

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 24
(Nos. 3915–4110)

Micah S. Echols, Esq.
Nevada Bar No. 8437
CLAGGETT & SYKES LAW FIRM
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
Telephone: (702) 655-2346
Facsimile: (702) 655-3763
micah@claggettlaw.com

Jeffrey L. Hartman, Esq.
Nevada Bar No. 1607
HARTMAN & HARTMAN
510 West Plumb Lane, Suite B
Reno, Nevada 89509
Telephone: (775) 324-2800
Facsimile: (775) 324-1818
jlh@bankruptcyreno.com

Attorneys for Appellants, Superpumper, Inc.; Edward Bayuk, individually and as Trustee of the Edward Bayuk Living Trust; Salvatore Morabito; and Snowshoe Petroleum, Inc.

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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 NRCF 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

MEMBERSHIP INTEREST TRANSFER AGREEMENT

This **MEMBERSHIP INTEREST TRANSFER AGREEMENT** (this "Agreement") is entered into and effective as of October 1, 2010 (the "Effective Date"), between and among, **PAUL A. MORABITO** in his capacity as Trustee of the **ARCADIA LIVING TRUST** ("Arcadia Trust"), **EDWARD WILLIAM. BAYUK** in his capacity as Trustee of the **EDWARD WILLIAM BAYUK LIVING TRUST** ("Bayuk Trust") and **BARUK PROPERTIES, LLC**, a Nevada limited liability company (the "Company"). Paul Morabito and Edward Bayuk are also signatories to this Agreement in their respective capacities as Managers of the Company.

Defined terms used and not otherwise defined herein shall have the meanings ascribed to such terms in that certain Operating Agreement of Baruk Properties LLC dated as of April 17, 1999 (the "Operating Agreement"). Each of the parties hereto is sometimes individually referred to as a "party" or cumulatively as the "parties".

WHEREAS, Arcadia Trust currently holds a 50.00% Membership Interest in Company; and Bayuk Trust currently holds a 50.00% Membership Interest in Company; and

WHEREAS, Bayuk Trust desires to acquire, and Arcadia Trust desires to assign and transfer to Bayuk Trust, Arcadia Trust's 50.00% Membership Interest in the Company (the "Transferred Interest"), subject to the terms and conditions set forth herein; and

WHEREAS, the Company is the owner in fee simple of two commercial real properties and all improvements furniture, machinery, equipment and trade fixtures located thereon commonly known as 1461 Glenneyre, Laguna Beach, CA ("1461 Glenneyre") and 570 Glenneyre, Laguna Beach, CA ("570 Glenneyre") and a residential property commonly known as 1254 Mary Fleming Circle, Palm Springs, CA (1254 Mary Fleming") (collectively the "Properties"). The personal property, including all household furnishings, artwork, window coverings and non-affixed improvements in 1254 Mary Fleming Circle are not owned by the Company, but instead were purchased and are owned individually by the Members of the LLC.

WHEREAS, in accordance with the terms of this Agreement, effective as of the Closing Date, Paul Morabito shall tender his resignation as Manager of the Company. As such, as of the Closing Date and immediately following Arcadia Trust's receipt of all consideration due on the Closing Date, Bayuk Trust will be the only Member and Edward Bayuk the sole Manager of the Company.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound hereby agree as follows:

1.1 Transfer of Transferred Interest; Promissory Note; Resignation as Manager.

On the terms and subject to the conditions hereof and in consideration of Bayuk Trust's delivery to Arcadia Trust of its promissory note in the principal amount of \$1,617,050.00 (the "Promissory Note"), at the Closing (as defined in Section 1.3, below) Arcadia Trust will transfer

and convey to Bayuk Trust, and Bayuk Trust will acquire from Arcadia Trust, all of Arcadia Trust's right, title and interest in and to the Transferred Interest, including all rights, privileges, distributions, payments and benefits appertaining thereto, the Properties and any other interest Arcadia Trust may have in the Company in its capacity as a Member (the "Transfer"). The principal balance of the Promissory Note shall accrue interest at the rate of four percent (4%) per annum fully amortized over a 30 year term payable in equal consecutive monthly installments, may be prepaid without penalty at any time at the option of Bayuk Trust and shall be guaranteed by the Company as set forth in Section 2.1, below. The Transferred Interest is being acquired solely for Bayuk Trust's own account, for investment and not with a view to or for distribution, assignment, subdivision, fractionalization, or resale to others, and no person has or will have at the Closing a direct or indirect beneficial interest in the Transferred Interest.

1.2 **Termination of Relationship with the Company.** Paul Morabito hereby tenders his resignation as a Manager of the Company effective as of the Closing Date, leaving Bayuk Trust as the sole Member and Edward Bayuk as the sole Manager of the Company as of the Closing Date. Effective as of the Closing Date, Paul Morabito acknowledges that he has once and forever terminated in all respects his business relationships with the Company, resigned his position as Manager of the Company and given up all of his interests in the Company or the Properties. Effective as of the Closing Date, Arcadia Trust assigns and transfers its Transferred Interest in the Company to Bayuk Trust. On the Closing Date Arcadia Trust shall surrender to Bayuk Trust and mark canceled any certificate it may have evidencing the Transferred Interest, which certificate shall thereupon be cancelled.

1.3 **Closing.** The Closing of the transactions contemplated by this Agreement (the "Closing") shall take place on or before October 1, 2010 (the "Closing Date") or at such other time and place or at such other date as parties may mutually agree. The Closing shall take place at the Law Offices of Mark E. Lehman, 9200 Sunset Boulevard, PH2, West Hollywood, CA 90069 at such other time and place or at such other date as mutually agreed to by the parties.

1.4 **Other Obligations at Closing.** At Closing, the parties shall execute and deliver to one another all documents set forth in this Agreement, and, in addition, such other documents, including but not limited to bills of sale, as may be necessary or appropriate to accomplish in a complete and proper manner the transaction contemplated by this Agreement.

2.1 **Guaranty of Payment.** For purposes of this Agreement, the Company hereby unconditionally and irrevocably guarantees to Arcadia Trust and its trustee Paul A. Morabito the full, complete and timely performance under the Promissory Note and payment of all amounts which may hereafter become payable by Bayuk Trust and its trustee Edward William Bayuk under the Promissory Note. The provisions of this Article 2 shall continue in full force and effect until all obligations of Bayuk Trust and/or Edward William Bayuk set forth in this Agreement have been satisfied in full.

2.2 **Obligations Unconditional.** The obligations of the Company under this Article 2 shall constitute a present and continuing guaranty of performance and payment and not of collectability, and shall be absolute and unconditional. Without limiting the generality of the

foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Company hereunder:

- (a) the sale or transfer of any or all of a Company's assets or businesses, and/or the merger, dissolution or liquidation of the Company;
- (b) any insolvency, bankruptcy, reorganization, receivership, assignment for the benefit of creditors, liquidation or similar proceedings with respect to the Company; or
- (c) the modification, amendment, renewal or extension of the terms or conditions of this Agreement or the Promissory Note.

2.3 **Waiver.** The Company hereby waives notice of (a) acceptance hereof, (b) any action taken or omitted in reliance hereon, (c) any default with respect to any obligations guaranteed hereunder and (d) any presentment, demand, protest or notice of any kind.

3. **Consent of Managers to Transfer and Guaranty.** Paul Morabito and Edward Bayuk in their respective capacities as Managers of Company hereby consent to the transfer from Arcadia Trust to Bayuk Trust of the Transferred Interest for the consideration set forth herein and to the Company's Guaranty of Payment set forth herein.

4. **Conditions to Closing.**

A. **Arcadia Trust's Conditions to Closing.** Arcadia Trust's obligation to close shall be subject to and conditioned on the following conditions precedent in favor of Arcadia Trust to the reasonable satisfaction of Arcadia Trust, all of which may be waived or disapproved in writing in whole or in part by Arcadia Trust, at any time, and from time to time, on or before the Closing. Arcadia Trust may waive any or all of these conditions in whole or in part without prior notice; provided however, that no such waiver of a condition constitutes a waiver by Arcadia Trust of any of its rights or remedies, at law or in equity, if transferor is in default of any of its representations, warranties or covenants under this Agreement. If, within the time frame specified, Arcadia Trust gives written notice to the Company and Bayuk Trust of its disapproval of any of the contingencies set forth in this Agreement, this Agreement shall be deemed cancelled and terminated with respect to the real property at issue.

4.1. **Performance by the Company and Bayuk Trust.** On or before the Closing Date, the Company and Bayuk Trust will have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required of any of them by this Agreement.

4.2. **Other Documents.** The parties having entered into all other mutually acceptable written agreements and other documents reasonably necessary to accomplish the terms, conditions and intents of this Agreement and the form and substance of all certificates, instruments and other documents delivered to Arcadia Trust under this Agreement being approved in all reasonable respects by Arcadia Trust.



B. **The Company's and Bayuk Trust's Conditions to Closing.** The Company's and Bayuk Trust's obligation to close shall be conditioned on the satisfaction of the following conditions precedent in favor of the Company and Bayuk Trust, all of which may be waived or disapproved in writing in whole or in part by the Company and Bayuk Trust, at any time, and from time to time, at or before the Closing Date.

4.3. **Performance by Arcadia Trust.** On or before the Closing Date, Arcadia Trust will have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required of any of them by this Agreement.

3.5. **Other Documents.** The parties having entered into all other mutually acceptable written agreements and other documents reasonably necessary to accomplish the terms, conditions and intents of this Agreement and the form and substance of all certificates, instruments and other documents delivered to the Company and Bayuk Trust under this Agreement being approved in all reasonable respects by the Company and Bayuk Trust.

5. **Indemnities.**

5.1 **Arcadia Trust's Indemnities.** As to the Transferred Interest, the Arcadia Trust shall indemnify, defend and hold harmless Bayuk Trust and its trustee Edward William Bayuk from and against any damage, deficiency, loss, or claim resulting from any of Arcadia Trust's misrepresentations, breaches of warranty, or other or defaults of the terms of this Agreement or any closing document which cause monetary damage to Bayuk Trust.

5.2 **Bayuk Trust's and the Company's Indemnities.** The Company and Bayuk Trust, and each of them, shall indemnify, defend and hold harmless Arcadia Trust and its trustee Paul A. Morabito from and against any damage, deficiency, loss, or claim resulting from any of either the Company's or Bayuk Trust's misrepresentations, breaches of warranty, or other or defaults of the terms of this Agreement or any closing document which cause monetary damage to transferee. The Company acknowledges that it shall continue to be liable for all debts, mortgages, liens, encumbrances, claims, losses, liabilities, suits, demands, damages, costs, tax obligations, employment claims, judgments, interest, fines, penalties and expenses associated with all of the Properties and any other properties owned by the Company (the "Claims") and indemnify, defend and hold harmless Arcadia Trust and its trustee Paul A. Morabito from and against any and all such Claims, including reasonable attorneys' fees and expenses, reasonable consultants' fees and expenses, court costs and all other reasonable out-of-pocket expenses and causes of actions of any nature whatsoever relating to the Company and the Properties.

5.3 **Survival.** The provisions of this Article 5 shall survive termination or consummation of this Agreement.

6. **REPRESENTATIONS AND WARRANTIES OF THE PARTIES.** As a material inducement to one another to enter into this Agreement and to consummate the transactions contemplated hereby, each party hereto makes the following representations and warranties to each of the other parties:



7.6 Assignment. This Agreement (including the other documents and instruments referred to herein) and the Promissory Note may not be assigned without the written consent of each other party hereto, which consent may be withheld in each of the parties' sole and absolute discretion.

7.7 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

7.8 Provisions Separable. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

7.9 Integration. This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and except as herein contained supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written. This Agreement may not be modified or amended other than by an agreement in writing signed by each of the parties named on the first page of this Agreement.

7.10 Construction of Agreement. This Agreement has been prepared, and negotiations in connection with it have been conducted, by the joint efforts of each of the parties. This Agreement is to be construed simply and fairly, and not strictly for or against any of the parties.

7.11. Time is of Essence. Time is of the essence of this Agreement, all documents and all transactions contemplated herein.

7.12. Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when (1) delivered (personally, by courier service such as Federal Express, or by other messenger); (2) if transmitted by facsimile transmission, then on the date of transmission as confirmed by the facsimile equipment the recipient location; provided that if transmission is after 5:00 p.m. on any day, then notice shall not be deemed given until the following business day; or (3) or the date mailed, when deposited in the United States mails, certified mail, postage prepaid, return receipt requested, addressed as set forth below:

TO: Paul A. Morabito and Arcadia Trust:

8581 Santa Monica Blvd., #708
West Hollywood, California 90069
e-fax: (310) 241-6337

6.1 **Authority Relative to this Agreement.** This Agreement, the Promissory Note and all agreements, instruments of transfer, documents and deeds to be executed in connection with the Closing, have been or will be, as applicable, duly executed and delivered by each of the parties and constitute valid and binding obligations of each of the parties, enforceable against each of the parties, in accordance with their terms. Each of the parties has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Agreement, and except as otherwise provided for or disclosed in this Agreement, no approvals or consents of any persons other than the party executing this Agreement are necessary in connection with it. The execution and delivery of this Agreement by each of the parties has been duly authorized by all necessary action on the part of each such party.

6.2 **Title to Transferred Interest.** Arcadia Trust has good and marketable title to and is the lawful owner of the Transferred Interest, free and clear of all security interests, liens, encumbrances, equities and other charges.

6.3 **Valid and Binding Agreement.** The representations, warranties, and covenants made under this Agreement constitute valid and binding obligations of each of the parties and are enforceable against each of the parties.

7. **ADDITIONAL AGREEMENTS.**

7.1 **Fees and Expenses.** The parties shall each bear their own expenses for legal and accounting fees, costs and expenses incurred in negotiating and preparing this Agreement, negotiating and preparing all of the other paperwork in connection with this Agreement, and carrying out the transactions contemplated by this Agreement.

7.2 **Further Acts.** The parties agree to execute and deliver all documents and perform all further acts that may be reasonably necessary to carry out the provisions of this Agreement and to cooperate with each other in connection with the foregoing.

7.3 **Controlling Law.** This Agreement and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of State of California.

7.4 **Attorneys' Fees and Costs.** If any party hereto institutes any legal action or proceeding arising out of or related to this Agreement the prevailing party shall be entitled to reasonable attorneys' fees and expenses, and all other recoverable costs and damages, including any and all such costs on appeal.

7.5 **Parties in Interest.** This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns and nothing in this Agreement, express or implied, is intended to confer upon any other person any right or remedies of any nature whatsoever under or by reason of this Agreement.



TO: **Edward Bayuk and Bayuk Trust:**

668 North Pacific Coast Highway, Suite 517
Laguna Beach, California 92651
e-fax: (480) 222-1063

Notice by mail shall be by airmail if posted outside of the continental United States. Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section for the giving of notice.

8. TERMINATION, AMENDMENT AND WAIVER.

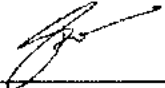
8.1 Termination. In addition to the termination provisions set forth herein, this Agreement may be terminated and the transactions contemplated hereby may be abandoned:

8.1.1 By mutual written consent of all of the parties, or in accordance with this Section 8; or

8.1.2 By any of the parties if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or shall have taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable.

IN WITNESS WHEREOF, each of the Parties have executed this Agreement this 1st day of October, 2010


ARCADIA LIVING TRUST

By: 

Paul A. Morabito, Trustee

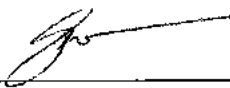
EDWARD WILLIAM BAYUK

LIVING TRUST

By: 


Edward William Bayuk, Trustee

BARUK PROPERTIES, LLC

By: 

Paul Morabito, Manager

BARUK PROPERTIES, LLC

By: 

Edward Bayuk, Manager



PROMISSORY NOTE

Laguna Beach, California

Effective Date of Note: **October 1, 2010**

Borrower: **EDWARD WILLIAM BAYUK LIVING TRUST**
Edward William Bayuk, Trustee

Lender: **ARCADIA LIVING TRUST**
Paul A. Morabito, Trustee

Principal Amount: **\$1,617,050.00**

Payments: **Three Hundred and Sixty (360) consecutive equal monthly installment payments of principal and interest in the amount of \$7,720.04 each, due and payable monthly on the first day of each month commencing November 1, 2010.**

Applicable Interest Rate: **Four percent (4.0%) per annum**

Maturity Date: **September 30, 2040**

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, the undersigned EDWARD WILLIAM BAYUK LIVING TRUST, Edward William Bayuk, Trustee promises to pay to ARCADIA LIVING TRUST, Paul A. Morabito, Trustee, ("Lender"), at such place as Lender may from time to time designate in writing, the Principal Amount stated above with interest on the unpaid principal from time to time outstanding at the Applicable Interest Rate stated above (the "Loan") as set forth in this Promissory Note (this "Note").

1. **Principal; Applicable Interest Rate; Installment Payments and Maturity.** This Note has a term of thirty (30) years and shall accrue interest at the rate of four percent (4.0%) per annum ("Applicable Interest Rate") from October 1, 2010. Principal and interest payments on this Note shall be fully amortized over the term and payable in three hundred and sixty (360) consecutive equal monthly installment payments in the amount of \$7,720.04 each, due on the first day of each month commencing November 1, 2010, with all principal plus interest accrued but unpaid, along with any unpaid late payment fees and other unpaid fees under the terms hereof, due and payable on September 30, 2040. All payments shall be made by check drawn on lawful funds in U.S. dollars, without right of offset. By his execution hereof, the Borrower represents and warrants to the Lender that this Note is the valid and binding obligation of the Borrower, enforceable in accordance with its terms.
2. **Prepayment.** Borrower may prepay all amounts due hereunder in part or in full, with interest to the date of payment, without penalty, premium or discount. Borrower hereby waives the provisions of Section 2966 of the Civil Code which provides that the holder of this Note shall give written notice to the Borrower, or his successor in interest, of prescribed information at least 90 days and not more than 150 days before any balloon payment, if any, is due.
3. **Late Payment.** If any installment of the principal or interest is not paid on or before ten (10) business days from the date such payment first became due and payable, a late payment fee of

four (4%) percent of the payment owed shall be due, it being agreed between Borrower and Lender that such amount represents the parties' reasonable estimate of the damage suffered by Lender as a result of any such late payment. Such late payment fee shall be paid without prejudice to the right of Lender to collect interest on said unpaid amount or to collect any other amounts provided to be paid or to declare an Event of Default under this Note or from exercising any of the other rights and remedies available to Lender.

4. **Guaranty of Payment.** This Note is guaranteed by Baruk Properties, LLC as set forth in Section 2.1 of that certain Membership Interest Transfer Agreement dated September 29, 2010 between the parties.

5. **Cure Period.** Borrower shall have ten (10) business days to cure any Event of Default commencing on the date Lender gives Borrower written notice of such Event of Default; provided, however, that Lender shall be entitled to exercise any and all of its default remedies in the event Borrower fails to cure within the prescribed ten (10) business day period.

6. **Attorneys' Fees.** In the event that suit be brought under or in connection with this Note to compel payment of this Note or any portion of the indebtedness evidenced hereby, the prevailing party in any such suit shall be entitled to recover all reasonable attorneys' and expert consultants' fees incurred in addition to all other recoverable costs and damages.

7. **Place of Payment.** Borrower shall pay all amounts to Lender at:

ARCADIA LIVING TRUST
Paul A. Morabito, Trustee
8581 Santa Monica Blvd., #708
West Hollywood, California 90069

or at such other location as is designated in writing by the legal holder of this Note.

8. **Governing Law.** This Note shall be governed and construed in accordance with the laws of the State of California. Venue shall be proper in Los Angeles County, State of California.

9. **Notices.** All notices, requests, demands and other communications required or permitted under this Note shall be in writing and delivered by U.S. certified mail, postage prepaid, return receipt requested and signed by the party to whom it is addressed, addressed as set forth below and shall be deemed to have been duly given, made and received three (3) days after the date when signed return receipt is received by the sending party:

TO: **Lender:**
ARCADIA LIVING TRUST
Paul A. Morabito, Trustee
8581 Santa Monica Blvd., #708
West Hollywood, California 90069

TO: **Borrower:**
EDWARD WILLIAM BAYUK LIVING TRUST
Edward William Bayuk, Trustee
668 North Pacific Coast Highway, Suite 517
Laguna Beach, California 92651

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section for the giving of notice.

10. **Assignment.** Lender shall have the right to sell, assign, or otherwise transfer, either in part or in its entirety, this Note, without the consent of the Borrower. Borrower shall not have the right to sell, assign, or otherwise transfer, either in part or in its entirety, this Note without the consent of Lender, which consent may be withheld at Lender's sole and absolute discretion. Borrower shall have no right to delegate its duties under this Note without the prior written consent of Lender, which consent may be withheld at Lender's sole and absolute discretion. This Note and all of the covenants, promises and agreements contained in it shall be binding on and inure to the benefit of the respective legal and personal representatives, devisees, heirs, successors and assigns of Borrower and Lender.

11. **Entire Agreement.** This Note (a) is the final, complete and exclusive statement of the parties' agreement with respect to the subject matter hereof, and is binding upon the successors and assigns of the Borrower; (b) except for written agreements expressly referred to herein, replaces and supersedes any prior or contemporaneous agreements, understandings, negotiations or statements of any kind, oral or written, between the parties. Any agreement hereafter made shall be ineffective to modify, supplement or discharge the terms of this Note, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the modification, supplement or is sought.

12. **Severability.** If any term or provision of this Note or the application thereof to any person or circumstance shall, to any extent, be determined to be invalid, illegal or unenforceable, then the remaining part of this Note, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable, which can be separated from the invalid, illegal or unenforceable term(s) and provision(s), shall not be affected thereby and shall continue in full force and effect to the fullest extent provided by law, and the invalid, illegal or unenforceable term(s) and provision(s) shall be construed as if they had never been incorporated into this Note.

IN WITNESS WHEREOF, Borrower has executed this Note as of the date and year first written above and has delivered it to Lender.

BORROWER:

EDWARD WILLIAM BAYUK LIVING TRUST

By: 

Edward William Bayuk, Trustee

201027310002



State of California Secretary of State

Certificate of Merger

(California Corporations Code sections
1113(g), 6019.1, 6019.1, 6640, 12546.1, 15611.14, 18915(b) and 17552)

ONE MERG

FILED
In the office of the Secretary of State
of the State of California

OCT 04 2010

This Space For Filing Use Only

1. NAME OF SURVIVING ENTITY Snowshoe Properties, LLC		2. TYPE OF ENTITY Limited Liability Company	3. CA SECRETARY OF STATE FILE NUMBER 201027310002	4. JURISDICTION California
5. NAME OF DISAPPEARING ENTITY Bank Properties LLC		6. TYPE OF ENTITY Limited Liability Company	7. CA SECRETARY OF STATE FILE NUMBER 200106010010	8. JURISDICTION Nevada
9. THE PRINCIPAL TERMS OF THE AGREEMENT OF MERGER WERE APPROVED BY A VOTE OF THE HOLDERS OF INTERESTS OR SHARES OF EACH CLASS THAT QUALIFIED OR EXCEEDED THE VOTE REQUIRED. IF A VOTE WAS REQUIRED, SPECIFY THE CLASS AND THE NUMBER OF OUTSTANDING INTERESTS OF EACH CLASS ENTITLED TO VOTE ON THE MERGER AND THE PERCENTAGE VOTE REQUIRED OF EACH CLASS. ATTACH ADDITIONAL PAGES, IF NECESSARY.				
SURVIVING ENTITY CLASS AND NUMBER AND PERCENTAGE VOTE REQUIRED 100% Membership Interest 100%		DISAPPEARING ENTITY CLASS AND NUMBER AND PERCENTAGE VOTE REQUIRED 100% Membership Interest 100%		
10. IF EQUITY SECURITIES OF A PARENT PARTY ARE TO BE ISSUED IN THE MERGER, CHECK THE APPLICABLE STATEMENT. <input type="checkbox"/> No vote of the shareholders of the parent party was required. <input type="checkbox"/> The required vote of the shareholders of the parent party was obtained.				
11. IF THE SURVIVING ENTITY IS A DOMESTIC LIMITED LIABILITY COMPANY, LIMITED PARTNERSHIP, OR PARTNERSHIP, PROVIDE THE REQUIRED CHANGES OF ANY TO THE INFORMATION SET FORTH IN THE SURVIVING ENTITY'S ARTICLES OF ORGANIZATION, CERTIFICATE OF LIMITED PARTNERSHIP OR STATEMENT OF PARTNERSHIP AUTHORITY RESULTING FROM THE MERGER. ATTACH ADDITIONAL PAGES, IF NECESSARY.				
12. IF A DISAPPEARING ENTITY IS A DOMESTIC LIMITED LIABILITY COMPANY, LIMITED PARTNERSHIP, OR PARTNERSHIP, AND THE SURVIVING ENTITY IS NOT A DOMESTIC ENTITY OF THE SAME TYPE, ENTER THE PRINCIPAL ADDRESS OF THE SURVIVING ENTITY. PRINCIPAL ADDRESS OF SURVIVING ENTITY CITY AND STATE ZIP CODE				
13. OTHER INFORMATION REQUIRED TO BE STATED IN THE CERTIFICATE OF MERGER BY THE LAWS UNDER WHICH EACH CONSTITUENT OTHER BUSINESS ENTITY IS ORGANIZED. ATTACH ADDITIONAL PAGES, IF NECESSARY.				
14. STATUTORY OR OTHER BASIS UNDER WHICH A FOREIGN OTHER BUSINESS ENTITY IS AUTHORIZED TO EFFECT THE MERGER. NRS Chapter 92A-excluding 92A.200 (4b)			15. FUTURE EFFECTIVE DATE, IF ANY (Month) (Day) (Year)	
16. ADDITIONAL INFORMATION SET FORTH ON ATTACHED PAGES, IF ANY, IS INCORPORATED HEREIN BY THIS REFERENCE AND MADE PART OF THIS CERTIFICATE.				
17. I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT OF MY OWN KNOWLEDGE. I DECLAR THAT THE PERSON WHO EXECUTED THIS INSTRUMENT, WHIC EXECUTION IS MY NOT AND DEED.				
SIGNATURE OF AUTHORIZED PERSON FOR THE SURVIVING ENTITY		DATE	TYPE OR PRINT NAME AND TITLE OF AUTHORIZED PERSON	
SIGNATURE OF AUTHORIZED PERSON FOR THE SURVIVING ENTITY		DATE	TYPE OR PRINT NAME AND TITLE OF AUTHORIZED PERSON	
SIGNATURE OF AUTHORIZED PERSON FOR THE DISAPPEARING ENTITY		DATE	TYPE OR PRINT NAME AND TITLE OF AUTHORIZED PERSON	
SIGNATURE OF AUTHORIZED PERSON FOR THE DISAPPEARING ENTITY		DATE	TYPE OR PRINT NAME AND TITLE OF AUTHORIZED PERSON	
For an entity that is a business trust, real estate investment trust or an unincorporated association, set forth the provision of law or other basis for the authority of the person signing:				
ONE MERG-1 (REV 01/03/10)			APPROVED BY SECRETARY OF STATE	



I hereby certify that the foregoing
transcript of _____ page(s)
is a full, true and correct copy of the
original record in the custody of the
California Secretary of State's office.

OCT 15 2018

Date: _____

Handwritten signature of Alex Padilla in cursive script.

ALEX PADILLA, Secretary of State

STATE OF NEVADA

BARBARA K. CEGAVSKE

Secretary of State

KIMBERLEY PERONDI

*Deputy Secretary
for Commercial Recordings*



Commercial Recordings Division

*202 N. Carson Street
Carson City, NV 89701-4201
Telephone (775) 684-5708
Fax (775) 684-7138*

OFFICE OF THE
SECRETARY OF STATE

Certified Copy

October 4, 2018

Job Number: C20181002-2128

Reference Number: 00011112481-19

Expedite:

Through Date:

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
20100746864-78	Merge Out	6 Pages/1 Copies
LLC2408-1999-001	Articles of Organization	4 Pages/1 Copies



Respectfully,

Barbara K. Cegavske

Barbara K. Cegavske
Secretary of State

Certified By: Paul Reyes
Certificate Number: C20181002-2128

Commercial Recording Division
202 N. Carson Street
Carson City, Nevada 89701-4201
Telephone (775) 684-5708
Fax (775) 684-7138



140102



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

Filed in the office of Ross Miller Secretary of State State of Nevada	Document Number 20100746864-78
	Filing Date and Time 10/04/2010 12:00 PM
	Entity Number LLC2408-1999

Articles of Merger

(PURSUANT TO NRS 92A.200)

Page 1

USE BLACK INK ONLY - DO NOT HIGHLIGHT

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

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

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

Baruk Properties LLC	
Name of merging entity	
Nevada	Limited Liability Company
Jurisdiction	Entity type *
Name of merging entity	
Jurisdiction	Entity type *
Name of merging entity	
Jurisdiction	Entity type *
Name of merging entity	
Jurisdiction	Entity type *
and,	
Snowshoe Properties, LLC	
Name of surviving entity	
California	Limited Liability Company
Jurisdiction	Entity type *

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

Filing Fee: \$350.00

This form must be accompanied by appropriate fees.

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



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

Articles of Merger

(PURSUANT TO NRS 92A.200)

Page 2

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

Attn: Edward Bayuk

c/o: 668 North Pacific Coast Hwy #517
Laguna Beach, CA 92651

- 3) Choose one:

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

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

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

- (a) Owner's approval was not required from

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

and, or;

Name of surviving entity, if applicable

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merger Page 2
Revised: 9-20-10



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

Articles of Merger

(PURSUANT TO NRS 92A.200)

Page 3

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

Baruk Properties LLC

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

and, or,

Snowshoe Properties, LLC

Name of surviving entity, if applicable

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

This form must be accompanied by appropriate fees.

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



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

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

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

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

Name of **merging** entity, if applicable

Name of **merging** entity, if applicable

Name of **merging** entity, if applicable

Name of **merging** entity, if applicable

and, or:

Name of **surviving** entity, if applicable

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merger Page 4
Revised: 9-20-10



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

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

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

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

☐

(a) The entire plan of merger is attached;

or,

☒

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

7) Effective date (optional)**: October 4, 2010

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

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

This form must be accompanied by appropriate fees.

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



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

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

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

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

Baruk Properties LLC

Name of merging entity

X

Signature

Edward Bayuk, Manager

Title

10/04/2010

Date

Name of merging entity

X

Signature

Title

Date

Name of merging entity

X

Signature

Title

Date

Name of merging entity

X

Signature

Title

Date

and,

Snowshot Properties, LLC

Name of surviving entity

X

Signature

Edward Bayuk, Manager

Title

10/04/2010

Date

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

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

This form must be accompanied by appropriate fees.

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

FILED # LLC 2408-99

APR 07 1999

IN THE OFFICE OF
DEAN HELLER SECRETARY OF STATE

ARTICLES OF ORGANIZATION
OF
BARUK PROPERTIES LLC

The undersigned individual, acting as the organizer of a limited liability company (the "Company") under the provisions of Chapter 86 of the Nevada Revised Statutes (the "Act"), hereby adopts the following Articles of Organization.

I

NAME

The name of the Company is "BARUK PROPERTIES LLC."

II

RESIDENT AGENT

The resident agent for the Company is the law firm of Walther, Key, Maupin, Oats, Cox, Klaich & LeGoy, A Professional Corporation, a Nevada professional corporation. The street address of the Company's resident agent is 3500 Lakeside Court, Suite 200, Reno, Nevada 89509. The mailing address of the Company's resident agent is P.O. Box 30000, Reno, Nevada 89520.

III

STATEMENT OF MANAGEMENT

The Company shall be managed by the Managers. The following are the name and address of the Manager of Company.

<u>Name</u>	<u>Address</u>
Paul Morabito	P. O. Box 30000 Reno, Nevada 89520

IV

INDEMNITY

To the maximum extent permitted by the Act and applicable laws, no Manager or Member shall have any personal liability to the Company or other Managers or Members for damages resulting

from breach of any fiduciary duty as a Manager or Member, except for acts or omissions that involve intentional misconduct, fraud, knowing violations of law, or knowing violations of the Company's Operating Agreement. The Company may, as determined by the Managers of the Company, indemnify and advance expenses to a Manager, Member, employee, or agent of Company in connection with any proceedings, to the extent permitted by the Act and in accordance with applicable laws and the Company's Operating Agreement.

