ARSPA puts the
19 responsibility on the buyer to rely on their own
20 investigation of the company and gives them the prerogative
21 of buying it or not buying it.

22 The question, then, is, Was there information that
23 was false that was represented to the buyer to be true that
24 was knowingly false which the buyer reasonably relied on in

1 making the decision to purchase the company and which the
2 buyer, as a practical matter, couldn't have otherwise
3 discovered, or truthful information intentionally withheld
4 from the buyer, which the buyer couldn't otherwise discover
5 and leading the — misleading the buyer to his detriment to
6 purchase the company.

7 I do not purport to have the capacity to evaluate
8 all of the expert testimony in this case. I thought Mr. Wood
9 and Mr. Greene and Ms. Berglund and the lady from Radiant —
10 forgive me. I forget her name — who testified were
11 magnificent in trying to translate for me accounting terms so
12 I would have an understanding of the significance of their
13 testimony.

14 But the finder-of-fact, who is a layperson in a
15 case like this, can't be an auditor. They can't really be
16 expected to surgically evaluate a case. I hope, based on my
17 experience and some special training at the National Judicial
18 College that I'm able to read a balance sheet and understand
19 a financial statement and some of the tools that business
20 people and accountants use.

21 But it is very, very easy in a case of this nature
22 to lose sight of the forest because one is trying to count
23 all the trees. There are a number of aspects of claimed
24 fraudulent conduct that I find not to be the case. For

1 instance, as to the leases, as I commented earlier, the
2 defendants were given all the information about the leases.
3 The leases, clearly most of them, were mischaracterized and,
4 therefore, there was a violation of the ARSPA because they
5 were not set forth in accordance with GAAP.

6 But the defendants had all the opportunity and all
7 the ability in the world to evaluate the leases. The
8 distinction between operating and capital leases was at least
9 as important to the buyer as it was to the seller because, as
10 several witnesses pointed out, the high-dollar amount of
11 capital leases created a default on the part of the buyer
12 with its lender.

13 So they knew that under the conditions of the loan
14 they had to be concerned about the distinction between
15 capital and operating leases and they had the expertise
16 necessary to make that evaluation.

17 Now, what would have happened if the buyer had said
18 we want an appraisal of the development sites. We've hired
19 Mr. Ken Olin. He'd like to stop by and do appraisals, and
20 the seller said no? I don't know what would have happened.
21 But there's certainly nothing close to proof by clear and
22 convincing evidence that the mischaracterization of the
23 leases constituted fraud.

24 Likewise, the evidence is overwhelming that these

1 leases were above market. Every witness who's testified on
2 the subject has said that. I think Mr. Herbst, Senior said
3 it. If you give me a minute to look at this, I would have
4 known instantly it was above market. Everybody at
5 Berry-Hinckley knew it was above market. What is the
6 requirement in the ARSPA that the leases not be above market?
7 Nothing.

8 In fact, how couldn't they be above market once you
9 understand how Mr. Morabito purchased this company in the
10 first place? He did a leveraged purchase. He used the land
11 of the company and sold it in order to finance his purchase
12 and then the leases were flipped again. Well, you know,
13 there's only so much air you can add even to Wonder Bread
14 before it explodes. But that doesn't create any basis to
15 conclude that there was fraud. Again, it was information
16 that either was known or could have been known by the
17 defendants, and the plaintiff really did nothing to conceal
18 that.

19 There are a number of GAAP violations. I agree
20 with the entire list and adopt it stated by Mr. Desmond in
21 his closing statement. The capital versus operating, I
22 already referred to, including the rent in the construction
23 in progress category, including in CIP other
24 non-Berry-Hinckley companies' assets, the improper treatment

1 of landlord — I can't read the last word in my own notes,
2 but the landlord issue. And there's one more. And, again,
3 those are listed. They are GAAP violations. There's been
4 evidence to support that. But I don't believe the defendants
5 have been damaged because of those violations so, although
6 they're breaches of the ARSPA, damages should not be awarded.

7 The two other significant matters are, first of
8 all, working capital. The evidence shows, I believe clearly
9 and convincingly, that there was no basis whatsoever for the
10 contents of the working capital estimate other than Mr.
11 Morabito's decision to create it. Generally speaking, of
12 course, an estimate of value is just that. It cannot form
13 the basis for a legal claim for fraud or other misconduct.

14 But these circumstances are different. Here's why
15 they're different: First, this estimate was prepared by the
16 owner of this company. Secondly, it was significantly and
17 materially inconsistent with the information he was given
18 firsthand by his chief financial officer and by his personal
19 attorney. Third, there's no evidence that it was reviewed by
20 anyone else. I asked counsel just today did Mr. Morabito
21 say, look, here's my idea for working capital, what do you
22 think? No.

23 There isn't one piece of paper that's been produced
24 in over 5,500 exhibits in this trial or to the professional

1 accountants or during discovery or anywhere, as far as I
2 know, to support the exaggerated value of the company as set
3 forth in the working capital statement. I also agree with
4 Mr. Desmond that the major difference is accounts payable.

5 Now, there's a reason why that's significant too.
6 I was very impressed, very impressed with the testimony of
7 Ms. Meyer. She worked for Berry-Hinckley since, I believe,
8 1995. She worked for years under the direction of Mr.
9 Hinckley, who impressed me during his testimony as an honest,
10 fine business person. And the testimony of the CFO of this
11 company -- and, by the way, of course, she's also a CPA. She
12 graduated from UNR and was an accountant at Grant, Thornton.
13 She pointed out several times that Grant, Thornton had a very
14 good relationship with the company.

15 She testified that Mr. Morabito did not prepare the
16 monthly financial statements. There's no testimony
17 inconsistent with that. He did not. And, by the way,
18 there's no evidence that those monthly financial statements
19 through April of 2007 were inaccurate. And she testified --
20 and there's no testimony to the contrary -- that Mr. Morabito
21 had any access to the accounting at the company. She
22 certainly gave Mr. Morabito evidence to understand that the
23 leases were not being flipped.

24 She said Mr. Morabito had no ability because of his

1 inaccessibility to the financials — I guess the computers —
2 to change the financial statements. In the course of events
3 leading up to the closing of this transaction, there was a
4 point where Mr. Morabito only wanted Ms. Meyer to communicate
5 with him and not the lawyers or BCC.

6 Now, that's just a small fact. Maybe it has no
7 significance, but it's an unusual fact. If you're in the
8 process of a complex transaction involving tens of millions
9 of dollars, you've got a big team of people on behalf of the
10 defendant buyers, you have many, many, many emails from that
11 team to Ms. Meyer, you've got the CEO of the company who has
12 access to the financials and the president of the company
13 does not, yet she's told communicate with him and no lawyers
14 or BCC.

15 And as the chief financial officer of the company,
16 she said I don't know what happened to the information after
17 it went to Mr. Morabito. Paul handled the majority of the
18 information. All of us present during this trial remember
19 Ms. Meyer's testimony. And I thought it was very moving,
20 very moving about her constant disputes, disagreements with
21 Mr. Morabito about the accounts payable.

22 Now, the people who testify at trials, fortunately,
23 are not computers. And the most reliable indicator of the
24 truth is still common sense, as flawed as it is. It's the

1 best we have. So during this trial I've been trying to do
2 two things at the same time. One is to listen and learn the
3 information. As someone once said, understanding precedes
4 advocacy. And the other is to assess the credibility of the
5 human beings who testify here personally or by videotape and
6 say to myself, in essence, who is this person. Can I rely on
7 what they say.

8 It's just not enough to say, well, Ms. Meyer said
9 she constantly had disagreements with Mr. Morabito about the
10 amount of the accounts payable. Her anxiety, her fear of
11 this man because of his relentless, torturous attacks on her
12 to drive down the accounts payable was almost palpable as she
13 testified. It sounded more like the accounts I hear in cases
14 of spousal abuse than in cases of commercial transactions.

15 And what was his point of view? He always thought
16 it should be lower. It was always a battle back and forth.
17 Mr. Bernstein, who she talked about this and relied on, he
18 agreed with her. Ms. — I don't recall her name now, but the
19 other lady in the accounting department, she agreed with Ms.
20 Meyer.

21 Now, Ms. Berglund pointed out something that I
22 think is significant as well and it brings a sense of reality
23 to a case of this nature. She said, you know, what's the big
24 news? The seller would like the payables to be down and the

1 receivables to be up. The buyer would like the receivables
2 to be up and the payables to be down. And if there's anybody
3 in this room who hasn't slipped just a little bit on their
4 taxes over the last few years, stand up.

5 So, of course, people have a business interest that
6 incentivizes them to take a position on certain things.
7 Sometimes we see something as we think it is, because it's
8 something we want it to be. And I've thought long and hard
9 about that observation by Ms. Berglund, but then I go back to
10 the testimony of Ms. Meyer and how powerful it was.

11 Because, by the way, she wasn't mean-spirited in
12 her testimony about Mr. Morabito. She said she didn't know
13 of any particular instance when Mr. Morabito gave inaccurate
14 information to a third party. She didn't know of any
15 particular instance in which he changed the financial
16 statement. But then she was shown the document prepared by
17 Mr. Morabito and she knew in the flicker of an eye that it
18 was way off. Payables should be in the range of five to six
19 million. She had no idea why Mr. Morabito said that.

