

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,

Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE CONNIE J. STEINHEIMER,

Respondents,

and

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

Real Party in Interest.

Case No.

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**PETITIONERS' APPENDIX,**

**VOLUME 5**  
**(Nos. 726–925)**

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Recommendation for Order RE: <i>Defendants’ Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP</i> , filed on July 18, 2017 (filed 08/17/2017)		Vol. 11, 1743–1753
Motion for Partial Summary Judgment (filed 08/17/2017)		Vol. 11, 1754–1796
Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment (filed 08/17/2017)		Vol. 11, 1797–1825
<b>Exhibits to Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Declaration of Timothy P. Herbst in Support of Separate Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment	Vol. 12, 1826–1829
2	Findings of Fact, Conclusions of Law, and Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 10/12/2010)	Vol. 12, 1830–1846
3	Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 08/23/2011)	Vol. 12, 1847–1849

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
4	Excerpted Transcript of July 12, 2017 Deposition of Garry M. Graber	Vol. 12, 1850–1852
5	September 15, 2015 email from Yalamanchili RE: Follow Up Thoughts	Vol. 12, 1853–1854
6	September 23, 2010 email between Garry M. Graber and P. Morabito	Vol. 12, 1855–1857
7	September 20, 2010 email between Yalamanchili and Eileen Crotty RE: Morabito Wire	Vol. 12, 1858–1861
8	September 20, 2010 email between Yalamanchili and Garry M. Graber RE: All Mortgage Balances as of 9/20/2010	Vol. 12, 1862–1863
9	September 20, 2010 email from Garry M. Graber RE: Call	Vol. 12, 1864–1867
10	September 20, 2010 email from P. Morabito to Dennis and Yalamanchili RE: Attorney client privileged communication	Vol. 12, 1868–1870
11	September 20, 2010 email string RE: Attorney client privileged communication	Vol. 12, 1871–1875
12	Appraisal of Real Property: 370 Los Olivos, Laguna Beach, CA, as of Sept. 24, 2010	Vol. 12, 1876–1903
13	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 12, 1904–1919
14	P. Morabito Redacted Investment and Bank Report from Sept. 1 to Sept. 30, 2010	Vol. 12, 1920–1922
15	Excerpted Transcript of June 25, 2015 Deposition of 341 Meeting of Creditors	Vol. 12, 1923–1927
16	Excerpted Transcript of December 5, 2015 Deposition of P. Morabito	Vol. 12, 1928–1952

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
17	Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 27, 2010	Vol. 12, 1953–1961
18	First Amendment to Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 28, 2010	Vol. 12, 1962–1964
19	Appraisal Report providing market value estimate of real property located at 8355 Panorama Drive, Reno, NV as of Dec. 7, 2011	Vol. 12, 1965–1995
20	An Appraisal of a vacant .977± Acre Parcel of Industrial Land Located at 49 Clayton Place West of the Pyramid Highway (State Route 445) Sparks, Washoe County, Nevada and a single-family residence located at 8355 Panorama Drive Reno, Washoe County, Nevada 89511 as of October 1, 2010 a retrospective date	Vol. 13, 1996–2073
21	APN: 040-620-09 Declaration of Value (dated 12/31/2012)	Vol. 14, 2074–2075
22	Sellers Closing Statement for real property located at 8355 Panorama Drive, Reno, NV 89511	Vol. 14, 2076–2077
23	Bill of Sale for real property located at 8355 Panorama Drive, Reno, NV 89511	Vol. 14, 2078–2082
24	Operating Agreement of Baruk Properties LLC	Vol. 14, 2083–2093
25	Edward Bayuk, as trustee of the Edward William Bayuk Living Trust's Answer to Plaintiff's First Set of Interrogatories (dated 09/14/2014)	Vol. 14, 2094–2104
26	Summary Appraisal Report of real property located at 1461 Glenneyre Street, Laguna Beach, CA 92651, as of Sept. 25, 2010	Vol. 14, 2105–2155

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
27	Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262	Vol. 15, 2156–2185
28	Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262	Vol. 15, 2186–2216
29	Membership Interest Transfer Agreement between Arcadia Trust and Bayuk Trust entered effective as of Oct. 1, 2010	Vol. 15, 2217–2224
30	PROMISSORY NOTE [Edward William Bayuk Living Trust (“Borrower”) promises to pay Arcadia Living Trust (“Lender”) the principal sum of \$1,617,050.00, plus applicable interest] (dated 10/01/2010)	Vol. 15, 2225–2228
31	Certificate of Merger dated Oct. 4, 2010	Vol. 15, 2229–2230
32	Articles of Merger Document No. 20100746864-78 (recorded date 10/04/2010)	Vol. 15, 2231–2241
33	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 15, 2242–2256
34	Grant Deed for real property 1254 Mary Fleming Circle, Palm Springs, CA 92262; APN: 507-520-015 (recorded 11/04/2010)	Vol. 15, 2257–2258
35	General Conveyance made as of Oct. 31, 2010 between Woodland Heights Limited (“Vendor”) and Arcadia Living Trust (“Purchaser”)	Vol. 15, 2259–2265
36	Appraisal of Real Property as of Sept. 24, 2010: 371 El Camino Del Mar, Laguna Beach, CA 92651	Vol. 15, 2266–2292

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
37	Excerpted Transcript of December 6, 2016 Deposition of P. Morabito	Vol. 15, 2293–2295
38	Page intentionally left blank	Vol. 15, 2296–2297
39	Ledger of Edward Bayuk to P. Morabito	Vol. 15, 2298–2300
40	Loan Calculator: Payment Amount (Standard Loan Amortization)	Vol. 15, 2301–2304
41	Payment Schedule of Edward Bayuk Note in Favor of P. Morabito	Vol. 15, 2305–2308
42	November 10, 2011 email from Vacco RE: Baruk Properties, LLC/P. Morabito/Bank of America, N.A.	Vol. 15, 2309–2312
43	May 23, 2012 email from Vacco to Steve Peek RE: Formal Settlement Proposal to resolve the Morabito matter	Vol. 15, 2313–2319
44	Excerpted Transcript of March 12, 2015 Deposition of 341 Meeting of Creditors	Vol. 15, 2320–2326
45	Shareholder Interest Purchase Agreement between P. Morabito and Snowshoe Petroleum, Inc. (dated 09/30/2010)	Vol. 15, 2327–2332
46	P. Morabito Statement of Assets & Liabilities as of May 5, 2009	Vol. 15, 2333–2334
47	March 10, 2010 email from Naz Afshar, CPA to Darren Takemoto, CPA RE: Current Personal Financial Statement	Vol. 15, 2335–2337
48	March 10, 2010 email from P. Morabito to Jon RE: ExxonMobil CIM for Florida and associated maps	Vol. 15, 2338–2339

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
49	March 20, 2010 email from P. Morabito to Vacco RE: proceed with placing binding bid on June 22nd with ExxonMobil	Vol. 15, 2340–2341
50	P. Morabito Statement of Assets & Liabilities as of May 30, 2010	Vol. 15, 2342–2343
51	June 28, 2010 email from P. Morabito to George R. Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 15, 2344–2345
52	Plan of Merger of Consolidated Western Corp. with and into Superpumper, Inc. (dated 09/28/2010)	Vol. 15, 2346–2364
53	Page intentionally left blank	Vol. 15, 2365–2366
54	BBVA Compass Proposed Request on behalf of Superpumper, Inc. (dated 12/15/2010)	Vol. 15, 2367–2397
55	Business Valuation Agreement between Matrix Capital Markets Group, Inc. and Superpumper, Inc. (dated 09/30/2010)	Vol. 15, 2398–2434
56	Expert report of James L. McGovern, CPA/CFF, CVA (dated 01/25/2016)	Vol. 16, 2435–2509
57	June 18, 2014 email from Sam Morabito to Michael Vanek RE: SPI Analysis	Vol. 17, 2510–2511
58	Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry-Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring, or Disposing of or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee; Case No. BK-N-13-51237 (filed 07/01/2013)	Vol. 17, 2512–2516

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



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
69	Excerpted Transcript of July 10, 2017 Deposition of Dennis C. Vacco	Vol. 17, 2573–2579
70	April 15, 2011 email from P. Morabito to Christian Lovelace; Gregory Ivancic; Vacco RE: \$65 million loan offer from Cerberus	Vol. 17, 2580–2582
71	Email from Vacco to P. Morabito RE: \$2 million second mortgage on the Reno house	Vol. 17, 2583–2584
72	Email from Vacco to P. Morabito RE: Tim Haves	Vol. 17, 2585–2586
73	Settlement Agreement, Loan Agreement Modification & Release dated as of Sept. 7, 2012, entered into by Bank of America and P. Morabito	Vol. 17, 2587–2595
74	Page intentionally left blank	Vol. 17, 2596–2597
75	February 10, 2012 email from Vacco to Paul Wells and Timothy Haves RE: 1461 Glenneyre Street, Laguna Beach – Sale	Vol. 17, 2598–2602
76	May 8, 2012 email from P. Morabito to Vacco RE: Proceed with the corporate set-up with Ray, Edward and P. Morabito	Vol. 17, 2603–2604
77	September 4, 2012 email from Vacco to Edward Bayuk RE: Second Deed of Trust documents	Vol. 17, 2605–2606
78	September 18, 2012 email from P. Morabito to Edward Bayuk RE: Deed of Trust	Vol. 17, 2607–2611
79	October 3, 2012 email from Vacco to P. Morabito RE: Term Sheet on both real estate deal and option	Vol. 17, 2612–2614
80	March 14, 2013 email from P. Morabito to Vacco RE: BHI Hinckley	Vol. 17, 2615–2616
81	Page intentionally left blank	Vol. 17, 2617–2618

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts (cont.)</b>		
82	November 11, 2011 email from Vacco to P. Morabito RE: Trevor's commitment to sign	Vol. 17, 2619–2620
83	November 28, 2011 email string RE: Wiring \$560,000 to Lippes Mathias	Vol. 17, 2621–2623
84	Page intentionally left blank	Vol. 17, 2624–2625
85	Page intentionally left blank	Vol. 17, 2626–2627
86	Order for Relief Under Chapter 7; Case No. BK-N-13-51236 (filed 12/22/2014)	Vol. 17, 2628–2634
87	Report of Undisputed Election (11 U.S.C § 702); Case No. BK-N-13-51237 (filed 01/23/2015)	Vol. 17, 2635–2637
88	Amended Stipulation and Order to Substitute a Party to NRCP 17(a) (filed 06/11/2015)	Vol. 17, 2638–2642
89	Membership Interest Purchase Agreement, entered into as of Oct. 6, 2010 between P. Morabito and Edward Bayuk	Vol. 17, 2643–2648
90	Complaint; Case No. BK-N-13-51237 (filed 10/15/2015)	Vol. 17, 2649–2686
91	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/2010)	Vol. 17, 2687–2726
Objection to Recommendation for Order filed August 17, 2017 (filed 08/28/2017)		Vol. 18, 2727–2734
<b>Exhibit to Objection to Recommendation for Order</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff's counsel's Jan. 24, 2017, email memorializing the discovery dispute agreement	Vol. 18, 2735–2736

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Opposition to Objection to Recommendation for Order filed August 17, 2017 (filed 09/05/2017)		Vol. 18, 2737–2748
<b>Exhibit to Opposition to Objection to Recommendation for Order</b>		
<b>Exhibit</b>	<b>Document Description</b>	
A	Declaration of Teresa M. Pilatowicz, Esq., in Support of Opposition to Objection to Recommendation for Order (filed 09/05/2017)	Vol. 18, 2749–2752
Reply to Opposition to Objection to Recommendation for Order filed August 17, 2017 (dated 09/15/2017)		Vol. 18, 2753–2758
Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)		Vol. 18, 2759–2774
Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)		Vol. 18, 2775–2790
<b>Exhibits to Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 08/23/2011)	Vol. 18, 2791–2793
2	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 18, 2794–2810
3	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings Pursuant to 11 U.S.C §305(a)(1); Case No. BK-N-13-51237 (filed 12/17/2013)	Vol. 18, 2811–2814

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Defendants' Separate Statement of Disputed Facts (cont.)</b>		
4	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 18, 2815–2826
5	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 18, 2827–2857
6	Appraisal	Vol. 18, 2858–2859
7	Budget Summary as of Jan. 7, 2016	Vol. 18, 2860–2862
8	Excerpted Transcript of March 24, 2016 Deposition of Dennis Banks	Vol. 18, 2863–2871
9	Excerpted Transcript of March 22, 2016 Deposition of Michael Sewitz	Vol. 18, 2872–2879
10	Excerpted Transcript of April 27, 2011 Deposition of Darryl Noble	Vol. 18, 2880–2883
11	Copies of cancelled checks from Edward Bayuk made payable to P. Morabito	Vol. 18, 2884–2892
12	CBRE Appraisal of 14th Street Card Lock Facility (dated 02/26/2010)	Vol. 18, 2893–2906
13	Bank of America wire transfer from P. Morabito to Salvatore Morabito in the amount of \$146,127.00; and a wire transfer from P. Morabito to Lippes for \$25.00 (date 10/01/2010)	Vol. 18, 2907–2908
14	Excerpted Transcript of October 21, 2015 Deposition of Christian Mark Lovelace	Vol. 18, 2909–2918
15	June 18, 2014 email from Sam Morabito to Michael Vanek RE: Analysis of the Superpumper transaction in 2010	Vol. 18, 2919–2920
16	Excerpted Transcript of October 21, 2015 Deposition of Salvatore R. Morabito	Vol. 18, 2921–2929

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Defendants' Separate Statement of Disputed Facts (cont.)</b>		
17	PROMISSORY NOTE [Snowshoe Petroleum ("Maker") promises to pay P. Morabito ("Holder") the principal sum of \$1,462,213.00] (dated 11/01/2010)	Vol. 18, 2930–2932
18	TERM NOTE [P. Morabito ("Borrower") promises to pay Consolidated Western Corp. ("Lender") the principal sum of \$939,000.00, plus interest] (dated 09/01/2010)	Vol. 18, 2933–2934
19	SUCCESSOR PROMISSORY NOTE [Snowshoe Petroleum ("Maker") promises to pay P. Morabito ("Holder") the principal sum of \$492,937.30, plus interest] (dated 02/01/2011)	Vol. 18, 2935–2937
20	Edward Bayuk's wire transfer to Lippes in the amount of \$517,547.20 (dated 09/29/2010)	Vol. 18, 2938–2940
21	Salvatore Morabito Bank of Montreal September 2011 Wire Transfer	Vol. 18, 2941–2942
22	Declaration of Salvatore Morabito (dated 09/21/2017)	Vol. 18, 2943–2944
23	Edward Bayuk bank wire transfer to Superpumper, Inc., in the amount of \$659,000.00 (dated 09/30/2010)	Vol. 18, 2945–2947
24	Edward Bayuk checking account statements between 2010 and 2011 funding the company with transfers totaling \$500,000	Vol. 18, 2948–2953
25	Salvatore Morabito's wire transfer statement between 2010 and 2011, funding the company with \$750,000	Vol. 18, 2954–2957
26	Payment Schedule of Edward Bayuk Note in Favor of P. Morabito	Vol. 18, 2958–2961

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Defendants' Separate Statement of Disputed Facts (cont.)</b>		
27	September 15, 2010 email from Vacco to Yalamanchili and P. Morabito RE: Follow Up Thoughts	Vol. 18, 2962–2964
Reply in Support of Motion for Partial Summary Judgment (dated 10/10/2017)		Vol. 19, 2965–2973
Order Regarding Discovery Commissioner's Recommendation for Order dated August 17, 2017 (filed 12/07/2017)		Vol. 19, 2974–2981
Order Denying Motion for Partial Summary Judgment (filed 12/11/2017)		Vol. 19, 2982–2997
Defendants' Motions in Limine (filed 09/12/2018)		Vol. 19, 2998–3006
<b>Exhibits to Defendants' Motions in Limine</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff's Second Supplement to Amended Disclosures Pursuant to NRCP 16.1(A)(1) (dated 04/28/2016)	Vol. 19, 3007–3016
2	Excerpted Transcript of March 25, 2016 Deposition of William A. Leonard	Vol. 19, 3017–3023
3	Plaintiff, Jerry Herbst's Responses to Defendant Snowshoe Petroleum, Inc.'s Set of Interrogatories (dated 02/11/2015); and Plaintiff, Jerry Herbst's Responses to Defendant, Salvatore Morabito's Set of Interrogatories (dated 02/12/2015)	Vol. 19, 3024–3044
Motion in Limine to Exclude Testimony of Jan Friederich (filed 09/20/2018)		Vol. 19, 3045–3056

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Motion in Limine to Exclude Testimony of Jan Friederich</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Defendants' Rebuttal Expert Witness Disclosure (dated 02/29/2016)	Vol. 19, 3057–3071
2	Condensed Transcript of March 29, 2016 Deposition of Jan Friederich	Vol. 19, 3072–3086
Opposition to Defendants' Motions in Limine (filed 09/28/2018)		Vol. 19, 3087–3102
<b>Exhibits to Opposition to Defendants' Motions in Limine</b>		
<b>Exhibit</b>	<b>Document Description</b>	
A	Declaration of Teresa M. Pilatowicz, Esq. in Support of Opposition to Defendants' Motions in Limine (filed 09/28/2018)	Vol. 19, 3103–3107
A-1	Plaintiff's February 19, 2016, Amended Disclosures Pursuant to NRCP 16.1(A)(1)	Vol. 19, 3108–3115
A-2	Plaintiff's January 26, 2016, Expert Witnesses Disclosures (without exhibits)	Vol. 19, 3116–3122
A-3	Defendants' January 26, 2016, and February 29, 2016, Expert Witness Disclosures (without exhibits)	Vol. 19, 3123–3131
A-4	Plaintiff's August 17, 2017, Motion for Partial Summary Judgment (without exhibits)	Vol. 19, 3132–3175
A-5	Plaintiff's August 17, 2017, Statement of Undisputed Facts in Support of his Motion for Partial Summary Judgment (without exhibits)	Vol. 19, 3176–3205
Defendants' Reply in Support of Motions in Limine (filed 10/08/2018)		Vol. 20, 3206–3217

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



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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
8	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings, Case 13-51237. ECF No. 94, (filed 12/17/2013)	Vol. 22, 3623–3625
19	Report of Undisputed Election– Appointment of Trustee, Case No. 13-51237, ECF No. 220	Vol. 22, 3626–3627
20	Stipulation and Order to Substitute a Party Pursuant to NRCPP 17(a), Case No. CV13-02663, May 15, 2015	Vol. 22, 3628–3632
21	Non-Dischargeable Judgment Regarding Plaintiff's First and Second Causes of Action, Case No. 15-05019-GWZ, ECF No. 123, April 30, 2018	Vol. 22, 3633–3634
22	Memorandum & Decision; Case No. 15-05019-GWZ, ECF No. 124, April 30, 2018	Vol. 22, 3635–3654
23	Amended Findings of Fact, Conclusions of Law in Support of Judgment Regarding Plaintiff's First and Second Causes of Action; Case 15-05019-GWZ, ECF No. 122, April 30, 2018	Vol. 22, 3655–3679
25	September 15, 2010 email from Yalamanchili to Vacco and P. Morabito RE: Follow Up Thoughts	Vol. 22, 3680–3681
26	September 18, 2010 email from P. Morabito to Vacco	Vol. 22, 3682–3683
27	September 20, 2010 email from Vacco to P. Morabito RE: Spirit	Vol. 22, 3684–3684
28	September 20, 2010 email between Yalamanchili and Crotty RE: Morabito -Wire	Vol. 22, 3685–3687
29	September 20, 2010 email from Yalamanchili to Graber RE: Attorney Client Privileged Communication	Vol. 22, 3688–3689

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
30	September 21, 2010 email from P. Morabito to Vacco and Cross RE: Attorney Client Privileged Communication	Vol. 22, 3690–3692
31	September 23, 2010 email chain between Graber and P. Morabito RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3693–3694
32	September 23, 2010 email from Yalamanchili to Graber RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3695–3696
33	September 24, 2010 email from P. Morabito to Vacco RE: Superpumper, Inc.	Vol. 22, 3697–3697
34	September 26, 2010 email from Vacco to P. Morabito RE: Judgment for a fixed debt	Vol. 22, 3698–3698
35	September 27, 2010 email from P. Morabito to Vacco RE: First Amendment to Residential Lease executed 9/27/2010	Vol. 22, 3699–3701
36	November 7, 2012 emails between Vacco, P. Morabito, C. Lovelace RE: Attorney Client Privileged Communication	Vol. 22, 3702–3703
37	Morabito BMO Bank Statement – September 2010	Vol. 22, 3704–3710
38	Lippes Mathias Trust Ledger History	Vol. 23, 3711–3716
39	Fifth Amendment & Restatement of the Trust Agreement for the Arcadia Living Trust dated September 30, 2010	Vol. 23, 3717–3755
42	P. Morabito Statement of Assets & Liabilities as of May 5, 2009	Vol. 23, 3756–3756

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
43	March 10, 2010 email chain between Afshar and Takemoto RE: Current Personal Financial Statement	Vol. 23, 3757–3758
44	Salazar Net Worth Report (dated 03/15/2011)	Vol. 23, 3759–3772
45	Purchase and Sale Agreement	Vol. 23, 3773–3780
46	First Amendment to Purchase and Sale Agreement	Vol. 23, 3781–3782
47	Panorama – Estimated Settlement Statement	Vol. 23, 3783–3792
48	El Camino – Final Settlement Statement	Vol. 23, 3793–3793
49	Los Olivos – Final Settlement Statement	Vol. 23, 3794–3794
50	Deed for Transfer of Panorama Property	Vol. 23, 3795–3804
51	Deed for Transfer for Los Olivos	Vol. 23, 3805–3806
52	Deed for Transfer of El Camino	Vol. 23, 3807–3808
53	Kimmel Appraisal Report for Panorama and Clayton	Vol. 23, 3809–3886
54	Bill of Sale – Panorama	Vol. 23, 3887–3890
55	Bill of Sale – Mary Fleming	Vol. 23, 3891–3894
56	Bill of Sale – El Camino	Vol. 23, 3895–3898
57	Bill of Sale – Los Olivos	Vol. 23, 3899–3902
58	Declaration of Value and Transfer Deed of 8355 Panorama (recorded 12/31/2012)	Vol. 23, 3903–3904
60	Baruk Properties Operating Agreement	Vol. 23, 3905–3914
61	Baruk Membership Transfer Agreement	Vol. 24, 3915–3921
62	Promissory Note for \$1,617,050 (dated 10/01/2010)	Vol. 24, 3922–3924

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
63	Baruk Properties/Snowshoe Properties, Certificate of Merger (filed 10/04/2010)	Vol. 24, 3925–3926
64	Baruk Properties/Snowshoe Properties, Articles of Merger	Vol. 24, 3927–3937
65	Grant Deed from Snowshoe to Bayuk Living Trust; Doc No. 2010-0531071 (recorded 11/04/2010)	Vol. 24, 3938–3939
66	Grant Deed – 1461 Glenneyre; Doc No. 2010000511045 (recorded 10/08/2010)	Vol. 24, 3940–3941
67	Grant Deed – 570 Glenneyre; Doc No. 2010000508587 (recorded 10/08/2010)	Vol. 24, 3942–3944
68	Attorney File re: Conveyance between Woodland Heights and Arcadia Living Trust	Vol. 24, 3945–3980
69	October 24, 2011 email from P. Morabito to Vacco RE: Attorney Client Privileged Communication	Vol. 24, 3981–3982
70	November 10, 2011 email chain between Vacco and P. Morabito RE: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.	Vol. 24, 3983–3985
71	Bayuk First Ledger	Vol. 24, 3986–3987
72	Amortization Schedule	Vol. 24, 3988–3990
73	Bayuk Second Ledger	Vol. 24, 3991–3993
74	Opposition to Motion for Summary Judgment and Declaration of Edward Bayuk; Case No. 13-51237, ECF No. 146 (filed 10/03/2014)	Vol. 24, 3994–4053
75	March 30, 2012 email from Vacco to Bayuk RE: Letter to BOA	Vol. 24, 4054–4055

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
76	March 10, 2010 email chain between P. Morabito and <a href="mailto:jon@aim13.com">jon@aim13.com</a> RE: Strictly Confidential	Vol. 24, 4056–4056
77	May 20, 2010 email chain between P. Morabito, Vacco and Michael Pace RE: Proceed with placing a Binding Bid on June 22nd with ExxonMobil	Vol. 24, 4057–4057
78	Morabito Personal Financial Statement May 2010	Vol. 24, 4058–4059
79	June 28, 2010 email from P. Morabito to George Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 24, 4060–4066
80	Shareholder Interest Purchase Agreement	Vol. 24, 4067–4071
81	Plan of Merger of Consolidated Western Corporation with and Into Superpumper, Inc.	Vol. 24, 4072–4075
82	Articles of Merger of Consolidated Western Corporation with and Into Superpumper, Inc.	Vol. 24, 4076–4077
83	Unanimous Written Consent of the Board of Directors and Sole Shareholder of Superpumper, Inc.	Vol. 24, 4078–4080
84	Unanimous Written Consent of the Directors and Shareholders of Consolidated Western Corporation	Vol. 24, 4081–4083
85	Arizona Corporation Commission Letter dated October 21, 2010	Vol. 24, 4084–4091
86	Nevada Articles of Merger	Vol. 24, 4092–4098
87	New York Creation of Snowshoe	Vol. 24, 4099–4103
88	April 26, 2012 email from Vacco to Afshar RE: Ownership Structure of SPI	Vol. 24, 4104–4106
90	September 30, 2010 Matrix Retention Agreement	Vol. 24, 4107–4110

<u><b>DOCUMENT DESCRIPTION</b></u>		<u><b>LOCATION</b></u>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
91	McGovern Expert Report	Vol. 25, 4111–4189
92	Appendix B to McGovern Report – Source 4 – Budgets	Vol. 25, 4190–4191
103	Superpumper Note in the amount of \$1,462,213.00 (dated 11/01/2010)	Vol. 25, 4192–4193
104	Superpumper Successor Note in the amount of \$492,937.30 (dated 02/01/2011)	Vol. 25, 4194–4195
105	Superpumper Successor Note in the amount of \$939,000 (dated 02/01/2011)	Vol. 25, 4196–4197
106	Superpumper Stock Power transfers to S. Morabito and Bayuk (dated 01/01/2011)	Vol. 25, 4198–4199
107	<i>Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry- Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee, Case 13-51237, ECF No. 22 (filed 07/01/2013)</i>	Vol. 25, 4200–4203
108	October 12, 2012 email between P. Morabito and Bernstein RE: 2011 Return	Vol. 25, 4204–4204
109	Compass Term Loan (dated 12/21/2016)	Vol. 25, 4205–4213
110	P. Morabito – Term Note in the amount of \$939,000.000 (dated 09/01/2010)	Vol. 25, 4214–4214
111	Loan Agreement between Compass Bank and Superpumper (dated 12/21/2016)	Vol. 25, 4215–4244
112	Consent Agreement (dated 12/28/2010)	Vol. 25, 4245–4249
113	Superpumper Financial Statement (dated 12/31/2007)	Vol. 25, 4250–4263

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
114	Superpumper Financial Statement (dated 12/31/2009)	Vol. 25, 4264–4276
115	Notes Receivable Interest Income Calculation (dated 12/31/2009)	Vol. 25, 4277–4278
116	Superpumper Inc. Audit Conclusions Memo (dated 12/31/2010)	Vol. 25, 4279–4284
117	Superpumper 2010 YTD Income Statement and Balance Sheets	Vol. 25, 4285–4299
118	March 12, 2010 Management Letter	Vol. 25, 4300–4302
119	Superpumper Unaudited August 2010 Balance Sheet	Vol. 25, 4303–4307
120	Superpumper Financial Statements (dated 12/31/2010)	Vol. 25, 4308–4322
121	Notes Receivable Balance as of September 30, 2010	Vol. 26, 4323
122	Salvatore Morabito Term Note \$2,563,542.00 as of December 31, 2010	Vol. 26, 4324–4325
123	Edward Bayuk Term Note \$2,580,500.00 as of December 31, 2010	Vol. 26, 4326–4327
125	April 21, 2011 Management letter	Vol. 26, 4328–4330
126	Bayuk and S. Morabito Statements of Assets & Liabilities as of February 1, 2011	Vol. 26, 4331–4332
127	January 6, 2012 email from Bayuk to Lovelace RE: Letter of Credit	Vol. 26, 4333–4335
128	January 6, 2012 email from Vacco to Bernstein	Vol. 26, 4336–4338
129	January 7, 2012 email from Bernstein to Lovelace	Vol. 26, 4339–4343
130	March 18, 2012 email from P. Morabito to Vacco	Vol. 26, 4344–4344



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
131	April 21, 2011 Proposed Acquisition of Nella Oil	Vol. 26, 4345–4351
132	April 15, 2011 email chain between P. Morabito and Vacco	Vol. 26, 4352
133	April 5, 2011 email from P. Morabito to Vacco	Vol. 26, 4353
134	April 16, 2012 email from Vacco to Morabito	Vol. 26, 4354–4359
135	August 7, 2011 email exchange between Vacco and P. Morabito	Vol. 26, 4360
136	August 2011 Lovelace letter to Timothy Halves	Vol. 26, 4361–4365
137	August 24, 2011 email from Vacco to P. Morabito RE: Tim Haves	Vol. 26, 4366
138	November 11, 2011 email from Vacco to P. Morabito RE: Getting Trevor's commitment to sign	Vol. 26, 4367
139	November 16, 2011 email from P. Morabito to Vacco RE: Vacco's litigation letter	Vol. 26, 4368
140	November 28, 2011 email chain between Vacco, S. Morabito, and P. Morabito RE: \$560,000 wire to Lippes Mathias	Vol. 26, 4369–4370
141	December 7, 2011 email from Vacco to P. Morabito RE: Moreno	Vol. 26, 4371
142	February 10, 2012 email chain between P. Morabito Wells, and Vacco RE: 1461 Glenneyre Street - Sale	Vol. 26, 4372–4375
143	April 20, 2012 email from P. Morabito to Bayuk RE: BofA	Vol. 26, 4376
144	April 24, 2012 email from P. Morabito to Vacco RE: SPI Loan Detail	Vol. 26, 4377–4378

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
145	September 4, 2012 email chain between Vacco and Bayuk RE: Second Deed of Trust documents	Vol. 26, 4379–4418
147	September 4, 2012 email from P. Morabito to Vacco RE: Wire	Vol. 26, 4419–4422
148	September 4, 2012 email from Bayuk to Vacco RE: Wire	Vol. 26, 4423–4426
149	December 6, 2012 email from Vacco to P. Morabito RE: BOA and the path of money	Vol. 26, 4427–4428
150	September 18, 2012 email chain between P. Morabito and Bayuk	Vol. 26, 4429–4432
151	October 3, 2012 email chain between Vacco and P. Morabito RE: Snowshoe Properties, LLC	Vol. 26, 4433–4434
152	September 3, 2012 email from P. Morabito to Vacco RE: Wire	Vol. 26, 4435
153	March 14, 2013 email chain between P. Morabito and Vacco RE: BHI Hinckley	Vol. 26, 4436
154	Paul Morabito 2009 Tax Return	Vol. 26, 4437–4463
155	Superpumper Form 8879-S tax year ended December 31, 2010	Vol. 26, 4464–4484
156	2010 U.S. S Corporation Tax Return for Consolidated Western Corporation	Vol. 27, 4485–4556
157	Snowshoe form 8879-S for year ended December 31, 2010	Vol. 27, 4557–4577
158	Snowshoe Form 1120S 2011 Amended Tax Return	Vol. 27, 4578–4655
159	September 14, 2012 email from Vacco to P. Morabito	Vol. 27, 4656–4657

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
160	October 1, 2012 email from P. Morabito to Vacco RE: Monday work for Dennis and Christian	Vol. 27, 4658
161	December 18, 2012 email from Vacco to P. Morabito RE: Attorney Client Privileged Communication	Vol. 27, 4659
162	April 24, 2013 email from P. Morabito to Vacco RE: BHI Trust	Vol. 27, 4660
163	Membership Interest Purchases, Agreement – Watch My Block (dated 10/06/2010)	Vol. 27, 4661–4665
164	Watch My Block organizational documents	Vol. 27, 4666–4669
174	October 15, 2015 Certificate of Service of copy of Lippes Mathias Wexler Friedman's Response to Subpoena	Vol. 27, 4670
175	Order Granting Motion to Compel Responses to Deposition Questions ECF No. 502; Case No. 13- 51237-gwz (filed 02/03/2016)	Vol. 27, 4671–4675
179	Gursey Schneider LLP Subpoena	Vol. 28, 4676–4697
180	Summary Appraisal of 570 Glenneyre	Vol. 28, 4698–4728
181	Appraisal of 1461 Glenneyre Street	Vol. 28, 4729–4777
182	Appraisal of 370 Los Olivos	Vol. 28, 4778–4804
183	Appraisal of 371 El Camino Del Mar	Vol. 28, 4805–4830
184	Appraisal of 1254 Mary Fleming Circle	Vol. 28, 4831–4859
185	Mortgage – Panorama	Vol. 28, 4860–4860
186	Mortgage – El Camino	Vol. 28, 4861
187	Mortgage – Los Olivos	Vol. 28, 4862
188	Mortgage – Glenneyre	Vol. 28, 4863

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
189	Mortgage – Mary Fleming	Vol. 28, 4864
190	Settlement Statement – 371 El Camino Del Mar	Vol. 28, 4865
191	Settlement Statement – 370 Los Olivos	Vol. 28, 4866
192	2010 Declaration of Value of 8355 Panorama Dr	Vol. 28, 4867–4868
193	Mortgage – 8355 Panorama Drive	Vol. 28, 4869–4870
194	Compass – Certificate of Custodian of Records (dated 12/21/2016)	Vol. 28, 4871–4871
196	June 6, 2014 Declaration of Sam Morabito – Exhibit 1 to Snowshoe Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4872–4874
197	June 19, 2014 Declaration of Sam Morabito – Exhibit 1 to Superpumper Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4875–4877
198	September 22, 2017 Declaration of Sam Morabito – Exhibit 22 to Defendants' SSOF in Support of Opposition to Plaintiff's MSJ – filed in Case No. CV13-02663	Vol. 28, 4878–4879
222	Kimmel – January 21, 2016, Comment on Alves Appraisal	Vol. 28, 4880–4883
223	September 20, 2010 email from Yalamanchili to Morabito	Vol. 28, 4884
224	March 24, 2011 email from Naz Afshar RE: telephone call regarding CWC	Vol. 28, 4885–4886
225	Bank of America Records for Edward Bayuk (dated 09/05/2012)	Vol. 28, 4887–4897

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
226	June 11, 2007 Wholesale Marketer Agreement	Vol. 29, 4898–4921
227	May 25, 2006 Wholesale Marketer Facility Development Incentive Program Agreement	Vol. 29, 4922–4928
228	June 2007 Master Lease Agreement – Spirit SPE Portfolio and Superpumper, Inc.	Vol. 29, 4929–4983
229	Superpumper Inc 2008 Financial Statement (dated 12/31/2008)	Vol. 29, 4984–4996
230	November 9, 2009 email from P. Morabito to Bernstein, Yalaman RE: Jan Friederich – entered into Consulting Agreement	Vol. 29, 4997
231	September 30, 2010, Letter from Compass to Superpumper, Morabito, CWC RE: reducing face amount of the revolving note	Vol. 29, 4998–5001
232	October 15, 2010, letter from Quarles & Brady to Vacco RE: Revolving Loan Documents and Term Loan Documents between Superpumper and Compass Bank	Vol. 29, 5002–5006
233	BMO Account Tracker Banking Report October 1 to October 31, 2010	Vol. 29, 5007–5013
235	August 31, 2010 Superpumper Inc., Valuation of 100 percent of the common equity in Superpumper, Inc on a controlling marketable basis	Vol. 29, 5014–5059
236	June 18, 2014 email from S. Morabito to Vanek (WF) RE: Analysis of Superpumper Acquisition in 2010	Vol. 29, 5060–5061
241	Superpumper March 2010 YTD Income Statement	Vol. 29, 5062–5076

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
244	Assignment Agreement for \$939,000 Morabito Note	Vol. 29, 5077–5079
247	July 1, 2011 Third Amendment to Forbearance Agreement Superpumper and Compass Bank	Vol. 29, 5080–5088
248	Superpumper Cash Contributions January 2010 thru September 2015 – Bayuk and S. Morabito	Vol. 29, 5089–5096
252	October 15, 2010 Letter from Quarles & Brady to Vacco RE: Revolving Loan documents and Term Loan documents between Superpumper Prop. and Compass Bank	Vol. 29, 5097–5099
254	Bank of America – S. Morabito SP Properties Sale, SP Purchase Balance	Vol. 29, 5100
255	Superpumper Prop. Final Closing Statement for 920 Mountain City Hwy, Elko, NV	Vol. 29, 5101
256	September 30, 2010 Raffles Insurance Limited Member Summary	Vol. 29, 5102
257	Equalization Spreadsheet	Vol. 30, 5103
258	November 9, 2005 Grant, Bargain and Sale Deed; Doc #3306300 for Property Washoe County	Vol. 30, 5104–5105
260	January 7, 2016 Budget Summary – Panorama Drive	Vol. 30, 5106–5107
261	Mary 22, 2006 Compilation of Quotes and Invoices Quote of Valley Drapery	Vol. 30, 5108–5116
262	Photos of 8355 Panorama Home	Vol. 30, 5117–5151
263	Water Rights Deed (Document #4190152) between P. Morabito, E. Bayuk, Grantors, RCA Trust One Grantee (recorded 12/31/2012)	Vol. 30, 5152–5155

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
265	October 1, 2010 Bank of America Wire Transfer –Bayuk – Morabito \$60,117	Vol. 30, 5156
266	October 1, 2010 Check #2354 from Bayuk to P. Morabito for \$29,383 for 8355 Panorama funding	Vol. 30, 5157–5158
268	October 1, 2010 Check #2356 from Bayuk to P. Morabito for \$12,763 for 370 Los Olivos Funding	Vol. 30, 5159–5160
269	October 1, 2010 Check #2357 from Bayuk to P. Morabito for \$31,284 for 371 El Camino Del Mar Funding	Vol. 30, 5161–5162
270	Bayuk Payment Ledger Support Documents Checks and Bank Statements	Vol. 31, 5163–5352
271	Bayuk Superpumper Contributions	Vol. 31, 5353–5358
272	May 14, 2012 email string between P. Morabito, Vacco, Bayuk, and S. Bernstein RE: Info for Laguna purchase	Vol. 31, 5359–5363
276	September 21, 2010 Appraisal of 8355 Panorama Drive Reno, NV by Alves Appraisal	Vol. 32, 5364–5400
277	Assessor's Map/Home Comparisons for 8355 Panorama Drive, Reno, NV	Vol. 32, 5401–5437
278	December 3, 2007 Case Docket for CV07-02764	Vol. 32, 5438–5564
280	May 25, 2011 Stipulation Regarding the Imposition of Punitive Damages; Case No. CV07-02764 (filed 05/25/2011)	Vol. 33, 5565–5570
281	Work File for September 24, 2010 Appraisal of 8355 Panorama Drive, Reno, NV	Vol. 33, 5571–5628
283	January 25, 2016 Expert Witness Report Leonard v. Superpumper Snowshoe	Vol. 33, 5629–5652

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
284	February 29, 2016 Defendants' Rebuttal Expert Witness Disclosure	Vol. 33, 5653–5666
294	October 5, 2010 Lippes, Mathias Wexler Friedman, LLP, Invoices to P. Morabito	Vol. 33, 5667–5680
295	P. Morabito 2010 Tax Return (dated 10/16/2011)	Vol. 33, 5681–5739
296	December 31, 2010 Superpumper Inc. Note to Financial Statements	Vol. 33, 5740–5743
297	December 31, 2010 Superpumper Consultations	Vol. 33, 5744
300	September 20, 2010 email chain between Yalmanchili and Graber RE: Attorney Client Privileged Communication	Vol. 33, 5745–5748
301	September 15, 2010 email from Vacco to P. Morabito RE: Tomorrow	Vol. 33, 5749–5752
303	Bankruptcy Court District of Nevada Claims Register Case No. 13-51237	Vol. 33, 5753–5755
304	April 14, 2018 email from Allen to Krausz RE: Superpumper	Vol. 33, 5756–5757
305	Subpoena in a Case Under the Bankruptcy Code to Robison, Sharp, Sullivan & Brust issued in Case No. BK-N-13-51237-GWZ	Vol. 33, 5758–5768
306	August 30, 2018 letter to Mark Weisenmiller, Esq., from Frank Gilmore, Esq.,	Vol. 34, 5769
307	Order Granting Motion to Compel Compliance with the Subpoena to Robison, Sharp, Sullivan & Brust filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5770–5772
308	Response of Robison, Sharp, Sullivan & Brust's to Subpoena filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5773–5797



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Clerk's Trial Exhibit List (cont.)</b>		
309	Declaration of Frank C. Gilmore in support of Robison, Sharp, Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5798–5801
Minutes of October 29, 2018, Non-Jury Trial, Day 1 (filed 11/08/2018)		Vol. 35, 5802–6041
Transcript of October 29, 2018, Non-Jury Trial, Day 1		Vol. 35, 6042–6045
Minutes of October 30, 2018, Non-Jury Trial, Day 2 (filed 11/08/2018)		Vol. 36, 6046–6283
Transcript of October 30, 2018, Non-Jury Trial, Day 2		Vol. 36, 6284–6286
Minutes of October 31, 2018, Non-Jury Trial, Day 3 (filed 11/08/2018)		Vol. 37, 6287–6548
Transcript of October 31, 2018, Non-Jury Trial, Day 3		Vol. 37, 6549–6552
Minutes of November 1, 2018, Non-Jury Trial, Day 4 (filed 11/08/2018)		Vol. 38, 6553–6814
Transcript of November 1, 2018, Non-Jury Trial, Day 4		Vol. 38, 6815–6817
Minutes of November 2, 2018, Non-Jury Trial, Day 5 (filed 11/08/2018)		Vol. 39, 6818–7007
Transcript of November 2, 2018, Non-Jury Trial, Day 5		Vol. 39, 7008–7011
Minutes of November 5, 2018, Non-Jury Trial, Day 6 (filed 11/08/2018)		Vol. 40, 7012–7167
Transcript of November 5, 2018, Non-Jury Trial, Day 6		Vol. 40, 7168–7169

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Minutes of November 6, 2018, Non-Jury Trial, Day 7 (filed 11/08/2018)		Vol. 41, 7170–7269
Transcript of November 6, 2018, Non-Jury Trial, Day 7		Vol. 41, 7270–7272 Vol. 42, 7273–7474
Minutes of November 7, 2018, Non-Jury Trial, Day 8 (filed 11/08/2018)		Vol. 43, 7475–7476
Transcript of November 7, 2018, Non-Jury Trial, Day 8		Vol. 43, 7477–7615
Minutes of November 26, 2018, Non-Jury Trial, Day 9 (filed 11/26/2018)		Vol. 44, 7616
Transcript of November 26, 2018, Non-Jury Trial – Closing Arguments, Day 9		Vol. 44, 7617–7666 Vol. 45, 7667–7893
Plaintiff’s Motion to Reopen Evidence (filed 01/30/2019)		Vol. 46, 7894–7908
<b>Exhibits to Plaintiff’s Motion to Reopen Evidence</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff’s Motion to Reopen	Vol. 46, 7909–7913
1-A	September 21, 2017 Declaration of Salvatore Morabito	Vol. 46, 7914–7916
1-B	Defendants’ Proposed Findings of Fact, Conclusions of Law, and Judgment (Nov. 26, 2018)	Vol. 46, 7917–7957
1-C	Judgment on the First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 123 (April 30, 2018)	Vol. 46, 7958–7962

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Plaintiff's Motion to Reopen Evidence (cont.)</b>		
1-D	Amended Findings of Fact and Conclusions of Law in Support of Judgment Regarding Plaintiffs' First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 126 (April 30, 2018)	Vol. 46, 7963–7994
1-E	Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 191 (Sept. 10, 2018)	Vol. 46, 7995–8035
1-F	Order Granting Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 229 (Jan. 3, 2019)	Vol. 46, 8036–8039
1-G	Response of Robison, Sharp, Sullivan & Brust[] To Subpoena (including RSSB_000001 – RSSB_000031) (Jan. 18, 2019)	Vol. 46, 8040–8067
1-H	Excerpts of Deposition Transcript of Sam Morabito as PMK of Snowshoe Petroleum, Inc. (Oct. 1, 2015)	Vol. 46, 8068–8076
Errata to: Plaintiff's Motion to Reopen Evidence (filed 01/30/2019)		Vol. 47, 8077–8080
<b>Exhibit to Errata to: Plaintiff's Motion to Reopen Evidence</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff's Motion to Reopen Evidence	Vol. 47, 8081–8096

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Ex Parte Motion for Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 01/31/2019)		Vol. 47, 8097–8102
Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 02/04/2019)		Vol. 47, 8103–8105
Supplement to Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)		Vol. 47, 8106–8110
<b>Exhibits to Supplement to Plaintiff's Motion to Reopen Evidence</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Supplemental Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)	Vol. 47, 8111–8113
1-I	Declaration of Frank C. Gilmore in Support of Robison, Sharp Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 259 (Jan. 30, 2019)	Vol. 47, 8114–8128
Defendants' Response to Motion to Reopen Evidence (02/06/2019)		Vol. 47, 8129–8135
Plaintiff's Reply to Defendants' Response to Motion to Reopen Evidence (filed 02/07/2019)		Vol. 47, 8136–8143
Minutes of February 7, 2019 hearing on Motion to Reopen Evidence (filed 02/28/2019)		Vol. 47, 8144
Rough Draft Transcript of February 8, 2019 hearing on Motion to Reopen Evidence		Vol. 47, 8145–8158

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
[Plaintiff's Proposed] Findings of Fact, Conclusions of Law, and Judgment (filed 03/06/2019)		Vol. 47, 8159–8224
[Defendants' Proposed Amended] Findings of Fact, Conclusions of Law, and Judgment (filed 03/08/2019)		Vol. 47, 8225–8268
Minutes of February 26, 2019 hearing on Motion to Continue ongoing Non-Jury Trial (Telephonic) (filed 03/11/2019)		Vol. 47, 8269
Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)		Vol. 48, 8270–8333
Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)		Vol. 48, 8334–8340
Memorandum of Costs and Disbursements (filed 04/11/2019)		Vol. 48, 8341–8347
<b>Exhibit to Memorandum of Costs and Disbursements</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Ledger of Costs	Vol. 48, 8348–8370
Application for Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)		Vol. 48, 8371–8384
<b>Exhibits to Application for Attorneys' Fees and Costs Pursuant to NRCP 68</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Declaration of Teresa M. Pilatowicz In Support of Plaintiff's Application for Attorney's Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)	Vol. 48, 8385–8390
2	Plaintiff's Offer of Judgment to Defendants (dated 05/31/2016)	Vol. 48, 8391–8397

