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 Electronically Filed Jun 02 2020 06:01 p.m. Elizabeth A. Brown Clerk of Supreme Court Appeal from the Second Judicial District Court, the Honorable Connie J. Steinheimer Presiding

APPELLANTS' APPENDIX, VOLUME 47
(Nos. 8077–8269)

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

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

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

INDEX TO APPELLANTS' APPENDIX

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Defendant, Snowshow Petroleum, Inc.’s Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 06/06/2014)</td><td>Vol. 2, 209–216</td></tr>
<tr><td colspan="2">Exhibit to Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2)</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Salvatore Morabito in Support of Snowshow Petroleum, Inc.’s Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction (filed 06/06/2014)</td><td>Vol. 2, 217–219</td></tr>
<tr><td colspan="2">Defendant, Superpumper, Inc.’s Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 06/19/2014)</td><td>Vol. 2, 220–231</td></tr>
<tr><td colspan="2">Exhibit to Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2)</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Salvatore Morabito in Support of Superpumper, Inc.’s Motion to Dismiss for Lack of Personal Jurisdiction (filed 06/19/2014)</td><td>Vol. 2, 232–234</td></tr>
<tr><td colspan="2">JH, Inc., Jerry Herbst, and Berry Hinckley Industries, Opposition to Motion to Dismiss (filed 07/07/2014)</td><td>Vol. 2, 235–247</td></tr>
<tr><td colspan="2">Exhibits to Opposition to Motion to Dismiss</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Affidavit of Brian R. Irvine (filed 07/07/2014)</td><td>Vol. 2, 248–252</td></tr>
</table>

	DOCUMENT DESCRIPTION	LOCATION
2	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/2010)	Vol. 2, 253–292
3	BHI Electronic Funds Transfers, January 1, 2006 to December 31, 2006	Vol. 2, 293–294
4	Legal and accounting fees paid by BHI on behalf of Superpumper; JH78636-JH78639; JH78653-JH78662; JH78703-JH78719	Vol. 2, 295–328
5	Unanimous Written Consent of the Directors and Shareholders of CWC (dated 09/28/2010)	Vol. 2, 329–332
6	Unanimous Written Consent of the Board of Directors and Sole Shareholders of Superpumper (dated 09/28/2010)	Vol. 2, 333–336
7	Plan of Merger of Consolidated Western Corporation with and into Superpumper, Inc. (dated 09/28/2010)	Vol. 2, 337–341
8	Articles of Merger of Consolidated Western Corporation with and into Superpumper, Inc. (dated 09/29/2010)	Vol. 2, 342–344
9	2009 Federal Income Tax Return for P. Morabito	Vol. 2, 345–388
10	Relevant portions of the January 22, 2010 Deposition of Edward Bayuk	Vol. 2, 389–400
11	Grant, Bargain and Sale Deed for APN: 040-620-09, dated November 10, 2005	Vol. 2, 401–404
12	Relevant portions of the January 11, 2010 Deposition of Salvatore Morabito	Vol. 2, 405–408

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td>13</td><td>Printout of Arizona Corporation Commission corporate listing for Superpumper, Inc.</td><td>Vol. 2, 409–414</td></tr>
<tr><td colspan="2">Defendant, Superpumper, Inc.’s Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 07/15/2014)</td><td>Vol. 3, 415–421</td></tr>
<tr><td colspan="2">Order Denying Motion to Dismiss as to Snowshoe Petroleum, Inc.’s (filed 07/17/2014)</td><td>Vol. 3, 422–431</td></tr>
<tr><td colspan="2">Notice of Entry of Order Denying Motion to Dismiss as to Snowshoe Petroleum, Inc.’s (filed 07/17/2014)</td><td>Vol. 3, 432–435</td></tr>
<tr><td colspan="2">Exhibit to Notice of Entry of Order Denying Motion to Dismiss as to Snowshoe Petroleum, Inc.’s</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Denying Motion to Dismiss as to Snowshoe Petroleum, Inc.’s</td><td>Vol. 3, 436–446</td></tr>
<tr><td colspan="2">Order Denying Superpumper, Inc.’s Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 07/22/2014)</td><td>Vol. 3, 447–457</td></tr>
<tr><td colspan="2">Notice of Entry of Order Denying Superpumper, Inc.’s Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 07/22/2014)</td><td>Vol. 3, 458–461</td></tr>
<tr><td colspan="2">Exhibit to Notice of Entry of Order Denying Superpumper, Inc.’s Motion to Dismiss Complaint</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Denying Superpumper, Inc.’s Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 07/22/2014)</td><td>Vol. 3, 462–473</td></tr>
</table>

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Answer to Complaint of Superpumper, Inc., and Snowshoe Petroleum, Inc. (filed 07/28/2014)</td><td>Vol. 3, 474–483</td></tr>
<tr><td colspan="2">Answer to Complaint of Defendants, Edward Bayuk, individually and as trustee of the Edward William Bayuk Living Trust, and Salvatore Morabito (filed 09/29/2014)</td><td>Vol. 3, 484–494</td></tr>
<tr><td colspan="2">Notice of Bankruptcy of Consolidated Nevada Corporation and P. Morabito (filed 2/11/2015)</td><td>Vol. 3, 495–498</td></tr>
<tr><td colspan="2">Supplemental Notice of Bankruptcy of Consolidated Nevada Corporation and P. Morabito (filed 02/17/2015)</td><td>Vol. 3, 499–502</td></tr>
<tr><td colspan="2">Exhibits to Supplemental Notice of Bankruptcy of Consolidated Nevada Corporation and P. Morabito</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Involuntary Petition; Case No. BK-N-13-51236 (filed 06/20/2013)</td><td>Vol. 3, 503–534</td></tr>
<tr><td>2</td><td>Involuntary Petition; Case No. BK-N-13-51237 (06/20/2013)</td><td>Vol. 3, 535–566</td></tr>
<tr><td>3</td><td>Order for Relief Under Chapter 7; Case No. BK-N-13-51236 (filed 12/17/2014)</td><td>Vol. 3, 567–570</td></tr>
<tr><td>4</td><td>Order for Relief Under Chapter 7; Case No. BK-N-13-51237 (filed 12/17/2014)</td><td>Vol. 3, 571–574</td></tr>
<tr><td colspan="2">Stipulation and Order to File Amended Complaint (filed 05/15/2015)</td><td>Vol. 4, 575–579</td></tr>
<tr><td colspan="2">Exhibit to Stipulation and Order to File Amended Complaint</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
</table>

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Minutes of February 24, 2016 Pre-trial Conference (filed 03/17/2016)</td><td>Vol. 4, 660–661</td></tr>
<tr><td colspan="2">Transcript of February 24, 2016 Pre-trial Conference</td><td>Vol. 4, 662–725</td></tr>
<tr><td colspan="2">Plaintiff's (Leonard) Opposition to Defendants' Motion to Partially Quash, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client Privilege (filed 03/25/2016)</td><td>Vol. 5, 726–746</td></tr>
<tr><td colspan="2">Exhibits to Opposition to Motion to Partially Quash or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client Privilege</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Teresa M. Pilatowicz in Support of Plaintiff's Opposition to Defendants' Motion to Partially Quash (filed 03/25/2016)</td><td>Vol. 5, 747–750</td></tr>
<tr><td>2</td><td>Application for Commission to take Deposition of Dennis Vacco (filed 09/17/2015)</td><td>Vol. 5, 751–759</td></tr>
<tr><td>3</td><td>Commission to take Deposition of Dennis Vacco (filed 09/21/2015)</td><td>Vol. 5, 760–763</td></tr>
<tr><td>4</td><td>Subpoena/Subpoena Duces Tecum to Dennis Vacco (09/29/2015)</td><td>Vol. 5, 764–776</td></tr>
<tr><td>5</td><td>Notice of Issuance of Subpoena to Dennis Vacco (dated 09/29/2015)</td><td>Vol. 5, 777–791</td></tr>
<tr><td>6</td><td>Dennis C. Vacco and Lippes Mathias Wexler Friedman LLP, Response to Subpoena (dated 10/15/2015)</td><td>Vol. 5, 792–801</td></tr>
</table>

	DOCUMENT DESCRIPTION	LOCATION
3	Bill of Sale – 371 El Camino Del Mar (dated 10/01/2010)	Vol. 6, 954–958
4	Bill of Sale – 370 Los Olivos (dated 10/01/2010)	Vol. 6, 959–963
5	Personal financial statement of P. Morabito as of May 5, 2009	Vol. 6, 964–965
6	Plaintiff's First Set of Requests for Production of Documents to Edward Bayuk (dated 08/14/2015)	Vol. 6, 966–977
7	Edward Bayuk's Responses to Plaintiff's First Set of Requests for Production (dated 09/23/2014)	Vol. 6, 978–987
8	Plaintiff's First Set of Requests for Production of Documents to Edward Bayuk, as trustee of the Edward William Bayuk Living Trust (dated 08/14/2015)	Vol. 6, 988–997
9	Edward Bayuk, as trustee of the Edward William Bayuk Living Trust's Responses to Plaintiff's First Set of Requests for Production (dated 09/23/2014)	Vol. 6, 998–1007
10	Plaintiff's Second Set of Requests for Production of Documents to Edward Bayuk (dated 01/29/2016)	Vol. 6, 1008–1015
11	Edward Bayuk's Responses to Plaintiff's Second Set of Requests for Production (dated 03/08/2016)	Vol. 6, 1016–1020

	DOCUMENT DESCRIPTION	**LOCATION**
3	Order Compelling Deposition of P. Morabito dated March 13, 2014, in *Consolidated Nevada Corp., et al v. JH. et al*.; Case No. CV07-02764 (filed 03/13/2014)	Vol. 7, 1071–1074
4	Emergency Motion Under NRCP 27(e); Petition for Writ of Prohibition, *P. Morabito v. The Second Judicial District Court of the State of Nevada in and for the County of Washoe*; Case No. 65319 (filed 04/01/2014)	Vol. 7, 1075–1104
5	Order Denying Petition for Writ of Prohibition; Case No. 65319 (filed 04/18/2014)	Vol. 7, 1105–1108
6	Order Granting Summary Judgment; Case No. BK-N-13-51237 (filed 12/17/2014)	Vol. 7, 1109–1112
Recommendation for Order RE: *Defendants' Motion to Partially Quash*, filed on March 10, 2016 (filed 06/13/2016)		Vol. 7, 1113–1124
Confirming Recommendation Order from June 13, 2016 (filed 07/06/2016)		Vol. 7, 1125–1126
Recommendation for Order RE: *Plaintiff's Motion to Compel Production of Documents*, filed on April 8, 2016 (filed 09/01/2016)		Vol. 7, 1127–1133
Confirming Recommendation Order from September 1, 2016 (filed 09/16/2016)		Vol. 7, 1134–1135
Plaintiff's Application for Order to Show Cause Why Defendant, Edward Bayuk Should Not Be Held in Contempt of Court Order (filed 11/21/2016)		Vol. 8, 1136–1145

DOCUMENT DESCRIPTION		**LOCATION**
Exhibits to Plaintiff's Application for Order to Show Cause Why Defendant, Edward Bayuk Should Not Be Held in Contempt of Court Order		
Exhibit	**Document Description**	
1	Order to Show Cause Why Defendant, Edward Bayuk Should Not Be Held in Contempt of Court Order (filed 11/21/2016)	Vol. 8, 1146–1148
2	Confirming Recommendation Order from September 1, 2016 (filed 09/16/2016)	Vol. 8, 1149–1151
3	Recommendation for Order RE: *Plaintiff's Motion to Compel Production of Documents*, filed on April 8, 2016 (filed 09/01/2016)	Vol. 8, 1152–1159
4	Plaintiff's Motion to Compel Production of Documents (filed 04/08/2016)	Vol. 8, 1160–1265
5	Opposition to Plaintiff's Motion to Compel Production of Documents (filed 04/25/2016)	Vol. 8, 1266–1273
6	Reply in Support of Plaintiff's Motion to Compel Production of Documents (filed 05/09/2016)	Vol. 8, 1274–1342
7	Correspondences between Teresa M. Pilatowicz, Esq., and Frank Gilmore, Esq. (dated 09/22/2016)	Vol. 8, 1343–1346
8	Edward Bayuk's Supplemental Responses to Plaintiff's Second Set of Requests for Production (dated 10/25/2016)	Vol. 8, 1347–1352

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Opposition to Plaintiff's Application for Order to Show Cause Why Defendant Should Not Be Held in Contempt of Court Order (filed 12/19/2016</td><td>Vol. 9, 1353–1363</td></tr>
<tr><td colspan="2">Exhibits to Opposition to Plaintiff's Application for Order to Show Cause Why Defendant Should Not Be Held in Contempt of Court Order</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Edward Bayuk in Support of Opposition to Plaintiff's Application for Order to Show Cause (filed 12/19/2016)</td><td>Vol. 9, 1364–1367</td></tr>
<tr><td>2</td><td>Declaration of Frank C. Gilmore, Esq., in Support of Opposition to Plaintiff's Application for Order to Show Cause (filed 12/19/2016)</td><td>Vol. 9, 1368–1370</td></tr>
<tr><td>3</td><td>Redacted copy of the September 6, 2016, correspondence of Frank C. Gilmore, Esq.</td><td>Vol. 9, 1371–1372</td></tr>
<tr><td colspan="2">Order to Show Cause Why Defendant, Edward Bayuk Should Not Be Held in Contempt of Court Order (filed 12/23/2016)</td><td>Vol. 9, 1373–1375</td></tr>
<tr><td colspan="2">Response: (1) to Opposition to Application for Order to Show Cause Why Defendant Should Not Be Held in Contempt of Court Order and (2) in Support of Order to Show Cause (filed 12/30/2016)</td><td>Vol. 9, 1376–1387</td></tr>
<tr><td colspan="2">Minutes of January 19, 2017 Deposition of Edward Bayuk in RE: insurance policies (filed 01/19/2017)</td><td>Vol. 9, 1388</td></tr>
<tr><td colspan="2">Minutes of January 19, 2017 hearing on Order to Show Cause (filed 01/30/2017)</td><td>Vol. 9, 1389</td></tr>
</table>

DOCUMENT DESCRIPTION		**LOCATION**
Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP (filed 07/18/2017)		Vol. 9, 1390–1404
Exhibits to Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP		
Exhibit	**Document Description**	
1	Correspondence between Teresa M. Pilatowicz, Esq., and Frank Gilmore, Esq., dated March 8, 2016	Vol. 9, 1405–1406
2	Correspondence between Teresa M. Pilatowicz, Esq., and Frank Gilmore, Esq., dated March 8, 2016, with attached redlined discovery extension stipulation	Vol. 9, 1407–1414
3	Jan. 3 – Jan. 4, 2017, email chain from Teresa M. Pilatowicz, Esq., and Frank Gilmore, Esq.	Vol. 9, 1415–1416
4	Declaration of Frank C. Gilmore, Esq., in Support of Motion to Quash (filed 07/18/2017)	Vol. 9, 1417–1420
5	January 24, 2017 email from Teresa M. Pilatowicz, Esq.,	Vol. 9, 1421–1422
6	Jones Vargas letter to HR and P. Morabito, dated August 16, 2010	Vol. 9, 1423–1425
7	Excerpted Transcript of July 26, 2011 Deposition of Sujata Yalamanchili, Esq.	Vol. 9, 1426–1431
8	Letter dated June 17, 2011, from Hodgson Russ ("HR") to John Desmond and Brian Irvine on Morabito related issues	Vol. 9, 1432–1434

DOCUMENT DESCRIPTION		**LOCATION**
Exhibit	**Document Description**	
A	Declaration of Teresa M. Pilatowicz, Esq., in Support of (1) Opposition to Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP (filed 07/24/2017)	Vol. 10, 1486–1494
A-1	Defendants' NRCP Disclosure of Witnesses and Documents (dated 12/01/2014)	Vol. 10, 1495–1598
A-2	Order Granting Motion to Compel Responses to Deposition Questions; Case No. BK-N-13-51237 (filed 02/03/2016)	Vol. 10, 1599–1604
A-3	Recommendation for Order RE: *Defendants' Motion to Partially Quash*, filed on March 10, 2016 (filed 06/13/2016)	Vol. 10, 1605–1617
A-4	Confirming Recommendation Order from September 1, 2016 (filed 09/16/2016)	Vol. 10, 1618–1620
A-5	Subpoena – Civil (dated 01/03/2017)	Vol. 10, 1621–1634
A-6	Notice of Deposition of Person Most Knowledgeable of Hodgson Russ LLP (filed 01/03/2017)	Vol. 10, 1635–1639
A-7	January 25, 2017 Letter to Hodgson Russ LLP	Vol. 10, 1640–1649
A-8	Stipulation Regarding Continued Discovery Dates (Sixth Request) (filed 01/30/2017)	Vol. 10, 1650–1659
A-9	Stipulation Regarding Continued Discovery Dates (Seventh Request) (filed 05/25/2017)	Vol. 10, 1660–1669

DOCUMENT DESCRIPTION		**LOCATION**
Exhibits to Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment		
Exhibit	**Document Description**	
1	Declaration of Timothy P. Herbst in Support of Separate Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment	Vol. 12, 1826–1829
2	Findings of Fact, Conclusions of Law, and Judgment in *Consolidated Nevada Corp., et al v. JH. et al.;* Case No. CV07-02764 (filed 10/12/2010)	Vol. 12, 1830–1846
3	Judgment in *Consolidated Nevada Corp., et al v. JH. et al.;* Case No. CV07-02764 (filed 08/23/2011)	Vol. 12, 1847–1849
4	Excerpted Transcript of July 12, 2017 Deposition of Garry M. Graber	Vol. 12, 1850–1852
5	September 15, 2015 email from Yalamanchili RE: Follow Up Thoughts	Vol. 12, 1853–1854
6	September 23, 2010 email between Garry M. Graber and P. Morabito	Vol. 12, 1855–1857
7	September 20, 2010 email between Yalamanchili and Eileen Crotty RE: Morabito Wire	Vol. 12, 1858–1861
8	September 20, 2010 email between Yalamanchili and Garry M. Graber RE: All Mortgage Balances as of 9/20/2010	Vol. 12, 1862–1863
9	September 20, 2010 email from Garry M. Graber RE: Call	Vol. 12, 1864–1867

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	**LOCATION**
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

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Objection to Recommendation for Order filed August 17, 2017 (filed 08/28/2017)</td><td>Vol. 18, 2727–2734</td></tr>
<tr><td colspan="2">Exhibit to Objection to Recommendation for Order</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Plaintiff’s counsel’s Jan. 24, 2017, email memorializing the discovery dispute agreement</td><td>Vol. 18, 2735–2736</td></tr>
<tr><td colspan="2">Opposition to Objection to Recommendation for Order filed August 17, 2017 (filed 09/05/2017)</td><td>Vol. 18, 2737–2748</td></tr>
<tr><td colspan="2">Exhibit to Opposition to Objection to Recommendation for Order</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>A</td><td>Declaration of Teresa M. Pilatowicz, Esq., in Support of Opposition to Objection to Recommendation for Order (filed 09/05/2017)</td><td>Vol. 18, 2749–2752</td></tr>
<tr><td colspan="2">Reply to Opposition to Objection to Recommendation for Order filed August 17, 2017 (dated 09/15/2017)</td><td>Vol. 18, 2753–2758</td></tr>
<tr><td colspan="2">Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)</td><td>Vol. 18, 2759–2774</td></tr>
<tr><td colspan="2">Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)</td><td>Vol. 18, 2775–2790</td></tr>
</table>

DOCUMENT DESCRIPTION		LOCATION
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 *Consolidated Nevada Corp., et al v. JH. et al.*; 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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Order Denying Motion for Partial Summary Judgment (filed 12/11/2017)</td><td>Vol. 19, 2982–2997</td></tr>
<tr><td colspan="2">Defendants' Motions in Limine (filed 09/12/2018)</td><td>Vol. 19, 2998–3006</td></tr>
<tr><td colspan="2">Exhibits to Defendants' Motions in Limine</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Plaintiff's Second Supplement to Amended Disclosures Pursuant to NRCP 16.1(A)(1) (dated 04/28/2016)</td><td>Vol. 19, 3007–3016</td></tr>
<tr><td>2</td><td>Excerpted Transcript of March 25, 2016 Deposition of William A. Leonard</td><td>Vol. 19, 3017–3023</td></tr>
<tr><td>3</td><td>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)</td><td>Vol. 19, 3024–3044</td></tr>
<tr><td colspan="2">Motion in Limine to Exclude Testimony of Jan Friederich (filed 09/20/2018)</td><td>Vol. 19, 3045–3056</td></tr>
<tr><td colspan="2">Exhibits to Motion in Limine to Exclude Testimony of Jan Friederich</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Defendants' Rebuttal Expert Witness Disclosure (dated 02/29/2016)</td><td>Vol. 19, 3057–3071</td></tr>
<tr><td>2</td><td>Condensed Transcript of March 29, 2016 Deposition of Jan Friederich</td><td>Vol. 19, 3072–3086</td></tr>
</table>

DOCUMENT DESCRIPTION		LOCATION
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**	

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

	DOCUMENT DESCRIPTION	LOCATION
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 NRCP 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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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
74	Opposition to Motion for Summary Judgment and Declaration of Edward Bayuk; Case No. 13-51237, ECF No. 146 (filed 10/03/2014)	Vol. 24, 3994–4053
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

	DOCUMENT DESCRIPTION	LOCATION
82	Articles of Merger of Consolidated Western Corporation with and Into Superpumper, Inc.	Vol. 24, 4076–4077
83	Unanimous Written Consent of the Board of Directors and Sole Shareholder of Superpumper, Inc.	Vol. 24, 4078–4080
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
103	Superpumper Note in the amount of $1,462,213.00 (dated 11/01/2010)	Vol. 25, 4192–4193
104	Superpumper Successor Note in the amount of $492,937.30 (dated 02/01/2011)	Vol. 25, 4194–4195
105	Superpumper Successor Note in the amount of $939,000 (dated 02/01/2011)	Vol. 25, 4196–4197

	DOCUMENT DESCRIPTION	**LOCATION**
106	Superpumper Stock Power transfers to S. Morabito and Bayuk (dated 01/01/2011)	Vol. 25, 4198–4199
107	*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)	Vol. 25, 4200–4203
108	October 12, 2012 email between P. Morabito and Bernstein RE: 2011 Return	Vol. 25, 4204–4204
109	Compass Term Loan (dated 12/21/2016)	Vol. 25, 4205–4213
110	P. Morabito – Term Note in the amount of $939,000.000 (dated 09/01/2010)	Vol. 25, 4214–4214
111	Loan Agreement between Compass Bank and Superpumper (dated 12/21/2016)	Vol. 25, 4215–4244
112	Consent Agreement (dated 12/28/2010)	Vol. 25, 4245–4249
113	Superpumper Financial Statement (dated 12/31/2007)	Vol. 25, 4250–4263
114	Superpumper Financial Statement (dated 12/31/2009)	Vol. 25, 4264–4276
115	Notes Receivable Interest Income Calculation (dated 12/31/2009)	Vol. 25, 4277–4278
116	Superpumper Inc. Audit Conclusions Memo (dated 12/31/2010)	Vol. 25, 4279–4284

	DOCUMENT DESCRIPTION	LOCATION
117	Superpumper 2010 YTD Income Statement and Balance Sheets	Vol. 25, 4285–4299
118	March 12, 2010 Management Letter	Vol. 25, 4300–4302
119	Superpumper Unaudited August 2010 Balance Sheet	Vol. 25, 4303–4307
120	Superpumper Financial Statements (dated 12/31/2010)	Vol. 25, 4308–4322
121	Notes Receivable Balance as of September 30, 2010	Vol. 26, 4323
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

	DOCUMENT DESCRIPTION	LOCATION
133	April 5, 2011 email from P. Morabito to Vacco	Vol. 26, 4353
134	April 16, 2012 email from Vacco to Morabito	Vol. 26, 4354–4359
135	August 7, 2011 email exchange between Vacco and P. Morabito	Vol. 26, 4360
136	August 2011 Lovelace letter to Timothy Halves	Vol. 26, 4361–4365
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
140	November 28, 2011 email chain between Vacco, S. Morabito, and P. Morabito RE: $560,000 wire to Lippes Mathias	Vol. 26, 4369–4370
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
144	April 24, 2012 email from P. Morabito to Vacco RE: SPI Loan Detail	Vol. 26, 4377–4378

	DOCUMENT DESCRIPTION	LOCATION
145	September 4, 2012 email chain between Vacco and Bayuk RE: Second Deed of Trust documents	Vol. 26, 4379–4418
147	September 4, 2012 email from P. Morabito to Vacco RE: Wire	Vol. 26, 4419–4422
148	September 4, 2012 email from Bayuk to Vacco RE: Wire	Vol. 26, 4423–4426
149	December 6, 2012 email from Vacco to P. Morabito RE: BOA and the path of money	Vol. 26, 4427–4428
150	September 18, 2012 email chain between P. Morabito and Bayuk	Vol. 26, 4429–4432
151	October 3, 2012 email chain between Vacco and P. Morabito RE: Snowshoe Properties, LLC	Vol. 26, 4433–4434
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

	DOCUMENT DESCRIPTION	LOCATION
159	September 14, 2012 email from Vacco to P. Morabito	Vol. 27, 4656–4657
160	October 1, 2012 email from P. Morabito to Vacco RE: Monday work for Dennis and Christian	Vol. 27, 4658
161	December 18, 2012 email from Vacco to P. Morabito RE: Attorney Client Privileged Communication	Vol. 27, 4659
162	April 24, 2013 email from P. Morabito to Vacco RE: BHI Trust	Vol. 27, 4660
163	Membership Interest Purchases, Agreement – Watch My Block (dated 10/06/2010)	Vol. 27, 4661–4665
164	Watch My Block organizational documents	Vol. 27, 4666–4669
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
179	Gursey Schneider LLP Subpoena	Vol. 28, 4676–4697
180	Summary Appraisal of 570 Glenneyre	Vol. 28, 4698–4728
181	Appraisal of 1461 Glenneyre Street	Vol. 28, 4729–4777
182	Appraisal of 370 Los Olivos	Vol. 28, 4778–4804
183	Appraisal of 371 El Camino Del Mar	Vol. 28, 4805–4830
184	Appraisal of 1254 Mary Fleming Circle	Vol. 28, 4831–4859

	DOCUMENT DESCRIPTION	LOCATION
185	Mortgage – Panorama	Vol. 28, 4860–4860
186	Mortgage – El Camino	Vol. 28, 4861
187	Mortgage – Los Olivos	Vol. 28, 4862
188	Mortgage – Glenneyre	Vol. 28, 4863
189	Mortgage – Mary Fleming	Vol. 28, 4864
190	Settlement Statement – 371 El Camino Del Mar	Vol. 28, 4865
191	Settlement Statement – 370 Los Olivos	Vol. 28, 4866
192	2010 Declaration of Value of 8355 Panorama Dr	Vol. 28, 4867–4868
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

	DOCUMENT DESCRIPTION	LOCATION
222	Kimmel – January 21, 2016, Comment on Alves Appraisal	Vol. 28, 4880–4883
223	September 20, 2010 email from Yalamanchili to Morabito	Vol. 28, 4884
224	March 24, 2011 email from Naz Afshar RE: telephone call regarding CWC	Vol. 28, 4885–4886
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

	DOCUMENT DESCRIPTION	LOCATION
233	BMO Account Tracker Banking Report October 1 to October 31, 2010	Vol. 29, 5007–5013
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

	DOCUMENT DESCRIPTION	LOCATION
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
269	October 1, 2010 Check #2357 from Bayuk to P. Morabito for $31,284 for 371 El Camino Del Mar Funding	Vol. 30, 5161–5162
270	Bayuk Payment Ledger Support Documents Checks and Bank Statements	Vol. 31, 5163–5352
271	Bayuk Superpumper Contributions	Vol. 31, 5353–5358

	DOCUMENT DESCRIPTION	LOCATION
272	May 14, 2012 email string between P. Morabito, Vacco, Bayuk, and S. Bernstein RE: Info for Laguna purchase	Vol. 31, 5359–5363
276	September 21, 2010 Appraisal of 8355 Panorama Drive Reno, NV by Alves Appraisal	Vol. 32, 5364–5400
277	Assessor's Map/Home Caparisons 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

DOCUMENT DESCRIPTION		LOCATION
300	September 20, 2010 email chain between Yalmanchili and Graber RE: Attorney Client Privileged Communication	Vol. 33, 5745–5748
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
Minutes of October 29, 2018, Non-Jury Trial, Day 1 (filed 11/08/2018)		Vol. 35, 5802–6041
Transcript of October 29, 2018, Non-Jury Trial, Day 1		Vol. 35, 6042–6045

DOCUMENT DESCRIPTION	**LOCATION**
Minutes of October 30, 2018, Non-Jury Trial, Day 2 (filed 11/08/2018)	Vol. 36, 6046–6283
Transcript of October 30, 2018, Non-Jury Trial, Day 2	Vol. 36, 6284–6286
Minutes of October 31, 2018, Non-Jury Trial, Day 3 (filed 11/08/2018)	Vol. 37, 6287–6548
Transcript of October 31, 2018, Non-Jury Trial, Day 3	Vol. 37, 6549–6552
Minutes of November 1, 2018, Non-Jury Trial, Day 4 (filed 11/08/2018)	Vol. 38, 6553–6814
Transcript of November 1, 2018, Non-Jury Trial, Day 4	Vol. 38, 6815–6817
Minutes of November 2, 2018, Non-Jury Trial, Day 5 (filed 11/08/2018)	Vol. 39, 6818–7007
Transcript of November 2, 2018, Non-Jury Trial, Day 5	Vol. 39, 7008–7011
Minutes of November 5, 2018, Non-Jury Trial, Day 6 (filed 11/08/2018)	Vol. 40, 7012–7167
Transcript of November 5, 2018, Non-Jury Trial, Day 6	Vol. 40, 7168–7169
Minutes of November 6, 2018, Non-Jury Trial, Day 7 (filed 11/08/2018)	Vol. 41, 7170–7269
Transcript of November 6, 2018, Non-Jury Trial, Day 7	Vol. 41, 7270–7272 Vol. 42, 7273–7474
Minutes of November 7, 2018, Non-Jury Trial, Day 8 (filed 11/08/2018)	Vol. 43, 7475–7476
Transcript of November 7, 2018, Non-Jury Trial, Day 8	Vol. 43, 7477–7615

DOCUMENT DESCRIPTION		LOCATION
Minutes of November 26, 2018, Non-Jury Trial, Day 9 (filed 11/26/2018)		Vol. 44, 7616
Transcript of November 26, 2018, Non-Jury Trial – Closing Arguments, Day 9		Vol. 44, 7617–7666 Vol. 45, 7667–7893
Plaintiff's Motion to Reopen Evidence (filed 01/30/2019)		Vol. 46, 7894–7908
Exhibits to Plaintiff's Motion to Reopen Evidence		
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

DOCUMENT DESCRIPTION		**LOCATION**
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		
Exhibit	**Document Description**	
1	Plaintiff's Motion to Reopen Evidence	Vol. 47, 8081–8096
Ex Parte Motion for Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 01/31/2019)		Vol. 47, 8097–8102
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

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Exhibits to Supplement to Plaintiff's Motion to Reopen Evidence</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Supplemental Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)</td><td>Vol. 47, 8111–8113</td></tr>
<tr><td>1-I</td><td>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)</td><td>Vol. 47, 8114–8128</td></tr>
<tr><td colspan="2">Defendants' Response to Motion to Reopen Evidence (02/06/2019)</td><td>Vol. 47, 8129–8135</td></tr>
<tr><td colspan="2">Plaintiff's Reply to Defendants' Response to Motion to Reopen Evidence (filed 02/07/2019)</td><td>Vol. 47, 8136–8143</td></tr>
<tr><td colspan="2">Minutes of February 7, 2019 hearing on Motion to Reopen Evidence (filed 02/28/2019)</td><td>Vol. 47, 8144</td></tr>
<tr><td colspan="2">Rough Draft Transcript of February 8, 2019 hearing on Motion to Reopen Evidence</td><td>Vol. 47, 8145–8158</td></tr>
<tr><td colspan="2">[Plaintiff's Proposed] Findings of Fact, Conclusions of Law, and Judgment (filed 03/06/2019)</td><td>Vol. 47, 8159–8224</td></tr>
<tr><td colspan="2">[Defendants' Proposed Amended] Findings of Fact, Conclusions of Law, and Judgment (filed 03/08/2019)</td><td>Vol. 47, 8225–8268</td></tr>
<tr><td colspan="2">Minutes of February 26, 2019 hearing on Motion to Continue ongoing Non-Jury Trial (Telephonic) (filed 03/11/2019)</td><td>Vol. 47, 8269</td></tr>
</table>

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)</td><td>Vol. 48, 8270–8333</td></tr>
<tr><td colspan="2">Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)</td><td>Vol. 48, 8334–8340</td></tr>
<tr><td colspan="2">Memorandum of Costs and Disbursements (filed 04/11/2019)</td><td>Vol. 48, 8341–8347</td></tr>
<tr><td colspan="2">Exhibit to Memorandum of Costs and Disbursements</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Ledger of Costs</td><td>Vol. 48, 8348–8370</td></tr>
<tr><td colspan="2">Application for Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)</td><td>Vol. 48, 8371–8384</td></tr>
<tr><td colspan="2">Exhibits to Application for Attorneys’ Fees and Costs Pursuant to NRCP 68</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>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)</td><td>Vol. 48, 8385–8390</td></tr>
<tr><td>2</td><td>Plaintiff’s Offer of Judgment to Defendants (dated 05/31/2016)</td><td>Vol. 48, 8391–8397</td></tr>
<tr><td>3</td><td>Defendant’s Rejection of Offer of Judgment by Plaintiff (dated 06/15/2016)</td><td>Vol. 48, 8398–8399</td></tr>
<tr><td>4</td><td>Log of time entries from June 1, 2016 to March 28, 2019</td><td>Vol. 48, 8400–8456</td></tr>
</table>

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

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

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Plaintiff's Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 05/07/2019)</td><td>Vol. 51, 8836–8858</td></tr>
<tr><td colspan="2">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)</td><td>Vol. 51, 8859–8864</td></tr>
<tr><td colspan="2">Declaration of Edward Bayuk Claiming Exemption from Execution (filed 06/28/2019)</td><td>Vol. 51, 8865–8870</td></tr>
<tr><td colspan="2">Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Copy of June 22, 2019 Notice of Execution and two Write of Executions</td><td>Vol. 51, 8871–8896</td></tr>
<tr><td>2</td><td>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)</td><td>Vol. 51, 8897–8942</td></tr>
<tr><td colspan="2">Notice of Claim of Exemption from Execution (filed 06/28/2019)</td><td>Vol. 51, 8943–8949</td></tr>
<tr><td colspan="2">Edward Bayuk's Declaration of Salvatore Morabito Claiming Exemption from Execution (filed 07/02/2019)</td><td>Vol. 51, 8950–8954</td></tr>
<tr><td colspan="2">Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Las Vegas June 22, 2019 letter</td><td>Vol. 51, 8955–8956</td></tr>
</table>

	DOCUMENT DESCRIPTION	LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

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

	DOCUMENT DESCRIPTION	LOCATION
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

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

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

DOCUMENT DESCRIPTION		**LOCATION**
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

	DOCUMENT DESCRIPTION	**LOCATION**
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

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

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">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)</td><td>Vol. 57, 9939–9951</td></tr>
<tr><td colspan="2">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</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>19</td><td>Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)</td><td>Vol. 57, 9952–9993</td></tr>
<tr><td>20</td><td>Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)</td><td>Vol. 57, 9994–10010</td></tr>
<tr><td colspan="2">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)</td><td>Vol. 57, 10011–10019</td></tr>
<tr><td colspan="2">Bayuk’s Case Appeal Statement (filed 12/06/2019)</td><td>Vol. 57, 10020–10026</td></tr>
<tr><td colspan="2">Bayuk’s Notice of Appeal (filed 12/06/2019)</td><td>Vol. 57, 10027–10030</td></tr>
</table>

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Exhibits to Bayuk’s Notice of Appeal</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Denying [Morabito’s] Claim of Exemption (filed 08/02/19)</td><td>Vol. 57, 10031–10033</td></tr>
<tr><td>2</td><td>Order Denying [Bayuk’s] Claim of Exemption and Third Party Claim (filed 08/09/19)</td><td>Vol. 57, 10034–10038</td></tr>
<tr><td>3</td><td>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)</td><td>Vol. 57, 10039–10048</td></tr>
<tr><td colspan="2">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)</td><td>Vol. 57, 10049–10052</td></tr>
<tr><td colspan="2">Exhibit to Notice of Entry of Order</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>A</td><td>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)</td><td>Vol. 57, 10053–10062</td></tr>
<tr><td colspan="2">Docket Case No. CV13-02663</td><td>Vol. 57, 10063–10111</td></tr>
</table>

1652

GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER, ESQ.
Nevada Bar No. 6454
E-mail: eturner@gtg.legal
TERESA M. PILATOWICZ, ESQ.
Nevada Bar No. 9605
E-mail: tpilatowicz@gtg.legal
GABRIELLE A. HAMM, ESQ.
Nevada Bar No. 11588
E-mail: ghamm@gtg.legal
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel to Trustee

IN THE SECOND JUDICIAL DISTRICT COURT OF

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

ERRATA TO: PLAINTIFF'S MOTION TO REOPEN EVIDENCE

Plaintiff, WILLIAM A LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, by and through his counsel, TERESA M. PILATOWIZ, of the law firm of Garman Turner Gordon, hereby files this errata ("Errata") to the *Plaintiff's Motion to Reopen Evidence* due an error with page 9 in the original filing causing a portion of the text to be blacked out. Accordingly, attached as Exhibit 1 to this Errata, is a copy of the Motion with a legible page 9.

