

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

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

Respondent.

Case No. 79355

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Appeal from the Second Judicial District Court, the Honorable Connie J. Steinheimer Presiding

APPELLANTS' APPENDIX, VOLUME 52
(Nos. 8989–9236)

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12	Appraisal of Real Property: 370 Los Olivos, Laguna Beach, CA, as of Sept. 24, 2010	Vol. 12, 1876–1903
13	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 12, 1904–1919
14	P. Morabito Redacted Investment and Bank Report from Sept. 1 to Sept. 30, 2010	Vol. 12, 1920–1922
15	Excerpted Transcript of June 25, 2015 Deposition of 341 Meeting of Creditors	Vol. 12, 1923–1927
16	Excerpted Transcript of December 5, 2015 Deposition of P. Morabito	Vol. 12, 1928–1952
17	Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 27, 2010	Vol. 12, 1953–1961
18	First Amendment to Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 28, 2010	Vol. 12, 1962–1964
19	Appraisal Report providing market value estimate of real property located at 8355 Panorama Drive, Reno, NV as of Dec. 7, 2011	Vol. 12, 1965–1995

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
20	An Appraisal of a vacant .977± Acre Parcel of Industrial Land Located at 49 Clayton Place West of the Pyramid Highway (State Route 445) Sparks, Washoe County, Nevada and a single-family residence located at 8355 Panorama Drive Reno, Washoe County, Nevada 89511 as of October 1, 2010 a retrospective date	Vol. 13, 1996–2073
21	APN: 040-620-09 Declaration of Value (dated 12/31/2012)	Vol. 14, 2074–2075
22	Sellers Closing Statement for real property located at 8355 Panorama Drive, Reno, NV 89511	Vol. 14, 2076–2077
23	Bill of Sale for real property located at 8355 Panorama Drive, Reno, NV 89511	Vol. 14, 2078–2082
24	Operating Agreement of Baruk Properties LLC	Vol. 14, 2083–2093
25	Edward Bayuk, as trustee of the Edward William Bayuk Living Trust’s Answer to Plaintiff’s First Set of Interrogatories (dated 09/14/2014)	Vol. 14, 2094–2104
26	Summary Appraisal Report of real property located at 1461 Glenneyre Street, Laguna Beach, CA 92651, as of Sept. 25, 2010	Vol. 14, 2105–2155
27	Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262	Vol. 15, 2156–2185
28	Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262	Vol. 15, 2186–2216

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
29	Membership Interest Transfer Agreement between Arcadia Trust and Bayuk Trust entered effective as of Oct. 1, 2010	Vol. 15, 2217–2224
30	PROMISSORY NOTE [Edward William Bayuk Living Trust (“Borrower”) promises to pay Arcadia Living Trust (“Lender”) the principal sum of \$1,617,050.00, plus applicable interest] (dated 10/01/2010)	Vol. 15, 2225–2228
31	Certificate of Merger dated Oct. 4, 2010	Vol. 15, 2229–2230
32	Articles of Merger Document No. 20100746864-78 (recorded date 10/04/2010)	Vol. 15, 2231–2241
33	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 15, 2242–2256
34	Grant Deed for real property 1254 Mary Fleming Circle, Palm Springs, CA 92262; APN: 507-520-015 (recorded 11/04/2010)	Vol. 15, 2257–2258
35	General Conveyance made as of Oct. 31, 2010 between Woodland Heights Limited (“Vendor”) and Arcadia Living Trust (“Purchaser”)	Vol. 15, 2259–2265
36	Appraisal of Real Property as of Sept. 24, 2010: 371 El Camino Del Mar, Laguna Beach, CA 92651	Vol. 15, 2266–2292
37	Excerpted Transcript of December 6, 2016 Deposition of P. Morabito	Vol. 15, 2293–2295
38	Page intentionally left blank	Vol. 15, 2296–2297
39	Ledger of Edward Bayuk to P. Morabito	Vol. 15, 2298–2300

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
40	Loan Calculator: Payment Amount (Standard Loan Amortization)	Vol. 15, 2301–2304
41	Payment Schedule of Edward Bayuk Note in Favor of P. Morabito	Vol. 15, 2305–2308
42	November 10, 2011 email from Vacco RE: Baruk Properties, LLC/P. Morabito/Bank of America, N.A.	Vol. 15, 2309–2312
43	May 23, 2012 email from Vacco to Steve Peek RE: Formal Settlement Proposal to resolve the Morabito matter	Vol. 15, 2313–2319
44	Excerpted Transcript of March 12, 2015 Deposition of 341 Meeting of Creditors	Vol. 15, 2320–2326
45	Shareholder Interest Purchase Agreement between P. Morabito and Snowshoe Petroleum, Inc. (dated 09/30/2010)	Vol. 15, 2327–2332
46	P. Morabito Statement of Assets & Liabilities as of May 5, 2009	Vol. 15, 2333–2334
47	March 10, 2010 email from Naz Afshar, CPA to Darren Takemoto, CPA RE: Current Personal Financial Statement	Vol. 15, 2335–2337
48	March 10, 2010 email from P. Morabito to Jon RE: ExxonMobil CIM for Florida and associated maps	Vol. 15, 2338–2339
49	March 20, 2010 email from P. Morabito to Vacco RE: proceed with placing binding bid on June 22nd with ExxonMobil	Vol. 15, 2340–2341

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
50	P. Morabito Statement of Assets & Liabilities as of May 30, 2010	Vol. 15, 2342–2343
51	June 28, 2010 email from P. Morabito to George R. Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 15, 2344–2345
52	Plan of Merger of Consolidated Western Corp. with and into Superpumper, Inc. (dated 09/28/2010)	Vol. 15, 2346–2364
53	Page intentionally left blank	Vol. 15, 2365–2366
54	BBVA Compass Proposed Request on behalf of Superpumper, Inc. (dated 12/15/2010)	Vol. 15, 2367–2397
55	Business Valuation Agreement between Matrix Capital Markets Group, Inc. and Superpumper, Inc. (dated 09/30/2010)	Vol. 15, 2398–2434
56	Expert report of James L. McGovern, CPA/CFF, CVA (dated 01/25/2016)	Vol. 16, 2435–2509
57	June 18, 2014 email from Sam Morabito to Michael Vanek RE: SPI Analysis	Vol. 17, 2510–2511
58	Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry-Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring, or Disposing of or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee; Case No. BK-N-13-51237 (filed 07/01/2013)	Vol. 17, 2512–2516

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
59	State of California Secretary of State Limited Liability Company – Snowshoe Properties, LLC; File No. 201027310002 (filed 09/29/2010)	Vol. 17, 2517–2518
60	PROMISSORY NOTE [Snowshoe Petroleum (“Maker”) promises to pay P. Morabito (“Holder”) the principal sum of \$1,462,213.00] (dated 11/01/2010)	Vol. 17, 2519–2529
61	PROMISSORY NOTE [Superpumper, Inc. (“Maker”) promises to pay Compass Bank (the “Bank” and/or “Holder”) the principal sum of \$3,000,000.00] (dated 08/13/2010)	Vol. 17, 2530–2538
62	Excerpted Transcript of October 21, 2015 Deposition of Salvatore R. Morabito	Vol. 17, 2539–2541
63	Page intentionally left blank	Vol. 17, 2542–2543
64	Edward Bayuk’s Answers to Plaintiff’s First Set of Interrogatories (dated 09/14/2014)	Vol. 17, 2544–2557
65	October 12, 2012 email from Stan Bernstein to P. Morabito RE: 2011 return	Vol. 17, 2558–2559
66	Page intentionally left blank	Vol. 17, 2560–2561
67	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 17, 2562–2564
68	Snowshoe Petroleum, Inc.’s letter of intent to set out the framework of the contemplated transaction between: Snowshoe Petroleum, Inc.; David Dwelle, LP; Eclipse Investments, LP; Speedy Investments; and TAD Limited Partnership (dated 04/21/2011)	Vol. 17, 2565–2572

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
69	Excerpted Transcript of July 10, 2017 Deposition of Dennis C. Vacco	Vol. 17, 2573–2579
70	April 15, 2011 email from P. Morabito to Christian Lovelace; Gregory Ivancic; Vacco RE: \$65 million loan offer from Cerberus	Vol. 17, 2580–2582
71	Email from Vacco to P. Morabito RE: \$2 million second mortgage on the Reno house	Vol. 17, 2583–2584
72	Email from Vacco to P. Morabito RE: Tim Haves	Vol. 17, 2585–2586
73	Settlement Agreement, Loan Agreement Modification & Release dated as of Sept. 7, 2012, entered into by Bank of America and P. Morabito	Vol. 17, 2587–2595
74	Page intentionally left blank	Vol. 17, 2596–2597
75	February 10, 2012 email from Vacco to Paul Wells and Timothy Haves RE: 1461 Glenneyre Street, Laguna Beach – Sale	Vol. 17, 2598–2602
76	May 8, 2012 email from P. Morabito to Vacco RE: Proceed with the corporate set-up with Ray, Edward and P. Morabito	Vol. 17, 2603–2604
77	September 4, 2012 email from Vacco to Edward Bayuk RE: Second Deed of Trust documents	Vol. 17, 2605–2606
78	September 18, 2012 email from P. Morabito to Edward Bayuk RE: Deed of Trust	Vol. 17, 2607–2611
79	October 3, 2012 email from Vacco to P. Morabito RE: Term Sheet on both real estate deal and option	Vol. 17, 2612–2614

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
80	March 14, 2013 email from P. Morabito to Vacco RE: BHI Hinckley	Vol. 17, 2615–2616
81	Page intentionally left blank	Vol. 17, 2617–2618
82	November 11, 2011 email from Vacco to P. Morabito RE: Trevor’s commitment to sign	Vol. 17, 2619–2620
83	November 28, 2011 email string RE: Wiring \$560,000 to Lippes Mathias	Vol. 17, 2621–2623
84	Page intentionally left blank	Vol. 17, 2624–2625
85	Page intentionally left blank	Vol. 17, 2626–2627
86	Order for Relief Under Chapter 7; Case No. BK-N-13-51236 (filed 12/22/2014)	Vol. 17, 2628–2634
87	Report of Undisputed Election (11 U.S.C § 702); Case No. BK-N-13-51237 (filed 01/23/2015)	Vol. 17, 2635–2637
88	Amended Stipulation and Order to Substitute a Party to NRCP 17(a) (filed 06/11/2015)	Vol. 17, 2638–2642
89	Membership Interest Purchase Agreement, entered into as of Oct. 6, 2010 between P. Morabito and Edward Bayuk	Vol. 17, 2643–2648
90	Complaint; Case No. BK-N-13-51237 (filed 10/15/2015)	Vol. 17, 2649–2686
91	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/2010)	Vol. 17, 2687–2726

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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Defendants' Separate Statement of Disputed Facts in Support of Opposition to Plaintiff's Motion for Partial Summary Judgment		
Exhibit	Document Description	
1	Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 08/23/2011)	Vol. 18, 2791–2793
2	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 18, 2794–2810
3	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings Pursuant to 11 U.S.C §305(a)(1); Case No. BK-N-13-51237 (filed 12/17/2013)	Vol. 18, 2811–2814
4	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 18, 2815–2826
5	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 18, 2827–2857
6	Appraisal	Vol. 18, 2858–2859
7	Budget Summary as of Jan. 7, 2016	Vol. 18, 2860–2862
8	Excerpted Transcript of March 24, 2016 Deposition of Dennis Banks	Vol. 18, 2863–2871
9	Excerpted Transcript of March 22, 2016 Deposition of Michael Sewitz	Vol. 18, 2872–2879
10	Excerpted Transcript of April 27, 2011 Deposition of Darryl Noble	Vol. 18, 2880–2883

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
11	Copies of cancelled checks from Edward Bayuk made payable to P. Morabito	Vol. 18, 2884–2892
12	CBRE Appraisal of 14th Street Card Lock Facility (dated 02/26/2010)	Vol. 18, 2893–2906
13	Bank of America wire transfer from P. Morabito to Salvatore Morabito in the amount of \$146,127.00; and a wire transfer from P. Morabito to Lippes for \$25.00 (date 10/01/2010)	Vol. 18, 2907–2908
14	Excerpted Transcript of October 21, 2015 Deposition of Christian Mark Lovelace	Vol. 18, 2909–2918
15	June 18, 2014 email from Sam Morabito to Michael Vanek RE: Analysis of the Superpumper transaction in 2010	Vol. 18, 2919–2920
16	Excerpted Transcript of October 21, 2015 Deposition of Salvatore R. Morabito	Vol. 18, 2921–2929
17	PROMISSORY NOTE [Snowshoe Petroleum (“Maker”) promises to pay P. Morabito (“Holder”) the principal sum of \$1,462,213.00] (dated 11/01/2010)	Vol. 18, 2930–2932
18	TERM NOTE [P. Morabito (“Borrower”) promises to pay Consolidated Western Corp. (“Lender”) the principal sum of \$939,000.00, plus interest] (dated 09/01/2010)	Vol. 18, 2933–2934
19	SUCCESSOR PROMISSORY NOTE [Snowshoe Petroleum (“Maker”) promises to pay P. Morabito (“Holder”) the principal sum of \$492,937.30, plus interest] (dated 02/01/2011)	Vol. 18, 2935–2937

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
20	Edward Bayuk's wire transfer to Lippes in the amount of \$517,547.20 (dated 09/29/2010)	Vol. 18, 2938–2940
21	Salvatore Morabito Bank of Montreal September 2011 Wire Transfer	Vol. 18, 2941–2942
22	Declaration of Salvatore Morabito (dated 09/21/2017)	Vol. 18, 2943–2944
23	Edward Bayuk bank wire transfer to Superpumper, Inc., in the amount of \$659,000.00 (dated 09/30/2010)	Vol. 18, 2945–2947
24	Edward Bayuk checking account statements between 2010 and 2011 funding the company with transfers totaling \$500,000	Vol. 18, 2948–2953
25	Salvatore Morabito's wire transfer statement between 2010 and 2011, funding the company with \$750,000	Vol. 18, 2954–2957
26	Payment Schedule of Edward Bayuk Note in Favor of P. Morabito	Vol. 18, 2958–2961
27	September 15, 2010 email from Vacco to Yalamanchili and P. Morabito RE: Follow Up Thoughts	Vol. 18, 2962–2964
Reply in Support of Motion for Partial Summary Judgment (dated 10/10/2017)		Vol. 19, 2965–2973
Order Regarding Discovery Commissioner's Recommendation for Order dated August 17, 2017 (filed 12/07/2017)		Vol. 19, 2974–2981

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Order Denying Motion for Partial Summary Judgment (filed 12/11/2017)		Vol. 19, 2982–2997
Defendants’ Motions in Limine (filed 09/12/2018)		Vol. 19, 2998–3006
Exhibits to Defendants’ Motions in Limine		
Exhibit	Document Description	
1	Plaintiff’s Second Supplement to Amended Disclosures Pursuant to NRCP 16.1(A)(1) (dated 04/28/2016)	Vol. 19, 3007–3016
2	Excerpted Transcript of March 25, 2016 Deposition of William A. Leonard	Vol. 19, 3017–3023
3	Plaintiff, Jerry Herbst’s Responses to Defendant Snowshoe Petroleum, Inc.’s Set of Interrogatories (dated 02/11/2015); and Plaintiff, Jerry Herbst’s Responses to Defendant, Salvatore Morabito’s Set of Interrogatories (dated 02/12/2015)	Vol. 19, 3024–3044
Motion in Limine to Exclude Testimony of Jan Friederich (filed 09/20/2018)		Vol. 19, 3045–3056
Exhibits to Motion in Limine to Exclude Testimony of Jan Friederich		
Exhibit	Document Description	
1	Defendants’ Rebuttal Expert Witness Disclosure (dated 02/29/2016)	Vol. 19, 3057–3071
2	Condensed Transcript of March 29, 2016 Deposition of Jan Friederich	Vol. 19, 3072–3086

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Opposition to Defendants' Motions in Limine (filed 09/28/2018)		Vol. 19, 3087–3102
Exhibits to Opposition to Defendants' Motions in Limine		
Exhibit	Document Description	
A	Declaration of Teresa M. Pilatowicz, Esq. in Support of Opposition to Defendants' Motions in Limine (filed 09/28/2018)	Vol. 19, 3103–3107
A-1	Plaintiff's February 19, 2016, Amended Disclosures Pursuant to NRCP 16.1(A)(1)	Vol. 19, 3108–3115
A-2	Plaintiff's January 26, 2016, Expert Witnesses Disclosures (without exhibits)	Vol. 19, 3116–3122
A-3	Defendants' January 26, 2016, and February 29, 2016, Expert Witness Disclosures (without exhibits)	Vol. 19, 3123–3131
A-4	Plaintiff's August 17, 2017, Motion for Partial Summary Judgment (without exhibits)	Vol. 19, 3132–3175
A-5	Plaintiff's August 17, 2017, Statement of Undisputed Facts in Support of his Motion for Partial Summary Judgment (without exhibits)	Vol. 19, 3176–3205
Defendants' Reply in Support of Motions in Limine (filed 10/08/2018)		Vol. 20, 3206–3217
Exhibit to Defendants' Reply in Support of Motions in Limine		
Exhibit	Document Description	

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
1	Chapter 7 Trustee, William A. Leonard's Responses to Defendants' First Set of Interrogatories (dated 05/28/2015)	Vol. 20, 3218–3236
Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich (filed 10/08/2018)		Vol. 20, 3237–3250
Exhibits to Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich		
Exhibit	Document Description	
1	Excerpt of Matrix Report (dated 10/13/2010)	Vol. 20, 3251–3255
2	Defendants' Rebuttal Expert Witness Disclosure (dated 02/29/2016)	Vol. 20, 3256–3270
3	November 9, 2009 email from P. Morabito to Daniel Fletcher; Jim Benbrook; Don Whitehead; Sam Morabito, etc. RE: Jan Friederich entered consulting agreement with Superpumper	Vol. 20, 3271–3272
4	Excerpted Transcript of March 29, 2016 Deposition of Jan Friederich	Vol. 20, 3273–3296
Defendants' Objections to Plaintiff's Pretrial Disclosures (filed 10/12/2018)		Vol. 20, 3297–3299
Objections to Defendants' Pretrial Disclosures (filed 10/12/2018)		Vol. 20, 3300–3303
Reply to Defendants' Opposition to Plaintiff's Motion in Limine to Exclude the Testimony of Jan Friederich (filed 10/12/2018)		Vol. 20, 3304–3311

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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
8	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings, Case 13-51237. ECF No. 94, (filed 12/17/2013)	Vol. 22, 3623–3625
19	Report of Undisputed Election– Appointment of Trustee, Case No. 13-51237, ECF No. 220	Vol. 22, 3626–3627
20	Stipulation and Order to Substitute a Party Pursuant to 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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
29	September 20, 2010 email from Yalamanchili to Graber RE: Attorney Client Privileged Communication	Vol. 22, 3688–3689
30	September 21, 2010 email from P. Morabito to Vacco and Cross RE: Attorney Client Privileged Communication	Vol. 22, 3690–3692
31	September 23, 2010 email chain between Graber and P. Morabito RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3693–3694
32	September 23, 2010 email from Yalamanchili to Graber RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3695–3696
33	September 24, 2010 email from P. Morabito to Vacco RE: Superpumper, Inc.	Vol. 22, 3697–3697
34	September 26, 2010 email from Vacco to P. Morabito RE: Judgment for a fixed debt	Vol. 22, 3698–3698
35	September 27, 2010 email from P. Morabito to Vacco RE: First Amendment to Residential Lease executed 9/27/2010	Vol. 22, 3699–3701
36	November 7, 2012 emails between Vacco, P. Morabito, C. Lovelace RE: Attorney Client Privileged Communication	Vol. 22, 3702–3703
37	Morabito BMO Bank Statement – September 2010	Vol. 22, 3704–3710
38	Lippes Mathias Trust Ledger History	Vol. 23, 3711–3716

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
39	Fifth Amendment & Restatement of the Trust Agreement for the Arcadia Living Trust dated September 30, 2010	Vol. 23, 3717–3755
42	P. Morabito Statement of Assets & Liabilities as of May 5, 2009	Vol. 23, 3756–3756
43	March 10, 2010 email chain between Afshar and Takemoto RE: Current Personal Financial Statement	Vol. 23, 3757–3758
44	Salazar Net Worth Report (dated 03/15/2011)	Vol. 23, 3759–3772
45	Purchase and Sale Agreement	Vol. 23, 3773–3780
46	First Amendment to Purchase and Sale Agreement	Vol. 23, 3781–3782
47	Panorama – Estimated Settlement Statement	Vol. 23, 3783–3792
48	El Camino – Final Settlement Statement	Vol. 23, 3793–3793
49	Los Olivos – Final Settlement Statement	Vol. 23, 3794–3794
50	Deed for Transfer of Panorama Property	Vol. 23, 3795–3804
51	Deed for Transfer for Los Olivos	Vol. 23, 3805–3806
52	Deed for Transfer of El Camino	Vol. 23, 3807–3808
53	Kimmel Appraisal Report for Panorama and Clayton	Vol. 23, 3809–3886
54	Bill of Sale – Panorama	Vol. 23, 3887–3890
55	Bill of Sale – Mary Fleming	Vol. 23, 3891–3894
56	Bill of Sale – El Camino	Vol. 23, 3895–3898

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
57	Bill of Sale – Los Olivos	Vol. 23, 3899–3902
58	Declaration of Value and Transfer Deed of 8355 Panorama (recorded 12/31/2012)	Vol. 23, 3903–3904
60	Baruk Properties Operating Agreement	Vol. 23, 3905–3914
61	Baruk Membership Transfer Agreement	Vol. 24, 3915–3921
62	Promissory Note for \$1,617,050 (dated 10/01/2010)	Vol. 24, 3922–3924
63	Baruk Properties/Snowshoe Properties, Certificate of Merger (filed 10/04/2010)	Vol. 24, 3925–3926
64	Baruk Properties/Snowshoe Properties, Articles of Merger	Vol. 24, 3927–3937
65	Grant Deed from Snowshoe to Bayuk Living Trust; Doc No. 2010-0531071 (recorded 11/04/2010)	Vol. 24, 3938–3939
66	Grant Deed – 1461 Glenneyre; Doc No. 2010000511045 (recorded 10/08/2010)	Vol. 24, 3940–3941
67	Grant Deed – 570 Glenneyre; Doc No. 2010000508587 (recorded 10/08/2010)	Vol. 24, 3942–3944
68	Attorney File re: Conveyance between Woodland Heights and Arcadia Living Trust	Vol. 24, 3945–3980
69	October 24, 2011 email from P. Morabito to Vacco RE: Attorney Client Privileged Communication	Vol. 24, 3981–3982

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
70	November 10, 2011 email chain between Vacco and P. Morabito RE: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.	Vol. 24, 3983–3985
71	Bayuk First Ledger	Vol. 24, 3986–3987
72	Amortization Schedule	Vol. 24, 3988–3990
73	Bayuk Second Ledger	Vol. 24, 3991–3993
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75	March 30, 2012 email from Vacco to Bayuk RE: Letter to BOA	Vol. 24, 4054–4055
76	March 10, 2010 email chain between P. Morabito and jon@aim13.com RE: Strictly Confidential	Vol. 24, 4056–4056
77	May 20, 2010 email chain between P. Morabito, Vacco and Michael Pace RE: Proceed with placing a Binding Bid on June 22nd with ExxonMobil	Vol. 24, 4057–4057
78	Morabito Personal Financial Statement May 2010	Vol. 24, 4058–4059
79	June 28, 2010 email from P. Morabito to George Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 24, 4060–4066
80	Shareholder Interest Purchase Agreement	Vol. 24, 4067–4071
81	Plan of Merger of Consolidated Western Corporation with and Into Superpumper, Inc.	Vol. 24, 4072–4075

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84	Unanimous Written Consent of the Directors and Shareholders of Consolidated Western Corporation	Vol. 24, 4081–4083
85	Arizona Corporation Commission Letter dated October 21, 2010	Vol. 24, 4084–4091
86	Nevada Articles of Merger	Vol. 24, 4092–4098
87	New York Creation of Snowshoe	Vol. 24, 4099–4103
88	April 26, 2012 email from Vacco to Afshar RE: Ownership Structure of SPI	Vol. 24, 4104–4106
90	September 30, 2010 Matrix Retention Agreement	Vol. 24, 4107–4110
91	McGovern Expert Report	Vol. 25, 4111–4189
92	Appendix B to McGovern Report – Source 4 – Budgets	Vol. 25, 4190–4191
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105	Superpumper Successor Note in the amount of \$939,000 (dated 02/01/2011)	Vol. 25, 4196–4197

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106	Superpumper Stock Power transfers to S. Morabito and Bayuk (dated 01/01/2011)	Vol. 25, 4198–4199
107	<i>Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry- Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee, Case 13-51237, ECF No. 22 (filed 07/01/2013)</i>	Vol. 25, 4200–4203
108	October 12, 2012 email between P. Morabito and Bernstein RE: 2011 Return	Vol. 25, 4204–4204
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110	P. Morabito – Term Note in the amount of \$939,000.000 (dated 09/01/2010)	Vol. 25, 4214–4214
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112	Consent Agreement (dated 12/28/2010)	Vol. 25, 4245–4249
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122	Salvatore Morabito Term Note \$2,563,542.00 as of December 31, 2010	Vol. 26, 4324–4325
123	Edward Bayuk Term Note \$2,580,500.00 as of December 31, 2010	Vol. 26, 4326–4327
125	April 21, 2011 Management letter	Vol. 26, 4328–4330
126	Bayuk and S. Morabito Statements of Assets & Liabilities as of February 1, 2011	Vol. 26, 4331–4332
127	January 6, 2012 email from Bayuk to Lovelace RE: Letter of Credit	Vol. 26, 4333–4335
128	January 6, 2012 email from Vacco to Bernstein	Vol. 26, 4336–4338
129	January 7, 2012 email from Bernstein to Lovelace	Vol. 26, 4339–4343
130	March 18, 2012 email from P. Morabito to Vacco	Vol. 26, 4344–4344
131	April 21, 2011 Proposed Acquisition of Nella Oil	Vol. 26, 4345–4351
132	April 15, 2011 email chain between P. Morabito and Vacco	Vol. 26, 4352

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134	April 16, 2012 email from Vacco to Morabito	Vol. 26, 4354–4359
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137	August 24, 2011 email from Vacco to P. Morabito RE: Tim Haves	Vol. 26, 4366
138	November 11, 2011 email from Vacco to P. Morabito RE: Getting Trevor's commitment to sign	Vol. 26, 4367
139	November 16, 2011 email from P. Morabito to Vacco RE: Vacco's litigation letter	Vol. 26, 4368
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141	December 7, 2011 email from Vacco to P. Morabito RE: Moreno	Vol. 26, 4371
142	February 10, 2012 email chain between P. Morabito Wells, and Vacco RE: 1461 Glenneyre Street - Sale	Vol. 26, 4372–4375
143	April 20, 2012 email from P. Morabito to Bayuk RE: BofA	Vol. 26, 4376
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148	September 4, 2012 email from Bayuk to Vacco RE: Wire	Vol. 26, 4423–4426
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152	September 3, 2012 email from P. Morabito to Vacco RE: Wire	Vol. 26, 4435
153	March 14, 2013 email chain between P. Morabito and Vacco RE: BHI Hinckley	Vol. 26, 4436
154	Paul Morabito 2009 Tax Return	Vol. 26, 4437–4463
155	Superpumper Form 8879-S tax year ended December 31, 2010	Vol. 26, 4464–4484
156	2010 U.S. S Corporation Tax Return for Consolidated Western Corporation	Vol. 27, 4485–4556
157	Snowshoe form 8879-S for year ended December 31, 2010	Vol. 27, 4557–4577
158	Snowshoe Form 1120S 2011 Amended Tax Return	Vol. 27, 4578–4655

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161	December 18, 2012 email from Vacco to P. Morabito RE: Attorney Client Privileged Communication	Vol. 27, 4659
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174	October 15, 2015 Certificate of Service of copy of Lippes Mathias Wexler Friedman’s Response to Subpoena	Vol. 27, 4670
175	Order Granting Motion to Compel Responses to Deposition Questions ECF No. 502; Case No. 13-51237-gwz (filed 02/03/2016)	Vol. 27, 4671–4675
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189	Mortgage – Mary Fleming	Vol. 28, 4864
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191	Settlement Statement – 370 Los Olivos	Vol. 28, 4866
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193	Mortgage – 8355 Panorama Drive	Vol. 28, 4869–4870
194	Compass – Certificate of Custodian of Records (dated 12/21/2016)	Vol. 28, 4871–4871
196	June 6, 2014 Declaration of Sam Morabito – Exhibit 1 to Snowshoe Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4872–4874
197	June 19, 2014 Declaration of Sam Morabito – Exhibit 1 to Superpumper Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4875–4877
198	September 22, 2017 Declaration of Sam Morabito – Exhibit 22 to Defendants’ SSOF in Support of Opposition to Plaintiff’s MSJ – filed in Case No. CV13-02663	Vol. 28, 4878–4879

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225	Bank of America Records for Edward Bayuk (dated 09/05/2012)	Vol. 28, 4887–4897
226	June 11, 2007 Wholesale Marketer Agreement	Vol. 29, 4898–4921
227	May 25, 2006 Wholesale Marketer Facility Development Incentive Program Agreement	Vol. 29, 4922–4928
228	June 2007 Master Lease Agreement – Spirit SPE Portfolio and Superpumper, Inc.	Vol. 29, 4929–4983
229	Superpumper Inc 2008 Financial Statement (dated 12/31/2008)	Vol. 29, 4984–4996
230	November 9, 2009 email from P. Morabito to Bernstein, Yalaman RE: Jan Friederich – entered into Consulting Agreement	Vol. 29, 4997
231	September 30, 2010, Letter from Compass to Superpumper, Morabito, CWC RE: reducing face amount of the revolving note	Vol. 29, 4998–5001
232	October 15, 2010, letter from Quarles & Brady to Vacco RE: Revolving Loan Documents and Term Loan Documents between Superpumper and Compass Bank	Vol. 29, 5002–5006

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235	August 31, 2010 Superpumper Inc., Valuation of 100 percent of the common equity in Superpumper, Inc on a controlling marketable basis	Vol. 29, 5014–5059
236	June 18, 2014 email from S. Morabito to Vanek (WF) RE: Analysis of Superpumper Acquisition in 2010	Vol. 29, 5060–5061
241	Superpumper March 2010 YTD Income Statement	Vol. 29, 5062–5076
244	Assignment Agreement for \$939,000 Morabito Note	Vol. 29, 5077–5079
247	July 1, 2011 Third Amendment to Forbearance Agreement Superpumper and Compass Bank	Vol. 29, 5080–5088
248	Superpumper Cash Contributions January 2010 thru September 2015 – Bayuk and S. Morabito	Vol. 29, 5089–5096
252	October 15, 2010 Letter from Quarles & Brady to Vacco RE: Revolving Loan documents and Term Loan documents between Superpumper Prop. and Compass Bank	Vol. 29, 5097–5099
254	Bank of America – S. Morabito SP Properties Sale, SP Purchase Balance	Vol. 29, 5100
255	Superpumper Prop. Final Closing Statement for 920 Mountain City Hwy, Elko, NV	Vol. 29, 5101
256	September 30, 2010 Raffles Insurance Limited Member Summary	Vol. 29, 5102

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257	Equalization Spreadsheet	Vol. 30, 5103
258	November 9, 2005 Grant, Bargain and Sale Deed; Doc #3306300 for Property Washoe County	Vol. 30, 5104–5105
260	January 7, 2016 Budget Summary – Panorama Drive	Vol. 30, 5106–5107
261	Mary 22, 2006 Compilation of Quotes and Invoices Quote of Valley Drapery	Vol. 30, 5108–5116
262	Photos of 8355 Panorama Home	Vol. 30, 5117–5151
263	Water Rights Deed (Document #4190152) between P. Morabito, E. Bayuk, Grantors, RCA Trust One Grantee (recorded 12/31/2012)	Vol. 30, 5152–5155
265	October 1, 2010 Bank of America Wire Transfer –Bayuk – Morabito \$60,117	Vol. 30, 5156
266	October 1, 2010 Check #2354 from Bayuk to P. Morabito for \$29,383 for 8355 Panorama funding	Vol. 30, 5157–5158
268	October 1, 2010 Check #2356 from Bayuk to P. Morabito for \$12,763 for 370 Los Olivos Funding	Vol. 30, 5159–5160
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270	Bayuk Payment Ledger Support Documents Checks and Bank Statements	Vol. 31, 5163–5352
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277	Assessor's Map/Home Comparisons for 8355 Panorama Drive, Reno, NV	Vol. 32, 5401–5437
278	December 3, 2007 Case Docket for CV07-02764	Vol. 32, 5438–5564
280	May 25, 2011 Stipulation Regarding the Imposition of Punitive Damages; Case No. CV07-02764 (filed 05/25/2011)	Vol. 33, 5565–5570
281	Work File for September 24, 2010 Appraisal of 8355 Panorama Drive, Reno, NV	Vol. 33, 5571–5628
283	January 25, 2016 Expert Witness Report Leonard v. Superpumper Snowshoe	Vol. 33, 5629–5652
284	February 29, 2016 Defendants' Rebuttal Expert Witness Disclosure	Vol. 33, 5653–5666
294	October 5, 2010 Lippes, Mathias Wexler Friedman, LLP, Invoices to P. Morabito	Vol. 33, 5667–5680
295	P. Morabito 2010 Tax Return (dated 10/16/2011)	Vol. 33, 5681–5739
296	December 31, 2010 Superpumper Inc. Note to Financial Statements	Vol. 33, 5740–5743
297	December 31, 2010 Superpumper Consultations	Vol. 33, 5744

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301	September 15, 2010 email from Vacco to P. Morabito RE: Tomorrow	Vol. 33, 5749–5752
303	Bankruptcy Court District of Nevada Claims Register Case No. 13-51237	Vol. 33, 5753–5755
304	April 14, 2018 email from Allen to Krausz RE: Superpumper	Vol. 33, 5756–5757
305	Subpoena in a Case Under the Bankruptcy Code to Robison, Sharp, Sullivan & Brust issued in Case No. BK-N-13-51237-GWZ	Vol. 33, 5758–5768
306	August 30, 2018 letter to Mark Weisenmiller, Esq., from Frank Gilmore, Esq.,	Vol. 34, 5769
307	Order Granting Motion to Compel Compliance with the Subpoena to Robison, Sharp, Sullivan & Brust filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5770–5772
308	Response of Robison, Sharp, Sullivan & Brust's to Subpoena filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5773–5797
309	Declaration of Frank C. Gilmore in support of Robison, Sharp, Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5798–5801
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Minutes of November 2, 2018, Non-Jury Trial, Day 5 (filed 11/08/2018)	Vol. 39, 6818–7007
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Minutes of November 6, 2018, Non-Jury Trial, Day 7 (filed 11/08/2018)	Vol. 41, 7170–7269
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Plaintiff’s Motion to Reopen Evidence (filed 01/30/2019)		Vol. 46, 7894–7908
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Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff’s Motion to Reopen	Vol. 46, 7909–7913
1-A	September 21, 2017 Declaration of Salvatore Morabito	Vol. 46, 7914–7916
1-B	Defendants’ Proposed Findings of Fact, Conclusions of Law, and Judgment (Nov. 26, 2018)	Vol. 46, 7917–7957
1-C	Judgment on the First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 123 (April 30, 2018)	Vol. 46, 7958–7962
1-D	Amended Findings of Fact and Conclusions of Law in Support of Judgment Regarding Plaintiffs’ First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 126 (April 30, 2018)	Vol. 46, 7963–7994
1-E	Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 191 (Sept. 10, 2018)	Vol. 46, 7995–8035

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1-F	Order Granting Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 229 (Jan. 3, 2019)	Vol. 46, 8036–8039
1-G	Response of Robison, Sharp, Sullivan & Brust[] To Subpoena (including RSSB_000001 – RSSB_000031) (Jan. 18, 2019)	Vol. 46, 8040–8067
1-H	Excerpts of Deposition Transcript of Sam Morabito as PMK of Snowshoe Petroleum, Inc. (Oct. 1, 2015)	Vol. 46, 8068–8076
Errata to: Plaintiff's Motion to Reopen Evidence (filed 01/30/2019)		Vol. 47, 8077–8080
Exhibit to Errata to: Plaintiff's Motion to Reopen Evidence		
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1	Plaintiff's Motion to Reopen Evidence	Vol. 47, 8081–8096
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Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 02/04/2019)		Vol. 47, 8103–8105
Supplement to Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)		Vol. 47, 8106–8110

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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Exhibit	Document Description	
1	Supplemental Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)	Vol. 47, 8111–8113
1-I	Declaration of Frank C. Gilmore in Support of Robison, Sharp Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 259 (Jan. 30, 2019)	Vol. 47, 8114–8128
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Plaintiff's Reply to Defendants' Response to Motion to Reopen Evidence (filed 02/07/2019)		Vol. 47, 8136–8143
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[Defendants' Proposed Amended] Findings of Fact, Conclusions of Law, and Judgment (filed 03/08/2019)		Vol. 47, 8225–8268
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Memorandum of Costs and Disbursements (filed 04/11/2019)		Vol. 48, 8341–8347
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Exhibit	Document Description	
1	Ledger of Costs	Vol. 48, 8348–8370
Application for Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)		Vol. 48, 8371–8384
Exhibits to Application for Attorneys’ Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Declaration of Teresa M. Pilatowicz In Support of Plaintiff’s Application for Attorney’s Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)	Vol. 48, 8385–8390
2	Plaintiff’s Offer of Judgment to Defendants (dated 05/31/2016)	Vol. 48, 8391–8397
3	Defendant’s Rejection of Offer of Judgment by Plaintiff (dated 06/15/2016)	Vol. 48, 8398–8399
4	Log of time entries from June 1, 2016 to March 28, 2019	Vol. 48, 8400–8456