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
3	Defendant's Rejection of Offer of Judgment by Plaintiff (dated 06/15/2016)	Vol. 48, 8398–8399
4	Log of time entries from June 1, 2016 to March 28, 2019	Vol. 48, 8400–8456
5	Plaintiff's Memorandum of Costs and Disbursements (filed 04/11/2019)	Vol. 48, 8457–8487
Motion to Retax Costs (filed 04/15/2019)		Vol. 49, 8488–8495
Plaintiff's Opposition to Motion to Retax Costs (filed 04/17/2019)		Vol. 49, 8496–8507
<b>Exhibits to Plaintiff's Opposition to Motion to Retax Costs</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Declaration of Teresa M. Pilatowicz In Support of Opposition to Motion to Retax Costs (filed 04/17/2019)	Vol. 49, 8508–8510
2	Summary of Photocopy Charges	Vol. 49, 8511–8523
3	James L. McGovern Curriculum Vitae	Vol. 49, 8524–8530
4	McGovern & Greene LLP Invoices	Vol. 49, 8531–8552
5	Buss-Shelger Associates Invoices	Vol. 49, 8553–8555
Reply in Support of Motion to Retax Costs (filed 04/22/2019)		Vol. 49, 8556–8562
Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCPP 68 (filed 04/25/2019)		Vol. 49, 8563–8578
<b>Exhibit to Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCPP 68</b>		

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff's Bill Dispute Ledger	Vol. 49, 8579–8637
	Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/25/2019)	Vol. 49, 8638–8657
	Defendant, Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/26/2019)	Vol. 50, 8658–8676
	<b>Exhibits to Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60</b>	
<b>Exhibit</b>	<b>Document Description</b>	
1	February 27, 2019 email with attachments	Vol. 50, 8677–8768
2	Declaration of Frank C. Gilmore in Support of Edward Bayuk's Motion for New Trial (filed 04/26/2019)	Vol. 50, 8769–8771
3	February 27, 2019 email from Marcy Trabert	Vol. 50, 8772–8775
4	February 27, 2019 email from Frank Gilmore to <a href="mailto:eturner@Gtg.legal">eturner@Gtg.legal</a> RE: Friday Trial	Vol. 50, 8776–8777
	Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/30/2019)	Vol. 50, 8778–8790
	<b>Exhibit to Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68</b>	
<b>Exhibit</b>	<b>Document Description</b>	
1	Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321	Vol. 50, 8791–8835

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Plaintiff's Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 05/07/2019)		Vol. 51, 8836–8858
Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Reply in Support of Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCp 52, 59, and 60 (filed 05/14/2019)		Vol. 51, 8859–8864
Declaration of Edward Bayuk Claiming Exemption from Execution (filed 06/28/2019)		Vol. 51, 8865–8870
<b>Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Copy of June 22, 2019 Notice of Execution and two Write of Executions	Vol. 51, 8871–8896
2	Declaration of James Arthur Gibbons Regarding his Attestation, Witness and Certification on November 12, 2005 of the Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 06/25/2019)	Vol. 51, 8897–8942
Notice of Claim of Exemption from Execution (filed 06/28/2019)		Vol. 51, 8943–8949
Edward Bayuk's Declaration of Salvatore Morabito Claiming Exemption from Execution (filed 07/02/2019)		Vol. 51, 8950–8954
<b>Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Las Vegas June 22, 2019 letter	Vol. 51, 8955–8956
2	Writs of execution and the notice of execution	Vol. 51, 8957–8970



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Minutes of June 24, 2019 telephonic hearing on Decision on Submitted Motions (filed 07/02/2019)		Vol. 51, 8971–8972
Salvatore Morabito’s Notice of Claim of Exemption from Execution (filed 07/02/2019)		Vol. 51, 8973–8976
Edward Bayuk’s Third Party Claim to Property Levied Upon NRS 31.070 (filed 07/03/2019)		Vol. 51, 8977–8982
Order Granting Plaintiff’s Application for an Award of Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)		Vol. 51, 8983–8985
Order Granting in part and Denying in part Motion to Retax Costs (filed 07/10/2019)		Vol. 51, 8986–8988
Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5) (filed 07/11/2019)		Vol. 52, 8989–9003
<b>Exhibits to Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5)</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 52, 9004–9007
2	11/30/2011 Tolling Agreement – Edward Bayuk	Vol. 52, 9008–9023
3	11/30/2011 Tolling Agreement – Edward William Bayuk Living Trust	Vol. 52, 9024–9035
4	Excerpts of 9/28/2015 Deposition of Edward Bayuk	Vol. 52, 9036–9041

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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibit to Notice of Entry of Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)	Vol. 52, 9125–9127
Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/16/2019)		Vol. 52, 9128–9130
<b>Exhibit to Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)	Vol. 52, 9131–9134
Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/16/2019)		Vol. 52, 9135–9137
<b>Exhibit to Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)	Vol. 52, 9138–9141
Plaintiff's Objection to Notice of Claim of Exemption from Execution Filed by Salvatore Morabito and Request for Hearing (filed 07/16/2019)		Vol. 52, 9142–9146
Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon (filed 07/17/2019)		Vol. 52, 9147–9162

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	March 3, 2011 Deposition Transcript of P. Morabito	Vol. 52, 9163–9174
2	Mr. Bayuk’s September 23, 2014 responses to Plaintiff’s first set of requests for production	Vol. 52, 9175–9180
3	September 28, 2015 Deposition Transcript of Edward Bayuk	Vol. 52, 9181–9190
Reply to Plaintiff’s Objection to Notice of Claim of Exemption from Execution (filed 07/18/2019)		Vol. 52, 9191–9194
Declaration of Service of Till Tap, Notice of Attachment and Levy Upon Property (filed 07/29/2019)		Vol. 52, 9195
Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019)		Vol. 52, 9196–9199
<b>Exhibits to Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff’s Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 52, 9200–9204
2	Bayuk and the Bayuk Trust’s proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 52, 9205–9210
3	July 30, 2019 email evidencing Bayuk, through counsel Jeffrey Hartman, Esq., requesting until noon on July 31, 2019 to provide comments.	Vol. 52, 9211–9212

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Notice of Submission of Disputed Order (cont.)</b>		
4	July 31, 2019 email from Teresa M. Pilatowicz, Esq. Bayuk failed to provide comments at noon on July 31, 2019, instead waiting until 1:43 p.m. to send a redline version with proposed changes after multiple follow ups from Plaintiff's counsel on July 31, 2019	Vol. 52, 9213–9219
5	A true and correct copy of the original Order and Bayuk Changes	Vol. 52, 9220–9224
6	A true and correct copy of the redline run by Plaintiff accurately reflecting Bayuk's proposed changes	Vol. 52, 9225–9229
7	Email evidencing that after review of the proposed revisions, Plaintiff advised Bayuk, through counsel, that Plaintiff agree to certain proposed revisions, but the majority of the changes were unacceptable as they did not reflect the Court's findings or evidence before the Court.	Vol. 52, 9230–9236
Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019)		Vol. 53, 9237–9240
<b>Exhibits to Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 53, 9241–9245
2	Defendant's comments on Findings of Fact	Vol. 53, 9246–9247
3	Defendant's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 53, 9248–9252

<u><b>DOCUMENT DESCRIPTION</b></u>		<u><b>LOCATION</b></u>
Minutes of July 22, 2019 hearing on Objection to Claim for Exemption (filed 08/02/2019)		Vol. 53, 9253
Order Denying Claim of Exemption (filed 08/02/2019)		Vol. 53, 9254–9255
Bayuk’s Case Appeal Statement (filed 08/05/2019)		Vol. 53, 9256–9260
Bayuk’s Notice of Appeal (filed 08/05/2019)		Vol. 53, 9261–9263
Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.’s, Case Appeal Statement (filed 08/05/2019)		Vol. 53, 9264–9269
Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.’s, Notice of Appeal (filed 08/05/2019)		Vol. 53, 9270–9273
<b>Exhibits to Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.’s, Notice of Appeal</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)	Vol. 53, 9274–9338
2	Order Denying Defendants’ Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)	Vol. 53, 9339–9341
3	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)	Vol. 53, 9342–9345
4	Order Granting Plaintiff’s Application for an Award of Attorneys’ Fees and Costs Pursuant to NRCF 68 (filed 07/10/2019)	Vol. 53, 9346–9349

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Plaintiff's Reply to Defendants' Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim		Vol. 53, 9350–9356
Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)		Vol. 53, 9357–9360
Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim (filed 08/09/2019)		Vol. 53, 9361–9364
<b>Exhibit to Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)	Vol. 53, 9365–9369
Notice of Entry of Order Denying Claim of Exemption (filed 08/12/2019)		Vol. 53, 9370–9373
<b>Exhibit to Notice of Entry of Order Denying Claim of Exemption</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Denying Claim of Exemption (08/02/2019)	Vol. 53, 9374–9376
Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/19/2019)		Vol. 54, 9377–9401
<b>Exhibits to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Denying Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 54, 9402–9406

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Motion to Make Amended (cont.)</b>		
2	Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 11/12/05)	Vol. 54, 9407–9447
3	Spendthrift Trust Agreement for the Arcadia Living Trust (dated 10/14/05)	Vol. 54, 9448–9484
4	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/10)	Vol. 54, 9485–9524
5	P. Morabito's Supplement to NRCP 16.1 Disclosures (dated 03/01/11)	Vol. 54, 9525–9529
6	Transcript of March 3, 2011 Deposition of P. Morabito	Vol. 55, 9530–9765
7	Documents Conveying Real Property	Vol. 56, 9766–9774
8	Transcript of July 22, 2019 Hearing	Vol. 56, 9775–9835
9	Tolling Agreement JH and P. Morabito (partially executed 11/30/11)	Vol. 56, 9836–9840
10	Tolling Agreement JH and Arcadia Living Trust (partially executed 11/30/11)	Vol. 56, 9841–9845
11	Excerpted Pages 8–9 of Superpumper Judgment (filed 03/29/19)	Vol. 56, 9846–9848
12	Petitioners' First Set of Interrogatories to Debtor (dated 08/13/13)	Vol. 56, 9849–9853
13	Tolling Agreement JH and Edward Bayuk (partially executed 11/30/11)	Vol. 56, 9854–9858
14	Tolling Agreement JH and Bayuk Trust (partially executed 11/30/11)	Vol. 56, 9859–9863
15	Declaration of Mark E. Lehman, Esq. (dated 03/21/11)	Vol. 56, 9864–9867



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Motion to Make Amended (cont.)</b>		
16	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 56, 9868–9871
17	Assignment and Assumption Agreement (dated 07/03/07)	Vol. 56, 9872–9887
18	Order Denying Morabito’s Claim of Exemption (filed 08/02/19)	Vol. 56, 9888–9890
Errata to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/20/2019)		Vol. 57, 9891–9893
Plaintiff’s Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)		Vol. 57, 9894–9910
Errata to Plaintiff’s Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)		Vol. 57, 9911–9914
<b>Exhibits to Errata to Plaintiff’s Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 57, 9915–9918
2	Plaintiff’s Amended NRCP 16.1 Disclosures (February 19, 2016)	Vol. 57, 9919–9926

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Errata (cont.)</b>		
3	Plaintiff's Fourth Supplemental NRCP 16.1 Disclosures (November 15, 2016)	Vol. 57, 9927–9930
4	Plaintiff's Fifth Supplemental NRCP 16.1 Disclosures (December 21, 2016)	Vol. 57, 9931–9934
5	Plaintiff's Sixth Supplemental NRCP 16.1 Disclosures (March 20, 2017)	Vol. 57, 9935–9938
Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs (filed 09/04/2019)		Vol. 57, 9939–9951
<b>Exhibits to Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs</b>		
<b>Exhibit</b>	<b>Document Description</b>	
19	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9952–9993
20	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9994–10010
Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/2019)		Vol. 57, 10011–10019
Bayuk's Case Appeal Statement (filed 12/06/2019)		Vol. 57, 10020–10026

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Bayuk's Notice of Appeal (filed 12/06/2019)		Vol. 57, 10027–10030
<b>Exhibits to Bayuk's Notice of Appeal</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Denying [Morabito's] Claim of Exemption (filed 08/02/19)	Vol. 57, 10031–10033
2	Order Denying [Bayuk's] Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 57, 10034–10038
3	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10039–10048
Notice of Entry of Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 12/23/2019)		Vol. 57, 10049–10052
<b>Exhibit to Notice of Entry of Order</b>		
<b>Exhibit</b>	<b>Document Description</b>	
A	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10053–10062

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
District Court Docket Case No. CV13-02663		Vol. 57, 10063–10111
Notice of Claim of Exemption and Third-Party Claim to Property Levied Upon, Case No. CV13-02663 (filed 08/25/2020)		Vol. 58, 10112–10121
<b>Exhibits to Notice of Claim of Exemption and Third-Party Claim to Property Levied Upon</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Writ of Execution, Case No. CV13-02663 (filed 07/21/2020)	Vol. 58, 10123–10130
2	Superior Court of California, Orange County Docket, Case No. 30-2019-01068591-CU-EN-CJC	Vol. 58, 10131–10139
3	Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 11/12/2005)	Vol. 58, 10140–10190

1 **2645**

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

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

23 Plaintiff,

24 vs.

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

Defendants.

**CASE NO.: CV13-02663**

**DEPT. NO. 1**

29  
30 **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO**  
31 **PARTIALLY QUASH, OR, IN THE ALTERNATIVE, FOR A**  
32 **PROTECTIVE ORDER PRECLUDING TRUSTEE FROM SEEKING**  
33 **DISCOVERY PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE**

34 William Leonard, Chapter 7 Trustee for the bankruptcy estate of Paul Anthony Morabito  
35 and the plaintiff in the above-referenced action (the "Plaintiff" or "Trustee"), by and through his

1 counsel, the law firm of Garman Turner Gordon LLP, hereby submits this opposition (the  
2 "Opposition") to the *Motion to Partially Quash, or, in the Alternative, for a Protective Order*  
3 *Precluding Trustee From Seeking Discovery Protected by the Attorney-Client Privilege* (the  
4 "Motion") filed by defendants Superpumper, Inc. ("Superpumper") Edward Bayuk, individually  
5 and as the Trustee of the Edward William Bayuk Living Trust ("Bayuk"), Salvatore Morabito  
6 ("Salvatore"), and Showshoe Petroleum ("Snowshoe," and together with Superpumper, Bayuk,  
7 and Salvatore, the "Defendants") in connection with the properly-issued and noticed  
8 Subpoena/Subpoena Duces Tecum (the "Subpoena") issued to attorney Dennis Vacco ("Vacco")  
9 of the law firm of Lippes Mathias Wexler Friedman LLP ("Lippes Mathias") on September 29,  
10 2015.

11 This Opposition is supported by the following memorandum of points and authorities, the  
12 declaration of Teresa M. Pilatowicz, Esq. (the "Pilatowicz Decl."), the exhibits attached hereto,  
13 and pleadings and papers on file in this above-captioned case, judicial notice of which is  
14 respectfully requested.

15 Dated this 24th day of March, 2016.

16 GARMAN TURNER GORDON LLP

17 /s/ Teresa Pilatowicz

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1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                                   **I.**  
3                                   **INTRODUCTION**

4                   Defendants' Motion is without merit. First, it is an improper collateral attack on an order  
5 of the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court").  
6 Second, the assertion of privilege is not only legally and factually baseless, it is too little, too  
7 late. Despite having ample opportunity to do so, Defendants waited *five months* to assert a  
8 purported privilege over the requested documents, interfering with Lippes Mathias's production  
9 of the documents on the eve of the close of discovery. To the extent any privilege existed with  
10 respect to the requested documents, a contention that Plaintiff disputes, it has long since been  
11 waived under both the co-client doctrine and because Defendants failed to assert it despite  
12 having notice of the subject subpoena since *September 24, 2015*.

13                                   **II.**  
14                                   **RELEVANT FACTS**

15                   **A.     Background.**

16                   1.       On December 17, 2013, JH, Inc., Jerry Herbst, and Berry-Hinckley Industries (the  
17 "Herbst Parties") filed a complaint in this Court against Paul A. Morabito (the "Debtor"), his  
18 long-term domestic partner, Bayuk, his brother, Salvatore, Superpumper, and Snowshoe, thereby  
19 commencing case no. CV13-02663 (the "Fraudulent Transfer Action").

20                   2.       The Fraudulent Transfer Action seeks to avoid and recover a number of  
21 fraudulent transfers of the Debtor's real and personal property which occurred only days after an  
22 oral ruling by Judge Brent Adams finding the Debtor liable for fraud against the Herbst Parties  
23 resulting in actual damages in excess of \$75 million. Ultimately, final judgment was entered in  
24 the approximate amount of \$144 Million against the Debtor and in favor of the Herbst Parties,  
25 encompassing actual and punitive damages.

26                   3.       On June 20, 2013, the Herbst Parties filed an Involuntary Petition (the "Petition")  
27 against the Debtor, thereby commencing the chapter 7 case (the "Chapter 7 Case") in the United  
28 States Bankruptcy Court for the District of Nevada. Case No. 13-51237-GWZ, ECF No. 1.

1           4.       Following the election and appointment of William A. Leonard as the Chapter 7  
2 Trustee, Mr. Leonard was substituted as the Plaintiff in this Fraudulent Transfer Action.

3       **B.       Commission to Take Deposition and the Subpoena.**

4           5.       On September 17, 2015, Plaintiff filed his *Application for Commission to Take*  
5 *Deposition* of Vacco of the law firm of Lippes Mathias, a true and correct copy of which is  
6 attached hereto as **Exhibit 2**. Defendants' counsel was duly-served with the *Application for*  
7 *Commission to Take Deposition*. Id.

8           6.       The *Commission to Take Deposition* of Vacco was issued by the Clerk of this  
9 Court and entered on the docket on September 21, 2015. A true and correct copy of the  
10 *Commission to Take Deposition* is attached hereto as **Exhibit 3**.

11          7.       Pursuant to the Interstate Uniform Discovery Act, the Subpoena was served upon  
12 Vacco on September 29, 2015 at 665 Main Street, Suite 300, Buffalo, New York 14203. A true  
13 and correct copy of the Subpoena is attached hereto as **Exhibit 4**. The Subpoena commanded  
14 Vacco to attend a deposition at Key Center, 50 Fountain Plaza, Suite 1400, Buffalo, New York  
15 14202 on October 20, 2015 at 10:00 a.m., and to produce documents relating to the Fraudulent  
16 Transfers.

17          8.       Plaintiff's *Notice of Issuance of Subpoena to Dennis Vacco*, a true and correct  
18 copy of which is attached hereto as **Exhibit 5**, was duly-served upon Defendants' counsel on  
19 September 29, 2015.

20          9.       Vacco served his *Response to Subpoena* (the "Response") upon Plaintiff's counsel  
21 on October 15, 2015, a true and correct copy of which is attached hereto as **Exhibit 6**. The  
22 Response asserted a boilerplate privilege objection, but failed to identify the purportedly  
23 privileged documents or provide a privilege log. See id. Only approximately 200 pages of  
24 documents were produced pursuant to the Subpoena. See Pilatowicz Decl., ¶ 4.

25       **C.       The October 21, 2015 Deposition and Privilege Dispute.**

26          10.       On October 21, 2015, counsel for the Plaintiff conducted a deposition (the "Initial  
27 Deposition") of Vacco. A true and correct copy of the transcript of Vacco's deposition (the  
28 "Vacco Trans.") is attached hereto as **Exhibit 7**. At that time, Vacco indicated that although



1 privilege objections were asserted, he did not believe any documents were withheld on that basis.  
2 See Vacco Trans. at 13:14 - 14:24. Furthermore, at the Initial Deposition, attorney Frank  
3 Gilmore (“Gilmore”), objected to various questions to Vacco regarding communications between  
4 the Debtor and Vacco, asserting the Debtor’s attorney-client privilege. Based on the assertion of  
5 the privilege, Gilmore instructed Vacco not to answer such questions. Id. at 48:22-44-15.

6 11. Vacco testified that he represented Bayuk although he does not know if he has a  
7 representation agreement with Bayuk. Vacco does not recall if he represented Salvatore. Id. at  
8 16:7-11; 54:24 - 55:22; 115:13-19. Vacco further testified that he has represented Superpumper  
9 and Snowshoe, though not in connection with the transfers that are the subject of this Fraudulent  
10 Transfer Action. See Id. at 155:13-16.

11 12. Moreover, Vacco testified that in the Response of Lippes Mathias to the  
12 Subpoena, Lippes Mathias asserted privilege on behalf of the Debtor and various entities,  
13 including Showshoe and Superpumper. See Id. at 39:17 – 44:15, 102:10 – 104:10 (refusing to  
14 answer questions regarding conversations with Debtor based on privilege). However, until the  
15 Motion was filed in this Fraudulent Transfer Action on March 10, 2016, neither Gilmore nor  
16 Lippes Mathias ever asserted a privilege on behalf of Bayuk or Salvatore.<sup>1</sup>

17 13. Because the Debtor, a non-party to this Action, asserted a privilege which he is  
18 not entitled to assert pursuant to Title 11 of the United States Code (the “Bankruptcy Code”) and  
19 for other reasons, counsel for the Trustee filed the *Motion to Compel Responses to Deposition*  
20 *Questions* (the “Privilege Motion”) in the Bankruptcy Court, which sought a determination  
21 regarding the existence and scope of the Debtor’s privilege for communications occurring prior  
22 to the commencement of the Debtor’s bankruptcy case. See Case No. 13-51237-GWZ, ECF No.

23  
24  
25 <sup>1</sup> To the extent Defendants argue that an assertion of privilege by the Defendants was suggested or  
26 implied, the argument must fail, because the privilege is not preserved unless it is made expressly. See  
27 Abueg v. State Farm Mut. Auto. Ins. Co., No. 2:14-CV-00635-GMN, 2014 WL 5503114, at \*2 (D. Nev.  
28 Oct. 30, 2014) (“A failure to assert privileges in accordance with Rule 26(b)(5) can result in a waiver of  
the privilege.”) (citing Koninklijke Philips Elecs. N.V. v. KXD Tech., Inc., No. 2:05CV01532RLH-GWF,  
2007 WL 778153 (D. Nev. Mar. 12, 2007)).

1 452.<sup>2</sup>

2 14. The Bankruptcy Court held that the attorney-client privilege did not protect the  
3 Debtor's communications with Vacco and Lippes Mathias (including with respect to the  
4 fraudulent transfers complained of in this Fraudulent Transfer Action) under the crime-fraud  
5 exception or, even if it did apply, became the property of the bankruptcy estate and held by the  
6 Trustee, who has waived the privilege. Attached hereto as **Exhibits 8 and 9** are the transcript of  
7 the Bankruptcy Court's oral ruling and the *Order Granting Motion to Compel Responses to*  
8 *Deposition Questions* (the "Privilege Order") entered by the Bankruptcy Court on February 3,  
9 2016.

10 **D. The Re-Noticed Deposition and Mr. Gilmore's Gamesmanship.**

11 15. Following entry of the Privilege Order, Plaintiff's counsel immediately sent the  
12 Privilege Order to Vacco and demanded the production of any documents pursuant to the  
13 Subpoena that had been withheld on the basis of privilege. Pilatowicz Decl., ¶ 5. Vacco's  
14 continued deposition was re-noticed for March 18, 2016 at 10:00 a.m. in Buffalo, New York. A  
15 true and correct copy of the *Notice of Continued Deposition*, served on February 17, 2016, is  
16 attached hereto as **Exhibit 10**.

17 16. The Trustee's counsel spoke with Kevin Burke ("Burke"), Vacco's partner at  
18 Lippes Mathias, several times regarding the production of documents. On or about March 3,

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19 <sup>2</sup> The Bankruptcy Court correctly discussed the reason why the existence and scope of the Debtor's  
20 privilege could only be addressed by the Bankruptcy Court:

21 The matter before me today, so far as I can determine, based upon the questions  
22 that were asked of Mr. Vacco in his October deposition, and that he refused to answer  
23 upon being ordered not to do so by Mr. Gilmore on behalf of the debtor, because it is not  
24 Mr. Vacco's privilege. It is the debtor's privilege that the debtor invoked, the same  
25 debtor who is not a party to the state court action in which the deposition was being  
26 taken, but is clearly a party in interest here and it affects property of the estate in the  
27 sense of the distributions if they are returned to the estate. If the allegations can be  
28 proven, this would appear to be the only court that would have jurisdiction over Mr.  
Morabito.

And its jurisdiction over Mr. Morabito is asserting the privilege that is the  
critical issue before me. I'm not going to order Mr. Vacco to say anything or not to say  
anything. Any order I issue will just be dealing with the privilege that's being asserted  
of Mr. Morabito.

Hearing Trans. at 20:2-18.

1 2016, for the first time, Burke advised Plaintiff's counsel that there were at least nine bankers'  
2 boxes of responsive documents that had not been produced, notwithstanding Vacco's testimony  
3 that no responsive documents had been withheld on the basis of the privilege assertion.<sup>3</sup>  
4 Pilatowicz Decl., ¶ 6. Burke has most recently acknowledged that there are *fifteen bankers'*  
5 *boxes of documents* in addition to electronically stored information that may be responsive to the  
6 Subpoena that have not been produced (collectively, the "Disputed Documents"). *Id.* ¶ 7.  
7 However, Mr. Burke unequivocally advised Plaintiff's counsel that in light of the validly-issued  
8 Subpoena and the Privilege Order, Lippes Mathias would produce the responsive documents to  
9 Plaintiff's counsel. *Id.*

10 17. On March 9, 2016 (more than five months after receiving notice of the Subpoena  
11 and a month after entry of the Privilege Order), Mr. Gilmore, as counsel for both the Defendants  
12 and the Debtor, alleged that he "was suddenly made aware" that the Disputed Documents, which  
13 were the subject of the *September 29, 2015* Subpoena, may be protected by the attorney-client  
14 privilege of the Defendants. Pilatowicz Decl., ¶ 8.

15 18. Despite the passage of more than five months, no privilege log has ever been  
16 provided pursuant to NRCp 26(e).<sup>4</sup> Pilatowicz Decl., ¶ 9.

17 19. In their meet and confer pursuant to NRCp 37, Plaintiff's counsel offered to limit  
18 the request to those documents and communications to which the Debtor was a party, which  
19 communications the Bankruptcy Court has already ruled are not privileged,<sup>5</sup> notwithstanding the

20 <sup>3</sup> By the happenstance of Plaintiff's counsel contacting a copy service for a quote for copying and  
21 digitizing the documents that is the same copy service contacted by Lippes Mathias, Plaintiff's counsel  
22 learned that there may be as many as 15 boxes of documents. Burke thereafter confirmed that there are  
23 15 boxes of documents, along with electronically stored information that may be responsive to the  
24 Subpoena but have not been produced. Pilatowicz Decl., ¶ 6.

25 <sup>4</sup> In the Privilege Order, the Bankruptcy Court ordered that, if the Debtor intended to withhold any  
26 documents based on privilege, "Within ten (10) calendar days of entry of [the Privilege Order], the Debtor  
27 shall provide the Trustee a privilege log with respect to all documents withheld on the basis of privilege."  
28 Privilege Order, at ¶ 4. To date, no privilege log has been provided with respect to the Debtor's claim of  
privilege. Pilatowicz Decl., ¶ 10.

<sup>5</sup> The Trustee has filed a motion in the Bankruptcy Court to compel Lippes Mathias' turnover of all of the  
Debtor's files pursuant to 11 U.S.C. § 542, which confirm that communications to which the Debtor was  
a party regarding the fraudulent transfers are not privileged, or that any privilege which may have existed  
has been waived.

1 Defendants' failure to establish that they are entitled to a privilege. Gilmore nonetheless claims  
2 that the documents remain privileged and has refused to allow the production of documents.  
3 Pilatowicz Decl., ¶ 11.

4  
5 **III.**  
6 **LEGAL ARGUMENT**

7 **A. The Motion is an Improper Collateral Attack on the Bankruptcy Court's Privilege**  
8 **Order.**

9 As a threshold matter, Defendants' contention that Plaintiff must file a motion to compel  
10 in the New York state court to obtain the Disputed Documents is without merit. Had Lippes  
11 Mathias simply refused to produce the Disputed Documents, that would surely be true.  
12 However, Lippes Mathias's counsel has already represented that the Disputed Documents would  
13 be produced, and it is clear that it is the Defendants' counsel in this Fraudulent Transfer Action  
14 who is interfering with Lippes Mathias' production of responsive documents. Moreover, it is  
15 Defendants who are seeking the imprimatur of *this* Court for Lippes Mathias to refuse the  
16 Subpoena by filing the Motion.

17 The Bankruptcy Court has unequivocally held that the attorney-client privilege does not  
18 protect the Debtor's communications with Vacco, for two separate, independent reasons. First,  
19 the Bankruptcy Court found that the attorney-client privilege did not protect the communications  
20 as a result of the crime-fraud exception. Second, the Bankruptcy Court found that even if the  
21 attorney-client privilege did apply to the communications involving the Debtor, the Trustee, as  
22 owner of the privilege, has waived it. See Privilege Order, 2:10 - 3:3.

23 **1. The Crime-Fraud Exception.**

24 The crime-fraud exception to the privilege is nearly, if not completely, universal. Under  
25 federal law, as set forth in Cox v. Administrator US Steel, 17 F.3d 1386, 1416 (11th Cir. 1994),  
26 the analysis is two-fold: (1) there must be a *prima facie* showing that the client was engaged in  
27 criminal or fraudulent conduct when he sought the advice of counsel, or that he committed a  
28 crime or fraud subsequent to receiving the benefit of counsel's advice, and (2) there must be a  
showing that the attorney's assistance was obtained in furtherance of the criminal or fraudulent  
activity or was closely related to it. Id. In Nevada, the exception applies "if the services of the

1 lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the  
2 client knew or reasonably should have known to be a crime or fraud.” Nev. Rev. Stat. 49.115(1).  
3 Under New York law, the exception applies if the communications encompass “a fraudulent  
4 scheme . . . or any accusation of some other wrongful conduct.” Art Capital Group LLC v. Rose,  
5 54 A.D.3d 276, 277, 862 N.Y.S.2d 369 [1st Dept. 2008]. Thus, the attorney-client privilege does  
6 not shield communications made in furtherance of a client’s tortious conduct. See Duplan Corp.  
7 v. Deering Milliken, Inc., 397 F. Supp. 1146, 1172 (D.S.C. 1974).

8 The crime-fraud exception to the privilege applies to transfers made in fraud of creditors.  
9 In re Blier Cedar Co., Inc., 10 B.R. 993 (Bankr. D. Me. 1981) (ordering production of documents  
10 relating to transfers shown on a prima facie basis to have constituted fraudulent transfers); In re  
11 Cutuli, No. 11-35256-BKC-AJC, 2013 Bankr. LEXIS 3843 (Bankr. S.D. Fla. Sept. 13, 2013)  
12 (“Bankruptcy courts have held that merely raising an ‘inference that . . . transfers may have been  
13 fraudulent’ is sufficient to invoke the crime-fraud exception.”).

14 Moreover, for the crime fraud exception to apply, the attorney does not even have to be  
15 aware of the illegality involved; it is enough that the communication furthered, or was intended  
16 by the client to further, the illegality. In re Grand Jury Proceedings, 87 F.3d 377, 381 (9th Cir.  
17 1996); see also People v. Clark, 789 P.2d 127, 153, 50 Cal.3d 583, 609 (1990) (quoting United  
18 States v. Friedman, 445 F.2d 1076, 1086 (9th Cir.) (“The attorney does not have to be aware of  
19 the fraud if the communication furthered the fraud or if the client intended the communication to  
20 further the fraud.”). Thus, “asset planning” advice that an attorney provides to a client intending  
21 to hinder, delay, or defraud his creditors is not protected, even if the attorney is not aware of the  
22 client’s intent.

23 Following briefing by the parties and a hearing on December 22, 2015, the Bankruptcy  
24 Court concluded that the Trustee had made a prima facie showing that the crime-fraud exception  
25 applied with respect to Vacco and Lippe Mathias. Specifically, the Bankruptcy Court stated in  
26 his oral ruling:

27 *I believe that there has been a prima facie showing that has not been*  
28 *rebutted regarding the existence of the fraud exception to the*

1            ***attorney-client privilege***. There's certain badges of fraud that exist --  
2            Cutuli talks about those -- to determine if the moving party has met its  
3            burden to make a prima facie case, and I believe that that has been  
4            established.

5            Hearing Trans. at 22:6-11.

6            Even Defendants' counsel acknowledged that the Bankruptcy Court's ruling expressly  
7            applied to the transfers at issue in this Fraudulent Transfer Action. Following the December 22,  
8            2015 hearing, Gilmore filed an objection to the proposed form of order incorporating the above  
9            findings, arguing that the Bankruptcy Court's ruling on the crime/fraud exception was limited to  
10           "the Debtor's transfer of the shares of Superpumper to the State Court Case Defendants." See  
11           *Debtor's Objection to Proposed Order Granting Motion to Compel Responses to Deposition*  
12           *Questions*, Case No. 13-51237-GWZ, ECF No. 482, 2:4-16), attached hereto as **Exhibit 11**.  
13           However, while the ruling indisputably included the transfers at issue here, the Bankruptcy Court  
14           declined to so limit it. See Privilege Order.

15           **2. Plaintiff's Entitlement to the Documents as Successor to the Debtor.**

16           In addition to the crime-fraud exception, the Bankruptcy Court further found that the  
17           privilege was the Trustee's to assert, and that the Trustee was entitled to waive the privilege.  
18           Specifically, in the Privilege Order, the Bankruptcy Court stated:

19                   (g) the Trustee has met his burden to waive the Debtor's attorney-client  
20                   privilege under the balancing test; and (h) as a result, the Trustee has,  
21                   consistent with applicable law, waived the Debtor's attorney-client  
22                   privilege with Lippes Mathias and Vacco.

23           Privilege Order, 2:25-27.

24           Notwithstanding the clear ruling from the Bankruptcy Court that no attorney-client  
25           privilege applies to communications involving the Debtor, Defendants now assert, for the first  
26           time, that the Disputed Documents are protected from disclosure on the basis that Vacco was  
27           also representing the recipients of the Fraudulent Transfers. This is a clear effort to collaterally  
28           attack the Bankruptcy Court's Privilege Order, because a finding that the privilege applies with  
29           respect to the Defendants is irreconcilably inconsistent with the Bankruptcy Court's findings that  
30           (i) the crime-fraud exception was satisfied and (ii) the Debtor's privilege, to the extent it ever

1 existed, was waived. Because no privilege arose in the first instance, or has been waived, any  
2 privilege Defendants may have had no longer protects the Disputed Documents.

3 **B. Vacco's Representation of Multiple Parties to the Transactions Results in Waiver of**  
4 **the Privilege.**

5 In order to assert a privilege, the Defendants must first show that Vacco actually had an  
6 attorney-client relationship with them. They have not done so. See Vacco Trans. at 16:7-11;  
7 54:24 - 55:22; 115:13-19; 155:13-16. That Bayuk and Salvatore were the beneficiaries of the  
8 Debtor's transfers in fraud of his creditors does not establish an attorney-client relationship with  
9 Lippes Mathias. Even if an attorney-client relationship is established, Defendants would have  
10 the burden to establish that the communications at issue were necessary to secure or give legal  
11 advice.<sup>6</sup> However, even if Vacco represented the Defendants, and even if the communications  
12 were made in the rendition of legal advice (and the other elements of a valid privilege were  
13 established), that privilege does not protect such communications involving the Debtor, because  
14 (i) the client file remains property of the bankruptcy estate, and the Plaintiff is entitled to  
15 disclosure of Vacco's communications with the alleged co-clients to the same extent the Debtor  
16 would be entitled to such disclosure, and (ii) the joint-client privilege does not protect  
17 communications with co-clients when they lack a unity of interest.

18 The common interest privilege is an extension of the attorney-client privilege. United  
19 States v. Gonzalez, 669 F.3d 974, 978 (9th Cir. 2012). "Under the joint-client privilege, clients  
20 may jointly retain (or one client may retain for the joint benefit of others) an attorney as their  
21 common agent on a legal matter of common interest. With respect to matters of common  
22 interest, *each joint client may be privy to the other's communications with the attorney* without  
23 the attorney-client privilege protection being waived by that breach of confidentiality." In re  
24 Hotels Nevada, LLC, 458 B.R. at 570 (emphasis added) (citing Griffith v. Davis, 161 F.R.D.  
25 687, 693 (C.D. Cal. 1995)). Although generally a protection against disclosure to third parties,  
26 the joint-client privilege "does not generally override the responsibilities owed by the attorney to

27 <sup>6</sup> This analysis assumes that the Disputed Documents are in fact communications. However, as no  
28 privilege log was provided, this is not clear.

1 each client, nor does it protect communications among clients when they become adversaries.”  
2 Id. at 570.

3 The attempted use of the joint-client privilege to protect communications from a trustee  
4 who has waived the debtor’s attorney-client privilege was expressly considered and rejected by  
5 the Nevada Bankruptcy Court in Hotels Nevada. In that case, certain debtors and non-debtor  
6 affiliates were represented by the same law firm prepetition in connection with, among other  
7 things, litigation and settlement discussions. Id. at 564-565. Following the filing of the debtors’  
8 bankruptcy case, the trustee sought documents related to the litigation and any transfers of assets  
9 belonging to the debtors. Id. at 565. Although the law firm acknowledged that the debtors’  
10 privilege had been waived, it refused to turn over documents that included communications with  
11 non-debtor parties, arguing that, because the non-debtor affiliates’ privilege had not been  
12 waived, the trustee was not entitled to communications which included both the debtors and non-  
13 debtor affiliates. Id. at 565-567.

14 The court disagreed, holding that the joint-client principle did not apply to protect the  
15 communications. Id. at 573. First, the court in Hotels Nevada characterized the trustee’s request  
16 for documents as follows:

17 Here, no third party seeks access to a confidential communication  
18 between a lawyer and her client. Rather, a successor to a client—here,  
19 the Trustee—is attempting to gain access to its property, or information  
20 related to its property, from its former attorney, all as authorized by  
21 Section 542 [of the Bankruptcy Code]. The analog would be if two  
22 corporations hired the same attorney for a common task, and then one  
23 of the corporations had a change in management, and new management  
24 wanted all its old files to give to a new attorney only to be told “no” by  
25 the old attorney.

26 Id. at 566.

27 Thus, as set forth by the court in Hotels Nevada, an attorney’s client files become  
28 property of the client’s bankruptcy estate under Section 541(a) of the Bankruptcy Code. Thus,  
the Debtor’s files at Lippes Mathias are the Plaintiff’s property. Hotels Nevada, LLC, 458 B.R.  
at 568; see also Sage Realty Corp. v. Proskauer Rose Goetz & Mendelsohn L.L.P., 91 N.Y.2d  
30, 689 N.E.2d 879 (1997) (holding that with very narrow exceptions, client has a broad right to



1 attorney's file in New York). As in Hotels Nevada, the Plaintiff seeks documents and  
2 information that would be in the *Debtor's files* and communications to which *the Debtor* would  
3 have been entitled. Such information is already property that belongs to the Plaintiff in his  
4 capacity as a trustee, and he has a right to production because he stands in the shoes of the  
5 Debtor under the Bankruptcy Code.

6 In addition to the Plaintiff's entitlement to the Disputed Documents because he owns  
7 them under the Bankruptcy Code, Plaintiff is entitled to discover the Disputed Documents  
8 because the joint-client privilege does not protect communications once the clients become  
9 adversarial. "When former co-clients sue one another, the default rule is that *all communications*  
10 *made in the course of the joint representation* are discoverable.... This rule has two bases: (1) the  
11 presumed intent of the parties, and (2) the lawyer's fiduciary obligation of candor to both  
12 parties." Hotels Nevada, 458 B.R. at 571-572 (quoting Teleglobe USA Inc. v. BCE, Inc. (In re  
13 Teleglobe Comm'ns Corp.), 493 F.3d 345, 366 (3d Cir. 2007) (emphasis added)). Thus, when  
14 parties formerly under a joint-client privilege become adverse, the privilege no longer applies to  
15 any of their communications. Id.; see also Sec. Inv'r Prot. Corp. v. Stratton Oakmont, Inc., 213  
16 B.R. 433, 437 (Bankr. S.D.N.Y. 1997) (finding waiver of the joint defense privilege where  
17 debtor was one of the parties to the joint defense).

18 The same rule would also apply under New York law. E.g., Bolton v. Weil, Gotshal &  
19 Manges LLP, 14 Misc. 3d 1220(A), 836 N.Y.S.2d 483 (Sup. Ct. 2005) (unpublished opinion)  
20 (finding joint defense privilege did not protect communications when the matter of their common  
21 interest was at issue in later litigation); Finn v. Morgan, 46 A.D.2d 229, 236, 362 N.Y.S.2d 292  
22 (1974) (where parties "decided to cast their lot together . . . in a situation implicit with  
23 conflicting interests, there is no reason to protect them from the consequences of that choice  
24 when their interests later diverge."); Dooley v. Boyle, 140 Misc. 2d 177, 186, 531 N.Y.S.2d 161,  
25 167 (Sup. Ct. 1988) ("Where an attorney is consulted by two parties in a matter of common  
26 interest for their mutual benefit, nothing said by the parties or the attorney is deemed confidential  
27 in litigation between those parties or their personal representatives since their common interest  
28

1 forbids concealment of statements made by one from the other.”) (citations omitted).<sup>7</sup>

2 With respect to the Transfers, Vacco represented the Debtor at the same time he was  
3 purportedly also representing the Defendants in connection with the transfers that are the subject  
4 of this Fraudulent Transfer Action.<sup>8</sup> Plaintiff, as the Debtor’s representative, has stepped into the  
5 shoes of the Debtor and is now seeking to recover fraudulently-conveyed assets for the benefit of  
6 all creditors. He is directly adverse to the Defendants in this Fraudulent Transfer Action. As a  
7 result, to the extent the joint-client privilege ever applied despite the application of the crime-  
8 fraud exception, it no longer protects communications regarding the matter of their common  
9 interest.

10 **C. Defendants’ Motion is Untimely.**

11 Nev. R. Civ. P. 45(c)(3)(A) provides that “[o]n timely motion, the court by which a  
12 subpoena was issued shall quash or modify the subpoena” under the circumstances specified.  
13 The most liberal interpretation of “timely” does not allow Defendants to bring the Motion more  
14 than five months after the Subpoena was issued, more than four months after the Initial  
15 Deposition of Vacco and the noticed return date for the production of the Disputed Documents,  
16 more than a month after the Bankruptcy Court entered the Privilege Order, a scant three weeks  
17 before the close of discovery in this Fraudulent Transfer Action, and a mere eight days before  
18 Vacco’s continued deposition. Such timing is tactical manipulation at its worst.

19 Interpreting the equivalent federal rule, the District of Nevada held that a motion to quash  
20 filed three days before a deposition of which the movant had three-weeks’ notice was untimely.  
21 Allstate Ins. Co. v. Nassiri, No. 2:08-CV-369 JCM GWF, 2011 WL 4905639, at \*1 (D. Nev. Oct.  
22 14, 2011) (applying Fed. R. Civ. P. 45(c)(3), which requires a “timely motion”); see also  
23 Innomed Labs, LLC v. Alza Corp., 211 F.R.D. 237, 240 (S.D.N.Y. 2002) (motion to quash is  
24 timely only if it is filed before the noticed return date). Defendants’ delay of more than five  
25 months after the Subpoena was issued, a month after the entry of the Privilege Order and a mere  
26

---

27 <sup>7</sup> There appear to be no Nevada cases on point.

28 <sup>8</sup> More likely, he was representing solely the Debtor.

1 eight days before Vacco's continued deposition is far more egregious than the delay in Nassiri  
2 and well after the noticed date for production of the Disputed Documents (October 15, 2015).

3 Similarly, the District of Nevada found that a motion for a protective order filed under  
4 Fed. R. Civ. P. 26(c) after an initial deposition and shortly before a re-noticed deposition was  
5 untimely, as it should have been filed in response to the first notice of deposition. Steelman  
6 Partners v. Sanya Gaosheng Inv. Co. Ltd., No. 209CV01016GMNGWF, 2015 WL 9462081, at  
7 \*2 (D. Nev. Dec. 24, 2015).

8 Though neither Nev. R. Civ. P. 26(c) nor the equivalent Fed. R. Civ. P. 26(c) contain an  
9 explicit timeliness requirement, courts consistently hold that a motion for protective order must  
10 be timely. See, e.g., Brittain v. Stroh Brewery Co., 136 F.R.D. 408, 413 (M.D.N.C. 1991) (citing  
11 United States v. IBM Corp., 70 F.R.D. 700, 701 (S.D.N.Y. 1976)); In re Air Crash Disaster at  
12 Detroit Metro. Airport, 130 F.R.D. 627, 630 (E.D. Mich. 1989); 8 Charles A. Wright & Arthur  
13 R. Miller, Federal Practice and Procedure, sec. 2035, at 262 (1970). The failure to timely obtain  
14 a protective order ordinarily precludes subsequent objection to the discovery requests. See, e.g.,  
15 In re Air Crash Disaster, 130 F.R.D. at 630; International Business Machs., 79 F.R.D. at 414.

16 Defendants' counsel's contention that he was somehow unaware that the Vacco  
17 Subpoena might implicate his clients' purported privilege until March 9, 2016, notwithstanding  
18 the fact that he has had notice of the Subpoena for over five months and the privilege issue was  
19 subject to a protracted fight in the Bankruptcy Court, defies credulity. Defendants' Motion, filed  
20 not only months after the deadline for Vacco to produce documents, but also long after the  
21 Bankruptcy Court ruled on the very same issue and Vacco's deposition was re-noticed, is not  
22 timely and should be denied on that basis alone.

