

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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District Court, the Honorable Connie
J. Steinheimer Presiding

APPELLANTS' APPENDIX, VOLUME 46
(Nos. 7894–8076)

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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

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

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

21 Plaintiff,

22 vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

**PLAINTIFF'S MOTION TO REOPEN
EVIDENCE**

Plaintiff William A. Leonard ("Plaintiff") hereby moves to reopen evidence in the trial of the above-referenced action, commencing October 29, 2018 and concluding November 7, 2018 (the "Trial") in order to submit material evidence in support of Plaintiff's claim for avoidance of transfers made with actual intent to hinder, delay, or defraud under NRS 112.180(1)(a), which evidence was discovered after the conclusion of the Trial.

This Motion is supported by the following Memorandum of Points and Authorities, the declaration of Gabrielle A. Hamm, Esq. (the "Hamm Decl."), attached hereto as Exhibit 1, the

1 exhibits thereto, the pleadings, papers, and other records on file with the clerk of the above-
2 captioned Court, the evidence adduced at the Trial, and any argument of counsel at the time of the
3 hearing.

4 Dated this 30th day of January, 2019.

5 GARMAN TURNER GORDON LLP

6 /s/ Erika Pike Turner

7 ERIKA PIKE TURNER, ESQ.

8 TERESA M. PILATOWICZ, ESQ.

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Special Counsel for Trustee

12
13 **I.**
INTRODUCTION

14 During the entirety of the case, including through the conclusion of the Trial, Defendants
15 vociferously denied that following the merger, Paul Morabito, the judgment debtor, had any
16 interest in or control over Superpumper, Inc. ("Superpumper") or the successor to Consolidated
17 Western Corporation, Inc., a Nevada corporation ("CWC"), Snowshoe Petroleum, Inc.
18 ("Snowshoe Petroleum"). Contrary to the sworn testimony offered by Defendants, however,
19 Plaintiff learned following the conclusion of the Trial that Paul Morabito received payments from
20 Snowshoe Petroleum as late as March 27, 2018, by way of Snowshoe Petroleum's payment of Paul
21 Morabito's attorneys' fees to the law firm of Robison, Sharp, Sullivan & Brust ("RSSB") in Paul
22 Morabito's pending bankruptcy case.

23 While Plaintiff believes that ample evidence of the "badges" of fraud was presented to
24 support the entry of judgment for avoidance of the transfer of Paul Morabito's interest in
25 Superpumper under NRS 112.180(1)(a), there was no evidence of direct payments or transfers by
26 Superpumper or Snowshoe Petroleum to or for the benefit of Paul Morabito following the subject
27 transfer, and Defendants affirmatively testified that 1) Paul Morabito's attorneys' fees were not
28 paid by Snowshoe Petroleum, and 2) Paul did not receive money from Showshoe Petroleum. New

1 evidence obtained by the Herbst Parties in Paul Morabito's chapter 7 bankruptcy case proves that
2 this testimony was false—Snowshoe Petroleum paid Paul Morabito's personal attorneys' fees in
3 2015, 2016, 2017, and 2018. That Paul Morabito received financial benefits from Snowshoe
4 Petroleum following the transfer is directly relevant, and material, to Plaintiff's claim for
5 avoidance of the transfer of Paul Morabito's interest in Superpumper as an "actually fraudulent"
6 transfer and demonstrates that Defendants materially misled the Court. As such, the evidence may
7 affect the outcome of the proceeding.

8 Defendants cannot claim, under any circumstance, that they were unaware of the payments,
9 as they were made by Snowshoe Petroleum, which is solely owned by Salvatore "Sam" Morabito
10 and Edward Bayuk, to RSSB, Mr. Gilmore's firm. Their joint counsel certainly knew of the
11 payments, and that the testimony at Trial that no such payments were made was false.
12 Accordingly, all the factors relevant to determining whether to reopen evidence have been met,
13 and it is appropriate to grant the Motion.

14 **II.**

15 **RELEVANT FACTS**

16 **A. Plaintiff's Claim for Avoidance of the Superpumper Transfer Under NRS** 17 **112.180(a)(1) and Defendants' Testimony.**

18 Plaintiff asserted a claim for avoidance of Paul Morabito's transfer of his interest in
19 Superpumper to Snowshoe Petroleum—for the benefit of its shareholders, Sam Morabito and
20 Edward Bayuk—with actual intent to hinder, delay, or defraud creditors under NRS 112.180(1)(a).

21 The evidence at Trial established that Snowshoe Petroleum was created by attorney Dennis
22 Vacco (joint counsel for Paul Morabito, Sam Morabito, and Edward Bayuk) as a New York
23 company at the direction of Sam Morabito, in order to receive the transfer of Paul Morabito's 80%
24 interest in Superpumper.¹ Sam Morabito and Edward Bayuk each owned 50% of Snowshoe
25 Petroleum.² The transfer of Paul Morabito's interest in Superpumper occurred immediately after
26 CWC, a Nevada corporation, was merged into its 100% subsidiary, Superpumper, an Arizona

27 ¹ Trial Trans. 11/6/2018, p. 159, ll. 11 – p. 159, ll. 6 (testimony of Dennis Vacco).

28 ² Trial Trans. 10/31/18, p. 80, l. 11 – p. 81, l. 20 (testimony of Sam Morabito).

1 corporation, such that Paul Morabito's 80% interest in CWC became a direct 80% interest in
2 Superpumper.³

3 In support of Plaintiff's claim for avoidance of Paul Morabito's transfer of his interest in
4 Superpumper to Snowshoe Petroleum with actual intent to hinder, delay, or defraud creditors under
5 NRS 112.180(1)(a), Plaintiff introduced a panoply of evidence of the existence of "badges" of
6 fraud identified in NRS 112.180(2). Among these badges was evidence that Paul Morabito
7 continued to exercise control over the property transferred after the transfer. NRS 112.180(2)(b);
8 see also Sportsco Enters. v. Morris, 112 Nev. 625, 632, 917 P.2d 934, 938 (1996) (citations
9 omitted) (identifying retention by the debtor of possession of the property or the reservation of
10 benefit to the transferor as indicia of fraud).

11 For example, prior to the transfer, Paul Morabito represented to his counsel and a
12 representative of third party Cerberus California, LLC that Snowshoe Petroleum was being created
13 as an asset of Sam Morabito and Edward Bayuk so that Paul Morabito would not have assets titled
14 in his name, but that he would remain an "advisor."⁴ Paul Morabito remained active and involved
15 with respect to the Superpumper business after the sale to Snowshoe Petroleum, directing
16 Superpumper and Snowshoe Petroleum's auditors and accountants with respect to Superpumper's
17 financials, and remained a guarantor on Superpumper's land leases.⁵ Snowshoe Petroleum's
18 counsel advised Paul Morabito to use Superpumper to pay a third party in order to conceal the
19 payment from his judgment creditors.⁶ Even after the transfer, Paul Morabito sought to negotiate
20 transactions on behalf of Snowshoe Petroleum, including a transaction he began negotiating prior
21 to the transfer on behalf of CWC, viewing Snowshoe Petroleum as simply an extension of CWC.⁷
22 Paul Morabito was given broad authority, despite ostensibly having no interest in Snowshoe
23

24
25 ³ E.g., Trial Trans. 10/31/18, p. 80, l. 11 – p. 81, l. 20.

26 ⁴ Trial Exh. 30. All references to "Trial Exh." are to exhibits admitted by either Plaintiff or Defendant during Trial.

27 ⁵ Trial Exh. 144 (in response to inquiries in April of 2012 by Superpumper's auditors regarding affiliate loans, Paul
28 Morabito instructed Vacco: "MY POSITION IS BELOW - PLEASE MAKE IT HAPPEN"); Trial Trans. 10/29/18,
p. 192, ll. 5-22; p. 202, ll. 2-10; p. 224, l. 24 – p. 225, l. 17.

⁶ Trial Exhs. 136 and 137.

⁷ See Trial Exhs. 30, 131, 132, 133, 135; Trans. 11/2/18, p. 12, l. 23 – p. 16, l. 3; p. 16, l. 4 – p. 17, l. 19

1 Petroleum or Superpumper, to act on behalf of Snowshoe Petroleum and Superpumper.⁸ Paul
2 Morabito even used Superpumper in his negotiations with his judgment creditors years after the
3 transfer, proposing a settlement with the Herbst Parties in which he would transfer Superpumper
4 to the Herbst Parties in partial satisfaction of the judgment.⁹

5 In addition to acting on behalf of Superpumper and Snowshoe Petroleum with respect to
6 the companies' auditors and accountants and holding himself out as an agent to third parties (which
7 none of the Defendants nor their counsel, Dennis Vacco, repudiated), Paul Morabito continued
8 receiving the distributions from Raffles Insurance Limited and received the funds released by Bank
9 of America upon reduction of the letter of credit despite the fact that the Raffles shares were owned
10 by CWC and then Snowshoe Petroleum.¹⁰

11 Despite evidence of Paul Morabito's continued involvement in the Superpumper business,
12 however, Defendants adamantly contended that Paul Morabito had nothing to do with
13 Superpumper or Snowshoe Petroleum after the subject transfers, minimizing Paul Morabito's
14 continued direction of Superpumper's business as mere "whiteboarding."¹¹ Sam Morabito
15 represented to this Court that after payment to Paul Morabito for the transfer of his interest in
16 Superpumper, "Paul had no further involvement in the company other than his maintained
17 guaranty, which the lender required," that Edward Bayuk and Sam Morabito solely operated
18 Snowshoe after the transfer, and he "vehemently den[ied] that Paul had any involvement" in
19
20

21 ⁸ Trial Trans. 10/29/18, p. 224, l. 3 – p. 226, l. 20.

22 ⁹ Trial Exh. 153.

23 ¹⁰ Trial Trans. 10/29/18, p. 166, l. 12 – p. 168, l. 6 (Edward Bayuk testimony that Raffles was an asset of CWC and
24 was then "parked" in Snowshoe Petroleum and Superpumper); Trial Trans. 10/29/18, p. 179, l. 8 – p. 187, l. 17; Trial
25 Trans. 10/29/18, p. 196, l. 17 – p. 197, l. 24 (Edward Bayuk testifying that Paul Morabito received approximately \$1.6
26 million in distributions from Raffles through the asset was testimony in the name of CWC and later Snowshoe
27 Petroleum or Superpumper); Trial Exh. 128 (email regarding issuance of new certificates to Snowshoe Petroleum);
28 Trial Exh. 75 (Mar. 30, 2012 email from Dennis Vacco regarding obtaining release of cash security collateral for letter
of credit in the name of Snowshoe Petroleum or CWC); Trial Trans. 10/30/18, p. 223, l. 14 – p. 224, l. 24 (Edward
Bayuk testimony that on March 30, 2012, Snowshoe Petroleum owned the Raffles shares but Paul Morabito would
receive the funds released from the Bank of America lock box on reduction of the letter of credit and the dividends
issued by Raffles); Trial Trans. 11/6/18, p. 233, ll. 3-18 (Dennis Vacco testimony that letter of credit was implicated
in the settlement of Paul Morabito's obligations to Bank of America).

¹¹ Trial Trans. 10/31/18, p. 236, l. 21 – p. 237, l. 1 (Sam Morabito); Trial Trans. 11/1/18, p. 21, ll.4-14 (Sam Morabito);
Trial Trans., 11/6/18, p. 199, l. 3 – p. 200, l. 21 (Dennis Vacco).

1 Showshoe. See September 21, 2017 Declaration of Salvatore Morabito, attached to the Hamm
2 Declaration as **Exhibit 1-A**.¹²

3 At Trial, Defendant Edward Bayuk affirmatively and emphatically testified that Paul
4 Morabito did not receive money from Snowshoe Petroleum and that Snowshoe Petroleum did not
5 pay Paul Morabito's attorneys' fees. On October 29, 2018, Edward Bayuk testified:

6 Q So you have Superpumper, pardon me, Snowshoe
7 Petroleum. You don't know whether they have paid Paul
8 Morabito's attorney's fees?

8 A **No, they have not.**

9 Trial Trans. 10/29/18, p. 189, ll. 14-17 (emphasis added).

10 Edward Bayuk further testified:

11 Q Now subsequent to Paul Morabito selling his interest
12 to you and Sam and really Snowshoe Petroleum, he had input on
13 Snowshoe's financials for the time period subsequent to the
14 sale, correct?

14 A You are referring to Paul?

15 Q Paul?

16 A Input on what?

17 Q On the Snowshoe financials?

18 A I said earlier Sam was in Arizona running the
19 business, and we had accounting people there doing the
20 accounting stuff. Paul was looking for opportunities for
21 himself, and if he thought a big opportunity was coming along
22 he would say, hey, would you be interested in participating?
23 But Sam was very focused on running the business in Arizona,
24 Superpumper, and so Paul would give his opinions and his
25 advice. Like I said earlier, the e-mail on 137 between Dennis
26 and Paul I know nothing about it. I don't even know -- It
27 makes no sense, the e-mail. So Paul, you know, he did things.
28 He wrote things. And sometimes it made no sense, but did
he -- did he say he was the owner of Snowshoe Petroleum or the
owner of Superpumper? No. **Did he get money out of Snowshoe
Petroleum or Superpumper? No.** So did he look for all kinds of
opportunities? Yes.

26 Id., p. 206, l. 3 – p. 207, l. 1 (emphasis added).

27
28 ¹² In this Court's docket as Exhibit 22 to *Defendants' Separate Statement of Disputed Facts in Support of Opposition to Plaintiff's Motion for Partial Summary Judgment* (Sept. 22, 2017).

1 In furtherance of this false narrative, Defendants submitted proposed findings and
2 conclusions that urged the Court to find: “After the merger and acquisition, Paul had no control,
3 management, or economic stake in Snowshoe.” Defendants’ proposed Findings of Fact,
4 Conclusions of Law, and Judgment (Nov. 26, 2018), ¶ 101, attached to the Hamm Declaration as
5 **Exhibit 1-B.**

6 **B. Newly-Discovered Evidence Relevant to Paul Morabito’s Interest in Snowshoe**
7 **Petroleum.**

8 On April 30, 2018, the United States Bankruptcy Court for the District of Nevada (the
9 “Bankruptcy Court”) entered a nondischargeable judgment in favor of the Herbst Parties and
10 against Paul Morabito under 11 U.S.C. § 523(a)(2)¹³ in the amount of \$85,000,000, less the value
11 of any payments made by Paul Morabito (the “Judgment”). The Judgment and Amended Findings
12 of Fact and Conclusions of Law in Support of Judgment Regarding Plaintiffs’ First and Second
13 Causes of Action are attached as **Exhibits 1-C and 1-D.** Paul Morabito appealed the Judgment,
14 and on January 23, 2019, the United States District Court for the District of Nevada affirmed the
15 Judgment.¹⁴

16 Following entry of the Judgment, the Herbst Parties began seeking certain discovery in aid
17 of execution and exercising post-judgment remedies under Federal Rule 69 (made applicable by
18 Federal Rule of Bankruptcy Procedure 7069), NRCF 69, and NRS 21.270. In addition to
19 requesting authorization to register the judgment pursuant under 28 U.S.C. § 1963 and a judgment
20 debtor exam of Paul Morabito, the Herbst Parties issued a subpoena to RSSB on or about August
21 27, 2018 (the “Subpoena”) seeking documents and communications relating to payments or
22 transfers to RSSB by any person (including the form and source of any payments) in payment of
23 fees and costs incurred by RSSB in representing Paul Morabito from January 1, 2013 to the
24 present.¹⁵

25 _____
26 ¹³ Generally, 11 U.S.C. § 523(a)(2) makes non-dischargeable in bankruptcy a debt to the extent incurred as a result of fraud.

27 ¹⁴ Case No. 15-05010-gwz (Bankr. D. Nev.), ECF No. 251 (memorandum decision by Judge Miranda M. Du).

28 ¹⁵ See Case No. 15-05010-gwz (Bankr. D. Nev.), ECF No. 165 (*Motion for Authorization to Register Judgment*); ECF No. 173 (*Ex Parte Application for Judgment Debtor Exam*); ECF No. 186 (*Notice of Issuance of Subpoena to Robison*)

1 RSSB refused to comply with the Subpoena, requiring the Herbst Parties to file a motion
2 to compel compliance on September 10, 2018 (the “Motion to Compel RSSB”). The Motion to
3 Compel RSSB, including the Subpoena, is attached to the Hamm Declaration as **Exhibit 1-E**. Paul
4 Morabito filed an opposition to the Motion to Compel RSSB and other post-judgment motions on
5 October 5, 2018, and RSSB submitted a joinder to the opposition on the same day.¹⁶ A hearing on
6 the Motion to Compel RSSB and other post-judgment motions was held on December 20, 2018,
7 at which the Bankruptcy Court made findings of fact and conclusions of law and, among other
8 rulings, ordered RSSB to comply with the Subpoena. On January 3, 2019, the Bankruptcy Court
9 entered orders on the motions, including its *Order Granting Motion to Compel Compliance with*
10 *the Subpoena to Robison Sharp Sullivan Brust*, attached to the Hamm Declaration as **Exhibit 1-F**.

11 On January 16, 2019, RSSB and Mr. Gilmore moved to withdraw from representing
12 Edward Bayuk in an adversary proceeding seeking avoidance of the transfer of Paul Morabito’s
13 interest in Virsenet, LLC¹⁷ on the basis of an unidentified conflict.¹⁸ Two days later, RSSB finally
14 produced documents in partial compliance with the August 27, 2018 Subpoena, comprised of 24
15 pages of billing records and emails. The *Response of Robison, Sharp, Sullivan & Brust[] To*
16 *Subpoena* with the accompanying documents is attached to the Hamm Declaration as **Exhibit 1-**
17 **G**.¹⁹ Among the documents produced is a transaction ledger for Paul Morabito’s matters entitled

18
19 *Sharp Sullivan Brust*); ECF No. 203 (*Notice of Issuance of Subpoena to Edward Bayuk*).

20 ¹⁶ See Case No. 15-05010-gwz (Bankr. D. Nev.), ECF No. 199 (*Debtor’s Supplemental Opposition to Plaintiffs’*
21 *(1) Motion for Authority to Register Federal Money Judgment, (2) Application for Jud[g]ment Debtor Examination,*
22 *and (3) Subpoena to Robison Sharp Sullivan Brust*), ECF No. 200 (*Robison, Sharp, Sullivan & Brust’s Joinder in*
Debtor’s Supplemental Opposition to Plaintiffs’ (1) Motion for Authority to Register Federal Money Judgment,
(2) Application for Jud[g]ment Debtor Examination, and (3) Subpoena to Robison Sharp Sullivan Brust).

23 ¹⁷ Case No. 15-05046 (Bankr. D. Nev.).

24 ¹⁸ Case No. 15-05046 (Bankr. D. Nev.), ECF No. 296 (*Motion to Withdraw as Counsel of Record for Defendants*
Edward Bayuk and Jackson Hole Trust Company); ECF No. 297 (*Declaration of Frank C. Gilmore in Support of*
Motion to Withdraw as Counsel of Record for Defendants Edward Bayuk and Jackson Hole Trust Company). While
25 the motion to withdraw was filed only in the Virsenet adversary proceeding, Mr. Gilmore stated that on January 14,
26 2019, Defendant Bayuk effectively terminated RSSB’s services” and that “[t]he communication in which RSSB was
terminated also caused an adverse relationship to exist between RSSB and Defendants, rendering continued
representation impossible.” ECF No. 297 at ¶ 3.

27 ¹⁹ RSSB’s response to the Subpoena was incomplete, prompting the pending *Motion for Order: (I) Holding Robison*
in Contempt of the Order Compelling Compliance; (II) Awarding Sanctions to the Herbst Parties; and
28 *(III) Compelling Robison’s Compliance* by the Herbst Parties. Case No. 15-05010-gwz (Bankr. D. Nev.), ECF No.
253.

Detail Payment Transaction File List for the period of February 4, 2013 through March 27, 2018 (the “Transaction Ledger”). Id. at RSSB_000001 – RSSB_000005.

Contrary to the Trial testimony of Edward Bayuk that Snowshoe Petroleum had not paid Paul Morabito’s attorneys’ fees or distributed funds to Paul Morabito, contrary to the declaration testimony and Trial testimony of Sam Morabito that Paul Morabito had no involvement in Snowshoe Petroleum whatsoever, and contrary to the proposed findings and conclusions submitted by RSSB on behalf of the Defendants to this Court urging the Court to find that Paul Morabito had no economic interest in Snowshoe Petroleum, RSSB’s Transaction Ledger shows that Snowshoe Petroleum did in fact pay Paul Morabito’s personal attorneys’ fees and costs. The Transaction Ledger for Paul Morabito’s accounts shows payments made by Snowshoe Petroleum for Paul Morabito’s benefit as follows:

23245.001	10/16/2015	A	32	1,661.90	Cost payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	10/16/2015	A	31	13,210.10	Fee payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	11/28/2016	A	32	640.30	Cost payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	11/28/2016	A	31	14,359.70	Cost payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	01/18/2017	A	32	2,529.09	Cost payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	05/18/2017	P	32	1,139.41	Cost payment - Snowshoe Petroleum, Inc.	136
23245.001	05/18/2017	P	31	15,000.00	Fee payment - Snowshoe Petroleum, Inc.	137
23245.001	06/19/2017	P	32	1,000.55	Cost payment - Snowshoe Petroleum, Inc.	138
23245.001	06/19/2017	P	31	12,500.00	Fee payment - Snowshoe Petroleum, Inc.	139
23245.001	08/28/2017	P	32	1,204.09	Cost payment - Snowshoe Petroleum, Inc.	142
23245.001	08/28/2017	P	31	12,553.29	Fee payment - Snowshoe Petroleum, Inc.	143
23245.001	10/23/2017	P	32	894.00	Cost payment - Snowshoe Petroleum, Inc.	146
23245.001	11/15/2017	P	31	12,500.00	Fee payment - Snowshoe Petroleum, Inc.	147
23245.001	02/01/2018	P	31	12,500.00	Fee payment - Snowshoe Petroleum, Inc.	151
23245.001	02/01/2018	P	32	89.00	Cost payment - Snowshoe Petroleum, Inc.	152
23245.001	02/15/2018	P	31	10,000.00	Fee payment - Snowshoe Petroleum, Inc.	154
23245.001	03/27/2018	P	32	5,048.55	Cost payment - Snowshoe Petroleum, Inc.	155
23245.001	03/27/2018	P	31	7,712.45	Fee payment - Snowshoe Petroleum, Inc.	156

Transaction Ledger (Ex. 1-G) at RSSB_000001 – RSSB_000002.

III. ARGUMENT

A. Reopening Evidence to Submit Additional Evidence is Within the Court’s Discretion Under NRCP 59.

A motion to reopen evidence under NRCP 59 is committed to the discretion of the trial court. See AA Primo Builders, LLC v. Washington, 126 Nev. 578, 589, 245 P.3d 1190, 1197

(2010) (citing 11 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 2818, at 188 (2d ed. 1995)); Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 331, 91 S. Ct. 795, 803, 28 L. Ed. 2d 77 (1971) (“a motion to reopen to submit additional proof is addressed to [the court’s] sound discretion.”).²⁰

NRCP 59(a) provides:

Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds materially affecting the substantial rights of an aggrieved party: (1) ***Irregularity in the proceedings of the court, jury, master, or adverse party***, or any order of the court, or master, or abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) ***Newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered and produced at the trial***; (5) Manifest disregard by the jury of the instructions of the court; (6) Excessive damages appearing to have been given under the influence of passion or prejudice; or, (7) Error in law occurring at the trial and objected to by the party making the motion. ***On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.***

NRCP 59(a) (emphasis added).²¹

Under Federal Rule 59, factors for a trial court to consider when deciding to reopen a case include (1) the importance and probative value of the evidence or arguments sought to be introduced, *i.e.*, whether it is cumulative or might affect the outcome of the case by, for example,

²⁰ In AA Primo Builders, the Court found that because NRCP 59(e) echoes Fed.R.Civ.P. 59(e), the Court may consult federal law in interpreting NRCP 59(e). See id., 126 Nev. at 582, 245 P.3d at 1192-93 (citing Coury v. Robison, 115 Nev. 84, 91 n. 4, 976 P.2d 518, 522 n. 4 (1999)); see also Executive Mgmt., Ltd. v. Tigor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (“Federal cases interpreting the Federal Rules of Civil Procedure “are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.”) (citing Las Vegas Novelty v. Fernandez, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)). NRCP 59 models Fed.R.Civ.P. 59, except that NRCP 59(a) expressly enumerates the grounds for new trial which are not expressly delineated in Fed.R.Civ.P. 59 but are a matter of judicial development. See, e.g., In re Walker, 332 B.R. 820, 831-32 (Bankr. D. Nev. 2005).

²¹ NRCP 59 will be amended as of March 1, 2019, restructuring but not materially changing the substance of the rule and making the rule more closely conform to the language of Fed.R.Civ.P. 59. Instead of permitting the court to grant a new trial on “all or part of the issues,” the court may grant a new trial on “all or some of the issues.” See Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, No. ADKT 0522 (Dec. 31, 2018).

1 offering a new theory of liability or present a significant alteration of the evidence presented at
2 trial; (2) the moving party's diligence and explanation for failing to previously introduce the
3 evidence or arguments; (3) the undue prejudice that the delay might cause the non-moving party;
4 and (4) whether the court has already announced its decision. See, e.g., In re Jim Slemons Hawaii,
5 Inc., No. BAP HI-11-1464, 2013 WL 980115, at *14 (9th Cir. B.A.P. Mar. 13, 2013), *aff'd*, 584 F.
6 App'x 671 (9th Cir. 2014) (citing In re W. Shore Assocs., Inc., 435 B.R. 723, 725 (Bankr. M.D.
7 Fla. 2010)); see also Kona Tech. Corp. v. S. Pac. Transp. Co., 225 F.3d 595, 609 (5th Cir. 2000).
8 "The trial court may properly look with more favor upon a motion to reopen made after
9 submission, but before any indication by it as to its decision ... than when the motion comes after
10 a decision has been rendered." Shore Assocs, 435 B.R. at 725.

11 The standards under Federal Rule 59 to amend a final order and the considerations
12 discussed by courts in connection with a motion to reopen to submit additional proof are similar.
13 See Shore Assoc., 435 B.R. at 724 (citing In re United Refuse, LLC, 2007 WL 1695332 *4 (Bankr.
14 E.D. Va. 2007) (not reported)). However, while evidence that is available to a party prior to entry
15 of judgment is not a basis for a motion to amend under FRCP 59 as newly discovered evidence,
16 "when considering a motion to reopen a case to present new evidence or argument, '[c]ourts
17 need—and have—the discretion, in the interest of justice, to allow parties to correct ... oversights'
18 that might occur at trial." See id. at 724–25.

19 **B. The Court Should Reopen the Evidence to Consider Additional Probative Evidence**
20 **That Supports Plaintiff's Theory and Contradicts Defendants' Testimony.**

21 Defendants offered testimony which was blatantly false to support their theory that the
22 flurry of transfers which occurred immediately after Judge Adams issued his Oral Ruling against
23 Paul Morabito were nothing more than an effort by Edward Bayuk and Sam Morabito to
24 disentangle their assets from Paul Morabito and that following the transfers, Paul Morabito had
25 nothing to do with Superpumper or CWC's successor, Snowshoe Petroleum.

26 The Transaction Ledger not only contradicts Defendants' sworn statements (further
27 undermining what little credibility they retained following their testimony at Trial), it is probative
28 and compelling evidence that benefits were reserved by Paul Morabito following the supposedly

1 arms-length sale of his interest in Superpumper. See NRS 112.180(2)(b) (control by transferor as
2 a badge of fraud); Sportsco Enters. v. Morris, 112 Nev. at 632, 917 P.2d at 938 (citations omitted)
3 (retention by the debtor of possession of the property or the reservation of benefit to the transferor
4 as indicia of fraud).

5 The Transaction Ledger was not available to Plaintiff until January 18, 2019, when it was
6 produced to the Herbst Parties in the related litigation. Plaintiff did not introduce documents
7 evidencing Snowshoe Petroleum's payments to or for the benefit of Paul Morabito because
8 evidence of the payments was disclosed for the first time after the conclusion of Trial—not by
9 Snowshoe Petroleum, but by RSSB.

10 During discovery, Plaintiff's counsel asked Sam Morabito, in his capacity as a
11 representative of Snowshoe Petroleum, whether Paul Morabito held any interest in Snowshoe
12 Petroleum and whether any payments or transfers were made by Snowshoe Petroleum to Paul
13 Morabito. In response, Sam Morabito testified conclusively that Paul Morabito held no interest in
14 Snowshoe Petroleum, that no assets were transferred to Paul Morabito, and that payments were
15 made to Paul Morabito to acquire his interest in Superpumper, with some small adjustments
16 following the sale, but that the obligations were paid in full by November 28, 2011. See Sam
17 Morabito Depo. Trans., at p. 79, l. 13 – p. 80, l. 14; p. 82, ll. 5-7; p. 114, ll. 1-25, attached to the
18 Hamm Declaration as **Exhibit 1-H**. Thereafter, Sam Morabito submitted sworn testimony in
19 opposition to summary judgment that Paul Morabito had zero involvement in Snowshoe Petroleum
20 following the transfer. Ex. 1-A (Sept. 21, 2017 Declaration of Sam Morabito). Introduction of
21 the Transaction Ledger is not unduly prejudicial to the Defendants, as it is entirely consistent with
22 Plaintiff's theory of the case and the information was in Snowshoe Petroleum's possession all
23 along.

24 Further, the Transaction Ledger is not cumulative. While Plaintiff offered considerable
25 evidence at Trial of Paul Morabito's continued involvement in Superpumper and Snowshoe
26 Petroleum following the transfer, Defendants deliberately misled the Court by seeking to minimize
27 his involvement as nothing more than "whiteboarding" and wanting to "help," and repeated again
28 and again that Paul Morabito had nothing to do with Superpumper or Snowshoe Petroleum

1 following the transfer. The Transaction Ledger proves that Paul Morabito's continuing interest in
2 Superpumper's and Snowshoe Petroleum's affairs was not mere altruism, as Edward Bayuk
3 testified. Rather, Paul Morabito received concrete financial benefits from Snowshoe Petroleum in
4 the years following the transfer – over \$100,000 in 2015, 2016, 2017, and 2018.

5
6 **IV.**
CONCLUSION

7 The defense offered by Defendants was premised on their contention that the transfers at
8 issue were nothing more than a legitimate attempt to segregate their assets from Paul Morabito and
9 go their separate ways. In support of this theory, Defendants insisted repeatedly that Paul Morabito
10 had nothing to do with Superpumper or Snowshoe Petroleum after September 30, 2010. In
11 furtherance of this theory, Defendants lied and misled the Court.

12 Based upon the foregoing, Plaintiff respectfully requests that the Court grant the Motion
13 and reopen the evidence at Trial to consider the RSSB Transaction Ledger, and grant any other
14 relief appropriate under the circumstances.

15 **AFFIRMATION**
Pursuant to NRS 239B.030

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

18 Dated this 30th day of January, 2019.

19 GARMAN TURNER GORDON LLP

20
21 /s/ Erika Pike Turner
22 ERIKA PIKE TURNER, ESQ.
23 TERESA M. PILATOWICZ, ESQ.
24 GABRIELLE A. HAMM, ESQ.
25 650 White Drive, Ste. 100
26 Las Vegas, Nevada 89119
27 Telephone 725-777-3000
28 *Special Counsel for Trustee*

INDEX OF EXHIBITS

Exhibit	Description	Pages ²²
1	Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff's Motion to Reopen	4
1-A	September 21, 2017 Declaration of Salvatore Morabito	2
1-B	Defendants' proposed Findings of Fact, Conclusions of Law, and Judgment (Nov. 26, 2018)	40
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)	4
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)	31
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)	40
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)	3
1-G	Response of Robison, Sharp, Sullivan & Brust[] To Subpoena (including RSSB_000001 – RSSB_000031) (Jan. 18, 2019)	27
1-H	Excerpts of Deposition Transcript of Sam Morabito as PMK of Snowshoe Petroleum, Inc. (Oct. 1, 2015)	8

²² Exhibit pagination excludes exhibit slip sheets.

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this
3 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the foregoing **PLAINTIFF'S**
4 **MOTION TO REOPEN EVIDENCE** on the parties as set forth below:

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

7 Frank Gilmore, Esq.
8 Lindsay L. Liddell, Esq.
9 ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
10 Reno, NV 89503

11 _____ Certified Mail, Return Receipt Requested

12 _____ Via Facsimile (Fax)

13 _____ Via E-Mail

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

15 _____ Federal Express (or other overnight delivery)

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

17 Frank C. Gilmore, Esq.
18 E-mail: fgilmore@rssblaw.com

19 Lindsay L. Liddell, Esq.
20 E-mail: lliddell@rssblaw.com

21 Dated this 30th day of January, 2019.

22 /s/ Kelli Wightman
23 An Employee of GARMAN TURNER
24 GORDON LLP

25 4829-9125-7222, v. 3
26
27
28

Exhibit 1

1 **2120**
2 GARMAN TURNER GORDON LLP
3 ERIKA PIKE TURNER, ESQ.
4 Nevada Bar No. 6454
5 E-mail: eturner@gtg.legal
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Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel to Trustee

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

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

16 vs.

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

CASE NO.: CV13-02663

DEPT. NO.: 4

**DECLARATION OF GABRIELLE A.
HAMM, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION TO REOPEN
EVIDENCE**

22 I, Gabrielle A. Hamm, declare under penalty of perjury as follows:

23 1. I am an attorney with the law firm of Garman Turner Gordon LLP ("GTG"), special
24 counsel for Plaintiff William A. Leonard in the above-captioned case. I am licensed to practice
25 law in the State of Nevada, and have been since 2010. I make this declaration in support of
26 Plaintiff's Motion to Reopen Evidence.

27 2. GTG is also counsel for the Herbst Parties in the adversary proceeding entitled *JH,*
28 *Inc., Jerry Herbst, and Berry-Hinckley Industries v. Paul A. Morabito*, pending as Case No. 15-

1 05019-GWZ in the United States Bankruptcy Court for the District of Nevada (the “Bankruptcy
2 Court”), which adversary proceeding was filed in connection with the Chapter 7 bankruptcy case
3 of Paul A. Morabito, Debtor, Case No. 13-51237-GWZ.

4 3. I have personal knowledge of the facts set forth herein, and if called upon to testify
5 regarding the contents of this Declaration, could and would do so.

6 4. Attached hereto as **Exhibit 1-A** is a true and correct copy of the September 21,
7 2017 Declaration of Salvatore Morabito, filed in this Court’s docket on September 22, 2017 as
8 Exhibit 22 to *Defendants’ Separate Statement of Disputed Facts in Support of Opposition to*
9 *Plaintiff’s Motion for Partial Summary Judgment*.

10 5. Attached hereto as **Exhibit 1-B** is a true and correct copy of Defendants’ proposed
11 Findings of Fact, Conclusions of Law, and Judgment, submitted to this Court on November 26,
12 2018.

13 6. On April 30, 2018, the Bankruptcy Court entered a nondischargeable judgment in
14 favor of JH, Inc., Jerry Herbst, and Berry-Hinckley Industries (the “Herbst Parties”) and against
15 Paul Morabito under 11 U.S.C. § 523(a)(2)¹ in the amount of \$85,000,000, less the value of any
16 payments made by Paul Morabito (the “Judgment”). True and correct copies of the Judgment and
17 the Bankruptcy Court’s Amended Findings of Fact and Conclusions of Law in Support of
18 Judgment Regarding Plaintiffs’ First and Second Causes of Action are attached hereto as **Exhibits**
19 **1-C and 1-D**.

20 7. Paul Morabito appealed the Judgment, and on January 23, 2019, the United States
21 District Court for the District of Nevada entered an order affirming the Judgment, available via
22 PACER at Case No. 15-05010-gwz (Bankr. D. Nev.), ECF No. 251.

23 8. Following entry of the Judgment, the Herbst Parties began seeking certain
24 discovery in aid of execution and exercising post-judgment remedies under Federal Rule 69 (made
25 applicable by Federal Rule of Bankruptcy Procedure 7069), NRCp 69, and NRS 21.270. In
26 addition to requesting authorization to register the judgment pursuant under 28 U.S.C. § 1963 and

27 _____
28 ¹ Generally, 11 U.S.C. § 523(a)(2) makes non-dischargeable in bankruptcy a debt to the extent incurred as a result of fraud.