V

OPERATING AGREEMENT AND AUTHORITY

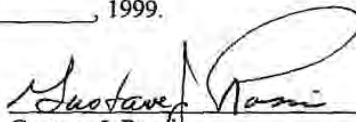
The manner in which the Company conducts its business and affairs, the duties and authority of its Managers and Members, the basis upon which profits are to be divided and distributed among Members, and the rights and obligations of its Managers and Members shall be set forth in the Operating Agreement adopted by the initial Members of the Company. The Operating Agreement may from time to time be amended in accordance with the provisions contained therein. Any matters not addressed by the Operating Agreement shall be governed by the Act and other applicable law.

VI

NAME AND ADDRESS OF ORGANIZER

The name and post office or street address, either residence or business, of the organizer signing these Articles of Organization are Gustave J. Rossi, Esq., 3500 Lakeside Court, Suite 200, Reno, Nevada 89509.

Dated this 6th day of April, 1999.


Gustave J. Rossi

ORGANIZER

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

These Articles of Organization of Baruk Properties LLC were acknowledged before me on
April 6, 1999, by Gustave J. Rossi.



Jean A Beehly
Notary Public

WALTHER, KEY, MAUPIN, OATS, COX, KLATCH & LEGG, ATTORNEYS AT LAW, RENO, NEVADA

FILED # LLC2408-99

APR 07 1999

MAJORITY OF
Dean Hall
DEAN HALL SECRETARY OF STATE

CERTIFICATE OF ACCEPTANCE
OF
AGENT FOR SERVICE OF PROCESS
FOR
BARUK PROPERTIES LLC

Pursuant to Chapter 86 of the Nevada Revised Statutes, Walther, Key, Maupin, Oats, Cox, Klaich & LeGoy, a Nevada Professional Corporation, hereby certifies that earlier this day it accepted appointment as Agent for Service of Process of Baruk Properties LLC, a Nevada limited liability company.

The registered office of the Agent for Service of Process required pursuant to NRS Chapter 86 is located at 3500 Lakeside Court, Suite 200, Reno, Nevada 89509. The mailing address is P.O. Box 30000, Reno, Nevada 89520.

Dated this 7th day of April, 1999.

By *Gustave J. Rossi*
Gustave J. Rossi, Esq.
on behalf of
Walther, Key, Maupin, Oats,
Cox, Klaich & LeGoy
3500 Lakeside Ct., Ste. 200
P.O. Box 30000
Reno, Nevada 89520
(702) 827-2000

WALTHER, KEY, MAUPIN, OATS, COX, KLAICH & LEGOY, ATTORNEYS AT LAW, RENO, NEVADA

DOC # 2010-0531071

11/04/2010 12:48P Fee:15.00

Page 1 of 1

Recorded in Official Records
County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder

RECORDING REQUESTED BY:
FIRST AMERICAN TITLEAND WHEN RECORDED MAIL TO:
Edward William Bayuk, Trustee et al.
568 N. Pacific Coast Highway #517
Laguna Beach, CA 92651Order No.: 3005461-3
Escrow No.:
A.P.N.: 507-520-015

TRA 1011-021

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GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$ ~~20~~ CITY TRANSFER TAX IS \$ ~~20~~ *NO consideration*
"The Grantors and the Grantees in this Conveyance are comprised of the same parties who continue to hold the same proportionate interest in the property, R & Y 11923(d)."

- ☐ computed on full value of property conveyed, or
☐ computed on full value less value of liens or encumbrances remaining at time of sale.
☐ unincorporated area ☐ City of Palm Springs AND

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

SNOWSHOE PROPERTIES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

hereby GRANT(S) to

EDWARD WILLIAM BAYUK, TRUSTEE OF THE EDWARD WILLIAM BAYUK LIVING TRUST

the following described real property in the County of Riverside, State of California:

Lot 6 of Tract 29075 as shown by Map on file in Book 284 Page 12 to 15 of Maps in the office
of the County Recorder of Riverside County, California.
AKA: 1254 Mary Fleming Circle, Palm Springs, CA 92262

Dated: October 29, 2010

STATE OF CALIFORNIA

COUNTY OF Los Angeles

} ss.

On November 1, 2010 before meM. Mason

Notary Public, personally appeared

Edward BayukSNOWSHOE PROPERTIES, LLC, A CALIFORNIA LIMITED
LIABILITY COMPANYBy: Edward Bayuk, Manager

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

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

WITNESS my hand and official seal.

Signature M. Mason

Signature of Notary

Commission Expiration Date: 7/6/2011

(This area for official notarial seal)

MAIL TAX STATEMENTS TO: Edward William Bayuk, Trustee et al., 568 N. Pacific Coast Highway #517

This must be in red to be a
"CERTIFIED COPY"

I hereby certify the foregoing instrument to
which this stamp has been affixed consisting
of 1 pages to be a full, true and
correct copy of the original on file and
of record in my office.

Peter Alshauer

Assessor - County Clerk - Recorder
County of Riverside, State of California

Dated OCT 02 2012 *✍*



Certification must be in red to be a
"CERTIFIED COPY"

RECORDING REQUESTED BY:
EQUITY TITLE-LOS ANGELES

AND WHEN RECORDED MAIL TO:
Snowshoe Properties, LLC
668 North Pacific Coast Hwy, #517
Laguna Beach, CA 92651

Order No.: 0170578-7
Escrow No.:
A.P.N.: 644-212-06

Recorded in Official Records, Orange County

Tom Daly, Clerk-Recorder



6.00

2010000511045 04:19pm 10/08/10

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SPACE ABOVE THIS LINE IS FOR RECORDER'S USE
GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS **NONE-NO CONSIDERATION**

"The Grantors and the Grantees in this Conveyance are comprised of the same parties who continue to hold the same proportionate interest in the property, R & T 11923(d)."

- ☐ computed on full value of property conveyed, or
☐ computed on full value less value of liens or encumbrances remaining at time of sale.
☒ unincorporated area ☒ City of Laguna Beach AND

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

BARUK PROPERTIES, LLC, A NEVADA LIMITED LIABILITY COMPANY

hereby GRANT(S) to

SNOWSHOE PROPERTIES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

the following described real property in the County of Orange, State of California:

Lots 21 and 22, in Block 45, of Laguna Heights No. 3, in the City of Laguna Beach, County of Orange, State of California, as per Map Recorded in Book 8, Page 1, of Miscellaneous Maps, in the Office of the County Recorder of said County.

AKA: 1461 Glenneyre, Laguna Beach, CA

Dated: October 6, 2010

STATE OF CALIFORNIA

COUNTY OF ORANGE

} ss.

On 10/06/2010 before me

Virginia A. Pool
Notary Public, personally appeared
EDWARD BAYUK

BARUK PROPERTIES, LLC, A NEVADA LIMITED LIABILITY COMPANY

By: Edward Bayuk, Manager

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

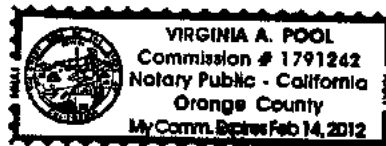
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Virginia A. Pool

Signature of Notary

Commission Expiration Date: 2/14/2012



(This area for official notarial seal)

MAIL TAX STATEMENTS TO: Snowshoe Properties, LLC, a California Limited Liability Company

Certified Copy of document number 2010000511045

THIS IS A CERTIFIED COPY OF THE
RECORD IF IT BEARS THE SEAL, AND
SIGNATURE OF THE ORANGE
COUNTY CLERK-RECORDER.

DATE: 10/01/2018

CERTIFICATION FEE: 2.00



COUNTY CLERK-RECORDER

Hugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

RECORDING REQUESTED BY:
CHICAGO TITLE COMPANY

AND WHEN RECORDED MAIL TO:
Snowshoe Properties, LLC
668 N. Pacific Coast Hwy #517
Laguna Beach, CA 92651

Order No.: 43803568M07
Escrow No.:
A.P.N.: 644-012-08

Recorded in Official Records, Orange County

Tom Daly, Clerk-Recorder



9.00

2010000508587 08:00am 10/08/10

93 401 G02 2

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SPACE ABOVE THIS LINE IS FOR RECORDER'S USE
GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$ 0 CITY TRANSFER TAX IS \$

"The Grantors and the Grantees in this Conveyance are comprised of the same parties who continue to hold the same proportionate interest in the property, R & T 11923(d)."

- ☐ computed on full value of property conveyed, or
☐ computed on full value less value of liens or encumbrances remaining at time of sale.
☐ unincorporated area ☐ City of Laguna Beach AND

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

BARUK PROPERTIES, LLC, A NEVADA LIMITED LIABILITY COMPANY

hereby GRANT(S) to

SNOWSHOE PROPERTIES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

the following described real property in the County of Orange, State of California:

Legal Description attached hereto as Exhibit A
AKA: 570 Glenneyre, Laguna Beach, CA

Dated: October 6, 2010

STATE OF CALIFORNIA

COUNTY OF ORANGE

} ss.

On 10/6/2010 before me

VIRGINIA A. POOL
Notary Public, personally appeared

EDWARD BAYUK

BARUK PROPERTIES, LLC, A NEVADA LIMITED LIABILITY COMPANY

By: Edward Bayuk, Manager

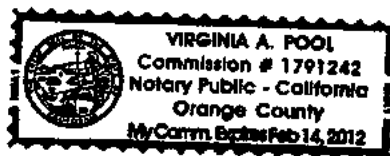
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature on the instrument the person(s), or the entity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

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

WITNESS my hand and official seal.

Signature Virginia A. Pool
Signature of Notary

Commission Expiration Date: 2/14/2012



(This area for official notarial seal)

MAIL TAX STATEMENTS TO: Snowshoe Properties, LLC, a California Limited Liability Company, 668 N. Pacific Coast Hwy #517, Laguna Beach, CA 92651

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Laguna Beach, County of Orange, State of California, described as follows:

PARCEL 1:

LOT 159 OF LAGUNA BEACH, AS PER MAP RECORDED IN BOOK 1, PAGE 78, OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY, TOGETHER WITH THAT PORTION OF THE SOUTHWESTERLY 10.00 FEET OF GOFF STREET, ADJOINING SAID LOT 159 ON THE NORTHEAST ABANDONED BY ORDER OF THE CITY OF LAGUNA BEACH, CALIFORNIA, ON APRIL 3, 1929, WHICH IS INCLUDED BETWEEN THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY AND SOUTHEASTERLY LINES OF SAID LOT 159.

PARCEL 2:

LOT 160 OF LAGUNA BEACH, AS PER MAP RECORDED IN BOOK 1, PAGE 78, OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY, TOGETHER WITH THAT PORTION OF THE SOUTHWESTERLY 10.00 FEET OF GOFF STREET, ADJOINING SAID LOT 160 ON THE NORTHEAST, ABANDONED BY ORDER OF THE CITY OF LAGUNA BEACH, CALIFORNIA, ON APRIL 3, 1929, WHICH IS INCLUDED BETWEEN THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY AND SOUTHEASTERLY LINE OF SAID LOT 160.

APN: 644-012-08

Certified Copy of document number 2010000508587

THIS IS A CERTIFIED COPY OF THE
RECORD IF IT BEARS THE SEAL, AND
SIGNATURE OF THE ORANGE
COUNTY CLERK-RECORDER.

DATE: 10/01/2018

CERTIFICATION FEE: 3.00



COUNTY CLERK-RECORDER

Hugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

Woodland Heights

General Conveyance & Allonge - Original Docs.

GENERAL CONVEYANCE

This General Conveyance and ("**this Conveyance**") made as of the 31st day of October, 2010.

B E T W E E N :

WOODLAND HEIGHTS LIMITED

(hereinafter referred to as the "**Vendor**")

- and -

ARCADIA LIVING TRUST

(hereinafter referred to as the "**Purchaser**")

WHEREAS, the Vendor is an Ontario corporation with an ownership interest in multiple assets (the "**Business**");

AND WHEREAS, one of such assets of Vendor is as the registered owner of certain lands located in the City of Thorold, in the Province of Ontario, which lands are more particularly described in Schedule "A" hereto (the "**Lands**");

AND WHEREAS, the Vendor is the beneficial owner of a Forty (40%) percent interest (the "**Vendor's Interest**") in the Lands and the balance of which the Vendor holds in trust for the benefit of other third party investors pursuant to a joint venture arrangement (the "**Other Investors**" and together with the Vendor, collectively the "**Joint Venturors**");

AND WHEREAS, the Purchaser wishes to acquire a portion of the Vendor's Interest for the sum and in accordance with the provisions of this Conveyance;

THIS CONVEYANCE WITNESSES that for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, the parties agree as follows:

1. Definitions. The capitalized terms used in this Conveyance have the following meanings:

"**Assumed Liabilities**" means the Purchaser's proportionate share of the Mortgage debt and periodic interest payments thereon, real property taxes, on-going obligations under the subdivision agreement with the City of Thorold, on-going maintenance and repairs to the Lands, accounting and legal costs and any and all other costs and obligations which the Vendor may incur from time to time for and on behalf of the Joint Venturors, but shall not

include any expenses incurred by Vendor with respect to any of its other assets or operations;

"Lands" means the lands and premises described and outlined in red in Schedule "A" hereto;

"Mortgage" means a first mortgage registered against the Lands securing a loan from Meridian Credit Union Limited ("Meridian") in the original principal sum of One Million, Four Hundred & Forty Thousand Dollars (\$1,440,000.00) with interest thereon at the rate of Three (3%) percent per annum above Meridian's prime rate from time to time payable monthly;

"Bayuk Note" means a certain promissory note dated October 1, 2010, from Edward William Bayuk Living Trust as Borrower to Arcadia Living Trust as Lender in the principal amount of One Million, Six Hundred & Seventeen Thousand and Fifty Dollars (US \$1,617,050.00). A copy of the Bayuk Note is attached hereto as Schedule "B";

"Conveyed Asset" means a Fifty-one and 65/100(51.65%) percent portion of the Vendor's Interest in the Lands (being Twenty and 66/100 percent (20.66%) of all the Lands) purchased hereunder and conveyed to Purchaser in accordance with this Conveyance;

"Vendor's Interest" means a Forty percent (40%) undivided beneficial ownership interest which the Vendor holds in the Lands;

2. Conveyance. Subject to the terms hereof, the Vendor sells, grants, transfers and conveys the Conveyed Asset with effect as of October 1, 2010, to the Purchaser, its successors and assigns, to have and to hold the said Conveyed Asset and all such right, title, interest, property, claim and demand unto and to the use of the Purchaser, its successors and assigns.

3. Representations and Warranties. The Vendor covenants, represents and warrants to the Purchaser as follows:

- (a) **Incorporation and Power.** The Vendor is a corporation duly incorporated under the laws of the Province of Ontario and is duly organized, validly subsisting and in good standing under such laws. The Vendor has the full corporate power, absolute authority and is qualified to own and dispose of its properties and assets and to carry on the Business as presently carried on by it.
- (b) **Corporate Authority.** The Vendor has all necessary corporate power, authority and capacity to enter into this Conveyance and all other agreements and instruments to be executed by it as contemplated by this Conveyance and to carry out its obligations under this Conveyance and such other agreements and instruments.

- (c) **Execution and Delivery.** The execution and delivery of this Conveyance and all other agreements and instruments to be executed and delivered as contemplated by this Conveyance and the completion of the transactions contemplated by this Conveyance and such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Vendor and its shareholders and directors, as necessary.
- (d) **Binding Obligation.** This Conveyance is a legal, valid and binding obligation of the Vendor, enforceable against the Vendor in accordance with its terms, subject to:
 - (i) bankruptcy, insolvency, moratorium, reorganization and other laws affecting the enforcement of creditors' rights generally; and
 - (ii) the extent that equitable remedies, including the remedies of specific performance and injunction, are only available in the discretion of the court from which they are sought.
- (e) **Vendor's Title.** The Vendor has good and marketable title to the Vendor's Interest and the Conveyed Asset, the Lands of which are free and clear of all encumbrances other than the Mortgage and the obligations set out as Assumed Liabilities;
- (f) **Right to Convey.** The Vendor is now rightfully and absolutely possessed of and entitled to the Conveyed Asset and every part thereof other than those interests owned by the Other Investors. The Vendor has the right to transfer and assign only the part of or all of the Vendor's Interest to the Purchaser, and the Purchaser shall and may immediately upon the execution and delivery of this Conveyance quietly have, hold, possess and enjoy the Conveyed Asset free and clear and absolutely released and discharged from and against all former and other bargains, sales, gifts, grants and encumbrances, including any such encumbrances that may or could be made by any Other Investor, other than the Mortgage and the obligations set forth as Assumed Liabilities.

4. Purchase Price.

- (a) The purchase price payable by the Purchaser to the Vendor for the Conveyed Asset is One Million, Six Hundred & Seventeen Thousand and Fifty Dollars (US \$1,617,050.00) (the "Purchase Price"), which purchase price is payable as follows:
 - (i) The Purchase Price shall be paid by assignment of the Bayuk Note to the Vendor at closing. Purchaser on closing shall execute and deliver an allonge to the Bayuk Note assigning such Bayuk Note to the Vendor and shall notify and direct the Borrower as defined in the Bayuk Note to henceforth make all payments thereunder to the Vendor. Irrespective of said assignment, the

Purchaser shall remain responsible and liable for the payment of the Purchase Price.

- (ii) The Purchaser acknowledges that the Vendor, in accepting the Bayuk Note as payment of the Purchase Price, does not accept the endorsement of the Bayuk Note as absolute satisfaction of the Purchase Price payable by Vendor hereunder but rather as the means by which the Purchase Price will be satisfied and reserves unto itself an unpaid vendor's lien for and until the Purchase Price has been satisfied in full.

5. Purchaser Acknowledgements. The Purchaser acknowledges that:

- (a) The Lands are held by the Vendor in trust for all Joint Venturors and there is no joint venture agreement, partnership agreement or other document that governs the respective rights and obligations of the Vendor and Other Investors. All respective interests in the Lands appear as an undivided entity with a common interest in the Land as a whole and that no Other Investor is entitled to an absolute conveyance of any part or portion of the Lands, except for the interest in the Lands claimed by that Other Investor represented by the proportionate share of the Other Investor's Assumed Liabilities;
- (b) The Lands are held for sale and/or development and that a division of the beneficial interests will occur as and when the Lands are sold and/or developed by way of distribution of the net proceeds of sale and in accordance with the proportionate interests of all Joint Venturors.

6. Vendor Acknowledgements. The Vendor, as bare trustee, does hereby acknowledge that it shall hold the Conveyed Asset in trust for the Purchaser in accordance with Purchaser's interest as herein set out. The Vendor, as trustee, covenants and agrees that it will account to the Purchaser from time to time but in no event shall Vendor account to the Purchaser less than which it accounts to the Other Investors and will specifically do so in the event of any sale, transfer or other disposition of the Lands.

7. Miscellaneous.

- (a) The parties hereto acknowledge that all expenses from and after the date hereof shall accrue to and be discharged by the Purchaser in accordance with its proportionate interest.
- (b) This Conveyance shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (c) This Conveyance shall enure to the benefit of and be binding upon the parties and their respective successors and assigns.

SULLIVAN MAHONEY LLP

IN WITNESS WHEREOF the parties have executed this Conveyance on the date first above written.

WOODLAND HEIGHTS LIMITED

By: 

Name: Sam Morabito

Title: President

I have authority to bind the Corporation.

ARCADIA LIVING TRUST

By: 

Name: Paul A. Morabito

Title: Trustee

I have authority to bind the Trust

GENERAL CONVEYANCE

This General Conveyance and ("**this Conveyance**") made as of the 31st day of October, 2010.

B E T W E E N :

WOODLAND HEIGHTS LIMITED

(hereinafter referred to as the "**Vendor**")

- and -

ARCADIA LIVING TRUST

(hereinafter referred to as the "**Purchaser**")

WHEREAS, the Vendor is an Ontario corporation with an ownership interest in multiple assets (the "**Business**");

AND WHEREAS, one of such assets of Vendor is as the registered owner of certain lands located in the City of Thorold, in the Province of Ontario, which lands are more particularly described in Schedule "A" hereto (the "**Lands**");

AND WHEREAS, the Vendor is the beneficial owner of a Forty (40%) percent interest (the "**Vendor's Interest**") in the Lands and the balance of which the Vendor holds in trust for the benefit of other third party investors pursuant to a joint venture arrangement (the "**Other Investors**" and together with the Vendor, collectively the "**Joint Venturers**");

AND WHEREAS, the Purchaser wishes to acquire a portion of the Vendor's Interest for the sum and in accordance with the provisions of this Conveyance;

THIS CONVEYANCE WITNESSES that for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, the parties agree as follows:

1. **Definitions**. The capitalized terms used in this Conveyance have the following meanings:

"**Assumed Liabilities**" means the Purchaser's proportionate share of the Mortgage debt and periodic interest payments thereon, real property taxes, on-going obligations under the subdivision agreement with the City of Thorold, on-going maintenance and repairs to the Lands, accounting and legal costs and any and all other costs and obligations which the Vendor may incur from time to time for and on behalf of the Joint Venturers, but shall not

include any expenses incurred by Vendor with respect to any of its other assets or operations;

"Lands" means the lands and premises described and outlined in red in Schedule "A" hereto;

"Mortgage" means a first mortgage registered against the Lands securing a loan from Meridian Credit Union Limited ("Meridian") in the original principal sum of One Million, Four Hundred & Forty Thousand Dollars (\$1,440,000.00) with interest thereon at the rate of Three (3%) percent per annum above Meridian's prime rate from time to time payable monthly;

"Bayuk Note" means a certain promissory note dated October 1, 2010, from Edward William Bayuk Living Trust as Borrower to Arcadia Living Trust as Lender in the principal amount of One Million, Six Hundred & Seventeen Thousand and Fifty Dollars (US \$1,617,050.00). A copy of the Bayuk Note is attached hereto as Schedule "B";

"Conveyed Asset" means a Fifty-one and 65/100(51.65%) percent portion of the Vendor's Interest in the Lands (being Twenty and 66/100 percent (20.66%) of all the Lands) purchased hereunder and conveyed to Purchaser in accordance with this Conveyance;

"Vendor's Interest" means a Forty percent (40%) undivided beneficial ownership interest which the Vendor holds in the Lands;

2. Conveyance. Subject to the terms hereof, the Vendor sells, grants, transfers and conveys the Conveyed Asset with effect as of October 1, 2010, to the Purchaser, its successors and assigns, to have and to hold the said Conveyed Asset and all such right, title, interest, property, claim and demand unto and to the use of the Purchaser, its successors and assigns.

3. Representations and Warranties. The Vendor covenants, represents and warrants to the Purchaser as follows:

- (a) **Incorporation and Power.** The Vendor is a corporation duly incorporated under the laws of the Province of Ontario and is duly organized, validly subsisting and in good standing under such laws. The Vendor has the full corporate power, absolute authority and is qualified to own and dispose of its properties and assets and to carry on the Business as presently carried on by it.
- (b) **Corporate Authority.** The Vendor has all necessary corporate power, authority and capacity to enter into this Conveyance and all other agreements and instruments to be executed by it as contemplated by this Conveyance and to carry out its obligations under this Conveyance and such other agreements and instruments.

- (c) **Execution and Delivery.** The execution and delivery of this Conveyance and all other agreements and instruments to be executed and delivered as contemplated by this Conveyance and the completion of the transactions contemplated by this Conveyance and such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Vendor and its shareholders and directors, as necessary.
- (d) **Binding Obligation.** This Conveyance is a legal, valid and binding obligation of the Vendor, enforceable against the Vendor in accordance with its terms, subject to:
 - (i) bankruptcy, insolvency, moratorium, reorganization and other laws affecting the enforcement of creditors' rights generally; and
 - (ii) the extent that equitable remedies, including the remedies of specific performance and injunction, are only available in the discretion of the court from which they are sought.
- (e) **Vendor's Title.** The Vendor has good and marketable title to the Vendor's Interest and the Conveyed Asset, the Lands of which are free and clear of all encumbrances other than the Mortgage and the obligations set out as Assumed Liabilities;
- (f) **Right to Convey.** The Vendor is now rightfully and absolutely possessed of and entitled to the Conveyed Asset and every part thereof other than those interests owned by the Other Investors. The Vendor has the right to transfer and assign only the part of or all of the Vendor's Interest to the Purchaser, and the Purchaser shall and may immediately upon the execution and delivery of this Conveyance quietly have, hold, possess and enjoy the Conveyed Asset free and clear and absolutely released and discharged from and against all former and other bargains, sales, gifts, grants and encumbrances, including any such encumbrances that may or could be made by any Other Investor, other than the Mortgage and the obligations set forth as Assumed Liabilities.

4. Purchase Price.

- (a) The purchase price payable by the Purchaser to the Vendor for the Conveyed Asset is One Million, Six Hundred & Seventeen Thousand and Fifty Dollars (US \$1,617,050.00) (the "Purchase Price"), which purchase price is payable as follows:
 - (i) The Purchase Price shall be paid by assignment of the Bayuk Note to the Vendor at closing. Purchaser on closing shall execute and deliver an allonge to the Bayuk Note assigning such Bayuk Note to the Vendor and shall notify and direct the Borrower as defined in the Bayuk Note to henceforth make all payments thereunder to the Vendor. Irrespective of said assignment, the

SULLIVAN MAHONEY LLP

Purchaser shall remain responsible and liable for the payment of the Purchase Price.

- (ii) The Purchaser acknowledges that the Vendor, in accepting the Bayuk Note as payment of the Purchase Price, does not accept the endorsement of the Bayuk Note as absolute satisfaction of the Purchase Price payable by Vendor hereunder but rather as the means by which the Purchase Price will be satisfied and reserves unto itself an unpaid vendor's lien for and until the Purchase Price has been satisfied in full.

5. Purchaser Acknowledgements. The Purchaser acknowledges that:

- (a) The Lands are held by the Vendor in trust for all Joint Venturors and there is no joint venture agreement, partnership agreement or other document that governs the respective rights and obligations of the Vendor and Other Investors. All respective interests in the Lands appear as an undivided entity with a common interest in the Land as a whole and that no Other Investor is entitled to an absolute conveyance of any part or portion of the Lands, except for the interest in the Lands claimed by that Other Investor represented by the proportionate share of the Other Investor's Assumed Liabilities;
- (b) The Lands are held for sale and/or development and that a division of the beneficial interests will occur as and when the Lands are sold and/or developed by way of distribution of the net proceeds of sale and in accordance with the proportionate interests of all Joint Venturors.

6. Vendor Acknowledgements. The Vendor, as bare trustee, does hereby acknowledge that it shall hold the Conveyed Asset in trust for the Purchaser in accordance with Purchaser's interest as herein set out. The Vendor, as trustee, covenants and agrees that it will account to the Purchaser from time to time but in no event shall Vendor account to the Purchaser less than which it accounts to the Other Investors and will specifically do so in the event of any sale, transfer or other disposition of the Lands.

7. Miscellaneous.

- (a) The parties hereto acknowledge that all expenses from and after the date hereof shall accrue to and be discharged by the Purchaser in accordance with its proportionate interest.
- (b) This Conveyance shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (c) This Conveyance shall enure to the benefit of and be binding upon the parties and their respective successors and assigns.

SULLIVAN MAHONEY LLP

IN WITNESS WHEREOF the parties have executed this Conveyance on the date first above written.

WOODLAND HEIGHTS LIMITED

By: 

Name: Sam Morabito

Title: President

I have authority to bind the Corporation.

ARCADIA LIVING TRUST

By: 

Name: Paul A. Morabito

Title: Trustee

I have authority to bind the Trust

ALLONGE

This Allonge is affixed to, and forms a part of, that certain Promissory Note dated October 1, 2010 (the "Note") having an original principal balance of \$1,617,050, wherein Edward William Bayuk Living Trust is the Borrower and Arcadia Living Trust is the Lender. The Note is hereby endorsed to Woodland Heights Limited, an Ontario corporation.

ENDORSEMENT

PAY TO THE ORDER OF WOODLAND HEIGHTS LIMITED, WITHOUT
RECOURSE.

Dated: October 31, 2010.

ARCADIA LIVING TRUST

By: _____

Paul Morabito, Trustee

Acknowledged and accepted,
This 31st day of October, 2010

WOODLAND HEIGHTS LIMITED

By: _____

Sam Morabito, President

ALLONGE

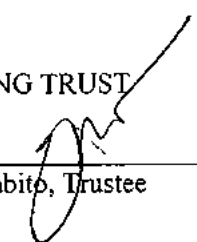
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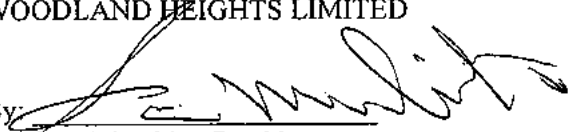
Dated: October 31, 2010.

ARCADIA LIVING TRUST

By: 
Paul Morabito, Trustee

Acknowledged and accepted,
This 31st day of October, 2010

WOODLAND HEIGHTS LIMITED

By: 
Sam Morabito, President

Lippes.PAM0001425

3957

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ARCADIA LIVING TRUST

By: _____

Paul Morabito Trustee

Acknowledged and accepted,
This 31st day of October, 2010

WOODLAND HEIGHTS LIMITED

By: _____

Sam Morabito, President

Kernahan & Graves Real Estate Co. Limited
50 William Street, St. Catharines, ON L2R 5J2
Phone 905 685-8447 Fax 905 685-7844

October 19, 2010

Woodlands Heights Ltd.
P.O. Box 1595
St. Catharines, On L2R 7J9

Attention: Mr. Sam Morabito.

Dear Mr. Morabito:

At your request I have reviewed the appraisal report prepared with the assistance of Mr. Mark F. D. Danko, Associate Appraiser, now AACI, the parcel of Open Land located at Highway #58 and Collier Road in the City of Thorold, Municipality of Niagara. The purpose of that appraisal was to estimate its then market Value. The Final estimate of its Market Value at that time, being February 25th, 2002, was Four Million, Seven Hundred Thousand (\$4,700,000.00) Dollars.

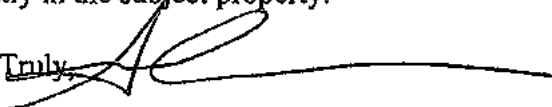
Your next request was to update that report and estimate its current market Value.

The study has now been completed and the results are contained in the attached report, resulting in my estimate of the property's current Market Value, as of October 18th, 2010 being

Nine Million, Two Hundred and Sixty-Six Thousand and Six Hundred (\$9,266,600.00) Dollars.

I certify that I, J. William Losier have no personal interest either directly or indirectly in the subject property.

Yours Truly,



Kernahan & Graves Real Estate Co. Limited.

J. William Losier Real Estate Broker (Realtor) and Property Consultant.

Lippes.PAM0001427

3959

SITE OVERVIEW

Location

The subject lands are located at the intersection of Collier Road and Highway No. 58, within the City of Thorold and collectively comprise approximately 27 acres of available serviced land. The site is accessible by way of McCleary Street, just south of the existing interchange ramps of Highway 58, on the east side of Collier Road.

Legal Description and Municipal Addressing

The available lands are comprised of Block 1, part of Block 2, Blocks 3 and 4, and Blocks 6 and 7, Plan 59M-306. This site was previously draft plan approved and registered in February 2003 (Appendix A) and are known municipally as 1530 and 1600 McCleary Street, Thorold, with yet to be determined addressing for Block 4.

Appendix B illustrates more precisely, the available lands along McCleary Street; these lands collectively comprise approximately 27 acres.

Site Ownership

Current ownership of these lands is registered under Woodland Heights Ltd. Current mailing information is reported to be:

Ownership:

Woodland Heights Ltd.
P.O. Box 1595,
St. Catharines, Ontario
905 933-0733

BACKGROUND INFORMATION

Regional Policy Plan

The Regional Policy Plan identifies the subject lands as being within the Urban Area and as such, does not contravene or offend the objectives and policies of the Regional Plan.

