

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

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

Respondent.

No. 80214

Electronically Filed
Dec 23 2019 01:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The 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 26 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.

1. Judicial District Second Department 4
County Washoe Judge Connie J. Steinheimer
District Ct. Case No. CV13-02663

2. **Attorneys filing this docketing statement:**

Attorney Micah S. Echols, Esq.
Telephone 702-382-0711
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Address 10001 Park Run Drive, Las Vegas, NV 89145
Clients Defendants/Appellants, Superpumper, Inc. ("Superpumper"); Edward Bayuk ("Ed Bayuk"), individually and as Trustee of the Edward Bayuk Living Trust ("Bayuk Trust"); Salvatore Morabito ("Sam Morabito"); and Snowshoe Petroleum, Inc. ("Snowshoe") (collectively, "Defendants")

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Clients Defendants/Appellants, Salvatore Morabito; Superpumper, Inc.; and Snowshoe Petroleum, Inc.

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Clients Defendants/Appellants, Edward Bayuk, individually and as Trustee of the Edward Bayuk Living Trust

3. **Attorneys representing respondents:**

Attorney Gerald M. Gordon, Esq.; Erica Pike Turner, Esq.; Teresa M. Pilatowicz, Esq.; and Stephen A. Davis, Esq.
Telephone 725-777-3000
Firm Garman Turner Gordon LLP
Address 650 White Drive, Ste. 100, Las Vegas, Nevada 89119
Client Plaintiff/Respondent, William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito ("Plaintiff")

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

- | | |
|---|---|
| <input 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 checked="" type="checkbox"/> Other disposition (specify) |
- Order Denying [Morabito's] Claim of Exemption (filed 08/02/19) (**Exhibit 5**);
 - Order Denying [Bayuk's] Claim of Exemption and Third-Party Claim (filed 08/09/19) (**Exhibit 6**); and
 - Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19) (**Exhibit 7**).

5. **Does this appeal raise issues concerning any of the following:** N/A.

- ☐ 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:

Consolidated Nev. Corp. v. JH, Inc., Case No. 54412, dismissal orders filed on November 22, 2011, December 1, 2011, and December 7, 2011.

American Realty Investors, Inc. v. Dist. Ct., Case No. 57743, order dismissing petition filed January 11, 2012.

Consolidated Nevada Corp. v. JH, Inc., Consolidated Case Nos. 57943/57944/59138, dismissal order filed November 22, 2011.

Consolidated Nevada Corp. v. Dist. Ct., Case No. 59083, order denying petition August 31, 2011.

Morabito v. Dist. Ct., Case No. 65319, order denying petition May 13, 2014.

Superpumper, Inc., et al. v. Leonard, Case No. 79355, pending.

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:

Consolidated Nevada Corp., et al. v. JH. et al., CV07-02764, settled and dismissed December 1, 2011.

In re: Consolidated Nevada Corp., BK-N-13-51236-GWZ, order granting summary judgment and judgment filed on December 17, 2014 and order for relief filed on December 17, 2014. Pending.

In re: Consolidated Nevada Corp., Bankruptcy Appellate Case No. NV-17-1210, affirmed December 21, 2017.

In re: Consolidated Nevada Corp., Ninth Circuit Case No. 18-60002, affirmed August 8, 2019.

In re: Paul A. Morabito, BK-N-13-51237-GWZ and all related matters, order granting summary judgment and judgment filed on December 17, 2014 and order for relief filed on December 17, 2014. Pending.

In re: Paul A. Morabito, Bankruptcy Appellate Case No. NV-14-1593, affirmed June 6, 2016.

In re: Paul A. Morabito, Bankruptcy Appellate Case No. NV-17-1211, affirmed December 21, 2017.

In re: Paul A. Morabito, Bankruptcy Appellate Case No. NV-17-1304, affirmed October 30, 2018.

In re: Paul A. Morabito, Ninth Circuit Case No. 16-60055, voluntarily dismissed November 4, 2016.

In re: Paul A. Morabito, Ninth Circuit Case No. 18-60064, affirmed August 8, 2019.

In re: Paul A. Morabito, District Court Case No. 3:18-cv-00221-MMD, affirmed January 22, 2019.

Leonard v. Superpumper Inc., Maricopa County, AZ Case No. CV2019-007691, pending.

Leonard v. Bayuk, Orange County, CA Case No. 30-2019-01068591-CU-EN-CJC, pending litigation.

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

This is an action to recover alleged fraudulent conveyances. The action was commenced by JH, Inc.; Jerry Herbst; and Berry-Hinckley Industries, Inc. on December 17, 2013. On June 20, 2013, JH, Inc.; Jerry Herbst; and Berry-Hinckley Industries, Inc. filed a petition for an involuntary bankruptcy against Paul Morabito in the United States Bankruptcy Court for the District of Nevada, Case No. BK-N 13-51237. William A. Leonard was appointed as the Chapter 7 Trustee in the involuntary bankruptcy. On June 16, 2015, the District Court entered an amended order substituting William A. Leonard as the Plaintiff ("Plaintiff") in the place of JH, Inc.; Jerry Herbst; and Berry-Hinckley Industries, Inc. pursuant to NRCP 17(a). *See Exhibit 3.*

On March 29, 2019 the District Court entered judgment against each of the Defendants as follows:

Against Ed Bayuk and the Bayuk Trust, as follows: (1) Avoiding the transfer of the El Camino Property and the Los Olivos Property, and awarding Plaintiff damages in the amount of \$884,999.95, with offset for amounts collected on account of the El Camino Property and the Los Olivos Property; (2) Avoiding the transfer of Baruk LLC and awarding Plaintiff damages in the amount of \$1,654,550 with offset for amounts collected on account of Baruk LLC; (3) Avoiding the transfer of \$420,250 and awarding Plaintiff damages in the amount of \$420,250 with offset for amounts collected on account of the \$420,250; and (4) Avoiding the Superpumper Transfer and awarding Plaintiff damages in the amount of \$4,949,000 with offset for amounts collected on account of the Superpumper Transfer. *See Exhibit 4.*

Against Sam Morabito as follows: (1) Avoiding the transfer of \$355,000 and awarding Plaintiff damages in the amount of \$355,000 with offset for amounts collected on account on account of the \$355,000; and (2) Avoiding the Superpumper Transfer and awarding Plaintiff damages in the amount of

\$4,949,000 with offset for amounts collected on account of the Superpumper Transfer. *See id.*

Against Snowshoe, avoiding the Superpumper Transfer and awarding Plaintiff damages in the amount of \$9,898,000 with offset for amounts collected on account of the Superpumper Transfer. *See id.* In post-trial proceedings, the District Court denied a motion for new trial, and awarded Plaintiff attorney fees and costs.

On August 5, 2019, Defendants filed an appeal from (1) the Findings of Fact, Conclusions of Law, and Judgment; (2) the Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment; (3) the Order Granting in Part and Denying in Part Motion to Retax Costs; and (4) the Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68.

On August 5, 2019, Ed Bayuk and the Bayuk Trust separately appealed from (1) the Order Denying Defendants' Motion to Dismiss; (2) the Order Regarding Discovery Commissioner's Recommendation for Order; (3) the oral order made on October 29, 2018 on the first day of trial, denying Defendants' motion in limine; (4) the oral order made on October 29, 2018 on the first day of trial, holding Plaintiff's motion in limine in abeyance; (5) the Findings of Fact, Conclusions of Law, and Judgment; (6) the Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment; (7) the Order Granting in Part and Denying in Part Motion to Retax Costs; and (8) the Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68. Both notices of appeal were docketed in Case No. 79355, and Defendants are proceeding together.

Upon initiation of execution proceedings, Defendants Ed Bayuk and Salvatore Morabito both filed claims of exemption. Edward Bayuk, as Trustee for Non-Party the Edward Bayuk Living Trust also filed a third-party claim. However, the District Court denied the claims of exemption and the third-party claim in orders filed on August 2, 2019 (**Exhibit 5**) and August 9, 2019 (**Exhibit 6**). On August 19, 2019, Defendants filed their motion to make amended or additional findings under NRCP 52(b), or, in the alternative, motion for reconsideration. *See Exhibit 2*. The District Court denied Defendants' motion in an order filed on November 8, 2019. *See Exhibit 7*.

Defendants now appeal from: (1) the Order Denying [Morabito's] Claim of Exemption, which was filed on August 2, 2019 (**Exhibit 5**); (2) the Order Denying [Bayuk's] Claim of Exemption and Third-Party Claim, which was filed on August 9, 2019 (**Exhibit 6**); and (3) the Order Denying Defendants' Motion to

Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085, which was filed on November 8, 2019 (**Exhibit 7**).

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

(1) Whether the District Court lacked subject matter jurisdiction over the entire District Court case, due to the Bankruptcy Trustee's failure to obtain the proper authorization from the Bankruptcy Court;

(2) Whether the District Court lacked subject matter jurisdiction over the Bayuk Trust since no *in rem* action was filed against it;

(3) Whether the District Court erred by refusing to apply the plain language of the specific limitations period in NRS 166.170(1);

(4) Whether the District Court's erred by refusing to recognize the validity of spendthrift trusts under NRS Chapter 166, by adding extra-statutory conditions that are in direct conflict with *Klabacka v Nelson*, 394 P.3d 940 (Nev. 2017); and

(5) Whether a transfer between two spendthrift trusts is protected from fraudulent transfer claims.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding 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:

Appellants are not aware of any pending proceedings in this Court raising the same or similar issues.

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: *See* response to Question 9.

13. **Assignment to the Supreme 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 case originated in business court and should be retained by the Supreme Court according to NRAP 17(a)(9). Additionally, this appeal raises several issues of first impression, as outlined in response to Question 9.

14. **Trial.** If this action proceeded to trial, how many days did the trial last?
9 days.

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?

N/A.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from

- (1) the Order Denying [Morabito's] Claim of Exemption was filed on August 2, 2019 and is attached as **Exhibit 5**;
- (2) the Order Denying [Bayuk's] Claim of Exemption and Third-Party Claim was filed on August 9, 2019 and is attached as **Exhibit 6**; and
- (3) the Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 was filed on November 8, 2019 and is attached as **Exhibit 7**.

Date written notice of entry of judgment or order was served

- (1) the Notice of Entry of Order Denying [Morabito's] Claim of Exemption was filed on August 12, 2019 and is attached as **Exhibit 5**;
- (2) the Notice of Entry of Order Denying [Bayuk's] Claim of Exemption and Third-Party Claim was filed on August 9, 2019 and is attached as **Exhibit 6**; and
- (3) the Notice of Entry of Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 was filed on December 23, 2019 and is attached as **Exhibit 7**.

Was service by:

- ☐ Delivery
- ☒ Mail/electronic/fax

17. 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 [Defendants'] Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration was filed August 19, 2019

☐ 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: November 8, 2019.

(c) Date written notice of entry of order resolving tolling motion was served: December 23, 2019.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. Date notice of appeal filed: December 6, 2019.

19. 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

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

(a)

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) NRAP 3A(b)(8) | |

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

NRAP 3A(b)(8) provides for an appeal from an special order filed after judgment, such as the instant orders denying exemption and third-party claim.

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

(a) Parties:

Original Plaintiffs: JH, Inc.; Jerry Herbst; and Berry Hinckley Industries

Substituted Plaintiff: William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito

Defendants: Paul Morabito, individually and as Trustee of the Arcadia Living Trust; Superpumper, Inc.; Edward Bayuk, individually and as Trustee of the Edward William Bayuk Trust; Salvatore Morabito; and Snowshoe Petroleum, Inc.

(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:

All of the original Plaintiffs were removed and substituted by William A. Leonard in the May 15, 2015 stipulation and order to substitute a party pursuant to NRCP 17(a), as amended on June 16, 2015. *See Exhibit 3.* Defendant, Paul Morabito, individually and as Trustee of the Arcadia Living Trust was removed by that same stipulation and order. *Id.*

22. 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.

In the first amended complaint, Plaintiff alleged a claim for fraudulent transfers against all Defendants. See **Exhibit 1**. This claim was disposed of in the March 29, 2019 Findings of Fact, Conclusions of Law, and Judgment. See **Exhibit 4**.

23. 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

24. 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

(d) 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

25. 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)):

N/A.

26. 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

Exhibit	Document Description
1	First Amended Complaint (filed 05/15/15)
2	[Defendants'] Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration without Exhibits (filed 08/19/19)
3	Amended Stipulation and Order to Substitute a Party Pursuant to NRCP 17(a) (filed 06/16/15)
4	Notice of Entry with Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/19)
5	Notice of Entry of Order Denying [Morabito's] Claim of Exemption (filed 08/02/19)
6	Notice of Entry of Order Denying [Bayuk's] Claim of Exemption and Third-Party Claim (filed 08/09/19)
7	Notice of Entry of Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 12/23/19)

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.

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

Name of appellant

Micah S. Echols, Esq.

Name of counsel of record

December 23, 2019

Date

/s/ Micah S. Echols

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 23rd day of December, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☒ By electronic service in accordance with this Court's Master Service List

Gabrielle Hamm, Esq.
Michael Lehnert, Esq.
Frank Gilmore, Esq.
Jeffrey Hartman, Esq.
Erika Pike Turner, Esq.
Stephen A. Davis, Esq.
Debbie Leonard, Esq.

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Gerald M. Gordon, Esq.
Teresa M. Pilatowicz, Esq.
Mark Weisenmiller, Esq.
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650 White Drive, Ste. 100
Las Vegas, Nevada 89119

*Attorneys for Respondent, William A. Leonard, Trustee for the Bankruptcy Estate
of Paul Anthony Morabito*

Dated this 23rd day of December, 2019.

/s/ Leah Dell

Signature

Exhibit 1

1090
GORDON SILVER
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Attorneys for Plaintiff

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 7

FIRST AMENDED COMPLAINT

[EXEMPT FROM ARBITRATION – DAMAGES IN EXCESS OF \$50,000]

Plaintiff WILLIAM A. LEONARD hereby alleges the following:

I.

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff William A. Leonard is an individual serving as the Chapter 7 Trustee in
the bankruptcy proceeding of Paul Morabito (hereinafter referred to as the “Debtor”), *In re*:

1 *Paul A. Morabito*, Case 13-51237 in the United States Bankruptcy Court for the District of
2 Nevada.

3 2. Upon information and belief, Defendant Superpumper, Inc. (“Superpumper”) is
4 and was at all times relevant hereto an Arizona corporation with its principal place of business
5 in Maricopa County, Arizona. Superpumper was the recipient of certain fraudulent transfers
6 originating in Washoe County, Nevada.

7 3. Upon information and belief, Defendant Edward Bayuk (“Bayuk”) is and was at
8 all times relevant hereto a resident of both Washoe County Nevada and Los Angeles County,
9 California and is the domestic partner of the Debtor. Bayuk is also the President of
10 Superpumper.

11 4. Upon information and belief, Bayuk is also the Trustee of the Edward William
12 Bayuk Living Trust. Bayuk, individually, and as Trustee of the Edward William Bayuk Living
13 Trust, was the recipient of certain fraudulent transfers originating in Washoe County, Nevada.