1 a judgment debtor exam of Paul Morabito, the Herbst Parties issued a subpoena to RSSB on or
2 about August 27, 2018 (the “Subpoena”) seeking documents and communications relating to
3 payments or transfers to RSSB by any person (including the form and source of any payments) in
4 payment of fees and costs incurred by RSSB in representing Paul Morabito from January 1, 2013
5 to the present. See Case No. 15-05010-gwz, ECF Nos. 165, 173, and 186, respectively. The
6 Herbst Parties also served a subpoena upon Edward Bayuk. See Case No. 15-05010-gwz, ECF
7 No. 203.

8 9. RSSB refused to comply with the Subpoena, prompting the Herbst Parties to file
9 the Motion to Compel RSSB on September 10, 2018. A true and correct copy of the Motion to
10 Compel RSSB, including the Subpoena, is attached hereto as **Exhibit 1-E**.

11 10. Paul Morabito filed an opposition to the Motion to Compel RSSB and other post-
12 judgment motions on October 5, 2018, and RSSB submitted a joinder to the opposition on the
13 same day. See Case No. 15-05010-gwz, ECF Nos. 199, 200. A hearing on the Motion to Compel
14 RSSB and other post-judgment motions was held on December 20, 2018, at which the Bankruptcy
15 Court made findings of fact and conclusions of law and, among other rulings, ordered RSSB to
16 comply with the Subpoena. On January 3, 2019, the Bankruptcy Court entered orders on the
17 motions, including its *Order Granting Motion to Compel Compliance with the Subpoena to*
18 *Robison Sharp Sullivan Brust*, a true and correct copy of which is attached hereto as **Exhibit 1-F**.

19 11. On January 16, 2019, RSSB and Mr. Gilmore moved to withdraw from representing
20 Edward Bayuk in an adversary proceeding seeking avoidance of the transfer of Paul Morabito’s
21 interest in Virsenet, LLC, pending in the Bankruptcy Court as Case No. 15-05046, on the basis of
22 an unidentified conflict. See Case No. 15-05046 (Bankr. D. Nev.), ECF Nos. 296, 297. Two days
23 after filing the motion to withdraw, RSSB finally produced documents in partial compliance with
24 the August 27, 2018 Subpoena, comprised of 24 pages of billing records and emails.² A true and
25 correct copy of the *Response of Robison, Sharp, Sullivan & Brust[] To Subpoena* with the
26

27 ² The Herbst Parties subsequently filed the *Motion for Order: (I) Holding Robison in Contempt of the Order*
28 *Compelling Compliance; (II) Awarding Sanctions to the Herbst Parties; and (III) Compelling Robison’s Compliance*
by the Herbst Parties. Case No. 15-05010-gwz (Bankr. D. Nev.), ECF No. 253.

1 accompanying documents, produced to GTG as counsel for the Herbst Parties, is attached hereto
2 as **Exhibit 1-G**.

3 12. Among the documents produced by RSSB is a transaction ledger for Paul
4 Morabito's matters entitled Detail Payment Transaction File List for the period of February 4,
5 2013 through March 27, 2018 (the "Transaction Ledger"). The Transaction Ledger is found at
6 RSSB_000001 – RSSB_000005 in Exhibit 1-G.


7 13. The Transaction Ledger was not available to Plaintiff until January 18, 2019, when
8 it was produced to the Herbst Parties in the related Bankruptcy Court action. Plaintiff did not
9 introduce documents evidencing Snowshoe Petroleum's payments to or for the benefit of Paul
10 Morabito at Trial because such documents were not produced by Snowshoe Petroleum prior to the
11 Trial. Evidence of the payments was disclosed for the first time after the conclusion of Trial by
12 RSSB.

13 14. Attached hereto as **Exhibit 1-H** are true and correct excerpts of the October 21,
14 2015 deposition testimony of Sam Morabito in his capacity as person most knowledgeable of
15 Snowshoe Petroleum.

16 This document does not contain the social security number of any person.

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

19 Dated this 30th day of January, 2019.

20 
21 GABRIELLE A. HAMM, Declarant

22
23 4840-1257-4598, v. 1
24
25
26
27
28

Exhibit 1-A

EXHIBIT 22

EXHIBIT 22

1 **DECLARATION OF SALVATORE MORABITO**

2 I, SALVATORE MORABITO, being first duly sworn under penalty of perjury, depose and
3 say:

4 1. I am an individual above the age of 18 and make the following statements on my
5 own personal knowledge, except where stated to be on my information and belief.

6 2. Snowshoe Petroleum, Inc. ("SPI") was incorporated in the State of New York on or
7 about September 29, 2010. It was incorporated at my direction.

8 3. The wire transfer represented payment on the note, plus interest accrued and fees
9 associated with the transaction.

10 4. At that point, Bayuk and I had paid off the Note owed by Snowshoe to Paul, and
11 Paul had no further involvement in the company other than his maintained guaranty, which the
12 lender required.

13 5. Plaintiff contends that the Superpumper sale was a sham and that Paul Morabito
14 has maintained control of Superpumper notwithstanding the sale. We hotly contest this
15 accusation.

16 6. Contrary to Plaintiff's contentions, Paul has neither contributed a dime to the
17 company since the sale, nor has he had any role in its operation.

18 7. Any communications that Paul might have had related to Snowshoe or
19 Superpumper after the sale were "whiteboard" discussions about involving Snowshoe or
20 Superpumper in one of Paul's many contemplated deals, none of which came to pass.

21 8. From the time of the property exchange until this lawsuit was filed, I was not in the
22 practice of supporting Paul's lifestyle.

23 9. Bayuk and I solely operated Snowshoe after the transfer. I maintained the daily
24 operation of Snowshoe, and vehemently deny that Paul had any involvement.

25 Dated this 21 day of September, 2017.

26 
27 SALVATORE MORABITO
28

Exhibit 1-B

1750
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Attorneys for Defendants

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

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

CASE NO.: CV13-02663

DEPT. NO.: 4

Plaintiffs,

vs.

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

Defendants. /

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Trial in this matter commenced on October 29, 2018. After hearing the evidence and arguments of the parties, this Court enters the following Findings of Fact, Conclusions of Law, and Judgment.

I. FINDINGS OF FACT

1. Prior to 2007, Paul Morabito owned a majority share and controlling interest in Berry-Hinckley Industries ("BHI"), that owned gas station, convenient stores, and a wholesale fuel business in in Northern Nevada.

2. Salvatore "Sam" Morabito, Paul Morabito's brother, was a minority owner of BHI.

3. Edward Bayuk was, at the time, Paul Morabito's domestic partner and minority

1 owner of BHI.

2 4. In 2007, Paul¹ sold BHI's stock to Jerry Herbst and his company, JH, Inc.
3 ("Herbst").

4 5. After the consummation of the sale, a dispute arose related to the computation of
5 working capital, among other things.

6 6. Paul filed suit in the Second Judicial District Court, and Herbst parties
7 counterclaimed, bringing claims against Bayuk and Sam, individually (the "2007 Lawsuit").

8 7. Herbst sued Sam and Bayuk for unjust enrichment, claiming that because Sam
9 and Bayuk were shareholders of CNC, a constructive trust should be maintained over their share
10 of the sales proceeds of BHI.

11 8. After a lengthy and expensive trial, on September 13, 2010, Judge Adams entered
12 his oral ruling in favor of Herbst, entering a judgment against Paul and his entity Consolidated
13 Nevada Corporation.

14 9. In his oral ruling, Judge Adams dismissed all claims against Sam and Bayuk,
15 finding that "There has been no evidence that I recall of any kind creating any personal liability
16 on the part of plaintiffs, Edward Bayuk, Salvatore Morabito or Trevor Lloyd and, therefore, any
17 claims against them are hereby dismissed." (Trial Exhibit 1)(hereinafter "Exh.")

18 10. On October 12, 2010, Judge Adams entered Judgment in favor of Herbst and
19 against Paul Morabito and his corporation Consolidated Nevada Corporation ("CNC"). The
20 Judgment included an award of punitive damages, to be determined at a subsequent hearing.
21 (Exh. 2).

22 11. From October 12, 2010, and continuing until May 25, 2011, Herbst engaged in
23 considerable discovery of Paul's net worth in anticipation of a trial on the appropriate amount of
24 punitive damages. (Exh. 278)(Trial Transcript, Vol.1. (Oct 29, 2018) pp.103-104)(hereinafter
25 "Vol 1.")

26 12. Herbst took Paul's deposition related to his net worth and examined thousands of
27

28 ¹ Mr. Paul Morabito will be referred to as "Paul" to avoid confusion with the references to
his brother Salvatore "Sam" Morabito.

1 pages of bank records and other documents related to his net worth. (Exh. 280)

2 13. Through the net worth discovery, in early 2011, Herbst became aware of the
3 transfers of which Plaintiff now complains. (Vol 1, Pp. 103-104)

4 14. Herbst retained an expert to opine as to Paul's net worth. He opined that Paul's
5 net worth, as of May 2011, was in excess of \$90 million. (Vol 1, p.91)

6 15. On May 25, 2011, based on the Herbst's expert report, the parties stipulated to
7 \$15,000,000 in punitive damages. (Exh. 280)

8 16. On August 23, 2011, Judge Adams entered judgment in favor of Herbst in the
9 amount of \$149,444,777.80, which included punitive damages, attorney's fees, costs, and
10 prejudgment interest. (Exh. 3)

11 17. On September 1, 2011, Morabito appealed the Judgment, but no stay of execution
12 was sought. (Vol. 1, pp.58-59)

13 18. From October 2011 until the settlement was filed on December 1, 2011, Herbst
14 did not seek nor obtain a writ of execution, a writ of attachment, nor did Herbst attempt to
15 domesticate the Judgment in Paul's home state of California. (Exh. 278)(Vol. 1, pp.97-99)

16 19. Herbst conducted no post-judgment execution or collection efforts or any other
17 post-judgment execution proceedings to enforce or execute upon the Judgment. *Id.*

18 20. On December 1, 2011, Paul and the Herbst settled their disputes. They filed a
19 Stipulation and Order vacating the Judgment *nunc pro tunc* to the date of the original judgment.

20 21. On December 17, 2013, Herbst filed the instant Complaint.

21 22. In June 2013, Herbst filed a Petition for Involuntary Chapter 7 Bankruptcy, to
22 collect their debt using the mechanisms of the Bankruptcy Code, which Judge Gregg Zive
23 indicated was "essentially a two-party collection action. . . . This Court is not the proper forum
24 for the Petitioning Creditors to seek to collect on their judgment against the Alleged Debtor, and
25 the Bankruptcy Code was not intended for such purposes." (Exh. 8)

26 23. On May 15, 2015, William Leonard, Chapter 7 Trustee, was substituted in place
27 of Herbst as Plaintiff in this action. (Exh. 20)

1 **A. The Alleged Fraudulent Transfers**

2 24. At the time of the oral pronouncement of the Judgment, Paul and Bayuk co-
3 owned (1) a Nevada limited liability company that owned commercial properties and a
4 residential property, (2) two residential properties in Laguna Beach, California, (3) a Reno
5 property located on Panorama Drive, (4) together with Sam, owned an interest in Consolidated
6 Western Corporation, a Nevada corporation that held all the stock of Superpumper, Inc., an
7 Arizona gas station company, and (5) together with Sam, owned a Nevada limited liability
8 company that owned “card lock” gas stations in rural Nevada. (Trial Transcript, Volume 2
9 (October 30, 2018), pp.117-118.)(hereinafter Vol 2)

10 25. Upon pronouncement of the oral judgment, Bayuk and Sam were rightfully
11 concerned that because some of their assets were co-owned with Paul that they might get
12 dragged into a vigorous and vindictive collection effort by the Herbsts. (Vol. 1, pp.131-133);
13 (Vol. 3, pp.151-53, 164-66); (Vol. 7 pp. 105-109).

14 26. Bayuk and Sam testified that he had the option to do nothing in response to the
15 Judgment and the co-ownership of assets, but that he believed doing nothing would only further
16 embroil him in a dispute with the Herbsts which he neither deserved nor asked for. (Vol 2,
17 pp.118-120); (Vol. 3, pp.151-53).

18 27. As explained by their lawyer, Dennis Vacco, “Edward and Sam didn’t want to be
19 – be chased because they had an equity interest in properties that were also attached to Paul.”

20 28. Bayuk and Sam sought legal advice as to how they could appropriate extricate
21 themselves from the Herbst/Paul dispute. They consulted with Dennis Vacco, the former New
22 York Attorney General, and former United States Attorney for the Western District of New
23 York, who assisted them with their efforts to separate their assets with Paul. (Vol 2. pp.114-117);
24 (Vol. 3, pp.165-66)

25 29. Vacco testified, “the goal was very simple . . . the effort was because they owned
26 --- all three of them, in many instances, owned assets together . . . The goal, after researching
27 Nevada law and consulting with Nevada counsel, was to right-size the investment so that
28 everybody walked away with their proportionate share of the investment.”

1 30. He continued, “So the goal was to essentially take all of those assets and to – to
2 identify the value of (Paul) Morabito’s stake in those assets, and to transfer that value exclusively
3 to him, and then separate the equity, if you will, to the extent it existed for Edward and Sam,
4 because they were now relieved of this lawsuit.”

5 31. Vacco explained that the asset separation was all “in an effort not to embroil
6 them, ironically, as they are now, in litigation.”

7 32. To add more stress and motive to separate assets, Edward and Paul’s personal
8 relationship was deteriorating. (Vol 2, pp123-124)

9 33. Paul described the status of their relationship in September 2010, “we were more
10 part time I think we were parting. I thought we had parted by then, but I don’t recall the
11 exact date.”

12 34. Edward testified that he wanted to separate his personal and business life with
13 Paul and make things simple for him. Like most endings of long-term relationships, Edward
14 explained that he was going to separate things and live on his own and do things and be
15 independent. (Vol 2. Pp.119-120)

16 35. Vacco testified that he had devised the plan, with assistance from Paul’s New
17 York counsel at the law firm of Hodgson Russ. (Vol. 7 pp. 108-109).

18 36. Vacco testified that “[T]he properties were, again, valued and moved so that
19 everybody, at the end of the day, as you took . . . the percentages that each one of them owned in
20 the whole, the goal was to have [Paul] Morabito walk away with the same value that he had in
21 the whole, while separating from [Paul] Morabito the interest that Edward and Sam also owned. .
22 . . We separated Edward’s interest, ownership interest, in that so the **property located in**
23 **Nevada would be a ripe target for the Herbsts and their collection efforts**” (Vol. 7 pp.
24 108-112).

25 37. In doing so, Vacco was careful to research Nevada law on these types of transfers
26 to ensure everything was done fairly and by the book. He testified that “We were very cognizant
27 of the claims that are made in this lawsuit now. And we went to great lengths to avoid these
28 claims.” (Vol. 7 pp. 108-112).

1 38. Over the course of their partnership, Bayuk and Paul had acquired three
2 residential properties that they had lived in at different times of the year. Two properties were in
3 Laguna Beach: the Los Olivos property and the El Camino property, and one was in Reno, on
4 Panorama Drive. (Vol 2. pp. 117-118)

5 39. Because the parties were separating both their legal ownership and their personal
6 lives at the time, this was not a simple asset division. Bayuk explained that Paul was deciding
7 where he was going to live, and Bayuk was going to decide where he was going to live. (Vol 2.
8 Pp. 122-123)

9 40. The decisions on who would own what property moving forward were made in
10 meetings with Vacco. Vacco testified that: “Edward, either individually or through his trust,
11 wanted to . . . shake the dust of Reno from his sandals as a result of Judge Adams’ decision and
12 get as far away from the Herbsts as possible, it made perfect sense, since the judgment was a
13 Nevada judgement, that . . . Paul Morabito, should own the Nevada property.”

14 41. Vacco testified, “why would we have given the Nevada property to Edward, who
15 was looking to cut – sever his ties with Nevada and distance himself from the Herbst litigation
16 machine? . . . We made it easier for the Herbst . . . by stating that the property in Nevada that is
17 most – most reachable by the Herbsts, belongs to the judgment debtor.”

18 42. Paul retained the Buffalo law firm of Hodgson Russ to provide him with post-
19 Judgment legal advice. (Vol. 4, pp.64-65);

20 43. Paul’s lawyer, Sujata Yalamanchili testified that the proposal that she had helped
21 engineer was a “permissive way” for Paul to separate his assets with Bayuk and Sam, and that
22 she wouldn’t have proposed a plan that was fraudulent. She testified that she did not believe
23 Paul harbored fraudulent intent and she did not believe Paul “was doing anything wrong.” (Vol.
24 4, pp. 93-94);

25 44. Yalamanchili’s partner, Gary Graber, who specializes in bankruptcy and asset
26 protection, testified that the advice he gives to his clients is to take advantage of the legally
27 available methods to protect assets and that there is nothing wrong or immoral with a judgment
28 debtor seeking assistance to assist with that. (Vol. 4, pp. 53-55);

1 45. Ultimately, Sam and Bayuk extricated themselves from the co-ownership
2 dilemma. The parties valued, exchanged, and then trued-up the respective values in a division
3 that was crafted, supervised, and managed by counsel. (Exh. 257)

4 i. **Superpumper Inc./Consolidated Western Corporation**

5 46. In April 2006, a Nevada corporation controlled by Paul (PAMAZ) acquired all the
6 common stock of Superpumper, Inc., an Arizona corporation (“SPI”) that operated gas stations
7 and convenience stores in Scottsdale, Arizona. PAMAZ ultimately became Consolidated
8 Western Corporation, a Nevada corporation (“CWC”). (Stipulated Fact)

9 47. The purchase transaction was complicated in that it involved a sale-leaseback of
10 the real estate SPI owned, which, in large part, financed the acquisition. (October 31, 2018) p.
11 188)(hereinafter “Vol. 3”)

12 48. For tax purposes, the amount of \$4.3 million was allocated to Paul’s purchase
13 price for the fair market value of the SPI equity in 2006. (Exh. 229)

14 49. SPI maintained a \$2 million revolving line of credit (“RLOC”) from BBVA
15 Compass (“BBVA”) that was used for operating capital. The outstanding balance of the RLOC
16 fluctuated greatly depending on inventory needs and sales. (Vol. 3 pp.156-158).

17 50. In June 2007, SPI executed a Wholesale Marketer Agreement with Shell Oil
18 Products, requiring SPI to sell *only* Shell gasoline. This also permitted SPI to acquire gasoline
19 directly from Shell at a discount and not have to acquire fuel on the volatile spot market. (Exh.
20 226).

21 51. SPI did not own any of the properties on which it operated. All of the properties
22 were leased. In June 2007, SPI executed a master lease with Spirit SPE (“Spirit”) for the ground
23 leases on most of the 11 store locations. (Vol. 3 pp.180).

24 52. As far back as 2007, Superpumper carried on its books a large “Due From
25 Affiliates” receivable, which was comprised of “advances to affiliates.” These were reflected on
26 the books as non-current notes receivable “due from shareholder,” or due on demand “advances”
27 to shareholders. (Vol. 3 pp.190-192).

28 53. These “Due From Affiliates” amounts remained on SPI books as accounts

1 receivable, because although non-current, they ensured that SPI maintain the requisite \$6 million
2 in “shareholder equity” on its balance sheet as required by Spirit. (Vol. 3 pp.183).

3 54. The Due From Affiliates number grew from \$5.7 million in 2008 to \$8.2 million
4 at the end of 2010. (Exh. 120). This number primarily reflected cash paid to its shareholder
5 which were either booked as shareholder distributions or notes payable to SPI. (Vol. 8 p. 17-18).

6 55. In 2009, Sam and Bayuk each acquired 10% of CWC, which owned all the
7 Superpumper stock, which was acquired through their individual proceeds from the sale of BHI
8 to the Herbsts. (Vol. 3 p. 205).

9 56. In November 2009, SPI hired Jan Friederich, a gas station and convenience store
10 consultant to direct the operations of the company. (Vol. 3 pp.173).

11 57. In early 2010, SPI sought a term loan from Compass to pursue acquisitions in
12 Chicago and Texas. However, when it became apparent that the Judgment was imminent, those
13 immediate plans were scrapped. Paul wanted to use the money from the term loan so he
14 requested that it be funded. A \$3 million term loan was funded in mid-September 2010 (“Term
15 Loan”). Sam, Bayuk, and Paul each received \$939,000 from the funding. SPI was the obligor.
16 (Vol. 3 pp.169-171).

17 58. At the time of the Judgment, SPI stock was held by CWC, a Nevada corporation.
18 This corporation was subject to Nevada’s judgment exemption statutes, which would have, at
19 most, given Herbst a charging order on Paul’s CWC distributions, but would not have permitted
20 ownership or liquidation of Paul’s stock. (Vol. 3 p. 73).

21 59. Despite the creditor protections in place, Sam and Bayuk decided to form
22 Snowshoe Petroleum, Inc., a New York corporation (“Snowshoe”), to buy the SPI stock from
23 CWC at fair market value. (Vol. 3 pp.80-81).

24 60. Sam and Edward’s New York counsel, Dennis Vacco, proposed a merger between
25 CWC (as the parent corporation) and SPI (the subsidiary) and a subsequent stock sale to
26 Snowshoe. (Vol. 3 pp.90-92).

27 61. Snowshoe was formed in New York because Vacco’s office handled all the
28 paperwork and contracts to facilitate the SPI acquisition, including the merger agreements, the

1 purchase agreements, and other documents needed to consummate the transfer. (Vol. 3 pp.90-
2 92).

3 62. The merger was accomplished through several filings with the Nevada and
4 Arizona Secretary of State. The filings were public record. (Exh. 63, 64)

5 63. The SPI exchange was memorialized by a Shareholder Purchase Agreement
6 prepared by Vacco's office. It was prepared before the final appraisal figures had been received.
7 Thus, the agreement provided for \$1,035,000 immediate cash payment to Paul, and the
8 remainder of the purchase price – determined after the appraisal – would be paid by a note made
9 by Snowshoe. (Exh. 80)

10 64. The Shareholder Purchase Agreement expressly contemplated that the Note
11 would be assigned to a third-party creditor – the Herbst. (Exh. 80)

12 65. Sam and Edward each contributed \$517,000 of their own money to Snowshoe,
13 and on October 1, 2010, Paul was wired \$1,035,094. (Vol. 3 pp. 101-102).

14 66. To finalize the value of SPI, Vacco contacted and retained Matrix Capital, a
15 business appraiser with experience in gas stations to appraise the fair market value ("FMV") of
16 Superpumper's equity. (Vol. 7 pp. 112).

17 67. Spencer Cavalier, of Matrix, performed an SPI equity valuation, and was paid
18 \$40,000 by Snowshoe to perform it. (Exh. 90)

19 68. Cavalier opined that the fair market value of 100% of SPI's equity, on a
20 controlling, marketable basis, as of September 2010 was \$6,484,514. (Exh. 90)

21 69. In doing his Adjusted Balance Sheet Method of valuation, Cavalier adjusted the
22 SPI balance sheet to appropriately reflect the value of SPI's marketable assets. He adjusted off
23 the balance sheet the "Due From Affiliates" in the amount of \$8,925,708. (Exh. 90)

24 70. Defendants' expert, Michelle Salazar testified that in her experience this
25 adjustment was not only appropriate, but necessary. She opined that in a FMV evaluation like
26 this one, non-performing and non-current assets should be adjusted off the company's balance
27 sheet where, as here, the assets cannot be verified as marketable assets. (Trial Transcript,
28 Volume 6 (November 5, 2018) p. 90)(hereinafter "Vol 6").

1 71. The Due From Affiliates receivables carried on the SPI books had insufficient
2 evidence that they were marketable. There was no evidence that the receivables were supported
3 by written notes, or that the shareholder, CWC, intended to repay them. (Vol. 6 pp. 75-77).

4 72. The SPI auditors had indicated that these receivables were non-current assets
5 because there was no expectation that they would be paid within the year. (Trial Transcript,
6 Volume 4 (November 1, 2018) p. 166)(hereinafter "Vol 4").

7 73. Accordingly, they were properly adjusted off the balance sheet for the purposes of
8 ascertaining the Balance Sheet method of valuation. (Vol. 6 pp. 49).

9 74. Gary Krausz, the audit partner that signed SPI's audit, acknowledged that the
10 amounts reflected in the "Due From Affiliates" -- also called "related party transactions" -- were
11 the result of amounts paid to the shareholder and sometime reflected as a receivable from the
12 parent company, CWC. (Vol. 4 p. 249).

13 75. Krausz explained that he felt it appropriate to limit the scope of the 2010 audit
14 report to not include an opinion as to the "satisfaction of the valuation assertion for the notes
15 receivable" related to the Due From Affiliates. (Vol. 4 pp. 241-42).

16 76. Further, Krausz testified that although they obtained personal financial statements
17 from the CWC principals, he was unable to verify the value of the assets and liabilities on the
18 personal financial statements with third parties, and could not satisfy himself as to the value or
19 "viability" of the related party notes. (Trial Transcript, Volume 5 (November 2, 2018) p. 169-
20 170)(hereinafter "Vol 5").

21 77. Plaintiff's expert, James McGovern, testified that in his assessment of value, he
22 simply assumed the notes were "collectable," without any effort to test the assumption. (Vol. 4
23 p. 163).

24 78. McGovern admitted that he had no evidence of any notes being in existence to
25 support the assumption that the "Due From Affiliates" were collectible. (Vol. 4 p. 164).

26 79. Accordingly, in his opinion of value, he included the "Due From Affiliates" into
27 his excess working capital calculations, to the tune of \$6.5 million. (Exh. 91).

28 80. This \$6.5 million was then added to the SPI valuation he arrived at through the

1 Discounted Cash Flow Method of \$6,550,000, for a total appraised value of \$13,050,000. (Exh.
2 91).

3 81. Matrix's valuation and McGovern's valuations were only \$65,486 apart, before
4 McGovern included the \$6.5 million from the Due From Affiliates. (Compare Exh. 91 to Exh
5 235)

6 82. McGovern testified that the Due From Affiliates receivable should have been
7 included in the valuation, even though he conceded that the hypothetical arm's length buyer
8 would be paying face value to acquire a note from the hypothetical seller, which does little more
9 than entitle the hypothetical buyer to potential future income from the note, with no discount and
10 no security. (Vol. 4 pp. 182-185).

11 83. Michelle Salazar testified that McGovern's assessment of the excess working
12 capital was erroneous on the basis that he incorrectly and inexplicably changed the Due From
13 Affiliates from a non-current asset, as in the 2009 audit report, to a current asset, suggesting it
14 was intended to be repaid within the year. There was no basis for this adjustment. (Vol. 6 pp.
15 75-77).

16 84. Vacco's transactional partner, Christian Lovelace, who was very familiar with
17 SPI's performance and risk issues, applied discounts that Cavalier had not been asked to
18 consider. (Vol. 7 pp. 251-252).

19 85. Neither McGovern nor Matrix applied any marketability discounts. Neither
20 considered the fact that the Judgment against Paul constituted a default of the BBVA Compass
21 RLOC and Term Loan. (Exh. 91, 235)

22 86. On September 30, 2010, BBVA notified SPI of the events of default and notified
23 SPI of its right to exercise its rights, which included calling the unconditional guaranties and
24 security agreements. Lovelace made those required adjustments to account for the impact of the
25 default on the fair market value of SPI. (Exh. 231)

26 87. First, Lovelace computed a 35% risk discount to the valuation. He testified that,
27 "a risk discount is a normalizing number traditionally used with valuations and closely held
28 companies to come up with, you know, what the parties feel the actual value is based on outlying

1 risks. You know, there's always some sort of risk taken into account, whether it be a minority
2 risk or traditional ones. At the time, the risk discount was a combination of the defaults with the
3 Compass credit facilities, the term and the line, there's defaults on both. Compass Bank was well
4 aware of the defaults. It was also a factor of the present situation with Paul Morabito in October.
5 . . . [Paul] had litigation and judgments assessed against him, and the fact of buying the
6 percentage of the company at the time was a risk assessment of, you know, do we want to
7 separate -- if we separate ourselves from Paul Morabito, there's always going to be risk. . .
8 .Because of a judgment assessed against Paul and because the company was already in default,
9 Paul had drawn on the term loan, right, and money was with Paul. We're probably not going to
10 get that back because of the litigation. Sam and Edward would likely have to capitalize the
11 company in order to make the company good on all of its defaults with Compass Bank. The
12 guaranties for Compass Bank, there's only one, Paul. In order to do this the right way, where
13 Compass would put them in good graces, Edward and Sam would have to sign on. So all of that
14 taken together, because of Paul's situation of his litigation, right, the litigation itself is a massive
15 default on Compass and the guaranty, so Edward and Sam wouldn't have to take on a guaranty.
16 The risk was that Compass would pull everything, that we wouldn't get the 939 back, and the
17 discount was appropriate to the -- to the risk of the company failing and the -- because if that line
18 of credit was canceled, the way that the business of Superpumper operated, it collapses, because
19 you've got to have that bridge credit facility. . . . And from what I recall, the 35 percent was a
20 number that we had discussed with different accountants, including Matrix on a call. And, you
21 know, standard discounts in the industry range from 10 -- 10 to 40 percent, depending on the
22 combination of discounts and what they are. And at the time the 35 percent was, I think, a group
23 discussion in what everybody felt was fair. And I think it lined up with what we felt Edward and
24 Sam were out because of the bank defaults. (Vol. 7 pp. 254-258).

25 88. Lovelace explained that "You know, if we lost the line of credit, we'd lose about
26 1.5 to \$2 million. It was a big, big risk. . . . If we lose that, we lose the business, unless we get
27 another bank. And the likelihood of getting another bank after that is not good. I mean, it was a
28 very big risk. And then if we do default because we lose the line, Edward and Sam are now

1 personally guaranteed on all of those leases, which is huge -- huge, huge number. (Vol. 7 p. 256)

2 89. Second, Lovelace discounted the Matrix valuation by the amount of the
3 outstanding balance of the original \$3 million Term Loan, which was \$1,682,000, which Matrix
4 had not considered in evaluating SPI's liabilities. From the \$3 million, funds in the amount of
5 \$933,000 each were distributed to Sam, Paul, and Bayuk. (Vol. 7 pp. 254-258).

6 90. Subsequently, on September 30, 2010, a payment of \$659,000 was made to
7 Snowshoe by Sam, which was used to pay down the term loan. Additionally, on September 30,
8 2010, a payment was made by Bayuk to Snowshoe in the amount of \$659,000, which was used
9 to pay down the Term Loan. Therefore, the \$1,682,000 (\$3,000,000 - \$659,000 - \$659,000)
10 stemmed from the original Term Loan balance obtained in September 2010 for \$3 million less
11 the \$659,000 repaid by each. (Vol. 3 pp. 218).

12 91. Thus, after application of the 35% risk discount and the Term Loan, the net value
13 of SPI was \$3,121,634. Since Paul owned only 80%, his share was worth \$2,497,307. (Exh.
14 236).

15 92. Thus, pursuant to Lovelace's discount calculations, which were not rebutted by
16 Plaintiff, the total fair market value of Paul's 80% interest in SPI was \$2,497,307. (Exh. 236)

17 93. On October 1, 2010, Snowshoe Petroleum had already wired Paul \$1,035,094,
18 and Snowshoe Petroleum executed a note in favor of Paul for the balance of \$1,462,213. (Exh.
19 103).

20 94. Sam and Bayuk were not willing to assume the entire balance of the \$3 million
21 Term Loan in the SPI acquisition. They demanded that Paul repay the company the \$939,00 that
22 he received in mid-September. Thus, at the closing of the Snowshoe acquisition, Paul executed a
23 note payable in the amount of \$939,000. (Vol. 3 pp. 103-104; 217).

24 95. The balance of the purchase price owed to Paul was \$1,462,213. However, Paul
25 simultaneously owed \$939,000 to Superpumper (Snowshoe's subsidiary). Those notes
26 appropriately off-set. Accordingly, Superpumper assigned the \$939,000 note to Snowshoe, and
27 then a successor note was executed in Paul's favor for \$492,937.30, which represented the
28 remaining amount Snowshoe owed to Paul after the offset. (Exh. 103, 104, 105)

1 96. BBVA Compass was notified of the Judgment, which constituted a default under
2 the SPI loan documents. Despite the default, Compass agreed to work in good faith with SPI to
3 cure the defaults. (Exh. 33, 231, 232)

4 97. It was Sam and Vacco, not Paul, that worked with Compass to cure the defaults.
5 Paul had no involvement in that process after the transfer except for re-affirming his guaranty,
6 which Compass would not release. (Vol. 3 pp. 210-212).

7 98. As part of the default cure, Compass, the lender on the Term Loan, required that a
8 substantial repayment occur. To that end, both Sam and Bayuk contributed personal funds to
9 Snowshoe to pay down the Term Loan as Compass required. Paul had no involvement in that
10 process at all and contributed nothing. (Vol. 3 pp. 210-213).

11 99. BBVA Compass also required a significant pay down of the RLOC. In response,
12 on Bayuk and Sam each contributed \$659,000 to Snowshoe to reduce the balance of the RLOC
13 to help cure the default and secure the opportunity for forbearance. (Vol. 3 pp. 218).

14 100. Once Snowshoe was able to obtain forbearance from BBVA on the defaulted
15 loans, Snowshoe fully paid Paul, with interest, on November 28, 2011, in the amount of
16 \$560,000. (Vol. 3 pp. 112-113).

17 101. After the merger and acquisition, Paul had no control, management, or economic
18 stake in Snowshoe. (Vol. 3 p. 175).

19 102. In emails to his lawyers, Paul candidly explained that Sam and Bayuk had been
20 “exonerated” by Judge Adams, and that, along with his lawyers, they agreed that he “was best
21 standing alone” with his assets. (Exh. 29)

22 103. Paul Morabito explained his intent to his lawyers, undoubtedly with the
23 expectation that the conversation would remain confidential indefinitely. He said, “I end up with
24 clearly defined assets that are just mine that they can attach and take worth the same amount had
25 they tried to take assets jointly owned now by Edward and myself. I wasn't trying to avoid
26 anything - just separate the assets so that they are easily identified. He made it sounds as if I was
27 trying to defraud someone.” (Exh. 29)(Vol. 3 pp. 99-101).

- 1 **a. *Snowshoe Petroleum, Inc.***
- 2 104. Snowshoe Petroleum, Inc., was incorporated in the State of New York on or about
- 3 September 29, 2010, and is now a domestic corporation of the State of Delaware.
- 4 105. Snowshoe was incorporated at the direction of Sam Morabito, a dual
- 5 Canadian/American citizen and presently a resident of Canada. (Vol. 3 pp. 80-81).
- 6 106. Snowshoe's attorneys in Buffalo, New York, prepared the articles and other
- 7 filings and provided advice to Sam from New York. (Vol. 7 p. 258).
- 8 107. Snowshoe's principal office is located in Buffalo, New York, and has been
- 9 located there since the date of incorporation. (Vol. 3 p. 204).
- 10 108. Snowshoe has never transacted business in Nevada, has never sold products or
- 11 offered services in Nevada, has never had any employees who worked in Nevada. (Vol. 3 p.
- 12 204).
- 13 109. Since its formation, Snowshoe has never had any contacts with the State of
- 14 Nevada. (Vol. 3 p. 204).
- 15 110. Snowshoe owns an interest in Defendant Superpumper, an Arizona corporation,
- 16 which has never had assets or business in Nevada. (Vol. 3 p. 204).
- 17 111. No portion of the transaction was conducted in Nevada, and Snowshoe has never
- 18 had a physical, business, or economic presence in Nevada. (Vol. 4 p. 204).
- 19 **ii. Superpumper Properties, LLC**
- 20 112. Superpumper Properties, LLC, was an Arizona limited liability company ("SPP")
- 21 formerly owned by Paul (50%), Sam (25%) and Bayuk (25%).
- 22 113. SPP owned three "card lock fuel facilities" in Elko and Lovelock. A card lock is
- 23 an unmanned gas station. (Vol. 3 pp. 239-240).
- 24 114. After the Judgment, Paul wished to retain his interest in the card locks, and so he
- 25 agreed to buy out Sam and Bayuk's positions. (Vol. 3 pp. 239-240).
- 26 115. They agreed that Paul would transmit to them the payment for their share of the
- 27 equity in the company, net of debt. (Vol. 3 pp. 239-242).
- 28 116. The Superpumper Properties' lender had appraised the card locks in February

2010, and collectively they were valued at \$1,615,000. (Vol. 3 pp. 239-242).

