

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 8

(Nos. 1036–1352)

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| Reply in Support of Countermotion for Sanctions and to Compel Resetting of 30(b)(6) Deposition of Hodgson Russ LLP (filed 08/09/2017) | | Vol. 11, 1735–1740 |
| Minutes of August 10, 2017 hearing on Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP, and Opposition to Motion for Sanctions (filed 08/11/2017) | | Vol. 11, 1741–1742 |
| 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 |
| Exhibits to Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment | | |
| Exhibit | Document Description | |
| 1 | Declaration of Timothy P. Herbst in Support of Separate Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment | Vol. 12, 1826–1829 |
| 2 | Findings of Fact, Conclusions of Law, and Judgment in <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 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Statement of Undisputed Facts (cont.) | | |
| 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 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Statement of Undisputed Facts (cont.) | | |
| 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 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Statement of Undisputed Facts (cont.) | | |
| 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 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Statement of Undisputed Facts (cont.) | | |
| 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 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Statement of Undisputed Facts (cont.) | | |
| 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 |

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

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Statement of Undisputed Facts (cont.) | | |
| 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 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Statement of Undisputed Facts (cont.) | | |
| 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 |
| Exhibit to Objection to Recommendation for Order | | |
| Exhibit | Document Description | |
| 1 | Plaintiff's counsel's Jan. 24, 2017, email memorializing the discovery dispute agreement | Vol. 18, 2735–2736 |

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

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Defendants' Separate Statement of Disputed Facts (cont.) | | |
| 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 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Defendants' Separate Statement of Disputed Facts (cont.) | | |
| 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 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Defendants' Separate Statement of Disputed Facts (cont.) | | |
| 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 |
| Exhibits to Defendants' Motions in Limine | | |
| Exhibit | Document Description | |
| 1 | Plaintiff's Second Supplement to Amended Disclosures Pursuant to NRCP 16.1(A)(1) (dated 04/28/2016) | Vol. 19, 3007–3016 |
| 2 | Excerpted Transcript of March 25, 2016 Deposition of William A. Leonard | Vol. 19, 3017–3023 |
| 3 | Plaintiff, Jerry Herbst's Responses to Defendant Snowshoe Petroleum, Inc.'s Set of Interrogatories (dated 02/11/2015); and Plaintiff, Jerry Herbst's Responses to Defendant, Salvatore Morabito's Set of Interrogatories (dated 02/12/2015) | Vol. 19, 3024–3044 |
| Motion in Limine to Exclude Testimony of Jan Friederich (filed 09/20/2018) | | Vol. 19, 3045–3056 |

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

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

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

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|---|------------------------|
| Exhibits to Clerk's Trial Exhibit List (cont.) | | |
| 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 |

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| 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 |

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| 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 |

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| 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 |

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| Exhibits to Clerk's Trial Exhibit List (cont.) | | |
| 76 | March 10, 2010 email chain between P. Morabito and jon@aim13.com RE: Strictly Confidential | Vol. 24, 4056–4056 |
| 77 | May 20, 2010 email chain between P. Morabito, Vacco and Michael Pace RE: Proceed with placing a Binding Bid on June 22nd with ExxonMobil | Vol. 24, 4057–4057 |
| 78 | Morabito Personal Financial Statement May 2010 | Vol. 24, 4058–4059 |
| 79 | June 28, 2010 email from P. Morabito to George Garner RE: ExxonMobil Chicago Market Business Plan Review | Vol. 24, 4060–4066 |
| 80 | Shareholder Interest Purchase Agreement | Vol. 24, 4067–4071 |
| 81 | Plan of Merger of Consolidated Western Corporation with and Into Superpumper, Inc. | Vol. 24, 4072–4075 |
| 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 |

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| 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 |

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| 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 |

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| 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 |

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| 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 |

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| 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 |

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| 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 |

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| 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 |

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| Exhibits to Clerk's Trial Exhibit List (cont.) | | |
| 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 |

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| 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 |

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| 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 |

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| Exhibits to Clerk's Trial Exhibit List (cont.) | | |
| 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 |

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| 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 |
| Exhibits to Plaintiff’s Motion to Reopen Evidence | | |
| Exhibit | Document Description | |
| 1 | Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff’s Motion to Reopen | Vol. 46, 7909–7913 |
| 1-A | September 21, 2017 Declaration of Salvatore Morabito | Vol. 46, 7914–7916 |
| 1-B | Defendants’ Proposed Findings of Fact, Conclusions of Law, and Judgment (Nov. 26, 2018) | Vol. 46, 7917–7957 |
| 1-C | Judgment on the First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 123 (April 30, 2018) | Vol. 46, 7958–7962 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|------------------------|
| Exhibits to Plaintiff's Motion to Reopen Evidence (cont.) | | |
| 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 |
| Exhibit to Errata to: Plaintiff's Motion to Reopen Evidence | | |
| Exhibit | Document Description | |
| 1 | Plaintiff's Motion to Reopen Evidence | Vol. 47, 8081–8096 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|---|------------------------|
| 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 |
| Exhibits to Supplement to Plaintiff's Motion to Reopen Evidence | | |
| Exhibit | Document Description | |
| 1 | Supplemental Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff's Motion to Reopen Evidence (filed 02/04/2019) | Vol. 47, 8111–8113 |
| 1-I | Declaration of Frank C. Gilmore in Support of Robison, Sharp Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 259 (Jan. 30, 2019) | Vol. 47, 8114–8128 |
| 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 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|------------------------|
| [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 |
| Exhibit to Memorandum of Costs and Disbursements | | |
| Exhibit | Document Description | |
| 1 | Ledger of Costs | Vol. 48, 8348–8370 |
| Application for Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019) | | Vol. 48, 8371–8384 |
| Exhibits to Application for Attorneys' Fees and Costs Pursuant to NRCP 68 | | |
| Exhibit | Document Description | |
| 1 | Declaration of Teresa M. Pilatowicz In Support of Plaintiff's Application for Attorney's Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019) | Vol. 48, 8385–8390 |
| 2 | Plaintiff's Offer of Judgment to Defendants (dated 05/31/2016) | Vol. 48, 8391–8397 |

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

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

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

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

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

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

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

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|------------------------|
| Exhibits to Notice of Submission of Disputed Order (cont.) | | |
| 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 |
| Exhibits to Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim | | |
| Exhibit | Document Description | |
| 1 | Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim | Vol. 53, 9241–9245 |
| 2 | Defendant's comments on Findings of Fact | Vol. 53, 9246–9247 |
| 3 | Defendant's Proposed Order Denying Claim of Exemption and Third-Party Claim | Vol. 53, 9248–9252 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</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 |
| Exhibits to Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.’s, Notice of Appeal | | |
| Exhibit | Document Description | |
| 1 | Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019) | Vol. 53, 9274–9338 |
| 2 | Order Denying Defendants’ Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019) | Vol. 53, 9339–9341 |
| 3 | Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019) | Vol. 53, 9342–9345 |
| 4 | Order Granting Plaintiff’s Application for an Award of Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019) | Vol. 53, 9346–9349 |

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

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|------------------------|
| Exhibits to Motion to Make Amended (cont.) | | |
| 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 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|------------------------|
| Exhibits to Motion to Make Amended (cont.) | | |
| 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 |
| Exhibits to Errata to Plaintiff’s Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 | | |
| Exhibit | Document Description | |
| 1 | Declaration of Gabrielle A. Hamm, Esq. | Vol. 57, 9915–9918 |
| 2 | Plaintiff’s Amended NRCP 16.1 Disclosures (February 19, 2016) | Vol. 57, 9919–9926 |

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

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

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|--|---|-------------------------|
| 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 |
| Exhibits to Notice of Claim of Exemption and Third-Party Claim to Property Levied Upon | | |
| Exhibit | Document Description | |
| 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 |

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Special Counsel to William A. Leonard, Plaintiff

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO. 1

**PLAINTIFF'S APPLICATION FOR ORDER TO SHOW CAUSE WHY DEFENDANT
EDWARD BAYUK SHOULD NOT BE HELD IN CONTEMPT OF COURT ORDER**

William Leonard, Chapter 7 Trustee for the bankruptcy estate of Paul Anthony Morabito
and the plaintiff in the above-referenced action (the "Plaintiff" or "Trustee"), by and through his
counsel, the law firm of Garman Turner Gordon LLP, hereby applies (the "Application") to this

1 Court pursuant to NRS 22.010 *et seq.* for the order, attached as **Exhibit 1**, to show cause why
2 Defendant Edward Bayuk, both individually and as Trustee of the Edward William Bayuk Living
3 Trust (the “Defendant”), should not be held in contempt for violation of this Court’s *Confirming*
4 *Order*, attached hereto as **Exhibit 2**, confirming the *Recommendation for Order*, attached hereto
5 as **Exhibit 3**, which ordered Defendant to produce for inspection and copying by Plaintiff, no
6 later than September 16, 2016, all insurance policies within the possession, custody, or control of
7 Defendant that were in effect at any time between January 1, 2005 and December 31, 2011, and
8 which provided coverage for real or personal property located at (a) 1254 Mary Fleming Circle,
9 Palm Springs, California, (b) 371 El Camino Del Mar, Laguna Beach, California, and (c) 370
10 Los Olivos, Laguna Beach, California.

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

15 Dated this 18th day of November, 2016.

16 GARMAN TURNER GORDON LLP

17 /s/ Teresa M. Pilatowicz
18 GERALD M. GORDON, ESQ.
19 Nevada Bar No. 229
20 TERESA M. PILATOWICZ, ESQ.
21 Nevada Bar No. 9605
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23 Nevada Bar No. 11972
24 650 White Drive, Suite 100
25 Las Vegas, Nevada 89119
26 Tel: (735) 777-3000
27 *Attorneys for Plaintiff William A. Leonard*

28 **DECLARATION OF TERESA M. PILATOWICZ IN SUPPORT OF
APPLICATION**

I, Teresa M. Pilatowicz, declare and state as follows:

1. I am an attorney licensed to practice law in the State of Nevada and am of counsel
in the law firm of Garman Turner Gordon, attorneys for Plaintiff. I am competent to testify to the

1 matters asserted herein, of which I have personal knowledge, except as to those matters stated
2 upon information and belief. As to those matters stated upon information and belief, I believe
3 them to be true. I make this Declaration in support of Plaintiff's *Application for Order to Show*
4 *Cause Why Defendant Edward Bayuk Should Not Be Held in Contempt of Court Order*. On April
5 8, 2016, Plaintiff's *Motion to Compel Production of Documents* (the "Motion to Compel") was
6 filed, a true and correct copy of which is attached hereto as **Exhibit 4**. In the Motion to Compel,
7 Plaintiff sought documents related to insurance held or applied for on real or personal property
8 between January 1, 2005 and December 31, 2011 as requested in the First Bayuk Requests,
9 Second Bayuk Requests, First Trust Requests, and Second Trust Requests (as those terms are
10 defined in the Motion to Compel) (collectively, the "Requests"), to which Requests Defendant
11 had objected. Defendant did not indicate that the requested documents did not exist or were not
12 in Defendant's possession. In counsel's meet and confer prior to filing the Motion to Compel,
13 Defendant's counsel contended that the insurance policies were not relevant, stating that
14 "[i]nformation contained in an insurance policy does not reflect the true market value of any
15 personal or real property. Rather, a policy reflects the amount to which an insured is willing to
16 Insure the property." See Motion to Compel at 7-8 and counsel's correspondence attached
17 thereto as Exhibit 14. At no time did Defendant indicate that the requested documents did not
18 exist or were not in Defendant's possession.

19 2. In the Motion to Compel, Plaintiff asserted that, because the reasonably
20 equivalent value of property transferred was at issue in the case, the value ascribed to that
21 property by Defendant and the amount of insurance coverage sought and obtained relate to the
22 value and Defendant's opinion of value on such property, and is unquestionably likely to lead to
23 admissible evidence. See Motion to Compel at 9. Plaintiff further advised that the requests had
24 been narrowly limited to specific property subject to the action, and did not broadly cover, e.g.,
25 any and all insurance policies or valuation of any estate property. See Motion to Compel at 3-
26 7. On April 25, 2016, Defendant filed his *Opposition to Plaintiff's Motion to Compel Production*
27 *of Documents* (the "Opposition"). A true and correct copy of the Opposition is attached hereto
28 as **Exhibit 5**. In the Opposition, Defendant argued that (1) insurance policies were private and

1 confidential, and information requested could be obtained from other sources, and (2) was
2 overbroad and seeks irrelevant information that has no possibility of leading to the discovery of
3 admissible evidence. See Opposition at 4-6. At no time did Defendant indicate that the
4 requested documents did not exist or were not in Defendant's possession.

5 3. On May 9, 2016, Plaintiff filed his *Reply in Support of Plaintiff's Motion to*
6 *Compel Production of Documents* (the "Reply"), a true and correct copy of which is attached
7 hereto as **Exhibit 6**. In the Reply, Plaintiff asserted that relevant information is not
8 undiscoverable because it is private, confidential, or financial information, and that the requested
9 information is not competitive business information. The Reply also asserted that Defendant's
10 refusal to produce documents was procedurally improper, as Defendant failed to properly
11 identify responsive documents being withheld on the basis of a discovery objection. See Reply
12 at 3-11.

13 4. On September 1, 2016, the Discovery Commissioner issued the Recommendation
14 for Order, which recommended the production of insurance documents related to specific real
15 and personal property, and rejected the inherent protection of insurance policies. See
16 Recommendation for Order.

17 5. On September 16, 2016, this Court entered the Confirming Order. See
18 Confirming Order.

19 6. On September 16, 2016, Frank Gilmore, Esq., counsel for Defendant stated in an
20 e-mail to me, "I instructed Mr. Bayuk to search his records for all responsive policy documents.
21 I have been told that he has only the past few years of insurance documents, but does not have
22 any responsive to the request (2005-2011). Accordingly, no documents will be produced." A
23 true and correct copy of an e-mail exchange (the "E-mail Exchange") is attached hereto as
24 **Exhibit 7**.

25 7. On September 19, 2016, I replied to Mr. Gilmore expressing surprise "given that
26 at no point in the discovery responses or during the briefing on the motion to compel was it ever
27 mentioned that Mr. Bayuk did not have any responsive documents." Id. In response, I stated:

28 This information now that no responsive documents exist is quite

1 concerning and raises multiple additional questions. Please
2 provide additional information as to what searches were conducted
3 when the discovery requests were initially propounded, what
4 searches Mr. Bayuk conducted recently, what additional efforts
5 were taken to obtain the requested insurance documents, what
6 insurance documents Mr. Bayuk does have, how they are
7 maintained, and who Mr. Bayuk believes may have copies of the
8 responsive documents. We will review and determine how to
9 proceed but I anticipate that absent production of the documents
10 that were subject to a motion to compel for over five months with
11 no indication that the documents did not allegedly exist, further
12 court intervention will be necessary.

13 Id.

14 8. On September 20, 2016, in response, Mr. Gilmore stated:

15 First, I don't necessarily agree with you that just because we were
16 willing to file a Motion to protect the production of the documents
17 meant that we had a full responsive production. However, I will
18 tell you that I was under the impression when I drafted the Motion
19 that my client had responsive documents. Although I will also
20 admit that we never expressly discussed it, because I was
21 instructed to oppose the request as soon as the request was served.
22 In other words, we opposed the request before we even looked for
23 the documents.

24 Here is what happened, and I can swear to it in a declaration if it
25 comes to that. In February, I met with my clients Sam and Edward
26 in Los Angeles. I took with me a copy of the 2nd RFP seeking
27 insurance documents. We discussed the request in general terms
28 and we all agreed that the response was overbroad. At that
meeting, I was instructed to object to the request as overbroad. I
never asked my client to look for the documents before we
objected. Only when the Recommendation for Order was received
did we have the conversation about the documents. Without
waiving a privilege, I will tell you that Edward was under the
impression that you were seeking documents from the date of the
lawsuit to the present, some of which he does have (I believe he
said he has from 2014 to present). When I told him that you were
seeking from 2005-2011, his response was "oh, I didn't know that.
No, I don't have insurance documents that old. I don't even think
my broker keeps them that long. But I will search my files and let
you know." He recently confirmed to me that he does not have
anything pre-dating 2011. To be honest, I am not surprised. There
is little reason to keep insurance documents that old.

29 Id.

9. On October 25, 2016, I held a meet and confer with Defendant's counsel to discuss the lack of production of documents. We were unable to reach a resolution with respect to the lack of production of documents. Defendant's counsel advised that he would be amending Defendants' answer to the discovery responses and that he believed that resolved all issues. I advised that Plaintiff did not agree.

10. On November 4, 2016, Plaintiff received *Edward Bayuk's Supplemental Responses to Plaintiff's Second Set of Requests for Production* as set forth above. A true and correct copy is attached hereto as **Exhibit 8**.

11. At no time during the initial discovery responses or in response to the Motion to Compel, which had been pending for nearly six months, did Defendant ever advise that no responsive documents existed. As of the filing of this Application, no documents have been submitted in response to the Confirming Order.

I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045),
that the foregoing is true and correct.

DATED this 18th day of November, 2016.


Teresa M. Pilatowicz, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL ARGUMENT

A. Issuance of the Order to Show Cause Is Warranted.

"Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers" is contempt. NRS § 22.010(3). The Nevada Supreme Court has long held that disobedience or resistance to any order of the Court constitutes a prima facie contempt of court. See City Council of Reno v. Reno Newspapers, Inc., 105 Nev. 886, 889, 784 P.2d 974, 976 (1989). Injunctions may be enforced through contempt proceedings. Id. (citing Conforte v. Hanna, 76 Nev. 239, 351 P.2d 612 (1960)). Courts have inherent power to enforce their decrees through civil contempt proceedings. See In re Determination of the Relative Rights of the

1 Claimants and Appropriators of the Waters of the Humboldt River Stream & Tributaries, 118
2 Nev. 901, 909, 59 P.3d 1226, 1231 (2002). Moreover, NRS 22.030 provides that when the
3 “contempt is not committed in the immediate view and presence of the court or judge at
4 chambers, an affidavit must be presented to the court or judge of the facts constituting the
5 contempt, or a statement of the facts by the masters or arbitrators.” NRS 22.010(2).¹

6 As detailed in the Pilatowicz Dec. above, Defendant has not produced responsive
7 documents as required by the Confirming Order. Instead, Defendant asserts that no documents
8 exist, even though the parties allocated significant time and expense litigating this discovery
9 dispute and at no time did Defendant ever advise that no responsive documents existed. At best,
10 Defendant caused a baseless and unnecessary discovery dispute due to Defendant’s willful
11 disregard to his obligation to adequately read and analyze the plain language of the Requests and
12 determine whether responsive documents were available to produce. In the alternative,
13 Defendant is intentionally hiding documents that this Court has ordered produced..

14 As evidenced in the E-mail Exchange, Defendant’s counsel has offered to provide this
15 court with a sworn statement of his account of the purported cause of the unwarranted and
16 unnecessary opposition to the Requests. See E-mail Exchange. Additionally, Defendant has
17 asserted that otherwise responsive documents from more recent years are available detailing
18 insurance coverage, not documents from the previous date range. Thus, at a minimum, it is
19 proper that this Court require (1) that Defendant pay all fees and costs incurred in connection
20 with the dispute over the Requests, including those arising out of the Motion to Compel and this
21 Application, (2) that Defendant’s counsel provide a sworn statement under the penalty of perjury
22 as offered in the E-mail Exchange, (3) that Defendant provide a sworn statement under the
23 penalty of perjury that no responsive documents exist, and (4) that Defendant provide all
24 documents that would otherwise be responsive under the Confirming Order for the date range of
25 2011 through 2015 so that Plaintiff may attempt to determine the scope of insurance coverage
26 during the relevant time-period. Specifically in light of Defendant’s failure to comply with the

27
28 ¹ Unsworn declarations may be submitted in lieu of affidavits. NRS 53.045

1 current request and failure to advise for the past six months that such documents allegedly did
2 not exist, such documents, while not initially requested, would potentially lead to the discovery
3 of admissible evidence, including information that would be contained in the missing documents.
4 If this Court determines that Defendant is intentionally withholding documents, it is proper that
5 this Court not only order Defendant to turn over responsive documents and to pay all Plaintiff's
6 fees and costs incurred in connection with the discovery dispute, but to order further sanctions
7 for willful non-compliance with this Court's order.

8 **B. Plaintiff Is Entitled to an Adverse Inference as a Result of Defendant's Failure to**
9 **Produce Responsive Documents.**

10 NRCP 37(b)(2)(A) provides that a court may order that the matter regarding which the
11 order was made or any other designated facts shall be taken to be established for the purposes of
12 the action in accordance with the claim of the party obtaining the order. As well, NRCP
13 37(b)(2)(B) provides that a court may refuse to allow the disobedient party to support or oppose
14 designated claims or defenses, or prohibit the party from introducing designated matters in
15 evidence.

16 Here, Defendant has failed to produce documents related to insurance policies for
17 personal property. While Defendant contends they do not exist, Defendant has failed to make
18 any mention of that fact for the significant amount of time since the Requests and while the
19 Motion to Compel was pending. For Defendant's failure to provide the documents, Trustee is
20 entitled to an inference that reasonably equivalent value for the transfer of personal property has
21 not been established by the Defendant

22 **II.**
CONCLUSION

23 For the reasons detailed above, Plaintiff requests that this Court enter an order to show
24 cause why Defendant should not be sanctioned for willful violation of the Court's Confirming
25 Order and, in the absence of a determination that Defendant willfully violated the Confirming
26 Order, for fees and costs, sworn statements verifying compliance, and the provision of more
27 recent but otherwise applicable
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AFFIRMATION
Pursuant to NRS 239B.030

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

Dated this 21st day of November, 2016.

GARMAN TURNER GORDON LLP

/s/ Teresa M. Pilatowicz
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XXX Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, Reno, Nevada, postage prepaid, following ordinary business practices

_____ Certified Mail, Return Receipt Requested

_____ Via Facsimile (Fax)

_____ Via E-Mail

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

_____ Federal Express (or other overnight delivery)

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

/s/Ricky H. Ayala
An Employee of GARMAN TURNER GORDON

EXHIBIT 1

EXHIBIT 1

1 3355

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9
10 *Attorneys for William A. Leonard*

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

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

15 Plaintiff,

16 vs.

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

22 Defendants.

CASE NO.: CV13-02663

DEPT. NO. 1

23 **ORDER TO SHOW CAUSE WHY DEFENDANT EDWARD BAYUK SHOULD NOT BE**
24 **HELD IN CONTEMPT OF COURT ORDER**

25 The Court having reviewed *Plaintiff's Application for Order to Show Cause Why*
26 *Defendant Edward Bayuk Should Not Be Held in Contempt of Court Order* (the "Application")
27 and exhibits thereto, and good cause appearing therefore, the Application is GRANTED.
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IT IS THEREFORE HEREBY ORDERED that on the _____ of _____, 2016, at the hour of _____ o'clock a.m., Defendant shall appear and show cause, if any, why Defendant should not be held in contempt of the Order pursuant to Chapter 22 of the Nev. Rev. Stat. for the alleged failure to comply with the Order.

IT IS FURTHER HEREBY ORDERED that Plaintiff shall serve on counsel for Defendant a copy of this Order immediately upon its entry and no later than _____, 2016.

IT IS HEREBY ORDERED this _____ day of _____, 2016.

DISTRICT COURT JUDGE

FILED
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CV13-02663
2016-11-21 10:11:14 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5813397 / cs ill z c

EXHIBIT 2

EXHIBIT 2

1 CODE NO. 2690

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

8 * * *

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

11 Plaintiff,

Case No. CV13-02663

12 vs.

Dept. No. B1

13 SUPERPUMPER, INC., an Arizona corporation,
14 et al.,


15 Defendants.

16 CONFIRMING ORDER

17 On September 1, 2016, the Discovery Commissioner served a *Recommendation for Order* in
18 this action. None of the parties to this action has filed an objection regarding that recommendation
19 and the period for filing any objection concerning that recommendation has expired. See NRCP
20 16.1(d)(2).

21 ACCORDINGLY, the Court hereby CONFIRMS, APPROVES, and ADOPTS the Discovery
22 Commissioner's Supplemental Recommendation for Order served on August 26, 2016.

23 DATED this 14th day of SEPTEMBER, 2016.

24 
DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CV13-02663

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 16 day of SEPTEMBER, 2016, I electronically filed the **CONFIRMING ORDER** with the Clerk of the Court by using the ECF system.

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

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:


TERESA M. PILATOWICZ, ESQ. for WILLIAM A. LEONARD, TRUSTEE OF THE
BANKRUPTCY ESTATE OF PAUL ANTHONY MORABITO

BARRY L. BRESLOW, ESQ. for SUPERPUMPER, INC. et al.

FRANK C. GILMORE, ESQ. for SUPERPUMPER, INC. et al.

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:

Gerald M. Gordon, Esq.
Mark M. Weisenmiller, Esq.
Gabrielle A. Hamm, Esq.
Garman Turner Gordon LLP
650 White Dr., Ste. 100
Las Vegas, NV 89119-9018



A handwritten signature in black ink, appearing to be 'G. Gordon', is written over a horizontal line.

FILED
Electronically
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Jacqueline Bryant
Clerk of the Court
Transaction # 5813397 / cs ill z c

EXHIBIT 3

EXHIBIT 3

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

8 * * *

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

11 Plaintiff,

Case No. CV13-02663

12 vs.

Dept. No. B1

13 SUPERPUMPER, INC., an Arizona corporation,
et al.,

14 Defendants.
15 _____/

16 **RECOMMENDATION FOR ORDER**

17 This is an action in which Plaintiff William A. Leonard, as Trustee for the Bankruptcy Estate
18 of Paul Anthony Morabito, seeks to avoid and recover a number of allegedly fraudulent transfers
19 from the Debtor (i.e., Paul Anthony Morabito) to Defendants.¹ On January 29, 2016, Plaintiff served
20 separate requests for production of documents on Defendant Edward Bayuk, both individually and
21 as Trustee of the Edward William Bayuk Living Trust. Each request for production contains the
22 following two categories, which are designated as Category Nos. 26 and 27 in the request to
23 Defendant Bayuk individually, and as Category Nos. 24 and 25 in the request to Defendant Bayuk
24 as trustee:

25 ///

26 ¹ The background of this action is set forth in greater detail in previous decisions of this Court.

1 • Produce all Documents related to, referring to, or constituting any and all insurance
2 policies in effect for any real or personal property You owned between January 1,
2005 and December 31, 2011.

3 • Produce all Documents related to, referring to, or constituting any and all insurance
4 policies for which you applied relating to any real or personal property You owned
between January 1, 2005 and December 31, 2011.

5 Defendant's separate responses to each of these categories, served on March 9, 2016, are as
6 follows:

7 Objection, this request seeks documents which contain sensitive personal information
8 which is not relevant to the claims and defenses pled in this case. The request is
overbroad, not limited to specific issues in dispute in this case, and is not reasonably
9 calculated to lead to the discovery of admissible evidence.

10 Plaintiff's counsel perceived Defendant Bayuk's responses to be insufficient. Thereafter, counsel
11 conferred regarding the propriety of these categories and the sufficiency of Defendant Bayuk's
12 responses; however, they were unable to resolve their dispute.

13 On April 8, 2016, Plaintiff filed *Plaintiff's Motion to Compel Production of Documents*.
14 Essentially, Plaintiff argues that the requested documents are discoverable because insurance
15 coverage that Defendant Bayuk sought and obtained for the subject property will reflect his belief
16 regarding the true value of that property which, in turn, is relevant to whether he actually gave
17 Debtor reasonably equivalent value for that property. On April 25, 2016, Defendant Bayuk filed his
18 *Opposition to Plaintiff's Motion to Compel Production of Documents*. Defendant maintains that the
19 categories at issue are overbroad and that the information contained in insurance policies is private
20 and confidential. Plaintiff's *Reply in Support of Plaintiff's Motion to Compel Production of*
21 *Documents* was filed on May 9, 2016, and the motion was submitted on that same date.²

22 As drafted, the categories described above³ are objectionably overbroad. This action does
23

24 ² Due to a data entry error regarding the request for submission, this motion was not referred to the Discovery
Commissioner until June 29, 2016.