Thorold Office Plan

The Thorold Official Plan, as amended, designates the Subject lands as Serviced Industrial which permits a wide range of related uses including *"....a limited amount of certain public, institutional, and commercial uses..."*

Thorold Zoning By-law

The City of Thorold By-law 2140(97) identifies the Subject Lands as being zoned Light Industrial – Special Provision 13 (L1-13). This site specific zoning designation was approved for the Collier Road and Highway 58 Industrial/Business Area and in addition to allowing all uses permitted by the Light Industrial (L1) Zone, additional uses and provisions as defined which comprise what are typically described as "bag box" commercial uses.

In 2007 a site specific zoning by-law application was made to permit the construction of a food supermarket as part of Block 4, this application was passed by the Council of the City of Thorold and approved by the Ontario Municipal Board.

The subject site has changed since the 1992 report in that the property is now fully serviced with a paved and curbed roadway with a Cul-de-sac at its easterly Boundary now known as McCleary Street. Entry and exit is located on the east side of Collier Road.

The property is now reduced from its size stated in the earlier report by the removal of Block #2 and part of Block 3 (2acres) as shown on the survey included herewith. This report will consider Block 1, part of 3, and 4 only containing a total acreage of 25.394 serviced usable areas.

The zoning for the property comes under a light industrial classification. To view the allowed uses I suggest consulting the bylaws for the city of Thorold or from the booklet prepared for the property by Woodland Heights Ltd.

The property owners appealed part of the by-law covering the property #4 on the survey and that parcel now permits the use of the lands for a major grocery store of not a greater size than 40,000 square feet, this size in my opinion is adequate in size for such use. The use does prohibit outside storage and display except for a garden centre. Further, restricts the use as pharmacy use. These restrictions to some degree lessen the overall potential of the site, but do meet the major use as a grocery food center, especially where the lands surrounding is developed with large residential development.

Basis for my estimate of the current market value of the property is on the following sales recorded.

Sale #1

417 / 421 / 433 / 36 Burbank Dr. St. Catharines

Date of Sale, April 30th, 2007.

From 9133-0589 Quebec Inc. to 4246551 Canada Inc. (Rhona Inc.)

Price Paid \$3,935,000.00

Area said to be 14 Acres. Therefore \$281,070.00 per acre.

Sale #2

McLeod Road, Niagara Falls Ontario

Part of Township Lot 170

Date of Sale, August 1, 2006

From Corporation of the City of Niagara Falls, to McLeod Square Group

Said to contain 25 acres.

Price paid \$6,928,533.00. Therefore \$277,000.00 per acre.

Sale #3

Oakwood Drive, Niagara Falls, Ontario

Part of Township Lot 178/187

Date of sale: October 26, 2007.

From Consulate Ventures Inc. to Oakwood Place Shopping Centre Inc.

Said to contain 34.7 acres

Price paid \$10,076,920.00. Therefore \$209,400,000.00 per acre.

Sale #4

Lundy's Lane, Niagara Falls Ontario

Part of Township Lot 139, Land with house.

Date of Sale October 15th, 2009.

From Assemble of Individuals to River Realty Development.

Said to contain 15.24 acres.

Price paid \$5,350,000.00, price per acre \$351,000.00 per acre.

Sale #5

59R-13666 Parts 1 & 2.

Niagara Falls, Ontario

Date of Sale, January 20, 2010.

From Niagara Square Inc. to Rio Can Yonge Eglinton Centre.

Said to contain 6.5 acres.

Price paid \$935,000.00, price per acre \$143,400.00.

Sale #6

Primway Dr. Welland, Ontario

Date of Sale, November 29, 2009

From Calloway Reit (Welland) Inc. to Canadian Tire Real Estate Ltd.

Said to contain 7.3 acres

Price paid \$3,006,900.00 price per acre \$411,916.00

Based upon the foregoing noted sales as support to my estimate of current
Market Value for the subject property.

My estimate Market Value for properties 1 & 4 are:

13.484 acres plus 3 acres = 16.484 acres @ \$400,000.00 per acre	
	= \$6,593,600.00
8.91 acres @ \$300,000.00	= \$2,673,000.00
TOTAL	\$9,266,600.00

BEING A SUBDIVISION OF
PART OF LOT 32
GEOGRAPHIC TOWNSHIP OF THOROLD,
COUNTY OF WELLAND
NOW IN THE
CITY OF THOROLD
REGIONAL MUNICIPALITY OF NIAGARA


SCALE 1:750

WILLIAM A. MASCOE
ONTARIO LAND SURVEYOR

SUMMARY PLAN OF DISPOSITION
Addressed Street Map No. 21 of the following lot
File _____ Map of _____, 1904

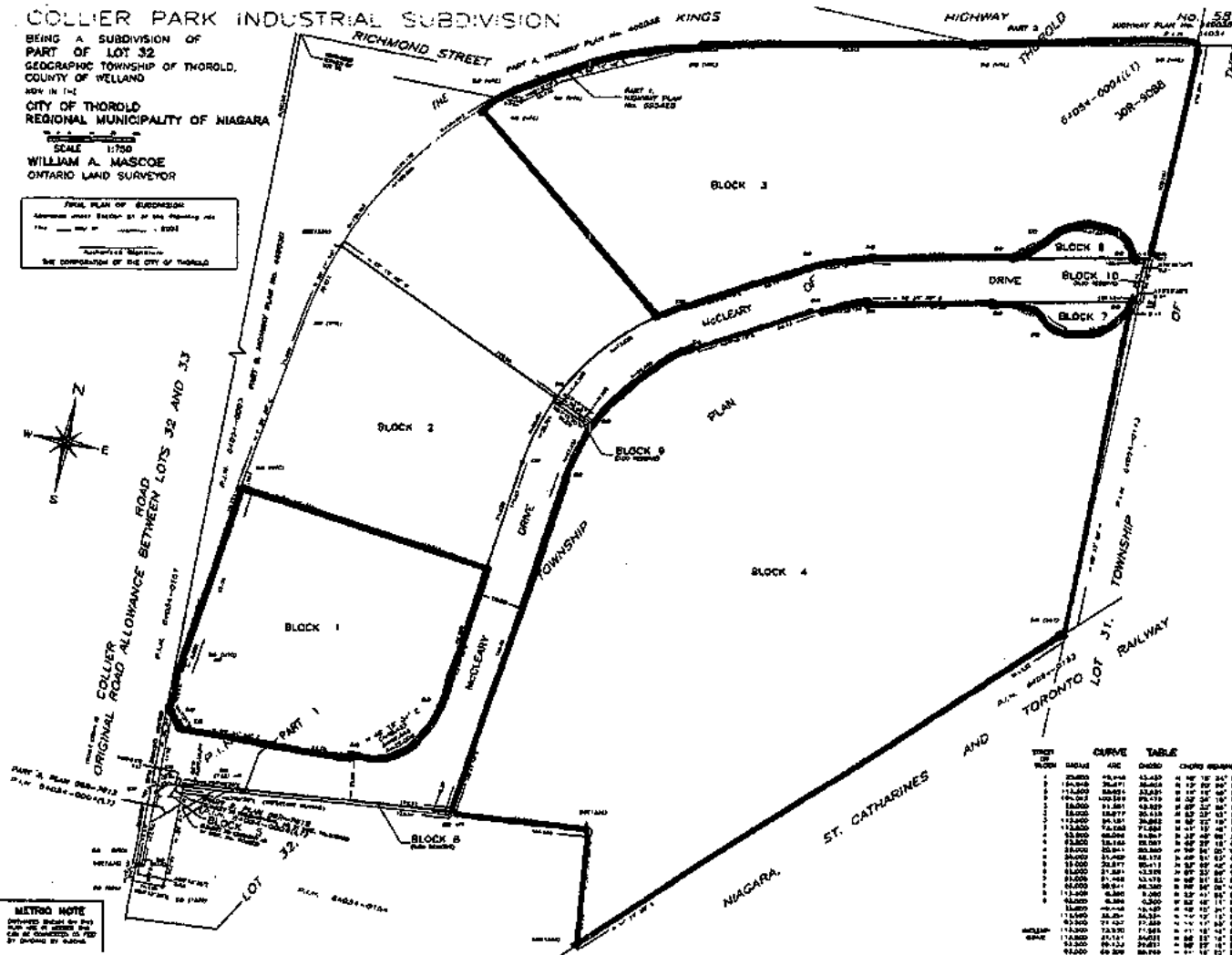
Assistant Engineer
THE COMMISSIONERS OF THE CITY OF TACOMA



PART - A PLAN RES-A
 D-1-A BACED-000-01

6A
 1-0
 60

MAYROO NOTE
 (CONTINUED FROM 6A) (P)
 MAYROO NOTE (P) (P)
 MAYROO NOTE (P) (P)
 MAYROO NOTE (P) (P)

[illegible]

OWNER'S CERTIFICATE

THIS IS TO CERTIFY THAT

1. ELIJAH D. J. & SONS, INC. HAS RECEIVED THE SUM OF 100.00 DOLLARS FROM THE STATE OF NEW YORK FOR THE PURPOSE OF THE STATE OF NEW YORK AND HAS PAID THE SAME TO THE STATE OF NEW YORK FOR THE PURPOSE OF THE STATE OF NEW YORK.

2. THE STATE OF NEW YORK HAS RECEIVED THE SUM OF 100.00 DOLLARS FROM THE STATE OF NEW YORK FOR THE PURPOSE OF THE STATE OF NEW YORK AND HAS PAID THE SAME TO THE STATE OF NEW YORK FOR THE PURPOSE OF THE STATE OF NEW YORK.

DATED this 10th day of April, 1940.

Attest: John J. McLaughlin Secretary

SURVEYOR'S CERTIFICATE

I, the Surveyor, do hereby certify that the above is a true and correct copy of the original as the same appears in the records of the County of [] State of []

Witness my hand and seal of office this [] day of [] 19[]

 Surveyor

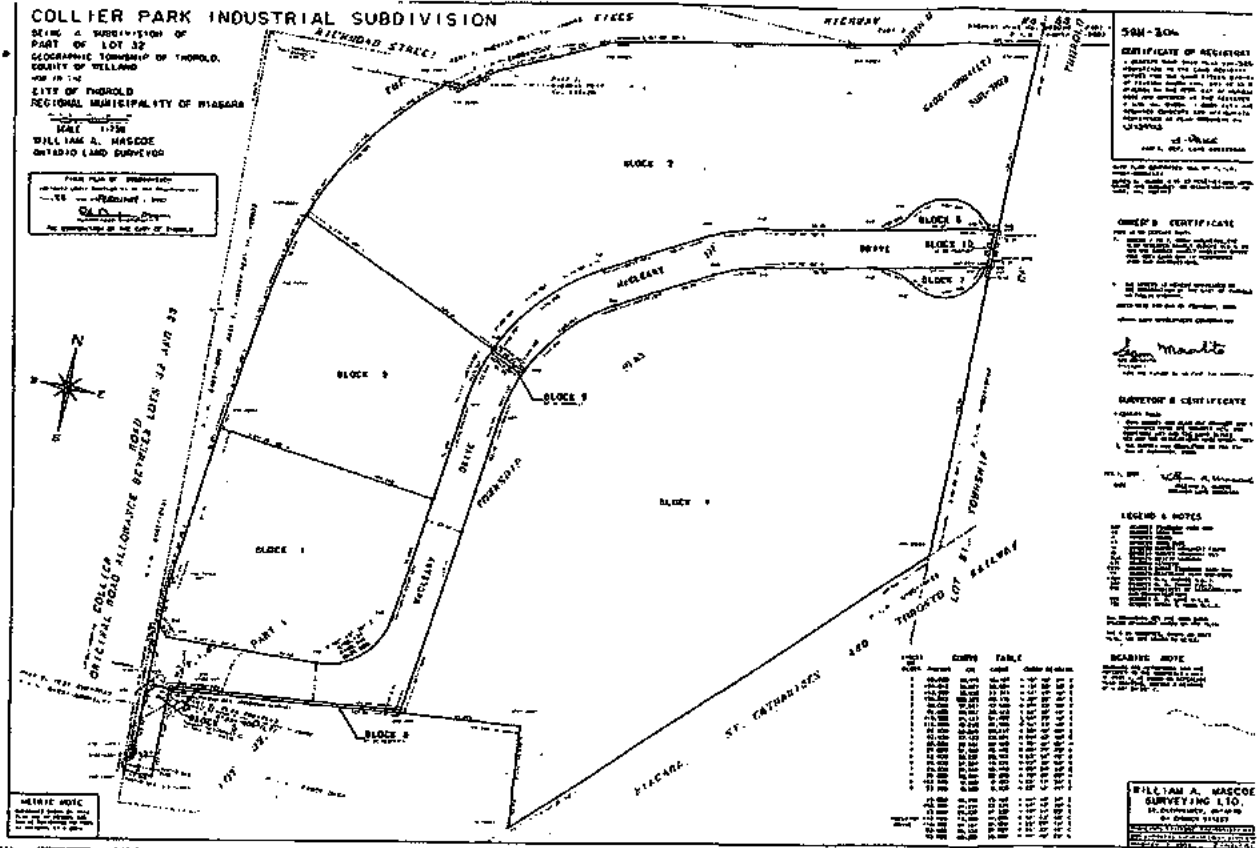
SECRET

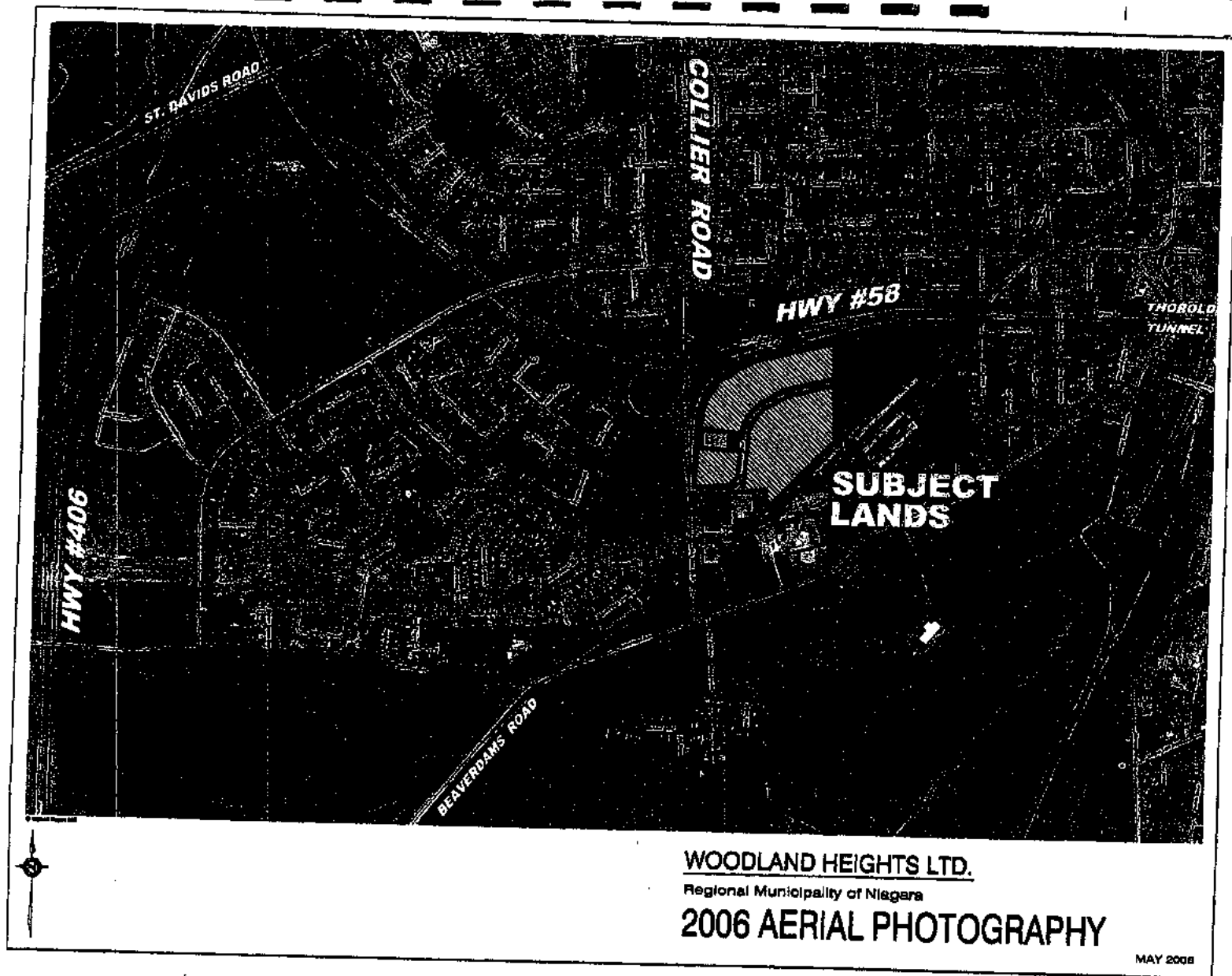
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READING NOTE
REPRINTS ARE AVAILABLE AND ARE
REFUSED TO THE READING NOTE
BY PART 1, 46, 1000 OF THE
REASONS FOR THE READING NOTE
OF 11-11-1961, 1961 - 1961

WAGE BY INDUSTRY		CAREER TABLE				
	SEMI- SKILL	SKILL	PROFES- SIONAL	MANAGEMENT	TECHNICAL	
1	25.000	45.000	15.000	10.000	20.000	
2	20.000	30.000	10.000	5.000	15.000	
3	15.000	25.000	5.000	5.000	10.000	
4	10.000	20.000	5.000	5.000	10.000	
5	5.000	15.000	5.000	5.000	10.000	
6	5.000	15.000	5.000	5.000	10.000	
7	5.000	15.000	5.000	5.000	10.000	
8	5.000	15.000	5.000	5.000	10.000	
9	5.000	15.000	5.000	5.000	10.000	
10	5.000	15.000	5.000	5.000	10.000	
11	5.000	15.000	5.000	5.000	10.000	
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13	5.000	15.000	5.000	5.000	10.000	
14	5.000	15.000	5.000	5.000	10.000	
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18	5.000	15.000	5.000	5.000	10.000	
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23	5.000	15.000	5.000	5.000	10.000	
24	5.000	15.000	5.000	5.000	10.000	
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48	5.000	15.000	5.000	5.000	10.000	
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50	5.000	15.000	5.000	5.000	10.000	
51	5.000	15.000	5.000	5.000	10.000	
52	5.000	15.000	5.000	5.000	10.000	
53	5.000	15.000	5.000	5.000	10.000	
54	5.000	15.000	5.000	5.000	10.000	
55	5.000	15.000	5.000	5.000	10.000	
56	5.					

WILLIAM A. MASCOE
SURVEYING LTD.
ST. CATHARINES, ONTARIO
84 CHURCH STREET
Tel: (416) 221-2851 Fax: (416) 221-2852
E-mail: mascoe_surveys@sympatico.ca
Bills Due: 15th of Month
Bills Due: 15th of Month





WOODLAND HEIGHTS LTD.

Regional Municipality of Niagara

2006 AERIAL PHOTOGRAPHY

MAY 2008

Lippes.PAM0001434

3966

Lippes Mathias Wexler Friedman LLP

Dennis C. Vacco
Partner
dvacco@lippes.com

March 11, 2011

VIA OVERNIGHT MAIL

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

Re: *Woodland Heights*

Dear Paul:

Enclosed please find an original and several copies of the General Conveyance and Allonge regarding the above-entitled matter. Please execute all documents and return the original and copies to our office in the enclosed overnight envelope. You can keep a copy of each document for your records.

Thank you for your courtesy and cooperation in this matter. Please contact me if you have any questions.

Very truly yours,

LIPPES MATHIAS WEXLER FRIEDMAN LLP

By:



Stephanie Canastraro
Legal Assistant to Dennis C. Vacco, Esq.

Enc.



Lippes Mathias Wexler Friedman LLP

Dennis C. Vacco
Partner
dvacco@lippes.com

March 11, 2011

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LIPPES MATHIAS WEXLER FRIEDMAN LLP

By: 

Stephanie Canastraro
Legal Assistant to Dennis C. Vacco, Esq.

Enc.



Reply to St. Catharines Office
VICTOR F. MURATORI, Q.C.
Phone: 905.688.6655 Ext. 235
Facsimile: 905.688.5814
vmuratori@sullivan-mahoney.com

March 10, 2011

Please reply to St. Catharines Office

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

Attention: Christian M. Lovelace

Dear Mr. Lovelace:

**Re: Woodland Heights Limited sale to Arcadia Living Trust
General Conveyance and Allonge
Our File No. 89690**

Further to our e-mail to you of today's date, enclosed are copies of the General Conveyance and Allonge executed by our client.

Once executed by your client, we ask that you return not less than 2 copies to our office.

Yours very truly,

Sullivan Mahoney LLP

Per:


Victor F. Muratori

VFM:cd
encls.

40 Queen Street, P.O. Box 1360, St. Catharines, Ontario L2R 6Z2 Telephone: 905.688.6655, Facsimile: 905.688.5814
4781 Portage Road, Niagara Falls, Ontario L2E 6B1 Telephone: 905.357.0500, Facsimile: 905.357.0501
www.sullivan-mahoney.com

V. F. Muratori, Q.C.
J. M. Gottli
S. J. Premi
M. F. Adams

P. B. Bedard
R. B. Culliton
C. D'Angelo
L. K. Parsons

T. A. Richardson
J. R. Bush
R. Vacca
J. P. Mahoney

P. M. Sheehan
P. A. Mahoney
T. Wall
M. D. Atherton

W. B. McKaig
B. A. Macdonald
K. A. Book
J. McNulty

J. Dallal
M. J. Bonomi
B. J. Troup
J. A. Butlin

D. A. Goslin
G. W. McCann
D. M. Miller
A. Kapend

Counsel (Commercial Law): M. D. Kriluck

Lippes.PAM0001437

3969

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By: 

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Title: President

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By: _____

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Title: Trustee

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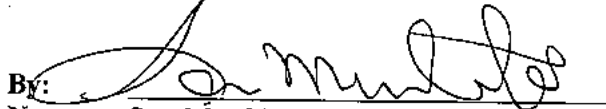
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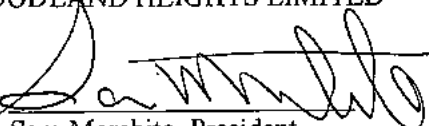
Dated: October 31, 2010.

ARCADIA LIVING TRUST

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Acknowledged and accepted,
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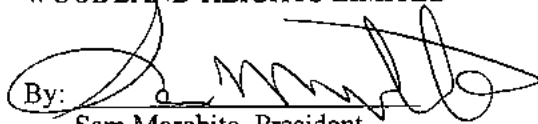
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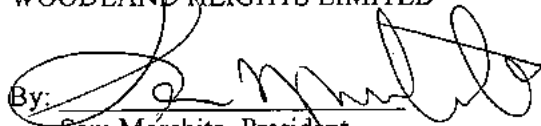
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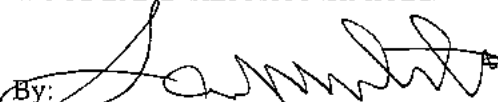
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PAY TO THE ORDER OF WOODLAND HEIGHTS LIMITED, WITHOUT
RECOURSE.

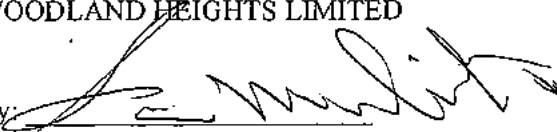
Dated: October 31, 2010.

ARCADIA LIVING TRUST

By: _____
Paul Morabito, Trustee

Acknowledged and accepted,
This 31st day of October, 2010

WOODLAND HEIGHTS LIMITED

By:  _____
Sam Morabito, President

UPS Next Day Air[®]
UPS Worldwide Express[®]

Shipping Document

See instructions on back. Visit UPS.com or call 1-800-PICK-UPS[®] (800-742-5877) for additional information and UPS Tariff/Terms and Conditions.

TRACKING NUMBER 1Z F09 616 22 1017 1980

1 SHIPMENT FROM

SHIPPER'S UPS ACCOUNT NO. **F09616**

REFERENCE NUMBER

NAME _____ TELEPHONE **716-853-5100**

COMPANY **LIPES MATHIAS WEXLER FRIEDMAN**

STREET ADDRESS **665 MAIN STREET SUITE 300**

CITY AND STATE **BUFFALO NY** ZIP CODE **14203**


2 EXTREMELY URGENT DELIVERY TO

NAME **Mr. Paul A. Morabito** TELEPHONE _____

COMPANY _____

STREET ADDRESS **8581 Santa Monica Blvd. Suite 708** DEPT./FLR. _____ Residential Delivery ☐

CITY AND STATE (INCLUDE COUNTRY IF INTERNATIONAL) **West Hollywood, CA** ZIP CODE **90069**



3 WEIGHT LTR ☐ PAK ☐ WEIGHT _____ DIMENSIONAL WEIGHT If Applicable _____ LARGE PACKAGE ☐ **4 SHIPPER RELEASE** ☐

5 TYPE OF SERVICE ☐ NEXT DAY AIR ☐ EXPRESS (INTL) ☐ CHARGES \$ _____

FOR INTERNATIONAL SHIPMENTS CUSTOMS VALUE ☐ DOCUMENTS ONLY ☐

6 OPTIONAL SERVICES ☐ SATURDAY PICKUP See instructions. ☐ SATURDAY DELIVERY See instructions. \$ _____

☐ DECLARED VALUE FOR CARRIAGE For declared value over \$100, see instructions. \$ _____ AMOUNT \$ _____

☐ C.O.D. If C.O.D., enter amount to be collected and attach completed UPS C.O.D. tag to package. \$ _____ AMOUNT \$ _____

7 ADDITIONAL HANDLING CHARGES ☐ An Additional Handling Charge applies for certain items. See instructions. \$ _____

8 TOTAL CHARGES \$ _____

9 METHOD OF PAYMENT BILL SHIPPER'S ACCOUNT NUMBER ☒ BILL RECEIVER ☐ BILL THIRD PARTY ☐ CREDIT CARD ☐ CHECK ☐

IN SECTION 1 ☐ DOMESTIC ONLY ☐ RECORD ACCOUNT NO. IN SECTION 9 ☐

10 RECEIVER'S/THIRD PARTY'S UPS ACCT. NO. OR MAJOR CREDIT CARD NO. _____ EXPIRATION DATE _____

THIRD PARTY'S COMPANY NAME _____

STREET ADDRESS _____

CITY AND STATE _____ ZIP CODE _____

Shipper certifies that the goods are for export and are in accordance with the Export Administration Regulations. Shipper certifies that these commodities, technology or software, if exported from the United States, will not be re-exported in violation of the Export Administration Regulations. Where necessary to law is prohibited.

10 SHIPPER'S SIGNATURE **X** DATE OF SHIPMENT **1/1**

All shipments are subject to the terms contained in the UPS Tariff/Terms and Conditions of Service, which are available at ups.com and local UPS offices.

0101911202609 1/10 S UPS COPY

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Shipping Document

See instructions on back. Visit UPS.com or call 1-800-PICK-UPS[®] (800-742-5877) for additional information and UPS Tariff/Terms and Conditions.

TRACKING NUMBER 1Z F09 616 22 1017 1953

1 SHIPMENT FROM

SHIPPER'S UPS ACCOUNT NO. **F09616**

REFERENCE NUMBER **3540.1**

NAME _____ TELEPHONE **716-853-5100**

COMPANY **LIPES MATHIAS WEXLER FRIEDMAN**

STREET ADDRESS **665 MAIN STREET SUITE 300**

CITY AND STATE **BUFFALO NY** ZIP CODE **14203**


2 EXTREMELY URGENT DELIVERY TO

NAME **Dennis Vacco, Esq.** TELEPHONE _____

COMPANY **Lippes Mathias Wexler Friedman LLP**

STREET ADDRESS **665 Main St., Ste 300** DEPT./FLR. _____ Residential Delivery ☐

CITY AND STATE (INCLUDE COUNTRY IF INTERNATIONAL) **Buffalo, NY** ZIP CODE **14203**



3 WEIGHT LTR ☐ PAK ☐ WEIGHT _____ DIMENSIONAL WEIGHT If Applicable _____ LARGE PACKAGE ☐ **4 SHIPPER RELEASE** ☐

5 TYPE OF SERVICE ☐ NEXT DAY AIR ☐ EXPRESS (INTL) ☐ CHARGES \$ _____

FOR INTERNATIONAL SHIPMENTS CUSTOMS VALUE ☐ DOCUMENTS ONLY ☐

6 OPTIONAL SERVICES ☐ SATURDAY PICKUP See instructions. ☐ SATURDAY DELIVERY See instructions. \$ _____

☐ DECLARED VALUE FOR CARRIAGE For declared value over \$100, see instructions. \$ _____ AMOUNT \$ _____

☐ C.O.D. If C.O.D., enter amount to be collected and attach completed UPS C.O.D. tag to package. \$ _____ AMOUNT \$ _____

7 ADDITIONAL HANDLING CHARGES ☐ An Additional Handling Charge applies for certain items. See instructions. \$ _____

8 TOTAL CHARGES \$ _____

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IN SECTION 1 ☐ DOMESTIC ONLY ☐ RECORD ACCOUNT NO. IN SECTION 9 ☐

10 RECEIVER'S/THIRD PARTY'S UPS ACCT. NO. OR MAJOR CREDIT CARD NO. _____ EXPIRATION DATE _____

THIRD PARTY'S COMPANY NAME _____

STREET ADDRESS _____

CITY AND STATE _____ ZIP CODE _____

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10 SHIPPER'S SIGNATURE **X [Signature]** DATE OF SHIPMENT **1/1**

All shipments are subject to the terms contained in the UPS Tariff/Terms and Conditions of Service, which are available at ups.com and local UPS offices.

Lippes.PAM0001448
3980

This form not needed with UPS Internet Shipment at UPS.com

From: Paul Morabito [morabito.pa@gmail.com]
Sent: Monday, October 24, 2011 11:02 AM
To: Stephanie Canastraro; Dennis Vacco
Subject: Attorney Client Privileged Communication
Attachment(s): "Herbst et al.docx"

see attached

Dennis

Per our conversation on Saturday, I want to make sure everything we reviewed gets addressed:

1. When will we be getting the draft of the Herbst settlement agreement ?
2. Desmond and you should arrange a date this week to physically go in to see Judge Adams AND either have Judge Infante with you, or scheduled on the phone
3. We need to press immediately for binding arbitration with Judge Infante on the Oppio matter
4. Please send me a brief summary email on the Moreno case so that I can understand it
5. Retain David Groover, a private detective TODAY in Las Vegas and find Jeffrey Langan – 7024971955. He lives with his mother Diana in Henderson, NV
6. Contact Marcus & Millichap and ask them to propose a settlement in the Eclectic Case wherein we offer to pay a nominal amount (i.e. less than \$1 million) to settle this case – I want this case CLOSED
7. We need letters in place from Jon Richmond and Bob Burke confirming that they are acting as Counsellors for me in their capacity as attorneys
8. I want a memo wherein I buy back, as a Nevada resident, the 80% of Snowshoe Petroleum Inc., as part of the settlement so as to stymie fraudulent conveyance claims. Sam and Edward should document what they have put into the company in cash, and I should pay them back those amounts LESS any settlement amount they pay towards the Herbst settlement
9. Cancel my note to my father. I will cancel the note with Edward wherein I will take title back to the building at 1461 Glenneyre in Laguna; have USHFCC head lease the building for \$150,000 a year NNN; and sell it for \$3 million to go towards the Herbst settlement
10. Please get me the bio of your law partner that worked as County Counsel in Eric County
11. Please arrange for a call asap with (a) the Seneca Indian investor's principal and (b) Gerry Lippes, re: USHFCC
12. Greg Ivanic needs to communicate with Edward, and I, BEFORE a document like the one Christian released to Rene Stiegler ever goes out. We need a clear plan as to how we are managing this transaction – Bob Block needs cash and has a monthly cash burn of \$36,000 - \$6,000 of that is “rent” for his Alabama antenna farm. If we add a section to the Agreement wherein they agree that we are removing some but not all conditions, and will pay \$30,000 a month now and then \$36,000 a month when ALL conditions are removed. PLEASE review the Agreement and find out what ADDENDUMS TO THE CONTRACT need to be prepared.
13. Who is looking at the PPM and getting it ready ?