20 In March — I believe it was March 8th, '07, the
21 total of — I believe these were fuel accounts payable —
22 \$7,405,342.33. She said she never persuaded Mr. Morabito to
23 change anything. She just got yelled at. She told Mr.
24 Morabito on the telephone that she knew the payables were way

1 too low. She told him that many times on the telephone. "I
2 always knew," she said, "the accounts payable were too low."
3 And here's how she characterized her job, and I alluded to it
4 this morning, and I wasn't kidding. Here's what she said, "I
5 just got yelled at, did my job and went home."

6 There is simply no other conclusion available than
7 that the working capital report was prepared by Mr. Morabito,
8 that it was false, yet it was intentionally false, that it
9 was done for the purpose of the defendant's relying on it,
10 that they did reasonably rely on it.

11 There's just no other conclusion available, no
12 other data in the company supported that working capital
13 estimate. Mr. Morabito knew firsthand from his own employees
14 and from his own accountant that it was incorrect. It
15 materially inflated and falsely inflated the value of the
16 company, and that became apparent so quickly.

17 By August of 2007 Mr. Wood knew what was up. Mr.
18 Greene figured it out. Mr. Wood testified in a phrase, "Mr.
19 Morabito used his company as his personal piggy bank."
20 That's what he did. The estimate he gave had, not only no
21 basis in reality, but it was contrary to what he knew
22 firsthand to be the truth.

23 The Court finds that, had the defendant known these
24 things, the false statements in the working capital estimate,

1 they would not have bought this company. The ARSPA makes
2 clear there's no guarantee of success. One of the comments
3 of Mr. Reid that I thought about so much is that people are
4 entitled to fail. You can buy a company and you think you
5 can turn it around, you can think you can make it better, and
6 it doesn't happen. I have hundreds of commercial cases in
7 this department and not one of them involves a successful
8 company. I like to say -- and I apologize in advance for
9 saying this -- rich people think two things: One, I'm always
10 entitled to a return on my investment and, two, if I didn't
11 get it, somebody else is responsible. Maybe it's only
12 doctors who think that. I don't know. But that's our
13 natural instinct as human beings.

14 The defendants here lost a lot of money, a ton of
15 money, and so they naturally think, well, it's got to be
16 somebody else. It can't be me. And there's so many
17 variables that occurred in our economy in connection with
18 these convenience markets, the cost of gasoline, the cost of
19 construction for the development sites, on and on and on that
20 it becomes dizzying to try to determine just why this company
21 was so unsuccessful.

22 But for the purpose of the fraud analysis it comes
23 back to a rather simple thing: Number one was the value of
24 the company materially misstated. Of course it was. It had

1 to be. There's no other conclusion. Sure you can buy a
2 company that you know isn't doing well and hope you make it
3 better and it gets worse. But it doesn't get many hundreds
4 of thousands of dollars worse in the first thirty days.

5 And if you buy something that you are told in
6 December '06 is losing half a million a year — I'm sorry —
7 about \$600,000 a year and you do your own analysis and you
8 say no, I think that's wrong, I think it's \$1.5 million a
9 year and in relatively short order you find out it
10 approximates a million a month, then it is reasonable, as Mr.
11 Greene suggested, to extrapolate from performance to the
12 truthfulness or untruthfulness of the representations
13 concerning the value of the company.

14 I don't think there's sufficient evidence to
15 warrant a finding of fraud or to award damages, but I don't
16 think it's unreasonable. And I think those facts demonstrate
17 the conclusion that these defendants, had they known the
18 truth about the working capital, would not have bought this
19 company.

20 The Court, having found that the defendants were
21 fraudulently induced for the reasons I've stated, awards
22 damages to the defendant and against the plaintiffs in the
23 amount of \$66,002,205.75 for a total compensatory damage
24 award of \$85,871,364.75.

1 Counsel, are directed to set a punitive damages
2 hearing and counsel are directed to conduct discovery
3 concerning the net worth of the plaintiffs.

4 Mr. Desmond, would you prepare an order consistent
5 with what I've just said?

6 MR. DESMOND: I will, your Honor. Do you want it
7 in the form of findings of fact and conclusions of law?

8 THE COURT: Yes.

9 Oh, I should note otherwise than stated in the
10 decision I've just announced, all other claims by all parties
11 are denied.

12 Court is in recess.

13 (Whereupon, proceedings were concluded at 6:29
14 p.m.)

15 -o0o-

1 STATE OF NEVADA)
2) SS.
3 COUNTY OF WASHOE)

4 I, CHRISTINA MARIE AMUNDSON, official reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, do hereby certify:

7 That as such reporter, I was present in Department No. 6
8 of the above court on Monday, September 13, 2010, at the hour
9 of 9:00 a.m. of said day, and I then and there took verbatim
10 stenotype notes of the proceedings had and testimony given
11 therein in the case of Consolidated Nevada Corporation,
12 Plaintiff, versus JH, Inc., Defendant, Case No. CV07-02764.

13 That the foregoing transcript is a true and correct
14 transcript of my said stenotype notes so taken as aforesaid,
15 and is a true and correct statement of the proceedings had
16 and testimony given in the above-entitled action to the best
17 of my knowledge, skill and ability.

18 DATED: At Reno, Nevada, this 14th day of September 2010.
19

20 /S/ Christina Marie Amundson, CCR #641

21 Christina Marie Amundson, CCR #641
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CONSOLIDATED NEVADA CORP., et al.,
Plaintiffs,
vs.
JH, INC., et al.,
Defendants.

CASE NO. CV07-02764
DEPT. NO. 6

MEMORANDUM AND ORDER

JH, INC., et al.,
Counter-Claimants,
vs.
CONSOLIDATED NEVADA CORP., et al.,
Counter-Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

In accordance with WDCR 9, following a non-jury trial in the above-captioned matter, and review of the record and pleadings filed by the parties, the Court renders the following Findings of Fact, Conclusions of Law, Decision, and Judgment.

///

///

FINDINGS OF FACT

1. Berry-Hinckley Industries ("BHI") began operations in 1928 when Wayne Hinckley and Lawrence Semenza assumed the lease of the Flying A Service Station on Second and West Streets in Reno, Nevada. (Sept. 13, 2010, Transcript of Judge's Ruling at 4:2-7.)

2. In the late 1970s, Art Hinckley, Ward Hinckley's son, joined the business supervising the administrative staff of three employees. *Id.* at 4:9-11.

3. BHI was very successful for generations. *Id.* at 4:11-12.

4. The Stock of BHI was purchased on October 14, 2005, by P.A. Morabito & Co. ("PAMCO"), a company owned by Mr. Morabito, for approximately \$95 million. *Id.* at 4:12-14.

5. Paul Morabito, the controlling owner of PAMCO, was appointed president and CEO. *Id.* at 4:14-16.

6. All real properties owned by BHI, and by related entities as operated by BHI, were separately sold to PAMCO, which properties were then sold to third parties. *Id.* at 4:16-18.

7. As part of these sales, new leases were entered into with BHI as the lessee and the leases were at above-market rates. *Id.* at 4:19-21.

8. JH, Inc. ("JH"), owned by Jerry Herbst, was formed for the purpose of acquiring BHI. *Id.* at 4:21-23.

9. JH is a related party to Terrible Herbst, Inc. and to the Herbst family, who have decades of experience operating gas stations and convenience stores and, in recent years, some experience in the gaming industry. *Id.* at 4:23-5:3.

10. By no later than December 31, 2008, BHI had zero value. *Id.* at 5:4-5.

11. Although not essential to the outcome of this case, the story of how BHI lost all value is contained in the long record of these proceedings. *Id.* at 5:5-7.

12. The agreement between the parties is titled the Amended and Restated Stock Purchase Agreement ("ARSPA") and is dated June 28, 2007. *Id.* at 5:7-10.

13. The substance of the agreement consists of two components. *Id.* at 5:11-12.

1 14. First, the transaction consisted of the Development Sites. *Id.* at 12-13. The
2 Development Sites are ten parcels of real property that were partially improved or would be
3 improved to create convenience stores and gas stations. *Id.* at 5:13-19.

4 15. The primary assets in the second category were the operating convenience stores
5 and gas stations. *Id.* at 5:17-19.

6 16. This transaction entailed a very extensive review of the financial documents by
7 representatives of the buyer including certified public accountants and people with an expertise in
8 obtaining commercial financing. *Id.* at 12:6-13. Defendants also had their own experience and
9 expertise in the industry upon which they relied. *Id.* at 12:14-15. Defendants could and did fly to
10 Reno. *Id.* at 12:15. Defendants could and did physically see the properties. *Id.* at 12:15-16.
11 Defendants could and did talk to Mr. Hinckley about his experience with BHI. *Id.* at 12:16-17.
12 Thus, it is understandable that, for the most part, the ARSPA places the responsibility on the buyer
13 to rely on their own investigation of the company and gives them the prerogative of buying the
14 company or not buying the company. *Id.* at 12:17-21.

15 17. Expert witnesses David Wood, Craig Greene, Claudia Berglund and Heather Tryon
16 did a magnificent job in attempting to translate accounting terms for the Court so that the Court
17 would have an understanding of the significance of their testimony. *Id.* at 13:8-13.

18 18. The finder-of-fact, who is untutored in accounting, cannot function as an auditor,
19 and must rely on expert witness testimony for an understanding of the many financial issues in this
20 case. *Id.* at 13:14-15.

21 **A. Development Sites**

22 19. Section 2.8(c) of the ARSPA obligates the seller to enter into a construction
23 management agreement with the buyer and that agreement is attached as Exhibit E to the ARSPA.
24 *Id.* at 5:24-6:3.