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

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Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/25/2019)		Vol. 49, 8638–8657
Defendant, Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/26/2019)		Vol. 50, 8658–8676
Exhibits to Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60		
Exhibit	Document Description	
1	February 27, 2019 email with attachments	Vol. 50, 8677–8768
2	Declaration of Frank C. Gilmore in Support of Edward Bayuk's Motion for New Trial (filed 04/26/2019)	Vol. 50, 8769–8771
3	February 27, 2019 email from Marcy Trabert	Vol. 50, 8772–8775
4	February 27, 2019 email from Frank Gilmore to eturner@Gtg.legal RE: Friday Trial	Vol. 50, 8776–8777
Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/30/2019)		Vol. 50, 8778–8790
Exhibit to Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321	Vol. 50, 8791–8835

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Plaintiff's Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 05/07/2019)		Vol. 51, 8836–8858
Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Reply in Support of Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCp 52, 59, and 60 (filed 05/14/2019)		Vol. 51, 8859–8864
Declaration of Edward Bayuk Claiming Exemption from Execution (filed 06/28/2019)		Vol. 51, 8865–8870
Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution		
Exhibit	Document Description	
1	Copy of June 22, 2019 Notice of Execution and two Write of Executions	Vol. 51, 8871–8896
2	Declaration of James Arthur Gibbons Regarding his Attestation, Witness and Certification on November 12, 2005 of the Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 06/25/2019)	Vol. 51, 8897–8942
Notice of Claim of Exemption from Execution (filed 06/28/2019)		Vol. 51, 8943–8949
Edward Bayuk's Declaration of Salvatore Morabito Claiming Exemption from Execution (filed 07/02/2019)		Vol. 51, 8950–8954
Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution		
Exhibit	Document Description	
1	Las Vegas June 22, 2019 letter	Vol. 51, 8955–8956

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
2	Writs of execution and the notice of execution	Vol. 51, 8957–8970
Minutes of June 24, 2019 telephonic hearing on Decision on Submitted Motions (filed 07/02/2019)		Vol. 51, 8971–8972
Salvatore Morabito’s Notice of Claim of Exemption from Execution (filed 07/02/2019)		Vol. 51, 8973–8976
Edward Bayuk’s Third Party Claim to Property Levied Upon NRS 31.070 (filed 07/03/2019)		Vol. 51, 8977–8982
Order Granting Plaintiff’s Application for an Award of Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)		Vol. 51, 8983–8985
Order Granting in part and Denying in part Motion to Retax Costs (filed 07/10/2019)		Vol. 51, 8986–8988
Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5) (filed 07/11/2019)		Vol. 52, 8989–9003
Exhibits to Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5)		
Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 52, 9004–9007
2	11/30/2011 Tolling Agreement – Edward Bayuk	Vol. 52, 9008–9023
3	11/30/2011 Tolling Agreement – Edward William Bayuk Living Trust	Vol. 52, 9024–9035

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
4	Excerpts of 9/28/2015 Deposition of Edward Bayuk	Vol. 52, 9036–9041
5	Edward Bayuk, as Trustee of the Edward William Bayuk Living Trust’s Responses to Plaintiff’s First Set of Requests for Production, served 9/24/2015	Vol. 52, 9042–9051
6	8/26/2009 Grant Deed (Los Olivos)	Vol. 52, 9052–9056
7	8/17/2018 Grant Deed (El Camino)	Vol. 52, 9057–9062
8	Trial Ex. 4 (Confession of Judgment)	Vol. 52, 9063–9088
9	Trial Ex. 45 (Purchase and Sale Agreement, dated 9/28/2010)	Vol. 52, 9089–9097
10	Trial Ex. 46 (First Amendment to Purchase and Sale Agreement, dated 9/29/2010)	Vol. 52, 9098–9100
11	Trial Ex. 51 (Los Olivos Grant Deed recorded 10/8/2010)	Vol. 52, 9101–9103
12	Trial Ex. 52 (El Camino Grant Deed recorded 10/8/2010)	Vol. 52, 9104–9106
13	Trial Ex. 61 (Membership Interest Transfer Agreement, dated 10/1/2010)	Vol. 52, 9107–9114
14	Trial Ex. 62 (\$1,617,050.00 Promissory Note)	Vol. 52, 9115–9118
15	Trial Ex. 65 (Mary Fleming Grant Deed recorded 11/4/2010)	Vol. 52, 9119–9121
Notice of Entry of Order Denying Defendants’ Motions for New Trial and/or to Alter or Amend Judgment (filed 07/16/2019)		Vol. 52, 9122–9124

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibit to Notice of Entry of Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment		
Exhibit	Document Description	
1	Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)	Vol. 52, 9125–9127
Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/16/2019)		Vol. 52, 9128–9130
Exhibit to Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)	Vol. 52, 9131–9134
Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/16/2019)		Vol. 52, 9135–9137
Exhibit to Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs		
Exhibit	Document Description	
1	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)	Vol. 52, 9138–9141

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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
2	Bayuk and the Bayuk Trust's proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 52, 9205–9210
3	July 30, 2019 email evidencing Bayuk, through counsel Jeffrey Hartman, Esq., requesting until noon on July 31, 2019 to provide comments.	Vol. 52, 9211–9212
4	July 31, 2019 email from Teresa M. Pilatowicz, Esq. Bayuk failed to provide comments at noon on July 31, 2019, instead waiting until 1:43 p.m. to send a redline version with proposed changes after multiple follow ups from Plaintiff's counsel on July 31, 2019	Vol. 52, 9213–9219
5	A true and correct copy of the original Order and Bayuk Changes	Vol. 52, 9220–9224
6	A true and correct copy of the redline run by Plaintiff accurately reflecting Bayuk's proposed changes	Vol. 52, 9225–9229
7	Email evidencing that after review of the proposed revisions, Plaintiff advised Bayuk, through counsel, that Plaintiff agree to certain proposed revisions, but the majority of the changes were unacceptable as they did not reflect the Court's findings or evidence before the Court.	Vol. 52, 9230–9236
Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019)		Vol. 53, 9237–9240

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

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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Notice of Entry of Order Denying Claim of Exemption (filed 08/12/2019)		Vol. 53, 9370–9373
Exhibit to Notice of Entry of Order Denying Claim of Exemption		
Exhibit	Document Description	
1	Order Denying Claim of Exemption (08/02/2019)	Vol. 53, 9374–9376
Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/19/2019)		Vol. 54, 9377–9401
Exhibits to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration		
Exhibit	Document Description	
1	Order Denying Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 54, 9402–9406
2	Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 11/12/05)	Vol. 54, 9407–9447
3	Spendthrift Trust Agreement for the Arcadia Living Trust (dated 10/14/05)	Vol. 54, 9448–9484
4	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/10)	Vol. 54, 9485–9524
5	P. Morabito's Supplement to NRCP 16.1 Disclosures (dated 03/01/11)	Vol. 54, 9525–9529

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
6	Transcript of March 3, 2011 Deposition of P. Morabito	Vol. 55, 9530–9765
7	Documents Conveying Real Property	Vol. 56, 9766–9774
8	Transcript of July 22, 2019 Hearing	Vol. 56, 9775–9835
9	Tolling Agreement JH and P. Morabito (partially executed 11/30/11)	Vol. 56, 9836–9840
10	Tolling Agreement JH and Arcadia Living Trust (partially executed 11/30/11)	Vol. 56, 9841–9845
11	Excerpted Pages 8–9 of Superpumper Judgment (filed 03/29/19)	Vol. 56, 9846–9848
12	Petitioners' First Set of Interrogatories to Debtor (dated 08/13/13)	Vol. 56, 9849–9853
13	Tolling Agreement JH and Edward Bayuk (partially executed 11/30/11)	Vol. 56, 9854–9858
14	Tolling Agreement JH and Bayuk Trust (partially executed 11/30/11)	Vol. 56, 9859–9863
15	Declaration of Mark E. Lehman, Esq. (dated 03/21/11)	Vol. 56, 9864–9867
16	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 56, 9868–9871
17	Assignment and Assumption Agreement (dated 07/03/07)	Vol. 56, 9872–9887
18	Order Denying Morabito's Claim of Exemption (filed 08/02/19)	Vol. 56, 9888–9890

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Errata to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/20/2019)		Vol. 57, 9891–9893
Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)		Vol. 57, 9894–9910
Errata to Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)		Vol. 57, 9911–9914
Exhibits to Errata to Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085		
Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 57, 9915–9918
2	Plaintiff's Amended NRCP 16.1 Disclosures (February 19, 2016)	Vol. 57, 9919–9926
3	Plaintiff's Fourth Supplemental NRCP 16.1 Disclosures (November 15, 2016)	Vol. 57, 9927–9930
4	Plaintiff's Fifth Supplemental NRCP 16.1 Disclosures (December 21, 2016)	Vol. 57, 9931–9934
5	Plaintiff's Sixth Supplemental NRCP 16.1 Disclosures (March 20, 2017)	Vol. 57, 9935–9938

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs (filed 09/04/2019)		Vol. 57, 9939–9951
Exhibits to Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs		
Exhibit	Document Description	
19	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9952–9993
20	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9994–10010
Order Denying Defendants’ Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff’s Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/2019)		Vol. 57, 10011–10019
Bayuk’s Case Appeal Statement (filed 12/06/2019)		Vol. 57, 10020–10026
Bayuk’s Notice of Appeal (filed 12/06/2019)		Vol. 57, 10027–10030

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Bayuk's Notice of Appeal		
Exhibit	Document Description	
1	Order Denying [Morabito's] Claim of Exemption (filed 08/02/19)	Vol. 57, 10031–10033
2	Order Denying [Bayuk's] Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 57, 10034–10038
3	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10039–10048
Notice of Entry of Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 12/23/2019)		Vol. 57, 10049–10052
Exhibit to Notice of Entry of Order		
Exhibit	Document Description	
A	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10053–10062
Docket Case No. CV13-02663		Vol. 57, 10063–10111

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

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

16 Plaintiff,

17 vs.

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

24 Defendants.

CASE NO.: CV13-02663
DEPT. NO. 4

23 **PLAINTIFF'S OBJECTION TO (1) CLAIM OF EXEMPTION FROM**
24 **EXECUTION AND (2) THIRD PARTY CLAIM TO PROPERTY LEVIED UPON,**
25 **AND REQUEST FOR HEARING PURSUANT TO NRS 21.112 AND 31.070(5)**

26 Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito
27 ("Plaintiff"), by and through counsel, the law firm of Garman Turner Gordon LLP, hereby objects
28 to the *Notice of Claim of Exemption from Execution* (the "Exemption Claim") and *Third Party Claim*

1 to Property Levied Upon NRS 31.070 (the “Third Party Claim”), both filed by Edward William
2 Bayuk (“Bayuk”), individually or in his capacity as Trustee of the Edward William Bayuk Living
3 Trust (the “Bayuk Trust”), which are supported by the *Declaration of Bayuk Claiming Exemption*
4 *from Execution* filed by Bayuk, individually and as Trustee of the Bayuk Trust, on June 28, 2019
5 (the “Bayuk Declaration”). Plaintiff further moves this Court for immediate hearing on the Third
6 Party Claim under NRS 31.070(5) and on the Exemption Claim under NRS 21.112(6), which
7 requires a hearing to be held within seven (7) judicial days hereof, to determine whether Bayuk and
8 the Bayuk Trust are entitled to the exemptions claimed therein under NRS 21.112 and WDCR 16.

9 This objection (the “Objection”) is made and based on the following Memorandum of Points
10 and Authorities, the accompanying declaration of Gabrielle A. Hamm, Esq. (“Hamm Decl.”) and
11 exhibits, the papers and pleadings on file in the case, the evidentiary record from trial, including the
12 trial transcript and exhibits, and the *Findings of Fact, Conclusions of Law, and Judgment* entered on
13 March 29, 2019 (the “Judgment”), as well as testimony elicited and oral argument the Court may
14 permit at the hearing.

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I.**
17 **INTRODUCTION**

18 The Bayuk Declaration is a sworn statement that clarifies years of inconsistent testimony and
19 documents relating to the Bayuk Trust.

20 In the Bayuk Declaration, Bayuk relies on the “Spendthrift Trust Amendment to the Edward
21 William Bayuk Living Trust” dated November 12, 2005 (the “Spendthrift Amendment”), which
22 establishes the Bayuk Trust as a self-settled irrevocable spendthrift trust, to support both the
23 Exemption Claim and the Third Party Claim. Though this is the first disclosure of the Spendthrift
24 Amendment in the more than five years following commencement of this action and three months
25 after entry of the Judgment, and is inconsistent with Bayuk’s own prior representations, sworn
26 testimony, and the trial evidence, given that the Exemption Claim and Third Party Claim are
27 supported by the Bayuk Declaration—a sworn statement of Bayuk under penalty of perjury—
28

1 Plaintiff will not take issue with the sworn statement as a clarification of the nature of Bayuk Trust
2 and Bayuk's relationship to the Bayuk Trust.

3 After culling through all of the extraneous verbiage, Bayuk is testifying, in sum, that in 2005,
4 he amended the Bayuk Trust to be a self-settled irrevocable spendthrift trust under the applicable
5 Nevada statute, that the Bayuk Trust is titled "The Edward William Bayuk Living Trust," that no
6 other trusts exist by, for, or on behalf of Bayuk, and that he has no assets outside this Bayuk Trust
7 (and conversely, that all of the identified assets are property of the Bayuk Trust). Bayuk then argues
8 that the assets of the Bayuk Trust may not be levied to satisfy a claim against him personally as
9 beneficiary of the Bayuk Trust and that his personal assets (of which he claims there are none) may
10 not be levied to satisfy claims against the Bayuk Trust, relying upon cherry-picked compilation of
11 provisions of NRS Chapters 164 and 166 (the "Spendthrift Trust Act"). However, this argument is
12 immaterial, irrelevant, and misplaced. What Bayuk ignores is that *both Bayuk and the Bayuk Trust*
13 *are judgment debtors* because both Bayuk and the Bayuk Trust were the transferees of various
14 fraudulent transfers made by Paul Morabito or the person for whose benefit such transfers were
15 made.

16 Moreover, the Bayuk Trust has not identified the value of the assets Bayuk contends are
17 subject to the Third Party Claim or the beneficial holders of any third party claim other than Bayuk
18 himself, such that Plaintiff cannot give the sheriff an undertaking under NRS 31.070 should one be
19 required. Rather, the Third Party Claim appears to be an effort by Bayuk to raise defenses under the
20 Spendthrift Trust Act for the first time following the close of evidence and entry of the Judgment,
21 which defenses are both without merit and waived.

22 Accordingly, both the Exemption Claim and Third Party Claim should be denied.

23 **II.**
24 **RELEVANT FACTS**

25 **A. The Material Facts Proffered by Bayuk.**

26 1. Bayuk represents that the Bayuk Trust was created on August 23, 1998 as a Florida
27 Living Trust, and that on November 12, 2005, he executed the Spendthrift Amendment to the
28

1 Edward William Bayuk Living Trust.¹ That the Spendthrift Amendment was executed on November
2 12, 2005 is verified by the *Declaration of James Arthur Gibbons Regarding His Attestation, Witness*
3 *and Certification on November 12, 2005 of the Spendthrift Trust Amendment to the Edward William*
4 *Bayuk Living Trust.*²

5 2. According to Bayuk's sworn statement, "The Edward William Bayuk Living Trust"
6 created by the 2005 Spendthrift Amendment nullifies all prior versions of the Edward William Bayuk
7 Living Trust and subsumes all future versions of the Edward William Bayuk Living Trust.³ He
8 further states that "all business and personal assets associated with Bayuk, whether prior or current
9 holdings, are the property of the "Edward William Bayuk Living Trust."⁴ Thus, based on the Bayuk
10 Declaration, everyone can now conclude that the Bayuk Trust is Bayuk's only trust.

11 **B. The Tolling Agreements with Bayuk and the Bayuk Trust.**

12 3. As part of the settlement between the Herbst Parties and Paul Morabito ("Morabito")
13 and Consolidated Nevada Corp. in Case No. CV07-02764, Bayuk and the Bayuk Trust entered into
14 the Tolling Agreements attached as Exhibits 2 (the "Bayuk Tolling Agreement") and 3 (the "Bayuk
15 Trust Tolling Agreement")⁵ with the Herbst Parties on November 30, 2011.

16 4. Both Tolling Agreements reflect the Herbst Parties' belief that they possessed valid
17 claims against Bayuk, individually, and the Bayuk Trust, among others, for recovery of fraudulent
18 transfers.⁶ The Bayuk Trust agreed to toll the limitations period for fraudulent transfer claims, as
19 follows:

20 The Bayuk Trust hereby agrees that any limitations period under Nevada
21 law and the statute of limitations for filing or prosecuting claims against
22 The Bayuk Trust that are related to the alleged transfers referred to in
23 Recital F, including but not limited to, the Fraudulent Conveyance
Claims, are hereby tolled pending the full and complete performance of

24 ¹ Bayuk Declaration, at p. 2, ¶¶ 3, 4.

25 ² Bayuk Declaration, at Exhibit 2 (James Gibbons declaration dated June 25, 2019), ¶¶ 7, 8.

26 ³ Bayuk Declaration, at p. 2, ¶ 5.

27 ⁴ Id., at p. 3, ¶ 8.

28 ⁵ The Bayuk Trust Tolling Agreement identifies the "Edward William Bayuk Living Trust" but inadvertently refers to it as the "Edward W. Bayuk Living Trust" in several places.

⁶ Ex. 2 at pp. 1-2, Recital F; Ex. 3 at pp. 1-2, Recital F.

each and every one of the Morabito Parties' obligations under the Settlement Agreement or entry of the Confession of Judgment, whichever is first to occur.

In exchange, the Herbst Parties hold in abeyance all claims against The Bayuk Trust related to the alleged transfers referred to in Recital F, including but not limited to, the Fraudulent Conveyance Claims, pending the full and complete performance of each and every of the Morabito Parties' obligations under the Settlement Agreement or entry of the Confession of Judgment, whichever is first to occur.⁷⁸

5. Bayuk agreed to substantively identical terms in the Bayuk Tolling Agreement.⁹

6. Following Morabito's default of the terms of the settlement with the Herbst Parties, the Confession of Judgment was entered on June 18, 2013.¹⁰

7. The involuntary bankruptcy petition for Morabito was filed on June 20, 2013, before the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court").

8. This action was commenced on December 17, 2013 against Bayuk and the Bayuk Trust, among others.¹¹

C. The Judgment Against Bayuk and the Bayuk Trust.

9. The Court entered the Judgment on March 29, 2019 against Bayuk and the Bayuk Trust, along with Snowshoe Petroleum, Inc. and Salvatore Morabito.

10. With respect to Plaintiff's claims against Bayuk and the Bayuk Trust, the Court found that Morabito transferred his interests in both the Los Olivos and El Camino Properties¹² (along with

⁷ Ex. 3 (Bayuk Trust Tolling Agreement), at p. 2, ¶¶ 2, 3.

⁸ "Fraudulent Transfer Claims" are defined in the Settlement Agreement as follows:

the Herbst Parties contend that prior to and after the Court's oral pronouncement of judgment, Morabito undertook numerous fraudulent conveyances in an effort to conceal assets and render himself judgment proof. Morabito denies such allegation. Notwithstanding the denial by Morabito, the Herbst Parties believe they possess valid claims against CNC, Morabito, individually and in his capacity as Trustee of the Arcadia Living Trust, Edward Bayuk, individually and in his capacity as Trustee of the Edward William Bayuk Living Trust, Salvatore Morabito and Trevor Lloyd, for recovery of funds the Herbst Parties believe were transferred in violation of Nevada's Uniform Fraudulent Conveyance Act (each of the foregoing causes of action, a "Fraudulent Conveyance Claim").

⁹ Ex. 2 (Bayuk Tolling Agreement), at p. 2, ¶¶ 2, 3.

¹⁰ See Trial Ex. 4 (Confession of Judgment), attached hereto as Exhibit 8. All admitted trial exhibits referenced herein are attached as exhibits to this Objection for the convenience of the Court.

¹¹ See Complaint, on file herein.

¹² 370 Los Olivos, Laguna Beach, California and 371 El Camino del Mar, Laguna Beach, California.

1 all of the personal property therein) to the Bayuk Trust following the September 13, 2010 Oral Ruling
2 against Morabito and Consolidated Nevada Corporation.¹³ As reflected in the exhibits admitted at
3 trial, Morabito transferred his interest in the Los Olivos and El Camino Properties to both Bayuk,
4 individually and in his capacity as Trustee of the “Edward William Bayuk Living Trust dated
5 6/18/2008.”¹⁴

6 11. Consistent with the evidence admitted at trial, Bayuk’s 50% interest in the Los Olivos
7 Property and his 25% interest in the El Camino Property were held by Bayuk in his capacity as
8 trustee of the “Edward William Bayuk Living Trust dated 6/18/2008.”¹⁵ Bayuk took title to both
9 properties following the fraudulent transfers in the name of “Edward William Bayuk, Trustee of
10 Edward William Bayuk Living Trust.”¹⁶

11 12. The Court further found that Morabito transferred his interest in Baruk LLC to
12 Bayuk, who merged Baruk LLC into Snowshoe Properties, LLC, a newly-formed California limited
13 liability company solely owned by the Bayuk Trust.¹⁷ As reflected in the trial exhibits, Morabito
14 transferred his interest in Baruk LLC to Bayuk, in his capacity as Trustee of the “Edward William
15 Bayuk Living Trust”¹⁸ and the Baruk Note in the amount of \$1,617,050 was payable by the “Edward
16 William Bayuk Living Trust.”¹⁹

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22 ¹³ Judgment at p. 7, ¶ 17(f), pp. 19-20, ¶¶ 45-46.

23 ¹⁴ See Trial Ex. 45 (9/28/2010 Purchase and Sale Agreement) and Ex. 46 (9/29/2010 First Amendment to Purchase
24 and Sale Agreement), attached hereto as Exhibits 9 and 10.

25 ¹⁵ Exhibit 6 (Grant Deed recorded 8/26/2009, Document No. 2009000459183).

26 ¹⁶ Trial Ex. 51 (Los Olivos Property Grant Deed recorded 10/1/2010) and Ex. 52 (El Camino Property Grant Deed
27 recorded 10/1/2010), attached hereto as Exhibits 11 and 12.

28 ¹⁷ Judgment at p. 24 ¶¶ 56-58.

¹⁸ Trial Ex. 61 (10/1/2010 Membership Interest Transfer Agreement for Baruk Properties, LLC), attached hereto as
Exhibit 13.

¹⁹ Trial Ex. 62 (10/1/2010 Promissory Note in the principal amount of \$1,617,050 in favor of Morabito as trustee of
the Arcadia Living Trust), attached hereto as Exhibit 14.

1 13. The Court further found that Bayuk caused the Palm Springs Property²⁰ to be
2 transferred from Snowshoe Properties, LLC to the Bayuk Trust.²¹ As reflected in the trial exhibits,
3 Bayuk took title in his capacity as Trustee of the “Edward William Bayuk Living Trust.”²²

4 **D. Bayuk’s Prior Representations Regarding the Bayuk Trust.**

5 14. Inconsistent with the sworn statement in the Bayuk Declaration, repeated in the
6 Exemption Claim, that the Bayuk Trust was formed in 2005, which is supported by the sworn
7 statement of James Gibbons, Bayuk testified that the Bayuk Trust was formed in 2008 in his
8 deposition on September 28, 2015.²³

9 15. Consistent with his deposition testimony but contrary to his sworn statement that the
10 Bayuk Trust is a 2005 irrevocable trust and is the only trust in existence, the Purchase and Sale
11 Agreement and the First Amendment to Purchase and Sale Agreement provided for the transfer of
12 the El Camino and Los Olivos Properties to Bayuk and the Edward William Bayuk Living Trust
13 dated 6/18/2008.²⁴

14 16. On the eve of trial, Bayuk recorded a purported transfer of the El Camino Property
15 to the “Edward William Bayuk Living Trust dated August 13, 2009.”²⁵

16 17. These prior inconsistent representations regarding the identity of the transferee of
17 fraudulent transfers in the course of the litigation resulting in the Judgment are now clarified by the
18 Bayuk Declaration as the Bayuk Trust; there is only one Bayuk Trust, and that is the one evidenced
19 by the Spendthrift Amendment.

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21
22
23 ²⁰ 1254 Mary Fleming Circle, Palm Springs, California.

24 ²¹ Judgment at p. 24, ¶ 59.

25 ²² Trial Ex. 65 (11/4/2010 Grant Deed from Snowshoe Properties, LLC), attached hereto as Exhibit 15.

26 ²³ See Exhibit 4 (Transcript of Sept. 28, 2015 deposition of Edward Bayuk (“Depo Trans.”), at 54:4-25 (testifying that
the Edward William Bayuk Living Trust, which owns 370 Los Olivos and 331 El Camino, was created in 2008 for
the purpose of avoiding probate).

27 ²⁴ See Exs. 9 and 10 (Purchase and Sale Agreement and First Amendment to Purchase and Sale Agreement).

28 ²⁵ Exhibit 7 (Grant Deed recorded on 8/17/2018, Document No. 2018000302297).

1 **E. The Writs of Execution and Garnishment and Bayuk's Claim of Exemption.**

2 18. Plaintiff obtained writs of execution against both Bayuk and the Bayuk Trust on the
3 Judgment and caused the Washoe County Sheriff's Office or Las Vegas Constable's Office, as
4 applicable, to serve writs of garnishment upon Hartman & Hartman P.C. ("Hartman") and Holley
5 Driggs Walch Fine Puzey Stein & Thompson, Ltd. ("Holley Driggs"), two of many law firms who
6 have represented Bayuk and the Bayuk Trust, along with financial institutions where Plaintiff had
7 reason to believe Bayuk or the Bayuk Trust has held accounts.²⁶

8 19. Bayuk appears to assert an exemption for the following assets (the "Nevada Assets"):
9 (1) any money held in bank accounts "with respect to" Bayuk or the Bayuk Trust, (2) the unearned
10 portion of the retainer paid by Bayuk to Holley Driggs, and (3) the unearned portion of the retainer
11 paid by Bayuk to Hartman.²⁷ However, Bayuk fails to identify what bank accounts are the subject
12 of the claimed exemption, including the identity of the financial institution, the account numbers, or
13 the names of the account holder. Moreover, he fails to state the value of each of the Nevada Assets.

14 **III.**
15 **ARGUMENT**

16 **A. The Edward William Bayuk Living Trust is the Judgment Debtor.**

17 At various times, Bayuk has alleged that the Bayuk Trust was formed in 1998, 2008, and
18 2009, and now, for the first time in the Bayuk Declaration and Exemption Claim, he has revealed by
19 his sworn testimony and that of James Gibbons that the former Florida revocable Edward William
20 Bayuk Living Trust was amended in 2005 and has been referred to since such amendment as the
21 Edward William Bayuk Living Trust. His sworn testimony is, at the very least, inconsistent and
22 contrary to his various prior claims regarding the Edward William Bayuk Living Trust, including
23 that it was formed to avoid probate and that he is not a beneficiary.²⁸

24 While Bayuk has not explained his prior inconsistent testimony, why he executed the
25 Purchase and Sale Agreement and grant deeds on behalf of trust agreements which facially appear

26 ²⁶ See Hamm Decl., ¶ 4.

27 ²⁷ See Exemption Claim, at ¶¶ 2, 9, 10.

28 ²⁸ See Depo Trans. (Ex. 4) at p. 55:8-16; p. 56:24-25; see also Exhibit 5 (Bayuk Trust's NRCP 34 responses, served on September 24, 2015, Response to Request for Production No. 1).

1 to be different than the Spendthrift Amendment, or why he did not disclose the existence of the 2005
2 Spendthrift Amendment for more than five years after this action was commenced, it is clear from
3 the Exemption Claim that Bayuk swears that The Edward William Bayuk Living Trust was amended
4 by the Spendthrift Amendment on or about November 12, 2005, that it nullifies all prior versions of
5 the Bayuk Trust (the 1998 Florida revocable trust) and subsumes all future versions of the Bayuk
6 Trust (inclusive of any 2008 and 2009 modifications), and that it has held all of his assets since
7 2005.²⁹ As such, whether Bayuk has referred to or conveyed property to the “Edward William Bayuk
8 Living Trust dated June 18, 2008” or the “Edward William Bayuk Living Trust dated August 13,
9 2009,” all such property is property of the judgment debtor, The Edward William Bayuk Living
10 Trust.

11 However, that the Bayuk Trust was amended to become a self-settled spendthrift trust in
12 2005 is irrelevant to the Exemption Claim and the Third Party Claim, because Plaintiff is not
13 attempting to execute against Bayuk’s beneficial interest in the Bayuk Trust to satisfy a personal
14 claim against Bayuk. The Bayuk Trust itself is a judgment debtor under the Judgment because the
15 Bayuk Trust was the transferee of Morabito’s interests in the El Camino and Los Olivos Properties
16 and Baruk LLC, and as such, is directly liable as the transferee.

17 **B. The Third Party Claim Should be Rejected as the Spendthrift Trust Act Does Not**
18 **Shield Bayuk Trust from Liability, and any Defenses are Waived.**

19 The Bayuk Trust’s Third Party Claim is nothing more than a frivolous attempt to collaterally
20 attack the Judgment, and should be rejected in its entirety.

21 NRS 31.070(1) provides, in relevant part,

22 If the property levied on is claimed by a third person as the person’s property by
23 a written claim verified by the person’s oath or that of the person’s agent,
24 setting out the person’s right to the possession thereof, and served upon the
25 sheriff, the sheriff must release the property if the plaintiff, or the person in
26 whose favor the writ of attachment runs, fails within 7 days after written
27 demand to give the sheriff an undertaking executed by at least two good and
28 sufficient sureties in a sum equal to double the value of the property levied on.

²⁹ Bayuk Declaration, at p. 2, ¶¶ 4-5, p. 3, ¶¶ 7-8.

1 First, the Third Party Claim fails to identify the specific property levied on or the value
2 thereof. As such, Plaintiff is precluded from giving an undertaking “in a sum equal to double the
3 value of the property levied on” should one be required.

4 Second, the Third Party Claim is premised upon the nonsensical contention that “Plaintiff is
5 attempting to attach assets that belong to the [Bayuk Trust] by joining the trustee as a judgment
6 debtor.”³⁰ To the contrary, **both** Bayuk and the Bayuk Trust are judgment debtors, as both Bayuk
7 and the Bayuk Trust were initial transferees of the fraudulent transfers, or the person for whose
8 benefit the fraudulent transfers were made. Plaintiff did not seek to hold Bayuk vicariously liable as
9 a result of his self-appointment as trustee of the Bayuk Trust, and nothing in the Judgment imposes
10 personal liability on Bayuk for the obligations of the Bayuk Trust simply because he is the trustee of
11 the Bayuk Trust. Whether or not the Spendthrift Amendment is effective to prevent levy of the
12 Bayuk Trust’s assets to satisfy Bayuk’s personal obligations (which Plaintiff does not concede
13 because Defendants failed to raise the issue at trial), it does not immunize the Bayuk Trust from its
14 own obligations, and the Bayuk Trust cites no authority for the proposition that a trust, including a
15 trust created under the Spendthrift Trust Act, is shielded from its own liabilities. See NRS
16 166.120(1) (restrains assignment or alienation of “any interest of the beneficiary”); NRS 166.120(3)
17 (“ . . . nor shall the interest of the beneficiary be subject to any process of attachment issued against
18 the beneficiary, . . . ”); Klabacka v. Nelson, 394 P.3d 940, 947 (2017) (stating that the Spendthrift
19 Trust Act protects spendthrift trust assets from the personal obligations of beneficiaries).

20 Third, the Third Party Claim appears to be nothing more than an oblique challenge to the
21 Judgment, suggesting defenses that were never raised. To the extent Bayuk or the Bayuk Trust are
22 attempting to argue that the Bayuk Trust is not subject to liability as a result of any provision of the
23 Spendthrift Trust Act, including the limitations period set forth in NRS 166.040, or Chapter 164 of
24 the Nevada Revised Statutes,³¹ in addition to the Tolling Agreements, such arguments have been
25 waived because they were not raised at trial. See Idaho Res., Inc. v. Freeport-McMoran Gold Co.,

26
27 ³⁰ Third Party Claim at p. 2:7-8.

28 ³¹ See Bayuk Declaration, at p. 3, ¶ 11 (stating that the Bayuk Trust was created more than two years before the
existence of any claims by creditors).

1 110 Nev. 459, 461, 874 P.2d 742, 743 (1994) (affirmative defense not properly asserted or tried is
2 waived) (citing Combe v. Warren’s Family Drive-Inns, Inc., 680 P.2d 733, 735–36 (Utah 1984)
3 (“Parties may limit the scope of the litigation if they choose, and if an issue is clearly withheld, the
4 court cannot nevertheless adjudicate it and grant corresponding relief.”) (citations omitted); see also
5 Matter of Frei Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 8, 390 P.3d 646, 651 (2017) (citing
6 Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (stating that
7 nonjurisdictional issues not raised in the trial court are waived); Edwards v. Emperor’s Garden
8 Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (the court need not consider claims
9 not cogently argued in the parties’ briefs).

10 With respect to the statute of limitations argument specifically, neither Bayuk nor the Bayuk
11 Trust raised the limitations defense at trial or offer any evidence to meet their affirmative burden,
12 and therefore it is waived. See id.; see also NRCp 8(c) (statute of limitations is an affirmative
13 defense). Even were the defense not waived, however, it is specious and a nullity, as Bayuk and the
14 Bayuk Trust entered into the Tolling Agreements, which tolled the limitations period until June 18,
15 2013 (the date on which the Confession of Judgment was entered). Thus, the limitations period
16 would not have expired for two years following June 18, 2013.

17 The Court must also reject the Bayuk Trust’s contention that this Court lacks jurisdiction
18 under NRS 164.010(1), as the Nevada Supreme Court has already rejected a parallel argument in
19 Klabacka v. Nelson, 133 Nev. 164, 394 P.3d 940, 946 (2017). There, the husband and his trust
20 appealed a divorce decree, arguing, among other things, that the family court lacked jurisdiction to
21 hear the trust-related claims under NRS 166.120, which provides, in relevant part,

22 Any action to enforce [a spendthrift trust] beneficiary’s rights, to determine if
23 the beneficiary’s rights are subject to execution, to levy an attachment or for
24 any other remedy must be made only in a proceeding commenced pursuant to
25 [chapter 153 of NRS, if against a testamentary trust, or] NRS 164.010, if against
a nontestamentary trust. A court has exclusive jurisdiction over any proceeding
pursuant to this section.

26 Id., 394 P.3d at 946. Further, under NRS 164.015(1), “[t]he court has exclusive jurisdiction of
27 proceedings initiated by the petition of an interested person concerning the internal affairs of a
28 nontestamentary trust.” Id. (quoting NRS 164.015(1)). In both statutes, “court” is defined as “a

1 district court of this State sitting in probate or otherwise adjudicating matters pursuant to this title.”
2 Id. (citing NRS 132.116; NRS 164.005 (applying NRS 132.116 to trust proceedings under Title 13)).

3 However, the case was not initiated for the purpose of enforcing or determining a spendthrift
4 beneficiary’s rights under NRS 164.120(2) or determining the internal affairs of a nontestamentary
5 trust under NRS 164.015(1), and the Supreme Court found that the family court had subject-matter
6 jurisdiction over all claims brought in the divorce, including those relating to property held within
7 the self-settled spendthrift trusts. Klabacka, 394 P.3d at 946.

8 NRS 164.010(1), cited by the Bayuk Trust, provides

9 *Upon petition of any person appointed as trustee* of an express trust by any
10 *written instrument other than a will, or upon petition of a settlor or beneficiary*
11 *of the trust*, the district court of the county in which any trustee resides or
12 conducts business at the time of the filing of the petition or in which the trust
has been domiciled as of the time of the filing of the petition shall assume
jurisdiction of the trust. . .

13 No petition by a trustee, settlor, or beneficiary is pending; rather, this action is a fraudulent
14 transfer action commenced under Nevada’s Uniform Fraudulent Transfer Act by Plaintiff, who is a
15 stranger to the Bayuk Trust. By the same reasoning applied in Klabacka, this Court is not deprived
16 of jurisdiction merely because a trust or its property is implicated.

17 **C. Plaintiff requests an immediate hearing on the Third Party Claim.**

18 Subsection (5) of NRS 31.070 provides, in relevant part,

19 Whenever a verified third-party claim is served upon the sheriff upon levy of
20 the writ of attachment, the plaintiff or the third-party claimant is entitled to a
21 hearing within 10 days therefrom before the court having jurisdiction of the
action.

22 NRS 31.070(5). As the purported “third-party claimant” has not obtained a hearing, Plaintiff
23 requests an immediate hearing under NRS 31.070(5).