14 5. Upon information and belief, Defendant Salvatore Morabito (“Salvatore
15 Morabito”) is and was at all times relevant hereto a resident of Washoe County, Nevada and
16 Maricopa County, Arizona and the Secretary and Vice President of Superpumper. Salvatore
17 Morabito is the brother of the Debtor. Salavatore Morabito was the recipient of certain
18 fraudulent transfers originating in Washoe County, Nevada.

19 6. Upon information and belief, Defendant Snowshoe Petroleum, Inc. (“Snowshoe
20 Petroleum,” together with Superpumper, Bayuk, and Salvatore Morabito, collectively referred to
21 as the “Defendants”) is a New York corporation. Bayuk is the President of Snowshoe
22 Petroleum. Snowshoe Petroleum and Bayuk, individually, and as Trustee of the Edward
23 William Bayuk Living Trust, were the recipients of certain fraudulent transfers originating in
24 Washoe County, Nevada.

25 7. This Court has jurisdiction over this matter on the basis that the Defendants
26 reside or are located in Washoe County, Nevada; the activities complained of herein occurred in
27 Washoe County, Nevada; the fraudulent transfers outlined in the complaint originated from
28

1 Washoe County, Nevada; and/or Defendants have expressly agreed to submit themselves to the
2 jurisdiction of this Court.

3 8. Venue is proper in Washoe County, Nevada pursuant to NRS § 13.010 because
4 the rights, obligations and activities that give rise to this action occurred in Washoe County,
5 Nevada and Defendants have already agreed that Washoe County, Nevada is an appropriate
6 venue.

7 II.

8 GENERAL ALLEGATIONS

9 9. Plaintiff repeats, realleges, and incorporates the allegations set forth in the
10 proceeding paragraphs of this Complaint as if fully set forth herein.

11 10. On or about June 28, 2007, JH and P.A. Morabito & Co., Ltd. ("PAMCO"), the
12 predecessor-in-interest to Consolidated Nevada Corporation ("CNC"), entered into an Amended
13 and Restated Stock Purchase Agreement (the "ARSPA"), whereby JH purchased the stock of
14 Berry-Hinckley Industries ("BHI") from PAMCO. Herbst was the guarantor of the JH
15 obligations under the ARSPA, and the Debtor guaranteed the obligations of PAMCO.

16 THE STATE COURT ACTION

17 11. A dispute developed between JH, Inc., Jerry Herbst, and BHI (collectively, the
18 "Herbst Entities") on the one hand and the Debtor and CNC on the other regarding the sale of
19 the BHI stock to JH.

20 12. On December 3, 2007, the Debtor and CNC filed a lawsuit against the Herbst
21 Entities, captioned Consolidated Nevada Corp., et al. v. JH, et al., (the "State Court"), Case No.
22 CV07-02764 (together with all claims and counterclaims, the "State Court Action").

23 13. The Herbst Entities filed numerous counterclaims in the State Court Action
24 against the Debtor and CNC, including, but not limited to, fraud in the inducement,
25 misrepresentation, and breach of contract relating to the ARSPA.

26 14. On September 13, 2010, the State Court entered an oral judgment against the
27 Debtor and CNC in favor of the Herbst Entities. Specifically, the State Court found that the
28

Debtor and CNC fraudulently induced JH and Herbst to enter into the ARSPA and ruled in favor of JH and Herbst against the Debtor on other fraud-based claims.

15. On October 12, 2010, the State Court entered its findings of fact and conclusions of law which set forth the legal and factual basis for a forthcoming state court judgment, including fraud in the inducement.

16. On August 23, 2011, the State Court entered a judgment awarding the Herbst Entities total damages in the amount of \$149,444,777.80 for actual fraud, representing both compensatory and punitive damages as well as an award of attorneys' fees and costs (the "Nevada Court Judgment").

THE SETTLEMENT AGREEMENT AND FORBEARANCE AGREEMENT

17. While the Debtor and CNC's appeal of the State Court Judgment (the "Appeal") was pending before the Nevada Supreme Court, the Debtor, CNC, and the Herbst Entities entered into a Settlement Agreement and Mutual Release dated November 30, 2011 (the "Settlement Agreement"). Pursuant to the terms of the Settlement Agreement:

(a) The parties agreed to file a *Stipulation to Vacate Appeal and a Stipulation to Vacate Judgment and Findings of Fact and Conclusions of Law entered by the State Court*;

(b) The parties agreed to execute a *Confession of Judgment and Stipulation to Confess Judgment in the Amount of \$85,000,000.00* (referred to collectively as the "Confessed Judgment"), which, in the event that the Settlement Agreement was breached and not cured, Plaintiffs would be permitted to file *ex parte* and without notice in Department 6 of the Second Judicial District Court in and for the County of Washoe;

(c) The Debtor and CNC agreed to comply with the timely payment of numerous financial obligations set forth therein; and

(d) The Debtor and CNC agreed to submit themselves to the jurisdiction of the court of Washoe County, Nevada for any dispute relating to the Settlement Agreement.

1 18. Consistent with the terms of the Settlement Agreement, the State Court Action
2 was dismissed with prejudice and the Debtor, CNC, and the Herbst Entities executed the
3 Confessed Judgment.

4 19. Unbeknownst to the Herbst Entities, at the time the parties began negotiating and
5 subsequently executed the Settlement Agreement, the Debtor and CNC had no intention of
6 complying with its terms. Instead, the Debtor and CNC induced the Herbst Entities to execute
7 the Settlement Agreement as a delay tactic to avoid execution and collection efforts on the State
8 Court Judgment and in an effort to obtain more time to transfer and dissipate assets in
9 furtherance of their attempts to thwart the Herbst Entities' collection of the State Court
10 Judgment.

11 20. Shortly after execution, the Debtor and CNC defaulted under the terms of the
12 Settlement Agreement by failing to comply with several of their financial obligations, including
13 complying with obligations under the related Moreno settlement agreement (the "Moreno
14 Default"), failing to pay amounts due and owing under the Hinckley Note (the "Hinckley Note
15 Default"), and failing to make the cash payment of Four Million and No/100ths Dollars
16 (\$4,000,000.00) due to Plaintiffs on or before March 1, 2013 (the "Cash Payment Default")
17 (collectively, the "Continuing Defaults").

18 21. After defaulting under the terms of the Settlement Agreement, the Debtor and
19 CNC requested that the Herbst Entities forbear from exercising their rights and remedies set
20 forth in the Settlement Agreement, until December 1, 2013.

21 22. Accordingly, the Debtor, CNC and the Herbst Entities entered into that certain
22 Forbearance Agreement dated March 1, 2013 (the "Forbearance Agreement").

23 23. Pursuant to the Forbearance Agreement, the Debtor and CNC made the following
24 acknowledgments:

- 25 (i) The Continuing Defaults have occurred and are continuing; (ii)
26 [Paul Morabito and CNC] are unable to cure the Cash Payment Default;
27 (iii) [Paul Morabito and CNC] are unable to cure the Hinckley Note
28 Default; (iv) pursuant to the terms of the Settlement Agreement, as a result
of the occurrence of the Continuing Defaults, [Plaintiffs] currently have
the right to immediately exercise any one or more of the rights and

1 remedies under the Settlement Agreement, at law or in equity, as they, in
2 their sole discretion, deem necessary or desirable; and (v) [Paul Morabito
3 and CNC] do not have any defenses, legal or equitable, to the Continuing
4 Defaults, and/or any other events of Default that may exist under the
Settlement Agreement or the exercise by [Plaintiffs] of anyone or more of
their rights and remedies under the Settlement Agreement.

5 24. In exchange for the Herbst Entities' agreement to grant a forbearance, the Debtor
6 and CNC agreed to (1) by no later than March 15, 2013, provide the Herbst Entities with a fully
7 executed forbearance agreement between the Debtor, CNC, and the holders of the Hinckley
8 Note; (2) to make certain payments of deferred principal on the payment due on March 1, 2013
9 under the Settlement Agreement; and (3) to make certain additional payments to the Herbst
10 Entities commencing with a payment of \$68,437 on or before May 21, 2013.

11 25. In the event of a default under the terms of the Forbearance Agreement or the
12 Settlement Agreement, other than the Continuing Defaults, the Herbst Entities were entitled
13 under the Forbearance Agreement to "immediately, and without expiration of any notice and cure
14 period, exercise and enforce their rights and remedies under the Settlement Agreement or at law."

15 26. Upon information and belief, as with the Settlement Agreement, at the time the
16 parties began negotiating and subsequently executed the Forbearance Agreement, the Debtor and
17 CNC had no intention of complying with its terms. Instead, the Debtor and CNC induced the
18 Herbst Entities to execute the Forbearance Agreement as a delay tactic to avoid execution and
19 collection efforts on the State Court Judgment and in an effort to obtain more time to transfer and
20 dissipate assets in furtherance of their attempts to thwart the Herbst Entities collection of the
21 State Court Judgment.

22 27. The Debtor and CNC failed to comply with the terms of the Forbearance
23 Agreement by, among other things, failing to pay the required April, May, or June payments and
24 failing to obtain or deliver the Hinckley Forbearance Agreement.

25 28. Based on the express terms of the Settlement Agreement, on June 18, 2013, the
26 Herbst Entities filed the Confessed Judgment with the Second Judicial District Court in and for
27 the State of Nevada. Pursuant to the Confessed Judgment, the Debtor and CNC are jointly and
28

severally indebted to the Herbst Entities in the amount of \$85,000,000.00, less any credits or offsets for any payments made under the Settlement Agreement.

29. Despite the oral findings of fact and conclusions of law, State Court Judgment, Settlement Agreement, Forbearance Agreement, and Confessed Judgment, the Debtor and CNC have failed to make the required payments to the Herbst Entities in satisfaction of the amounts due and owing them.

THE FRAUDULENT TRANSFERS

30. Upon information and belief, Defendants and the Debtor engaged in a series of fraudulent transfers in an effort to prevent the Herbst Entities from collecting on the State Court Judgment and/or the Confessed Judgment and to protect the Debtor from having any of his assets seized. The vast majority of those transfers occurred shortly after the State Court entered its oral findings of fact and conclusions of law. The transfers were intentional and in contravention of the District Court's findings made in the State Court Judgment. The transfers, include, but are not limited to, the following:

(a) On or about September 15, 2010, a mere two days after the State Court issued its oral findings of fact and conclusions of law, the Debtor transferred \$6,000,000 out of his account with Bank of Montreal in Canada to an entity identified as Sefton Trustees in New Zealand.

(b) Upon information and belief, Sefton Trustees is an entity that specializes in offshore trusts.

(c) Although the Debtor claimed this \$6,000,000 transfer was made as a settlement relating to his obligation on a guaranty, no documentation supporting said guaranty obligation was ever provided to the Herbst Entities and the Debtor subsequently denied under oath that the transfer was made to satisfy an obligation under a guaranty.

(d) Upon information and belief, on September 21, 2010, the Debtor next transferred \$355,000 to Salvatore Morabito, the Debtor's brother, and \$420,250 to Bayuk.

(e) Upon information and belief, prior to September 28, 2010, the Debtor resided at 8355 Panorama Drive in Reno, Nevada (the "Reno Property"). The Debtor

1 owned a two-thirds interest in the Property and Bayuk owned the remaining one-third of
2 the Reno Property.

3 (f) Upon information and belief, on October 1, 2010, the Debtor and Bayuk
4 transferred the Reno Property to the Debtor as Trustee of the Arcadia Living Trust for
5 \$981,341. It was later discovered that the appraised value of the Reno Property was
6 \$4,300,000 with a corresponding mortgage of \$1,021,000.

7 (g) Upon information and belief, are Bayuk, who holds a 70% beneficial
8 interest, and Salvatore Morabito, who holds a 30% beneficial interest.

9 (h) Upon information and belief, up until September 28, 2010, the Debtor was
10 the 80% owner of Consolidated Western Corporation ("CWC"). Salvatore Morabito and
11 Bayuk each also held a 10% interest in CWC. At the time, CWC held an interest in
12 Superpumper.

13 (i) Upon information and belief, on September 28, 2010, CWC was merged
14 into Superpumper. At the time, the Debtor's 2009 personal income tax return showed his
15 stock basis in the company was \$5,588,661.

16 (j) On September 30, 2010, despite the Debtor's 2009 \$5,588,661 stock basis,
17 the Debtor sold his interest in Superpumper to Snowshoe Petroleum for approximately
18 \$2,500,000. Snowshoe Petroleum was incorporated on September 29, 2010 for the sole
19 purpose of receiving the transfer from the Debtor.

20 (k) Upon information and belief, prior to October 1, 2010, the Arcadia Living
21 Trust and Bayuk held a joint interest in Baruk Properties. On October 1, 2010, the
22 Debtor transferred the Arcadia Living Trust's 50% interest in Baruk Properties to Bayuk
23 as Trustee of the Edward William Bayuk Living Trust for a promissory note with a
24 principal amount of \$1,617,050, which was then assigned to the principals of Woodland
25 Heights Ltd. for a 20% interest in a joint venture.

26 (l) Upon information and belief, the appraised value of Baruk Properties at the
27 time of the transfer was \$9,266,600 less a mortgage of \$1,440,000, for a net equity value
28

1 of \$7,826,600, making the Debtor's 50% worth \$3,913,000, exceeding the value of the
2 promissory note received in exchange by \$2,295,950.

3 (m) Upon information and belief, in or around September 2010, the Debtor as
4 Trustee of the Arcadia Living Trust, and Bayuk, held joint ownership of a property
5 located at 1254 Mary Flemming Circle in Palm Springs, California (the "Palm Springs
6 Property").

7 (n) Upon information and belief, the Palm Springs Property was subsequently
8 transferred to Bayuk as Trustee of the Edward William Bayuk Living Trust. No
9 documentation has ever been provided demonstrating that this transfer was made for any
10 form of consideration.

11 (o) Upon information and belief, the Debtor and Bayuk also transferred real
12 property consisting of a personal residence located at 371 El Camino Del Mar, Laguna
13 Beach, California (Parcel No. 644-032-01) (the "Laguna Beach Property") to the Debtor
14 as Trustee for the Arcadia Living Trust, and Bayuk as trustee for Edward William Bayuk
15 Living Trust, on or around August 20, 2009. Ownership of the California Property was
16 subsequently transferred in whole to the Edward William Bayuk Living Trust, despite the
17 fact that the Debtor admitted that he did not know if it was for consideration.

18 (p) Lastly, upon information and belief, at some point subsequent to the State
19 Court's oral judgment, the Debtor executed a promissory note in favor of Bayuk in the
20 amount of \$600,000. The Debtor has refused to produce any evidence relating to the
21 underlying obligation to Bayuk or payments made on said obligation and Bayuk claims
22 that the note is in good standing despite the fact that the Debtor purportedly failed to
23 make any payments on the note to Bayuk.

24 31. Upon information and belief, these transfers were done in an effort to avoid the
25 Herbst Entities' efforts to collect on the State Court Judgment and the subsequently executed
26 Confession of Judgment.

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38. In January 2015, Plaintiff was elected to serve as the Chapter 7 Trustee in the bankruptcy proceedings.