117. The company carried secured debt in the amount of \$1,030,413, thus, the net equity in the Superpumper Properties as of the exchange was \$584,587. (Vol. 3 pp. 239-242).

118. Paul paid Bayuk and Sam each \$146,000 for their respective share of Superpumper Properties. This was a fair exchange, for value. (Exh. 254)

119. Nothing about the Superpumper Properties transfer or subsequent sale prevented the Herbst from seizing the proceeds in execution of their judgment.

iii. 8355 Panorama Drive, Reno

120. 8355 Panorama is a residential property near the Holcomb ranches in Reno.

121. On or about November 10, 2005, Paul and Bayuk purchased the house for \$2.65 million; financing was provided by Bank of America. (Exh. 258) (Vol. 2 pp. 128).

122. The house was titled to Paul, 2/3 interest, and Bayuk, 1/3 interest, as tenants-in-common. (Vol 2. p.119)

123. When Bayuk and Paul bought the house in 2005, they completely gutted the interior, exterior, and re-did the landscaping, spending over \$2.3 million on the remodel itself, which meant that they had spent \$4.95 million on the property in total. (Vol. 2 pp. 129-147).

124. They remodeled the property with the best materials and workmanship that money could buy. (Vol. 2 pp. 129-147).

125. Paul and Bayuk hired Mark Paul Designs, a world-renowned decorator located in Los Angeles, as their interior decorator. (Vol. 2 pp. 130-131).

126. Mark Paul retained Michael Sewitz, the world-renowned the owner of Valley Drapery, a drapery and upholstery designer and installer, in Burbank, California, to create and install all the upholstery, drapery, and window coverings throughout the house. (Vol. 2 pp. 130-131).

127. When asked about the quality of the house, Sewitz called it a “top-of-the-line house,” and “couldn’t believe that (he would) ever see a house like this in Reno,” comparing it to the top properties in Pacific Palisades or Malibu. (Trial Transcript, Volume 8 (November 7, 2018) p. 82)(hereinafter “Vol 8”).

1 128. Paul and Edward hired Dennis Banks as their renovation contractor. Banks
2 described the renovation as “extremely expensive in quality stuff,” stating that “It was among the
3 top” houses he had seen in his entire career. (Trial Transcript, Volume 7 (November 6, 2018) p.
4 14)(hereinafter “Vol 7”).

5 129. After the oral Judgment, Paul and Bayuk agreed that Paul should buy-out
6 Edward’s share of the home in order to make it accessible for Paul’s judgment creditors, and
7 Edward should buy out Paul’s interest in the Laguna Beach residential properties. (Vol. 7 p.
8 116).

9 130. They knew that they did not have to transfer their respective ownership because
10 Nevada and California law protected the non-judgment debtor’s interest in the houses as a
11 tenant-in-common. (Vol. 2 pp. 119-120).

12 131. However, as Vacco explained, having Paul acquire Bayuk’s share of the Reno
13 house made it available for Herbst to collect upon, and would hopefully leave Bayuk in peace.
14 (Vol. 7 pp. 116-117).

15 132. They agreed that they would exchange their respective interests in the properties
16 and then a true-up payment would be made to ensure that the exchange was for equivalent value.
17 (Vol. 7 pp. 111-112).

18 133. Paul and Bayuk signed a Purchase and Sale Agreement, prepared by Vacco’s
19 office, which identified the parties’ intent in exchanging their respective interests in the
20 residential properties, and estimated the value of the properties. (Vol. 7 pp. 113).

21 134. The Panorama property was appraised by Alves Appraisal, a Reno MAI appraisal
22 company. (Exh. 276)

23 135. As of September 21, 2010, the Panorama property was appraised at \$4,300,000.
24 (Exh. 276).

25 136. Darryl Noble, who performed the appraisal, testified that he had conducted an
26 exhaustive appraisal of the home, and he concluded that the quality of the workmanship and
27 finishes was among the top 10% of houses he had seen in his entire career, and comparable to
28 homes “in Lake Tahoe, in Montreaux, and Arrow Creek.” (Vol. 7 pp. 28).

1 137. In discovery in this case, Plaintiff retained William Kimmel to perform a
2 retroactive appraisal for this case. Kimmel opined that the value of the property was \$2,000,000.
3 (Exh. 53)

4 138. However, Kimmel admitted that he had never seen the interior of the home. (Vol.
5 5 pp. 54).

6 139. Kimmel admitted that his assessment of the condition of the property was based
7 *exclusively* on statements from the property's current owner. (Vol. 5 pp. 54).

8 140. Kimmel therefore opined that the property was of "substandard" condition and
9 quality, and "not in typical condition for the custom homes in the area." (Exh. 53)

10 141. Kimmel's report distinguished the Panorama house and the other comparable
11 properties only based on the quality and condition of the comparable properties, which he
12 concluded were far superior to Panorama. (Exh 53, p.57)

13 142. Kimmel acknowledged that he was not aware that the current owner of the
14 Panorama home was upset with Bayuk because Bayuk had refused to help the owner with
15 decorating the house after he had purchased it. (Vol. 5 pp. 53-54) (Vol. 2 pp. 160-163).

16 143. Paul acquired Bayuk's share of the furniture for \$29,383. The price was arrived
17 at by Bayuk taking inventory of the personal property and assessing a value he believed to be
18 fair. (Vol. 2 p. 63).

19 144. Paul executed a Bill of Sale for the personal property and Bayuk wrote him a
20 check for that amount. (Exh. 54, 266)

21 145. Paul also acquired Bayuk's share of the theater equipment in the amount of
22 \$150,000, which they had acquired jointly, and Paul acquired Bayuk's share of the excess water
23 rights in the amount of \$45,000. (Exh. 45)

24 146. A deed was recorded in the Washoe County Recorder's office, evidencing the
25 transfer. (Exh 50)

26 147. Herbst was aware of the transfer as early as Spring 2011. Herbst deposed Noble
27 in April 2011 about the valuation that facilitated the transfer. (Vol. 7 p. 46).

1 iv. **371 El Camino Del Mar, Laguna Beach**

2 148. 371 El Camino and 370 Los Olivos are adjacent properties in Laguna Beach,
3 California, that shared a common back yard fence. (Stipulated fact)

4 149. Bayuk and Paul acquired El Camino in approximately 2003. It was titled as
5 tenants-in-common, with Paul owning 75% and Bayuk owning 25%. (Stipulated Fact)

6 150. The Los Olivos property was purchased later. Once both properties were owned
7 by Paul and Bayuk, they removed the common fence to join the two backyards together. (Vol. 1
8 p. 107).

9 151. Bayuk has lived at El Camino since 2010, and after the Judgment he moved there,
10 to remain there indefinitely. He desired to buy Paul's 75% interest in the property. (Vol. 2 pp.
11 164-165).

12 152. Bayuk's Orange county lawyer, Mark Lehman, was retained to assist Bayuk in
13 obtaining appraisals for the Orange County properties. Lehman arranged for Justmann &
14 Associates to appraise the properties. (Vol. 2 pp. 154-55).

15 153. Justmann determined, using a sales comparison approach, that El Camino was
16 worth \$1,950,000, at the time of the exchange. (Stipulated Fact)

17 154. This valuation contradicts Plaintiff's trial theory that the values of the properties
18 Bayuk received were intentionally deflated and Paul's property was intentionally inflated.

19 155. Bayuk also acquired Paul's share of the furniture in El Camino for \$31,284. (Vol.
20 2 pp. 86).

21 156. Paul executed a Bill of Sale for the property and Bayuk wrote him a check for
22 that amount. (Exh. 56, 269)

23 157. A deed was recorded in the Orange County Recorder's office, evidencing the
24 transfer. (Exh. 52)

25 v. **370 Los Olivos, Laguna Beach**

26 158. Los Olivos was originally purchased for investment purposes, but was never used
27 that way, and eventually became a guest cottage. (Morabito Deposition)

28 159. It was titled as tenants-in-common with Bayuk and Paul each owning 50%.

1 (Stipulated Fact).

2 160. Bayuk desired to retain this property in the exchange. (Vol. 2 pp. 164-165).

3 161. As with El Camino, Lehman arranged for Justmann & Associates to appraise the
4 property. (Vol. 2 pp. 154-55).

5 162. Justmann determined, using a sales comparison approach, that the property was
6 worth \$1,900,000 at the time of the exchange. (Stipulated Fact)

7 163. Plaintiff offered no evidence to rebut the Justmann valuation.

8 164. Bayuk also acquired Paul's share of the furniture for \$12,763. Paul executed a
9 Bill of Sale for the property and Bayuk wrote him a check for that amount. (Exh. 57, 268)

10 165. A deed was recorded in the Orange County Recorder's office, evidencing the
11 transfer. (Exh. 51)

12 166. After the appraisals of the Panorama house and the two Laguna Beach houses,
13 Bayuk acquired \$60,117 more value in the exchange than did Paul. As per their agreement,
14 Bayuk wired that amount to Paul on October 1, 2010. (Vol. 2 pp. 168-169).

15 **vi. Baruk Properties**

16 167. Baruk Properties, LLC, was a Nevada limited liability company which Bayuk and
17 Paul formed in approximately 1999, which Bayuk and Paul co-owned equally through their
18 respective living trusts. Bayuk and Paul were the two managers. (Exh. 60)

19 168. Baruk held four pieces of real property. Two of the properties are located in
20 Laguna Beach ("Glenneyre properties") and are in commercial use. The other property was a
21 residence in Palm Springs, CA on Mary Fleming Circle, and the fourth was 49 Clayton Place,
22 Reno, a parcel of unimproved property next to a gas station that was owned from Baruk's former
23 Jiffy Lube business. (Stipulated Fact)

24 169. After the oral Judgment, Bayuk told Paul he wanted to buy Paul's share of Baruk
25 Properties. The primary motivation had to do with the fact that Bayuk lived only a few blocks
26 from the Glenneyre properties and maintained an office there. Paul, on the other hand, was
27 intending on residing in West Hollywood, a few hours away. (Vol. 2 pp. 164-65).

28 170. As with the other residences, with Vacco's assistance, Bayuk arranged for

1 certified appraisers to value the Baruk properties. (Vol. 2 pp. 154-55).

2 171. MAI Certified appraisers delivered appraisals for each property. (Exh. 180-184)

3 172. After the properties were valued, the fair market value of Paul's interest was
4 \$1,617,050. (Stipulated Fact)

5 173. Bayuk had insufficient liquidity to buy Paul's 50% interest in Baruk with cash
6 because Compass Bank required Bayuk to maintain a certain minimum balance of cash in his
7 personal accounts to secure the Superpumper debts, so he negotiated a payoff of the acquisition
8 with a note payable to Paul in the amount of \$1,617,050. (Vol. 2 p. 185).

9 ***a. 1254 Mary Fleming Circle, Palm Springs***

10 174. 1254 Mary Fleming was a residential property in Palm Springs.

11 175. It was appraised for Bayuk as of September 23, 2010, by Dozier Appraisal
12 Company, for \$1,050,000. (Stipulated Fact)

13 176. Mary Fleming had a mortgage balance at the time of \$344,921, leaving \$705,079
14 in equity. (Stipulated Fact)

15 177. Plaintiff offered no evidence to rebut the valuation.

16 178. This valuation contradicts Plaintiff's trial theory that the values of the properties
17 Bayuk received were intentionally deflated and Paul's property was intentionally inflated.

18 179. Bayuk also acquired Paul's share of the furniture for \$44,756. Paul executed a
19 Bill of Sale for the personal property as Trustee of his living Trust, and Bayuk wrote him a check
20 for that amount. (Exh. 55).

21 180. A deed was recorded in the Recorder's Office evidencing the transfer. (Vol. 2 p.
22 185).

23 ***b. 1461 Glenneyre, Laguna Beach***

24 181. 1461 Glenneyre is a commercial building a few blocks from Bayuk's residence.

25 182. It was appraised by Mark Justmann, who opined that the fair market value was
26 \$1,400,000. There was no debt on the property. (Stipulated Fact)

27 183. Plaintiff offered no evidence to rebut the Justmann valuation.

28 184. A deed was recorded in the Orange County Recorder's office, evidencing the

1 transfer. (Exh. 66)

2 ***c. 570 Glenneyre, Laguna Beach***

3 185. 570 Glenneyre is a commercial building just down the street from Bayuk's
4 residence.

5 186. It had a loan against the property with the balance of \$1,370,979 at the time of the
6 transfer. (Stipulated Fact)

7 187. Before the exchange, Bayuk, the property was appraised by Mark Justmann, who
8 opined that the fair market value was \$2,500,000. (Stipulated Fact)

9 188. Plaintiff offered no evidence to rebut the Justmann valuation.

10 189. A deed was recorded in the Orange County Recorder's office, evidencing the
11 transfer. (Exh 67)

12 ***d. 49 Clayton Place, Sparks***

13 190. Clayton Place was the name of the unimproved parcel of land in Sparks, Nevada,
14 owned by Baruk Properties.

15 191. At the time the property exchange was conceived, the parties had initially
16 forgotten about Clayton Place as an asset of Baruk. However, as the parties commenced the
17 respective equalization payments, they realized that Clayton Place had been left off the
18 equalization ledger. (Vol. 2 pp. 65-66).

19 192. The parcel was oddly shaped and had no access to the main road except through
20 the adjacent parcel. It had little utility to Bayuk and Morabito. (Vol. 2 p. 65-66).

21 193. Bayuk and Paul agreed that the property might be worth approximately \$100,000.
22 Thus, Bayuk credited Paul \$50,000 for Paul's share of the property and included that credit into
23 the balance of the Baruk properties equalization note. (Vol. 2 p. 95).

24 ***e. The \$1,617,050 Note.***

25 194. Bayuk purchased Morabito's share of Baruk Properties by executing a note in
26 favor of Paul for \$1,617,050. (Exh 62)

27 195. Although Bayuk testified there was no uniformity to the payments of the Note, he
28 paid the Note in full by June 2013. (Vol. 2 p. 229).

1 196. A payment ledger, and all the back-up documentation to support the ledger, was
2 admitted at trial. (Exh 73)

3 **f. Snowshoe Properties, LLC**

4 197. After the completion of the acquisition of Paul's share of Baruk Properties, Baruk
5 was merged into an existing entity which Bayuk solely owned, called Snowshoe Properties. The
6 merger was filed with the California Secretary of State. (Exh. 63, 64).

7 198. After the merger, Bayuk transferred 1254 Mary Fleming out of Snowshoe
8 Properties and into his Trust, which was evidenced by a recorded deed. (Exh 65)

9 199. Paul received no direct benefit from the income the properties generated.

10 **vii. Raffles Insurance Limited**

11 200. Raffles Insurance Limited was a risk pool created by an insurance captive. Prior
12 to selling BHI to Herbst in 2007, BHI had contributed several million dollars to secure a letter of
13 credit to Raffles to acquire a stake in the captive, along with dozens of other similar businesses
14 throughout the United States. This pooled risk provide re-insurance and protected BHI against
15 catastrophic loss in the event of an accident throughout a defined policy periods. (Vol. 2 pp.
16 166-168).

17 201. As the policy periods expired, distributions of the excess pooling would be made
18 to the members. If there were large claims against the policies during the policy periods, then
19 there might be no distributions to the members at all. (Vol. 2 pp. 166-168).

20 202. In the BHI sale to Herbst, Raffles was an excluded asset, retained by Consolidated
21 Nevada Corporation ("CNC"). (Vol. 3 pp. 99-100).

22 203. After the sale of BHI, CNC transferred its ownership in Raffles to CWC. Paul
23 owned 55%, Sam owned 20%, and Bayuk owned 25%. Raffles was held by CWC because it
24 was a requirement of the pooling that it be held by a like-kind business similar to BHI. (Vol. 2
25 pp. 212-215).

26 204. After the oral Judgment, Paul desired to retain Raffles, and Sam and Bayuk
27 agreed to be bought out. (Vol. 2 pp. 219-220).

28 205. As of September 30, 2010, CWC's equity in Raffles was approximately \$1.8

1 million. (Vol. 3 pp. 75-76).

2 206. On September 21, 2010, Paul wired Edward \$355,000 for his share in raffles and
3 Paul wired Edward \$420,500 for his share. (Vol. 2 p. 222).

4 207. Plaintiff offered no evidence to rebut the valuation.

5 **viii. WatchMyBlock LLC**

6 208. Watchmyblock LLC was a Nevada limited liability company formed by Bayuk
7 and Paul in 2005. It was based on an idea that a website could substitute for neighborhood
8 watch, using cell phones. (Vol. 2 pp. 208-212).

9 209. Watchmyblock never owned any assets, never operated, and never got past the
10 idea stage. (Vol. 2 pp. 208-212).

11 210. After the oral Judgment, Paul was going to give up on the idea. Bayuk wanted to
12 pursue it, and incur the expense of pursuing it. (Vol. 2 pp. 208-212).

13 211. Vacco's office drafted a Membership Interest Purchase Agreement in which
14 Bayuk acquired Paul's interest for \$1000. (Vol. 2 pp. 208-212).

15 212. When asked to explain the rationale for the consideration, Vacco testified, "It
16 owned no assets. It owned no trademarks. It owned no patent rights. It owned an amorphous
17 idea. . . . [A]s you research Paul A. Morabito, you'll find that there's a plethora of LLCs, because
18 every time he had a business idea, he formed an LLC. Those LLCs, much like this one, were
19 hollow shells, virtually worthless."

20 213. Plaintiff offered no evidence of the value of Watchmyblock.

21 **ix. Sefton Trust**

22 214. Plaintiff alleges a transfer of funds from Paul to the Sefton Trustees in the amount
23 of \$6,000,000.

24 215. Plaintiff presented no evidence that either Sam or Bayuk had personal knowledge
25 of anything related to Sefton, and no evidence was presented which suggested that either of them
26 received any benefit directly or indirectly as a result of the alleged transfer.

27 216. Plaintiff presented no testimony that Defendants had anything to do with this
28 transfer or that they somehow benefitted from it.

1 217. Dennis Vacco testified that the monies transferred to the Sefton Trust were paid
2 directly to the Herbst toward satisfaction of their claim.

3 **II. CONCLUSIONS OF LAW**

4 A. **Plaintiff Has Failed to Establish Personal Jurisdiction over Snowshoe**
5 **Petroleum, Inc, a New York corporation.**

6 218. On May 12, 2014, Defendant Snowshoe Petroleum filed a Motion to Dismiss on
7 the basis that this Court lacked personal jurisdiction over the entity.

8 219. On June 17, 2014, this Court denied the Motion without a hearing or evidentiary
9 findings, concluding that Plaintiff had established a prima facie showing of personal jurisdiction.

10 220. “Once a defendant challenges personal jurisdiction, the plaintiff may proceed to
11 show jurisdiction by one of two distinct processes. In the more frequently utilized process, a
12 plaintiff may make a prima facie showing of personal jurisdiction prior to trial and then prove
13 jurisdiction by a preponderance of the evidence at trial. *Casentini v. Ninth Judicial Dist. Court*
14 *of State In & For Cty. of Douglas*, 110 Nev. 721, 725, 877 P.2d 535, 538 (1994). This burden of
15 proof never shifts to defendant. *Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 692, 857
16 P.2d 740, 744 (1993).

17 221. To obtain jurisdiction over a non-resident defendant, Plaintiff must produce some
18 evidence to show: (1) the requirements of the forum state’s long-arm statute have been satisfied,
19 and (2) due process is not offended by the exercise of jurisdiction. *Id.* at 698.

20 222. Because Nevada’s long-arm statute does not enumerate specific bases for
21 jurisdiction and merely extends personal jurisdiction to the limits of due process, the two-part
22 test may be collapsed into a single constitutional inquiry. *Id.*; NRS §14.065(1) (“A court of this
23 state may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the
24 constitution of this state or the Constitution of the United States.”)

25 223. Plaintiff failed to establish that exercise of jurisdiction over Snowshoe was
26 reasonable.

27 224. To comply with the constitutional requirement of due process, Herbst must
28 demonstrate the existence of sufficient “minimum contacts” between Snowshoe and the forum

1 state, “such that the maintenance of the suit does not offend traditional notions of fair play and
2 substantial justice.” *Trump*, 109 Nev. at 698. Simply put, Snowshoe “must have sufficient
3 contacts with the forum state to reasonably anticipate being haled into court there.” *Id.* at 699.

4 225. Even if the plaintiff establishes sufficient minimum contacts between defendant
5 and the forum state, the plaintiff must also show that the exercise of jurisdiction is reasonable.
6 *Id.* The Nevada courts recognize two types of personal jurisdiction over a non-resident
7 defendant: general and specific. *Id.* General jurisdiction approximates a defendant’s physical
8 presence within the forum, and requires that the defendant’s presence within the forum be so
9 substantial or “continuous and systematic” that it may be subject to suit in the forum for any
10 claim. *Id.* Specific jurisdiction, by contrast, may only be exercised over claims arising from the
11 defendant’s specific contacts with the forum as that contact relates to the claims asserted. *Id.*

12 226. To establish specific jurisdiction, the plaintiff must show that (1) the defendant
13 purposefully availed itself of the privileges or laws of the forum state, or purposely established
14 contacts with the forum and affirmatively directed its conduct toward the forum; *and* (2) the
15 plaintiff’s cause of action arises out of defendant’s purposeful conduct with the forum. *Id.* at
16 699-700.

17 227. In this case, Plaintiff did not satisfy the requirements for general or specific
18 personal jurisdiction over Snowshoe.

19 228. Snowshoe has no contacts with Nevada. Plaintiff did not establish with any
20 evidence that Snowshoe has a systematic and continuous presence within this State.

21 229. Plaintiff established only alleged that Snowshoe is a New York corporation, and
22 that the idea of alleged transfer “originated” in Washoe County.

23 230. The burden for proving general jurisdiction is a substantial one. General
24 jurisdiction only exists when a defendant has contacts with the forum that are so substantial to
25 deem the defendant “present within the forum” for all purposes. *Trump*, 109 Nev. At 699. The
26 Nevada courts have concluded that general jurisdiction may not lie where the defendant is a non-
27 resident and the plaintiff has presented no evidence that (1) the defendant owns an interest in any
28 property within the forum; (2) has physically entered the state; (3) has conducted business or

1 engaged in any persistent course of conduct within the state; or (4) derives any revenues from
2 any goods consumed or services rendered within the state. *Id.* at 701-02.

3 231. In the instant case, Snowshoe lacks even the minimum contacts with Nevada
4 necessary for specific jurisdiction, let alone the higher threshold for general jurisdiction.

5 232. Snowshoe has never had *any* contact with Nevada whatsoever. There is no basis
6 for general jurisdiction against Snowshoe in Nevada.

7 233. Plaintiff contended that Snowshoe is subject to suit here because it allegedly
8 conspired with one-time Nevada residents.

9 234. Nevada courts have not expressly rejected the theory of conspiracy jurisdiction,
10 but the Ninth Circuit has noted that “a great deal of doubt” surrounds the conspiracy theory's
11 legitimacy. *Menalco, FZE v. Buchan*, 602 F. Supp. 2d 1186, 1194 (D. Nev. 2009) (citing *Chirila*
12 *v. Conforte*, 47 Fed. App'x 838, 842 (9th Cir. 2002) (unpublished)). Several courts have outright
13 rejected conspiracy jurisdiction because it conflicts with the Supreme Court's requirement that
14 each defendant's connection with the forum state be examined independently. *See, e.g.,*
15 *Gutierrez v. Givens*, 1 F. Supp. 2d 1077, 1083 n.1 (S.D. Cal. 1998); *Kipperman v. McCone*, 422
16 F. Supp. 860, 873 n.14 (N.D. Cal. 1976).

17 235. Even if this Court adopted the theory of conspiracy jurisdiction, Plaintiff did not
18 establish the necessary facts to support this theory. The majority of courts that recognize
19 conspiracy jurisdiction require the plaintiff to prove specific overt acts that occurred within the
20 forum state to further the alleged conspiracy, or to prove substantial acts in furtherance of the
21 conspiracy within the forum, and that the co-conspirator knew or should have known his co-
22 conspirator would perform those acts in the forum. *Menalco, FZE*, 602 F. Supp. 2d at 1193
23 (citing *Underwager v. Channel 9 Australia*, 69 F.3d 361,364 (9th Cir. 1995)).

24 236. Further if a plaintiff is attempting to assert jurisdiction based on the contacts of a
25 defendant's co-conspirator, the plaintiff must establish the conspiracy relationship through which
26 the contacts are attributed to defendants by at least prima facie evidence. *See Trump*, 109 Nev.
27 at 694-95 (discussing principle in terms of agency relationship).

28 237. Here, Plaintiff established no overt act *committed in Nevada* as part of the

1 purported conspiracy, or that Snowshoe knew or should have known that any acts in further of
2 the conspiracy would be committed in Nevada.

3 238. To establish specific jurisdiction, the plaintiff must show by preponderance of the
4 evidence that Snowshoe purposely established contacts with the forum and affirmatively directed
5 its conduct at the forum. *Trump*, 109 Nev. at 699-700. Snowshoe has done neither.

6 239. Snowshoe was formed in New York, by New York counsel. Snowshoe does
7 business only in Arizona. Snowshoe owns an interest in an Arizona corporation with no assets in
8 Nevada. Snowshoe has never availed itself of the privileges of doing business in Nevada. See
9 *Menalco, FZE*, 602 F. Supp.2d at 1194 (“Evidence of availment is typically action taking place
10 in the forum”).

11 240. Snowshoe lack of minimum contacts with Nevada precludes the exercise of
12 personal jurisdiction over it in Nevada.

13 241. Plaintiff did not establish that the Snowshoe acquisition of Superpumper, Inc.,
14 had any relation to this forum. Specific jurisdiction requires that the cause of action be
15 intimately related to the forum, and not based on a “random,” “fortuitous,” or “attenuated”
16 relationship. *Trump*, 109 Nev. at 700 (citing *Munley v. Dist. Court*, 104 Nev. 492, 495-96
17 (1988)). “The cause of action must arise from the consequences in the forum state of the
18 defendant's activities, and those activities, or the consequences thereof, must have a substantial
19 enough connection with the forum state to make the exercise of jurisdiction over the defendant
20 reasonable.” *Trump*, 109 Nev. at 700 (citations omitted). The quality rather than the quantity of
21 the defendant's contacts will affect the determination of jurisdiction. *Id.*

22 242. At no time has Snowshoe had contacts with Nevada. At no time did Snowshoe
23 purposely direct any action towards this forum to subject them to the jurisdiction of Nevada.

24 243. Because Snowshoe lacks any contacts with Nevada, requiring it to defend claims
25 in this forum exceeds the reach of the long-arm statute and offends the traditional notions of fair
26 play and substantial justice, and the claims against Snowshoe are DISMISSED.

27 **B. Plaintiff Has Failed to Establish the Existence of a Fraudulent Transfer.**

28 244. Nevada’s codified Uniform Fraudulent Transfer Act (“UFTA”) sets forth two

types of fraudulent transfers. The first is “actual fraud”, while the other is generally called “constructive fraud.” The law explains that a “transfer made or obligation incurred by a debtor is fraudulent as to a creditor . . . if the debtor made the transfer or incurred the obligation:”

- (a) **With actual intent to hinder, delay or defraud** any creditor of the debtor; **or**
- (b) **Without receiving a reasonably equivalent value in exchange** for the transfer or obligation, **and** the debtor:
 - (1) Was engaged or was about to engage in a business transaction for which the remaining assets of the debtor were unreasonably small in relation to the business; or
 - (2) Intended to incur, or believed to reasonably should have believed that the debtor would incur, debts beyond his or her ability to pay as they became due. NRS 112.180(1) (emphasis added).

245. “The UFTA is designed to prevent a debtor from defrauding creditors by placing the subject property beyond the creditors’ reach” *Herup v. First Boston Fin., LLC*, 123 Nev. 228, 232, 162 P.3d 870, 872 (2007).

246. While a “[f]raudulent conveyance under NRS Chapter 112 does not require proof of intent to defraud,” the creditor bears the burden of proof to establish that a fraudulent transfer occurred. *Sportsco Enters. v. Morris*, 112 Nev. 625, 631, 917 P.2d 934, 937 (1996).

247. Under UFTA, a creditor must prove the elements of a fraudulent transfer by **clear and convincing evidence**, a higher standard than the ordinary preponderance of the evidence. *See G.M. Houser, Inc. v. Rodgers*, 204 S.W.3d 836 (Tex.App. 2006); *In re Grove-Merritt*, 406 B.R. 778 (Bkrtcy.S.D.Ohio 2009); *Comcast of IL X v. Multi-Vision Electronics, Inc.*, 504 F.Supp.2d 740 (D.Neb.2007).

248. The creditor generally bears the burden of proof with respect to both insolvency of the debtor and inadequacy of consideration. *Sportsco*, 112 Nev. at 632.

249. “However, where the creditor establishes the existence of certain indicia or badges of fraud, the burden shifts to the defendant to come forward with rebuttal evidence that a transfer was not made to defraud the creditor.” *Sportsco*, 112 Nev. at 632.

1 250. The defendant must show either that the debtor was solvent at the time of the
2 transfer and not rendered insolvent thereby or that the transfer was supported by fair
3 consideration. *Sportsco*, 112 Nev. at 632.

4 251. To summarize, a creditor must prove either (1) actual intent to defraud or (2) that
5 the debtor did not receive reasonably equivalent value and was rendered insolvent as a result of
6 the exchange. *Sportso*, 112 Nev. at 631.

7 **1. There Was No Showing of Actual Fraud.**

8 252. Plaintiff has not established, through direct evidence or through the “Badges of
9 Fraud” that Defendants are liable for actual fraud. Plaintiff has not established that the transfers
10 removed Paul’s assets “beyond the creditor’s reach.”

11 253. Plaintiff’s primary theme is that the transfers prevented Paul’s creditor – Herbst --
12 from seizing the transferred assets, and that as a result of the transfers, the creditor was left
13 without assets to satisfy the Judgment.

14 254. There is no Nevada authority which supports the contention that the question of
15 whether the creditor was ultimately able to satisfy his judgment is an element in a fraudulent
16 transfer. The creditor’s ultimate ability to recover is irrelevant to the fraudulent transfer
17 question.

18 255. Nevada has significant debtor protection laws that regularly prevent creditors
19 from executing on valid judgments; whether a judgment can be ultimately be satisfied is not the
20 test for fraudulent transfers.

21 256. The test is whether the debtor engaged in fraud in an attempt to frustrate his
22 creditors by removing the assets beyond the creditor’s reach. Engaging in appropriate and legal
23 asset protection is not fraud.

24 257. Plaintiff established that the transfers occurred within days of the oral Judgment.
25 Defendants thus have the burden to explain why the transfers occurred. Defendants met their
26 burden.

27 258. Defendants’ established that the transfers actually *facilitated* the creditor’s
28 collection efforts, not frustrated them.

1 259. All of the assets Paul divided with Sam and Bayuk were held in either: (a) CWC,
2 a Nevada limited liability company, (2) Baruk Properties, a Nevada limited liability company, or
3 (3) tenancy-in-common.

4 260. Nevada law already protected Paul's interests in these properties from his
5 creditors. As part of Vacco's plan, Paul and the Defendants *intentionally dismantled* this
6 statutory asset protection in order to separate Sam and Edward's interests from Paul, and to make
7 Paul's assets more easily subject to collection.

8 261. If Paul and the Defendants had genuinely intended to frustrate Herbst's collection
9 efforts, dismantling the long-standing asset protections of Nevada law would not have been a
10 strategy they would have considered.

11 262. At the time of the oral judgment, Paul's interest in the Nevada limited liability
12 companies were not subject to execution. NRS 86.401 provides that:

13 “A court of competent jurisdiction by any judgment creditor of a member, the
14 court may charge the member's interest with payment of the unsatisfied amount
15 of the judgment with interest. To the extent so charged, the judgment creditor has
16 only the rights of an assignee of the member's interest [and] . . . This section . .
17 .[p]rovides the exclusive remedy by which a judgment creditor of a member or an
18 assignee of a member may satisfy a judgment out of the member's interest of the
19 judgment debtor, whether the limited-liability company has one member or more
than one member. No other remedy, including, without limitation, foreclosure on
the member's interest or a court order for directions, accounts and inquiries that
the debtor or member might have made, is available to the judgment creditor
attempting to satisfy the judgment out of the judgment debtor's interest in the
limited-liability company, and no other remedy may be ordered by a court.”

20 263. NRS 78.746 provides the same protections to Nevada corporations.

21 264. Thus, Plaintiff's contention that the merger of CWC – a Nevada corporation --
22 and subsequent sale of Superpumper placed assets “beyond the reach of the creditor” is not
23 supported by the law. Had CWC not been merged, the most Herbst could have obtained is a
24 charging order against Paul's economic interest. It could never have obtained the value of the
25 assets held by CWC.

26 265. Additionally, Baruk Properties was a Nevada limited liability company. Had Paul
27 *not* sold his interest in Baruk for a note, Paul's creditor could have acquired no interest in Baruk,
28 except for a charging order against his economic interest.

1 266. Additionally, Paul and Bayuk co-owned three real properties that were titled as
2 tenants-in-common. Under both Nevada law and California law, Paul’s creditors could have – at
3 most – acquired a tenancy-in-common interest in the properties and co-owned them with Bayuk.
4 Paul’s creditors could not have liquidated the properties to satisfy the Judgment. *Dieden v.*
5 *Schmidt*, 128 Cal. Rptr. 2d 365, 369 (2002); Cal. Code of Civ. Procedure 704.820 (stating that if
6 a dwelling is owned by the judgment debtor as a tenant in common, “the interest of the judgment
7 debtor in the dwelling *and not the dwelling* shall be sold”).

8 267. None of the assets transferred were subject to execution under Nevada’s or
9 California’s judgment execution laws, *unless and until* the Defendants intentionally and
10 purposefully dismantled the statutory asset protections. This is not indicia of fraud; rather, this is
11 evidence of an intent to make those assets available to Herbst and separate Sam and Edward
12 from the collection efforts.

13 **2. *The “Badges of Fraud” Do Not Establish a Showing of Actual Fraud.***

14 268. In determining whether actual fraud exists, Nevada law further provides the
15 following factors to which “consideration may be given, among other factors,” as to whether
16 actual intent to defraud, labeled “badges of fraud” existed:

- 17 (a) The transfer or obligation was to an insider;
18 (b) The debtor retained possession or control of the property transferred after the
19 transfer;
20 (c) The transfer or obligation was disclosed or concealed;
21 (d) Before the transfer was made or the obligation was incurred, the debtor had been
22 sued or threatened with suit;
23 (e) The transfer was of substantially all of debtor’s assets;
24 (f) The debtor absconded;
25 (g) The debtor removed or concealed assets;
26 (h) The value of the consideration received by the debtor was reasonably equivalent
27 to the value of the asset transferred or the amount of the obligation incurred;
28

1 (i) The debtor was insolvent or became insolvent shortly after the transfer was made
2 or obligation was incurred;

3 (j) The transfer occurred shortly before or shortly after a substantial debt was
4 incurred; and

5 (k) The debtor transferred the essential assets of the business to a lienor who
6 transferred the assets to an insider of the debtor.

7 NRS 112.18 (2).

8 ***a. Edward Bayuk Is Not an Insider.***

9 269. The first badge examines whether the transfer was made to an insider.

10 270. Bayuk is not an insider of the debtor. The debtor is a natural person. Thus,
11 insiders are defined as, (1) A relative of the debtor or of a general partner of the debtor; (2) A
12 partnership in which the debtor is a general partner; (3) A general partner in a partnership
13 described in subparagraph (2); and (4) A corporation of which the debtor is a director, officer or
14 person in control, or “An affiliate, or an insider of an affiliate as if the affiliate were the debtor.”
15 NRS 112.150(7). Bayuk is not an insider.

