

IN THE SUPREME COURT OF THE STATE OF NEVADA

WEISER ASSET MANAGEMENT, LTD., A
BAHAMAS COMPANY; AND WEISER
(BAHAMAS) LTD.,
A BAHAMAS COMPANY
Appellants,

vs.

ATHANASIOS SKARPELOS, AN INDIVIDUAL,
Respondent.

Electronically Filed
Supreme Court No. 79526
Oct 10 2019 03:54 p.m.
District Court Case No. CV1902259
Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Judicial District Second **Department** 10

County Washoe Judge Elliot Sattler

District Ct. Case No. CV15-02259

2. Attorney filing this docketing statement:

Attorney Jeremy J. Nork; Frank Z. LaForge Telephone (775)327-3000

Firm HOLLAND & HART LLP

Address 5441 Kietzke Lane, 2nd Floor Reno, Nevada 89511

Client(s) Weiser Asset Management, Ltd and Weiser (Bahamas), Ltd

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Dane W. Anderson; Seth J. Adams Telephone (775) 688-3000

Firm Woodburn and Wedge

Address 6100 Neil Road, Ste. 500, Reno, Nevada 89511

Client(s) Athanasios Skarpelos, an individual

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to Prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify):_____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This case was initiated by the Plaintiff Nevada Agency and Transfer Company as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of stock in Anavex Life Sciences Corp. The Plaintiff was discharged from the action in an Order Granting Motion for Discharge on January 23, 2019. A bench trial began on January 28, 2019, to resolve the competing claims between Skarpelos and Weiser. The Court's Findings of Fact, Conclusion of Law and Judgment entered on April 22, 2019 determined that Skarpelos was the owner of the shares and also awarded Weiser \$245,464.64 against Skarpelos. On April 25, 2019, Skarpelos filed a post-judgment Motion for Attorney's Fees. The Court granted the motion on August 9, 2019, awarding Skarpelos \$216,900.50 against Weiser.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether the District Court abused its discretion in granting Skarpelos' Motion for Attorney's Fees.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is not presumptively retained by the Supreme Court under NRAP 17(a) and not presumptively assigned to the Court of Appeals pursuant to NRAP 17(b).

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? Bench

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from August 9, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served August 9, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed August 29, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The District Court's order qualifies as an appealable final judgment in this matter pursuant to NRAP 3A(b)(1).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Nevada Agency and Transfer Company, Weiser Asset Management, Ltd., Weiser (Bahamas), and Athanasios Skapelos

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Nevada Agency and Transfer Company was discharged and dismissed from the action by order entered January 23, 2019

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Weiser: Declaratory Relief

Skarpelos: Declaratory Relief

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

- (a) Specify the claims remaining pending below:
- (b) Specify the parties remaining below:
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?
 - ☐ Yes
 - ☐ No
- (a) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?
 - ☐ Yes
 - ☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross- claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Weiser Asset Management, Ltd. and
Weiser (Bahamas) Ltd.
Name of appellants

Jeremy J. Nork
Name of counsel of record

October 10, 2019
Date

/s/ Jeremy J. Nork
Signature of counsel of record

Nevada, Washoe County
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 10th day of October 2019, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

John F. Murtha
Dane W. Anderson
Seth J. Adams
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, Nevada 89505
jmurtha@woodburnandwedge.com
danderson@woodburnandwedge.com
sadams@woodburnandwedge.com

Lansford Levitt
4230 Christy Way
Reno, NV 89519
Settlement Judge

Attorneys for Respondent
Athanasios Skarpelos

/s/ Martha Hauser
An Employee of Holland & Hart LLP

DOCKETING STATEMENT
ATTACHMENTS

TAB #	DESCRIPTION	DATE FILED
1	Amended Complaint	4/29/2016
2	Answer to Amended Complaint and Cross-Claim (by Defendant Skarpelos)	5/23/2016
3	Weiser's Answer and Cross-Claim	5/24/2016

TAB # 1

AMENDED COMPLAINT

TAB # 1

CODE: 1425
ALEXANDER H. WALKER III
Nevada State Bar #8712
57 West 200 South, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-0100
Email: alex@awalkerlaw.com

CLAY P. BRUST
Nevada State Bar #5234
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Email: cbrust@rbsllaw.com
Attorneys for Plaintiff

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

NEVADA AGENCY AND TRANSFER
COMPANY, a Nevada corporation,

Plaintiff,

vs.

WEISER ASSET MANAGEMENT, LTD., a
Bahamas company, WEISER (BAHAMAS)
LTD, a Bahamas company, ATHANASIOS
SKARPELOS, an individual, and DOES 1
through 10,

Defendants.

Case No. CV15 02259

Dept. No. 10

AMENDED COMPLAINT

COMES NOW, the above named Plaintiff, Nevada Agency and Transfer Company, by
and through its attorneys, and hereby alleges as follows:

1. Plaintiff Nevada Agency and Transfer Company ("NATCO") is a Nevada
corporation with its principal place of business located in Reno, Nevada.

1 2. Based upon information and belief Plaintiff alleges that Defendant Weiser
2 Asset Management, Ltd. is a company organized and operated under the laws of the Bahamas.

3 3. Based upon information and belief, Plaintiff alleges that Defendant Weiser
4 (Bahamas) Ltd. is a company organized and operated under the laws of the Bahamas, is also
5 known as, or does business as, Weiser Ltd and has asserted a claim or interest in the subject
6 matter detailed in this Amended Complaint.

7 4. Based upon information and belief Plaintiff alleges that Athanasios Skarpelos
8 is an individual who resides in the nation of Greece.

9 5. Plaintiff does not know the true names and capacities of Defendants sued
10 herein as DOES 1 through 10, inclusive, and therefore sues these Defendants by fictitious
11 names. Plaintiff is informed and believes, and thereon alleges, that each of these fictitiously
12 named Defendants are responsible in some actionable manner for the damages herein alleged.
13 Plaintiff requests leave of Court to amend the Complaint to name such Defendants
14 specifically when their identities become known.
15

16 **GENERAL ALLEGATIONS**

17 **A. The Business of Nevada Agency and Transfer Company.**

18 6. Since 1903, Plaintiff has been engaged in the stock transfer and registrar
19 business. Plaintiff acts as the stock transfer agent and registrar for numerous corporations.

20 7. Companies, especially companies that have publicly traded securities, typically
21 use transfer agents to keep track of the individuals and entities that own their stocks, bonds
22 and other securities. Most transfer agents generally perform ministerial functions for
23 corporations such as:

24 a. Issuing and canceling stock certificates to reflect changes in ownership;
25

1 b. Acting as an intermediary for the company for ministerial functions such as
2 paying cash and stock dividends, or other distributions to stockholders. In addition, transfer
3 agents act as proxy agent (sending out proxy materials), exchange agent (exchanging a
4 company's stock in a merger), tender agent (tendering shares in a tender offer), and mailing
5 agent (mailing the company's quarterly, annual, and other reports); and

6 c. Handling lost, destroyed, or stolen certificates. Transfer agents help
7 shareholders when a stock certificate has been lost, destroyed, or stolen.

8 8. As a transfer agent for public companies, NATCO is registered with the
9 Securities and Exchange Commission and NATCO operations are regularly inspected and
10 reviewed by examiners from the Securities and Exchange Commission.

11 **B. The Skarpelos's Lost Stock Affidavit**

12 9. During all time relevant to these allegations, NATCO has served as the transfer
13 agent and registrar for a Nevada corporation named Anavex Life Sciences Corp. ("Anavex").
14

15 10. On October 29, 2009, in the ordinary course of its business as Anavex's
16 transfer agent, NATCO effected a transfer of Anavex shares which had previously been
17 issued at the direction of Anavex's board of directors. As part of that transfer, NATCO issued
18 certificate number 753 registered in the name of Athanasios Skarpelos representing what was
19 then 6,633,332 shares of Anavex's common stock. Such shares were validly issued and
20 NATCO placed a restrictive legend on certificate 753 at the direction of Anavex and delivered
21 the share certificate to the registered owner.

22 11. On or about March 29, 2013, Defendant Skarpelos executed and delivered to
23 NATCO documentation, including an Affidavit for Lost Certificate, indicating that certificate
24 753, along with another Anavex certificate registered in his name, had been lost and requested
25 that NATCO issue a replacement certificate for the two lost certificates.

1 12. On that same date, Defendant Skarpelos executed and delivered to NATCO a
2 Stop Transfer Order under the terms of which Defendant Skarpelos, as the registered owner of
3 certificate number 753 instructed NATCO to place a “stop transfer order” against certificate
4 number 753.

5 13. At the time he requested the lost certificate, Defendant Skarpelos was the only
6 officer and director of Anavex.

7 14. As the only officer and director of Anavex, Defendant Skarpelos also executed
8 and delivered to NATCO a Corporate Indemnity to Nevada Agency and Transfer Company
9 for Reissuance of Lost Certificate under the terms of which Anavex agreed to “indemnify
10 Nevada Agency and Transfer Company against an and all costs, damages, actions, expenses,
11 and attorney’s fees which might result from the issuance of a duplicate certificate to replace”
12 certificate 753.

13 15. Based upon the representations of Defendant Skarpelos and Anavex, NATCO
14 issued a replacement certificate, certificate number 975 (the “Replacement Certificate”), for
15 the two lost certificates. NATCO also placed stop transfer orders against the two lost
16 certificates per the representations of Defendant Skarpelos and Anavex.
17

18 **C. Weiser’s Claim to Shares Represented by Certificate Number 753.**

19 16. On October 30, 2015, Defendant Weiser, through its attorney Ernesto Alvarez,
20 delivered an e-mailed letter to NATCO in which Defendant Weiser claimed:

21 a. on or about July 12, 2013, Defendant Skarpelos sold 3,316,666 shares of
22 common stock of Anavex, but did not mention to whom Defendant Skarpelos had sold such
23 shares;

24 b. Defendant Weiser had delivered to Nevada Agency and Transfer, in its
25

1 capacity as transfer agent for Anavex, certificate 753, though in fact as of October 30, 2015
2 Weiser had in fact not delivered certificate number 753 to NATCO;

3 c. Defendant Weiser had delivered to NATCO a stock power executed by
4 Defendant Skarpelos in favor of Defendant Weiser when Defendant Weiser had in fact not
5 delivered such a stock power;

6 d. Defendant Skarpelos has obtained the Replacement Certificate under false
7 pretenses; and,

8 e. that Defendant Weiser was a “protected purchaser” of 3,316,666 of Anavex
9 stock, though Defendant Weiser offered no documentation to support that claim.

10 17. In its October 30, 2015, letter to NATCO Defendant Weiser demanded
11 NATCO:

12 a. place a stop transfer restriction on the shares of Anavex represented by the
13 Replacement Certificate;

14 b. cancel that Replacement Certificate; and,

15 c. register on Anavex’s stock transfer records Weiser’s ownership of 3,316,666
16 share of Anavex common stock.

17 18. On or about November 3, 2015, NATCO, through its counsel, responded to
18 Defendant’s Weiser’s October 30, 2015 letter and asked Defendant Weiser to:

19 a. provide NATCO’s counsel with copies of the documents evidencing Defendant
20 Weiser’s claim that it had presented certificate number 753 to NATCO prior to October 30,
21 2015;

22 b. provide to NATCO’s counsel copies of certificate 753 and any instruction
23 Defendant Weiser claimed to have submitted to NATCO prior to October 30, 2015;
24
25

1 c. indicate, for purposes of Defendant Weiser's request for stop transfer
2 instructions, if Defendant Weiser was making a request under section 8-403 that the issuer not
3 register a transfer.

4 d. identify the facts that support Defendant's Weiser's claim that it was an
5 "appropriate person" as that term is identified under the applicable provisions of the Uniform
6 Commercial Code for purposes of requesting a stop transfer order.

7 19. As of the date of this complaint, Defendant Weiser has not:

8 a. provided NATCO's counsel with copies of the documents evidencing
9 Defendant Weiser's claim that it had presented certificate number 753 to NATCO prior to
10 October 30, 2015;

11 b. provided to NATCO's counsel copies of any instruction Defendant Weiser
12 claimed to have submitted to NATCO prior to October 30, 2015;

13 c. indicated, for purposes of Defendant Weiser's request for stop transfer
14 instructions, if Defendant Weiser was making a request under section 8-403 that the issuer not
15 register a transfer.

16 d. identified the facts that support Defendant's Weiser's claim that it was an
17 "appropriate person" as that term is identified under the applicable provisions of the Uniform
18 Commercial Code for purposes of requesting a stop transfer order in connection with the
19 Replacement Certificate.
20

21 20. On or about November 13, 2015, Defendant Weiser delivered an emailed letter
22 to counsel for NATCO which indicated that;

23 a. Anavex had delivered and was in the process of delivering to NATCO
24 certificate number 753 together with a stock power executed by Defendant Skarpelos in favor
25

1 of Defendant Weiser;

2 b. Defendant Weiser was providing to NATCO under separate letter instructions
3 for the transfer of 3,316,666 shares into the name of Defendant Weiser;

4 c. Defendant Weiser was a “protected purchaser” as that term is defined under
5 Nevada Revised Statute Section 104.8403 because Defendant Weiser had purchased a
6 certificated Security for value without notice of any adverse claim to the security at the time
7 of such purchase and thereafter obtained control of the certificated security.

8 21. As of the date of this complaint, Defendant Weiser has not provided
9 documentation that it had purchased shares represented by certificate 753 or the Replacement
10 Certificate.

11 22. On November 16, 2015, NATCO received certificate number 753 which
12 appeared to have been forwarded to NATCO by an entity known as Primoris Group. With
13 certificate number 753 NATCO received a stock power, or a copy of a stock power (the
14 “Stock Power”), which purports to be signed by the registered owner of certificate number
15 753 in blank, that is, while the stock power bears a signature, it does not contain instructions
16 regarding any transferee.

17 23. The signature on the Stock Power is not Medallion Guaranteed.

18 24. Certificate number 753 bears a restrictive legend which states, “[t]he shares
19 represented by this certificate have not been registered under the Securities Act of 1933, and
20 may not be sold, transferred or otherwise disposed unless in the opinion of counsel
21 satisfactory to the issuer, the transfer qualifies for an exemption from or exemption to the
22 registration provisions thereof.”

23 25. Defendant Weiser did not submit an opinion of counsel with its request to
24
25

1 transfer the shares represented by certificate number 753.

2 26. Defendant Weiser has not tendered any transfer fee to NATCO.

3 27. Defendant Weiser claims it will be damaged if NATCO does not immediately
4 transfer 3,316,666 shares of Anavex common stock to Defendant Weiser in the manner
5 Defendant Weiser has demanded.

6 **D. Defendant Skarpelos's Claim to Certificate Number 753.**

7 28. On November 2, 2015, NATCO forwarded a copy of Defendant Weiser's
8 October 30, 2015 letter to Defendant Skarpelos.

9 29. On or about November 12, 2015, Defendant Skarpelos, through his attorney,
10 informed NATCO and Defendant Weiser of Defendant Skarpelos's claim that:

11 a. Defendant Skarpelos did provide Defendant Weiser with certificates 753 and
12 660 representing shares of Anavex common stock in order to establish a brokerage account
13 with Defendant Weiser;

14 b. Defendant Weiser had represented itself to Defendant Skarpelos as a registered
15 broker-dealer.

16 c. The process of opening Defendant Skarpelos's account with Defendant Weiser
17 was not going smoothly.

18 d. Defendant Skarpelos learned that Defendant Weiser was not a properly
19 licensed broker-dealer in the United States.

20 e. Defendant Skarpelos tried many times to reach his contact at Defendant Weiser
21 to get his shares back, but was unsuccessful in connecting with anyone in authority at
22 Defendant Weiser.

23 f. Defendant Skarpelos became alarmed when Defendant Weiser stopped
24
25

1 answering its phones.

2 g. Defendant Skarpelos was worried that Defendant Weiser was not reliably
3 holding the shares he had delivered to Defendant Weiser, including the shares represented by
4 certificate number 753, and contacted NATCO to see about cancelling the share certificates
5 he had delivered to Weiser and getting a new one.