24 **IV.
CONCLUSION**

25 Based upon the foregoing, Plaintiff respectfully requests an immediate hearing under NRS
26 31.070(5) regarding the Third Party Claim and a hearing within seven (7) judicial days under NRS
27 21.112(6) and WDCR 16 regarding the Exemption Claim. Plaintiff further requests that the Court:
28

- 1 (1) deny the Exemption Claim;
- 2 (2) deny the Third Party Claim and determine that Bayuk is not entitled to possession of the
- 3 Bayuk Trust assets under NRS 31.070 because the Bayuk Trust, whether operative pursuant to the
- 4 Spendthrift Amendment dated November 12, 2005 or a subsequent amendment dated June 18, 2008
- 5 or August 13, 2009 which is subsumed within the 2005 Spendthrift Amendment, is the judgment
- 6 debtor, and any defenses based on the Spendthrift Amendment are waived; and
- 7 (3) enter such other and further relief as the Court deems just and appropriate.

8 **AFFIRMATION**

9 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document

10 does not contain the social security number of any person.

11 Dated this 11th day of July, 2019.

12 GARMAN TURNER GORDON LLP

13 /s/ Gabrielle A. Hamm

14 GERALD M. GORDON, ESQ.

15 ERIKA PIKE TURNER, ESQ.

16 TERESA M. PILATOWICZ, ESQ.

17 GABRIELLE A. HAMM, ESQ.

18 650 White Drive, Ste. 100

19 Las Vegas, Nevada 89119

20 Telephone 725-777-3000

21 *Counsel for Plaintiff*

22

23

24

25

26

27

28

INDEX OF EXHIBITS

Exhibit	Description	Pages³²
1	Declaration of Gabrielle A. Hamm, Esq.	5
2	11/30/2011 Tolling Agreement – Edward Bayuk	16
3	11/30/2011 Tolling Agreement – Edward William Bayuk Living Trust	12
4	Excerpts of 9/28/2015 Deposition of Edward Bayuk	
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	10
6	8/26/2009 Grant Deed (Los Olivos)	5
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8	Trial Ex. 4 (Confession of Judgment)	26
9	Trial Ex. 45 (Purchase and Sale Agreement, dated 9/28/2010)	9
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11	Trial Ex. 51 (Los Olivos Grant Deed recorded 10/8/2010)	3
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13	Trial Ex. 61 (Membership Interest Transfer Agreement, dated 10/1/2010)	8
14	Trial Ex. 62 (\$1,617,050.00 Promissory Note)	4
15	Trial Ex. 65 (Mary Fleming Grant Deed recorded 11/4/2010)	3

³² Exhibit pagination includes exhibit slip sheets.

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this
3 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the foregoing ***Plaintiff's***
4 ***Objection to (1) Declaration of Edward Bayuk Claiming Exemption From Execution and***
5 ***(2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112***
6 ***and 31.070(5)*** on the parties as set forth below:

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

9 _____ Certified Mail, Return Receipt Requested

10 _____ Via Facsimile (Fax)

11 _____ Via E-Mail

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

14 _____ Federal Express (or other overnight delivery)

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

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

17 Jeffrey L. Hartman, Esq.
E-mail: jlh@bankruptcyreno.com

18
19 Dated this 11th day of July, 2019.

20
21 /s/ Dekova Huckaby
22 An Employee of
23 GARMAN TURNER GORDON LLP

24 4844-6520-9756, v. 3

Exhibit 1

1 **1520**
2 GARMAN TURNER GORDON LLP
3 GERALD M. GORDON, ESQ.
4 Nevada Bar No. 229
5 E-mail: ggordon@gtg.legal
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15 650 White Drive, Ste. 100
16 Las Vegas, Nevada 89119
17 Telephone 725-777-3000
18 *Counsel to Plaintiff, William A. Leonard*

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

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

16 Plaintiff,

17 vs.

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

24 Defendants.

CASE NO.: CV13-02663
DEPT. NO. 4

23 **DECLARATION OF GABRIELLE A. HAMM IN SUPPORT OF PLAINTIFF'S**
24 **OBJECTION TO (1) DECLARATION OF EDWARD BAYUK CLAIMING EXEMPTION**
25 **FROM EXECUTION AND (2) THIRD PARTY CLAIM TO PROPERTY LEVIED UPON,**
26 **AND REQUEST FOR HEARING PURSUANT TO NRS 21.112 AND 31.070(5)**

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

28 1. I am over the age of eighteen (18) years and competent to testify on the matters set forth herein.

1 2. At all relevant times, I have been counsel with the law firm of Garman Turner Gordon
2 LLP (“GTG”), counsel for Plaintiff William A. Leonard (“Plaintiff”) in the above-captioned case.
3 In such capacity, I have direct and personal knowledge of the matters set forth herein and know them
4 to be true.

5 3. I am submitting this Declaration in support of Plaintiff’s objection and request for
6 hearing (the “Objection”) with respect to the *Declaration of Edward Bayuk Claiming Exemption*
7 *From Execution* (the “Exemption Claim”) and the *Third Party Claim to Property Levied Upon* (the
8 “Third Party Claim”).

9 4. Plaintiff obtained writs of execution against both Edward Bayuk (“Bayuk”) and The
10 Edward William Bayuk Living Trust (the “Bayuk Trust”) on the March 29, 2019 Judgment and
11 caused the Washoe County Sherriff’s Office or Las Vegas Constable’s Office, as applicable, to serve
12 writs of garnishment upon Hartman & Hartman P.C. (“Hartman”) and Holley Driggs Walch Fine
13 Puzey Stein & Thompson, Ltd. (“Holley Driggs”), two of several law firms who have represented
14 Bayuk and/or the Bayuk Trust, along with financial institutions where Plaintiff had reason to believe
15 Bayuk or the Bayuk Trust has held accounts. The Exemption Claim and Third Party Claim appear
16 to relate to these writs.

17 5. Attached to the Objection as **Exhibit 2** is a true and correct copy of the Tolling
18 Agreement between JH, Inc. and Jerry Herbst, on the one hand, and Bayuk, on the other, dated
19 November 30, 2011.

20 6. Attached to the Objection as **Exhibit 3** is a true and correct copy of the Tolling
21 Agreement between JH, Inc. and Jerry Herbst, on the one hand, and the Bayuk Trust, on the other,
22 dated November 30, 2011.

23 7. Attached to the Objection as **Exhibit 4** are true and correct excerpts from the
24 deposition of Bayuk, taken in the above-captioned case on September 28, 2015.

25 8. Attached to the Objection as **Exhibit 5** is a true and correct copy of *Edward Bayuk,*
26 *as Trustee of the Edward William Bayuk Living Trust’s Responses to Plaintiff’s First Set of Requests*
27 *for Production*, served in the above-captioned case on September 24, 2015.

28 9. Attached to the Objection as **Exhibit 6** is a certified copy of a grant deed recorded

1 on August 26, 2009 in Orange County, California as Document No. 2009000459183.

2 10. Attached to the Objection as **Exhibit 7** is a certified copy of a grant deed recorded
3 on August 17, 2018 in Orange County, California as Document No. 2018000302297.

4 11. Attached to the Objection as Exhibits 8 through 15 are copies of exhibits admitted
5 during trial in the above-captioned case, as follows:

6 (a) **Exhibit 8** is a true and correct copy of trial exhibit 4, which is the June 18,
7 2013 Confession of Judgment in Case No. CV07-02764.

8 (b) **Exhibit 9** is a true and correct copy of trial exhibit 45, which is the Purchase
9 and Sale Agreement executed on September 28, 2010.

10 (c) **Exhibit 10** is a true and correct copy of trial exhibit 46, which is the First
11 Amendment to Purchase and Sale Agreement executed on September 29, 2010.

12 (d) **Exhibit 11** is a true and correct copy of trial exhibit 51, which is the grant
13 deed for the Los Olivos Property recorded on October 8, 2010.

14 (e) **Exhibit 12** is a true and correct copy of trial exhibit 52, which is the grant
15 deed for the El Camino Property recorded on October 8, 2010.

16 (f) **Exhibit 13** is a true and correct copy of trial exhibit 61, which is the
17 Membership Interest Transfer Agreement dated October 1, 2010 for Baruk Properties, LLC.

18 (g) **Exhibit 14** is a true and correct copy of trial exhibit 62, which is the
19 Promissory Note in the principal amount of \$1,617,050 dated October 1, 2010.

20 (h) **Exhibit 15** is a true and correct copy of trial exhibit 65, which is the grant
21 deed transferring the Mary Fleming Property from Snowshoe Properties, LLC to the Bayuk Trust,
22 recorded on November 4, 2010.

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

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

26 Dated this 11th day of July, 2019.

27 /s/ Gabrielle A. Hamm
28 Gabrielle A. Hamm, Declarant

4816-6617-5900, v. 2

Exhibit 2

TOLLING AGREEMENT

This TOLLING AGREEMENT is entered into by and between JH, Inc. ("JH"), JERRY HERBST ("Herbst") and EDWARD W. BAYUK ("BAYUK"). JH and Herbst are collectively referred to herein as the "Herbst Parties." BAYUK and the Herbst Parties are collectively referred to herein as the "Parties."

RECITALS:

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

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

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

D. The matter was tried before the Honorable Judge Brent Adams by way of a bench trial commencing May 10, 2010 that lasted for several weeks. At the conclusion of the bench trial, the Court found that the Morabito Parties had breached the ARSPA and committed fraud in the inducement and misrepresentation in relation to numerous aspects of the transaction contemplated by the ARSPA. The Court ultimately awarded the Herbst Parties total damages in the amount of One Hundred Forty-Two Million, Five Hundred Ninety-Seven Thousand, Two Hundred Eighty-Eight and 80/100ths Dollars (\$142,597,288.80), representing both compensatory and punitive damages (the "Judgment"). The Judgment was entered by the Court on August 23, 2011. There was also a Determination that the Morabito Parties owed the Herbst Parties \$6.7 million for the working capital of BHI pursuant to the ARSPA.

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

F. The Herbst Parties contend that prior to and after the Court's oral pronouncement of judgment, Morabito undertook numerous fraudulent transfers and conveyances in an effort to conceal assets and render himself judgment proof. Morabito denies such allegations. Notwithstanding the denial by Morabito, the Herbst Parties believe they possess valid claims against CNC, Morabito, individually and in his capacity as Trustee of the Arcadia Living Trust,

4. The Herbst Parties shall have no obligation to hold in abeyance any claim related to the Action against any of the foregoing individuals or entities that fail to deliver a duly executed Tolling Agreement within sixty (60) days of Closing.

EDWARD W. BAYUK, Individually

By: _____

Its: _____

SUBSCRIBED and SWORN to before me

this ____ day of _____, 2011,

by EDWARD W. BAYUK

Notary Public

JH, INC., a Nevada corporation

By: _____

Its: _____

SUBSCRIBED and SWORN to before me

this ____ day of _____, 2011,

by JERRY HERBST.

Notary Public

JERRY HERBST, an individual

SUBSCRIBED and SWORN to before me

this ____ day of _____, 2011,

by JERRY HERBST.

Notary Public

TOLLING AGREEMENT

This TOLLING AGREEMENT is entered into by and between JH, Inc. ("JH"), JERRY HERBST ("Herbst") and EDWARD W. BAYUK ("BAYUK"). JH and Herbst are collectively referred to herein as the "Herbst Parties." BAYUK and the Herbst Parties are collectively referred to herein as the "Parties."

RECITALS:

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

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

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

D. The matter was tried before the Honorable Judge Brent Adams by way of a bench trial commencing May 10, 2010 that lasted for several weeks. At the conclusion of the bench trial, the Court found that the Morabito Parties had breached the ARSPA and committed fraud in the inducement and misrepresentation in relation to numerous aspects of the transaction contemplated by the ARSPA. The Court ultimately awarded the Herbst Parties total damages in the amount of One Hundred Forty-Two Million, Five Hundred Ninety-Seven Thousand, Two Hundred Eighty-Eight and 80/100ths Dollars (\$142,597,288.80), representing both compensatory and punitive damages (the "Judgment"). The Judgment was entered by the Court on August 23, 2011. There was also a Determination that the Morabito Parties owed the Herbst Parties \$6.7 million for the working capital of BHI pursuant to the ARSPA.

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F. The Herbst Parties contend that prior to and after the Court's oral pronouncement of judgment, Morabito undertook numerous fraudulent transfers and conveyances in an effort to conceal assets and render himself judgment proof. Morabito denies such allegations. Notwithstanding the denial by Morabito, the Herbst Parties believe they possess valid claims against CNC, Morabito, individually and in his capacity as Trustee of the Arcadia Living Trust,

Edward Bayuk, individually and in his capacity as Trustee of the Edward William Bayuk Living Trust, Salvatore Morabito and Trevor Lloyd, for recovery of funds the Herbst Parties believe were transferred in violation of Nevada's Uniform Fraudulent Conveyance Act (each of the foregoing causes of action a "Fraudulent Conveyance Claim"). The Morabito Parties, Edward W. Bayuk, individually and as trustee of the Edward W. Bayuk Living Trust, Salvatore Morabito, and Trevor Lloyd contend the transfers were done for fair value and dispute that any transfers were fraudulent.

G. The Herbst Parties and the Morabito Parties agreed to settle the Action, and, on November 30, 2011 executed the Settlement Agreement and Mutual Release ("Settlement Agreement"). As part of the Settlement, CNC and Morabito executed a Confession of Judgment, to be filed in the event that the Morabito Parties default under the Settlement Agreement and such default is not cured by the Morabito Parties.

NOW THEREFORE, the Parties hereby agree as follows:

1. The above Recitals A through G above, are hereby incorporated by reference entirely herein and expressly agreed to by the Parties.

2. BAYUK hereby agrees that any limitations period under Nevada law and the statute of limitations for filing or prosecuting claims against BAYUK that are related to the alleged transfers referred to in Recital F, including but not limited to, the Fraudulent Conveyance Claims, are hereby tolled pending the full and complete performance of each and every one of the Morabito Parties' obligations under the Settlement Agreement or entry of the Confession of Judgment, whichever is first to occur.

3. In exchange, the Herbst Parties hold in abeyance all claims against BAYUK related to the alleged transfers referred to in Recital F, including but not limited to, the Fraudulent Conveyance Claims, pending the full and complete performance of each and every of the Morabito Parties' obligations under the Settlement Agreement or entry of the Confession of Judgment, whichever is first to occur.

[illegible]

4. The Herbst Parties shall have no obligation to hold in abeyance any claim related to the Action against any of the foregoing individuals or entities that fail to deliver a duly executed Tolling Agreement within sixty (60) days of Closing.

EDWARD W. BAYUK, Individually

By: _____

Its: _____

SUBSCRIBED and SWORN to before me

this ____ day of _____, 2011,

by EDWARD W. BAYUK

Notary Public

JH, INC., a Nevada corporation

By: *Jerry Herbst*

Its: President

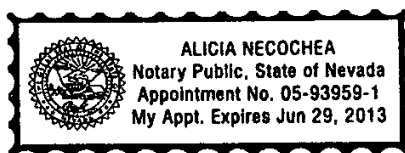
SUBSCRIBED and SWORN to before me

this 30 day of November, 2011,

by JERRY HERBST.

Alicia Necochea

Notary Public



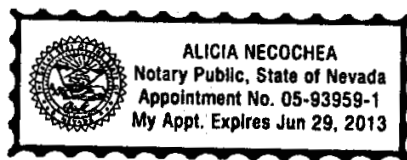
Jerry Herbst
JERRY HERBST, an individual

SUBSCRIBED and SWORN to before me

this 30 day of November, 2011,

by JERRY HERBST.

Alicia Necochea
Notary Public



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

D. The matter was tried before the Honorable Judge Brent Adams by way of a bench trial commencing May 10, 2010 that lasted for several weeks. At the conclusion of the bench trial, the Court found that the Morabito Parties had breached the ARSPA and committed fraud in the inducement and misrepresentation in relation to numerous aspects of the transaction contemplated by the ARSPA. The Court ultimately awarded the Herbst Parties total damages in the amount of One Hundred Forty-Two Million, Five Hundred Ninety-Seven Thousand, Two Hundred Eighty-Eight and 80/100ths Dollars (\$142,597,288.80), representing both compensatory and punitive damages (the "Judgment"). The Judgment was entered by the Court on August 23, 2011. There was also a Determination that the Morabito Parties owed the Herbst Parties \$6.7 million for the working capital of BHI pursuant to the ARSPA.

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

F. The Herbst Parties contend that prior to and after the Court's oral pronouncement of judgment, Morabito undertook numerous fraudulent transfers and conveyances in an effort to conceal assets and render himself judgment proof. Morabito denies such allegations. Notwithstanding the denial by Morabito, the Herbst Parties believe they possess valid claims against CNC, Morabito, individually and in his capacity as Trustee of the Arcadia Living Trust,

4. The Herbst Parties shall have no obligation to hold in abeyance any claim related to the Action against any of the foregoing individuals or entities that fail to deliver a duly executed Tolling Agreement within sixty (60) days of Closing.

EDWARD W. BAYUK, Individually

By: _____

Its: _____

SUBSCRIBED and SWORN to before me

this ____ day of _____, 2011,

by EDWARD W. BAYUK

Notary Public

JH, INC., a Nevada corporation

By: *[Signature]*

Its: President

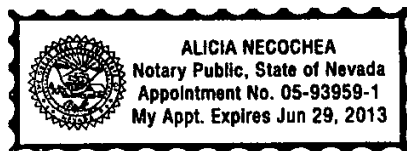
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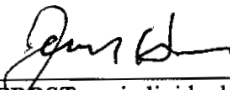
this 30 day of November, 2011,

by JERRY HERBST.

Alicia Necochea

Notary Public



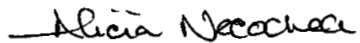


JERRY HERBST, an individual

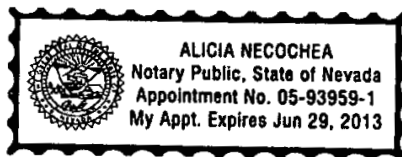
SUBSCRIBED and SWORN to before me

this 30 day of November, 2011,

by JERRY HERBST.



Notary Public



TOLLING AGREEMENT

This TOLLING AGREEMENT is entered into by and between JH, Inc. ("JH"), JERRY HERBST ("Herbst") and EDWARD W. BAYUK ("BAYUK"). JH and Herbst are collectively referred to herein as the "Herbst Parties." BAYUK and the Herbst Parties are collectively referred to herein as the "Parties."

RECITALS:

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

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

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

D. The matter was tried before the Honorable Judge Brent Adams by way of a bench trial commencing May 10, 2010 that lasted for several weeks. At the conclusion of the bench trial, the Court found that the Morabito Parties had breached the ARSPA and committed fraud in the inducement and misrepresentation in relation to numerous aspects of the transaction contemplated by the ARSPA. The Court ultimately awarded the Herbst Parties total damages in the amount of One Hundred Forty-Two Million, Five Hundred Ninety-Seven Thousand, Two Hundred Eighty-Eight and 80/100ths Dollars (\$142,597,288.80), representing both compensatory and punitive damages (the "Judgment"). The Judgment was entered by the Court on August 23, 2011. There was also a Determination that the Morabito Parties owed the Herbst Parties \$6.7 million for the working capital of BHI pursuant to the ARSPA.

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

F. The Herbst Parties contend that prior to and after the Court's oral pronouncement of judgment, Morabito undertook numerous fraudulent transfers and conveyances in an effort to conceal assets and render himself judgment proof. Morabito denies such allegations. Notwithstanding the denial by Morabito, the Herbst Parties believe they possess valid claims against CNC, Morabito, individually and in his capacity as Trustee of the Arcadia Living Trust,

09

G. The Herbst Parties and the Morabito Parties agreed to settle the Action, and, on November 30, 2011 executed the Settlement Agreement and Mutual Release ("Settlement Agreement"). As part of the Settlement, CNC and Morabito executed a Confession of Judgment, to be filed in the event that the Morabito Parties default under the Settlement Agreement and such default is not cured by the Morabito Parties.

1. The above Recitals A through G above, are hereby incorporated by reference entirely herein and expressly agreed to by the Parties.

3. In exchange, the Herbst Parties hold in abeyance all claims against BAYUK related to the alleged transfers referred to in Recital F, including but not limited to, the Fraudulent Conveyance Claims, pending the full and complete performance of each and every of the Morabito Parties' obligations under the Settlement Agreement or entry of the Confession of Judgment, whichever is first to occur.

///

04

EDWARD W. BAYUK) Individually

By:

Its:

SUBSCRIBED and SWQRN to before me

this 30 day of November, 2011,

by EDWARD W. BAYUK

Virginia A. Pool
Notary Public

JH, (INC.), a Nevada corporation

By:

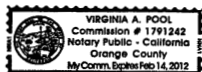
Its:

SUBSCRIBED and SWORN to before me

this day of _____, 2011.

by JERRY HERBST.

Notary Public



14

JERRY HERBST, an individual

SUBSCRIBED and SWORN to before me

this _____ day of _____, 2011,

by JERRY HERBST.

Notary Public



Exhibit 3

TOLLING AGREEMENT

This TOLLING AGREEMENT is entered into by and between JH, Inc. ("JH"), JERRY HERBST ("Herbst") and THE EDWARD W. BAYUK LIVING TRUST ("The Bayuk Trust"). JH and Herbst are collectively referred to herein as the "Herbst Parties." The Bayuk Trust and the Herbst Parties are collectively referred to herein as the "Parties."

RECITALS:

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

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

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

D. The matter was tried before the Honorable Judge Brent Adams by way of a bench trial commencing May 10, 2010 that lasted for several weeks. At the conclusion of the bench trial, the Court found that the Morabito Parties had breached the ARSPA and committed fraud in the inducement and misrepresentation in relation to numerous aspects of the transaction contemplated by the ARSPA. The Court ultimately awarded the Herbst Parties total damages in the amount of One Hundred Forty-Two Million, Five Hundred Ninety-Seven Thousand, Two Hundred Eighty-Eight and 80/100ths Dollars (\$142,597,288.80), representing both compensatory and punitive damages (the "Judgment"). The Judgment was entered by the Court on August 23, 2011. There was also a Determination that the Morabito Parties owed the Herbst Parties \$6.7 million for the working capital of BHI pursuant to the ARSPA.

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

F. The Herbst Parties contend that prior to and after the Court's oral pronouncement of judgment, Morabito undertook numerous fraudulent transfers and conveyances in an effort to conceal assets and render himself judgment proof. Morabito denies such allegations. Notwithstanding the denial by Morabito, the Herbst Parties believe they possess valid claims against CNC, Morabito, individually and in his capacity as Trustee of the Arcadia Living Trust,

4. The Herbst Parties shall have no obligation to hold in abeyance any claim related to the Action against any of the foregoing individuals or entities that fail to deliver a duly executed Tolling Agreement within sixty (60) days of Closing.

THE EDWARD W. BAYUK LIVING TRUST

By: _____

Its: _____

SUBSCRIBED and SWORN to before me

this _____ day of _____, 2011,

by EDWARD W. BAYUK

Notary Public

JH, INC., a Nevada corporation

By: *[Signature]*

Its: President

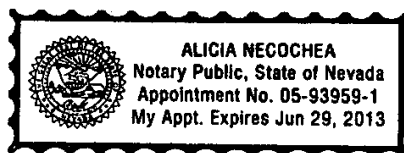
SUBSCRIBED and SWORN to before me

this 30 day of November, 2011,

by JERRY HERBST.

Alicia Necochea

Notary Public



TOLLING AGREEMENT

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

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F. The Herbst Parties contend that prior to and after the Court's oral pronouncement of judgment, Morabito undertook numerous fraudulent transfers and conveyances in an effort to conceal assets and render himself judgment proof. Morabito denies such allegations. Notwithstanding the denial by Morabito, the Herbst Parties believe they possess valid claims against CNC, Morabito, individually and in his capacity as Trustee of the Arcadia Living Trust,

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THE EDWARD W. BAYUK LIVING TRUST

By: _____

Its: _____

SUBSCRIBED and SWORN to before me

this ____ day of _____, 2011,

by EDWARD W. BAYUK

Notary Public

JH, INC., a Nevada corporation

By: *[Signature]*

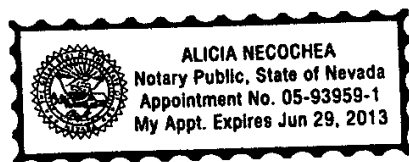
Its: President

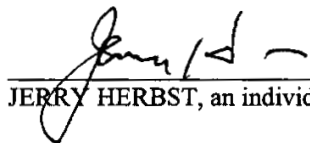
SUBSCRIBED and SWORN to before me

this 30 day of November, 2011,

by JERRY HERBST.

Alicia Necochea
Notary Public

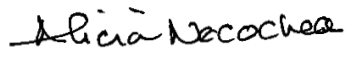


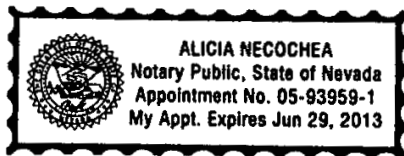

JERRY HERBST, an individual

SUBSCRIBED and SWORN to before me

this 30 day of November, 2011,

by JERRY HERBST.


Notary Public



TOLLING AGREEMENT

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AB

G. The Herbst Parties and the Morabito Parties agreed to settle the Action, and, on November 30, 2011 executed the Settlement Agreement and Mutual Release ("Settlement Agreement"). As part of the Settlement, CNC and Morabito executed a Confession of Judgment, to be filed in the event that the Morabito Parties default under the Settlement Agreement and such default is not cured by the Morabito Parties.

1. The above Recitals A through G above, are hereby incorporated by reference entirely herein and expressly agreed to by the Parties.

3. In exchange, the Herbst Parties hold in abeyance all claims against The Bayuk Trust related to the alleged transfers referred to in Recital F, including but not limited to, the Fraudulent Conveyance Claims, pending the full and complete performance of each and every of the Morabito Parties' obligations under the Settlement Agreement or entry of the Confession of Judgment, whichever is first to occur.

[illegible]

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4. The Herbst Parties shall have no obligation to hold in abeyance any claim related to the Action against any of the foregoing individuals or entities that fail to deliver a duly executed Tolling Agreement within sixty (60) days of Closing.

THE EDWARD W. BAYUK LIVING TRUST

By: [Signature]

Its: Trustee

SUBSCRIBED and SWORN to before me

this 30 day of November, 2011,

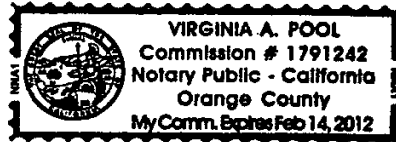
by EDWARD W. BAYUK

Virginia A. Pool
Notary Public

JH, INC., a Nevada corporation

By: _____

Its: _____



SUBSCRIBED and SWORN to before me

this _____ day of _____, 2011,

by JERRY HERBST.

Notary Public

607

JERRY HERBST, an individual

SUBSCRIBED and SWORN to before me

this ____ day of _____, 2011,

by JERRY HERBST.

Notary Public

01

Exhibit 4

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

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

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

JOB NO.: 260711

Page 2		Page 4	
1	APPEARANCES OF COUNSEL:	1	E X H I B I T S
2		2	TRUSTEE DESCRIPTION IDENTIFIED MARKED
3	Special Counsel for Trustee:	3	EXHIBIT 1 Notice of Deposition of Edward Bayuk 7 7
4	GARMAN TURNER GORDON, LLP	4	EXHIBIT 2 Edward Bayuk's Answers to Plaintiff's First Set of Interrogatories 11 11
5	BY TERESA PILATOWICZ	5	
6	-and-	6	EXHIBIT 3 Edward Bayuk, as Trustee of the Edward William Bayuk Living Trust's Answers to Plaintiff's First Set of Interrogatories 16 16
7	BY GERALD GORDON	7	
8	650 White Drive, Suite 100	8	EXHIBIT 4 Edward Bayuk's Responses to Plaintiff's First Set of Requests for Production 20 20
9	Las Vegas, Nevada 89119	9	
10	(725) 777-3000	10	EXHIBIT 5 Ledger of Edward Bayuk to Paul Morabito 23 23
11	tpilatowicz@gtg.legal	11	
12	ggordon@gtg.legal	12	EXHIBIT 6 Edward Bayuk, as Trustee of the Edward William Bayuk Living Trusts Responses to Plaintiff's First Set of Requests for Production 33 33
13		13	
14		14	EXHIBIT 7 Operating Agreement of Baruk Properties, LLC marked "Confidential" 74 73
15	For Chapter 7 Trustee WILLIAM LEONARD:	15	
16	WOODBURN AND WEDGE	16	EXHIBIT 8 Bill of Sale 100 100
17	BY JOHN MURTHA	17	EXHIBIT 9 Membership Interest Transfer Agreement 108 108
18	6100 Neil Road, Suite 500	18	
19	Reno, Nevada 89511	19	EXHIBIT 10 Estimated Settlement Statement 142 142
20	(775) 688-3000	20	EXHIBIT 11 Bill of Sale 145 145
21	jmurtha@woodburnandwedge.com	21	EXHIBIT 12 Final Settlement Statement 156 156
22		22	
23		23	
24		24	
25		25	
Page 3		Page 5	
1	APPEARANCES OF COUNSEL: (Cont.)	1	E X H I B I T S (Cont.)
2		2	TRUSTEE DESCRIPTION IDENTIFIED MARKED
3	For Defendants:	3	EXHIBIT 13 Bill of Sale 159 159
4	ROBISON BELAUSTEGUI SHARP & LOW	4	EXHIBIT 14 Final Settlement Statement 167 167
5	BY FRANK GILMORE	5	
6	71 Washington Street	6	EXHIBIT 15 Bill of Sale 171 171
7	Reno, Nevada 89503	7	
8	(775) 329-3151	8	EXHIBIT 16 Purchase and Sale Agreement 173 172
9	fgilmore@rbsllaw.com	9	EXHIBIT 17 First Amendment to Purchase and Sale Agreement 180 179
10		10	
11	Also Present:	11	EXHIBIT 18 E-mail sent June 18, 2014 202 201
12	WILLIAM A. LEONARD	12	
13	SALVATORE MORABITO	13	EXHIBIT 19 Promissory Note 206 206
14		14	
15		15	
16	I N D E X	16	
17	WITNESS: EDWARD WILLIAM BAYUK	17	
18	EXAMINATION BY: PAGE	18	
19	Ms. Pilatowicz 6	19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	

<p style="text-align: right;">Page 54</p> <p>1 But no, I just get -- I just put in an expense 2 report when I travel and go to meetings or stuff. 3 Q. Okay. 4 What is the Edward William Bayuk Living Trust? 5 A. It's a trust that I set up. It owns the 6 houses, and I believe it owns -- 7 You would have to give me an exhibit. I believe I 8 used it on my Snowshoe Properties deed, but I don't -- 9 you know, you would have to pull an exhibit for me for 10 that. 11 Q. When you say "it owns the houses," what houses 12 are you referring to? 13 A. It owns 370 Los Olivos in Laguna Beach, 14 331 El Camino Del Mar, and it owns 1254 Mary Fleming 15 Circle in Palm Springs. 16 And you would have to pull an exhibit. I think I 17 used it when I -- And, again, it's set up for estate 18 planning. So if I croak or someone kills me, you know, 19 that it avoids probate. 20 Q. When did you create it? 21 A. I believe 2008. 22 I had a will -- I had a will, and then someone told 23 me I needed to form a trust because the trust helps. If 24 you have a will, you still have to go through probate, 25 and I didn't know that. And that's why I set it up.</p>	<p style="text-align: right;">Page 56</p> <p>1 know, it requires, you know, more -- you know, it 2 requires me to sign paperwork or whatever. 3 Q. Okay. 4 How do you decide what to put into the trust and 5 What not to put into the trust. 6 A. Well, I'm trying to be proactive, as I get 7 older, to put things into the living trust. 8 Now, if I was smart, I would close my -- all my 9 bank accounts and put everything in the living trust. 10 But I'm lazy, so -- It's a pain in the neck. It's a lot 11 of work. 12 Q. Does the trust pay any of your expenses right 13 now? 14 A. No. 15 Well, when you say "trust," I sign checks, so I -- 16 I sign checks, so -- 17 Q. You sign checks from the trust? 18 A. I'm the whatever, the Trustee of the Edward 19 William Bayuk Living Trust. You know, I'm the -- what 20 do you call that person? Am I right? 21 Q. Well -- 22 A. If I die, then the person in my will or whoever 23 takes over. 24 Q. Who are the beneficiaries of the trust? 25 A. Family members, friends, charities.</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. Do you know what kind of trust it is? 2 A. Just a living -- It's the Edward -- It's listed 3 as Edward William Bayuk Living Trust -- 4 Q. What's your understanding -- 5 A. -- Edward William Bayuk Living Trust. 6 Q. So it's a living trust? 7 A. Correct. 8 Q. What's your understanding of what a living 9 trust is? 10 A. A living trust is put in place because -- I 11 kind of got an education on this. I didn't know -- I 12 always had a will, but I didn't have a trust. 13 And the trust, if you die, it takes over matters 14 that are in it that can enable you to avoid probate. 15 But if things are not in the trust, all those things 16 still have to go to probate. 17 So the answer is, not everything is in the Edward 18 William Bayuk Living Trust. And the reason for that is 19 that -- I'll give you an example: My B of A account is 20 not Edward William Bayuk Living Trust. It's not 21 connected because I set it up as Edward Bayuk. 22 And then, like, the Comerica account that I have, 23 too, is -- I think it's Edward Bayuk. 24 So you can walk into a bank today and open an 25 account with your driver's license or whatever, and, you</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. Which friends are members of the -- or 2 beneficiaries of the trust? 3 A. Friends. Lots of friends and lots of charities 4 and -- 5 Q. Is Paul Morabito a beneficiary of your trust? 6 A. No. 7 Q. Is Sam Morabito a beneficiary of your trust? 8 And by "Sam" I mean Salvatore. 9 A. No. 10 Q. So, when you write checks from the trust, what 11 are you writing those checks for? 12 A. Oh, so back up. 13 So I write checks out of more than one bank 14 account. So, when you say "trust," are you saying what 15 bank? 16 Q. Well, let's back up. 17 How many bank accounts does the trust have? 18 A. I believe one. 19 Q. Okay. 20 Do you write checks -- Do you sign checks out of 21 that account? 22 A. Yes. 23 Q. And what sort of checks are you writing out of 24 that account? What are the purposes of those checks? 25 A. Oh, just general stuff, like repair of the</p>

<p style="text-align: right;">Page 58</p> <p>1 house, water tank, or a credit card bill.</p> <p>2 Q. Is it your personal credit card bill?</p> <p>3 A. Yeah. Oh, yeah.</p> <p>4 Q. Okay.</p> <p>5 So credit card bills, house repairs?</p> <p>6 A. But that's not my only account that writes</p> <p>7 checks to credit card companies or repair bills.</p> <p>8 Q. What other accounts do?</p> <p>9 A. I have a B of A account that I write checks out</p> <p>10 of.</p> <p>11 Q. Well, let's focus right now on the bank account</p> <p>12 that is in the trust's name.</p> <p>13 You use it to pay personal credit cards, home</p> <p>14 repairs.</p> <p>15 Any other expenses that you use it to pay?</p> <p>16 A. Pays mortgage. I have a mortgage on the houses</p> <p>17 I just mentioned.</p> <p>18 Q. There's a mortgage on Mary Fleming?</p> <p>19 A. Yes.</p> <p>20 Q. And there's a mortgage on Los Olivos?</p> <p>21 A. Yes.</p> <p>22 Q. And El Camino?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 Other than credit cards, mortgages and house</p>	<p style="text-align: right;">Page 60</p> <p>1 MR. GILMORE: Sorry. There are documents produced</p> <p>2 that speak to that, I'm sure you know.</p> <p>3 But don't guess. Okay?</p> <p>4 MS. PILATOWICZ: I'm asking --</p> <p>5 THE WITNESS: I'm just trying to be helpful.</p> <p>6 MS. PILATOWICZ:</p> <p>7 Q. Other than the Mary Fleming house, the</p> <p>8 Los Olivos house, and the El Camino house, have there</p> <p>9 ever been -- and the bank accounts --</p> <p>10 A. And there may be Snowshoe Properties commercial</p> <p>11 building, the title of that property may be in my trust,</p> <p>12 and I believe it is.</p> <p>13 Q. What property is that?</p> <p>14 A. 570 Glenneyre.</p> <p>15 Because it's in the deed. And I think you can</p> <p>16 check the deed, double-check. It could even be in those</p> <p>17 exhibits.</p> <p>18 Q. So, then, other than the bank account, those</p> <p>19 three houses, and potentially the Snowshoe Properties,</p> <p>20 Glenneyre property, have there ever been any other</p> <p>21 assets in the trust?</p> <p>22 A. No.</p> <p>23 And, again, the trust is set up for estate</p> <p>24 purposes. And do I use it all the time? No. I forget</p> <p>25 about it at times, to be honest.</p>
<p style="text-align: right;">Page 59</p> <p>1 repairs, do you use it to pay anything else?</p> <p>2 A. Probably pay lawyers.</p> <p>3 Q. So you --</p> <p>4 A. You know, I think I paid Frank out of it.</p> <p>5 Q. Is it fair to say, when you need money, you can</p> <p>6 go to the trust and just take it?</p> <p>7 A. Oh, yeah.</p> <p>8 And I'm the only one authorized to take money out.</p> <p>9 Q. When you created the trust in 2008, what assets</p> <p>10 did it have?</p> <p>11 A. Nothing.</p> <p>12 Q. When did it first get assets?</p> <p>13 A. When I first got assets? Probably -- I don't</p> <p>14 remember, to be honest.</p> <p>15 Q. Do you know if there were any assets that went</p> <p>16 into it before the three houses you mentioned: Mary</p> <p>17 Fleming, Los Olivos and El Camino?</p> <p>18 A. No. I don't believe so. I actually don't</p> <p>19 know. I would have to look.</p> <p>20 Q. Do you know what --</p> <p>21 A. Well --</p> <p>22 Q. -- other type of assets you would put in it?</p> <p>23 A. What's in this are the houses -- the three</p> <p>24 houses and my one bank account. That's what's in it</p> <p>25 today.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. Has it made any payments to Paul Morabito in</p> <p>2 the past five years?</p> <p>3 A. Yes.</p> <p>4 Q. What are those payments?</p> <p>5 A. Some of them are loans to Mr. Morabito.</p> <p>6 Q. What kind of -- Tell me about the loans.</p> <p>7 A. Oh, when Paul needs money and I'll loan him</p> <p>8 money. Or, also, when I owed him the 1.6 million, I</p> <p>9 used that account. And then I also used it again -- So</p> <p>10 yeah.</p> <p>11 So I used it to pay the 1.6 million, and I also</p> <p>12 used it to loan money to Mr. Morabito.</p> <p>13 Q. Do you recall the specific loans -- or do you</p> <p>14 recall any of the specific loans that you made to Paul</p> <p>15 Morabito that were paid out of the trust?</p> <p>16 A. There was a lot of them.</p> <p>17 Q. Do you have any specific recollections as to</p> <p>18 any particular one?</p> <p>19 A. You know, I paid a lot of stuff -- lot of</p> <p>20 money. If you count the 1.6 and then monies thereafter,</p> <p>21 it's a lot of money.</p> <p>22 Q. Are they listed on this exhibit that we</p> <p>23 previously looked at, Exhibit 5?</p> <p>24 A. The ones, yeah, that you have? That's not</p> <p>25 complete. It's not complete. Yes.</p>