CLAIMS FOR RELIEF

[FRAUDULENT TRANSFERS NRS § 112.140 – ALL DEFENDANTS]

42. Upon information and belief, the transfers by the Debtor to the Defendants were made with the actual intent to hinder, delay, or defraud the Herbst Entities as a creditor of the Debtor, pursuant to NRS § 112.180.

1 43. Before the transfers were made, the Herbst Entities had obtained an oral judgment
2 against the Debtor on claims for fraud and fraud in the inducement.

3 44. Upon information and belief, the transfers were made to insiders.

4 45. Upon further information and belief, the Debtor retained possession or control of
5 at least some of the property transferred after the transfer and continued to control the actions of
6 Bayuk and Salvatore Morabito and continues to presently control their actions.

7 46. Upon further information and belief, said transfers were made without the Debtor
8 receiving reasonably equivalent value from Defendants, and left the Debtor with debts which he
9 lacked the means to pay, including the State Court Judgment owed to Plaintiffs.

10 47. Upon information and belief, at the time of the transfers to Defendants, the Debtor
11 was engaged or was about to engage in a business or a transaction for which his remaining assets
12 were unreasonably small in relation to his business or transaction.

13 48. Upon information and belief, at the time of the transfers to the remaining
14 Defendants, the Debtor intended to incur, or believed or reasonably should have believed that he
15 would incur debts beyond his ability to pay as they became due.

16 49. Upon further information and belief, at the time of the transfers to Defendants, the
17 Debtor was insolvent or was rendered insolvent by the transfers.

18 50. As a direct, natural, and foreseeable consequence of the Debtor and Defendants'
19 actions, the Bankruptcy Estate has been damaged in an amount to be proven at trial.

20 51. Plaintiff is entitled to the remedies provided in NRS § 112.210, including, but not
21 limited to:

22 (a) Avoidance of the transfer or obligation to the extent necessary to satisfy
23 Plaintiffs' claim.

24 (b) Garnishment against Defendants as transferor and recipients of the
25 fraudulent obligations, in accordance with the procedure prescribed by law in obtaining
26 such remedy.

1 (c) An attachment or other provisional remedy against the asset transferred or
2 other property of Defendants in accordance with the procedure prescribed by law in
3 obtaining such remedy.

4 (d) Imposition of a constructive trust over the assets fraudulently transferred.

5 (e) Any other relief the circumstances may require.

6 52. It has been necessary for Plaintiff to retain the services of counsel to prosecute
7 this action, and Plaintiff is entitled to recover the attorneys' fees and costs incurred herein.

8 53.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for relief as follows:

11 1. For an award of compensatory damages against Defendants in an amount to be
12 proven at trial;

13 2. For an award of punitive damages against Defendants in an amount to be proven
14 at trial;

15 3. For an award to Plaintiff of reasonable attorneys' fees and costs;

16 4. For garnishment against Defendants, the recipients of the fraudulent obligation.

17 5. For avoidance of the transfer or obligation to the extent necessary to satisfy
18 Plaintiff's claim.

19 6. For attachment or other provisional remedy against the asset transferred or other
20 property of Defendants in accordance with the procedure prescribed by law in obtaining such
21 remedy.

22 7. For such other and further relief as this Court deems appropriate.

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AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 15th day of May, 2015.

GORDON SILVER

By: /s/ John P. Desmond
JOHN P. DESMOND
Nevada Bar No. 5618
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100 West Liberty Street
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Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of GORDON SILVER, and that on this date, pursuant to
3 NRCP 5(b), I am serving a true and correct copy of the attached **FIRST AMENDED**
4 **COMPLAINT** on the parties as set forth below:

- 5 _____ Placing an original or true copy thereof in a sealed envelope placed for collection
6 and mailing in the United States Mail, Reno, Nevada, postage prepaid, following
7 ordinary business practices
8 _____ Certified Mail, Return Receipt Requested
9 _____ Via Facsimile (Fax)
10 _____ Via E-Mail
11 _____ Placing an original or true copy thereof in a sealed envelope and causing the same
12 to be personally Hand Delivered
13 _____ Federal Express (or other overnight delivery)
14 X Via CM/ECF

14 addressed as follows:

15 Barry Breslow
16 Frank Gilmore
17 ROBISON, BELAUSTEGUI, SHARP & LOW
18 71 Washington Street
19 Reno, NV 89503

20 DATED this 15th day of May, 2015.

21 _____ /s/ Mina Reel
22 An Employee of GORDON SILVER
23
24
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27
28

Exhibit 2

2490

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Attorneys for Defendants

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

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

Plaintiff,

vs.

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

Defendants.

Case No.: CV13-02663
Dept. No.: 4

**MOTION TO MAKE AMENDED OR
ADDITIONAL FINDINGS UNDER
NRC 52(b), OR, IN THE
ALTERNATIVE, MOTION FOR
RECONSIDERATION**

Defendants Edward Bayuk (“Bayuk”) individually and Bayuk as Trustee (“Trustee Bayuk”) of the Edward William Bayuk Living Trust (collectively “Bayuk Trust”), by and through Hartman & Hartman and Marquis Aurbach Coffing; and Defendants, Superpumper, Inc.; Salvatore Morabito; and Snowshoe Petroleum, Inc. by and through their counsel of record, Marquis Aurbach Coffing, hereby file this motion to make amended or additional findings pursuant to NRCP 52(b), or, in the alternative, motion for reconsideration. The findings sought to be amended are those set forth in this Court’s August 9, 2019 Order Denying Claim of Exemption and Third Party Claim (“Denial Order”). A copy of the Denial Order is attached as “Exhibit 1.” This motion also challenges the August 2, 2019 Order Denying Salvatore Morabito’s Claim of Exemption (“Morabito Denial Order”). A copy of the Morabito Denial Order is attached as “Exhibit 18.”

I. INTRODUCTION

The property that Plaintiff seeks to execute upon is the exempt property of the Bayuk Trust, itself an Irrevocable Nevada Self-Settled Spendthrift Trust (“SSST”), evidenced as a signed and written agreement with valid and unambiguous language that manifested a clear intention by Bayuk to create the Bayuk Trust as Settlor, Grantor, and Co-Trustee on November 12, 2005 (“Exhibit 2”) pursuant to Chapter 166 of the Nevada Revised Statutes. Plaintiff seeks to illegally execute upon statutorily-exempt assets owned by the SSST Bayuk Trust.

The Bayuk Trust exchanged exempt assets with the Arcadia Living Trust, an Irrevocable Nevada SSST established on October 14, 2005 (“Arcadia Trust”) (“Exhibit 3”) or, per NRS 163.025 created the Arcadia Trust’s nominee, per NRS 163.026 by the Trustee of the Arcadia Trust, naming it the Arcadia Living Trust, a revocable Nevada inter vivos trust established on February 14, 2006 (“Arcadia Nominee Trust”) (“Exhibit 4”). The Trustee, Grantor and Settlor of the Arcadia Trust and of the Arcadia Nominee Trust were each Paul Morabito (“Morabito”).

This motion specifically concerns paragraphs 2, 3, 4, 5, and 6 of the Denial Order, and the Court’s conclusion in the Morabito Denial Order.

¶2. Bayuk has transferred all of his personal assets to the Bayuk Trust since the Bayuk Trust was established in 1998. As set forth in the Judgment, the Bayuk Trust received fraudulently transferred property which was established by clear and convincing evidence.

¶3. The purported nature of the Bayuk Trust as a Nevada spendthrift trust was not disclosed prior to the Claim of Exemption. In response to discovery requests, in deposition, in subject deeds, and at trial prior to the Judgment, Bayuk and the Bayuk Trust produced contradictory evidence regarding the date and the purpose of the Bayuk Trust. With the Claim of Exemption, the Bayuk Trust clarifies that that there is, and has been, only one trust with the name “the Edward William Bayuk Living Trust” and that is the Bayuk Trust.

¶4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada spendthrift trust under NRS 166.015 because Bayuk is the settlor and beneficiary during his lifetime of the Bayuk Trust, and neither Bayuk nor his co-trustee Paul Morabito are domiciles of Nevada. NRS 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved to California in September 2010.

¶5. Contrary to assertions by Bayuk, there was no credible evidence presented that the Bayuk Trust owns a burial plot in Nevada; but, even if such fact were established, the ownership of a burial plot in Nevada is insufficient to invoke the protections of NRS Chapter 166.

¶6. Even if the claims asserted against the Bayuk Trust were subject to the time periods under NRS 166.170, they were timely because the fraudulent transfer claim was brought (1) within two years after the fraudulent transfers were made and (2) also within six months of discovery of, or when Plaintiff reasonably should have discovered, the existence of the purported spendthrift trust. The subject fraudulent transfers occurred in September 2010 and thereafter. The Bayuk Trust executed a tolling agreement on November 30, 2011 to toll any statute of limitations applicable to the fraudulent transfer of property to the Bayuk Trust, which tolling agreement tolled the time period to file until June 18, 2013 and the Complaint was filed in December 2013. The purported nature of the Bayuk Trust as a spendthrift trust subject to NRS 166.170 was not disclosed until the Claim of Exemption. Moreover, any defenses based on NRS 166.170 have been waived as a result of the failure of Bayuk or the Bayuk Trust to raise such defenses prior to the Claim of Exemption.

This motion relates to six issues that were brought before this Court at the hearing on July 22, 2019 that resulted in the Denial Order, as well as the Morabito Denial Order. Each of the six issues regards black letter law in NRS Chapter 166, the Nevada Spendthrift Trust Act, and the record needs to accurately reflect the true and correct amended and additional findings pursuant to NRCP 52(b). Defendants, alternatively, move this Court for the same relief under the reconsideration standard outlined in the Washoe District Court Rules, Rule 12. Yet, as the Nevada Supreme Court has clarified, the reconsideration standard is the functional equivalent of an NRCP 59(e) motion. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 245 P.3d

1 1190, 1193–1194 (2010). In *Primo Builders*, the Nevada Supreme Court also explained that
2 although the standard to alter or amend under NRCP 59(e) is discretionary, courts do not defer to
3 “legal error.” *Id.*, 126 Nev. at 589, 245 P.3d at 1197.

4 First, did the Bayuk Trust exchange or receive fraudulently transferred property or
5 exchange and transfer exempt Nevada SSST assets? Was the SSST Bayuk Trust a judgment
6 debtor under this Court’s March 29, 2019 judgment or a stranger to the Court?

7 Second, was the existence of the Bayuk Trust and the revocable Bayuk Nominee Trusts
8 hidden? If Trustee Bayuk gave extrinsic or parol evidence, does it contradict or vary the terms of
9 an unambiguous written instrument? Was the Bayuk Trust valid under NRS 166.170(4) when
10 used for arranging financing by a mortgage or deed of trust and then reconveying to the Nevada
11 Irrevocable SSST the asset—whether in original form or through the financing contemplated by
12 NRS 166.170(4) receiving substantially the exact same valued asset back?

13 Third, did Trustee Bayuk breach trust formalities of the Bayuk Trust under
14 NRS 166.040(2)(f), (g) & (h)(3)? Did the Bayuk Trust meet the requirements for enforcement as
15 a Nevada SSST under NRS 166.015? Since neither Morabito nor Bayuk are domiciles of
16 Nevada today, does NRS 166.015 apply under the SSST construction, operation, and
17 enforcement provisions?

18 Fourth, the Court, under the Denial Order and during the July 22, 2019 hearing,
19 disregarded the burial plot as insufficient to invoke the protections of NRS Chapter 166. Has the
20 Bayuk Trust breached the trust formalities of an otherwise validly created Irrevocable Nevada
21 SSST?

22 Fifth, the Denial Order states that the (page 3) “subject fraudulent transfers occurred in
23 September 2010 and thereafter.” Was the statute of limitations contained in NRS 166.170(1)
24 and/or NRS 166.170(2) tolled by the alleged concealment by Trustee Bayuk of the SSST Bayuk
25 Trust or failure by Trustee Bayuk to disclose the Bayuk Trust documents or the exempt assets the
26 Bayuk Trust held?

1 Sixth, should the Court reject Plaintiff's general writ of execution as to Sam Morabito for
2 lack of specificity? Upon these issues, Defendants respectfully request that this Court grant them
3 relief under NRCP 52(b), WDCR 12, and NRCP 59(e).

4
5 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

6 **A. THE RELEASE OF THE ARCADIA TRUST AND THE ARCADIA
7 NOMINEE TRUST.**

8 Both the Arcadia Trust and the Arcadia Nominee Trust were disclosed by Morabito to
9 JH, Inc., Jerry Herbst, and Berry-Hinckley Industries (together the "Herbst Parties") on March 1,
10 2011 ("Exhibit 5") in a Supplement to NRCP 16.1 Disclosures by Morabito's counsel, Barry
11 Breslow, Esq., to Herbst Parties' counsel, John Desmond, Esq.

12 On March 3, 2011, Mr. Desmond conducted a deposition of Morabito in Los Angeles,
13 California with Mr. Breslow present ("Exhibit 6"). Morabito went into minute detail regarding
14 the exchanges of exempt assets of the Irrevocable Nevada SSST Arcadia Trust or by its agent-in-
15 fact, the Arcadia Nominee Trust with its beneficiaries, Salvatore Morabito and Edward Bayuk, as
16 well as with Trustee Bayuk, the Bayuk Trust, and the Bayuk Nominee Trust.

17 A series of exchanges of exempt SSST assets occurred on October 1 and on November 4,
18 2010. The exchanges were all valid and enforceable acts by any reading of the four corners of
19 the Arcadia Trust or the Bayuk Trust—contemplated since the manifest intention of Morabito on
20 October 14, 2005 and by Bayuk on November 12, 2005. The exempt SSST exchanges were
21 completed and made known through public record on September 28 and October 1, 2010 such
22 that the claims against "Debtor" made by Plaintiff in the Findings of Fact and Conclusions of
23 Law ("FF&CL") and the resulting judgment ("Superpumper Judgment") when viewed from the
24 prism of these truthful facts and chronology as well as NRS Chapter 166 are binding on the
25 parties as Nevada law under the Settlement Agreement.

26 **B. THE TRANSFERS MADE ON THE PUBLIC RECORD.**

27 The Herbst Parties were already aware through the public record on October 1, 2010 and
28 on November 4, 2010 of the conveyance of real property ("Exhibit 7") per NRS 166.170(2),
which governs the transfer, including, without limitation, the conveyance of the real property that

1 was recorded in the office of the county recorder in which the property is located. Plaintiff has
2 erroneously used these same exhibits as proof of malfeasance or failure to disclose information.
3 The findings were based upon the arguments and comments at the July 22, 2019 hearing of
4 which the transcript is attached (“Exhibit 8”).

5 The first issue before the Court is that the record should reflect specific facts regarding
6 the statute of limitations set forth in NRS 166.170(1)(a)(1) & (2) and NRS 166.170(2) that the
7 Bayuk Trust was established on November 12, 2005 and that the initial two-year transfer period
8 ended on November 12, 2007; and the six-month period ended April 1, 2011. The date falls
9 within a claim by the Herbst Parties or Plaintiff against Bayuk, Trustee Bayuk, the Bayuk Trust,
10 or the Bayuk Nominee Trust.