6 h. Through his efforts, Defendant Skarpelos obtained the Replacement
7 Certificate.

8 i. In July of 2013, Defendant Weiser did re-establish contact with Defendant
9 Skarpelos and informed him Defendant Weiser would like to arrange the sale of Defendant
10 Skarpelos's shares of Anavex common stock.

11 j. Defendant Skarpelos was prepared to sell his Anavex shares on the right
12 conditions and did sign a purchase agreement on July 9, 2013 with regard to the sale of shares
13 represented by the Replacement Certificate, not the shares represented by certificate 753, a
14 certificate which had been cancelled.

15 k. Defendant Skarpelos kept in his possession the original Replacement
16 Certificate together with the original Stock Power. Defendant Skarpelos did not deliver the
17 original signed Stock Power to Defendant Weiser.

18 l. Defendant Skarpelos would only deliver the original Replacement Certificate
19 and Stock Power to Defendant Weiser after the purchase price had been paid.

20 m. The purchase price for the shares subject to any agreement between Defendant
21 Skarpelos and Defendant Weiser never has been paid.

22 n. The terms of any sale agreement between Defendant Skarpelos and Defendant
23 Weiser have expired.
24
25

1 o. Defendant Weiser is not a protected purchaser because defendant Weiser never
2 gave value for the share it claims, and cannot claim that it did not have notice of an adverse
3 claim.

4 p. Defendant Weiser knew and knows that Defendant Skarpelos lays claim to the
5 shares which Defendant Weiser claims, and knew and knows Defendant Skarpelos has not
6 sold such shares.

7 q. Defendant Weiser is holding certificate 753, and the other cancelled Anavex
8 certificate, improperly.

9 r. Certificate 753, and the other cancelled certificate, should be returned to
10 NATCO to complete the record of cancellation.

11 **E. Defendant Weiser (Bahamas) Ltd claim.**

12 30. Following the filing of the Complaint in this matter, counsel for Weiser
13 accepted service of process on Weiser's behalf and appeared as counsel for Weiser in this
14 matter.
15

16 31. After appearing in this matter, counsel for Weiser indicated that an entity
17 known as Weiser (Bahamas) Ltd, also known as or doing business as Weiser Ltd, ("Weiser
18 Bahamas") asserts a claim to the shares of Anavex and/or the Replacement Certificate similar
19 to, or identical to, the claims asserted by Weiser, and that Weiser Bahamas is an appropriate
20 party to be named in this matter for the resolution of the claims identified in this Amended
21 Complaint.

22 32. Based upon the information obtained by Plaintiff from Defendant Weiser
23 Bahamas following the filing of the Complaint, Plaintiff alleges that Defendant Weiser
24 Bahamas asserts claims or interests in the Replacement Certificate identical or similar to the
25

1 claims asserted by Defendant Weiser and therefore Defendant Weiser Bahamas should be
2 subject to this action and that Plaintiff is entitled to relief against Weiser Bahamas identical or
3 similar to the relief Plaintiff seeks herein against Weiser.

4 **FIRST CLAIM FOR RELIEF**
5 **(Interpleader of Shares)**

6 33. Plaintiff incorporates the allegations of the paragraphs above as though fully
7 set forth herein.

8 34. Defendant Weiser, Defendant Weiser Bahamas and Defendant Skarpelos have
9 asserted claims to the shares represented by certificate number 753 which are adverse to one
10 another.

11 35. NATCO cannot determine which defendant is entitled to the shares represented
12 by certificate 753.

13 36. As such NATCO is a disinterested stakeholder who may be exposed to
14 multiple liabilities.

15 37. NATCO stands ready willing and able to tender certificate number 753 to the
16 Court or take action in connection with certificate number 753 as the Court directs.

17 38. NATCO is entitled to an order of the Court which:

18 a. requires Defendant Weiser, Defendant Weiser Bahamas and Defendant
19 Skarpelos to litigate their respective claims to certificate number 753 herein;

20 b. releases and forever discharges NATCO from liability related to or arising
21 from the competing claims of the Defendants to certificate number 753;

22 c. directs NATCO, upon resolution of the Defendants' competing claims, to
23 transfer, cancel or otherwise dispose of the shares represented by certificate 753 as the Court
24 deems legally proper, fair, just and equitable.
25

1 39. Plaintiff is entitled to its attorneys fees and costs in connection with this action.

2 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them,
3 as follows:

4 1. For an order of the Court which:

5 a. requires Defendant Weiser, Defendant Weiser Bahamas and Defendant
6 Skarpelos to litigate their respective claims to certificate number 753 herein;

7 b. releases and forever discharges NATCO from liability related to or arising
8 from the competing claims of the Defendants to certificate number 753;

9 c. directs NATCO, upon resolution of the Defendants' competing claims, to
10 transfer, cancel or otherwise dispose of the share represented by certificate 753 as the Court
11 deems legally proper, fair, just and equitable.

12 2. For costs of suit, including reasonable attorneys fees, incurred herein; and,

13 3. For such other and further relief as the Court may deem just and proper.
14

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

17 The undersigned does hereby affirm that the preceding document and/or attachments
18 do not contain the social security number of any person.

19 Dated this 29th day of April, 2016.

20 ALEXANDER H. WALKER III

21
22 /s/ Alexander H. Walker III
23 Alexander H. Walker III
24 ALEXANDER H. WALKER III, LLC
25 57 West 200 South, Suite 400
 Salt Lake City, Utah 84101
 Attorney for Nevada Agency and Transfer Co.

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2016, I caused to be served a copy of the foregoing on all parties via the Court's electronic filing system.

/s/ Alexander H. Walker III
Alexander H. Walker III
ALEXANDER H. WALKER III, LLC
57 West 200 South, Suite 400
Salt Lake City, Utah 84101
Attorney for Nevada Agency and Transfer Co.

TAB # 2

ANSWER TO AMENDED COMPLAINT AND
CROSS-CLAIM
(by Defendant Skarpelos)

TAB # 2

1 Code 1155
2 JOHN F. MURTHA, ESQ.
3 **Nevada Bar No. 835**
4 W. CHRIS WICKER, ESQ.
5 **Nevada Bar No. 1037**
6 WOODBURN AND WEDGE
7 6100 Neil Road, Ste. 500
8 Reno, Nevada 89505
9 Telephone : (775) 688-3000
10 imurtha@woodburnandwedge.com
11 cwicker@woodburnandwedge.com

12 Attorneys for Defendant/Cross-Claimant
13 Athanasios Skarpelos

14 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

15 IN AND FOR THE COUNTY OF WASHOE

16 ***

17 NEVADA AGENCY AND TRANSFER
18 COMPANY, a Nevada corporation,

19 Plaintiff,

20 vs.

Case No. CV15-02259
Dept. No. 10

21 WEISER ASSET MANAGEMENT, LTD.,
22 a Bahamas company; WEISER (BAHAMAS)
23 LTD., a Bahamas company, ATHANASIOS
24 SKARPELOS, an individual; and
25 DOES 1-10,

26 Defendants.

27 _____/
28 ATHANASIOS SKARPELOS, an individual

29 Cross-Claimant,

30 vs.

31 WEISER ASSET MANAGEMENT, LTD., a
32 Bahamas company; and WEISER (BAHAMAS)
33 LTD., a Bahamas company,

34 Cross-Defendants.
35 _____/

**ANSWER TO AMENDED COMPLAINT AND CROSS-CLAIM
(By Defendant Skarpelos)**

Defendant Athanasios Skarpelos, by and through his counsel Woodburn and Wedge, hereby answers the Amended Complaint filed herein on April 29, 2016, as follows:

1. The allegation in Paragraph 1 is admitted.

2. Defendant Skarpelos is without sufficient information to form a belief as to the truth of the allegation in Paragraph 2 and, therefore, denies the same.

3. Defendant Skarpelos is without sufficient information to form a belief as to the truth of the allegations of Paragraph 3 and, therefore, denies the same.

4. The allegation in Paragraph 4 is admitted.

5. No answer is required to the allegations of Paragraph 5, but out of an abundance of caution Defendant Skarpelos repeats and realleges each and every admission, denial and other response set forth above.

6. The allegations of Paragraph 6 are admitted.

7. The allegations of Paragraph 7 are admitted.

8. Defendant Skarpelos is without sufficient information to form a belief as to the truth of the allegation in Paragraph 8 and, therefore, denies the same.

9. The allegation in Paragraph 9 is admitted.

10. The allegations of Paragraph 10 are admitted.

11. The allegations of Paragraph 11 are admitted.

12. The allegations of Paragraph 12 are admitted.

13. Responding to the allegations of Paragraph 13, Defendant Skarpelos admits he has been an officer and director of Anavex Life Sciences Corp. ("Anavex"),

1 but cannot recall whether he was Anavex's sole officer and director at the time
2 indicated in Paragraph 13 and, therefore, denies the same.

3
4 14. Responding to the allegations of Paragraph 14, Defendant Skarpelos
5 admits he has been an officer and director of Anavex, but cannot recall whether he
6 was Anavex's sole officer or director at the time indicated in Paragraph 14 and,
7 therefore, denies the same.

8 15. Responding to the allegations of Paragraph 15, Defendant Skarpelos
9 admits NATCO issued the Replacement Certificate, but it is without sufficient
10 information to form a belief as to the truth of the remaining allegations of Paragraph 15
11 and, therefore, denies the same.

12
13 16. Responding to the allegations of Paragraph 16, Defendant Skarpelos
14 admits Defendant Weiser sent a letter to NATCO, but he denies the truth of the matters
15 asserted in the letter and affirmatively pleads that Defendant Weiser has absolutely no
16 claim, legal or equitable, to any Anavex stock arising out of, related to, or derived from
17 any of the stock certificates referenced in the Amended Complaint.

18 17. Responding to the allegations of Paragraph 17, Defendant Skarpelos
19 admits Defendant Weiser sent the letter to NATCO, but he denies Defendant Weiser
20 has any right to make the claims asserted in the letter and affirmatively pleads that
21 Defendant Weiser has absolutely no claim, legal or equitable, to any Anavex stock
22 arising out of, related to, or derived from any of the stock certificates referenced in the
23 Amended Complaint.
24

25 18. The allegations of Paragraph 18 are admitted.

26 19. The allegations of Paragraph 19 are admitted.
27
28

1 20. Defendant Skarpelos is without sufficient information to form a belief as
2 to the truth of the allegations of Paragraph 20 and, therefore, denies the same.

3 21. The allegation in Paragraph 21 is admitted.

4 22. Defendant Skarpelos is without sufficient information to form a belief as
5 to the truth of the allegations of Paragraph 22 and, therefore, denies the same.

6 23. Defendant Skarpelos is without sufficient information to form a belief as
7 to the truth of the allegation in Paragraph 23 and, therefore, denies the same.

8 24. The allegation in Paragraph 24 is admitted.

9 25. Defendant Skarpelos is without sufficient information to form a belief as
10 to the truth of the allegation in Paragraph 25 and, therefore, denies the same.

11 26. Defendant Skarpelos is without sufficient information to form a belief as
12 to the truth of the allegation in Paragraph 26 and, therefore, denies the same.

13 27. Defendant Skarpelos is without sufficient information to form a belief as
14 to the truth of the allegation in Paragraph 27 and, therefore, denies the same.

15 28. The allegation in Paragraph 28 is admitted.

16 29. The allegations of Paragraph 29 are admitted.

17 30. The allegations of Paragraph 30 are admitted.

18 31. Defendant Skarpelos is without sufficient information to form a belief as
19 to the truth of the allegations of Paragraph 31 and, therefore, denies the same.

20 32. Defendant Skarpelos is without sufficient information to form a belief as
21 to the truth of the allegations of Paragraph 32 and, therefore, denies the same.

22 33. No answer is required to the allegation in Paragraph 33, but out of an
23 abundance of caution Defendant Skarpelos repeats and realleges each and every
24 admission, denial and other response set forth above.
25
26
27
28

34. The allegation in Paragraph 34 is admitted.

35. The allegation in Paragraph 35 is admitted.

36. The allegation in Paragraph 36 is admitted.

37. Defendant Skarpelos is without sufficient information to form a belief as to the truth of the allegation in Paragraph 37 and, therefore, denies the same.

38. Defendant Skarpelos is without sufficient information to form a belief as to the truth of the allegation in Paragraph 38 and, therefore, denies the same.

39. Defendant Skarpelos is without sufficient information to form a belief as to the truth of the allegation in Paragraph 39 and, therefore, denies the same.

DEFENSES

40. Defendant Skarpelos admits the Plaintiff ("NATCO") is entitled to an order allowing it to tender the stock certificates referenced in the Amended Complaint (the "Disputed Stock") to the Court or to hold onto such Disputed Stock until such time as the Court enters an order declaring Defendant Skarpelos to be the sole, true and rightful owner of all of the Disputed Stock, but to the extent the allegations in the Amended Complaint could be interpreted as establishing a claim of ownership to the Disputed Stock in the name of Weiser Asset Management, Ltd., ("Weiser") or Weiser (Bahamas) Ltd. ("Bahamas") the Amended Complaint fails to state a claim upon which relief may be granted.

41. Defendant Skarpelos is entitled to declaratory relief to the effect that he is the sole, true and rightful owner of all of the Disputed Stock to the exclusion of Weiser, Bahamas and any other person or entity who may claim ownership to the same on account of, or derived from, Weiser's or Bahamas' claims to the Disputed Stock.

1 42. To the extent Weiser or Bahamas claim ownership to any or all of the
2 Disputed Stock, such claims must be denied on the basis of estoppel.

3 43. To the extent Weiser or Bahamas claim ownership to any or all of the
4 Disputed Stock, such claims must be denied on the equitable doctrine of laches.

5 44. To the extent Weiser or Bahamas claim ownership to any or all of the
6 Disputed Stock, such claims must be denied on the basis no binding or enforceable
7 contract regarding the sale of the Disputed Stock by Skarpelos to Weiser, Bahamas or
8 any other person or entity claiming through them, has ever been in existence.

9 45. Without admitting that an enforceable contract exists between Skarpelos
10 and Weiser or Bahamas, to the extent Weiser or Bahamas claim ownership to any or
11 all of the Disputed Stock under the terms of a contract, such claims must be denied for
12 lack of consideration.

13 46. Without admitting that an enforceable contract exists between Skarpelos
14 and Weiser or Bahamas, to the extent Weiser or Bahamas claim ownership to any or
15 all of the Disputed Stock under the terms of a contract, such claims must be denied for
16 failure of consideration.

17 47. Without admitting that an enforceable contract exists between Skarpelos
18 and Weiser or Bahamas, to the extent Weiser or Bahamas claim ownership to any or
19 all of the Disputed Stock under the terms of a contract, such claims must be denied by
20 reason of Weiser's and/or Bahamas' breaches of contract.

21 48. Without admitting that an enforceable contract exists between Skarpelos
22 and Weiser or Bahamas, to the extent Weiser or Bahamas claim ownership to any or
23 all of the Disputed Stock under the terms of a contract, such claims must be denied
24
25
26
27
28

1 because any contract under which Weiser or Bahamas claim to have been a registered
2 stock broker, stock agent or stock dealer is unenforceable on the basis of illegality.

3
4 49. To the extent Weiser or Bahamas claim ownership to any or all of the
5 Disputed Stock, such claims must be denied because of Weiser's and/or Bahamas'
6 fraudulent conduct.

7 50. To the extent Weiser or Bahamas claim ownership to any or all of the
8 Disputed Stock, such claims must be denied by reason of the statute of frauds.

9 51. To the extent Weiser or Bahamas claim ownership to any or all of the
10 Disputed Stock, such claims must be denied by reason of the running of the applicable
11 statutes of limitations.

12
13 52. To the extent Weiser or Bahamas claim ownership to any or all of the
14 Disputed Stock, such claims have been knowingly and validly waived by Weiser and
15 Bahamas.