25 ³ In the motion to compel, Plaintiff asserts that earlier requests for production contained several other categories
26 which would have encompassed insurance policies. But Defendant Bayuk served responses to those earlier requests in
September 2015. To the extent that Plaintiff might currently seek to enforce those other categories, he has waited too long
to seek relief regarding those categories and the motion is therefore untimely. See, e.g., *Pearce v. E.F. Hutton Grp., Inc.*,
117 F.R.D. 477, 478 (D.D.C. 1986) (motion to compel concerning discovery responses served five months earlier was
denied, with court finding that moving party "should have budgeted his time sufficient to bring the issue before the court at

1 not implicate every conceivable item of real or personal property owned by Defendant Bayuk,
2 individually or as trustee, during the stated period. In addition, the requests at issue define the term
3 "You" to mean "Edward William Bayuk, and his agents, heirs, assignees or representatives." These
4 categories would therefore require Defendant Bayuk to produce insurance policies concerning items
5 of real and personal property owned by all of his agents, heirs, assignees, and representatives
6 during the stated period. The request for documents "related to" or "referring to" insurance policies
7 is also objectionable in this context, on the ground that the request is not stated with reasonable
8 particularity.⁴

9 However, during prefiling consultation, Plaintiff addressed Defendant Bayuk's objection
10 regarding overbreadth. In emails, Plaintiff's counsel explained that "[t]he request seeks information
11 related [to] the value of both real and personal property transferred, which is the subject of the state
12 court complaint," and that the "personal property was transferred by and between Mr. Bayuk and his
13 Trust and Paul Morabito in connection with the transfers of the real properties." Thus, Plaintiff made
14 clear that he does not seek insurance policies regarding all property owned by Defendant Bayuk,
15 individually or as trustee, during the stated period. Rather, he seeks only insurance policies that
16 provided coverage for items of real or personal property that were transferred by Debtor to
17 Defendant Bayuk, individually or as trustee, and which are the subject of this action. From the
18 amended complaint and other filings and requests in this case, Defendant Bayuk knew or should
19 have known that Plaintiffs are seeking insurance policies providing coverage for real and personal
20 property located at (a) 1254 Mary Fleming Circle, Palm Springs, California; (b) 371 El Camino Del

21 a much earlier stage in the discovery timetable"); Lapenna v. Upjohn Co., 110 F.R.D. 15, 18 (E.D. Pa. 1986) (court may
22 require that motions to compel be submitted within a reasonable time "to prevent delay and harassment and to allow for
calendar control").

23 ⁴ The requirement of reasonable particularity applies to document requests through NRCP 34(b)(1)(A), and this
24 Court generally will not enforce requests that fail to satisfy that requirement. See, e.g., Perez v. El Tequila LLC, No. 12-
25 CV-588-JED-PJC, 2014 WL 5341766, at *1 (N.D. Okla. Oct. 20, 2014) ("discovery requests seeking 'all documents
26 referring to, concerning, relating to' . . . are generally too vague and overbroad on their face and do not describe with
'reasonable particularity' what is being sought") (emphasis added); Hartford Fire Ins. Co. v. P & H Cattle Co., No. 05-2001-
DJW, 2009 WL 2951120, at *11 (D. Kan. Sept. 11, 2009) (request for "all documents maintained by the Plaintiff concerning
any of the Defendants" not made with reasonable particularity) (emphasis added); Lopez v. Chertoff, No. CV 07-1566-
LEW, 2009 WL 1575214, at *2 (E.D. Cal. June 2, 2009) (request for all documents "referring to [or] relating to" plaintiff from
defendant sheriff was overly broad and lacked reasonable particularity). For a detailed explanation of why this kind of
phrasing is objectionable, see Wesley M. Ayres, Conversations on Discovery, The Writ, Jan. 2001, at 3-4.

1 Mar, Laguna Beach, California; and (c) 370 Los Olivos, Laguna Beach, California. The Court finds
2 that Plaintiff provided sufficient explanation to address Defendant's concerns about overbreadth in
3 the categories described above, and reliance on that objection is therefore unavailing.⁵

4 Defendant's other objection is that the requested insurance policies contain information that
5 is personal, private, and confidential, and that they should therefore be protected from discovery by
6 Plaintiff. As explained by Defendant:

7 Insurance policies, and the information they contain, are undoubtedly "private,
8 personal information and financial information," just like tax returns. An unlimited
9 production of all insurance policies would essentially open the door to the entire
10 financial and asset structure of the insured. Insurance policies are entitled to
11 protection, just like tax returns, particularly when the information sought—Bayuk's
12 subjective belief of the value of a limited number of assets—can be obtained
13 elsewhere.

14 Plaintiff counters that insurance policy records do not automatically qualify for protection from
15 discovery, and that Defendant failed to seek a protective order for those documents.

16 Essentially, Defendant Bayuk is seeking protection for the requested insurance policies.⁶ A
17 party seeking protection under NRCP 26(c) has the burden of establishing good cause for the
18 requested order. See, e.g., Hawley v. Hall, 131 F.R.D. 578, 583 (D. Nev. 1990).⁷ The existence of
19 good cause is a factual matter to be determined from the nature and character of the information
20 sought weighed in the balance of the factual issues involved in each action. See Glick v. McKesson
21 & Robbins, Inc., 10 F.R.D. 477, 479 (W.D. Mo. 1950). In that regard, courts insist upon a particular
22 and specific demonstration of fact, as distinguished from stereotyped and conclusory statements, in
23 order to establish good cause. See, e.g., Hawley, 131 F.R.D. at 583. Broad allegations of harm,

24 ⁵ Alternatively, if Defendant Bayuk truly could not identify the real and personal property transferred to him which
25 is at issue in this case, then he should have asked for further explanation about the description provided by Plaintiff's
26 counsel in her emails to Defendants' counsel in March 2016 (attached as Exhibit 14 to the motion to compel). Significantly,
in his response to the first email, Defendants' counsel did not cite overbreadth or confusion about the real and personal
property at issue.

⁶ NRCP 37(a)(4)(B) and (C) allow the Court to "enter any protective order authorized under Rule 26(c)" in
connection with its decision concerning a motion to compel.

⁷ "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.'" See Exec. Mgmt. v. Tigor Title
Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting Las Vegas Novelty, Inc. v. Fernandez, 106 Nev. 113, 119, 787
P.2d 772, 776 (1990)).

1 unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.
2 See Cipollone v. Liggett Grp., Inc., 785 F.2d 1108, 1121 (3d Cir. 1986).

3 Defendant Bayuk's contention that insurance policies are inherently entitled to protection is
4 not compelling. In fact, certain kinds of insurance policies must be disclosed in most Nevada civil
5 actions, and the rule requiring disclosure does not purport to provide any special protection for those
6 policies. See NRCP 16.1(a)(1)(D). Moreover, insurance policies typically contain numerous
7 provisions concerning definitions, coverages, exclusions, and other contractual requirements that
8 reveal no confidential information about the insured. The Court appreciates that Defendant's
9 objection might have been partly based on the overbroad nature of Plaintiff's requests; but those
10 concerns have now been addressed and the scope of Plaintiff's requests for insurance policies has
11 been substantially narrowed. As noted above, Defendant need only produce insurance policies that
12 provided coverage for items of real or personal property that were transferred by Debtor to
13 Defendant Bayuk, individually or as trustee, and which are the subject of this action.

14 In addition, while courts have recognized protection for documents such as medical records,
15 tax returns, and documents revealing a party's financial condition (e.g., bank records), see, e.g.,
16 Hetter v. Dist. Court, 110 Nev. 513, 520, 874 P.2d 762, 766 (1994); Schlatter v. Dist. Court, 93 Nev.
17 189, 192-93, 561 P.2d 1342, 1343-44 (1979), those kinds of documents necessarily implicate an
18 individual's privacy concerns. A patient's medical records reveal information about his or her
19 condition. Tax returns require individuals to provide substantial information about their income and
20 assets. Statements from financial institutions directly reveal information about an individual's
21 financial condition. In contrast, property insurance policies are contractual agreements which do not
22 inherently reveal information typically regarded as confidential. Perhaps some policies of this sort
23 reveal private information; but they do not automatically do so, and Defendant has not identified the
24 personal, private, confidential information that would be revealed in the policies at issue.
25 Significantly, no case has been cited in which a court held that insurance policies are automatically
26 entitled to protection under NRCP 26(c), or the analogous federal rule.

1 In any event, even medical records, tax returns, and financial statements are presumptively
2 discoverable if they are relevant to the subject matter involved in the pending action.⁹ See NRCP
3 26(b)(1). As explained above, Plaintiff's request for insurance policies is limited to those that
4 provided coverage for items of real or personal property that were transferred by Debtor to
5 Defendant Bayuk, individually or as trustee, and which are the subject of this action. That property
6 is part of the subject matter of this litigation. The Court agrees with Plaintiff that the value ascribed
7 to that property by Defendant Bayuk, and the amount of coverage he sought and obtained, are
8 relevant to his beliefs about the value of that property. When compared with the value of
9 consideration actually exchanged for that property, it may constitute evidence about whether the
10 transfers of that property to Defendant Bayuk were made in good faith, or whether they were
11 fraudulent. Therefore, Plaintiff is entitled to the insurance policies he seeks.

12 ACCORDINGLY, *Plaintiff's Motion to Compel Production of Documents* should be
13 GRANTED.

14 IT SHOULD, THEREFORE, BE ORDERED that Defendant Bayuk produce for inspection and
15 copying by Plaintiff, no later than September 16, 2016, all insurance policies within the possession,
16 custody, or control of Defendant Bayuk that were in effect at any time between January 1, 2005 and
17 December 31, 2011, and which provided coverage for real or personal property located at (a) 1254
18 Mary Fleming Circle, Palm Springs, California; (b) 371 El Camino Del Mar, Laguna Beach,
19 California; and (c) 370 Los Olivos, Laguna Beach, California.

20 DATED: This 1st day of September, 2016.

21
22 
23 WESLEY M. AYRES
DISCOVERY COMMISSIONER

24 ⁹ In Nevada, the discovery of tax returns generally will not be permitted unless the information sought is
25 otherwise unobtainable. See *McNair v. Dist. Court*, 110 Nev. 1285, 1290, 885 P.2d 576, 579 (1994); *Clark v. Dist. Court*,
26 101 Nev. 58, 64, 692 P.2d 512, 516 (1985). That degree of protection is appropriate for documents in which most income-
earners are required to reveal substantial amounts of information about their income and assets, and which then must be
filed with the Internal Revenue Service. See *Hettler v. Dist. Court*, 110 Nev. 513, 519, 874 P.2d 762, 765-66 (1994)
("because of the policy considerations of protecting taxpayer privacy and encouraging the filing of full and accurate tax
returns, both state and federal courts have subjected discovery requests for income tax returns to a heightened scrutiny").
Insurance policies concerning noncompulsory coverage for items of real and personal property simply do not raise the
same kinds of privacy concerns as tax returns.

CERTIFICATE OF SERVICE

CASE NO. CV13-02663

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 1st day of September, 2016, I electronically filed the **RECOMMENDATION FOR ORDER** with the Clerk of the Court by using the ECF system.

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

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:


TERESA M. PILATOWICZ, ESQ. for WILLIAM A. LEONARD, TRUSTEE OF THE
BANKRUPTCY ESTATE OF PAUL ANTHONY MORABITO

BARRY L. BRESLOW, ESQ. for SUPERPUMPER, INC. et al.

FRANK C. GILMORE, ESQ. for SUPERPUMPER, INC. et al.

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:

Gerald M. Gordon, Esq.
Mark M. Weisenmiller, Esq.
Gabrielle A. Hamm, Esq.
Garman Turner Gordon LLP
650 White Dr., Ste. 100
Las Vegas, NV 89119-9018



Maureen Conway
Court Clerk

FILED
Electronically
CV13-02663
2016-11-21 10:11:14 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5813397 / cs ill z c

EXHIBIT 4

EXHIBIT 4

1 2270
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14 Telephone 725-777-3000

15 *Special Counsel to William A. Leonard, Plaintiff*

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

PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

William Leonard, Chapter 7 Trustee for the bankruptcy estate of Paul Anthony Morabito and the plaintiff in the above-referenced action (the "Plaintiff" or "Trustee"), by and through his counsel, the law firm of Garman Turner Gordon LLP, hereby files this motion (the "Motion") to compel the production of documents from defendant EDWARD BAYUK, individually

1 ("Bayuk") and as trustee of the EDWARD WILLIAM BAYUK LIVING TRUST (the "Trust").
2 Specifically, Plaintiff seeks an order compelling the production of insurance policies relating to
3 the personal property which Plaintiff alleges was fraudulently transferred to Bayuk or the Trust
4 by Paul Morabito ("Morabito" or "Debtor").

5 This Motion is supported by the following memorandum of points and authorities, the
6 declaration of Teresa M. Pilatowicz, Esq. (the "Pilatowicz Decl."), attached hereto as **Exhibit 1**,
7 the remaining exhibits attached hereto, and pleadings and papers on file in this above-captioned
8 case, judicial notice of which is respectfully requested.

9 Dated this 7th day of April, 2016.

10 GARMAN TURNER GORDON LLP

11 /s/ Gabrielle A. Hamm
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.
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18 650 White Drive, Suite 100
19 Las Vegas, Nevada 89119
20 Tel: (735) 777-3000
21 *Attorneys for Plaintiff William A. Leonard*

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I.**
24 **RELEVANT FACTS**

25 **A. Background.**

26 1. On December 17, 2013, JH, Inc., Jerry Herbst, and Berry-Hinckley Industries (the
27 "Herbst Parties") filed a complaint in this Court against Morabito, his long-term domestic
28 partner, Bayuk, his brother, Salvatore Morabito, Superpumper, Inc., an Arizona corporation, and
29 Snowshoe Petroleum, Inc., a New York corporation, thereby commencing this action (the
30 "Fraudulent Transfer Action").

31 2. On June 20, 2013, the Herbst Parties filed an Involuntary Petition (the "Petition")
32 against the Debtor, thereby commencing the chapter 7 case (the "Chapter 7 Case") in the United

1 States Bankruptcy Court for the District of Nevada. Case No. 13-51237-GWZ, ECF No. 1.

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

4 **B. The Personal Property Transfers.**

5 4. The Fraudulent Transfer Action seeks to avoid and recover a number of
6 fraudulent transfers of the Debtor's property, including personal property, which occurred only
7 days after an oral ruling by Judge Brent Adams finding the Debtor liable for fraud against the
8 Herbst Parties resulting in actual damages of approximately \$75 million. Ultimately, final
9 judgment was entered against the Debtor in the approximate amount of \$144 Million against the
10 Debtor and in favor of the Herbst Parties, encompassing actual and punitive damages.

11 5. Pertinent to this Motion, Plaintiff seeks to avoid and recover the fraudulent
12 transfer by the Debtor to Bayuk of numerous items of personal property reflected in the bills of
13 sale attached hereto as **Exhibits 2, 3, and 4** (the "**Bills of Sale**"). The Bills of Sale reflect an
14 aggregate purchase price paid by Bayuk of \$88,812. See Ex. 1, 2, 3; Pilatowicz Decl. ¶ 4.

15 6. During the course of discovery, Plaintiff learned that within the two years prior to
16 the transfers of the personal property reflected in the Bills of Sale, the Debtor insured various
17 items of personal property for \$2,000,000 – significantly more than the price paid by Bayuk.
18 Attached hereto as **Exhibit 5** is the personal financial statement of the Debtor produced pursuant
19 to a subpoena *duces tecum* by non-party Gursey Schneider, who performed auditing services for
20 the Debtor and his cohorts, including Bayuk. Pilatowicz Decl. ¶ 5.

21 **C. The Discovery Requests and Bayuk's and the Trust's Failure to Produce Responsive**
22 **Documents.**

23 7. On August 14, 2015, Plaintiff served *Plaintiff's First Set of Requests for*
24 *Production of Documents to Edward Bayuk* (the "**First Bayuk Requests**"), to which Bayuk served
25 his responses on September 24, 2015. True and correct copies of the First Bayuk Requests and
26 *Edward Bayuk's Responses to Plaintiff's First Set of Requests for Production* are attached hereto
27 as **Exhibits 6 and 7**. See Pilatowicz Decl., ¶ 6. In the First Bayuk Requests, Plaintiff requested
28 the production of a number of categories of documents that would include insurance policies

1 obtained on the fraudulently-transferred personal property, though Bayuk failed to produce any
2 insurance policies. The relevant requests, and Bayuk's responses thereto, are as follows:

3 **Request for Production No. 2:**

4 Produce any and all appraisals and/or valuations of the real and/or personal
5 property located at [] 1254 Mary Flem[ing] Circle, Palm Springs, California
6 between 2007 and the date of Your responses to these Discovery Requests.

7 **Response to Request for Production No. 2**

8 See MORABITO (341).002365-002401.

9 **Request for Production No. 3:**

10 Produce any and all appraisals and/or valuations of the real and/or personal
11 property located at [] 371 El Camino Del Mar, Laguna Beach, California between
12 2007 and the date of Your responses to these Discovery Requests.

13 **Response to Request for Production No. 3**

14 See MORABITO (341).002489-00251

15 **Request for Production No. 5:**

16 Produce any and all inventories or lists of personal property located at [] 1254
17 Mary Flem[ing] Circle, Palm Springs, California between 2007 and the date of
18 Your response to these Discovery Requests.

19 **Response to Request for Production No. 5**

20 All known responsive documents have been produced. See MORABITO
21 (341).002362-2544; 006971-006978; 007350-007361; 006941-006948.

22 **Request for Production No. 6:**

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

26 **Response to Request for Production No. 6**

27 All known responsive documents have been produced. See MORABITO
28 (341).002362-2544;006971-006978;007350-007361;006941-006948.

8. On August 14, 2015, Plaintiff served *Plaintiff's First Set of Requests for
Production of Documents to Edward Bayuk, as trustee of the Edward William Bayuk Living
Trust* (the "First Trust Requests"), to which Bayuk served his responses on September 23, 2015.
True and correct copies of the First Trust Requests and *Edward Bayuk, as trustee of the Edward
William Bayuk Living Trust's Responses to Plaintiff's First Set of Requests for Production* are

1 attached hereto as **Exhibits 8 and 9**. See Pilatowicz Decl., ¶ 7. Like the First Bayuk Requests,
2 Plaintiff requested the production of a number of categories of documents from the Trust that
3 would include insurance policies obtained on the fraudulently-transferred personal property,
4 though Bayuk failed to produce any insurance policies. The relevant requests, and the Bayuk's
5 responses thereto, are as follows:

6 **Request for Production No. 3:**

7 Produce any and all Lists or Inventories of Assets in The Edward William Bayuk
8 Living Trust between December 3, 2007 and the date of Your Response to these
9 Discovery Requests.

10 **Response to Request for Production No. 3**

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

14 **Request for Production No. 8:**

15 Produce any and all appraisals and/or valuations of the real and/or personal
16 property located at [] 1254 Mary Flem[ing] Circle, Palm Springs, California
17 between 2007 and the date of Your responses to these Discovery Requests.

18 **Response to Request for Production No. 8**

19 See MORABITO (341).002515-2544.

20 **Request for Production No. 9:**

21 Produce any and all appraisals and/or valuations of the real and/or personal
22 property located at [] 371 El Camino Del Mar, Laguna Beach, California between
23 2007 and the date of Your responses to these Discovery Requests.

24 **Response to Request for Production No. 9**

25 See MORABITO (341).002489-2514;

26 **Request for Production No. 10:**

27 Produce any and all inventories or lists of personal property located at [] 1254
28 Mary Flem[ing] Circle, Palm Springs, California between 2007 and the date of
Your response to these Discovery Requests.

Response to Request for Production No. 10

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

1 **Request for Production No. 11:**

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

5 **Response to Request for Production No. 11**

6 See responses to Bayuk Requests for Production.

7 9. On January 29, 2016, Plaintiff served *Plaintiff's Second Set of Requests for*
8 *Production of Documents to Edward Bayuk* (the "Second Bayuk Requests"), to which Bayuk
9 served his responses on March 9, 2016. True and correct copies of the Second Bayuk Requests
10 and *Edward Bayuk's Responses to Plaintiff's Second Set of Requests for Production* are attached
11 hereto as **Exhibits 10 and 11**. See Pilatowicz Decl., ¶ 8. In the Second Bayuk Requests,
12 Plaintiff expressly requested the production of insurance policies obtained on the fraudulently-
13 transferred personal property. Again, Bayuk failed to produce any insurance policies. The
14 relevant requests, and Bayuk's responses thereto, are as follows:

15 **Request for Production No. 26:**

16 Produce all Documents related to, referring to, or constituting any and all
17 insurance policies in effect for any real or personal property You owned between
18 January 1, 2005 and December 31, 2011.

19 **Response to Request for Production No. 26**

20 Objection, this request seeks documents which contain sensitive personal
21 information which is not relevant to the claims and defenses pled in this
22 case. The request is overbroad, not limited to the specific issues in dispute
23 in this case, and is not reasonably calculated to lead to the discovery of
24 admissible evidence.

25 **Request for Production No. 27:**

26 Produce all Documents related to, referring to, or constituting any and all
27 insurance policies for which you applied relating to any [] real or personal
28 property You owned between January 1, 2005 and December 31, 2011.

Response to Request for Production No. 27

 Objection, this request seeks documents which contain sensitive personal
information which is not relevant to the claims and defenses pled in this
case. The request is overbroad, not limited to the specific issues in dispute
in this case, and is not reasonably calculated to lead to the discovery of
admissible evidence.

1 10. On January 29, 2016, Plaintiff served *Plaintiff's Second Set of Requests for*
2 *Production of Documents to Edward Bayuk, as trustee of the Edward William Bayuk Living*
3 *Trust* (the "Second Trust Requests"), to which Bayuk served his responses on March 9, 2016.
4 True and correct copies of the Second Trust Requests and *Edward Bayuk, as trustee of the*
5 *Edward William Bayuk Living Trust's Responses to Plaintiff's Second Set of Requests for*
6 *Production* are attached hereto as **Exhibits 12 and 13**. See Pilatowicz Decl., ¶ 9. Like the
7 Second Bayuk Requests, Plaintiff expressly requested the production of insurance policies
8 obtained on the fraudulently-transferred personal property. Again, Bayuk failed to produce any
9 insurance policies. The relevant requests, and Bayuk's responses thereto, are as follows:

10 **Request for Production No. 24:**

11 Produce all Documents related to, referring to, or constituting any and all
12 insurance policies in effect for any real or personal property You owned between
13 January 1, 2005 and December 31, 2011.

14 **Response to Request for Production No. 24**

15 Objection, this request seeks documents which contain sensitive personal
16 information which is not relevant to the claims and defenses pled in this
17 case. The request is overbroad, not limited to the specific issues in dispute
18 in this case, and is not reasonably calculated to lead to the discovery of
19 admissible evidence.

20 **Request for Production No. 25:**

21 Produce all Documents related to, referring to, or constituting any and all
22 insurance policies for which you applied relating to any [] real or personal
23 property You owned between January 1, 2005 and December 31, 2011.

24 **Response to Request for Production No. 25**

25 Objection, this request seeks documents which contain sensitive personal
26 information which is not relevant to the claims and defenses pled in this
27 case. The request is overbroad, not limited to the specific issues in dispute
28 in this case, and is not reasonably calculated to lead to the discovery of
29 admissible evidence.

30 11. In counsel's meet and confer pursuant to NRCP 37, Defendants' counsel
31 contended that insurance policies are not relevant, stating that "[i]nformation contained in an
32 insurance policy does not reflect the true market value of any personal or real property. Rather, a
33 policy reflects the amount to which an insured is willing to ensure the property." Pilatowicz

Decl., ¶ 10. A true and correct copy of counsel's correspondence is attached hereto as **Exhibit 14**.

II. LEGAL ARGUMENT

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery. NRCP 37(a). If a party fails to permit inspection pursuant to a NRCP 34 request, after being served with a proper notice, the court in which the action is pending on motion may make such orders in regard to the failure as are just. See NRCP 37(d). Failure to comply with discovery requests under NRCP 37(d) "may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c)." Id. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Id.

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery." NRCP 26(b)(1); see also Harrison v. Falcon Prods., 103 Nev. 558, 560, 746 P.2d 642, 642 (1987). "Relevance is broadly construed to include "any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978); see also F.T.C. v. AMG Servs., Inc., 291 F.R.D. 544, 552 (D. Nev. 2013) ("Relevance within the meaning of Rule 26(b)(1) is considerably broader than relevance for trial purposes . . . [f]or discovery purposes, relevance means only that the materials sought are reasonably calculated to lead to the discovery of admissible evidence.") (citations omitted); Pulsecard, Inc. v. Discover Card Servs., Inc., 168 F.R.D. 295, 309 (D. Kan. 1996). "It is not ground for objection that the information sought will be inadmissible at the trial if *the information sought appears reasonably calculated to lead to the discovery of admissible evidence.*" Nev. R. Civ. P. 26

1 (emphasis added). Therefore, Defendant's counsel is not the arbiter of whether the insurance
2 policies are relevant, and may not refuse to produce responsive documents because Defendant
3 would object to their admissibility at trial.

4 The "party resisting discovery bears the burden of showing why a discovery request
5 should be denied." F.T.C. v. AMG Servs., Inc., 291 F.R.D. 544, 553 (D. Nev. 2013) (citing
6 Painters Joint Comm. v. Employee Painters Trust Health & Welfare Fund, No. 2:10-CV-1385
7 JCM (PAL), 2011 WL 4573349, at *5 (D. Nev. 2011), *modified on other grounds*, 2011 WL
8 5854714 (D. Nev. 2011)). The "objecting party must specifically detail the reasons why each
9 request is irrelevant" and may not rely on boilerplate, generalized, conclusory, or speculative
10 arguments. Id. (citing E.E.O.C. v. Caesars Entertainment, Inc., 237 F.R.D. 428, 432 (D. Nev.
11 2006) ("Rule 26(c) requires more than broad allegations of harm, unsubstantiated by specific
12 examples or articulated reasoning.")). Defendant's reference to unspecified privacy interests and
13 boilerplate objection that the insurance policies are not relevant therefore are insufficient.

14 At issue in this case is whether Bayuk gave the Debtor reasonably equivalent value for
15 the property transferred to Bayuk mere days after a significant judgment against the Debtor
16 under Nevada's Uniform Fraudulent Transfer Act. The value ascribed to that property by
17 Bayuk, and the amount of coverage which he sought and obtained, unquestionably relate to the
18 value of that property along with Bayuk's opinion of the value of that property. Even assuming
19 an insurance policy "does not reflect the true market value of any personal or real property," as
20 Defendants contend and which Plaintiff contests, it is unquestionably likely to lead to the
21 discovery of admissible evidence including, but not limited to, Bayuk's belief as to the value of
22 the personal property. Accordingly, the requested documents are discoverable and must be
23 produced.

24 ...

25 ...

26 ...

27 ...

28 ...

AFFIRMATION
Pursuant to NRS 239B.030

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

Dated this 7th day of April, 2016.

GARMAN TURNER GORDON LLP

/s/ Gabrielle A. Hamm

GERALD M. GORDON, ESQ.

Nevada Bar No. 229

TERESA M. PILATOWICZ, ESQ.

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Attorneys for Plaintiff William A. Leonard

INDEX OF EXHIBITS

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| 3. | Bill of Sale - 371 El Camino Del Mar | 4 |
| 4. | Bill of Sale - 370 Los Olivos | 4 |
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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
7 counsel to the plaintiff, William Leonard, in this matter. I am duly-licensed in Nevada and
8 Arizona.

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

11 3. I submit this declaration in support of *Plaintiff's Motion to Compel Production of*
12 *Documents* (the "Motion").

13 4. True and correct copies of the Bills of Sale reflecting an aggregate purchase price
14 purportedly paid by Bayuk to the Debtor for numerous items of personal property of \$88,812,
15 produced by Defendants in this action, are attached to the Motion as **Exhibits 1, 2, and 3**.

16 5. During the course of discovery, Plaintiff learned that prior to the transfers of the
17 personal property reflected in the Bills of Sale, the Debtor insured various items of personal
18 property for \$2,000,000 – significantly more than the price paid by Bayuk. Attached to the
19 Motion as **Exhibit 5** is the personal financial statement of the Debtor produced pursuant to a
20 subpoena duces tecum by non-party Gursey Schneider, who performed auditing services for the
21 Debtor and his cohorts, including Bayuk.

22 6. On August 14, 2015 Plaintiff served *Plaintiff's First Set of Requests for*
23 *Production of Documents to Edward Bayuk* (the "First Bayuk Requests"), to which Bayuk served
24 his responses on September 24, 2015. True and correct copies of the First Bayuk Requests and
25 *Edward Bayuk's Responses to Plaintiff's First Set of Requests for Production* are attached to the
26 Motion as **Exhibits 6 and 7**. In the First Bayuk Requests, Plaintiff requested the production of a
27 number of categories of documents that would include insurance policies obtained on the
28 fraudulently-transferred personal property, though Bayuk failed to produce any insurance
29 policies.