16 271. Moreover, Bayuk is not an “affiliate.” An affiliate applies *only where the debtor*
17 *is a corporation*. Affiliate means, (a) “A person who directly or indirectly owns, controls or
18 holds with power to vote, 20 percent or more of **the outstanding voting securities of the**
19 **debtor;**” or (b) “A corporation 20 percent or more of whose outstanding voting securities are
20 directly or indirectly owned, controlled or held with power to vote, by the debtor or a person who
21 directly or indirectly owns, controls or holds with power to vote, 20 percent or more of **the**
22 **outstanding voting securities of the debtor.**” (Emphasis added).

23 ***b. Paul Retained No Control Over Any of the Assets After the***
24 ***Transfers.***

25 272. Bayuk, Sam, and Jan Friederich each testified that after the merger of CWC and
26 the sale of Superpumper, Paul no longer had any active role in the company, and his only
27 involvement was as a continuing guarantor of the BBVA loans. He received no profits from the
28 operations, he received no salary, or other remuneration from the company.

1 273. Bayuk testified that Paul had no involvement in Baruk Properties after the sale.

2 274. Plaintiff's only evidence of "control" were emails where Paul was proposing big-
3 picture business ventures for himself and Bayuk in an effort to earn his way out of the Judgment.
4 None of Paul's "whiteboard" ideas ever came to fruition.

5 ***c The transfers were public record; there was no attempt to conceal***
6 ***the exchanges.***

7 275. The CWC merger was a public record filing. The sale of the real properties were
8 all done by way of recorded deed. The properties were valued by transparent and qualified
9 appraisals. There was no concealment.

10 276. The creditor was aware of the transfers within months of them occurring. There
11 was no active concealment.

12 277. Plaintiff has not produced any authority that Paul or the Defendants owed a duty
13 to affirmatively notify Herbst of the exchanges.

14 ***d Before the transfer was made or the obligation was incurred,***
15 ***Paul had been sued or threatened with suit;***

16 278. It is undisputed that the transfers were made shortly after the oral Judgment was
17 rendered.

18 ***e Herbst's own expert – and the partner of James McGovern –***
19 ***opined in May 2011 that Paul Morabito's net worth was over \$90***
20 ***million.***

21 279. The original Plaintiffs to this case, the Herbst parties (who were substituted out by
22 the Trustee) attempted to convince Judge Adams that as of May 2011, Paul had a net worth in
23 excess of \$90 million. The expert who rendered the opinion was Craig Greene, who is partners
24 with Plaintiff's expert, James McGovern. Greene was hired by the Herbst, who filed a report in
25 May 2011 substantiating his opinion of Paul's net worth. This report, prepared and filed by the
26 Herbst estops the Plaintiff from contending that the transfers "were substantially all" of Paul's
27 assets.

28 280. The Herbst expert report was prepared six months after the transfers, and Mr.
Greene, who prepared the report, was aware of the transfers when he prepared his report.

1 281. It was Greene's opinion of Paul's net worth which resulted in a stipulation to an
2 amount of punitive damages in the amount of \$15 million, which is well in excess of the amount
3 in controversy in this case.

4 282. If, as Plaintiff claims in this case, that the transfers were all of Paul's assets, then
5 the Herbst's defrauded the Court in the original Herbst punitive damages trial.

6 ***f Paul Never Absconded;***

7 283. There was no evidence that Paul absconded or attempted to abscond.

8 ***g Paul Did Not Remove or Conceal Assets.***

9 284. None of the assets at issue in this case were "removed or concealed".

10 285. Plaintiff's contends that the transfer of \$6 million to Sefton Trustees, which
11 Defendants were not aware of, were not involved in and received no benefit.

12 286. Plaintiff produced no evidence addressing Paul's intention as to the \$6 million
13 transfer.

14 287. It is undisputed that Paul paid the Herbst's settlement obligations with the \$6
15 million.

16 ***h The value of the consideration received by Paul was reasonably***
17 ***equivalent to the value of the asset transferred;***

18 288. The test to determine whether a debtor received reasonably fair consideration for
19 a transfer is "whether the disparity between the true value of the property transferred and the
20 price paid is so great as to shock the conscience and strike the understanding at once with the
21 conviction that such transfer could never have been made in good faith." *Matusik v. Large*, 85
22 Nev. 202, 208, 452 P.2d 457, 460 (1969)(emphasis added).

23 289. The parties appear to agree that the appropriate standard of value for the assets is
24 the fair market value of the assets at the time of the transfers.

25 290. The transfers were all for reasonably equivalent value.

26 291. Plaintiff's experts agreed that the values of 370 Los Olivos, 371 El Camino, 75
27 Clayton Place, and 1254 Mary Fleming were reasonably equivalent to the values at which they
28 were exchanged.

1 292. Plaintiff presented no evidence disputing the value of Raffles or the Superpumper
2 Properties' card locks.

3 293. Thus, Plaintiff only disputes the values of Panorama Drive and SPI.

4 294. Plaintiff's and Defendants' assessment of the value of SPI at the time of the
5 transfer was reasonably equivalent, with one exception. Plaintiff's expert James McGovern
6 testified that \$6,500,000 should be added to the Discounted Cash Flow valuation because of its
7 application as "excess working capital." McGovern testified that he assumed the "Due From
8 Affiliates" non-current assets should be current assets. This testimony was not credible.

9 295. This Court agrees with Defendants' expert Michelle Salazar that McGovern
10 improperly changed the "Due From Affiliates" from non-current assets to current assets, and that
11 Spencer Cavalier correctly adjusted the Due From Affiliates off the Superpumper balance sheet
12 in assessing the FMV of the SPI equity.

13 296. This Court agrees with Jan Friederich testified that in a Fair Market Valuation of
14 the equity of Superpumper, a hypothetical willing buyer would not be willing to purchase the
15 "Due From Affiliates" assets because a buyer desires only operating assets.

16 297. This Court also agrees that Defendants' Panorama Drive transfer was for
17 reasonably equivalent value.

18 298. The evidence presented by Defendants established that the quality of the interior
19 of the property was second to none. Darryl Noble considered the comparable properties in
20 Northern Nevada and applied an appropriate value to the square footage of the property.

21 299. The Court finds the testimony of Dennis Banks and Michael Sewitz compelling in
22 determining that the quality of the property was of the highest quality, justifying Mr. Noble's
23 appraised value.

24 300. The difference in value between the respective appraisers as to the 1461
25 Glenneyre property was not so vast as to shock the conscience and was the result of a difference
26 of opinion between two qualified experts.

27 ***i The Transfers Did Not Render Paul Insolvent.***

28 301. According to Herbst's expert, Paul had a net worth of more than \$90 million *after*

1 the transfers. According to Herbst's experts, even after the transfer he had sufficient assets to
2 pay the \$85 million Judgment.

3 302. Nor did the transfers leave Paul with nothing. While the final Judgment in
4 November 2011 rendered him technically insolvent in the sense that his Judgment exceeded the
5 value of everything he owned, the *transfers* did not reduce Paul's net worth in any way.

6 303. Further, the evidence as to the cash he received as part of the exchanges was
7 uncontroverted:

- 8 a. Paul received \$1,035,068 in *cash* as a result of the sale of Superpumper.
- 9 b. Paul received \$560,000 from Snowshoe as payment in full of the
10 Superpumper note.
- 11 c. Paul received \$60,117 in cash as a result of the exchange of the panorama
12 house for the Laguna houses.
- 13 d. Paul received \$31,284 in cash for his interest in the personal property at El
14 Camino;
- 15 e. Paul received \$29,383 in cash for his interest in the personal property at
16 Panorama Drive;
- 17 f. Paul received \$12,763 in cash for his interest in the personal property at
18 Los Olivos;

19 304. Paul was solvent at the time of the oral Judgment, he was solvent after the
20 transfers, and he was solvent up and until the time the punitive damages award was incorporated
21 into the Judgment along with attorney's fees and interest in November 2011.

22 *j The transfer occurred shortly before or shortly after a substantial*
23 *debt was incurred;*

24 305. It is undisputed that the transfers occurred shortly after the pronouncement of the
25 oral Judgment.

26 306. Plaintiff established only three badges of fraud. Sam Morabito was an insider;
27 and that the transfers occurred just after pronouncement of the oral Judgment.

28 307. Establishment of one or more of the badges of fraud is relevant evidence, but does

1 not create a presumption of a fraudulent transfer. *In re Nat'l Audit Def. Network*, 367 B.R. at
2 220. No badge standing alone is enough to establish fraud. *Id.*

3 308. On balance, the badges of fraud do not present clear and convincing evidence of
4 actual fraud.

5 **ii. Plaintiff Did Not Establish Constructive Fraud.**

6 309. A constructive fraudulent transfer occurs where the debtor transfers an asset (a)
7 without receiving reasonable equivalent value, and (b) the either the debtor (1) “engaged or was
8 about to engage in a business or a transaction for which the remaining assets of the debtor were
9 unreasonably small in relation to the business or transaction;” or (2) “Intended to incur, or
10 believed or reasonably should have believed that the debtor would incur, debts beyond his or her
11 ability to pay as they became due.” NRS 112.180(1)(b).

12 310. In essence, there is constructive fraud where the transfer occurs without fair
13 consideration and renders the debtor insolvent. *Matusik v. Large*, 85 Nev. at 205, 452 P.2d at
14 458.

15 311. As discussed above, Paul received reasonably equivalent value for the assets he
16 exchanged with Sam and Bayuk.

17 312. Further, the transfers did not render Paul insolvent.

18 313. Plaintiff did not contend that as a result of the exchange, Paul incurred debts
19 beyond his ability to pay. Rather, Plaintiff contended that Paul’s remaining assets after the
20 transfers were unreasonably small in relation to the size of the overall transaction with
21 Defendants.

22 314. It was established to the satisfaction of the Court that after the exchanges, Paul
23 received significant assets which Paul’s creditor could have executed upon.

24 315. Further, Herbst’s own expert filed a report in which he concluded that Paul’s *post-*
25 *transfer* net worth was over \$90 million. The total value of the transferred assets was a fraction
26 of Paul’s post-transfer net worth.

27 316. The transfers did not render Paul insolvent, and the transfers did not prevent
28 Herbst from seizing the same value in assets that it could have seized before the transfers.

1 **3. *Defendants Took the Exchanges in Good Faith***

2 317. Pursuant to NRS 112.220, taking in good faith and for reasonably equivalent
3 value is a total defense to a claim for fraudulent transfer. In such a case, where the transferees
4 take in good faith, “a transfer or obligation is not voidable.”

5 318. Even if Plaintiff had established Paul’s actual intent to defraud the Herbst in
6 making the property divisions, that finding alone would not achieve judgment for Plaintiff.

7 319. Defendants established a “complete defense” as good faith transferees. *Herup v.*
8 *First Boston Fin., LLC*, 123 Nev. 228, 234, 162 P.3d 870, 874 (2007).

9 320. Defendants had justifiable reasons for engaging in the transfers. The Judgment
10 excluded Bayuk and Sam from liability. Dennis Vacco testified that “Edward and Sam didn’t
11 want to be – be chased because they had an equity interest in properties that were also attached to
12 Paul.”

13 321. The Defendants “went to great lengths to avoid these claims,” including hiring
14 numerous appraisers to assess the value of the assets now at issue.

15 322. The asset separation was “just a matter of simple math based upon independent
16 third-party property valuations.

17 323. Plaintiff did not establish, that Defendants were aware of or participated in Paul’s
18 alleged intent to defraud his creditors.

19 324. Defendants testified that although they certainly were aware of the Judgment, they
20 were that Paul’s intent was to protect their interest in the properties, and not to defraud the
21 Herbst

22 325. Moreover, Defendants exchanged fair market value for the assets they acquired.
23 From the perspective of the Herbsts, the transfers left Paul no less susceptible to execution than
24 before the transfers. Indeed, the converse is true. If anything, the transfers made the assets more
25 accessible to the Herbst, not less so.

26 **III. JUDGMENT**

27 1. Plaintiff has not established, by clear and convincing evidence, that the badges of
28 fraud support a finding of actual fraud, or that constructive fraud occurred.

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2. Judgment is entered in favor of Defendants, and against Plaintiff, on all counts.


DATED this _____ day of _____, 2018.

DISTRICT JUDGE

Submitted by:
ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

/s/ Frank C. Gilmore
FRANK C. GILMORE, ESQ.
Attorneys for Defendants

Exhibit 1-C


Honorable Gregg W. Zive
United States Bankruptcy Judge



Entered on Docket
April 30, 2018

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

PAUL A. MORABITO,

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

Debtor.

JH, INC., JERRY HERBST, and BERRY
HINKLEY - INDUSTRIES,

Adv. No. 15-05019-GWZ

Plaintiffs,

vs.

PAUL A. MORABITO,
Debtor,

JUDGMENT ON THE
FIRST AND SECOND
CAUSES OF ACTION

Defendant.

IT IS HEREBY ADJUDGED, consistent with the Court's Memorandum
Decision filed April 30, 2018 and it's Amended Findings of Fact and Conclusions of
Law also filed April 30, 2018, which are hereby incorporated by reference as though

1 set forth in full, as follows:

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3 Plaintiffs have satisfied their burden of proof and proven all the necessary

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5 requirements to obtain a nondischargeable judgment under 11 U.S.C. § 523(a)(2), and

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7 the \$85,000,000.00 less the value of any payments made by Defendant, owed to the

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9 Plaintiffs by Defendant, is a nondischargeable debt. The Court finds in favor of

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11 Plaintiffs on the First and Second causes of action.

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From: USBC_NEVADA@nvb.uscourts.gov
Sent: Monday, April 30, 2018 2:55 PM
To: Courtmail@nvb.uscourts.gov
Subject: 15-05019-gwz Judgment

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U.S. Bankruptcy Court

District of Nevada

Notice of Electronic Filing

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Case Name: JH, INC. et al v. MORABITO

Case Number: [15-05019-gwz](#)

Document Number: [123](#)

Docket Text:

Judgment On The First And Second Causes Of Action (Related document(s)[1] Complaint filed by Plaintiff JH, INC..) (lms)

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a9c878c005fb4a831a58c87cdfaeea837ce5b631b6862a5c0bee167f72cd]]

15-05019-gwz Notice will be electronically mailed to:

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Exhibit 1-D


Honorable Gregg W. Zive
United States Bankruptcy Judge



Entered on Docket
April 30, 2018

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

PAUL A. MORABITO,

Debtor.

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

JH, INC., JERRY HERBST, and BERRY HINKLEY -
INDUSTRIES,

Plaintiffs,

v.

PAUL A. MORABITO,
Debtor,

Adversary No.: 15-05019-GWZ

Defendant.

**AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN
SUPPORT OF JUDGMENT REGARDING PLAINTIFFS' FIRST
AND SECOND CAUSES OF ACTION**

The purpose of these Amended Findings of Fact and Conclusions of Law is to supercede and replace the Court's initial *Findings of Fact and Conclusions of Law in Support of Order Granting in Part and Denying in Part Motion for Partial Summary Judgment* [ECF No. 59] ("Findings of Fact for Partial Summary Judgment") entered on September 22, 2016. The Court entered its *Order Granting in Part and Denying in Part Motion for Partial Summary Judgment*

1 [ECF No. 60] (the “Order for Partial Summary Judgment”) on September 22, 2016, granting in
 2 part and denying in part the Plaintiffs’¹ *Motion for Partial Summary Judgment* [ECF No. 33]
 3 (“MSJ”). In it’s Order, the Court granted the MSJ on the Plaintiffs’ First and Second causes of
 4 action and denied it on the Third Cause of Action. The Third Cause of Action was subsequently
 5 dismissed. Predicated on the Memorandum Decision, filed separately, and these Amended
 6 Findings of Fact and Conclusions of Law, the Court will enter a final judgment after trial as to the
 7 Plaintiffs’ First and Second causes of action that will replace the Order for Partial Summary
 8 Judgment. As to the Fourth Cause of Action, a separate judgment will be entered consistent with
 9 the Memorandum Decision filed herewith.
 10
 11

12 **PLEADINGS**

13 The Court reviewed and considered the following pleadings filed by the parties pertaining
 14 to the Herbst Parties’ First and Second causes of action.

15 Plaintiffs JH Inc. ("JH"), Jerry Herbst ("Herbst"), and Berry-Hinckley Industries ("BHI,"
 16 and together with JH and Herbst, the "Herbst Parties"), by and through their counsel, the law firm
 17 of Garman Turner Gordon LLP, filed their Motion for Partial Summary Judgment on August 4,
 18 2016. The Court reviewed the Motion for Partial Summary Judgment, the Herbst Parties'
 19 *Separate Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment*
 20 [ECF No. 34] (the "SSOF"), the *Declaration of Timothy P. Herbst in Support of the Herbst*
 21 *Parties' Separate Statement of Undisputed Facts in Support of Motion for Partial Summary*
 22 *Judgment* [ECF No. 35] (the "Herbst Declaration"), and the *Debtor's Opposition to Plaintiffs'*
 23 *Motion for Partial Summary Judgment* [ECF No. 42] (the "Opposition"), filed by Paul A.
 24
 25
 26
 27

28 ¹ All reference to “Plaintiffs,” “Herbst Parties,” or “Petitioning Creditors” herein shall identify the Plaintiffs.

1 Morabito ("Morabito"),² by and through his counsel, the law firms of Robison, Belaustegui, Sharp
 2 & Low and Robins Kaplan LLP, along with *Morabito's Evidentiary Objections to Declaration of*
 3 *Timothy P. Herbst Filed in Support of JH, Inc., Jerry Herbst, and Berry-Hinckley Industries'*
 4 *Motion for Partial Summary Judgment* [ECF No. 43] (the "Evidentiary Objection to Declaration
 5 of Timothy Herbst"), the *Defendants' Response to Plaintiffs' Statement of Disputed Facts in*
 6 *Support of Motion for Partial Summary Judgment (Fed. R. Civ. P. 56: LR 7056(c)* [ECF No. 44]
 7 (the "Response to Plaintiffs' Statement of Disputed Facts"), the *Defendant's Statement of Disputed*
 8 *Fact in Support of Opposition to Plaintiffs' Motion for Partial Summary Judgment* [ECF No.
 9 45] (the "Defendant's Statement of Disputed Fact"), the *Declaration of Paul A. Morabito in*
 10 *Support of Defendant's Statement of Disputed Fact in Support of Opposition to Plaintiff's Motion*
 11 *for Partial Summary Judgment* [ECF No. 46] (the "Morabito Declaration"), as well as the *Herbst*
 12 *Parties' Reply to Opposition to Motion for Partial Summary Judgment* [ECF No. 50] (the
 13 "Reply") and *Response to Evidentiary Objections to Declaration of Timothy P. Herbst Filed in*
 14 *Support of JH, Inc., Jerry Herbst, and Berry-Hinckley Industries' Motion for Partial Summary*
 15 *Judgment* [ECF No. 51] (the "Response to Evidentiary Objection") and the other pleadings,
 16 declarations, and documents noted on the record at the hearing on the Motion held August 4,
 17 2016, the trial conducted September 13-14, 2016 (the "Trial"), and the hearing and final
 18 arguments made on December 7, 2016.

22 Following the trial and hearings and after due deliberation and sufficient cause appearing
 23 in accordance with FRCP 52, as incorporated pursuant to Bankruptcy Rule 7052, the Court
 24 presents this Amended Findings of Fact and Conclusion of Law and orders the entry of a final
 25 judgment for the reasons set forth below and as explained in the Memorandum Decision filed
 26

28 ² All references to "Defendant," "Debtor," or "Morabito" herein shall identify the Defendant.

1 herewith.

2 **IT IS HEREBY FOUND AND DETERMINED** by the Court (together with the findings
3 of fact and conclusions of law made on the record at the Trial and hearings and the Memorandum
4 Decision filed herewith) as follows:

- 5 1. The Court has jurisdiction over the matters raised in the adversary proceeding and the MSJ
6 as core proceedings pursuant to 28 U.S.C. §§ 157 and 1334.
- 7 2. Determining whether a judgment is warranted under Section 523 is a core
8 proceeding in which the Court may enter a final order in accordance with 28 U.S.C. §
9 157(b)(2)(I).
- 10 3. Venue of the adversary proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
- 11 4. Good, sufficient and timely notice of the MSJ, the Trial and hearings has been given to
12 those to whom notice is required to be given in accordance with the Bankruptcy Code, the
13 Bankruptcy Rules, and the Local Rules. Notice of all proceedings regarding or relating to
14 the MSJ, the Trial and hearings was adequate under the circumstances and materially
15 complied with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and
16 the Local Rules.
- 17 5. Morabito and the Herbst Parties entered into an *Amended and Restated Stock Purchase*
18 *Agreement* (“ARSPA”), dated June 28, 2007.
- 19 6. A dispute developed between Morabito and the Herbst Parties regarding the ARSPA and
20 Morabito filed a lawsuit in the Second Judicial Court of the State of Nevada against the
21 Herbst Parties on December 3, 2007. The lawsuit was captioned Consolidated Nevada
22 Corp., et al. V. JH, et al., Case No. CV07-02764. The Honorable Judge Brent Adams
23 presided at a bench trial commencing May 10, 2010. At the conclusion of the trial, Judge
24
25
26
27
28

1 Adams found that Morabito had breached the ARSPA, had committed fraud in the
2 inducement and misrepresentation in relation to numerous aspects of the ARSPA. Judge
3 Adams ultimately awarded the Herbst Parties total damages in the amount of
4 \$149,444,777.80, representing both compensatory and punitive damages (the “Judgment”),
5 which Judgment was entered on August 23, 2011.
6

7 7. On October 12, 2010, Judge Adams entered his *Findings of Fact and Conclusions of Law*
8 related to the Judgment (the “FF&CL”).

9 8. Morabito appealed the FF&CL and the Judgment to the Nevada Supreme Court and the
10 Herbst Parties filed numerous cross-appeals (referred to collectively as the “Appeals”).
11

12 9. During the Appeals, Morabito represented to the Herbst Parties that he was unable to
13 satisfy the Judgment in full.

14 10. With the advice of counsel, Morabito and the Herbst Parties agreed to settle the state court
15 action and the Appeals through the execution of the *Settlement Agreement and Mutual*
16 *Release* (“Settlement Agreement”), executed on November 30, 2011. Pursuant to the
17 Settlement Agreement, the Appeals were vacated, and the Judgment and the FF&CL were
18 vacated.
19

20 11. As part of the Settlement Agreement, Morabito agreed to execute a *Confession of*
21 *Judgment* in the amount of \$85,000,000.00 and to stipulate that it would be
22 nondischargeable in a bankruptcy proceeding and affirmed the facts that establish that the
23 debt satisfied the requirements of Section 523(a)(2)(A) as a nondischargeable debt. The
24 Settlement Agreement further provided the Confession of Judgment could be filed, *ex*
25 *parte* and with no notice to Morabito, should Morabito fail to perform or default on any of
26 his obligations under the Settlement Agreement, and the failure to perform was not cured
27
28

1 within fifteen (15) days.

2 12. Morabito defaulted under the terms of the Settlement Agreement as a result of his failure
3 to timely comply with many of the terms.

4 13. Morabito then requested that the Herbst Parties forbear from exercising their rights and
5 remedies under the Settlement Agreement until December 1, 2013. Accordingly,
6 Morabito and the Herbst Parties, again with the advice of counsel, entered into the
7 *Forbearance Agreement*, dated March 1, 2013.

8 14. Morabito also failed to comply with the Forbearance Agreement. In accordance with the
9 terms of the Settlement Agreement, the Herbst Parties, on June 18, 2013, filed with the
10 Clerk of the State Court the Confession of Judgment and Stipulation. The Confession of
11 Judgment and Stipulation (“Confessed Judgment”) was entered onto the judgment roll.

12 15. Each of Morabito’s admissions within the Confessed Judgment were derived from, and
13 consistent with, the FF&CL and Judgment.

14 16. On June 20, 2013, the Herbst Parties filed an involuntary petition for relief under Chapter
15 7 of the Bankruptcy Code [ECF No. 1 in BK-N-13-51237-GWZ] (the “Involuntary
16 Petition”), commencing a Chapter 7 (the “Involuntary Proceeding”) against Morabito.

17 17. On December 22, 2014, the Court entered its *Amended Order for Relief Under Chapter 7*
18 [ECF No. 168] in BK-N-13-51237-GWZ.

19 18. On March 20, 2015, the Herbst Parties commenced the above-captioned adversary
20 proceeding (the “Adversary Proceeding”) by timely filing their *Complaint Objecting to*
21 *Debtor’s Discharge Pursuant to 11 U.S.C. § 523 and Bankruptcy Rule 4007* [ECF No. 1]
22 (the “Complaint”). The Complaint contained a First, Second, and Third Cause of Action.

- 1 19. On April 23, 2015, Morabito filed an *Answer to Adversary Complaint* [ECF No. 7]
2 (“Answer”).
3
- 4 20. On May 7, 2015, the Herbst Parties filed their *Amended Complaint Objecting to Debtor’s*
5 *Discharge Pursuant to Sections 523(a)(2)(A) and 523(a)(2)(B) and 28 U.S.C. § 2201* [ECF
6 No. 8] (the “Amended Complaint”), after Morabito disclosed in his Answer he was now
7 claiming that the facts he affirmed in 2011, four years earlier, were misleading and false.
8 The Herbst Parties added a Fourth Cause of Action as alternative relief to their Amended
9 Complaint premised upon Morabito’s allegations in his Answer.
10
- 11 21. On May 22, 2015, Morabito filed his *Answer to Amended Complaint Objecting to*
12 *Discharge* [ECF No. 10] (the “Amended Answer”).
13
- 14 22. On June 22, 2016, the Herbst Parties filed the *Motion for Partial Summary Judgment*
15 [ECF No. 33]; the *Herbst Parties Separate Statement of Undisputed Facts in Support of*
16 *Motion for Partial Summary Judgment* [ECF No. 34]; and the *Declaration of Timothy P.*
17 *Herbst* [ECF No. 35].
18
- 19 23. On July 21, 2016, Morabito filed his *Opposition*, his *Evidentiary Objection to the*
20 *Declaration of Timothy Herbst*; the *Defendant’s Statement of Disputed Fact*, and the
21 *Morabito Declaration*.
22
- 23 24. On July 28, 2016, the Herbst Parties filed their *Reply* and their *Response to Evidentiary*
24 *Objection to the Declaration of Timothy Herbst*.
25
- 26 25. On August 4, 2016, the Court conducted a hearing on the Herbst Parties’ Motion for
27 Partial Summary Judgment and Morabito’s Evidentiary Objection to the Declaration of
28

1 Timothy Herbst.

2
3 26. On August 18, 2016, the Herbst Parties filed a *Joint Trial Statement* [ECF No. 53].

4 27. On August 23, 2016, the Herbst Parties filed an *Amended Joint Trial Statement* [ECF No.
5 55].

6
7 28. On September 13-14, 2016, the Court held the Trial on the Herbst Parties' Fourth Cause of
8 Action which was seeking alternative relief.

9
10 29. On September 22, 2016, the Court entered its Findings of Fact for Partial Summary
11 Judgment and its Order for Partial Summary Judgment. The effect of the Order for Partial
12 Summary Judgment was to grant the Herbst Parties' Motion for Partial Summary
13 Judgment for the Herbst Parties' First and Second causes of action and to deny it in for the
14 Third Cause of Action.

15
16 30. On October 17, 2016, seeking revision of the Court's Order for Partial Summary
17 Judgment, Morabito filed his *Motion for Revision of Interlocutory Order Granting Partial*
18 *Summary Judgment Pursuant to Rule 54(b) of the Federal Rule of Civil Procedure* [ECF
19 No. 66] ("Motion for Revision").

20
21 31. On October 31, 2016, the Court entered its *Judgment as to Plaintiffs' Third Cause of*
22 *Action* [ECF No. 71].

23
24 32. On November 10, 2016, the Herbst Parties filed their *Opposition to the Motion for*
25 *Revision*.

1 33. On November 18, 2016, Morabito filed his *Memorandum of Points and Authorities in*
2 *Support of Debtor's Findings of Fact and Conclusions of Law Regarding the Fourth*
3 *Cause of Action* [ECF No. 73] and the Herbst Parties filed their *Memorandum of Law in*
4 *Support of Judgment for the Herbst Parties on Their Fourth Cause of Action* [ECF No.
5 74].
6

7 34. On November 29, 2016, Morabito filed his *Reply to the Herbst Parties' Opposition to the*
8 *Motion for Revision*.
9

10 35. The Court held a hearing on December 7, 2016 on the Motion for Revision and final
11 arguments were heard on the Fourth Cause of Action.
12

13 36. With respect to his Evidentiary Objection to the Declaration of Timothy Herbst, Morabito
14 argued that the Court could not consider and rely on the FF&CL or Judgment for any
15 purpose, because the FF&CL and Judgment were subsequently vacated by the state court.
16 However, Morabito misses the point. The Herbst Parties have not requested that the
17 FF&CL or Judgment be given preclusive effect, nor has the Court given them preclusive
18 effect. Instead, the Herbst Parties requested that the FF&CL and Judgment be considered
19 as further evidence that the issues of fraud in the inducement in the Confessed Judgment
20 were "actually litigated and necessarily litigated" for purposes of the Court's issue
21 preclusion analysis. Although it is correct that the vacated FF&CL and Judgment do not
22 have preclusive effect, that does not mean that a trial was not held, that Judge Adams did
23 not make certain findings of fraud and conclusions of law, and that a judgment was not
24 actually entered at one point. That is the reality and those are facts that Morabito admits to
25 in the Morabito Declaration. The Court is authorized to take judicial notice of these facts
26
27
28

1 under Federal Rule of Evidence 201. Thus, the Court overrules the Evidentiary Objection
 2 to the Declaration of Timothy Herbst.

3
 4 37. With respect to the MSJ, the Herbst Parties moved for partial summary judgment with
 5 respect to their First, Second, and Third causes of action pursuant to Sections 523(a)(2)(A)
 6 and 523(a)(2)(B) and 28 U.S.C. § 2201, respectively.

7
 8 38. Section 523(a) provides in pertinent part that:

9 (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not
 10 discharge an individual debtor from any debt-

11 ...

12 (2) for money, property, services, or an extension, renewal, or refinancing of credit,
 13 to the extent obtained by--

14 (A) false pretenses, a false representation, or actual fraud, other than a
 statement respecting the debtor's or an insider's financial condition;

15 (B) use of a statement in writing--

16 (I) that is materially false;

17 (ii) respecting the debtor's or an insider's financial condition;

18 (iii) on which the creditor to whom the debtor is liable for such
 19 money, property, services, or credit reasonably relied; and

20 (iv) that the debtor caused to be made or published with intent to
 21 deceive.

22 11 U.S.C. § 523(a)(2).

23 39. The Court finds and concludes that entry of a final judgment is appropriate because
 24 there is no genuine dispute as to any material fact and the Herbst Parties are entitled to
 25 judgment as a matter of law on their First and Second causes of action under Section
 26 523(a)(2)(A) and 523(a)(2)(B) under claim preclusion and issue preclusion and the
 27 evidence presented at the Trial established that Morabito engaged in conduct that satisfies
 28

1 the factual and legal basis for finding the debt to be nondischargeable pursuant to Section
2 523(a)(2). See Memorandum Decision for a full analysis of this additional basis for
3 judgment in favor of the Herbst Parties on the First and Second causes of action.
4

5 40. A fact is “material” if it might affect the outcome of the suit under the governing
6 substantive law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A
7 factual dispute is “genuine” where “the evidence is such that a reasonable jury could return
8 a verdict for the nonmoving party.” See id.
9

10 41. Here, it is undisputed that there was a trial in the state court, that FF&CL and a Judgment
11 were entered by Judge Adams and then vacated, and the Stipulation in support of the
12 Confessed Judgment mirrors the FF&CL.
13

14 42. The facts that Morabito agreed to and affirmed in the Stipulation in support of the
15 Confessed Judgment meet each of the elements of fraudulent inducement under Nevada
16 law and nondischargeability under Sections 523(a)(2)(A) and 523(a)(2)(B), which mirror
17 one another.
18

19 43. The Bankruptcy Appellate Panel of the Ninth Circuit found in In re Morabito, No. BAP
20 NV-14-1593-FBD, 2016WL 3267406, *1 (9th Cir. BAP June 6, 2016) that in the
21 Confessed Judgment, Morabito admitted that he acted in bad faith and committed fraud,
22 including fraudulently inducing the Herbst Parties. The Morabito Declaration appears to
23 contradict the stipulated facts in the Confessed Judgment, even though Morabito affirmed
24 each of the facts in support of the Confessed Judgment.
25

26
27 44. While the Court found that no trial was necessary on the Herbst Parties’ First and Second
28

1 causes of action because the only differing versions of the truth that had been presented to
2 the Court were in the Morabito Declaration and Morabito's verified stipulation of facts in
3 support of the Confessed Judgment, the Trial regarding the Fourth Cause of Action was
4 conducted and the evidence provided additional facts establishing that Morabito engaged
5 in fraud, supporting a judgment of nondischargeability on the First and Second causes of
6 action.
7

8
9 45. The admitted and verified stipulation of facts in support of the Confessed Judgment
10 demonstrates beyond any doubt that no genuine dispute exists as to whether Morabito's
11 conduct satisfies all the elements of nondischargeability under Section 523(a)(2).
12

13 46. Although Morabito filed the Morabito Declaration in support of his Opposition, the Court
14 finds that the Morabito Declaration is a sham intended to create disputed facts with his
15 own inconsistent statements to defeat partial summary judgment. See Kennedy v. Allied
16 Mut. Ins. Co., 952 F.2d 262, 266 (9th Cir. 1991) (a party cannot create an issue of fact by
17 an affidavit contradicting his prior testimony if the affidavit is a sham produced merely to
18 avoid summary judgment).
19

20 47. The Morabito Declaration is simply a rehash of what happened at the state court trial, and
21 its contents are substantially all hearsay or not based upon Morabito's personal knowledge.
22

23 48. The disputes between the parties were previously litigated to judgment in the state court as
24 evidenced by the FF&CL, Judgment, and Confessed Judgment. The Court will not conduct
25 an evidentiary hearing to relitigate what has been previously litigated.
26

27 49. Morabito's trial testimony provides further evidence that his declaration was a sham.
28

- 1 50. Morabito was adequately represented by counsel when he executed the Confessed
2 Judgment. There has been no allegation made or evidence presented to the Court that
3 Morabito was under undue duress when he executed the Confessed Judgment. Morabito
4 simply did not want the Judgment of record. The allegations that Morabito was advised by
5 his counsel that the Confessed Judgment would neither be enforceable nor entitled to
6 preclusive effect in bankruptcy, do not entitle him to disavow facts that he verified. As
7 confirmed by his testimony at the Trial, Morabito never discussed the affirmed stipulation
8 of facts with the Herbst Parties or their counsel. He only discussed them with his counsel
9 who advised him to affirm the facts and execute the Confessed Judgment.
10
11
- 12 51. The Confessed Judgment was part of the Settlement Agreement and the Confessed
13 Judgment existed when Morabito breached the Settlement Agreement and the subsequent
14 Forbearance Agreement. The Herbst Parties moved to enforce the Confessed Judgment
15 and had it entered onto the judgment roll. It was only after those events and the
16 commencement of this bankruptcy case that Morabito sought to disavow the facts he
17 stipulated to and affirmed. The Court finds that to be unacceptable and a sham.
18
19
- 20 52. To determine the preclusive effect of a state court decision in bankruptcy court, the
21 bankruptcy court must apply the law of the state rendering the allegedly preclusive
22 judgment. See In re Cantrell, 329 F.3d 1119, 1123 (9th Cir. 2003); Gayden v. Nourbakhsh
23 (In re Nourbakhsh), 67 F.3d 798, 800 (9th Cir. 1995).
24
- 25 53. In Nevada, four elements must be established for issue preclusion to apply: (I) the issue
26 decided in the prior litigation must be identical to the issue presented in the current action;
27 (ii) the initial ruling must have been on the merits and have become final; (iii) the party
28

1 against whom the judgment is asserted must have been a party or in privity with a party to
2 the prior litigation; and (iv) the issue was actually and necessarily litigated. See Five Star
3 Capital Corp. v. Ruby, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008).
4

5 54. Here, the Court is not being asked to give preclusive effect to the Judgment and the Court
6 is not relying upon the findings in the FF&CL for preclusive effect. Rather, the Herbst
7 Parties are asking the Court to give preclusive effect to the Confessed Judgment and the
8 Stipulation of facts in support of the Confessed Judgment.
9

10 55. The FF&CL and Judgment were vacated, however Morabito affirmed the facts contained
11 in the FF&CL and the Judgment to be true when he entered into the Stipulation of facts in
12 support of the Confessed Judgment. This is so because the facts contained in the
13 Stipulation of facts directly parallel Judge Adam's findings. Unlike the FF&CL and the
14 Judgment, the verified Stipulation of facts has not been vacated.
15

16 56. Thus, the Court is relying upon Morabito's verified Stipulation of facts in support of the
17 Confessed Judgment. The Court is not relying upon Judge Adam's FF&CL; the Court is
18 simply observing (because the Court cannot ignore) that the Stipulation of facts is
19 consistent Judge Adam's FF&CL, they were not made out of whole-cloth or dictated to
20 Morabito by the Herbst Parties, and there is no reason for the Court to view the Stipulation
21 of facts with skepticism like the panel in In re Wank, 505 B.R. 878 (9th Cir. BAP 2014).
22
23

24 57. The parties to the Confessed Judgment Action and the Adversary Proceeding are the same.
25 The Confessed Judgment is a final valid judgment on the merits. The Herbst Parties' state
26 court fraud in the inducement claim is the same claim the Herbst Parties are litigating in
27 the Adversary Proceeding.
28

58. It is undisputed that there was a trial in the State Court, that FF&CL were entered by Judge Adams, and the Stipulation in support of the Confessed Judgment mirrors the FF&CL. In fact, Morabito had significant and substantial participation in every event that led him to sign the stipulated facts in support of the Confessed Judgment.