16 53. Pursuant to the provisions of FRCP 11, at the time of filing this Answer
17 to Amended Complaint and Cross-Claim, all possible defenses may not have been
18 alleged inasmuch as insufficient facts and other relevant information may not have
19 been available after a reasonable inquiry and, therefore, Defendant Skarpelos
20 reserves the right to amend this Answer to assert additional defenses should additional
21 defenses become evident as a result of discovery in this matter.

22
23 WHEREAS Defendant Skarpelos prays for relief as follows:

24 1. For an order of the Court declaring him to be the sole, true and rightful
25 owner of all of the legal and equitable interests in and to the Disputed Stock;

26 2. For an order of the Court declaring that Weiser, Bahamas or any other
27 person or entity claiming any ownership to the Disputed Stock through any claim of
28

1 ownership by Weiser or Bahamas, have no claim of ownership to the Disputed Stock,
2 legal or equitable;

3
4 3. For an order of the Court authorizing NATCO to tender all of the
5 certificates evidencing the Disputed Stock to the Court or, alternatively, directing
6 NATCO to take no action regarding any of the Disputed Stock without a further order
7 of the Court;

8 4. For costs of suit;

9 5. For an award of reasonable attorney's fees incurred by Skarpelos in the
10 defense of the matters set forth in the Complaint; and

11 6. For such other and further relief as to the Court seems just and equitable
12 under the circumstances.
13

14
15 **CROSS-CLAIM AS AGAINST DEFENDANTS**
16 **WEISER ASSET MANAGEMENT, LTD. AND**
17 **WEISER (BAHAMAS) LTD.**
(Declaratory Relief)

18 Comes now Defendant/Cross-Claimant Athanasios Skarpelos ("Skarpelos"), by
19 and through his attorneys Woodburn and Wedge, who complains and alleges as
20 against Defendants/Cross-Defendants Weiser Asset Management, Ltd. ("Weiser") and
21 Weiser (Bahamas) Ltd. ("Bahamas") as follows:

22 1. By reason of the Allegations set forth in the Amended Complaint filed
23 herein on April 29, 2016, it is clear there is a dispute between Skarpelos, Weiser and
24 Bahamas as to the ownership of the Disputed Stock.
25

26 2. For purposes of describing the nature of the dispute between Skarpelos,
27 Weiser and Bahamas, Skarpelos hereby incorporates the allegations of: (a) the
28

1 Amended Complaint; (b) his Answer to the Amended Complaint set forth above; and
2 (c) his defenses to the Amended Complaint also set forth above as if set forth in their
3 entirety.
4

5 3. By reason of the allegations of the Amended Complaint and Skarpelos'
6 answer and defenses thereto, a true and justiciable case and controversy exists
7 between Skarpelos, Weiser and Bahamas as to the ownership of the Disputed Stock.

8 4. At all times relevant to the matters set forth in the Amended Complaint
9 and this Cross-Claim, Skarpelos was the sole, true and rightful owner of all of the legal
10 and equitable interests in the Disputed Stock.
11

12 5. At no time relevant to the matters set forth in the Amended Complaint
13 and this Cross-Claim did Weiser, Bahamas or any other person or entity making a
14 claim through them, have any right, title, interest or claim to any legal or equitable
15 interests in the Disputed Stock by reason of contract or any other legal or equitable
16 theory.
17

18 6. Pursuant to Chapter 30, Nevada Revised Statutes, Nevada courts may
19 issue declaratory judgments. Specifically, NRS §30.030 provides that "courts of record
20 shall have power to declare rights, status and other legal relations whether or not
21 further relief is or could be claimed."

22 7. By reason of Nevada's Declaratory Judgment statutes (NRS §§30.010,
23 et. seq.), Skarpelos is entitled to a declaratory judgment from this Court that he is the
24 sole, true and rightful owner of all of the legal and equitable interests in the Disputed
25 Stock.
26

27 ///

28 ///

1 WHEREFORE, Skarpelos prays for relief as follows:

2 1. For an order of the Court declaring him to be the sole, true and rightful
3 owner of all of the legal and equitable interests in and to the Disputed Stock;

4 2. For an order of the Court declaring that Weiser, Bahamas or any other
5 person or entity claiming any ownership to the Disputed Stock through any claim of
6 ownership by Weiser or Bahamas have no claim of ownership to the Disputed Stock,
7 legal or equitable;

8 3. For an order of the Court directing NATCO to take such action as is
9 necessary to reflect in Anavex's corporate books and records that Skarpelos is the
10 sole, true and rightful owner of all of the legal and equitable interests in the Disputed
11 Stock;

12 4. For costs of suit;

13 5. For an award of reasonable attorney's fees incurred by Skarpelos in
14 connection with the prosecution of the Cross-Claim; and
15 For such other and further relief as to the Court seems just and equitable under the
16 circumstances.

17 DATED this 23rd day of May, 2016.

18 WOODBURN AND WEDGE

19 By 

20 John F. Murtha, Esq.
21 W. Chris Wicker, Esq.
22 Attorneys for Defendant/
23 Cross-Claimant
24 Athanasios Skarpelos
25
26
27
28


AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the above-entitled document filed in this matter does not contain the social security number of any person whomsoever.

DATED this 23rd day of May, 2016.

WOODBURN AND WEDGE

By



John F. Murtha, Esq.
W. Chris Wicker, Esq.
Attorneys for Defendant/
Cross-Claimant
Athanasios Skarpelos

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the law firm of Woodburn and Wedge, and that on the 23rd day of May, 2016, I caused the foregoing document to be delivered to the parties entitled to notice in this action by:

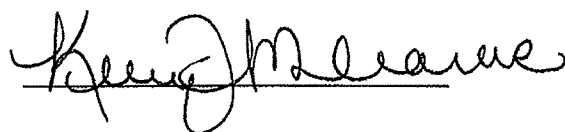
- _____ placing a true copy thereof in a sealed, stamped envelope with the United States Postal Service at Reno, Nevada
- _____ personal delivery
- _____ email
- X electronic filing
- _____ Federal Express or other overnight delivery

as follows:

Alexander H. Walker III, Esq.
57 West 200 South, Ste. 400
Salt Lake City, Utah 84101

Clay P. Brust, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

Jeremy J. Nork, Esq.
Frank Z. LaForge, Esq.
Holland & Hart LLP
5441 Kietzke Lane, 2nd Flr.
Reno, Nevada 89511



TAB # 3

WEISER'S ANSWER AND CROSS-CLAIM

TAB # 3

1 **1137**

2 Jeremy J. Nork (SBN 4017)
3 Frank Z. LaForge (SBN 12246)
4 HOLLAND & HART LLP
5 5441 Kietzke Lane, Second Floor
6 Reno, Nevada 89511
7 Tel: (775) 327-3000; Fax: (775) 786-6179
8 jnork@hollandhart.com
9 fzlaforge@hollandhart.com

6 Attorneys for Defendants/Cross-claimants Weiser

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

10 NEVADA AGENCY AND TRANSFER
11 COMPANY, a Nevada Corporation,

12 Plaintiff,

13 v.

14 WEISER ASSET MANAGEMENT, LTD.,
15 a Bahamas company, WEISER
16 (BAHAMAS) LTD, a Bahamas company,
17 ATHANASIOS SKARPELOS, an
18 individual, and DOES 1 through 10,

19 Defendants.

19 WEISER ASSET MANAGEMENT, LTD.,
20 a Bahamas company, WEISER
21 (BAHAMAS) LTD., a Bahamas company,

22 Cross-claimants,

23 v.

24 ATHANASIOS SKARPELOS, an
25 individual,

26 Cross-defendant.

Case No. CV15-02259

Dept. No. 10

**WEISER'S ANSWER AND CROSS-
CLAIM**

27 Defendants/Cross-claimants Weiser Asset Management, Ltd. and Weiser (Bahamas)
28 Ltd. (collectively "Weiser"), by and through counsel Holland & Hart LLP, for their answer to

1 Nevada Agency And Transfer Co.'s ("NATCO") Amended Complaint, hereby admit, deny, and
2 allege as follows:

3 1. Weiser is without knowledge or information sufficient to form a belief as to the
4 truth or accuracy of the allegation in this paragraph and therefore denies each and every
5 allegation.

6 2. Admit.

7 3. Admit.

8 4. Weiser is without knowledge or information sufficient to form a belief as to the
9 truth or accuracy of the allegation in this paragraph and therefore denies each and every
10 allegation.

11 5. The allegation in this paragraph contains a legal assertion to which no reply is
12 required.

13 **GENERAL ALLEGATIONS**

14 6. Weiser is without knowledge or information sufficient to form a belief as to the
15 truth or accuracy of the allegation in this paragraph and therefore denies each and every
16 allegation.

17 7. Weiser is without knowledge or information sufficient to form a belief as to the
18 truth or accuracy of the allegation in this paragraph and therefore denies each and every
19 allegation.

20 a. Weiser is without knowledge or information sufficient to form a belief as to the
21 truth or accuracy of the allegation in this paragraph and therefore denies each and every
22 allegation.

23 b. Weiser is without knowledge or information sufficient to form a belief as to the
24 truth or accuracy of the allegation in this paragraph and therefore denies each and every
25 allegation.

26 c. Weiser is without knowledge or information sufficient to form a belief as to the
27 truth or accuracy of the allegation in this paragraph and therefore denies each and every
28 allegation.

1 8. Weiser is without knowledge or information sufficient to form a belief as to the
2 truth or accuracy of the allegation in this paragraph and therefore denies each and every
3 allegation.

4 9. Weiser is without knowledge or information sufficient to form a belief as to the
5 truth or accuracy of the allegation in this paragraph and therefore denies each and every
6 allegation.

7 10. Weiser is without knowledge or information sufficient to form a belief as to the
8 truth or accuracy of the allegation in this paragraph and therefore denies each and every
9 allegation.

10 11. Weiser is without knowledge or information sufficient to form a belief as to the
11 truth or accuracy of the allegation in this paragraph and therefore denies each and every
12 allegation.

13 12. Weiser is without knowledge or information sufficient to form a belief as to the
14 truth or accuracy of the allegation in this paragraph and therefore denies each and every
15 allegation.

16 13. Weiser is without knowledge or information sufficient to form a belief as to the
17 truth or accuracy of the allegation in this paragraph and therefore denies each and every
18 allegation.

19 14. Weiser is without knowledge or information sufficient to form a belief as to the
20 truth or accuracy of the allegation in this paragraph and therefore denies each and every
21 allegation.

22 15. Weiser is without knowledge or information sufficient to form a belief as to the
23 truth or accuracy of the allegation in this paragraph and therefore denies each and every
24 allegation.

25 16. Admit.

- 26 a. The document referenced in this paragraph speaks for itself. Weiser
27 denies the remaining allegations of this paragraph to the extent they are
28 inconsistent with such document.

1 b. The document referenced in this paragraph speaks for itself. Weiser
2 denies the remaining allegations of this paragraph to the extent they are
3 inconsistent with such document.

4 c. The document referenced in this paragraph speaks for itself. Weiser
5 denies the remaining allegations of this paragraph to the extent they are
6 inconsistent with such document.

7 d. The document referenced in this paragraph speaks for itself. Weiser
8 denies the remaining allegations of this paragraph to the extent they are
9 inconsistent with such document.

10 e. The document referenced in this paragraph speaks for itself. Weiser
11 denies the remaining allegations of this paragraph to the extent they are
12 inconsistent with such document.

13 17. The document referenced in this paragraph speaks for itself. Weiser denies the
14 remaining allegations of this paragraph to the extent they are inconsistent with such document.

15 a. The document referenced in this paragraph speaks for itself. Weiser
16 denies the remaining allegations of this paragraph to the extent they are
17 inconsistent with such document.

18 b. The document referenced in this paragraph speaks for itself. Weiser
19 denies the remaining allegations of this paragraph to the extent they are
20 inconsistent with such document.

21 c. The document referenced in this paragraph speaks for itself. Weiser
22 denies the remaining allegations of this paragraph to the extent they are
23 inconsistent with such document.

24 18. Weiser admits that counsel for NATCO responded to Weiser's letter. But the
25 document referenced in this paragraph speaks for itself. Weiser denies the remaining allegations
26 of this paragraph to the extent they are inconsistent with such document.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- a. The letter referenced in this paragraph speaks for itself. Weiser denies the remaining allegations of this paragraph to the extent they are inconsistent with such document.
- b. The letter referenced in this paragraph speaks for itself. Weiser denies the remaining allegations of this paragraph to the extent they are inconsistent with such document.
- c. The letter referenced in this paragraph speaks for itself. Weiser denies the remaining allegations of this paragraph to the extent they are inconsistent with such document.
- d. The letter referenced in this paragraph speaks for itself. Weiser denies the remaining allegations of this paragraph to the extent they are inconsistent with such document.

19. There is no allegation in this part of the paragraph to which Weiser must respond.

- a. Deny.
- b. Deny.
- c. Deny.
- d. Deny.

20. Admit.

- a. The letter referenced in this paragraph speaks for itself. Weiser denies the remaining allegations of this paragraph to the extent they are inconsistent with such document.
- b. The letter referenced in this paragraph speaks for itself. Weiser denies the remaining allegations of this paragraph to the extent they are inconsistent with such document.
- c. The letter referenced in this paragraph speaks for itself. Weiser denies the remaining allegations of this paragraph to the extent they are inconsistent with such document.

1 21. Deny.

2 22. Weiser is without knowledge or information sufficient to form a belief as to the
3 truth or accuracy of the allegation in this paragraph and therefore denies each and every
4 allegation.

5 23. Weiser is without knowledge or information sufficient to form a belief as to the
6 truth or accuracy of the allegation in this paragraph and therefore denies each and every
7 allegation.

8 24. Weiser is without knowledge or information sufficient to form a belief as to the
9 truth or accuracy of the allegation in this paragraph and therefore denies each and every
10 allegation.

11 25. Deny.

12 26. Deny.

13 27. Admit.

14 28. Weiser is without knowledge or information sufficient to form a belief as to the
15 truth or accuracy of the allegation in this paragraph and therefore denies each and every
16 allegation.

17 29. Weiser is without knowledge or information sufficient to form a belief as to the
18 truth or accuracy of the allegation in this paragraph and therefore denies each and every
19 allegation.

20 a. Weiser is without knowledge or information sufficient to form a belief as
21 to the truth or accuracy of the allegation in this paragraph and therefore
22 denies each and every allegation.

23 b. Weiser is without knowledge or information sufficient to form a belief as
24 to the truth or accuracy of the allegation in this paragraph and therefore
25 denies each and every allegation.

26 c. Weiser is without knowledge or information sufficient to form a belief as
27 to the truth or accuracy of the allegation in this paragraph and therefore
28 denies each and every allegation.

- d. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- e. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- f. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- g. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- h. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- i. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- j. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- k. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- l. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.

- 1 m. Weiser is without knowledge or information sufficient to form a belief as
2 to the truth or accuracy of the allegation in this paragraph and therefore
3 denies each and every allegation.
4 n. Weiser is without knowledge or information sufficient to form a belief as
5 to the truth or accuracy of the allegation in this paragraph and therefore
6 denies each and every allegation.
7 o. Weiser is without knowledge or information sufficient to form a belief as
8 to the truth or accuracy of the allegation in this paragraph and therefore
9 denies each and every allegation.
10 p. Weiser is without knowledge or information sufficient to form a belief as
11 to the truth or accuracy of the allegation in this paragraph and therefore
12 denies each and every allegation.
13 q. Weiser is without knowledge or information sufficient to form a belief as
14 to the truth or accuracy of the allegation in this paragraph and therefore
15 denies each and every allegation.
16 r. Weiser is without knowledge or information sufficient to form a belief as
17 to the truth or accuracy of the allegation in this paragraph and therefore
18 denies each and every allegation.

19 30. Admit.

20 31. Admit.

21 32. The allegation in this paragraph contains a legal assertion to which no reply is
22 required.

23 **FIRST CLAIM FOR RELIEF**

24 **(Interpleader of Shares)**

25 33. No response is required to the allegation in this paragraph.