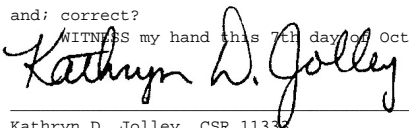
<p style="text-align: right;">Page 214</p> <p>1 Q. When was Co Westco Special Risk formed?</p> <p>2 A. I don't remember.</p> <p>3 Q. Do you know if it was before 2010 or after</p> <p>4 2010?</p> <p>5 A. I don't remember, to be honest.</p> <p>6 Q. What was your ownership interest in Co Westco</p> <p>7 Special Risk?</p> <p>8 A. I would say, refer to the corporate documents,</p> <p>9 and I don't remember.</p> <p>10 Q. Did you have an ownership interest?</p> <p>11 A. I honestly don't remember.</p> <p>12 Q. Do you know if anyone -- had anyone else had an</p> <p>13 ownership interest in Co Westco Special Risk?</p> <p>14 A. Good question. I don't remember. Sorry.</p> <p>15 Q. Does Co Westco Special Risk, LLC still exist</p> <p>16 today?</p> <p>17 A. I don't believe so.</p> <p>18 Sorry. Takes a lot of brainpower.</p> <p>19 MS. PILATOWICZ: Let's take a five-minute break.</p> <p>20 (A recess is taken.)</p> <p>21 MS. PILATOWICZ: We can go back on the record.</p> <p>22 I have good news. That completes my questions for</p> <p>23 today, unless there's any follow-up. I don't know if</p> <p>24 anybody else wants to ask questions today.</p> <p>25 MR. GILMORE: No.</p>	<p style="text-align: right;">Page 216</p> <p>1 ***</p> <p>2</p> <p>3 I declare under penalty of perjury under the laws</p> <p>4 of the State of California that the foregoing is true</p> <p>5 and correct.</p> <p>6</p> <p>7 Executed at _____, California,</p> <p>8 on _____.</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 EDWARD WILLIAM BAYUK</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 215</p> <p>1 THE WITNESS: I owe some information to you guys</p> <p>2 for 2010, '11 and '12.</p> <p>3 MS. PILATOWICZ:</p> <p>4 Q. What's that?</p> <p>5 A. The spreadsheets stuff.</p> <p>6 Q. Okay.</p> <p>7 A. Just so that, you know, you understand</p> <p>8 everything and --</p> <p>9 Q. So you're going to provide --</p> <p>10 A. I have to pull some -- I hopefully have a</p> <p>11 mortgage statement, and I'm looking for the mortgage for</p> <p>12 Mary Fleming.</p> <p>13 MR. GILMORE: Let's not put that on the record.</p> <p>14 But do you have any more questions?</p> <p>15 MS. PILATOWICZ: I do not have any more questions.</p> <p>16 MR. GILMORE: Okay. Then you're done. So let's --</p> <p>17 MS. PILATOWICZ: We can conclude.</p> <p>18 MR. GILMORE: Well, normally in California you have</p> <p>19 to read her all of these things about what you're going</p> <p>20 to do and not do with the transcript, but we don't have</p> <p>21 to do that today because you're on a commission from</p> <p>22 Nevada.</p> <p>23 So, in Nevada we just say, "We're done. Thank you</p> <p>24 very much."</p> <p>25 (The proceedings concluded at 4:17 p.m.)</p>	<p style="text-align: right;">Page 217</p> <p>1 STATE OF CALIFORNIA) ss</p> <p>2 I, Kathryn D. Jolley, CSR 11333, do hereby declare:</p> <p>3 That, prior to being examined, the witness named in</p> <p>4 the foregoing deposition was by me duly sworn pursuant</p> <p>5 to Section 2093(b) and 2094 of the Code of Civil</p> <p>6 Procedure;</p> <p>7 That said deposition was taken down by me in</p> <p>8 shorthand at the time and place therein named and</p> <p>9 thereafter reduced to text under my direction.</p> <p>10 I further declare that I have no interest in the</p> <p>11 event of the action.</p> <p>12 I declare under penalty of perjury under the laws</p> <p>13 of the State of California that the foregoing is true</p> <p>14 and: correct?</p> <p>15 WITNESS my hand this 7th day of October, 2015.</p> <p>16 </p> <p>17 Kathryn D. Jolley, CSR 11333</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Exhibit 5

1 **DISCOVERY**

2 **BARRY L. BRESLOW, ESQ. – NSB #3023**

3 bbreslow@rbsllaw.com

4 **FRANK C. GILMORE, ESQ. - NSB #10052**

5 fgilmore@rbsllaw.com

6 **Robison, Belaustegui, Sharp & Low**

7 A Professional Corporation

8 71 Washington Street

9 Reno, Nevada 89503

Telephone: (775) 329-3151

Facsimile: (775) 329-7169

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

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

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

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

CASE NO.: CV13-02663

DEPT. NO.: B1

15 Plaintiffs,

16 vs.

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

20 Defendants.

21 /

22 **EDWARD BAYUK, AS TRUSTEE OF THE EDWARD WILLIAM BAYUK LIVING**
23 **TRUSTS RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR**
24 **PRODUCTION**

25 Defendant Edward Bayuk, as Trustee of the Edward William Bayuk Living Trust, by and
26 through its attorneys Robison, Belaustegui, Sharp & Low, pursuant to NRCP 34 hereby Responses
27 Plaintiff's First Set of Requests for Production of Documents to Edward Bayuk, as Trustee of the
28 Edward William Bayuk Living Trust, as follows:

///

1 **REQUEST FOR PRODUCTION NO. 1:**

2 Produce a complete executed copy of the Edward William Bayuk Living Trust.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

4 Objection. The Trust agreement contains information which is personal and confidential
5 and not subject to disclosure. The Trust agreement contains information which is not reasonably
6 calculated to lead to the discovery of admissible evidence. Notwithstanding the objection, Bayuk
7 confirms that he is the Settlor and Trustee, that the Trust was established prior to any events at
8 issue in this case, and no person which has any affiliation to this action is named as a beneficiary
9 in the Trust.

10 **REQUEST FOR PRODUCTION NO. 2:**

11 Produce a complete executed copy of any and all amendments/modifications to the Edward
12 William Bayuk Living Trust.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

14 See response to No.1 above.

15 **REQUEST FOR PRODUCTION NO. 3:**

16 Produce any and all lists or inventories of assets in the Edward William Bayuk Living
17 Trust between December 3, 2007 and the date of Your response to these Discovery Requests.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

19 Objection. This request is overbroad and seeks documents which are not reasonably
20 calculated to lead to the discovery of admissible evidence related to the claims and/or defenses in
21 this case.

22 **REQUEST FOR PRODUCTION NO. 4:**

23 Produce any and all Documents constituting, evidencing, or related to any transfers of
24 assets to and from the Edward William Bayuk Living Trust between December 3, 2007 and the
25 date of your response to these Discovery Requests.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

27 Objection. This request is overbroad and seeks documents which are not reasonably
28 calculated to lead to the discovery of admissible evidence related to the claims and/or defenses in

1 this case.

2 **REQUEST FOR PRODUCTION NO. 5:**

3 Produce any and all Communications between You and any third-party regarding any
4 transfers of assets to and from the Edward William Bayuk Living Trust between December 3, 2007
5 ad the date of your response to these Discovery Requests.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

7 Objection. This request is overbroad and seeks documents which are not reasonably
8 calculated to lead to the discovery of admissible evidence related to the claims and/or defenses in
9 this case.

10 **REQUEST FOR PRODUCTION NO. 6:**

11 Produce and any all Documents constituting, evidencing, or related to the source of funds
12 and the purpose(s) for the \$351,626.82 deposited into Morabito's trust account with Lippes
13 Mathias Wexler Friedman, LLC by You on or about September 5, 2011.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

15 Objection, lacks foundation. Bayuk is not aware of any deposit to Lippes Mathias of that
16 amount on or about September 5, 2011.

17 **REQUEST FOR PRODUCTION NO. 7:**

18 Produce and any all Communications between You and any third-party relating to the
19 \$351,626.82 deposited into Morabito's trust account with Lippes Mathias Wexler Friedman, LLP
20 by You on or before September 5, 2011.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

22 Objection, see No. 6, above.

23 **REQUEST FOR PRODUCTION NO. 8:**

24 Produce any and all appraisals and/or valuations of the real and/or personal property
25 located at the 1254 Mary Flemming Circle, Palm Springs, California between 2007 and the date of
26 Your response to these Discovery Requests.

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

28 See MORABITO (341).002515-2544;

1 **REQUEST FOR PRODUCTION NO. 9:**

2 Produce any and all appraisals and/or valuations of the real and/or personal property
3 located at the 371 El Camino Del Mar, Laguna Beach, California between 2007 and the date of
4 Your response to these Discovery Requests.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

6 See MORABITO (341).002489-2514;

7 **REQUEST FOR PRODUCTION NO. 10:**

8 Produce any and all inventories or lists of personal property located at the 1254 Mary
9 Flemming Circle, Palm Springs, California between 2007 and the date of Your response to these
10 Discovery Requests.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

12 See MORABITO (341).002362-2544; see also cancelled checks evidencing Bayuk's
13 purchase of the furniture, MORABITO(341).006941-006948.

14 **REQUEST FOR PRODUCTION NO. 11:**

15 Produce any and all inventories or lists of personal property located at the 371 El Camino
16 Del Mar, Laguna Beach, California between 2007 and the date of Your response to these
17 Discovery Requests.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

19 See responses to Bayuk Requests for Production.

20 **REQUEST FOR PRODUCTION NO. 12:**

21 Produce any and all Documents constituting, evidencing, or related any secured loans on
22 the real property located at the 1254 Mary Flemming Circle, Palm Springs, California between
23 2007 and the date of Your response to these Discovery Requests.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

25 See Bayuk responses to Requests for Production. Bayuk has requested copies of these
26 records from the respective lenders and will be produced once received.

27 **REQUEST FOR PRODUCTION NO. 13:**

28 Produce any and all Documents constituting, evidencing, or related any secured loans on

1 the real property located at the 371 El Camino Del Mar, Laguna Beach, California between 2007
2 and the date of Your response to these Discovery Requests.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

4 See Bayuk responses to Requests for Production. Bayuk has requested copies of these
5 records from the respective lenders and will be produced once received.

6 **REQUEST FOR PRODUCTION NO. 14:**

7 Produce any and all Documents constituting, evidencing, or related to the transfer of the
8 property located at the 1254 Mary Flemming Circle, Palm Springs, California to You on or after
9 September 2010.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

11 See Bayuk responses to Requests for Production.

12 **REQUEST FOR PRODUCTION NO. 15:**

13 Produce any and all Documents constituting, evidencing, or related to the transfer of the
14 real property located at 371 El Camino Del Mar, Laguna Beach, California to You or by You at
15 any time on or after August 20, 2009.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

17 See Bayuk responses to Requests for Production.

18 **REQUEST FOR PRODUCTION NO. 16:**

19 Produce any and all Documents between You and any third-party regarding of the transfer
20 of the real property located at 1254 Mary Flemming Circle, Palm Springs, California to You on or
21 after September 2010.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

23 No responsive documents are known to exist, other than what has been produced.

24 **REQUEST FOR PRODUCTION NO. 17:**

25 Produce any and all Communications between You and any third-party regarding the
26 transfer of the real property located at 371 El Camino Del Mar, Laguna Beach, California to You
27 or by You at any time on or after August 20, 2009.

28 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

1 No responsive documents are known to exist, other than what has been produced.

2 **REQUEST FOR PRODUCTION NO. 18:**

3 Any and all Documents constituting, evidencing, or related to the transfer of the Arcadia
4 Living Trust's 50% interest in Baruk Properties to You on or about October 1, 2010.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

6 No such documents are within the care, custody and/or control of the Bayuk Trust, other
7 than what has been produced.

8 **REQUEST FOR PRODUCTION NO. 19:**

9 Any and all Communications between You and any third-party regarding Arcadia Living
10 Trust's 50% interest in Baruk Properties to You on or about October 1, 2010.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

12 No such documents are within the care, custody and/or control of the Bayuk Trust, other
13 than what has been produced.

14 **REQUEST FOR PRODUCTION NO. 20:**

15 Any and all appraisals and/or valuations of Your interest in Baruk Properties between
16 December 2007 and the date of Your response to these Discovery Requests.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

18 See MORABITO (341).002362-2544;

19 **REQUEST FOR PRODUCTION NO. 21:**

20 Any and all Documents constituting, evidencing, or related to every transfer of property of
21 any type from Morabito, either directly or through an entity or trust owned or controlled by
22 Morabito, to You between December 1, 2007 and the ate of Your response to these Discovery
23 Requests.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

25 All known responsive documents have been produced.

26 **REQUEST FOR PRODUCTION NO. 22:**

27 Any and all Communications regarding every transfer of property of any type from
28 Morabito, either directly or through an entity or trust owned or controlled by Morabito, to You

1 between December 1, 2007 and the date of Your response to these Discovery Requests.

2 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

3 All known responsive documents have been produced.

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

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

8 DATED this 23rd day of September, 2014.

9 ROBISON, BELAUSTEGUI, SHARP & LOW
10 A Professional Corporation
11 71 Washington Street
12 Reno, Nevada 89503

13 

14 BARRY D. BRESLOW, ESQ.
15 FRANK C. GILMORE, ESQ.

16 Attorneys for Defendants Snowshoe Petroleum,
17 Inc., Superpumper, Inc., Edward Bayuk, individually
18 and as Trustee of the Edward William Bayuk Living
19 Trust, and Salvatore Morabito.

20 J:\WPData\BLB\14359.001 Snowshoe adv. Herbst\P-Response to RFP (1st set) by Bayuk Trust .doc

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Robison, Belaustegui, Sharp & Low, and that on this date I caused to be served a true copy of the **EDWARD BAYUK, AS TRUSTEE OF THE EDWARD WILLIAM BAYUK LIVING TRUSTS RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION** all parties to this action by the method(s) indicated below:

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

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

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

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

by personal delivery/hand delivery addressed to:

by facsimile (fax) addressed to:

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

DATED: This 24th day of September, 2015.



RBS&L

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



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

8911989018 0006



Exhibit 6

Lawyers Title

RECORDING REQUESTED BY
Lawyers Title Company
WHEN RECORDED MAIL THIS DOCUMENT
AND TAX STATEMENTS TO:
Edward William Bayuk
Paul A. Morabito
370 Los Olivos
Laguna Beach, CA 92651

Recorded in Official Records, Orange County

Tom Daly, Clerk-Recorder



12.00

2009000459183 09:07am 08/26/09

108 73 G02 3

0.00 0.00 0.00 0.00 6.00 0.00 0.00 0.00

APN: 644-032-04

Escrow No: 07008527-700-DD2

Title No: 7008527

Space above this line for Recorder's use

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$ 0.00, CITY TAX \$ 0.00
computed on full value of property conveyed,
City of Laguna Beach, AND

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

Paul A. Morabito, a single man as to an undivided 50% interest and Edward Bayuk, a single man as to an undivided 50% interest as tenants in common.

hereby GRANT(S) to

Edward William Bayuk, Trustee of the Edward William Bayuk Living Trust, Dated 06/18/2008, as to an undivided 50% interest and Paul A. Morabito, Trustee of the Arcadia Living Trust dated 02/14/2006, as to an undivided 50% interest, as tenants in common.

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

See Exhibit A attached hereto and made a part hereof.

Commonly known as: 370 Los Olivos, Laguna Beach, CA 92651

Dated: August 21, 2009

Paul A. Morabito

Edward William Bayuk

STATE OF CALIFORNIA } ss:
COUNTY OF Los Angeles

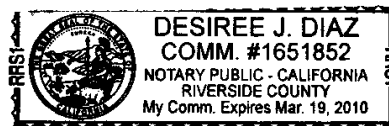
On 8/22/09 before me, DESIREE J. DIAZ, a Notary Public, personally
(here insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature



(This area for notary stamp)

MAIL TAX STATEMENTS AS DIRECTED ABOVE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

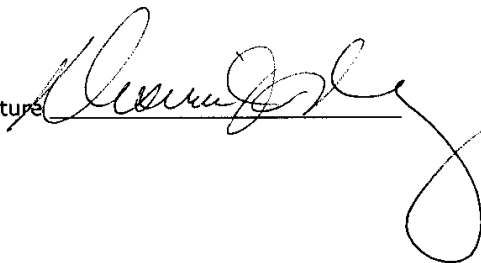
} SS:

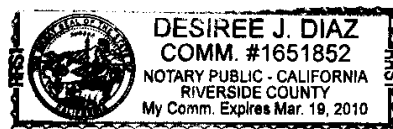
On AUGUST 22, 2009 before me, Desiree J. Diaz
(here insert name and title of the officer)
a Notary Public, personally appeared Edward William Bayuk and Paul A. Morabito

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

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

WITNESS my hand and official seal.

Signature 



(This area for notary stamp)

STATE OF CALIFORNIA
COUNTY OF _____

} SS:

On _____ before me, _____
(here insert name and title of the officer)
a Notary Public, personally appeared _____

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

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

WITNESS my hand and official seal.

Signature _____

(This area for notary stamp)

Exhibit A

All that certain real property situated in the County of Orange, State of California, described as follows:

Lot 17 of Tract 870, in the City of Laguna Beach, County of Orange, State of California as per Map recorded in Book 27, Page(s) 30, 31 and 32, of Miscellaneous Maps in the Office of the County Recorder of said County.

Assessor's Parcel Number: 644-032-04

Certified Copy of document number 2009000459183

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

DATE: 07/02/2019

CERTIFICATION FEE: 4.00



COUNTY CLERK-RECORDER

Hugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

Exhibit 7

RECORDING REQUESTED BY:
WESTERN RESOURCES TITLE COMPANY

WRT
RECORDING REQUESTED
AND WHEN RECORDED MAIL TO:
EDWARD WILLIAM BAYUK, TRUSTEE
668 NORTH COAST HIGHWAY #517
LAGUNA BEACH, CA 92651

156267-GH

644-032-01

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder



18.00

* \$ R 0 0 1 0 2 9 3 1 1 8 \$ *
2018000302297 1:27 pm 08/17/18

90 SC5 G02 4

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THIS SPACE IS FOR RECORDERS USE ONLY

GRANT DEED

(Title of Document)

Per Government Code 27388.1 (a)(1) "A fee of \$75 dollars shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded, except those expressly exempted from payment of recording fees, per each single transaction per parcel or real property. The fee shall not exceed two hundred twenty-five dollars (\$225)"

Reason for Exemption:

☐ Exempt from fee per GC 27388.1 (a) (2); recorded concurrently "in connection with" a transfer subject to the imposition of documentary transfer tax (DTT).

☒ Exempt from fee per GC 27388.1 (a) (2); recorded concurrently "in connection with" a transfer of real property that is a residential dwelling to an owner-occupier.

☐ Exempt from fee per GC 27388.1 (a) (1); fee cap of \$225.00 reached.

☐ Exempt from the fee per GC 27388.1 (a) (1); not related to real property.

Failure to include an exemption reason will result in the imposition of the \$75.00 Building Homes and Job Act Fee.

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(ADDITIONAL RECORDING FEE APPLIES)

12/29/17

RECORDING REQUESTED BY

Western Resources Title

MAIL TAX STATEMENT

AND WHEN RECORDED MAIL DOCUMENT TO:

Edward William Bayuk, Trustee of Edward William Bayuk Living Trust

668 North Coast Highway #517
Laguna Beach, CA. 92651

Space Above This Line for Recorder's Use Only

A.P.N.: 644-032-01

File No.: 156267 (JM)

GRANT DEED

The Undersigned Grantor(s) declare(s): DOCUMENTARY TRANSFER TAX **\$0.00**; CITY TRANSFER TAX \$;
SURVEY MONUMENT FEE \$

This conveyance transfers Grantor's interest into or out of his/her revocable trust and is EXEMPT from the imposition of the Documentary Transfer Tax pursuant to § 11930 of the Revenue and Taxation Code.

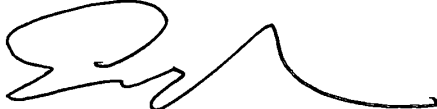
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
Edward William Bayuk, Trustee of the Edward William Bayuk Living Trust

hereby GRANT(s) to **Edward William Bayuk, trustee of the Edward William Bayuk Living Trust dated August 13, 2009**

the following described property in the City of **Laguna Beach**, County of **Orange**, State of **California**:

See Exhibit A attached hereto for legal description.

Dated: August 13, 2018



Edward William Bayuk, trustee of the Edward William Bayuk Living Trust dated August 13, 2009

Mail Tax Statements To: **SAME AS ABOVE**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California)SS

COUNTY OF Orange)

On 8-15-18 before me, SHEREEN E. SHELDON Notary Public, personally appeared

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

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

WITNESS my hand and official seal.

This area for official notarial seal.

[Signature]
Notary Signature



A.P.N.: 644-032-01

File No.: 156267 (JM)

EXHIBIT A

LOT 20 OF TRACT NO. 870, AS PER MAP RECORDED IN BOOK 27 PAGE(S) 30, 31 AND 32 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

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

DATE: 07/02/2019

CERTIFICATION FEE: 5.00



COUNTY CLERK-RECORDER

Hugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

Certified Copy of document number 2018000302297

Exhibit 8

GORDON SILVER
JOHN P. DESMOND
Nevada Bar No. 5618
Email: jdesmond@gordonsilver.com
BRIAN R. IRVINE
Nevada Bar No. 7758
Email: birvine@gordonsilver.com
100 West Liberty Street
Suite 940
Reno, NV 89501
Tel: (775) 343-7500
Fax: (775) 786-0131

Attorneys for Defendants/Counter-Claimants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

CONFESSION OF JUDGMENT

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

///

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 18th day of June, 2013.

GORDON SILVER

/s/ John P. Desmond
JOHN P. DESMOND
Nevada Bar No. 5618
Email: jdesmond@gordonsilver.com
BRIAN R. IRVINE
Nevada Bar No. 7758
Email: birvine@gordonsilver.com
100 West Liberty Street
Suite 940
Reno, NV 89501
Tel: (775) 343-7500
Fax: (775) 786-0131

Attorneys for Defendants/Counter-Claimants

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EXHIBIT TABLE

Exhibit	Description	Pages¹
1	Confession of Judgment	20

¹ Exhibit page count is exclusive of exhibit slip sheet.

CERTIFICATE OF SERVICE

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

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

addressed as follows:

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

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

DATED this 18th day of June, 2013.

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

E D

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

EXHIBIT 1

EXHIBIT 1

WL002875

9068

JONES VARGAS
300 East Second Street, Suite 1510
P.O. Box 281
Reno, NV 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

1 JOHN P. DESMOND, ESQ.
Nevada State Bar No. 5618
2 BRIAN R. IRVINE ESQ.
Nevada State Bar No. 7758
3 JONES VARGAS
300 E. Second Street
4 Suite 1510
P.O. Box 281
5 Reno, Nevada 89504-0281
Telephone: (775) 786-5000
6 Facsimile: (775) 786-1177

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

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

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

13 Plaintiffs,

14 vs.

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

17 Defendants.
18

19 CONFESSION OF JUDGMENT

20 RECITALS:

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

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

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

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

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

24
25 F. The Morabito Parties appealed the Findings of Fact and Conclusions of Law as well
26 as the Judgment to the Nevada Supreme Court as identified by those certain appeals captioned
27 Nevada Supreme Court Case Nos. 54412 and 57943. The Herbst Parties filed numerous cross-
28

JONES VARGAS
300 East Second Street, Suite 1510
P.O. Box 281
Reno, NV 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

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

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

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

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

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

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

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

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

JONES VARGAS
300 East Second Street, Suite 1510
P.O. Box 281

Rego, NY 85504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

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

9 M. As part of the Settlement, beginning on December 1, 2011, CNC and Paul Morabito
10 agreed to indemnify and defend Berry-Hinckley Industries and Jerry Herbst in the lawsuit captioned
11 as Desi Moreno, Trustee of the Desi Moreno 2001 Trust, et al. v. Berry-Hinckley Industries, et al.,
12 Case No. CV10-02329 in Department 4 of the Second Judicial District Court in and for the County
13 of Washoe. CNC and Paul Morabito expressly agreed to indemnify Berry-Hinckley Industries and
14 Jerry Herbst from any finding of liability or assessment of damages in that action. To facilitate the
15 assumption of the duty to defend and indemnify in the context of the aforementioned case, CNC and
16 Paul Morabito agreed to amend the Answer previously filed. It was agreed that the Amended
17 Answer would admit liability to JH, Inc. pursuant to the indemnification provisions of the Amended
18 and Restated Stock Purchase Agreement. Specifically, pursuant to Article 9.1(d) of the ARSPA,
19 CNC and Paul Morabito agreed to admit that they were obligated to indemnify Berry-Hinckley
20 Industries and Jerry Herbst for any loss that has already been suffered and any loss that may be
21 suffered in the future as a result of the lawsuit filed by the Moreno Plaintiffs. It was agreed that
22 failure to timely indemnify Berry-Hinckley Industries and Jerry Herbst from a findings of liability or
23 damages would constitute a default under the settlement agreement. It was also agreed that in the
24 event a judgment is entered against Berry-Hinckley Industries and/or Jerry Herbst, Paul Morabito
25 and CNC agreed to either (1) satisfy said judgment within fifteen days; or (2) file a notice of appeal
26
27
28

1 of said judgment within thirty days and post a bond pending appeal to stay execution against Berry-
2 Hinckley Industries and/or Jerry Herbst. In the event of an appeal, if the decision is affirmed, Paul
3 Morabito and CNC agreed to pay any judgment within fifteen days of an order of affirmance from
4 the Nevada Supreme Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 4. BHI was very successful for generations.

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

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

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

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

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

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

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

19 12. The ARSPA consists of two components.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 52. JH reasonably relied on those representations.

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

27 54. As a result, JH was damaged.

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

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

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

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

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

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

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

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

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

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

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VERIFICATION

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


By: PAUL MORABITO
for CONSOLIDATED NEVADA CORPORATION

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

Virginia A. Pool
Notary Public



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VERIFICATION

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



By: PAUL MORABITO, Individually

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

Virginia A. Pool
Notary Public

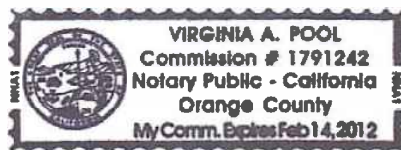


EXHIBIT J
STIPULATION TO CONFESSION OF JUDGMENT

(See attached.)

FINAL EXECUTION VERSION
21753500_6.doc

WL002891

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1 JOHN P. DESMOND, ESQ.
Nevada State Bar No. 5618
2 BRIAN R. IRVINE ESQ.
Nevada State Bar No. 7758
3 JONES VARGAS
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4 Suite 1510
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Telephone: (775) 786-5000
6 Facsimile: (775) 786-1177
7 *Attorneys for JH, Inc., Jerry Herbst,*
And Berry-Hinckley Industries
8

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

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

13 Plaintiffs,

14 vs.

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

17 Defendants.
18

19 STIPULATION

20 JH, INC., a Nevada corporation ("JH"), JERRY HERBST, an individual ("Herbst") and
21 BERRY-HINCKLEY INDUSTRIES, a Nevada corporation ("BHI"), on the one hand, and
22 CONSOLIDATED NEVADA CORPORATION, a Nevada corporation ("CNC"), and PAUL
23 MORABITO, an individual ("Morabito"), on the other hand, hereby consent, stipulate and agree
24 as follows:
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28

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1 1. CNC and Morabito consented, stipulated and agreed that Judgment in the amount
2 of \$85,000,000 be taken against them in the event of a default under the Settlement Agreement as
3 provided for in the attached Confession of Judgment ("Judgment").


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

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

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

9 JONES VARGAS

10 ROBISON, BELAUSTEGUI,
SHARP & LOW

11 
12 JOHN P. DESMOND, ESQ.
13 BRIAN R. IRVINE, ESQ.
14 300 E. Second Street
Suite 1510
15 Reno, NV 89501

16 BARRY L. BRESLOW
71 Washington Street
17 Reno, NV 89503

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

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

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

25 PAUL A. MORABITO, Individually

26 PAUL A. MORABITO
27 Authorized Representative for
28 Consolidated Nevada Corporation

JONES VARGAS
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3 provided for in the attached Confession of Judgment ("Judgment").

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

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


8 DATED this ____ day of November, 2011.

DATED this 30 day of November, 2011.

9 JONES VARGAS

ROBISON, BELAUSTEGUI,
SHARP & LOW

10
11
12 JOHN P. DESMOND, ESQ.
13 BRIAN R. IRVINE, ESQ.
14 300 E. Second Street
15 Suite 1510
16 Reno, NV 89501


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

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

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

25 DATED this ____ day of November, 2011.

DATED this ____ day of November, 2011.

26
27
28 PAUL A. MORABITO, Individually

PAUL A. MORABITO
Authorized Representative for
Consolidated Nevada Corporation

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

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

8 DATED this ____ day of November, 2011.

DATED this ____ day of November, 2011.

9 JONES VARGAS

ROBISON, BELAUSTEGUI,
SHARP & LOW

11
12 JOHN P. DESMOND, ESQ.
13 BRIAN R. IRVINE, ESQ.
14 300 E. Second Street
15 Suite 1510
16 Reno, NV 89501

BARRY L. BRESLOW
71 Washington Street
Reno, NV 89503

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

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

20 DATED this 30 day of November, 2011.

DATED this 30 day of November, 2011.

21 
22 PAUL A. MORABITO, Individually

23 
24 PAUL A. MORABITO
25 Authorized Representative for
26 Consolidated Nevada Corporation
27
28

Exhibit 9

PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** (this "Agreement") is made and entered into effective as of September 27, 2010 between and among **PAUL A. MORABITO** ("P. Morabito") individually and in his capacity as **TRUSTEE OF THE ARCADIA LIVING TRUST DATED 2/14/2006** ("Arcadia Trust") (collectively "Morabito") on the one hand, and **EDWARD W. BAYUK** ("E. Bayuk") individually and in his capacity as **TRUSTEE OF THE EDWARD WILLIAM BAYUK LIVING TRUST DATED 6/18/2008**, ("Bayuk Trust") (collectively "Bayuk") on the other hand.

Each of those parties is sometimes referred to herein as a "Party" and collectively as the "Parties" to this Agreement.

RECITALS

A. Arcadia Trust as to an undivided 75.00% interest and Bayuk Trust as to an undivided 25.00% interest, as tenants in common, own the residential real property and all buildings and improvements thereon commonly known as 371 El Camino Del Mar, Laguna Beach, CA 92651, more particularly described as:

All that certain real property situated in the County of Orange, State of California, described as follows:

Lot 20 of Tract No. 870, in the City of Laguna Beach, County of Orange, State of California, as per Map recorded in Book 27, Pages 30 to 32 inclusive of Miscellaneous Maps, in the Office of the County Recorder of said County..

Assessor's Parcel Number: **644-032-01**

hereinafter (the "El Camino Property"). The El Camino Property has a current fair market value of \$2,500,000.00, is subject to mortgages in the total amount of \$871,359.00 and has an estimated net approximate current value of \$1,628,641.00. Associated with the El Camino Property are all of the furniture, fixtures, appliances, equipment, art, furnishings and personal property located therein (the "El Camino Personal Property").

B. Arcadia Trust as to an undivided 50.00% interest and Bayuk Trust as to an undivided 50.00% interest, as tenants in common, own the residential real property and all buildings and improvements thereon commonly known as 370 Los Olivos, Laguna Beach, CA 92651, more particularly described as:

All that certain real property situated in the County of Orange, State of California, described as follows:

Lot 17 of Tract 870, in the City of Laguna Beach, County of Orange, State of California as per Map recorded in Book 27, Page(s) 30, 31 and 32, of Miscellaneous Maps in the Office of the County Recorder of said County.

Assessor's Parcel Number: **644-032-04**

hereinafter (the "Los Olivos Property"). The Los Olivos Property has a current fair market value of \$2,500,000.00, is subject to mortgages in the total amount of \$1,045,046.00 and has an estimated net current value of \$1,454,954.00. Associated with the Los Olivos Property are all of the furniture, fixtures, appliances, equipment, art, furnishings and personal property located therein (the "Los Olivos Personal Property").

MORABITO (341).006971

C. P. Morabito, as to an undivided 2/3 interest and E. Bayuk as to an undivided 1/3 interest, as tenants in common, own the residential real property and all buildings and improvements thereon commonly known as 8355 Panorama Drive, Reno, NV 89511, more particularly described as:

The land referred to herein is situated in the State of Nevada, County of Washoe, described as follows:

Beginning at a point on the West line of the NE 1/4 of the SE 1/4 of Section 1, Township 18 North, Range 19 East, M.D.B&M., as shown on record of License Survey for John J. Dieringer, File No. 232365, whence the Northwest corner of said subdivision bears North 0°03'50" East 1200.96 feet in center line of Huffer Lane; thence South 89°56'10" East 930.00 feet to the Western line of a 50 foot road; thence South 0°03'50" West along said road 25.0 feet; thence South 49°28'50" West 381.8 feet; thence North 89°56'10" West 640.0 feet; thence North 0°03'50" East 273.4 feet to the point of beginning; situate in the E 1/2 of SE 1/4 of said Section 1.

APN: 040-620-09

Document Number 2772474 is provided pursuant to the requirements of Section 1. NRS 111.312

hereinafter the "Panorama Property". The Panorama Property has a current fair market value of \$4,300,000.00, is subject to mortgages in the total amount of \$1,028,864.00 and has an estimated net current value of \$3,271,136.00. Associated with the Panorama Property are all of the furniture, fixtures, appliances, equipment, art, furnishings and personal property located therein (the "Panorama Personal Property").

D. Associated with the Panorama Property are excess water rights (the "Excess Water Rights") owned 70% by P. Morabito and 30% by E. Bayuk, with a current fair market value of \$300,000.00. In addition there is theater equipment not affixed to but located at the Panorama Property (the "Theater Equipment") paid for 100% by E. Bayuk with an estimated current fair market value of \$300,000.00.

E. The Parties desire to enter into this Agreement whereby, among other things, in exchange for the consideration described in this Agreement, the Arcadia Trust will hold a 100% interests in the Panorama Property and the Excess Water Rights and the Bayuk Trust will hold 100.00% interests in the El Camino Property, the Los Olivos Property, the El Camino Personal Property, the Los Olivos Personal Property, the Theater Equipment and the Panorama Personal Property, subject to any and all existing all liens, claims and monetary encumbrances on each such property, all in accordance with the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises, and subject to the conditions set forth below, the parties now agree as follows:

1. **Exchange of Property Interests and Promissory Note.** At Closing (as defined in Section 2.1 below), Arcadia Trust shall grant to Bayuk Trust its 75.00% interest in the El Camino Property, its 50.00% interest in the Los Olivos Property, confirm that E. Bayuk owns

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100% of the Theater Equipment and transfer possession of same to E. Bayuk, transfer to E. Bayuk its interests in the El Camino Personal Property, the Los Olivos Personal Property and the Panorama Personal Property and allow E. Bayuk to take possession of the Panorama Personal Property.