23 **D. Defendants' Failure to Timely Establish the Claim of Privilege in Compliance With**  
24 **NRCP 26 Waived the Privilege.**

25 Any claim of privilege must be made expressly and with particularity. Nev. R. Civ. P.  
26 26(b)(5) provides:

27 **Claims of Privilege or Protection of Trial Preparation Materials.**

28 When a party withholds information otherwise discoverable under these  
rules by claiming that it is privileged or subject to protection as trial

1 preparation material, the party *shall make the claim expressly* and shall  
2 describe the nature of the documents, communications, or things not  
3 produced or disclosed in a manner that, without revealing information  
4 itself privileged or protected, will *enable other parties to assess the  
applicability of the privilege or protection.*

5 Nev. R. Civ. P. 26(b)(5) (emphasis added).<sup>9</sup>

6 In order to meet its burden to establish all elements of the privilege, the party asserting  
7 the privilege “must identify specific communications and the grounds supporting the privilege as  
8 to each piece of evidence over which privilege is asserted.” See, e.g., United States v. Martin,  
9 278 F.3d 988, 999-1000 (9th Cir. 2002)<sup>10</sup> (citing United States v. Munoz, 233 F.3d 1117, 1128  
10 (9th Cir. 2000); United States v. Osborn, 561 F.2d 1334, 1339 (9th Cir. 1977)); see also Painters  
11 Joint Committee v. Employee Painters Trust Health & Welfare Fund, 2011 WL 4573349, at \*5  
12 (D. Nev. 2011) (citing Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975) (the  
13 “party resisting discovery bears the burden of showing why a discovery request should be  
14 denied”).

15 Boilerplate, blanket assertions are “extremely disfavored.” Martin, 278 F.3d at 1000  
16 (citing Clarke v. Am. Commerce Nat’l Bank, 974 F.2d 127, 129 (9th Cir. 1992)). Instead, the  
17 objecting party must specifically identify the grounds for its objection and may not rely merely  
18 on conclusory or speculative arguments. E.E.O.C. v. Caesars Entertainment, Inc., 237 F.R.D.  
19 428, 432 (D. Nev. 2006).

20 Where the party asserting privilege fails to expressly make the claim of privilege and  
21 specifically describe the nature of the documents not produced in a manner that enables other  
22 parties to assess the claim of the privilege, it is waived. In Bullion Monarch Mining, Inc. v.  
23 Newmont USA Ltd., the District of Nevada found that privilege was waived where the defendant

24 <sup>9</sup> To the extent Defendants’ Motion is made under Rule 45, it also requires that “the claim shall be made  
25 expressly and shall be supported by a description of the nature of the documents, communications, or  
26 things not produced that is sufficient to enable the demanding party to contest the claim.” Nev. R. Civ. P.  
27 45(d)(2).

28 <sup>10</sup> “Federal cases interpreting the Federal Rules of Civil Procedure ‘are strong persuasive authority,  
because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.’”  
Executive Mgmt., Ltd. v. Tigor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting Las  
Vegas Novelty v. Fernandez, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

1 produced a privilege log for the first time a year after the documents were required to be  
2 produced and after the close of discovery. 271 F.R.D. 643, 650 (D. Nev. 2010). Discussing the  
3 lack of timeliness, the court found that though the determination of timeliness must be made in  
4 relation to other factors involved, the default 30-days for responding to discovery is a guideline  
5 for timeliness. *Id.* (citing Burlington Northern and Santa Fe Railway Company v. United States  
6 District Court for the District of Montana, 408 F.3d 1142, 1147-1148 (2005); *comparing* Carl  
7 Zeiss Vision Int'l GmbH v. Signet Armorlite, 2009 WL 4642388, \*3-4, 2009 U.S. Dist. LEXIS  
8 111877, at \*14 (S.D. Cal. Dec. 1, 2009) (nine month delay in production of privilege log deemed  
9 unreasonable), *with* Coalition for a Sustainable Delta v. Koch, 2009 WL 3378974, \*4-5, 2009  
10 U.S. Dist. LEXIS 100728, at \*11-14 (E.D. Cal. Oct. 15, 2009) (in a case dealing with a universe  
11 of 80,000 documents and thousands of emails, defendants' assertion of privilege two months  
12 after production of documents was reasonable)).

13 In finding that the defendant's privilege was waived, the Bullion court noted that the  
14 excessive delay had effectively nullified the plaintiff's ability to meaningfully inquire into the  
15 claimed privilege. Even though the court had granted Bullion's motion for additional briefing to  
16 supplement its dispositive motions, the court found that it was unfairly prejudiced, stating:

17 . . . but what are Bullion's options insofar as the privilege log is  
18 concerned? At the July 1, 2010 hearing, the court posed this question to  
19 Newmont's counsel, who replied that it was up to Bullion's counsel to  
20 review the privilege log, decide which among the 1,126 entries it  
21 contests, identify new witnesses it would like to depose (which were  
22 never identified until Newmont produced the privilege log), re-depose  
certain other witnesses, and then file a more targeted motion for  
sanctions, if necessary. The court presumes that it, in turn, would be  
required to review disputed privilege log entries *in camera* to decide  
what is privileged. This takes time, and there is no time left.

23 Bullion Monarch Mining, 271 F.R.D. at 649.<sup>11</sup>

25 <sup>11</sup> The Bullion court had some further observations about the manipulative tactics employed by the  
26 defendant in that case:

27 Newmont delayed production of the privilege log, rendering it useless for its intended  
28 purpose. There is no conceivable way that Bullion can review the 1,126 entries, compare  
them with deposition testimony of numerous witnesses, and review the thousands of  
documents produced to challenge the log entries, get a hearing and decision from the court,

1       The Defendants' shenanigans in this case are comparable to those of the defendant in  
2 Bullion, if not worse, and result in similar prejudice to the Plaintiff. Defendants raised the  
3 privilege objection for the first time on approximately March 9, 2016, asserting a blanket  
4 privilege over at least 9 bankers' boxes of documents that Plaintiff's counsel was not even aware  
5 of.<sup>12</sup> No privilege log has been provided, leaving the Plaintiff with no ability to meaningfully  
6 evaluate the claim of privilege, much less challenge it. Even if a privilege log is provided  
7 immediately, Plaintiff is left with one week left during the discovery period to evaluate the  
8 privilege log, determine which entries he contests, move to compel the production of documents  
9 that should not be protected by privilege, identify and depose any new witnesses disclosed for  
10 the first time in the privilege log, and potentially re-depose witnesses that Plaintiff deposed  
11 without the benefit of the Disputed Documents that were not produced.<sup>13</sup> As in Bullion, "this  
12 takes time, and there is no time left." Accordingly, the Court should find that any privilege  
13 Defendants may have had in the Disputed Documents has been waived by their failure to timely  
14 assert it and to assert it in compliance with the mandates of Rule 26.

15     ...

16     ...

17     ...

18     \_\_\_\_ (continued)

19       and then supplement its oppositions to dispositive motions, all by August 30, 2010. This  
20       does not even include the potential necessity to re-depose witnesses or depose new witnesses  
21       never disclosed.

22     ...

23       Given the very late stage of these proceedings and the fact that no amount of post-privilege  
24       log discovery now can cure the prejudice Bullion has suffered, the court is left with little  
25       choice but to find that Newmont has waived its privilege as to every document designated in  
26       the privilege log, including those designated as protected under the work product doctrine.

27     Bullion Monarch, 271 F.R.D. at 650-53.

28     <sup>12</sup> Plaintiff's counsel was unaware that Vacco had failed to produce approximately 15 bankers' boxes of  
responsive documents along with electronically-stored information until the week of March 7, 2016, as  
Vacco testified that no responsive documents had been withheld pursuant to the assertion of privilege.  
Pilatowicz Decl., ¶ \_\_\_\_.

<sup>13</sup> Plaintiff's counsel has just completed the depositions of the Debtor and the Debtor's and Defendants'  
auditors, Gursey Schneider. In the coming days and weeks, Plaintiff's counsel will be deposing Vacco  
and the Debtor's and Defendants' accountant, Stanton Bernstein. Pilatowicz Decl., ¶ 12.

1 **IV.**  
2 **CONCLUSION**

3 Based on the foregoing, Plaintiff respectfully requests that this Court deny Defendants'  
4 Motion. Plaintiff seeks such other relief as this Court deems just and proper.

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

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

9 Dated this 24th day of March, 2016.

10 GARMAN TURNER GORDON LLP

11 /s/ Teresa Pilatowicz

12 GERALD M. GORDON, ESQ.

13 Nevada Bar No. 229

14 TERESA M. PILATOWICZ, ESQ.

15 Nevada Bar No. 9605

16 GABRIELLE A. HAMM, ESQ.

17 Nevada Bar No. 11588

18 650 White Drive, Suite 100

19 Las Vegas, Nevada 89119

20 Tel: (735) 777-3000

21 *Attorneys for Plaintiff William A. Leonard*  
22  
23  
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28

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of GARMAN TURNER GORDON, and that on this date,  
3 pursuant to NRCP 5(b), I am serving a true and correct copy of the above **Plaintiff's Opposition**  
4 **to Defendants' Motion to Partially Quash, or, in the Alternative, for a Protective Order**  
5 **Precluding Trustee From Seeking Discovery Protected by the Attorney-Client Privilege** on  
6 the parties as set forth below:

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

9 \_\_\_\_\_ Certified Mail, Return Receipt Requested

10 \_\_\_\_\_ Via Facsimile (Fax)

11 \_\_\_\_\_ Via E-Mail

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

14 \_\_\_\_\_ Federal Express (or other overnight delivery)

15 addressed as follows:

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

21 DATED this 24th day of March, 2016.

22 /s/ Jenifer Cannon  
23 An Employee of GARMAN TURNER  
24 GORDON  
25  
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28



**INDEX OF EXHIBITS**

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>	<b><u>Pages</u></b>
<u>1</u>	Declaration of Teresa M. Pilatowicz in Support of Plaintiff's Opposition to Defendants' Motion to Partially Quash, or, in the Alternative, for a Protective Order Precluding Trustee From Seeking Discovery Protected by the Attorney-Client Privilege	
<u>2</u>	Application for Commission to Take Deposition of Dennis Vacco (September 17, 2015)	8
<u>3</u>	Commission to Take Deposition of Dennis Vacco (September 21, 2015)	3
<u>4</u>	Subpoena/Subpoena Duces Tecum to Dennis Vacco (September 29, 2015)	12
<u>5</u>	Notice of Issuance of Subpoena to Dennis Vacco (September 29, 2015)	14
<u>6</u>	Response to Subpoena (October 15, 2015)	9
<u>7</u>	Transcript of October 21, 2015 Deposition of Dennis Vacco	49
<u>8</u>	Transcript of the Bankruptcy Court's December 22, 2015 oral ruling	45
<u>9</u>	Order Granting Motion to Compel Responses to Deposition Questions (February 3, 2016)	5
<u>10</u>	Notice of Continued Deposition of Dennis Vacco	3
<u>11</u>	Debtor's Objection to Proposed Order Granting Motion to Compel Responses to Deposition Questions	17

# EXHIBIT 1

1 **DECLARATION OF TERESA M. PILATOWICZ IN SUPPORT OF PLAINTIFF'S**  
2 **OPPOSITION TO DEFENDANTS' MOTION TO PARTIALLY QUASH, OR, IN THE**  
3 **ALTERNATIVE, FOR A PROTECTIVE ORDER PRECLUDING TRUSTEE FROM**  
4 **SEEKING DISCOVERY PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE**

5 I, TERESA M. PILATOWICZ, declare and state under penalty of perjury the following:

6 1. I am an attorney with the law firm of Garman Turner Gordon LLP and am counsel to the  
7 plaintiff, William Leonard, in this matter. I am duly-licensed in Nevada and Arizona.

8 2. I have personal knowledge of the facts set forth herein, and if called upon to  
9 testify, could and would do so.

10 3. I submit this declaration in support of *Plaintiff's Opposition to Defendants'*  
11 *Motion to Partially Quash, or, in the Alternative, for a Protective Order Precluding Trustee*  
12 *From Seeking Discovery Protected by the Attorney-Client Privilege* (the "Motion").

13 4. Vacco<sup>1</sup> served his *Response to Subpoena* (the "Response") upon Plaintiff's  
14 counsel on October 15, 2015, a true and correct copy of which is attached hereto as **Exhibit 6**.  
15 The Response asserted a boilerplate privilege objection, but failed to identify the purportedly  
16 privileged documents or provide a privilege log. Only approximately 200 pages of documents  
17 were produced pursuant to the Subpoena.

18 5. Following entry of the *Order Granting Motion to Compel Responses to*  
19 *Deposition Questions* on February 3, 2016, I immediately sent the Privilege Order to Vacco and  
20 demanded the production of any documents pursuant to the Subpoena that had been withheld on  
21 the basis of privilege. Vacco's continued deposition was re-noticed for March 18, 2016 at 10:00  
22 a.m. in Buffalo, New York. A true and correct copy of the *Notice of Continued Deposition*,  
23 served on February 17, 2016, is attached hereto as **Exhibit 10**.

24 6. I spoke with Kevin Burke, Vacco's partner at Lippes Mathias, several times  
25 regarding the production of documents. On or about March 3, 2016, for the first time, Burke  
26 advised me that there were at least nine bankers' boxes of responsive documents that had not  
27 been produced, notwithstanding Vacco's testimony that no responsive documents had been

28 <sup>1</sup> Capitalized terms not defined in this declaration have the meanings set forth in the Motion.

1 withheld on the basis of the privilege assertion. By the happenstance of Plaintiff's counsel  
2 contacting a copy service for a quote for copying and digitizing the documents that is the same  
3 copy service contacted by Lippes Mathias, Plaintiff's counsel learned that there may be as many  
4 as 15 boxes of documents.

5 7. Burke has most recently acknowledged that there are *fifteen bankers' boxes of*  
6 *documents* in addition to electronically stored information that may be responsive to the  
7 Subpoena that have not been produced (the "Disputed Documents"). However, Burke  
8 unequivocally advised me that in light of the validly-issued Subpoena and the Privilege Order,  
9 Lippes Mathias would produce the responsive documents to Plaintiff's counsel.

10 8. On March 9, 2016 (more than five months after receiving notice of the Subpoena  
11 and a month after entry of the Privilege Order), Mr. Gilmore, as counsel for both the Defendants  
12 and the Debtor, represented that he "was suddenly made aware" that the Disputed Documents,  
13 which were the subject of the *September 29, 2015* Subpoena, may be protected by the attorney-  
14 client privilege of the Defendants.

15 9. Despite the passage of more than five months, no privilege log has ever been  
16 provided pursuant to NRCP 26(e).

17 10. Similarly, the Debtor has never produced a privilege log, though in the Privilege  
18 Order, the Bankruptcy Court ordered that, if the Debtor intended to withhold any documents based on  
19 privilege, "Within ten (10) calendar days of entry of [the Privilege Order], the Debtor shall provide the  
20 Trustee a privilege log with respect to all documents withheld on the basis of privilege." Privilege Order,  
21 at ¶ 4.

22 11. In our meet and confer pursuant to NRCP 37, I offered to limit the request to  
23 those documents and communications to which the Debtor was a party, which communications  
24 the Bankruptcy Court has already ruled are not privileged, notwithstanding the Defendants'  
25 failure to establish that they are entitled to a privilege. Gilmore nonetheless claims that all  
26 documents remain privileged and has refused any compromise related to the production.

27 12. I have just completed the depositions of the Debtor and the Debtor's and  
28 Defendants' auditors, Gursev Schneider, and will be deposing Vacco and the Debtor's and

1 Defendants' accountant, Stanton Bernstein, in the near future. Further depositions of these  
2 parties may be required as a result of information discovered in Vacco's testimony or the  
3 Disputed Documents. Though Defendants have stipulated to a very limited extension of the  
4 discovery period, this does little to ameliorate the prejudice that Plaintiff suffers as a result of the  
5 failure to allow Plaintiff access to the Disputed Documents.

6 Dated this 24th day of March, 2016.

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8 TERESA M. PILATOWICZ, ESQ.  
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## Exhibit 2

1 1270  
2 GARMAN TURNER GORDON LLP  
3 GERALD M. GORDON, ESQ.  
4 Nevada Bar No. 229  
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6 TERESA M. PILATOWICZ, ESQ.  
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8 E-mail: tpilatowicz@gtg.legal  
9 650 White Drive, Ste. 100  
10 Las Vegas, Nevada 89119  
11 Telephone 725-777-3000

12 *Special Counsel to Trustee*

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

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

15 Plaintiff,

16 vs.

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

24 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

TIME: 10:00 A.M.

DATE: 10/20/2015

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APPLICATION FOR COMMISSION TO TAKE DEPOSITION

23 Plaintiff William A. Leonard, Jr. ("Leonard"), trustee for the bankruptcy estate of Paul  
24 Anthony Morabito, by and through his special, Garman Turner Gordon, LLP ("GTG"), and  
25 pursuant to Rule 28(a) of the Nevada Rules of Civil Procedure make application to this Court for  
26 issuance of a Commission to take the deposition of Dennis Vacco, on October 20<sup>th</sup>, 2015, in  
27 Buffalo, New York, and respectfully show the Court as follows:

- 28 1. GTG is the attorney of record for plaintiff in the above-entitled case.

1           2.     Dennis Vacco is located in Buffalo, New York.  
2           3.     Applicant will provide for the attendance of a court reporter at the time and place  
3 of 10:00 a.m. on October 20<sup>th</sup>, 2015 at Key Center, 50 Fountain Plaza, Suite 1400, Buffalo,  
4 New York 14202, who is authorized to administer oaths under the laws of the State of New  
5 York, for the taking of the deposition of Dennis Vacco.

6           4.     A copy of the *Notice of Deposition of Dennis Vacco* (the "Notice") is attached  
7 hereto as Exhibit "1" by this reference incorporated herein as if set forth in full.

8           5.     Under Rule 28(a) of the Nevada Rules of Civil Procedure, upon application and  
9 proof that the Notice to take a deposition out of the State of Nevada has been given as provided  
10 in NRCP 30(b)(1), the Clerk of this Court is authorized to issue a commission for the taking of  
11 deposition of witnesses outside the State of Nevada.

12           WHEREFORE, Applicant prays that the clerk of this Court issue a Commission to take  
13 the deposition of Dennis Vacco, at 10:00 a.m. on the 20<sup>th</sup> day of October, 2015, or such date as  
14 continued by agreement of the parties or order of the Court.

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

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

19           Dated this 17<sup>th</sup> day of September, 2015.

20                                   GARMAN TURNER GORDON LLP

21                                   /s/ Teresa M. Pilatowicz  
22                                   GERALD E. GORDON, ESQ.  
23                                   TERESA M. PILATOWICZ, ESQ.  
24                                   650 White Drive, Ste. 100  
25                                   Las Vegas, Nevada 89119  
26                                   Special Counsel for Trustee  
27  
28



1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of GARMAN TURNER GORDON, and that on this date,  
3 pursuant to NRCP 5(b), I am serving a true and correct copy of the attached APPLICATION  
4 FOR COMMISSION TO TAKE DEPOSITION on the parties as set forth below:

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

7 \_\_\_\_\_ Certified Mail, Return Receipt Requested

8 \_\_\_\_\_ Via Facsimile (Fax)

9 \_\_\_\_\_ Via E-Mail

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

12 \_\_\_\_\_ Federal Express (or other overnight delivery)

13 addressed as follows:

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

18 DATED this 17<sup>th</sup> day of September 2015.

19  
20   
21 An Employee of GARMAN TURNER  
22 GORDON  
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INDEX OF EXHIBITS

1. Notice of Deposition of Dennis Vacco 3 pages

FILED  
Electronically  
2015-09-17 04:26:16 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5147154 - csulezic

## **EXHIBIT 1**

## **EXHIBIT 1**

1 2582  
2 GARMAN TURNER GORDON LLP  
3 GERALD M. GORDON, ESQ.  
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5 E-mail: ggordon@gtg.legal  
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12 *Special Counsel to Trustee*

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21 New York corporation,

22 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

TIME: October 20, 2015  
DATE: 10:00 a.m.

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NOTICE OF DEPOSITION OF DENNIS VACCO

PLEASE TAKE NOTICE that on the 20th day of October, 2015, at 10:00 o'clock a.m., at Key Center, 50 Fountain Plaza, Suite 1400, Buffalo, New York 14202, Plaintiff William A. Leonard, by and through his special counsel, Garman Turner Gordon LLP, will take the deposition of Dennis Vacco.

The deposition will be taken upon oral examination and stenographically recorded pursuant to Rules 26 and 30 of the Nevada Rules of Civil Procedure, before a Notary Public, or

1 before some other officer authorized by law to administer oaths. The oral examination will  
2 continue from day to day until completed. You are invited to attend and cross-examine.

3 **AFFIRMATION**

4 Pursuant to NRS 239B.030

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

7 Dated this 20<sup>th</sup> of August, 2015.

8  
9 GARMAN TURNER GORDON LLP

10  
11 /s/ Teresa M. Pilatowicz  
12 GERALD E. GORDON, ESQ.  
13 TERESA M. PILATOWICZ, ESQ.  
14 650 White Drive, Ste. 100  
15 Las Vegas, Nevada 89119  
16 Telephone 725-777-3000

17  
18 *Special Counsel for Trustee*  
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1  
2 CERTIFICATE OF SERVICE

3 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this  
4 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached **NOTICE OF**  
5 **DEPOSITION OF DENNIS VACCO** on the parties as set forth below:  
6

7 ☒ XXX Placing an original or true copy thereof in a sealed envelope placed for collection  
8 and mailing in the United States Mail, Reno, Nevada, postage prepaid, following  
9 ordinary business practices

10 ☐ Certified Mail, Return Receipt Requested

11 ☐ Via Facsimile (Fax)

12 ☐ Via E-Mail

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

15 ☐ Federal Express (or other overnight delivery)

16 addressed as follows:

17 Barry Breslow  
18 Frank Gilmore  
19 ROBISON, BELAUSTEGUI, SHARP & LOW  
20 71 Washington Street  
21 Reno, NV 89503

22 DATED this 20 day of August, 2015.

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

## Exhibit 3


CV-13-02663  
JH, INC. ET AL. VS. PRL MOR & P  
District Court  
Washoe County  
09/21/2015 04:47 PM  
1417  
PMSFMR11

1417  
GARMAN TURNER GORDON LLP  
GERALD M. GORDON, ESQ.  
Nevada Bar No. 229  
E-mail: ggordon@gtg.legal  
TERESA M. PILATOWICZ, ESQ.  
Nevada Bar No. 9605  
E-mail: tpilatowicz@gtg.legal  
650 White Drive, Ste. 100  
Las Vegas, Nevada 89119  
Telephone 725-777-3000

*Special Counsel to Trustee*

FILED

2015 SEP 21 PM 4:47

JACQUELINE BRYANT  
CLERK OF THE COURT  
BY  DEPUTY

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.: 1

DATE: 10/20/2015  
TIME: 10:00 a.m.

COMMISSION TO TAKE DEPOSITION

YOU ARE HEREBY COMMISSIONED AND FULLY AUTHORIZED to take the  
deposition of Dennis Vacco, in accordance with the Rules of Civil Procedure of the State of  
Nevada, at Key Center, 50 Fountain Plaza, Suite 1400, Buffalo, New York 14202, on the 20<sup>th</sup>  
day of October, 2015, at the hour of 10:00 a.m. and on succeeding days until concluded, or at  
such other time and place as may be mutually agreed upon by counsel for the respective parties  
hereto.

GARMAN TURNER GORDON LLP  
650 White Drive, Ste. 100  
Las Vegas, NV 89119  
725-777-3000

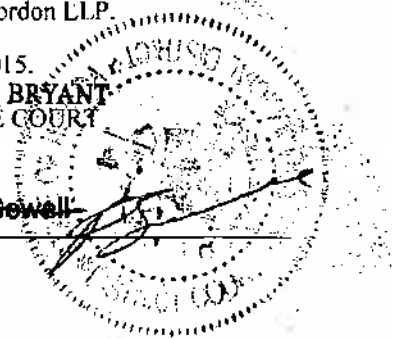


1 You shall put the witness on oath and his testimony shall be recorded by someone acting  
2 under your direction, stenographically, and thereafter transcribed. Objections to evidence  
3 presented shall be noted, and the evidence shall be taken subject to said objections. When the  
4 testimony is fully transcribed, it shall be signed by the respective witness, after a full opportunity  
5 to make corrections or changes. You shall certify on the deposition transcript that the witness  
6 was duly sworn by you, and that the deposition is a deposition, and place it in an envelope  
7 endorsed with the title of the action and marked "Deposition of Dennis Vacco" and send it by  
8 registered mail to the law offices of Garman Turner Gordon LLP.

9 Dated this 21<sup>st</sup> day of September, 2015.

10 JACQUELINE BRYANT  
11 CLERK OF THE COURT

12 By: P. Sowell  
13 Deputy



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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Commission to Take Deposition

(Title of Document)

filed in case number: \_\_\_\_\_



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 9/21/15

Alexandra Shippe  
(Signature)

Alexandra Shippe  
(Print Name)

Courier  
(Attorney for)

## Exhibit 4

STATE OF NEW YORK  
COUNTY OF ERIE

## SUBPOENA

(pursuant to the Uniform Interstate  
Deposition and Discovery Act and  
CPLR §3119)

William A. Leonard

Plaintiff/Petitioner,

v.

Superpumper, Inc., et al

Defendant/Respondent.

Originating State: Nevada

Originating County: Washoe

Originating Court: Second Judicial District

Originating Case number:

CV13-02863

SUBPOENA/ SUBPOENA DUCES TECUM  
pursuant to the Uniform Interstate Discovery Act  
(Personal Attendance Required)

TO: Dennis Vacco

Lippes Mathias Waxler Friedman LLP

665 Main Street, Suite 300

Buffalo, New York 14203

WE COMMAND YOU to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action: and each of you appear and attend before an authorized court reporter at Key Center, 50 Fountain Plaza, Suite 1400, Buffalo, New York 14202 on the 20th day of October, 20 15 at 10 o'clock, in the a.m. and at any recessed or adjourned date to give testimony in this action on the part of

and/or that you bring with you, and produce at the time and place aforesaid, the following documents, electronically stored information, or objects, and permit their inspection, copying, testing or sampling of the material:

see items requested in "Items to Be Produced" on attached subpoena issued from the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, to be produced on or before October 15, 2015

1 NEW YORK AFFIDAVIT OF SERVICE

2 STATE OF NEVADA.

3 COUNTY OF CLARK

} ss:

4 Carly Benicourt being duly sworn says: That at all times  
 5 herein affiant was over 18 years of age, not a party to nor interested in the proceeding in which  
 6 this affidavit is made. That affiant received the Subpoena on the 29<sup>th</sup> day of Septembe, 2015,  
 7 and served the same on the 29<sup>th</sup> day of Septembe, 2015 by delivering a copy to  
 8 the witness at: 665 Main Street, Suite 300

9 Buffalo, New York 14203

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

12 EXECUTED this 29<sup>th</sup> day of Septembe, 2015.

13 Dawn M Kornaker  
 14 Dawn M Kornaker

15 [Signature]  
 16 Signature of person making service

17 DAWN M. KORNAKER  
 18 NOTARY PUBLIC, STATE OF NEW YORK  
 19 QUALIFIED IN NIAGARA COUNTY  
 20 My Commission Expires June 1, 2017

1 3980

2 GARMAN TURNER GORDON LLP

3 GERALD M. GORDON, ESQ.

4 Nevada Bar No. 229

5 E-mail: ggordon@gtg.legal

6 TERESA M. PILATOWICZ, ESQ.

7 Nevada Bar No. 9605

8 E-mail: tpilatowicz@gtg.legal

9 650 White Drive, Ste. 100

10 Las Vegas, Nevada 89119

11 Telephone 725-777-3000

12 Attorneys for William A. Leonard

13 IN THE SECOND JUDICIAL DISTRICT COURT OF

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

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

18 Plaintiff,

19 vs.

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

27 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

SUBPOENA - CIVIL

XX Regular XX Duces Tecum

28 THE STATE OF NEVADA SENDS GREETINGS TO:

29 Dennis Vacco  
30 Lippes Mathias Wexler Friedman LLP  
31 665 Main Street, Suite 300  
32 Buffalo, New York 14203

33 YOU ARE HEREBY COMMANDED that all and singular, business and excuses set  
34 aside, you (1) shall produce the documents requested below for inspection and copying<sup>1</sup> on

35 <sup>1</sup> Alternatively, the documents may be delivered electronically to [tpilatowicz@gtg.legal](mailto:tpilatowicz@gtg.legal) prior to October 15, 2015.  
36 If documents are provided electronically, no appearance to produce and permit inspection is necessary on October

1 October 15, 2015 at 10:00 a.m. and (2) shall appear and attend to present testimony on the 20th  
2 day of October, 2015 at 10:00 a.m.. The address where you are required to appear is Key Center,  
3 50 Fountain Plaza, Suite 1400, Buffalo, New York 14202. Your attendance is required to give  
4 testimony and/or produce and permit inspection and copying of designated books, documents or  
5 tangible things in your possession, custody or control, or to permit inspection of premises. If you  
6 fail to attend, you may be deemed guilty of contempt of Court and liable to pay all losses and  
7 damages caused by your failure to appear. Please see Exhibit "A" attached hereto for  
8 information regarding the rights of the person subject to this Subpoena.

9 Dated this 24th day of September, 2015.

10 GARMAN TURNER GORDON LLP

11  
12 /s/ Teresa M. Pilatowicz  
13 GERALD E. GORDON, ESQ.  
14 TERESA M. PILATOWICZ, ESQ.  
15 650 White Drive, Ste. 100  
Las Vegas, Nevada 89119  
Telephone 725-777-3000

16 *Attorneys for William A. Leonard*

---

17  
18 ITEMS TO BE PRODUCED

---

19  
20 DEFINITIONS

- 21 1. "Action" means the above-captioned case pending in the Second Judicial District Court,  
22 Washoe County, Nevada, at Case No. A CV13-02663.
- 23 2. "Communication" means any contact, oral or written, formal or informal, at any time or  
24 any place under any circumstance whatsoever whereby any information of any nature  
25 was transmitted or transferred, including but not limited to personal conversation,  
conferences, telephone conversations, memoranda, letters, correspondence, electronic  
correspondence, texts, reports, and publications.
- 26 3. "Document" shall be deemed to mean any printed, typewritten, handwritten, electronic,  
27

28 \_\_\_\_\_ (Continued)  
15, 2015.

1 or otherwise recorded matter of whatever character, whether original, master or copy  
2 (whether still active, archived or transparent) and any copies or reproductions that are not  
3 identical to the original, that is or has been in the possession, control or custody of you,  
4 your attorney and/or all other person acting in your behalf or of which any of the  
5 aforementioned persons have knowledge, other person acting in your behalf or of which  
6 any of the aforementioned persons have knowledge, including, but not limited to, letters,  
7 e-mail (internal and external), communications, correspondence, memoranda,  
8 confirmations, facsimile transmittal sheets, transmittal forms, telegrams, notes,  
9 summaries, minutes, contracts, subcontracts, purchase orders, leases, amendments,  
10 change orders, proposals, requests for proposal, bids, marketing documents, reports,  
11 studies, drawings, charts, diagrams, sketches, estimates, specifications, addenda,  
12 schedules, directives, records of telephone conversations, staffing projections, records of  
13 meetings and conferences, including lists of persons attending meetings or conferences,  
14 summaries and records of personal conversations or interviews, exhibits, transcripts,  
15 books, manuals, publications, diaries, logs, daily reports, status reports, minutes of  
16 meetings, records, journals, entries in journals, charts, financial records and/or summaries  
17 of financial records, work papers, bills, ledgers, financial statements, audit reports,  
18 financial data, status sheets, contract status reports, tax returns, certificate of insurance,  
19 agreements of suretyship and/or indemnification, insurance policies, calendars,  
20 summaries of investigations and/or surveys, statistical compilations, audio or visual  
21 recordings, photographs, cpm schedules, spreadsheets, computer or magnetic records,  
22 computer memory (including that of any "transparent" information, information deleted  
23 from the personal computer or file but not from the system), hard drives, floppy discs,  
24 optical discs, CD-ROM discs, Bernoulli discs and their equivalents, magnetic tape,  
25 disaster recovery back-up, compact disks, computer generated reports or summaries,  
26 drafts of original or preliminary notes on and marginal comments appearing on any  
27 documents, other reports and records, any other paper or physical thing containing  
28 writing, photographic, imaged, or electronically recorded data, every copy of such  
writing or records where the original is not in the possession, custody or control of the  
aforementioned persons, and every copy of every such writing or record where such copy  
contains any commentary or notation whatsoever that does not appear on the original.

4. "Morabito" means Paul Morabito.

5. "Plaintiff" or "Leonard" refers to Plaintiff William A. Leonard, Trustee.

6. "Relate" or "Relating to" or "Relative to" means constituting, comprising, containing,  
setting forth, showing, disclosing, describing, explaining, summarizing, concerning, or  
referring to directly or indirectly.

7. "YOU" OR "YOUR" means Dennis Vacco and Lipkes Mathias Wexler Friedman LLP  
and their agents, employees, heirs, assignees or representatives.

#### INSTRUCTIONS

1. These requests shall be deemed continuing and as additional information concerning the  
answers is secured, such additional information shall be supplied to Plaintiff.

2. You shall produce all Documents in the manner in which they are maintained in the usual



1 course of business and/or shall organize and label Documents to correspond with the  
2 categories of these requests. A request shall be deemed to include a request for any and  
3 all file folders within which the document was contained, transmittal sheets, cover letters,  
4 exhibits, enclosures, or attachments to the Document in addition to the Document itself.

5 3. In producing Documents and other materials, You are requested to furnish all Documents  
6 or things in Your possession, custody, or control, regardless of whether such Documents  
7 or materials are possessed by You directly or Your directors, officers, agents, employees,  
8 representatives, subsidiaries, managing agents, affiliates, investigators, or by Your  
9 attorneys or their agents, employees, representatives, or investigators.

10 4. If any Document is held under claim of privilege, please identify the Document for which  
11 there is a claim of privilege and a full description thereof, including without limitation:

- 12 1. The date it bears;
- 13 2. The name of each person who prepared it or who participated in any way  
14 in its preparation;
- 15 3. The name of each person who signed it;
- 16 4. The name of each person to whom it, or a copy of it was addressed;
- 17 5. The name of each person who presently has custody of it or a copy of it;
- 18 6. The subject matter and its substance; and
- 19 7. What factual basis there is for the claim of privilege.

20 5. If any Document requested to be produced was but is no longer in Your possession or  
21 control, or is no longer in existence, state whether it is (1) missing or lost, (2) destroyed,  
22 (3) transferred voluntarily or involuntarily to others and if so to whom, or (4) otherwise  
23 disposed of; and in each instance explain the circumstances surrounding an authorization  
24 of such disposition thereof and state the approximate date thereof.

25 6. In the event that Documents called for by any particular request have been lost or  
26 destroyed, please state: (i) the date on which the Document(s) were lost or destroyed; (ii)  
27 the manner in which the Document(s) were lost or destroyed; (iii) the identity of the  
28 Document(s); (iv) the information contained within such Document(s) and the nature of  
the Document(s); and (v) the identity of any person(s) who has knowledge of the  
contents of the Document(s) or has received a copy of such Document(s).

7. Documents attached to each other should not be separated.

8. Documents not otherwise responsive to these requests shall be produced if such  
Documents mention, discuss, refer to, or explain the Documents that are called for in a  
request.

9. The term "and" as well as "or" shall be construed either disjunctively or conjunctively, as  
necessary, to bring within the scope of these requests any information which might  
otherwise be construed to be outside their scope.

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

1 11. The fact that a Document has been produced by You or any other defendant in any other  
2 litigation does not relieve You of Your obligation to produce your copy of the same  
3 Document, even if the two Documents are identical

4 **DISCOVERY REQUESTS**

5 1. Any and all Documents constituting, relating to, or referring to your engagement  
6 as counsel for Morabito between January 1, 2007 and December 31, 2014.

7 2. Any and all statements from January 1, 2010 through December 31, 2010  
8 detailing the descriptions of and amount billed for services provided by you to Paul A. Morabito  
9 or any third party on his behalf.

10 3. Any and all documents sufficient to identify any and all payments made from  
11 January 1, 2010 through December 31, 2010 to you by Paul Morabito or a third party on his  
12 behalf.

13 4. Any and all documents sufficient to identify any and all payments made by You  
14 to any third party on Morabito's behalf from January 1, 2010 through December 31, 2010.

15 5. Any and all Documents constituting, relating to, or referring to services  
16 performed by you with respect to the transfer of property located at 8355 Panorama Drive, Reno,  
17 Nevada to the Arcadia Living Trust on or about October 1, 2010. This includes, but is not limited  
18 to, opinion letters, written agreements relating to the transfer, including drafts, and valuations of  
19 the real and personal property located at 8355 Panorama Drive, Reno, Nevada whether ordered  
20 by You, obtained by You, or otherwise in Your file.

21 6. Any and all Documents constituting, relating to, or referring to services  
22 performed by you with respect to the transfer of property located at 371 El Camino Del Mar,  
23 Laguna Beach, California to the Edward William Bayuk Living Trust (the "Bayuk Living Trust")  
24 on or about October 1, 2010. This includes, but is not limited to, opinion letters, written  
25 agreements relating to the transfer, including drafts, and valuations of the real and personal  
26 property located at 371 El Camino Del Mar, Laguna Beach, California whether ordered by You,  
27 obtained by You, or otherwise in Your file.

28 7. Any and all Documents constituting, relating to, or referring to services

1 performed by you with respect to the transfer of property located at 370 Los Olivos, Laguna  
2 Beach, California to the Bayuk Living Trust on or about October 1, 2010. This includes, but is  
3 not limited to, opinion letters, written agreements relating to the transfer, including drafts, and  
4 valuations of the real and personal property located at 370 Los Olivos, Laguna Beach, California  
5 whether ordered by You, obtained by You, or otherwise in Your file.

6 8. Any and all Documents constituting, relating to, or referring to services  
7 performed by you with respect to the transfer of the Arcadia Living Trust's ownership interest in  
8 Baruk Properties, LLC on or about October 1, 2010. This includes, but is not limited to, opinion  
9 letters, written agreements relating to the transfer, including drafts, and valuations of the assets  
10 owned by Baruk Properties, LLC whether ordered by You, obtained by You, or otherwise in  
11 Your file. Such assets include, but are not limited to, the real and personal property located at  
12 1254 Mary Flemming Circle, Palm Springs, California; 1461 Glenneyre St., Laguna Beach,  
13 California; 520 Glenneyre St., Laguna Beach, California; and 49 Clayton Place, Sparks, Nevada.

14 9. Any and all Documents constituting, relating to, or referring to services  
15 performed by you relating to the sale of Paul A. Morabito's 80% interest in Superpumper, Inc. to  
16 Snowshoe Petroleum on or about September 30, 2010. This includes, but is not limited to,  
17 opinion letters, written agreements relating to the transfer, including drafts, and valuations of  
18 Morabito's interest in Superpumper, Inc. whether ordered by You, obtained by You, or otherwise  
19 in Your file.

20 10. Any and all Documents constituting, relating to, or referring to Communications  
21 between you and any employee of Matrix Capital Markets Group, Inc. regarding any valuations  
22 requested by You of Superpumper, Inc.

23 11. Any and all promissory notes drafted by You between January 1, 2010 and  
24 December 31, 2010 at the request of Morabito, or at the request of any third party on Morabito's  
25 behalf.

26 12. Any and all Documents related to or referring to promissory notes drafted by You  
27 between January 1, 2010 and December 31, 2010 at the request of Morabito, or at the request of  
28 any third party on Morabito's behalf including, but not limited to, any ledgers regarding

1 payments on such promissory notes.

2 13. Any and all Communications between You and any third party regarding  
3 promissory notes drafted by You between January 1, 2010 and December 31, 2012 at the request  
4 of Morabito, or at the request of any third party on Morabito's behalf.

5 14. Any and all Documents sufficient to identify any and all payments Received in  
6 any of Your accounts from Sefton Trustees on Morabito's behalf between September 15, 2010  
7 and the date of Your response to these requests.

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**AFFIDAVIT OF SERVICE**

STATE OF NEVADA        )  
                                  ) ss:  
COUNTY OF CLARK        )

\_\_\_\_\_, being duly sworn says: That at all times herein affiant was over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received the Subpoena on the \_\_ day of \_\_\_\_\_, 2015, and served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 2015 by delivering a copy to the witness at: \_\_\_\_\_

\_\_\_\_\_.

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

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Signature of person making service

EXHIBIT "A"

NEVADA RULES OF CIVIL PROCEDURE

Rule 45:

(c) **Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected material and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

1  
2 **(d) Duties in Responding to Subpoena.**

3 (1) A person responding to a subpoena to produce documents shall produce them as  
4 they are kept in the usual course of business or shall organize and label them to correspond with  
5 the categories in the demand.

6 (2) When information subject to a subpoena is withheld on a claim that it is  
7 privileged or subject to protection as trial preparation materials, the claim shall be made  
8 expressly and shall be supported by a description of the nature of the documents,  
9 communications, or things not produced that is sufficient to enable the demanding party to  
10 contest the claim.  
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## Exhibit 5



1 2610  
2 GARMAN TURNER GORDON LLP  
3 GERALD M. GORDON, ESQ.  
4 Nevada Bar No. 229  
5 E-mail: ggordon@gtg.legal  
6 TERESA M. PILATOWICZ, ESQ.  
7 Nevada Bar No. 9605  
8 E-mail: tpilatowicz@gtg.legal  
9 650 White Drive, Ste. 100  
10 Las Vegas, Nevada 89119  
11 Telephone 725-777-3000

12 *Attorneys for William A. Leonard*

13  
14  
15 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
16 **THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE**

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

20 Plaintiff,

21 vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

**NOTICE OF ISSUANCE OF SUBPOENA  
TO DENNIS VACCO**

Plaintiff, WILLIAM A LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, by and through his counsel, GERALD M. GORDON and TERESA M. PILATOWIZ, of the law firm of Garman Turner Gordon, hereby provide notice to Defendants of the issuance of a Subpoena to testify at a deposition and produced documents upon Dennis Vacco. A copy of the subpoena is attached hereto as Exhibit "1."

///

///

**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 January 2015.

GARMAN TURNER GORDON LLP

/s/ Teresa M. Pilatowicz  
GERALD M. GORDON, ESQ.  
Nevada Bar No. 229  
TERESA M. PILATOWICZ, ESQ.  
Nevada Bar No. 9605  
650 White Drive, Suite 100  
Las Vegas, Nevada 89119  
Tel: (735) 777-3000  
*Attorneys for William A. Leonard*

CERTIFICATE OF SERVICE

The undersigned, an employee of Garman Turner Gordon, hereby certifies that on the 29th day of September, 2015, she served a copy of the NOTICE OF ISSUANCE OF SUBPOENA TO DENNIS VACCO, to all interested parties via e-mail and U.S Mail system addressed to:

Barry Breslow  
Frank Gilmore  
ROBISON, BELAUSTEGUI, SHARP & LOW  
71 Washington Street  
Reno, NV 89503

  
An employee of Garman Turner Gordon

## **EXHIBIT 1**

## **EXHIBIT 1**

1 3980  
2 GARMAN TURNER GORDON LLP  
3 GERALD M. GORDON, ESQ.  
4 Nevada Bar No. 229  
5 E-mail: ggordon@gtg.legal  
6 TERESA M. PILATOWICZ, ESQ.  
7 Nevada Bar No. 9605  
8 E-mail: tpilatowicz@gtg.legal  
9 650 White Drive, Ste. 100  
10 Las Vegas, Nevada 89119  
11 Telephone 725-777-3000

12 *Attorneys for William A. Leonard*

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

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

13 Plaintiff,

14 vs.

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

22 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

SUBPOENA - CIVIL

XX Regular XX Duces Tecum

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**THE STATE OF NEVADA SENDS GREETINGS TO:**

**Dennis Vacco  
Lippes Mathias Wexler Friedman LLP  
665 Main Street, Suite 300  
Buffalo, New York 14203**

**YOU ARE HEREBY COMMANDED** that all and singular, business and excuses set  
aside, you (1) shall produce the documents requested below for inspection and copying<sup>1</sup> on

<sup>1</sup> Alternatively, the documents may be delivered electronically to [tpilatowicz@gtg.legal](mailto:tpilatowicz@gtg.legal) prior to October 15, 2015.  
If documents are provided electronically, no appearance to produce and permit inspection is necessary on October

1 October 15, 2015 at 10:00 a.m. and (2) shall appear and attend to present testimony on the 20th  
2 day of October, 2015 at 10:00 a.m.. The address where you are required to appear is Key Center,  
3 50 Fountain Plaza, Suite 1400, Buffalo, New York 14202. Your attendance is required to give  
4 testimony and/or produce and permit inspection and copying of designated books, documents or  
5 tangible things in your possession, custody or control, or to permit inspection of premises. If you  
6 fail to attend, you may be deemed guilty of contempt of Court and liable to pay all losses and  
7 damages caused by your failure to appear. Please see Exhibit "A" attached hereto for  
8 information regarding the rights of the person subject to this Subpoena.

9 Dated this 24th day of September, 2015.

10 GARMAN TURNER GORDON LLP

11  
12 /s/ Teresa M. Pilatowicz  
13 GERALD E. GORDON, ESQ.  
14 TERESA M. PILATOWICZ, ESQ.  
15 650 White Drive, Ste. 100  
16 Las Vegas, Nevada 89119  
17 Telephone 725-777-3000

18 *Attorneys for William A. Leonard*

---

19 ITEMS TO BE PRODUCED

---

20 DEFINITIONS

- 21 1. "Action" means the above-captioned case pending in the Second Judicial District Court,  
22 Washoe County, Nevada, at Case No. A CV13-02663.
- 23 2. "Communication" means any contact, oral or written, formal or informal, at any time or  
24 any place under any circumstance whatsoever whereby any information of any nature  
25 was transmitted or transferred, including but not limited to personal conversation,  
26 conferences, telephone conversations, memoranda, letters, correspondence, electronic  
27 correspondence, texts, reports, and publications.
- 28 3. "Document" shall be deemed to mean any printed, typewritten, handwritten, electronic,

(Continued)

15, 2015.