26 34. Admit.
27
28

1 35. Weiser is without knowledge or information sufficient to form a belief as to the
2 truth or accuracy of the allegation in this paragraph and therefore denies each and every
3 allegation.

4 36. The allegation in this paragraph contains a legal assertion to which no reply is
5 required.

6 37. The allegation in this paragraph contains a legal assertion to which no reply is
7 required.

8 38. The allegation in this paragraph contains a legal assertion to which no reply is
9 required.

10 a. The allegation in this paragraph contains a legal assertion to which no
11 reply is required.

12 b. The allegation in this paragraph contains a legal assertion to which no
13 reply is required.

14 c. The allegation in this paragraph contains a legal assertion to which no
15 reply is required.

16 d. The allegation in this paragraph contains a legal assertion to which no
17 reply is required.

18 39. The allegation in this paragraph contains a legal assertion to which no reply is
19 required.

20 As for separate affirmative defenses, Weiser alleges:

21 **FIRST AFFIRMATIVE DEFENSE**

22 Weiser is the rightful owner of the stock at issue in NATCO's complaint.

23 **SECOND AFFIRMATIVE DEFENSE**

24 Pursuant to the provisions of Rule 11 of the Rules of Civil Procedure, at the time of the
25 filing of Weiser's Answer, all possible affirmative defenses may not have been alleged
26 inasmuch as facts and other relevant information may not have been available after reasonable
27 inquiry, and therefore, Weiser reserves the right to amend this Answer to allege affirmative
28 defenses if subsequent investigation warrants the same.

1 WHEREFORE, Weiser prays for relief as follows:

- 2 1. An order declaring Weiser to be the sole owner of the stock in dispute;
- 3 2. An order that NATCO immediately deliver to Weiser appropriate certificates of
- 4 the stock in dispute;
- 5 3. For an award of attorney's fees and costs to Weiser; and
- 6 4. All other appropriate relief.

7
8 **WEISER'S CROSS-CLAIM AGAINST DEFENDANT SKARPELOS**

9 Weiser, through its attorneys of record, alleges as follows

- 10 1. Cross-claimant Weiser is organized and operated under the laws of the Bahamas.
- 11 2. On information and belief, Weiser believes that cross-defendant Athanasios
- 12 Skarpelos resides in and is a citizen of Greece.
- 13 3. In July 2013, Weiser and Skarpelos entered into a contract for the sale of a
- 14 certain amount of stock. Skarpelos, the former owner of the stock, agreed to sell it to Weiser.
- 15 4. Weiser performed under the contract.
- 16 5. Skarpelos, although he initially transferred the stock, later took actions with
- 17 NATCO that essentially negated the transfer.
- 18 6. As generally set forth in NATCO's Amended Complaint, there is a dispute
- 19 between Weiser and Skarpelos as to the ownership of the stock.
- 20 7. Weiser is the rightful owner of the stock and has suffered damages from
- 21 Skarpelos's actions concerning the stock.
- 22 8. As a result of Skarpelos's actions, Weiser has been required to retain the services
- 23 of Holland & Hart LLP and is entitled to a reasonable award of attorney's fees therefor.

24 **FIRST CLAIM**

25 (Declaratory Judgment)

- 26 9. Weiser realleges the allegations in paragraphs above as though set forth fully
- 27 herein.

11. Weiser is entitled to a declaration from the Court under NRS §33.010, *et seq.*
that it is the rightful owner of the stock.

SECOND CLAIM

(Breach Of Contract)

7 12. Weiser realleges the allegations in paragraphs above as though set forth fully
8 herein.

9 13. Weiser and Skarpelos entered into a binding contract in July 2013 concerning the
10 sale of certain stock.

11 || 14. Weiser performed under the contract.

12 15. Skarpelos initially performed by transferring the stock but later took actions that
13 effectively negated the transfer. These later actions constitute a breach of the parties' contract.

14 16. Weiser has suffered damages in excess of \$10,000 from Skarpelos's breach.

THIRD CLAIM

(Breach Of The Covenant Of Good Faith And Fair Dealing)

17 17. Weiser realleges the allegations in paragraphs above as though set forth fully
18 herein.

19 18. The aforementioned contract contained an implied covenant of good faith and
20 fair dealing, which Skarpelos triggered upon the execution of the contract .

19. After executing the contract, Skarpelos acted unfaithfully to the purpose of the contract by, among other things, undermining Weiser's ownership of the stock.

23 20. As a result of Skarpelos's actions, Weiser's justified expectations under the
24 contract have been denied.

25 21. As a result of Skarpelos's actions, Weiser has been damaged in an amount in
26 excess of \$10,000.

1 WHEREFORE, Weiser respectfully requests judgment against Skarpelos as follows:

- 2 1. For an order of the Court declaring Weiser to be the legal and rightful owner of
3 the stock;
4 2. For an award of damages in an amount in excess of \$10,000.00;
5 3. For costs of suit and reasonable attorney's fees; and
6 4. For such other and further relief as the Court deems just, proper, and equitable.

7 The undersigned affirms that this document does not contain the social security number
8 of any person.

9 DATED this 23rd day of May, 2016

10
11 By /s/ Jeremy J. Nork
12 Jeremy J. Nork (SBN 4017)
13 Frank Z. LaForge (SBN 12246)
14 HOLLAND & HART LLP
15 5441 Kietzke Lane, Second Floor
16 Reno, NV 89511
17 Telephone: (775) 327-3000
18 Facsimile: (775) 786-6179
19 jnork@hollandhart.com
20 fzlaforge@hollandhart.com

21 Attorneys for Defendants/Cross-claimants
22 Weiser
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, Martha Hauser, certify:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Holland & Hart LLP. My business address is 5441 Kietzke Lane, Second Floor, Reno, Nevada 89511. I am over the age of 18 years and not a party to this action.

On May 23, 2016, I electronically filed the foregoing **WEISER'S ANSWER AND CROSS CLAIM**, with the Clerk of the Second Judicial District Court via the Court's e-Flex system. Service will be made by e-Flex on all registered participants.

Alexander H. Walker III, Esq.
awalkerlaw@aol.com

Clayton P. Brust
ROBISON, BELAUSTEGUI, SHARP & LOW
cbrust@rbsllaw.com

John F. Murtha
W. Chris Wicker
WOODBURN AND WEDGE
jmurtha@woodburnandwedge.com
cwicker@woodburnandwedge.com

/s/ Martha Hauser
Martha Hauser

1 **1155**

2 Jeremy J. Nork (SBN 4017)
3 Frank Z. LaForge (SBN 12246)
4 HOLLAND & HART LLP
5 5441 Kietzke Lane, Second Floor
6 Reno, Nevada 89511
7 Tel: (775) 327-3000; Fax: (775) 786-6179
8 jnork@hollandhart.com
9 fzlaforge@hollandhart.com

6 Attorneys for Defendants/Cross-claimants Weiser

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

10 NEVADA AGENCY AND TRANSFER
11 COMPANY, a Nevada Corporation,

12 Plaintiff,

13 v.

14 WEISER ASSET MANAGEMENT, LTD.,
15 a Bahamas company, WEISER
16 (BAHAMAS) LTD, a Bahamas company,
17 ATHANASIOS SKARPELOS, an
18 individual, and DOES 1 through 10,

17 Defendants.

19 WEISER ASSET MANAGEMENT, LTD.,
20 a Bahamas company, WEISER
(BAHAMAS) LTD., a Bahamas company,

21 Cross-claimants,

22 v.

23 ATHANASIOS SKARPELOS, an
24 individual,

25 Cross-defendant.

Case No. CV15-02259

Dept. No. 10

**WEISER'S ANSWER TO
SKARPELOS'S CROSS-CLAIM**

26
27 Defendants/Cross-claimants Weiser Asset Management, Ltd. and Weiser (Bahamas)
28 Ltd. (collectively "Weiser"), by and through counsel Holland & Hart LLP, for their answer to

defendant and cross-claimant Athanasios Skarpelos's Cross-Claim Against Defendants Weiser Asset Management, Ltd. And Weiser (Bahamas) Ltd. hereby admit, deny, and allege as follows:

1. Admit.

2. Weiser incorporates its responses to plaintiff Nevada Agency And Transfer Co.'s ("NATCO")'s amended complaint as set forth in Weiser's Answer And Cross-Claim.

3. Admit.

4. Deny.

5. Deny.

6. This paragraph contains a legal conclusion to which to response is required.

7. Deny.

As for separate affirmative defenses, Weiser alleges:

FIRST AFFIRMATIVE DEFENSE

Weiser is the rightful owner of the stock at issue in NATCO's complaint.

SECOND AFFIRMATIVE DEFENSE

Skarpelos was and remains contractually obligated to deliver the disputed stock to Weiser.

THIRD AFFIRMATIVE DEFENSE

Skarpelos is barred by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Skarpelos's right to the stock is barred by his knowing and intentional waiver.

FIFTH AFFIRMATIVE DEFENSE

Skarpelos's right to the stock is barred by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

Skarpelos's right to the stock is barred by his fraudulent conduct. In particular, Skarpelos represented to Weiser that the parties had a contract by which Skarpelos would transfer the disputed stock and acted consistently with that representation. On information and belief, Weiser believes that Skarpelos, despite his representations, at some point changed his mind when the value of the stock rose.

SEVENTH AFFIRMATIVE DEFENSE

Skarpelos is barred from retaining the full amount of the disputed stock by the doctrine of unjust enrichment.

EIGHTH AFFIRMATIVE DEFENSE

Skarpelos is barred from retaining the full amount of the disputed stock because he has failed to reasonably mitigate any damages.

NINTH AFFIRMATIVE DEFENSE

Pursuant to the provisions of Rule 11 of the Rules of Civil Procedure, at the time of the filing of Weiser's Answer, all possible affirmative defenses may not have been alleged inasmuch as facts and other relevant information may not have been available after reasonable inquiry, and therefore, Weiser reserves the right to amend this Answer to allege affirmative defenses if subsequent investigation warrants the same.

WHEREFORE, Weiser prays for relief as follows:

1. An order declaring Weiser to be the sole owner of the stock in dispute;
2. An order that NATCO immediately deliver to Weiser appropriate certificates of the stock in dispute;
3. For an award of attorney's fees and costs to Weiser; and
4. All other appropriate relief.

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

DATED this 15th day of June, 2016

By /s/ Jeremy J. Nork
Jeremy J. Nork (SBN 4017)
Frank Z. LaForge (SBN 12246)
HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
Reno, NV 89511
Telephone: (775) 327-3000
Facsimile: (775) 786-6179

Attorneys for Defendants/Cross-claimants
Weiser

1 **CERTIFICATE OF SERVICE**

2 I, Martha Hauser, certify:

3 I am employed in the City of Reno, County of Washoe, State of Nevada by the law
4 offices of Holland & Hart LLP. My business address is 5441 Kietzke Lane, Second Floor,
Reno, Nevada 89511. I am over the age of 18 years and not a party to this action.

5 On June 15, 2016, I electronically filed the foregoing **WEISER'S ANSWER TO**
6 **SKARPELOS'S CROSS-CLAIM**, with the Clerk of the Second Judicial District Court via
the Court's e-Flex system. Service will be made by e-Flex on all registered participants.

7 Alexander H. Walker III, Esq.
8 awalkerlaw@aol.com

9 Clayton P. Brust
10 ROBISON, BELAUSTEGUI, SHARP & LOW
cbrust@rbsllaw.com

11 John F. Murtha
12 W. Chris Wicker
WOODBURN AND WEDGE
13 jmurtha@woodburnandwedge.com
cwicker@woodburnandwedge.com

14
15 /s/ Martha Hauser
16 Martha Hauser
17
18
19
20
21
22
23
24
25
26
27
28

HOLLAND & HART LLP
5441 KIETZKE LANE, SECOND FLOOR
RENO, NEVADA 89511
(775) 327-3000

Code 1155
JOHN F. MURTHA, ESQ.
Nevada Bar No. 835
W. CHRIS WICKER, ESQ.
Nevada Bar No. 1037
WOODBURN AND WEDGE
6100 Neil Road, Ste. 500
Reno, Nevada 89505
Telephone : (775) 688-3000
jmurtha@woodburnandwedge.com
cwicker@woodburnandwedge.com

Attorneys for Defendant/Cross-Claimant
Athanasios Skarpelos

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

NEVADA AGENCY AND TRANSFER
COMPANY, a Nevada corporation,

Plaintiff,

vs.

Case No. CV15-02259
Dept. No. 10

WEISER ASSET MANAGEMENT, LTD.,
a Bahamas company; WEISER (BAHAMAS)
LTD., a Bahamas company, ATHANASIOS
SKARPELOS, an individual; and
DOES 1-10,

**SKARPELOS' ANSWER TO
WEISER'S CROSS-CLAIM**

Defendants.

ATHANASIOS SKARPELOS, an individual

Cross-Claimant,

vs.

WEISER ASSET MANAGEMENT, LTD., a
Bahamas company, and WEISER (BAHAMAS)
LTD., a Bahamas company,

Cross-Defendants.

1
2 WEISER ASSET MANAGEMENT, LTD.,
3 A Bahamas company, WEISER
(BAHAMAS) LTD., a Bahamas company,

4 Cross-Claimants,

5 vs.

6 ATHANASIOS SKARPELOS, an
7 individual,

8 Cross-Defendant.
9

10 **SKARPELOS' ANSWER TO WEISER'S CROSS-CLAIM**
11

12 Defendant Athanasios Skarpelos, by and through his counsel Woodburn and
13 Wedge, hereby answers WEISER'S CROSS-CLAIM AGAINST DEFENDANT
14 SKARPELOS filed by Weiser Asset Management, Ltd., ("Weiser") and Weiser
15 (Bahamas) Ltd. ("Bahamas") (collectively "Weiser") as follows:
16

- 17 1. Cross-Defendant Skarpelos is without sufficient information to form a
18 belief as to the truth of the allegations in Paragraph 1 and, therefore, denies the same.
19 2. Responding to Paragraph 2, Skarpelos admits he resides in Greece.
20 3. Paragraph 3 is denied.
21 4. Paragraph 4 is denied.
22 5. Paragraph 5 is denied.
23 6. Paragraph 6 is admitted.
24 7. Paragraph 7 is denied.
25 8. Paragraph 8 is denied.
26 9. No response is needed as to Paragraph 9.
27
28

10. Responding to Paragraph 10, Skarpelos admits there is a dispute between himself and Weiser regarding the ownership of the stock which forms the basis for the Plaintiff's interpleader complaint (the "Disputed Stock").

11. Paragraph 11 is denied.

12. No response is needed as to Paragraph 12.

13. Paragraph 13 is denied.

14. Paragraph 14 is denied.

15. Paragraph 15 is denied.

16. Paragraph 16 is denied.

17. No response is needed as to Paragraph 17.

18. Paragraph 18 is denied.

19. Paragraph 19 is denied.

20. Paragraph 20 is denied.

21. Paragraph 21 is denied.

DEFENSES

1. Defendant Skarpelos is entitled to declaratory relief to the effect that he is the sole, true and rightful owner of all of the Disputed Stock to the exclusion of Weiser or anyone else claiming through Weiser.

2. To the extent Weiser claims ownership to any or all of the Disputed Stock, such claims must be denied on the basis of estoppel.

3. To the extent Weiser claims ownership to any or all of the Disputed Stock, such claims must be denied on the equitable doctrine of laches.

4. To the extent Weiser claims ownership to any or all of the Disputed Stock, such claims must be denied on the basis no binding or enforceable contract regarding

1 the sale of the Disputed Stock by Skarpelos to Weiser or any other person or entity
2 claiming through them, has ever been in existence.

3
4 5. Without admitting that an enforceable contract exists between Skarpelos
5 and Weiser, to the extent Weiser claims ownership to any or all of the Disputed Stock
6 under the terms of a contract, such claims must be denied for lack of consideration.