From: Dennis Vacco
Sent: Thursday, November 10, 2011 10:23 AM
To: 'Paul Morabito'
Subject: RE: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.

Okay,

But none of that is in place for today. Christian has a call into your father's lawyer to unwind the Ontario transaction.

From: Paul Morabito [mailto:morabito.pa@gmail.com]
Sent: Thursday, November 10, 2011 9:55 AM
To: Dennis Vacco
Subject: Re: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.

On this, I have the note that I sold my Dad. Cancel it, convert it back into a 50% share interest in Snowshoe Properties, LLC, and give me the right to trigger an option to split the assets and take 1461 Glenneyre and Edward ends up with 570 Glenneyre

On Wed, Nov 9, 2011 at 4:49 PM, Paul Morabito <morabito.pa@gmail.com> wrote:
But im still on guaranty

On Nov 9, 2011, at 6:47 PM, "Dennis Vacco" <dvacco@lippes.com> wrote:

Tough to sell if she pulls corporate records which id who the members of Snowshoe Properties LLC are.

From: Paul Morabito [mailto:morabito.pa@gmail.com]
Sent: Wednesday, November 09, 2011 7:43 PM
To: Dennis Vacco
Subject: Re: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.

As far as they are concerned it is a name change - correct ?

On Nov 9, 2011, at 6:41 PM, "Dennis Vacco" <dvacco@lippes.com> wrote:

I sent Michele a note asking her to call me tomorrow.

From: Paul Morabito [mailto:morabito.pa@gmail.com]
Sent: Wednesday, November 09, 2011 7:30 PM
To: Frank Gilmore
Cc: Barry Breslow; Dennis Vacco
Subject: Re: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.

Let's walk through this tomorrow

On Nov 9, 2011, at 5:39 PM, "Frank Gilmore" <FGilmore@rbsllaw.com> wrote:

Gentlemen,

See below. Please advise so I can respond, if desired.

Frank

From: Michele Assayag [mailto:michelea@amlegalgroup.com]
Sent: Wednesday, November 09, 2011 3:39 PM
To: Frank Gilmore
Cc: david.p.maiorella@bankofamerica.com; Regis Guerin

Subject: RE: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.

Hello, Mr. Gilmore. I have had no further response from you to my e-mail of November 3, 2011, and I ask that you provide me with the information that I request, absent which my client will proceed as permitted under its operative credit documents. Thank you, and I look forward to your substantive response.

<image001.jpg>

Michele Sabo Assayag
michelea@amlegalgroup.com

2915 Redhill Avenue
Suite 200
Costa Mesa, CA 92626
Phone: [\(714\) 427-6800](tel:(714)427-6800)
Fax: [\(714\) 427-6888](tel:(714)427-6888)

Three Centerpointe Drive
Suite 190
Lake Oswego, OR 97035
Phone: [\(503\) 624-6800](tel:(503)624-6800)
Fax: [\(503\) 624-6888](tel:(503)624-6888)

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From: Frank Gilmore [mailto:FGilmore@rbsllaw.com]
Sent: Friday, November 04, 2011 10:06 AM
To: Michele Assayag
Cc: david.p.maiorella@bankofamerica.com; Regis Guerin
Subject: Re: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.

Thank you for your email. We will discuss with our client and somebody from our camp will reply shortly.

Frank

On Nov 3, 2011, at 3:04 PM, "Michele Assayag" <michelea@amlegalgroup.com> wrote:

Hello, Mr. Gilmore. My firm is outside counsel to Bank of America, N.A., ("Bank") in respect of certain credit transactions between the Bank and entities associated with your client, Paul Morabito, among others. The transaction presently in question involves the Bank's loan in the original amount of \$1,750,000, secured by a deed of trust of first position on real property in Laguna Beach, California, commonly described as 570 Glenneyre Street (the "Property"). The Borrower entity in respect of the Property is Baruk Properties, LLC, a Nevada limited liability company ("Baruk"). My client has been advised by Fidelity National Title Insurance Company that on or about October 6, 2010, Baruk transferred the property, via Grant Deed, and without the consent of the Bank, to an entity known as Snowshoe Properties, LLC, a California Limited Liability Company ("Snowshoe"). David Maiorella of the Bank spoke with Mr. Morabito about this situation on October 31st, and Mr. Maiorella was advised by Mr. Morabito that this transfer represented nothing more than a Borrower name change, and that documentation exists substantiating that such was, indeed, the case. Therefore, by this correspondence, I am requesting whether you, as counsel for Mr. Morabito, are in possession of such documentation, and, if so, I am requesting that it be provided to me as soon as possible. Absent the provision of documentation substantiating Mr. Morabito's claims in this regard, my client will have no alternative but to consider the invocation of its default remedies in respect of this particular loan. Thank you, and I look forward to hearing from you.

<image001.jpg>

Michele Sabo Assayag
michelea@amlegalgroup.com

2915 Redhill Avenue
Suite 200
Costa Mesa, CA 92626
Phone: [\(714\) 427-6800](tel:(714)427-6800)
Fax: [\(714\) 427-6888](tel:(714)427-6888)

Three Centerpointe Drive
Suite 190
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LEDGER

OF EDWARD BAYUK TO PAUL MORABITO

Date	Description	PAM
8/30/2012	BMO to Wells A/C 6917	\$ (449,980.00)
9/5/2012	Lippes Mathias Wexler	\$ 351,626.82
9/17/2012	PAM - Wells a/c 5330	\$ 98,353.18
12/4/2012	PM LOC Payoff to B of A	\$ 732,124.75
12/6/2012	Payroll (PM p/r account)	\$ 3,600.00
	Totals for 2012	\$ 735,724.75

Date	Description	PAM
3/1/2013	Spirit Rent - Loan to PAM	\$ 65,000.00
3/22/2013	Lippes Legal - via USHIFCC	\$ 50,000.00
5/24/2013	PAM bills - 5330	\$ 25,000.00
6/12/2013	PAM - travel & bills	\$ 50,000.00
6/12/2013	PAM and Barclay - Maint Fee MF	\$ 35,000.00
7/10/2013	PAM - travel & bills	\$ 70,000.00
7/17/2013	PAM	\$ 10,000.00
8/1/2013	Loan to PAM - via EWB Household	\$ 25,000.00
8/30/2013	Loan to PAM - via EWB Household	\$ 25,000.00
9/13/2013	EBH for PAM Loan	\$ 12,000.00
9/26/2013	EBH for PAM Loan	\$ 25,000.00
10/15/2013	EBH for PAM Loan	\$ 20,000.00
10/28/2013	EBH for PAM Loan	\$ 20,000.00
11/15/2013	EBH for PAM Loan	\$ 28,000.00
11/29/2013	EBH for PAM Loan	\$ 23,000.00
12/16/2013	EBH for PAM Loan	\$ 48,600.00
	2013 Totals to date:	\$ 531,600.00

Date	Description	PAM
1/8/2014	To PAM	\$ 743.00
1/9/2014	To PAM	\$ 33,500.00
2/13/2014	To PAM	\$ 30,930.00
2/19/2014	To PAM	\$ 743.00
3/14/2014	Loan to PAM - 5330	\$ 30,000.00
3/17/2014	To PAM	\$ 743.00
3/27/2014	To PAM	\$ 3,344.58
4/10/2014	To PAM	\$ 743.00
4/11/2014	To PAM	\$ 30,000.00
5/13/2014	To PAM	\$ 55,000.00
5/19/2014	To PAM	\$ 743.00
6/12/2014	To PAM	\$ 57,000.00
6/19/2014	To PAM	\$ 743.00
7/10/2014	To PAM	\$ 33,000.00
7/16/2014	To PAM	\$ 743.00
8/12/2014	To PAM	\$ 30,000.00
9/12/2014	To PAM	\$ 53,000.00
10/15/2014	To PAM	\$ 216,000.00
10/23/2014	Loan to PAM from EWB Household	\$ 105.11

11/24/2015	AMEX Loan to PAM	\$ 175.00
12/4/2014	Loan to PAM from EWB Household	\$ 251.00
12/23/2014	Loan to PAM from EWB Household	\$ 647.52
12/31/2014	To PAM	\$ 1,208.41
		\$ 579,362.62

Date	Description	PAM
1/2/2015	CHK 1132 - Loan to PAM	\$ 25,000.00
1/29/2015	AMEX - Loan to PAM	\$ 3,749.03
1/30/2015	CHK 1131 - Loan to PAM	\$ 13,500.00
2/17/2015	CHK 1133 - Loan to PAM (AMEX)	\$ 20,000.00
2/25/2015	MC 5165 - Loan to PAM	\$ 1,183.03
2/25/2015	VISA 6913 - Loan to PAM	\$ 4,000.44
3/2/2015	AMEX - Loan to PAM	\$ 34,094.20
		\$ 101,526.70

Paul
Loan Calculator: Payment Amount (Standard Loan Amortization)

Name: Stanton R. Bernstein, CPA

Assumptions:

Follow up for 2010, No Pymts Received in 2010

Loan amount \$ 1,617,050.00

Payment Information

Number of payments per year 12

Payments will be made at the End of Period

Length of the loan 360 months

Interest rate 4.000%

Interest is compounded Monthly

Results:

With a 360 month loan of \$1,617,050.00, at an effective annual rate of 4.074%, and making 12 payments each year, each payment will be **\$7,720.04**.

The total payments on the loan will be \$2,779,217.09 with interest payments of \$1,162,167.09.

Amortization Schedule		Loan Amount	\$1,617,050.00		Interest	4.000%
		Regular Payment	\$7,720.04		Number of Months	360
Payment Number	Month	Remaining Balance	Interest	Interest To Date	Principal	Principal To Date
1	Nov	1,614,720.13	5,390.17	5,390.17	2,329.87	2,329.87
2	Dec	1,612,382.49	5,382.40	10,772.57	2,337.64	4,667.51
Total Year	2010	Interest	10,772.57	Principal	4,667.51	
3	Jan	1,610,037.06	5,374.61	16,147.18	2,345.43	7,012.94
4	Feb	1,607,683.81	5,366.79	21,513.97	2,353.25	9,366.19
5	Mar	1,605,322.72	5,358.95	26,872.92	2,361.09	11,727.28
6	Apr	1,602,953.76	5,351.08	32,224.00	2,368.96	14,096.24
7	May	1,600,576.90	5,343.18	37,567.18	2,376.86	16,473.10
8	Jun	1,598,192.12	5,335.26	42,902.44	2,384.78	18,857.88
9	Jul	1,595,799.39	5,327.31	48,229.75	2,392.73	21,250.61
10	Aug	1,593,398.68	5,319.33	53,549.08	2,400.71	23,651.32
11	Sep	1,590,989.97	5,311.33	58,860.41	2,408.71	26,060.03
12	Oct	1,588,573.23	5,303.30	64,163.71	2,416.74	28,476.77
13	Nov	1,586,148.43	5,295.24	69,458.95	2,424.80	30,901.57
14	Dec	1,583,715.55	5,287.16	74,746.11	2,432.88	33,334.45
Total Year	2011	Interest	63,973.54	Principal	28,666.94	
15	Jan	1,581,274.56	5,279.05	80,025.16	2,440.99	35,775.44
16	Feb	1,578,825.44	5,270.92	85,296.08	2,449.12	38,224.56
17	Mar	1,576,368.15	5,262.75	90,558.83	2,457.29	40,681.85
18	Apr	1,573,902.67	5,254.56	95,813.39	2,465.48	43,147.33
19	May	1,571,428.97	5,246.34	101,059.73	2,473.70	45,621.03
20	Jun	1,568,947.03	5,238.10	106,297.83	2,481.94	48,102.97
21	Jul	1,566,456.81	5,229.82	111,527.65	2,490.22	50,593.19

Prepared By:

Stanton R. Bernstein
6320 Canoga Ave., 15th FL
Woodland Hills CA 91367
Tel: (818) 596-2139 Fax: (818) 222-5180

10-13-2011

MORABITO (341).000002

Loan Calculator: Payment Amount (Standard Loan Amortization)

Payment Number	Month	Remaining Balance	Interest	Interest To Date	Principal	Principal To Date
22	Aug	1,563,958.29	5,221.52	116,749.17	2,498.52	53,091.71
23	Sep	1,561,451.44	5,213.19	121,962.36	2,506.85	55,598.56
24	Oct	1,558,936.24	5,204.84	127,167.20	2,515.20	58,113.76
25	Nov	1,556,412.65	5,196.45	132,363.65	2,523.59	60,637.35
26	Dec	1,553,880.65	5,188.04	137,551.69	2,532.00	63,169.35
Total Year	2012	Interest	62,805.58	Principal	29,834.90	
27	Jan	1,551,340.21	5,179.60	142,731.29	2,540.44	65,709.79
28	Feb	1,548,791.30	5,171.13	147,902.42	2,548.91	68,258.70
29	Mar	1,546,233.90	5,162.64	153,065.06	2,557.40	70,816.10
30	Apr	1,543,667.97	5,154.11	158,219.17	2,565.93	73,382.03
31	May	1,541,093.49	5,145.56	163,364.73	2,574.48	75,956.51
32	Jun	1,538,510.43	5,136.98	168,501.71	2,583.06	78,539.57
33	Jul	1,535,918.76	5,128.37	173,630.08	2,591.67	81,131.24
34	Aug	1,533,318.45	5,119.73	178,749.81	2,600.31	83,731.55
35	Sep	1,530,709.47	5,111.06	183,860.87	2,608.98	86,340.53
36	Oct	1,528,091.79	5,102.36	188,963.23	2,617.68	88,958.21
37	Nov	1,525,465.39	5,093.64	194,056.87	2,626.40	91,584.61
38	Dec	1,522,830.23	5,084.88	199,141.75	2,635.16	94,219.77
Total Year	2013	Interest	61,590.06	Principal	31,050.42	
39	Jan	1,520,186.29	5,076.10	204,217.85	2,643.94	96,863.71
40	Feb	1,517,533.54	5,067.29	209,285.14	2,652.75	99,516.46
41	Mar	1,514,871.95	5,058.45	214,343.59	2,661.59	102,178.05
42	Apr	1,512,201.48	5,049.57	219,393.16	2,670.47	104,848.52
43	May	1,509,522.11	5,040.67	224,433.83	2,679.37	107,527.89
44	Jun	1,506,833.81	5,031.74	229,465.57	2,688.30	110,216.19
45	Jul	1,504,136.55	5,022.78	234,488.35	2,697.26	112,913.45
46	Aug	1,501,430.30	5,013.79	239,502.14	2,706.25	115,619.70
47	Sep	1,498,715.03	5,004.77	244,506.91	2,715.27	118,334.97
48	Oct	1,495,990.71	4,995.72	249,502.63	2,724.32	121,059.29
49	Nov	1,493,257.31	4,986.64	254,489.27	2,733.40	123,792.69
50	Dec	1,490,514.79	4,977.52	259,466.79	2,742.52	126,535.21
Total Year	2014	Interest	60,325.04	Principal	32,315.44	
51	Jan	1,487,763.13	4,968.38	264,435.17	2,751.66	129,286.87
52	Feb	1,485,002.30	4,959.21	269,394.38	2,760.83	132,047.70
53	Mar	1,482,232.27	4,950.01	274,344.39	2,770.03	134,817.73
54	Apr	1,479,453.00	4,940.77	279,285.16	2,779.27	137,597.00
55	May	1,476,664.47	4,931.51	284,216.67	2,788.53	140,385.53
56	Jun	1,473,866.64	4,922.21	289,138.88	2,797.83	143,183.36
57	Jul	1,471,059.49	4,912.89	294,051.77	2,807.15	145,990.51
58	Aug	1,468,242.98	4,903.53	298,955.30	2,816.51	148,807.02
59	Sep	1,465,417.08	4,894.14	303,849.44	2,825.90	151,632.92
60	Oct	1,462,581.76	4,884.72	308,734.16	2,835.32	154,468.24
61	Nov	1,459,736.99	4,875.27	313,609.43	2,844.77	157,313.01
62	Dec	1,456,882.74	4,865.79	318,475.22	2,854.25	160,167.26
Total Year	2015	Interest	59,008.43	Principal	33,632.05	

Prepared By:

Stanton R. Bernstein
6320 Canoga Ave., 15th FL
Woodland Hills CA 91367
Tel: (818) 596-2139 Fax: (818) 222-5180

10-13-2011

MORABITO (341).000003

IRREGULAR AMORTIZATION CALCULATION
(Using Daily Simple Interest Calculated on the Remaining Principal)

Client: Ed Bayuk
Loan:

ID#: - - -
Account No:

Start Date: 10/29/2010
Days Per Year: 365

Starting Loan Amount: \$1,617,050.00
Deferred Interest Balance:

Page 1

No	Payment Date	Payment Amount	Int Rate	- This Payment Paid - Interest	Principal	Remaining Principal	Deferred Interest
1	12/31/2010	.00	4.000	0.00	0.00	1617050.00	11164.29
	2010 Totals	0.00		0.00	0.00		0.00
2	12/31/2011	.00	4.000	0.00	0.00	1617050.00	64682.00
	2011 Totals	0.00		0.00	0.00		0.00
3	12/04/2012	732124.75	4.000	60074.52	596203.94	1020846.06	-75846.29
4	12/06/2012	3600.00	4.000	223.75	3376.25	1017469.81	0.00
5	12/31/2012	.00	4.000	0.00	0.00	1017469.81	2787.59
	2012 Totals	735724.75		60298.27	599580.19		75846.29
6	01/11/2013	99740.72	4.000	1226.54	95726.59	921743.22	-2787.59
7	01/25/2013	137488.25	4.000	1414.18	136074.07	785669.15	0.00
8	02/12/2013	96339.00	4.000	1549.81	94789.19	690879.96	0.00
9	02/28/2013	60000.00	4.000	1211.41	58788.59	632091.37	0.00
10	03/01/2013	65000.00	4.000	69.27	64930.73	567160.64	0.00
11	03/12/2013	104774.85	4.000	683.70	104091.15	463069.49	0.00
12	03/28/2013	100000.00	4.000	811.96	99188.04	363881.45	0.00
13	04/19/2013	30000.00	4.000	877.30	29122.70	334758.75	0.00
14	04/22/2013	25000.00	4.000	110.06	24889.94	309868.81	0.00
15	04/26/2013	27000.00	4.000	135.83	26864.17	283004.64	0.00
16	04/30/2013	85000.00	4.000	124.06	84875.94	198128.70	0.00
17	05/24/2013	25000.00	4.000	521.11	24478.89	173649.81	0.00
18	06/12/2013	85000.00	4.000	361.57	84638.43	89011.38	0.00
19	06/28/2013	89167.45	4.000	156.07	89011.38	0.00	0.00
	2013 Totals	1029510.27		9252.87	1017469.81		2787.59

LOAN SUMMARY

Regular Interest Paid:	\$69,551.14	Deferred Interest Unpaid:	\$0.00
Deferred Interest Paid:	\$78,633.88	Principal Applied:	\$1,617,050.00
Total Interest Paid:	\$148,185.02	Remaining Principal:	\$0.00

Principal Paid in 2013 1,017,469.81
Interest Paid in 2013 12,040.46 - FINAL

Prepared By:

Stanton R. Bernstein
6320 Canoga Ave., 15th FL
Woodland Hills CA 91367
Tel: (818) 596-2139 Fax: (818) 222-5180

10-07-2013

MORABITO (341).000004

3990

Payment Schedule of Edward Bayuk Note in Favor of Paul Morabito		
Date	Description	Amount
9/28/2010	Paul Morabito	\$ 7,000.00
9/29/2010	Paul Morabito	\$ 10,000.00
9/29/2010	Granite Mountain Marble	\$ 1,790.25
10/4/2010	American Vector	\$ 15,161.00
10/4/2010	American Vector	\$ 4,500.00
10/4/2010	Clayton Way Property	\$ (50,000.00)
10/6/2010	John Blake	\$ 6,352.82
10/8/2010	Mitchell's Wilkes Basan	\$ 1,089.53
10/13/2010	Kim's Marble Inc	\$ 900.00
10/14/2010	Doheny Builders Supply	\$ 850.00
10/21/2010	American Geotechnical	\$ 10,108.35
10/29/2010	American Vector	\$ 15,161.00
10/31/2010	Mary Fleming Mortgage Balance "PM Chase Loan 12/1/10" Records stop	\$ 341,952.69
10/31/2010	2005 to 2010 Interest and principal adjustment to Mary Fleming total \$167,705 / 2 = \$83,758.50	\$ 83,758.50
11/9/2010	Riley - Jerrils LLC	\$ 5,000.00
11/10/2010	MSI Granite - AMEX	\$ 4,616.22
11/12/2010	American Vector	\$ 15,161.00
11/17/2010	Kim's Marble & Granite	\$ 4,000.00
11/24/2010	American Vector	\$ 15,161.00
12/2/2010	DC Plumbing	\$ 1,100.00
12/2/2010	Doheny Builders Supply	\$ 944.38
12/3/2010	Beard Painting Inc	\$ 7,000.00
12/4/2010	Riley - Jerrils LLC	\$ 9,207.00
12/5/2010	Kim's Marble & Granite	\$ 1,000.00
12/5/2010	American Vector	\$ 15,616.00
12/9/2010	Mark Paul Designs	\$ 2,462.51
12/13/2010	Nleman-Marcus	\$ 2,218.49
12/16/2010	American Vector	\$ 15,616.00
12/17/2010	Beard Painting Inc	\$ 11,120.00
12/27/2010	Atlas Sheet Metal Inc	\$ 75.00
12/31/2010	Phillip Alexander 2010 AMEX Charges	\$ 8,087.52
1/1/2011	Comerica Jan 2011 - Payments on behalf of PM	\$ 5,060.78
1/1/2011	Anthem Blue Cross	\$ 693.00
1/9/2011	American Vector	\$ 15,161.00
2/1/2011	Comerica Feb 2011 - Payments on behalf of PM	\$ 10,221.99
2/1/2011	Anthem Blue Cross	\$ 693.00
3/1/2011	Comerica March 2011 - Payments on behalf of PM	\$ 2,691.51
3/1/2011	Anthem Blue Cross	\$ 693.00
4/1/2011	Comerica April 2011 - Payments on behalf of PM	\$ 12,557.50
4/1/2011	Anthem Blue Cross	\$ 693.00
4/13/2011	Brian Haley	\$ 1,050.00
5/1/2011	Comerica May 2011 - Payments on behalf of PM	\$ 3,689.85
5/1/2011	Anthem Blue Cross	\$ 693.00
5/5/2011	Moana Nursery	\$ 3,087.63
6/1/2011	Comerica June 2011 - Payments on behalf of PM	\$ 2,313.86
6/1/2011	Anthem Blue Cross	\$ 693.00
7/1/2011	Comerica July 2011 - Payments on behalf of PM	\$ 2,260.62
7/1/2011	Anthem Blue Cross	\$ 693.00
7/11/2011	Alitalia	\$ 7,041.60
7/11/2011	Penninsula Hotel	\$ 2,174.91

Payment Schedule of Edward Bayuk Note in Favor of Paul Morabito		
8/1/2011	Comerica Aug 2011 - Payments on behalf of PM	\$ 5,143.05
8/1/2011	Anthem Blue Cross	\$ 693.00
9/1/2011	Comerica Sep 2011 - Payments on behalf of PM	\$ 3,718.03
9/1/2011	John Blake	\$ 1,200.00
9/1/2011	Anthem Blue Cross	\$ 693.00
9/2/2011	John Blake	\$ 400.00
10/1/2011	Comerica Oct 2011 - Payments on behalf of PM	\$ 1,913.93
10/1/2011	Anthem Blue Cross	\$ 693.00
10/4/2011	Moreno Valley Auto	\$ 2,500.00
10/11/2011	Galpin Ford Service	\$ 3,000.00
10/20/2011	Galpin Ford Service	\$ 11,878.92
10/20/2011	John Blake	\$ 2,300.00
11/1/2011	Comerica Nov 2011 - Payments on behalf of PM	\$ 6,182.93
11/1/2011	Anthem Blue Cross	\$ 693.00
12/1/2011	Comerica Dec 2011 - Payments on behalf of PM	\$ 2,455.71
12/1/2011	Anthem Blue Cross	\$ 693.00
12/21/2011	PM Payment (B of A)	\$ 3,000.00
12/23/2011	PM Payment (B of A)	\$ 1,500.00
12/29/2011	PM Payment (B of A)	\$ 2,500.00
12/31/2011	Phillip Alexander AMEX Charges for 2011	\$ 40,102.66
12/31/2011	Philip & Ron Salary	\$ 109,990.40
1/5/2012	Chase Card Charges - Ron Gregory	\$ 884.18
1/12/2012	PM Payment (B of A)	\$ 2,000.00
1/20/2012	PM Payment (B of A)	\$ 4,000.00
2/2/2012	Citi Card Charges - Ron Gregory	\$ 21,209.98
2/5/2012	Chase Card Charges - Ron Gregory	\$ 683.30
2/7/2012	PM Payment (WF)	\$ 4,500.00
2/16/2012	PM Payment (B of A)	\$ 2,000.00
3/2/2012	Citi Card Charges - Ron Gregory	\$ 2,841.63
3/5/2012	Chase Card Charges - Ron Gregory	\$ 891.91
3/28/2012	PM Payment (B of A)	\$ 1,200.00
3/30/2012	PM Payment (B of A)	\$ 3,500.00
4/5/2012	Chase Card Charges - Ron Gregory	\$ 11,172.21
4/5/2012	Chase Card Charges - Ron Gregory	\$ 843.37
4/16/2012	PM Payment (B of A)	\$ 1,200.00
5/5/2012	Chase Card Charges - Ron Gregory	\$ 14,374.35
5/5/2012	Chase Card Charges - Ron Gregory	\$ 994.90
5/22/2012	PM Payment (WF)	\$ 2,000.00
6/5/2012	Chase Card Charges - Ron Gregory	\$ 1,911.91
8/22/2012	PM Payment (WF)	\$ 3,500.00
8/30/2012	BMO to Wells A/C 6917	\$ (449,980.00)
9/5/2012	Lippes Mathias Wexler	\$ 351,626.82
9/17/2012	PAM - Wells a/c 5330	\$ 98,353.18
11/19/2012	Willy Calpo	\$ 4,000.00
12/4/2012	EWB pays off PM line of credit - "\$749,349.75"	\$ 732,124.75
12/6/2012	Top Project	\$ 1,800.00
12/6/2012	Payroll (PM p/r account)	\$ 3,600.00
12/13/2012	PM Payment (WF)	\$ 5,000.00
1/10/2013	PM Payment - B of A	\$ 5,000.00
1/28/2013	PM Payment - B of A	\$ 5,000.00
2/14/2013	PM Payment - WF	\$ 4,400.00

Payment Schedule of Edward Bayuk Note in Favor of Paul Morabito		
3/15/2013	PM Payment - WF	\$ 5,000.00
5/24/2013	PM Payment - WF	\$ 25,000.00
6/12/2013	PM Payment - WF	\$ 50,000.00
6/17/2013	Transfer to 5330 from EWB Household - WF	\$ 35,000.00
		\$ 1,796,054.63

Barry L. Breslow, Esq. (SBN 3023)
 Frank C. Gilmore, Esq. (SBN 10052)
 ROBISON, BELAUSTEGUI, SHARP & LOW
 71 Washington Street
 Reno, Nevada 89503
 Tel: (775) 329-3151 / Fax: (775) 329-7941

Jeffrey L. Hartman, Esq. (SBN 1607)
 Hartman & Hartman
 510 W. Plumb Ln., Suite B
 Reno, Nevada 89509
 Tel: (775) 334-2800 / Fax: (775) 324-1818

Counsel for Paul A. Morabito

**UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF NEVADA
 (RENO)**

In re
 PAUL A. MORABITO, an individual,
 Alleged Debtor.

Case No. BK-N-13-51237

Chapter No. 7

**OPPOSITION TO MOTION FOR
 SUMMARY JUDGMENT**

Date: November 20, 2014
 Time: 10:00 A.M.
 Place: Courtroom 1
 C. Clifton Young Federal
 Building
 300 Booth Street
 Reno, NV 89509
 Judge: Hon. Gregg Zive

Paul A. Morabito ("Morabito"), hereby opposes Petitioning Creditor's Motion for Summary Judgment (the "Motion") (Doc#131). This Opposition is made and supported by the following Memorandum of Points and Authorities, and the attached Declarations.

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION

I. INTRODUCTION

At this Court's June 26, 2014, status conference, the Court explained, in no uncertain terms, that the determination of whether to grant relief to Petitioning Creditors' on their Petitions

1 against Morabito would require a trial and the presentation of evidence. The Court posited that it
 2 has received several affirmations from both Morabito and Petitioning Creditors throughout this
 3 process and that based on the conflicting declarations, the matter should be decided through
 4 presentation of testimony and findings of fact, not more declarations. Petitioning Creditors now
 5 attempt to short-cut that process by providing more declarations in support of the contention that
 6 there are no genuine issues of material fact which preclude summary relief on the Petition.
 7 Unsurprisingly, Morabito disagrees. The mere fact that there have been no less than 26 separate
 8 declarations filed in this case suggests that the parties view the facts and the equities differently.
 9 These disagreements are material and substantive. As such, summary judgment is not
 10 appropriate. There are several issues of material fact that render summary relief on the petitions
 11 improper.

12 First, Morabito did not admit that he is generally not paying his debts when due. The
 13 admission to certain portions of paragraph 3 in the Answer (Doc #128) was in reference to
 14 paragraph 3 of the Attachment to Involuntary Petition. The allegation as to whether Morabito is
 15 generally not paying his debts when due is an issue of material dispute which Morabito which
 16 has consistently and unambiguously disputed since the filing of the Petitions. Morabito contends
 17 that with the exception of the Petitioning Creditors' judgment he does pay his debts when due.

18 Second, although Petitioning Creditors contend otherwise (Motion for Summary
 19 Judgment, p. 4:9-11), this Petition is most certainly the result of a two-party dispute that is
 20 nothing more than a pretext for a debt-collection effort that should have been undertaken through
 21 the mechanisms of state law. This Court has already made a preliminary determination "that this
 22 is essentially a two-party collection action." Order, ¶6 (Doc #94).

23 Third, there is a material dispute as to whether dismissal and/or abstention is in the best
 24 interests of the debtor and the creditors under 11 U.S.C. §305(a)(1). This Court must analyze the
 25 applicable elements of §305(a)(1) which requires factual findings from the presentation of
 26 evidence. This Court has previously indicated that "this Court is not the proper forum for the
 27 Petitioning Creditors to seek to collect on their judgment against the Alleged Debtor, and the
 28 Bankruptcy Code was not intended for such purposes." Order, ¶¶ 7-8 (Doc #94). Unsurprisingly,

Petitioning Creditors did not address this point in their Motion.

For these reasons, summary judgment is not appropriate. At the very least, Morabito is entitled to an evidentiary hearing to determine whether relief should be granted on the Petition.

II. APPLICABLE LAW

Morabito generally concurs with Petitioning Creditors' assessment of the applicable procedural law, as set forth in their Motion (§4.A).

However, in Petitioning Creditors' assessment of the substantive law, they neglect to give treatment to one of the primary issues previously raised regarding the applicability of §305(a)(1) to this case: Specifically, the analysis under §305(a) as to whether "the interests of creditors and the debtor would be better served by such dismissal" is based on the totality of the circumstances. In re Macke Intern. Trade, Inc., 370 B.R. 236, 247 (9th Cir. BAP 2007). There are several factors that this Court should consider in determining whether creditors and the debtor will be better served by dismissal or suspension under § 305(a), including:

- (1) the economy and efficiency of administration;
- (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court;
- (3) whether federal proceedings are necessary to reach a just and equitable solution;
- (4) whether there is an alternative means of achieving an equitable distribution of assets;
- (5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;
- (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and
- (7) the purpose for which bankruptcy jurisdiction has been sought.