11 The language in the Bayuk Trust of November 12, 2005 is clear and unambiguous;
12 therefore, NRS 166.170(1)(a)(1) determines the two-year anniversary date after the creation of
13 the SSST and the transfer of assets as November 12, 2007. Neither the Herbst Parties nor
14 Plaintiff made any claim against the Bayuk Trust prior to November 12, 2007. The SSST Bayuk
15 Trust is not a judgment debtor.

16 In the Nevada Supreme Court case, *Klabacka v Nelson*, 394 P.3d 940, 947 (Nev. 2017),
17 the Court unanimously concluded that “[w]here a written contract is clear and unambiguous on
18 its face, extraneous evidence cannot be introduced to explain its meaning.” (citing *Kaldi v.*
19 *Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (internal quotation marks
20 omitted)). “Extrinsic or parol evidence is not admissible to contradict or vary the terms of an
21 unambiguous written instrument, since all prior negotiations and agreements are deemed to have
22 been merged therein.” *Frei v. Goodsell*, 129 Nev. 403, 409, 305 P.3d 70, 73 (2013) (internal
23 quotation marks omitted).

24 In furtherance of NRS 166.170(1)(a)(2), the public record on October 1 and November 4,
25 2010 was further detailed to the Herbst Parties on March 3, 2011 by Morabito. The six-month
26 anniversary date of public notice of a conveyance was April 1, 2011. Neither the Herbst Parties
27 nor Plaintiff made any claim against the Bayuk Trust prior to April 1, 2011, despite being given
28

1 a detailed roadmap on March 3, 2011 of what were already public filings in October 2010. But,
2 the Denial Order states that the underlying complaint was filed in December 2013.

3 **C. THE SETTLEMENT AGREEMENT AND THE TOLLING AGREEMENT.**

4 A settlement was reached between Morabito and the Herbst Parties (“Settlement
5 Agreement”) and executed on November 30, 2011. The Herbst Parties’ attorney, John Desmond,
6 was fully cognizant of the Nevada Spendthrift Trust Act (“NSTA”) and, as of March 1, 2011,
7 had the Breslow-provided discovery of the Arcadia Trust, which by its terms was irrevocable and
8 all-consuming, and the revocable spending vehicles in the form of the Arcadia Nominee Trust, of
9 which versions existed prior to November 2005 and (Exhibit 4) in a February 2006 version
10 revised at least five times.

11 As part of the Settlement Agreement, on November 30, 2011, Morabito executed a tolling
12 agreement (“Tolling Agreement”) with JH, Inc. and Jerry Herbst (“Herbst”) (“Exhibit 9”).
13 Trustee Morabito of the revocable nominee trust executed a Tolling Agreement (“Exhibit 10”)
14 also on November 30, 2011. Neither the Arcadia Nominee Trust nor the Arcadia Trust was a
15 party to the Settlement Agreement other than executing each Tolling Agreement. In the
16 Superpumper Judgment of March 29, 2019, this Court (pages 8–9) (“Exhibit 11”) stated, “On
17 May 15, 2015, Plaintiff (Trustee William A. Leonard) was substituted in place of the Herbst
18 Parties in the case, and Paul Morabito and his revocable Arcadia Trust were dismissed from the
19 action.” Note on Exhibit 11, page 8, ¶18, the thematic reference to Morabito and Bayuk’s “close
20 personal relationship hallmarked by Bayuk’s seemingly unwavering support of Paul Morabito”
21 that the March 1, 2011 release of trust documents by Breslow and the March 3, 2011 deposition
22 outlining exchanges from what on the face was called the Arcadia Living Trust to what on the
23 face was called the Edward William Bayuk Living Trust and the October 1, 2010 public notice
24 of conveyances (Exhibit 7).

25 On March 13, 2013, in bankruptcy “petitioners’ first set of interrogatories to Debtor, Paul
26 Morabito” (“Exhibit 12”), the bankruptcy counsel including Gabrielle A. Hamm, Esq., who
27 actively participated in the underlying Denial Order matter, asked as “Interrogatory No. 1: Please
28 identify each and every trust in which you are or have been a grantor, settlor, beneficiary and/or

1 trustee including but not limited to the Arcadia Living Trust and the Arcadia Spendthrift Trust,
2 for the past two (2) years.”

3 Bayuk signed a Tolling Agreement (“Exhibit 13”) as did the Trustee Bayuk (“Exhibit
4 14”). No Tolling Agreement was signed by the Bayuk Trust, Trustee Morabito, or the Arcadia
5 Trust.

6 Why would Plaintiff have the Arcadia Nominee Trust sign the Tolling Agreement and
7 having full subpoena power after March 3, 2011 and by April 1, 2011 to query Trustee Bayuk,
8 the Bayuk Trust, and the Bayuk Nominee Trust?

9 Plaintiff took no action up and until November 30, 2011 with the Tolling Agreements—
10 eight months after learning of the Morabito Irrevocable Nevada SSST and the revocable nominee
11 trusts.

12 Paragraph 6 of the Denial Order asserts that the statute of limitation on JH, Inc., Jerry
13 Herbst, and Berry-Hinckley Industries (together the “Herbst Parties”) was stayed until June 18,
14 2013.

15 **D. POST-BRESLOW LITIGATION AND VACCO.**

16 Defendants’ counsel, Frank C. Gilmore, Esq., assumed this matter from Breslow in 2013
17 and could not rely upon Breslow’s institutional memory after he was appointed by Governor
18 Brian Sandoval to the bench on April 7, 2017.

19 On March 21, 2011, California attorney Mark E. Lehman, Esq., acting as California
20 counsel to Bayuk, Trustee Bayuk, and the Bayuk Trust, executed a declaration (“Exhibit 15”) less than three weeks after Morabito’s March 3, 2011 deposition. As an officer of the court,
21 Lehman declared that “the financial interests of Mr. Bayuk and Mr. Morabito, as well as the two
22 Trusts are now completely separate and each individual and Trust has been left with equity
23 interests that are substantially the same to their respective interests held prior to the
24 September 13, 2010 decision.” Breslow was accompanied at the March 3, 2011 deposition by
25 Dennis C. Vacco, Esq., as counsel to Bayuk, Trustee Bayuk, the Bayuk Trust, the Bayuk
26 Nominee Trusts, Salvatore Morabito, Morabito, Trustee Morabito, the Arcadia Trust, and the
27 Arcadia Nominee Trusts (the “Defendant Clients”). Breslow and his firm met the Defendant
28

1 Clients in December 2010 and entered into a retention agreement with Breslow's firm on
2 January 12, 2011. Prior to being counsel to the Defendant Clients, Vacco was the Attorney
3 General of New York State and, prior to that, was the U.S. Attorney for the Western District of
4 New York.

5 Much has been made by Plaintiff of the cherry-picked e-mails whose privilege was
6 removed by order of U.S. Bankruptcy Judge Gregg Zive. Vacco was deposed under penalty of
7 perjury on October 20, 2015 in this matter ("Exhibit 16") with Gilmore present. Vacco stated
8 (page 50, 53) that "the goal, after researching Nevada law and consulting with Nevada counsel"
9 was to start in "mid to late September of 2010" on "separating assets." When asked "was there
10 anyone else that you discussed the separation of assets with?" Vacco answered, "It might have
11 come from me, mostly because I was fixated on the fact that Edward and Sam had been
12 exonerated." When asked who was on these September and October 2010 phone calls, Vacco
13 answered: "and the Breslow people, too. Belaustegui people."

14 Again (page 56), Vacco references "the Belaustegui people." He then testified (pages
15 56-57): "We ... we were researching Nevada law on these types of transfers. We were ... we
16 were ... we were spend ... obviously, we weren't Nevada attorneys, so we were researching
17 Nevada law, and we wanted a better understanding of what the, you know, body of caselaw was
18 out there. So it was more technical nature with ... with ... whether it was Leif (Reid) or with the
19 Belaustegui firm, although, eventually, the Belaustegui firm got more involved in the mechanics
20 if you will." On page 58, when Vacco was asked what "specific work that Mr. Gilmore's law
21 firm did with respect to the separation of assets you've been describing," Vacco testified: "I
22 don't ... I don't think that they were that deep in the weeds."

23 The public notice of the conveyance of real property was made by New York state and a
24 California attorney on October 1 and November 4, 2011—by First American Title Co. located on
25 Sunset Boulevard in West Hollywood, California (Exhibit 7). Vacco and Lehman received no
26 input or advice from Nevada counsel with regard to the transfers—First American Title Co.
27 relied on their Las Vegas office to assist with the actual October 1 and November 4, 2010
28 transactions. Breslow and the "Belaustegui firm" did not meet the Client Defendants until

1 December 2010 and were not retained until January 12, 2011. Gilmore was not introduced to the
2 Defendant Clients until 2013—unaware that Vacco and Lehman had not received advice or
3 counsel from any Nevada attorneys on their 2010 actions.

4 **E. PLAINTIFF’S SUPPRESSION OF EVIDENCE.**

5 Evidence was willfully suppressed by Plaintiff, knowing that Mr. Gilmore was not the
6 original counsel to the Defendants and did not have the reliance on the institutional knowledge
7 from 2011 of Barry Breslow who, since April 2017, is a Washoe County District Court Judge.
8 Plaintiff, by deed and word, acknowledged and affirmed that the Arcadia Trust was a stranger to
9 the Court, despite absolute and full knowledge that NRS 166.170 which precludes a creditor
10 taking actions with respect to “limitations of actions with respect to transfer of property to trust;
11 certain transfers of properties disregarded; limitations of actions against advisers to settlors or
12 trustees and against trustees; transfers to trust.”

13 “Clear and convincing evidence requires a finding of high probability.” *In re Angelia P.*,
14 28 Cal.3d 908, 919, 171 Cal.Rptr. 637, 623 P.2d 198 (1981). Considering the concealment and
15 suppression of evidence by Plaintiff, including but not limited to the Breslow March 2011
16 discovery and depositions, and the Lehman declaration—which when taken together and red-
17 lined into the FF&CL makes untruthful the dates and assumptions sold to the Court by Plaintiff
18 as fact.

19 The question is why Desmond, Hamm, Gerald M. Gordon, and Plaintiff did not inform
20 the Court of the March 1, 2011 discovery and March 3, 2011 Morabito deposition, or release of
21 the privileged Vacco emails and communications to tell the whole truth to the Court? Lehman’s
22 declaration made no mention of seeking Nevada counsel or advice, whereas Vacco did. “[T]he
23 rule has long been settled in this state that although one may be under no duty to speak as to a
24 matter, “if he undertakes to do so, either voluntarily or in response to inquiries, he is bound not
25 only to state truly what he tells but also not to suppress or conceal any facts within his
26 knowledge which materially qualify those stated. If he speaks at all he must make a full and fair
27 disclosure.” *Marketing West, Inc. v. Sanyo Fisher (USA) Corp.*, 6 Cal.App.4th 603, 613,
28 7 Cal.Rptr.2d 859 (1992).

1 **F. THIS COURT INVITES ADDITIONAL DOCUMENTATION TO**
2 **CLARIFY TRANSFERS.**

3 The record should reflect that per NRS 166.170(4) certain properties were conveyed to
4 the Arcadia Trust Settlor and/or a beneficiary for the purpose of arranging a loan secured by a
5 deed of trust and then reconveyed to the SSST Bayuk Trust. The record should also reflect that
6 the SSST Bayuk Trust was not a judgment debtor as no *in rem* action was filed against it.

7 Paragraph 4 of the Denial Order states that the Bayuk Trust does not meet the
8 requirement for enforcement as a Nevada spendthrift trust under NRS 166.015. But, Bayuk is
9 not a beneficiary of the Bayuk Trust, so NRS 166.015(2) does not apply. That is clear and
10 unambiguous to any finder of fact who reads the Bayuk Trust. As such, the finding made in
11 paragraph 4 that Bayuk “is the settlor and beneficiary during his lifetime” is without any basis in
12 Nevada law.

13 In the July 22, 2019 hearing (page 56), the Court being offered the testimony of Bayuk as
14 personal knowledge making him qualified, replied: “He would be qualified if he told the truth.”
15 As such, the Court improperly prejudged the truthfulness of Bayuk showing bias and complete
16 disregard for the rights of all parties in the Court to have the finder of fact unbiased and fair. The
17 Court (page 57) on July 22, 2019 stated that Defendants could certainly make amended or
18 additional filings: THE COURT: “I am not going to entertain any more evidence. you want to
19 try to do something in the future with some documentary evidence, you can certainly do that, but
20 not today.”

21 **G. THE ASSIGNMENT AND ASSUMPTION AGREEMENT.**

22 Present in the Court on July 22, 2019 was former U.S. Member of the House of
23 Representatives for Nevada’s Second District and former Governor James A. Gibbons.
24 Governor Gibbons, who resides at his ranch property in Lamoille, Nevada, drove to Reno that
25 day to give evidence to the Court that he is the Co-Trustee of the Bayuk Trust and the Arcadia
26 Trust. The Court did not entertain any more evidence after the biased treatment of Bayuk.

27 On July 3, 2007, an assignment and assumption agreement (“A&AA”) was entered by
28 P.A. Morabito & Co., Limited (“PAMCO”) (“Exhibit 17”) and the Arcadia Trust and the Bayuk

1 Trust. Governor Gibbons executed the A&AA as Co-Trustee of the Arcadia Trust and Co-
2 Trustee of the Bayuk Trust more than three years prior to the Court's disregard for the NSTA as
3 shown in paragraphs 4 and 5.

4
5 **H. THE COURT'S LEGAL CONCLUSIONS IN THE DENIAL ORDER AND
THE MORABITO DENIAL ORDER.**

6 The Denial Order in paragraph 2 states that Bayuk transferred all of his personal assets
7 since 1998 to the Bayuk Trust. Paragraph 3 concludes that the purported nature of the Bayuk
8 Trust as an Irrevocable Nevada SSST was not disclosed prior to the Claim of Exemption.
9 Specifically, in response to discovery requests, the Denial Order asserted that Bayuk, Trustee
10 Bayuk, and the Bayuk Trust produced contradictory evidence regarding the date and the purpose
11 of the Bayuk Trust.

12 The Denial Order in paragraph 3 asserts that "the purported nature of the Bayuk Trust ...
13 was not disclosed prior to the Claim of Exemption." Trustee Bayuk per NRS 166.120(4) "is
14 required to disregard and defeat every assignment or other act, voluntary or involuntary, that is
15 attempted contrary to the provisions of this chapter" and did exactly as Nevada law requires him
16 to do as Trustee.

17 The record should be amended to show that the Court exceeded its authority as clearly
18 outlined by the Legislature in NRS Chapter 166 and by consistently and constantly disregarding
19 the clear and unambiguous ruling of the Nevada Supreme Court in *Klabacka*. The Nevada
20 Supreme Court ruled in *Klabacka*, "Where, as here, a valid SSST agreement is clear and
21 unambiguous, the district court may not consider the parties' testimony regarding their purported
22 intent when fashioning remedies related to that SSST." *Id.* at 949 (citing 76 Am. Jur. 2d Trusts
23 § 30 (2016)).