59. No Nevada case cited by the parties had facts similar to what is before the Court. While Willerton v. Bassham, by Welfare Div., State, Dep't of Human Res., 111 Nev. 10, 889 P.2d 823 (1995) gives the Court pause, Willerton is distinguishable. The Nevada Supreme Court in Willerton generally stated in *dicta* that stipulation-based judgments entered into prior to a trial are not entitled to issue preclusive effect. However, unlike in Willerton, Morabito stipulated to facts after (not prior to) a trial and that existed when the Confessed Judgment was executed. So here we have a post-trial stipulated judgment, which, as discussed below, the Court believes falls within Cole³ and Levinson,⁴ and are consistent with the Ninth Circuit BAP's rationale in the unpublished opinion of In re Johnson.⁵

60. Willerton did not hold that issue preclusive effect could not be given to a Confessed Judgment, particularly where there has been significant and substantial participation and a two week trial after which findings of fact and conclusions of law were entered and an appeal was filed before the parties settled.

61. The Court concludes that there is no case directly on point. In none of the cases cited in the

³ In re Cole, 226 B.R. 647 (9th Cir. BAP 1998).

⁴ Klingman v. Levinson, 831 F.2d 1292, 1296 n.3 (7th Cir. 1987).

⁵ In re Johnson v. W3 Inv. Partners, LP, (In re Johnson), No. SC-17-1194-LBF, 2018 WL 1803002 (9th Cir. BAP Apr. 16, 2018). In re Johnson was not published. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 Opposition had there been a trial where facts were established and set forth in findings of
2 fact and conclusions of law and a judgment, which were then vacated pursuant to a
3 settlement of the parties. In no case cited by the parties was there a Confessed Judgment or
4 stipulated judgment entered after a trial.
5

6 62. Here the facts in the Confessed Judgment had been established by Judge Adams after a
7 trial that last several weeks and were established at the time of execution of the Confessed
8 Judgment and were stipulated to and affirmed by Morabito.
9

10 63. In most cases refusing to give issue preclusive effect to a Confessed Judgment, the
11 Confessed Judgment was executed at the time of the original transaction, not after a trial
12 and findings of fact and conclusions of law and a judgment. Thus, the general policy that
13 courts have relied upon in denying issue preclusive effect to Confessed Judgments is not at
14 issue here.
15

16 64. Morabito argues that the BAP decision in In re Wank, 505 B.R. 878 (9th Cir. BAP 2014)
17 permits Morabito to contradict his stipulations in support of the Confessed Judgment. The
18 Court concludes that Wank is not on point and distinguishable for several reasons. And,
19 of course, the Court has now weighed Morabito's credibility and testimony during the
20 Trial.
21

22
23 65. In Wank, the first declaration did not provide that the debtor knew the statements were
24 false or that the creditor justifiably relied. Here, in support of the Confessed Judgment,
25 Morabito acknowledged and verified that he knew his statements and representations were
26 false at the time he made them and that the Herbst Parties justifiably relied upon his
27 verification of the facts. There is no evidence that Morabito or his attorney had any
28

1 communication with the Herbst Parties or their counsel about Morabito believing the facts
2 that he verified in the Confession of Judgment to be false. That Morabito and his counsel
3 never told the Herbst Parties or their counsel that Morabito's affirmation of the stipulated
4 facts was false was finally established by his own testimony at the Trial.
5

6 66. In describing the circumstances giving rise to the first declaration in Wank, the debtor
7 stated that he was under undue duress and on medication for anxiety when he executed the
8 first declaration and that he objected to the falsity of the statements at the time he executed
9 the declaration.
10

11 67. Moreover, the second declaration in Wank presented the debtor's version of the truth had
12 he had the opportunity to defend against the creditor's claims, unlike Morabito's select bits
13 and pieces from a trial in which he had a full opportunity to litigate his version of the truth.
14

15 68. Unlike in Wank, the Morabito Declaration is a sham.
16

17 69. Further, the first declaration in Wank could only be used in a future bankruptcy proceeding
18 and was not included in the stipulated judgment. However, the Confessed Judgment here,
19 which contains all of the findings of fact that were agreed to and verified by Morabito, was
20 not intended to be filed in a future bankruptcy proceeding, but rather was specifically
21 intended to be filed in the state court and, in fact, was filed in the state court on June 18,
22 2013, and entered onto the judgement roll.
23

24 70. In Wank, the BAP panel relied upon In re Cole, which was cited with approval by the
25 Ninth Circuit in In re Huang, 275 F.3d 1173 (9th Cir. 2002), for the proposition that
26 bankruptcy courts should not enforce a stipulated judgment. However, the stipulated
27
28

1 judgment in Cole was executed prior to any trial on the issues set forth in the stipulated
2 judgment. Thus, the BAP panel in Cole held it would not enforce a prospective waiver of
3 the discharge.
4

5 71. Here, the stipulation of facts in the Confessed Judgment was not prospective because the
6 Judgment, with all the necessary elements of Section 523(a)(2) nondischargeability,
7 existed at the time of execution. When Morabito executed the Confessed Judgment, there
8 existed a final judgment, which made all the findings that are mirrored in the Confessed
9 Judgment, that were actually litigated and that were all necessarily decided in the former
10 proceeding with the same parties.
11

12 72. Further, unlike in Cole, the facts stipulated to and verified by Morabito did not relate to
13 some future bankruptcy case, but involved issues that were actually and necessarily
14 litigated in front of Judge Adams and were in existence at the time the Confessed
15 Judgment was executed. The Confessed Judgment had everything to do with the merits of
16 the state court action unlike in Cole.
17
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19 73. In distinguishing Cole's holding that, "if the parties stipulated to the underlying facts that
20 support a finding of nondischargeability, the Stipulated Judgment would then be entitled to
21 collateral estoppel application," the Wank panel wrote that the debtor's admissions in the
22 first declaration were not stipulated, nor were they referenced in the stipulated judgment.
23 Instead, the first declaration in Wank was a stand-alone document, executed only by the
24 debtor, not submitted for consideration by the state court, then sealed, to be used by the
25 creditor only in a future bankruptcy proceeding. Of course, the facts in the instant
26 proceeding are totally inapposite.
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- 1 74. The Herbst Parties have asked the Court to give the stipulated facts collateral estoppel
2 application as recognized in Wank and Cole and the Court concludes that the stipulated
3 facts are entitled to collateral estoppel effect because the facts at issue here are akin to
4 those in Cole, not Wank. Here, the facts underlying Morabito's fraud were stipulated to,
5 admitted, verified, and included in the Confessed Judgment that was filed in the state court
6 and subsequently entered upon the judgment roll.
7
- 8 75. Furthermore, unlike in Wank, there is no reason to question the Herbst Parties' motivation
9 in requesting that Morabito execute the Confessed Judgment. The creditor in Wank had
10 not gone through trial or had facts determined by a court that could establish Section
11 523(a)(2) nondischargeability. Unlike Wank, the Herbst Parties received no benefit from
12 the stipulation of facts and verification that they did not already have from the FF&CL and
13 Judgment entered by Judge Adams.
14
- 15 76. With respect to the Stipulation of Nondischargeability, which Morabito suggests taints the
16 Confessed Judgment, the Court again concludes that this case is more similar to Cole, than
17 Wank. In Cole, the BAP panel recognized that it could sever the pre-petition waiver of the
18 discharge, and give effect to the remaining provisions of the stipulated judgment.
19
- 20 77. Although the Court finds that the Stipulation of Nondischargeability is unenforceable as
21 against public policy, as in Cole, the Court will sever the Stipulation of
22 Nondischargeability and give force and effect to the other provisions of the Confessed
23 Judgment including the stipulated facts underlying Morabito's fraud.
24
- 25 78. The Court finds that its analysis of the facts in this proceeding parallel the reasoning of the
26 BAP panel in In re Johnson. The parties in Johnson settled a prepetition state court action
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1 that had been litigated for nearly two and a half years, and that had sought recovery on
2 numerous causes of action including fraud based upon intentional misrepresentation,
3 concealment and false promise. Id. at 1-2. As part of the settlement, the defendants
4 agreed to pay the plaintiff \$625,000.00 and further, if the settlement agreement was
5 breached, a Stipulated Judgment would be entered against the defendants. Id. at 2-3. The
6 Stipulated Judgment provided that the obligations arising from the settlement agreement
7 would be nondischargeable in bankruptcy. Id. at 2. More importantly, the defendants
8 agreed that entry of the Stipulated Judgment deemed all allegations, statements and facts
9 contained in the first amended complaint to be true and accurate and that the Stipulated
10 Judgment was directly related to, and arose solely out of, their fraudulent conduct. Id. at 3.

13 79. After the defendants in Johnson defaulted on the settlement agreement and the plaintiff
14 caused the Stipulated Judgment to be entered, defendants filed a chapter 7 petition. The
15 plaintiff filed an adversary proceeding seeking to except from discharge the amount due
16 under the Stipulated Judgment and the plaintiff filed a motion seeking summary judgment
17 on its § 523(a)(2)(A) and § 523(a)(4) causes of action only based on the issue preclusive
18 effect of the Stipulated Judgment. The defendants filed declarations stating that neither of
19 them had engaged in the conduct alleged in the complaint, notwithstanding their
20 admissions to the contrary in the Stipulated Judgment. The defendants further stated that
21 they felt bullied by the settlement judge into settling the lawsuit because he told them that
22 they had no chance of winning and they had no money to keep litigating. Id.

25 80. The bankruptcy court in Johnson denied the plaintiff's motion as to the § 523(a)(4) cause
26 of action but granted it as to the § 523(a)(2)(A) cause of action, finding that issue
27 preclusion applied to the facts stipulated to by the defendants and that those facts
28

1 supported a finding of nondischargeability under § 523(a)(2)(A). The defendants
2 appealed, asserting that the bankruptcy court erred in granting summary judgment by
3 giving issue preclusive effect to the state court judgment as to the § 523(a)(2)(A) claim. Id.
4 at 4.

6 81. The BAP affirmed the bankruptcy court's grant of motion for summary judgment on the §
7 523(a)(2)(A) nondischargeability claim. Id. at 9. The BAP explained that the bankruptcy
8 court correctly disregarded the general nondischargeability language and also correctly
9 found that a party may stipulate to facts that a bankruptcy court can apply in a
10 nondischargeability action and that the debtors' deemed admission of the facts establishing
11 fraud liability was entitled to preclusive effect. Id. at 5-6; see Hayhoe v. Cole (In re Cole),
12 226 B.R. 647, 655 (9th Cir. BAP 1994) (citing Klingman v. Levinson, 831 F.2d 1292,
13 1296 n.3 (7th Cir. 1987)). Although the defendants contended that their case was
14 analogous to In re Wank, the BAP distinguished the case from Wank, explaining that the
15 facts of Johnson did not mirror those in Wank, and that the salient question was whether
16 the circumstances surrounding the settlement or the judgment itself evidence the parties'
17 intent for the Stipulated Judgment to have preclusive effect. Id. at 7-8. The BAP found
18 evidence that the parties intended for the state court judgment to have preclusive effect.
19 Id. at 8. The BAP based its findings on a declaration from plaintiff's counsel that stated
20 that the parties specifically negotiated language with the intent that if defendants breached
21 the settlement agreement, the Stipulated Judgment entered against them would clearly set
22 forth a finding of fraud and breach of fiduciary duty and the admission of fraudulent
23 conduct would render the judgment nondischargeable. Furthermore, the defendants
24 provided no evidence to refute the testimony and the BAP did not find the debtors'

1 statements in their declarations that they felt pressured to settle, overcame the plaintiff's
2 counsel's testimony. Id.

3
4 82. The facts verified by Morabito in the Confessed Judgment constitute an admission by him
5 that he committed fraud, similar to the Settlement Judgment in Johnson. Morabito
6 testified that he was advised by his counsel that he was bound to sign the Confessed
7 Judgment but that it would not be binding. [EFC No. 65 at :257:12-16; at 216: 7-8].
8 Morabito testified that he thought the decision by Judge Adams was ridiculous, but
9 nevertheless the facts that he admitted tracked Judge Adams' decision. [EFC No. 65 at
10 :168: 24-25; 1169: 1-9]. Similarly, in Johnson, the defendants, in their postpetition
11 declarations, attempted to void the Settlement Judgment by stating that they felt bullied by
12 the settlement judge into settling.
13

14
15 83. There is no evidence that the Herbst Parties were aware of Morabito's counsel's advice or
16 that Morabito's affirmation was not true at the time they entered into the Confessed
17 Judgment.
18

19 84. By signing and verifying the Confessed Judgment, Morabito intentionally misrepresented
20 his belief that the facts that he verified were true and correct. This is the case even though
21 he had contested the assertions made by the Herbst Parties in the state court action and had
22 sought to appeal the Judgment and FF&CL.
23

24 85. Unlike the facts in In re Wank, but similar to those in In re Johnson, Morabito was not
25 compelled or urged to sign and verify facts by the Herbst Parties. The facts Morabito
26 verified were facts originally found by the state court judge and not created by the Herbst
27 Parties. Morabito testified that during the October 2011 settlement conference in San
28

1 Francisco, he never talked to the Herbst Parties, nor their counsel. [ECF No. 65 at 168:9-
2 16]. Pursuant to Morabito's testimony, the only person who told him that he was bound to
3 sign the Confessed Judgment was his own attorney. As a result, Morabito intentionally
4 misrepresented that he was affirming the facts in the Confessed Judgment.
5

6 86. Morabito did what the BAP in the Johnson case stated a party may do—stipulated to facts
7 that a bankruptcy court may apply in a nondischargeability action— and that is what this
8 Court is doing. In re Johnson, 2018 WL1803002, at * 6.
9

10 87. Therefore, the Confessed Judgment is entitled to issue preclusive effect.
11

12 88. Under Nevada law, claim preclusion should apply whenever: “(1) the parties or their
13 privies are the same, (2) the final judgment is valid, and (3) the subsequent action is based
14 on the same claims or any part of them that were or could have been brought in the first
15 case.” See Five Star, 124 Nev. at 1054, 194 P.3d at 713.
16

17 89. Unlike issue preclusion, claim preclusion does not require actual litigation.
18

19 90. Under Nevada law, the elements of fraud are: (1) A false representation made by the
20 defendant; (2) Defendant's knowledge or belief that the representation is false (or
21 insufficient basis for making the representation); (3) Defendant's intention to induce the
22 plaintiff to act or to refrain from acting in reliance upon the misrepresentation; (4)
23 Plaintiff's justifiable reliance upon the misrepresentation; and (5) Damage to the plaintiff
24 resulting from such reliance. Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 825 P.2d 588,
25 592 (1992) (citing Lubbe v. Barba, 91 Nev. 596, 540 P.2d 115, 117 (1975)). In addition,
26 the plaintiff must prove each element of the fraud claim by clear and convincing evidence
27
28

1 Bulbman, 825 P.2d at 592.

2
3 91. Here, the parties to the Confessed Judgment Action and this Adversary Proceeding are the
4 same. The Confessed Judgment is a final valid judgment on the merits. The Herbst Parties'
5 state court fraud in the inducement claim is the same claim the Herbst Parties are litigating
6 in the Adversary Proceeding.

7
8 92. Moreover, the elements of fraud in the inducement under Nevada law and
9 nondischargeability under Section 523(a)(2) mirror one another.


10
11 93. As a result, the Herbst Parties are also entitled to judgment on their First and Second
12 causes of action under claim preclusion.

13
14 94. The Court also finds and concludes that the Confessed Judgment is not an unenforceable
15 penalty under Nevada law. Damages resulting from a breach of the Settlement Agreement
16 were difficult to ascertain because of the non-monetary obligations. The Confessed
17 Judgment was a reasonable attempt to ascertain damages under the Settlement Agreement
18 as the \$85,000,000 was tied to the \$85,000,000 compensatory award of the State Court.
19 The Settlement Agreement was not a penalty; it was a benefit to Morabito, particularly in
20 light of the Forbearance Agreement, which provided Morabito more time to perform under
21 the terms of the Settlement Agreement.

22
23 95. The Court is also not persuaded by Morabito's argument that the Confessed Judgment
24 does not evidence that the \$85,000,000 was proximately caused by Morabito's fraud. The
25 Court reads the Confessed Judgment to mean that the \$85,000,000 was sustained due to
26 Morabito's fraud.
27
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1 96. A final judgment will be entered in favor of the Herbst Parties on their First and Second
2 causes of action that the \$85,000,000.00 Confessed Judgment debt reduced by the value of
3 payments made by Morabito, is nondischargeable pursuant to Section 523(a)(2).
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Honorable Gregg W. Zive
United States Bankruptcy Judge



Entered on Docket
April 30, 2018

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

PAUL A. MORABITO,

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

Debtor.

JH, INC., JERRY HERBST, and BERRY
HINKLEY - INDUSTRIES,

Adv. No. 15-05019-GWZ

Plaintiffs,

vs.

PAUL A. MORABITO,
Debtor,


JUDGMENT ON THE
FIRST AND SECOND
CAUSES OF ACTION

Defendant.

IT IS HEREBY ADJUDGED, consistent with the Court's Memorandum
Decision filed April 30, 2018 and it's Amended Findings of Fact and Conclusions of
Law also filed April 30, 2018, which are hereby incorporated by reference as though

1 set forth in full, as follows:

2 Plaintiffs have satisfied their burden of proof and proven all the necessary
3 requirements to obtain a nondischargeable judgment under 11 U.S.C. § 523(a)(2), and
4 the \$85,000,000.00 less the value of any payments made by Defendant, owed to the
5 Plaintiffs by Defendant, is a nondischargeable debt. The Court finds in favor of
6 Plaintiffs on the First and Second causes of action.
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Honorable Gregg W. Zive
United States Bankruptcy Judge



Entered on Docket
April 30, 2018

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

PAUL A. MORABITO,

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

Debtor.

JH, INC., JERRY HERBST, and BERRY
HINKLEY - INDUSTRIES,

Adv. No. 15-05019-GWZ

Plaintiffs,

vs.

JUDGMENT RE:
FOURTH CAUSE OF
ACTION

PAUL A. MORABITO,
Debtor,

Defendant.

IT IS HEREBY ADJUDGED, consistent with this Court's Memorandum
Decision filed April 30, 2018, which is hereby incorporated by reference as though set
forth in full, as follows:

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Given the Court's granting a final judgment in favor of the Plaintiffs on the First and Second causes of action in their Amended Complaint, the relief sought alternatively by the Plaintiffs in their Fourth Cause of Action is not necessary, therefore the Court finds in favor of Defendant.

From: USBC_NEVADA@nvb.uscourts.gov
Sent: Monday, April 30, 2018 3:02 PM
To: Courtmail@nvb.uscourts.gov
Subject: 15-05019-gwz Document Forwarded to BNC for Noticing

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U.S. Bankruptcy Court

District of Nevada

Notice of Electronic Filing

The following transaction was received from Story, LM entered on 4/30/2018 at 3:02 PM PDT and filed on 4/30/2018

Case Name: JH, INC. et al v. MORABITO

Case Number: [15-05019-gwz](#)

Document Number: [126](#)

Docket Text:

Clerk Forwarded Document to BNC for Noticing. (Related document(s)[122] Findings of Fact and Conclusions of Law, [123] Judgment, [125] Judgment.) (Attachments: # (1) Appendix order # (2) Appendix order) (lms)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:R:\Case Administration\Scanned Documents\LAURA\122.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=989277954 [Date=4/30/2018] [FileNumber=30899806-0]
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Document description:Appendix order

Original filename:R:\Case Administration\Scanned Documents\LAURA\123.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=989277954 [Date=4/30/2018] [FileNumber=30899806-1]
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Document description:Appendix order

Original filename:R:\Case Administration\Scanned Documents\LAURA\125.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=989277954 [Date=4/30/2018] [FileNumber=30899806-2]
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9a2de56910de7ee1d3463d7156a81f0bfc271968ac8799fceab19f6f19a60]]

15-05019-gwz Notice will be electronically mailed to:

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15-05019-gwz Notice will not be electronically mailed to:

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Exhibit 1-E

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

In re: PAUL A. MORABITO, Debtor.	Case No.: BK-N-13-51237-GWZ Chapter 7
JH, INC., JERRY HERBST, and BERRY- HINCKLEY INDUSTRIES, Plaintiffs, v. PAUL A. MORABITO, Defendant.	Adv. Pro. No. 15-05019-GWZ Hearing Date: OST REQUESTED Hearing Time: OST REQUESTED

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presented and considered by this Court at any hearing on this Motion.

I. INTRODUCTION

On August 27, 2018, the Herbst Parties served the Subpoena (defined below) upon Robison Sharp Sullivan Brust ("Robison") and requested that Robison produce documents responsive of the following request on or before September 3, 2018:

All documents and communications Relating to any Person's, including the Judgment Debtor or any Morabito Associate, payments or transfers of an Asset to You (including the form and source of any payments) in payment of Your fees and costs incurred in representing Morabito since January 1, 2013 to the present.

On August 30, 2018, Robison objected to and refused to comply with the Subpoena on grounds that: (i) the Subpoena was an improper attempt to collect upon a money judgment of the Nevada state court; (ii) the time-frame for compliance with the Subpoena did not comply with FRCP 45; and (iii) compliance with the Subpoena imposed an undue burden upon Robison and the Herbst Parties made no offer to accommodate Robison for the time and cost of compliance.

Because Robison's objections lack factual and/or legal support, the Motion should be granted, and Robison should be ordered to comply with the Subpoena.

II. JURISDICTION AND VENUE

1. On June 20, 2013 (the "Petition Date"), the Herbst Parties filed an involuntary petition for relief under Chapter¹ 7 of the Bankruptcy Code [ECF No. 1 in BK-N-13-51237-GWZ] (the "Involuntary Petition"), thereby commencing a Chapter 7 involuntary proceeding (the "Involuntary Proceeding" or the "Case") against Paul A. Morabito (the "Morabito").

2. On December 22, 2014, the Court entered its *Amended Order for Relief Under Chapter 7* [ECF No. 168 in BK-N-13-51237-GWZ].

3. On March 20, 2015, the Herbst Parties commenced the above-captioned adversary proceeding (the "Adversary Proceeding") by timely filing their complaint objecting to

¹ Unless otherwise stated, all references to "Chapter" or "Section" herein shall be to the Bankruptcy Code appearing in Title 11 of the U.S. Code; all references to "FRCP" shall be to the Federal Rules of Civil Procedure; all references to a "Bankruptcy Rule" shall refer to the Federal Rules of Bankruptcy Procedure; and all references to a "Local Rule" shall refer to the Local Rules of Bankruptcy Practice of the U.S. District Court for the District of Nevada.

1 Morabito's discharge pursuant to Sections 523(a)(2)(A) and 523(a)(2)(B) and 28 U.S.C. § 2201
 2 [ECF No. 1] (the "Complaint"). On May 7, 2015, the Herbst Parties filed their *Amended*
 3 *Complaint objecting to Debtor's Discharge Pursuant to Sections 523(a)(2)(A) and 523(a)(2)(B)*
 4 *and 28 U.S.C. § 2201* [ECF No. 8] (the "Amended Complaint"). On May 22, 2015, Morabito
 5 filed his *Answer to Amended Complaint Objection to Discharge* [ECF No. 10] (the "Amended
 6 Answer").

7 4. This Court has jurisdiction over the matters raised in the Motion as a core
 8 proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

9 5. Venue of these proceedings and the Motion is properly in this District pursuant to
 10 28 U.S.C. §§ 1408 and 1409.

11 6. The procedural predicates for the relief sought herein is FRCP 45, applicable here
 12 pursuant to Bankruptcy Rule 9016.

13 7. Pursuant to Local Rule 9014.2, the Herbst Parties consent to entry of final
 14 order(s) or judgment(s) by the bankruptcy judge if it is determined that the bankruptcy judge,
 15 absent consent of the parties, cannot enter final orders for judgment consistent with Article III of
 16 the United States Constitution.

17 **III.** 18 **BACKGROUND**

19 **A. The Judgment.**

20 8. On April 30, 2018, this Court entered the *Judgment on the First and Second*
 21 *Causes of Action* [ECF No. 123] (the "Judgment") against Morabito, awarding a nondischargeable
 22 judgment under 11 U.S.C. § 523(a)(2) in the amount of \$85,000,000.00 less the value of any
 23 payments made by Morabito.

24 9. The Judgment incorporated the Court's *Amended Findings of Fact and*
 25 *Conclusions of Law* [ECF No. 126].

26 10. On May 14, 2018, Morabito filed his *Notice of Appeal*. See ECF No. 136.

27 11. No bond has been posted.

28 12. No request for a stay pending appeal has been filed.

13. The Judgment remains unsatisfied and outstanding.

B. The Registration Motion.

14. On July 11, 2018, the Herbst Parties filed the *Motion for Authorization to Register Judgment* [ECF No. 165] (the “Registration Motion”).

15. The Registration Motion expressly requests, pursuant to 28 U.S.C. § 1963, that this Court authorize the Herbst Parties’ registration of the Judgement for \$85,000,000 less payments made by Morabito, entered by this Court on April 30, 2018 in favor of the Herbst Parties and against Morabito. The Herbst Parties seek to enforce the Judgment in the Central District of California, the District of Arizona, and all other jurisdictions wherein it is believed that Morabito has resided, acquired assets and/or conducted business since the Petition Date.

16. On August 14, 2018, Morabito filed the *Debtor’s Opposition to Plaintiffs’ Motion for Authorization to Register Judgment* [ECF No. 182] (the “Registration Motion Opposition”).

17. In the Registration Motion Opposition, Morabito argues that the Registration Motion should be denied because: (i) the Herbst Parties seek to register the Confession of Judgment; (ii) the Herbst Parties have not established grounds for relief; and (iii) Morabito is entitled to a continued stay of the enforcement of the Judgment.

18. On September 6, 2018, the Herbst Parties filed a reply to the Registration Motion Opposition. See ECF No. 188.

19. The hearing on the Registration Motion is set for September 13, 2018, at 2:00 p.m. (the “September 13 Hearing”).

C. The JDE Application

20. On August 7, 2018, the Herbst Parties filed the *Ex Parte Application for Judgment Debtor Exam* [ECF No. 173] (the “JDE Application”).

21. In the JDE Application, the Herbst Parties request, pursuant to Bankruptcy Rule 7069 (incorporating FRCP 69, Nevada Rule of Civil Procedure 69, and Nevada Revised Statute § 21.270), the issuance of an order requiring Morabito to appear at Wallin & Russell LLP, 26000 Towne Centre Dr, Ste 130, Foothill Ranch, CA 92610-3444 and be examined under oath regarding all of his postpetition assets and liabilities, including but not limited to the provision of

1 information regarding his personal property and real property, and to produce prior to such
 2 examination any and all documents showing or referring to such assets and liabilities, including
 3 but not limited to those documents requested on Exhibit A to the Proposed Order to the JDE
 4 Application.

5 22. On August 30, 2018, Morabito filed *Debtor's Opposition to Plaintiffs'*
 6 *Application for Judgment Debtor Exam* [ECF No. 187] (the "JDE Application Opposition").

7 23. In the JDE Application Opposition, Morabito argues that the JDE Application
 8 should be denied because: (i) the Herbst Parties did not obtain a "money judgment" from this
 9 Court; (ii) Nevada law does not authorize a judgment debtor examination outside of Nevada; and
 10 (iii) the JDE Application is unduly burdensome.

11 24. On September 6, 2018, the Herbst Parties replied to the JDE Application
 12 Opposition. See ECF No. 189.

13 25. The JDE Application is also set to be heard at the September 13 Hearing.

14 **D. The Subpoena.**

15 26. On August 27, 2018, the Herbst Parties filed the *Notice of Issuance of Subpoena*
 16 *to Robison Sharp Sullivan Brust* [EC No. 186] (the "Subpoena Notice"). Attached as Exhibit 1
 17 to the Subpoena Notice is the *Subpoena in a Case Under the Bankruptcy Code* (the "Subpoena")
 18 subject to this Motion.²

19 27. The Subpoena included only one limited request for documents:

20 All documents and communications Relating to any Person's, including the
 21 Judgment Debtor or any Morabito Associate, payments or transfers of an Asset to
 22 You (including the form and source of any payments) in payment of Your fees
 and costs incurred in representing Morabito since January 1, 2013 to the present.

23 28. The Subpoena was served upon Robison on August 27, 2018.

24 29. The Subpoena demanded compliance on or before September 3, 2018, provided
 25 that responsive documents may be produced *via* email to ggordon@gtg.legal and
 26 mweisenmiller@gtg.legal and listed Woodburn and Wedge in Reno, Nevada as the place for

27
 28 ² A true and correct copy of the Subpoena Notice and Subpoena are attached hereto as **Exhibit 1**.

1 responsive documents to be delivered to be copied.

2 **E. Robison's Objection to and Refusal to Comply With the Subpoena and the Herbst**
3 **Parties' Good Faith Attempt to Resolve the Dispute.**

4 30. On August 30, 2018, Robison emailed a letter of the same date to the Herbst
5 Parties, objecting to the Subpoena (the "Robison Objection").

6 31. The Robison Objection provided that:

7 Pursuant to Federal Rule of Civil Procedure 45(d)(2)(B), please accept this
8 correspondence as an objection to the request to produce documents. First, the
9 request is unduly burdensome, and no accommodation have been made for the
10 time and cost of compiling and producing the requested records. Second, I
11 interpret the Subpoena as an attempt to execute upon a money judgment obtained
12 in the Second Judicial District Court of the State of Nevada. Accordingly, we take
13 the position that the Subpoena you have issued, under the auspices of the "523"
14 Adversary, is the incorrect forum for your collection activities. Third, the time
15 frame requested in the Subpoena does not comport with Rule 45, and does not
16 provide my office sufficient time to compile and produce the documents, even if
17 we were inclined to do so.

18 A true and correct copy of the Robison Objection is attached hereto as **Exhibit 2**.

19 32. On September 4, 2018, the Herbst Parties responded to the Robison Objection in
20 correspondence dated the same date (the "Herbst Parties Response").

21 33. In the Herbst Parties Response, the Herbst Parties indicated that each of the
22 objections of the Robison Objection lacked factual and/or legal merit and did not justify
23 Robison's refusal to comply with the Subpoena. The Herbst Parties requested a response to the
24 Herbst Parties Response by noon on September 5, 2018 and indicated that if a cooperative
25 response was not received, the Herbst Parties would file a motion to compel Robison's
26 compliance with the Subpoena. A true and correct copy of the Herbst Parties Response is
27 attached hereto as **Exhibit 3**.

28 34. To date, Robison has not responded to the Herbst Parties Response.

35. On September 9, 2018, the Herbst Parties emailed Robison and Morabito's
counsel and indicated their intent to file the instant Motion and have it heard on shortened time.
Robison and counsel for Morabito responded shortly thereafter, stating that this Motion had no
merit and that they did not consent to have the Motion heard on shortened time. Attached hereto

1 as **Exhibit 4** is a true and correct copy of the September 9, 2018 emails.

2 36. As such, the Herbst Parties attempted in good faith to resolve the dispute with
3 Robison with respect to the Subpoena but were not able to do so without the Court's
4 involvement.

5 IV. 6 LEGAL ARGUMENT

7 A. Generally Applicable Law.

8 FRCP 45, applied to bankruptcy and adversary proceedings *via* Bankruptcy Rule 9016,
9 provides that a person who has been commanded to produce or permit inspection of documents
10 or other tangible things may serve written objections to the production. See FED. R. CIV. P.
11 45(d)(2)(B). In responding to a subpoena, if the recipient of a subpoena claims a privilege or a
12 protection, the recipient "must: (i) expressly make the claim; and (ii) describe the nature of the
13 withheld documents, communications, or tangible things in a manner that, without revealing
14 information itself privileged or protected, will enable the parties to assess the claim." See FED.
15 R. CIV. P. 45(e)(2)(A). Upon an objection by the recipient of the subpoena, the serving party
16 may move for an order compelling production or inspection. See FED. R. CIV. P. 45(d)(2)(B).

17 B. The Argument That The Subpoena Is An Attempt To Collect Upon A Money 18 Judgment Of The State Court Is Pure Fiction And Does Not Justify Robison's Blanket Refusal To Comply With The Subpoena.

19 Robison's suggestion that the Subpoena is an attempt to collect upon a money judgment
20 of the Nevada state court is without support. First, the Registration Motion expressly provides
21 otherwise:

22 [the Herbst Parties] submit their *Motion for Authorization to Register Judgment*
23 (the "Motion"), which requests that the Court, pursuant to 28 U.S.C. § 1963 for
24 good cause shown, ***authorize the Herbst Parties' registration of the Judgment***
25 ***on the First and Second Causes of Action (the "Judgment") entered by this***
26 ***Court on April 30, 2018 in favor of the Herbst Parties and against Defendant Paul***
27 ***A. Morabito (the "Judgment Debtor" or "Morabito"). *The Herbst Parties seek to****
28 ***enforce the Judgment*** in the Central District of California, the District of
Arizona, and all other jurisdictions wherein it is believed that Morabito has
resided, acquired assets and/or conducted business since the Petition Date (as
defined below).

1 See Registration Motion, pp. 1-2 (emphasis added).

2 Second, the Judgment was entered against Morabito and for a certain sum, not
3 declaratory relief. Specifically, the Judgment provides in pertinent part that:

4 Plaintiffs have satisfied their burden of proof and proven all the necessary
5 requirements to obtain a nondischargeable judgment under 11 U.S.C. §
6 523(a)(2), and the \$85,000,000.00 less the value of any payments made by
7 Defendant, owed to the Plaintiffs by Defendant, is a nondischargeable debt. The
8 Court finds in favor of Plaintiffs on the First and Second causes of action.

9 See Judgment.

10 Moreover, the Herbst Parties' first and second causes of action did not request
11 declaratory relief. See ECF No. 8 (the "Amended Complaint"), ¶ 70. ("The amount due and
12 owing to the Plaintiffs as set forth in the Confessed Judgment and POC constitutes "money,
13 property, services or an extension, renewal, or refinancing of credit: within the meaning of
14 Section 523(a)(2), from which the Defendant received a financial benefit"), ¶ 83 ("The Plaintiffs
15 are entitled to a judgment against the Defendant that the Confessed Judgment and the claim
16 evidenced by the POC is not dischargeable under Section 523(a)(2)(A) of the Bankruptcy
17 Code."), ¶85 ("The amount due and owing to the Plaintiffs as set forth in the Confessed
18 Judgment and POC constitutes "money, property, services or an extension, renewal, or
19 refinancing of credit: within the meaning of Section 523(a)(2), from which the Defendant
20 received a financial benefit"), & ¶ 94 ("The Plaintiffs are entitled to a judgment against the
21 Defendant that the Confessed Judgment and the claim evidenced by the POC is not
22 dischargeable under Section 523(a)(2)(B) of the Bankruptcy Code."). In contrast, the Herbst
23 Parties requested declaratory relief in their third cause of action. However, this Court denied
24 judgment to the Herbst Parties on their third cause of action in the *Judgment as to Plaintiffs'*
25 *Third Cause of Action* [ECF No. 71].