In re Marciano, 459 B.R. 27, 46-47 (9th Cir. BAP 2011). These factors require this Court to "make specific and substantiated findings" in order to determine if §305(a)(1) should apply. In re Macke, 370 B.R. at 247. These factors are in dispute. Accordingly, a determination on §305(a)(1) is not appropriate for summary judgment.

III. STATEMENT OF RELEVANT FACTS¹

In response to Petitioning Creditors "Separate Statement of Undisputed Facts" (Doc#132)("SSOF"), Morabito offers the following:

1. As of the date of the filing of the Petition (June 20, 2013), Morabito did not believe he had any significant noncontingent, undisputed creditors who were not being timely paid. At the time of the filing of the Petition, Morabito believed that the Herbst Confession of Judgment was not a bona fide debt because it was subject to a dispute as to the validity of the method in which it was filed. SSOF, Exhibit 3, ¶5; Exhibit 4, ¶8;

2. The only noncontingent, undisputed creditors which Morabito believed he had as of June 20, 2013, were installment creditors, and utility accounts, which were each paid monthly when due, and a debt to his former partner Edward Bayuk. SSOF, Exhibit 3, ¶5.

3. Morabito has repeatedly contended that with the exception of the Herbst debt, he pays his debts when they come due. SSOF, Exhibit 3, ¶5; Exhibit 4, ¶8; Motion to Dismiss, p. 7:7-8 (Doc#42).

4. As of the date of the Petition, Morabito had other creditors whose claims were subject to dispute as to both liability and amount. Morabito did not consider them to be significant. Those creditors were:

- a. *Desi Moreno*. Mr. Moreno filed an action against Herbst and Morabito related to a ground lease. That dispute has been resolved and the action dismissed with prejudice. No continuing obligations remain.
- b. *Hartford Fire Insurance Company*. Hartford filed an action for indemnity pursuant to payment of a performance bond on a construction project. That dispute has been resolved and the action has been dismissed. As part of the resolution of that dispute, Morabito executed a promissory note in favor of Hartford that is current and in good standing. See Declaration of Peter Dubowsky, Esq., counsel for Hartford, attached hereto as **EXHIBIT**

¹ Each of these facts are set forth in the Declaration of Paul A. Morabito, attached hereto as **EXHIBIT 1**.

2.

c. *Eclectic Properties East, LLC et al.* Eclectic and fifteen (15) other plaintiffs filed an action against Morabito and approximately twenty-eight (28) other defendants alleging civil RICO claims. The claims were dismissed on the pleadings by the United States District Court, Northern District of California. The Ninth Circuit Court of Appeals affirmed the dismissal in a published opinion. See *Eclectic Properties East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990 (9th Cir. 2014).

5. Since the date of the Petition, three additional claims have been asserted against Morabito, each subject to dispute as to liability and amount:

- a. *Carl Barbieri et al.* In February 2014, Mr. Barbieri filed a demand for arbitration with the American Arbitration Association against Morabito and several other respondents regarding a real estate transaction that occurred in 2004. The matter is set for hearing in April 2015, but will likely be mediated long before the hearing date.
- b. *Herbst et al.* In December 2013, Petitioning Creditors filed an action in Nevada state court against Morabito and others alleging violations of Nevada's Uniform Fraudulent Transfers Act. Discovery has yet to commence in that action.
- c. *Ahrend et al.* In June 2014, Justus Ahrend *et al* filed an action in Los Angeles Superior Court against Morabito and several others regarding real estate transactions that occurred as far back as 2004. That action is in the process of being dismissed by stipulation of the parties.

6. Since the date of the Petition, Morabito has paid off or eliminated several of his revolving accounts and other utility accounts, such that his only remaining creditors are credit card debts and a few utility and living expense accounts. See, e.g. Second Amended 1003(b) List of Creditors (Doc#145).

7. Morabito's remaining debts are current and in good standing.

8. Morabito has obtained a declaration from the custodian of records for Time Warner Cable wherein it affirms that Morabito is current on his obligation; that he pays his account when due; that he has always been current, with no negative payment remarks, and that Time Warner has no interest in joining any involuntary bankruptcy action. See Declaration of Custodian of Time Warner, attached hereto as **EXHIBIT 3**.

9. Morabito has obtained a declaration from Hartford (Exhibit 2), wherein Hartford counsel explains that Hartford has no intention of joining an involuntary bankruptcy proceeding and that Hartford opposes an effort to place Morabito in bankruptcy because it deprives Hartford of being able to enforce Morabito's settlement obligations.

10. Morabito has obtained a declaration from Edward Bayuk (attached hereto as **EXHIBIT 4**), wherein Bayuk affirms that he has forgiven the debt owed to him by Morabito via gift; that he has no intention of joining any bankruptcy action; and that he would not submit a proof of claim in bankruptcy in the event relief is granted on the petition.

11. Morabito has obtained a declaration from Carl Barbieri (attached hereto as **EXHIBIT 5**), wherein Barbieri explains that he is in the process of negotiating a settlement of the AAA Action claims with Morabito, although no agreement has yet been reached. He opposes any efforts to place Morabito into bankruptcy as that will deprive him of the ability to maintain the AAA Action against Morabito in the forum of his choosing. Further, Barbieri explains that implementation of an automatic stay in bankruptcy would prejudice him greatly, as there is an arbitration hearing date set for April 2015, and he very much desires to maintain that arbitration date in order to achieve speedy resolution of the matter, should it not settle. Further, Barbieri declares that if Morabito were forced into bankruptcy, he recognizes the possibility, if not the likelihood, that the AAA claim would be discharged and he would be left with the possibility of no recovery and no opportunity for settlement. Lastly, Barbieri has declared that if Mr. Morabito were adjudged bankrupt, any settlement agreement reached between he and Morabito would be unenforceable and likely discharged. Accordingly, he is strongly opposed to such a result.

12. Morabito has obtained a declaration from the custodian of records for the Los Angeles Department of Power & Water wherein it affirms that Morabito is current on his

1 account; that he pays his account when due; that he has always been current, with no negative
 2 payment remarks, and that it has no interest in joining any involuntary bankruptcy action. See
 3 Declaration of Los Angeles Department of Power & Water, attached hereto as **EXHIBIT 6**.

4 13. Attached as **EXHIBIT 7** are redacted copies of the credit card statements for the
 5 credit cards Morabito maintained as of the date of the Petition. As the Court will see, these bills
 6 were being paid every month, and although a balance was carried, the accounts were current and
 7 not in default.

8 14. Although Morabito has resided in California since 2009, Petitioning Creditors
 9 have made no effort to domesticate their Confession of Judgment in California or attempted to
 10 execute their Judgment according to California law.

11 15. The only effort Petitioning Creditors have made toward executing their
 12 Confession of Judgment was to take Morabito's deposition. No other collection efforts have
 13 been attempted in the last sixteen months since the Judgment was filed, indicating that
 14 Petitioning Creditors are not genuinely interested in collecting their debt using state court
 15 execution proceedings.

16 **IV. ARGUMENT**

17 **A. There Exists A Genuine Material Disputes About Whether Morabito Is** 18 **Generally Not Paying His Debts When Due.**

19 Morabito has never admitted that he does not pay his debts when due. The paragraphs
 20 referenced in Morabito's Answer were keyed to the paragraphs of the specific allegations
 21 contained in the "Attachment to Involuntary Petition." (Doc#1, p.3-5). Nothing in Morabito's
 22 Answer can be read as an admission that he qualifies for involuntary bankruptcy because he does
 23 not pay his debts when they come due. To the contrary, Morabito has repeatedly and
 24 continuously contended that he pays his debts when they come due, and that, with the exception
 25 of Petitioning Creditors, he maintains no other creditors who would have any interest in joining
 26 the Petition. SSOF, Exhibit 3, ¶5; Exhibit 4, ¶8; Motion to Dismiss, p.7:7-8 (Doc#42).

27 Petitioning Creditors "gotcha" argument is disingenuous and should be disregarded. The
 28 Federal Rules of Civil Procedure explain that the "[p]leadings must be construed so as to do

justice.” Fed. R. Civ. P. 8(e). In that context, Morabito’s Answer must be read to include a denial of Petitioning Creditors’ assertion that Morabito is a proper candidate for involuntary bankruptcy under §303(h).²

Morabito does not contend that Petitioning Creditors do not meet the numerosity requirement of §303(b)(1). That contention was abandoned and will not be asserted.

1. Applying the “Totality of The Circumstances” Test to This Case Establishes A Material Dispute of Fact As to Whether Morabito Generally Pays His Debts When They Come Due.

There is a genuine and material dispute about whether Morabito, as of the date of the filing of the Petition, was “generally not paying his debts when due” pursuant to §303(h)(1). The Petitioning Creditors bear the burden of establishing this fact. *In re WLB-RSK Venture*, 320 B.R. 221, (BAP 9th Cir. 2004) (citing *In re McElvoy*, 37 B.R. 197, 199 (Bankr.E.D.Va. 1984)).

Petitioning Creditors are correct in their citation to *Vortex Fishing*, 277 F.3d at 1072, where the court explained that “establishing the existence of a few unpaid debts” is not enough to meet the burden. Other factors like “the amount of the delinquency, the materiality of the nonpayment, and the nature of the conduct of the debtor’s affairs” are important considerations as well. *Id.* Further, as this issue is raised in summary judgment, Morabito is entitled to have all the evidence viewed in a light most favorable to him. *Barnett v. Centoni*, 31 F.3d 813, 815 (9th Cir.1994).

Although Morabito does not contest the fact that he lacks the resources to pay Petitioning Creditor’s Confession of Judgment, this does not end the analysis under §303(h)(1). Morabito has contended, and has supported with admissible evidence, that all of his other creditors are paid as those debts come due. SSOF, Exhibit 3, ¶5; Exhibit 4, ¶8; Motion to Dismiss, p.7-8 (Doc#42). The Bankruptcy Code does not define the term “generally not paying,” but the Ninth Circuit has adopted a “totality of the circumstances” test for determining whether a debtor is generally not paying its debts under section 303(h)(1). *In re Vortex Fishing*, 277 F.3d 1057, 1072 (9th Cir. 2002). Importantly, it has been well-recognized that it is:

² If the Court determines that Morabito’s Answer is defective, Morabito respectfully seeks leave to amend the Answer, pursuant to Fed. R. Civ. P. 15(a)(2), so that he can more expressly deny the allegations.

a factual, as distinguished from legal, determination. There is no single mathematical formula that can be used to determine whether the standard has or has not been met. The diversity exhibited by those suffering financial distress calls for a broad definition rather than a mechanical test.

2 COLIER ON BANKRUPTCY ¶ 303.31, p. 303-93 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). This “broad definition” includes a number of fact-specific circumstances, none of which are dispositive, and none of which are given particular weight in every circumstance. *Id.*

The COLIER ON BANKRUPTCY application of the “totality of circumstances” factors are well-recognized and often cited. While some of those factors favor Petitioning Creditors’ request for relief (e.g. the amount of the debtor’s debts compared to the debtor’s yearly income), the majority of the factors militate *against* relief on the Petition.

One of the factors consistently recognized by the courts is the “nature of the conduct of the debtor’s affairs.” *Vortex*, 277 F.3d at 1072. It is this factor that distinguishes the facts of this case from *In re Smith*, 415 B.R. 222 (Bankr. N.D. Tex. 2009), which was cited by the Petitioning Creditors. Petitioning Creditors cite the case for the proposition that because 99% of the debtors’ aggregate claims were not being paid, Morabito should be similarly adjudged to be generally not paying his debts when due. However, in that case there were *several claimants* who were not being paid—including insiders—and the court made important note of the fact that the debtor had transferred the bulk of his assets into an off-shore irrevocable trust. *Id.* at 228. Undoubtedly, the court considered the “nature of the conduct of the debtor’s affairs” to be less-than-honorable in a blatant attempt to avoid paying the creditors. The exact opposite of that scenario is present here.

As previously explained to this Court, Morabito liquidated ALL of his assets in order to pay the Petitioning Creditors on their claim. See Morabito Declaration, ¶¶6-12, SSOF Exhibit 3. Indeed, Morabito has paid Petitioning Creditors approximately \$8,000,000 toward their claim. *Id.* The only reason he has not paid more is because he lacks the resources to do so. This is not a scenario where Morabito has made payment to other creditors in preference over Petitioning Creditors, or that Morabito has conducted his business affairs in such a way as to minimize the ability of the Petitioning Creditors to be paid. To the contrary, Morabito sold everything he

1 owned and paid it to Petitioning Creditors in order to satisfy his obligations to them.

2 These uncontroverted facts dovetail into another of the COLLIER'S factors: "the debtor's
3 statement of a subjective desire to pay the debts." See In re Harmisen, 320 B.R. 188, 202 n.43
4 (BAP 10th Cir. 2005). It bears repeating that this is not a situation where Morabito ignored
5 Petitioning Creditors' claims and went about his business with indifference to the debt they claim
6 he owed them. Indeed, everything that has been presented in Petitioning Creditors' Motion, and
7 the SSOF, substantiates Morabito's claim that he liquidated his assets out of a desire to pay the
8 claim, and that a significant amount was paid to Petitioning Creditors toward satisfaction of the
9 claim. Morabito confirms this in his own declarations submitted to this Court. SSOF, Exhibit 3.
10 ¶6. Thus, this case is distinguishable from the cases cited by Petitioning Creditors where the
11 debtors forced the petitioners' hand in seeking bankruptcy protection.

12 **2. A Single-Creditor Claim Does Not Qualify as "Generally Not Paying**
13 **Debts" When They Come Due.**

14 It is undisputed that the only creditor not being timely paid is Petitioning Creditor. There
15 are no other potential or actual creditors who have unpaid debts that would qualify under
16 §303(h)(1). There is substantial authority, in nearly every Circuit, that "single-creditor" petitions
17 do not meet the burden of establishing that a debtor "generally does not pay" his debts when due,
18 unless accompanied by some measure of fraud or scam intended to isolate that particular
19 creditor. In re Nordbrock, 772 F.2d 397 (8th Cir.1985); In re Smith, 123 B.R. 423
20 (Bankr.M.D.Fla.1990); In re Axl Industries, Inc., 127 B.R. 482, 484 (S.D.Fla.1991); Paroline v.
21 Doling, 116 B.R. 583 (Bankr.S.D.Ohio 1990); In re H.I.J.R. Properties, Denver, 115 B.R. 275
22 (D.Colo.1990); In re Gold Bond Corp., 98 B.R. 128 (Bankr.D.R.I.1989); In re Fales, 73 B.R. 44
23 (Bankr.S.D.Ohio 1987); In re Blaine Richards & Co., 16 B.R. 362, 365 (Bankr.E.D.N.Y.1982)
24 ("ordinarily there can be no order for relief based upon the mere failure to pay a single
25 creditor"); In re R.V. Seating, Inc., 8 B.R. 663 (Bankr.S.D.Fla.1981); Matter of 7H Land &
26 Cattle Co., 6 B.R. 29, 31 (Bankr.D.Nev.1980). These cases, and the preeminent commentator on
27 the subject (COLLIER'S) focus first on the language of the statute that requires Petitioners to
28 provide that Morabito does not "generally pay such debtor's debts" when they come due. The

1 statute references *debts* as plural, suggesting that Congress intended that relief under 303(h)(1)
 2 would require a debtor default on more than just a single debt. *Paroline v. Doling*, 116 B.R. 583,
 3 585 (Bkrcty.S.D. Ohio, 1990) (“reference of § 303(h)(1) to the debtor’s nonpayment of his *debts*,
 4 *rather than debt*, the courts have generally held that the nonpayment of a single debt does not
 5 constitute a default general enough to qualify for relief under § 303(h)(1)”)(emphasis added).

6 Further, the courts applying this interpretation conclude that if a debtor fails in only one
 7 of his obligations, then it cannot be said he is “generally” not paying his debts. See *In re Central*
 8 *Hobron Associates*, 41 B.R. 444, 448-49 (D.Hawaii 1984). As the cases explain, one instance
 9 does not a “generality” make. *Id.* There are several cases, including one Nevada case, which
 10 support this conclusion.

11 The case of *Matter of 7H Land & Cattle Co.*, 6 B.R. 29, 31 (Bankr.D.Nev. 1980), is on
 12 point here. In that case, a bank filed three petitions for involuntary bankruptcy against two
 13 individuals and an entity on the basis of a defaulted promissory note. *Id.* at 30. As in this case,
 14 the court explained that:

15 there is in this case really only one central issue: Is an allegation
 16 that the alleged debtors have failed to pay one creditor constitute
 17 ‘generally not paying such debtor’s debts’? Or stated another way,
 18 under what circumstances may a single creditor establish a case for
 involuntary bankruptcy with only proof of a default in respect to
 the debt or debts owing to him?

19 *Id.* at 30-31. In answering the questions it posed, the court explained that “it may be assumed
 20 that in the ordinary case there can be no order for relief with no more proof than mere failure to
 21 meet liability to a single creditor.” *Id.* The court then examined the various “special
 22 circumstance” exceptions to that rule. Those include the scenario where the petitioner “shows
 23 that he cannot possibly obtain adequate relief in the ordinary courts without resorting to the
 24 Bankruptcy Court,” (*Id.* at 32), and where fraud, trick, or artifice resulted in isolation of the
 25 creditor. *Id.* Critically, the court explained that “the burden is upon petitioner to show that the
 26 overdrawn account was an unusual single debt created by special circumstances . . . A mere
 27 overdrawn account is insufficient.” *Id.* at 33.

28 7H Land & Cattle has direct application to the case at hand. It is undisputed that

1 Morabito has only one outstanding unpaid bona fide creditor.³ That creditor is the Petitioning
 2 Creditors. There is no other basis upon which it could be argued that Morabito “generally” does
 3 not pay his debts when due. In their Motion, Petitioning Creditors have not substantiated any
 4 claim that an exception to the single-creditor rule should apply here because of fraud or because
 5 they lack the ability to obtain state-court relief. Accordingly, Petitioning Creditors have not met
 6 their burden of establishing any “special circumstances” which override the presumption that
 7 without more, a single creditor liability is insufficient to meet the burden of §303(h)(1).

8 There exist substantial and material disputes of fact as to whether Morabito is “generally
 9 not paying” his debts when they come due. Accordingly, summary judgment on this issue is
 10 inappropriate and the Motion must be denied.

11 **B. Summary Judgment is Inappropriate Because This Is a Two-Party Dispute**
 12 **That Does Not Belong In Bankruptcy Court.**

13 Petitioning Creditors have rightly conceded, in oral argument to this Court, that this case
 14 is a two-party dispute. (Status Hearing on June 26, 2014). Petitioning Creditors explained that
 15 although this is a two-party dispute, relief is warranted because they are unable to obtain
 16 adequate remedies under state law. In the Motion for Summary Judgment, Petitioning Creditors
 17 have not provided sufficient admissible evidence on this issue to support the argument that no
 18 genuine issue of material fact exists as to this issue. Even so, there is no evidence in the present
 19 record supporting Petitioning Creditors’ new position that this case is not a two-party dispute.

20 It is conceded that at the time of the filing, Morabito was engaged in litigation in which
 21 he faced potential liability. However, these contingent liabilities – which were subject to
 22 disputes as to liability and amount – do not change the analysis as to whether this case is a two-
 23 party dispute. First, none of those other creditors were eligible to submit a petition under
 24 §303(b) because their claims were disputed. Second, when asked by Petitioning Creditors to
 25 participate in this action, none of the claimants accepted. Thus, it was true on the date of the
 26 Petition date, and it is true now: *this is a two-party collection action instigated by Petitioning*
 27 *Creditors in order to collect a two-party debt.* This Court was correct when it stated that “this

28 ³ For purposes of this argument, Morabito assumes, without conceding, that Petitioning
 Creditors’ claim is not “subject to dispute as to liability or amount.”

1 Court is not the proper forum for the Petitioning Creditors to seek to collect on their judgment
 2 against the Alleged Debtor, and the Bankruptcy Code was not intended for such purposes."
 3 (Order, ¶7, Doc#94). Nothing that has happened or been discovered since then changes that
 4 conclusion. Accordingly, summary judgment is not warranted.

5 **C. There Exists a Genuine Material Dispute As To Whether the "Interests of**
 6 **Creditors and the Debtor Would be Better Served" By Dismissal of the**
 7 **Action.**

8 This Court indicated its intent to have a hearing on the issue of whether it should grant
 9 relief on the Petitions or apply §305(a)(1) dismissal.⁴ Morabito contends that summary
 10 judgment should not be entered until the Court has held a hearing and made findings regarding
 11 whether the interests of the creditors and debtor are better served by dismissal instead of relief on
 12 the Petition.

13 It is apparent given the facts of this case that the interest of Morabito and his creditors are
 14 best served by the dismissal of the Petition. Two primary considerations support this conclusion:
 15 First, the practice of permitting single-creditor petitioners to utilize the Bankruptcy code in
 16 substitution for state court execution remedies is not supported by the Code or the overwhelming
 17 authorities on the subject. Petitioning Creditors have taken no action which suggests they have
 18 genuinely attempted to execute on their judgment under state law. In the 16 months since the
 19 Confession of Judgment was filed, they have not domesticated their Judgment in Morabito's
 20 home state, and, aside from a single deposition, have taken no action to execute on the Judgment.

21 ⁴ The analysis under section 305(a) as to whether "the interests of creditors and the debtor would
 22 be better served by such dismissal" is based on the totality of the circumstances. In re Macke
 23 Int'l Trade, 370 B.R. at 247. There are several factors that the bankruptcy court may consider to
 24 determine whether creditors and the debtor will be better served by dismissal or suspension
 25 under § 305(a), including: (1) the economy and efficiency of administration; (2) whether another
 26 forum is available to protect the interests of both parties or there is already a pending proceeding
 27 in state court; (3) whether federal proceedings are necessary to reach a just and equitable
 28 solution; (4) whether there is an alternative means of achieving an equitable distribution of
 assets; (5) whether the debtor and the creditors are able to work out a less expensive out-of-court
 arrangement which better serves all interests in the case; (6) whether a non-federal insolvency
 has proceeded so far in those proceedings that it would be costly and time consuming to start
 afresh with the federal bankruptcy process; and (7) the purpose for which bankruptcy jurisdiction
 has been sought. In re Gelb, Slip Copy, 2013 WL 1296790, at *6 (BAP 9th Cir.
 2013)(unpublished)

1 This shows that Petitioning Creditors hope that this Court will do their state-law collection work
2 at taxpayer expense.

3 The bankruptcy court is not a collection agency and an involuntary bankruptcy action
4 should not be used as an alternative collection procedure for a single creditor. See, e.g., In re
5 Mountain Dairies, Inc., 372 B.R. 623 (Bankr. S.D.N.Y. 2007); In re Macke Intern. Trade, Inc.,
6 370 B.R. at 247. Courts have been very critical of creditors "utilizing the bankruptcy court as a
7 collection agency instead of going to state court where collection claims are properly filed." In
8 re Century Tile and Marble, Inc., 152 B.R. 688, 689 (Bankr. S.D. Fla.1993). In light of
9 Petitioning Creditors' utter failure to follow any of the procedures available to them under state
10 law, the Petition must be viewed as nothing more than a two-party collection action.

11 Second, in light of the Petitioning Creditors' contention that their Judgment is non-
12 dischargeable, relief on the Petition will essentially wipe out all of Morabito's current and non-
13 defaulted creditors but leave Petitioning creditors in the same position they are in now. Relief on
14 the Petition will severely prejudice Morabito's other creditors because it will deprive them of the
15 ability to receive payments on Morabito's monthly obligations and the ability to maintain their
16 accounts and actions on their own terms and in the forums of their choosing. All of the creditors
17 who responded to Morabito's requests for a declaration have indicated that they would oppose an
18 effort to place Morabito in bankruptcy because they would be deprived of a current and paying
19 customer with an impeccable payment history. In other words, the best interests of all of the
20 creditors but one are better served by dismissal of the Petition, not relief on the Petition.

21 The case of In re Macke Int'l Trade, 370 B.R. at 243, 247, supports this analysis. In that
22 case the petitioning creditor declined to utilize state court remedies in favor of involuntary
23 bankruptcy. The court concluded that the matter was not fit for bankruptcy court. Id.
24 Specifically, the alleged debtor (i) did not need debt adjustment, (ii) did not need a breathing
25 spell from creditors, (iii) did not need a discharge and a fresh start, and (iv) there appeared to be
26 nothing to reorganize or even liquidate. The bankruptcy court noted that if there were, it could be
27 pursued in state court, if necessary. However, further continuation of the case would only lead to
28 administrative expenses, and would be a waste of judicial resources. Id.

Each of these considerations apply here. There is no need for a debt adjustment for any other creditor as they are all current save Petitioners; there is no possibility here of a "fresh start" because Petitioners strongly contend that their debt is non-dischargeable, meaning that the process will benefit nobody but Petitioners; there are no assets, substantial or otherwise, that would be liquidated, and there is no possibility of a reorganization. Simply put, the creditor body as a whole would not benefit from a Morabito bankruptcy. Considering the factors at play here, dismissal is the more appropriate relief. Summary judgment to the Petitioners is not warranted or appropriate.

V. CONCLUSION

There are several genuine and material disputes of fact that preclude entry of summary judgment. Further, considering the totality of the circumstances, dismissal of the Petition is the more appropriate result here. Morabito respectfully requests an Order denying the Motion for Summary Judgment and an Order dismissing the Petition under §305(a)(1).

Date: October 3, 2014

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

HARTMAN & HARTMAN
510 W. Plumb Ln., Suite B
Reno, Nevada 89509

By: /s/ Frank C. Gilmore

Barry L. Breslow, Esq. (SBN 3023)
Frank C. Gilmore, Esq. (SBN 10052)
Jeffrey L. Hartman, Esq. (SBN 1607)
Attorneys for Paul A. Morabito

Barry L. Breslow, Esq. (SBN 3023)
Frank C. Gilmore, Esq. (SBN 10052)
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
Tel: (775) 329-3151 / Fax: (775) 329-7941

Jeffrey L. Hartman, Esq. (SBN 1607)
Hartman & Hartman
510 W. Plumb Ln., Suite B
Reno, Nevada 89509
Tel: (775) 334-2800 / Fax: (775) 324-1818

Counsel for Paul A. Morabito

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA
(RENO)**

In re
PAUL A. MORABITO, an individual,
Alleged Debtor.

Case No. BK-N-13-51237

Chapter No. 7

**OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

Date: November 20, 2014
Time: 10:00 A.M.
Place: Courtroom 1
C. Clifton Young Federal
Building
300 Booth Street
Reno, NV 89509
Judge: Hon. Gregg Zive

Paul A. Morabito ("Morabito"), hereby opposes Petitioning Creditor's Motion for Summary Judgment (the "Motion") (Doc#131). This Opposition is made and supported by the following Memorandum of Points and Authorities, and the attached Declarations.

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION

I. INTRODUCTION

At this Court's June 26, 2014, status conference, the Court explained, in no uncertain terms, that the determination of whether to grant relief to Petitioning Creditors' on their Petitions

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

1

I certify that this is a true copy:

Attest: Melissa P. Beatty
Deputy Clerk, Bankruptcy Court

1 against Morabito would require a trial and the presentation of evidence. The Court posited that it
 2 has received several affirmations from both Morabito and Petitioning Creditors throughout this
 3 process and that based on the conflicting declarations, the matter should be decided through
 4 presentation of testimony and findings of fact, not more declarations. Petitioning Creditors now
 5 attempt to short-cut that process by providing more declarations in support of the contention that
 6 there are no genuine issues of material fact which preclude summary relief on the Petition.
 7 Unsurprisingly, Morabito disagrees. The mere fact that there have been no less than 26 separate
 8 declarations filed in this case suggests that the parties view the facts and the equities differently.
 9 These disagreements are material and substantive. As such, summary judgment is not
 10 appropriate. There are several issues of material fact that render summary relief on the petitions
 11 improper.

12 First, Morabito did not admit that he is generally not paying his debts when due. The
 13 admission to certain portions of paragraph 3 in the Answer (Doc #128) was in reference to
 14 paragraph 3 of the Attachment to Involuntary Petition. The allegation as to whether Morabito is
 15 generally not paying his debts when due is an issue of material dispute which Morabito which
 16 has consistently and unambiguously disputed since the filing of the Petitions. Morabito contends
 17 that with the exception of the Petitioning Creditors' judgment he does pay his debts when due.

18 Second, although Petitioning Creditors contend otherwise (Motion for Summary
 19 Judgment, p. 4:9-11), this Petition is most certainly the result of a two-party dispute that is
 20 nothing more than a pretext for a debt-collection effort that should have been undertaken through
 21 the mechanisms of state law. This Court has already made a preliminary determination "that this
 22 is essentially a two-party collection action." Order, ¶6 (Doc #94).

23 Third, there is a material dispute as to whether dismissal and/or abstention is in the best
 24 interests of the debtor and the creditors under 11 U.S.C. §305(a)(1). This Court must analyze the
 25 applicable elements of §305(a)(1) which requires factual findings from the presentation of
 26 evidence. This Court has previously indicated that "this Court is not the proper forum for the
 27 Petitioning Creditors to seek to collect on their judgment against the Alleged Debtor, and the
 28 Bankruptcy Code was not intended for such purposes." Order, ¶¶7-8 (Doc #94). Unsurprisingly,

Petitioning Creditors did not address this point in their Motion.

For these reasons, summary judgment is not appropriate. At the very least, Morabito is entitled to an evidentiary hearing to determine whether relief should be granted on the Petition.

II. APPLICABLE LAW

Morabito generally concurs with Petitioning Creditors' assessment of the applicable procedural law, as set forth in their Motion (§4.A).

However, in Petitioning Creditors' assessment of the substantive law, they neglect to give treatment to one of the primary issues previously raised regarding the applicability of §305(a)(1) to this case. Specifically, the analysis under §305(a) as to whether "the interests of creditors and the debtor would be better served by such dismissal" is based on the totality of the circumstances. In re Macke Intern. Trade, Inc., 370 B.R. 236, 247 (9th Cir. BAP 2007). There are several factors that this Court should consider in determining whether creditors and the debtor will be better served by dismissal or suspension under § 305(a), including:

- (1) the economy and efficiency of administration;
- (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court;
- (3) whether federal proceedings are necessary to reach a just and equitable solution;
- (4) whether there is an alternative means of achieving an equitable distribution of assets;
- (5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;
- (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and
- (7) the purpose for which bankruptcy jurisdiction has been sought.

In re Marciano, 459 B.R. 27, 46-47 (9th Cir. BAP 2011). These factors require this Court to "make specific and substantiated findings" in order to determine if §305(a)(1) should apply. In re Macke, 370 B.R. at 247. These factors are in dispute. Accordingly, a determination on §305(a)(1) is not appropriate for summary judgment.

1 **III. STATEMENT OF RELEVANT FACTS¹**

2 In response to Petitioning Creditors "Separate Statement of Undisputed Facts"
3 (Doc#132)("SSOF"), Morabito offers the following:

4 1. As of the date of the filing of the Petition (June 20, 2013), Morabito did not
5 believe he had any significant noncontingent, undisputed creditors who were not being timely
6 paid. At the time of the filing of the Petition, Morabito believed that the Herbst Confession of
7 Judgment was not a bona fide debt because it was subject to a dispute as to the validity of the
8 method in which it was filed. SSOF, Exhibit 3, ¶5; Exhibit 4, ¶8;

9 2. The only noncontingent, undisputed creditors which Morabito believed he had as
10 of June 20, 2013, were installment creditors, and utility accounts, which were each paid monthly
11 when due, and a debt to his former partner Edward Bayuk., SSOF, Exhibit 3, ¶5.

12 3. Morabito has repeatedly contended that with the exception of the Herbst debt, he
13 pays his debts when they come due. SSOF, Exhibit 3, ¶5; Exhibit 4, ¶8; Motion to Dismiss, p.
14 7:7-8 (Doc#42).