24 The Court uses the term "purported" in paragraph 3 ("the purported nature of the Bayuk
25 Trust") and twice in paragraph 6 ("the existence of the purported spendthrift trust" and "The
26 purported nature of the Bayuk Trust as a spendthrift trust subject to NRS 166.170 was not
27 disclosed until the Claim of Exemption."). The record should be amended to withdraw the term
28 "purported" in these determinations, as the Court disregarded the clear and unambiguous

1 language of the Nevada Supreme Court. As it stands, the Denial Order is a violation of the intent
2 of the Legislature and the specific directions provided by the Nevada Supreme Court. The
3 Nevada Supreme Court was clear that the Court “may not consider the parties’ testimony
4 regarding their purported intent when fashioning remedies related to that SSST” as the Court did
5 in paragraphs 3 and 6 directly, and in paragraphs 2, 4, and 5 by remedies and conclusions
6 reached by the Court.

7 The Court’s position in paragraph 3 is further addressed by the Nevada Supreme Court in
8 *Klabacka*, which states, “Breaching trust formalities of an otherwise validly created SSST does
9 not invalidate a spendthrift trust; rather, it creates liability upon the trustee(s) for that breach.
10 Indeed, if, after an SSST is validly formed, the trust formalities are breached by a trustee, the
11 proper remedy is a civil suit against the trustee—not an invalidation of the trust itself.” *Id.* at 948
12 (citing NRS 163.115). The Denial Order further runs contrary to the unanimous Nevada
13 Supreme Court *Klabacka* opinion in that the Denial Order is “such a court order [that] would
14 require the trustee to make a distribution outside the scope of the trust agreement and, perhaps
15 more importantly, would run afoul of NRS 166.120(2), which prohibits payments made pursuant
16 to or by virtue of any legal process.” *Id.* at 950 (citing NRS 163.417(1)(c)(1)).

17 In *Klabacka*, the Nevada Supreme Court explained, “The legislative history of SSSTs in
18 Nevada supports this conclusion. It appears that the Legislature enacted the statutory framework
19 allowing SSSTs to make Nevada an attractive place for wealthy individuals to invest their assets,
20 which, in turn, provides Nevada increased estate and inheritance tax revenues. *See* Hearing on
21 A.B. 469 Before the Assembly Judiciary Comm., 70th Leg. (Nev., Mar. 26, 1999) (statement of
22 Assemblyman David Goldwater). When crafting the language to allow SSSTs, the Legislature
23 contemplated a statutory framework that protected trust assets from unknown, future creditors, as
24 opposed to debts known to the settlor at the time the trust was created.” *See id.* at 951. “This
25 rigid scheme makes Nevada’s self-settled spendthrift framework unique; indeed, the “key
26 difference” among Nevada’s self-settled spendthrift statutes and statutes of other states with
27 SSSTs, including Florida, South Dakota, and Wyoming, is that Nevada abandoned the interests
28 of child- and spousal-support creditors, as well as **involuntary tort creditors**, seemingly in an

1 effort to attract the trust business of those individuals seeking maximum asset protection.” *Id.*
2 (emphasis added) (citing Michael Sjuggerud, Defeating the Self-Settled Spendthrift Trust in
3 Bankruptcy, 28 Fla. St. U. L. Rev. 977, 986 (2001)).

4 Paragraph 6 of the Denial Order determines that the tolling agreement tolled the time
5 period to file until June 18, 2013 and that the Complaint was filed in December 2013. The
6 nature of the Bayuk Trust as a spendthrift trust subject to NRS 166.170 was not disclosed until
7 the Claim of Exemption. The Denial Order further states that the true nature of the trust was
8 concealed until the claim of exemption was filed, notwithstanding discovery in the 2013 case;
9 the 2010 public notice of conveyance; the 2011 Morabito deposition and Lehman declaration.
10 The Arcadia Trust and the Bayuk Trust are valid Nevada SSSTs—and the concept of
11 concealment of the Bayuk Trust when there are public records of conveyance and declarations by
12 Officers of the Court all before the expiration of the April 1, 2011 six-month deadline—is
13 baseless.

14 Neither the Arcadia Trust, Trustee Morabito, the Bayuk Trust, or Trustee Bayuk is a legal
15 party to the Denial Order, and the Court should amend its findings to comport with Nevada law
16 and release Trustee Bayuk and the Bayuk Trust from the Denial Order.

17 Although the execution documents related to the Morabito Denial Order did not identify
18 specific property to execute, the Court improperly shifted the burden to Salvatore Morabito by
19 requiring him to provide a more specific objection to vague execution language (Exhibit 18).
20 The result is that Plaintiff has retained what amounts to a general execution order against
21 Salvatore Morabito.

22 **I. THE COURT’S CONCLUSIONS REGARDING TOLLING OF THE**
23 **STATUTE OF LIMITATIONS.**

24 The following comments are relevant to the issue of whether or not the statute of
25 limitations was tolled by concealment of the Bayuk Trust or fraud.

26 MR. LEHNERS: Your Honor, what happened, the Living Trust ceased to exist.

27 THE COURT: I understand your argument. But what your argument is, is that
28 you in fact could have a Living Trust --

1 MR. LEHNERS: Yes.

2 THE COURT: -- in secret, change it to a Spendthrift Trust and not tell your
3 creditors that you have changed it to a Spendthrift Trust until after the Statute of
4 Limitations may have run and a full-blown litigation that took five years could
5 take place.

6 MR. LEHNERS: And I also know, after reading Mr. Morabito's March 3, 2011
7 deposition, he talked about the Bayuk Trust. Now I wasn't there in 2011, but
8 when I read that, I scratched my head. I thought why didn't those guys serve a
9 subpoena on him. Why didn't they do a request for production for all of it? Why
10 didn't they depose him? Why didn't they --

11 THE COURT: They did.

12 MR. LEHNERS: The specific 2005 Trust, I mean it was there. And he was also
13 under an obligation not --

14 THE COURT: But there was discovery in the case I tried for it to be disclosed.

15 Exhibit 8, pgs. 14-15.

16 THE COURT: But you already disclosed with that name of the Trust, you
17 disclosed the contents of it. You disclosed the content of the Trust, what existed
18 and what it was with that name. Then you secretly, as you say, created a novation
19 by the Amendment in 2005, and then never provided, using the exact same name,
20 then you never provided discovery as to what that new Trust even though it says it
21 is a Living Trust, you never gave any -- so on its name it didn't give anybody
22 notice of this Amendment and the content of it.

23 *Id.* at pg. 39.

24 MR. LEHNERS: They knew, well there is a Bayuk Trust out there.

25 THE COURT: They knew there was a Bayuk Trust?

26 MR. LEHNERS: Well they also knew the address and county of the Del Mar
27 property. Dig out the public record, look at that. Say I want a copy of the Trust
28 Agreement that owns this property.

THE COURT: I am saying I assume the request for the copy of the Trust
Agreement was made and discovered.

MR. LEHNERS: Your Honor, I can't speak to that. I don't have that in the
record. I just can't speak to that. What I am telling you is if somebody says hey
give me a copy of the Trust Agreement or they send something over, it is like,
well, I am under an obligation not to disclose it as a Trustee. I've been a Trustee
of a Trust once. Your obligation is to that beneficiary, not the creditors.

THE COURT: Well certainly if the request for production was responded to that I
cannot give you that information, then the person would be on notice to go follow
up and get a court order to produce. When you say here it is and what you get
isn't the right one, how can you then claim protection?

Id. at pgs. 40-41.

1 THE COURT: I am not discussing anything about the name. But assuming that
2 you said you have an obligation to ask for it and you asked for it and you weren't
3 given it, it was I'm not giving it to you because I can't. It was here you go and it
was the Trust that was no longer in existence based on your argument. What is
remedy then?

4 MR. LEHNERS: Your Honor, the Trust that is no longer in existence and the
5 Trust that replaced it are the same names. It is a novation. One replaced the
other.

6 THE COURT: I understand your argument. What if he didn't produce it.

7 MR. LEHNERS: Well, the discovery request should have been as follows: Here's
8 the Deed, it says the Edward Bayuk Living Trust. I want the Trust Agreement, all
amendments with respect to the Trust that owns this property. Give me that. That
is what should have happened.

9 THE COURT: I am just asking you to assume that was made.

10
11 *Id.* at pgs. 41–42.

12 This dialogue touches upon whether or not the existence and nature of the trust was
13 disclosed to Plaintiff. The following portion of the transcript relates to whether or not the
14 spendthrift trust was a judgment debtor.

15 MS. TURNER: We talked to the clerk and All assets that were transferred to
16 the Edward William Bayuk Living Trust. Even though the Deeds or the
17 testimony may indicate there was a 2008-2009 Trust, there is but one. There is
the Edward William Bayuk Living Trust which is a judgment debtor which is a
18 judgment debtor. This is a judgment debtor. We are not dealing with a claim of
exemption by a beneficiary of a trust. This is where the Trust, itself, is a
judgment debtor.

19 *Id.* at pgs. 3–4.

20 MR. LEHNERS: Well, Your Honor, maybe not directly, but clearly, if the assets
21 of the spendthrift trust are gobbled up, it is going to affect the rights of the
beneficiary. And Mr. Bayuk, under the Trust, has a duty to stop that. And again,
22 the Trust is a thing, so it is an in rem action not an in personam action. You don't
bring the Trust in by suing the Trustee. You bring the Trust in by filing an action
to determine whether or not there has been a fraud. If there has, the Court can do
23 something about it. But it is restricted procedurally. I understand and it is very
difficult for me to argue to you. You were the trial Judge. I was not. I have never
24 even had a jury trial. But I went through a lot of history on this, and I am
somewhat of a Johnny come lately, and it is difficult for me to argue why they
25 didn't you raise it then, Mr. Lehnars. Well, because it is jurisdictional. The law
states I get to raise it at any time, and I will raise it now because I was brought in
26 on this case to represent Mr. Bayuk, and I have to make that argument. And I also
believe in the argument. So again –

27
28 *Id.* at pg. 23.

III. LEGAL ARGUMENT

A. STANDARDS FOR GRANTING RELIEF.

NRCP 52(a) states that in an action tried on the facts without a jury, the court must find the facts specially and state its conclusions of law separately. NRCP 52(b) provides, in relevant part, that on a party's motion filed no later than 28 days after service of written notice of entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. When a final order or judgment is appealed, the findings must be clear and specific. The appellate court will not imply findings to support the judgment where the record is not clear. If the record is not clear, then the usual practice is to remand the matter to the district court to set forth the basis for its award. *See Commercial Cabinet Co. v. Mort Wallin of Lake Tahoe, Inc.*, 103 Nev. 238, 240, 737 P.2d 515, 517 (1987). If the record is not clear on the issues, then the argument cannot be made on appeal where no Rule 52 motion was filed. *See Solar, Inc. v. Elec. Smith Constr. & Equip. Co.*, 88 Nev. 457, 459, 499 P.2d 649, 649–650 (1972).

“A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous.” *Masonry and Tile Contractors Ass’n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). “Unless and until an order is appealed, the district court retains jurisdiction to reconsider the matter.” *Gibbs v. Giles*, 96 Nev. 243, 245, 607 P.2d 118, 199 (1980).

The purpose of an NRCP 59(e) motion to alter or amend judgment is to seek correction at the trial court level of an order or judgment that contains legal errors. *See Chiara v. Belaustegui*, 86 Nev. 856, 858, 477 P.2d 857, 859 (1970). A motion to alter or amend the judgment is proper where there has been judicial error, as opposed to clerical error, in a court judgment. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582–583, 245 P.3d 1190, 1193 (2010).

1 **B. THE COURT SHOULD CORRECT THE RECORD TO REFLECT**
2 **SPECIFIC FACTS REGARDING THE STATUTE OF LIMITATIONS**
3 **OUTLINED IN NRS 166.170.**

4 NRS 166.170 is the controlling statute of limitations with respect to alleged fraudulent
5 transfers to a spendthrift trust. This statute states in relevant part that:

6 1. A person may not bring an action with respect to a transfer of property to a
7 spendthrift trust:

8 (a) If the person is a creditor when the transfer is made, unless the action is
9 commenced within:

10 (1) Two years after the transfer is made; or

11 (2) Six months after the person discovers or reasonably should have discovered
12 the transfer, whichever is later.

13 (b) If the person becomes a creditor after the transfer is made, unless the action is
14 commenced within two (2) years after the transfer is made or six (6) months after
15 the person discovers or reasonably should have discovered the transfer.

16 2. A person shall be deemed to have discovered a transfer at the time a public
17 record is made of the transfer, including, without limitation, the conveyance of
18 real property that is recorded in the office of the county recorder of the county in
19 which the property is located or the filing of a financing statement pursuant to
20 chapter 104 of NRS.

21 When construing statutes, courts first look to the plain language of the statute. *See A.F.*
22 *Constr. Co. v. Virgin River Casino*, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002). When a
23 statute's language is plain and its meaning clear, the courts will apply that plain language.
24 *See International Game Tech. v. Dist. Ct.*, 122 Nev. 132, 152, 127 P.3d 1088, 1102 (2006).
25 Statutes outlining "time and manner" requirements must be strictly construed. *See Leven v.*
26 *Frey*, 123 Nev. 399, 407–408, 168 P.3d 712, 717–719 (2007). "[I]t is not the business of this
27 court to fill in alleged legislative omissions based on conjecture as to what the legislature would
28 or should have done." *S. Nev. Homebuilders Ass'n v. Clark Cnty.*, 121 Nev. 446, 451, 117 P.3d
171, 174 (2005)

 At the July 22, 2019 hearing, Bayuk's counsel referenced the March 3, 2011 deposition
of Morabito. In that deposition, Morabito was fully candid about Bayuk's trust as well as his
own. Morabito disclosed property that had been transferred to the Bayuk Trust. Morabito

1 specifically testified that the Bayuk Trust was a co-purchaser of the real property located at
2 371 El Camino Del Mar property in Laguna Beach.

3 The Lehman Declaration (Exhibit 15) is dated March 21, 2011, giving Plaintiff time to
4 beat the six-month clock, which expired on April 1, 2011, and subpoena Bayuk, Trustee Bayuk,
5 the Bayuk Trust, and the Bayuk Nominee Trust. *See Rock Bay, LLC v. Dist. Ct.*, 129 Nev. 205,
6 298 P.3d 441 (2013) (permitting a judgment creditor to subpoena documents from a third party
7 for purposes of judgment discovery). Despite public notice in October 2010, detailed copies of
8 Morabito's Irrevocable Nevada SSST and revocable Nevada Nominee Trust on March 1, 2011,
9 and the detailed deposition on March 3, 2011, Plaintiff did nothing. In fact, Plaintiff did less
10 than nothing. The Tolling Agreement failed to name the Nevada Irrevocable SSST Arcadia
11 Living Trust and specifically only named the revocable Nevada Arcadia Nominee Trust. In May
12 2015, even that Trust and Morabito were removed. Plaintiff knew that the complaint in this
13 matter, as well as the Settlement Agreement itself, knowingly runs afoul of Nevada law.