In exchange, at Closing, E. Bayuk shall grant to Arcadia Trust his 1/3 interest in the Panorama Property, transfer to Arcadia Trust his 30% interest in the Excess Water Rights, take possession of the Theater Equipment, El Camino Personal Property, the Los Olivos Personal Property and the Panorama Personal Property and shall deliver to Arcadia Trust his Promissory Note in the principal amount of \$500,000.00 in a form mutually agreeable to the parties, accruing interest at the rate of four percent (4%) per annum fully amortized over a 30 year terms, payable in equal monthly installments (the "Promissory Note"), secured by a Deed of Trust against the real property commonly known as 1461 Glenneyre, Laguna Beach, CA.

2. Closing; Escrow Holder.

2.1. Escrow Holders; Closing Date. West Coast Escrow ("CA Escrow Holder") shall be escrow holder with respect to the grant of Arcadia Trusts' interests in the El Camino Property and the Los Olivos to Bayuk Trust. First American Title ("NV Escrow Holder") shall be escrow holder with respect to the grant of E. Bayuk's interest in the Panorama Property to Arcadia Trust and the transfer of interests in the Excess Water Rights and Theater Equipment to the Arcadia Trust.

The Parties shall share all reasonable and customary escrow and title insurance fees in the same proportion of their ownership interests. The exchange of documents contemplated hereby (the "Closing"), shall occur before October 1, 2010, unless otherwise mutually agreed by the parties (the "Closing Date"). Promptly after mutual execution of this Agreement, Buyer and Seller shall open escrows with CA Escrow Holder and NV Escrow Holder, and shall execute such instructions as each escrow holder may reasonably request which are not inconsistent with the provisions of this Agreement. CA Escrow Holder and NV Escrow Holder are each hereby authorized and instructed to conduct escrow in accordance with this Agreement, applicable law and custom and practice of the community in which the escrow holder is located, including any reporting requirements of the Internal Revenue Code.

2.2. Other Obligations at Closing. At Closing, the parties shall execute and deliver to one another all documents set forth in this Agreement, and, in addition, such other documents as may be necessary or appropriate to accomplish in a complete and proper manner the transaction contemplated by this Agreement. At Closing and except as elsewhere provided in this Agreement, appropriate proration shall be made for such items for which proration would be appropriate.

2.3. Other Undertakings At Closing. Immediately after the Closing the party to whom title is being transferred shall be put into full possession and enjoyment of the property that is subject to the transfer and shall deliver the property and all properties to be conveyed and transferred by this Agreement.

3. Title Report; Title. As to the real property interests being transferred hereunder, the transferor of title in each such instance shall pay for and furnish to the transferee a preliminary title report on the property being transferred (the "Report"), together with full legible copies of all exceptions in the Report within three (3) days of opening escrow. The transferee shall have

twenty-four (24) hours after receipt of the Report and said copies of exceptions within which to notify transferor and the applicable Escrow Holder in writing of transferee's reasonable disapproval of any such exceptions. Failure of transferee to disapprove in writing any exceptions within the aforementioned time limit shall be deemed to be an approval of the Report. In the event transferee disapproves any exception(s) in the Report, transferor shall have until two (2) days before the Closing Date to eliminate any disapproved exceptions from the proposed policy of title insurance to be issued in favor of transferee, and if such exceptions are not eliminated then the escrow shall be cancelled, this Agreement shall be null and void, and the deposit returned to transferee unless transferee then elects to waive its prior disapproval. Transferor, at its expense, shall provide marketable title, as evidenced by Escrow Holder's standard policy of title insurance in the amount of the value of its transferred interest in the property, showing title in transferee. Transferor agrees to execute and deliver to transferee at the Closing Date such instruments of transfer, assignment and conveyance as shall be necessary to vest in transferee good and marketable title to the property, subject to all existing mortgages, liens, security interests, pledges, charges and other monetary encumbrances other than as specifically assumed by the transferee as set forth in this Agreement.

Except as otherwise set forth in this Agreement, all existing fixtures, furnishings, equipment and fittings attached to or contained in each respective property shall be transferred to transferee at the Closing Date.

4. Conditions to Closing.

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

4.1 Deeds and Title Insurance on Property. Transferee's approval of the Report and Escrow Holder issuing Title Insurance on the property at issue in the manner specified in Paragraph 3 hereinabove.

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

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

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

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

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

5. Indemnities.

5.1 Transferor's Indemnities. As to each of the properties being transferred hereunder, the transferor shall indemnify, defend and hold harmless the transferee from and against any damage, deficiency, loss, or claim resulting from any of transferor's misrepresentations, breaches of warranty, or other or defaults of the terms of this Agreement or any closing document which cause monetary damage to transferee.

5.2 Transferee's Indemnities. Transferee shall assume all debts, mortgages, liens, encumbrances, claims, losses, liabilities, suits, demands, damages, costs, tax obligations, employment claims, judgments, interest, fines, penalties and expenses associated with the interest being transferred by transferor and the underlying property (the "Claims") and indemnify, defend and hold harmless transferor from and against any and all such Claims, including reasonable attorneys' fees and expenses, reasonable consultants' fees and expenses, court costs and all other reasonable out-of-pocket expenses and causes of actions of any nature whatsoever relating to transferor's interest in such property which may be asserted against transferor by any third party or against the transferor's interest in such property being transferred; (ii) any damage, deficiency, loss, or claim resulting from any of transferee's misrepresentations, breaches of warranty, or other or defaults of the terms of this Agreement or any closing document which cause monetary damage to transferor.

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

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

6.1 Authority Relative to this Agreement. This Agreement and all agreements, instruments of transfer, documents and deeds to be executed in connection with the closing of this transaction, have been or will be, as applicable, duly executed and delivered by the Party and constitute valid and binding obligations of the Party, enforceable against the Party, in accordance with their terms. Each of the Parties has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Agreement, and except as otherwise provided for or disclosed in this Agreement, no approvals or consents of any persons other than

the Party are necessary in connection with it. The execution and delivery of this Agreement by the Party have been duly authorized by all necessary action on the part of Party.

6.2 Title to Assets and the Property. Except as otherwise provided for or disclosed in this Agreement, the Party has good and marketable title to the interests being transferred by the Party under this Agreement.

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

7. ADDITIONAL AGREEMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

TO: **P. Morabito and Arcadia Trust:**

9255 Doheny Road, Apartment 2906
Los Angeles, California 90069
e-fax: (480) 222-1062

TO: **E. Bayuk and Bayuk Trust:**

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

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

8. TERMINATION, AMENDMENT AND WAIVER.


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

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

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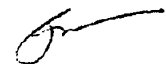
8.1.2 By any of the Parties if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or shall have taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the transactions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

IN WITNESS WHEREOF, each of the Parties have executed this Agreement as of the date so indicated



Paul A. Morabito Dated: September 28th, 2010

ARCADIA LIVING TRUST DATED 2/14/2006

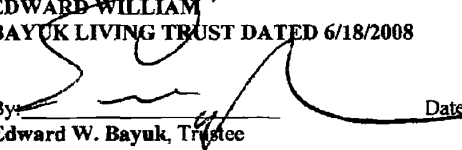
By: 

Paul A. Morabito, Trustee Dated: September 28th, 2010



Edward W. Bayuk Dated: September 28th, 2010

EDWARD WILLIAM
BAYUK LIVING TRUST DATED 6/18/2008

By: 

Edward W. Bayuk, Trustee Dated: September 28th, 2010

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Exhibit 10

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

This **FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT** (this "**Amendment**"), is made and entered into effective as of September 28, 2010 (the "**Effective Date**"), between and among **PAUL A. MORABITO** ("**P. Morabito**") individually and in his capacity as **TRUSTEE OF THE ARCADIA LIVING TRUST** ("**Arcadia Trust**") on the one hand, and **EDWARD WILLIAM BAYUK** ("**E. Bayuk**") individually and in his capacity as **TRUSTEE OF THE EDWARD WILLIAM BAYUK LIVING TRUST DATED 6/18/2008**, ("**Bayuk Trust**") (collectively "**Bayuk**") on the other hand. Each of those parties is sometimes referred to herein as a "**Party**" and collectively as the "**Parties**" to this Agreement.

RECITALS

A. The Parties are parties to that certain Purchase and Sale Agreement Residential dated September 27, 2010 (collectively the "**Agreement**").

B. The Parties now desire to amend the Agreement, to among other things, correct the name of Arcadia Living Trust, correct the trustee's name of the Edward William Bayuk Trust dated 6/18/2008 to be Edward William Bayuk and otherwise revise the terms of the contemplated transactions as set forth in this Amendment. Capitalized terms used herein and not herein defined shall have the meanings given to such terms in the Agreement.


NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby specifically acknowledged, the Parties agree to the following:

1. **Correctly Identifying Arcadia Living Trust and Trustee of the Edward William Bayuk Trust dated 6/18/2008.** In the introduction and elsewhere where applicable in the Agreement, the term and Party "**ARCADIA LIVING TRUST DATED 2/14/2006**" is hereby changed to correctly reflect the Party's actual name "**ARCADIA LIVING TRUST**" and the trustee of the Edward William Bayuk Trust dated 6/18/2008 is hereby changed to correctly identify the name of the Trustee as "Edward William Bayuk. As such it is understood and agreed that the Capitalized Term "**Arcadia Trust**" throughout the Agreement refers to Arcadia Living Trust and the Capitalized Term "**E. Bayuk**" throughout the Agreement refers to Edward William Bayuk.
2. **Correcting Values of Properties and Interests.** MAI appraisals were conducted and the Parties hereby replace the fair market values and current values of the following properties stated in the Recitals as follows to more accurately reflect the values established by the appraisals:
 - 2.1 The El Camino Property has a current fair market value of \$1,950,000.00 and a current net value of \$1,078,641.00; and

2.2 The Los Olivos Property has a current fair market value of \$1,900,000.00 and a current net value of \$894,954.00.


3. **Deletion of Promissory Note** In recognition of the now current fair market values and current net values of the El Camino Property and the Los Olivos Property established by MAI appraisals, the Parties hereby agree that in lieu of delivering his Promissory Note secured by a Deed of Trust against the real property commonly known as 1461 Glenneyre at Closing, E. Bayuk shall instead make payment in the sum of \$60,117.00 to Arcadia Trust at Closing.
4. **Miscellaneous.** This Amendment amends the Agreement. Except as amended by this Amendment the Agreement shall otherwise remain in full force and effect. In the event of a conflict between this Amendment and the Agreement, this Amendment shall take precedence and control. A signature on this Amendment sent via e-mail or facsimile shall be deemed an original signature for the purposes of enforcement. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Amendment shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date indicated.




Paul A. Morabito
ARCADIA LIVING TRUST

Dated: 9/29, 2010

By: 

Paul A. Morabito, Trustee

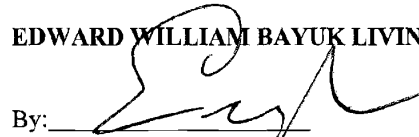
Dated: 9/29, 2010



Edward William Bayuk

Dated: 09/29, 2010

EDWARD WILLIAM BAYUK LIVING TRUST DATED 6/18/2008

By: 

Edward William. Bayuk, Trustee

Dated: 09/29, 2010

Exhibit 11

FATCOLA/RESALE

RECORDING REQUESTED BY:
FIRST AMERICAN TITLE COMPANY

AND WHEN RECORDED MAIL TO:
Edward William Bayuk Living Trust
668 North Pacific Coast Highway, Suite 517
Laguna Beach, CA 92651

Order No.: 3600729
Escrow No.: SS-26777-AL
A.P.N.: 644-032-04

Recorded in Official Records, Orange County

Tom Daly, Clerk-Recorder



6.00

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Recording Requested By: DPS
On Behalf Of:

“ **DPS** ”

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

THE UNDERSIGNED GRANTOR(S) DECLARE(S)
DOCUMENTARY TRANSFER TAX IS \$ CITY TRANSFER TAX IS \$
[< - >] computed on full value of property conveyed, or
[< - >] computed on full value less value of liens or encumbrances remaining at time of sale.
[< - >] unincorporated area [x] City of **Laguna Beach** AND

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

Paul A. Morabito, Trustee of the Arcadia Living Trust as to an undivided 50% interest who acquired title as Paul A. Morabito, Trustee of the Arcadia Living Trust dated 2/14/2006, as to an undivided 50% interest

hereby GRANT(S) to

Edward William Bayuk, Trustee of Edward William Bayuk Living Trust

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

Lot 17 of Tract 870, in the City of Laguna Beach, County of Orange, State of California as per Map recorded in Book 27, Page(s) 30, 31, and 32, of Miscellaneous Maps in the Office of the County of said County.

AKA: 370 Los Olivos, Laguna Beach, CA 92651

Dated: **September 28, 2010**

STATE OF CALIFORNIA

COUNTY OF **LOS ANGELES**

} ss.

On **September 28, 2010** before me

M. MASON
Notary Public, personally appeared

PAUL A. MORABITO

Arcadia Living Trust

By: **Paul A. Morabito, Trustee**

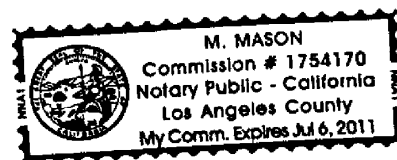
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s),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

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

WITNESS my hand and official seal.

Signature **M. Mason**
Signature of Notary

Commission Expiration Date: **7/6/2011**



(This area for official notarial seal)

MAIL TAX STATEMENTS TO: **Edward William Bayuk Living Trust**
Document Number: 2010000491888 Page: 1 of 2

Certified Copy of document Number 2010000491888

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

DATE: 10/01/2018

CERTIFICATION FEE: 2.00



COUNTY CLERK-RECORDER

Jugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

Exhibit 12

FATCOLA/RESALE

RECORDING REQUESTED BY:
FIRST AMERICAN TITLE COMPANY

AND WHEN RECORDED MAIL TO:
Edward William Bayuk Living Trust
668 North Pacific Coast Highway, Suite 517
Laguna Beach, CA 92651

Order No.: 3600727
Escrow No.: SS-26776-AL
A.P.N.: 644-031-01

Recording Requested By: DPS
On Behalf Of:

“DPS”

Recorded in Official Records, Orange County

Tom Daly, Clerk-Recorder



6.00

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

THE UNDERSIGNED GRANTOR(S) DECLARE(S)
DOCUMENTARY TRANSFER TAX IS \$ CITY TRANSFER TAX IS \$

[< - >] computed on full value of property conveyed, or
[< - >] computed on full value less value of liens or encumbrances remaining at time of sale.
[< - >] unincorporated area [X] City of **Laguna Beach** AND

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

Paul A. Morabito, Trustee of Arcadia Living Trust as to an undivided 75.00% interest who acquired title as Paul A. Morabito, Trustee of the Arcadia Living Trust dated 2/14/2006 as to an undivided 75.00% interest

hereby GRANT(S) to

Edward William Bayuk, Trustee of Edward William Bayuk Living Trust

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

Lot 20 of Tract No. 870, in the City of Laguna Beach, County of Orange, State of California, as per Map recorded in Book 27 Page(s) 30, 31, and 32 of Miscellaneous Maps, in the Office of the County Recorder of said County.

AKA: 371 El Camino Del Mar, Laguna Beach, CA 92651

Dated: **September 28, 2010**

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

} ss.

On September 28, 2010 before me

M. MASON

Notary Public, personally appeared

PAUL A. MORABITO

Arcadia Living Trust

By: Paul A. Morabito, Trustee

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

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

WITNESS my hand and official seal.

Signature M. Mason
Signature of Notary

Commission Expiration Date: 7/6/2011



(This area for official notarial seal)

MAIL TAX STATEMENTS TO: **Edward William Bayuk Living Trust**
Document Number: 2010000491887 Page: 1 of 2

Certified Copy of document Number 2010000491887

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

DATE: 10/01/2018

CERTIFICATION FEE: 2.00



COUNTY CLERK-RECORDER

Jugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

Exhibit 13

MEMBERSHIP INTEREST TRANSFER AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the sale or transfer of any or all of a Company's assets or businesses, and/or the merger, dissolution or liquidation of the Company;

(b) any insolvency, bankruptcy, reorganization, receivership, assignment for the benefit of creditors, liquidation or similar proceedings with respect to the Company; or

(c) the modification, amendment, renewal or extension of the terms or conditions of this Agreement or the Promissory Note.

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

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

4. **Conditions to Closing.**

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

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

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



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

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

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

5. **Indemnities.**

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

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

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

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



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

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

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

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

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

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

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

TO: Paul A. Morabito and Arcadia Trust:

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



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

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

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

7. **ADDITIONAL AGREEMENTS.**

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

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

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

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

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

TO: Edward Bayuk and Bayuk Trust:

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

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

8. TERMINATION, AMENDMENT AND WAIVER.


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

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

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

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

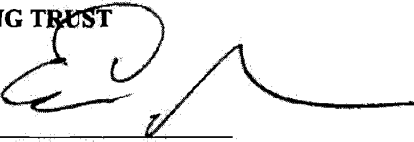
ARCADIA LIVING TRUST

By: 

Paul A. Morabito, Trustee

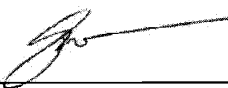
EDWARD WILLIAM BAYUK

LIVING TRUST

By: 


Edward William. Bayuk, Trustee

BARUK PROPERTIES, LLC

By: 

Paul Morabito, Manager

BARUK PROPERTIES, LLC

By: 

Edward Bayuk, Manager



Exhibit 14

PROMISSORY NOTE

Laguna Beach, California

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

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

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

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

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

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

Maturity Date: **September 30, 2040**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BORROWER:

EDWARD WILLIAM BAYUK LIVING TRUST

By:

Edward William Bayuk, Trustee

Exhibit 15

DOC # 2010-0531071

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

Page 1 of 1

Recorded in Official Records
County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder

RECORDING REQUESTED BY:
FIRST AMERICAN TITLEAND WHEN RECORDED MAIL TO:
Edward William Bayuk, Trustee et al.
668 N. Pacific Coast Highway #517
Laguna Beach, CA 92651

Order No.: 3005461-3

Escrow No.:

A.P.N.: 507-520-015

TRA: 011-021

S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
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M	A	L	465	426	PPCOR	NCOR	SMF	NCHG	EXAM
					T:		CTY	UNI	025

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$ ~~10~~ CITY TRANSFER TAX IS \$ ~~10~~ *NO Consideration*
"The Grantors and the Grantees in this Conveyance are comprised of the same parties who continue to hold the same proportionate interest in the property, R & T 11923(d)."

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

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

SNOWSHOE PROPERTIES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

hereby GRANT(S) to

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

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

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

Dated: October 29, 2010

STATE OF CALIFORNIA

COUNTY OF Los Angeles

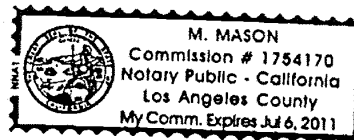
} ss.

On November 1, 2010 before meNotary Public, personally appeared
Edward BayukSNOWSHOE PROPERTIES, LLC, A CALIFORNIA LIMITED
LIABILITY COMPANYBy: Edward Bayuk, Manager

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

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

WITNESS my hand and official seal.

Signature M. Mason
Signature of NotaryCommission Expiration Date: 7/6/2011

(This area for official notarial seal)

MAIL TAX STATEMENTS TO: Edward William Bayuk, Trustee et al., 668 N. Pacific Coast Highway #517

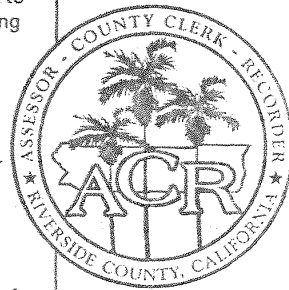
This must be in red to be a
"CERTIFIED COPY"

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

Peter Alolawa

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

Dated: OCT 02 2018 *✍*



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

2535
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
Nevada Bar No. 11588
E-mail: ghamm@gtg.legal
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Counsel to Plaintiff

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

NOTICE OF ENTRY OF
ORDER DENYING DEENDANTS'
MOTIONS FOR NEW TRIAL AND/OR TO
ALTER OR AMEND JUDGMENT

Notice is hereby given that on July 10, 2019, this Honorable Court entered its *Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment*, a copy of

...

...

1 which is attached hereto as **Exhibit 1.**

2 Dated this 15th day of July, 2019.

GARMAN TURNER GORDON LLP

3

4 /s/ Teresa M. Pilatowicz, Esq.

5 ERIKA PIKE TURNER, ESQ.

6 TERESA M. PILATOWICZ, ESQ.

7 GABRIELLE A. HAMM, ESQ.

8 650 White Drive, Ste. 100

9 Las Vegas, Nevada 89119

10 Telephone 725-777-3000

11 *Special Counsel to Plaintiff,*

12 *William A. Leonard, Trustee*

13

14

AFFIRMATION

15

Pursuant to NRS 239B.030

16

The undersigned does hereby affirm that the preceding document does not contain the

17 social security number of any person.

18 Dated this 15th day of July, 2019.

19

GARMAN TURNER GORDON LLP

20

21 /s/ Teresa M. Pilatowicz, Esq.

22 ERIKA PIKE TURNER, ESQ.

23 TERESA M. PILATOWICZ, ESQ.

24 GABRIELLE A. HAMM, ESQ.

25 650 White Drive, Ste. 100

26 Las Vegas, Nevada 89119

27 Telephone 725-777-3000

28 *Counsel to Plaintiff*

29

30

31

32

33

34

35

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this
3 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached **NOTICE OF**
4 **ENTRY OF ORDER DENYING DEENDANTS' MOTIONS FOR NEW TRIAL AND/OR**
5 **TO ALTER OR AMEND JUDGMENT** on the parties as set forth below:

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

9 _____ Certified Mail, Return Receipt Requested

10 _____ Via Facsimile (Fax)

11 _____ Via E-Mail

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

14 _____ Federal Express (or other overnight delivery)

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

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

Jeffrey Hartman, Esq.
E-mail: jlh@bankruptcyreno.com

18
19 I declare under penalty of perjury that the foregoing is true and correct.
20 DATED this 15th day of July, 2019.

21
22 /s/ Dekova Huckaby
23 An Employee of GARMAN TURNER
24 GORDON LLP

Exhibit 1

2700

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,

CASE NO.: CV13-02663

DEPT. NO. 4

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.

**ORDER DENYING DEFENDANTS' MOTIONS FOR NEW TRIAL AND/OR TO
ALTER OR AMEND JUDGMENT**

Defendants Superpumper, Inc. ("Superpumper"), Salvatore Morabito ("Morabito"), and Snowshoe Petroleum, Inc. ("Snowshoe") filed a *Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRC P 52, 59, and 50* on April 25, 2019 (the "Snowshoe Motion"), and Defendant Edward Bayuk, individually and as Trustee of the Edward William Bayuk Living Trust ("Bayuk," and collectively with Superpumper, Morabito, and Snowshoe, "Defendants") filed a *Motion for New Trial and/or to Alter or Amend Judgment* filed on April 26, 2019 (the "Bayuk Motion" and together with the Snowshoe Motion, the "Motions"). Plaintiff William A. Leonard, chapter 7 trustee for the bankruptcy estate of Paul A. Morabito ("Plaintiff") filed *Plaintiff's Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment* (the "Opposition") on May 7, 2019, and Superpumper, Snowshoe, and Morabito filed *Defendants' Reply in Support of Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRC P 52, 59, and 60* (the "Snowshoe Reply") on May 14, 2019. The Snowshoe Motion was submitted for decision on May 14, 2019. Bayuk did not file a reply in support of the Bayuk Motion, and Plaintiff submitted the Bayuk Motion for decision on May 21, 2019.

1 The Court has reviewed and considered the arguments made in the Motions, the
2 Opposition, and the Snowshoe Reply, the papers and pleadings on file with the Court in this action,
3 the testimony and exhibits admitted during the trial, and the Court's Findings of Fact, Conclusions
4 of Law, and Judgment, entered on March 29, 2019 (the "Judgment"). The Court, persuaded by
5 the argument and authorities in Plaintiff's Opposition, along with the pleadings and papers on file,
6 the trial record, and the findings and conclusions set forth in the Judgment, finds as follows:

7 1. Defendants' Motions identify no clerical mistakes, oversights, newly-discovered
8 evidence, or any other grounds for relief from the Judgment under Rule 60 of the Nevada Rules of
9 Civil Procedure ("NRCP"). See NRCP 60(a) and (b).

10 2. Defendants' Motions do not set forth grounds for relief under NRCP 52. The Court
11 made specific findings of fact substantiated by the actual trial record and separately stated its
12 conclusions of law, and the Court's findings and conclusions were set forth in a memorandum in
13 the Judgment. See NRCP 52(a)(1). Defendants failed to set forth any basis for the Court to make
14 additional findings or amend its findings. See NRCP 52(b).

15 3. Relief from a judgment or order under NRCP 59 is an extraordinary remedy
16 available only upon a finding that an error occurred which materially affected the substantial rights
17 of the movant. See NRCP 59(a)(1); see also Khoury v. Seastrand, 132 Nev. Adv. Op. 52, 377 P.3d
18 81, 94 (2016); Gunderson v. D.R. Horton, Inc., 130 Nev. 67, 74, 319 P.3d 606, 611 (2014). Here,
19 there was no irregularity that denied Defendants a fair trial, nor an error in law over Defendants'
20 objection that would justify a new trial or altering or amending the Judgment. Further, in light of
21 the volume of evidence supporting the Court's findings regarding the multiple badges of fraud and
22 Defendants' lack of good faith, Defendants cannot demonstrate that any error, if one occurred, was
23 one that affected the outcome of the trial or materially affected their substantial rights.

24 Based on the foregoing, and good cause appearing,

25 IT IS HEREBY ORDERED that Defendants' Motions for New Trial and/or to Alter or
26 Amend Judgment are DENIED.

27 Dated this 9 day of July, 2019.

28 Connie J. Steinhauser
DISTRICT JUDGE

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

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

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

15 Plaintiff,

16 vs.

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

24 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

**NOTICE OF ENTRY OF
ORDER GRANTING PLAINTIFF'S
APPLICATION FOR AN AWARD OF
ATTORNEYS' FEES AND COSTS
PURSUANT TO NRCP 68**

22 Notice is hereby given that on July 10, 2019, this Honorable Court entered its *Order*
23 *Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP*

24 ...

26 ...

1 68, a copy of which is attached hereto as **Exhibit 1**.

2 Dated this 15th day of July, 2019.

3 GARMAN TURNER GORDON LLP

4 /s/ Teresa M. Pilatowicz, Esq.
5 ERIKA PIKE TURNER, ESQ.
6 TERESA M. PILATOWICZ, ESQ.
7 GABRIELLE A. HAMM, ESQ.
8 650 White Drive, Ste. 100
9 Las Vegas, Nevada 89119
10 Telephone 725-777-3000
11 *Counsel to Plaintiff*

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

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

15 Dated this 15th day of July, 2019.

16 GARMAN TURNER GORDON LLP

17 /s/ Teresa M. Pilatowicz, Esq.
18 ERIKA PIKE TURNER, ESQ.
19 TERESA M. PILATOWICZ, ESQ.
20 GABRIELLE A. HAMM, ESQ.
21 650 White Drive, Ste. 100
22 Las Vegas, Nevada 89119
23 Telephone 725-777-3000
24 *Counsel to Plaintiff*

1
2
3 **CERTIFICATE OF SERVICE**

4 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this
5 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached **NOTICE OF**
6 **ENTRY OF ORDER GRANTING PLAINTIFF'S APPLICATION FOR AN AWARD OF**
7 **ATTORNEYS' FEES AND COSTS PURSUANT TO NRCP 68** on the parties as set forth
8 below:

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

12 ☐ Certified Mail, Return Receipt Requested

13 ☐ Via Facsimile (Fax)

14 ☐ Via E-Mail

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

17 ☐ Federal Express (or other overnight delivery)

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

19
20 Frank C. Gilmore, Esq.
21 E-mail: fgilmore@rssblaw.com

22 Jeffrey Hartman, Esq.
23 E-mail: jlh@bankruptcyreno.com

24 I declare under penalty of perjury that the foregoing is true and correct.

25 DATED this 15th day of July, 2019.

26 /s/ Dekova Huckaby

27 An Employee of GARMAN TURNER
28 GORDON LLP

4818-3455-8364, v. 2

Exhibit 1

2777

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

**ORDER GRANTING PLAINTIFF'S APPLICATION FOR AN AWARD
OF ATTORNEYS' FEES AND COSTS PURSUANT TO NRCP 68**

Plaintiff William A. Leonard, chapter 7 trustee for the bankruptcy estate of Paul A. Morabito and judgment creditor in the above-entitled action (the "Plaintiff") filed an *Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68* (the "Application") on April 12, 2019. Superpumper, Inc., Salvatore Morabito, and Snowshoe Petroleum, Inc. (collectively, the "Responding Defendants") filed an *Opposition to the Application for Attorneys' Fees and Costs* (the "Opposition") on April 25, 2019. Plaintiff filed a *Reply in Support of the Application for Attorneys' Fees and Costs pursuant to NRCP 68* (the "Reply") on April 30, 2019. Edward Bayuk, individually and as trustee of the Edward William Bayuk Living Trust ("Bayuk," and together with the Responding Defendants, the "Defendants") did not oppose the Application. The Application was submitted for decision on May 1, 2019.

The Court has reviewed and considered the arguments made in the Application, the Opposition, and the Reply, the papers and pleadings on file with the Court in this action, including

1 the Memorandum of Costs filed by Trustee on April 11, 2019, the *Motion to Retax* (the "Motion
2 to Retax") filed on May 1, 2019, the testimony and exhibits admitted during the trial, and the
3 Court's Findings of Fact, Conclusions of Law, and Judgment, entered on March 29, 2019 (the
4 "Judgment"). The Court, persuaded by the argument and authorities in Plaintiff's Application,
5 along with the pleadings and papers on file, the trial record, and the findings and conclusions set
6 forth in the Judgment, finds as follows:

7 1. Plaintiff served a valid apportioned offer of judgment in the amount of \$3,000,000
8 on Defendants on May 31, 2016 (the "Offer of Judgment").

9 2. Defendants rejected the Offer of Judgment.

10 3. Plaintiff obtained a verdict in an amount greater than the Offer of Judgment after a
11 trial on the merits.

12 4. Plaintiff's Offer of Judgement must be enforced under NRS 68(f) and consistent
13 with the factors delineated in *Beattie vs. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983):

14 a. Plaintiff's Offer of Judgment was a good faith offer premised on sound factual
15 and legal bases.

16 b. Plaintiff's Offer of Judgment was reasonable and in good faith in timing and
17 amount.

18 c. Defendants' rejection of the Offer of Judgment was unreasonable.

19 5. Plaintiff's attorney's fees are fair and reasonable and enforceable under the
20 standards set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33
21 (1969):

22 a. The work required in connection with the case was difficult and time consuming
23 and performed by skilled counsel.

24 b. The character of the work, time, and skill required justifies the fees requested.

25 c. The attorneys were successful in obtaining a favorable result for the Plaintiff

26 ///

27 ///

28 ///

6. The Offer of Judgment justifies the award of fees and costs.

Based upon the foregoing, and good cause appearing:

IT IS HEREBY ORDERED that the Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 is GRANTED.

IT IS HEREBY FURTHER ORDERED that the Plaintiff is awarded attorneys' fees incurred from June 1, 2016 through the date of the Judgment in the amount of \$773,116.00.

IT IS HEREBY FURTHER ORDERED that the Plaintiff is awarded costs incurred from June 1, 2016 through the date of Judgment, which have not been otherwise reduced already by the *Order Granting in Part and Denying in Part Motion to Retax*, in the amount of \$109,427.

IT IS HEREBY FURTHER ORDERED that the Defendants are ordered to pay Plaintiff's attorneys' fees in the amount of \$773,116.00, less the \$8,128.67 in sanctions already paid, for a total amount of \$764,987.33 in attorneys' fees and \$109,427 in costs.

IT IS HEREBY FURTHER ORDERED that this award of attorneys' fees and costs shall be added to the amount of the Judgment.

Dated this 9 day of July, 2019.

Connie J. Steinheimer
DISTRICT JUDGE

1 **2535**
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13 Las Vegas, Nevada 89119
14 Telephone 725-777-3000
15 *Counsel to Plaintiff*

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

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

21 Plaintiff,

22 vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

**NOTICE OF ENTRY OF
ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO RETAX
COSTS**

Notice is hereby given that on July 10, 2019, this Honorable Court entered its *Order
Granting in Part and Denying in Part Motion to Retax Costs,*

...

...

1 a copy of which is attached hereto as **Exhibit 1**.

2 Dated this 15th day of July, 2019.

GARMAN TURNER GORDON LLP

3
4 /s/ Teresa M. Pilatowicz, Esq.
5 ERIKA PIKE TURNER, ESQ.
6 TERESA M. PILATOWICZ, ESQ.
7 GABRIELLE A. HAMM, ESQ.
8 650 White Drive, Ste. 100
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10 Telephone 725-777-3000
11 *Special Counsel to Plaintiff,*
12 *William A. Leonard, Trustee*

13 **AFFIRMATION**
14 **Pursuant to NRS 239B.030**

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

17 Dated this 15th day of July, 2019.

18 GARMAN TURNER GORDON LLP

19
20 /s/ Teresa M. Pilatowicz, Esq.
21 ERIKA PIKE TURNER, ESQ.
22 TERESA M. PILATOWICZ, ESQ.
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27 *Counsel to Plaintiff*

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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 attached **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART MOTION TO RETAX COSTS** on the parties as set forth below:

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

_____ 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

Jeffrey Hartman, Esq.
E-mail: jlh@bankruptcyreno.com

I declare under penalty of perjury that the foregoing is true and correct.
DATED this 15th day of July, 2019.

/s/ Dekova Huckaby
An Employee of GARMAN TURNER
GORDON LLP

Exhibit 1

1 3025

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4
5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

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

CASE NO.: CV13-02663

DEPT. NO.: 4

10 Plaintiff,

11 vs.

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

Defendants.

17
18 **ORDER GRANTING IN PART AND DENYING IN PART MOTION**
19 **TO RETAX COSTS**

20 Defendants Salvatore Morabito, Superpumper, Inc., and Snowshoe Petroleum, Inc.
21 (collectively, the "Defendants") filed their *Motion to Retax Costs* ("Motion to Retax") on April
22 15, 2019. Plaintiff William A. Leonard, chapter 7 trustee for the bankruptcy estate of Paul A.
23 Morabito and judgment creditor in the above-entitled action (the "Plaintiff") filed his *Opposition*
24 *to Motion to Retax Costs* (the "Opposition") on April 18, 2019. Defendants filed their *Reply in*
25 *Support of Motion to Retax Costs* (the "Reply") on April 22, 2018. The Motion to Retax was
26 submitted for decision on May 1, 2019.

27 The Court has reviewed and considered the arguments made in the Motion, the Opposition,
28 and the Reply, the papers and pleadings on file with the Court in this action, the testimony and

1 exhibits admitted during the trial, and the Court's Findings of Fact, Conclusions of Law, and
2 Judgment, entered on March 29, 2019 (the "Judgment"). The Court, persuaded by the argument
3 and authorities in Plaintiff's Opposition, along with the pleadings and papers on file, the trial
4 record, and the findings and conclusions set forth in the Judgment, finds as follows:

5 1. Plaintiff filed his Memorandum of Costs and Disbursements (the "Memorandum")
6 on April 11, 2019.

7 2. The four-day delay in filing the Memorandum is for good cause based on the
8 Plaintiff's confusion regarding the application of NRCP Rule 68 and NRS 18.110.

9 3. The four-day delay in filing the Memorandum has not caused any prejudice to the
10 Defendants.

11 4. The following reductions in the costs requested in the Memorandum are
12 appropriate:

13 a. The costs of experts should be reduced from \$77,201.80 to \$75,505.90;

14 b. The costs of photocopies should be reduced from \$17,961.67 to \$17,772.17;

15 c. The costs for use of Odyssey in the amount of \$200 are reduced to \$0.00.

16 5. The remaining costs incurred for Plaintiff's experts were reasonably incurred and
17 are reasonable under the circumstances of this case as modified from the Memorandum.

18 6. The remaining charges for photocopying were reasonably incurred and are
19 reasonable under the circumstances of this case as modified from the Memorandum.

20 7. Plaintiff had no obligation to only retain local counsel and the costs associated with
21 Plaintiff's chosen counsels' representation were reasonable and necessary.

22 8. There was no objection to the remaining costs in the Memorandum and they were
23 authorized, reasonable, and actually incurred.

24 Based upon review of the entire file, the foregoing, and good cause appearing:

25 IT IS HEREBY ORDERED that the Motion to Retax is granted in part and denied in part.

26 IT IS HEREBY FURTHER ORDERED that the five-day deadline to file the Memorandum
27 is extended up to and including April 11, 2019 and the Memorandum is therefore timely.
28

1 IT IS HEREBY FURTHER ORDERED that the costs listed in the Memorandum, as
2 modified herein, in the amount of \$152,856.84 are reasonable costs incurred in this matter pursuant
3 to NRS § 18.110 and are awarded in Plaintiff's favor and against Defendants and Edward Bayuk,
4 individually and as trustee of the Edward William Bayuk Living Trust.

5 IT IS HEREBY FURTHER ORDERED that this award of costs shall be added to the
6 amount of the Judgment.

7 Dated this 9 day of July, 2019.

8 Connie J. Steinheimer
9 DISTRICT JUDGE
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1 **2630**
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16 Las Vegas, Nevada 89119
17 Telephone 725-777-3000
18 *Counsel to Plaintiff, William A. Leonard*

12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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

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

16 Plaintiff,

17 vs.