7 6. Without admitting that an enforceable contract exists between Skarpelos
8 and Weiser, to the extent Weiser claims ownership to any or all of the Disputed Stock
9 under the terms of a contract, such claims must be denied for failure of consideration.

10 7. Without admitting that an enforceable contract exists between Skarpelos
11 and Weiser, to the extent Weiser claims ownership to any or all of the Disputed Stock
12 under the terms of a contract, such claims must be denied by reason of Weiser's
13 breaches of contract.

14
15 8. Without admitting that an enforceable contract exists between Skarpelos
16 and Weiser, to the extent Weiser claims ownership to any or all of the Disputed Stock
17 under the terms of a contract, such claims must be denied because any contract under
18 which Weiser claims to have been a registered stock broker, stock agent or stock
19 dealer is unenforceable on the basis of illegality.

20
21 9. Without admitting that an enforceable contract exists between Skarpelos
22 and Weiser, to the extent Weiser claims ownership to any or all of the Disputed Stock
23 under the terms of a contract, such claims must be denied because of Weiser's fraud
24 in the inducement

25 10. To the extent Weiser claims ownership to any or all of the Disputed Stock,
26 such claims must be denied by reason of the statute of frauds.
27
28

1 11. To the extent Weiser claims ownership to any or all of the Disputed Stock,
2 such claims must be denied by reason of the running of the applicable statutes of
3 limitations.
4

5 12. To the extent Weiser claims ownership to any or all of the Disputed Stock,
6 such claims have been knowingly and validly waived by Weiser.

7 13. To the extent Weiser may have had claims against Skarpelos, relief
8 should be denied by reason of Weiser's failure to mitigate its damages.

9 14. Pursuant to the provisions of FRCP 11, at the time of filing this Answer,
10 all possible defenses may not have been alleged inasmuch as insufficient facts and
11 other relevant information may not have been available after a reasonable inquiry and,
12 therefore, Defendant Skarpelos reserves the right to amend this Answer to assert
13 additional defenses should additional defenses become evident as a result of
14 discovery in this matter.
15

16 WHEREAS Defendant Skarpelos prays for relief as follows:

17 1. For an order of the Court declaring him to be the sole, true and rightful
18 owner of all of the legal and equitable interests in and to the Disputed Stock to the
19 exclusion of all other persons and entities including, but not limited to, Weiser,
20 Bahamas or any person or entity claiming through Weiser or Bahamas;
21

22 2. For an order of the Court authorizing NATCO to tender all of the
23 certificates evidencing the Disputed Stock to Skarpelos;


24 3. For costs of suit;

25 4. For an award of reasonable attorney's fees incurred by Skarpelos in the
26 defense of the matters set forth in Weiser's Cross-Claim; and
27
28

1 5. For such other and further relief as to the Court seems just and equitable
2 under the circumstances.
3

4 DATED this 17th day of June, 2016.

5 WOODBURN AND WEDGE
6


7 By 
8 John F. Murtha, Esq.
9 W. Chris Wicker, Esq.
10 Attorneys for Defendant/
11 Cross-Claimant/Cross-
12 Defendant Athanasios Skarpelos

13 **AFFIRMATION**
14 **Pursuant to NRS 239B.030**

15 The undersigned does hereby affirm that the above-entitled document filed in
16 this matter does not contain the social security number of any person whomsoever.

17 DATED this 17th day of June, 2016.

18 WOODBURN AND WEDGE
19

20 By 
21 John F. Murtha, Esq.
22 W. Chris Wicker, Esq.
23 Attorneys for Defendant/
24 Cross-Claimant/Cross-
25 Defendant Athanasios Skarpelos
26
27
28

1
2
3 **CERTIFICATE OF SERVICE**

4 I certify that I am an employee of the law firm of Woodburn and Wedge, and that
5 on the 17 day of June, 2016, I caused the foregoing document to be delivered to
6 the parties entitled to notice in this action by:

7 ✓ placing a true copy thereof in a sealed, stamped envelope with the
8 United States Postal Service at Reno, Nevada

9 personal delivery

10 email

11 electronic filing

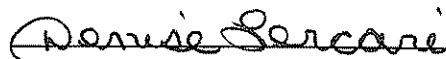
12 Federal Express or other overnight delivery

13 as follows:

14 Alexander H. Walker III, Esq.
15 57 West 200 South, Ste. 400
16 Salt Lake City, Utah 84101

17 Clay P. Brust, Esq.
18 Robison, Belaustegui, Sharp & Low
19 71 Washington Street
20 Reno, NV 89503

21 Jeremy J. Nork, Esq.
22 Frank Z. LaForge, Esq.
23 Holland & Hart LLP
24 5441 Kietzke Lane, 2nd Flr.
25 Reno, Nevada 89511

26
27
28 

Tab No. “4”

1 1750

2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 NEVADA AGENCY AND TRANSFER
9 COMPANY, a Nevada corporation,

Case No. CV15-02259
Dept. No. 10

10 Plaintiff,

11 vs.

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT

12 WEISER ASSET MANAGEMENT, LTD.,
13 a Bahamas company; ATHANASIOS
14 SKARPELOS, an individual; and
DOES 1-10,

15 Defendants.

16 _____/
ATHANASIOS SKARPELOS, an individual,

17 Cross-Claimant,

18 vs.

19 WEISER ASSET MANAGEMENT, LTD., a
20 Bahamas company, and WEISER (BAHAMAS)
LTD., a Bahamas company.

21 Cross-Defendants.

22 _____/
23 WEISER ASSET MANAGEMENT, LTD.,
24 a Bahamas company, WEISER (BAHAMAS), LTD.,
a Bahamas company,

25 Cross-Claimants.

26 vs.

27 ATHANASIOS SKARPELOS, an individual,
28 Cross-defendant.

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

2 This action came before this Court for a bench trial on January 28, 2019. This is
3 an interpleader action filed by Nevada Agency and Transfer Company ("NATCO"),
4 which was discharged from liability and dismissed from the case prior to trial. The
5 operative pleadings to be resolved by the Court at trial were: (1) the Answer To Amended
6 Complaint and Crossclaim filed by defendant Athanasios Skarpelos ("Skarpelos") on May
7 23, 2016 and (2) the Answer and Cross-Claim filed by defendants Weiser Asset
8 Management, Ltd. ("WAM") and Weiser (Bahamas) Ltd. ("Weiser Capital") (WAM and
9 Weiser Capital are sometimes collectively referred to herein as "Weiser"). As framed by
10 the pleadings, Skarpelos and Weiser asserted competing claims to 3,316,666 shares of
11 stock (the "Disputed Stock") in Anavex Life Sciences Corp. ("Anavex").

12 During the trial, the Court listened to the testimony of the following people:
13 Christos Livadas ("Livadas"), Skarpelos, Alexander Walker ("Walker") and Lambros
14 Pedafronimos ("Pedafronimos"). The Court also reviewed and considered documentary
15 evidence that was admitted at trial.

16 Based on the evidence presented at trial, the Court enters the following findings
17 of fact, conclusions of law and judgment in this matter.

18 **FINDINGS OF FACT**

19 1. WAM is a Class 1 broker-dealer registered with and regulated by the
20 Financial Services Authority and Securities Commission of the Bahamas. WAM is also a
21 registered foreign broker-dealer in Canada, regulated by the Ontario Securities
22 Commission.

23 2. Weiser Capital is an affiliate entity to WAM and provides investment
24 banking advisory services and deal arrangements as an investor and principal on behalf of
25 WAM and its clients. Basically, Weiser Capital would direct clients to WAM. Livadas is
26 the owner and director of Weiser Capital.

27 3. Livadas is also the owner and director of Weiser Holdings, Ltd. ("Weiser
28 Holdings"). Weiser Holdings acquired WAM in 2014 and is now the parent company of

1 WAM. Prior to that acquisition, WAM and Weiser Capital were two entirely separate
2 entities.

3 4. The prior owner of WAM was Equity Trust Bahamas, Ltd. ("Equity
4 Trust"). One of the principals of Equity Trust was Howard Daniels ("Daniels"), who later
5 became one of two contacts that Skarpelos had at WAM in 2011.

6 5. In 2011, Skarpelos applied for and opened an account with WAM.
7 Skarpelos funded the account with his Anavex Stock Certificates Nos. 0660 ("Certificate
8 No. 660") and No. 0753 ("Certificate No. 753"). Certificate 660 represents 92,500 shares
9 of Anavex stock and was issued to Skarpelos in 2007. Certificate 753 represents
10 6,633,332 shares of Anavex stock and was issued to Skarpelos in 2009. In opening the
11 account, Skarpelos was assisted by Daniels and Pedafronimos.

12 6. Skarpelos withdrew money, or had people withdraw money on his behalf,
13 from his WAM account. In doing so, Skarpelos took his account balance into a negative
14 position in the amount of \$153,679.54 as of March 25, 2013.

15 7. In early 2013, Skarpelos caused NATCO to cancel Stock Certificates No.
16 660 and No. 753, falsely reporting them as "lost" when in fact he knew the certificates had
17 been deposited with WAM in 2011.

18 8. On April 2, 2013, there was a sale of 3,316,666 shares of Skarpelos'
19 Anavex stock represented by Certificate 753 to an unidentified third party. Pursuant to
20 this transaction, WAM credited Skarpelos' account in the amount of \$249,580, taking it to
21 a positive balance of \$95,775.46. Thereafter, a substantial portion of that money was
22 withdrawn from Skarpelos' account leaving a balance of \$4,115.36 as of December 31,
23 2013. The withdrawn money was provided from Skarpelos' WAM account to
24 Pedafronimos, and Pedafronimos withdrew that money through transactions in May, July,
25 August and September of 2013 and presumably gave that money to Skarpelos.

26 9. The Answer and Cross-Claim filed by WAM and Weiser Capital claimed
27 ownership of the Disputed Stock under the terms of a July 5, 2013 Stock Sale and
28 Purchase Agreement ("July 2013 PSA"). The July 2013 PSA does not evidence a sale of

1 any kind to anybody. At trial, Livadas testified he used this document for something other
2 than its intended purpose and that, contrary to Weiser's claims throughout this case, it is a
3 meaningless document.

4 10. There is no evidence of a contract between Skarpelos and either WAM or
5 Weiser Capital for the sale of Anavex stock at any time. Although Weiser asserted
6 throughout this case that "it" was the owner of the Disputed Stock by virtue of the July
7 2013 PSA, Livadas and WAM abandoned that claim at trial and instead relied on a new
8 theory that WAM is the owner of the stock by virtue of the April 2, 2013 transaction.
9 However, Livadas also testified that WAM was not even the purchaser of the stock under
10 the April 2, 2013 transaction and that the stock was just transferred through WAM to a
11 third party.

12 11. Weiser Capital had absolutely nothing to do with any sale by Skarpelos of
13 any Anavex stock at any time. At best what happened in this case was that, arguably,
14 WAM was just transferring the stock sold on April 2, 2013 to somebody else. WAM was
15 never intended to be the purchaser of that stock, and there was no such agreement between
16 Skarpelos and WAM.

17 12. No contract was formed for the sale of Anavex stock from Skarpelos to
18 either WAM or Weiser Capital at any time. Because there is no contract between
19 Skarpelos and WAM and/or Weiser Capital, the Weiser claims for declaratory relief,
20 breach of contract and breach of the implied covenant of good faith and fair dealing all
21 fail because they all rely entirely upon the existence of a contract.

22 13. Any conclusion of law set forth below which is more appropriately a
23 finding of fact is hereby incorporated as a finding of fact.

24 **CONCLUSIONS OF LAW**

25 14. "Basic contract principles require, for an enforceable contract, an offer and
26 acceptance, meeting of the minds, and consideration." *Certified Fire Prot. Inc. v.*
27 *Precision Construction, Inc.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012), citing *May v.*
28 *Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). "A meeting of the minds

1 exists when the parties have agreed upon the contract's essential terms.” *Id.*, citing *Roth v.*
2 *Scott*, 112 Nev. 1078, 1083, 921 P.2d 1262, 1296 (1996). “Which terms are essential
3 depends on the agreement and its context and also on the subsequent conduct of the
4 parties, including the dispute which arises and the remedy sought.” *Id.*, citing
5 Restatement (Second) of Contracts § 131 cmt. g (1981). Whether a contract exists is a
6 question of fact entitled to deference unless clearly erroneous or not based on substantial
7 evidence. *Id.*, citing *May v. Anderson*, 121 Nev. at 672-73, 119 P.3d at 1257.

8 15. When the essential terms of a contract have yet to be agreed upon by the
9 parties, a contract cannot be formed. *Certified Fire*, 128 Nev. at 379, 283 P.3d at 255,
10 citing *Nevada Power Co. v. Public Util. Comm’n*, 122 Nev. 821, 839-840, 138 P.3d 486,
11 498-499 (2006).

12 16. Here, there is no evidence of an offer and acceptance between Skarpelos
13 and either WAM or Weiser Capital, nor is there any meeting of the minds as to the
14 relevant and essential terms of any contract. The Court concludes as a matter of law that
15 there was no contract between Skarpelos and either WAM or Weiser Capital for the sale
16 and purchase of any Anavex stock at any time, much less the Disputed Stock.

17 17. In order to establish a claim for breach of contract, the claiming party must
18 establish: (1) the existence of a valid contract; (2) a breach by the defendant; and (3)
19 damage as a result of the breach. *Saini v. Int’l Game Tech.*, 434 F.Supp.2d 913, 919-920
20 (D. Nev. 2006), citing *Richardson v. Jones*, 1 Nev. 405, 405 (Nev. 1865).

21 18. Because the Court has found that no valid contract existed between
22 Skarpelos and either WAM or Weiser Capital, Weiser’s claim for breach of contract fails.

23 19. In order to establish a claim for breach of the implied covenant of good
24 faith and fair dealing, the claiming party must establish: (1) that the plaintiff and
25 defendant were parties to an agreement; (2) that defendant owed a duty of good faith to
26 the plaintiff; (3) the defendant breached that duty by performing in a manner that is
27 unfaithful to the purpose of the contract; and (4) that plaintiff’s justified expectations were
28

1 denied. *Hilton Hotels Corp. v. Butch Lewis Prod., Inc.*, 107 Nev. 226, 234, 808 P.2d 919,
2 923 (1991).

3 20. Because the Court has found that no valid contract existed between
4 Skarpelos and either WAM or Weiser Capital, Weiser's claim for breach of the implied
5 covenant of good faith and fair dealing fails.

6 21. Although not raised by Weiser's pleadings, the Court further concludes that
7 there is no contract implied-in-fact between Skarpelos and either WAM or Weiser Capital.
8 Quantum meruit applies in actions based upon contracts implied-in-fact. *Certified Fire*,
9 128 Nev. at 379, 283 P.3d at 256. "A contract implied-in-fact must be manifested by
10 conduct; it is a true contract that arises from the tacit agreement of the parties." *Id.*
11 (internal quotations and citations omitted). "To find a contract implied-in-fact, the fact-
12 finder must conclude that the parties intended to contract and promises were exchanged,
13 the general obligations for which must be sufficiently clear. *Id.*, 128 Nev. at 379-380, 238
14 P.3d at 257. "It is at that point that a party may invoke quantum meruit as a gap-filer to
15 supply the absent term." *Id.*, 128 Nev. at 380, 238 P.3d at 257. "Where such a contract
16 exists, then, quantum meruit ensures the laborer receives the reasonable value, usually
17 market price, for his services." *Id.*

18 22. Even if Weiser had timely raised this issue in its pleadings, the Court
19 concludes there is no contract implied-in-fact because there is no evidence that Skarpelos
20 intended to contract with either WAM or Weiser Capital. The Court concludes that the
21 parties to the contract must be identified, and in this case Livadas' testimony was unclear
22 whether WAM or Weiser Capital was the supposed purchaser of the stock. If the Court
23 cannot even establish that basic premise, it cannot find or conclude that there is an oral
24 contract, a written contract, or even an implied-in-fact contract. The Court cannot find or
25 conclude there was a meeting of the minds because neither WAM nor Weiser Capital
26 seems to know who claims to be the owner.