1 or otherwise recorded matter of whatever character, whether original, master or copy  
2 (whether still active, archived or transparent) and any copies or reproductions that are not  
3 identical to the original, that is or has been in the possession, control or custody of you,  
4 your attorney and/or all other person acting in your behalf or of which any of the  
5 aforementioned persons have knowledge, other person acting in your behalf or of which  
6 any of the aforementioned persons have knowledge, including, but not limited to, letters,  
7 e-mail (internal and external), communications, correspondence, memoranda,  
8 confirmations, facsimile transmittal sheets, transmittal forms, telegrams, notes,  
9 summaries, minutes, contracts, subcontracts, purchase orders, leases, amendments,  
10 change orders, proposals, requests for proposal, bids, marketing documents, reports,  
11 studies, drawings, charts, diagrams, sketches, estimates, specifications, addenda,  
12 schedules, directives, records of telephone conversations, staffing projections, records of  
13 meetings and conferences, including lists of persons attending meetings or conferences,  
14 summaries and records of personal conversations or interviews, exhibits, transcripts,  
15 books, manuals, publications, diaries, logs, daily reports, status reports, minutes of  
16 meetings, records, journals, entries in journals, charts, financial records and/or summaries  
17 of financial records, work papers, bills, ledgers, financial statements, audit reports,  
18 financial data, status sheets, contract status reports, tax returns, certificate of insurance,  
19 agreements of suretyship and/or indemnification, insurance policies, calendars,  
20 summaries of investigations and/or surveys, statistical compilations, audio or visual  
21 recordings, photographs, cpm schedules, spreadsheets, computer or magnetic records,  
22 computer memory (including that of any "transparent" information, information deleted  
23 from the personal computer or file but not from the system), hard drives, floppy discs,  
24 optical discs, CD-ROM discs, Bernoulli discs and their equivalents, magnetic tape,  
25 disaster recovery back-up, compact disks, computer generated reports or summaries,  
26 drafts of original or preliminary notes on and marginal comments appearing on any  
27 documents, other reports and records, any other paper or physical thing containing  
28 writing, photographic, imaged, or electronically recorded data, every copy of such  
writing or records where the original is not in the possession, custody or control of the  
aforementioned persons, and every copy of every such writing or record where such copy  
contains any commentary or notation whatsoever that does not appear on the original.

4. "Morabito" means Paul Morabito.

5. "Plaintiff" or "Leonard" refers to Plaintiff William A. Leonard, Trustee.

6. "Relate" or "Relating to" or "Relative to" means constituting, comprising, containing,  
setting forth, showing, disclosing, describing, explaining, summarizing, concerning, or  
referring to directly or indirectly.

7. "YOU" OR "YOUR" means Dennis Vacco and Lippes Mathias Wexler Friedman LLP  
and their agents, employees, heirs, assignees or representatives.

#### INSTRUCTIONS

1. These requests shall be deemed continuing and as additional information concerning the  
answers is secured, such additional information shall be supplied to Plaintiff.

2. You shall produce all Documents in the manner in which they are maintained in the usual

1 course of business and/or shall organize and label Documents to correspond with the  
2 categories of these requests. A request shall be deemed to include a request for any and  
3 all file folders within which the document was contained, transmittal sheets, cover letters,  
4 exhibits, enclosures, or attachments to the Document in addition to the Document itself.

5 3. In producing Documents and other materials, You are requested to furnish all Documents  
6 or things in Your possession, custody, or control, regardless of whether such Documents  
7 or materials are possessed by You directly or Your directors, officers, agents, employees,  
8 representatives, subsidiaries, managing agents, affiliates, investigators, or by Your  
9 attorneys or their agents, employees, representatives, or investigators.

10 4. If any Document is held under claim of privilege, please identify the Document for which  
11 there is a claim of privilege and a full description thereof, including without limitation:

- 12 1. The date it bears;
- 13 2. The name of each person who prepared it or who participated in any way  
14 in its preparation;
- 15 3. The name of each person who signed it;
- 16 4. The name of each person to whom it, or a copy of it was addressed;
- 17 5. The name of each person who presently has custody of it or a copy of it;
- 18 6. The subject matter and its substance; and
- 19 7. What factual basis there is for the claim of privilege.

20 5. If any Document requested to be produced was but is no longer in Your possession or  
21 control, or is no longer in existence, state whether it is (1) missing or lost, (2) destroyed,  
22 (3) transferred voluntarily or involuntarily to others and if so to whom, or (4) otherwise  
23 disposed of; and in each instance explain the circumstances surrounding an authorization  
24 of such disposition thereof and state the approximate date thereof.

25 6. In the event that Documents called for by any particular request have been lost or  
26 destroyed, please state: (i) the date on which the Document(s) were lost or destroyed; (ii)  
27 the manner in which the Document(s) were lost or destroyed; (iii) the identity of the  
28 Document(s); (iv) the information contained within such Document(s) and the nature of  
the Document(s); and (v) the identity of any person(s) who has knowledge of the  
contents of the Document(s) or has received a copy of such Document(s).

7. Documents attached to each other should not be separated.

8. Documents not otherwise responsive to these requests shall be produced if such  
Documents mention, discuss, refer to, or explain the Documents that are called for in a  
request.

9. The term "and" as well as "or" shall be construed either disjunctively or conjunctively, as  
necessary, to bring within the scope of these requests any information which might  
otherwise be construed to be outside their scope.

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



1 11. The fact that a Document has been produced by You or any other defendant in any other  
2 litigation does not relieve You of Your obligation to produce your copy of the same  
3 Document, even if the two Documents are identical

4 **DISCOVERY REQUESTS**

5 1. Any and all Documents constituting, relating to, or referring to your engagement  
6 as counsel for Morabito between January 1, 2007 and December 31, 2014.

7 2. Any and all statements from January 1, 2010 through December 31, 2010  
8 detailing the descriptions of and amount billed for services provided by you to Paul A. Morabito  
9 or any third party on his behalf.

10 3. Any and all documents sufficient to identify any and all payments made from  
11 January 1, 2010 through December 31, 2010 to you by Paul Morabito or a third party on his  
12 behalf.

13 4. Any and all documents sufficient to identify any and all payments made by You  
14 to any third party on Morabito's behalf from January 1, 2010 through December 31, 2010.

15 5. Any and all Documents constituting, relating to, or referring to services  
16 performed by you with respect to the transfer of property located at 8355 Panorama Drive, Reno,  
17 Nevada to the Arcadia Living Trust on or about October 1, 2010. This includes, but is not limited  
18 to, opinion letters, written agreements relating to the transfer, including drafts, and valuations of  
19 the real and personal property located at 8355 Panorama Drive, Reno, Nevada whether ordered  
20 by You, obtained by You, or otherwise in Your file.

21 6. Any and all Documents constituting, relating to, or referring to services  
22 performed by you with respect to the transfer of property located at 371 El Camino Del Mar,  
23 Laguna Beach, California to the Edward William Bayuk Living Trust (the "Bayuk Living Trust")  
24 on or about October 1, 2010. This includes, but is not limited to, opinion letters, written  
25 agreements relating to the transfer, including drafts, and valuations of the real and personal  
26 property located at 371 El Camino Del Mar, Laguna Beach, California whether ordered by You,  
27 obtained by You, or otherwise in Your file.

28 7. Any and all Documents constituting, relating to, or referring to services

1 performed by you with respect to the transfer of property located at 370 Los Olivos, Laguna  
2 Beach, California to the Bayuk Living Trust on or about October 1, 2010. This includes, but is  
3 not limited to, opinion letters, written agreements relating to the transfer, including drafts, and  
4 valuations of the real and personal property located at 370 Los Olivos, Laguna Beach, California  
5 whether ordered by You, obtained by You, or otherwise in Your file.

6 8. Any and all Documents constituting, relating to, or referring to services  
7 performed by you with respect to the transfer of the Arcadia Living Trust's ownership interest in  
8 Baruk Properties, LLC on or about October 1, 2010. This includes, but is not limited to, opinion  
9 letters, written agreements relating to the transfer, including drafts, and valuations of the assets  
10 owned by Baruk Properties, LLC whether ordered by You, obtained by You, or otherwise in  
11 Your file. Such assets include, but are not limited to, the real and personal property located at  
12 1254 Mary Flemming Circle, Palm Springs, California; 1461 Glenneyre St., Laguna Beach,  
13 California; 520 Glenneyre St., Laguna Beach, California; and 49 Clayton Place, Sparks, Nevada.

14 9. Any and all Documents constituting, relating to, or referring to services  
15 performed by you relating to the sale of Paul A. Morabito's 80% interest in Superpumper, Inc. to  
16 Snowshoe Petroleum on or about September 30, 2010. This includes, but is not limited to,  
17 opinion letters, written agreements relating to the transfer, including drafts, and valuations of  
18 Morabito's interest in Superpumper, Inc. whether ordered by You, obtained by You, or otherwise  
19 in Your file.

20 10. Any and all Documents constituting, relating to, or referring to Communications  
21 between you and any employee of Matrix Capital Markets Group, Inc. regarding any valuations  
22 requested by You of Superpumper, Inc.

23 11. Any and all promissory notes drafted by You between January 1, 2010 and  
24 December 31, 2010 at the request of Morabito, or at the request of any third party on Morabito's  
25 behalf.

26 12. Any and all Documents related to or referring to promissory notes drafted by You  
27 between January 1, 2010 and December 31, 2010 at the request of Morabito, or at the request of  
28 any third party on Morabito's behalf including, but not limited to, any ledgers regarding

1 payments on such promissory notes.

2 13. Any and all Communications between You and any third party regarding  
3 promissory notes drafted by You between January 1, 2010 and December 31, 2012 at the request  
4 of Morabito, or at the request of any third party on Morabito's behalf.

5 14. Any and all Documents sufficient to identify any and all payments Received in  
6 any of Your accounts from Sefion Trustees on Morabito's behalf between September 15, 2010  
7 and the date of Your response to these requests.

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AFFIDAVIT OF SERVICE

STATE OF NEVADA        )  
                                  ) ss:  
COUNTY OF CLARK        )

\_\_\_\_\_ being duly sworn says: That at all times herein affiant was over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received the Subpoena on the \_\_\_\_ day of \_\_\_\_\_, 2015, and served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 2015 by delivering a copy to the witness at: \_\_\_\_\_

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

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Signature of person making service

EXHIBIT "A"

NEVADA RULES OF CIVIL PROCEDURE

Rule 45:

(c) **Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected material and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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**(d) Duties in Responding to Subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

## Exhibit 6

[insert document code]  
**LIPES MATHIAS WEXLER FRIEDMAN LLP**  
**Stacey L. Moar, Esq.**  
**E-mail: smoar@lipes.com**  
**665 Main Street, Suite 300**  
**Buffalo, New York 14203**  
**Telephone: 716-853-5100**

Attorneys for Defendants

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.: 1

**RESPONSE TO SUBPOENA - CIVIL**

**RESPONSE TO SUBPOENA**

Dennis C. Vacco and Lipes Mathias Wexler Friedman LLP (collectively "LMWF") by  
and through the undersigned counsel, provide the following responses and objections to the  
Subpoena Duces Tecum to Dennis C. Vacco and Lipes Mathias Wexler Friedman LLP with  
Document Demands ("Document Demands") of Trustee William A. Leonard, made through his  
counsel, Garman Turner Gordon LLP.

LMWF reserves the right to amend or supplement these responses and objections as may  
be appropriate, and any objection or failure to object to any particular Document Demand, or any  
response that LMWF will produce documents, is not to be construed as an admission that such  
documents are within LMWF's possession, custody or control or that such documents exist. A  
statement that LMWF will produce documents means that LMWF will conduct a reasonable



1 search for and, if they exist, produce non-privileged responsive documents in his possession,  
2 custody or control.

3 Any documents produced by LMWF in response to the Document Demands are subject  
4 to LMWF's right to object to the admission in evidence of any and all such documents on the  
5 ground that they are irrelevant to the issues in this action or otherwise inadmissible.

6  
7 **GENERAL OBJECTIONS**

8 1. Each and every general objection is expressly incorporated by the specific  
9 Responses labeled Response No. 1 through Response No. 14 below.

10 2. LMWF objects to each paragraph of the Document Demand to the extent that  
11 paragraph seeks privileged information, proprietary information or other information that has been  
12 gathered or prepared in the course of litigation or which is otherwise subject to the lawyer-client  
13 privilege, the accountant-client privilege, the joint-defense privilege, the husband-wife privilege,  
14 the work product doctrine, or any other applicable privilege or immunity, including trade secrets,  
15 proprietary information, information that is confidential pursuant to a statute or court order,  
16 confidential business information, or other information subject to an expectation of privacy or  
17 confidentiality. Information described by this paragraph is referred to herein as "privileged."  
18  
19

20 3. LMWF objects to each paragraph of the Document Demand to the extent it requests  
21 information subject to the attorney-client privilege and attorney work product doctrine. Such  
22 privileged information includes but is not limited to detailed descriptions of attorney work product  
23 and attorney advice contained in invoices sent by LMWF.  
24

25 4. LMWF further objects to each paragraph of the Document Demand to the extent it  
26 requests information subject to attorney-client privilege held by corporate a client-entity of LMWF  
27 that is not a party to these proceedings.  
28

1 5. LMWF objects to each paragraph of the Document Demand to the extent that  
2 paragraph conflicts with, or seeks to impose any obligation beyond, the applicable rules and law.  
3

4 6. LMWF objects to each paragraph of the Document Demand to the extent that  
5 paragraph is not reasonably calculated to lead to the discovery of admissible evidence.  
6

7 7. LMWF objects to each paragraph of the Document Demand to the extent it requests  
8 information that is not relevant to this proceeding. Such irrelevant information includes but is not  
9 limited to detailed descriptions of attorney work product and attorney advice contained in invoices  
10 sent by LMWF.  
11

12 8. LMWF objects to each paragraph of the Document Demand to the extent that  
13 paragraph seeks documents that are not in LMWF's possession, custody or control.  
14

15 9. LMWF objects to each paragraph of the Document Demand to the extent that  
16 paragraph is unduly burdensome.  
17

18 10. LMWF specifically reserves the right to object, as appropriate, to the admission of  
19 these documents or these written responses as evidence at trial or for any other purpose.  
20

21 11. An objection does not mean that LMWF possesses documents or information  
22 responsive to the objectionable paragraph.  
23

#### 24 RESPONSE TO DOCUMENT DEMANDS

25 Request No. 1: Any and all documents constituting, relating to, or referring to your  
26 engagement as counsel for Morabito between January 1, 2007 and December 31, 2014.

27 Response: LMWF objects to this Document Demand as unduly burdensome and further  
28 objects to the extent it calls for the production of documents subject to the attorney client

1 privilege or attorney work product doctrine, or for the production of evidence not relevant to  
2 these proceedings. LMWF reserves the right to supplement this response upon receipt of a  
3 properly limited document demand.  
4

5 **Request No. 2:** Any and all statements from January 1, 2010 through December 31, 2010  
6 detailing the descriptions of and amount billed for services provided by you to Paul A.  
7 Morabito or any third party on his behalf.  
8

9 **Response:** LMWF objects to this Document Demand as seeking documents already in the  
10 custody and control of the Trustee. Notwithstanding this objection, LMWF refers to documents  
11 it previously produced to the Trustee in the Paul A. Morabito Involuntary Bankruptcy, Case No.  
12 BK-N-13-51237-GWZ.  
13

14 **Request No. 3:** Any and all documents sufficient to identify any and all payments made from  
15 January 1, 2010 through December 31, 2010 to you by Paul Morabito or a third party on his  
16 behalf.  
17

18 **Response:** LMWF objects to this Document Demand as seeking documents already in the  
19 custody and control of the Trustee. Notwithstanding this objection, LMWF refers to documents  
20 it previously produced to the Trustee in the Paul A. Morabito Involuntary Bankruptcy, Case No.  
21 BK-N-13-51237-GWZ.  
22

23 **Request No. 4:** Any and all documents sufficient to identify any and all payments made by  
24 You to any third party on Morabito's behalf from January 1, 2010 through December 31, 2010.  
25

26 **Response:** LMWF objects to this Document Demand as seeking documents already in the  
27 custody and control of the Trustee. Notwithstanding this objection, LMWF refers to documents  
28

1 it previously produced to the Trustee in the Paul A. Morabito Involuntary Bankruptcy, Case No.  
2 BK-N-13-51237-GWZ.

3  
4 **Request No. 5:** Any and all documents constituting, relating to, or referring to services  
5 performed by you with respect to the transfer of property located at 8355 Panorama Drive,  
6 Reno, Nevada to the Arcadia Living Trust on or about October 1, 2010. This includes, but is not  
7 limited to, opinion letters, written agreements relating to the transfer, including drafts, and  
8 valuations of the real and personal property located at 8355 Panorama Drive, Reno, Nevada  
9 whether ordered by You, obtained by You, or otherwise in Your file.  
10

11 **Response:** LMWF objects to this Document Demand as seeking documents subject to the  
12 attorney-client privilege and documents already in the custody and control of the Trustee.  
13 Notwithstanding this objection, LMWF refers to documents it previously produced to the  
14 Trustee in the Paul A. Morabito Involuntary Bankruptcy, Case No. BK-N-13-51237-GWZ.  
15

16 **Request No. 6:** Any and all documents constituting, relating to, or referring to services  
17 performed by you with respect to the transfer of property located at 371 El Camino Del Mar,  
18 Laguna Beach, California to the Edward William Bayuk Living Trust (the "Bayuk Living  
19 Trust") on or about October 1, 2010. This includes drafts, and valuations of real and personal  
20 property located at 371 El Camino Del Mar, Laguna Beach, California whether ordered by You,  
21 obtained by You, or otherwise in Your file.  
22

23 **Response:** LMWF objects to this Document Demand as seeking documents subject to the  
24 attorney-client privilege and documents already in the custody and control of the Trustee.  
25 Notwithstanding this objection, LMWF refers to documents it previously produced to the  
26 Trustee in the Paul A. Morabito Involuntary Bankruptcy, Case No. BK-N-13-51237-GWZ.  
27  
28

1 **Request No. 7:** Any and all documents constituting, relating to, or referring to services  
2 performed by you with respect to the transfer of property located at 370 Los Olivos, Laguna  
3 Beach, California to the Bayuk Living Trust on or about October 1, 2010. This includes, but is  
4 not limited to, opinion letters, written agreements relating to the transfer, including drafts, and  
5 valuations of the real and personal property located at 370 Los Olivos, Laguna Beach,  
6 California whether ordered by You, obtained by You, or otherwise in Your file.

7  
8 **Response:** LMWF objects to this Document Demand as seeking documents subject to the  
9 attorney-client privilege and documents already in the custody and control of the Trustee.  
10 Notwithstanding this objection, LMWF refers to documents it previously produced to the  
11 Trustee in the Paul A. Morabito Involuntary Bankruptcy, Case No. BK-N-13-51237-GWZ.  
12

13 **Request No. 8:** Any and all documents constituting, relating to, or referring to services  
14 performed by you with respect to the transfer of the Arcadia Living Trust's ownership interest  
15 in Baruk Properties, LLC on or about October 1, 2010. This includes, but is not limited to,  
16 opinion letters, written agreements relating to the transfer, including drafts, and valuations of  
17 the assets owned by Baruk Properties, LLC whether ordered by You, obtained by You, or  
18 otherwise in Your file. Such assets include, but are not limited to, the real and personal property  
19 located at 1254 Mary Flemming Circle, Palm Springs, California; 1461 Glenneyre St., Laguna  
20 Beach, California; 520 Glenneyre St., Laguna Beach, California; and 49 Clayton Place, Sparks,  
21 Nevada.  
22

23  
24 **Response:** LMWF objects to this Document Demand as seeking documents subject to the  
25 attorney-client privilege and documents already in the custody and control of the Trustee.  
26 Notwithstanding this objection, LMWF refers to documents it previously produced to the  
27 Trustee in the Paul A. Morabito Involuntary Bankruptcy, Case No. BK-N-13-51237-GWZ.  
28

1 **Request No. 9:** Any and all documents constituting, relating to, or referring to services  
2 performed by you relating to the sale of Paul A. Morabito's 80% interest in Superpumper, Inc.  
3 to Snowshoe Petroleum on or about September 30, 2010. This includes, but is not limited to,  
4 opinion letters, written agreements relating to the transfer, including drafts, and valuations of  
5 Morabito's interest in Superpumper, Inc. whether ordered by You, obtained by You, or  
6 otherwise in Your file.  
7

8 **Response:** LMWF objects to this Document Demand as seeking documents subject to the  
9 attorney-client privilege and documents already in the custody and control of the Trustee.  
10 Notwithstanding this objection, LMWF refers to documents it previously produced to the  
11 Trustee in the Paul A. Morabito Involuntary Bankruptcy, Case No. BK-N-13-51237-GWZ.  
12

13 **Request No. 10:** Any and all documents constituting, relating to, or referring to  
14 Communications between you and any employee of Matrix Capital Markets Group, Inc.  
15 regarding any valuations requested by You of Superpumper, Inc.  
16

17 **Response:** Notwithstanding this objection, LMWF refers to documents bates labeled  
18 LMWF000001 – LMWF000180 for its response.  
19

20 **Request No. 11:** Any and all promissory notes drafted by You between January 1, 2010 and  
21 December 31, 2010 at the request of Morabito, or at the request of any third party on  
22 Morabito's behalf.  
23

24 **Response:** LMWF objects to this Document demand as seeking documents subject to the  
25 attorney client privilege and documents already in the custody and control of the Trustee.  
26 Notwithstanding this objection, LMWF refers to documents it previously produced to the  
27 Trustee in the Paul A. Morabito Involuntary Bankruptcy, Case No. BK-N-13-51237-GWZ.  
28

1 **Request No. 12:** Any and all documents related to or referring to promissory notes drafted by  
2 You between January 1, 2010 and December 31, 2010 at the request of Morabito, or at the  
3 request of any third party on Morabito's behalf including, but not limited to, any ledgers  
4 regarding payments on such promissory notes.  
5

6 **Response:** LMWF objects to this Document Demand as seeking documents subject to the  
7 attorney-client privilege and documents already in the custody and control of the Trustee.  
8 Notwithstanding this objection, LMWF refers to documents it previously produced to the  
9 Trustee in the Paul A. Morabito Involuntary Bankruptcy, Case No. BK-N-13-51237-GWZ.  
10

11 **Request No. 13:** Any and all Communications between You and any third party regarding  
12 promissory notes drafted by You between January 1, 2010 and December 31, 2012 at the  
13 request of Morabito, or at the request of any third party on Morabito's behalf.  
14

15 **Response:** LMWF states that no responsive documents exist and reserves the right to  
16 supplement should it become aware of any responsive documents.  
17

18 **Request No. 14:** Any and all documents sufficient to identify any and all payments Received  
19 in any of Your accounts from Sefion Trustees on Morabito's behalf between September 15,  
20 2010 and the date of Your response to these requests.  
21

22 **Response:** LMWF objects to this Document Demand as seeking documents subject to the  
23 attorney-client privilege and documents already in the custody and control of the Trustee.  
24 Notwithstanding this objection, LMWF refers to documents it previously produced to the  
25 Trustee in the Paul A. Morabito Involuntary Bankruptcy, Case No. BK-N-13-51237-GWZ.  
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Dated: October 15, 2015  
Buffalo, New York

Respectfully submitted,

**LIPPES MATHIAS WEXLER FRIEDMAN LLP**

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Gerlad E. Gordon, Esq.  
650 White Drive, Ste. 100  
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## Exhibit 7

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

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

Plaintiff,

- vs - Case No. CV13-02663

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

Defendants.  
-----

Examination before trial of DENNIS C.

VACCO, taken pursuant to Subpoena, at  
Regus Business Center, 50 Fountain Plaza,  
Suite 1400, Buffalo, New York, on October 20, 2015,  
commencing at 10:09 a.m., before MARY SCHULZE, RPR,  
RMR, Notary Public.

JOB NUMBER: 262502-A

<p>Page 2</p> <p>1 APPEARANCES: GARMAN TURNER GORDON LLP,  2 BY TERESA M. PILATOWICZ, ESQ.,  3 665 White Drive, Suite 300,  4 Las Vegas, Nevada 89119,  5 (775) 777-3000,  6 tpilatowicz@gtg-legal,  7 Appearing for the Plaintiff.  8 ROBINSON, BELAUSTEGUI, SHARP &amp; LOW,  9 By FRANK C. GILMORE, ESQ.,  10 71 Washington Street,  11 Reno, Nevada 89503,  12 (775) 329-3151,  13 fgilmore@rbsllaw.com,  14 Appearing for the Defendants.  15 PRESENT: SALVATORE MORABITO</p>	<p>Page 3</p> <p>1 THE REPORTER: Are there any stipulations?  2 MR. GILMORE: No.  3 D E N N I S C. V A C C O, 665 Main Street,  4 Suite 300, Buffalo, New York 14203, after being  5 duly called and sworn, testified as follows:  6 EXAMINATION BY MS. PILATOWICZ:  7 Q. Good afternoon, or morning.  8 A. Good morning.  9 Q. Good morning, Mr. Vacco. My name is  10 Teresa Pilatowicz. I represent William Leonard in  11 the case that you're being deposed in today.  12 Can you please state and spell your name for  13 the record?  14 A. Dennis C. Vacco, D-E-N-N-I-S, middle  15 initial C, last name V as in victory A-C-C-O.  16 MS. PILATOWICZ: And I'll allow everyone  17 else in the room to make their appearances.  18 MR. GILMORE: My name is Frank Gilmore. I'm  19 an attorney with the firm of Robison, Belaustegui,  20 Sharp &amp; Low of Reno, Nevada. I represent all the  21 defendants in this case.  22 I understand that Mr. Vacco will be -- will  23 be deposed today under two different formalities.  24 One is as his -- in his individual capacity, having  25 been subpoenaed directly by the plaintiff, and,</p>
<p>Page 4</p> <p>1 secondarily, as a 30(b)(6) person most  2 knowledgeable witness for Superpumper, Inc., which  3 is a defendant in this case.  4 I will be -- I'm not representing Mr. Vacco,  5 but I am representing the defendants, and so I will  6 assert various objections on behalf of the  7 defendants, considering that Mr. Vacco is being  8 produced by my client to testify today in the  9 second of those cases.  10 So just wanted to make that clear.  11 BY MS. PILATOWICZ:  12 Q. All right. And let me -- let me make  13 one clarification. We're going to proceed with  14 your deposition in your capacity as the attorney --  15 and can you -- can you state your -- your firm name  16 for me?  17 A. Before I -- yes. It's Lippes,  18 L-I-P-P-E-S, Mathias, M-A-T-H-I-A-S, Wexler &amp;  19 Friedman, F-R-I-E-D-M-A-N.  20 So just -- just a point of clarification for  21 me, this is not the 2004 exam in the bankruptcy  22 case, or is it?  23 MR. GILMORE: It is not.  24 BY MS. PILATOWICZ:  25 Q. Is it not. This is --</p>	<p>Page 5</p> <p>1 A. It is not. Okay. So this is a  2 deposition in the --  3 Q. State court matter.  4 A. -- the state court case. Okay.  5 Q. And to follow up with what Mr. Gilmore  6 was saying, you -- you are appearing today in two  7 different capacities: In your individual capacity  8 and also as the personal -- person most  9 knowledgeable, or the 30(b)(6) representative of  10 Snowshoe Petroleum. We're going to handle those  11 two depositions separately. There'll likely be  12 some overlap, but we're going to take you as an  13 individual first, and then later, we'll do the  14 Snowshoe Petroleum deposition.  15 Do you understand that?  16 A. Okay. Sure.  17 MR. GILMORE: Okay.  18 MR. MORABITO: I'm Salvatore Morabito,  19 Phoenix, Arizona. I'm a defendant in the case.  20 MS. PILATOWICZ: Mark this as Exhibit 1.  21 The following was marked for Identification:  22 EXHIBIT 1 Subpoena  23 BY MS. PILATOWICZ:  24 Q. Mr. Vacco, you've been handed what's  25 been marked as Exhibit 1. Do you see recognize</p>

Page 6	Page 7
<p>1 Exhibit 1?</p> <p>2 A. Yes.</p> <p>3 Q. And can you tell me what Exhibit 1 is?</p> <p>4 A. It's a subpoena in this matter.</p> <p>5 Q. Have you seen this document before?</p> <p>6 A. Yes. Several times.</p> <p>7 Q. Is it pursuant to this document that</p> <p>8 you're appearing today?</p> <p>9 A. Well, I -- I'm -- I'm not sure about</p> <p>10 that because I thought that this was a subpoena for</p> <p>11 documents, but I'm here, in any event.</p> <p>12 Q. Okay. And so we're on the same page</p> <p>13 for the deposition, I'm going to go over some</p> <p>14 ground rules.</p> <p>15 Have you ever testified previously in a</p> <p>16 deposition?</p> <p>17 A. Yes.</p> <p>18 Q. How many times?</p> <p>19 A. Several.</p> <p>20 Q. More than ten? Less than ten?</p> <p>21 A. Probably -- where I've actually</p> <p>22 testified?</p> <p>23 Q. Where you've actually testified, yes.</p> <p>24 A. Probably -- probably ten.</p> <p>25 Q. When was the last time you've testified</p>	<p>1 in a deposition?</p> <p>2 A. Earlier this year.</p> <p>3 Q. When was that?</p> <p>4 A. I -- I just don't recall. Sometime,</p> <p>5 you know, when the weather was -- after the snow,</p> <p>6 but before the fall.</p> <p>7 Q. Fair enough.</p> <p>8 A. So sometime within the last six months.</p> <p>9 Q. What case was that?</p> <p>10 A. It's a federal court matter pending in</p> <p>11 the Southern District of New York.</p> <p>12 Q. What is your involvement in it?</p> <p>13 A. I am a defendant.</p> <p>14 Q. Who are the parties to that matter?</p> <p>15 A. Jeffrey Camp is the plaintiff, and</p> <p>16 Robert Berman, Robert Wong, W-O-N-G, and one other</p> <p>17 are the defendants. Probably some corporate</p> <p>18 defendants too.</p> <p>19 Q. What's the nature of that case?</p> <p>20 A. It's a dispute between shareholders of</p> <p>21 a company.</p> <p>22 Q. And why are you named as a defendant?</p> <p>23 A. That's a good question. I represented</p> <p>24 the company for a -- a brief period of time.</p> <p>25 Q. Okay. Prior to that deposition, when</p>
Page 8	Page 9
<p>1 was the last time you were deposed?</p> <p>2 A. I can't recall.</p> <p>3 Q. Have you taken depositions before?</p> <p>4 A. Several. Many.</p> <p>5 Q. Approximately how many?</p> <p>6 A. I don't know. Too numerous to count.</p> <p>7 Q. Now, you've been given an oath by the</p> <p>8 court reporter today. Do you understand that that</p> <p>9 oath that you gave today is subject to the same</p> <p>10 penalty of perjury as if we were sitting in a court</p> <p>11 of law?</p> <p>12 A. Sure.</p> <p>13 Q. And so we're getting a clear record of</p> <p>14 everything that's being said today, I'll ask you to</p> <p>15 wait for me to finish my questions before you</p> <p>16 answer, and I will do my best to wait for you to</p> <p>17 answer to ask my next question. Do you understand</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. Also, since the court reporter is</p> <p>21 taking down everything that we say, it will be best</p> <p>22 to use audible answers. A head -- head nods, head</p> <p>23 shakes don't translate on the record. Uh-huhs,</p> <p>24 uh-uhs don't as well. So do your best, too, to</p> <p>25 answer with verbal responses that are clear. Do</p>	<p>1 you understand that?</p> <p>2 A. Yes.</p> <p>3 Q. If you don't understand a question,</p> <p>4 feel free to ask me to rephrase. If you answer the</p> <p>5 question, I'm going to under -- I'll assume that</p> <p>6 you understood it. Is that -- do you understand</p> <p>7 that?</p> <p>8 A. Yep. Yes.</p> <p>9 Q. Now, I don't want you to guess today,</p> <p>10 but I am entitled to your best estimate. Do you</p> <p>11 understand that?</p> <p>12 A. To the best of my ability, I'll give it</p> <p>13 to you.</p> <p>14 Q. Now, at the end of this deposition, the</p> <p>15 court reporter will finalize the transcript of</p> <p>16 everything that was said today. You'll have an</p> <p>17 opportunity to review that transcript and make</p> <p>18 corrections. If you do make corrections, then any</p> <p>19 party can comment on those at the time of any</p> <p>20 hearing or any trial in the matter. Do you</p> <p>21 understand that?</p> <p>22 A. Yes.</p> <p>23 Q. I'm going to try to get through today</p> <p>24 as quickly as possible, but should you need a</p> <p>25 break, feel free to go ahead and ask me for one.</p>

<p style="text-align: right;">Page 10</p> <p>1 The only thing that I'll ask is that you</p> <p>2 don't ask for a break while a question is pending.</p> <p>3 Do you understand that?</p> <p>4 A. Yes.</p> <p>5 Q. Are you under the influence of any</p> <p>6 drugs, alcohol, or medication that would impair --</p> <p>7 impair your ability to be truthful today?</p> <p>8 A. No.</p> <p>9 Q. Are you under the influence of any</p> <p>10 drugs, alcohol, or medication that would impair</p> <p>11 your -- impair your ability to accurately remember</p> <p>12 events today?</p> <p>13 A. No.</p> <p>14 Q. Do you know of any reason why we cannot</p> <p>15 go forward today with your best testimony?</p> <p>16 A. No.</p> <p>17 By the way, so I've looked at the subpoena,</p> <p>18 and I do see now that it was -- it's both a --</p> <p>19 request for documents and my appearance here.</p> <p>20 Q. Okay. Thank you for that</p> <p>21 clarification.</p> <p>22 A. Referring to Exhibit 1.</p> <p>23 MS. PILATOWICZ: If you could mark that as</p> <p>24 Exhibit 2, please.</p> <p>25 The following was marked for identification:</p>	<p style="text-align: right;">Page 11</p> <p>1 EXHIBIT 2 Response to subpoena</p> <p>2 MS. PILATOWICZ: Whoops. I may have to --</p> <p>3 that might have been my copy. Just one second. My</p> <p>4 apologies. Yes. Can you change this to number 2?</p> <p>5 (Discussion off the record.)</p> <p>6 BY MS. PILATOWICZ:</p> <p>7 Q. Mr. Vacco, you've been handed what's</p> <p>8 been marked as Exhibit 2. Do you recognize</p> <p>9 Exhibit 2?</p> <p>10 A. Yes.</p> <p>11 Q. Did you prepare Exhibit 2?</p> <p>12 A. I collaborated in its preparation.</p> <p>13 Q. Who else worked on -- well, let me ask</p> <p>14 you, what is -- what is Exhibit 2? Can you</p> <p>15 identify it, please?</p> <p>16 A. It's the response to the subpoena</p> <p>17 requesting documents.</p> <p>18 Q. Who worked with you on completing</p> <p>19 Exhibit number 2?</p> <p>20 A. My litigation team: Stacey Moar, who</p> <p>21 signed the document, who's an associate in my</p> <p>22 practice group; Ben Wisniewski, who's another</p> <p>23 associate in my practice group. I'm not going to</p> <p>24 try to spell that for you. I think it's</p> <p>25 W-E-T-S-N-E-W-S-K-I.</p>
<p style="text-align: right;">Page 12</p> <p>1 My legal assistant, Stephanie Canastraro,</p> <p>2 and a partner in the -- in our firm's corporate</p> <p>3 group, Christian Lovelace, to the best of my</p> <p>4 knowledge.</p> <p>5 Q. Did you review Exhibit 2 when it was</p> <p>6 completed?</p> <p>7 A. Yes. I -- yes. I worked extensively</p> <p>8 on responding, so the subpoena, Exhibit number 1,</p> <p>9 which led to Exhibit number 2, I worked extensively</p> <p>10 on this, yes.</p> <p>11 Q. And is Exhibit 2 a complete response to</p> <p>12 the request for productions in the subpoena?</p> <p>13 A. Well, other than as it -- you know, as</p> <p>14 it's qualified. I'll let the document speak for</p> <p>15 itself.</p> <p>16 Q. Okay. If you could turn to page 2 of</p> <p>17 Exhibit 2 and look down at number 4 of the general</p> <p>18 objections. It says, LMWF further objects to each</p> <p>19 paragraph of the document demand to the extent it</p> <p>20 requests information subject to attorney-client</p> <p>21 privilege held by -- I believe there's a typo -- a</p> <p>22 corporate client entity of LMWF that is not a party</p> <p>23 to these proceedings.</p> <p>24 A. Correct.</p> <p>25 Q. Is there somebody -- is there a</p>	<p style="text-align: right;">Page 13</p> <p>1 specific client that you're referring to there?</p> <p>2 A. Certainly, it's in reference to</p> <p>3 Snowshoe Petroleum, Inc., and Supergumper, Inc.,</p> <p>4 but there might be others that don't immediately</p> <p>5 come to my attention, just reading that -- that</p> <p>6 paragraph 4.</p> <p>7 Q. Okay. Can you turn to page 5 of</p> <p>8 Exhibit 2? And under -- well, let me ask you to</p> <p>9 read -- to yourself is fine -- request number 5 and</p> <p>10 the response to request number 5. And let me know</p> <p>11 when you've read it.</p> <p>12 A. I've read both the request and the</p> <p>13 response.</p> <p>14 Q. Okay. The response indicates that LMWF</p> <p>15 objects to this document demand as seeking</p> <p>16 documents subject to the attorney-client privilege</p> <p>17 and documents already in the custody and control of</p> <p>18 the trustee.</p> <p>19 Were there any documents that have been</p> <p>20 withheld because of the attorney-client privilege?</p> <p>21 A. You'd have to ask Mr. Gilmore that.</p> <p>22 Q. Did you produce documents to</p> <p>23 Mr. Gilmore in response to the subpoena?</p> <p>24 A. Well, as the response indicates,</p> <p>25 notwithstanding -- quoting, notwithstanding this</p>

Page 14	Page 15
<p>1 objection, LMWF refers to documents it previously  2 produced to the trustee in the Paul A. Morabito  3 involuntary bankruptcy case, and then it lists the  4 case number.  5 Q. Okay. So any document that you've had  6 that would be responsive to request number 5,  7 you've given to Mr. Gilmore?  8 A. Well, I don't recall whether they were  9 given to Mr. Gilmore and then he disclosed them to  10 you or your firm, or whether we gave them directly  11 to your firm.  12 But the -- the documents that are requested  13 in -- you can see in many of the responses, we --  14 we indicate that the documents had been previously  15 provided to your firm on behalf of the trustee, who  16 is the plaintiff in this case.  17 So all of these documents in these -- so it  18 looks like requests number 2, 3, 4, 5, 6, 7, 8, 9  19 have been previously produced.  20 Q. Okay. And my -- my question is, just  21 to clarify, that you are not withholding any  22 documents based on the attorney-client privilege.  23 Is that correct?  24 A. My firm is not.  25 Q. Okay. So to further clarify, the</p>	<p>1 documents that have been produced to the trustee in  2 the bankruptcy case, have they been produced  3 directly by you?  4 A. I don't recall.  5 Q. And as to your request number 6, have  6 any documents been withheld based on the  7 attorney-client privilege?  8 A. My answer that I gave you previously  9 would apply to all of these.  10 Q. Okay. If you could look at page  11 number 7 of Exhibit 2.  12 A. Okay.  13 Q. Request number 10.  14 A. Correct.  15 Q. The response indicates, notwithstanding  16 this objection, LMWF refers to documents Bates  17 labeled LMWF's 1 through 180 for its response.  18 Do you know what objection is being referred  19 to in that response?  20 A. The qualification is in regard to, to  21 the extent that the demand is seeking documents  22 subject to the attorney-client privilege and  23 documents already in the control and custody of the  24 trustee.  25 Q. Did you communicate with anyone about</p>
Page 16	Page 17
<p>1 being deposed here today?  2 A. The individuals at Lippes Mathias  3 Wexler Friedman that I previously mentioned, with  4 the exclusion of my legal assistant, but the  5 lawyers, yes. Them. Mr. Gilmore, and briefly Mr.  6 Salvatore Morabito.  7 Q. Do you currently represent Mr.  8 Salvatore Morabito?  9 A. Individually?  10 Q. Correct.  11 A. No.  12 Q. What did you discuss with Mr. Gilmore  13 about your deposition today?  14 A. Mostly around the production of  15 documents that were requested in the subpoena.  16 Q. When did --  17 A. Almost exclusively, I mean except for  18 the logistics of -- of this and, you know, just  19 trying to separate the bankruptcy proceeding from  20 this proceeding.  21 But most of our dialogue was regarding the  22 documents that we had previously produced.  23 Q. When was the last time you spoke with  24 Mr. Gilmore about your deposition?  25 A. Probably last week, as we were</p>	<p>1 concluding the pulling together of those documents.  2 And, once again, so it wasn't just pulling together  3 the documents; it was reviewing all the documents,  4 again, to make sure that Frank, Mr. Gilmore, had  5 the documents that were requested and that they had  6 been previously produced.  7 Q. When did you speak with Mr. Salvatore  8 Morabito about your deposition?  9 A. I don't know. A couple weeks ago.  10 Q. Was it by phone call?  11 A. I think it was.  12 Q. What did you discuss with Mr. Morabito  13 about your deposition?  14 A. Whether I would be the person most  15 knowledgeable for Snowshoe Petroleum or not.  16 Q. Were there any other discussions?  17 A. Nope.  18 Q. Did you review any documents in  19 preparation for your deposition?  20 A. Other than, you know, the exercise that  21 we went through last week, which was more designed  22 to identify what's already been produced, no.  23 Q. Okay. Other than the conversations  24 with Mr. Gilmore, with your litigation team, and  25 with Mr. Morabito, Salvatore Morabito, have you</p>

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<p>1 done anything today -- anything else to prepare for 2 your deposition today? 3 A. No. 4 Q. Let's talk a little bit about your 5 background. Where did you attend college? 6 A. Colgate University, BA economics, 1974. 7 Q. And after you graduated, what did you 8 do next? 9 A. University of Buffalo Law School, JD, 10 1978. 11 Q. Did you take time off between college 12 and law school? 13 A. No. 14 Q. When were you licensed to practice law? 15 A. February 2000 -- February 1979. 16 Q. Where do you currently hold licenses to 17 practice law? 18 A. State of New York. 19 Q. Is that it? 20 A. Correct. 21 Q. Have you ever held a license in any 22 other state? 23 A. No. 24 Q. Between 1979 and today, have you always 25 been a practicing attorney?</p>	<p>1 A. I've always been registered with the 2 bar of the State of New York, but there was a brief 3 hiatus when I didn't formally practice law. 4 Q. When was that? 5 A. '99 through 2003. 6 Q. What were you doing during that time? 7 A. I was the regional vice president of 8 the New York subsidiary of Waste Management, Inc., 9 a publicly traded company, based in Houston, Texas. 10 Q. Why did you start doing that in 1999? 11 A. I wanted a break from the law, and it 12 was a great opportunity to run a company. 13 Q. Was there any particular reason you 14 wanted a break from the law? 15 A. I had just lost an election to the 16 future governor of the State of New York and 17 decided that I was going to take a break from 18 public service and practicing law. 19 Q. Okay. What made you go back to law in 20 2003? 21 A. Because that's -- that's my training 22 and background. 23 Q. Is there a reason you left the position 24 with the Waste Management open, or the Waste 25 Management subsidiary?</p>
Page 20	Page 21
<p>1 A. Because I took a position with a law 2 firm and a consulting firm in Albany, New York. 3 Q. Is that your current firm? 4 A. No. 5 Q. What firm was that? 6 A. The consulting firm was Crane &amp; Powers, 7 and it was affiliated with the law firm of Crane, 8 Greene, Parente &amp; Cherubin. 9 Q. And there was a law firm at the same 10 time that you went and worked for? 11 A. Powers &amp; Crane was the consulting firm. 12 Crane -- Crane, Greene, Parente &amp; Cherubin was the 13 law firm. 14 Q. Okay. 15 A. I was affiliated with both. 16 Q. Did you voluntarily leave the Waste 17 Management position? 18 A. My contract ran out. 19 Q. And how long did you work for the firm 20 that -- the consulting firm and the law firm that 21 you went to after leaving Waste Management? 22 A. Well, Crane &amp; Powers imploded before 23 too long after I arrived there, for reasons beyond 24 my control. 25 And the result of that implosion was we</p>	<p>1 formed an LLC known as Crane &amp; Vacco. And that 2 survived from 2004 to roughly 2008. 3 Q. And at that time were you practicing 4 law, or were you consulting, or were you -- or 5 both? 6 A. Both. 7 Q. When did you leave Crane &amp; Vacco? 8 A. March 31st of -- so I -- I terminated 9 my affiliation with the consulting firm Crane &amp; 10 Vacco. By that time it was Crane, Vacco &amp; Sanders, 11 otherwise known as CVS. So I terminated my 12 affiliation with that LLC and dissolved it in March 13 of 2008, and that's the same time that I ended my 14 affiliation with the law firm. 15 Q. Okay. What was the reason for ending 16 those affiliations? 17 A. I -- I was offered a job to serve as 18 in-house counsel to a New York domiciled insurance 19 company. 20 Q. What's the name of that company? 21 A. Upper Hudson -- Upper Hudson National 22 Insurance Company. 23 Q. Were you the general counsel there? 24 A. I was the counsel. 25 Q. So did they have a legal department, or</p>