25 20. The Construction Management Agreement ("CMA") provides that, in consideration
26 for the purchase of the Development Sites by owner, the construction manager, which is Washoe
27 Construction Management Services, LLC ("WCM"), a company created and owned by Mr.
28 Morabito, has agreed to act as the construction manager for the project. *Id.* at 6:9-14.

1 21. In other words, Mr. Morabito's company agreed to act as construction manager for
2 this project in consideration for the purchase of the Development Sites by JH. *Id.* at 6:15-17.

3 22. A few pertinent provisions of the CMA are as follows:

4 a. Article 1 provides, "[t]he Construction Manager will assist the Owner with the
5 management of the Project, including monitoring Project costs, endeavoring to
6 keep costs within the fixed sum contracts entered into by and between Owner and
7 Dennis Banks Construction (the "Contractor") for certain of the Development Sites
8 and within the budgets developed by Owner and the Construction Manager for the
9 balance of the Development Sites for which the Owner will have entered into Cost,
10 Plus Contracts with the Contractor, . . . and working with the Contractor to
11 schedule the work of the Project efficiently so that the Project will be ready for
12 occupancy on the dates set forth in the Construction Contracts." *Id.* at 6:18-7:5.

13 b. Article 2.1 provides, "[t]he Construction Manager will review all plans and
14 specifications and advise on systems and materials, construction feasibility, time
15 requirements for procurement, installation and construction, relative costs, and
16 provide recommendations for economies as appropriate. The Construction
17 Manager is hereby authorized to act as the Owner's agent in dealing with the
18 Architect, the Construction Contracts, subcontractors and their respective
19 employees and agents." *Id.* at 7:6-14.

20 c. Paragraph 2.3 provides, in part, "[t]he Construction Manager will work with the
21 Contractor to assure completion of the Project within the time periods set forth in
22 the Construction Contracts.. In the event any change order or other adjustment is
23 requested by Owner to be made to any Construction Contract, Construction
24 manager will work with the Contractor to assure proper inclusion of such change
25 order or other adjustment into the Project. " *Id.* at 7:15-21.

26 23. Pursuant to paragraph 3.2, the relevant terms and conditions of the ARSPA are
27 incorporated in the CMA. *Id.* at 7:22-23.

28

1 24. The Court was impressed by the testimony of Doug Browne. *Id.* at 7:24-8:1. Mr.
2 Browne is a graduate in mathematics from the University of Notre Dame. *Id.* at 8:1-2. Mr.
3 Browne was in the United States Marine Corps. *Id.* at 8:2-3. He was involved in construction
4 engineering and management for a substantial period of time including at Q&D Construction
5 Company. *Id.* at 8:4-6.

6 25. Mr. Browne described generally the role of the construction manager. *Id.* at 8:6-8.
7 Essentially, the role of the construction manager is to be the owner's representative to ensure that
8 both the schedule of the construction project and its costs adhere to the budget and timeline for
9 construction. *Id.* at 8:10-13. The construction manager asks questions and looks at the long-term
10 items of a contract. *Id.* at 8:13-15. The construction manager works directly with subcontractors,
11 taking bids, evaluating the costs of various components of the construction, creating a construction
12 timeline, and making, at a minimum, monthly reports to the owner so the owner is advised
13 consistently of the milestones of construction. *Id.* at 8:15-20. A good construction manager
14 facilitates the process and ensures proper and responsible accounting of the owner's money on the
15 project. *Id.* at 8:21-23.

16 26. In Mr. Browne's experience, the construction manager is usually involved in the
17 construction on a daily basis and frequently visits the construction site. *Id.* at 8:23-9:1. A
18 construction manager should review the construction schedule with the contractor and meet with
19 the contractor on a weekly basis. *Id.* at 9:1-3.

20 27. Mr. Browne opined that WCM and Mr. Morabito performed none of the services
21 contemplated by the CMA. *Id.* at 9:4-7.

22 28. Mr. Morabito made it absolutely plain that in his view, the only purpose of the
23 CMA was for him to get paid. *Id.* at 9:7-9. Mr. Morabito actually said, "What does the
24 management of the construction sites mean? I have no idea what that means." *Id.* at 9:10-13.

25 29. The only other people involved in WCM were Garrett Gordon, Phil Tripoli and
26 Alfredo Alonso. *Id.* at 9:14-10:13.

27 30. Mr. Gordon is an attorney with the law firm of Lewis and Roca in Reno, Nevada.
28 *Id.* at 9:15-17. Mr. Gordon made it plain that he does not have any competence in

1 construction supervision. *Id.* at 9:17-19. Mr. Gordon testified that he was called every day by Mr.
2 Morabito, who wanted to know the status of the building permits so that Mr. Morabito could get
3 his money. *Id.* at 9:10-22. Mr. Gordon's job was to secure Mr. Morabito's money by getting
4 building permits or certificates of occupancy. *Id.* at 9:22-24.

5 31. Mr. Alonso, although not a lawyer, is also associated with the law firm of Lewis
6 and Roca and played the same role as Mr. Gordon. *Id.* at 10:1-4.

7 32. The third person involved with WCM was Mr. Tripoli. *Id.* at 10:5. It is ludicrous
8 to think that Mr. Tripoli has any capacity to, or did in any significant way, supervise this project.
9 *Id.* at 10:7-9. Mr. Tripoli testified that he did not communicate at all with the owner of the project.
10 *Id.* at 10:9-11.

11 33. In the words of Mr. Browne, Mr. Morabito was not managing the construction
12 project, he was managing his money. *Id.* at 10:11-13.

13 **B. Working Capital**

14 34. Clear and convincing evidence shows that there was no basis whatsoever for the
15 contents of the working capital estimate other than Mr. Morabito's decision to create it. *Id.* at
16 16:8-11.

17 35. There is not one piece of paper that has been produced in over 5,500 exhibits in this
18 trial, to the Independent Accountants, during discovery or anywhere else, to support the
19 exaggerated value of the company as set forth in the working capital estimate. *Id.* at 16:23-17:3.

20 36. The major difference between Mr. Morabito's estimate and the actual working
21 capital is accounts payable. *Id.* at 17:3-4. This fact is significant. *Id.* at 17:15.

22 37. The Court is very impressed with the testimony of Paula Meyer. *Id.* at 17:5-7. Ms.
23 Meyer worked for BHI since approximately 1995. *Id.* at 17:7-8. She worked for years under the
24 direction of Mr. Hinckley, who impressed the Court as an honest and fine business person. *Id.* at
25 17:8-10. Ms. Meyer is also a CPA and was the CFO of BHI. *Id.* at 17:10-11. Ms. Meyer
26 graduated from the University of Nevada, Reno and was an accountant at Grant, Thornton. *Id.* at
27 17:11-12.

28 38. Mr. Morabito did not prepare the monthly financial statements. *Id.* at 17:15-17.

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1 39. There is no evidence that the monthly financial statements were inaccurate. *Id.*
2 at 17:16-19.

3 40. Mr. Morabito did not have access to the accounting system of the company. *Id.* at
4 17:19-21.

5 41. Ms. Meyer informed Mr. Morabito that the leases were not being "flipped" from
6 capital leases to operating leases. *Id.* at 17:21-23.

7 42. Mr. Morabito had no ability, due to his lack of access to the financial accounting
8 system, to change the financial statements. *Id.* at 17:24-18:2.

9 43. In the course of events leading to the closing of this transaction, there was a point
10 where Mr. Morabito wanted Ms. Meyer to communicate only with him and not the lawyers or
11 BCC. *Id.* at 18:2-5. This is a small fact, but it is an unusual fact. *Id.* at 18:6-7. This is a complex
12 transaction involving tens of millions of dollars. *Id.* at 18:7-9. As the CFO, Ms. Meyer had access
13 to the financial statements of the company while the CEO of the company, Mr. Morabito, did not
14 have such access. *Id.* at 18:11-13. Nevertheless, Mr. Morabito instructed Ms. Meyer to only
15 communicate with him. *Id.* at 18:13-14. Thus, the buyer was deprived of access to Ms. Meyer
16 (who knew the true financial condition of the company) and had to rely exclusively on the false
17 working capital estimate prepared by Mr. Morabito.

18 44. Ms. Meyer testified that she did not know what happened to information once it
19 went to Mr. Morabito. *Id.* at 18:15-17. Mr. Morabito handled the majority of the information. *Id.*
20 at 18:17-18.

21 45. Ms. Meyer's testimony regarding her constant disputes and disagreements with Paul
22 Morabito about the accounts payable was very moving. *Id.* at 19-21.

23 46. It is not enough to say Ms. Meyer constantly had disagreements with Mr. Morabito
24 about the amount of accounts payable. *Id.* at 19:8-10. Ms. Meyer's anxiety and fear of this man
25 because of his relentless, torturous attacks on her to drive down the accounts payable was almost
26 palpable as she testified. *Id.* at 19:10-13. Her testimony sounded more like the accounts the Court
27 hears in cases of spousal abuse than in cases of commercial transactions. *Id.* at 19:13-14.

28

1 47. Ms. Meyer was then shown the document prepared by Mr. Morabito and she knew
2 in the flicker of an eye that it was way off. *Id.* at 20:16-18.

3 48. Ms. Meyer testified that monthly accounts payable should have been in the range of
4 at least five to six million. *Id.* at 20:18-19. Ms. Meyer had no idea why Mr. Morabito made the
5 representation he did. *Id.* at 20:19.

6 49. Mr. Morabito always thought accounts payable should be lower. *Id.* at 19:15-16. It
7 was always a battle back and forth between Mr. Morabito and Ms. Meyer. *Id.* at 19:16.