Dated this 30th day of January, 2019.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner
ERIKA PIKE TURNER, ESQ.
TERESA M. PILATOWICZ, ESQ.
GABRIELLE A. HAMM, ESQ.
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel for Trustee

AFFIRMATION
Pursuant to NRS 239B.030

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

Dated this 30th day of January, 2019.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner
ERIKA PIKE TURNER, ESQ.
TERESA M. PILATOWICZ, ESQ.
GABRIELLE A. HAMM, ESQ.
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel for Trustee

INDEX OF EXHIBITS

Exhibit	Description	Pages[1]
1	Plaintiff's Motion to Reopen Evidence	15

[1] Exhibit pagination excludes exhibit slip sheets.

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

CERTIFICATE OF SERVICE

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

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

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

____ Certified Mail, Return Receipt Requested

____ Via Facsimile (Fax)

____ Via E-Mail

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

____ Federal Express (or other overnight delivery)

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

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

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

Dated this 30th day of January, 2019.

/s/ Kelli Wightman
An Employee of GARMAN TURNER GORDON LLP

4829-9125-7222, v. 3

Exhibit 1

2120
GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER, ESQ.
Nevada Bar No. 6454
E-mail: eturner@gtg.legal
TERESA M. PILATOWICZ, ESQ.
Nevada Bar No. 9605
E-mail: tpilatowicz@gtg.legal
GABRIELLE A. HAMM, ESQ.
Nevada Bar No. 11588
E-mail: ghamm@gtg.legal
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel to Trustee

IN THE SECOND JUDICIAL DISTRICT COURT OF

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 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

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

Dated this 30th day of January, 2019.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner
ERIKA PIKE TURNER, ESQ.
TERESA M. PILATOWICZ, ESQ.
GABRIELLE A. HAMM, ESQ.
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel for Trustee

I.
INTRODUCTION

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

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

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

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

II.
RELEVANT FACTS

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

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

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

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

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

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

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

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

---

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

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

[5] Trial Exh. 144 (in response to inquiries in April of 2012 by Superpumper's auditors regarding affiliate loans, Paul 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

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

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

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

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

---

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

[9] Trial Exh. 153.

[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 was then "parked" in Snowshoe Petroleum and Superpumper); Trial Trans. 10/29/18, p. 179, l. 8 – p. 187, l. 17; Trial Trans. 10/29/18, p. 196, l. 17 – p. 197, l. 24 (Edward Bayuk testifying that Paul Morabito received approximately $1.6 million in distributions from Raffles through the asset was testimony in the name of CWC and later Snowshoe Petroleum or Superpumper); Trial Exh. 128 (email regarding issuance of new certificates to Snowshoe Petroleum); 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).

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

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

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

> Q So you have Superpumper, pardon me, Snowshoe Petroleum. You don't know whether they have paid Paul Morabito's attorney's fees?
>
> A **No, they have not**.

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

Edward Bayuk further testified:

> Q Now subsequent to Paul Morabito selling his interest to you and Sam and really Snowshoe Petroleum, he had input on Snowshoe's financials for the time period subsequent to the sale, correct?
>
> A You are referring to Paul?
>
> Q Paul?
>
> A Input on what?
>
> Q On the Snowshoe financials?
>
> A I said earlier Sam was in Arizona running the business, and we had accounting people there doing the accounting stuff. Paul was looking for opportunities for himself, and if he thought a big opportunity was coming along he would say, hey, would you be interested in participating? But Sam was very focused on running the business in Arizona, Superpumper, and so Paul would give his opinions and his advice. Like I said earlier, the e-mail on 137 between Dennis and Paul I know nothing about it. I don't even know -- It makes no sense, the e-mail. So Paul, you know, he did things. 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.

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

---

[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).

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

B. Newly-Discovered Evidence Relevant to Paul Morabito's Interest in Snowshoe Petroleum.

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

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

---

[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.

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

[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*

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

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

---

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

[16] See Case No. 15-05010-gwz (Bankr. D. Nev.), ECF No. 199 (*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*), 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*).

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

[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 the motion to withdraw was filed only in the Virsenet adversary proceeding, Mr. Gilmore stated that on January 14, 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.

[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 (III) Compelling Robison's Compliance* by the Herbst Parties. Case No. 15-05010-gwz (Bankr. D. Nev.), ECF No. 253.

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

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	1,738.41	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	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	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	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. Ticor 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).

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

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

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

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

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

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

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

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

During discovery, Plaintiff's counsel asked Sam Morabito, in his capacity as a representative of Snowshoe Petroleum, whether Paul Morabito held any interest in Snowshoe Petroleum and whether any payments or transfers were made by Snowshoe Petroleum to Paul Morabito. In response, Sam Morabito testified conclusively that Paul Morabito held no interest in Snowshoe Petroleum, that no assets were transferred to Paul Morabito, and that payments were made to Paul Morabito to acquire his interest in Superpumper, with some small adjustments following the sale, but that the obligations were paid in full by November 28, 2011. See Sam 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 Hamm Declaration as **Exhibit 1-H**. Thereafter, Sam Morabito submitted sworn testimony in opposition to summary judgment that Paul Morabito had zero involvement in Snowshoe Petroleum following the transfer. Ex. 1-A (Sept. 21, 2017 Declaration of Sam Morabito). Introduction of the Transaction Ledger is not unduly prejudicial to the Defendants, as it is entirely consistent with Plaintiff's theory of the case and the information was in Snowshoe Petroleum's possession all along.

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

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

IV.
CONCLUSION

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

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

AFFIRMATION
Pursuant to NRS 239B.030

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

Dated this 30th day of January, 2019.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner
ERIKA PIKE TURNER, ESQ.
TERESA M. PILATOWICZ, ESQ.
GABRIELLE A. HAMM, ESQ.
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
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.

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

CERTIFICATE OF SERVICE

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

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

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

____ Certified Mail, Return Receipt Requested

____ Via Facsimile (Fax)

____ Via E-Mail

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

____ Federal Express (or other overnight delivery)

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

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

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

Dated this 30th day of January, 2019.

/s/ Kelli Wightman
An Employee of GARMAN TURNER GORDON LLP

4829-9125-7222, v. 3

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

2140
GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER, ESQ.
Nevada Bar No. 6454
E-mail: eturner@gtg.legal
TERESA M. PILATOWICZ, ESQ.
Nevada Bar No. 9605
E-mail: tpilatowicz@gtg.legal
GABRIELLE A. HAMM, ESQ.
Nevada Bar No. 11588
E-mail: ghamm@gtg.legal
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel to Trustee

IN THE SECOND JUDICIAL DISTRICT COURT OF

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

EX PARTE MOTION FOR ORDER SHORTENING TIME ON PLAINTIFF'S MOTION TO REOPEN EVIDENCE AND FOR EXPEDITED HEARING

Plaintiff William A. Leonard ("Plaintiff") hereby moves, on an *ex parte* basis, for an order shortening time for responses on *Plaintiff's Motion to Reopen Evidence* under NRCP 59(a) (the "Motion to Reopen") and an expedited hearing. This motion is made pursuant to WDCR 11(3) and is supported by the points and authorities below, the Declaration of Gabrielle A. Hamm set forth below, the pleadings, papers, and other records on file with the clerk of the above-captioned Court, the evidence adduced at the trial, and any argument of counsel at the time of the hearing.

I.
MEMORANDUM OF POINTS AND AUTHORITIES

Good cause exists to grant the order shortening time and set an expedited hearing under WDCR 11(3). If heard in the ordinary course, the Motion to Reopen is unlikely to be decided before March 2019, or almost four months following the conclusion of the trial, and an evidentiary hearing to admit the additional evidence would occur sometime thereafter, resulting in significant delay in entry of the judgment. More importantly, any delay in hearing the Motion to Reopen is likely to prejudice Plaintiff, as Defendants have transferred and dissipated assets during the pendency of the litigation, as follows:

1. Edward Bayuk testified that during the pendency of this litigation, he caused Snowshoe Properties, LLC, the California limited liability company (formed by Edward Bayuk as the successor to Baruk Properties, LLC, a Nevada limited liability company) to become a Delaware company. Trial Trans. 10/30/18, at p. 25, l. 18 – p. 26, l. 14 and p. 27, ll. 10-23.

2. The trial testimony also established that while this litigation was pending, the assets of Superpumper, Inc. ("Superpumper") were sold to an entity affiliated with Jan Friederich pursuant to an Asset Purchase Agreement executed on or about March 31, 2016, and Defendants failed to disclose to the buyer that Superpumper was the subject of a pending fraudulent transfer claim. See Trial Trans. 11/6/18, p. 37, l. 9 – p. 38, l. 14 and p. 39, l. 13 – p. 40, l. 4 (testimony of Jan Friederich). Defendants also failed to disclose the sale or Mr. Friederich's financial interest to Plaintiff when offering Jan Friederich as an expert witness, nor prior to or during his March 29, 2016 deposition. Plaintiff first learned of the sale on May 17, 2017, during the deposition of Stanton Bernstein. Hamm Decl., ¶ 4.

3. Defendant Snowshoe Petroleum, Inc. ("Snowshoe Petroleum"), which was incorporated in New York on or about September 29, 2010, subsequently became a Delaware corporation. See Defendants' proposed Findings of Fact, Conclusions of Law, and Judgment (Nov. 26, 2018), a true and correct copy of which is attached to the Hamm Declaration in support of the Motion to Reopen as Exhibit 1-B, at ¶ 105.

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

4. The evidence discovered after the conclusion of the trial, which is the subject of the Motion to Reopen, shows that Defendant Snowshoe Petroleum dissipated assets during the pendency of the litigation by transferring them to Paul Morabito's counsel to pay Paul Morabito's legal fees and costs. See Hamm Decl., ¶ 5 and Exhibit 1-G to the Hamm Declaration in support of the Motion to Reopen.

II.
CONCLUSION

Defendants' pattern of conduct to date strongly suggests Defendants will continue to dissipate assets which are recoverable by the bankruptcy estate or otherwise take steps to prevent collection on any judgment. Therefore, Plaintiff requests consideration of the Motion to Reopen at the Court's earliest opportunity to avoid further prejudice to Plaintiff.

AFFIRMATION
Pursuant to NRS 239B.030

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

Dated this 31st day of January, 2019.

GARMAN TURNER GORDON LLP

/s/ Gabrielle A. Hamm
ERIKA PIKE TURNER, ESQ.
TERESA M. PILATOWICZ, ESQ.
GABRIELLE A. HAMM, ESQ.
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel for Trustee

DECLARATION OF GABRIELLE A. HAMM IN SUPPORT OF PLAINTIFF'S EX PARTE MOTION FOR ORDER SHORTENING TIME ON PLAINTIFF'S MOTION TO REOPEN EVIDENCE AND FOR EXPEDITED HEARING

I, Gabrielle A. Hamm, Esq., hereby declare as follows:

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

2. GTG is also counsel for the Herbst Parties in the adversary proceeding entitled *JH, Inc., Jerry Herbst, and Berry-Hinckley Industries v. Paul A. Morabito* (the "Non-Dischargeability Action"), pending as Case No. 15-05019-GWZ in the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court"), which adversary proceeding was filed in connection with the Chapter 7 bankruptcy case of Paul A. Morabito, Debtor, Case No. 13-51237-GWZ.

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

4. Plaintiff's counsel first learned of a sale of Superpumper from the deposition testimony of Stanton Bernstein on May 17, 2017—more than a year after the date Jan Friederich testified the Asset Purchase Agreement was executed. Defendants did not disclose the sale prior to or during Jan Friederich's deposition. Shortly after learning of the sale from Mr. Bernstein, Plaintiff served Superpumper with *Plaintiff's Fifth Set of Requests for Production of Documents to Superpumper, Inc.*, requesting documents relating to the sale, assignment, or transfer of any assets of Superpumper, the assumption, assignment, or transfer of liabilities of Superpumper, and the sale, assignment or transfer of any stock and/or shares of Superpumper after 2014. In response, Superpumper identified documents relating to the sale for the first time in *Superpumper, Inc.'s Responses to Plaintiff's Fifth Set of Requests for Production* dated June 20, 2017, and produced the sale documents with *Defendants' Seventeenth Supplement to NRCP Disclosure of Witnesses and Documents*, also dated June 20, 2017.

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

5. Attached as Exhibit 1-G to the Hamm Declaration in support of the Motion to Reopen is a true and copy of the *Response of Robison, Sharp, Sullivan & Brust[] To Subpoena* and accompanying documents, which were served by Robison, Sharp, Sullivan & Brust ("RSSB") upon GTG in response to a post-judgment subpoena by the Herbst Parties in the Non-Dischargeability Action against Paul Morabito. RSSB's response includes a transaction ledger for Paul Morabito's files for the period of February 4, 2013 through March 27, 2018 (the "Transaction Ledger"). The Transaction Ledger shows payments by Snowshoe Petroleum to RSSB for Paul Morabito's legal fees and costs.[1]

6. On January 30, 2019, I emailed opposing counsel notice of Plaintiff's intent to file this *ex parte* motion, along with a copy of the Motion to Reopen (and errata thereto).

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

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

Dated this 31st day of January, 2019.

/s/ Gabrielle A. Hamm
GABRIELLE A. HAMM, Declarant

[1] The Non-Dischargeability Action and resulting Judgment is against Paul Morabito. The post-judgment subpoena to RSSB by the Herbst Parties sought billing records solely for Paul Morabito.

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

CERTIFICATE OF SERVICE

I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this date, pursuant to NRCP 5(b), I am serving a true and correct copy of the foregoing **EX PARTE MOTION FOR ORDER SHORTENING TIME ON PLAINTIFF'S MOTION TO REOPEN EVIDENCE AND FOR EXPEDITED HEARING** on the parties as set forth below:

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

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

____ Certified Mail, Return Receipt Requested

____ Via Facsimile (Fax)

____ Via E-Mail

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

____ Federal Express (or other overnight delivery)

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

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

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

Dated this 31st day of January, 2019.

/s/ Kelli Wightman
An Employee of GARMAN TURNER GORDON LLP

4810-5893-3126, v. 2

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

FILED
Electronically
CV13-02663
2019-02-04 11:09:11 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7100140

3370

IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morobito, Plaintiff, v. 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.	Case No. CV13-02663 Department No.: B4

ORDER SHORTENING TIME ON PLAINTIFF'S MOTION TO REOPEN EVIDENCE AND SETTING EXPEDITED HEARING

On January 30, 2019, Plaintiff WILLIAM A. LEONARD (hereinafter "LEONARD"), by and through its attorney Erika Pike Turner, Esq., of Garman Turner Gordon LLP, filed a *Motion to Reopen Evidence,* and an *Errata to Plaintiff's Motion to Reopen Evidence.* On January 31, 2019, LEONARD filed an *Ex Parte Motion for Order Shortening Time on Plaintiff's Motion to Reopen Evidence and For Expedited Hearing.*

Based on the foregoing and good cause appearing,

IT IS HEREBY ORDERED that Defendants SUPERPUMPER, INC., EDWARD BAYUK, individually, and as Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM, INC., shall have until Wednesday, February 6, 2019 at 1:00 p.m. to file an opposition to the Plaintiff's Motion to

Reopen Evidence. Plaintiff WILLIAM LEONARD shall have until 3:00 p.m. on February 7, 2019 to file a reply, if any. Additionally, a hearing on Plaintiff's Motion to Reopen Evidence is scheduled for **Friday, February 8, 2019 at 1:00 p.m.**

DATED this 4 day of February, 2019.

Connie J. Steinheimer
DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CV13-02663

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 4 day February, 2019, I filed the **ORDER SHORTENING TIME ON PLAINTIFF'S MOTION TO REOPEN EVIDENCE AND SETTING EXPEDITED HEARING** with the Clerk of the Court.

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

_____**Personal delivery to the following: [NONE]**

__X__**Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.**

ERIKA TURNER, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

MARK WEISENMILLER, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

TERESA PILATOWICZ, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

GABRIELLE HAMM, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

FRANK GILMORE, ESQ. for SNOWSHOE PETROLEUM, INC. et al

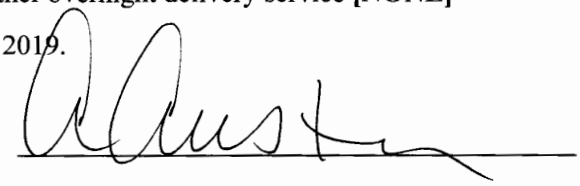
_____**Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]**

_____**Placed a true copy in a sealed envelope for service via:**

_____ Reno/Carson Messenger Service – **[NONE]**

_____ Federal Express or other overnight delivery service **[NONE]**

DATED this 4 day of February, 2019.



4105
GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER, ESQ.
Nevada Bar No. 6454
E-mail: eturner@gtg.legal
TERESA M. PILATOWICZ, ESQ.
Nevada Bar No. 9605
E-mail: tpilatowicz@gtg.legal
GABRIELLE A. HAMM, ESQ.
Nevada Bar No. 11588
E-mail: ghamm@gtg.legal
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel to Trustee

IN THE SECOND JUDICIAL DISTRICT COURT OF

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

SUPPLEMENT TO PLAINTIFF'S MOTION TO REOPEN EVIDENCE

Plaintiff William A. Leonard ("Plaintiff") hereby files this supplement to Plaintiff's Motion to Reopen Evidence filed on January 30, 2019 ("Motion to Reopen"), which is supported by the supplemental declaration of Gabrielle A. Hamm, Esq. (the "Supplemental Declaration") attached hereto as Exhibit 1.

Filed with the Motion to Reopen as Exhibit 1-G is the January 18, 2019 *Response of Robison, Sharp, Sullivan & Brust[] To Subpoena* and the documents produced therewith by RSSB in response to an August 27, 2018 Subpoena by the Herbst Parties in the Bankruptcy Court

adversary proceeding entitled *JH, Inc., Jerry Herbst, and Berry-Hinckley Industries v. Paul A. Morabito*. Among the documents produced by RSSB is a Transaction Ledger for Paul Morabito for the period of February 4, 2013 through March 27, 2018. Ex. 1-G at RSSB_000001 – RSSB_000005.

As indicated in the Motion to Reopen, the Herbst Parties filed their *Motion for Order: (I) Holding Robison in Contempt of the Order Compelling Compliance; (II) Awarding Sanctions to the Herbst Parties; and (III) Compelling Robison's Compliance* (the "Contempt Motion") in the Bankruptcy Court action, contending that RSSB's production was materially incomplete.[1] Shortly after the Motion to Reopen was filed in this Court, RSSB filed its opposition to the Contempt Motion[2] along with the *Declaration of Frank C. Gilmore in Support of Robison, Sharp, Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt* (the "Gilmore Declaration").[3] A true and correct copy of the Gilmore Declaration is attached as **Exhibit 1-I** to the Supplemental Declaration.

Relevant to the Motion to Reopen, the Gilmore Declaration confirms that "Client ID 23245.001" in the Transaction Ledger refers to RSSB's representation of Paul Morabito in the Chapter 7 bankruptcy case. See Gilmore Declaration at ¶ 6. Further, Mr. Gilmore confirms that the notations to the Transaction Ledger identifying Snowshoe Petroleum, Inc. reflect payment made by Snowshoe Petroleum, Inc. Id. at ¶ 9 ("Where the identity of the payor was someone other than Paul Morabito, a notation to the Detail Payment Transaction ledger was made.").

Accordingly, Plaintiff supplements the Motion to Reopen to submit the Gilmore Declaration as Exhibit 1-I in support of the relief requested in the Motion to Reopen.

. . .

. . .

. . .

---

[1] Case No. 15-05010-gwz (Bankr. D. Nev.), ECF No. 253.

[2] Id., ECF No. 258 (*Robison, Sharp, Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt*) (Jan. 30, 2019).

[3] Id., ECF No. 259.

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

AFFIRMATION
Pursuant to NRS 239B.030

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

Dated this 4th day of February, 2019.

GARMAN TURNER GORDON LLP

/s/ Gabrielle A. Hamm
ERIKA PIKE TURNER, ESQ.
TERESA M. PILATOWICZ, ESQ.
GABRIELLE A. HAMM, ESQ.
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel for Trustee

INDEX OF EXHIBITS

Exhibit	Description	Pages[4]
1	Supplemental Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff's Motion to Reopen Evidence	2
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)	14

[4] Exhibit pagination excludes exhibit slip sheets.

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

CERTIFICATE OF SERVICE

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

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

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

____ Certified Mail, Return Receipt Requested

____ Via Facsimile (Fax)

____ Via E-Mail

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

____ Federal Express (or other overnight delivery)

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

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

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

Dated this 4th day of February, 2019.

/s/ Kelli Wightman
An Employee of GARMAN TURNER GORDON LLP

4846-3972-1095, v. 1

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

Exhibit 1

4105
GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER, ESQ.
Nevada Bar No. 6454
E-mail: eturner@gtg.legal
TERESA M. PILATOWICZ, ESQ.
Nevada Bar No. 9605
E-mail: tpilatowicz@gtg.legal
GABRIELLE A. HAMM, ESQ.
Nevada Bar No. 11588
E-mail: ghamm@gtg.legal
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel to Trustee

IN THE SECOND JUDICIAL DISTRICT COURT OF

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

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

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

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

. . .

2. GTG is also counsel for the Herbst Parties in the adversary proceeding entitled *JH, Inc., Jerry Herbst, and Berry-Hinckley Industries v. Paul A. Morabito*, pending as Case No. 15-05019-GWZ in the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court"), which adversary proceeding was filed in connection with the Chapter 7 bankruptcy case of Paul A. Morabito, Debtor, Case No. 13-51237-GWZ.

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

4. Attached hereto as **Exhibit 1-I** is a true and correct copy of the *Declaration of Frank C. Gilmore in Support of Robison, Sharp, Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt*, on file as ECF No. 259 in the above-referenced adversary proceeding before the Bankruptcy Court.

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

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

Dated this 4th day of February, 2019.

GABRIELLE A. HAMM, Declarant

4852-4370-0871, v. 1

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

Exhibit 1-I

Frank C. Gilmore, Esq. (SBN 10052)
ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503
Tel: (775) 329-3151 / Fax: (775) 329-7941

Counsel for Paul A. Morabito

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF NEVADA

(RENO)

In re PAUL A. MORABITO, an individual, Debtor. / JH, INC., JERRY HERBST, and BERRY-HINCKLEY INDUSTRIES, Plaintiffs. vs. PAUL A. MORABITO, Defendant.	Case No. BK-N-13-51237 Chapter No. 7 Adv. No. 15-05019-GWZ **DECLARATION OF FRANK C. GILMORE IN SUPPORT OF ROBISON, SHARP, SULLIVAN & BRUST'S OPPOSITION TO MOTION FOR ORDER HOLDING ROBISON IN CONTEMPT** Hearing Date: OST Pending Hearing Time: OST Pending

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

1. I am a shareholder at Robison, Sharp, Sullivan & Brust ("RSSB"), counsel of record for Defendant, Paul A. Morabito, in the above referenced Chapter 7 adversary bankruptcy matter.

2. This Motion represents the third time the Herbst Parties have brought a motion against RSSB seeking an order compelling RSSB to performance, seeking sanctions and/or requesting contempt findings. The first instance involved a March 3, 2014, motion by the Herbst Parties to Department 6 of the Second Judicial District Court, seeking an award of attorney's fees against RSSB related to the scheduling of a deposition. Judge Adams denied request for sanction

against RSSB in the form of attorney's fees.

3. On March 23, 2015, the Herbst Parties sought an order against RSSB compelling the production of documents related to its pre-petition representation of Paul Morabito. [ECF 269 & 286 in the Chapter 7 Bankruptcy, BK-N-13-51237], contending that RSSB failed to comply with a subpoena served on January 8, 2015. At the hearing held on May 13, 2015, the Herbst Parties admitted that there was no basis for proceeding with the Motion to Compel against RSSB and admitted that the motion against RSSB should be denied as moot.

4. Attached hereto as Exhibit 1, is a true and accurate copy of the March 13, 2014 Order entered by the Second Judicial District Court in Case Number CV07-02764 denying sanctions against RSSB.

5. Attached hereto as Exhibit 2, is a true and accurate copy of an email January 24, 2019 email string between me and counsel Mark Weisenmiller.

6. RSSB has represented Paul A. Morabito and various of his entities since prior to January 1, 2013. The client numbers associated with Mr. Morabito and his various entities' matters is identified as "23245". Each matter has its own assigned matter number: 23245.001 through 23245.011. Of all the Morabito matters that RSSB has opened, only the Chapter 7 bankruptcy matter (23245.001) remains active.

7. Prior to October 2015, RSSB maintained an hourly-fee arrangement with Morabito, plus reimbursement for out-of-pocket costs. Morabito's bills occasionally were paid by personal check from Morabito, but most often his bill was paid by processing his credit card. These payments are reflected on RSSB_000001-000005, attached as Exhibit 1 to the Motion.

8. The Herbst Parties have copies of all of Morabito's credit card statements and bank statements from at least 2010 until at least March 2015 to verify this information. These records were produced at the request of the Trustee.

9. Starting in October 2015, Morabito agreed to a flat monthly attorney fee, plus costs. Each month, RSSB would receive a check or credit card to process the payment. These payments are reflected on RSSB_000001-000005, attached as Exhibit 1 to the Motion. Where the identity of the payor was someone other than Paul Morabito, a notation to the Detail Payment

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

Transaction ledger was made.

10. On information and belief, each of the payments made on any of Morabito's files since October 2015 were made by paper check, and not by wire transfer or credit card, or any other source of payment.

11. No payment has been received by any person related to RSSB's representation of Morabito (on any of his matters) since March 27, 2018.

12. RSSB has never accepted or received any tangible or intangible asset in lieu of payment of any fee or cost.

13. The Detail Payment Transaction Ledger (RSSB_000001-000002), attached to the Motion as Exhibit 1, is a true and correct compilation of all payments received for all of the matters in which RSSB has represented Paul Morabito or his entities since January 1, 2013.

14. In response to the subpoena, I reviewed my files and emails and produced all non-privileged communications related to "payments or transfers of an Asset" to RSSB "(including the form and source of payments) in payment of [RSSB] fees and costs incurred in representing Morabito since January 1, 2013."

15. All responsive documents in RSSB's care, custody, and control were produced. Those privileged communications were withheld and a privilege log was produced reflecting the withheld documents.

16. On January 19, 2019, I received an email from Herbst Parties' counsel which asked only, "Do you contend that the documents attached to Robison's response are all the documents and communications in Robison's possession, custody, or control responsive of the Subpoena for the applicable period (from 2013 to the present)?" On January 22, 2019, I responded, "Yes, we do contend as much."

17. On January 24, 2019, Herbst Parties' counsel responded by accusing RSSB of misinterpreting the subpoena and suggesting the contention that the response to the subpoena is not credible. Herbst Parties' counsel then notified me that a motion seeking to hold RSSB in contempt would be filed on order shortening time. No attempt was made to explain the basis for the request for shortened time, as required by Local Rule 9006.

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

18. On January 24, 2019, I responded by asking "Can I assume that you are dispensing with the requirement to meet and confer as to the specifics of your allegations before you proceed to motion practice? * * * And no, I do not consent to OST. According to the Rules, you are required to explain the basis for the OST, which, frankly, you never do. Can you explain the basis for OST?"

Dated this 30th day of January, 2019.

Frank C. Gilmore, Esq.

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

EXHIBIT 1

EXHIBIT 1

FILED
Electronically
2014-03-13 09:01:10 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4341478

Code 3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CONSOLIDATED NEVADA CORP., et al.,

Plaintiffs,

v.

JH, INC., et al.,

Defendants.
_____/

Case No. CV07-02764

Dept. No. 6

JH, INC., et al.,

Counter-Claimants,

v.

CONSOLIDATED NEVADA CORP., et al.,

Counter-Defendants.
_____/

ORDER

On March 3, 2014, Defendants/Counter-Claimants, JH, INC. and BERRY-HINCKLEY INDUSTRIES (hereinafter "Herbst Parties"), filed a motion to compel the deposition of Plaintiff/Counter-Defendant, PAUL A. MORABITO (hereinafter "Mr. Morabito"), and for monetary sanctions. Mr. Morabito opposed this motion on March 7, 2014 on the ground a deposition under this case number is improper as the underlying case was dismissed with prejudice and the confession of judgment improperly paced upon the judgment roll of the clerk of the Second Judicial District Court.