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

24 Defendants.

CASE NO.: CV13-02663
DEPT. NO. 4

23 **PLAINTIFF'S OBJECTION TO NOTICE OF CLAIM OF EXEMPTION FROM**
24 **EXECUTION FILED BY SALVATORE MORABITO AND REQUEST FOR HEARING**

25 Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito
26 ("Plaintiff"), by and through counsel, the law firm of Garman Turner Gordon LLP, hereby objects
27 to the *Notice of Claim of Exemption from Execution* (the "Exemption Claim") filed by Salvatore
28 Morabito ("Morabito"), supported by the *Declaration of Salvatore Morabito Claiming Exemption*

1 *From Execution* (the “Declaration”). The Exemption Claim is not actually effective to claim an
2 exemption because no Nevada assets have been levied. However, in an abundance of caution,
3 Plaintiff moves this Court for a hearing on the Exemption Claim under NRS 21.112(6), which
4 requires a hearing to be held within seven (7) judicial days hereof, to determine whether Morabito is
5 entitled to the exemptions claimed therein under NRS 21.112 and WDCR 16.

6 This objection (the “Objection”) is made and based on the following Memorandum of Points
7 and Authorities, the papers and pleadings on file in the case, the evidentiary record from trial,
8 including the trial transcript and exhibits, and the *Findings of Fact, Conclusions of Law, and*
9 *Judgment* entered on March 29, 2019, as well as testimony elicited and oral argument the Court may
10 permit at the hearing.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 Morabito states that he is not a Nevada resident, but a resident of Ontario, Canada,¹ and that
13 he has no assets in Nevada.² If these representations are true, then it is not clear what assets he is
14 seeking to exempt under NRS 21.090. If Morabito is seeking to have this Court issue a declaration
15 that unidentified assets in another state or foreign jurisdiction are not subject to execution or are
16 exempt under NRS 21.090, he fails to explain the basis for an exemption by a non-Nevada resident
17 for non-Nevada assets under Nevada law.

18 Nor does he explain how the Court can make any reasoned determination that assets
19 purportedly located outside of Nevada held in national or international banks are not executable
20 when he has not identified (1) the national or international banks affected, nor (2) the assets affected.
21 Based on the scant description of the allegedly-exempt assets provided by Morabito, the Court
22 cannot even determine if the funds at issue are indeed located “outside the State of Nevada or the
23 United States,”³ or the jurisdictional or procedural basis for the relief being requested, particularly
24
25

26 ¹ Declaration, at p. 2, l. 3 and ¶ 3.

27 ² Id., at ¶ 4.

28 ³ Id., at ¶ 5.

1 as he concedes the general principle that “assets that are located in other states or countries must be
2 attached according to the procedures in that state or country.”⁴

3 Moreover, even if the Court had the power to declare such assets exempt or non-executable,
4 Morabito’s vague description of the assets he claims to be exempt leaves this Court unable to assess
5 the claim of exemption under NRS 21.090(1)(g) and 21.090(1)(z). NRS 21.090(1)(g) exempts a
6 portion of disposable earnings, with “earnings” defined under subsection (2) as “compensation paid
7 or payable for personal services performed by a judgment debtor in the regular course of
8 business. . .”⁵ NRS 21.090(1)(z) is the “catch-all” provision, which allows a judgment debtor to
9 exempt personal property not otherwise exempted, not to exceed \$10,000.⁶

10 Morabito provides this Court no evidence that the unidentified funds constitute earnings
11 under NRS 21.090(1)(g), nor has he shown that the funds in the subject accounts—which he has not
12 identified—do not exceed \$10,000.

13 In short, the Exemption Claim is incoherent, as it fails to explain the basis for the exemption
14 or other relief sought and fails to explain the Court’s power to grant such relief. Accordingly,
15

16 ⁴ Exemption Claim at p. 2.

17 ⁵ Subsection (g) of NRS 21.090(1) provides, in its entirety:

18 For any workweek, 82 percent of the disposable earnings of a judgment debtor during that week if the gross
19 weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued
20 was \$770 or less, 75 percent of the disposable earnings of a judgment debtor during that week if the gross
21 weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued
22 exceeded \$770, or 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair
23 Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and in effect at the time the earnings are payable,
24 whichever is greater. Except as otherwise provided in paragraphs (o), (s) and (t), the exemption provided in
25 this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of
26 any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this
27 paragraph:

28 (1) “Disposable earnings” means that part of the earnings of a judgment debtor remaining after the deduction
from those earnings of any amounts required by law to be withheld.

(2) “Earnings” means compensation paid or payable for personal services performed by a judgment debtor
in the regular course of business, including, without limitation, compensation designated as income, wages,
tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that
is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other
financial institution or, in the case of a receivable, compensation that is due the judgment debtor.

⁶ Subsection (z) of NRS 21.090(1) provides, in its entirety:

Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the
judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks,
bonds or other funds on deposit with a financial institution, not to exceed \$10,000 in total value, to be selected
by the judgment debtor.

1 Plaintiff requests (1) a hearing within seven (7) days under NRS 21.112(6) and WDCR 16, (2) an
2 order denying the Exemption Claim, and (3) such other and further relief as the Court deems just
3 and proper.

4 **AFFIRMATION**

5 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document
6 does not contain the social security number of any person.

7 Dated this 15th day of July, 2019.

8 GARMAN TURNER GORDON LLP

9 /s/ Gabrielle A. Hamm

10 GERALD M. GORDON, ESQ.
11 ERIKA PIKE TURNER, ESQ.
12 TERESA M. PILATOWICZ, ESQ.
13 GABRIELLE A. HAMM, ESQ.
14 650 White Drive, Ste. 100
15 Las Vegas, Nevada 89119
16 Telephone 725-777-3000
17 *Counsel for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this
3 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the foregoing ***Plaintiff's***
4 ***Objection to Notice of Claim of Exemption From Execution Filed by Salvatore Morabito and***
5 ***Request for Hearing*** on the parties as set forth below:

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

8 _____ Certified Mail, Return Receipt Requested

9 _____ Via Facsimile (Fax)

10 _____ Via E-Mail

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

13 _____ Federal Express (or other overnight delivery)

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

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

16 Jeffrey L. Hartman, Esq.
17 E-mail: jlh@bankruptcyreno.com

18 Dated this 15th day of July, 2019.

19
20 /s/ Dekova Huckaby
21 An Employee of
22 GARMAN TURNER GORDON LLP

23 4835-8908-8156, v. 1
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28

1 CODE: 3795
2 Jeffrey L. Hartman, Esq.
3 Hartman & Hartman
4 510 W. Plumb Ln., Suite B
5 Reno, Nevada 89509
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5 Michael Lehnars, Esq.
6 429 Marsh Ave.
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8 Nevada Bar Number 003331
9 Tel: (775) 786-1695

8 Attorneys for Edward Bayuk, individually and
9 as Trustee of the Edward William Bayuk Living Trust

10 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**
12
13

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

16 Plaintiff,

17 vs.

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

24 Defendants. /

CASE NO.: CV13-02663

DEPT. NO.: 4

**REPLY TO OBJECTION TO CLAIM
OF EXEMPTION AND THIRD PARTY
CLAIM TO PROPERTY LEVIED UPON**

23 Edward Bayuk, in his capacity as an individual, and in his capacity as the Trustee of the
24 Edward William Bayuk Living Trust, files the following Reply to Objection to Claim of Exemption
25 and Reply to Third Party Claim to Property Levied Upon.

26 **1. Relief Sought**

27 The Trust at issue is an irrevocable spendthrift trust created under Chapter 166 of the Nevada
28 Revised Statutes on November 12, 2005. This Trust replaced the August 23, 1998 Living Trust. The

1 irrevocable spendthrift trust amendment (hereinafter the "Irrevocable Trust"), is attached to Mr.
2 Bayuk's Declaration of Exemption as Exhibit "2". The beneficiaries of this Irrevocable Trust are his
3 step-mother Elizabeth Bayuk and the U.S. Humane Society. Please see ¶¶9-10 of the Irrevocable
4 Trust.

5 As stated in Mr. Bayuk's Affidavit, the Irrevocable Trust has held all of his assets and property
6 since the amendment was executed in November of 2005. As the Trustee of the Irrevocable Trust,
7 Mr. Bayuk is claiming the exemption allowed under Nevada's Spendthrift Trust Act; and he is making
8 a claim for the Irrevocable Trust to the property sought to be attached. As the Trustee, Mr. Bayuk is
9 required to file such a claim. Please see ¶49 of the Irrevocable Trust.

10 **2. Summary of Objection to Exemption**

11 The Objection does not disagree that spendthrift trusts have the protections afforded by the
12 anti-alienation provisions of NRS 166.120. Likewise, the Plaintiff does not argue that the Irrevocable
13 Trust is not valid under Chapter 166 of the Nevada Revised Statutes.

14 The essence of Plaintiff's objection is (1) Mr. Bayuk has given conflicting testimony
15 regarding the existence of the Irrevocable Trust; (2) Mr. Bayuk has not previously disclosed the
16 existence of the Irrevocable Trust; (3) Both Mr. Bayuk and the Irrevocable Trust are judgment
17 debtors; and (4) A tolling agreement was signed on November 30, 2011.

18 **3. Mr. Bayuk's Response**

19 **A. PLAINTIFF KNEW ABOUT MR. BAYUK'S IRREVOCABLE TRUST**
20 **AND THE TRANSFER OF ASSETS BY MARCH 3, 2011**

21 Notwithstanding the arguments in the Objection, the Plaintiff knew all about Mr. Bayuk's
22 Irrevocable Trust and some of the assets that were transferred to it as of March 3, 2011. That was the
23 day the Herbst creditors deposed Mr. Morabito. The relevant pages of testimony have been attached
24 as Exhibit "1". The following exchanges demonstrate Mr. Morabito was fully candid about Mr.
25 Bayuk's Irrevocable Trust as well as his own.

26 At Page 20:

27 Q. Who or what entity was the property transferred to?

28 A. Mr. Bayuk's trust.

1 Q. Okay.

2 A. We went from owning something together to owning it individually but with the

3 same values.

4 Q. Are you a beneficiary of Mr. Bayuk's trust?

5 A. I don't know. I don't believe so.

6 Q. Have you ever seen the trust documents for Mr. Bayuk's trust?

7 A. Yes.

8 Q. Do you know who prepared those documents?

9 A. No.

10 Q. You have no idea whether you are a beneficiary on that?

11 A. No. I doubt it, but no.

12 Q. Why do you doubt that?

13 A. Because I presume it would go to his family.

14

15 At page 62

16 Q. I think you said to your knowledge you have never been a beneficiary of Mr.

17 Bayuk's trust?

18 A. I don't believe I am.

19 Q. Do you know who did the paperwork or the

20 documentation for Mr. Bayuk's trust?

21 A. No.

22 At pages 81-82

23 Q. The 371 El Camino Del Mar property in Laguna Beach, who originally

24 purchased that property?

25 A. My trust and Edward's.

26 Q. Do you recall the approximate amount you paid for that property when you

27 purchased it?

28 A. No.

1 Q. And you don't have a recollection of when you said there was an appraisal done
2 in September of 2010 on that property?

3 A. Yes.

4 Q. And then ownership of that property was transferred to Mr. Bayuk's trust?

5 A. I believe so.

6 Q. You don't recall if there was any consideration or cash paid for transfers of that
7 asset to Mr. Bayuk?

8 A. Whatever the appraisal is worth, the numbers, whatever. I don't recall if I
9 received money or he received money on this particular transaction, but its
10 whatever the appraisals were on the percentages.

11 At Page 85

12 Q. Tell me how ownership of that property has changed since the time you and Mr.
13 Bayuk originally purchased it.

14 A. Same thing as the appraisal as part of the change of properties.

15 Q. That property is now held by Mr. Bayuk's trust?

16 A. Yes.

17 Q. What about do you know if there is a mortgage currently on that property?

18 A. I don't know.

19 For administrative convenience and to insure the irrevocable trusts were meeting the letter
20 and spirit of the Nevada Spendthrift Trust Act, both Mr. Bayuk and Mr. Morabito had irrevocable
21 self-settled spendthrift trusts and "spending trusts" in the form of living trusts.

22 On September 23, 2014, Mr. Bayuk's attorney, Barry L. Breslow, Esq., submitted Defendant
23 Bayuk's responses to Plaintiff's first set of requests for production, asking for "*a complete executed*
24 *copy of the Edward William Bayuk Living Trust.*

25 "*Objection. The trust agreement contains information which is personal and confidential*
26 *and not subject to disclosure.*" To finish: "*Bayuk confirms that he is the Settlor and Trustee, that the*
27 *Trust was established prior to any events at issue in this case, and no person which has any affiliation*
28

1 to this action is named as a beneficiary." A true and correct copy of those responses, minus the
2 exhibits, are attached as Exhibit "2".

3 To be prior to any events in this case would be before December 3, 2007. The spending trust
4 organized by Mr. Bayuk was not until June 18, 2008.

5 On September 28, 2015, Mr. Bayuk was deposed and addressed the Irrevocable Trust. A copy
6 of the Deposition Transcript with the relevant pages is attached as Exhibit "3".

7 At Page 54

8 Q. When did you create it ?

9 A. I believe 2008.

10 At Page 56-57

11 Q. Who are the beneficiaries of the trust?

12 A. Family members, friends, charities.

13 Q. Which friends are members of the – or beneficiaries of the trust ?

14 A. Friends. Lots of friends and lots of charities and ...

15 Q. Is Paul Morabito a beneficiary of your trust ?

16 A. No.

17 Q. Is Sam Morabito a beneficiary of your trust ? And by "Sam" I mean Salvatore.

18 A. No.

19 At Page 59

20 Q. When you created the trust in 2008, what assets did it have ?

21 A. Nothing.

22 Mr. Bayuk had a living trust executed in Miami Beach, Florida in 1998 which was revoked
23 by the execution of the Irrevocable Trust. The assets targeted in the judgment include assets acquired
24 well prior to 2008. Put simply, Mr. Bayuk did not fully appreciate the construction of his trusts and
25 relied on his accountants, lawyers and professional advisors.
26
27
28

1 Further, after producing copies of both his spendthrift and revocable trusts, Mr. Morabito on
2 March 3, 2011 further testified regarding the differences between the two trusts in response to
3 questions asked by Plaintiff's predecessor in interest:

4 At Page 70-71

5 Q. Have you ever used the Arcadia accounts to pay any debts incurred by you
6 personally?

7 A. I would assume so. The operating account.

8 Q. For instance, do you use that to pay your credit card statements ?

9 A. The Arcadia Living Trust is set up in two trusts; and there is a trust to pay bills,
10 and there is a trust to hold assets. So the one that pays bills pays bills on my
11 behalf, and the one that holds assets holds assets.

12 Q. Describe for me how that works and how it was structured that way originally.

13 A. My understanding of it was that there is a spend thrift trust and this then has a
14 spend thrift operating or living trust, and that the living trust handles any change
15 of monies in and out, and the other one held the assets. That is how it was
16 explained to me.

17 Q. Who explained that to you ?

18 A. My attorney.

19 Q. And in the various amendments that have been done over the years, has that
20 arrangement ever changed, to your knowledge?

21 A. **The spend thrift trust has never been amended.**

22 Q. The living trust has?

23 A. **The living trust has.**

24 (emphasis added).

25 Clearly Mr. Morabito, like Mr. Bayuk, had a spendthrift trust holding assets and a spending
26 trust for administrative purposes and trust formalities and compliance.

27 ///

28 ///

///

1 **B. DISCUSSION**

2 Nevada's Uniform Fraudulent Transfer Act (UFTA) has a four year reach back provision.
3 However, transfers to a Spendthrift Trust are excluded from this limitation. See NRS 112.230(2)
4 which states that: "*This section does not apply to a claim for relief with respect to a transfer of*
5 *property to a spendthrift trust subject to chapter 166 of NRS*".

6 NRS 166.170 is the controlling statute of limitation with respect to alleged fraudulent
7 transfers to a spendthrift trust. This statute states in relevant part that:

- 8 1. A person may not bring an action with respect to a transfer of property to a
9 spendthrift trust:
- 10 (a) If the person is a creditor when the transfer is made, unless the action is
11 commenced within:
- 12 (1) Two years after the transfer is made; or
- 13 (2) Six months after the person discovers or reasonably should have
14 discovered the transfer, whichever is later.
- 15 (b) If the person becomes a creditor after the transfer is made, unless the
16 action is commenced within two (2) years after the transfer is made or
17 six (6) months after the person discovers or reasonably should have
18 discovered the transfer.
- 19 2. A person shall be deemed to have discovered a transfer at the time a public
20 record is made of the transfer, including, without limitation, the conveyance
21 of real property that is recorded in the office of the county recorder of the
22 county in which the property is located or the filing of a financing statement
23 pursuant to chapter 104 of NRS.

24 In the case at bar, Mr. Morabito was examined in March 2011 by Plaintiff's counsel about
25 Mr. Bayuk's Irrevocable Trust and the property that was transferred to it. The Irrevocable Trust also
26 held real property in its name, which would have been of record at the recorder's office. NRS
27 166.170(2) says that a person shall be deemed to have discovered a transfer at the time a public record
28 is made of the transfer, including, without limitation, the conveyance of real property that is recorded
in the office of the county recorder of the county in which the property is located.

When viewed together, Mr. Morabito's testimony regarding his revocable and irrevocable trusts, the existence of Mr. Bayuk's Irrevocable Trust, the transfers of assets between Mr. Morabito's

1 trust and Mr. Bayuk's Irrevocable Trust, and the real property transfer records were sufficient to
2 place Plaintiff's predecessor in interest on inquiry notice that the transfers into Mr. Bayuk's
3 Irrevocable Trust would be subject to the protections and restrictions of NRS Chapter 166.

4 The time to set aside any of the transfers to or from the Irrevocable Trust ran, at the latest,
5 September 3, 2011 - six months after Mr. Morabito's deposition. Notwithstanding this fact, the Herbst
6 creditors filed the instant lawsuit in 2013. This was in direct violation of NRS 166.170(8) which
7 states:

8 Notwithstanding any other provision of law, no action of any kind, including, without
9 limitation, an action to enforce a judgment entered by a court or other body having
10 adjudicative authority, may be brought at law or in equity against the trustee of a
11 spendthrift trust if, as of the date the action is brought, an action by a creditor with
respect to a transfer to the spendthrift trust would be barred pursuant to this section.

12 The statute is very clear. No action of any kind may be brought to enforce a judgment against
13 the trustee of a spendthrift trust if the action is time barred pursuant to subsection (1).

14 This goes to the subject matter jurisdiction of this Court. The Legislature defines the subject
15 matter jurisdiction of the Nevada Courts. With respect to fraudulent conveyance actions concerning
16 a spendthrift trust, the Legislature has not only set forth a statute of limitation; it has also set a separate
17 prohibition about filing suits against trustees.

18 This court has a duty to construe statutes as a whole, so that all provisions are considered
19 together and, to the extent practicable, reconciled and harmonized. *Orion Portfolio Services 2 LLC*
20 *v. County of Clark ex rel. University Medical Center of Southern Nevada*, 126 Nev. 397, 245 P.3d
21 527, (Nev. 2010), citing *Southern Nev. Homebuilders v. Clark County*, 121 Nev. 446, 449, 117 P.3d
22 171, 173 (2005). The only practical way to construe NRS 166.170's statute of limitation and
23 prohibition of suit is as a limitation on the Court's subject matter jurisdiction.

24 As an initial matter, whether a court lacks subject matter jurisdiction can be raised by the
25 parties at any time, or sua sponte by a court of review, and cannot be conferred by the parties.
26 *Landreth v. Malik*, 127 Nev. 175, 179–80, 251 P.3d 163, 166 (2011). If the district court lacks subject
27 matter jurisdiction, the judgment is rendered void. *Id.*

1 Here, Plaintiff's predecessor in interest failed to take any action during the six month
2 discovery window after Mr. Morabito's deposition testimony in March 2011.¹ Plaintiff's predecessor
3 in interest failed to depose Mr. Bayuk, failed to request copies of Mr. Bayuk's spendthrift and living
4 trust agreements, and failed to bring suit within six months as required by NRS 166.170.

5 Simply put, because Plaintiff's predecessor in interest failed to take timely action, the instant
6 action is barred by NRS 166.170. Accordingly, any judgment against Mr. Bayuk as the Trustee is
7 void *ab initio* as suit was filed in violation of statute. This is relevant as the Plaintiff substituted in as
8 the real party in interest.

9 The Plaintiff seeks to get around any statute of limitation problem by raising the November
10 30, 2011 tolling agreement. It was signed by Mr. Bayuk individually and as Trustee for the
11 Irrevocable Trust.

12 In order to have a tolling agreement, the statute of limitation must not have run. The Herbst
13 parties and their counsel knew about the Irrevocable Trust on March 3, 2011. For the tolling
14 agreement to be valid, it would have had to have been signed on or before September 3, 2011. It
15 wasn't.

16 Second, the tolling was pending the full and complete performance of each and every one of
17 the Morabito parties' obligations under the Settlement Agreement. According to the complaint filed
18 in this action, the Morabito parties immediately breached the settlement agreement.

19
20 22. Consistent with the terms of the Settlement Agreement, the State Court Action
21 was dismissed with prejudice and Paul Morabito, CNC, and the Plaintiffs
executed the Confessed Judgment.

22 23. Unbeknownst to Plaintiffs, at the time the parties began negotiating and
23 subsequently executed the Settlement Agreement, Paul Morabito and CNC had
24 no intention of complying with its terms. Instead, Paul Morabito and CNC
induced Plaintiffs to execute the Settlement Agreement as a delay tactic to avoid
25 execution and collection efforts on the State Court Judgment and in an effort to

26 ¹ Moreover, any claim by Plaintiff that Mr. Bayuk's subsequent testimony (well after the expiration
27 of the statute of limitations) was unclear or inconsistent regarding the Irrevocable Trust does not
28 invalidate the spendthrift protections afforded under the Nevada law. See *Klabacka v. Nelson*, --
Nev --, 394 P.3d 940, 948 (2017) (inconsistent testimony regarding characterization of trust assets
and trust terms does not invalidate spendthrift trust).

1 obtain more time to transfer and dissipate assets in furtherance of their attempts
2 to thwart Plaintiffs' collection of the State Court Judgment.

- 3 24. Shortly after execution, Paul Morabito and CNC defaulted under the terms of
4 the Settlement Agreement by failing to comply with several of their financial
5 obligations, including complying with obligations under the related Moreno
6 settlement agreement (the "Moreno Default"), failing to pay amounts due and
7 owing under the Hinckley Note (the "Hinckley Note Default"), and failing to
8 make the cash payment of Four Million and No/100ths Dollars (\$4,000,000.00)
9 due to Plaintiffs on or before March 1, 2013 (the "Cash Payment Default")
10 (collectively, the "Continuing Defaults").

11 Third, as the Trustee of a spendthrift trust, Mr. Bayuk was prohibited by statute from signing
12 the tolling agreement. NRS 166.120(4) says that the trustee of a spendthrift trust is required to
13 disregard and defeat every assignment or other act, voluntary or involuntary, that is attempted
14 contrary to the provisions of this chapter.

15 NRS 166.120(4) imposed a statutory limitation on Mr. Bayuk's (in his capacity as trustee)
16 authority to act in derogation of the provisions of Chapter 166. As such, the act was *ultra vires* and
17 void. *See, e.g., Shoen v. SAC Holding Corp.*, 122 Nev. 621, 643–44, 137 P.3d 1171, 1186 (2006)
18 (Ultra vires act of company "beyond powers allowed by state law or articles of incorporation" is
19 void).

20 Trustees should be treated no differently. Both are fiduciaries. Neither can commit an *ultra*
21 *vires* act. If either does, then the act is void *ab initio*.

22 In conclusion, the statute of limitation ran before the tolling agreement was signed. The
23 tolling agreement expired when the Morabito parties breached the terms of the settlement agreement,
24 which happened immediately. Suit was not filed until December 17, 2013. Any action against the
25 Trustee was time barred. The execution of the tolling agreement by the Trustee was void as an *ultra*
26 *vires* act.

27 C. **NO PROPERTY MAY BE TAKEN BY EXECUTION FROM THE**
28 **SPENDTHRIFT TRUST**

Perhaps the most important issue is whether or not the Irrevocable Trust is a judgment debtor.
The answer is that it is not a judgment debtor nor could it be one.

///

1 Most exemption statutes identify property that is exempt from execution and often set a
2 limitation on the value that may be declared exempt. Nevada spendthrift trusts are different. They
3 absolutely bar the alienation of property by judicial process, and have conferred exclusive jurisdiction
4 upon Nevada courts under a specific statute to adjudicate issues of alienation.

5 These restrictions are found in NRS 166.120. Subsection one of the statute prohibits the
6 alienation of any interest of the beneficiary under the trust by operation of law or any process or at
7 all.

8 Subsection two of the statute concerns payments by the trustee of the spendthrift trust to the
9 beneficiary. It provides that whether the payments are mandatory or discretionary, they may only be
10 made for the benefit of the beneficiary. No payment from the spendthrift trust may be made by virtue
11 of any legal process in judgment, execution, attachment, garnishment, bankruptcy or otherwise.

12 NRS 166.170(1) and (8) establish clear time limits to bring an action under NRS 164.010,
13 and NRS 164.010 specifies that the action must be one *in rem* against the trust.

14 *In re Aboud Inter Vivos Tr.*, 129 Nev. 915, Nev.922, 314 P.3d 941, 945–46 (2013) is
15 instructive. It stated that NRS 164.010(1) confers *in rem* jurisdiction on the district court over trust
16 property in all trust administration actions. In addition, NRS 164.015(6) provides that a district
17 court's order in a trust administration action is "*binding in rem upon the trust estate and upon the*
18 *interests of all beneficiaries.*"

19 Any attempt to otherwise attach spendthrift trust assets violates the statutory protections
20 shielding spendthrift trusts from court order. That was the holding of *Klabacka v. Nelson*, 394 P.3d
21 940, 953 (Nev. 2017). In that ruling the Nevada Supreme Court unanimously upheld the intent of the
22 Nevada legislature in passing the Nevada Spendthrift Trust Act: "*When crafting the language to*
23 *allow (self-settled spend thrift trusts), the Legislature contemplated a statutory framework that*
24 *protected trust assets from unknown, future creditors, as opposed to debts known to the settlor at the*
25 *time the trust was created.*"

26 Mr. Bayuk's Irrevocable Trust was created on November 12, 2005 when he was a resident of
27 Nevada.

28 ///

Both the statutes and case law make four points crystal clear: (1) Any action to recover fraudulent transfers to a spendthrift trust must be brought within two years or six months of discovery; (2) Creditors are barred by statute if they attempt to sue a trustee after the deadline has passed; (3) Any action to recover property fraudulently transferred to a spendthrift trust must be filed as an in rem action under NRS 164.010, and (4) All other collection methods and remedies do not apply on a constructive trust theory or remedy.

4. Summary of Plaintiff's Third Party Argument

Plaintiff argues that the Irrevocable Trust's claim is nothing more than a collateral attack on the judgment. Also, no specific property is identified. Finally, Plaintiff asserts the Irrevocable Trust is a judgment debtor.

5. Mr. Bayuk's Response

The writs of attachment were attached to Bayuk's Declaration of Exemption as Exhibit "1". The Writs do not identify the specific property that is to be the subject of the execution. However, on information and belief they include (1) Any money held in bank accounts with respect to Mr. Bayuk or the Edward William Bayuk Living Trust; (2) Any money remaining upon the retainer remaining unearned paid to Richard Holly, Esq. and (3) Any money remaining unearned upon the retainer paid to Jeffrey Hartman, Esq.

As noted in the prior section, NRS 166.120 contains anti-alienation clauses. NRS 166.120(1) restrains and prohibits generally the assignment of any interest of the beneficiary under the trust by operation of law.

NRS 166.120(2) provides: payments by the trustee must be made only to or for the benefit of the beneficiary and not by way of any legal process in judgment, execution, attachment, garnishment, bankruptcy or otherwise.

All money in all bank accounts and all attorney retainers were paid from assets of the irrevocable spendthrift trust. These payments are not subject to legal process under NRS 166.120(1) and (2).

Paragraph 49 of the Irrevocable Trust requires the trustee to defeat every assignment or other act contrary to the provisions of the Nevada Spendthrift Trust Act. The Trustee has no discretion and must file this claim to enforce the anti-alienation provisions of NRS 166.120.

For these reasons, this is not a collateral attack upon the judgment. Rather, it is the Trustee's obligation under the Irrevocable Trust to enforce the property rights of the Irrevocable Trust.

6. Conclusion

The Irrevocable Trust was never concealed. Neither were the transfers to or exchanges with the Irrevocable Trust. All transfers and exchanges were done with Mr. Morabito's self-settled spendthrift Arcadia Living Trust of which Mr. Morabito is the Trustee. The Arcadia Living Trust was not a party to the November 2011 Settlement Agreement² and the Arcadia Living Trust is not the "Debtor." The Herbst creditors knew about it, at the latest, on March 3, 2011. Under NRS 166.170(1) they had six months to file an *in rem* action challenging the transfers under NRS 166.010. This they failed to do.

Instead, in direct violation of NRS 166.170(8) they filed an action in personam against the Trustee and now claim a judgment against the Irrevocable Trust itself. By violating not only the time limitation and the procedures outlined in NRS 166.170 any judgment against the Trustee and the Irrevocable Trust are void.

The Spendthrift Trust Act also contains anti-alienation provisions. No money or assets of the trust can be taken by operation of law. The statute is clear and must be enforced.

The Trustee is obligated to file the third party claim on behalf of the Irrevocable Trust to enforce the its property rights. It is not a collateral attack on the judgment. Rather, it is the enforcement of rights granted under the Spendthrift Trust Act. The exemption and third party claim should stand.

DATED this 17th day of July, 2019.

Hartman & Hartman
/s/ Jeffrey Hartman
Jeffrey Hartman, Esq.
Attorneys for Edward Bayuk, individually and
as Trustee of the Edward William Bayuk Living Trust

² Superpumper Findings of Fact, Conclusions of Law and Judgment filed March 29, 2019, page 8, lines 1-2: "*Paul Morabito and his revocable Arcadia Trust were dismissed from the action.*"

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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 17th day of July, 2019.

Hartman & Hartman

/s/ Jeffrey Hartman
Jeffrey Hartman, Esq.
Attorneys for Edward Bayuk, individually and
as Trustee of the Edward William Bayuk Living Trust

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HARTMAN & HARTMAN, and that on this date I caused to be served a true copy of the **REPLY TO OBJECTION TO CLAIM OF EXEMPTION AND THIRD PARTY CLAIM TO PROPERTY LEVIED UPON** on all parties to this action by the method(s) indicated below:

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

Gerald M. Gordon, Esq.
GARMAN TURNER GORDON LLP
650 White Drive, Ste. 100
Las Vegas, Nevada 89119

Richard F. Holley, Esq.
HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON
400 South Fourth Street
Suite 300
Las Vegas, Nevada 89101

The Office of the Ex-Officio Constable
301 E. Clark Avenue, Suite 100
Las Vegas, Nevada 89101

Washoe County Sheriff's Office
911 Parr Blvd.
Reno, Nevada 89512

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

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

Frank C. Gilmore, Esq.
Email: fgilmore@rssblaw.com

DATED: This 17th day of July, 2019.

/s/ Angie Gerbig
ANGIE GERBIG

Exhibit List

- | | |
|-----------|--|
| Exhibit 1 | March 3, 2011 Deposition Transcript of Paul Morabito |
| Exhibit 2 | Mr. Bayuk's September 23, 2014 responses to Plaintiff's first set of requests for production |
| Exhibit 3 | September 28, 2015 Deposition Transcript of Edward Bayuk |

Exhibit 1

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CV13-02663
2019-07-17 04:55:16 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7379614 : csulezic

Exhibit 1

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

CONSOLIDATED NEVADA CORP., et al,
Plaintiffs,

VS.

No. CV07-02764

JH, INC., et al.,
Defendants.

VIDEOTAPE DEPOSITION OF PAUL A. MORABITO
LOS ANGELES, CALIFORNIA
THURSDAY, MARCH 3, 2011

REPORTED BY:

Mary Jo Saul

CSR No. 8820, RPR, CLR

FOR ATTORNEYS EYE'S ONLY * CONFIDENTIAL *

1 VIDEOTAPE DEPOSITION of PAUL A. MORABITO, taken on
2 behalf of the Defendants/Counterclaimants JH, INC., at
3 5757 West Century Boulevard, 7th Floor, Los Angeles,
4 California, on Thursday, March 3, 2011, at 9:03 A.M.,
5 before Mary Jo Saul, CSR No. 8820, RPR, CLR, pursuant
6 to Notice.

7

8

9 APPEARANCES:

10

11 FOR THE PLAINTIFFS:

12 ROBISON, BELAUSTEGUI, SHARP & LOW
13 BY: Barry L. Breslow, Esq.
14 71 Washington Street
Reno, Nevada 89503

15 LIPPES, MATHIAS, WEXLER, FRIEDMAN, LLP
16 BY: Dennis Vacco, Esq.
17 665 Main Street, Suite 300
Buffalo, New York 14203
(716) 853-5100

18

19

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FOR ATTORNEYS EYE'S ONLY * CONFIDENTIAL*

2

1 APPEARANCES (Continued):
2 FOR THE DEFENDANTS AND COUNTERCLAIMANTS JH, INC.:
3 JONES VARGAS
4 BY: John P. Desmond, Esq.
5 Brian R. Irvine, Esq.
6 100 West Liberty Street
12th Floor
Reno, Nevada 89504
(775) 786-5000

7 ALSO PRESENT:
8 CRAIG SCHUMACHER, Videographer
9
10
11
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3

1 Q Who or what entity was the property
2 transferred to?
3 A Mr. Bayuk's trust.
4 Q Okay.
5 A We went from owning something together to
6 owning it individually but with the same values.
7 Q Are you a beneficiary of Mr. Bayuk's trust?
8 A I don't know. I don't believe so.
9 Q Have you ever seen the trust documents for
10 Mr. Bayuk's trust?
11 A Yes.
12 Q Do you know who prepared those documents?
13 A No.
14 Q You have no idea whether you are a
15 beneficiary on that?
16 A No. I doubt it, but no.
17 Q Why do you doubt that?
18 A Because I presume it would go to his
19 family.
20 Q But Mr. Bayuk is a beneficiary of the
21 Arcadia Trust?
22 A Yes.
23 Q As is your brother, Sam?
24 A Yes.
25 Q Have their respective interests as

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1 A It depends when. When my mother died, I
2 didn't go for a couple of years, and then I started
3 going again regularly. Now I haven't gone for over
4 a year or thereabouts.

5 Q Have you ever traveled to the Cook Islands
6 in the past five years?

7 A No. I don't know where they are.

8 Q I want to talk for a minute about trust
9 interest. Do you have currently, or have you had
10 any beneficial ownership in any trust?

11 A The Arcadia Living Trust.

12 Q And just to be clear, I am talking about
13 both as an individual as an employee or throughout a
14 corporate entity, so in any form, not just Morabito
15 an individual, but if you have a corporate nominee
16 or designee. Are you aware of whether you are a
17 beneficiary of any trusts other than --

18 A Not that I'm aware of.

19 Q I think you said to your knowledge you have
20 never been a beneficiary of Mr. Bayuk's trust?

21 A I don't believe I am.

22 Q Do you know who did the paperwork or the
23 documentation for Mr. Bayuk's trust?

24 A No.

25 Q The fifth amendment to Arcadia's Trust,

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1 A I do.

2 Q And you are the one who established the

3 bank relationships with these institutions?

4 A Yes.

5 Q Does anyone else handle any of the

6 financial records or dealings of Arcadia's business

7 with these banks?

8 A When I want something, I will call the

9 bank.

10 Q On Arcadia's end it's you?

11 A Yes.

12 Q And you would be the principal one actually

13 who calls the bank?

14 A If I need something, I will call and say

15 may I have.

16 Q Have you ever used the Arcadia accounts to

17 pay any debts incurred by you personally?

18 A I would assume so. The operating account.

19 Q For instance, do you use that to pay your

20 credit card statements?

21 A The Arcadia Living Trust is set up in two

22 trusts, and there is a trust to pay bills, and there

23 is a trust that holds assets. So the one that pays

24 bills pays bills on my behalf, and the one that

25 holds assets holds assets.

FOR ATTORNEYS EYE'S ONLY * CONFIDENTIAL *

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1 Q Describe for me how that works and how it
2 was structured that way originally.

3 A My understanding of it was that there is a
4 spend thrift trust and this then has a spend thrift
5 operating or a living trust, and that the living
6 trust handles any change of monies in and out, and
7 the other one held the assets. That's how it was
8 explained to me.

9 Q Who explained that to you?

10 A My attorney.

11 Q And in the various amendments that have
12 been done over the years, has that arrangement ever
13 changed, to your knowledge?

14 A The spend thrift trust has never been
15 amended.

16 Q The living trust has?

17 A The living trust has.

18 Q Do you use the assets held by the living
19 trust to regularly pay debts and obligations that
20 you have?

21 A Yes.

22 Q Is that the principal account through which
23 you pay your debts and obligations?

24 A The accounts of bank?

25 MR. BRESLOW: He means accounts held by

FOR ATTORNEYS EYE'S ONLY * CONFIDENTIAL *

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1 A Dinner and we travel together.