15 4. As of the date of the Petition, Morabito had other creditors whose claims were
16 subject to dispute as to both liability and amount. Morabito did not consider them to be
17 significant. Those creditors were:

- 18 a. *Desi Moreno*. Mr. Moreno filed an action against Herbst and Morabito
19 related to a ground lease. That dispute has been resolved and the action
20 dismissed with prejudice. No continuing obligations remain.
21 b. *Hartford Fire Insurance Company*. Hartford filed an action for indemnity
22 pursuant to payment of a performance bond on a construction project.
23 That dispute has been resolved and the action has been dismissed. As part
24 of the resolution of that dispute, Morabito executed a promissory note in
25 favor of Hartford that is current and in good standing. See Declaration of
26 Peter Dubowsky, Esq., counsel for Hartford, attached hereto as **EXHIBIT**

27
28 ¹ Each of these facts are set forth in the Declaration of Paul A. Morabito, attached hereto as
EXHIBIT 1.

2.

c. *Eclectic Properties East, LLC et al.* Eclectic and fifteen (15) other plaintiffs filed an action against Morabito and approximately twenty-eight (28) other defendants alleging civil RICO claims. The claims were dismissed on the pleadings by the United States District Court, Northern District of California. The Ninth Circuit Court of Appeals affirmed the dismissal in a published opinion. See *Eclectic Properties East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990 (9th Cir. 2014).

5. Since the date of the Petition, three additional claims have been asserted against Morabito, each subject to dispute as to liability and amount:

- a. *Carl Barbieri et al.* In February 2014, Mr. Barbieri filed a demand for arbitration with the American Arbitration Association against Morabito and several other respondents regarding a real estate transaction that occurred in 2004. The matter is set for hearing in April 2015, but will likely be mediated long before the hearing date.
- b. *Herbst et al.* In December 2013, Petitioning Creditors filed an action in Nevada state court against Morabito and others alleging violations of Nevada's Uniform Fraudulent Transfers Act. Discovery has yet to commence in that action.
- c. *Ahrend et al.* In June 2014, Justus Ahrend *et al* filed an action in Los Angeles Superior Court against Morabito and several others regarding real estate transactions that occurred as far back as 2004. That action is in the process of being dismissed by stipulation of the parties.

6. Since the date of the Petition, Morabito has paid off or eliminated several of his revolving accounts and other utility accounts, such that his only remaining creditors are credit card debts and a few utility and living expense accounts. See, e.g. Second Amended 1003(b) List of Creditors (Doc#145).

7. Morabito's remaining debts are current and in good standing.

8. Morabito has obtained a declaration from the custodian of records for Time Warner Cable wherein it affirms that Morabito is current on his obligation: that he pays his account when due; that he has always been current, with no negative payment remarks, and that Time Warner has no interest in joining any involuntary bankruptcy action. See Declaration of Custodian of Time Warner, attached hereto as **EXHIBIT 3**.

9. Morabito has obtained a declaration from Hartford (Exhibit 2), wherein Hartford counsel explains that Hartford has no intention of joining an involuntary bankruptcy proceeding and that Hartford opposes an effort to place Morabito in bankruptcy because it deprives Hartford of being able to enforce Morabito's settlement obligations.

10. Morabito has obtained a declaration from Edward Bayuk (attached hereto as **EXHIBIT 4**), wherein Bayuk affirms that he has forgiven the debt owed to him by Morabito via gift; that he has no intention of joining any bankruptcy action; and that he would not submit a proof of claim in bankruptcy in the event relief is granted on the petition.

11. Morabito has obtained a declaration from Carl Barbieri (attached hereto as **EXHIBIT 5**), wherein Barbieri explains that he is the process of negotiating a settlement of the AAA Action claims with Morabito, although no agreement has yet been reached. He opposes any efforts to place Morabito into bankruptcy as that will deprive him of the ability to maintain the AAA Action against Morabito in the forum of his choosing. Further, Barbieri explains that implementation of an automatic stay in bankruptcy would prejudice him greatly, as there is an arbitration hearing date set for April 2015, and he very much desires to maintain that arbitration date in order to achieve speedy resolution of the matter, should it not settle. Further, Barbieri declares that if Morabito were forced into bankruptcy, he recognizes the possibility, if not the likelihood, that the AAA claim would be discharged and he would be left with the possibility of no recovery and no opportunity for settlement. Lastly, Barbieri has declared that if Mr. Morabito were adjudged bankrupt, any settlement agreement reached between he and Morabito would be unenforceable and likely discharged. Accordingly, he is strongly opposed to such a result.

12. Morabito has obtained a declaration from the custodian of records for the Los Angeles Department of Power & Water wherein it affirms that Morabito is current on his

1 account; that he pays his account when due; that he has always been current, with no negative
 2 payment remarks, and that it has no interest in joining any involuntary bankruptcy action. See
 3 Declaration of Los Angeles Department of Power & Water, attached hereto as **EXHIBIT 6**.

4 13. Attached as **EXHIBIT 7** are redacted copies of the credit card statements for the
 5 credit cards Morabito maintained as of the date of the Petition. As the Court will see, these bills
 6 were being paid every month, and although a balance was carried, the accounts were current and
 7 not in default.

8 14. Although Morabito has resided in California since 2009, Petitioning Creditors
 9 have made no effort to domesticate their Confession of Judgment in California or attempted to
 10 execute their Judgment according to California law.

11 15. The only effort Petitioning Creditors have made toward executing their
 12 Confession of Judgment was to take Morabito's deposition. No other collection efforts have
 13 been attempted in the last sixteen months since the Judgment was filed, indicating that
 14 Petitioning Creditors are not genuinely interested in collecting their debt using state court
 15 execution proceedings.

16 **IV. ARGUMENT**

17 **A. There Exists A Genuine Material Disputes About Whether Morabito Is** 18 **Generally Not Paying His Debts When Due.**

19 Morabito has never admitted that he does not pay his debts when due. The paragraphs
 20 referenced in Morabito's Answer were keyed to the paragraphs of the specific allegations
 21 contained in the "Attachment to Involuntary Petition." (Doc#1, p.3-5). Nothing in Morabito's
 22 Answer can be read as an admission that he qualifies for involuntary bankruptcy because he does
 23 not pay his debts when they come due. To the contrary, Morabito has repeatedly and
 24 continuously contended that he pays his debts when they come due, and that, with the exception
 25 of Petitioning Creditors, he maintains no other creditors who would have any interest in joining
 26 the Petition. SSOF, Exhibit 3, ¶5; Exhibit 4, ¶8; Motion to Dismiss, p.7:7-8 (Doc#42).

27 Petitioning Creditors "gotcha" argument is disingenuous and should be disregarded. The
 28 Federal Rules of Civil Procedure explain that the "[p]leadings must be construed so as to do

justice.” Fed. R. Civ. P. 8(c). In that context, Morabito’s Answer must be read to include a denial of Petitioning Creditors’ assertion that Morabito is a proper candidate for involuntary bankruptcy under §303(b).²

Morabito does not contend that Petitioning Creditors do not meet the numerosity requirement of §303(b)(1). That contention was abandoned and will not be asserted.

1. Applying the “Totality of The Circumstances” Test to This Case Establishes A Material Dispute of Fact As to Whether Morabito Generally Pays His Debts When They Come Due.

There is a genuine and material dispute about whether Morabito, as of the date of the filing of the Petition, was “generally not paying his debts when due” pursuant to §303(h)(1). The Petitioning Creditors bear the burden of establishing this fact. In re WLB-RSK Venture, 320 B.R. 221, (BAP 9th Cir. 2004) (citing In re McEvoy, 37 B.R. 197, 199 (Bankr.E.D.Va. 1984)).

Petitioning Creditors are correct in their citation to Vortex Fishing, 277 F.3d at 1072, where the court explained that “establishing the existence of a few unpaid debts” is not enough to meet the burden. Other factors like “the amount of the delinquency, the materiality of the nonpayment, and the nature of the conduct of the debtor’s affairs” are important considerations as well. Id. Further, as this issue is raised in summary judgment, Morabito is entitled to have all the evidence viewed in a light most favorable to him. Barnett v. Centoni, 31 F.3d 813, 815 (9th Cir.1994).

Although Morabito does not contest the fact that he lacks the resources to pay Petitioning Creditor’s Confession of Judgment, this does not end the analysis under §303(h)(1). Morabito has contended, and has supported with admissible evidence, that all of his other creditors are paid as those debts come due. SSOF, Exhibit 3, ¶5; Exhibit 4, ¶8; Motion to Dismiss, p.7:7-8 (Doc#42). The Bankruptcy Code does not define the term “generally not paying,” but the Ninth Circuit has adopted a “totality of the circumstances” test for determining whether a debtor is generally not paying its debts under section 303(h)(1). In re Vortex Fishing, 277 F.3d 1057, 1072 (9th Cir. 2002). Importantly, it has been well-recognized that it is:

² If the Court determines that Morabito’s Answer is defective, Morabito respectfully seeks leave to amend the Answer, pursuant to Fed. R. Civ. P. 15(a)(2), so that he can more expressly deny the allegations.

a factual, as distinguished from legal, determination. There is no single mathematical formula that can be used to determine whether the standard has or has not been met. The diversity exhibited by those suffering financial distress calls for a broad definition rather than a mechanical test.

2 COLLIER ON BANKRUPTCY ¶ 303.31, p. 303-93 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). This “broad definition” includes a number of fact-specific circumstances, none of which are dispositive, and none of which are given particular weight in every circumstance. *Id.*

The COLLIER ON BANKRUPTCY application of the “totality of circumstances” factors are well-recognized and often cited. While some of those factors favor Petitioning Creditors’ request for relief (e.g. the amount of the debtor’s debts compared to the debtor’s yearly income), the majority of the factors militate *against* relief on the Petition.

One of the factors consistently recognized by the courts is the “nature of the conduct of the debtor’s affairs.” *Vortex*, 277 F.3d at 1072. It is this factor that distinguishes the facts of this case from *In re Smith*, 415 B.R. 222 (Bankr. N.D. Tex. 2009), which was cited by the Petitioning Creditors. Petitioning Creditors cite the case for the proposition that because 99% of the debtors’ aggregate claims were not being paid, Morabito should be similarly adjudged to be generally not paying his debts when due. However, in that case there were *several claimants* who were not being paid – including insiders – and the court made important note of the fact that the debtor had transferred the bulk of his assets into an off-shore irrevocable trust. *Id.* at 228. Undoubtedly, the court considered the “nature of the conduct of the debtor’s affairs” to be less-than-honorable in a blatant attempt to avoid paying the creditors. The exact opposite of that scenario is present here.

As previously explained to this Court, Morabito liquidated ALL of his assets in order to pay the Petitioning Creditors on their claim. See Morabito Declaration, ¶¶6-12, SSOF Exhibit 3. Indeed, Morabito has paid Petitioning Creditors approximately \$8,000,000 toward their claim. *Id.* The only reason he has not paid more is because he lacks the resources to do so. This is not a scenario where Morabito has made payment to other creditors in preference over Petitioning Creditors, or that Morabito has conducted his business affairs in such a way as to minimize the ability of the Petitioning Creditors to be paid. To the contrary, Morabito sold everything he

owned and paid it to Petitioning Creditors in order to satisfy his obligations to them.

These uncontroverted facts dovetail into another of the COLLIER factors: "the debtor's statement of a subjective desire to pay the debts." See In re Harmsen, 320 B.R. 188, 202 n.43 (BAP 10th Cir. 2005). It bears repeating that this is not a situation where Morabito ignored Petitioning Creditors' claims and went about his business with indifference to the debt they claim he owed them. Indeed, everything that has been presented in Petitioning Creditors' Motion, and the SSOF, substantiates Morabito's claim that he liquidated his assets out of a desire to pay the claim, and that a significant amount was paid to Petitioning Creditors toward satisfaction of the claim. Morabito confirms this in his own declarations submitted to this Court. SSOF, Exhibit 3.

*6. Thus, this case is distinguishable from the cases cited by Petitioning Creditors where the debtors forced the petitioners' hand in seeking bankruptcy protection.

2. *A Single-Creditor Claim Does Not Qualify as "Generally Not Paying Debts" When They Come Due.*

It is undisputed that the only creditor not being timely paid is Petitioning Creditor. There are no other potential or actual creditors who have unpaid debts that would qualify under §303(h)(1). There is substantial authority, in nearly every Circuit, that "single-creditor" petitions do not meet the burden of establishing that a debtor "generally does not pay" his debts when due, unless accompanied by some measure of fraud or scam intended to isolate that particular creditor. In re Nordbrock, 772 F.2d 397 (8th Cir.1985); In re Smith, 123 B.R. 423 (Bankr.M.D.Fla.1990); In re Axl Industries, Inc., 127 B.R. 482, 484 (S.D.Fla.1991); Paroline v. Doling, 116 B.R. 583 (Bankr.S.D. Ohio 1990); In re H.I.J.R. Properties, Denver, 115 B.R. 275 (D.Colo.1990); In re Gold Bond Corp., 98 B.R. 128 (Bankr.D.R.I.1989); In re Fales, 73 B.R. 44 (Bankr.S.D. Ohio 1987); In re Blaine Richards & Co., 16 B.R. 362, 365 (Bankr.E.D.N.Y.1982) ("ordinarily there can be no order for relief based upon the mere failure to pay a single creditor"); In re R.V. Seating, Inc., 8 B.R. 663 (Bankr.S.D.Fla.1981); Matter of 7H Land & Cattle Co., 6 B.R. 29, 31 (Bankr.D.Nev.1980). These cases, and the preeminent commentator on the subject (COLLIERS) focus first on the language of the statute that requires Petitioners to provide that Morabito does not "generally pay such debtor's debts" when they come due. The

1 statute references *debts* as plural, suggesting that Congress intended that relief under 303(h)(1)
 2 would require a debtor default on more than just a single debt. *Paroline v. Doling*, 116 B.R. 583,
 3 585 (Bkrcty S.D. Ohio, 1990) (“reference of § 303(h)(1) to the debtor’s nonpayment of his *debts*,
 4 ***rather than debt***, the courts have generally held that the nonpayment of a single debt does not
 5 constitute a default general enough to qualify for relief under § 303(h)(1)”) (emphasis added).

6 Further, the courts applying this interpretation conclude that if a debtor fails in only one
 7 of his obligations, then it cannot be said he is “generally” not paying his debts. See In re Central
 8 Hobron Associates, 41 B.R. 444, 448-49 (D. Hawaii 1984). As the cases explain, one instance
 9 does not a “generality” make. *Id.* There are several cases, including one Nevada case, which
 10 support this conclusion.

11 The case of Matter of 711 Land & Cattle Co., 6 B.R. 29, 31 (Bankr D. Nev. 1980), is on
 12 point here. In that case, a bank filed three petitions for involuntary bankruptcy against two
 13 individuals and an entity on the basis of a defaulted promissory note. *Id.* at 30. As in this case,
 14 the court explained that:

15 there is in this case really only one central issue: Is an allegation
 16 that the alleged debtors have failed to pay one creditor constitute
 17 “generally not paying such debtor’s debts”? Or stated another way,
 18 under what circumstances may a single creditor establish a case for
 involuntary bankruptcy with only proof of a default in respect to
 the debt or debts owing to him?

19 *Id.* at 30-31. In answering the questions it posed, the court explained that “it may be assumed
 20 that in the ordinary case there can be no order for relief with no more proof than mere failure to
 21 meet liability to a single creditor.” *Id.* The court then examined the various “special
 22 circumstance” exceptions to that rule. Those include the scenario where the petitioner “shows
 23 that he cannot possibly obtain adequate relief in the ordinary courts without resorting to the
 24 Bankruptcy Court,” (*Id.* at 32), and where fraud, trick, or artifice resulted in isolation of the
 25 creditor. *Id.* Critically, the court explained that “the burden is upon petitioner to show that the
 26 overdrawn account was an unusual single debt created by special circumstances A mere
 27 overdrawn account is insufficient.” *Id.* at 33.

28 711 Land & Cattle has direct application to the case at hand. It is undisputed that

Morabito has only one outstanding unpaid bona fide creditor.³ That creditor is the Petitioning Creditors. There is no other basis upon which it could be argued that Morabito “generally” does not pay his debts when due. In their Motion, Petitioning Creditors have not substantiated any claim that an exception to the single-creditor rule should apply here because of fraud or because they lack the ability to obtain state-court relief. Accordingly, Petitioning Creditors have not met their burden of establishing any “special circumstances” which override the presumption that, without more, a single creditor liability is insufficient to meet the burden of §303(h)(1).

There exist substantial and material disputes of fact as to whether Morabito is “generally not paying” his debts when they come due. Accordingly, summary judgment on this issue is inappropriate and the Motion must be denied.

B. Summary Judgment is Inappropriate Because This Is a Two-Party Dispute That Does Not Belong In Bankruptcy Court.

Petitioning Creditors have rightly conceded, in oral argument to this Court, that this case is a two-party dispute. (Status Hearing on June 26, 2014). Petitioning Creditors explained that although this is a two-party dispute, relief is warranted because they are unable to obtain adequate remedies under state law. In the Motion for Summary Judgment, Petitioning Creditors have not provided sufficient admissible evidence on this issue to support the argument that no genuine issue of material fact exists as to this issue. Even so, there is no evidence in the present record supporting Petitioning Creditors’ new position that this case is not a two-party dispute.

It is conceded that at the time of the filing, Morabito was engaged in litigation in which he faced potential liability. However, these contingent liabilities – which were subject to disputes as to liability and amount -- do not change the analysis as to whether this case is a two-party dispute. First, none of those other creditors were eligible to submit a petition under §303(b) because their claims were disputed. Second, when asked by Petitioning Creditors to participate in this action, none of the claimants accepted. Thus, it was true on the date of the Petition date, and it is true now: *this is a two-party collection action instigated by Petitioning Creditors in order to collect a two-party debt.* This Court was correct when it stated that “this

³ For purposes of this argument, Morabito assumes, without conceding, that Petitioning Creditors’ claim is not “subject to dispute as to liability or amount.”

1 Court is not the proper forum for the Petitioning Creditors to seek to collect on their judgment
 2 against the Alleged Debtor, and the Bankruptcy Code was not intended for such purposes.”
 3 (Order, ¶7, Doc#94). Nothing that has happened or been discovered since then changes that
 4 conclusion. Accordingly, summary judgment is not warranted.

5 C. **There Exists a Genuine Material Dispute As To Whether the “Interests of**
 6 **Creditors and the Debtor Would be Better Served” By Dismissal of the**
 7 **Action.**

8 This Court indicated its intent to have a hearing on the issue of whether it should grant
 9 relief on the Petitions or apply §305(a)(1) dismissal.⁴ Morabito contends that summary
 10 judgment should not be entered until the Court has held a hearing and made findings regarding
 11 whether the interests of the creditors and debtor are better served by dismissal instead of relief on
 12 the Petition.

13 It is apparent given the facts of this case that the interest of Morabito and his creditors are
 14 best served by the dismissal of the Petition. Two primary considerations support this conclusion:
 15 First, the practice of permitting single-creditor petitioners to utilize the Bankruptcy code in
 16 substitution for state court execution remedies is not supported by the Code or the overwhelming
 17 authorities on the subject. Petitioning Creditors have taken no action which suggests they have
 18 genuinely attempted to execute on their judgment under state law. In the 16 months since the
 19 Confession of Judgment was filed, they have not domesticated their Judgment in Morabito’s
 20 home state, and, aside from a single deposition, have taken no action to execute on the Judgment.

21 ⁴ The analysis under section 305(a) as to whether “the interests of creditors and the debtor would
 22 be better served by such dismissal” is based on the totality of the circumstances. *In re Macke*
 23 *Int’l Trade*, 370 B.R. at 247. There are several factors that the bankruptcy court may consider to
 24 determine whether creditors and the debtor will be better served by dismissal or suspension
 25 under § 305(a), including: (1) the economy and efficiency of administration; (2) whether another
 26 forum is available to protect the interests of both parties or there is already a pending proceeding
 27 in state court; (3) whether federal proceedings are necessary to reach a just and equitable
 28 solution; (4) whether there is an alternative means of achieving an equitable distribution of
 assets; (5) whether the debtor and the creditors are able to work out a less expensive out-of-court
 arrangement which better serves all interests in the case; (6) whether a non-federal insolvency
 has proceeded so far in those proceedings that it would be costly and time consuming to start
 afresh with the federal bankruptcy process; and (7) the purpose for which bankruptcy jurisdiction
 has been sought. *In re Gelb*, Slip Copy, 2013 WL 1296790, at *6 (BAP 9th Cir.
 2013)(unpublished)

1 This shows that Petitioning Creditors hope that this Court will do their state-law collection work
2 at taxpayer expense

3 The bankruptcy court is not a collection agency and an involuntary bankruptcy action
4 should not be used as an alternative collection procedure for a single creditor. See, e.g., In re
5 Mountain Dairies, Inc., 372 B.R. 623 (Bankr. S.D.N.Y. 2007); In re Macke Intern. Trade, Inc.,
6 370 B.R. at 247. Courts have been very critical of creditors "utilizing the bankruptcy court as a
7 collection agency instead of going to state court where collection claims are properly filed." In
8 re Century Tile and Marble, Inc., 152 B.R. 688, 689 (Bankr. S.D. Fla. 1993). In light of
9 Petitioning Creditors' utter failure to follow any of the procedures available to them under state
10 law, the Petition must be viewed as nothing more than a two-party collection action.

11 Second, in light of the Petitioning Creditors' contention that their judgment is non-
12 dischargeable, relief on the Petition will essentially wipe out all of Morabito's current and non-
13 defaulted creditors but leave Petitioning creditors in the same position they are in now. Relief on
14 the Petition will severely prejudice Morabito's other creditors because it will deprive them of the
15 ability to receive payments on Morabito's monthly obligations and the ability to maintain their
16 accounts and actions on their own terms and in the forums of their choosing. All of the creditors
17 who responded to Morabito's requests for a declaration have indicated that they would oppose an
18 effort to place Morabito in bankruptcy because they would be deprived of a current and paying
19 customer with an impeccable payment history. In other words, the best interests of all of the
20 creditors but one are better served by dismissal of the Petition, not relief on the Petition.

21 The case of In re Macke Int'l Trade, 370 B.R. at 243, 247, supports this analysis. In that
22 case the petitioning creditor declined to utilize state court remedies in favor of involuntary
23 bankruptcy. The court concluded that the matter was not fit for bankruptcy court. Id.
24 Specifically, the alleged debtor (i) did not need debt adjustment, (ii) did not need a breathing
25 spell from creditors, (iii) did not need a discharge and a fresh start, and (iv) there appeared to be
26 nothing to reorganize or even liquidate. The bankruptcy court noted that if there were, it could be
27 pursued in state court, if necessary. However, further continuation of the case would only lead to
28 administrative expenses, and would be a waste of judicial resources. Id.

Each of these considerations apply here. There is no need for a debt adjustment for any other creditor as they are all current save Petitioners; there is no possibility here of a "fresh start" because Petitioners strongly contend that their debt is non-dischargeable, meaning that the process will benefit nobody but Petitioners; there are no assets, substantial or otherwise, that would be liquidated, and there is no possibility of a reorganization. Simply put, the creditor body as a whole would not benefit from a Morabito bankruptcy. Considering the factors at play here, dismissal is the more appropriate relief. Summary judgment to the Petitioners is not warranted or appropriate.

V. CONCLUSION

There are several genuine and material disputes of fact that preclude entry of summary judgment. Further, considering the totality of the circumstances, dismissal of the Petition is the more appropriate result here. Morabito respectfully requests an Order denying the Motion for Summary Judgment and an Order dismissing the Petition under §305(a)(1).

Date: October 3, 2014

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

HARTMAN & HARTMAN
510 W. Plumb Ln., Suite B
Reno, Nevada 89509

By: /s/ Frank C. Gilmore

Barry L. Breslow, Esq. (SBN 3023)
Frank C. Gilmore, Esq. (SBN 10052)
Jeffrey L. Hartman, Esq. (SBN 1607)
Attorneys for Paul A. Morabito

EXHIBIT 1

EXHIBIT 1

Barry L. Breslow, Esq. (SBN 3023)
Frank C. Gilmore, Esq. (SBN 10052)
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
Tel: (775) 329-3151 / Fax: (775) 329-7941

Jeffrey L. Hartman, Esq. (SBN 1607)
Hartman & Hartman
510 W. Plumb Ln., Suite B
Reno, Nevada 89509
Tel: (775) 334-2800 / Fax: (775) 324-1818

Counsel for Paul A. Morabito

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA
(RENO)

In re
PAUL A. MORABITO, an individual,
Alleged Debtor.

Case No. BK-N-13-51237

Chapter No. 7

**DECLARATION OF PAUL A.
MORABITO IN SUPPORT OF
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

Date: November 20, 2013
Time: 10:00 A.M.
Place: Courtroom 1
C. Clifton Young Federal Building
300 Booth Street
Reno, NV 89509
Judge: Hon. Gregg Zive

I, Paul A. Morabito, declare under penalty of perjury as follows:

1. I am the named Alleged Debtor and do make this Declaration of my own personal knowledge.

2. As of the date of the filing of the Petition (June 20, 2013), I did not believe I had any significant noncontingent, undisputed creditors who were not being timely paid. At the time

1 of the filing of the Petition, I believed that the Herbst Confession of Judgment was not a bona
2 fide debt because it was subject to a dispute as to the validity of the method in which it was filed.
3 SSOF, Exhibit 3, ¶5; Exhibit 4, ¶8;

4 3. The only noncontingent, undisputed creditors which I believed I had as of June
5 20, 2013, were installment creditors, and utility accounts, which were each paid monthly when
6 due, and a debt to my former partner Edward Bayuk.. SSOF, Exhibit 3, ¶5

7 4. I have repeatedly contended that with the exception of the Herbst debt, I pay my
8 debts when they come due. SSOF, Exhibit 3, ¶5; Exhibit 4, ¶8; Motion to Dismiss, p.7:7-8
9 (Doc#42).

10 5. As of the date of the Petition, I had other creditors whose claims were subject to
11 dispute as to both liability and amount. I did not consider them to be significant. Those creditors
12 were:

13 a. *Desi Moreno*. Mr. Moreno filed an action against Herbst and me to related
14 to a ground lease. That dispute has been resolved and the action dismissed with prejudice. No
15 continuing obligations remain.

16 b. *Hartford Fire Insurance Company*. Hartford filed an action for indemnity
17 pursuant to payment of a performance bond on a construction project. That dispute has been
18 resolved and the action has been dismissed. As part of the resolution of that dispute, I executed a
19 promissory note in favor of Hartford that is current and in good standing. See Declaration of
20 Peter Dubowsky, Esq., counsel for Hartford, attached to the Opposition as **EXHIBIT 2**.

21 c. *Eclectic Properties East, LLC et al.* Eclectic and fifteen (15) other
22 plaintiffs filed an action against me and approximately twenty-eight (28) other defendants
23 alleging civil RICO claims. The claims were dismissed on the pleadings by the United States
24 District Court, Northern District of California. The Ninth Circuit Court of Appeals affirmed the
25 dismissal in a published opinion. See Eclectic Properties East, LLC v. Marcus & Millichap Co.,
26 751 F.3d 990 (9th Cir. 2014).

27 6. Since the date of the Petition, three additional claims have been asserted against
28 me, each subject to dispute as to liability and amount:

1 a. *Carl Barbieri et al.* In February 2014, Mr. Barbieri filed a demand for
2 arbitration with the American Arbitration Association against me and several other respondents
3 regarding a real estate transaction that occurred in 2004. The matter is set for hearing in April
4 2015, but will likely be mediated long before the hearing date.

5 b. *Herbst et al.* In December 2013, Petitioning Creditors filed an action in
6 Nevada state court against me and others alleging violations of Nevada's Uniform Fraudulent
7 Transfers Act. Discovery has yet to commence in that action.

8 c. *Ahrend et al.* In June 2014, Justus Ahrend *et al* filed an action in Los
9 Angeles Superior Court against Morabito and several others regarding real estate transactions
10 that occurred in as far back as 2004. That action is in the process of being dismissed by
11 stipulation of the parties.

12 7. Since the date of the Petition, I have paid off or eliminated several of my
13 revolving accounts and other utility accounts, such that my only remaining creditors are credit
14 card debts and a few utility and living expense accounts. See, e.g. Second Amended 1003(b) List
15 of Creditors (Doc#143).

16 8. My remaining debts are current and in good standing.

17 9. I have obtained a declaration from the custodian of records for Time Warner
18 Cable wherein it affirms that I am current on my obligation; that I pay my account when due; that
19 I have always been current, with no negative payment remarks, and that Time Warner has no
20 interest in joining any involuntary bankruptcy action. See Declaration of Custodian of Time
21 Warner, attached to the Opposition as **EXHIBIT 3**.

22 10. I have obtained a declaration from Hartford (Exhibit 2), wherein Hartford counsel
23 explains that Hartford has no intention of joining an involuntary bankruptcy proceeding and that
24 Hartford opposes an effort to place me in bankruptcy because it deprives Hartford of being able
25 to enforce my settlement obligations.

26 11. I have obtained a declaration from Edward Bayuk (attached to the Opposition as
27 **EXHIBIT 4**), wherein Bayuk affirms that he has forgiven the debt owed to him by me; that he
28 has no intention of joining any bankruptcy action; and that he would not submit a proof of claim

in bankruptcy in the event relief is granted on the petition.

12. I have obtained a declaration from Carl Barbieri (attached to the Opposition as **EXHIBIT 5**), wherein Barbieri explains that he is the process of negotiating a settlement of the AAA Action claims with me, although no agreement has yet been reached. He opposes any efforts to place me into bankruptcy as that will deprive him of the ability to maintain the AAA Action against me in the forum of his choosing. Further, Barbieri explains that implementation of an automatic stay in bankruptcy would prejudice him greatly, as there is an arbitration hearing date set for April 2015, and he very much desires to maintain that arbitration date in order to achieve speedy resolution of the matter, should it not settle. Further, Barbieri declares that if I were forced into bankruptcy, he recognizes the possibility, if not the likelihood, that the AAA claim would be discharged and he would be left with the possibility of no recovery and no opportunity for settlement. Lastly, Barbieri has declared that if I were adjudged bankrupt, any settlement agreement reached between he and I would be unenforceable and likely discharged. Accordingly, he is strongly opposed to such a result.

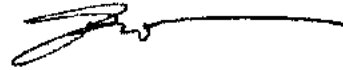
13. I have obtained a declaration from the custodian of records for the Los Angeles Department of Power & Water wherein it affirms that I am current on my account; that I pay my account when due; that I have always been current, with no negative payment remarks, and that it has no interest in joining any involuntary bankruptcy action. See Declaration of Los Angeles Department of Power & Water, attached to the Opposition as **EXHIBIT 6**.

14. Attached to the Opposition as **EXHIBIT 7** are true and correct redacted copies of the credit card statements for the credit cards I maintained as of the date of the Petition.

15. Although I have resided in California since 2009, Petitioning Creditors have made no effort to domesticate their Confession of Judgment in California or attempted to execute their Judgment according to California law.

16. The only effort Petitioning Creditors have made toward executing their Confession of Judgment was to take my deposition. No other collection efforts have been attempted in the last sixteen months since the Judgment was filed, indicating that Petitioning Creditors are not collecting their debt using state court execution proceedings.

1 Dated this 3rd day of October, 2014.

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PAUL A. MORABITO

Robison, Debra M.
Sharp & Love
11 Washington St
Zeno, NY 89963
775) 329-3151

EXHIBIT 2

EXHIBIT 2

Barry L. Breslow, Esq. (SBN 3023)
Frank C. Gilmore, Esq. (SBN 10052)
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
Tel. (775) 329-3151 / Fax: (775) 329-7941

Jeffrey L. Hartman, Esq. (SBN 1607)
Hartman & Hartman
510 W. Plumb Ln., Suite B
Reno, Nevada 89509
Tel. (775) 334-2800 / Fax: (775) 324-1818

Counsel for Paul A. Morabito

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA
(RENO)

In re
PAUL A. MORABITO, an individual,
Alleged Debtor.

Case No. BK-N-13-51237

Chapter No. 7

**DECLARATION OF COUNSEL FOR
HARTFORD FIRE INSURANCE
COMPANY IN OPPOSITION TO
PETITIONING CREDITORS' MOTION
FOR SUMMARY JUDGMENT**

Date: November 20, 2013

Time: 10:00 A.M.