After carefully considering the Herbst Parties' motion and good cause appearing, it is hereby ordered the Herbst Parties' motion to compel is GRANTED. The Court does not

find any violation of N.R.S. 17.090, N.R.S. 17.100, or N.R.S. 17.110 by filing the confession of judgment under the above case number. The Court finds there is nothing in N.R.S. 17.090, N.R.S. 17.100, nor in N.R.S. 17.110 that requires a confession of judgment be filed in a new case. N.R.S. 17.110 provides:

> The statement must be filed with the clerk of the court in which the judgment is to be entered. The clerk shall endorse upon it and enter in the judgment book a judgment of the court for the amount confessed...

There is no evidence the Herbst Parties failed to abide by N.R.S. 17.110.

Additionally, the Court does not find Mr. Morabito's argument that even though his counsel agreed to a date and location of the deposition, there was never an understanding that Mr. Morabito would attend said deposition persuasive. If this had been the case, Mr. Morabito's counsel should have informed the Herbst Parties' counsel that Mr. Morabito might not attend.

The Court does not find the Herbst Parties' are entitled to fees and costs of bringing this motion. Accordingly, the Herbst Parties' motion for costs and fees is DENIED.

Accordingly, the Herbst Parties' motion is granted in part and denied in part. The parties shall conduct the deposition of Paul A. Morabito within thirty (30) days of the entry of this order. If counsel cannot agree as to the time and place of the deposition they shall notify the Judicial Assistant of this department and the Court will designate the time and place of the deposition.

DATED: This 13th day of March, 2014.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 13th day of March, 2014, I electronically filed the foregoing with the clerk of the Court:

JOHN DESMOND, ESQ.

BRIAN IRVINE, ESQ.

BARRY BRESLOW, ESQ.

FRANK GILMORE, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Judicial Assistant

EXHIBIT 2

EXHIBIT 2

From: Mark Weisenmiller <mweisenmiller@Gtg.legal>
Sent: Thursday, January 24, 2019 3:00 PM
To: Frank Gilmore <FGilmore@rssblaw.com>
Cc: Gerald Gordon <ggordon@Gtg.legal>; Caitlin Halm <CHalm@Gtg.legal>
Subject: RE: Adversary Action 15-05019;

Frank,

The Herbst Parties are filing a motion for contempt of the order compelling compliance [ECF No. 229]. Moreover, you stated unequivocally that Robison produced all documents and communications in its possession, custody, and/or control responsive of the subpoena. I disagree. We need Judge Zive to resolve this.

As to the order shortening time, it is appropriate because this is a discrete dispute, and necessary because of the Herbst Parties' need for responsive documents and to avoid the undue delay caused by the coordinated effort of Robison, Morabito, and Bayuk to delay the Herbst Parties' legitimate collection efforts. Requiring the Herbst Parties to wait a month for the motion to be heard is not appropriate considering the undue delay already caused by Robison's refusal to comply with the subpoena for which a motion to compel was required and Morabito's history of transferring and concealing his assets following entry of an adverse judgment.

Thanks,

Mark

From: Frank Gilmore <FGilmore@rssblaw.com>
Sent: Thursday, January 24, 2019 12:12 PM
To: Mark Weisenmiller <mweisenmiller@Gtg.legal>
Cc: Gerald Gordon <ggordon@Gtg.legal>; Caitlin Halm <CHalm@Gtg.legal>
Subject: RE: Adversary Action 15-05019;

Mark,

Can I assume that you are dispensing with the requirement to meet and confer as to the specifics of your allegations before you proceed to motion practice?

And no, I do not consent to OST. According to the Rules, you are required to explain the basis for the OST, which, frankly, you never do. Can you explain the basis for OST?

Frank

From: Mark Weisenmiller <mweisenmiller@Gtg.legal>
Sent: Thursday, January 24, 2019 11:52 AM
To: Frank Gilmore <FGilmore@rssblaw.com>
Cc: Gerald Gordon <ggordon@Gtg.legal>; Caitlin Halm <CHalm@Gtg.legal>
Subject: RE: Adversary Action 15-05019;

Frank,

The contention that the documents and communications attached to the Robison response are all that need to be produced pursuant to the subpoena is a misinterpretation of the subpoena and order compelling Robison's compliance. Alternatively, the contention that Robison does not have documents and/or communications in its possession, custody, and/or control with identifying information as to each payment by wire transfer, money order, check, cash, or credit card is not credible.

Consequently, the Herbst Parties intend to file a motion to hold Robison in contempt, award the Herbst Parties monetary sanctions, and compel Robison's compliance, and request that the motion be heard on shortened time as soon as the Court's calendar permits.

Please inform me whether Robison consents to the requested order shortening time.

Thanks,

Mark

From: Frank Gilmore <FGilmore@rssblaw.com>
Sent: Tuesday, January 22, 2019 8:28 AM
To: Mark Weisenmiller <mweisenmiller@Gtg.legal>
Cc: Gerald Gordon <ggordon@Gtg.legal>; Caitlin Halm <CHalm@Gtg.legal>
Subject: Re: Adversary Action 15-05019;

Yes, we do contend as much.

Frank C. Gilmore, Esq.
Robison Sharp Sullivan & Brust
71 Washington St.
Reno, Nevada 89503
W: 775-329-3151
C: 775-240-6387

On Jan 19, 2019, at 1:54 PM, Mark Weisenmiller <mweisenmiller@gtg.legal> wrote:

Frank,

Do you contend that the documents attached to Robison's response are all the documents and communications in Robison's possession, custody, or control responsive of the Subpoena for the applicable period (from 2013 to the present)?

Thanks,

Mark

From: Mary Carroll Davis <mdavis@rssblaw.com>
Sent: Friday, January 18, 2019 11:31 AM
To: Gerald Gordon; Mark Weisenmiller
Cc: Frank Gilmore
Subject: Adversary Action 15-05019;

Pursuant to Mr. Gilmore's instruction, attached please find a courtesy copy of the Response of Robison, Sharp, Sullivan & Brust to Subpoena. A hard copy is being served by mail.

Sincerely,

Mary Carroll Davis
Legal Assistant to Frank C. Gilmore and
F. DeArmond Sharp
<image001.jpg>
71 Washington Street
Reno, NV 89503
Phone - 775.329.3151
Fax - 775.329.7941
www.rssblaw.com

and assistance.

IRS CIRCULAR 230 DISCLAIMER: Any tax advice contained in this email is not intended to be used, and cannot be used by any taxpayer, for the purpose of avoiding Federal tax penalties that may be imposed on the taxpayer. Further, to the extent any tax advice contained in this email may have been written to support the promotion or marketing of the transactions or matters discussed in this email, every taxpayer should seek advice based on such taxpayer's particular circumstances from an independent tax advisor.

CERTIFICATE OF SERVICE

Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, that I am over the age of 18 and not a party to the above-referenced case, and that on the date below I caused to be served a true copy of **DECLARATION OF FRANK C. GILMORE IN SUPPORT OF ROBISON, SHARP, SULLIVAN & BRUST'S OPPOSITION TO MOTION FOR ORDER HOLDING ROBISON IN CONTEMPT** on all parties to this action by the method(s) indicated below:

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

Gerald M. Gordon, Esq.
ggordon@gtg.legal
Mark M. Weisenmiller, Esq.
mweisenmiller@gtg.legal, bknotices@gtg.legal
Attorneys for Creditor Berry-Hinckley Industries, Creditor JH, Inc., Creditor Jerry Herbst

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

Gerald M. Gordon, Esq.
Mark M. Weisenmiller, Esq.
Garman Turner Gordon LLP
650 White Drive, Suite 100
Las Vegas, Nevada 89119

Attorneys for Creditor Berry-Hinckley Industries, Creditor JH, Inc., Creditor Jerry Herbst

DATED: This 30TH day of January, 2019.

/s/ Mary Carroll Davis
Employee of Robison, Sharp, Sullivan & Brust

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

3880
FRANK C. GILMORE, ESQ. - NSB #10052
fgilmore@rbsllaw.com
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169

Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

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. /

CASE NO.: CV13-02663

DEPT. NO.: 4

DEFENDANTS' REPONSE TO MOTION TO REOPEN EVIDENCE

Defendants SUPERPUMPER, INC., EDWARD BAYUK, individually and as Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO, and SNOWSHOE PETROLEUM, INC., bring their response to the Motion to Reopen Evidence. This response is made and supported by the following Memorandum of Points and Authorities, the Declaration of Edward Bayuk, the Declaration of Salvatore Morabito, and the pleadings and papers on file herein.

I. INTRODUCTION

Defendants do not oppose the relief sought by Plaintiff; namely, to reopen evidence to

introduce a Detail Payment Transaction File List (the "Ledger") produced pursuant to a judgment execution subpoena served on Defendants' undersigned counsel. However, if the Motion to Reopen Evidence is granted and the Ledger is admitted, then Defendants should be entitled to produce evidence of their own to explain why the Ledger is neither contradictory of their testimony at trial, nor further support for the Plaintiff's contention the Ledger is evidence of Paul Morabito's "control, management, or economic stake in Snowshoe", as Defendants testified at trial. (See Trial Transcript, Vol. 3 p. 175). Due process requires that if the evidentiary phase of the trial is to be re-opened, Defendants should be entitled to present their own rebuttal evidence to the Ledger.

II. RELEVANT FACTS

As this Court is aware, the Herbst Parties obtained a Judgment against Paul Morabito by way of stipulation, and then commenced an involuntary Chapter 7 bankruptcy. During the bankruptcy, Plaintiff obtained an order from the bankruptcy court that the Judgment was non-dischargeable through the bankruptcy process. The Herbst Parties, then commenced Judgment execution proceedings against Paul Morabito through the bankruptcy, contending that the order of non-dischargeability was a money-judgment that entitled the Herbst Parties to utilize the bankruptcy code to enforce and execute the Judgment. The Herbst Parties served Defendants' counsel, among others, with a bankruptcy subpoena seeking records of payment activity of Paul Morabito's legal fees from 2013 to the present. Defendants' counsel objected on the basis that the Judgment was obtained pursuant to Nevada state law and any execution efforts should be done pursuant to Nevada law and not the bankruptcy Code. Judge Zive disagreed with Defendants' counsel's position and the records were produced. Among the records produced was the Ledger, reflecting that Snowshoe Petroleum, Inc., a company co-owned by Edward Bayuk and Sam Morabito, had paid several months of Paul Morabito's legal fees. Undersigned counsel affirmed that the notations in the Ledger were made to reflect anytime a payment was received by someone other than the client (in this case, Paul Morabito). Plaintiff seeks to re-open the evidence phase of this action to admit the Ledger in support of (1) Plaintiff's claim that the Ledger establishes that Bayuk and Sam gave false testimony, and (2) Defendants' claim that

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

Paul Morabito maintained no "control, management, or economic stake in Snowshoe" is false.

III. ARGUMENT

A. If Evidence Is To Be Re-Opened, Defendants Have a Due Process Right to Submit Evidence Responding to the Ledger.

Defendants do not deny that the Ledger reflects Snowshoe payments, and do not oppose the Plaintiff's request to re-open the evidence. However, if the Ledger is to be admitted, Defendants are entitled, through due process, to submit evidence of their own to address the Plaintiff's contention that the Ledger supports Plaintiff's case-in-chief. In applying FRCP 59, which is similar to Nevada's NRCP 59, the Second Circuit found that the reopening of a hearing for additional or supplemental evidence was justified so long as (1) the additional evidence was material; (2) the opposing party had an opportunity for cross-examination; and (3) the opposing party suffered no prejudice. *Matthew Bender & Co., Inc. v. West Publ'g Co*., 158 F.3d 674, 679 (2d Cir. 1998) (emphasis added).

Defendants request that if the Ledger is to be admitted, that Sam Morabito and Edward Bayuk be permitted to give deposition testimony, under oath, to answer questions – and cross-examination – as to their personal knowledge of the facts and circumstances surrounding the Ledger and its contents. Obviously, that testimony cannot be presented at the hearing set for February 8, 2019. Defendants request that the Court order the parties to take the supplemental depositions of Edward Bayuk and Sam Morabito as soon as the parties and counsel's calendars can permit. The admissible portions of the deposition transcripts can be submitted to the Court as supplemental evidence along with the Ledger.

B. The Ledger Does Not Establish That Defendants' Gave False Testimony, Nor Is It Conclusive of Paul's Control of the Company.

Sam Morabito will testify as to the reasons that he authorized the payment of Snowshoe's legal fees. (See Declaration of Salvatore Morabito, ¶ 3). He will also testify that he never spoke with Edward Bayuk about the Snowshoe's payments reflected in the Robison firm Ledger, despite Edward being an officer and shareholder of Snowshoe. *Id*. at ¶ 4. Sam will testify why he contends that Paul had no "control, management, or economic stake in Snowshoe," as

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

contended in Defendants' proposed findings of fact. *Id*.

Edward will testify that prior to receiving the Motion to Reopen Evidence on or about Friday, February 1, 2019, he was not aware that Snowshoe Petroleum, a company which he co-owns with Defendant Salvatore Morabito, had made any payments to the Robison firm other than for legal matters regarding Snowshoe. See Declaration of Edward Bayuk, ¶ 3.

If the Ledger is to be admitted, Defendants' testimony explaining the Ledger and the circumstances surrounding Snowshoe's payment of any of Paul's legal fees must also be admitted.

IV. CONCLUSION

Defendants do not oppose the request to re-open evidence to admit the Ledger. Defendants merely seek the right to present their supplemental testimony in response to the new evidence.

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 6th day of February, 2019.

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

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

DECLARATION OF SALVATORE MORABITO IN SUPPORT OF RESPONSE TO MOTION TO REOPEN EVIDENCE AND SUPPLEMENT THERETO

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

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

2. I am one of the Defendants in this action.

3. I am willing to give deposition testimony explaining the payment of Snowshoe's legal fees.

4. I never spoke with Edward Bayuk about the Snowshoe payments reflected in the Robison firm Ledger, despite Edward being an officer and shareholder of Snowshoe. I will give deposition testimony explaining why I contend that Paul had no "control, management, or economic stake in Snowshoe," as set forth in Defendants' proposed findings of fact.

Dated this 6 day of February, 2019.

SALVATORE MORABTO

DECLARATION OF EDWARD BAYUK IN SUPPORT OF RESPONSE TO MOTION TO REOPEN EVIDENCE AND SUPPLEMENT THERETO

I, EDWARD BAYUK, declare as follows:

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

2. I am one of the Defendants in this action.

3. Prior to receiving the Motion to Reopen Evidence on or about Friday, February 1, 2019, I was not aware that Snowshoe Petroleum, Inc. ("Snowshoe"), a company which I co-own with Defendant Salvatore Morabito, had made any payments to the Robison firm other than for legal matters regarding Snowshoe.

Dated this 5th day of February 2019.

EDWARD BAYUK

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Robison, Sharp, Sullivan & Brust, and that on this date I caused to be served a true copy of the **DEFENDANTS' RESPONSE TO MOTION TO REOPEN EVIDENCE** all parties to this action by the method(s) indicated below:

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

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

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

Gerald Gordon, Esq.
Email: ggordon@Gtg.legal
Mark M. Weisenmiller, Esq.
Email: mweisenmiller@Gtg.legal
Teresa M. Pilatowicz, Esq.
Email: tpilatowicz@Gtg.legal
Erika Pike Turner, Esq.
Email: eturner@gtg.legal

____ by personal delivery/hand delivery addressed to:

____ by email addressed to:

Gerald Gordon, Esq.
Email: ggordon@Gtg.legal
Mark M. Weisenmiller, Esq.
Email: mweisenmiller@Gtg.legal
Teresa M. Pilatowicz, Esq.
Email: tpilatowicz@Gtg.legal
Erika Pike Turner, Esq.
Email: eturner@gtg.legal

____ by facsimile (fax) addressed to:

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

DATED: This 6th day of February, 2019.

Mary Carroll Davis

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

3790
GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER, ESQ.
Nevada Bar No. 6454
E-mail: eturner@gtg.legal
TERESA M. PILATOWICZ, ESQ.
Nevada Bar No. 9605
E-mail: tpilatowicz@gtg.legal
GABRIELLE A. HAMM, ESQ.
Nevada Bar No. 11588
E-mail: ghamm@gtg.legal
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel to Trustee

IN THE SECOND JUDICIAL DISTRICT COURT OF

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE TO MOTION TO REOPEN EVIDENCE

Defendants' Response to Motion to Reopen Evidence (the "Response") misses the point in two key respects.

First, whether Edward Bayuk ("Bayuk," an officer, director, and 50% member of Snowshoe Petroleum) personally chose to ignore that Snowshoe Petroleum, Inc. ("Snowshoe Petroleum") was paying the debtor Paul Morabito's legal fees is not determinative of whether his testimony was false or Defendants' misled the Court. Among other possible non-perjurious testimony Bayuk could have provided if he had no knowledge of whether Snowshoe Petroleum

had made such payments was, "I don't know," but he did not say that. Instead, he testified unequivocally that Snowshoe Petroleum did not pay Paul Morabito's legal fees and that Paul Morabito did not receive money from Snowshoe Petroleum.

Further, when Bayuk testified that Snowshoe Petroleum did not pay Paul Morabito's attorney's fees, both Sam Morabito (who apparently directed the payments at issue) and Frank Gilmore (whose firm received the payments at issue) did nothing to correct the record. Mr. Gilmore then went so far as to rely on the false testimony in his closing argument. The Court was not misled merely by Bayuk's testimony. Rather, Bayuk's false testimony was compounded by Defendants' repeated failure to make disclosures and give truthful testimony during discovery, disingenuous statements by Sam Morabito at trial regarding a purported "good faith" intent to transfer the Superpumper assets in order to maintain separateness from his brother, Paul Morabito, as well as Mr. Gilmore's use of the misrepresentation and omissions in his arguments. As a result, Defendants presented a false record concerning a material fact to the Court.

Second, Defendants have consented (albeit with improper conditions) to the new proposed evidence being admitted to the record.[1] Defendants are not entitled to present an after-the-fact, curated explanation for their false and misleading statements in declarations or depositions outside of the presence of the Court. Plaintiff is not asking to reopen discovery, but to reopen evidence at the Trial. Defendants had the opportunity to be truthful during Trial, but declined to do so. Defendants, along with their counsel, can now provide their explanation to the Court and be subject to cross-examination in the Court's presence.

I.
ARGUMENT

Defendants' non-opposition to reopening the evidence appears conditioned upon (1) limiting the new evidence to the issue of whether or not Bayuk disavowed personal knowledge

[1] The new evidence being offered consists of 1) the subpoena requesting information from Mr. Gilmore's firm, dated August 27, 2018; 2) Mr. Gilmore's August 30, 2018 objection to the subpoena cc'd to "Client;" 3) the Order dated January 3, 2019 compelling response to the subpoena, judicial notice of which is requested; 4) the response of January 18, 2019 to the subpoena, inclusive of the ledger showing payments from Snowshoe to Mr. Gilmore's firm; and 5) Mr. Gilmore's declaration explaining the detail of the ledger.

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

of the Snowshoe Petroleum payments to RSSB and clarifying Defendants' position that Paul Morabito "had no control, management, or economic stake in Snowshoe," as Sam Morabito represented and Defendants contend in their proposed findings, and (2) providing evidence in the form of depositions rather than trial testimony. Both conditions are inappropriate under the facts of this matter.

A. Edward Bayuk's, at Best, Willful Ignorance, of the Payments is Not the Issue.

Bayuk did not testify at trial that he did not know if Snowshoe Petroleum had made payments to or on behalf of Paul Morabito. Rather, he testified "No, they have not" when asked whether Snowshoe Petroleum paid Paul Morabito's legal fees[2] and that Paul Morabito did not "get money out of Snowshoe Petroleum or Superpumper."[3] These statements are conclusively proven by the new evidence to be false.

Defendants then failed to correct the record. Sam Morabito was more than willing to "correct" Bayuk's testimony during the Trial when he believed Bayuk's testimony was unfavorable to Defendants. See Trial Trans. 10/31/18, p. 85, l. 21 – p. 87, l. 3 (insisting Bayuk's testimony that Sam Morabito was an officer of CWC was "incorrect" and "very incorrect"); see also id. at p. 92, l. 16 – p. 93, l. 21 (testifying that Bayuk made an incorrect statement under oath but contending that is not the same as a false statement). However, when Bayuk's "incorrect statement under oath" furthered a false narrative in furtherance of Defendants' defense, Sam Morabito did nothing to correct the statements despite having actual knowledge that they were false.[4]

Frank Gilmore, the recipient of the payments, also knew Bayuk's testimony was false but did nothing to correct the record, either on redirect of Bayuk or during Sam Morabito's testimony. Indeed, he seized upon the false statements not only in the proposed findings submitted by Defendants after the Trial, but during closing, arguing:

---

[2] Trial Trans. 10/29/18, p. 189, ll. 14-17

[3] Trial Trans. 10/29/18, p. 206, ll. 23-24

[4] See Opposition at 3:24-25 and Declaration of Salvatore Morabito, ¶ 3 (stating that Sam Morabito authorized the payments).

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

> But that's all the evidence Plaintiff could muster suggesting that Paul had control of Superpumper after the sale. He received **no payments**, he received no dividends or distributions. He received no salary and he had no involvement in the day-to-day affairs of the company. Well, I would submit to the Court that real control that's contemplated in the badges of fraud is not the ability to write some emails to lawyers and friends saying, Let's put together a $160 million deal. That's not control. That's not ownership.

Trial Trans. 11/26/18, p. 132, ll. 5-15 (emphasis added). Moreover, while Mr. Gilmore received payments from Snowshoe Petroleum on behalf of Paul Morabito between October 2015 and March 2018, he (1) made no disclosure of the payments under NRCP 16.1[5] and (2) offered the declaration of Sam Morabito on September 21, 2017 which was deliberately misleading by omission.

The Nevada Supreme Court recently confirmed that an attorney has a duty of candor that requires integrity and honest dealing with the court, and failure to do so amounts to a fraud upon the court. In Estate of Adams v. Fallini, the Court held that the district court did not abuse its discretion in granting NRCP 60(b) relief based on fraud upon the court when the plaintiff had procured summary judgment based on part on a deemed admission that plaintiff's counsel knew or should have known to be false. 132 Nev. ___, ___, 386 P.3d 621, 623, 625, 626 (2016).

"Fraud upon the court" is fraud "which does, or attempts to, subvert the integrity of the court itself, *or is a fraud perpetrated by officers of the court* so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." Id. at 625 (quoting NC–DSH, Inc. v. Garner, 125 Nev. 647, 654, 218 P.3d 853, 858 (2009)) (internal quotations omitted). As an officer of the court, "an attorney owes a duty of loyalty to the court ..., [which] demands integrity and honest dealing with the court" and an attorney who fails to abide by that standard "perpetrates fraud upon the court." Adams, 132 Nev. at ___, 386 P.3d at 625 (quoting NC-DSH, Inc., 125 Nev. at 654–55, 218 P.3d at 858-59) (internal quotation marks omitted).

In Adams, the fact that Fallini's counsel failed to respond to plaintiff's request for admissions did not absolve plaintiff's counsel of the consequences of creating a factual narrative

---

[5] Mr. Gilmore could not have believed the information not relevant and discoverable, as Plaintiff's counsel had questioned Sam Morabito regarding Snowshoe Petroleum's payments only two weeks before the payments began. See Ex. 1-H to the Motion (Oct. 1, 2015 Sam Morabito Depo. Trans., at p. 79, l. 13 – p. 80, l. 14; p. 82, ll. 5-7; p. 114, ll. 1-25).

that he knew to be false; relief under NRCP 60(b) was merited because plaintiff's counsel "seized on that abandonment as an opportunity to create a false record and present that record to the district court as the basis for judgment." 132 Nev. at ___, 386 P.3d at 625. Likewise, that the falsehood is as dependent upon omission as it is upon false statements does not make it any less fraudulent. In fact, most fraud on the court cases involve a scheme by one party to hide a key fact from the court and the opposing party. United States v. Estate of Stonehill, 660 F.3d 415, 444 (9th Cir. 2011).

Here, Defendants and their counsel have weaved affirmative falsehood, partial disclosure, deliberate omissions, and knowingly-false argument into a deliberately-false narrative which they have offered to the Court as a basis for judgment. This is nothing less than a fraud upon the Court. See Sierra Glass & Mirror v. Viking Indus., Inc., 107 Nev. 119, 125, 808 P.2d 512, 516 (1991) (where trial counsel read portion of deposition into the record but omitted testimony that sales representative resided in Las Vegas and Viking's counsel represented in answering brief on appeal that she did not reside in Las Vegas based upon that omission, counsel's conduct was not "clever lawyering or proficient advocacy" but was calculated to mislead the tribunal and "nothing other than fraud upon the court in violation of SCR 172(1)(a) and (d).")

Counsel's duty of candor has not changed since the Nevada Supreme Court decided Sierra Glass. Current Rule 3.3 of the Nevada Rules of Professional Conduct, entitled "Candor Toward the Tribunal," provides

> (a) A lawyer shall not knowingly:
>
> (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
>
> (2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
>
> (3) Offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

> than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(Emphasis added.) Defendants' counsel breached this duty.

Defendants cannot credibly claim that all of this was an unintended oversight. At the time of both Bayuk's false testimony on October 29, 2018 and Mr. Gilmore's argument on November 26, 2018, RSSB, through Mr. Gilmore, was actively fighting production of the Transaction Ledger to the Herbst Parties in the pending bankruptcy case, producing the subpoenaed documents only after the close of evidence in the case before this Court. Defendants' counsel knew the truth, knew the factual record provided to the Court was false, failed to correct it, and exploited the misrepresentation for Defendants' benefit. Now, Defendants must be judged on the aftermath.

B. Depositions Are Insufficient.

Defendants' Opposition indicates that Defendants are apparently unwilling to stand subject to cross-examination before this Court. Instead, they offer to provide depositions of Edward Bayuk and Sam Morabito, limited to whether Bayuk had personal knowledge of the Snowshoe Petroleum payments to RSSB and clarifying Defendants' position that Paul Morabito "had no control, management, or economic stake in Snowshoe." In other words, Defendants (and their counsel) refuse to testify before the Court and demand to control the scope of the evidence presented to the Court.

The mode of interrogating witnesses and presenting evidence is the province of the Court, rather than Defendants or Mr. Gilmore. NRS 50.115 ("[t]he judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence"). The Court may also elect to call witnesses and examine witnesses, whether called by the Court or a party. NRS 50.115. Moreover, as the Court is the trier of fact in this case, it is axiomatic that the Court is the exclusive judge of the witnesses' credibility. See, e.g., Douglas Spencer & Associates v. Las Vegas Sun, Inc., 84 Nev. 279, 281–82, 439 P.2d 473, 475 (1968) (stating that "[t]he trier of fact, as the exclusive judge of the credit and weight to be given the testimony of a witness, may reject such testimony even though uncontradicted or unimpeached when he does not act arbitrarily but does so upon sound and relevant considerations, such as the inherent improbability of the

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

statements, the interest of the witness in the case, his motives, and the manner in which he testifies.") (quoting Polk v. Polk, 228 Cal.App.2d 763, 39 Cal.Rptr. 824 (1964)).

Defendants are attempting to deprive the Court of its essential functions both as a tribunal and as the trier of fact by seeking to explain their false testimony and omissions by out-of-court depositions. Not only should Plaintiff be entitled to cross-examine Defendants' witnesses on whatever new version of facts they are now concocting (and to offer additional relevant evidence and impeachment and rebuttal evidence), with such cross-examination to be controlled by the Court rather than Mr. Gilmore, but the Court must be permitted to weigh the credibility of the witnesses' testimony through their mannerisms and if it so chooses, to conduct its own inquiries.

II.
CONCLUSION

Evidence should be reopened because Defendants withheld relevant evidence and then offered testimony that they knew to be false and misleading on a material issue. Having deliberately misled the Court, Defendants may not now decide the form and scope of the new evidence.

AFFIRMATION
Pursuant to NRS 239B.030

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

Dated this 7th day of February, 2019.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner
ERIKA PIKE TURNER, ESQ.
TERESA M. PILATOWICZ, ESQ.
GABRIELLE A. HAMM, ESQ.
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel for Trustee

CERTIFICATE OF SERVICE

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

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

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

____ Certified Mail, Return Receipt Requested

____ Via Facsimile (Fax)

__X__ Via E-Mail

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

____ Federal Express (or other overnight delivery)

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

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

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

Dated this 7th day of February, 2019.

/s/ Gabrielle A. Hamm
An Employee of GARMAN TURNER GORDON LLP

4817-4608-7815, v. 2

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

F I L E D
Electronically
CV13-02663
2019-02-28 05:05:53 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7142248

CASE NO. CV13-02663 **TITLE: WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD BAYUK, EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM, INC.**

PAGE TWO

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONT'D TO
2/7/19 HONORABLE CONNIE STEINHEIMER DEPT. NO.4 M. Stone (Clerk) J. Kernan (Reporter)	**MOTION TO REOPEN EVIDENCE** Erika Turner, Esq., represented on behalf of Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito. Frank Gilmore, Esq., represented Defendant Edward Bayuk present, individually and as representative for Edward William Bayuk Living Trust, Superpumper, Inc., and Snowshoe Petroleum, Inc., Defendant Salvatore Morabito, individually and as representative for Superpumper, Inc., and Snowshoe Petroleum, Inc. Court convened. Counsel Turner noted for the record that John Murtha, Esq., attorney for the Plaintiff in Bankruptcy Court, is present in the gallery. Motion to Reopen Evidence by counsel Turner; presented argument; response by counsel Gilmore. **COURT ENTERED ORDER** granting the Motion to Reopen Evidence. The documents shall be provided to the Clerk, marked and are admitted into evidence. (Marked as **Exhibits 305 through 309** to the Trial) Court set ongoing non-jury trial wherein the Defendants will have the opportunity to present rebuttal evidence. All witnesses must testify in person on that day. Court adjourned.	**3/1/19 1:00 p.m. Ongoing Non-Jury Trial**

4185

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

---o0o---

WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, Plaintiff, vs. SUPERPUMPER, INC., et al., Defendants.	Case No. CV13-02663 Dept. No. 4 TRANSCRIPT OF PROCEEDINGS

MOTION TO REOPEN EVIDENCE
FEBRUARY 8, 2019, RENO, NEVADA

APPEARANCES:

For the Plaintiff: GARMAN, TURNER, GORDON, LLP
Attorneys at Law
By: Erika Pike Turner, Esq.
650 White Drive
Suite 100
Las Vegas, Nevada 89119

Reported by: JULIE ANN KERNAN, CCR #427, CP, RPR
Computer-Aided Transcription

CONTINUATION OF APPEARANCES:

For the Bankruptcy Trustee:	WOODBURN AND WEDGE Attorneys at Law By John F. Murtha, Esq. 6100 Neil Road, Suite 500 Reno, Nevada 89511
For the Defendants: (Telephonically)	ROBISON, SHARP, SULLIVAN & BRUST Attorneys at Law By: Frank C. Gilmore, Esq. 71 Washington Street Reno, Nevada 89503

RENO, NEVADA; FRIDAY, FEBRUARY 8, 2019; 1:00 P.M.

---o0o---

THE COURT: Mr. Gilmore, you can sit down, too.

MR. GILMORE: Thank you, your Honor.

THE COURT: The record should reflect that you're appearing telephonically. And in the courtroom is?

MS. PIKE TURNER: Erika Pike Turner of Garman, Turner, Gordon on behalf of the plaintiff. Mr. Murtha is here as well. He's counsel for the trustee in the bankruptcy matter.

THE COURT: Okay. So this is the time set for a hearing on the motion to reopen evidence. Counsel?

MS. PIKE TURNER: Yes, your Honor. As I see it there's really two questions. One is whether to admit the new evidence into the trial evidence. The second is how to proceed.

And the first one there's really no substantive dispute that the evidence that was discovered after the close of evidence in the trial is relevant, noncumulative, and specifically relevant to plaintiff's actual fraud claim and the bad defraud

whether Paul Morabito, the debtor, continued to have benefits and/or exercise control over the transferred assets subsequent to the transfer.

And second, the defendants proffered a good faith defense. And that good faith defense was explained, without any real corroborating evidence, but it was explained that their intention was to separate the assets from Paul Morabito so that he would no longer receive those benefits that could then be the subject of execution by the Herbst parties.

And this evidence, which is really primarily based on the ledger of payments for the benefit of Paul Morabito, the payment of his personal attorney's fees in 2015, '16, '17 and '18. Those certainly go to the heart of our claim and their defense.

Reading Mr. Gilmore's opposition doesn't sound like there's really any substantive dispute on that point. The bigger dispute is how the Court should proceed.

And how I see it is there's several options. One is we have provided the evidence, and it's documentary. It's documents. There's really five pieces, and that is that there was a request for production where Mr. Gilmore objected. An order was

entered by the bankruptcy court for its production. And Mr. Gilmore provided the production, or his firm provided the production in the related bankruptcy case, and we are seeking that evidence -- oh, and Mr. Gilmore explained the detail, what it meant in the declaration.

Those are five pieces that we have proffered and offered into evidence. We believe that stands alone. This is really self-authenticating evidence that stands alone and requires no testimony. Standing by itself, it goes to those -- those issues that I just outlined to be resolved by this Court.

Now, Mr. Gilmore said we want an opportunity to explain that this -- regarding this evidence they want to present some explanation to the Court. And they want to do it by deposition. And these are two separate issues, as I see it.