26 Third, Diamond (cited in the Registration Motion Opposition) does not support
27 Morabito's argument that the Judgment could only be for declaratory relief. The creditor in
28 Diamond requested that the bankruptcy court "declare" the state court judgment
nondischargeable. See Diamond, 285 F.3d at 829. However, here, this Court denied the Herbst

1 Parties' request for declaratory relief and entered a monetary judgment in favor of the Herbst
 2 Parties for \$85,000,000 less amounts paid by Morabito.

3 Morabito does not argue that the State Court Confession of Judgment barred the
 4 nondischargeability action like the debtor in Diamond. See id. Instead, Morabito cites to
 5 Diamond suggesting that this Court could only enter a declaratory judgment that the Confession
 6 of Judgment was nondischargeable. The Court should reject this argument for several reasons.

7 The Herbst Parties requested a monetary judgment in the Amended Complaint and
 8 Morabito admitted that the Adversary Proceeding was a "core proceeding" and consented to this
 9 Court entering final orders and judgments with respect to non-core matters. In the Amended
 10 Complaint, the Herbst Parties alleged that the Adversary Proceeding was a "core proceeding"
 11 and consented to this Court's jurisdiction. See Amended Complaint, ¶¶ 6, 8. Morabito admitted
 12 in his answer to the Amended Complaint that the Adversary Proceeding was a "core proceeding"
 13 and failed to respond to the Herbst Parties' jurisdictional consent or otherwise include the
 14 statement that Morabito does or does not consent to the entry of final orders if this Court lacked
 15 jurisdiction to do so under the Constitution of the United States. See ECF No. 10 (the "Amended
 16 Answer"), ¶¶ 6, 8.

17 As such, Morabito admitted that the Adversary Proceeding was a "core proceeding" and
 18 consented to the Court's jurisdiction in the Adversary Proceeding to enter final orders and
 19 judgments on non-core matters. See Local Rule 7008 ("Pleading requirements). In an adversary
 20 proceeding or contested matter, in addition to the statements required by Fed R. Bankr.
 21 P.7008(a), the first pleading, motion, or paper shall contain a statement that the pleader does or
 22 does not consent to the entry of final orders or judgment by the bankruptcy judge if it is
 23 determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or
 24 judgment consistent with Article III of the United States Constitution. ***Failure to do so***
 25 ***constitutes consent to the matter being heard and final orders or judgment being entered by***
 26 ***the bankruptcy court.***") (emphasis added). See also In re Bellingham Ins. Agency, Inc., 702
 27 F.3d 553, 566 (9th Cir. 2012), *aff'd sub nom.* Executive Benefits Ins. Agency v. Arkison, 134 S.
 28 Ct. 2165 (2014) (a party may waive or consent to bankruptcy court's authority to enter final

orders in non-core matters). In light of and consistent with Bellingham, Local Rule 7008.1, which required an affirmative consent to the entry of a final order or judgment, was replaced by Local Rule 7008.

Morabito also failed to challenge the monetary award in his appeal of the Judgment. See ECF No. 144. Furthermore, notwithstanding the general statement from Diamond cited by Morabito, Ninth Circuit law provides that this Court has jurisdiction to enter a money judgment in conjunction with a finding that the money judgment is nondischargeable. See In re Kennedy, 108 F.3d 1015, 1018 (9th Cir. 1997), *as amended* (Mar. 21, 1997) (“We conclude, in conformity with all of the circuits which have considered the matter, that the bankruptcy court acted within its jurisdiction in entering a monetary judgment against Kennedy in conjunction with a finding that the debt was non-dischargeable.”).

Based upon the foregoing, this Court should reject Robison’s argument that it need not comply with the Subpoena because it interprets the Subpoena as an attempt to collect upon a money judgment of the State Court.

C. The Time To Comply With The Subpoena Was Reasonable.

FRCP 45 does not prescribe a minimum or maximum amount of time for compliance with a subpoena. See FED. R. CIV. P. 45. As a result, “[w]hether a burdensome subpoena is reasonable ‘must be determined according to the facts of the case,’ such as the party’s need for the documents and the nature and importance of the litigation.” Linder v. Dep’t of Def., 133 F.3d 17, 24 (D.C. Cir. 1998). See also Oculu, LLC v. Oculus VR, Inc., 2015 WL 1926646, at *1 (N.D. Cal. Apr. 28, 2015) (“Although ten business days’ notice generally is considered reasonable, ‘the analysis is necessarily case-specific and fact-intensive.’”).

Here, the time to comply with the Subpoena was reasonable under the circumstances. Robison was served with the Subpoena on Monday, August 27, 2018, which requested that Robison produce responsive documents on or before Monday, September 3, 2018.

The Subpoena included only one limited request for documents:

All documents and communications Relating to any Person’s, including the Judgment Debtor or any Morabito Associate, payments or transfers of an Asset to You (including the form and source of any payments) in payment of Your fees

1 and costs incurred in representing Morabito since January 1, 2013 to the present.

2 As such, responsive documents are easily accessible to Robison.

3 After responsive documents are identified by Robison staff, there should be little attorney
4 time necessary to review responsive documents. The requested documents related to the
5 payment of fees and costs to Robison, including bank records, are not privileged or confidential.
6 See e.g., EC v. First Sec. Bank of Utah, N.A., 447 F.2d 166, 167 (10th Cir. 1971); Harris v.
7 United States, 413 F.2d 316, 319-20 (9th Cir. 1969); Gjerde v. United States, No. 10-mc-00068,
8 2011 U.S. Dist. LEXIS 50845 at *12, (E.D. Cal. Apr. 7, 2011). See also Najjar v. United States,
9 2003 WL 21254772, at * 2 (S.D. Ind. April 11, 2003) (“Even if the transactions could be viewed
10 by a large stretch of the imagination to be communicative, in no way could they be considered to
11 be confidential.”). Likewise, checks deposited in or drawn upon Robison’s accounts are not
12 confidential or privileged. See United States v. Bank of Cal., 424 F. Supp. 220, 225 (N.D. Cal.
13 1976).

14 Thus, Robison’s assertion that the time frame required to comply with the Subpoena does
15 not comport with FRCP 45 or provide Robison sufficient time to compile and produce the
16 limited documents requested is without merit and does not justify Robison’s refusal to comply
17 with the Subpoena.

18 **D. Compliance With The Subpoena Is Not Unduly Burdensome.**

19 A party refusing to provide discovery on grounds of undue burden bears a heavy burden
20 of proof. See Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975) (parties resisting
21 discovery carry the heavy burden of showing why discovery should be denied.). See also In re
22 Yassai, 225 B.R. 478, 483-84 (Bankr. C.D. Cal. 1998) (stating that a “party moving to quash on
23 the grounds of undue burden pursuant to FRCP 45(c)(3)(A)(iv) bears the burden of proof.”).

24 “The burden is a heavy one” and requires the establishment “that compliance with the
25 subpoena would be ‘unreasonable and oppressive.’” See Yassai, 225 B.R. at 484 (internal
26 quotation omitted). See also Teller v. Dogge, No. 2:12—cv-00591—JCM, 2013 WL 1501445
27 (D. Nev. Apr. 10, 2013) (the objecting party must show that the discovery request is overly
28 broad, unduly burdensome, and irrelevant). To meet this burden, the objecting party must

specifically detail the reasons why each request is improper. See Walker v. Lakewood Condo. Owners Ass'n, 186 F.R.D. 584, 587 (C.D. Cal. 1999). And boilerplate, generalized objections are inadequate and tantamount to making no objection at all. See Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3d Cir. 1986) (objecting party must show a particularized harm is likely to occur if the requesting party obtains the information that is the subject of the particular objections; generalized objections are insufficient).

As summarized by the Nevada District Court:

Parties resisting discovery carry the heavy burden of showing why discovery should be denied. The objecting party must show that the discovery request is overly broad, unduly burdensome and irrelevant. To meet this burden, the objecting party must specifically detail the reasons why each request is improper. Boilerplate, generalized objections are inadequate and tantamount to making no objection at all. Therefore, the party opposing discovery must allege (1) specific facts, which indicate the nature and extent of the burden, usually by affidavit or other reliable evidence, or (2) sufficient detail regarding the time, money and procedures required to comply with the purportedly improper request.

Collins v. Landry's Inc., No. 2:13-CV-1674-JCM-VCF, 2014 WL 2770702, at *3 (D. Nev. June 17, 2014) (internal citations omitted).

The fact that production of documents will be time consuming and expensive is not ordinarily a sufficient reason to grant a protective order if the requested material is relevant and necessary to the discovery of admissible evidence. See In re Toys "R" Us—Delaware, Inc. Litigation, 2010 WL 4942645, at *6 (C.D. Cal. 2010). Courts regularly order compliance with document requests even where production would entail large amounts of man hours. See e.g., Greystone Constr., Inc. v. Nat'l Fire & Marine Ins. Co., 2008 WL 795815 *6, 2008 U.S. Dist. LEXIS 106695 * 17 (D. Col. 008) (The fact that, according to the [supporting] declaration, it would take approximately one-hundred and eleven hours to conduct the data review necessary to respond to Interrogatory No. 8 is insufficient to establish an undue burden.); Azimi, 2007 WL 2010937 at *7-8, 2007 U.S. Dist. LEXIS 49762 at *24-26 (D. Kan. 2007) (responding party's estimate that it would take more than 100 hours and at least two months to locate and print information sought held insufficient to establish undue burden); Beach v. City of Olathe, 203 F.R.D. 489, 493-94 (D. Kan. 2001) (overruling objection where responding to interrogatory

1 required hundreds of hours of document review); Weller v. Am. Home Assur. Co., 2007 WL
2 1097883 *4-5, 2007 U.S. Dist. LEXIS 27284 *12-14 (N.D. W. Va. 2007) (overruling objection
3 despite responding party's affidavit which stated response would entail "at least hundreds of man
4 hours").

5 Here, Robison's unduly burdensome objection should be overruled. First, Robison's
6 blanket objection to the Subpoena on grounds that compliance is unduly burdensome without
7 explanation is just the type of boilerplate objection that is routinely rejected by courts. Second,
8 even if Robison attempted to justify its undue burden objection, it could not.

9 As noted, Robison was served with the Subpoena on Monday, August 27, 2018, which
10 commanded that responsive documents be produced on or before Monday, September 3, 2018.
11 The Subpoena included only one limited request for documents:

12 All documents and communications Relating to any Person's, including the
13 Judgment Debtor or any Morabito Associate, payments or transfers of an Asset to
14 You (including the form and source of any payments) in payment of Your fees
15 and costs incurred in representing Morabito since January 1, 2013 to the present.

16 As such, responsive documents are easily accessible to Robison. After responsive documents are
17 identified by Robison staff, there should be little (if any) time and expense incurred to review
18 responsive documents. Few responsive documents should be privileged, confidential, or
19 otherwise protected from discovery. Thus, Robison cannot satisfy its heavy burden of proof.
20 See Yassai, 225 B.R. at 484 ("Here, Movants presented no evidence pertaining to the time, cost,
21 or inconvenience entailed in responding to the Third-Party Subpoenas. Consequently, Movants
22 have failed to meet their burden in demonstrating an undue burden.").

23 Moreover, Robison's demand for accommodations for the time and cost of complying
24 with the Subpoena and producing responsive documents, also lacks merit and does not justify
25 Robison's blanket refusal to comply with the Subpoena. First, the Herbst Parties requested in the
26 Herbst Parties Response that Robison provide the Herbst Parties the amount Robison estimated
27 the production would cost. However, the Herbst Parties have not received the requested estimate
28 to date.

Second, the implication that compliance with the Subpoena will impose a "significant

1 expense” upon Robison is without merit. No expense for copying is necessary. The Subpoena
 2 expressly provided that responsive documents may be produced *via* email at ggordon@gtg.legal
 3 and mweisenmiller@gtg.legal and listed Woodburn and Wedge in Reno, Nevada as the place for
 4 responsive documents to be delivered to be copied.

5 Additionally, considering Robison’s long relationship with Morabito and the assertions
 6 Robison has made during the Chapter 7 cases, Robison is not entitled any reimbursement under
 7 FRCP 45(d)(2)(b)(ii). Even after the 1991 amendments to FRCP 45(d)(2)(B)(ii)’s cost-shifting
 8 provision, courts have held that “Rule 45’s required protection of a non-party from significant
 9 discovery expenses does not mean that the requesting party must bear the entire cost of
 10 compliance in every case. A non-party can be required to bear some or all of the expenses where
 11 the equities of the particular case demand it.” See Wells Fargo Bank, N.A. v. Konover, 259
 12 F.R.D. 206, 207 (D. Conn. 2009). Furthermore, in determining whether to order reimbursement
 13 under FRCP 45(d)(2)(B)(ii), a number of courts have looked to whether the non-party was
 14 substantially involved in the underlying transaction and could have anticipated that such
 15 transaction could potentially spawn litigation or discovery. See, e.g., Behrend v. Comcast Corp.,
 16 248 F.R.D. 84, 87 (D. Mass. 2008); Tutor-Saliba Corp. v. United States, 32 Fed.Cl. 609, 610 n. 5
 17 (1995); In re First Am. Corp., 184 F.R.D. 234, 242 (S.D.N.Y.1998). Thus, this Court should
 18 grant the Motion and compel Robison’s compliance with the Subpoena, notwithstanding its
 19 request for accommodations.

20 V. 21 CONCLUSION

22 Based upon the foregoing, the Herbst Parties respectfully request that the Court grant the
 23 Motion and order Robison to comply with the Subpoena and grant any other relief appropriate.

24 Dated this 10th day of September, 2018.

25 GARMAN TURNER GORDON LLP

26 By: /s/ Mark M. Weisenmiller
 27 GERALD M. GORDON, ESQ.
 28 MARK M. WEISENMILLER, ESQ.
Attorneys for the Herbst Parties

EXHIBIT 1

EXHIBIT 1

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15 *Attorneys for the Herbst Parties*

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

In re:	Case No.: BK-N-13-51237-GWZ
PAUL A. MORABITO,	Chapter 7
Debtor.	
JH, INC., JERRY HERBST, and BERRY- HINCKLEY INDUSTRIES,	Adv. Pro. No. 15-05019-GWZ
Plaintiffs,	
v.	
PAUL A. MORABITO,	
Defendant.	Hearing Date: N/A Hearing Time: N/A

NOTICE OF ISSUANCE OF SUBPOENA TO ROBISON SHARP SULLIVAN BRUST

PLEASE TAKE NOTICE that JH, Inc., Jerry Herbst, and Berry-Hinckley Industries (collectively, the "Herbst Parties"), by and through their counsel, the law firm of Garman Turner Gordon LLP, will issue a subpoena to Robison Sharp Sullivan Brust (formerly Robison, Belaustegui, Sharp & Low) for production of documents pursuant to Federal Rules of Civil Procedure 34, 45, and 69, as adopted in Federal Rules of Bankruptcy Procedure 7034, 7069,

9014 and 9016.

A copy of the subpoena is attached hereto as **Exhibit 1**.

Dated this 27th day of August, 2018.

GARMAN TURNER GORDON LLP

By: /s/ Mark M. Weisenmiller

GERALD M. GORDON, ESQ.
MARK M. WEISENMILLER, ESQ.
MICHAEL R. ESPOSITO, ESQ.
Attorneys for the Herbst Parties

EXHIBIT 1

EXHIBIT 1

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

In re:

PAUL A. MORABITO,

Debtor.

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

JH, INC., JERRY HERBST, and BERRY-
HINCKLEY INDUSTRIES,

Plaintiffs,

v.

PAUL A. MORABITO,

Defendant.

Adv. Pro. No. 15-05019-GWZ

SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE

TO: ROBISON SHARP SULLIVAN BRUST
c/o FRANK C. GILMORE, ESQ.
71 WASHINGTON STREET
RENO, NEVADA 89503
LAS VEGAS, NEVADA 89147

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above-captioned case.

PLACE	DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the documents requested on **Exhibit A** hereto.

PLACE	DATE AND TIME
Woodburn & Wedge ¹ Attn: John F. Murtha, Esq. 6100 Neil Road, Ste. 500 Reno, Nevada 89511-1149	September 03, 2018 3:00 p.m.

¹ Responsive documents may be produced *via* email to ggordon@gtg.legal and mweisenmiller@gtg.legal.

Any subpoenaed organization not a party to this proceeding shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify, Fed. R. Civ. P. 30(b)(6) made applicable to this proceeding by Rules 7030 and 7069, Fed. R. Bankr. P. See Rules 1018 and 9014, FED. R. BANKR. P.

ISSUING OFFICER SIGNATURE AND TITLE		DATE
/s/ <u>Gerald M. Gordon</u> Counsel for JH Inc., Jerry Herbst, and Berry-Hinckley Industries		August 27, 2018
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER		
GERALD M. GORDON, ESQ. GARMAN TURNER GORDON LLP 650 White Drive, Suite 100 Las Vegas, Nevada 89119 Telephone: (725) 777-3000 Email: ggordon@gtg.legal		
PROOF OF SERVICE		
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE
DECLARATION OF SERVER		

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
(Date)

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction--which may include lost earnings and reasonable attorney's fees--on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises--or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person--except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

Federal Rules of Civil Procedure Rule 45.

EXHIBIT A

DEFINITIONS

1. “Affiliate” shall have the meaning set forth in 11 U.S.C. § 101(2).
2. “Asset” includes, but is not limited to, any:
 - a. Cash or cash equivalent;
 - b. Personal property, including but not limited to art, furniture, video, music and literary copyrighted work, clothing valued at over \$100.00 per item, internet domain name, jewelry, and/ or car, boat, plane or other vehicle;
 - c. Intellectual property (including but not limited to all patents, registered or unregistered copyrights, trademarks, trade secrets, licenses or any rights thereto);
 - d. Real property;
 - e. Fixtures;
 - f. Mineral, gas and oil leases or related rights;
 - g. Purchase options, leases, any other right relating to land or other real property,
 - h. Right to payment or distribution (primary or contingent) including but not limited to royalties, beneficiary rights, liens, mortgages, promissory notes and other chattel paper,
 - i. Account;
 - j. Insurance policy;
 - k. Stock, bond, and/or derivative;
 - l. Note, check, order to pay or any other negotiable instrument;
 - m. Receivable;
 - n. Pre-paid expenses; or
 - o. Any other current or prospective tangible or intangible property.

3. “Communication” means any oral or written statement transmitted from one Person to another by any means, including, but not limited to, any contract, agreement, document, or understanding in proposed, draft, or final form related to any such oral or written statement, and including without limitation all methods of communication, including electronic mail.

4. “Date” means the exact day, month, and year, if known, or if not known, your best approximation thereof. Exact dates shall be given in all answers except where it is explicitly indicated that an approximate date may be given.

5. “Document” is intended to be as broad as it is used in Federal Rules of Civil Procedure (“FRCP”) 26 and 34, and includes, without limitation:

a. the original (or an identical duplicate if the original is not available) and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description that are fixed in any kind of physical media;²

b. any printed, typewritten, handwritten, electronic, or otherwise recorded matter of whatever character of communications, letters, correspondence, electronic mail, memoranda, notes, Post-Its, media releases or articles, photographs, tape or sound recordings, contracts, agreements, telephone records, diaries, desk calendars, appointment calendar, group scheduler calendars, statements, reports, journal, minutes, working paper, financial report, accounting report, work papers, facsimile, facsimile transmission, drafts, logs, chart, graph, index, directory, scheduling data, databases, spreadsheets, presentations, word processed documents, bulletins, design schedules, supplemental instructions, time cards, drawings, shop drawings, progress payments, progress

² Physical media includes, but is not limited to, paper media, photographic media (including pictures, films, slides and microfilm), phonographic media, magnetic media (including, but not limited to hard drives, floppy disks, compact disks, and magnetic tapes of any kind), computer memory, optical media, magneto-optical media, and other physical media on which notations or marking of any kind can be affixed.

schedules, estimates, equipment time cards, design calculations, design meeting minutes, coordination meeting minutes, and material similar to any of the foregoing, however denominated and to whomever addressed, computer directory, computer disk, computer tape, or any written, printed, typed, punched, taped, filmed, or graphic matter however produced or reproduced. Documents also include the file, folder tabs, and labels appended to or containing any documents.

c. For the avoidance of doubt, electronically-stored information with all metadata intact shall be produced whenever available in the format described below.

6. “Insider” shall have the meaning set forth in 11 U.S.C. § 101(31).

7. “Judgment Debtor” or “Morabito” means Paul A. Morabito as the Judgment Debtor in Adv. Pro. No. 15-13-51237-GWZ together with any aliases or other names by which he is known or has used including, but not limited to, Paul Anthony, Paul Anthony Morabito, Paul Morabito, Paul Anthony Georges, and Paul-Anthony Georges Morabito

8. “Morabito Associate” means any Person, corporation, limited liability company, general or limited partnership, joint-venture, or other entity, Affiliate, Insider, insurance policy, or irrevocable or revocable trust or similar device in which Morabito is a grantor, trustee, co-trustee, trust protector, or beneficiary (primary or contingent), that has: (a) received any Assets from Morabito or any third party Person, entity, or trust on Morabito’s behalf or for Morabito’s pecuniary benefit; (b) distributed, remitted, transferred, assigned, gifted, quitclaimed, sold, or otherwise disposed of any Asset to Morabito or to any third party Person, entity, or trust on Morabito’s behalf or for Morabito’s pecuniary benefit; or (c) holds (outright or in trust), possesses, controls, maintains a right or obligation to distribute, any Assets in which Morabito has any primary or contingent pecuniary interest from January 1, 2013 to present.

9. “Person” means the plural as well as the singular and includes without limitation any natural person, as well as any firm, corporation, unincorporated association, partnership, or other form of legal entity.

10. “Relate” or “relating to” means constituting, comprising, containing, setting forth, showing, disclosing, describing, explaining, summarizing, concerning, or referring to directly or indirectly.

11. “You” or “Your,” means Robison, Sharp, Sullivan & Brust (formerly Robison, Belaustegui, Sharp & Low), and each of its owners, managers, agents, servants, employees, attorneys, and representatives, or any other person which any of the foregoing control or have the right to compel to do an act or produce an item.

INSTRUCTIONS

1. Pursuant to FRCP 34, 45, and 69, as adopted in Federal Rule of Bankruptcy Procedure (“FRBP”) 7034, 7069, 9014 and 9016, any documents, electronically stored information (“ESI”) or other tangible information shall be copied and produced to the undersigned counsel by web-based email, share file, or drop box. Responsive information should be organized and labeled to correspond to the categories in the Request. ESI should be produced in native format with all metadata attached, or if any native files cannot be rendered in readable format, native format linked to a single-page tagged image file format (“TIFF”). ESI in TIFF format should be identified by an Opticon cross-reference file, and all metadata that describes the electronic files associated with ESI (e.g., “date last modified”) should be produced in text format linked to the associated files.

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

3. As used in these Requests, the term “and” as well as “or” shall be construed either disjunctively or conjunctively, as necessary, to bring within the scope of these Requests any information which might otherwise be construed to be outside their scope.

4. The term “identify”, when used in reference to a document, means to:

a) State the date of preparation, author, title (if any), subject matter, number of pages, and type of documents (e.g., contract, letter, report, etc.) or some other means of distinguishing the document or writing;

- b) Identify each and every person who prepared or participated in the preparation of the document or writing;
- c) Identify each and every person who received a copy of the document;
- d) State the present location of the document or writing;
- e) Identify each and every person having custody or control of the document or writing;
- f) State whether any copy of the document or writing is not identical to the original by reason of shorthand or other written notes, initials, or other modifications;
- g) State, if the document or writing has been destroyed, the circumstances surrounding and the reasons for the destruction; and
- h) Identify, if the document or writing has been destroyed, each and every person who destroyed or participated in, or ordered or suggested the destruction of it.

5. If any document is held under claim of privilege, please identify the document for which there is a claim of privilege by providing a full description thereof, including without limitation:

- a) The date it bears;
- b) The name of each person who prepared it or who participated in any way in its preparation;
- c) The name of each person who signed it;
- d) The name of each person to whom it, or a copy of it was addressed;
- e) The name of each person who presently has custody of it or a copy of it;
- f) The subject matter and its substance; and
- g) What factual basis there is for the claim of privilege.

6. You are Requested to provide all documents within your possession, custody or control. In the event that you provide only a portion of the documents called for by any particular Request, please state the reason(s) for your inability to provide the remainder of the documents requested and the identity of the document(s).

7. If any document requested to be produced was but is no longer in your possession or control, or is no longer in existence, state whether it is (1) missing or lost, (2) destroyed, (3)

transferred voluntarily or involuntarily to others and if so to whom, or (4) otherwise disposed of; and in each instance explain the circumstances surrounding an authorization of such disposition thereof and state the approximate date thereof.

8. In answering these Requests, you are requested to furnish all information available at the time the responses are made, including information in the possession of its attorneys or investigators for your attorneys, not merely information known to your officers, directors, agents and employees.

9. Unless otherwise stated, each Request shall be deemed to request documents generated, created, or obtained from January 1, 2013 through the present.

10. These Requests shall be deemed continuing and as additional information concerning the answers is secured, such additional information should be promptly supplemented.

DOCUMENTS TO BE PRODUCED

1. All documents and communications Relating to any Person's, including the Judgment Debtor or any Morabito Associate, payments or transfers of an Asset to You (including the form and source of any payments) in payment of Your fees and costs incurred in representing Morabito since January 1, 2013 to the present.

EXHIBIT 2

EXHIBIT 2



Robison | Sharp | Sullivan | Brust

Kent R. Robison
Thomas L. Belaustegui
(Co-Founder Of Counsel)
F. DeArmond Sharp
Michael E. Sullivan
Clayton P. Brust
Stefanie T. Sharp
Frank C. Gilmore
Michael A. Burke
Therese M. Shanks
Lindsay L. Liddell

August 30, 2018

VIA E-MAIL: mweisenmiller@gtg.legal

Mark M. Weisenmiller, Esq.
Garman Turner Gordon
650 White Drive, Suite 100
Las Vegas, Nevada 89119

Re: *Subpoena to Robison, Sharp, Sullivan & Brust*

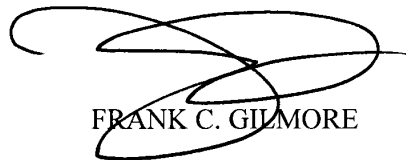
Dear Mark:

I am in receipt of the Subpoena served upon RSSB seeking certain records with respect to this firm's representation of Mr. Morabito.

Pursuant to Federal Rule of Civil Procedure 45(d)(2)(B), please accept this correspondence as an objection to the request to produce documents. First, the request is unduly burdensome, and no accommodation has been made for the time and cost of compiling and producing the requested records. Second, I interpret the Subpoena as an attempt to execute upon a money judgment obtained in the Second Judicial District Court of the State of Nevada. Accordingly, we take the position that the Subpoena you have issued, under the auspices of the "523" Adversary, is the incorrect forum for your collection activities. Third, the time frame requested in the Subpoena does not comport with Rule 45, and does not provide my office sufficient time to compile and produce the documents, even if we were inclined to do so.

Please contact me if you would like to discuss this objection further.

Sincerely,



FRANK C. GILMORE

71 Washington St
Reno, Nevada 89503

RSSBLAW.COM

P: 775.329.3151

F: 775.329.7941

FCG/mcd
cc: Client
David Shemano, Esq.

J:\WPData\FCG\23245.001 Morabito adv. JH, Inc. and Herbst\Morabito Invol Bankruptcy 2013\Herbst 523 Adversary Action 15-05019\L-Weisenmiller 8-29-18.docx

EXHIBIT 3

EXHIBIT 3

GARMAN
TURNER
GORDON

630 WHITE DRIVE
SUITE 100
LAS VEGAS, NV 89118
WWW.GTG.LEGAL
PHONE: 725.777.3000
FAX: 725.777.3112

September 4, 2018

Mark M. Weisenmiller, Esq.
mweisenmiller@gtg.legal

VIA EMAIL & U.S. MAIL:

Frank C. Gilmore, Esq.
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, Nevada 89503
fgilmore@rssblaw.com

Re: August 30, 2018 Letter Responding to Subpoena to Robison, Sharp,
Sullivan & Brust (the "August 30 Response").

Frank:

I am in receipt of your August 30 Response wherein you objected to the *Subpoena to Robison, Sharp, Sullivan & Brust* (the "Subpoena") served upon your law firm, Robison, Sharp, Sullivan & Brust ("Robison"), by JH, Inc., Jerry Herbst, and Berry-Hinkley Industries (together, the "Herbst Parties"). As detailed below, each of the objections set forth in the August 30 Response lack factual and/or legal merit and do not justify Robison's refusal to comply with the Subpoena.

Robison was served with the Subpoena on Monday, August 27, 2018. The Subpoena included only one limited request for documents:

All documents and communications Relating to any Person's, including the Judgment Debtor or any Morabito Associate, payments or transfers of an Asset to You (including the form and source of any payments) in payment of Your fees and costs incurred in representing Morabito since January 1, 2013 to the present.

As such, responsive documents are easily accessible to Robison.

After responsive documents are identified by Robison staff, there should be little (if any) expenses incurred to review responsive documents. The requested documents related to the payment of fees and costs to Robison, including bank records, are not privileged or confidential. See e.g., *EC v. First Sec. Bank of Utah, N.A.*, 447 F.2d 166, 167 (10th Cir. 1971); *Harris v. United States*, 413 F.2d 316, 319-20 (9th Cir. 1969); *Gjerde v. United States*, No. 10-mc-00068, 2011 U.S. Dist. LEXIS 50845 at *12, (E.D. Cal. Apr. 7, 2011). See also *Najjar v. United States*, 2003 WL 21254772, at * 2 (S.D. Ind. April 11, 2003) ("Even if the transactions could be viewed by a

large stretch of the imagination to be communicative, in no way could they be considered to be confidential.”). Likewise, checks deposited in or drawn upon Robison’s accounts are not confidential or privileged. See United States v. Bank of Cal., 424 F. Supp. 220, 225 (N.D. Cal. 1976). Thus, your suggestion that the Subpoena is unduly burdensome is without factual or legal support.

With respect to your demand for accommodations for the time and cost of complying with the Subpoena and producing responsive documents, please provide me the amount that you estimate the production will cost. I must note, however, that the Subpoena should not impose any “significant expense” to comply. First, no expense for copying is necessary. The Subpoena expressly provided that responsive documents may be produced *via* email at ggordon@gtg.legal and mweisenmiller@gtg.legal and listed Woodburn and Wedge in Reno, Nevada as the place for responsive documents to be delivered to be copied.

Second, considering Robison’s long relationship with Mr. Morabito and the assertions Robison has made during the Chapter 7 cases, I seriously doubt Judge Zive would find that Robison is entitled to any reimbursement under Federal Rule of Civil Procedure (“FRCP”) 45(d)(2)(b)(ii). Even after the 1991 amendments to FRCP 45(d)(2)(B)(ii)’s cost-shifting provision, courts have held that “Rule 45’s required protection of a non-party from significant discovery expenses does not mean that the requesting party must bear the entire cost of compliance in every case. A non-party can be required to bear some or all of the expenses where the equities of the particular case demand it.” See Wells Fargo Bank, N.A. v. Konover, 259 F.R.D. 206, 207 (D. Conn. 2009). Furthermore, in determining whether to order reimbursement under FRCP 45(d)(2)(B)(ii), a number of courts have looked to whether the non-party was substantially involved in the underlying transaction and could have anticipated that such transaction could potentially spawn litigation or discovery. See, e.g., Behrend v. Comcast Corp., 248 F.R.D. 84, 87 (D. Mass. 2008); Tutor-Saliba Corp. v. United States, 32 Fed.Cl. 609, 610 n. 5 (1995); In re First Am. Corp., 184 F.R.D. 234, 242 (S.D.N.Y.1998).

Further, Robison’s refusal to comply with the Subpoena because you interpret the Subpoena as an attempt to execute upon a money judgment obtained in the Second Judicial District Court of the State of Nevada (the “State Court”) is meritless and ludicrous. The judgment [ECF No. 123] (the “Judgment”) issued by the Bankruptcy Court is a federal money judgment for a debt which, pursuant to 11 U.S.C. § 523, as evidenced by the Proof of Claim for \$77,000,000 [Claim No. 2-2 attached hereto], was determined to be non-dischargeable. See Judgment (“Plaintiffs have satisfied their burden of proof and proven all the necessary requirements to obtain a nondischargeable judgment under 11 U.S.C. § 523(a)(2), and the \$85,000,000.00 less the value of any payments made by Defendant, owed to the Plaintiffs by Defendant, is a nondischargeable debt.”). Execution is being sought on the Judgment issued by the Bankruptcy Court and has nothing whatsoever to do with the judgment of the State Court. See e.g., In re Reedy, 247 B.R. 742, 745 (1999) (“The court, by issuance of the Writ of Execution, does not seek to ‘manage, supervise, modify, and enforce the divorce decree.’ Rather, the Writ of Execution is designed to enforce the wholly-independent Judgment of the bankruptcy court.”).

Finally, your assertion that the time frame required to comply with the Subpoena does not comport with FRCP 45 or provide Robison sufficient time to compile and produce the limited documents requested is without merit and does not justify Robison's refusal to comply with the Subpoena. FRCP 45 does not prescribe a minimum or maximum amount of time for compliance with a subpoena. See FED. R. CIV. P. 45. As a result, "[w]hether a burdensome subpoena is reasonable 'must be determined according to the facts of the case,' such as the party's need for the documents and the nature and importance of the litigation." Linder v. Dep't of Def., 133 F.3d 17, 24 (D.C. Cir. 1998). See also Oculu, LLC v. Oculus VR, Inc., 2015 WL 1926646, at *1 (N.D. Cal. Apr. 28, 2015) ("Although ten business days' notice generally is considered reasonable, 'the analysis is necessarily case-specific and fact-intensive.'"). Considering the limited documents requested, the nature of the documents, and the Herbst Parties' need for the documents, the time to comply with the Subpoena is reasonable.¹

Based upon the foregoing, your cooperative response by noon on September 5, 2018, will be appreciated, otherwise the Herbst Parties will file a motion to compel.

Sincerely,

GARMAN TURNER GORDON



MARK M. WEISENMILLER, ESQ.

¹ After the Subpoena was served, counsel for the Herbst Parties discovered that the production date of September 3, 2018 was a holiday. Had Robison requested an extension to produce documents on September 4, 2018, the Herbst Parties would have agreed to such an extension.

B10 (Official Form 10) (04/13)

AMENDED

UNITED STATES BANKRUPTCY COURT		PROOF OF CLAIM
Name of Debtor: PAUL A. MORABITO	Case Number: 13-51237-GWZ	
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): JH, Inc., Jerry Herbst, and Berry-Hinckley Industries		
Name and address where notices should be sent: Candace Clark, Esq. Gordon Silver 3960 Howard Hughes Pkwy, 9th Fl Las Vegas, NV 89169 Telephone number: 702-796-5555 email: cclark@gordonsilver.com		COURT USE ONLY <input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where payment should be sent (if different from above): Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed: \$ 77,000,000.00 If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: See Attached Exhibits (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5). Amount entitled to priority: \$ _____
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____). \$ _____
<i>*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

B10 (Official Form 10) (04/13)

2

7. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☒ I am the creditor's authorized agent ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)
(See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Candace Clark

Title: Attorney

Company: Gordon Silver

Address and telephone number (if different from notice address above):

/s/ Candace Clark 2-3-2015
(Signature) (Date)

Telephone number: email:

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS		INFORMATION
<p>Debtor A debtor is the person, corporation, or other entity that has filed a bankruptcy case.</p> <p>Creditor A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).</p> <p>Claim A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.</p> <p>Proof of Claim A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.</p> <p>Secured Claim Under 11 U.S.C. § 506 (a) A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.</p>	<p>A claim also may be secured if the creditor owes the debtor money (has a right to setoff).</p> <p>Unsecured Claim An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.</p> <p>Claim Entitled to Priority Under 11 U.S.C. § 507 (a) Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.</p> <p>Redacted A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.</p> <p>Evidence of Perfection Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.</p>	<p>Acknowledgment of Filing of Claim To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.</p> <p>Offers to Purchase a Claim Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 <i>et seq.</i>), and any applicable orders of the bankruptcy court.</p>

EXHIBIT 4

EXHIBIT 4

Caitlin Halm

From: Frank Gilmore <FGilmore@rssblaw.com>
Sent: Sunday, September 9, 2018 2:15 PM
To: Mark Weisenmiller
Cc: David B. Shemano; Gerald Gordon
Subject: Re: Herbst Parties v. Morabito (Nondischarge Action): OST Request for Consent

The Rule requires you to give good cause for the request, which you haven't done. Quite frankly, you seek shortened time as a matter of course rather than as the rare exception it is intended to be. So, what is the good cause?