14 As of March 3, 2011, the instant lawsuit had not been filed. No tolling agreement had
15 been signed. No settlement had been made. There was no confession of judgment. At that
16 moment in time, there was only a judgment against Morabito for approximately \$149 million
17 dollars. So when the Bayuk Trust was subpoenaed is critical with regard to the release of files
18 on the property it owned, what could Plaintiff have done if it had acted in the time prescribed by
19 statute in NRS 166.170(2)? If Plaintiff requested discovery after April 1, 2011 not in compliance
20 with NRS 166.170(2) and the October 1, 2010 publication date by First American Title Co., then
21 NRS 166.120(4) dictates the actions, or inaction, of Trustee Bayuk.

22 NRCP 69(a)(2) states:

23 **Obtaining Discovery.** In aid of the judgment or execution, the judgment creditor
24 or a successor in interest whose interest appears of record may obtain discovery
25 from any person--including the judgment debtor--as provided in these rules or by
state law.

26 There is no doubt that, as of March 3, 2011, Plaintiff knew about the Bayuk Trust and
27 that it owned property. By March 21, 2011, the Plaintiff had the Lehman Declaration—and
28 10 days to file a subpoena. NRS 166.170(a) identifies the limitation of actions as either two

1 years from the creation of the SSST and the transfer or six months from the discovery after
2 public notice of a conveyance or transfer. That gave Plaintiff six months, or until April 1, 2011,
3 to depose Bayuk and demand production of the Bayuk Trust. Under NRS 166.120(4), Trustee
4 Bayuk would have sought to “disregard and defeat every assignment or other act, voluntary or
5 involuntary, that is attempted contrary to the provisions of this Chapter.” But, Trustee Bayuk did
6 not have to take a position since the discovery was never done.

7 Breslow responded to Plaintiff’s interrogatories in 2015, cognizant of the April 1, 2011
8 deadline having long passed. Breslow knew that New York and California counsel had
9 undertaken a legal exchange under NRS Chapter 166, but an unnecessary one. Then, as now,
10 NRS Chapter 166 protects the Arcadia Trust and the Bayuk Trust as the Nevada Legislature
11 intended, and the Nevada Supreme Court unanimously enforced in *Klabacka*. The Court should
12 now make amended and additional findings, and vacate the Denial Order.

13 This Court stated that (1) Bayuk was deposed, and (2) there was discovery in the case.
14 None occurred before April 1, 2011. Bayuk acknowledged the existence of the Bayuk Trust in
15 response to interrogatories in 2015, but in accordance with NRS 166.120(4), refused to release
16 the Bayuk Trust documents. The Court’s findings should be amended to reflect that (1) the
17 Tolling Agreement signed by Trustee Bayuk and Bayuk on November 30, 2011 was not
18 enforceable on the Bayuk Trust, and (2) there is no evidence of any discovery requests filed by
19 Plaintiff with respect to the Bayuk Trust until the instant case was filed in December of 2013—
20 well after NRS 166.170(2) on April 1, 2011.

21 **C. THE RECORD SHOULD REFLECT THAT BAYUK TRUST WAS NOT A**
22 **JUDGMENT DEBTOR AS NO *IN REM* ACTION WAS FILED AGAINST**
IT.

23 This is a request for clarification. A review of the transcript does not reveal a specific
24 finding by the Court that the Bayuk Trust was a judgment debtor. Rather, the point was argued
25 by counsel. Plaintiff’s counsel argued that the trust was a judgment debtor because there is a
26 judgment against Bayuk in his capacity as Trustee Bayuk. Bayuk’s counsel argued that it was an
27 *in personam* judgment against the trustee, which was not the same as an *in rem* judgment against
28 the trust. NRS 166.170(1) and (8) establish clear time limits to bring an action under

1 NRS 164.010. And, NRS 164.010 specifies that the action must be one *in rem* against the trust.
2 *See also In re Aboud Inter Vivos Tr.*, 129 Nev. 915, 922, 314 P.3d 941, 945–946 (2013).

3 NRS 164.010(1) confers *in rem* jurisdiction on a district court over trust property in all
4 trust administration actions. NRS 164.015(6) also provides that a district court’s order in a trust
5 administration action is binding *in rem* upon the trust estate and upon the interests of all
6 beneficiaries. A trustee in his representative capacity is a different legal personage than the
7 person in his individual capacity. *Mona v. Eighth Judicial Dist. Court*, 132 Nev. Adv. Op. 72,
8 380 P.3d 836, 842–843 (2016) (“[Petitioner], in her individual capacity, is a distinct legal person
9 and is a stranger to [Petitioner] in her representative capacity as a trustee of the Mona Family
10 Trust.”). Thus, Trustee Bayuk is not the same as Bayuk (individually) or the Bayuk Trust.

11 In light of the foregoing, Bayuk respectfully requests that the findings be amended to
12 reflect that: (1) the existence of the Bayuk Trust was disclosed by public notice of conveyance by
13 First American Title Co. to the world and Plaintiff on October 1, 2010; and (2) notwithstanding
14 the entry of a judgment against Morabito and the discovery rules allowed by NRCP 69, Plaintiff
15 failed to propound any discovery requests to ascertain the nature or character of the Bayuk Trust
16 until after the instant case was filed in December of 2013. This is well after the NRS 166.170(2)
17 deadline of April 1, 2011.

18 **D. THE MORABITO DENIAL ORDER IMPERMISSIBLY SHIFTS THE**
19 **BURDEN TO MORABITO AND UNNECESSARILY CREATES A**
GENERAL EXECUTION ORDER AGAINST SALVATORE MORABITO.

20 Salvatore Morabito claimed an exemption from Plaintiff’s vague execution because it
21 amounted to a general execution order against him. NRS 21.020(1) requires a writ of execution
22 to identify the judgment debtor’s real or personal property. NRS 21.070 similarly requires the
23 writ of execution to be issued in the county where the real or personal property is located.
24 Unfortunately, Plaintiff did not specifically identify any property belonging to Salvatore
25 Morabito upon which it would seek execution. This is a valid concern for Salvatore Morabito
26 because Plaintiff now has a general execution order to seek assets from Salvatore Morabito, even
27 though Plaintiff cannot reach Canadian assets since an appeal is pending. Under the principle of
28 international comity, courts should give effect to executive, legislative, or judicial acts of another

1 nation. *See Philadelphia Gear Corp. v. Philadelphia Gear de Mexico*, 44 F.3d 187, 191 (3d Cir.
2 1994). Comity is the “recognition which one nation allows within its territory to the legislative,
3 executive, or judicial acts of another nation, having due regard both to international duty and
4 convenience, and to the rights of its own citizens or of other persons who are under the
5 protection of its laws.” *Hilton v. Guyot*, 159 U.S. 113, 163, 16 S.Ct. 139 (1895).

6 With Plaintiff’s general execution order, however, Salvatore Morabito could be subject to
7 unlawful extraterritorial execution, which he would have to again challenge. Instead of unfairly
8 shifting the burden to Salvatore Morabito, the Court should require Plaintiff to identify real or
9 personal property that it is seeking to execute. Since Plaintiff has not identified such property in
10 its current execution filings, the Court should vacate the Morabito Denial Order.

11 **IV. CONCLUSION**

12 In summary, the Court should vacate the Denial Order and the Morabito Denial Order on
13 the basis of NRCP 52(b), WDCR 12, and NRCP 59(e). Despite Plaintiff’s knowledge of the
14 Nevada SSSTs, it chose to do nothing and should be barred by the statute of limitations from
15 seeking execution. Further, Plaintiff never initiated an *in rem* proceeding against the Bayuk
16 Trust, such that this Court never had jurisdiction over the Bayuk Trust. Finally, the Court should
17 require Plaintiff to specify the real or personal property it seeks to execute against Salvatore
18 Morabito instead of shifting the burden.

19 ///

20 ///

21 ///

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned affirms that the pleading or document now being present to the Court in the above-entitled action does **not** contain any Personal Information (as defined in NRS 603A.040).

Dated this 19th day of August, 2019.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols
Micah S. Echols, Esq.
Nevada Bar No. 8437
Kathleen A. Wilde, Esq.
Nevada Bar No. 12522
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION TO MAKE AMENDED OR ADDITIONAL FINDINGS UNDER NRCP 52(b), OR, IN THE ALTERNATIVE, MOTION FOR RECONSIDERATION** was submitted electronically for filing and/or service with the Second Judicial District Court on the 19th day of August, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

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

FRANK GILMORE, ESQ.
for SALVATORE R. MORABITO, SNOWSHOE PETROLEUM, INC.,
and SUPERPUMPER, INC.

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

JEFFREY HARTMAN, ESQ.
for EDWARD WILLIAM BAYUK LIVING TRUST, EDWARD BAYUK

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

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

MICHAEL LEHNERS, ESQ.
for EDWARD WILLIAM BAYUK LIVING TRUST, and EDWARD BAYUK and
SALVATORE R. MORABITO

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

GERALD M. GORDON, ESQ.
Garman Turner Gordon LLP
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
SPECIAL COUNSEL TO TRUSTEE

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

INDEX OF EXHIBITS

Exhibit	Document Description	Page Count
1	Order Denying Claim of Exemption and Third Party Claim (filed 08/09/19)	5
2	Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 11/12/05)	41
3	Spendthrift Trust Agreement for the Arcadia Living Trust (dated 10/14/05)	37
4	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/10)	40
5	Paul A. Morabito's Supplement to NRCP 16.1 Disclosures (dated 03/01/11)	5
6	Transcript of March 3, 2011 Deposition of Paul A. Morabito	236
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8	Transcript of July 22, 2019 Hearing	61
9	Tolling Agreement JH and Paul Morabito (partially executed 11/30/11)	5
10	Tolling Agreement JH and Arcadia Living Trust (partially executed 11/30/11)	5
11	Excerpted Pages 8–9 of Superpumper Judgment (filed 03/29/19)	3
12	Petitioners' First Set of Interrogatories to Debtor (dated 08/13/13)	5
13	Tolling Agreement JH and Edward Bayuk (partially executed 11/30/11)	5
14	Tolling Agreement JH and Bayuk Trust (partially executed 11/30/11)	5
15	Declaration of Mark E. Lehman, Esq. (dated 03/21/11)	4
16	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	4
17	Assignment and Assumption Agreement (dated 07/03/07)	16
18	Order Denying Morabito's Claim of Exemption (filed 08/02/19)	3

Exhibit 3

1 **3980**

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13 Las Vegas, Nevada 89119

14 Telephone 725-777-3000

15 *Proposed Attorneys to Trustee*

16 **IN THE SECOND JUDICIAL DISTRICT COURT OF**

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

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

CASE NO.: CV13-02663

DEPT. NO.: 1

21 **Plaintiff,**

22 **vs.**

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

Defendants.

**AMENDED STIPULATION AND ORDER TO SUBSTITUTE A PARTY PURSUANT TO
NRCP 17(a)**

Plaintiff William A. Leonard, Jr. ("Leonard"), trustee for the Bankruptcy Estate of Paul Anthony Morabito, by and through his counsel of record, Garman Turner Gordon, LLP, and Defendants Superpumper, Inc.; Edward Bayuk, individually and as Trustee of the Edward

1 William Bayuk Living Trust; Snowshoe Petroleum, Inc.; and Salvatore Morabito (collectively,
2 "Defendants") by and through their attorneys of record, Robison, Belaustegui, Sharp & Low,
3 hereby jointly agree and stipulation as follows:¹

4 1. To remove JH, Inc., Jerry Herbst, and Berry-Hinkley Industries as plaintiff to this
5 action;

6 2. To substitute Leonard, the trustee for the Bankruptcy Estate of Paul A. Morabito,
7 as the plaintiff in this action under NRCP 17(a);

8 3. To remove Paul Morabito as a defendant to this action, both individually and as a
9 Trustee of the Arcadia Living Trust;

10 4. To remove the Arcadia Living Trust as a defendant to this action.

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

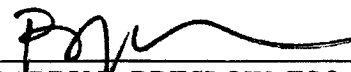
13 The undersigned does hereby affirm that the preceding document does not contain the
14 social security number of any person.

15 DATED this 1 day of June, 2015.

16 GARMAN TURNER GORDON LLP

ROBISON BELAUSTEGUI SHARP & LOW

17
18 /s/ Teresa M. Pilatowicz
19 GERALD E. GORDON, ESQ.
20 ERIKA PIKE TURNER, ESQ.
21 TERESA M. PILATOWICZ, ESQ.
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FRANK C. GILMORE, ESQ.
71 Washington Street
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Telephone 775-329-3151

25 *Proposed Attorneys for Trustee*

Attorneys for Defendants

26 ...

27 ¹ Plaintiffs JH, Inc., Jerry Herbst, and Berry-Hinkley Industries and Defendants, including Paul
28 Morabito, individually and as trustee of the Arcadia Living Trust, previously submitted a
stipulation to substitute Leonard, which was approved. The purpose of this Amended Stipulation
is to clarify that all Leonard is substituting if for all three previous plaintiffs, and that the Arcadia
Living Trust is being removed as a defendant

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16 **IN THE SECOND JUDICIAL DISTRICT COURT OF**

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

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

CASE NO.: CV13-02663

DEPT. NO.: 1

21 Plaintiff,

22 vs.

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

Defendants.

ORDER APPROVING AMENDED STIPULATION TO SUBSTITUTE A PARTY
PURSUANT TO NRCP 17(a)

Pursuant to the foregoing Stipulation, IT IS SO ORDERED.

Dated this 15th day of June, 2015.


DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

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 16th day of June, 2015, 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 the individuals listed herein and/or electronically filed the foregoing document with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following: :

VIA ECF

Barry Breslow, Esq.

Frank Gilmore, Esq.

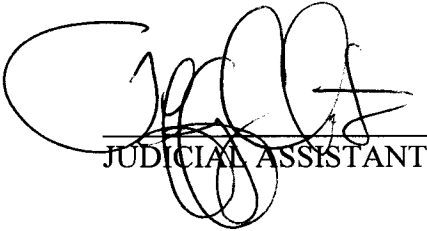
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JUDICIAL ASSISTANT

Exhibit 4

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

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

///

///

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///

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

Notice is hereby given that on March 29, 2019, this Honorable Court entered its Findings of Fact, Conclusions of Law, and Judgment, a copy of which is attached hereto as **Exhibit 1**.

Dated this 29th day of March, 2019.

GARMAN TURNER GORDON LLP

/s/ Teresa M. Pilatowicz, Esq.

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Special Counsel to Plaintiff,

William A. Leonard, Trustee

AFFIRMATION
Pursuant to NRS 239B.030

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

Dated this 29th day of March, 2019.

GARMAN TURNER GORDON LLP

/s/ Teresa M. Pilatowicz, Esq.

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☒ a. Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, postage prepaid, following ordinary business practices:

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18 668 North Coast Highway #517
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21 Edward William Bayuk Living Trust
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20 Attn: Alan Skobin, Esq.
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22 North Hills, CA 91343-6503

23 Jack Suddarth
24 Equity Wave Lending
25 2355 Main St., Suite 230
26 Irvine, CA 92614

27 Famille Holdings, L.P.
28 27675 Chapala
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Patrick Harkin
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900 E. Washington St., Suite 100
Colton, CA 92324

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

2 DATED this 29th day of March, 2019.

3
4 /s/ Kelli Wightman

5 An Employee of GARMAN TURNER
6 GORDON LLP
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Exhibit 5

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Counsel to Plaintiff

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an *Order Denying Claim of Exemption and Third Party Claim*, a copy of which is attached hereto as **Exhibit 1**, was entered in this matter on the 9th day of August, 2019.