One is whether or not a deposition proffered by the defendants should be admitted into evidence at trial. And we say no, that if the Court permits testimony relative to these documents, it should be sitting here with your Honor having an opportunity to judge the witnesses and their credibility, and we would have an opportunity to then cross-examine.

To have a self-serving deposition,

particularly under the circumstances of this case where we have fraud at issue credibility is really important, a deposition doesn't make any sense because the Court is denied the opportunity to judge the credibility.

Beyond that, Mr. Sam Morabito lives in Canada. Mr. Bayuk lives in California, and it would be an undue burden to require the plaintiff to have to go and seek -- seek these depositions, particularly when there is evidence in the bankruptcy that the relationship between Mr. Gilmore and at least Mr. Bayuk is under fire. He has made representations in the bankruptcy court that he has been terminated in that matter. Apparently he's not in this matter.

But given these issues, we have real concern that any deposition or further discovery would just be undue delay and we need to put some finality on this matter. The best way to do that is to have them come here and testify if they want that testimony to be heard by the Court.

Now, whether or not the Court needs further testimony, we don't think so. There's nothing that Ed Bayuk can say at this point to change the fact that he testified previously under oath, not I don't know if payments were made, he said no. And that's the second

time that this has happened. Mr. Bayuk answers an emphatic no until you put a document in front of him. And he and his counsel will fight tooth and nail to address that document, but once they're confronted with the document, then they have an explanation, it becomes an I don't know.

We've seen with this declaration submitted in opposition to this motion that the proffer is he's going to say he was unaware of the payments. I don't think it matters if he was unaware. At this point it doesn't matter. He testified no, and now whatever he says, it's not going to change the fact that the payments were made.

And the fact that the payments were made goes to the heart of the issues, not whether he knew. Whether it was Sam Morabito, whether it was Paul Morabito, that's a separate question. Whether Ed Bayuk knew, he certainly didn't say I don't know before. There's a credibility issue.

However, when it comes down to whether the Court determines if there was actual fraud or whether the defendants have a defense, the ledger itself, the time line with the production of the ledger, that's what's important.

Now, beyond that, there's nothing that Sam Morabito, or Frank Gilmore can say that will change the fact that they sat here in this court and they watched Ed Bayuk say no, that there had been no payments from Snowshoe Petroleum to Paul Morabito, and specifically for attorney's fees. They sat there and watched that testimony and they did nothing to correct the record.

Now, we have certainly an issue of credibility of the witnesses, certainly candor to the tribunal, but we're not interested in asking for a perjury determination at this point or sanctioning Frank Gilmore, that's not in our papers. We want the evidence considered and put this matter to rest.

THE COURT: Okay.

MS. PIKE TURNER: Thank you.

THE COURT: You're welcome. Mr. Gilmore?

MR. GILMORE: Thank you, your Honor. I agree with much of the first portion about of what counsel explained. This motion is not about presenting closing arguments, about arguing what the inferences should be taken from this ledger. This motion is simply two things. One, should evidentiary phase of the trial be reopened. And number two, what is the best way to effectuate defendants' due process rights to address the

ledger, address what it means, address what they think the reasons for those payments were, and to address any accusations that they gave false testimony with explanations that they're entitled to give under due process. So with respect to that, I don't disagree with what plaintiff's counsel said.

I will address my proposal for a deposition to -- as the means for acquiring this new evidence in response to the ledger was not in any way a demand, it was simply a proposal suggesting that my clients will do whatever is most effective and efficient to ensure that they have their opportunity to present their counter evidence and testimony to this ledger, and what -- and respond to what the plaintiff contends that it means.

So my clients have expressed their desire to testify. They're happy to do that in a deposition. They're happy to do that in a reconvened session at the courthouse in Reno. And the objection, or the response my position was simply that if the ledger is to be offered my clients desire to be able to give testimony to address it as I think they are entitled to, and I don't think I heard plaintiff's counsel suggest that if they want to give that response testimony, they shouldn't be allowed to. I think there was effectively

a concession that the defendants had that right.

So it is my expectation that there will be a subsequent evidentiary hearing of some sort, whether it's in the courthouse in front of the judge or whether it's in a deposition, and then there can be supplemental argument where Ms. Pike Turner can make the arguments she just made about what evidence supposedly showed and how that changed the various arguments of the parties.

I think that those types of arguments are premature today. And so if we're just addressing strictly the motion, I think it's pretty straight forward and I'm willing to take the Court's instruction as to how this additional evidentiary phase should be conducted.

THE COURT: Okay. At this time I am going to grant the motion to reopen the evidence. I am going to admit the evidence that was in the motion without further support from the plaintiff.

I will allow for you to present a rebuttal to the evidence and -- but it must be in person. I'm not going to reopen the case for any discovery or deposition.

The dates available for Court, really, are very limited, and I do not want to delay this, so we

have a few afternoons that we can offer you for this evidentiary hearing, which I would think would be very brief because you've already put on all the evidence, you're just going to go rebut the new evidence that's been presented, and then you all will make an argument as to whatever you think this means.

Available currently would be March 1st in the afternoon.

MS. PIKE TURNER: That works on our end, your Honor.

MR. GILMORE: One second, your Honor. Your Honor, it does not conflict with my schedule but since I have clients traveling from across the country I would ask permission to pencil in some dates and then clear those with my clients to make sure that there's no immovable conflict.

THE COURT: I really can't emphasize enough that I don't have very much flexibility in the next two months. So I'm going to set it for March 1st at one p.m., and then we'll see what -- if you can't get -- if your evidence that you want to present which I assume is going to be Mr. Bayuk can't be here, you can always ask me to move it, but absent something very extraordinary, three weeks he should be able to get here from Southern

California. So March 1st.

MR. GILMORE: I suspect, your Honor, that the primary witness will actually be Mr. Morabito and -- Sam Morabito, not Mr. Bayuk as it was Sam Morabito that was signing the checks.

THE COURT: Okay. Well, three weeks, you can get here from -- I'm sure you can even get here and back here, Mr. Gilmore, from Germany, if you had to. Right?

MR. GILMORE: I suppose I could, your Honor.

THE COURT: Okay.

MS. PIKE TURNER: I have a copy of the five documents, just for ease.

THE COURT: Okay.

MS. PIKE TURNER: I'll hand that to the clerk.

THE COURT: And she'll mark them next in order --

MS. PIKE TURNER: Okay.

THE COURT: -- just so everyone has them so they'll be in the evidence binder.

MS. PIKE TURNER: Thank you.

COURT CLERK: Thank you. And counsel, I'm not going to mark them right now because I don't know what number we left off on, but I will email you all and let you know what numbers -- or letters, numbers that they

were actually marked.

MS. PIKE TURNER: Thank you.

THE COURT: So Mr. Gilmore, we'll see you back on March 1st at one p.m. and for the limited purpose of putting your rebuttal evidence onto what has been marked and admitted today.

MR. GILMORE: Thank you, your Honor.

THE COURT: Okay. Thank you, counsel.

MS. PIKE TURNER: Thank you.

THE COURT: Court's in recess.

(Proceedings continued until March 1, 2019, at 1:00 p.m.)

---o0o---

STATE OF NEVADA)

COUNTY OF WASHOE)

I, JULIE ANN KERNAN, official reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That as such reporter I was present in Department No. 4 of the above court on Friday, February 8, 2019, at the hour of 1:00 p.m. of said day, and I then and there took verbatim stenotype notes of the proceedings had and testimony given therein upon the Motion to Reopen Evidence of the case of WILLIAM A. LEONARD, Trustee, Plaintiff, vs. SUPERPUMPER, INC., et al., Defendants, Case No. CV13-02663.

That the foregoing transcript, consisting of pages numbered 1 through 13, both inclusive, is a full, true and correct transcript of my said stenotype notes, so taken as aforesaid, and is a full, true and correct statement of the proceedings of the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada, this 13th day of January, 2020.

/s/ Julie Ann Kernan

JULIE ANN KERNAN, CCR #427

1750
GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER
Nevada Bar No. 6454
Email: eturner@gtg.legal
TERESA M. PILATOWICZ, ESQ.
Nevada Bar No. 9605
E-mail: tpilatowicz@gtg.legal
GABRIELLE A HAMM, ESQ.
Nevada Bar No. 11588
E-mail: ghamm@gtg.legal
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000

Attorneys for Plaintiff William A. Leonard

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, Plaintiff, vs. SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST; SALVATORE MORABITO, and individual; and SNOWSHOE PETROLEUM, INC., a New York corporation, Defendants.	**CASE NO.: CV13-02663** **DEPT. NO. 4**

[PLAINTIFF'S PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

This matter was tried to the bench commencing October 29, 2018. Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito ("Plaintiff"), appeared by and through counsel, Erika Pike Turner, Teresa Pilatowicz, and Gabrielle Hamm of the law firm of

Garman Turner Gordon LLP. Defendants, Superpumper, Inc., an Arizona corporation ("Superpumper"); Edward Bayuk ("Bayuk"), individually and as Trustee of the Edward William Bayuk Living Trust (the "Bayuk Trust"); Salvatore Morabito, an individual ("Sam Morabito"); and Snowshoe Petroleum, Inc., a New York corporation ("Snowshoe," and together with Superpumper, Bayuk, the Bayuk Trust, and Sam Morabito, the "Defendants," and together with Plaintiff, the "Parties"), appeared by and through counsel, Frank Gilmore of the law firm of Robison, Sharp, Sullivan & Brust ("Robison"). The Parties presented testimony and documents. On notice and hearing, the Court reopened evidence under NRCP 59(a) and admitted additional exhibits on February 8, 2019, to which Defendants waived rebuttal. Based thereon, the Court hereby finds, concludes, and orders, as follows:

I.
FINDINGS OF FACT

A. The Judgment Against Paul Morabito.

1. On December 3, 2007, Paul Morabito and Consolidated Nevada Corporation ("CNC") filed a lawsuit against JH, Inc., Jerry Herbst, and Berry-Hinckley Industries (together, the "Herbst Parties") captioned *Consolidated Nevada Corp., et al. v. JH, et al.* in the Second Judicial District Court (the "State Court"), Case No. CV07-02764, Department 6 (presiding, the Hon. Brent Adams) (the "Herbst Litigation").[1] The Herbst Parties filed counterclaims against Paul Morabito and CNC as well as a claim against Bayuk and Sam Morabito.[2]

2. On September 13, 2010, the State Court entered its oral ruling on the liability and damages portion of the trial, finding the Herbst Parties were fraudulently induced by Paul Morabito, justifying an award of $85,871,364.75 in actual damages in favor of the Herbst Parties

[1] Stipulated Facts ("SF"), □ 1.

[2] *Id.*; Trial Transcript ("Trans").

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

against Paul Morabito and CNC, and dismissing Bayuk and Sam Morabito from liability (the "Oral Ruling").[3] Bayuk and Sam Morabito were present at the Oral Ruling.[4]

3. On October 12, 2010, the State Court entered its written findings of fact, conclusions of law and judgment reflecting the Oral Ruling (the "FF&CL").[5] On August 23, 2011, following the punitive damages phase of the trial, the State Court entered final judgment, awarding the Herbst Parties total damages against Paul Morabito and CNC in the amount of $149,444,777.80, including both compensatory and punitive damages for Paul Morabito's fraud (the "Final Judgment").[6] After entry of the Final Judgment, Paul Morabito and CNC filed numerous appeals with the Nevada Supreme Court (together with cross-appeals, the "Appeals").[7]

4. The Herbst Parties, Paul Morabito, and CNC agreed to settle the Herbst Litigation and the Appeals and, on November 30, 2011, executed a Settlement Agreement and Mutual Release (the "Settlement Agreement").[8] Pursuant to the terms of the Settlement Agreement, the Appeals were withdrawn and vacated, as were the FF&CL and Final Judgment, and Paul Morabito executed a Confession of Judgment for a compromised $85 million based upon the same findings of facts and conclusions of law, inclusive of those grounded in fraud, as set forth in the FF&CL.[9]

5. Paul Morabito and CNC defaulted under the terms of the Settlement Agreement.[10] By the time of the Settlement Agreement, the Herbst Parties had already experienced difficulty in collecting on the Final Judgment, as assets had been moved out of Paul Morabito's name.[11] Wanting to try to resolve the matter as opposed to engage in more collection actions, the Herbst

---

[3] SF, □ 2; Trial Exhibit ("Exh.") 1, p. 22, l. 22 – p. 23, l. 24.

[4] SF, □ 2.

[5] SF, □ 3; Exh. 2.

[6] SF, □ 4; Exh. 6.

[7] SF, □ 5.

[8] SF □ 6; Exh. 5.

[9] SF □□ 6-7; Exh. 4, p. 10, § 2(k), and pp. 13-15, and Exh. 5.

[10] SF, □ 8.

[11] Exh. 5, p. 2, Sect. I-J; Trans. 10/29/18, p. 65, ll. 16-24.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

Parties agreed to give Paul Morabito more time, and the Herbst Parties, Paul Morabito and CNC entered into a Forbearance Agreement dated March 1, 2013.[12] However, Paul Morabito and CNC also defaulted under the terms of the Forbearance Agreement, making none of the due payment obligations.[13]

6. On June 18, 2013, the Herbst Parties filed the Confession of Judgment and the Stipulation of Nondischargeability (the "Confessed Judgment") and the Confessed Judgment was thereafter entered on the judgment roll of the Clerk of the State Court.[14]

B. The Bankruptcy.

7. On June 20, 2013, following Paul Morabito's defaults of the Settlement Agreement and Forbearance Agreement,[15] the Herbst Parties commenced an involuntary bankruptcy against Paul Morabito and CNC in the U.S. Bankruptcy Court for the District of Nevada (the "Bankruptcy Court").[16]

8. On December 17, 2014, the Bankruptcy Court entered an order adjudicating Paul Morabito a chapter 7 debtor.[17]

9. Multiple parties have filed claims in the Bankruptcy Court,[18] inclusive of the Herbst Parties' $77 million claim based on the unsatisfied Confessed Judgment.[19] There is currently no bar date for Paul Morabito's creditors to file their claims with the Bankruptcy Court.[20]

10. On April 30, 2018, the Bankruptcy Court entered judgment in favor of the Herbst Parties, determining that their claim evidenced by the Settlement Agreement and Confessed

---

[12] SF, ¶ 9; Exh. 6; Trans. 10/29/18, p. 12, ll. 12-17.

[13] SF, ¶ 10; Exh. 6, p. WL003105; Trans. 10/29/18, p. 69, ll. 2-9.

[14] SF, ¶ 11; Exh. 4.

[15] Trans. 10/29/18, p. 73, ll. 3-4.

[16] SF, ¶ 12.

[17] SF, ¶¶ 13-14.

[18] Exh. 303 (identifying five claims, including a $4,232,980.52 claim from the Franchise Tax Board).

[19] *See* Exh. 303; Trans. 10/29/18, p. 74, ll. 7-13, and p. 78, l. 19 – p. 79, l. 9.

[20] Trans. 11/2/18, p. 114, ll. 15-18.

Judgment was nondischargeable under 11 U.S.C. § 523(a)(2), as the factual basis for the Confessed Judgment met each of the elements of fraudulent inducement under Nevada law and nondischargeability under bankruptcy law.[21] Paul Morabito appealed the nondischargeability judgment, which appeal is pending.[22]

C. The Parties.

11. The Herbst Parties have spent nearly $10 million in fees and costs in their attempt to collect from Paul Morabito.[23] Still, approximately $80 million of the Confessed Judgment remains unsatisfied.[24]

12. As part of their collection effort, on December 17, 2013, the Herbst Parties commenced this action under NRS Chapter 112 (the "UFTA") for fraudulent transfer against transferor Paul Morabito, individually and as Trustee of his Arcadia Living Trust ("Arcadia Trust"), as well as transferees Superpumper, Bayuk, individually and as trustee of his Bayuk Trust, Sam Morabito, and Snowshoe.[25]

13. Sam Morabito is Paul Morabito's brother.[26] Sam Morabito resides in Canada, and is a former resident of Reno .[27]

14. Superpumper is an Arizona corporation that owns and operates gas stations and convenience stores in Arizona.[28] Consolidated Western Corporation, Inc., a Nevada corporation ("CWC") was the sole shareholder of Superpumper through September 28, 2010 when Sam Morabito executed a Plan of Merger and Articles of Merger upon Bayuk's consent on behalf of CWC, and filed Articles of Merger of CWC into Superpumper with the States of Arizona and

---

[21] SF, □ 14; Exhs. 22 and 23, p. 11, ll. 14-18.

[22] *Id.*

[23] Trans. 10/29/18, p. 78, ll. 16-17; p. 78, l. 22 – p. 79, l. 1; p. 102, ll. 11-23l; p. 103, ll. 2-3.

[24] Trans. 10/29/18, p. 79, ll. 2-9.

[25] SF, □ 15.

[26] SF, □ 18.

[27] Trans. 10/31/18, p. 142, l. 5; 145, ll. 305; p. 164, ll. 16-19.

[28] SF, □ 36.

Nevada on September 29, 2010, thereby effectuating CWC's merger into Superpumper (the "Merger").[29]

15. Prior to the Merger, CWC's ownership was Paul Morabito -80%, Sam Morabito -10% and Bayuk -10%,[30] and Paul Morabito, Bayuk and Sam Morabito each had a role as director and officer of Superpumper and CWC.[31] After the Merger of CWC into Superpumper, both Bayuk and Sam Morabito were directors and officers of Superpumper.[32]

16. On September 29, 2010, Dennis Vacco, ("Vacco"), joint counsel to Paul Morabito and the Defendants,[33] formed Snowshoe, a New York corporation,[34] for the purpose of acquiring Paul Morabito's interest in CWC.[35] Upon formation, Bayuk and Sam Morabito each owned 50% of the equity in Snowshoe and were designated as directors.[36] Snowshoe never had any other business operations or investments other than as a holding company for Superpumper's equity.[37]

17. From 1997 through at least the Oral Ruling date, Bayuk could be characterized as Paul Morabito's long-time boyfriend or companion.[38] The Bayuk Trust is Bayuk's self-settled trust formed and existing for estate-planning purposes.[39] While Bayuk and Paul Morabito were not registered as "domestic partners," Bayuk intimated that was only the case because they could not be married under Nevada or California law at that time.[40] Although Bayuk indicated that he

---

[29] SF, ¶ 17; Exhs. 81-86.

[30] SF, ¶ 36.

[31] Trans. 10/29/18, p. 123, ll. 20-22; p. 125, l. 19 – p. 126, l. 6.

[32] SF, ¶¶ 16-19, 37.

[33] Trans. 10/31/18, p. 90, l. 19 – p. 91, l. 18.

[34] SF, ¶ 40; Exh. 87.

[35] Trans. 10/29/18, p. 148, ll. 21-24, p. 149, ll. 1-7; Trans. 11/6/18, p. 159, ll. 1-3.

[36] SF, ¶¶ 20, 40; Exh. 87, p. 1.

[37] Trans. 10/29/18, p. 185, l. 14 – p. 186, l. 1.

[38] SF, ¶ 19; Trans. 10/29/18, p. 110, ll. 5-9.

[39] Trans. 10/29/18, p. 143, ll. 13-18.

[40] Trans. 10/29/18, p. 120, ll. 18-24.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

and Paul Morabito separated in 2010,[41] substantial evidence supports that there was a special close personal relationship between Bayuk and Paul Morabito at the time of the Oral Ruling and continuing thereafter even through the time of trial.

a. Vacco testified that as far as he knew, Bayuk and Paul Morabito had an ongoing relationship even after the subject transfers.[42]

b. On September 18, 2010, Paul Morabito emailed Vacco regarding judgment enforcement statutes and stated, "I should declare my residence with [Bayuk] in Laguna Beach asap..."[43] Consistent therewith, Paul Morabito and Bayuk moved from Reno to California.[44]

c. On September 23, 2010, Bayuk was added as a co-tenant on a West Hollywood, California residence leased in the name of Paul Morabito, rendering Bayuk and Paul Morabito jointly and severally liable for the lease obligations.[45]

d. On September 30, 2010, Paul Morabito executed an amendment and restatement of the Trust Agreement for his self-settled Arcadia Trust, which described Bayuk as Paul Morabito's "boyfriend and longtime companion," which Bayuk testified was true as of that date.[46] Bayuk was named the 70% beneficiary of the Arcadia Trust.[47]

e. On April 13, 2012, Paul Morabito represented that "[Bayuk] is my former long-time companion but we have a very strong personal relationship and he is my family and will be the central person in my life for the rest of my life."[48]

f. Paul Morabito currently resides in a home located at 370 Los Olivos, Laguna Beach, California (the "Los Olivos Property") along with his new boyfriend. The Los

---

[41] Trans. 10/29/18, p. 109, ll. 15-17.

[42] Trans. 11/6/18, p. 212, l. 23 – p. 213, l. 15.

[43] Exh. 26; *see also* Exh. 29 (same, September 20, 2010); Exh. 32 (same, September 23, 2010).

[44] Trans. 10/29/18, p. 106, ll. 14-21.

[45] Exh. 35, p. 1, Sect. 1.

[46] Trans. 10/29/18, p. 147, ll. 14 – 23.

[47] Exh. 39, pp. RBSL001877-1878, 1903, 1906.

[48] Exh. 134, p. LMWF SUPP 068536.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

Olivos Property is located adjacent to Bayuk's current residence at 371 El Camino del Mar, Laguna Beach, California (the "El Camino Property").[49] The Bayuk Trust owns both the Los Olivos Property and the El Camino Property as Paul Morabito transferred his interests in both the Los Olivos Property and the El Camino Property (along with all of the personal property in the Los Olivos and El Camino Properties) to the Bayuk Trust following the Oral Ruling.

g. Paul Morabito has been, and continues to be, financially supported by his brother, Sam Morabito, as well as by Bayuk.[50] Paul Morabito has possessed and used Bayuk's credit card with Bayuk paying the bills,[51] In addition, Bayuk pays Paul Morabito's attorneys' fees, and other amounts as directed by Paul Morabito.[52]

h. During the Herbst Litigation and through the time of trial in this case, Paul Morabito, Sam Morabito and Bayuk have had concurrent representation by the same counsel.[53]

18. In addition to their close personal relationship hallmarked by Bayuk's seemingly unwavering support of Paul Morabito,[54] Bayuk and Paul Morabito are also long-time business partners.[55] They co-owned multiple businesses before the Oral Ruling. Moreover, despite the alleged purpose of the subject transfers being to "separate" their financial interests, they co-owned a business after the Oral Ruling.[56]

19. On January 22, 2015, the Bankruptcy Court appointed Plaintiff as the trustee for the bankruptcy estates of Morabito and CNC.[57] On May 15, 2015, Plaintiff was substituted in

---

[49] Trans. 10/29/18, p. 107, l. 10 –p. 108, l. 10.

[50] *See* Testimony of Paul Morabito, Deposition Trans. p. 27, ll. 10-16; p. 28, ll. 1-2; p. 31, l. 7- p. 33, l. 24.

[51] *Id*. at p. 34, ll. 14-20.

[52] Trans. 10/29/18, p. 188, ll. 19-23; p. 189, l. 7-9; 10/30/18, p. 98, l. 19 – p. 99, l. 7.

[53] Trans. 10/30/18, p. 5, l. 16 – p. 6, l. 8.

[54] Trans. 10/30/18, p. 98, l. 4 – p. 99, l. 7.

[55] SF, □ 19.

[56] *See, e.g.*, Testimony of Paul Morabito, Deposition Trans. p. 48, l. 16-p. 49, l. 24; Exh. 134, p. LMWF SUPP, p. 068536 (discussing Bayuk's co-ownership of Virsenet, a company formed in 2011 or 2012).

[57] SF, □ 21; Exh. 19.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

place of the Herbst Parties in this case, and Paul Morabito and his revocable Arcadia Trust were dismissed from the action with only transferees of Paul Morabito's assets remaining in the case.[58]

D. Immediately After the State Court's Oral Ruling, Paul Morabito Implemented a Plan to Delay, Hinder and Prevent Collection by the Herbst Parties.

20. Within two days after the Oral Ruling, Paul Morabito had engaged at least two out-of-state law firms, Hodgson Russ LLP (attorneys-Garry Graber ("Graber") and Sujata Yalamanchili) and Lippes Mathias Wexler & Friedman ("LMWF") (attorneys-Vacco and Christian Lovelace), for advice on how to evade the Herbst Parties' judgment and to protect his assets.[59] In his email communications with lawyers from these firms,[60] Paul Morabito made clear his intent to thwart the Herbst Parties' enforcement of the judgment by cutting his (and Bayuk's) ties with Nevada and moving to California, while also converting and moving the majority of his assets that could be used to satisfy the Herbst Parties' judgment outside of Nevada. [61]

21. Graber of Hodgson Russ testified that he was engaged by Morabito to "protect his assets and/or escape liability on account of the judgment."[62] When asked which assets, Graber indicated "well, I think he was seeking to protect them all" and further specified that "I believe one of his principal assets which he expressed concern was his stock and his equity interest in an entity that was in the auto service business, I believe, and I believe that was this Superpumper entity."[63] When questioned regarding Paul Morabito's intent, Graber testified "I think he had an intent to avoid paying the judgment, whether that's by winning on appeal or divesting himself of

---

[58] SF, □ 22; Exh. 20.

[59] *See* Exh. 25 (Hodgson Ross indicating they had a number of ideas, "including a possible marital split between Paul [Morabito] and [Bayuk] pursuant to which [Bayuk] could retain some of Paul [Morabito's] assets" and Vacco of LMWF following with discussion of Paul Morabito selling his interest in CWC to Bayuk and Sam Morabito).

[60] Any attorney-client privilege was waived by Plaintiff. In addition, the privilege was deemed waived by the crime/fraud exception. See this Court's order of 7/6/16 (approving a Report & Recommendations of the Discovery Commissioner of 6/13/16).

[61] *See* Exhs. 26 (discussing moving to California) and 32 ("[Bayuk] and I plan on changing our primary residence from Reno to Laguna Beach.").

[62] Trans. 11/1/18, p. 29, ll. 13-18 and p. 30, ll. 21-22.

[63] Trans. 11/1/18, p. 33, ll. 1-6.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

his assets."[64] Ultimately, after Hodgson Russ attorneys advised Paul Morabito that he could not simply transfer his assets for value, Paul Morabito terminated them, as he did not like the advice that he was being provided.[65]

22. Paul Morabito utilized LMWF to complete the subject transfers. The same firm also concurrently represented Defendants.[66]

23. There is no evidence indicating that the subject transfers were contemplated before the Oral Ruling. The subject transfers were substantially completed in a short window of September 14, 2010 (the day after the Oral Ruling) to October 1, 2010, before any written order on the Oral Ruling was entered.[67]

24. At no time prior to, or at the time of, the subject transfers did Paul Morabito or any of the Defendants advise the Herbst Parties that Paul Morabito's assets were being converted or transferred, or any of the details of the subject transfers.[68]

25. Paul Morabito's email communications to his counsel contemporaneous with the subject transfers were inconsistent with the proffered explanation for the subject transfers that his goal was solely to separate out his interests from Sam Morabito and Bayuk once they were relieved from liability in the Herbst Litigation.[69] For example, in an email to counsel dated September 20, 2010, Paul Morabito recognized that the transfers would be challenged in court at the same time he described his intention to deprive the Herbst Parties of what he perceived to be the Herbst Parties' "home court, good old boy advantage."[70] In an email dated September 21, 2010, Paul

---

[64] Trans. 11/1/18, p. 46, ll. 13-15.

[65] Trans. 11/1/18, p. 35, ll. 6-14.

[66] Trans. 10/29/18, p. 140, l. 8 – p. 141, l. 9.

[67] Exhs. 45, 46, 61, 80.

[68] Trans. 10/29/18, p. 62, ll. 15-20 (on line 20, first sentence only); p. 63, ll. 4-12.

[69] Deposition Testimony of Paul Morabito, Trans. p. 69, ll. 8-16.

[70] Exh. 29.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

Morabito discussed his intention to continue be active in the business of Superpumper, save and except as only as "advisor" with ownership to be in the name of Sam Morabito and Bayuk.[71]

1. The $6,000,000 Cash Transfer.

26. Immediately after the Oral Ruling, on September 14, 2010, Paul Morabito transferred $6 million out of his bank account.[72] While transfer is not the subject of Plaintiff's claims here, the pattern of Paul Morabito's conduct in the same timeframe as the subject transfers is still relevant as evidence of Paul Morabito's intent. The story that Paul Morabito was merely separating his assets from Bayuk and Sam Morabito in September 2010 is belied by the transfer of Paul Morabito's $6 million from his account immediately following the Oral Ruling.

2. The CWC/Superpumper Transfers.

27. Prior to the Oral Ruling, Paul Morabito communicated his opinion of the value of Superpumper to the company's auditors,[73] as well as third-party potential business partners.[74]

28. Subsequent to the Oral Ruling, at the same time that the subject transfers were being contemplated, significant value was intentionally stripped out of CWC by Paul Morabito in conjunction with Sam Morabito and Bayuk.

a. On August 13, 2010, which was just prior to the Oral Ruling but while the Herbst Litigation was pending, CWC had $3 million in loan proceeds from a term loan obtained

---

[71] Exh. 30.

[72] Exh. 37, p. 4, MORABITO (341).005352.

[73] Exh. 42 (May 5, 2009- $20 million value for 100% of equity in CWC); Exh. 43 (Mach 10, 2010- "nothing has materially changed" with respect to Paul Morabito's identified assets, including value).

[74] Exhs. 76, 77, 79. It is notable that in addition to both the State Court and the Bankruptcy Court finding that Paul Morabito had intentionally defrauded the Herbst Parties as the basis for their respective judgments against Paul Morabito, Bayuk, Paul Morabito's closest ally, admitted that Paul Morabito is not honest in his dealings with third parties and is not trustworthy. (Trans. 10/31/18, p. 28, l. 24 – p. 31, l. 2). Sam Morabito also confirmed that Paul Morabito is not honest in his communications with third parties (Trans. 10/31/18, p. 236, l. 6 – p. 237, l. 34). The Court is in the untenable position of being asked by Defendants to believe Paul Morabito (and his agent, Vacco) with regard to his intentions with respect to the subject transfers at the same time Defendants are asking the Court to disregard Paul Morabito's representations that there was significant value of the equity in Superpumper.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

from Compass Bank (the "Compass Loan").[75] On September 14, 2010, Paul Morabito, Sam Morabito and Bayuk each took a $939,000 distribution from CWC,[76] which together totaled almost all of the $3 million in loan proceeds. On September 30, 2010, Sam Morabito and Bayuk each contributed $659,000 of their distribution monies back into Superpumper; however, Paul Morabito did not contribute any portion of his $939,000 distribution.[77] Instead, Paul Morabito executed a Term Note dated September 1, 2010, documenting a loan obligation from Paul Morabito to CWC for $939,000 (the "$939,000 Note").[78]

b. Prior to the Oral Ruling, Raffles, an insurance captive, was certificated in CWC's name (the "Raffles Asset"). The Raffles Asset was valued on September 30, 2010 at $2,234,175.[79] On September 21, 2010, Paul Morabito paid Sam Morabito $355,000.00 and paid Bayuk $420,250.[80] Sam Morabito and Bayuk testified that the purpose of these payments was for Paul Morabito to purchase Sam Morabito and Bayuk's interests in the Raffles Asset. There is no documentation whatsoever reflecting the purpose of these September 2010 payments to Sam Morabito and Bayuk. Further, it is undisputed that the title of the Raffles Asset was never transferred out of the CWC name to Paul Morabito,[81] and no one advised the Herbsts that any distributions of the Raffles proceeds they received would be payable to Paul Morabito,[82]

c. Then, CWC was merged into Superpumper.[83] The effect of the Merger was that amounts due to Superpumper from Paul Morabito and his affiliates were cancelled.[84]

---

[75] SF, □ 38.

[76] SF, □ 38.

[77] Trans. 10/31/18, p. 126, l. 22 – p. 127, l. 2.

[78] Exh. 110.

[79] Exh. 256; *see also* Exh. 44, WL004539 (identifying Raffles Asset value of $2,352,017).

[80] Exh. 37, p. 4, MORABITO (341).005352.

[81] Trans. 10/31/18, p. 96, ll. 6-21.

[82] Trans. 10/31/18, p. 101, ll. 3-10.

[83] SF, □ 39.

[84] Exh. 144, p. 1, SPI NO PAM 00000018.

Inclusive, the $939,000 Note was cancelled. Paul Morabito had taken distributions over the years from Superpumper and those distributions were booked as loan receivables on the audited books of Superpumper.[85]

29. The ability to quickly manipulate Superpumper's financials in order to make it appear as if the company had little value is consistent with Bayuk's representation that Paul Morabito is a "financial genius when it comes to understanding financing."[86]

30. On September 30, 2010, after the distribution of the Compass Loan proceeds, transfer of CWC's right to distributions from the Raffles Asset, and the cancellation of Paul Morabito's loan receivables due to Superpumper, Paul Morabito sold his 80% equity interest in the merged CWC/Superpumper to Snowshoe pursuant to a Shareholder Interest Purchase Agreement (the "Superpumper Agreement").[87] As a result of this transfer (the "Superpumper Transfer"), Sam Morabito and Bayuk each received 50% of Paul Morabito's 80% equity interest in Superpumper. On January 1, 2011, Bayuk and Sam Morabito transferred their respective 10% interests in Superpumper to Snowshoe.[88]

30. While Sam Morabito and Bayuk contend that the purpose of the Superpumper Transfer, and related transactions, was for their exclusive benefit in order to separate their assets from Paul,[89] the billing records from LMWF show that the entirety of the transactions was billed to, and for the benefit, of Paul Morabito.[90] There was no bill to Sam Morabito or Bayuk. Further, Sam Morabito and Bayuk's contention on the purpose of the transactions provides no rational explanation for the Merger and the creation of a new company, Snowshoe, a New York corporation, to be the transferee of Paul Morabito's interest.