In any event, we don't believe the Motion has any merit whatsoever and we do not consent to shortened time.

Frank C. Gilmore, Esq.
Robison Sharp Sullivan & Brust
71 Washington St.
Reno, Nevada 89503
W: 775-329-3151
C: 775-240-6387

On Sep 9, 2018, at 12:47 PM, Mark Weisenmiller <mweisenmiller@Gtg.legal> wrote:

Frank & David,


The Herbst Parties intend to file a motion to compel Robison's compliance with the subpoena for documents attached hereto and request that the motion be heard on shortened times as soon as the court's calendar permits.

Please let me know whether you consent to the requested order shortening time.

Thanks,

<DKT 0186 Notice of Issuance of Subpoena to Robison Sharp Sullivan Brust.pdf>

Exhibit 1-F


Honorable Gregg W. Zive
United States Bankruptcy Judge



Entered on Docket
January 03, 2019

GARMAN TURNER GORDON LLP
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Fax: (725)-777-3112
Attorneys for the Herbst Parties

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

In re:

PAUL A. MORABITO,

Debtor.

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

JH, INC., JERRY HERBST, and BERRY-
HINCKLEY INDUSTRIES,

Plaintiffs,

v.

PAUL A. MORABITO,

Defendant.

Adv. Pro. No. 15-05019-GWZ

Hearing Date: September 13, 2018
Hearing Time: 2:00 p.m.

Oral Ruling Date: December 20, 2018
Oral Ruling Time: 3:00 p.m.

**ORDER GRANTING MOTION TO COMPEL COMPLIANCE WITH THE
SUBPOENA TO ROBISON SHARP SULLIVAN BRUST**

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

4824-0978-6756, v. 1

8037

1 The *Motion to Compel Compliance With the Subpoena to Robison Sharp Sullivan Brust*
 2 [ECF No. 191] (the “Motion”)¹, filed by judgment creditors JH, Inc. (“JH”), Jerry Herbst
 3 (“Herbst”), and Berry-Hinckley Industries (“BHI” and collectively with JH and Herbst, the
 4 “Herbst Parties”), by and through their counsel, the law firm of Garman Turner Gordon LLP,
 5 came on for hearing before the above-captioned Court on September 13, 2018, at 2:00 p.m. (the
 6 “Hearing”). Gerald M. Gordon, Esq. appeared on behalf of the Herbst Parties and Lindsay
 7 Liddell, Esq. appeared on behalf of Robison Sharp Sullivan Brust (“Robison”).

8 The Court, having reviewed and considered the Motion, Robison’s objection to the
 9 Motion stated at the Hearing, and all documents and exhibits submitted therewith, as well as the
 10 supplemental briefing submitted by the parties [ECF Nos. 199 & 201]; all notice and service
 11 having been proper under the Bankruptcy Code and Bankruptcy Rules; the Court having entered
 12 its findings of fact and conclusions of law on the record at the Hearing and the hearing held on
 13 December 20, 2018, at 3:00 p.m., which are hereby incorporated pursuant to Bankruptcy Rule
 14 7052; and good cause appearing:

15 **IT IS HEREBY ORDERED, ADJUDGED and DECREED** as follows:

- 16 1. The Motion is granted as set forth herein.
- 17 2. Robison shall comply with the Subpoena on or before January 18, 2019.

18 **IT IS SO ORDERED.**

19 PREPARED AND SUBMITTED BY:

20 GARMAN TURNER GORDON LLP

21
 22 /s/ Mark M. Weisenmiller
 23 GERALD M. GORDON, ESQ.
 24 MARK M. WEISENMILLER, ESQ.
 25 *Attorneys for the Herbst Parties*
 26
 27
 28

¹ All capitalized undefined terms used herein shall be ascribed the definitions in the Motion.

LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

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

David Shemano, counsel for Paul A. Morabito and Edward Bayuk – approves form of this proposed order subject to full reservation of rights to appeal or otherwise seek relief with respect to the order

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

###

Exhibit 1-G

1 Frank C. Gilmore, Esq. (SBN 10052)
fgilmore@rssblaw.com
2 Lindsay L. Liddell, Esq. (SBN 14079)
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3 ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
4 Reno, Nevada 89503
Telephone: (775) 329-3151
5

6 Attorneys for Paul A. Morabito

7 **UNITED STATES BANKRUPTCY COURT**
8 **DISTRICT OF NEVADA**

9 In re:

10 PAUL A. MORABITO,

11 Debtor.

12 JH, INC., JERRY HERBST, and BERRY-
HINCKLEY INDUSTRIES,

13 Plaintiffs.

14 vs.

15 PAUL A. MORABITO,

16 Defendant.

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

Adv. No. 15-05019

**RESPONSE OF ROBISON, SHARP,
SULLIVAN & BRUST'S TO SUBPOENA**

Hearing Date: September 13, 2018
Hearing Time: 2:00 p.m.

Oral Ruling Date: December 20, 2018
Oral Ruling Time: 3:00 p.m.

18 Pursuant to the Court's Order [Doc. 229], Robison, Sharp, Sullivan & Brust ("RSSB")
19 hereby produces the following documents in response to the Subpoena served upon it:

RSSB_000001- RSSB_000005	2/4/2013- 3/27/18	Detailed Payment Transaction File -- Robison, Sharp, Sullivan & Brust
RSSB_000006	6/11/13	Email
RSSB_000007	7/8/13	Email
RSSB_000008	7/31/13	Email
RSSB_000009	8/30/13	Email
RSSB_000010	9/3/13	Email
RSSB_000011	10/02/13	Email
RSSB_000012	10/29/13	Email
RSSB_000013	12/3/13	Email
RSSB_000014	2/3/14	Email
RSSB_000015	5/4/14	Email
RSSB_000016	7/31/14	Email
RSSB_000017	9/2/14	Email
RSSB_000018	11/3/14	Email
RSSB_000019	12/2/14	Email

RSSB 000020	1/8/15	Email
RSSB 000021	5/5/15	Email
RSSB 000030	6/22/16	Email
RSSB 000031	2/17/16	Email

RSSB also provides a privilege log for documents RSSB_000022-RSSB_000029.

Dated this 18th day of January, 2019.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151

By: /s/ Frank C. Gilmore
Frank C. Gilmore, Esq. (SBN 10052)
Lindsay L. Liddell, Esq. (SBN 14079)
Attorneys for Paul A. Morabito

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmt # Rate	Amount	Ref #
Client ID 23245.001 Morabito and Consolidated Nevada Corp./Paul							
23245.001	02/04/2013		A	31		9,225.00 Fee payment.	ARCH
23245.001	03/20/2013		A	31		8,505.00 Fee payment.	ARCH
23245.001	04/18/2013		A	31		3,656.25 Fee payment.	ARCH
23245.001	05/13/2013		A	31		1,290.00 Fee payment.	ARCH
23245.001	06/17/2013		A	31		1,635.00 Fee payment.	ARCH
23245.001	07/19/2013		A	31		1,687.50 Fee payment.	ARCH
23245.001	07/31/2013		A	41		6,986.80 Trust Fee Payment.	ARCH
23245.001	07/31/2013		A	42		453.01 Trust Cost payment.	ARCH
23245.001	08/07/2013		A	41		5,718.20 Trust Fee Payment.	ARCH
23245.001	08/30/2013		A	41		1,423.84 Trust Fee Payment.	ARCH
23245.001	08/30/2013		A	42		162.20 Trust Cost payment.	ARCH
23245.001	09/06/2013		A	31		12,484.91 Fee payment.	ARCH
23245.001	09/20/2013		A	32		2,760.66 Cost payment.	ARCH
23245.001	10/07/2013		A	32		399.52 Cost payment.	ARCH
23245.001	10/07/2013		A	31		13,220.48 Fee payment.	ARCH
23245.001	11/07/2013		A	32		204.15 Cost payment.	ARCH
23245.001	11/07/2013		A	31		19,093.30 Fee payment.	ARCH
23245.001	12/06/2013		A	31		5,861.22 Fee payment.	ARCH
23245.001	01/03/2014		A	41		291.68 Trust Fee Payment.	ARCH
23245.001	01/03/2014		A	42		34.60 Trust Cost payment.	ARCH
23245.001	01/14/2014		A	31		2,250.82 Fee payment.	ARCH
23245.001	01/31/2014		A	41		96.68 Trust Fee Payment.	ARCH
23245.001	02/05/2014		A	31		2,479.57 Fee payment.	ARCH
23245.001	02/05/2014		A	32		3,591.90 Cost payment.	ARCH
23245.001	03/11/2014		A	32		78.00 Cost payment.	ARCH
23245.001	03/11/2014		A	31		1,507.50 Fee payment.	ARCH
23245.001	04/07/2014		A	32		8.50 Cost payment.	ARCH
23245.001	04/07/2014		A	31		4,655.00 Fee payment.	ARCH
23245.001	04/21/2014		A	32		1,458.53 Cost payment.	ARCH
23245.001	05/09/2014		A	32		178.66 Cost payment.	ARCH
23245.001	05/09/2014		A	31		5,201.52 Fee payment.	ARCH
23245.001	06/09/2014		A	32		351.50 Cost payment.	ARCH
23245.001	06/09/2014		A	31		10,848.48 Fee payment.	ARCH
23245.001	07/14/2014		A	32		135.95 Cost payment.	ARCH
23245.001	07/14/2014		A	31		3,867.50 Fee payment.	ARCH
23245.001	08/13/2014		A	31		9,372.50 Fee payment.	ARCH
23245.001	09/05/2014		A	32		765.50 Cost payment.	ARCH
23245.001	09/05/2014		A	31		4,907.50 Fee payment.	ARCH
23245.001	10/05/2014		A	32		79.52 Cost payment.	ARCH
23245.001	10/05/2014		A	31		5,165.00 Fee payment.	ARCH
23245.001	11/07/2014		A	31		7,620.00 Fee payment.	ARCH
23245.001	11/07/2014		A	32		5,899.18 Cost payment.	ARCH
23245.001	12/05/2014		A	32		374.96 Cost payment.	ARCH
23245.001	12/05/2014		A	31		5,932.50 Fee payment.	ARCH
23245.001	01/06/2015		A	32		411.63 Cost payment.	ARCH
23245.001	01/06/2015		A	31		11,910.00 Fee payment.	ARCH
23245.001	02/04/2015		A	32		18,631.29 Cost payment.	ARCH
23245.001	03/04/2015		A	32		14,094.20 Cost payment.	ARCH
23245.001	03/10/2015		A	41		12,500.00 Trust Fee Payment.	ARCH
23245.001	04/13/2015		A	42		995.29 Trust Cost payment.	ARCH
23245.001	04/20/2015		A	31		6,615.64 Fee payment.	ARCH
23245.001	04/29/2015		A	42		819.15 Trust Cost payment.	ARCH
23245.001	05/08/2015		A	32		17,000.00 Cost payment.	ARCH
23245.001	05/08/2015		A	31		1,062.74 Fee payment.	ARCH
23245.001	06/05/2015		A	32		814.76 Cost payment - JAMS.	ARCH
23245.001	06/24/2015		A	32		486.04 Cost payment.	ARCH
23245.001	06/24/2015		A	32		14,013.96 Cost payment.	ARCH
23245.001	07/29/2015		A	32		2,324.40 Cost payment.	ARCH
23245.001	10/09/2015		A	41		19,999.35 Trust Fee Payment.	ARCH
23245.001	10/16/2015		A	32		1,661.90 Cost payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	10/16/2015		A	31		13,210.10 Fee payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	11/17/2015		A	41		10,223.68 Trust Fee Payment.	ARCH
23245.001	11/17/2015		A	42		3,296.82 Trust Cost payment.	ARCH
23245.001	12/17/2015		A	41		12,500.00 Trust Fee Payment.	ARCH

Client	Trans Date	H Tcode/ Tmkr P Task Code	Stmt # Rate	Amount	Ref #
Client ID 23245.001 Morabito and Consolidated Nevada Corp./Paul					
23245.001	12/17/2015	A 42		3,348.00 Trust Cost payment.	ARCH
23245.001	01/22/2016	A 32		1,360.24 Cost payment.	ARCH
23245.001	01/22/2016	A 32		10,000.00 Cost payment.	ARCH
23245.001	01/22/2016	A 31		13,125.20 Fee payment.	ARCH
23245.001	02/17/2016	A 32		10,586.47 Cost payment.	ARCH
23245.001	02/17/2016	A 31		13,073.63 Fee payment.	ARCH
23245.001	03/10/2016	A 32		10,803.50 Cost payment.	ARCH
23245.001	03/10/2016	A 31		8,086.47 Fee payment.	ARCH
23245.001	04/22/2016	A 32		13,448.32 Cost payment.	ARCH
23245.001	04/22/2016	A 31		12,499.68 Fee payment.	ARCH
23245.001	05/23/2016	A 32		1,863.00 Cost payment.	ARCH
23245.001	05/23/2016	A 31		12,500.00 Fee payment.	ARCH
23245.001	05/23/2016	A 32		7,554.93 Cost payment.	ARCH
23245.001	06/17/2016	A 32		7,617.00 Cost payment.	ARCH
23245.001	06/17/2016	A 31		12,500.00 Fee payment.	ARCH
23245.001	07/13/2016	A 32		1,642.44 Cost payment.	ARCH
23245.001	07/13/2016	A 31		12,499.56 Fee payment.	ARCH
23245.001	08/12/2016	A 32		21.00 Cost payment - Access Transcripts, LLC (Refund for overestimate on pages)	ARCH
23245.001	08/26/2016	A 32		1,349.88 Cost payment.	ARCH
23245.001	08/26/2016	A 31		13,650.12 Fee payment.	ARCH
23245.001	10/04/2016	A 32		91.25 Cost payment - Access Transcripts, LLC (Refund).	ARCH
23245.001	10/05/2016	A 32		239.83 Cost payment.	ARCH
23245.001	10/05/2016	A 31		14,760.17 Fee payment.	ARCH
23245.001	10/31/2016	A 32		1,999.77 Cost payment.	ARCH
23245.001	10/31/2016	A 31		13,000.23 Fee payment.	ARCH
23245.001	11/28/2016	A 32		640.30 Cost payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	11/28/2016	A 31		14,359.70 Cost payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	12/15/2016	A 32		3,769.48 Cost payment.	ARCH
23245.001	12/15/2016	A 31		12,499.52 Fee payment.	ARCH
23245.001	01/18/2017	A 32		2,529.09 Cost payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	01/18/2017	A 31		12,500.00 Fee payment.	ARCH
23245.001	02/21/2017	A 32		1,466.82 Cost payment.	ARCH
23245.001	02/21/2017	A 31		12,500.00 Fee payment.	ARCH
23245.001	03/24/2017	A 32		3,011.34 Cost payment.	ARCH
23245.001	03/24/2017	A 31		12,552.00 Fee payment.	ARCH
23245.001	04/24/2017	P 32		809.80 Cost payment.	134
23245.001	04/24/2017	P 31		12,500.00 Fee payment.	135
23245.001	05/18/2017	P 32		1,738.41 Cost payment - Snowshoe Petroleum, Inc.	136
23245.001	05/18/2017	P 31		15,000.00 Fee payment - Snowshoe Petroleum, Inc.	137
23245.001	06/19/2017	P 32		1,900.53 Cost payment - Snowshoe Petroleum, Inc.	138
23245.001	06/19/2017	P 31		12,500.00 Fee payment - Snowshoe Petroleum, Inc.	139
23245.001	06/26/2017	P 31		9,199.40 Fee payment - Edward Bayuk.	140
23245.001	07/31/2017	P 31		12,500.00 Fee payment.	141
23245.001	08/28/2017	P 32		1,204.09 Cost payment - Snowshoe Petroleum, Inc.	142
23245.001	08/28/2017	P 31		12,553.29 Fee payment - Snowshoe Petroleum, Inc.	143
23245.001	09/26/2017	P 32		500.00 Cost payment.	144
23245.001	09/26/2017	P 31		12,500.00 Fee payment.	145
23245.001	10/23/2017	P 32		854.00 Cost payment - Snowshoe Petroleum, Inc.	146
23245.001	11/16/2017	P 31		12,500.00 Fee payment - Snowshoe Petroleum, Inc.	147
23245.001	12/21/2017	P 31		12,500.00 Fee payment.	149
23245.001	12/21/2017	P 32		3,094.69 Cost payment.	153
23245.001	12/26/2017	P 32		3,343.59 Cost payment.	150
23245.001	02/01/2018	P 31		12,500.00 Fee payment - Snowshoe Petroleum, Inc.	151
23245.001	02/01/2018	P 32		89.00 Cost payment - Snowshoe Petroleum, Inc.	152
23245.001	02/15/2018	P 31		10,000.00 Fee payment - Snowshoe Petroleum, Inc.	154
23245.001	03/27/2018	P 32		5,048.55 Cost payment - Snowshoe Petroleum, Inc.	155
23245.001	03/27/2018	P 31		7,712.45 Fee payment - Snowshoe Petroleum, Inc.	156

Total for Client ID 23245.001 Payments: 768,487.78 Morabito and Consolidated Nevada Corp./Paul
V. JH, Inc and Herbst

Client ID 23245.003 Morabito/Paul

23245.003 08/07/2013 A 41 337.50 Trust Fee Payment.

ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmt # Rate	Amount	Ref #
Client ID 23245.003 Morabito/Paul							
23245.003	09/06/2013		A	31		450.00 Fee payment.	ARCH
23245.003	10/07/2013		A	31		427.50 Fee payment.	ARCH
23245.003	11/07/2013		A	31		101.25 Fee payment.	ARCH
23245.003	12/06/2013		A	31		562.50 Fee payment.	ARCH
23245.003	01/14/2014		A	31		1,260.00 Fee payment.	ARCH
23245.003	02/05/2014		A	31		700.00 Fee payment.	ARCH
23245.003	03/11/2014		A	32		223.52 Cost payment.	ARCH
23245.003	06/09/2014		A	31		120.00 Fee payment.	ARCH
23245.003	10/05/2014		A	32		35.00 Cost payment.	ARCH
23245.003	11/07/2014		A	32		500.00 Cost payment.	ARCH
23245.003	05/08/2015		A	31		100.00 Fee payment.	ARCH
Total for Client ID 23245.003						Payments 4,817.27 Morabito/Paul General	
Client ID 23245.004 Morabito/Paul							
23245.004	02/04/2013		A	31		90.00 Fee payment.	ARCH
23245.004	05/13/2013		A	31		4,248.75 Fee payment.	ARCH
23245.004	06/17/2013		A	32		320.00 Cost payment.	ARCH
23245.004	06/17/2013		A	31		7,995.00 Fee payment.	ARCH
23245.004	07/31/2013		A	41		1,106.25 Trust Fee Payment.	ARCH
23245.004	09/06/2013		A	31	26	1,035.00 Fee payment.	ARCH
23245.004	09/06/2013		A	32	26	159.00 Cost payment.	ARCH
23245.004	10/07/2013		A	31		442.50 Fee payment.	ARCH
23245.004	11/07/2013		A	32		404.55 Cost payment.	ARCH
23245.004	11/07/2013		A	31		3,101.25 Fee payment.	ARCH
23245.004	12/06/2013		A	31		4,597.50 Fee payment.	ARCH
23245.004	01/14/2014		A	31		4,638.75 Fee payment.	ARCH
23245.004	02/05/2014		A	31		4,332.50 Fee payment.	ARCH
23245.004	03/11/2014		A	32		325.80 Cost payment.	ARCH
23245.004	03/11/2014		A	31		5,557.50 Fee payment.	ARCH
23245.004	04/07/2014		A	32		137.00 Cost payment.	ARCH
23245.004	04/07/2014		A	31		6,367.26 Fee payment.	ARCH
23245.004	04/28/2014		A	31		320.00 Fee payment - Second Judicial District Court (Refund).	ARCH
23245.004	05/09/2014		A	32		143.08 Cost payment.	ARCH
23245.004	05/09/2014		A	31		5,227.74 Fee payment.	ARCH
Total for Client ID 23245.004						Payments 50,549.43 Morabito/Paul Berry-Hinckley Industries, et al., adv. Morabito	
Client ID 23245.005 Morabito/Paul							
23245.005	02/04/2013		A	31		60.00 Fee payment.	ARCH
Total for Client ID 23245.005						Payments 60.00 Morabito/Paul Bank of America v. Morabito/Arcadia Living Trust	
Client ID 23245.007 Morabito/Paul							
23245.007	07/31/2013		A	41		1,275.00 Trust Fee Payment.	ARCH
23245.007	07/31/2013		A	42		243.49 Trust Cost payment.	ARCH
23245.007	09/06/2013		A	31	4	416.25 Fee payment.	ARCH
23245.007	10/07/2013		A	31		453.75 Fee payment.	ARCH
23245.007	11/07/2013		A	32		213.00 Cost payment.	ARCH
23245.007	11/07/2013		A	31		1,125.00 Fee payment.	ARCH
23245.007	12/06/2013		A	31		607.50 Fee payment.	ARCH
23245.007	01/14/2014		A	31		472.50 Fee payment.	ARCH
23245.007	02/05/2014		A	31		537.50 Fee payment.	ARCH
23245.007	03/11/2014		A	31		2,450.00 Fee payment.	ARCH
23245.007	04/07/2014		A	32		213.00 Cost payment.	ARCH
23245.007	04/07/2014		A	31		685.00 Fee payment.	ARCH
23245.007	05/09/2014		A	31		2,982.50 Fee payment.	ARCH
23245.007	06/09/2014		A	32		70.00 Cost payment.	ARCH
23245.007	06/09/2014		A	31		2,165.00 Fee payment.	ARCH
23245.007	07/14/2014		A	32		152.99 Cost payment.	ARCH
23245.007	07/14/2014		A	31		5,442.50 Fee payment.	ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmt # Rate	Amount	Ref #
Client ID 23245.007 Morabito/Paul							
23245.007	08/13/2014		A	31		1,335.00 Fee payment.	ARCH
23245.007	09/05/2014		A	32		1,189.50 Cost payment.	ARCH
23245.007	09/05/2014		A	31		8,185.00 Fee payment.	ARCH
23245.007	10/05/2014		A	31		505.00 Fee payment.	ARCH
23245.007	10/05/2014		A	32		0.00 Cost payment.	ARCH
23245.007	10/05/2014		A	32		1,640.88 Cost payment.	ARCH
23245.007	11/07/2014		A	32		26.63 Cost payment.	ARCH
23245.007	12/05/2014		A	32		26.38 Cost payment.	ARCH
Total for Client ID 23245.007					Payments	32,413.37 Morabito/Paul v. Consolidated Nevada Corp. et al. adv. The Hartford	
Client ID 23245.008 Morabito/Paul							
23245.008	08/07/2013		A	41		900.00 Trust Fee Payment.	ARCH
23245.008	09/06/2013		A	31		210.00 Fee payment.	ARCH
23245.008	10/07/2013		A	31		56.25 Fee payment.	ARCH
23245.008	12/06/2013		A	31		45.00 Fee payment.	ARCH
23245.008	01/14/2014		A	31		281.25 Fee payment.	ARCH
23245.008	02/05/2014		A	31		125.00 Fee payment.	ARCH
23245.008	03/11/2014		A	31		375.00 Fee payment.	ARCH
23245.008	04/07/2014		A	32		436.74 Cost payment.	ARCH
23245.008	05/09/2014		A	32		131.50 Cost payment.	ARCH
23245.008	05/09/2014		A	31		7,247.50 Fee payment.	ARCH
23245.008	06/09/2014		A	31		200.00 Fee payment.	ARCH
23245.008	07/14/2014		A	32		1.19 Cost payment.	ARCH
23245.008	07/14/2014		A	31		125.00 Fee payment.	ARCH
23245.008	08/13/2014		A	31		125.00 Fee payment.	ARCH
23245.008	11/07/2014		A	31		250.00 Fee payment.	ARCH
23245.008	12/05/2014		A	31		350.00 Fee payment.	ARCH
23245.008	01/06/2015		A	32		1,358.33 Cost payment.	ARCH
23245.008	01/06/2015		A	31		325.00 Fee payment.	ARCH
23245.008	04/20/2015		A	32		451.43 Cost payment.	ARCH
23245.008	05/08/2015		A	32		600.91 Cost payment.	ARCH
23245.008	05/08/2015		A	31		4,021.35 Fee payment.	ARCH
Total for Client ID 23245.008					Payments	17,616.45 Morabito/Paul v. Eclectic Properties v. Morabito et al.	
Client ID 23245.009 Morabito/Paul							
23245.009	03/11/2014		A	31		997.50 Fee payment.	ARCH
23245.009	04/07/2014		A	31		497.50 Fee payment.	ARCH
23245.009	05/09/2014		A	31		887.50 Fee payment.	ARCH
23245.009	06/09/2014		A	31		587.50 Fee payment.	ARCH
23245.009	07/14/2014		A	31		962.50 Fee payment.	ARCH
23245.009	09/05/2014		A	31		1,152.50 Fee payment.	ARCH
23245.009	10/05/2014		A	31		1,212.50 Fee payment.	ARCH
23245.009	11/07/2014		A	32		1,250.00 Cost payment.	ARCH
23245.009	11/07/2014		A	31		1,000.00 Fee payment.	ARCH
23245.009	12/05/2014		A	31		662.50 Fee payment.	ARCH
23245.009	01/06/2015		A	31		532.50 Fee payment.	ARCH
23245.009	02/04/2015		A	32		1,625.00 Cost payment.	ARCH
23245.009	03/04/2015		A	32		7,500.00 Cost payment.	ARCH
23245.009	04/20/2015		A	32		513.78 Cost payment.	ARCH
23245.009	05/08/2015		A	31		4,215.00 Fee payment.	ARCH
Total for Client ID 23245.009					Payments	23,596.28 Morabito/Paul v. adv. Barbieri, Carl and Ilda	
Client ID 23245.010 Virsenet, LLC							
23245.010	06/19/2015		A	31		19,999.35 Fee payment - Virsenet LLC	ARCH
Total for Client ID 23245.010					Payments	19,999.35 Virsenet, LLC Document production pursuant to Subpoena	

<u>Client</u>	<u>Trans</u> <u>Date</u>	<u>H</u> <u>Tmkr</u>	<u>Tcode/</u> <u>P Task Code</u>	<u>Stmt #</u> <u>Rate</u>	<u>Amount</u>	<u>Ref #</u>
Client ID 23245.011 Morabito and Consolidated Nevada Corp./Paul						
23245.011	02/21/2017	A	32		1,800.00 Cost payment.	ARCH
23245.011	06/26/2017	P	32		151.69 Cost payment - Edward Bayuk.	3
Total for Client ID 23245.011				Payments	1,951.69	Morabito and Consolidated Nevada Corp./Paul Morabito/CNC v. JH Inc., Berry Hinckley Industries
GRAND TOTALS						
				Payments	919,491.62	

Frank Gilmore

From: Barry Breslow
Sent: Tuesday, June 11, 2013 9:15 PM
To: Heidi Cohen
Cc: Debbie Moberly; Frank Gilmore
Subject: Paul Morabito bills

Totalling \$9950, client approved AmEx payment; please process.
Thank you,
Barry

Sent from my iPhone

Frank Gilmore

From: Barry Breslow
Sent: Monday, July 08, 2013 3:38 PM
To: Heidi Cohen
Cc: Debbie Moberly
Subject: Please process an AmEx payment from Paul Morabito

For all bills, in the amount of \$ 11,702.05.

Thank you

Frank Gilmore

From: Frank Gilmore
Sent: Wednesday, July 31, 2013 8:56 PM
To: Heidi Cohen
Cc: Barry Breslow
Subject: Morabito

Paul authorized an \$8,000 charge to his card to pay this months bills. Please run it. Thanks.

Frank C. Gilmore, Esq.
Robison Belaustegui Sharp & Low
71 Washington St.
Reno, Nevada 89503
W: 775-329-3151
C: 775-240-6387

Sent from my iPhone

Frank Gilmore

From: Barry Breslow
Sent: Friday, August 30, 2013 2:47 PM
To: Heidi Cohen
Cc: Frank Gilmore; Mary Carroll Davis; Jennifer Jacobsen
Subject: RE: Morabito Due \$15,512.66

Thank you Heidi. That is the amount to please charge Paul's Amex on Tuesday.

Frank, please forward the bills (on your chair) to Paul via email on Tuesday. Please let him know the total amount above that we charged his Amex.

thanks

From: Heidi Cohen
Sent: Friday, August 30, 2013 2:38 PM
To: Barry Breslow
Subject: Morabito Due \$15,512.66

Frank Gilmore

From: Frank Gilmore
Sent: Tuesday, September 03, 2013 3:37 PM
To: morabito.pa@gmail.com
Cc: Heidi Cohen; Debbie Moberly
Subject: August Bills
Attachments: 20130903130320702.pdf

Paul,

As we discussed last week, here are the August bills for all the cases we are working on. We will process the payment of \$15,512 this evening.

Thanks.

Frank

FRANK C. GILMORE, ESQ.
ROBISON, BELAUSTEGUI, SHARP AND LOW, P.C.
71 WASHINGTON STREET
RENO, NV 89503
PH: (775) 329-3151
FAX: (775) 329-7169
fgilmore@rbsllaw.com

Frank Gilmore

From: Jennifer Jacobsen
Sent: Wednesday, October 02, 2013 9:05 AM
To: 'morabito.pa@gmail.com' (morabito.pa@gmail.com)
Cc: Barry Breslow; Frank Gilmore
Subject: Statements for Services Rendered for the period ending September 25, 2013
Attachments: Billing Statements 8-26 to 9-25.pdf

Dictated by Barry Breslow:

Paul:

Attached are our statements for the period August 26 through September 25. The total for this month is just north of \$19,000.

I am aware that Frank previously received your authorization to process and AMEX charge of \$15,000. I apologize that it was processed for the full amount of these bills. I have today instructed our bookkeeper to refund the card the amount charged, in excess of \$15,000. The balance will be carried over to next month. The error is completely my fault, as I miscalculated the total, before providing it to Frank.

If you have any questions, please advise.

Sorry again for the mistake.

Sincerely,

Barry

Sent by:

Jennifer Jacobsen
Assistant to Barry L. Breslow, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503
(775) 329-3151
jjacobsen@rbsllaw.com

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Frank Gilmore

From: Barry Breslow
Sent: Tuesday, October 29, 2013 7:06 AM
To: Frank Gilmore
Cc: Heidi Cohen; Barry Breslow
Subject: Re: Morabito

Heidi this includes the amounts we held in abeyance. Please charge on Nov 4, \$25,000 or actual total amount owed, whichever is lower. Frank will review and return Morabito pre- bills this week. As we discussed you do not need to wait for me.

Thank you.

Sent from my iPhone

On Oct 28, 2013, at 10:51 PM, "Frank Gilmore" <FGilmore@rbsllaw.com> wrote:

> On November 4, We have the client's permission to charge up to \$25,000 for all his accounts.
>
> The charge cannot be processed before next Monday. Please wait a week and then process the charge. Thanks.
>
> Frank C. Gilmore, Esq.
> Robison Belaustegui Sharp & Low
> 71 Washington St.
> Reno, Nevada 89503
> W: 775-329-3151
> C: 775-240-6387
>
>
> Sent from my iPhone

Frank Gilmore

From: Frank Gilmore.
Sent: Tuesday, December 03, 2013 4:04 PM
To: Barry Breslow; Heidi Cohen; Debbie Moberly
Subject: Morabito

I have authorization from the client to charge \$12,000 to the Amex for November's bills.

Frank C. Gilmore, Esq.
Robison Belaustegui Sharp & Low
71 Washington St.
Reno, Nevada 89503
W: 775-329-3151
C: 775-240-6387

Sent from my iPhone

Frank Gilmore

From: Frank Gilmore
Sent: Monday, February 03, 2014 2:43 PM
To: Heidi Cohen
Cc: Barry Breslow
Subject: FW: Invoice
Attachments: Morabito Invoice.pdf

Heidi,
Approval from the client to please charge the Morabito card for the January bills, and for this Hartman invoice. Then cut a check to Hartman for his bill.

Thanks.

From: Jeff Hartman [mailto:jlh@bankruptcyreno.com]
Sent: Wednesday, November 20, 2013 6:55 AM
To: 'Paul Morabito'
Cc: Frank Gilmore
Subject: Invoice

Paul:



Jeff Hartman

Jeffrey L. Hartman, Esq.
HARTMAN & HARTMAN
510 West Plumb Lane, Suite B
Reno, NV 89509
Telephone: (775) 324-2800
Facsimile: (775) 324-1818
Email: jlh@bankruptcyreno.com

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Frank Gilmore

From: Frank Gilmore
Sent: Monday, May 05, 2014 1:35 PM
To: Barry Breslow; Heidi Cohen
Cc: Jennifer Jacobsen
Subject: RE: Morabito bills

Morabito approved a payment of \$22,000 toward the existing bills.

From: Barry Breslow
Sent: Thursday, May 01, 2014 3:14 PM
To: Heidi Cohen
Cc: Jennifer Jacobsen; Frank Gilmore
Subject: Morabito bills

Heidi, even if you don't get to the remainder of my pre-bills tonight, can you please finalize the Morabito bills and leave on Jen's chair?

If so, Jen, please scan and email them to Frank with a bcc to me. Frank will then forward to client and make contact with him.

Heidi if tonight is not possible, then Friday sometime would be great too.

Thank you,
Barry

Frank Gilmore

From: Frank Gilmore
Sent: Thursday, July 31, 2014 1:18 PM
To: Mary Carroll Davis; Barry Breslow; Heidi Cohen
Subject: Morabito

I got Permission to charge his card for the outstanding bills next Wednesday.

Frank C. Gilmore, Esq.
Robison Belaustegui Sharp & Low
71 Washington St.
Reno, Nevada 89503
W: 775-329-3151
C: 775-240-6387

Sent from my iPhone

Frank Gilmore

From: Frank Gilmore
Sent: Tuesday, September 02, 2014 10:59 AM
To: Barry Breslow; Heidi Cohen
Subject: Morabito

I have authorization to charge the Morabito card for the August Bills plus \$12,000 to be paid out in settlement. Please advise as soon as the charge posts. Thanks.

FRANK C. GILMORE, ESQ.
ROBISON, BELAUSTEGUI, SHARP AND LOW, P.C.
71 WASHINGTON STREET
RENO, NV 89503
PH: (775) 329-3151
FAX: (775) 329-7169
fgilmore@rbsllaw.com

Frank Gilmore

From: Barry Breslow
Sent: Monday, November 03, 2014 3:31 PM
To: Frank Gilmore; Heidi Cohen; Debbie Moberly
Cc: Mary Carroll Davis; Jennifer Jacobsen
Subject: RE: Morabito billings

HC, our total bills are \$10,147.

Please add the other \$2500, plus the amount of Jeff Hartman's bill, all toward this month's Am Ex charge.

If you need Jeff's bill amount again, please advise.

MCD and/or Jen will oversee getting the \$2000 to Hartford and \$500 to Spencer, once you confirm that the funds are available.

Thank you.

From: Frank Gilmore
Sent: Monday, November 03, 2014 3:22 PM
To: Heidi Cohen; Debbie Moberly
Cc: Barry Breslow
Subject: Morabito billings

Please charge the card for our fees, the Hartford \$2,000, the Hartman bill I forwarded earlier this month, and the \$500 to Spencer Investigations. I obtained client approval.

FRANK C. GILMORE, ESQ.
ROBISON, BELAUSTEGUI, SHARP AND LOW, P.C.
71 WASHINGTON STREET
RENO, NV 89503
PH: (775) 329-3151
FAX: (775) 329-7169
fgilmore@rbsllaw.com

Frank Gilmore

From: Frank Gilmore
Sent: Tuesday, December 02, 2014 2:34 PM
To: Heidi Cohen; Debbie Moberly
Cc: Barry Breslow
Subject: Morabito

I received authority to charge the client's card for November bills.