8 50. Mr. Stanton Bernstein, Mr. Morabito's personal accountant, agreed with Ms. Meyer
9 regarding accounts payable. *Id.* at 19:17-18.

10 51. Ms. Karen Scarborough, the BHI controller, also agreed with Ms. Meyer. *Id.* at
11 19:18-20.

12 52. Ms. Meyer was not mean spirited in her testimony about Mr. Morabito. *Id.* at
13 20:11-12. Ms. Meyer testified that she did not know of any particular instance when Mr. Morabito
14 gave inaccurate information to a third party. *Id.* at 20:12-14. Ms. Meyer also testified that she did
15 not know of any particular instance in which Mr. Morabito changed the financial statements. *Id.*
16 at 14-16.

17 53. On or about March 8, 2007, the accounts payable totaled \$7,405,342.33. *Id.* at
18 20:20-22.

19 54. Ms. Meyer testified that she never persuaded Mr. Morabito to change anything. *Id.*
20 at 20:22-23. She just got yelled at by him. *Id.* at 20:23.

21 55. Ms. Meyer told Mr. Morabito on the telephone many times that she knew the
22 payables were way too low. *Id.* at 20:23-21:2.

23 56. Ms. Meyer characterized her job as follows: "I just got yelled at, did my job and
24 went home." *Id.* at 21:4-5.

25 57. By August of 2007, Mr. Wood knew what happened regarding working capital. *Id.*
26 at 21:17. Mr. Wood testified in a phrase, "Mr. Morabito used this company as his personal piggy
27 bank." *Id.* at 21:18-19. This is what Mr. Morabito did. *Id.* at 21:20.

28 58. Mr. Greene figured out what happened regarding working capital. *Id.* at 21:17-18.

1 59. The working capital estimate Mr. Morabito gave the buyer had no basis in reality. It
2 was contrary to what he knew firsthand to be the truth. *Id.* at 21:20-22.

3 **CONCLUSIONS OF LAW**

4 60. Following decisions on the parties' dispositive motions, trial was held regarding the
5 parties' remaining claims for relief.

6 a. The Court heard evidence on Defendants' claims for relief which consisted of
7 the following: fraud in the inducement, negligent misrepresentation, fraud or
8 intentional misrepresentation – working capital, breach of contract, breach of
9 the implied covenant of good faith and fair dealing, declaratory relief, and
10 performance by Paul Morabito on his personal and unconditional guaranty.

11 b. The Court also heard evidence on Plaintiffs' remaining claims for relief relating
12 to the Development Sites: breach of contract, breach of the implied covenant of
13 good faith and fair dealing, and express indemnification.

14 A. **Development Sites**

15 1. **Breach of Contract**

16 61. A claim for breach of contract requires Defendants to prove each of the following
17 elements: 1) the parties entered into a valid and enforceable contract; 2) Defendants performed all
18 obligations required under the contract or were excused from performance; 3) Plaintiffs breached
19 their obligations under the contract; and 4) Defendants suffered damages as a result. *Nev.*
20 *Contract Servs., Inc. v. Squirrel Companies, Inc.*, 119 Nev. 157, 161, 68 P.3d 896, 899 (2003).

21 62. It is undisputed that the CMA and the ARSPA are valid and enforceable contracts.

22 63. The Court finds that the obligations undertaken in the CMA are consideration for the
23 purchase of the Development Sites. (Sept. 13, 2010, Transcript of Judge's Ruling at 10:14-16.)

24 64. The Court finds that every one of the obligations of the CMA were breached by
25 WCM and Mr. Morabito. *Id.* at 10:16-18.

26 65. The Court finds that the implied covenant of good faith and fair dealing was
27 breached by WCM and Mr. Morabito.

28

1 66. As a result of Plaintiffs' breach, there has been a total failure of consideration. *See*
2 *id.*

3 67. As a result of Plaintiffs' breach of the CMA and ARSPA, Defendants have been
4 damaged. *Id.* at 11:5.

5 **2. Fraud in the Inducement**

6 68. To establish fraud in the inducement under Nevada law, the following elements must
7 be proven: (1) a false representation made by Plaintiffs; (2) Plaintiffs' knowledge or belief that the
8 representation was false (or knowledge that it had an insufficient basis for making the
9 representation); (3) Plaintiffs' intention to therewith induce Defendants to consent to the contract's
10 formation; (4) Defendants' justifiable reliance upon the misrepresentation; and (5) damages
11 resulting from such reliance. *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev.
12 277, 290, 89 P.3d 1009, 1018 (2004);

13 69. The Court finds by clear and convincing evidence that Mr. Morabito never for a
14 single second had any intention to perform the services of construction manager. (Sept. 13, 2010,
15 Transcript of Judge's Ruling at 10:18-22.)

16 70. Mr. Morabito's representations under the CMA were intentionally false. *Id.* at
17 10:23-11:1.

18 71. Mr. Morabito's representations were made for the purpose of inducing the purchase
19 of the Development Sites by JH. *Id.* at 11:1-2.

20 72. JH reasonably relied on those representations. *Id.* at 11:3.

21 73. As a result, Defendants have been damaged in the sum of \$19,869,159.

22 74. Plaintiffs' claims for compensation under the CMA and the ARSPA are denied.

23 **B. Conduct that is not Fraudulent**

24 **1. Leases**

25 75. Defendants were given all the information about the leases. *Id.* at 14:2

26 76. The leases were mischaracterized and, therefore, violated the ARSPA because they
27 were not accounted for in accordance with GAAP. *Id.* at 14:3-5.

28 77. However, Defendants had an opportunity to evaluate the leases. *Id.* at 14:6-7.

1 78. The distinction between operating and capital leases was at least as important to the
2 buyer as it was to the seller because, as several witnesses pointed out, the high-dollar amount of
3 capital leases created a default on the part of the buyer with its lender. *Id.* at 14:7-12.

4 79. Thus, buyer knew that under the conditions of the loan they had to be concerned
5 about the distinction between capital and operating leases and they had the expertise necessary to
6 make that evaluation. *Id.* at 14:13-16.

7 80. It is not clear what would have happened if buyer had asked to conduct an appraisal.
8 *Id.* at 14:17-20. Nevertheless, there is no proof by clear and convincing evidence that the
9 mischaracterization of the leases constituted fraud. *Id.* at 14:21-23.

10 81. Similarly, the evidence is overwhelming that the leases were above the market rate.
11 *Id.* at 14:24-15:15:1. Every witness who has testified on the subject has agreed that the leases were
12 above the market rate. *Id.* at 15:1-2. Jerry Herbst testified that if he had looked at the leases, he
13 would have known instantly that they were above the market rate. *Id.* at 15:2-4.

14 82. There is nothing in the ARSPA that required the leases to not be above the market
15 rate. *Id.* at 15:5-7.

16 83. In fact, it is clear why the leases were above the market rate when one examines how
17 Mr. Morabito purchased the company. *Id.* at 15:8-10. Mr. Morabito engaged in a leveraged
18 purchase. *Id.* at 15:10. He sold the land of the company to finance his purchase and leased back
19 to BHI the convenience store sites (thus a BHI asset -- value of the convenience store land --
20 became a BHI liability -- the lease obligations). The leases were then sold a second time.
21 *Id.* at 15:10-12. This process created lease rents substantially above the market rate.

22 84. Information regarding the fact that the leases were above market rates was either
23 known or could have been known by Defendants and Plaintiffs did nothing to conceal this fact.
24 *Id.* at 15:15-18.

25 **2. GAAP Violations**

26 85. The evidence in this case establishes a number of violations of Generally Accepted
27 Accounting Principles (GAAP) violations. *Id.* at 15:19.

28

1 86. The mischaracterization of leases as operating leases when a majority of them were
2 in fact capital leases constitutes a violation of GAAP. *Id.* at 15:19-22.

3 87. The inclusion of rent in construction in progress constitutes a violation of GAAP.
4 *Id.* at 15:22-23.

5 88. The recording of construction in progress for non-BHI companies constitutes a
6 violation of GAAP. *Id.* at 15:23-24.

7 89. The recording of landlord deposits as a reduction to construction in progress is a
8 violation of GAAP. *Id.* at 15:19-21, 15:24-6:2.

9 90. Finally, the inclusion of Nella assets in BHI's financial statements constitutes a
10 violation of GAAP. *Id.* at 15:19-21, 16:2.

11 91. Although these GAAP violations are breaches of the ARSPA, Defendants were not
12 damaged by these violations because they could have been discovered by due diligence on the part
13 of the buyer. *Id.* at 16:5-6.

14 **C. Working Capital**

15 92. The elements that must be demonstrated for fraud in the inducement have been set
16 forth above.

17 93. Clear and convincing evidence shows that there was no basis whatsoever for the
18 contents of the working capital estimate other than Mr. Morabito's decision to create it. *Id.* at
19 16:8-11. Defendants proved, by clear and convincing evidence, that Mr. Morabito's statements of
20 working capital were false and known by him to be false, that Defendants reasonably relied on Mr.
21 Morabito's statements of working capital, and were damaged thereby.

22 94. Generally speaking, an estimate of value cannot be the basis for a legal claim for
23 fraud or other misconduct. *Id.* at 16:11-13. However, the circumstances in this case are different.
24 *Id.* at 16:14.

- 25 a. First, the estimate was prepared by the Mr. Morabito, the owner of the
26 company. *Id.* at 16:15-16.