---

[85] Trans. 11/1/18, p. 249, l. 8 – p. 250, l. 7.

[86] Trans. 10/29/18, p 225, ll. 6-17.

[87] SF, □ 41.

[88] SF, □ 42.

[89] Trans. 10/29/18, p. 130, ll. 9 -24; 10/31/18, p. 31, ll. 8-11.

[90] Exh. 294; Trans. 11/1/18, p. 10, l. 3 – p. 11, l. 22.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

31. The Court finds the testimony and report of James McGovern, CPA/CCF, CVA, a CPA and forensic accountant for over 35 years ("McGovern"),[91] credible and accepts his valuation of the 100% equity interest in Superpumper as of September 30, 2010 at $13,050,000, placing Paul Morabito's 80% interest as of September 30, 2010 at $10,440,000.[92]

32. Through their joint counsel, Vacco, Paul Morabito, together with Bayuk, Sam Morabito, and Superpumper, ordered an appraisal to support the transfer of Paul Morabito's 80% interest—consistent with Paul Morabito's plan[93] to obtain appraisals to justify transfers intended to divest himself of any interest the Herbst Parties could attach. On October 13, 2010 (two weeks *after* the Superpumper Agreement), Spencer Cavalier of Matrix Capital Markets Group, Inc. ("Matrix") completed a valuation of Superpumper in which he opined that the value of 100% of the equity interest in Superpumper as of August 31, 2010 (one month before the Superpumper Transfer date) was $6,484,514, which equates to $5,187,611.20 for Paul Morabito's 80% interest (the "Matrix Valuation").

33. The Matrix Valuation is nearly identical to McGovern's valuation,[94] save and expect that Matrix inexplicably adjusted accounts receivables due to Superpumper from Paul Morabito and his affiliates (the "Insider Receivables") to zero[95] while McGovern included the Insider Receivables in his valuation.

34. The decision on whether to include the Insider Receivables in the valuation of Superpumper's equity requires inquiry into whether the Insider Receivables can be repaid.[96] McGovern relied on Superpumper's audited financial statements for 2009 to confirm his opinion

---

[91] Trans. 11/1/18, p. 111, ll. 17-20.

[92] Exh. 91; Trans. 11/1/18, p. 123, ll. 2 -3.

[93] Exh. 29 (Paul Morabito's September 20, 2010 email to Vacco and Yalamanchili: "selling for value" will be allowed").

[94] Excluding the Insider Receivables (*i.e.*, non-operating assets) from his valuation, McGovern's valuation of the Superpumper equity was $6,550,000. *See* Exh. 91, pp. 8, 11 and 19 of the McGovern report, MCGOVERN 00009, 12, and 20; *see also* Trans. 11/1/18, p. 137, ll. 3-10.

[95] Exh. 235, at Exhibit 7 of 14.

[96] Trans. 11/1/18, p. 125, ll. 5-24.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

that the Insider Receivables should be included in the valuation of Superpumper's equity, wherein the auditors concluded the Insider Receivables were valid and collectible.[97] Defendants take issue with the recognition of the Insider Receivables in determining the value of the Superpumper equity in light of the fact that there were no notes introduced relative to a majority of the Insider Receivables and the Merger wiped out the Insider Receivables in any event; however, the Court finds that McGovern's determination that the debt underlying the Insider Receivables was valid and collectible is corroborated by the fact that before the end of 2010, new written notes were executed by Sam Morabito and Bayuk, without any new consideration, and placed on the Superpumper books, and Sam Morabito and Bayuk certified that they had sufficient assets to pay the Insider Receivables obligations.[98]

35. To get to a lower value, LMWF, counsel (and therefore the agent) for Paul Morabito and Defendants, reduced the Matrix Valuation[99] by (1) $1,682,000 for the "Compass Term Loan" (the "Compass Reduction"), despite the fact that the outstanding amounts of the Compass Term Loan loaned to Superpumper's members were supposed to be repaid and indeed $1,318,000 had been returned by Sam Morabito and Bayuk by September 30, 2010[100] and Paul Morabito executed the $939,000 Note with a promise to repay his distributed $939,000,[101] and (2) $1,680,880 for a 35% "risk reduction" (the "Risk Reduction," and together with the Compass Reduction, the "Additional LMWF Reductions"). This resulted in an ultimate "acquisition value" for the Superpumper Transfer of $2,497,307. There was no attempt to show how anyone at LMWF, a law firm, was in any way qualified to determine or quantify the LMWF Reductions. The Risk

---

[97] *Id.*; *see also* Exh. 42 (auditor's notes verifying Paul Morabito had sufficient net assets to satisfy Compass liquidity obligation and to support $7.2 million of receivables on Superpumper's books); Exh. 118, at GURSEY004850 (verifying the Inside Receivables were fully collectible); Trans. 11/1/18, p. 168, l. 9 – p. 169, l. 3 (the Insider Receivables were on current (due on demand) on the books and had not been written off or otherwise indicated as uncollectible).

[98] Exhs. 105, 122-123, 126.

[99] Exh. 236

[100] Trans. 10/31/18, p. 75, ll. 1-5; Trans. 11/1/18, p. 120, ll. 15-22.

[101] Exh. 244.

Reduction was based, at least in part, on (1) the defaults under the Compass Term Loan and under Superpumper's real estate leases that are the result of the voluntary distributions of the Compass Term Loan proceeds to Paul Morabito, Bayuk, and Sam Morabito on September 14, 2010 and the Merger[102] and (2) the risk that Bayuk and Sam Morabito would be sued for the fraudulent transfers.[103] Defendants fail to explain how defaults and fraudulent transfers they engineered support a 35% "risk reduction," particularly where purported defaults would not exist in an arms-length sale to a third party. Furthermore, both McGovern and Mr. Cavalier testified that they had already considered risk when valuing the equity in Superpumper, which is reflected in their discount rate.[104] Finally, whether or not there were actual defaults of Superpumper obligations as a result of the Compass Loan distributions, the Oral Ruling, the Merger or otherwise, they did not prove to be so material that they were not ultimately resolved.[105] Superpumper's auditors confirmed that Compass was even prepared to refinance the existing obligation upon receipt of the 2010 audited financials.[106]

36. The Court reviewed the testimony of Michele Salazar ("Salazar"). Salazar did not perform a valuation of Superpumper,[107] but rather she criticized the Matrix Valuation and McGovern's report as purportedly incorrect. Ultimately, Salazar has two primary criticisms of the reports, neither of which is supported. First, Salazar disagreed with Mr. Cavalier's capitalization rate in the Matrix Valuation and McGovern's discount rate because, according the Salazar, they failed to take into account company specific risks.[108] However, both Cavalier[109] and McGovern[110]

---

[102] Trans. 11/6/18, p. 253, l. 21 – p. 255, l. 21.

[103] Trans. 11/6/18, p. 173, ll. 5-8.

[104] Trans. 11/1/18, p. 120, 12- p. 122, l. 23 (14.2% discount rate- McGovern); Trans. 11/6/18, p. 282, ll. 13 – p. 284, l. 5 (13.25% to 13.4% capitalization rate- Matrix).

[105] Exhs. 27 and 33; Trans. 10/31/18, p. 122, ll. 16-22.

[106] Trans. 11/1/18, p. 253, l. 16 – p. 254, l. 9.

[107] Trans. 11/5/18, p. 101, l. 17 – p. 102, l. 2.

[108] Trans. 11/5/18, p. 60, l. 16 – p. 63, l. 18; p. 93, l. 24 – p. 94, l. 13.

[109] Trans. 11/6/18, p. 282, l. 19 – p. 286, l. 17.

[110] Trans. 11/1/18, p. 122, ll. 6-23; Exh. 91, McGovern 000018 and McGovern 000053-75.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

testified as to the company specific risks they applied and tellingly, both came up with similar rates. Second, Salazar criticized McGovern for including the Insider Receivables in his valuation because, according to Salazar, there were no written notes and, as a result, the Insider Receivables could not be found to be valid and collectible.[111] Salazar's conclusion is directly contradicted by the testimony of Gary Kraus, Superpumper's auditor, who confirmed the Insider Receivables were valid and collectible obligations.[112]

37. Immediately following the 2016 deposition of Jan Friederich, a witness designated by Defendants as a rebuttal expert on the value of Superpumper's equity, Snowshoe transferred its equity to Supermesa Fuel & Merc, LLC ("Supermesa"), an entity affiliated with Mr. Friederich.[113] As Mr. Friederich stood to benefit from a lower valuation, his testimony is not helpful to the Court in determining the value of Superpumper's equity and his related testimony was accordingly given no weight by the Court.

38. The ultimate $2.5 million valuation for Paul Morabito's 80% interest is further belied by Sam Morabito's and Bayuk's own financial statements that they provided to Superpumper's auditors on February 1, 2011, just four months after the transfer, that represent their respective 50% equity interests as valued at $4,514,869, for a total combined value of Superpumper as of February 1, 2011 of $9,029,738.[114] Bayuk testified that this was his good faith statement of what the value of his 50% interest was as of February 1, 2011.[115]

39. As of the September 30, 2010 date of transfer of Paul Morabito's 80% equity interest in Superpumper to Snowshoe, pursuant to the Superpumper Agreement, Snowshoe was required to pay Paul Morabito $1,035,094 in cash. While Paul Morabito received $1,035,068 wire on October 1, 2018, there is no proof that such payment reflects the cash payment for the

---

[111] Trans. 11/5/18, p. 48, l. 22 – p. 49, l. 18.

[112] Trans. 11/1/18, p. 222, l. 23 – p. 225, l. 18; see also Exh. 118, p. GURRSEY004850 (auditor confirmation that they were fully collectible).

[113] Trans. 11/5/18, p. 37, l. 9 – p. 38, l. 9.

[114] Exh. 126.

[115] Trans. 10/29/18, p. 236, ll. 8-11.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

Superpumper equity and such evidence would be inconsistent with Paul Morabito's sworn testimony to the Bankruptcy Court that he only received $542,000 for his equity in Superpumper.[116] In any event, under any opinion of value, even if the $1,035,094 were received, that is not reasonably equivalent value for Paul Morabito's interest.

40. Subsequent to the execution of the Superpumper Agreement, Snowshoe became obligated for an additional $1,462,213 to Paul Morabito, as set forth in a $1,462,213 term note from Snowshoe to Paul Morabito (the "$1,462,213 Note") dated November 1, 2010.[117] The $1,462,213 Note required Snowshoe to make monthly payments commencing on December 1, 2010 in the amount of $19,986.71 for 84 months, with interest accruing at 4.0% per annum.[118] There were no payments made on the $1,462,213 Note, and on February 1, 2011, the Snowshoe obligation to Paul Morabito under the $1,462,213 Note was cancelled and a successor note from Snowshoe to Paul Morabito in the amount of $492,937 was executed (the "$492,937 Successor Note")[119] at the same time a successor note from Snowshoe to Superpumper (purportedly reflecting the amount of the $939,000 Note that had been cancelled at the time of the Merger) in the amount of $939,000 was executed (the "939,000 Successor Note").[120]

41. There is no record of payment from Snowshoe to Paul Morabito due under the terms of the Superpumper Agreement, the $1,462,213 Note or the $492,937 Successor Note. Likewise, there is no record of payment of the $939,000 Successor Note from Snowshoe to Superpumper. Sam Morabito conceded that, post-merger, it would not matter if there were papered obligations between Snowshoe and Superpumper because Snowshoe has no funds other than what Superpumper generated.[121] Finally, other than $542,000 Paul Morabito reported to have received,

---

[116] Exh. 233.

[117] SF, □ 43.

[118] SF, □ 44.

[119] Ex. 104; Trans. 10/31/18, p. 217, ll. 6-16.

[120] Ex. 105.

[121] Trans. 10/31/18, p. 109, ll. 7-11.

the details of which are unknown, any remainder due to him on account of notes was unequivocally "cancelled."[122]

42. Contrary to Paul Morabito's representation to the Bankruptcy Court, Sam Morabito testified that he paid the $492,937 Successor Note obligation when he transferred $560,000 to LMWF on November 28, 2011 at the direction of Paul Morabito.[123] Not only does the amount paid by Sam Morabito not correspond with the $492,937 Successor Note or any identifiable obligation from Sam Morabito, there is no record of any satisfaction of the $492,937 Successor Note obligation in the Snowshoe books and records, including on Snowshoe's tax returns or amended tax returns.[124] There is no evidence of a capital contribution by Sam Morabito to Snowshoe for the payment, nor is there a corresponding capital contribution by Bayuk.[125] Furthermore, Sam Morabito's testimony that Vacco contacted him and told him the amount was due is contradicted by the communication from Paul Morabito instructing Sam Morabito to transfer funds[126] and also Vacco's testimony that he had no knowledge as to whether the amounts due under the $492,937 Successor Note were paid.[127]

43. In light of the evidence presented, inclusive of no corresponding payments, the Court finds that the $1,462,213 Note and the $492,937 and $939,000 Successor Note obligations were contrived in order to give the appearance of an arms-length exchange of value.

3. <u>Paul Morabito's Equity in the Real Properties.</u>

44. Immediately prior to the Oral Ruling, Paul Morabito and Bayuk, through their respective trusts, owned three real properties improved with homes as tenants in common:[128]

---

[122] Ex. 107, ¶ 10.

[123] Trans. 10/31/18, p. 13, l. 21 – p. 115, l. 5.

[124] Trans, 10/31/18, p. 246, l. 18- p. 249, l. 11.

[125] Trans. 10/31/18, p. 131, l. 18 – p. 132, l. 19.

[126] Exh. 140.

[127] Trans. 11/6/18, p. 181, l. 22 – p. 182, l. 8.

[128] SF, □ 23.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

a. Paul Morabito owned 75% of the El Camino Property and Bayuk owned 25%.[129]

b. Paul Morabito and Bayuk each owned 50% of the Los Olivos Property.[130]

c. 8355 Panorama Drive, Reno, Nevada (the "Panorama Property," and together with the El Camino Property and the Los Olivos Property (the "Laguna Properties"), the "Real Properties"). Paul Morabito owned 70% and Bayuk owned 30% of the Panorama Property.[131]

45. On September 27, 2010, Paul Morabito and Bayuk executed a Purchase and Sale Agreement, which was amended September 28, 2010 (as amended, the "Real Properties Agreement"), for the transfer of their respective interests in the Real Properties, as well as all of their personal property located at the Real Properties, which all went to Bayuk.[132] The Real Properties Agreement was prepared by one lawyer on behalf of both Bayuk and Paul Morabito.[133] Pursuant to the Real Properties Agreement, Paul Morabito sold his interests in the Laguna Properties to Bayuk in exchange for Bayuk's 30% interest in the Panorama Property and a payment of $60,117.00.[134]

46. According to Paul Morabito and Bayuk, the equity in the Laguna Properties at the time of the transfers on October 1, 2010 was $1,933,595: the equity in the Los Olivos Property was valued at $854,954 and the equity in the El Camino Property was valued at $1,078,641.[135] Paul Morabito's interests in the Laguna Properties therefore had an aggregate value of approximately $1,236,457.75, and Bayuk's interests in the Laguna Properties had an aggregate value of approximately $697,137.25.[136] Plaintiff did not dispute these values.[137]

---

[129] *Id.*

[130] *Id.*

[131] *Id.*

[132] SF, □ 24; Exhs. 45-46.

[133] Trans. 10/30/18, p. 89, ll. 21-23.

[134] Exhs. 45, 26, 233 .

[135] SF, □□ 25-26.

[136] *Id.*

[137] *Id.*

47. Paul Morabito and Bayuk obtained an appraisal of the Panorama Property from Darryl Noble, who is not an MAI.[138] Mr. Noble opined that the Panorama Property had a purported fair market value as of October 1, 2010 (the approximate date of the transfer) of $4.3 million. Mr. Noble relied heavily on the cost approach, focusing on the cost of the home and its significant improvements.[139] Mr. Noble's conclusion of value was within the range of values suggested to him by Paul Morabito.[140]

48. As of the date of transfer, there had never been a sale of a home in excess of $4 million in Reno, and there was no sale for more than $3.35 million in the year preceding the transfer.[141] Whereas the transfer of the Panorama Property occurred on October 1, 2010, the $3.35 million sale which Mr. Noble used in his sales comparison approach occurred in September 2009, before the residential real estate market significantly worsened.[142] The sale prices of other properties on which Mr. Noble relied as comparables were not adjusted to account for significant differences, such as finished basements, or the significant deterioration in the residential real estate market throughout late 2009 and 2010. The sale price of one comparable was incorrectly reported in the appraisal.[143] Accordingly, the comparables on which Mr. Noble relied in his sales comparison approach do not support the concluded value. These errors were the result, at least in part, of the haste with which Mr. Noble was required to conduct the appraisal at the insistence of Paul Morabito.[144]

---

[138] Exh. 276. Although another appraiser from Mr. Noble who is an MAI signed off on the appraisal report, no evidence was presented of his involvement in the assignment beyond reviewing and signing the report.

[139] Exh. 276, Trans. 11/6/18 , p. 32, ll. 3-13; p. 83, l. 23 – p. 84, l. 2; see Trans. 11/2/18, p. 16, l. 14-p. 18, l. 2 (Mr. Kimmel testifying that the cost approach is used to determine replacement cost by valuing the property and deducting depreciation, including physical depreciation, functional depreciation, and externalities such as economic factors.).

[140] Exh. 276, Trans. 11/6/18, p. 65, l. 2 – p. 65, l. 14.

[141] Trans. 11/6/18, p. 79, l. 18 – p. 80, l. 8.

[142] Id.; Trans. 11/6/18, p. 79, ll. 16-21.

[143] Trans. 11/6/18, p. 77, l. 3 – p. 78, l. 14; Ex. 277 at Superpumper 001124.

[144] Trans. 11/6/18, p. 83, l. 9 – p. 83, l. 8.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

49. Moreover, the Court finds that Mr. Noble was focused on the undisputed significant cost of improvements to the Panorama Property, without regard to the devastated real estate market in October 2010. Indeed, in the cost approach, Mr. Noble's appraisal made no downward adjustment at all for functional obsolescence resulting from overimprovement or for external obsolescence, including the realities of the depressed real estate market at that time. Rather, Mr. Noble increased his conclusion of value by at least 25% more than the amount suggested by a calculation of replacement costs under the cost approach in order to arrive at a valuation of $4.3 million, an amount consistent with the value suggested to him by Paul Morabito.[145]

50. Consistent with the opinion of long-time Reno appraiser William Kimmel, MAI,[146] SREA,[147] the Court finds that the devastated local real estate market[148] had a greater impact on the valuation of real property in October 2010 than the cost of a home or its improvements.[149] The Court therefore agrees with Mr. Kimmel's appraisal of the Panorama Property, which relied primarily on the sales comparison approach,[150] determining a fair market value of $2,000,000 as of September 30, 2010, before deducting $1,028,864 in secured debt. The Court's finding is not based on, but is supported by, the subsequent sale of the Panorama Property for $2,584,000 to a third-party purchaser in December 2012.[151]

51. As part of the Real Property Agreement, Paul Morabito provided a credit to Bayuk in the amount of $45,000 for certain water rights associated with the Panorama Property and

---

[145] Trans. 11/6/18, p. 70, l. 18 – p. 71, l. 2.

[146] Trans. 11/2/18, p. 7, ll. 5-6 (since 1968).

[147] Trans. 11/2/18, p. 7, ll. 8-9, 18 (Senior Residential Real Estate Analyst/Appraiser).

[148] Trans. 11/2/18, p. 17, ll. 14-15, and p. 21, l. 19- p. 22, l. 1.

[149] Trans. 11/2/18, p. 18, ll. 11-15; *see also* Trans. 11/2/18, p. 20, l. 1- p. 21, l. 6 (explaining that there were reported issues with the home in 2016; however, those did not change Mr. Kimmel's opinion of value because the reported condition of the improvements was communicated years after the October 1, 2010 retrospective date of valuation).

[150] Exh. 53; Trans. 11/2/18, p. 15, l. 16 – p. 19, l. 13; p. 85, ll. 5-8.

[151] Trans. 11/2/18, p. 22, ll. 8-15

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

$150,000 for theatre equipment purportedly located in the Panorama Property,[152] though neither Paul Morabito nor Bayuk obtained a valuation of the alleged water rights[153] or theatre equipment.[154]

52. Thus, Paul Morabito transferred his interests in the Laguna Properties worth $1,236,457.75 in exchange for Bayuk's interests in the Panorama Property worth only $291,340.80, plus $60,117.00,[155] resulting in a difference of $884,999.95.

4. Paul Morabito's 50% Equity Interest in Baruk Properties, LLC.

53. Prior to the Oral Ruling, Paul Morabito and Bayuk each owned 50% of a real estate holding company called Baruk Properties, LLC, a Nevada limited liability company ("Baruk LLC").[156] Baruk LLC owned four real properties (the "Baruk Properties"):

a. 1461 Glenneyre, Laguna Beach, CA ("1461 Glenneyre"), a commercial property with a stipulated appraised value of $1.4 million as of September 30, 2010;[157]

b. 570 Glenneyre, Laguna Beach, CA ("570 Glenneyre"), a commercial property with an appraised value of $2.5 million as of September 30, 2010, or $1,129,021 after deduction for the mortgage on property;[158]

c. 1254 Mary Fleming, Palm Springs, CA (the "Palm Springs Property"), a home with an appraised value of approximately $1,050,000 as of September 30, 2010, or $705,079 after deduction for the mortgage;[159] and

---

[152] Ex. 247.

[153] Trans. 10/30/18, p. 158, ll. 2-19.

[154] Trans. 10/30/18, p. 158, l. 20 – p. 159, l. 7.

[155] Exhs. 46, 233.

[156] SF, □□ 27, 29.

[157] SF, □□ 27-28.

[158] *Id.*

[159] *Id.*

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

d. 49 Clayton Place, Sparks, NV (the "Clayton Property"), a vacant property with an appraised value of approximately $75,000 as of September 30, 2010.[160]

54. Accordingly, Paul Morabito's 50% interest in the Baruk Properties had a value of at least $1,654,550.

55. On October 1, 2010, Paul Morabito transferred his 50% membership interest in Baruk LLC to Bayuk pursuant to a Membership Interest Transfer Agreement (the "Baruk Transfer").[161]

56. Immediately after the Baruk Transfer, on October 4, 2010, Baruk LLC, a Nevada entity, was merged into a newly formed entity owned 100% by the Bayuk Trust called Snowshoe Properties, LLC, a California limited liability company ("Snowshoe Properties"),[162] thereby transferring the assets owned by Baruk Properties to Snowshoe Properties.

57. Snowshoe Properties is solely owned by the Bayuk Trust. Bayuk, through the Bayuk Trust, converted Snowshoe Properties from a California limited liability company to a Delaware limited liability company during the pendency of this litigation.[163]

58. On November 2, 2010, Bayuk transferred the Palm Springs Property from Snowshoe Properties to the Bayuk Trust.[164]

59. Following this series of transfers, the Bayuk Trust owned 100% of 1461 Glenneyre, 570 Glenneyre, and the Clayton Property indirectly through Snowshoe Properties, and directly owned 100% of the Palm Springs Property.[165]

60. The Membership Interest Transfer Agreement required that in exchange for Paul Morabito's 50% interest in Bayuk LLC, Bayuk deliver a promissory note in the principal amount

---

[160] *Id.*

[161] SF, ¶ 30.

[162] SF, ¶¶ 31-32.

[163] Trans. 10/31/18, p. 26, ll. 1-14; p. 27, ll. 16-19.

[164] SF, ¶ 33.

[165] SF, ¶ 34.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

of $1,617,050 to Paul Morabito (the "Baruk Note").[166] The terms of the Baruk Note required principal and interest payments in equal monthly installments of $7,720.04 over 360 months, accruing interest at 4.0%.[167]

61. There was no evidence of any payments corresponding with the terms of the Baruk Note. Bayuk's own records don't support alleged repayment. Specifically, Bayuk produced "ledgers" purporting to show payments to Paul Morabito under the Baruk Note.[168] These ledgers and supporting documents[169] are not credible as showing repayment of the Baruk Note for several reasons, including: (i) they include payments to Kim's Marble, Doheny Builder Supplier, Geo Technical, American Vector, Mark Paul Designs, Bead Painting, and Atlas Sheet Metal that were made for construction on Los Olivos after Paul Morabito's interests in the Real Properties were transferred,[170] (ii) $341,952.69 was credited for payment of the Chase mortgage on the Palm Springs Property, which was already taken into account in the valuation of the Palm Springs Property;[171] (iii) certain payments occurred or were applicable to expenses incurred prior to the date of the $1,617,050 Note;[172] (iv) Bayuk had no knowledge as to the purpose of $105,084.09 of payments for "Comerica" and believed it was on the ledger in error;[173] and (v) they include a $50,000 credit for the Clayton Property that was purportedly applied on October 4, 2010,[174] despite Bayuk's testimony that he did not recognize that the Clayton Property was owned by Baruk LLC until years later when it was used to settle a lawsuit from Desi Moreno against Paul Morabito.[175]

---

[166] SF, □ 35.

[167] *Id*.

[168] Exhs. 71 and 73.

[169] Exh. 271.

[170] Trans. 10/31/18, p. 50, l. 20 – p. 52, l. 20; p. 56, l. 19 – p. 58, l. 2.

[171] Trans. 10/31/18, p. 52, l. 21 – p. 55, l. 19.

[172] Trans. 10/31/18, p. 56, l. 22 – p. 57, l. 15;

[173] Trans. 10/31/18, p.. 58, l. 10 – p. 59, l. 7.

[174] Exh. 73.

[175] Trans. 10/31/18, p. 64, l. 19 – p. 65, l. 1; p. 65, l. 14 – p. 66, l. 8.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

62. On October 31, 2010, with an effective date of October 1, 2010, Paul Morabito assigned the Baruk Note to Woodland Heights, Ltd., a Canadian entity, and executed an allonge, purportedly in exchange for a 20% ownership interest in Woodland Heights, Ltd. (the "Woodland Assignment").[176] Bayuk purported to not even know of the Woodland Assignment, and testified he never paid payments pursuant to the Woodland Assignment.[177] Thus, it appears that the Woodland Assignment was a sham designed to further hinder the Herbst Parties from enforcing their judgment against Paul Morabito's interest in the $1,617,050 Note.

Watchmyblock.

63. On October 1, 2010, Paul Morabito also transferred his 90% interest in Watchmyblock LLC, a Nevada limited liability company, to Bayuk, the other 10% owner.[178]

64. Watchmyblock, LLC was a Nevada limited liability company at the time of transfer, but Bayuk changed it to a New York entity at the time of the transfer.[179]

65. Paul Morabito valued his equity in Watchmyblock, LLC at $2,250,000,[180] yet transferred that same equity to Bayuk in exchange for $1,000. Although Plaintiff is not seeking to avoid the Watchmyblock transfer in this case, the transfer is further evidence of Paul Morabito's motive and intent to move his assets out of the Herbst Parties' reach.

E. Paul Morabito Continued to Control the Transferred Interests After the Transfers.

66. Contrary to Defendants' denial of Paul Morabito's continuing interest and control over Superpumper and Snowshoe following the Superpumper Transfer, substantial evidence establishes that Paul Morabito retained control and continued to receive benefits. Beginning in October of 2015—over five years after Defendants allege Paul Morabito ceased to have any involvement or financial interest in Superpumper—and continuing through March 2018,

---

[176] Exh. 68; *see also* Exh. 44, WL004540 (Salazar describes the assignment and purported value provided to Paul Morabito by Woodland Heights, Ltd. in return).

[177] Trans. 10/30/18, p. 81, ll. 1-8; p. 82, ll. 11-14.

[178] Trans. 10/31/18, p. 64, l. 24 – p. 65, l. 2; Exh. 163.

[179] Exh. 164; Trans. 10/31/18, p. 65, l. 3 – 4.

[180] Exhs. 42, 43.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

Snowshoe paid more than $126,000 of Paul Morabito's personal legal expenses to the law firm of Robison, Sharp, Sullivan & Brust ("RSSB"), joint counsel to Paul Morabito and Defendants.[181] Indeed, the majority of Paul Morabito's legal fees in his personal bankruptcy case between May of 2017 and March of 2018 were paid by Snowshoe.[182]

67. Defendants attempted to conceal these payments. The centerpiece of Defendants' case-in-chief was Defendants' contention that the subject transfers were a "good faith" attempt to maintain separateness of Sam Morabito's and Bayuk's assets from those of Paul Morabito. As part and parcel of this defense, Defendants sought to minimize Paul Morabito's continued direction of Superpumper's business as mere "whiteboarding"[183] or an altruistic attempt to help Bayuk and Sam Morabito in their new endeavor. To maintain this fiction, Defendants failed to disclose the payments by Snowshoe during discovery or in trial, and Defendants' counsel actively avoided disclosing the payments until after the close of evidence.[184] During trial, Defendants testified that Paul Morabito had no interest or economic stake in Snowshoe, and Bayuk expressly denied that Snowshoe gave any money to Paul Morabito[185] or that Snowshoe paid any of Paul Morabito's attorneys' fees.[186]

68. Defendants Snowshoe, Superpumper, and Sam Morabito, along with their joint counsel, knew Bayuk's testimony was false both when it was offered[187] and when Defendants

---

[181] Exhs. 308 (Detail Payment Transaction File List at RSSB_000001–RSSB_000002) and 309 (Declaration of Frank C. Gilmore).

[182] Exh. 308 at RSSB_000002.

[183] Trans. 10/31/18, p. 236, l. 21 – p. 237, l. 1; Trans. 11/1/18, p. 21, ll. 4-14; Trans., 11/6/18, p. 199, l. 3 – p. 200, l. 21.

[184] RSSB's billing records were the subject of a pending subpoena in Paul Morabito's bankruptcy case. Exh. 305 (Aug. 27, 2018 Subpoena to RSSB). RSSB failed to comply with the subpoena until an order compelling compliance was entered by the Bankruptcy Court. Exhs. 306 (Aug. 30, 2018 letter from F. Gilmore to M. Weisenmiller), 307 (Bankruptcy Court's order compelling RSSB's compliance).

[185] Trans. 10/29/18, p. 206, l. 3 – p. 207, l. 1.

[186] Trans. 10/29/18, p. 189, ll. 14-17;

[187] Snowshoe made the payments to RSSB for Paul Morabito's attorneys' fees, and RSSB, joint counsel to Defendants and Paul Morabito, accepted and applied the payments. Exh. 308, 309.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

relied upon it in closing argument and post-trial submissions[188] in support of their contention that Paul Morabito had no interest or involvement in Snowshoe. Defendants offered no explanation for their false testimony after Plaintiff introduced evidence of the Snowshoe payments.

69. In addition to receiving concrete financial benefits from Snowshoe in the years following the Superpumper Transfer, substantial evidence established that prior to the subject transfers, Paul Morabito developed a scheme to continue to control the transferred assets and use them for his benefit while concealing his interest by having his brother and Bayuk hold title, and that following the transfers, he in fact retained significant control of the transferred assets (including Superpumper, the Baruk Properties, and Los Olivos) and used them for his benefit as if he still owned them.

70. Prior to the Superpumper Transfer, on September 21, 2010, Paul Morabito emailed his counsel, Vacco, and a third party potential business partner, Kevin Cross of Cerberus California, LLC, to advise that he "would no longer be actively seeking to accumulate assets in companies that [he was] a shareholder in, and instead would be acting as an advisor to amongst other entities, Snowshoe Petroleum LLC, a company to be owned and operated by [his] brother, Sam; Edward Bayuk, and Dennis Vacco…"[189]

71. Consistent with Paul Morabito's plan, following the Superpumper Transfer, Paul Morabito continued to utilize the transferred assets as if he still owned them. Paul Morabito remained active and involved with respect to the Superpumper business by, among other things, (1) providing advice; (2) directing Superpumper and Snowshoe's auditors and accountants with respect to handling questions related to Superpumper's financials, and (3) remaining a guarantor for the Spirit leases.[190]

---

[188] Trans. 11/26/18, p. 132, ll. 5-15 (arguing that Paul Morabito received no payments following the Merger); [Defendants' Proposed] Findings of Fact, Conclusions of Law, and Judgment (submitted Nov. 26, 2018), at para. 101 ("After the merger and acquisition, Paul had no control, management, or economic stake in Snowshoe.").

[189] Exh. 30.