2 Q But you never paid mortgages or loans on
3 his behalf?

4 A When we shared things I made my payment,
5 and he paid his. We have always been responsible.
6 He does his thing, and I do mine.

7 Q Do you know if Mr. Bayuk is currently
8 employed?

9 A Speak to Mr. Bayuk.

10 Q You have no idea of that arrangement?

11 A I stay out of his professional life.

12 Q You don't know what would be possible
13 sources of income for him?

14 A No.

15 Q In your latest 2009 income tax return you
16 listed an address of 8518 Santa Monica Boulevard.

17 A My mailing address.

18 Q That's a UPS or mail box you can drop?

19 A Yes.

20 Q Is that an address you still maintain as
21 your P.O. box or mail drop?

22 A Yes.

23 Q The 371 El Camino Del Mar property in
24 Laguna Beach, who originally purchased that
25 property?

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1 A My trust and Edward's.

2 Q Do you recall the approximate amount you
3 paid for that property when you purchased it?

4 A No.

5 Q And you don't have a recollection of when
6 you said there was an appraisal done in September of
7 2010 on that property?

8 A Yes.

9 Q And then ownership of that property was
10 transferred to Mr. Bayuk's trust?

11 A I believe so.

12 Q You don't recall if there was any
13 consideration or cash paid for transfers of that
14 asset to Mr. Bayuk?

15 A Whatever the appraisal is worth, the
16 numbers, whatever. I don't recall if I received
17 money or he received money on this particular
18 transaction, but it's whatever the appraisals were
19 on the percentages.

20 Q It's your testimony that pretty much
21 whatever the appraisal amounts were on the
22 properties you had either an exchange of cash or
23 corresponding offset with the property that you were
24 to receive?

25 A Not pretty much. It was what the appraisal

FOR ATTORNEYS EYE'S ONLY * CONFIDENTIAL*

82

1 A Yes.

2 Q Were you the original purchaser of the
3 property?

4 A With Edward. I believe so.

5 Q Do you remember the approximate purchase
6 price of the property at the time you bought it?

7 A Approximately.

8 Q What was it?

9 A Several hundred thousand dollars.

10 Q Less than a million?

11 A Oh, yes.

12 Q Tell me how ownership of that property has
13 changed since the time you and Mr. Bayuk originally
14 purchased it.

15 A Same thing as the appraisal as part of the
16 change of properties.

17 Q That property is now held by Mr. Bayuk's
18 trust?

19 A Yes.

20 Q What about do you know if there is a
21 mortgage currently on that property?

22 A I don't know.

23 Q What about -- there is another property,
24 1260 Verdugo Road in Palm Springs?

25 A That's my brother's.

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85

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss.

3

4

5 I, the witness herein, hereby certify
6 under Penalty of perjury under the laws of the State
7 of California that the foregoing is true and
8 correct.

9 Executed this _____ day of

10

11 _____, 2011, at _____,

12 California

13

14

15

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17 _____

THE WITNESS

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FOR ATTORNEYS EYE'S ONLY * CONFIDENTIAL*

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Exhibit 2

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Jacqueline Bryant
Clerk of the Court
Transaction # 7379614 : csulezic

Exhibit 2

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

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

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

JOB NO.: 260711

Page 2		Page 4	
1	APPEARANCES OF COUNSEL:	1	E X H I B I T S
2		2	TRUSTEE
3	Special Counsel for Trustee:	3	EXHIBIT 1
4	GARMAN TURNER GORDON, LLP	4	EXHIBIT 2
5	BY TERESA FILATOWICZ	5	EXHIBIT 3
6	-and-	6	EXHIBIT 4
7	BY GERALD GORDON	7	EXHIBIT 5
8	650 White Drive, Suite 100	8	EXHIBIT 6
9	Las Vegas, Nevada 89119	9	EXHIBIT 7
10	(725) 777-3000	10	EXHIBIT 8
11	tpilatowicz@gtg.legal	11	EXHIBIT 9
12	ggordon@gtg.legal	12	EXHIBIT 10
13		13	EXHIBIT 11
14		14	EXHIBIT 12
15	For Chapter 7 Trustee WILLIAM LEONARD:	15	
16	WOODBURN AND WEDGE	16	
17	BY JOHN MURTHA	17	
18	6100 Neil Road, Suite 500	18	
19	Reno, Nevada 89511	19	
20	(775) 688-3000	20	
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22		22	
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24		24	
25		25	
Page 3		Page 5	
1	APPEARANCES OF COUNSEL: (Cont.)	1	E X H I B I T S (Cont.)
2		2	TRUSTEE
3	For Defendants:	3	EXHIBIT 13
4	ROBISON BELAUSTEGUI SHARP & LOW	4	EXHIBIT 14
5	BY FRANK GILMORE	5	EXHIBIT 15
6	71 Washington Street	6	EXHIBIT 16
7	Reno, Nevada 89503	7	EXHIBIT 17
8	(775) 329-3151	8	EXHIBIT 18
9	fgilmore@rbsllaw.com	9	EXHIBIT 19
10		10	
11	Also Present:	11	
12	WILLIAM A. LEONARD	12	
13	SALVATORE MORABITO	13	
14		14	
15		15	
16		16	
17	WITNESS: EDWARD WILLIAM BAYUK	17	
18	EXAMINATION BY:	18	
19	Ms. Pilatowicz	19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	

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1 But no, I just get -- I just put in an expense
 2 report when I travel and go to meetings or stuff.
 3 Q. Okay.
 4 What is the Edward William Bayuk Living Trust?
 5 A. It's a trust that I set up. It owns the
 6 houses, and I believe it owns --
 7 You would have to give me an exhibit. I believe I
 8 used it on my Snowshoe Properties deed, but I don't --
 9 you know, you would have to pull an exhibit for me for
 10 that.
 11 Q. When you say "it owns the houses," what houses
 12 are you referring to?
 13 A. It owns 370 Los Olivos in Laguna Beach,
 14 331 El Camino Del Mar, and it owns 1254 Mary Fleming
 15 Circle in Palm Springs.
 16 And you would have to pull an exhibit. I think I
 17 used it when I -- And, again, it's set up for estate
 18 planning. So if I croak or someone kills me, you know,
 19 that it avoids probate.
 20 Q. When did you create it?
 21 A. I believe 2008.
 22 I had a will -- I had a will, and then someone told
 23 me I needed to form a trust because the trust helps. If
 24 you have a will, you still have to go through probate,
 25 and I didn't know that. And that's why I set it up.

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1 Q. Do you know what kind of trust it is?
 2 A. Just a living -- It's the Edward -- It's listed
 3 as Edward William Bayuk Living Trust --
 4 Q. What's your understanding --
 5 A. -- Edward William Bayuk Living Trust.
 6 Q. So it's a living trust?
 7 A. Correct.
 8 Q. What's your understanding of what a living
 9 trust is?
 10 A. A living trust is put in place because -- I
 11 kind of got an education on this. I didn't know -- I
 12 always had a will, but I didn't have a trust.
 13 And the trust, if you die, it takes over matters
 14 that are in it that can enable you to avoid probate.
 15 But if things are not in the trust, all those things
 16 still have to go to probate.
 17 So the answer is, not everything is in the Edward
 18 William Bayuk Living Trust. And the reason for that is
 19 that -- I'll give you an example: My B of A account is
 20 not Edward William Bayuk Living Trust. It's not
 21 connected because I set it up as Edward Bayuk.
 22 And then, like, the Comerica account that I have,
 23 too, is -- I think it's Edward Bayuk.
 24 So you can walk into a bank today and open an
 25 account with your driver's license or whatever, and, you

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1 know, it requires, you know, more -- you know, it
 2 requires me to sign paperwork or whatever.
 3 Q. Okay.
 4 How do you decide what to put into the trust and
 5 what not to put into the trust?
 6 A. Well, I'm trying to be proactive, as I get
 7 older, to put things into the living trust.
 8 Now, if I was smart, I would close my -- all my
 9 bank accounts and put everything in the living trust.
 10 But I'm lazy, so -- It's a pain in the neck. It's a lot
 11 of work.
 12 Q. Does the trust pay any of your expenses right
 13 now?
 14 A. No.
 15 Well, when you say "trust," I sign checks, so I --
 16 I sign checks, so --
 17 Q. You sign checks from the trust?
 18 A. I'm the whatever, the Trustee of the Edward
 19 William Bayuk Living Trust. You know, I'm the -- what
 20 do you call that person? Am I right?
 21 Q. Well --
 22 A. If I die, then the person in my will or whoever
 23 takes over.
 24 Q. Who are the beneficiaries of the trust?
 25 A. Family members, friends, charities.

Page 57

1 Q. Which friends are members of the -- or
 2 beneficiaries of the trust?
 3 A. Friends. Lots of friends and lots of charities
 4 and --
 5 Q. Is Paul Morabito a beneficiary of your trust?
 6 A. No.
 7 Q. Is Sam Morabito a beneficiary of your trust?
 8 And by "Sam" I mean Salvatore.
 9 A. No.
 10 Q. So, when you write checks from the trust, what
 11 are you writing those checks for?
 12 A. Oh, so back up.
 13 So I write checks out of more than one bank
 14 account. So, when you say "trust," are you saying what
 15 bank?
 16 Q. Well, let's back up.
 17 How many bank accounts does the trust have?
 18 A. I believe one.
 19 Q. Okay.
 20 Do you write checks -- Do you sign checks out of
 21 that account?
 22 A. Yes.
 23 Q. And what sort of checks are you writing out of
 24 that account? What are the purposes of those checks?
 25 A. Oh, just general stuff, like repair of the

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1 house, water tank, or a credit card bill.
 2 Q. Is it your personal credit card bill?
 3 A. Yeah. Oh, yeah.
 4 Q. Okay.
 5 So credit card bills, house repairs?
 6 A. But that's not my only account that writes
 7 checks to credit card companies or repair bills.
 8 Q. What other accounts do?
 9 A. I have a B of A account that I write checks out
 10 of.
 11 Q. Well, let's focus right now on the bank account
 12 that is in the trust's name.
 13 You use it to pay personal credit cards, home
 14 repairs.
 15 Any other expenses that you use it to pay?
 16 A. Pays mortgage. I have a mortgage on the houses
 17 I just mentioned.
 18 Q. There's a mortgage on Mary Fleming?
 19 A. Yes.
 20 Q. And there's a mortgage on Los Olivos?
 21 A. Yes.
 22 Q. And El Camino?
 23 A. Yes.
 24 Q. Okay.
 25 Other than credit cards, mortgages and house

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1 repairs, do you use it to pay anything else?
 2 A. Probably pay lawyers.
 3 Q. So you --
 4 A. You know, I think I paid Frank out of it.
 5 Q. Is it fair to say, when you need money, you can
 6 go to the trust and just take it?
 7 A. Oh, yeah.
 8 And I'm the only one authorized to take money out.
 9 Q. When you created the trust in 2008, what assets
 10 did it have?
 11 A. Nothing.
 12 Q. When did it first get assets?
 13 A. When I first got assets? Probably -- I don't
 14 remember, to be honest.
 15 Q. Do you know if there were any assets that went
 16 into it before the three houses you mentioned: Mary
 17 Fleming, Los Olivos and El Camino?
 18 A. No. I don't believe so. I actually don't
 19 know. I would have to look.
 20 Q. Do you know what --
 21 A. Well --
 22 Q. -- other type of assets you would put in it?
 23 A. What's in this are the houses -- the three
 24 houses and my one bank account. That's what's in it
 25 today.

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1 MR. GILMORE: Sorry. There are documents produced
 2 that speak to that, I'm sure you know.
 3 But don't guess. Okay?
 4 MS. PILATOWICZ: I'm asking --
 5 THE WITNESS: I'm just trying to be helpful.
 6 MS. PILATOWICZ:
 7 Q. Other than the Mary Fleming house, the
 8 Los Olivos house, and the El Camino house, have there
 9 ever been -- and the bank accounts --
 10 A. And there may be Snowshoe Properties commercial
 11 building, the title of that property may be in my trust,
 12 and I believe it is.
 13 Q. What property is that?
 14 A. 570 Glenneyre.
 15 Because it's in the deed. And I think you can
 16 check the deed, double-check. It could even be in those
 17 exhibits.
 18 Q. So, then, other than the bank account, those
 19 three houses, and potentially the Snowshoe Properties,
 20 Glenneyre property, have there ever been any other
 21 assets in the trust?
 22 A. No.
 23 And, again, the trust is set up for estate
 24 purposes. And do I use it all the time? No. I forget
 25 about it at times, to be honest.

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1 Q. Has it made any payments to Paul Morabito in
 2 the past five years?
 3 A. Yes.
 4 Q. What are those payments?
 5 A. Some of them are loans to Mr. Morabito.
 6 Q. What kind of -- Tell me about the loans.
 7 A. Oh, when Paul needs money and I'll loan him
 8 money. Or, also, when I owed him the 1.6 million, I
 9 used that account. And then I also used it again -- So
 10 yeah.
 11 So I used it to pay the 1.6 million, and I also
 12 used it to loan money to Mr. Morabito.
 13 Q. Do you recall the specific loans -- or do you
 14 recall any of the specific loans that you made to Paul
 15 Morabito that were paid out of the trust?
 16 A. There was a lot of them.
 17 Q. Do you have any specific recollections as to
 18 any particular one?
 19 A. You know, I paid a lot of stuff -- lot of
 20 money. If you count the 1.6 and then monies thereafter,
 21 it's a lot of money.
 22 Q. Are they listed on this exhibit that we
 23 previously looked at, Exhibit 5?
 24 A. The ones, yeah, that you have? That's not
 25 complete. It's not complete. Yes.

Page 214

Page 216

1 Q. When was Co Westco Special Risk formed?
 2 A. I don't remember.
 3 Q. Do you know if it was before 2010 or after
 4 2010?
 5 A. I don't remember, to be honest.
 6 Q. What was your ownership interest in Co Westco
 7 Special Risk?
 8 A. I would say, refer to the corporate documents,
 9 and I don't remember.
 10 Q. Did you have an ownership interest?
 11 A. I honestly don't remember.
 12 Q. Do you know if anyone -- had anyone else had an
 13 ownership interest in Co Westco Special Risk?
 14 A. Good question. I don't remember. Sorry.
 15 Q. Does Co Westco Special Risk, LLC still exist
 16 today?
 17 A. I don't believe so.
 18 Sorry. Takes a lot of brainpower.
 19 MS. PILATOWICZ: Let's take a five-minute break.
 20 (A recess is taken.)
 21 MS. PILATOWICZ: We can go back on the record.
 22 I have good news. That completes my questions for
 23 today, unless there's any follow-up. I don't know if
 24 anybody else wants to ask questions today.
 25 MR. GILMORE: No.

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1 THE WITNESS: I owe some information to you guys
 2 for 2010, '11 and '12.
 3 MS. PILATOWICZ:
 4 Q. What's that?
 5 A. The spreadsheets stuff.
 6 Q. Okay.
 7 A. Just so that, you know, you understand
 8 everything and --
 9 Q. So you're going to provide --
 10 A. I have to pull some -- I hopefully have a
 11 mortgage statement, and I'm looking for the mortgage for
 12 Mary Fleming.
 13 MR. GILMORE: Let's not put that on the record.
 14 But do you have any more questions?
 15 MS. PILATOWICZ: I do not have any more questions.
 16 MR. GILMORE: Okay. Then you're done. So let's --
 17 MS. PILATOWICZ: We can conclude.
 18 MR. GILMORE: Well, normally in California you have
 19 to read her all of these things about what you're going
 20 to do and not do with the transcript, but we don't have
 21 to do that today because you're on a commission from
 22 Nevada.
 23 So, in Nevada we just say, "We're done. Thank you
 24 very much."
 25 (The proceedings concluded at 4:17 p.m.)

1 ***
 2
 3 I declare under penalty of perjury under the laws
 4 of the State of California that the foregoing is true
 5 and correct.
 6
 7 Executed at _____, California.
 8 on _____
 9
 10
 11
 12 EDWARD WILLIAM BAYUK
 13
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1 STATE OF CALIFORNIA) ss
 2 I, Kathryn D. Jolley, CSR 11333, do hereby declare:
 3 That, prior to being examined, the witness named in
 4 the foregoing deposition was by me duly sworn pursuant
 5 to Section 2093(b) and 2094 of the Code of Civil
 6 Procedure;
 7 That said deposition was taken down by me in
 8 shorthand at the time and place therein named and
 9 thereafter reduced to text under my direction.
 10 I further declare that I have no interest in the
 11 event of the action.
 12 I declare under penalty of perjury under the laws
 13 of the State of California that the foregoing is true
 14 and correct?
 15 WITNES my hand this 7th day of October, 2015.
 16 Kathryn D. Jolley, CSR 11333

Exhibit 3

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Electronically
CV13-02663
2019-07-17 04:55:16 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7379614 : csulezic

Exhibit 3

1 **DISCOVERY**

2 **BARRY L. BRESLOW, ESQ. - NSB #3023**

3 bbreslow@rbsllaw.com

4 **FRANK C. GILMORE, ESQ. - NSB #10052**

5 fgilmore@rbsllaw.com

6 **Robison, Belaustegui, Sharp & Low**

7 A Professional Corporation

8 71 Washington Street

9 Reno, Nevada 89503

Telephone: (775) 329-3151

Facsimile: (775) 329-7169

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

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

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

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

CASE NO.: CV13-02663

DEPT. NO.: B1

Plaintiffs,

15
16 vs.

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

Defendants.

23 **EDWARD BAYUK, AS TRUSTEE OF THE EDWARD WILLIAM BAYUK LIVING**
24 **TRUSTS RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR**
25 **PRODUCTION**

26 Defendant Edward Bayuk, as Trustee of the Edward William Bayuk Living Trust, by and
27 through its attorneys Robison, Belaustegui, Sharp & Low, pursuant to NRCP 34 hereby Responses
28 Plaintiff's First Set of Requests for Production of Documents to Edward Bayuk, as Trustee of the
Edward William Bayuk Living Trust, as follows:

///

1 **REQUEST FOR PRODUCTION NO. 1:**

2 Produce a complete executed copy of the Edward William Bayuk Living Trust.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

4 Objection. The Trust agreement contains information which is personal and confidential
5 and not subject to disclosure. The Trust agreement contains information which is not reasonably
6 calculated to lead to the discovery of admissible evidence. Notwithstanding the objection, Bayuk
7 confirms that he is the Settlor and Trustee, that the Trust was established prior to any events at
8 issue in this case, and no person which has any affiliation to this action is named as a beneficiary
9 in the Trust.

10 **REQUEST FOR PRODUCTION NO. 2:**

11 Produce a complete executed copy of any and all amendments/modifications to the Edward
12 William Bayuk Living Trust.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

14 See response to No.1 above.

15 **REQUEST FOR PRODUCTION NO. 3:**

16 Produce any and all lists or inventories of assets in the Edward William Bayuk Living
17 Trust between December 3, 2007 and the date of Your response to these Discovery Requests.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

19 Objection. This request is overbroad and seeks documents which are not reasonably
20 calculated to lead to the discovery of admissible evidence related to the claims and/or defenses in
21 this case.

22 **REQUEST FOR PRODUCTION NO. 4:**

23 Produce any and all Documents constituting, evidencing, or related to any transfers of
24 assets to and from the Edward William Bayuk Living Trust between December 3, 2007 and the
25 date of your response to these Discovery Requests.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

27 Objection. This request is overbroad and seeks documents which are not reasonably
28 calculated to lead to the discovery of admissible evidence related to the claims and/or defenses in

1 this case.

2 **REQUEST FOR PRODUCTION NO. 5:**

3 Produce any and all Communications between You and any third-party regarding any
4 transfers of assets to and from the Edward William Bayuk Living Trust between December 3, 2007
5 and the date of your response to these Discovery Requests.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

7 Objection. This request is overbroad and seeks documents which are not reasonably
8 calculated to lead to the discovery of admissible evidence related to the claims and/or defenses in
9 this case.

10 **REQUEST FOR PRODUCTION NO. 6:**

11 Produce and any all Documents constituting, evidencing, or related to the source of funds
12 and the purpose(s) for the \$351,626.82 deposited into Morabito's trust account with Lippes
13 Mathias Wexler Friedman, LLC by You on or about September 5, 2011.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

15 Objection, lacks foundation. Bayuk is not aware of any deposit to Lippes Mathias of that
16 amount on or about September 5, 2011.

17 **REQUEST FOR PRODUCTION NO. 7:**

18 Produce and any all Communications between You and any third-party relating to the
19 \$351,626.82 deposited into Morabito's trust account with Lippes Mathias Wexler Friedman, LLP
20 by You on or before September 5, 2011.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

22 Objection, see No. 6, above.

23 **REQUEST FOR PRODUCTION NO. 8:**

24 Produce any and all appraisals and/or valuations of the real and/or personal property
25 located at the 1254 Mary Flemming Circle, Palm Springs, California between 2007 and the date of
26 Your response to these Discovery Requests.

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

28 See MORABITO (341).002515-2544;

1 **REQUEST FOR PRODUCTION NO. 9:**

2 Produce any and all appraisals and/or valuations of the real and/or personal property
3 located at the 371 El Camino Del Mar, Laguna Beach, California between 2007 and the date of
4 Your response to these Discovery Requests.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

6 See MORABITO (341).002489-2514;

7 **REQUEST FOR PRODUCTION NO. 10:**

8 Produce any and all inventories or lists of personal property located at the 1254 Mary
9 Flemming Circle, Palm Springs, California between 2007 and the date of Your response to these
10 Discovery Requests.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

12 See MORABITO (341).002362-2544; see also cancelled checks evidencing Bayuk's
13 purchase of the furniture, MORABITO(341).006941-006948.

14 **REQUEST FOR PRODUCTION NO. 11:**

15 Produce any and all inventories or lists of personal property located at the 371 El Camino
16 Del Mar, Laguna Beach, California between 2007 and the date of Your response to these
17 Discovery Requests.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

19 See responses to Bayuk Requests for Production.

20 **REQUEST FOR PRODUCTION NO. 12:**

21 Produce any and all Documents constituting, evidencing, or related any secured loans on
22 the real property located at the 1254 Mary Flemming Circle, Palm Springs, California between
23 2007 and the date of Your response to these Discovery Requests.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

25 See Bayuk responses to Requests for Production. Bayuk has requested copies of these
26 records from the respective lenders and will be produced once received.

27 **REQUEST FOR PRODUCTION NO. 13:**

28 Produce any and all Documents constituting, evidencing, or related any secured loans on

1 the real property located at the 371 El Camino Del Mar, Laguna Beach, California between 2007
2 and the date of Your response to these Discovery Requests.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

4 See Bayuk responses to Requests for Production. Bayuk has requested copies of these
5 records from the respective lenders and will be produced once received.

6 **REQUEST FOR PRODUCTION NO. 14:**

7 Produce any and all Documents constituting, evidencing, or related to the transfer of the
8 property located at the 1254 Mary Flemming Circle, Palm Springs, California to You on or after
9 September 2010.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

11 See Bayuk responses to Requests for Production.

12 **REQUEST FOR PRODUCTION NO. 15:**

13 Produce any and all Documents constituting, evidencing, or related to the transfer of the
14 real property located at 371 El Camino Del Mar, Laguna Beach, California to You or by You at
15 any time on or after August 20, 2009.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

17 See Bayuk responses to Requests for Production.

18 **REQUEST FOR PRODUCTION NO. 16:**

19 Produce any and all Documents between You and any third-party regarding of the transfer
20 of the real property located at 1254 Mary Flemming Circle, Palm Springs, California to You on or
21 after September 2010.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

23 No responsive documents are known to exist, other than what has been produced.

24 **REQUEST FOR PRODUCTION NO. 17:**

25 Produce any and all Communications between You and any third-party regarding the
26 transfer of the real property located at 371 El Camino Del Mar, Laguna Beach, California to You
27 or by You at any time on or after August 20, 2009.

28 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

1 No responsive documents are known to exist, other than what has been produced.

2 **REQUEST FOR PRODUCTION NO. 18:**

3 Any and all Documents constituting, evidencing, or related to the transfer of the Arcadia
4 Living Trust's 50% interest in Baruk Properties to You on or about October 1, 2010.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

6 No such documents are within the care, custody and/or control of the Bayuk Trust, other
7 than what has been produced.

8 **REQUEST FOR PRODUCTION NO. 19:**

9 Any and all Communications between You and any third-party regarding Arcadia Living
10 Trust's 50% interest in Baruk Properties to You on or about October 1, 2010.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

12 No such documents are within the care, custody and/or control of the Bayuk Trust, other
13 than what has been produced.

14 **REQUEST FOR PRODUCTION NO. 20:**

15 Any and all appraisals and/or valuations of Your interest in Baruk Properties between
16 December 2007 and the date of Your response to these Discovery Requests.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

18 See MORABITO (341).002362-2544;

19 **REQUEST FOR PRODUCTION NO. 21:**

20 Any and all Documents constituting, evidencing, or related to every transfer of property of
21 any type from Morabito, either directly or through an entity or trust owned or controlled by
22 Morabito, to You between December 1, 2007 and the ate of Your response to these Discovery
23 Requests.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

25 All known responsive documents have been produced.

26 **REQUEST FOR PRODUCTION NO. 22:**

27 Any and all Communications regarding every transfer of property of any type from
28 Morabito, either directly or through an entity or trust owned or controlled by Morabito, to You

1 between December 1, 2007 and the date of Your response to these Discovery Requests.

2 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**


3 All known responsive documents have been produced.

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

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

8 DATED this 23rd day of September, 2014.

9 ROBISON, BELAUSTEGUI, SHARP & LOW
10 A Professional Corporation
11 71 Washington Street
12 Reno, Nevada 89503

13 
14 BARRY D. BRESLOW, ESQ.
15 FRANK C. GILMORE, ESQ.
16 Attorneys for Defendants Snowshoe Petroleum,
17 Inc., Superpumper, Inc., Edward Bayuk, individually
18 and as Trustee of the Edward William Bayuk Living
19 Trust, and Salvatore Morabito.

20 J:\WPData\BLB\14359.001 Snowshoe adv Herbst\P-Response to RFP (1st set) by Bayuk Trust.doc
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Robison, Belaustegui, Sharp & Low, and that on this date I caused to be served a true copy of the **EDWARD BAYUK, AS TRUSTEE OF THE EDWARD WILLIAM BAYUK LIVING TRUSTS RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION** all parties to this action by the method(s) indicated below:

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

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

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


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

by personal delivery/hand delivery addressed to:

by facsimile (fax) addressed to:

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

DATED: This 24th day of September, 2015.



9300 010361 1000

1 CODE: 1520
2 MICHAEL LEHNERS, ESQ.
3 429 Marsh Ave.
4 Reno, Nevada 89509
5 Nevada Bar Number 003331
6 (775) 786-1695

7 Attorney for Salvatore Morabito

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

o0o

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

Case No. CV13-02663

Dept. No. 4

14 Plaintiff,

15 vs.

16 REPLY TO PLAINTIFF'S
17 OBJECTION TO NOTICE OF CLAIM
18 OF EXEMPTION FROM EXECUTION

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

27 Defendant.

28 _____/

Salvatore Morabito files the following Reply to Plaintiff's Objection
to Notice of Claim of Exemption From Execution.

1. The Writs of Execution

1 On May 28, 2019 the Plaintiff issued two writs of execution against
2 Mr. Morabito. A copy of each writ has been attached as Exhibit "2" to the
3 Declaration of Salvatore Morabito Claiming Exemption of Execution,
4 which was filed with this Court on July 2, 2019. The writs identify the
5 following property to be seized:

6 Any and all monies belonging to or held in the name of
7 Salvatore Morabito D.O.B: 08/XX/1961, including but not
8 limited to money held in any bank accounts, including but
9 not limited to, checking accounts, savings accounts, money
market accounts and certificate of deposits.

10 **2. Mr. Morabito's Claim of Exemption**

11 Mr. Morabito is a resident of Ontario Canada. He holds no assets in
12 the State of Nevada. It is not unheard of for a levy on a bank branch in
13 one state to cause the freeze of assets with a branch located in another
14 state. In fact, Nevada prohibits this practice with respect to judgments
15 obtained in other states. NRS 31.2945 provides as follows:

16 1. Any judgment debtor who is a resident of this State and
17 who maintains an account or any other property at a
18 branch of a financial institution located in this State or
19 whose earnings are derived from employment in this
20 State may bring a civil action against a judgment creditor
21 under a foreign judgment if the judgment creditor,
without satisfying the requirements of NRS 17.330 to
17.400, inclusive, has obtained a writ of garnishment to
satisfy all or part of the foreign judgment from:

22 (a) The earnings of the judgment debtor derived from
23 employment in this State; or

24 (b) Money in the account or any other property
25 maintained by the judgment debtor at a branch of
26 a financial institution located in this State.

27 This statute protects a Nevada resident from having funds in his or
28 her Nevada branch frozen where a foreign judgment in another state is

1 served on a branch in another state. While that statute has no
2 application here since it is a Nevada judgment, it does reflect the fact
3 that executions in one state sometimes freeze assets in other states.

4 The Plaintiff argues that it is improper for this Court to make a
5 determination of what is subject to execution in other states. That is not
6 what the Defendant seeks. Rather, Defendant seeks an order that states
7 the judgment is enforceable only within the boundaries of the State of
8 Nevada, and that to attach other assets in other states or countries,
9 Plaintiff must follow the rules of said jurisdictions.

10 Plaintiff also points out that it does not make any sense to file a
11 claim of exemption where there are no assets in Nevada to attach. The
12 Defendant stands by what he said in his declaration. However, the
13 statutes are clear. Should an asset somehow be attached, the Defendant
14 must assert Nevada's wage and wildcard exemptions or have them
15 waived.

16 In conclusion, the Defendant requests that this Nevada judgment
17 may not be used as a vehicle to seize assets in other states or countries
18 without following their procedures and to preserve the wage and
19 wildcard exemption should any funds be seized.

20 **Affirmation**

21 **Pursuant to NRS 239B.030**

22 The Undersigned does hereby affirm that the preceding document filed in the case herein
23 does not contain the social security number of any person.

24 Dated: This 18 day of July, 2019

25 By: 

26 Michael Lehnert, Esq.
27 429 Marsh Ave.
28 Reno, Nevada 89509
Nevada Bar Number 003331

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Michael Lehnert, Esq., and that on the 18 day of July, 2019 I deposited for mailing with postage prepaid a true and correct copy of the foregoing Reply to Plaintiff's Objection to Notice of Claim of Exemption From Execution addressed to Gabrielle A. Hamm, Esq., 650 White Drive, Ste. 100, Las Vegas, Nevada 89119.

Don Syal
Employee

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

William A Leonard
PLAINTIFF

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,
DEFENDANT

) Dated: 7/23/2019

) Civil File Number: 19005770

) CASE No.: CV1302663

DECLARATION OF SERVICE

STATE OF NEVADA }
COUNTY OF WASHOE } ss:

Nicholas Sanford, being first duly sworn, deposes and says: That affiant is a citizen of the United States, over 18 years of age, not a party to the within entered action, and that in the County of Washoe, State of Nevada, personally served the described documents upon:

Person served: Hartman and Hartman P.C.
Location: 510 W Plumb #B Reno, NV 89509
Date: 7/23/2019 Time: 1:30 PM

The document(s) served were: TILL TAP, NOTICE OF ATTACHMENT AND LEVY UPON PROPERTY

I declare under penalty of perjury under the law provided of the State of Nevada that the foregoing is true and correct.
No notary is required per NRS 53.045.

DARIN BALAAM, SHERIFF

By:  2393
Sheriff's Authorized Agent

Garman Turner Gordon, LLP
650 White Drive
#100
Las Vegas, NV 89119

1770
GARMAN TURNER GORDON LLP
GERALD M. GORDON, ESQ.
Nevada Bar No. 229
E-mail: ggordon@gtg.legal
ERIKA PIKE TURNER, ESQ.
Nevada Bar No. 6454
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650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Counsel to Plaintiff

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

NOTICE OF SUBMISSION OF DISPUTED ORDER DENYING CLAIM OF
EXEMPTION AND THIRD PARTY CLAIM

1 Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito,
2 (“Plaintiff”) by and through his counsel, the law firm of Garman Turner Gordon LLP, hereby
3 submits Plaintiff’s proposed *Order Denying Claim of Exemption and Third Party Claim* (the
4 “Proposed Order”), attached hereto as **Exhibit “1,”** and requests that the Court enter the same.

5 1. On June 28, 2019, Edward Bayuk (“Edward”), individually and as trustee of the
6 Edward William Bayuk Living Trust (the “Bayuk Trust,” and together with Edward, “Bayuk”)
7 filed a *Notice of Claim of Exemption from Execution* (the “Claim of Exemption”) and on July 3,
8 2019, the Bayuk Trust filed the *Third Party Claim to Property Levied Upon [NRS 31.070]* (the
9 “Third Party Claim”).

10 2. On July 11, 2019, Plaintiff filed *Plaintiff’s Objection to (1) Declaration of Edward*
11 *Bayuk Claiming Exemption From Execution and (2) Third Party Claim to Property Levied Upon,*
12 *and Request for Hearing Pursuant to NRS 21.112 and 31.070(5)* (the “Objection”)

13 3. On July 17, 2019, Bayuk filed their *Reply to Objection to Claim of Exemption and*
14 *Third Party Claim to Property Levied Upon* (the “Reply”)

15 4. The Court held a hearing on the Claim of Exemption and Third Party Claim on July
16 22, 2019 and requested Plaintiff to prepare and circulate an order denying the Claim of Exemption
17 and Third Party Claim, which Plaintiff did by circulating an *Order Denying Claim of Exemption*
18 *and Third Party Claim* (the “July 24 Order”) on July 24, 2019. **See Exhibit “2”**

19 5. Pursuant to WDCR 9, comments or objections to the July 24 Order were due on or
20 before July 29, 2019. On July 30, 2019, Bayuk, through counsel Jeffrey Hartman, Esq., requested
21 until noon on July 31, 2019 to provide comments. **See Exhibit**
22 **“3.”**

23 6. Bayuk failed to provide comments at noon on July 31, 2019, instead waiting until
24 1:43 p.m. to send a redline version with proposed changes after multiple follow ups from Plaintiff’s
25 counsel on July 31, 2019. **See Exhibits “4” and “5.”**¹

26
27 ¹ In the July 31 e-mail, Bayuk only provided his comments in redline, but did not provide a “clean” copy of Bayuk’s
28 proposed order. A “clean” copy of the proposed order, created by “accepting” the redline changes is attached hereto
as Exhibit “6.”

7. Upon review of the proposed revisions, Plaintiff's counsel became aware that the redline attached to the July 31, 2019 e-mail was not a correct reflection of the proposed changes to the July 24 Order. Instead, a true and correct copy of the redline run by Plaintiff accurately reflecting Bayuk's proposed changes is attached hereto as **Exhibit "6."**

8. After review of the proposed revisions, Plaintiff advised Bayuk, through counsel, that Plaintiff agreed 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. See Exhibit "7."²

9. Plaintiff’s counsel requested that Bayuk’s counsel respond by 1:00 p.m. on August 1, 2019 indicting whether the proposed Order was acceptable. See id.

10. Plaintiff's counsel has not received any response from Bayuk's counsel and, as such, submits the Proposed Order and advises the Court that Plaintiff understands that Bayuk disputes the form of Order.

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 1st day of August, 2019.

GARMAN TURNER GORDON LLP

By: /s/ Teresa M. Pilatowicz
 GERALD M. GORDON, ESQ.
 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
Counsel to Plaintiff

² Exhibit 7 does not contain a second copy of the Proposed Order or the correct redline run between the July 24 Order and Bayuk's proposed order as such documents are already attached to this Notice as Exhibits 1 and 6, respectively.

INDEX OF EXHIBITS

Exhibit	Description	Pages ³
1	Plaintiff's proposed Order Denying Claim of Exemption and Third Party Claim	5
2	Bayuk and the Bayuk Trust's proposed Order Denying Claim of Exemption and Third Party Claim	5
3	July 30, 2019 email evidencing Bayuk, through counsel Jeffrey Hartman, Esq., requesting until noon on July 31, 2019 to provide comments.	2
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	7
5	A true and correct copy of the original Order and Bayuk Changes	5
6	A true and correct copy of the redline run by Plaintiff accurately reflecting Bayuk's proposed changes	5
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.	3

³ Exhibit pagination includes exhibit slip sheets.

Exhibit 1

1 **2840**
2 GARMAN TURNER GORDON LLP
3 GERALD M. GORDON, ESQ.
4 Nevada Bar No. 229
5 E-mail: ggordon@gtg.legal
6 ERIKA PIKE TURNER, ESQ.
7 Nevada Bar No. 6454
8 E-mail: eturner@gtg.legal
9 TERESA M. PILATOWICZ, ESQ.
10 Nevada Bar No. 9605
11 E-mail: tpilatowicz@gtg.legal
12 GABRIELLE A. HAMM, ESQ.
13 Nevada Bar No. 11588
14 E-mail: ghamm@gtg.legal
15 650 White Drive, Ste. 100
16 Las Vegas, Nevada 89119
17 Telephone 725-777-3000
18 *Counsel to Plaintiff*

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

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

17 Plaintiff,

18 vs.