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1 b. Second, the estimate was significantly and materially inconsistent with the
2 information he was given firsthand by his chief financial officer and by his
3 personal accountant. *Id.* at 16:16-19.

4 c. Third, there is no evidence that anyone else reviewed the estimate that was
5 prepared by Mr. Morabito. *Id.* at 16:19-22.

6 95. There is simply no other conclusion available than the working capital report that
7 was prepared by Mr. Morabito was intentionally false, was done for the purpose of Defendant
8 relying on it, and that Defendants did reasonably rely on it. *Id.* at 21:6-10.

9 96. There is no data in the company to support the working capital estimate. *Id.* at
10 21:11-13.

11 97. Mr. Morabito knew firsthand from his own employees and from his own accountant
12 that it was incorrect. *Id.* at 21:13-14.

13 98. The working capital estimate was materially inflated and falsely inflated the value of
14 the company, and that became apparent shortly after close of the transaction. *Id.* at 21:14-16.

15 99. The Court finds that had Defendants known the false statements in the working
16 capital estimate, they would not have bought the company. *Id.* at 21:23-22:1.

17 100. Ultimately, the Defendants' BHI business venture was a failure. There are many
18 variables that occurred in our economy in connection with the BHI convenience markets,
19 including the cost of gasoline, the cost of construction for the Development Sites and numerous
20 other factors. It is unclear just why this company was so unsuccessful. *Id.* at 22:14-21.

21 101. But one thing is clear: The value of this company was materially misstated. Had
22 the buyer known the truth, the purchase would not have occurred. *Id.* at 22:22-25. There is no
23 other conclusion. *Id.* at 23:1.

24 102. Any company may fail. But a company's value does not decline by hundreds of
25 thousands of dollars in the first thirty days of operation if seller's representation of working capital
26 is accurate. *Id.* at 23:3-4.

27 103. In December of 2006, Defendants were told BHI was losing about \$600,000 a year.
28 *Id.* at 23:5-7. Defendants' own analysis indicated the company was losing approximately \$1.5

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1 million a year. *Id.* at 23:7-9. In relatively short order, it turns out the company was losing
2 approximately \$1 million a month. *Id.* at 23:8-10. Thus, it is reasonable, as Mr. Greene
3 suggested, to extrapolate from performance to the truthfulness or untruthfulness of the
4 representations concerning the value of BHI. *Id.* at 23:10-13.

5 104. This evidence is not sufficient to warrant a finding of fraud or to award damages
6 with respect to the representations of the value of BHI. *Id.* at 23:14-16.

7 105. However, these facts demonstrate that had Defendants known the truth about the
8 working capital, they would not have bought the company. *Id.* at 23:16-18.

9 106. The Court, having found that defendants were fraudulently induced, awards
10 damages to Defendant and against Plaintiffs in the amount of \$66,002,205.75.

11 **D. Personal Guarantees**

12 107. All obligations of the Seller under the ARSPA are personally guaranteed by Paul
13 Morabito.

14 108. All obligations of the buyer under the ARSPA are personally guaranteed by Jerry
15 Herbst.

16 **E. Claims Against Edward Bayuk, Salvatore Morabito and Trevor Lloyd**

17 109. There is no evidence of any personal liability on the part of plaintiffs, Edward
18 Bayuk, Salvatore Morabito or Trevor Lloyd. Claims against these individuals are hereby
19 dismissed. *Id.* at 5:20-23.

20 **CONCLUSION**

21 110. The Court awards total compensatory damages to Defendants in the amount of
22 \$85,871,364.75. *Id.* at 23:24. Resolution of all other claims by all parties is unnecessary to this
23 decision and such claims are hereby dismissed. *Id.* at 24:9-11.

24 111. Counsel are directed to set a punitive damages hearing. *Id.* at 24:1-2. Counsel are
25 also directed to conduct discovery concerning the net worth of Plaintiffs. *Id.* at 24:2-3.

26 **JUDGMENT**

27 **IT IS ORDERED AND ADJUDGED** that Defendants recover from Consolidated Nevada
28 Corp. and Paul A. Morabito the sum of \$85,871,364.75 in addition to any amount, if any, awarded

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1 as punitive damages during the punitive damages hearing, with interest thereon as provided by
2 NRS 17.130 and 99.040(1).

3 This Judgment shall not become final until after hearing and decision on the claim for
4 punitive damages.

5 IT IS SO ORDERED.

6 DATED this 12th day of October, 2010.

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DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 12th day of October, 2010, I electronically filed the foregoing with the
Clerk of the Court system which will send a notice of electronic filing to the following:

LEIF REID, ESQ.

JOHN DESMOND, ESQ.

Further, I certify that I deposited in the county mailing system for postage and
mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing
addressed to:

Edward D. Vogel, Esq.
Shannon Z. Petersen, Esq.
501 West Broadway, 19th Floor
San Diego, CA 92101-3598

Stanley W. Parry, Esq.
100 City Parkway, Ste. 1750
Las Vegas, NV 89106-4614



Heidi Boe
Judicial Assistant

1 1880

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

8 ***

9 **CONSOLIDATED NEVADA CORP., et al.,**

CASE NO. CV-07-02764

10 **Plaintiffs,**

DEPT. NO. 6

11 **vs.**

12 **JH, INC., et al.,**

13 **Defendants.**

14
15 **JH, INC., et al.,**

Counter-Claimants,

16 **vs.**

17 **CONSOLIDATED NEVADA CORP., et al.,**

18 **Counter-Defendants.**

19
20 **JUDGMENT**

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

23 **IT IS ORDERED AND ADJUDGED** that Defendants/Counter-claimants JH, Inc. and Jerry
24 Herbst recover of the Plaintiffs/Counter-defendants Consolidated Nevada Corporation and Paul A.
25 Morabito, the sum of \$141,278,228.20 (ONE HUNDRED FORTY-ONE MILLION, TWO
26 HUNDRED SEVENTY-EIGHT THOUSAND, TWO HUNDRED TWENTY-EIGHT DOLLARS
27 AND TWENTY CENTS), and their costs of action of \$1,319,060.67 (ONE MILLION, THREE
28

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 May, 2011.

12 
13 DISTRICT COURT JUDGE

14 *****

15
16 Prepared and submitted by:

17
18 JOHN P. DESMOND, ESQ.
19 Nevada State Bar No. 5618
20 BRIAN R. IRVINE, ESQ.
21 Nevada State Bar No. 7758
22 JONES VARGAS
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28 *Attorneys for Defendants and Counter-Claimants*

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Attorneys for Defendants/Counter-Claimants

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. CV07-02764
Plaintiffs,)	
vs.)	DEPT. NO. 6
JH, INC., et al.,)	
Defendants.)	
<hr/>		
JH, INC., et al.,)	
Counter-Claimants,)	
vs.)	
CONSOLIDATED NEVADA CORP., et al.,)	
Counter-Defendants.)	
<hr/>		

CONFESSION OF JUDGMENT

Defendants/Counter-Claimants JH, INC., JERRY HERBST, and BERRY-HINCKLEY INDUSTRIES, by and through their counsel of record, Gordon Silver, file the attached Confession of Judgment, **Exhibit 1** hereto, against Plaintiff/Counter-Defendants, CONSOLIDATED NEVADA CORPORATION, and PAUL A. MORABITO.

///

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 18th day of June, 2013.

GORDON SILVER

/s/ John P. Desmond
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Attorneys for Defendants/Counter-Claimants

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EXHIBIT TABLE

Exhibit	Description	Pages¹
1	Confession of Judgment	20

¹ Exhibit page count is exclusive of exhibit slip sheet.

CERTIFICATE OF SERVICE

I certify that I am an employee of GORDON SILVER, and that on this date, pursuant to NRCP 5(b), I am serving the attached **CONFESSION OF JUDGMENT** on the party set forth below by:

X	Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail at Reno, Nevada, postage prepaid, following ordinary business practices
	Certified Mail, Return Receipt Requested
	Via Facsimile (Fax)
	Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand-Delivered
	Federal Express (or other overnight delivery)
	Hand Delivery
X	Via E-Mail

addressed as follows:

Barry L. Breslow
Robison, Belaustegui, Sharp and Low
71 Washington Street
Reno, NV 89503
BBreslow@rbsllaw.com

Dennis C. Vacco
Lippes Mathias Wexler Friedman LLP
665 Main Street, Suite 300
Buffalo, New York 14203
dvacco@lippes.com

DATED this 18th day of June, 2013.

/s/ Cindy S. Grinstead
An Employee of GORDON SILVER

E D

Electronically
06-18-2013:02:03:46 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3796507

EXHIBIT 1

EXHIBIT 1

WL002875

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7 *Attorneys for JH, Inc., Jerry Herbst,*
8 *And Berry-Hinckley Industries*

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

11 JH, INC., a Nevada corporation; JERRY HERBST, CASE NO.:
12 an individual; and BERRY-HINCKLEY
INDUSTRIES, a Nevada corporation, DEPT. NO.:

13 Plaintiffs,

14 vs.