[190] Exh. 144; Trans. 10/29/18, p. 192, ll. 5-22; p. 202, ll. 2-10; p. 224, l. 24 – p. 225, l. 17.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

72. On April 11, 2011, Paul Morabito sought to negotiate a sale on behalf of Snowshoe. Specifically, Snowshoe sought to acquire Nella Oil Company, LLC and Flyers LLC (the "Nella Deal").[191] Paul Morabito had commenced discussions with Nella prior to the Superpumper Transfer.[192] The April 11, 2011 proposal included the contribution of Snowshoe's 100% interest in Superpumper, "valued at $10,000,000." Despite having no ownership interest in Snowshoe, Paul Morabito negotiated on behalf of Snowshoe without the involvement of Bayuk or Sam Morabito, and admitted that he had simply changed the name on a loan required for the deal from CWC to Snowshoe.[193]

73. In August 2011, Paul Morabito retained Tim Haves, a real estate broker, on behalf of Superpumper Properties, LLC ("Superpumper Properties"), a company apparently owned by Paul Morabito which is distinct from Superpumper.[194] However, Vacco instructed Morabito, without copying Bayuk or Salvatore, to simply use Superpumper to make payment to conceal the payment from the Herbst Parties.[195]

74. In November 2011, despite previously transferring his interest in Baruk LLC to Bayuk, Paul Morabito sought to use the assets of Snowshoe Properties (the successor to Baruk LLC) to settle a lawsuit against him.[196]

75. When the sham of the sale to Bayuk became inconvenient, Paul Morabito advised Vacco to just undo it—to cancel the Baruk Note, convert it back into a 50% share interest in Snowshoe Properties, and to give Paul Morabito the right to trigger an option to split the assets so that Morabito would own 1461 Glenneyre and Bayuk would own 570 Glenneyre.[197]

---

[191] Exhs. 131-133, 135

[192] *See* Exh. 30.

[193] Exh. 132.

[194] Trans. 10/31/18, p. 239, l. 17 – p. 240, l. 17.

[195] Exhs. 136, 137.

[196] Exhs 145, 146.

[197] Exh. 70

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

76. In February 2012, Paul Morabito, through Vacco and Timothy Haves, sought to negotiate a third-party sale of 1461 Glenneyre[198] and to prepare a master lease with the new buyer for Snowshoe Capital, a company owned by Paul Morabito, for the property,[199] without any involvement by Bayuk.

77. Later, in September 2012, in connection with a settlement of Paul Morabito's lawsuit with Bank of America, which had nothing to do with Bayuk, Paul Morabito caused a deed of trust to be placed on 1461 Glenneyre. Vacco simply instructed Bayuk when and where to sign for Paul Morabito, which Bayuk did.[200]

78. Similarly, in September of 2012, Bayuk instructed his and Paul Morabito's counsel that he would sign a second deed of trust Paul Morabito wanted to put on the Mary Fleming House[201] in connection with funding for Virsenet, an entity in which Bayuk and Paul Morabito held joint interests.[202]

79. On October 3, 2012, Morabito instructed Vacco and Christian Lovelace, another lawyer at LMWF, regarding negotiation of a $5 million loan to Snowshoe Properties—in which Morabito supposedly held no interest—without including Bayuk.[203]

80. Ultimately, Paul Morabito and Bayuk finalized the $5 million loan and a first deed of trust was placed on 1461 Glenneyre and a Second Deed of Trust was placed on 570 Glenneyre.[204]

---

[198] Exh. 142.

[199] Exh. 142; Trans. 10/30/18, p. 28, l. 9 – p. 29, l.1.

[200] Exhs. 145-148, 225.

[201] Exh. 150.

[202] Trans. 10/31/18, p. 35, ll. 2-9.

[203] Exh. 151.

[204] Exh. 151; Trans. 10/30/18, p. 35, l. 5 – p. 38, l. 16.

81. The funds loaned, and secured by the Glenneyre Properties, were used, in part, to pay for Paul Morabito's obligations including over $700,000 to satisfy Paul Morabito's obligation to Bank of America.[205]

82. In March 2013, nearly three years after the Superpumper Transfer, Paul Morabito was still bargaining with Superpumper. For example, Paul Morabito proposed a settlement with the Herbst Parties whereby he would transfer Superpumper to the Herbst Parties in partial satisfaction of the judgment. Though Bayuk and Sam Morabito supposedly owned Superpumper at that point through Snowshoe, neither was included in these discussions.[206]

83. In March 2014, Paul Morabito caused Bayuk to transfer the Clayton Property to Desi Moreno without any value to Bayuk.[207]

84. Paul Morabito's continued control makes clear that the intent of the transfers was not to separate Sam Morabito's and Bayuk's interests from Paul Morabito's interests, as Bayuk and Sam Morabito now contend. There was never any separation that one would expect in an arms-length transaction; rather, the Parties remained very much intertwined, and the only difference following the transfers was that the transferred assets were now out of the Herbst Parties' reach.

F. Paul Morabito Rendered Himself Judgment-Proof.

85. By the transfers at issue in this action, along with other transfers, Paul Morabito effectively transferred all or substantially all of his assets prior to any enforceable judgment even being entered against him, which is confirmed by Michele Salazar's net worth report submitted in the punitive damages phase of the Herbst Litigation,[208] the subject transfers rendered Paul Morabito insolvent, unable to satisfy his obligation to the Herbst Parties.

---

[205] Trans. 10/21/18, p. 68, ll. 13-15.

[206] Exh. 153.

[207] Trans. 10/30/18, p. 66, ll. 1-12.

[208] Exh. 44. Notably, the report was from March 2011, well after the subject transfers had been finalized. There is no evidence presented of any disclosure of Paul Morabito's holdings or the detail of the transfer prior to, or at the time of, the subject transfers.

86. Although there was testimony presented from Bayuk[209] and attorney Vacco[210] that the transfers of Paul Morabito's interests to Bayuk after the Oral Ruling were for the purpose of separating Bayuk's interests from Paul Morabito, that testimony is belied by the fact that Bayuk and Paul Morabito co-owned new companies subsequent to the Oral Ruling. For instance, as of April 2012, Bayuk was co-owner of a company with Paul Morabito called Virsenet.[211]

II.
CONCLUSIONS OF LAW

A. Plaintiff has standing to assert a claim for fraudulent transfer under NRS Ch. 112.

1. Paul Morabito became a "debtor" no later than December 3, 2007[212] and remains a debtor under NRS 112.150(6).[213]

2. The Herbst Parties were "creditors" under NRS 112.150(4) no later than December 3, 2007, and they were entitled to assert claims under NRS Chapter 112, the Uniform Fraudulent Transfer Act ("UFTA"), pursuant to NRS 112.210 when this action was commenced.

3. 11 U.S.C. § 544(a)(1) provides that a trustee has "the rights and powers of ... a creditor" as of the commencement of the bankruptcy case. Thus, Plaintiff has standing to sue to avoid and recover transfers under NRS 112.210 and is the proper party in interest under NRCP 17. Plaintiff stands in the shoes of the bankrupt debtor, Paul Morabito, under the Bankruptcy Code, including under 11 U.S.C. § 541, and at the same time stands in the shoes of Paul Morabito's creditors, inclusive of the Herbst Parties, in the pursuit of fraudulently transferred assets under 11

---

[209] Trans. 10/29/18, p. 130, l. 9-24.

[210] Trans. 11/6/18, p. 105, l. 17 – p. 106, l. 23.

[211] Exh. 134, p. LMWF SUPP, p. 068536.

[212] A "debtor" under NRS 112.150(6) is "a person who is liable on a claim," and a "claim" means "a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured" under NRS 112.150(3), which is derived from § 101(5) of the Bankruptcy Code. *See* UFTA, § 1, cmt. 3. A creditor has a "claim" if the injury giving rise to the right to payment manifests itself to the party holding the potential claim, even if both liability and damages are contested and unresolved. In re Flynn, 238 B.R. 742, 746 (Bankr. N.D. Ohio 1999) (citing Grady v. A.H. Robins Co., 839 F.2d 198, 202–03 (4th Cir. 1988), cert. dism'd 487 U.S. 1260, 109 S.Ct. 201, 101 L.Ed.2d 972 (1988). Thus, the Herbst Parties' claim against Paul Morabito and CNC arose prior to the date they commenced the State Court Action, or December 3, 2007.

[213] Exhs. 4, 21-23, 303.

U.S.C. § 544(b). See In re MortgageAmerica Corp., 714 F.2d 1266, 1275 (5th Cir. 1983) (section 544(b) "allows the bankruptcy trustee to step into the shoes of a creditor for the purpose of asserting causes of action under state fraudulent conveyance acts for the benefit of all creditors, not just those who win a race to judgment").

4. This court retains concurrent jurisdiction over claims by a trustee pursuant to 11 U.S.C. § 544(b) under 28 U.S.C. § 1334(b). See In re Rosenblum, 545 B.R. 846, 855-56 (Bankr. E.D. Pa. 2016); Hopkins v. Plant Insulation Co., 349 B.R. 805, 812 (N.D. Cal. 2006); In re Kaufman & Roberts, Inc., 188 B.R. 309, 314 (Bankr. S.D. Fla. 1995) ("[b]ecause of this Court's concurrent jurisdiction with the state court, the Trustee may intervene in the state court action"); In re CitX Corp., 302 B.R. 144, 161 n. 10 (Bankr. E.D. Pa. 2003) (citing Quality Tooling, Inc. v. United States, 47 F.3d 1569, 1573 (Fed. Cir. 1995)) (observing that, under 28 U.S.C. § 1334(b), "bankruptcy courts do not have exclusive jurisdiction over adversary proceedings, and such matters may be heard in a non-bankruptcy forum").

B. The Court Has Jurisdiction Over the Defendants.

1. Jurisdiction over a nonresident defendant is proper when the plaintiff shows that the existence of jurisdiction satisfies Nevada's long-arm statute and does not offend the principles of due process. Viega GmbH v. Eighth Jud. Dist. Ct., 130 Nev. 368, 364-75, 328 P.3d 1152, 1157-58 (2014); Trump v. Eighth Judicial Dist. Court, 109 Nev. 687, 698, 857 P.2d 740, 747 (1993); see also NRS 14.065(1).

2. "Due process requires that "minimum contacts" exist "between the defendant and the forum state 'such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice'". Consipio Holding, BV v. Carlberg, 128 Nev. 454, 458. 282 P.3d 751, 754 (2012) (quoting Trump, 109 Nev. at 698, 857 P.2d at 747). The defendant should "reasonably anticipate being haled into court" in the forum state due to its conduct and connection there. Id. at 458, 282 P.3d at 754 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)). Ultimately, the Court applies a three part-inquiry to determine whether specific personal jurisdiction exists, which consists of: (1) whether the defendant purposely availed itself to the privilege of conducting business in the state, or purposefully directed its actions towards

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

the state, (2) whether the cause of action arises out of the defendant's forum-related activities, and (3) whether the exercise of jurisdiction over the defendant is reasonable. See Consipio, 128 Nev. at 458-459, 282 P.3d at 755.

3. "A defendant's contacts with a state are sufficient to meet the due process requirement if either general personal jurisdiction or specific personal jurisdiction exists." Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court ex rel. County of Clark, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006) The Court has specific personal jurisdiction over any defendant when that defendant "purposefully enters the forum's market or establishes contacts in the forum and affirmatively directs conduct there, and the claims arise from that purposeful contact or conduct." Viega GmbH, 130 Nev. at 375, 328 P.3d at 1156-57.

4. In Nevada, a defendant who assists with fraudulent transfers or other efforts to impede satisfaction of a judgment is subject to personal jurisdiction in Nevada. See Casentini v. Ninth Judicial Dist. Court of State In & For County of Douglas, 110 Nev. 721, 727, 887 P.2d 535, 539-40 (1994). Further, intentional conduct occurring outside the forum state, but designed to cause harm in the forum state, may be a basis for finding minimum contacts. Calder v. Jones, 465 U.S. 783, 787-90 (1984) (holding that defendants must "reasonably anticipate[] being haled into court [in the forum state]" because "their intentional, and allegedly tortious, actions were expressly aimed at" the forum state, even though they occurred outside the forum state, and "they knew that the brunt of th[e] injury would be felt "in the forum state.").

5. The Court finds that based on Defendants' connections to Nevada, including that Bayuk and Sam Morabito are former residents of Reno, each Defendants' acceptance of fraudulent transfers of Nevada assets following a Nevada judgment, and Superpumper's merger with CWC, articles for which were filed in Nevada, it has jurisdiction over all Defendants.

6. With specific reference to Snowshoe, Paul Morabito held shares of CWC, a Nevada entity, which he fraudulently transferred to Snowshoe. Snowshoe is operated by Bayuk and Sam Morabito who are former Nevada residents. Snowshoe was formed with the specific purpose to accept a fraudulent transfer of the CWC shares. Defendants conceded that the Oral Judgment, announced in a Nevada court while Bayuk and Sam Morabito were present, was the

impetus for the transfer to Snowshoe. Snowshoe, Bayuk, and Sam Morabito engaged in a business transactions for the purpose of defrauding Nevada residents of a judgment won in a Nevada state court. Therefore, Snowshoe purposefully availed itself of Nevada jurisdiction and it could, along with the other Defendants, expect to be haled into court in Nevada. Snowshoe's contacts with Nevada were not the result of a unilateral act of a third party, nor were they random or fortuitous; they are the direct and intended consequence of the transfers in September 2010.

A. Nevada's Statutory Scheme for Avoidance and Recovery of Fraudulent Transfers.

1. Nevada has adopted and codified the UFTA in NRS Chapter 112. See generally, NRS Ch. 112; Herup v. First Boston Fin., LLC, 123 Nev. 228, 231, 162 P.3d 870, 872 (2007). The UFTA is designed to prevent a debtor from defrauding creditors by placing the subject property beyond the creditors' reach. Id. at 232, 162 P.3d at 873. The underlying policy of both the fraudulent transfer provisions of the Bankruptcy Code and the UFTA are the same – "to preserve a debtor's assets ***for the benefit of creditors***." Id. at 235, 162 P.3d at 874 (emphasis added).[214]

2. NRS 112.250 directs Nevada courts to apply and construe the UFTA "to effectuate its general purposes to make uniform the law with respect to the subject of this chapter among states enacting it." Herup, 123 Nev. at 237; 162 P.3d at 876 (quoting NRS 112.250).[215]

---

[214] The Nevada Supreme Court noted that it is appropriate to rely on cases interpreting 11 U.S.C. § 548 in light of the similarity of the underlying policy of both UFTA and the Bankruptcy Code of preserving the debtor's assets for the benefit of creditors and the similarity of the language of § 548 and the UFTA. Id., 123 Nev. at 235, 162 P.3d at 874, n. 15 (citing In re Tiger Petroleum Co., 319 B.R. 225, 232 (Bankr. N.D. Okla. 2004) (citing In re Grandote Country Club Company, Ltd., 252 F.3d 1146, 1152 (10th Cir. 2001); In re United Energy Corp., 944 F.2d 589, 594 (9th Cir. 1991); In re First Commercial Management Group, Inc., 279 B.R. 230, 240 (Bankr. N.D. Ill. 2002) ("Except for different statutes of limitations, the [Illinois] and federal statutes are functional equivalents, and the analysis applicable [under federal law] is also applicable [under Illinois law]."); In re Spatz, 222 B.R. 157, 164 (N.D. Ill. 1998) ("Because the provisions of the UFTA parallel § 548 of the Bankruptcy Code, findings made under the Bankruptcy Code are applicable to actions under the UFTA.")); see also Warfield v. Byron, 436 F.3d 551, 558 (5th Cir. 2006) (appropriate to rely on cases interpreting 11 U.S.C. § 548 where provision of UFTA at issue (which mirrored NRS 112.180(1)(a)) was "virtually identical" to 11 U.S.C. § 548 actual intent fraudulent transfer provision) (citing Ramirez Rodriguez v. Dunson (In re Ramirez Rodriguez), 209 B.R. 424 (Bankr. S.D. Tex. 1997); Cuthill v. Greenmark, LLC (In re World Vision Entm't. Inc.), 275 B.R. 641, 658 (Bankr. M.D. Fla. 2002); In re Carrozzella & Richardson, 286 B.R. 480, 485–86 (D. Conn. 2002)).

[215] Accordingly, it is appropriate for the Court to look to the application and construction of the UFTA by other courts. See, e.g., Sportsco Enters., 112 Nev. 625, 917 P.2d at 938 (citing to cases from other jurisdictions to support interpretation of Nevada's UFTA).

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

Fundamentally, the application of the UFTA should be consistent with its purpose of preventing and suppressing fraud. See Donell v. Kowell, 533 F.3d 762, 774 (9th Cir. 2008) (finding the terms of the UFTA are abstract in order to protect defrauded creditors, no matter what form a financial fraud might take) (citations omitted).

3. Further, the UFTA "is remedial and as such should be liberally construed." Cortez v. Vogt, 52 Cal.App.4th 917, 937, 60 Cal.Rptr.2d 841, 853 (Cal. App. 1997) (citing Lind v. O.N. Johnson Co., 204 Minn. 30, 40 (1938)); see also Landmark Community Bank, N.A. v. Klingelhutz, 874 N.W.2d 446 (Minn. Ct. App. 2016), review denied, (Apr. 27, 2016) (stating that the UFTA is remedial and meant to be construed broadly, applying Minnesota's enactment of the UFTA); Sigmon v. Goldman Sachs Mortg. Co., 539 B.R. 221 (S.D. N.Y. 2015) (same, applying Utah's enactment of the UFTA). The objective of UFTA "is to enhance and not to impair the remedies of the creditor." Id. at 937.

4. The UFTA provides that three types of transfers may be set aside: (1) transfers made with actual intent to hinder, delay, or defraud; (2) constructive fraudulent transfers; and (3) certain transfers by insolvent debtors. NRS 112.180(1)(a) (actual intent); NRS 112.180(1)(b) (constructive fraud); NRS 112.190 (transfers by an insolvent); Herup, 123 Nev. at 233, 162 P.3d at 873. At issue here are NRS 112.180(1)(a) and NRS 112.180(1)(b).

5. Defendants contend that the subject transfers are not fraudulent under the UFTA because Bayuk and Sam Morabito had been "exonerated" by Judge Adams in the Herbst Litigation. But even if Judge Adam's ruling that Defendants were not liable to the Herbst Parties on the claims at issue in the Herbst Litigation was pertinent to Defendants' intent with respect to their receipt of transfers after the Oral Ruling, Defendants' intent is not relevant to the analysis of whether the transfers were made with actual intent to hinder, delay, or defraud, or were constructively fraudulent. Both the actual and constructive fraud provisions of the statute address the nature of the transfer and the intent of the *debtor*, rather than the transferee. Specifically, NRS 112.180(1)(a) provides:

> 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 . .

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

> . [w]ith actual intent to hinder, delay or defraud any creditor of the debtor;

(Emphasis added.) NRS 112.180(1)(b) provides:

> 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 . . . [w]ithout receiving a reasonably equivalent value . . . and ***the debtor***: (1) [w]as engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (2) [i]ntended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond his or her ability to pay as they became due.

(Emphasis added.) Thus, it is the debtor's intent, rather than the transferee's intent, which is relevant to whether a transfer is actually or constructively fraudulent under the UFTA. See Herup, 123 Nev. at 234, 162 P.3d at 874 (NRS 112.180(1)(a) plainly provides that, for the district court to enter judgment in favor of a creditor under that statute, it must first determine whether the debtor "*actual[ly] inten[ded]* to hinder, delay or defraud any creditor of the debtor.") (emphasis in Herup); see also In re Nat'l Audit Def. Network, 367 B.R. 207, 221 (Bankr. D. Nev. 2007) ("It is key in this analysis that the required intent to hinder, delay or defraud is the debtor's; no collusion with the transferee is necessary.").

6. The transferee's knowledge becomes relevant under the good faith defense, which the transferee must prove. Herup, 123 Nev. at 236–37, 162 P.3d at 875–76. Under Nevada law, determination of whether a transfer is fraudulent under NRS 112.180 is a prerequisite, but is separate and distinct, from remedies available to the creditor and whether the transferee is entitled to a good faith defense. Id. at 232, 237 162 P.3d at 872, 876 (concluding that determination of whether a fraudulent transfer occurred under NRS 112.180(1)(a) is a prerequisite to setting aside the transfer or imposing damages and analysis of good faith defense, and instructing district court on remand to determine 1) whether the debtor made a fraudulent transfer under the UFTA, 2) whether the transferee acted in objective good faith in purchasing the business from the transferor, and 3) whether the transferee paid reasonably equivalent value for the business for purposes of the good faith defense under NRS 112.220(1)).

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

B. The Transfers Were Made with Intent to Hinder, Delay, or Defraud the Herbst Parties.

7. The UFTA provides that a transfer made or obligation incurred by a debtor may be set aside if it is made or incurred by a debtor "with actual intent to hinder, delay or defraud any creditor of the debtor." NRS 112.180(1)(a); Herup, 123 Nev. at 231, 162 P.3d at 872. "Traditionally, the intent required for actual fraudulent transfers is established by circumstantial evidence, since it will be the rare case in which the debtor testifies under oath that he or she intended to defraud creditors." See In re Nat'l Audit Def. Network, 367 B.R. at 219–20 (applying NUFTA) (citing Dahar v. Jackson (In re Jackson), 318 B.R. 5, 13 (Bankr. D. N.H. 2004). Intent may be established by circumstantial evidence or inferences drawn from the debtor's course of conduct. Id., 367 B.R. at 219 (citing Mazer v. Jones (In re Jones), 184 B.R. 377, 385 (Bankr. D. N.M. 1995)).

8. Moreover, the debtor's intent does not necessarily have to be to defraud a creditor. Rather, the "intent" element is satisfied is the debtor intends to hinder or delay or defraud a creditor. In re Nat'l Audit Def. Network, 367 B.R. at 221–22 ("Given the alternative phrasing of the requisite intent—a fraudulent transfer exists if there is an intent to hinder, delay *or* defraud—such transfers are also made with the requisite intent under Section 548(a)(1) and [NRS] 112.180.1(a)) (citations omitted). The debtor's knowledge that a transaction will operate to the detriment of creditors is sufficient to establish actual intent to defraud a creditor. Hayes v. Palm Seedlings Partners–A (In re Agric. Research & Tech. Group, Inc.), 916 F.2d 528, 535 (9th Cir. 1990) (quoting Coleman Am. Mov. Servs., Inc. v. First Nat'l Bank and Trust Co. (In re Am. Prop., Inc.), 14 B.R. 637, 643 (Bankr. D. Kan. 1981)). If the debtor has a motive of effecting the transaction to hinder a creditor, then the transaction is intentionally fraudulent even if the debtor also has non-fraudulent motives. See Bertram v. WFI Stadium, Inc., 41 A.3d 1239, 1247, 2012 WL 1427788 (D.C. 2012) (even if a debtor has at least one non-fraudulent motive for a transaction, the additional motive of effecting the transaction to hinder a creditor is a sufficient ground for an unassailable conclusion of fraudulent intent). Further, where the moving party proves fraudulent intent, the transfer is deemed fraudulent, even if it is in exchange for valuable or full consideration.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

See In re Zeigler, 320 B.R. 362, 373 (Bankr. N.D. Ill. 2005) (applying Illinois enactment of UFTA).

9. NRS 112.180(2) sets forth the following non-exclusive list of factors (generally known as the "badges of fraud")[216] to be considered in determining actual intent:

a. the transfer or obligation was to an insider;

b. the debtor retained possession or control of the property transferred after the transfer;

c. the transfer or obligation was disclosed or concealed;

d. before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

e. the transfer was of substantially all the debtor's assets;

f. the debtor absconded;

g. the debtor removed or concealed assets;

h. the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

i. the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

j. the transfer occurred shortly before or shortly after a substantial debt was incurred; and

k. the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

NRS 112.180(2). This list is illustrative, not exhaustive, and none of the badges standing alone are necessary or sufficient as "the range of activities that fraudsters may use to commit fraud cannot and should not be definitively cataloged." In re Nat'l Audit Def. Network, 367 B.R. at 220.

[216] See Nat'l Audit Def. Network, 367 B.R. at 220 (noting that the "badges of fraud" developed by the courts are recurring actions that historically have been associated with the actual intent to hinder, delay or defraud creditors) (citing Twyne's Case, 3 Coke 80b, 76 Eng. Rep. 809 (Star Chamber 1601) (developing early list of badges of fraud); Cuthill v. Greenmark, LLC (In re World Vision Entm't, Inc.), 275 B.R. 641, 656 (Bankr. M.D. Fla. 2002); Indianapolis Indiana Aamco Dealers Advertising Pool v. Anderson, 746 N.E.2d 383, 390 (Ind. App. Ct. 2001)).

10. The Nevada Supreme Court has also recognized the following indicia of fraud that will support a determination of actual fraudulent intent:

> lack of consideration for the conveyance, the transfer of the debtor's entire estate, relationship between transferor and transferee, the pendency or threat of litigation, secrecy or hurried transaction, insolvency or indebtedness of the transferor, departure from the usual method of business, the retention by the debtor of possession of the property, and the reservation of benefit to the transferor.

Sportsco Enters. v. Morris, 112 Nev. 625, 632, 917 P.2d 934, 938 (1996) (citations omitted).

11. The UFTA list of "badges of fraud" provides neither a counting rule, nor a mathematical formula, and no minimum number of factors tips the scales toward actual intent. In re Beverly, 374 B.R. 221, 236 (B.A.P. 9th Cir. 2007), aff'd in part, dismissed in part, 551 F.3d 1092 (9th Cir. 2008) (applying the California enacted UFTA). The Ninth Circuit has explained that "[t]he presence of a single badge of fraud may spur mere suspicion; the confluence of several can constitute conclusive evidence of actual intent to defraud, absent 'significantly clear' evidence of a legitimate supervening purpose." In re Acequia, Inc., 34 F.3d 800 (9th Cir. 1994) (emphasis added); see also S. New England Tel. Co. v. Sahara & Arden, Inc., No. 2:09-CV-00534-RCJ-PAL, 2010 WL 2035330, at *4 (D. Nev. May 24, 2010) ("[a]lthough the 'presence of a single factor, i.e. a badge of fraud, may cast suspicion on the transferor's intent, the confluence of several in one transaction generally provides conclusive evidence of an actual intent to defraud.'") (quoting Gilchinsky v. Nat'l Westminster Bank, 159 N.J. 463, 732 A.2d 482, 490 (N.J. 1999)); In re Nat'l Audit Def., 367 B.R. at 220 ("Although none of the badges standing alone will establish fraud, the existence of several of them will raise a presumption of fraud."). In Nevada, as few as three badges have been found to establish clear and convincing evidence of actual fraudulent intent. See Sportsco Enters., 112 Nev. at 632, 917 P.2d at 938.

12. Where the plaintiff establishes the existence of "indicia of 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." See Sportsco Enters., 112 Nev. at 632, 917 P.2d at 938 (citing Territorial Sav. & Loan Ass'n v. Baird, 781 P.2d 452, 462 n. 18 (Utah Ct. App. 1989); see also Southern New England Telephone Co. v. Sahara & Arden, Inc., 2010 WL 2035330, *4-12 (D. Nev. May 24,

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

2010) (applying the burden-shifting analysis under NRS 112.180(1)(a) and granting summary judgment to creditor).

13. The evidence relative to a confluence of at least a majority of the badges of fraud identified by Nevada statute and the Sportsco case amounts to conclusive, or clear and convincing, evidence of Paul Morabito's actual intent to delay, hinder or defraud the Herbst Parties. See Lubbe v. Barba, 91 Nev. 596, 598, 540 P.2d 115, 117 (1975) (establishing a requirement for proving contentions of fraud by clear and convincing evidence).

1. Paul Morabito's Actual Intent Is Apparent from His Own Statements and Actions.

16. This Court need not resort to circumstantial evidence to divine the intent of the debtor, as the debtor made his intent clear through his actions and his own statements.

17. Immediately following the Oral Ruling, Paul Morabito transferred $6 million in cash off-shore.[217] Within two days of the Oral Ruling, he hired counsel for advice on how to evade the Herbst Parties' judgment and protect his assets from the Herbst Parties.[218] Recognizing that the transfers would be challenged, he explained his motive as depriving the Herbst Parties of a perceived "home court, good old boy advantage."[219] When he was advised by Gary Graber that the contemplated transfers may constitute fraudulent transfers, he terminated Mr. Graber's firm.[220] Paul Morabito then used his long-time counsel, Vacco, to implement a series of transactions that resulted in him being divested of most of his assets within a two-week period, before the FF&CL was even entered.

---

[217] Exh. 37, p. 4, MORABITO (341).005352.

[218] *See* Exh. 25 (Hodgson Ross indicating they had a number of ideas, "including a possible marital split between Paul [Morabito] and [Bayuk] pursuant to which [Bayuk] could retain some of Paul [Morabito's] assets" and Vacco of LMWF following with discussion of Paul Morabito selling his interest in CWC to Bayuk and Sam Morabito); see also Trans. 11/1/18, p. 29, ll. 13-18 and p. 30, ll. 21-22; 11/1/18, p. 33, ll. 1-6; 11/1/18, p. 46, ll. 13-15; Exhs. 26 discussing moving to California) and 32 ("[Bayuk] and I plan on changing our primary residence from Reno to Laguna Beach.").

[219] Exh. 29.

[220] Trans. 11/1/18, p. 35, ll. 6-14.

18. Subsequent to the transfers, Paul Morabito was seemingly ecstatic that he had stripped himself of any assets other than the Panorama Property and had effectively limited the Herbst Parties' collection attempts to the Panorama Property, telling Vacco:

> With the sale of the Reno house closing December 31st our friends in Las Vegas get a nice gift. They also acknowledge the change of ownership to just me. $1.5 million is [their] bounty. If we go past December 31st the only material asset that they can lay their hands on through me is access to Edward Bayuk and Virsenet - and that is now valued at $2.12 billion. After dilution Edward owns 72%. $85 million is 4% of the overall value. If they want to go after me and think that they can make a claim on him, then that's [their] value proposition. . . .[221]

19. Then on April 24, 2013, on the eve of Paul Morabito's default under the Forbearance Agreement with the Herbst Parties, he asked Vacco "How do you do this so that Herbst cannot ever access it?"[222]

20. Paul Morabito's communications with his counsel both before and after the transfers leave no doubt of his knowledge that the transactions would operate to the detriment of the Herbst Parties. A clearer case of a debtor's actual intent to hinder, delay, or defraud is hard to imagine. The evidence is sufficient to establish actual intent to hinder, delay, or defraud a creditor by clear and convincing evidence without any further consideration of the statutory or common-law badges of fraud. See Hayes, 916 F.2d at 535 (debtor's knowledge that a transaction will operate to the detriment of creditors is sufficient to establish actual intent).

21. Even if the court were to accept the story offered by Paul Morabito and Defendants that the parties were seeking to separate their assets as a result of the Oral Ruling,, a non-fraudulent motive will not "cure" a transaction effectuated with actual intent.[223] See Bertram, 41 A.3d at

---

[221] Exh. 161 (December 18, 2012 email from Paul Morabito to Dennis Vacco).

[222] Exh. 162.

[223] As noted above, the story that Paul Morabito was merely separating his assets from Bayuk and Sam Morabito in September 2010 is belied by the transfer of $6 million from Paul Morabito's account immediately following the Oral Ruling, along with Paul Morabito's continued involvement in their businesses as an "advisor."

1247 (transaction is intentionally fraudulent if debtor has a motive of effecting a transaction to hinder a creditor, even if the debtor also has non-fraudulent motives).

2. The Presence of Multiple Badges of Fraud Compel a Determination of Paul Morabito's Intent to Hinder, Delay, or Defraud the Herbst Parties.

21. Even if Paul Morabito had not all but admitted his intent to hinder and delay the Herbst Parties, consideration of the badges of fraud compel the conclusion that Paul Morabito intended to hinder, delay, or defraud his creditors, the Herbst Parties.

a. The transfers were to insiders – NRS 112.180(2)(a).

22. The transfers at issue in this case were made to insiders. Under NUFTA, a relative of the debtor is an insider. NRS 112.150(7)(a)(1). Here, Sam Morabito is Paul Morabito's brother and, therefore, a relative of the debtor.

23. NRS 112.150(7)(d) further provides that a statutory insider includes an affiliate, or an insider of an affiliate as if the affiliate were the debtor. "Affiliate" is defined as:

> (b) A corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by the debtor or a person who directly or indirectly owns, controls or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities: (1) As a fiduciary or agent without sole power to vote the securities; or (2) Solely to secure a debt, if the person has not in fact exercised the power to vote…

NRS 112.150(1)(b). Paul Morabito directly and indirectly owned and controlled 20% more of the outstanding voting securities of CWC, Superpumper, and Baruk LLC and therefore, they all constitute Paul Morabito's affiliates. If the affiliate is a corporation, an insider includes (1) a director of the affiliate, (2) an officer of the affiliate, or (3) a person in control of the affiliate. Here, Bayuk was a director and officer of CWC and Superpumper along with Paul Morabito and owned 50% of Baruk Properties with Paul Morabito. Therefore, Bayuk was therefore an insider of Paul Morabito's affiliates and, by extension, a statutory insider of Paul Morabito.