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<p>1 they just had you?</p> <p>2 A. Just me.</p> <p>3 Q. How long did you work for Upper Hudson</p> <p>4 Insurance?</p> <p>5 A. Well, thanks to the economic implosion</p> <p>6 of 2008, the company mothballed its surplus in the</p> <p>7 fall of 2008, so I went from being a W-2 employee</p> <p>8 sometime in October, November of 2008, to being an</p> <p>9 outside counsel. And that role lasted for a couple</p> <p>10 years.</p> <p>11 Q. So 2008 till approximately --</p> <p>12 A. The fall of 2008.</p> <p>13 Q. To 2011? Before or after 2011?</p> <p>14 A. Well, it gets a little complicated,</p> <p>15 because then I joined this law firm, and a lot of</p> <p>16 that work came into this law firm.</p> <p>17 Q. Okay. That's a fair distinction. And</p> <p>18 "this law firm," are you talking about your current</p> <p>19 law firm?</p> <p>20 A. Lippes Mathias Wexler Friedman.</p> <p>21 Q. Why did you join your current law firm?</p> <p>22 A. Because I was tired of -- of practicing</p> <p>23 law from my -- my home office. Albany was no</p> <p>24 longer relevant to me and my practice, and this was</p> <p>25 a great opportunity to grow my practice and the</p>	<p>1 firm.</p> <p>2 Q. So at that time did you move from</p> <p>3 Albany to Buffalo?</p> <p>4 A. I never physically moved out of Western</p> <p>5 New York.</p> <p>6 Q. Okay. Do you have any areas of</p> <p>7 concentration in your law practice?</p> <p>8 A. I'm a litigator. We -- we do a lot of</p> <p>9 work -- we have a government investigations</p> <p>10 practice group that I head up. So while we try to</p> <p>11 avoid representing white collar defendants, I have</p> <p>12 the ability to pick and choose, but, mostly, we</p> <p>13 represent entities that are corporate entities that</p> <p>14 are the subject of some type of governmental</p> <p>15 investigation or regulatory compliance effort.</p> <p>16 Q. Do you have any special certifications?</p> <p>17 A. No. Besides my resumé?</p> <p>18 Q. Any -- any sort of special state</p> <p>19 designation or license --</p> <p>20 A. No.</p> <p>21 Q. -- other than a law degree?</p> <p>22 A. I don't -- other than a law degree? So</p> <p>23 outside of the practice of law?</p> <p>24 Q. Correct.</p> <p>25 A. No.</p>
Page 24	Page 25
<p>1 Q. Do you know Paul Morabito?</p> <p>2 A. I do.</p> <p>3 Q. When did you first meet Mr. Morabito?</p> <p>4 A. Hmm. Physically meet him, I don't</p> <p>5 recall precisely, but I would say that</p> <p>6 representation of him or some of his entities began</p> <p>7 in around about August or September 2007. I did</p> <p>8 not immediately meet him in person.</p> <p>9 Q. Okay. How -- how did you first become</p> <p>10 acquainted with Mr. Morabito?</p> <p>11 A. During the Reagan administration, I was</p> <p>12 the United States Attorney for the Western District</p> <p>13 of New York.</p> <p>14 My then colleague from San Francisco called</p> <p>15 me one day and asked me if I was interested in</p> <p>16 representing a friend of his, who had -- was --</p> <p>17 whose companies were the subject of a complaint in</p> <p>18 federal district court here in the Western</p> <p>19 District.</p> <p>20 Q. Who was that colleague in</p> <p>21 San Francisco?</p> <p>22 A. Joe Russoniello. Frankly, I think that</p> <p>23 Joe at that time was -- so this would have been the</p> <p>24 second of the -- the two Bush terms. I believe</p> <p>25 that Joe was actually back in the U.S. Attorney's</p>	<p>1 seat. So he had been a Reagan appointee, left, and</p> <p>2 then came back later as a Bush appointee.</p> <p>3 So Joe was the U.S. Attorney when he called</p> <p>4 me and asked me if I was interested in representing</p> <p>5 Morabito's companies.</p> <p>6 Q. Okay. And at that time you were</p> <p>7 working from your home office?</p> <p>8 A. So that at that time I was still</p> <p>9 affiliated with the Albany law firm of Crane, so</p> <p>10 no -- and by that time it probably wasn't Crane,</p> <p>11 Greene, Parente &amp; Cherubin; it was probably, at</p> <p>12 that point in time, Crane Parente. But I was still</p> <p>13 affiliated with the Albany law firm.</p> <p>14 Q. And who were -- or what were Paul's</p> <p>15 companies that you were asked to represent at that</p> <p>16 time?</p> <p>17 A. Oh, man. So there was a -- Tibarom</p> <p>18 sticks out in my mind, T-I-B-A-R-O-M, and maybe</p> <p>19 other Tibarom affiliates. I just don't recall</p> <p>20 precisely.</p> <p>21 Q. Okay. What was the nature of that</p> <p>22 litigation?</p> <p>23 A. It was a complaint in federal district</p> <p>24 court brought by a company -- I want to say a</p> <p>25 company out of Boston, Massachusetts, that was</p>



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<p>1 suing over a sale of property.</p> <p>2 Q. Do you recall what the dispute was</p> <p>3 about the sale of property?</p> <p>4 A. We -- the Morabito entities was</p> <p>5 impleaded into the case by the primary defendant.</p> <p>6 So this company sued. And I forgot the name of the</p> <p>7 company or the individuals who were the primary</p> <p>8 defendants, and then they impleaded in Morabito's</p> <p>9 companies over the value of the -- the property.</p> <p>10 Q. Okay. And did you represent</p> <p>11 Mr. Morabito and his companies in that litigation?</p> <p>12 A. I don't remember if Mr. Morabito</p> <p>13 himself individually was a defendant, but the</p> <p>14 companies -- to the extent that companies that he</p> <p>15 controlled were defendants, yes, I represented</p> <p>16 them. And if he was individually, I represented</p> <p>17 him as well.</p> <p>18 Q. Okay. How was that litigation</p> <p>19 ultimately resolved?</p> <p>20 A. It was dismissed against the Morabito</p> <p>21 entities.</p> <p>22 Q. Do you recall when that was?</p> <p>23 A. I don't.</p> <p>24 Q. Did you represent Mr. Morabito or any</p> <p>25 of his companies while that litigation was pending</p>	<p>1 in other matters?</p> <p>2 A. Well, your -- your qualification "while</p> <p>3 that litigation was pending" is pretty broad. So I</p> <p>4 would have to say the answer to that -- because it</p> <p>5 was pending for a long time, for many months, if</p> <p>6 not longer, so the answer to that is yes.</p> <p>7 Q. Okay. What other companies of</p> <p>8 Mr. Morabito's have you represented?</p> <p>9 A. It would be difficult to enumerate</p> <p>10 them. I'll try my best but --</p> <p>11 MR. GILMORE: Sorry. Can I get some</p> <p>12 clarification on the question? Mr. Morabito's</p> <p>13 companies, are you talking about ones in which he</p> <p>14 had complete or partial ownership or control, or he</p> <p>15 was the contact liaison, or all of the above?</p> <p>16 BY MS. PILATOWICZ:</p> <p>17 Q. Let's start with ones that he had any</p> <p>18 type of ownership in that you're aware of.</p> <p>19 A. Again, that's going to be difficult for</p> <p>20 me to give you a complete and comprehensive list</p> <p>21 without something more to refresh my recollection.</p> <p>22 But along the way to the Tibarom -- Tibarom</p> <p>23 entities, or some iteration of Tibarom, because</p> <p>24 there were -- you know, there were several</p> <p>25 Tibarom -- Tibarom entities, many of which were not</p>
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<p>1 involved in this Western District of New York</p> <p>2 litigation.</p> <p>3 Eventually, while this case was pending,</p> <p>4 the -- the case in Nevada that is the -- the root</p> <p>5 cause of these proceedings, eventually, I</p> <p>6 represented him in that case, or represented the</p> <p>7 company and his interest in that case.</p> <p>8 A Superpumper, a Snowshoe Petroleum,</p> <p>9 obviously, not a company that he is -- controls,</p> <p>10 but Superpumper, at one point in time he was</p> <p>11 involved in Superpumper. CWC, CNC. There was a</p> <p>12 Superpumper Properties.</p> <p>13 Some of the California entities are escaping</p> <p>14 me at this moment.</p> <p>15 Q. Okay.</p> <p>16 A. Because there was also litigation, as</p> <p>17 I'm sure you're aware, in I believe the Middle</p> <p>18 District of -- Central District of California,</p> <p>19 maybe the Northern District, wherever San Jose is.</p> <p>20 And they were entities in that litigation that I</p> <p>21 represented him in as well.</p> <p>22 Q. What litigation are you referring to?</p> <p>23 A. We referred to it as the eclectic</p> <p>24 litigation. This was a -- styled as a RICO claim</p> <p>25 that failed twice in being able to state a cause of</p>	<p>1 action, dismissed by the trial court judge in</p> <p>2 round 1, amended complaint, dismissed in round 2,</p> <p>3 and then affirmed by the circuit court.</p> <p>4 Q. So other than the litigation in the</p> <p>5 eclectic litigation, the litigation with the</p> <p>6 Tibarom entities that was pending in the federal</p> <p>7 district court of Western District of New York? Is</p> <p>8 that correct?</p> <p>9 A. There are actually two, now that you</p> <p>10 mention it. Two in the Western District of</p> <p>11 New York.</p> <p>12 Q. Okay.</p> <p>13 A. Same result in both cases. I forgot</p> <p>14 about --</p> <p>15 Q. Same results --</p> <p>16 A. Dismissed. Dismissed in both</p> <p>17 instances.</p> <p>18 Q. Both relating to the Tibarom entities?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. So other than the two that were</p> <p>21 pending and dismissed in the Western District of</p> <p>22 New York, the eclectic litigation, and the</p> <p>23 litigation in Reno, Nevada, that stemmed -- that</p> <p>24 all of this stems from, which I'll refer to as the</p> <p>25 Herbst litigation, have you represented</p>

<p style="text-align: right;">Page 30</p> <p>1 Mr. Morabito individually or any of his companies 2 in any other litigation? 3 A. Yes. 4 Q. What other litigation? 5 A. Again, that would have been some of the 6 California entities that I just don't recall. 7 There -- there was -- there were -- besides 8 eclectic, which is -- which was in federal court, 9 there were -- there were a couple of other state 10 court cases in California. And while there was 11 local counsel in those cases, we did also represent 12 Mr. Morabito and the entities involved. 13 And there was another Nevada litigation. 14 Q. Okay. Let's start with the California 15 state court litigations. How many -- approximately 16 how many were there? 17 A. Besides eclectic, which was the federal 18 court case, for sure one sticks out in my mind. We 19 called -- we referred to it as the Barbieri 20 litigation. 21 And there's -- my recollection is that there 22 was one other, but it just doesn't ring a bell with 23 me at the moment. 24 Q. Let's start with the Barbieri 25 litigation.</p>	<p style="text-align: right;">Page 31</p> <p>1 A. Barbieri. 2 Q. Barbieri litigation. What was that 3 litigation? 4 A. They were -- all of these cases, except 5 for Herbst, were of the same theory, that somehow 6 these people that bought properties from 7 individuals that Morabito had -- Morabito's 8 entities had sold properties to, that somehow, the 9 properties were -- the value of the properties were 10 artificially inflated. 11 Q. How was the Barbieri -- 12 A. So just so I make myself clear, my -- 13 my recollection is that in none of these cases was 14 Morabito or Morabito's entity the entity that sold 15 the property to the complaining plaintiff. 16 Strikes me that I could be wrong, maybe, 17 about Barbieri, for instance, but the case here in 18 the -- the two cases here in the Western District 19 of New York, the Morabito entity would have sold to 20 a third party. 21 The third party was then sued, along with 22 the Morabito entity, when the third party sold that 23 property to the eventual plaintiff. 24 Q. Okay. Thank you for that 25 clarification.</p>
<p style="text-align: right;">Page 32</p> <p>1 In the Barbieri litigation, do you recall 2 the Morabito entities that were defendants? 3 A. I don't. Again, it's, you know, 4 Tibaron CA. I just don't recall. 5 Q. Okay. And there was one other 6 litigation that you don't necessarily recall out of 7 California. Was it the same type of litigation? 8 A. Yes. 9 Q. Do you know where in litigation -- 10 where in California it was pending? 11 Do you know approximately what year? 12 THE REPORTER: I didn't get an answer. 13 THE WITNESS: No. I'm sorry. No. 14 BY MS. PIATONICZ: 15 Q. Do you recall what years? 16 A. Sometime between 2007 and 2014. 17 Q. Okay. And what about the other Nevada 18 litigation that you mentioned? What was that 19 litigation? 20 A. Actually, there were -- now that you 21 jogged my memory, I believe there were two -- 22 Q. Okay. 23 A. -- in addition to the infamous Herbst 24 case. There was a case that we referred to as 25 Oppio Ranches, and I believe Desi Moreno sued, so I</p>	<p style="text-align: right;">Page 33</p> <p>1 believe that that case was also in -- in suit. 2 Desi Moreno was part of the settlement, I believe, 3 of -- of the original judgment in the Herbst case. 4 But I do believe that Moreno had an independent 5 action in Nevada, which may have included the 6 Herbsts. I just don't recall at the moment. 7 Q. Was Oppio Ranches and Desi Moreno, 8 those were two separate cases? 9 A. Correct. 10 Q. Okay. What was the Oppio Ranches case? 11 A. Again, they're all the same. They're 12 all about value of property. The allegation's that 13 property -- value of property was artificially 14 inflated. 15 Q. And do you recall what the 16 Morabito-related entities in Oppio Ranches were? 17 A. I don't. 18 Q. And is Desi Moreno the same type of 19 case that you've been discussing? 20 A. Yes. 21 Q. Who is Desi Moreno? 22 A. He was an individual who bought 23 property in a suburb of Reno. I forgot exactly 24 where. Starks, maybe. I don't know. It's a 25 suburb of Reno. Bought property, and he eventually</p>

<p>Page 34</p> <p>1 was the landlord to the Herbsts.</p> <p>2 Q. Do you recall how the Desi Moreno</p> <p>3 litigation concluded?</p> <p>4 A. There was a settlement, which I believe</p> <p>5 was then somehow incorporated into the master</p> <p>6 settlement with the Herbsts.</p> <p>7 Q. Do you know when the Desi Moreno --</p> <p>8 A. It might have been -- it might have</p> <p>9 been separate, but there was a settlement.</p> <p>10 Q. Do you know when the Desi Moreno</p> <p>11 settlement was?</p> <p>12 A. So the Herbst settlement, which is the</p> <p>13 settlement of the -- the judgment that had been</p> <p>14 issued by Judge Adams. So, as you know, that that</p> <p>15 was eventually settled.</p> <p>16 The Moreno settlement would have been</p> <p>17 contemporaneous. Either -- either just slightly</p> <p>18 before or slightly after or incorporated. I do</p> <p>19 believe it was incorporated into the Herbst</p> <p>20 settlement. But it's all in the same time frame,</p> <p>21 which was -- I think that we had an agreement in</p> <p>22 principle in October of 2011, with John Desmond and</p> <p>23 Brian Irvine and company.</p> <p>24 Q. Are you aware of any settlements with</p> <p>25 Desi Moreno after 2011?</p>	<p>Page 35</p> <p>1 A. It -- it could have been into 2012.</p> <p>2 Q. Okay. Are you aware of any settlements</p> <p>3 of Desi Moreno after 2012?</p> <p>4 A. My recollection, it was one settlement</p> <p>5 with Desi Moreno. When it happened, my -- my</p> <p>6 recollection is that it's -- it's all part of the</p> <p>7 same attempt to resolve issue -- Morabito-related</p> <p>8 issues in Nevada.</p> <p>9 Q. Okay. Do you know how the Oppio</p> <p>10 Ranches --</p> <p>11 A. Settled.</p> <p>12 Q. -- litigation concluded?</p> <p>13 A. It was settled.</p> <p>14 Q. Do you know when that was settled?</p> <p>15 A. My sense is that it was -- predated the</p> <p>16 Herbst settlement, but maybe not by much. So</p> <p>17 2000 -- 2011. Again, it's all kind of in the same</p> <p>18 time frame. Which came first or second or third, I</p> <p>19 just don't recall.</p> <p>20 Q. Okay. Do you recall what the terms of</p> <p>21 the Oppio Ranches settlement was?</p> <p>22 A. The defendants were going to pay, over</p> <p>23 a period of time, some amount of money that was</p> <p>24 embedded in the settlement document.</p> <p>25 Q. But as you sit here, you -- today, you</p>
<p>Page 36</p> <p>1 don't recall how much that was?</p> <p>2 A. No.</p> <p>3 Q. What about with the Moreno settlement?</p> <p>4 Do you recall what the terms of that settlement</p> <p>5 was?</p> <p>6 A. The same thing. You know. Payment</p> <p>7 over time from some entity. But I think there was</p> <p>8 a nuance in the Moreno settlement that called for</p> <p>9 the build-out of a "warm shell."</p> <p>10 Q. What is your understanding of what a</p> <p>11 warm shell is?</p> <p>12 A. Was -- it was going to be a</p> <p>13 structure -- there was, you know, some dialogue</p> <p>14 around the definition of the warm shell, but,</p> <p>15 ultimately, it was the company that entered into</p> <p>16 the settlement was to build a structure of so many</p> <p>17 square feet that had the ability to serve multiple</p> <p>18 uses. So it was going to be a structure that was,</p> <p>19 you know, fully -- had all the utilities, all the</p> <p>20 mechanicals in it, which made it warm. Had all the</p> <p>21 mechanicals in it but was not built for any</p> <p>22 specific purpose.</p> <p>23 Q. And who was responsible for building</p> <p>24 that?</p> <p>25 A. I don't recall the entity.</p>	<p>Page 37</p> <p>1 Q. Was it on the plaintiff's side or the</p> <p>2 defendant's side?</p> <p>3 A. Defendant's side. It was originally a</p> <p>4 Herbst obligation that they reneged on.</p> <p>5 Q. Who was the dialogue about the warm</p> <p>6 shell, who was part of that dialogue?</p> <p>7 A. Moreno's lawyer. Three years ago, I</p> <p>8 would have been able to give you all of these</p> <p>9 guys', chapter and verse, names, cellphone numbers,</p> <p>10 telephone numbers. I just don't recall.</p> <p>11 Q. Okay.</p> <p>12 A. Sharp guy. I want to say his offices</p> <p>13 were in Truckee. I don't remember his name. Nice</p> <p>14 offices, though.</p> <p>15 Q. Besides Moreno's lawyer, who else was</p> <p>16 part of that dialogue?</p> <p>17 A. On behalf of Moreno?</p> <p>18 Q. On behalf of any party.</p> <p>19 A. So there's a piece of me that says John</p> <p>20 Desmond and Brian Irvine played a role in the</p> <p>21 Moreno settlement because it was part and parcel to</p> <p>22 the Herbst/Morabito settlement. Herbsts were also</p> <p>23 defendants in the Moreno case, to the best of my</p> <p>24 recollection. So John Desmond, Brian Irvine,</p> <p>25 perhaps Frank Gilmore and Barry Breslow because</p>

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<p>1 they were local counsel in Nevada.</p> <p>2 Q. Were you a party to those -- to that</p> <p>3 dialogue?</p> <p>4 A. Yes.</p> <p>5 Q. Was there anyone else besides,</p> <p>6 potentially, Mr. Gilmore and Mr. Breslow and</p> <p>7 yourself on Morabito's side that you were party to?</p> <p>8 A. My team.</p> <p>9 Q. Do you still currently represent Paul</p> <p>10 Morabito?</p> <p>11 A. No.</p> <p>12 Q. When did you stop representing</p> <p>13 Mr. Morabito?</p> <p>14 A. I don't recall.</p> <p>15 Q. Was it prior to January 1st, 2013?</p> <p>16 A. No.</p> <p>17 Q. Was it prior to January 1st, 2014?</p> <p>18 A. So that's my confusion. It was either</p> <p>19 April or May 2013 or 2014. I just don't recall as</p> <p>20 I sit here.</p> <p>21 Q. Was there something that led to you no</p> <p>22 longer representing Mr. Morabito?</p> <p>23 A. I don't think there was any singular</p> <p>24 item.</p> <p>25 Q. Were there a collection of items?</p>	<p>1 A. There were a collection of items,</p> <p>2 including collections.</p> <p>3 Q. Other than collections, what led to you</p> <p>4 no longer representing Mr. Morabito?</p> <p>5 A. I would say the outstanding AR was the</p> <p>6 issue.</p> <p>7 Q. So that was it? Outstanding AR was the</p> <p>8 reason that you terminated your relationship with</p> <p>9 Mr. Morabito?</p> <p>10 A. Principally.</p> <p>11 MR. GILMORE: Well, I'm sorry. He didn't</p> <p>12 testify he terminated his relationship with him but</p> <p>13 just his representation of him.</p> <p>14 MS. PILATOWICZ: That's fair.</p> <p>15 THE WITNESS: Principally.</p> <p>16 BY MS. PILATOWICZ:</p> <p>17 Q. What else led to the decision to no</p> <p>18 longer represent Mr. Morabito?</p> <p>19 A. We were here in Buffalo. The world --</p> <p>20 his world was imploding in Nevada. I just think</p> <p>21 that we both decided it was time to -- for him to</p> <p>22 seek other counsel.</p> <p>23 Q. So the collections and the distance</p> <p>24 were two factors. Were there any other factors?</p> <p>25 A. I just think that we lost the dialogue.</p>
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<p>1 Q. What makes you say that you lost the</p> <p>2 dialogue?</p> <p>3 A. That's -- that's just a conclusion</p> <p>4 based upon many conversations that I'm not going to</p> <p>5 get into that the relationship, attorney-client</p> <p>6 relationship, had been frayed.</p> <p>7 Q. Were those conversations prior to his</p> <p>8 involuntary bankruptcy filing or after?</p> <p>9 A. I believe that our representation</p> <p>10 terminated prior to the involuntary.</p> <p>11 Q. Okay. And are you aware that</p> <p>12 Mr. Leonard, who is the trustee in the Chapter 11</p> <p>13 case, has waived Mr. Morabito's privilege?</p> <p>14 A. Yes. I know that he has asserted a</p> <p>15 waiver.</p> <p>16 Q. Okay. Are you also aware that</p> <p>17 Mr. Leonard has asserted that the privilege has</p> <p>18 been waived as a result of the crime-fraud</p> <p>19 exception? Are you aware of that?</p> <p>20 A. I am aware of that as well.</p> <p>21 Q. And is it still your position today</p> <p>22 that you're not going to answer questions regarding</p> <p>23 conversations with Mr. Morabito?</p> <p>24 A. Well, it's Morabito's privilege to</p> <p>25 assert, so I'll leave that to Mr. Gilmore.</p>	<p>1 MR. GILMORE: And, yes, Mr. Morabito does</p> <p>2 intend to assert all applicable attorney-client</p> <p>3 privileges until there's been a determination by</p> <p>4 the Court as to the assertion of waiver.</p> <p>5 BY MS. PILATOWICZ:</p> <p>6 Q. Okay. And based on that, are you</p> <p>7 refusing to answer questions about conversations</p> <p>8 with Mr. Morabito relating to the breakdown in</p> <p>9 dialogue that led to the termination of your</p> <p>10 representation of Mr. Morabito?</p> <p>11 A. Again, I'm going to let Mr. Gilmore</p> <p>12 speak to the issues of privilege.</p> <p>13 MR. GILMORE: I haven't heard any questions</p> <p>14 that have been asked to which the witness was not</p> <p>15 able to answer on the basis of privilege.</p> <p>16 He testified as to general communications</p> <p>17 with a client, which would not rise to the level of</p> <p>18 attorney-client privileged communication.</p> <p>19 So he can answer questions until I think you</p> <p>20 ask one which might ask him to divulge an</p> <p>21 attorney-client communication.</p> <p>22 BY MS. PILATOWICZ:</p> <p>23 Q. Okay. What was the last conversation</p> <p>24 you had with Paul Morabito prior to -- or sorry.</p> <p>25 Let me rephrase that.</p>

Page 42	Page 43
<p>1 When was the last conversation you had with 2 Mr. Morabito prior to terminating the 3 attorney-client relationship? 4 A. I don't recall. 5 Q. Do you recall if it was a telephone 6 conversation? 7 A. Most likely. 8 Q. Okay. Do you recall what was said 9 during that conversation? 10 A. I recall just general -- the general 11 topic. 12 Q. And what was the general topic? 13 A. Our outstanding -- 14 MR. GILMORE: I will -- I would say if it 15 has anything to do with delivery or seeking of 16 legal advice, I'd ask you not to answer it. But if 17 it has something other than that, those two topics, 18 then you're free to answer. 19 THE WITNESS: The outstanding AR. 20 BY MS. PILATOWICZ: 21 Q. Okay. Did you discuss anything else on 22 that phone call? 23 A. I don't recall. 24 Q. Okay. When did you have a conversation 25 with Mr. Morabito that led you to believe that the</p>	<p>1 attorney-client relationship had broken down? 2 A. I don't remember precisely. 3 Q. Okay. What was said during a 4 conversation that made you think that the 5 attorney-client relationship had broken down? 6 A. I don't recall precisely what was said. 7 Q. What gave you the sense that the 8 attorney-client privilege or attorney-client 9 relationship had broken down? 10 A. I think I took the position that we 11 weren't going to continue representation. 12 Q. Why did you determine that you weren't 13 going to continue representation? 14 A. Because of the -- the extent of the 15 outstanding accounts receivable. 16 Q. Okay. But you testified earlier that 17 there were other factors that went into that 18 decision, one being that the relationship had 19 become frayed, I believe is the term you used. Is 20 that correct? 21 A. But it was around the AR. 22 Q. Okay. Was there any advice that you 23 provided to Mr. Morabito that he refused to follow 24 that led to your decision to terminate your 25 relationship with Mr. Morabito?</p>
Page 44	Page 45
<p>1 MR. GILMORE: That, I'm going to object to. 2 If you offered him advice, that would be centered 3 around the attorney-client privilege. 4 THE WITNESS: Mm-hmm. 5 BY MS. PILATOWICZ: 6 Q. No. I'm not asking for the advice -- 7 MR. GILMORE: Well, you asked -- 8 MS. PILATOWICZ: -- right now. 9 MR. GILMORE: You asked, did he fail to 10 follow some advice that Mr. Vacco had provided, and 11 that does delve into it. 12 BY MS. PILATOWICZ: 13 Q. Are you going to refuse to answer -- 14 A. Yes. 15 Q. -- based on the privilege? 16 Do you still have a personal relationship 17 with Mr. Morabito? 18 A. Yes. 19 Q. When was the last time you spoke with 20 Mr. Morabito? 21 A. Around about the middle of September of 22 this year. 23 Q. What was the nature of that 24 conversation? 25 A. He invited me to Thanksgiving dinner in</p>	<p>1 Canada. 2 Q. Was that a -- how was that 3 communication? And let me -- 4 A. I don't understand. 5 Q. Let me rephrase. 6 Was that a telephone conversation? 7 A. Yes. 8 Q. Okay. How often do you speak with 9 Mr. Morabito? 10 A. Now, infrequently. 11 Q. Okay. By infrequently, do you mean 12 more than -- I'm sorry. Less than every three 13 months? 14 A. I don't -- I don't think that we 15 communicate on a monthly basis. 16 Q. Okay. Do you plan on attending 17 Thanksgiving in Canada? 18 A. It's passed. Canada Thanksgiving has 19 passed. 20 Q. Thank you for that clarification. When 21 was -- when was Canadian Thanksgiving? 22 A. Canadian Thanksgiving was October 12th, 23 I believe, which is our Columbus Day. And I did 24 not attend. 25 Q. What was the reason you didn't attend?</p>

<p style="text-align: right;">Page 46</p> <p>1 A. Actually, the invitation was for the 2 week before, and my 20-year-old son was planning on 3 coming home from college to attend a football game 4 with his friends and me, so it was a conflict. 5 Q. When did you first meet Mr. Gilmore? 6 Mr. Frank Gilmore? 7 A. I think that we -- I -- I engaged his 8 law firm in 2010. When precisely Frank and I 9 personally met would have been sometime after the 10 engagement. Precisely when, I don't remember. 11 Q. Who made the decision to hire 12 Mr. Gilmore's law firm in 2010? 13 A. Well, after the debacle of the trial in 14 front of Judge Adams, Mr. Morabito was dissatisfied 15 with his then Reno counsel. He turned to me for 16 advice and counsel on a successor counsel in Reno. 17 This law firm was referred to me by some other 18 lawyer whose name now escapes me. 19 So then I vetted the law firm, proposed the 20 law firm to Mr. Morabito, and, obviously, he's the 21 client; he made the decision. 22 Q. Do you know Jeff Hartman? 23 A. The name Hartman sounds familiar. I 24 don't know in what context. 25 Q. Okay. Do you know Scott Gautier? Let</p>	<p style="text-align: right;">Page 47</p> <p>1 me spell that for you so I make sure I'm saying it 2 correctly. G-A-U-T-I-E-R. 3 A. I believe he was, if not still does, 4 represent Morabito in the involuntary bankruptcy. 5 Q. Did you have any connection with the 6 retention of Scott Gautier? 7 A. No. 8 Q. Have you ever met Scott Gautier? 9 A. Personally, no. 10 Q. Do you know -- and I'm probably going 11 to ask for your help on this one -- Sue -- 12 A. Sujata Yalamanchili. 13 Q. Okay. 14 A. She is in the attorney directory here. 15 I'm not even going to try to spell Yalamanchili for 16 you. 17 I do know her. 18 Q. When did you meet her? 19 A. In 2007. 20 Q. How did you meet her? 21 A. Well, after Joe Russonicchio connected 22 me to Morabito on the case here in the Western 23 District and Mr. Morabito and I had some 24 preliminary discussions about the background of 25 that case, I was pleased to learn that it was a</p>
<p style="text-align: right;">Page 48</p> <p>1 Buffalo attorney, Sujata Yalamanchili, who was 2 principally involved in the underlying 3 transactions. I didn't know her personally prior 4 to then. 5 Q. And did you work with her in the 6 litigation that was pending in the federal court of 7 the Western District of New York? 8 A. She was an invaluable resource for this 9 matter, the Western District of New York case, both 10 Western District of New York cases. And she was 11 also a resource in the so-called Herbst litigation. 12 Q. Have you worked with her in any other 13 cases that deal with Paul Morabito or any of his 14 entities? 15 A. Beyond the three that I just mentioned, 16 I don't believe so. 17 Q. Have you worked with her on any 18 transactional matters related to Paul Morabito or 19 his entities? 20 A. No. 21 Q. Now, we've been discussing a little bit 22 the Herbst litigation, which is the litigation that 23 was pending in Reno, Nevada. There was an 24 approximately \$140 million judgment entered. 25 Do you recall when that judgment --</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Well, it was an \$85 million judgment. 2 The judgment that was entered was -- I could be 3 wrong, but that was the settlement amount. 4 Q. Okay. There was a substantial judgment 5 at some point, though, entered. 6 A. There was a substantial judgment, 7 correct. 8 Q. Do you recall when that was entered? 9 A. September 2010. 10 Q. And how were you advised that the 11 judgment was entered? 12 A. Phone call from Leif Reid. 13 Q. And who is Leif Reid? 14 A. Trial counsel on the case in Reno, 15 Nevada. 16 Q. What was your reaction to that 17 judgment? 18 A. Utter surprise. 19 Q. Did you or your office start taking any 20 actions with respect to Morabito's assets? 21 A. There came a point in time when -- 22 after having analyzed the decision, so it was a 23 written decision, we -- we worked with Paul and 24 other owners of properties to get valuations on 25 properties and to -- to -- the -- the goal was very</p>

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<p>1 simple. The decision entered by Judge Adams, for 2 as much as Herbst and their litigation team wanted 3 to wave that decision around as it related to Paul 4 Morabito, they were not as willing to wave it 5 around as it related to Salvatore Morabito and 6 Edward Bayuk, both of whom were exonerated, if you 7 will, by Judge Adams. 8 Judge Adams found that they were not 9 involved in any of the alleged fraud that was the 10 subject of the judgment, and the -- the decision of 11 Judge Adams dismissed the claims, rejected the 12 claims against Salvatore Morabito and Edward Bayuk. 13 The -- the effort was because they owned -- 14 all three of them, in many instances, owned assets 15 together, the goal, after researching Nevada law 16 and consulting with Nevada counsel, was to 17 right-size the investment so that everybody walked 18 away with their proportionate share of the 19 investment, including Paul A. Morabito. 20 For instance, the Panorama property, which 21 was located in Reno, my recollection serves me that 22 it was owned by a Morabito entity and an Edward 23 Bayuk entity but not in equal proportions, if I 24 recall correctly. 25 There were properties in California, Laguna</p>	<p>1 Beach, California, that was jointly owned, again, 2 not in equal proportions. 3 And then there was Superpumper, where all 4 three of them had an ownership interest. 5 So the goal was to essentially take all of 6 those assets and to -- to identify the value of 7 Morabito's stake in those assets, and to transfer 8 that value exclusively to him, and then separate 9 the equity, if you will, to the extent it existed, 10 for Edward and Sam, because they were now relieved 11 of this lawsuit. 12 And in an effort to not embroil them, 13 ironically, as they are now, in litigation, the 14 properties were, again, valued and moved so that 15 everybody, at the end of the day, as you took the 16 whole and you took the percentages that each one of 17 them owned in the whole, the goal was to have 18 Morabito walk away with the same value that he had 19 in the whole, while separating from Morabito the 20 interest that Edward and Sam also owned. 21 Q. When did you start that process? 22 A. Mid -- mid to late September of 2010. 23 Q. Who ultimately decided to commence this 24 separation of the assets? 25 A. Well, the parties.</p>
Page 52	Page 53
<p>1 Q. The parties being Paul Morabito, Sam 2 Morabito, and Edward Bayuk? 3 A. Sure. Edward and Sam didn't want to 4 be -- be chased because they had an equity interest 5 in properties that were also attached to Paul. 6 Q. So who raised the idea of separating 7 the assets? 8 A. I don't recall. 9 Q. Do you recall the first discussion 10 regarding separating the assets? 11 A. No. 12 Q. Do you recall any discussions regarding 13 separating the assets? 14 A. Yes. 15 Q. When was the first discussion that you 16 can remember? 17 A. I don't recall. 18 Q. Do you recall what that discussion was? 19 A. No. 20 Q. Do you recall who was present during 21 any of these discussions? 22 A. Keep in mind, most of these discussions 23 were telephonic. 24 Q. Okay. 25 A. So, again, I don't remember.</p>	<p>1 Q. Do you recall who was on any of the 2 phone calls? 3 A. Well, certainly Paul and, from time to 4 time, Edward and Sam. I would say Sam less so 5 than -- than Edward. And the -- the Broslow people 6 too. Belaustegui people. 7 Q. Do you recall whether you raised the 8 idea of separating assets or if it was raised to 9 you? 10 A. It might have come from me, mostly 11 because I was fixated on the fact that Edward and 12 Sam had been exonerated. So the Panorama 13 property's a perfect example. Again, I don't 14 remember the two specific entities that Edward and 15 Paul controlled that were the actual owners of the 16 property. My recollection -- and I could stand 17 corrected on this if you show me a document -- is 18 that the split wasn't 50/50; it was either 60/40 or 19 70/30, including, you know, mortgage obligation. 20 We separated Edward's interest, ownership 21 interest, in that so that the property located in 22 Nevada would be a ripe target for the Herbsts and 23 their collection efforts, minus the satisfaction of 24 the underlying mortgage, because they didn't have 25 to then deal with Edward, and Edward was tired of</p>

<p>Page 54</p> <p>1 the litigation, and Edward didn't want to be 2 embroiled in any more litigation with the Herbsts. 3 Judge Adams exonerated him. He wanted out. 4 And this effort was to -- to maintain value, 5 maintain value -- maintain the value of Morabito's 6 ownership interest, while separating the ownership 7 interest of the two individuals who were exonerated 8 by Judge Adams. 9 So going back to the Panorama property, just 10 for illustration purposes, if it was worth a 11 million dollars, but because Edward's ownership 12 interest -- let's just say it was 30 percent as 13 opposed to 50 percent. That means that the best 14 that the Herbsts could do, free and clear of the 15 mortgage, was \$700,000 or Paul's interest in the 16 Panorama property. By virtue of what we did, they 17 now had access to the full million dollar value. 18 Q. Do you recall any of your discussions 19 with Paul Morabito regarding the separation of 20 assets? 21 A. There were many. 22 Q. Do you recall any specific discussions? 23 A. No. 24 Q. Did you represent Edward Bayuk 25 individually?</p>	<p>Page 55</p> <p>1 A. Yes. At that time. Yes. 2 Q. Did you have a retention agreement with 3 Mr. Bayuk? 4 A. I don't believe so. 5 Q. Is it your normal practice to have 6 retention agreements with clients that you 7 represent? 8 A. Usually. 9 Q. Is there a reason why you didn't have 10 one with Mr. Bayuk? 11 A. I don't recall. 12 Q. Did you represent Sam Morabito during 13 this separation of assets? 14 A. I -- I don't remember whether Sam had 15 independent counsel or not. 16 Q. Do you recall if you had a retention 17 agreement with Mr. -- with Mr. Sam Morabito? 18 A. No. 19 Q. No, you don't recall, or no, you do -- 20 A. Did not. 21 Q. Did not have one? 22 A. Correct. To the best of my knowledge. 23 Q. Do you recall any of your discussions 24 with Edward -- with Sam Morabito regarding the 25 separation of assets?</p>
<p>Page 56</p> <p>1 A. I don't recall particular 2 conversations. 3 Q. Do you recall the general sense of your 4 discussions? 5 A. Again, it was -- so, you know, I have 6 an ownership interest in property X or in asset X. 7 How am I going to get that out? 8 Q. Other than Paul Morabito, Sam Morabito, 9 and Edward Bayuk, was there anyone else that you 10 discussed the separation of assets with? 11 A. So I mentioned the Belaustegui people. 12 But maybe even before then, Leif Reid. 13 Q. What was your conversation with Leif 14 Reid? 15 MR. GILMORE: I'll ask you not to disclose 16 attorney-client communications -- 17 THE WITNESS: Yeah. 18 MR. GILMORE: -- but you can testify as to 19 nonattorney-client communications. 20 THE WITNESS: We -- we were researching 21 Nevada law on these types of transfers. We were -- 22 we were -- we were spend -- obviously, we weren't 23 Nevada attorneys, so we were researching Nevada 24 law, and we wanted a better understanding of what 25 the -- the, you know, body of caselaw was out</p>	<p>Page 57</p> <p>1 there. So it was more technical nature with -- 2 with -- whether it was Leif or with the Belaustegui 3 firm, although, eventually, the Belaustegui firm 4 got more involved in the mechanics, if you will. 5 We were very cognizant of the claims that 6 are made in this lawsuit now. And we went to great 7 lengths to avoid these claims, which is why -- 8 eventually, you'll get to it because you asked for 9 it -- why we went to Matrix to get an independent 10 third-party appraisal of the so-called Supertanker 11 asset. We just didn't stick a finger in the wind 12 because Nevada law said that you can make these 13 transfers, as long as they're arm's length and for 14 fair market value. That was our understanding of 15 Nevada law. 16 And that's how we tried to arrange each one 17 of these separations, if you will, of the various 18 equity interest. 19 BY MS. PILATOWICZ: 20 Q. When you say the -- and I can never say 21 the name of Mr. Gilmore's firm. 22 A. Belaustegui. 23 Q. -- Belaustegui were involved in more 24 the mechanics of it, what do you mean by that? 25 A. Well, eventually, so as the -- the</p>



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<p>1 Lewis &amp; Roca firm transitioned out of 2 representation and Barry Breslow and Mr. Gilmore 3 stepped into the role of primary Nevada counsel, 4 you know, we worked on a variety of issues 5 collaboratively. 6 So when I say they -- they were more -- they 7 got more involved in the mechanics, it wasn't just 8 a matter of giving us their assessment of Nevada 9 law. We were working collaboratively to -- for 10 instance, these -- these settlements or, you know, 11 I recall there was -- you know, there was even some 12 depositions in these -- I want to say that there 13 was a deposition, for instance, in the Moreno case 14 that Mr. Breslow -- 'cause I'm not admitted in 15 Nevada, so we worked very closely with this law 16 firm. 17 Q. Was there any specific work that 18 Mr. Gilmore's law firm did with respect to the 19 separation of assets you've been describing? 20 A. I don't -- I don't think that they were 21 that deep in the weeds. 22 MS. PILATOWICZ: Would you mark this as 23 Exhibit 3, please. 24 The following was marked for Identification: 25 EXHIBIT 3 Purchase and sale agreement</p>	<p>1 dated September 27, 2010 2 BY MS. PILATOWICZ: 3 Q. Mr. Vacco, you've been handed what's 4 been marked as Exhibit 3. Do you recognize 5 Exhibit 3? 6 A. Yes. Generally, I do. 7 Q. And what is Exhibit 3? 8 A. It's a purchase and sale agreement. 9 Q. Did you prepare Exhibit 3? 10 A. My law firm did. 11 Q. Do you know who in your law firm did? 12 A. I don't recall specifically. 13 Q. Did you represent Paul Morabito with 14 respect to this purchase and sale agreement? 15 A. Yes. 16 Q. Did you represent the Arcadia Living 17 Trust dated February 14, 2006, with respect to this 18 purchase and sale agreement? 19 A. Yes. 20 Q. Do you have a retention agreement with 21 the Arcadia Living Trust? 22 A. I don't -- I don't recall. 23 Q. If you reviewed your internal records, 24 would you be able to locate whether you have a 25 retention agreement?</p>
Page 60	Page 61
<p>1 A. Yes. 2 Q. Did you represent Mr. Edward Bayuk with 3 respect to this purchase and sale agreement? 4 A. I don't recall whether Edward had 5 independent counsel look at this or not. I don't 6 recall. 7 Q. Do you recall if you were representing 8 Mr. Bayuk, though? 9 A. On this transaction, I just -- I just 10 don't recall. There's -- there's -- there's a 11 piece of me that says that Edward was consulting 12 counsel in California. 13 Q. Do you have any idea who that counsel 14 would be? 15 A. I'm guessing Mark Lehman. 16 Q. Who's Mark Lehman? 17 A. A lawyer in Los Angeles. 18 Q. Did he work at a firm? 19 A. I think he had his own firm. 20 Q. Okay. Had you worked with Mr. Lehman? 21 A. Did I work with him? 22 Q. Yes. 23 A. What do you mean by that? 24 Q. Did you -- how were you aware of 25 Mr. Lehman?</p>	<p>1 A. Edward or Paul brought him to my 2 attention. 3 Q. Did you represent the Edward William 4 Bayuk Living Trust dated 6/18/2008, with respect to 5 this purchase and sale agreement? 6 A. I've -- I've already said that I 7 don't -- I don't recall. 8 Q. I'm sorry. I was asking you about 9 the -- the trust as opposed to -- 10 A. I'm sorry. 11 Q. -- him individually. 12 A. Yeah. I don't recall. 13 Q. Now, this document represents the 14 transfer of multiple properties -- 15 A. Right. 16 Q. -- one being 371 El Camino Del Mar, 17 another one being 370 Los Olivos, and the other one 18 being 8355 Panorama Drive. 19 Do you recognize those properties? 20 A. I do. 21 Q. What do you -- what was your 22 recollection about who owned the El Camino 23 property? 24 A. Well, I'm looking at the document, so 25 it's refreshed my recollection.</p>

	Page 62	Page 63
1	Q. Okay.	1 Then the next piece of property, the
2	A. I mean, the property --	2 373 Los Olivos, was owned 50/50 between the two of
3	Q. So who owned it?	3 them but did not have the same value, if you will,
4	A. -- according to the document, all of	4 as the -- the El Camino property.
5	these -- so it appears as though the El Camino and	5 And then the -- it appears from this
6	Los Olivos property were both owned, in some	6 agreement that they then individually owned
7	proportion or percentage, by the Arcadia Living	7 interests, two-thirds and one-third, as tenants in
8	Trust and the William Bayuk Living Trust.	8 common in the Panorama Drive property.
9	Q. Okay. And how did -- how was it	9 So as you were trying to assess, what did
10	determined who would receive which properties	10 the Arcadia Living Trust own, it -- it -- it was --
11	through this purchase and sale agreement?	11 so that that could be segregated and -- and put in
12	A. Well, so earlier, without this document	12 Morabito's name, versus what did the Bayuk Trust --
13	in front of me, I gave you just the rough example	13 and Edward and -- again, was excoriated in Judge
14	of the Panorama property in Nevada. So this	14 Adams' decision, what portion of these properties
15	document speaks for itself. But it -- it lays out	15 did he own so that his interests could be
16	more particularly the logic that I -- that I gave	16 separated. It -- it was just a matter of simple
17	you in my -- my example response a few moments ago.	17 math based upon independent third-party property
18	So as you could see, in the recitals, one --	18 valuations.
19	one of the big problems here was that Paul and	19 All of these properties, those three -- so
20	Edward, if you will, through their trusts, did not	20 let's stick with those three -- all three had
21	own these properties even-stein. They did not own	21 independent third-party appraisals.
22	them equally.	22 So we had a fair market value, if you will,
23	So, for instance, the 371 El Camino in	23 as determined by a third-party appraiser, for each
24	Laguna Beach was owned 75/25 by -- 75 Morabito, 25	24 of the properties. We then took the ownership
25	by Bayuk Trust.	25 interest of each of them, of each of the properties
	Page 64	Page 65
1	and of each of the entities, to come up with the	1 embroiled.
2	proportionate value of -- in dollars of -- for both	2 If the property -- if the property had
3	the trust -- the Morabito -- the Arcadia Living	3 not -- had been taken out of Edward's name, it was
4	Trust and the Bayuk Trust.	4 clear that, sooner or later, through collection
5	Q. Was there -- how was it determined that	5 efforts on the judgment against Paul, that Edward
6	the Arcadia Living Trust would get the Reno	6 was -- Edward's interest in that property was going
7	property, and Edward Bayuk's Trust would get the	7 to be implicated.
8	California properties?	8 So we made it easier for the Herbsts, if you
9	A. I -- I mentioned earlier that because	9 will -- and I know you understand that -- by -- by
10	Edward, either individually or through his trust,	10 saying that the property in Nevada that is most --
11	wanted to, my words, shake the dust of Reno from	11 most reachable by the Herbsts, belongs to the
12	his sandals as a result of Judge Adams' decision	12 judgment debtor.
13	and got as far away from the Herbsts as possible,	13 Q. Who retained the appraisers to appraise
14	it made perfect sense, since the judgment was a	14 the properties?
15	Nevada judgment, that the -- the judgment debtor,	15 A. So do you mean who found them?
16	Paul Morabito, should own the Nevada property.	16 Q. Yes. Who found them?
17	Why would we have given the Nevada property	17 A. I -- I don't recall. I want to say
18	to Edward, who was looking to cut -- sever his ties	18 that -- that it strikes me that the then sheriff --
19	with Nevada and distance himself from the Herbst	19 I don't know if he still is or not, but the sheriff
20	litigation machine?	20 of Washoe County, Sheriff Haley, recommended the
21	Q. So the decision was made based on it	21 appraiser for the Reno property, and I don't know
22	being a Nevada judgment and Edward Bayuk not	22 who came up with the appraiser for the California
23	wanting to be affiliated with Nevada anymore?	23 properties.
24	A. And -- and the Herbsts. He had been	24 Q. Did you have any conversations with the
25	excoriated. He didn't want to continue to be	25 appraisers?