15 CONSOLIDATED NEVADA CORPORATION, a
16 Nevada corporation; PAUL A. MORABITO, an
individual,

17 Defendants.
18 _____

19 CONFESSION OF JUDGMENT

20 RECITALS:

21 A. JH, and P.A. MORABITO & CO. LTD., a Nevada corporation ("PAMCO") entered
22 into that certain Amended and Restated Stock Purchase Agreement dated June 28, 2007 (the
23 "ARSPA"), whereby JH was to purchase the stock of BHI from PAMCO. Herbst was the guarantor
24 of the JH obligations under the ARSPA, and Morabito guaranteed the obligations of PAMCO.
25 CNC is the successor in interest to PAMCO. The transaction contemplated by the ARSPA closed
26 on July 2, 2007.
27
28

1 B. A dispute developed between the Morabito Parties and the Herbst Parties regarding
2 the sale of the BHI stock to JH. Based thereon, the Morabito Parties filed a lawsuit against the
3 Herbst Parties on December 3, 2007. The lawsuit was captioned Consolidated Nevada Corp., et al.
4 v. JH, et al., and was filed in Department 6 of the Second Judicial District Court in and for the
5 County of Washoe (the "Court"), Case No. CV07-02764 (together with all claims and
6 counterclaims, the "Action").

7
8 C. The Herbst Parties filed numerous counterclaims in the Action against the Morabito
9 Parties, including, but not limited to, fraud in the inducement, misrepresentation and breach of
10 contract.

11
12 D. The matter was tried before the Honorable Judge Brent Adams by way of a bench
13 trial commencing May 10, 2010 that lasted for several weeks. At the conclusion of the bench trial,
14 the Court found that the Morabito Parties had breached the ARSPA and committed fraud in the
15 inducement and misrepresentation in relation to numerous aspects of the transaction contemplated
16 by the ARSPA. The Court ultimately awarded the Herbst Parties total damages in the amount of
17 One Hundred Forty-Nine Million Four Hundred Forty-Four Thousand Seven Hundred Seventy-
18 Seven and 80/100ths Dollars (\$149,444,777.80), representing both compensatory and punitive
19 damages (the "Judgment"). The Judgment was entered by the Court on August 23, 2011.

20
21 E. On October 12, 2010, the Court entered its findings of fact and conclusions or law
22 related to the Judgment (the "Findings of Fact and Conclusions of Law"). The Findings of Fact and
23 Conclusions of Law outlined the factual and legal basis for the Judgment.

24
25 F. The Morabito Parties appealed the Findings of Fact and Conclusions of Law as well
26 as the Judgment to the Nevada Supreme Court as identified by those certain appeals captioned
27 Nevada Supreme Court Case Nos. 54412 and 57943. The Herbst Parties filed numerous cross-

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1 appeals in the subject appeals. The appeals filed by the Morabito Parties and the cross appeals filed
2 therein by the Herbst Parties, are collectively referred to herein as the "Appeal."

3 G. The Morabito Parties have represented that they are unable to satisfy the monetary
4 Judgment entered against them in full.

5 H. The Parties agreed to settle the Action, and, on November 30, 2011 executed the
6 Settlement Agreement and Mutual Release ("Settlement").

7 I. As part of the Settlement, the Parties agreed that the Appeals would be vacated as
8 well as the Judgment and the Findings of Fact and Conclusions of Law.

9 J. As part of the Settlement, Consolidated Nevada Corporation ("CNC") and Morabito
10 agree to make the following cash payments to JH, Inc. in addition to other cash payments and
11 assumption of liabilities as referenced in the Settlement.

- 12 o December 1, 2011 - \$2.5 million
- 13 o June 1, 2012 - \$2.5 million
- 14 o March 1, 2013 - \$4 million
- 15 o December 1, 2013 - \$4 million

16 K. As part of the Settlement, beginning on December 1, 2011, CNC and Paul Morabito
17 agreed to assume any and all obligations of the tenant under the lease for 425 Maestro Drive, Reno,
18 Nevada, including but not limited to all rental payments, CAM charges, taxes, etc. CNC and Paul
19 Morabito agreed to provide proof of each payment under the lease for 425 Maestro Drive, Reno,
20 Nevada (and performance of any and all other non-monetary obligations) to JH, Inc. within five (5)
21 days of each payment. CNC and Paul Morabito will indemnify and hold harmless JH, Inc. and Jerry
22 Herbst for any and all claims related to obligations owed under the lease for 425 Maestro Drive,
23 Reno, Nevada beginning on December 1, 2011 until the conclusion of the lease term.

24 L. As part of the Settlement, beginning on December 1, 2011, CNC and Paul Morabito
25 agreed to assume any and all obligations of the Maker/Payor under the June 29, 2007 Note between
26

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1 JH, Inc. as Maker and Payor and Arthur T. Hinckley, as Payee, including but not limited to those
2 obligations set forth in Sections 1.1 through 1.3 of the Note, periodic interest payments and payment
3 of the principal and accrued interest upon maturation. CNC and Paul Morabito agreed to provide
4 proof of each payment under the Note between JH and Mr. Hinckley (and performance of any and
5 all other non-monetary obligations) to JH, Inc. and Jerry Herbst for any and all claims related to the
6 June 29, 2007 Note between JH, Inc. as Maker and Payor and Jerry Herbst as guarantor and Arthur
7 T. Hinckley, as Payee.

9 M. As part of the Settlement, beginning on December 1, 2011, CNC and Paul Morabito
10 agreed to indemnify and defend Berry-Hinckley Industries and Jerry Herbst in the lawsuit captioned
11 as Desi Moreno, Trustee of the Desi Moreno 2001 Trust, et al. v. Berry-Hinckley Industries, et al.,
12 Case No. CV10-02329 in Department 4 of the Second Judicial District Court in and for the County
13 of Washoe. CNC and Paul Morabito expressly agreed to indemnify Berry-Hinckley Industries and
14 Jerry Herbst from any finding of liability or assessment of damages in that action. To facilitate the
15 assumption of the duty to defend and indemnify in the context of the aforementioned case, CNC and
16 Paul Morabito agreed to amend the Answer previously filed. It was agreed that the Amended
17 Answer would admit liability to JH, Inc. pursuant to the indemnification provisions of the Amended
18 and Restated Stock Purchase Agreement. Specifically, pursuant to Article 9.1(d) of the ARSPA,
19 CNC and Paul Morabito agreed to admit that they were obligated to indemnify Berry-Hinckley
20 Industries and Jerry Herbst for any loss that has already been suffered and any loss that may be
21 suffered in the future as a result of the lawsuit filed by the Moreno Plaintiffs. It was agreed that
22 failure to timely indemnify Berry-Hinckley Industries and Jerry Herbst from a findings of liability or
23 damages would constitute a default under the settlement agreement. It was also agreed that in the
24 event a judgment is entered against Berry-Hinckley Industries and/or Jerry Herbst, Paul Morabito
25 and CNC agreed to either (1) satisfy said judgment within fifteen days; or (2) file a notice of appeal
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1 of said judgment within thirty days and post a bond pending appeal to stay execution against Berry-
2 Hinckley Industries and/or Jerry Herbst. In the event of an appeal, if the decision is affirmed, Paul
3 Morabito and CNC agreed to pay any judgment within fifteen days of an order of affirmance from
4 the Nevada Supreme Court.

5
6 N. Paul Morabito, individually and as trustee of the Arcadia Living Trust, agreed that
7 the real property located at 8355 Panorama Drive in Reno, Nevada currently held in the name of the
8 Arcadia Living Trust would be listed for sale as soon as possible. The initial listing price was to be
9 set as follows:

10 • JH, Inc. and Jerry Herbst, on the one hand, and CNC and Paul Morabito, on
11 the other hand, would each commission an appraiser of their choice that is licensed in the
12 State of Nevada with at least five (5) years experience appraising residential real property in
13 Northern Nevada.

14
15 • Each appraiser would prepare a sale appraisal of the Panorama Drive
16 property. The party requesting the appraisal would bear the expense of the same.

17 • The initial listing price would be the mid-point, to the nearest thousand
18 dollars, between the two appraisals. The listing price must be a minimum of \$2.5 million.
19 Paul Morabito, individually and as trustee of the Arcadia Living Trust, represented and
20 warranted that there is an existing mortgage on the real property located at 8355 Panorama
21 Drive with a remaining pay-off amount of approximately \$1 million. Mr. Morabito
22 represented and warranted, to the best of his personal knowledge, that there are no other
23 mortgages or liens on the Panorama Drive property.

24
25 • Paul Morabito, individually and as trustee of the Arcadia Living Trust, agreed
26 that, upon the sale of the real property located at 8355 Panorama Drive, JH, Inc. and Jerry
27 Herbst would receive the net proceeds of that sale, after closing costs and the existing \$1
28

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1 million mortgage are paid. Should JH, Inc. and Jerry Herbst receive more than \$1 million in
2 net proceeds from that sale, CNC and Paul Morabito would be entitled to deduct any amount
3 received by JH, Inc. and Jerry Herbst in excess of \$1 million from the \$4 million payment
4 scheduled to be made under this settlement agreement on December 1, 2013.

5
6 • If the real property located at 8355 Panorama Drive, Reno, Nevada did not
7 sell within six (6) months of the first listing date, representatives of each of the parties
8 agreed to meet with the listing agent to determine if any actions should be taken to enable
9 the property to be sold.

10 O. As part of the Settlement, CNC and Morabito agreed to execute this Confession of
11 Judgment and stipulate that it is non-dischargeable in any bankruptcy proceeding filed by either
12 CNC or Paul Morabito, in the amount of \$85 million. The Confession of Judgment may be filed, ex
13 parte and with no notice to CNC or Paul Morabito, should CNC or Paul Morabito fail to perform or
14 default on any of their obligations under the Settlement, and said failure to perform is not cured
15 within fifteen (15) days. In the event all payments are made and obligations performed under the
16 Settlement by CNC and Paul Morabito, this Confession of Judgment will be returned to CNC and
17 Paul Morabito once all payments have been made and obligations performed.