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AFFIRMATION

Pursuant to NRS 239B.030

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

Dated this 9th day of August, 2019.

GARMAN TURNER GORDON LLP

By: /s/ Erika Pike Turner

GERALD M. GORDON

Nevada Bar No. 229

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Counsel to Plaintiff

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INDEX OF EXHIBITS

Exhibit	Description	Pages¹
1	Order Denying Claim of Exemption and Third Party Claim	4

¹ Exhibit pagination includes exhibit slip sheets.

1 **CERTIFICATE OF SERVICE**

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

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

8 ☐ Certified Mail, Return Receipt Requested

9 ☐ Via Facsimile (Fax)

10 ☐ Via E-Mail

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

13 ☐ Federal Express (or other overnight delivery)

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

15 Michael Lehnert, Esq.
E-mail: mcl3303@aol.com

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

17 Dated this 9th day of August, 2019.

18
19
20 /s/

21 An Employee of
22 GARMAN TURNER
23 GORDON LLP
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

2840

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

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

CASE NO.: CV13-02663

DEPT. NO.: 4

Plaintiff,

vs.

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

Defendants.

ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM

Before the Court is the *Notice of Claim of Exemption from Execution* (the “Claim of Exemption”) filed on June 28, 2019 by Edward Bayuk (“Bayuk”), individually and as trustee of the Edward William Bayuk Living Trust (the “Bayuk Trust”), and the *Third Party Claim to Property Levied Upon [NRS 31.070]* (the “Third Party Claim”) filed on July 3, 2019 by the Bayuk Trust. The Claim of Exemption and Third Party Claim are supported by the *Declaration of Edward Bayuk Claiming Exemption from Execution* (the “Bayuk Declaration”), filed on July 2, 2019. *Plaintiff’s Objection to (1) Declaration of Edward Bayuk Claiming Exemption From Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5)* (the “Objection”) was filed on July 11, 2019, and Bayuk and the Bayuk Trust’s *Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon* (the “Reply”) was filed on July 17, 2019.

1 The Court held a hearing on the Claim of Exemption and Third Party Claim on July 22,
2 2019. Bayuk and the Bayuk Trust appeared by and through counsel, Michael Lehnars and Jeffrey
3 L. Hartman. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M. Gordon,
4 and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

5 The Court has reviewed and considered the arguments made in the Claim of Exemption
6 and the Third Party Claim, the Objection, and the Reply, the Bayuk Declaration, the exhibits to all
7 of the foregoing, the papers and pleadings on file with the Court in this action, the testimony and
8 exhibits admitted during the trial, the Court's Findings of Fact, Conclusions of Law, and Judgment,
9 entered on March 29, 2019 (the "Judgment"), and the arguments of counsel made at the hearing.
10 The Court, persuaded by the argument and authorities in Plaintiff's Objection and the arguments
11 of Plaintiff's counsel at the hearing, along with the pleadings and papers on file, the trial record,
12 and the findings and conclusions set forth in the Judgment, finds as follows:

13 1. The court has subject matter jurisdiction over the claims asserted against Bayuk, as
14 trustee of the Bayuk Trust.

15 2. Bayuk has transferred all of his personal assets to the Bayuk Trust since the Bayuk
16 Trust was established in 1998. As set forth in the Judgment, the Bayuk Trust received fraudulently
17 transferred property which was established by clear and convincing evidence.

18 3. The purported nature of the Bayuk Trust as a Nevada spendthrift trust was not
19 disclosed prior to the Claim of Exemption. In response to discovery requests, in deposition, in
20 subject deeds, and at trial prior to the Judgment, Bayuk and the Bayuk Trust produced
21 contradictory evidence regarding the date and the purpose of the Bayuk Trust. With the Claim of
22 Exemption, the Bayuk Trust clarifies that that there is, and has been, only one trust with the name
23 "the Edward William Bayuk Living Trust" and that is the Bayuk Trust.

24 4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada
25 spendthrift trust under NRS 166.015 because Bayuk is the settlor and beneficiary during his
26 lifetime of the Bayuk Trust, and neither Bayuk nor his co-trustee Paul Morabito are domiciles of
27 Nevada. NRS 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved to
28 California in September 2010.

5. Contrary to assertions by Bayuk, there was no credible evidence presented that the Bayuk Trust owns a burial plot in Nevada; but, even if such fact were established, the ownership of a burial plot in Nevada is insufficient to invoke the protections of NRS Chapter 166.

6. Even if the claims asserted against the Bayuk Trust were subject to the time periods under NRS 166.170, they were timely because the fraudulent transfer claim was brought (1) within two years after the fraudulent transfers were made and (2) also within six months of discovery of, or when Plaintiff reasonably should have discovered, the existence of the purported spendthrift trust. The subject fraudulent transfers occurred in September 2010 and thereafter. The Bayuk Trust executed a tolling agreement on November 30, 2011 to toll any statute of limitations applicable to the fraudulent transfer of property to the Bayuk Trust, which tolling agreement tolled the time period to file until June 18, 2013 and the Complaint was filed in December 2013. The purported nature of the Bayuk Trust as a spendthrift trust subject to NRS 166.170 was not disclosed until the Claim of Exemption. Moreover, any defenses based on NRS 166.170 have been waived as a result of the failure of Bayuk or the Bayuk Trust to raise such defenses prior to the Claim of Exemption.

Based upon review of the entire file, the foregoing, and good cause appearing:

IT IS HEREBY ORDERED that the June 28, 2019 Claim of Exemption filed by Edward Bayuk, individually and as trustee of the Edward William Bayuk Living Trust is DENIED.

IT IS HEREBY FURTHER ORDERED that the July 3, 2019 Third Party Claim to Property Levied Upon [NRS 31.070] filed by the Bayuk Trust is DENIED.

Dated this 9 day of August, 2019.

Connie J. Steinheimer
DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CV13-02663

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9 day of August, 2019, I filed the **ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM** with the Clerk of the Court.

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

 Personal delivery to the following: [NONE]

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

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

MICAH ECHOLS, ESQ. for EDWARD WILLIAM BAYUK LIVING TRUST et al

JEFFREY HARTMAN, ESQ. for EDWARD WILLIAM BAYUK LIVING TRUST, EDWARD BAYUK

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

FRANK GILMORE, ESQ. for SNOWSHOE PETROLEUM, INC., SALVATORE R. MORABITO, SUPERPUMPER, INC.

MICHAEL LEHNERS, ESQ. for SALVATORE R. MORABITO

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

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

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

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

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 9 day of August, 2019.

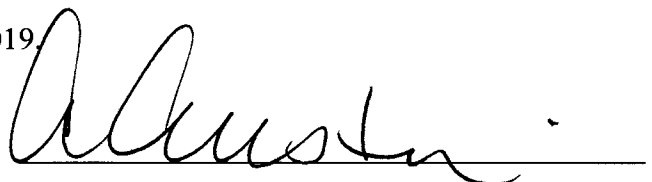


Exhibit 6

1 GARMAN TURNER GORDON LLP
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4 E-mail: ggordon@gtg.legal
5 ERIKA PIKE TURNER
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12 Nevada Bar No. 11588
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14 650 White Drive, Ste. 100
15 Las Vegas, Nevada 89119
16 Telephone 725-777-3000
17 *Counsel to Plaintiff*

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

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

16 Plaintiff,

17 vs.

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

22 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

24 **NOTICE OF ENTRY OF ORDER**

25 PLEASE TAKE NOTICE that an *Order Denying Claim of Exemption*, a copy of which is
26 attached hereto as **Exhibit 1**, was entered in this matter on the 2nd day of August, 2019.

27 ///

28 **AFFIRMATION**

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Pursuant to NRS 239B.030

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

Dated this 12th day of August, 2019.

GARMAN TURNER GORDON LLP

By: /s/ Teresa M. Pilatowicz, Esq.
GERALD M. GORDON
Nevada Bar No. 229
ERIKA PIKE TURNER
Nevada Bar No. 6454
TERESA M. PILATOWICZ
Nevada Bar No. 9605
GABRIELLE A. HAMM
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650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Counsel to Plaintiff

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INDEX OF EXHIBITS

Exhibit	Description	Pages¹
1	Order Denying Claim of Exemption	3

¹ Exhibit pagination includes exhibit slip sheets.

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this
3 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the foregoing **NOTICE OF**
4 **ENTRY OF ORDER** on the parties as set forth below:

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

8 _____ Certified Mail, Return Receipt Requested

9 _____ Via Facsimile (Fax)

10 _____ Via E-Mail

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

12 _____ Federal Express (or other overnight delivery)

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

14 Michael Lehnert, Esq.
15 E-mail: mcl3303@aol.com

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

18 Dated this 12th day of August, 2019.

19
20 /s/ Dekova Huckaby
21 An Employee of
22 GARMAN TURNER
23 GORDON LLP
24
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Exhibit 1

2840

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

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

CASE NO.: CV13-02663

DEPT. NO.: 4

Plaintiff,

vs.

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

Defendants.

ORDER DENYING CLAIM OF EXEMPTION

Before the Court is the *Notice of Claim of Exemption from Execution* (the "Claim of Exemption") filed on July 2, 2019 by Defendant Salvatore Morabito ("Morabito"). The Claim of Exemption is supported by the *Declaration of Salvatore Morabito Claiming Exemption from Execution* (the "Morabito Declaration"), also filed on July 2, 2019. *Plaintiff's Objection to Notice of Claim of Exemption from Execution Filed by Salvatore Morabito and Request for Hearing* (the "Objection") was filed on July 16, 2019, and *Morabito's Reply to Plaintiff's Objection to Notice of Claim of Exemption from Execution* (the "Reply") was filed on July 18, 2019.

The Court held a hearing on the Claim of Exemption on July 22, 2019. Morabito appeared by and through counsel, Michael Lehnars. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M. Gordon and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

1 The Court has reviewed and considered the arguments made in the Claim of Exemption,
2 the Objection, and the Reply, the papers and pleadings on file with the Court in this action, the
3 testimony and exhibits admitted during the trial, the Court's Findings of Fact, Conclusions of Law,
4 and Judgment, entered on March 29, 2019 (the "Judgment"), and the arguments of counsel made
5 at the hearing. The Court is persuaded by the argument and authorities in Plaintiff's Objection and
6 the arguments of Plaintiff's counsel at the hearing, along with the pleadings and papers on file, the
7 trial record, and the findings and conclusions set forth in the Judgment. As such, the Court finds
8 that Sam Morabito failed to meet his burden to show that there are assets in Nevada subject to
9 exemption from execution.

10 Based on the foregoing, and good cause appearing:

11 IT IS HEREBY ORDERED that the Claim of Exemption filed by Salvatore Morabito is
12 denied.

13 Dated this 2 day of August, 2019.

14
15 Connie J. Steinheimer
16 DISTRICT JUDGE
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Exhibit 7

1 **2540**
2 **Marquis Aurbach Coffing**
3 Micah S. Echols, Esq.
4 Nevada Bar No. 8437
5 Kathleen A. Wilde, Esq.
6 Nevada Bar No. 12522
7 10001 Park Run Drive
8 Las Vegas, Nevada 89145
9 Telephone: (702) 382-0711
10 Facsimile: (702) 382-5816
11 mechols@maclaw.com
12 kwilde@maclaw.com
13 *Attorneys for Defendants*

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

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

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

Case No.: CV13-02663
Dept. No.: 4

12 Plaintiff,

13 vs.
14

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

21 Defendants.

22 **NOTICE OF ENTRY OF ORDER**

23 Please take notice that an Order Denying Defendants' Motion to Make Amended or
24 Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and
25 Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 was filed on
26 November 8, 2019 and is attached as **Exhibit A**.
27
28

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned affirms that the pleading or document now being present to the Court in the above-entitled action does **not** contain any Personal Information (as defined in NRS 603A.040).

Dated this 23rd day of December, 2019.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols
Micah S. Echols, Esq.
Nevada Bar No. 8437
Kathleen A. Wilde, Esq.
Nevada Bar No. 12522
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Second Judicial District Court on the 23rd day of December, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

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

FRANK GILMORE, ESQ.
for SALVATORE R. MORABITO, SNOWSHOE PETROLEUM, INC.,
and SUPERPUMPER, INC.

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

JEFFREY HARTMAN, ESQ.
for EDWARD WILLIAM BAYUK LIVING TRUST, and EDWARD BAYUK

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

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

MICHAEL LEHNERS, ESQ.
for EDWARD WILLIAM BAYUK LIVING TRUST, and EDWARD BAYUK and
SALVATORE R. MORABITO

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

GERALD M. GORDON, ESQ.
Garman Turner Gordon LLP
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
SPECIAL COUNSEL TO TRUSTEE

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

INDEX OF EXHIBITS

Exhibit No.	Document Description	No. of Pages
A	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	10

FILED
Electronically
CV13-02663
2019-12-23 01:14:18 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7652664

Exhibit A

2840

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

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

CASE NO.: CV13-02663

DEPT. NO.: 4

Plaintiff,

vs.

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

Defendants.

**ORDER DENYING DEFENDANTS' MOTION TO MAKE AMENDED OR
ADDITIONAL FINDINGS UNDER NRCP 52(B), OR, IN THE ALTERNATIVE,
MOTION FOR RECONSIDERATION AND DENYING PLAINTIFF'S
COUNTERMOTION FOR FEES AND COSTS PURSUANT TO NRS 7.085**

On November 26, 2018, the Court concluded the nine day Non-Jury Trial and took the matter under advisement.

On January 30, 2019, Plaintiff William A. Leonard. Leonard, Trustee of the Bankruptcy Estate of Paul Anthony Morabito (hereinafter "Leonard"), by and through his attorney, Erika Pike Turner, Esq. Teresa M. Pilatowicz, Esq. and Gabrielle A. Hamm, Esq. of Garman Turner Gordan LLP, filed *Plaintiff's Motion to Reopen Evidence*. Also, on January 30, 2019, Leonard filed an *Errata to Plaintiff's Motion to Reopen Evidence*, and an *Ex Parte Motion for Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing*. On February 4, 2019, the Court entered an *Order Shortening Time on Plaintiff's Motion to Reopen Evidence and Setting*

1 *Expedited Hearing* wherein the Court set forth the shortened briefing deadlines and scheduled a
2 hearing on the motion to reopen evidence for February 8, 2019. Also, on February 4, 2019,
3 Leonard filed a *Supplement to Plaintiff's Motion to Reopen Evidence*.

4 On February 6, 2019, Defendants Superpumper, Inc., Edward Bayuk, individually and as
5 Trustee of the Edward William Bayuk Living Trust, Salvatore Morabito and Snowshoe Petroleum,
6 Inc. (hereinafter collectively "Superpumper Defendants"), by and through their attorney, Frank C.
7 Gilmore, Esq. of Robison, Sharp, Sullivan & Brust, filed *Defendants' Response to Motion to*
8 *Reopen Evidence*.