Place: Courtroom 1

C. Clifton Young Federal Building

300 Booth Street

Reno, NV 89509

Judge: Hon. Gregg Zive

I, Peter Dubowsky, Esq., declare under penalty of perjury as follows:

1. I am counsel of record for HARTFORD FIRE INSURANCE COMPANY.
2. On behalf of Hartford, I filed a claim against Paul Morabito seeking indemnity pursuant to a performance bond issued by Hartford to one of Morabito's former

1 . entities (Second Judicial District Court, Case No. CV13-01126)

2 3 Morabito and Hartford have resolved the claim and the complaint has
3 been dismissed pursuant to the terms of a confidential settlement agreement.

4 4. Morabito is current on all obligations owed to Hartford, and, as a result,
5 Hartford has no intent or desire to join the involuntary bankruptcy proceedings as a
6 petitioning creditor.

7 5. Hartford would oppose any efforts to place Morabito into bankruptcy as
8 that will likely result in a discharge of Morabito's obligations to Hartford, and further
9 deprives Hartford of being able to enforce the terms of the parties' confidential
10 settlement agreement.

11 DATED this 30 day of September, 2014.

12
13 **DUBOWSKY LAW OFFICE**
14 330 South Third Street, Suite 680
Las Vegas, Nevada 89101

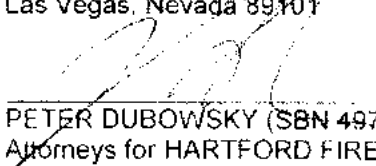
15
16 
17 PETER DUBOWSKY (SBN 4972)
Attorneys for HARTFORD FIRE INSURANCE COMPANY

EXHIBIT 3

EXHIBIT 3

Sep. 23. 2014 4:25PM RBS&L

No. 0940 P. 2/3

Barry L. Breslow, Esq. (SBN 3023)
Frank C. Gilmore, Esq. (SBN 10052)
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
Tel: (775) 329-3151 / Fax: (775) 329-7941

Jeffrey L. Hartman, Esq. (SBN 1807)
Hartman & Hartman
510 W. Plumb Ln., Suite B
Reno, Nevada 89509
Tel: (775) 334-2800 / Fax: (775) 324-1818

Counsel for Paul A. Morabito

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA
(RENO)

In re
PAUL A. MORABITO, an individual,
Alleged Debtor.

Case No. BK-N-13-51237

Chapter No. 7

DECLARATION OF CUSTODIAN OF
RECORDS FOR TIME WARNER CABLE
IN OPPOSITION TO PETITIONING
CREDITORS' MOTION FOR SUMMARY
JUDGMENT

Date: November 20, 2013

Time: 10:00 A.M.

Place: Courtroom 1

C. Clifton Young Federal Building

300 Booth Street

Reno, NV 89509

Judge: Hon. Gregg Zive

I, Robert Suter, declare under penalty of perjury as follows:

1. I am the custodian of record for TIME WARNER CABLE, a creditor of
Paul A. Morabito, and do make this Declaration pursuant to the records maintained by
me.

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

Sep. 23. 2014 4:25PM RBS&L

No. 0940 P. 3/3

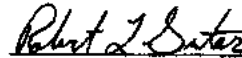
2. Paul A. Morabito is a customer of TIME WARNER CABLE, which provides cable T.V. and internet.

3. I can confirm that Paul A. Morabito's account is maintained in good standing and he has a history of timely payments on his account, with no negative payment remarks.

4. I can confirm that Mr. Morabito pays his account when due, and, as a result, TIME WARNER CABLE has no intent or desire to join the involuntary bankruptcy proceedings.

DATED this 26 day of September, 2014.

TIME WARNER CABLE



By: Robert Suter

Its: Sr. Analyst TWC Herndon VA

EXHIBIT 4

EXHIBIT 4

Robert B. Ziv, Esq. (SBN 9621)
 United States Bankruptcy Court, District of Nevada
 ROBERTSON, BULL, MULLIGAN, SHARP & TOW
 717 Washington Street
 Reno, Nevada 89509
 Tel.: (775) 329-4141 Fax: (775) 329-4941

Kathleen C. Hartman Esq. (SBN 1007)
 Hartman & Hartman
 815 W. Plumberton, Suite B
 Reno, Nevada 89509
 Tel.: (775) 334-2800 Fax: (775) 329-6818
 Counsel for Paul A. Morabito

UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF NEVADA
 (RENO)

Paul A. Morabito, an individual,
 Alleged Debtor

Case No. BK No. 13-51237

Chapter No. 7

**DECLARATION OF EDWARD BAYUK
 IN SUPPORT OF PAUL A. MORABITO'S
 OPPOSITION TO MOTION FOR
 SUMMARY JUDGMENT**

Date: November 20, 2013
 Time: 10:00 A.M.
 Place: Courtroom 1
 C. Clifton Young Federal Building
 300 Booth Street
 Reno, NV 89509
 Judge: Hon. Gregg Zive

1. EDWARD BAYUK, declare under penalty of perjury as follows:

1. I am over the age of eighteen years and declare the veracity of my own personal knowledge.

2. I am a former business partner of Paul Morabito.

Edward B. Bayuk, Esq.
 Mark A. Goss
 1750 Washington Blvd.
 Reno, NV 89501
 (775) 329-4141

1 Prior to September 1, 2013, I was a creditor of Mr. Morabito and was the holder
2 of a promissory note made by Mr. Morabito in my favor in the amount of approximately
3 \$500,000.

4 In consideration of the past friendship, loyalty, and successful past business
5 venture which Mr. Morabito and I have shared, I made a gift to Mr. Morabito in the amount of
6 the debt to me and I have destroyed the promissory note.

7 I intend to continue gifting Mr. Morabito money in the future, if and when he
8 requires it to enable him to meet his monthly obligations.

9 I have no intention of becoming involved as a petitioner in any voluntary
10 bankruptcy proceedings. I reject a granted or non-voluntary petition to liquidate Mr.
11 Morabito. I do not intend to submit a proof of claim for any past debt or obligation owed to me
12 whatsoever.

13 Dated this 13 day of October, 2014.

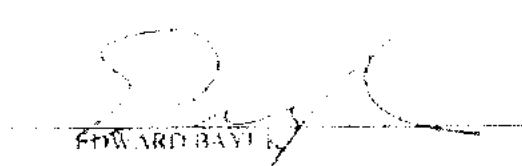
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EDWARD BAYL

EXHIBIT 5

EXHIBIT 5

Barry L. Breslow, Esq. (SBN 3023)
Frank C. Gilmore, Esq. (SBN 10052)
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
Tel: (775) 329-3151 / Fax: (775) 329-7941

Jeffrey L. Hartman, Esq. (SBN 1607)
Hartman & Hartman
510 W. Plumb Ln., Suite B
Reno, Nevada 89509
Tel: (775) 334-2800 / Fax: (775) 324-1818

Counsel for Paul A. Morabito

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA
(RENO)

In re
PAUL A. MORABITO, an individual.
Alleged Debtor.

Case No. BK-N-13-51237

Chapter No. 7

**DECLARATION OF CARL BARBIERI IN
OPPOSITION TO PETITIONING
CREDITORS' MOTION FOR SUMMARY
JUDGMENT**

Date: November 20, 2013

Time: 10:00 A.M.

Place: Courtroom 1

C. Clifton Young Federal Building

300 Booth Street

Reno, NV 89509

Judge: Hon. Gregg Zive

I, CARL BARBIERI, declare under penalty of perjury as follows:

1 My wife and I are the Claimants in the litigation pending in the American
Arbitration Association action captioned *Barbieri et al v. Marcus & Milichap et al*. Case
No. 74115Y8914, in which Paul Morabito is a respondent ("AAA Action"). I make this

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

1

1 declaration on my own personal knowledge and I am competent to testify to the
2 statements herein

3 2 Mr. Morabito and I are in the process of negotiating a settlement of the
4 AAA Action claims against him, although no agreement has yet been reached.

5 3 I oppose any efforts to place Morabito into bankruptcy as that will deprive
6 me of the ability to maintain my AAA Action against him in the forum of my choosing.

7 4 Further, implementation of an automatic stay in bankruptcy would
8 prejudice me greatly, as there is an arbitration hearing date set for April 2015, and I
9 very much desire to maintain that arbitration date in order to achieve speedy resolution
10 of the matter.

11 5 Further, if Morabito were forced into bankruptcy, I recognize the
12 possibility, if not the likelihood, that my AAA claim would be discharged and I would be
13 left with the possibility of no recovery and no opportunity for settlement.

14 6 Lastly, if Mr. Morabito were adjudged bankrupt, any settlement agreement
15 reached between he and I would be unenforceable and likely discharged. I would be
16 strongly opposed to such a result.

17 DATED this 2nd day of October, 2014.


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21 CARL BARBIERI
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EXHIBIT 6

EXHIBIT 6

Sep 23, 2014 4:26PM RECEIVED

No. 0938 T. 2/2

Barry-L. Breslow, Esq. (SBN 3023)
 Frank C. Gilmore, Esq. (SBN 10052)
 ROBISON, BELAUSTEGUI, SHARP & LOW
 71 Washington Street
 Reno, Nevada 89503
 Tel: (775) 329-3151 / Fax: (775) 329-7041

Jeffrey L. Hartman, Esq. (SBN 1607)
 Hartman & Hartman
 510 W. Plumb Ln., Suite B
 Reno, Nevada 89508
 Tel: (775) 334-2800 / Fax: (775) 324-1818

Counsel for Paul A. Morabito

UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF NEVADA
 (RENO)

in re
 PAUL A. MORABITO, an Individual,
 Alleged Debtor.

Case No. BK-N-13-51237

Chapter No. 7

**DECLARATION OF CUSTODIAN OF
 RECORDS FOR LOS ANGELES
 DEPARTMENT OF WATER & POWER IN
 OPPOSITION TO PETITIONING
 CREDITORS' MOTION FOR SUMMARY
 JUDGMENT**

Date: November 20, 2013
 Time: 10:00 A.M.
 Place: Courtroom 1
 C. Clifton Young Federal Building
 300 Booth Street
 Reno, NV 89509
 Judge: Hon. Gregg Zive

I, GREGORY D. SILVA, declare under penalty of perjury as follows:

1. I am the custodian of record for LOS ANGELES DEPARTMENT OF
 WATER & POWER, a creditor of Paul A. Morabito, and do make this Declaration
 pursuant to the records maintained by me.

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

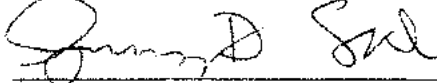
2 Paul A. Morabito is a customer of LOS ANGELES DEPARTMENT OF
WATER & POWER, which provides residential power and water.

3 I can confirm that Paul A. Morabito's account is maintained in good
4 standing and he has a history of timely payments on his account, with no negative
5 payment remarks.

6 I can confirm that Mr. Morabito pays his account when due, and, as a
7 result, LOS ANGELES DEPARTMENT OF WATER & POWER has no intent or desire
8 to join the involuntary bankruptcy proceedings.

9 DATED this 30 day of September, 2014.

LOS ANGELES DEPARTMENT OF WATER &
POWER



By GREGORY D. SILVA

Its: LEGAL LIAISON TO CUSTOMER SERVICE

EXHIBIT 7

EXHIBIT 7

PAUL A MORABITO
Closing Date 06/28/13

Account Ending 1-47002

Please Pay By	07/13/13
----------------------	-----------------

 See page 2 for additional information.



Amount Due
\$110,764.18

AMERICAN EXPRESS
BOX 0001
LOS ANGELES CA 90096-8000

Citi® Platinum Select® / AAdvantage® Visa Signature® Card**citi**

PAUL A MORABITO
 Member Since 1998 Account number ending in: 6304
 Billing Period: 06/14/13-06/12/13

How to reach us
www.citicards.com
 1-888-419-7559
 BOX 6500 SIOUX FALLS, SD 57117

Minimum payment due: **\$130.92**
 New balance: **[REDACTED]**
 Payment due date: **07/08/13**

Make a payment now! www.payonline.citicards.com

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to \$35 and your APRs may be increased up to the variable Penalty APR of 29.99%.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on the statement in about...	And you will end up paying an estimated total of...
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

For information about credit counseling services, call 1-877-337-6167.

Account Summary

Previous balance [REDACTED]
 Payments [REDACTED] **\$500.00**
 Credits [REDACTED]
 Purchases [REDACTED]
 Cash advances [REDACTED]
 Fees [REDACTED]
 Interest [REDACTED]

New balance [REDACTED]


Credit Limit


[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

citi

P.O. Box 6004
 Sioux Falls, SD 57117-6004

Your Statement Is Inside

 Pay online www.citicards.com

 Pay by phone 1-888-419-7559

 Pay by mail Use this coupon

- Enclose a valid check or money order payable to CITI CARDS. No cash or foreign currency.
- Write the last four digits of your account number on your check.

Minimum payment due **\$130.92**
 New balance **[REDACTED]**
 Payment due date **07/08/13**

Amount enclosed: \$

Account number ending in 6304

CITI CARDS
 Processing Center
 Des Moines, IA 50363-0005





PAUL A MORABITO
Account Number: [REDACTED] 7059
July 9 - August 7, 2013

Account Information:
www.bankofamerica.com

Mail billing inquiries to:
Bank of America
P.O. Box 982235
El Paso, TX 79998-2235

Mail payments to:
Bank of America
P.O. Box 15019
Wilmington, DE 19880-5019

Customer Service:
1.800.789.8701

(1.800.348.3178 TTY)

Payment Information		
New Balance Total	[REDACTED]	
Current Payment Due	\$29.00	
Total Minimum Payment Due	\$29.00	
Payment Due Date	9/4/13	
Late Payment Warning: If we do not receive your Total Minimum Payment by the date listed above, you may have to pay a late fee of up to \$35.00 and your APRs may be increased up to the Penalty APR of 29.99%.		
Total Minimum Payment Warning: If you make only the Total Minimum Payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:		
If you make no additional charges using this card and each month you pay:	You will pay off the balance shown on this statement in about:	And you will end up paying an estimated total of:
Only the Total Minimum Payment	9 years	[REDACTED]
[REDACTED]	36 months	[REDACTED]
If you would like information about credit counseling services, call 1-866-300-5238.		

Account Summary	
Previous Balance	[REDACTED]
Payments and Other Credits	-1,029.01
Purchases and Adjustments	[REDACTED]
Fees Charged	[REDACTED]
Interest Charged	[REDACTED]
New Balance Total	[REDACTED]
Total Credit Line	[REDACTED]
Total Credit Available	[REDACTED]
Cash Credit Line	[REDACTED]
Portion of Credit Available for Cash	[REDACTED]
Statement Closing Date	8/7/13
Days in Billing Cycle	30

Transactions						
Transaction Date	Posting Date	Description	Reference Number	Account Number	Amount	Total
		Payments and Other Credits				
08/02	08/05	PAYMENT - ELECTRONIC	0050		-1,000.00	[REDACTED]
		Purchases and Adjustments				
		continued on next page...				

BANK OF AMERICA
P.O. BOX 15019
WILMINGTON, DE 19886-5019

Account Number: [REDACTED] 7059

New Balance Total

Total Minimum Payment Due29.00

Payment Due Date09/04/13

Enter payment amount \$

☐ Check here for a change of mailing address or phone numbers.
Please provide all corrections on the reverse side.
Mail this coupon along with your check payable to: Bank of America

Account Summary	
Previous Balance	
Payments and Other Credits	198.00
Purchases and Adjustments	
Fees Charged	
Interest Charged	
New Balance Total	
Total Credit Line	
Total Credit Available	
Cash Credit Line	
Portion of Credit Available for Cash	
Statement Closing Date	8/7/13
Days in Billing Cycle	30

U.S. TRUST
Bank of America Private Wealth Management

Bank of America Accolades®
American Express® Card

PAUL MORABITO
Account Number: [REDACTED] 1500
July 10 - August 8, 2013

Account Information:
www.bankofamerica.com

Mail billing inquiries to:
Bank of America
P.O. Box 862235
El Paso, TX 79086-2235
Mail payments to:
Bank of America
P.O. Box 15019
Wilmington, DE 19886-5019
Customer Service:
1.800.478.6030

(1.800.346.3178 TTY)

Payment Information		
New Balance Total	[REDACTED]	
Current Payment Due	\$2,045.00	
Total Minimum Payment Due	\$2,045.00	
Payment Due Date	9/5/13	
Late Payment Warning: If we do not receive your Total Minimum Payment by the date listed above, you may have to pay a late fee of up to \$35.00.		
Total Minimum Payment Warning: If you make only the Total Minimum Payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:		
Only the Total Minimum Payment	48 years	[REDACTED]
	36 months	[REDACTED]
If you would like information about credit counseling services, call 1-866-300-5238.		

Account Summary	
Previous Balance	[REDACTED]
Payments and Other Credits	-2,089.00
Purchases and Adjustments	[REDACTED]
Fees Charged	[REDACTED]
Interest Charged	[REDACTED]
New Balance Total	[REDACTED]
Total Credit Line	[REDACTED]
Total Credit Available	[REDACTED]
Cash Credit Line	[REDACTED]
Portion of Credit Available for Cash	[REDACTED]
Statement Closing Date	8/8/13
Days in Billing Cycle	30

Transactions						
Transaction Date	Posting Date	Description	Reference Number	Account Number	Amount	Total
08/02	08/05	Payments and Other Credits PAYMENT - ELECTRONIC	0050		-2,089.00	-2,089.00
		Purchases and Adjustments				
		[REDACTED]				
		[REDACTED]				

BANK OF AMERICA
P.O. BOX 15019
WILMINGTON, DE 19886-5019

Account Number: [REDACTED] 1500

New Balance Total [REDACTED]
Total Minimum Payment Due 2,045.00
Payment Due Date 09/05/13

Enter payment amount \$

☐ Check here for a change of mailing address or phone numbers.
Please provide all corrections on the reverse side.
Mail this coupon along with your check payable to: Bank of America

CERTIFICATE OF SERVICE

Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, that I am over the age of 18 and not a party to the above-referenced case, and that on the date below I caused to be served a true copy of the **OPPOSITION TO MOTION TO MOTION FOR SUMMARY JUDGMENT** on all parties to this action by the method(s) indicated below:

X I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Gabrielle A. Hamm
bknotices@gordonsilver.com;
bankruptcyntices@gordonsilver.com
Brian R. Irvine
birvine@gordonsilver.com,
sglantz@gordonsilver.com
Mark M. Weisenmiller
MWEISENMILLER@GORDONSILVER.COM
Attorney for Creditor Berry-Hinckley Industries,
Creditor JH, Inc., Creditor Jerry Herbst

U.S. TRUSTEE - RN - 11
USTPRegion17.RE.ECF@usdoj.gov
U.S. Trustee

Jeffrey L. Hartman
ntices@bankruptcyreno.com
Attorney for Paul A. Morabito

Michael R. Kealy
Mkealy@parsonsbehle.com
Attorney for Party in Interest Desi
Moreno 2001 Trust, Ohm Place/4900
Mill Street, LLC, Mill Ohm Posada,
LLC, 788 Mallory, LLC

Robert M. Charles, Jr.
rcharles@lrlaw.com,
BankruptcyNotices@lrlaw.com
Attorney for Interested Party Lewis and Roca
LLP

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

BMW Financial Services NA, LLC Department
Post Office Box 201347
Arlington, TX 76006

GE Capital Retail Bank
c/o Recovery Management Systems Corporation
25 SE 2nd Avenue, Suite 1120
Miami, Florida 331331-1605

DATED: This 3rd day of October, 2013.

/s/ Mary Carroll Davis

From: Dennis Vacco
Sent: Friday, March 30, 2012 2:47 PM
To: 'Edward Bayuk'
CC: 'Paul Morabito'; Stephanie Canastraro; Richard Scherer; 'Frank Gilmore'
Subject: LETTER TO BOA
Attachment(s): "BAYUK LTR TO BOA 3-30-12.doc", "Snowshoe Petroleum.pdf"

Edward,

Please review the attached letter. We need this letter to BOA so it can initiate a request to Royal requesting a diminution of the security collateral/ Letter of Credit. Please put this letter on CWC letterhead (Snowshoe will do but CWC is better) and mail directly, with enclosure to the address indicated. Please send to me a signed PDF copy so I can send to Peak and Maiorella.

Don't forget to include the letter from Raffles.

Thanks.

DENNIS C. VACCO, Esq.
Lippes Mathias Wexler Friedman LLP
665 Main Street, Suite 300
Buffalo, New York 14203
716-853-5100 (office)
716-853-5199 (fax)
716-713-1679 (cell)
DVacco@Lippes.com

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March 30, 2012

Bank of America, N.A.
ATTN: Standby LC Dept.
CA9-705-07-05
1000 W. Temple Street, 7th Floor
Los Angeles, CA. 90012

Re: Letter of Credit Number 3077485

To Whom It May Concern:

Please be advised that on behalf of Consolidated Western Corporation and its parent company, Snowshoe Petroleum, Inc., I am writing to request that Bank of America ("BOA") send a formal request to Royal Bank of Canada ("Royal") requesting a reduction in the cash security collateral which is on deposit with BOA as security for Letter of Credit, number 3077485, issued in favor of Royal. Presently there is \$1,204,479 in the security collateral account held by BOA.

Attached hereto is a letter from Raffles Insurance Limited ("Raffles") dated March 28, 2012 which states that the security collateral required to support the asset can be reduced. I draw your attention to the second to the last paragraph of the Raffles letter wherein it indicates that if a decrease in security collateral is authorized, we should "instruct your L/C provider to process the appropriate adjustment." Presently the Letter of Credit which forms the basis for this security collateral is in the amount of \$1,134,685. Therefore we are instructing BOA to request that Royal release all funds in the security collateral account *except* for \$81,010 which is still required by Raffles to secure the asset.

Thank you for your anticipated prompt attention to this request. If you have any questions regarding these instructions, please contact Mr. Dennis C. Vacco, Esq., at 716-853-5100.

Sincerely,

Edward W. Bayuk
Consolidated Western Corporation, LLC
Snowshoe Petroleum, Inc.

CC: Mr. David Maiorella, Bank of America
Mr. Steven Peek
Mr. Paul A. Morabito

Encl.

From: Paul Morabito [pmorabito@cowestco.com]
Sent: Wednesday, March 10, 2010 1:50 AM
To: jon@aim13.com
CC: dfcantor@gmail.com; Dennis Vacco
Subject: Strictly Confidential
Attachment(s): "Archived"

Jon

Please see attached the ExxonMobil CIM for Florida, and associated maps. Please keep this strictly confidential, and do not forward – use this as the basis of our continued conversations only. My intention is to contribute my existing Arizona (11 stores) and Nevada (51% of the truckstop/casino) businesses at a FMV of approximately \$40 million – and get a partner to assist in acquiring these markets, and possibly NYC and New Jersey.

I look forward to going into further detail on this with you in Manhattan.

SUMMARY:

Southwest

Total Fee Stores: 29
Total gallons for fee stores: 52,367,000
Total stores: 33, with total gallons: 57,951,000

Southeast

Total Fee Stores: 127
Total gallons for fee stores: 256,906,000
Total stores: 150, with total gallons: 307,450,000

Orlando

Total Fee Stores: 37
Total gallons for fee stores: 78,633,000
Total stores: 41, with total gallons: 89,921,000

SUMMARY

Total Fee Stores: 193
Total gallons for all fee stores: 387,906,000
Total stores: 224, with total gallons: 455,322,000

Paul Morabito

Chairman & Chief Executive Officer

CONSOLIDATED WESTERN CORPORATION • Big Wheel Travel Center & Casino • Superpumper, Inc. • Superpumper Canada Limited • Cowestco Special Risk LLC

14631 North Scottsdale Road, Suite 125, Scottsdale, Arizona 85254 • 59 Damonte Ranch Parkway, Suite B-335, Reno, Nevada 89521 • 100 King Street West, Suite 5700, First Canadian Place, Toronto, Ontario, Canada M5X 1C7
Tel.: (775) 682-3910 • UK: +44(0)777-0 385-385 • CDN: (416) 915-4160 • fax: (480) 222-1062 • mobile: (775) 223-3585 • e-mail: pmorabito@cowestco.com

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CONFIDENTIALITÉ: Ce message courriel (y compris les pièces jointes, le cas échéant) est confidentiel et destiné uniquement à la personne ou à l'entité à qui il est adressé. Toute utilisation ou divulgation non permise est strictement interdite. L'obligation de confidentialité et de secret professionnel demeure malgré toute divulgation. Si vous avez reçu le présent courriel et ses annexes par erreur, veuillez nous en informer immédiatement et le détruire. Nous vous remercions de votre collaboration.

From: Paul Morabito [pmorabito@cowestco.com]
Sent: Thursday, May 20, 2010 9:43 AM
To: Dennis Vacco; mpace@millertthomson.com
CC: Mark Frederick; Stan Bernstein; Jeffrey M. Fleischer; glongo@cowestco.com; Edward Bayuk; Sam Morabito; Pasquale, Stephen; Gino Vendittelli
Subject: PRIORITY

All:

We have made the determination to proceed with placing a BINDING BID on June 22nd with ExxonMobil (XOM) for the 88 stores in the Chicago marketplace. The following process needs to happen asap:

1. set up **Consolidated Canada Corporation** as a British Columbia unlimited liability corporation, wholly owned by **Snowshoe Capital LLC**
2. **Snowshoe Capital LLC** is a Nevada S Corp owned 7.5% by Edward Bayuk, 5% by Sam Morabito and 2.5% by **Hanoosh Holdings Ltd.**, an Ontario company owned by Dr. Anna Kobylecky, 1% by George Longo and 84% by myself through the **Arcadia Living Trust**, my Nevada living trust
3. arrange paperwork for me to transfer into CCC 100% of the shares of **Consolidated Western Corporation**, which owns 100% of **Superpumper, Inc.**, at a FMV of \$30 million
4. arrange paperwork for Gino Vendittelli to transfer into CCC 100% of the shares of **Victoria & Greenlane Auto Service Center Ltd.** in exchange for a 2% ownership in CCC and a note to his partner, Albino Di Santo, for C\$1.1 million whose terms I will explain in another email
5. the assets being acquired will be done through **Superpumper Chicago, Inc.** an Illinois S corp that will be 100% owned by CCC
6. we are seeking financing from BMO Harris with the support of the EDC – in order for this to happen, we need this corporate structure in place BEFORE I have my meeting with the EDC in Mississauga next Thursday

Having made the decision to do this, we need this process completed asap. I am in court today, so I need Stan and Stephen to communicate, and Dennis and Michael to make this happen. George Longo will be coordinating everything.

Paul Morabito
Chairman

Consolidated Canada Corporation • Consolidated Western Corporation • American Oil Distribution Co. • Signal Specialty Risk LLC
14631 North Scottsdale Road, Suite 125, Scottsdale, Arizona 85254-2711 • 59 Damonte Ranch Parkway, Suite B-335, Reno, Nevada 89521-1907
100 King Street West, Suite 5700, First Canadian Place, Toronto, Ontario M5X 1C7
tel.: (775) 682-3910 • UK: 07770 385385 • Canada: (416) 915-4160 • fax: (480) 222-1062 • mobile: (775) 223-3585 • e-mail: pmorabito@cowestco.com

please direct all mail and deliveries to the address in Scottsdale, Arizona, above

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Compass

P. O. Box 10566
Birmingham, Alabama 35296

AFFIDAVIT

VERIFICATION OF AUTHENTICITY OF BBVA COMPASS RECORDS

BEFORE ME, the undersigned authority personally appeared Shanta Tate
who being duly sworn, deposes and says:

My name is Shanta Tate I am over the age of 18 and
qualified to make this affidavit. I am employed by BBVA Compass as a
Item Processor and also serve as the Custodian of Records or otherwise for
BBVA Compass. I have been employed by BBVA Compass since December 20, 2010
Attached to this affidavit are true and correct copies of BBVA Compass records.

I do hereby certify that these records were made at or near the time of the
occurrence of the activity reflected herein, by a person with knowledge of those matters or
from information transmitted by a person with knowledge. The attached copies of records
are maintained by BBVA Compass in the course regularly conducted business activity.
These records were made as regular practice by BBVA Compass during the course of said
business activity.

Shanta Tate

Signature of affiant

12.21.16

Date

The foregoing affidavit was sworn to and subscribed before me on this 21st day of
December 2016.

Nameta Sue Henderson

Notary Public

**My Commission Expires
9/20/2020**

Paul Anthony Georges Morabito
Statement of Assets & Liabilities
as of Sunday, May 30th, 2010

Assets		Liabilities	
Personal Residences & Effects 8255 Panorama Drive Reno, Washoe County, Nevada 371 El Camino del Mar, Laguna Beach, Orange County, California 370 Los Olivos, Laguna Beach, Orange County, California 1254 Mary Fleming Circle, Palm Springs, Riverside County, California Artwork - paintings, sculptures, collectibles and rare maps Jewelry - birth pieces, rings etc. Personal Effects including antiques, furniture etc.	primary residence	Real Property Fee Mortgages Bank of America Mortgage Bank of America Mortgage Bank of America Mortgage Bank of America Mortgage Other Personal Outstanding Debt & Obligations Bank of America The Private Bank - lines of credit American Express Cardholder Commercial Mortgages and Obligations Guaranteed By Principal Superpumper, Inc. - line of credit with BBVA Compass & Shell Oil Products, US Sport Finance Co., property lease Fernley, Nevada Bank of America Mortgage Bank of America Mortgage	NOTE: \$ 738,622 \$ 565,058 \$ 530,276 \$ 189,661 \$ 2,118,624 \$ 1,545,000 \$ 1 \$ 1,545,001 \$ 4,000,000 \$ 5,500,000 \$ 550,000 \$ 720,417 \$ 6,773,417 \$ 12,434,042
	vacation home		
	vacation home		
	vacation home		
Cash & Demand Notes Bank of America, The Private Bank, Palm Desert, California Comerica Bank, Century City, California BMO Harris Private Bank, Toronto, Ontario Development Demand Note Receivable from Jerry Herbst Raffles Insurance Co., cash value cash on hand			
Investments, Commercial Real Estate & Miscellaneous 54% Common Shares, Consolidated Nevada Corporation; 100% Common Shares, Consolidated Western Corporation; 87.5% Common Shares, Cowestco Investment LLC 10% Common Shares, Big Wheel Lodging LLC; 10% Common Shares, Big Wheel Properties LLC; 51% Common Shares, Big Wheel Gaming LLC; 80% Common Shares, Watchmyblock LLC; United States Patent & Trademark Office application number US867887,707 50% Common Shares, Superpumper Properties LLC; 25% Common Shares, First Newport Insurance Associates LLC; 1491 Glenneyre, Laguna Beach, Orange County, California 570 Glenneyre, Laguna Beach, Orange County, California Nevada State Highway 445 & Caba De La Plata, Sparks, Washoe County, Nevada unit in Rosemont Seabury LLP, New York City, New York 2006 Range Rover HSE	office building		
	medical office building		
	raw land		
Assets Total		Liabilities Total	

Notes:

all residential and commercial properties and investments shown at Fair Market Value unless noted otherwise

- primary residence - 5 acres of ranch property, water rights, barn and 9,400 square feet principal residence owned 30% by Edward W. Bayuk and 70% by Paul Morabito
- 2,200 square foot vacation residence owned 25% by Edward W. Bayuk and 75% by Paul Morabito
- 1,900 square foot guest house vacation residence owned 50% by Edward W. Bayuk and 50% by Paul Morabito
- 3,500 square foot vacation residence owned 50% by Edward W. Bayuk and 50% by Paul Morabito
- as outlined in detailed schedule to AIG Private Insurance on the Umbrella Policy with Rider
- as outlined in detailed schedule to AIG Private Insurance on the Umbrella Policy with Rider
- 54% of Promissory Note personally guaranteed by Jerry Herbst, CEO of Terrible Herbst, Inc. in support of property developments assigned to Consolidated Nevada Corporation in 2007
- cash value of captive insurance entity in Bridgetown, Barbados
- Nevada corporation that previously owned Berry-Hindley Industries
- Nevada corporation that owns Superpumper, Inc. which operates 11 Shell franchised gas service stations and 5 convenience stores; gas stations under a jointer agreement with Shell Oil Products US
- minimum \$5 million operating line of credit at BBVA Compass Bank in Scottsdale, Arizona, and \$1 million wholesale fuel operating line with Shell Oil Products US, Houston, Texas
- membership interest - Nevada corporation owning 100% of Cowestco Holdings Inc., which owns 84.5% of Cowestco Canada Holdings LLC, a British Columbia LLC; Superpumper Chicago LP;
- membership interest - Fernley Travel Centers on 7 acres in Fernley, Nevada developing casino, truckstop and IHOP restaurant
- ground lease with option to buy beneficially owned by LLC
- beneficiary to operate 240 slot machines at Fernley Travel Center in Fernley, Nevada
- membership interest in company developing realtime connection of law enforcement emergency CAD 911 systems to civilian cellular and electronic mod systems accessed through Neighborhood Watch
- United States Patent & Trademark Office application number US867887,707
- beneficial owner of three fee properties in Elko & Lovelock, Nevada leased to Western Energetix Inc., a unit of Nalco Oil Inc.
- membership interest - Los Angeles, California based insurance brokerage with \$200 million HSBC premium line
- 4,300 square foot mixed used commercial office building with apartment, as well as 3 covered and 5 onsite parking - owned jointly with Edward Bayuk in Bank Properties LLC
- 6,000 square foot mixed used commercial building with 22 onsite parking and loading bay, in Laguna Beach's Central Business District, formerly the main United States Post Office - owned jointly with Edward Bayuk in Bank Properties LLC
- 48,000 square foot commercial building property adjacent to convenience store and to-be licensed facility
- investment in private equity Limited Partnership directed by a company controlled by Christopher Heinz III, Rosemont Seabury Farms, L.P., Pittsburgh, Pennsylvania

I certify the attached to be true to the best of my direct knowledge:

Paul Anthony Georges Morabito
resident of Washoe County, Nevada
Sunday, May 30th, 2010

STRICTLY CONFIDENTIAL

Compass 000085



From: Paul Morabito [pmorabito@cowestco.com]
Sent: Monday, June 28, 2010 10:25 AM
To: george.r.garner@exxonmobil.com
CC: don.j.salamack@exxonmobil.com; dan.nelson@nelsoninsight.com;
jfleischer@straightlinemerchantcapital.com; tucker.quayle@gmail.com; jdquayle47@gmail.com;
Jones, James; ggardnerjones@gmail.com; Dennis Vacco
Subject: RE: ExxonMobil Chicago Market Business Plan Review

George

We have executives from Getty Realty, our sale lease/back provider, and BMO Harris NA, our commercial bank from Chicago, in attendance on Thursday in Scottsdale.