24. Furthermore, the "UFTA's definition of 'insider' is not intended to limit an insider to the …listed subjects. Instead, the drafters provided the list for purposes of exemplification." See In re Holloway, 955 F.2d 1008, 110 (5th Cir. 1992) (analyzing identical provision under

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

Texas' adopted UFTA)); Landmark Cmty. Bank, N.A. v. Klingelhutz, 874 N.W.2d 446, 452, 2016 WL 363521 (Minn. Ct. App. 2016), review denied (Apr. 27, 2016) (finding that single-member LLC of spouse was an insider because the definition of "insider" is not limiting) (citing Citizens State Bank Norwood Young Am. v. Brown, 849 N.W.2d 55, 62–63 (Minn. 2014) (finding that former spouse was an insider)). The cases evaluating whether a transferee is a non-statutory insider have focused on two factors: (1) the closeness of the relationship between the transferee and the debtor, and (2) whether the transactions between them were conducted at arm's length. In re Emerson, supra at 707 (citing to In re Holloway, 955 F.2d 1008, 1011 (5th Cir. 1992)); In re Village at Lakeridge, LLC, 814 F.3d 993, 996 (9th Cir. 2016). "The true test of 'insider' status is whether one's dealings with the debtor cannot accurately be characterized as arm's-length." In re Craig Systems Corp., 244 B.R. 529, 539 (Bankr. D. Mass. 2000).

25. Bayuk was Paul Morabito's boyfriend, long-time companion, and business partner at the time of the subject transfers. Courts have consistently held that domestic partners, same-sex or otherwise, are, like spouses, insiders for the purposes of an avoidance analysis. See Bloom v. Camp, 336 Ga. App. 891, 895, 785 S.E.2d 573, 578, adopted, (Ga. Super. May 24, 2016) (finding same-sex partner to be an insider though same-sex marriages were not recognized in Georgia at the time of the transfer); In re Fisher, 296 F. App'x 494, 502, 2008 WL 4569946, at *5 (6th Cir. 2008) (though finding no fraudulent transfer occurred, finding that opposite-sex domestic partner was an insider); In re Tanner, 145 B.R. 672, 678 (Bankr. W.D. Wash. 1992) (same-sex partner who had cohabitated with debtor was an insider) (citing Matter of Montanino, 15 B.R. 307 (Bankr. D. N.J. 1981) (parents of debtor's live-in fiancé were insiders); In re Ribcke, 64 B.R. 663 (Bankr. D. Md. 1986) (parents of a debtor's deceased wife were insiders); In re O'Connell, 119 B.R. 311 (Bankr. M.D. Fla. 1990) (a good friend who had made numerous informal loans to a debtor was an insider); In re Standard Stores, Inc., 124 B.R. 318 (Bankr. C.D. Cal. 1991) (a corporate debtor's president's ex-brother-in-law was an insider with respect to a transfer five years after divorce from debtor's president's sister).

26. Paul Morabito and Bayuk were long-time companions and business partners who cohabitated for over a decade prior to the subject transfers, owned several properties together as

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

tenants in common, and co-owned several businesses. At the same time the transfers were occurring, Paul Morabito identified Bayuk as his "boyfriend and longtime companion." Indeed, Paul Morabito's counsel even suggested one idea to protect Paul Morabito's assets from collection was a "domestic partner split." Their joint counsel, Vacco, testified that Paul Morabito and Bayuk remained together following the transfers, and following the transfers, they continued to engage in business together and their finances were entangled. Paul Morabito described his relationship with Baruk as "family" who "will be the central person in my life for the rest of my life." Given the nature of their relationship, and the nature of the subject transactions, the subject transactions between Paul Morabito and Bayuk were not arm's length in their transactions with one another.

b. <u>The debtor retained possession or control of the property transferred after the transfer – NRS 112.180(2)(b).</u>

27. It was Paul Morabito's intent that he would continue to be involved in his businesses behind the scenes, but that he would not have assets titled in his name and his businesses would be titled in the names of Bayuk, Sam Morabito, and Dennis Vacco.[224]

28. Consistent with his plan, following the transfers, Paul Morabito, Bayuk, and Sam Morabito maintained the *status quo*, with Paul Morabito retaining significant control of and continuing to use the transferred assets as if he still owned them. After the transfers, Bayuk and Sam Morabito funded Paul Morabito's lavish lifestyle and Bayuk supplied Paul Morabito with money, credit card, a Mercedes, and a luxurious home. Paul Morabito continued to receive financial remuneration from Snowshoe, which paid $126,000 in Paul Morabito's personal legal expenses between October of 2015 and March of 2018—years after his financial interests were supposedly separated from those of his brother and Bayuk.[225]

[224] Exh. 30 (9/21/2010 email to joint counsel, Vacco, and a third party representing that he "would no longer be actively seeking to accumulate assets in companies that [he was] a shareholder in, and instead would be acting as an advisor to amongst other entities, Snowshoe Petroleum LLC, a company to be owned and operated by [his] brother, Sam; Edward Bayuk, and Dennis Vacco…").

[225] Exhs. 308, 309.

29. Paul Morabito continued to negotiate deals using Superpumper as if he still owned it, and had general authority to speak on behalf of Snowshoe.[226] Among other examples of his continued control, in April 11, 2011, without any involvement by Bayuk or Sam Morabito, Paul Morabito proposed contributing Snowshoe's 100% interest in Superpumper in connection with the proposed Nella Deal, for which negotiations had commenced prior to the transfers.[227] In August 2011, Paul Morabito's and Defendants' joint counsel advised Paul Morabito (without copying Bayuk or Sam Morabito) to simply use Superpumper to make a payment to real estate broker Tim Haves in order to conceal the payment from the Herbst Parties.[228] In April of 2012, in response to inquiries by Superpumper's auditors regarding affiliate loans, Paul Morabito instructed Vacco "MY POSITION IS BELOW - PLEASE MAKE IT HAPPEN".[229] In March 2013, nearly three years after the Superpumper Transfer, Paul Morabito was still bargaining with Superpumper, proposing a settlement with the Herbst Parties whereby he would transfer Superpumper to the Herbst Parties in partial satisfaction of the judgment.[230] Though Bayuk and Sam Morabito supposedly owned Superpumper at that point through Snowshoe, neither was included in these discussions.

30. Paul Morabito also continued to use Superpumper Properties, the successor to Baruk LLC, and its assets as if he still owned them. In November of 2011, Paul Morabito sought to use the assets of Snowshoe Properties (the successor to Baruk LLC) to settle a lawsuit against him. In February 2012, he sought to negotiate a third-party sale of 1461 Glenneyre and a master lease with the new buyer for Snowshoe Capital, a company owned by Paul Morabito, for the property, without any involvement by Bayuk.[231] Later, he caused a second deed of trust to be

---

[226] Trans. 10/29/18, p. 224, l. 3 – p. 226, l. 20.

[227] Exhs. 131, 132 133; Trans. 11/2/18, p. 12, l. 23 – p. 16, l. 3; p. 16, l. 4 – p. 17, l. 19.

[228] Exhs. 136 and 137.

[229] Exh. 144.

[230] Exh. 153.

[231] Exh. 142;Trans. 10/30/18, p. 28, l. 9 – p. 29, l.1.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

placed on 1461 Glenneyre in connection with a settlement of his lawsuit with Bank of America, which had nothing to do with Bayuk—Vacco simply instructed Bayuk when and where to sign for Paul Morabito.[232] Similarly, in September of 2012, Bayuk instructed their counsel that he would sign a second deed of trust on the Mary Fleming House in Palm Springs that Paul Morabito wanted in connection with funding for Virsenet, an entity in which Bayuk and Paul Morabito held joint interests.[233] When the sham of the sale of the Baruk LLC interest to Bayuk became inconvenient, Paul Morabito instructed Vacco to just undo it.[234] On October 3, 2012, Paul Morabito instructed Vacco and Lovelace regarding negotiation of a $5 million loan to Snowshoe Properties—in which Paul Morabito supposedly held no interest—without including Bayuk.[235] In March 2014, Paul Morabito caused Bayuk to transfer the Clayton Property to Desi Moreno without any value to Bayuk.[236]

31. Paul Morabito's continued control makes clear that the intent of the transfers was not to separate Sam Morabito's and Bayuk's interests from Paul Morabito's interests, as Bayuk and Sam Morabito now contend. There was never any separation one would expect in an arms' length transaction; rather, Paul Morabito viewed the transferred assets as if he still owned them. The only difference following the transfers was that the assets were out of the Herbst Parties' reach. While Bayuk and Sam Morabito often attempted to characterize Paul Morabito's representations regarding the assets and his continued use of the assets as mere "whiteboarding," neither of them ever repudiated Paul Morabito's representations regarding the assets or his attempts to sell, lien, or otherwise leverage them in connection with a transaction,[237] and, consistent with their unwavering support for Paul Morabito,[238] testified that they believed in his

---

[232] Exhs. 145, 147, 148, 152.

[233] Exh. 150; *see also* Exhs. 159 and 160.

[234] Exh. 70.

[235] Exh. 151.

[236] Trans. 10/30/18, p. 66, ll. 1-12.

[237] Nor did their counsel, Vacco.

[238] See Trans. 10/30/18, p. 98, l. 4 – p. 99, l. 7; p. 233, l. 15 – 235, l. 9

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

ability to put together a favorable transaction and would have agreed to a transaction negotiated by him.[239]

c. <u>The transfers were concealed (NRS 112.180(2)(c)) and the debtor removed or concealed assets – NRS 112.180(2)(g).</u>[240]

32. Judge Adams announced the Oral Ruling on September 13, 2010. By October 1, 2010, the transfers were largely complete. Neither Paul Morabito, his counsel, nor Defendants informed the Herbst Parties that the transfers were occurring, despite the fact that Paul Morabito and the Herbst Parties were in the midst of preparing for the punitive damages phase of the trial.

33. The Herbst Parties were not informed of the Baruk Transfer, much less the subsequent transfers of the Baruk Properties. For no legitimate purpose, both the name and location of the entity owning the Baruk Properties was changed to Snowshoe Properties. By October 1, 2010, Bayuk had transferred the Palm Springs Property again, this time to the Bayuk Trust. Thereafter, the $1,617,500 Note was assigned to Woodland Heights, Ltd. so the Herbst Parties could not simply attach the proceeds to satisfy the Confessed Judgment.

34. The Herbst Parties were not informed of the Compass Loan, the distributions by Superpumper, the Matrix Valuation, or the Superpumper Agreement. Further, Paul Morabito again ensured the removal of his assets from Nevada when he transferred his interest to Snowshoe, a new company incorporated in New York.

35. As Paul Morabito made clear in his communications with his counsel, removing and concealing assets in different jurisdictions was an intentional measure to ensure that the assets were out of the reach of the Nevada courts and to strip the Herbst Parties of a perceived "home court, good old boy" advantage in their collection efforts.

d. <u>Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit – NRS 112.180(2)(d), the transfer occurred shortly before or shortly after a substantial debt was incurred – NRS 112.180(2)(j), and the transfers were hurried – Sportsco Enterprises.</u>

---

[239] Trans. 10/30/18, p. 239, l. 1-13.

[240] These badges of fraud are overlapping, and therefore are discussed together.

36. The presence of these related badges of fraud are the most obvious and compelling. Not only had Paul Morabito been sued by the Herbst Parties, but Judge Adams had announced an $85 million Oral Ruling against him on September 13, 2010.

37. The transfers were largely completed within the next two weeks, when the punitive damages phase of the litigation was just commencing. See Sportsco Enters., 112 Nev. at 632, 917 P.2d at 938 (secrecy or a hurried transaction as indicative of fraud). By the time of Judge Adams' FF&CL, let alone entry of the Final Judgment on August 23, 2011, Paul Morabito's attachable assets were gone. It is not even necessary to infer that the Oral Ruling prompted the transfers, because Paul Morabito, Bayuk and Sam Morabito all admitted it.[241]

e. The transfer was of substantially all the debtor's assets – NRS 112.180(2)(e).

38. Within days after Judge Adams announced the Oral Ruling, Paul Morabito divested himself of almost all, if not all, of his assets: approximately $7 million in funds were transferred from his bank account, Paul Morabito's interest in the Laguna Properties was transferred, the 50% interest in Baruk LLC, and the 80% interests in Superpumper. He even transferred his furnishings and personal property (including those he continued to use), to Bayuk. Paul Morabito was left with minimal tangible assets subject to execution by his creditors.

f. The value of the consideration received by the debtor was not reasonably equivalent to the value of the asset transferred – NRS 112.180(2)(h), and there was lack of consideration for the transfers.[242]

39. Whether a debtor receives reasonably equivalent value is determined from the perspective of creditors. In Herup, the Nevada Supreme Court found that the underlying public policy of the Bankruptcy Code and the UFTA is the same: "to preserve a debtor's assets ***for the benefit of creditors***." Herup v. First Boston Fin., LLC, 123 Nev. 228, 235, 162 P.3d 870, 874 (2007) (emphasis added). Because the language of the UFTA and § 548 of the Bankruptcy Code

---

[241] Trans. 10/29/18, p. 132, ll. 6-16; *see also id.*, p. 132, ll. 17-19 (stipulating that Oral Ruling was the impetus for the transfers); Trans. 10/31/18, p. 150, l. 20 – p. 151, l. 3.

[242] The lack of reasonably equivalent value is both a badge of fraud under NRS 112.180(2)(h) and an element of a constructive fraudulent transfer under NRS 112.180(1)(b).

are nearly identical and the purposes of the different laws are the same, cases applying § 548 of the Bankruptcy Code are persuasive authority. See id. (citing cases) (synthesizing authority for the conclusion that the bankruptcy code dictates "the appropriate standard to apply under Nevada's version of the UFTA.").

40. Likewise, the comments to the UFTA expressly state that the definition of "value" within the uniform act "is adapted from § 548(d)(2)(A) of the Bankruptcy Code.... The definition [ ]is not exclusive [and] is to be determined in light of the purpose of the Act to protect a debtor's estate from being depleted to the prejudice of the debtor's unsecured creditors." UFTA § 3, cmt. 2. "***Consideration having no utility from a creditor's viewpoint does not satisfy the statutory definition.***" Id. (emphasis added). Other jurisdictions have reached the same conclusion. See In re Countrywide Fin. Corp. Mortg.-Backed Sec. Litig., No. 211ML02265MRPMANX, 2013 WL 12148482, at *6 (C.D. Cal. June 7, 2013); Janvey v. Golf Channel, Inc., 792 F.3d 539, 544 (5th Cir. 2015), certified question answered, 487 S.W.3d 560 (Tex. 2016). California's UFTA, for example, "requires 'reasonably equivalent value' to be determined ***from the standpoint of the creditors***," as contemplated under section 548. In re Prejean, 994 F.2d 706, 708 (9th Cir. 1993) (emphasis added); see In re Bay Plastics, Inc., 187 B.R. 315, 329 (Bankr. C.D. Cal. 1995) (noting that "under California law, reasonable equivalence must be determined from the standpoint of creditors"); see also In re Blixseth, 489 B.R. 154, 184 (Bankr. D. Mont. 2013), aff'd, 514 B.R. 871 (D. Mont. 2014), aff'd in part, rev'd in part, 679 F. App'x 611 (9th Cir. 2017).

41. To constitute a cognizable benefit under the UFTA, (1) the benefit must be received by the debtor, such that the debtor's net worth is preserved ***to the exception of the interests of the creditors***; (2) such benefits must be for a cognizable value, including "property" and "satisfaction or securing of a present or antecedent debt of the debtor;" and (3) the benefit must have been received by the debtor in exchange for the transfer or obligation. See In re Blixseth, 489 B.R. at 184; see also SE Prop. Holdings, LLC v. Braswell, 255 F. Supp. 3d 1187, 1198 (S.D. Ala. 2017) (citing UFTA and synthesizing similar bankruptcy authority for the conclusion that "reasonably equivalent value" is measured from the net effect of the transfer on the debtor's estate and the value of the transfer to the creditors at-issue). Consequently, states do not determine the

reasonably equivalent value of a given transfer under the UFTA relative to the transferee or the transferor, but relative to assets available for the benefit of creditors. Consideration is "reasonably equivalent" if it leaves *creditors* in the substantially the same position as before the transfers.

42. Here, Paul Morabito did not receive reasonably equivalent value in exchange for the assets he transferred. Prior to the subject transfers, Paul Morabito owned (1) a 70% interest in the Panorama Property, a 75% interest in the El Camino Property, and a 50% interest in the Los Olivos Property, with a collective value of approximately $1,916,250; (2) a 50% interest in Baruk LLC, with a value of approximately $1,654,550, and (3) 80% of the equity of CWC, which held an 100% interest in Superpumper, with a value of $10,440,000. In addition, he owned personal property at the El Camino, Los Olivos, Panorama, and Mary Fleming Properties which he valued at $2,000,000.

43. After the transfers, Paul Morabito owned the Panorama Property, which had an equity value of only $971,136 (further reduced by credits for the theatre equipment and water rights that Bayuk retained), $60,000 in cash and nominal payments for the personal property, the $1,617,050 Note, the $492,937.30 Note, and a slew of payments as directed to the LMWF firm (who represented Paul Morabito and Defendants) and other third parties to support his lifestyle. Even assuming these were payments made for Paul Morabito's benefit, they equal less than half of the value Paul Morabito held just prior to the transfer and without benefit to Paul Morabito's creditors.

44. In reality, however, the evidence establishes that Paul Morabito received even less, because the bulk of the "value" received—the $1,617,050 and $492,937.30 Notes—were illusory, and certainly did not result in tangible assets available for Paul Morabito's creditors. A promise is illusory when it appears "so insubstantial as to impose no obligation at all on the promisor – who says, in effect, 'I will if I want to.'" See Sateriale v. R.J. Reynolds Tobacco Co., 687 F.3d 1132, 1146 (9th Cir. 2012). Paul Morabito's relationships with Bayuk and Sam Morabito were such that Bayuk's and Sam Morabito's obligations on the Notes were nothing more than "I will if I want to." Defendants have been unable to credibly account for payments on the Notes, the terms of which were never enforced and meaningless to the parties.

45. Thus, while Paul Morabito transferred executable assets to the Defendants, he received only a fraction of the value in cash, illusory notes, and promises to maintain his lifestyle without regard for the terms of the notes or the agreements documenting the transfers.

C. The Transfers Were Constructively Fraudulent as to Creditors.

42. The evidence presented, the chronology of events and transfer of assets, and the other surrounding circumstances lead to the inescapable conclusion that the transfers to the Defendants were intentionally, willfully and fraudulently designed to evade collection by the Herbst Parties. But even if actual intent had not been established, the transfers would be avoidable as constructively fraudulent. Under Nevada's constructive fraud provision:

> [a] transfer made... by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made., if the debtor made the transfer... [w]ithout receiving a reasonably equivalent value in exchange for the transfer..., and the debtor:
>
> > (1) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
> >
> > (2) Intended to incur, or believed or 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)(b).

43. While the creditor generally bears the burden of proof both with respect to the insolvency of the debtor and the inadequacy of consideration, as with the actual fraudulent transfer statute, "under [the] constructively fraudulent transfer statute, 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 hinder, delay, or defraud the creditor. See Sportsco Enters., 112 Nev. at 632, 917 P.2d at 938 (citing Territorial Sav. & Loan Ass'n v. Baird, 781 P.2d 452, 462 n. 18 (Utah Ct. App. 1989); Erjavec v. Herrick, 827 P.2d 615, 617 (Colo. Ct. App. 1992)); In re Nat'l Audit Defense Network, 367 B.R. 207, 226 (Bankr. D. Nev. 2007) (applying burden shifting analysis to constructive fraud). While "[i]t may appear contradictory to consider facts used to infer actual intent to defraud in order to determine 'constructive' fraud," the

"[f]actors relevant to determining actual intent to defraud, a higher culpability standard, should be equally probative where something less than actual intent will suffice." In re Soza, 542 F.3d 1060, 1066-67 (5th Cir. 2008).

44. To rebut an inference of fraud, the defendant must show either that the debtor was solvent at the time of the transfer and not rendered insolvent thereby or that the transfer was supported by fair consideration.[243] Sportsco Enters., 112 Nev. at 632, 917 P.2d at 938 (citing Kirkland v. Risso, 98 Cal.App.3d 971, 159 Cal.Rptr. 798, 802 (Ct. App. 1980)).

45. A number of the badges of fraud are present in this case, giving rise to a presumption that the transfers were constructively fraudulent, thereby shifting the burden to Defendants to establish the transfers were not constructively fraudulent. Defendants have not offered evidence sufficient to overcome the presumption. As discussed in the context of actual intent under NRS 112.180(a)(1), Paul Morabito did not receive reasonably equivalent value in exchange for the subject transfers. Moreover, after the transfers, Paul Morabito was left with insufficient assets to even meet his basic expenses, relying on Bayuk and Sam Morabito to pay his living expenses. The transfers were made immediately following Judge Adams' Oral Ruling, but before entry of the Final Judgment. As of the Oral Ruling, Paul Morabito knew, or at the very least, should have known, that he would incur a debt to the Herbst Parties beyond his ability to pay as it came due. That insolvency was imminent upon entry of the final judgment was confirmed by Michele Salazar in her net worth expert report submitted in the Herbst Litigation.[244]

D. Plaintiff Is Entitled to Avoidance of the Transfers and Return of the Property or the Value Thereof.

46. Having determined that the transfers were actually or constructively fraudulent under NRS 112.180(a)(1) or (a)(2), the Court must evaluate the Defendants' good faith defense and the equable remedies under NRS 112.210 and NRS 112.220. See Herup, 123 Nev. at 232, 162

[243] The term "fair consideration" derives from the Uniform Fraudulent Conveyance Act, 7A U.L.A. 427, 428 (1985), the predecessor to the UFTA. In re Bay Plastics, Inc., 187 B.R. 315, 322, 329 (Bankr. C.D. Cal. 1995). The UFTA replaced "fair consideration" with "reasonably equivalent value." Id. at 329.

[244] Exh. 44.

P.3d at 872; Cadle Co. v. Woods & Erickson, LLP, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1053 (2015) (finding that Nevada's fraudulent transfer statute creates equitable remedies including avoidance, attachment, and, subject to principles of equity and the rules of civil procedure, injunction, receivership, or other relief under NRS 112.210 or payment for value under NRS 112.220).

47. Nevada law provides a complete defense to avoidance to a good faith transferee who pays reasonably equivalent value as follows:

> A transfer or obligation is not voidable under paragraph (a) of subsection 1 of NRS 112.180[245] against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

NRS 112.220(1). A partial defense is afforded to a good faith transferee under NRS 112.220(4), which provides:

> Notwithstanding voidability of a transfer or an obligation under this chapter, a transferee or obligee who took in good faith is entitled, to the extent of the value given the debtor for the transfer or obligation, to:
>
> (a) A lien on or a right to retain any interest in the asset transferred;
>
> (b) Enforcement of any obligation incurred; or
>
> (c) A reduction in the amount of the liability on the judgment.

Thus, under Nevada law, if the complete defense under subsection (1) of NRS 112.220 does not apply to a transfer made with actual intent because less than "reasonably equivalent value" was given, a good faith transferee may receive a lien, enforcement of any obligation incurred, and/or "a reduction in the amount of the liability on the judgment" to the extent of the value provided. See In re Nat'l Audit Def. Network, 367 B.R. at 223 (describing good faith defense).

48. Under either NRS 112.220(1) or (4), however, the transferee bears the burden of proof to establish that the transferee received the transfer in good faith. Herup, 123 Nev. at 236-

---

[245] Transfers which are made with actual intent to hinder, delay, or defraud.

237, 162 P.3d at 875-76. Good faith is an indispensable element of the defense, and as such, even if a transferee gives reasonably equivalent value in exchange for the transfer avoided, the transferee may not recover such value if the exchange was not in good faith. In re Agric. Research & Tech. Group, Inc., 89-15416, 1990 WL 149820 (9th Cir. 1990) (applying Haw.Rev.Stat. § 651C–8 with Bankruptcy Code § 548(c) as persuasive authority) (citing In re Candor Diamond Corp., 76 B.R. 342, 351 (Bankr. S.D.N.Y. 1987); Dean v. Davis, 242 U.S. 438, 37 S.Ct. 130, 61 L.Ed. 419 (1917); In re Roco Corp., 701 F.2d 978, 984 (1st Cir. 1983); In re Health Gourmet, Inc., 29 B.R. 673, 677 (Bankr. D. Mass. 1983)).

49. "A majority of courts applying the UFTA hold that a transferee must prove that he received the transfer in ***objective*** good faith. That is, good faith must be determined on a case-by-case basis by examining whether the facts would have caused a reasonable transferee to inquire into whether the transferor's purpose in effectuating the transfer was to delay, hinder, or defraud the transferor's creditors." Herup, 123 Nev. at 236-237, 162 P.3d at 876 (emphasis added) (adopting the objective standard of good faith applicable under the Bankruptcy Code and other states' adoption of UFTA and collecting cases). "[T]o establish a good faith defense to a fraudulent transfer claim, the transferee must show objectively that he or she did not know or had no reason to know of the transferor's fraudulent purpose to delay, hinder, or defraud the transferor's creditors." Id. at 237, 163 P.3d 876.

50. Under this objective, inquiry notice standard, transferees "have a duty to investigate if there is sufficient information to put the transferee on notice that something is wrong." Leonard v. Woods & Erickson, LLP (In re AVI, Inc.), 389 B.R. 721, 736 (B.A.P. 9th Cir. 2008) (applying objective standard of good faith under Bankruptcy Code § 550 that is similar to UFTA) (citing Bonded Fin. Servs., Inc. v. Eur. Am. Bank, 838 F.2d 890, 897–98 (7th Cir. 1988)).

51. Defendants contend that because they were, in their words, "exonerated" by Judge Adams in the Herbst Litigation, they are absolved of liability. However, whether Bayuk or Sam Morabito were participants in the original fraud that resulted in the judgment does not mean they had no reason to know that Paul Morabito intended to hinder or delay enforcement of the Herbst Parties' judgment. Bayuk and Sam Morabito were present at the Oral Ruling when Judge Adams

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

awarded the Herbst Parties $85 million in damages against Paul Morabito on the basis of actual fraud. In the Oral Ruling, Judge Adams not only awarded the Herbst Parties $85 million, but he expressly found by clear and convincing evidence that Paul Morabito knowingly and intentionally made material misrepresentations which "had no basis in reality."[246] Within the next two weeks, the Defendants received substantially all of Paul Morabito's assets. This alone put Defendants on notice that something was wrong.

52. Bayuk and Sam Morabito cannot demonstrate that they did not know or have reason to know of Paul Morabito's intent to hinder, delay, or defraud the Herbst Parties. They were aware of the Oral Ruling and Paul Morabito's obligations to the Herbst Parties at the time of the transfers. They utilized the same counsel to orchestrate the transfers. They participated in the actions to strip the value from Superpumper prior to Paul Morabito's transfer of the equity. They allowed Paul Morabito to continue using and controlling the assets transferred. They assisted in ensuring that the Notes were not paid in accordance with their terms, thereby hindering collection by the Herbst Parties. They continued to fund Paul Morabito's lifestyle to ensure that, after the assets were transferred, the Herbst Parties could not collect their judgment but Paul Morabito's high-flying lifestyle would not change. They did not receive the transfers in objective good faith. They were complicit in all respects.

53. Even if good faith is established, the transferee must still demonstrate that it has provided value in exchange for the transfer. A complete defense to a fraudulent transfer arises in favor of a good faith transferee only if reasonably equivalent value is provided in exchange. NRS 112.220(1). If the value provided is not "reasonably equivalent," the value provided a good faith transferee entitles the transferee to a lien or reduction in liability to the extent of the value given. NRS 112.220(4)

---

[246] Exh. 1 (Sept. 13, 2010 Transcript of Judge Adams' Oral Ruling) at LMWF SUPP 23106, l. 14 – LMWF SUPP 23107, l. 6; LMWF SUPP 23117, ll. 11-22 (finding that Paul Morabito "knew firsthand from his own employees and from his own accountant that [the working capital estimate] was incorrect," that it "materially inflated and false inflated the value of the company," and that it had "no basis in reality, but it was contrary to what he knew firsthand to be the truth.")

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

54. Prior to the transfers, Morabito owned interests in the Laguna Properties and Panorama Property with an aggregate value of approximately $1,916,250; (2) a 50% interest in Baruk, with a value of approximately $1,654,550, and (3) an indirect 80% interest in Superpumper, with a value of at least $10,440,000. After the transfers, Paul Morabito owned the Panorama Property, with a net value of only $971,136 and the sham Notes, and received no more than $60,000 in cash in connection with the Real Properties transfers and $1,035,068 in cash in connection with Superpumper. For the reasons discussed above, the total amounts received by Morabito are not reasonably equivalent to the more than $14 million in value transferred.

55. Because the Defendants did not take the transfers in good faith, they are not entitled to the good faith defense.

E. Plaintiff is Entitled to Avoidance of the Transfers and Return of the Property Transferred Under NRS 112.210(a) and 11 U.S.C. § 541(a), and Judgment Under NRS 112.220

1. <u>Remedies Available to Plaintiff Under Chapter 112.</u>

56. The equitable remedies under UFTA are found in NRS 112.210 and 112.220(2). NRS 112.210 provides:

> 1. In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in NRS 112.220, may obtain:
>
> (a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
>
> (b) An attachment or garnishment against the asset transferred or other property of the transferee pursuant to NRS 31.010 to 31.460, inclusive; and
>
> (c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:
>
> (1) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
>
> (2) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
>
> (3) Any other relief the circumstances may require.
>
> 2. If a creditor has obtained a judgment on a claim against the debtor, the

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

> creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

NRS 112.210. Subsection (2) of NRS 112.220 provides:

> Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under paragraph (a) of subsection 1 of NRS 112.210, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection 3 of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:
>
> > (a) The first transferee of the asset or the person for whose benefit the transfer was made; or
> >
> > (b) Any subsequent transferee other than a transferee who took in good faith for value or from any subsequent transferee.

57. Thus, under NRS 112.210(1)(a), the first remedy is actual avoidance of the transfers—undoing the transfer sued upon. NRS 112.150 expressly advises Nevada courts construing the UFTA to harmonize its ruling with other states' courts construing the UFTA. Courts in other states interpreting UFTA have found that avoidance operates as a reconveyance the property to the transferor. See In re Sexton, 166 B.R. 421, 426 (Bankr. N.D. Cal. 1994) (applying California law, ". . . a creditor that succeeds in causing a fraudulent transfer to be avoided merely causes the property to be reconveyed to the transferor.") (citing Wagner v. Trout, 124 Cal.App.2d 248, 254, 268 P.2d 537 (1954); Wright v. Salzberger, 121 Cal.App. 639, 9 P.2d 860 (1932)); United States v. Ultra Dimensions, 803 F. Supp. 2d 596, 601 (E.D. Tex. 2011) (under the Texas UFTA, "a conveyance which is found to be fraudulent as to creditors is wholly null and void as to such creditors, and the legal as well as the equitable title remains in the debtor for the purpose of satisfying debts.'") (citing California Pipe Recycling, Inc. v. Southwest Holdings, Inc., 2010 WL 56053, at *5 (S.D. Tex. 2010).

58. Further, under NRS 112.210(1)(c), this Court has authority to issue an injunction "against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property." In addition to the power to grant injunctive relief under NRS 112.210(1)(c), the court is also vested with the power to issue injunctive relief pursuant to NRCP 65 and NRS 33.010. NRS 33.010(3) provides for injunctive relief when a party acts in "violation of the plaintiff's rights

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

respecting the subject of the action, and tending to render the judgment ineffectual." NRS 33.010(3). The Nevada Supreme Court has long held that "if the injury is likely to be irreparable, or if the defendant be insolvent, equity will always interpose its powers to protect a person from a threatened injury." Champion v. Sessions, 1 Nev. 478, 483 (1865) (emphasis added). Injunctive relief may be of either a mandatory or prohibitive nature, and is properly issued where "it is essential to preserve a business or property interests." Guion v. Terra Marketing of Nevada, Inc., 90 Nev. 237 at 240, 523 P.2d 847; City of Reno v. Matley, 79 Nev. 49, 60, 378 P.2d 256 (1963).

59. In addition, NRS 112.220(2) allows a creditor to recover judgment for the value of the asset transferred," subject to adjustment as equities may require. Moreover, NRS 112.220 permits the plaintiff to recover judgment against the initial transferee or the person for whose benefit the transfer was made—in this case, Bayuk and Sam Morabito.

60. Finally, NRS 112.210(1)(c)(3) broadly permits the court to award "[a]ny other relief the circumstances may require" subject to principles of equity and the applicable rules of civil procedure.

61. The breadth and flexibility of these remedies is reflected in Altus Brands II, LLC v. Alexander, a Texas appellate decision discussing provisions of Texas's UFTA which are substantively identical to NRS 112.210 and 112.220. 435 S.W.3d 432 (Tex.App.--Dallas 2014, no pet.) (applying Chapter 24 of the Texas Business & Commerce Code and specifically, Tex. Bus. & Com. Code Ann., §§ 24.008 and 24.009). The Altus court described the purpose and remedial provisions of UFTA as follows:

> UFTA is intended to prevent debtors from defrauding creditors by moving assets out of reach. "[T]he focus of an UFTA claim is to ensure the satisfaction of a creditor's claim when the elements of a fraudulent transfer are proven."