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<p>1 A. Yes, I did.</p> <p>2 Q. What was your conversation with --</p> <p>3 let's start with the appraiser for the Nevada</p> <p>4 property. Do you recall specifically who that was?</p> <p>5 A. I don't.</p> <p>6 Q. Okay. Do you recall having any</p> <p>7 conversations with the appraiser for the Reno</p> <p>8 property?</p> <p>9 A. I -- I would have had a conversation</p> <p>10 with both appraisers, just giving them the general</p> <p>11 outlines of -- of what we were looking for and that</p> <p>12 was, you know, a comparable fair market value for</p> <p>13 these properties.</p> <p>14 Q. Do you recall if it was somebody from</p> <p>15 your office who retained the appraisers?</p> <p>16 A. I don't remember.</p> <p>17 Q. Okay. So you don't recall if it was</p> <p>18 Edward Bayuk or Paul Morabito?</p> <p>19 A. I don't remember. I don't remember</p> <p>20 how -- how they were paid. I just -- I remember --</p> <p>21 I do -- so especially the Reno appraiser, because</p> <p>22 I -- I seem to remember a conversation with him</p> <p>23 about -- there was a -- an auxiliary building that</p> <p>24 wasn't finished, and what sticks out in my mind, a</p> <p>25 conversation with him about how the -- you know, he</p>	<p>1 was coming in a little bit lower on the value</p> <p>2 because of the unfinished nature of the -- the</p> <p>3 auxiliary -- auxiliary building.</p> <p>4 Q. Was this an auxiliary building that was</p> <p>5 on the Panorama property?</p> <p>6 A. Yeah. Yes.</p> <p>7 MS. PILATOWICZ: Okay.</p> <p>8 The following was marked for Identification:</p> <p>9 EXHIBIT 4 First amendment to purchase and</p> <p>10 sale agreement dated</p> <p>11 September 28, 2010</p> <p>12 BY MS. PILATOWICZ:</p> <p>13 Q. Mr. Vacco, you've been handed what's</p> <p>14 been marked Exhibit 4. Do you recognize Exhibit 4?</p> <p>15 A. So I generally recognize -- recognize</p> <p>16 it. I -- yes.</p> <p>17 Q. What is it?</p> <p>18 A. It's a first amendment to the purchase</p> <p>19 and sale agreement, which is Exhibit 3 in this</p> <p>20 deposition.</p> <p>21 Q. Do you recall the reason for the first</p> <p>22 amendment to the purchase agreement?</p> <p>23 A. I don't. But, I mean, it speaks for</p> <p>24 itself as I'm reading it.</p> <p>25 Q. It indicates that there's a change in</p>
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<p>1 the fair market value based on appraisals that were</p> <p>2 conducted in Section B -- well, in Section 2? Do</p> <p>3 you see that?</p> <p>4 A. I do.</p> <p>5 Q. Do you recall where these amounts came</p> <p>6 from in number 2?</p> <p>7 A. Just, I mean, reading paragraph 2, it</p> <p>8 says MAI appraisals were conducted. So these, I'm</p> <p>9 assuming -- I -- I don't know where they came from.</p> <p>10 Q. Do you know where the values in the</p> <p>11 original purchase and sale agreement came from?</p> <p>12 A. I don't. I thought they were based on</p> <p>13 the appraisals.</p> <p>14 Q. There's a reference in number 3 to the</p> <p>15 deletion of a promissory note based on the new</p> <p>16 appraisals. Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Do you know why there was supposed to</p> <p>19 be an exchange of a promissory note as opposed to a</p> <p>20 cash payment in the original purchase agreement?</p> <p>21 A. So I'm just referring back to Exhibit 3</p> <p>22 to help refresh my recollection here. So</p> <p>23 Exhibit 3, which was the purchase and sale</p> <p>24 agreement, in paragraph D, it references the</p> <p>25 theater equipment that was personalty inside the</p>	<p>1 Panorama Drive property valued at approximately</p> <p>2 \$300,000.</p> <p>3 So the promissory note that's referenced in</p> <p>4 paragraph C of \$500,000 represents the value of the</p> <p>5 equipment of \$300,000, plus, without doing the</p> <p>6 math, the differential of the dollar value of the</p> <p>7 respective interest of these three properties. So,</p> <p>8 in other words, when -- when we had added up, you</p> <p>9 know, the property -- the total amount of the</p> <p>10 properties, the value, the net value, so it would</p> <p>11 have been net value, deducting the mortgage</p> <p>12 liabilities. So the net equity value of each of</p> <p>13 the three, and then you took each owners'</p> <p>14 respective interest, whether it was one-third or</p> <p>15 two-thirds, 75/25, 50/50, you came up with</p> <p>16 Morabito's equity holdings in the whole and Bayuk's</p> <p>17 equity interest in the whole.</p> <p>18 And without doing the math, the note looked</p> <p>19 like there was probably \$200,000 differential.</p> <p>20 In other words, Bayuk was getting \$200,000</p> <p>21 more in value than Morabito was getting, and that's</p> <p>22 why Bayuk then entered into the note, which also</p> <p>23 then included the equipment.</p> <p>24 Q. Do you know why it was done through a</p> <p>25 note instead of a cash payment?</p>

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<p>1 A. I don't recall.</p> <p>2 Q. Do you know if Mr. Bayuk had the funds</p> <p>3 to make a cash payment?</p> <p>4 A. I don't -- I don't -- I don't know.</p> <p>5 The following was marked for identification:</p> <p>6 EXHIBIT 5 Invoices, several pages</p> <p>7 BY MS. PILATOWICZ:</p> <p>8 Q. Mr. Vacco, you've been handed what's</p> <p>9 been marked as Exhibit 5. Do you recognize</p> <p>10 generally what Exhibit 5 is?</p> <p>11 A. Yes.</p> <p>12 Q. What is Exhibit 5?</p> <p>13 A. It's a Lippes Mathias Wexler Friedman</p> <p>14 invoice dated October 5th, 2010, for professional</p> <p>15 services rendered through the month of September</p> <p>16 2010.</p> <p>17 Q. Okay. I'll represent to you that the</p> <p>18 entire exhibit is a group of invoices --</p> <p>19 A. Okay.</p> <p>20 Q. -- over different periods --</p> <p>21 A. I'm sorry.</p> <p>22 Q. -- that we'll talk about at various</p> <p>23 times.</p> <p>24 But can you --</p> <p>25 A. So that -- okay. Let me just -- so</p>	<p>1 it's not just the October --</p> <p>2 Q. Correct.</p> <p>3 A. -- 2010 invoice. Okay.</p> <p>4 Q. Can you turn to page 7 of the -- of</p> <p>5 Exhibit 5? Do you recall at some point the</p> <p>6 Panorama property was sold to a third party?</p> <p>7 A. You want me to look at page 7?</p> <p>8 Q. It's page 2 of Bill 5 -- 45028 or</p> <p>9 page 7 of the exhibit.</p> <p>10 MR. GILMORE: There's a Bates stamp in the</p> <p>11 top corner too.</p> <p>12 MS. PILATOWICZ: Correct. The --</p> <p>13 THE WITNESS: So 000844?</p> <p>14 BY MS. PILATOWICZ:</p> <p>15 Q. Correct.</p> <p>16 A. Okay. What do you want me to look at?</p> <p>17 Q. Do you recall that in 2012, the</p> <p>18 Panorama property was listed for sale?</p> <p>19 A. Yes. Pursuant to the settlement</p> <p>20 agreement.</p> <p>21 Q. What was your involvement in the</p> <p>22 listing of the sale?</p> <p>23 A. So I might have misspoke earlier. When</p> <p>24 I invoked Sheriff Haley, it's possible that it was</p> <p>25 Sheriff Haley who recommended the realtor to sell</p>
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<p>1 the property as opposed to the appraiser.</p> <p>2 Q. Okay.</p> <p>3 A. So my role was through the course of</p> <p>4 the settlement agreement. I mean, this was selling</p> <p>5 the property, the Panorama property, that Morabito</p> <p>6 or his trust now owned a hundred percent of,</p> <p>7 selling it was a condition of the -- the settlement</p> <p>8 agreement. Herbst wanted to monetize it.</p> <p>9 Q. Do you know why there's a reference to</p> <p>10 marketing it without pictures? On the last time</p> <p>11 entry dated 3/28/12, looks like the biller's RMS,</p> <p>12 who I believe is Richard Scherer?</p> <p>13 A. Richard Scherer was an associate in the</p> <p>14 firm.</p> <p>15 Paul, a very private individual, did not</p> <p>16 want photos of the interior of the house, and I</p> <p>17 don't remember whether there was furniture then in</p> <p>18 the house or not. I don't remember the disposition</p> <p>19 of the furniture. By, primarily, Paul did not want</p> <p>20 photos of the interior of his home in Reno exposed</p> <p>21 on the Internet, especially since there was nobody</p> <p>22 living there.</p> <p>23 I seem to recall, in the back of my mind,</p> <p>24 that there was some unwanted -- I don't want to say</p> <p>25 it was a break-in, but there -- there was -- the</p>	<p>1 home was vacant now. So Paul didn't want the</p> <p>2 interior of the home displayed on the Internet, and</p> <p>3 maybe it was because there was no furniture in it.</p> <p>4 But as you can see, Richard also spoke to</p> <p>5 John Desmond about it. So whatever was decided was</p> <p>6 conveyed to John Desmond contemporaneous with this</p> <p>7 decision. And Desmond was representing at that</p> <p>8 time, as you know, the Herbsts.</p> <p>9 Q. Mm-hmm. Can you turn to page 5 of</p> <p>10 Exhibit 5, which is Bates number -- Bates number</p> <p>11 536?</p> <p>12 A. Okay.</p> <p>13 Q. And there's a list of disbursements.</p> <p>14 A. Okay.</p> <p>15 Q. Do you see on 9/22/10, there's a</p> <p>16 disbursements to Alves Appraisal?</p> <p>17 A. Alves Appraisal's, yes.</p> <p>18 Q. Alves Appraisal?</p> <p>19 Do you know who that is?</p> <p>20 A. I -- I would just be guessing. It's</p> <p>21 one of the appraisers for the properties. Whether</p> <p>22 it was the Reno property or the California</p> <p>23 properties, I don't recall.</p> <p>24 Q. Do you know why you were paying them</p> <p>25 directly through your firm?</p>

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<p>1 A. I don't.</p> <p>2 Q. And the next entry is 9/27/10, for the</p> <p>3 retainer for Mark Lehman?</p> <p>4 A. Right.</p> <p>5 Q. Is that the attorney that you</p> <p>6 represented before you believe may have been</p> <p>7 represented Ed Bayuk?</p> <p>8 A. Same person. Right.</p> <p>9 Q. Okay. Do you know why there's a</p> <p>10 \$25,000 retainer being paid through your firm to</p> <p>11 Mr. Lehman?</p> <p>12 A. I don't recall.</p> <p>13 Q. And the next entry is 9/27/10, to</p> <p>14 Justmann &amp; Associates. Do you know who</p> <p>15 Justmann &amp; Associates are?</p> <p>16 A. I don't. I -- I don't. I'm -- I'm</p> <p>17 thinking that they're appraisers as well. I just</p> <p>18 don't -- I don't know.</p> <p>19 Q. Do you know why Justmann &amp; Associates</p> <p>20 would be paid through your firm?</p> <p>21 A. I don't recall.</p> <p>22 Q. If you look back at Exhibit 4, which</p> <p>23 was the amended and restated --</p> <p>24 A. Right.</p> <p>25 Q. -- amended and restated agreement,</p>	<p>1 there was a payment that was to be made from Bayuk</p> <p>2 to Morabito -- let me make sure I have the parties</p> <p>3 right.</p> <p>4 Under Section 3, there's a payment of</p> <p>5 \$60,117 from Ed Bayuk to the Arcadia Trust at</p> <p>6 closing?</p> <p>7 A. Correct.</p> <p>8 Q. Did you have any -- did that payment go</p> <p>9 through your trust account?</p> <p>10 A. I don't recall.</p> <p>11 Q. Okay. Do you normally at closings have</p> <p>12 clients make payments through your trust account?</p> <p>13 A. I don't do real estate, so I really</p> <p>14 don't know the answer to that.</p> <p>15 MS. PILATOWICZ: Okay.</p> <p>16 The following was marked for identification:</p> <p>17 EXHIBIT 6 Membership interest transfer</p> <p>18 agreement dated October 1,</p> <p>19 2010</p> <p>20 MR. GILMORE: It's noon. Is this a good</p> <p>21 time? Do you want to go through this or -- just</p> <p>22 putting that on the radar.</p> <p>23 MS. PILATOWICZ: We can take a break right</p> <p>24 now. We're moving into a different subject, so we</p> <p>25 can go off the record.</p>
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<p>1 (Discussion off the record.)</p> <p>2 (A luncheon recess was taken.)</p> <p>3 BY MS. PILATOWICZ:</p> <p>4 Q. Back on the record. Mr. Vacco, we're</p> <p>5 back from our lunch break. Do you understand that</p> <p>6 you're still under the same --</p> <p>7 A. Yes.</p> <p>8 Q. -- penalty of perjury that we discussed</p> <p>9 previously?</p> <p>10 A. Still under oath.</p> <p>11 Q. Prior to the break, I handed you what</p> <p>12 was marked as Exhibit 6. Do you recognize</p> <p>13 Exhibit 6?</p> <p>14 A. Generally, yes.</p> <p>15 Q. What is Exhibit 6?</p> <p>16 A. It's a membership interest transfer</p> <p>17 agreement.</p> <p>18 Q. For Baruk Properties, LLC?</p> <p>19 A. Correct.</p> <p>20 Q. Did you prepare this membership</p> <p>21 interest transfer agreement?</p> <p>22 A. Somebody in my law firm did.</p> <p>23 Q. Do you know who in your law firm did?</p> <p>24 A. No.</p> <p>25 Q. Did you represent Arcadia Living Trust</p>	<p>1 with respect to this membership interest transfer</p> <p>2 agreement?</p> <p>3 A. And/or Paul A. Morabito, yes.</p> <p>4 Q. Would you normally have a separate</p> <p>5 retention agreement for an individual and their</p> <p>6 trust, or would you put them all under one?</p> <p>7 A. In this instance, I would probably</p> <p>8 be -- it was probably a joint retainer.</p> <p>9 Q. Did you represent Edward Bayuk with</p> <p>10 respect to this membership -- membership interest</p> <p>11 transfer agreement?</p> <p>12 A. I don't recall.</p> <p>13 Q. What about the Edward William Bayuk</p> <p>14 Living Trust?</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you know if either of those were</p> <p>17 represented by outside counsel?</p> <p>18 A. I -- I don't recall.</p> <p>19 Q. Can you tell me what the Baruk</p> <p>20 Properties, LLC, is?</p> <p>21 A. Well, this is refreshing my</p> <p>22 recollection. It was an LLC owned in equal</p> <p>23 membership interest by the Bayuk Trust and the</p> <p>24 Arcadia Living Trust. And the assets of the LLC,</p> <p>25 Baruk Properties, LLC, were properties in</p>

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<p>1 California.</p> <p>2 Q. Do you know where you got that list of</p> <p>3 properties that's in the fifth paragraph of the</p> <p>4 membership interest transfer agreement?</p> <p>5 A. From Edward or Paul.</p> <p>6 Q. And that's your understanding of all of</p> <p>7 the assets of Baruk Properties, LLC?</p> <p>8 A. I don't recall if it owned other assets</p> <p>9 besides this. Besides those three.</p> <p>10 Q. Do you know if there's a reason why</p> <p>11 other properties owned by Baruk Properties, LLC,</p> <p>12 wouldn't be in this list?</p> <p>13 A. There probably wouldn't be any reason</p> <p>14 to not include them, so, I mean, I -- I can't tell</p> <p>15 you definitively, as I look at this document,</p> <p>16 whether there were other properties. I don't</p> <p>17 believe there were.</p> <p>18 MR. GILMORE: Are we talking real</p> <p>19 properties?</p> <p>20 MS. PILATOWICZ: Real properties.</p> <p>21 BY MS. PILATOWICZ:</p> <p>22 Q. 1 point -- Section 1.1 of the agreement</p> <p>23 has a -- a transfer of the property -- of the</p> <p>24 interest in LLC in return for a promissory note in</p> <p>25 the amount of \$1,617,050.</p>	<p>1 A. Correct.</p> <p>2 Q. Do you see that?</p> <p>3 Do you know how that number was arrived at?</p> <p>4 A. I believe, much like the other</p> <p>5 properties that we've discussed, there was an</p> <p>6 appraisal of these three, and because the</p> <p>7 membership interest was split down the middle,</p> <p>8 50/50, it was easier to arrive at the Arcadia</p> <p>9 Living Trust interest versus the Bayuk Trust</p> <p>10 interest net of any encumbrances.</p> <p>11 So the \$1.617 million would represent the</p> <p>12 Arcadia Living Trust value in the collective --</p> <p>13 the -- the three collective properties together.</p> <p>14 Q. When you say "easier to arrive at the</p> <p>15 Arcadia Trust interest than the Bayuk Trust</p> <p>16 interest," what do you mean?</p> <p>17 A. I -- I either misspoke or you</p> <p>18 misunderstood me. So in the other properties that</p> <p>19 we talked about, where you had a 75/25 split, a</p> <p>20 50/50 split as individuals as opposed to amongst</p> <p>21 the trust, and then I think there was a two-thirds,</p> <p>22 one thirds, individually, a 75/25 and a 50/50, just</p> <p>23 made the math more difficult based upon the</p> <p>24 ownership percentages.</p> <p>25 Here, the math was much easier. You had an</p>
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<p>1 appraisal for all three properties, and you netted</p> <p>2 out -- frankly, I don't recall. I don't see any</p> <p>3 reference here to any debt.</p> <p>4 So it -- it strikes me, just looking at this</p> <p>5 document, that this \$1.617 million was a 50 percent</p> <p>6 interest in the value of all three properties</p> <p>7 combined.</p> <p>8 Q. Okay. If there were other properties</p> <p>9 with value not included -- other properties owned</p> <p>10 by Baruk Properties, LLC, with value not included,</p> <p>11 would that increase what should have been paid for</p> <p>12 the membership interest?</p> <p>13 MR. GILMORE: Object to form.</p> <p>14 THE WITNESS: Logically speaking, yes. So,</p> <p>15 earlier -- I don't want to confuse you with my</p> <p>16 earlier answer. I -- as I sit here, looking at</p> <p>17 this document, I say that these three properties</p> <p>18 are the sum total of the assets of the -- of Baruk</p> <p>19 Properties, LLC. But I just don't recall that with</p> <p>20 precise clarity.</p> <p>21 BY MS. PILATOWICZ:</p> <p>22 Q. Do you know why the interest in Baruk</p> <p>23 Properties went to the Bayuk Living Trust as</p> <p>24 opposed to the Arcadia Trust?</p> <p>25 A. No, I don't.</p>	<p>1 Well, because, as I think about it, the --</p> <p>2 the ownership of the properties wasn't going to</p> <p>3 change. The ownership of the properties was going</p> <p>4 to stay in the name of the Baruk Properties, LLC.</p> <p>5 Q. Okay. Do you know why the Bayuk Trust</p> <p>6 obtained all the interest in Baruk Properties, as</p> <p>7 opposed to the Arcadia Trust obtaining the interest</p> <p>8 in Baruk Properties?</p> <p>9 A. 'Cause pursuant to this agreement, the</p> <p>10 Arcadia Living Trust is surrendering -- is</p> <p>11 transferring its interest to the Bayuk Living</p> <p>12 Trust.</p> <p>13 Q. Do you know how it was decided the</p> <p>14 interest would go to the Bayuk Living Trust?</p> <p>15 A. I don't.</p> <p>16 Q. Do you know if appraisers were hired</p> <p>17 with respect to these properties?</p> <p>18 A. I can't say with absolute certainty,</p> <p>19 but that was the standard operating procedure. Get</p> <p>20 a third-party independent value, appraised value of</p> <p>21 the properties. So I can't tell you whether it was</p> <p>22 Alves. We saw, you know, in the invoice Alves and</p> <p>23 Justmann and whatever.</p> <p>24 I -- I -- I'm confident that there were</p> <p>25 appraisals done. I don't know who did them.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. Had you worked with Alves before these</p> <p>2 transactions?</p> <p>3 A. No.</p> <p>4 Q. Had you worked with Justmann before</p> <p>5 these transactions?</p> <p>6 A. No.</p> <p>7 Q. Okay. In Section 1.1 there's a</p> <p>8 reference to the 1.6 -- approximate \$1.6 million</p> <p>9 note.</p> <p>10 Do you know why there was a note in</p> <p>11 consideration instead of a cash payment?</p> <p>12 A. I don't.</p> <p>13 Q. Did you discuss Mr. Bayuk's ability to</p> <p>14 make a cash payment?</p> <p>15 A. I don't believe that we negotiated the</p> <p>16 terms, so the -- whether he had the wherewithal to</p> <p>17 make a \$1.6 million cash payment or not was unknown</p> <p>18 to me.</p> <p>19 Q. Negotiated the terms of the agreement</p> <p>20 or the promissory note?</p> <p>21 A. The agreement.</p> <p>22 Q. Who negotiated the terms of the</p> <p>23 agreement?</p> <p>24 A. I didn't.</p> <p>25 Q. Do you know who did?</p>	<p style="text-align: right;">Page 83</p> <p>1 A. No.</p> <p>2 Q. Who gave you the information as to --</p> <p>3 or do you know who gave your office information as</p> <p>4 to what terms should go in the membership interest</p> <p>5 transfer agreement?</p> <p>6 A. My assumption is Paul and Edward both.</p> <p>7 Q. Okay. Who in your office could have</p> <p>8 drafted this transfer agreement? And --</p> <p>9 A. Chris -- Chris --</p> <p>10 Q. -- and let me rephrase. Sorry.</p> <p>11 I'm not talking about ability. Who do you</p> <p>12 think, of the people in your office, may have</p> <p>13 drafted this?</p> <p>14 A. Yeah. I understood that. Christian</p> <p>15 Lovelace.</p> <p>16 Q. Anyone else?</p> <p>17 A. Based upon the invoices embedded in</p> <p>18 Exhibit 5, it could have been, in addition to</p> <p>19 Lovelace, Paul Wells, who's out -- in our real</p> <p>20 estate group, may have assisted, or Greg T.</p> <p>21 Ivancic, who is also in our corporate group.</p> <p>22 MS. PILATOWICZ: Okay.</p> <p>23 The following was marked for Identification:</p> <p>24 EXHIBIT 7 Promissory note dated</p> <p>25 October 1, 2010</p>
<p style="text-align: right;">Page 84</p> <p>1 BY MS. PILATOWICZ:</p> <p>2 Q. Mr. Vacco, you've been handed what's</p> <p>3 been marked as Exhibit 7. Do you recognize</p> <p>4 Exhibit 7?</p> <p>5 A. Yes.</p> <p>6 Q. What is Exhibit 7?</p> <p>7 A. It's the promissory note.</p> <p>8 Q. The promissory note --</p> <p>9 A. The promissory note that's referenced</p> <p>10 in Exhibit 6.</p> <p>11 Q. Okay. So for the transfer of the</p> <p>12 interests in Baruk Properties?</p> <p>13 A. Yes.</p> <p>14 Q. Did you draft this note?</p> <p>15 A. I believe our office did.</p> <p>16 Q. Do you know who in your office did?</p> <p>17 A. No.</p> <p>18 Q. Do you believe it may have been</p> <p>19 Christian Lovelace?</p> <p>20 A. It -- it's -- it's possible.</p> <p>21 Q. Do you know who negotiated the</p> <p>22 promissory note?</p> <p>23 A. No.</p> <p>24 Q. Do you know how your office got the</p> <p>25 terms of the promissory note?</p>	<p style="text-align: right;">Page 85</p> <p>1 A. No. I don't recall.</p> <p>2 Q. Did your office have any involvement</p> <p>3 with respect to following up on payments on the</p> <p>4 promissory note?</p> <p>5 MR. GILMORE: Object to form.</p> <p>6 THE WITNESS: I -- I don't recall. I just</p> <p>7 don't recall any specific follow-up regarding the</p> <p>8 monthly payments. I don't recall it being brought</p> <p>9 to my attention that it was not happening.</p> <p>10 BY MS. PILATOWICZ:</p> <p>11 Q. Okay. Are you aware of any payments</p> <p>12 that were made?</p> <p>13 A. That were made?</p> <p>14 Q. Yes.</p> <p>15 A. So my -- my recollection on this is --</p> <p>16 is fuzzy as to whether or not there was follow-up</p> <p>17 or -- my sense is that payments were made, yes.</p> <p>18 Q. What gave -- what gives you a sense</p> <p>19 that payments were made?</p> <p>20 A. Because Edward from time to time would</p> <p>21 ask me about when the payment was due.</p> <p>22 Q. Did the payments go through your</p> <p>23 office?</p> <p>24 A. No. Certainly not.</p> <p>25 The following was marked for Identification:</p>

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<p>1 EXHIBIT 8 Membership interest purchase 2 agreement dated October 6, 3 2010, with resignation 4 BY MS. PILATOWICZ: 5 Q. Mr. Vacco, you've been handed what's 6 been marked as Exhibit 8. Do you recognize 7 Exhibit 8? 8 A. Generally, I recognize it, yes. 9 Q. What is Exhibit 8? 10 A. It is a membership interest purchase 11 agreement. 12 Q. What is it a membership interest 13 purchase agreement for? 14 A. watchmyblock LLC. 15 Q. Do you know what watchmyblock LLC is? 16 A. I don't know if it still exists, but it 17 was a -- an LLC formed by Edward and Paul at some 18 point in time. I don't recall when. 19 I mean, are you asking me what watchmyblock 20 is? 21 Q. Yes. Do you know what it is? 22 A. It was a concept. 23 Q. What was the concept? 24 A. I will do it a disservice as I try to 25 describe it, but, essentially, it was going to be</p>	<p>1 an interactive social media connected, if you will, 2 neighborhood block club, if you will. 3 So, you know, in the old days, when -- I'm 4 much older than you, but when I was a kid, you 5 know, people watched out for themselves by, you 6 know, kind of shouting off the front porch. 7 Watched out for their neighborhood. 8 So the concept here was to protect the 9 neighborhood, protect the block, if you will, 10 through interactive social media. 11 Q. Do you know if it -- if watchmyblock 12 LLC owned anything? 13 A. It owned zero, other than the idea, 14 which, you know, was at that point in time just an 15 idea. 16 Q. Did you incorporate watchmyblock LLC in 17 New York? 18 A. I don't know if we incorporated it. I 19 don't recall that. It may have been a preexisting 20 entity. My sense is that it was a preexisting 21 entity. In other words, preceded our 22 representation of Morabito interest. I do not 23 believe it's a New York LLC. 24 Q. Do you know if you're listed as the 25 resident agent for a New York LLC?</p>
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<p>1 A. I don't. But if you're looking at 2 corporate documents, and so if you're -- if you 3 know that's been incorporated in New York, then 4 show me something to refresh my recollection, but I 5 just don't recall. 6 Q. Okay. Do you know how you came up with 7 the value of the -- 8 Well, let me back up. Did you draft this 9 agreement? 10 A. Somebody in my office did. 11 Q. Do you know who in your office? 12 A. I don't. 13 Q. Do you know who negotiated the terms of 14 this agreement? 15 A. I do not. 16 Q. Do you know how the purchase price of 17 \$1,000 was arrived at? 18 A. I don't, but what I do know is that 19 this wasn't -- the LLC owned an idea. It owned no 20 assets. It owned no trademarks. It owned no 21 patent rights. It owned an amorphous idea. 22 Frankly, as you research Paul A. Morabito, 23 you'll find that there's a plethora of LLCs, 24 because every time he had a business idea, he 25 formed an LLC. Those LLCs, much like this one,</p>	<p>1 were hollow shells, virtually worthless. 2 Q. Do you know why, if it was a hollow 3 shell, there was a purchase agreement to transfer 4 the interest in it? 5 A. Because I believe it was at its nascent 6 stage, where there was some sense that, sooner or 7 later, it was going to become a robust social media 8 security device for neighborhoods. 9 Q. Did you have that belief, or that was 10 just conveyed to you? 11 A. Did I have what belief? 12 Q. That this was on the verge of 13 potentially being something at some point? That 14 that -- 15 A. Well, on the verge of being something 16 at some point is kind of contradictory. I -- I 17 understood the concept. It was an interesting 18 concept. But even though my -- my residence is 19 Erie County, State of New York, I'm intellectually 20 from Missouri. Show me. So -- the Show Me State. 21 Q. Mm-hmm. 22 A. So there was a lot of ideas. A lot of 23 concepts. But most, 99.9 percent of the ideas and 24 concepts never, ever came to fruition. 25 Q. Do you know if there were other LLCs</p>



<p style="text-align: right;">Page 90</p> <p>1 that were in existence, at the time that you were 2 doing the restructuring of Morabito's assets, that 3 you didn't do transfer agreements for? 4 A. That's a -- I don't mean to be 5 critical, but there's a lot of qualifications in 6 that -- in that sentence, starting with during -- 7 during these transfers. 8 Q. Okay. So -- 9 A. So I can't -- 10 Q. -- between -- 11 A. I can't -- I can't, with any sense of 12 clarity, say precisely when. So, you know, 13 probably not during these transfers. 14 Q. Okay. Between September 1st of 2010 15 and September 30th of 2010, did someone from your 16 office do an investigation as to what LLCs 17 Mr. Morabito had an interest in? 18 A. No. 19 Q. Okay. How did you decide -- 20 A. Not that I recall. 21 Q. Okay. How did you decide what entities 22 to create membership transfer interest -- 23 membership interest transfer agreements for? 24 A. I didn't decide any of that. 25 Q. Who gave you that information?</p>	<p style="text-align: right;">Page 91</p> <p>1 A. The membership interest direction would 2 have come from Paul and/or Edward. 3 Q. Were there any entities that they 4 brought to you that you didn't do a membership 5 interest transfer agreement for? 6 A. I -- I don't recall. 7 And, by the way, I -- I didn't mean my 8 answer three answers ago to be snarky or snide. 9 But it is -- there was a big time frame there and a 10 lot of different elements, so I -- I apologize 11 for -- 12 Q. No. That's -- that's fair. I -- I 13 will happily rephrase my question anytime -- 14 A. Okay. 15 Q. -- you misunderstand it or think it 16 needs to be narrowed. Just go ahead and ask me. 17 The following was marked for Identification: 18 EXHIBIT 9 Four-page document 19 THE WITNESS: Thank you. 20 BY MS. PILATOWICZ: 21 Q. Mr. Vacco, you've been handed what's 22 been marked as Exhibit 9. Do you recognize 23 Exhibit 9? 24 A. I've seen it before, sure. 25 Q. Do you know where you've seen it?</p>
<p style="text-align: right;">Page 92</p> <p>1 A. In our files. 2 Q. Do you know who created it? 3 A. Well, so just for the record, 9 is -- 4 is one, two, three, four pages. The first page 5 looks like a reconciliation -- for lack of a better 6 way to describe it, a reconciliation page. And 7 then the -- the other -- the remaining Bates 8 number 00002 through 4 appear to be an amortization 9 schedule. 10 So, frankly, I -- I -- they were separately 11 created. So you've -- you've made it one exhibit, 12 but in my mind, they're -- they're not necessarily 13 connected. 14 Q. Okay. Let's talk about the first page 15 of Exhibit 9. Do you know who created the first 16 page of Exhibit 9? 17 A. This is -- this is a document provided 18 to us by Paul A. Morabito. 19 Q. Do you know if Paul Morabito created 20 it? 21 A. I don't. I know that we did not. 22 Q. There's -- about two-thirds of the way 23 down the page -- 24 A. Right. 25 Q. -- under -- between Baruk Properties</p>	<p style="text-align: right;">Page 93</p> <p>1 and Superpumper Properties, it says net amount owed 2 by Edward Bayuk to Paul Morabito, see 3 reconciliation, below. 4 A. Right. 5 Q. Do you know what that is referring to? 6 A. Well, we've seen that, so the 7 corresponding amount is \$1.617 million that we've 8 seen in the note, which was Exhibit 7 and that we 9 saw referred to in -- in prior exhibits. What was 10 it? 4 or 5, or 3 and 4. I'm sorry. 3 and 4. 11 Q. Okay. Do you know what the actual 12 reconciliation that he's referring to, though, is? 13 A. See reconciliation, below. So this may 14 be more graphically than what I tried to do earlier 15 is -- is the reconciliation around -- starting, 16 first and foremost -- I know I'm repeating myself, 17 but starting first and foremost with the appraised 18 value of these properties and then separating the 19 debt, which would be mortgages. 20 So I'm looking under bullet point number 1. 21 Personal residences. So, for instance, the net 22 value for Los Olivos, appraised value minus the 23 mortgage was 834,954. Same amount for El Camino 24 was -- the same category, net equity for El Camino 25 was 1,078,641. And for Panorama Drive, 3,271,136.</p>

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1 Then, as you can see, working down on the  
2 sheet, the next column was for each of those  
3 properties to divvy up the equity interest pursuant  
4 to the corresponding ownership interest of Morabito  
5 and Bayak.

6 So, you know, the -- the -- the nicety of  
7 the trust was left out. But the trust actually  
8 owned -- well, the trust didn't own Panorama, but  
9 the trust owned the California properties. The  
10 respective trust. So you come up with the --  
11 the -- the net net value owned by each interest of  
12 these collective properties.

13 Then you implicated the -- the Baruk  
14 Properties, which we've talked about now, which was  
15 the Mary Fleming Circle and the 1461 Glenneyre in  
16 Laguna Beach. Same methodology. And the math  
17 comes up to the \$1.6 million.

18 Q. Mm-hmm.

19 A. I don't know -- well, so  
20 reconciliation, below, so then there was the  
21 Superpumper Properties, LLC. These were known in  
22 my -- my world as the card lock properties. They  
23 were all in Nevada, so you can see the addresses.

24 Frankly, this morning, that -- you know,  
25 when I was still lying in bed thinking about this,

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1 Q. Similar -- a document that looks like  
2 Exhibit 9 but has something else below where it  
3 cuts off now?

4 A. I don't -- I don't know. I don't  
5 recall.

6 Q. Do you know when Paul Morabito provided  
7 this to your office?

8 A. I would be guessing. But, having said  
9 that, I mean, the numbers, especially, you know,  
10 the numbers under bullet point 1 and 2 we've seen  
11 embedded in these documents, so I would say that  
12 it's contemporaneous with these documents.

13 And there has to be some -- some similar  
14 documents that we've -- you've asked me to testify  
15 to for the personal residence and the Baruk  
16 Properties, I believe similar documents exist for  
17 Superpumper Properties, LLC.

18 Q. Do you know if your office drafted  
19 those documents?

20 A. If they exist, I would say yes, but if  
21 you don't have them, then they must not exist.

22 Q. Do you know if the BEVA Compass  
23 mortgage that is referenced is a loan that was made  
24 to Superpumper Properties, LLC?

25 A. I believe, yes. As opposed to

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1 I was trying to figure out what card lock means. I  
2 don't know. You know, I -- I think you had to  
3 like, you know, put a -- like a credit card into a  
4 property to go in and get some gas or fuel or  
5 whatever.

6 But these were properties that were owned by  
7 Superpumper Properties, LLC.

8 And you can see that they were appraised for  
9 BEVA, so boy, boy, victor, apple, Compass Bank, I  
10 think there was indebtedness on this property. And  
11 that debt was as recent as February of 2010.

12 So there's -- to further the reconciliation,  
13 so this is an independent reconciliation from the  
14 1.6, because as you can see now, Sam and Edward are  
15 partners with Paul.

16 So when it says see reconciliation, below, I  
17 don't know what it means.

18 Q. Okay.

19 A. A long explanation to get -- I thought  
20 I was going to, you know, just work down the math  
21 and I was going to get there, but it didn't happen.

22 Q. Have you ever seen a document that has  
23 anything below -- that -- that has more information  
24 on it than Exhibit 9?

25 A. You mean similar to this document?

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1 Superpumper, Inc.

2 Q. Correct.

3 A. But there was a comprehensive -- I know  
4 that we're kind of now morphing into the next  
5 topic, but there was a comprehensive banking  
6 relationship between Superpumper, Inc., and BBVS as  
7 well. BB -- BEVA.

8 Q. What was Superpumper Properties, LLC's  
9 relationship to Superpumper, Inc.?

10 A. Just a name. I believe it was just the  
11 name. There was no -- the common ownership were  
12 the -- the three shareholders. But you can see the  
13 percentages here. The percentages were not to the  
14 same percentages that they were involved in  
15 Superpumper, Inc.

16 Q. Did you form Superpumper Properties,  
17 LLC?

18 A. No. Nor Superpumper, Inc. They were  
19 preexisting entities. Prior to our representation.

20 Q. So going back to the overall transfer  
21 of Morabito's assets, the corporate --

22 A. Paul A. Morabito.

23 Q. -- Paul Morabito's assets, we've talked  
24 about the Panorama property, the two California  
25 properties, Los Olivos and El Camino, the

<p style="text-align: right;">Page 98</p> <p>1 membership interest in Baruk Properties, the 2 membership interest in watchmyblock LLC and then 3 there was an interest in Superpumper that was 4 transferred. 5 Besides those -- 6 A. Superpumper Properties, LLC. 7 Q. Superpumper Properties, LLC -- 8 A. -- Inc. 9 Q. -- and Superpumper, Inc. 10 A. So I'm -- I'm -- I'm not sure about 11 Superpumper Properties, LLC. There's a piece of me 12 that says that -- that those properties went over 13 to the Herbsts in the settlement agreement. I 14 can't -- I -- I just don't recall the disposition 15 of the Superpumper, LLC, properties. 16 Q. Okay. So -- 17 A. I'm -- I'm -- I -- I believe -- and you 18 have to have a settlement agreement, I think, that 19 they went over to the Herbsts. 20 Q. Okay. So -- 21 A. I could be wrong about that. 22 Q. Of the properties I previously 23 mentioned, taking out Superpumper Properties, 24 LLC -- 25 A. Right.</p>	<p style="text-align: right;">Page 99</p> <p>1 Q. -- are there any other transfers of 2 assets that you're aware of that took place in 3 September or October of 2010? 4 A. Well, the complicated CWC, 5 Superpumper, Inc., Snowshoe. 6 Q. Okay. Other than that and the ones 7 I've mentioned, is there anything else that you're 8 aware of that was transferred? 9 A. I don't believe so. 10 Q. Why was -- all of the -- it -- it would 11 appear, looking at the documents, that 12 September 30th was a target date to have all the 13 properties transferred. Is that fair? 14 A. It does look like everything's 15 happening in, you know, 28th, 29th, 30th from the 16 documents, sure. 17 Q. Do you know why everything happened in 18 that time period? 19 A. Edward wanted out. Edward was free and 20 clear, as far as he was concerned, from the Herbst 21 litigation, and he wanted out. Sam equally but not 22 as -- you know, Edward is a hand wringer. He's -- 23 he worries about, you know, whether the sun's going 24 to come up in the morning. 25 Sam is -- is -- is concerned, but Sam wasn't</p>
<p style="text-align: right;">Page 100</p> <p>1 calling me every day wondering how he's going to be 2 free and clear of the Herbsts. Edward was. 3 Q. So the -- the fast timeline was based 4 on Bayuk's insistence? 5 A. Yes. He was the primary motivation, as 6 far as my recollection serves me. 7 Q. Were there other motivators? 8 A. That was the prime one. I don't -- if 9 there were secondary or tertiary, I don't recall 10 what they were, but Edward wanted out. 11 Q. Do you know what Sefton, S-E-F-T-O-N, 12 Trustees is? 13 A. Well, I came to -- to know it, yes. 14 Q. What is your understanding of what 15 Sefton Trustees is? 16 A. I'm glad you couched it in terms of my 17 understanding, because I don't know precisely. But 18 my understanding is that Sefton Trustees is an 19 international repository of -- of assets. 20 Q. How did you become aware of Sefton 21 Trustees? 22 A. From Paul Morabito. 23 Q. When did you become aware of it? 24 A. Postjudgment and probably -- 25 postjudgment in the context of the enforcement</p>	<p style="text-align: right;">Page 101</p> <p>1 action. So the net worth -- the net worth 2 deposition, in that context. So as now Brian and 3 John have the judgment at hand, and now they begin 4 enforcement actions, my recollection is that there 5 was an awful lot of discovery around that, and 6 there was a net worth deposition of Morabito, and 7 it was in that context that I became aware of it. 8 Q. So the first time you heard of it was 9 when Morabito mentioned it at a deposition? Is 10 that accurate? 11 A. It was in the context of the net worth 12 either discovery or deposition. 13 Q. Do you recall when that deposition or 14 discovery was? 15 A. I'm just going on feel here. I would 16 say that it was early 2011. It was sometime in 17 2011. But that's -- I just don't believe that it 18 happened in 2010. 19 Q. Okay. Do you know why Paul Morabito 20 transferred \$6 million to Sefton Trustees on 21 September 15th, 2010? 22 A. No. On what date? 23 Q. September 15th of 2010. 24 A. No. 25 Q. Do you know why Morabito transferred</p>

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<p>1 any funds at any time to Sefton Trustees?  2 A. I know what he testified to in the net  3 worth deposition.  4 Q. But you don't have any independent  5 knowledge?  6 A. Not that would be independent of  7 communications directly with him.  8 Q. Well, communications other than what  9 was said in the deposition? Let me back up.  10 Have you had conversations with Paul  11 Morabito about transfers to Sefton Trustees?  12 A. I have.  13 Q. When did you have those conversations?  14 A. Generally, in the context of --  15 sometime in the time frame of the discovery or  16 deposition around the net worth.  17 Q. Okay. But have you had conversations  18 that weren't --  19 A. Privileged?  20 Q. -- weren't on record in the deposition?  21 A. Yes.  22 Q. Okay. What were those conversations?  23 MR. GILMORE: I'm going to object on the  24 basis of attorney-client privilege.  25 BY MS. PILATOWICZ:</p>	<p>1 Q. Okay. You're aware that Mr. Leonard  2 has waived Mr. Morabito's -- or has waived the  3 attorney-client privilege, correct?  4 A. Yes.  5 Q. And you're aware that --  6 MR. GILMORE: Well, these aren't questions  7 that should be directed to Mr. Vacco. Those -- you  8 can direct them to me.  9 We are aware -- I am, both as Mr. Morabito's  10 counsel in several matters, as well as the  11 defendants' counsel in this matter -- that the  12 trustee has sent a letter to debtor's counsel  13 purporting to waive the applicable attorney-client  14 privilege of the debtor, both in the personal and  15 corporate capacity.  16 And, of course, having cited no Ninth  17 Circuit or Nevada jurisprudence to support such a  18 waiver, we are not in the position to accept that  19 waiver at this time.  20 So as far as I'm concerned, the  21 attorney-client privilege exists, and I'm going to  22 assert it.  23 BY MS. PILATOWICZ:  24 Q. Okay. Did you also receive a letter  25 from John Murtha regarding a waiver of the</p>
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<p>1 attorney-client privilege?  2 A. We did.  3 Q. Okay. Did you -- did that letter also  4 indicate a waiver of the privilege -- privilege  5 based on the crime-fraud exception?  6 A. I believe it did.  7 Q. Okay. Are you going to refuse to  8 answer the question based on the attorney-client  9 privilege?  10 A. I am.  11 MR. GILMORE: And the record should reflect,  12 it's not Mr. Vacco's privilege to waive or to  13 assert. It's Mr. Morabito's or other clients of  14 the firms that are here to waive or assert the  15 privilege. So Mr. Vacco's neither waiving nor  16 asserting privilege. It's the clients that are  17 asserting the privilege. Does that make sense?  18 MS. PILATOWICZ: I understand your position,  19 but so that the record's clear, my client, we've  20 taken the position, holds the privilege and has  21 waived it. I am simply asking if you are refusing  22 to answer based on counsel's assertion of the  23 privilege.  24 MR. GILMORE: Thank you.  25 THE WITNESS: His assertion of the privilege</p>	<p>1 on behalf of his clients, yes.  2 BY MS. PILATOWICZ:  3 Q. Okay. Did -- do you know what happened  4 with -- well, do you understand that \$6 million was  5 transferred from Paul Morabito to Sefton Trustees?  6 A. I know that generally, yes.  7 Q. Okay.  8 A. I don't know it particularly.  9 Q. Okay. Do you know what happened to  10 those funds?  11 MR. GILMORE: You know, I'm going to insert  12 an objection here. Is the Sefton claim part and  13 parcel to the state court litigation, or are we now  14 walking into the -- the bankruptcy --  15 MS. PILATOWICZ: No. The --  16 MR. GILMORE: -- claims?  17 MS. PILATOWICZ: The Sefton trustee, the  18 \$6 million transfer is one of the allegations in  19 the state court complaint.  20 MR. GILMORE: As to which defendants?  21 MS. PILATOWICZ: As to Paul Morabito.  22 MR. GILMORE: Well, he's not a defendant.  23 MS. PILATOWICZ: Well, the -- the transfer  24 of the funds has to do with the overall fraudulent  25 transfer.</p>