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

26 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

25 **ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM**

26 Before the Court is the *Notice of Claim of Exemption from Execution* (the “Claim of
27 Exemption”) filed on June 28, 2019 by Edward Bayuk (“Bayuk”), individually and as trustee of
28 the Edward William Bayuk Living Trust (the “Bayuk Trust”), and the *Third Party Claim to*

1 *Property Levied Upon [NRS 31.070]* (the “Third Party Claim”) filed on July 3, 2019 by the Bayuk
2 Trust. The Claim of Exemption and Third Party Claim are supported by the *Declaration of Edward*
3 *Bayuk Claiming Exemption from Execution* (the “Bayuk Declaration”), filed on July 2, 2019.
4 *Plaintiff’s Objection to (1) Declaration of Edward Bayuk Claiming Exemption From Execution*
5 *and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS*
6 *21.112 and 31.070(5)* (the “Objection”) was filed on July 11, 2019, and Bayuk and the Bayuk
7 Trust’s *Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon*
8 (the “Reply”) was filed on July 17, 2019.

9 The Court held a hearing on the Claim of Exemption and Third Party Claim on July 22,
10 2019. Bayuk and the Bayuk Trust appeared by and through counsel, Michael Lehnert and Jeffrey
11 L. Hartman. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M. Gordon,
12 and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

13 The Court has reviewed and considered the arguments made in the Claim of Exemption
14 and the Third Party Claim, the Objection, and the Reply, the Bayuk Declaration, the exhibits to all
15 of the foregoing, the papers and pleadings on file with the Court in this action, the testimony and
16 exhibits admitted during the trial, the Court’s Findings of Fact, Conclusions of Law, and Judgment,
17 entered on March 29, 2019 (the “Judgment”), and the arguments of counsel made at the hearing.
18 The Court, persuaded by the argument and authorities in Plaintiff’s Objection and the arguments
19 of Plaintiff’s counsel at the hearing, along with the pleadings and papers on file, the trial record,
20 and the findings and conclusions set forth in the Judgment, finds as follows:

21 1. The court has subject matter jurisdiction over the claims asserted against Bayuk, as
22 trustee of the Bayuk Trust.

23 2. Bayuk has transferred all of his personal assets to the Bayuk Trust since the Bayuk
24 Trust was established in 1998. As set forth in the Judgment, the Bayuk Trust received fraudulently
25 transferred property which was established by clear and convincing evidence.

26 3. The purported nature of the Bayuk Trust as a Nevada spendthrift trust was not
27 disclosed prior to the Claim of Exemption. In response to discovery requests, in deposition, in
28 subject deeds, and at trial prior to the Judgment, Bayuk and the Bayuk Trust produced

1 contradictory evidence regarding the date and the purpose of the Bayuk Trust. With the Claim of
2 Exemption, the Bayuk Trust clarifies that that there is, and has been, only one trust with the name
3 “the Edward William Bayuk Living Trust” and that is the Bayuk Trust.

4 4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada
5 spendthrift trust under NRS 166.015 because Bayuk is the settlor and beneficiary during his
6 lifetime of the Bayuk Trust, and neither Bayuk nor his co-trustee Paul Morabito are domiciles of
7 Nevada. NRS 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved to
8 California in September 2010.

9 5. Contrary to assertions by Bayuk, there was no credible evidence presented that the
10 Bayuk Trust owns a burial plot in Nevada; but, even if such fact were established, the ownership
11 of a burial plot in Nevada is insufficient to invoke the protections of NRS Chapter 166.

12 6. Even if the claims asserted against the Bayuk Trust were subject to the time periods
13 under NRS 166.170, they were timely because the fraudulent transfer claim was brought (1) within
14 two years after the fraudulent transfers were made and (2) also within six months of discovery of,
15 or when Plaintiff reasonably should have discovered, the existence of the purported spendthrift
16 trust. The subject fraudulent transfers occurred in September 2010 and thereafter. The Bayuk
17 Trust executed a tolling agreement on November 30, 2011 to toll any statute of limitations
18 applicable to the fraudulent transfer of property to the Bayuk Trust, which tolling agreement tolled
19 the time period to file until June 18, 2013 and the Complaint was filed in December 2013. The
20 purported nature of the Bayuk Trust as a spendthrift trust subject to NRS 166.170 was not disclosed
21 until the Claim of Exemption. Moreover, any defenses based on NRS 166.170 have been waived
22 as a result of the failure of Bayuk or the Bayuk Trust to raise such defenses prior to the Claim of
23 Exemption.

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Based upon review of the entire file, the foregoing, and good cause appearing:

IT IS HEREBY ORDERED that the Claim of Exemption is denied.

IT IS FURTHER ORDERED that the Third Party Claim is denied.

Dated this _____ day of _____, 2019.

DISTRICT JUDGE

Exhibit 2

Dekova Huckaby

From: Teresa Pilatowicz
Sent: Wednesday, July 24, 2019 6:05 PM
To: jlh@bankruptcyreno.com; michaellehners@yahoo.com
Cc: Gabby Hamm; Erika Turner; Dekova Huckaby
Subject: Leonard v. Superpumper/Orders Denying Claims of Exemption
Attachments: Ord Denying Bayuk Claim of Exemption & Third Party Claim.docx; Ord Denying S. Morabito Exemption Claim.docx

Michael and Jeff,

Attached please find the following: (1) Order Denying Claim of Exemption and Third Party Claim and (2) Order Denying Claim of Exemption following the hearing held on Monday, July 22, 2019.

Please provide and comments or proposed revisions no later than July 29.

Thanks,

Teresa

2840
GARMAN TURNER GORDON LLP
GERALD M. GORDON, ESQ.
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ERIKA PIKE TURNER, ESQ.
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Las Vegas, Nevada 89119
Telephone 725-777-3000
Counsel to Plaintiff

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

ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM

Before the Court is the *Notice of Claim of Exemption from Execution* (the “Claim of Exemption”) filed on June 28, 2019 by Edward Bayuk (“Bayuk”), individually and as trustee of the Edward William Bayuk Living Trust (the “Bayuk Trust”), and the *Third Party Claim to*

1 *Property Levied Upon [NRS 31.070]* (the “Third Party Claim”) filed on July 3, 2019 by the Bayuk
2 Trust. The Claim of Exemption and Third Party Claim are supported by the *Declaration of Edward*
3 *Bayuk Claiming Exemption from Execution* (the “Bayuk Declaration”), filed on July 2, 2019.
4 *Plaintiff’s Objection to (1) Declaration of Edward Bayuk Claiming Exemption From Execution*
5 *and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS*
6 *21.112 and 31.070(5)* (the “Objection”) was filed on July 11, 2019, and Bayuk and the Bayuk
7 Trust’s *Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon*
8 (the “Reply”) was filed on July 17, 2019.

9 The Court held a hearing on the Claim of Exemption and Third Party Claim on July 22,
10 2019. Bayuk and the Bayuk Trust appeared by and through counsel, Michael Lehnert and Jeffrey
11 L. Hartman. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M. Gordon,
12 and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

13 The Court has reviewed and considered the arguments made in the Claim of Exemption
14 and the Third Party Claim, the Objection, and the Reply, the Bayuk Declaration, the exhibits to all
15 of the foregoing, the papers and pleadings on file with the Court in this action, the testimony and
16 exhibits admitted during the trial, the Court’s Findings of Fact, Conclusions of Law, and Judgment,
17 entered on March 29, 2019 (the “Judgment”), and the arguments of counsel made at the hearing.
18 The Court, persuaded by the argument and authorities in Plaintiff’s Objection and the arguments
19 of Plaintiff’s counsel at the hearing, along with the pleadings and papers on file, the trial record,
20 and the findings and conclusions set forth in the Judgment, finds as follows:

21 1. The court has subject matter jurisdiction over the claims asserted against Bayuk, as
22 trustee of the Bayuk Trust.

23 2. Bayuk has transferred all of his personal assets to the Bayuk Trust since the Bayuk
24 Trust was established in 1998. Inclusive, the Bayuk Trust received fraudulently transferred
25 property which, as further set forth in the Judgment, was established by clear and convincing
26 evidence.

27 3. The purported nature of the Bayuk Trust as a Nevada spendthrift trust was not
28 disclosed prior to the Claim of Exemption. In response to discovery requests, in deposition, in

1 subject deeds, and at trial prior to the Judgment, Bayuk and the Bayuk Trust produced
2 contradictory evidence regarding the date and the purpose of the Bayuk Trust. With the Claim of
3 Exemption, the Bayuk Trust clarifies that that there is, and has been, only one trust with the name
4 “the Edward William Bayuk Living Trust” and that is the Bayuk Trust.

5 4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada
6 spendthrift trust under NRS 166.015 because Bayuk is the settler and beneficiary during his
7 lifetime of the Bayuk Trust, and neither Bayuk nor his co-trustee Paul Morabito are domiciles of
8 Nevada. NRS 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved to
9 California in September 2010.

10 5. Contrary to assertions by Bayuk, there was no credible evidence presented that the
11 Bayuk Trust owns a burial plot in Nevada; but, even if such fact were established, the ownership
12 of a burial plot in Nevada is insufficient to invoke the protections of NRS 166.015.

13 6. Even if the claims asserted against the Bayuk Trust were subject to the time periods
14 under NRS 166.170, they were timely because the fraudulent transfer claim was brought (1) within
15 two years of the fraudulent transfers and (2) also within six months of discovery of the existence
16 of the purported spendthrift trust. The subject fraudulent transfers occurred in September 2010
17 and thereafter. The Bayuk Trust executed a tolling agreement on November 30, 2011 to toll any
18 statute of limitations applicable to the fraudulent transfer of property to the Bayuk Trust, which
19 tolling agreement tolled the time period to file until June 18, 2013 and the Complaint was filed in
20 December 2013. The purported nature of the Bayuk Trust as a spendthrift trust subject to NRS
21 166.170 was not disclosed until the Claim of Exemption. Moreover, any defenses based on NRS
22 166.170 have been waived as a result of the failure of Bayuk or the Bayuk Trust to raise such
23 defenses prior to the Claim of Exemption.

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Based upon review of the entire file, the foregoing, and good cause appearing:

IT IS HEREBY ORDERED that the Claim of Exemption is denied.

IT IS FURTHER ORDERED that the Third Party Claim is denied.

Dated this _____ day of _____, 2019.

DISTRICT JUDGE

Exhibit 3

Dekova Huckaby

From: Jeffrey L. Hartman <jlh@bankruptcyreno.com>
Sent: Tuesday, July 30, 2019 5:25 PM
To: Teresa Pilatowicz
Cc: Michael C. Lehnerns (mcl3303@aol.com)
Subject: RE: Leonard v. Superpumper/Orders Denying Claims of Exemption

Teresa:

Michael and I got our wires crossed on these. I will respond to you by noon tomorrow.

Jeff Hartman

From: Teresa Pilatowicz <tpilatowicz@Gtg.legal>
Sent: Wednesday, July 24, 2019 6:05 PM
To: Jeffrey L. Hartman <jlh@bankruptcyreno.com>; michaellehners@yahoo.com
Cc: Gabby Hamm <ghamm@Gtg.legal>; Erika Turner <eturner@Gtg.legal>; Dekova Huckaby <dhuckaby@Gtg.legal>
Subject: Leonard v. Superpumper/Orders Denying Claims of Exemption

Michael and Jeff,

Attached please find the following: (1) Order Denying Claim of Exemption and Third Party Claim and (2) Order Denying Claim of Exemption following the hearing held on Monday, July 22, 2019.

Please provide and comments or proposed revisions no later than July 29.

Thanks,

Teresa

Exhibit 4

Dekova Huckaby

From: Jeffrey L. Hartman <jlh@bankruptcyreno.com>
Sent: Wednesday, July 31, 2019 1:45 PM
To: Teresa Pilatowicz
Subject: RE: Exemption Orders
Attachments: JPL REDLINE OF Order Denying Bayuk Claim (004).docx

I'm sorry for the delay. We had incompatible Word versions with some of the editors.

Jeff Hartman

From: Teresa Pilatowicz <tpilatowicz@Gtg.legal>
Sent: Wednesday, July 31, 2019 1:43 PM
To: Jeffrey L. Hartman <jlh@bankruptcyreno.com>
Cc: Dekova Huckaby <dhuckaby@Gtg.legal>
Subject: Re: Exemption Orders

Jeff,

The Court requested that the orders be uploaded shortly after the hearing. We circulated them last Wednesday, two days after the hearing, for comment. Pursuant to local rule, comments were due Monday. I waited until noon today at your request. At noon, you advised comments would be sent within 30 minutes. It has now been almost two hours.

We intend to upload the orders today to comply with the Court's request that they be submitted in short order.

Teresa

Sent from my iPhone

On Jul 31, 2019, at 2:57 PM, Jeffrey L. Hartman <jlh@bankruptcyreno.com> wrote:

Another 30 minutes. Thanks for your indulgence.

Jeff Hartman

Jeffrey L. Hartman, Esq.
HARTMAN & HARTMAN
510 West Plumb Lane, Suite B
Reno, NV 89509
Telephone: (775) 324-2800
Facsimile: (775) 324-1818
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return email, and please destroy this transmission, all attachments to it, and any copies that have been made. Thank you for your cooperation.

1 **2840**

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10 Las Vegas, Nevada 89119

Telephone 725-777-3000

11 *Counsel to Plaintiff*

12 **IN THE SECOND JUDICIAL DISTRICT COURT OF**

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

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

17 Plaintiff,

18 vs.

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

26 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

27 **ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM**

28 Before the Court is the *Notice of Claim of Exemption from Execution* (the “Claim of Exemption”) filed on June 28, 2019 by Edward Bayuk (“Bayuk”), individually and as trustee of the Edward William Bayuk Living Trust (the “Bayuk Trust”), and the *Third Party Claim to*

1 *Property Levied Upon [NRS 31.070]* (the “Third Party Claim”) filed on July 3, 2019 by the Bayuk
2 Trust. The Claim of Exemption and Third Party Claim are supported by the *Declaration of Edward*
3 *Bayuk Claiming Exemption from Execution* (the “Bayuk Declaration”), filed on July 2, 2019.
4 *Plaintiff’s Objection to (1) Declaration of Edward Bayuk Claiming Exemption From Execution*
5 *and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS*
6 *21.112 and 31.070(5)* (the “Objection”) was filed on July 11, 2019, and Bayuk and the Bayuk
7 Trust’s *Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon*
8 (the “Reply”) was filed on July 17, 2019.

9 The Court held a hearing on the Claim of Exemption and Third Party Claim on July 22,
10 2019. Bayuk and the Bayuk Trust appeared by and through counsel, Michael Lehnern and Jeffrey
11 L. Hartman. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M. Gordon,
12 and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

13 The Court has reviewed and considered the arguments made in the Claim of Exemption
14 and the Third Party Claim, the Objection, and the Reply, the Bayuk Declaration, the exhibits to all
15 of the foregoing, the papers and pleadings on file with the Court in this action, the testimony and
16 exhibits admitted during the trial, the Court’s Findings of Fact, Conclusions of Law, and Judgment,
17 entered on March 29, 2019 (the “Judgment”), and the arguments of counsel made at the hearing.
18 The Court, persuaded by the argument and authorities in Plaintiff’s Objection and the arguments
19 of Plaintiff’s counsel at the hearing, along with the pleadings and papers on file, the trial record,
20 and the findings and conclusions set forth in the Judgment, finds as follows:

21 1. The court has subject matter jurisdiction over the claims asserted against Bayuk, as
22 trustee of the Bayuk Trust.

23 2. ~~Bayuk has transferred all of his personal assets to the Bayuk Trust since t~~The Bayuk
24 Trust was established in 1998, and through amendment on November 12, 2005 became a Nevada
25 irrevocable self-settled spendthrift trust. As set forth in the Judgment, inclusive, the Bayuk Trust
26 received fraudulently transferred property which ~~, as further set forth in the Judgment,~~ was
27 established by clear and convincing evidence.

28 ///

Commented [A1]: I am not sure that this is factually accurate, and do not recall seeing this in the transcript.

1 ///

2 3. ~~The purported nature of the Bayuk Trust as a Nevada spendthrift trust was not~~
3 ~~disclosed prior to the Claim of Exemption.~~ On March 3, 2011 the Plaintiff deposed Paul Morabito.
4 In that deposition, Mr. Morabito disclosed the existence of the Edward Bayuk Living Trust and
5 the fact that real property had been transferred to it. In response to discovery requests propounded
6 after the instant lawsuit was commenced on December 17, 2013, Bayuk and the Bayuk Trust
7 produced evidence regarding the date and the purpose of the Bayuk Trust as well as revocable
8 spending trusts. With the Claim of Exemption, the Bayuk Trust confirmed that there is, and has
9 been, only one self-settled spendthrift trust with the name “the Edward William Bayuk Living
10 Trust” and that is the Bayuk Trust.
11

12 4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada
13 spendthrift trust under NRS 166.015 because Bayuk is the ~~settler-settlor and beneficiary during his~~
14 ~~lifetime of the Bayuk Trust~~, and neither Bayuk ~~as Trustee~~ nor ~~his named 2005 co-trustee~~ Paul
15 Morabito, ~~who was a co-trustee in 2005~~ are ~~presently domiciles-domiciled of in~~ Nevada. NRS
16 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved ~~their residency~~ to
17 California in September 2010.

18 5. Contrary to ~~the evidence contained within assertions by Bayuk-the Claim of~~
19 ~~Exemption from Execution, and without allowing Bayuk to introduce additional evidence in the~~
20 ~~form of documents and testimony at the hearing, having the opportunity to testify to evidence,~~ the
21 ~~Court finds that there~~ was no ~~credible~~ evidence presented that the Bayuk Trust owns a burial plot
22 in Nevada; but, even if such fact were established, the ownership of a burial plot in Nevada is
23 insufficient to invoke the protections of NRS ~~Chapter 166.015~~.

24 6. Even if the claims asserted against the Bayuk Trust were subject to the time periods
25 under NRS 166.170, they were timely because the fraudulent transfer claim was brought (1) within
26 two years ~~of the fraudulent transfers after the transfers were made~~ and (2) ~~also within six months~~
27 ~~of Plaintiff's discovery of the existence of the purported 2005 spendthrift trust.~~ The subject
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Commented [A2]: The standard under NRS 166.170(1)(A)(2) is
“Six months after the person discovers or reasonably should have
discovered the transfer.” I am not sure whether it is better to leave
the incorrect standard for appellate purposes.

1 fraudulent transfers occurred in September 2010 and thereafter as evidenced by Plaintiff's exhibits
2 of 2010 public record of the transfers. The Bayuk Trust executed a tolling agreement on November
3 30, 2011 to thereafter toll any statute of limitations applicable to the fraudulent transfer of property
4 to the Bayuk Trust, which tolling agreement tolled the time period to file until June 18, 2013 and
5 the Complaint was filed in December 2013. The purported nature of the Bayuk Trust as a
6 spendthrift trust subject to NRS 166.170 was not disclosed until the Claim of Exemption.
7 Moreover, any defenses based on NRS 166.170 have been waived as a result of the failure of
8 Bayuk or the Bayuk Trust to raise such defenses prior to the Claim of Exemption.

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14 Based upon review of the entire file, the foregoing, and good cause appearing:

15 IT IS HEREBY ORDERED that the Claim of Exemption is denied.

16 IT IS FURTHER ORDERED that the Third Party Claim is denied.

17 Dated this _____ day of _____, 2019.

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DISTRICT JUDGE
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Exhibit 5

1 **2840**
2 GARMAN TURNER GORDON LLP
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16 Las Vegas, Nevada 89119
17 Telephone 725-777-3000
18 *Counsel to Plaintiff*

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

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

17 Plaintiff,

18 vs.

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

26 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

25 **ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM**

26 Before the Court is the *Notice of Claim of Exemption from Execution* (the “Claim of
27 Exemption”) filed on June 28, 2019 by Edward Bayuk (“Bayuk”), individually and as trustee of
28 the Edward William Bayuk Living Trust (the “Bayuk Trust”), and the *Third Party Claim to*

1 *Property Levied Upon [NRS 31.070]* (the “Third Party Claim”) filed on July 3, 2019 by the Bayuk
2 Trust. The Claim of Exemption and Third Party Claim are supported by the *Declaration of Edward*
3 *Bayuk Claiming Exemption from Execution* (the “Bayuk Declaration”), filed on July 2, 2019.
4 *Plaintiff’s Objection to (1) Declaration of Edward Bayuk Claiming Exemption From Execution*
5 *and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS*
6 *21.112 and 31.070(5)* (the “Objection”) was filed on July 11, 2019, and Bayuk and the Bayuk
7 Trust’s *Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon*
8 (the “Reply”) was filed on July 17, 2019.

9 The Court held a hearing on the Claim of Exemption and Third Party Claim on July 22,
10 2019. Bayuk and the Bayuk Trust appeared by and through counsel, Michael Lehnerns and Jeffrey
11 L. Hartman. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M. Gordon,
12 and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

13 The Court has reviewed and considered the arguments made in the Claim of Exemption
14 and the Third Party Claim, the Objection, and the Reply, the Bayuk Declaration, the exhibits to all
15 of the foregoing, the papers and pleadings on file with the Court in this action, the testimony and
16 exhibits admitted during the trial, the Court’s Findings of Fact, Conclusions of Law, and Judgment,
17 entered on March 29, 2019 (the “Judgment”), and the arguments of counsel made at the hearing.
18 The Court, persuaded by the argument and authorities in Plaintiff’s Objection and the arguments
19 of Plaintiff’s counsel at the hearing, along with the pleadings and papers on file, the trial record,
20 and the findings and conclusions set forth in the Judgment, finds as follows:

21 1. The court has subject matter jurisdiction over the claims asserted against Bayuk, as
22 trustee of the Bayuk Trust.

23 2. The Bayuk Trust was established in 1998, and through amendment on November
24 12, 2005 became a Nevada irrevocable self-settled spendthrift trust. As set forth in the Judgment,
25 the Bayuk Trust received fraudulently transferred property which was established by clear and
26 convincing evidence.

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1 3. On March 3, 2011 the Plaintiff deposed Paul Morabito. In that deposition, Mr.
2 Morabito disclosed the existence of the Edward Bayuk Living Trust and the fact that real property
3 had been transferred to it. In response to discovery requests propounded after the instant lawsuit
4 was commenced on December 17, 2013, Bayuk and the Bayuk Trust produced evidence regarding
5 the date and the purpose of the Bayuk Trust as well as revocable spending trusts. With the Claim
6 of Exemption, the Bayuk Trust confirmed that there is, and has been, only one self-settled
7 spendthrift trust with the name “the Edward William Bayuk Living Trust” and that is the Bayuk
8 Trust.
9

10 4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada
11 spendthrift trust under NRS 166.015 because Bayuk is the settlor , and neither Bayuk as Trustee
12 nor Paul Morabito, who was a co-trustee in 2005 are presently domiciled in Nevada. NRS
13 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved their residency to
14 California in September 2010.

15 5. Contrary to the evidence contained within the Claim of Exemption from Execution,
16 and without allowing Bayuk to introduce additional evidence in the form of documents and
17 testimony at the hearing, the Court finds that there was no evidence presented that the Bayuk Trust
18 owns a burial plot in Nevada; but, even if such fact were established, the ownership of a burial plot
19 in Nevada is insufficient to invoke the protections of NRS Chapter 166.

20 6. Even if the claims asserted against the Bayuk Trust were subject to the time periods
21 under NRS 166.170, they were timely because the fraudulent transfer claim was brought (1) within
22 two years after the transfers were made and (2) also within six months of Plaintiff’s discovery of
23 the existence of the 2005 spendthrift trust. The subject fraudulent transfers occurred in September
24 2010 and thereafter as evidenced by Plaintiff’s exhibits of 2010 public record of the transfers. The
25 Bayuk Trust executed a tolling agreement on November 30, 2011 to thereafter toll any statute of
26 limitations applicable to the fraudulent transfer of property to the Bayuk Trust, which tolling
27 agreement tolled the time period to file until June 18, 2013 and the Complaint was filed in
28

1 December 2013. The purported nature of the Bayuk Trust as a spendthrift trust subject to NRS
2 166.170 was not disclosed until the Claim of Exemption. Moreover, any defenses based on NRS
3 166.170 have been waived as a result of the failure of Bayuk or the Bayuk Trust to raise such
4 defenses prior to the Claim of Exemption.

5 Based upon review of the entire file, the foregoing, and good cause appearing:

6 IT IS HEREBY ORDERED that the Claim of Exemption is denied.

7 IT IS FURTHER ORDERED that the Third Party Claim is denied.

8 Dated this _____ day of _____, 2019.

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DISTRICT JUDGE

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Exhibit 6

2840

GARMAN TURNER GORDON LLP

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Nevada Bar No. 11588

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650 White Drive, Ste. 100

Las Vegas, Nevada 89119

Telephone 725-777-3000

Counsel to Plaintiff

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

ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM

Before the Court is the *Notice of Claim of Exemption from Execution* (the “Claim of Exemption”) filed on June 28, 2019 by Edward Bayuk (“Bayuk”), individually and as trustee of the Edward William Bayuk Living Trust (the “Bayuk Trust”), and the *Third Party Claim to*

1 *Property Levied Upon [NRS 31.070] (the “Third Party Claim”) filed on July 3, 2019 by the Bayuk*
2 *Trust. The Claim of Exemption and Third Party Claim are supported by the Declaration of Edward*
3 *Bayuk Claiming Exemption from Execution (the “Bayuk Declaration”), filed on July 2, 2019.*
4 *Plaintiff’s Objection to (1) Declaration of Edward Bayuk Claiming Exemption From Execution*
5 *and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS*
6 *21.112 and 31.070(5) (the “Objection”) was filed on July 11, 2019, and Bayuk and the Bayuk*
7 *Trust’s Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon*
8 *(the “Reply”) was filed on July 17, 2019.*

9 The Court held a hearing on the Claim of Exemption and Third Party Claim on July 22,
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11 L. Hartman. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M. Gordon,
12 and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

13 The Court has reviewed and considered the arguments made in the Claim of Exemption
14 and the Third Party Claim, the Objection, and the Reply, the Bayuk Declaration, the exhibits to all
15 of the foregoing, the papers and pleadings on file with the Court in this action, the testimony and
16 exhibits admitted during the trial, the Court’s Findings of Fact, Conclusions of Law, and Judgment,
17 entered on March 29, 2019 (the “Judgment”), and the arguments of counsel made at the hearing.
18 The Court, persuaded by the argument and authorities in Plaintiff’s Objection and the arguments
19 of Plaintiff’s counsel at the hearing, along with the pleadings and papers on file, the trial record,
20 and the findings and conclusions set forth in the Judgment, finds as follows:

21 1. The court has subject matter jurisdiction over the claims asserted against Bayuk, as
22 trustee of the Bayuk Trust.

23 2. ~~Bayuk has transferred all of his personal assets to the Bayuk Trust since the The~~
24 ~~Bayuk Trust was established in 1998. Inclusive, and through amendment on November 12, 2005~~
25 ~~became a Nevada irrevocable self-settled spendthrift trust. As set forth in the Judgment, the Bayuk~~
26 ~~Trust received fraudulently transferred property which, as further set forth in the Judgment, was~~
27 ~~established by clear and convincing evidence.~~

28 ~~The purported nature of the Bayuk Trust as a Nevada spendthrift trust was not///~~

///

3. On March 3, 2011 the Plaintiff deposed Paul Morabito. In that deposition, Mr. Morabito disclosed prior to the Claim of Exemption, the existence of the Edward Bayuk Living Trust and the fact that real property had been transferred to it. In response to discovery requests, in deposition, in subject deeds, and at trial prior to propounded after the Judgment instant lawsuit was commenced on December 17, 2013, Bayuk and the Bayuk Trust produced contradictory evidence regarding the date and the purpose of the Bayuk Trust— as well as revocable spending trusts. With the Claim of Exemption, the Bayuk Trust clarifies that confirmed that there is, and has been, only one self-settled spendthrift trust with the name “the Edward William Bayuk Living Trust” and that is the Bayuk Trust.

4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada spendthrift trust under NRS 166.015 because Bayuk is the settler and beneficiary during his lifetime of the Bayuk Trust settlor, and neither Bayuk as Trustee nor his co-trustee Paul Morabito, who was a co-trustee in 2005 are domiciles of presently domiciled in Nevada. NRS 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved their residency to California in September 2010.

5. Contrary to assertions by Bayuk, there was no credible Contrary to the evidence contained within the Claim of Exemption from Execution, and without allowing Bayuk to introduce additional evidence in the form of documents and testimony at the hearing, the Court finds that there was no evidence presented that the Bayuk Trust owns a burial plot in Nevada; but, even if such fact were established, the ownership of a burial plot in Nevada is insufficient to invoke the protections of NRS Chapter 166-015.

6. Even if the claims asserted against the Bayuk Trust were subject to the time periods under NRS 166.170, they were timely because the fraudulent transfer claim was brought (1) within two years of after the fraudulent transfers were made and (2) also within six months of Plaintiff's discovery of the existence of the purported 2005 spendthrift trust. The subject fraudulent transfers

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1 occurred in September 2010 and thereafter, as evidenced by Plaintiff's exhibits of 2010 public
2 record of the transfers. The Bayuk Trust executed a tolling agreement on November 30, 2011 to
3 thereafter toll any statute of limitations applicable to the fraudulent transfer of property to the
4 Bayuk Trust, which tolling agreement tolled the time period to file until June 18, 2013 and the
5 Complaint was filed in December 2013. The purported nature of the Bayuk Trust as a spendthrift
6 trust subject to NRS 166.170 was not disclosed until the Claim of Exemption. Moreover, any
7 defenses based on NRS 166.170 have been waived as a result of the failure of Bayuk or the Bayuk
8 Trust to raise such defenses prior to the Claim of Exemption.

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14 Based upon review of the entire file, the foregoing, and good cause appearing:

15 IT IS HEREBY ORDERED that the Claim of Exemption is denied.

16 IT IS FURTHER ORDERED that the Third Party Claim is denied.

17 Dated this _____ day of _____, 2019.

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19 _____
20 DISTRICT JUDGE
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Exhibit 7

Dekova Huckaby

From: Teresa Pilatowicz
Sent: Thursday, August 1, 2019 10:12 AM
To: Jeffrey L. Hartman
Cc: Erika Turner; Gabby Hamm; Dekova Huckaby
Subject: RE: Exemption Orders
Attachments: Redline - Original Order and Bayuk Changes.docx; Ord Denying Bayuk Claim of Exemption & Third Party Claim.docx; Redline - GTG versions.docx

Jeff,

It took some time to get through your comments as I realized half way through that the redline you sent was not a redline with the version we had sent. I assume that was unintentional. I am attaching a redline that shows Bayuk's proposed changes with our original version. I have also attached an updated version and a redline showing the changes we are willing to accept.

For the most part, Bayuk's proposed changes are not acceptable as they do not reflect the Court's findings or evidence that was before the Court.

Please advise as to whether the attached revised order is acceptable by 1:00 today. If we do not have an agreement, we will advise the Court that there is a dispute over the form of orders and both parties can submit their proposed orders.

Teresa

From: Jeffrey L. Hartman <jlh@bankruptcyreno.com>
Sent: Wednesday, July 31, 2019 1:45 PM
To: Teresa Pilatowicz <tpilatowicz@Gtg.legal>
Subject: RE: Exemption Orders

I'm sorry for the delay. We had incompatible Word versions with some of the editors.

Jeff Hartman

From: Teresa Pilatowicz <tpilatowicz@Gtg.legal>
Sent: Wednesday, July 31, 2019 1:43 PM
To: Jeffrey L. Hartman <jlh@bankruptcyreno.com>
Cc: Dekova Huckaby <dhuckaby@Gtg.legal>
Subject: Re: Exemption Orders

Jeff,

The Court requested that the orders be uploaded shortly after the hearing. We circulated them last Wednesday, two days after the hearing, for comment. Pursuant to local rule, comments were due Monday. I waited until noon today at your request. At noon, you advised comments would be sent within 30 minutes. It has now been almost two hours.

We intend to upload the orders today to comply with the Court's request that they be submitted in short order.

Teresa

Sent from my iPhone

On Jul 31, 2019, at 2:57 PM, Jeffrey L. Hartman <jlh@bankruptcyreno.com> wrote:

Another 30 minutes. Thanks for your indulgence.

Jeff Hartman

Jeffrey L. Hartman, Esq.
HARTMAN & HARTMAN
510 West Plumb Lane, Suite B
Reno, NV 89509
Telephone: (775) 324-2800
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18 *Counsel to Plaintiff*

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

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

17 Plaintiff,

18 vs.

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

26 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

27 **ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM**

28 Before the Court is the *Notice of Claim of Exemption from Execution* (the “Claim of Exemption”) filed on June 28, 2019 by Edward Bayuk (“Bayuk”), individually and as trustee of the Edward William Bayuk Living Trust (the “Bayuk Trust”), and the *Third Party Claim to*

1 *Property Levied Upon [NRS 31.070]* (the “Third Party Claim”) filed on July 3, 2019 by the Bayuk
2 Trust. The Claim of Exemption and Third Party Claim are supported by the *Declaration of Edward*
3 *Bayuk Claiming Exemption from Execution* (the “Bayuk Declaration”), filed on July 2, 2019.
4 *Plaintiff’s Objection to (1) Declaration of Edward Bayuk Claiming Exemption From Execution*
5 *and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS*
6 *21.112 and 31.070(5)* (the “Objection”) was filed on July 11, 2019, and Bayuk and the Bayuk
7 Trust’s *Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon*
8 (the “Reply”) was filed on July 17, 2019.

9 The Court held a hearing on the Claim of Exemption and Third Party Claim on July 22,
10 2019. Bayuk and the Bayuk Trust appeared by and through counsel, Michael Lehnert and Jeffrey
11 L. Hartman. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M. Gordon,
12 and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

13 The Court has reviewed and considered the arguments made in the Claim of Exemption
14 and the Third Party Claim, the Objection, and the Reply, the Bayuk Declaration, the exhibits to all
15 of the foregoing, the papers and pleadings on file with the Court in this action, the testimony and
16 exhibits admitted during the trial, the Court’s Findings of Fact, Conclusions of Law, and Judgment,
17 entered on March 29, 2019 (the “Judgment”), and the arguments of counsel made at the hearing.
18 The Court, persuaded by the argument and authorities in Plaintiff’s Objection and the arguments
19 of Plaintiff’s counsel at the hearing, along with the pleadings and papers on file, the trial record,
20 and the findings and conclusions set forth in the Judgment, finds as follows:

21 1. The court has subject matter jurisdiction over the claims asserted against Bayuk, as
22 trustee of the Bayuk Trust.

23 2. Bayuk has transferred all of his personal assets to the Bayuk Trust since the Bayuk
24 Trust was established in 1998. ~~Inclusive, As set forth in the Judgment,~~ the Bayuk Trust received
25 fraudulently transferred property which, ~~as further set forth in the Judgment,~~ was established by
26 clear and convincing evidence.

27 3. The purported nature of the Bayuk Trust as a Nevada spendthrift trust was not
28 disclosed prior to the Claim of Exemption. In response to discovery requests, in deposition, in

1 subject deeds, and at trial prior to the Judgment, Bayuk and the Bayuk Trust produced
2 contradictory evidence regarding the date and the purpose of the Bayuk Trust. With the Claim of
3 Exemption, the Bayuk Trust clarifies that that there is, and has been, only one trust with the name
4 “the Edward William Bayuk Living Trust” and that is the Bayuk Trust.

5 4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada
6 spendthrift trust under NRS 166.015 because Bayuk is the ~~settler~~settlor and beneficiary during his
7 lifetime of the Bayuk Trust, and neither Bayuk nor his co-trustee Paul Morabito are domiciles of
8 Nevada. NRS 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved to
9 California in September 2010.

10 5. Contrary to assertions by Bayuk, there was no credible evidence presented that the
11 Bayuk Trust owns a burial plot in Nevada; but, even if such fact were established, the ownership
12 of a burial plot in Nevada is insufficient to invoke the protections of NRS Chapter 166.015.

13 6. Even if the claims asserted against the Bayuk Trust were subject to the time periods
14 under NRS 166.170, they were timely because the fraudulent transfer claim was brought (1) within
15 two years ~~of~~after the fraudulent transfers were made and (2) also within six months of discovery
16 of , or when Plaintiff reasonably should have discovered, the existence of the purported spendthrift
17 trust. The subject fraudulent transfers occurred in September 2010 and thereafter. The Bayuk
18 Trust executed a tolling agreement on November 30, 2011 to toll any statute of limitations
19 applicable to the fraudulent transfer of property to the Bayuk Trust, which tolling agreement tolled
20 the time period to file until June 18, 2013 and the Complaint was filed in December 2013. The
21 purported nature of the Bayuk Trust as a spendthrift trust subject to NRS 166.170 was not disclosed
22 until the Claim of Exemption. Moreover, any defenses based on NRS 166.170 have been waived
23 as a result of the failure of Bayuk or the Bayuk Trust to raise such defenses prior to the Claim of
24 Exemption.

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Based upon review of the entire file, the foregoing, and good cause appearing:

IT IS HEREBY ORDERED that the Claim of Exemption is denied.

IT IS FURTHER ORDERED that the Third Party Claim is denied.

Dated this _____ day of _____, 2019.

DISTRICT JUDGE