18
19
20 P. In the event this Confession of Judgment is filed following an event of default which
21 is not cured within fifteen (15) days, CNC and Paul Morabito agree not to defend or contest the
22 filing of the Confession of Judgment.

23 NOW THEREFORE, CONSOLIDATED NEVADA CORPORATION, a Nevada
24 corporation ("CNC"), and PAUL MORABITO, individually ("Morabito") hereby consent, stipulate
25 and agree to the entry of judgment as follows:

26
27 1. The above Recitals A through P above, are hereby incorporated by reference entirely
28 herein and expressly consented, stipulated and agreed to by CNC and Morabito.

1 2. Berry-Hinckley Industries ("BHI") began operations in 1928 when Wayne Hinckley
2 and Lawrence Semenza assumed the lease of the Flying A Service Station on Second and West
3 Streets in Reno, Nevada.

4 3. In the late 1970s, Art Hinckley, Ward Hinckley's son, joined the business supervising
5 the administrative staff of three employees.

6 4. BHI was very successful for generations.

7 5. The Stock of BHI was purchased on October 14, 2005, by P.A. Morabito & Co.
8 ("PAMCO"), a company owned by Mr. Morabito, for approximately \$95 million

9 6. Paul Morabito, the controlling owner of PAMCO, was appointed president and CEO.

10 7. All real properties owned by BHI, and by related entities as operated by BHI, were
11 separately sold to PAMCO, which properties were then sold to third parties.

12 8. As part of these sales, new leases were entered into with BHI as the lessee and the
13 leases were at above-market rates.

14 9. JH, owned by Jerry Herbst, was formed for the purpose of acquiring BHI.

15 10. JH is a related party to Terrible Herbst, Inc. and to the Herbst family, who have
16 decades of experience operating gas stations and convenience stores and, in recent years, some
17 experience in the gaming industry.

18 11. By no later than December 31, 2008, BHI had zero value.

19 12. The ARSPA consists of two components.

20 13. First, the transaction consisted of the Development Sites. The Development Sites are
21 ten parcels of real property that were partially improved or would be improved to create
22 convenience stores and gas stations.

23 14. The primary assets in the second category were the operating convenience stores and
24 gas stations.

25 15. Section 2.8(c) of the ARSPA obligates the seller to enter into a construction
26 management agreement with the buyer and that agreement is attached as Exhibit E to the ARSPA.

27 16. The Construction Management Agreement ("CMA") provides that, in consideration
28 for the purchase of the Development Sites by owner, the construction manager, which is Washoe

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1 Construction Management Services, LLC ("WCM"), a company created and owned by Mr.
2 Morabito, has agreed to act as the construction manager for the project.

3 17. Mr. Morabito's company agreed to act as construction manager for this project in
4 consideration for the purchase of the Development Sites by JH.

5 18. A few pertinent provisions of the CMA are as follows:

6 a. Article 1 provides, "[t]he Construction Manager will assist the Owner with
7 the management of the Project, including monitoring Project costs, endeavoring to keep costs within
8 the fixed sum contracts entered into by and between Owner and Dennis Banks Construction (the
9 "Contractor") for certain of the Development Sites and within the budgets developed by Owner and
10 the Construction Manager for the balance of the Development Sites for which the Owner will have
11 entered into Cost, Plus Contracts with the Contractor, . . . and working with the Contractor to
12 schedule the work of the Project efficiently so that the Project will be ready for occupancy on the
13 dates set forth in the Construction Contracts."

14 b. Article 2.1 provides, "[t]he Construction Manager will review all plans and
15 specifications and advise on systems and materials, construction feasibility, time requirements for
16 procurement, installation and construction, relative costs, and provide recommendations for
17 economies as appropriate. The Construction Manager is hereby authorized to act as the Owner's
18 agent in dealing with the Architect, the Construction Contracts, subcontractors and their respective
19 employees and agents."

20 c. Paragraph 2.3 provides, in part, "[t]he Construction Manager will work with
21 the Contractor to assure completion of the Project within the time periods set forth in the
22 Construction Contracts.. In the event any change order or other adjustment is requested by Owner
23 to be made to any Construction Contract, Construction manager will work with the Contractor to
24 assure proper inclusion of such change order or other adjustment into the Project. "

25 19. Pursuant to paragraph 3.2, the relevant terms and conditions of the ARSPA are
26 incorporated in the CMA.

27 20. The role of the construction manager is to be the owner's representative to ensure that
28 both the schedule of the construction project and its costs adhere to the budget and timeline for

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1 construction. The construction manager asks questions and looks at the long-term items of a
2 contract. The construction manager works directly with subcontractors, taking bids, evaluating the
3 costs of various components of the construction, creating a construction timeline, and making, at a
4 minimum, monthly reports to the owner so the owner is advised consistently of the milestones of
5 construction. A good construction manager facilitates the process and ensures proper and
6 responsible accounting of the owner's money on the project.

7 21. The construction manager is usually involved in the construction on a daily basis and
8 frequently visits the construction site. A construction manager should review the construction
9 schedule with the contractor and meet with the contractor on a weekly basis.

10 22. WCM and Mr. Morabito performed none of the services contemplated by the CMA.

11 23. Mr. Morabito made it absolutely plain that in his view, the only purpose of the CMA
12 was for him to get paid. Mr. Morabito actually said, "What does the management of the
13 construction sites mean? I have no idea what that means."

14 24. Garrett Gordon is an attorney with the law firm of Lewis and Roca in Reno, Nevada.
15 Mr. Gordon made it extremely plain that he does not have any competence in construction
16 supervision. Mr. Gordon testified that he was called every day by Mr. Morabito, who wanted to
17 know the status of the building permits so that Mr. Morabito could get his money. Mr. Gordon's job
18 was to secure Mr. Morabito's money by getting building permits or certificates of occupancy.

19 25. Phillip Tripoli has no capacity to, or did not in any significant way, supervise this
20 project. Mr. Tripoli did not communicate at all with the owner of the project.

21 26. Mr. Morabito was not managing the construction project, he was managing his
22 money.

23 27. The ARSPA required PAMCO to provide a working capital estimate prior to closing,
24 which it did. There was no basis whatsoever for the contents of the working capital estimate. Mr.
25 Morabito decided to simply create it.

26 28. There is not one piece of paper that can be produced to support the exaggerated value
27 of the company as set forth in the working capital estimate.
28

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1 29. The major difference between Mr. Morabito's estimate and the actual working capital
2 is accounts payable. This fact is significant.

3 30. Mr. Morabito did not prepare the monthly financial statements.

4 31. There is no evidence that the monthly financial statements were inaccurate.

5 32. Mr. Morabito did not have access to the accounting system of the company.

6 33. Paula Meyer, then CFO of BHI, gave Mr. Morabito evidence to understand that the
7 leases were not being flipped as was being represented to JH.

8 34. In the course of events leading to the closing of this transaction, there was a point
9 where Mr. Morabito only wanted Ms. Meyer to communicate with him and not the lawyers or BCC
10 Capital who was representing Mr. Morabito and CNC in the transaction. This is a complex
11 transaction involving tens of millions of dollars. As the CFO, Ms. Meyer had access to the financial
12 statements of the company while the CEO of the company, Mr. Morabito, did not have access.
13 Nevertheless, Ms. Meyer was told to only communicate with Mr. Morabito.

14 35. Ms. Meyer constantly had disagreements with Mr. Morabito about the amount of
15 accounts payable.

16 36. The accounts payable were in the range of at least five to six million, but Mr.
17 Morabito represented to JH that the accounts payable amount was much lower than that.

18 37. Stan Bernstein, Mr. Morabito's personal accountant, agreed with Ms. Meyer
19 regarding accounts payable.

20 38. Karen Scarborough, BHI Controller, also agreed with Ms. Meyer.

21 39. On or about March 8, 2007, the accounts payable totaled \$7,405,342.33.

22 40. Ms. Meyer told Mr. Morabito on the telephone many times that she knew the
23 payables represented in the working capital estimate were way too low.

24 41. The estimate Mr. Morabito gave had, not only no basis in reality, but it was contrary
25 to what he knew firsthand to be the truth.

26 42. A claim for breach of contract requires the Herbst parties to prove each of the
27 following elements: (1) the parties entered into a valid and enforceable contract; (2) the Herbst
28 parties performed all obligations required under the contract or were excused from performance; (3)

1 the Morabito parties breached their obligations under the contract; and (4) the Herbst parties
2 suffered damages as a result. *Nev. Contract Servs., Inc. v. Squirrel Companies, Inc.*, 119 Nev. 157,
3 161, 68 P.3d 896, 899 (2003).

4 43. The CMA and the ARSPA are valid and enforceable contracts.

5 44. The obligations undertaken in the CMA were in consideration for the purchase of the
6 Development Sites.

7 45. Every one of the obligations of the CMA were breached by WCM and Mr. Morabito.

8 46. As a result of WCM and Mr. Morabito's breach, there was a total failure of
9 consideration.

10 47. As a result of WCM and Mr. Morabito's breach of the CMA and ARSPA, JH was
11 damaged.

12 48. To establish fraud in the inducement under Nevada law, the following elements must
13 be proven: (1) a false representation made by WCM and Mr. Morabito; (2) WCM and Mr.
14 Morabito's knowledge or belief that the representation was false (or knowledge that it had an
15 insufficient basis for making the representation); (3) WCM and Mr. Morabito's intention to
16 therewith induce the Herbst parties to consent to the contract's formation; (4) the Herbst parties'
17 justifiable reliance upon the misrepresentation; and (5) damages resulting from such reliance. *J.A.*
18 *Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004).