9 On February 7, 2019, Leonard filed *Plaintiff's Reply to Defendants' Response to Motion*
10 *to Reopen Evidence*.

11 On February 8, 2019, Erika Turner, Esq. appeared on behalf of Leonard, and Frank
12 Gilmore, Esq. appeared on behalf of the Superpumper Defendants at the scheduled hearing on
13 Leonard's Motion to Reopen Evidence. After hearing the arguments of the parties, the Court
14 granted Leonard's motion to reopen evidence and set an ongoing non-jury trial wherein the
15 Superpumper Defendants would have the opportunity to present rebuttal evidence for March 1,
16 2019.

17 On February 28, 2019, an *Amended Stipulation to Vacate March 1, 2019 Hearing* was filed
18 wherein the Superpumper Defendants waived any rebuttal to the evidence admitted at the February
19 8, 2019 hearing, Trial Exhibits 305, 306, 307, 308 and 309, and the parties stipulated to vacating
20 the March 1, 2019 ongoing non-jury trial. Thereafter, on February 28, 2019, the Court entered an
21 *Order Granting Amended Stipulation to Vacate March 1, 2019 Hearing*.

22 On March 6, 2019, Leonard filed *[Plaintiff's Proposed] Findings of Fact, Conclusions of*
23 *Law, and Judgment*. On March 8, 2019, the Superpumper Defendants filed *[Defendants' Proposed*
24 *Amended] Findings of Fact, Conclusions of Law and Judgment*.

25 On March 29, 2019, the Court entered its *Findings of Fact, Conclusions of Law and*
26 *Judgment*. Also, on March 29, 2019, Leonard filed a *Notice of Entry of Findings of Fact,*
27 *Conclusions of Law and Judgment*.

1 On April 11, 2019, Leonard filed *Plaintiff's Memorandum of Costs and Disbursements*.
2 On April 12, 2019, Leonard filed an *Application for Attorneys' Fees and Costs Pursuant to NRCP*
3 *68*. On May 15, 2019, the Superpumper Defendants filed a *Motion to Retax Costs*. On April 17,
4 2019, *Plaintiff's Opposition to Motion to Retax Costs* was filed. On April 22, 2019, the
5 Superpumper Defendants filed their *Reply in Support of Motion to Retax Costs*. On April 25, 2019,
6 the Superpumper Defendants filed their *Opposition to Application for Attorneys' Fees and Costs*.

7 On April 25, 2019, Jeffrey L. Hartman, Esq. and the law firm of Hartman & Hartman,
8 substituted in the place and stead of Frank Gilmore, Esq. and Robison, Sharp, Sullivan & Brust,
9 as attorney of record for Defendant Edward Bayuk, individually and as Trustee of the Edward
10 William Bayuk Living Trust (hereinafter "Bayuk")

11 Also, on April 25, 2019, Defendants Salvatore Morabito, Snowshoe Petroleum, Inc. and
12 Superpumper, Inc. (hereinafter the "Morabito Defendants") filed a *Motion for New Trial and/or to*
13 *Alter or Amend Judgment Pursuant to NRCP 52, 59 and 60*. On April 26, 2019, Bayuk filed a
14 *Motion for New Trial and/or to Alter or Amend Judgment*.

15 On April 30, 2019, *Plaintiff's Reply in Support of Application for Attorneys' Fees and*
16 *Costs Pursuant to NRCP 68* was filed. On May 1, 2019, Leonard submitted his Application for
17 Attorneys' Fees and Costs Pursuant to NRCP 68 and the Superpumper Defendants' Motion to
18 Retax Costs for the Court's consideration.

19 On May 7, 2019, *Plaintiff's Opposition to Defendants' Motions for New Trial and/or to*
20 *Alter or Amend Judgment* was filed. On May 14, 2019, the Morabito Defendants filed *Defendants'*
21 *Reply in Support of Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP*
22 *52, 59 and 60*, and submitted the motion for the Court's consideration. After the time to file a
23 reply had expired, Leonard submitted Defendant Bayuk's Motion for New Trial and/or to Alter or
24 Amend Judgment for the Court's consideration on May 21, 2019.

25 On June 24, 2019, the Court held a telephonic hearing on its decision concerning the
26 submitted motions of Leonard's application for attorneys' fees and costs, the motion to retax costs
27 and the Morabito Defendants' and Bayuk's motions for new trial and/or alter or amend judgment
28 wherein Erika Turner, Esq., Teresa Pilatowicz, Esq. and Gabrielle Hamm, Esq. appeared on behalf

1 of Leonard, Jeffrey Hartman, Esq. appeared on behalf of Bayuk, and Frank Gilmore, Esq. appeared
2 on behalf of the Morabito Defendants.

3 At the hearing, the Court stated that it was persuaded by a majority of the arguments of
4 Leonard; therefore, it was granting in part and denying in part the Motion to Retax Costs. As a
5 result, the Court found that reasonable costs were incurred in the amount of \$152,856.84. As to
6 Leonard's motion for attorneys' fees and costs, the Court found that Bayuk and the Morabito
7 Defendants' rejection of the offer of judgment was unreasonable, and ordered costs incurred from
8 June 1, 2016 which were reduced by the decision in the motion to retax costs, and that Bayuk and
9 the Morabito Defendants were to pay Leonard's attorneys' fees in the amount of \$773,116.00, less
10 \$8,128.87 for sanctions previously paid.

11 Next, the Court turned its attention to Bayuk and the Morabito Defendants' motions for
12 new trial and/or to amend or alter judgment. Having reviewed all the pleadings filed related to the
13 motions, the entire file, and presided over the trial, the Court found it was persuaded by a majority
14 of the arguments of Leonard, and found that there were no clerical mistakes, oversights or newly
15 discovered evidence or any other reason to justify relief from the judgment pursuant to NRCP 60,
16 that NRCP 52 does not support modification of the judgment as written, and that there were no
17 irregularities that denied Bayuk and the Morabito Defendants a fair trial nor error in law over
18 defendants' objections that would justify a new trial and/or altering the judgment pursuant to
19 NRCP 59, and that in light of the evidence supporting the Court's finding regarding multiple
20 badges of fraud and lack of good faith by Bayuk and the Morabito Defendants, they could not
21 demonstrate that any error materially affected their substantial rights or affected the outcome of
22 the trial. As such, the Court denied Bayuk's and the Morabito Defendants' Motions for New Trial
23 and/or Alter or Amend Judgment Pursuant to NRCP 52, 59 and 60.

24 On July 2, 2019, Salvatore Morabito filed a *Notice of Claim of Exemption from Execution*
25 and a *Declaration of Salvatore Morabito Claiming Exemption from Execution*. On July 3, 2019,
26 Edward Bayuk filed a *Third-Party Claim to Property Levied Upon NRS 31, 070*.

27 On July 10, 2019, the written *Order Denying Defendants' Motions for New Trial and/or to*
28 *Alter or Amend Judgment* was entered. Also, on July 10, 2019, the written *Order Granting in Part*

1 *and Denying in Part Motion to Retax Costs and the written Order Granting Plaintiff's Application*
2 *for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68* were entered.

3 On July 11, 2019, Leonard filed *Plaintiff's Objection to (1) Claim of Exemption from*
4 *Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant*
5 *to NRS 21.112 and 31.070(5).*

6 On July 16, 2019, Leonard filed a *Notice of Hearing on Plaintiff's Objection to (1) Claim*
7 *of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request*
8 *for Hearing Pursuant to NRS 21.112 and 31.070(5)* wherein the hearing on the claims of
9 exemption was scheduled for July 22, 2019. Also, on July 16, 2019, *Plaintiff's Objection to Notice*
10 *of Claim of Exemption from Execution filed by Salvatore Morabito and Request for Hearing* was
11 filed. Additionally, on July 16, 2019, Leonard filed notices of entry of orders concerning the Order
12 Denying Defendants' Motion for New Trial and/or Alter or Amend Judgment, Order Granting in
13 Part and Denying in Part Motion to Retax Costs, and the Order Granting Plaintiff's Application
14 for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68.

15 On July 17, 2019, Bayuk filed his *Reply to Objection to Claim of Exemption and Third-*
16 *Party Claim to Property Levied Upon.*

17 On July 18, 2019, Michael Lehnern, Esq. filed a *Notice of Appearance* as attorney of record
18 on behalf of Salvatore Morabito, and associating as co-counsel for Bayuk. Also, on July 18, 2019,
19 Salvatore Morabito filed his *Reply to Plaintiff's Objection to Notice of Claim from Exemption from*
20 *Execution.* Also, on July 18, 2019, Leonard filed a *Notice of Hearing on Plaintiff's Objection to*
21 *Notice of Claim of Execution Filed by Salvatore Morabito* was filed setting the hearing on
22 Salvatore Morabito's claims of exemption for July 22, 2019.

23 On July 22, 2019, Erika Turner, Esq. and Teresa Pilatowicz, Esq. appeared on behalf of
24 Leonard, Jeffrey Hartman, Esq. appeared with Defendant Edward Bayuk, and Michael Lehnern,
25 Esq. appeared as co-counsel on behalf of Edward Bayuk, and counsel for Salvatore Morabito at
26 the scheduled hearing on the objections to claims of exemption. After hearing argument of the
27 parties, the Court found that there were not sufficient factors in the case to create trust protections.
28 Neither a trustee or beneficiary of the Edward William Bayuk Living Trust live in the State of

1 Nevada, the Court does have the necessary jurisdiction to rule in the case, and the objection was
2 waived by the Defendants as it was not raised during the course of the trial. As such, the Court
3 denied the claims of exemption. Additionally, the Court heard argument on Mr. Lehner's oral
4 motion for stay of proceedings pending appeal, and a motion for leave to supplement record as to
5 the burial plot. After hearing argument of the parties, the Court denied the request to supplement
6 the record with testimony of Edward Bayuk regarding the burial plot, and denied the motion to
7 stay proceedings with leave to renew once written decision is entered regarding the request for
8 exemption. Finally, the Court rendered its oral decision denying Edward William Bayuk Living
9 Trust's third-party claim.

10 On August 5, 2019, Micah S. Echols, Esq. and Kathleen A. Wilde, Esq. of Marquis
11 Aurbach Coffing filed a *Notice of Appearance* as attorney of record on behalf of Defendants
12 Superpumper, Inc., Bayuk, Salvatore Morabito and Snowshoe Petroleum, Inc. Additionally, on
13 August 5, 2019, Defendants Superpumper, Inc., Edward Bayuk, Salvatore Morabito and Snowshoe
14 Petroleum, Inc., by and through the law firm of Marquis Aurbach Coffing, filed a *Notice of Appeal*
15 concerning the Findings of Fact, Conclusions of Law, and Judgment filed March 29, 2019, the
16 Order Denying Defendants' Motion for New Trial and/or to Alter or Amend Judgment filed July
17 10, 2019, the Order Granting in Part and Denying in Part Motion to Retax Costs, filed July 10,
18 2019, and the Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs
19 Pursuant to NRCP 68 filed July 10, 2019.

20 Also, on August 5, 2019, Bayuk, by and through Jeffrey Hartman, Esq. and Michael
21 Lehner, Esq. filed a *Notice of Appeal* of eight orders entered in the instant matter from August 17,
22 2014 to July 20, 2019.

23 On August 19, 2019, Bayuk and the Superpumper Defendants filed a *Motion to Amended*
24 *or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration.*

25 On August 30, 2019, Bayuk and the Superpumper Defendants filed an *Errata to Motion to*
26 *Make Amended or Additional Findings under NRCP 52(b), or in the Alternative, Motion for*
27 *Reconsideration.* On August 30, 2019, Leonard filed *Plaintiff's Opposition to Motion to Make*
28 *Amended or Additional Findings Under NRCP 52(b), or in the Alternative, Motion for*

1 *Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085.* Thereafter, also
2 on August 30, 2019, Leonard filed an *Errata to Plaintiff's Opposition to Motion to Make Amended*
3 *or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and*
4 *Countermotion for Fees and Costs Pursuant to NRS 7.085.*

5 On September 4, 2019, Bayuk and the Superpumper Defendants filed their *Reply in*
6 *Support of Motion to Amended or Additional Findings Under NRCP 52(b), or, in the Alternative,*
7 *Motion for Reconsideration and Opposition to Countermotion for Fees and Costs,* and submitted
8 their motion for the Court's consideration.

9 The Court has considered the pleadings noted above, in addition to all exhibits, papers and
10 pleadings on file in the case; the record of the trial including trial transcripts and exhibits, the
11 Court's Findings of Fact, Conclusion of Law and Judgment dated March 29, 2019, and the record
12 of the July 22, 2019 hearing.

13 Based upon the above, the Court finds no basis in law or fact to support amending or
14 supplementing the Court's previously entered orders or findings.

15 Good cause appearing,

16 IT IS HEREBY ORDERED that Defendants' Motion to Make Amended or Additional
17 Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration is DENIED.

18 IT IS HEREBY FURTHER ORDERED that Plaintiff's Countermotion for Fees and Costs
19 Pursuant to NRS 7.085 is DENIED.

20 Dated this 8 day of November, 2019.

21
22 Connie J. Steinheimer
23 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

CASE NO. CV13-02663

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 8 day of November, 2019, I filed the **ORDER DENYING DEFENDANTS' MOTION TO MAKE AMENDED OR ADDITIONAL FINDINGS UNDER NRCP 52(B), OR, IN THE ALTERNATIVE, MOTION FOR RECONSIDERATION AND DENYING PLAINTIFF'S COUNTERMOTION FOR FEES AND COSTS PURSUANT TO NRS 7.085** with the Clerk of the Court.

I FURTHER CERTIFY THAT I TRANSMITTED A TRUE AND CORRECT COPY OF THE FOREGOING DOCUMENT BY THE METHOD(S) NOTED BELOW:

 PERSONAL DELIVERY TO THE FOLLOWING: [NONE]

 ELECTRONICALLY FILED WITH THE CLERK OF THE COURT, USING THE EFLEX SYSTEM WHICH CONSTITUTES EFFECTIVE SERVICE FOR ALL EFILED DOCUMENTS PURSUANT TO THE EFILE USER AGREEMENT.

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

JEFFREY HARTMAN, ESQ. FOR EDWARD WILLIAM BAYUK LIVING TRUST, EDWARD BAYUK

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

TOM STEWART, ESQ. FOR EDWARD WILLIAM BAYUK LIVING TRUST ET AL

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

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

KATHLEEN WILDE, ESQ. FOR EDWARD WILLIAM BAYUK LIVING TRUST ET AL

MICHAEL LEHNERS, ESQ. FOR SALVATORE R. MORABITO

MICAH ECHOLS, ESQ. FOR EDWARD WILLIAM BAYUK LIVING TRUST ET AL

FRANK GILMORE, ESQ. FOR SALVATORE R. MORABITO, SUPERPUMPER, INC., SNOWSHOE PETROLEUM, INC.

1 **TRANSMITTED DOCUMENT TO THE SECOND JUDICIAL DISTRICT COURT**
2 **MAILING SYSTEM IN A SEALED ENVELOPE FOR POSTAGE AND MAILING BY**
3 **WASHOE COUNTY USING THE UNITED STATES POSTAL SERVICE IN RENO,**
4 **NEVADA: [NONE]**

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6 _____ Reno/Carson Messenger Service – [NONE]

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8 DATED this 8 day of November, 2019.

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