1 7. On August 14, 2015, Plaintiff served *Plaintiff's First Set of Requests for*
2 *Production of Documents to Edward Bayuk, as trustee of the Edward William Bayuk Living*
3 *Trust* (the "First Trust Requests"), to which Bayuk served his responses on September 23, 2015.
4 True and correct copies of the First Trust Requests and *Edward Bayuk, as trustee of the Edward*
5 *William Bayuk Living Trust's Responses to Plaintiff's First Set of Requests for Production* are
6 attached to the Motion as **Exhibits 8** and **9**. Like the First Bayuk Requests, Plaintiff requested
7 the production of a number of categories of documents from the Trust that would include
8 insurance policies obtained on the fraudulently-transferred personal property, though Bayuk
9 failed to produce any insurance policies.

10 8. On January 29, 2016, Plaintiff served *Plaintiff's Second Set of Requests for*
11 *Production of Documents to Edward Bayuk* (the "Second Bayuk Requests"), to which Bayuk
12 served his responses on March 9, 2016. True and correct copies of the Second Bayuk Requests
13 and *Edward Bayuk's Responses to Plaintiff's Second Set of Requests for Production* are attached
14 to the Motion as **Exhibits 10** and **11**. In the Second Bayuk Requests, Plaintiff expressly
15 requested the production of insurance policies obtained on the fraudulently-transferred personal
16 property. Again, Bayuk failed to produce any insurance policies.

17 9. On January 29, 2016, Plaintiff served *Plaintiff's Second Set of Requests for*
18 *Production of Documents to Edward Bayuk, as trustee of the Edward William Bayuk Living*
19 *Trust* (the "Second Trust Requests"), to which Bayuk served his responses on March 9, 2016.
20 True and correct copies of the Second Trust Requests and *Edward Bayuk, as trustee of the*
21 *Edward William Bayuk Living Trust's Responses to Plaintiff's Second Set of Requests for*
22 *Production* are attached to the Motion as **Exhibits 12** and **13**. Like the Second Bayuk Requests,
23 Plaintiff expressly requested the production of insurance policies obtained on the fraudulently-
24 transferred personal property. Again, no insurance policies were produced.

25 10. I have consulted with counsel for the Defendants, Frank Gilmore, in order to
26 attempt to resolve the matter, but we have been unable to resolve the matter without court
27 intervention. In our meet and confer pursuant to NRCP 37, Defendants' counsel contended that
28 insurance policies are not relevant, stating that "[i]nformation contained in an insurance policy

1 does not reflect the true market value of any personal or real property. Rather, a policy reflects
2 the amount to which an insured is willing to ensure the property." A true and correct copy of
3 counsel's correspondence is attached to the Motion as **Exhibit 14**.

4 Dated this 7th day of April, 2016.

5
6 
TERESA M. PILATOWICZ, ESQ.

Exhibit 2

BILL OF SALE

This **BILL OF SALE** (this "**Bill of Sale**") is made and effective as of October 1, 2010, (the "**Effective Date**") by and between **PAUL A. MORABITO** in his capacity as Trustee of the **ARCADIA LIVING TRUST ("Seller")** on the one hand, and **EDWARD WILLIAM BAYUK** in his capacity as Trustee of the **EDWARD WILLIAM BAYUK LIVING TRUST ("Buyer")**

Recitals

A. The Seller and the Buyer entered into that certain Purchase and Sale Agreement dated as of September 27, 2010 as thereafter amended (the "**Agreement**"), respecting the transfer of certain real property interests, including the real property commonly known as 1254 Mary Fleming Circle, Palm Springs, CA (the "**Mary Fleming Property**") as defined in the Agreement); and

B. Under the Agreement, the Seller is obligated to transfer to the Buyer any and all of his right, title and interest in and to certain specified personal property ("**Personal Property**") owned by Seller that is located on or in the Mary Fleming Property.

NOW, THEREFORE, as of the Effective Date for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Seller and Buyer agree as follows:

1. In consideration of the sum of \$44,756.00 delivered to Buyer concurrently herewith, Seller absolutely and unconditionally gives, grants, bargains, sells, transfers, sets over, assigns, conveys, releases, confirms and delivers to the Buyer all of the Seller's right, title and interest in and to all of the Personal Property. Attached hereto marked Exhibit "A" and incorporated herein by reference is a Listing of the Personal Property.

2. The Seller covenants that the Seller will, at no cost or liability to the Seller, at any time and from time to time upon written request therefor, execute and deliver to the Buyer, or the Buyer's successors, nominees or assigns, such documents as the Buyer may reasonably request in order to confirm the foregoing transfer to the Buyer of all of the Seller's right, title and interest in and to all of the Personal Property.

3. The Buyer acknowledges that the Seller makes no representation or warranty, either express or implied, with respect to the Personal Property, its present condition or its fitness or suitability for any particular purpose; and accordingly, the Personal Property is being purchased by the Buyer from the Seller in its "as is" "where is" condition, with all faults associated therewith. In this respect, the Buyer confirms that except as set forth in the representations, warranties and covenants contained in the Agreement, the Buyer is relying solely upon its investigation of the present condition of the Personal Property. The Buyer agrees to pay sales and use taxes, if any, in connection with the transfer of the Personal Property pursuant hereto.

4. This Bill of Sale shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the Buyer and the Seller.

5. The Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

MORABITO (341).002437

6. This Bill of Sale may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

7. Capitalized terms used herein and not herein defined shall have the meanings given to such terms in the Agreement

IN WITNESS WHEREOF, the Seller and the Buyer have executed this Bill of Sale as of the date first written above.

"SELLER"


ARCADIA LIVING TRUST



Paul A. Morabito, Trustee

"BUYER"

EDWARD WILLIAM BAYUK LIVING TRUST



Edward William Bayuk, Trustee

MORABITO (341).002438

Exhibit "A"
Listing of Personal Property

MORABITO (341).002439

1254 Mary Fleming Circle

| Location | Description |
|---------------|---|
| kitchen | Oslo style bar stools |
| kitchen | dining table |
| kitchen | dining chairs |
| kitchen | carpet |
| kitchen | pots, pans, dishes etc. |
| Liv rm | liquor and wine |
| Liv rm | throw pillows |
| Liv rm | cocktail table |
| Liv rm | L shaped sofa |
| Liv rm | knick knacks |
| Liv rm | side table |
| Liv rm | fruit art |
| various | framed WW1 & WW2 posters |
| TV Room | throw pillows |
| TV Room | custom 3 pc sectional sofa |
| TV Room | leather ottoman |
| hall | wood framed mirror |
| den | Nixon lounge chair |
| den | 2 office chairs |
| den | mirror |
| guest rm | custom Queen upholstered bed |
| guest rm | ottoman |
| guest rm | chair |
| guest rm | bed side cabinet |
| guest rm | custom pillows |
| hall bar area | 800 DVDs |
| various | throws |
| hall bath | framed mirror & pictures |
| bedrooms | mattresses |
| master bdrm | custom eastern king upholstered bed, comforter etc. |
| master bdrm | bedside & dresser chests |
| master bdrm | credenza cabinet |
| master bdrm | wall mounted lamps |
| master bdrm | lounge chair |
| master bdrm | bedding |
| dining room | Secretary desk |
| various | wall cabinet glassware |
| various | TVs & electronics |
| dining room | outdoor furniture |
| dining room | dining table |
| dining room | dining chairs |

MORABITO (341).002440

Exhibit 3

BILL OF SALE

This **BILL OF SALE** (this "**Bill of Sale**") is made and effective as of October 1, 2010, (the "Effective Date") by and between **PAUL A. MORABITO** in his capacity as Trustee of the **ARCADIA LIVING TRUST ("Seller")** on the one hand, and **EDWARD WILLIAM BAYUK** in his capacity as Trustee of the **EDWARD WILLIAM BAYUK LIVING TRUST ("Buyer")**

Recitals

A. The Seller and the Buyer entered into that certain Purchase and Sale Agreement dated as of September 27, 2010 as thereafter amended (the "**Agreement**"), respecting the transfer of certain real property interests, including the real property commonly known as 371 El Camino Del Mar, Laguna Beach, CA (the "**El Camino Property**") as defined in the Agreement); and

B. Under the Agreement, the Seller is obligated to transfer to the Buyer any and all of his right, title and interest in and to certain specified personal property ("**Personal Property**") owned by Seller that is located on or in the El Camino Property.

NOW, THEREFORE, as of the Effective Date for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Seller and Buyer agree as follows:

1. In consideration of the sum of \$31,284.00 delivered to Buyer concurrently herewith, Seller absolutely and unconditionally gives, grants, bargains, sells, transfers, sets over, assigns, conveys, releases, confirms and delivers to the Buyer all of the Seller's right, title and interest in and to all of the Personal Property. Attached hereto marked Exhibit "A" and incorporated herein by reference is a Listing of the Personal Property.

2. The Seller covenants that the Seller will, at no cost or liability to the Seller, at any time and from time to time upon written request therefor, execute and deliver to the Buyer, or the Buyer's successors, nominees or assigns, such documents as the Buyer may reasonably request in order to confirm the foregoing transfer to the Buyer of all of the Seller's right, title and interest in and to all of the Personal Property.

3. The Buyer acknowledges that the Seller makes no representation or warranty, either express or implied, with respect to the Personal Property, its present condition or its fitness or suitability for any particular purpose; and accordingly, the Personal Property is being purchased by the Buyer from the Seller in its "as is" "where is" condition, with all faults associated therewith. In this respect, the Buyer confirms that except as set forth in the representations, warranties and covenants contained in the Agreement, the Buyer is relying solely upon its investigation of the present condition of the Personal Property. The Buyer agrees to pay sales and use taxes, if any, in connection with the transfer of the Personal Property pursuant hereto.

4. This Bill of Sale shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the Buyer and the Seller.

5. The Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

MORABITO (341).002445

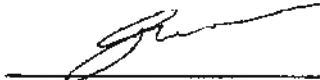
6. This Bill of Sale may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

7. Capitalized terms used herein and not herein defined shall have the meanings given to such terms in the Agreement

IN WITNESS WHEREOF, the Seller and the Buyer have executed this Bill of Sale as of the date first written above.

"SELLER"

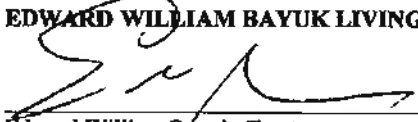
ARCADIA LIVING TRUST



Paul A. Morabito, Trustee

"BUYER"

EDWARD WILLIAM BAYUK LIVING TRUST



Edward William Bayuk, Trustee

MORABITO (341).002446

Exhibit "A"
Listing of Personal Property

MORABITO (341).002447

371 El Camino del Mar

| Location | Description |
|-------------|--------------------------------------|
| Kitchen | Osco style bar stools |
| TV Room | L shaped sofa |
| TV Room | cocktail table |
| TV Room | leather ottoman |
| TV Room | leather chair |
| Liv rm | throw pillows |
| Liv rm | cocktail table |
| Liv rm | round side tables & butterfly boxes |
| Liv rm | chairs |
| Liv rm | knick knacks |
| Liv rm | ottoman |
| Liv rm | art work |
| den | throw pillows |
| den | chair and ottoman |
| guest rm | double upholstered bed |
| guest rm | bed side cabinet |
| guest rm | custom pillows |
| various | throws |
| bedrooms | mattresses |
| master bdrm | King upholstered bed, comforter etc. |
| master bdrm | bedside chests |
| master bdrm | credenza cabinet |
| various | TVs & electronics |
| various | outdoor furniture |
| dining room | chairs |
| dining room | table |

MORABITO (341).002448

Exhibit 4

BILL OF SALE

This **BILL OF SALE** (this "**Bill of Sale**") is made and effective as of October 1, 2010, (the "**Effective Date**") by and between **PAUL A. MORABITO** in his capacity as Trustee of the **ARCADIA LIVING TRUST** ("**Seller**") on the one hand, and **EDWARD WILLIAM BAYUK** in his capacity as Trustee of the **EDWARD WILLIAM BAYUK LIVING TRUST** ("**Buyer**")

Recitals

A. The Seller and the Buyer entered into that certain Purchase and Sale Agreement dated as of September 27, 2010 as thereafter amended (the "**Agreement**"), respecting the transfer of certain real property interests, including the real property commonly known as 370 Los Olivos, Laguna Beach, CA (the "**Los Olivos Property**") as defined in the Agreement; and

B. Under the Agreement, the Seller is obligated to transfer to the Buyer any and all of his right, title and interest in and to certain specified personal property ("**Personal Property**") owned by Seller that is located on or in the Los Olivos Property.

NOW, THEREFORE, as of the Effective Date for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Seller and Buyer agree as follows:

1. In consideration of the sum of \$12,763.00 delivered to Buyer concurrently herewith, Seller absolutely and unconditionally gives, grants, bargains, sells, transfers, sets over, assigns, conveys, releases, confirms and delivers to the Buyer all of the Seller's right, title and interest in and to all of the Personal Property. Attached hereto marked Exhibit "A" and incorporated herein by reference is a Listing of the Personal Property.

2. The Seller covenants that the Seller will, at no cost or liability to the Seller, at any time and from time to time upon written request therefor, execute and deliver to the Buyer, or the Buyer's successors, nominees or assigns, such documents as the Buyer may reasonably request in order to confirm the foregoing transfer to the Buyer of all of the Seller's right, title and interest in and to all of the Personal Property.

3. The Buyer acknowledges that the Seller makes no representation or warranty, either express or implied, with respect to the Personal Property, its present condition or its fitness or suitability for any particular purpose; and accordingly, the Personal Property is being purchased by the Buyer from the Seller in its "as is" "where is" condition, with all faults associated therewith. In this respect, the Buyer confirms that except as set forth in the representations, warranties and covenants contained in the Agreement, the Buyer is relying solely upon its investigation of the present condition of the Personal Property. The Buyer agrees to pay sales and use taxes, if any, in connection with the transfer of the Personal Property pursuant hereto.

4. This Bill of Sale shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the Buyer and the Seller.

5. The Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

MORABITO (341).002441

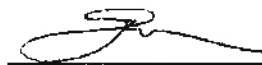
6. This Bill of Sale may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

7. Capitalized terms used herein and not herein defined shall have the meanings given to such terms in the Agreement

IN WITNESS WHEREOF, the Seller and the Buyer have executed this Bill of Sale as of the date first written above.

"SELLER"


ARCADIA LIVING TRUST



Paul A. Morabito, Trustee

"BUYER"

EDWARD WILLIAM BAYUK LIVING TRUST



Edward William Bayuk, Trustee

MORABITO (341).002442

Exhibit "A"
Listing of Personal Property

MORABITO (341).002443

370 Los Olivos

| Location | Description |
|-------------|---------------------------------------|
| Liv rm | throw pillows |
| Liv rm | cocktail table |
| Liv rm | L shaped sofa |
| Liv rm | knick knacks |
| Liv rm | bureau |
| Liv rm | art work |
| den | throw pillows |
| TV Room | pull-out sofa |
| guest rm | double upholstered bed |
| guest rm | bed side cabinet |
| guest rm | custom pillows |
| various | throws |
| bedrooms | mattresses |
| master bdrm | Queen upholstered bed, comforter etc. |
| master bdrm | bedside chests |
| various | TVs & electronics |
| various | outdoor furniture |
| dining room | table |

MORABITO (341).002444

Exhibit 5

| Assets | | Liabilities | |
|---|--|------------------------------------|-------------|
| Personal Items | | Loan Balances | |
| Assets - (note 5) personal affects - (Note 6) Antiques (note 6) | per AIG Insurance \$ 2,000,000 per AIG Insurance \$ 1,500,000 per AIG Insurance \$ 250,000 \$ 3,750,000 | First mortgage mortgage 169,600 | |
| excess of assets over liabilities | | | 364,526,418 |

all residential and commercial properties and investments shown at Fair Market Value unless noted otherwise

5 as outlined in detail in schedule to AIG Private Insurance on the Umbrella Policy with Rider
6 as outlined in detail in schedule to AIG Private Insurance on the Umbrella Policy with Rider

1193

Exhibit 6

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

11 *Attorneys to Trustee*

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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
13 Morabito,

14 Plaintiff,

15 vs.

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

23 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

24
25
26
27
28

PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
TO EDWARD BAYUK

29 To: Edward William Bayuk; and

30 To: Barry Breslow and Frank Gilmore, Esq., his attorneys.

31 PLEASE TAKE NOTICE that, Pursuant to Rule 34 of the Nevada Rule of Civil
32 Procedure, Plaintiff William A. Leonard ("Plaintiff"), by and through his counsel, Garman
33 Turner Gordon LLP, hereby propounds the following document requests (each a "Discovery
34 Request," and collectively, the "Discovery Requests"), and demands that Edward William Bayuk

1 respond within thirty (30) days of service hereof.

2 DEFINITIONS

3 1. "Action" means the above-captioned case pending in the Second Judicial District
4 Court, Washoe County, Nevada, at Case No. A CV13-02663.

5 2. "Answer" means *Defendants' Answer to First Amended Complaint* filed in the
6 Action on or about June 2, 2015.

7 3. "Communication" means any contact, oral or written, formal or informal, at any
8 time or any place under any circumstance whatsoever whereby any information of any nature
9 was transmitted or transferred, including but not limited to personal conversation, conferences,
10 telephone conversations, memoranda, letters, correspondence, electronic correspondence, texts,
11 reports, and publications.

12 4. "Complaint" refers to the *First Amended Complaint* filed in the Action on or
13 about May 15, 2015.

14 5. "Document" shall be deemed to mean any printed, typewritten, handwritten,
15 electronic, or otherwise recorded matter of whatever character, whether original, master or copy
16 (whether still active, archived or transparent) and any copies or reproductions that are not
17 identical to the original, that is or has been in the possession, control or custody of you, your
18 attorney and/or all other person acting in your behalf or of which any of the aforementioned
19 persons have knowledge, other person acting in your behalf or of which any of the
20 aforementioned persons have knowledge, including, but not limited to, letters, e-mail (internal
21 and external), communications, correspondence, memoranda, confirmations, facsimile
22 transmittal sheets, transmittal forms, telegrams, notes, summaries, minutes, contracts,
23 subcontracts, purchase orders, leases, amendments, change orders, proposals, requests for
24 proposal, bids, marketing documents, reports, studies, drawings, charts, diagrams, sketches,
25 estimates, specifications, addenda, schedules, directives, records of telephone conversations,
26 staffing projections, records of meetings and conferences, including lists of persons attending
27 meetings or conferences, summaries and records of personal conversations or interviews,
28 exhibits, transcripts, books, manuals, publications, diaries, logs, daily reports, status reports,

1 minutes of meetings, records, journals, entries in journals, charts, financial records and/or
2 summaries of financial records, work papers, bills, ledgers, financial statements, audit reports,
3 financial data, status sheets, contract status reports, tax returns, certificate of insurance,
4 agreements of suretyship and/or indemnification, insurance policies, calendars, summaries of
5 investigations and/or surveys, statistical compilations, audio or visual recordings, photographs,
6 cpm schedules, spreadsheets, computer or magnetic records, computer memory (including that of
7 any "transparent" information, information deleted from the personal computer or file but not
8 from the system), hard drives, floppy discs, optical discs, CD-ROM discs, Bernoulli discs and
9 their equivalents, magnetic tape, disaster recovery back-up, compact disks, computer generated
10 reports or summaries, drafts of original or preliminary notes on and marginal comments
11 appearing on any documents, other reports and records, any other paper or physical thing
12 containing writing, photographic, imaged, or electronically recorded data, every copy of such
13 writing or records where the original is not in the possession, custody or control of the
14 aforementioned persons, and every copy of every such writing or record where such copy
15 contains any commentary or notation whatsoever that does not appear on the original.

16 6. "Morabito" means Paul Morabito.

17 7. "Plaintiff" or "Leonard" refers to Plaintiff William A. Leonard, Trustee.

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

21 9. "You" or "Your" means Edward William Bayuk, and his agents, heirs, assignees
22 or representatives.

23 INSTRUCTIONS

24 1. These Discovery Requests shall be deemed continuing and as additional
25 information concerning the answers is secured, such additional information shall be supplied to
26 Plaintiff.

27 2. You shall produce all Documents in the manner in which they are maintained in
28 the usual course of business and/or shall organize and label Documents to correspond with the

1 categories of these Discovery Requests. A Discovery Request shall be deemed to include a
2 request for any and all file folders within which the document was contained, transmittal sheets,
3 cover letters, exhibits, enclosures, or attachments to the Document in addition to the Document
4 itself.

5 3. In producing Documents and other materials, You are requested to furnish all
6 Documents or things in Your possession, custody, or control, regardless of whether such
7 Documents or materials are possessed by You directly or Your directors, officers, agents,
8 employees, 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
11 for which 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
21 possession or control, or is no longer in existence, state whether it is (1) missing or lost, (2)
22 destroyed, (3) transferred voluntarily or involuntarily to others and if so to whom, or (4)
23 otherwise disposed of; and in each instance explain the circumstances surrounding an
24 authorization 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) the
27 manner in which the Document(s) were lost or destroyed; (iii) the identity of the Document(s);
28

1 (iv) the information contained within such Document(s) and the nature of the Document(s); and
2 (v) and the identity of any person(s) who has knowledge of the contents of the Document(s) or
3 has received a copy of such Document(s).

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

5 8. Documents not otherwise responsive to this Discovery Request shall be produced
6 if such Documents mention, discuss, refer to, or explain the Documents that are called for in a
7 Discovery Request.

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

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

13 11. The fact that a Document has been produced by You or any other defendant in
14 any other litigation does not relieve You of Your obligation to produce your copy of the same
15 Document, even if the two Documents are identical
16

17 **DISCOVERY REQUESTS**

18 **Request for Production No. 1:**

19 Produce any and all appraisals and/or valuations of the real and/or personal property
20 located at 8355 Panorama Drive, Reno, Nevada, between 2007 and the date of Your response to
21 these Discovery Requests

22 **Request for Production No. 2:**

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

26 **Request for Production No. 3:**

27
28

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

4 **Request for Production No. 4:**

5 Produce any and all inventories or lists of personal property located at 8355 Panorama
6 Drive, Reno, Nevada between 2007 and the date of Your response to these Discovery Requests

7 **Request for Production No. 5:**

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

11 **Request for Production No. 6:**

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

15 **Request for Production No. 7:**

16 Produce any and all Documents evidencing, constituting, or relating to any secured loans
17 on the real property located at 8355 Panorama Drive, Reno, Nevada the following locations
18 between 2007 and the date of Your response to these Discovery Requests

19 **Request for Production No. 8:**

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

23 **Request for Production No. 9:**

24 Produce any and all Documents evidencing, constituting, or relating to any secured loans
25 on the real property located at 371 El Camino Del Mar, Laguna Beach, California the following
26 locations between 2007 and the date of Your response to these Discovery Requests

27 **Request for Production No. 10:**

28 Produce any and all Documents evidencing, constituting, or relating to the transfer of the

1 real property located at 8355 Panorama Drive, Reno, Nevada to the Arcadia Living Trust on or
2 about October 1, 2010.

3 **Request for Production No. 11:**

4 Produce any and all Documents evidencing, constituting, or relating to the transfer of the
5 real property located at 1254 Mary Flemming Circle, Palm Springs, California to the Edward
6 William Bayuk Living Trust in or about September 2010.

7 **Request for Production No. 12:**

8 Produce any and all Documents evidencing, constituting, or relating to the transfer of the
9 real property located at 371 El Camino Del Mar, Laguna Beach, California to the Edward
10 William Bayuk Living Trust on or about August 20, 2009.

11 **Request for Production No. 13:**

12 Produce any and all Communications between You and any third-party regarding the
13 transfer of the real property located at 8355 Panorama Drive, Reno, Nevada to the Arcadia
14 Living Trust on or about October 1, 2010.

15 **Request for Production No. 14:**

16 Produce any and all Communications between You and any third-party regarding the
17 transfer of the real property located at 1254 Mary Flemming Circle, Palm Springs, California to
18 the Edward William Bayuk Living Trust in or about September 2010.

19 **Request for Production No. 15:**

20 Produce any and all Communications between You and any third-party regarding the
21 transfer of the real property located at 371 El Camino Del Mar, Laguna Beach, California to the
22 Edward William Bayuk Living Trust on or about August 20, 2009.

23 **Request for Production No. 16:**

24 Produce any and all inventories or lists of all assets held by Baruk Properties from
25 December 3, 2007 to the date of Your responses to these Discovery Requests.

26 **Request for Production No. 17:**

27 Produce any and all any and all valuations of Your interest in Baruk Properties from
28 December 3, 2007 to the date of Your responses to these Discovery Requests.

1 **Request for Production No. 18:**

2 Any and all documents evidencing, constituting, or related to the promissory note from
3 Morabito to You in the amount of \$600,000, including, but not limited to, any and all documents
4 evidencing the basis for the promissory note.

5 **Request for Production No. 19:**

6 Any and all Communications between You and any third-party regarding the promissory
7 note from Morabito to You in the amount of \$600,000, including, but not limited to, any and all
8 documents evidencing the basis for the promissory note.

9 **Request for Production No. 20:**

10 Any and all valuations of Your interest in Consolidated Western Corporation between
11 December 3, 2007 and the date of Your response to these Discovery Requests.

12 **Request for Production No. 21:**

13 Any and all valuations of Your interest in Snowshoe Petroleum, Inc. between December
14 3, 2007 and the date of Your response to these Discovery Requests.

15 **Request for Production No. 22:**

16 Any and all documents valuations of Your interest in Superpumper, Inc. between
17 December 3, 2007 and the date of Your response to these Discovery Requests.

18 **Request for Production No. 23:**

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

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1 Request for Production No. 24:

2 Any and all Communications regarding every transfer of property of any type from
3 Morabito, either directly or through an entity or trust owned or controlled by Morabito, to You
4 between December 1, 2007 and the date of Your response to these Discovery Requests

5 Dated this 14th day of August, 2015.

6
7 GARMAN TURNER GORDON LLP

8 /s/ Teresa M. Pilatowicz

9 GERALD M. GORDON, ESQ.

10 Nevada Bar No. 229

11 E-mail: ggordon@gtg.legal

12 TERESA M. PILATOWICZ, ESQ.

13 Nevada Bar No. 9605

14 E-mail: tpilatowicz@gtg.legal

15 650 White Drive, Ste. 100

16 Telephone (725) 777-3000

17 Attorneys to Trustee

1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this
3 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached PLAINTIFF'S
4 FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO EDWARD
5 BAYUK 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 XXX Via E-Mail

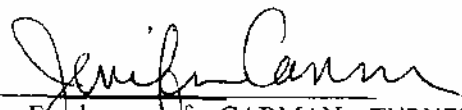
12 Placing an original or true copy thereof in a sealed envelope and causing the same
13 to be personally Hand Delivered

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 4 day of August 2015.

21
22 
23 An Employee of GARMAN TURNER
24 GORDON LLP

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

11 of 11

Exhibit 7

1 **DISCOVERY**

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

3 **bbreslow@rbsllaw.com**

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

5 **fgilmore@rbsllaw.com**

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

7 **A Professional Corporation**

8 **71 Washington Street**

9 **Reno, Nevada 89503**

10 **Telephone: (775) 329-3151**

11 **Facsimile: (775) 329-7169**

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

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

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

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

CASE NO.: CV13-02663

DEPT. NO.: B1

20 **Plaintiffs,**

21 **vs.**

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

28 **Defendants.**

EDWARD BAYUK'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR
PRODUCTION

Defendant Edward Bayuk, by and through his attorneys Robison, Belaustegui, Sharp &
Low, pursuant to NRCP 34 hereby Responses Plaintiff's First Set of Requests for Production of
Documents to Edward Bayuk, as follows:

REQUEST FOR PRODUCTION NO. 1:

Produce any and all appraisals and/or valuations of the real and/or personal property located at 8355 Panorama Drive, Reno, Nevada between 2007 and the date of Your response to these Discovery Requests.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

See Morabito (341).002365-002401.

REQUEST FOR PRODUCTION NO. 2:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

See Morabito (341).002365-002401.

REQUEST FOR PRODUCTION NO. 3:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

See MORABITO (341).002489-002514

REQUEST FOR PRODUCTION NO. 4:

Produce any and all inventories or lists of personal property located at 8355 Panorama Drive, Reno, Nevada between 2007 and the date of Your response to these Discovery Requests.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

All known responsive documents have been produced. See MORABITO (341).002362-2544; 007063-007092; 006941-006948.

REQUEST FOR PRODUCTION NO. 5:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

All known responsive documents have been produced. See MORABITO (341).002362-2544; 006971-006978; 007350-007361; 006941-006948.

REQUEST FOR PRODUCTION NO. 6:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

All known responsive documents have been produced. See MORABITO (341).002362-2544; 006971-006978; 007350-007361; 006941-006948.

REQUEST FOR PRODUCTION NO. 7:

Produce and any all Documents evidencing, constituting, or relating to any secured loans on the real property located at 8355 Panorama Drive, Reno, Nevada between 2007 and the date of Your response to these Discovery Requests.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Documents related to this loan have been requested of the lender. The loan was paid off approximately December 31, 2012. When additional documents have been received, they will be produced.