19 49. Mr. Morabito never for a single second had any intention to perform the services of
20 construction manager.

21 50. Mr. Morabito's representations under the CMA were intentionally false.

22 51. Mr. Morabito's representations were made for the purpose of inducing the purchase
23 of the Development Sites by JH.

24 52. JH reasonably relied on those representations.

25 53. It is established that Morabito fraudulently induced JH to purchase the Development
26 Sites.

27 54. As a result, JH was damaged.

28 55. CNC and Morabito have no claims under the CMA and the ARSPA.

- 1 56. There were a number of GAAP violations in the BHI accounting.
- 2 57. The leases were mischaracterized and, therefore, violated the ARSPA because they
- 3 were not accounted for in accordance with GAAP.
- 4 58. The inclusion of rent in construction in progress constitutes a violation of GAAP.
- 5 59. The recording of construction in progress for non-BHI companies constitutes a
- 6 violation of GAAP.
- 7 60. The recording of landlord deposits as a reduction to construction in progress is a
- 8 violation of GAAP.
- 9 61. Finally, the inclusion of Nella assets in BHI's financial statements constitutes a
- 10 violation of GAAP.
- 11 62. There was no basis whatsoever for the contents of the working capital estimate other
- 12 than Mr. Morabito's decision to create it.
- 13 63. The estimate was prepared by the Mr. Morabito, the owner of the company.
- 14 64. The estimate was significantly and materially inconsistent with the information he
- 15 was given firsthand by his chief financial officer and by his personal accountant.
- 16 65. No one else reviewed the estimate that was prepared by Mr. Morabito.
- 17 66. The working capital report that was prepared by Mr. Morabito was intentionally
- 18 false, was done for the purpose of JH relying on it, and that JH did reasonably rely on it.
- 19 67. There is no data in the company to support the working capital estimate.
- 20 68. Mr. Morabito knew firsthand from his own employees and from his own accountant
- 21 that it was incorrect.
- 22 69. The working capital estimate was materially inflated and falsely inflated the value of
- 23 the company, and that became apparent quickly.
- 24 70. Had JH known the false statements in the working capital estimate, they would not
- 25 have bought the company.
- 26 71. The value of Berry-Hinckley Industries was materially misstated by Mr. Morabito.
- 27 72. A company does not get many hundreds of thousands of dollars worse in the first
- 28 thirty days.

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1 73. In December of 2006, CNC and Morabito told JH that BHI was losing about
2 \$600,000 a year. The company was losing approximately \$1 million a month.

3 74. These material misrepresentations were made to fraudulently induce JH to purchase
4 BHI.

5 75. It is established that Morabito fraudulently induced JH to purchase BHI.

6 76. All obligations of the Seller under the ARSPA are personally guaranteed by Paul
7 Morabito.

8 77. Morabito, on behalf of CNC, stipulates and confesses to judgment being entered
9 against CNC in the amount of \$85,000,000.

10 78. Morabito, on behalf of himself individually, stipulates and confesses to judgment
11 being entered against him individually in the amount of \$85,000,000.

12 79. Morabito, on behalf of himself individually and on behalf of CNC, stipulate and
13 agree that this Judgment in the amount of \$85,000,000 qualifies as a non-dischargeable debt under
14 11 U.S.C. Section 523.

15 80. Morabito, on behalf of himself individually and on behalf of CNC, stipulate and
16 agree that the facts outlined above establishing the debts and obligations of Morabito and CNC
17 qualifies as a Section 523 non-dischargeable debt.

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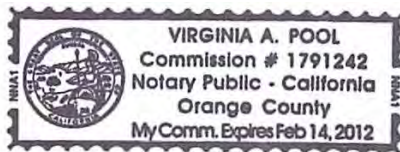
VERIFICATION

I, PAUL MORABITO, a duly authorized representative of CONSOLIDATED NEVADA CORPORATION, a Nevada corporation, hereby assert that the contents of this Confession of Judgment are true and accurate to the best of my knowledge and authorize entry of judgment in this matter for the sum of Eighty-Five Million Dollars (\$85,000,000.00) against CONSOLIDATED NEVADA CORPORATION.


By: PAUL MORABITO
for CONSOLIDATED NEVADA CORPORATION

SUBSCRIBED and SWORN to before me
this 30th day of November, 2011,
by PAUL MORABITO.

Virginia A. Pool
Notary Public



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VERIFICATION

I, PAUL MORABITO, hereby assert that the contents of this Confession of Judgment are true and accurate to the best of my knowledge and authorize entry of judgment in this matter for the sum of Eighty-Five Million Dollars (\$85,000,000.00) against me, PAUL MORABITO, individually.



By: PAUL MORABITO, Individually

SUBSCRIBED and SWORN to before me
this 30th day of November, 2011,
by PAUL MORABITO.

Virginia A. Pool
Notary Public

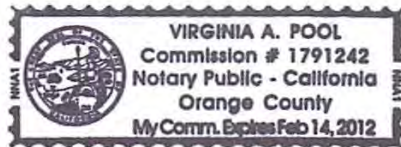


EXHIBIT J
STIPULATION TO CONFESSION OF JUDGMENT

(See attached.)

FINAL EXECUTION VERSION
21753500_6.doc

WL002891

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7 *Attorneys for JH, Inc., Jerry Herbst,*
8 *And Berry-Hinckley Industries*

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

11 JH, INC., a Nevada corporation; JERRY HERBST, CASE NO.:
12 an individual; and BERRY-HINCKLEY
INDUSTRIES, a Nevada corporation, DEPT. NO.:

13 Plaintiffs,

14 vs.

15 CONSOLIDATED NEVADA CORPORATION, a
16 Nevada corporation; PAUL A. MORABITO, an
individual,

17 Defendants.
18 _____/

19 **STIPULATION**

20 JH, INC., a Nevada corporation ("JH"), JERRY HERBST, an individual ("Herbst") and
21 BERRY-HINCKLEY INDUSTRIES, a Nevada corporation ("BHI"), on the one hand, and
22 CONSOLIDATED NEVADA CORPORATION, a Nevada corporation ("CNC"), and PAUL
23 MORABITO, an individual ("Morabito"), on the other hand, hereby consent, stipulate and agree
24 as follows:
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1. CNC and Morabito consented, stipulated and agreed that Judgment in the amount of \$85,000,000 be taken against them in the event of a default under the Settlement Agreement as provided for in the attached Confession of Judgment ("Judgment").

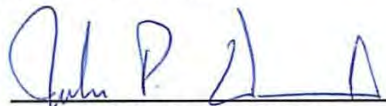
2. The parties stipulate and agree that the Judgment qualifies as a non-dischargeable debt under 11 U.S.C. Section 523.

3. The parties stipulate and agree that the facts underlying and outlined in the Judgment establishing the debt qualify it as a Section 523 non-dischargeable debt.

DATED this 30th day of November, 2011. DATED this ____ day of November, 2011.

JONES VARGAS

ROBISON, BELAUSTEGUI,
SHARP & LOW



JOHN P. DESMOND, ESQ.
BRIAN R. IRVINE, ESQ.
300 E. Second Street
Suite 1510
Reno, NV 89501

BARRY L. BRESLOW
71 Washington Street
Reno, NV 89503

Attorneys for JH, Inc., Jerry Herbst, an individual, and Berry-Hinckley Industries, a Nevada corporation

Attorneys for Consolidated Nevada Corporation and Paul A. Morabito, an individual

DATED this ____ day of November, 2011. DATED this ____ day of November, 2011.

PAUL A. MORABITO, Individually

PAUL A. MORABITO
Authorized Representative for
Consolidated Nevada Corporation

JONES VARGAS
300 East Second Street, Suite 1510 - P.O. Box 281
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6 3. The parties stipulate and agree that the facts underlying and outlined in the
7 Judgment establishing the debt qualify it as a Section 523 non-dischargeable debt.


8 DATED this ____ day of November, 2011.

DATED this 30 day of November, 2011.

9 JONES VARGAS

ROBISON, BELAUSTEGUI,
SHARP & LOW

10
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17 BARRY L. BRESLOW
18 71 Washington Street
19 Reno, NV 89503

20 *Attorneys for JH, Inc., Jerry Herbst, an*
21 *individual, and Berry-Hinckley Industries, a*
22 *Nevada corporation*

Attorneys for Consolidated Nevada
23 *Corporation and Paul A. Morabito, an*
24 *individual*

25 DATED this ____ day of November, 2011.

DATED this ____ day of November, 2011.

26
27
28 PAUL A. MORABITO, Individually

PAUL A. MORABITO
Authorized Representative for
Consolidated Nevada Corporation

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8 DATED this ____ day of November, 2011. DATED this ____ day of November, 2011.

9 JONES VARGAS

10 ROBISON, BELAUSTEGUI,
SHARP & LOW

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19 *Attorneys for JH, Inc., Jerry Herbst, an*
20 *individual, and Berry-Hinckley Industries, a*
21 *Nevada corporation*

22 *Attorneys for Consolidated Nevada*
23 *Corporation and Paul A. Morabito, an*
24 *individual*

25 DATED this 30 day of November, 2011. DATED this 30 day of November, 2011.

26
27 
28 PAUL A. MORABITO, Individually

29
30 
31 PAUL A. MORABITO
32 Authorized Representative for
33 Consolidated Nevada Corporation