Id. at 441. As to a particular remedy, the court stated:

> However, UFTA does not specify how a remedy is to be selected in a particular case. To the extent appellees contend UFTA limits a creditor who has obtained a judgment against the debtor to the remedy described in Subsection 24.008(b), i.e. execution on the asset transferred or its proceeds, the language of UFTA does not, on its face, state such a limitation. Further, appellees cite no case law supporting such a limitation, and we have found none.

Id. at 444 (internal citations omitted). See also Arriaga v. Cartmill, 407 S.W.3d 927, 933 (Tex.App.--Houston [14th Dist.] 2013, no pet.) (reversing trial court's award of judgment instead of execution on transferred property in light of debtor's evasion of prior judgment, finding that "the trial court's award of a money judgment effectively denies [plaintiff], the prevailing party, the equitable relief she sought—a result that is contrary to the purpose of the UFTA."); Matter of Galaz, 850 F.3d 800, 806 (5th Cir. 2017) (given the evidence of actual intent to defraud and the broad remedial authority conferred by authority to grant "any other relief the circumstances may require" and to make "adjustment as the equities may require" of UFTA, the trial court properly awarded creditor amount which would restore her to the position she would have had if the fraudulent transfer had not occurred, which included percentage of gross income after the date of the transfer, over transferee's objection the district court should have limited compensatory damages to the value of the royalty rights at the time of the transfer).

62. As these cases demonstrate, the remedial provisions of UFTA are equitable in nature and intended to restore the creditor to the position he would have had if the fraudulent transfer had not occurred. The court has the equitable power to fashion a remedy that fully restores the creditor—in this case, the bankruptcy estate—to the position it would have held had the transfers not occurred.

63. Plaintiff is therefore entitled to avoidance of the transfers to the extent necessary to satisfy the claims of creditors against Paul Morabito's estate pursuant to NRS 112.210(a) and 11 U.S.C. § 544(b). It is undisputed that the combined value of the property transferred from September 13, 2010 to October 10, 2010 is less than the amount of the claims, inclusive of the Herbst Parties' claim arising from the Confessed Judgment. Therefore, Plaintiff is entitled to avoidance of the transfers in their entirety, such that all of the transferred assets are returned to the bankruptcy estate.[247]

[247] Here, because Paul Morabito is a debtor under Chapter 7 of the Bankruptcy Code, all legal and equitable interests of Paul Morabito as of June 20, 2013 are property of the bankruptcy estate. 11 U.S.C. § 541(a). Reconveyance of the property to the transferor—Paul Morabito—therefore requires conveyance of the property to the bankruptcy estate.

2. Plaintiff Is Entitled to Avoid the Real Property Transfers and Recover Paul Morabito's Interest in the Laguna Properties, as well as Monetary Judgment Against Bayuk and the Bayuk Trust Based on the Real Property Transfers in the Amount of $1,236,458.

64. Bayuk and the Bayuk Trust continue to own the Laguna Properties. Therefore, under NRS 112.210(1)(a) and 11 U.S.C. § 541(a), the bankruptcy estate is entitled to a return of Paul Morabito's 75% interest in the El Camino Property and his 50% interest in the Los Olivos Property.

65. Plaintiff is also entitled to a monetary judgment equal to the value of the transferred asset as of the date of transfer. Paul Morabito's 75% interest in El Camino Property was valued at $808,981 at the time of the transfers, and his 50% interest in Los Olivos Property had a value of $427,477 at the time of the transfers, for a total interest in the Laguna Properties at the time of the transfers of $1,236,458.

3. Plaintiff Is Entitled to Avoid the Baruk Transfer and Recover the Equity Interest in Baruk LLC, and Monetary Judgment Against Bayuk and the Bayuk Trust Based on the Baruk Transfer in the Amount of $1,654,550.

66. Paul Morabito indirectly owned 50% of the Baruk Properties prior to the transfers through Baruk LLC. Bayuk testified that he transferred the interest in Baruk LLC acquired from Paul Morabito to Snowshoe Properties and the Bayuk Trust. Bayuk still owns and controls the transferred properties (except the Clayton Property)—the Bayuk Trust owns 100% of the Glenneyre Properties indirectly through Snowshoe Properties, and directly owns the Mary Fleming Property. While litigation has been pending, Bayuk converted Snowshoe Properties from a California company to a Delaware company.

67. Plaintiff is entitled to avoidance of the Baruk Transfer, thereby restoring Paul Morabito's 50% equity interest in the remaining Baruk Properties. However, as a result of the subsequent transfers, Plaintiff is not remedied with avoidance alone.

68. Plaintiff is entitled to a monetary judgment against Bayuk and the Bayuk Trust based on the Baruk Transfer in the amount of $1,654,550 under NRS 112.220(2). As evidenced by the valuations obtained by Paul Morabito and Defendants, and the appraisal of the Clayton Property which was not valued by Defendants at the time of the transfers, the total value of Baruk

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

LLC on September 30, 2010 was $3,309,100. Morabito's 50% interest, therefore, had a value of $1,654,550. As a result, the Trustee is entitled to judgment against Bayuk and the Bayuk Trust in the amount of $1,654,550.

4. Plaintiff Is Entitled to Monetary Judgments Against Bayuk, Sam Morabito, and Snowshoe Based on the Superpumper Transfers.

69. While this action was pending, Defendants sold Superpumper and therefore, avoidance of the Superpumper Transfer is an inadequate remedy. Under NRS 112.220(2), Plaintiff is entitled to a judgment against the Defendants in the amount of the value of Morabito's interest at the time of the transfers.

70. Between September 21 and 23, 2010, Morabito transferred $355,000 to Salvatore and $420,250 to Bayuk, purportedly in exchange for their interests in Raffles. However, the Raffles assets remained an asset of CWC and Snowshoe, demonstrating that the alleged transfer was intended solely to strip CWC of one of its two assets and thereby reduce the valuation of Superpumper. Plaintiff is entitled to judgment in the amount of $355,000 against Salvatore and $420,250 against Baruk for the fraudulently-transferred cash.

71. Furthermore, Morabito's 80% interest in Superpumper had a value of $10,440,000 (exclusive of Raffles). In exchange for his interest in Superpumper, Morabito received only $1,035,068 and the Superpumper Note, which was illusory and provided no benefit to Morabito's creditors. Snowshoe was the initial transferee of the Superpumper Transfer. Bayuk and Salvatore were the ultimate recipients of the equity interests in Superpumper and therefore, the persons for whose benefit the transfers were made. Accordingly, Plaintiff is entitled to a judgment against Snowshoe in the amount of $9,404,932, and judgments against each of Bayuk and Salvatore for $4,702,466.

5. Plaintiff Is Entitled to Injunctive Relief.

72. During the pendency of this action, Defendants sold Superpumper to a third party, and Bayuk converted Snowshoe Properties from a California company to a Delaware company. Defendants have demonstrated both the ability and the willingness to engage in shell games to prevent Paul Morabito's creditors and Plaintiff from recovering assets to satisfy their claims.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

Absent injunctive relief, Defendants are likely to transfer assets in an attempt to evade the court's judgment in favor of the Plaintiff.

JUDGMENT

1. IT IS HEREBY ORDERED that judgment is entered in favor of Plaintiff and against Bayuk and the Bayuk Trust, as follows:

   a. Avoiding the transfer of the El Camino Property and the Los Olivos Property, and awarding Plaintiff damages in the amount of $884,999.95, with offset for amounts collected on account of the El Camino Property and the Los Olivos Property;

   b. Avoiding the transfer of Baruk LLC and awarding Plaintiff damages in the amount of $1,654,550 with offset for amounts collected on account of Baruk LLC;

   c. Avoiding the transfer of $420,250 and awarding Plaintiff damages in the amount of $420,250 with offset for amounts collected on account of the $420,250; and

   d. Avoiding the Superpumper Transfer and awarding Plaintiff damages in the amount of $4,949,000 with offset for amounts collected on account of the Superpumper Transfer.

2. IT IS FURTHER ORDERED that judgment is entered in favor of Plaintiff and against Sam Morabito as follows:

   a. Avoiding the transfer of $355,000 and awarding Plaintiff damages in the amount of $355,000 with offset for amounts collected on account on account of the $355,000; and

   b. Avoiding the Superpumper Transfer and awarding Plaintiff damages in the amount of $4,949,000 with offset for amounts collected on account of the Superpumper Transfer.

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

3. IT IS FURTHER ORDERED that judgment is entered in favor of Plaintiff and against Snowshoe, avoiding the Superpumper Transfer and awarding Plaintiff damages in the amount of $9,898,000 with offset for amounts collected on account of the Superpumper Transfer.

4. IT IS FURTHER ORDERED that Plaintiff is awarded pre-judgment interest on the amounts set forth above at the Nevada statutory rate from date of service of the summonses and complaint to the date of entry of this judgment.

5. IT IS FURTHER ORDERED that Plaintiff is awarded post-judgment interest on the amounts set forth above at the Nevada statutory rate until the judgment is paid in full.

6. IT IS FURTHER ORDERED that under NRCP 65, NRS 33.010, and NRS 112.210(1)(c), the Court hereby enjoins and restrains Defendants, and each of them, as well as their officers, directors, agents, servants, and attorneys, and those persons or entities in concern with them who receive actual notice of this Judgment, whether acting directly or indirectly, or through any third party, from concealing, transferring, disposing of, or encumbering the El Camino Property, the Los Olivos Property, the Baruk Properties (or their proceeds), Snowshoe Properties or any successor thereto, or any assets held for the benefit of Paul Morabito.

Dated this 6th day of March, 2019.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner
ERIKA PIKE TURNER, ESQ.
TERESA M. PILATOWICZ, ESQ.
GABRIELLE A. HAMM, ESQ.
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000

Special Counsel for Plaintiff

AFFIRMATION
Pursuant to NRS 239B.030

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

Dated this 6th day of March, 2019.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner
ERIKA PIKE TURNER, ESQ.
TERESA M. PILATOWICZ, ESQ.
GABRIELLE A. HAMM, ESQ.
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel for Plaintiff

CERTIFICATE OF SERVICE

I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this date, pursuant to NRCP 5(b), I am serving a true and correct copy of the foregoing **[PLAINTIFF'S PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT** on the parties as set forth below:

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

Frank Gilmore, Esq.
ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, NV 89503

____ Certified Mail, Return Receipt Requested

____ Via Facsimile (Fax)

__X__ Via E-Mail

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

____ Federal Express (or other overnight delivery)

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

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

Dated this 6th day of March, 2019.

/s/ Kelli Wightman
An Employee of GARMAN TURNER GORDON LLP

Garman Turner Gordon
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

1750
FRANK C. GILMORE, ESQ. - NSB #10052
fgilmore@rbsllaw.com
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169

Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

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. /

CASE NO.: CV13-02663

DEPT. NO.: 4

[DEFENDANTS' PROPOSED AMENDED]
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. On February 7, 2019, the Court granted Plaintiff's Motion to Reopen Evidence and admitted Trial Exhibits 305, 306, 307, 308, and 309, which were admitted without rebuttal.

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 friend, associate, and minority owner of BHI.

4. In 2007, Paul[1] sold BHI's stock to Jerry Herbst and his company, JH, Inc. ("Herbst").

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

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

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

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

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

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

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

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

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

"Vol 1.")

12. Herbst took Paul's deposition related to his net worth and examined thousands of pages of bank records and other documents related to his net worth. (Exh. 280)

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

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

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

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

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

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

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

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

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

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

23. On May 15, 2015, William Leonard, Chapter 7 Trustee, was substituted in place

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

of Herbst as Plaintiff in this action. (Exh. 20)

A. The Alleged Fraudulent Transfers

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

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

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

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

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

29. Vacco testified, "the goal was very simple . . . the effort was because they owned --- all three of them, in many instances, owned assets together . . .The goal, after researching Nevada law and consulting with Nevada counsel, was to right-size the investment so that

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

everybody walked away with their proportionate share of the investment."

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

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

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

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

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

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

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

37. In doing so, Vacco was careful to research Nevada law on these types of transfers to ensure everything was done fairly and by the book. He testified that "We were very cognizant of the claims that are made in this lawsuit now. And we went to great lengths to avoid these

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

claims." (Vol. 7 pp. 108-112).

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

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

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

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

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

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

44. Yalamanchili's partner, Gary Graber, who specializes in bankruptcy and asset protection, testified that the advice he gives to his clients is to take advantage of the legally available methods to protect assets and that there is nothing wrong or immoral with a judgment

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

debtor seeking assistance to assist with that. (Vol. 4, pp. 53-55);

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

i. Superpumper Inc./Consolidated Western Corporation

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

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

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

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

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

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

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

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

53. These "Due From Affiliates" amounts remained on SPI books as accounts receivable, because although non-current, they ensured that SPI maintain the requisite $6 million in "shareholder equity" on its balance sheet as required by Spirit. (Vol. 3 pp. 183).

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

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

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

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

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

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

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

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

61. Snowshoe was formed in New York because Vacco's office handled all the paperwork and contracts to facilitate the SPI acquisition, including the merger agreements, the purchase agreements, and other documents needed to consummate the transfer. (Vol. 3 pp.90-92).

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

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

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

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

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

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

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

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

70. Defendants' expert, Michelle Salazar testified that in her experience this adjustment was not only appropriate, but necessary. She opined that in a FMV evaluation like this one, non-performing and non-current assets should be adjusted off the company's balance

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

sheet where, as here, the assets cannot be verified as marketable assets. (Trial Transcript, Volume 6 (November 5, 2018) p. 90) (hereinafter "Vol 6").

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

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

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

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

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

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

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

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

79. Accordingly, in his opinion of value, he included the "Due From Affiliates" into

his excess working capital calculations, to the tune of $6.5 million. (Exh. 91).

80. This $6.5 million was then added to the SPI valuation he arrived at through the Discounted Cash Flow Method of $6,550,000, for a total appraised value of $13,050,000. (Exh. 91).

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

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

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

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

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

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

87. First, Lovelace computed a 35% risk discount to the valuation. He testified that,

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

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

88. Lovelace explained that "You know, if we lost the line of credit, we'd lose about 1.5 to $2 million. It was a big, big risk. . . . If we lose that, we lose the business, unless we get

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

another bank. And the likelihood of getting another bank after that is not good.· I mean, it was a very big risk.· And then if we do default because we lose the line, Edward and Sam are now personally guaranteed on all of those leases, which is huge -- huge, huge number. (Vol. 7 p. 256)

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

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

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

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

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

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

95. The balance of the purchase price owed to Paul was $1,462,213. However, Paul simultaneously owed $939,000 to Superpumper (Snowshoe's subsidiary). Those notes appropriately off-set. Accordingly, Superpumper assigned the $939,000 note to Snowshoe, and

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

then a successor note was executed in Paul's favor for $492,937.30, which represented the remaining amount Snowshoe owed to Paul after the offset. (Exh. 103, 104, 105)

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

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

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

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

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

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

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

103. Paul Morabito explained his intent to his lawyers, undoubtedly with the expectation that the conversation would remain confidential indefinitely. He said, "I end up with clearly defined assets that are just mine that they can attach and take worth the same amount had they tried to take assets jointly owned now by Edward and myself. I wasn't trying to avoid anything - just separate the assets so that they are easily identified. He made it sounds as if I was

trying to defraud someone." (Exh. 29)(Vol. 3 pp. 99-101).

a. Snowshoe Petroleum, Inc.

104. Snowshoe Petroleum, Inc., was incorporated in the State of New York on or about September 29, 2010, and is now a domestic corporation of the State of Delaware.

105. Snowshoe was incorporated at the direction of Sam Morabito, a dual Canadian/American citizen and presently a resident of Canada. (Vol. 3 pp. 80-81).

106. Snowshoe's attorneys in Buffalo, New York, prepared the articles and other filings and provided advice to Sam from New York. (Vol. 7 p. 258).

107. Snowshoe's principal office is located in Buffalo, New York, and has been located there since the date of incorporation. (Vol. 3 p. 204).

108. Snowshoe has never transacted business in Nevada, has never sold products or offered services in Nevada, has never had any employees who worked in Nevada. (Vol. 3 p. 204).

109. Since its formation, Snowshoe has never had any contacts with the State of Nevada. (Vol. 3 p. 204).

110. Snowshoe owns an interest in Defendant Superpumper, an Arizona corporation, which has never had assets or business in Nevada. (Vol. 3 p. 204).

111. No portion of the transaction was conducted in Nevada, and Snowshoe has never had a physical, business, or economic presence in Nevada. (Vol. 4 p. 204).

ii. <u>Superpumper Properties, LLC</u>

112. Superpumper Properties, LLC, was an Arizona limited liability company ("SPP") formerly owned by Paul (50%), Sam (25%) and Bayuk (25%).

113. SPP owned three "card lock fuel facilities" in Elko and Lovelock. A card lock is an unmanned gas station. (Vol. 3 pp. 239-240).

114. After the Judgment, Paul wished to retain his interest in the card locks, and so he agreed to buy out Sam and Bayuk's positions. (Vol. 3 pp. 239-240).

115. They agreed that Paul would transmit to them the payment for their share of the equity in the company, net of debt. (Vol. 3 pp. 239-242).

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

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,

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

2018) p. 82)(hereinafter "Vol 8").

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

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

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

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

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

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

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

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

136. Darryl Noble, who performed the appraisal, testified that he had conducted an exhaustive appraisal of the home, and he concluded that the quality of the workmanship and finishes was among the top 10% of houses he had seen in his entire career, and comparable to

homes "in Lake Tahoe, in Montreaux, and Arrow Creek." (Vol. 7 pp. 28).

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

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

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

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

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

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

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

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

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

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

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

iv. <u>371 El Camino Del Mar, Laguna Beach</u>

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

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

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

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

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

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

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

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

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

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

v. <u>370 Los Olivos, Laguna Beach</u>

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

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

(Stipulated Fact).

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

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

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

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

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

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

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

vi. <u>Baruk Properties</u>

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

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

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

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

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

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

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

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

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

a. 1254 Mary Fleming Circle, Palm Springs

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

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

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

177. Plaintiff offered no evidence to rebut the valuation.

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

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

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

b. 1461 Glenneyre, Laguna Beach

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

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

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

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

transfer. (Exh. 66)

c. 570 Glenneyre, Laguna Beach

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

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

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

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

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

d. 49 Clayton Place, Sparks

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

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

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

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

e. The $1,617.050 Note.

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

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

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

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

f. Snowshoe Properties, LLC

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

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

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

vii. Raffles Insurance Limited

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

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

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

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

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

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

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

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

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

207. Plaintiff offered no evidence to rebut the valuation.

viii. WatchMyBlock LLC

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

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

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

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

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

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

ix. Sefton Trust

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

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

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

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

II. CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

241. Plaintiff did not establish that the Snowshoe acquisition of Superpumper, Inc., had any relation to this forum. Specific jurisdiction requires that the cause of action be intimately related to the forum, and not based on a "random," "fortuitous," or "attenuated" relationship. *Trump*, 109 Nev. at700 (citing *Munley v. Dist. Court*, 104 Nev. 492,495-96 (1988)). "The cause of action must arise from the consequences in the forum state of the defendant's activities, and those activities, or the consequences thereof, must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable." *Trump*, 109 Nev. at 700 (citations omitted). The quality rather than the quantity of the defendant's contacts will affect the determination of jurisdiction. *Id.*

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

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

B. <u>Plaintiff Has Failed to Establish the Existence of a Fraudulent Transfer</u>.

244. Nevada's codified Uniform Fraudulent Transfer Act ("UFTA") sets forth two

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

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.

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

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

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

1. There Was No Showing of Actual Fraud.

252. Plaintiff has not established, through direct evidence or through the "Badges of Fraud" that Defendants are liable for actual fraud. Plaintiff has not established that the transfers removed Paul's assets "beyond the creditor's reach."

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

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

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

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

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

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

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

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

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

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

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

> "A court of competent jurisdiction by any judgment creditor of a member, the court may charge the member's interest with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's interest [and] . . . This section . . .[p]rovides the exclusive remedy by which a judgment creditor of a member or an assignee of a member may satisfy a judgment out of the member's interest of the 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."

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

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

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

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

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

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

2. The "Badges of Fraud" Do Not Establish a Showing of Actual Fraud.

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

(a) The transfer or obligation was to an insider;

(b) The debtor retained possession or control of the property transferred after the transfer;

(c) The transfer or obligation was disclosed or concealed;

(d) Before the transfer was made or the obligation was incurred, the debtor had been sued or threatened with suit;

(e) The transfer was of substantially all of debtor's assets;

(f) The debtor absconded;

(g) The debtor removed or concealed assets;

(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

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

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

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

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

NRS 112.18 (2).

a. Edward Bayuk Is Not an Insider.

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

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

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

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

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

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

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

275. The Trial Exhibits proffered by Plaintiff through the Motion to Reopen Evidence do not establish Paul Morabito's "possession or control" of Snowshoe Petroleum after he sold his interest in Superpumper.

276. Trial Exhibit 305 is a subpoena served on Defendants' counsel by Plaintiff, which seeks payment records for all of Paul Morabito's matters with Defense counsel's firm. This Exhibit is inconclusive of any fact in dispute and adds zero weight to the disputed issues.

277. Trial Exhibit 306 is not material to any disputed fact, and adds no weight to Plaintiff's contention that Paul Morabito "possession or control" of Snowshoe after he sold his interest in Superpumper. Exhibit 306 is a Fed. R. Civ. P. 45(d)(2)(B) objection letter from Defendants' counsel's law firm to Plaintiff's counsel in a pending bankruptcy adversary action, explaining that the subpoena was deficient in several respects, including (1) the request was unduly burdensome, and no accommodation had been made for the time and cost of compiling and producing the requested records; (2) the subpoena was an attempt to execute upon a money judgment obtained in the Second Judicial District Court of the State of Nevada, and the bankruptcy adversary action was the incorrect forum for Plaintiff's collection activities; (3) the time frame requested in the Subpoena did not comport with Rule 45, and did not provide sufficient time to compile and produce the documents.

278. Plaintiff has provided no evidence that Exhibit 306 was an intentional effort to conceal Paul Morabito's payment records. To the contrary, each of the contentions were well founded in both fact and law. Clearly, Plaintiff's counsel was attempting to conduct executions proceedings against Paul Morabito of a judgment obtained in state court, through the provisions of Section 352 of the Bankruptcy Code. The United States Bankruptcy Court did not have jurisdiction and power to permit execution of the judgment under Fed. R. Civ. P. 69, because the bankruptcy court did not enter a "money judgment" that Plaintiff's counsel sought to enforce by way

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

of the subpoena on Defendants' counsel's law firm. The "money judgment" that Plaintiff's counsel attempted to enforce is a state court judgment and thus. "Rule 69 is not available to enforce state court judgments in federal court." *Labertew v. Langemeier*, 846 F.3d 1028, 1033 (9th Cir. 2017).

279. Trial Exhibit 307 is not material to any disputed fact, and adds no weight to Plaintiff's contention that Paul Morabito had "possession or control" of Snowshoe after he sold his interest in Superpumper. Exhibit 307 evidences the bankruptcy court's agreement to provide Defendants' counsel sufficient time to produce the payment records. The other legal contentions were overruled, but that is not evidence of a group conspiracy to conceal the payment records. There is no substantive findings in Exhibit 307 that add any weight to Plaintiff's contention that Paul Morabito "controlled or possessed" Snowshoe after the 2010 transfers.

280. Trial Exhibit 308 shows only that Snowshoe paid legal bills under billing matters assigned to Paul Morabito according to Defense counsel's internal billing systems. That occurred once in October 2015, and then more regularly from November 2016 to March 2018. Exhibit 308 is not evidence of Paul's "possession or control" of Snowshoe. The only actual evidence before the Court is the fact that Snowshoe paid legal bills. The Court does not have evidence as to why these bills were paid, what services were being provided that Snowshoe was paying for, who benefitted from the legal services, or how or why Defense counsel's law firm allocated these payments to these specific client billing matter-numbers, or whether Paul Morabito and Snowshoe were operating under a theory of common defense to defeat Herbst Parties' claims in other venues.

281. This Court can take judicial notice of the proceedings in CV16-02571, which were commenced on December 16, 2016, by the filing of a Complaint by Paul Morabito against the Herbst Parties pursuant to NRCP 60(b). Morabito claimed that the Herbst Parties had committed a fraud on the Court in procuring the original Judgment against him in the 2007 Action. Morabito sought declaratory relief that would have rendered the original Judgment *void ab initio*. Had that filing been successful, Snowshoe would have been a primary beneficiary, because success would have resulted in a dismissal of the pending action. Had the action been successful, Snowshoe would have defeated any exposure it might have had to the Herbst Parties

for a fraudulent transfer, because the Herbst Parties would have no underlying claim or judgment upon which to base any fraudulent transfer claim. The action was immediately removed to bankruptcy court and is presently the subject of multiple appeals in the federal courts.

282. It is reasonable to infer from the evidence, and from the Court's judicial notice of the CV16-02571 proceeding, that Snowshoe would have had its own reasons for contributing toward the costs of Defense counsel's efforts to overturn the Judgment. Snowshoe, facing a $12 million dollar claim from the Herbst parties in this action, had sufficient reason to ensure that counsel was paid to maintain the fraud on the court action. Paul Morabito was in bankruptcy. This Court can take judicial notice of the filings in that action in which Morabito has represented that he has no income, no employment, and lives off the generosity and loans of others. Thus, it is also reasonable to infer that had Snowshoe not contributed toward the cost of pursuing the fraud on the court action, it would not have been prosecuted.

283. Trial Exhibit 309 is not material to any disputed fact, and adds no weight to Plaintiff's contention that Paul Morabito had "possession or control" of Snowshoe after he sold his interest in Superpumper. Exhibit 309 merely confirms that Snowshoe contributed to payment of attorney fees which were allocated to Morabito's client-matter numbers in the law firm's billing systems. The Exhibit does not break down the scope of the services that were rendered that justified the fee that was paid by Snowshoe. The Exhibit does not explain why Defense counsel's law firm allocated these fees to this particular client-matter number instead of another matter number, and it does not establish one way or the other whether Snowshoe was even aware of how Defense counsel's law firm allocated the payments to the various billing matter numbers. Exhibit 309 is not conclusive of any fact in dispute.

284. Exhibits 305-309 do not establish that Bayuk gave false or misleading testimony. Bayuk testified that Snowshoe was not paying any of Paul's legal bills. Obviously, a witness can only testify to things he knows (or believes he knows). Bayuk believed that Snowshoe had not paid any of Paul's bills. These exhibits do not render that testimony *knowingly* false. The Exhibits do not speak to what Bayuk actually knew or did not know. Bayuk did testify that "I said earlier Sam was in Arizona running the business, and we had accounting people there doing

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

the accounting stuff." Trial Trans. 10/29/18, pp. 206 - 207. It is reasonable to infer from Bayuk's testimony that he was not aware of any payments being made by Snowshoe as reflected on the law firm's payment ledger, and that his testimony was truthful, according to his understanding of the facts.

285. Exhibits 305-309 do not establish that Sam Morabito gave false or misleading testimony. Sam testified that Paul had no involvement whatsoever with Snowshoe after the Superpumper transaction. These Exhibits do not contradict that testimony. The payment ledger is not evidence that Paul was directing the payment of the fees and it is not evidence that Paul was the only beneficiary of the services obtained through the payment of these fees. The ledger is not even evidence that Paul was aware of Snowshoe's payment of the fees, or that Paul had ever seen the invoices memorializing the legal services. Sam did not testify that Snowshoe was not paying attorney fees associated with Paul. Rather, Sam testified truthfully that Paul had no economic interest in Snowshoe, had no involvement in its management, and that Snowshoe did not transfer any assets to Paul Morabito after the transfer. These Exhibits do not contradict that testimony.

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

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

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

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

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

289. It is undisputed that the transfers were made shortly after the oral Judgment was rendered.

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

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

291. 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.

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

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

f Paul Never Absconded;

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

g Paul Did Not Remove or Conceal Assets.

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

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

297. Plaintiff produced no evidence addressing Paul's intention as to the $6 million transfer.

298. It is undisputed that Paul paid the Herbst's settlement obligations with the $6 million.

/ / /

/ / /

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

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

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

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

301. The transfers were all for reasonably equivalent value.

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

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

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

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

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

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

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

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

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

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

i The Transfers Did Not Render Paul Insolvent.

312. According to Herbst's expert, Paul had a net worth of more than $90 million *after* the transfers. According to Herbst's experts, even after the transfer he had sufficient assets to pay the $85 million Judgment.

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

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

a. Paul received $1,035,068 in *cash* as a result of the sale of Superpumper.

b. Paul received $560,000 from Snowshoe as payment in full of the Superpumper note.

c. Paul received $60,117 in cash as a result of the exchange of the panorama house for the Laguna houses.

d. Paul received $31,284 in cash for his interest in the personal property at El Camino;

e. Paul received $29,383 in cash for his interest in the personal property at

Panorama Drive;

f. Paul received $12,763 in cash for his interest in the personal property at Los Olivos;

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

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

316. It is undisputed that the transfers occurred shortly after the pronouncement of the oral Judgment.

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

318. Establishment of one or more of the badges of fraud is relevant evidence, but does not create a presumption of a fraudulent transfer. *In re Nat'l Audit Def. Network*, 367 B.R. at 220. No badge standing alone is enough to establish fraud. *Id.*

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

ii. Plaintiff Did Not Establish Constructive Fraud.

320. A constructive fraudulent transfer occurs where the debtor transfers an asset (a) without receiving reasonable equivalent value, and (b) the either the debtor (1) "engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction;" or (2) "Intended to incur, or believed or 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)(b).

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

322. As discussed above, Paul received reasonably equivalent value for the assets he

exchanged with Sam and Bayuk.

323. Further, the transfers did not render Paul insolvent.

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

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

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

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

3. Defendants Took the Exchanges in Good Faith

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

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

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

331. Defendants had justifiable reasons for engaging in the transfers. The Judgment excluded Bayuk and Sam from liability. Dennis Vacco testified that "Edward and Sam didn't want to be – be chased because they had an equity interest in properties that were also attached to Paul."

332. The Defendants "went to great lengths to avoid these claims," including hiring numerous appraisers to assess the value of the assets now at issue.

333. The asset separation was "just a matter of simple math based upon independent

third-party property valuations.

334. Plaintiff did not establish, that Defendants were aware of or participated in Paul's alleged intent to defraud his creditors.

335. Defendants testified that although they certainly were aware of the Judgment, they were that Paul's intent was to protect their interest in the properties, and not to defraud the Herbst

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

III. JUDGMENT

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

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

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 8th day of March, 2018.

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

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Robison, Sharp, Sullivan & Brust, and that on this date I caused to be served a true copy of the **[DEFENDANTS' PROPOSED AMENDED] FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT** all parties to this action by the method(s) indicated below:

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

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

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

Gerald Gordon, Esq.
Email: ggordon@Gtg.legal
Mark M. Weisenmiller, Esq.
Email: mweisenmiller@Gtg.legal
Teresa M. Pilatowicz, Esq.
Email: tpilatowicz@Gtg.legal
Erika Pike Turner, Esq.
Email: eturner@gtg.legal

____ by personal delivery/hand delivery addressed to:

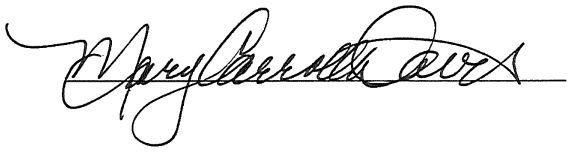
____ by email addressed to:

Gerald Gordon, Esq.
Email: ggordon@Gtg.legal
Mark M. Weisenmiller, Esq.
Email: mweisenmiller@Gtg.legal
Teresa M. Pilatowicz, Esq.
Email: tpilatowicz@Gtg.legal
Erika Pike Turner, Esq.
Email: eturner@gtg.legal

____ by facsimile (fax) addressed to:

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

DATED: This 8th day of March, 2019.



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

F I L E D
Electronically
CV13-02663
2019-03-11 04:33:43 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7160184

CASE NO. CV13-02663 **TITLE: WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD BAYUK, EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM, INC.**

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONT'D TO
2/26/19 HONORABLE CONNIE STEINHEIMER DEPT. NO.4 M. Stone (Clerk) J. Schonlau (Reporter)	**MOTION TO CONTINUE ONGOING NON-JURY TRIAL (TELEPHONIC)** Erika Turner, Esq., represented on behalf of Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito. Frank Gilmore, Esq., represented Defendant Edward Bayuk present, individually and as representative for Edward William Bayuk Living Trust, Superpumper, Inc., and Snowshoe Petroleum, Inc., Defendant Salvatore Morabito, individually and as representative for Superpumper, Inc., and Snowshoe Petroleum, Inc. Court convened. Neither counsel had anything to add to the pleadings. **COURT ENTERED ORDER** denying the Motion to Continue the Ongoing Non-Jury Trial scheduled for March 1, 2019. As suggested by Plaintiff's counsel in Plaintiff's Opposition to the Motion, **COURT ENTERED ORDER** allowing Defendant Bayuk to testify by audiovisual transmission pursuant to NRCP 43(a) and Part IX-B(B) of the Nevada Supreme Court Rules. Court adjourned.	**3/1/19 1:00 p.m. Ongoing Non-Jury Trial**