REQUEST FOR PRODUCTION NO. 8:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Documents related to this loan have been requested of the lender and will be produced when received. See also MORABITO (341).007097-98.

REQUEST FOR PRODUCTION NO. 9:

Produce and any all Documents evidencing, constituting, or relating to any secured loans on the real property located at 371 El Camino Del Mar, Laguna Beach, California the following

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

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

3 Documents related to this loan have been requested of the lender and will be produced
4 when received. See also Superpumper 000439; MORABITO (341).006925-006926.

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

6 Produce any and all Documents evidencing, constituting, or relating to the transfer of the
7 real property located at 8355 Panorama Drive, Reno, Nevada to the Arcadia Living Trust on or
8 about October 1, 2010.

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

10 All known responsive documents have been produced. See MORABITO (341).002362-
11 2544;

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

13 Produce any and all Documents evidencing, constituting, or relating to the transfer of the
14 real property located at 1254 Mary Flemming Circle, Palm Springs, California to the Edward
15 William Bayuk Living Trust on or about September 2010.

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

17 All known responsive documents have been produced. See See MORABITO
18 (341).002362-2544; 7099;

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

20 Produce any and all Documents evidencing, constituting, or relating to the transfer of the
21 real property located at 371 El Camino Del Mar, Laguna Beach, California to the Edward William
22 Bayuk Living Trust on or about August 20, 2009.

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

24 All known responsive documents have been produced. See See MORABITO
25 (341).002362-2544; 006949; 006941-006948; 006971-006978

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

27 Produce any and all Communications between You and any third-party regarding the
28 transfer of the real property located at 8355 Panorama Drive, Reno, Nevada to the Arcadia Living

1 Trust on or about October 1, 2010.

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

3 All known responsive documents have been produced. See # 10, above.

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

5 Produce any and all Communications between You and any third-party regarding the
6 transfer of the real property located at 1254 Mary Flemming Circle, Palm Springs, California to
7 the Edward William Bayuk Living Trust on or about September 2010.

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

9 All known responsive documents have been produced. See MORABITO (341).002362-
10 2544;

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

12 Produce any and all Communications between You and any third-party regarding the
13 transfer of the real property located at 371 El Camino Del Mar, Laguna Beach, California to the
14 Edward William Bayuk Living Trust on or about August 20, 2009.

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

16 All known responsive documents have been produced. See See MORABITO
17 (341).002362-2544; 007097-007099

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

19 Produce any and all inventories or lists of assets held by Baruk Properties from December
20 3, 2007 to the date of Your response to these Discovery Requests.

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

22 Bayuk does not hold any interest in Baruk Properties.

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

24 Produce any and all valuations of Your interest in Baruk Properties from December 3, 2007
25 to the date of Your response to these Discovery Requests.

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

27 Bayuk does not hold any interest in Baruk Properties.

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

1 Any and all documents evidencing, constituting, or related to the promissory note from
2 Morabito to You in the amount of \$600,000, including, but not limited to, any and all documents
3 evidencing the basis for the promissory note.

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

5 See MORABITO (341).000001-000004; 000110-000111; All other responsive documents
6 have been produced.

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

8 Any and all Communications between You and any third-party regarding the promissory
9 note from Morabito to You in the amount of \$600,000, including but not limited to, any and all
10 documents evidencing the basis for the promissory note.

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

12 See MORABITO (341).000001-000004; 000110-000111; All other responsive documents
13 have been produced.

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

15 Any and all valuations of Your interest in Consolidated Western Corporation between
16 December 3, 2007 and the date of Your response to these Discovery Requests.

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

18 See Superpumper 00064-00096; MORABITO(341).00001-000004. No other responsive
19 documents are known to exist which have not been produced.

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

21 Any and all valuations of Your interest in Snowshoe Petroleum, Inc. between December 3,
22 2007, and the date of Your response to these Discovery Requests.

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

24 See SUPERPUMPER 000064-000096.

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

26 Any and all valuations of Your interest in Superpumper, Inc. between December 3, 2007
27 and the date of Your response to these Discovery Requests.

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

2 See SUPERPUMPER 000064-000096.

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

4 Any and all Documents constituting, evidencing, or related to every transfer of property of
5 any type from Morabito, either directly or through an entity or trust owned or controlled by
6 Morabito, to You between December 1, 2007 and the date of Your response to these Discovery
7 Requests.

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

9 All responsive documents have been produced.

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

11 Any and all Communications regarding every transfer of property of any type from
12 Morabito, either directly or through an entity or trust owned or controlled by Morabito, to You
13 between December 1, 2007 and the date of Your response to these Discovery Requests.

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

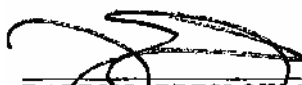
15 All responsive documents have been produced.

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

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

20 DATED this 23rd day of September, 2014.

21 ROBISON, BELAUSTEGUI, SHARP & LOW
22 A Professional Corporation
23 71 Washington Street
24 Reno, Nevada 89503

25 
26 **BARRY J. BRESLOW, ESQ.**
27 **FRANK C. GILMORE, ESQ.**
28 Attorneys for Defendants Snowshoe Petroleum,
Inc., Superpumper, Inc., Edward Bayuk, individually
and as Trustee of the Edward William Bayuk Living
Trust, and Salvatore Morabito.

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

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CERTIFICATE OF SERVICE

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

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

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

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

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

by personal delivery/hand delivery addressed to:

by facsimile (fax) addressed to:

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

DATED: This 24th day of September, 2015.



RBS&L

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



Gerald Gordon, Esq.
Mark M. Wesenmiller, Esq.
Teresa M. Plattowicz, Esq.
GABRIEL TURNER, Esq.
650 White Drive, Suite 100
Las Vegas, Nevada 89119

8911985015 0006



Exhibit 8

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

11 *Attorneys to Trustee*

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO
EDWARD BAYUK, AS TRUSTEE OF
THE EDWARD WILLIAM BAYUK LIVING TRUST

To: Edward William Bayuk, as Trustee of the Edward William Bayuk Living
Trust; and

To: Barry Breslow and Frank Gilmore, Esq., his attorneys.

PLEASE TAKE NOTICE that, Pursuant to Rule 34 of the Nevada Rule of Civil
Procedure, Plaintiff William A. Leonard ("Plaintiff"), by and through his counsel, Garman

1 Turner Gordon LLP, hereby propounds the following document requests (each a "Discovery
2 Request," and collectively, the "Discovery Requests"), and demands that Edward William
3 Bayuk, as Trustee of the Edward William Bayuk Living Trust, respond within thirty (30) days of
4 service hereof.

5 DEFINITIONS

6 1. "Action" means the above-captioned case pending in the Second Judicial District
7 Court, Washoe County, Nevada, at Case No. A CV13-02663.

8 2. "Answer" means *Defendants' Answer to First Amended Complaint* filed in the
9 Action on or about June 2, 2015.

10 3. "Communication" means any contact, oral or written, formal or informal, at any
11 time or any place under any circumstance whatsoever whereby any information of any nature
12 was transmitted or transferred, including but not limited to personal conversation, conferences,
13 telephone conversations, memoranda, letters, correspondence, electronic correspondence, texts,
14 reports, and publications.

15 4. "Complaint" refers to the *First Amended Complaint* filed in the Action on or
16 about May 15, 2015.

17 5. "Document" shall be deemed to mean any printed, typewritten, handwritten,
18 electronic, or otherwise recorded matter of whatever character, whether original, master or copy
19 (whether still active, archived or transparent) and any copies or reproductions that are not
20 identical to the original, that is or has been in the possession, control or custody of you, your
21 attorney and/or all other person acting in your behalf or of which any of the aforementioned
22 persons have knowledge, other person acting in your behalf or of which any of the
23 aforementioned persons have knowledge, including, but not limited to, letters, e-mail (internal
24 and external), communications, correspondence, memoranda, confirmations, facsimile
25 transmittal sheets, transmittal forms, telegrams, notes, summaries, minutes, contracts,
26 subcontracts, purchase orders, leases, amendments, change orders, proposals, requests for
27 proposal, bids, marketing documents, reports, studies, drawings, charts, diagrams, sketches,
28 estimates, specifications, addenda, schedules, directives, records of telephone conversations,

1 staffing projections, records of meetings and conferences, including lists of persons attending
2 meetings or conferences, summaries and records of personal conversations or interviews,
3 exhibits, transcripts, books, manuals, publications, diaries, logs, daily reports, status reports,
4 minutes of meetings, records, journals, entries in journals, charts, financial records and/or
5 summaries of financial records, work papers, bills, ledgers, financial statements, audit reports,
6 financial data, status sheets, contract status reports, tax returns, certificate of insurance,
7 agreements of suretyship and/or indemnification, insurance policies, calendars, summaries of
8 investigations and/or surveys, statistical compilations, audio or visual recordings, photographs,
9 cpm schedules, spreadsheets, computer or magnetic records, computer memory (including that of
10 any "transparent" information, information deleted from the personal computer or file but not
11 from the system), hard drives, floppy discs, optical discs, CD-ROM discs, Bernoulli discs and
12 their equivalents, magnetic tape, disaster recovery back-up, compact disks, computer generated
13 reports or summaries, drafts of original or preliminary notes on and marginal comments
14 appearing on any documents, other reports and records, any other paper or physical thing
15 containing writing, photographic, imaged, or electronically recorded data, every copy of such
16 writing or records where the original is not in the possession, custody or control of the
17 aforementioned persons, and every copy of every such writing or record where such copy
18 contains any commentary or notation whatsoever that does not appear on the original.

19 6. "Morabito" means Paul Morabito.

20 7. "Plaintiff" or "Leonard" refers to Plaintiff William A. Leonard, Trustee.

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

24 9. "You" or "Your" means the Edward William Bayuk Living Trust, and its agents,
25 heirs, assignees or representatives.

26 INSTRUCTIONS

27 1. These Discovery Requests shall be deemed continuing and as additional
28 information concerning the answers is secured, such additional information shall be supplied to

1 Plaintiff.

2 2. You shall produce all Documents in the manner in which they are maintained in
3 the usual course of business and/or shall organize and label Documents to correspond with the
4 categories of these Discovery Requests. A Discovery Request shall be deemed to include a
5 request for any and all file folders within which the document was contained, transmittal sheets,
6 cover letters, exhibits, enclosures, or attachments to the Document in addition to the Document
7 itself.

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

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

- 15 a. The date it bears;
16 b. The name of each person who prepared it or who participated in any way
17 in its preparation;
18 c. The name of each person who signed it;
19 d. The name of each person to whom it, or a copy of it was addressed;
20 e. The name of each person who presently has custody of it or a copy of it;
21 f. The subject matter and its substance; and
22 g. What factual basis there is for the claim of privilege.

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

28

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

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

8 8. Documents not otherwise responsive to this Discovery Request shall be produced
9 if such Documents mention, discuss, refer to, or explain the Documents that are called for in a
10 Discovery Request.

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

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

16 11. The fact that a Document has been produced by You or any other defendant in
17 any other litigation does not relieve You of Your obligation to produce your copy of the same
18 Document, even if the two Documents are identical
19

20 DISCOVERY REQUESTS

21 Request for Production No. 1.

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

23 Request for Production No. 2:

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

26 Request for Production No. 3:

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

1 **Request for Production No. 4:**

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

5 **Request for Production No. 5:**

6 Produce any and all Communications between You and any third-party regarding any
7 transfers of assets to and from the Edward William Bayuk Living Trust between December 3,
8 2007 and the date of your response to these Discovery Requests.

9 **Request for Production No. 6:**

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

13 **Request for Production No. 7:**

14 Produce and any all Communications between You and any third-party relating to the
15 \$351,626.82 deposited into Morabito's trust account with Lippes Mathias Wexler Friedman, LLP
16 by You on or about September 5, 2011.

17 **Request for Production No. 8:**

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

21 **Request for Production No. 9:**

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

25 **Request for Production No. 10:**

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

1 **Request for Production No. 11:**

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

5 **Request for Production No. 12:**

6 Produce any and all Documents constituting, evidencing, or related to any secured loans
7 on the real property located at 1254 Mary Flemming Circle, Palm Springs, California between
8 2007 and the date of Your response to these Discovery Requests

9 **Request for Production No. 13:**

10 Produce any and all Documents constituting, evidencing, or related any secured loans on
11 the real property located at 371 El Camino Del Mar, Laguna Beach, California between 2007 and
12 the date of Your response to these Discovery Requests

13 **Request for Production No. 14:**

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

17 **Request for Production No. 15:**

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

21 **Request for Production No. 16:**

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

25 **Request for Production No. 17:**

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

1 **Request for Production No. 18:**

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

4 **Request for Production No. 19:**

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

7 **Request for Production No. 20:**

8 Any and all appraisals and/or valuations of Your interest in Baruk Properties between
9 December 3, 2007 and the date of Your response to these Discovery Requests.

10 **Request for Production No. 21:**

11 Any and all Documents constituting, evidencing, or related to every transfer of property
12 of any type from Morabito, either directly or through an entity or trust owned or controlled by
13 Morabito, to You between December 1, 2007 and the date of Your response to these Discovery
14 Requests

15 **Request for Production No. 22:**

16 Any and all Communications regarding every transfer of property of any type from
17 Morabito, either directly or through an entity or trust owned or controlled by Morabito, to You
18 between December 1, 2007 and the date of Your response to these Discovery Requests

19 Dated this 14th day of August, 2015.

20
21 GARMAN TURNER GORDON LLP

22 /s/ Teresa M. Pilatowicz

23 GERALD M. GORDON, ESQ.

24 Nevada Bar No. 229

25 E-mail: ggordon@gtg.legal

26 TERESA M. PILATOWICZ, ESQ.

27 Nevada Bar No. 9605

28 E-mail: tpilatowicz@gtg.legal

650 White Drive, Ste. 100

Telephone (725) 777-3000

Attorneys to Trustee

1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this
3 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached PLAINTIFF'S
4 FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO EDWARD BAYUK,
5 AS TRUSTEE OF THE EDWARD WILLIAM BAYUK LIVING TRUST on the parties as set
6 forth below:

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

10 Certified Mail, Return Receipt Requested

11 Via Facsimile (Fax)

12 XXX 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
Reno, NV 89503

21 DATED this 14 day of August 2015.


22
23 
24 An Employee of GARMAN TURNER
GORDON LLP

Exhibit 9

1 **DISCOVERY**

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

3 bbreslow@rbsllaw.com

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

5 fgilmore@rbsllaw.com

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

7 A Professional Corporation

8 71 Washington Street

9 Reno, Nevada 89503

Telephone: (775) 329-3151

Facsimile: (775) 329-7169

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

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

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

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

CASE NO.: CV13-02663

DEPT. NO.: B1

15 **Plaintiffs,**

16 **vs.**

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

23 **Defendants.**

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

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

///

REQUEST FOR PRODUCTION NO. 1:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

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

REQUEST FOR PRODUCTION NO. 2:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

See response to No.1 above.

REQUEST FOR PRODUCTION NO. 3:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

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

REQUEST FOR PRODUCTION NO. 4:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

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

1 this case.

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

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

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

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

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

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

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

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

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

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

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

22 Objection, see No. 6, above.

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

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

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

28 See MORABITO (341).002515-2544;

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

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

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

6 See MORABITO (341).002489-2514;

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

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

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

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

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

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

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

19 See responses to Bayuk Requests for Production.

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

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

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

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

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

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

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

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

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

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

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

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

11 See Bayuk responses to Requests for Production.

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

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

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

17 See Bayuk responses to Requests for Production.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 See MORABITO (341).002362-2544;

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

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

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

25 All known responsive documents have been produced.

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

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

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

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


3 All known responsive documents have been produced.

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

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

8 DATED this 23rd day of September, 2014.

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

13 
14 BARRY D. BRESLOW, ESQ.
15 FRANK C. GILMORE, ESQ.
16 Attorneys for Defendants Snowshoe Petroleum,
17 Inc., Superpumper, Inc., Edward Bayuk, individually
18 and as Trustee of the Edward William Bayuk Living
19 Trust, and Salvatore Morabito.

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

CERTIFICATE OF SERVICE

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

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

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

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

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

— by personal delivery/hand delivery addressed to:

— by facsimile (fax) addressed to:

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

DATED: This 24th day of September, 2015.



RBS&L
 111 Washington Street
 Reno, Nevada 89503
 ROBISON, BELAUSTEGUI, SHARP & LOW



Gerald Gordon, Esq.
 Mark M. Wesenmiller, Esq.
 Teresa M. Piotrowicz, Esq.
 646 MANI TURNPIKE RD
 650 White Drive, Suite 100
 Las Vegas, Nevada 89119

0011985018 00005

Exhibit 10

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

11 *Attorneys to Trustee*

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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
13 Morabito,

14 Plaintiff,

15 vs.

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

23 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

24
25
26
27
28

PLAINTIFF'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
TO EDWARD BAYUK

29 To: Edward William Bayuk; and

30 To: Barry Breslow and Frank Gilmore, Esq., his attorneys.

31 PLEASE TAKE NOTICE that, Pursuant to Rule 34 of the Nevada Rule of Civil
32 Procedure, Plaintiff William A. Leonard ("Plaintiff"), by and through his counsel, Garman
33 Turner Gordon LLP, hereby propounds the following document requests (each a "Discovery
34 Request," and collectively, the "Discovery Requests"), and demands that Edward William Bayuk

1 respond within thirty (30) days of service hereof.

2 DEFINITIONS

3 1. "Action" means the above-captioned case pending in the Second Judicial District
4 Court, Washoe County, Nevada, at Case No. A CV13-02663.

5 2. "Answer" means *Defendants' Answer to First Amended Complaint* filed in the
6 Action on or about June 2, 2015.

7 3. "Communication" means any contact, oral or written, formal or informal, at any
8 time or any place under any circumstance whatsoever whereby any information of any nature
9 was transmitted or transferred, including but not limited to personal conversation, conferences,
10 telephone conversations, memoranda, letters, correspondence, electronic correspondence, texts,
11 reports, and publications.

12 4. "Complaint" refers to the *First Amended Complaint* filed in the Action on or
13 about May 15, 2015.

14 5. "Document" shall be deemed to mean any printed, typewritten, handwritten,
15 electronic, or otherwise recorded matter of whatever character, whether original, master or copy
16 (whether still active, archived or transparent) and any copies or reproductions that are not
17 identical to the original, that is or has been in the possession, control or custody of you, your
18 attorney and/or all other person acting in your behalf or of which any of the aforementioned
19 persons have knowledge, other person acting in your behalf or of which any of the
20 aforementioned persons have knowledge, including, but not limited to, letters, e-mail (internal
21 and external), communications, correspondence, memoranda, confirmations, facsimile
22 transmittal sheets, transmittal forms, telegrams, notes, summaries, minutes, contracts,
23 subcontracts, purchase orders, leases, amendments, change orders, proposals, requests for
24 proposal, bids, marketing documents, reports, studies, drawings, charts, diagrams, sketches,
25 estimates, specifications, addenda, schedules, directives, records of telephone conversations,
26 staffing projections, records of meetings and conferences, including lists of persons attending
27 meetings or conferences, summaries and records of personal conversations or interviews,
28 exhibits, transcripts, books, manuals, publications, diaries, logs, daily reports, status reports,

1 minutes of meetings, records, journals, entries in journals, charts, financial records and/or
2 summaries of financial records, work papers, bills, ledgers, financial statements, audit reports,
3 financial data, status sheets, contract status reports, tax returns, certificate of insurance,
4 agreements of suretyship and/or indemnification, insurance policies, calendars, summaries of
5 investigations and/or surveys, statistical compilations, audio or visual recordings, photographs,
6 cpm schedules, spreadsheets, computer or magnetic records, computer memory (including that of
7 any "transparent" information, information deleted from the personal computer or file but not
8 from the system), hard drives, floppy discs, optical discs, CD-ROM discs, Bernoulli discs and
9 their equivalents, magnetic tape, disaster recovery back-up, compact disks, computer generated
10 reports or summaries, drafts of original or preliminary notes on and marginal comments
11 appearing on any documents, other reports and records, any other paper or physical thing
12 containing writing, photographic, imaged, or electronically recorded data, every copy of such
13 writing or records where the original is not in the possession, custody or control of the
14 aforementioned persons, and every copy of every such writing or record where such copy
15 contains any commentary or notation whatsoever that does not appear on the original.

16 6. "Morabito" means Paul Morabito.

17 7. "Plaintiff" or "Leonard" refers to Plaintiff William A. Leonard, Trustee.

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

21 9. "You" or "Your" means Edward William Bayuk, and his agents, heirs, assignees
22 or representatives.

23 INSTRUCTIONS

24 1. These Discovery Requests shall be deemed continuing and as additional
25 information concerning the answers is secured, such additional information shall be supplied to
26 Plaintiff.

27 2. You shall produce all Documents in the manner in which they are maintained in
28 the usual course of business and/or shall organize and label Documents to correspond with the

1 categories of these Discovery Requests. A Discovery Request shall be deemed to include a
2 request for any and all file folders within which the document was contained, transmittal sheets,
3 cover letters, exhibits, enclosures, or attachments to the Document in addition to the Document
4 itself.

5 3. In producing Documents and other materials, You are requested to furnish all
6 Documents or things in Your possession, custody, or control, regardless of whether such
7 Documents or materials are possessed by You directly or Your directors, officers, agents,
8 employees, 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
11 for which 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
21 possession or control, or is no longer in existence, state whether it is (1) missing or lost, (2)
22 destroyed, (3) transferred voluntarily or involuntarily to others and if so to whom, or (4)
23 otherwise disposed of; and in each instance explain the circumstances surrounding an
24 authorization 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) the
27 manner in which the Document(s) were lost or destroyed; (iii) the identity of the Document(s);
28

1 (iv) the information contained within such Document(s) and the nature of the Document(s); and
2 (v) and the identity of any person(s) who has knowledge of the contents of the Document(s) or
3 has received a copy of such Document(s).

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

5 8. Documents not otherwise responsive to this Discovery Request shall be produced
6 if such Documents mention, discuss, refer to, or explain the Documents that are called for in a
7 Discovery Request.

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

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

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

16 **DISCOVERY REQUESTS**

17 **Request for Production No. 25:**

18 Produce all tax returns filed by You or on Your behalf from the tax years 2005 through
19 2012.

20 **Request for Production No. 26:**

21 Produce all Documents related to, referring to, or constituting any and all insurance
22 policies in effect for any real or personal property You owned between January 1, 2005 and
23 December 31, 2011.

24 **Request for Production No. 27:**

25 Produce all Documents related to, referring to, or constituting any and all insurance
26 policies for which you applied relating to any any real or personal property You owned between
27 January 1, 2005 and December 31, 2011.

1 Request for Production No. 28:

2 Produce all Documents related to, referring to, or constituting any payments or
3 distributions to You from Superpumper, Inc., between January 1, 2005 and December 31, 2011.

4 Request for Production No. 29:

5 Produce all Documents related to, referring to, or constituting any loans to You from
6 Superpumper, Inc., between January 1, 2005 and December 31, 2011.

7 Dated this 29th day of January, 2016.

8
9 GARMAN TURNER GORDON LLP

10 /s/ Teresa Pilatowicz

11 GERALD M. GORDON, ESQ.

12 Nevada Bar No. 229

13 E-mail: ggordon@gtg.legal

14 TERESA M. PILATOWICZ, ESQ.

15 Nevada Bar No. 9605

16 E-mail: tpilatowicz@gtg.legal

17 650 White Drive, Ste. 100

18 Telephone (725) 777-3000

19 Attorneys to Trustee

1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this
3 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached **PLAINTIFF'S**
4 **SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO EDWARD**
5 **BAYUK** 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 XXX 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 29th day of January, 2016

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

Exhibit 11

1 **DISCOVERY**

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

3 **bbreslow@rbsllaw.com**

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

5 **fgilmore@rbsllaw.com**

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

7 **A Professional Corporation**

8 **71 Washington Street**

9 **Reno, Nevada 89503**

10 **Telephone: (775) 329-3151**

11 **Facsimile: (775) 329-7169**

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

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

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

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

CASE NO.: CV13-02663

DEPT. NO.: B1

20 **Plaintiffs,**

21 **vs.**

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

28 **Defendants.**

EDWARD BAYUK'S RESPONSES TO PLAINTIFF'S SECOND SET OF REQUESTS
FOR PRODUCTION

Defendant Edward Bayuk, by and through his attorneys Robison, Belaustegui, Sharp &
Low, pursuant to NRCP 34 hereby Responses Plaintiff's Second Set of Requests for Production of
Documents to Edward Bayuk, as follows:

1 **REQUEST FOR PRODUCTION NO. 25:**

2 Produce all tax returns filed by You or on Your behalf from the tax years 2005 through
3 2011.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

5 Objection, tax returns contain sensitive personal information which is not relevant to the
6 claims and defenses pled in this case. As explained in correspondence sent to Plaintiff related to
7 the same request from Stanton Bernstein, tax returns are not discoverable unless the information
8 contained therein is relevant to a claim alleged. Here, the tax returns are not relevant to Plaintiff's
9 claims and will not be produced. Notwithstanding the objection, no shareholder loans related to
10 Superpumper Inc., are believed to be reported or scheduled on Edward Bayuk's tax returns.

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

12 Produce all Documents related to, referring to, or constituting any and all insurance
13 policies in effect for any real or personal property You owned between January 1, 2005 and
14 December 31, 2011.

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

16 Objection, this request seeks documents which contain sensitive personal information
17 which is not relevant to the claims and defenses pled in this case. The request is overbroad, not
18 limited to specific issues in dispute in this case, and is not reasonably calculated to lead to the
19 discovery of admissible evidence.

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

21 Produce all Documents related to, referring to, or constituting any and all insurance
22 policies for which you applied relating to any real or personal property You owned between
23 January 1, 2005 and December 31, 2011.

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

25 Objection, this request seeks documents which contain sensitive personal information
26 which is not relevant to the claims and defenses pled in this case. The request is overbroad, not
27 limited to specific issues in dispute in this case, and is not reasonably calculated to lead to the
28 discovery of admissible evidence.

1 **REQUEST FOR PRODUCTION NO. 28:**

2 Produce all Documents related to, referring to, or constituting any payments or
3 distributions to You from Superpumper, Inc., between January 1, 2005 and December 31, 2011.

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

5 All responsive documents have either already been produced or are in the possession of
6 Superpumper's accounting and auditing professionals, which has already been sought and/or
7 received by the requesting party. Edward Bayuk has no records in his personal possession which
8 have not already been sought and/or requested from the most direct source.

9 **REQUEST FOR PRODUCTION NO. 29:**

10 Produce all Documents related to, referring to, or constituting any loans to You from
11 Superpumper, Inc., between January 1, 2005 and December 31, 2011.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

13 All responsive documents have either already been produced or are in the possession of
14 Superpumper's accounting and auditing professionals, which has already been sought and/or
15 received by the requesting party. Edward Bayuk has no records in his personal possession which
16 have not already been sought and/or requested from the most direct source.

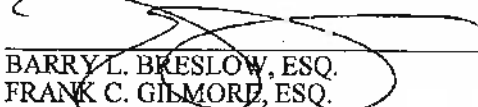
17 **AFFIRMATION**

18 Pursuant to NRS 239B.030

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

21 DATED this 8th day of March, 2016.

22 ROBISON, BELAUSTEGUI, SHARP & LOW
23 A Professional Corporation
24 71 Washington Street
25 Reno, Nevada 89503

26 
27 BARRY L. BRESLOW, ESQ.
28 FRANK C. GILMORE, ESQ.
Attorneys for Defendants

J:\WPData\B\B\4359.001 Snowshoe adv. HerbstP-Response to RFP (2nd set) by Bayuk.2-2-16.doc

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CERTIFICATE OF SERVICE

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

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

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

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

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

by personal delivery/hand delivery addressed to:

by email addressed to:

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

by facsimile (fax) addressed to:

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

DATED: This 9th day of March, 2016.



Exhibit 12

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

11 *Attorneys to Trustee*

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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
13 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,

19 Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

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PLAINTIFF'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
TO EDWARD BAYUK, AS TRUSTEE OF
THE EDWARD WILLIAM BAYUK LIVING TRUST

24 To: Edward William Bayuk, as Trustee of the Edward William Bayuk Living
25 Trust; and

26 To: Barry Breslow and Frank Gilmore, Esq., his attorneys.

27 PLEASE TAKE NOTICE that, Pursuant to Rule 34 of the Nevada Rule of Civil
28 Procedure, Plaintiff William A. Leonard ("Plaintiff"), by and through his counsel, Garman

1 Turner Gordon LLP, hereby propounds the following document requests (each a "Discovery
2 Request," and collectively, the "Discovery Requests"), and demands that Edward William
3 Bayuk, as Trustee of the Edward William Bayuk Living Trust, respond within thirty (30) days of
4 service hereof.