<p style="text-align: right;">Page 106</p> <p>1 MR. GILMORE: Well, there's no allegation 2 that any of the defendant recipients had anything 3 to do with it. You -- you get my drift? 4 So the original complaint had a Sefton 5 allegation because Paul was a defendant. Now 6 Paul's not a party to the lawsuit. The only 7 parties to the lawsuit are Mr. Bayuk, Mr. Sam 8 Morabito, and the respective Superpumper and 9 Snowshoe entities. 10 So I'm having a hard time understanding why 11 we're crossing the streams here on the Sefton 12 Trustee transfers that have nothing to do -- 13 there's no allegation in the complaint that has 14 anything to do with the pending defendants. 15 MS. PILATOWICZ: Well, there was a transfer 16 of \$6 million to Sefton Trustees, and we are 17 investigating where it went. And we're entitled in 18 the litigation to investigate what happened to that 19 money. 20 MR. GILMORE: If -- if the -- if you're 21 telling me that the line of questioning is intended 22 to determine whether or not those transfers have 23 some relation to the defendants, then I suppose 24 you're going to get some latitude, but -- 25 MS. PILATOWICZ: Mm-hmm.</p>	<p style="text-align: right;">Page 107</p> <p>1 MR. GILMORE: -- if this witness doesn't 2 have that kind of testimony, then I'm going to 3 object that we're crossing the streams here. 4 BY MS. PILATOWICZ: 5 Q. So do you have any understanding of 6 what happened to the \$6 million that was 7 transferred to Sefton Trustees? 8 A. I really don't. 9 Q. Did any of that money come back through 10 your trust account? 11 A. Well, so that's why I hesitated a 12 moment ago. The record doesn't reflect my 13 hesitation. But recognizing that money's fungible, 14 and never having access to Sefton's records, what 15 I -- what I do know with clarity is what was 16 transferred into our trust account from Sefton, or 17 Lakud and Dash, which, you know, I believe 18 represented Sefton or had something to do with the 19 Sefton money. 20 MS. PILATOWICZ: Okay. 21 THE REPORTER: How do I spell Lakud and Dash? 22 MR. GILMORE: Actually. It's Liburd, 23 L-I-B-U-R-D. 24 (Discussion off the record.) 25 The following was marked for identification:</p>
<p style="text-align: right;">Page 108</p> <p>1 EXHIBIT 10 Trust Ledger History, six pages 2 BY MS. PILATOWICZ: 3 Q. Mr. Vacco, I've handed you what has 4 been marked as Exhibit 10. Thank you. Do you 5 recognize Exhibit 10? 6 A. I do. 7 Q. What is Exhibit 10? 8 A. It's a trust ledger history of Lippe 9 Mathias Wexler Friedman for matter number 3540, 10 which is Paul A. Morabito. 11 Q. Is the 3540 number, does that reflect 12 all matters of Paul Morabito, or is that just a 13 Paul Morabito general file? 14 A. I believe it's -- I don't know with 15 clarity. So some of the entities, you know, I'm 16 thinking of some of the -- the LLCs might have had 17 separate matter numbers. 18 Q. The second entry of that trust ledger 19 appears to be a deposit of \$449,975 from Sefton 20 Trustees Limited. Do you see that? 21 A. I do. 22 Q. Do you know what that money was? 23 A. What do you mean? 24 Q. Do you know why it was deposited into 25 your trust account?</p>	<p style="text-align: right;">Page 109</p> <p>1 A. Yes. 2 Q. Why was it? 3 A. Because it was going to form the basis 4 of the first cash payment under the Herbst 5 settlement to the Herbsts. 6 Q. Do you know how it got from Sefton 7 Trustees to your trust account? 8 A. Wire transfer. 9 Q. Do you know who initiated that wire 10 transfer? 11 A. Sefton Trustees. 12 Q. Do you know -- do you know -- let me 13 back up. 14 Did your firm have any contact with Sefton 15 Trustees to have that money transferred? 16 A. No. 17 Q. Okay. 18 A. Other than, you know, receiving the 19 wire transfer. 20 Q. When you saw it -- did you see the 21 deposit from Sefton Trustees come in? 22 A. I was aware of it. 23 Q. Okay. Did you question who Sefton -- 24 Sefton Trustees was? 25 A. Well, by this time, I knew.</p>

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<p>1 Q. Okay. And you also mentioned that 2 Liburd and Dash was someone who you believed to 3 represent? 4 A. Yes. So excuse me for the 5 mispronunciation previously. It's L-I-B-U-R-D and 6 Dash. 7 Q. And there's a receipt of 1,999,950? 8 A. Correct. Ten -- ten days after the 9 receipt of the half million. So the amounts that 10 are received are net of the wire transfer fees. 11 Q. Okay. 12 A. So the 449,975 is really 450,000 13 because you add the 25,000 -- the \$25, it becomes 14 500,000. I'm sorry. 450,000. 15 Q. And do you know what that money was 16 for? 17 A. The Liburd and Dash? 18 Q. Yes. 19 A. Well, sure. You can see that -- just 20 follow the trust ledger down. So the amount -- the 21 receipt amounts and then -- so on the 18th is the 22 449. So just for easy discussion, the 450 on 23 November 18 from Sefton and then on November 28th, 24 ten days later, is the Liburd and Dash, essentially 25 \$2 million on that day. And then a deposit from</p>	<p>1 Sam Morabito of 559, or roughly 560. 2 But then on November 30th, a day before the 3 payment was due, 2.5 -- 2.564 million goes out to 4 First American, which was the escrow agent for the 5 Herbsts. 6 So of the -- of the \$2,450,000 that came in 7 from Sefton and Liburd and Dash, it forred the 8 lion's share of the money that went to the Herbsts 9 for the first payment. 10 Q. Okay. Are you aware of other deposits 11 from Sefton Trustees into your firm's trust 12 account? 13 A. Well, in the interest of time, can you 14 point to me where they exist? 15 Q. I don't see them on this ledger. 16 A. Oh. Sure. So go to 5/11. So it would 17 be page Bates number 000481, and go down one, two, 18 three, four up from the bottom. And you can see a 19 receipt on May 11th, 2012, another \$2,274,389.53. 20 So, again, that's essentially \$2,275,000 once you 21 net out the -- the -- the transfer fee. 22 And that came from Liburd and Dash, and lo 23 and behold, 14 days later, that 2.274 forms the 24 lion's share of the next cash payment to the 25 Herbsts of \$2.5 million. So the Sefton moneys, the</p>
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<p>1 Herbsts got. 2 Q. Do you know if there were any other 3 deposits besides the -- the 2.5 -- there -- 4 there -- there would appear to be another million 5 dollars that was transferred to Sefton Trustees. 6 Do you know what happened to that money? 7 A. I don't know how much was transferred 8 into Sefton. I never knew that. 9 Q. Okay. 10 A. All I know is what we received. 11 Q. Do you -- are you aware of any other 12 receipts, from Sefton Trustees or Liburd and Dash, 13 other than the ones that we've just gone over? 14 A. If they're not on this Exhibit 10, they 15 didn't happen. 16 MR. GILMORE: There is actually another 17 Lippes trust lodger, which you know about. 18 MS. PILATOWICZ: Right. That deals with 19 JCH -- 20 MR. GILMORE: USFCC has one as well. It 21 may have Liburd money in it. 22 BY MS. PILATOWICZ: 23 Q. Yeah. Let me be clear. I'm not trying 24 to trick you. I didn't pull that one because it -- 25 A. Well, okay. So let's be a little bit</p>	<p>1 more careful about this from my perspective. 2 Q. Okay. 3 A. So let's go back to page 1, or 478 of 4 Bates stamp of the trust ledger, Exhibit 10. So 5 now as I look at this document more thoroughly, as 6 opposed to responding to your questions just now, 7 analyzing it, there is a Sefton transfer on 8 November 18th of -- if we -- if you don't mind, if 9 we could just round it up to the -- to the full 10 amount minus the fee, or before the fee is 11 deducted, of \$450,000. 12 So for the record, that's the second entry 13 on this page 1. 14 Q. Mm-hmm. 15 A. Right? Do you see that? 16 Q. Yes. 17 A. Okay. Then we go down to 18 November 28th. And there's essentially a 19 \$2 million transfer from Liburd and Dash on 20 November 28th. 21 And then we see the entry or the -- the 22 disbursement of \$2,564,067.21 on November 30th 23 drawing down the Sefton and Liburd deposits. 24 Then on December 13th is another \$750,000 25 receipt from Liburd and Dash. So on this page, you</p>

<p style="text-align: right;">Page 114</p> <p>1 have 2.75 -- you have over \$3 million of -- you got  2 close to \$3.2 million on this page from Sefton or  3 Liburd and Dash. And that \$750,000, as you could  4 see, was then disbursed, for the most part, toward  5 settlement obligations.  6 And why I qualify "for the most part,"  7 because as you go down and reconcile the trust  8 agreements, so -- the trust ledger, there was a  9 payment to my firm for fees. But all the other  10 entries, Berry-Hinckley Trust of \$3,000 on  11 January 3rd, that's a settlement payment.  12 The Marine Midland wire accounts, so the  13 disbursement on 1 -- January 31st, 2012, that's a  14 settlement payment. And when I say, "settlement"  15 because there were other obligations in the  16 settlement besides cash to the Herbsts. So  17 there's -- the -- those are -- those monies are  18 coming out of the \$750,000 that came from Liburd  19 and Dash on November 30th.  20 And we could just keep going here. You  21 know, Washoe County Treasurer is a settlement.  22 That's tax payments. Again, Midland wire account  23 on 2/27. Settlement payment. Straight-line  24 Merchant Capital. Off the top of my head, that  25 doesn't ring a bell, but I believe that also was a</p>	<p style="text-align: right;">Page 115</p> <p>1 settlement payment, but I could be wrong about  2 that.  3 But my point is, so between -- this trust  4 ledger reveals over \$5 million, substantially more  5 than \$5 million coming in from Sefton and Liburd  6 and Dash. What happened to the rest of it, if it  7 didn't hit here, I don't know.  8 Q. Okay.  9 A. And by "here," I mean Exhibit 10.  10 Q. Are you aware of any offshore accounts  11 that Paul Morabito held?  12 A. Other than this one, no.  13 Q. Do you currently represent Edward  14 Bayuk?  15 A. I currently represent Snowshoe but not  16 Edward personally.  17 Q. Do you currently represent Salvatore  18 Morabito?  19 A. No.  20 MS. PILATOWICZ: Okay. I am through with  21 the portion of the questions that -- other than the  22 questions that deal with Superpumper and Snowshoe  23 and CWC.  24 At this time I am going to suspend the  25 deposition based on the asserted privilege, as I</p>
<p style="text-align: right;">Page 116</p> <p>1 think it's an issue that the Court's going to have  2 to decide. So we're not concluding the deposition  3 today of you personally; it's being suspended with  4 the potential of bringing you back if it is  5 determined that the attorney-client privilege is  6 properly waived by the trustee.  7 MR. GILMORE: But you have concluded  8 nonattorney-client privileged questions with  9 respect to the subpoena of this witness?  10 MS. PILATOWICZ: Correct.  11 MR. GILMORE: Okay. Let's close this  12 record, then.  13 MS. PILATOWICZ: If you have no questions,  14 we can close this record.  15 (Deposition concluded at 1:49 p.m.)  16 * * *  17  18  19  20  21  22  23  24  25</p>	<p style="text-align: right;">Page 117</p> <p>1 I hereby CERTIFY that I have read the  2 foregoing 116 pages, and that they are a true and  3 accurate transcript of the testimony given by me in  4 the above-entitled action on October 20, 2015.  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p> <p style="text-align: center;">DENNIS C. VACCO</p> <p>Sworn to before me this _____ day of _____, 2015.</p> <p>_____  NOTARY PUBLIC</p>

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<p>1 2 In order to make this deposition more 3 nearly conform to the testimony, the witness wishes 4 to make the following changes:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">PAGE</th> <th style="width: 15%;">LINE</th> <th style="width: 70%;">DESIRED CHANGE</th> </tr> </thead> <tbody> <tr><td>5</td><td></td><td></td></tr> <tr><td>6</td><td></td><td></td></tr> <tr><td>7</td><td></td><td></td></tr> <tr><td>8</td><td></td><td></td></tr> <tr><td>9</td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td></tr> <tr><td>22</td><td></td><td></td></tr> <tr><td>23</td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td></tr> <tr><td>25</td><td></td><td></td></tr> </tbody> </table> <p>Signature of Witness _____ Date _____</p>	PAGE	LINE	DESIRED CHANGE	5			6			7			8			9			10			11			12			13			14			15			16			17			18			19			20			21			22			23			24			25			<p>1 STATE OF NEW YORK)</p> <p>2 ss:</p> <p>3 COUNTY OF ERIE )</p> <p>4</p> <p>5 I DO HEREBY CERTIFY as a Notary Public in and 6 for the State of New York, that I did attend and 7 report the foregoing deposition, which was taken 8 down by me in a verbatim manner by means of machine 9 shorthand. Further, that the deposition was then 10 reduced to writing in my presence and under my 11 direction. That the deposition was taken to be 12 used in the foregoing captioned action. That the 13 said deponent, before examination, was duly sworn 14 by me to testify to the truth, the whole truth and 15 nothing but the truth, relative to said action.</p> <p style="text-align: right;"><i>Mary Scholze</i></p> <p style="text-align: right;">MARY SCHOLZE, RPS, 1001, Notary Public.</p>																																																																																				
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## Exhibit 8

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA (RENO)

IN RE: Case No. 13-51237-gwz  
PAUL A. MORABITO, Chapter 7  
Debtor.  
.....  
WILLIAM A. LEONARD, JR., Adv. No. 15-05046-gwz  
Chapter 7 Trustee for the Estate  
of Paul Anthony Morabito,  
Plaintiffs,  
v.  
PAUL ANTHONY MORABITO, an  
individual; MEADOW FARMS TRUST,  
a Delaware Trust; EDWARD BAYUK,  
an individual and grantor and  
trustee of The Meadow Farms Trust;  
VIRSENET, LLC, a Delaware  
limited liability company;  
USHF CELLULAR COMMUNICATIONS, LLC,  
a Delaware limited liability  
company; and LIPPES MATHIAS  
WEXLER FRIEDMAN, LLP, a New York  
limited liability partnership,  
Defendants.  
.....  
Tuesday, December 22, 2015  
9:13 a.m.

TRANSCRIPT OF MOTION FOR SCHEDULING CONFERENCE RELATING TO  
TRUSTEE'S MOTION FOR PRELIMINARY INJUNCTION (11 U.S.C. 105)  
FILED BY JOHN F. MURTHA ON BEHALF OF WILLIAM A. LEONARD, JR.;  
MOTION TO COMPEL RESPONSES TO DEPOSITION QUESTIONS FILED BY  
TERESA M. PILATOWICZ ON BEHALF OF WILLIAM A. LEONARD, JR.

**BEFORE THE HONORABLE GREGG W. ZIVE  
UNITED STATES BANKRUPTCY COURT JUDGE**

APPEARANCES CONTINUED

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ACCESS TRANSCRIPTS, LLC



1-855-USE-ACCESS (873-2223)

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ACCESS TRANSCRIPTS, LLC



1-855-USE-ACCESS (873-2223)

1 (Proceedings commence at 9:13 a.m.)

2 THE COURT: In the Matter of Paul A. Morabito, the  
3 first matter on the calendar is an adversary, 15-05046.

4 May I have appearances in that matter, please?

5 MR. GORDON: Good morning.

6 MR. ESMONT: Your Honor, Joseph --

7 THE COURT: In the --

8 MR. ESMONT: -- Esmont on behalf --

9 THE COURT: Excuse me. In the courtroom first,  
10 please. Thank you.

11 MR. GORDON: Good morning, Your Honor.

12 MR. ESMONT: Apologies.

13 MR. GORDON: Gerald Gordon of Gordon Silver -- I'm  
14 sorry, of Garman Turner Gordon; I keep on doing that -- on  
15 behalf of the trustee, special counsel to the trustee, in the  
16 adversary matter.

17 MR. GILMORE: Good morning, Your Honor. Frank  
18 Gilmore and Jeff Hartman on behalf of the debtor.

19 MS. ESTES: Good morning, Your Honor. Holly Estes on  
20 behalf of Edward Bayuk and the Meadows Farm Irrevocable Trust.

21 MS. CHUBB: Good morning, Your Honor. Janet Chubb  
22 for Virsenet, LLC, and on the telephone are my co-counsel,  
23 Pamela Johnson and Joseph Esmont. His pro hac has been  
24 granted; her application has been filed, but I don't know if  
25 it's been granted yet.



1 THE COURT: All right.

2 MR. MURTHA: Good afternoon, Your Honor -- good  
3 morning, Your Honor. John Murtha appearing on behalf of the  
4 trustee as the plaintiff in the adversary.

5 MR. LUKAS: Good morning, Your Honor. Tim Lukas on  
6 behalf of the USHF Cellular Communication.

7 THE COURT: By telephone, please? May I have  
8 appearances?

9 MS. JOHNSON: Your Honor, Pamela Johnson on behalf of  
10 Virsenet.

11 MR. ESMONT: And, Your Honor, Joseph Esmont on behalf  
12 of Virsenet.

13 THE COURT: Are there any other counsel on the  
14 telephone? I thought you were going to have a couple lawyers  
15 from your firm, Mr. Gordon.

16 MR. GORDON: I thought they were. I thought I heard  
17 Mr. Weisenmiller earlier. They're not going to say anything,  
18 just --

19 THE COURT: Well, I'm assuming that all argument is  
20 going to be made by counsel in the courtroom. Is that  
21 accurate?

22 MR. GILMORE: That's accurate from my end, Your  
23 Honor.

24 THE COURT: All right, because that's what I assumed.  
25 All right. On November 24th, I signed an order



1 shortening time in the adversary, Docket Number 21, to conduct  
2 a scheduling conference. And that's all I'm going to do. I am  
3 not going to resolve any factual issues.

4 I know that there was a complaint filed on October  
5 15th of this year. I have the complaint in front of me. I've  
6 read it. I certainly haven't studied it. I have read the  
7 answer that was filed by the debtor on December 3rd, Docket  
8 Number 25. I read Virsenet's answer filed on December 10th,  
9 and I read USHF Cellular Communication's answer filed on  
10 December 1.

11 The -- all of the answers demanded jury trials, and  
12 if I read them correctly, there's no consent to the Bankruptcy  
13 Court conducting the jury trial. And obviously at some point  
14 there may have to be a determination of whether this matter and  
15 the issues are Stern-related issues, and if so, this Court  
16 would not then have constitutional authority to enter a final  
17 judgment. And in the absence of consent, either implied or  
18 express, and certainly none that I can see so far that rise to  
19 the level of implied, then the United States District Court  
20 would have to enter final judgment. This Court would function  
21 in a manner analogous to a magistrate judge and could prepare  
22 proposed findings and conclusions and proposed order, and then  
23 the process would be dictated by 28 U.S.C. 157(c), Federal Rule  
24 of Bankruptcy Procedure 9033, and that would be the steps that  
25 would be taken.



1 That, of course, is not in front of me today. The  
2 scheduling conference is for the purpose of this Court to  
3 consider a motion for a preliminary injunction, which by its  
4 terms is not a final adjudication.

5 And I have read the motion for preliminary  
6 injunction, Docket Number 11, and I read the declaration of  
7 John Murtha filed in support thereof, Docket Number 12, and it  
8 contains exhibits that I believe are identical to the exhibits  
9 that were attached to the complaint. Is that correct?

10 MR. MURTHA: That is correct, Your Honor.

11 THE COURT: Yes. All right. It is the movant's  
12 belief that there is going to be discovery that must be taken  
13 prior to the Court conducting the hearing on the preliminary  
14 injunction and that the hearing itself might take some time.  
15 Is that accurate?

16 MR. MURTHA: That is correct, Your Honor.

17 THE COURT: Is there any disagreement with that by  
18 any of the defendants?

19 MR. GILMORE: I don't believe so, Your Honor.

20 MR. LUKAS: Your Honor, in terms of USHFCC, I don't  
21 believe that the issues -- because the claims essentially are  
22 prohibition, bar sought against the receipt of funds --

23 THE COURT: Well, what it does --

24 MR. LUKAS: -- directed to the debtor.

25 THE COURT: What the -- really, what the motion for



1 preliminary injunction, in shorthand, means to me is that the  
2 trustee wants to freeze the funds and no further distributions.  
3 That's how I read it.

4 MR. MURTHA: That is correct, Your Honor.

5 THE COURT: All right.

6 MR. MURTHA: And then can I update the Court on  
7 some --

8 THE COURT: Wait, I just want to make sure that --  
9 I'm not sure I understood what you just told me, Mr. Lukas.

10 MR. LUKAS: The issue is, Your Honor, there's no  
11 allegations against USHFCC per se in terms of trying to get any  
12 ownership interest or anything. It's an indirect vis-a-vis  
13 Virsenet -- it's kind of upstream, if you will. What they're  
14 trying to do to USHFCC, which is similar to Lippes, is saying  
15 don't make any payment distribution --

16 THE COURT: That's exactly what they're saying.

17 MR. LUKAS: Right, to Morabito, but it's not a claim  
18 of ownership.

19 THE COURT: And I'm all -- asking do you need any  
20 discovery before I have a hearing on the motion for preliminary  
21 injunction? That's all I'm asking.

22 MR. MURTHA: The answer to that, I believe, is yes,  
23 although we've made some progress in getting it resolved by  
24 stipulation.

25 THE COURT: All right. And then to hear from counsel



1 from Virsenet, please.

2 MS. CHUBB: Yes, Your Honor. We agree that -- I  
3 don't know whether we'll be taking any discovery or not. I --

4 THE COURT: All right.

5 MS. CHUBB: But it depends to some extent on what the  
6 trustee --

7 THE COURT: Mr. Gilmore, first you said you thought  
8 you didn't disagree, then you stood up.

9 MR. GILMORE: I don't disagree with the Court's  
10 assessment as to Mr. Murtha's request for the necessity for  
11 discovery. If Mr. Murtha -- the trustee wants to obtain the  
12 relief they've sought in the motion, there's certainly going to  
13 be required depositions and exchange of discovery.

14 THE COURT: I totally agree with that.

15 MR. GILMORE: From the debtor's perspective, I agree  
16 with that. From the perspective of USHFCC or Lippes or perhaps  
17 the Meadow Farms trust or whomever, I don't believe any  
18 discovery would be required because, as I understand, there's  
19 likely to be a stipulation that no payments will be forthcoming  
20 from any of those persons or entities to the debtor, indeed,  
21 and there is a possibility even a stipulation vis-a-vis the  
22 trustee and the debtor that would likely occur before the  
23 discovery even takes place.

24 THE COURT: Well, that certainly would be the  
25 preferable way of doing it. It would hold down the



1 administrative expense for the state and, of course, eliminate  
2 the associated expense for any responding defendant.

3 Ms. Chubb?

4 MS. CHUBB: Well, we're trying very hard to work all  
5 of that out.

6 THE COURT: Good.

7 MS. CHUBB: But there might be distributions. They  
8 would be --

9 THE COURT: I'm not here to -- I don't want to know  
10 about distributions. All I have in front of me is the request  
11 for a scheduling conference so that the motion can come on.

12 What I will tell you, my time is pretty well taken up  
13 for the next three months, so you have plenty of time to do  
14 whatever discovery you need, plenty of time to enter into any  
15 stipulations that you need. We really don't have any time. In  
16 fact, I have a two-week trial set that I had to shorten to one  
17 week, and I'll make sure it only lasts one week, that -- I  
18 don't think I have any time until April now. Is that correct?

19 THE CLERK: That's correct, Judge.

20 THE COURT: Okay. What -- give me a date in April --  
21 if you do not arrive at a consensual resolution, I think you  
22 need at least a day.

23 MR. MURTHA: I agree. Maybe two.

24 THE COURT: Yeah. Set aside two days, please.

25 THE CLERK: Your Honor, that would be April 7th and



1 8th.

2 THE COURT: April 7th and 8th, and that's when we'll  
3 have it.

4 MR. MURTHA: At nine o'clock?

5 THE COURT: We'll start at 10:00 on the 7th because I  
6 always get late pleadings and I like to read them. That's a  
7 Thursday and a Friday.

8 THE CLERK: Yes, Your Honor.

9 THE COURT: And I don't give up my Fridays. That's  
10 my retirement are my Fridays, so try to get it worked out.

11 That -- anything else, Mr. Murtha?

12 MR. MURTHA: No, I don't believe so, Your Honor. We  
13 will start discovery and there might be issues that arise  
14 that --

15 THE COURT: I really encourage --

16 MR. MURTHA: -- we have, but --

17 THE COURT: Okay. I strongly encourage the parties  
18 to work at it, at some type of resolution. Maybe there's some  
19 mandatory type of distributions that have to be made in some  
20 amount. I have no idea, but I know I'm troubled when I see  
21 money go away before we've had a --

22 MR. MURTHA: Sure.

23 THE COURT: -- chance to look at the underlying  
24 facts.

25 MR. MURTHA: I guess I do have one other issue, Your

1 Honor.

2 THE COURT: What's that?

3 MR. MURTHA: With the hearing on April 7th, under the  
4 rules, no opposition to the preliminary injunction motion will  
5 be needed until two weeks previously.

6 THE COURT: Well, let me set up a schedule. I'd want  
7 opposition -- on April's -- I'm not going to push it right away  
8 because I want the parties to continue to negotiate without  
9 incurring the fees that would be incurred in preparing  
10 oppositions at this point. But I would like an -- if it can't  
11 be agreed to, I'd like an opposition filed by Friday, February  
12 10th, and then replies filed by March 10th. And knowing that  
13 there may be discovery, if you can't arrive, I will allow  
14 supplements from both sides simultaneously, and no later than  
15 March 24th. All right?

16 And the point of the supplements is not to restate  
17 every argument you've made. It's just if there have been any  
18 developments between March 10th and that final date.

19 Prepare the order, please, Mr. Murtha. Have opposing  
20 counsel sign off under Local Rule 9021.

21 MR. MURTHA: Yes, Your Honor, will do.

22 THE COURT: Thank you. The next matter I have on  
23 calendar was set pursuant to a notice of hearing on order  
24 shortening time that I signed on November 24, 2015. Of course,  
25 here we are on December 22nd, so it wasn't really all that

1 short. And that was Docket 256 in the main case. The motion  
2 is Docket 452. I've read it, it was filed on November 20th,  
3 and I've read the exhibits attached thereto.

4 Now, that motion was filed by special counsel for the  
5 Chapter 7 trustee, and then the trustee, through his counsel,  
6 filed a joinder. So in a sense the trustee has filed two  
7 pleadings regarding this motion, if I've read it correctly.

8 MR. MURTHA: That is correct, Your Honor.

9 THE COURT: From the -- in the future, do what you  
10 did with the reply. Give me one pleading so I know what the  
11 trustee is saying.

12 MR. MURTHA: Understood, Your Honor.

13 THE COURT: Thank you. There was a limited objection  
14 filed on December 14th, Docket Number 460, on behalf of USHF  
15 Cellular Communications. There has to be an easier way of  
16 referring to that client because I find that it becomes a  
17 tongue twister with all of the initials. So let's see if we  
18 can come up with something that makes sense.

19 MR. GILMORE: I'll work on it, Your Honor.

20 THE COURT: Yeah, it's just difficult. The debtor  
21 filed an opposition on December 14th, Docket 461, supported by  
22 the declaration of Mr. Gilmore, Docket 462. I've read it and  
23 I've read the exhibits. There was a stipulation for extension  
24 of time. I denied it because it wouldn't have given me any  
25 time to prepare, but I think I also agreed to allow a shorter



1 extension than that was asked.

2           Then I read the declaration of Teresa M. Pilatowicz  
3 filed in support of the motion to compel, that's Docket 464.  
4 There was an omnibus reply filed on December 17th, Docket 466.  
5 And that's a far more preferable way for the trustee to advance  
6 his arguments. I read Docket Number 467, which is another  
7 declaration of Teresa M. Pilatowicz, and there's -- I read 465,  
8 which is the service.

9           Are those all the pleadings that have been filed in  
10 support of and in opposition to the motion?

11           MR. GORDON: Yes, Your Honor.

12           MR. LUKAS: I believe so, Your Honor.

13           MR. GILMORE: I believe that's correct, Your Honor,  
14 yes.

15           THE COURT: Okay. I did not see any pleadings filed  
16 by Virsenet. Is that correct?

17           MS. CHUBB: Yes, it is.

18           THE COURT: All right. Then I won't listen to  
19 Virsenet today. Then I have also read the order partially  
20 granting the motion to compel production of documents that I  
21 entered on June 12th, 2015, following a hearing on May 13th,  
22 2015. And since there are references to what occurred at that  
23 hearing of May 13th, I've read the transcript, which is Docket  
24 Number 339. I've annotated it.

25           I must say that the issues that were before me in May

1 are not the same issues that are before me today, factual  
2 issues. The legal issues tend to be the same, but the analysis  
3 must be different, upon my reading of the cases, and I'll go  
4 through that in a minute.

5 I've read the following cases, among the many that  
6 have been cited by the parties, and if I do not refer to one,  
7 it just means I don't have it in front of me today. It does  
8 not mean I didn't read them.

9 The first is Commodity Futures Trading Commission v.  
10 Weintraub. I'm not going to give the cites. You know what the  
11 cites are. In that the Supreme Court allowed, after the  
12 application of balancing test, the trustee to have the ability  
13 to waive the privilege on behalf of a corporate debtor, and  
14 expressly indicated that it was not making any determination in  
15 the event of an individual debtor, said that it would be  
16 different considerations.

17 I've read Swidler & Berlin v. United States. In  
18 fact, I referred to this at the May hearing. It was decided in  
19 1998 and raises some interesting points. I've read In Re  
20 Kincaid, a Ninth Circuit case in 1990, which I think clearly  
21 indicates this Court has jurisdiction over this matter today.  
22 Page 1165, the Ninth Circuit noted:

23 "Moreover, as the BAP pointed out, determining the  
24 nature and the extent of the case is also a  
25 fundamental function of a bankruptcy court and



1 fundamental to the administration of a bankruptcy  
2 case."

3 Moreover, you know, when one looks at the Fietz  
4 decision, which deals with the subject matter jurisdiction, not  
5 by -- and then incorporated the Pacor decision in its totality,  
6 it's a broad definition and it's -- could conceivably have an  
7 effect on the administration on the estate of the debtor. And  
8 clearly what's before me today does. This is -- involves  
9 potential fraudulent conveyance and transfer of property that  
10 would be property of the estate and available to debtors.

11 I also read the Murdoch case. Now, this case, which  
12 is at 609 F.3d 983, it's a 2010 Ninth Circuit case, refers to  
13 Swidler, and specifically at Page 994, it did not hold, I  
14 believe, that the balancing test is totally inapplicable in the  
15 Ninth Circuit. It is limited, and I think Judge Tighe's  
16 reading of it is, I think, perhaps broader.

17 And it simply held that the United States Supreme  
18 Court in Swidler, quote:

19 "Explicitly stated that it was not deciding whether  
20 the attorney-client privilege might have to yield to  
21 a criminal defendant's constitutional rights."

22 It had nothing to do with the crime-fraud exception  
23 which the United States Supreme Court in Swidler recognized was  
24 one of two existing exceptions to the attorney-client  
25 privilege, along with the testamentary exception.



1 All Swidler dealt with was a posthumous waiver of  
2 privilege. It said, no, it was not going to create a new one.  
3 It did not address directly the crime-fraud nor the  
4 testamentary exceptions. And I would notice that Murdoch has  
5 not been cited for that proposition except by Judge Tighe, and  
6 then Judge Tighe's decision in Ginzburg, which I also referred  
7 to in May, found at 517 B.R. 175, which as I noted at that  
8 time, and I'm incorporating by reference, the analysis that I  
9 placed on the record on May 13th of this year.

10 This was a motion for reconsideration where Judge  
11 Tighe changed her decision based on Swidler and that the  
12 balancing test could not be applied regarding waiver of the  
13 attorney-client privilege. It has not, so far as we can  
14 determine, been followed by any other course. It was not  
15 appealed. It's not precedential. It's well-written and I  
16 understand the reasoning.

17 And Judge Tighe, based upon Swidler, held that there  
18 was no balancing test. She noted that:

19 "In Swidler, Independent Counsel argued that existing  
20 exceptions to the privilege, such as the crime-fraud  
21 exception and the testamentary exception, make the  
22 impact of one more exception marginal. The Supreme  
23 Court rejected this rationale."

24 She's correct. But that -- but the Supreme Court did  
25 not say there was no balancing test for either of those two



1 exceptions. It just said it wasn't going to create another  
2 exception. Then, at page 182, as well, in the Ginzburg  
3 opinion, the judge wrote:

4 "Even when faced with the question of whether a  
5 criminal defendant's constitutional rights to cause  
6 the attorney-client privilege to yield, the Ninth  
7 Circuit also relied on Swidler to uphold the trial  
8 court's refusal to waive the privilege."

9 Well, that's not exactly correct. What it said was  
10 the Supreme Court hadn't decided it, and then held that the  
11 privilege couldn't be waived, over a strong dissent by a number  
12 of judges on the Ninth Circuit, including Judge Kozinski.

13 And thus I think it may be a reach to say, as this  
14 opinion states at Page 182:

15 "Federal common law simply prohibits the balancing of  
16 the trustee's duties and the need for the information  
17 with the debtor's attorney-client privilege."

18 I think that's too much. We know that's true for the  
19 creation of a new privilege -- or, excuse me, for the creation  
20 of a new exception to the privilege in Swidler, and Murdoch was  
21 trying to fill the void because it found that the United States  
22 Supreme Court didn't deal with a waiver of a privilege when it  
23 affects a criminal defendant's constitutional rights, including  
24 a right under the confrontation clause, because that was a  
25 murder case where Mr. Murdoch was convicted when Mr. Dinardo

1 kind of pointed his finger at him and -- even though he had  
2 written a letter years ago saying he was coerced into making  
3 that identification. And one only has to read Judge Kozinski's  
4 dissent to see, in my opinion, how important that letter was,  
5 but the Ninth Circuit ruled it wouldn't come in. It has  
6 nothing to do with the crime-fraud exception.

7 By the way, the only portion of crime-fraud exception  
8 in front of me is fraud. I do not have any criminal -- it's  
9 fraud. It's fraudulent conveyance transfer.

10 I've also read United States v. Graf, 2010, Ninth  
11 Circuit case, where it indicates what is covered by the  
12 privilege. There's an eight-part test. I've employed --  
13 applied that. Again, I've read Cutuli, which deals with the  
14 crime -- this is a case out of the Southern District of Florida  
15 Bankruptcy, deals with the crime-fraud exception, Page 3 of the  
16 opinion. I've read it. Bazmore out of the Southern District  
17 -- Bankruptcy Court, Southern District of Georgia. By the way,  
18 this involved a state court action.

19 I've read In re Hotels Nevada. This is a decision by  
20 Judge Markell found at 458 B.R. 560, decided in 2011. Now,  
21 reliance on this case I think has to be careful. First of all,  
22 it deals with a 2004 exam and certain documents that were  
23 requested to be produced. If you remember, what I -- the  
24 matter that was in front of me earlier in this case were  
25 documents, and the documents themselves are property of the

1 estate.

2           The matter before me today, so far as I can  
3 determine, based upon the questions that were asked of  
4 Mr. Vacco in his October deposition, and that he refused to  
5 answer upon being ordered not to do so by Mr. Gilmore on behalf  
6 of the debtor, because it is not Mr. Vacco's privilege. It is  
7 the debtor's privilege that the debtor invoked, the same debtor  
8 who is not a party to the state court action in which the  
9 deposition was being taken, but is clearly a party in interest  
10 here and it affects property of the estate in the sense of the  
11 distributions if they are returned to the estate. If the  
12 allegations can be proven, this would appear to be the only  
13 court that would have jurisdiction over Mr. Morabito.

14           And its jurisdiction over Mr. Morabito is asserting  
15 the privilege that is the critical issue before me. I'm not  
16 going to order Mr. Vacco to say anything or not to say  
17 anything. Any order I issue will just be dealing with the  
18 privilege that's being asserted of Mr. Morabito.

19           Then if Mr. Vacco determines that he doesn't want to  
20 answer, believes it would be inappropriate to answer, I think  
21 then the citation to the -- it's kind of ironic, Federal Rules  
22 of Civil Procedure that I read, even though it's alleged that  
23 it really should be under state law, but assuming that the same  
24 type of provision applies, then it probably should be  
25 determined by the court in the district where the deposition is



1 being taken, even though I believe that there was -- it was  
2 issued pursuant to state law, the summons was issued pursuant  
3 to -- and subpoenas were issued pursuant to state law.

4 But nevertheless I'm not determining anything  
5 regarding Mr. Vacco except that he was undisputedly counsel for  
6 the debtor and for a number of other clients who are  
7 represented here today. So this may only be the first step in  
8 the process.

9 I've also read In Re Andrews, 186 B.R. 219 (Bankr.  
10 E.D. Va.). It's got a good analysis of the crime-fraud  
11 exception. I've read Napster (In Re Napster, Inc.), 479 F.3d  
12 1078 (9th Cir. 2007); In Re Grand Jury Proceedings, 87 F.3d 377  
13 (9th Cir. 1996); KL Group, 829 F.2d 909 (9th Cir. 1987); and  
14 others. So I think I've made the record. I've given you some  
15 indication of how I've analyzed this matter.

16 I'm going to allow some short argument because I have  
17 other matters that I need to attend to this morning and I just  
18 squeezed this matter in. But -- so I think I'll provide a  
19 tentative conclusion, and I believe that the eight-part test  
20 applies, that there is an attorney-client privilege.

21 You'll note that in my prior decision I ordered a  
22 privilege log. I still don't see a privilege log here, so all  
23 I have are some disputed questions. I'm also being asked, I  
24 think, to find that the waiver is applicable to all counsel in  
25 -- who may have represented the debtor. Is that correct?



1 MR. MURTHA: That's absolutely correct, Your Honor.

2 THE COURT: I'm not going to do that. I think it is  
3 too close to an advisory opinion, and if waiver requires some  
4 type of a balancing test, then I think I have to balance it for  
5 each of them.

6 I believe that there has been a prima facie showing  
7 that has not been rebutted regarding the existence of the fraud  
8 exception to the attorney-client privilege. There's certain  
9 badges of fraud that exist -- Cutuli talks about those -- to  
10 determine if the moving party has met its burden to make a  
11 prima facie case, and I believe that that has been established.

12 Remember, we're not -- or I'm not in any way making  
13 any finding regarding the deponent, Mr. Vacco's, credibility or  
14 not saying he participated in a fraud. As we know, the case  
15 law says he doesn't even have to be aware of it; it's just if  
16 the attorney's assistance was obtained in furtherance of the  
17 fraudulent activity. And I'm not even convinced that timing  
18 makes any difference or, in fact, was -- the attorney's  
19 assistance was closely related.

20 The query is what the client wanted to accomplish,  
21 whether the client, Mr. Morabito, intended to further some  
22 fraudulent activity and that he engaged counsel to assist in  
23 that activity. The debtor is not subject to the motion to  
24 compel because he was not the deponent, but he is the holder of  
25 the privilege. And that's why there is jurisdiction, and



1 that's why this motion isn't brought under Rule 37. And I'm  
2 not making any determination of Rule 37.

3           Moreover, I'm not being asked to enter any type of a  
4 final order or a judgment against Mr. Vacco. Not aware of law  
5 that says there must be in personam jurisdiction over a  
6 deponent who's not a party. And Mr. Vacco himself, who is a --  
7 obviously a skilled and knowledgeable practitioner, indicated  
8 that he needed a judicial determination so he could make his  
9 own judgment whether or not he was going to answer the  
10 questions. I don't know of any other court that can make that  
11 determination.

12           In other words, while related to discovery, what I'm  
13 really being asked to do is not to participate in the discovery  
14 process except to find whether or not there is a privilege -- I  
15 think there is -- and whether or not it's been waived. By the  
16 balancing test, I think it may -- it has been, and whether the  
17 crime-fraud exception applies, and I think it does. But I'm  
18 not going to go any further than find -- making those findings  
19 applicable to this particular deponent. That's why it's not an  
20 advisory opinion.

21           Moreover, this is a procedural issue. It's not  
22 really substantive, and state law does not supply the rule  
23 decision for privilege determination. Moreover, based upon the  
24 citations contained in the opposition, it would appear to me  
25 that both New York and Nevada have a very similar exception

1 based upon fraud, which is the equivalent of the federal law  
2 crime-fraud exception.

3 And federal law, and the cases so hold, does  
4 determine the scope of the privilege as it relates to estate  
5 property, and the allegation is that this is estate property  
6 that was improperly or fraudulently transferred by the debtor.

7 Moreover, there are a number of issues, even if  
8 timing was important, that Mr. Vacco already testified to that  
9 he had no knowledge of, or didn't, at least, until sometime  
10 near the time that he terminated his relationship with  
11 Mr. Morabito, which was in 2013. Specifically I'm talking  
12 about the septen (phonetic) transfers by Mr. Morabito.

13 One thing that is a little bit perplexing to me is  
14 the state court action in which the deposition was taken. It's  
15 not been removed. It's not in this court. Is that correct?

16 MR. GORDON: Your Honor, we were not able to remove  
17 it pursuant to the rules because of the manner by which it was  
18 filed in that gap period between -- we were not able to do it,  
19 so it had to stay in state court. So what we did was we  
20 substituted in the trustee --

21 THE COURT: I know. The trustee is now a party. I  
22 read that.

23 MR. GORDON: And we substituted out Mr. Morabito.

24 THE COURT: The adversary in which I conducted the  
25 status conference this morning, does that contain similar



1 allegations to the allegations that are in the state court  
2 action?

3 MR. MURTHA: Only in that it's a fraudulent transfer  
4 case, Your Honor. But it has nothing to do with the issues  
5 that are in place in the state court issue -- state court  
6 matter. For example, we're not addressing real property  
7 transfers. We're not addressing the payment of --

8 THE COURT: In the adversary.

9 MR. MURTHA: In the adversary, that's correct. Our  
10 adversary focuses on the transfer of whatever interest the  
11 debtor may have had in USHFCC, and it deals with that only.

12 MR. LUKAS: If I can correct, you mean in Virsenet.

13 MR. MURTHA: In Virsenet.

14 THE COURT: Virsenet, okay.

15 MR. MURTHA: Generically, I refer to it as the  
16 USHFCC.

17 THE COURT: All right. You've heard my tentative  
18 conclusion. I'll hear argument from the trustee.

19 MR. GORDON: Again, good morning, Your Honor. I will  
20 keep it very short given the Court's comments and summary  
21 conclusions. Just a few things. One is the Court is  
22 absolutely correct, we were trying to be very careful in that  
23 this is not directed at Mr. Vacco. This is directed at the  
24 holder of the privilege, and in this case it's the debtors.  
25 And I use the word "debtors" as CNC and Mr. Morabito.



1 THE COURT: I forgot to mention because CNC is also a  
2 debtor. That's a corporate debtor and Weintraub makes it very  
3 clear that the trustee has that privilege.

4 MR. GORDON: The second point I'd like to clarify is  
5 the Court has talked about the privilege log. In fact, when  
6 the Court reviewed the transcript of Mr. Vacco's deposition,  
7 there was a lengthy discussion with regard to both Exhibit 1  
8 and Exhibit 2. Exhibit 1 was a subpoena for documentation  
9 issued to Mr. Vacco. Exhibit 2 was the response from  
10 Mr. Vacco. And they're both attached to the deposition.

11 In the response, Mr. Vacco -- in the subpoena  
12 response, Mr. Vacco states in paragraph LMWF, which is  
13 Lippes --

14 THE COURT: That's Lippes.

15 MR. GORDON: -- objects to each paragraph of the  
16 document demand to the extent that paragraph seeks privileged  
17 information, proprietary information, or other information that  
18 has been gathered or prepared in the course of litigation or  
19 which is otherwise subject to the lawyer-client privilege, the  
20 accountant-client privilege, the joint defense privilege, the  
21 husband-wife privilege, the work product doctrine, or any other  
22 applicable privilege or immunity, including trade secrets,  
23 proprietary information, information that is confidential  
24 pursuant to a statute or a court order, confidential business  
25 information, other information subject to an exception of



1 privacy or confidentiality, information described by this  
2 paragraph as referred to herein as privileged.

3 Now, he did in each -- Mr. Vacco and Lippes did, in  
4 each of the responses, assert that privilege subject to  
5 whatever documentation that's already been produced, which is  
6 basically billing records and that -- the two two-page trust  
7 account documents for USHFCC and Mr. Morabito.

8 In fact, in the deposition, in response to -- on  
9 Page 12, beginning at Line 16, here's a question from  
10 Ms. Pilatowicz.

11 "Q Okay, if you could turn to Page 2 of Exhibit 2 and look  
12 down at Number 4, the general objections, it says LMWA further  
13 objects to any -- each paragraph of the document, and to the  
14 extent it requests information subject to a client -- attorney-  
15 client privilege held by" -- I believe that's a typo -- "a  
16 corporate client entity of LMWA that is not a party to these  
17 proceedings?"

18 "A Correct."

19 So there is no privilege log, as the Court said.  
20 There has been response whatsoever, obviously, from Mr. Vacco  
21 since he's not the target of this motion.

22 THE COURT: The privilege log should come from the  
23 debtor.

24 MR. GORDON: That's exactly right.

25 THE COURT: Well, maybe both debtors.

1 MR. GORDON: But when the Court said there wasn't a  
2 -- there is a subpoena, there were documents requested. There  
3 -- Mr. Vacco did --

4 THE COURT: Okay.

5 MR. GORDON: -- refuse to produce any of those  
6 documents.

7 THE COURT: That's -- the documents, I -- in that  
8 case, I believe the documents then would constitute property of  
9 the estate. The Ninth Circuit has so held.

10 MR. GORDON: Not Section 541. I mean, there's no  
11 Section 542, turnover by the trustee, but it's clear, the  
12 exception to Section 541, and as we cite back to the very  
13 genesis of that, which is 28 U.S.C. 157(2)(b)(1), which is  
14 administration of the case.

15 I appreciate how limited this is, and basically,  
16 based on what I believe will be the Court's order and the  
17 clarity of the Court's order, we will go back and depose --  
18 further depose Mr. Vacco since his deposition was suspended,  
19 not concluded.

20 However, I would point out something, and this is  
21 really where the trustee needs to go, but I will point it out.  
22 This -- as the Court commented, this is not going to be the  
23 first or last hearing in this regard. If the Court looks very  
24 clear -- carefully at the objection from Mr. Gilmore, he made  
25 the objection on behalf of the debtor, which I assume was

1 Mr. Morabito, not the debtor CNC.

2 THE COURT: That's what I assumed, as well.

3 MR. GORDON: But he also made the objection on behalf  
4 of the other defendants. So I imagine we're going to be back  
5 here on the issue of the joint client exception, which --

6 THE COURT: I don't have it in front of me.

7 MR. GORDON: And we will go further on that. But  
8 that's basically what I believe is where the Court is. I would  
9 also point out the Ginzburg case. In Ginzburg, they -- this is  
10 what the Court said with regard to the crime-fraud exception,  
11 this also has no bearing on the well-established crime-fraud  
12 exception, which the trustee has stipulated does not apply  
13 here. So in Ginzburg, all the Court had was the balancing of  
14 the equities. I think we meet both tests, but the crime-fraud  
15 exception is clear. A fraudulent conveyance matter is crime-  
16 fraud.

17 THE COURT: The balancing is for the waiver of crime-  
18 fraud is the exception --

19 MR. GORDON: And with regard to the balance, I mean,  
20 ultimately what it comes down to on the balance is pretty  
21 simple. You balance the --

22 THE COURT: Well, my tentative conclusion was a belt  
23 and suspenders.

24 MR. GORDON: Yes. But in essence, in the balancing  
25 test, Your Honor, you look at the interest of the debtor and



1 the preservation of the privilege versus the interest of the  
2 trustee. The debtor is not a party to this. We're not seeking  
3 in this matter recovery from the debtor. We're seeking  
4 recovery from third parties who we believe received fraudulent  
5 transfers.