Thanks.

FRANK C. GILMORE, ESQ.
ROBISON, BELAUSTEGUI, SHARP AND LOW, P.C.
71 WASHINGTON STREET
RENO, NV 89503
PH: (775) 329-3151
FAX: (775) 329-7169
fgilmore@rbsllaw.com

Frank Gilmore

From: Frank Gilmore
Sent: Wednesday, January 28, 2015 5:21 PM
To: Heidi Cohen; Barry Breslow; Mary Carroll Davis
Subject: Morabito Bills

Here are the instructions for this coming Monday on Morabito:

Charge Morabito's card \$20,256.29

Make the following payments once it has cleared:

Lee & High : \$16,225.29

Hartman & Hartman: \$931

Harris Weinberg: \$1,625

Remainder (\$1,475) to RBSL to apply to costs.

FRANK C. GILMORE, ESQ.
ROBISON, BELAUSTEGUI, SHARP AND LOW, P.C.
71 WASHINGTON STREET
RENO, NV 89503
PH: (775) 329-3151
FAX: (775) 329-7169
fgilmore@rbsllaw.com

Frank Gilmore

From: Frank Gilmore
Sent: Tuesday, May 05, 2015 8:00 AM
To: morabito.pa@gmail.com
Cc: Barry Breslow
Subject: Emailing: M-Memo on Morabito Bills and Payments.5.4.15.pdf
Attachments: M-Memo on Morabito Bills and Payments.5.4.15.pdf

Paul,

Attached is a short memo setting forth the billing and payments for the 3 sets of lawyers working for you on your matters. Please call to discuss.

Frank

FRANK C. GILMORE, ESQ.
ROBISON, BELAUSTEGUI, SHARP AND LOW, P.C.
71 WASHINGTON STREET
RENO, NV 89503
PH: (775) 329-3151
FAX: (775) 329-7169
fgilmore@rbsllaw.com

Frank Gilmore

From: Barry Breslow
Sent: Friday, January 22, 2016 10:32 AM
To: Jeffrey L. Hartman; CeciliaLee-DGS (cecilia.lee@dgsllaw.com)
Cc: Frank Gilmore; Mary Carroll Davis
Subject: Morabito matters

Hi Jeff and Cissy:

Happy to confirm receipt moments ago of \$10,000 to be distributed \$5000 each towards your bills.
Once cleared, checks will be cut next week.

Thank you,
Barry

Frank Gilmore

From: Barry Breslow
Sent: Wednesday, February 17, 2016 11:22 AM
To: Jeffrey L. Hartman; CeciliaLee-DGS (cecilia.lee@dgsilaw.com)
Cc: Frank Gilmore; Mary Carroll Davis
Subject: RE: Morabito matters

Hello Cissy and Jeff:
Funds received today. Once protocol for deposit and clearing have been met, we will fund \$5000 to each of you, likely at the end of next week.
Thank you,
Barry

From: Barry Breslow
Sent: Tuesday, January 26, 2016 3:12 PM
To: 'Jeffrey L. Hartman'; CeciliaLee-DGS (cecilia.lee@dgsilaw.com)
Cc: Frank Gilmore; Mary Carroll Davis
Subject: RE: Morabito matters

All:
Checks should be delivered this Friday.
Thank you,
Barry

From: Barry Breslow
Sent: Friday, January 22, 2016 10:32 AM
To: 'Jeffrey L. Hartman'; CeciliaLee-DGS (cecilia.lee@dgsilaw.com)
Cc: Frank Gilmore; Mary Carroll Davis
Subject: Morabito matters

Hi Jeff and Cissy:
Happy to confirm receipt moments ago of \$10,000 to be distributed \$5000 each towards your bills.
Once cleared, checks will be cut next week.
Thank you,
Barry

Page 1 of 1 - Privilege Log
IN RE MORABITO, Debtor
13-41237

JH, INC., et al. v. Morabito,
ADV 15-05019

PRIVILEGE/REDACTION LOG

Privilege/Redaction Key:

1. Attorney/Client Privileged Documents
2. Work Product
3. Proprietary Information; not relevant, nor reasonably calculated to lead to discovery of admissible evidence
4. Patient Name/Information
5. Social Security Numbers

Bates #	Date	Document	Author	Recipient	Privilege
RSSB_000022- RSSB_000025	5/1/15	Memorandum	Frank Gilmore	P. Morabito	1
RSSB_000026- RSSB_000029	6/4/15	Email	Paul Morabito	B. Breslow F. Gilmore	1

1
2
3 **CERTIFICATE OF SERVICE**

4 Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of ROBISON,
5 SHARP, SULLIVAN & BRUST, that I am over the age of 18 and not a party to the above-
6 referenced case, and that on the date below I caused to be served a true copy of the **RESPONSE**
7 **OF ROBISON, SHARP, SULLIVAN & BRUST'S TO SUBPOENA** on all parties to this
8 action by the method(s) indicated below:

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

11 Gerald M. Gordon, Esq.
12 ggordon@gtg.legal
13 Mark M. Weisenmiller, Esq.
14 mweisenmiller@gtg.legal, bknotices@gtg.legal
15 *Attorneys for Creditor Berry-Hinckley*
16 Industries, Creditor JH, Inc., Creditor Jerry
17 Herbst

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

20 Gerald M. Gordon, Esq.
21 Mark M. Weisenmiller, Esq.
22 Garman Turner Gordon LLP
23 650 White Drive, Suite 100
24 Las Vegas, Nevada 89119
25 *Attorneys for Creditor Berry-Hinckley*
26 Industries, Creditor JH, Inc., Creditor Jerry
27 Herbst

28 DATED: This 18th day of January, 2019.

/s/ Mary Carroll Davis
Employee of Robison, Sharp, Sullivan & Brust

Exhibit 1-H

SALVATORE R. MORABITO

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

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

Plaintiff,

- vs - Case No. CV13-02663

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

Defendants.

Examination before trial of SALVATORE R.
MORABITO, Defendant, taken pursuant to Notice, at
Regus Business Center, 50 Fountain Plaza, Suite
1400, Buffalo, New York, on October 21, 2015,
commencing at 9:29 a.m., before MARY E. BLACK,
Notary Public.

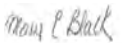
<p>Page 2</p> <p>1 APPEARANCES: GARMAN TURNER GORDON LLP, By TERESA M. PILATOWICZ, ESQ., 2 650 White Drive, Suite 100, Las Vegas, Nevada 89119, 3 (725) 777-3000, tpilatowicz@gtg.legal, 4 Appearing for the Plaintiff. ROBISON, BELAUSTEGUI, SHARP & LOW, 5 By FRANK C. GILMORE, ESQ., 6 71 Washington Street, Reno, Nevada 89503, 7 (775) 329-3151, fgilmore@rbsllaw.com, 8 Appearing for the Defendants. 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 3</p> <p>1 S A L V A T O R E R. M O R A B I T O, 10645 North 2 Tatum Boulevard, Number 200-626, Phoenix, Arizona 3 85028, after being duly called and sworn, testified 4 as follows: 5 EXAMINATION BY MS. PILATOWICZ: 6 Q. Good morning, Mr. Morabito. 7 A. Good morning. 8 Q. Do you currently live in Phoenix? 9 A. Yes. 10 Q. If you had a deposition notice in 11 Phoenix, would you appear for that deposition in 12 Phoenix? 13 A. Perhaps. It depends. I spend a lot of 14 time up here, so it depends if I'm working in New 15 York. It depends on where I am at. 16 Q. Where do you consider your residence? 17 A. Arizona, but my office is here in New 18 York. 19 MS. PILATOWICZ: Okay. Mr. Morabito, I'm 20 going to hand you what has been marked as Exhibit 21 15 or -- sorry -- let me back up. 22 Can you mark that, please. 23 The following was marked for Identification: 24 EXHIBIT 15 Notice of Deposition of 25 Salvatore Morabito.</p>
<p>Page 4</p> <p>1 BY MS. PILATOWICZ: 2 Q. Mr. Morabito, you've been handed what's 3 been marked Exhibit 15. 4 Do you recognize Exhibit 15? 5 A. What's the date of this? 6 October 21st, 2015. Yes, I recognize this. 7 Q. What is it? 8 A. It's -- it looks like it's the notice 9 for what's going on here today. 10 Q. Is it pursuant to this notice of 11 deposition that you're appearing today? 12 A. Yes. 13 Q. I'm going to hand you what has been 14 marked as Exhibit 11 from yesterday. Do you 15 recognize Exhibit 11? 16 A. Yes, I recognize this. 17 Q. What is Exhibit 11? 18 A. It looks like another notice of 19 deposition for the person most knowledge of 20 Snowshoe Petroleum. 21 Q. And as I understand it, you are the 22 person most knowledgeable as to certain topics; is 23 that correct? 24 A. Of certain topics, that's correct. 25 Q. I'm going to go through the topics and</p>	<p>Page 5</p> <p>1 you can tell me if you are the person most 2 knowledgeable. 3 Topic number 1, The allegations raised in 4 the First Amended Complaint filed in the 5 above-captioned action. Are you the person most 6 knowledgeable as to the first topic? 7 A. The allegations raised in the First 8 Amended Complaint filed in the above-captioned 9 action. I think so. 10 Q. Well, let me go through. 11 You may recall yesterday there were several 12 allegations that we went through, and pursuant to 13 an e-mail from your counsel to me there were 14 certain topics on certain of the allegations within 15 the First Amended Complaint that you would be the 16 most knowledgeable to and certain allegations that 17 Mr. Vacco was the person most knowledgeable for. 18 A. Correct. 19 Q. Do you recall that? 20 And the first allegation was: Upon 21 information and belief, up until 22 September 28th, 2010, the debtor was the 80 percent 23 owner of Consolidated Western Corporation. 24 Salvatore Morabito and Bayuk, each also held a 10 25 percent interest in CWC. At the time, CWC held an</p>

<p style="text-align: right;">Page 78</p> <p>1 money into the Superpumper at the time before</p> <p>2 Snowshoe Petroleum?</p> <p>3 A. At that very time you mean, or what</p> <p>4 time frame? Over the course of a year we</p> <p>5 contributed another \$2 million.</p> <p>6 Q. Okay. Let's talk about in the first</p> <p>7 month.</p> <p>8 A. First month? Well, we -- we had to pay</p> <p>9 Paul his initial payments for the stock for -- you</p> <p>10 know, for the company, so we wired Paul a</p> <p>11 million -- 1,035,000.</p> <p>12 Q. When was that?</p> <p>13 A. That was on or about September 28th,</p> <p>14 29th, 30th -- something like that -- of 2010.</p> <p>15 Q. And was that a payment from you</p> <p>16 individually, Edward individually to Paul</p> <p>17 individually?</p> <p>18 A. It was a payment -- I believe it went</p> <p>19 through a trust account of the lawyer's office.</p> <p>20 Q. Did it go through Snowshoe Petroleum?</p> <p>21 A. It was -- I don't know if it went</p> <p>22 through Snowshoe's bank, but it was certainly</p> <p>23 credited on behalf of Snowshoe. I can't remember</p> <p>24 if the actual wire went -- we probably wired money</p> <p>25 from Snowshoe to Lippes -- Lippes, Mathias, Wexler,</p>	<p style="text-align: right;">Page 79</p> <p>1 Friedman.</p> <p>2 Q. Why did you pay the money to Lippes?</p> <p>3 A. Well, they were the ones that were</p> <p>4 handling the transaction.</p> <p>5 Q. Did somebody at Lippes tell you to send</p> <p>6 the money to Lippes?</p> <p>7 A. I would imagine so.</p> <p>8 Q. Did Paul tell you to send the money to</p> <p>9 Lippes?</p> <p>10 A. No, that would have been the lawyers.</p> <p>11 I mean, they are a law firm so they are the one</p> <p>12 inking the deal so they are going to get the money.</p> <p>13 Q. Has Paul Morabito ever had an interest</p> <p>14 in Snowshoe Petroleum?</p> <p>15 A. No.</p> <p>16 Q. Has Snowshoe Petroleum ever made any</p> <p>17 payments to Paul?</p> <p>18 A. Has it made any payments to Paul?</p> <p>19 Probably, yeah. I think it did, yeah.</p> <p>20 Q. Were those payments to acquire his</p> <p>21 interest?</p> <p>22 A. Payments to acquire his interest in</p> <p>23 Superpumper, yes.</p> <p>24 Q. Were there any other payments, other</p> <p>25 than to acquire Paul's interests, made to Paul from</p>
<p style="text-align: right;">Page 80</p> <p>1 Snowshoe?</p> <p>2 A. I think after we bought the company</p> <p>3 there may have been some small adjustments paid to</p> <p>4 Paul.</p> <p>5 Q. What are those adjustments?</p> <p>6 A. Just as we're buying the company we're</p> <p>7 trying to, you know, figure out what's -- well,</p> <p>8 like I'll give you an example. When we bought the</p> <p>9 company, Paul had a car inside the business. So we</p> <p>10 had to -- we didn't realize that we are responsible</p> <p>11 to pay off the car because now the car is in</p> <p>12 Superpumper's name, so we had to pay \$50,000 to pay</p> <p>13 that car off. It was actually a lease. So that's</p> <p>14 money that we paid on behalf of Paul.</p> <p>15 Q. What was that car?</p> <p>16 A. It was a car he leased. I forget what</p> <p>17 it was.</p> <p>18 Q. Do you know what kind of car it was?</p> <p>19 A. No.</p> <p>20 Q. Was it a work vehicle?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you know if it was a personal</p> <p>23 vehicle?</p> <p>24 A. It was a car he had in the company, so</p> <p>25 he probably used it for work.</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Do you know if anybody other than Paul</p> <p>2 used it?</p> <p>3 A. No, I don't think so.</p> <p>4 Q. Do you know where it was located?</p> <p>5 A. No, I don't know.</p> <p>6 Q. Do you know how often Paul drove it?</p> <p>7 A. No, I don't.</p> <p>8 Q. Do you know when Superpumper purchased</p> <p>9 that car?</p> <p>10 A. No, I don't. It was a lease. They</p> <p>11 didn't purchase it. It was a lease.</p> <p>12 Q. Okay.</p> <p>13 A. So it was a lease obligation that we</p> <p>14 had to pay off because it's Paul's car and it's --</p> <p>15 we wanted to get rid of the car and the company so</p> <p>16 we didn't want the payments anymore so we had to</p> <p>17 pay the lease off. So that's what I mean, so those</p> <p>18 are the kind of adjustments we would have to make,</p> <p>19 to transfer money. So that didn't go directly to</p> <p>20 Paul. We had to pay the lease off, which was</p> <p>21 actually a company expense, but it was something we</p> <p>22 weren't expecting.</p> <p>23 Q. What happened to the car after you --</p> <p>24 A. Turned it back into the dealership.</p> <p>25 MR. GILMORE: Let her finish.</p>

<p style="text-align: right;">Page 82</p> <p>1 BY MS. PILATOWICZ:</p> <p>2 Q. What happened to the car after the</p> <p>3 lease was paid off?</p> <p>4 A. I turned it back into the dealership.</p> <p>5 Q. Has Snowshoe Petroleum ever transferred</p> <p>6 any property to Paul Morabito?</p> <p>7 A. No.</p> <p>8 Q. Now, in 2010, when Snowshoe acquired</p> <p>9 Paul Morabito's interest in Superpumper, who was</p> <p>10 involved in making that decision?</p> <p>11 A. Myself, Edward and Paul.</p> <p>12 Q. Was there anyone else?</p> <p>13 A. I'm sure we had legal advice through</p> <p>14 Dennis Vacco's firm.</p> <p>15 Q. Was there anyone else who was involved</p> <p>16 in making that decision?</p> <p>17 A. Not to my recollection. I think it was</p> <p>18 just the three of us, and of course the lawyers</p> <p>19 guiding us through it.</p> <p>20 Q. Were -- did the three of you negotiate</p> <p>21 a purchase price for the acquisition of</p> <p>22 Superpumper?</p> <p>23 A. We decided that we had to get a fair</p> <p>24 market value appraisal done.</p> <p>25 Q. Who retained the appraiser?</p>	<p style="text-align: right;">Page 83</p> <p>1 A. Dennis Vacco's firm.</p> <p>2 Q. Did you ever talk to the appraiser?</p> <p>3 A. No.</p> <p>4 Q. Do you know who at Superpumper talked</p> <p>5 to the appraiser?</p> <p>6 MR. GILMORE: Object to form.</p> <p>7 THE WITNESS: The people that talked to the</p> <p>8 appraiser from the Superpumper side would have been</p> <p>9 Stan Bernstein and our auditors Gursey Schneider</p> <p>10 because we had audited statements, and I believe</p> <p>11 the appraiser was in touch with the auditors a lot</p> <p>12 on verifying the financials of the company.</p> <p>13 BY MS. PILATOWICZ:</p> <p>14 Q. Other than Stan Berstein and the</p> <p>15 auditors, was there anyone else who you're aware of</p> <p>16 that spoke with the appraiser?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. Are you aware of anyone at</p> <p>19 Superpumper's offices that spoke with the</p> <p>20 appraiser?</p> <p>21 A. I don't believe so.</p> <p>22 Q. Did you have counsel representing you</p> <p>23 individually in the purchase of Superpumper?</p> <p>24 A. Not individually, no.</p> <p>25 Q. Did you ever contemplate getting</p>
<p style="text-align: right;">Page 84</p> <p>1 counsel?</p> <p>2 A. No. No, I was happy with Dennis' firm.</p> <p>3 Q. Were you advised to get separate</p> <p>4 counsel?</p> <p>5 A. No, I don't think anybody advised me of</p> <p>6 that.</p> <p>7 Q. So after you obtained the -- do you</p> <p>8 recall seeing the appraisal for Superpumper?</p> <p>9 A. I saw it a while ago, a long time ago,</p> <p>10 yeah. I have a copy of it actually.</p> <p>11 Q. Did you review it prior to purchasing</p> <p>12 Superpumper?</p> <p>13 A. No, because I think the appraisal was</p> <p>14 actually finalized after we actually bought the</p> <p>15 company.</p> <p>16 Q. Were you concerned at all with what the</p> <p>17 price would be to purchase the company?</p> <p>18 A. Yes, absolutely.</p> <p>19 Q. What were those concerns?</p> <p>20 A. That it would be -- that I would be</p> <p>21 able to afford it, but I was confident that Edward</p> <p>22 and I had the wherewithal to buy the company</p> <p>23 initially.</p> <p>24 Q. Actually, we'll go back to Exhibit 12</p> <p>25 from yesterday. You've been handed what's been</p>	<p style="text-align: right;">Page 85</p> <p>1 marked as Exhibit 12. Do you recognize Exhibit 12?</p> <p>2 A. It's the shareholder interest purchase</p> <p>3 agreement dated September 30th, 2010, sale of</p> <p>4 shares.</p> <p>5 Q. Do you -- are you familiar with this</p> <p>6 document?</p> <p>7 A. Yes.</p> <p>8 Q. Are you a director of Snowshoe</p> <p>9 Petroleum?</p> <p>10 A. A director of Snowshoe Petroleum? I</p> <p>11 would imagine so. I'm the president so I imagine</p> <p>12 I'm a director.</p> <p>13 Q. Do you know why Edward Bayuk signed</p> <p>14 this agreement rather than you signing the</p> <p>15 agreement?</p> <p>16 A. Let's see. No. I mean, one of us</p> <p>17 usually sign documents. He would -- I'm sure he</p> <p>18 made me aware that he was signing it.</p> <p>19 Q. Do you know if you reviewed this</p> <p>20 agreement before it was signed?</p> <p>21 A. Oh, I'm sure I did.</p> <p>22 Q. Do recall discussing the purchase price</p> <p>23 in Section 1.1 with anyone?</p> <p>24 A. I'm sure I discussed it with Edward and</p> <p>25 my attorneys.</p>

<p style="text-align: right;">Page 114</p> <p>1 Q. When were -- were regular payments made</p> <p>2 on that promissory note to Paul Morabito?</p> <p>3 A. No. Not exactly regular payments</p> <p>4 because at this time we're still -- we know -- we</p> <p>5 definitely agree we owe Paul the money. There's no</p> <p>6 doubt that we owe him the money. We're just going</p> <p>7 back and forth with the bank and with lawyers</p> <p>8 trying to figure out, you know, what the true</p> <p>9 balance is, sums, blah, blah, blah.</p> <p>10 You know, you have all these things going</p> <p>11 back and forth where, you know, the bank is on our</p> <p>12 case. We're trying to support the business. You</p> <p>13 know, Edward's involved in whatever he's doing. So</p> <p>14 there's no doubt that we owe the money. We just</p> <p>15 did not make regular payments on that note until it</p> <p>16 was paid in full.</p> <p>17 Q. Was it paid in full at one time?</p> <p>18 A. Yes.</p> <p>19 Q. When was that?</p> <p>20 A. It was paid in full on</p> <p>21 November 28th, 2011.</p> <p>22 Q. Was there something that happened on</p> <p>23 that day that caused you to be able to pay?</p> <p>24 A. Yes. I wired money to the Lippes</p> <p>25 Mathias firm and it was paid in full.</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. Was that money from your account</p> <p>2 personally?</p> <p>3 A. Yes, it was.</p> <p>4 MS. PILATOWICZ: I think this is probably a</p> <p>5 good place to stop for lunch, if you want to take a</p> <p>6 lunch break. Go off the record.</p> <p>7 (A luncheon recess was taken at 12:01 p.m.)</p> <p>8 BY MS. PILATOWICZ:</p> <p>9 Q. Mr. Morabito, you're back from the</p> <p>10 lunch break. Do you understand that you are still</p> <p>11 under the same penalties of perjury that we</p> <p>12 discussed earlier?</p> <p>13 THE WITNESS: Yes.</p> <p>14 The following was marked for Identification:</p> <p>15 EXHIBIT 20 Document Bates Stamped Morabito</p> <p>16 (341).007166.</p> <p>17 BY MS. PILATOWICZ:</p> <p>18 Q. You've been handed what's been marked</p> <p>19 Exhibit 20.</p> <p>20 A. Okay.</p> <p>21 Q. Do you recognize Exhibit 20?</p> <p>22 A. Yes.</p> <p>23 Q. What is Exhibit 20?</p> <p>24 A. I believe it's the valuation of the</p> <p>25 Raffles' asset.</p>
<p style="text-align: right;">Page 116</p> <p>1 Q. Do you know who prepared Exhibit 20?</p> <p>2 A. No, I can't tell you that for sure.</p> <p>3 Q. Do you know when you first saw Exhibit</p> <p>4 20?</p> <p>5 A. No, I can't -- I mean, I've probably</p> <p>6 seen it at some time or, you know, from the time of</p> <p>7 the sale of Berry-Hinckley until now, but I can't</p> <p>8 really tell you when I saw it.</p> <p>9 Q. Did you base the purchase of the</p> <p>10 Raff -- of Paul Morabito's interest in Raffles</p> <p>11 Insurance -- strike that.</p> <p>12 Did you decide the purchase amount of Paul</p> <p>13 Morabito's -- strike that again. I'm sorry.</p> <p>14 Did you use this document to decide how much</p> <p>15 you would accept for your interest in Raffles</p> <p>16 Insurance from Paul Morabito?</p> <p>17 A. Yes.</p> <p>18 Q. Did you request this document from</p> <p>19 anyone?</p> <p>20 A. I don't think so.</p> <p>21 Q. Do you --</p> <p>22 A. But it looks familiar, and I believe</p> <p>23 that the value of my share of Raffles was</p> <p>24 determined by this document or one prepared very</p> <p>25 similar to it because I see this was -- well, this</p>	<p style="text-align: right;">Page 117</p> <p>1 is September 30th, 2010, so I -- it looks very</p> <p>2 familiar. And I believe that at the time my share</p> <p>3 of the Raffles asset was based on this valuation,</p> <p>4 which frankly I don't understand because it is --</p> <p>5 like I said before, captive insurance entities are</p> <p>6 very, very difficult to understand, very</p> <p>7 complicated. They are actually, you know, just a</p> <p>8 lot of moving parts. It's -- I didn't understand</p> <p>9 it.</p> <p>10 I knew it was an asset worth a lot of money,</p> <p>11 and Paul obviously thought it was worth something</p> <p>12 for him to keep. I know that the value of it</p> <p>13 potentially goes up over time and there would have</p> <p>14 been some upside in me taking it or, like, holding</p> <p>15 on to it. But at the same time, I'm dividing my</p> <p>16 assets, my Nevada assets with Paul, and I was happy</p> <p>17 to take a cash payment and just basically sell</p> <p>18 something that I don't understand what it is all</p> <p>19 about, but it was something that I own so --</p> <p>20 Q. Have you seen any other valuations of</p> <p>21 Raffles Insurance that you would have used to</p> <p>22 determine the price that you were willing to accept</p> <p>23 for your interest in Raffles Insurance?</p> <p>24 A. I don't recall. It's possible that I</p> <p>25 did. I don't recall off the top of my head any</p>

<p style="text-align: right;">Page 186</p> <p>1 A. No.</p> <p>2 Q. Number 12, The plaintiffs, by and</p> <p>3 through their manager, representatives and</p> <p>4 partners, expressly consented to and authorized the</p> <p>5 conduct of the defendants now complained of and</p> <p>6 Plaintiffs are therefore estopped from recovering</p> <p>7 on their claim. Do you know what that means?</p> <p>8 A. No.</p> <p>9 Q. Did you have any involvement with the</p> <p>10 trustee prior to January of 2015?</p> <p>11 A. The trustee being?</p> <p>12 Q. William Leonard.</p> <p>13 A. No. I didn't have any involvement with</p> <p>14 him, no.</p> <p>15 MR. GILMORE: Well, I mean these aren't fair</p> <p>16 questions because the trustee is the named</p> <p>17 plaintiff, but he's not the real party of interest.</p> <p>18 MS. PILATOWICZ: The trustee is the party in</p> <p>19 interest.</p> <p>20 MR. GILMORE: No, he's not. The estate of</p> <p>21 the debtor is the real party in interest, counsel,</p> <p>22 not the trustee. So that's why I'm saying these</p> <p>23 aren't fair questions.</p> <p>24 Does the defendant have a contract with the</p> <p>25 trustee? Of course he doesn't have a contract with</p>	<p style="text-align: right;">Page 187</p> <p>1 the trustee. The trustee in not the real party in</p> <p>2 interest, the estate of the debtor is, so these are</p> <p>3 totally ridiculous, unfair questions.</p> <p>4 BY MS. PILATOWICZ:</p> <p>5 Q. Okay. Number 13, The cause of</p> <p>6 plaintiffs' damages, if any, is a result of their</p> <p>7 own inept conduct and in the alternative, is caused</p> <p>8 by third parties unrelated to the defendants named</p> <p>9 herein. Do you know what that means?</p> <p>10 A. No.</p> <p>11 Q. Number 14, Plaintiffs' negligent</p> <p>12 conduct proximately caused whatever damages they</p> <p>13 have sustained. Do you know what that means?</p> <p>14 A. No.</p> <p>15 Q. Number 15, The answering defendants is</p> <p>16 entitled to setoff. Do you know what that means?</p> <p>17 A. No.</p> <p>18 Q. Number 16, All alleged improper acts</p> <p>19 allegedly committed by these answering defendants</p> <p>20 was accepted, approved and ratified by the</p> <p>21 plaintiffs. Do you know what that means?</p> <p>22 A. No.</p> <p>23 Q. Number 17, Plaintiffs' complaint fails</p> <p>24 to state claims upon which relief can be granted.</p> <p>25 Do you know what that means?</p>
<p style="text-align: right;">Page 188</p> <p>1 A. No.</p> <p>2 Q. Number 18, Plaintiffs' claims are</p> <p>3 barred by the election of remedies.</p> <p>4 Do you know what that means?</p> <p>5 A. No.</p> <p>6 Q. Number 19, Discovery has not yet</p> <p>7 commenced and these answering defendants reserve</p> <p>8 the right to amend this answer to include</p> <p>9 additional -- you can strike number 19.</p> <p>10 Number 20, Plaintiffs' claims are barred by</p> <p>11 the applicable statute of limitations.</p> <p>12 Do you know what that means?</p> <p>13 A. No.</p> <p>14 Q. Okay. Is there anything we discussed</p> <p>15 today that you believe Christian Lovelace is the</p> <p>16 person most knowledgeable for Snowshoe Petroleum</p> <p>17 on?</p> <p>18 A. Well, specifically what we spoke of</p> <p>19 before for him to come and explain the 2009 -- I</p> <p>20 forget how you referred to it.</p> <p>21 Q. The stock basis?</p> <p>22 A. The stock basis. And anything</p> <p>23 regarding the notes or the contractual setup of the</p> <p>24 purchase of Snowshoe he understands.</p> <p>25 Do you not have a clear indication of what</p>	<p style="text-align: right;">Page 189</p> <p>1 you're -- what he's to be speaking about?</p> <p>2 Q. I'm asking you if there's anything that</p> <p>3 we've discussed that you believe that he's the</p> <p>4 person most knowledgeable for?</p> <p>5 A. Well, just those items that I think I</p> <p>6 deferred them to you earlier.</p> <p>7 I'm sorry. I don't understand this at all.</p> <p>8 I'm sorry if I caused you any grief on this one.</p> <p>9 We're good?</p> <p>10 MS. PILATOWICZ: I do not have any further</p> <p>11 questions.</p> <p>12 THE WITNESS: Okay. Thank you.</p> <p>13 (Deposition concluded at 2:42 p.m.)</p> <p>14 * * *</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 190</p> <p>1 I hereby CERTIFY that I have read the</p> <p>2 foregoing 189 pages, and that they are a true and</p> <p>3 accurate transcript of the testimony given by me in</p> <p>4 the above-entitled action on October 21, 2015.</p> <p>5</p> <p>6</p> <p>7 -----</p> <p>8 SALVATORE R. MORABITO</p> <p>9 Sworn to before me this</p> <p>10 ----- day of -----, 2015.</p> <p>11 -----</p> <p>12</p> <p>13</p> <p>14 NOTARY PUBLIC.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 191</p> <p>1 In order to make this deposition more</p> <p>2 nearly conform to the testimony, the witness wishes</p> <p>3 to make the following changes:</p> <p>4</p> <table border="1"> <thead> <tr> <th>PAGE</th> <th>LINE</th> <th>DESIRED CHANGE</th> </tr> </thead> <tbody> <tr><td>6</td><td>_____</td><td>_____</td></tr> <tr><td>7</td><td>_____</td><td>_____</td></tr> <tr><td>8</td><td>_____</td><td>_____</td></tr> <tr><td>9</td><td>_____</td><td>_____</td></tr> <tr><td>10</td><td>_____</td><td>_____</td></tr> <tr><td>11</td><td>_____</td><td>_____</td></tr> <tr><td>12</td><td>_____</td><td>_____</td></tr> <tr><td>13</td><td>_____</td><td>_____</td></tr> <tr><td>14</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td>_____</td><td>_____</td></tr> <tr><td>18</td><td>_____</td><td>_____</td></tr> <tr><td>19</td><td>_____</td><td>_____</td></tr> <tr><td>20</td><td>_____</td><td>_____</td></tr> <tr><td>21</td><td>_____</td><td>_____</td></tr> <tr><td>22</td><td>_____</td><td>_____</td></tr> <tr><td>23</td><td>_____</td><td>_____</td></tr> <tr><td>24</td><td>Signature of Witness</td><td>Date</td></tr> <tr><td>25</td><td>_____</td><td>_____</td></tr> </tbody> </table>	PAGE	LINE	DESIRED CHANGE	6	_____	_____	7	_____	_____	8	_____	_____	9	_____	_____	10	_____	_____	11	_____	_____	12	_____	_____	13	_____	_____	14	_____	_____	15	_____	_____	16	_____	_____	17	_____	_____	18	_____	_____	19	_____	_____	20	_____	_____	21	_____	_____	22	_____	_____	23	_____	_____	24	Signature of Witness	Date	25	_____	_____
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<p style="text-align: right;">Page 192</p> <p>1 STATE OF NEW YORK)</p> <p>2 ss:</p> <p>3 COUNTY OF ERIE)</p> <p>4</p> <p>5 I DO HEREBY CERTIFY as a Notary Public in and</p> <p>6 for the State of New York, that I did attend and</p> <p>7 report the foregoing deposition, which was taken</p> <p>8 down by me in a verbatim manner by means of machine</p> <p>9 shorthand. Further, that the deposition was then</p> <p>10 reduced to writing in my presence and under my</p> <p>11 direction. That the deposition was taken to be</p> <p>12 used in the foregoing entitled action. That the</p> <p>13 said deponent, before examination, was duly sworn</p> <p>14 to testify to the truth, the whole truth and</p> <p>15 nothing but the truth, relative to said action.</p> <p>16</p> <p>17</p> <p>18 </p> <p>19 MARY E. BLACK,</p> <p>20 Notary Public.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 193</p> <table border="1"> <thead> <tr> <th>Exhibit</th> <th>INDEX TO EXHIBITS Description</th> <th>Page</th> </tr> </thead> <tbody> <tr> <td>3 EXHIBIT 15</td> <td>Notice of Deposition of Salvatore Morabito</td> <td>3</td> </tr> <tr> <td>4 EXHIBIT 16</td> <td>Snowshoe Petroleum, Inc.'s Answers to Plaintiff's First Set of Interrogatories</td> <td>13</td> </tr> <tr> <td>7 EXHIBIT 17</td> <td>Snowshoe Petroleum, Inc.'s Responses to Plaintiff's First Set of Requests For Production</td> <td>14</td> </tr> <tr> <td>9 EXHIBIT 18</td> <td>Salvatore Morabito's Answers to Plaintiff's First Set of Interrogatories</td> <td>15</td> </tr> <tr> <td>12 EXHIBIT 19</td> <td>Salvatore Morabito's Responses to Plaintiff's First Set of Request For Production</td> <td>18</td> </tr> <tr> <td>14 EXHIBIT 20</td> <td>Document Bates Stamped Morabito (341).007166</td> <td>115</td> </tr> <tr> <td>16 EXHIBIT 21</td> <td>Document Bates Stamped Superpumper 000606.</td> <td>118</td> </tr> <tr> <td>17 EXHIBIT 22</td> <td>Document Bates Stamped Superpumper 000605</td> <td>119</td> </tr> <tr> <td>18 EXHIBIT 23</td> <td>Document Bates Stamped Superpumper 000607</td> <td>122</td> </tr> <tr> <td>20 EXHIBIT 24</td> <td>Document Bates Stamped Superpumper 000608</td> <td>124</td> </tr> <tr> <td>21 EXHIBIT 25</td> <td>Document Bates Stamped Superpumper 000609</td> <td>126</td> </tr> <tr> <td>23 EXHIBIT 26</td> <td>Document Bates Stamped Superpumper 000610</td> <td>128</td> </tr> <tr> <td>24</td> <td></td> <td></td> </tr> <tr> <td>25</td> <td></td> <td></td> </tr> </tbody> </table>	Exhibit	INDEX TO EXHIBITS Description	Page	3 EXHIBIT 15	Notice of Deposition of Salvatore Morabito	3	4 EXHIBIT 16	Snowshoe Petroleum, Inc.'s Answers to Plaintiff's First Set of Interrogatories	13	7 EXHIBIT 17	Snowshoe Petroleum, Inc.'s Responses to Plaintiff's First Set of Requests For Production	14	9 EXHIBIT 18	Salvatore Morabito's Answers to Plaintiff's First Set of Interrogatories	15	12 EXHIBIT 19	Salvatore Morabito's Responses to Plaintiff's First Set of Request For Production	18	14 EXHIBIT 20	Document Bates Stamped Morabito (341).007166	115	16 EXHIBIT 21	Document Bates Stamped Superpumper 000606.	118	17 EXHIBIT 22	Document Bates Stamped Superpumper 000605	119	18 EXHIBIT 23	Document Bates Stamped Superpumper 000607	122	20 EXHIBIT 24	Document Bates Stamped Superpumper 000608	124	21 EXHIBIT 25	Document Bates Stamped Superpumper 000609	126	23 EXHIBIT 26	Document Bates Stamped Superpumper 000610	128	24			25																				
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