5 DEFINITIONS

6 1. "Action" means the above-captioned case pending in the Second Judicial District
7 Court, Washoe County, Nevada, at Case No. A CV13-02663.

8 2. "Answer" means *Defendants' Answer to First Amended Complaint* filed in the
9 Action on or about June 2, 2015.

10 3. "Communication" means any contact, oral or written, formal or informal, at any
11 time or any place under any circumstance whatsoever whereby any information of any nature
12 was transmitted or transferred, including but not limited to personal conversation, conferences,
13 telephone conversations, memoranda, letters, correspondence, electronic correspondence, texts,
14 reports, and publications.

15 4. "Complaint" refers to the *First Amended Complaint* filed in the Action on or
16 about May 15, 2015.

17 5. "Document" shall be deemed to mean any printed, typewritten, handwritten,
18 electronic, or otherwise recorded matter of whatever character, whether original, master or copy
19 (whether still active, archived or transparent) and any copies or reproductions that are not
20 identical to the original, that is or has been in the possession, control or custody of you, your
21 attorney and/or all other person acting in your behalf or of which any of the aforementioned
22 persons have knowledge, other person acting in your behalf or of which any of the
23 aforementioned persons have knowledge, including, but not limited to, letters, e-mail (internal
24 and external), communications, correspondence, memoranda, confirmations, facsimile
25 transmittal sheets, transmittal forms, telegrams, notes, summaries, minutes, contracts,
26 subcontracts, purchase orders, leases, amendments, change orders, proposals, requests for
27 proposal, bids, marketing documents, reports, studies, drawings, charts, diagrams, sketches,
28 estimates, specifications, addenda, schedules, directives, records of telephone conversations,

1 staffing projections, records of meetings and conferences, including lists of persons attending
2 meetings or conferences, summaries and records of personal conversations or interviews,
3 exhibits, transcripts, books, manuals, publications, diaries, logs, daily reports, status reports,
4 minutes of meetings, records, journals, entries in journals, charts, financial records and/or
5 summaries of financial records, work papers, bills, ledgers, financial statements, audit reports,
6 financial data, status sheets, contract status reports, tax returns, certificate of insurance,
7 agreements of suretyship and/or indemnification, insurance policies, calendars, summaries of
8 investigations and/or surveys, statistical compilations, audio or visual recordings, photographs,
9 cpm schedules, spreadsheets, computer or magnetic records, computer memory (including that of
10 any "transparent" information, information deleted from the personal computer or file but not
11 from the system), hard drives, floppy discs, optical discs, CD-ROM discs, Bernoulli discs and
12 their equivalents, magnetic tape, disaster recovery back-up, compact disks, computer generated
13 reports or summaries, drafts of original or preliminary notes on and marginal comments
14 appearing on any documents, other reports and records, any other paper or physical thing
15 containing writing, photographic, imaged, or electronically recorded data, every copy of such
16 writing or records where the original is not in the possession, custody or control of the
17 aforementioned persons, and every copy of every such writing or record where such copy
18 contains any commentary or notation whatsoever that does not appear on the original.

19 6. "Morabito" means Paul Morabito.

20 7. "Plaintiff" or "Leonard" refers to Plaintiff William A. Leonard, Trustee.

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

24 9. "You" or "Your" means the Edward William Bayuk Living Trust, and its agents,
25 heirs, assignees or representatives.

26 INSTRUCTIONS

27 1. These Discovery Requests shall be deemed continuing and as additional
28 information concerning the answers is secured, such additional information shall be supplied to

1 Plaintiff.

2 2. You shall produce all Documents in the manner in which they are maintained in
3 the usual course of business and/or shall organize and label Documents to correspond with the
4 categories of these Discovery Requests. A Discovery Request shall be deemed to include a
5 request for any and all file folders within which the document was contained, transmittal sheets,
6 cover letters, exhibits, enclosures, or attachments to the Document in addition to the Document
7 itself.

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

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

- 15 a. The date it bears;
- 16 b. The name of each person who prepared it or who participated in any way
17 in its preparation;
- 18 c. The name of each person who signed it;
- 19 d. The name of each person to whom it, or a copy of it was addressed;
- 20 e. The name of each person who presently has custody of it or a copy of it;
- 21 f. The subject matter and its substance; and
- 22 g. What factual basis there is for the claim of privilege.

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

28

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

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

8 8. Documents not otherwise responsive to this Discovery Request shall be produced
9 if such Documents mention, discuss, refer to, or explain the Documents that are called for in a
10 Discovery Request.

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

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

16 11. The fact that a Document has been produced by You or any other defendant in
17 any other litigation does not relieve You of Your obligation to produce your copy of the same
18 Document, even if the two Documents are identical
19

20 DISCOVERY REQUESTS

21 Request for Production No. 23.

22 Produce all tax returns filed by You or on Your behalf from the tax years 2005 through
23 2011.

24 Request for Production No. 24:

25 Produce all Documents related to, referring to, or constituting any and all insurance
26 policies in effect for any real or personal property You owned between January 1, 2005 and
27 December 31, 2011.

28 ...

1 Request for Production No. 25:

2 Produce all Documents related to, referring to, or constituting any and all insurance
3 policies for which you applied relating to any any real or personal property You owned between
4 January 1, 2005 and December 31, 2011.

5 Dated this 29th day of January 2016.

6

7

GARMAN TURNER GORDON LLP

8

9

/s/ Teresa Pilatowicz
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
Telephone (725) 777-3000
Attorneys to Trustee

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1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this
3 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached PLAINTIFF'S
4 SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO EDWARD
5 BAYUK, AS TRUSTEE OF THE EDWARD WILLIAM BAYUK LIVING TRUST on the
6 parties as set forth below:

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

10 _____ Certified Mail, Return Receipt Requested

11 _____ Via Facsimile (Fax)

12 XXX 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
Reno, NV 89503

21 DATED this 29th day of January, 2016.

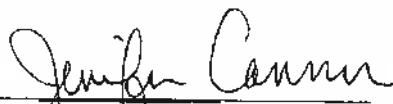
22
23 
24 An Employee of GARMAN TURNER
GORDON LLP

Exhibit 13

1 **DISCOVERY**

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

3 **bbreslow@rbsllaw.com**

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

5 **fgilmore@rbsllaw.com**

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

7 **A Professional Corporation**

8 **71 Washington Street**

9 **Reno, Nevada 89503**

10 **Telephone: (775) 329-3151**

11 **Facsimile: (775) 329-7169**

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

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

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

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

CASE NO.: CV13-02663

DEPT. NO.: B1

20 **Plaintiffs,**

21 **vs.**

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

28 **Defendants.**

29 **EDWARD BAYUK'S, AS TRUSTEE OF THE EDWARD WILLIAM BAYUK LIVING**
30 **TRUST, RESPONSES TO PLAINTIFF'S SECOND SET OF REQUESTS FOR**
31 **PRODUCTION**

32 **Defendant Edward Bayuk, as Trustee of the Edward William Bayuk Living Trust, by and**
33 **through its attorneys Robison, Belaustegui, Sharp & Low, pursuant to NRCP 34 hereby Responses**
34 **Plaintiff's Second Set of Requests for Production of Documents to Edward Bayuk, as Trustee of**
35 **the Edward William Bayuk Living Trust, as follows:**

36 **///**

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

REQUEST FOR PRODUCTION NO. 23:

Produce all tax returns filed by You or on Your behalf from the tax years 2005 through 2011.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Objection, tax returns contain sensitive personal information which is not relevant to the claims and defenses pled in this case. As explained in correspondence sent to Plaintiff related to the same request from Stanton Bernstein, tax returns are not discoverable unless the information contained therein is relevant to a claim alleged. Here, the tax returns are not relevant to Plaintiff's claims and will not be produced. Notwithstanding the objection, the Edward Bayuk Living Trust has never filed a tax return.

REQUEST FOR PRODUCTION NO. 24:

Produce all Documents related to, referring to, or constituting any and all insurance policies in effect for any real or personal property You owned between January 1, 2005 and December 31, 2011.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Objection, this request seeks documents which contain sensitive personal information which is not relevant to the claims and defenses pled in this case. The request is overbroad, not limited to specific issues in dispute in this case, and is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 25:

Produce all Documents related to, referring to, or constituting any and all insurance policies for which you applied relating to any real or personal property You owned between January 1, 20015 and December 31, 2011.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

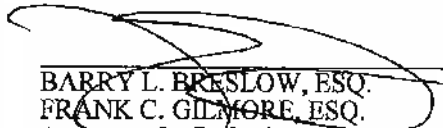
Objection, this request seeks documents which contain sensitive personal information which is not relevant to the claims and defenses pled in this case. The request is overbroad, not limited to specific issues in dispute in this case, and is not reasonably calculated to lead to the discovery of admissible evidence.

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 8th day of March, 2016.

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


BARRY L. BRESLOW, ESQ.
FRANK C. GILMORE, ESQ.
Attorneys for Defendants Snowshoe Petroleum,
Inc., Superpumper, Inc., Edward Bayuk, individually
and as Trustee of the Edward William Bayuk Living
Trust, and Salvatore Morabito.

J:\WPData\GLB\14359.001 Snowshoe adv. Herbert(P-Response to RFP (2nd set) by Bayuk Trust 2-2-16.doc

CERTIFICATE OF SERVICE

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

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

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

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

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

by personal delivery/hand delivery addressed to:

by email addressed to:

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

by facsimile (fax) addressed to:

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

DATED: This 9th day of March, 2016.



Exhibit 14

From: Teresa Pilatowicz
Sent: Friday, March 25, 2016 11:24 AM
To: Frank Gilmore
Cc: Mary Carroll Davis; Gabby Hamm; Vicki DiMaio
Subject: RE: Superpumper Discovery Responses

Frank,

With respect to the tax returns, as set forth in the my letter dated February 19, 2016:

"The Trustee will agree to limit the production to only the pertinent schedules and notes related to the transfers referenced in the State Court Case complaint and any loans from Superpumper, Inc. to Bayuk and Morabito between 2006 and 2011."

As you can see, the Trustee had requested any information as to how the transfers set forth in the state court action were treated on the tax returns. As the transfers are the subject of the state court complaint, their treatment by the parties in tax returns is certainly relevant to the proceeding. Please produce responsive documents.

With respect to the tax returns, as a preliminary matter, we did not seek insurance policies from Sam Morabito but rather, only from Edward Bayuk and the Edward William Bayuk Living Trust. As you know, personal property was transferred by and between Mr. Bayuk and his Trust and Paul Morabito in connection with the transfers of the real properties. The Trustee is entitled to discover what personal property the parties were indicating they owned on insurance policies during the relevant time period. Your position as to whether such policies reflect the true market value is not only disputed by the Trustee but not a basis to withhold the documents. Any identification of personal property or the value thereof on insurance policies between 2009 and 2011 are likely to lead to the discovery of admissible evidence and therefore, must be produced.

Please produce the requested documents by the close of business no later than Monday, March 28.

Thanks,

Teresa M. Pilatowicz
Attorney

Phone: 725 777 3000
Direct: 702 478 0559
Fax: 725 777 3112

GARMAN | TURNER | GORDON
2415 E. CAMELBACK RD., SUITE 700
PHOENIX, ARIZONA 85016

Visit us online at www.gtg.legal

From: Frank Gilmore [mailto:FGilmore@rbsllaw.com]
Sent: Wednesday, March 23, 2016 2:26 PM
To: Teresa Pilatowicz <tpilatowicz@Gtg.legal>
Cc: Mary Carroll Davis <MDavis@rbsllaw.com>; Gabby Hamm <ghamm@Gtg.legal>; Vicki DiMaio <vdimai@Gtg.legal>
Subject: RE: Superpumper Discovery Responses

Teresa,

See my responses below in red:

With respect to the requests for the tax returns for Edward Bayuk (No. 25) and Salvatore Morabito (No. 10), you indicate for Mr. Bayuk that "no shareholder loans related to Superpumper, Inc. are believed to be reported or scheduled on Edward Bayuk's tax returns," and for Salvatore Morabito, you indicate that "no shareholder loans related to Superpumper Inc. are reported or scheduled on Sam Morabito's tax returns." Please note that the Trustee and Defendants previously agreed to limit his requests as they relate to tax returns to the extent they reflect shareholder loans and/or treatment of the transfers identified in the state court complaint. Please produce the tax returns to the extent that they identify treatment of any of the transfers identified in the state court complaint. Furthermore, please advise as to what you mean by "no shareholder loans are believed to be reported or scheduled" as stated in Mr. Bayuk's response.

I understood the requests for tax returns to be based on the desire to discover the tax treatment of the Superpumper loans. That is the limitation with which I agreed to produce anything related to tax returns. I will produce schedules or statements evidencing the Superpumper loans if they exist. I am being told that no loans are reflected in the respective tax returns. Thus, no tax returns will be produced. If you are now telling me that you seek additional information in the tax returns, please explain specifically what you seek, and why. All other information related to the Superpumper ownership would be located in the k-1's of the company tax returns, which you have.

Finally, as to the requests for insurance policies in effect for real and personal property for both Mr. Bayuk (Nos. 26, 27) and the Edward William Bayuk Living Trustee (Nos. 24, 25), you have refused to produce any documents on the basis that such documents contain personal or sensitive information or are not likely to lead to the discovery of admissible evidence. The request seeks information related to the value of both real and personal property transferred, which is the subject of the state court complaint. Therefore, the information is relevant to the proceedings and must be produced. Please produce the documents no later than March 21, 2016 or the Trustee will be required to file a motion seeking to compel responses to the same.

Information contained in an insurance policy does not reflect the true market value of any personal or real property. Rather, a policy reflects the amount to which an insured is willing to ensure the property. Moreover, if you review the prior productions you will see several pages of insurance paperwork that has been produced, which is likely to satisfy your concerns. I remain steadfast in my contention that Sam and Edward's policies of insurance are not relevant and contain personal and confidential information about their personal finances that Plaintiff is not entitled to discover.

To the extent you do not intend to produce the documents as requested above, please let me know when you are available for a meet and confer to discuss.

Thanks,

Teresa M. Pilatowicz
Attorney

Phone: 725 777 3000
Direct: 702 478 0559
Fax: 725 777 3112

GARMAN | TURNER | GORDON

2415 E. CAMELBACK RD., SUITE 700
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-----Original Message-----

From: Frank Gilmore [mailto:FGilmore@rbsllaw.com]
Sent: Tuesday, March 8, 2016 7:55 PM
To: Teresa Pilatowicz <tpilatowicz@Gtg.legal>
Cc: Mary Carroll Davis <MDavis@rbsllaw.com>
Subject: Superpumper Discovery Responses

Teresa,

Please see the courtesy copies of the attached discovery responses and my letter of today's date. I am in the process of preparing a document production that you should have tomorrow or Thursday as well. My assistant will serve the originals tomorrow with a Cert of Service.

P-Responses to RFP (2nd).Superpumper.pdf P-Responses to RFP (2nd).S Morabito.pdf P-Responses to RFP (2nd).Bayuk Trust.pdf P-Responses to RFP (2nd).Bayuk.pdf

Frank

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EXHIBIT 5

EXHIBIT 5

1 **2645**
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10 Telephone: (775) 329-3151

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

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

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

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

CASE NO.: CV13-02663

DEPT. NO.: B1

20 Plaintiffs,

21 vs.

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

28 Defendants.

OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF
DOCUMENTS

29 Defendants **EDWARD BAYUK**, individually and as Trustee of the **EDWARD WILLIAM**
30 **BAYUK LIVING TRUST** (collectively, "Bayuk") hereby oppose Plaintiff's Motion to Compel
31 Production of Documents, filed on April 8, 2016. This Opposition is made and supported by the
32 following Memorandum of Points and Authorities.

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION**

2 **I. INTRODUCTION**

3 This case is an off-shoot from a dispute between the original Plaintiffs to this case, JH,
4 INC., JERRY HERBST, and BERRY-HINCKLEY INDUSTRIES, and their long-time adversary,
5 PAUL MORABITO. That original dispute centered around disagreement as to the post-closing
6 obligations related to the purchase and sale of BERRY-HINCKLEY INDUSTRIES, which owned
7 and managed several gas stations and convenience stores in Northern Nevada. That original
8 dispute – which is commonly referred to as the Herbst Litigation – was commenced in 2007, and
9 tried to Department 6 in the summer of 2009. Edward Bayuk (“Bayuk”) and Salvatore Morabito
10 (“Salvatore”) were counter-defendants in the Herbst Litigation, *but were exonerated and*
11 *dismissed* from the case at trial.

12 After the trial resulted in a substantial judgment against Paul Morabito, both Bayuk and
13 Salvatore, who were found to have no liability to Herbst whatsoever, undertook to separate their
14 businesses and jointly-owned properties from Paul Morabito so as to avoid the post-trial
15 entanglements with the Herbsts that were sure to occur.

16 In furtherance of their effort to separate their business lives from Paul Morabito, Bayuk and
17 Salvatore hired Dennis Vacco, Esq., an attorney of unimpeachable credentials¹, to facilitate the
18 business division. Using certified appraisers and business valuers, Mr. Vacco assisted Bayuk
19 and Salvatore with valuing their respective interests in the jointly-held entities and interests, and
20 dividing them equitably and transparently. Paul Morabito took title to some property and Bayuk
21 and Salvatore to title to others.

22 As Mr. Vacco and his partners have testified, the process was done with an eye toward
23 separating Bayuk and Salvatore from the now 9-year old dispute between Paul Morabito and the
24 Herbsts, and with the goal of ensuring that the transfers were done fair, commercially reasonable,
25 and not subject to subsequent challenge. Unfortunately, neither Mr. Vacco nor Bayuk or Salvatore
26 understood the lengths the Herbsts would be willing to go in order to destroy Paul Morabito and

27

¹ Mr. Vacco had previously served as the United States Attorney for the Western District of New
28 York, and was the former elected New York Attorney General.

1 his erst-while business partners. The Herbst promptly used their judgment in Department 6² to
2 obtain a Confession of Judgment from Paul Morabito in settlement – in which neither Bayuk nor
3 Salvatore were involved – which they then used to direct Paul Morabito into Involuntary
4 Bankruptcy, a move quite obviously designed to use the power of the United States Trustee to
5 collect their debts.

6 After the bankruptcy was initiated, Herbsts sued Bayuk and Salvatore in this action,
7 contending that the property division was fraudulent, and was done for less than equivalent value.
8 The Herbsts have challenged each and every division of assets that Mr. Vacco facilitated,
9 remarkably, even those where the Herbsts' expert witnesses have concluded that exchange was for
10 fair value. Herbsts then convinced the bankruptcy trustee to sue Dennis Vacco and his firm.
11 Herbsts served demands and subpoenas on Bayuk and Salvatore's lawyers (including the
12 undersigned) to turn over their entire files, without regard for any work-product or attorney-client
13 privilege. In other words, this case, and the dispute from which it stems, is a scorched-earth, no-
14 holds-barred, "grind him into the dirt," battle to the death. A cursory review of the Herbsts'
15 conduct in this case reveals that these superlatives are not over-dramatization of the dispute.
16 Bayuk and Salvatore are the collateral damage, caught in the middle.

17 The present Motion is a simple one. William Leonard, as the bankruptcy trustee (who
18 substituted into this case as Plaintiff for Herbsts), seeks production of all insurance policies held
19 by Bayuk and the Bayuk Living Trust, for a 7-year time period, and without limitation in scope.
20 Bayuk objected because the demand seeks confidential and personal information, is overbroad, is
21 not narrowly tailored, and the bulk of the information that Leonard seeks is not reasonably
22 calculated to lead to the discovery of admissible evidence. Moreover, the information Leonard
23 seeks - "the value ascribed to that property by Bayuk" (Motion, p.9:16-18) is available from other
24 sources without resort to invading Bayuk's personal and confidential information to obtain it.

25 Think of it this way: this trial is not a debtor's exam. Leonard does not get Bayuk and
26 Salvatore's personal and confidential information simply because he demands it. Just like the

27 _____
28 ² Which was on appeal based on numerous evidentiary and legal infirmities.

1 response to Leonard's improper demand for 7-years-worth of tax returns and working papers,
2 Bayuk and Salvatore have a right to protection of their private and confidential documents and
3 information which deal not with this case, but with their personal assets, financial lives and
4 livelihoods. The Motion should be denied.

5 **II. ARGUMENT**

6 **A. The Information Sought is Private and Confidential and Should Not Be 7 Produced, Particularly When The Information is Available From Less Invasive Sources.**

8 The Nevada Rules of Civil Procedure do not provide a basis for "invasion into a litigant's
9 private affairs merely" because an opposing party is seeking redress for a grievance. Schlatter, 93
10 Nev. at 192, 561 P.2d at 1344. These private affairs include both private, personal information
11 and financial information. See Rock Bay, LLC v. Eighth Judicial Dist. Ct., 129 Nev. ___, ___,
12 298 P.3d 441, 447 (2013) ("Although Nevada does not recognize a privilege for financial
13 documents . . . this court has recognized that 'public policy suggests that. . . financial status
14 [should] not be had for the mere asking.'" (second alteration in original) (quoting Hetter v. Eighth
15 Judicial Dist. Ct., 110 Nev. 513, 520, 874 P.2d 762, 766 (1994)). Financial information, in
16 particular, "is inherently sensitive." Willeford v. Toys "R" Us-Del., Inc., 895 N.E.2d 83, 91 (Ill.
17 App. Ct. 2008). Thus, even if relevant, "a limited protection is given to sensitive information
18 which people may wish to keep confidential, such as their financial dealings." Hofmann Corp. v.
19 Super. Ct., 218 Cal. Rptr. 355, 357 (Ct. App. 1985).

20 While this state does not recognize a privilege for tax returns or
21 necessarily require that liability for punitive damages be
22 established before discovery of financial condition, public policy
23 suggests that tax returns or financial status not be had for the mere
24 asking. Claims for punitive damages can be asserted with ease and
25 can result in abuse and harassment if their assertion alone entitles
plaintiff to financial discovery. We hold that before tax returns or
financial records are discoverable on the issue of punitive damages,
the plaintiff must demonstrate some factual basis for its punitive
damage claim. Disclosure of tax returns at this point is
unwarranted.

26 Hetter v. Eighth Judicial Dist. Court of State In & For Cnty. of Clark, 110 Nev. 513, 519-
27 20, 874 P.2d 762, 765-66 (1994). "Accordingly, *Clark* and *Schlatter* do not hold that tax
28 returns are privileged information, but instead conclude that tax returns must be relevant

1 to be discoverable, and may not be discoverable in the absence of a showing that the
2 information is otherwise unobtainable. McNair v. Eighth Judicial Dist. Court In & For
3 Cnty. of Clark, 110 Nev. 1285, 1290, 885 P.2d 576, 579 (1994); (citing *Clark*, 101 Nev.
4 at 64, 692 P.2d at 516; *Schlatter*, 93 Nev. at 192, 561 P.2d at 1343).

5 Insurance policies, and the information they contain, are undoubtedly “private,
6 personal information and financial information,” just like tax returns. An unlimited
7 production of all insurance policies would essentially open the door to the entire financial
8 and asset structure of the insured. Insurance policies are entitled to protection, just like
9 tax returns, particularly when the information sought – Bayuk’s subjective belief of the
10 value of a limited number of assets – can be obtained elsewhere.

11 **B. The Request for Production of “Any and All Insurance Policies” from**
12 **January 2005 to December 2011 is Overbroad and Clearly Seeks**
13 **Irrelevant Information.**

14 The Request for Production is not properly limited in time or in scope. Leonard essentially
15 contends in his Motion that if Edward Bayuk owned a car in 2005 and insured it with any policy of
16 insurance, that policy is responsive to the discovery request and should be produced. Further, if
17 Bayuk were the beneficiary of his mother’s will, and Bayuk desired to purchase an insurance
18 policy on his mother’s diamond ring in anticipation of inheritance, Leonard essentially contends
19 that the policy is responsive to his request and must be produced.

20 These hypothetical examples are only two of hundreds of examples which illustrate the
21 improper scope of the Request for Production. Neither of those hypothetical assets could be, in
22 any way, relevant to the allegations in this case. In his Complaint, Leonard makes very specific
23 allegations about seven or eight very specific asset transfers. There are, as reflected in Leonard’s
24 attached exhibits, only a small number of expressly identified assets that are relevant to this case.
25 Insurance policies which pre-date the alleged transfers by nearly 4-years, and which potentially
26 sweep in all of Bayuk’s assets, are not properly discoverable.

27 In his Motion, Leonard sets out the facts of this case as he believes them to be, and then,
28 without any treatment of the direct connection between the scope of the documents sought and the
claims at issue, concludes that he is entitled to everything he seeks. Leonard then states

1 conclusively that "defendant's counsel is not the arbiter of whether the insurance policies are
2 relevant. . . ." Leonard has it wrong. Defendant, through counsel, *is* the gatekeeper of his own
3 confidential and personal information. That protection is not evaporated simply because Leonard
4 asks for protected documents and then summarily concludes in a Motion that it is relevant. Before
5 the burden shifts entirely to Bayuk on this request, Leonard must at least attempt in his Motion to
6 explain why a policy of automobile insurance from January 2005, or his mother's diamond ring,
7 could be relevant to any claim or defense in this action, or how obtaining such a policy could lead
8 to the discovery of admissible information. Leonard has not, and cannot make such a showing
9 because it is obvious that the unlimited scope of the request undoubtedly seeks documents which
10 have no possibility of leading to the discovery of admissible evidence. This is the very definition
11 of overbreadth. A Motion which seeks documents which have no possibility of leading to the
12 discovery of admissible evidence must be denied.

13 **III. CONCLUSION**

14 For the reasons set forth above, Bayuk respectfully requests this Court enter its Order
15 denying the Motion to Compel.

16 **AFFIRMATION** 17 **Pursuant to NRS 239B.030**

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

20 DATED this 25th day of April, 2016.

21 ROBISON, BELAUSTEGUI, SHARP & LOW
22 A Professional Corporation
23 71 Washington Street
24 Reno, Nevada 89503

25 /s/ Frank C. Gilmore
26 BARRY L. BRESLOW, ESQ.
27 FRANK C. GILMORE, ESQ.
28 Attorneys for Defendants

J:\WPData\9LB\14359 001 Snowshoe adv. Herbst\P-Opposition to Motion of Compel.4.25.16 doc

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Robison, Belaustegui, Sharp & Low, and that on this date I caused to be served a true copy of the OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS all parties to this action by the method(s) indicated below:

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

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

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

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

by personal delivery/hand delivery addressed to:

by email addressed to:

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

by facsimile (fax) addressed to:

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

DATED: This 25th day of April, 2016.



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EXHIBIT 6

EXHIBIT 6

1 3790

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650 White Drive, Ste. 100

8 Las Vegas, Nevada 89119

Telephone 725-777-3000

9 *Special Counsel to William A. Leonard, Plaintiff*

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

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

15 Plaintiff,

16 vs.

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

22 Defendants.

CASE NO.: CV13-02663

DEPT. NO. 1

23
24 **REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL**
25 **PRODUCTION OF DOCUMENTS**

26 Plaintiff William A. Leonard. ("Trustee"), by and through his counsel, Garman Turner
27 Gordon LLP ("GTG"), hereby submits his reply (the "Reply") to Defendant Edward Bayuk,
28 individually and as Trustee of the Edward William Bayuk Living Trust's ("Bayuk") *Opposition*

1 to Plaintiff's Motion to Compel Production of Documents (the "Opposition") and in support of
2 Plaintiff's Motion to Compel Production of Documents (the "Motion"). This Reply is based on
3 the Memorandum of Points and Authorities and the Declaration of Gabrielle A. Hamm, Esq.,
4 filed herewith as **Exhibit 1**.

5 Bayuk's Opposition is patently without merit and littered with irrelevant and unsupported
6 facts in a transparent attempt at obfuscation. The claims asserted by the Plaintiff are not
7 complex. Among other transfers, Plaintiff is seeking the recovery of fraudulent transfers of
8 personal property from the Debtor to Bayuk. Plaintiff asserts both actual fraud – i.e., that the
9 Debtor transferred the property with the actual intent to hinder, delay, or defraud his creditors,
10 primarily the Herbst Parties, and constructive fraud – i.e., that the Debtor transferred the property
11 for less than reasonably equivalent value when the Debtor was insolvent or about to become
12 insolvent. Under either claim, the value of the property transferred is relevant to Plaintiff's
13 claims. See Nevada Revised Statute ("NRS") 112.180(2)(h) (value of the consideration received
14 reviewed in determining badges of fraud for a transfer made with actual intent to hinder, delay,
15 or defraud creditors); 112.180(1)(b) (constructive fraudulent transfer where, inter alia, debtor
16 transfers property "[w]ithout receiving a reasonably equivalent value in exchange for the transfer
17 or obligation").