27 23. "When sitting in equity, however, courts must consider the entirety of the
28 circumstances that bear upon the equities." *Shadow Wood Homeowners Ass'n, Inc. v.*

1 *New York Community Bancorp., Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1114 (2016).
2 “This includes considering the status and actions of all parties involved, including whether
3 an innocent party may be harmed by granting the desired relief.” *Id.*, 366 P.3d at 1115,
4 citing *Smith v. U.S.*, 373 F.2d 419, 424 (4th Cir. 1996) (“Equitable relief will not be
5 granted to the possible detriment of innocent third parties.”) (other citations omitted). It is
6 a “recognized province” of a court sitting in equity to do “complete justice between the
7 parties.” *MacDonald v. Krause*, 77 Nev. 312, 318, 362 P.2d 724, 727 (1961).

8 24. “Interpleader is an equitable proceeding to determine the rights of rival
9 claimants to property held by a third person having no interest therein.” *Balish v.*
10 *Farnham*, 92 Nev. 133, 137, 546 P.2d 1297, 1299 (1976). “In such a proceeding, each
11 claimant is treated as a plaintiff and must recover on the strength of his own right to title
12 and not upon the weakness of his adversary’s. *Id.*, 92 Nev. at 137, 546 P.2d at 1300. In
13 an interpleader action, each claimant must succeed in establishing his right to the property
14 by a preponderance of the evidence. *Midland Ins. Co. v. Friedgood*, 577 F.Supp. 1407
15 (S.D.N.Y. 1984).

16 25. Based on the foregoing, Skarpelos’ single cause of action for declaratory
17 relief is granted. Skarpelos is the owner of all shares of Anavex stock previously
18 represented by Certificates Nos. 660 and 753 and now represented by Certificate No. 975.

19 26. Neither WAM nor Weiser Capital, nor anyone claiming through WAM or
20 Weiser Capital, has any ownership interest in Anavex stock represented by Certificates
21 Nos. 660, 753 or 975.

22 27. Weiser’s claims for declaratory relief, breach of contract and breach of the
23 implied covenant of good faith and fair dealing are all dismissed.

24 28. However, as indicated above, the Court finds that Skarpelos agreed to sell
25 shares on April 2, 2013 to an unknown third party and that, as a result, WAM credited
26 Skarpelos’ account \$249,580 pursuant to that transaction. This credit took the account
27 from a balance of negative \$153,679.54 to a positive balance of \$95,775.46. The Court
28 further found that Skarpelos subsequently withdrew and received a substantial portion of

1 those funds, eventually leaving a balance of \$4,115.36. Therefore, despite Weiser's
2 failure to plead this claim for relief, the Court concludes it has equitable jurisdiction to
3 enter judgment against Skarpelos and in favor of WAM in the total amount of
4 \$245,464.64. Allowing Skarpelos to retain ownership of the Disputed Stock and the funds
5 he received would result in a windfall. This is an obligation that is separate from and
6 independent of Skarpelos' ownership of stock in Anavex and has no bearing on his
7 ownership.

8 29. Any finding of fact set forth above which is more appropriately a
9 conclusion of law is hereby incorporated as a conclusion of law.

10 **JUDGMENT**

11 Based on the foregoing findings of fact and conclusions of law,

12 IT IS HEREBY ORDERED AND ADJUDGED that Athanasios "Tom" Skarpelos
13 is the sole, true and rightful owner of all shares of stock in Anavex Life Sciences Corp.,
14 previously represented by Certificates Nos. 660 and 753 and now represented by
15 Certificate No. 975.

16 IT IS HEREBY FURTHER ORDERED AND ADJUDGED that neither Weiser
17 Asset Management, Ltd. (referred to above as WAM) nor Weiser (Bahamas) Ltd.
18 (referred to above as Weiser Capital) have any claim of ownership to any of the shares
19 previously represented by Certificates No. 660 and 753 and now represented by
20 Certificate No. 975, nor does any other person or entity claiming any ownership to said
21 shares by or through Weiser Asset Management, Ltd. or Weiser (Bahamas) Ltd.

22 IT IS HEREBY FURTHER ORDERED that Nevada Agency and Transfer
23 Company shall take such action as is necessary to reflect in Anavex's stock register,
24 corporate books and records that Athanasios "Tom" Skarpelos is the sole, true and rightful
25 owner of all the legal and equitable interest in all the shares previously represented by
26 Certificates No. 660 and 753 and now represented by Certificate No. 975.

1 IT IS HEREBY FURTHER ORDERED AND ADJUDGED that judgment is
2 entered against Athanasios "Tom" Skarpelos and in favor of WAM in the total amount of
3 \$245,464.64.

4 Dated this 22 day of April, 2019.

5 
6 DISTRICT JUDGE

1 **2545**

2 JOHN F. MURTHA, ESQ.

3 Nevada Bar No. 835

4 DANE W. ANDERSON, ESQ.

5 Nevada Bar No. 6883

6 SETH J. ADAMS, ESQ.

7 Nevada Bar No. 11034

8 **WOODBURN AND WEDGE**

9 Sierra Plaza

10 6100 Neil Road, Ste. 500

11 P.O. Box 2311

12 Reno, Nevada 89505

13 Telephone : (775) 688-3000

14 jmurtha@woodburnandwedge.com

15 danderson@woodburnandwedge.com

16 sadams@woodburnandwedge.com

17 *Attorneys for Defendant/Cross-Claimant*

18 *Athanasios Skarpelos*

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

21 ***

22 NEVADA AGENCY AND TRANSFER
23 COMPANY, a Nevada corporation,

Case No. CV15-02259

Dept. No. 10

24 Plaintiff,

25 vs.

**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF
LAW, AND JUDGMENT**

26 WEISER ASSET MANAGEMENT, LTD.,
27 a Bahamas company; ATHANASIOS
28 SKARPELOS, an individual; and
DOES 1-10,

Defendants.

ATHANASIOS SKARPELOS, an individual,

Cross-Claimant,

vs.

WEISER ASSET MANAGEMENT, LTD., a
Bahamas company, and WEISER (BAHAMAS)
LTD., a Bahamas company.

Cross-Defendants.

1 WEISER ASSET MANAGEMENT, LTD.,
2 a Bahamas company, WEISER (BAHAMAS), LTD.,
3 a Bahamas company,

4 Cross-Claimants.

5 vs.

6 ATHANASIOS SKARPELOS, an individual,
7 Cross-defendant.

8 **NOTICE OF ENTRY OF FINDINGS OF FACT,**
9 **CONCLUSIONS OF LAW, AND JUDGMENT**

10 **PLEASE TAKE NOTICE** that on April 22, 2019, the Court entered its Findings of
11 Fact, Conclusions of Law, and Judgment, a true and correct copy of which is attached hereto
12 as Exhibit "1".

13 **AFFIRMATION**

14 The undersigned does hereby affirm that the preceding document does not contain the
15 personal information of any person.

16 DATED: April 22, 2019.

WOODBURN AND WEDGE

17 By /s/ Dane W. Anderson
18 John F. Murtha, Esq.
19 Nevada Bar No. 835
20 Dane W. Anderson, Esq.
21 Nevada Bar No. 6883
22 Seth J. Adams, Esq.
23 Nevada Bar No. 11034

24 *Attorneys for Defendant/
25 Cross-Claimant
26 Athanasios Skarpelos*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Woodburn and Wedge and that on this date,
I caused to be sent via electronic delivery through the Court's E-flex system a true and correct
copy of *Notice of Entry of Order* to:

Alexander H. Walker III, Esq.
57 West 200 South, Ste. 400
Salt Lake City, Utah 84101
awalker@law@aol.com

Clay P. Brust, Esq.
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, NV 89503
cbrust@rbsllaw.com

Attorneys for Plaintiff

Attorneys for Plaintiff

Jeremy J. Nork, Esq.
Frank Z. LaForge, Esq.
Holland & Hart LLP
5441 Kietzke Lane, 2nd Floor
Reno, Nevada 89511
jnork@hollandandhart.com
fzlaforge@hollandandhart.com

*Attorneys for Defendants
Weiser Asset Management, Ltd.
and Weiser (Bahamas), Ltd.*

DATED: April 22, 2019.

/s/ Tommie Kay Atkinson
Tommie Kay Atkinson, an employee of
Woodburn and Wedge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT LIST

<u>Exhibit No.</u>	<u>Exhibit Title</u>	<u>Pages</u>
1	Findings of Fact, Conclusions of Law, and Judgment	9

EXHIBIT 1

EXHIBIT 1

1 1750

2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 NEVADA AGENCY AND TRANSFER
9 COMPANY, a Nevada corporation,

Case No. CV15-02259
Dept. No. 10

10 Plaintiff,

11 vs.

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT

12 WEISER ASSET MANAGEMENT, LTD.,
13 a Bahamas company; ATHANASIOS
14 SKARPELOS, an individual; and
DOES 1-10,

15 Defendants.

16 _____/
ATHANASIOS SKARPELOS, an individual,

17 Cross-Claimant,

18 vs.

19 WEISER ASSET MANAGEMENT, LTD., a
20 Bahamas company, and WEISER (BAHAMAS)
21 LTD., a Bahamas company.

22 Cross-Defendants.

23 _____/
WEISER ASSET MANAGEMENT, LTD.,
24 a Bahamas company, WEISER (BAHAMAS), LTD.,
a Bahamas company,

25 Cross-Claimants.

26 vs.

27 ATHANASIOS SKARPELOS, an individual,
28 Cross-defendant.
_____/
-1-

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

2 This action came before this Court for a bench trial on January 28, 2019. This is
3 an interpleader action filed by Nevada Agency and Transfer Company ("NATCO"),
4 which was discharged from liability and dismissed from the case prior to trial. The
5 operative pleadings to be resolved by the Court at trial were: (1) the Answer To Amended
6 Complaint and Crossclaim filed by defendant Athanasios Skarpelos ("Skarpelos") on May
7 23, 2016 and (2) the Answer and Cross-Claim filed by defendants Weiser Asset
8 Management, Ltd. ("WAM") and Weiser (Bahamas) Ltd. ("Weiser Capital") (WAM and
9 Weiser Capital are sometimes collectively referred to herein as "Weiser"). As framed by
10 the pleadings, Skarpelos and Weiser asserted competing claims to 3,316,666 shares of
11 stock (the "Disputed Stock") in Anavex Life Sciences Corp. ("Anavex").

12 During the trial, the Court listened to the testimony of the following people:
13 Christos Livadas ("Livadas"), Skarpelos, Alexander Walker ("Walker") and Lambros
14 Pedafronimos ("Pedafronimos"). The Court also reviewed and considered documentary
15 evidence that was admitted at trial.

16 Based on the evidence presented at trial, the Court enters the following findings
17 of fact, conclusions of law and judgment in this matter.

18 **FINDINGS OF FACT**

19 1. WAM is a Class 1 broker-dealer registered with and regulated by the
20 Financial Services Authority and Securities Commission of the Bahamas. WAM is also a
21 registered foreign broker-dealer in Canada, regulated by the Ontario Securities
22 Commission.

23 2. Weiser Capital is an affiliate entity to WAM and provides investment
24 banking advisory services and deal arrangements as an investor and principal on behalf of
25 WAM and its clients. Basically, Weiser Capital would direct clients to WAM. Livadas is
26 the owner and director of Weiser Capital.

27 3. Livadas is also the owner and director of Weiser Holdings, Ltd. ("Weiser
28 Holdings"). Weiser Holdings acquired WAM in 2014 and is now the parent company of

1 WAM. Prior to that acquisition, WAM and Weiser Capital were two entirely separate
2 entities.

3 4. The prior owner of WAM was Equity Trust Bahamas, Ltd. ("Equity
4 Trust"). One of the principals of Equity Trust was Howard Daniels ("Daniels"), who later
5 became one of two contacts that Skarpelos had at WAM in 2011.

6 5. In 2011, Skarpelos applied for and opened an account with WAM.
7 Skarpelos funded the account with his Anavex Stock Certificates Nos. 0660 ("Certificate
8 No. 660") and No. 0753 ("Certificate No. 753"). Certificate 660 represents 92,500 shares
9 of Anavex stock and was issued to Skarpelos in 2007. Certificate 753 represents
10 6,633,332 shares of Anavex stock and was issued to Skarpelos in 2009. In opening the
11 account, Skarpelos was assisted by Daniels and Pedafronimos.

12 6. Skarpelos withdrew money, or had people withdraw money on his behalf,
13 from his WAM account. In doing so, Skarpelos took his account balance into a negative
14 position in the amount of \$153,679.54 as of March 25, 2013.

15 7. In early 2013, Skarpelos caused NATCO to cancel Stock Certificates No.
16 660 and No. 753, falsely reporting them as "lost" when in fact he knew the certificates had
17 been deposited with WAM in 2011.

18 8. On April 2, 2013, there was a sale of 3,316,666 shares of Skarpelos'
19 Anavex stock represented by Certificate 753 to an unidentified third party. Pursuant to
20 this transaction, WAM credited Skarpelos' account in the amount of \$249,580, taking it to
21 a positive balance of \$95,775.46. Thereafter, a substantial portion of that money was
22 withdrawn from Skarpelos' account leaving a balance of \$4,115.36 as of December 31,
23 2013. The withdrawn money was provided from Skarpelos' WAM account to
24 Pedafronimos, and Pedafronimos withdrew that money through transactions in May, July,
25 August and September of 2013 and presumably gave that money to Skarpelos.

26 9. The Answer and Cross-Claim filed by WAM and Weiser Capital claimed
27 ownership of the Disputed Stock under the terms of a July 5, 2013 Stock Sale and
28 Purchase Agreement ("July 2013 PSA"). The July 2013 PSA does not evidence a sale of

1 any kind to anybody. At trial, Livadas testified he used this document for something other
2 than its intended purpose and that, contrary to Weiser's claims throughout this case, it is a
3 meaningless document.

4 10. There is no evidence of a contract between Skarpelos and either WAM or
5 Weiser Capital for the sale of Anavex stock at any time. Although Weiser asserted
6 throughout this case that "it" was the owner of the Disputed Stock by virtue of the July
7 2013 PSA, Livadas and WAM abandoned that claim at trial and instead relied on a new
8 theory that WAM is the owner of the stock by virtue of the April 2, 2013 transaction.
9 However, Livadas also testified that WAM was not even the purchaser of the stock under
10 the April 2, 2013 transaction and that the stock was just transferred through WAM to a
11 third party.

12 11. Weiser Capital had absolutely nothing to do with any sale by Skarpelos of
13 any Anavex stock at any time. At best what happened in this case was that, arguably,
14 WAM was just transferring the stock sold on April 2, 2013 to somebody else. WAM was
15 never intended to be the purchaser of that stock, and there was no such agreement between
16 Skarpelos and WAM.

17 12. No contract was formed for the sale of Anavex stock from Skarpelos to
18 either WAM or Weiser Capital at any time. Because there is no contract between
19 Skarpelos and WAM and/or Weiser Capital, the Weiser claims for declaratory relief,
20 breach of contract and breach of the implied covenant of good faith and fair dealing all
21 fail because they all rely entirely upon the existence of a contract.

22 13. Any conclusion of law set forth below which is more appropriately a
23 finding of fact is hereby incorporated as a finding of fact.

24 CONCLUSIONS OF LAW

25 14. "Basic contract principles require, for an enforceable contract, an offer and
26 acceptance, meeting of the minds, and consideration." *Certified Fire Prot. Inc. v.*
27 *Precision Construction, Inc.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012), citing *May v.*
28 *Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). "A meeting of the minds

1 exists when the parties have agreed upon the contract's essential terms." *Id.*, citing *Roth v.*
2 *Scott*, 112 Nev. 1078, 1083, 921 P.2d 1262, 1296 (1996). "Which terms are essential
3 depends on the agreement and its context and also on the subsequent conduct of the
4 parties, including the dispute which arises and the remedy sought." *Id.*, citing
5 Restatement (Second) of Contracts § 131 cmt. g (1981). Whether a contract exists is a
6 question of fact entitled to deference unless clearly erroneous or not based on substantial
7 evidence. *Id.*, citing *May v. Anderson*, 121 Nev. at 672-73, 119 P.3d at 1257.