Our financing is very simple: we have an \$80 million sale lease/back arranged through Getty Realty (NYSE:GTY) - this is a 15 year term lease, with two options to renew at 10 years each. The base cap rate is at 10%, with final adjustments on pricing to be determined. The board of Getty will have approved this transaction within three weeks, and they can close shortly thereafter.

Through my Canadian bank, we have a commitment letter from Chicago based BMO Harris Bank for \$20 million in the form of letters of credit (\$10 million) and lines of credit (\$10 million). I am merging the ownership of the Chicago assets and my existing Superpumper, Inc., assets in Arizona, together.

The Arizona company, which I presently own 100% of, has a FMV exceeding \$25 million; annual cashflow of \$5 million; and has no term debt, just an existing line of credit for \$3 million. Superpumper, Inc., and Superpumper Chicago LP, will be jointly owned by my holding company, Consolidated Western Corporation. I am contributing an additional \$3 million in cash to Consolidated Western Corporation - which will increase its book value to approximately \$11 million.

Dan Nelson, the former Vice President of Government Relations for ExxonMobil, is a 5% shareholder in Superpumper Chicago LP; as is Jeffrey M. Fleischer. Vice President Dan Quayle and his son, Tucker, through Tynwald Capital LLC, will own 1% of the combined Consolidated Western Corporation at that time. Upon merger, Messrs. Nelson and Fleischer will trade their Superpumper Chicago LP stock for 3% each in Consolidated Western Corporation.

Our plan is to acquire an additional 130+ store independent operator in the SouthWest - and convert its existing 240 million gallons to ExxonMobil brand as quickly as practicable. At that time, the Quayle's ownership through Tynwald Capital will adjust as they will also have 10% of this new investment vehicle; and former United States Ambassador Jim Jones, and his son, Geoffrey, will also be joining us as 10% shareholders in this new company. Jeffrey Fleischer is also receiving additional equity in this transaction. Just as with Chicago, our plan will be to merge the ownership of this entity into Consolidated Western Corporation, with appropriate dilution of ownership applied. We anticipate the acquisition of this new company to be \$150 million - financed \$110 million through a sale lease/back of its underlying real estate, \$30 million term loan arranged through BMO Harris NA, and \$10 million in cash equity.

We are looking forward to the opportunity to go into this in further detail on Thursday.

Paul Morabito

Chairman

Cowestco Investment LLC • Consolidated Western Corporation • Superpumper, Inc., & Superpumper Chicago LP • First Newport Insurance Associates LLP

14631 North Scottsdale Road, Suite 125, Scottsdale, Arizona 85254-2711 • 59 Damonte Ranch Parkway, Suite B-335, Reno, Nevada 89521-1907

100 King Street West, Suite 5700, First Canadian Place, Toronto, Ontario M5X 1C7

tel.: (775) 682-3910 • UK: 07770 385385 • Canada: (416) 915-4160 • fax: (480) 222-1062 • mobile: (775) 223-3585 • e-mail:

pmorabito@cowestco.com

please direct all mail and deliveries to the address in Scottsdale, Arizona, above

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—Original Message—

From: george.r.gamer@exxonmobil.com [mailto:george.r.gamer@exxonmobil.com]

Sent: Monday, June 28, 2010 7:28 AM

To: Paul Morabito

Subject: Fw: ExxonMobil Chicago Market Business Plan Review

Paul, our Treasurers Department will very interested in as much detail as possible on your financing plan (Sr. Debt amount, interest rate, from who, Mezz debt amount, interest rate, etc.). Please have you financing folks prepared to discuss in detail on Thursday. Give me a call if you have questions or concerns. Thanks.

George R. Gamer III

U.S. Market Conversion Lead

Office: 703 846 7830

Fax: 703 846 4365

Email: george.r.gamer@exxonmobil.com

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— Forwarded by George R Gamer/Fairfax/ExxonMobil on 06/28/10 10:23 AM

—

George R

Gamer/Fairfax

/ExxonMobil

To

pmorabito@cowestco.com

cc

06/28/10 10:23

Don J

AM

Salamack/Fairfax/Mobil-Notes@xom,

Chris R

LMWF SUPP 043996

4061

Mahoney/Fairfax/ExxonMobil@xom,

Note: 1 Tamarra A

Attachment(s) Fullerton/Fairfax/Mobil-Notes@xom,

removed from Karen I

this message Moreno/Fairfax/ExxonMobil@XOM,

Lindsey A

Aldrich/Fairfax/ExxonMobil@XOM

Subject

Fw: ExxonMobil Chicago Market

Business Plan Review

Paul, we will plan to arrive at the Westin Kierland Hotel , 6902 E.

Greenway Parkway, Scottsdale AZ (Westin Parke Suite conference room) around
8:00am on Thursday. We are flying in Thursday morning and therefore unable
to attend dinner on Wednesday evening.

George R. Gamer III

U.S. Market Conversion Lead

Office: 703 846 7830

Fax: 703 846 4365

Email: george.r.gamer@exxonmobil.com

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— Forwarded by George R Gamer/Fairfax/ExxonMobil on 06/28/10 10:07 AM

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George R

Garner/Fairfax

/ExxonMobil

To

pmorabito@cowestco.com

cc

06/25/10 04:20

Don J

PM

Salamack/Fairfax/Mobil-Notes@xom,

Chris R

Mahoney/Fairfax/ExxonMobil@xom,

Tamarra A

Fullerton/Fairfax/Mobil-Notes@xom,

Karen I

Moreno/Fairfax/ExxonMobil@XOM,

Lindsey A

Aldrich/Fairfax/ExxonMobil@XOM

Subject

ExxonMobil Chicago Market Business

Plan Review

Paul,

I will send you details on the expected time of our arrival on Thursday,

July 1st once I have had a chance to check flight availability.

The review should take about 3-4 hours. Additionally, we would like to tour a few of your stores.

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In preparation for the meeting, I am enclosing the following:

- List of ExxonMobil attendees
- General guideline for your Business Plan review
- Powerpoint template for your Business Plan (optional)
- List of specific areas you should cover in your presentation or be prepared to discuss

The following will be in attendance from ExxonMobil:

Don Salamack	Project Executive
Chris Mahoney	US Distributor Business Manager
Karen Moreno	Counsel
Lindsey Aldrich	Treasurers
George Gamer	Market Conversion Lead

General Guideline for Business Plan

- History of your company and yourself
 - Overview of your organization and the relevant industry experience of your leadership team
 - Present view of your business performance
 - Major operating changes and planned investments
- [attachment "Candidate Business Plan Presentation.ppt" deleted by George R Gamer/Fairfax/ExxonMobil]

Specific areas that you should cover in your presentation or be prepared to discuss:

Your company's understanding of the following key SPA provisions:

- Inspection Period requirements. Limited obligations that ExxonMobil has to resolve title and survey matters
- Indemnity requirements described in the environmental section of the PSA
- Signing Deposit and Earnest Money Deposit approach and money at risk concepts
- 15 Year branding commitment and liquidated damages

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- License and Permit requirements
- Funding into escrow 3 business days before closing date
- Transfer of environmental liability
- Underground Storage Tank Upgrades
- Employment offer requirements
- Sale of wet and dry stock and the cost basis

Describe in general terms any redline comments to the PSA. Major concerns, if any Has bank/financing/investor reviewed the PSA Has your attorney reviewed the PSA

Expand on future Method of Site Operations

How will you integrate our CORS store employees and above-site field personnel into your organization

How you will provide the fuel delivery function

How you will manage the transition of operations on the day of closing

Critical elements to maintaining and growing the business

Margin assumptions

Growth plans

Property selection process

Plans to meet upgrade requirements

Strategy to market the backcourt offering

POS and Back Office technology platforms in existing stores.

To ensure we understand material aspects of your financing plans, please cover all aspects of Schedule D (Financing Plan) contained in the CIM.

Please provide hard copies of the presentation. We look forward to a very productive meeting. If you have any questions or concerns, please do not hesitate to call me.

George R. Garner III

U.S. Market Conversion Lead

Office: 703 846 7830

Fax: 703 846 4365

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Email: george.r.gamer@exxonmobil.com

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SHAREHOLDER INTEREST PURCHASE AGREEMENT

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

WITNESSETH:

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

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

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

ARTICLE 1. **PURCHASE AND SALE**

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

ARTICLE 2.
CLOSING DOCUMENTS

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

ARTICLE 3.
REPRESENTATIONS AND WARRANTIES OF SELLER

3.1 Seller represents and warrants to the Company as follows:

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

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

ARTICLE 4.
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

4.1 The Company represents and warrants to Seller as follows:

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

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

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

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

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

ARTICLE 5. MISCELLANEOUS

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

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

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

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

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

(a) To Seller:

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

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

With a copy to:

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

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

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

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

[The Remainder of this Page Intentionally Blank]

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

SELLER:

PAUL MORABITO

COMPANY:

SNOWSHOE PETROLEUM, INC

By:



Edward Bayuk, Shareholder and Director

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

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

RECITALS:

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

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

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

ARTICLE 1.
THE MERGER

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

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

Superpumper 000046

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

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

ARTICLE 2. SHAREHOLDER APPROVAL

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

ARTICLE 3. ARTICLES OF INCORPORATION AND BYLAWS

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

ARTICLE 4. DIRECTORS AND OFFICERS

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

ARTICLE 5.
MANNER AND BASIS OF CONVERTING SHARES

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

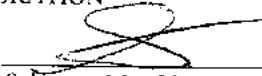
ARTICLE 6.
EFFECTIVE TIME

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

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

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

CONSOLIDATED WESTERN
CORPORATION

By: 
Name: Salvatore Morabito
Title: Vice President

SUPERPUMPER, INC.

By: 
Name: Salvatore Morabito
Title: Vice President

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

INTO

SUPERPUMPER, INC.
(An Arizona Corporation)

(ARS, §§ 10-1101, 10-1105)

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

Superpumper 000050

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

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

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

SUPERPUMPER, INC.

By: 
Name: Salvatore Morabito
Title: Vice President

Superpumper 000051

4077

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

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

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

NOW, THEREFORE, be it

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

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

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

Sep 29 2010 10:04am P001/006

Superpumper 000021

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

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

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

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

BOARD OF DIRECTORS:

Paul A. Morabito

Edward Bayuk

Salvatore Morabito

SHAREHOLDER:

Consolidated Western Corporation

By: _____
Salvatore Morabito, Vice President

EXHIBIT A

PLAN OF MERGER

Sep 29 2010 10:04am P003/006

Superpumper 000023

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

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

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

NOW, THEREFORE, be it

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

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

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

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

Sep 29 2010 10:04am P004/006

Superpumper 000024

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

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

DIRECTORS:

Paul A. Morabito

Edward Bayuk

Salvatore Morabito

SHAREHOLDERS:

Paul A. Morabito

Edward Bayuk

Salvatore Morabito

Sep 29 2010 10:04am P005/006

Superpumper 000025

EXHIBIT A

PLAN OF MERGER

Sep 29 2010 10:04am P006/006

Superpumper 000026

COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



ARIZONA CORPORATION COMMISSION

ERNEST G. JOHNSON
Executive Director

JEFF GRANT
Director
Corporations Division

October 21, 2010

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

Re: SUPERPUMPER, INC.

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

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

☐ No publication is required.

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

Sincerely,

Lottie Hawkins
Examiner
Corporations Division

1305 WEST WASHINGTON, PHOENIX, ARIZONA 85007-2928
www.azcc.gov • 602-542-3026

Superpumper 000011

4084

AZ CORPORATION COMMISSION
FILED

SEP 29 2010

FILE NO. 0150875-8

ARTICLES OF AMENDMENT AND MERGER

OF

AZ CORPORATION COMMISSION
FILED

CONSOLIDATED WESTERN CORPORATION
(a Nevada Corporation)

M-1635058-8

INTO

OCT-12-2010

FILE NO. 0150875-8

SUPERPUMPER, INC.
(An Arizona Corporation)

0150875-8

(ARS, §§ 10-1101, 10-1105)

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

PAID
135.00

3024107D

Superpumper 000012

4085

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

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

SUPERPUMPER, INC.

By: 

Name: Salvatore Morabito

Title: Vice President

Superpumper 000013

4086

**PLAN OF MERGER
OF
CONSOLIDATED WESTERN CORPORATION
WITH AND INTO**

SUPERPUMPER, INC.

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

RECITALS:

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

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

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

**ARTICLE 1.
THE MERGER**

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

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

Superpumper 000014

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

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

ARTICLE 2. SHAREHOLDER APPROVAL

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

ARTICLE 3. ARTICLES OF INCORPORATION AND BYLAWS

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

ARTICLE 4. DIRECTORS AND OFFICERS

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

ARTICLE 5.
MANNER AND BASIS OF CONVERTING SHARES

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

ARTICLE 6.
EFFECTIVE TIME

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

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

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

CONSOLIDATED WESTERN
CORPORATION

By: 
Name: Salvatore Morabito
Title: Vice President

SUPERPUMPER, INC.

By: 
Name: Salvatore Morabito
Title: Vice President

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

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

resignation.

C T CORPORATION SYSTEM

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

RE: Superpumper, Inc.

Superpumper 000018

STATE OF NEVADA

BARBARA K. CEGAVSKE

Secretary of State

KIMBERLEY PERONDI

*Deputy Secretary
for Commercial Recordings*



Commercial Recordings Division

*202 N. Carson Street
Carson City, NV 89701-4201
Telephone (775) 684-5708
Fax (775) 684-7138*

OFFICE OF THE
SECRETARY OF STATE

Certified Copy

October 4, 2018

Job Number: C20181002-2119

Reference Number: 00011112476-43

Expedite:

Through Date:

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
20100733183-68	Merge Out	6 Pages/1 Copies



Respectfully,

Barbara K. Cegavske

Barbara K. Cegavske
Secretary of State

Certified By: Paul Reyes
Certificate Number: C20181002-2119

Commercial Recording Division
202 N. Carson Street
Carson City, Nevada 89701-4201
Telephone (775) 684-5708
Fax (775) 684-7138



140102



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

Filed in the office of Ross Miller Secretary of State State of Nevada	Document Number 20100733183-68
	Filing Date and Time 09/29/2010 12:30 PM
	Entity Number E0156052006-2

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

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

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

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

Consolidated Western Corporation

Name of merging entity

Nevada

Jurisdiction

Corporation

Entity type *

Name of merging entity

Jurisdiction

Entity type *

Name of merging entity

Jurisdiction

Entity type *

Name of merging entity

Jurisdiction

Entity type *

and,

Superpumper, Inc.

Name of surviving entity

Arizona

Jurisdiction

Corporation

Entity type *

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

Filing Fee: \$350.00

This form must be accompanied by appropriate fees.

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



ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(776) 684-5708
Website: www.nvsos.gov

Articles of Merger

(PURSUANT TO NRS 92A.200)

Page 2

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

Attn: Superpumper, Inc.

c/o: 14631 North Scottsdale Road, Suite 125
Scottsdale, Arizona 85254-2711

- 3) Choose one:

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

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

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

- (a) Owner's approval was not required from

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

and, or,

Name of surviving entity, if applicable

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merger Page 2
Revised: 9-20-10



ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(775) 684-5708
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Articles of Merger

(PURSUANT TO NRS 92A.200)

Page 3

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

Consolidated Western Corporation

Name of **merging** entity, if applicable

Name of **merging** entity, if applicable

Name of **merging** entity, if applicable

Name of **merging** entity, if applicable

and, or,

Superpumper, Inc.

Name of **surviving** entity, if applicable

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

This form must be accompanied by appropriate fees.

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



ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(775) 684-5708
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Articles of Merger

(PURSUANT TO NRS 92A.200)

Page 4

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

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

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

Name of merging entity, if applicable

and, or,

Name of surviving entity, if applicable

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Merger Page 4
Revised: 9-20-10



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

Articles of Merger

(PURSUANT TO NRS 92A.200)

Page 5

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

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

☐

(a) The entire plan of merger is attached;

or,

☒

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

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

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

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

This form must be accompanied by appropriate fees.

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



ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4620
(775) 684-5708
Website: www.nvsos.gov

Articles of Merger

(PURSUANT TO NRS 92A.200)

Page 6

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

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

Consolidated Western Corporation

Name of merging entity

X

Signature

Salvatore Morabito, Vice Pres

Title

09/29/10

Date

Name of merging entity

X

Signature

Title

Date

Name of merging entity

X

Signature

Title

Date

Name of merging entity

X

Signature

Title

Date

and,

Superpumper, Inc.

Name of surviving entity

X

Signature

Salvatore Morabito, Vice Pres

Title

09/29/10

Date

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

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

This form must be accompanied by appropriate fees.

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

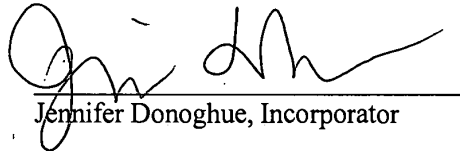
ORGANIZATION CERTIFICATE
OF
SNOWSHOE PETROLEUM, INC.

I, Jennifer Donoghue, do hereby certify that I am the Incorporator of Snowshoe Petroleum, Inc. (the "Corporation") and do further certify as follows:

1. The Certificate of Incorporation of the Corporation, a copy of which is hereto attached as Exhibit A, was filed in the Office of the Secretary of State of New York on September 29, 2010.
2. This Organization Certificate is made in lieu of an organizational meeting of the Incorporator.
3. The By-Laws relating to the business of the Corporation, the conduct of its affairs and the rights and powers of the Corporation, its shareholders, directors and officers, a copy of which is hereto attached as Exhibit B, are adopted as and for the By-Laws of the Corporation.
4. The following persons are designated as Directors of the Corporation to serve until the first annual meeting of shareholders and until their successors are elected and qualified:

Edward Bayuk
Salvatore Morabito

IN WITNESS WHEREOF, I have executed this Certificate as of the 29th day of September, 2010.


Jennifer Donoghue, Incorporator

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
October 12, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State

100929000007

CERTIFICATE OF INCORPORATION

OF

SNOWSHOE PETROLEUM, INC.

Under Section 402 of the Business Corporation Law

The undersigned, being over the age of eighteen, for the purpose of forming a corporation pursuant to Section 402 of the New York Business Corporation Law, hereby certifies:

1. The name of the corporation is: Snowshoe Petroleum, Inc. (hereinafter the "Corporation").
2. The purpose for which the Corporation is formed is to engage in any lawful act or activity for which corporations may be organized under the New York Business Corporation Law; provided that, the Corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.
3. The office of the Corporation is to be located in Erie County, New York.
4. The aggregate number of shares which the Corporation shall have the authority to issue is two hundred (200) shares without any par value per share.
5. The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any such process against it served upon him is:

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

6. (a) To the fullest extent that the New York Business Corporation Law, as now in effect or as may hereafter be amended, permits elimination or limitation of the liability of Directors, no Director of the Corporation shall be liable to the Corporation or its shareholders for damages for any breach of duty in such capacity. Any repeal or modification of this Article by the shareholders of the Corporation shall be prospective only and shall not adversely affect any elimination or limitation of the personal liability of a Director of the Corporation for acts or omissions occurring prior to the effective date of such repeal or modification.

(b) The Corporation shall indemnify and hold harmless each person (and the heirs, executors, or administrators of such person) who was or is a party or is threatened

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to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a Director or officer of the Corporation or is or was serving at the request of the Corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise, to the fullest extent permitted by the New York Business Corporation Law, as the same exists or may hereafter be amended; provided however, that except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any Director or officer (or his or her heirs, executors or administrators) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors of the Corporation.

(c) Expenses (including attorneys' fees) incurred by an officer or Director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article.

(d) To the extent authorized from time to time by the Board of Directors, the Corporation may provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation who are not Directors or officers similar to those conferred in this Article to Directors and officers of the Corporation.

(e) The rights to indemnification and to the advancement of expenses conferred in this Article shall not be exclusive of any other right which any person may have or hereafter acquire under this Certificate of Incorporation, the By-laws, any statute, agreement, vote of shareholders or otherwise.

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


Jennifer Donoghue, Incorporator
665 Main Street, Suite 300
Buffalo, New York 14203

100929000000

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RECEIVED

2010 SEP 28 PM 4:18

CERTIFICATE OF INCORPORATION

OF

SNOWSHOE PETROLEUM, INC.

Under Section 402 of the Business Corporation
Law of the State of New York

1CC
STATE OF NEW YORK
DEPARTMENT OF STATE

SEP 29 2010

FILED
TAX \$ 10
BY: ml
Gie

FILED

2010 SEP 29 AM 7:37

Lippes Mathias Wexler Friedman LLP
665 Main St., Suite 300
Buffalo, NY 14203-1425

Customer Reference # SNOWS20766

DRAWDOWN

007

Frank Gilmore

From: dvacco@lippes.com
Sent: Thursday, April 26, 2012 11:30 AM
To: Naz Afshar, CPA/CFF, Paul Morabito
Cc: Edward Bayuk; Stan Bernstein; Gary Krausz, CPA/CFF; Christian Lovelace; Stephanie
Subject: Re: IMPORTANT

Gary, I am presently in court but will be available at 4:00 Eastern. I am not sure when we last spoke about ownership structure of SPI. Initially Snowshoe owned 80% of SPI while Ed and Sam each owned 10% of SPI. Last year D'Arata, at the direction of Ed and Sam converted Snowshoe to an S corp. Since an S corp can't own another S corp, we worked with D'Arata to convert Ed's and Sam's interest in SPI so that Snowshoe owned retroactively to day one 100% of SPI. I can provide further illumination later today if you need more information. Thanks

Sent from my Verizon Wireless BlackBerry

From: "Naz Afshar, CPA/CFF" <nafshar@gursey.com>
Date: Thu, 26 Apr 2012 18:02:45 +0000
To: 'Paul Morabito' <morabito.pa@gmail.com>
Cc: Edward Bayuk <ebayuk@Superpumper.com>; Stan Bernstein <stan@bernstein-cpabiz.com>; Dennis Vacco <dvacco@lippes.com>; Gary Krausz, CPA/CFF <garyk@gursey.com>
Subject: RE: IMPORTANT

Paul,

We have not received any information with respect to Gary's inquiries from two days ago, a copy of his email is attached. The notes are not updated. We sent Stan copy of the most current trial balance which shows the financial results, and he can put together a balance sheet and income statement.

Naz

From: Paul Morabito [mailto:morabito.pa@gmail.com]
Sent: Thursday, April 26, 2012 9:40 AM
To: Naz Afshar, CPA/CFF
Cc: Edward Bayuk; Stan Bernstein; Dennis Vacco
Subject: IMPORTANT

the landlord needs AT MINIMUM a draft today ...

--
Paul A. Morabito

Chief Executive Officer

Virsenet LLC / USHFCC / Snowshoe Capital LLC

tel/text: (310) 339-0475 - fax: (480) 222-1062 - UK: 0-777-0 385385

e-mail: morabito.pa@gmail.com paul.morabito@ushfcc.com

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Naz Afshar, CPA/CFF

Partner

Tax

Gursey | Schneider LLP

1888 Century Park East, Suite 900

Los Angeles, CA 90067

<http://www.gursey.com>

p. 310.552.0960

f. 310.557.3468

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BUSINESS VALUATION AGREEMENT

This Agreement entered into this 20 day of SEP., 2010 between Matrix Capital Markets Group, Inc. ("Matrix") and Superpumper, Inc. (referred to hereinafter as "SPI" or "Company") outlines the terms and objectives of our valuation engagement.

Whereas Matrix is in the business of providing financial advisory services to companies; and whereas SPI desires to engage Matrix to provide business valuation services and valuation related advisory services for SPI; now, therefore, Matrix and SPI understand and agree to the following:

Matrix understands that it will perform a valuation of the Company for the purpose of corporate planning and that the distribution of the valuation is restricted to the internal use of the SPI's management and, accordingly, will not be distributed to outside parties to obtain credit or for any other purpose. The objective of the valuation will be to estimate the fair market value of 100% of the Company's common equity as of August 31, 2010, on a controlling, marketable basis, where the term fair market value is defined as the "price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts."

In performing the valuation, Matrix will be relying on the accuracy and reliability of the Company's historical financial statements, forecasts of future operations, and other financial data of the Company. Matrix will not audit, review, or compile Company financial statements, forecasts or other data, and Matrix will not express an opinion or any form of assurance on them. We will rely on and accept management's representations in performing our analysis. Investigation into the veracity of such representations is beyond the scope of this assignment. Further, specific procedures may or may not be performed in conformity with generally accepted auditing standards and information provided to SPI may or may not be presented in accordance with generally accepted accounting principles.

The valuation will be prepared in conformity with, and is subject to, the requirements of the code of professional ethics and standards of professional conduct of the American Society of Appraisers as well as Standard 9 of the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation (USPAP). A Restricted Use Appraisal Report will be prepared in accordance with the requirements of USPAP Standard 10 – Business Appraisal Reporting.

Matrix agrees to keep and to cause Matrix's directors, officers, employees, stockholders, and representatives to keep all information about the Company furnished by SPI confidential at all times, to return to SPI any written information furnished by SPI upon SPI's request, and not to use nor permit any of Matrix's directors, officers, employees, stockholders or representatives to use the information for any purpose other than Matrix's evaluation.

The fee for Matrix's services will be \$40,000, with \$20,000 payable at the execution of this Agreement, \$10,000 payable at the delivery of Matrix's first draft and \$10,000 payable upon delivery of the final valuation. The fee is not contingent on the value determined by this engagement. Our engagement ends upon delivery of our Restricted Use valuation report. SPI shall reimburse Matrix for all reasonable travel, meals and lodging expenses, all costs of conference services, teleconference services, long distance phone charges, third party research approved by Company in advance, printing, photocopying, production and mailing or other delivery costs associated with the services provided by Matrix herein. Client shall reimburse Matrix for such expenses promptly upon receipt of invoices from Matrix. Any follow-up services that are required will be deemed to be a separate engagement and will be governed by the terms and conditions of a subsequent financial services agreement and typically subject to hourly billing at rates ranging from \$250 to \$400 per hour.

SPI hereby agrees to indemnify Matrix, its directors, employees, agents and controlling persons (each being an "Indemnified Party") from and against any and all losses, claims, damages, liabilities and expenses, joint or several including all reasonable fees of counsel and other expenses incurred by an Indemnified Party in connection with the

preparation for, or defense of, any claim, action or proceeding whether or not resulting in any liability, to which such Indemnified Party may become subject under any applicable federal or state law, or otherwise, arising in any way out of the valuation or the performance by Matrix of services in connection with this assignment, unless it shall be finally judicially determined that such losses, claims, damages or liabilities arise solely out of gross negligence of Matrix, provided that Matrix may not settle or compromise any losses, claims, damages or liabilities for which indemnification is granted hereunder, as a condition to entitlement thereto, without SPI prior written approval, which approval will not be unreasonably withheld. The valuation cannot be relied on to disclose errors, irregularities, or illegal acts, including fraud or defalcations, that may have existed in the past or exist currently.

This Agreement is not assignable by either Party without the prior written approval of the other Party, except that to the extent any broker-dealer services are required to be performed as part of the Services, Matrix may secure such services through an assignment of all or part of its obligation to render such services to Matrix's affiliate, Matrix Private Equities, Inc. at Matrix's sole discretion. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

The Company agrees that Matrix has the right to place advertisements or notices in financial and other newspapers and journals, at its own expense, describing the services it provided to the Company but only upon consummation of the engagement; provided, all such advertisements and notices shall be subject to the Company's approval, which approval shall not be unreasonably withheld.

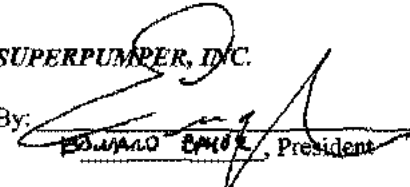
This Agreement shall be construed and enforced under the laws of the Commonwealth of Virginia, without reference to its choice of law provisions.

Acknowledged and Accepted:

MATRIX CAPITAL MARKETS GROUP, INC.

By: _____
Jeffrey Moore, President

SUPERPUMPER, INC.

By:  _____
EDUARDO BARRERA, President

LMWF000002

Invoice

PERSONAL & CONFIDENTIAL

Invoice Date : September 29, 2010

Client Information:

Name: Don Whitehead, CFO
Superpumper, Inc.
Address: 14631 North Scottsdale Road
Suite 125
Scottsdale, AZ 85254

Due Date: Upon Receipt

Date	Description	Amount
9/29/2010	Financial Consulting Services	\$ 20,000.00

TOTAL BALANCE DUE: \$ 20,000.00

Make checks payable to: Matrix Capital Markets Group, Inc.
Remit payment to: P.O. Box 1816, Richmond, VA 23218

or

Wire Transfer Instructions:
Matrix Capital Markets Group, Inc.
Wachovia Bank
1021 E. Cary St., Richmond, VA
Account #: 2070123305610
Routing#: 051400549

LMWF000003

Invoice

PERSONAL & CONFIDENTIAL

Invoice Date : October 14, 2010

Client Information:

Name: Don Whitehead, CFO
Superpumper, Inc.
Address: 14631 North Scottsdale Road
Suite 125
Scottsdale, AZ 85254

Due Date: Upon Receipt

Date	Description	Amount
10/13/2010	Financial Consulting Services-Final Payment	\$ 20,000.00
	Administrative Expenses	
10/11/2010	Conference Call	\$ 19.86

TOTAL BALANCE DUE: \$ 20,019.86

Make checks payable to: Matrix Capital Markets Group, Inc.
Remit payment to: P.O. Box 1816, Richmond, VA 23218

or

Wire Transfer Instructions:
Matrix Capital Markets Group, Inc.
Wachovia Bank
1021 E. Cary St., Richmond, VA
Account #: 2070123305610
Routing#: 051400549

LMWF000004