18 Under either subsection (a) or (b) of NRS 112.180, the value of the property transferred is
19 relevant to Plaintiff's recovery. See Cadle Co. v. Woods & Erickson, LLP, 131 Nev. Adv. Op.
20 15, 345 P.3d 1049, 1053 (2015) ("creditors have recourse in *equitable* proceedings in order to
21 recover the property, or payment for its value, by which they are returned to their pre-transfer
22 position.") (citing NRS 112.210, NRS 112.220(2)). Accordingly, discovery relating to the value
23 of the property transferred is directly relevant to Plaintiff's claims.

24 A. **Bayuk's "Introduction" is an Amalgamation of Irrelevant, Unsupported**
25 **Facts Which Should be Stricken or Disregarded.**

26 First, the fact that Defendants Bayuk and Salvatore were dismissed from the original
27 litigation against Debtor Paul Morabito arising from the Debtor's massive fraud against the
28 Herbst Parties is irrelevant to any issue before the Court. As Defendants are apparently unaware,

1 this action is a fraudulent transfer action under NRS Chapter 112 pertaining to the *Debtor's*
2 fraudulent transfer of real and personal property to the Defendants *after* a significant judgment
3 was entered against the Debtor in September 2010 in the original litigation. It is the Debtor's
4 intent to hinder, delay, or defraud his creditors which Plaintiff must establish under NRS 112.180
5 – Plaintiff does not have to prove Defendants' intent.

6 While Defendants' intent to hinder the Herbst Parties or their knowledge that the property
7 received from the Debtor was received for less than fair value would certainly constitute a
8 "badge of fraud," the fact that the Defendants were not party to the Debtor's fraud scheme
9 directed to the Herbst Parties in 2007 has nothing whatsoever to do with any element of
10 Plaintiff's claims or Defendants' defenses in this fraudulent transfer action.

11 Second, the Defendants' litany of complaints about the Herbst Parties and the actions of
12 other courts is irrelevant, inappropriate, and unsupported by any factual record. The Debtor's
13 argument that the Confessed Judgment was improperly obtained has been rejected by the United
14 States Bankruptcy Court and the state courts. See Exhibit 2 (Am. Findings of Fact and
15 Conclusion of Law in Support of Order Granting Mot. for Summ. Judgment, Case No. 13-51237-
16 gwz, ECF No. 167);¹ Exhibit 3 (Order compelling deposition of Debtor dated March 13, 2014 in
17 Consolidated Nevada Corp., et al. v. JH. et al., Case No. CV07-02764); Exhibit 4 (Emergency
18 Mot. Under NRCP 27(e): Pet. for Writ of Prohibition, *Paul A. Morabito v. The Second Judicial*
19 *District Court of the State of Nevada in and for the County of Washoe*, Case No. 65319, Apr. 1,
20 2014); Exhibit 5 (Ord. Denying Pet. for Writ of Prohibition, Case No. 65319, Apr. 18, 2014).

21 The argument that the Involuntary Petition was improper was also soundly rejected by
22 the Bankruptcy Court. See Ex. 2: Exhibit 6 (Ord. Granting Summ. Judgment and Judgment,
23 Case No. 13-51237-gwz, ECF No. 161).

24 ¹ Stating "[a]s previously determined in denying the Dismissal Motion, the Confessed Judgment is not subject
25 to a bona fide dispute" and "[t]he Confessed Judgment was filed as a result of Morabito's failure to comply
26 with the terms of that certain *Settlement Agreement and Mutual Release dated November 30, 2011* (the
27 "Settlement Agreement"), which resolved [] Morabito's appeal of a State Court judgment rendered in
28 Consolidated Nevada Corp., et al. v. JH. et al., Case No. CV07-02764 (together with all claims and
counterclaims, the "State Court Action"), in favor of the Petitioning Creditors for \$149,444,777.80. . ." Why
the Debtor persists in his position that the Confessed Judgment, which represents a significant *reduction* in the
Debtor's liability, is invalid, is unclear. Even more unclear is why the Debtor's counsel is taking that position
ostensibly on behalf of Bayuk.

1 What is relevant, and what Bayuk does not dispute, is that immediately following the
2 entry of a \$150,000,000 fraud judgment against the Debtor, Debtor transferred numerous items
3 of personal property to Bayuk for a total of \$88,812. See Motion, Exhibits 2, 3, 4. What is
4 relevant, and what Bayuk does not dispute, is that shortly before the transfers, the Debtor insured
5 various items of personal property for \$2,000,000 – significantly more than the price paid by
6 Bayuk. See Motion, Exhibit 5. And yet, Bayuk has refused to produce any documents relating
7 to the value of the property transferred.

8 **B. Bayuk Fails to Cite Any Authority to Support His Failure to Produce**
9 **Relevant Discovery.**

10 None of Bayuk's cited authorities are on point, nor do they support a presumption against
11 the discovery of relevant financial information that Bayuk is asking this Court to adopt.
12 Schlatter stands for the unremarkable proposition that "discovery in civil actions is limited to
13 matter, not privileged, 'which is relevant to the subject matter involved in the pending action, . .
14 .'" Schlatter v. Eighth Judicial Dist. Court In & For Clark Cty., 93 Nev. 189, 192, 561 P.2d
15 1342, 1343 (1977) (quoting NRCp 26(b)(1)). Specifically, the Court found:

16 Where, as here, a litigant's physical condition is in issue, a court may order
17 discovery of medical records containing information relevant to the injury
18 complained of or any pre-existing injury related thereto. Similarly, when a
19 litigant puts the amount of her income in issue by alleging the impairment of
20 ability to earn a living, a court may require disclosure of matter contained in
21 tax records which is relevant to this issue . . . Still, from the record, any such
consideration appears to be satisfied; thus, we think the court could properly
compel disclosure of matters in petitioner's tax returns and medical records
relating to issues raised by her action.

22 Schlatter, 93 Nev. at 192, 561 P.2d at 1343-44 (citations omitted). Where the trial court went
23 wrong, however, was entering a discovery order permitting blanket discovery of her medical
24 records and income tax returns far beyond that which was relevant to the injuries allegedly
25 sustained and the income allegedly lost. Id., 93 Nev. at 192-93, 561 P.2d at 1343-44. Contrary
26 to Bayuk's representations, however, Schlatter does not suggest that relevant information is
27 undiscoverable because it is deemed private, confidential, or financial information.

1 Rock Bay, LLC bears no relationship to this case or the discovery sought whatsoever, and
2 Bayuk's out-of-context quotation is disingenuous. The discovery order challenged in Rock Bay
3 was an order refusing to quash a post-judgment third party subpoena issued pursuant to NRCP
4 69(a). Rock Bay, LLC v. Dist. Ct., 129 Nev. Adv. Op. 21, 298 P.3d 441 (2013). Though
5 holding that discovery of a non-party's assets is permissible in certain circumstances in post-
6 judgment discovery of a judgment debtor's assets, the Court held that the subpoena to one of the
7 non-party witnesses should have been quashed because there was no showing that he was an
8 alter ego of the judgment debtors and there was no evidence that he ever held or transferred
9 assets with the judgment debtors. Id., 298 P.3d at 446. The Court stated:

10 In the context of post-judgment discovery, courts have recognized that a
11 nonparty's privacy interests must be balanced against the need of the judgment
12 creditor for the requested information. Thus, a nonparty's financial assets are
13 generally protected where the information sought was critical to the financial
14 health of the non-party's business and was being requested by a direct
15 competitor.

16 However, the need of a judgment creditor to examine a nonparty's financial
17 records outweighs the nonparty's privacy interest where, as in this case, there
18 are reasonable doubts as to the good faith of the transfer of assets between the
19 nonparty and the judgment debtor, and the judgment creditor is not a
20 competitor of the nonparty.

21 Rock Bay, LLC, 298 P.3d at 447 (quotations and citations omitted). The court concluded that
22 the district court properly refused to quash the judgment creditors' subpoena to U.S. Bank
23 because the creditors were not competitors of Rock Bay and the banking records sought were
24 relevant. Id. at 448. Bayuk is a party, and this is not post-judgment discovery under NRCP
25 69(a). Therefore, to the extent Rock Bay could be construed as requiring some kind of
26 heightened standard for third party financial records in the judgment debtor context, it certainly
27 is not applicable here.

28 Willeford v. Toys "R" Us-Delaware, Inc. was an Illinois case addressing the scope of
protective orders under Illinois Rule 201(c), which is somewhat similar to NRCP 26(c).
Willeford v. Toys "R" Us-Delaware, Inc., 385 Ill. App. 3d 265, 273, 895 N.E.2d 83, 90 (2008)
(discussing Ill. Sup.Ct.Rules, Rule 201(c)). In that case, the defendants sought a protective order

1 to prohibit the production of documents which would identify other persons injured at Toys “R”
2 Us stores in a similar manner as the plaintiff (i.e., pattern and practice discovery), on the basis
3 that plaintiff’s counsel could use that information to recruit people as plaintiffs. Willeford, 385
4 Ill. App. 3d at 271-72, 895 N.E.2d at 88-89. The court discussed at length the history of Illinois
5 cases granting protective orders in connection with confidential business information, and
6 concluded that there was no requirement that a trial court enter a protective order any time a
7 litigant alleged that the requested material could be used by another party in another suit. Id.,
8 385 Ill. App. 3d at 274, 895 N.E.2d at 91.

9 Regarding the “inherently sensitive” quote, which as with all of Bayuk’s other citations is
10 taken so drastically out of context as to be affirmatively misleading, the court made clear that it
11 was referring the disclosure to non-parties of competitive business information, the disclosure of
12 which could result in business injury to the producing party. Id., 385 Ill. App. 3d at 275, 895
13 N.E.2d at 91 (discussing Statland v. Freeman, 112 Ill.2d 494, 493 N.E.2d 1075 (1986)
14 (protective order to prevent party from disseminating to third parties purchase and sale records of
15 partnership interests, ownership records, and records of negotiations concerning the partnerships
16 and legal fees paid by the partnerships produced by former law partners in discovery) and May
17 Centers, Inc. v. S.G. Adams Printing & Stationery Co., 153 Ill.App.3d 1018, 506 N.E.2d 691
18 (1987)); see also Hofmann Corp. v. Superior Court, 172 Cal. App. 3d 357, 360, 218 Cal. Rptr.
19 355, 356 (Ct. App. 1985) (refusing to compel disclosure in personal injury action of proprietary
20 customer list that was only tangentially relevant to the action after partial discovery of requested
21 information was made).

22 Apart from the fact that Bayuk’s insurance policy records do not constitute competitive
23 business information, much less information that could result in a business injury, Bayuk did not
24 seek a protective order to prohibit Plaintiff from disclosing his financial information to third
25 parties; nor has Bayuk shown that production of the documents would result in some kind of
26 business injury. Instead, Bayuk chose to refuse to produce such information to the Plaintiff in
27 response to multiple written discovery requests. Whether or not such a protective order could
28 issue therefore is irrelevant.

1 Bayuk's citation to Hetter v. Eighth Judicial District Court is similarly baffling. Hetter v.
2 Eighth Judicial Dist. Court of State In & For Cty. of Clark, 110 Nev. 513, 874 P.2d 762 (1994).
3 In Hetter, the Court found that policy concerns, including federal policy considerations of
4 protecting taxpayer privacy and encouraging the filing of full and accurate tax returns, weighed
5 against requiring the production of tax returns without some showing of relevance. Id., 110 Nev.
6 at 520, 874 P.2d at 766. Specifically, the Court stated

7 Claims for punitive damages can be asserted with ease and can result in abuse
8 and harassment if their assertion alone entitles plaintiff to financial discovery.
9 We hold that before tax returns or financial records are discoverable on the
10 issue of punitive damages, the plaintiff must demonstrate some factual basis
11 for its punitive damage claim.

12 Id. (citations omitted).

13 Plaintiff is not seeking punitive damages. He is not seeking to compel the production of
14 income tax returns. Bayuk fails to demonstrate that insurance policies are subject to the same
15 policy considerations as income tax returns, or that there is any policy, whether under state or
16 federal law, favoring the privacy of insurance information. More importantly, however, the
17 value of the personal property transferred to Bayuk by the Debtor immediately following entry of
18 the judgment is directly relevant to Plaintiff's claims.

19 McNair also involves the production of tax returns. McNair v. Eighth Judicial Dist.
20 Court In & For Cty. of Clark, 110 Nev. 1285, 1290, 885 P.2d 576, 579 (1994). The Court in
21 McNair refused to hold that tax returns were entitled to any privilege, concluding instead that
22 "tax returns must be relevant to be discoverable, and may not be discoverable in the absence of a
23 showing that the information is otherwise unobtainable." McNair, 110 Nev. at 1290, 885 P.2d at
24 579 (citing Clark v. District Court, 101 Nev. 58, 64, 692 P.2d 512, 516 (1985), Schlatter, 93 Nev.
25 at 192, 561 P.2d at 1343). Ultimately, the Court ordered the tax returns were discoverable,
26 where the judgment creditors had been unsuccessful in their efforts to discover the judgment
27 debtors' assets and the information contained in the tax returns may be relevant in identifying
28 assets and collecting the judgment. Id. Contrary to Bayuk's contention, McNair does not hold,

1 nor even imply, that financial records need only be produced by a party in litigation if they are
2 unobtainable from some other source.

3 **C. Refusing to Produce Relevant, Responsive Documents is Not an Acceptable**
4 **Response to Requests, Even if Overly Broad.**

5 In light of the commingling of Bayuk's and the Debtor's assets over a number of years,
6 Plaintiff does not believe the subject discovery requests were overly broad. The temporal scope
7 of the requests at issue² is necessary to determine which assets were in the Debtor's possession
8 and which were in Bayuk's possession before and after the subject transfers, along with
9 differences in valuation attributed to such assets before and after the transfers reflected in the
10 Bills of Sale. See Motion, Exhibits 2, 3, and 4.

11 Nonetheless, overbreadth is not an excuse for simply refusing to produce any responsive
12 documents. Rule 34(b)(2)(B) provides:

13 (B) Responding to Each Item. For each item or category, the response
14 must either state that inspection and related activities will be permitted
15 as requested or state the ground for objecting to the request, *with*
specificity, including the reasons.

16 Nev. R. Civ. P. 34(b)(2)(B) (emphasis added). Meeting the burden of asserting a discovery
17 objection requires more than Bayuk's boilerplate objection of "this request seeks documents
18 which contain sensitive personal information which is not relevant to the claims and defenses
19 pled in this case. The request is overbroad, not limited to the specific issues in dispute in this
20 case, and is not reasonably calculated to lead to the discovery of admissible evidence." Bare
21 assertions do not suffice. See, e.g., Pleasants v. Allbaugh, 208 F.R.D. 7, 12 (D.D.C. 2002), on
22 reconsideration, No. CIV.A. 00-3094(JMF), 2002 WL 31520105 (D.D.C. Nov. 12, 2002);
23 Jackson v. Montgomery Ward & Co., 173 F.R.D. 524 (D. Nev. 1997); Josephs v. Harris Corp.,
24 677 F.2d 985, 992 (3d Cir. 1982) ("the mere statement by a party that the interrogatory was
25 'overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful
26

27 ² Bayuk does not clearly identify the requests that he contends are "unlimited in scope," but from the context it
28 appears he is referring to requests relating to "insurance policies in effect for any real or personal property
[Bayuk] owned between January 1, 2005 and December 31, 2011." See Motion, pp. 6-7.

1 objection to an interrogatory. On the contrary, the party resisting discovery 'must show
2 specifically how ... each interrogatory is not relevant or how each question is overly broad,
3 burdensome or oppressive.'" (citing Roesberg v. Johns-Manville Corp., 85 F.R.D. 292, 296-97
4 (E.D.Pa.1980)).³

5 Thus, the burden is on the party resisting discovery (Bayuk) to explain precisely why
6 each request is objectionable given the broad discovery rules. See, e.g., McLeod, Alexander,
7 Powel &Apffel, P.C. v. Quarles, 894 F.2d 1482, 1485 (5th Cir. 1990). The burden of showing
8 that an objection is proper is on the objecting party, and it is only after the objecting party makes
9 a proper and valid showing that the materials sought are improper does the burden shift to the
10 requesting party. See Redland Soccer Club, Inc. v. Department of the Army, 55 F.3d 827, 856
11 (3rd Cir.1995); Heller v. City of Dallas, 303 F.R.D. 466, 490-91 (N.D. Tex. 2014) (the party
12 resisting discovery must "show how the requested discovery was overly broad, unduly
13 burdensome, or oppressive by submitting affidavits or offering evidence revealing the nature of
14 the burden.") (citations omitted); Etienne v. Wolverine Tube, Inc., 185 F.R.D. 653, 656 (D. Kan.
15 1999); Hilt v. SFC, Inc., 170 F.R.D. 182, 186 (D.Kan 1997).⁴

16 Further, Rule 34(b)(2)(C) requires not only that Bayuk identify responsive documents
17 that are not produced pursuant to an objection, but that he produce any responsive documents
18 that are not subject to an objection. Specifically, Rule 34(b)(2)(C) provides:

19 (C) Objections. An objection must state whether any responsive
20 materials are being withheld on the basis of that objection. An objection
21 to part of a request must specify the part and permit inspection of the
22 rest.

23 ³ See Burns v. Imagine Films Entertainment, Inc., 164 F.R.D. 589, 592-93 (W.D.N.Y. 1996) (generalized
24 objections are not sufficiently specific to allow the Court to ascertain the objectionable character of the
25 discovery request); Chubb Integrated Sys. Ltd. v. National Bank of Washington, 103 F.R.D. 52, 58 (D.D.C.
26 1984) (general objections do not fulfill a party's burden to explain its objections and therefore are not useful to
27 the court.).

28 ⁴ See also Mancia v. Mayflower Textile Servs. Co., 253 F.R.D. 354, 359 (D. Md. 2008) (finding that boilerplate
objections resulted in waiver of objections, and stating "[i]t would be difficult to dispute the notion that the very
act of making such boilerplate objections is *prima facie* evidence of a Rule 26(g) violation, because if the
lawyer had paused, made a reasonable inquiry, and discovered facts that demonstrated the burdensomeness or
excessive cost of the discovery request, he or she should have disclosed them in the objection, as both Rule 33
and 34 responses must state objections with particularity, on pain of waiver.").

1 Nev. R. Civ. P. 34(b)(2)(C). Interpreting the parallel Federal Rule, Wright & Miller states:

2 The producing party does not need to provide a detailed description or
3 log of all documents withheld, but does need to alert other parties to the
4 fact that documents have been withheld and thereby facilitate an
5 informed discussion of the objection. An objection that states the limits
6 that have controlled the search for responsive and relevant materials
7 qualifies as a statement that the materials have been "withheld."

8 8B Fed. Prac. & Proc. Civ. § 2213 (3d ed.) (citing Committee Note to 2015 Amendment to Fed.
9 R. Civ. P. 34).

10 Similarly, the Southern Nevada Discovery Commissioner stated:

11 The rule of common sense dictates a responding party *has a duty to*
12 *answer to the extent a discovery inquiry is not objectionable.* . . .
13 Answers must be complete and unevasive. If the answering party lacks
14 the necessary information to make a full, fair and specific answer to an
15 interrogatory, it should so state under oath and should set forth in detail
16 the efforts made to obtain the information.

17 Olivarez v. Rebel Oil Company, et al., Discovery Commissioner Opinion #11 (2003) (internal
18 citations omitted) (emphasis added) (citing Miller v. Doctor's General Hospital, 76 F.R.D. 136
19 (W.D.Okla. 1997); Zanowic v. Reno, 2000 U.S. Dist. Lexis 13845 (S.D.N.Y. 2000)).

20 Bayuk failed to produce documents that are plainly unobjectionable, including insurance
21 applications, policies, and schedules of assets for the assets transferred by the Debtor to Bayuk,
22 an insider, for the period immediately preceding and immediately following the transfers, nor did
23 he advise Plaintiff in any way that responsive documents were withheld. Only *after* the Motion
24 was filed did Bayuk explain the basis for his objections, arguing for the first time in his
25 Opposition that insurance on his mother's diamond ring or his vehicle would be deemed
26 responsive to the requests. However, his contention that the requests encompass irrelevant
27 information or were overly broad did not entitle him to refuse to produce (or even identify)
28 documents which were both responsive and relevant.

29 **D. Conclusion.**

30 There is no presumption in Nevada against the discovery of relevant financial
31 information, especially from a defendant in a fraudulent transfer action. Accordingly, the
32 documents requested by Plaintiff are required to be produced. Bayuk's objection that the

1 requests were overly broad did not permit him to withhold indisputably relevant documents that
2 are fairly within the scope of authority, particularly without disclosing to Plaintiff that documents
3 were withheld. Unfortunately, had Bayuk's counsel conferred in good faith regarding the scope
4 of the requests rather than categorically refusing to respond, the disputed issues could have been
5 narrowed and the supposed overbreadth of Plaintiff's request may have been resolved without
6 court intervention. However, Bayuk's refusal to comply with his discovery obligations
7 whatsoever requires an order compelling the requested discovery by this Court.

8 **AFFIRMATION**
9 **Pursuant to NRS 239B.030**

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

12 DATED this 9th day of May, 2016.

13 GARMAN TURNER GORDON LLP

14 /s/ Gabrielle A. Hamm

15 GERALD E. GORDON, ESQ.
16 GABRIELLE A. HAMM, ESQ.
17 TERESA M. PILATOWICZ, ESQ.
18 650 White Drive, Ste. 100
19 Las Vegas, Nevada 89119
20 Telephone 725-777-3000

21 *Special Counsel to the Plaintiff William M. Leonard*

CERTIFICATE OF SERVICE

I certify that I am an employee of GARMAN TURNER GORDON, and that on this date, pursuant to NRCP 5(b), I served a true and correct copy of the foregoing **REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS** on the parties as set forth below:

- ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, Las Vegas, Nevada, postage prepaid, following ordinary business practices
- ☐ Certified Mail, Return Receipt Requested
- ☐ Via Facsimile (Fax)
- ☐ Via E-Mail
- ☐ Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered
- ☐ Federal Express (or other overnight delivery)
- ☒ By using the Court's CM/ECF Electronic Notification System addressed to:
Barry L. Breslow, Esq.
Frank C. Gilmore, Esq.

Addressed as follows:

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

DATED this 9th day of May, 2016.

/s/ Patty Pierson

Patty Pierson, an Employee of GARMAN
TURNER GORDON

INDEX OF EXHIBITS

| <u>Exhibit No.</u> | <u>Description</u> | <u>Pages</u> |
|---------------------------|--|---------------------|
| 1. | Declaration of Gabrielle A. Hamm, Esq. in Support of Reply in Support of Plaintiff's Motion to Compel Production of Documents | 2 |
| 2. | Amended Findings of Fact and Conclusion of Law in Support of Order Granting Motion for Summary Judgment, Case No. 13-51237-gwz, ECF No. 167 | 9 |
| 3. | Order compelling deposition of Paul A. Morabito dated March 13, 2014 in Consolidated Nevada Corp., et al. v. JH. et al., Case No. CV07-02764 | 3 |
| 4. | Emergency Motion Under NRCP 27(e): Petition for Writ of Prohibition, <i>Paul A. Morabito v. The Second Judicial District Court of the State of Nevada in and for the County of Washoe</i> , Case No. 65319, Apr. 1, 2014 | 29 |
| 5. | Order Denying Petition for Writ of Prohibition, Case No. 65319, Apr. 18, 2014 | 3 |
| 6. | Order Granting Summary Judgment and Judgment, Case No. 13-51237-gwz, ECF No. 161 | 3 |

EXHIBIT 1

EXHIBIT 1

1 **DECLARATION OF GABRIELLE A. HAMM, ESQ. IN SUPPORT OF REPLY IN**
2 **SUPPORT OF PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF**
3 **DOCUMENTS**

4 I, GABRIELLE A. HAMM, declare and state under penalty of perjury the following:

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

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 *Reply in Support of Plaintiff's Motion to*
11 *Compel Production of Documents* (the "Reply").

12 4. Attached hereto as Exhibit 2 is a true and correct copy of the *Amended Findings*
13 *of Fact and Conclusion of Law in Support of Order Granting Motion for Summary Judgment*,
14 entered by the United States Bankruptcy Court for the District of Nevada in *In re: Paul A.*
15 *Morabito*, Case No. 13-51237-gwz, ECF No. 167.

16 5. Attached hereto as Exhibit 3 is a true and correct copy of the *Order* compelling
17 deposition of Paul A. Morabito, entered by the Hon. Judge Brent Adams on March 13, 2014 in
18 *Consolidated Nevada Corp., et al. v. JH. et al.*, Case No. CV07-02764.

19 6. Attached hereto as Exhibit 4 is a true and correct copy of the *Emergency Motion*
20 *Under NRCP 27(e): Petition for Writ of Prohibition*, filed on April 1, 2014 in *Paul A. Morabito*
21 *v. The Second Judicial District Court of the State of Nevada in and for the County of Washoe*,
22 Case No. 65319.

23 7. Attached hereto as Exhibit 5 is a true and correct copy of the *Order Denying*
24 *Petition for Writ of Prohibition*, issued by the Nevada Supreme Court on April 18, 2014 in Case
25 No. 65319.

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8. Attached hereto as Exhibit 6 is a true and correct copy of the *Order Granting Summary Judgment and Judgment*, entered by the United States Bankruptcy Court for the District of Nevada in *In re: Paul A. Morabito*, Case No. 13-51237-gwz, ECF No. 161

Dated this 9th day of May, 2016.

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

EXHIBIT 2

EXHIBIT 2

Gregg W. Zive

Honorable Gregg W. Zive
United States Bankruptcy Judge



Entered on Docket
December 22, 2014

GORDON SILVER
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JH, Inc., Jerry Herbst, and Berry-Hinckley Industries

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re;

PAUL A. MORABITO,

Alleged Debtor.

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

Date: November 21, 2014
Time: 10:00 a.m.

**AMENDED¹ FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF
ORDER GRANTING SUMMARY JUDGMENT AND JUDGMENT**

JH, Inc. ("JH"), Jerry Herbst ("Herbst"), and Berry-Hinckley Industries ("BHI" and collectively with JH and Herbst, the "Petitioning Creditors"), by and through their counsel, the law firm of Gordon Silver, filed their *Motion for Summary Judgment* [ECF No. 131] (the

¹ Amended to correct the petition date to June 20, 2013.

1 "Motion") on August 14, 2014.² The Court reviewed the Motion, the *Petitioning Creditors'*
 2 *Separate Statement of Undisputed Facts in Support of Motion for Summary Judgment* [ECF No.
 3 132] (the "SSOF"), the *Declaration of Brian R. Irvine, Esq. in Support of Petitioning Creditors'*
 4 *Separate Statement of Undisputed Facts in Support of Motion for Summary Judgment* [ECF No.
 5 133], the *Opposition to Motion for Summary Judgment* [ECF No. 146] (the "Opposition"), the
 6 *Reply to Opposition to Motion for Summary Judgment* [ECF No. 147] (the "Reply") and the
 7 other pleadings and declarations noted on the record at the hearing on the Motion held on
 8 November 21, 2014 (the "Hearing").

9 At the Hearing and after due deliberation and sufficient cause appearing in accordance
 10 with FRCP³ 52, as incorporated pursuant to Bankruptcy Rule 9014, and Bankruptcy Rules 1013,
 11 1018 and 7056, the Court granted the Motion for the reasons set forth below.

12 **IT IS HEREBY FOUND AND DETERMINED** by the Court (together with the
 13 findings of fact and conclusions of law made on the record at the Hearing (the "Findings and
 14 Conclusions") as follows:

- 15 1. The Court has jurisdiction over the Involuntary Proceeding pursuant to 28 U.S.C.
 16 § 1334.
- 17 2. Determining whether an order for relief is appropriate is a core proceeding in
 18 which the Court may enter a final order in accordance with 28 U.S.C. § 157(b)(2).
- 19 3. Venue of the Involuntary Proceeding in this District is proper pursuant to 28
 20 U.S.C. § 1408.
- 21 4. Good, sufficient, and timely notice of the Hearing has been given to holders of
 22 claims and other parties-in-interest to whom notice is required to be given in accordance with the
 23 Bankruptcy Code, the Bankruptcy Rules and the Local Rules. Notice of all proceedings
 24 regarding or relating to the Motion was adequate under the circumstances and materially

25 ² Any capitalized but undefined terms set forth herein shall be defined in the Motion and SSOF (defined below).