8 15. When the essential terms of a contract have yet to be agreed upon by the
9 parties, a contract cannot be formed. *Certified Fire*, 128 Nev. at 379, 283 P.3d at 255,
10 citing *Nevada Power Co. v. Public Util. Comm'n*, 122 Nev. 821, 839-840, 138 P.3d 486,
11 498-499 (2006).

12 16. Here, there is no evidence of an offer and acceptance between Skarpelos
13 and either WAM or Weiser Capital, nor is there any meeting of the minds as to the
14 relevant and essential terms of any contract. The Court concludes as a matter of law that
15 there was no contract between Skarpelos and either WAM or Weiser Capital for the sale
16 and purchase of any Anavex stock at any time, much less the Disputed Stock.

17 17. In order to establish a claim for breach of contract, the claiming party must
18 establish: (1) the existence of a valid contract; (2) a breach by the defendant; and (3)
19 damage as a result of the breach. *Saini v. Int'l Game Tech.*, 434 F.Supp.2d 913, 919-920
20 (D. Nev. 2006), citing *Richardson v. Jones*, 1 Nev. 405, 405 (Nev. 1865).

21 18. Because the Court has found that no valid contract existed between
22 Skarpelos and either WAM or Weiser Capital, Weiser's claim for breach of contract fails.

23 19. In order to establish a claim for breach of the implied covenant of good
24 faith and fair dealing, the claiming party must establish: (1) that the plaintiff and
25 defendant were parties to an agreement; (2) that defendant owed a duty of good faith to
26 the plaintiff; (3) the defendant breached that duty by performing in a manner that is
27 unfaithful to the purpose of the contract; and (4) that plaintiff's justified expectations were
28

1 denied. *Hilton Hotels Corp. v. Butch Lewis Prod., Inc.*, 107 Nev. 226, 234, 808 P.2d 919,
2 923 (1991).

3 20. Because the Court has found that no valid contract existed between
4 Skarpelos and either WAM or Weiser Capital, Weiser's claim for breach of the implied
5 covenant of good faith and fair dealing fails.

6 21. Although not raised by Weiser's pleadings, the Court further concludes that
7 there is no contract implied-in-fact between Skarpelos and either WAM or Weiser Capital.
8 Quantum meruit applies in actions based upon contracts implied-in-fact. *Certified Fire*,
9 128 Nev. at 379, 283 P.3d at 256. "A contract implied-in-fact must be manifested by
10 conduct; it is a true contract that arises from the tacit agreement of the parties." *Id.*
11 (internal quotations and citations omitted). "To find a contract implied-in-fact, the fact-
12 finder must conclude that the parties intended to contract and promises were exchanged,
13 the general obligations for which must be sufficiently clear. *Id.*, 128 Nev. at 379-380, 238
14 P.3d at 257. "It is at that point that a party may invoke quantum meruit as a gap-filer to
15 supply the absent term." *Id.*, 128 Nev. at 380, 238 P.3d at 257. "Where such a contract
16 exists, then, quantum meruit ensures the laborer receives the reasonable value, usually
17 market price, for his services." *Id.*

18 22. Even if Weiser had timely raised this issue in its pleadings, the Court
19 concludes there is no contract implied-in-fact because there is no evidence that Skarpelos
20 intended to contract with either WAM or Weiser Capital. The Court concludes that the
21 parties to the contract must be identified, and in this case Livadas' testimony was unclear
22 whether WAM or Weiser Capital was the supposed purchaser of the stock. If the Court
23 cannot even establish that basic premise, it cannot find or conclude that there is an oral
24 contract, a written contract, or even an implied-in-fact contract. The Court cannot find or
25 conclude there was a meeting of the minds because neither WAM nor Weiser Capital
26 seems to know who claims to be the owner.

27 23. "When sitting in equity, however, courts must consider the entirety of the
28 circumstances that bear upon the equities." *Shadow Wood Homeowners Ass'n, Inc. v.*

1 *New York Community Bancorp., Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1114 (2016).
2 “This includes considering the status and actions of all parties involved, including whether
3 an innocent party may be harmed by granting the desired relief.” *Id.*, 366 P.3d at 1115,
4 citing *Smith v. U.S.*, 373 F.2d 419, 424 (4th Cir. 1996) (“Equitable relief will not be
5 granted to the possible detriment of innocent third parties.”) (other citations omitted). It is
6 a “recognized province” of a court sitting in equity to do “complete justice between the
7 parties.” *MacDonald v. Krause*, 77 Nev. 312, 318, 362 P.2d 724, 727 (1961).

8 24. “Interpleader is an equitable proceeding to determine the rights of rival
9 claimants to property held by a third person having no interest therein.” *Balish v.*
10 *Farnham*, 92 Nev. 133, 137, 546 P.2d 1297, 1299 (1976). “In such a proceeding, each
11 claimant is treated as a plaintiff and must recover on the strength of his own right to title
12 and not upon the weakness of his adversary’s. *Id.*, 92 Nev. at 137, 546 P.2d at 1300. In
13 an interpleader action, each claimant must succeed in establishing his right to the property
14 by a preponderance of the evidence. *Midland Ins. Co. v. Friedgood*, 577 F.Supp. 1407
15 (S.D.N.Y. 1984).

16 25. Based on the foregoing, Skarpelos’ single cause of action for declaratory
17 relief is granted. Skarpelos is the owner of all shares of Anavex stock previously
18 represented by Certificates Nos. 660 and 753 and now represented by Certificate No. 975.

19 26. Neither WAM nor Weiser Capital, nor anyone claiming through WAM or
20 Weiser Capital, has any ownership interest in Anavex stock represented by Certificates
21 Nos. 660, 753 or 975.

22 27. Weiser’s claims for declaratory relief, breach of contract and breach of the
23 implied covenant of good faith and fair dealing are all dismissed.

24 28. However, as indicated above, the Court finds that Skarpelos agreed to sell
25 shares on April 2, 2013 to an unknown third party and that, as a result, WAM credited
26 Skarpelos’ account \$249,580 pursuant to that transaction. This credit took the account
27 from a balance of negative \$153,679.54 to a positive balance of \$95,775.46. The Court
28 further found that Skarpelos subsequently withdrew and received a substantial portion of

1 those funds, eventually leaving a balance of \$4,115.36. Therefore, despite Weiser's
2 failure to plead this claim for relief, the Court concludes it has equitable jurisdiction to
3 enter judgment against Skarpelos and in favor of WAM in the total amount of
4 \$245,464.64. Allowing Skarpelos to retain ownership of the Disputed Stock and the funds
5 he received would result in a windfall. This is an obligation that is separate from and
6 independent of Skarpelos' ownership of stock in Anavex and has no bearing on his
7 ownership.

8 29. Any finding of fact set forth above which is more appropriately a
9 conclusion of law is hereby incorporated as a conclusion of law.

10 **JUDGMENT**

11 Based on the foregoing findings of fact and conclusions of law,

12 IT IS HEREBY ORDERED AND ADJUDGED that Athanasios "Tom" Skarpelos
13 is the sole, true and rightful owner of all shares of stock in Anavex Life Sciences Corp.,
14 previously represented by Certificates Nos. 660 and 753 and now represented by
15 Certificate No. 975.

16 IT IS HEREBY FURTHER ORDERED AND ADJUDGED that neither Weiser
17 Asset Management, Ltd. (referred to above as WAM) nor Weiser (Bahamas) Ltd.
18 (referred to above as Weiser Capital) have any claim of ownership to any of the shares
19 previously represented by Certificates No. 660 and 753 and now represented by
20 Certificate No. 975, nor does any other person or entity claiming any ownership to said
21 shares by or through Weiser Asset Management, Ltd. or Weiser (Bahamas) Ltd.

22 IT IS HEREBY FURTHER ORDERED that Nevada Agency and Transfer
23 Company shall take such action as is necessary to reflect in Anavex's stock register,
24 corporate books and records that Athanasios "Tom" Skarpelos is the sole, true and rightful
25 owner of all the legal and equitable interest in all the shares previously represented by
26 Certificates No. 660 and 753 and now represented by Certificate No. 975.

1 IT IS HEREBY FURTHER ORDERED AND ADJUDGED that judgment is
2 entered against Athanasios "Tom" Skarpelos and in favor of WAM in the total amount of
3 \$245,464.64.

4 Dated this 22 day of April, 2019.

5 
6 DISTRICT JUDGE

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

NEVADA AGENCY AND TRANSFER
COMPANY, a Nevada corporation,

Plaintiff,

Case No. CV15-02259

vs.

Dept. No. 10

WEISER ASSET MANAGEMENT, LTD.,
a Bahamas company, WEISER (BAHAMAS)
LTD., a Bahamas company, ATHANASIOS
SKARPELOS, an individual, and DOES 1
through 10,

Defendants.

ORDER GRANTING MOTION FOR ATTORNEY'S FEES

Presently before the Court is the MOTION FOR ATTORNEYS' FEES ("the Motion") filed by Defendant ATHANASIOS SKARPELOS ("Mr. Skarpelos") on April 25, 2019. Mr. Skarpelos contemporaneously filed the DECLARATION OF DANE W. ANDERSON IN SUPPORT OF MOTION FOR ATTORNEYS' FEES ("the Declaration"). Defendants WEISER ASSET MANAGEMENT, LTD. and WEISER (BAHAMAS) LTD. (collectively, "Weiser") filed WEISER'S OPPOSITION TO SKARPELOS'S MOTION FOR ATTORNEY'S FEES ("the Opposition") on May 24, 2019. Mr. Skarpelos filed the REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES ("the Reply") on June 7, 2019, and contemporaneously submitted the matter for the Court's consideration.

1 This case was initiated by Plaintiff NEVADA AGENCY AND TRANSFER COMPANY
2 (“the Plaintiff”) as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of
3 stock in Anavex Life Sciences Corp.¹ On May 24, 2016, Weiser filed WEISER’S ANSWER AND
4 CROSS-CLAIM (“the A&C”) which contained three cross-claims: 1) Declaratory Judgment; 2)
5 Breach of Contract; and 3) Breach of the Implied Covenant of Good Faith and Fair Dealing. The
6 A&C 10-12. The Court presided over a bench trial beginning on January 28, 2019, to resolve the
7 competing claims between Weiser and Mr. Skarpelos to the shares. The Court entered the
8 FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT (“the FFCLJ”) on April 22,
9 2019. The Court determined that Mr. Skarpelos was the rightful owner of the shares. The FFCLJ,
10 p. 7 ¶ 25. However, the Court invoked its equitable jurisdiction to enter judgment against Mr.
11 Skarpelos in the amount of \$245,464.64. The FFCLJ, p. 7-8 ¶ 28.

14 Mr. Skarpelos contends he is entitled to an award of \$216,900.50 in attorney’s fees because
15 Weiser’s cross-claims and defenses were maintained without reasonable grounds or to harass Mr.
16 Skarpelos. The Motion 2:9-17; 7:21-28. Mr. Skarpelos contends Weiser changed its legal theory
17 during trial and that its cross-claims and defenses were not supported by credible evidence and are
18 thus frivolous. The Motion 7:1-11. Weiser makes the following arguments in response: 1) Weiser
19 won a quarter-million dollar judgment, which demonstrates its claims were not frivolous; 2) even if
20 Weiser’s claims were unsuccessful, they were supported by substantial evidence and reasonable
21 grounds; 3) Weiser did not change its legal theory and, even if it did, changing a legal theory is not
22 a basis for an award of attorney’s fees; and 4) Mr. Skarpelos fails to explain how the requested
23 amount is reasonable and necessary. The Opposition 1:25-28; 2:1-7; 3-6. Mr. Skarpelos responds

27 ¹ The Plaintiff was discharged from the action in the ORDER GRANTING MOTION FOR DISCHARGE filed on
28 January 23, 2019.

1 as follows: 1) Weiser changed its argument at trial regarding the July 2013 Purchase and Sale
2 Agreement (“the July PSA”), and began arguing it was a meaningless document; 2) the award of
3 \$245,464.64 was not based on any of Weiser’s claims; 3) Weiser presented no credible evidence to
4 supports its claims because all of the claims were premised on the July PSA; 4) Weiser abandoned
5 its pleadings and legal theories at trial; and 5) the requested fees are reasonable considering the
6 duration and nature of the litigation. The Reply 3:2-27; 5:1-6; 6:24-26; 7:4-17; 8:4-24.

8 Attorney’s fees are recoverable where authorized by agreement, statute or rule. *Wheeler*
9 *Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 268, 71 P.3d 1258, 1263 (2003) (quoting *Young v.*
10 *Nev. Title Co.*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987)). NRS 18.010(2)(b) permits an award
11 of attorney’s fees where:
12

13 Without regard to the recovery sought, when the court finds that the claim, counterclaim,
14 cross-claim or third-party complaint or defense of the opposing party was brought or
15 maintained without reasonable ground or to harass the prevailing party. The court shall
16 liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all
17 appropriate situations. It is the intent of the Legislature that the court award attorney's fees
18 pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of
19 Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious
20 claims and defenses because such claims and defenses overburden limited judicial resources,
21 hinder the timely resolution of meritorious claims and increase the costs of engaging in
22 business and providing professional services to the public.

23 NRCP 11(b) provides:

24 Representations to the Court. By presenting to the court a pleading, written motion, or other
25 paper--whether by signing, filing, submitting, or later advocating it--an attorney or
26 unrepresented party certifies that to the best of the person's knowledge, information, and
27 belief, formed after an inquiry reasonable under the circumstances:

28 (1) it is not being presented for any improper purpose, such as to harass, cause
unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by
a nonfrivolous argument for extending, modifying, or reversing existing law or for
establishing new law;

1 (3) the factual contentions have evidentiary support or, if specifically so identified, will
2 likely have evidentiary support after a reasonable opportunity for further
3 investigation or discovery; and

4 (4) the denials of factual contentions are warranted on the evidence or, if specifically so
5 identified, are reasonably based on belief or a lack of information.

6 A claim will be considered groundless or frivolous if there is no credible evidence at trial to
7 support it. *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134
8 Nev. Adv. Op. 69, 427 P.3d 104, 113 (2018) (citing *Semenza v. Caughlin Crafted Homes*, 111 Nev.
9 1089, 1095, 901 P.2d 684, 687-88 (1995)). *See also Capanna v. Orth*, 134 Nev. Adv. Op. 108, 432
10 P.3d 726, 734 (2018). “Determining whether attorney fees should be awarded under NRS
11 18.010(2)(b) requires the court to inquire into the actual circumstances of the case, ‘rather than a
12 hypothetical set of facts favoring plaintiff’s averments.’” *Baldonaldo v. Wynn Las Vegas, LLC*, 124
13 Nev. 951, 967-68, 194 P.3d 96, 106-07 (2008) (citations omitted). Per *Brunzell*, the court must
14 analyze whether the requested attorney’s fees are reasonable using the following factors:
15

16 (1) the qualities of the advocate: his ability, his training, education, experience, professional
17 standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its
18 importance, time and skill required, the responsibility imposed and the prominence and
19 character of the parties where they affect the importance of the litigation; (3) the work
20 actually performed by the lawyer: the skill, time and attention given to the work; (4) the
21 result: whether the attorney was successful and what benefits were derived.

22 *Brunzell v. Golden Gate Nat. Bank*, 95 Nev. 345, 349, 455 P.2d 31, 33 (1969).