6 THE COURT: The transferees.

7 MR. GORDON: Pardon me?

8 THE COURT: The transferees.

9 MR. GORDON: The transferees. The interest to the  
10 estate is to maximize the estate for the benefit of the  
11 creditors, to provide -- and to carry out the burden and the  
12 obligations of the trustee, and that is to maximize an estate.  
13 We believe that the interests of the debtor are minor in this.  
14 He did this transaction back in 2010. He has nothing coming  
15 back to him. He has nothing that he has to give up. As the  
16 Court said, we said, he's not a defendant. Therefore, I really  
17 think the balancing of the -- balancing test is met.

18 THE COURT: As to the objection filed by Mr. Lukas, I  
19 believe you've addressed that in the reply and his concerns  
20 have been --

21 MR. LUKAS: It appears to be so, yes, Your Honor.

22 THE COURT: Thank you.

23 MR. GORDON: Yeah, we're --

24 THE COURT: Yeah. I --

25 MR. GORDON: -- not focused on USHFCC. In fact, to



1 be candid with the Court, we look at USHFCC as being the golden  
2 goose, or the golden egg in this case. That's where we believe  
3 the value is as --

4 THE COURT: The licenses and such.

5 MR. GORDON: And where the trustee is going in the  
6 adversary.

7 THE COURT: Okay.

8 MR. GORDON: We have no intent to have any impact  
9 whatsoever on USHFCC. We wish it well and we hope it thrives.

10 THE COURT: Thank you. Mr. Gilmore.

11 MR. GILMORE: Thank you, Your Honor. Your Honor, I  
12 think the debtor has the right to rely on the request sought in  
13 the motion. What we have here is a motion that's very clear as  
14 to what relief it seeks, and then we have an about-face by  
15 counsel at the table.

16 The motion says we are seeking -- the trustee is  
17 seeking an order directing Dennis Vacco to respond to  
18 categories of questions asked in a deposition, paren, in the  
19 state court, for which Vacco was instructed not to respond by  
20 counsel for the debtor. That's what the motion seeks, and that  
21 is what the debtor responded to.

22 The Court is absolutely correct. In the deposition  
23 transcript, I was very clear. I said to Ms. Pilatowicz, don't  
24 direct those arguments at Mr. Vacco. It's not his privilege.  
25 He doesn't have a dog in this fight. If Mr. Morabito wishes to



1 waive the privilege or assert the privilege, that's a  
2 Mr. Morabito issue. She said, well, I'm going to instruct Mr.  
3 Vacco to answer, and I said, I'm going to assert the privilege  
4 on behalf of the debtor. She said fine, we're going to have a  
5 motion. I said, okay.

6 I was also very careful to assert only the privilege  
7 where I was confident and assured that it applied. If you want  
8 to talk about general things that the debtor and counsel did or  
9 that Mr. Vacco did with other defendants, have at it. But as  
10 soon as she said, what advice did you give to which  
11 Mr. Morabito did not follow, I said, well, I'm sorry, counsel,  
12 there you are asking for advice and that's clearly attorney-  
13 client privilege and I'm going to have to assert the objection.  
14 So this motion is entirely premised on those disputed questions  
15 raised in the deposition.

16 Then the trustee comes in and bootstraps everything  
17 it wants into this motion and into a joinder that essentially  
18 says, Your Honor, I'm going to refer you to the February letter  
19 which was sent to me, it was sent to Mr. Hartman, it was sent  
20 to Mr. Vacco, that basically says since you represent the  
21 debtor, I get everything you've ever said or done with respect  
22 to advice you've given to the debtor.

23 THE COURT: I'm not making any finding in that  
24 regard.

25 MR. GILMORE: Okay. The point I'm making on that

1 today, Your Honor --

2 THE COURT: The big fear that I read in your  
3 opposition would be even -- not only the matters that Mr. Vacco  
4 might be ordered to testify to, but perhaps what your firm  
5 might be required to testify about, and I'm not going there  
6 today.

7 MR. GILMORE: Sure. Okay.

8 THE COURT: Not at all. Done.

9 MR. GILMORE: And so I would ask the Court not to go  
10 there. I would ask the Court --

11 THE COURT: I just said I wasn't.

12 MR. GILMORE: The -- to address the issue that is  
13 raised in the motion, which is is this Court willing to compel  
14 Mr. Vacco, who has not received a subpoena in this matter, to  
15 answer questions in a state court deposition --

16 THE COURT: The answer is yes.

17 MR. GILMORE: The answer is the Court is --

18 THE COURT: I am.

19 MR. GILMORE: The Court is -- I think what the Court  
20 said, respectfully, was it's going to issue findings that  
21 essentially render the objections meritless.

22 THE COURT: Here's how -- here's my thinking. The  
23 only reason Mr. Vacco didn't answer the questions is because he  
24 was told -- he was instructed not to by you on behalf of your  
25 client. Obviously, a lawyer is going to follow the

1 instructions that are given by you because that was his client.  
2 Done. He even said, I need a ruling from a court. I am going  
3 to give him that ruling. What he chooses to do thereafter is  
4 within his purview, and as I've already said, at that time,  
5 maybe folks have to go back to state court and figure out how  
6 to solve this problem.

7 But I believe that the administration of this estate  
8 is implicated, property of the estate is implicated, that I  
9 have the jurisdiction to enter this order, and then what  
10 Mr. Vacco wants to do with it is up to Mr. Vacco. That's why  
11 I'm not telling -- if Mr. Vacco still refuses to answer the  
12 question, I'm not willing to say at this time that he'd be in  
13 contempt of this order.

14 MR. GILMORE: Right.

15 THE COURT: I'm not -- understand, I think it was a  
16 limited motion. My order is going to be limited.

17 MR. GILMORE: Okay. So --

18 THE COURT: I did it the last time we were here. I  
19 think the attorney-client privilege is extraordinarily  
20 important for all the reasons cited by the cases. At the same  
21 time, in a bankruptcy context, when you read the cases, there  
22 can be even a greater necessity for some -- for discovery  
23 either under the fraud exception or if you're taking a look at  
24 whether or not the trustee has the ability to waive the  
25 privilege on behalf of the debtor.



1 I -- in this instance, I found both. If I'm wrong on  
2 one, I'm probably right on the other because I just want this  
3 matter to move forward in a way that I think is efficient and  
4 economical and protects the debtor's rights.

5 MR. GILMORE: With that clarification, I interpreted  
6 the Court's tentative ruling to essentially say nothing more  
7 than the Court finds a prima facie showing which would then  
8 potentially open the door to subsequent proceedings, either in  
9 New York or potentially the state court where that then --

10 THE COURT: And only regarding Mr. Vacco.

11 MR. GILMORE: Okay. With that, I'll skip down and  
12 address only a few other things. The Court's reference to the  
13 privilege log, I think, was first with regard to the May  
14 proceeding and then secondary with regard to --

15 THE COURT: But if I --

16 MR. GILMORE: -- today's proceeding. With May, it  
17 didn't really matter, if Your Honor remembers, because --

18 THE COURT: Oh, I remember well.

19 MR. GILMORE: -- there was no privilege asserted.  
20 There --

21 THE COURT: I know why I ruled.

22 MR. GILMORE: Okay.

23 THE COURT: I read the transcript.

24 MR. GILMORE: There would be no privilege log  
25 provided in this proceeding because the motion says we want

1 Mr. Vacco to answer two questions and nothing more.

2 THE COURT: And everybody has given me those  
3 questions. I've read the --

4 MR. GILMORE: Okay.

5 THE COURT: -- declarations. I've read the  
6 transcript. I understand that, but I'm also well aware that  
7 one of the reasons this motion was filed and one of the reasons  
8 you've opposed it is everybody is trying to find some guidance  
9 so you're not back here the next time there's a third question  
10 that's asked. And that's what I've tried to do.

11 MR. GILMORE: Okay.

12 THE COURT: And if you want to come back, great.  
13 That's what I'm here for.

14 MR. GILMORE: Now, I understand the Court's tentative  
15 ruling on the prima facie showing. I certainly don't want to  
16 concede that. I don't think my opposition --

17 THE COURT: I'm not asking you to.

18 MR. GILMORE: -- concedes that, so -- but I won't  
19 belabor the point other than to say with respect to the  
20 disputed questions, the --

21 THE COURT: The disputed questions, those that were  
22 actually asked at the deposition.

23 MR. GILMORE: Correct, correct. And I understand the  
24 Court's tentative ruling to say, well, the Court's tentative  
25 ruling would involve any other potential questions where we

1 could have been there all day and she would have been asking  
2 various questions and I would have been asserting the  
3 objection.

4 THE COURT: And I -- and there are number of cases  
5 that say there has to be a specific question and a specific --  
6 but usually those arise in the Fifth Amendment areas and not so  
7 -- not all the time when you're raising attorney-client  
8 privilege. I think there can be just we're going to assert the  
9 privilege. I think in the civil action, the courts understand  
10 the economics. That's how I took it.

11 MR. GILMORE: Okay. So my request for a further --  
12 to further box exactly what the Court's ruling today is,  
13 Mr. Vacco's deposition involved a very discrete set of  
14 transfers that are not in any way implicated by the adversarial  
15 proceeding.

16 THE COURT: Which is why I asked the question.

17 MR. GILMORE: Okay. So if I understand the Court's  
18 tentative today, the Court's suggesting that with respect to  
19 those discrete transactions, what we call sort of the  
20 Superpumper transactions --

21 THE COURT: The ones where there were appraisals and  
22 why they were done and who -- and I know -- that's why I kind  
23 of wonder what this fight is really about because I also read  
24 what Mr. Vacco did answer, and he was trying to separate  
25 Mr. Morabito's brother and Ms. Estes' client from Paul Morabito



1 and distribute them fairly. Well, I think that's a real good  
2 question for the trustee to examine is just how fair are these.  
3 And that's where the fraudulent conveyance is, that's why  
4 (indiscernible) jurisdiction, that's why I think there's a  
5 prima facie case.

6 MR. GILMORE: Okay. And --

7 THE COURT: I thought Mr. Vacco tried to answer the  
8 questions to the best of his ability subject to the limitation  
9 that you imposed upon him.

10 MR. GILMORE: So did I. And I believe discovery has  
11 only somewhat commenced in the state court action, the  
12 Superpumper action. What the trustee, Mr. Murtha, seeks is  
13 something totally unrelated to what was going on in the state  
14 court action. And what I'm primarily here today to understand  
15 for the Court's tentative ruling is the letter that I received  
16 and that Mr. Vacco and Mr. Murtha received from the trustee  
17 that essentially says I'm trying to find out what the financial  
18 condition of the debtor is, and in my effort to do so, I'm  
19 waiving all of your client's applicable privileges.

20 THE COURT: Then --

21 MR. GILMORE: That's not where the Court's going  
22 today.

23 THE COURT: I do not -- as I'm saying, if you take a  
24 look at the case law, if you take a look -- I can't remember  
25 the particular case now, but the one in which there was a -- it

1 was turnover, it was a 542 action that also implicated 541  
2 because the documents that were sought to be produced were  
3 property of the estate. That's how you get to 541; the  
4 turnover is under 542. That's a little bit different than what  
5 I have here. That's why I'm not willing to go as far as the  
6 joinder asked me to go.

7 MR. GILMORE: Okay. If the Court has no further  
8 questions of me, that would be my --

9 THE COURT: I don't think so. Anybody else?

10 MR. GORDON: You're absolutely right, Your Honor.  
11 This is -- there's no 542 action before you. That would be  
12 brought by the trustee in the case in chief, and we'll see what  
13 the trustee does in that regard.

14 I would make the following: That the Court -- and I  
15 think we're very clear in our points and authorities. We're  
16 looking to Mr. Vacco to answer the questions. The privilege  
17 has been imposed. We short circuited --

18 THE COURT: And let me give you a hint, if you want  
19 to avoid some of this. Maybe you don't, maybe because it's a  
20 state law issue. But since it affects the debtor's privilege  
21 and assertion of that privilege, I would do the same thing that  
22 I do in matters that are -- in any adversary pending in front  
23 of me. If you have a question on privilege, pick up the  
24 telephone.

25 MR. GORDON: And, Your Honor, what I was --

1 THE COURT: We'll go on the record right there.

2 MR. GORDON: What I was going to say as a suggestion  
3 to the Court was exactly that; that we will recommence the  
4 deposition, obviously we will ask the questions, but we will  
5 ask additional questions. I would --

6 THE COURT: I'm not compelling anybody to do that.

7 MR. GORDON: Nope.

8 THE COURT: There may be --

9 MR. GORDON: Nope.

10 THE COURT: -- other issues that I'm not aware of.

11 MR. GORDON: Nope, we will also very clearly, in that  
12 record, deal with the subpoena and the refusal to produce  
13 documents and try to figure out what documents there are. Part  
14 of it was short circuited. I don't even know what documents he  
15 has. I assume communications, et cetera. We don't really  
16 know, and that's fine.

17 I will tell the Court that I would expect that  
18 Mr. Gilmore will reimpose the -- or assert the privilege on  
19 behalf of the joint, and that will bring us back here.

20 THE COURT: Then I would -- my only guidance I'd  
21 provide is that if that is going to occur, I mean, discuss it  
22 in advance. You folks be ready at the time of the deposition  
23 to make cogent argument at that time. If I can't resolve it on  
24 the telephone, I'll set a briefing schedule. But let's not --  
25 we're all -- I've got nothing but good lawyers in this room.



1 Let's not -- I don't think anybody's playing hide the ball.  
2 Let's not do it. Make your positions known in advance, and  
3 then if you can't work them out and if I can't -- I'll attempt  
4 to do it telephonically. If I can't do it, then we'll come  
5 back here.

6 MR. GORDON: Understood.

7 THE COURT: Let's try to be efficient and not incur  
8 any administrative expense on the state's behalf or any  
9 unnecessary attorneys' fees on behalf of any of the other  
10 parties in interest, if we can avoid it. That's what I'm  
11 seeking to do.

12 MR. GORDON: And I understand that. We'll  
13 coordinate, obviously, with Mr. Gilmore. We put our positions  
14 on the record in terms of the brief. We know what it is.

15 THE COURT: And so to Mr. Gilmore, I have no  
16 problem --

17 MR. GORDON: Understood.

18 THE COURT: -- with the conduct of -- with any  
19 counsel, including Mr. Vacco, up to this point, no problem at  
20 all.

21 MR. GORDON: No. And by the way, as we said in our  
22 pleadings, this has nothing to do with Mr. Vacco.

23 THE COURT: I already said that.

24 MR. GORDON: Yeah. And we've said that also, Your  
25 Honor.



1 THE COURT: Okay.

2 MR. GILMORE: One last thing, if you don't mind, Your  
3 Honor.

4 THE COURT: Okay.

5 MR. GILMORE: One -- ten seconds. When --

6 THE COURT: Don't ever say that because you can't do  
7 it.

8 MR. GILMORE: It will be ten seconds for me, I  
9 promise you that. When the Court says it would like cogent  
10 arguments in the event of a further dispute, would the argument  
11 be related to the relationship between the advice sought and  
12 the fraud asserted?

13 THE COURT: Whatever you want.

14 MR. GILMORE: Okay.

15 THE COURT: I'm not going to limit what your argument  
16 can be.

17 MR. GILMORE: Well, I'm thinking in terms of pointing  
18 it to where --

19 THE COURT: I --

20 MR. GILMORE: -- the Court would be going.

21 THE COURT: I don't know. And it might be helpful --  
22 and you can think about this. I won't do an advisory opinion,  
23 but you could be -- both folks could submit to me a short brief  
24 in advance of deposition if you think these issues should come  
25 up so that I could be briefed on them. Not that I would issue

1 an opinion -- I wouldn't -- but at least then I'd have your  
2 authority. And I'd limit you each to ten pages, tell me what  
3 you think may come up at the deposition, and let me read it.  
4 And then I can do it by telephone rather than bringing you back  
5 here.

6 MR. GORDON: That's --

7 MR. GILMORE: Understood.

8 MR. GORDON: From our standpoint, that's an excellent  
9 idea. It would be in the joint -- whatever the defenses are,  
10 whatever the claims are, and --

11 THE COURT: Do a joint or you can do separate, I  
12 don't care.

13 MR. GORDON: Okay.

14 THE COURT: Just simultaneous. Let me have it, let  
15 me read it before your deposition. Get it to me in plenty --

16 MR. GORDON: That's fine with us.

17 THE COURT: -- of time so I can read it. That way we  
18 can save some time and money.

19 MR. GILMORE: I'd prefer to not do the briefing and  
20 not have the objections, and not have objectionable questions,  
21 but --

22 THE COURT: Yeah, and I'm sure he'd just as soon --

23 MR. GILMORE: -- I don't always get my way.

24 THE COURT: Well, you know what? That choice is  
25 yours. Okay.



1 MR. GORDON: Thank you, Your Honor.

2 THE COURT: Okay. Mr. Gordon, I'm going to order you  
3 to prepare the order that is consistent with the oral --  
4 tentative conclusion that I placed on the record as detailed in  
5 the dialogue that has occurred since I entered that tentative  
6 ruling. And I've made my oral findings and conclusions on the  
7 record pursuant to Federal Rule of Bankruptcy Procedure 7052  
8 that incorporates by reference Federal Rule of Civil Procedure  
9 52. And we'll go from there. You're scheduled. And I'd put  
10 in the order that the procedure that we've established for  
11 assertion of any privilege in future deposition of Mr. Vacco,  
12 and that way it's clear and we can go forward.

13 MR. GORDON: Will do. Thank you, Your Honor.

14 THE COURT: I wish you all the happiest of holidays.  
15 Thank you very much.

16 THE CLERK: All rise.

17 (Proceedings concluded at 10:13 a.m.)

18 \* \* \* \* \*

19

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21

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23

24

25



C E R T I F I C A T I O N

I, Ilene Watson, court-approved transcriber, hereby  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter.



ILENE WATSON, AAERT NO. 447

DATE: December 28, 2015

ACCESS TRANSCRIPTS, LLC

ACCESS TRANSCRIPTS, LLC



1-855-USE-ACCESS (873-2223)



## Exhibit 9

The undersigned has reviewed the objection to proposed order, the response, the transcript of the December 22, 2015 hearing and the underlying pleadings prior to executing this order.



Honorable Gregg W. Zive  
United States Bankruptcy Judge



Entered on Docket  
February 03, 2016

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*Attorneys for William Leonard, Chapter 7 Trustee*

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA

In re:

PAUL A. MORABITO,

Debtor.

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

Hearing:

Date: December 22, 2015  
Time: 9:00 a.m.

**ORDER GRANTING MOTION TO COMPEL  
RESPONSES TO DEPOSITION QUESTIONS**

The *Motion to Compel Responses to Deposition Questions* [ECF No. 452] (the "Motion"), filed by William Leonard, Chapter 7 Trustee (the "Trustee"), by and through his counsel, the law firm of Garman Turner Gordon LLP, with regard to the deposition of Dennis Vacco ("Vacco") in the State Court Case<sup>1</sup> came on for hearing before the above-captioned Court

<sup>1</sup> Terms not otherwise defined in this Order are as defined in the Motion.

1 on December 22, 2015, at 9:00 a.m. (the "Hearing"). Gerald M. Gordon, Esq. of Garman Turner  
2 Gordon LLP appeared as special counsel and John F. Murtha, Esq. of Woodburn & Wedge  
3 appeared as general counsel on behalf of the Trustee. Frank C. Gilmore, Esq. of Robison  
4 Belaustegui Sharp & Low and Jeffrey L. Hartman, Esq. of Hartman & Hartman appeared on  
5 behalf of the debtor Paul A. Morabito (the "Debtor"). Timothy A. Lukas, Esq. of Holland &  
6 Hart appeared on behalf of USHF Cellular Communications, LLC and Janet L. Chubb, Esq. of  
7 Kaempfer Crowell appeared on behalf of Virsenet, LLC. Holly Estes, Esq. of Walter & Wilhelm  
8 Law Group appeared on behalf of Edward Bayuk and the Meadow Farms Irrevocable Trust. All  
9 other appearances were noted on the record at the Hearing.

10 The Court having reviewed the Motion and all matters submitted therewith as well as the  
11 oppositions [ECF Nos. 460 & 461] and the Trustee's omnibus reply [ECF No. 466] filed thereto;  
12 notice of the Motion having been proper; the Court finding and concluding that: (a) the Court has  
13 jurisdiction to hear and decide the Motion; (b) the attorney-client privilege related to Lippes  
14 Mathias Wexler Friedman, LLP's ("Lippes Mathias") production of documents and Vacco's  
15 testimony during the deposition is that of the Debtor; (c) it is the Debtor's obligation to provide a  
16 privilege log with respect to the documents being withheld on the basis of privilege because the  
17 Debtor is asserting the privilege; (d) the invocation of the privilege by the Debtor affects  
18 property of his estate pursuant to Section 541 of the Bankruptcy Code that is alleged to have  
19 been fraudulently transferred; (e) the Trustee has made a prima facie showing of fraud as  
20 required by the crime/fraud exception to the attorney-client privilege, which showing has not  
21 been rebutted; (f) the inquiry required by the crime/fraud exception is focused on what the client  
22 wanted to accomplish – whether the client intended to further some fraudulent activity and  
23 engage counsel to assist in that activity; the timing of the legal services or whether the attorney's  
24 legal services were closely related have no effect on whether the crime/fraud exception is  
25 established; (g) the Trustee has met his burden to waive the Debtor's attorney-client privilege  
26 under the balancing test; and (h) as a result, the Trustee has, consistent with applicable law,  
27 waived the Debtor's attorney-client privilege with Lippes Mathias and Vacco. Having stated the  
28 Court's additional findings of fact and conclusions of law on the record at the Hearing, which are

1 hereby incorporated herein by reference in accordance with Rule 52 of the Federal Rules of Civil  
2 Procedure, made applicable pursuant to Rule 9014 of the Federal Rules of Bankruptcy  
3 Procedure; and good cause appearing therefore,

4 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

5 1. The Motion is granted as provided herein.

6 2. The elimination of Debtor's attorney-client privilege with Lippes Mathias and  
7 Vacco as provided for herein extends to the Disputed Questions that were asked and objected to  
8 in the deposition of Vacco, any other questions that may be asked of Vacco at the continued  
9 deposition, and any documents that may have been withheld by Lippes Mathias, the Debtor, or  
10 Debtor's counsel in response to the subpoenas for documents on grounds that disclosure was not  
11 required because of the Debtor's attorney-client privilege with Lippes Mathias and Vacco.

12 3. Lippes Mathias and Vacco shall disclose and make available to the Trustee  
13 documents and information related to the representation of the Debtor that would otherwise be  
14 protected from disclosure under the privilege.

15 4. Within ten (10) calendar days of entry of this Order, the Debtor shall provide the  
16 Trustee a privilege log with respect to all documents withheld on the basis of privilege.

17 5. The deposition of Vacco shall recommence in the State Court Case.

18 6. The parties may submit briefs simultaneously of no longer than ten (10) pages, by  
19 5:00 p.m. on the last business day which is ten (10) calendar days prior to the recommenced  
20 deposition, in which the parties may brief attorney-client privilege issues and disputes that the  
21 Debtor and parties to the State Court Case anticipate arising at the continued deposition to  
22 expedite the resolution any additional disputes.

23 7. The parties shall coordinate with the Court's staff so that the Court is available  
24 telephonically to resolve any disputes that arise during the continued deposition.

25 **IT IS SO ORDERED.**

1 **PREPARED AND SUBMITTED:**

2 GARMAN TURNER GORDON LLP

3  
4 /s/ Mark M. Weisenmiller

GERALD M. GORDON, ESQ.

5 Nevada Bar No. 229

TERESA M. PILATOWICZ, ESQ.

6 Nevada Bar No. 9605

MARK M. WEISENMILLER, ESQ.

7 Nevada Bar No. 12128

650 White Drive, Suite 100

8 Las Vegas, Nevada 89119

Tel: (735) 777-3000

9 *Attorneys for Chapter 7 Trustee.*

*William A. Leonard*

**LR 9021 CERTIFICATION**

In accordance with LR 9021, counsel submitting this document certifies as follows:

- ☐ The Court waived the requirement of approval under LR 9021(b)(1).
- ☐ No party appeared on the Motion at the hearing or filed an objection to the Motion.
- ☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order as stated below.

FRANK C. GILMORE, ESQ. & JEFFREY L. HARTMAN, ESQ. – For Debtor – **DISAPPROVED**

TIMOTHY A. LUKAS, ESQ. – For USHF Cellular Communications, LLC – **APPROVED**

HOLLY ESTES, ESQ. – For Edward Bayuk and Meadow Farms Irrevocable Trust – **DISAPPROVED**

JOHN F. MURTHA, ESQ. – for Chapter 7 Trustee – **APPROVED**

- ☐ I have certified that under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objection to the form or content of the order.

###

## Exhibit 10

2582  
GARMAN TURNER GORDON LLP  
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Telephone 725-777-3000

*Special Counsel to Trustee*

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

TIME: March 18, 2016  
DATE: 10:00 a.m.

**NOTICE OF CONTINUED DEPOSITION OF DENNIS VACCO**

PLEASE TAKE NOTICE that on the 18th day of March 2016, at 10:00 o'clock a.m., at  
Key Center, 50 Fountain Plaza, Suite 1400, Buffalo, New York 14202, Plaintiff William A.  
Leonard, by and through his special counsel, Garman Turner Gordon LLP, will take the  
continued deposition of Dennis Vacco.

The deposition will be taken upon oral examination and stenographically recorded  
pursuant to Rules 26 and 30 of the Nevada Rules of Civil Procedure, before a Notary Public, or



1 before some other officer authorized by law to administer oaths. The oral examination will  
2 continue from day to day until completed. You are invited to attend and cross-examine.

3 **AFFIRMATION**

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

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

7 Dated this 18<sup>th</sup> of February, 2016.  
8

9 GARMAN TURNER GORDON LLP

10  
11 /s/ Teresa M. Pilatowicz

12 GERALD E. GORDON, ESQ.

13 TERESA M. PILATOWICZ, ESQ.

14 650 White Drive, Ste. 100

15 Las Vegas, Nevada 89119

16 Telephone 725-777-3000

17 *Special Counsel for Trustee*  
18  
19  
20  
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28

1  
2 **CERTIFICATE OF SERVICE**

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

6  
7 ☒ XXX Placing an original or true copy thereof in a sealed envelope placed for collection  
8 and mailing in the United States Mail, Reno, Nevada, postage prepaid, following  
ordinary business practices

9 ☐ Certified Mail, Return Receipt Requested

10 ☐ Via Facsimile (Fax)

11 ☐ Via E-Mail

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

14 ☐ Federal Express (or other overnight delivery)

15 addressed as follows:

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

20 DATED this \_\_\_\_ day of August, 2015.

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

# Exhibit 11

Barry L. Breslow, Esq. (SBN 3023)  
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Jeffrey L. Hartman, Esq. (SBN 1607)  
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Counsel for Paul A. Morabito

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA  
(RENO)

In re  
PAUL A. MORABITO, an individual,  
Debtor.

Case No. BK-N-13-51237

Chapter 7

**DEBTOR'S OBJECTION TO PROPOSED  
ORDER GRANTING MOTION TO  
COMPEL RESPONSES TO DEPOSITION  
QUESTIONS**

Hearing Date: December 22, 2015  
Hearing Time: 9:00 a.m.

Debtor Paul A. Morabito ("Morabito"), by and through his counsel, Robison, Belaustegui, Sharp & Low, hereby brings his objection to the Trustee William J. Leonard Jr.'s ("Trustee") proposed Order Granting Motion to Compel Responses to Deposition Questions, which was lodged with the Court by Trustee's counsel after the December 22, 2015, hearing on the Trustee's Motion to Compel Responses to Deposition Questions (Doc#452). This Objection is made and supported by Local Rule 9021(b)(2)(A).

**STATEMENT OF OBJECTIONS TO PROPOSED ORDER**

The Trustee's proposed Order goes well beyond the scope of the Court's oral and tentative conclusion that was placed on the record on December 22, 2015. Debtor's proposed order is attached hereto as EXHIBIT 1. A redlined version of the Trustee's Order is attached as

1 EXHIBIT 2, in order to show the difference between the Trustee's proposed order and the  
2 Debtor's proposed order. Debtor takes issue with the following provisions of the Trustee's  
3 proposed order:

4 1. Page 2, lines 18-21, subsection "e".

5 The Trustee's proposed order suggests and implies that there has been a prima facie  
6 showing of fraud as to all advice rendered to the Debtor from Dennis Vacco or the Lippes  
7 Mathias law firm. The Court's oral findings did not reach so broadly. The issue before the  
8 Court was the advice Lippes and Vacco gave to the Debtor as to the State Court Case  
9 transactions which were the subject of the Motion (Doc #452), to wit: the Debtor's transfer of the  
10 shares of Superpumper to the State Court Case Defendants. The Court did not find a prima facie  
11 showing of fraud as to all advice rendered by Vacco to the Debtor, or all documents maintained  
12 or created by Vacco on behalf of the Debtor, unlimited in time or in scope. The Debtor has  
13 proposed that the paragraph include a provision that the prima facie showing has been made only  
14 "as to the allegations made in the First Amended Complaint in the State Court Case regarding the  
15 transfer of the shares of Superpumper, Inc., in which Dennis Vacco was counsel for the  
16 transferor and the transferees, . . ."

17 2. Page 2, lines 23-24.

18 The Court did not hold that timing of the legal services or advice rendered has no bearing  
19 on the crime/fraud exception. The Court explained that it was "not even convinced that timing  
20 makes any difference . . ." (Transcript, December 22, 2015, p. 22:17-18). Debtor's proposed  
21 order is more in line with the Court's findings. Debtor understands that the Court is not  
22 convinced that timing makes any difference, but that is different than Trustee's order which  
23 states that the timing "has no effect," which is not what the Court found.

24 3. Page 2, lines 25-26, subsection "g".

25 As with number 1, above, the Trustee has proposed an order that the Trustee has met his  
26 burden, under the balancing test, as to all of Debtor's attorney-client privilege with Vacco or the  
27 Lippes firm, irrespective of the scope of the advice, and the connection between the advice and  
28 the alleged fraud. Debtor has proposed limiting language more in keeping with the Court's oral

1 findings that the balancing test is limited to the issues put before the Court in the Motion, to wit:  
2 the Debtor's transfer of the shares of Superpumper to the State Court Case Defendants.

3 **4. Page 2, lines 26-27, subsection "h".**

4 As with number 1, above, the Trustee has proposed an order that purports to waive all of  
5 Debtor's attorney-client privilege with Vacco or the Lippes firm, irrespective of the scope of the  
6 advice, and the connection between the advice and the alleged fraud. Debtor has proposed  
7 limiting language more in keeping with the Court's oral findings that the balancing test is limited  
8 to the issues put before the Court in the Motion, to wit: the Debtor's transfer of the shares of  
9 Superpumper to the State Court Case Defendants. The Court's willingness to be available in the  
10 event of Vacco's continued deposition to render decisions if the parties have "a question on  
11 privilege" confirms that the Court had not entered a wholesale waiver of the Debtor's privilege  
12 as to Vacco or the Lippes firm. (Transcript, December 22, 2015, p. 39:23-24). Debtor has  
13 proposed limiting language more in keeping with the Court's oral findings that the waiver is  
14 limited to the issues put before the Court in the Motion, to wit: the Debtor's transfer of the  
15 shares of Superpumper to the State Court Case Defendants.

16 **5. Page 3, lines 6-11, subsection "2".**

17 The Court left open the possibility that certain questions asked of Vacco at a continued  
18 deposition, or documents sought from him, would not be subject to the waiver of the Debtor's  
19 privilege. (Transcript, December 22, 2015, p. 39:23-24). The Trustee's proposed order provides  
20 that the Debtor's privilege with Vacco has been eliminated in its entirety. Debtor has provided  
21 proposed language which limits the waiver of the privilege to only those issues which have some  
22 relation to the alleged fraud.

23 **6. Page 3, lines 12-17, subsections "3-5".**

24 The Court did not order the production of any documents. Indeed, the Court specifically  
25 stated that it was "not going to order Mr. Vacco to say anything or not say anything."  
26 (Transcript, December 22, 2015, p. 20:15-17). The issue of production of documents from  
27 Vacco was not before the Court and the Court did not enter any order on the subject. That  
28 portion of the proposed order violates Local Rule 9021(a)(2).

1 The Court did not Order any party to produce a privilege log. That portion of the  
2 proposed order violates Local Rule 9021(a)(2).

3 The Court did not, and cannot, order that the Vacco deposition be recommenced. The  
4 State Court has jurisdiction over the Vacco deposition in the State Court Case, and if the  
5 deposition is to be recommenced, it would be recommenced by authority of the subpoena power  
6 of the State Court, irrespective of the privilege issue. That portion of the proposed order violates  
7 Local Rule 9021(a)(2).

8 **II. CONCLUSION**

9 For the reasons set forth above, Debtor respectfully requests the Court enter the proposed  
10 order attached hereto as EXHIBIT 1.

11 Date: January 21, 2016

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71 Washington Street  
Reno, Nevada 89503

HARTMAN & HARTMAN  
510 W. Plumb Ln., Suite B  
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16 By: /s/ FRANK C. GILMORE  
17 Barry L. Breslow, Esq. (SBN 3023)  
18 Frank C. Gilmore, Esq. (SBN 10052)  
19 Jeffrey L. Hartman, Esq. (SBN 1607)  
20 Attorneys for Paul A. Morabito  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT 1

# EXHIBIT 1



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*Counsel for Paul A. Morabito*

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

In re:  
PAUL A. MORABITO,  
Debtor.

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

Hearing:  
Date: December 22, 2015  
Time: 9:00 a.m.

**[DEBTOR'S PROPOSED]**

**ORDER GRANTING MOTION TO COMPEL  
RESPONSES TO DEPOSITION QUESTIONS**

The *Motion to Compel Responses to Deposition Questions* [ECF No. 452] (the "Motion"), filed by William Leonard, Chapter 7 Trustee (the "Trustee"), by and through his counsel, the law firm of Garman Turner Gordon LLP, with regard to the deposition of Dennis

1 Vacco ("Vacco") in the State Court Case<sup>1</sup> came on for hearing before the above-captioned Court  
2 on December 22, 2015, at 9:00 a.m. (the "Hearing"). Gerald M. Gordon, Esq. of Garman Turner  
3 Gordon LLP appeared as special counsel and John F. Murtha, Esq. of Woodburn & Wedge  
4 appeared as general counsel on behalf of the Trustee. Frank C. Gilmore, Esq. of Robison  
5 Belaustegui Sharp & Low and Jeffrey L. Hartman, Esq. of Hartman & Hartman appeared on  
6 behalf of the debtor Paul A. Morabito (the "Debtor"). Timothy A. Lukas, Esq. of Holland &  
7 Hart appeared on behalf of USHF Cellular Communications, LLC and Janet L. Chubb, Esq. of  
8 Kaempfer Crowell appeared on behalf of Virsenet, LLC. Holly Estes, Esq. of Walter & Wilhelm  
9 Law Group appeared on behalf of Edward Bayuk and the Meadow Farms Irrevocable Trust. All  
10 other appearances were noted on the record at the Hearing.

11 The Court having reviewed the Motion and all matters submitted therewith as well as the  
12 oppositions filed thereto; notice of the Motion having been proper; the Court finding and  
13 concluding that: (a) the Court has jurisdiction to hear and decide the Motion; (b) the attorney-  
14 client privilege related to Lippes Mathias Wexler Friedman, LLP's ("Lippes Mathias")  
15 production of documents and Vacco's testimony during the deposition is that of the Debtor; (c) it  
16 is the Debtor's obligation to provide a privilege log with respect to the documents being withheld  
17 on the basis of privilege because the Debtor is asserting the privilege; (d) the invocation of the  
18 privilege by the Debtor affects property of his estate pursuant to Section 541 of the Bankruptcy  
19 Code that is alleged to have been fraudulently transferred; (e) as to the allegations made in the  
20 First Amended Complaint in the State Court Case regarding the transfer of the shares of  
21 Superpumper, Inc., in which Dennis Vacco was counsel for the transferor and the transferees, the  
22 Trustee has made a prima facie showing of fraud as required by the crime/fraud exception to the  
23 attorney-client privilege, which showing has not been rebutted; (f) the inquiry required by the  
24 crime/fraud exception is focused on what the client wanted to accomplish – whether the client  
25 intended to further some fraudulent activity and engage counsel to assist in that activity; the  
26 Court is not convinced that the timing of the legal services or whether the attorney's legal

27  
28 <sup>1</sup> Terms not otherwise defined in this Order are as defined in the Motion.

1 services were closely related has any effect on whether the crime/fraud exception is established;  
2 (g) as to the allegations made in the First Amended Complaint in the State Court Case regarding  
3 the transfer of the shares of Superpumper, Inc., in which Dennis Vacco was counsel for the  
4 transferor and the transferees, the Trustee has met his burden to waive the Debtor's attorney-  
5 client privilege under the balancing test; and (h) as a result, the Trustee has, consistent with  
6 applicable law, waived the Debtor's attorney-client privilege with Lippes Mathias and Vacco as  
7 to the allegations made in the First Amended Complaint in the State Court Case regarding the  
8 transfer of the shares of Superpumper, Inc., in which Dennis Vacco was counsel for the  
9 transferor and the transferees. Having stated the Court's additional findings of fact and  
10 conclusions of law on the record at the Hearing, which are hereby incorporated herein by  
11 reference in accordance with Rule 52 of the Federal Rules of Civil Procedure, made applicable  
12 pursuant to Rule 9014 of the Federal Rules of Bankruptcy Procedure; and good cause appearing  
13 therefore,

14 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

15 1. The Motion is granted as provided herein.

16 2. The elimination of Debtor's attorney-client privilege with Lippes Mathias and  
17 Vacco as provided for herein extends to the Disputed Questions that were asked and objected to  
18 in the deposition of Vacco, any other questions that may be asked of Vacco at the continued  
19 deposition, and any documents that may have been withheld by Lippes Mathias, the Debtor, or  
20 Debtor's counsel in response to the subpoenas for documents on grounds that disclosure was not  
21 required because of the Debtor's attorney-client privilege with Lippes Mathias and Vacco,  
22 provided that the Trustee can establish, to the Court's satisfaction, that the questions asked, or  
23 the documents sought, have a connection or nexus between the advice sought and the alleged  
24 fraud.

25 3. If the Trustee desires to re-commence the deposition of Dennis Vacco, the parties  
26 may submit briefs simultaneously of no longer than ten (10) pages, by 5:00 p.m. on the last  
27 business day which is ten (10) calendar days prior to the recommenced deposition, in which the  
28 parties may brief any attorney-client privilege issues and disputes that the Debtor and parties to

1 the State Court Case anticipate arising at the continued disposition to expedite the resolution any  
2 additional disputes.

3 4. The parties shall coordinate with the Court's staff so that the Court is available  
4 telephonically to resolve any disputes that arise during the continued deposition.

5 **IT IS SO ORDERED.**

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7  
8 **PREPARED AND SUBMITTED:**

9  
10 /s/ Frank C. Gilmore  
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22 Counsel for Paul A. Morabito  
23  
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# EXHIBIT 2

# EXHIBIT 2

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*Attorneys for William Leonard, Chapter 7 Trustee*

16  
17 **UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

18 In re: Case No.: BK-S-13-51237-GWZ  
19 PAUL A. MORABITO, Chapter: 7  
20 Debtor. Hearing:  
Date: December 22, 2015  
21 Time: 9:00 a.m.

22 **ORDER GRANTING MOTION TO COMPEL  
23 RESPONSES TO DEPOSITION QUESTIONS**

24 The *Motion to Compel Responses to Deposition Questions* [ECF No. 452] (the  
25 "Motion"), filed by William Leonard, Chapter 7 Trustee (the "Trustee"), by and through his  
26 counsel, the law firm of Garman Turner Gordon LLP, with regard to the deposition of Dennis  
27 Vacco ("Vacco") in the State Court Case<sup>1</sup> came on for hearing before the above-captioned Court

28 <sup>1</sup> Terms not otherwise defined in this Order are as defined in the Motion.

1 on December 22, 2015, at 9:00 a.m. (the "Hearing"). Gerald M. Gordon, Esq. of Garman Turner  
 2 Gordon LLP appeared as special counsel and John F. Murtha, Esq. of Woodburn & Wedge  
 3 appeared as general counsel on behalf of the Trustee. Frank C. Gilmore, Esq. of Robison  
 4 Belaustegui Sharp & Low and Jeffrey L. Hartman, Esq. of Hartman & Hartman appeared on  
 5 behalf of the debtor Paul A. Morabito (the "Debtor"). Timothy A. Lukas, Esq. of Holland &  
 6 Hart appeared on behalf of USHF Cellular Communications, LLC and Janet L. Chubb, Esq. of  
 7 Kaempfer Crowell appeared on behalf of Virsenet, LLC. Holly Estes, Esq. of Walter & Wilhelm  
 8 Law Group appeared on behalf of Edward Bayuk and the Meadow Farms Irrevocable Trust. All  
 9 other appearances were noted on the record at the Hearing.

10 The Court having reviewed the Motion and all matters submitted therewith as well as the  
 11 oppositions filed thereto; notice of the Motion having been proper; the Court finding and  
 12 concluding that: (a) the Court has jurisdiction to hear and decide the Motion; (b) the attorney-  
 13 client privilege related to Lippes Mathias Wexler Friedman, LLP's ("Lippes Mathias")  
 14 production of documents and Vacco's testimony during the deposition is that of the Debtor; (c) it  
 15 is the Debtor's obligation to provide a privilege log with respect to the documents being withheld  
 16 on the basis of privilege because the Debtor is asserting the privilege; (d) the invocation of the  
 17 privilege by the Debtor affects property of his estate pursuant to Section 541 of the Bankruptcy  
 18 Code that is alleged to have been fraudulently transferred; (e) as to the allegations made in the  
 19 First Amended Complaint in the State Court Case regarding the transfer of the shares of  
 20 Superpumper, Inc., in which Dennis Vacco was counsel for the transferor and the transferees, the  
 21 Trustee has made a prima facie showing of fraud as required by the crime/fraud exception to the  
 22 attorney-client privilege, which showing has not been rebutted; (f) the inquiry required by the  
 23 crime/fraud exception is focused on what the client wanted to accomplish – whether the client  
 24 intended to further some fraudulent activity and engage counsel to assist in that activity; the  
 25 Court is not convinced that the timing of the legal services or whether the attorney's legal  
 26 services were closely related has any effect on whether the crime/fraud exception is established;  
 27 (g) as to the allegations made in the First Amended Complaint in the State Court Case regarding  
 28 the transfer of the shares of Superpumper, Inc., in which Dennis Vacco was counsel for the

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transferor and the transferees, the Trustee has met his burden to waive the Debtor's attorney-client privilege under the balancing test; and (h) as a result, the Trustee has, consistent with applicable law, waived the Debtor's attorney-client privilege with Lippes Mathias and Vacco as to the allegations made in the First Amended Complaint in the State Court Case regarding the transfer of the shares of Superpumper, Inc., in which Dennis Vacco was counsel for the transferor and the transferees. Having stated the Court's additional findings of fact and conclusions of law on the record at the Hearing, which are hereby incorporated herein by reference in accordance with Rule 52 of the Federal Rules of Civil Procedure, made applicable pursuant to Rule 9014 of the Federal Rules of Bankruptcy Procedure; and good cause appearing therefore,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Motion is granted as provided herein.
2. The elimination of Debtor's attorney-client privilege with Lippes Mathias and Vacco as provided for herein extends to the Disputed Questions that were asked and objected to in the deposition of Vacco, any other questions that may be asked of Vacco at the continued deposition, and any documents that may have been withheld by Lippes Mathias, the Debtor, or Debtor's counsel in response to the subpoenas for documents on grounds that disclosure was not required because of the Debtor's attorney-client privilege with Lippes Mathias and Vacco, provided that the Trustee can establish, to the Court's satisfaction, that the questions asked, or the documents sought, have a connection or nexus between the advice sought and the alleged fraud.
3. If the Trustee desires to re-commence the deposition of Dennis Vacco, the parties may submit briefs simultaneously of no longer than ten (10) pages, by 5:00 p.m. on the last business day which is ten (10) calendar days prior to the recommenced deposition, in which the parties may brief any attorney-client privilege issues and disputes that the Debtor and parties to the State Court Case anticipate arising at the continued disposition to expedite the resolution any additional disputes.
4. The parties shall coordinate with the Court's staff so that the Court is available

**Deleted:** Lippes Mathias and Vacco shall disclose and make available to the Trustee documents and information related to the representation of the Debtor that would otherwise be protected from disclosure under the privilege.  
 \* Within ten (10) calendar days of entry of this Order, the Debtor shall provide the Trustee a privilege log with respect to all documents withheld on the basis of privilege.  
 \* The deposition of Vacco shall recommence in the State Court Case.  
**Deleted:** ?



1 telephonically to resolve any disputes that arise during the continued deposition.

2 **IT IS SO ORDERED.**

3  
4  
5  
6  
7 **PREPARED AND SUBMITTED:**

8 GARMAN TURNER GORDON LLP

9  
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19 *Attorneys for Chapter 7 Trustee, William A. Leonard*

LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies as follows:

- ☐ The Court waived the requirement of approval under LR 9021(b)(1).
- ☐ No party appeared on the Motion at the hearing or filed an objection to the Motion.

- ☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order as stated above.

FRANK C. GILMORE, ESQ. & JEFFREY L. HARTMAN, ESQ. -- For Debtor -- APPROVED

JANET L. CHUBB, ESQ. -- For Virsenet, LLC -- APPROVED

TIMOTHY A. LUKAS, ESQ. -- For USHF Cellular Communications, LLC -- APPROVED

HOLLY ESTES, ESQ. -- For Edward Bayuk and Meadow Farms Irrevocable Trust -- APPROVED

JOHN F. MURTHA, ESQ. -- for Chapter 7 Trustee -- APPROVED

- ☐ I have certified that under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objection to the form or content of the order.

###

**CERTIFICATE OF SERVICE**

Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, that I am over the age of 18 and not a party to the above-referenced case, and that on the date below I caused to be served a true copy of the **DEBTOR'S OBJECTION TO PROPOSED ORDER GRANTING MOTION TO COMPEL RESPONSES TO DEPOSITION QUESTIONS** on all parties to this action by the method(s) indicated below:

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

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DATED: This 22 day of January, 2016.