26 ³ All references to "Chapter" or "Section" herein shall be to the Bankruptcy Code appearing in Title 11 of the U.S.
 27 Code; all references to a "Bankruptcy Rule" shall refer to the Federal Rules of Bankruptcy Procedure; all references
 28 to "FRCP" shall refer to the Federal Rules of Civil Procedure; and all references to "Local Rule" are to the Local
 Rules of Bankruptcy Practice for the U.S. District Court for the District of Nevada.

1 complied with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the
2 Local Rules.

3 5. On June 20, 2013 (the "Petition Date"), the Petitioning Creditors filed an
4 involuntary petition for relief under Chapter 7 of the Bankruptcy Code [ECF No. 1] (the
5 "Involuntary Petition"), thereby commencing the Chapter 7 involuntary proceeding (the
6 "Involuntary Proceeding") against Paul A. Morabito (the "Morabito").

7 6. The Involuntary Petition alleged that the Petitioning Creditors' claims were for
8 \$77,000,000, based upon the *Confession of Judgment* and a *Stipulation to Confession of*
9 *Judgment* (the "Stipulated Judgment" and referred to with the Confession of Judgment as the
10 "Confessed Judgment"), filed on June 18, 2013, in the Second Judicial District Court in and for
11 the County of Washoe (the "State Court"), and entered onto the judgment roll by the clerk of the
12 State Court.

13 7. On July 15, 2013, Morabito filed his *Motion to Dismiss Involuntary Chapter 7*
14 *Petitions: Memorandum of Points and Authorities in their respective Chapter 7 Cases* [ECF No.
15 42] (the "Dismissal Motion").

16 8. On September 25, 2013, Morabito filed his *Notice of Withdrawal of Alleged*
17 *Debtors' Argument Regarding 11 U.S.C. 303(b) Numerosity Contained in the Motion to Dismiss*
18 [ECF No. 78], which provided that the Morabito withdraws that argument from the Dismissal
19 Motion and it shall not be presented as a basis for dismissal of the Involuntary Petition.

20 9. The Petitioning Creditors filed their *Joint Opposition to Motion to Dismiss*
21 *Involuntary Chapter 7 Petitions* [ECF No. 82] (the "Joint Opposition"), in which they argued
22 that the Confessed Judgment was not subject to a bona fide dispute and the Involuntary
23 Proceeding before the Court was more than a two-party dispute. The Petitioning Creditors also
24 maintained that they filed the Involuntary Petition primarily to address the fraudulent dissipation
25 and transfer of Morabito's assets. See Opposition to Dismissal at 3:18-19.

26 10. Morabito responded to the Joint Opposition in the *Joint Reply in Support of*
27 *Motion to Dismiss Involuntary Chapter 7 Petitions* [ECF No. 91].
28

11. The Bankruptcy Court held a hearing on the Dismissal Motion on October 22, 2013, and on December 17, 2013, the Bankruptcy Court entered its *Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings Pursuant to 11 U.S.C. § 305(a)(1)* [ECF No. 94] (the "Suspension Order") for the reasons set forth on the record at the hearing and in the Suspension Order and as reiterated at the Hearing.

12. On March 20, 2014, Morabito filed his *Motion for Clarification of Order* [ECF No. 99] (the "Clarification Motion"), which requested clarification of the Suspension Order and authorization to settle an undisclosed claim against Morabito after it was already settled by state court order.

13. The Court lifted the Suspension Order on July 10, 2014, in its *Order Re: June 26, 2014 Status Conference* [ECF No. 123] ("Order Lifting Suspension") for the reasons stated on the record at the hearing and in the Order Lifting Suspension and reiterated at the Hearing. The Court also provided that Morabito answer the Involuntary Petition on or before July 21, 2014.

14. On July 21, 2014, Morabito filed his *Answer to Involuntary Petition* [ECF No. 128] (the "Answer"). While the Answer addressed Exhibit A to the Petition, it did not address the three allegations set forth on the face of the Involuntary Petition.

15. On November 21, 2014, the Court held the Hearing on the Motion.

16. The Court finds and concludes that summary judgment is appropriate because there is no genuine dispute as to any material fact and the Petition Creditors are entitled to judgment as a matter of law.

17. The Court finds that the following factual findings are based upon undisputed facts. Although Morabito had the opportunity to provide declarations and other evidence in support of his Opposition, he failed to do so. As such, there is no genuine dispute as to any material fact.

a. There is no dispute as to the facts set forth in the Petitioning Creditors' SSOF, except for Morabito's assertion that he was generally paying his debts when due, which assertion is not supported by any genuine material fact.

b. As previously determined in denying the Dismissal Motion, the Confessed Judgment is not subject to a bona fide dispute.

c. The Confessed Judgment was filed as a result of Morabito's failure to comply with the terms of that certain *Settlement Agreement and Mutual Release dated November 30, 2011* (the "Settlement Agreement"), which resolved the Morabito's appeal of a State Court judgment rendered in Consolidated Nevada Corp., et al. v. JH. et al., Case No. CV07-02764 (together with all claims and counterclaims, the "State Court Action"), in favor of the Petitioning Creditors for \$149,444,777.80 (the "Judgment").

d. The Petitioning Creditors were eligible to file the Involuntary Petition pursuant Section 303(b).

e. Morabito is a person against whom an order for relief may be entered.

f. There is no genuine dispute that Morabito was not paying at least 98% of his debt on the Petition Date.

g. The Involuntary Proceeding is not a one-creditor dispute.

h. Special circumstances exist that would permit the Court to enter an order for relief even if the Involuntary Proceeding is a one-creditor dispute.

i. Even if the Involuntary Proceeding was a one-creditor dispute, it is because Morabito and Bayuk sought to isolate the Petitioning Creditors by paying all of Morabito's other debts.

j. The materiality of the debt owed to the Petitioning Creditors swamped Morabito's other debt.

k. The conduct of Morabito before the State Court and the Bankruptcy Court was gamesmanship.

l. Exhibit 4 to the Opposition, which is the *Declaration of Edward Bayuk in Support of Paul A. Morabito's Opposition to Motion for Summary Judgment* ("Bayuk Declaration"), demonstrates that, on the Petition Date, Morabito was not paying his debts himself, but that Bayuk was paying Morabito's debts.

1 m. The Bayuk Declaration also evidences that Bayuk was the holder of a
2 promissory note in the amount of \$600,000 (the "Bayuk Note") on the Petition Date.

3 n. Morabito acknowledged during his deposition that the \$600,000 was used
4 to pay his expenses.

5 o. The Bayuk Declaration establishes that Bayuk expected, as of the Petition
6 Date, to be repaid by Morabito the amounts due under the Bayuk Note.

7 p. Bayuk was a creditor of Morabito on the Petition Date and, as a result, the
8 Involuntary Proceeding was not a one-creditor dispute on the Petition Date.

9 q. Although Bayuk suggested in the Bayuk Declaration that he gifted the
10 debt owed to him under the Bayuk Note and destroyed the Bayuk Note after the Petition
11 Date, debt that is forgiven is not paid.

12 r. Morabito was not paying the amounts due and owing to Bayuk under the
13 Bayuk Note in addition to failing to pay the Petitioning Creditors under the Confessed
14 Judgment.

15 s. What has occurred here is isolation by Morabito and Bayuk of the
16 obligation of \$77 million under the Confessed Judgment.

17 t. The amount of delinquency, the materiality of debt and nonpayment, the
18 nature of the conduct of Morabito's affairs, and the inconsistent positions taken by
19 Morabito and Bayuk before the Court by declarations, pleadings and Morabito's
20 testimony in deposition demonstrate that, under a totality of circumstances, Morabito was
21 not generally paying his debts as they became due on the Petition Date.

22 u. No evidence could be presented at trial that could vary these undisputed
23 facts.

24 18. The Court concludes that since no evidence could be presented at trial that could
25 vary these undisputed facts, and there is no question that the Court would render a directed
26 verdict in favor of the Petitioning Creditors at trial.

27 19. Genuine disputes as to material facts cannot be created by contradictory or
28 conflicting testimony or declarations of Morabito.

1 20. The Court concludes that the Petitioning Creditors were eligible to file the
2 Involuntary Petition pursuant Section 303(b).

3 21. The Court concludes that Morabito waived any argument that the Petitioning
4 Creditors did not meet the numerosity requirement pursuant to Section 303(b)(1).

5 22. The Court concludes that even if the numerosity requirement was not waived, as
6 provided for in Section 303(b), there are less than twelve eligible holders of claims against
7 Morabito.

8 23. The Court concludes that Morabito is a person against whom an order for relief
9 may be entered.

10 24. The Court concludes that the Section 303(h)(1) test of whether Morabito was
11 generally paying his debts as they became due is to be applied as of the date of the filing of the
12 Involuntary Petition.

13 25. The Court concludes that what happens post-Petition does not affect the Court's
14 determination as to whether Morabito was generally paying his debts as the debts become due.

15 26. Morabito's request in the Opposition that the Court dismiss the Involuntary
16 Petition under Section 305 was denied when the Court lifted the Suspension Order and is not
17 properly before the Court at the Hearing as required by Section 305(a).

18 27. The Court concludes that Morabito was not generally paying his debts as his debt
19 became due on the Petition Date.

20 28. The Court concludes that, consistent with Section 303, it is appropriate for the
21 Court to enter an order for relief under Chapter 7 of the Bankruptcy Code against Morabito.

22 **IT IS SO ORDERED.**
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| PREPARED AND SUBMITTED BY: | APPROVED/DISAPPROVED |
| GORDON SILVER | ROBISON, BELAUSTEGUI, SHARP & LOW |
| By: <u>/s/ Mark M. Weisenmiller</u> GERALD M. GORDON, ESQ. BRIAN R. IRVINE, ESQ. MARK M. WEISENMILLER, ESQ. 100 W. Liberty Street Reno, Nevada 89501 <i>Attorneys for Petitioning Creditors</i> | By: <u>/s/ Frank C. Gilmore</u> FRANK C. GILMORE, ESQ. BARRY L. BRESLOW, ESQ. 71 Washington Street Reno, Nevada 89503 <i>Attorneys for Paul A. Morabito and Consolidated Nevada Corporation</i> |

LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

- ☐ The court waived the requirement of approval under LR 9021(b)(1).
- ☐ No party appeared 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, or failed to respond, as indicated above.

FRANK C. GILMORE, ESQ. and JEFFREY L. HARTMAN, ESQ.

- ☐ I certify that this is a case 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 3

EXHIBIT 3

1 Code 3370

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

6 CONSOLIDATED NEVADA CORP., et al.,

Case No. CV07-02764

7 Plaintiffs,

Dept. No. 6

8 v.

9 JH, INC., et al.,

10 Defendants.
11 _____/

12 JH, INC., et al.,

13 Counter-Claimants,

14 v.
15

16 CONSOLIDATED NEVADA CORP., et al.,

17 Counter-Defendants.
18 _____/

19 ORDER

20 On March 3, 2014, Defendants/Counter-Claimants, JH, INC. and BERRY-
21 HINCKLEY INDUSTRIES (hereinafter "Herbst Parties"), filed a motion to compel the
22 deposition of Plaintiff/Counter-Defendant, PAUL A. MORABITO (hereinafter "Mr.
23 Morabito"), and for monetary sanctions. Mr. Morabito opposed this motion on March 7,
24 2014 on the ground a deposition under this case number is improper as the underlying case
25 was dismissed with prejudice and the confession of judgment improperly placed upon the
26 judgment roll of the clerk of the Second Judicial District Court.

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

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

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

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

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

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

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

DATED: This 13 day of March, 2014.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

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

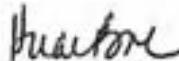
JOHN DESMOND, ESQ.

BRIAN IRVINE, ESQ.

BARRY BRESLOW, ESQ.

FRANK GILMORE, ESQ.

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



Judicial Assistant

EXHIBIT 4

EXHIBIT 4

Electronically Filed
Apr 01 2014 01:37 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

IN THE SUPREME COURT FOR THE STATE OF NEVADA

PAUL A. MORABITO,
Petitioner,

Supreme Court
Case No.: _____

v.

Second Judicial District Court
Case No. CV07-02764

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA IN AND FOR THE
COUNTY OF WASHOE, and the
HONORABLE BRENT ADAMS,

Respondents,

and

JH, INC., a Nevada corporation; JERRY
HERBST; and BERRY-HINCKLEY
INDUSTRIES, a Nevada corporation;

EMERGENCY MOTION
UNDER NRCP 27(c):
PETITION FOR WRIT OF
PROHIBITION
(Action needed by April 12,
2014)

Real parties in Interest

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Petitioner Paul Morabito is an individual, and is not an entity. The undersigned counsel plans to appear on behalf of petitioner in this writ proceeding, and is his counsel in the action before the district court.

4/


BARRY L. BRES

BARRY L. BRESLOW (SBN 3023)
FRANK C. GILMORE (SBN 10052)
Attorneys for Petitioner

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TABLE OF AUTHORITIES

Nevada Case Law

| | |
|--|------------|
| <i>Bergmann v. Boyce</i> , 109 Nev. 670, 856 P.2d 560 (1993) | 8 |
| <i>Coast to Coast Demolition & Crushing, Inc. v. Real Equity Pursuit, LLC</i> , 126 Nev. ___, 226 P.3d 605 (2010) | 12 |
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| <i>Jeep Corp. v. Second Judicial Dist. Ct.</i> , 98 Nev. 440, 652 P.2d 1183 (1982) | 11, 14 |
| <i>Landreth v. Malik</i> , 127 Nev. ___, 251 P.3d 163 (2011) | 11 |
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| <i>Moore v. City of Las Vegas</i> , 92 Nev. 402, 551 P.2d 244 (1975) | 13 |
| <i>Ravera v. City of Reno</i> , 100 Nev. 68, 675 P.2d 407 (1982) | 5, 10, 11 |
| <i>Riverside Casino Corp. v. J.W. Brewer Co.</i> , 80 Nev. 153, 390 P.2d 232 (1964) | 8 |
| <i>Rock Bay, LLC v. Eighth Judicial Dist. Ct.</i> , 129 Nev. ___, 298 P.3d 441 (2013) | 4, 6, 7, 8 |
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| <i>Wardleigh v. Second Judicial Dist. Ct.</i> , 111 Nev. 345, 891 P.2d 1180 (1995) | 6 |

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| 3 | | |
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| 5 | <i>Fausto v. Credigy Servs. Corp.</i> , 251 F.R.D. 427 (N.D. Cal. 2009) | 5,8,9 |
| 6 | <i>Steel Co. v. Citizens for a Better Env't</i> , 523 U.S. 83 (1998) | 11 |
| 7 | | |
| 8 | <i>U.S. v. \$160,066.98 from Bank of Am.</i> , 202 F.R.D. 626 (S.D. Cal. 2009) | 8,9 |
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STATEMENT OF THE ISSUES

1. Whether the district court abused its discretion in compelling appellant, a judgment debtor to a confessed judgment which was filed in the underlying case, to attend a NRCP 30 deposition in Nevada when the appellant resides in California?

2. Whether the district court erred in exercising jurisdiction over this matter because the real parties in interest improperly filed the confession of judgment in the underlying case that had been dismissed with prejudice and all findings and judgments had been vacated and nullified, *nunc pro tunc*, by order of the trial court?

STATEMENT OF THE CASE

This petition arises from an order compelling the attendance of Petitioner Paul A. Morabito ("Morabito") at an NRCP 30 deposition in Nevada. That deposition was noticed by real parties in interest JH, Inc., Jerry Herbst, and Berry-Hinckley Industries (collectively "Herbst") in order to perform discovery in anticipation of executing upon a confession of judgment executed by Morabito in 2011. Herbst improperly filed the confession of judgment in case number CV07-02764, which was dismissed with prejudice by order of the trial court, and in which the findings, judgments and orders of the district court were vacated, withdrawn, and

1 nullified *nunc pro tunc* almost three years ago.

2 After the underlying case was dismissed, Herbst filed the confession
3 of judgment in the same dismissed case. Herbst then sought to commence
4 discovery upon Morabito pursuant to the confession of judgment. Morabito
5 objected to the entry of the confession of judgment in the dismissed case.
6 Herbst then moved to compel Morabito's appearance at a deposition in
7 Nevada. Morabito objected on the ground that (1) he resides in California,
8 and (2) the district court lacked jurisdiction to compel his attendance
9 because the confession of judgment had been improperly filed and the trial
10 court lacked jurisdiction to enter *any* orders in the dismissed case. Over
11 Morabito's objections, the district court granted the motion to compel. This
12 emergency petition for a writ of prohibition follows.
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17 **FACTUAL BACKGROUND OF THE CASE**

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19 Morabito and Herbst were previously parties to district court case
20 number CV07-02764. Petitioner's Appendix ("PA") 1. On December 1,
21 2011, Morabito and Herbst stipulated and requested that the district court
22 enter an order (1) withdrawing and vacating the district court's findings of
23 fact, conclusions of law, and judgment in the case CV07-02764; (2) vacating
24 a judgment entered after a jury trial, and entering that order *nunc pro tunc*.
25
26 *Id.* at 1-2. That same date, Herbst and Morabito stipulated that case CV07-
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1 02764 be dismissed with prejudice. *Id.* at 3-4. Finally, Herbst and Morabito
2 stipulated to seal the record of case CV07-02764. *Id.* at 5-6.
3

4 Once the parties had agreed to dismiss CV07-02764, Morabito signed
5 a confession of judgment in favor of Herbst. *Id.* at 12-25. That confession
6 of judgment did not contain the caption for CV07-02764 because *it was not*
7 *entered into before the district court in that case.* See *id.* at 12.
8

9 Confusingly, when Morabito defaulted on his confession of judgment,
10 in June 2013 Herbst filed the confession of judgment in CV07-02764, which
11 was no longer a pending case. *Id.* at 7-8. Herbst then filed an "Emergency
12 Motion to Compel Deposition of Paul A. Morabito and for Sanctions"
13 pursuant to a deposition notice which Morabito explained he was not
14 inclined to comply with. *Id.* at 32-49. In that emergency motion, Herbst
15 sought an order requiring Morabito to attend an NRCP 30 deposition in
16 Nevada, despite the undisputed fact that Morabito has been a California
17 resident for several years. *Id.* at 32-33. Morabito opposed that emergency
18 motion and argued that (1) the district court lacked subject matter
19 jurisdiction over the confession of judgment execution proceedings because
20 the confession of judgment was improperly before the court in CV07-02764,
21 which had been dismissed with prejudice in 2011; and (2) Morabito, a
22 judgment debtor under the confession of judgment, cannot be required to
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1 attend a deposition at a place that is not in the county where he resides. *Id.* at
2 151-58.

3
4 Over Morabito's objections, the district court granted the motion to
5 compel. *Id.* at 182-84. It found that it had subject matter jurisdiction over
6 the confession of judgment proceedings because "there is nothing in NRS
7 17.090, NRS 17.100, nor in NRS 17.110 that requires a confession of
8 judgment be filed in a new case." *Id.* at 183. It further ordered the parties to
9 conduct the deposition of Morabito within thirty days of March 13, 2014.
10

11
12 *Id.*

13
14 Morabito offered to have his deposition taken in Los Angeles County,
15 where he resides on April 14, 2014. Aff. Frank C. Gilmore, Esq., ¶4. When
16 counsel could not agree to a time, date and location for the deposition, a
17 telephonic hearing was set with the district court. *Id.* The telephonic
18 hearing was held with the district court on March 26, 2014. *Id.* At that
19 hearing, the district court ordered Morabito to attend a deposition in Washoe
20 County, Nevada on April 12, 2014. *Id.* at ¶ 5. *The district court then*
21 *abruptly terminated the hearing before Morabito's counsel could ask the*
22 *court to explain its reasoning for requiring Morabito to appear at a*
23 *deposition in Nevada, and before counsel could make his record. Id.* This
24 writ petition follows.
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SUMMARY OF THE ARGUMENT

A writ of prohibition is the appropriate remedy in this matter because Morabito is requesting this Court to restrain the district court from (1) ordering improper discovery, and (2) exercising jurisdiction over a case in which it lacks subject matter jurisdiction. *Rock Bay, LLC v. Eighth Judicial Dist. Ct.*, 129 Nev. ___, ___, 298 P.3d 441, 444, 446 (2013).

This Court must enter a writ of prohibition restraining the district court from ordering Morabito to attend a post-judgment deposition in Nevada because Morabito resides in California. Herbst moved to compel Morabito's attendance at a deposition in Washoe County. During the telephonic hearing on this issue, the district court ordered Morabito's attendance at a deposition on Saturday, April 12, 2014, in Washoe County, over counsel's objections. The district court then abruptly terminated the telephonic hearing without explaining its reasons for compelling Morabito's attendance, and without permitting counsel to make a record. Because a defendant must be afforded the opportunity to be deposed in the district in which he resides, *Fausto v. Credigy Servs. Corp.*, 251 F.R.D. 427, 429 (N.D. Cal. 2009), the district court's decision was a clear abuse of discretion.

Furthermore, this Court should enter a writ of prohibition restraining the district court from compelling Morabito to attend a deposition in Nevada

1 because the district court's order is void, given that it lacks subject matter
2 jurisdiction over the confession of judgment proceedings.

3
4 Herbst seeks discovery pursuant to a confession of judgment that was
5 filed in case number CV07-02764. That case was dismissed with prejudice,
6 and all findings and judgments were vacated and withdrawn – *nunc pro tunc*
7 -- *almost two years before Herbst filed the confession of judgment with*
8 *the district court.* Notably, *Morabito did not execute the confession of*
9 *judgment in CV07-02764.* The confession of judgment was not executed the
10 dismissed case. Accordingly, the district court did not retain jurisdiction
11 over the matter. *Ravera v. City of Reno*, 100 Nev. 68, 71, 675 P.2d 407, 409
12 (1982). Therefore, the order compelling Morabito to attend his deposition
13 is void. *Cox v. Eighth Judicial Dist. Ct.*, 124 Nev. 918, 925, 193 P.3d 503,
14 534 (2008).
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19 ARGUMENT

20 I. WRIT RELIEF IS APPROPRIATE.

21
22 Morabito respectfully requests that this Court enter a writ of prohibition
23 restraining the district court from (1) ordering Morabito to appear for a
24 deposition in Nevada, and (2) exercising jurisdiction over the execution
25 proceedings on the confession of judgment. "A writ of prohibition may be
26 granted when the district court exceeds its jurisdiction." *Rock Bay, LLC v.*
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1 *Eighth Judicial Dist. Ct.*, 129 Nev. ___, ___, 298 P.3d 441, 444 (2013); *see*
2 *also* NRS 34.320. This relief is an extraordinary remedy that is not available
3 if there is a “plain, speedy and adequate remedy in the ordinary course of
4 law.” *Rock Bay*, 298 P.3d at 444-45 (quoting NRS 34.170).

5
6 Morabito has no adequate legal remedy because post-judgment orders
7 compelling discovery are not substantively appealable. *See* NRAP 3A(b).
8 Furthermore, it is well established that a writ of prohibition is the
9 appropriate remedy to prevent improper discovery. *Rock Bay*, 298 P.3d at
10 444; *Wardleigh v. Second Judicial Dist. Ct.*, 111 Nev. 345, 351, 891 P.2d
11 1180, 1184 (1995) (holding that “a writ of prohibition will issue to prevent
12 discovery required by court order entered in excess of the court’s
13 jurisdiction”).
14

15
16 In addition, writ relief is also appropriate because the district court lacked
17 jurisdiction to enter the order compelling Morabito to attend a deposition in
18 Nevada. Writs of prohibition are “designed to prevent the district court from
19 acting beyond its authority.” *Rock Bay*, 298 P.3d at 444; *see also* NRS
20 34.320. Therefore, a writ of prohibition is the appropriate remedy in this
21 matter.
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26 **II. THE DISTRICT COURT ABUSED ITS DISCRETION IN**
27 **ORDERING MORABITO TO ATTEND A DEPOSITION IN**
28 **NEVADA.**

1 This Court must enter a writ of prohibition restraining the district court
2 from ordering Morabito to attend a post-judgment deposition in Nevada
3 because Morabito resides in California. Herbst moved to compel Morabito's
4 attendance at a deposition in Washoe County. PA 32-33. During the
5 telephonic hearing on this issue, the district court ordered Morabito's
6 attendance at a deposition on Saturday, April 12, 2014, in Washoe County,
7 over counsel's objections. Aff. Frank C. Gilmore, Esq. ¶¶ 4-5. The district
8 court then abruptly terminated the telephonic hearing without explaining its
9 reasons for compelling Morabito's attendance, and without permitting
10 counsel to make a record. *Id.* at ¶ 5. Because a defendant must be given the
11 opportunity to be deposed in the district in which he resides, *Fausto v.*
12 *Credigy Servs. Corp.*, 251 F.R.D. 427, 429 (N.D. Cal. 2009), the district
13 court's decision was a clear abuse of discretion.

14 This Court reviews an order compelling post-judgment discovery for an
15 abuse of discretion. *Rock Bay*, 129 Nev. at ___, 298 P.3d at 446. An abuse
16 of discretion occurs when the court acts "in clear disregard of the guiding
17 legal principles." *McKnight Family, LLP v. Adept Mgmt.*, 129 Nev. ___.
18 ___, 310 P.3d 555, 559 (2013) (quoting *Bergmann v. Boyce*, 109 Nev. 670,
19 674, 856 P.2d 560, 563 (1993)).

1 The deposition Herbst seeks was noticed pursuant to NRCP 30. PA 32.
2 This Rule does not contain a geographical limitation. This does not,
3 however, mean that Herbst may require Morabito to travel to Nevada to be
4 deposed.
5

6 Under FRCP 30, NRCP 30's federal counterpart, "there is general
7 presumption that the deposition of the defendant should be conducted in the
8 district of his residence." *Fausto*, 251 F.R.D. at 429 (internal quotations
9 omitted); *see also U.S. v. \$160,066.98 from Bank of Am.*, 202 F.R.D. 626,
10 627 (S.D. Cal. 2009); *Cont'l Fed. Sav. & Loan Ass'n v. Delta Corp. of Am.*,
11 71 F.R.D. 697, 699 (W.D. Okla. 1976). This is because the defendant is
12 "not before the court by choice," since the plaintiff brought the action and
13 chose the forum. *Fausto*, 251 F.R.D. at 429 (internal quotations omitted);
14 *\$160,066.98 from Bank of Am.*, 202 F.R.D. at 627. Therefore, absent special
15 circumstances, the "party seeking discovery must go where the desired
16 witnesses are normally located." *\$160,066.98 from Bank of Am.*, 202 F.R.D.
17 at 627 (internal quotations omitted).
18

19 This reasoning is "strong persuasive authority, because the Nevada
20 Rules of Civil Procedure are based in large part upon their federal
21 counterpart." *Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 119, 787
22 P.2d 772, 776 (1990)). Here, Morabito does not reside in Nevada. He is not
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1 before the district court by choice. In fact, as will be shown later in this
2 petition, he executed the confession of judgment to *avoid* coming before this
3 district court. His deposition should be conducted in Los Angeles,
4 California, where he resides. The district court did not address this issue in
5 its hearing, did not provide its reasoning for requiring Morabito to attend his
6 deposition, and terminated the telephonic hearing before counsel could make
7 a record. See Aff. Frank Gilmore, Esq. ¶¶ 4-5. Therefore, the district court
8 clearly abused its discretion in requiring Morabito to appear for a deposition
9 in Washoe County, Nevada. Accordingly, this Court should enter a writ of
10 prohibition restraining the district court from requiring Morabito to attend a
11 deposition in Nevada.
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17 **III. THE DISTRICT COURT ERRED IN DETERMINING IT**
18 **HAS SUBJECT MATTER JURISDICTION OVER**
19 **EXECUTION PROCEEDINGS UNDER THE CONFESSION**
20 **OF JUDGMENT.**

21 This Court should also enter a writ of prohibition restraining the district
22 court from compelling Morabito to attend a deposition in Nevada because
23 the district court's order is void, given that it lacks subject matter jurisdiction
24 over the confession of judgment proceedings. Herbst improperly filed the
25 confession of judgment in case number CV07-02764. PA 7. Morabito did
26 not execute his confession of judgment before the district court in that case,
27 *see id.* at 12-25, because that case was dismissed with prejudice, and all
28

1 findings and judgments were vacated and withdrawn *nunc pro tunc* almost
2 *two years before Herbst filed the confession of judgment in the dismissed*
3 *case. Id.* at 1-6. Because the confession of judgment was not executed in
4 CV07-02764, the district judge did not retain jurisdiction over this matter.
5 *Ravera v. City of Reno*, 100 Nev. 68, 71, 675 P.2d 407, 409 (1982).
6 Therefore, the order compelling Morabito to attend his deposition is void.
7 *Cox v. Eighth Judicial Dist. Ct.*, 124 Nev. 918, 925, 193 P.3d 503, 534
8 (2008).