23 The Court will grant the Motion because Weiser unreasonably maintained its claim to
24 ownership of the stock by virtue of the July PSA. While the Court awarded Weiser equitable relief,
25 the award was unrelated to Weiser’s claims for relief and was an exercise of the Court’s equitable
26 jurisdiction over this matter. *See* the FFCLJ 7-8 ¶ 28. Until trial, Weiser indicated its cross-claims
27 were supported by the July PSA. *See* the A&C 10-12. *See also* Trial Ex. 30. At trial, Weiser
28 abandoned the theory that its claim of ownership was supported by the July PSA, and Mr. Livadas

1 testified the July PSA was meaningless and used for another purpose. The FFCLJ 3-4 ¶ 9. The
2 Court found this testimony extremely troubling, given the consistency with which Weiser had held
3 its position about the July PSA before trial. Had Weiser admitted the July PSA was meaningless
4 before trial, the Court may have been able to dismiss or summarily adjudicate this matter, thus
5 obviating the costs incurred during trial. While Weiser is correct that evidence may develop over
6 the course of a trial, a sudden change in legal theory undermines pretrial procedure and motion
7 practice and can result in the accumulation of needless costs. For these reasons, Weiser
8 unreasonably maintained its claim to ownership by virtue of the July PSA.
9

10 The Court will award \$216,900.50 in attorney's fees because the requested fees are
11 reasonable. Considering the qualities of Mr. Skarpelos' legal team, both Dane Anderson ("Mr.
12 Anderson") and John Murtha ("Mr. Murtha") are experienced litigators with a shared total of 55
13 years of legal experience. See the Declaration 2:12-20. Mr. Anderson and Mr. Murtha charged
14 reasonable fees, ranging from \$350.00 to \$375.00 per hour, and billed \$150.00 to \$300.00 per hour
15 for their associates' work. Mr. Skarpelos' legal team worked diligently on this matter over the
16 course of three years, including traveling to Greece to take key depositions and representing Mr.
17 Skarpelos during a five-day bench trial. The number of hours spent on this matter were also
18 reasonable, given the three-year duration of this case and the fact it proceeded to trial. See the
19 Declaration Ex. 1, p. 19. Furthermore, Mr. Skarpelos' legal team obtained a successful result in
20 this litigation. Mr. Skarpelos prevailed on his claim for declaratory relief, and he was ultimately
21 declared the owner of the stock. The equitable award to Weiser does not cast doubt on the efficacy
22 of Mr. Skarpelos' legal team, and the Court will award \$216,900.50 in attorney's fees.
23
24
25
26
27
28

1 **IT IS ORDERED** the MOTION FOR ATTORNEYS' FEES is hereby **GRANTED**.

2 **DATED** this 9 day of August, 2019.

3
4 

5 ELLIOTT A. SATTLER

6 District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of August, 2019, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 9 day of August, 2019, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

- JOHN F. MURTHA, ESQ.
- DANE W. ANDERSON, ESQ.
- JEREMY J. NORK, ESQ.
- FRANK Z. LAFORGE, ESQ.


Sheila Mansfield
Judicial Assistant

1 **2540**

JOHN F. MURTHA, ESQ.

2 Nevada Bar No. 835

DANE W. ANDERSON, ESQ.

3 Nevada Bar No. 6883

4 SETH J. ADAMS, ESQ.

Nevada Bar No. 11034

5 **WOODBURN AND WEDGE**

Sierra Plaza

6 6100 Neil Road, Ste. 500

P.O. Box 2311

7 Reno, Nevada 89505

8 Telephone : (775) 688-3000

jmurtha@woodburnandwedge.com

9 danderson@woodburnandwedge.com

sadams@woodburnandwedge.com

10 *Attorneys for Defendant/Cross-Claimant*

11 *Athanasios Skarpepos*

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

13 ***

14 NEVADA AGENCY AND TRANSFER
15 COMPANY, a Nevada corporation,

Case No. CV15-02259

Dept. No. 10

16 Plaintiff,

17 vs.

NOTICE OF ENTRY OF ORDER

18 WEISER ASSET MANAGEMENT, LTD.,
19 a Bahamas company; ATHANASIOS
20 SKARPELOS, an individual; and
DOES 1-10,

21 Defendants.

22 _____/
ATHANASIOS SKARPELOS, an individual,

23 Cross-Claimant,

24 vs.

25 WEISER ASSET MANAGEMENT, LTD., a
26 Bahamas company, and WEISER (BAHAMAS)
27 LTD., a Bahamas company.

28 Cross-Defendants.

1 WEISER ASSET MANAGEMENT, LTD.,
2 a Bahamas company, WEISER (BAHAMAS), LTD.,
3 a Bahamas company,

4 Cross-Claimants.

5 vs.

6 ATHANASIOS SKARPELOS, an individual,
7 Cross-defendant.

8 **NOTICE OF ENTRY OF ORDER**

9 **PLEASE TAKE NOTICE** that on August 9, 2019, the Court entered its Order
10 Granting Motion for Attorney's Fees, a true and correct copy of which is attached hereto as
11 **Exhibit 1.**

12 **AFFIRMATION**

13 The undersigned does hereby affirm that the preceding document does not contain the
14 personal information of any person.

15 DATED: August 9, 2019

WOODBURN AND WEDGE

17 By /s/ Dane W. Anderson

18 John F. Murtha, Esq.
19 Nevada Bar No. 835
Dane W. Anderson, Esq.
20 Nevada Bar No. 6883
Seth J. Adams, Esq.
21 Nevada Bar No. 11034

22 *Attorneys for Defendant/
23 Cross-Claimant
24 Athanasios Skarpelos*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Woodburn and Wedge and that on this date,
3 I caused to be sent via electronic delivery through the Court's E-flex system a true and correct
4 copy of *Notice of Entry of Order* to:
5

6 Alexander H. Walker III, Esq.
7 57 West 200 South, Ste. 400
8 Salt Lake City, Utah 84101
9 awalker@law@aol.com

10 *Attorneys for Plaintiff*

Clay P. Brust, Esq.
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, NV 89503
cbrust@rbsllaw.com

Attorneys for Plaintiff

11 Jeremy J. Nork, Esq.
12 Frank Z. LaForge, Esq.
13 Holland & Hart LLP
14 5441 Kietzke Lane, 2nd Floor
15 Reno, Nevada 89511
16 jnork@hollandandhart.com
17 fzlaforge@hollandandhart.com

18 *Attorneys for Defendants*
19 *Weiser Asset Management, Ltd.*
20 *and Weiser (Bahamas), Ltd.*
21

22 DATED: August 9, 2019.

23 /s/ Dianne M. Kelling
24 Dianne M. Kelling, an employee of
25 Woodburn and Wedge
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT LIST

<u>Exhibit No.</u>	<u>Exhibit Title</u>	<u>Pages</u> (Including Exhibit Sheet)
1	Order Granting Motion for Attorney's Fees	8

EXHIBIT 1

EXHIBIT1

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

NEVADA AGENCY AND TRANSFER
COMPANY, a Nevada corporation,

Plaintiff,

Case No. CV15-02259

vs.

Dept. No. 10

WEISER ASSET MANAGEMENT, LTD.,
a Bahamas company, WEISER (BAHAMAS)
LTD., a Bahamas company, ATHANASIOS
SKARPELOS, an individual, and DOES 1
through 10,

Defendants.

ORDER GRANTING MOTION FOR ATTORNEY'S FEES

Presently before the Court is the MOTION FOR ATTORNEYS' FEES ("the Motion") filed by Defendant ATHANASIOS SKARPELOS ("Mr. Skarpelos") on April 25, 2019. Mr. Skarpelos contemporaneously filed the DECLARATION OF DANE W. ANDERSON IN SUPPORT OF MOTION FOR ATTORNEYS' FEES ("the Declaration"). Defendants WEISER ASSET MANAGEMENT, LTD. and WEISER (BAHAMAS) LTD. (collectively, "Weiser") filed WEISER'S OPPOSITION TO SKARPELOS'S MOTION FOR ATTORNEY'S FEES ("the Opposition") on May 24, 2019. Mr. Skarpelos filed the REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES ("the Reply") on June 7, 2019, and contemporaneously submitted the matter for the Court's consideration.

1 This case was initiated by Plaintiff NEVADA AGENCY AND TRANSFER COMPANY
2 (“the Plaintiff”) as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of
3 stock in Anavex Life Sciences Corp.¹ On May 24, 2016, Weiser filed WEISER’S ANSWER AND
4 CROSS-CLAIM (“the A&C”) which contained three cross-claims: 1) Declaratory Judgment; 2)
5 Breach of Contract; and 3) Breach of the Implied Covenant of Good Faith and Fair Dealing. The
6 A&C 10-12. The Court presided over a bench trial beginning on January 28, 2019, to resolve the
7 competing claims between Weiser and Mr. Skarpelos to the shares. The Court entered the
8 FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT (“the FFCLJ”) on April 22,
9 2019. The Court determined that Mr. Skarpelos was the rightful owner of the shares. The FFCLJ,
10 p. 7 ¶ 25. However, the Court invoked its equitable jurisdiction to enter judgment against Mr.
11 Skarpelos in the amount of \$245,464.64. The FFCLJ, p. 7-8 ¶ 28.

14 Mr. Skarpelos contends he is entitled to an award of \$216,900.50 in attorney’s fees because
15 Weiser’s cross-claims and defenses were maintained without reasonable grounds or to harass Mr.
16 Skarpelos. The Motion 2:9-17; 7:21-28. Mr. Skarpelos contends Weiser changed its legal theory
17 during trial and that its cross-claims and defenses were not supported by credible evidence and are
18 thus frivolous. The Motion 7:1-11. Weiser makes the following arguments in response: 1) Weiser
19 won a quarter-million dollar judgment, which demonstrates its claims were not frivolous; 2) even if
20 Weiser’s claims were unsuccessful, they were supported by substantial evidence and reasonable
21 grounds; 3) Weiser did not change its legal theory and, even if it did, changing a legal theory is not
22 a basis for an award of attorney’s fees; and 4) Mr. Skarpelos fails to explain how the requested
23 amount is reasonable and necessary. The Opposition 1:25-28; 2:1-7; 3-6. Mr. Skarpelos responds

27 ¹ The Plaintiff was discharged from the action in the ORDER GRANTING MOTION FOR DISCHARGE filed on
28 January 23, 2019.

1 as follows: 1) Weiser changed its argument at trial regarding the July 2013 Purchase and Sale
2 Agreement ("the July PSA"), and began arguing it was a meaningless document; 2) the award of
3 \$245,464.64 was not based on any of Weiser's claims; 3) Weiser presented no credible evidence to
4 supports its claims because all of the claims were premised on the July PSA; 4) Weiser abandoned
5 its pleadings and legal theories at trial; and 5) the requested fees are reasonable considering the
6 duration and nature of the litigation. The Reply 3:2-27; 5:1-6; 6:24-26; 7:4-17; 8:4-24.

8 Attorney's fees are recoverable where authorized by agreement, statute or rule. *Wheeler*
9 *Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 268, 71 P.3d 1258, 1263 (2003) (quoting *Young v.*
10 *Nev. Title Co.*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987)). NRS 18.010(2)(b) permits an award
11 of attorney's fees where:
12

13 Without regard to the recovery sought, when the court finds that the claim, counterclaim,
14 cross-claim or third-party complaint or defense of the opposing party was brought or
15 maintained without reasonable ground or to harass the prevailing party. The court shall
16 liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all
17 appropriate situations. It is the intent of the Legislature that the court award attorney's fees
18 pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of
19 Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious
20 claims and defenses because such claims and defenses overburden limited judicial resources,
21 hinder the timely resolution of meritorious claims and increase the costs of engaging in
22 business and providing professional services to the public.

23 NRCP 11(b) provides:

24 Representations to the Court. By presenting to the court a pleading, written motion, or other
25 paper--whether by signing, filing, submitting, or later advocating it--an attorney or
26 unrepresented party certifies that to the best of the person's knowledge, information, and
27 belief, formed after an inquiry reasonable under the circumstances:

- 28 (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

1 (3) the factual contentions have evidentiary support or, if specifically so identified, will
2 likely have evidentiary support after a reasonable opportunity for further
3 investigation or discovery; and

4 (4) the denials of factual contentions are warranted on the evidence or, if specifically so
5 identified, are reasonably based on belief or a lack of information.

6 A claim will be considered groundless or frivolous if there is no credible evidence at trial to
7 support it. *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134
8 Nev. Adv. Op. 69, 427 P.3d 104, 113 (2018) (citing *Semenza v. Caughlin Crafted Homes*, 111 Nev.
9 1089, 1095, 901 P.2d 684, 687-88 (1995)). See also *Capanna v. Orth*, 134 Nev. Adv. Op. 108, 432
10 P.3d 726, 734 (2018). "Determining whether attorney fees should be awarded under NRS
11 18.010(2)(b) requires the court to inquire into the actual circumstances of the case, 'rather than a
12 hypothetical set of facts favoring plaintiff's averments.'" *Baldonardo v. Wynn Las Vegas, LLC*, 124
13 Nev. 951, 967-68, 194 P.3d 96, 106-07 (2008) (citations omitted). Per *Brunzell*, the court must
14 analyze whether the requested attorney's fees are reasonable using the following factors:

15 (1) the qualities of the advocate: his ability, his training, education, experience, professional
16 standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its
17 importance, time and skill required, the responsibility imposed and the prominence and
18 character of the parties where they affect the importance of the litigation; (3) the work
19 actually performed by the lawyer: the skill, time and attention given to the work; (4) the
20 result: whether the attorney was successful and what benefits were derived.

21 *Brunzell v. Golden Gate Nat. Bank*, 95 Nev. 345, 349, 455 P.2d 31, 33 (1969).


22 The Court will grant the Motion because Weiser unreasonably maintained its claim to
23 ownership of the stock by virtue of the July PSA. While the Court awarded Weiser equitable relief,
24 the award was unrelated to Weiser's claims for relief and was an exercise of the Court's equitable
25 jurisdiction over this matter. See the FFCLJ 7-8 ¶ 28. Until trial, Weiser indicated its cross-claims
26 were supported by the July PSA. See the A&C 10-12. See also Trial Ex. 30. At trial, Weiser
27 abandoned the theory that its claim of ownership was supported by the July PSA, and Mr. Livadas
28

1 testified the July PSA was meaningless and used for another purpose. The FFCLJ 3-4 ¶ 9. The
2 Court found this testimony extremely troubling, given the consistency with which Weiser had held
3 its position about the July PSA before trial. Had Weiser admitted the July PSA was meaningless
4 before trial, the Court may have been able to dismiss or summarily adjudicate this matter, thus
5 obviating the costs incurred during trial. While Weiser is correct that evidence may develop over
6 the course of a trial, a sudden change in legal theory undermines pretrial procedure and motion
7 practice and can result in the accumulation of needless costs. For these reasons, Weiser
8 unreasonably maintained its claim to ownership by virtue of the July PSA.
9

10 The Court will award \$216,900.50 in attorney's fees because the requested fees are
11 reasonable. Considering the qualities of Mr. Skarpelos' legal team, both Dane Anderson ("Mr.
12 Anderson") and John Murtha ("Mr. Murtha") are experienced litigators with a shared total of 55
13 years of legal experience. *See* the Declaration 2:12-20. Mr. Anderson and Mr. Murtha charged
14 reasonable fees, ranging from \$350.00 to \$375.00 per hour, and billed \$150.00 to \$300.00 per hour
15 for their associates' work. Mr. Skarpelos' legal team worked diligently on this matter over the
16 course of three years, including traveling to Greece to take key depositions and representing Mr.
17 Skarpelos during a five-day bench trial. The number of hours spent on this matter were also
18 reasonable, given the three-year duration of this case and the fact it proceeded to trial. *See* the
19 Declaration Ex. 1, p. 19. Furthermore, Mr. Skarpelos' legal team obtained a successful result in
20 this litigation. Mr. Skarpelos prevailed on his claim for declaratory relief, and he was ultimately
21 declared the owner of the stock. The equitable award to Weiser does not cast doubt on the efficacy
22 of Mr. Skarpelos' legal team, and the Court will award \$216,900.50 in attorney's fees.
23
24
25
26
27
28

1 **IT IS ORDERED** the MOTION FOR ATTORNEYS' FEES is hereby **GRANTED**.

2 **DATED** this 9 day of August, 2019.

3
4 
5 ELLIOTT A. SATTLER
6 District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

6
78
913
1415
1618
19