12 Subject matter jurisdiction permits the district court to exercise authority
13 over the controversy between the parties. *Landreth v. Malik*, 127 Nev. ___,
14 ___, 251 P.3d 163, 168 (2011). Absent subject matter jurisdiction, the
15 district court has no authority to enter orders in the case. *In re Parental*
16 *Rights as to S.M.M.D.*, 128 Nev. ___, ___, 272 P.3d 126, 130 (2012); *see*
17 *also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998)
18 ("Without jurisdiction the court cannot proceed at all in any cause.
19 Jurisdiction is the power to declare the law, and when it ceases to exist, the
20 only function of the court is that of announcing the fact and dismissing the
21 cause." (internal quotations omitted)). This means that "[e]very act of a
22 court beyond its jurisdiction is void." *Ex parte Reed*, 100 U.S. 13, 23
23 (1879).

1 Voluntary dismissals with prejudice under NRCP 41(a), like the one that
2 dismissed case number CV07-02764, deprive the district court of further
3 subject matter jurisdiction on the case. *Jeep Corp. v. Second Judicial Dist.*
4 *Ct.*, 98 Nev. 440, 444, 652 P.2d 1183, 1186 (1982). Once the case is
5 dismissed, the district "court loses jurisdiction to consider further
6 proceedings." *Ravera*, 100 Nev. at 71, 675 P.2d at 407. "Any subsequent
7 orders entered by the district court," such as the one compelling Morabito to
8 attend his deposition in Washoe County, are void. *Cox*, 124 Nev. at 925,
9 193 P.3d at 534.

13 Here, Herbst and Morabito voluntarily dismissed case number CV07-
14 02764 with prejudice, and vacated and withdrew all findings of the district
15 court *nunc pro tunc*. PA 1-6. This had the practical effect of declaring that
16 the case never existed. Once the parties agreed to do this, Morabito then
17 confessed judgment to Herbst on terms independent of the district court's
18 involvement. *Id.* at 12-25.

21 A confession of judgment permits a party to confess liability without
22 getting involved in additional litigation. See NRS 17.090. In order for a
23 judgment creditor to execute upon a confession of judgment, the confession
24 of judgment must be filed with the district court. See NRS 21.020
25 (discussing the requirements for seeking a writ of execution on a judgment).
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1 Confession of judgments may be filed "without action." NRS 17.090. The
2 term "without action" refers to the fact that a confessed judgment may be
3 filed and executed upon without requiring the judgment creditor to undergo
4 the pleading process, i.e., to file an action. *Coast to Coast Demolition &*
5 *Crushing, Inc. v. Real Equity Pursuit, LLC*, 126 Nev. ___, ___, 226 P.3d
6 605, 608-09 (2010).
7

8
9 However, the phrase "without action" *does not mean that the confession*
10 *of judgment may be filed in a case that has been dismissed with prejudice*
11 *for almost two years*, as Herbst has attempted to do here. PA 1-6, 7. Had
12 the judgment been entered by the district court in case number CV07-02764,
13 the district court would have retained jurisdiction to execute it. *Fishman v.*
14 *Las Vegas Sun, Inc.*, 75 Nev. 13, 14-15, 333 P.2d 988, 989 (1959)
15 (explaining that a district court retains jurisdiction under NRCP 69 to aid in
16 the execution of judgments entered into before the court).
17

18
19 However, Morabito's confession of judgment was not delivered by the
20 district court in case number CV07-02764, and the district court played no
21 part in the process that led to the confession. The face of the judgment itself
22 demonstrates this. The confession contains a different caption than the
23 dismissed case, and a blank case number space was provided. PA 12.
24 Moreover, Morabito did not confess judgment until the parties had agreed
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1 that case number CV07-02764 (1) *was dismissed with prejudice*, (2) *had all*
2 *its findings, orders and judgments withdrawn*, and (3) the records were
3 *sealed and expunged*. *Id.* at 1-6.

5 Morabito executed the confession on the basis that all findings,
6 judgment, and orders of the district court were null and void, *nunc pro tunc*.
7 He well understood that he would not ever be required to appear before that
8 district judge in that case. Morabito properly expected Herbst would do what
9 all other judgment creditors of confessed judgments do – file the confessed
10 judgment so that it may be entered upon the judgment roll and then be
11 randomly assigned to a judge if executory proceedings required district court
12 attention.
13
14
15

16 Instead, Herbst filed the confession of the judgment under case number
17 CV07-02764 for the express purpose of obtaining the same district judge
18 which had adjudicated the case prior to its dismissal and nullification of all
19 findings. *Id.* at 7. This Court has repeatedly frowned upon judge-shopping.
20 *See Moore v. City of Las Vegas*, 92 Nev. 402, 404, 551 P.2d 244, 246
21 (1975); *Smith v. Eighth Judicial Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849,
22 852 (1991). Here, Morabito confessed judgment in order to *avoid* litigating
23 further in front of this judge. Prior to the dismissal of the action and the
24 vacating of the findings, Herbst had obtained a favorable (and excessive)
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1 monetary judgment with punitive damages award. Herbst knew the district
2 judge's stance on the case. Herbst filed the confession with the intent of
3 utilizing the district court to favorably assist Herbst in its execution efforts.
4 Herbst's scheme worked. As shown above, the district court abused its
5 discretion when it compelled Morabito to attend a deposition in Nevada, and
6 then abruptly terminated the telephonic hearing before counsel could even
7 make a record. Counsel did not have the opportunity to ask the reason for its
8 ruling or to make a record for appellate review. Aff. Frank C. Gilmore, Esq.
9 ¶¶ 4-5.

13 Herbst cannot now attempt "to fan the ashes of that action into life,"
14 because the district court "has no role to play" in case number CVO7-02764.
15 *Jeep Corp.*, 98 Nev. at 444, 652 P.2d at 1186. Instead, Herbst should be
16 required to file the confession of judgment with the district court and permit
17 the random selection process to decide who will preside over the collection
18 process. Accordingly, the district court's order should be declared void for
19 lack of subject matter jurisdiction, and this Court should enter a writ of
20 prohibition restraining the district court from exercising jurisdiction over the
21 collection proceedings.

26 CONCLUSION

27 This Court should enter a writ of restraining the district court from (1)
28

1 ordering improper discovery, and (2) exercising jurisdiction over a case in
2 which it lacks subject matter jurisdiction. The district court clearly abused
3 its discretion when it ordered Morabito to attend a post-judgment deposition
4 in Nevada because Morabito resides in California. The district court
5 rendered this order without explaining its reasons for doing so, without
6 taking into account the well-established fact that a defendant must be
7 deposed in the district in which he resides, and without permitting counsel to
8 make a record for this Court's review. Furthermore, this Court should enter
9 a writ of prohibition restraining the district court from compelling Morabito
10 to attend a deposition in Nevada because the district court's order is void,
11 given that it lacks subject matter jurisdiction over the confession of
12 judgment proceedings. Herbst improperly filed the confession of judgment
13 in case number CV07-02764. That case was dismissed with prejudice, and
14 all findings and judgments were vacated, nullified and expunged, *before*
15 Morabito confessed judgment, and *over two years before Herbst filed the*
16 *confession of judgment with the district court.* The district court lacked
17 jurisdiction to preside over the proceedings and to enter any orders thereon.

18 ///

19 ///

20 ///

1 Therefore, the order compelling Morabito to attend his deposition is
2 void, and a writ of prohibition is necessary to restrain the district court from
3 acting in excess of its jurisdiction.
4

5 DATED this 1st day of April, 2014.
6

7 Robison, Belaustegui, Sharp & Low
8 71 Washington Street
9 Reno, Nevada 89503

10  BARRY L. BRESLOW (SBN 3023)
11 FRANK C. GILMORE (SBN 10052)
12 Attorneys for Petitioner
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[illegible]

Frank C. Gilmore, being first duly sworn deposes and states under penalty of perjury, as follows:

2. This Petition concerns an order compelling attendance at a deposition.

4. When the trial court granted the Motion to Compel, I notified counsel for Herbst that Morabito would appear for his deposition in Los Angeles, California on the 14th of April. Notably, I expressly reserved the

18

1 right to seek appellate review of the trial court's order on the Motion. When
2 counsel could not agree as to the date and time of the deposition, a
3 telephonic hearing was set for March 26, 2014. The hearing on this order
4 occurred telephonically between myself, counsel for real parties in interest,
5 and District Judge Brent Adams.
6

7
8 5. Judge Adams announced his ruling that Morabito must attend a
9 deposition in Washoe County, Nevada, on Saturday, April 12, 2014. He
10 then terminated the hearing without permitting me to object or make my
11 record. He did not explain his reasoning for the order, and I was unable to
12 make a record for this Court. I immediately notified opposing counsel, via
13 letter, that I objected to the deposition and that I intended to seek appellate
14 court review of the Order.
15

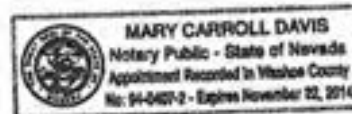
16
17 6. I certify and affirm that this Petition for Writ of Prohibition is
18 made in good faith and not for delay.
19

20 DATED this 1st day of April, 2014

21
22 FRANK C. GILMORE
23

24 Subscribed and Sworn to before me
25 this 1st day of April, 2014, by
26 Frank C. Gilmore.

27 NOTARY PUBLIC
28



1 NRAP 27(e) CERTIFICATE

2 Frank C. Gilmore, the undersigned attorney, hereby certifies that:

- 3
- 4 1. I have made every effort possible notify the clerk of the Supreme
- 5 Court and opposing counsel of this emergency writ petition;
- 6
- 7 2. I have served this emergency writ petition at the earliest possible time.

8 The district court's order was made on March 26, 2014, compelling Mr.

9 Morabito's attendance at a deposition on April 12, 2014, in Nevada;

10

- 11 3. The contact information for the parties' attorneys is:

- 12 a. Paul A. Morabito
- 13 Barry L. Breslow, Esq.
- 14 Frank C. Gilmore, Esq.
- 15 Robison Belaustegui Sharp & Low
- 16 71 Washington Street
- 17 Reno, Nevada 89503
- 18 (775) 329-3151
- 19
- 20 b. JH, Inc., Jerry Herbst, and Berry-Hinckley Industries
- 21 John Desmond, Esq.
- 22 Brian Irvine, Esq.
- 23 Gordon Silver
- 24 100 West Liberty Street, Suite 940
- 25 Reno, Nevada 89501
- 26 (775) 343-7500

- 27 4. Emergency relief is sought because the district court has ordered
- 28 Morabito to attend a deposition in Nevada on Saturday, April 12, 2014. As
- set forth in our motion, this order was entered in excess of the court's
- jurisdiction and was an abuse of discretion since Mr. Morabito resides in

1 California. Emergency action is needed in order to avoid Mr. Morabito from
2 being held in contempt of court;

3
4 5. We have served opposing counsel with notice of the petition, which
5 was filed in Second Judicial District Court Case No. CV07-02764, on the
6 same date as this petition; and

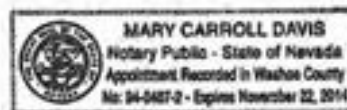
7
8 6. The relief sought in this motion is not available in the district court.
9 The district court has exercised jurisdiction over this matter over Morabito's
10 objection that it lacks jurisdiction. Moreover, the district court ordered
11 Morabito to attend a deposition in Nevada during a telephonic hearing. The
12 district court hung up the telephone before counsel could ask its reasoning,
13 or make a record.
14

15
16 DATED this 1st day of April, 2014.

17
18
19 
20 FRANK C. GILMORE

21 Subscribed and Sworn to before me
22 this 1st day of April, 2014, by
23 Frank C. Gilmore.

24 
25 NOTARY PUBLIC



CERTIFICATE OF COMPLIANCE

1
2 1. I hereby certify that this Petition complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP
4 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:
5

6 This brief has been prepared in a proportionally spaced typeface using
7 Microsoft Word 2010 in 14 size font and Times New Roman style.
8

9 2. I further certify that this Petition complies with the page- or
10 type- volume limitations of NRAP 32(a)(7) because, excluding the parts of
11 the Petition exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has
12 a typeface of 14 points or more and contains 3,489 words.
13

14 3. Finally, I hereby certify that I have read this Petition for Writ of
15 Mandamus, and to the best of my knowledge, information and belief, it is
16 not frivolous or interposed for any improper purpose. I further certify that
17 this Petition complies with all applicable Nevada Rules of Appellate
18 Procedure, in particular NRAP 28(e)(1), which requires every assertion in
19 the Petition regarding matters in the record to be supported by a reference to
20 the page and volume number, if any, of the transcript or appendix where the
21 matter relied on is to be found. I understand that I may be subject to
22 sanctions in the event that the accompanying Petition is not in conformity
23

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with the requirements of Nevada Rules of Appellate Procedure.

DATED this 1st day of April, 2014.

Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, Nevada 89503


~~BARRY L. BRESLOW (SBN 3023)~~
~~FRANK G. GILMORE (SBN 10052)~~
Attorneys for Petitioner

Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3131

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I certify that I am an employee of
ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I
caused a true copy of the attached PETITION FOR WRIT OF
PROHIBITION to be hand-delivered addressed as follows:

Honorable Brent Adams
Second Judicial District Court
75 Court Street
Reno, Nevada 89501

John Desmond, Esq.
Brian Irvine, Esq.
Gordon Silver
100 West Liberty Street, Suite 940
Reno, Nevada 89501

DATED this 1st day of April, 2014.

Mary Carroll Davis
Employee of Robison, Belaustegui,
Sharp & Low

EXHIBIT 5

EXHIBIT 5

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL A. MORABITO,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF WASHOE;
AND THE HONORABLE BRENT ADAMS,
Respondents,

and

JH, INC., A NEVADA CORPORATION;
JERRY HERBST; AND BERRY-
HINCKLEY INDUSTRIES, A NEVADA
CORPORATION,
Real Parties in Interest.

No. 65319

FILED

APR 18 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Malone*
DEPUTY CLERK


ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of prohibition challenges a district court order granting a motion to compel petitioner's deposition.

This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction. NRS 34.320; *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Whether to consider a writ petition is within this court's discretion. *Smith*, 107 Nev. at 677, 818 P.2d at 851. Petitioner bears the burden of demonstrating that extraordinary relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

According to the petition, during a telephonic hearing, the district court ordered petitioner, who is a California resident, to appear for a deposition in Washoe County, Nevada. Petitioner contends that a writ of prohibition is appropriate because he should have been "afforded the opportunity to be deposed in the district in which he resides." Petitioner further contends that the district court should be restrained from

SUPREME COURT
OF
NEVADA

(C) 1977 

14-12510

compelling his attendance at a deposition in Nevada because real parties in interest improperly filed the underlying confession of judgment with the same district court case number as a previous district court action that was dismissed on the parties' stipulation, making the order compelling petitioner's deposition in the confessed judgment proceeding void.

Having considered the petition, answer, reply, and the appendices, we conclude that our extraordinary intervention is not warranted at this time. *Smith*, 107 Nev. at 677, 818 P.2d at 851. In particular, petitioner did not provide this court with a copy of a written order memorializing the district court's ruling that petitioner appear in Washoe County for a deposition, see *Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 688-89, 747 P.2d 1380, 1382 (1987) (recognizing that an oral ruling is ineffective for any purpose), and we are not otherwise convinced that petitioner's argument regarding the district court's jurisdiction over the confession of judgment proceedings warrants our extraordinary intervention, at least at this point in the proceedings. See *Pan*, 120 Nev. at 228, 88 P.3d at 844; *Smith*, 107 Nev. at 677, 818 P.2d at 851. Thus, under these circumstances, we

ORDER the petition DENIED.¹

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Saitta, J.
Saitta

¹In light of our resolution of this matter, we vacate the temporary stay imposed by our April 4, 2014, order.

cc: Hon. Brent T. Adams, District Judge
Robison Belaustegui Sharp & Low
Gordon Silver/Reno
Washoe District Court Clerk

EXHIBIT 6

EXHIBIT 6

Gregg W. Zive

Honorable Gregg W. Zive
United States Bankruptcy Judge



Entered on Docket
December 17, 2014

GORDON SILVER
GERALD M. GORDON, ESQ., Nevada Bar No. 229
E-mail: ggordon@gordonsilver.com
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Facsimile (702) 369-2666
Attorneys for Petitioning Creditors
JH, Inc., Jerry Herbst, and Berry-Hinckley Industries

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:
PAUL A. MORABITO, an individual,

Alleged Debtor.

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

Date: November 21, 2014
Time: 10:00 a.m.

ORDER GRANTING SUMMARY JUDGMENT AND JUDGMENT

The *Motion for Summary Judgment* [ECF No. 131] (the "Motion"), filed by JH, Inc. ("JH"), Jerry Herbst ("Herbst"), and Berry-Hinckley Industries ("BHI") and together with JH and Herbst, the "Petitioning Creditors") came on for hearing before the above-captioned court on November 21, 2014 (the "Hearing"). Gerald M. Gordon, Esq. and Brian R. Irvine, Esq., of the law firm of Gordon Silver, appeared on behalf of the Petitioning Creditors. Frank C. Gilmore,

GORDON & SILVER, L.L.C.
ATTORNEYS AT LAW
NINTH FLOOR
3960 HOWARD HUGHES PARK
LAS VEGAS, NEVADA 89169
(702) 796-5555

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Esq. and Jeffrey L. Hartman, Esq. appeared for the alleged debtor, Paul A. Morabito ("Morabito").

Based upon the *Findings of Fact and Conclusions of Law in Support of Order Granting Summary Judgment and Judgment*, entered concurrently herewith, which is incorporated into this Order by reference, it having been determined after the Hearing on notice that the requirements of Federal Rule of Civil Procedure 56, applicable to this Involuntary Proceeding pursuant to Federal Rules of Bankruptcy Procedure 1018 and 7056, have been satisfied, and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. The Motion is granted.
2. An order for relief shall be entered against Morabito.
3. All pretrial hearings and other hearings related to a trial on the Involuntary Petition shall be vacated.

IT IS SO ORDERED.

PREPARED AND SUBMITTED BY:

GORDON SILVER

By: /s/ Mark M. Weisenmiller
 GERALD M. GORDON, ESQ.
 BRIAN R. IRVINE, ESQ.
 MARK M. WEISENMILLER, ESQ.
 100 W. Liberty Street
 Reno, Nevada 89501
Attorneys for Petitioning Creditors

APPROVED/DISAPPROVED

ROBISON, BELAUSTEGUI, SHARP & LOW

By: /s/ Frank C. Gilmore
 FRANK C. GILMORE, ESQ.
 BARRY L. BRESLOW, ESQ.
 71 Washington Street
 Reno, Nevada 89503
Attorneys for Paul A. Morabito and Consolidated Nevada Corporation

LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

- ☐ The court waived the requirement of approval under LR 9021(b)(1).
- ☐ No party appeared 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, or failed to respond, as indicated above.

FRANK C. GILMORE, ESQ. and JEFFREY L. HARTMAN, ESQ.

- ☐ I certify that this is a case 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 7

EXHIBIT 7

Ricky Ayala

From: Teresa Pilatowicz
Sent: Thursday, September 22, 2016 11:25 AM
To: 'Frank Gilmore'
Cc: 'Mary Carroll Davis'; Gabby Hamm; Ricky Ayala
Subject: RE: Bayuk Insurance Docs
Attachments: Morabito Subpoena Package.pdf

Frank,

I am reviewing your response on the first point and will get back to you shortly.

As to the second point, the documents were subpoenaed from Mr. Morabito (a copy of the subpoena is attached for your convenience). You advised that Mr. Morabito was refusing to produce documents based on the same relevancy objection raised by Mr. Bayuk. Note also that discovery in this matter remains open until February 1, 2017 to follow up on documents produced by Vacco (which we are still waiting on and which therefore may require a further extension) and to follow up on issues related to the Court's ruling on the motion to compel (which was under submission at the time the agreement was made). Please let me know if this changes your position with respect to Mr. Morabito.

Thanks,

Teresa

From: Frank Gilmore <FGilmore@rbsllaw.com>
Date: September 20, 2016 at 11:27:45 AM MST
To: Teresa Pilatowicz <tpilatowicz@Gtg.legal>
Cc: Mary Carroll Davis <MDavis@rbsllaw.com>, Gabby Hamm <g Hamm@Gtg.legal>, Ricky Ayala <rayala@Gtg.legal>
Subject: RE: Bayuk Insurance Docs

Teresa,

First, I don't necessarily agree with you that just because we were willing to file a Motion to protect the production of the documents meant that we had a full responsive production. However, I will tell you that I was under the impression when I drafted the Motion that my client had responsive documents. Although I will also admit that we never expressly discussed it, because I was instructed to oppose the request as soon as the request was served. In other words, we opposed the request before we even looked for the documents.

Here is what happened, and I can swear to it in a declaration if it comes to that. In February, I met with my clients Sam and Edward in Los Angeles. I took with me a copy of the 2nd RFP seeking insurance documents. We discussed the request in general terms and we all agreed that the response was overbroad. At that meeting, I was instructed to object to the request as overbroad. I never asked my client to look for the documents before we objected. Only when the Recommendation for Order was received did we have the conversation about the documents. Without waiving a privilege, I will tell you that Edward was under the impression that you were seeking documents from the date of the lawsuit to the present, some of which he does have (I believe he said he has from 2014 to present). When I told him that you were seeking from 2005-2011, his response was "oh, I didn't know that. No, I don't have

insurance documents that old. I don't even think my broker keeps them that long. But I will search my files and let you know." He recently confirmed to me that he does not have anything pre-dating 2011. To be honest, I am not surprised. There is little reason to keep insurance documents that old.

As to Mr. Morabito, he is entitled to different protections than is Bayuk, who is a party. Morabito is a third-party and has the protections afforded under Rule 45. If you are telling me that you think the Order applies equally to Mr. Bayuk as it does to Mr. Morabito, then I will disagree with you. Moreover, you would be under an obligation to subpoena him for the information. Discovery is closed. I am not sure what basis you have to seek it from Mr. Morabito when you could have done so for the past several years while this case is pending.

Please let me know if we need to discuss this further.

Frank

From: Teresa Pilatowicz [<mailto:tpilatowicz@Gtg.legal>]
Sent: Monday, September 19, 2016 12:05 PM
To: Frank Gilmore
Cc: Mary Carroll Davis; Gabby Hamm; Ricky Ayala
Subject: RE: Bayuk Insurance Docs

Frank,

Following up on our brief discussion this morning, I was quite surprised to see your e-mail given that at no point in the discovery responses or during the briefing on the motion to compel was it ever mentioned that Mr. Bayuk did not have any responsive documents. Quite to the contrary, the understanding on our end was that Mr. Bayuk did have documents but was withholding them from production based on the relevancy objection and pending a determination by the court on the motion to compel. This information now that no responsive documents exist is quite concerning and raises multiple additional questions. Please provide additional information as to what searches were conducted when the discovery requests were initially propounded, what searches Mr. Bayuk conducted recently, what additional efforts were taken to obtain the requested insurance documents, what insurance documents Mr. Bayuk does have, how they are maintained, and who Mr. Bayuk believes may have copies of the responsive documents. We will review and determine how to proceed but I anticipate that absent production of the documents that were subject to a motion to compel for over five months with no indication that the documents did not allegedly exist, further court intervention will be necessary.

Furthermore, as you know, Paul Morabito raised a similar objection to the objection raised by Edward Bayuk and the Bayuk Trust to production of requested insurance documents (i.e., that they were not relevant) and on that basis, refused to produce them. Please advise as to whether, in light of the Court's ruling on the motion to compel, Mr. Morabito will produce the requested documents or if an order compelling the production will be necessary.

Thanks,

Teresa

From: Frank Gilmore [<mailto:FGilmore@rbsllaw.com>]
Sent: Friday, September 16, 2016 10:30 AM
To: Teresa Pilatowicz <tpilatowicz@Gtg.legal>

Cc: Mary Carroll Davis <MDavis@rbsllaw.com>

Subject: Bayuk Insurance Docs

Teresa,

We do not intend to oppose the Master's Recommendation. I instructed Mr. Bayuk to search his records for all responsive policy documents. I have been told that he has only the past few years of insurance documents, but does not have any responsive to the request (2005-2011). Accordingly, no documents will be produced.

However, you are probably aware that Mr. Murtha has sent a subpoena to the insurance broker; if the documents you are seeking do exist, they would likely be provided by the broker.

Frank

FRANK C. GILMORE, ESQ.
ROBISON, BELAUSTEGUI, SHARP AND LOW, P.C.
71 WASHINGTON STREET
RENO, NV 89503
PH: (775) 329-3151
FAX: (775) 329-7169
fgilmore@rbsllaw.com

EXHIBIT 8

EXHIBIT 8

1 **DISCOVERY**

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

3 **bbreslow@rbsllaw.com**

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

5 **fgilmore@rbsllaw.com**

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

7 **A Professional Corporation**

8 **71 Washington Street**

9 **Reno, Nevada 89503**

10 **Telephone: (775) 329-3151**

11 **Facsimile: (775) 329-7169**

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

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

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

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

20 **Plaintiffs,**

21 **CASE NO.: CV13-02663**

22 **DEPT. NO.: B1**

23 **vs.**

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

Defendants.

EDWARD BAYUK'S SUPPLEMENTAL RESPONSES TO PLAINTIFF'S SECOND SET
OF REQUESTS FOR PRODUCTION

Defendant Edward Bayuk, by and through his attorneys Robison, Belaustegui, Sharp & Low, pursuant to NRCP 34 hereby Responses Plaintiff's Second Set of Requests for Production of Documents to Edward Bayuk, as follows:

1 **REQUEST FOR PRODUCTION NO. 25:**

2 Produce all tax returns filed by You or on Your behalf from the tax years 2005 through
3 2011.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

5 Objection, tax returns contain sensitive personal information which is not relevant to the
6 claims and defenses pled in this case. As explained in correspondence sent to Plaintiff related to
7 the same request from Stanton Bernstein, tax returns are not discoverable unless the information
8 contained therein is relevant to a claim alleged. Here, the tax returns are not relevant to Plaintiff's
9 claims and will not be produced. Notwithstanding the objection, no shareholder loans related to
10 Superpumper Inc., are believed to be reported or scheduled on Edward Bayuk's tax returns.

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

12 Produce all Documents related to, referring to, or constituting any and all insurance
13 policies in effect for any real or personal property You owned between January 1, 2005 and
14 December 31, 2011.

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

16 Objection, this request seeks documents which contain sensitive personal information
17 which is not relevant to the claims and defenses pled in this case. The request is overbroad, not
18 limited to specific issues in dispute in this case, and is not reasonably calculated to lead to the
19 discovery of admissible evidence.

20 Notwithstanding the objection, no responsive documents are in Bayuk's possession. As
21 explained to Plaintiffs' counsel multiple times, Mr. Bayuk initially misapprehended the scope of
22 the request, believing that Plaintiffs were seeking *current* insurance documents; he had no
23 appreciation for the fact that Plaintiff was seeking documents from 2005-2011. It was under this
24 misapprehension that Mr. Bayuk instructed his counsel to object to the request and seek a
25 protective order. Only when the Order was received did Mr. Bayuk realize the scope of the request
26 (2005-2011), upon which he promptly notified his counsel that while he has current insurance
27 documentation, he does not keep insurance records from as far back as 2005-2011. Thus, despite
28 his intent to comply with the Order, no responsive documents can be produced pursuant to this

1 request.

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

3 Produce all Documents related to, referring to, or constituting any and all insurance
4 policies for which you applied relating to any real or personal property You owned between
5 January 1, 20015 and December 31, 2011.

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

7 See response to #26, above.

8 **REQUEST FOR PRODUCTION NO. 28:**

9 Produce all Documents related to, referring to, or constituting any payments or
10 distributions to You from Superpumper, Inc., between January 1, 2005 and December 31, 2011.

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

12 All responsive documents have either already been produced or are in the possession of
13 Superpumper's accounting and auditing professionals, which has already been sought and/or
14 received by the requesting party. Edward Bayuk has no records in his personal possession which
15 have not already been sought and/or requested from the most direct source.

16 **REQUEST FOR PRODUCTION NO. 29:**

17 Produce all Documents related to, referring to, or constituting any loans to You from
18 Superpumper, Inc., between January 1, 2005 and December 31, 2011.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

20 All responsive documents have either already been produced or are in the possession of
21 Superpumper's accounting and auditing professionals, which has already been sought and/or
22 received by the requesting party. Edward Bayuk has no records in his personal possession which
23 have not already been sought and/or requested from the most direct source.

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AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 25th day of October, 2016.

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


BARRY E. BRESLOW, ESQ.
FRANK C. GILMORE, ESQ.
Attorneys for Defendants

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CERTIFICATE OF SERVICE

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

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

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

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

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

— by personal delivery/hand delivery addressed to:

— by email addressed to:

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

— by facsimile (fax) addressed to:

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

DATED: This 25th day of October, 2016.

